

1 PLAINTIFF: Ms. Miller

2 WITNESS: Mr. Brown

3 COURT:

4 DEFENSE: Ms. Thomas

5

6 WARM UP

7

8 THE COURT: The record should reflect that the
9 jury is present and counsel are present.

10 MS. MILLER: Thank you, your Honor. May I resume
11 with my direct examination?

12 THE COURT: Yes, / please proceed.

13 MS. MILLER: Thank you.

14 MS. THOMAS: Excuse me. Before we begin, could we
15 approach the bench?

16 THE COURT: All right. Counsel may approach side
17 bar.

18 MS. THOMAS: Your Honor, I just / wanted to find
19 out what time we will be recessing tonight. I
20 apologize for not bringing it up earlier, but I do have
21 a commitment / and I was hoping that we could recess a
22 little early.

23 THE COURT: What time are you requesting?

24 MS. THOMAS: If it is possible, I would like to
25 recess / at 4:00 o'clock.

26 THE COURT: Do you have any objection to that?

1 MS. MILLER: No, definitely not. I really don't
2 have much more with this witness anyway. We can /
3 adjourn after that if your Honor wishes.

4 THE COURT: Okay. Let's see how far we can
5 progress with this witness, and then eventually we will
6 see what / happens from there.

7 MS. THOMAS: Thank you again, your Honor.

8 THE COURT: All right. Let's proceed.

9 MS. MILLER: Thank you, your Honor.

10 BY MS. MILLER: Q. Mr. Brown, when we left
11 off before the break / we were discussing about the
12 three of you walking down the street immediately before
13 your friend being struck. Mr. Brown, do you remember
14 that line / of questions?

15 A. Yes, I do.

16 Q. Okay. I just wanted to ask you a couple more
17 questions about that and then we can continue on.

18 A. Okay. /

19 Q. Now, counsel asked you if you had heard
20 anything before Michael was struck by the automobile.
21 You testified that you might have heard a loud / noise.
22 Do you recall now what you heard just immediately prior
23 to the accident?

24 A. Well, I remember that we were all casually
25 talking and then / there was a loud sound that was
26 coming from behind us.

1 Q. When you testify you were all talking, who was
2 actually speaking at that time? /

3 A. I remember the girls were talking about the
4 movie we had just seen and I was talking to Michael
5 about going to the beach soon. /

6

7

8

END OF WARMUP

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 BEGIN TEST

2

3 BY MS. MILLER: Q. There were a couple
4 conversations going on at the same time?

5 A. Yes.

6 Q. We have the diagram here that depicts where you
7 were located on the / sidewalk. I believe we have
8 labeled this before, but I want to be positive that we
9 have the order correct. Could you please describe
10 where / everybody was just before the automobile drove
11 up.

12 A. Michael was sitting on his bicycle and he had
13 one foot on the curb. He wasn't really / riding his
14 bike, but more like walking it while he was talking to
15 us.

16 Q. And were you closest to Michael on the
17 sidewalk?

18 A. Yes. I / was walking right next to him. We
19 were talking about the upcoming weekend.

20 Q. Who was next to you as you were initially
21 walking along?

22 A. Michael / was on my left and Linda was on my
23 right. She and Susan were both on my right. They were
24 really only a short distance / behind me actually.

25

26

1 Q. All right. When you say that, do you mean they
2 were actually walking behind you, or how would you
3 describe it?

4 A. Not / really behind us. The sidewalk section
5 is not very wide so we were really walking together,
6 but not really in a straight line across the /
7 sidewalk. More like an angle.

8 Q. How long had you been speaking with Michael
9 before the defendant approached you?

10 MS. THOMAS: Objection. Assumes facts not in
11 evidence that / the defendant approached them.

12 MS. MILLER: He was hit by the defendant's car,
13 your Honor, I think it is a reasonable assumption that
14 the defendant approached them. /

15 THE COURT: Perhaps you can rephrase your
16 question. Sustained.

17 BY MS. MILLER: Q. Let me ask you a
18 different question. Had Michael attended the movies
19 with all of you that night? /

20 A. No, he did not.

21 Q. Where did you meet up with him that evening?

22 A. We were just walking home and he came riding up
23 on his / bike. He stopped to talk to us and then we
24 just began walking.

