

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
ATLANTIC COUNTY, NEW JERSEY
DOCKET NO. ATL-L-1167-15
A.D. #A-000845-17-T3**

HILDA T. KENNEDY AND)
JOHN F. KENNEDY,)
)
 Plaintiffs,)
 v.)
)
FREDERIC A. POLLOCK, et al.)
)
 Defendants.)

**Transcript
of
Day of Trial**

**Place: Atlantic County Courthouse
1201 Bacharach Boulevard
Atlantic City, NJ 08401**

Date: September 6, 2017

BEFORE:

THE HONORABLE MARY SIRACUSA, J.S.C.

TRANSCRIPT ORDERED BY:

ASHER BROOKS CHANCEY, ESQUIRE
Goldberg Segalla

APPEARANCES:

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I N D E X

WITNESSES:

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Richard Islinger	5	(Via Video - Not Transcribed)		
John Kennedy	8	54	85	
Frank Costanzo	85	99	108	
Valeri Parisi	111			
Christopher Lucasti	122	(Via Video - Not Transcribed)		

EVIDENCE:

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVID</u>
P-2	Photo, Jitney	92	
P-3	Photo, Intersection	92	
P-6	Photos, Hilda Kennedy pr-accident	18	
P-7A-F	Photos, Hilda Kennedy post-accident	40	
P-13	Medical Bills	118	
P-14	Medical Billing Summary	119	121

1 **(On the record on September 6, 2017 at 9:06 AM:)**

2 THE COURT: You can be seated. This is my
3 law clerk Brian Solven, so he's going to watch for a
4 little bit today. So we are ready for the jury?

5 MR. LAFFERTY: Judge, just one housekeeping
6 measure. I had mentioned to the Court, and I actually
7 said in my opening, in reference to the jury charges,
8 the Atlantic City ordinance.

9 THE COURT: Okay, great.

10 MR. LAFFERTY: May I approach?

11 THE COURT: Yes, please. Thank you.

12 MR. LAFFERTY: And Judge, the plaintiff's
13 first witness this morning would be Dr. Richard
14 Islinger.

15 THE COURT: Dr. Islinger. Okay. So what's
16 the schedule? How are your witnesses?

17 MR. LAFFERTY: Judge, Dr. Islinger's first.
18 Then we need a short break to set up. Then John
19 Kennedy will testify.

20 THE COURT: Okay.

21 MR. LAFFERTY: I think that will probably
22 fill the morning.

23 THE COURT: Okay.

24 MR. LAFFERTY: Afternoon the accident
25 reconstruction expert, Frank Costanzo, is going to

1 testify. Then probably Dr. Lucasti.

2 THE COURT: Okay.

3 MR. LAFFERTY: By video tape. And then Val
4 Parisi who's a medical billing expert.

5 THE COURT: Okay. And that's pretty much the
6 case, right?

7 MR. LAFFERTY: No, then Hilda has to testify.

8 THE COURT: Oh, right, right.

9 MR. LAFFERTY: Tomorrow. And then Dr. Baliga
10 will testify tomorrow.

11 THE COURT: Okay. Good. Thanks.

12 MR. LAFFERTY: And I may call William
13 Kennedy. I'm not sure yet.

14 THE COURT: Okay.

15 MR. LAFFERTY: The son.

16 THE COURT: Okay.

17 **(Jury enters at 9:09 AM)**

18 THE COURT: Please be seated. Welcome back,
19 ladies and gentlemen. I see you have your notebooks.
20 And so we're going to start the morning. It's going to
21 be a video testimony of Dr. Islinger. And even though
22 he's on video it has the exact same effect as if he was
23 sitting here on the witness stand. He's under oath.
24 So it's just he's not here live but it's the exact same
25 effect as if he were sitting here in the courtroom. So

1 you do have a full day. I think after Dr. Islinger Mr.
2 Kennedy's going to testify and then that might take the
3 whole morning. And then we'll do -- the afternoon is
4 full as well. All right? Thank you so much.

5 MR. LAFFERTY: Judge, can we dim the lights?

6 THE COURT: We can't dim them but we can turn
7 them off, like yesterday.

8 MR. LAFFERTY: Okay.

9 THE COURT: Yeah.

10 MR. LAFFERTY: Judge, plaintiff would call
11 Dr. Richard Islinger.

12 **(Video Testimony of DR. RICHARD ISLINGER played in open**
13 **court from 9:10 AM to 10:19 AM. Not transcribed)**

14 THE COURT: That's it, right?

15 MR. LAFFERTY: Yes. That concludes the
16 video, Judge.

17 THE COURT: Okay. Do we want to take the
18 morning break?

19 MR. LAFFERTY: Yeah.

20 THE COURT: And then we'll get set up. So 15
21 -- remember don't talk about the case until it's over.

22 **(Jury exits)**

23 THE COURT: Okay. Be seated. So I'll see
24 you back in 15 minutes.

25 MR. LAFFERTY: Thank you, Judge.

1 **(off the record from 10:20 AM to 10:43 AM)**

2 THE COURT: Okay. So Forrest was bringing
3 the jury down. Are we ready for that?

4 MR. LAFFERTY: Yes, ma'am.

5 THE COURT: Sounds good.

6 **(pause)**

7 THE COURT: So Mr. Kennedy, and then anybody
8 else before lunch or --

9 MR. LAFFERTY: I suspect that will be lunch
10 break.

11 THE COURT: Okay. He's going to be on like
12 an hour and a half? Okay.

13 **(pause)**

14 MR. LAFFERTY: Judge, we might have one
15 issue. I don't know if we do or we don't. On the
16 video I had it stopped at a certain point in time
17 because after that there are certain hearsay statements
18 by passengers, unidentified passengers --

19 THE COURT: Okay.

20 MR. LAFFERTY: -- about fault and
21 responsibility and such.

22 THE COURT: Okay. Hold on one second. Okay.

23 MR. LAFFERTY: And I guess this would be a
24 motion to likewise restrict that playing.

25 THE COURT: Yeah.

1 MR. LAFFERTY: To likewise restrict on cross-
2 examination the playing beyond that point as well.

3 THE COURT: So did it get played yesterday?

4 MR. LAFFERTY: Not beyond.

5 THE COURT: Okay. So once they all started
6 talking they, it stopped?

7 MR. LAFFERTY: I had it stopped.

8 THE COURT: Okay.

9 MR. LAFFERTY: At a particular time. I don't
10 know if we have an issue on that or not.

11 THE COURT: Any objection to that, that it
12 would stop?

13 MR. CHANCEY: Well, a video tape of people
14 speaking contemporaneously with an event is not
15 hearsay. This isn't an out of court statement being
16 offered for the proof of the matter asserted. This is
17 what's captured on the drive cam footage of the
18 accident. I have no objection. I have no intention of
19 using that, that footage, but I certainly don't believe
20 it's objectionable as hearsay. And look, let's spare
21 the whole nine yards, we can stipulate that we won't
22 play it past that point.

23 MR. LAFFERTY: That's fine.

24 THE COURT: Okay. All right. Fine. We're
25 ready.

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(Jury enters)

THE COURT: All right. Please be seated. Welcome back, ladies and gentlemen. So now you're going to hear the testimony of Mr. Kennedy.

MR. LAFFERTY: John Kennedy, Your Honor.

THE COURT: Okay.

JOHN KENNEDY, PLAINTIFF, SWORN

CLERK: State your full name.

THE WITNESS: John Kennedy.

CLERK: Spell your last name for the record, please.

THE WITNESS: K-E-N-N-E-D-Y.

CLERK: Thank you. You may be seated.

THE COURT: Mr. Lafferty.

MR. LAFFERTY: Thank you, Judge.

DIRECT EXAMINATION BY MR. LAFFERTY:

Q. Good morning, John.

A. Good morning.

Q. John, tell us, tell the ladies and gentlemen of the jury a little bit about yourself. What did you do in your full time employment?

A. I started off as a metallurgist.

Q. And how old are you now?

A. I don't like counting, but I think 62.

Q. And where do you currently reside?

1 A. 2834 Atlantic Avenue.

2 Q. And -- in Atlantic City?

3 A. In Atlantic City, New Jersey.

4 Q. Do you currently work at all?

5 A. I work for H and R Block.

6 Q. As what, a tax preparer?

7 A. Yeah, a tax professional, yes.

8 Q. And let's talk a little bit about your
9 marriage to Hilda. When did you and Hilda get married?

10 A. September the 3rd, 1976.

11 Q. And where did you meet Hilda?

12 A. I met her, I first met her in Clifton's cafeteria
13 in Los Angeles.

14 Q. Okay. And what kind of work -- were you a
15 metallurgist then?

16 A. I was working on cars.

17 Q. And what was Hilda?

18 A. Hilda was working as a salesperson for Broadway
19 Interiors.

20 Q. As what, interior design?

21 A. She was sales clerk.

22 Q. Right. So how -- so you've been married how
23 long?

24 A. About 43 years.

25 Q. And did you just celebrate an anniversary?

1 A. Yes, we did.

2 Q. Now have you and Hilda continuously been
3 married over that 40-some year period?

4 A. Yes.

5 Q. Where have you lived?

6 A. We started off in Los Angeles and then we moved to
7 Guatemala and New York. I can't think -- we lived
8 there for a while and New Jersey. Then to Florida.

9 Q. You've got to keep your voice up.

10 A. Oh. Then to Florida, then back to New York, then
11 back to California and then finally we landed in New
12 York and we stayed there.

13 Q. And how long have you lived in Atlantic City?

14 A. Since 2009 off and on, you know.

15 Q. And is this your permanent residence now?

16 A. It's -- I -- no. I'm in between. I don't know
17 what I'm going to do. This accident changed my whole
18 life so I don't know what to do.

19 Q. In between where?

20 A. Well, we were planning on leaving to -- we were
21 leaving to Guatemala. I was going to retire and that
22 would be it. And so the accident changed our whole
23 life. It changed the total dynamics of our life,
24 everything.

25 Q. So what country is Hilda originally from?

1 A. Guatemala.

2 Q. Now tell us a little bit about Hilda. You
3 told us she worked with an interior design company.
4 What other kind of work did Hilda do?

5 A. When I first met her she had just, you know, left
6 -- I didn't know her well. Anyway. She left the UN.
7 I happened to be on vacation in San Francisco and I was
8 in the Starlight Room roof and when I seen her. And
9 she didn't look to back. She had some great legs, let
10 me tell you. If you're a leg man she's got some great
11 legs. But I just seen her and I just knew that she
12 was, she was for me. I didn't even know her name. I
13 turned and looked at a friend of mine, we were
14 together, and I said I'm going to marry that girl. I
15 had no clue even who she was. None whatsoever. It
16 was, the Star Spangled Banner all over, let me tell
17 you. It really was. She's a great, great person. I
18 never heard her say anything bad about anyone. Okay.

19 Q. How old were you when you first met her?

20 A. I was, I don't know, I think it was 1969 when I
21 first seen her. And then we just happened to, I
22 happened to be in the cafeteria in Clifton's cafeteria
23 and here she comes in the cafeteria with her mother.
24 And I said that can't be the same girl. This was like
25 a few years later. And I'm looking at her. And she

1 doesn't, she's not looking at me. So I start talking
2 to her mother and her mother seemed kind of
3 interesting. But I spoke very little Spanish. And for
4 some reason her mother and I hit it off. And there
5 again here she comes with a tray. I'm sitting there
6 and her mother asked me can we sit here and the whole
7 nine yards, you know. So I'm being polite and
8 gentleman that I think I am. And I see them same legs
9 come walking at me. You know, it's -- I'm a leg man.
10 I'm sorry, I'm a leg man. And I looked up and she's
11 adorable. She's got this -- if any of youse remember
12 Elizabeth Taylor, she's got this Elizabeth Taylor thing
13 going on. You know. And she's walking there and the
14 guy's coming with her tray. And I said, wow, you know.
15 and she has no interest in me whatsoever. She sits
16 down with her mother and we're still talking. And she
17 still hasn't noticed me, she still hasn't said
18 anything. She's just sitting there. She's talking.
19 And every once in a while she'd say yes. So she -- I
20 asked them where are you going and she says we're going
21 to San Francisco. But mostly the conversation was with
22 her mother and I. And her mother for some, we just
23 understood each other. I don't know why, I don't know
24 how, but we understood each other. And I'm going to
25 now go -- I don't know -- I call her Momita, my

1 mother-in-law I call Momita, okay. So anyway once we
2 start talking I tell them, you know, you -- they tell
3 me they're going to San Francisco. I says, you know,
4 San Francisco's got all those hills, it's got a lot of
5 wind. And Hilda's 89 pounds. Okay. And I'm looking
6 at her and I'm telling them you know, you're not going
7 to make this one. You should come down here to live in
8 Los Angeles. But anyway, they go to San Francisco.
9 And I basically, you know, I was able to do whatever I
10 wanted. I didn't have any supervision. So one day I
11 just hightailed it up to San Francisco. And I see her
12 sitting there, you know, they're sitting in the -- at
13 that time they had a Woolworth's, okay? Woolworth's
14 always had a cafeteria inside. And I'm sitting there
15 and here comes her mother and her inside. And I said I
16 don't believe this. This is, this is unreal. So to
17 make a long story short, I convince them to move back
18 to California, back to Los Angeles. So she moves there
19 and I told her mother, don't worry, I'll take care of
20 her. And she -- we start seeing each other on a
21 regular basis. And you know, one thing leads to
22 another and I ask her to marry me, she says no. Well,
23 to make it even shorter, I talked to a friend and he
24 said why don't you marry her if you like her that much
25 because she's a sweet gal, she looks good, we already

1 have our son. And you know, I say, you know, she won't
2 marry me, you know. And I already -- by that time, the
3 time my son was born a week later I started working as
4 a metallurgist. So again, for me it's divine
5 intervention. I don't know what else, know another way
6 to put it, but it's God's hand in this, okay. So she
7 still doesn't want to marry me so I start working as a
8 metallurgist. And I find that I enjoyed doing it. It
9 was interesting. I could pick up, if you're a mechanic
10 and you know what a motor's manual is, all the
11 information about the materials and what they do and
12 what they're used for you can read about it. So I
13 picked it up and I started reading it.

14 Q. All right. John, I'm going to cut you off.
15 But how many times did you have to propose before she
16 said yes?

17 A. Before -- oh, God. Four, three or four. But
18 anyway, so to make it, okay, shorter, a friend of mine
19 said why don't you ask you why you won't, she won't
20 marry you. And I says okay, but I know that she has
21 all these little plates, you know. And she can make an
22 awesome soup. Believe me she could. But she had all
23 these little plates and I'm thinking, you know. So one
24 day I walk up the stairs of the apartment and I say,
25 listen, I'm going to leave California. I want to take

1 you with me. I don't want you to stay here by
2 yourself. You have to marry me. Why won't you marry
3 me? And she said because I don't know how to cook. I
4 said, what? She said I don't know how to cook. I
5 says, I do. I have no problem. I'll teach you.

6 Q. So you get, you folks got married. How old
7 were you when you married?

8 A. I believe i was 21.

9 Q. How old was Hilda?

10 A. I never asked. I'm being honest. I never asked.
11 I never asked her how old she was.

12 Q. There's an age difference though, right?

13 A. Yes, there was. I knew there was. And I didn't
14 care. And I didn't care and I still don't care what
15 other people think.

16 Q. So let's talk about Hilda. Hilda was in
17 sales, she was in the UN at one point, right?

18 A. Right.

19 Q. She retired, correct?

20 A. Yes.

21 Q. How old was she when she retired?

22 A. Like, oh, I think maybe 60-something, I'm not
23 sure.

24 Q. 60-something?

25 A. Right.

1 Q. And you had one son?

2 A. Yes.

3 Q. And that's William who's seated in the
4 courtroom?

5 A. Yes.

6 Q. So tell us a little bit about Hilda. What
7 kind of -- after she retired what kind of hobbies, what
8 kind of activities did she enjoy?

