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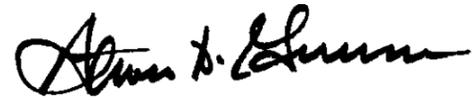
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CLERK OF THE COURT

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8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

9 JAPONICA GLOVER-ARMONT,

10 Plaintiff,

11 vs.

12 JOHN CARGILE; CITY OF NORTH LAS
13 VEGAS, a Municipal Corporation existing
14 under the laws of the State of Nevada in the
15 County of Clark; DOES I through X, inclusive;
16 and/or ROE CORPORATIONS I through X,
17 inclusive,

18 Defendants.

Case No. A-13-683211-C

Dept. No. XIX

**DEFENDANTS' REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

Hearing date: February 2, 2016

Hearing time: 9:00 a.m.

17 Defendants City of North Las Vegas (the "City") and Sergeant John Cargile ("Sergeant
18 Cargile") (collectively "City Defendants"), by and through their attorneys, hereby submit their Reply
19 in Support of Motion for Summary Judgment. This Reply is based upon the following Memorandum
20 of Points and Authorities, the papers and pleadings on file, and any oral argument the Court may
21 entertain.

22 DATED this 26th day of January, 2016.

24 NORTH LAS VEGAS CITY ATTORNEY

25 /s/ Christopher D. Craft

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1 **REPLY**

2 **I.**

3 **CARGILE’S DECISION TO PROCEED THROUGH THE RED LIGHT WHILE**
4 **RESPONDING TO AN EMERGENCY CALL WAS A DISCRETIONARY ACT.**

5 Plaintiff’s Complaint alleges that Sergeant Cargile was negligent when he decided to proceed
6 through a red light while responding to an emergency. In the present Motion, the City argues that
7 because Cargile made a decision to go through the red light, and that decision was related to public
8 policy (specifically, preventing crime and protecting the public), his actions were discretionary, and
9 he and the City are therefore immune from liability. Numerous cases were cited to support that exact
10 notion.¹ See Motion for Summary Judgment at pp. 7-10. In each of those cases, an emergency
11 responder proceeded through a red light, resulting in an accident, but was found to be immune from
12 suit because the actions were discretionary. As the court explained in Colby v. Boyden, 400 S.E.2d
13 184 (Va. 1991),

14 [A] police officer, engaged in the delicate, dangerous, and potentially deadly job of vehicular
15 pursuit, must make prompt, original, and crucial decisions in a highly stressful situation.
16 Unlike the driver in routine traffic, the officer must make difficult judgments about the best
17 means of effectuating the governmental purpose by embracing special risks in an emergency
18 situation. Such situations involve necessarily discretionary, split-second decisions balancing
19 grave personal risks, public safety concerns, and the need to achieve the governmental
20 objective.

21 Id. at 187. In response, Plaintiff ignores all of those cases, making no effort to distinguish them,
22 because she cannot dispute the logic and fairness of those rulings.

23 Instead, Plaintiff relies on Williams v. City of North Las Vegas, 91 Nev. 622, 541 P.2d 652
24 (1975), which has no bearing on the present case. In Williams, where a wrongful death claim was
25 brought against the City for its failure to inspect for a dangerous condition. The City was liable
26 because it had a *contractual* duty to inspect as part of its agreement with Nevada Power Company,
27 and the Nevada Supreme Court found that the decedent was a third-party beneficiary of that contract.
28 Id. at 625-627. The holding in Williams has absolutely nothing to do with discretionary immunity.

¹ See Vassallo ex rel. Brown v. Majeski, 842 N.W.2d 456 (Minn. 2014), Colby v. Boyden, 400 S.E.2d 184 (Va. 1991), Terrell v. Larson, 2008 WL 2168348 (Minn. 2008), Muse v. Schleiden, 349 F. Supp. 2d 990, 996-98 (E. D. Va. 2004), Rivas v. City of Houston, 17 S.W.3d 23 (Tex.App. 2000), Pletan v. Gaines, 494 N.W.2d 38 (Minn.1992).

1 Plaintiff also relies on Johnson v. Brown, 75 Nev. 437, 345 P.2d 754 (1959), and Avery v.
2 Gilliam, 97 Nev. 181, 625 P.2d 1166 (1981), but these cases also do not involve discretionary
3 immunity. Johnson is of no instructive use to the court as it *predates* NRS 41.032, which was not
4 enacted until 1965. Discretionary immunity as we know it was not available as a defense. Avery is
5 no better, as the errant driver was not a public employee. Rather, he was employed by Mercy
6 Ambulance, and as such would not have discretionary immunity under NRS 41.032.² None of the
7 cases relied upon by Plaintiff address discretionary immunity, and therefore are of no use to the Court
8 in this matter.

9 The overwhelming weight of authority before the Court supports the City’s position. Cargile,
10 as a public employee responding to an emergency, was engaged in a discretionary act, and therefore
11 is immune from liability.

12 II.

13 **CARGILE’S DECISION TO PROCEED THROUGH THE RED LIGHT WAS** 14 **DISCRETIONARY UNDER NEVADA LAW AND SUBJECT TO DISCRETIONARY** **IMMUNITY.**

15 Next, Plaintiff completely fails to distinguish Nevada law regarding discretionary immunity.
16 Under Martinez v. Maruszczak, 123 Nev. 433, 446–47, 168 P.3d 720, 729 (2007), to receive
17 discretionary-act immunity under NRS 41.032(2), a public employee's decision “must (1) involve an
18 element of individual judgment or choice and (2) be based on considerations of social, economic, or
19 political policy.” Id. at 446-447. “[D]ecisions at all levels of government, including frequent or
20 routine decisions, may be protected by discretionary-act immunity...” Id. at 447.

21 As discussed in Martinez, and applied in Ransdell v. Clark County, 124 Nev. 847, 192 P.3d
22 756 (2008), Bryan v. Las Vegas Metropolitan Police Dept., No. 08-15992, 2009 WL 3249742 at *2
23 (9th Cir. Oct. 7, 2009), Seiffert v. City of Reno, 2014 WL 605863, and Gonzalez v. Las Vegas

25 ² Furthermore, the ruling in Avery hinged on the driver of the ambulance entering the
26 intersection without sirens. Doing so was a clear violation of NRS 484.261 as it existed at that
27 time, as the statute (eventually re-titled as NRS 484B.700) required both “audible and visual
28 signals.” NRS 484.261 was amended in 2001 to permit either (1) audible and visual signals, *or*
(2) visual signals only. In the present case, Plaintiff does not dispute that Cargile had his
emergency lights on, and therefore he was in compliance with NRS 484B.700.

1 Metropolitan Police Department, 2013 WL 7158415, discretionary immunity now applies to practical,
2 day-to-day decisions by officers on the ground, so long as those decisions are related to or in
3 furtherance of a public policy. In Ransdell, code enforcement officers made a judgment call as to
4 how to respond to a code violator. Plaintiff misleads the Court by stating, “The Randall [sic] case
5 did not involve the individual actions of the county employees, but rather, the overall policy for
6 abatement.” Opposition at 11. In reality, the Ransdell opinion stated, “[T]he actions of the Clark
7 County inspectors in this case were discretionary because the abatement procedure required the
8 inspectors to use their own judgment and conduct individual assessments of the conditions on
9 Ransdell's property[.]” Id. at 856. Again, officers made a judgment call in furtherance of a public
10 policy and were immune from suit.

11 The same general rule was applied in Bryan, supra, in which the District Court found that the
12 municipality and its officers were entitled to discretionary immunity under NRS 41.032 because “the
13 scope and manner in which the agency conducts an investigation” involve discretionary decisions that
14 “(1) [involve] an element of individual judgment or choice and (2) [are] based on considerations of
15 social, economic, or political policy”). Plaintiff declines to address Bryan in any way in her
16 Opposition.

17 Similarly, in Seiffert, police officers made a judgment call as to how to secure a crime scene,
18 and in Gonzalez, police officers made a judgment call as to whether to arrest an individual. In both
19 cases, the officers were found to be immune from liability for their actions. The Nevada Supreme
20 Court in those cases never got to the question of whether or not the officers were negligent. Plaintiff
21 attempts to distinguish these cases based on them being factually different, but the same principle was
22 applied there as should apply here: When officers are using their judgment as to how to do their jobs,
23 which further the public policy of enforcing the law, they enjoy discretionary immunity.

24 In the various Nevada cases listed above, and the present case, an officer making a judgment
25 call, while performing his duties in furtherance of public policy, is immune from suit.

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III.

CARGILE’S ACTIONS WERE IN FURTHERANCE OF PUBLIC POLICY.

Plaintiff also argues that an officer’s decision as to how to proceed through a red light when responding to an emergency does not relate to any social, economic, or political policy, and therefore is not subject to discretionary immunity. Here, Plaintiff completely misses the point of Martinez, which affords immunity to acts which are based on decisions and relate to such policies. Cargile’s decisions here were related to policies of public safety, preventing crime, and saving lives. Because he made a judgment call in furtherance of these policies, his actions are subject to discretionary immunity. Plaintiff makes no effort to explain how Cargile’s actions in attempting to fight crime and save lives, which he is sworn to do as a member of the City’s police department, are not related to public policy.

Ignoring the obvious policy considerations which are at play when a police officer responds to an emergency, Plaintiff prefers to liken Cargile’s actions to being “asleep at the wheel,” and then asserts that under the City’s rationale, no police officer would ever be negligent for anything. Opposition at 10. Plaintiff’s position here is simply incorrect. Discretionary immunity applies where an officer’s decisions relate to public policy – which would apply here, where Cargile made multiple split-second decisions while responding to an emergency. If he were “asleep at the wheel,” there would be no decision being made, and he would not be doing anything related to public policy such as saving lives or preventing crime.

IV.

BECAUSE CARGILE IS NOT LIABLE FOR NEGLIGENCE, THE CITY CANNOT BE VICARIOUSLY LIABLE.

As set forth in the Motion, Plaintiff has no claim based on negligent hiring, training, supervision, or retention. As stated in Bryan, supra, decisions relating to the hiring, training, and supervision of employees usually involve policy judgments which are protected by discretionary immunity. Id. at *2. See NRS 41.032(2); see also Beckwith v. Pool, 2013 WL 3049070 at *6–7 (D. Nev. Jun. 17, 2013). Plaintiff does not address this argument in her Opposition.

///

1 As for vicarious liability, Plaintiff seeks to distinguish Village Development Company v. Filice,
2 90 Nev. 305, 310, 526 P.2d 83, 86 (1974), which stated, “Where no basis exists to charge an
3 employer, other than vicarious liability for the imputed negligence of its agent, courts have often held
4 that a judgment on the merits in the agent’s favor bars further action against the employer.” But
5 Plaintiff only points out that the factual background of Village Development is different, without
6 making any attempt to refute the logic of the holding. Simply put, if Cargile is not found negligent,
7 then there is no liability that can pass through to the City. Furthermore, discretionary immunity
8 arises from NRS 41.032, which applies to claims against an “officer or employee of the State or any
9 of its agencies or political subdivisions.” The City is a subdivision of the State, and Cargile is its
10 officer. Both Cargile and the City enjoy discretionary immunity from Plaintiff’s claims.

11 **V.**

12 **CONCLUSION**

13 Cargile was engaged in a discretionary act because (1) he made a judgment call as to how to
14 respond to an emergency call, including his decision regarding whether and how to proceed through
15 the red light, and (2) his actions were in furtherance of public policy, specifically the City’s policies
16 of enforcing the law and protecting the public. Accordingly, both Cargile and the City enjoy
17 discretionary immunity from all of Plaintiff’s claims, and summary judgment is appropriate.

18 DATED this 26th day of January, 2016.

19 NORTH LAS VEGAS CITY ATTORNEY

20
21 /s/ Christopher D. Craft
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28 *John Cargile and City of North Las Vegas*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that service of a true and correct copy of the **DEFENDANTS'**
3 **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was made on the 26th day
4 of January, 2016, as indicated below:

- 5 By electronic service, pursuant to N.E.F.C.R. 9
6 By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P.
7 5(b) addressed as follows
8 By facsimile, pursuant to EDCR 7.26 (as amended)
9 By hand delivery

10 To the parties listed below:

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15 *Attorneys for Plaintiff*

20 /s/ Michelle T. Harrell
21 An Employee of North Las Vegas
22 City Attorney's Office
23
24
25
26
27
28

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAPONICA GLOVER-ARMONT,	.	CASE NO. A-13-683211-C
	.	
Plaintiff,	.	DEPT. NO. XIX
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
JOHN CARGILE, et al.,	.	
	.	
Defendants.	.	
.	

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TUESDAY, FEBRUARY 2, 2016

APPEARANCES:

FOR THE PLAINTIFF:	ADAM GANZ, ESQ.
FOR THE DEFENDANTS:	CHRISTOPHER D. CRAFT, ESQ.

COURT RECORDER:

CHRISTINE ERICKSON
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 2, 2016, 9:06 A.M.

2 THE COURT: Good morning, everybody.

3 Let's see, on page 1, this is Japonica Glover v.
4 John Cargile and North Las Vegas. This is A-683211. For the
5 record, can you state your name?

6 MR. CRAFT: Good morning, Judge. Chris Craft for
7 the City of North Las Vegas.

8 MR. GANZ: Adam Ganz on behalf of the plaintiff --

9 THE COURT: Okay.

10 MR. GANZ: -- Ms. Glover-Armont.

11 THE COURT: Mr. Craft, are you also representing
12 John Cargile?

13 MR. CRAFT: Yes, sir.

14 THE COURT: Okay. This is Defendants' Motion for
15 Summary Judgment. I've had an opportunity to review the
16 moving papers. I think the issue that I'm looking at,
17 basically, both of you are in opposite positions, is with
18 respect to whether or not -- what evidence can be supported
19 that the red lights and sirens were on in the vehicle, so.

20 MR. CRAFT: Well, there is a dispute, a factual
21 dispute on that point.

22 THE COURT: Um-hum.

23 MR. CRAFT: Our officer says he had his lights and
24 sirens going --

25 THE COURT: Right.

1 MR. CRAFT: -- like he always does on every single
2 Code 3.

3 THE COURT: Well, isn't there something on the
4 vehicles that -- that supports that?

5 MR. CRAFT: I believe so. I think that it's -- it's
6 almost --

7 THE COURT: But wasn't that something that was
8 presented in discovery other than just the officer's
9 testimony?

10 MR. CRAFT: I think it is an automatic thing, Judge.
11 And I think that -- he does not respond to calls unless those
12 are going with the lights and sirens.

13 THE COURT: Well, I know, but that's --

14 MR. CRAFT: He has control over it.

15 THE COURT: -- that's the policy. But we know that
16 they have to activate them, themselves.

17 MR. CRAFT: Well, he has control over it to an
18 extent. And I think what he said he did here was as he
19 approached the intersection there is a separate button they
20 can hit to where they can make sort of a vibrating thing so
21 you can feel it --

22 THE COURT: Um-hum.

23 MR. CRAFT: -- and hear it at the same time. So
24 that's what he did.

25 THE COURT: I know, but isn't there -- what I'm

1 asking, isn't there something that documents that like a --
2 like through the -- through dispatch or something like that
3 that documents it?

4 MR. CRAFT: Sort of like a black box situation in
5 the vehicle?

6 THE COURT: Yeah. I thought there --

7 MR. CRAFT: This vehicle did not have that.

8 THE COURT: Oh.

9 MR. CRAFT: That was not present here.

10 THE COURT: Okay.

11 MR. CRAFT: And so we do have different testimony.

12 THE COURT: Well, then --

13 MR. CRAFT: It differs in a very subtle way because
14 what she says initially is that she didn't hear it and then
15 she changed it to he didn't have his sirens on. So it's
16 like --

17 THE COURT: Okay.

18 MR. CRAFT: -- a little bit of a dispute there. But
19 it's not a material factual dispute, Judge.

20 THE COURT: Well, it is. It is, because -- because
21 if the jury believes that he didn't have his lights and siren
22 on, does he still have the discretionary authority to enter
23 the red light without it even though he is going to a call?

24 MR. CRAFT: He does, Judge, because first of all he
25 is still in compliance with NRS 44B.700 which allows you to go

1 with either lights and sirens or just lights. So he is not
2 violating any law by going through this.

3 THE COURT: Yeah, but if -- okay, or just lights.

4 MR. CRAFT: Or just lights.

5 THE COURT: That's what I'm saying. But isn't there
6 a dispute as to whether or not he even had his lights on?

7 MR. CRAFT: No.

8 THE COURT: She's --

9 MR. CRAFT: She said she --

10 THE COURT: She's saying --

11 MR. CRAFT: -- saw his lights.

12 THE COURT: What's that?

13 MR. CRAFT: She saw his lights when she saw the
14 vehicle so there's no violation of law going on here.

15 THE COURT: Okay.

16 MR. CRAFT: And if you want to go to the next level
17 about whether it's like a violation of what our police policy
18 and procedure is --

19 THE COURT: Um-hum.

20 MR. CRAFT: -- that's not the sort of policy that
21 we're talking about when it comes to discretionary immunity.

22 THE COURT: Right.

23 MR. CRAFT: The policies we're talking about there
24 are, enforce the law, prevent crime, prevent the public, these
25 over-arching sort of large policies. And even our boots in

1 the ground acts that are furtherance of those policies are
2 immune.

3 THE COURT: Um-hum. Yeah, but --

4 MR. CRAFT: That's --

5 THE COURT: -- doesn't the immunity go to -- they
6 have to do certain things before they can accept the immunity,
7 not just be responding to a call?

8 MR. CRAFT: All he has to do is under Martinez v.
9 Maruszczak there's two elements. One, he has to be making a
10 conscious decision, and that's where they're talking about
11 sleeping at the wheel. He has to make so many split second
12 decisions when he's going --

13 THE COURT: Right.

14 MR. CRAFT: -- on this -- responding to a call; what
15 route to take, whether to go through a red light, how to
16 proceed through the red light. These are all decisions he has
17 to make on the fly.

18 Second, it has to be in furtherance of a public
19 policy. And the policy here is -- the policies here are
20 obvious; fight crime, prevent crime --

21 THE COURT: Yeah.

22 MR. CRAFT: -- protect the public, that's all we
23 have to meet and he does that here. And we have given you
24 several cases --

25 THE COURT: Yeah, but --

1 MR. CRAFT: -- from around the county.

2 THE COURT: -- I'm okay with the second aspect of
3 that. I don't think there's any -- I don't think there's any
4 dispute with that --

5 MR. CRAFT: Okay.

6 THE COURT: -- that he was going in furtherance of
7 his position fight crime and protect the public. At this
8 point, I'm not. I haven't heard from the plaintiffs yet. But
9 the first one is the one that I had the issue with. Isn't
10 there set policies in order to exercise that discretion? You
11 know, he makes the decision, and he's made that split second
12 decision, whatever, to act.

13 MR. CRAFT: Um-hum.

14 THE COURT: But then he has to do certain things in
15 order to place the public safe.

16 MR. CRAFT: Well --

17 THE COURT: And that's the lights and the sirens.

18 MR. CRAFT: Right. Well, he even has the discretion
19 as to decide what is due care. And we've provided case law to
20 the Court that supports that.

21 Every decision that he makes, all he has to do is
22 make a conscious decision. That's what's supported in Nevada,
23 under Ransdell, code enforcement officers making a judgment
24 call as to what is a -- what is a public nuisance or what is,
25 you know, this guy having a junkyard on his property.

1 We offered you Seiffert where they're making a
2 judgment call as to how to tape off a crime scene.

3 We offered you Gonzalez where police are immune from
4 liability for a judgment call on a rescue of an individual
5 even though it turned out to be the wrong guy.

6 THE COURT: I know, but the judgment in this
7 particular case, depend on what is believed factually, is a
8 judgment -- you're going to -- for purposes of protecting the
9 public and safety of the public and responding to crime, and
10 then in response, he does something that puts the public in
11 peril when he's going through a red light without notifying
12 individuals that he's -- that he's doing that, going for a
13 call. So that's why --

14 MR. CRAFT: Well, he -- well, first of all, he did
15 notify them by having his lights on at the very --

16 THE COURT: Okay. That's -- that's --

17 MR. CRAFT: -- least, undisputed, yeah, and he says
18 he has his sirens on. I know that's a factual dispute.

19 THE COURT: Okay.

20 MR. CRAFT: But the decision is how to proceed. And
21 we can't have -- and the whole point of all those cases that I
22 cited, six cases from around the country where they said,
23 like, look, we cannot have people second guessing our officers
24 in a job that is already hard enough. They are putting their
25 life on the line every single day. This is a life in the

1 situation. They're responding to shots fired. He's --

2 THE COURT: Yeah.

3 MR. CRAFT: -- we've made the call. He's got to get
4 there as quickly and safely as he can using his best judgment.

5 And we can't have in the back of his mind saying, oh
6 my gosh, what if I get in a car wreck, I might be held
7 personally civilly liable. We can't have him delaying,
8 touching the brakes. That's that situation.

9 And it's also very weird factually here. This
10 particular intersection, we're going north on 5th, we're
11 turning left on Cheyenne. There is this massive pile of dirt
12 that's a golf course right there.

13 THE COURT: Um-hum.

14 MR. CRAFT: And so you cannot possibly tell if there
15 are cars coming the other way until you pull into the lane by
16 a couple of feet which is what he did.

17 THE COURT: Okay.

18 MR. CRAFT: Look, he had to use so much judgment on
19 the split second decisions over and over in order to best
20 respond to this call, in order to save a life, protect a life,
21 stop a crime.

22 THE COURT: Okay.

23 MR. CRAFT: And yeah, we had a fender bender result.

24 THE COURT: Okay. All right. Thank you.

25 MR. CRAFT: Thank you, Judge.

1 MR. GANZ: Judge, there are some factual things that
2 need to be discussed.

3 And more specifically with regards to your concerns
4 with the statute itself. The statute itself in subsection (4)
5 of 44B.700(4) specifically says, "The provisions of this
6 section do not relieve the driver from the duty to drive with
7 due regard for the safety of all persons and do not protect
8 the driver from the consequences of the driver's reckless
9 disregard of the safety of others."

10 So you're exactly right. Just because he flicks a
11 switch on and says that there's lights going on, or even if he
12 had the sirens on, I'm not saying that he did, because I don't
13 believe that that's actually accurate.

14 But let's just say that. Does that mean that he can
15 just go straight down Las Vegas Boulevard, right down the
16 center of the road? Does that mean he's entitled to do that?
17 At some point in time, it's not discretionary.

18 Discretionary, when he decided to go after somebody,
19 that's discretionary, okay? If he was chasing my client and
20 made a determination to go ahead and hit her at the front of
21 his car or something like that, that's discretionary.

22 To go and chase after this individual, whoever he
23 was chasing after -- he wasn't chasing anybody by the way. He
24 was going to a specific location. So it wasn't like he was
25 actually, you know, on somebody's tail and had to actually

1 speed up in order to get them.

2 He knew the location that the shots were fired at he
3 was going to a specific location. At some point in time,
4 discretion does not allow him immunity from making decisions
5 that are in disregard for the specific policies in which
6 they're trying to protect.

7 In this particular instance, by the way, they own
8 that -- that dirt lot they're talking about. He knew that he
9 could not see when he went to that particular direction of
10 travel. There was a dozen other places that he could have
11 gone in order to go around that to where he could actually go.

12 He chose to go that particular route that particular
13 day. That's not discretionary, okay? When he --

14 THE COURT: Well, would you -- I disagree with you
15 there.

16 MR. GANZ: Okay.

17 THE COURT: If the officer is picking the most
18 direct route that would be discretionary, would it not?

19 MR. GANZ: I'm not sure that that's what his mindset
20 was at that particular time.

21 THE COURT: Okay. So that -- isn't that something
22 that was borne out in the discovery?

23 MR. GANZ: Well, no, he said that -- he said that
24 was the route they usually took because there was less
25 traffic.

1 THE COURT: Okay.

2 MR. GANZ: But that doesn't necessarily mean it's
3 the safest. And you certainly have that as a policy within
4 North Las Vegas. And by the way, this doesn't --

5 THE COURT: Well, just by that answer, wouldn't that
6 be discretionary? I took this route because it was the
7 safest, or I took this route because it was the most direct
8 route, or I took this route because there was less lights,
9 that's discretionary.

10 MR. GANZ: So when does it stop then? When does it
11 stop?

12 THE COURT: I don't know. It's your -- it's --

13 MR. GANZ: I shot this guy because I thought he
14 didn't look good, but that was my discretion.

15 THE COURT: Well --

16 MR. GANZ: You know, I ran through this
17 intersection --

18 THE COURT: Okay.

19 MR. GANZ: -- without my lights on because I didn't
20 want, you know, the -- the neighbors to be woken up.

21 THE COURT: Okay. How is it --

22 MR. GANZ: I mean, at what point in time is it --

23 THE COURT: -- is there in this -- but we're talking
24 factually.

25 MR. GANZ: Yes.

1 THE COURT: It's subject to the facts. So in this
2 particular case what defense had indicated is that he entered
3 the intersection slightly in order to see and then proceeded
4 and that's when the accident occurred. Is that correct? Am I
5 understanding the facts right?

6 MR. GANZ: No, he --

7 MR. CRAFT: It was -- well -- I don't think he can
8 speak to this. I think it was --

9 MR. GANZ: He's pointing at you, so.

10 MR. CRAFT: -- I think it was unfortunate timing.
11 We pulled in off -- about 1 or 2 feet --

12 THE COURT: Uh-huh.

13 MR. CRAFT: -- to -- because that's -- he had to
14 pull up that far to see --

15 THE COURT: To see.

16 MR. CRAFT: -- at all.

17 THE COURT: Okay.

18 MR. CRAFT: That's when she hit her brakes. It's
19 just unfortunate timing, just --

20 MR. GANZ: Yeah.

21 THE COURT: So he was already out in the
22 intersection and then she come --

23 MR. CRAFT: He pulled out to see, she hit her
24 brakes, slid into him.

25 MR. GANZ: No, that's not exactly -- exactly what he

1 testified to. What he testified to, which I don't -- I don't
2 know what a jury is going to believe about that.

3 THE COURT: Um-hum.

4 MR. GANZ: He testified he stopped a few feet
5 beforehand, looked, inched forward, inched forward, inched
6 forward, inched forward, and supposedly was in the
7 intersection when he decided to go forward. That's what he
8 claims.

9 THE COURT: Okay.

10 MR. GANZ: And I don't --

11 THE COURT: And his lights are on?

12 MR. GANZ: -- think the jury's going to buy that.
13 That's what he claims, lights and siren. That's what he
14 claims.

15 THE COURT: And she said she saw lights at that
16 point?

17 MR. GANZ: She said she saw it just immediately
18 right before she hit him.

19 THE COURT: Okay.

20 MR. GANZ: And we don't know specifically which
21 lights we're talking about here either.

22 THE COURT: Um-hum.

23 MR. GANZ: And she clearly says there is no siren
24 on. Clearly says there's no siren on.

25 THE COURT: Okay.

1 MR. GANZ: So the reality --

2 THE COURT: But the lights were on and she's
3 entering --

4 MR. GANZ: Well, you're -- you're picking and
5 choosing parts of the -- the statute then to apply to, because
6 if it says that that particular statute, then that means he's
7 satisfying the statute.

8 The very next sentence in the statute says, he must
9 not -- he must -- "this section does not relieve the driver
10 from duty to drive with due regard for the safety of others on
11 the roads."

12 So how do you reconcile the two?

13 THE COURT: So your argument is, is that you have to
14 have lights and siren in order to be --

15 MR. GANZ: No. My -- my argument is, she's on a
16 green light --

17 THE COURT: Um-hum.

18 MR. GANZ: -- traveling through an intersection.

19 THE COURT: Um-hum.

20 MR. GANZ: How does this wreck occur? He runs a red
21 light and is not being safe about that. That's not
22 discretionary.

23 THE COURT: Okay. Where was the damage to the
24 vehicles?

25 MR. GANZ: Whose vehicles, his?

1 THE COURT: Well, his vehicle?

2 MR. GANZ: Right to the front of hers and to the
3 left quarter panel of his.

4 THE COURT: Okay. So he eased out?

5 MR. GANZ: Actually, more like his into her. If I
6 remember correctly, it was actually the front quarter panel of
7 his into the front kind of -- it was almost at a "T", almost
8 at a point --

9 THE COURT: Okay.

10 MR. GANZ: -- where like her right front and his
11 left front if I remember correctly.

12 THE COURT: Did it appear that --

13 MR. GANZ: And you can correct me if I'm wrong.

14 THE COURT: Did it appear that the -- that the squad
15 car struck the other car or the other car struck the squad
16 car?

17 MR. CRAFT: We're going to go ahead and say that's a
18 factual dispute.

19 THE COURT: Okay.

20 MR. CRAFT: We have competing experts.

21 THE COURT: Okay.

22 MR. CRAFT: It's -- it basically is --

23 THE COURT: Then that right there, I think, is -- in
24 my opinion, and right now that's what's mattering, is that's
25 the dispute.

1 If, in fact, the squad car is out in the
2 intersection and gets hit by the other vehicle with the lights
3 going then, you know, I think that you're probably on better
4 grounds.

5 But if the squad car strikes that vehicle, then
6 there's a good argument that the plaintiff in this matter
7 didn't observe it and couldn't have heard it, or didn't hear,
8 because he said the sirens weren't on.

9 MR. CRAFT: Judge, I believe --

10 THE COURT: So that's --

11 MR. CRAFT: -- that's contrary to the cases that
12 we've cited from around the country. We gave you six cases to
13 where -- in far more egregious situations than this.

14 THE COURT: I know, but under the circumstances,
15 under what the factual scenario that I put forth, if that's
16 what comes out, if the squad car -- if the person's -- the
17 plaintiff in this matter is already in the intersection and
18 the squad car comes through and T-Bones them, by your same
19 argument, the squad car is protected.

20 MR. CRAFT: That's not -- well, he is protected.
21 But that's not -- that's not what she testified to.

22 THE COURT: Okay.

23 MR. CRAFT: He had pulled into the intersection.
24 She saw him a hundred --

25 THE COURT: Yeah, well, can you tell me, did she

1 strike his vehicle or did he strike her vehicle?

2 MR. CRAFT: He was already in the intersection when
3 she saw him. That's why she slammed on her brakes and slid
4 120 feet toward his vehicle. So it's impossible for -- to say
5 that he was somehow blowing through this intersection the way
6 they say over and over in their --

7 THE COURT: Okay. You have --

8 MR. CRAFT: -- in their opposition.

9 THE COURT: -- you actually have skid marks and all
10 that --

11 MR. CRAFT: Yes.

12 THE COURT: -- that she went 120 feet before she
13 strikes his vehicle?

14 MR. CRAFT: Yes, we do. So she saw him, she saw his
15 lights. And we're talking about, you know, due care here.

16 THE COURT: Um-hum.

17 MR. CRAFT: And I believe as we've cited in our
18 case, in our motion, it's his discretion to decide what is due
19 care even. All these cases that they're citing don't have
20 anything to do with discretionary immunity. They're citing
21 to --

22 THE COURT: Well, isn't that the factual position
23 that the plaintiff and the defense would always be inapposite
24 with, what is actually due care? So you're saying it just --
25 it's the officer's unfettered discretion to decide whether or

1 not it's due care. If he wants to 200 miles an hour down a
2 residential street and he thinks that's due care, under your
3 scenario, the plaintiff would never have a claim.

4 MR. CRAFT: I don't think so. I think that's taking
5 it very much to extremes. First of all, cars can't go 200
6 miles an hour.

7 THE COURT: Well, I did that, because that was the
8 argument you just made, is that it's in the officer's
9 discretion to determine what due care is. So, I put it to
10 that extreme to see whether or not -- what your position would
11 be.

12 MR. CRAFT: Well, the only standard that we have
13 under Nevada law is asleep at the wheel. That's what they
14 talk about in Martinez v. Maruszczak where someone's making --
15 just being unconscious at the wheel. And I haven't seen any
16 cases where someone is asleep at the wheel, thank God.

17 THE COURT: All right.

18 MR. CRAFT: But we do have cases where we are
19 liable. We do. And I --

20 THE COURT: Yeah, but the term "unconscious" is also
21 a -- also a possible -- it's used unilaterally with actually
22 being asleep or not paying attention.

23 MR. CRAFT: Um-hum.

24 THE COURT: So that's the factual dispute. The
25 plaintiff is claiming that this officer wasn't exercising

1 proper due care.

2 MR. CRAFT: Well, he just -- you have a
3 demonstration of what -- their version of events where he's
4 inching forward looking and to a point where he can actually
5 see where there's a vehicle coming.

6 THE COURT: Yeah.

7 MR. GANZ: That wasn't my version. That was the
8 officer's version. I think it's BS, but, you know, we'll see
9 if the jury believes him or not.

10 THE COURT: Yeah, but that -- and your client
11 though, in her testimony indicated that she actually saw the
12 lights and then -- so that's what -- she had to have. That's
13 what caused her to hit her brakes a hundred and --

14 MR. GANZ: Yeah, I mean --

15 THE COURT: -- sixty feet.

16 MR. GANZ: -- I certainly don't believe that little
17 description because if -- certainly, if he was looking at --
18 and you've got a car coming down a road there and he's inching
19 forward, and inching forward, and he's in the middle of it, he
20 doesn't need to pull forward. I mean, clearly, I mean, it
21 doesn't make any sense and I don't think the jury's going to
22 buy it, so.

23 MR. CRAFT: I don't think they're --

24 THE COURT: Well, your client wouldn't have to abide
25 by the officer's --

1 MR. GANZ: Well, no, he said he was --

2 THE COURT: -- entrance (indecipherable)?

3 MR. GANZ: -- only a few feet above. So if this is
4 the front of the intersection he's only up to here. It's not
5 like he's three -- she's the -- in the third lane.

6 THE COURT: Well, what's -- what is --

7 MR. GANZ: She's in the third lane.

8 THE COURT: -- what does the accident diagram
9 support?

10 MR. CRAFT: Well, I mean, they've paid somebody to
11 say it supports their purview and we have someone and our
12 officer.

13 THE COURT: Well, what's that? I'm sorry, I'm
14 sorry. I didn't -- they paid somebody to say?

15 MR. CRAFT: To say that our officer was somehow
16 blowing through this intersection. And it's just -- it's --

17 THE COURT: I know, but doesn't the accident report
18 show where the actual collision took place?

19 MR. CRAFT: Yes.

20 MR. GANZ: So --

21 THE COURT: And where is that in regards to the
22 intersection? What lane --

23 MR. CRAFT: It supports our --

24 THE COURT: -- what lane was --

25 MR. CRAFT: It supports our theory.

1 THE COURT: -- she in versus --

2 MR. CRAFT: We had pulled into her lane by about a
3 foot. She hit her brakes and slid into our car.

4 THE COURT: I know, what lane was she in?

5 MR. CRAFT: In the closest driving lane.

6 MR. GANZ: No.

7 THE COURT: To what, closest driving lane to the
8 curb or closest driving lane to the center?

9 MR. GANZ: No, no.

10 MR. CRAFT: I --

11 MR. GANZ: She was -- she was not -- it was not the
12 first lane, Judge.

13 THE COURT: Well, address me.

14 MR. GANZ: It was not the first lane, Judge. That's
15 my recollection of it.

16 THE COURT: Okay.

17 MR. GANZ: I don't have it --

18 THE COURT: The first lane would be the --

19 MR. GANZ: -- in front of me.

20 THE COURT: -- right lane and my opinion -- and my
21 understanding, the second lane is probably the middle lane and
22 then the -- I'm familiar with that -- with that area. And
23 then there's another lane, and then there's a turning lane.

