

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Tweedie*, 2024 NSSC 150

Date: 20240517

Docket: CRS No. 500387

Registry: Sydney

Between:

His Majesty the King

v.

Colin Hugh Tweedie

TRIAL DECISION

Judge: The Honourable Justice Kevin Coady

Heard: March 13 – 19 and 26, 2024 in Sydney, Nova Scotia

Decision: May 17, 2024

Counsel: Darcy MacPherson and Gerald MacDonald for the Crown
Tony Mozvik, K.C. and Danielle Arsenault, Articling Clerk, for Mr.
Tweedie

By the Court:

Background

[1] On July 11, 2019, the community of families that resided along Black Rock Road in Victoria County, Nova Scotia, experienced a trauma that has left an indelible scar on their otherwise bucolic lives. On that day, at 9:42 pm, a motor vehicle driven by Colin Hugh Tweedie collided with 10-year-old Talia Forrest while she was riding a bicycle on Black Rock Road. Mr. Tweedie did not stop at the scene of the collision. At approximately 10:46 pm, Talia Forrest was declared deceased as a result of the catastrophic injuries she sustained in the collision.

[2] Shortly after the collision, the police were informed that Mr. Tweedie may have been driving the vehicle that struck Talia Forrest. Officers proceeded immediately to the Tweedie residence, which was only a short distance from the scene. Upon arrival, the officers noticed a 2004 Nissan Xterra SUV with significant front-end damage and two deployed airbags parked at the residence. While speaking to Mr. Tweedie, the officers formed the opinion that he was impaired by alcohol. He was taken to the Baddeck RCMP detachment where he was cautioned and two samples of his breath were taken.

[3] Mr. Tweedie was charged with the following three offences:

- Dangerous driving causing death contrary to s. 320.13(3) of the *Criminal Code* (Count 1).
- Having a blood alcohol concentration (BAC) equal to or exceeding 80 mg of alcohol in 100 ml of blood within two hours after ceasing to operate a vehicle and thereby causing the death of Talia Forrest contrary to s. 320.14(3) of the *Criminal Code* (Count 2).
- Failure to stop, without reasonable excuse, after knowing or being reckless as to whether his vehicle had been involved in an accident resulting in death of a person contrary to s. 320.16 of the *Criminal Code*.

[4] Mr. Tweedie elected trial by a Supreme Court Justice sitting without a jury. He entered not guilty pleas to all three offences.

[5] This is Mr. Tweedie's second trial on these charges. On March 25, 2022, he was acquitted on all counts (2022 NSSC 75). On February 15, 2023, the Nova Scotia Court of Appeal overturned those acquittals and ordered a new trial (2023 NSCA 11). Leave to appeal to the Supreme Court of Canada was refused ([2023] S.C.C.A. No. 149).

[6] The new trial proceeded before me on March 13 – 19 and 26, 2024.

Agreed Statement of Facts

[7] The parties filed the following Agreed Statement of Facts at the commencement of this trial:

1. On July 11, 2019, at 9:43 p.m. a 911 call was received advising of a collision, where a ten-year-old girl, Talia Forrest, was struck by a vehicle while riding a bicycle on Black Rock Road, Nova Scotia.
2. At 9:55 p.m. Talia Forrest was located, unresponsive, and CPR was administered by witnesses. Paramedics arrived on scene at 10 p.m. and immediately left for Cape Breton Regional Hospital with Talia Forrest where, despite all efforts, she was declared deceased at 10:46 p.m.
3. Physical debris from the responsible vehicle was found at the scene of the collision. The debris was examined and comparatively matched by the RCMP Identification Unit and confirmed to be a 2004 Nissan X-Terra bearing the license plate GGH 070. The Nissan X-Terra was located and seized by the RCMP at the residence of 78 Black Rock Road [sic], with extensive visible damage to the front end and two deployed airbags.
4. DNA samples were taken by the Identification Unit of the RCMP from the front of the 2004 Nissan X-Terra and confirmed a match to be the DNA of Talia Forrest.
5. The driver of the Nissan X-Terra did not stop at the scene of the collision.

6. Defence is conceding to continuity of all the Crown exhibits being entered at the time of Trial.
7. On July 11, 2019 at 10:36 p.m. the RCMP officers arrived at the residence of Colin Tweedie. Upon arriving on scene Officers came in contact with Colin Tweedie and Beth Hart, both of whom were detained in separate vehicles.
8. At the same date and time, while under Caution, Colin Tweedie stated to Cst. James Dollard that Beth was driving, and they thought they hit a deer. Beth Hart was the girlfriend of Colin Tweedie at the time of the accident.
9. On July 12, 2019 at 12:12 a.m. while Colin Tweedie was in the custody of Cst. Joseph Wallace and Cst. James Dollard during transportation to the Baddeck RCMP detachment, Colin Tweedie asked what was going to happen to his girlfriend, and wondering why she was not being taken by police, as he thought she was going to take the blame.
10. On July 12, 2019 at 12:46 a.m. at the Baddeck RCMP Detachment in the process of providing a breath sample, Colin Tweedie, while under Caution, stated he was not driving, wanted to take breathalyzer, and go home.
11. On July 12, 2019 at 9:33 a.m. the RCMP commenced their interview with Colin Tweedie under Caution, at the Baddeck RCMP Detachment.
12. At approximately 02:16 p.m. during the interview, Colin Tweedie advised police that he was driving and Beth Hart was not in the vehicle with him.
13. When Colin Hugh Tweedie was taken to the Baddeck Detachment on the night of July 11, 2019, a form was filled out by Cst. Joe Wallace indicating Mr. Tweedie's weight to be 180 pounds.

14. That the source of that information was Colin Hugh Tweedie.

15. That 80 [sic] pounds converts to 81.81 kilograms. (180/2.2).

[8] This Agreed Statement of Facts removed any doubt as to who was driving the Nissan Xterra at the time of the collision.

The Evidence

[9] In addition to the Agreed Statement of Facts, the court heard from numerous witnesses, including three individuals who were qualified as experts capable of providing opinion evidence. The court also had the benefit of numerous exhibits, including video evidence from a camera positioned in the window of a residence on Black Rock Road on the night of the collision; photographs taken by police of the scene, of Mr. Tweedie's vehicle and of the bicycle; and drone footage taken of the area exactly one year after the collision, during daylight hours.

[10] I will summarize the relevant evidence from each witness.

David Edwards

[11] David Edwards is 42 years old and is currently a combat engineer with the Canadian Armed Forces ("CAF") at CFB Gagetown. In July 2019, Mr. Edwards was a part-time member of the CAF Reserve Force and a volunteer firefighter with the Big Bras D'Or Fire Department. He was living with his then-girlfriend Leah Luker and her daughter in Ms. Luker's house at 1649 Old Route 5 in Big Bras D'Or in Victoria County, Nova Scotia. Ms. Luker's house was located less than one kilometre from the beginning of Black Rock Road.

[12] On the evening of July 11, 2019, shortly before the collision on Black Rock Road, David Edwards and Colin Tweedie were playing darts in the barn at 1649 Old Route 5. Mr. Edwards had met Mr. Tweedie a little less than a year earlier, after Mr. Tweedie had started dating Ms. Luker's best friend, Beth Hart.

[13] Mr. Edwards testified that Mr. Tweedie lived about a five minute drive away at 78 Black Rock Light Road, a dirt road off of Black Rock Road. He confirmed that the only way to get from the Luker residence to Mr. Tweedie's house was to proceed along Old Route 5 to where it intersects with Black Rock Road, just before the Big

Bras D'Or Fire Hall; turn left onto Black Rock Road and proceed northbound past the collision site; then turn left onto Black Rock Light Road.

[14] Mr. Edwards testified that at 9:14 pm on July 11, 2019, Mr. Tweedie and Beth Hart pulled into the driveway at 1649 Old Route 5. Mr. Tweedie was driving the vehicle, and Ms. Hart was in the passenger seat. Mr. Edwards was certain of the time because he specifically recalled standing next to the driver's side window of Mr. Tweedie's Nissan Xterra and asking him what time it was. Ms. Luker was not at home when Mr. Tweedie and Ms. Hart stopped by. Ms. Hart was tired and wanted to go home, so the plan was that Mr. Tweedie would drive Ms. Hart back to his home, then return to play darts with Mr. Edwards.

[15] Mr. Edwards said Mr. Tweedie returned to the Luker residence at around 9:20 pm to 9:25 pm, with a bag containing three bottles of Budweiser beer. The two men started playing darts in the barn. Mr. Tweedie drank one beer and gave one to Mr. Edwards, which Mr. Edwards put in the fridge. Mr. Edwards did not know what happened to the third bottle of beer. He did not see it being consumed, nor did he see it go anywhere.

[16] While Mr. Tweedie drank his beer, he and Mr. Edwards played two games of darts. Mr. Edwards won both games. About 15 minutes after Mr. Tweedie's arrival, Ms. Luker returned home from Ferry Wharf, where she had been taking photos of wildlife. Mr. Edwards said Ms. Luker came into the barn for about five minutes before heading into the house to boil potatoes for supper.

[17] After the second game of darts concluded, Mr. Edwards mentioned to Mr. Tweedie that he needed to make supper, and he started barbecuing pork chops. Mr. Tweedie took the hint and left. Mr. Edwards estimated that Mr. Tweedie left at around 9:45 or 9:50 pm.

[18] About eight or nine minutes after starting the pork chops, Mr. Edwards heard the sound of sirens. He went inside to check his phone to see if the Big Bras D'Or Fire Department had been called to respond to an emergency. Mr. Edwards played the voice message he found on his phone and heard "vehicle-pedestrian accident." In "hysterics", he left his phone and drove down to the fire department, which was "very close" to his house, to try and get there before the other firefighters left the station. When he realized they had already left for the scene, Mr. Edwards went back home and listened to the phone message again. He testified that he has some hearing loss and the message was particularly difficult to hear, but it said something about

132 Black Rock Road and a vehicle-pedestrian accident involving a 10-year-old girl. He and Ms. Luker immediately jumped into his pickup truck and headed down to the scene. On their way to the scene, Leah Luker called Beth Hart and spoke with her for a few minutes.

[19] Mr. Edwards stopped his vehicle about 300 metres down Black Rock Road, at the first checkpoint, where the fire department had blocked the road with one of its vehicles. After parking his vehicle just outside the first checkpoint, Mr. Edwards proceeded through the collision scene to place emergency markers at the far end of the scene, about 500 metres from the Old Route 5 – Black Rock Road intersection. He could not recall whether he walked or travelled in the fire department's cube van. He remembered that he obtained the markers from the back of the cube van, which meant that someone had to have driven it to the northern end of the scene.

[20] Mr. Edwards said the road to get from where he parked his truck to where he placed the markers was straight, not curved. He explained that the markers were intended to stop vehicles and personnel from entering the scene. After placing the emergency scene markers, Mr. Edwards returned to his truck where he told Leah Luker that the accident was a hit and run, and that it looked like the 10-year-old girl who was struck "was not going to make it." He said Leah then called Beth again and spoke to her. Mr. Edwards could hear Beth's voice on the call.

[21] Mr. Edwards' foundation for telling Ms. Luker that it looked like the little girl "was not going to make it" was a conversation he had with a fire department member who said he had taken the child's body to the side of the road. When asked if he knew where this person had taken the body from, Mr. Edwards said the body "was just off the road, in somebody's front yard."

[22] After telling Ms. Luker that it had been a hit and run, Mr. Edwards stayed on scene to assist with traffic control. He stayed until the Chief told him he could leave. He did not recall how late that was. Mr. Edwards knew the RCMP showed up and that they had brought some people in to watch the scene overnight.

[23] Mr. Edwards was asked if he had seen Mia White's mother on the night of the collision. He said he believed so, and that he thought they were down around where the body was initially lying. He assumed the people he saw were Mia, her mother, and a few neighbours who were out. Mr. Edwards did not see the body. When asked how he knew the others were around where the body was if he had not seen it, he said, "Because they showed me, and then when we were walking by, you could see

where the blood stains were.” Mr. Edwards said the body had already been taken from the scene by that time.

[24] Mr. Edwards did not see Mia or her mother anywhere else that night. He explained that when he arrives on a scene, he does an initial look around because their main job is site preservation, along with traffic control. So he did his initial scene look, and confirmed that there were people in place to keep anyone from walking or driving through the scene.

[25] On cross-examination, Mr. Edwards testified that Black Rock Road is a standard country road that was in “very bad” condition. He disagreed that there were “lots of potholes”, but acknowledged “there was a lot of bumps and stuff.” When it was put to him that a lot of people would drive toward the middle of the road to avoid crevices and loose pavement, and asked if that was his experience, Mr. Edwards said, “No, and I didn’t do that.” He estimated that he had driven on Black Rock Road “probably hundreds” of times.

[26] Mr. Edwards would drive down Black Rock Road because he is “an explorer” who loves to travel. He and Leah were always hopping in their vehicle and exploring the area, trying to find waterfalls and see wildlife. He said that if you go down to the end of Black Rock Road, there is a back road that leads to Battleman’s Beach. Mr. Edwards said Black Rock Road turns into a dirt road at a certain point. He was not sure whether there was any way to get back to the highway from the end of Black Rock Road other than turning around and coming back up.

[27] Mr. Edwards testified that when he first arrived on the scene and parked his truck, he looked down the road and saw a few members of the fire department crew. He did not see anyone from the neighbourhood with flashlights looking for Talia Forrest’s body. The body had already been transported from the scene when he arrived.

[28] Mr. Edwards was asked if he remembered who the firefighter was who told him that he had moved the body down toward the road. Mr. Edwards thought his name was Dan.