9 A. She was a songwriter. She wrote some songs over
10 the years. And she doesn't like me to tell anybody
11 this, but she can sing. Okay. And she would sing
12 sometimes. And --

13 Q. How about physical activities?

14 A. Oh, she would, she's -- she was always doing
15 something. It's, it's in the Tobias nature, that's my
16 wife's last name, to always do something. Even her
17 mother, my mother-in-law, Momita, was that way. She --
18 they don't rest. That's just what they do. She would
19 go out, she'd go, she'd do the shopping, she'd do the
20 cleaning, take care of my son. She did, she'd help out
21 the neighbors. She would take -- go out and give
22 business cards for attorneys for anything they needed.
23 She did little things like that. Okay? And then she
24 worked for the HeadStart. And she had left there. But
25 she was always constantly -- she would sell sandwiches

1 on the side. She was constantly doing something. She
2 did her own hair, her own fingernails, her own hair.
3 She was able to apply her own makeup. But now all of
4 that has changed.

5 Q. Well, we'll talk about that.

6 A. Okay.

7 Q. Did she enjoy walking?

8 A. Yes. She walked quite a bit. She walked upstairs
9 by herself. I don't know if any of youse ever been to
10 the, what's I think it's the 57th Street stop in New
11 York on the 6 train where you walk up all them stairs
12 if the escalator's broken because she doesn't know
13 where the elevators are so she would walk up those.
14 She recently walked up those before the accident.

15 Q. Do you own a car?

16 A. No.

17 Q. How did you folks get around mostly?

18 A. Public transportation.

19 Q. And that includes here in Atlantic City?

20 A. Yes.

21 Q. Did Hilda enjoy travel before the accident?

22 A. When my son became a flight attendant for American
23 Airlines, um, he -- she would use his benefits. It's
24 -- you know, any time she wanted to fly someplace she'd
25 go. All I did was make sure she got to the airport and

1 she did the rest by herself. She was capable of doing,
2 you know, getting her own baggage.

3 Q. How often would she travel?

4 A. I'd say about 8 -- a total -- putting everything
5 together about --

6 Q. On average.

7 A. About 8 times a year.

8 Q. And that would include to go see William
9 where he was living?

10 A. yeah. She'd stay there and then --

11 Q. Where was that?

12 A. In Puerto Rico, Texas, here in New York when he
13 came back.

14 Q. Did she return to Guatemala on occasion?

15 A. Yes. She'd go there by herself to see her family.

16 Q. And would that -- was that up to the time of
17 the accident?

18 A. Yes, yes.

19 Q. Now we have some pictures of Hilda, Exhibit
20 P-6. You've seen these pictures, correct?

21 A. Yes.

22 **PLAINTIFF'S EXHIBIT #P-6 MARKED FOR IDENTIFICATION**

23 **BY MR. LAFFERTY:**

24 Q. Where -- the one on the top --

25 A. That --

1 Q. -- on the left as you look at these pictures,
2 where was that taken?

3 A. That was taken in Los Angeles in the Bonaventure
4 Hotel. We had, we ere going -- we had -- my son's
5 childhood high school friend was getting married and we
6 knew them all well because we, the families got
7 together, we took care of each other's kids. And so
8 this, Helmut was getting married and this is where this
9 was taken. This is -- that's why we were there.

10 Q. And do you recall about when these pictures
11 were taken?

12 A. I think about 3 years ago, approximately?

13 Q. 3 years. The year before the accident?

14 A. Probably, yes. Yes.

15 Q. How about the center picture?

16 A. That's on Atlantic City Boardwalk. As you can
17 see, they were giving out little trinkets on the
18 Boardwalk.

19 Q. That's you, Hilda and William?

20 A. Yeah. We like to promote the city because we live
21 here, you know. You know, it's the right thing to do,
22 giving something back.

23 Q. All right. How about the upper right?

24 A. That was in, when Helmut was having his bachelor
25 party. That's Las Vegas. So we tagged along. And we

1 didn't do any partying, we just went to a couple of
2 shows and that was it.

3 Q. Now seeing these pictures Hilda's using her
4 right arm. Do you see that?

5 A. Right. She's predominately right armed.

6 Q. Before this accident did Hilda have any
7 problem with the use of her right arm?

8 A. No, she didn't. Not at all.

9 Q. How was Hilda's general health before this
10 accident?

11 A. Excellent. Excellent. She -- excellent.

12 Q. Any problems with mobility or with the use of
13 her limbs?

14 A. No, not at all. Nothing. Absolutely nothing.

15 Q. All right. Now let's talk about the accident
16 for a few minutes. The accident happened November
17 when?

18 A. November the 17th.

19 Q. Of?

20 A. 2014 I believe.

21 Q. Now tell the ladies and gentlemen of the jury
22 what you and Hilda had done that day.

23 A. We were running errands and we had to go shopping
24 for Thanksgiving. And I wanted to kill two birds with
25 one stone so we were going to go do the shopping and

1 then, you know, take a little stroll home because I
2 wanted to get her, to make sure she got enough
3 exercise. For me it's never enough, okay? I spent
4 most of my, I spent a lot -- I used to go to the gym so
5 I had -- anyway, I figured this would help her, you
6 know, just keep constantly walking, constantly moving.
7 Do not sit there and not do anything, you know, just,
8 just keep constantly going.

9 Q. All right. You lived where at that time?

10 A. We lived right there on Metropolitan Avenue. I
11 don't know if you can even see it.

12 Q. Up in the Inlet section of Atlantic City?

13 A. Right. Correct.

14 Q. Where did you go shopping?

15 A. At the Save-a-Lot on Pacific boulevard. I don't
16 know the cross streets.

17 Q. About how many blocks was it from your house?

18 A. I'd say about 10.

19 Q. What time did you go there?

20 A. We left, it was about maybe, I'd say about 1
21 o'clock, 2. No, not even that. About 12. Because we
22 did our morning prayers and then we, we decided to -- I
23 wanted to get the shopping done.

24 Q. So you went -- how did you get to the
25 shopping center?

1 A. We walked.

2 Q. You walked the 10 blocks?

3 A. Yeah. Yes.

4 Q. Now while you were at the store did the
5 weather change?

6 A. It didn't, we got the shopping done and then we
7 went to the pharmacy. It was fine once we left, okay.
8 When we got the pharmacy is when it got nasty outside.

9 Q. Was it rather sudden?

10 A. It was, it was terrible. The weather changed like
11 that. Snap of a finger the weather just changed. You
12 know, it changed.

13 Q. And how did it change?

14 A. It started raining and windy and it looked like a
15 small tornado or hurricane or whatever. But it was, it
16 was bad.

17 Q. And was your intention to walk back home or
18 were you --

19 A. We were going to walk back home.

20 Q. You were?

21 A. Yeah, it was our intention.

22 Q. And we've seen the video. You're pulling a
23 shopping cart?

24 A. Right.

25 Q. What was in the cart?

1 A. Oh, vegetables and I think a half a turkey and
2 just things, potatoes and the stuff you need for
3 Thanksgiving.

4 Q. Now --

5 A. Cranberries.

6 Q. -- so, so the weather changed. Did you
7 change your mind as to whether you were going to walk
8 home?

9 A. Yes. I was looking for a taxi. And I, I didn't,
10 I couldn't find one. I looked for one. We just didn't
11 find one. We were in the store, in the RiteAid for
12 about, oh, I'd say about 30 minutes, 35 minutes.

13 Q. So what did you decide to do?

14 A. I stayed in there, I did what I had to do. And I
15 just wanted to make sure that, you know -- I waited for
16 the rain to stop. And even my son called me and he
17 said, you know, you should take -- I just got a call
18 from Paul, a friend of ours. And he said the weather's
19 bad, you guys shouldn't have went out. Whatever. And
20 I said, well, we're here now. And he said, but get a
21 taxi. He goes I --

22 Q. But you couldn't get a taxi.

23 A. No.

24 Q. So what did you decide to do?

25 A. We walked up and my wife said, you know, I'm a

1 little bit tired. Maybe we should take the jitney.
2 And I said okay, fine. We walked all this way, why
3 not.

4 Q. So had you ridden jitneys in Atlantic City
5 before this day?

6 A. Hundreds and hundreds of times. It's the fastest
7 way to get around the city, okay. It is. It's just
8 really fast.

9 Q. And when -- in your normal experience with
10 jitneys when they stopped to let you off where would
11 you be in relationship to the curb?

12 A. My wife's leg, my wife is --

13 Q. I'm asking, I'm asking you --

14 A. Okay. They always leave us off at the curb, okay?
15 The always leave us off there, where they stop right
16 next to the curb like you see this here. And then you
17 step off. And when I carry the cart I always give my
18 wife her hand and then she grabs me by this arm, okay,
19 and then we walk. I use this arm and she walks.

20 Q. So the jitney always pulled up to the curb?

21 A. Right.

22 Q. So you got on the jitney. Do you remember at
23 what street?

24 A. At the -- what's the name -- I think it's Trump,
25 the one with the elephants.

1 Q. Taj Mahal?

2 A. Taj Mahal, right. They got the stop right there,
3 Taj Mahal.

4 Q. And you don't actually recall which jitney
5 number you got on, do you?

6 A. No, I don't.

7 Q. But is that the type of jitney you got on?

8 A. Yes.

9 Q. And when you were describing before how the
10 jitneys usually would drop passengers, you see how the
11 jitney's positioned in that photograph?

12 A. Yes.

13 Q. Is that how, is that like what you normally
14 experienced?

15 A. No, I always experienced that. That's what they
16 do.

17 Q. So you got on the jitney. About how far are
18 you from your home at that point?

19 A. Let me see. About 6 blocks.

20 Q. And what stop were you intending to get off
21 at?

22 A. At Massachusetts Avenue.

23 Q. Is there a jitney stop there?

24 A. Yes. All jitney stops are designated by the
25 Atlantic City Fire Department. They tell the jitney

1 where they have to stop.

2 Q. How are jitney stops identified?

3 A. They usually have a sign that says jitney stops
4 here.

5 Q. On a street pole?

6 A. On their own pole if they're independent.

7 Q. On a pole.

8 A. Right.

9 Q. Along the street?

10 A. Correct.

11 Q. Well, you're familiar with Rhode Island and
12 Pacific Avenues, correct?

13 A. Correct, I am.

14 Q. Is there a jitney stop there?

15 A. No. It's on the -- can I get up and show you
16 where it is?

17 Q. Sure. Watch the cord.

18 A. The jitney stop is on this side of the street.

19 And the stop I wanted is on the other block, two blocks
20 away.

21 Q. So there is a jitney stop on the other side
22 of Rhode Island. And you were pointing across the,
23 across Rhode Island Avenue on Pacific?

24 A. Right. It was right there on the corner.

25 Q. Okay. All right. So you were -- if we look

1 at this aerial map you were intending to get off at
2 Massachusetts.

3 A. Right. It -- you really can't see it but there's
4 a stop here. Where's Massachusetts? Okay. You turn,
5 right here and there's a couple of poles here and it's
6 supposed to stop -- this is where I rang. This is
7 where you stop, okay? And we usually get off here and
8 walk around this building and then we live right here
9 on this little bit here, on the first floor. That's
10 our, that's our path. That's the way we go. We know
11 -- we don't have any problem doing that, just walking
12 across like that. But he skipped our stop from down
13 here.

14 Q. Had you signaled the stop?

15 A. There's instructions in there that tell you that
16 you have to signal one block before your stop.

17 Q. How do you do that?

18 A. You pull the cord.

19 Q. So it goes past your stop and we see somebody
20 on the video saying, "Did you hear me? Did you hear
21 me?"

22 A. That's me.

23 Q. And the jitney comes to a stop at some point,
24 correct?

25 A. He was busy talking to one of the passengers. And

1 that's prohibited. Okay. You're not supposed --

2 Q. Well, we'll --

3 A. Okay. Yeah, so anyway --

4 Q. He was talking to a passenger.

5 A. Yeah.

6 Q. All right. Then what happened?

7 A. He just didn't pay attention.

8 Q. So the jitney comes to a stop.

9 A. I -- yeah, it comes to a stop but say -- I get up
10 and he won't stop, okay. He's not going to stop. And
11 I get up and I say where you going to stop? And he --
12 I was -- I said, where you want to stop? And I said
13 stop here. So he stops but he stops just before the,
14 like I say, before the stop, the next stop.

15 Q. Before the intersection.

16 A. The intersection, right.

17 Q. When he opened the door did you notice
18 anything unusual?

19 A. Yeah. He was far away from the curb. He was too
20 far. And I didn't know if I should argue with him,
21 what to do. I just said okay, let's get off because I
22 didn't want to argue with this guy, it's going to be
23 Thanksgiving. Do he stops. I get down. I get my
24 wife. I give her my hand. I put the groceries down.

25 Q. Now before you do that, what was the weather

1 like at this time?

2 A. There was water going through the, through the, I
3 guess you'd call it the gutter. I hate using that
4 word.

5 Q. Okay. Was it windy?

6 A. Yes. It was windy. It was, the weather was
7 miserable. It was getting miserable.

8 Q. So what happened next?

9 A. I get down, I put the groceries. I go back to get
10 my wife. I give her my hand. And like I say, I try to
11 do the gentlemanly thing all the time, you know. She
12 walks on my arm, I have the cart in my hand. I want a
13 routine. But this day he was too far away from the
14 curb for me to do my routine. I had it down. Okay? I
15 don't -- I had it down and something went wrong, I
16 don't now what. Okay?

17 Q. So did you get Hilda through the gutter?

18 A. Yes.

19 Q. Did she step onto the curb?

20 A. Yes.

21 Q. What happened next?

22 A. That I can't explain it to you. I really -- I
23 don't know what knocked us down, but we, she went down
24 and I tried, I banged on the side of the jitney. I
25 tried to pick her up. And I had her, you know, like

1 this and I was screaming and shouting, "Don't move,
2 don't move." And he moved. And I heard this -- her
3 scream scream . . . (crying)

4 Q. So, John, you were, you were trying to help
5 Hilda out of the gutter. Was there water in the
6 gutter?

7 A. Umhmm.

8 Q. Do you need a minute, John?

9 THE COURT: Do you need a break, Mr.
10 Kennedy? Do you need a break?

11 MR. LAFFERTY: Maybe we should take a break,
12 Your Honor.

13 THE COURT: Yes. All right. We'll take a 5
14 minute break.

15 **(Jury exits)**

16 THE COURT: Do you need a minute, Mr.
17 Kennedy? Do you need to leave and go to the restroom?

18 THE WITNESS: Yeah, maybe.

19 MR. LAFFERTY: About a 5 minute break, Your
20 Honor?

21 THE COURT: Yes.

22 **(off the record from 11:20 AM to 11:29 AM)**

23 THE COURT: Bring the jury in.

24 MR. LAFFERTY: Thank you, Judge.

25 **(Jury enters at 11:31 AM)**

1 THE COURT: All right. Please be seated.

2 All right, Mr. Lafferty.

3 MR. LAFFERTY: Thank you, Judge.

4 **BY MR. LAFFERTY:**

5 Q. John, let's, let's break that down a little
6 bit, that testimony. You recall helping Hilda through
7 the gutter, correct?

