



Sarah texting on her cellphone. He reported this information to the OSHP after the crash.

The Ohio State Highway Patrol (OSHP) downloaded the data from Sarah's cellphone after the crash to determine if she was using it during her trip and created a timeline showing what Sarah was doing on the phone and when she was doing it. The download showed that while driving, Sarah was taking "selfies" of herself and her dog in the back of her vehicle, checking her paystub on her employer's online website, downloading music, researching a vacation to Puerto Rico to kayak in a bioluminescent lagoon, and speaking on the phone to a beauty salon.

The OSHP also downloaded data from Sarah's vehicle. This data showed that Sarah was travelling about 72 m.p.h. (in a 55 m.p.h. zone) for five seconds prior to her crash. It also showed that she did not engage her brakes until a half of a second prior to the crash and that she only slowed down to 62 m.p.h. at impact.

Three witnesses actually saw Sarah's accident. They indicated that Sarah was travelling at a high speed when she passed each of them. They also indicated that after passing them, Sarah had plenty of space to move over to avoid the ODOT truck ahead of her but for some reason she never moved over. They indicated that because she didn't move over or slow down prior to impact, that she must have been distracted. In fact, Sarah's cellphone records indicate that she was on the phone with a beauty salon at the time of her crash. Sammy Smith, who was driving the truck that Sarah hit, said he saw Sarah passing traffic about 1000 feet before impact.

ODOT obtained an accident reconstructionist, Brinn Tanner, to analyze the visibility of the ODOT truck. ODOT's vehicle was a large white dump truck that was approximately eight

feet wide and ten feet high. Additionally, the truck was utilizing flashing, oscillating strobe lights to warn traffic of its presence.

As part of his analysis, Tanner had ODOT place the truck in issue at the exact point of impact. Tanner photographed the truck at that location and walked back and photographed the view Sarah would have had as she approached it. Tanner established that Sarah had some visibility of the truck 1300 feet prior to impact (13 seconds prior to impact even at her speed). He also determined that the closer Sarah got to the vehicle, the more of the truck became visible to her. He concluded that at 800 feet (8 second prior to impact), Sarah could have seen the entire truck and its contact point in the road, showing her exactly what lane it was in. Unfortunately, Sarah did not apply her brakes until 50 feet prior to impact, 1250 feet from when the truck was first visible.

Not only was visibility a factor in Sarah's crash, but, as Plaintiff's expert admitted, speed was also a factor. The OSHP downloaded speed data from Sarah's vehicle. In the last five seconds prior to impact, she was travelling 72 m.p.h. in a 55 m.p.h. zone. So even though she was speeding, Sarah could see the ODOT vehicle for about 13 seconds prior to impact. Of course, had she been travelling at the speed limit of 55 m.p.h., she could have seen the ODOT vehicle 16 seconds prior to impact.

This would have provided three seconds more to perceive and react to it. But despite the 13 seconds available to react to the ODOT vehicle, the OSHP download from Sarah's vehicle established that she did not engage her brakes until only a half of a second prior to impact. Because she hit her brakes so late, Sarah only slowed down to 62 m.p.h. at impact, still over the speed limit.

Both the testimony of eyewitnesses and the experts from both parties will establish that Sarah failed to maintain an assured clear distance and that she is negligent per se. Paying attention and slowing down to 55 m.p.h. would have provided more time and opportunity to perceive and react and it would have lessened her speed and injuries at impact.

**B. ODOT Was Not Negligent**

ODOT's trucks were sent out to sweep the berm on S.R. 35. The vehicles consisted of a truck with a broom to sweep and a shadow vehicle to provide additional visibility. According to the OSHP report, both vehicles were using flashing, oscillating lights to warn traffic.

The sweeping project was a mobile operation, which moved continuously between 10 and 15 miles per hour. In fact, because of the speed they were moving, the ODOT drivers swept 20 miles of roads before the crash which happened at 12:48 p.m. Given the speed of the operation and the distance the trucks were covering, ODOT does not typically close 20 miles of road nor does it place signs since the drivers would be so far away from the signs as they moved further down the road and they would constantly need to move them. The OMUTCD authorizes ODOT to use flashing lights on trucks in lieu of placing signs.

Both parties have obtained experts on the traffic issues. Both experts agree that ODOT's crew did everything they were required to do by the Ohio Manual of Traffic Control Devices. Plaintiff's expert has even agreed that the things he believes ODOT should have done were not required. For example, Plaintiff's expert believes ODOT should have used signs, arrows, lane closures and an attenuator. But he agreed that ODOT was not required

to use any of these devices. Because ODOT did not fail to use any devices that were required, it did not violate the OMUTCD and it is not negligent.

## II. WITNESSES

1. All witnesses to the accident or to Sarah's driving;
2. All persons deposed
3. Trooper Shaner
4. Trooper Cook
5. Trooper Kinzer
6. Brian Tanner
7. Reynaldo Stargell

## III. EXHIBITS

1. The OSHP accident report;
2. The OSHP accident photos;
3. Download from Martin vehicle
4. Download from Martin phone/timeline
5. OSHP reconstruction
6. Photos of the accident location - ODOT/Experts
7. OSHP call log
8. Relevant portions of OMUTCD
9. Depositions of all witnesses
10. OSHP Property Control form

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General



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PETER E. DEMARCO (0002684)  
Assistant Attorney General  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215  
Telephone: (614) 466-7447  
Facsimile: (614) 644-9185  
[Peter.DeMarco@OhioAttorneyGeneral.gov](mailto:Peter.DeMarco@OhioAttorneyGeneral.gov)  
*Counsel for Defendant*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Pretrial Statement was served by regular U.S. mail, postage prepaid, this 18<sup>th</sup> day of November, 2014, to:

Ellen M. McCarthy  
Jamie R. Lebovitz  
Jordan Lebovitz  
1370 Ontario Street, Suite 100  
Cleveland, Ohio 44113  
*Counsel for Plaintiff*



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PETER E. DEMARCO (0002684)  
Assistant Attorney General