[29] When it was put to Mr. Edwards that in order for the fire department cube van to get down to the north end of the scene, it would have had to drive down the road through the scene, he agreed. He further agreed that it would have driven past the location of the body, but noted that the vehicle would typically be guided through a

scene. He said that when he walked down to the north end of the scene, he observed a few people out in the yard where the body was found, just off the side of the driveway. He saw a bicycle reflector, a few pieces of broken glass, what looked like pieces of plastic from a vehicle, and a bike tire. He could not recall whether he saw flip flops. Mr. Edwards did not speak to any police officers that night, but did give a statement to the police the next morning at around 6 am.

[30] Mr. Edwards was asked about the first time Colin Tweedie had been to his home with Beth that night. He agreed that he had a conversation with Mr. Tweedie at the driver's side of his vehicle. He did not smell any alcohol on Mr. Tweedie at that time, and was not concerned about his sobriety or level of impairment. He agreed that, as a first responder, if he had had concerns of that nature, he would have done something about them. Mr. Edwards confirmed that after Mr. Tweedie returned and they were playing darts, Mr. Tweedie was hitting the dart board. Mr. Edwards did not smell any alcohol coming from Mr. Tweedie, but noted that they were "in a fresh barn", and "that's pretty much what you smell." He said they played darts for about 20 minutes. When Mr. Tweedie left, Mr. Edwards was not concerned about Mr. Tweedie's sobriety.

[31] Mr. Edwards confirmed that even though he has some hearing damage, he was able to hear Beth on the phone when Leah was speaking to her.

Mia White

[32] Mia White was Talia Forrest's best friend. Currently 16 years of age and in the 10th grade, Mia lives with her mother Ellen (Ellie) Fraser in Bras D'Or. Mia has three older brothers and two older sisters.

[33] In July 2019, Mia was 11 years old. She lived at 70 Black Rock Road with her mother and siblings. The family had a multitude of pets at the time, including dogs, cats, hamsters, lizards, fish and goats.

[34] On the morning of July 11, 2019, Mia and Talia woke up after a sleepover at Mia's house. Talia had stayed over at Mia's the previous two nights, and the plan was for Talia to sleep over that night as well. After they woke up in the living room on the couch, Mia and Talia watched a movie. They then went to Ingonish Beach with Mia's mother and siblings. The weather was sunny. On the way home from Ingonish they stopped at a pizza shop and picked up some pizza for supper.

[35] After they arrived back home, Mia and Talia were taking turns choosing activities for them to do. Talia chose to play in the woods, so they went out in the wooded area on the property and played in a fort that Mia's brother had made. They also went swimming in the pool in Mia's backyard, and played with the goats. Mia's mother was inside the house making soap for her business while Mia and Talia played outside. Mia could not remember whether she and Talia went back inside the house between activities, or if she talked with her mother at any point during that time.

[36] After they played with the goats, Mia suggested they go for a pedal bike ride. Mia owned two bicycles, which were kept under the doorstep. The first bike was hot pink and red, and she believed that she had received it as a birthday gift in January 2019. This bike had no gears, and no handbrakes. To brake, you had to push backwards on the pedals. The bike was in good condition, although the handlebars were rusting from the rain. Mia was given the second bike – a purple and blue one – as a grading day present several weeks earlier. She did not really know how to work that bike because it had gears, and brakes on the handlebars.

[37] Mia testified that after she received the second bike, she still used the first bike sometimes. She went back and forth between the two bikes. Mia described herself as a “pretty good” bicycle rider. She had taught herself and she went for bike rides “basically every day” in the summer.

[38] When Mia would go for bike rides, she would only go down Black Rock Road and around the neighbourhood with the other kids. If she was by herself, she was only allowed to go as far as the first set of community mailboxes, which were farther down Black Rock Road, not far from her home. Her mother's other rules were that Mia was supposed to always look both ways before crossing the street, and that she had to wear a helmet when riding her bike.

[39] Mia explained that if you turned left out of her driveway, it would take you to the beginning of Black Rock Road where it meets the highway. Turning right out of the driveway would take you farther down Black Rock Road toward the community mailboxes. She said that as you turn onto Black Rock Road from Old Route 5, her home, and the mailboxes, were on the right-hand side of the road.

[40] Once the girls decided to go for a bike ride, Mia got on the newer purple and blue bike with the gears and handbrakes, while Talia got on the pink and red bike. The girls were not wearing helmets and they did not tell Mia's mother they were

going for a bike ride. As to the time of day, Mia said it was still bright outside, “like it was almost sunset”, and not dark yet. Mia said they drove to the end of her driveway and turned right. They did not cross the road. There were no sidewalks on Black Rock Road, so the girls rode their bikes on the dirt shoulder. There was not enough room on the shoulder for two people to bike beside one another. Mia was leading, with Talia riding behind her. Mia estimated that there were “like five or seven” houses total, counting both sides of the road, between her house and the mailboxes.

[41] When the girls reached the mailboxes, they stopped and chatted for a bit about what they were going to do after their bike ride. They then looked both ways before crossing the road. Once they reached the other side, they started riding their bikes a little bit. Mia then noticed “a strange car that was kind of swerving on the road a little bit”, coming down Black Rock Road in the opposite direction, toward them. She said the car was going “decently fast”, and crossing back and forth over the yellow line in the middle of the road. She did not count how many times it crossed over into the oncoming lane. Mia testified as follows:

MR. MACDONALD: Then can you tell us what happens?

MIA WHITE: So as the car got closer, I told Talia to stop her bike, ‘cause, like, we both stopped, ‘cause I had a strange feeling about something. So, once I seen the car like pass me from like my side vision, I started pedalling my bike again, and I looked behind me, and I didn’t see Talia anymore. And I seen the bike under the car. And the tires and the dirt flying everywhere. So I uh, kind of hopped off my bike and I started looking around, screaming for help.

MR. MACDONALD: When the car went by you, did you hear anything?

MIA WHITE: I kinda heard like a loud smack.

MR. MACDONALD: Yes.

MIA WHITE: And I heard the uh, the bike under the car making uh.. like the road and the metal scraping.

MR. MACDONALD: Yes?

MIA WHITE: And just uh, just rocks and pavement just scattering across the road.

...

MR. MACDONALD: Where was the car at this point?

MIA WHITE: It kept driving.

MR. MACDONALD: Okay. When, when you said the bike was under the car, and you could hear that?

MIA WHITE: Yeah, I seen it with my own eyes.

MR. MACDONALD: Okay, and was there any noise coming from it?

MIA WHITE: Yeah, it was making a squealing noise, kind of like the road and metal scraping together.

MR. MACDONALD: Okay. Okay. How loud was that?

MIA WHITE: It was pretty loud.

MR. MACDONALD: Okay.

MIA WHITE: I still heard it after he kept going.

MR. MACDONALD: So you could hear it as...

MIA WHITE: Yeah.

MR. MACDONALD: Did the car ever stop?

MIA WHITE: No.

MR. MACDONALD: As you're hearing that noise, and you see the car go off, did you see Talia?

MIA WHITE: Um, I don't know if I did or not. But I did see um.. something in the air, from the corner of my eye, when I first turned around and looked.

MR. MACDONALD: But you're not sure what it was that you saw?

MIA WHITE: No.

[42] Mia testified that as the car was driving away, she hopped off her bike and started looking in every direction, screaming for help. A lady in a nearby home heard Mia screaming and opened her door, so Mia ran toward her house and told her what had happened. Mia, the lady, and the lady's daughter went back out on the road. The lady found Talia's flip flop and told Mia to get back on her bike and go get her mother. Mia got back on her bike and pedalled home. As soon as she got home, Mia dropped her bike, ran into the house and screamed to her mother that Talia got hurt and they needed to go down the road and help her. She said there were already people coming out of their houses to help look for her.

[43] Mia and her mother got into their Dodge Journey SUV and drove back to the scene. When they got out of the SUV, Mia's mother began talking to the lady who had come out of her house to help Mia look for Talia. Everyone was looking around in the ditch, yelling Talia's name. When asked what the light was like, Mia said it was "about sunset, like the sky was orange, going dark."

[44] Mia said she was present when Talia was found. She remembered seeing Talia's lifeless body on the ground but she did not get much of a look because there were two people she did not really know shielding her face from it. Mia said that when they found Talia, her mother rolled Talia onto her back and starting performing CPR on her. There were no police officers on the scene yet. Mia knew that the lady who had come out of her house to help look for Talia had called the police, because Mia had been there when she made the call.

[45] Mia was there when the ambulance arrived to take Talia to the hospital. She saw it leave the scene. Mia and her mother immediately hopped back into their SUV and went straight to the hospital. Mia was at the hospital when she learned that Talia had died.

[46] At the end of her direct examination, Mia was asked why she had told Talia to stop, after she saw the vehicle coming down Black Rock Road in their direction. Mia said:

Because I honestly had this like gut feeling in me, it was kind of like a movie, because the car that I seen, it just, it looked so weird, and I just had this weird feeling in me that, like, we should probably stop, because this car is going back and forth on the road.

[47] On cross-examination, Mia said there was “no way” that it was 9 or 10 pm when she and Talia were out riding their bikes. She confirmed that the bikes had no lights on them, but she was pretty sure that there were reflectors on the wheels.

[48] Mia was asked about having previously described the vehicle that hit Talia as a “car”, and a “Honda Civic”. Mia said she “didn’t really know car brands or names” and that she “was just a little girl” who “didn’t play with cars or nothing.” She further testified that she now knows the difference between an SUV and a car.

[49] Mia was also referred to her statement to police that she thought the vehicle had a sunroof, and that there were two people in it – a man driving, and a woman in the passenger seat. Mia testified that the statement was accurate from what she could remember. It was then put to her that she had previously said that someone in the vehicle opened the door and tried to hit her with it as the vehicle passed her. Mia said she must have “rephrased that wrong because as a scared child, and after everything that happened to me that night, it kind of seemed like the person in the car was trying to hit me with their door, but I think that the door was just swinging open on its own.” When asked if a door did in fact open and come toward her, Mia said yes.

[50] Mia denied that there were any mechanical problems with the pink and red bike. She said she and Talia were not wearing helmets because they “didn’t really think about it”, and that none of the kids in the neighbourhood wore helmets because it was a pretty safe area.

[51] When asked how far she and Talia had gotten on their way back home after they crossed the street, Mia said they had started pedalling again but had not gotten far. They were still across from the mailboxes. She confirmed that she was still biking ahead of Talia, and that after she saw the vehicle coming toward them, neither of them got off of their bikes; they just sat on them. Mia said the bikes were not moving when the collision occurred, and Talia’s bike was a few inches behind hers. Mia agreed that after the collision, she saw sparks from the vehicle as it continued down Black Rock Road.

[52] Mia denied having seen anyone move Talia’s body closer to the road. She did not recall seeing firefighters at the scene, but she did remember police officers. She said the first police car she saw stopped right in front of the scene, on the road. Two officers got out and one of them started questioning her about what happened.

[53] Mia confirmed that Talia was wearing flip flops that night. She also confirmed that she saw debris after the accident, including a bike tire in the ditch beside the mailboxes and plastic pieces from a car scattered on the road and in the ditch. When asked how many people from the neighbourhood were out looking for Talia after the collision, Mia guessed five or seven people. Some had flashlights, and some were walking on the road and searching in the yards.

[54] On re-direct examination, Mia testified that she saw debris on both sides of the road. Finally, Mia was asked whether it was seconds or minutes from when she saw the vehicle coming down Black Rock Road to when she saw it going down the road with sparks after the collision, and she said, “Maybe minutes? I don’t know.”

Clayton Devoe

[55] Clayton Devoe is 65 years old. He has lived in a Cape Cod style house at 127 Black Rock Road since 1995. Mr. Devoe’s house is on the opposite side of the street from Mia White’s house. Driving down Black Rock Road from Old Route 5, Mr. Devoe’s house would be on the left side of the street.

[56] About three or four months before July 11, 2019, Mr. Devoe purchased a video camera which he set up in the middle dormer of his house, facing out onto the road. The Crown entered 20 video clips obtained by Mr. Devoe’s camera on the night of the collision as Exhibit 7. The individual clips vary in length from a few seconds to almost 18 minutes. The parties agreed that the timer displayed in the upper right corner of the video footage was behind by 53 minutes. Put differently, to determine the correct time of anything shown on the video, 53 minutes had to be added to the time displayed on the screen. Exhibit 8 is a chart which indicates the correct times for each of the clips. I will refer only to the correct, adjusted times going forward, and will discuss only those clips depicting relevant activity.

[57] All the video clips were played before Mr. Devoe was asked any questions. The first clip begins at 8:42:29 pm on July 11, 2019, and the 20th clip ends at 10:15 pm. Between the end of clip 3 (8:48:50 pm), and the start of clip 4 (9:38:52 pm), there is a significant difference in the darkness of the sky. As noted in the Agreed Statement of Facts, the 911 call reporting the collision was received at 9:43 pm.

[58] In the first clip, at 8:42:51, Mr. Tweedie’s Nissan Xterra passes in front of Mr. Devoe’s house, heading in a northerly direction, away from Old Route 5 and toward Black Rock Light Road. In the second clip, at 8:48:07 pm, two seconds before the

end of the clip, the Nissan Xterra begins a pass in the southerly direction, in the direction of Old Route 5. In the third clip, the Xterra completes its pass in the southerly direction.

[59] In the fourth clip, at 9:41:01 pm, Mia and Talia begin to ride their bikes past the Devoe property, in a northerly direction, on the dirt shoulder across the street. Mia is wearing a red long-sleeved shirt and dark pants. Talia's clothing is dark in colour. The white walls of the tires on Talia's bike stand out on the video, in stark contrast to the all black tires on Mia's bike. The late evening sky is a dark cerulean or twilight blue colour. In other words, the sun has clearly set but darkness has not yet fully descended.

[60] The girls complete their pass in the fifth clip. As they do, the headlights of a vehicle travelling in the opposite direction are visible through the trees on the left side the screen. The vehicle makes a left into a driveway just after the girls pass the driveway on their bikes. At the end of the sixth clip, at 9:42:33 pm, headlights illuminate the right edge of the screen.