8 A. Yes.

9 Q. Was there water in the gutter?

10 A. Yes.

11 Q. Was it rushing water?

12 A. Yes.

13 Q. So did Hilda get to step onto the sidewalk or
14 the curb?

15 A. Yes.

16 Q. Do you recall her taking any steps after
17 that?

18 A. Just so that we could adjust ourselves. We were
19 trying to adjust ourselves to walk away.

20 Q. Was it extremely windy at that time?

21 A. Yes.

22 Q. And how much did Hilda weigh about then?

23 A. About the same as she does now, about 120 pounds
24 maybe.

25 Q. So was the wind affecting your ability to

1 walk or her ability to walk that you could see?

2 A. It -- yes, it did. Everything happened so fast.
3 The wind kind of came this way and then she went down
4 and I went down. And we're lying in the gutter. And
5 like I say, I pounded and I screamed and I shouted,
6 "Don't move, don't move." And I had her up. He hadn't
7 moved at this time. And he moved and she went back
8 down. The tire grabbed her sleeve. I couldn't do
9 anything. And it ran up her arm.

10 Q. Now was her head facing towards the front of
11 the jitney?

12 A. It was headed -- the front tires. Okay. The
13 tire's here, front tire's here and we're here, so we're
14 like down here a little bit.

15 Q. You're past the door, outside the door.

16 A. Right. We're past the door.

17 Q. So was she facing down or facing up --

18 A. Facing up. Okay.

19 Q. So had the jitney not moved what was your
20 intention?

21 A. To pick her up and put her back on the curb and
22 leave. I was --

23 Q. Now when you say the jitney stop was there
24 any physical reason why the jitney had to stop so far
25 away from the curb that you could see? Was there an

1 obstruction, was there something that made him do that?

2 A. That's where he --

3 Q. Listen to my question. Did you see --

4 A. There was nothing there that should keep him from,
5 preventing him to move to the curb. Nothing,
6 absolutely nothing. There was no obstructions, no
7 nothing.

8 Q. Now you've seen the video yesterday and other
9 times, correct?

10 A. Right.

11 Q. And does that video accurately show the
12 events that are at least captured by the video and the
13 microphone?

14 A. Other than -- I don't know where the microphone
15 was placed but basically it shows what's in view of the
16 camera, okay. That's the best way I can describe it.
17 Whatever the camera picked up it picked up. Whatever
18 the audio picked up it picked up.

19 Q. Now and you hear yourself saying, "Don't
20 move?"

21 A. No, I didn't. I heard the video, I didn't --

22 Q. Now you've read Mr. Pollack's description of
23 the events. And as he testified in his written
24 certified answers to interrogatories, correct?

25 A. Right.

1 Q. Now when you asked -- did this banging and
2 you asked not to move was the jitney stopped?

3 A. Yes.

4 Q. Still stopped?

5 A. It was still stopped.

6 Q. So you would agree where he says answering
7 defendant was still stopped at a red light when he
8 heard a loud -- we don't know what he heard, but was
9 there any other loud sound going on at the time when
10 you were banging in the jitney asking him to stop?

11 A. No. That was just me. He wasn't even moving.

12 Q. When you saw Hilda in the gutter after the
13 jitney rolled where did she end up in relationship to
14 the jitney?

15 A. Oh, the tire had completely went past her. He
16 didn't, it just passed her. It was there and --

17 Q. So were you alongside the jitney still or had
18 the jitney pulled up in front?

19 A. It was quite -- about 3 or 4 feet ahead of her.

20 Q. So you, were you still by her side at this
21 point?

22 A. Uh, I went already by the --

23 Q. Okay.

24 A. I had gotten up. And I could hear her gasping for
25 air and I thought she was having a heart attack. I

1 really did. I thought she was going to die. I was
2 almost sure she was, she was breathing her last
3 breaths.

4 Q. Well, that was -- so after the impact
5 happened, after the accident happened where were you in
6 relationship to Hilda?

7 A. I was standing over her. Okay. I got up and I
8 walked over and I could hear her breathing and then I
9 ran to, to the door and I asked the driver to call the
10 jitney, call the ambulance, he just ran over her.

11 Q. And you were obviously excited when you did
12 that.

13 A. Yeah. And I apologize if you have to hear some
14 vulgar language or language that you're not used to,
15 Your Honor, I apologize to the Court. It was in the
16 heat of the moment and I, uh, it was an accident. It
17 just happened. You know, I don't usually speak that
18 way.

19 Q. So when you, so when you first noticed the
20 jitney stop were you still on the ground or were you
21 standing up?

22 A. When I noticed he stopped I, as I picked up my
23 wife I could see the light was still green. I know it
24 was still green. I could see it was still green. And
25 when he stopped, he stopped -- I don't know why he

1 stopped. For whatever reason he stopped he stopped. I
2 can't answer that question but all I know is he stopped
3 3 feet ahead of us.

4 Q. So what happened next?

5 A. We waited for the police and he got out of the
6 car, out of the truck and he apologized, said he was
7 sorry, said he didn't see her, said this, said that.
8 And how could he not see her? He's got the, he's got
9 the mirror. I mean come on.

10 Q. So the police, the police come, right?

11 A. Right.

12 Q. And the ambulance came.

13 A. Yes.

14 Q. How was Hilda doing?

15 A. It started raining harder and the water started
16 rising so I kind of had to pick her up just a little
17 bit so she wouldn't drown. And when the police got
18 there I was still holding her. And the water was still
19 coming up. And I didn't want her to drown. And she
20 was still, I could hear her (wheezing) trying to
21 breathe. And she couldn't do it. So the ambulance
22 came and they knew right there it was a severe
23 accident. And she couldn't breathe. And they pulled
24 me out of -- the paramedics pulled me away and tried to
25 comfort me. And I was crying and upset and it was, it

1 was an experience nobody should have to go through
2 because of somebody's carelessness.

3 Q. So did -- Hilda got put into the ambulance,
4 right?

5 A. Right.

6 Q. Did you ride to the hospital with Hilda?

7 A. I -- from that moment I never left her side.

8 Q. So you went to the hospital with her, right?

9 A. Right.

10 Q. Did she go into the trauma unit?

11 A. They wheeled her in there. And I was upset and
12 they took me off and put me in this room and they told
13 me don't worry, she's going to be fine. And it wasn't
14 I think, um, I don't know how long, the nurse came out
15 and said, listen, you got lucky today because we got
16 one of the world's best surgeons right here. So don't
17 worry, she's going to be fine.

18 Q. And who was the surgeon?

19 A. Dr. Islinger.

20 Q. So Hilda got admitted to the trauma center or
21 the ICU, correct?

22 A. Right.

23 Q. Did you stay with her?

24 A. All the time.

25 Q. She was in the trauma center for 8 days?

1 A. Yes.

2 Q. Did you stay all 8 days?

3 A. Yes. I slept there. The nurses came in every 2
4 hours in the beginning. And there was really no way
5 of, of sleeping or getting anything. I was more
6 concerned with her and I could still hear her gasping
7 for her breath, you know. It wasn't anything that
8 somebody should go through.

9 Q. Were you there -- were you communicating with
10 Dr. Islinger?

11 A. Yes, I was.

12 Q. And did you give him Hilda's medical history?

13 A. Yes.

14 Q. And were you there when the decision was made
15 to do the surgery on the 19th?

16 A. Yes. It was -- she -- he had said that he'd try
17 to put the shoulder back in but she was having
18 something, her heart was not, something was wrong with
19 it and he said, no, this is too much.

20 MR. CHANCEY: Objection.

21 THE COURT: That's sustained.

22 **BY MR. LAFFERTY:**

23 Q. Yeah, don't tell us what the doctor told you.

24 A. Okay.

25 Q. We heard from Dr. Islinger.

1 A. Okay.

2 Q. Were you there when the chest tube was
3 inserted?

4 A. Yes.

5 Q. How was Hilda -- did she appear to be in pain
6 to you?

7 A. Um, she told me don't worry, I'm going to be fine.

8 MR. CHANCEY: Objection.

9 **BY MR. LAFFERTY:**

10 Q. How did she appear to you?

11 THE COURT: That's sustained.

12 **BY THE WITNESS:**

13 A. She appeared -- she was hurt, she was, she was,
14 like I say, gasping for air. She couldn't breathe.
15 She just could not breathe. It was -- I, um -- it was,
16 she was, um, having trouble breathing, she was in pain,
17 she couldn't move, she couldn't relax. You could see
18 she was tense. You know, you knew that she was in
19 pain, you could see it.

20 Q. So she had the surgery on the 19th and then
21 ultimately she was released to Betty Bacharach,
22 correct?

23 A. Correct.

24 Q. How did she get to Betty Bacharach.

25 A. By ambulance.

1 Q. Did you go with her?

2 A. Yes.

3 Q. And at least the record shows she was in
4 Betty Bacharach Rehabilitation Center from November
5 25th to December 12th. Is that consistent with your
6 recollection?

7 A. Correct.

8 Q. Were you able to stay there?

9 A. No.

10 Q. So they wouldn't let you stay.

11 A. No, not at all.

12 MR. LAFFERTY: All right. Now there are some
13 pictures that we've marked as Exhibit P-7. And they're
14 individually marked P-7A through F.

15 **PLAINTIFF'S EXHIBITS #P-7A THROUGH #P-7F MARKED FOR**
16 **IDENTIFICATION**

17 **BY MR. LAFFERTY:**

18 Q. Now these pictures, where were they taken?

19 A. That's in Bacharach.

20 Q. And the bruising that we see in these
21 pictures, did any of that exist before this accident
22 happened?

23 A. No, nothing. No, she was, she was fine, she was a
24 hundred percent fine.

25 Q. And had you seen these bruises before when

1 she was at the intensive care unit as well?

2 A. Uh, I seen them but they were not -- I wasn't
3 searching for them. Yes, they were there, I seen them.

4 Q. Was Hilda up and about and walking when she
5 was in the intensive care unit?

6 A. No. She couldn't move.

7 Q. So what did they do for Hilda at the
8 Bacharach Rehabilitation Center?

9 A. They taught her to try to keep her balance and --

10 Q. Did she have balance problems before this
11 accident?

12 A. No. None whatsoever.

13 Q. Okay. What about physical therapy, did you
14 observe any of that?

15 A. they did a little bit of it. Trying to get her to
16 roll little weights like this and stuff, you know.

17 Q. Did you notice anything about Hilda's use of
18 her right arm?

19 A. She couldn't, it wasn't mobile. You know, they
20 had it -- I guess it was actually pinned to her body.
21 She couldn't move it. It was like it wasn't going to
22 move.

23 Q. The fracture was still healing?

24 A. Yes.

25 Q. When she was in Betty Bacharach was there,

1 you know, was there some physical therapy that you saw?

2 A. Yeah. They, basically she was trying to move it
3 but it wasn't, it wasn't moving the way, you know, it
4 wasn't moving -- she was kind of doing -- she was doing
5 like this, not kind of. She was pushing it and she was
6 trying to get it mobile.

7 Q. And while Hilda was at Betty Bacharach did
8 you make any general observations of her condition?
9 Did she appear comfortable, in distress? I mean how
10 would you characterize it?

11 A. She wasn't -- she was under stress. You seen her
12 pain. She's not -- she's a trooper. She's going to
13 tell you, you know. She was telling us all the time
14 her pain wasn't --

15 MR. CHANCEY: Objection.

16 THE COURT: You can't testify to what she
17 said.

18 THE WITNESS: Okay.

19 THE COURT: You can only testify to what you
20 saw.

21 **BY MR. LAFFERTY:**

22 Q. So --

23 A. She couldn't -- you could see she was in pain.
24 She wasn't -- you could see it was constant. It was
25 not anything, it wasn't going away. It didn't look

1 like it was healing.

2 Q. Did her breathing improve?

3 A. Somewhat. But it wasn't her normal breathing. It
4 was not.

5 Q. But it wasn't labored like you told us?

6 A. It started dissipating little by little.

7 Q. Then where did, where did Hilda go after
8 Betty Bacharach?

9 A. Egg Harbor Care Center.

10 Q. And what was the purpose of that transfer?
11 Do you remember?

12 A. She was, she wasn't mobile enough and she couldn't
13 go home because I couldn't provide a stable environment
14 for her. Okay.

15 Q. So they transferred her -- it's a subacute
16 center?

17 A. Yes.

18 Q. Did she receive physical therapy when she was
19 there?

20 A. Yes.

21 Q. Did she receive IV antibiotics when she was
22 there?

23 MR. CHANCEY: I'm going to object to the
24 leading form of this questioning. It's --

25 THE COURT: Okay.

1 MR. CHANCEY: I apologize. I apologize.

2 (sidebar conference not recorded)

3 BY MR. LAFFERTY:

4 Q. Mr. Kennedy, can you tell the ladies and
5 gentlemen of the jury what you, what treatment you saw
6 being rendered to Hilda at the Egg Harbor Care Center.

7 A. Um, they gave her her pain medicine and her
8 therapy. And then we noticed there was a bump growing
9 on her arm. And nobody knew what it was. So we went
10 to Dr. Islinger. We asked him what it was. And he
11 didn't look happy but he said he didn't know. But he
12 did the biopsy. And it came back that it was, it had a
13 infection. And we went through the routine of taking
14 her back and forth to get it cleared up. And then that
15 was it. They gave her the antibiotics and stuff like
16 that.

17 Q. So according to the records Hilda was
18 discharged on February 27th, 2015?

19 A. Uh, yeah, she was. But I had to go, they weren't
20 going to discharge her unless I learned how to change
21 the wound myself. And that's the wound there in the
22 picture. I had to learn to that before --

23 Q. You're talking about the packing?

24 A. Yeah, the packing. They wouldn't do it. The
25 insurance had ran out and I was already had signed a

1 promissory note that I would pay an extra 20 days and I
2 ran out of cash. So that -- this is the wound right
3 there that you see --

4 Q. Let me ask you about this Exhibit P-7C. We
5 see what appear to be stitches on her shoulder?

6 A. Correct.

7 Q. Is that from the initial surgery or from the
8 wound surgery?

9 A. The initial surgery.

10 Q. Hilda didn't have any scars on her shoulder
11 before, did she?

12 A. No, never. Nothing.

13 Q. So you got Hilda home in late February.

14 A. Correct.

15 Q. So you celebrated Thanksgiving in the ICU?

16 A. Yes.

17 Q. And the Bacharach was Christmas?

18 A. Yes.

19 Q. So let's, let's talk about the care that
20 Hilda received when she got home. Did you ever observe
21 Hilda performing home physical therapy?

22 A. Yes.

23 Q. And does she still perform it?

24 A. Yes. Yes.

25 Q. What kind of therapy does she usually do?

1 A. The therapist in Egg Harbor taught her to take a
2 towel with little weights and you do like this, this
3 way, and then you move it back this way. And we have
4 the arm pulley and --

5 Q. Where's the arm pulley?

6 A. It's hanging in the bathroom. So she closes the
7 door and she just starts doing like this. Pulls up a
8 little. We have a very light chair and she pulls it up
9 to the chair, up to the door and she starts doing like,
10 you know, basically her left arm is doing all the work.

11 Q. How often does she do this?

12 A. Almost every day. And she'll go out to the
13 balcony and march on the balcony and, you know, try to
14 go up, hold onto the balcony and then do like this and
15 stretch her legs and -- that's the reason why I got
16 that apartment, that particular apartment, for the
17 balcony so that she can go out there and do that.

18 Q. So how about her activities in the house?
19 Have they changed?

20 A. Um, she tries to do maybe one or two dishes and
21 it's, um, she tries. The cabinets are too high. She
22 can't do anything, really. I'm not -- she can do --
23 you know, she'll put away the clothes. I'll open the
24 drawer. She'll put in the clothes. She'll take --
25 she'll try to do what she can. And I guess we didn't

1 know really about the, how severe the cutting of the,
2 of the arm was, you know, I forget what you call them,
3 the nerves. And we were pushing her a little too far.
4 And -- but she got through it. It was a good thing we
5 didn't know. But she was able to.