24 MR. CRAFT: Right.

25 THE COURT: So what lane was she in?

1 MR. CRAFT: The farthest driving lane to the south.
2 So the first one that he had to enter into to be able --

3 THE COURT: Okay.

4 MR. CRAFT: -- to see if there was a vehicle there.

5 THE COURT: All right.

6 MR. CRAFT: And, you know, if we're going to have
7 competing events, look, you're getting right to the point.
8 They cannot dispute these skid marks. And she saw the
9 vehicle, she saw his emergency lights, hit her brakes and slid
10 forward. And whether he was moving one mile an hour at that
11 point or whether he was stopped doesn't really matter.

12 THE COURT: Okay. And how far out into the
13 intersection was she -- was he, I mean?

14 MR. CRAFT: About a foot.

15 THE COURT: And then the front -- the front of her
16 vehicle struck his left front --

17 MR. CRAFT: Yes.

18 THE COURT: -- quarter panel? Did she strike it
19 behind the wheel or in front of the wheel?

20 MR. CRAFT: In front of the wheel.

21 THE COURT: Towards the bumper?

22 MR. CRAFT: Yes.

23 MR. GANZ: Judge, I'm not convinced that's accurate,
24 but I'm looking for -- I'm looking for the diagram. My memory
25 was that she was in either the middle or the left lane.

1 THE COURT: Okay.

2 MR. GANZ: And, I mean, that's --

3 THE COURT: You mean --

4 MR. CRAFT: Oh, wow.

5 THE COURT: -- to the center?

6 MR. GANZ: I could be wrong. I'm just going --

7 THE COURT: All right.

8 MR. GANZ: -- from my memory of taking these
9 depositions and it's been a while so.

10 THE COURT: This is what I'm going to do. Before I
11 make my mind up on this, I want those issues answered.

12 MR. GANZ: Okay.

13 THE COURT: Okay? As to the location, what the
14 diagram shows, and if you can provide me with a diagram I'll
15 even look at it that route -- way and then I'll see if that
16 assists me in making my decision, okay?

17 MR. GANZ: Judge, just for clarification purposes,
18 too, they threw in like one paragraph in the Reply that says
19 that the City shouldn't be liable either.

20 THE COURT: Um-hum.

21 MR. GANZ: We have claims for negligent supervision,
22 negligent hiring, none of that stuff was even addressed
23 remotely in this --

24 THE COURT: Well --

25 MR. GANZ: -- in these motions at all, and I don't

1 presume that you're just going to bootstrap the --

2 THE COURT: The immunity argument?

3 MR. GANZ: -- yeah, to -- to saying the City's out
4 completely.

5 THE COURT: Well, if the -- if the driver is immune,
6 how does it reach then further to the City?

7 MR. CRAFT: Exactly, Judge.

8 MR. GANZ: But he's not immune -- they're not immune
9 from negligent supervision, negligent hiring.

10 THE COURT: I know, but you'd have to assume then
11 that any immunity that applies to the driver wouldn't apply at
12 all to the North Las Vegas police -- I mean, the North Las
13 Vegas because you're saying that they negligent hired,
14 negligent --

15 MR. GANZ: No. No, that's not what I'm --

16 THE COURT: I --

17 MR. GANZ: What I'm saying is, on the particular --
18 if you find that he is -- if you find that he is immune then
19 maybe a vicarious liability cannot attach, I agree. However,
20 you can't say that our direct claims against the City for
21 negligent hiring, supervision and policies that they have,
22 those --

23 THE COURT: Yeah, but don't you have to establish a
24 cause of action with regards to the driver in order to reach
25 the City?

1 MR. GANZ: My client was injured because they have a
2 bad policy -- let's just assume that this guy was a felon and
3 they hired him anyway, right?

4 MR. CRAFT: Oh, good God, Judge.

5 MR. GANZ: I mean, of course that's not --

6 THE COURT: Okay.

7 MR. GANZ: -- that's not -- that's not the --

8 THE COURT: Well, I'll hear that out.

9 MR. GANZ: -- the case. Let's just assume that he
10 was, right?

11 THE COURT: Okay.

12 MR. GANZ: And my client was injured because this --
13 this -- they shouldn't have had him on the Force.

14 THE COURT: Okay.

15 MR. GANZ: How does that have anything to do with
16 this specific act that he might be immune for?

17 MR. CRAFT: Judge --

18 THE COURT: Because the immunity would carry over.

19 MR. CRAFT: All right. I think we need to better
20 fetter that out for you, Judge.

21 THE COURT: I'll tell you what; I'll give you an
22 opportunity to brief that further.

23 MR. CRAFT: Okay.

24 THE COURT: But I'm --

25 MR. CRAFT: Judge --

1 THE COURT: You're going to be hard pressed to get
2 around that argument.

3 MR. GANZ: Okay.

4 MR. CRAFT: I can save you a step.

5 THE COURT: Okay.

6 MR. CRAFT: What he's saying is like negligent
7 hiring, negligent retention, negligent supervision is a whole
8 separate thing.

9 THE COURT: Uh-huh.

10 MR. CRAFT: The reason he's started saying this now
11 is because they forgot to address that in their opposition.
12 We brought it up in our motion on page 11, "As explained in
13 Bryan supra, the decisions related to the hiring, training and
14 supervision of employees usually involve policy and judgments
15 which are protected by discretionary immunity." We cited that
16 case. We've address their claims. They forgot to mention
17 that in their opposition.

18 THE COURT: Well, I'll --

19 MR. CRAFT: They've had a chance to brief it, they
20 shouldn't have one now.

21 THE COURT: No, I'll let them. I'll let them. I
22 understand -- you're okay. Just -- don't get too mad. You
23 know what, let's hear it out, you know what I mean? And
24 then --

25 MR. CRAFT: No problem.

1 THE COURT: -- but I'll tell you though, you've got
2 a tough position with that argument with me.

3 MR. GANZ: Okay.

4 THE COURT: Because I know the case that you're
5 talking about and -- but I'll give you -- I mean, maybe I'm
6 interpreting it wrong, I don't know, I'll give you a chance to
7 straighten me out on that if you think you can.

8 But I'm going to continue this over. And how long
9 do you want? I just need -- I want information with respect
10 to the diagram and the location of the --

11 MR. CRAFT: You want a description of the accident
12 as far as --

13 THE COURT: Uh-huh.

14 MR. CRAFT: -- what the evidence shows --

15 THE COURT: Right.

16 MR. CRAFT: -- and the police report and --

17 THE COURT: Um-hum.

18 MR. CRAFT: -- okay.

19 THE COURT: And I'll -- and both of you can brief it
20 that way, you know, I think that that --

21 MR. GANZ: Do you want to set it for a couple weeks
22 and maybe give us a week to do the briefs?

23 THE COURT: I can set it out --

24 MR. GANZ: Okay, longer. I don't care.

25 THE COURT: -- I'll set it out --

1 MR. GANZ: Less?

2 THE COURT: -- 30 days. Will that be enough?

3 MR. CRAFT: Thirty days. And if we could have our
4 briefs in -- and I'm sorry, I'm just crushed right now and I
5 know you are too.

6 MR. GANZ: That's fine, I've got two trials next
7 door that I'm waiting --

8 THE COURT: Well, you don't need more time?

9 MR. CRAFT: Three weeks?

10 THE COURT: Do you need more time?

11 MR. CRAFT: If I could have 30 days to go ahead and
12 brief this --

13 THE COURT: Okay.

14 MR. CRAFT: -- and get everything in front of you.

15 THE COURT: I'll give you three weeks to -- well,
16 you want 30 days to brief it and then a week after that for --
17 or --

18 MR. CRAFT: I'll need three weeks to brief it.

19 THE COURT: Okay. Will that be okay with you?

20 MR. GANZ: We'll get it done, Judge.

21 THE COURT: All right. So, 30 days to -- 30 days
22 for the argument, and three weeks then you'll get the briefs
23 done. And --

24 THE CLERK: Okay. The briefs will be due by
25 February 23rd -- are they doing blind briefs?

1 THE COURT: Yeah, you can -- I don't need you to do
2 oppositions or whatever, that. But if you want to address
3 further the issue involving --

4 MR. GANZ: Okay.

5 THE COURT: -- the immunity of the --

6 MR. GANZ: We'll do.

7 THE COURT: -- North Las Vegas, I'll look at that.

8 MR. GANZ: Okay.

9 THE COURT: And I want you to serve a copy of that
10 portion of your brief, at least, on opposing counsel and see
11 if they want to readdress that.

12 MR. GANZ: Oh, so we're not serving these briefs on
13 each other?

14 THE COURT: You can. I wasn't going to require --

15 MR. GANZ: Just serve them simultaneously, right?

16 MR. CRAFT: Everything's electronically served, so.

17 MR. GANZ: Just -- just simultaneously --

18 THE COURT: Yeah. Okay. And that's fine.

19 MR. GANZ: -- right?

20 MR. CRAFT: Yeah, let's do it at the same time.

21 THE CLERK: And the hearing -- the continuation date
22 will be March 1st at 9:00 a.m.

23 MR. CRAFT: Thank you.

24 MR. GANZ: Thank you, Your Honor.

25 THE COURT: Okay. Yeah, my law clerk asked that

1 maybe you could submit a courtesy copy to us on that?

2 MR. CRAFT: We will.

3 MR. GANZ: Of course.

4 THE COURT: Okay. Thank you. All right.

5 MR. GANZ: Thank you, Judge.

6 THE COURT: Okay.

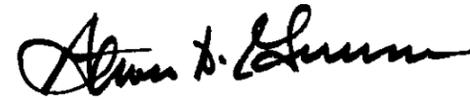
7 (Proceeding concluded at 9:29 A.M.)

8 * * * * *

9 ATTEST: I hereby certify that I have truly and correctly
10 transcribed the audio/visual proceedings in the above-entitled
11 case to the best of my ability.



12
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14 _____
15 JULIE LORD, INDEPENDENT TRANSCRIBER
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25



CLERK OF THE COURT

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

9 JAPONICA GLOVER-ARMONT,

10 Plaintiff,

Case No. A-13-683211-C

11 vs.

Dept. No. XIX

12 JOHN CARGILE; CITY OF NORTH LAS
13 VEGAS, a Municipal Corporation existing
14 under the laws of the State of Nevada in the
15 County of Clark; DOES I through X, inclusive;
16 and/or ROE CORPORATIONS I through X,
17 inclusive,

18 Defendants.

**DEFENDANTS' SUPPLEMENTAL
BRIEF IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

**Hearing date: March 1, 2016
Hearing time: 9:00 a.m.**

17 Defendants City of North Las Vegas (the "City") and Sergeant John Cargile ("Sergeant
18 Cargile") (collectively "City Defendants"), by and through their attorneys, hereby submit their
19 Supplemental Brief in Support of Motion for Summary Judgment. This Supplemental Brief is based
20 upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and
21 any oral argument the Court may entertain.

22 DATED this 23rd day of February, 2016.

23
24 NORTH LAS VEGAS CITY ATTORNEY

25 /s/ Christopher D. Craft
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1 **SUPPLEMENTAL BRIEF**

2 **I.**

3 **INTRODUCTION.**

4 As discussed at the hearing on Defendants' Motion for Summary Judgment, Nevada law
5 provides discretionary immunity for an officer's actions if (1) his actions were the result of a
6 decision or judgment, and (2) his actions were related to a public policy. Martinez v. Maruszczak,
7 123 Nev. 433, 445-447, 168 P.3d 720 (2007). However, discretionary immunity would not apply in
8 a situation where, for example, an officer fell asleep while driving, as such conduct would not be
9 related to a public purpose. Id. at 446. While Plaintiff has argued that Cargile was "asleep at the
10 wheel,"¹ Defendants have argued that Cargile's actions were the result of conscious decisions on his
11 part in deciding how best to respond to an emergency call. In furtherance of its decision on this
12 crucial question, the Court has requested further information regarding the accident. The requested
13 factual background is set forth below, and it is respectfully submitted that all such facts support the
14 City's position: Because Cargile's actions in proceeding through the red light were the result of
15 conscious decisions, and his actions related to public policy, his actions are protected by
16 discretionary immunity.

17 **II.**

18 **CARGILES ACTIONS WERE THE RESULT OF CONSCIOUS DECISIONS.**

19 **A. Cargile decides on what route to take.**

20 At approximately 2:00 a.m. on November 5, 2012, an emergency call was issued that a fight
21 was in progress between several juveniles at the apartment complex known as Fountain Falls in
22 North Las Vegas. The call indicated that shots had been fired and a victim of gunshots was down.²
23 At the time of the call, Cargile was located at the Southwest Command of the NLVPD, which is
24 located at Lake Mead and Bruce. Fountain Falls is located near the intersection of Cheyenne and
25

26
27 ¹ See Plaintiff's Opposition to Motion for Summary Judgment at pp. 10, 11.

28 ² See Deposition of Sergeant John Cargile ("Cargile Deposition"), October 1, 2014, at
33:20-34:6, attached as Exhibit A.

1 Simmons in North Las Vegas.³ Cargile describes his decision on what route to take as follows:

2 The quickest way for us to get down there as we come on to the west side of town, which is
3 on the west side of the I-15 freeway, the North Fifth Street off of Losee is our easiest way to
4 come up, to only have to come up to the light that's at North Fifth and Cheyenne. So we're
trying to get to the area that's used less by the civilian traffic. Then I was going to go
westbound on Cheyenne from there. All straight up to Simmons.⁴

5 Immediately upon hearing the call, Cargile jumped into his vehicle and started heading toward the
6 complex.⁵ Cargile was in the process of turning left on Cheyenne from northbound Fifth Street when
7 the accident occurred. Cargile also testified that there are several different routes he could have
8 taken, which may have been preferable if there were "other calls or accidents working."⁶

9 Cargile was hardly "asleep at the wheel" when deciding his route. His decision centered on
10 taking the route which would bring him to the scene of the incident as quickly as possible, taking
11 into account the number of stop lights he would encounter and seeking a route used less by civilian
12 traffic.

13 **B. Cargile decides whether and how to proceed through the red light.**

14 Once the route had been decided, the next decision facing Cargile was how to proceed
15 through the red light at Fifth Street and Cheyenne. When approaching the intersection, Cargile noted
16 that there were cars stopped in the southbound lanes of Fifth, and as a result, Cargile came to a
17 complete stop for five or six seconds⁷ before entering the intersection, and at that time changed the
18 tone of his sirens. As Cargile explained:

19 We have four different siren tones that are on our vehicle. What we do is we'll push from
20 button to button to button. It changes the sound, the tone, how loud it goes, in order to make
21 sure everybody that's in the intersection or nearby is gathering their attention to my patrol
vehicle.⁸

22 ³ See Cargile Deposition at 30:3-7.

23 ⁴ See Cargile Deposition at 30:21-31:4.

24 ⁵ See Cargile Deposition at 33:16-17.

25 ⁶ See Cargile Deposition at 31:12-19.

26 ⁷ See Cargile Deposition at 39:1-6.

27 ⁸ See Cargile Deposition at 36:6-12.

1 Once Cargile believed there was no oncoming traffic, he started to encroach the intersection to get
2 ready to turn left. However, as soon as he started to do so, he heard Plaintiff's vehicle lock up its
3 brakes, and he noticed it approaching his vehicle.⁹ A collision resulted. Both parties agree that
4 there was no way that Cargile could have seen Plaintiff's vehicle without pulling into the intersection
5 first, due to the embankment located at the southwest corner of the intersection. Motion for
6 Summary Judgment at p.3. A Google map of the intersection, as well as street views from
7 eastbound Cheyenne and northbound Fifth Street approaching the intersection, are attached as
8 Exhibit B. A diagram of the accident, provided by Plaintiff, is attached as Exhibit C.

9 Cargile's account is consistent with the accident report, a copy of which is attached hereto
10 as Exhibit D. As specified in the accident report, Plaintiff's vehicle skidded 110 feet in an attempt
11 to avoid collision with Cargile's vehicle, which had partially encroached her lane (the #3 travel lane)
12 in order to clear the intersection. The #3 travel lane is approximately 14 feet wide, 15.5 feet from
13 curb to "bot dots," and Cargile's vehicle encroached approximately 6.5 feet from the curb line.¹⁰

14 Again, far from being "asleep at the wheel," Cargile's actions reflect numerous decisions as
15 to how best to proceed through the intersection. Because cars were stopped on the opposite side, he
16 came to a complete stop before proceeding. He then proceeded into the intersection the minimum
17 amount necessary to see if there was oncoming eastbound traffic. All of Cargile's actions at the
18 intersection were conscious and directed toward arriving at the emergency scene as quickly and
19 safely as possible. Such decisions are protected by discretionary immunity.

20 **III.**

21 **CONCLUSION**

22 Cargile, who drove through a red light while responding to an emergency, was engaged in
23 a discretionary act because (1) he made a judgment call as to how to respond to an emergency call,

24
25 ⁹ See Cargile Deposition at 35:11-37:4.

26 ¹⁰ As a result of the accident, Plaintiff was cited for failure to yield to an emergency
27 vehicle, a violation of NRS 484B.267. See Exhibit D, which includes the citation issued to
28 Plaintiff. Plaintiff's violation came before the North Las Vegas Municipal Court for arraignment
on December 13, 2012, at which Plaintiff entered a plea of nolo contendere and was found guilty.
Plaintiff subsequently paid all fines assessed for this incident. See Exhibit E.

1 including his decision regarding whether and how to proceed through the red light, and (2) his
2 actions were in furtherance of public policy, specifically the City's policies of enforcing the law and
3 protecting the public. As set forth above, Cargile was not "asleep at the wheel" by any measure;
4 rather, his actions were the result of conscious decisions, all of which were directed toward how best
5 to respond to the emergency at hand. Accordingly, both Cargile and the City enjoy discretionary
6 immunity from all of Plaintiff's claims, and summary judgment is appropriate.

7 DATED this 23rd day of February, 2016.

8 NORTH LAS VEGAS CITY ATTORNEY

9 /s/ Christopher D. Craft

10 Sandra Douglass Morgan, Nev. Bar No. 8582

11 Christopher D. Craft, Nev. Bar No. 7314

12 2250 Las Vegas Blvd. North, Suite 810

13 North Las Vegas, Nevada 89030

14 (702) 633-1050

15 *Attorneys for Defendants*

16 *John Cargile and City of North Las Vegas*

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that service of a true and correct copy of the **DEFENDANTS'**
3 **SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was
4 made on the 23rd day of February, 2016, as indicated below:

- 5 By electronic service, pursuant to N.E.F.C.R. 9
6 By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P.
7 5(b) addressed as follows
8 By facsimile, pursuant to EDCR 7.26 (as amended)
9 By hand delivery

10 To the parties listed below:

11 Marjorie Hauf, Esq.
12 Ida M. Ybarra, Esq.
13 GANZ & HAUF
14 8950 W. Tropicana Avenue, Ste. 1
Las Vegas, Nevada 89147
Facsimile (702) 598-3626

15 *Attorneys for Plaintiff*

16
17
18
19
20 /s/ Michelle T. Harrell
21 An Employee of North Las Vegas
City Attorney's Office
22
23
24
25
26
27
28

EXHIBIT “A”

EXHIBIT “A”

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAPONICA GLOVER-ARMONT,

Plaintiff,

Certified Copy

vs

Case No. A-13-683211-C

JOHN CARGILE; CITY OF NORTH
LAS VEGAS, a Municipal
Corporation existing under the
laws of the State of Nevada in
the County of Clark; DOES I
through X, inclusive; and/or
ROE CORPORATIONS I through X,
inclusive;

Defendants.

DEPOSITION OF SERGEANT JOHN CARGILE

Taken on Wednesday, October 1, 2014

At 3:49 p.m.

At 8950 West Tropicana Avenue, Suite 1

Las Vegas, Nevada

Reported by: Marnita J. Goddard, RPR, CCR No. 344

1 A. No. I spent one year on graveyard. This
2 week, it happens to be that I'm back on graveyard,
3 believe it or not. But my current assignment is
4 administrative sergeant. I work day, swing, and
5 grave. I work all shifts.

6 Q. November 2012, where did that fall within
7 your year of working graveyard?

8 A. I was promoted in 2011. So it would have
9 been that February of 2012 I would have gone to
10 graveyard. So that would have been my graveyard
11 shift.

12 Q. How many days a week did you work during
13 that period of time?

14 A. I work four days a week. Yes.

15 Q. Was it a set four days that you normally
16 worked?

17 A. Yes. I worked grave B, B squad, so, again,
18 I came in Saturday night. I was working basically the
19 Sunday morning, Monday morning, Tuesday, and Wednesday
20 morning, for the most part.

21 Q. This wreck occurred about 1:53 in the
22 morning is I believe when you called it in. So I
23 assume it occurred maybe minutes before that.

24 A. Uh-huh.

25 Q. Is that a fair statement?

1 A. Yes.

2 Q. Where were you coming from?

3 A. I was coming from the South Area Command,
4 which is at Lake Mead and Bruce. And I was driving
5 to -- I think the exact is 3260 Fountain Falls, which
6 is basically Cheyenne and Simmons, is where I was
7 heading to.

8 Q. How do you remember that address?

9 A. I remember that it's -- it's an apartment
10 complex that's right there that we respond to quite
11 often back then, especially when I was assigned to the
12 south. It was one that you become frequent with.

13 Q. What's the name of the complex?

14 A. It's called Fountain Falls. And that might
15 not be the current name of the apartment complex
16 today. They tend to change from year to year by
17 ownerships.

18 Q. It was your intended route to take -- take
19 me through your intended path had this accident not --
20 had this not occurred.

21 A. The quickest way for us to get down there as
22 we come on to the west side of town, which is on the
23 west side of the I-15 freeway, the North Fifth Street
24 off of Losee is our easiest way to come up, to only
25 have to come up to the light that's at North Fifth and

1 Cheyenne. So we're trying to get to the area that's
2 used less by the civilian traffic. Then I was going
3 to go westbound on Cheyenne from there. All straight
4 up to Simmons.

5 Q. So it was your intent to make a left on
6 north -- sorry, on Cheyenne and go westbound?

7 A. And go westbound, yes.

8 Q. Is there an alternative route from the --
9 you said we usually take that route. Is there an
10 alternative route that can be taken from the Lake Mead
11 and Bruce Southwest Area Command?

12 A. There's several different ways that you can
13 go. But a lot of times it will depend upon current
14 traffic. If we had other calls or accidents working,
15 based on where you are at, you may take a different
16 route based on that alone. But, yes, you could use
17 Lake Mead or Carey or come across Civic Center and up
18 Cheyenne that way. But several different ways to get
19 there.

20 Q. It appears to me -- strike that.

21 Is there -- strike that.

22 Did you inspect your car prior to getting in
23 the vehicle to head to this call?

24 A. Yes.

25 Q. What did you do to inspect your vehicle?

1 A. Our normal inspection of our vehicle is to
2 make sure that all of our required equipment is inside
3 of the vehicle -- traffic vest, cones. As a
4 supervisor, we have additional equipment that we carry
5 inside the vehicles, which are shields, rams, extra
6 protective equipment for the officers, so forth. So
7 we verify that all of our required equipment is inside
8 the vehicle. Then after that, then we do an
9 inspection of the tires and an external of a vehicle.
10 Then we turn on lights and sirens and make sure
11 everything is operational.

12 Q. Was that done immediately prior to the call,
13 or was that done at the beginning of your shift?

14 A. At the very beginning of the shift.

15 Q. You were kind of indicating a -- some kind
16 of writing. Is there some kind of form that you fill
17 out to do that?

18 A. No, we don't do a form. We have a vehicle
19 log that is on -- an electronic vehicle log. Once you
20 complete your inspection, you type in on the vehicle
21 log that vehicle check was okay and that the gas card
22 is in the vehicle. That's usually what's put inside
23 the log.

24 Q. Is that something that is kept for a period
25 of time?

1 A. I believe -- it's kept for I believe for
2 three months. Right after that you can see it and
3 then electronically up for a year and then it's gone.

4 Q. Anything else that you did regarding your
5 inspection?

6 A. No. Once inspection is complete, then
7 that's it. We put ourselves in service.

8 Q. I understand that you said that you were at
9 the southwest command. Were you at a desk at the time
10 you received the call? What were you doing? Do you
11 remember?

12 A. Don't specifically. I know I was down at
13 the South Area Command. I believe I was talking with
14 other officers when the call first started coming out.
15 But just based on the information of the call as it
16 starts to come out, I immediately jumped in my vehicle
17 and started heading in that general direction.

18 Q. My understanding is that there was -- well,
19 what is your memory of what kind of call was made?

20 A. The call that was in is that there was a
21 fight that was going on inside the complex with
22 several juveniles, that it was still active. And then
23 there was shots fired at the complex which of course
24 that generated people to start going, which at that
25 point, the two primary officers and myself being the

1 supervisor are now automatically dispatched to the
2 call to have to respond. I believe shortly within the
3 very first few seconds of that call coming out, then
4 the dispatch claimed that they had a victim down to a
5 gunshot wound and people were requesting medical to
6 respond as well.

7 Q. Ultimately, you never made it to that call;
8 is that correct?

9 A. Correct.

10 Q. Do you have an understanding of what exactly
11 occurred that night, if there was any kind of
12 convictions from that, anything like that?

13 A. No, not off the top of my head I don't
14 remember. Basically once I was en route and involved
15 in the accident, my job was just to notify them that I
16 was involved so that another supervisor could get
17 en route to the call to be able to get on scene.

18 Q. Who was the other supervisor at the time?

19 A. Tell you the truth, I'm not sure. I think
20 there were a couple of supervisors that were on. I
21 believe Sergeant Semper was on up north and I believe
22 Sergeant Fay was still there. But I believe
23 Sergeant Semper actually responded on scene. But I
24 would have to go verify who actually got there.

25 Q. I was just curious.

1 And you don't remember what ultimately
2 occurred, whether or not the victim was found -- I'm
3 sorry, the --

4 A. Victim was found. I know an arrest was
5 made. I don't know like what the outcome was whether
6 or not the suspect had received time or anything like
7 that.

8 Q. Okay. You obviously didn't have anybody
9 else in your vehicle at the time; correct?

10 A. Correct.

11 Q. Can you describe in detail how this wreck
12 occurred?

13 A. Basically, I was running lights and sirens
14 going which would be northbound on Fifth Street as I
15 approached Cheyenne, the intersection with Cheyenne.
16 I was preparing to make a left-hand turn and go
17 westbound on Cheyenne. As I approached the
18 intersection, there was nobody on my side of the
19 street. I do remember that there was vehicles
20 directly across because we did have a red light for
21 east and westbound traffic. There was vehicles that
22 were stopped on the other side that were traveling
23 south. It would be south on North Fifth. And as I
24 approached, I believe there was some cross traffic as
25 in vehicles had passed through the intersection as I

1 was approaching up to the intersection. At that
2 point, then I came to a stop prior to the intersection
3 as typically we do, because I know there was one or
4 two vehicles -- I don't recall like make or models of
5 vehicles on the other side of the intersection. That
6 we then will do something where we will change. We
7 have four different siren tones that are on our
8 vehicle. What we do is we'll push from button to
9 button to button. It changes the sound, the tone, how
10 loud it goes, in order to make sure everybody that's
11 in the intersection or nearby is gathering their
12 attention to my patrol vehicle. Then I started to --
13 once I believed there was no oncoming traffic on
14 either east or westbound on Cheyenne, I started to
15 encroach into the intersection to get ready to make my
16 left-hand turn. As soon as I started to encroach into
17 the intersection, I heard the vehicle lock up its
18 brakes. And it was to my left. So I noticed it was a
19 small car now that was traveling eastbound on Cheyenne
20 approaching the intersection. Two things occurred to
21 me. I noticed it was a small dark-colored vehicle and
22 it had no headlights or anything on the vehicle as it
23 approached. At that point I stopped as that vehicle
24 was locking up its brakes. There's that point in
25 there where I realized I can't move or go anywhere,

1 but knowing that the vehicle mostly likely was going
2 to end up striking the front of my vehicle. Once the
3 collision occurred, then I called out on the radio to
4 advise them that I was --

5 Q. Let's stop there.

6 MR. GANZ: Do you mind reading back his
7 answer?

8 Q. (BY MR. GANZ) I'm going to have her read
9 that back to you, make sure it's accurate and correct,
10 and if there is something you need to change, let us
11 know afterwards. Okay?

12 A. Okay.

13 (The reporter read the requested
14 portion of the record)

15 Q. (BY MR. GANZ) You heard her read that back?

16 A. Nope.

17 Q. You didn't?

18 A. I heard her read it back. I have one
19 clarification. I will say I know it was a red light
20 to stop north and southbound traffic. I was traveling
21 north. It was green lights that allowed east and
22 westbound traffic through the intersection as I
23 approached.

24 Q. Anything else?

25 A. Huh-uh.

1 Q. Is that no?

2 A. Yeah, that's a no. That's it.

3 Q. Was there anything else you want to add to
4 that, something that you may have missed in your
5 explanation of how the wreck occurred?

6 A. Nope. That's pretty much exactly how it
7 happened.

8 Q. I have some questions for you. You had said
9 that there was some cross traffic at one point in
10 time.

11 A. Correct.

12 Q. Are you talking about cross traffic meaning
13 east and -- eastbound and westbound Cheyenne?

14 A. East and westbound Cheyenne, correct. As I
15 approached still a distance -- I'm going to say
16 several hundred feet away from the intersection, but
17 as I'm approaching, I can see the intersection. I
18 could see cars that had gone through the intersection
19 as I was approaching.

20 Q. You had then said that as you approached the
21 intersection you stopped prior to the intersection.

22 A. Correct.

23 Q. And started changing the tones of your
24 siren; correct?

25 A. Correct.

1 Q. First of all, how long had you stopped
2 before you proceeded into the intersection?

3 A. I would -- probably five to six seconds.
4 It's not a whole lot of time. Once I stopped, then
5 it's just a matter of just visually clearing each
6 intersection as I go.

7 Q. When you stopped prior to approaching the
8 intersection, I want to make sure we have the same
9 definition of an intersection just because it gets
10 very confusing sometimes where the intersection begins
11 and where it doesn't. At least from my perspective.

12 My take on where the intersection occurs is
13 where the stop bar is for the vehicles traveling in
14 that direction. Do you agree with that?

15 A. Correct. From any point from that stop sign
16 into is included into the intersection, which is
17 typically defined by the curbing that is along the
18 road, the roadway.

19 Q. I'm talking about -- if you're looking at an
20 aerial above, there is a stop bar that's before the
21 light where you are supposed to stop waiting for a
22 light.

23 A. Correct.

24 Q. Can we agree that at least for the
25 discussion today even if that's not the technical

1 beginning of the intersection that we use that as a
2 point of reference for now?

3 A. Correct. That's fine.

4 Q. When you say you stopped prior to the
5 intersection and changed your tone, were you stopped
6 behind that stop bar?

7 A. Yes. Stopped behind the line, yes.

8 Q. And I know from traveling that area -- not
9 that often -- but recently in an inspection of the
10 area, I noticed there's this -- for lack of better
11 term there's this big hill that's on the southwest
12 corner of Fifth Avenue just right before the
13 intersection; correct?

14 A. Correct.

15 Q. It actually goes beyond the stop bar,
16 doesn't it?

17 A. The hill?

18 Q. Yes.

19 A. The hill goes, yes, correct, all the way up.

20 Q. When I say it's a big hill, it's a hill -- I
21 don't know, I haven't measured it, but it's probably
22 at least 50 feet in the air; right?

23 A. I would put the hill probably a good 20,
24 25 feet up. I believe that mound that is there is the
25 Las Vegas -- or the North Las Vegas Golf Course. It's

1 a built up tee box that is for the golf course.

2 Q. When you are at that stop bar with that hill
3 on your left, are you able to see -- and I'm talking
4 about stopped right before the stop bar. Are you able
5 to see the eastbound traffic on Cheyenne?

6 A. Yes, for only a certain distance. There's
7 two limiting factors I see on that one. One is the
8 obstruction, the large hill that's on that southwest
9 corner, and two is the limited lighting at night to be
10 able -- how far up the hill you can see.

11 Q. In addition to the hill, there's also trees
12 and stuff there too, isn't there?

13 A. That is inside the fence up on the hill.
14 Lower down, all the way up -- down around by the
15 fencing I don't think there's any trees down there.

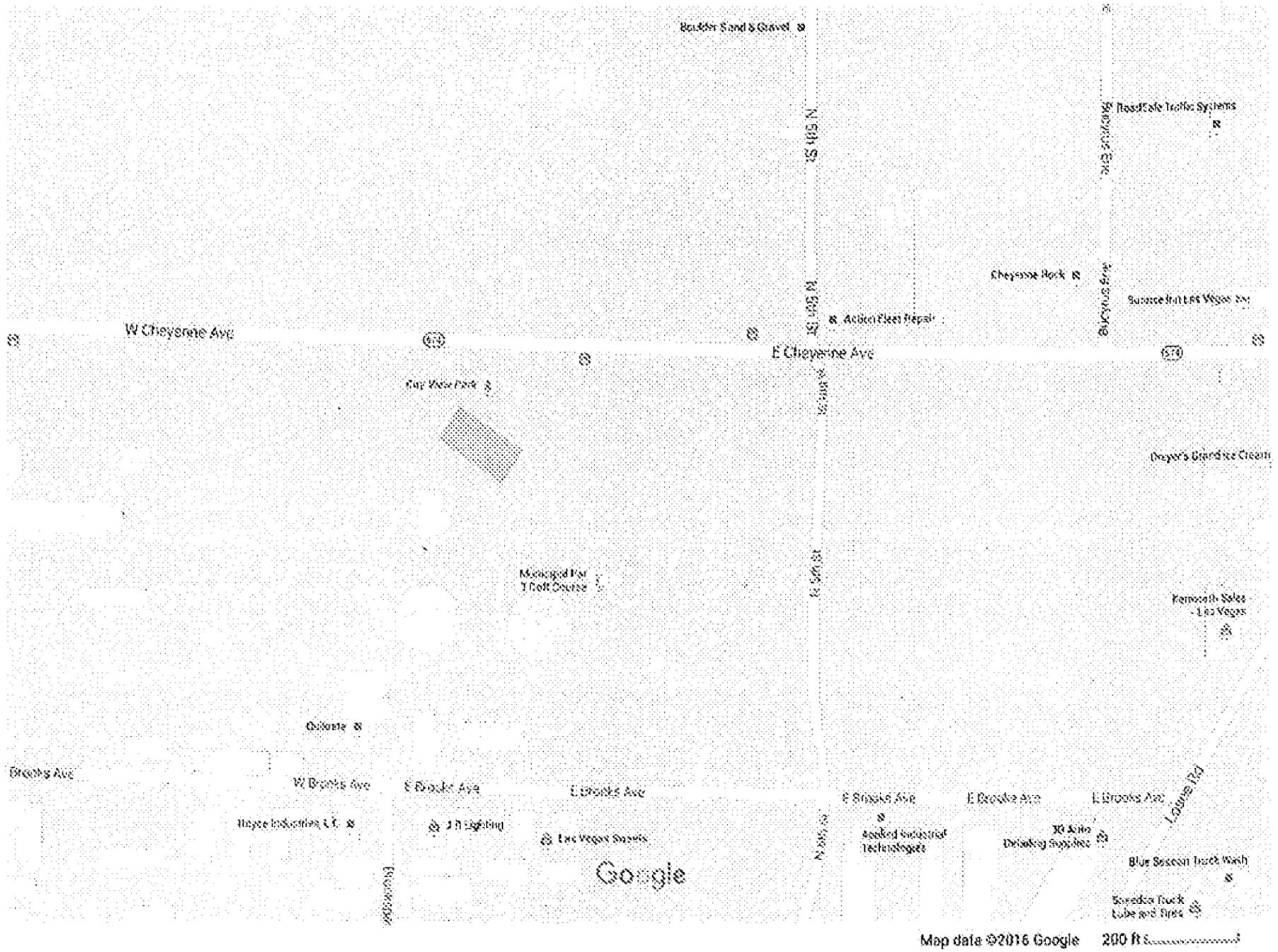
16 Q. Forgetting about lighting issues because of
17 being dark, even if it was during the middle of the
18 day with that hill there at the stop bar can you
19 estimate for me how far you could see into the
20 eastbound travel lanes if you're at that stop bar in
21 that one lane?

