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2 MR. FROHLICH: Good afternoon, ladies and
3 gentlemen. We've been introduced earlier
4 today. My name is Cort Frohlich and I have the
5 privilege of representing Anita Forester and
6 Pat Dougherty.

7 We all know that it is a sacrifice from
8 your lives and those of your families for you
9 to be here today and the rest of the week and
10 this next week. And we thank you for being
11 here.

12 This is an important case, but it's
13 really a simple case, but an important one. On
14 October 28th, 2016, a garbage truck owned and
15 operated by WCA of Florida, LLC approached the
16 intersection of 17th Street and University
17 Avenue in Gainesville. That intersection is
18 located right next to the Swamp. It's one of
19 the busiest intersections in Gainesville. It's
20 busy not with -- just with cars and trucks, but
21 with pedestrians and bicyclists.

22 As the WCA truck approaches that
23 intersection with the intention of turning
24 right onto University Avenue, the light turned
25 yellow. Instead of slowing down, the WCA

1 driver sped up. He didn't check his mirrors to
2 make sure no one was in the dedicated bicycle
3 lane on the right side of the truck. Because
4 he didn't look, he never saw a 20-year-old
5 college student, Abigail Dougherty, who was
6 riding her bike in the dedicated bike lane.
7 This is Abigail Dougherty, the daughter of
8 Anita Forester and Patrick Dougherty, my
9 clients.

10 The garbage truck ran over Abby, as she
11 rode through the intersection and the dedicated
12 crosswalk and killed her. You're going to see
13 this with your own eyes, because all of this
14 was captured by a video camera that was located
15 right next to the intersection. And I want to
16 reassure you-all that the video is not graphic
17 or gruesome. It cuts off immediately after the
18 impact and before the garbage truck overruns
19 Abigail Dougherty. The driver had been
20 employed by WCA, which stands for Waste
21 Corporation of America, for more than 15 years.
22 In fact, he's still employed by WCA.

23 He is a professional driver. He makes
24 his living driving a garbage truck for WCA,
25 that truck (indicating). He has a commercial

1 driver's license, a CDL.

2 The garbage truck that he drives is one
3 of the largest and heaviest in WCA's entire
4 fleet. It weighs 40,000 pounds. And again,
5 that's the very truck.

6 On the morning of October 28th, 2016,
7 WCA's driver is on a commercial recycling route
8 that typically takes him about 12 hours to
9 complete, with 90-to-95 stops before he's done
10 for the day. He's familiar with his truck.

11 He's familiar with his route. He's driven the
12 route many times. He begins his route early
13 that morning. He makes several stops.

14 WCA's driver makes a stop at a place
15 called University Plaza and the next stop, as
16 you will here is approximately a mile away. He
17 then drives -- Christopher -- I'm going to ask
18 my son to help me with the technology here, if
19 you would give us -- orient --

20 MR. NEWSOME: I'm going to move this
21 back, so they can see.

22 MR. FROHLICH: Okay. This is Northwest
23 17th Street heading towards the center section
24 here on University Avenue. The driver had

25 stopped at a stop sign at Northwest 1st up

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1 here, turned right onto Northwest 17th, heading
2 towards University Avenue. And as you can see,
3 there's a dedicated bike lane on both sides of
4 Northwest 17th at that location. Everybody see
5 that? All right.

6 The intersection that he is traveling
7 towards is located one block from the
8 University of Florida campus. As I said, he
9 pulls up and he stops at the intersection of
10 Northwest 1st Avenue and Northwest 17th. As
11 you see, and as I mentioned, there's a
12 dedicated bike lane. And as he sits at the
13 stop sign there, WCA's driver claims to have
14 looked to his left before turning right onto
15 Northwest 17th Street. He has an unobstructed
16 view of the bike lane on Northwest 17th Street
17 to his left, because the street there is
18 perfectly straight, there's no hills or curves,
19 and he claims he sees no approaching bicycles.
20 WCA's driver then turns right onto Northwest
21 17th Street. He heads south towards its
22 intersection with University Avenue. It's
23 approximately 9:30 in the morning.

24 Now, his truck is equipped with four
25 right-side mirrors. We're going to show you a

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1 photograph of those four mirrors, one, two,
2 three, four; is everybody able to see those?
3 That set of four mirrors, ladies and gentlemen,
4 is designed to minimize any blind spots on the
5 right side of the truck and to the rear of the
6 truck. WCA's driver will tell you that he
7 looked once in those right side mirrors
8 immediately after making his turn from
9 Northwest 1st onto Northwest 17th. Again, he
10 claims he didn't see any approaching bicyclist.

11 He then drives -- can you switch back,
12 Chris? He then drives towards north -- out
13 Northwest 17th towards the intersection with
14 University Avenue. He choses to never again to
15 look in his side view mirrors. It's undisputed
16 in this case that the WCA driver drove
17 approximately 200 feet, which took him at least
18 ten seconds and never once checked his
19 right-side mirrors.

20 In addition to the right-side mirrors
21 that you've just seen, the garbage truck has a
22 video monitor. And that video monitor is
23 located where a rearview mirror would be in a
24 passenger car, but because of the enormous size
25 of the body of the truck, of course, a rearview

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1 mirror doesn't work, so there's a camera at the
2 back of the truck, which takes the place of a
3 rearview mirror. And what is shown there is
4 displayed right here on a monitor in the cab of
5 the truck. As you can see, it is a wide-angle
6 view of everything that would have been behind
7 the truck, in which would have included the
8 bike lane as well.

9 A bicyclist approaching the rear of the
10 garbage truck in that bike lane, the dedicated
11 bike lane, would have been visible in that
12 monitor. As you will hear, WCA's driver choses
13 to never once check that monitor in the entire
14 block leading up to University Avenue. As I
15 total you, Abigail Dougherty is in the bike
16 lane. She's traveling in the same direction as
17 the garbage truck. She's approaching the
18 garbage truck from the rear. She's traveling
19 at a steady speed, slightly faster than the
20 garbage truck.