[61] Three seconds into the seventh clip (9:42:37 pm), the Nissan Xterra completely crosses the screen, travelling in a northerly direction. The vehicle passes behind the trees at the left side of the screen, and, one second before it disappears from view entirely, the red brake lights appear to brighten.

[62] In the eighth clip, at 9:44:23 pm, what appear to be flashlight flashes are visible through the trees to the left of the mouth of the Devoe driveway. These flashes of light are visible intermittently through the rest of the clip. In the ninth clip, two cars pass in a northerly direction.

[63] In the 10th clip, at 9:49:23 pm, Mia enters the frame from the left, riding her bike back home. At around 9:51:15, there appear to be flashlight flashes to the left. At the end of the clip, a vehicle's headlights are visible through the trees, entering the frame from the left.

[64] At the start of the 11th clip (9:51:39 pm), the vehicle whose headlights appeared at the end of the last clip appears to have stopped, not far from the left edge of the screen. The headlights remain on, illuminating the street in front of it, and its signal light appears to be flashing. At 9:51:57, an SUV drives past the Devoe residence in a northerly direction, and pulls over on the side of the road just beyond

the Devoe driveway. The driver and a passenger exit the vehicle and begin walking in a northerly direction.

[65] In the 15th clip, at 9:54:32, a person enters the frame on the right and runs in a northerly direction. The clip ends when the person reaches the halfway point of the frame. The person completes their run across the screen in the 16th clip.

[66] In clip 18, a blue car enters slowly from the right side of the frame, travelling northbound, and stops on the side of the road across from the Devoe driveway, several car lengths behind the SUV. A woman and a man then walk up the Devoe driveway from the house, in the direction of the blue car. The woman approaches the driver's side window and speaks briefly to the driver of the car. The man and the woman then stand in the roadway, looking to their left at the events occurring to the north.

[67] In clip 20, the longest of the clips, two individuals enter the frame from the left. They walk up to the man and woman standing in front of the Devoe property and stop to talk to them. The driver of the blue car exits their vehicle and walks to the north, off screen. At 9:59:08 pm, a white cube van with flashing emergency lights enters from the right, travelling northbound. The driver of the blue car then runs back into view and gets back into their vehicle. At 9:59:35 pm, an ambulance drives across the screen, travelling northbound, followed by a dark-coloured pickup truck. Other vehicles arrive and park on the shoulder across the street, where the drivers exit and walk northbound. At 10:06:53 pm, the ambulance leaves the scene, heading southbound toward Old Route 5.

[68] After the video clips finished playing, Mr. Devoe was asked general questions about Black Rock Road and shown a series of photographs of the area. Mr. Devoe testified that Black Rock Road is paved from where it connects to Old Route 5 until it turns into a dirt road, which eventually comes to a dead end. Mr. Devoe testified that he lives at 127 Black Rock Road, that Noelle and Bob MacLean live right next door to him at 135 Black Rock Road, and that, in July 2019, David Wylde lived at 143 Black Rock Road next to the MacLeans. All three houses are in a row on the same side of the street.

[69] Mr. Devoe was then asked about the properties on the opposite side of the street. Just beyond Mr. Devoe's property, on the opposite side of the street, is a driveway leading to Jim McLean's residence. Mr. Devoe said a young man named Andrew lives there. Next to Jim McLean's house, and across from the Wylde

property, is a small building that belongs to Claude Douglas. Mr. Devoe testified that Claude Douglas used to store fishing traps and other things in the small building. There are two driveways, one on each side of the small building. The first driveway leads to Claude Douglas's residence, and the second leads to his son Chad's house. Next to Claude Douglas's storage building, at the bottom of Chad Douglas's driveway, is a set of community mailboxes and an area for vehicles to turn around.

[70] Mr. Devoe was asked about the events of July 11, 2019. He testified that he was in bed, falling asleep, when his common-law wife heard a bang. She got up and looked out the window, and could hear people hollering. She initially thought that it was just kids, but then she heard more screaming and hollering. Mr. Devoe and his wife got dressed and walked out to the top of their driveway to see what was going on. Mr. Devoe identified himself and his wife as the two people shown walking up their driveway in the video.

[71] Mr. Devoe testified that he stayed neared the top of his driveway and never approached the scene. The only people he spoke to were Lucy Miller and her daughter, and Andrew McLean from across the street. He said David Wylde's son, who he estimated would have been 12 or 13 years old at the time, also came up to his driveway while Mr. Devoe was outside. Mr. Devoe said the boy was very upset.

[72] Mr. Devoe estimated that the area of the collision was about 300 to 400 feet away from where he was standing at his driveway. He said there were people near where the girl was found, screaming and hollering, and there were flashlights.

[73] As to the condition of Black Rock Road in July 2019, Mr. Devoe testified that the road has not been paved in 38 years. He said the road was bad at the beginning near Old Route 5, and that sometimes there were potholes there, but that the stretch of road in front of his property was "perfect." He said the road got bad again not far from where the dirt road starts, with pieces of the road taken out.

[74] On cross-examination, defence counsel suggested to Mr. Devoe that his testimony about the condition of the road was different from what he said in his police statement and his evidence at the first trial. It was put to him that he described the road in his statement as "very, very bad." Mr. Devoe testified that he was referring to the areas of the road where there were pieces missing, at the start and the end of the road.

[75] Mr. Devoe was asked about the portion of his statement where he said, “People are swerving away from the potholes and stuff like that.” He testified that if he sees a pothole, he swerves, but that he could not speak for his neighbours. He agreed, however, that if he said in his statement that he had seen people swerving from potholes on Black Rock Road, it must have been true. He reiterated, however, that the stretch of road where he lives was in very good shape, with no potholes. He said there had been potholes in the past but that he would always call his MLA or other people he knew to get them filled in. He said he might have made two or three such calls since he moved to Black Rock Road in 1995.

[76] Mr. Devoe agreed that he complained in his statement about there being very little shoulder on the road, and that there was not enough room to pull a vehicle entirely off of the road.

[77] Mr. Devoe agreed that there were no streetlights across the road from him, but said there is a streetlight in front of his house. He said there are two streetlights in a row before his driveway, and one in front of David Wylde’s former property.

Constable Joseph Wallace

[78] Constable Wallace has been a regular member of the RCMP since November 2017. At that time, he was posted in the Baddeck detachment where he stayed until transferring to the Cole Harbour detachment in August 2021. He is currently posted on the emergency response team at the RCMP headquarters in Burnside.

[79] On July 11, 2019, Cst. Wallace was working the evening shift, from 4 pm to midnight. He was in the community of Wagmatcook, about 10 minutes south of Baddeck, on an unrelated police matter when he learned of the collision on Black Rock Road. Cst. Wallace estimated the distance between where he was and the scene of the accident as between 30 and 40 kilometres.

[80] Cst. Wallace testified that the 911 operational call centre dispatched the incident over both the police radio and the computer. The original dispatch indicated that a 911 call had come in that there had been a hit and run collision involving a child. The initial dispatch ticket said they could not find the child and that the vehicle had left the scene.

[81] When Cst. Wallace received the dispatch message at around 10:11 pm, he was outside of his police vehicle with about five other officers. Three of them responded

to the dispatch message immediately, in two separate police vehicles. Cst. Wallace responded as lead vehicle, while Cst. James Dollard and Cpl. James Jessome travelled together in the second vehicle. Both vehicles used their lights and sirens. Cst. Darren Sylvester responded to the dispatch as well, but was delayed by about 10 minutes. Cst. Wallace said his notes indicate that he arrived at the scene about 10 minutes later, at 10:21 pm. He estimated that it would normally take about 20-25 minutes to travel that distance at normal speed.

[82] On the way to the scene, Cst. Wallace and the other officers received an update that the vehicle involved was a white car or SUV, so he was trying to coordinate with policing partners in Cape Breton and Cape Breton Traffic Services to see if they could locate the vehicle. Another update came in that the vehicle would have front end damage.

[83] When Cst. Wallace got to the scene, volunteer firefighters had already arrived and were placing cones on the roadway. Cst. Wallace stopped his vehicle ahead of the scene and parked it on the right-hand side of the roadway on Black Rock Road. He saw bystanders gathered on both sides of the road. He estimated that there were about 10 people in total. He observed vehicle parts, paint chips, bicycle parts, reflectors, and a bicycle wheel strewn about on the roadway, making it obvious that there had been a significant collision.

[84] Cst. Wallace said they had already gotten an update that EHS was en route to the hospital with the victim, so the first priority was preserving evidence at the scene. He said the firefighters had already begun walking the roadway, and there were no vehicles in or out of the scene after Cst. Wallace arrived. Cst. Dollard and Cpl. Jessome arrived just after Cst. Wallace, while he was speaking to Mia White and her mother, Ellie Fraser. Cst. Wallace said Mia was in a “significant amount of distress.” Mia told Cst. Wallace that after her friend was struck by the vehicle and she could not find her, she ran to the closest neighbour’s house, which belonged to David Wylde. Mia and Ellie were very distressed and wanted to go to the hospital to see Talia. Cst. Wallace advised them to go back to their residence if they could, and that he would come back and talk to them later.

[85] Cst. Wallace then spoke to David Wylde, who said he had been in his house when Mia had come running up saying that her friend had been hit by a vehicle. Mr. Wylde went out looking for Talia and followed the trail of debris up the road between one and two kilometres where he located the bicycle. When he came back he located

the victim on his lawn. Cst. Wallace observed where Talia had been found on the lawn, and he later observed the bicycle, which was off to the left-hand side of the road (if one were travelling northbound toward the end of Black Rock Road). Cst. Wallace guessed that the bike was between 300 and 500 metres from where Black Rock Road turns from pavement to dirt, but added that “this was almost five years ago.”

[86] After speaking with Mr. Wylde, Cst. Wallace left the scene to join Cst. Dollard and Cpl. Jessome at an address on Black Rock Light Road. Cst. Dollard and Cpl. Jessome had requested another police vehicle because they believed that they may have located the vehicle involved in the collision. When Cst. Wallace arrived at the residence, the officers had already detained the two persons they believed to be involved, and observed the damaged vehicle that was parked at the residence. One of the individuals, Elizabeth (Beth) Hart, was outside of the police vehicle, speaking to Cst. Dollard and Cpl. Jessome. Mr. Tweedie had already been placed in the back of their police car.

[87] Upon arrival, Cst. Wallace took Beth Hart and placed her in the back of his vehicle. He said the officers were still trying to ascertain what had happened and felt the need to separate Ms. Hart and Mr. Tweedie so they could get their stories independently. Cst. Wallace said he walked over to the Nissan Xterra and looked at the front end damage. He also saw a piece of the bumper at the end of the driveway. He looked inside the Nissan Xterra with his flashlight and observed two beer bottles on the floor in the back seat. He could not recall whether they were empty or full, or the brand name.

[88] Cst. Wallace said all three officers were speaking to both Beth Hart and Colin Tweedie at various times, while the two were sitting in separate police vehicles. Ms. Hart was asking questions about what the charges would be if she had been the one driving the vehicle and not Mr. Tweedie. She wanted the officers to tell Mr. Tweedie that she was going to be charged. At one point, Mr. Tweedie indicated that he needed to go to the bathroom, so Cst. Wallace took him out of the police vehicle. Mr. Tweedie walked over to the wood line to urinate. While Mr. Tweedie was outside, Beth yelled at him to “make it right.” Cst. Wallace believed that Mr. Tweedie would have heard Ms. Hart.

[89] When Cst. Wallace took Mr. Tweedie out of the police vehicle to urinate, he noticed that Mr. Tweedie’s balance was off. He was unsteady on his feet, and Cst.

Wallace could smell “alcoholic beverage” coming from his breath. Cst. Wallace believed him to be intoxicated.

[90] Cst. Wallace added that at a certain point, Ms. Hart was removed from his police vehicle and Mr. Tweedie was placed inside. The next time Cst. Wallace entered the car, he could smell “the odour of alcoholic beverage” inside the police vehicle.” He said there had been no odour when Ms. Hart had been inside the vehicle.

[91] After Cst. Wallace put Mr. Tweedie in his police vehicle, Cpl. Jessome and Cst. Dollard spoke to Leah Luker on the phone. Ms. Luker had approached them earlier at the collision scene and advised that they should go to Mr. Tweedie’s residence. After the phone call ended, Cpl. Jessome and Cst. Dollard placed Mr. Tweedie under arrest. Cst. Wallace was outside his police vehicle when Mr. Tweedie was placed under arrest, one or two metres away. Mr. Tweedie was not removed from inside Cst. Wallace’s police vehicle during his arrest.

[92] After Mr. Tweedie’s initial arrest, Cst. Dollard performed a more formal arrest through the Charter card. Cst. Wallace heard Cst. Dollard inform Mr. Tweedie of his right to counsel before reading him the breath demand. Cst. Wallace and Cst. Dollard then transported Mr. Tweedie to the Baddeck detachment in Cst. Wallace’s vehicle. Cst. Wallace drove the car. After checking his notes, he said they left for Baddeck at 12:12 am. He testified that they drove past the scene to get to the detachment. He could not recall which lane they used, but said he believed that it was the same route he took from the collision scene, to avoid driving on the evidence. During the drive, Mr. Tweedie was concerned about where Beth Hart was, and whether she was also going to come to the detachment, because he “thought that she was going to take the blame.”

[93] Cst. Wallace, Cst. Dollard and Colin Tweedie arrived in Baddeck at 12:48 am. Cst. Wallace explained that common procedure upon arriving at the detachment is to book the person in, which involves removing all their personal items, belts, shoelaces, and other things, and filling out a report that lists the items that were in that person’s possession at the time. They recorded Mr. Tweedie’s personal items, which included an iPhone and the keys to a vehicle with the Nissan logo on them.

[94] Cst. Wallace said Mr. Tweedie continually declined to speak with a lawyer, saying that he did not need one. Mr. Tweedie was informed of his right to a lawyer numerous times.