22 A. That's a tough question, a tough question.
23 There's no lighting there. Typical lighting is
24 150 feet up. It's a good judge for us to be able to
25 see a streetlight -- the next streetlight up from a

EXHIBIT “B”

EXHIBIT “B”

Google Maps N 5th St



N 5th St
North Las Vegas, NV

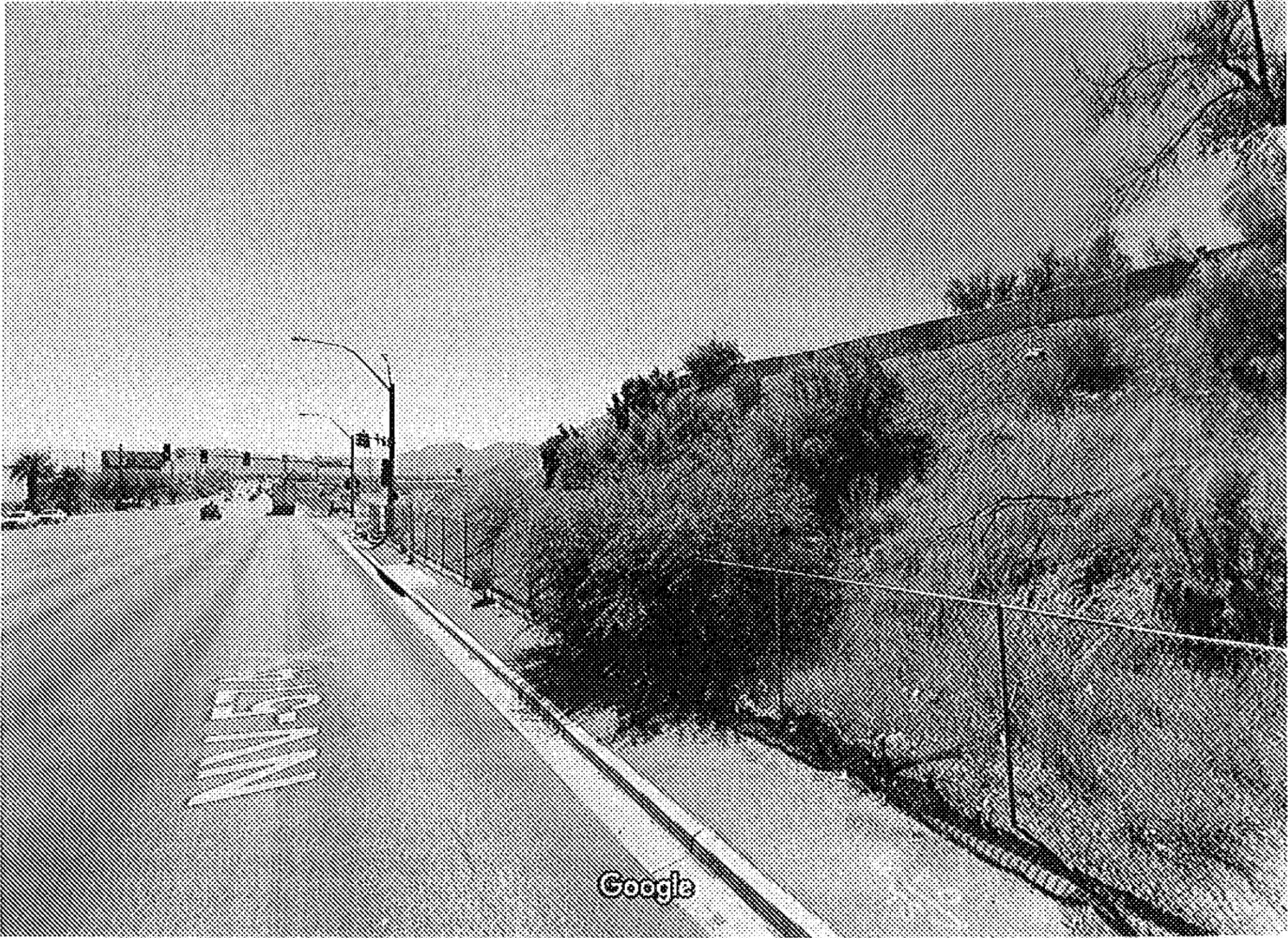


Image capture: Jul 2015 © 2016 Google

North Las Vegas, Nevada

Street View - Jul 2015



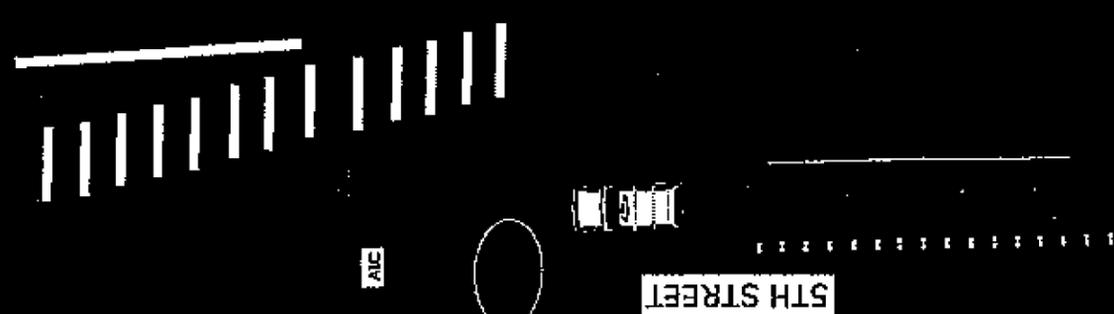
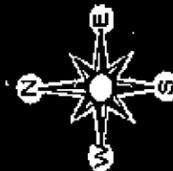
Image capture: May 2013 © 2016 Google

North Las Vegas, Nevada

Street View - May 2013

EXHIBIT “C”

EXHIBIT “C”



CHEYENNE AVENUE (EASTBOUND)

124 110

Hill Profile @ 65" Eye Height

Chainlink Fence

197

233

270

- 110 Onset of Visible Skid
- 124 Brake Application
- 197 Approx. 1 sec. to Brake Application
- 233 Approx. 1.5 sec. to Brake Application
- 270 Approx. 2.0 sec. to Brake Application

EXHIBIT “D”

EXHIBIT “D”

CERTIFICATE OF RECORDS CUSTODIAN

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

The undersigned Custodian of Records for the North Las Vegas Police Department, after being first duly sworn, deposes and says:

That the undersigned is an employee of the North Las Vegas Police Department and in such capacity is the custodian of records for that institution.

That the Custodian of Records of the North Las Vegas Police Department was served with a written request in connection with the **traffic accident numbered 121105019878** matter calling for the production of **the accident report and traffic citation.**

That the undersigned has examined the original records/information/files requested, a true and exact copy of the requested documents, and that the production of the records attached hereto is true and complete.

That the original of the records was made at or near the time of the acts, events, conditions, or circumstances recited therein by or from information transmitted by a person with knowledge in the course of a regularly conducted activity of the undersigned or the office in which the deponent is engaged.

DATED this 17th day of February, 2016



Denise Scarff, Custodian of Records
North Las Vegas Police Department

State of Nevada)

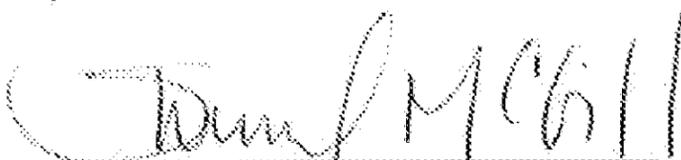
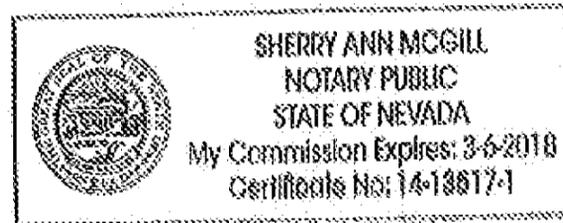
) ss.

County of Clark)

SUBSCRIBED and SWORN to before me

This 17th day of February, 2016

by Denise Scarff as Custodian of Police Records



Notary Public

Event Number:		STATE OF NEVADA TRAFFIC ACCIDENT REPORT SCENE INFORMATION SHEET Revised 1/14/04				Accident Number: NLVPD-121105019878			
Code Revision:		<input type="checkbox"/> Preliminary Report <input type="checkbox"/> Resubmission		<input type="checkbox"/> Hit and Run		<input type="checkbox"/> Property <input checked="" type="checkbox"/> Injury <input type="checkbox"/> Fatal			
<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural	<input checked="" type="checkbox"/> Emergency Use <input type="checkbox"/> Office Report	<input type="checkbox"/> Initial Report <input type="checkbox"/> Supplement Report		<input type="checkbox"/> Private Property		Agency Name: 7 - NORTH LAS VEGAS POLICE DEPARTMENT			
Collision Date 11/5/2012	Time 01:53	Day MONDAY	Beat / Sector B2	<input type="checkbox"/> County	<input checked="" type="checkbox"/> City NORTH LAS VEGAS	Surface <input checked="" type="checkbox"/> Asphalt <input type="checkbox"/> Concrete <input type="checkbox"/> Gravel <input type="checkbox"/> Dirt <input type="checkbox"/> Other	Intersection <input type="checkbox"/> Four Way <input type="checkbox"/> > Four Way <input type="checkbox"/> T <input type="checkbox"/> Y <input type="checkbox"/> Roundabout <input type="checkbox"/> Other	Paddle Markers <input checked="" type="checkbox"/> None <input type="checkbox"/> Left Side <input type="checkbox"/> Right Side <input type="checkbox"/> Both Side <input type="checkbox"/> Unknown	
Mile Marker	# Vehicles 2	# Non Motorists 0	# Occupants 2	# Fatalities 0	# Injured 1	# Restrained 2			
Occurred On: (Highway # or Street Name) <input type="checkbox"/> 1) Parking Lot CHEYENNE AVENUE								Access Control <input checked="" type="checkbox"/> None <input type="checkbox"/> Full <input type="checkbox"/> Partial	
<input checked="" type="checkbox"/> At Intersection With: <input type="checkbox"/> Or <input type="checkbox"/> Feet <input type="checkbox"/> Miles <input type="checkbox"/> Approximate								Of (Cross Street) 5TH STREET	
Roadway Character <input type="checkbox"/> Curve & Grade <input type="checkbox"/> Curve & Hillcrest <input type="checkbox"/> Curve & Level <input type="checkbox"/> Straight & Grade <input type="checkbox"/> Straight & Hillcrest <input checked="" type="checkbox"/> Straight & Level <input type="checkbox"/> Unknown <input type="checkbox"/> Other		Roadway Conditions <input checked="" type="checkbox"/> Dry <input type="checkbox"/> Slush <input type="checkbox"/> Icy <input type="checkbox"/> Standing Water <input type="checkbox"/> Wet <input type="checkbox"/> Moving Water <input type="checkbox"/> Snow <input type="checkbox"/> Unknown <input type="checkbox"/> Sand / Mud / Oil / Dirt / Gravel <input type="checkbox"/> Other		Total Thru Lanes Main Road <input type="checkbox"/> One <input type="checkbox"/> Two <input type="checkbox"/> Three <input type="checkbox"/> Four <input type="checkbox"/> Five <input type="checkbox"/> > 5 Total All Lanes:		Average Roadway Widths Travel Lane Ft Storage / Turn Lane Ft Median Ft Paved Shoulder Inside Outside		Roadway Grade Relative To V1 Grade 3 % <input type="checkbox"/> Not Determined <input type="checkbox"/> Relatively Level Roadway <input type="checkbox"/> Up Slope (+) <input checked="" type="checkbox"/> Down Slope (-)	
Pavement Markings and Type 4 Centerline, Broken Yellow No Passing, Either Direction <input type="checkbox"/> None Centerline, Solid Yellow 3 Turn Arrow Symbols <input type="checkbox"/> Unknown Centerline, Double Yellow Center Turn Lane Line Lane Line, Broken White Edge Line, Left, Yellow 4 Lane Line, Solid White Edge Line, Right, White Other				Highway Description <input type="checkbox"/> Two-Way, Not Divided <input checked="" type="checkbox"/> Two-Way, Div., Unpro. Median <input type="checkbox"/> Two-Way, Div., Median Barrier <input type="checkbox"/> One-Way, Not Div. <input type="checkbox"/> Unknown <input type="checkbox"/> Off Road		Weather Conditions <input checked="" type="checkbox"/> Clear <input type="checkbox"/> Fog, Smog, Smoke, Ash <input type="checkbox"/> Cloudy <input type="checkbox"/> Severe Crosswinds <input type="checkbox"/> Snow <input type="checkbox"/> Sleet / Hail <input type="checkbox"/> Rain <input type="checkbox"/> Unknown <input type="checkbox"/> Blowing Sand, Dirt, Soil, Snow <input type="checkbox"/> Other			
Light Conditions <input type="checkbox"/> Dusk <input type="checkbox"/> Dark - No Roadway Lighting <input type="checkbox"/> Dawn <input type="checkbox"/> Dark - Spot Roadway Lighting <input type="checkbox"/> Daylight <input checked="" type="checkbox"/> Dark - Continuous Roadway Lighting <input type="checkbox"/> Unknown <input type="checkbox"/> Dark - Unknown Roadway Lighting <input type="checkbox"/> Other		Vehicle Collision Type <input type="checkbox"/> Head On <input type="checkbox"/> Rear to Rear <input type="checkbox"/> Rear End <input type="checkbox"/> Sideswipe - Meeting <input type="checkbox"/> Backing <input type="checkbox"/> Sideswipe - Overtaking <input checked="" type="checkbox"/> Angle <input type="checkbox"/> Non - Collision <input type="checkbox"/> Unknown		Location of First Event <input type="checkbox"/> Travel Lane <input type="checkbox"/> Outside Shoulder <input type="checkbox"/> Ramp <input type="checkbox"/> Turn Lane <input checked="" type="checkbox"/> Intersection <input type="checkbox"/> Unknown <input type="checkbox"/> Gore <input type="checkbox"/> Private Property <input type="checkbox"/> Median <input type="checkbox"/> Roadside <input type="checkbox"/> Inside Shoulder <input type="checkbox"/> Other					
Highway / Environment Factors <input type="checkbox"/> None <input type="checkbox"/> Shoulders <input type="checkbox"/> Ruts, Holes, Bumps <input type="checkbox"/> Weather <input type="checkbox"/> Road Obstruction <input type="checkbox"/> Active Work Zone <input type="checkbox"/> Debris <input type="checkbox"/> Worn Traffic Surface <input type="checkbox"/> Inactive Work Zone <input type="checkbox"/> Glare <input type="checkbox"/> Wet, Icy, Snow, Slush <input type="checkbox"/> Animal In Roadway <input type="checkbox"/> Other Highway <input type="checkbox"/> Unknown <input type="checkbox"/> Other Environmental			Property Damage To Other Than Vehicle Describe Property Damage Owner's Name (Last First Middle): <input type="checkbox"/> 1) Owner Notified Owner's Address: (Street Address City, State Zip)						
First Harmful Event									
Code #: 217		Description: 217 SLOW / STOPPED VEHICLE							
Description of Accident / Narrative									
V#1 WAS TRAVELING EASTBOUND IN THE #3 TRAVEL LANE ON CHEYENNE, APPROACHING THE INTERSECTION OF 5TH ST.									
V#2, A MARKED NLVPD PATROL VEHICLE (UNIT #1514) WAS TRAVELING NORTHBOUND ON 5TH WITH EMERGENCY LIGHTS AND SIREN ACTIVATED, APPROACHING THE INTERSECTION OF CHEYENNE. THE OPERATOR, A PATROL SGT., WAS RESPONDING TO A SHOTS FIRED CALL, WITH A CONFIRMED VICTIM.									
Investigation Complete <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Photos Taken <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Scene Diagram <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Statements# <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Date Notified 11/5/2012	Time Notified 01:53	Arrival Date 11/5/2012	Arrival Time 01:53		
Investigator(s) 956 JIM BYRNE		ID Number 956	Date 11/5/2012	Reviewed By 958 RANDY SALYER		Date Reviewed 11/5/2012	Page 1 of 7		

Event Number:

STATE OF NEVADA
TRAFFIC ACCIDENT REPORT
SCENE INFORMATION SHEET
Revised 5/21/03

Accident Number:
NLRVDPD-121105019878

Agency Name:
7 - NORTH LAS VEGAS POLICE
DEPARTMENT

Description of Accident / Narrative Continuation

BOTH DRIVERS STATED THAT V#1 HAD A GREEN TRAFFIC SIGNAL AND THAT V#2 HAD A RED TRAFFIC SIGNAL. V#2'S OPERATOR REPORTED THAT V#1 WAS TRAVELING WITHOUT THE VEHICLE'S HEADLIGHTS ON AT THIS TIME (DURING THE HOURS OF DARKNESS), AS THE VEHICLE APPROACHED THE INTERSECTION

AS V#2 APPROACHED THE INTERSECTION ON A RED LIGHT, V#2'S OPERATOR CAME TO A STOP AND SLOWLY BEGAN MOVING INTO THE INTERSECTION IN AN ATTEMPT TO CROSS THE INTERSECTION (DUE TO A LARGE HILL IN THE CITY VIEW PARK WHICH OBSTRUCTS NORTHBOUND TRAFFIC'S VISION, V#2'S OPERATOR HAD TO MOVE PARTIALLY INTO THE INTERSECTION, IN ORDER TO BE ABLE TO OBSERVE EASTBOUND TRAFFIC).

V#1'S OPERATOR STATED THAT SHE SAW V#2'S EMERGENCY LIGHTS ACTIVATED AS SHE APPROACHED THE INTERSECTION, BUT DID NOT HEAR THE VEHICLE'S SIREN. V#1'S OPERATOR FAILED TO USE DUE CARE UPON APPROACHING THE INTERSECTION IN VIOLATION OF NRS 484B.603-DUTY OF DRIVER TO DECREASE SPEED UNDER CERTAIN CIRCUMSTANCES;

1. THE FACT THAT THE SPEED OF A VEHICLE IS LOWER THAN THE PRESCRIBED LIMITS DOES NOT RELIEVE A DRIVER FROM THE DUTY TO DECREASE SPEED WHEN APPROACHING AND CROSSING AN INTERSECTION, WHEN APPROACHING AND GOING AROUND A CURVE, WHEN APPROACHING A HILL CREST, WHEN TRAVELING UPON ANY NARROW OR WINDING HIGHWAY, OR WHEN SPECIAL HAZARDS EXIST OR MAY EXIST WITH RESPECT TO PEDESTRIANS OR OTHER TRAFFIC, OR BY REASON OF WEATHER OR OTHER HIGHWAY CONDITIONS, AND SPEED MUST BE DECREASED AS MAY BE NECESSARY TO AVOID COLLIDING WITH ANY PERSON, VEHICLE OR OTHER CONVEYANCE ON OR ENTERING A HIGHWAY IN COMPLIANCE WITH LEGAL REQUIREMENTS AND THE DUTY OF ALL PERSONS TO USE DUE CARE.

IN ADDITION, V#1 FAILED TO YIELD THE RIGHT OF WAY TO V#2 IN VIOLATION OF NRS 484B.267- OPERATION OF VEHICLE ON APPROACH OF AUTHORIZED EMERGENCY VEHICLE OR OFFICIAL VEHICLE OF REGULATORY AGENCY. UPON THE IMMEDIATE APPROACH OF AN AUTHORIZED EMERGENCY VEHICLE OR AN OFFICIAL VEHICLE OF A REGULATORY AGENCY, MAKING USE OF FLASHING LIGHTS MEETING THE REQUIREMENTS OF SUBSECTION 3 OF NRS 484A.480, THE DRIVER OF EVERY OTHER VEHICLE SHALL YIELD THE RIGHT-OF-WAY AND SHALL IMMEDIATELY DRIVE TO A POSITION PARALLEL TO, AND AS CLOSE AS POSSIBLE TO, THE RIGHT-HAND EDGE OR CURB OF A HIGHWAY CLEAR OF ANY INTERSECTION AND SHALL STOP AND REMAIN IN SUCH POSITION UNTIL THE AUTHORIZED EMERGENCY VEHICLE OR OFFICIAL VEHICLE HAS PASSED, EXCEPT WHEN OTHERWISE DIRECTED BY A POLICE OFFICER.

V#1 LEFT APPROX 110' OF 4-WHEEL SKIDMARKS IN AN ATTEMPT TO AVOID A COLLISION WITH V#2 WHICH HAD PARTIALLY ENCLOSED THE EASTBOUND #3 TRAVEL LANE IN ORDER TO CLEAR THE INTERSECTION (#3 TRAVEL LANE IS APPROX 14' WIDE & 15.5' FROM CURB TO BOT DOTS, V#2 ENCLOSED APPROX 6.5' FROM CURB LINE IN ORDER TO CLEAR TRAFFIC).

V#1'S RIGHT FRONT ("A" PILLAR) IMPACTED THE FRONT OF V#2, CAUSING DAMAGE TO BOTH VEHICLES. V#1 THEN TRAVELED APPROX 5.5' POST-AOI, BEFORE COMING TO REST IN THE EASTBOUND #3 TRAVEL LANE (TOTAL SKIDMARKS-115.5').

V#1'S OPERATOR WAS TRANSPORTED TO NORTH VISTA HOSPITAL FOR MEDICAL ATTENTION FOR HER NECK AND HEAD PAIN AND WAS LISTED IN STABLE CONDITION AT NORTH VISTA.
OverFlow

Indicate North

A.I.C.:

7912 10:05 AM
NORTH LAS VEGAS
POLICE DEPARTMENT
REPORTS DIVISION
VEGAS, NV

Page

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Event Number:		STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET <small>Revised 1/14/04</small>			Accident Number: NLVPD-121105019878	
Vehicle # 1	# Occupants 1	<input checked="" type="checkbox"/> At Fault <input type="checkbox"/> Non Contact Vehicle		Agency Name: 7 - NORTH LAS VEGAS POLICE DEPARTMENT		
Direction of Travel: <input type="checkbox"/> North <input checked="" type="checkbox"/> East <input type="checkbox"/> Unknown <input type="checkbox"/> South <input type="checkbox"/> West		Highway / Street Name: CHEYENNE AVENUE			Travel Lane #: 3	
Vehicle Action: <input checked="" type="checkbox"/> Straight <input type="checkbox"/> Left Turn <input type="checkbox"/> U-Turn <input type="checkbox"/> Wrong Way <input type="checkbox"/> Passing <input type="checkbox"/> Leaving Parked <input type="checkbox"/> Leaving Lane <input type="checkbox"/> Enter Parked (#) <input type="checkbox"/> Lane Change <input type="checkbox"/> Unknown <input type="checkbox"/> Backing <input type="checkbox"/> Right Turn <input type="checkbox"/> Parked <input type="checkbox"/> Stopped (Δ) <input type="checkbox"/> Racing <input type="checkbox"/> Entering Lane <input type="checkbox"/> Other Turning <input type="checkbox"/> Driverless Vehicle <input type="checkbox"/> Other						
Driver: (Last Name, First Name, Middle Name Suffix) GLOVER-ARMONT SAPONZCA FELICA				Transported By: <input type="checkbox"/> Not Transported <input checked="" type="checkbox"/> EMS MEDIC WEST <input type="checkbox"/> Police <input type="checkbox"/> Unknown <input type="checkbox"/> Other		
Street Address: 611 PARK LANDING CT				Transported To: NORTH VISTA		
City: NLV	State / Country NV	Zip Code: 89032	Person Type: 1	Seating Position: 01	Occupant Restraints: 7	
<input type="checkbox"/> Male <input type="checkbox"/> Unknown <input checked="" type="checkbox"/> Female	DOB: 5/6/1968	Phone Number:	Injury Severity: C	Injury Location: 1	3	7
OLN: [REDACTED]	State: <input checked="" type="checkbox"/> NV	<input type="checkbox"/> CDL <input checked="" type="checkbox"/> DL	License Status: 0	Airbags: 2	Airbag Switch: 1	Ejected: 0
Compliance: <input type="checkbox"/> Restrict <input type="checkbox"/> Endorse			Driver Factors			
Alcohol/Drug Involvement: <input checked="" type="checkbox"/> Not Involved <input type="checkbox"/> Suspected Impairment <input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Unknown			<input checked="" type="checkbox"/> Apparently Normal <input type="checkbox"/> Driver Ill / Injured <input type="checkbox"/> Had Been Drinking <input type="checkbox"/> Other Improper Driving <input type="checkbox"/> Drug Involvement <input type="checkbox"/> Driver Inattention / Distracted <input type="checkbox"/> Apparently Fatigued / Asleep <input type="checkbox"/> Physical Impairment <input type="checkbox"/> Obstructed View <input type="checkbox"/> Unknown			
Method of Determination (check up to 2) <input type="checkbox"/> Field Sobriety Test <input type="checkbox"/> Urine Test <input type="checkbox"/> Evidentiary Breath <input type="checkbox"/> Blood Test <input type="checkbox"/> Driver Admission <input type="checkbox"/> Preliminary Breath Test			Test Results:			
Vehicle Year: 1995	Vehicle Make: CHEVROLET	Vehicle Model: CAVALIER	Vehicle Type: 4D	Vehicle Factors		
Plate / Permit No.: 358VMF	State: <input checked="" type="checkbox"/> NV	Expiration Date: 08/29/2013	Vehicle Color: BLUE	<input checked="" type="checkbox"/> Failed To Yield Right Of Way <input type="checkbox"/> Failed To Maintain Lane <input type="checkbox"/> Driverless Vehicle <input type="checkbox"/> Disregard Control Device <input type="checkbox"/> Following Too Close <input type="checkbox"/> Unsafe Backing <input type="checkbox"/> Too Fast For Conditions <input type="checkbox"/> Unsafe Lane Change <input type="checkbox"/> Ran Off Road <input type="checkbox"/> Exceeding Speed Limit <input type="checkbox"/> Made Improper Turn <input type="checkbox"/> Hit and Run <input type="checkbox"/> Wrong Way / Direction <input type="checkbox"/> Over Correct/Steering <input type="checkbox"/> Road Defect (Δ) <input type="checkbox"/> Mechanical Defects <input type="checkbox"/> Other Improper Driving <input type="checkbox"/> Object Avoidance <input type="checkbox"/> Drove Left Of Center <input type="checkbox"/> Aggressive / Reckless / Careless <input type="checkbox"/> Other <input type="checkbox"/> Unknown (#)		
Vehicle Identification Number: 1G1VC5245S7100784				1st Contact <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 1 <input type="checkbox"/> 5 <input type="checkbox"/> 8 <input type="checkbox"/> 7 <input type="checkbox"/> 6 <input type="checkbox"/> Overide <input type="checkbox"/> Under Ride		
Registered Owner Name: <input checked="" type="checkbox"/> Same As Driver				Damaged Areas <input type="checkbox"/> Front <input type="checkbox"/> Right Side <input type="checkbox"/> Left Side <input type="checkbox"/> Rear <input checked="" type="checkbox"/> Right Front <input type="checkbox"/> Right Rear <input type="checkbox"/> Top <input type="checkbox"/> Under Carriage <input type="checkbox"/> Left Front <input type="checkbox"/> Left Rear <input type="checkbox"/> Unknown <input type="checkbox"/> Other		
Registered Owner Address:				Insurance Company Name: PROGRESSIVE NORTHERN INS		
<input checked="" type="checkbox"/> Insured				Policy Number: 45890554-2		
Effective: 7/12/2012				To: 1/12/2013		
Insurance Company Address or Phone Number: 1-800-876-5581				Extent Of Damage <input type="checkbox"/> Minor <input type="checkbox"/> None <input type="checkbox"/> Total <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Unknown <input type="checkbox"/> Major		
<input checked="" type="checkbox"/> Vehicle Towed				Towed By: FAST TOWING		
Removed To: TOW YARD				Sequence Of Events		
Traffic Control <input type="checkbox"/> Speed Zone <input type="checkbox"/> Stop Sign <input type="checkbox"/> Signal Light <input type="checkbox"/> Yield Sign <input type="checkbox"/> Flashing Light <input type="checkbox"/> R. R. Sign <input type="checkbox"/> School Zone <input type="checkbox"/> R. R. Gates <input type="checkbox"/> Ped. Signal <input type="checkbox"/> R. R. Signal (#) <input type="checkbox"/> No Passing <input type="checkbox"/> Marked Lanes <input type="checkbox"/> No Controls <input type="checkbox"/> Tire Chains/Snow Req. <input type="checkbox"/> Warning Sign <input type="checkbox"/> Permissive Green <input type="checkbox"/> Turn Signal <input type="checkbox"/> Unknown <input type="checkbox"/> Other		Distance Traveled After Impact 5.5 1 - FEET	Speed Estimate From To Limit 50	Collision With Fixed Object <input type="checkbox"/> Most Harmful Event <input checked="" type="checkbox"/>		
		Code #	Description	Collision With Fixed Object	Most Harmful Event	
		1st	217	217 SLOW / STOPPED VEHICLE	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		2nd			<input type="checkbox"/>	<input type="checkbox"/>
		3rd			<input type="checkbox"/>	<input type="checkbox"/>
		4th			<input type="checkbox"/>	<input type="checkbox"/>
		5th			<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> NRS <input type="checkbox"/> CFR <input type="checkbox"/> CC / MC <input type="checkbox"/> Pending		Violation	NOC	Citation Number		
		NRS FAIL TO YIELD/PULL TO THE ...	0998	B00051915		
<input type="checkbox"/> NRS <input type="checkbox"/> CFR <input type="checkbox"/> CC / MC <input type="checkbox"/> Pending		Violation	NOC	Citation Number		
Investigator(s) 956 JIM BYRNE		ID Number 956	Date 11/5/2012	Reviewed By 958 RANDY SALYER	Date Reviewed 11/5/2012	Page 3 of 7

Event Number:		STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET <small>Revised 5/21/03</small>			Accident Number: NLVPD-121105019878		
		Agency Name: 7 - NORTH LAS VEGAS POLICE DEPARTMENT					
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> Not Transported <input type="checkbox"/> EMS <input type="checkbox"/> Police <input type="checkbox"/> Unknown <input type="checkbox"/> Other			
Street Address:				Transported To:			
City:		State / Country <input type="checkbox"/> NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> Male <input type="checkbox"/> Unknown	DOB:	Phone Number:		Injury Severity:	Injury Location:		
<input type="checkbox"/> Female							
		Airbags:	Airbag Switch:	Ejected:	Trapped:		
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> Not Transported <input type="checkbox"/> EMS <input type="checkbox"/> Police <input type="checkbox"/> Unknown <input type="checkbox"/> Other			
Street Address:				Transported To:			
City:		State / Country <input type="checkbox"/> NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> Male <input type="checkbox"/> Unknown	DOB:	Phone Number:		Injury Severity:	Injury Location:		
<input type="checkbox"/> Female							
		Airbags:	Airbag Switch:	Ejected:	Trapped:		
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> Not Transported <input type="checkbox"/> EMS <input type="checkbox"/> Police <input type="checkbox"/> Unknown <input type="checkbox"/> Other			
Street Address:				Transported To:			
City:		State / Country <input type="checkbox"/> NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> Male <input type="checkbox"/> Unknown	DOB:	Phone Number:		Injury Severity:	Injury Location:		
<input type="checkbox"/> Female							
		Airbags:	Airbag Switch:	Ejected:	Trapped:		
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> Not Transported <input type="checkbox"/> EMS <input type="checkbox"/> Police <input type="checkbox"/> Unknown <input type="checkbox"/> Other			
Street Address:				Transported To:			
City:		State / Country <input type="checkbox"/> NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> Male <input type="checkbox"/> Unknown	DOB:	Phone Number:		Injury Severity:	Injury Location:		
<input type="checkbox"/> Female							
		Airbags:	Airbag Switch:	Ejected:	Trapped:		
<input type="checkbox"/> Trailing Unit 1		VIN:		Plate:	State: <input type="checkbox"/> NV	Type:	
<input type="checkbox"/> Trailing Unit 2		VIN:		Plate:	State: <input type="checkbox"/> NV	Type:	
<input type="checkbox"/> Trailing Unit 3		VIN:		Plate:	State: <input type="checkbox"/> NV	Type:	
Commercial Vehicle Configuration				<input type="checkbox"/> Commercial Vehicle <input type="checkbox"/> School Bus			
<input type="checkbox"/> Bus, 9 - 15 Occupants	<input type="checkbox"/> Tractor Only	<input type="checkbox"/> Tractor / Semi Trailer		<input type="checkbox"/> Driver	Source	<input type="checkbox"/> State Reg.	
<input type="checkbox"/> Bus, > 15 Occupants	<input type="checkbox"/> Tractor / Trailer	<input type="checkbox"/> Passenger Vehicle, (Haz-Mat)		<input type="checkbox"/> Log Book		<input type="checkbox"/> Side of Vehicle	
<input type="checkbox"/> Single 2 Axle and 6 Tire	<input type="checkbox"/> Tractor / Doubles	<input type="checkbox"/> Light Truck, (Haz-Mat)		<input type="checkbox"/> Shipping Papers / Trip Manifest		<input type="checkbox"/> Other	
<input type="checkbox"/> Single > 3 Axle	<input type="checkbox"/> Tractor / Triples	<input type="checkbox"/> Other Heavy Vehicle					
<input type="checkbox"/> Any 4 Tire Vehicle	<input type="checkbox"/> Truck with Trailer						
Carrier Name:				Power Unit GVWR		<input type="checkbox"/> Haz-Mat	
				<input type="checkbox"/> < 10,000 Lbs	<input type="checkbox"/> 10,000 - 26,000 Lbs	<input type="checkbox"/> > 28,000 Lbs	<input type="checkbox"/> Released
Carrier Street Address:				City:		State: <input type="checkbox"/> NV	Zip:
Cargo Body Type			Haz-Mat ID #:	Type of Carrier		NAS Safety Report #:	
<input type="checkbox"/> Pole	<input type="checkbox"/> Van / Box	<input type="checkbox"/> Grain, Gravel Chips		<input type="checkbox"/> Single State			
<input type="checkbox"/> Tank	<input type="checkbox"/> Concrete Mixer	<input type="checkbox"/> Bus, 9 - 15 Occupants	Hazard Classification #:	<input type="checkbox"/> USDOT			
<input type="checkbox"/> Flatbed	<input type="checkbox"/> Auto Carrier	<input type="checkbox"/> Bus, > 15 Occupants		<input type="checkbox"/> Mexico			
<input type="checkbox"/> Dump	<input type="checkbox"/> Garbage/Refuse	<input type="checkbox"/> Other		<input type="checkbox"/> Canada			
<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable			<input type="checkbox"/> None			
						Page 4 of 7	