21 She's bicycling to work at the Field &
22 Fork Food Pantry on the campus of University of
23 Florida, which is located a few blocks away on
24 the UF campus.

25 The evidence, ladies and gentlemen, in
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1 this case will show that Abigail Dougherty was

2 there to be seen in the right-side mirrors.
3 She was there to be seen in the video monitor
4 in the cab of the truck. No one in the case
5 will be able to dispute that, but, as you've
6 heard, the driver never looks.

7 WCA's driver is very familiar with the
8 intersection that he's approaching at Northwest
9 17th Street and University Avenue. He knows
10 that it's located right in front of the
11 University of Florida campus. He knows it's
12 very busy. He knows that there's lots of
13 bicyclists and pedestrians in that area,
14 particularly at 9:30 a.m. on a weekday.

15 As the WCA driver and the bicyclist
16 approach that intersection, the bicyclist, Abby
17 Dougherty, is riding parallel to the garbage
18 truck, as I said, at a steady speed in the bike
19 lane. She has the right-of-way at the
20 intersection they are both approaching.

21 WCA's driver will acknowledge to you that
22 had he seen her, he had an obligation to slow
23 down, yield to her, until she safely crossed
24 the intersection on the crosswalk, which we

25 will show you in a minute, and then make his

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1 right turn behind her. He didn't see her,

2 because he didn't look.

3 Instead of yielding to Abigail Dougherty,
4 as WCA's driver approaches the intersection, he
5 makes a sharp turn to his right onto
6 University. As you will see and hear, the
7 right tires of the garbage truck actually
8 crossover into the bike lane, the dedicated
9 bike lane. He drives right up against the
10 curb.

11 WCA will acknowledge that its drivers are
12 supposed to make slow wide turns. WCA's driver
13 will tell you that's what he did on the morning
14 of October 28th, 2018 [sic]. Had he actually
15 done so -- done what he claimed, this collision
16 never would have occurred. He didn't make a
17 slow wide turn, as you will see on the video.
18 He chose to make a sharp turn. The sharp turn
19 takes him into the crosswalk. Where is that
20 other blowup, please?

21 Can we have just a minute, Your Honor? I
22 apologize for the delay.

23 That's taken from a video and, as I've
24 said, demonstrates that instead of a wide and
25 slow turn, the WCA driver makes a sharp turn

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1 right up against the curb into the crosswalk
2 where he strikes the rear tire of Abigail

3 Dougherty's bicycle. He then travels into the
4 left-hand lane of University Avenue and not
5 into the right-hand lane closest to the curb.

6 The point of impact is here, he travels all of
7 the way to here where he finally stops his
8 truck in the left-hand far lane of University
9 Avenue.

10 WCA requires its driver to slow down as
11 they approach an intersection where they're
12 going to make a turn and do and do what's
13 called covering their brake. That's because
14 slowing down is safer. But WCA's driver that
15 morning does not slow down. He does not even
16 maintain the same speed.

17 Instead he chooses to speed up into his
18 turn. As he speeds up into his turn, the right
19 front, as I said, of the truck strikes Abigail
20 Dougherty's bicycle, as you can see right
21 there. The impact occurs, as you can see, in
22 the dedicated crosswalk. WCA's driver never
23 does see her at all, until he has run over her
24 and her body is lying on University Avenue.

25 WCA, through its driver, made several
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1 choices that morning: He chose not to look in
2 his right-side mirrors; he chose not to look in

3 the video monitor for the 200 feet or seeing
4 his right turn, as I said, a period of at least
5 ten seconds. He chose to make a sharp turn,
6 instead of what's called a button-hook turn,
7 which is he's coming down -- coming down
8 University and what he's supposed to do is
9 drive slightly to the left and make a slow wide
10 turn into the lane closest to the curb at
11 University Avenue, not a sharp fast turn
12 through the crosswalk and into the left-hand
13 lane. He chose to make a sharp turn instead of
14 a wide turn and he chose to speed up into the
15 turn instead of slowing down, so he could beat
16 a light.

17 You already heard that there's a
18 surveillance video. There's actually two
19 surveillance videos from nearby businesses.
20 And you're going to see them both, ladies and
21 gentlemen. And here, depicted in one of those
22 videos, are the consequences of the choices
23 that WCA's driver made that morning.

24 (Video being shown to jury.)

25 On impact, which you just saw, Abby
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1 Dougherty and her bicycle are pulled under the
2 garbage truck. She's dragged under the truck
3 for several seconds before the right rear tires

4 run over her head and her entire upper body
5 crushing and killing her. As you will hear, if
6 the WCA's driver applied his brakes upon
7 impact, he would not have run over Abby --

8 MR. EHRENREICH: Your Honor, there's not
9 going to be any of those facts in evidence at
10 all. They don't have the --

11 THE COURT: Can you-all approach?
12 (The following sidebar was held out of
13 the hearing of the jury.)

14 THE COURT: Go ahead.

15 MR. EHRENREICH: They have no
16 biomechanical expert. In fact, their accident
17 reconstruction expert states specifically that
18 there are no biomechanic opinions. They have
19 not talked about what the injuries would have
20 been different had she just fallen with no
21 helmet versus a vehicle or truck ran over her.
22 So this is all Plaintiffs' opinions --
23 Plaintiffs' Counsel. No expert -- no one is
24 going to offer any of that testimony
25 whatsoever. Counsel knows that.

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1 MR. FROHLICH: I absolutely disagree.
2 Bryant Buckner has testified in his deposition
3 twice actually now, since it was taken again on

4 Sunday, and will testify at trial that if the
5 driver had timely applied his brakes on impact,
6 which is exactly what I said, he could have
7 stopped in time to avoid overrunning Ms.
8 Dougherty with his right rear tires, purely and
9 simply.

10 THE COURT: But you don't know exactly
11 how that would impact --

12 MR. FROHLICH: I'm sorry?

13 THE COURT: You don't know how that would
14 have impacted or whether or not she would have
15 survived; does anyone testify as to that?

