

1 A: No, I did not.

2 Q: Did you -- when you saw the truck coming
3 over did you apply your brakes?

4 A: No, I did not.

5 Q: So the only thing you did when the truck
6 came over as you say it did, was you immediately went
7 over into the left lane; the lane to your left (clapping
8 sound), and there's an accident.

9 A: Correct.

10 Q: Thank you, sir.

11 That's all I have.

12 THE COURT: Okay.

13 CROSS EXAMINATION

14 BY MR. STEPHENSON:

15 Q: Mr. Ervin, just wanted to be clear in a
16 couple of things.

17 In conjunction with the tractor trailer, this
18 is a big 60-foot long tractor and tanker trailer,
19 correct?

20 A: Correct.

21 Q: In conjunction with that vehicle, where
22 were you in relation to the length of that vehicle when,
23 as you say, it commenced to come into your lane?

24 A: I was along the tractor. I was on his -- I
25 was -- he was on my right hand side so I was on his left.

1 Q: Okay.

2 A: And I -- like I said I had merged over into
3 that first -- the right turn left turn lane, and I was
4 riding along side of him at that time.

5 Q: Okay.

6 And my question to you is, okay, where
7 alongside the tractor and the tanker trailer were you
8 when he commenced to come into your lane as you suggest?

9 Where -- what part of the tractor and trailer
10 were you in conjunction with when that occurred?

11 A: I was more in conjunction with the trailer
12 more so than the tractor.

13 Q: Okay.

14 Now, it's a long trailer, right?

15 A: That is correct.

16 Q: Were you more -- was your vehicle closer to
17 the rear tandem wheels of the trailer or was it closer to
18 the middle of the trailer?

19 A: Closer to the middle of the trailer.

20 Q: Closer to the middle of the trailer.

21 Q: Closer to the middle of the trailer?

22 Okay.

23 I've got your Deposition transcript in front of
24 you there, sir. If you could please draw your attention
25 to Page 67.

1 Pardon me, if you go to Page 66, Line 22 which
2 is the last line on Page 66. Let me know when you're
3 there.

4 A: What page -- which line number?

5 Q: The very last line of Page 66; Line 22.

6 You see that?

7 A: Um hum.

8 Q: Okay.

9 I'm gonna read with you so I want you to make
10 sure that I'm reading this accurately. Beginning Page
11 66, Line 22, I asked you, question, "Now, in terms of
12 where you were in conjunction with the BTL trailer, when
13 you say it came into your lane were you about half way
14 down the trailer or were you back where the rear tandems
15 are?" Your answer was "Back near the rear tandems",
16 right?

17 A: That's correct.

18 Q: Next question, "So, further towards the
19 back of the trailer than the middle?" Your answer,
20 "That's correct."

21 That was your testimony at your Deposition?

22 A: That is correct.

23 Q: Okay.

24 Does that refresh your recollection that that's
25 in fact -- this Deposition was taken back on the 7th of

1 November, 2007?

2 A: I do remember that Deposition.

3 Q: Okay.

4 Do you agree that your Deposition testimony is
5 -- is accurate?

6 A: Yes.

7 Q: Okay.

8 Did you ever progress further than the rear
9 tandems of the trailer? Did you ever progress forward,
10 further than that point, after he commenced to come into
11 your lane?

12 A: I can't recall.

13 Q: Okay.

14 So the rear tandems back at the rear of the
15 tanker, that's as far forward in terms of the tractor
16 trailer that you got in conjunction with this entire
17 event?

18 MR. BRATT: Objection.

19 THE COURT: Overrule.

20 A: Correct.

21 Q: Okay.

22 Showing you what's been marked as Plaintiff's
23 Exhibit Number 2, do you agree that in terms of
24 Plaintiff's Exhibit Number 2 your vehicle is the vehicle
25 designated with the letter "H" for Honda?

1 A: That is correct.

2 Q: And do you agree that in conjunction with
3 this exhibit you have placed your vehicle up near the
4 rear wheels of the tractor?

