

1 Q You said something that peaked my interest. You  
2 said you were in jail with Mark Free -- I mean in the  
3 diversion center with Mark Free?

4 A Yes, ma'am.

5 Q When was that?

6 A I went there May the 1st of -- May 3rd of the year  
7 2000. Excuse me.

8 Q May the 1st of --

9 A That's when I got there. He was there a couple of  
10 weeks before me.

11 Q Okay. All right.

12 MS. COLSTON: Thank you, Mr. Mullinax. That's  
13 all I have.

14 THE COURT: Anything else, Mr. O'Dell?

15 MR. O'DELL: No, Your Honor.

16 THE COURT: All right. Step down, Mr. Mullinax.  
17 Who is the State's next witness?

18 MS. COLSTON: Let me see here. Wayne Benson.

19 \*\*\*\*\*

20 WAYNE BENSON

21 was called as a witness by and on behalf of the State, and  
22 after being first duly sworn, was examined and testified as  
23 follows:

24 DIRECT EXAMINATION

25 BY MS. COLSTON:

1 Q Good afternoon, Mr. Benson.

2 A Good afternoon.

3 Q That's great. You sound great. Just keep  
4 speaking up just like you are. Tell the jury who you are  
5 and where you live at.

6 A I'm Wayne Benson. I live on Bells Ferry Road in  
7 Rome, Georgia. I've lived there for about 20 years.

8 Q Did you use to work in Cedartown, Georgia?

9 A Yes, ma'am.

10 Q Where did work at?

11 A I worked for Builder Station.

12 Q How long did you work for Builder Station?

13 A Thirty-nine years.

14 Q All right. Were you working there, were you so  
15 employed there back on January the 11th of 2000?

16 A Yes, ma'am.

17 Q And what time do you generally get off of work?

18 A Around 6:30.

19 Q Okay. And you head on back towards Rome?

20 A Yes, ma'am.

21 Q Towards your home, Bells Ferry Road?

22 A That's correct.

23 Q Was that the case on January the 11th, 2000, sir?

24 A That's correct.

25 Q What -- first of all as you -- did you -- do you

1 travel the route of Highway 27, of course, from Cedartown to  
2 Rome?

3 A Yes, ma'am.

4 Q And is that the route you traveled on the night of  
5 January the 11th, 2000?

6 A Yes.

7 Q What is -- is there anything that night that first  
8 caught your attention as you were driving down the road?  
9 First, what kind of vehicle were you in?

10 A An S-10 pickup.

11 Q An S-10?

12 A Uh-huh.

13 Q What color is your S-10?

14 A Blue.

15 Q And is there anything that caught your eye as you  
16 were coming down the road that night, sir?

17 A Well, as I came around the curve there at  
18 Northwest Georgia Campers, this Toyota pickup truck stopped  
19 in front of me and I immediately stopped. And I was  
20 wondering why he stopped and there was a blue car sort of  
21 darted off the road.

22 Q Okay. Let me slow you down.

23 A Okay.

24 Q Okay? So I can make sure I understand perfectly  
25 everything you're trying to say.

1           A     Okay.

2           Q     Now I don't know where the camper place is.

3           A     Uh-huh.

4           Q     Can you give me a little bit more than that, tell

5 me where the camper place is?

6           A     It would probably be half a mile north of Floyd

7 College coming towards Rome.

8           Q     Okay.

9           A     On the right hand side of the road.

10          Q     Okay. Going past Floyd College on the right hand

11 side of the road, the camper place?

12          A     Uh-huh.

13          Q     And you saw the truck and it was in what lane?

14          A     It was the inside lane, traveling towards town.

15          Q     All right. That's the lane closest to the median?

16          A     No, ma'am, it was on the right hand side coming.

17          Q     The out --

18          A     I'm sorry. It was the outside lane.

19          Q     It was in the outside lane?

20          A     Yes, ma'am.

21          Q     And the truck was in the outside lane?

22          A     Uh-huh.

23          Q     And you said it was stopped or almost stopped or

24 what?