16 MR. FROHLICH: As to whether she would
17 have survived?

18 THE COURT: Yes.

19 MR. FROHLICH: Well, her entire upper
20 torso was crushed by the right rear tires.

21 THE COURT: I mean, you and I can't --

22 MR. FROHLICH: Right. Right.

23 THE COURT: I'm just saying why don't we
24 just skip it and you can come back to it later.

25 MR. FROHLICH: Come back to it later?

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1 All right.

2 THE COURT: Yeah.

3 MR. EHRENREICH: Fair enough. Thank you,

4 Your Honor.

5 MR. FROHLICH: WCA's driver doesn't
6 realize that he struck someone. He doesn't
7 apply his brakes until he feels the bump -- a
8 bump, as the truck runs over Abigail
9 Dougherty's body. And he finally comes to a
10 stop some 95 feet from the initial point of
11 impact, which you've already seen.

12 After WCA's driver gets out of his truck,
13 he walks towards the intersection. He sees a
14 body lying in the road. He walks back to the
15 truck and he makes a telephone call. He
16 doesn't call 911. He calls his boss at WCA,
17 because that's what he's been told to do in the
18 event of a motor vehicle accident.

19 You've already been introduced to Anita
20 Forester and Pat Dougherty. Why are we here in
21 this courtroom, ladies and gentlemen? Because
22 what I've just described to you happened on
23 that morning should never have happened and
24 didn't have to happen. Abigail Dougherty's

25 parent have sued WCA, the company that owned,
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1 managed and was responsible for the garbage
2 truck and is responsible for the negligence of
3 the driver. They sued WCA because its driver,
4 an individual with a commercial driver's

5 license that was operating a 40,000-pound
6 garbage violated the basic rules of the road
7 that govern all drivers. Rules that are
8 covered in a basic driver education course.
9 They filed suit because WCA violated its own
10 policies and procedures. They are suing WCA to
11 require, through your verdict, to finally
12 accept responsibility for its driver's actions,
13 so that WCA, through your verdict, is held
14 accountable --

15 MR. EHRENREICH: Your Honor? Can we
16 sidebar?

17 THE COURT: Yes.

18 (The following sidebar was held out of
19 the hearing of the jury.)

20 THE COURT: Go ahead.

21 MR. EHRENREICH: I'm going to move for
22 mistrial. It is beyond improper in an opening.

23 This is not inequity. For Mr. Frohlich to get
24 up there and say that they have to be held

25 accountable, that they're suing for this other

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1 reason is highly inappropriate in opening. I
2 don't have a case with me. I didn't anticipate
3 having to, but there's law that talks directly
4 about that as to what the facts really show.
5 This is beyond that.

6 THE COURT: Okay. Mr. Frohlich, let's

7 move on from there.

8 MR. FROHLICH: Okay.

9 (End of sidebar.)

10 MR. FROHLICH: I want to discuss with you

11 the evidence and testimony that we intend to

12 present over the next several days. First will

13 be the testimony of a man by the name of

14 Dewayne Harding. The Defense, WCA, designated

15 Mr. Harding as it's corporate representative.

16 What that means is that in this courtroom and

17 in this case, he speaks on behalf of WCA.

18 Every word he utters and that you hear is

19 uttered on behalf of WCA and they are bound by

20 the testimony that he gives here. He is, as I

21 said, WCA for purposes of this trial.

22 He is the direct supervisor of WCA's

23 driver. He's the person the driver called on

24 the cellphone that morning. I asked that you

25 watch and listen carefully to his testimony.

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1 He will agree that WCA drivers are supposed to

2 look in and use their mirror. He will agree

3 that the truck had a large camera monitor that

4 his drivers are trained to use and are supposed

5 to use. He's going to testify about something

6 called a drive cam, which this truck was
7 equipped with. And what that does is it
8 records video --

9 MR. EHRENREICH: Your Honor, the drive
10 cam, we've already got into this. The expert
11 is giving no testimony -- sorry, I'm objecting.
12 None of those facts will come into evidence,
13 Your Honor, form.

14 THE COURT: All right.

15 MR. FROHLICH: May we approach, You
16 Honor?

17 THE COURT: Yes.

18 (The following sidebar was held out of
19 the hearing of the jury.)

20 MR. FROHLICH: Those facts are very
21 definitely coming in through the Defendant
22 itself. They designated this man --

23 THE COURT: He testified to it.

24 MR. FROHLICH: He absolutely testified to
25 it repeatedly.

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1 THE COURT: I read it.

2 MR. FROHLICH: You've seen it. And we
3 sent designations prior to the deposition, that
4 specifically included the drive cam and it's
5 recording capabilities. It's coming in.

6 There will be a question about a jury

7 instruction later and we are prepared to argue
8 that at the appropriate time. It's not coming
9 in through the expert, it's coming in through
10 you the Defendant.

11 THE COURT: What's your objection?

12 MR. EHRENREICH: It was equipped with a
13 drive cam and that's all their going to say.
14 They have no testimony at all that says --

15 THE COURT: Your corporate representative
16 says more than there's a drive cam.

17 MR. EHRENREICH: I'm sorry?

18 THE COURT: Your corporate representative
19 testify more than it's equipped with a drive
20 cam. He gave a lot of testimony about that and
21 he saying he's testifying about that.

22 MR. EHRENREICH: He gave testimony as to
23 whether the drive cam and he misstated the
24 amount of time.

25 THE COURT: But that's what he said.
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1 MR. EHRENREICH: But you have to
2 understand something, they can't tie that to
3 anything. Their own expert says it's only
4 available for 12 seconds. It has nothing to do
5 with this case only. That because the impact
6 was so minor, it never triggered the drive cam.

7 That's what their own expert says. And that's
8 why we brought this up to the Court last week,
9 because there's no evidence.

