

1 IN THE SUPERIOR COURT OF FULTON COUNTY

2 STATE OF GEORGIA

3  
4 MALCOM SMITH,

5 Plaintiff,

6 vs.

CIVIL ACTION FILE  
NO. 2012-CV-223874

7 PATIENCE AJUZIE,

8 Defendant.  
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9  
10 VIDEOTAPED DEPOSITION OF

11  
12 KEVIN MCKINNEY RADCLIFFE

13  
14 October 16, 2013

15 10:59 a.m.

16  
17 Suite 1040

18 900 75 Circle Parkway

19 Atlanta, Georgia

20  
21 Richard Bursky, RMR, CRR, CCR-2509  
22  
23  
24  
25

1 APPEARANCES OF COUNSEL

2  
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(Original exhibit has been attached to the original transcript.)

1 VIDEOTAPED DEPOSITION OF KEVIN MCKINNEY RADCLIFFE

2 October 16, 2013

3 (Reporter disclosure made pursuant to  
4 Article 10.B. of the Rules and Regulations of the Board  
5 of Court Reporting of the Judicial Council of Georgia.)  
6

7 THE VIDEOGRAPHER: We are on the record. The  
8 time is approximately 10:59 a.m. This is the  
9 beginning of Tape 1 of the videotaped deposition  
10 of Kevin Radcliffe in the matter of Smith versus  
11 Ajuzie.

12 Today's date is October 16, 2013. My name is  
13 Terry Wetz, legal video specialist. Would counsel  
14 present please identify themselves and who they  
15 represent for the record.

16 MR. BUTLER: Jeb Butler on behalf of the  
17 Plaintiff, Malcom Smith.

18 MR. HIESTAND: Trevor Hiestand on behalf of  
19 the Defendant Ajuzie.

20 THE VIDEOGRAPHER: Thank you, counsel. Would  
21 the court reporter please swear in the witness.

22 KEVIN MCKINNEY RADCLIFFE,  
23 having been first duly sworn, testifies as follows:

24 MR. BUTLER: This will be the deposition of  
25 Kevin Radcliffe taken pursuant to notice, subpoena

1 and agreement, taken pursuant to the Civil  
2 Practice Act for all purposes permitted under the  
3 Civil Practice Act including use at trial. We are  
4 here in the office of defense counsel, and we have  
5 already announced ourselves for the record.

6 DIRECT EXAMINATION

7 BY-MR.BUTLER:

8 Q. Mr. Radcliffe, would you state your name for  
9 the record, please?

10 A. Kevin McKinney Radcliffe.

11 Q. Did you observe a wreck at the intersection of  
12 Northside Drive and Martin Luther King Drive on or  
13 about December 3, 2010?

14 A. I did, yes.

15 Q. Tell the jury, please, where you were coming  
16 from.

17 A. I was coming from picking up my girlfriend, on  
18 my way to the airport to pick up my sister.

19 Q. How did you approach the intersection of  
20 Northside Drive and Martin Luther King drive? In other  
21 words, what road were you on and what direction were  
22 you going?

23 A. I was traveling south on Northside Drive.

24 Q. Was the wreck between a black Kia and a  
25 gold-colored Tahoe?

1 A. Yes.

2 Q. Were you able to see the Kia before the wreck?

3 A. Yes.

4 Q. Describe what the Kia was doing, please, in  
5 terms of what road it was on and what direction it was  
6 going?

7 A. Like I was, the black Kia was traveling south  
8 on Northside Drive.

9 Q. Was the Kia ahead of you or behind you or next  
10 to you?

11 A. Ahead of me.

12 Q. How far ahead?

13 A. Two to four to five car lengths in front of  
14 me, the distance.

15 Q. Were there any cars between you and the Kia?

16 A. No.

17 Q. In terms of the other car involved in the  
18 wreck, the gold-colored Tahoe, do you have an  
19 understanding of how the Tahoe got to the intersection,  
20 what road it was on or what direction it was traveling  
21 generally before the wreck?

22 A. Traveling north on Northside Drive.

23 Q. As the Kia approached the intersection, as you  
24 observed it approach the intersection, did it appear to  
25 be going straight or preparing to make a left turn?

1 A. Going straight.

2 Q. Were you able to observe what the Tahoe was  
3 doing before the collision, or was that something that  
4 you were unable to see?

5 A. I was unable to see what the Tahoe was doing.

6 Q. Tell us, please, what lane you were in as you  
7 approached the intersection.

8 A. From the right side curb, second to third lane  
9 traveling south on Northside Drive.

10 Q. Let me show you for your reference what I will  
11 mark as Plaintiff's Exhibit 1 to the Radcliffe  
12 deposition just so you can refer to it.