6 Q. Does she still try to maintain her
7 flexibility?

8 A. Yes. That's, that's something. We don't want her
9 to lose, for her arm to stiffen up. We want her always
10 to have some motion in that arm.

11 Q. And Hilda is right handed or left handed?

12 A. Right -- left handed. Right handed. I'm sorry.
13 I'm --

14 Q. Right hand dominant?

15 A. Right hand dominant.

16 Q. Is she able to raise her hand over her head?
17 By herself.

18 A. No. Not at all.

19 Q. Is she able to do her hair?

20 A. No, not at all.

21 Q. Who does her hair?

22 A. I do.

23 Q. Is she able to dress without assistance?

24 A. Not really, no. I have to -- she can no longer
25 button her blouse so I gotta do it for her. But no.

1 Q. How about her personal needs? Does she
2 require help?

3 A. I have to give her a shower. I have to, you know.
4 I have to convince her that she's, she's not a burden.
5 Every time I give her a shower I have to make sure that
6 I turn around and tell her please take your time
7 getting out of the bathtub. It's a shower but we have
8 a chair and I tell her all the time, just to reinforce
9 it that it's not a burden, it's what I signed up to do.
10 Not just this early.

11 Q. And who dries her off?

12 A. I basically do. I dry her feet and her -- you
13 know, whatever. Her hair and towel her and --

14 Q. How about her sleeping habits?

15 A. I haven't slept since the accident. I really
16 haven't. I haven't had any real --

17 Q. Why?

18 A. Because in the winter time I know that her
19 shoulder, if it's out in the cold it's going to be
20 colder and it may freeze up and she may not want to
21 move it, it may hurt. So I have to make sure she's
22 covered. In the summertime I have to make sure that
23 the air conditioning is either on low or either off.
24 And then it gets unbearably hot in there and you can't
25 sleep.

1 Q. How about Hilda's sleeping habits?

2 A. She gets up about 2 or 3 times a night.

3 Q. Is she still taking pain medication?

4 A. Yes. But only when I -- again I didn't know that
5 her injury was as severe as it is. She's never going
6 to get it back and it's painful. So we limit it as
7 much as we can, you know. She'll say, you know, I
8 really can't do -- my arm is really killing me, let me
9 have some pills. And now the pharmacy don't even want
10 to give it to us. You know, they're giving us, no,
11 you've had about enough. But even -- they won't give
12 it to us.

13 Q. Is she taking over the counter medication?

14 A. She is. I still, like I say, I have some oxycotin
15 left I think it is, whatever it is. So we use it only
16 sparingly. And I guess I'm going to have to take her
17 to a pain therapist so that he can really see what we
18 can do. It's -- everybody says there's nothing they
19 can do anymore, this is it.

20 Q. How about Hilda's travel. Has she traveled
21 since the accident?

22 A. I took her up to New York to see her main doctor.
23 And she had her sling on. And these kids walked right
24 into her arm. So I try to stay local. We really can't
25 do much anymore. We can't --

1 Q. Has she flown?

2 A. Not at all. Not at all. No.

3 Q. Has she gone back to see her family in
4 Guatemala?

5 A. No. No.

6 Q. So tell the ladies and gentlemen of the jury
7 what a typical day is like.

8 A. I usually now get up at 5 o'clock, 4 o'clock, 4:30
9 in the morning. And I start getting myself ready. I
10 put the house in order. And hopefully, I actually pray
11 that she stays asleep until about 8 so I can get
12 everything done. And then I -- she gets up. I have
13 her make her coffee. I make her coffee and I make sure
14 everything is ready. And we have a -- she has her
15 coffee. Then we say our morning prayers. And then the
16 day starts. I have to give her a shower, do the
17 washing. You know, it just -- it's just, it's all
18 changed. It's all totally -- it's a new experience
19 every day. It's something you learn new every day. My
20 wife's upbringing they ate four times a day, okay. And
21 to this day she still has to have her morning
22 breakfast, she has to have her snack, which is always
23 fruit, and then she has her lunch, which is the main
24 meal, and then she has coffee at 4 and then we have a
25 little dinner. That is the way it always was. So I

1 try to maintain that.

2 Q. Who prepares all the food?

3 A. I do.

4 Q. Did Hilda prepare it before?

5 A. Uh --

6 Q. Did she finally learn how to cook?

7 A. Listen, one day we were in Los Angeles, this is
8 actually true, I hear -- I get home she says, guess
9 what? I said what? She says I hear this knock -- she
10 said I heard a knock on the door, I went to answer it
11 and there was Bobby Brown standing on our door, Whitney
12 Houston's husband. And he says to her, you can't be
13 the one cooking that fried chicken because that stuff
14 smells really good. And she was ashamed because she
15 didn't say listen, I just finished frying the wings,
16 here's one. And she smiled and she said, yes, I am.
17 And I'm the one who taught her how to fry chicken. So
18 yeah, she did learn how to cook.

19 Q. Okay. So normally you would do the cooking -
20 or she would do the cooking?

21 A. Only when she would say, um, I'm tired of cooking.

22 Q. Well, here's what I'm trying to get at, John.
23 How did the meal preparation change after the accident
24 compared to before the accident?

25 A. She did the four basic food groups, okay. I can't

1 deal with that when I cook.

2 Q. Did you share the cooking responsibilities?

3 A. Before she always did the cooking and sometimes we
4 cooked together, sometimes I cooked. But she did, was
5 predominantly the cook, she was predominantly the cook.
6 It was not me.

7 Q. Any more does she cook at all?

8 A. She can't even push the toaster down.

9 Q. So if you had to compare Hilda before the
10 accident and after the accident how would you compare
11 her?

12 A. Uh, there is no real comparison. It's totally day
13 and night. It's -- I can't. It's no comparison.
14 She's a totally different person. She cannot -- she's
15 -- her attitude is the same but she's not, she can't do
16 anything. I used to have this picture of her on the
17 cell phone and she looked so cute when she would put
18 out her little finger and drink her tea or something.
19 And all of that's gone.

20 MR. LAFFERTY: That's all I have, Judge.

21 THE COURT: Cross?

22 MR. CHANCEY: Can we request a brief break?

23 We have more video. We're going to --

24 THE COURT: Okay. My question is do you want
25 to do the lunch break or is it -- are you going to be

1 brief?

2 MR. CHANCEY: Maybe this would be a good time
3 for lunch because I don't anticipate my cross being
4 brief.

5 THE COURT: Okay. All right. So it's 10
6 after 12 or 5 after 12. So we'll try to be back, we'll
7 be back by 5 after 12, or 1, and then we'll get
8 started. All right? Thank you so much.

9 **(Jury exits)**

10 THE COURT: All right. Everybody be seated.
11 So I'll just see you back here about 5 after 1.

12 MR. CHANCEY: Thank you, Judge.

13 THE COURT: All right. Thanks.

14 **(Luncheon recess from 12:05 PM to 1:16 PM)**

15 THE COURT: Are we ready for the jury? I
16 guess if you want to get back on the stand, Mr.
17 Kennedy, you can. You're still under oath. And
18 Forrest asked me, when Mrs. Kennedy testifies does she
19 need to be in a wheelchair?

20 MR. LAFFERTY: No.

21 THE COURT: She can walk over to the witness
22 stand?

23 MR. LAFFERTY: Well, with assistance. I'll
24 help her.

25 THE COURT: Okay.

1 MR. LAFFERTY: I don't want her trying to get
2 through this courtroom.

3 THE COURT: With all the wires.

4 MR. LAFFERTY: I know.

5 (Jury enters)

6 THE COURT: Please be seated. Welcome back,
7 ladies and gentlemen. So now we're going to continue
8 with cross-examination of Mr. Kennedy. Mr. Chancey.

9 **CROSS-EXAMINATION BY MR. CHANCEY:**

10 Q. Mr. Kennedy, hello.

11 A. Hi.

12 Q. How are you this afternoon?

13 A. Fine.

14 Q. We've met before so I'll make the
15 introductions spare. As you know, I represent Frederic
16 Pollack, who is deceased, in this lawsuit that you and
17 your wife have filed against him. A few moments ago,
18 before we went to lunch you testified that as we sit
19 here today it all happened really fast and you just
20 don't know what happened to cause Hilda to fall into
21 the roadway. Am I correct in that?

22 A. Basically it was the wind. We went down. I would
23 say probably. I don't know what made us fall. I can't
24 say for sure.

25 Q. Okay. You said it was the wind and we all

1 agree that it was a windy day that day, is that
2 correct?

3 A. Correct.

4 Q. But specifically you can't say for sure what
5 it was that specifically made you fall. Let me ask you
6 this. Were you holding Mrs. Kennedy's hand at the time
7 that she fell?

8 A. We were adjusting ourselves so that we could go to
9 walk with the cart. Like I say, she on the inside away
10 from the water and mud and me with the cart on my right
11 side.

12 Q. Were you up on the sidewalk at that point?

13 A. I believe so, yeah.

14 Q. Okay. You weren't standing in the street at
15 the moment that you were adjusting yourselves getting
16 ready to walk.

17 A. No.

18 Q. Okay. You talked a bit about the fact that
19 the jitney didn't take you to the stop that you would
20 have liked to have stopped at, is that correct?

21 A. Correct.

22 Q. Okay. What was the stop that you wanted to
23 go to? Can you remind the jury of that?

24 A. It was on Metropolitan -- not -- Massachusetts
25 Avenue.

1 Q. Massachusetts and Pacific?

2 A. Yes.

3 Q. Okay. And you ended up stopping where?

4 A. At, what is it -- I forget. It starts with an I.
5 Rhode Island.

6 Q. Rhode island. The second word starts with an
7 I, right? The place where you stopped -- the fact that
8 you didn't stop at Massachusetts and Pacific but
9 instead stopped at Rhode Island and Pacific, that
10 didn't cause Mrs. Kennedy to fall, is that correct?

11 A. Yes, it did. Because he took us out of our
12 comfort zone. He --

13 Q. Okay.

14 A. It did. It had everything to do with what
15 happened that day.

16 Q. Okay. The area where he stopped you, were
17 you able to step out of the vehicle safely?

18 A. No.

19 Q. You weren't able to step out of the vehicle
20 safely?

21 A. No. I was.

22 Q. Okay. Did you fall as you were stepping out
23 of the vehicle?

24 A. No.

25 Q. Did your wife fall as she was stepping out of

1 the vehicle?

2 A. No.

3 Q. Okay. Did she step into the roadway from the
4 vehicle?

5 A. it was difficult for her to do, but yes, she did.

6 Q. Did she do it?

7 A. Right.

8 Q. Did she fall as she was stepping into the
9 roadway out of the vehicle?

10 A. No.

11 Q. Okay. And were you able to step up onto the
12 sidewalk from the roadway?

13 A. Correct.

14 Q. Okay. Did you fall as you were stepping up
15 onto the sidewalk from the vehicle?

16 A. No.

17 Q. I'm sorry?

18 A. No.

19 Q. Okay. And was your wife able to step up onto
20 the sidewalk out of the roadway?

21 A. Yes.

22 Q. With your help of course.

23 A. Right. With my help.

24 Q. Okay. And you were holding her hand as she
25 stepped up onto the sidewalk?

1 A. Right.

2 Q. And the two of you came to a rest on the
3 sidewalk and adjusted yourself, is that correct?

4 A. No, we were trying to when the wind came.

5 Q. Okay.

6 A. We didn't -- like I said, he took us out of our
7 comfort zone. He took me out from the way that I had
8 set up. He took us out of my norm.

9 Q. Right.

10 A. Out of my normal place. Okay?

11 Q. Okay. Was there any defect in the roadway
12 there --

13 A. I didn't notice.

14 Q. -- that caused you to fall?

15 A. I didn't notice.

16 Q. Okay. So sitting here today you don't know
17 if there was a defect in the roadway one way or
18 another.

19 A. I didn't notice.

20 Q. Okay. So you say when the wind blew. You
21 did or did not have a chance to adjust yourself before
22 the wind blew?

23 A. The wind, the wind -- we couldn't, we couldn't, I
24 couldn't get her -- like I said, he took us out of our
25 norm. Okay. Out of our normal routine. He took us

1 out of it.

2 Q. Sir, other than being taken out of your
3 normal routine was there anything abnormal about the
4 roadway or the sidewalk that made --

5 A. Yes. We were in --

6 Q. -- you unable to stand on it?

7 A. -- the wrong place.

8 Q. Okay. Other than being in the wrong place
9 and being taken out of your normal routine was there
10 anything abnormal about the roadway or the sidewalk
11 that made you unable to stand on it?

12 A. I don't know.

13 Q. Okay. Sitting here today you know of nothing
14 about the roadway or the sidewalk that was any
15 different than any other roadway or sidewalk.

16 A. Other than there, we being out of our normal
17 routine, you know. The stop, I know very little about
18 that stop. And that's it. I can't tell you anything
19 other than that.

20 Q. Okay. It was a cold day. You had your cart
21 with you.

22 A. Right.

23 Q. You're going down the steps. Do you know,
24 can you estimate for us about how long it took you to
25 -- before your wife came out of the vehicle, took you

1 to walk down the steps and put the cart up on the
2 sidewalk?

3 A. No.

4 Q. You have no way of estimating that?

5 A. No.

6 Q. Okay. How about your wife? Your wife came
7 down the steps. She steps into the roadway. She steps
8 up onto the sidewalk. Is there --

9 A. She --

10 Q. I'm sorry. You gotta let me finish. Sitting
11 here today do you have any way of estimating how long
12 that process took?

13 A. It was an extra step, okay.

14 Q. Okay.

15 A. It was an extra step. She, her -- the jitney is
16 too high for her to get off there. But that's where he
17 left us and these guys do whatever they want. I don't
18 know what to tell you.

19 Q. Mr. Kennedy, I understand. My question is
20 simply do you have an idea in your mind about how long
21 it took her to step out of the jitney into the roadway
22 and then out of the roadway and up onto the step?

23 A. Longer than usual.

24 Q. Okay. But do you have an idea in your mind
25 of how long that took?

1 A. No.

2 Q. For me it was too long, but --

3 A. Do you think it's about a minute?

4 Q. I don't have a clue. I don't know. It was
5 out of our norm. It's not what we usually do. It's
6 not the way that I treat my wife and other passengers
7 that I've helped to get off the jitney, you know. It's
8 just not what I do. It's totally out of my norm.

9 Q. Okay.

10 A. Okay.

11 Q. I'm just looking for a time measurement. Did
12 it take like 10 seconds to get out of the jitney?

13 A. Um, like I said, again, I cannot even -- how long
14 it was, I don't know. I can't tell you.

15 Q. You said it took too long.

16 A. For me, yes. It took -- it took me too long to
17 get her adjusted to where we could go, the way we could
18 go. It was just, um, it wasn't okay, I put the cart
19 down. I put the cart down and I usually when she comes
20 down I put the cart down and then she comes around, she
21 grabs my arm. But this time she's too far away from
22 the curb, she can't get down off the jitney. So --

23 Q. Okay. Did you help her?

24 A. -- this is all new to me. So I, you know, did
25 what I had to.

1 Q. Did you help her get down, out of the jitney?

2 A. Yeah. I gave her my hand. I took her, I tried to
3 do what I needed to do to get her off.

4 Q. Okay. Did you give her your hand while she
5 was still on the steps of the jitney?

6 A. I believe so.

7 Q. Okay. Did you hold her hand while she
8 stepped into the roadway?

9 A. I believe so.

10 Q. Did you hold her hand while she stepped up
11 onto the sidewalk?

12 A. I believe so.

13 Q. Were you still holding her hand when she
14 fell?

15 A. I would think I had it by her. I was trying to
16 adjust her. I don't know.

17 Q. Okay. Sitting here today do you have a
18 specific recollection of where your hands were at the
19 moment that she fell?