25          A     It stopped.

1 Q It was stopped?

2 A Uh-huh.

3 Q And what color was that pickup truck?

4 A A light color. I'm not really sure about the  
5 color.

6 Q Let's talk about color for just a minute.

7 A Okay.

8 Q Are you colorblind, Mr. Benson?

9 A Yes, ma'am.

10 Q All right. So are you just guessing at these  
11 colors that you were seeing pretty much? Can you see hues?  
12 I don't understand colorblindness because I don't have that.  
13 So can you explain to us what you see as a person who's  
14 colorblind when you look at color such as the color that I  
15 have on right now? What color does that appear to you?

16 A Pinkish color.

17 Q Okay. Very good. And the color that this  
18 gentleman right here that's got the jacket over his arms on  
19 the front row, what color shirt does that look like to you?

20 A Blue.

21 Q Blue? All right. Let's try one more. Mr.  
22 Sutton's jacket, what color would that appear to be to you?

23 A A grayish color.

24 Q So colorblindness, you can still tell what colors  
25 are?

1 A Yes, ma'am.

2 Q You did real well just then. So you saw this light  
3 colored truck.

4 A Uh-huh.

5 Q And it stopped in the outside lane?

6 A Yes, ma'am.

7 Q On Highway 27 about a half of a mile north of  
8 Floyd College; correct?

9 A That's correct.

10 Q And you said the car -- describe it, what it was  
11 doing.

12 A You know, I was wondering why the truck stopped  
13 because the flow of traffic was pretty good right there and  
14 it seemed like this blue car just sort of darted off to the  
15 shoulder of the road.

16 Q Was it behind the truck before it darted?

17 A No, ma'am, it was in front of the truck.

18 Q It was in front of the truck?

19 A Yes, ma'am.

20 Q And it darted off to the shoulder of the road?

21 A Yes, ma'am. That's correct.

22 Q And what did the truck do?

23 A The truck immediately speeded up after it stopped.

24 Q Okay.

25 A It stopped and immediately took off and changed to

1 the inside lane.

2 Q So the truck was at first behind the blue car?

3 A Yes, ma'am.

4 Q The blue car pulled -- it stopped behind the blue  
5 car?

6 A Uh-huh.

7 Q And the blue car pulled off and the truck went on  
8 and sped up?

9 A Yes, ma'am.

10 Q Then what did the blue car do?

11 A I wasn't sure what the blue car was going to do so  
12 I just sat there or, you know, slowed down and it  
13 immediately pulled back out into the lane of traffic.

14 Q Did you have to slow back to let it in?

15 A Yes, ma'am, I slowed down to let it back in.

16 Q Were there other cars around you, Mr. Benson?

17 A There was a few passed me. I'm sure of that.

18 Q Okay.

19 A Because we were all wondering what was going on  
20 here.

21 Q Okay. So there were several vehicles around --

22 A Yes, ma'am, behind.

23 Q -- and a few may have passed you.

24 A Uh-huh.

25 Q And then how fast were those two vehicles

1 traveling or do you know?

2 A They sped off pretty fast. They were moving along  
3 pretty good.

4 Q Okay.

5 A From acceleration, they picked up speed pretty  
6 fast.

7 Q At the point that the car pulled out in front of  
8 you and you had to let off and let that car in, how close  
9 were you to that car?

10 A About as close as I am to you.

11 Q And tell me what you noticed about that blue car.

12 A It was just a bluish colored car. It had fancy  
13 wheels on it. I think it had probably been customized. It  
14 had the body style of maybe a Honda. I'm not sure about the  
15 make.

16 Q Okay.

17 A But it was a low profile vehicle.

18 Q A low profile vehicle?

19 A Uh-huh.

20 Q How many doors did it have?

21 A It was a four-door.

22 Q It was a four-door?

23 A Uh-huh.

24 Q And did you notice anything else about it besides  
25 it had fancy wheels, low profile. Are you talking about



1 kind of low to the ground?

