

1 Plaintiff's Counsel: Mr. Briggs
2 The Witness: Officer Thomas Merrell
3 Defense Counsel No. 1: Ms. Swanson
4 Defense Counsel No. 2: Ms. Frances

5

6 **Warm up**

7

8 Q. BY MR. BRIGGS: All right. Good morning, Officer
9 Merrell.

10 A. Good morning, sir.

11 Q. Could you please state and spell your name for
12 the record.

13 A. My name is Thomas Merrell, / M-e-r-r-e-l-l.

14 Q. Okay. Have you ever had your deposition taken
15 before?

16 A. No, I never have.

17 Q. Have you ever testified in / a court of law
18 before?

19 A. Yes, sir.

20 Q. Okay. More than once?

21 A. Yes, sir.

22 Q. All right. Let's see. Have you reviewed any
23 documents to prepare for / this deposition today?

24 A. Yes, I have.

25 Q. All right. What did you review?

1 A. I read my written statement.

2 Q. And did you review anything else to prepare? //

3 A. I also reviewed the call logs.

4 MS. FRANCES: Excuse me, Officer. When you say

5 "call logs," do you mean the dispatch call logs?

6 THE WITNESS: Correct, ma'am.

7 MS. SWANSON: Thank you / for the clarification.

8 MS. FRANCES: Sorry to interrupt.

9 Q. BY MR. BRIGGS: All right, sir. Is there anything

10 else you reviewed prior to today?

11 A. I think that is it.

12 Q. All right. /// And when you say "written

13 statement," was that the written statement you gave at

14 the scene of the accident that was attached to the

15 traffic / accident report?

16 A. Yes, it was.

17 Q. Okay. We will go over that in a little bit.

18 A. All right.

19 Q. Let me get a little bit of background /*(1)

20 information about you. Where were you born?

21 A. I was born in Santa Rosa.

22 Q. Okay. Did you attend high school in Santa Rosa?

23 A. I did not. /

24 Q. All right. Where did you attend high school?

25 A. I attended high school in Reno.

1 Q. Okay. When did you move from California to Nevada?

2 A. It was / in second grade, I believe. I don't

3 remember what age I was.

4 Q. A long time ago; is that correct?

5 A. Yes. Correct.

6 Q. Let me ask what / is your date of birth?

7 A. It is 2/12/1974.

8 Q. Did you graduate from high school in Reno?

9 A. Yes.

10 Q. Okay. Did you pursue // any further education

11 beyond high school?

12 A. I went to UNR.

13 Q. And did you graduate from UNR?

14 A. No.

15 Q. Okay. You are currently / employed as a police

16 officer with the City of South Lake Tahoe; correct?

17 A. Yes, sir.

18 MS. SWANSON: Excuse me, Counsel. May I just

19 clarify one point?

20 MR. BRIGGS: Go /// right ahead.

21 MS. SWANSON: Officer, when did you move back to

22 California?

23 THE WITNESS: Roughly fifteen years ago.

24 Q. BY MR. BRIGGS: All right. How long have you been

25 employed as a police / officer by the City of South Lake

1 Tahoe?

2 A. For fourteen years.

3 Q. All right. Where were you employed prior to being a
4 police officer with the /* (2) City of South Lake Tahoe?

5 A. I was with a security company at the federal
6 courthouse.

7 Q. All right. And is that the federal courthouse up
8 in / Reno?

9 A. Yes.

10 Q. Okay.

11 MS. FRANCES: I thought they had marshals that
12 provide security there.

13 THE WITNESS: Well, they also contract out with
14 third-party companies.

15 Q. BY MR. BRIGGS: And is that who / you worked for?

16 A. Yes.

17 Q. Okay. How long did you hold that position?

18 A. You know, I don't recall.

19 Q. That is okay.

20 A. It was usually nights and / weekends, but I don't
21 recall how long I was there.

22 Q. Okay. There will be things that you don't recall
23 specifically. I will ask you to // estimate for me.

24 A. I will do my best.

25 Q. Did you work there for one month, one year, ten

1 years?