Event Number:		STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET <small>Revised 1/14/04</small>			Accident Number: NLVPD-121105019878	
Vehicle # 2	# Occupants 1	<input type="checkbox"/> At Fault <input type="checkbox"/> Non Contact Vehicle		Agency Name: 7 - NORTH LAS VEGAS POLICE DEPARTMENT		
Direction of Travel: <input checked="" type="checkbox"/> North <input type="checkbox"/> East <input type="checkbox"/> Unknown <input type="checkbox"/> South <input type="checkbox"/> West		Highway / Street Name: 5TH STREET			Travel Lane #: 1	
Vehicle Action: <input type="checkbox"/> Straight <input type="checkbox"/> Left Turn <input type="checkbox"/> U-Turn <input type="checkbox"/> Wrong Way <input type="checkbox"/> Passing <input type="checkbox"/> Leaving Parked <input type="checkbox"/> Leaving Lane <input type="checkbox"/> Enter Parked (#) <input type="checkbox"/> Lane Change <input type="checkbox"/> Unknown <input type="checkbox"/> Backing <input type="checkbox"/> Right Turn <input type="checkbox"/> Parked <input checked="" type="checkbox"/> Stopped (Δ) <input type="checkbox"/> Racing <input type="checkbox"/> Entering Lane <input type="checkbox"/> Other Turning <input type="checkbox"/> Driverless Vehicle <input type="checkbox"/> Other						
Driver: (Last Name, First Name, Middle Name Suffix) CARGILE JOHN Q				Transported By: <input checked="" type="checkbox"/> Not Transported <input type="checkbox"/> EMS <input type="checkbox"/> Police <input type="checkbox"/> Unknown <input type="checkbox"/> Other		
Street Address: 1301 LMBE				Transported To:		
City: NLV		State / Country: <input checked="" type="checkbox"/> NV	Zip Code: 89030	Person Type: 1	Seating Position: 01	Occupant Restraints: 7
<input checked="" type="checkbox"/> Male <input type="checkbox"/> Unknown <input type="checkbox"/> Female		DOB: 9/5/1970	Phone Number:		Injury Severity: 0	Injury Location: 0
OLN: [REDACTED]		State: <input checked="" type="checkbox"/> NV	<input type="checkbox"/> CDL <input checked="" type="checkbox"/> DL	License Status: 0	Airbags: 2	Airbag Switch: 1
Ejected: 0	Trapped: 0	Compliance: <input type="checkbox"/> Restrict <input type="checkbox"/> Endorse		Driver Factors		
Alcohol/Drug Involvement: <input checked="" type="checkbox"/> Not Involved <input type="checkbox"/> Suspected Impairment <input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Unknown		Endorsements		Restrictions		Method of Determination (check up to 2): <input type="checkbox"/> Field Sobriety Test <input type="checkbox"/> Urine Test <input type="checkbox"/> Evidentiary Breath <input type="checkbox"/> Blood Test <input type="checkbox"/> Driver Admission <input type="checkbox"/> Preliminary Breath Test
Test Results:		<input checked="" type="checkbox"/> Apparently Normal <input type="checkbox"/> Had Been Drinking <input type="checkbox"/> Drug Involvement <input type="checkbox"/> Apparently Fatigued / Asleep <input type="checkbox"/> Obstructed View	<input type="checkbox"/> Driver Ill / Injured <input type="checkbox"/> Other Improper Driving <input type="checkbox"/> Driver Inattention / Distracted <input type="checkbox"/> Physical Impairment <input type="checkbox"/> Unknown			
Vehicle Year: 2008	Vehicle Make: FORD	Vehicle Model: EXPEDITION	Vehicle Type: LL		Vehicle Factors	
Plate / Permit No.: EX52316	State: <input checked="" type="checkbox"/> NV	Expiration Date: 12/31/2012	Vehicle Color: WHITE		<input type="checkbox"/> Failed To Yield Right Of Way <input type="checkbox"/> Failed To Maintain Lane <input type="checkbox"/> Driverless Vehicle <input type="checkbox"/> Disregard Control Device <input type="checkbox"/> Following Too Close <input type="checkbox"/> Unsafe Backing <input type="checkbox"/> Too Fast For Conditions <input type="checkbox"/> Unsafe Lane Change <input type="checkbox"/> Ran Off Road <input type="checkbox"/> Exceeding Speed Limit <input type="checkbox"/> Made Improper Turn <input type="checkbox"/> Hit and Run <input type="checkbox"/> Wrong Way / Direction <input type="checkbox"/> Over Correct/Steering <input type="checkbox"/> Road Defect (Δ) <input type="checkbox"/> Mechanical Defects <input type="checkbox"/> Other Improper Driving <input type="checkbox"/> Object Avoidance <input type="checkbox"/> Drove Left Of Center <input type="checkbox"/> Aggressive / Reckless / Careless Other <input type="checkbox"/> Unknown (#)	
Vehicle Identification Number: 1FMFU16598LA23144				1st Contact		Damaged Areas
Registered Owner Name: <input type="checkbox"/> Same As Driver CITY OF NORTH LAS VEGAS				2 3 4 1 5 8 7 6		<input type="checkbox"/> Front <input type="checkbox"/> Right Side <input type="checkbox"/> Left Side <input type="checkbox"/> Rear <input type="checkbox"/> Right Front <input type="checkbox"/> Right Rear <input type="checkbox"/> Top <input type="checkbox"/> Under Carriage <input type="checkbox"/> Left Front <input type="checkbox"/> Left Rear <input type="checkbox"/> Unknown <input type="checkbox"/> Other
Registered Owner Address: 100 E BROOKS NLV NV 89030				<input type="checkbox"/> Overide <input type="checkbox"/> Under Ride		
<input checked="" type="checkbox"/> Insured Insurance Company Name: SEE RISK MGMT						
Policy Number:		Effective:	To:			
Insurance Company Address or Phone Number:						
<input type="checkbox"/> Vehicle Towed		Towed By:				
Removed To: DRIVEN TO CITY GARAGE						
Traffic Control		Distance Traveled After Impact 0 1 - FEET	Speed Estimate From To Limit 35		Extent Of Damage <input type="checkbox"/> Minor <input type="checkbox"/> None <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Total <input type="checkbox"/> Major <input type="checkbox"/> Unknown	
<input type="checkbox"/> Speed Zone <input type="checkbox"/> Stop Sign <input type="checkbox"/> Signal Light <input type="checkbox"/> Yield Sign <input type="checkbox"/> Flashing Light <input type="checkbox"/> R. R. Sign <input type="checkbox"/> School Zone <input type="checkbox"/> R. R. Galgs <input type="checkbox"/> Ped. Signal <input type="checkbox"/> R. R. Signal (#) <input type="checkbox"/> No Passing <input type="checkbox"/> Marked Lanes <input type="checkbox"/> No Controls <input type="checkbox"/> Tire Chains/Snow Req. <input type="checkbox"/> Warning Sign <input type="checkbox"/> Permissive Green <input type="checkbox"/> Turn Signal <input type="checkbox"/> Unknown <input type="checkbox"/> Other		Sequence Of Events				
		Code #	Description		Collision With Fixed Object	Most Harmful Event
		1st 214	214 MOTOR VEHICLE IN TRANSPORT		<input type="checkbox"/>	<input checked="" type="checkbox"/>
		2nd			<input type="checkbox"/>	<input type="checkbox"/>
		3rd			<input type="checkbox"/>	<input type="checkbox"/>
		4th			<input type="checkbox"/>	<input type="checkbox"/>
		5th			<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> NRS <input type="checkbox"/> CFR <input type="checkbox"/> CC / MC <input type="checkbox"/> Pending		Violation		NOC	Citation Number	
<input type="checkbox"/> NRS <input type="checkbox"/> CFR <input type="checkbox"/> CC / MC <input type="checkbox"/> Pending		Violation		NOC	Citation Number	
Investigator(s) 956 JIM BYRNE		ID Number 956	Date 11/5/2012	Reviewed By 958 RANDY SALYER	Date Reviewed 11/5/2012	Page 5 of 7

Event Number:		STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET <small>Revised 5/21/03</small>			Accident Number: NLVPD-121105019878	
		Agency Name: 7 - NORTH LAS VEGAS POLICE DEPARTMENT				
Name: <small>(Last Name, First Name, Middle Name Suffix)</small>			Transported By: <input type="checkbox"/> Not Transported <input type="checkbox"/> EMS <input type="checkbox"/> Police <input type="checkbox"/> Unknown <input type="checkbox"/> Other			
Street Address:			Transported To:			
City:		State / Country <input type="checkbox"/> NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> Male <input type="checkbox"/> Unknown	DOB:	Phone Number:		Injury Severity:	Injury Location:	
<input type="checkbox"/> Female						
			Airbags:	Airbag Switch:	Ejected:	Trapped:
Name: <small>(Last Name, First Name, Middle Name Suffix)</small>			Transported By: <input type="checkbox"/> Not Transported <input type="checkbox"/> EMS <input type="checkbox"/> Police <input type="checkbox"/> Unknown <input type="checkbox"/> Other			
Street Address:			Transported To:			
City:		State / Country <input type="checkbox"/> NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> Male <input type="checkbox"/> Unknown	DOB:	Phone Number:		Injury Severity:	Injury Location:	
<input type="checkbox"/> Female						
			Airbags:	Airbag Switch:	Ejected:	Trapped:
Name: <small>(Last Name, First Name, Middle Name Suffix)</small>			Transported By: <input type="checkbox"/> Not Transported <input type="checkbox"/> EMS <input type="checkbox"/> Police <input type="checkbox"/> Unknown <input type="checkbox"/> Other			
Street Address:			Transported To:			
City:		State / Country <input type="checkbox"/> NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> Male <input type="checkbox"/> Unknown	DOB:	Phone Number:		Injury Severity:	Injury Location:	
<input type="checkbox"/> Female						
			Airbags:	Airbag Switch:	Ejected:	Trapped:
Name: <small>(Last Name, First Name, Middle Name Suffix)</small>			Transported By: <input type="checkbox"/> Not Transported <input type="checkbox"/> EMS <input type="checkbox"/> Police <input type="checkbox"/> Unknown <input type="checkbox"/> Other			
Street Address:			Transported To:			
City:		State / Country <input type="checkbox"/> NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> Male <input type="checkbox"/> Unknown	DOB:	Phone Number:		Injury Severity:	Injury Location:	
<input type="checkbox"/> Female						
			Airbags:	Airbag Switch:	Ejected:	Trapped:
<input type="checkbox"/> Trailing Unit 1		VIN:	Plate:	State: <input type="checkbox"/> NV	Type:	
<input type="checkbox"/> Trailing Unit 2		VIN:	Plate:	State: <input type="checkbox"/> NV	Type:	
<input type="checkbox"/> Trailing Unit 3		VIN:	Plate:	State: <input type="checkbox"/> NV	Type:	
Commercial Vehicle Configuration			<input type="checkbox"/> Commercial Vehicle <input type="checkbox"/> School Bus			
<input type="checkbox"/> Bus, 9 - 15 Occupants	<input type="checkbox"/> Tractor Only	<input type="checkbox"/> Tractor / Semi Trailer		<input type="checkbox"/> Driver	Source	
<input type="checkbox"/> Bus, > 15 Occupants	<input type="checkbox"/> Tractor / Tractor	<input type="checkbox"/> Passenger Vehicle, (Haz-Mat)		<input type="checkbox"/> Log Book	<input type="checkbox"/> State Reg.	
<input type="checkbox"/> Single 2 Axle and 8 Tire	<input type="checkbox"/> Tractor / Doubles	<input type="checkbox"/> Light Truck, (Haz-Mat)		<input type="checkbox"/> Shipping Papers / Trip Manifest	<input type="checkbox"/> Side of Vehicle	
<input type="checkbox"/> Single > 3 Axle	<input type="checkbox"/> Tractor / Triples	<input type="checkbox"/> Other Heavy Vehicle			<input type="checkbox"/> Other	
<input type="checkbox"/> Agg 4 Tire Vehicle	<input type="checkbox"/> Truck with Trailer					
Carrier Name:			Power Unit GVWR			<input type="checkbox"/> Haz-Mat
			<input type="checkbox"/> ≤ 10,000 Lbs	<input type="checkbox"/> 10,000 - 26,000 Lbs	<input type="checkbox"/> ≥ 26,000 Lbs	<input type="checkbox"/> Released
Carrier Street Address:			City:		State: <input type="checkbox"/> NV	Zip:
Cargo Body Type			Haz-Mat ID #:	Type of Carrier		NAS Safety Report #:
<input type="checkbox"/> Pole	<input type="checkbox"/> Van / Box	<input type="checkbox"/> Grain, Gravel Chips		<input type="checkbox"/> Single State		
<input type="checkbox"/> Tank	<input type="checkbox"/> Concrete Mixer	<input type="checkbox"/> Bus, 9 - 15 Occupants	Hazard Classification #:	<input type="checkbox"/> USDOT		
<input type="checkbox"/> Flatbed	<input type="checkbox"/> Auto Carrier	<input type="checkbox"/> Bus, > 15 Occupants		<input type="checkbox"/> Mexico		
<input type="checkbox"/> Dump	<input type="checkbox"/> Garbage/Refuse	<input type="checkbox"/> Other		<input type="checkbox"/> Canada		
<input type="checkbox"/> Unknown	<input type="checkbox"/> Not Applicable			<input type="checkbox"/> None		
						Page 6 of 7

Event Number:

**STATE OF NEVADA
TRAFFIC ACCIDENT REPORT
SCENE INFORMATION SHEET**
Revised 5/21/03

Accident Number:

NLVPD-121105019878

Agency Name:

7 - NORTH LAS VEGAS POLICE
DEPARTMENT

Description of Accident / Narrative Continuation

V#2'S OPERATOR REPORTED NO INJURIES AT THIS TIME.

A SPEED ANALYSIS WAS CONDUCTED BY THIS OFFICER ON V#1 AND BASED ON A CONSERVATIVE DRAG FACTOR OF .65 (WHICH TAKES INTO ACCOUNT THE DOWNHILL GRADE OF 3%), V#1 WAS DOING APPROX 47 MPH WHEN V#1'S OPERATOR APPLIED HER BRAKES AT THE BEGINNING OF THE SKIDMARKS AND WAS TRAVELING AT APPROX 10 MPH WHEN V#1 IMPACTED V#2 (NOT TAKING INTO ACCOUNT LOSS OF SPEED FROM THE COLLISION).

THIS OFFICER FOLLOWED UP AT NORTH VISTA HOSPITAL FOR THE COMPLETION OF THIS COLLISION.

Page

7 of 7

STATE OF NEVADA
North Las Vegas Police Department

In the Municipal Court of North Las Vegas

Citation #B00051915
Case # 121105019878
Type TRAFFIC

County: CLARK

Issue Date/Time: 11/5/2012 04:41

Violation Date/Time: 11/5/2012 04:41

VIOLATOR

Name: GLOVER-ARMONT, SAPONZCA F

Address: 611 PARK LANDING CT

Phone: UNABLEOBT

City: NORTH LAS VEGAS

State: NV

Zip: 89032

Hgt: 505

Wgt: 125

Sex: F

Hair: BRO

Eyes: BRO

Race: B

Employer: Business -

Address:

City:

State: NV

Phone:

DL:

DL State: NV

Zip:

DL Expires: 6/6/2013

Class: C

CDL: No

Restrictions:

Endorsements:

DOB: 5/6/1968

VEHICLE

> 16 Pass:

VIN #: 1G1JC6245B7100784

Type: 4D

State: NV

Make: CHEV

Veh Tag: 358VMF

Haz Mat: No

Model:

Veh Yr: 1995

Comm Veh: No

Color: BLUE

DOT #:

Reg Exp: 08/29/2013

Owner: GLOVER-ARMONT, SAPONZCA F

Address: 611 PARK LANDING CT, NORTH LAS VEGAS, NV 89032

LOCATION AND VIOLATION INFORMATION

Location: CHEYENNE and 5TH

Weather: Clear
Traffic:

Direction: E

Turn:

Lane: 3

Road Conditions:

Alleged:

District: B2

Limit:

Grant: 1

Spd Det:

Arrest: No

School Zone: No

Accident: Yes

CONSTRUCTION ZONE/WORKERS PRESENT: No

VIOLATIONS (C2.150/NRS 706.756)

Violation - 484D.100.1 - HEADLAMPS NOT ILLUMINATED WHEN REQ DID OPERATE ABOVE VEHICLE ON PUBLIC ROADWAY WITHOUT LIGHTED LAMPS AS REQUIRED- NO HEADLIGHTS ON PRIOR TO COLLISION WITH POLICE VEHICLE

Fine: \$195

Violation - 484B.287 - FAIL YIELD TO EMERG VEH DID OPERATE ABOVE VEHICLE ON A PUBLIC ROADWAY AND FAILED TO YIELD/PULL TO THE RIGHT FOR AN EMERGENCY VEHICLE DRIVER EB IN #3 TRAVEL LANE FTYROW TO POLICE VEHICLE RUNNING CODE 3 TO A SHOTS FIRED CALL WITH A VICTIM-DRIVER CAUSED A TC WITH POLICE VEHICLE

Fine: \$645

I certify (or Declare) under penalty of perjury under the laws of the state of Nevada that I have reasonable grounds/probable cause to believe and do believe that above named person committed the above offense(s) contrary to law.

Officer Signature

Complainant Signature

Officer: Officer Byrne ID# 956

Citizen:

Defendant's Signature

[Signature]
This is not a plea of guilty. (Not valid if unsigned)

Failure to comply with this complaint or future dates relating to this complaint will constitute a separate offense

Interpreter Needed: *None

Total Bail: \$840

Without admitting having committed the above offense(s), I hereby promise to respond as directed on this notice and waive my right to be taken immediately before a magistrate (NRS 484.799 and NRS 484.803)

You are hereby ordered to appear to answer to the above charges on the day and time:

North Las Vegas Municipal Court

Appear By: 1/3/2013

2332 Las Vegas Blvd North #100

7 am to 5 pm

North Las Vegas, NV 89030

(702) 633 1130

Officer Notes:

Picture

Officer Notes:

Diagram

Radar (Moving/Stallionary):

Radar Number:

Stop Type: TRAFFIC

Trailer Tag:

Trailer State: NV

Appear by Date: 1/3/2013

Appear by Time: 7 am to 5 pm

Attitude: Courteous

Traffic:

Highway Cond.:

Weather: Clear

Num Occ: 1

Had Been Drinking: No

Drug Suspected: No

Citizen Address:

Citizen City:

Citizen State: NV

Citizen Zip:

Citizen Phone:

GLOVER-ARMONT, SAPONZCA F UNABLEOBT MUNI. - NLV (TRAFFIC)

EXHIBIT “E”

EXHIBIT “E”



General Inquiry



New Search...

- Summary
- Parties
- Events
- Dockets
- Fields
- Notes
- Disposition
- Costs
- Charges
- Summary
- Sentencing

Party Charge Summary

TR028347-12 CITY OF NORTH LAS VEGAS CITY OF NORTH LAS VEGAS VS. GLOVER-ARMONT, JAPONICA FELICA

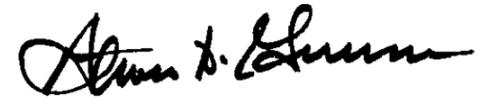
<p>Full Name GLOVER-ARMONT, JAPONICA FELICA</p> <p>Party Type DEFENDANT</p> <p>Ticket Number B00051915</p> <p>Action Code T07006M00NV</p> <p>Description FAIL YIELD TO EMERG VEH</p> <p>Charge Dscr. FAIL YIELD TO EMERG VEH</p> <p>Degree of Off. MISDEMEANOR</p> <p>Indict Charge</p> <p>Amd Chrg STOP/STAND/PARK VEH IN PROHIBIT PLACE</p> <p>Amd Chrg DGOF MISDEMEANOR</p> <p>Actn Chng Date</p> <p># of Counts</p> <p>Speed Limit 0 Speed 0</p> <p>Payable <input checked="" type="checkbox"/> Misc. Track MID000026480002</p>	<p>Plea Code PLED NOLO 12/13/2012</p> <p>Decision FOUND 12/13/2012</p> <p>GUILTY</p> <p>Disp. Date(s) 12/13/2012</p> <p>Disposition Code PLED NO CONTEST AT INITIAL ARRAIGNMENT</p> <p>Comments DID OPERATE ABOVE VEHICLE ON A PUBLIC ROADWAY AND FAILED TO YIELD/PULL TO THE RIGHT FOR AN EMERGENCY VEHICLE DRIVER EB IN #3 TRAVEL LANE FTYROW TO POLICE VEHICLE RUNNING CODE 3 TO A SHOTS FIRED CALL WITH A VICTIM-DRIVER CAUSED A TC WITH POLICE VEHICL</p>
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EXHIBIT: E

WITNESS: Glover Armont

DATE: 8-7-14

S. NAYLOR



CLERK OF THE COURT

1 **OPPS**
MARJORIE HAUF, ESQ.
2 Nevada Bar No. 8111
3 IDA M. YBARRA, ESQ.
Nevada Bar No. 11327
4 GANZ & HAUF
8950 W. Tropicana Ave., Ste. 1
5 Las Vegas, Nevada 89147
6 Tel: (702) 598-4529
Fax: (702) 598-3626

7 Attorneys for Plaintiff

8 -o0o-

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 JAPONICA GLOVER-ARMONT,

12 Plaintiff,

13 vs.

14 JOHN CARGILE; CITY OF NORTH LAS
15 VEGAS, a Municipal Corporation existing
16 under the laws of the State of Nevada in the
17 County of Clark; DOES I through X, inclusive;
18 and/or ROE CORPORATIONS I through X,
inclusive,

19 Defendants.

CASE NO.: A-13-683211-C
DEPT NO.: XIX

**SUPPLEMENTAL OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

**DATE OF HEARING: 03/01/16
TIME OF HEARING: 9:00 A.M.**

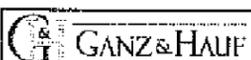
20
21 COMES NOW, Plaintiff, JAPONICA GLOVER-ARMONT, by and through her attorney
22 of record, MARJORIE HAUF, ESQ., of the law firm of GANZ & HAUF and hereby files her
23 Supplemental Opposition to Defendants' Motion for Summary Judgment regarding factual
24 discrepancies.

25 ///

26 ///

27 ///

28 ///



1 This Supplemental Opposition is made and based upon the following Points and
2 Authorities, the attached exhibits, all pleadings and papers on file, and any oral argument adduced
3 by this Court at the time of hearing of this matter.

4 Dated this 23rd day of February, 2016.

5 GANZ & HAUF

6
7 Ida Ybarra
8 MARJORIE HAUF, ESQ.
9 Nevada Bar No. 8111
10 IDA M. YBARRA, ESQ.
11 Nevada Bar No. 11327
12 8950 W. Tropicana Ave., Suite 1
13 Las Vegas, Nevada 89147
14 Attorney for Plaintiff

15 **I. STATEMENT OF FACTS**

16 This case involves a motor vehicle crash that occurred on November 5, 2012. Plaintiff,
17 Japonica Glover-Armont, was driving, eastbound on Cheyenne approaching the intersection of 5th
18 Street in North Las Vegas, Nevada. Defendant, John Cargile, while driving a vehicle owned by his
19 employer, Defendant, City of North Las Vegas, was driving northbound on 5th Street in North Las
20 Vegas, when Defendant John Cargile attempted to cross the intersection on a red light without his
21 siren causing an impact with Plaintiff's vehicle. As a result of the crash, Plaintiff sustained
22 \$23,711.69 in medical damages.

23 On June 10, 2013, Plaintiff filed a Complaint against Defendants alleging negligence,
24 vicarious liability, negligent entrustment and negligent hiring, training and supervision.

25 On December 22, 2015, Defendants filed a Motion for Summary Judgment. Plaintiff filed
26 an Opposition to Defendant's Motion for Summary Judgment on January 11, 2016. Defendants
27 filed a Reply in Support of their Motion for Summary Judgment on January 26, 2016.

28 A hearing on Defendants' Motion for Summary Judgment was held on February 2, 2016.
The hearing was continued to March 1, 2016 and Plaintiff was ordered to file a supplemental

1 opposition to include factual discrepancies in the case. As such, Plaintiff now submits her
2 Supplemental Opposition to Defendants' Motion for Summary Judgment.

3 **II. LEGAL ARGUMENT**

4 **Defendants' Motion for Summary Judgment must be denied because there are genuine issues**
5 **of material fact that exist with regards to the factual discrepancies in the case.**

6 Defendants seek summary judgment based on discretionary immunity when material issues
7 of fact exist with regards to immunity in this case. Material facts are those which may affect the
8 outcome of the case. *Las Vegas Tribe of Paiute Indians v. Phebus*, 2014, 5 F.Supp.3d. 1221. A
9 dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return
10 a verdict for the nonmoving party. *Id.* This case contains several discrepancies which create
11 genuine issues of material fact that the trier of fact needs to evaluate. Specifically, there are factual
12 discrepancies with regards to: 1) whether or not Defendant Cargile had his sirens and lights on; 2)
13 whether or not Plaintiff had her headlights on and 3) whether or not Defendant Cargile was already
14 in the intersection at the time of impact. When evaluating the following factual discrepancies,
15 there is sufficient evidence for a reasonable jury to return a verdict for Plaintiff.
16

17
18 **1) Defendant Cargile's failure to have his lights and sirens on.**

19 There are factual discrepancies with regards to whether or not Defendant Cargile had both
20 of his lights and sirens on at the time he entered the intersection. This is important because
21 Defendant Cargile is not entitled to discretionary immunity if he entered the intersection without
22 both lights and sirens. During the deposition of Plaintiff, she testified that Defendant Cargile did
23 not have his sirens at the time of impact. Plaintiff testified:¹

24
25 Q. Looking forward to your answer to
26 Interrogatory No. 2, "Please describe in detail the
27 incident that is the subject of the lawsuit," basically
28 a summary of your side of the story. In your answer to
Interrogatory No. 2 on page 3, the last sentence, you
say, "The officer did not have his sirens on, and

¹ See, Deposition of Japonica Glover-Armont, 24:24-25:9, attached hereto as Exhibit I.

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plaintiff could not see his lights flashing due to the hill obstructing her view."

As you sit here today, is that an accurate statement?

A. Yes.

However, when Defendant Cargile's deposition was taken, Mr. Cargile testified that he had both his lights and sirens on at the time of impact. Mr. Cargile testified:²

Q. Can you describe in detail how this wreck occurred?

A. Basically, I was running lights and sirens going which would be northbound on Fifth Street as I approached Cheyenne, the intersection with Cheyenne.

Defendant Cargile also testified that the siren is really loud, but he allegedly heard Plaintiff's squealing tires to the left of him. Mr. Cargile testified:³

Q. Do you know what decibel level the wail is?

A. No, I don't. It varies in how loud and the pitch to be able to -- and how frequently it goes. It changes to get people's attention.

Q. It's pretty loud, though, isn't it?

A. Yes. It's quite loud.

Q. And it's your testimony that as the siren is going, you heard squealing of tires to the left?

A. Correct.

It is up to a jury to determine whether or not Defendant Cargile had both of his sirens and lights on at the time of impact. A jury would need to weigh the evidence and determine whether or not Defendant Cargile could possibly hear Plaintiff's squealing tires when the sirens are loud as he alleges. This is especially important as Defendant Cargile claims Plaintiff did not have her headlights on at the time of the crash as discussed further below. Based on the factual discrepancies, a genuine issue of material fact exists as to whether or not Defendant had his lights and sirens on at the time of impact. As such, Defendants' Motion for Summary Judgment must be denied.

² See, Deposition of John Cargile, 35:11-15, attached hereto as Exhibit 2.
³ Id. at 48:22-49:5.

1 2) Plaintiff had her headlights on at the of the crash.

2 There are factual discrepancies between the parties with regards to whether or not Plaintiff
3 had her headlights on at the time of the crash. This is important because Defendant's failure to act
4 with due care by entering an intersection when Plaintiff clearly had her lights on defeats
5 Defendants' discretionary immunity argument. *Johnson v. Brown*, 75 Nev. 437, 345 P.2d 754, 755
6 (1959). Plaintiff testified during her deposition that she had her headlights on at the time of the
7 crash. Plaintiff testified:⁴

9 Q. At the time of the accident, did you have
10 your headlights on?

11 A. Yes.

12 Plaintiff testified during her deposition that she knows she had her lights on because if her lights
13 were not on then her dashboard would have been completely dark while she was driving it. This is
14 important as it was dark outside when the crash occurred. Plaintiff testified:⁵

15 A. Because my car, that car I had then was a
16 1995 Cavalier, and if you don't turn the headlight --
17 if you don't turn the lights on, the dashboard is
18 completely dark. So my dashboard was not completely
19 dark.

20 Q. Okay. So your recollection is because your
21 dashboard was lit up, that meant that your headlights
22 were on?

23 A. Yes.

24 Plaintiff also explained that her vehicle was turned off by a police officer after she was hit
25 and believes the police officer also turned off her lights. Plaintiff testified:⁶

26 A. Because the officer that was sitting beside
27 me reached in, turned off my car, and apparently he
28 must have turned the headlights off, too, because he
was telling me -- I was -- I remember holding my head,
and -- because I was really groggy, kind of like, from
the impact. I hit my head on the steering wheel. And
he kept saying, "You need to turn your car off."

⁴ See, Exhibit 1 at 14:19-21.

⁵ Id. at 15:16-24.

⁶ Id. at 17:7-26.

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So I didn't turn my car off. I didn't touch the headlights. But I know my headlights were on, because my dashboard was lit up.

Yet, when Defendant Cargile's deposition as taken, he testified that he did not see Plaintiff because Plaintiff did not have her headlights on. Defendant Cargile testified:⁷

I noticed it was a small dark-colored vehicle and it had no headlights or anything on the vehicle as it approached.

Defendant Cargile would like the Court to believe that Plaintiff did not have her headlights on at the time of the crash. However, the reality is, there is factual discrepancy with regards to whether or not Plaintiff had her headlights on at the time of the crash or not. Again, the jury needs to weigh the evidence and determine whether or not Plaintiff had her lights on at the time of the crash. As such, a genuine issue of material fact exists and Defendants' Motion for Summary Judgment must be denied.

3) Defendant Cargile was not in the intersection prior to Plaintiff.

A factual discrepancy exists as to whether or not Defendant Cargile or Plaintiff were already in the intersection at the time of the crash. Plaintiff testified during her deposition that she was already in the intersection at the time of the crash. Again, this is important because by Defendant Cargile crashing into Plaintiff when she was in the intersection first, shows that he did not act with due care, which defeats his discretionary immunity argument. *Johnson v. Brown*, 75 Nev. 437, 345 P.2d 754, 755 (1959). Also, Plaintiff testified that Defendant hit her rather than her crashing into him. Plaintiff testified:⁸

A. Because I was already in the intersection when he hit me.

Q. Is it your testimony that while you were driving through the intersection, both cars were moving, and his hit you in the side?

A. Yes.

⁷ See, Exhibit 2 at 36:21-23.
⁸ See, Exhibit 1 at 21:19-24.

1 Yet, during Defendant Cargile's deposition, he testified that he was "encroaching" into the
2 intersection when he heard Plaintiff lock up her brakes. Defendant testified:⁹

3 Then I started to --
4 once I believed there was no oncoming traffic on
5 either east or westbound on Cheyenne, I started to
6 encroach into the intersection to get ready to make my
7 left-hand turn. As soon as I started to encroach into
8 the intersection, I heard the vehicle lock up its
brakes. And it was to my left. So I noticed it was a
small car now that was traveling eastbound on Cheyenne
approaching the intersection.

9 ...
10 Q. What you meant by that was that you were
already within that Cheyenne travel when you heard the
vehicle to the left?

11 A. Encroaching. I was entering the
intersection.

12 Q. But you were already in it?

13 A. Yes.

14 Again, because there are factual discrepancies that exist in this matter, a jury needs to weigh the
15 evidence and testimony of the parties to determine whether Defendant Cargile was already in the
16 intersection at the time of the crash. Therefore, Defendants' Motion for Summary Judgment must
17 be denied.

18 III. CONCLUSION

19 Based on the foregoing, Defendants' Motion for Summary Judgment must be denied as a
20 genuine issue of material fact exists.

21 Dated this 23rd day of February, 2016.

22
23 GANZ & HAUF

24 Ida Ybarra
25 MARJORIE HAUF, ESQ.
Nevada Bar No. 8111
26 IDA M. YBARRA, ESQ.
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27 8950 W. Tropicana Ave., Suite 1
Las Vegas, Nevada 89147

⁹ See, Exhibit 2 at 36:12-18 and 48:1-7.

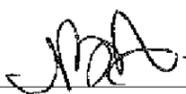
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on this date, I served the foregoing
**SUPPLEMENTAL OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT** on all parties to this action by Wiznet and U.S. Mail:

Christopher Craft, Esq.
Deputy City Attorney
2250 Las Vegas Blvd Ste 810
North Las Vegas, NV 89030

Dated this 23rd day of February, 2016.



An employee of the law firm of GANZ & HAUF

EXHIBIT 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAPONICA GLOVER-ARMONT,)	
)	
Plaintiff,)	
)	
vs.)	Case No. A-13-683211-C
)	
JOHN CARGILE; CITY OF NORTH)	
LAS VEGAS, a Municipal)	
Corporation existing under)	
the laws of the State of)	
Nevada in the County of)	
Clark; DOES I through X,)	
inclusive; and/or ROE)	
CORPORATIONS I through X,)	
inclusive,)	
)	
Defendants.)	
)	

DEPOSITION OF JAPONICA FELISHA GLOVER-ARMONT

Taken on Thursday, August 7, 2014

At 2:08 p.m.

At 2250 Las Vegas Boulevard North

Suite 810

North Las Vegas, Nevada 89030

Reported by: Susan Lee Naylor, RPR, RMR, CCR #513

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APPEARANCES

For the Plaintiff: ADAM GANZ, ESQ.
Ganz & Hauf
8950 West Tropicana Avenue
Suite 1
Las Vegas, NV 89147

For the Defendants: CHRISTOPHER D. CRAFT, ESQ.
Deputy City Attorney
2250 Las Vegas Boulevard North
Suite 810
North Las Vegas, NV 89030

I N D E X

Witness	Page
JAPONICA FELISHA GLOVER-ARMONT	
(By Mr. Craft)	3
(By Mr. Ganz)	35

E X H I B I T S

Number	Description	Page
A	Police Report	14
B	Photograph	15
C	Photograph	18
D	Plaintiff's Response to Interrogatories	24
E	CourtView Printout	30

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(Rule 30(b)(4) was waived.)

JAPONICA FELISHA GLOVER-ARMONT

was called as a witness, and having been first duly sworn, testified as follows:

EXAMINATION

BY MR. CRAFT:

Q Could you please state and spell your full name for the record?

A Japonica Felisha Glover-Armont, J-A-P-O-N-I-C-A, F-E-L-I-S-H-A, G-L-O-V-E-R, hyphen, A-R-M-O-N-T.

Q We met earlier. My name is Chris Craft. I am one of the attorneys for the City of North Las Vegas and Officer Cargile in this lawsuit. Have you ever had your deposition taken before?

A No.

Q Okay. I'll explain the process a little bit. A deposition is our opportunity to ask you questions about your knowledge as it relates to this case. You are under oath. Even though this setting is informal, the oath carries as much weight as if we were in a court of law. Do you understand?

A Yes.

Q Along with us is a court reporter who will take down everything that we say. So she can do that,

1 we have to be careful not to talk over each other. We
 2 have to wait until the other one is done speaking
 3 before we start talking. Similarly, she can't take
 4 down gestures like shaking your head or nodding, so we
 5 have to use yes or nos, not uh-huh or uh-uh, things
 6 like that. Do you understand?

7 A Yes.

8 Q After we're done, the reporter is going to
 9 put everything that's said today in a booklet in a
 10 written form, and you will be sent a copy. You will
 11 have the opportunity to review it, and if there's
 12 anything you feel the need to correct, you can correct
 13 it.