10 THE COURT: This is one of the motions
11 you-all set for hearing that I haven't heard,
12 so we just have to press forward. I haven't
13 heard it. You-all filed the motion and --

14 MR. EHRENREICH: If he keeps going about
15 this, I'm going to move for mistrial. We
16 brought this up to the Court. We appropriately
17 filed the motions right here.

18 MR. FROHLICH: Your Honor, respectfully,
19 I'm going to reference the drive cam only in
20 the context that WCA's own testimony through
21 its corporate representative and what was said
22 about the drive cam. That's pure and simply
23 what I'm going to do. I'm not going to talk
24 about it's -- whether -- you know, the length
25 of its recording capabilities.

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1 THE COURT: You're not going to do that?

2 MR. FROHLICH: Not right now. All of
3 that is going to be discussed. It's going to
4 be -- the testimony is coming in tomorrow.

5 THE COURT: I understand. Let's not do
6 that now.

7 MR. FROHLICH: Right.

8 (Sidebar was concluded.)

9 MR. FROHLICH: The designated corporate
10 representative, and thus WCA, has testified and
11 will testify that there's something called a
12 drive cam, that this truck was equipped with,
13 and that records video of what the driver was
14 doing in the cab and the view out of the front
15 of the truck. He will testify that it is able
16 to be manually activated. Listen carefully to
17 his testimony about the drive cam. And later,
18 listen carefully to the testimony about the
19 driver about his knowledge of the drive cam.
20 It was never manually activated that morning,
21 as WCA acknowledges. And so any video evidence
22 that it may have captured is gone. WCA will
23 argue --

24 MR. EHRENREICH: Your Honor?

25 MR. FROHLICH: I'm sorry, will agree.
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1 MR. EHRENREICH: I'm going to move for
2 mistrial of spoliation claim.

3 THE COURT: I'll defer.

4 MR. EHRENREICH: Thank you.

5 MR. FROHLICH: WCA will agree, through
6 Mr. Harding, that the driver making the
7 right-hand turn onto University was trained to

8 and was supposed to cover his brake and slow
9 down, not speed up. WCA, through Mr. Harding,
10 will agree that that particular intersection
11 requires extra care, because all of the
12 students, pedestrians and bicyclists are
13 continually crossing it, extra care, not less,
14 because of the catastrophic potential of a
15 40,000-pound garbage truck colliding with
16 pedestrians or bicyclists. Despite all of
17 this, Mr. Harding will also testify that WCA
18 did nothing wrong.

19 And he will tell you that he maintained
20 and they maintained that he did nothing wrong
21 after this investigation, taking six-to-eight
22 photographs at the scene and securing a
23 one-page written statement from its driver on
24 the date of the accident. That was the
25 investigation. Mr. Harding will also tell you

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1 and testify that Mr. Danzy purportedly complied
2 with all of the policies and procedures of WCA.
3 And you're going to hear about those policies
4 and procedures, ladies and gentlemen, and
5 you'll -bye be able to judge for yourself
6 whether or not WCA complied with its own
7 policies and procedures.

8 Next, you're going to hear from Bryant

9 Buckner. Bryant Bucker is a professional
10 engineer from Tallahassee, Florida. He's an
11 experienced engineer and an accident
12 reconstructionist. And Mr. Bucker uses his
13 education and his background and his training
14 and experience to reconstruct accidents, to
15 tell us what happened and why.

16 We retained and paid Mr. Buckner to
17 recreate the moments leading up to this
18 collision and the seconds after Mr. Danzy,
19 struck Abigail Dougherty in the crosswalk. As
20 you're going to hear, Mr. Buckner conducted a
21 detailed inspection of the truck, the scene and
22 all of the available photographs and videos.
23 There are two videos, as I mentioned, one of
24 which you've already seen and another that

25 depicts what happened as the garbage truck and
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1 Abigail Dougherty approach that intersection.

2 Mr. Buckner took detailed measurements.

3 He conducted speed calculations. He evaluated
4 braking distances. He's reviewed and
5 considered the sworn deposition testimony of

6 WCA's driver and the other representatives of

7 WCA. And Mr. Buckner will tell you that Abby

8 Dougherty was visible to WCA's driver for at

9 least ten seconds in his right-side mirrors and
10 in the video monitor, if he looked.
11 Mr. Buckner will testify and tell you that he
12 the WCA driver did not make a slow wide turn,
13 as he claims, but a sharp right turn. Mr.
14 Bucker will further testify that WCA's driver
15 increased his speed from 7.5 miles an hour to
16 11 miles per hour as he made his right turn
17 onto University Avenue. And Mr. Bucker will
18 tell you and show you that had that driver not
19 done so, had he simply maintained his speed,
20 this fatal collision would never have happened.

21 Mr. Buckner has prepared animations for
22 your consideration, which graphically contrasts
23 what the WCA driver says he did and what he
24 actually did that morning. They graphically
25 depict Abigail Dougherty would be alive today

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1 if WCA's driver had simply maintained his speed
2 and not sped up into the turn.

3 We are also going to call WCA's driver to
4 the stand. It's a man by the name of Charles
5 Danzy and I'm not going to go into great detail
6 right now about the testimony that we intend to
7 elicit from him, with one exception. He's
8 testified that he took a slow, wide button-hook
9 turn as far away from the curve as he could

10 get, because it would be dangerous to drive
11 right up next to the curb, because there's
12 always pedestrians in that area. That's what
13 he said that he did. You're going to decide
14 using your own two eyes and your common sense
15 wherein the truth lies with respect to Mr.
16 Danzy's actions that morning and the choices
17 that he made, and what he claims he did and
18 what actually occurred.

19 You're going to hear from witnesses that
20 knew Abigail Dougherty and knew her parents.

21 Of course, you're going to hear from her
22 parents, Anita and Pat. They are going to tell
23 you about their daughter. They are going to
24 tell you about their relationship with her, the

25 good times they enjoyed with her and the hopes

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1 and the dreams that they had for her.

2 Now, as I told you, WCA claims they did
3 nothing wrong, nothing at all. Instead, WCA
4 will point the finger at Abby Dougherty and
5 will tell you, as you've already heard, that
6 she's allegedly responsible for her own death.