2 A. I would estimate approximately a year. /

3 Q. And where did you work prior to that security
4 position with the federal courthouse?

5 A. I have had a lot of jobs.

6 MS. SWANSON: How far back do /// you want to go,
7 Counsel?

8 MS. FRANCES: If you limit it, we can save a privacy
9 objection.

10 MR. BRIGGS: I can do that.

11 MS. SWANSON: Thank you for the courtesy.

12 Q. BY MR. BRIGGS: Let's / take one more job, then.
13 Where did you work just prior to the federal courthouse?

14 A. I was working security for an apartment complex.

15 Q. All right. /* (3)

16 **END OF WARM-UP PAUSE**

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1 **EXAM**

2 Q. BY MR. BRIGGS: And we are talking at least 15 years
3 ago; is that correct?

4 A. Yes.

5 Q. Okay. What is your current position with the police
6 department?

7 A. Just police / officer.

8 Q. All right. Do you have a rank?

9 A. No.

10 Q. Is everyone just an officer? I don't
11 know if there's sergeant, lieutenant. I'm, you know,
12 unfamiliar / with that.

13 A. There are ranks, but I hold no rank. I am just an
14 officer.

15 Q. You are actively engaged in patrolling the streets;
16 is that / right?

17 A. Yes, patrol.

18 Q. All right. Sir, we ask everyone this, even police
19 officers: Have you ever been convicted of a felony?

20 A. No, I have not. //

21 Q. Okay. Have you ever been convicted of a crime of
22 dishonesty?

23 MS. FRANCES: Objection. That is vague and
24 ambiguous.

25 MS. SWANSON: I will join in that.

1 MS. FRANCES: Would you please / rephrase the
2 question.

3 MR. BRIGGS: I can do that.

4 MS. FRANCES: Thank you.

5 Q. BY MR. BRIGGS: I am asking about, for example,
6 writing a bad check or fraud or anything like that. ///

7 A. I have not.

8 Q. I didn't think so.

9 Okay. Now, how long have you had your driver's
10 license?

11 A. Since I was about 16 years old.

12 Q. Okay. / Has it ever been suspended or revoked?

13 A. No.

14 Q. Okay. The accident we are here to discuss occurred
15 on June 23rd of last year; is /*(1) that your
16 understanding?

17 A. Yes, sir.

18 Q. And prior to that date were you ever in any other
19 motor vehicle accidents in the course and scope of / your
20 employment?

21 A. I was.

22 Q. Okay. And is there more than one or just one?

23 A. Just this one and one other occasion.

24 Q. Okay. You have had / at least one prior accident in
25 the course and scope of your patrol duties with the

1 police department; is that correct?

2 A. Yes, sir.

3 Q. Okay. When / was that prior accident in relation
4 to the one we are dealing with here?

5 A. I believe it was 2008.

6 Q. Okay. And could you // give us a little more
7 additional detail about that incident, please.

8 A. I am not sure what you are asking me exactly.

9 Q. Well, I assume it / occurred in the city of South
10 Lake Tahoe; is that correct?

11 A. It did.

12 Q. Okay. Can you just briefly describe to me what
13 happened in that /// incident.

14 MS. FRANCES: For the record, I will object as to the
15 relevance of this.

16 MS. SWANSON: The question is also overbroad.

17 MR. BRIGGS: Well, are you telling him not to /
18 answer?

19 MS. FRANCES: No, not at all. I am just making my
20 record.

21 Q. BY MR. BRIGGS: Officer, do you remember where the
22 accident occurred?

23 A. I was on I-80 westbound. /*(2)

24 **END OF LEAD-IN - KEEP READING WITHOUT PAUSE**

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START TYPING

Q. BY MR. BRIGGS: How did that accident occur?

A. There was a vehicle going the wrong way on the freeway, which caused a collision.

Q. Were you involved in that / collision?

A. I came upon them and ended up in the accident as well.

Q. Okay. How did you end up in the accident as well? Were / you hit by that vehicle that was going the wrong direction?

A. No, I was not hit by the vehicle.

Q. What happened?

A. Well, I swerved to / miss the first two vehicles and then hit a third vehicle a little bit farther down --

Q. Okay.

A. -- the highway.

Q. Okay. Did you strike the third // vehicle from behind or something like that?

A. You know, I cannot tell you exactly where it got hit.

Q. That is okay. I will move on. /

A. All right.

Q. And, sir, have you had to investigate many car accidents in the course and scope of your duties as a police officer?

1 A. Yes, /// sir.

2 Q. Okay. And you have been trained by the City how to
3 conduct those investigations; is that right?

4 A. At a basic level, yes.

5 Q. Okay. Do / you have any special training as far as
6 accident reconstruction or things like that?

7 A. I do not.

8 Q. All right. Beyond your typical duties, are
9 there /*(1) any procedures that are to be followed at all
10 when there is an officer involved in an accident?