5 A: That is correct.

6 Q: Far further forward than the rear tandems
7 which are back here, right?

8 A: Yes.

9 Q: That's different than your testimony today,
10 correct?

11 A: Correct.

12 Q: I believe today in court during your direct
13 examination you were asked by Plaintiff's Counsel whether
14 you checked -- you -- looked -- checked in the left lane;
15 checked your mirrors to see whether there was anything in
16 the left left turn lane before you made your lane change.

17 And your testimony today, correct me if I'm
18 wrong, was that you didn't look cause you didn't have the
19 time. Is that correct?

20 A: That is correct.

21 Q: Okay.

22 Drawing your attention to Page 34 of your
23 Deposition transcript. I apologize, Page 33, Line 19.
24 Let me know when you're there.

25 A: I'm there.

1 Q: Line 19, I asked you, "Before making the
2 move did you look in your mirror or side view mirror,
3 your rear view mirror, to see if there was any traffic in
4 that lane."

5 Page 34, answer, "I had a split second to see
6 that." Question, "Did you look?" Answer, "Yes, I had a
7 split second to see that." Question, "And what did you
8 see in that split second?" Answer, "I saw that I had
9 just a split second to jump in the next lane."

10 Question, "Did you see anything in that lane?"
11 Answer, "No." Question, "How long did you look?"
12 Answer, "It was a split second."

13 Do you agree your Deposition testimony
14 indicates that you did check to see if there was anything
15 in the left lane but you didn't see anything?

16 A: That is correct.

17 Q: Your testimony today in court is -- correct
18 me if I'm wrong on that, following the collision between
19 the Dodge and the rear of your vehicle, you immediately
20 came to a stop, correct?

21 A: After the accident.

22 Q: After the accident.

23 A: Correct.

24 Q: There was a rear-end collision and then you
25 came to a stop essentially right --.

1 A: It wasn't a sudden. I rolled a couple of
2 feet and then stopped.

3 Q: Couple of feet.

4 In fact in your Deposition on Page 36 you --
5 you recall you indicated you -- you traveled probably 5
6 or 10 yards and then you stopped, correct?

7 A: Correct.

8 Q: Okay.

9 It's your testimony today that Ms. Young's
10 vehicle is green?

11 A: Correct.

12 Q: Okay.

13 Sir, you do agree that as you were approaching
14 where the lanes change from two lanes to three and then
15 four lanes, you were traveling behind the BTL tanker
16 trailer the whole time? Do you agree with that?

17 A: Yes.

18 Q: Can we say, just for arguments sake, for at
19 least a quarter of a mile you're traveling behind that
20 tractor trailer in the left through lane?

21 A: That's correct.

22 Q: Okay.

23 And he's traveling in front of you, right?

24 A: He's in front of me.

25 Q: Okay.

1 What speed are you going throughout that period
2 of time?

3 A: The speed limit.

4 Q: Okay.

5 And when the opportunity comes for you to -- to
6 -- when -- when the lanes change from two lanes to -- to
7 four, you -- you -- your testimony is you immediately
8 went into the left, to the turn lanes, correct?

9 A: Correct.

10 Q: Okay.

11 Could the tanker trailer have done that?

12 A: No.

13 Q: Why not?

14 A: He could have squeezed in there but he
15 didn't.

16 Q: No, I'm talking about before -- you know as
17 -- as he's travel -- he's traveling in front of you, he
18 could taken the same path and gone into those merge lanes
19 as well.

20 A: He -- he could have.

21 Q: He could have, right.

22 Just like you did.

23 A: Just like I did.

24 Q: And do you agree with me, you heard me in
25 Opening Statement, do you agree that when you're

1 traveling down Mattawoman Beantown Road and you're in the
2 two through lanes and the turn lanes are coming up, if
3 you want to get into one of those turn lanes you
4 essentially just go straight into it. Do you agree with
5 that?

6 A: That is correct.

7 Q: Okay.

8 There's no real turning over to the left,
9 right? You just stay where you are and it automatically
10 filters you straight into that left turn lane.