14 One caveat with that. If you make a material
 15 change such as changing an answer from the light was
 16 green to the light was red, I will be able to comment
 17 on that at trial, and it may affect your credibility.
 18 Do you understand?

19 A Yes.

20 Q If there's anything I ask that you don't
 21 understand, or you need me to rephrase the question,
 22 just let me know. If you need to take a break for any
 23 reason, let me know. It's not an endurance contest.
 24 We will do our best to accommodate you. I would ask
 25 that you not take a break while a question is pending,

1 so if I ask you a question, you suddenly say, "Time
2 out, I need to leave the room," then come back for an
3 answer. Answer the question, and then take the break.
4 Does that make sense?

5 A Yes.

6 Q Okay. Now and then your attorney may object
7 to a question that I ask for whatever reason. Unless
8 you're specifically instructed not to answer, you will
9 still have to answer. If you forget what the question
10 was during his objection, just ask me to restate it, or
11 we will have the reporter read it back. Is that fair?

12 A Yes.

13 Q All we need today is your best recollection
14 based on your knowledge. Don't guess, but you can
15 estimate. The difference is, for example, if you can
16 estimate how long this table is. But if I ask you to
17 guess about the table in our conference room and you
18 haven't seen it, that would be a guess. Do you
19 understand the difference?

20 A Yes.

21 Q Don't be mad at me. I have to ask everyone
22 this. Are you under any medication, drugs or alcohol,
23 or anything else that would affect your memory or your
24 ability to testify here today?

25 A No.

1 Q Is there reason that we can't go forward?

2 A No.

3 Q Are you currently employed?

4 A Yes.

5 Q By whom?

6 A Review-Journal.

7 Q How long have you been employed with that
8 company?

9 A About four years.

10 Q And what is your job?

11 A I'm a contractor.

12 Q Can you --

13 A I'm a carrier.

14 Q Okay. Can you briefly describe what that
15 job entails?

16 A Delivering papers to all their commercial
17 locations.

18 Q Okay. So not residential; not from house to
19 house?

20 A No.

21 Q Got it. Does that job include loading your
22 vehicle with newspapers?

23 A Yes.

24 Q Do you do that yourself?

25 A Yes. Well, I have help. Sometimes the

1 people in the dock help. Well, they issue you the
2 papers, and they will help you load if you need them to
3 help you load.

4 Q Briefly explain how that works.

5 A You back into the dock, and there's guys on
6 the top of the dock. We're down below. And if we're
7 getting ten bundles, then he will stack ten bundles up
8 on the dock. If you need help with those bundles, he
9 will come down and help you load the vehicle.

10 Q Okay. Do the bundles vary in size from time
11 to time?

12 A Yes.

13 Q What's the smallest the bundle usually is?

14 A Six papers.

15 Q Okay. But it can be up to a larger amount?

16 A Up to 40, 50.

17 Q Okay. So the amount of papers you're going
18 to be having in your car on any particular day is going
19 to vary?

20 A Yes.

21 Q And that was true at the time of the
22 accident, too?

23 A Yes.

24 Q Okay. At the time of the accident, how many
25 days a week were you working?

1 A Seven days a week.

2 Q Is that still the case?

3 A Yes.

4 Q At the time of the accident, what were the
5 usual hours that you were working from start to finish?

6 A Get to the warehouse around 12:00, between
7 12:00 and 12:30, and I'm done around somewhere by 5:00.

8 Q That's midnight to 5 a.m.?

9 A Basically.

10 Q Okay. Is that the same schedule you have
11 now?

12 A Yes.

13 Q Okay. At the time of the accident, did you
14 have any other jobs?

15 A Yes.

16 Q What was that?

17 A Co-owner of a commercial janitorial company.

18 Q But not currently?

19 A No.

20 Q Okay. What was your job position with that
21 company?

22 A Co-owner. I did -- we, me and my partner,
23 we split the duties. So cleaning, customer service
24 issue, whatever the business entailed.

25 Q And the company was 3-D Vision,

1 Incorporated, doing business as 3-D Janitorial?

2 A Yes.

3 Q And at the time of the accident, what were
4 your hours that you were working with 3-D Vision?

5 A I would go out -- it varied. It wasn't an
6 everyday job, because, like I said, my partner and I
7 split the jobs. And at the time, we didn't have very
8 many contracts, so maybe on Saturday, if he didn't feel
9 like going out.

10 Q Okay. Did you work at 3-D Vision on the day
11 prior to the accident?

12 A Yes.

13 Q What hours did you work that day?

14 A Normally, if I work, it's, like around from
15 six o'clock, sometime after 6:00. We have to wait till
16 the buildings are closed.

17 Q Okay.

18 A And so anytime after six o'clock.

19 Q So you started work the day before the
20 accident at six o'clock p.m.?

21 A Yeah. If -- if the building is on service
22 to be cleaned that day, yes.

23 Q Okay.

24 A The buildings aren't cleaned every day. At
25 that time, we only had contracts that did like three

1 days a week cleaning, three days a week and two days a
2 week.

3 Q So you started at 6:00. When did you finish
4 that night?

5 A Maybe about 8:00.

6 Q Okay. And you said typically, you'd arrive
7 at Review-Journal to pick up the papers at about
8 midnight?

9 A Oh, between 12:00 and 12:30 we'd get there,
10 but it doesn't mean we'd get done at the time we'd
11 arrive. It was based on after we'd wait for them.

12 Q Do you recall what you did that night
13 between your job with 3-D Vision and when you picked up
14 the papers?

15 A Go to bed.

16 Q Do you recall the location where you were
17 working for 3-D Vision that day?

18 A I don't remember which building.

19 Q Maybe I can cut to the chase this way. Do
20 you recall how much sleep you got that evening prior to
21 picking up the newspapers?

22 A Anywhere from -- my average time to lay down
23 is about 9 p.m., so about three hours.

24 Q Other than your sleep, which you estimate to
25 be from 9:00 to midnight that night, in the 24 hours

1 prior to the accident, did you get any other sleep?

2 A Yes.

3 Q What was that?

4 A I'll take a nap during the day. I can't say
5 exactly what time during the day I took it. I always
6 take daily naps.

7 Q Okay. When you get done with newspapers at
8 5 a.m., what is your usual routine at that time, at the
9 time of the accident?

10 A Go home, get something to eat, and go to
11 bed.

12 Q Okay. So how long would you usually be able
13 to sleep, on a typical day?

14 A Varies. Maybe about four hours.

15 Q Okay. So not charging you with a perfect
16 memory, but to your best recollection, the day before
17 the accident, you got about four hours' sleep in the
18 morning after you were out, possibly took a nap if you
19 could, and had sleep from 9:00 to midnight that night?

20 A Yes.

21 Q Okay. Previously, we had sent out some
22 interrogatories for you to answer, just written
23 questions, and you gave us answers. In response to one
24 of our questions about the incident and what had
25 happened before, during and after, you answered that

1 around two o'clock or three o'clock a.m., you were
2 traveling east on Cheyenne Avenue, going through a
3 green light at the Fifth Street intersection. Is that
4 your recollection of what you were doing?

5 A Yes.

6 Q And at that time, where were you coming
7 from?

8 A MLK and Cheyenne.

9 Q What was there?

10 A It's a Chevron, or Get 'N Go was the name of
11 the gas station.

12 Q And you were dropping off newspapers there?

13 A Yes.

14 Q Okay. At the time you were on Cheyenne
15 approaching Fifth Street, can you characterize -- how
16 many newspapers did you have in your car?

17 MR. GANZ: Volume, as opposed to just
18 individual papers.

19 THE WITNESS: Oh, let's see. My backseat
20 should have been full, so -- because I'm still pretty
21 much in kind of the middle of my route, so my backseat
22 should have still been full. I'm not sure. Because
23 the papers vary from day to day, one I may have 300
24 papers, next day I may only have 200. So the papers
25 vary from day to day, so I'm not sure.

1 (Interruption at door.)

2 MR. CRAFT: Guest appearance by one of our
3 city attorneys.

4 BY MR. CRAFT:

5 Q Did you have newspapers stacked up in the
6 front seat?

7 A Yes.

8 Q About how many were in the front seat?

9 A I'm not sure. Maybe halfway, because as I
10 use them, I unstrap and put some more in the front, so
11 it changes as I deliver.

12 Q Okay. Did you also have newspapers in the
13 trunk?

14 A I don't think I had in the trunk, but I'm
15 not 100 percent sure. I don't remember how many
16 bundles I had that night.

17 Q Remember the estimate versus guess. Could
18 you give me a good estimate of how many pounds of
19 newspapers you had in your car at that time?

20 A Pounds? Maybe a hundred pounds.

21 Q Okay. As you approached the intersection on
22 Cheyenne as it approached Fifth Street, just describe
23 what you saw.

24 A It's just morning, dark. I'm going down
25 Cheyenne. I am approaching the green light. As I go

1 through the light, I look to my right, and that's where
2 I see the police truck at, and it's getting ready to
3 hit me.

4 Q Okay. How far were you from the actual
5 intersection when you first saw the vehicle, the police
6 car?

7 MR. GANZ: Objection. Vague.

8 THE WITNESS: Excuse me?

9 BY MR. CRAFT:

10 Q How far were you from the intersection when
11 you first saw the police car?

12 MR. GANZ: Also assumes facts.

13 THE WITNESS: I was maybe -- I don't know.
14 Maybe 50 to a hundred feet, maybe. I'm not 100 percent
15 sure, because I'm just traveling through the green
16 light. So maybe 50 to a hundred feet, maybe, maybe a
17 little bit more than that.

18 BY MR. CRAFT:

19 Q At the time of the accident, did you have
20 your headlights on?

21 A Yes.

22 (Exhibit A was marked.)

23 BY MR. CRAFT:

24 Q Handing you what's been marked Exhibit A,
25 have you ever seen this before?

1 A Police report? Yeah, I have. I think I
2 have a copy of it.

3 Q Okay. On the second page of the report
4 during the narrative portion, in the very top paragraph
5 where it says, "Both drivers stated that Vehicle No.
6 1" -- that would be your vehicle -- "had a green
7 traffic signal, and the Vehicle 2" -- the police car --
8 "had a red traffic signal. Vehicle 2's operator
9 reported that Vehicle 1 was traveling without the
10 vehicle's headlights on at this time (during the hours
11 of darkness), as the vehicle approached the
12 intersection," do you agree with that statement or
13 disagree?

14 A I disagree.

15 Q Why is that?

16 A Because my car, that car I had then was a
17 1995 Cavalier, and if you don't turn the headlight --
18 if you don't turn the lights on, the dashboard is
19 completely dark. So my dashboard was not completely
20 dark.

21 Q Okay. So your recollection is because your
22 dashboard was lit up, that meant that your headlights
23 were on?

24 A Yes.

25 (Exhibit B was marked.)

1 BY MR. CRAFT:

2 Q I am handing you a photograph that was
3 produced in discovery in this case. Does this
4 photograph actually represent the interior of your car
5 at the time of the accident?

6 A Yes.

7 MR. GANZ: I'm going to object to vague.
8 You mean at the time of impact? Talking about
9 afterwards? What are we talking about?

10 MR. CRAFT: After the accident.

11 MR. GANZ: Is that how you understood the
12 question?

13 THE WITNESS: Yes.

14 MR. CRAFT: Okay. We didn't have time to
15 take a picture of the inside of her car prior to the
16 accident. I understand that.

17 MR. GANZ: I thought you were saying at the
18 time of the accident.

19 MR. CRAFT: I understand. Fair enough.

20 BY MR. CRAFT:

21 Q Does this depict the switch that you used to
22 turn your headlights on and off?

23 A Yes.

24 Q Is it correct that the switch, at this time,
25 is in the off position?

1 A Yes.

2 Q Does that change your recollection as to
3 whether or not you had your headlights on prior to the
4 accident?

5 A No.

6 Q Why not?

7 A Because the officer that was sitting beside
8 me reached in, turned off my car, and apparently he
9 must have turned the headlights off, too, because he
10 was telling me -- I was -- I remember holding my head,
11 and -- because I was really groggy, kind of like, from
12 the impact. I hit my head on the steering wheel. And
13 he kept saying, "You need to turn your car off."

14 So I didn't turn my car off. I didn't touch
15 the headlights. But I know my headlights were on,
16 because my dashboard was lit up.

17 Q Okay. You said he "must have" reached
18 over -- and I'm paraphrasing. I don't have exact
19 memory. You said he "must have" reached over to turn
20 off the headlights. Did you see him actually do that?

21 A No. I don't recall. I remember him
22 reaching in to turn the car off --

23 Q Okay.

24 A -- you know, but like I said, I was holding
25 my hands to my face and holding my head and doing --

1 and nodding my head and rocking back and forth with my
2 head, so I don't know what all. He was kind of talking
3 to me. I can't remember what was said. I remember him
4 saying something like, "Are you okay?" but, you know, I
5 remember him asking that the car needed to be turned
6 off.

7 Q Okay. So he got in -- we're jumping around
8 a little bit. But the officer who was at the accident,
9 driving the police car, got in your car on the
10 passenger side?

11 A No, he didn't get in. He was on the
12 passenger side. He opened the driver's side door, and
13 he asked -- he says, "Are you okay?" you know. And I'm
14 moaning and holding my head. And then he says, "You
15 need to turn the car off."

16 But I didn't turn the car off, because I was
17 still holding my head. At that point, I don't remember
18 if he turned the car off or who did what. But there
19 was some other officers that did show up, not -- I
20 mean, almost instantly after he, you know, got out and
21 came around or whatever. So I don't know. I know I
22 did not touch the headlights, and I did not turn my car
23 off.

24 Q Okay.

25 (Exhibit C was marked.)

1 BY MR. CRAFT:

2 Q Next photo I'm marking as Exhibit C. Can
3 you describe what you're seeing in the photograph?

4 A Yes. I see where he hit my car.

5 Q So this is the police vehicle and your car
6 after the accident?

7 A Yes.

8 Q Okay. What color is your car?

9 A It's, like an aqua green.

10 Q It's listed as blue, isn't it?

11 A Well, aqua blue. Yeah.

12 Q But this is what you would say is an
13 accurate representation of the vehicles after the
14 accident?

15 MR. GANZ: Objection. Vague as to time.

16 THE WITNESS: Yeah.

17 BY MR. CRAFT:

18 Q We may have touched on this, but when did
19 you first realize there was a police car at the
20 intersection of Cheyenne and Fifth Street at the time
21 of the accident?

22 A What do you mean, when?

23 Q At what point? On Cheyenne, where was your
24 vehicle when you first noticed that there was a police
25 car there?

1 A When I was entering into the intersection.

2 Q At that time, how fast were you going?

3 A Maybe about -- I'm going downhill, so maybe
4 about 40, 45.

5 Q On Exhibit A, the police report, if you go
6 to the last page which is page CNLV 7, in the bottom
7 right-hand corner, a speed analysis was done to
8 estimate your speed as being 47 miles an hour. Is that
9 correct that that's what that says?

10 A Yes, that's what it says.

11 Q Okay. Do you have any reason to believe
12 that's not accurate?

13 MR. GANZ: Objection. Foundation.

14 THE WITNESS: I'm not sure. I mean, I don't
15 remember what was on my speedometer.

16 BY MR. CRAFT:

17 Q Okay. But specifically, do you have any
18 reason to believe that's not an accurate estimate of
19 your speed?

20 MR. GANZ: Same objection.

21 THE WITNESS: I don't know.

22 BY MR. CRAFT:

23 Q When you were approaching the intersection,
24 were the streetlights operational?

25 A Yes, but that area's kind of dark because of

1 that huge hill that is to the right-hand side of the
2 lane in which I'm traveling. It's a huge hill there at
3 that corner of Fifth and Cheyenne, and it's just kind
4 of dark up there. It's a little park or something, a
5 little golf course or something. It's kind of dark in
6 that intersection.

7 Q Going back to the report, page 2, bottom
8 right-hand corner CNLV 2, on the next-to-the-last
9 paragraph, says "Vehicle 1" -- that's your vehicle --
10 "right front impacted the front of Vehicle No. 2" --
11 the police car -- "causing damage to both vehicles."

12 Is it your understanding that the police
13 report's indicating that your vehicle hit the police
14 car?

15 A That's what this says.

16 Q Do you agree with the statement?

17 A No.

18 Q Can you explain why?

19 A Because I was already in the intersection
20 when he hit me.

21 Q Is it your testimony that while you were
22 driving through the intersection, both cars were
23 moving, and his hit you in the side?

24 A Yes.

25 Q Okay. On the same page, third paragraph

1 down from the top, the report says -- and I am reading
2 from this -- "V No. 1's operator stated that she saw V
3 No. 2's emergency lights activated as she approached
4 the intersection but did not hear the vehicle's siren."

5 First of all, is that correct that's what it
6 says?

7 A Yes.

8 Q Do you agree with that statement? Let me
9 rephrase that. Did you state to the officer that was
10 making this report that you saw Vehicle No. 2, the
11 police car's, emergency lights activated as you
12 approached the intersection?

13 A I saw him as I entered the intersection.

14 Q Okay. And you saw his emergency lights
15 activated?

16 A Yes.

17 Q So this is an accurate statement of what you
18 had told the officer?

19 MR. GANZ: That's not what she said, so be
20 careful there. She says as she entered. This says
21 "approached." That's why she didn't agree with that.

22 MR. CRAFT: She didn't say she didn't agree
23 with that.

24 BY MR. CRAFT:

25 Q Now we're just debating over what you said,

1 so let's start over and leave the attorneys out of it
2 for a moment.

3 MR. GANZ: Leave the what out?

4 MR. CRAFT: The attorneys.

5 BY MR. CRAFT:

6 Q Is this an accurate statement?

7 A No.

8 Q Why not?

9 A Because I was already in the intersection
10 when I saw him -- or let me rephrase that. I was -- as
11 I was coming into the intersection, I looked to my
12 right, and that's when I saw him. So I'm coming --

13 Q And as you said -- sorry. Go ahead.

14 A I'm coming into the intersection, and he's
15 coming northbound. And when I looked, that's when I
16 saw him to my -- when I looked to my right, that's when
17 I saw him.

18 Q Okay. When you first saw the police vehicle
19 on Fifth Street, what was your immediate reaction?
20 What did you do?

21 A Slam on my brakes.

22 Q Can you estimate how much time it took
23 between when you first saw the vehicle there and when
24 you were able to apply the brakes?

25 A Maybe a couple of seconds, maybe.

1 Q Going back to page 2, same page, third
2 paragraph on the bottom says, "Vehicle No. 1 left
3 approximately 110 feet of four-wheel skid marks in an
4 attempt to avoid a collision with Vehicle No. 2."

5 Do you have any reason to doubt the report as
6 far as saying how long the skid marks were?

7 A I don't know.

8 (Exhibit D was marked.)

9 BY MR. CRAFT:

10 Q Marking Exhibit D, have you seen that
11 document before?

12 MR. GANZ: Or a copy of it?

13 THE WITNESS: A copy of it, I guess. Yes.

14 BY MR. CRAFT:

15 Q And what is this?

16 A It's the questions, I think.

17 Q Is it your responses to defendants' first
18 set of interrogatories?

19 A Is it what?

20 Q Plaintiff's response to defendants' first
21 set of interrogatories, just reading the title of it on
22 the first page.

23 A Oh, yeah.

24 Q Looking forward to your answer to
25 Interrogatory No. 2, "Please describe in detail the

1 incident that is the subject of the lawsuit," basically
2 a summary of your side of the story. In your answer to
3 Interrogatory No. 2 on page 3, the last sentence, you
4 say, "The officer did not have his sirens on, and
5 plaintiff could not see his lights flashing due to the
6 hill obstructing her view."

7 As you sit here today, is that an accurate
8 statement?

9 A Yes.

10 Q And explain how the hill obstructed your
11 view of the officer's lights flashing.

12 A This hill was huge, so there was no vision,
13 period, to the right of you as you're approaching this
14 hill. And the hill starts -- I don't know how many
15 feet back from the light, but it starts, and it
16 inclines, and it goes to a peak, so there's no vision
17 of anything to the right of you. You can't, even if
18 you wanted to -- like people do a right-hand turn on a
19 light, you would have to completely stop, ease up, ease
20 up, and look around this hill. So it totally obstructs
21 anything to the right of you, and that's what was to
22 the right of me from the direction he was coming.

23 Q Okay. So you're not talking about the hill
24 that Cheyenne is, like coming -- talking about the hill
25 where you're coming down Cheyenne. You're talking

1 about something on the right?

2 A Yeah. The hill was to my right, so I'm
3 heading east toward the 15, he's heading north. So I'm
4 heading east, he's heading north, so I couldn't see
5 him, and he couldn't see me. He couldn't have seen me
6 because of the hill.

7 Q Okay. Thank you for clarifying that. And
8 you said that he did not have his sirens on. Is it
9 your understanding that he had some sort of duty to
10 have his sirens on?

11 A I was told that all police officers had to
12 have their sirens on when they're in a hurry, or I grew
13 up being told that, so I don't know.

14 Q But you don't have any knowledge of any
15 Nevada laws to the contrary?

16 A I don't know anything about Nevada laws.

17 Q So to paraphrase -- and not to put words in
18 your mouth, but is it fair to say that your position
19 is, you don't dispute that the police car had its
20 lights activated, but because of the hill being there,
21 you couldn't see them in time to react?

22 A I didn't see him or hear him.

23 Q Okay. Is that a fair summary of what you're
24 saying?

25 A Yes.

1 Q Thank you. Was the road that you were
2 driving on slick or wet or otherwise slippery, to your
3 recollection?

4 A No.

5 Q So you've been working for the
6 Review-Journal since June of 2010; is that correct?

7 A Yes.

8 Q That was about two and a half years prior to
9 the accident?

10 A Yes.

11 Q Almost on a daily basis, you were driving
12 with your car with varying amounts of newspapers?

13 A Yes.

14 Q On any occasion where your car was filled
15 with newspapers -- let me rephrase that.

16 On any occasion where your car had the amount
17 of newspapers roughly equal to or more than the amount
18 the day of the accident, did you have any occasion to
19 slam on your brakes for any reason?

20 A Not that I can recall, no.

21 Q In this case, did your car slow as you
22 expected it to, or did it take longer to stop than you
23 expected?

24 A I don't know. I just slammed on brakes.

25 Q Okay. I think I know where this is going,

1 but do you believe that the added weight of your
2 newspapers made it harder for your car to stop in time
3 to avoid the accident?

4 A No.

5 Q Following the accident, did you have any
6 conversation with the police officer who was driving
7 the police car that was involved in the collision?

8 A You said after?

9 Q Yes.

10 A Or during?

11 Q After the accident.

12 A The only police officer that I spoke to was
13 the one that came to the hospital.

14 MR. GANZ: He means at the accident scene.

15 BY MR. CRAFT:

16 Q That's what I meant.

17 A Just the one that opened the door and said,
18 "Are you okay?"

19 Q And he also instructed you to turn off your
20 vehicle?

21 A Yes.

22 Q Do you recall any other conversation with
23 that individual?

24 A No.

25 Q To your knowledge, were there any other

1 witnesses to the accident aside from you and the
2 officer that was involved?

3 A No.

4 Q Were you issued a citation for this
5 accident?

6 MR. GANZ: Again, you meant at the scene?
7 She did mention the one at the hospital that I got her
8 off on. You were talking about at the scene still,
9 right?

10 MR. CRAFT: I was.

11 MR. GANZ: Okay. I didn't mean to cut you
12 off earlier, but she did say she had a conversation
13 with somebody at the hospital.

14 MR. CRAFT: No. I appreciate that.

15 BY MR. CRAFT:

16 Q Do you recall who the officer was that you
17 spoke with at the hospital?

18 A No.

19 Q Do you recall the conversation that took
20 place?

21 A Yes.

22 Q What was the conversation, basically?

23 A He came to the emergency room where I was
24 laying down in the bed, and he informed me that I was
25 being cited for the accident, failure to stop for an

1 emergency vehicle or something.

2 And I said to him, "How can I stop for
3 something I didn't see or hear?"

4 And he said to me, you know, that, "We don't
5 have to have our sirens on."

6 And I refused to sign the thing. I was
7 like, "It wasn't my fault."

8 And he says, "You need to sign this."

9 And, you know, at that point, I just shut
10 up, and I just signed the citation.

11 Q Do you remember what you were cited for?

12 A Failure to stop for an emergency vehicle. I
13 think that's what it was. I'm not sure.

14 (Exhibit E was marked.)

15 BY MR. CRAFT:

16 Q Handing you what's been marked as Exhibit E,
17 I doubt you've ever seen this. I'll represent to you
18 it's a printout from CourtView 2000 regarding the
19 citations for this incident. Is it correct that it
20 states your full name as Japonica -- probably
21 misspelled -- Felicia Glover-Armont?

22 A Yes.

23 Q If you'd flip to the third page, it gives a
24 chronology of your case -- I'm sorry. If you go to the
25 fourth page, there is a bunch of listings for

1 November 12, 2012. There's a number of them at the
2 bottom, basically the second one from the bottom. Do
3 you see what Charge No. 1 is where it says, "Headlamps
4 not illuminated when required"?

5 A Yeah, I see it.

6 Q And then rolling up to about the middle of
7 the same where it says Charge No. 2 is "Failure to
8 yield an emergency vehicle," is that correct? That's
9 what it says?

10 A Which one, now?

11 Q Let me point to you. We're in regards to
12 Charge No. 2. It says, "Fail, yield to emerg."

13 A Okay. Yes. I see that.

14 Q Do you recall that those were the two
15 charges that were made against you?

16 A I guess. I just knew about this other one.
17 I didn't realize there was an additional charge.

18 Q Okay. If you go back to the third page
19 which is later on, there is a couple of entries for
20 December 13, 2012 at the bottom. Charge No. 1 at the
21 very bottom says, "Headlights not illuminated when
22 required," and says, "Pled nolo."

23 Do you know what "pled nolo" means?

24 A No.

25 Q Do you know what nolo contendere means?

1 A No.

2 Q Do you recall making a plea with respect to
3 that citation?

4 A No. My attorney went for me. I didn't go
5 to the hearing.

6 Q You didn't go to the hearing?

7 A No.

8 Q Same thing -- sorry. Does the same thing
9 apply to -- well, second to the bottom where it says
10 Charge No. 2, "Failed to yield to emergency vehicle,"
11 is that correct that you didn't show up at that
12 hearing?

13 A No.

14 Q Did you know that you had pled nolo
15 contendere to that charge?

16 A I wasn't sure exactly what all was said at
17 the hearing.

18 Q You were aware the hearing was going
19 forward?

20 A Yes. I knew that my attorney had handled it
21 for me, and she just told me that --

22 MR. GANZ: No talking about the conversation
23 you had with your attorney.

24 THE WITNESS: I'm sorry. She told me she
25 handled it.

1 MR. GANZ: Attorney discussions, anything
2 she told you is privileged, okay? So you don't need to
3 divulge that.

4 MR. CRAFT: I'll try to be careful.
5 Sometimes we step into these, and I probably could have
6 guessed where that was going.

7 MR. GANZ: That's okay.

8 BY MR. CRAFT:

9 Q Is it your understanding how these citations
10 were eventually disposed of? Were you found guilty?
11 Do you have any knowledge of what happened?

12 A I know that I had to make payment
13 arrangements on -- and that the charge was lessened so
14 that I would not receive any points on my license.

15 Q Did you ever dispute the charge that you
16 were driving without your headlights on at night?

17 A I didn't realize it was there.

18 Q And I understand that you paid fines on
19 charges that were made against you without knowing what
20 those charges were?

21 MR. GANZ: Objection. Misstates. She had a
22 representative handling it for her. That's what she
23 said.

24 (Testimony read.)

25 MR. CRAFT: I understand that you paid fines

1 on charges without knowing what those charges were.

2 MR. GANZ: I'm going to object. I believe
3 it's argumentative.

4 THE WITNESS: I paid, you know -- yeah. I
5 just paid what I was told to pay.

6 BY MR. CRAFT:

7 Q Going back to the interrogatories, your
8 response to Interrogatory No. 3 asking about the
9 complaint -- which was obviously drafted by an
10 attorney -- you asserted that the defendant, John
11 Cargile, the police officer, was negligent and failed
12 to use due care. In response, you said that Cargile
13 breached his duty when he failed to use due care by
14 failing to use his sirens. Is that correct, your
15 response?

16 A Yes.

17 Q Is that still your response to that
18 interrogatory?

19 A Yes.

20 Q Okay. Just to clarify one response you gave
21 earlier, I believe you indicated that -- and again, I'm
22 paraphrasing. I'm not trying to put words in your
23 mouth. You had indicated it's your understanding that
24 there's no way Officer Cargile could have seen your car
25 coming unless he pulled forward into the intersection.

1 Is that a fair statement?

2 A Yes.

3 MR. CRAFT: I have no further questions.

4 EXAMINATION

5 BY MR. GANZ:

6 Q Did you go to trial on that citation?

7 A No.

8 Q Was there a judge and a hearing and a trial
9 that was taking place, and you were found guilty of
10 anything?

11 A I wasn't there.

12 MR. GANZ: All right. Nothing further.

13 MR. CRAFT: Thank you.

14 (The deposition concluded at 2:54 p.m.)

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CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Susan Lee Naylor, CCR #513, RMR, a Certified Court Reporter licensed in the State of Nevada, do hereby certify: That I reported the taking of the deposition of the witness, Japonica Felisha Glover-Armont, commencing on August 7, 2014 at 2:08 p.m.

That prior to being examined the witness was by me duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate record of the testimony provided by the witness at said time.

I further certify that (1) I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action, and (2) that transcript review pursuant to NRCP 30(e) was not requested.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 20th day of August 2014.

Susan Lee Naylor, RPR, RMR, CCR #513

EXHIBIT 2

Glover-Armont v. Cargile, et al.

Deposition of:
Sergeant John Cargile

October 1, 2014



500 South Rancho Drive, Suite 8A
Las Vegas, Nevada 89106
Telephone **702.474.6255**
Facsimile 702.474.6257

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAPONICA GLOVER-ARMONT,)
)
)
Plaintiff,)

vs) Case No. A-13-683211-C

JOHN CARGILE; CITY OF NORTH)
LAS VEGAS, a Municipal)
Corporation existing under the)
laws of the State of Nevada in)
the County of Clark; DOES I)
through X, inclusive; and/or)
ROE CORPORATIONS I through X,)
inclusive,)
Defendants.)

DEPOSITION OF SERGEANT JOHN CARGILE
Taken on Wednesday, October 1, 2014
At 3:49 p.m.
At 8950 West Tropicana Avenue, Suite 1
Las Vegas, Nevada

Reported by: Marnita J. Goddard, RPR, CCR No. 344

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A P P E A R A N C E S

FOR THE PLAINTIFF:
ADAM GANZ, ESQ.
GANZ & HAUF
8950 West Tropicana Avenue
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Las Vegas, Nevada 89147

FOR THE DEFENDANTS:
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Las Vegas, Nevada 89030

I N D E X

WITNESS	EXAMINATION
SERGEANT JOHN CARGILE:	
(BY MR. GANZ)	3

E X H I B I T S

Number	Description	Page
	(No Exhibits Were Marked)	

1 (Upon inquiry by the reporter prior to the
2 commencement of the proceedings, Counsel present
3 agreed to waive the reporter requirements as set
4 forth in NRCP 30(b)(4) or FRCP (b)(5), as
5 applicable.)

6 SERGEANT JOHN CARGILE,
7 having been first duly sworn, was
8 examined and testified as follows:

9 EXAMINATION

10 BY MR. GANZ:

11 Q. Can you state and spell your name for the
12 record?

13 A. Sure. My name is John Cargile. It's
14 J-O-H-N. My last name is C-A-R-G-I-L-E.

15 Q. It's my understanding you are a sergeant for
16 the North Las Vegas Police Department; is that
17 correct?

18 A. Correct.

19 Q. Have you ever had your deposition taken
20 before?

21 A. No.

22 Q. I'm going to go through some basic, general
23 ground rules of a deposition. You may have had the
24 opportunity to speak to counsel about a deposition.
25 Let me back up.

1 Have you ever testified at court before?

2 A. Yes. Plenty of times.

3 Q. More than a hundred?

4 A. I don't know. It's fairly close to that.
5 I've been on 14 years; so quite a lot.

6 Q. Criminal is a little different than civil in
7 the sense that we do discovery and depositions and I
8 can see why you wouldn't have necessarily had to do
9 some depositions before, but it's the same oath that
10 you took in any one of those other matters. You
11 understand that; right?

12 A. Right.

13 Q. Obviously, we're a little more informal here
14 today. But it still carries with it the same
15 requirements for truth and veracity as it would in a
16 more formal setting with a judge and jury. Do you
17 understand that?

18 A. Uh-huh. Yes.

19 Q. Some of the basics of a deposition. You
20 gave just a good example of one. When you said
21 "uh-huh," those types of things don't show up real
22 good on the record. So I may correct you or I may ask
23 you, "Is that a yes? Is that a no?" It's not meant
24 to be rude. It's just meant to get a clear record.
25 Okay?

1 A. Okay.

2 Q. So we need to make sure we're answering
3 audibly to the questions. Otherwise, the
4 court reporter can't take down everything we have to
5 say. Head shakes and nods and those types of things
6 don't show up real well. Okay?

7 A. Got it.

8 Q. At a later date, you are going to have the
9 opportunity to review your deposition transcript.
10 Have you ever reviewed a deposition before?

11 A. No.

12 Q. What about any depositions in this case?
13 You haven't obviously seen Ms. Glover-Armont
14 deposition?

15 A. No.

16 Q. Deposition will be put together in a booklet
17 format, usually in two to three weeks. We're not in
18 any hurry in this particular case. It will be the
19 normal course of time where she'll put it together in
20 a booklet format or electronic, depending on how you
21 get it. It will read like a play. Almost like a
22 script. Like you might have read -- if you've ever
23 read any one of those things where it will be a
24 question, then an answer, then a question and then an
25 answer. In doing so, we need to make sure that we're

1 following some basic rules so she can get a good
2 record. Okay?

3 A. Okay.

4 Q. The first is that we don't talk over each
5 other. The reason is because she can't literally take
6 down two people talking at the same time. It doesn't
7 show up real good in the transcript. Secondly, it
8 will look real choppy in that play I was talking
9 about. It will be part of a question, part of an
10 answer, part of a question. Really looks kind of
11 choppy. Okay?

12 A. Okay.

13 Q. Plus although you may know or think you know
14 what I'm going to ask you, it may be something totally
15 different than what you expected, and I want to make
16 sure I get your best testimony. Okay?

17 A. Okay.

18 Q. That deposition transcript, when it gets put
19 together in a booklet format, you are going to have an
20 opportunity to review it and make any changes that you
21 want to it. You can make any changes whatsoever to
22 the transcript. You will be making those changes
23 under oath just like you are here today. Okay?

24 A. Okay.

25 Q. So I do need to caution you that if you need

1 to make any material change to that deposition, it may
2 affect your credibility later on. Okay?

3 A. Okay.

4 Q. What I mean is you are under oath here
5 today. You will be under oath when you correct the
6 deposition transcript, if you need to make any
7 corrections. And at some point in time either one of
8 us, actually, may comment on the fact that you said
9 something under oath one day and then another day when
10 you were under oath you said something different. Do
11 you understand?

12 A. Right.

13 Q. I don't want to make you nervous about
14 making corrections. We obviously want your best
15 testimony. So you want to be as correct as you can.
16 Certainly, as we go through the deposition here today,
17 if you do need to make any changes or corrections to
18 something you've already testified to, feel free to
19 make those questions today and say, you know what,
20 20 minutes ago when you asked me that question, I
21 really didn't understand what you meant, and I need to
22 change it or whatever you need to do. Okay?