[95] While Mr. Tweedie was being booked in, he said he had had three or four beers that evening, and that he had drunk the last one at 9:30 pm. According to Cst. Wallace's notes, Mr. Tweedie made this statement between 12:59 am and 1:07 am. Around the same time, he said his girlfriend, Beth Hart, had been the one driving. He also said he just wanted to take the breathalyser and go from there.

[96] Cst. Beattie, the breath technician, met Cst. Wallace and Cst. Dollard at the detachment. Cst. Wallace explained that before the breath test is administered, the subject of the breath demand must be observed for 15 minutes to ensure that they do not put anything in their mouth, eat or drink anything, or do anything else that will affect the accuracy of the test. The 15-minute observation period began at 1:07 am. During this time, Cst. Wallace noted that Mr. Tweedie's eyes were glassy and bloodshot, that he was speaking about his family business and his school plans, and that he said his girlfriend teaches elementary school.

[97] The first observation period ended at 1:22 am. The first breath sample Colin Tweedie provided at 1:28 am was "insufficient", and did not register with the machine. His second breath sample at 1:29 am was also "insufficient." At 1:30 am, he provided his first proper sample, which produced a reading of 70 milligrams of alcohol per 100 millilitres of blood. The second observation period began at 1:31 am. Mr. Tweedie provided his second sample at 1:51 am, which produced a reading of 60 milligrams of alcohol per 100 millilitres of blood. After the breathalyser test was finished, Beth Hart was brought to the detachment as well.

[98] On cross-examination, Cst. Wallace confirmed that it took him 10 minutes to get to Black Rock Road from Wagmatcook after he received the dispatch. He denied that he was driving at double the speed limit. He agreed that he was the first RCMP vehicle on the scene and that he had noted about 10 bystanders. He did not take any formal statements from any of those bystanders or from any volunteer fire department members. He did not take any photos of the debris at the scene.

[99] Cst. Wallace testified that the bicycle had only one tire on it when he saw it. He could not remember whether it was the front tire or the back one. He did not take a good look at the bicycle until they seized all the exhibits the following day. Cst. Wallace, Cpl. Corey Ford and Cpl. Shaun Coady were involved in seizing the exhibits, which they did between 9 am and 11 am the next morning. Cst. Wallace testified that his role was simply to retrieve the exhibits, and that Cpl. Ford had taken the photos.

[100] Cst. Wallace believed that when he drove to the Tweedie residence, he travelled on the correct side of the road. He said he drove on a route that allowed him to avoid driving on the evidence.

[101] Cst. Wallace confirmed that David Wylde told him that he had found the body, and showed him where it was found. Cst. Wallace did not put any markers or paint where Mr. Wylde said the body had been. He was not aware of any evidence that the body had been moved down toward the road by a firefighter. Cst. Wallace was not aware of any photos taken by anyone of where Talia's body came to rest after the collision.

[102] When asked if he noticed any indicia of impairment prior to Mr. Tweedie getting out of the police vehicle to urinate, Cst. Wallace said he had smelled "the odour of alcoholic beverage" coming from Mr. Tweedie's breath throughout their entire interaction.

[103] Cst. Wallace could not recall whether he or Cst. Dollard said anything during the drive to the Baddeck detachment about it being a little girl that was hit in the collision.

[104] Cst. Wallace agreed that Mr. Tweedie's eyes were glassy and bloodshot during the first observation period, and that Mr. Tweedie blew below the legal limit when he completed the breathalyser.

[105] On re-direct examination, Cst. Wallace testified that Cpl. Ford had been at the scene of the collision all night. Cst. Wallace ended his shift at 3 am, and when he went back to the scene the next morning, Cpl. Ford was still there. According to his notes, Cst. Wallace started collecting exhibits at 9:25 am on July 12, 2019, and each exhibit that they collected had been photographed by Cpl. Ford beforehand.

Ellen (Ellie) Fraser

[106] Ellie Fraser lives in Bras D'Or and has five children. Mia White is her youngest child. Ms. Fraser has been a licensed practical nurse since 2009. She is employed by the Nova Scotia Health Authority, but is currently on a leave of absence.

[107] Ms. Fraser testified that in July 2019, she was living in Black Rock, Victoria County, at 70 Black Rock Road. She had begun living there in 2010. Ms. Fraser said

her house was not far down Black Rock Road. After turning onto Black Rock Road from Old Route 5, her house is “like the third house in”, on the right side of the road. The property is a little over an acre. Although she still owns the house, she no longer lives in it.

[108] Ellie Fraser described the neighbourhood in 2019 as “quiet.” There were no stores or businesses in the vicinity. The houses along Black Rock Road were about an acre apart. Traffic-wise, Black Rock Road was the quietest road she had lived on.

[109] Ms. Fraser was very familiar with Black Rock Road, travelling it daily to check the mail. The road had no sidewalks, only gravel shoulders. The mailboxes were on the same side of the street as her house, several houses up the road. Her mailbox was in the first set of mailboxes, and there was another set farther down the road. Ms. Fraser had been down to the end of Black Rock Road before, and said it is a dead end. The only way to get out is to turn around and come back up Black Rock Road.

[110] Ms. Fraser’s children spent a lot of time playing in the neighbourhood while they were growing up. In terms of rules for where they could go if they left the yard, the mailboxes were usually the boundary. The children were not to go beyond that point if they were out on their bikes or dirt bikes, or out with the dogs. Ms. Fraser testified that Mia would sometimes get the mail for her, either by walking or riding her pedal bike.

[111] Ms. Fraser said Mia had two pedal bikes in July 2019. She had gotten a new bike for grading day, and she had one from the year before. The older bike was pink and white, and had pedal brakes because there were no gears. The bike had been purchased new from Walmart. The older bike was still functioning fine when Mia received her new bike in June. The new bike was bigger and had gears. Ms. Fraser described it as a mountain bike. The brakes were on the handlebars.

[112] Ms. Fraser recalled that Mia did not pay much interest to the new bike between grading day and July 11, 2019. Mia used it a couple of times, but not as much as her mother had hoped. She did not recall seeing Mia use the older bike during that time period, either.

[113] Ms. Fraser testified that July 11, 2019 was “a really nice summer day.” It was “bright and sunny”, with no rain during the day. Mia’s friend Talia Forrest had slept over the previous two nights. That morning, Ms. Fraser took Mia and Talia, along

with her sons Darius and Denver and their then-partners, to Ingonish so they could go swimming at the beach. They all travelled in Ms. Fraser's Dodge Journey SUV. They did not stay long at the beach because the water was really cold. They then went to Mary Ann Falls, but the water was cold there, too. They headed back home around supper time, stopping at a pizza place along the way to pick up some pizza for supper. Ms. Fraser said the plan was for Talia to stay overnight again.

[114] About an hour after they returned home, one of Ellie Fraser's daughters wanted to go to her boyfriend's house in Georges River and asked Ms. Fraser to drive her and her boyfriend back there. Talia and Mia came along for the ride. On the way back, Ms. Fraser stopped at the Ultramar so the girls could get smoothies. When they arrived back home again at 8:30 pm, the girls went to play in the yard. While they played, Ms. Fraser was in the kitchen getting ready to make soap. Ms. Fraser recalled the girls coming back into the house a few times to go to the bathroom, change their clothes, and so on. She also remembered that the girls wanted to let the goats out of the pen, which she gave them permission to do.

[115] The last time Ellie Fraser saw the girls together was around 9:20 pm. She remembered seeing the time on the clock on the stove, and the two girls standing on the doorstep. She was just feet away from them. Ms. Fraser said there was no mention of bicycles or going for a ride on the bikes.

[116] The next time Ellie Fraser saw Mia "felt like about 10 minutes later." Mia came running up the doorstep screaming, "Talia's dead!" Ms. Fraser said Mia was hysterical, screaming and crying. Mia told her that Talia had been hit by a car. Ms. Fraser grabbed her keys and they both hopped into the SUV and headed up the road. She asked Mia, "Where?", and Mia said, "They kept going, they're not there anymore."

[117] Ms. Fraser stopped her vehicle on the right side of the road, across from Clayton Devoe's driveway. She saw a neighbour across the street in front of Mr. Devoe's house. Ms. Fraser and Mia got out of the SUV, crossed the street and started walking northbound up the left side of the road. Ms. Fraser saw a female neighbour just past Mr. Devoe's driveway, around the tall grass, calling out for Talia. Then she noticed another neighbour on the opposite side of the road, also calling out Talia's name.

[118] When asked if she saw any debris while looking for Talia, Ms. Fraser said she saw some large pieces of plastic on Mr. Devoe's front lawn and other debris scattered

all over the road in front of his house and up farther. She saw a flip flop on the left-hand side of the road, in front of Mr. Devoe's driveway. She also saw debris on the road in front of David Wylde's house. Ms. Fraser testified that a neighbour had found a bicycle tire in the grass in the ditch, picked it up, and put it back down again. Ms. Fraser testified that she did not recall seeing much of any debris on the right-hand side of the road.

[119] With respect to the light at the time, Ms. Fraser testified that it was getting dark. She did not have her phone on her, but she could see. She was searching in the grass in the drain between Clayton Devoe's house and the next neighbour. She said she could see in the grass, but that it was starting to get dark.

[120] While Ms. Fraser was walking through the drain, Mia veered off across the road with a neighbour who took her by the hand and the two of them were looking together. Ms. Fraser stayed in the drain and kept going through it, calling Talia's name. She then heard a male voice up ahead of her that said, "We found her, she's over here." The voice came from David and Lisa Wylde's front lawn, two houses up from Mr. Devoe's house, on the same side of the road.

[121] When Ms. Fraser heard the voice, she came up out of the ditch onto the shoulder and started running. Ms. Fraser said the Wylde's had three shrubs on their front lawn, about 10 feet away from the ditch. Talia was between the shrubs and the ditch, lying on her side, facing the shrubs. Ms. Fraser said there was no one close to Talia, but there were people standing off at a distance. She checked Talia's pulse over her carotid artery, but she could not feel a pulse. Ms. Fraser then took Talia by the shoulders, laid her flat on her back, and started CPR. As an LPN, Ms. Fraser was trained in CPR. She performed chest compressions and rescue breaths on Talia. One of the neighbours was speaking to the 911 dispatcher on her cellphone, and they were trying to instruct Ms. Fraser on what to do while she was already doing it. Ms. Fraser told them that she was a nurse, and she just kept doing CPR.

[122] Ms. Fraser continued doing CPR until the ambulance arrived and the paramedics told her to stop. At that time, Ms. Fraser was asking people for a cellphone so that she could contact Talia's mother, Susan. She got a cellphone from someone but she did not know Susan's phone number. She tried to find her on Facebook Messenger but she could not find Susan's profile.

[123] Ms. Fraser was not present when the ambulance left the scene with Talia. She had gone home to call Susan and tell her what happened. Mia stayed with the

neighbours who were comforting and consoling her. When Ms. Fraser reached Talia's mother, she told her that Talia had been hit by a car and that she needed to go to the Cape Breton Regional Hospital. Ms. Fraser then went back to the scene to get Mia. They waited around to see if the police wanted a statement from them. The police said they would come by later, so Ms. Fraser and Mia went to the hospital.

[124] Mia's father, Paul White, and his wife were already at the hospital, out in front of the ER doors. Ms. Fraser did not know who contacted them. Mr. White put his arms around Mia and told her that Talia had died. Mia decided she wanted to go home with her father for the night, so Ms. Fraser went home without her.

[125] Ellie Fraser was shown a short portion of video clip 11 from Exhibit 7. In the clip, at 9:51:57, an SUV enters the frame from the right and pulls over on the side of the road just beyond the Devoe driveway. The driver and a passenger exit the vehicle and begin walking in a northerly direction. Although Ms. Fraser did not recall parking that far up, she identified the two people who got out of the vehicle as herself and Mia.

[126] On cross-examination, Ellie Fraser was asked about the debris she saw on Mr. Devoe's lawn. She said she thought that it was in the grass, and that it looked like large pieces of plastic. She estimated that the biggest piece was "maybe a foot long."

[127] Ms. Fraser testified that she did have a rule that Mia should wear a helmet when riding her bicycle. She said Mia had two bike helmets and she should have had one on that night.

[128] When asked about the voice that yelled, "We found her", Ms. Fraser testified that it was a male voice. She believed that it belonged to David Wylde, because he was standing at the end of his driveway when she got there.

[129] With respect to the bicycle wheel, Ms. Fraser said it was in the ditch right after Clayton Devoe's driveway, in the tall grass. She did not know who picked it up and put it back down. She just saw someone do so. She also testified that she only saw one flip flop, on the left-hand side of the road, around the middle of the lane. She did not see anyone move or touch the flip flop.

[130] Ellie Fraser testified that Mia told her the vehicle that hit Talia was "whitish silverish." Mia never told her that it was a Honda Civic.

[131] Ms. Fraser was asked whether it was fair to say that Black Rock Road is in “really bad condition.” She said the end of the road is, from the mailboxes onward, but that there was nothing wrong with the road from her house to the first set of mailboxes. She denied that there were potholes or cracks in the pavement between her house and the first set of mailboxes.

[132] When asked if she ever witnessed drivers gravitating toward the middle of the road because it was a better driving area, Ms. Fraser replied, “Only if they were speeding, maybe.” Ms. Fraser said she thought the speed limit was 60 km/h. She was not sure whether there was a speed limit sign in 2019, but said there was a sign that says “Children Playing”.

[133] On re-direct examination, Ms. Fraser testified that the Children Playing sign was there in 2019. It was there when she moved to Black Rock Road in 2010.

Noelle MacLean

[134] Noelle MacLean lives at 135 Black Rock Road with her husband and daughter. She has lived there since April 2007. Ms. MacLean’s house is between Clayton Devoe’s house and David and Lisa Wylde’s former residence. Driving down Black Rock Road from Old Route 5, Ms. MacLean’s house would be on the left side of the street.

