

**ORIGINAL**

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COURT OF CLAIMS  
OF OHIO

IN THE COURT OF CLAIMS OF OHIO

2014 JUL 23 PM 3:36

DARLENE LANE FERRARO

Plaintiff

v.

THE OHIO STATE UNIVERSITY  
MEDICAL CENTER

Defendant

CASE NO. 2011-10371

JUDGE PATRICK M. McGRATH

MAGISTRATE  
ROBERT VAN SCHOYCK

**DEFENDANT'S MOTION IN LIMINE REGARDING  
TESTIMONY OF JAMES CRAWFORD**

Defendant, The Ohio State University Medical Center, respectfully asks this Court for a ruling in limine to limit the testimony of plaintiffs' expert James Crawford in three respects.

First, he should be precluded from offering an "expert" opinion regarding lighting and visibility on the night of the accident in question as he does not base that opinion on any particular knowledge or expertise or on any reliable scientific or technical knowledge.

Second, he should be prohibited from testifying as to his opinion about when a tail-light for the tow-dolly in question was broken because there is no foundation for that opinion.

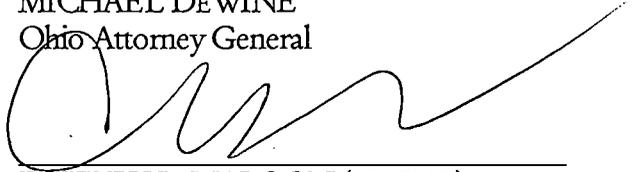
Third, he should be prohibited from offering any opinion as to whether there were any vehicles between the two that collided immediately prior to the accident, because his opinion in that regard is not based on physical evidence but instead based on weighing the credibility of witnesses, which is not a crash-reconstruction expert's function.

A memorandum in support is attached.

**ON COMPUTER**

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General



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## MEMORANDUM IN SUPPORT

Plaintiff's crash-reconstruction expert, James Crawford, has issued two reports in this matter. The first was issued May 9, 2013. The second, supplemental report was issued December 9, 2013. Although Mr. Crawford is generally qualified as an expert in crash reconstruction, there are three opinions that he expressed in this matter that must be excluded for the reasons set forth below. Accordingly, his testimony should be limited to exclude those three matters.

### **I. Background.**

This litigation surrounds a fatal traffic accident that occurred on September 10, 2009, on Interstate 71 approximately 300 feet north of milepost 238, in the city of Brook Park, Ohio. Two vehicles were involved in the accident: a 1997 Dodge Ram pickup truck driven by Gary Fury with a two-wheeled dolly behind it, and a 2004 Mercedes C240 driven by Dr. Rolf Barth. At the time of the accident, approximately 9:23 p.m., Mr. Fury's pickup truck was stopped on I-71 north, just north of Snow Road. Dr. Barth was also traveling northbound on I-71 when he struck the rear of Mr. Fury's stopped pickup truck.

In the area where the accident occurred, I-71 is an eight-lane highway consisting of four northbound lanes and four southbound lanes, which are divided by a four-foot high concrete wall. The roadway is straight and the pavement was dry at the time of the collision. The only lighting of the area was from a luminaire mounted on a dual-mast arm attached to a pole anchored to the top of the concrete dividing wall. The mast arm extended approximately 15 feet into the northbound lane, placing the light approximately eight feet into the left-most lane (lane 4). The poles are spaced about 233 feet apart. The collision occurred almost two hours after the sun had set and more than an hour before the moon rose that evening.

Prior to the collision, Jesse Fury and Plaintiffs decedent, Junior Lane, had exited Mr. Fury's pickup truck and were in the roadway attempting to reconnect a tow dolly that had come loose from its connection at the back of Mr. Fury's truck. The truck, which was completely stopped, was in the third lane of traffic. When the collision occurred, Mr. Lane was located in the area where the two vehicles come in contact and he was subsequently killed.

**II. Mr. Crawford is not qualified to testify as an expert regarding visibility and lighting conditions.**

Mr. Crawford has the proper education, training, and experience to testify as a crash reconstruction expert—analyzing the speeds and forces involved in a traffic accident—but that does not qualify him as an expert in the different field of lighting and visibility. Therefore he may not be permitted to present opinion testimony on those subjects.