23 A. Okay.

24 Q. So it's a little bit different than it is in
25 court. It's a little bit more of a fact-finding

1 mission, to be perfectly honest with you. We're
2 asking questions that we don't know the answers to
3 here. Typically when you are at trial, whoever is
4 asking you the questions typically knows what you're
5 going to say. Of course, the defense sometimes will
6 do a fact finding, but the reality is it is not good
7 lawyering in front of a jury or judge. It's not
8 always good to not know the answer to your questions.
9 We try to ask you those questions here today so I can
10 at least understand what your testimony is going to be
11 later on if we ever get to that stage. Okay?

12 A. Okay.

13 Q. If you have any questions as we go through
14 here, you don't understand my question -- I sometimes
15 talk a little fast -- if it doesn't make any sense to
16 you whatsoever based upon the circumstances -- let's
17 say I'm talking about the direction and I get it wrong
18 or something like that, doesn't make any sense, make
19 sure you correct me, and I'll make sure I try to ask
20 intelligent questions that can be answered. Okay?

21 A. Okay.

22 Q. I will assume, however, if you answer a
23 question, that you understood it. Is that a fair
24 assumption?

25 A. Yes.

1 Q. So, in other words, it's my obligation to
2 make sure I ask questions that make sense and your
3 obligation to answer the question as best as you can.
4 If you don't understand a question, don't answer it.
5 Okay?

6 A. Okay.

7 Q. What documents have you reviewed in
8 anticipation for your deposition testimony today?

9 A. I have reviewed the traffic accident report
10 that was filed from the night of the accident.

11 Q. Anything else?

12 A. No. This is pretty much it.

13 Q. Other than your attorney -- and you
14 understand that the City attorney is representing you;
15 correct?

16 A. Correct.

17 Q. Other than your attorney -- just to make it
18 clear, abundantly clear, if I ever ask a question that
19 calls for an answer that has to do with a conversation
20 you had with your attorney, I don't want to hear the
21 answer. Okay?

22 A. Okay.

23 Q. That is attorney-client privilege. I'm not
24 looking to gather -- looking to break that privilege
25 with your attorney. Okay? That's completely

1 privileged and I don't need to know it. However, if
2 it is something that you've learned from another
3 source or if I ask the question in a way that doesn't
4 elicit necessarily the conversation, it might be your
5 impression about something, I don't need to know the
6 source. I just want to know your impression. Make
7 sense?

8 A. Okay.

9 Q. Other than your attorneys or anybody from
10 his office, have you spoke to anybody about your
11 deposition testimony?

12 A. No.

13 Q. When was the last time that you spoke to the
14 investigating officer?

15 A. Officer Byrnes?

16 Q. Yes.

17 A. The only time I've spoken to him was the
18 night of the accident. Him and I have not conversed
19 directly about this since.

20 Q. Okay. Do you guys see each other on
21 occasion in other settings, just don't talk about this
22 particular incident?

23 A. Yes. I still see him out on -- typically
24 it's if he's called out to fatal scenes.

25 Q. In doing those investigations of fatal

1 scenes, are you a supervisor of his at that point?

2 A. No. I'm usually just a supervisor of the
3 first responding officers to the scene.

4 Q. Just kind of give you a heads up how we're
5 going to proceed here today so you understand. I'm
6 going to go through a little bit about your
7 background, a little bit of your training. I'm going
8 to go through some questions that we've asked you
9 already via some written questions. I don't know if
10 you remember doing those. But we're going to go
11 through some of those. Then we're going to take you
12 through the incident itself specifically and then just
13 kind of get some general opinions about -- excuse me,
14 general facts about what happened in the accident.
15 Okay?

16 A. Okay.

17 Q. Starting off with your background, how long
18 have you lived in the Las Vegas area, whether it be
19 North Las Vegas or Las Vegas?

20 A. I've lived here -- it's going to be 20-plus
21 years now. I'm going to say around 22. I was in the
22 military '89, '90, '91. So it was around, I believe,
23 the '92 to '93 time frame, right around there, is when
24 I moved here.

25 Q. Which branch of the military?

1 A. Air Force.

2 Q. Were you active military?

3 A. Yes.

4 Q. Were you honorably discharged?

5 A. Yes.

6 Q. What was your rank in the military?

7 A. I left the military as an E-7 and then went
8 into the reserves. But the reserves was in the Army
9 reserves.

10 Q. Are you still a reservist?

11 A. No.

12 Q. As an E-7, what were some of your duties in
13 the Air Force?

14 A. I spent the last six and a half years in a
15 specialized assignment which, believe it or not, is a
16 classified assignment that I did -- that I worked out
17 here for. I believe the Air Force shows me as
18 working at -- my last duty station is Edwards
19 Air Force Base in California.

20 Q. But physically you were here in Las Vegas?

21 A. Physically I was here in Las Vegas, yes.

22 Q. Or Nellis.

23 A. Yes.

24 Q. Creech. Some of those.

25 Can you give me generally the area of work

1 that you did in the Air Force? Again, I don't want
2 to --

3 A. I was an Air Force intel officer. My
4 specifics, for the most part, was I was a worldwide
5 responder who supervised linguists in their chosen
6 field.

7 Q. What about as an Army reservist?

8 A. As an Army reservist, I was assigned to
9 civil affairs. They call it 38 Alpha. I was a civil
10 affairs officer.

11 Q. What does that entail?

12 A. Civil affairs is just -- it's an airborne
13 unit that would, if deployed in country, would meet
14 with foreign dignitaries to help set up schools,
15 water, that type of thing.

16 Q. And I don't want to know your exact address
17 because as a police officer I'm not -- I don't know if
18 I'm entitled to it or not, but I don't really need it.
19 So I don't want it, but what general vicinity of the
20 town do you live in?

21 A. I live in Henderson.

22 Q. How long have you -- have you lived all the
23 20 years out there?

24 A. No. I lived the first few years up on
25 Sunrise Mountain when I was in the military, right

1 behind the base. Then when I became a police officer,
2 I moved out to Henderson.

3 Q. Can you give me a brief history of your
4 educational background?

5 A. I have a bachelor's degree in criminal
6 justice and I have a bachelor's degree in
7 communications.

8 Q. From where did you matriculate for your
9 criminal justice degree?

10 A. My criminal justice is through here through
11 the University of Phoenix. My communications degree
12 is -- it's joint. It's through the Air Force, through
13 Boise State University.

14 Q. What year did you get your communication
15 degree?

16 A. That was when I was still in -- I want to
17 say around '94.

18 Q. And the University of Phoenix degree?

19 A. That was more recent. That was, I believe,
20 2006. 2005, 2006. Right around there.

21 Q. Have you -- strike that.

22 We already talked about your current
23 employment with North Las Vegas Police Department.
24 How long have you worked for the North Las Vegas
25 Police Department?

1 A. I've worked for them for 14 years.

2 Q. Prior to that was that the Air Force?

3 A. Yes. I will take that back. I had one job
4 in between the Air Force and here. I was the regional
5 manager for Respond, Incorporated, which is an armored
6 car company.

7 Q. The fourteen years that you have worked for
8 the North Las Vegas Police Department -- I don't
9 presume you came right in as a sergeant.

10 A. No.

11 Q. Take me through your job titles and also the
12 departments that you were in.

13 A. Uh-huh.

14 Q. Within the 14 years.

15 A. Started out in patrol, like all new officers
16 do. I left -- excuse me. I was -- became a field
17 training officer and then left patrol for the police
18 academy. Was at the police academy for three and a
19 half years. Left there for narcotics. Was in
20 narcotics for a short duration of time. I can't even
21 remember the exact dates on that, but it was very
22 short after that. I came back into patrol as a field
23 training officer and then was promoted as sergeant. I
24 was promoted to sergeant -- I believe the exact date
25 was November of 2011. Almost three years.

1 Q. You are a sergeant in patrol?

2 A. I'm a sergeant in patrol right now. I'm
3 currently the administrative sergeant in the Northwest
4 Area Command.

5 Q. When you did the narcotics stint, were you
6 involved in the DEA task force in narcotics or were
7 you --

8 A. No. Just for the police department.

9 Q. As a detective?

10 A. It's patrol. They call you an investigator
11 by title, but there's no other -- there's no other
12 things. Not like Metro does with different titles.
13 We have just -- as an investigator. They have three
14 individual officers assigned to the different task
15 force.

16 Q. If you know, approximately how many police
17 officers are employed by North Las Vegas Police
18 Department?

19 A. Currently right now I believe we have -- I
20 think it's 282 is roughly commissioned officers. It's
21 going to be fairly close to that.

22 Q. How many -- were you a sergeant on the date
23 of this incident?

24 A. Yes, I was.

25 Q. In November of 2012, how many sergeants were

1 within that police force?

2 A. Currently, right now, we have 26 sergeants
3 assigned to our department. The number is going to be
4 fairly close. At the time there might have been
5 around 27 or 28 assigned.

6 Q. As I understand the structure -- I don't
7 know how many, but I understand that you go from a
8 police officer to a sergeant to lieutenant to --

9 A. Captain.

10 Q. -- captain to chief?

11 A. Correct.

12 Q. One chief; correct?

13 A. One chief.

14 Q. How many captains?

15 A. Three captains. One chief. We have
16 11 lieutenants, I believe, now and 26 sergeants.

17 Q. Excellent. Thank you. Do you or have you
18 ever done accident reconstruction?

19 A. No.

20 Q. Do you anticipate giving any kind of
21 accident reconstruction opinions in this case?

22 A. No.

23 Q. Ever done the Northwest 1 or 2 accident
24 reconstruction courses?

25 A. No, I have not. I've only received the

1 basic course in the academy.

2 Q. Can you kind of give me a general
3 overview -- I know currently you are in the admin
4 position. Were you -- you were obviously not in admin
5 in November 2012; correct?

6 A. Correct.

7 Q. Tell me kind of generally what your job
8 entailed in November of 2012.

9 A. November 2012 I was assigned as the sergeant
10 and I was the 2012 south -- I was the grave B
11 sergeant.

12 Q. What did that entail?

13 A. I supervised 11 to 13 patrol officers. Our
14 workdays for grave B are on Saturday, Sunday, Monday,
15 Tuesday night going into the mornings. So basically
16 Sunday, Monday, Tuesday, Wednesday mornings. That's
17 the first shift of the squad. I supervised them from
18 10:30 at night until 8:30 in the morning.

19 Q. More generally, can you tell me -- I think I
20 know the answer. But just to make sure that I'm not
21 just reading into things, you're supervising their
22 activities. What kind of activities are we talking
23 about?

24 A. Just their day-to-day activities out on the
25 street. Whatever -- obviously, I can't be with every

1 officer all the time. A lot of times it's as officers
2 request my assistance, whether it be guidance for
3 appropriate charges or actions that they are taking.
4 Or if we have dynamic scenes that start to grow,
5 whether or not they should be entering a house, not
6 entering a house, those type of things.

7 Q. When we're talking about patrol officers,
8 we're talking about the front line officers responding
9 to calls --

10 A. Calls for service, correct.

11 Q. Not talking about traffic investigators?

12 A. Correct.

13 Q. Or traffic officers responding to traffic
14 accidents?

15 A. Correct, no. Patrol officers do respond to
16 the traffic accidents when our motor officers are not
17 available. So we do go to them. If it's anything
18 that is a serious injury, substantial bodily harm,
19 then more officers will be called out.

20 Q. I assume you participate or have
21 participated in a safety orientation when you were
22 hired at North Las Vegas?

23 A. Correct. Reference to officer safety or
24 driving safety?

25 Q. Driving safety.

1 A. Driving safety, yes. It's our EVOC,
2 emergency vehicle operations course.

3 Q. Do you remember how long that course was?

4 A. That course is a one-week-long course that
5 consists of practice driving, then scored driving, and
6 a written examination.

7 Q. I asked Officer Byrne whether or not the
8 North Las Vegas police cars were equipped with the
9 Opticom devices to control traffic signals. He did
10 not know, necessarily. Do you know if --

11 A. Some vehicles do have them; some don't. It
12 just depends upon the function of the vehicles. But
13 not all vehicles have them.

14 Q. Did your vehicle that you were driving
15 November 5th, 2012, that was involved in this crash
16 have one?

17 A. No. My understanding is I don't believe any
18 of the supervisor vehicles have those.

19 Q. Have you ever been in a car accident prior
20 to this one? Not talking specifically about
21 on-the-job accidents but a car accident prior to this
22 one.

23 A. Yes, I have been in a vehicle accident. My
24 vehicle accidents have all been on duty. Prior to
25 that, I have never been involved in an accident.

1 Q. So how many vehicle wrecks have you been in?

2 A. I have been involved in three.

3 Q. Take me through the most recent one.

4 A. The most recent one is this one.

5 Q. November 5th, 2012?

6 A. Yes.

7 Q. Then the one prior to that?

8 A. The one prior to that I was -- I don't know
9 the exact date. I was the passenger in the vehicle
10 when we were struck.

11 Q. Approximate year?

12 A. I was still -- just came out. Roughly say
13 around 2007. Then I was only involved in one more.
14 That was when I first came on the department. That
15 was -- I was the driver. That was 2001, maybe early
16 2002.

17 Q. What were the circumstances surrounding that
18 incident in 2001?

19 A. That one was driving lights and sirens to an
20 officer-involved shooting, where the officer had
21 called out shots fired and requested assistance. I
22 was actually driving on Cheyenne. It was at Cheyenne
23 and Commerce, the intersection of Cheyenne and
24 Commerce, in front of the Silver State -- I'm going to
25 say disposal yard. Their trash receptacle yard. I

1 was right in front of that one.

2 Q. What happened?

3 A. That one was I was eastbound. Had turned
4 into the middle travel lane. I had green lights to
5 go, but traffic was stopped. And the vehicle hit
6 debris out of the roadway from the trash receptacle
7 that was pulled out. My vehicle hit debris, struck
8 the median, the three-foot concrete median that was
9 in. Then the front of my car ended up striking the
10 rear of a car that was stopped in the number 1 travel
11 lane.

12 Q. That incident was fairly close to this
13 incident, wasn't it?

14 A. No. Years apart. That was in 2001.

15 Q. I meant distancewise.

16 A. Locationwise, yes. This one was Cheyenne
17 and North Fifth. My first accident was Cheyenne and
18 Commerce.

19 Q. So less than a half mile away.

20 A. Oh, yes. Yes.

21 Q. Maybe even a couple blocks; right?

22 A. I don't know the exact distance, but right
23 from there it drops down the hill to North Fifth. But
24 they are fairly close.

25 Q. Any -- there haven't been any other --

1 strike that.

2 There haven't been any other wrecks after
3 this incident; correct?

4 A. Correct.

5 Q. I want to go through some basic kind of
6 safety rules and concepts with you if I can.

7 Do you agree that drivers of vehicles should
8 never needlessly endanger others in the road?

9 A. Yes.

10 Q. Do you agree that drivers of emergency
11 vehicles have a duty to drive safely at all times?

12 A. Yes.

13 Q. Do you also agree that a driver of an
14 emergency vehicle, regardless whether or not they're
15 running with lights and sirens or lights or sirens,
16 must not enter an intersection on a red light until
17 they're sure that it's safe to do so?

18 A. Yes.

19 Q. Why do you believe that these are
20 important -- just very basic safety rules?

21 A. I refer to it as driving with due care.
22 That's just it. It's trying to minimize or limit the
23 risk to all the drivers on the roadway by yet being
24 able to expedite our response time to those that are
25 in need.

1 Q. Have you ever responded to fatalities with
2 either vehicle crashes or vehicle and pedestrians or
3 anything like that?

4 A. Yes. Both.

5 Q. How many times have you done that?

6 A. It's a much smaller number. I would
7 probably say less than 25 throughout the career. But
8 have responded to both.

9 Q. With regards to North Las Vegas Police
10 Department policy with regards to running -- first of
11 all, when you use the terminology "Code 3," what does
12 that mean?

13 A. Code 3 for us is responding to calls for
14 service in which they require us to expedite our
15 response, which means driving faster than we normally
16 do. To be able to do so, then we run with our lights
17 flashing and our sirens activated.

18 Q. I know what Code 4 is. That's usually a
19 call sign to say that everything is safe.

20 A. Safe, yes.

21 Q. And there's no exigent circumstances.

22 A. Correct.

23 Q. Is there a Code 1 and a Code 2?

24 A. No Code 2. There is a Code 1 and a Code 3.
25 Those are both referred to driving. Code 3 is lights

1 and sirens. Code 1 is just normal driving, obeying
2 the traffic laws.

3 Q. Just curious. Was there a Code 2 at some
4 point in time?

5 A. No. Just they called it -- as far as I
6 know, my whole career, it's just always been Code 1
7 and Code 3.

8 Q. Just curious.

9 A. Then Code 4 came around for just -- response
10 to let people know that everybody was all right.

11 Q. So Code 1 would be a response to a call, no
12 exigent circumstances, meaning no emergency
13 circumstances, and you are to respond to a call but to
14 not run with your lights on, not run with your sirens
15 on and just get there at your earliest convenience?

16 A. Correct. How that Code 1 came about was
17 basically for calls for service that required a Code 3
18 response. Officers would respond on the radio -- they
19 would copy the call and responding Code 3. But as
20 information was updated or, say, other officers
21 arrived there first and they said we're here, we're
22 out, we're Code 4, then the officers that were
23 required to run Code 3 will respond on the radio,
24 okay, I'm now operating Code 1, which is just to let
25 everybody know that now they are not lights and

1 sirens.

2 Q. Is it your -- from your testimony just a
3 minute ago, it's North Las Vegas Police Department
4 policy to run lights and sirens when you are running
5 Code 3?

6 A. Yes.

7 Q. Even when -- strike that.

8 What is your understanding of either the NRS
9 and/or North Las Vegas statute, for better word -- I
10 think it's code -- but code with regards to your
11 authority to be able to go through red lights when you
12 are running Code 3?

13 A. Again, it's with due care. I fully believe
14 the NRS states that in order -- if you're going to be
15 operating where -- I don't know if violating is the
16 correct word, but you're not going by the law, so you
17 are violating laws. You are given that authority to
18 do so as in run a stop sign or go through a red light,
19 that you must have your lights activated. NRS is a
20 requirement to have lights activated, not necessarily
21 lights and sirens. But it also says that by doing so
22 you have the ability to operate within due care,
23 meaning that you cannot go through an intersection
24 without at least trying to visually clear that it's
25 safe for you to do so.

1 Q. There's a couple of NRS provisions that seem
2 to be applicable to this. They all seem to be very
3 similar in nature. Do you agree that it requires that
4 a vehicle to proceed, you know, past or through a red
5 light requires a vehicle to slow down as necessary to
6 proceed with caution and safety through the
7 intersection?

8 A. Yes, it does.

9 Q. Regardless of whether it's NRS or North Las
10 Vegas statute, you agree they are all essentially the
11 same thing. You indicated that the policy is to have
12 lights and siren, but you believe the NRS is only
13 lights or siren?

14 A. Correct.

15 MR. CRAFT: Misstates prior testimony. He
16 said lights or sirens.

17 THE WITNESS: NRS says you must have your
18 lights, but you don't necessarily have to have sirens.
19 But your lights must be activated. Our North
20 Las Vegas policy says lights and sirens.

21 Q. (BY MR. GANZ) That's what I thought I had
22 asked. I'm glad you clarified. Thank you. All
23 right. This accident -- strike that.

24 Before I get to that, I guess -- how often
25 have you been, over the last, you know, ten years have

1 you been to that area where this wreck occurred?

2 A. I drive through that area almost daily when
3 I'm working, at one point or another.

4 Q. Hundreds, if not thousands of times?

5 A. Yes.

6 Q. And has that area's topography, meaning kind
7 of the layout of the area, the buildings and all that
8 stuff, has that changed very dramatically --

9 A. No.

10 Q. -- since November 2012?

11 A. No. Actually, the entire time I've been
12 here in my career the area is not -- it's the same
13 things.

14 Q. As we may have already mentioned, this wreck
15 occurred at the intersection of Cheyenne and Fifth;
16 correct?

17 A. Correct.

18 Q. What was your shift that night?

19 A. I was working graveyard, which I believe is
20 10:30 to 8:30 in the morning.

21 Q. Was that your normal shift during that
22 period of time?

23 A. Yes.

24 Q. How long were you on graveyard for? Are you
25 still on graveyard?

1 A. No. I spent one year on graveyard. This
2 week, it happens to be that I'm back on graveyard,
3 believe it or not. But my current assignment is
4 administrative sergeant. I work day, swing, and
5 grave. I work all shifts.

6 Q. November 2012, where did that fall within
7 your year of working graveyard?

8 A. I was promoted in 2011. So it would have
9 been that February of 2012 I would have gone to
10 graveyard. So that would have been my graveyard
11 shift.

12 Q. How many days a week did you work during
13 that period of time?

14 A. I work four days a week. Yes.

15 Q. Was it a set four days that you normally
16 worked?

17 A. Yes. I worked grave B, B squad, so, again,
18 I came in Saturday night. I was working basically the
19 Sunday morning, Monday morning, Tuesday, and Wednesday
20 morning, for the most part.

21 Q. This wreck occurred about 1:53 in the
22 morning is I believe when you called it in. So I
23 assume it occurred maybe minutes before that.

24 A. Uh-huh.

25 Q. Is that a fair statement?

1 A. Yes.

2 Q. Where were you coming from?

3 A. I was coming from the South Area Command,
4 which is at Lake Mead and Bruce. And I was driving
5 to -- I think the exact is 3260 Fountain Falls, which
6 is basically Cheyenne and Simmons, is where I was
7 heading to.

8 Q. How do you remember that address?

9 A. I remember that it's -- it's an apartment
10 complex that's right there that we respond to quite
11 often back then, especially when I was assigned to the
12 south. It was one that you become frequent with.

13 Q. What's the name of the complex?

14 A. It's called Fountain Falls. And that might
15 not be the current name of the apartment complex
16 today. They tend to change from year to year by
17 ownerships.

18 Q. It was your intended route to take -- take
19 me through your intended path had this accident not --
20 had this not occurred.

21 A. The quickest way for us to get down there as
22 we come on to the west side of town, which is on the
23 west side of the I-15 freeway, the North Fifth Street
24 off of Losee is our easiest way to come up, to only
25 have to come up to the light that's at North Fifth and

1 Cheyenne. So we're trying to get to the area that's
2 used less by the civilian traffic. Then I was going
3 to go westbound on Cheyenne from there. All straight
4 up to Simmons.

5 Q. So it was your intent to make a left on
6 north -- sorry, on Cheyenne and go westbound?

7 A. And go westbound, yes.

8 Q. Is there an alternative route from the --
9 you said we usually take that route. Is there an
10 alternative route that can be taken from the Lake Mead
11 and Bruce Southwest Area Command?

12 A. There's several different ways that you can
13 go. But a lot of times it will depend upon current
14 traffic. If we had other calls or accidents working,
15 based on where you are at, you may take a different
16 route based on that alone. But, yes, you could use
17 Lake Mead or Carey or come across Civic Center and up
18 Cheyenne that way. But several different ways to get
19 there.

20 Q. It appears to me -- strike that.

21 Is there -- strike that.

22 Did you inspect your car prior to getting in
23 the vehicle to head to this call?

24 A. Yes.

25 Q. What did you do to inspect your vehicle?

1 A. Our normal inspection of our vehicle is to
2 make sure that all of our required equipment is inside
3 of the vehicle -- traffic vest, cones. As a
4 supervisor, we have additional equipment that we carry
5 inside the vehicles, which are shields, rams, extra
6 protective equipment for the officers, so forth. So
7 we verify that all of our required equipment is inside
8 the vehicle. Then after that, then we do an
9 inspection of the tires and an external of a vehicle.
10 Then we turn on lights and sirens and make sure
11 everything is operational.

12 Q. Was that done immediately prior to the call,
13 or was that done at the beginning of your shift?

14 A. At the very beginning of the shift.

15 Q. You were kind of indicating a -- some kind
16 of writing. Is there some kind of form that you fill
17 out to do that?

18 A. No, we don't do a form. We have a vehicle
19 log that is on -- an electronic vehicle log. Once you
20 complete your inspection, you type in on the vehicle
21 log that vehicle check was okay and that the gas card
22 is in the vehicle. That's usually what's put inside
23 the log.

24 Q. Is that something that is kept for a period
25 of time?

1 A. I believe -- it's kept for I believe for
2 three months. Right after that you can see it and
3 then electronically up for a year and then it's gone.

4 Q. Anything else that you did regarding your
5 inspection?

6 A. No. Once inspection is complete, then
7 that's it. We put ourselves in service.

8 Q. I understand that you said that you were at
9 the southwest command. Were you at a desk at the time
10 you received the call? What were you doing? Do you
11 remember?

12 A. Don't specifically. I know I was down at
13 the South Area Command. I believe I was talking with
14 other officers when the call first started coming out.
15 But just based on the information of the call as it
16 starts to come out, I immediately jumped in my vehicle
17 and started heading in that general direction.

18 Q. My understanding is that there was -- well,
19 what is your memory of what kind of call was made?

20 A. The call that was in is that there was a
21 fight that was going on inside the complex with
22 several juveniles, that it was still active. And then
23 there was shots fired at the complex which of course
24 that generated people to start going, which at that
25 point, the two primary officers and myself being the

1 supervisor are now automatically dispatched to the
2 call to have to respond. I believe shortly within the
3 very first few seconds of that call coming out, then
4 the dispatch claimed that they had a victim down to a
5 gunshot wound and people were requesting medical to
6 respond as well.

7 Q. Ultimately, you never made it to that call;
8 is that correct?

9 A. Correct.

10 Q. Do you have an understanding of what exactly
11 occurred that night, if there was any kind of
12 convictions from that, anything like that?

13 A. No, not off the top of my head I don't
14 remember. Basically once I was en route and involved
15 in the accident, my job was just to notify them that I
16 was involved so that another supervisor could get
17 en route to the call to be able to get on scene.

18 Q. Who was the other supervisor at the time?

19 A. Tell you the truth, I'm not sure. I think
20 there were a couple of supervisors that were on. I
21 believe Sergeant Semper was on up north and I believe
22 Sergeant Fay was still there. But I believe
23 Sergeant Semper actually responded on scene. But I
24 would have to go verify who actually got there.

25 Q. I was just curious.

1 And you don't remember what ultimately
2 occurred, whether or not the victim was found -- I'm
3 sorry, the --

4 A. Victim was found. I know an arrest was
5 made. I don't know like what the outcome was whether
6 or not the suspect had received time or anything like
7 that.

8 Q. Okay. You obviously didn't have anybody
9 else in your vehicle at the time; correct?

10 A. Correct.

11 Q. Can you describe in detail how this wreck
12 occurred?

13 A. Basically, I was running lights and sirens
14 going which would be northbound on Fifth Street as I
15 approached Cheyenne, the intersection with Cheyenne.
16 I was preparing to make a left-hand turn and go
17 westbound on Cheyenne. As I approached the
18 intersection, there was nobody on my side of the
19 street. I do remember that there was vehicles
20 directly across because we did have a red light for
21 east and westbound traffic. There was vehicles that
22 were stopped on the other side that were traveling
23 south. It would be south on North Fifth. And as I
24 approached, I believe there was some cross traffic as
25 in vehicles had passed through the intersection as I

1 was approaching up to the intersection. At that
2 point, then I came to a stop prior to the intersection
3 as typically we do, because I know there was one or
4 two vehicles -- I don't recall like make or models of
5 vehicles on the other side of the intersection. That
6 we then will do something where we will change. We
7 have four different siren tones that are on our
8 vehicle. What we do is we'll push from button to
9 button to button. It changes the sound, the tone, how
10 loud it goes, in order to make sure everybody that's
11 in the intersection or nearby is gathering their
12 attention to my patrol vehicle. Then I started to --
13 once I believed there was no oncoming traffic on
14 either east or westbound on Cheyenne, I started to
15 encroach into the intersection to get ready to make my
16 left-hand turn. As soon as I started to encroach into
17 the intersection, I heard the vehicle lock up its
18 brakes. And it was to my left. So I noticed it was a
19 small car now that was traveling eastbound on Cheyenne
20 approaching the intersection. Two things occurred to
21 me. I noticed it was a small dark-colored vehicle and
22 it had no headlights or anything on the vehicle as it
23 approached. At that point I stopped as that vehicle
24 was locking up its brakes. There's that point in
25 there where I realized I can't move or go anywhere,

1 but knowing that the vehicle mostly likely was going
2 to end up striking the front of my vehicle. Once the
3 collision occurred, then I called out on the radio to
4 advise them that I was --

5 Q. Let's stop there.

6 MR. GANZ: Do you mind reading back his
7 answer?

8 Q. (BY MR. GANZ) I'm going to have her read
9 that back to you, make sure it's accurate and correct,
10 and if there is something you need to change, let us
11 know afterwards. Okay?

12 A. Okay.

13 (The reporter read the requested
14 portion of the record)

15 Q. (BY MR. GANZ) You heard her read that back?

16 A. Nope.

17 Q. You didn't?

18 A. I heard her read it back. I have one
19 clarification. I will say I know it was a red light
20 to stop north and southbound traffic. I was traveling
21 north. It was green lights that allowed east and
22 westbound traffic through the intersection as I
23 approached.

24 Q. Anything else?

25 A. Huh-uh.

1 Q. Is that no?

2 A. Yeah, that's a no. That's it.

3 Q. Was there anything else you want to add to
4 that, something that you may have missed in your
5 explanation of how the wreck occurred?

6 A. Nope. That's pretty much exactly how it
7 happened.

8 Q. I have some questions for you. You had said
9 that there was some cross traffic at one point in
10 time.

11 A. Correct.

12 Q. Are you talking about cross traffic meaning
13 east and -- eastbound and westbound Cheyenne?

14 A. East and westbound Cheyenne, correct. As I
15 approached still a distance -- I'm going to say
16 several hundred feet away from the intersection, but
17 as I'm approaching, I can see the intersection. I
18 could see cars that had gone through the intersection
19 as I was approaching.

20 Q. You had then said that as you approached the
21 intersection you stopped prior to the intersection.

22 A. Correct.

23 Q. And started changing the tones of your
24 siren; correct?

25 A. Correct.

1 Q. First of all, how long had you stopped
2 before you proceeded into the intersection?

3 A. I would -- probably five to six seconds.
4 It's not a whole lot of time. Once I stopped, then
5 it's just a matter of just visually clearing each
6 intersection as I go.

7 Q. When you stopped prior to approaching the
8 intersection, I want to make sure we have the same
9 definition of an intersection just because it gets
10 very confusing sometimes where the intersection begins
11 and where it doesn't. At least from my perspective.

12 My take on where the intersection occurs is
13 where the stop bar is for the vehicles traveling in
14 that direction. Do you agree with that?

15 A. Correct. From any point from that stop sign
16 into is included into the intersection, which is
17 typically defined by the curbing that is along the
18 road, the roadway.

19 Q. I'm talking about -- if you're looking at an
20 aerial above, there is a stop bar that's before the
21 light where you are supposed to stop waiting for a
22 light.

23 A. Correct.

24 Q. Can we agree that at least for the
25 discussion today even if that's not the technical

1 beginning of the intersection that we use that as a
2 point of reference for now?

3 A. Correct. That's fine.

4 Q. When you say you stopped prior to the
5 intersection and changed your tone, were you stopped
6 behind that stop bar?

7 A. Yes. Stopped behind the line, yes.

8 Q. And I know from traveling that area -- not
9 that often -- but recently in an inspection of the
10 area, I noticed there's this -- for lack of better
11 term there's this big hill that's on the southwest
12 corner of Fifth Avenue just right before the
13 intersection; correct?

14 A. Correct.

15 Q. It actually goes beyond the stop bar,
16 doesn't it?

17 A. The hill?

18 Q. Yes.

19 A. The hill goes, yes, correct, all the way up.

20 Q. When I say it's a big hill, it's a hill -- I
21 don't know, I haven't measured it, but it's probably
22 at least 50 feet in the air; right?

23 A. I would put the hill probably a good 20,
24 25 feet up. I believe that mound that is there is the
25 Las Vegas -- or the North Las Vegas Golf Course. It's

1 a built up tee box that is for the golf course.

2 Q. When you are at that stop bar with that hill
3 on your left, are you able to see -- and I'm talking
4 about stopped right before the stop bar. Are you able
5 to see the eastbound traffic on Cheyenne?

6 A. Yes, for only a certain distance. There's
7 two limiting factors I see on that one. One is the
8 obstruction, the large hill that's on that southwest
9 corner, and two is the limited lighting at night to be
10 able -- how far up the hill you can see.

11 Q. In addition to the hill, there's also trees
12 and stuff there too, isn't there?

13 A. That is inside the fence up on the hill.
14 Lower down, all the way up -- down around by the
15 fencing I don't think there's any trees down there.

16 Q. Forgetting about lighting issues because of
17 being dark, even if it was during the middle of the
18 day with that hill there at the stop bar can you
19 estimate for me how far you could see into the
20 eastbound travel lanes if you're at that stop bar in
21 that one lane?

22 A. That's a tough question, a tough question.
23 There's no lighting there. Typical lighting is
24 150 feet up. It's a good judge for us to be able to
25 see a streetlight -- the next streetlight up from a

1 corner because it's not exact but it's roughly about
2 150 feet for the placement. That gives us usually a
3 good judgment of how far up we can see. In this case,
4 there is no street lighting that is right there. Not
5 until you're much further up the road to the entrance
6 to the little park that sits right there by that
7 golf course.

8 Q. Just so you understand, I'm looking for an
9 estimate. I recognize you haven't maybe have done --
10 doesn't sound like you've done this analysis.

11 A. Right.

12 Q. My question is as you sit here today, what
13 would you estimate how far you could see if you're
14 looking to the left in clear conditions in daylight?

15 A. It's rough being stopped behind the line
16 looking up the street. I'm -- most likely I'm going
17 to say the angle to see eastbound traffic or probably
18 less -- maybe around 150 feet to 200 feet that you
19 could probably see up the roadway.

20 Q. What about specifically for the third travel
21 lane closest to the curb?

22 A. Close to the curb? That's going to be the
23 shortest distance that you're going to be able to see
24 going up the hill. Again, 150 feet. But I'm making a
25 rough guess.

1 Q. Surely you've gone -- traveled eastbound on
2 Cheyenne on that road as well; correct?

3 A. Correct.

4 Q. Can you give me an estimate of how far you
5 believe in a Number 3 travel lane that somebody could
6 see somebody sitting at that stop bar facing
7 northbound on Fifth Avenue if you're traveling
8 eastbound on Cheyenne?

9 A. Eastbound on Cheyenne? It's a little easier
10 to see eastbound than west. And, again, I would have
11 to -- it's like anything else. I'll refer it to such
12 as building clearing and cutting corners. Where I'm
13 sitting to make a left-hand turn, the closer that I
14 sit to that side, it's harder for me to see an angle
15 to get cleared up. Otherwise, somebody who is coming
16 down from the other direction, the distance off
17 between where the travel lanes are -- and I don't know
18 exactly how it is, but, obviously, the further out you
19 go the easier it is for you to see back one way. I
20 don't know the exact term for it, but it's a thing
21 that we use to where one direction you can actually
22 see somebody. But someone looking the other direction
23 actually can't, when you cut off those corners. But
24 it's fairly close. It's not like a huge advantage, if
25 that makes sense.

1 Q. So still in that 150 to 200 feet range?

2 A. Correct. Where you could be -- again, it's
3 tough to say with being exactly there. But sitting
4 where I'm at, somebody could be -- if they are
5 150 feet up this way, they could see this vehicle
6 where this vehicle couldn't see them.