20 A. Um, no. I can't, I don't -- I know that I, I
21 tried to take care of her. And just that day you know,
22 we were out of our norm and that's what happened, you
23 know. I mean I never -- she's just petite, she's
24 small. You gotta take care of a person like her, you
25 just, you have to.

1 Q. I understand completely, sir. And I think
2 that it's a testament to you that you take such good
3 care of your wife. My question really to you does just
4 pertain to what was happening at the moment she fell
5 and whether you were still holding her hand. And do
6 you have a specific recollection about what you were
7 doing --

8 A. You know, again --

9 Q. -- with your hands at the moment that she
10 fell?

11 A. -- I can't, I can't at this very moment tell you
12 for sure a hundred percent what really took place at
13 that moment when we were shifting around. And all I
14 can tell you is I -- you want a specific answer and I
15 can't give it to you.

16 Q. I understand completely, sir. I understand
17 that it happened fast and you don't have a specific
18 recollection of that moment when you're adjusting
19 yourselves and the wind fell and she fell over.

20 A. Right.

21 Q. You said a couple of times, and I just want
22 to be clear, you said we went over.

23 A. Yes.

24 Q. Did you both fall?

25 A. I -- she, she went down and I remember we -- she

1 went down and how we ended up in between the gutter and
2 the jitney I don't know. I can't tell you that. All I
3 can tell you is I was scooping her up. I had her like
4 this. That's all in -- what transpired after that.
5 But I cannot say that, um, --

6 Q. Well, let me just be as specific as I can,
7 and let me honest with you, I don't have a very good
8 memory for what happened yesterday so the idea that I'm
9 going to ask you what happened in this traumatic
10 accident several years ago down to this minutia I
11 understand completely if you don't under -- if you
12 don't remember. And everyone understands if you don't
13 remember. So, but narrowing it down to what I'm asking
14 about at this precise moment is as you were both
15 standing on the sidewalk and adjusting and the wind
16 blew did you both fall or did she fall?

17 A. She -- all I can say is she tumbled. I don't, I
18 can't, I don't recall exactly how we ended up in that
19 position. I can tell you, I can theorize it. But I'm
20 not going to do that. I don't know. You want specific
21 answers, I can't give that.

22 Q. Okay. All I want to know is what you recall
23 about that day. And I certainly don't want you to
24 theorize. And I appreciate the effort you've given us.
25 I think we all agree that at some point she ends up

1 back in the roadway.

2 A. Right.

3 Q. And you go down into the roadway to try to
4 help her up, is that right?

5 A. Right.

6 Q. And then I think you testified with Mr.
7 Lafferty before lunch that you actually had her up.

8 A. Right.

9 Q. Okay. So she falls in the roadway. You go
10 down to get her. And you have her up. At some point
11 you bang on the jitney and you say, "Don't move, don't
12 move."

13 A. I banged on the jitney as, you know, coming up.
14 Bang, I banged three times and told him, "Don't move,
15 don't move."

16 Q. Okay. Did you shout it?

17 A. I thought I was. I got a loud voice. I don't
18 know.

19 Q. Did you yell as loud as you could?

20 A. I don't know. I know that I yelled. I know that
21 I said, "Don't move, don't move." I wasn't, you know.

22 Q. You weren't speaking it. You were yelling it
23 so that he would hear it.

24 A. I don't know if he heard it.

25 Q. No, I understand that. I'm asking if you

1 were yelling it so that he would hear it as opposed to
2 just saying it under your breath or something like
3 that.

4 A. I know I said it. I can't tell you how loud it
5 was. I know that I said it and I know that I banged on
6 the side of the jitney.

7 Q. Okay. And at the moment that you banged on
8 the side of the jitney and said, "Don't move, don't
9 move," was that before or after you'd gotten your wife
10 up?

11 A. I was going like this and i was going like this,
12 you know, trying to get her up, trying to keep the
13 noise going making sure I could get her up and pick her
14 back up on the curb.

15 Q. Okay.

16 A. Okay.

17 Q. So you yelled, "Don't move, don't move" as
18 you were getting her up --

19 A. Right.

20 Q. -- and then you got her up.

21 A. No. She moved -- he moved.

22 Q. Okay. You told us before that you actually
23 got her up but then -- you didn't get her out of the
24 street but you got her up --

25 A. I know I got her up like this. Okay? She's like

1 this and we're going. We're not all the way up. He
2 moves. Okay. We're sort of like 90 degrees I guess
3 you would say, like this, something like that.

4 Q. So you're getting up and he begins moving.

5 A. Right.

6 Q. At the moment you banged the jitney and said
7 "Don't move, don't move," he's not moving.

8 A. No.

9 Q. At the moment that your wife fell into the
10 roadway he wasn't moving.

11 A. No. His moving caused us to fall.

12 Q. Are you saying that the moving of the jitney
13 caused your wife to fall into the roadway?

14 A. No. I am saying -- what I am saying is we were
15 like this. I used this part of my body to leverage her
16 to get up. Okay. She was up like this.

17 Q. Right. Right. I understand.

18 A. And then he moved and then she fell.

19 Q. No, I understand that completely. I
20 apologize. My question may have been unclear. What
21 I'm asking is obviously at the moment that you said
22 "Don't move, don't move" the jitney hadn't begun
23 moving.

24 A. No.

25 Q. At the moment that you were adjusting

1 yourselves, getting ready to walk off before the wind
2 blew and you fell was he moving at that point?

3 A. No. I don't know. I was paying attention to my
4 wife. I can say maybe he was standard, but he wasn't
5 moving.

6 Q. Right. That's what I'm saying. You get up
7 on the sidewalk, you're adjusting, you're getting ready
8 to walk off, the wind blows, she falls into the
9 roadway. You go in to get her, you say, "Don't move,
10 don't move." The jitney's not moving at these points,
11 is that correct?

12 A. Right.

13 Q. Okay. And it was only after you said,
14 "Don't move, don't move," and you were getting her up
15 that the jitney began moving.

16 A. Uh, yes.

17 Q. Is that correct?

18 A. I didn't -- no. He had us -- like I said, we were
19 like this. He had us in -- his moving caused us to
20 fall. His moving. If he would have just stayed
21 standard there I could have gotten her back onto the
22 curb. But he didn't, he moved.

23 Q. Right. He moved as you were trying to get
24 her back up and that's what ran over her.

25 A. That's when we went back down and the tire --

1 yeah, the tire grabbed her sleeve and went up it.

2 Q. The first time you fell, that wasn't caused
3 by him moving. The first time she fell as you were
4 adjusting yourselves when the wind blew, that wasn't
5 caused by him moving.

6 A. No.

7 Q. Okay. Um, how long do you think you were in
8 the roadway trying to help your wife up and saying,
9 "Don't move, don't move?"

10 A. I have a very extremely fast, fast reactions. It
11 -- I just do. I don't know where it comes from, I
12 don't know how, but I just, I can't, I just do it and
13 if something kicks in then I just do what needs to be
14 done.

15 Q. So your wife fell into the roadway, you went
16 in to get her. You say, "Don't move, don't move."
17 Couldn't have taken more than 5 seconds?

18 A. I can't tell you that.

19 Q. Okay.

20 A. I can't.

21 Q. But you say that you're extremely fast.

22 A. Yes, I am extremely fast.

23 Q. At the moment that the jitney began to move
24 were you up on the sidewalk?

25 A. No.

1 Q. At the moment that the jitney began to move
2 was your wife up on the sidewalk?

3 A. No.

4 Q. Okay. You've seen the video surveillance
5 form this accident.

6 A. Correct.

7 Q. Okay. I want to take you through that video
8 just briefly. And I want to see if we can line up what
9 the video shows with what, with your version of the
10 accident.

11 A. Okay.

12 Q. Okay? Because your attorney asked you
13 earlier is the video an accurate reflection of the
14 incident as it occurred and you said the video shows
15 what it shows but there are things that happened
16 outside of the video that it doesn't show.

17 A. Correct.

18 Q. Is that correct? So at this moment what I'd
19 like to do is I'd like to take a look at the video and
20 see if it can give us any indication of where you were
21 at the moment that the vehicle began moving. Okay?

22 A. All right.

23 Q. Because according to your testimony at the
24 moment that the vehicle began moving both your wife and
25 you were not on the sidewalk, you were in the roadway

1 trying to help her get up.

2 A. Correct.

3 MR. CHANCEY: Okay. So I'm going to ask my
4 assistant to pull open the video.

5 **(video, Exhibit #P-5 begins playing)**

6 THE COURT: Do you want the lights on or off?

7 MR. CHANCEY: Let's pause it. We can turn
8 the lights off. Okay. Let's unpause it.

9 **(video continues playing)**

10 MR. CHANCEY: And this is the video that we
11 saw yesterday while we were taking to the jury.

12 **(video continues playing:)**

13 *SPEAKER 1: Guess what I just did.*

14 *SPEAKER 2: What did you just do?*

15 *MR. KENNEDY: Can you hear me? I told you to*
16 *let us off here.*

17 **BY MR. CHANCEY:**

18 Q. All right. Mr. Kennedy, is that you?

19 A. Yes.

20 Q. And is that your wife?

21 A. Yes.

22 Q. And this is you coming back for your wife to
23 help her down the steps.

24 A. Right.

25 Q. And this is your wife stepping into the

1 roadway.

2 A. Right.

3 Q. And this is you helping her up on the
4 sidewalk. And the jitney begins to move at that
5 moment.

6 **(video playing:)**

7 *(Screaming)*

8 *SPEAKER 1: Oh, shit.*

9 *MR. KENNEDY: Oh, gosh dam it.*

10 *SPEAKER 2: What did she do, faint?*

11 *SPEAKER 1: I don't know. I'm not sure.*

12 *MR. CHANCEY: Pause it there.*

13 **(video stops)**

14 **BY MR. CHANCEY:**

15 Q. Mr. Kennedy, it kind of looked to me like you
16 were on the sidewalk at the moment the jitney began to
17 move.

18 A. No. I fell. It looks that way, but that's not
19 what happened. I fell first.

20 Q. It also kind of looked to me like the jitney
21 began to move -- it kind of looked like you stepped
22 onto the sidewalk and the jitney began to move almost
23 right away.

24 A. Again, like I say, that's what it seems like, but
25 that's not what happened.

1 Q. Okay.

2 A. Okay.

3 Q. It also, it kind of seems to me that there
4 wasn't enough time for your wife to fall into the
5 roadway and for you to go in after her and bang on the
6 jitney before the jitney began moving.

7 A. But that's exactly what happened.

8 MR. CHANCEY: Okay. And can we just watch
9 that again? I just want to make sure we know what
10 we're looking at.

11 **(video playing:)**

12 MR. KENNEDY: *Can you let us off here.*

13 SPEAKER 1: *Guess what I just did.*

14 SPEAKER 2: *What did you just do?*

15 MR. KENNEDY: *Can you hear me? I told you to*
16 *let us off here.*

17 **BY MR. CHANCEY:**

18 Q. Okay. So here's the jitney coming to a stop.
19 Here's you with the cart. Here's your wife. Here's
20 you dutifully helping your wife down.

21 MR. CHANCEY: Can we pause it.

22 **(video stops)**

23 **BY MR. CHANCEY:**

24 Q. Now right here you've got your wife's hand,
25 is that correct?

1 A. Right.

2 Q. And you're helping her down.

3 A. Right.

4 Q. And what happens next as you told us before
5 is that you both step up onto the sidewalk and adjust
6 yourselves.

7 A. Right.

8 Q. And then she falls in and then you go in
9 after her and you bang on the jitney and say, "Don't
10 move, don't move." And then it begins to move. Is
11 that correct?

12 A. Correct.

13 MR. CHANCEY: Okay. Can you press play.

14 **(video continues playing)**

15 **BY MR. CHANCEY:**

16 Q. There you both are stepping up. And there's
17 the jitney and it's going. Now I do agree that we
18 can't see what it is that happened. But it does seem
19 like you're up on the sidewalk when the jitney starts
20 moving. did you see that?

21 A. No.

22 Q. Okay.

23 **(video stops)**

24 **BY THE WITNESS:**

25 A. Hold on a minute. There's poles there and there's

1 other things there. You could be, you could be
2 confusing me with the poles.

3 Q. I'm looking at --

4 A. No, no, no, no.

5 Q. I'm looking right in the doorway.

6 A. No, no, no, no. There's poles there.

7 Q. I'm --

8 A. There's two poles.

9 Q. I understand completely, sir.

10 A. Okay. There's a telephone pole and there's a
11 light pole. Okay. So don't confuse me with the two
12 poles because that was a whole obstruction that was
13 going on there.

14 Q. I understand completely, sir.

15 A. So don't confuse me that.

16 Q. I'm not confusing. I hope I'm not confusing.
17 Let's take a look and see if I'm confusing.

18 **(video playing)**

19 **BY THE WITNESS:**

20 A. No, don't confuse me. Confuse them here --

21 Q. I'm not confusing anyone, the judge or the
22 jury.

23 A. Okay? But there's two poles there that you don't
24 know is there. You can't see them.

25 MR. CHANCEY: Okay. Can we pause right

1 there?

2 (video stops)

3 **BY MR. CHANCEY:**

4 Q. I agree that the lighting is --

5 A. I agree too.

6 Q. -- it's a little bright. It's a contrast.

7 A. Okay.

8 MR. CHANCEY: Okay. Can we press play.

9 (video continues playing)

10 **BY MR. CHANCEY:**

11 Q. But that is you.

12 A. Right.

13 Q. Okay. And that's Mrs. Kennedy.

14 A. Right.

15 MR. CHANCEY: And can you pause it right
16 there.

17 (video stops)

18 **BY MR. CHANCEY:**

19 Q. Okay. So you're about to step up onto the
20 roadway.

21 A. Yes.

22 Q. And the jitney's about to start moving. And
23 I just want to be clear, but what I see moving when the
24 jitney begins moving is this figure right here. Is
25 that you?

1 A. Yes.

2 Q. And I haven't confused that with any poles or
3 anything.

4 A. Right.

5 MR. CHANCEY: Okay. Can we press play.

6 (video continues playing)

7 **BY MR. CHANCEY:**

8 Q. Now Mrs. Kennedy steps into the street, up on
9 the roadway, and that's you walking away at that
10 moment.

11 A. No, because I told you, no. I fell first, before
12 he moved. I'm sorry. I fell first before he moved.

13 (video stops)

14 **BY MR. CHANCEY:**

15 Q. Okay. You, you fell or Mrs. Kennedy fell?

16 A. My -- Mrs. Kennedy fell and I went to help her. I
17 -- like I say, I'm very fast, I'm quick. I'm telling
18 you, when I --

19 Q. Even though -- I'm sorry, I interrupted you.
20 Continue.

21 MR. LAFFERTY: He answered the question.

22 MR. CHANCEY: Okay.

23 **BY MR. CHANCEY:**

24 Q. Even though what we're looking at appears to
25 be you and your wife on the sidewalk as the jitney

1 begins moving you're saying that this --

2 A. You --

3 Q. -- hasn't captured -- let me finish, Mr.
4 Kennedy. I apologize. I don't want to be tedious.
5 You're saying even though we can see you and Mrs.
6 Kennedy on the sidewalk as the jitney is moving you're
7 saying what it doesn't capture is you falling into the
8 -- or Mrs. Kennedy falling into the roadway, you
9 getting down to help her, you banging on the vehicle
10 and saying, "Don't move, don't move."

