



### E10 Is This a Case of Prosecutorial Misconduct?

*Peter Alexander, PhD\*, and John Smith, MSEE, Raymond P. Smith & Associates, 43766 Buckskin Road, Parker, CO*

Upon completion of this presentation, attendees will understand the application of forensic techniques to a recent criminal justice case.

An accident reconstructionist is occasionally presented with a situation in which the Police and the Office of the District Attorney appear to act in bad faith with regard to a defendant's ability to prepare a proper defense. Judge for yourself their behavior in this felony injury case.

**Overview:** This criminal case involved a teenage driver, traveling eastbound on a road with 2 lanes in each direction. The lanes were separated by a wide, raised median containing grass, trees and bushes. His vehicle veered sharply to the left, struck the median, rebounded, and struck the median a second time. The vehicle then mounted the curb, became airborne, rolled on its side, traversed the median, and struck an oncoming westbound vehicle. The collision caused the oncoming vehicle to roll on its side and seriously injured the other driver. Both vehicles came to rest near the point of impact. No drugs or alcohol were involved. The teenager was charged with felony reckless vehicular assault, reckless endangerment, and engaging in a speed contest. The data and evidence available to the defense is listed in Table 1.

**Table 1 Data and Evidence**

Accident report	Witness statements/Interviews
Photographs taken by Police	Teenager's statement
Photographs taken by witnesses	Driver's statement - vehicle the
Photographs taken by rescue personnel	Police laser measurements of the scene
Police file, Investigating Officer's field notes and calculations	Tire marks and disturbance of the median - still visible after 6 mo.
Both vehicles	

**The Police Case:** The State Patrol reconstruction of the accident placed the speed of the teenager's vehicle at 83 m.p.h., in a 40 m.p.h. zone, prior to the driver's losing control. Four of the nine witnesses said the teenager was racing with another vehicle while traveling at 80 to 90 m.p.h., lost control, and caused the collision. The investigating State Patrolman based his speed calculation on what he believed were slightly over 50 feet of yaw and scuff marks left by the teenager's vehicle. The Patrolman measured the middle ordinate (curvature) of the yaw marks. Originally, the patrolman stated that he never wrote down the middle ordinate but merely remembered it until he got to his computer. Eleven months later, in court, he remembered that he had written it on his hand. The District Attorney (DA) was adamant that a felony conviction was essential and refused to accept a misdemeanor plea.

**The Teenager's Case:** The teenager remembered very little about the accident but said he was not racing and was not traveling at 83 m.p.h. The teenager said he was passing a friend's car when the accident occurred. He indicated that he lost control after he swerved to avoid something in the road.

**Our Reconstruction:** Based on the available data the authors were able to define of maximum speed of the teenager's vehicle, prior to swerving, as 55 m.p.h. It was concluded that the impact speed of the teenager's vehicle was 36 m.p.h., consistent with the above pre-swerve speed. No evidence of a speeding contest at the time of the collision was found. There was no data recorded by the Police to support their contention that they had measured yaw marks rather than ordinary scuffmarks. Review of the witness statements suggested the possibility that some witnesses had been coached. Items that were important to reconstruction, such as photographs and access to both vehicles listed in Table 1, were withheld by the DA's office, until just before trial.

**Problems and Issues:** The sole basis of the State Patrol's speed value for the teenager's vehicle was their assumption that tire marks left in the road by the teenager's vehicle were yaw marks. The investigating Patrolman used the Critical Speed Formula to calculate the vehicle speed. Unfortunately, the Patrolman did not photograph or record the marks. He could not provide a justification as to why he thought they were not simple skid/scuff marks. The curvature of the marks was so shallow (6 inches over 50 feet) that they almost formed a straight line. The Patrolman seemed to ignore publications that demonstrated that the yaw method could estimate vehicle speeds with errors exceeding 80%.

Although the State Patrol performed a detailed laser measurement of the scene, containing over 50 survey points, they neglected to record the location of the point of impact. If the Patrolman had measured the



## Jurisprudence Section – 2003

---

points of impact and rest for the two vehicles, the pre-impact speed of both vehicles could have been accurately calculated. Fortunately, the Patrolman had previously manually measured one coordinate of the point of impact and recorded it.

Impact speed could have been independently determined by examining the damage to both vehicles. The DA had an obligation to preserve important evidence. Although both vehicles were put on a DA's "hold," the DA's Office released the second vehicle, for transport out of the country, before the defense team could examine it. In court, the DA denied that the second vehicle had ever been on "hold" despite documentation that showed there was a hold.

The State Patrol took numerous photographs of the collision scene but the DA's office "lost" them until shortly before the trial. The DA's Office told a witness, who had independently taken high quality photographs of the collision scene, that he could destroy those pictures before the defense had a chance to examine them. At the defense attorney's request, the witness was able to recover the pictures, which revealed information helpful to the defense.

The State Patrol refused to accept a subpoena to provide the defense with information the investigating Officer had collected at the collision scene, prompting the magistrate to offer to issue an arrest warrant for the Patrolman.

Four witnesses stated they saw the teenager engaged in a speed contest at 80 to 90 m.p.h. When four witnesses specify exactly the same speed range it suggested possible witness tampering. There was no possibility that the teenager's vehicle was traveling that fast on the winding road. Analysis of the witnesses' testimony revealed that their recollections of events were not possible.

The friend, whose vehicle the teenager was passing, gave a statement to the police admitting that he was speeding. During the trial it was discovered that the friend had originally asserted that he was not racing. It was revealed that the police had held the friend in the back of a hot patrol car until he agreed to admit to racing. It was discovered that shortly after the accident the friend had confessed to a witness, that he had swerved in front of the teenager's vehicle, forcing the teenager to swerve. This was probably the precipitating event that led to the collision.

**Outcome:** The case was heard before a judge for four days spanning a period of four months, since each day of trial was separated by a continuance of weeks. The events described above make it appear that the case was skewed in favor of the prosecution. Despite strong forensic data pointing to his innocence of the charges filed, the teenager was found guilty of felony Vehicular Assault. He was sentenced to community service. He was not incarcerated, as he had just turned 18.

**Accident Reconstruction, Forensics, Criminal Justice System**