7 Q. Regardless of that, it's still about 150 --

8 A. About 150 feet. Roughly, I would say, in
9 that third lane. As you go further out, you'd be able
10 to see -- I could see a little bit further and then
11 they could also see me.

12 Q. Sure. Would you agree with me that that
13 hill, the fence, and the foliage on that corner
14 obstructs the view of somebody who is sitting in the
15 northbound Fifth Avenue -- obstructs the view of
16 anybody coming eastbound on Cheyenne? Would you agree
17 with that general concept?

18 A. Yeah. All that goes into play. I'd say
19 almost anywhere that that's going to go on there, what
20 you can see, what you can't see. It all makes -- we
21 have -- there's a new state law in reference to I want
22 to say campaign signs because they put them out there
23 and when they are sitting on corners, it obstructs
24 people's views to be able to see clearly in any
25 directions on the roadways.

1 Q. I'm just asking very specifically on this
2 intersection, that hill, foliage, fencing, and trees
3 obstructs the view of somebody who is traveling
4 northbound -- the view of the eastbound travel on
5 Cheyenne is obstructed?

6 A. Yes. That corner does. Whether you are
7 traveling eastbound Cheyenne or northbound on
8 North Fifth, it's going to limit your view.

9 Q. I'm not just talking about a little bit;
10 right? I mean, that's a really big obstruction. I
11 mean, I drove by it. I was fairly impressed with how
12 large that hill was and the amount of obstruction it
13 caused on that area. I mean, it's a tough spot to see
14 around, isn't it?

15 A. It is a tough spot to see around, correct.

16 Q. Because of that, you testified that you had
17 stopped, did your tone change, and then started -- you
18 described yourself as creeping forward a little bit;
19 is that correct?

20 A. Yes.

21 Q. Then you said that you heard a vehicle lock
22 up and then at that point you stopped and realized
23 that there was nowhere that you could go; is that
24 correct?

25 A. Correct.

1 Q. At the point that you heard the vehicle, you
2 were already in the third travel lane for eastbound
3 Cheyenne; correct?

4 A. Correct.

5 Q. How far were you in the travel lane when you
6 first heard the sound?

7 A. As I began to encroach, I'm only a couple of
8 feet. My vehicle is starting to roll forward because
9 I'm getting ready. My anticipation, even though I'm
10 not going to go fast, is that I've started because I'm
11 going to go out and make my left-hand turn across the
12 intersection. Specifically where I was at, I don't
13 know. I know that I had a stop prior to the
14 intersection. There's several feet. Again, without
15 going out there and measuring it -- because of that
16 and because of that spot, it's three to five feet or
17 so behind. So as I was rolling out -- my best example
18 is always to use the curbing that is on the sidewalk
19 that is on the Cheyenne side for the east and west
20 travel. I was fairly close to that or I would say
21 even starting to pass that when I heard the brakes
22 lock up, which immediately drew my attention to my
23 left. Then I stopped.

24 Q. And it's your testimony that you were
25 stopped at the time of impact; correct?

1 A. Correct.

2 Q. So when you heard the vehicle, you
3 immediately applied your brakes?

4 A. Correct.

5 Q. And didn't move any further?

6 A. Correct.

7 Q. So whatever position that the impact
8 occurred, is it fair to say that that's the location
9 that you first heard the vehicle?

10 A. Yeah. Fairly close. I could only probably
11 travel two to three -- I mean, a small amount of feet.
12 My vehicle is in motion when I heard it. I got to
13 stop. At that speed, I'm only going to go a couple
14 feet at most before I get stopped.

15 Q. How fast were you traveling from your point
16 of stopping before the stop bar and the time that you
17 heard the vehicle to the left?

18 A. Couple miles per hour. It was -- basically
19 it was just getting this vehicle into motion and then
20 hearing it and then applying the brakes and stopping.

21 Q. You used the word encroaching into the
22 Cheyenne travel; correct?

23 A. Correct.

24 Q. Is that a term that you used?

25 A. Yes.

1 Q. What you meant by that was that you were
2 already within that Cheyenne travel when you heard the
3 vehicle to the left?

4 A. Encroaching. I was entering the
5 intersection.

6 Q. But you were already in it?

7 A. Yes.

8 Q. When you do your little change in sounds, do
9 you then have to hit another button to be able to have
10 the sound continuous to a specific sound or is it just
11 change it and then it rotates?

12 A. It just changes. It will continue to
13 change. Whatever I leave it on -- our main siren on
14 our vehicles is called wail, W-A-I-L. Once I start
15 hitting buttons to change, if I leave it on -- if it's
16 the constant or yelp, if I start to drive, it will
17 stay there for say roughly 10 seconds and then it
18 automatically changes back to the main wail without me
19 having to push anything. All I'm doing by pushing the
20 button, again, is just changing the tone or the type
21 of sound that's coming off.

22 Q. Do you know what decibel level the wail is?

23 A. No, I don't. It varies in how loud and the
24 pitch to be able to -- and how frequently it goes. It
25 changes to get people's attention.

1 Q. It's pretty loud, though, isn't it?

2 A. Yes. It's quite loud.

3 Q. And it's your testimony that as the siren is
4 going, you heard squealing of tires to the left?

5 A. Correct.

6 Q. So I think you took us up to the point to
7 where the impact occurred.

8 A. Correct.

9 Q. But before you do that, can you describe for
10 me, first of all, what you remember seeing from the
11 time that you -- obviously, you didn't take your eyes
12 off of the other vehicle once you saw it; correct?

13 A. Correct.

14 Q. You said approximately how far away was it
15 when you first saw it?

16 A. The vehicle was fairly close. I'm going to
17 say it was roughly around the 150 to 200 feet range,
18 right up in there, once I picked up the vehicle. But
19 what drew my attention to it again was the sound of
20 the brakes, of the vehicle being locked up. You could
21 tell it was a vehicle that was in skid at that point.
22 And that's when I finally was able to pick the vehicle
23 up in the darkness.

24 Q. And you didn't take your eyes off of that
25 vehicle once you heard it; correct?

1 A. Right. Once I heard it, yeah, I didn't take
2 my eyes off of it. It was too close.

3 Q. Try to give me the path that it took and
4 describe for me the impact on your vehicle, her
5 vehicle, and what you saw there.

6 A. The impact itself to me felt -- it wasn't
7 hard. It was enough that it moved my vehicle a little
8 bit back and forth. But I don't believe my vehicle
9 actually moved very much, if at all, as in being
10 pushed sideways by the impact. But when I got out of
11 the vehicle, it just appeared very minor in nature at
12 that point. Again, my first recourse was just to call
13 it out and then go to the driver of that vehicle to
14 make sure they were okay.

15 Q. My question, though, is what part of your
16 vehicle hit her vehicle and her vehicle hit your
17 vehicle?

18 A. It was the front of my vehicle, front and
19 the front driver's corner. It was also the front and
20 front passenger corner of her vehicle that met.

21 Q. Would you describe it as -- when you say
22 front of your vehicle, you are talking about your
23 front bumper or are you talking about your quarter
24 panel that is near your wheel?

25 A. It was all the way on the front bumper of

1 the vehicle. Initially, when I heard the locking up
2 of the wheels, caught the attention of the vehicle as
3 it was coming towards me. Where I was stopped at it
4 was one of those -- you knew it was not going to be a
5 head-on or violent impact. To me it was almost still
6 a chance the vehicles could have missed each other.
7 If that's the best way to describe it. You just knew
8 it was going to be very minor or very close. It
9 wasn't going to be a hard impact into one where the
10 vehicles were going to be going in opposite directions
11 of each other, if that makes sense. It was almost
12 like they could have brushed the vehicle.

13 Q. Did you take any evasive action once you
14 heard her vehicle?

15 A. No. I just kept my vehicle on the brake.
16 At that point, I said -- I felt it was going to be
17 minor, but most likely I was going to be struck. So I
18 just maintained my position. There wasn't going to be
19 a whole lot of time for me to do anything else.

20 Q. Was there any evasive action that she could
21 have taken once you saw her vehicle at that point?

22 A. Now, the assumption is what I would have
23 done if I was driving that vehicle? I know what I
24 could have done.

25 Q. Are you critical of her for not taking

1 evasive action, once you were able to see her?

2 A. No, I'm not critical of her not being able
3 to take evasive action. All just depends upon your
4 driving skill, knowing what you could have done or not
5 could have done.

6 Q. So then once the impact occurred, what did
7 you do next?

8 A. Once the impact occurred, I basically put my
9 vehicle into park and got out. I called out on the
10 radio that I was in a traffic accident but that I was
11 uninjured.

12 Q. That's a portable radio?

13 A. Yes.

14 Q. As you're getting out of the vehicle?

15 A. As I was getting out of my vehicle.
16 Basically, all I did was go around the rear of her
17 vehicle. I just looked to make sure no one else was
18 coming, vehicles were stopped, if somebody else was on
19 the roadway. I went to her driver's side, opened the
20 door, and asked her if she was okay.

21 Q. What do you remember her saying?

22 A. I don't remember specifically. She was just
23 like just doing, "I'm sorry. I'm sorry. I'm sorry.
24 I'm so sorry. Are you hurt?"

25 "No, I'm fine. Are you okay?"

1 "I'm fine."

2 I'm not going to say she was elderly. She
3 was older than me. I basically just told her to sit
4 there and relax, it was an accident. I just told her
5 that I was requesting medical to come check her out
6 regardless.

7 Q. Although you don't remember the specific
8 conversation, it's your testimony that you believe
9 that she apologized?

10 A. Yes. Yes. She most definitely -- I can't
11 remember exactly what she said. I just know that she
12 was, again, just apologetic. She kept repeating, "I'm
13 sorry. I'm sorry." That type of a thing.

14 Q. How long until somebody else responded?

15 A. It was fairly quickly. I believe a patrol
16 officer got to me within a few minutes. I would have
17 to go back and try to look at that to know exact, but
18 it was a short amount of time before a patrol officer
19 got there. That was to provide assistance and getting
20 the travel lane behind her blocked off so nobody else
21 would come up and strike her vehicle.

22 Q. Do you remember who first responded?

23 A. I do not know the other officer that
24 responded. I'd have to look. I'm pretty sure it's in
25 there.

1 Q. In where?

2 A. It may be in the traffic accident report.
3 I'm not exactly positive. If not, it's called out.

4 Q. Where do we get that information about who
5 responded and at what time?

6 A. Information would be through our dispatch to
7 know who else responded after the scene. They
8 wouldn't have done anything except for place cones and
9 stuff out there to make sure no one struck the rear of
10 her vehicle. I requested motors to respond.

11 Q. Do you remember how many total responded at
12 any given time?

13 A. There was only -- there was a patrol vehicle
14 that responded to put cones and stuff out behind her
15 vehicle. Then after that it was the motor officers
16 that responded out on scene. I believe there was two.
17 But Officer Byrnes was the lead investigator for the
18 accident.

19 Q. So he was one of the two?

20 A. Yes. The only other ones that responded was
21 our CSI to take photographs of the accident.

22 Q. It's your testimony that CSI came out?

23 A. Yes.

24 Q. And it's your testimony that CSI did an
25 investigation?

1 A. All they do is take photographs. They are
2 there to photograph at the direction of the motor
3 officer, which would have been Officer Byrnes, at his
4 direction.

5 Q. Officer Byrne --

6 A. Byrne.

7 Q. -- testified right before you today. He
8 said that when he showed up to the scene you were the
9 only one there and that CSI wasn't called and he never
10 talked to anybody other than you at the accident
11 scene. Is that different than your memory?

12 A. CSI arrived and took photographs. They'll
13 take photographs of the overall scene. By the time he
14 arrived, the other officer -- because we had a
15 shooting which the victim was down, the other officers
16 could have left the scene. I know when officers
17 showed up that they would just provide cones and stuff
18 to block off traffic to make sure. I would say most
19 likely they would have then left prior to
20 Officer Byrne showing up.

21 Q. You don't -- your memory is, as his is, by
22 the time he got there, my client was gone and
23 everybody else was gone. It was just you still at the
24 accident scene. Is that your same memory?

25 A. Yeah. Correct.

1 Q. Do you know how long it took for
2 Officer Byrne to get there?

3 A. I do not. He had to be called out. I would
4 say 30 minutes at least, which is probably the most
5 likely why the other officer was not on scene when he
6 got there.

7 Q. During that 30 -- strike that.

8 You said that a patrol officer came within a
9 few minutes?

10 A. Yes.

11 Q. Do you remember any other conversations you
12 had with Ms. Glover-Armont prior to that officer
13 coming?

14 A. Do not. It was more about just is she okay?
15 Is she hurt? I had medical coming anyway, making sure
16 she was looked at and checked out. A lot of that, in
17 my mind, had to do with her age and stuff. Sometimes
18 they could be hurt and they don't even realize it. I
19 just wanted to have her checked out. But nothing
20 specific. I believe I did ask her, once that she
21 decided she was going to be transported by the
22 ambulance, that if there was somebody there for her
23 vehicle. The reason why, she delivered newspapers.
24 And she made a phone call to have somebody come to be
25 able to get the newspapers and I believe was going to

1 make her deliveries for her from the vehicle.

2 Q. Do you remember any other conversations that
3 you had at the accident scene with her before she was
4 taken?

5 A. No. My concern was more for her well being.
6 I wasn't -- I didn't get into it like why did you
7 drive? Why did you do this? I didn't go anywhere
8 like that with her.

9 Q. Did you take any pictures yourself?

10 A. Yes, I did.

11 Q. What pictures did you take?

12 A. I took a photo of the inside of the car to
13 show that the -- her headlights were off on the car.

14 Q. When was that photo taken?

15 A. Right after they were removing her out of
16 the vehicle from the scene, which they didn't have to
17 remove her. She got up and stood up and walked over
18 to the gurney.

19 Q. So it was already after the ambulance had
20 come?

21 A. After the ambulance had come. The ambulance
22 was there. I basically stood there with her and
23 remained talking with her, more to keep her calm and
24 stuff, until medical arrived to be able to start
25 asking their questions.

1 Q. How long after did medical come?

2 A. I don't know. I requested them immediately.
3 I requested them. It's also department policy if we
4 were in an accident our dispatchers would immediately
5 get on the phone and request for medical to respond as
6 well.

7 Q. Was it within minutes of the first patrol
8 officer showing up?

9 A. Yeah. They responded fairly quickly. It
10 would have been within a few minutes.

11 Q. At the time that you took this photograph,
12 the vehicle was still on or was it off by then?

13 A. The vehicle was still on. Still on.
14 Sitting there running. It was pretty much exactly how
15 she left it.

16 Q. So it is approximately 10 minutes after the
17 crash and the vehicle is still just running?

18 A. It's still running. There was no damage,
19 enough to any of the vehicles, to warrant like for
20 fire or medical to start turning stuff off. They were
21 just attending to her. The vehicle was on. Do I know
22 specifically if she had clicked it back to turn the
23 engine off or not? I don't 100 percent recall. But I
24 know the keys and everything were in the ignition and
25 it had to be clicked over because like the little dome

1 light that is not very bright and stuff was popped on
2 inside the vehicle.

3 Q. It's your testimony that you did not turn
4 her vehicle off?

5 A. I did not turn her vehicle off, no.

6 Q. Somebody else did?

7 A. Somebody else did. They could have. Again,
8 fire and medical get in there and start talking to her
9 because she was sitting initially when they got there
10 in the driver's seat. I believe she moved her feet
11 out. But she was sitting right there. It's not hard
12 for either her or them to just turn it back one so
13 that the engine stops.

14 Q. Again, no further conversations that you
15 remember other than what we've already talked about?

16 A. No conversation. It was all about her
17 welfare, well being, whether or not she was hurt or
18 injured. I do remember asking her if there was
19 somebody that could come for her newspapers for her
20 route.

21 Q. Did you ever write a written statement
22 regarding how this incident occurred?

23 A. No.

24 Q. Not even as a report to the department at
25 all?

1 A. No. I don't -- no, that would have been
2 Officer Byrne being the investigator.

3 (Phone call interruption)

4 Q. (BY MR. GANZ) Do you need to grab that?

5 A. No, that's dispatch. If it's something I
6 have to, they'll follow it up with a text.

7 Q. Do you believe that you could have avoided
8 this crash in any way?

9 A. No.

10 Q. Do you believe you have any fault for
11 causing this crash at all?

12 A. No.

13 Q. No camera in your vehicle; correct?

14 A. No camera in the vehicle.

15 Q. You didn't take any video afterwards either;
16 right?

17 A. No. Did not.

18 Q. Just to be clear, when you entered the
19 Cheyenne roadway, your light for northbound travel on
20 Fifth Avenue was red; correct?

21 A. The traffic light was red, yes.

22 Q. Do you remember anything else about
23 Ms. Glover at all? First of all, ever met her
24 beforehand?

25 A. No. Have not met her beforehand.

1 Q. Could you pick her out of a line-up now?

2 A. Probably not.

3 Q. Do you remember anything about her in the
4 vehicle when you saw her coming at you? Was there
5 anything that you saw her doing or anything like that?

6 A. No. Couldn't really see her, the driver of
7 the vehicle at all, until after the accident. I can
8 only just describe it as dark colored, small sedan.

9 Q. Did you happen to see what happened to her
10 body upon impact at all?

11 A. No, I did not. No.

12 Q. Where is your memory of where the impact
13 occurred within the intersection?

14 A. Just inside the intersection, a few feet
15 inside, in the number -- there's three -- so it would
16 be number 3 travel lane, which is closest to the
17 south.

18 Q. Do you know how wide those lanes are there?

19 A. I believe the standard is 11 to 13 feet in
20 width.

21 Q. If it's -- let's take the average there and
22 make it nice and even, 12. Let's assume that it's
23 12 feet. How far approximately was the impact within
24 the lane itself?

25 A. Three feet.

1 Q. Were you able to appreciate at all about how
2 fast she was going after she applied her brakes at any
3 time?

4 A. Could I estimate how fast she was going
5 based on the --

6 Q. Let me make sure I understand. You didn't
7 see her prior to her applying her brakes; correct?

8 A. Correct. Did not see her.

9 Q. So your only vantage point would be to tell
10 me how fast she was going after she applied her
11 brakes; correct?

12 A. Correct.

13 Q. So can you estimate approximately how fast
14 you thought she was going once she started applying
15 her brakes?

16 A. For me that's tough. Inside the accident
17 kit we have the workup card based on roughly how much
18 skid is out there. Without going back and walking off
19 the skid to -- would I know for sure how fast.

20 Q. I just want to make sure that you are not
21 going to tell the jury that she was going like a bat
22 out of hell going a hundred miles an hour or
23 something.

24 A. Do I think she was speeding? Yes. Do I
25 think she was a hundred plus miles per hour? No. No,

1 I don't.

2 Q. You saw the speed workup done by
3 Officer Byrne?

4 A. No, I have not seen the speed workup.

5 Q. It indicates in the traffic accident report
6 on the very last page that a speed analysis was done,
7 that he believed that she was not exceeding the speed
8 limit prior to braking. His workup was done to
9 indicate she was going approximately 47 miles an hour.
10 Do you have anything to disagree with that?

11 A. No.

12 Q. You would defer to him who did measure the
13 skid and did do the calculations and everything?

14 A. Yes. That's his thing. Again, the only
15 reasons why I was concerned with her about seeing the
16 vehicle -- I will add this -- is that -- the amount of
17 papers, newspapers, and everything that she had. I
18 believe they were the Sunday papers, newspapers,
19 inside of her vehicle. That was my concern. Again,
20 do I think she was going a hundred miles an hour, an
21 excessive amount of speed, no. Definitely did not
22 think she was doing that when I saw her. I was more
23 concerned of the amount of weight and everything
24 inside that vehicle and her ability to be able to stop
25 it, that it could have been more of an impact on her

1 than on me. That's why my concern was for her, the
2 driver.

3 Q. Did you ever check up on her at the hospital
4 to see how she was doing at all?

5 A. No, I did not.

6 Q. Is there anything that you would have done
7 differently? Even though you don't believe that you
8 did anything wrong, was there anything you would have
9 done differently in retrospect?

10 A. No.

11 Q. Prior to Officer Byrne showing up, did you
12 move the vehicles at all?

13 A. No, did not move the vehicles.

14 Q. Were you ever disciplined for this incident?

15 A. No.

16 Q. Was there an internal -- I don't want to say
17 Internal Affairs, but some kind of internal
18 investigation that was done?

19 A. Yes. All traffic accidents go to the
20 Collision Review Board.

21 Q. Collision Review? I didn't know that. I
22 heard it earlier today, but I didn't remember it, to
23 be honest with you.

24 Collision Review, do you testify there?

25 A. You have the option to testify if you want

1 to, but it's not required.

2 Q. Did you in this case?

3 A. No, I did not. I basically just let the
4 accident speak -- what was in the report to speak for
5 itself.

6 Q. Were you supplied with a decision regarding
7 the Collision Review Board?

8 A. Yes.

9 Q. What is your understanding of the outcome of
10 that?

11 A. The outcome, I believe -- I was just found
12 not at fault of the accident. They do have specific
13 terms that they use. I don't remember off the top of
14 my head.

15 Q. Was that something that was placed in your
16 file or anything?

17 A. No, it is not. It is maintained by the
18 motor bureau because Lieutenant Salyer, head of the
19 motors, supervises the Collision Review Board. He
20 maintains all of those on file, I believe. I don't
21 know the exact duration.

22 Q. Have you ever been disciplined while on duty
23 for -- strike that.

24 Have you ever been disciplined for any
25 on-duty activities?

1 A. No. Have not.

2 Q. Did you speak to any kind of expert or
3 consultant about how this accident occurred?

4 A. No. Did not.

5 Q. That prior incident that you were in on
6 Cheyenne as well early on in your career, were you
7 found to have been at fault for that?

8 A. Yes.

9 Q. Can you tell me a little bit about that?

10 A. Basically, without remembering it back
11 before, but it was percentages of being at fault. And
12 a lot of it more to do with hitting the debris in the
13 roadway prior to entering the intersection. Obviously
14 if I could have avoided the debris, then most likely I
15 would not have struck the median and then back into
16 the other vehicle.

17 Q. Were you disciplined for that incident?

18 A. No, I was not disciplined for that. It does
19 go on file, I believe, if you have -- if you have
20 three accidents within a certain time frame, then they
21 can review it. They can send you back to the
22 emergency vehicle operations course to have you drive
23 or stuff like that. That's why it's held.

24 Q. Do you remember any other conversations with
25 anybody else at the scene as you sit here today?

1 A. No. My conversations at the scene were only
2 to her initially, again, with her injuries and stuff,
3 and getting someone to come out and get her newspapers
4 and then with Officer Byrne who basically asked me
5 questions similar to -- what direction I was
6 traveling, where I was at, where I saw her, as far as
7 him investigating the accident.

8 Q. Made any notes or any kind of diary with
9 regards to the incident afterwards? We talked about a
10 formal written statement, but did you go back and
11 write anything up at all?

12 A. No.

13 Q. I think I'm just about done. Just a second.
14 How long was Officer Byrne at the scene?

15 A. I'm not exactly sure. I'm going to say it
16 probably took him an hour or maybe even a little
17 longer for him to do everything.

18 Q. Were you there the whole time?

19 A. Yes, I was there the whole time. My vehicle
20 was drivable. So once he was done and everything,
21 then I drove my vehicle back down to the police
22 department.

23 Q. Her vehicle was --

24 A. Her vehicle was towed.

25 Q. Not before somebody else came and took the

1 newspapers out?

2 A. Newspapers, yes.

3 Q. Do you remember who that person was?

4 A. No, I do not.

5 Q. Did you have any conversations with that
6 person?

7 A. Actually, no. I take that back. I think he
8 came up to me and asked me if it was okay to go ahead
9 and remove the newspapers from the car when he
10 arrived. And Officer Byrne said yes and then I said
11 yes. He removed them. I didn't help him remove them.
12 He took them out of the car and I believe he was going
13 to make deliveries for her. I'm not sure if that was
14 somebody for the Review-Journal or if that was just a
15 friend that did it.

16 Q. You drove your vehicle to the City garage?

17 A. Correct.

18 Q. What did you do at that point?

19 A. We park it in the back lot and we move all
20 of our equipment so we can get into another vehicle.
21 Then that's it.

22 Q. Just about done here. Hold on a second.

23 So it's your memory you only took the one
24 photograph inside the vehicle?

25 A. Inside the vehicle, yes.

1 Q. I know this sounds obvious, but clearly you
2 were working within the course and scope of your
3 employment at the time this incident occurred;
4 correct?

5 A. Correct.

6 Q. Had plaintiff had her lights on -- I
7 understand your testimony that she didn't -- had she
8 had her lights on, would she have done anything wrong?

9 A. Would she have done anything wrong?

10 Q. Yes.

11 A. I believe that if she would have had her
12 lights on, I would have been able to see her and that
13 I would not have encroached into the intersection
14 prior to her arriving into the intersection.

15 Q. So my question is had she had her lights on,
16 did she do anything wrong?

17 A. If she would have had her lights on, I
18 wouldn't have encroached in. She probably would have
19 went right through the intersection and then I would
20 have went behind her.

21 Q. Never made aware of any other person who
22 witnessed it and stuck around and gave you a name or
23 number or anything like that?

24 A. No.

25 Q. The instrumentation in your vehicle you have

1 at the time was radios. I assume you had your cell
2 phone. Computer that's there as well and accessible;
3 correct?

4 A. Correct.

5 Q. Were you distracted at all prior to entering
6 the intersection by looking at any of those devices?

7 A. No.

8 Q. It's your testimony that you were not on
9 your phone or texting or on the radio or your computer
10 within the few minutes before the impact?

11 A. Correct. Yeah, I was not using anything.
12 In this case, I knew the exact address and where I
13 needed to go. So I didn't need the use of all that.
14 Listening to the radio, but I was actually not using
15 it.

16 Q. Last question. You know you are under oath.
17 Do you really like the Dodgers? I mean, really? Just
18 kidding.

19 MR. GANZ: I have nothing further.

20 MR. CRAFT: No questions.

21 (The deposition was concluded
22 at 5:19 p.m.)

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CERTIFICATE OF DEPONENT

I, SERGEANT JOHN CARGILE, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action, subject to any corrections I have heretofore submitted; and that I have read, corrected, and do hereby affix my signature to said deposition.

SERGEANT JOHN CARGILE, Deponent

Subscribed and sworn to before me this
____ day of _____, _____.

STATE OF NEVADA)

SS:

COUNTY OF CLARK)

Notary Public

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CERTIFICATE OF REPORTER

I, Marnita J. Goddard, CCR No. 344, a Certified Court Reporter licensed by the State of Nevada, do hereby certify:

That I reported the deposition of the witness, SERGEANT JOHN CARGILE, commencing on Wednesday, October 1, 2014, at the hour of 3:49 p.m.;

That prior to being examined, the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth; that I thereafter transcribed my related shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate record of testimony provided by the witness at said time.

I further certify (1) that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action, and (2) that pursuant to NRCP 30(e), transcript review by the witness was not requested.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this _____ day of _____, 2014.

Marnita J. Goddard, RPR, CCR No. 344

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 1, 2016, 9:29 A.M.

2 THE COURT: On page -- page 8 -- no, I'm sorry, page
3 5, this is Japonica Glover v. John Cargile, it's A-683211.
4 This is on for the Defendants' Motion for Summary Judgment.

5 Okay, for the record, can you state your names?

6 MR. CRAFT: Good morning, Judge. Chris Craft here
7 for the defendants, City of North Las Vegas and John Cargile.

8 THE COURT: Okay.

9 MS. HAUF: Good morning, Your Honor. Marjorie Hauf
10 on behalf of the plaintiff, Japonica Glover-Armont.

11 THE COURT: Okay. I asked to have you supplement
12 your previous motion for reasons to get around questions that
13 I had factually. And I don't believe what's been presented to
14 me has satisfied my concerns factually. So for those reasons,
15 I'm going to deny your motion without prejudice. I do believe
16 there are still genuine issues of material fact here.

17 The simple fact is the arguments between one's
18 perception versus another's perception as to what they saw
19 with respect to the lights and siren or what they saw with
20 respect to somebody coming down the street and the officer
21 proceeds.

22 I understand the testimony. The officer felt that
23 he had -- he could go, and other cars had stopped. I
24 understand the testimony that the -- one believed the police
25 officers lights and sirens were not on, the officer believed

1 that his lights were on, but he changed his tone when he
2 entered the street. But that's a specific fact, I think, that
3 goes to this particular issue.

4 So -- I mean, if, in fact, the argument is that I
5 believe that the officer entered with a -- made his own
6 decision to enter and then that simply, by itself, grants him
7 immunity, I believe there would be no -- no reason whatsoever
8 to even ever file any motion because it would always be the
9 officer saying, that's what I did.

10 So because that -- because the officer's statement
11 is due to -- I mean, is subject to credibility and
12 believability, I believe that that's a factual issue that the
13 jury has to make a determination of.

14 MR. CRAFT: But, Judge, a determination is was he
15 making a decision? Was he asleep at the wheel? That's how
16 far it has to go in their direction.

17 THE COURT: Well, I don't know that because --
18 because if, in fact, there is a belief that he didn't have his
19 lights on, or sirens on at all and he was passing through,
20 that may be something that the jury might decide that he was
21 asleep at the wheel, because when you enter an intersection,
22 that's what you would always do. That's -- that's the -- that
23 alone is the factual issue that I think the jury needs to make
24 a decision on.

25 MR. CRAFT: Judge, I don't think it's a material

1 issue. The things they raise in their supplement are
2 immaterial to this entire case. What they're talking about is
3 did she have her headlights on or not. We concede that. We
4 don't even care. We didn't bring that up.

5 THE COURT: Well, I'm not -- I'm not -- that kind of
6 goes to a point whether or not the officer saw. I mean, and
7 it may be -- it may be a position that the jury looks at and
8 says, you know what, she entered it, she didn't have her
9 lights on. The officers -- there's no way he can see it. And
10 so when he entered, he entered appropriately believing that --
11 that he did it with lights and siren. They may believe that
12 that's a requirement, you know, for him to enter in a safe
13 manner.

14 So I do believe it's an issue of material fact. I
15 disagree with you. I believe that that's an issue that the
16 jury has to decide on.

17 MR. CRAFT: I take it that --

18 THE COURT: I can't decide on it here.

19 MR. CRAFT: I appreciate that, Judge, but there's a
20 difference between this kind of case and a case that I have
21 seen, not literally asleep at the wheel, but where it's just
22 simple screwing up on the job.

23 THE COURT: Um-hum.

24 MR. CRAFT: I've seen cases where officers are like
25 -- the hand mike will drop on the floor, he reached down to

1 get it, looks up, there's a car in front of me, hits it. We
2 don't have the discretion to begin that kind of case.

3 This sort of philosophy they have to where they are
4 saying, well, this would mean there's never a negligent
5 officer; that's not the case. We have fender-benders. We
6 have accidents where our guys are not responding to an
7 emergency and they're not making a conscious decision for this
8 whole public policy.

9 THE COURT: Yeah, but hear me out on this. If in
10 fact -- and I don't have any doubt that the officer was
11 responding to an emergency, I don't. But that doesn't absolve
12 him of certain responsibilities short of, in this simple case,
13 would be to notify individuals around him that he's responding
14 to an emergency and the way they do it is with the light or
15 siren.

16 If he -- if he was not the officer who dropped the
17 mike, but as an officer who says, you know what, I was
18 responding to an emergency. I'm in such a hurry, and he
19 doesn't do anything with regards to notifying the public that
20 he is involved in an emergency situation, and no one knows to
21 stop and they run into him like they did, do you think that
22 just because he's responding to an emergency, it is absolves
23 him of any responsibility further than that?

24 MR. CRAFT: Because he's responding to an emergency
25 and because he's making a conscious decision on how to do his

1 job. Judge, these kinds of --

2 THE COURT: Yeah, the -- yeah, but the conscious
3 decision is the issue that I think is the jury question. Is
4 this a conscious decision here? Did he -- did he do it in a
5 manner that was safe for the public?

6 MR. CRAFT: I'd say --

7 THE COURT: And that's the whole issue here.

8 MR. CRAFT: He has the discretion to decide what is
9 safe. She saw his lights, Judge.

10 THE COURT: So if he blows through an intersection
11 without -- just if I -- if I just accept -- I'll -- I mean,
12 hear me on this one. If I just change the facts and there's
13 no dispute on it, he blew through an intersection, not
14 notifying anybody, you know, and he went through a red light
15 himself, when green to the opposite and he didn't notify
16 anybody. It's just -- the only thing is he has a squad car,
17 but he didn't have his lights on, he didn't have his siren on
18 to notify anybody of that, and they drove normally and they
19 get in a wreck. Under your scenario, he's absolved, he's in
20 -- has immunity because he made a conscious decision.

21 MR. CRAFT: The difference is that what he was
22 doing, admittedly, by the plaintiff, in compliance with NRS,
23 NRS 44B.700. Like --

24 THE COURT: What's the -- what do you mean, the
25 difference?

1 MR. CRAFT: The difference is you're saying he went
2 through -- blowing through without lights or sirens, without
3 notifying anybody.

4 THE COURT: That's what I'm saying, that's what I'm
5 saying is that's the dispute. Is it --

6 MR. CRAFT: No, it's not, Judge, because --

7 THE COURT: I thought the officer is saying in
8 deposition, I had my lights and siren on. The plaintiff, in
9 deposition, saying, I didn't hear any lights or sirens.

10 MR. CRAFT: Well, you're not going to hear lights
11 (inaudible).

12 THE COURT: I didn't hear any sirens and I didn't
13 see any lights.

14 MR. CRAFT: No. She said she saw the lights. And
15 NRS 44B.700 gives him the option, lights or lights and sirens.
16 There's no dispute that he was in compliance with Nevada law.
17 That's the difference.

18 THE COURT: Is that correct?

19 MS. HAUF: I don't believe that is correct, Your
20 Honor. I think if that was correct, it probably would have
21 been set out in the briefing that way with the quote from the
22 client that apparently said that. It's been a while since
23 I've read her deposition --

24 THE COURT: Do you have -- do you have the
25 transcript?

1 MS. HAUF: -- so I don't want to misrepresent it.
2 But, Your Honor, there's -- there's more to it than that.
3 What we're talking about here is a Motion for Summary Judgment
4 and in the Motion for Summary Judgment --

5 THE COURT: Go ahead, I'm listening.

6 MS. HAUF: -- there is -- whenever there is disputed
7 facts, you have to look at the disputed facts in the light
8 most favorable to the non-moving party.

9 So I think you're exactly on point with whether or
10 not this officer was complying with the law, whether or not he
11 was -- he was going through the red light with his lights and
12 sirens on, you have to look at that in the light most
13 favorable to the non-moving party. That is, that he came
14 around a blind corner without sirens and -- and without lights
15 in a way that was visible to her.

16 There's also another issue that we're leaving out
17 here, which is, whether or not she was in the intersection
18 first. This is a huge disputed fact because regardless of
19 whether he has lights or sirens on, if she's in that
20 intersection first and he runs into her, it doesn't matter if
21 he has lights or sirens --

22 THE COURT: Well, that's what I --

23 MS. HAUF: -- because she's already there.

24 THE COURT: That's what I was asking last time we
25 were here, and the representation that I had that was made to

1 me was that the front left quarter panel of the officer was
2 struck by your client's vehicle.

3 MR. CRAFT: And what she's saying doesn't make any
4 sense, Judge. Is she saying that, like, that we slammed into
5 her in the intersection? Then why did she slam on her brakes
6 and skid 110 feet to hit him? Obviously -- it's not even
7 disputed that he pulled into the intersection to see around
8 the corner.