11 MS. FRANCES: I will object that that question is /
12 vague and ambiguous.

13 MS. SWANSON: I will join in that.

14 MS. FRANCES: Do you understand, Officer?

15 THE WITNESS: No, ma'am.

16 Q. BY MR. BRIGGS: Then let me clarify. Let's say
17 there is an accident.

18 A. Okay. /

19 Q. You are called, and you respond to it.

20 A. Okay.

21 Q. You are going to conduct an investigation and
22 prepare a report; is that right?

23 A. Yes, sir. /

24 Q. Okay. When there is an officer involved while he or
25 she is working, is there anything else that you do in

1 relation to that accident // and its investigations?

2 A. I would say no on the investigation part.

3 Q. Well, how about as to procedures?

4 A There is a rule if it is an / officer from the same
5 agency, that we call someone else from another agency to
6 do the report.

7 Q. All right.

8 A. Do you understand?

9 Q. Yes, I get /// it.

10 A. Okay.

11 Q. If someone from the sheriff's office was in an
12 accident, it would be okay for the City to come and
13 investigate; is that / right?

14 A. Yes, sir.

15 Q. But if someone from the police department is in an
16 accident, it is the policy to have a different agency to
17 come /* (2) and investigate; is that right?

18 A. To do the investigation, yes.

19 MS. FRANCES: Counsel, if you will allow me, I think
20 I can clear this up quickly.

21 MR. BRIGGS: Do / you want to ask questions now?

22 MS. FRANCES: Only on this point.

23 MR. BRIGGS: Okay. You may proceed.

24 **EXAMINATION**

25 Q. BY MS. FRANCES: Now, at the time of the June 23rd

1 accident we / are here to discuss, were you on duty with
2 the police department?

3 A. Yes, ma'am.

4 Q. All right. Did a different agency come out to
5 investigate that / accident?

6 A. Yes, they did.

7 Q. Which agency came out and worked that June 23rd
8 accident?

9 A. It was the sheriff's office.

10 Q. All right. That was per // your policy; is that
11 right?

12 A. Yes, it was.

13 MS. FRANCES: Nothing further on this point.

14 **CONTINUED EXAMINATION**

15 Q. BY MR. BRIGGS: Let's now move to the accident we
16 are here to discuss.

17 A. All / right.

18 Q. Do you recall what time of day this accident
19 occurred?

20 A. Yes, I do.

21 Q. Okay. And what time of day was it?

22 A. It was approximately /// 3:25 in the morning; so
23 3:25 a.m.

24 Q. I understand. Approximately how long had you been
25 working at the time of / that incident occurring?

1 A. I started shift at 2100 or 9:00 p.m.

2 Q. Okay. And how long a shift were you scheduled to

3 work /*(3) that day?

4 A. It is a 10-hour shift.

5 Q. Okay. What time did you begin?

6 A. It was specifically from 9:00 o'clock until 7:00

7 a.m. in / the morning.

8 Q. And where were you coming from when the incident

9 occurred?

10 A. I was coming from a call for service.

11 MS. SWANSON: Objection. That is nonresponsive.

12 MS. FRANCES: I / disagree. The witness answered.

13 MS. SWANSON: It is totally confusing at this point.

14 MS. FRANCES: I am sure counsel will get there.

15 Q. BY MR. BRIGGS: Officer, when you say you were

16 coming / from a call for service, are you saying you were

17 on your way to a call?

18 A. Yes. That is correct.

19 Q. Okay. What direction were you // traveling when

20 this accident occurred?

21 A. I was traveling westbound on Alpine.

22 Q. All right. And where were you heading to when the

23 incident occurred? Where were / you planning on heading

24 to at that time?

25 A. I was going to a call for service somewhere in the

1 vicinity of the mall.

