STATE OF MICHIGAN

COURT OF APPEALS

ANNA YOST,

Plaintiff-Appellant,

v

WOODLAND SHOPPING CENTER, INC., and KOHL'S DEPARTMENT STORES, INC.,

Defendants-Appellees.

v

SYDNEY L. SCHUT, WANDA SCHUT and JAYME LYNN SCHUT,

Defendants-Not participating.

UNPUBLISHED
December 18, 1998

No. 200866
Kent Circuit Court
LC No. 94-004260 N

Before: Cavanagh, P.J., and Neff and White, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of defendant's motion for directed verdict in this negligence action arising from an automobile accident. We reverse and remand for a new trial.

I

Plaintiff testified that on August 30, 1994 at around 4:15 p.m. she was traveling from one of her jobs to a second job, on a route she had travelled often before. Plaintiff was nineteen years old at the time. She was driving a 1988 Pontiac 6000 LE in a southwesterly direction on Woodland Outer Drive, in the right-most lane, i.e., along the curb. Plaintiff testified that she always treated Woodland Outer Drive as having two westbound lanes. She testified that she was alone, driving the speed limit of 25 miles per hour, and looking straight ahead. The pertinent portion of Woodland Outer Drive has a three-way stop, after which the road curves and later straightens as it approaches the entrance to Kohl's where the accident occurred. Plaintiff testified that just beyond the three-way stop and before the road

curved, she observed Schut's vehicle coming up to the stop sign and stopping at the Kohl's entrance, but that as soon as she reached the curve in the road she could no longer see Schut's vehicle. Plaintiff testified that after observing Schut's vehicle before the road curved, no vehicles pulled out from the Kohl's entrance at which Schut was stopped. Plaintiff testified that she did not see Schut's vehicle again until it slammed into the passenger side of her vehicle as she passed the Kohl's entrance. The impact from Schut's vehicle pushed plaintiff's vehicle into the oncoming lane of traffic driving northeast, and plaintiff was hit head-on by a third vehicle.

Schut testified that on the date in question she was driving a Mustang and had been shopping at Kohl's. She testified that she had graduated from high school several months before. Schut's trial testimony regarding where she stopped before pulling out of Kohl's and how many times she stopped was equivocal and at times less than clear. Schut testified that her memory would have been fresher at her deposition, and excerpts of her deposition read by defense counsel at trial support that, while Schut did not remember precisely where she stopped in relation to the stop bar, she was very clear that, even after pulling forward and stopping a second time, she still did not see plaintiff coming. Schut's trial testimony, when considered in its entirety, supports that conclusion as well.[1]

Gary McDonald, plaintiff's expert in accident reconstruction, testified by video deposition that he reviewed the police accident report, went to the scene and took measurements and photographs, and gave a deposition. He took the photographs on September 25, 1995, more than one year after the accident. After taking the photographs, he constructed the scale drawing that was being used at the video deposition and was later used at trial. McDonald's photographs included views from 100, 250 and 300 feet to the east of the Kohl's driveway viewing west, and a view east from three feet behind [driver's location] the stop bar located at the Kohl's exit from which Schut pulled out. McDonald testified that the stop bar at that exit point is a two-foot wide painted white line on the road and is right next to the stop sign. McDonald testified that all the photographs he took, including those taken from the stop bar at the Kohl's exit, viewing east, were taken at a forty-four inch height, which is the standard driver's sight height above the road bed used by the Department of Transportation for cars.

McDonald testified that at the Kohl's entrance in question, there are two lanes entering and two lanes leaving, divided by a grassy median area. A "Kohl's" sign fifty-four inches high sits on the grassy median. McDonald testified that the Kohl's sign was approximately one foot higher than the standard measurement used for the line of sight of a driver of an ordinary vehicle. There were some shrubs to the east of the Kohl's entrance. McDonald testified that the police took no photographs or measurements at the time of the accident.

McDonald testified that if the Schut vehicle is placed at the stop bar, and a sight line is drawn going in the direction plaintiff came from, a person in the Schut vehicle could only see eastward to a point of approximately 125 feet, a figure arrived at if one measured to the centerline of Woodland Outer Drive, i.e., to the double yellow line separating the traffic going east from the traffic going east. If the Yost vehicle is positioned in the center of the westbound portion of Woodland Outer Drive, a driver in the Schut vehicle can only see the Yost vehicle at 100 feet. McDonald testified that if Schut were stopped at the stop bar he did not think that Schut could have seen the Yost vehicle because "the placement of the Kohl's sign and the foliage on the edge of the grass embankment causes a vision

obstruction." McDonald also testified that he did speed and acceleration calculations. Assuming the Schut vehicle accelerated twenty-five feet from the stop bar it would take 3.23 seconds to impact. Using those calculations, plaintiff's vehicle, traveling at twenty-five miles per hour, would have been 118 feet away and not visible to Schut from the stop bar.