For the plaintiff's expert testimony to be admitted, the plaintiff must first show that the individual testifying is actually an expert in the subject matter—otherwise, the testimony is merely lay testimony. The plaintiff must establish that the witness “is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony.” Evid R. 702(B). That has not been established in this case. As he testified in his deposition, Mr. Crawford's only “expertise” in the areas of lighting and visibility is based on nothing more than driving for many years and “the wording in the book there that talks about a well-lit road.” Transcript of deposition of James Crawford, portions of which are attached as exhibit A, at 29-30. Mr. Crawford's training and experience in calculating the forces at work in a motor vehicle collision does not qualify him as an expert in all other matters pertaining to accidents. In particular, he has no specialized education, training or experience in lighting and visibility.

Furthermore, he also based his “expert” opinion on visibility on his conclusion that he could see vehicles on the roadway when he visited the site of the accident (Crawford depo. at

31), but that is not an observation based on any specialized education or “reliable scientific, technical, or other specialized information” as required by Evid.R. 702(C). Although he went to the site and measured the light with a meter, he does not have the background necessary to interpret those readings for this Court or apply them to the facts of this case, since all he had to go on was “the wording in the book there that talks about a well-lit road.”

In this regard, Mr. Crawford has only the same experience as any other individual who has been driving for many years and the same observational powers that any lay person might have. It is not “specialized” and does not produce reliable scientific or technical information. His experience of a lifetime of driving is not “specialized knowledge, skill, experience, training, or education” to qualify him on the issues of lighting and visibility beyond mere lay opinion. Under Evid. R. 701, then, he may not testify about his opinion as to the visibility factors at work in the collision that is the subject of this litigation.

Accordingly, Mr. Crawford may not present opinion testimony regarding lighting and visibility.

**III. There is no foundation for Mr. Crawford’s opinion as to when the tail-light of the tow-dolly was broken.**

Mr. Crawford must also be prohibited from testifying as to his opinion of when a tail-light from the tow-dolly was broken, because there is no foundation for his opinion in that matter.

In his supplemental report, Mr. Crawford offers his opinion that one of the broken tail-lights from the tow-dolly broke during a time when it was illuminated. Although the report did not include an opinion as to timing, he stated during his deposition that it was his opinion that it must have broken during the subject accident. Crawford depo. at 18. But there is no scientific test that he could conduct to determine the timing of the break, and he did no such thing. Crawford depo. at 40. Rather, his opinion as to timing is based on weighing and evaluating the

statements of other witnesses, which is not the function or expertise of a crash-reconstruction expert. Crawford depo. at 17-18. Instead, it is up to this Court to make those factual determinations, as set forth more fully below in relation to Mr. Crawford's other effort to supplant the trier of fact in this matter.

Accordingly, Mr. Crawford must not be permitted to testify as to his opinion about when the tail-light was broken.

**IV. Mr. Crawford should be precluded from testifying as to whether there was a truck between the two vehicles immediately preceding the collision.**

Finally, Mr. Crawford may not be permitted to opine about whether or not there was a truck or other vehicle in the same lane of travel and between the two vehicles that collided immediately prior to the collision.

In his first report, Mr. Crawford goes beyond the scope of his expertise and reliable scientific or technical information, to deliver an impermissible opinion based on his judgment of witness credibility. According to at least one witness to the collision, there was a truck between the two vehicles in the same lane of travel immediately prior to the collision. Deposition transcript of Chad Meeks, portions of which are attached as exhibit B, at 30-31. Mr. Crawford has admitted that there is no physical evidence on which he could base an opinion about whether or not a semi-trailer swerved out of the way and missed, because there is no physical evidence of an accident that did not happen. Crawford depo. at 51-52. Instead, he opines that no such thing happened because he chooses to believe one eyewitness account over another, at page 9 on his first report. In doing so, Mr. Crawford goes beyond expressing an opinion about reliable scientific or technical information based on specialized training and experience, and instead seeks to usurp the role of the fact-finder in this case. He may not be permitted to do so.