2 Q. Was the /// call you were heading to in your
3 district or beat area?

4 A. Yes.

5 Q. And do you recall how long you had received the call
6 for service / prior to the accident occurring?

7 A. I called out that I was en route to that call
8 for service at around 6:24 -- I'm sorry. /* (4) Not 6:24,
9 3:24.

10 Q. How long was that before the incident occurred?

11 A. The accident happened very shortly after that.

12 Q. All right. Where / did this accident take place?

13 A. It was at Alpine and Seventh Street.

14 Q. Okay. And you were heading westbound on Alpine;
15 correct?

16 A. Yes, I was.

17 Q. Okay. / What lane of travel were you in when the
18 incident occurred?

19 A. Well, I was in one of two turn lanes.

20 Q. Okay.

21 A. I do not remember / which one exactly.

22 Q. Okay. Would you have been in the left turn
23 lane or the more central of the turn lanes?

24 A. I specifically do not // recall at this point.

25 Q. Okay. Can you just tell me, in your own words,

1 how this incident occurred.

2 MS. FRANCES: Objection. Calls for a narrative.

3 MS. SWANSON: Join. It / would be better if you
4 asked him questions.

5 MR. BRIGGS: He can answer the question as phrased.

6 MS. SWANSON: It is your depo, Counsel.

7 Q. BY MR. BRIGGS: Officer, please tell us what ///
8 happened as you approached the intersection.

9 A. I was going westbound on Alpine, coming up to
10 Seventh.

11 Q. And then what happened?

12 A. I was going to turn / southbound onto Seventh and
13 drive from there. The traffic signal was red.

14 Q. Did you stop at the signal?

15 A. I don't recall whether I came to /* (5) a complete
16 stop or not.

17 Q. What happened after that?

18 A. I got ready for the stoplight to change. It was
19 very late, and there was hardly / any traffic.

20 Q. Please continue, sir.

21 A. After looking left and right, I started to roll
22 forward.

23 Q. Is that when the accident happened?

24 A. That is when I / hit your client.

25 Q. All right.

1 A. At first, I didn't know he was even on a bicycle.
2 It just happened very quickly.

3 MS. SWANSON: You have answered the / question,
4 Officer.

5 MS. FRANCES: Just wait until the next question.

6 THE WITNESS: All right.

7 Q. BY MR. BRIGGS: What did you do immediately after
8 the incident?

9 A. I slammed on the brakes, jumped out // of my patrol
10 vehicle, went to the front of my car.

11 Q. Okay. What did you observe at that point in time?

12 A. I observed him lying / on the ground with a bicycle.

13 Q. What action did you take then?

14 A. You know, I immediately asked him if he needed an
15 ambulance.

16 Q. Did he /// appear injured?

17 A. Not to me, but I wanted to, you know, make
18 sure he wasn't hurt.

19 Q. And how did my client respond to your question? /

20 A. He said he didn't need one. It appeared that he
21 intended to leave the scene.

22 Q. Okay. What happened next?

23 A. Well, I asked him several more /* (6) times, you
24 know, if I could get him an ambulance, get him checked
25 out.

1 Q. Did he eventually agree?

2 A. He decided, yeah, that was going to / be a good
3 idea.

4 Q. Okay. Did you then request an ambulance?

5 A. At that point we moved off of the roadway, and I
6 requested an ambulance. /

7 Q. All right.

8 A. I also called for a supervisor, per our policy.

9 Q. Now, you indicated you are not sure if you stopped
10 for the red light; / is that correct?

11 MS. FRANCES: Objection. Asked and answered.

12 MS. SWANSON: I will join in that.

13 MS. FRANCES: Why are we going back?

14 MR. BRIGGS: I am going back to the accident.

15 MS. FRANCES: Okay. //

16 MR. BRIGGS: I just want to make certain we are at
17 the same point in time.

18 MS. SWANSON: Perhaps we could proceed on.

19 Q. BY MR. BRIGGS: Officer, do you remember what
20 speed / you were going just prior to contact occurring
21 between your vehicle and my client?