2 A I call it aerodynamic.

3 Q Oh, okay.

4 A It was made like a Honda. It was an older model  
5 Honda. It wasn't a late model Honda.

6 Q It wasn't a late model Honda?

7 A As near as I could tell, it wasn't a late model  
8 Honda.

9 Q What do you call a late model versus an older  
10 model?

11 A Late '90s, 2000. I think it would be before that.

12 Q It would be?

13 A I think middle '90s.

14 Q Middle '90s like '95 or around there would you  
15 say?

16 A I'm not sure about a model of a Honda but.

17 Q But you call it a late model -- I mean, an early  
18 model car something that's not a late model?

19 A Yes, ma'am.

20 Q Something like a '95 or older?

21 A Right. Yes, ma'am. Yeah. Yes, ma'am.

22 Q When you saw this car doing this, how far away did  
23 they get from you?

24 A Well, I thought to myself, well, I'll catch them  
25 at the traffic light and see what's going on and then by the

1 time I got up enough speed, they both were side by side at  
2 the traffic light at Walker Mountain Road.

3 Q Okay.

4 A And the traffic light, I had to slow down for the  
5 traffic light because it was in the process of changing and  
6 by that time they had done got out of my sight.

7 Q Okay. They got out of your sight?

8 A For a few minutes, yes, ma'am.

9 Q For a few minutes?

10 A Uh-huh.

11 Q After they went on through the traffic light at  
12 Walker Mountain Road and then you went through the traffic  
13 light at Walker Mountain Road, when was the next time you  
14 saw the vehicles?

15 A Probably I saw them going up the hill at the Coca-  
16 Cola plant. I was probably three-tenths, four-tenths of a  
17 mile behind them.

18 Q What hill?

19 A The little rise there at the Coca-Cola plant  
20 on 27.

21 Q What else is around there?

22 A There's another business there next to the Coca-  
23 Cola plant. I'm not sure. And then on up past the Coca-  
24 Cola plant you have some other businesses.

25 Q Do you know a business named Angelica?

1 A Yes, ma'am.

2 Q Where is that in relation to that?

3 A It would be about where the young man left the  
4 road.

5 Q Really?

6 A Yes, ma'am, I would think it would be right in  
7 there somewhere about where the young man left the road.

8 Q Okay. Is that on that little hill?

9 A Yes, ma'am, it's sort of on, I guess, on the rise  
10 right there.

11 Q And so what did you see when you went up the  
12 little hill yourself, Mr. Benson?

13 A Well, it's not that much of a hill that would  
14 obscure what you could see. You could still see the --

15 Q Right.

16 A -- flow of traffic. I was coming up through  
17 there, you know, and I'd dismissed what had happened. So  
18 all of a sudden I seen this truck veer off to the left  
19 across the media and start up the southbound lane in a  
20 northerly direction.

21 Q Before we get to there, when you said that you  
22 dismissed what had happened, what had you seen the cars  
23 doing with each other as they were going down the road?

24 A Well, once they went under the traffic light  
25 there, I didn't -- you know, I actually wasn't -- I didn't

1 pay that much attention to them anymore. I think they were  
2 still, you know, running side by side.

3 Q Side by side?

4 A Well --

5 Q Either one of the vehicles in front of the other?

6 A Well, now as the little truck left the road -- he  
7 was in the left hand lane, the inside lane.

8 Q The inside lane.

9 A And the car was in the outside lane. The car was  
10 not running even with him but it was sitting behind him just  
11 a little bit, about bumper width, I guess, you know.

12 Q To the back of him or to the side?

13 A Yes, to the back of the truck -- sort of to the  
14 back, the best I can recall.

15 Q Okay. And then what happened? Did you see  
16 anything just as the truck left the road?

17 A There was -- there was a -- I don't know -- a  
18 flash of some kind. I mean, it could have been dirt or  
19 something. When the truck left, it stirred up some dirt or  
20 something.