7 As you've heard a little bit this
8 morning, we have the burden of proving that WCA
9 was careless and caused the death of Abigail

10 Dougherty by the greater weight of the evidence
11 and we fully embrace that burden. However --

12 MR. EHRENREICH: Your Honor, I'm sorry.

13 It's not about careless; it's about negligence.

14 This is a negligence case, not a careless case,

15 so I'm going to object and ask for an

16 instruction on that, Your Honor.

17 THE COURT: Do you have any objection to

18 me just explaining it to the jury?

19 MR. FROHLICH: I have none.

20 THE COURT: All right. I'm going to give

21 you instruction at the close of all of the

22 testimony, the evidence. At the end, you're

23 going to have all of the law that you're to

24 apply in this case. This is a negligence case

25 and I'll explain what that means when we get to

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1 that point. And the attorneys are going to try

2 to be careful with their words going forward.

3 Okay?

4 MR. FROHLICH: Thank you, Your Honor.

5 WCA has the burden of proving to you that

6 Ms. Dougherty was negligent and somehow

7 contributed or caused her own death and it must

8 prove that defense by the greater weight of the

9 evidence. We maintain that it will fail to

10 meet that burden at all and that WCA is

11 100-percent responsible.

12 However, you'll have the opportunity, as
13 the jury in this case, when all is said and
14 done and when you've heard it all, to determine
15 whether or not there is a responsibility on
16 both parties here. And that's a determination
17 that ultimately you'll make.

18 Ladies and gentlemen, in life, it is
19 never good for things to be taken out of
20 context, but in a courtroom, it's doubly
21 important that things be put in context. So
22 before I sit down and the Defense has its
23 opportunity to tell you what they intend to
24 show, I want to talk to you about some of the
25 evidence that they are going to tell you, we

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1 believe, that supports their defense. So I
2 won't get a chance to get back up here and put
3 things in context, so I'm going to do that now.
4 So let me talk about some of the evidence that
5 I believe the Defense is going to talk about
6 and put it in context.

7 WCA is going to tell you that Abigail
8 Dougherty was impaired at the time of the
9 collision. WCA must prove two things: First,
10 that she was impaired; and second, that this

11 alleged impairment had an impact on her actions
12 on the morning of her death. So I'm going to
13 ask you to look with me for a moment at the
14 whole picture and put that in context.

15 The evening before Abigail Dougherty was
16 struck and killed, she volunteered at a
17 Halloween party hosted by the University of
18 Florida campus diplomats for the children of
19 graduate students and faculty members, so those
20 children and their parents could enjoy a happy,
21 low-cost Halloween celebration. Ms. Dougherty
22 was a UF campus diplomat.

23 Afterwards, she went with a group of
24 friend to a local bar that was hosting a Harry
25 Potter party. Abby would have turned 21 the

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1 next week, on November the 3rd, 2016, but
2 because midterms were scheduled that week, her
3 friends were taking her out on October 27th for
4 a early birthday celebration.

5 Afterwards, several members of that
6 group, including Abby, went to home of one of
7 those friends, a young man by the name of Wyatt
8 Kelch, who will be here to testify, and there
9 she spent the night. Abby Dougherty consumed
10 some alcohol that evening. She also consumed
11 some cocaine.

12 But what is the context; what is the
13 entire picture? You're going to hear from
14 Mr. Kelch, one of the last two people to see
15 Abigail alive. He's going to tell you about
16 that evening. They were good friends.

17 He will testify that the group returned
18 to his home around one a.m. They went to a
19 park to look at some stars. And around three
20 a.m., everyone was back at home and went to
21 sleep. Abby Dougherty slept on a couch in the
22 living room.

23 The next morning, Mr. Kelcy and Abby woke
24 up around seven a.m. and they walked to a
25 coffee shop together. He will tell you that

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1 Abigail Dougherty was fine that morning. She
2 appeared perfectly normal. When they departed
3 the coffee shop, Mr. Kelch walked to class on
4 campus and Abby Dougherty walked home to get
5 ready for work.

6 When Abby Dougherty arrived at her
7 apartment, she interacted with her roommate, a
8 young lady by the name of Erin Park. Ms. Park
9 was the last person to interact with Abby
10 before her death. And you're going to hear
11 from Ms. Park as well. Ms. Park will tell you

12 that she and Abby got ready together that
13 morning for their day. They talked about a
14 midterm in organic chemistry that they both
15 suffered through the week before and they
16 discussed getting together that evening to
17 watch the sunset at Paynes Prairie. Ms. Park
18 will also tell you that Abby Dougherty was
19 perfectly fine that morning when she got on her
20 bike and headed out to work on campus at the
21 Field & Fork Food Pantry. That's the context.
22 That's part of the whole picture.

23 Dr. William Hamilton -- Dr. William
24 Hamilton is the Alachua County medical
25 examiner. He performed the autopsy in this

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1 case. He also obtained various samples that he
2 sent for analysis to Dr. Bruce Goldberger.

3 Dr. Bruce Goldberger is a University of
4 Florida toxicologist. Dr. Goldberger tested
5 Abby Dougherty's blood for alcohol and the
6 results were, and I quote, none detected, end
7 quote. That too is part of the context.

8 We retained an expert toxicologist. His
9 name is Dr. William Sawyer. He has analyzed
10 the autopsy results and the toxicology results
11 from Drs. Hamilton and Goldberger here in
12 Gainesville. Dr. Sawyer will tell you and

13 explain the toxicology results to you. He
14 agrees with Dr. Goldberger. He will tell you
15 the alcohol that Abby had consumed the night
16 before and prior to her death had been
17 completely metabolized as of the next morning.
18 In other words, her blood alcohol content, or
19 her BAC as we sometimes refer to it, at the
20 time of the collision was zero. Dr. Sawyer
21 will also tell you that although Abby had a
22 small detectable level of cocaine in her blood,
23 it too had largely been metabolized. And the
24 level in her blood was insufficient to create
25 any pharmacological effect. In other words,

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1 ladies and gentlemen, Abby Dougherty wasn't
2 impaired at all.