22 A. Just prior to? Well, less than five miles an
23 hour, I /// would say.

24 Q. All right. Had you slowed down prior to the
25 incident occurring as you approached the intersection?

1 A. Yes.

2 Q. Okay. Were there any other cars / around at that
3 point that you recall?

4 A. I do not recall any other cars being there right
5 then.

6 Q. Okay. As you were approaching the
7 intersection, /* (7) do you recall seeing my client on his
8 bicycle prior to the impact?

9 A. I do not.

10 Q. Okay. Where were you looking when the impact
11 occurred? /

12 A. I don't recall.

13 Q. Do you remember what direction you were looking?

14 A. I know I was looking left and right, but I don't
15 recall which direction / I was looking in.

16 Q. Okay. Am I correct that you agree you proceeded
17 through the red light; correct?

18 A. Are you saying through the lane of / travel?

19 Q. There was a red light controlling your lane of
20 travel; correct?

21 A. Yes. Yes.

22 Q. And you are not disputing that you proceeded against
23 that red // light; correct?

24 A. No.

25 MS. SWANSON: That was a double negative.

1 MS. FRANCES: You may want to clarify that for the
2 record, Counsel.

3 THE WITNESS: What do you want me to do? /

4 MS. SWANSON: Nothing, Officer. We are just
5 clearing up the record.

6 Q. BY MR. BRIGGS: Did you stop for the red light?

7 A. No, sir.

8 Q. Okay. And you gave a written statement /// to the
9 sheriff's officers that investigated this accident;
10 right?

11 A. Yes, sir.

12 Q. All right. Have you had a chance to read that
13 statement prior to today? /

14 A. Yes, I have.

15 Q. Okay. Looking at the document, is this your
16 signature on the bottom of the page?

17 A. Yes, it is.

18 Q. Okay. And is this /*(8) your handwriting here as
19 well?

20 A. Yes, sir, it is.

21 Q. Okay. And is there anything in this written
22 statement that you disagree with at this point / in time?

23 A. No, there is not.

24 Q. Okay. Going back to the accident, you called for an
25 ambulance; is that correct?

1 A. Well, I asked dispatch to / call the ambulance.

2 Q. Okay. You don't have to dial 911; right?

3 A. Yeah, I just used the radio.

4 Q. Okay. And what led you to / request an ambulance at

5 the scene of the incident?

6 A. The fact that he had fallen off of his bicycle after

7 the vehicle hit him.

8 Q. Okay. // Would it be fair to say you thought it

9 would be prudent for him to get an examination?

10 A. Yes.

11 Q. Okay. Is that because you believed / there was a

12 possibility he was injured in this incident?

13 A. Yes.

14 Q. You said you did not see him before the impact

15 occurred; is that right? ///

16 A. That is correct.

17 Q. Okay. Officer, describe what you saw when you

18 slammed on your brakes and got out of the vehicle.

19 A. It was just a / flash of something and then the

20 sound of my vehicle hitting something.

21 Q. Okay. What did you do after seeing this flash and

22 hearing the sound? /* (9)

23 A. I hit the brake, threw it in park, and immediately

24 got out.

25 Q. Okay. And where in relation to your vehicle was my

1 client when you / got out of your vehicle?

2 A. I couldn't say exactly but somewhere in the front
3 of.

4 Q. Okay. And when you say "in the front of,"
5 would / it be in the front to the left or directly in
6 front, or was he almost past your vehicle towards the
7 right?

8 A. I believe it / was more towards the passenger side.

9 Q. Okay.

10 A. That would be towards the right of how I was looking
11 out of the vehicle.

12 Q. All right. And // had you driven through this
13 intersection prior to the time of the incident?

14 A. Yes, sir.

15 Q. Okay. Many times?

16 A. Yes, sir.

17 Q. All right. And are you / able to estimate for us
18 how many times?

19 A. Not really.

20 Q. Okay. And this intersection was part of your
21 district that you patrolled at the time /// of this
22 incident; correct?

23 A. Part of the district, yes.

24 Q. Okay. Do you recall, when you stopped your vehicle,
25 where your vehicle was in relation to / the pedestrian

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crosswalk?

A. I do not.

Q. Okay.

A. It would be an absolute guess at this point.

Q. Okay. We don't want you to guess.

A. All right. /* (10)

END OF EXAM

*****EACH EXAM VARIES. THE ACTUAL TEST GIVEN MAY BE
SLIGHTLY DIFFERENT*****