11 A: That's the way it's supposed to be.

12 Q: Right.

13 That's the way it was for you on the date of
14 the accident, right?

15 A: That was the way for me.

16 Q: Okay.

17 But it's your testimony that the tanker truck
18 instead of staying straight and filtering right into that
19 left turn lane it went off to the right to follow the --
20 the through lane; the left through lane.

21 A: He stayed straight.

22 Q: Do you agree that that tractor trailer that
23 you saw, the tanker trailer; do you agree that it
24 ultimately did make a left turn on Leonardtown Road?

25 A: Yes, I do agree with that.

1 Q: Do you agree that it ultimately made the
2 left turn from the right left turn lane?

3 A: Ultimately.

4 Q: Okay.

5 When you were change -- when you were filtering
6 into the left turn lane -- ultimately -- well you were --
7 previously you were behind the tractor trailer. What was
8 the distance between the front of your vehicle and the
9 rear of the tanker trailer as you were approaching where
10 the lanes open up into the -- into the turn lanes?

11 A: I can't recall.

12 Q: Okay.

13 But you agree that you got from wherever you
14 were at that point up to a point where you're next to the
15 rear tandem wheels of the tanker trailer? You agree with
16 that, right?

17 A: Yes.

18 Q: Did you accelerate up to that point?

19 A: No.

20 Q: Did the tanker trailer decelerate back to
21 that point?

22 A: He could have but I -- I don't recall.

23 Q: Okay.

24 Was the tanker trailer accelerating or
25 decelerating at the time that it entered, as you say, it

1 entered into your lane?

2 A: I can't recall.

3 Q: Okay.

4 Do you know how fast Ms. Young was going in her
5 Honda?

6 A: No, I don't.

7 She didn't have a Honda.

8 Q: Sorry -- in -- in her Dodge. I do
9 apologize. You're quite correct. Thank you for clearing
10 that up for me so the record is clear.

11 Do you know how fast she was going in her
12 Dodge?

13 A: No, I don't.

14 Q: Okay.

15 When you changed lanes, as you described
16 abruptly, into the left lane -- into the lane that Ms.
17 Young was in did you accelerate or did you decelerate or
18 did you maintain your constant speed?

19 A: It happened so abruptly I don't recall.

20 Q: Do you recall whether you applied the
21 brakes as you made the lane change into the left lane?

22 A: I don't recall.

23 Q: Okay.

24 But up until that point you do recall that you
25 were traveling at a constant speed at the speed limit up

1 until the point that you made the abrupt lane change to
2 the left?

3 A: Yes.

4 Q: Okay.

5 But whether or not you accelerated or
6 decelerated or braked or whatever, you have no knowledge
7 in terms of the lane change?

8 A: I just can't remember.

9 Q: Okay.

10 But you do remember you didn't indicate?

11 A: Correct.

12 Q: And you do remember you didn't sound your
13 horn when you saw a tanker trailer coming into your lane?

14 A: I do remember that.

15 Q: Okay.

16 A: I remember just getting out of his way.

17 Q: Okay.

18 In terms of the distance from Leonardtown Road
19 to the point where the accident occurred, what -- what
20 was that distance?

21 A: In my original statement I said I recall --
22 I used a football field to kind of judge it. So I said
23 it was about 80 yards.

24 Q: Okay.

25 I -- I believe you're referring to your

1 Deposition transcript where you said, using a football
2 field as -- as a yardstick you thought it was less than a
3 football field's distance, right?

4 A: Yes.

5 Q: 80 yards and that would be about 240 feet,
6 right?

7 A: I don't know the math.

8 Q: Okay.

9 If there are three feet in a yard, three times
10 80; 240. You're not familiar with the -- the three feet
11 in a yard?

12 A: Not that quick as you.

13 Q: Okay.

14 (Laughter.)