11 A. Yes.

12 Q. And then the jitney beginning to move.

13 A. Yes. That's what you don't see.

14 Q. And you're saying that that's what's
15 happening off camera.

16 A. Right.

17 MR. CHANCEY: Okay. Can we play that one
18 more time.

19 **(video playing:)**

20 *MR. KENNEDY: Can you let us ff here.*

21 *SPEAKER 1: Guess what I just did.*

22 *SPEAKER 2: What did you just do?*

23 *MR. KENNEDY: Can you hear me? I told you to*
24 *let us off here.*

25 *(shuffling - low voices - scream)*

1 MR. CHANCEY: Pause.

2 (video stops)

3 MR. CHANCEY: Now I want everyone to look
4 closely and pay attention to the motion of the jitney
5 as it begins to move that way and where the figures are
6 at the moment that the jitney begins to move.

7 (video playing)

8 (shuffling - low voices - scream)

9 (yelling away from microphone)

10 SPEAKER 1: Oh, shit.

11 MR. CHANCEY: And pause it.

12 (video stops)

13 **BY MR. CHANCEY:**

14 Q. Notwithstanding what we just looked at it's
15 still your, it's still your version of events she fell
16 in, you went after her, you banged on the jitney, you
17 said, "Don't move, don't move," and only then did he
18 begin to move.

19 A. Right.

20 Q. I think that speaks for itself. But let's --

21 MR. LAFFERTY: Objection, Your Honor.

22 THE COURT: Yeah.

23 MR. CHANCEY: I'll withdraw it.

24 THE COURT: Thank you. You can disregard
25 that comment, you are to disregard that comment.

1 **BY MR. CHANCEY:**

2 Q. Let's talk about sounds. At the very
3 beginning of the video I heard somebody, and I think a
4 lot of us heard somebody say, "You can let us off
5 here."

6 A. Right.

7 Q. Is that you?

8 A. Yes.

9 Q. Okay. And then we hear some chatter and we
10 hear someone say, "Did you hear what I said? Let us
11 off here." Was that also you?

12 A. That was at our stop, okay.

13 Q. Okay.

14 A. And he wouldn't let us off. I don't know why he
15 didn't let us off but he didn't let us off. When I
16 told him to let us off the first time that was at our
17 stop. He kept going.

18 Q. How far --

19 A. He kept speeding up.

20 Q. How far from your stop were you -- let me
21 rephrase. When you said, "Let us off here," on the
22 video you were at your stop?

23 A. Yes.

24 Q. Okay. How far from your stop did you end up?

25 A. Almost to the next stop.

1 Q. Okay. Can you give us a estimate in terms of
2 blocks?

3 A. Rhode Island.

4 Q. In terms of blocks how far away were you?

5 A. Two.

6 Q. Okay. Okay. I want to listen to the sounds
7 of you saying let us off here. And then let's see
8 where he ultimately stops, okay?

9 A. Okay.

10 MR. CHANCEY: All right. Press play.

11 **(video playing:)**

12 *MR. KENNEDY: Let us off here.*

13 *MR. CHANCEY: Let us off here.*

14 **(video continues:)**

15 *SPEAKER 1: Guess what I just did*

16 *SPEAKER 2: What did you just did?*

17 *SPEAKER 1: Guess.*

18 *MR. KENNEDY: Did you hear me. I told you to*
19 *let us off here.*

20 **BY MR. CHANCEY:**

21 Q. So is it your contention, sir, that from the
22 moment you said let us off here the first time he went
23 two blocks forward?

24 A. No. My contention is when I rang the bell he's
25 paid to stop where we tell him to stop. That is his

1 obligation to the public. Where you pay to stop you
2 stop.

3 Q. I understand that.

4 A. You don't get to go forward, you don't get to stop
5 in the middle. You don't ask the passengers to do your
6 job.

7 Q. I understand completely. My question's
8 specific to what the video shows is whether you were
9 asking him to stop for Massachusetts Avenue and then he
10 kept going -- at the moment that you said --

11 A. I don't --

12 Q. -- let us off here whether that was
13 Massachusetts Avenue.

14 A. I don't -- when I rang the bell he's supposed to
15 stop, okay.

16 Q. I agree.

17 A. Why did he make me get up and ask him to stop,
18 stop, stop? Where he was going to stop I don't know.

19 Q. I have no idea as well.

20 A. He was busy talking, as you can see, not paying
21 attention to his paying customers. He gets \$65,000
22 from the government to drive that jitney for elderly
23 people. Okay.

24 Q. Okay.

25 A. For the disabled, for whatever. But he's supposed

1 to take care of us.

2 Q. I understand completely, sir.

3 A. Okay.

4 Q. My question really does just pertain to --

5 A. Listen, I'm going to tell you for the last time.
6 I did what I was supposed to do as a paying passenger.
7 He failed. He took me out of my comfort zone and
8 that's it. I'm not going to agree with you. I don't,
9 I'm sorry.

10 Q. Okay. I'm not asking you to agree with me,
11 sir. I'm really not. I understand your position in
12 this case. I'm -- this is a cross-examination. I'm
13 just asking you some questions to further clarify
14 things for the jury so that we can figure out what
15 happened.

16 A. He didn't stop where he was supposed to stop,
17 ladies and gentlemen. That's all.

18 MR. CHANCEY: Your Honor, I've got an open
19 question. He's being nonresponsive. And certainly
20 turning to the jury's a problem.

21 THE COURT: Let's -- okay. Please disregard
22 -- can both of you, can you come up here, please.

23 MR. CHANCEY: Yes.

24 **(sidebar conference not recorded)**

25 THE COURT: Okay. We're back on. So ladies

1 and gentlemen, any kind of comments made by Mr. Chancey
2 should be disregarded by you. You're just to listen to
3 the testimony of the witness. So any of his comments
4 are something that should be disregarded by you. Okay.

5 **BY MR. CHANCEY:**

6 Q. All right. Mr. Kennedy, I'm going to ask my
7 assistant to play the video through the moment where
8 the jitney begins moving again. And I believe that we
9 can hear a scream. I want to listen to see if we hear
10 before it starts moving the "Don't move, don't move."
11 Okay? So we're going to play it again and listen to
12 that.

13 **(video playing:)**

14 *MR. KENNEDY: Let us off here.*

15 *MR. CHANCEY: Let us off here.*

16 *SPEAKER 1: Guess what I just did*

17 *SPEAKER 2: What did you just did?*

18 *SPEAKER 1: Guess.*

19 *MR. KENNEDY: Did you hear me? I told you to*
20 *let us off here.*

21 *(shuffling - low voices - scream)*

22 *(yelling away from microphone)*

23 *SPEAKER 1: Oh, shit.*

24 *MR. KENNEDY: Oh, goddam it.*

25 *SPEAKER 2: What she do, faint?*

1 SPEAKER 1: I don't know. I'm not sure --

2 MR. KENNEDY: Oh, geez, you just run over
3 her. Goddam it, you --

4 **(video stops)**

5 **BY MR. CHANCEY:**

6 Q. Okay. In the video did you hear the part
7 where you said, "Don't move, don't' move?"

8 A. No.

9 Q. Okay.

10 MR. CHANCEY: Your Honor, that's all I have.

11 THE COURT: Okay. Any redirect? We can turn
12 the lights on. Unless -- yeah, we can turn the lights
13 on.

14 **REDIRECT EXAMINATION BY MR. LAFFERTY:**

15 Q. John, this whole event is it fair to say
16 happened very quickly?

17 A. Yes.

18 Q. And have you tried to give the jury the best
19 recollection that you have of the events that happened
20 on that day?

21 A. Yes, I did.

22 MR. LAFFERTY: Thank you.

23 THE COURT: Okay. All right, Mr. Kennedy,
24 you can step down.

25 MR. LAFFERTY: Your Honor, we would call

1 Frank Costanzo.

2 THE COURT: Okay.

3 **FRANK COSTANZO, PLAINTIFF'S WITNESS, SWORN**

4 ATTENDANT: State your full name.

5 THE WITNESS: Frank Costanzo,
6 C-O-S-T-A-N-Z-O.

7 ATTENDANT: Thank you. You may be seated.

8 THE WITNESS: Sorry, Your Honor.

9 MR. LAFFERTY: Are you ready?

10 THE WITNESS: Yeah. I need my readers.

11 **DIRECT EXAMINATION BY MR. LAFFERTY:**

12 Q. Again, say your full name for the record.

13 A. Frank Costanzo, C-O-S-T-A-N-Z-O.

14 Q. And by whom are you employed and in what
15 capacity?

16 A. My own company. I'm an accident
17 reconstructionist.

18 Q. And what's the name of your company?

19 A. Accident Cause and Analysis.

20 Q. And where are your offices located?

21 A. Our office in Chester Springs, Pennsylvania, Cape
22 May, New Jersey and Glenshaw in the Pittsburgh area.

23 Q. Let's talk a little bit about your education.
24 Did you go to college?

25 A. I did got to college. I went to Indiana

1 University of Pennsylvania. In 1982 I graduated with a
2 bachelor of science degree in safety science. Some
3 people call it safety management too.

4 Q. What did you do after graduating from the
5 University of Indiana?

6 A. I went to work for the National Highway Traffic
7 Safety Administration. For 10 years starting in 1983 I
8 reconstructed two accidents a week for the National
9 Highway Traffic Safety Administration for trauma
10 related programs.

11 Q. Did you obtain any certifications subsequent
12 to completing your, your bachelor's degree in 1982?

13 A. I did. I had a couple certifications. One is I
14 was a certified instructor for the Traffic Institute of
15 Police Services. I taught police officers
16 approximately 10 years how to reconstruct traffic
17 accidents. And I had to be certified to be able to
18 certify them. I did a trauma program for Children's
19 National Medical Center in Washington and I received a
20 certification for child seat installations back then.

21 Q. Now in your education at Indiana University
22 did you receive training in accident reconstruction and
23 accident investigation?

24 A. Yes.

25 Q. Was that a focal point of your training?

1 A. No, it wasn't.

2 Q. What was?

3 A. The focal point was safety related classes. We
4 had an accident investigation class, but a lot of it
5 was safety management, highway, safety on highway,
6 safety in buildings type of study.

7 Q. And subsequent to your graduating from
8 Indiana University did you participate in programs
9 related to accident reconstruction and accident
10 investigation?

11 A. Sure. All -- I went back, after I left NHTSA I
12 started my own --

13 Q. NHTSA is?

14 A. National Highway Traffic Safety Administration.

15 Q. How long were you affiliated with NHTSA?

16 A. 10 years. Like I told you before, I taught with
17 TIPS. I also, they asked me to come back to do two
18 special programs, one for national, the Children's
19 National Medical Center in Washington and one for
20 UMDNJ, which is up in North Jersey. For 3 and a half
21 years I reconstructed their cases for trauma related
22 cases. I worked for the Delaware County Prosecutor's
23 Office. I helped assist their doing their accident
24 reconstructions with their in house people. I also did
25 the same thing Montgomery County District Attorney's

1 office, I helped and assist with their cases. I think
2 that's about it.

3 Q. Okay. But have you participated as a student
4 in continuing education relative to your field of
5 speciality?

6 A. Oh, yeah. I've taken continuing education credits
7 through various organizations. I actually taught the
8 classes so I would get credit, when I would teach a
9 class I would get continuing education credits when I
10 would teach a class.

11 Q. And can you approximate how many continuing
12 education courses you've participated in?

13 A. I have no idea.

14 Q. Do you do it annually?

15 A. No, I'm doing more -- I haven't done it annually,
16 but for about 10 years I did it probably, probably
17 taught about 10 weeks a year in continuing education
18 credits through TIPS.

19 Q. Are -- what's TIPS?

20 A. Traffic Institute of Police Services. They're out
21 of Harrisburg.

22 Q. Are you a member of any professional
23 associations or organizations?

24 A. I am. I'm a member of SAE, the Society of
25 Automotive Engineers, I'm a member of ACTR -- not ACTR.

1 I always forget the synonym. It's International
2 Network Collision Reconstructionists. That's a talk
3 group. It's called INCR. The National Association of
4 Professional Accident Reconstructionists, called
5 NASPAR, remembering NASPAR. And American Society of
6 Forensic Sciences.

7 Q. Can you approximate for the ladies and
8 gentlemen of the jury both in your government service
9 with the National Institute of Highway Traffic Safety,
10 through law enforcement and through your private
11 company approximately how many accidents have you
12 investigated?

13 A. I've probably reconstructed and investigated
14 probably over 2,000 accidents.

15 Q. Have you qualified in the courts of the state
16 of New Jersey and the federal courts in the field of,
17 as an expert in the field of accident investigation and
18 accident reconstruction?

19 A. Yes.

20 MR. LAFFERTY: At this point, Your Honor, I'd
21 offer Mr. Costanzo as an expert in the field of
22 accident reconstruction and accident investigation.

23 MR. CHANCEY: Your Honor, I have no
24 objections to this witness.

25 THE COURT: So based on his education, skill,

1 experience and training and I find that Mr. Costanzo is
2 qualified as an accident reconstructionist and
3 investigation.

4 THE WITNESS: Thank you.

5 THE COURT: Thanks.

6 **BY MR. LAFFERTY:**

7 Q. Now, Mr. Costanzo, at my request did you
8 conduct a review of this particular accident?

9 A. I did.

10 Q. Do you recall when you were engaged?

11 A. I think it was sometime -- the scene inspection
12 was conducted March 8th of 2015 so it was sometime
13 prior to that.

14 Q. So you actually conducted a scene inspection?

15 A. Yes, I did.

16 Q. First of all, can you tell the ladies and
17 gentlemen of the jury what materials you had that you
18 reviewed in preparation for your analysis.

19 A. I had the Atlantic City accident report, I had the
20 security video tape taken from the jitney bus, I had
21 the deposition of Mrs. Kennedy, I had answers -- legal
22 answers to questions.

23 Q. I'm sorry. You conducted the scene
24 inspection when?

25 A. Scene inspection was conducted March 6th of 2015.

1 And I also conducted an inspection of the jitney bus
2 December 11, 2015.

3 Q. And did you take certain photographs in the
4 course of this, of this work?

5 A. I did.

6 Q. I want to show you what's been marked as
7 Exhibit P-3. Can you tell us what that is?

8 A. Yeah, that's a photograph of Pacific Avenue. The
9 photograph is pointing eastbound.

10 **PLAINTIFF'S EXHIBIT #P-3 MARKED FOR IDENTIFICATION**

11 **BY MR. LAFFERTY:**

12 Q. I want to show you what's been marked as P-2.
13 Do you recognize that photograph?

14 A. Yes. It's one of the photographs I took during
15 the jitney inspection.

16 **PLAINTIFF'S EXHIBIT #P-2 MARKED FOR IDENTIFICATION**

17 **BY MR. LAFFERTY:**

18 Q. Now who actually positioned the jitney on
19 this inspection?

20 A. Um -- that's a good question.

21 Q. Did you?

22 A. I requested it but there was a driver who drove it
23 to that location.

24 Q. You didn't drive the jitney, did you?

25 A. No, I did not.

1 Q. So let's tell, tell the ladies and gentlemen
2 when you did an assessment of the scene what you
3 learned.

4 A. Can you flip back? Pacific Avenue where the
5 collision took place just prior to the intersection of
6 Rhode Island Avenue, it's a 4 lane roadway divided by a
7 double yellow line. There's a drainage on the outer
8 berm of the outer travel lane which you can see it's a
9 little bit wet there. There's a sidewalk with a grass
10 section, extended sidewalk outside the travel path.
11 It's flat, no sight restrictions. The intersection of
12 Rhode Island and Pacific are controlled by traffic
13 lights.