25 Q. Now, to your knowledge did Susan and Linda
26 personally know Michael?

1 A. Absolutely. / We all had attended school
2 together the previous couple years.

3 Q. Was Michael older than you at that time?

4 A. He was ahead of me in school, / but I'm
5 uncertain of his age. He probably was older.

6 Q. When you first observed Michael, what was he
7 doing?

8 MS. THOMAS: Objection. Vague as to time. Are /
9 you talking about that evening or some other time?

10 MS. MILLER: Counsel, of course, I mean that
11 evening. I can rephrase it if it is a problem. /

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 START TYPING

2

3 THE COURT: The objection is overruled. Do you
4 understand the question?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: You may answer it, then.

7 THE WITNESS: I initially heard Michael before I saw
8 him. / I heard him call out to me, and when I started
9 to turn my head around, he was already there on my left
10 side.

11 BY MS. MILLER: Q. What / did you hear
12 Michael say to you prior to actually seeing him?

13 A. I heard him loudly calling my name. I quickly
14 turned around and he / was there.

15 Q. How much time elapsed between when you heard
16 Michael yell your name and when you heard the
17 automobile approaching?

18 A. I would estimate about -- /

19 MS. THOMAS: Objection. Speculation.

20 THE COURT: Counsel doesn't want you to speculate.
21 If you have an estimate or you know a precise time,
22 that's fine.

23 BY MS. MILLER: Q. Let me ask you / this:
24 How much time would you estimate passed between the
25 time you heard him call out your name and you started
26

1 talking to him and / when you heard the car approaching
2 you?

3 A. I would estimate that we had been walking for
4 approximately ten minutes maybe.

5 Q. All right. Now, let's look / back at this
6 exhibit that you have previously drawn. Do you
7 remember when you prepared that diagram?

8 A. The police officer asked me to draw that / when
9 he was asking me questions.

10 Q. Do you remember if you completed that at the
11 accident scene, or whether you were at the police
12 department / when you drew that?

13 A. It was during the time at the police department
14 that morning.

15 Q. Let me clarify that because I don't believe I /
16 inquired about that before. What time of the evening
17 was this when Michael was struck?

18 A. I would say roughly maybe about 10:00 o'clock.

19 Q. At night; / correct?

20 A. Yes.

21 Q. And what time was it when you traveled to the
22 police department?

23 A. I'm not positive of the time.

24 Q. Well, you said that you / drew this diagram in
25 the morning. Were you at the station overnight?

26

1 A. No, they just requested us to come to interview
2 with them in the / morning and we did.

3 Q. Who is we?

4 A. Actually, I mean just myself. I am sure
5 everybody else talked to them, too, but I went by /
6 myself. Actually, my father drove me down there.

7 Q. Were you interviewed at the police department
8 that next morning about the events of the night before?
9 /

10 A. Yes, I was.

11 Q. Do you remember if they tape-recorded your
12 interview?

13 A. I seem to recall that they advised me that they
14 were going to be / taping it, but I can't recall for
15 sure.

16 MS. MILLER: Your Honor, may I ask what the next
17 exhibit number will be.

18 THE COURT: Your next exhibit will be / number 30.

19 MS. MILLER: Thank you. I would like to mark 30 at
20 this time. It is a photograph of the victim.

21 MS. THOMAS: Your Honor, may I request / that she
22 not display the photograph to the jury until we have
23 had an opportunity to discuss it.

24 MS. MILLER: I was not planning to show it / at
25 this time.

26

1 THE COURT: That's fine. It is marked for
2 identification for the time being.

3 MS. THOMAS: I just had some comments before the
4 exhibits are admitted into / evidence.

5 THE COURT: Counsel is not requesting that it be
6 admitted yet so we will address that later.

7 MS. THOMAS: Sure. Thank you, your Honor.

8 THE COURT: Let's proceed, please.

9 BY MS. MILLER: Q. Do / you recognize who is
10 shown in this photograph?

11 A. Yes, I do. That's Michael Burton.

12 Q. Thank you, sir.

13 MS. MILLER: I have no further questions at this
14 time, / your Honor.

15 THE COURT: Any further cross-examination?

16 MS. THOMAS: Yes, I do. Thank you.

17 THE COURT: Let's proceed.

18 EXAMINATION

19 BY MS. THOMAS: Q. Mr. Brown, I just have a few
20 more for you.

21 A. That's fine.

22 Q. Do / you recall your interview with the
23 detective the morning after the accident?

24 A. Yes, I do.

25 Q. Do you recall the name of the detective that
26 you / spoke to at that time?

1 A. I believe it was Officer Turner, but I am not
2 positive.

3 Q. Would it refresh your memory if I showed you /
4 a police report?

5 A. I guess.

6 MS. THOMAS: May I approach the witness, your
7 Honor.

8 THE COURT: Yes.

9 MS. MILLER: Counsel, which report are you going to
10 show the witness?

11 MS. THOMAS: It is / the report of this witness
12 dated March 25.

13 MS. MILLER: Thank you.

14 BY MS. THOMAS: Q. Mr. Brown, does that refresh
15 your recollection by looking at that report as to who /
16 the officer was that you spoke to?