21 Q It could have been dirt flying up?

22 A It could have been. I was -- like I say, I was  
23 probably two to three tenths of a mile behind them.

24 Q All right.

25 A I wasn't really that -- right on their tail.

1 Q You described a flash of some kind. It could have  
2 been a flash or light as well as dirt also?

3 A Yes. Yes. Oh, yes, ma'am, it could have been  
4 dirt when he left the road, you know, that came up.

5 Q Either way? You don't know which one it is?

6 A No, ma'am, I do not.

7 Q Okay. And then the truck went across -- how --  
8 where did it go from the minute it left the pavement on the  
9 northbound side of the highway?

10 A It crossed the media and got -- went into the  
11 southbound lanes. It got into the inside lane and ran the  
12 highway, went past one guardrail. Then he went past another  
13 guardrail and that second guardrail, the truck veered  
14 completely off the highway, ran the length of the guardrail  
15 and when it got to the end, the guardrail is sort of rounded  
16 over, it's started rolling up on the guardrail and flipped  
17 about twice and ran it up on its wheels.

18 Q What did you do?

19 A I immediately pulled off to the side of the road  
20 and called 9-1-1.

21 Q Did you at that point pay any attention to what  
22 happened to the blue car?

23 A No, ma'am. After I -- when I got up there  
24 everything was clear. I don't know what happened to the  
25 blue car.

1 Q Okay. Did you -- did you see it again?

2 A No, ma'am, I did not and I haven't seen it since.  
3 I've been looking for it but I haven't seen it.

4 Q And you wish you had got that tag number a million  
5 times; haven't you, Mr. Benson?

6 A Yes, ma'am, many a time.

7 Q And did you -- when you got pulled off the road  
8 and I know that it was a hectic situation, hectic scene, did  
9 you call 9-1-1?

10 A Yes, ma'am.

11 Q All right. Were you the first to call?

12 A As far as I know I was the first.

13 Q Okay. And did they take your report?

14 A Yes, ma'am.

15 Q They didn't tell you, we've already got it?

16 A No, ma'am.

17 Q Okay. And after you called 9-1-1, what did you  
18 do?

19 A I immediately went across the road and tried to  
20 help the young man and the doors were jammed on the truck  
21 and we couldn't get into the vehicle.

22 Q Okay. How long was it before the police arrived?  
23 It probably seemed like an eternity if you --

24 A It wasn't very long. I think the fire department  
25 got there first if I remember right. They have a fire

1 department right off the road up there in Clemmonsville.

2 Q So it was pretty quick?

3 A It was fairly quick, yes, ma'am.

4 Q Did you stay with the vehicle for a while and the  
5 police?

6 A Yes, ma'am, I was there until they got the young  
7 man out of the vehicle.

8 Q All right. Did you see the police block off a  
9 lane of traffic and waving cars around and such as that?

10 A Yes, ma'am.

11 Q When the truck and the car -- the car being  
12 slightly behind the truck and before it went off the road,  
13 the other traffic, the traffic that you said may have passed  
14 you or whatever, did you even notice where that was?

15 A No, ma'am, not really.

16 Q Okay. You were just focusing on those two  
17 vehicles?

18 A Well, once I saw the truck --

19 Q I understand.

20 A -- you know, I was concerned about the people  
21 coming out of Rome; that they were going to have a head on  
22 but they managed to --

23 Q Managed to avoid that?

24 A -- avoid that, yes, ma'am.

25 Q All right. Hang on just a second, Mr. Benson, and

1 let me see if there's anything else.

2 MS. COLSTON: Thank you, Mr. Benson. The defense  
3 will have some questions for you so if you will just  
4 hang tight.

5 MR. ABERNATHY: Thank you, Ms. Colston, Judge.

6 \*\*\*\*\*

7 CROSS-EXAMINATION

8 BY MR. ABERNATHY:

9 Q Good afternoon, Mr. Benson.

10 A Good afternoon.

11 Q Mr. Benson, where were you working that evening?

12 A I was working at Builders Station in Cedartown.

13 Q All right. How long -- what time did you leave  
14 work about?

15 A Around 6:30, between 6:30, around 6:00, 6:30.

16 Q And you left work and drove immediately south on  
17 27 coming back to Rome?

18 A Yes, sir.

19 Q Do you recall where you first saw this white truck  
20 that crossed the median and wrecked and this blue car?

21 A It was about a mile, about a mile and a half  
22 before the accident.

23 Q About a mile and a half?

24 A About a mile, mile and three tenths.

25 Q Just before the college coming into town, past the



1 college?