[135] Ms. MacLean described the area around her home as a rural neighbourhood. She said she and her neighbours can see the road from their front doors. Ms. MacLean said there were a few children living in the area in July 2019, including her own daughter, who would have been eight years old at the time.

[136] According to Noelle MacLean, the traffic on Black Rock Road is “fairly steady”, both back in 2019 and now. The section she lives on is paved. When asked how she would describe the condition of the road in front of her place in 2019, Ms. MacLean said the road is always going back and forth between a state of needing repair and of being repaired. She could not recall which state it was in in July 2019. She said the road had never been fully paved since she’s been there; it is just patchwork. Ms. MacLean confirmed that there were streetlights on the poles in the area around her home in 2019.

[137] On the evening of July 11, 2019, Noelle MacLean was at home, lying in her bed, on her phone. Her bedroom was at the front of her house. Her daughter was

asleep. Suddenly, Ms. MacLean heard a very loud noise and went to investigate what it was. She left her bedroom and went to the living room area where her front door was, because she knew the noise had come from the front of her house. When she reached the living room, she heard more noise from outside. It was screaming.

[138] By this point, Ms. MacLean's daughter had woken up and joined her in the living room. Ms. MacLean opened the front door and saw a girl who she later learned was Mia White, standing in the centre of the road in front of her house. Mia was leaning over, covering her face and screaming frantically. Ms. MacLean hollered to Mia to come to her, so Mia came over to Ms. MacLean's front steps. Ms. MacLean initially thought that someone must have been chasing Mia or something, because there was nothing outside to indicate what the loud noise had been. When she asked Mia what had happened, Mia said her best friend had been hit by a car and Mia thought that she was dead. Ms. MacLean grabbed her phone and she and her daughter ran outside, without taking the time to put shoes on.

[139] Ms. MacLean asked Mia where her friend was, but Mia said she did not know. The three of them set out to go find the child. Ms. MacLean remembered thinking, "It can't be that bad", and figured that they were probably looking for a child with a broken arm or something. When they got outside, Faith Douglas, a neighbour who lived across the street from Ms. MacLean, was also outside. They talked to Ms. Douglas for a moment and told her what was happening, and they all started to look for the little girl. By this time, Ms. MacLean had realized that the girl was Mia White. She had known that Mia was from the neighbourhood but had not initially recognized her. She asked Mia for her name and for her friend's name, so they would know what name to holler. Ms. Douglas, Mia, Ms. MacLean and her daughter were all looking for Talia at this point, hollering her name.

[140] Noelle MacLean said it was dusk when Mia first came to her doorstep and they first began looking, but it was starting to get dark as they continued to look for Talia. They started out looking in the ditches, but Ms. Douglas had to go home because she had a three-year-old son who was asleep in the house by himself. Mia, Ms. MacLean and her daughter were going back and forth between the ditch on Ms. Douglas's side of the road (the "high side") and Ms. MacLean's side of the road. Ms. MacLean said the ditch on the high side of the road was clear, but the ditch on her side was overgrown with tall grass.

[141] When they returned to Ms. MacLean's side of the road, they started noticing things, like Talia's flip flop on the road, and a bicycle tire on top of the tall grass in front of David and Lisa Wylde's property. Ms. MacLean noticed some debris from a vehicle on the mowed portion of grass between her property and David Wylde's property. She could tell that it was from a vehicle, and said it was about the size of the courtroom Kleenex box. When asked if she and Mia were also on the road looking for Talia, Noelle MacLean they were not, because they could clearly see Talia was not on the road.

[142] Noelle MacLean said they were screaming Talia's name, and it was getting darker at this point. David and Lisa Wylde's son Jordan and his friend showed up. Ms. MacLean asked them to go home and get their parents and ask them to bring flashlights. Mia was frantic, so Ms. MacLean asked her to go get her mother, and for the two of them to come back with a flashlight. Ms. MacLean saw Mia run away on foot, while she kept looking for Talia.

[143] Ms. MacLean was still on the phone with 911 at this point, trying to give them directions and manage the situation as best as possible, while she was "completely not understanding why I can't find this child." People were starting to come, including David and Lisa Wylde. Ellie White, Mia's mother, came up the road, and she was frantic as well. Mia was with her. Around that time, the 911 dispatcher told Ms. MacLean to walk farther down the road in the direction the vehicle would have been travelling. When she walked a little farther toward the end of Black Rock Road, along the front of the Wylde property, she found Talia.

[144] Noelle MacLean said Talia was not far beyond the tall grass they had been focusing on. She said they had spent so much time looking in that tall grass, "just wasting time in the wrong spot." She had been sure that Talia had to be in the grass because the bike tire was there. Ms. MacLean estimated that Talia was 10 feet from the tall grass, "close to the bottom of the ditch, but more on the lawn", near some shrubs.

[145] Ms. MacLean hollered that she had found Talia, and told her daughter not to follow her. She went down over the little embankment and touched Talia's back to see if she could feel any breath, but there was none. Ms. MacLean noticed a June bug on Talia's bare foot. The moment stood out to her because she remembered thinking that if a little girl was fine, she would likely have been hollering and kicking

the bug off of her foot. Ms. MacLean knew in that moment that Talia was at least unconscious.

[146] After Ms. MacLean hollered that she had found Talia, Ellie Fraser came down and began to do CPR on Talia. Ms. MacLean stayed on the phone with 911 and the dispatcher was directing her to count out loud for the compressions and the breaths. She said Ellie was saying that she was a nurse and that she could handle it, but the dispatcher still wanted Ms. MacLean to count out the timing for the compressions and breaths. Ms. Fraser kept doing CPR until the ambulance and paramedics arrived and took over. When the paramedics showed up, Ellie Fraser just stepped aside. Ms. MacLean described Ms. Fraser as “just broken”, and added that “everybody there was just broken.”

[147] Ms. MacLean said the paramedics were there for around 10 minutes before they took Talia to the hospital. She was there and witnessed them put Talia in the ambulance and drive away. Ms. MacLean believed that police were on scene at that time because she spoke with them after seeing the paramedics take Talia away.

[148] Ms. MacLean stayed near Talia for the entire time from when she found her until the paramedics arrived, because the 911 dispatcher was making sure that she was giving Ellie instructions. She did not see anyone touch Talia other than Ellie and the paramedics.

[149] On cross-examination, Ms. MacLean said that when Mia first approached her, she first said it was a truck that had hit Talia, then possibly an SUV, and then she said it was a Honda Civic.

[150] With respect to the flip flop on the road, Ms. MacLean testified that she saw two black flip flops on the side of the road closest to her house. When asked if they were closer to the yellow line in the middle of the road or to the white line, Ms. MacLean responded that there were no lines on the road, but that they would have been closer to where a white line would be.

[151] Ms. MacLean agreed that she picked up one piece of a debris that looked like a piece of a bumper. She denied that she had cut her foot on any of the debris. She did not recall seeing any debris on the road other than the flip flops.

[152] Ms. MacLean was asked about where she started the process of criss-crossing the road checking the ditches. She said they started on Faith Douglas’s side of the

road, the high side, about 200 feet past Clayton Devoe's driveway. She believed she would only have crossed the road twice, because once she noticed the debris and the bicycle tire, she stayed on that side and focused on the tall grass. The process ended when she found Talia.

[153] Ms. MacLean was asked to list the people who were around while she was searching for Talia. They included Faith Douglas, Lisa and David Wylde, someone named Tanya, Ellie Fraser, and Jordan Wylde and his friend. Someone named Lucy Miller came after the first responders had been there.

[154] It was put to Ms. MacLean that she had indicated in her police statement that she stepped on a piece of plastic. Although she had no present recollection of it, she agreed that her memory would have been better at the time her statement was taken. She also could not remember previously stating that someone picked up Talia's flip flop, then put it back down close to where it was.

[155] Noelle MacLean said she did not see the ambulance turn around, but acknowledged that it must have at some point. She speculated that it likely pulled up to the mailboxes and turned around, because the people who were around Talia did not have to move out of the way. She saw the ambulance drive up towards Old Route 5, travelling on the correct side of the road. Finally, Ms. MacLean said she believed the speed limit on Black Rock Road was "50", and that there were no speed limit signs posted.

[156] On re-direct examination, Ms. MacLean said the two flip flops were not together on the road. They were at least a car's length apart.

Corporal Jennifer Klip

[157] Corporal Jennifer Klip was qualified, with the consent of defence counsel, as an expert in forensic identification specializing in the identification, collection, analysis, evaluation and comparison of fingerprint and physical evidence.

[158] Cpl. Klip began working for the RCMP in 2009. For the first six years, she worked as a forensic identification assistant in a civilian member capacity. From 2015 onward, she continued her forensic identification work as a regular member of the RCMP. Cpl. Klip works out of her office in Pork Hawkesbury, Nova Scotia. She worked out of the same location in July 2019.

[159] On July 12, 2019, Cpl. Klip was asked to attend at 78 Black Rock Light Road to perform an initial examination of a vehicle that had extensive front end damage from a possible hit and run. The examination involved obtaining numerous photographs of the vehicle and taking swabs and other samples from it before any perishable evidence could disappear during transport back to Cpl. Klip's office. Cpl. Klip took additional photographs and samples after the vehicle arrived at her office. The bicycle was also transported to her office where she photographed it and took samples from it.

[160] Approximately 204 photographs taken by Cpl. Klip were entered into evidence in two different formats – digital images on a green thumb drive (Exhibit 12), and physical images in book format (Exhibit 13). A few photos that were missing from the thumb drive were contained in the physical book.

[161] Crown counsel took Cpl. Klip through all of the photographs, starting with pictures of the vehicle. The Nissan Xterra's front end suffered considerable damage in the collision. The hood on the driver's side was particularly dented and crumpled, with large chunks of paint missing. The bumper grille was displaced and on an angle. The plastic bumper cover was separated from the main driver's side panel. On the front of the bumper cover, directly below the most severely dented and crumpled portion of the hood, there was a noticeable void in the mud and bug debris that covered the rest of the cover. Cpl. Klip testified that this meant that something had contacted the bumper to clean away the mud or debris that was there.

[162] Cpl. Klip noted that there was some light pink paint along the right edge of the black metal bumper. On the bumper cover, to the left of the driver's side headlight, was an area with a swipe mark and a reddish tinge. Cpl. Klip took a swab from the area for later DNA testing. Cpl. Klip took additional swabs from other areas of the bumper where there was a reddish coloured substance present. As indicated in the Agreed Statement of Facts, samples taken by the RCMP Identification Unit confirmed a match to the DNA of Talia Forrest.

[163] On the underside of the Nissan Xterra, Cpl. Klip observed and took samples from some areas of lighter and darker pink paint.

[164] Cpl. Klip took photographs of the interior of the Nissan Xterra, and seized several items. Both of the vehicle's airbags were deployed. Two crushed and empty beer cans were visible just behind the driver's seat. One was a Tatamagouche Brewing Company beer can, and the other was an empty Budweiser beer can. An

empty Alexander Keith's beer bottle was in the footwell of the driver's side backseat. Also behind the driver's seat was a blue canvas-like bag containing numerous empty beer cans. Although Cpl. Klip did not count the cans in the bag, at least six are visible in the photos. Another empty Alexander Keith's beer bottle was in the footwell of the rear passenger side seat. There is no evidence of any bottles, empty or full, of Budweiser beer inside the vehicle.

[165] In the glove compartment, which was open, was a glass containing a green plant substance that resembled dried marijuana. In the trunk of the vehicle was an NSLC brown paper bag with the words "Cannabis Need to Know" on it. The paper bag contained a receipt, a package of Canadian Lumber The Woods rolling papers, a container seal with the words "Lift and Peel" on it, and a metal card with several holes and the words "Grenco Science" on it. The metal card was slightly smaller than the package of rolling papers. The receipt, from the Sydney River NSLC, stated, "3.5 G COLOR CAN W H SHAR" with a price of \$36.48, and "CADN LUMBER WOODS 1.25" with a price of \$2.04.

[166] In addition to the Nissan Xterra, Cpl. Klip examined the bicycle involved in the collision. The bicycle, which was missing the front wheel, was heavily damaged. I will refer to the left and right sides of the bicycle from the perspective of the rider. The front fender of the bike was crumpled and twisted. Paint was missing from the right front fork. The top tube and the down tube were significantly bent. The right pedal and the right side of the bicycle seat were heavily worn down. The chain was off the chain ring and the rear fender was bent. A portion of the front wheel, which was no longer attached to the bike, was separating from the tire. A single spoke had separated from the rim. On one side of the wheel, half of the rim was scraped or scuffed up.

[167] Cpl. Klip was also provided with a large piece of plastic recovered from the collision scene. There were several areas of pink paint transfer visible on the plastic.

[168] On cross-examination, Cpl. Klip was shown Exhibit 17, a photo of the same model of bicycle retrieved from the internet by defence counsel. She agreed that the handlebars were positioned differently on the bike she examined. She further agreed that the yellow handle grips shown in the internet photo were not present on the bike recovered from the scene. She agreed that there were no reflectors on the bike she examined, but pointed out that there was a reflector casing present. Cpl. Klip agreed that the distance from the front of the Nissan Xterra to the hood was 42 inches. She

could not remember if the Xterra had a sunroof. Finally, Cpl. Klip confirmed that she did not find any blood on the underside of the Nissan Xterra.

[169] On re-direct examination, Cpl. Klip testified that she was not aware that reflectors were recovered from the scene. She also confirmed that when she examined the bicycle, she did not know where it had been located, other than that it had been removed from the roadway and put back on the roadway by a passerby. She did not have any information about the distance from the scene to where the bike was found.

David MacLean

[170] In July 2019, David MacLean was 16 years old and lived at 21 O'Connor Drive. Mr. MacLean testified that if one were to drive the entire length of Black Rock Road, coming from Old Route 5, O'Connor Drive would be at the very end of the dirt road. He said the dirt portion of the road is known as Tablehead Road.