14 Q. When you did your inspection the area
15 immediately before the intersection, was there any
16 impediment to a jitney or any other vehicle for that
17 matter being positioned immediately adjacent to the
18 curb?

19 A. No. None at all.

20 Q. Now at that location did you observe any
21 posting for a jitney stop?

22 A. There was no posting for a jitney stop.

23 Q. All right. Now in looking at the jitney
24 itself, which is Exhibit P-2, can you tell us what your
25 inspection of that jitney revealed.

1 A. Well, the jitney bus is similar to buses, other
2 buses, other tractors, you know, I've looked at over a
3 period of 30-some years. This is the --

4 THE WITNESS: Can I stand up, Your Honor?

5 THE COURT: Sure.

6 THE WITNESS: I can't see the picture very
7 well. Thank you.

8 **BY THE WITNESS:**

9 A. These are called side bus mirrors. They're
10 mounted on the outer quarter panel. The side bus
11 mirrors give you a view, give you, you'll see it has a
12 spot mirror on it and then it has a rectangular mirror.
13 It gives you different views of the side of the jitney
14 bus. It gives you complete unrestricted views of the
15 side of the jitney bus. Besides from -- it's an
16 E-450, 2011 Ford E-450, probably weighs around 15,000
17 pounds, somewhere in that area.

18 Q. So did you actually position yourself in the
19 bus to see the visibility?

20 A. I did. I did.

21 Q. In the driver's position?

22 A. Yes. There's not sight line restrictions for
23 anybody who would exit the bus or be reward of the exit
24 of the bus.

25 Q. And you mentioned these different features to

1 this mirror. What are those features?

2 A. Well, there's a side spot mirror, there's a
3 circular spot mirror. There's a large rectangular
4 mirror. There's multiple mirrors on this frame to give
5 you multiple views of the side of the vehicle.

6 Q. And was there any -- in your inspection was
7 there any reason why that would be obstructed, the view
8 of that mirror to the operator?

9 A. Only if it's misaligned, not placed properly. If
10 it's positioned properly -- I didn't move the mirror.
11 I didn't readjust the mirror when I inspected the
12 jitney bus.

13 Q. And is there any blind spot down the side of
14 the jitney when you look through that mirror?

15 A. No.

16 Q. So what did you do next?

17 A. Well, I looked at the video that was provided to
18 me, the security video, to get an idea of the movement
19 of the people involved in the bus and time frames that
20 we're talking about.

21 Q. When you looked at the video regarding the
22 positioning of the bus, of the jitney, did you notice
23 anything unusual?

24 A. Well, it's not parked along the curb. I can tell
25 you can see, in fact they played it a couple times.

1 You can see the movement of the pedestrian stepping
2 down onto the street and stepping back up onto the
3 sidewalk. So it was not pulled directly along the
4 curblineline. The curblineline is -- excuse me, Your Honor --
5 when someone refers to the curblineline it's actually the
6 high curb, it's usually 4 to 6 inches high, something
7 like that. That would be defined as the curblineline. It
8 wasn't parked along the curblineline.

9 Q. in the course of your investigation did you
10 look into whether there are any regulations in the city
11 of Atlantic City relative to positioning of jitneys?

12 A. There is. There is. There is a, there's
13 applicable city ordinance that controls the operation
14 of the jitney buses.

15 Q. And what was the requirement?

16 A. Well, it's Atlantic City ordinance 233-41, and it
17 says, "In all cases such embarking and disembarking
18 passengers shall be at a point as near to the curb as
19 practical -- as made practical."

20 Q. So the positioning of the jitney in the
21 fashion that it was away from the curb, what's the risk
22 there?

23 A. Well, the risk is -- let's kind of forward if it
24 was parked along the curblineline. If it's parked along
25 the curblineline and someone falls they can't fall into the

1 roadway. They'll fall on the curb. Not parking along
2 the curblin allows an individual to fall and fall
3 within a 3 foot, 4 foot gap in between the bus and the
4 curblin itself. So it allows someone by not parking
5 along the curblin to be in a position such as in this
6 case to be in the street and be struck by a jitney bus.

7 Q. Are you also aware of whether a jitney
8 operator needs to possess a CDL, a commercial drivers
9 license?

10 A. He absolutely does. Any bus operator that's in
11 charge of pedestrians has to be a CDL operator.

12 Q. And did you review the regulations applicable
13 to CDL operators?

14 A. I did.

15 Q. Do they have any relevance here?

16 A. They do. There's a couple. 2.4 says seeing.
17 This is a section called seeing basically. "Seeing.
18 To be a safe driver you need to know what's going on
19 around your vehicle. Not looking properly is a major
20 cause of accidents." And 2.42 is seeing to the sides
21 and rear. "It's important to know what's going on
22 behind and to the sides. Check your mirrors regularly.
23 Check more often in special situations."

24 Q. So based upon your, your inspections, based
25 upon your review of the applicable regulations, did you

1 reach a conclusion within a reasonable degree of
2 scientific certainty as to the causes for this
3 accident?

4 A. Yeah. The cause of this accident is the operation
5 of the jitney bus.

6 Q. And what specifically about it?

7 A. Well, pulling forward when an individual is -- he
8 has the capability of viewing an individual prone in
9 the roadway if he's properly using his side mirrors.
10 He pulled forward -- if you look at the video tape he
11 pulled forward with an individual in the roadway
12 without checking his mirrors, apparently, and running
13 over a pedestrian. The pedestrian falling into the
14 roadway is not a cause of this accident. If the jitney
15 bus didn't move forward she would have just got up and
16 walked down Pacific Avenue.

17 Q. And going back to your prior testimony, was
18 the initial positioning of the jitney a cause?

19 A. Yes. Like we explained, it allowed Ms. Kennedy, I
20 believe her name is, it allows Ms. Kennedy to fall and
21 become situated between the jitney bus and the
22 curblineline.

23 Q. And based upon your inspection of the scene
24 and inspection of the jitney was the jitney positioned
25 in accordance with the Atlantic City ordinance?

1 A. No.

2 Q. And did Mr. Pollack operate his jitney
3 consistent with the regulations imposed upon CDL
4 license holders?

5 A. No.

6 MR. LAFFERTY: I have no further questions,
7 Judge.

8 THE COURT: All right. Mr. Chancey.

9 **CROSS-EXAMINATION BY MR. CHANCEY:**

10 Q. Where was Mrs. Kennedy at the time that the
11 jitney began moving?

12 A. Well, looking at the video tape it appears where
13 was she on -- when the jitney bus started to move?

14 Q. Yeah.

15 A. I don't know. It doesn't really show a picture of
16 her position as the jitney bus rolls over her or
17 strikes her.

18 Q. When she began moving -- when the jitney
19 began moving you don't know where she was?

20 A. It appears she took a step onto the sidewalk.

21 Q. Yeah.

22 A. Anything kind of like after that I saw it, you
23 played it back 10 times --

24 Q. Yeah, I did.

25 A. Any kind of evaluation after she moves up and the

1 jitney bus starts to move is --

2 Q. Speculation?

3 A. Yes.

4 Q. So --

5 A. Well, not speculation. We know she's in the road.

6 Q. Do we know she's in the road?

7 A. Well, so what's the op -- we know she's struck.

8 Q. We do?

9 A. Yeah.

10 Q. Do we know where she was when the jitney
11 began moving?

12 A. Well, here's my professional analysis. If she's
13 not in the roadway and I'm assuming she's struck by the
14 jitney then the jitney jumped the curb and hit her.

15 Q. Well, we know that didn't happen because we
16 have the video.

17 A. Right. Correct.

18 Q. Right. Um, so are you telling me that you
19 can say with certainty that she was in the roadway at
20 the time that the jitney began to move?

21 A. When the jitney began to move?

22 Q. Yeah.

23 A. No, I can tell you when she's struck.

24 Q. Well, obviously she's in the roadway when
25 she's struck.

1 A. Right. Well, that was your question.

2 Q. No, that's not my question.

3 A. Okay. Sorry.

4 Q. My question is when the jitney began moving
5 where was she?

6 A. I don't know.

7 Q. Okay. So sir, you gave -- you told the jury
8 that one of your conclusions is that without assuring
9 -- sorry. Mr. Pollack, without assuring Mrs. Kennedy
10 was safely on the sidewalk pulled forward from a
11 stopped position and ran over Mrs. Kennedy. How do you
12 know that?

13 A. Well --

14 Q. How do you know that he did not insure that
15 she was safely on the sidewalk?

16 A. Well, she's not safely on the sidewalk if he's --
17 before he pulls forward if she's in position to be run
18 over. The time you were showing the video tape between
19 -- from the time it pulls forward and the time of the
20 impact is a few seconds.

21 Q. But you just told us you don't know where she
22 was at the time that the jitney began moving forward.

23 A. That's correct. My assumption she's in the
24 roadway when she --

25 Q. Assumption.

1 A. That's my assumption. She's --

2 Q. Okay.

3 A. -- in the roadway when the impact occurs.

4 Q. I -- sir, we all agree that she's in the
5 roadway when the impact occurs. My question for you
6 is, because you're giving an opinion that my client
7 failed to look through his mirrors to safely assure
8 himself that she was on the sidewalk before moving, I'm
9 asking you where was he, where was she when he began
10 moving. And you don't know.

11 A. I don't know.

12 Q. Okay. We know that we see on the video that
13 Mr. Kennedy and Mrs. Kennedy step out of the vehicle
14 into the roadway and up onto the sidewalk.

15 A. That's correct.

16 Q. So we have some evidence that she safely got
17 up onto the sidewalk, do we not?

18 A. That she stepped up on the sidewalk, yes.

19 Q. Okay. You also gave the conclusion that Mr.
20 Pollack failed to properly use his exterior mirrors
21 causing the collision. How do you know that?

22 A. Well, if he would have properly used his side
23 mirrors he'd have a full view of everything that's
24 transpiring before the impact happens.

25 Q. Right. So he should have used his mirrors

1 before he began moving his jitney.

2 A. Absolutely.

3 Q. Okay. And if he had looked in his mirrors
4 before he began moving his jitney what would he have
5 seen?

6 A. He would have seen the anticipation -- he only
7 moved forward 8, 7 feet, something like that.

8 Q. I agree.

9 A. He would have seen an individual, we can't even
10 argue, close or in the roadway at the time that the
11 jitney starts to move forward.

12 Q. You just told us you don't know where she was
13 at the time that the jitney began moving forward so how
14 can you tell us what he would have seen in his mirrors
15 at the time that he began moving forward?

16 A. He would have seen an elderly person in close
17 proximity to the roadway if not in the roadway.

18 Q. Maybe. You don't know.

19 A. He had the ability to see that by using his side
20 mirrors.

21 Q. He also had the ability to see it by looking
22 out his door. We saw both of them through the video
23 camera trained on the door getting up onto the
24 sidewalk, wouldn't you agree with me?

25 A. Yes. But you don't see to the right of the door

1 itself.

2 Q. That's correct, we don't.

3 A. That's right.

4 Q. But you can't tell me what he would have seen
5 in his mirror if he had looked the moment before he
6 began moving the vehicle. We do know that at the
7 moment before he began moving the vehicle that Mrs.
8 Kennedy and Mr. Kennedy had gotten up onto the
9 sidewalk.

10 A. That's correct.

11 Q. Okay. You told us that he violated, what was
12 it, 2.4 pertaining to seeing?

13 A. Yes.

14 Q. He's supposed to know what's going on behind
15 and to the sides of the vehicle and certainly in front
16 of the vehicle.

17 A. That's correct.

18 Q. Okay. Where is a holder of a CDL license
19 supposed to be looking as he begins moving his vehicle
20 forward?

21 A. He's supposed to scan his mirrors and he's
22 supposed to look forward.

23 Q. Supposed to scan his mirrors before he begins
24 moving.

25 A. That's correct.

1 Q. Right. But once he's looking forward you'd
2 expect him to be looking -- once he begins to move
3 forward certainly the law would expect him to look
4 forward so he knows that he's not going to strike
5 anything ahead of him.

6 A. Well, that's why it has, you know, check more
7 often in special situations. I would think this would
8 be a special situation.

9 Q. Sure, I agree.

10 A. I don't think -- so the idea of scanning your
11 mirrors as you move forward away from two people who
12 just departed your jitney bus would be an accepted
13 practice.

14 Q. Did my client check his mirrors before he
15 began moving forward?

16 A. I don't know.

17 Q. You don't know, that's correct.

18 A. If he would have checked it he would have saw the
19 situation unfolding.

20 Q. Well, we -- before the jitney begins moving
21 we've seen this situation unfold. Mr. and Mrs. Kennedy
22 get -- step down the steps into the roadway and up onto
23 the sidewalk. We know what happens before he begins
24 moving. Correct?

25 MR. LAFFERTY: Is that a question?

1 **BY MR. CHANCEY:**

2 Q. Is that correct?

3 A. Correct.

4 Q. You gave an opinion that the sole cause of
5 the collision was the inattentive driving actions of
6 Mr. Pollack ultimately leading to the serious injuries
7 of Mrs. Kennedy?

8 A. Yes.

9 Q. The sole cause?

10 A. Yeah, I believe that. I mean that if -- in this
11 situation if he didn't pull forward and the person was
12 in the roadway that individual would have been able to
13 get off -- get out of the roadway and the collision
14 would have never happened.

15 Q. So with Mrs. Kennedy in the roadway if he had
16 not began pulling forward the accident wouldn't have
17 happened.

18 A. That's correct.

19 Q. But you just told us you don't know where
20 Mrs. Kennedy was when he began moving forward.

21 A. I know the collision occurred --

22 Q. Yes, you do.

23 A. Yes.

24 Q. And you're willing to blame my client for it,
25 is that correct?

1 A. I am.

2 Q. Without knowing where Mrs. Kennedy was at the
3 moment that the vehicle began moving forward.

4 A. I am.

5 Q. Okay. So just so I'm clear for the record,
6 without knowing where Mrs. Kennedy was at the moment
7 that my client's vehicle began moving forward you are
8 nevertheless willing to say that my client was the sole
9 cause of the accident without knowing where Mrs.
10 Kennedy was when the vehicle began moving.

11 A. I am.

12 Q. Okay. The last section that you described
13 was 233-41.

14 A. The Atlantic City ordinance section, yes.

15 Q. Getting as close as practically possible to
16 the curb.

17 A. That's correct.

18 Q. Did his failure to get as close as
19 practically possible to the curb cause Mrs. Kennedy to
20 fall into the roadway?

21 A. It allowed her to fall into the roadway. It
22 didn't cause her to fall into the roadway.

23 MR. CHANCEY: Thank you very much. That's
24 all I have.

25 MR. LAFFERTY: Just a couple questions,

1 Judge.

2 **REDIRECT EXAMINATION BY MR. LAFFERTY:**

3 Q. Mr. Costanzo, you describe these mirrors as
4 bus mirrors on the jitney?

5 A. Right.

6 Q. Is there a reason why the mirror on the side,
7 the pedestrian side is all the way forward on the front
8 fender?

9 A. Yes. It just allows him a complete view of the
10 side of the bus. I mean if it was mounted here you
11 wouldn't see the front of the bus so they try to put
12 the bus mirrors as forward as possible to give you a
13 side view of the jitney bus.

14 Q. And is that mirror in the field of vision as
15 one is driving forward?

16 A. No.

17 Q. And what do you need -- what do you need to
18 do to see through that mirror?

19 A. Look at it. It's not very complicated. It has a
20 full view of everything on the side of the bus.

21 Q. And is it visible to the operator, even if
22 the operator is looking forward is that mirror in
23 sight?

24 A. Yes.

25 Q. So the operator can look forward and look

1 down the side of the bus in the same vision?