2 A That's correct.

3 Q And you first saw them there and followed them in,  
4 you say, about a mile and a half before the accident?

5 A It would be about a mile, mile and a half, yes,  
6 sir.

7 Q Okay. And how fast did you say that the truck  
8 almost stopped or might have stopped at one time?

9 A What's the question?

10 Q Did you say the truck stopped or almost stopped at  
11 one time?

12 A The truck stopped.

13 Q Okay. And then it proceeded on?

14 A Yes, sir.

15 Q How long a time period are you thinking this mile  
16 and a half distance you covered, how long did it take you  
17 were behind these vehicles before the accident happened?

18 A Not over five minutes.

19 Q It could have been as little as two minutes?

20 A Yes, sir, it could have been.

21 Q All right. And you say you saw the accident?

22 A Yes, sir.

23 Q And the blue car kept going?

24 A Yes, sir.

25 Q Were there any other vehicles between you and the

1 blue car and the accident?

2 A Not that I recall.

3 Q Okay. You didn't see any red trucks out there,  
4 did you, with some children and guys in it?

5 A No, sir.

6 Q And do you remember about what -- now when you saw  
7 the accident, you say you stopped immediately?

8 A Yes, sir.

9 Q Pulled on up to it and stopped?

10 A Uh-huh.

11 Q Were there some other cars stopped on the opposite  
12 lane coming towards you?

13 A Yes. Are you talking about coming south, going to  
14 --

15 Q Yes.

16 A Yes, sir, they -- some had stopped.

17 Q And did you let one of those talk on your cell  
18 phone?

19 A No, sir.

20 Q One of those people?

21 A Nobody talked on my phone but me.

22 Q Were you by yourself? weren't you?

23 A Yes, sir.

24 Q And you got out. Was someone else already up  
25 there assisting?

1           A       There was some other people there, three or four  
2 men standing around, trying to -- the time I got across the  
3 highway.

4           Q       One guy up there already trying to see if the guy  
5 was all right?

6           A       Yes, sir.

7           Q       And then you called?

8           A       I called on the other side of the road before I  
9 even left my vehicle.

10          Q       Okay.

11          A       Because I left my cell phone in the truck.

12          Q       And you called 9-1-1?

13          A       Yes, sir.

14          Q       Do you remember what time that was?

15          A       No, sir, I do not.

16                 MR. ABERNATHY: May I approach, Your Honor?

17          Q       [By Mr. Abernathy] Let me show you this 9-1-1 call  
18 where I've looked here, where there is an accident with  
19 injuries on 27 South there, 1919. Does that refresh your  
20 memory about that call?

21                 MS. COLSTON: I'm going to object, Your Honor. He  
22 can't refresh his memory from a 9-1-1 document.

23                 THE COURT: Well, he can --

24                 MR. ABERNATHY: Judge --

25                 THE COURT: Yeah, he can.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. ABERNATHY: Thank you.

THE COURT: He can refresh his memory from anything that reflects -- not that he's testifying that that's accurate but just does it refresh his own recollection after looking at it.

MS. COLSTON: Okay. I think his recollection, he said he didn't know.

THE COURT: Well, he can look and see and if that refreshes his recollection, then he can testify from his own recollection if it's --

A 9:19?

Q 1919, I think to clarify in lay people's language that means 7:19.

THE COURT: Well, you can't -- listen. He may look at it and if it helps him remember his own memory, that's fine but that's not his record and he can't testify --

Q Does that help refresh your memory?

A Sir, I can't. I know it would be between six and -- I mean, between 6:30 and 7:00.

Q Could it have been around 7:19?

MS. COLSTON: Could I see the document Mr. Abernathy is looking at. I don't see a copy of it. Thank you.