[171] On July 11, 2019, at around 9 pm, Mr. MacLean left his home on O'Connor Drive to walk to 86 Black Rock Road to babysit his 10-year-old cousin for the night. He said it normally took him about 45 minutes to walk from his house to his cousin's house.

[172] Mr. MacLean walked on the right-hand side of the road. He had just passed the driveway of a man named Harold – Mr. MacLean could not remember his last name – when he came across a bicycle lying across the middle of the road. Mr. MacLean said the bike only had one wheel, but he could not remember which one. The front of the bike was pointed to the left. He picked up the bike and moved it off to the right side of the road, off of the pavement, so that no one would hit it.

[173] Mr. MacLean was shown Exhibit 19, which was a copy of a sketch that he drew before the first trial. The sketch depicted the road with the bike in the middle, across both lanes. He was also shown Exhibit 16, which was a bicycle. He confirmed that Exhibit 16 was the same bicycle that he found in the road.

[174] After moving the bike aside, Mr. MacLean kept walking and heard sirens. The fire department got to him before the police. They asked him where he was going. He told them where he was going and they asked him to wait there. He said he was "about five minutes" away from the bike at that point. He let the fire department know that he had just moved a bike off the road. The police then arrived and asked

Mr. MacLean to take them to the bike. He brought them back to the bike. He carried the bike from the shoulder over to the pavement and the police put it in their vehicle. After that, Mr. MacLean's father came and picked him up.

[175] On cross-examination, Mr. MacLean was asked if the chain was on the bike when he found it. He said the chain was off. He could not remember if the front wheel was on the bike. He did not see any reflectors on the bike when he found it. Mr. MacLean said he was at a streetlight when he first saw the bike. He estimated that the bike was about 20 feet away from the streetlight. He said it was around 9:45 pm and dark out when he found the bike. Mr. MacLean testified that when the police officers asked him to grab the bike, he picked it up from the shoulder of the road where he had put it earlier and carried it about 10 steps to the officers. He did not recall anyone taking pictures of the bike or putting any markers on the road where the bike had been.

Dr. Erik Mont

[176] Dr. Erik Mont is a forensic pathologist and Deputy Chief Medical Examiner at the Nova Scotia Medical Examiner Service. Dr. Mont has worked full time as a forensic pathologist and medical examiner since 2003. Dr. Mont was qualified without objection by the defence as a forensic pathologist qualified to opine on the effects of injuries, disease and toxins on the human body, as well as on the cause and manner of death.

[177] Dr. Mont performed the autopsy of Talia Forrest on July 12, 2019 at 10 am, and prepared a Report of Postmortem Examination ("Autopsy Report") which was entered as Exhibit 21. He identified Talia's cause of death as "Blunt Head Trauma." His findings are summarized as follows on the first page of his report:

AUTOPSY FINDINGS:

1. Blunt force injuries of head:
 - A. Facial abrasions and lacerations
 - B. Focal scalp hemorrhage
 - C. Fractures of mandible and skull
 - D. Cerebral and cerebellar lacerations
 - E. Transection of brainstem

2. Blunt force injuries of torso:
 - A. Abrasions of abdomen and back
 - B. Contusion on chest

- C. Fracture of right first rib
 - D. Pelvic fractures
3. Blunt force injuries of extremities:
- A. Abrasions and contusions on upper and lower extremities
 - B. Deformed fractures of left upper extremity, including open fracture of wrist
 - C. Lower extremity fractures (seen on x-ray)

[178] Dr. Mont testified that the most severe injuries were injuries of the head, including fractures of facial bones, lacerations, abrasions and contusions (bruises), multiple skull fractures, and injuries of the brain, including transection of the brain stem in the medulla oblongata. Dr. Mont said transection of the brain stem is an injury that is incompatible with life. In other words, it is a non-survivable injury that results in instant death.

[179] At page 3 of the Autopsy Report, Dr. Mont wrote:

The mandible has deformed fractures, and the gingiva is torn and hemorrhagic. The upper lip has a deep irregular abrasion and several small lacerations. ... The skull has comminuted fractures in the occipital bone that are continuous fractures through the posterior cranial fossa lateral to the foramen magnum, through the petrous portions of the temporal bones and crossing the midline in the middle cranial fossa, creating a ring fracture. The brainstem is transected in the medulla oblongata. The cerebellum is partially morcellated, and there are multiple lacerations of the inferior aspects of the temporal lobes of the brain.

Dr. Mont explained that Talia's mandible (jaw bone) was fractured and displaced, and that her skull was fractured in multiple places, including the occipital bone (back of the head) and the base of the skull. There were fractures that were contiguous or connected between the base of the skull and the back of the skull, creating what is termed a "ring fracture", which surrounds the foramen magnum – the base of the skull through which the brain stem connects with the spinal cord. Dr. Mont said "morcellated" means "broken apart and essentially crushed in multiple areas and into multiple pieces."

[180] Dr. Mont was asked whether any of the blunt force injuries to the torso or the extremities caused Talia's death, or whether her death was caused solely by the transection of the brain stem. Dr. Mont testified that in this context, with an injury that is instantaneously incompatible with life, the other injuries did not directly, physiologically contribute to the cause of death.

[181] Crown counsel showed Dr. Mont photograph 70 from Appendix “A” to Cpl. Corey Ford’s Collision Reconstruction Investigation Report (entered as both Exhibit 4 and Exhibit 25) and asked what it depicted. He testified that it was a photograph from the scene showing part of a jaw bone with two teeth attached, on the ground in the grass. He said the image was consistent with the mandibular fractures he observed during the autopsy.

[182] When asked what he considered to be the manner of Talia’s death, Dr. Mont explained that in most jurisdictions, there are five possible manners of death – homicide, natural, accident, suicide, and, in a small number of cases, undetermined. Dr. Mont testified that in this case, he certified the manner of death as “accident.”

[183] Dr. Mont confirmed that there were no drugs or toxins detected in Talia’s postmortem blood.

[184] On cross-examination, Dr. Mont said he could not remember when he first saw photograph 70 of Appendix “A”, but he had not seen it at the time he performed the autopsy. He agreed that he did not specifically note in the Autopsy Report that teeth were missing. He just said there were multiple fractures. He agreed that he could not say with 100% certainty that the portion of jaw bone depicted in photograph 70 came from Talia Forrest, since it was not matched to the injuries to the body and he was not aware of any genetic testing done on it.

Leah Luker

[185] Leah Luker has lived at 1649 Old Route 5 in Big Bras D’Or since 2011. In July 2019, she lived there with her daughter and her then-boyfriend David Edwards. Mr. Edwards was a volunteer firefighter at the time.

[186] Ms. Luker testified that on the evening of July 11, 2019, she and her daughter had walked about half a kilometre down the road from their home, to take pictures of foxes that were living down by a ferry. When she returned home between 8:30 pm and 8:45 pm, Colin Tweedie’s vehicle was parked in her driveway, and Mr. Edwards and Mr. Tweedie were out in the barn playing darts and having a beer. Ms. Luker had met Mr. Tweedie about a year earlier, after he had started dating her best friend, Beth. Ms. Luker said hello to Mr. Edwards and Mr. Tweedie before heading into the house to boil potatoes for supper.

[187] Ms. Luker explained that her house was on one side of her driveway, and the barn was on the other. She had to walk around Mr. Tweedie's Nissan Xterra to get up her driveway, and walked directly in front of it at one point. Ms. Luker said there was "absolutely nothing" noteworthy about the vehicle, and the front end was "fine" at that time.

[188] While waiting for the water to boil, Ms. Luker went back out to the barn. She saw Mr. Tweedie drinking a bottle of Budweiser. Ms. Luker said Mr. Edwards was also having a drink, but she believed that it was likely a can of Budweiser, since that was what they typically kept in their fridge. Mr. Edwards preferred canned beer, so they did not normally buy bottles. Ms. Luker showed Mr. Tweedie one of the photos of the foxes from her camera. After spending about 10 minutes in the barn with the two men, she went back into the house and continued making supper. Ms. Luker said she did not notice anything out of the ordinary about Mr. Tweedie, other than that he was there without Beth. He had never been to her place without Beth before, so that was unusual.

[189] Leah Luker said Mr. Tweedie stayed for about 40 to 45 minutes. She did not see him leave the driveway, but Mr. Edwards came in right after and said, "Colin's gone." Mr. Edwards had started barbecuing pork chops to go with the potatoes. Within about 10 minutes of Mr. Edwards telling her that Mr. Tweedie had left, Ms. Luker heard sirens go by. She told Mr. Edwards to go and check to see if there was any information on his phone. There was a page reporting a 10-year-old pedestrian vs. vehicle on Black Rock Road. Ms. Luker and Mr. Edwards immediately got into Mr. Edwards' pickup truck and drove to Black Rock Road.

[190] When they arrived, they drove less than half of a kilometre up Black Rock Road. She saw a lot of visible panic happening in the road. Ms. Luker stayed in the truck and tried to contact Colin Tweedie's phone to find out if he had made it home or not. Ms. Luker said Beth did not have a cellphone that could receive phone calls at the time, so Beth and Colin shared his cellphone. When Ms. Luker called Mr. Tweedie's phone, Beth answered. Ms. Luker told Beth that there had been an accident on Black Rock Road and that a child had been hit. The call ended with Ms. Luker telling Beth that she was glad Colin had made it home and that he was not involved in the collision.

[191] Right after the call ended, Mr. Edwards came back to the pickup truck and told her that the collision had been a hit and run. Prior to that moment, Ms. Luker

had assumed that the driver involved was still on scene. She immediately called Beth back, told her that it had been a hit and run, and asked her if Colin had done it. Ms. Luker told Beth she had seen debris all over the road, and that it would be very easy to identify the vehicle involved if it was at their residence.

[192] After the phone call ended, David Edwards needed to return to the house to get his reflective vest because he was going to remain on scene. Ms. Luker went with him. She then returned with Mr. Edwards to the scene because she wanted to find a police officer to tell them who she thought may have been driving the vehicle involved. Ms. Luker testified that when they reached Black Rock Road again, they parked at least six driveways away from where the pylons were set up to block people from entering the scene. She said there were quite a few vehicles parked along the road from the volunteer firefighters that were down at the scene, and they were parked at the back end of those vehicles.

[193] While Leah Luker was waiting back at the scene, standing outside in front of the pickup truck, she received a phone call from Beth. The call ended with her telling Beth that she was going to tell the police everything that she knew and that officers should be there soon.

[194] About two minutes later, two police cars pulled up. The first one went by Ms. Luker pretty quickly, but she was able to flag down the second one. Ms. Luker told the officer in the passenger seat that she believed Colin Tweedie was the one who hit the little girl and continued on home. She gave them directions to his residence and told them that they should go to the property and find out if his vehicle was the one involved in the collision.

[195] After speaking with police, Ms. Luker went home. She then sent Beth a Facebook message apologizing that their friendship would be ending because she intended to tell the police everything she knew. That was the last communication she had with Beth. Ms. Luker said two police officers showed up at her house at 6 am the next morning to take her statement.

[196] On cross-examination, Leah Luker agreed that during the time she was in the barn with Mr. Tweedie, he seemed “normal.” She did not smell the odour of marijuana coming off of him. She said she was in the barn for about 10 minutes and that Mr. Tweedie did not drink the whole bottle of beer during that time. She saw Mr. Tweedie throw a dart that hit the dart board before falling to the floor.

[197] Ms. Luker agreed that if she had thought that Mr. Tweedie was intoxicated, or “three sheets to the wind”, she would have told him that she did not want him to drive that night. She agreed that she had no concerns about him driving during the 10 minutes she spent in the barn with him, but added that she also was not there when he got into his vehicle and pulled out of the driveway.

[198] Ms. Luker confirmed that she made three phone calls from her cellphone to Colin’s phone while she was on Black Rock Road. The fourth call between her and Beth was when Beth called her back from Colin’s phone. Ms. Luker made the first call when she and Mr. Edwards were just turning onto Black Rock Road. The call went unanswered. She called again while she was sitting in the truck, right after they pulled up. Ms. Luker was alone during the second call, as Mr. Edwards was down at the scene with the firefighters. She made the third call while she and Mr. Edwards were both in the vehicle. When Beth called her back, Ms. Luker was alone, standing outside the truck.

[199] When asked how many people she saw at the scene when she and Mr. Edwards arrived, Leah Luker estimated that there were about half a dozen people, but added that she was not counting.

[200] Defence counsel asked Ms. Luker if she recalled testifying at the first trial that she had crisscrossed the road a couple of times. She agreed that she had, and said she had done so because she was anxious and needed to walk. Ms. Luker said she would have been walking in the area where they parked the pickup truck, far away from the scene. While she was pacing back and forth, she saw “a lot of people piled up” on the left-hand shoulder of the road by the collision site.

[201] Ms. Luker testified that David Edwards drove her back home and went back to the scene because she does not have her driver’s license. She stayed up for a bit waiting for him to get home.

Corporal Corey Ford

[202] Corporal Corey Ford was qualified without objection as an expert “in the field of general collision reconstruction and pedestrian collision reconstruction.”

[203] Cpl. Ford prepared a Collision Reconstruction Investigation Report (“Reconstruction Report” or the “Report”) which was entered as Exhibit 24, and a

Supplemental Report, entered as Exhibit 27. Appendix “A” to the Reconstruction Report was entered as both Exhibit 4 and Exhibit 25.

[204] Prior to Cpl. Ford taking the stand, the court was advised by the Crown that he wished to make an amendment to page 3 of the Report, where he wrote:

The collision occurred on Black Rock Road, Black Rock, Victoria County. The location was adjacent to civic address 135. The speed limit at this location was 80 km/h, as governed by section 106 of the Nova Scotia Motor Vehicle Act.