3 Most importantly, you'll be able to judge
4 her actions that morning for yourself. You're
5 going to see the video again, probably several
6 times, with your own eyes, and you'll use your
7 own common sense to evaluate whether there's
8 any evidence of impairment. Abby Dougherty
9 isn't weaving in and out of traffic. She's in
10 the bike lane, right where she's supposed to
11 be. She's got both hands on the handlebars.
12 She's in the lane that's been reserved for her

13 and thousands of other students and faculty at
14 the University of Florida for bicycle travel,
15 who ride their bikes to the campus every day.
16 So when you hear about impairment from the
17 Defense, and consider that argument, keep in
18 your mind the whole picture, the entire
19 context.

20 You may hear about a turn signal. The
21 WCA driver claims that he turned on his turn
22 signal as he approached that intersection.

23 There's going to be competing evidence as to
24 whether or not the WCA driver used his turn

25 signal prior to and as he was approaching his

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1 right-hand turn on University Avenue.

2 There's a saying that I'm sure you've
3 heard, that a picture is worth a thousand
4 words, a video, perhaps, more. And in this
5 case, as I told you, there are two. You're
6 going to see them both with your own eyes.

7 You'll going to see a number of cars and
8 trucks, as you focus later on some of this,
9 that preceding the garbage truck through that
10 intersection, every one of them clearly has its
11 turn signal blinking, not the garbage truck.

12 See if you can with your own eyes see the turn
13 signal blinking on the garbage truck. And

14 although, ladies and gentlemen, you're going to
15 hear some expert testimony from both sides, as
16 I've said, you have everything you need right
17 now to make that call. You don't need to be an
18 engineer. You don't need to be a PhD. You
19 don't need to have extrasensory perceptions.
20 You've got everything you need, just your eyes
21 and your common sense as you watch that video.
22 And as you will hear, even if the turn signal
23 had been on, you need to put that in context as
24 well.

25 As you will hear from Mr. Buckner, Abby
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1 was in the dedicated bike lane and she had all
2 of the rights as any other driver in a second
3 lane of traffic. She had the right-of-way on
4 the shoulder. As you will also here from
5 Mr. Buckner, which is perfectly normal and
6 appropriate, as she would continue to drive
7 straight and to assume that the truck was not
8 going to accelerate and barrel through the
9 intersection right into her intended path and
10 plow into her in the dedicated crosswalk. Now,
11 whether there was a turn signal or not, and the
12 video clearly doesn't show that it was on, in
13 context, it doesn't matter, because Abby

14 Dougherty was acting and doing exactly what she
15 should have under these circumstances, the
16 whole picture.

17 You may hear about a blind spot from the
18 Defense. WCA may claim its driver didn't see
19 Ms. Dougherty because she was traveling
20 alongside the garbage track. Well, what's the
21 context of that? Again, the evidence will show
22 he didn't check -- he had four mirrors, he
23 didn't check them as he approached the
24 intersection. The vary mirrors intended to
25 minimize the blind spot.

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1 Also, by the time she actually was in a
2 blind spot, it was too late for her. If there
3 was a blind spot, it was created purely and
4 simply by the driver making the sharp
5 accelerating turn onto University Avenue. If
6 there was a blind spot, it occurred when he
7 committed to making that sharp, accelerating
8 speeding up turn.

9 Finally, if the Defense, when they speak
10 to you in a few moments, claims that Abigail
11 Dougherty was somehow trying to steer around
12 the truck, Mr. Buckner's going to explain to
13 you in detail why that is a fiction and why she
14 was not at all attempting to drive around the

15 truck. The tire was caught right here and she
16 was thrown underneath the vehicle.

17 THE COURT: You've got about three
18 minutes, Mr. Frohlich.

19 MR. FROHLICH: Thank you.

20 THE COURT: Ultimately, you, the jury,
21 are going to decide whether this commission
22 between a 40,000-pound garbage truck and a
23 young woman on a bicycle had anything at all to
24 do with what Ms. Dougherty did the night before
25 or where she spent the night or whether it had

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1 everything to do with the choices that the WCA
2 driver made that morning.

3 I'm going to speak to you very briefly
4 about damages. These are the losses, the harms
5 suffered by Pat Dougherty and Anita Forester,
6 Abby's father and mother. As you're going to
7 hear later from Judge Brasington, you're to
8 consider and evaluate their mental pain and
9 anguish that began on October 28th, 2016, when
10 they received a phone call that every parent
11 dreads, every parent's worst nightmare, your
12 child has been killed.

13 You're also going to consider their
14 mental pain and anguish in the year -- almost

15 two years since. And you are to consider the
16 mental pain and anguish they will experience
17 for the rest of their lives.

18 Abby was born on November 3rd, 1995. As
19 you're going to hear, she has an older brother,
20 Pat. She was Pat and Anita's only daughter.

21 It is hard to stand out in a college
22 campus with over 40,000 students, but stand out
23 she did. You're going to hear about how she
24 was doing academically. You'll hear about her

25 involvement on campus and in this community.

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1 You'll hear about her work at the Field & Fork
2 Food Pantry, which is where she headed on the
3 morning she was killed, meeting her
4 obligations, as always.

5 Ladies and gentlemen of the jury, but for
6 the choices that the WCA's driver made on the
7 morning of October 28th, 2016, Abby Dougherty
8 would have walked across and down the aisle in
9 a cap and gown this past May and graduated with
10 her class at the University of Florida.

11 Her mother and father have suffered the
12 greatest loss imaginable for any parent with a
13 loss of a child. And at the end of this trial,
14 we will ask you to evaluate that loss and the
15 mental pain and anguish each has and will

16 continue to suffer.