Q [By Mr. Abernathy] So you called the police

1 immediately?

2 A Yes, sir.

3 Q 9-1-1 and you tried to render assistance just as  
4 anyone would?

5 A Yes, sir.

6 Q Now do you recall talking to the officers there on  
7 the scene and that you were a witness and told them what  
8 happened?

9 A Yes, sir, that's correct. I stayed there till  
10 they got there and talked to them till they told me I could  
11 leave.

12 Q And Detective Moser wrote a report on this. Did  
13 you tell him you were about six or so car lengths behind the  
14 vehicles?

15 A I would say so. I was probably two to three  
16 tenths of a mile behind the vehicles.

17 Q I'm not trying to trick you, Mr. Benson. I just  
18 want to get the picture out. So that's about right; isn't  
19 it? And you remember suddenly the white truck left the  
20 roadway?

21 A Uh-huh.

22 Q Now you recall Mr. Moser showing you a picture,  
23 showing you, Mr. Benson, a picture of a Pontiac Sunfire,  
24 showing you a picture to see if this was the car?

25 A He showed me a picture, yes, sir.

1 Q You told him that wasn't it?

2 A Yes, sir, that's correct.

3 Q All right. Now you had testified they were side-  
4 by-side at the traffic light?

5 A Yes, sir, that's correct.

6 Q How -- I'm sorry.

7 A The little blue car -- the pickup got in the  
8 inside lane. It speeded up and the blue car immediately  
9 pulled back out in the line of traffic. It speeded up. He  
10 caught the truck at the traffic light.

11 Q And I believe you told the police that they were  
12 running about the speed limit; is that correct?

13 A Yes, sir.

14 Q And did you notice, were there one, two or three  
15 people in the little blue car?

16 A I have no idea how many people were in the car.

17 Q You told them it was a dark blue car; didn't you?

18 A It was a dark blue car, yes, sir. And I'm  
19 colorblind, you know.

20 Q Well, that's what I was about to ask you.

21 A It looked blue to me. It might have been a violet  
22 color.

23 Q Could it have been black?

24 A No, it was not black. It was definitely blue. It  
25 was a dark blue.

1 Q All right. And when you called the police, how  
2 long did it take before say the fire truck got there?

3 A Probably five minutes. I'm not really sure, you  
4 know.

5 Q That's all right.

6 A I wasn't concerned about that. I was concerned  
7 about seeing if we could help the young man.

8 Q Sure. And you cooperated and told the police and  
9 told us today all that you know?

10 A Yes, sir.

11 Q All right. And the blue car that the police  
12 showed you was not the car that was there that night?

13 A No, sir.

14 Q And you called in the accident. As far as you  
15 know you were the only person that called it in?

16 A Yes, sir, as far as I know, I was the first one.

17 Q And I want to make this perfectly clear. You told  
18 the ladies and gentlemen of the jury a moment ago that you  
19 followed the car maybe five minutes and I said it could have  
20 been two minutes, but somewhere you say about five minutes  
21 you followed the car before the accident happened, the car  
22 and the truck?

23 A From the time I seen the truck and till the  
24 accident happened, it was probably a five minute lapse of  
25 time in there, yes, sir.

1 Q Okay. So whatever time you called 9-1-1, all this  
2 was going on from five minutes back during that time period,  
3 all of this incident?

4 A Yes, sir, between the time it happened and --

5 Q Mr. Benson, thank you so much. Hold just one  
6 moment. Mr. Benson, were you shown any other photographs of  
7 any cars?

8 A Yes, sir.

9 Q How many did you look at?

10 A I have no idea.

11 Q Did you look at the cars one at a time or did you  
12 look at a grouping?

13 A I looked at -- they had a book with several cars  
14 in it and I looked at them, yes, sir.

15 Q So when you looked at this one car that you said  
16 it wasn't it, was it in the book or did they just show it to  
17 you individually?