15 A: I don't have a law degree and I didn't --
16 math wasn't my thing.

17 Q: All right.

18 MR. BRATT: I have one but I can't do it.

19 Q: When you were next to the rear tandem
20 wheels of the tanker trailer and you perceive for the --
21 the first moment that you perceived that it was coming
22 into your lane as you suggest why didn't you hit the
23 brakes?

24 A: It was a sudden decision. I didn't have
25 time to think that quick. It was abrupt.

1 I didn't -- my first thought was I don't want
2 to get hit by this -- this truck carrying fuel.

3 Q: Right, but were you aware that there were
4 any vehicles directly behind you in that lane that would
5 have -- would have presented a danger if you applied your
6 brakes?

7 A: I was trying to get out of the way of this
8 humungous truck.

9 Q: Okay.

10 It's a very -- it was a very noticeable thing,
11 right? It's right next to you. It's very large and it's
12 -- you -- you can see it, right?

13 A: You're correct.

14 Q: You -- you even say as you indicate you
15 caught it out of your peripheral vision, right?

16 A: Correct.

17 Q: Okay.

18 Hard to miss?

19 A: Correct.

20 Q: Cause it's a lot taller than the vehicle
21 you're in, right?

22 A: Correct.

23 Q: Okay.

24 And just so we're clear, it's a big shiny
25 silver tank, right?

1 A: Correct.

2 Q: Okay.

3 Your brother, Dewayne, that you refer to -- is
4 he gonna be here today to testify?

5 A: No.

6 Q: Okay.

7 The police officer that you spoke to, is he
8 coming to testify today?

9 A: No.

10 Q: Now, you told the police officer that you
11 had been run off the road by a tanker trailer. Did you
12 ask him to go and radio ahead and stop the BTL tanker
13 trailer on the highway?

14 A: No, I did not.

15 Q: Okay.

16 Do you have a police report here today with
17 you?

18 A: They didn't make a police report.

19 Q: Prior to making your lane change to the
20 left did you think or did -- were you aware that there
21 were any vehicles ahead of you in the left, the
22 furthest left left turn lane, that it would have
23 presented a danger for you to accelerate and move to the
24 left?

25 A: I didn't recall any vehicles ahead of me.

1 Q: Okay.

2 Just want to -- go back to the Exhibit Number
3 2; Plaintiff's Exhibit Number 2, that you compiled.

4 Why is it in Plaintiff's Exhibit Number 2 you
5 put my client's vehicle not only in the left through lane
6 but he's also encroaching on the right through lane?

7 A: Well, actually I was a cut and paste. I
8 didn't have all the engineering tools that you had to
9 paste it together. It was the tools that you provided to
10 me so I cut by hand and placed them there. And they were
11 just blown up from that.

12 Q: Okay.

13 But you're not suggesting by this that you saw
14 or you have knowledge that my client veered into the
15 right turn?

16 A: No.

17 Q: Right through lane?

18 A: By -- by no means.

19 Q: Okay.

20 You'd been following that tractor trailer for a
21 while, Mr. Ervin, hadn't 'cha?

22 A: About two miles probably.

23 Q: Okay.

24 And I guess given that it's a tanker truck it
25 would have stopped completely in advance of the railroad

1 tracks. Do you remember that? And you probably would
2 have to stop behind it?

3 A: No.

4 Q: You don't recall that?

5 A: No, well if that's the case, as I stated
6 there were three lanes. He turned in the furthest
7 right lane. So I may have been in front of him by that
8 time and he passed me at one point.

9 Q: And were you getting frustrated with the
10 tractor trailer driver?

11 A: No.

12 Q: I don't have any further questions.

13 THE COURT: Re-direct.

14 RE-DIRECT EXAMINATION

15 BY MR. BRATT:

16 Q: Mr. Ervin, when the tractor trailer came
17 into your lane and you jumped into the lane to your left
18 did you have time to signal?

19 A: No.

20 Q: Did you have time to blow your horn?

21 A: No.

22 Q: Did you have time to hit the brakes?

23 A: No.

24 Q: Did you have time to do something besides
25 what you ultimately did?