13 (Plaintiff's Exhibit 1 was marked for  
14 identification.)

15 (Witness reviewing document.)

16 Q. (By Mr. Butler) Does that appear to be a  
17 Google Earth map of the intersection?

18 A. Yes.

19 Q. Please show it to opposing counsel, I forgot  
20 to do that, if you don't mind.

21 MR. HIESTAND: I have seen it.

22 Q. (By Mr. Butler) Do you see which way is north  
23 on that picture?

24 A. If I can actually see which is which.

25 Q. How about this, I will represent to you that

1 north is up.

2 A. Yes, I know this is north, but I don't know,  
3 is this the parking lot, the Papa John's parking lot?

4 Q. This road heading up and down in the middle of  
5 it appears to be Northside Drive.

6 A. Okay, north, so this is the parking lot here,  
7 okay.

8 Q. There you go. So tell us again, please, what  
9 lane you were in as you approached the intersection.

10 A. Second to third lane traveling south on  
11 Northside Drive.

12 Q. What lane was the Kia in as it traveled ahead  
13 of you?

14 A. From my recollection, second to third lane  
15 also traveling south on Northside Drive.

16 Q. On that day, at any time before the  
17 intersection, did either you or the Kia ever enter the  
18 left turn lane on Northside Drive?

19 A. No.

20 Q. Did you observe at any time the Kia driving  
21 too fast or making abrupt traffic maneuvers violating  
22 traffic laws in any way?

23 A. No.

24 Q. Was the Kia just going straight through the  
25 intersection?



1 A. Yes, from my recollection.

2 Q. When was the last time you recall seeing the  
3 Kia before the wreck? Let me strike that and ask a  
4 cleaner question.

5 Where was the Kia the last time you recall  
6 seeing it before the wreck?

7 A. Traveling south in front of me on Northside  
8 Drive.

9 Q. Was the Kia already in the intersection or  
10 about to enter the intersection?

11 A. Approaching the intersection.

12 Q. At the last time you saw the Kia before it  
13 entered the intersection, was the Kia at such a place  
14 that it was abreast of the turn lane, meaning it was  
15 beside the turn lane?

16 A. Yes.

17 Q. In other words, could the Kia have been in the  
18 left turn lane if the Kia had intended to turn left?

19 A. Yes.

20 Q. Were there any cars backed up and stopped in  
21 that left turn lane that would have prevented the Kia  
22 from being in the left turn lane if it wanted to turn  
23 left?

24 A. No.

25 Q. Did you see the wreck itself?

1 A. No.

2 Q. Tell us why not, please.

3 A. Like I said, I was traveling with my  
4 girlfriend and we were in conversation. And upon  
5 looking at her, you know, receiving an answer or  
6 response is when I saw the accident occur, the end of  
7 the accident occur.

8 Q. You weren't looking at your girlfriend and  
9 away from the road for very long, were you?

10 A. No.

11 Q. You said you saw the end of the wreck occur.  
12 Explain to us what you mean, please.

13 A. Upon talking to my girlfriend and receiving a  
14 response and actually looking at her, and reverting  
15 back to the road is when I saw the back side of the Kia  
16 Sportage literally in the air and then hitting the  
17 ground.

18 Q. So the Kia was still in the air when you saw  
19 it immediately after the wreck?

20 A. Yes.

21 MR. HIESTAND: Objection, leading. I am not  
22 sure if we said we were going to stay on record or  
23 off record, but objection, leading.

24 Q. (By Mr. Butler) Did you see the Kia while the  
25 back of the Kia was in the air or not?

1 A. Yes.

2 Q. At that time when you saw the Kia with its  
3 back wheels up in the air, was the Kia in the  
4 southbound lane as though it were going straight?

5 A. Yes.

6 Q. Do you know whether the -- strike that.  
7 Do you believe that the Tahoe was turning left  
8 or going straight or do you know?

9 A. I believe the Tahoe was going straight, from  
10 what I see -- from what I saw the position of the Tahoe  
11 at the end of the accident.

12 Q. You believe the Kia -- were you able to  
13 actually see the Kia before the accident and  
14 immediately after the accident occurred?

15 A. Yes.

16 Q. Did it appear that the Kia was going straight?

17 A. Yes.

18 Q. Were you able to see the Tahoe at any time  
19 before the wreck occurred?

20 A. No.

21 Q. As to the color of the light at the time the  
22 wreck occurred, do you know whether it was -- what  
23 color the light was?