McDonald testified that if Schut had moved forward of the stop bar, her sight line would have reached further to the east and she could have seen further down the road. McDonald testified that "apparently" Schut did not look east again as she pulled out into Woodland Outer Drive. McDonald opined that the cause of the accident was "the Schut vehicle failing to yield to the Yost vehicle," and further testified:

> *Q*. Do you have any view as to the placement of the sign at the stop bar and/or the shrubbery growing, what, if any, causative effect that had in the accident?
>
> *A*. The only causative effect would be as depicted as we see the drawing, if one was to stop at that position and your eyes would be limited to the corner of the sign in relation to a view to the east, then your sight limited – your sight distance is limited, that would be based on the position of a vehicle in there in the sight triangle, if you will. You can't see through the sign or through the bushes so you have to put yourself in a spot that you can see.
>
> *Q*. Does that require to [sic] proceed beyond where you're required to stop at the stop bar?
>
> *A*. To get a distance beyond 125 feet, yes.
>
> *Q*. Do you consider that to be an obstructed view for drivers coming out of that driveway?
>
> *A*. If you stop in the position to put your eyes at that position, yes, if you move up, no.
>
> *Q*. So you have to move beyond where you're required to stop in order to see a vehicle coming.
>
> *A*. See a vehicle beyond 125 feet, correct.
>
> *Q*. And the Schut vehicle, in your opinion, would have been beyond 125 feet I assume?
>
> *A*. The Yost vehicle.
>
> *Q*. The Yost vehicle. I keep confusing those two in my statement.
>
> *A*. I believe that the vehicle would be – Now 125 feet is to centerline. This vehicle, as you're seeing it right now, is sitting 118 feet, the sight line goes across at an angle. We're talking 125 feet from the center, along the centerline is 125 feet.

> So if one was sitting at this position where the Schut vehicle would have been just looking through right on the corner of this Kohl's sign just off of the edge of the foliage, you can see down the road in the centerline where a vehicle could be 118 feet away and you could not see it.

On cross-examination, McDonald testified that he had not reviewed any deposition transcripts or statements or talked to any witnesses, and that he did not know the exact location of the accident other than that it occurred at the mouth of the intersection. McDonald testified that for his calculations, he placed the Yost vehicle **in the center of the westbound lane**.[2] McDonald treated Woodland Outer Drive as having only one lane in each direction, whereas plaintiff testified that the westbound portion of the road was used as two lanes and she was in the right-most lane.

On re-direct, McDonald testified that plaintiff's vehicle was fifty four inches high.

Defendant made a motion for directed verdict at the close of plaintiff's proofs, arguing that there was adequate sight distance from a vehicle stopped at the stop bar. Defendant further argued that McDonald testified that if Schut could not see adequately, she had a duty to pull forward in order to see adequately before proceeding. Defendant also argued that plaintiff's testimony regarding seeing Schut's vehicle supported this view.

Plaintiff's counsel responded that the sight line defendant was relying on was measured to the center of the westbound portion of the road, but plaintiff had testified that she had driven in the right-most lane. Plaintiff's counsel argued that the photograph defendant relied on, depicting a view from a vehicle stopped at the stop bar, showed that plaintiff's car was not in Schut's sight line.[3]

The trial court took the matter under advisement[4] and later granted defendants' motion, regarding causation alone.[5]

II

We review the grant or denial of a directed verdict de novo. *Meagher v Wayne State University,* 222 Mich App 700, 708; 565 NW2d 401 (1997). The trial court must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in the nonmoving party's favor. This Court reviews all the evidence presented up to the time of the motion to determine whether a question of fact existed. *Hord v Environmental Research Institute of Michigan,* 228 Mich App 638, 641; 579 NW2d 133 (1998). If reasonable jurors could honestly have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury. *Hunt v Freeman,* 217 Mich App 92, 100; 550 NW2d 817 (1996). To defeat a directed verdict motion, it is not necessary that the plaintiff establish that the defendant's negligence was the sole cause of the plaintiff's injury. *Brisboy v Fibreboard Corp,* 429 Mich 540, 547; 418 NW2d 650 (1988). Liability does not attach unless an actor's negligent conduct is a proximate or legal cause of the harm suffered. *Id.* There may be more than one proximate cause of an injury. *Id.* Where several factors combine to produce an injury, one actor's negligence will not be considered a proximate cause

of the harm unless it was a substantial factor in producing the injury. *Skinner v Square D Co,* 445 Mich 153, 165 n 8; 516 NW2d 475 (1994).