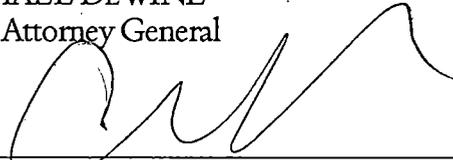
The task of an expert witness is not to judge the facts based on the credibility of witnesses, but simply to provide reliable scientific or technical information to "assist" the trier of

fact—in this case, this Court. “Although expert testimony may supplement the jury’s decision-making process, it may not supplant the jury’s fact-finding role. *McCall v Mareino* (2000), 138 Ohio App.3d 794, 799, 742 N.E.2d 668.” *Vinar v City of Bexley*, 10th Dist. No. 02AP-701, 2003-Ohio-1787. Experts are not permitted to opine on the credibility of lay witnesses. See, e.g., *State v Hamilton*, 77 Ohio App.3d 293, 302, 602 N.E.2d 278, 284 (12th Dist.1991); *State v Winterich*, 8th Dist. No. 89581, 2008-Ohio-1813. at ¶ 27. In *State v Boston*, (1989), 46 Ohio St.3d 108, 545 N.E.2d 1220, the Ohio Supreme Court considered many evidentiary issues relating to child-abuse cases, including whether an expert witness could comment on the veracity of the child-victim. The court held that an expert may not testify about the expert’s opinion concerning the veracity of the child-victim because the expert’s testimony acts as a litmus test of the key issue in the case and infringes upon the role of the fact finder, who is charged with making determinations of veracity and credibility.

Mr. Crawford does not have specialized knowledge, training or experience in evaluating witness testimony, and his evaluation of which testimony to believe is not reliable scientific or technical information. His opinion about whether a vehicle blocked Dr. Barth’s perception of the vehicle improperly stopped in the lane of travel in front of him may not be admitted.

Accordingly, defendant is entitled to a ruling in limine prohibiting any such testimony.

MICHAEL DEWINE  
Ohio Attorney General



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#### CERTIFICATE OF SERVICE

On July 23, 2014, a copy of this document was served via regular mail and email on the following:

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Counsel for Plaintiff



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Assistant Attorney General

THE OHIO COURT OF CLAIMS

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DARLENE LANE FERRARO,

Plaintiff,

vs.

Case No. 2011-10371

THE OHIO STATE UNIVERSITY MEDICAL CENTER,

Defendant.

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Deposition of

JAMES B. CRAWFORD

February 13, 2014  
1:10 p.m.

Taken at:  
Bashein & Bashein Company, LPA  
Terminal Tower, 35th Floor  
50 Public Square  
Cleveland, Ohio

Ashanti Edwards, RPR



1                   Do you have any way of determining  
2 whether or not that light had been broken prior  
3 to this accident?

4           A.     I guess you're asking me for a  
5 hypothetical. Tell me if I'm interpreting your  
6 question correctly. Hypothetically, could  
7 there have been a crash that happened to the  
8 back of this -- or an impact I should say to  
9 the area of that taillight, which was  
10 incandescent, at the time of the impact that  
11 happened at a time prior to this crash.

12          Q.     Well, sure. Let's start with that.

13          A.     Okay. And this is a hypothetical  
14 and, of course, in a hypothetical anything is  
15 possible. So what we have in this case though  
16 is evidence to the contrary, at least  
17 testimonial evidence to the contrary, that Gary  
18 Fury did indeed check and the lights were on at  
19 the time that he was operating it.

20          Q.     And there's also testimony that the  
21 lights were not operating, right?

22          A.     By whom?

23          Q.     We've had -- in the notebook you  
24 have some things that say it was and some that  
25 say it wasn't, right?

1           A.     Gary Fury is the one who said that  
2 he saw them operating at the time that he was  
3 operating the vehicle.

4           Q.     And he's also someone who said that  
5 they weren't operating, right?

6           A.     Years later after being told by the  
7 detective that there was evidence that they  
8 weren't.

9           Q.     So what I'm asking then, is there  
10 any objective evidence that you have to rule  
11 out that -- any testing, any observation, aside  
12 from testimony, that would rule out that this  
13 light bulb had been broken sometime prior to  
14 the impact with Dr. Barth's vehicle?

15          A.     Well, the only physical evidence  
16 that we have is that there was this impact and  
17 following this impact I could see the hot shot  
18 damage. The logical conclusion, more likely  
19 than not, was that this damage occurred during  
20 this particular crash. So that's my opinion  
21 more likely than not.

22          Q.     Okay. And you used the term hot  
23 shot damage..

24                   Can you tell me what that is?

25          A.     As you're looking at the filaments,

1 you'd like.