17 A. Yes, it was Officer Sanchez. I apologize. I
18 really thought it was Officer Turner.

19 Q. That's all right. Do / you remember telling
20 the officer that you didn't hear the car before the
21 accident?

22 A. No, I don't remember that. I believe I heard
23 the car / when it skidded around the corner.

24 Q. Did you tell the officer that the first you
25 believed something was wrong was when you didn't see
26 Michael / anymore?

1 A. Yes, I think I remember that.

2 Q. What did you initially notice?

3 A. Well, I first heard the noise and then I just
4 remember a sudden / spraying of air.

5 Q. What noise are you talking about?

6 A. I heard a very loud sound of the defendant
7 driving fast.

8 Q. And then what did you / hear?

9 A. I realized something terrible happened because
10 Michael's bike was on the sidewalk, but he wasn't
11 there.

12 Q. What happened next?

13 A. The three of us were / shocked and sure didn't
14 know what to do at first.

15 Q. Did anybody say anything?

16 A. Well, I just made sure that they were all right
17 and / then all three of us were kind of running around
18 looking for Michael. We didn't know what had happened
19 to him.

20 Q. My question, though, was / if anybody said
21 anything. Do you recall any conversation right after
22 that happened?

23 A. I recall asking what the hell happened to
24 Michael, and Susan said / that the defendant had taken
25 Michael.

26 Q. What did you do next?

1 A. I don't remember.

2 Q. Do you remember telling the officer that the
3 three of you / started to look around and you only
4 found his bike?

5 A. I don't really remember what I said. It has
6 been some time ago.

7 MS. THOMAS: Your Honor, / may I approach with the
8 transcript to refresh the witness?

9 MS. MILLER: Objection. I don't believe that the
10 foundation has been laid for that yet. Counsel hasn't
11 / asked if the witness needs to have his memory
12 refreshed.

13 THE COURT: Well, if that is an objection, it is
14 sustained.

15 BY MS. THOMAS: Q. Would it refresh your
16 recollection if / I showed you the transcript?

17 A. Certainly, I could look it over.

18 Q. It is this paragraph right here. Does reading
19 that refresh your recollection of what / you said to
20 the detective?

21 A. Well, I'll believe it if it is written here,
22 but I don't really remember saying it right now.

23 Q. Do you / remember telling the officer the
24 automobile you had seen that evening was dark in color?

25 A. Yes.

26

1 Q. Do you remember what color you thought it was?

2 /

3 A. It was either a black or maybe a dark green.

4 Q. Is that what you told the detective at the time
5 of the interview?

6 A. I believe / so.

7 Q. Would it refresh your memory if I directed you
8 to the transcript?

9 A. Sure.

10 Q. Okay. Now --

11 A. I guess I said it was either blue or / black.

12 I know it was a darker color, that's all I remember
13 definitely telling the detectives.

14 Q. You don't remember what you observed that
15 evening?

16 A. No. /

17 Q. Now, did you also tell the detectives you,
18 Linda and Susan had been to the movie theater and were
19 subsequently on your way to get / something to eat?