Plaintiff's theory of causation is that Schut stopped her vehicle at or near the stop bar but not significantly beyond it, and that defendants' shrubbery and sign obstructed both Schut's and plaintiff's view which, in turn, resulted in Schut pulling her vehicle out of defendants' premises and into plaintiff's vehicle. Plaintiff argues that this theory is supported by the evidence she presented. We agree.

The trial court concluded that Schut clearly stopped at least once "beyond the stop bar," and that McDonald's testimony was that if she stopped beyond the stop-bar her line of vision was not obstructed. The trial court further noted:

> We, of course, don't have any testimony, at least from her [Schut], as to how far beyond it [the stop bar] she stopped. If the evidence went no further than that, we would still have the inadequacy here because at that point we would be speculating wildly as to whether she stopped just a little bit or far enough in advance for it to make a difference.
>
> Officer McDonald didn't give us any parameters, he simply said, if it was in front of the stop bar. I think we can all agree that if it was some very minor distance, then his conclusion wouldn't be undermined. However, we don't have any evidence in that regard, and we simply can't conclude that it was a minor distance rather than a sufficient distance. We can't conclude either way.

We do not believe that Schut's testimony regarding where she stopped was so precise as to allow only the inference that her forward-most stop was "beyond" the stop bar, or that, even if that were the case, it necessarily meant that Schut's line of vision to Yost's vehicle was unobstructed.

McDonald testified that the stop bar was two feet wide and "next to" the stop sign. Schut testified that she stopped "probably at the stop sign," and that she thought she then moved forward to see better, but that even after moving forward she still could not see plaintiff's vehicle coming. Similarly, plaintiff testified that, after entering the curve of Woodland Drive, she did not see Schut's vehicle until the collision. McDonald's photographs show that if Schut had been stopped with her front bumper at the stop-bar, i.e., with her line of vision being three feet back of the stop bar, her view of the road would have been obstructed by foliage, as McDonald testified. McDonald also took a photograph depicting Schut's line of vision if moved forward of that point, and this photograph shows obstruction of a portion of the road near the Kohl's exit, and also supports the conclusion that a vehicle traveling west in the right-most lane could likely not be seen while rounding the curve. Plaintiff testified that the sign and shrubbery obstructed her view of Schut's vehicle. This evidence supports the conclusion that the same obstructions prevented Schut from seeing plaintiff's vehicle.

Moreover, the trial court overlooked that McDonald's measurements, photographs and video deposition testimony assumed that plaintiff had been driving in the center of the westbound side of Woodland Outer Drive, which McDonald treated as one large lane, while plaintiff's undisputed

testimony was, and she apparently demonstrated on a diagram used at trial, that she was driving in the right-most lane, i.e., the lane closest to the curb. Plaintiff's counsel brought this to the attention of the trial court when responding to defendants' motion for directed verdict. McDonald's photographs, which were introduced at trial, strongly suggest that, had he measured the sight lines to and from the right-most lane, Schut's and plaintiff's line of vision to each other's vehicles as plaintiff neared the Kohl's entrance would have been more obscured than the photographs showed. The trial court also apparently misinterpreted or misapplied plaintiff's testimony regarding seeing Schut's vehicle and concluded based on this misinterpretation that Schut's vehicle must have been well ahead of the stop bar. The trial court's conclusion was apparently based on McDonald's response to defense questions that did not inform McDonald that plaintiff had seen the Schut vehicle just after she passed the three-way stop, and not as she later approached the Kohl's exit at which the accident occurred.[6] McDonald's responses could thus not be relied on in this regard.

Contrary to the trial court's finding, when viewed in a light most favorable to plaintiff, plaintiff's evidence afforded a reasonable basis for the conclusion that it was more likely than not that defendants' conduct was a cause in fact of the accident. Plaintiff presented substantial evidence that, even assuming Schut did move forward after her initial stop, her line of vision was still at least partially obstructed and that, but for the negligently placed obstructions, this accident would not have occurred.