24 A. No.

25 Q. As to what the Tahoe was doing at the time of

1 the wreck, are you sure one way or the other what the  
2 Tahoe was doing in terms of going straight, turning  
3 right or turning left?

4 A. No, I would only be assuming.

5 Q. When the Kia came to rest after the wreck, was  
6 it in the northbound lanes or the southbound lanes?

7 A. Southbound lanes.

8 Q. After this wreck occurred, what did you do?

9 A. Well the Kia being closest to me, that's the  
10 vehicle I immediately ran to just to check on the  
11 victims that were in the Kia.

12 Q. Where did you stop your car after the wreck?

13 A. In the Papa John's parking lot which is  
14 traveling south on Northside Drive.

15 Q. Is that in sort of the northwest --

16 A. Northwest corner of the intersection there.

17 Q. I think you said you ran up to the Kia?

18 A. Yes.

19 Q. Did you hear anyone in the Kia saying  
20 anything?

21 A. I did.

22 Q. Tell us about that, please.

23 A. Upon approaching the Kia, the doors were open,  
24 I do remember that. And the, the passenger in the back  
25 seat kept saying, "My back, my back, my back." And

1 that's what I remember the victim saying in the back  
2 seat.

3 Q. Did you talk to any police officers that day?

4 A. Yes.

5 Q. Tell us about that, please.

6 A. Like I said, the end of the accident, on the  
7 southeast corner of the intersection, that's where I  
8 gave the police officer my information. And that was  
9 the only conversation I had with the police officer.

10 Q. When you say you gave him your information,  
11 what do you mean?

12 A. My name and phone number.

13 Q. Did you tell the officer what you saw in the  
14 wreck?

15 A. No.

16 Q. Why not?

17 A. He did not ask.

18 Q. Did you believe or was it your understanding  
19 at the time that the officer would call you to ask  
20 details about the wreck?

21 A. I would assume so, but, I mean, I don't know  
22 their process. So I didn't know one way or another.

23 Q. Did he ever call you?

24 A. No.

25 Q. If he had called you, would you have told him

1 what happened?

2 A. Yes.

3 Q. How long after this wreck did you stick  
4 around?

5 A. Less than a half hour. I would say about 20  
6 minutes.

7 Q. Why did you leave after 20 minutes?

8 A. I was en route to go pick my sister up from  
9 the airport.

10 Q. We talked a little bit about whether there  
11 were cars in the left turn lane for southbound traffic  
12 on Northside. Do you remember that?

13 A. Yes.

14 Q. Were you able to see from your perspective  
15 whether there were any cars in the left turn lane for  
16 northbound traffic on Northside?

17 A. I couldn't see.

18 Q. So you couldn't tell us one way or the other?

19 A. No.

20 MR. BUTLER: That's all the questions I have.

21 CROSS-EXAMINATION

22 BY-MR.HIESTAND:

23 Q. Sir, let me just make sure I am understanding  
24 your testimony. You did not see the collision itself,  
25 correct?

1 A. No.

2 Q. You did not see how the Kia actually entered  
3 the intersection; is that correct?

4 A. The Kia was in front of me.

5 Q. Did you see the Kia entering the intersection?

6 A. Yes.

7 Q. Do you remember giving a deposition just about  
8 20 minutes ago where you told me that you did not see  
9 how the Kia entered the intersection?

10 A. I don't remember saying I don't see it, but we  
11 were both traveling south, so I did see it approaching  
12 the intersection. Entering the intersection...

13 Q. Let me ask you this: The last time you saw  
14 the Kia before the impact would have been before it got  
15 to the intersection; is that correct?

16 A. Yes.

17 Q. You don't know how the Kia actually entered  
18 the intersection; is that correct?

19 A. I don't understand your question. It was  
20 traveling south approaching the intersection.

21 Q. But you are not sure which lane it was in, if  
22 it was in the second or third lane from the right; is  
23 that correct?

24 A. The second or third lane traveling south, yes.

25 Q. Which lane?

1 A. Second or third.

2 Q. So it was one of those, but you don't know  
3 which lane?

4 A. Yes.

5 Q. After the impact and you had an opportunity to  
6 see the Tahoe, the gold Tahoe when it was at rest, it  
7 was still on the northbound side of Northside Drive,  
8 correct?

9 A. Yes.

10 Q. You saw debris from the impact in the center  
11 of the intersection?

12 A. Yes.

13 Q. And in fact, there was debris on the north and  
14 south side, in the north and south side lanes; is that  
15 correct?