18 A It wasn't in the book.

19 Q They just brought it and showed it to you by  
20 itself and you told them that wasn't it?

21 A Yes, sir.

22 Q Is that when they showed you a whole book of  
23 pictures then?

24 A No, sir, uh-uh. That whole book of pictures, they  
25 showed them to me earlier by the City.



1           said, where he first encountered the victim.

2           THE COURT: That's not the same thing.

3           MS. COLSTON: I thought that's what he said.

4           THE COURT: No. That is not my understanding.

5           Q     [By Ms. Colston]: Excuse me, Mr. Benson, what were  
6     telling me?

7           A     Repeat the question so that we will get this  
8     straight.

9           Q     The first time you saw the vehicle, the vehicles,  
10    the truck and the car, right there at the camper place --

11          A     What? the distance from there to the accident?

12          Q     Exactly.

13          A     I'd say a mile and three tenths according to my  
14    speedometer.

15          Q     A mile and three tenths?

16          A     About a mile and three tenths, a mile and a half.

17          Q     You clocked it you said by your speedometer?

18          A     Yes, ma'am.

19          Q     And traveling -- how fast were you traveling?

20          A     I was going about forty, forty-five.

21          Q     And they were traveling much faster?

22          A     Yes, ma'am.

23          Q     They were traveling about sixty?

24          A     From where I first saw them at the traffic light  
25    is roughly three tenths of a mile.

1 Q But what seemed like five minutes to you was --  
2 whatever time it took to cover a mile to a mile and a half  
3 in distance --

4 A Yes, ma'am.

5 Q -- at sixty miles an hour or probably better, at  
6 least?

7 A Uh-huh.

8 MS. COLSTON: Thank you, sir.

9 THE COURT: Since I probably confused things, let  
10 me --

11 MR. ABERNATHY: Okay. Thank you, Judge.

12 THE COURT: Was the place you saw the pickup truck  
13 stopped at the camper, as you described it, at the  
14 camper place, was that the very first point in time you  
15 saw these vehicles?

16 THE WITNESS: Yes, sir, that's correct.

17 THE COURT: All right. Not at the --

18 THE WITNESS: It was not right at the camper  
19 place. It was right past the camper place.

20 THE COURT: All right. But you had not seen them  
21 earlier down at the college or --

22 THE WITNESS: No, sir.

23 THE COURT: -- leading up to that? That's where  
24 you first saw them?

25 THE WITNESS: I came around the curve, the bend in

FORM 6-100 - LAMER TELETYPE SYSTEMS PAPER & SUPPLY CO. 800-526-9073

1 the road and when I did, the truck stopped and I  
2 stopped.

3 THE COURT: I apologize for confusing anybody.

4 MR. ABERNATHY: Thank you, Judge.

5 THE COURT: I was confused and I transferred that  
6 confusion to everybody else and I apologize.

7 MS. COLSTON: Not me, Your Honor, I wasn't  
8 confused.

9 THE COURT: No, that's right. I didn't confuse  
10 you or Mr. Abernathy. Y'all were both quick to let me  
11 know that I was going to be wrong but I wanted to clear  
12 that up.

13 MS. COLSTON: Let me ask Mr. Benson one last  
14 question.

15 Q [By Ms. Colston] Did all this take place in Floyd  
16 County?

17 A Yes, ma'am.

18 MS. COLSTON: Thank you.

19 \*\*\*\*\*

20 RE CROSS-EXAMINATION

21 BY MR. ABERNATHY:

22 Q Mr. Benson, nobody is confused now, I don't think.  
23 Let me ask you something because Ms. Colston just said going  
24 about 60 miles an hour this mile and some sort of distance.  
25 You said the car came to a stop at one time or the truck?

1           A     Yes, sir, it did. It momentarily stopped, just  
2 long enough for the blue car to get out of its way.

3           Q     And you said you slowed down and came almost to a  
4 stop; didn't you?

5           A     Yes, sir, I slowed. Yes, sir.

6           Q     That's what you told the police?

7           A     Uh-huh.

8           Q     And then you proceeded on, went by the traffic  
9 light?

10          A     What do you mean, went by the traffic --

11          Q     Well, when they slowed down to stop, were they  
12 close to the traffic light?

13          A     No, sir, uh-uh, they were three tenths of a mile  
14 this side of the traffic light. They were south of the  
15 traffic light.