We reverse the trial court's grant of defendants' motion for directed verdict and remand for a new trial. Regarding the two evidentiary issues plaintiff raises we direct that on retrial the trial court reconsider the admissibility of plaintiff's videotape under *Lopez v General Motors Corp,* 224 Mich App 618; 569 NW2d 861 (1997), should plaintiff again seek its admission. The issue concerning Dr. Fitzgerald should not arise again.

/s/ Mark J. Cavanagh
/s/ Janet T. Neff
/s/ Helene N. White

[1] On direct examination, Schut testified in pertinent part:

> *Q.* And when you were leaving the – when you finished your shopping, can you tell us what you did from then on?
>
> *A.* I was – I was going to leave Kohl's, turning left, which is west [sic northeast]. And when I was turning, I stopped, looked both ways, and then when I turned out, I –
>
> * * *
>
> *A.* And that's when the accident happened. I looked both ways. I did not see her coming.

Q. Did you stop at the stop bar?

A. Yes, I did. Yes, I did.

Q. And what, and you – then you looked? What – tell us how you looked.

A. I – I probably looked to my left first, looked to my right, and looked to my left again, and then I went. And it's kind of hard to see at that point, but I didn't see anything coming either, so –

Q. What – did you – it's kind of hard to see, did you say?

A. Correct.

***Q*. But you did look to your left?**

***A*. Yes, I did.**

***Q*. And you didn't see anything coming?**

***A*. No, I didn't.**

Q. And you looked to your right?

A. Correct.

Q. Did you see a car coming there?

A. Not at – I felt that I could leave, that I could turn. I might have, but –

Q. You—the car – you mean you still thought you could safely pull in –

A. Yes.

Q. – ahead of that – any car that was coming from your right or the left?

A. Correct.

Q. And then what did you do then?

A. When I went to turn, I was hit. That's what.

Q. You – you have to talk louder. I can hardly hear you.

A. When I turned left, that's when I was hit by the other car.

> ***Q.* Did you see the – did you see the car coming in a – in a lane nearest you, the lane going west before you hit it?**
>
> ***A.* No. I – I never saw a car at all.**
>
> ***Q.* Until the actual collision?**
>
> ***A.* Correct. [Emphasis added.]**

On cross-examination, defense counsel asked if Schut recalled testifying at a deposition some ten months before trial. Schut responded affirmatively. Defense counsel proceeded:

> *Q.* If you said something different and I showed you the transcript of what you said in January of this year, would you think that the transcript is more accurate because your memory was more fresh at the time?
>
> *A.* Yes.
>
> *Q.* Did you have a chance to review your transcript before your testimony this morning?
>
> *A.* No.

Defense counsel later questioned Shut regarding her deposition testimony:

> *Q.* At one point in your deposition, I want to see if this refreshes your memory, the question was follows [sic]:
>
> BY MR. HENKE:
>
> *Q.* 'So the first stop you made was just in front of?
>
> > A Well, **probably** directly at the stop sign.'
>
> Do you recall that testimony?
>
> *A.* Yes.
>
> *Q.* And do you also recall testifying that you made a second stop after that?
>
> *A.* Yeah. I thought I had moved up a ways so I could see better.
>
> *Q.* And the question on Page 17 was, '**Do you recall where you made your second stop in relationship with the stop sign**?

And your answer was, '**Probably no**.'

But during your deposition, you said you recalled making a second stop, but you **couldn't say where that second stop was?**

A. **Correct.**

Q. Obviously, it's forward of the stop sign because you didn't back up, did you?

A. Right.

MR. SAWYER: Are we – are we reading from the deposition or – what are you doing now?

MR. HENKE: No. I'm asking a question. I'm asking a question.

MR. SAWYER: Oh, all right.

BY MR. HENKE:

Q. And then I asked you when – whether or not you made a third stop before making your left-turn, and you answer was, 'You didn't recall.' True?

A. Correct.

Q. So you made at least two stops; one at the stop sign, pulled forward, but not sure how far forward, and then you're not sure if you made a third stop or not?

A. Correct.

Q. On Page 18, you were asked the following question:

Q. 'Do you recall at this point in time if you had any vision obstruction when you looked to your left at that second stop?'

Your answer was, 'I can't say for sure.' Do you recall that testimony?