17 Let me sum up by saying that the evidence
18 and testimony will show that a professional
19 driver operating a 40,000-pound garbage truck
20 took unnecessary risks at one of the busiest
21 intersections in Gainesville and Abby Dougherty
22 paid the price of the risks that WCA took with
23 her life. And the question is, what you, the
24 jury, will do about it.

25 At the end of this trial, after you've
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1 heard all of the evidence and testimony, we
2 will ask you to require WCA of Florida to pay
3 restitution in an amount within your discretion
4 as the jury that should probably not exceed
5 15-million dollars.

6 MR. EHRENREICH: Your Honor, there's no
7 restitution here. Counsel needs to be careful.
8 It's not about restitution.

9 THE COURT: Let's make sure we use the
10 proper terms.

11 MR. FROHLICH: Pay damages in the amount
12 that should probably not exceed the sum of
13 15-million dollars for Anita Forester and
14 15-million dollars for Abby's father, Pat
15 Dougherty, for a total not to exceed 30-million

16 dollars. I thank you.

17 MR. EHRENREICH: I just want to show
18 Counsel.

19 THE COURT: Sure.

20 MR. EHRENREICH: It's ten to five. I'll
21 be done before 5:30, so we can get done today.

22 The process of bringing a case to trial
23 is involved and thorough. And in a case like
24 this, where there are depositions, sworn

25 statements, people swearing to tell the truth,
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1 and then they give statements to a court
2 reporter, a whole bunch of those. We have paid
3 witnesses. We have eyewitnesses. We have
4 employees of the State who gave sworn testimony
5 in the case. And that's pretty important to
6 hear, because when we walk into trial, there's
7 obviously disagreements, disagreements over
8 what happened and, perhaps, damages also. But
9 when somebody swears to tell the truth and
10 gives that testimony, you assume that both
11 sides would rely on that.

12 So Counsel was quoting his expert Bryant
13 Buckner and he was talking about the drive cam
14 system. It's not an issue here. I'll read to
15 you the sworn testimony of Mr. Buckner, which
16 is what he will say tomorrow when he's here.

17 The question on Page 158 of his sworn testimony
18 was, "Was the impact from this accident
19 sufficient to trigger the drive cam system?"
20 His answer, "no, sir." It's not an issue in
21 this case. Their paid expert agrees, it's not
22 an issue in this case.

23 The incident happened on October 28th,
24 2016, but this actually began on October 27th,
25 2016. At ten o'clock that night, Abigail was

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1 going to go out. She was going to meet up with
2 her friends and they were going to get together
3 and they were going to go, at age 20, to some
4 of the bars. Oak is the place they were
5 planning to go. Some of her friends were 20,
6 some of them were 21. She went over to her
7 friend Wyatt's place and from there they went
8 out.

9 During that night -- and this is from the
10 toxicologist from Alachua County, Dr. Goldberg,
11 during that night, she consumed several
12 alcoholic beverages. Her friend Wyatt is going
13 to tell you, who I think he describes himself
14 as being lit that evening, he is going to
15 describe that he himself saw her drink several
16 alcoholic beverages.

17 Dr. Goldberg is also going to tell you
18 that she had enough cocaine in her system to be
19 consistent with somebody who took cocaine
20 several times that evening. She had cocaine in
21 her system, she had alcohol in her system, all
22 between the hours of ten p.m. and four a.m. the
23 next morning. The combination of the two put
24 her in a state where she should have never been
25 on that bicycle.

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1 Counsel just said she was in the bed
2 between three and four and woke up at seven.
3 It's just three hours of sleep at the most.

4 She has alcohol and cocaine in her system.

5 Her boyfriend left her within the two
6 weeks before this for one of her good friends.
7 So she was out trying to clear that, I believe
8 is the testimony from her mom. So that's her
9 state of mind when she's out and having fun
10 with her friends.

11 She had driven to Wyatt's place that
12 evening and left her car there that morning.
13 She then walked with Wyatt after just three
14 hours of sleep, got coffee and went home. She
15 changed and got on her bicycle and now she's
16 going to ride her bicycle to work.

17 WCA -- I'm going to start off -- can you

18 pull up that first picture. So if when can
19 orient you, you're looking from bottom to top,
20 that's from north to south; left to right is
21 east to west. The two vehicles, the truck and
22 the bicycle, were traveling south heading
23 towards University.

24 This is a big truck -- go to the next

25 one, please. All witnesses are going to tell
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1 you that this is -- it's actually a
2 28,000-pound truck, but full it's over 30,000
3 pounds. This was over 300,00 pounds.

4 In the back is a strobe light. They
5 agree the strobe light was on. On the side are
6 running lights.

7 We disagree about the turn signal. We
8 say it's there and we say you're going to see.
9 It in the video, they say it wasn't.

10 They talked about the speed of the truck.
11 Mr. Buckner is going to testify that the truck
12 was going between seven and eleven miles per
13 hour. So if you had the thought that this is
14 speeding through, their own expert says the
15 truck was going between seven and eleven miles
16 per hour.

17 Next please. This is the truck. This is

18 the -- there's no pedestrian out there that can
19 miss this. And everyone will tell you how big
20 and loud and slow and obvious this truck is.

21 And then, on the back, you'll see there
22 is a caution and it says it takes wide turns.

23 Why am I show willing you the back? Well, the
24 testimony from everyone is going to be when the

25 truck and the bicycle were going north on

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1 17 -- excuse me, south on 17 that Abigail
2 started several feet behind the truck, in the
3 bike lane several feet behind the truck. She
4 was riding her bicycle faster than the truck.

5 According to Mr. Buckner, she was going
6 13 miles an hour and the truck was going 7
7 miles per hour. Doing very doing quick math,
8 which you'll hear a whole bunch of, she's
9 overtaking the truck as they are approaching
10 the intersection.

11 Next, please. So she's on the right side
12 of the truck, you'll see the strobe right there
13 in the back and then lights that are lit when
14 that truck is on. And she's starting behind,
15 and as she's approaching, she's overtaking the
16 truck. This is just on the back and you can
17 see about the wide turns.