2 Q. Okay. You don't have that document  
3 that you refer to handy with you today?

4 A. No. It's a big textbook. Huge  
5 textbook.

6 Q. What would be the foot-candle  
7 measurement for a road that you would consider  
8 not to be well lit?

9 A. Well, if it's not -- that just  
10 depends on what you're talking about about not  
11 well lit. I mean, not well lit can go anywhere  
12 from a little bit of ambient lighting to no  
13 ambient lighting. No ambient lighting would be  
14 zero foot-candles or zero lux. It's easier to  
15 measure it in lux when you're talking about  
16 these small values than it is in foot-candles  
17 because of the instrument and the way that it  
18 reads out. It reads more precise intervals in  
19 lux than it does in foot-candles. That's why I  
20 read it in lux.

21 Q. Okay. What kind of training and  
22 background do you have in making determinations  
23 as to whether a roadway is well lit?

24 A. Well, certainly I have 65 years of  
25 -- well, I guess I'm not 65 years old. I'm 61

1 years old. 61 years of experience in living.

2 Q. Okay.

3 A. And most of that being as a driver  
4 driving a lot at night. So I have that  
5 personal experience. Certainly, I also have  
6 the wording in the manual there that we just  
7 talked about that talks about, you know,  
8 well-lit areas and what standard freeway  
9 lighting used. Obviously, in crash  
10 reconstruction we take a look at the crash  
11 reports that we see. And I've seen probably a  
12 thousand or more crash reports. Many of which  
13 were at night where the police make a  
14 determination as to whether a road is well lit  
15 or not well lit. Then, I can take a look at  
16 that particular roadway on a scene visit to see  
17 what they were talking about. So I think I  
18 have a lot of experience as well as the wording  
19 in the book there that talks about a well-lit  
20 road.

21 Q. Did you make any calculations or  
22 measurements, aside from just the ambient  
23 lighting there, as to the visibility of the  
24 various items, elements involved in this  
25 collision itself?

1           A.     Well, I could see vehicles very  
2 clearly on the roadway as they went by, I could  
3 see my vehicle, which was parked on the side of  
4 the roadway, I could see the Highway  
5 Patrolman's vehicle when he pulled up behind me  
6 to see what was going on. I could -- just from  
7 a practical standpoint, I could read a  
8 typewritten paper with just the ambient  
9 lighting that was there on the shoulder without  
10 any trouble at all. So all of these things  
11 would point to the fact that, you know, for  
12 purposes of this crash and the reconstruction  
13 that I did on this crash, the area was  
14 considered to be a well-lighted area.

15           Q.     Tell me about your interaction with  
16 the -- was it a Highway Patrol officer there?

17           A.     Yes, it was.

18           Q.     What happened?

19           A.     Well, as I was out there taking my  
20 readings the Highway Patrol officer happened  
21 by, saw that I was parked on the shoulder and  
22 he pulled up behind me and I came up to him to  
23 speak with him and I shared with him what I was  
24 doing and he said okay and he drove away.

25           Q.     All right. No tickets then?

1 they have the glass envelope around these  
2 filaments. is to keep that inert gas in there so  
3 that the tungsten won't burn out, number one,  
4 and to keep it intact.

5 Q. And again you didn't have any  
6 objective means of testing to find out when  
7 that occurred, right?

8 A. Again, I just reported what I saw  
9 during my inspection. I didn't do any testing.

10 Q. Okay. Give me a moment here. On  
11 the last page of your report, the first  
12 bulleted paragraph, you state that Mr. Fury  
13 encountered an emergency situation where his  
14 trailer dolly was swinging from side to side.

15 Do you have any opinion as to how  
16 that trailer began swinging side to side or  
17 what caused it to do so?

18 A. The most likely explanation for  
19 that, based on my -- the totality of my  
20 reconstruction, is that the hitch portion --  
21 the receiver and hitch portion became  
22 disconnected and that the trailer then was  
23 connected to the pickup truck by the safety  
24 chains. And then that would be the most likely  
25 explanation for the kinds of -- the kind of

1           A.       There is evidence that they did  
2 take action. Sure. That vehicles all over the  
3 roadway that were approaching it were taking  
4 action to make sure that they slowed down or  
5 moved over or stopped before they got to this  
6 particular hazard. There's plenty of witnesses  
7 that say there were numerous vehicles that were  
8 doing that.