A. (No verbal response).

Q. Do you want to – do you want to look at the transcript? Would that help you?

A. I thought for sure I would have said that I couldn't see well because of –

Q. Take a look at Page 18, Line 11, the question reads:

Q. 'Do you recall at this point in time if you had any vision obstruction when you looked to your left at that second stop?'

Your answer is, 'I can't say for sure.'

A. Oh, the second stop. I went – I know the first time I couldn't see well.

Q. Okay.

A. **The second time I never saw her coming still, so** –

* * *

Q. You were asked [at deposition], 'Do you recall how far you could see down the roadway when you looked to your left at the second stop?'

The answer was, 'No.'

A. Correct.

Q. And the next question was, 'And you don't recall where you made that second stop; is that true?'

The answer is, 'Yeah.'

A. That's correct.

Q. So the bottom line, I guess, of your testimony today is you know you made at least two stops, you're not sure if you made a third stop; correct?

A. Correct.

Q. The first is at the stop sign?

A. Correct.

Q. The second stop is some distance forward from that?

A. Yes.

On re-direct Schut testified in pertinent part:

Q. From what I understand, though, you did look to – you stopped at the stop bar on the – on the street at the stop sign?

A. Correct.

Q. And you did look to your left?

A. Yes.

Q. Or to the east?

A. Yes.

Q. And you didn't see anything?

A. No.

* * *

Q. And you did not see the car coming from your left until you actually collided with it; right?

A. Correct.

[2] McDonald further testified while being questioned by defense counsel:

Q. Were you aware that Jamie [sic] Schut testified in her deposition that she stopped on more than one occasion and made more than one observation at that area?

A. No.

Q. Do you recall testifying that you didn't try to measure the view from the stop bar because there was [sic] several factors involved, I think one statement you advised me during your deposition, that it was questionable in its interpretation as to whether or not the person would be stopped where the person's over the stop bar or the front bumper's at the stop bar or whether the tires of the vehicle are at the stop bar?

A. That's correct.

Q. In this case, if the driver stopped with the vehicle positioned so that the **driver** is positioned directly over the stop bar and the vehicle traveling – Go ahead and make that move there.

A. Approximately something like that.

Q. Okay. And if the Yost vehicle was traveling eastbound **in the center of that lane,** how far back could the driver see at that –with those two points?

MR. SAWYER: Traveling west bound, you said eastbound.

Q. Traveling westbound.

A. . . . . If you move the Schut vehicle forward to where the driver would be sitting on the stop bar or above it looking to the east, then we create another sight triangle which would give you a distance to the centerline of 230, it would be 230 feet. If you put the vehicle, the Yost vehicle, again **in the center of the westbound lane**, then you could see that vehicle at approximately 185 feet.

Q. How far did you have to move the vehicle forward back at this location here?

A. From the original?

Q. From the original position.

A. Approximately six, maybe seven feet.

Q. Okay. What if we cut that in half and move that vehicle forward let's say 3 ½ feet?

A. . . . . If you put the vehicle again in the center of the roadway –

MR. SAWYER: Center of the – not the roadway.

THE WITNESS: Excuse me. – the **center of the westbound lane of travel**, that distance on the centerline comes up to 150 and the front of the vehicle would be approximately 125.

Q. And from your earlier testimony, I understood that you want at least 100 feet of sight distance?

A. Based on a 25-mile-an-hour—

Q. Zone?

A. --speed limit, correct. [Emphasis added.]

[3] Plaintiff's counsel further argued that:

. . . and also we know that a car is coming from here [from the west, eastbound on Woodland Outer Drive]. And I think – I can understand how the accident happened. Jayme Schut looked to the right [west], and saw a fair distance, but no vehicle. She then looked to – to her left. She then went to her right and saw another vehicle proceeding in this direction that [sic] she had enough room, she decided, to pull around

> and make the left-hand turn. And she probably then kept her eye on the approaching vehicle and never looked back and saw the vehicle until she hit it. And neither vehicle saw the other till they collided.

[4] The trial court noted:

> My concern, frankly, is [McDonald's] testimony that, at the stop bar, there were visual obstructions, but that, if you pull slightly ahead of the stop bar, there were not any visual obstructions.
>
> The fact that there were obstructions which didn't necessarily totally obscure the car doesn't mean, I think, that the defendant is exonerated. It's a situation of having the potential for a pair of causes; an inattentive driver, and inattentiveness perhaps exacerbated by the obstructions. If that's the situation, then we've got arguable negligence by multiple defendants and the jury will have to decide whether there are multiple causes.
>
> However, Mr. McDonald, I recall, and that's what I want to check to see, also said that pulled ahead of the stop bar some minor distance there were no such obstructions.