[205] Section 106 of the *Motor Vehicle Act*, R.S.N.S. 1989, c. 293, provides:

Maximum speed limit

106 (1) Notwithstanding any other provision of this Act, but subject to subsection (2) and Section 109, no person shall drive a motor vehicle at a speed in excess of eighty kilometres per hour on any highway at any time.

[206] There was no dispute that Black Rock Road is a “highway” pursuant to the MVA. When Cpl. Ford prepared his report, he believed that s. 106 applied to any highway where there are no speed limit signs posted. In the final few weeks before this trial, however, his attention was directed by Crown counsel to s. 102(2)(g) of the MVA, which states:

Prima facie speed limit

102 (1) Subject to Sections 101 and 104 and except where a lower rate of speed is specified in this Act or the regulations made thereunder it shall be *prima facie* lawful for the driver of a vehicle to drive the same at a rate of speed not exceeding the rate in subsection (2), and it shall be *prima facie* unlawful to exceed such rate of speed.

(2) The rate of speed referred to in subsection (1) is fifty kilometres per hour

...

(g) in a residence district as defined herein;

[207] The term “residence district” is defined at s. 2(bc):

(bc) “residence district” means the territory contiguous to a highway not comprising a business district when the frontage on the highway for a distance of 100 metres or more is mainly occupied by dwellings or by dwellings and business premises and includes any section of a highway so designated by the traffic authority by the erection of appropriate signs;

[208] After considering these provisions, Cpl. Ford wished to change page 3 of the Reconstruction Report to read:

The collision occurred on Black Rock Road, Black Rock, Victoria County. The location was adjacent to civic address 135. The speed limit at this location was ~~80 km/h~~ 50 km/h, as governed by section ~~106~~ 102(2)(g) of the Nova Scotia Motor Vehicle Act.

[209] Defence counsel objected to the amendment, arguing that it amounted to a fundamental change that might compromise his ability to conduct a proper cross-examination. A *voir dire* was held to determine the legitimacy of these concerns and whether an adjournment was required. It was agreed that the evidence on the *voir dire* would become part of the trial evidence.

[210] Upon taking the stand, Cpl. Ford testified briefly as to his qualifications, which are also set out in his CV (Exhibit 26). He has been with the RCMP since 2008. In 2010, Cpl. Ford completed Collision Investigation Level II, a five-day RCMP course. In 2013, he completed Advanced Collision Analysis Level III, a three-week RCMP course. In 2016, he completed Collision Reconstruction Level IV, another three-week RCMP course. As a collision analyst/reconstructionist, he has investigated 125 fatal collisions and 109 collisions involving injury.

[211] Cpl. Ford testified that he wished to change the Reconstruction Report to indicate that the speed limit in the area of the collision was 50 km/h, and not 80 km/h. He explained that when s. 102(2)(g) was brought to his attention, he took measurements in the section of Black Rock Road where the collision occurred. These measurements confirmed that the distance between civic addresses 127 and 135 is less than 100 metres, and the same is true for the distance between civic addresses 135 and 143. He concluded that because the distance is less than 100 metres between each of these adjacent dwellings, the definition of “residence district” was met, and the speed limit in the area of the collision was 50 km/h.

[212] Defence counsel asked whether Cpl. Ford had the actual measurements of the distance between civic addresses 127 and 135, and between civic addresses 135 and 143. Cpl. Ford responded that he did not. He further testified that he did not know whether the distance from 127 Black Rock Road to 143 Black Rock Road was more or less than 100 metres.

[213] Cpl. Ford testified that the amendment to the speed limit did not change any of the opinions outlined in his report, or the calculations he performed to reach them. He explained that his task in preparing the report was not to determine whether the driver was exceeding the speed limit. His determinations of the vehicle's speed at the time of the collision, the area of impact, and the cause of the collision were based on the physical evidence he collected from the scene, not the speed limit.

[214] After hearing this evidence, defence counsel agreed that an adjournment was not necessary, and the trial proceeded.

[215] Cpl. Ford arrived at the scene approximately four hours after the collision. He described the roadway at pages 3 and 4 of the Report:

Black Rock Road was a two lane highway that travelled primarily north and south in the immediate area of the collision with one lane in each direction. For northbound traffic the highway was straight, followed by a clockwise (CW) curve north of the scene. For southbound traffic the scene was within a straight section of highway after a counter clockwise curve (CCW).

The northbound and southbound sides of the highway were bordered by gravel shoulders and shallow vegetative covered ditches. The highway was also intersected by several residential driveways. The northbound and southbound lanes were separated by a faded double solid yellow line.

The northbound lane ranged from 3.16 m to 3.36 m wide and the gravel shoulder ranged from 1.16 m to 1.20 m wide. The southbound lane ranged from 3.11 m wide to 3.24 m wide and the shoulder ranged from 0.81 m to 1.05 m wide. The northbound lane grade ranged from -0.2% to -1.5% to the north and the southbound grade ranged from -0.2% to 1.4% to the south. The crown of the highway ranged from 0.7% to 4.3%. The highway was appropriately crowned.

There were cracks in the surface of the highway and pieces of the northbound lane adjacent to the gravel shoulder were deteriorated and absent. The northbound lane was in poor repair with an uneven surface for northbound traffic.

[216] Pages 4 to 7 of the Reconstruction Report consist of a chart summarizing all the "marks" Cpl. Ford observed at the collision scene. He used yellow evidence markers (YEM) to mark evidence from or related to the vehicle, and green evidence markers (GEM) to mark evidence from or related to the bicycle and cyclist. The vehicle evidence – Mark A (YEM 1) to Mark L (YEM 12) – consisted of paint chips and pieces of automotive plastic of various sizes. The evidence related to the bicycle and cyclist – Mark M (GEM 1 to 2) to Mark C1 (GEM 24 to 25) – consisted of marks on the roadway; bicycle reflectors; flip flops; the front bicycle wheel; the "final rest

position” of the cyclist; gouges in the vegetation and soil of the southbound shoulder; a hair elastic; silver chain jewelry; and biological materials, including a human bone fragment, and streaks that looked like blood. Appendix “A” to the report contained photographs of all the marked evidence.

[217] Cpl. Ford testified that virtually all of the marks originated in the southbound lane and spread somewhat continually northbound in the southbound lane or onto the southbound gravel shoulder.

[218] In addition to examining the scene, Cpl. Ford examined the Nissan Xterra (Vehicle One) and the bicycle. With respect to the front of the vehicle, Cpl. Ford wrote at page 8 of the Reconstruction Report:

The front bumper cover was displaced rearward at the top and left side. There was cleansing on the front centre and top centre of the bumper cover consistent with clothing material contact. There was a biological droplet consistent with blood located on the top left corner of the front bumper cover. The front grille was cracked with pieces absent, it was displaced downward on the left side, and upward on the right side against the right headlight assembly. The lower bumper cover was absent from the front of Vehicle One. There was cleansing on the lower bumper cover support bracket. The lower radiator support was heavily rusted however there was a fresh crack visible at the centre. The radiator was pushed rearward at the top and left side. The upper radiator support was pushed rearward at the top centre. The lower bumper cover was displaced and hanging loose. The hood was buckled, dented and pushed rearward. The paint on the hood was chipped and there were pieces absent.

[219] He went on to describe the undercarriage of the vehicle as follows:

There was cleansing on the left frame rail adjacent to the left front door. There was cleansing on the left front torsion bar/spring. There was cleansing and the surface of the left lower control arm was scraped. There was cleansing on the front differential housing. There was cleansing on the torsion spring mount and the rear transmission mount cross members. There was cleansing on the lower rear mounted spare tire.

(page 8)

[220] Cpl. Ford explained that “cleansing” refers to one object brushing up against another object, wiping it clean. It does not refer to indications that a person has wiped parts of the vehicle down in an effort to remove evidence.

[221] With respect to the seatbelts, Cpl. Ford noted that both front seatbelts were “retracted tight into the respective ‘B’ pillars” and “would not extend” (Reconstruction Report, page 8). He testified that the tight retraction and inability to extend the seatbelts was consistent with the seatbelts having been unworn at the time of the collision.

[222] Cpl. Ford explained that seatbelt pretensioners, similar to airbags, are part of the supplemental restraint system. Within milliseconds of a vehicle being involved in a collision significant enough to cause airbag deployment, the seatbelt pretensioner tightens the seatbelt in the first part of the deployment process. If the seatbelt is being worn at the time, the pretensioner tightens up any slack in the belt, forcing the occupant upright so that when the airbag deploys, it will have its best effect. If the seatbelt is not being worn at the time of the collision, however, the recoil process of the pretensioner tightens the seat belt, retracting it against the “B” pillar. Once this occurs, the seatbelt can no longer be extended and, if the vehicle is to be repaired, the pretensioner must be replaced. Cpl. Ford testified that the front seatbelts of the Nissan Xterra were “tight like a guitar string.”

[223] Cpl. Ford described the airbags at page 9 of the Report:

Vehicle One was equipped with airbags that deployed during this collision. Both left and right side frontal airbags were deployed. Both airbags were laying loose and were unremarkable for blood or visible debris.

[224] Cpl. Ford’s observations of the bicycle are set out at page 10:

The front wheel was absent from the bicycle. Both the cross tube and the down tube were buckled and bent. The front forks were buckled and bent. The right pedal, right side of the saddle and the right front fork showed visible marks of grinding and scraping damage. The scraping on the right side was consistent with the bicycle being dragged and scraped while lying on its right side.

[225] At page 10 of the Reconstruction Report, Cpl. Ford identified the following objectives of his investigation:

1. To determine the speed of Vehicle One.
2. To determine the seatbelt status of the occupant of Vehicle One.
3. To determine the area of impact.
4. To determine the cause of the collision.

[226] Cpl. Ford's conclusion regarding the speed of Vehicle One is set out at page 12:

Physical Evidence:

There were no pre-collision tire marks associated to Vehicle One located on scene. There was evidence sufficient to determine the area of impact and the final rest of the cyclist. The location of Mark A (paint chip) and Mark M (bicycle tire mark) were consistent with the onset of the scene area of impact. The remaining marks associated were located north of the area of impact consistent with the direction of travel of Vehicle One and trajectory of the cyclist. The distance from Mark M to the final rest of the cyclist was 52.78 m. The cyclist came to rest 1.61 m lower than the area of impact.

The height of the leading edge of Vehicle One was 0.77 m and the height of the bicycle seat was 0.68 m. As a result, if the cyclist was seated when struck the centre of mass was very close to the height of the leading edge of Vehicle One and a "Forward Projection" style collision would be expected. Vehicle One was examined and there was no evidence located to support another style of cyclist collision.

I utilized two accepted formula scenarios to calculate the speed of Vehicle One; "Fall and Slide Quadratic" and "Searles." The horizontal distance travelled by the cyclist from the area of impact to the final resting place was 52.78 m. When determining the drag factor for "Fall and Slide Quadratic" I utilized the average accepted value of 0.525 and for "Searles" I conducted two calculations using 0.66 and 0.79 (accepted values for asphalt and grass respectively) to supply a range.

The speed for "Fall and Slide Quadratic" was 76 km/h and the range for "Searles" was 78 km/h to 102 km/h. These values supplied an overall minimum speed range for Vehicle One from 76 km/h to 102 km/h.

[227] Cpl. Ford concluded that the seatbelts were not in use at the time of the collision because they were locked and retracted tight against the respective "B" pillars (Reconstruction Report, page 12).

[228] As to the area of impact, Cpl. Ford wrote:

To determine the area of impact between Vehicle One and the cyclist I examined the physical evidence located at the collision scene.

There were no pre-impact braking tire marks created by Vehicle One.

There were, however, numerous marks and pieces of evidence located which were consistent with the collision. Mark M was the first mark in the southbound lane and combined with Marks N, and O were consistent with the onset of the collision as

they were created by the bicycle wheel striking the surface of the highway. The paint chips and plastic vehicle debris originated at Mark A and spread in a northbound direction. The onset of Mark A and Mark M combined were consistent with the area of impact. Mark A and Mark M were located right of centre in the southbound lane.

The damages sustained to Vehicle One were concentrated to the front of Vehicle One. The damage sustained to the bicycle was consistent with a side on strike as there was no direct impact sustained to either of the wheels.

The location and proximity of the aforementioned marks and damage were consistent with the area of impact being right of centre in the southbound lane adjacent to civic address 135 Black Rock Road.

(pp. 12-13)

[229] On direct examination, Cpl. Ford clarified that when he uses the phrase “right of centre in the southbound lane”, he means right of centre *of* the southbound lane, not right of centre of the highway. He further means “right” from the perspective of someone travelling southbound in the southbound lane. In other words, he concluded that the area of impact was closer to the shoulder of the southbound lane than to the centre of the highway.

[230] Finally, as to the cause of the collision, Cpl. Ford wrote at pages 13 and 14 of the Reconstruction Report:

There were cracks in the surface of the highway and pieces of the northbound lane adjacent to the gravel shoulder were deteriorated and absent. The northbound lane was in poor repair with an uneven surface for northbound traffic. There were no permanent view obstructions observed in the area of the collision.

There were no sidewalks present in the area. The highway was dry and at the time of the collision it was dusk with minimal ambient street lights.

Vehicle One was travelling northbound and the area of impact was determined to be right of centre in the southbound lane of the highway.

There was insufficient pre-collision evidence to determine the pre-impact speed of Vehicle One. There was however, evidence suitable to utilize pedestrian/cyclist calculations in determining a speed range of Vehicle One from 76 km/h to 102 km/h.

Vehicle One was examined post collision and there were no defects located that could have caused or contributed to the collision. During my examination of Vehicle One I observed contact evidence on the front of the vehicle was [*sic*] consistent with the frontal impact. I also noted evidence on the undercarriage consistent with bicycle contact from the front to rear under Vehicle One. The

damage sustained to the bicycle was consistent with it being dragged a significant distance prior to be [sic] being deposited on the highway.