9 THE COURT: No, I'm okay with that.

10 MR. CRAFT: Okay.

11 THE COURT: Okay. Can you point to the transcript?

12 MR. CRAFT: I'm working on it, Judge.

13 THE COURT: Okay. Because I --

14 MR. CRAFT: The exact line, I don't know if I have
15 it.

16 THE COURT: -- I -- I don't recall where there was
17 any statement where she said she saw his lights.

18 MR. CRAFT: Judge, why don't we trail this out of
19 respect for everyone else here?

20 THE COURT: Okay.

21 MS. HAUF: And, Your Honor, again I would -- I don't
22 have time, obviously, even if we're trailing it, I don't have
23 the transcript with me to read the entire transcript and see
24 what is or isn't taken out of context there.

25 The reality is we're here on a Motion for Summary

1 Judgment, this is the defendant's motion. It's their job to
2 be prepared for their motion. If they're telling -- don't you
3 think that if that was the issue, which you specifically sent
4 us back to brief, that if there was language in that
5 deposition that said, I saw the lights, I heard the sirens,
6 that that would have been in their brief?

7 MR. CRAFT: Judge --

8 MS. HAUF: That's not our --

9 THE COURT: Well, good. Well, I'm going to give you
10 a chance to look at it.

11 MR. CRAFT: Thank you, Judge.

12 THE COURT: Okay.

13 (Case passed from 9:38 a.m. until 9:56 a.m.)

14 THE COURT: Japonica Glover versus John Cargile.
15 It's A-683211.

16 MR. CRAFT: I believe where we left off, the
17 question was whether or not she actually saw the emergency
18 lights on Cargile's vehicle prior to entering the
19 intersection.

20 THE COURT: What page?

21 MR. CRAFT: Going to Ms. Gover-Armont's deposition.
22 It was taken August 7, 2014, page 22, starting about line 9.

23 Question, "Did you state to the officer that was
24 making this report that you saw vehicle number two, the police
25 car's emergency lights activated as you approached the

1 intersection?"

2 Answer, "I saw him as I entered the intersection."

3 Question, "Okay. And you saw his emergency lights
4 activated?"

5 Answer, "Yes."

6 It's undisputed, Judge. It's not him blowing
7 through an intersection. She saw his lights, he was in
8 compliance with NRS.

9 MS. HAUF: Your Honor, may I speak?

10 THE COURT: Yes, go ahead.

11 MS. HAUF: This is exactly what I was concerned
12 about, unfortunately. My office was able to e-mail me the
13 exact sections of the deposition that create the question of
14 fact that we are here talking about. There is a -- first, you
15 had said that you were comfortable with the fact that she was
16 in the intersection first. And let me read you --

17 MR. CRAFT: He --

18 THE COURT: No, I didn't. That -- that was --

19 MS. HAUF: -- or that he was -- the officer that --

20 THE COURT: Right. Well, that was the question I
21 had last week -- I mean, last time you were here. I wanted to
22 know if you could -- if there was any additional information
23 you could provide the Court with that regard. And --

24 MS. HAUF: Well, here -- here's what it says in her
25 deposition.

1 "Looking forward to your answers to interrogatories
2 number two," which are, of course, sworn statements under
3 oath, "please describe in detail the incident that is the
4 subject of this lawsuit, basically, a summary of your side of
5 the story. And your answer to interrogatory number two on
6 page 3, the last sentence you say, 'The officer did not have
7 his sirens on and plaintiff could not see his lights flashing
8 due to the hill obstructing her view.' As you sit here today,
9 is that an accurate statement?"

10 Answer, "Yes."

11 Question, "Explain how the hill obstructed your view
12 of the officer's flashing lights?"

13 "The hill was huge. There was no -- there was no
14 vision, period, to the right as you're approaching the hill.
15 The hill starts. I don't know how many feet back from the
16 light, but it starts and it inclines. So it goes to a peak
17 and there's no vision of anything to the right of you. You
18 can't even, if you wanted to, like people do a right-hand turn
19 on the light, you would have to completely stop, ease up and
20 look around the hill, so it totally obstructs anything to the
21 right of you. And that's what -- to the right of me was
22 coming from the intersection."

23 So first of all there's a question of fact --

24 THE COURT: Yeah.

25 MS. HAUF: -- whether or not it was safe, it was

1 safe, because if there's not discretionary immunity for
2 unsafely entering an intersection, period. There's not
3 discretionary immunity for doing this unsafely.

4 Now, true, the statute says you can enter with
5 sirens or you can enter with sirens and lights, or you can
6 enter were sirens and lights as required by law. The statute
7 goes on to say, "The plain language is unambiguous. The
8 provision of this section do not relieve the driver from the
9 duty to drive with due regard for safety of all persons and do
10 not protect the driver from consequences of the driver's
11 reckless disregard for the safety of others."

12 THE COURT: So your argument basically is under
13 certain circumstances, there may be something further that a
14 jury may take in a factual issue as to whether or not it was
15 -- he entered safely.

16 MS. HAUF: And whether or not he had safely or --

17 THE COURT: And this one was because of the dirt
18 mound?

19 MS. HAUF: -- or was reckless. Even with regards to
20 who was in the intersection first, she says in her deposition,
21 "I was already in the intersection when I saw him."

22 THE COURT: Well, wasn't there a significant amount
23 of skid marks on her behalf when the officer got --

24 MR. CRAFT: 110 feet, Judge.

25 THE COURT: -- that -- 110 feet, and it was starting

1 before the intersection, right?

2 MR. CRAFT: Yes, Judge.

3 THE COURT: And see, so I --

4 MS. HAUF: But, Your Honor, we -- and yeah. And
5 that's a question of fact for the jury whether or not that is
6 reasonable.

7 THE COURT: Right.

8 MS. HAUF: We have to have somebody come in and
9 explain what perception and reaction of time is.

10 THE COURT: I know. But what she's -- what she's
11 saying --

12 MS. HAUF: Certainly, my client's perception --

13 THE COURT: I know. But what she's saying is, I was
14 in the intersection when I saw -- the first time I saw him.
15 Well, the skid marks themselves dispute that.

16 MS. HAUF: Well, that was 110 feet of pre-impact
17 skid marks.

18 THE COURT: Well, and it was --

19 MS. HAUF: What's missing in this -- in this fact
20 and what's for the jury to decide is where that impact
21 occurred.

22 MR. CRAFT: Well --

23 THE COURT: No, I think it's where the start at the
24 skid marks start because that's where she's reacting.

25 MS. HAUF: Correct.

1 THE COURT: And the skid marks were prior to the
2 intersection.

3 MS. HAUF: But if the -- but, Your Honor, if the
4 skid marks start three feet prior to the intersection --

5 THE COURT: Okay.

6 MS. HAUF: -- then that's not --

7 THE COURT: Do they?

8 MS. HAUF: -- but that's not him -- I don't know.
9 We don't know the answer to that.

10 THE COURT: Well, I thought you did. I thought that
11 was -- that was one of the things I sent you off for.

12 MR. CRAFT: That's why we went to the accident
13 report, Judge, and everything is in there. The diagram that
14 the plaintiff's produced show that he was all of 6.5 feet into
15 the intersection.

16 THE COURT: Okay.

17 MR. CRAFT: That's about this far plus a pen.

18 MS. HAUF: That's how far the officer was into the
19 intersection, not how far the plaintiff was.

20 MR. CRAFT: She can't dispute that she skid 110 feet
21 before impacting his vehicle.

22 MS. HAUF: Regardless of that, Your Honor, I mean
23 there's not even a reason to have to get there. It is a
24 disputed issue of fact. It is a disputed issue of fact.

25 MR. CRAFT: Well --

1 THE COURT: I agree, I agree. Mr. Craft, I'm not
2 going to take any further argument and this is why.

3 The position -- this is that section down there
4 right behind the golf course, right? Where the big -- the big
5 hill is?

6 MR. CRAFT: Yes, Judge.

7 THE COURT: Yeah. And the officer was coming from
8 the right going to his left. And -- I'm sorry, coming from
9 the south going north.

10 MR. CRAFT: Yes.

11 THE COURT: And so he would have been coming from
12 behind the mound. And the plaintiff was traveling east; is
13 that correct?

14 MR. CRAFT: Yes.

15 THE COURT: And so the mound would have been in the
16 way. I think that's an issue. I think you're going to have
17 to overcome that and I don't think you have. That's a factual
18 issue that I think the jury can make the determination, based
19 on the circumstances, what it is that the -- that gave the
20 officer a reason to believe that he was entering safely, what
21 it is that obstructs the -- if there is an obstruction, the
22 length of the skid marks, when -- when the defendant -- I
23 mean, when the plaintiff saw the car. I think those are all
24 factual scenarios that --

25 MR. CRAFT: I appreciate that, Judge, but can I make

1 my record?

2 THE COURT: Yes, yes.

3 MR. CRAFT: Okay. We addressed this in our motion
4 initially on page 8, it's Vassallo ex rel Brown v. Majeski,
5 it's a Minnesota case, talking about an identical statute
6 about the requirements of an emergency vehicle going through a
7 red light. Their statute requires a vehicle to slow down as
8 necessary for safety and they discuss the discretionary
9 immunity in that case.

10 "The requirement of a driver of an authorized
11 emergency vehicle shall slow down as necessary for safety,
12 plainly does not impose an absolute duty on the driver of an
13 emergency vehicle to slow down in every situation upon
14 approaching a red or stop signal or a stop sign. Rather, the
15 requirements conditioned on the driver's," in this case, that
16 would be the Majeski's, "determination of the level of speed
17 appropriate for safety under the circumstances. This is a
18 textbook example of exercise of discretion. The policy and
19 the statute requires individual and professional judgment that
20 necessarily reflects the professional goal and factors of a
21 situation and is therefore discretionary."

22 He has to decide what constitutes due care in this
23 situation. It renders discretionary immunity obsolete if we
24 say in every case it's --

25 THE COURT: Mr. Craft, though, I don't mean to

1 interrupt you, but -- but that's the very issue, is that if
2 he's deciding and then the jury says, you know what, officer,
3 we heard what you said, but we don't agree with it because we
4 don't think you decided appropriately. Isn't that the issue?

5 MR. CRAFT: It's not, Judge.

6 THE COURT: So you're saying legally I have to make
7 the determination whether or not this officer entering the
8 intersection did it properly with his discretion?

9 MR. CRAFT: No, because we don't get to that
10 question.

11 THE COURT: Okay.

12 MR. CRAFT: Immunity decides first. Discretionary
13 immunity, it's hinged on whether he made a conscious decision
14 on what he was going to do in the furtherance of a public
15 policy.

16 THE COURT: Okay.

17 MR. CRAFT: These cases, like Seiffert v. City of
18 Reno --

19 THE COURT: So you're -- so I understand the law as
20 you're citing it. So what you're saying is that the officer
21 makes a conscious decision based on public policy to respond
22 to a call --

23 MR. CRAFT: Um-hum.

24 THE COURT: -- and to enter this intersection in the
25 manner in what he did?

1 MR. CRAFT: Correct.

2 THE COURT: Okay. That alone, he gets immunity;
3 that's what you're saying?

4 MR. CRAFT: We don't even get to the middle of this
5 question, Judge. Look at Seiffert v. City of Reno. Again, a
6 public decision, we know what the rule is there. But what
7 they talk about is the tape that was taping off a crime scene,
8 they say, look, the officers decided to put this tape up the
9 way they did. I mean, it's a public policy of fighting crime,
10 preserving a crime scene. They never discussed whether it was
11 negligent or not, whether or not they met the care. You don't
12 get to that question. The immunity is there.

13 But, Judge, they're saying he was asleep at the
14 wheel? That's their argument. That's what they put forth in
15 their motion with regards to what they're saying here today
16 and that makes no sense under the facts of this case.

17 THE COURT: You know what? I am -- I don't read the
18 law that narrow. I -- that's awful strict in the way you're
19 reading that. I don't read it that way. And, I'm sorry, and
20 maybe I'm wrong. And, obviously, your perception is that I
21 am. But I'm going to make the decision now and give you an
22 opportunity, you know, back up and do what you have to do.
23 But my decision here is I'm going to deny your motion.

24 You know, I might be reading that wrong. And if I
25 -- until I get further direction, that's the way I'm

1 interpreting it, is that I do not believe that it goes to the
2 point where -- where if an officer makes a conscious decision
3 based on that he's responding to an emergency call, simply
4 that is what you're saying, then he's granted immunity. And
5 it's unqualified immunity as in the way you're interpreting it
6 to the point where I don't even get to the point where a jury
7 makes the determination whether or not his discretion to enter
8 the intersection in the manner he did was proper or not.

9 MR. CRAFT: Then I don't understand what the purpose
10 of immunity is. The purpose of immunity is to allow our
11 officers to do their jobs without having fear of civil
12 repercussions against them personally.

13 THE COURT: Um-hum.

14 MR. CRAFT: They have to be able to respond to
15 emergencies, making split-second decisions every day without
16 somebody looking over their shoulder --

17 THE COURT: Well, I understand that. But you're
18 saying that there's -- it's unfettered, meaning, to the point
19 where it's just his discretionary call. And if he does
20 nothing when there's policies that are out there for purposes
21 of safety, and if he does nothing to support that and that's
22 what they're --

23 MR. CRAFT: Well, I don't know where you're getting
24 there's nothing to support that because it's undisputed that
25 he had his emergency lights on. She saw them when he's going

1 through the light.

2 THE COURT: Well, no, no, no, no. I think that the
3 way that the interrogatory comes out, it talks about the fact
4 that the mountain's in the way and she's not sure.

5 MR. CRAFT: Oh, Judge --

6 THE COURT: But then at the point -- at the point
7 she's hitting the car, I'm sure she probably saw the lights.

8 MR. CRAFT: Well, Judge, she can't create an issue
9 of fact by just -- by contradicting herself.

10 THE COURT: Well, I don't think there is --

11 MR. CRAFT: I don't know what I'm supposed to do
12 except to ask her in a deposition --

13 THE COURT: I don't -- I mean, Mr. Craft, I don't
14 think there is a contradiction there. I don't think --
15 reading what you -- what you said to me -- I mean, what you
16 pointed out in her language is that -- what did she say? Page
17 24, is that it?

18 MR. CRAFT: Twenty-two.

19 THE COURT: Twenty-two. Wrong one. Okay.

20 "I saw him as I entered the intersection."

21 "And you saw emergency lights on?"

22 "Yes."

23 As she entered, right as she entered, she saw him.

24 So at what point in time was it she saw him?

25 MR. CRAFT: I'm assuming it's when she hit her

1 brakes 110 -- or more than 110 feet out.

2 THE COURT: Okay. I know, but that's -- that's what
3 I'm saying. At what -- if they're just now coming to the
4 intersection, and that's when she sees it, just as she's
5 entering, and she doesn't have a chance to stop, and she
6 didn't see the lights because the mountain's in the way down
7 the road further, then what -- I mean, you --

8 MR. CRAFT: I'm unclear, Judge. It's undisputed
9 that he pulled 6.5 feet into the intersection, into her lane.
10 That's why she hit her brakes.

11 THE COURT: What's that?

12 MR. CRAFT: That's why she hit her brakes, she saw
13 his vehicle 110 feet out.

14 THE COURT: What --

15 MR. CRAFT: They don't dispute that.

16 THE COURT: What section -- what lane was she in
17 again?

18 MR. CRAFT: The far right lane.

19 THE COURT: Okay. So she was -- like the turn lane?

20 MR. CRAFT: Yes. I don't know if there is a turn
21 lane.

22 THE COURT: Turn lane to the right, right?

23 MR. CRAFT: Going to the right.

24 THE COURT: Yeah. So she's closest to the curb.

25 MR. CRAFT: Yes.

1 THE COURT: Yeah. So then there -- that even has a
2 little bit more -- a little bit more obstruction because she's
3 even closer to that mountain.

4 So, Mr. Craft, I'm sorry, I'm denying your motion.
5 You know, hopefully the record's clear enough. If you want to
6 appeal it, then, you know; okay?

7 MR. CRAFT: Yes, Judge.

8 (Proceeding concluded at 10:08 A.M.)

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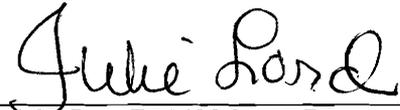
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

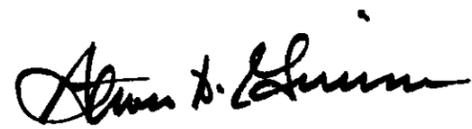
AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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CLERK OF THE COURT

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12 *John Cargile and City of North Las Vegas*

DISTRICT COURT
CLARK COUNTY, NEVADA

JAPONICA GLOVER-ARMONT,

Plaintiff,

vs.

JOHN CARGILE; CITY OF NORTH LAS
VEGAS, a Municipal Corporation existing
under the laws of the State of Nevada in the
County of Clark; DOES I through X, inclusive;
and/or ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-13-683211-C

Dept. No. XIX

**DEFENDANTS' MOTION TO
RECONSIDER**

Hearing date:
Hearing time:

Defendants City of North Las Vegas (the "City") and Sergeant John Cargile ("Sergeant Cargile") (collectively "Defendants"), by and through their attorneys, hereby file their Motion to Reconsider pursuant to EDCR 2.24. This Motion is made and based upon the following points and authorities, the papers and pleadings on file, and any argument the Court may entertain at any hearing of this matter.

DATED this 7th day of April, 2016.

NORTH LAS VEGAS CITY ATTORNEY

/s/ Christopher D. Craft
Sandra Douglass Morgan, Nev. Bar No. 8582
Christopher D. Craft, Nev. Bar No. 7314
2250 Las Vegas Blvd. North, Suite 810
North Las Vegas, Nevada 89030
(702) 633-1050
Attorneys for Defendants
John Cargile and City of North Las Vegas

1 **NOTICE OF MOTION**

2 TO: ALL INTERESTED PARTIES:

3 PLEASE TAKE NOTICE that the undersigned will bring the above motion on for hearing
4 in Department XIX of the above-entitled court on the 10 day of _____, 2016, at the
5 hour of _____, or as soon thereafter as counsel may be heard.

6 DATED this 7th day of April, 2016.

7 NORTH LAS VEGAS CITY ATTORNEY

8 /s/ Christopher D. Craft
9 Sandra Douglass Morgan, Nev. Bar No. 8582
10 Christopher D. Craft, Nev. Bar No. 7314
11 2250 Las Vegas Blvd. North, Suite 810
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13 **MOTION TO RECONSIDER**

14 **I.**

15 **INTRODUCTION.**

16 In the present case, it is undisputed that Defendant Sergeant Cargile, while responding to an
17 emergency call, decided to proceed through a red light en route to the location of the emergency, and
18 while doing so, was involved in an accident with Plaintiff. While it is uncertain what Plaintiff saw
19 first, it is undisputed that she skidded 110 feet before colliding with the front of Cargile’s vehicle, and
20 that his emergency lights were activated. Under these facts, Defendants argued by way of a Motion
21 for Summary Judgment that because (1) Cargile made a judgment call as to how to proceed through
22 the red light, and (2) his actions in responding to an emergency were in furtherance of a public policy,
23 he is entitled to discretionary immunity pursuant to NRS 41.032.

24 At the hearings on Defendants’ Motion for Summary Judgment, the Court disagreed,
25 essentially stating that an issue of fact remained as to whether Cargile was negligent. In denying
26 Defendants’ Motion, the Court expressed concern that an officer’s discretion is not unqualified, and
27 the jury should be able to “make the determination whether or not his discretion to enter the
28 intersection in the manner he did was proper or not.” See Transcript of Proceedings, Defendants’

1 Motion for Summary Judgment, March 1, 2016 (the “Transcript”) at 19:24- 20:8.

2 Reconsideration of the Court’s ruling in this matter is appropriate because while the Court
3 is correct that Cargile’s discretion is not “unfettered,” his conduct as alleged by Plaintiff would only
4 amount to negligence, or an “abuse of discretion,” and would still be subject to discretionary
5 immunity even if everything they allege is true.

6 **II.**

7 **CARGILE IS IMMUNE FROM LIABILITY WHETHER OR NOT HE ABUSED HIS**
8 **DISCRETION.**

9 The question remains whether there is discretionary immunity as a matter of law in this case.
10 NRS 41.032 immunizes municipal agencies and their employees against actions:

11 [b]ased upon the exercise or performance or the failure to exercise or perform a discretionary
12 function or duty on the part of the State or any of its agencies or political subdivisions or of
13 any officer, employee or immune contractor of any of these, **whether or not the discretion**
14 **involved is abused.**

15 N.R.S. § 41.032(2). In interpreting this statute, the Nevada Supreme Court has explicitly adopted the
16 two-part test for discretionary immunity under the Federal Tort Claims Act, under which there is
17 discretionary immunity when: (1) the allegedly negligent acts involve elements of judgment or choice;
18 (2) and the judgment or choice made involves social, economic, or political policy considerations.
19 Martinez v. Maruszczak, 168 P.3d 720, 722 (Nev. 2007). It is important to note that the court does
20 not consider whether the official abused his or her discretion, see § 41.032(2), but only whether the
21 acts concerned a matter in which the official had discretion. In other words, the immunity is not
22 infinitely broad, but once it is determined that the acts involved judgment or choice on social,
23 economic, or political policy considerations, **the immunity applies even to abuses of discretion.**

24 The limits of discretionary immunity were discussed in Franchise Tax Bd. of Cal. v. Hyatt,
25 130 Nev. Adv. Op. 71, 335 P.3d 125, 136 (Nev. 2014). As the Nevada Supreme Court explained,

26 The Falline court expressly addressed NRS 41.032(2)'s language that there is immunity
27 “whether or not the discretion involved is abused.” Falline v. GNLV Corp., 107 Nev. 1004,
28 1009 n. 3, 823 P.2d at 892 n. 3. The court determined that **bad faith is different from an**
abuse of discretion, in that an **abuse of discretion occurs when a person acts within his**
or her authority but the action lacks justification, while bad faith “involves an
implemented attitude that **completely transcends the circumference of authority granted**”
to the actor. Id.

1 The Falline court also explained bad faith conduct in this context as follows:

2 Stated otherwise, **an abuse of discretion is characterized by an application of**
3 **unreasonable judgment to a decision that is within the actor's rightful prerogatives,**
4 whereas an act of **bad faith has no relationship to a rightful prerogative** even if the result
5 is ostensibly within the actor's ambit of authority.

6 Id. The Nevada Supreme Court further explained that intentional torts and bad-faith conduct are acts
7 “unrelated to any plausible policy objective[]” and that such acts do not involve the kind of judgment
8 that is intended to be shielded from “judicial second-guessing.” Accordingly, NRS 41.032 does not
9 protect a government employee for intentional torts or bad-faith misconduct, as such misconduct, “by
10 definition, [cannot] be within the actor's discretion.” Falline, 107 Nev. at 1009, 823 P.2d at 891–92.

11 Thus, the type of actions which would not be subject to discretionary immunity are (1) bad
12 faith conduct and (2) intentional torts. In the present case, no intentional torts are pled, and none are
13 supported by any evidence. Thus, the only determination to be made by the Court is whether
14 Cargile’s actions constituted an abuse of discretion or bad faith conduct. An “abuse of discretion”
15 is applying unreasonable judgment to a decision that is within one’s rightful prerogatives. “Bad faith
16 conduct,” however, “has no relationship to a rightful prerogative.” In this case, it is undisputed that
17 Cargile was responding to an emergency call, which is absolutely within his rightful prerogative to
18 do as a police officer. Thus, even if he made poor decisions as to how to respond to the emergency,
19 he is still immune from liability for such an abuse of discretion. While Plaintiff repeatedly argues that
20 Cargile made a bad decision, and did not safely go through the red light, this does not amount to bad
21 faith because it was within his rightful prerogative to go through the red light while responding to an
22 emergency. Since going through a red light is sometimes necessary for police to do their jobs, and
23 is even contemplated by statute, a poor decision in this context at most is an “abuse of discretion,”
24 and is afforded immunity under NRS 41.032. Even if Plaintiffs are correct in their allegation that
25 Cargile abused his discretion, Cargile is still immune from their claims.

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III.

CONCLUSION.

For all of the foregoing reasons, summary judgment should be granted in favor of Cargile and the City on all claims against them.

DATED this 7th day of April, 2016.

NORTH LAS VEGAS CITY ATTORNEY

/s/ Christopher D. Craft

Sandra Douglass Morgan, Nev. Bar No. 8582

Christopher D. Craft, Nev. Bar No. 7314

2250 Las Vegas Blvd. North, Suite 810

North Las Vegas, Nevada 89030

(702) 633-1050

Attorneys for Defendants

John Cargile and City of North Las Vegas

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that service of a true and correct copy of the **DEFENDANTS'**
3 **MOTION TO RECONSIDER** was made on the 7th day of April, 2016, as indicated below:

- 4 By electronic service, pursuant to N.E.F.C.R. 9
5 By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P.
6 5(b) addressed as follows
7 By facsimile, pursuant to EDCR 7.26 (as amended)
8 By hand delivery

9 To the parties listed below:

10 Marjorie Hauf, Esq.
11 Ida M. Ybarra, Esq.
GANZ & HAUF
12 8950 W. Tropicana Avenue, Ste. 1
Las Vegas, Nevada 89147
13 Facsimile (702) 598-3626

14 *Attorneys for Plaintiff*

15
16
17 /s/ Michelle T. Harrell
18 An Employee of North Las Vegas
City Attorney's Office
19
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CLERK OF THE COURT

1 **OPPS**
2 MARJORIE HAUF, ESQ.
3 Nevada Bar No. 8111
4 IDA M. YBARRA, ESQ.
5 Nevada Bar No. 11327
6 GANZ & HAUF
7 8950 W. Tropicana Ave., Ste. 1
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10 Fax: (702) 598-3626

11 Attorneys for Plaintiff

-o0o-

DISTRICT COURT

CLARK COUNTY, NEVADA

12 JAPONICA GLOVER-ARMONT,

13 Plaintiff,

14 vs.

15 JOHN CARGILE; CITY OF NORTH LAS
16 VEGAS, a Municipal Corporation existing
17 under the laws of the State of Nevada in the
18 County of Clark; DOES I through X, inclusive;
and/or ROE CORPORATIONS I through X,
inclusive,

19 Defendants.

CASE NO.: A-13-683211-C
DEPT NO.: XIX

**OPPOSITION TO DEFENDANTS'
MOTION FOR RECONSIDERATION**

DATE OF HEARING: 05/10/16
TIME OF HEARING: 9:00 A.M.

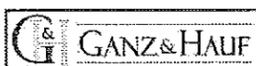
21 COMES NOW, Plaintiff, JAPONICA GLOVER-ARMONT, by and through her attorney
22 of record, MARJORIE HAUF, ESQ., of the law firm of GANZ & HAUF and hereby files her
23 Opposition to Defendants' Motion for Reconsideration.

24 ///

25 ///

26 ///

27 ///



1 This Opposition is made and based upon the following Points and Authorities, the attached
2 exhibits, all pleadings and papers on file, and any oral argument adduced by this Court at the time
3 of hearing of this matter.

4 Dated this 21st day of April, 2016.

5 GANZ & HAUF

6 
7 MARJORIE HAUF, ESQ.
8 Nevada Bar No. 8111
9 IDA M. YBARRA, ESQ.
10 Nevada Bar No. 11327
11 8950 W. Tropicana Ave., Suite 1
12 Las Vegas, Nevada 89147
13 Attorney for Plaintiff

14 **I. STATEMENT OF FACTS**

15 **A. Facts Relevant to Case in General**

16 This case involves a motor vehicle crash that occurred on November 5, 2012. Plaintiff,
17 Japonica Glover-Armont, was driving, eastbound on Cheyenne approaching the intersection of 5th
18 Street in North Las Vegas, Nevada. Defendant, John Cargile, while driving a vehicle owned by his
19 employer, Defendant, City of North Las Vegas, was driving northbound on 5th Street in North Las
20 Vegas, when Defendant John Cargile attempted to cross the intersection on a red light without his
21 siren causing an impact with Plaintiff's vehicle. As a result of the crash, Plaintiff sustained
22 \$23,711.69 in medical damages.

23 **B. Facts Relevant to this Motion**

24 On December 22, 2015, Defendants filed a Motion for Summary Judgment alleging
25 discretionary immunity pursuant to NRS 41.032(2).

26 On March 1, 2016, a hearing was held on Defendants' Motion for Summary Judgment.
27 The Court appropriately denied Defendants' Motion for Summary Judgment.

1 On April 7, 2016, Defendants filed a Motion for Reconsideration. Plaintiff now files her
2 Opposition to Defendants' Motion for Reconsideration.

3 **II. LEGAL ARGUMENT**

4 **A. Defendants' Motion for Reconsideration must be denied because there was not an**
5 **abuse of discretion in the denying of Defendants' Motion for Summary Judgment.**

6 Defendants have not provided anything new to warrant the Court reconsidering its proper
7 denial of Defendants' Motion for Summary Judgment.

8 EDCR Rule 2.24 provides:

9 (a) No motions once heard and disposed of may be renewed in the
10 same cause, nor may the same matters therein embraced be reheard,
11 unless by leave of the court granted upon motion therefor, after notice
of such motion to the adverse parties.

12 (b) A party seeking reconsideration of a ruling of the court, other
13 than any order which may be addressed by motion pursuant to
14 N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief
15 within 10 days after service of written notice of the order or judgment
16 unless the time is shortened or enlarged by order. A motion for
rehearing or reconsideration must be served, noticed, filed and heard
as is any other motion. A motion for reconsideration does not toll the
30-day period for filing a notice of appeal from a final order or
judgment.

17 (c) If a motion for rehearing is granted, the court may make a final
18 disposition of the cause without reargument or may reset it for
19 reargument or resubmission or may make such other orders as are
deemed appropriate under the circumstances of the particular case.

20 In Nevada, "[o]nly in rare instances in which new issues of fact or law are raised
21 supporting a ruling contrary to the ruling already reached should a motion for rehearing be
22 granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).
23 Reconsideration of a Court Order is not a matter of right, and should not be allowed unless there is
24 a reasonable probability that the Court arrived at an erroneous conclusion. *Geller v. McCowan*, 64
25 Nev. 106, 108 178 P.2d 380, 381 (1947). The primary purpose of a motion for reconsideration is to
26 inform the Court that it has overlooked an important argument or fact, or misunderstood a statute.
27 *In re Ross*, 99 Nev. 657, 659, 668 P.2d 1089, 1091 (1983). A motion for reconsideration should
28

1 only be granted in very rare instances, in which compelling new issues of fact or law support an
2 order contrary to the order the Court has already reached. *Moore v. City of Las Vegas*, 92 Nev.
3 402 551 P.2d 244 (1976). In fact, “points or contentions not raised in the original hearing cannot
4 be maintained or considered on rehearing.” *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742,
5 917 P.2d 447, 450 (1996).

6
7 Here, there is absolutely nothing to suggest that there are new issues of fact or law to
8 support Defendants’ argument for reconsideration. Defendants attempt to now cite to the cases of
9 *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. Adv. Op. 71, 335 P.3d, 125, 136 (Nev. 2014) and
10 *Falline v. GNLV Corp.*, 107 Nev. 1004, 1009 & n. 3, 823 P.2d 888, 892 & n. 3 (1991), for the
11 proposition that Defendants are immune from liability for their negligence. Not only did
12 Defendants fail to reference these cases in their Motion for Summary Judgment, but as discussed
13 further below, the cases are inapplicable to the present facts. Therefore, since there is absolutely
14 nothing to suggest that there are new issues of fact or law, Defendants’ Motion for Reconsideration
15 must be denied.
16

17 **B. Defendants’ Motion for Reconsideration must be denied because Defendants acted**
18 **with bad faith.**

19 If the Court were to consider the *Franchise Tax Bd. of Cal.* case, it is vastly distinguishable
20 from the present case. The *Franchise Tax Bd. of Cal.* case involved a taxpayer who brought an
21 action against an out-of-state franchise tax board alleging intentional torts and bad faith conduct
22 during audits. The *Franchise Tax Bd. of Cal.*, court held that the discretionary-function immunity
23 does not include intentional torts and bad-faith conduct. It did not limit immunity to intentional
24 torts and bad faith as Defendants suggest because it would be contrary to the policy of this state.
25 In the *Falline* case, the Court held that discretionary-function immunity did not apply to bad-faith
26 misconduct, but again, it did not limit its application to only bad faith conduct. As will be
27 discussed below, this is negligence case. Numerous Nevada Supreme Court case have held that
28

1 the City is not immune from liability when it fails to act with due care. However, here the City of
2 North Las Vegas acted with actual "bad faith" as defined by *Franchise Tax Bd. of Cal. and Falline*
3 because the City's misconduct is unrelated to any plausible policy objective and should not be
4 shielded from liability. Therefore, Defendants' Motion for Reconsideration must be denied.

5 **C. Defendants' Motion for Reconsideration must be denied because they are not immune**
6 **for failure to use due care.**

7 As argued in Plaintiff's Opposition to Motion to Summary Judgment, in the case of
8 *William v. City of North Las Vegas*, 1975, 541 P.2d 652, 91 Nev. 622, the Supreme Court of
9 Nevada held that the City was not immune from liability with regards to the death of a person who
10 was electrocuted while working on a billboard because the City violated city ordinances when a
11 power line was located too close to the billboard. The Supreme Court of Nevada held that
12 governmental immunity did not protect the City with regard to its duty to act with care. *Id.*

13 In the case of *Johnson v. Brown*, 75 Nev. 437, 345 P.2d 754, 755 (1959), the Supreme
14 Court of Nevada held that a firefighter was not driving with due care when he was driving a fire
15 engine truck in response to an emergency call. The firefighter was driving beyond the speed limit,
16 ran a stop sign and crashed into another vehicle. As such the Supreme Court of Nevada held that
17 the firefighter was liable to the plaintiff. *Id.*

18 The Supreme Court of Nevada also evaluated the actions of an ambulance driver who,
19 without sirens, entered an intersection and crashed into plaintiff. *Avery v. Gilliam*, 1981, 625 P.2d
20 1166, 97 Nev. 81. The Supreme Court of Nevada reversed and remanded the case for a new trial
21 and held that a verdict that was in favor of the defendants was "manifestly and palpably contrary
22 to the evidence." *Id.*

23 Lastly, as Your Honor stated at the hearing for Defendants' Motion for Summary
24 Judgment, Defendants' interpretation of the law would result in Defendants never being liable for
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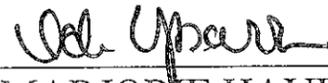
1 their failure to use due care. Therefore, Defendants' Motion for Reconsideration must be denied
2 as the Court did not abuse its discretion in denying Defendants' Motion for Summary Judgment.

3 **III. CONCLUSION**

4 Based on the foregoing, Plaintiff respectfully requests that Defendants' Motion for
5 Reconsideration must be denied.

6 Dated this 27th day of April, 2016.

8 GANZ & HAUF

9 

10 MARJORIE HAUF, ESQ.

11 Nevada Bar No. 8111

12 IDA M. YBARRA, ESQ.

13 Nevada Bar No. 11327

14 8950 W. Tropicana Ave., Suite 1

15 Las Vegas, Nevada 89147

16 Attorney for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on this date, I served the foregoing **OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION** on all parties to this action by Wiznet and U.S. Mail:

Christopher Craft, Esq.
Deputy City Attorney
2250 Las Vegas Blvd Ste 810
North Las Vegas, NV 89030

Dated this 27th day of April, 2016.

Uda Yhar
An employee of the law firm of GANZ & HAUF