[5] The trial court's opinion, read from the bench, stated in pertinent part:

> At several points in his testimony . . . Mr. McDonald is asked, if in his judgment, based upon his expertise, his inspection of things, and his review of matters, the configuration of stop sign, et cetera, resulted in a visual obstruction which at least contributed to the collision of the Schut and Yost vehicles.
>
> Mr. McDonald very carefully answers that question every time it's asked of him. He says, 'Yes, if Ms. Schut stopped at the stop bar, and then after stopping there, without stopping any more, drove out of the parking lot into Woodland Drive.'
>
> At one point he actually says in so many words, 'If she stopped beyond the stop bar, then there was [sic] no visual obstructions which contributed to this particular accident.'
>
> * * *
>
> Ms. Schut testified yesterday, as well as in her deposition, there wasn't any contradiction, that she did stop at the stop bar, but that she also stopped at least once, and perhaps twice, at some distance beyond the stop bar. Since she's not sure whether she stopped three times or a total of two, I will – giving the evidence with the most favorable construction, conclude that there were only two stops.
>
> However, two stops clearly undermines the testimony of Officer McDonald that there was a visual obstruction because he clearly says, there was, if, but only if, she stopped

only at the stop bar. He specifically said, if she stopped ahead of the stop bar, beyond it, there wasn't a contributing visual obstruction. Well, we have her testimony that, indeed she did stop at least once beyond it.

We, of course, don't have any testimony, at least from her, as to how far beyond it she stopped. If the evidence went no further than that, we would still have the inadequacy here because at that point we would be speculating wildly as to whether she stopped just a little bit or far enough in advance for it to make a difference.

Officer McDonald didn't give us any parameters, he simply said, if it was in front of the stop bar. I think we can all agree that if it was some very minor distance, then his conclusion wouldn't be undermined. However, we don't have any evidence in that regard, and we simply can't conclude that it was a minor distance rather than a sufficient distance. We can't conclude either way.

And the opinion in Skinner vs Square D, says is that when that is the choice available to the Court, the Court can't arbitrarily make a choice which favors the plaintiff, because there isn't any basis upon which to make that choice.

But, indeed, we do have more evidence in this case, that is, the testimony of Ms. Yost in her deposition, but acknowledged on the witness stand to be correct. That at a certain point on the roadway she saw the back end, at least, of the Schut vehicle.

Officer McDonald didn't have that information when he evaluated this case. He was, however, asked to respond to it when his de bene esse deposition was taken. At least on Page 32, perhaps at other places, he responds to that and says, 'If that's the case . . .' and of course Ms. Yost says it is the case, and is bound by her own testimony, ' . . . there was a minimum of 155 feet visibility.'

In his opinion earlier on, 100 feet, as I recall, was the minimum required for there to not be a visual obstruction. In other words, what we have is the plaintiff's expert responding to the plaintiff's testimony, saying that that testimony leads to the conclusion that there wasn't a visual obstruction which contributed to anything here. We're not dealing with strict liability. The fact that this configuration was located in such a way that, if people did nothing more than what they had to do, which is stop at the stop sign, there was a visual obstruction, and it shouldn't be that way, doesn't change the fact that Ms. Schut did stop beyond it. It's uncontradicted that she did, and Ms. Yost says she saw enough of the car such that the expert himself says is she had plenty of view.

[6] Defense counsel asked McDonald:

Q If the plaintiff testified that she could see the Schut vehicle from the front of the vehicle all the way back, would that suggest to you that the Mustang that the Schut –

> that Jamie Schut was driving was in front of the Kohl's sign? And let me give you a further explanation.
>
> I understood the plaintiff's testimony to be that she could see that vehicle all the way to the back to the front tire when Anna Yost was some distance away back towards the east.
>
> A If you move the Schut vehicle to a spot where the rear of the vehicle would be in line with the south end of the Kohl's sign, then that would basically put the driver sitting over top of the cross bar or the cross bar would be directly underneath which would be the second scenario that we brought up of 230 feet to the center.

McDonald was unaware of plaintiff's testimony that she saw the Schut vehicle **after the three-way stop and before the road curved**, but that after the curve she could not see it at all.

Because McDonald testified before trial, defense counsel's questions also did not incorporate plaintiff's trial testimony that she saw the **top** of Schut's vehicle at this point, and not the entire vehicle. [Emphasis added.]