20 A. Yes, that sounds accurate.

21 Q. Where did you go to eat?

22 A. We stopped at the Del Taco and then purchased
23 something to drink. /

24 Q. Did you sit down and drink your beverages in
25 the restaurant, or did you --

26

1 A. No, we just purchased something to drink and
2 eventually started to / walk home.

3 Q. Did you see Mr. Burton at the Del Taco that
4 evening?

5 A. I don't believe so.

6 Q. You don't remember talking to him there?

7 A. Not / really.

8 Q. Now, if Linda said that she had observed him
9 earlier, would you agree with her?

10 MS. MILLER: Objection. Hearsay.

11 THE COURT: Sustained.

12 BY MS. THOMAS: Q. Have you talked to Linda
13 about / what she remembers about that night?

14 MS. MILLER: Objection. Hearsay.

15 THE COURT: No, not yet. Overruled.

16 BY MS. THOMAS: Q. Have you discussed with Linda
17 anything about that night?

18 A. Well, sure. We are / friends and you can't
19 help but talk about something that traumatic.

20 Q. Did Linda express to you she saw Michael at the
21 restaurant before he / was walking with you?

22 MS. MILLER: Objection. Hearsay.

23 THE COURT: Sustained.

24 BY MS. THOMAS: Q. Tell us when you first
25 remember seeing Michael that night?

26

1 A. When we were walking home and he came / riding
2 up to us.

3 Q. Had you spoken to him that afternoon at all?

4 A. No, I thought he was living somewhere else
5 actually.

6 Q. Where did you / believe that Michael was
7 living?

8 MS. MILLER: Objection. Irrelevant.

9 THE COURT: Sustained.

10 BY MS. THOMAS: Q. When was the last time that
11 you had spoken to Mr. Burton before that night?

12 A. I would / have to say it was probably earlier
13 that summer.

14 Q. Okay. In what context did you speak to Michael
15 Burton?

16 A. I saw him at the beach. / We used to go there
17 together when we were attending high school. I think
18 it was downtown at the beach after school had ended in
19 / our senior year.

20 Q. You had graduated in June before this accident
21 happened?

22 A. Correct.

23 MS. THOMAS: No further questions, your Honor.

24 THE COURT: All right. Do you have any more /
25 redirect?
26

1 MS. MILLER: Just a couple questions, if I may,
2 your Honor.

3 THE COURT: What's your time estimate? Is this
4 something that we can finish before lunch?

5 MS. MILLER: I believe / so. I only have an area
6 or two that I wanted to straighten out.

7 THE COURT: Very well. Proceed.

8 EXAMINATION

9 BY MS. MILLER: Counsel asked you some
10 questions about your statement / to the detective after
11 Michael was hit. Do you remember that line of
12 questioning?

13 A. Yes.

14 Q. You testified that you remembered the car being
15 a dark / color; is that correct?

16 A. Yes.

17 Q. Were you able to describe the car to the
18 officers other than the color?

19 A. Yes, I told them it resembled / a small compact
20 car and that it had four doors. I thought probably it
21 was a Honda, but I wasn't sure.

22 Q. Did you see the / back of the Honda as it drove
23 away after it hit Michael Burton?

24 A. Yes, I did. I saw the back lights and told the
25 detectives / the right one was burned out.

26 MS. THOMAS: Objection. Speculation, your Honor.

1 THE COURT: Overruled.

2 MS. THOMAS: It is speculation whether it was
3 burned out, your Honor.

4 THE COURT: Overruled. Next question.

5 BY MS. MILLER: Q. Counsel, / also asked you
6 regarding when you had previously seen your friend
7 before he was killed. You mentioned seeing him at the
8 beach over the summer; / is that right?

9 A. Well, I believe that's the last time I saw him.
10 I might have seen him at a party over the summer, but /
11 I don't really remember that. I just know that it is
12 possible.

13 MS. THOMAS: Move to strike, your Honor. No
14 foundation.

15 THE COURT: Sustained.

16 BY MS. MILLER: Q. But, you do specifically
17 remember / seeing him downtown at the beach?

18 A. We used to go surfing together. I would see
19 him there.

20 Q. You testified earlier that you were talking to
21 / him about the beach right before the car approached.
22 Were you making plans to do something or were you
23 remembering trips from the past?

24 A. No, / we were talking about maybe getting
25 together that weekend at the beach. Like I said, I
26

1 didn't know that he was in town and I / thought it
2 would be fun to go to the beach again.

3 Q. Had you actually made plans before the
4 accident?

5 MS. THOMAS: Objection. Irrelevant.

6 THE COURT: Sustained.

7 BY MS. MILLER: Q. All right. One / other
8 area that I wanted to ask you about. Counsel asked you
9 about your conversations with Linda and Susan regarding
10 this incident. Do you recall / that?

11 A. Yes.

12 Q. Now, do you see them on a regular basis, or did
13 you see them on a regular basis before that night?

14 A. Well, I / worked with Linda and saw her all the
15 time. Susan was not around as much, but I saw her
16 every now and then.

17 Q. I hope / this question isn't too personal, but
18 were you dating either of these girls?

19 A. No, we were just friends.

20 Q. And had you dated them at any / time in the
21 past?

22 A. Well, I guess it depends on what you consider a
23 date. We mostly hung out with a group of friends.

24 Q. Do / you currently have a girlfriend now?

25 A. No, not at this time.

26

1 Q. Do you recall talking to either Susan or Linda
2 after this happened?

3 A. Of course. /

4 Q. I mean, do you specifically remember a
5 conversation?

6 MS. THOMAS: Objection. It's hearsay.

7 MS. MILLER: I am not asking for the conversation,
8 just if he recalls having one.

9 THE COURT: Overruled. /

10
11
12 -o0o-
13
14
15
16
17
18
19
20
21
22
23
24
25
26