16 A. The exact center of the intersection, yes.

17 Q. You never saw the Tahoe before the impact; is  
18 that correct?

19 A. Yes.

20 Q. The only time you saw the Tahoe was after the  
21 impact?

22 A. Yes.

23 Q. And when you saw that Tahoe, it was on the  
24 northbound side of Northside Drive?

25 A. Yes.



1 Q. You said that you checked on the victims in  
2 the Kia. Did you check on the victims in the Tahoe?

3 A. Yes.

4 Q. You didn't have any conversation with either  
5 of the drivers; is that correct?

6 A. Correct.

7 Q. You didn't overhear either of the drivers  
8 describing what happened in the impact?

9 A. No.

10 Q. You mentioned you knew where the Kia was when  
11 you saw the back end of the Kia up in the air, but at  
12 that point you don't know where the Tahoe was; is that  
13 correct?

14 A. Yes.

15 MR. HIESTAND: Thank you, sir.

16 REDIRECT EXAMINATION

17 BY-MR. BUTLER:

18 Q. Brief followup: You were just asked some  
19 questions about whether you saw the Kia enter the  
20 intersection. Do you recall those?

21 A. Yes.

22 Q. Did you see -- strike that. I meant to say  
23 the Kia. I am not sure what I said.

24 You were just asked some questions about  
25 whether you saw the Kia as it entered the intersection.

1 Do you recall those?

2 A. Yes.

3 Q. Could you see the Kia immediately before it  
4 entered the intersection?

5 A. Yes.

6 Q. Was it in the southbound lanes as though it  
7 were going straight?

8 A. Yes.

9 Q. Did you see the Kia while its wheels were  
10 still up in the air after the wreck?

11 A. Yes.

12 Q. At that time, was it in the southbound lanes  
13 as though it was going straight?

14 A. Yes.

15 Q. Did you ever see it in the turn lane?

16 A. No.

17 Q. You were asked some questions about where the  
18 Tahoe was when it was at rest. Do you recall these  
19 questions?

20 A. Yes.

21 Q. Does where the Tahoe was at rest tell you  
22 where the Tahoe was at the time of the wreck or could  
23 the Tahoe have rolled or moved after the wreck?

24 A. The Tahoe could have rolled or moved after the  
25 wreck.

1 Q. You were asked about some debris in the  
2 intersection. Do you recall that question or those  
3 questions?

4 A. Yes.

5 Q. Was there debris scattered generally all over  
6 the intersection?

7 A. Yes.

8 MR. BUTLER: Nothing further.

9 RE CROSS-EXAMINATION

10 BY-MR. HIESTAND:

11 Q. Sir, at any time did you ever see the Tahoe  
12 rolling or moving?

13 A. No.

14 Q. The only time you ever saw the Tahoe was when  
15 it was at rest, correct?

16 A. Yes.

17 MR. BUTLER: Nothing further.

18 MR. HIESTAND: I am not quite done, thank you.

19 MR. BUTLER: I am sorry.

20 MR. HIESTAND: That's all right.

21 Q. (By Mr. Hiestand) You mentioned that you gave  
22 your information to the investigating police officer  
23 and then you left because you had to go get your sister  
24 at the --

25 A. Airport.

1 Q. -- airport; is that correct?

2 A. Yes.

3 Q. The police officer didn't say to you, you can  
4 leave or time for you to go; you just gave your  
5 information and then you left?

6 A. Exactly.

7 MR. HIESTAND: No further questions.

8 MR. BUTLER: No further questions.

9 THE VIDEOGRAPHER: This concludes the  
10 videotape deposition. The time is 11:16. We are  
11 off the record.

12

13 (Whereupon, the deposition concluded at 11:16  
14 a.m.)

15

16 (It was stipulated and agreed by and between  
17 counsel for the respective parties and the witness  
18 that the signature of the witness to the  
19 deposition be waived.)

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C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 20 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 29th day of October, 2013.



RICHARD BURSKY, CCR-2509

COURT REPORTER DISCLOSURE

Pursuant to Article 10.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia which states: "Each court reporter shall tender a disclosure form at the time of the taking of the deposition stating the arrangements made for the reporting services of the certified court reporter, by the certified court reporter, the court reporter's employer, or the referral source for the deposition, with any party to the litigation, counsel to the parties or other entity. Such form shall be attached to the deposition transcript," I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as a representative of Esquire Deposition Solutions. Esquire Deposition Solutions was contacted to provide court reporting services for the deposition. Esquire Deposition Solutions will not be taking this deposition under any contract that is prohibited by O.C.G.A. 9-11-28(c).

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Richard Bursky, CCR-2509