9           Q.       That were in lane 2 and had to move  
10 to another lane to pass?

11          A.       Some say they were in lane 2 and  
12 some don't indicate what lanes they were in.

13          Q.       Do you have a conclusion as to  
14 whether there was or was not a vehicle in lane  
15 2 between Dr. Barth's vehicle and the dolly?

16          A.       More likely than not, there was  
17 not. At the time that -- that is germane to  
18 the crash sequence. That doesn't mean that  
19 there hadn't already been one in that lane that  
20 had moved over and/or stopped in another lane  
21 maybe 20, 30, 40 seconds before Dr. Barth got  
22 there.

23          Q.       There's no physical evidence one  
24 way or another, correct, as to whether there  
25 had been a vehicle there and moved? All we

1 have is witness testimony, right?

2 A. The only physical evidence we have  
3 on the roadway is from the crash -- from the  
4 actual impact and post crash.

5 Q. Right.

6 A. That's the only physical evidence  
7 we have.

8 Q. Right. So there is no physical  
9 evidence of a crash that did not occur, right?

10 MR. PALOMBO: Objection.

11 A. I don't know -- I don't know how  
12 you can have physical evidence of a crash that  
13 did not occur.

14 Q. So then we've got none, right, of a  
15 crash that did not occur?

16 A. If it didn't occur, there's no  
17 physical evidence.

18 Q. That's what I was asking. I know  
19 it's a silly question, but I'm a lawyer and  
20 we're allowed to ask silly questions.

21 What do you mean in this paragraph,  
22 by adverse human factor?

23 A. Drivers on this roadway who were  
24 normally alert and were paying reasonable  
25 attention to their driving duties stopped

**In The Matter Of:**  
*Darlene Lane Ferraro v.*  
*Ohio State University Medical Center*

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*Chad Meeks*  
*April 13, 2012*

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**Min-U-Script® with Word Index**



1 A. A second.

2 Q. What would you estimate the distance that you saw  
3 him travel? Do you think he went 100 feet?

4 A. The Mercedes.

5 Q. Forty feet? Two-hundred feet? Yeah.

6 A. After he hit the vehicle?

7 Q. Before.

8 A. Oh, before, from when I saw him?

9 Q. Yeah, as he's approaching this accident scene the  
10 best way to say it is how far from the stopped  
11 pickup is the Mercedes when you first see it?

12 A. I would have to say the length of a semi truck,  
13 an 18-wheeler, because once I saw the 18-wheeler  
14 merge out of the way, I looked behind him to find  
15 out who else was going to merge out of the way  
16 because when the 18-wheeler got out of the way he  
17 must have been hitting his horn or somebody was  
18 because it was very loud. Somebody was hitting  
19 their horn. So I'm looking behind him because --  
20 when he -- he didn't just get out of the way. He  
21 didn't slowly merge over like he was merging for  
22 traffic. His trailer was like leaning, he had to  
23 get out of the way so quickly so he's flying over  
24 to get over. I'm not sure if there was no room  
25 for him to get over. I don't understand why, but

1 he had to get over immediately.

2 Q. But you don't know which lane he was in?

3 A. I'm almost positive he was behind the truck.

4 Q. Could the truck have been in Lane 1?

5 A. Could the semi have been in Lane 1?

6 Q. Yeah.

7 A. The semi could have been in Lane 1. I don't  
8 think he was that close to the median, to the  
9 middle median there.

10 Q. Could he have been in Lane 3?

11 A. He could have been in Lane 3. He could have been  
12 in lane ten. I couldn't tell you, but all I do  
13 know is when that semi truck had to get over, he  
14 got over, and it was very abrupt, and after him I  
15 looked behind him to find out who was going to be  
16 approaching next and that's when I saw the  
17 Mercedes.

18 Q. And it didn't look like it was braking?

19 A. Oh, it looked like it was braking. Absolutely.  
20 He immediately hit his brakes. There was white  
21 smoke all the way through and then he smashed  
22 into that truck. I mean that had to have  
23 lasted -- that was so quick, one, two seconds,  
24 boom. It seemed like the whole intersection went  
25 up in a white cloud of smoke.