18 So this is where the video starts. And

19 I'm not playing the video, these are stills.

20 It's not the video.

21 So you see where Ms. Dougherty is. Well,

22 the testimony is that she started actually

23 behind the truck. So she's driving almost

24 twice as fast, according to their own expert.

25 And by the time she's just a few feet away from
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1 the intersection, she's already on the right

2 side of -- excuse me, the front tire on the

3 right side of the truck.

4 Next please. In just a few feet, you see

5 that she's already catching up to the truck.

6 Next. It's at this time both vehicles are

7 turning to the right. Do you see that? Do you

8 see the truck is turning to the right, making

9 its right-hand turn. You'll see the turn

10 signal as you look through this video. But the

11 driver is into the right turn and so is she.

12 She's taking the exact same turn.

13 And by the way, she's never more than

14 three feet away from the truck, never more.

15 When they are both in the turn together, she's

16 merely inches away from the truck.

17 Instead of completing the turn with the

18 truck and mimicking the full right turn, at the

19 last second, she decides that in her mind,
20 think about what had gone through the night
21 before and morning, that now she's at the
22 crosswalk and she's going to take that left and
23 go straight now. That's her fatal error, right
24 there, when she decides to go left instead of
25 continuing that arc to the right. She's now in
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1 front of the truck by half a length and the
2 contact between the right front of the truck
3 and Ms. Dougherty starts. And the rest you
4 know.

5 Marie, can we go back to this. I need to
6 show you something else, too. If you look at
7 where that car is stopped going southbound, you
8 look at the distance in where that car has to
9 travel to go around the corner and get into the
10 pedestrian path to cross University, you'll see
11 that any driver has to make a turn. If you go
12 straight, you never get there. But if you turn
13 and it's something around the order of
14 20-something feet, you get there.

15 Well, Ms. Dougherty, who has the same
16 duties, as a cyclist, as a truck driver or as a
17 car, is making that same turn. The bicycle
18 lane has ended. And she takes that right turn
19 to go from the bicycle lane around the corner

20 into the middle of that pedestrian cross,
21 crossing University from north to south.
22 You'll hear evidence as to why Ms. Dougherty
23 made the decision that way.

24 You see, negligence is defined as what a
25 reasonable bicyclist would do in like

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1 situations. You are charged with making that
2 decision. Did this bicyclist respond
3 reasonable in the same situation? Was it
4 reasonable for her to drive that closely to the
5 truck? Is it reasonable for her to try to pass
6 the truck? Was it reasonable for her to be
7 oblivious that a truck was even there? Was it
8 reasonable to mimic and follow the truck around
9 the right and ten at the last second try to
10 take a right and turn in front of it? I think
11 you'll find it was not reasonable. It was not
12 reasonable in like situations and circumstances
13 it and it's negligent.

14 Charles Danzy is the driver of the WCA
15 vehicle. It's my understanding they will be
16 calling him tomorrow and you'll hear he has
17 been doing this for a longer time. And he will
18 tell you how he looks and what they do and what
19 a commercial driver does. And what a

20 commercial driver does is you look in your
21 mirrors and as you approach -- as you approach
22 the intersection, you start scanning what's in
23 front of you. You saw the video. You saw the
24 fellow run across. So there's a green light
25 going south and you see the fellow run right

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1 across the southbound traffic.

2 So in that intersection when you have
3 motor schoolers and the unpredictability of the
4 east/west traffic, he's scanning in front of
5 him. And Mr. Danzy will tell you tomorrow that
6 once he looked in the mirrors and didn't see
7 anyone next to him, in fact, she was behind him
8 still, he's looking in front of him. He has
9 his turn signal on. He's making the wide turn
10 to go west.

11 And at the same time, Ms. Dougherty is
12 trying to overtake the truck. And you saw the
13 fatal move that she made, which is why we are
14 here today.

15 So what do the Plaintiffs have to show
16 you? Well, they have to show you that she
17 acted reasonably. And they are going to have
18 to show you that cocaine and alcohol had no
19 impact on it. That cocaine and alcohol --

20 MR. FROHLICH: Objection. May we

21 approach, Your Honor?

22 THE COURT: Sure.

23 (The following sidebar was held out of

24 the hearing of the jury.)

25 MR. FROHLICH: Cocaine and alcohol is an
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1 affirmative defense, we don't have to show
2 anything to the jury on that. It's their
3 burden of proof. And he's trying to -- he's
4 mis-arguing the law and trying to make a
5 statement that we have to show something on
6 cocaine and alcohol. The burden is solely is
7 by the greater weight of the evidence. And
8 he's misstating the law to the jury.

9 MR. EHRENREICH: Well, they brought it up
10 in their opening. And what Dr. Goldberger is
11 going to testify to is that she had alcohol,
12 cocaine and benzo, whatever combination of the
13 two is, and it does effect. So they are going
14 to have to show that it doesn't. I can reword
15 it, if you want me, but they are going to have
16 to show that it doesn't when Dr. Goldberger
17 says that it's true.

18 THE COURT: I just don't want to confuse
19 them.

20 MR. EHRENREICH: Okay. I'll back off,

21 Your Honor. I appreciate it. Thank you.

22 MR. FROHLICH: Thank you, Your Honor.

23 (Sidebar was concluded.)

24 MR. EHRENREICH: So as the evidence comes

25 in through the State toxicologist through the
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1 State's medical examiner and you'll hear the
2 quantity that they found in her system and the
3 combination. And what the combination of the
4 two does combined with the lack of sleep,
5 combined with all else that goes on in a
6 junior's mind.

7 That's what happened. That's the
8 evidence. That's what you're going to hear and
9 that's what you're going to have to decide.

10 And that's what you're going to have to weigh
11 on the greater weight of the evidence when you
12 hear all of it after a week when all of the
13 evidence shows that Abby's decisions -- Abby's
14 decisions during those 12 hours of her life
15 were fatal. And Abby's decisions were the
16 cause of the accident.

17 Thank you.

18 * * * * *

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