16          Q     Okay. And then they proceeded on under the  
17 traffic light --

18          A     Yes, sir.

19          Q     -- before the accident?

20          A     Yes, sir. I thought maybe, you know, when they  
21 got to the traffic light and they stopped, I could see them  
22 and see what was going on.

23          Q     Right.

24          A     Because I figured it was a girlfriend/boyfriend  
25 dispute or something.

1 Q How far past the traffic light did they go on down  
2 before the crash occurred before the shooting?

3 A Half a mile.

4 Q So the total distance, do you know from the first  
5 time you saw the car as you traveled to the accident site,  
6 how far was the total distance?

7 A A mile and a half, a mile and three -- somewhere  
8 around a mile and a half, I would think.

9 Q And your testimony is still you think it took  
10 three minutes, five minutes to cover this distance with the  
11 stopping and going?

12 A Not over five minutes, I wouldn't think. The flow  
13 of traffic was pretty steady.

14 MR. ABERNATHY: All right. Thank you.

15 MS. COLSTON: Thank you, Mr. Benson.

16 THE COURT: Thank you, sir. Mr. Benson, don't  
17 talk to anybody about your testimony, please, sir, but  
18 you're free to leave as long as the district attorney  
19 knows how to get in touch with you if necessary. Okay?  
20 Thank you, sir. You're free to leave.

21 We're going to take a mid-afternoon recess right  
22 now. Ladies and Gentlemen, if you'll go in the jury  
23 room. Please be at ease. Don't discuss the case as  
24 I've given you those instructions. We'll resume in a  
25 little over ten minutes. Court's in recess. Y'all be

FUJIMI U-100 - LASER REFORMERS PAPER & MFG. CO. 800-828-0313

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

back in ten minutes.

[Court reconvenes after the brief recess.]

THE COURT: Bring the jury in.

[The jury enters the courtroom.]

THE COURT: Sound your next witness, please. Who is your next witness, Ms. Colston?

MS. COLSTON: Oh, I'm sorry, Your Honor. Michael Taylor.

THE COURT: Michael Taylor.

MS. COLSTON: He's not out there? Okay. We'll call Capt. Marshall Smith then. Marshall Smith

THE COURT: Counsel, come up just a second.

[Inaudible colloquy between Court and counsel outside the presence of all others.]

THE COURT: Go ahead and swear Mr. Smith, please. Before you begin, I just talked to counsel and there was an inquiry from a juror through the bailiff. As I understand it, you wanted to know about asking a question, ma'am? Is that right? Of whom?

JUROR: Asking any witness. I do have a witness in mind.

THE COURT: That's already through testifying?

JUROR: Yes.

THE COURT: Okay. Here's the way that would work. Okay? First of all the jury needs to understand that

1 the lawyers know the parameters, the limits of  
2 questions that can and can't be asked. All right? But  
3 if you feel, a juror feels that there is a question  
4 that he or she wants to ask, whether to clarify or  
5 whatever, write it down, hand it -- before the witness  
6 leaves, raise your hand, hand the question to the  
7 bailiff in written form or tell me to wait while you  
8 write it and then I've got to show it the lawyers. If  
9 it's an objectionable question, they have the right to  
10 object to it. I have the right to object to it and  
11 tell you simply that it's not a question or a matter  
12 that can be inquired into or can be asked but if it's  
13 appropriate, I'll ask the question for you.

14 A JUROR: Thank you.

15 THE COURT: Okay? Fair enough? Okay.

16 \*\*\*\*\*

17 MARSHALL SMITH

18 was called as a witness by and on behalf of the State, and  
19 after being first duly sworn, was examined and testified as  
20 follows:

21 DIRECT EXAMINATION

22 BY MS. COLSTON:

23 Q Good afternoon.

24 A Good morning.

25 Q And I don't know what to call you anymore. What's