

1 Raisbeck vehicle leaving the roadway?

2 A At least the potential, yes.

3 Q Please, why don't you go to your transcript page
4 here.

5 A Certainly.

6 Q On page 160. Please, go to 160.

7 MS. SCHWAEMLE: What date are we
8 talking about?

9 MR. SOMMERS: We're talking about
10 the date of April 7, 2003.

11 Q Please, go to page 160.

12 A I'm there.

13 Q Okay. And page 160, go down to what is line 13.
14 Isn't it true that you were asked, You told him that
15 he was, and that's he being Greg Anderson, was
16 correct that the photo evidence indicated that the
17 brakes had been applied to some degree. Was that
18 true?

19 A Yes.

20 Q Now, when did you make your determination of
21 73 to 81 miles an hour for the first time?

22 A That was -- and I can pull out my notes on that, if
23 you'll bear with me. On or about -- the initial
24 calculations were February 12 of 2002.

25 Q Okay. February 12, 2002?

1 A Yes.

2 Q Now, please, also go to page 155 of the transcript.

3 A I'm there.

4 Q And when you made your initial analysis of
5 73 to 81 miles an hour, that was after you had
6 reviewed the photographic evidence?

7 A Yes.

8 Q And when you reviewed the photographic evidence,
9 isn't it true that you concluded to a reasonable
10 degree of scientific certainty that the brakes were
11 applied?

12 A To some degree, yes.

13 Q Well, please go down at line 20, and there it says,
14 Looking at Exhibits 3, 4 as well as 5, 6 and 8,
15 those were photos, can you tell from any of those
16 pictures to a reasonable degree of scientific
17 certainty that the brakes were applied? And you
18 answered yes.

19 MS. SCHWAEMLE: I object to the
20 form of the question. The witness doesn't
21 have the exhibits that he was referring to
22 then. That's what he said, of course. The
23 transcript speaks for itself, but you're
24 asking him now to look at exhibit numbers that
25 he doesn't have.

1 lesser degree of braking.

2 Q But you could tell there was some degree of braking?

3 A Yes.

4 Q And so when did you pass on to Paul Humphrey that it
5 was your belief that there was some degree of
6 braking? What was the date?

7 A I don't know. Early on. Early on I described to
8 you that it was a less specific conversation.
9 Sometime later -- I can't give you the date.

10 Q Tell me when you said to Paul Humphrey that the
11 photographic evidence indicates that there was some
12 degree of braking. When did you tell him that?

13 A And that conversation would have probably been
14 sometime after our initial discussion wherein I
15 indicated that we can't rely on Deputy Gnaciski's
16 initial calculations because those rely on no brakes
17 being applied.

18 Q And so when you initially talked to Paul Humphrey
19 about this case, you told him there were problems
20 with the deputy's analysis?

21 A I did.

22 Q And that was February of 2002?

23 A Yes.

24 Q You told him that there was problems with the
25 deputy's analysis in February of 2002 because you

1 knew that the photographic evidence indicated that
2 there could have been some braking?

3 MS. SCHWAEMLE: I will object to
4 the form of the question, the content of the
5 question. This whole line of questioning is
6 not relevant. It is also leading. I have a
7 continuing objection with regard to what he
8 told Humphrey and when he told him.

9 Q Go ahead.

10 A Yes.

11 Q And so, in fact, that could have been, since you did
12 your analysis on February 12, 2002, you probably
13 spoke to him within a day or so of that?

14 A I don't know that quickly, but it could have been.

15 Q So it's possible, within a day or so of February 12,
16 just very shortly thereafter, you had passed on to
17 him the photographic evidence basically discrediting
18 the deputy's analysis?

19 A Could have, yes, for those reasons we spoke of a few
20 minutes ago.

21 Q And the deputy's analysis could be shown to be in
22 error just due to the photographic evidence?

23 A Yes.

24 Q Now, were you aware that the deputy had testified on
25 January 28 and again on February 15, 2002 to a

1 Q Did you ever tell Paul or anybody, was it ever your
2 position in this case that you would be able to
3 testify that the driver of the Raisbeck vehicle
4 never locked his brakes prior to leaving the
5 roadway?

6 A In an instantaneous -- well, I want to make sure
7 that the jury has a clear understanding of my answer
8 to you, and we're looking at an entire distance of
9 roughly 82 feet of skid marks, and my opinion would
10 be it was not locked through there, but, by the time
11 it left the road, could there have been the end of
12 that mark being locked, the answer to be yes. The
13 answer to that is yes.

14 Q So if I understand it correctly, tell me if I'm
15 right or wrong, this is not your position that it
16 does not appear that the driver of the Raisbeck
17 vehicle locked the brakes prior to leaving the road?

18 A For the totality of the marks, I would say yes; for
19 the end of the marks, I'd say no, it's not true at
20 the very end of the marks.

21 Q So isn't this real simple? You just cannot testify
22 that he never locked his brakes prior to leaving the
23 road? It's that simple; right?

24 A Yes.

25 Q Did you ever tell Paul Humphrey that you would be

1 attorney in this case, was representing that the
2 critical speed calculation was still applicable to
3 this case?

4 A No.

5 Q Were you aware that he was representing all the way
6 through September of 2002 when he was trying to push
7 the case to trial that he was still representing
8 that the critical speed calculation was applicable
9 to this case?

10 A No.

11 Q Were you aware that he was representing all the way
12 through September of 2002 that there was basically
13 no discrepancy between your opinion and that of the
14 deputy's?

15 A No.

16 Q Are you aware that, throughout September 2002, he
17 made a representation that they are not
18 contradictions, they are just simply different speed
19 estimates?

20 A I'm not aware of what he was communicating.

21 Q If he did that, that's not correct, is it? There is
22 a contradiction between your speed estimate or your
23 speed formula and that of the deputy's; correct?

24 A The one that he bases off of the critical speed,
25 absolutely.

1 Q Absolutely yours voids it; correct?

2 A Yes.

3 Q In regards to, let's say, your speed calculation of
4 73 to 81 miles per hour, in that range of 81, are
5 you saying that it's more likely 81 than 73, or is
6 it equally 73 as 81?

7 A Equal.

8 Q Now, there is no way to define to a greater degree
9 whether it's more likely 73 or more likely 81?

10 A Correct.

11 Q And when you come up with that speed, that's at the
12 very beginning of when the tire marks were made?

13 A Actually, I had ignored the first substantial
14 distance. I only used an effective braking distance
15 of about 68 feet, yeah, I think that was it, so even
16 though the longest mark was 82 --

17 MR. SOMMERS: Please, read me back
18 the last answer, please.

19 (Off the record.)

20 Q Correct me if I'm wrong, but you just defined the 68
21 feet as being the braking distance, didn't you? You
22 just stated that under oath.

23 A No.

24 MR. SOMMERS: All right. This is
25 very important. If there's a way, I'd like