



Engineering Sciences Section - 2016

D25 A Case Against “Inattentive Driving” as a Cause for Some Nighttime Vehicle Pedestrian Accidents

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After attending this presentation, attendees will be aware of a case against “inattentive driving” as a cause for a number of nighttime vehicle pedestrian accidents.

This presentation will impact the forensic science community by explaining that some drivers exercising reasonable care with respect to lookout can and will miss visually perceiving pedestrians in their path under nighttime driving conditions.

A common and obvious cause of numerous roadway accidents is the driver not seeing a pedestrian in time to respond and avoid collision. It is not uncommon for drivers who have hit pedestrians, for example, to report that they “heard the thump but never saw him” or that they “didn’t see him until it was too late.” Accident reports commonly attribute such claims to “inattentive driving,” presumably based on an assumption that a driver who doesn’t see a pedestrian who must have been visible couldn’t have been paying attention. The job of the expert, then, is to determine whether the signal value of the struck pedestrian was sufficient relative to the driver’s visual field to assuredly capture the attention of all alert drivers exercising reasonable care to enable them to respond in time to avoid collision. Through a critical review of published scientific literature, it will be shown that it does not follow that simply because a pedestrian is visible to some drivers, he will necessarily be recognized as a hazard and responded to in time by all drivers exercising reasonable care with respect to lookout.

To correctly express these concepts to a jury, it is important to understand the relevant terminology as it relates to visibility of pedestrians. To *detect* a pedestrian means to discover or determine that something is there; however, a *detected* pedestrian may not necessarily be *recognized* as a pedestrian. To *see* the pedestrian simply means to *perceive* him by the eye or by vision. A pedestrian is *visible* if he is capable of being seen. A pedestrian is *conspicuous* if he attracts or tends to attract the attention of an observer who may not be looking for him. Conversely, a pedestrian is *inconspicuous* if he is not readily noticeable or discoverable by vision. The term *conspicuity*, then, is the capacity of an object, such as a pedestrian, to be readily discovered by vision. Therefore, even though a pedestrian may be in plain sight and visible, he must be sufficiently conspicuous relative to his surroundings to be seen in time by all drivers. At the two extremes, pedestrians that are highly conspicuous should be seen at the greatest possible distances and pedestrians that are highly camouflaged may not be seen or recognized at all.

This presentation offers a case study in which the facts and evidence are inconsistent with the alleged cause of “inattentive driving.” It will be shown that in some cases, drivers will miss visually recognizing pedestrians who first become visible at a distance too close to avoid impact because the driver is reasonably paying attention to a location farther ahead in his path and is looking for hazards that he does have time to avoid.

Accident Reconstruction, Visibility, Inattentive Driving