2 A. Yeah, I would think so. It's not very
3 complicated.

4 Q. And that's a feature that's peculiar to
5 passenger buses, isn't it?

6 A. No, actually tractor trailers have the same type
7 of positioning, something where you need a full view of
8 the side of a vehicle it's kind of common, actually.

9 MR. LAFFERTY: All right. That's all I have,
10 Judge.

11 THE COURT: Anything further, Mr. Chancey?

12 MR. CHANCEY: I have nothing further, Your
13 Honor.

14 THE COURT: Thank you, Mr. Costanzo.

15 THE WITNESS: Okay. Thank you.

16 MR. LAFFERTY: Judge, this may be a perfect
17 time.

18 THE COURT: Afternoon break. All right. 15
19 minutes.

20 **(Jury exits)**

21 THE COURT: All right. Please be seated.

22 MR. LAFFERTY: Thank you, Judge.

23 THE COURT: You can step down. Yes.

24 **(off the record from 2:17 PM to 2:36 PM)**

25 THE COURT: You can all be seated until the

1 jury comes in.

2 MR. CHANCEY: Randy, will you need the tripod
3 any longer?

4 MR. LAFFERTY: No.

5 THE COURT: Then who do we have?

6 MR. LAFFERTY: Another expert.

7 THE COURT: Okay.

8 MR. LAFFERTY: If we have time we'll have a
9 third expert.

10 THE COURT: All right. That's good. So
11 Valerie Parisi is that who you have?

12 MR. LAFFERTY: Yes.

13 THE COURT: Oh, so you have the video so we
14 could potentially do --

15 MR. LAFFERTY: I could potentially do another
16 video.

17 THE COURT: Okay.

18 MR. LAFFERTY: Which I think is a shorter one
19 actually. That one's a half hour.

20 THE COURT: Okay. So maybe. That would be
21 good.

22 MR. CHANCEY: Could I leave if you play a
23 video?

24 **(Jury enters)**

25 THE COURT: All right. Please be seated. So

1 now we're going to hear from Valerie Parisi. Mr.
2 Lafferty.

3 MR. LAFFERTY: Thank you, Judge. Ms. Parisi.

4 **VALERIE PARISI, PLAINTIFF'S WITNESS, SWORN**

5 ATTENDANT: State your full name.

6 THE WITNESS: Valerie V. Parisi.

7 ATTENDANT: Spell your last name for the
8 record, please.

9 THE WITNESS: P-A-R-I-S-I.

10 ATTENDANT: Thank you. You may be seated.

11 THE WITNESS: Thank you.

12 **DIRECT EXAMINATION BY MR. LAFFERTY:**

13 Q. Good afternoon, Ms. Parisi.

14 A. Good afternoon.

15 Q. Can you tell the ladies and gentlemen of the
16 jury where you work.

17 A. Yes. So I work at Valpar Consultants, which is a
18 company that provides case management, life care
19 planning and bill review services in Doylestown,
20 Pennsylvania.

21 Q. Tell me a little bit about your background,
22 your education.

23 A. Yes. I'm a registered nurse. And I attended
24 nursing school at Thomas Jefferson University School of
25 Nursing and I graduated in 1980. And I also have a

1 certificate from the University of Florida in life care
2 planning, and that is a continuing education program.
3 And I received that certification or that certificate
4 -- there is also a certification in life care planning,
5 but I received the certificate in 2000.

6 Q. Tell us a little bit about your work
7 experience after graduation.

8 A. Sure. So after I graduated nursing school I
9 initially worked at the Hospital University of
10 Pennsylvania. I worked with very little people in the
11 neonatal ICU. Did that for a year. And then I worked
12 at Thomas Jefferson University. I worked for the
13 pediatric and adolescent units, the Peds ICU. And I
14 did that for two years. Then I worked at Hahnemann, so
15 we're about '83, '84. Worked in the pediatric ICU.
16 And then for 14 years I worked for the Visiting Nurse
17 Association of Greater Philadelphia as a home
18 healthcare nurse. So I was a case manager for those
19 patients, did hands on skilled nursing care over -- I
20 had to oversee home health aids, recommend therapies,
21 be in touch with the physicians. And I did that for 14
22 years. And then I became a case manager in the workers
23 comp and catastrophic auto industry. I also started my
24 own company doing some record reviews for attorneys.
25 And so I started to do case management, which is the

1 coordination of care for individuals who've had
2 injuries for a couple different companies as a
3 subcontractor. And as part of that I was asked to go
4 out to the hospital or I would receive medical bills to
5 look at the bills and make sure that the charges were
6 usual and customary, just to make sure as a part of
7 cost containment to make sure that there weren't
8 charges that were over what we would expect. And so
9 also I was receiving my education in life care
10 planning. And so I finished that course and my company
11 began to offer both case management services and life
12 care planning services. And I've been doing life care
13 planning services from 2000 basically til today. My
14 company's been very busy with that. And as part of
15 that, and what's been growing over the past few years,
16 is I've been asked and my other nurses that work for me
17 to do analysis of the past medical bills in those life
18 care plan cases and also in a case such as today even
19 when there isn't a life care plan to look at the past
20 medical bills to determine if they fell within the
21 usual and customary range.

22 Q. So how -- throughout your career how long
23 have you been actually reviewing bills and determining
24 whether they're usual and customary charges?

25 A. Yes. So since I started the case management. So

1 basically we're talking about 20 years or 21 years I've
2 been looking at medical bills and being asked to look
3 at the codes and determine if the costs are reasonable,
4 whether the code is reasonable, whether what's being
5 billed is related to the injury in question. So it's
6 been 21 plus years.

7 Q. And you've done it on the side of the
8 employers or the insurance companies as well as on the
9 side of injured people?

10 A. Yes.

11 Q. Do you hold any board certification?

12 A. Yes. I'm certified in rehabilitation nursing and
13 I'm certified in life care planning.

14 Q. Do you hold any licenses?

15 A. I'm licensed as a registered nurse in the state of
16 Pennsylvania.

17 Q. Are you a member of any professional
18 societies or organizations?

19 A. Yes. I'm a member of the International
20 Association of Rehabilitation Professionals, the
21 American Association of Nurse Life Care Planners, the
22 American Association of Legal Nurse Consultants, Aging
23 Life Care Specialists. One thing I didn't mention is I
24 also do elder care cases in terms of case management
25 for families. I have three active cases right now. So

1 I also do provide that service.

2 Q. And have you published the field that you've
3 talked to us about?

4 A. Yes. I've published in the core curriculum for
5 legal nurse consulting, the chapter on case management,
6 two different editions. And also published in terms of
7 home health care nursing issues.

8 Q. Have you qualified as an expert witness in
9 the courts of the state of New Jersey previously as a
10 certified rehabilitative nurse and also in the field of
11 medical billing?

12 A. Yes, I have.

13 Q. On more than one occasion?

14 A. I believe it was on one occasion.

15 MR. LAFFERTY: Okay. Your Honor, I would
16 offer Ms. Parisi as an expert in the field of
17 rehabilitative nursing and also in medical billing.

18 THE COURT: Mr. Chancey?

19 MR. CHANCEY: Your Honor, I have no objection
20 to this witness.

21 THE COURT: All right. So the Court finds
22 that Ms. Parisi does qualify as an expert in the field
23 of medical billing and rehabilitation nursing.

24 **BY MR. LAFFERTY:**

25 Q. Now Ms. Parisi, can you tell the ladies and

1 gentlemen of the jury what you did to conduct your
2 review and analysis in this case.

3 A. Yes. So I was sent various medical records
4 pertaining to Hilda Kennedy's accident and injuries.
5 And I also received the medical bills. And so
6 typically what I do when I'm doing a bill review for
7 past medical bills is I start pulling up the bills and
8 I look at them and then I look at the charts, I look at
9 the records to see if it matches the care that has been
10 provided. You know, for example, if there's physical
11 therapy being billed then I look to see if physical
12 therapy did indeed take place, was it related to the
13 accident related injuries. And so basically that's
14 what I do. I have, usually have the records on one
15 side of my screen because they're electronic and bills
16 on another, and then I'm setting up a chart and I'm
17 just going through. And then as I'm going through the
18 bills I'm looking at various codes. And so, so what do
19 I mean by that? Medical care in the United States is
20 billed by what's called the CPT code. You might even
21 see this on your own medical bills. So I look at the
22 CPT code. I have various coding references that will
23 tell me what the usual and customary charge is for a
24 geographic area. So I'm looking at the bill, looking
25 at the code, looking at the record to make sure it's

1 related to the accident and that the care actually took
2 place, and then I'm determining if the charge falls
3 within the usual and customary. If the charge falls
4 within the usual and customary I just chart it. If it
5 doesn't then I do what's called an adjustment. So how
6 do I do that? I go to the various coding references
7 that I use. I use Medical Fees in the United States, I
8 also use one called Optim Fee Analyzer. These are
9 coding references used by billers and coders, doctor's
10 offices and life care planners such as myself and case
11 managers across the country. So I go to those
12 resources, I find the usual and customary which
13 typically falls in these books in the 75th to 80th
14 percentile, and then I adjust it to whatever that cost
15 is for the year for that service. Now for hospital
16 charges I use a data base called the American Hospital
17 Directory. That is a directory that has what the
18 typical billing, the charges are per hospital across
19 the nation. And so I look at the type of admission, I
20 look at whether it was a complicated admission or not,
21 and then I look at the range and then I determine
22 whether it's a reasonable charge or not.

23 Q. Now in this particular matter you said you
24 looked at the medical records of Hilda Kennedy,
25 correct?

1 A. Yes.

2 Q. And did you also look at -- I want to show
3 you Exhibit P-13. And just take a moment. Are these
4 the bills that were provided to you for review?

5 A. Yes, they are.

6 **PLAINTIFF'S EXHIBIT #P-13 MARKED FOR IDENTIFICATION**

7 **BY MR. LAFFERTY:**

8 Q. And did you make a determination as to
9 whether those bills were related to the treatment Hilda
10 received after the accident of November 17, 2014?

11 A. I did.

12 Q. And what -- are they related or are they not?

13 A. So they are related.

14 Q. So you take the bills and then you apply, you
15 compare the bills to the medical records.

16 A. Yes.

17 Q. And then once you've determined that the
18 treatment was related to the accident you then apply
19 the various programs or schedules or whatever, codes,
20 as you've told us to those services?

21 A. Yes.

22 Q. I want to show you what I've marked as P-14.
23 Would you take a moment and tell us what this is.

24 A. So this is the medical billing chart that I had
25 just testified to. It has all the bills that I looked

1 at, it states the date, it states what items, so what
2 kind of service was being provided, who the provider
3 was, what the charge was, what I determined to be
4 reasonable so if the charge was reasonable I just
5 repeat the charge, if it needs adjustment then I make
6 the adjustment. And then I have a column for the CPT
7 code that was being billed.

8 **PLAINTIFF'S EXHIBIT #P-14 MARKED FOR IDENTIFICATION**

9 **BY MR. LAFFERTY:**

10 Q. So is that, that chart actually is a little
11 bit less if you look at the bills themselves than the
12 bills, correct?

13 A. Yes.

14 Q. Why?

15 A. The reason for that was there were a couple
16 charges that did not fall in the usual and customary.
17 There were charges for physical therapy evaluations
18 from Bacharach Rehab that were higher than the usual
19 and customary so I made adjustments. There were also
20 surgeon's fees for the shoulder surgery. So based on
21 the CPT code I found the charges were higher than the
22 UCR, usual and customary, and so I adjusted them.

23 Q. So you adjusted downward because of the
24 coding?

25 A. Yes.

1 Q. So if we looked at Exhibit P -- is it 14?

2 A. Um, yeah. P-14.

3 Q. P-14. Does that list all of the bills that
4 you determined were related to this treatment and the
5 amounts that you determined to be usual and customary
6 charges for services of that nature?

7 A. Yes.

8 Q. And these usual and customary charges for the
9 services, are they national or do you look at the
10 locale or the region?

11 A. No, they are specific to the Atlantic City area,
12 South Jersey area. Medical care obviously is going to
13 cost more in New Jersey than say the middle of the
14 country, Nebraska. It's way more in North Jersey than
15 it is in South Jersey. And so it's very important to
16 look at the geographic area where the care has been
17 provided.

18 Q. So this billing summary that you prepared,
19 would that be a summarization of your individual review
20 of each of these bills?

21 A. Yes.

22 Q. And what was the, the total amount of the
23 bills that you determined were usual and customary
24 related to the treatment that Hilda received?

25 A. Yeah. So the sum total of usual and customary

1 charges for the care that Mrs. Kennedy received was
2 \$430,901.76.

3 MR. LAFFERTY: I think that's all that I
4 have, Judge. I am going to move that, P-14 into
5 evidence.

6 THE COURT: We didn't do any yet. Nothing's
7 in evidence.

8 MR. LAFFERTY: We haven't done anything, no.

9 THE COURT: Okay.

10 MR. LAFFERTY: But I mean while the witness
11 is here if there's a witness I want to know about it.

12 THE COURT: Okay. Any cross or any issue of
13 moving P-14 into evidence?

14 MR. CHANCEY: I certainly have no issue with
15 moving it into evidence. And Your Honor, I do not have
16 any questions for this witness.

17 **PLAINTIFF'S EXHIBIT #P-14 RECEIVED IN EVIDENCE**

18 THE COURT: Okay. Thank you, Mr. Parisi.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: We appreciate it. So the only
21 thing in evidence right now is P-14. We haven't done
22 anything else.

23 MR. LAFFERTY: Your Honor, at this point we
24 would call Dr. Christopher Lucasti by video.

25 THE COURT: Okay. So we get to watch another

1 movie. This one's only about a half hour you said,
2 correct?

3 MR. LAFFERTY: Yes, Your Honor.

4 MR. CHANCEY: Judge, may I briefly excuse
5 myself?

6 THE COURT: Okay.

7 MR. CHANCEY: I will be present since I am on
8 the video. I apologize.

9 THE COURT: Okay. Are we ready?

10 **(Video Testimony of DR. CHRISTOPHER LUCASTI played in**
11 **open court from 2:52 PM to 3:19 PM. Not transcribed)**

12 THE COURT: All right.

13 MR. LAFFERTY: Judge, can we approach?

14 THE COURT: Yes.

15 **(sidebar conference not recorded)**

16 THE COURT: I know it's early but I'll let
17 you go for today. So tomorrow what we we'll, you'll
18 hear from Mrs. Kennedy first thing. And then one more
19 video, Dr. Baliga, which is about a half hour. So
20 probably tomorrow morning by 10:30 or so the case will
21 be given to you for deliberations. All right? So
22 remember don't talk about the case. And then if you
23 could be here around quarter to 9 tomorrow so we can
24 start right at 9. And then we'll move through it. All
25 right? Thank you so much. Have a good night.

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(Jury exits)

THE COURT: All right.

MR. LAFFERTY: Thank you, Judge.

MR. CHANCEY: Thank you, Your Honor.

THE COURT: I'm just reaffirming that tomorrow if I'm doing jury charges that you can hook everything back up and my computer's hooked up to that. All right? All right. Have a good night. Let me know if anything ...

* * * * *

CERTIFICATION

I, **BONITA K. BRUMBACH**, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings heard on September 5, 2017 and digitally recorded from 9:04:19 AM to 10:20:02 AM, from 10:43:22 AM to 11:21:11 AM, from 11:29:05 AM to 12:04:01 PM, and from 1:16:04 PM to 3:23:42 PM, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

/s/ Bonita K. Brumbach August 27, 2014
BONITA K. BRUMBACH, AOC #263 Date
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