In the totality of the circumstances with the evidence present, it was apparent Vehicle One was travelling northbound on the southbound side of the highway when it encountered and struck the pedestrian. Vehicle One failed to stop and continued to travel northbound on Black Rock Road dragging the bicycle until it came free 1.15 km north of 143 Black Rock Road. It is therefore my opinion that the cause of this collision was the driver of Vehicle One failed to detect and avoid colliding with the cyclist. There was insufficient physical evidence to determine why the driver failed to detect the cyclist or why they failed to stop after the collision.

[Emphasis added]

[231] Crown counsel asked Cpl. Ford whether he would be concerned, for the purposes of his reconstruction analysis, to learn that a witness had picked up a piece of automotive plastic from the scene and put it back down. He responded that he might be concerned if there were only a couple of pieces of debris at a scene, but that he looks at the totality of all the evidence. He noted that larger pieces of debris, marks on the road, and biological debris on the grass or in the gravel are not going to move. So while he needs to take into account that small pieces of debris might be moved, his analysis is based on all the evidence.

[232] As noted earlier, Appendix “A” to the Reconstruction Report contained photographs of all the marks observed by Cpl. Ford. It also contained numerous photographs taken along Black Rock Road and Black Rock Light Road. Photo 77 is a photo of Black Rock Road northbound, south of the scene. On the right side of the photo is a large sign on a pole that says, “CAUTION DRIVE SLOW CHILDREN PLAYING”. If turning off Old Route 5 and travelling northbound down Black Rock Road, a vehicle would pass the sign before reaching the scene of the collision.

[233] Photo 9 is a photo of the bicycle in the area of Black Rock Road where it was found by David MacLean. Photo 12 is a photo of the intersection of Black Rock Road and Black Rock Light Road. Photos 13 to 18 are photos of Black Rock Light Road on the way to the Tweedie residence and back to Black Rock Road. Crown counsel asked Cpl. Ford what the first address on the right would be if one turned onto Black Rock Road from Black Rock Light Road and headed southbound toward Old Route 5. He said it would be 423 Black Rock Road, which is owned by Harold and Georgette Sampson.

[234] Exactly one year after the collision, on July 11, 2020, Cpl. Ford returned to the scene at 3 pm to obtain aerial photographs and drone video of the scene and the surrounding area, including the path taken by the Nissan Xterra. At 9:10 pm, he returned to the scene with the involved bicycle to take photographs of the bicycle in the area of impact from various distances in an effort to replicate the lighting conditions at the time of the collision. He explained the photo-taking process at page 3 of the Supplemental Report:

The involved bicycle was placed on the highway in the area of impact with the front wheel and three reflectors reattached. I placed yellow evidence markers (1-5) on the highway at 20 m intervals from the bicycle up to and including 100 m. I then utilized two test vehicles 2018 Chevrolet Tahoe and 2018 Ford Explorer. I placed the test vehicle with the front lined up with the respective cone and photographed the involved bicycle from the left side of the test vehicle and the right side of the test vehicle.

The camera utilized was a Nikon D-750 with the focal length fixed at 28mm and the flash turned off. The series of photos commenced at 21:26 hrs and concluded at 21:58 hrs. A third series of photographs was obtained without the use of a vehicle and available headlight illumination.

(See Appendix A for photographs, videos included on accompanying DVD)

The date and time were similar to the reported time of the collision for the nighttime photographs. It was nighttime with darkness conditions and some ambient lighting from nearby streetlights. The weather was cloudy and overcast.

[235] Cpl. Ford testified that he took one set of photos using the Chevrolet Tahoe and one set using the Ford Explorer because they had different styles of headlights. He believed the Chevrolet Tahoe was probably the most similar to the Nissan Xterra.

[236] After questioning Cpl. Ford about his reports, Crown counsel played video clip 7 from Exhibit 7 at one-third speed, and asked Cpl. Ford whether it was consistent with his report. In the first three seconds of clip 7, the Nissan Xterra travels from one side of the frame to the other, past Mr. Devoe's residence. Cpl. Ford testified that as the vehicle is just about to exit the left side of the screen, the brake lights come on. He said he could see the high mount brake light and the tail lights get brighter. Cpl. Ford testified that the vehicle would have been "very close" to the area of impact at that moment. He estimated that the vehicle was within five metres of the point of impact.

[237] Cross-examination began with defence counsel replaying clip 7 from Exhibit 7 and asking Cpl. Ford if he agreed that the Nissan Xterra appeared to be on the correct side of the road in the video. Cpl. Ford responded that it was difficult to tell because of the illumination of the shoulder. He could not be certain where the vehicle was on the road. When asked if he saw any evidence that it was on the wrong side of the road, Cpl. Ford said no.

[238] When asked if he could say for certain that the brake lights were applied before or after the vehicle struck Talia, Cpl. Ford said, "I can't tell you at what point those brake lights were illuminated."

[239] Cpl. Ford confirmed that he was never provided with a photo of the bike from before the collision; that no one checked the bike to see if it was working properly; that no one obtained the manufacturing specs from the internet to find out the size of the wheels, the number of reflectors it should have, or the size of the bike. Cpl. Ford agreed that when the bike was retrieved at the scene, there were no reflectors on it, and that reflectors were retrieved around the scene. He said no one checked the manufacturing specs to determine if the bike tire recovered at the scene belonged to that bike. He added, however, that it was consistent with belonging to that bicycle.

[240] Cpl. Ford was asked about Mark U (photo 63 in Appendix "A"), which is where he believed Talia came to rest after the collision. He confirmed that he had not seen her body there, nor was he provided with a picture of her in that location. He said he had no idea whether the red substance on the ground was tested for DNA, and agreed that he had not been informed that Talia's DNA was found at that location. Cpl. Ford said he based his conclusion that the body came to rest in that location on information provided to him by Cpl. Shaun Coady and the biological debris on the ground.

[241] Cpl. Ford agreed that he could not place where the bike was or what it was doing immediately prior to the point of collision. He said he assumed that it was moving at a low speed because it was a forward projection style collision, not a fender vault. If the bicycle had been moving at any great speed, there would have been evidence of it on the front of the vehicle.

[242] Defence counsel suggested to Cpl. Ford that it is important that a collision site not be contaminated. He agreed. He confirmed that he was aware that an ambulance drove down the north side of the road, turned around, picked up a body and drove

through the scene. He said, "I would expect that." He agreed that some of the debris on the road was very light, and would have been easy to move.

[243] When it was put to Cpl. Ford that as many as 10 people were "roaming around the site" looking for Talia, he testified that he was aware that people were looking for her, but he did not know how many. He did not take statements from any of those people or from the driver of the ambulance.

[244] As to the photos in his Supplemental Report, Cpl. Ford was asked why he did not take any photos from inside the Chevy Tahoe or the Ford Explorer. He said he was using a tripod to keep the camera steady and to avoid artificial light. He agreed that he could have taken a picture from inside each of the vehicles. Cpl. Ford agreed that the Chevy Tahoe and the Ford Explorer were only about a year or two old at the time he took the photos for the Supplemental Report, while the Nissan Xterra was about 15 years old.

[245] Cpl. Ford said the headlights in the Tahoe were similar to the Nissan, with both having incandescent bulbs. He did not measure the size of the headlights or compare the wattage of the bulbs. He agreed that the most fair comparison would have been to use another Nissan Xterra from the same year. Cpl. Ford testified that the high beams were not turned on for any of the pictures in the Supplemental Report.

[246] Cpl. Ford agreed that Black Rock Road was rough, and the northbound lane was in poor repair. He said the state of the road was not an important factor in his analysis. He comments on it in his reports, just as he comments on the width of the road, but unless there is a major issue with the road, it is not relevant.

[247] Defence counsel referred Cpl. Ford to Mark N (photos 48 to 50 of Appendix "A"), which was a mark on the road that Cpl. Ford identified as having come from the front bicycle wheel. He confirmed that no one took a sample from the mark to compare it to the rubber of the front bicycle tire.

[248] Cpl. Ford agreed that there were no skid marks found on scene, and that skid marks are often a good source of information for determining speed. When asked what the deployed airbags meant to him in terms of the type of collision, Cpl. Ford said it was evidence of a "fairly heavy impact", and that the damage on the front of the vehicle was consistent with deploying airbags. Cpl. Ford agreed that the seatbelt evidence meant nothing in terms of what caused the accident.

[249] Cpl. Ford agreed that he had no way to know if the Nissan Xterra was slowing down or speeding up shortly before the collision. He testified that he measured the distance from the road to the top of the vehicle hood, but no one did a measurement of how far from the road the top of Talia's head would have been when she was riding the bike.

[250] Defence counsel told Cpl. Ford that Ellie Fraser testified that she saw debris on the Devoe property. When asked if that had any meaning to him, he said it did not. He said it would not change his calculations if the court were to find that debris was found in front of the Devoe property.

[251] On re-direct examination, Cpl. Ford testified that the change in the forward velocity of a vehicle, or the rate of deceleration over time, is what triggers airbags to deploy.

[252] Cpl. Ford was asked what evidence he would expect to have seen if Talia's bicycle had been moving at a great speed. He said the collision style would likely have been a different one, such as a fender vault.

[253] With respect to the front bicycle wheel that Cpl. Ford reattached to the bicycle prior to taking the photographs for the Supplemental Report, Cpl. Ford said the front wheel was the same size as the back wheel and that both tires had the same white wall, along with a similar tread. As to the reflectors, Cpl. Ford testified that there was a black bracket on the handlebars of the bicycle, near the centre, and that the white reflector recovered at the scene fit in that black bracket.

Corporal James Dollard

[254] Corporal James Dollard has been with the RCMP for 18 years. He is currently posted in Fort McMurray, Alberta. In July 2019, he was posted in Antigonish, Nova Scotia.

[255] On the night of July 11, 2019, Cpl. Dollard and Cpl. Jessome were investigating a drug matter in Wagmatcook when the call came in for a hit and run collision. He said that a call of that nature would be a "priority one", all hands on deck, so they responded even though they were not posted in that area.

[256] Cpl. Dollard said they drove to the scene and Ms. Luker came to Cpl. Dollard's car door and told them they were looking for Colin Tweedie. They

proceeded to 78 Black Rock Light Road, following the directions provided by Ms. Luker. On their way there, Cpl. Dollard noticed two people walking up the side of Black Rock Road in the direction of the collision. He made a mental note and wondered if those individuals were who they were looking for.

[257] Upon arrival at the Tweedie residence, Cpl. Dollard noticed a bumper at the end of the driveway. When they reached the house and got out of the car, Cpl. Dollard smelled a “really strong, strong smell of gasoline.” He walked around the front of the Nissan Xterra and saw that it had a lot of damage. Mr. Tweedie’s father then came out of the house. Cpl. Dollard told him that they were looking for Colin. He said Colin was not home. Around this time, Colin Tweedie and his girlfriend, Beth Hart, walked down the driveway.

[258] Cpl. Dollard told Mr. Tweedie that he was investigating a hit and run involving a child and gave Mr. Tweedie his cautions and warnings. Mr. Tweedie told Cpl. Dollard that he had a hit a deer and could not afford a tow truck, so he walked back to his house. He said he and Beth went back to make sure the deer was not suffering. Cpl. Dollard testified that Mr. Tweedie was showing signs of impairment. His speech was slurred, there was a “very strong odour of alcoholic beverage on his breath”, and he “kind of swayed back and forth” while Cpl. Dollard was speaking to him. Cpl. Dollard said he was close to Mr. Tweedie while they were speaking.

[259] Cpl. Dollard said he gave Mr. Tweedie a caution, but he could not remember his exact words. He was speaking from memory, not reading from a card. After checking his notes, he said he explained why Mr. Tweedie was being detained, advised that he could call a lawyer at any time, and told him that he did not have to say anything but anything he did say could be used as evidence.

[260] Cpl. Dollard said Cpl. Jessome was speaking to Beth Hart while he spoke with Mr. Tweedie. Once Cst. Wallace showed up at the residence, Cpl. Dollard called Leah Luker for further information. After he hung up the phone, he arrested Mr. Tweedie for impaired driving causing death, and read him his rights from an RCMP-issued card. He also read him a breath demand from the card at 11:37 pm. Mr. Tweedie indicated that he understood the breath demand, and agreed to provide samples.

[261] Cpl. Dollard and Cst. Wallace then transported Mr. Tweedie to the Baddeck detachment. Cst. Wallace drove the police vehicle, while Cpl. Dollard sat in the

passenger seat and Mr. Tweedie sat in the back. Cpl. Dollard did not remember if there was any interaction with Mr. Tweedie during the drive. He said he would not typically have a conversation at that time.

[262] Cpl. Dollard testified that once they arrived at the detachment, Mr. Tweedie would have been brought into the cells area and given a chance to call a lawyer after he was booked in. Then the breath tests would have been administered. Cpl. Dollard was not involved in the breath tests themselves, but he was observing Mr. Tweedie during the observation period. During that time, Cpl. Dollard kept reminding him that he was free to call a lawyer at any time if he changed his mind, but Mr. Tweedie was adamant that he did not wish to call a lawyer.

[263] When asked if Mr. Tweedie made any comments about Beth Hart when they were leaving his residence to go to the detachment, Cpl. Dollard said Mr. Tweedie said several times that night that Beth was the one driving, not him.

[264] On cross-examination, defence counsel asked Cpl. Dollard when he left Wagmatcook to head to the scene. Cpl. Dollard checked his supplemental report, which said the call was dispatched at 10:11 pm, and that Leah Luker flagged him down at the scene at 10:22 pm. Defence counsel asked if Cpl. Dollard was telling the court that it took him only 11 minutes to travel from Wagmatcook to Black Rock Road. Cpl. Dollard said he could not remember, and that he was not driving. He said he did not take any independent notes of when he left Wagmatcook.

[265] Defence counsel introduced Exhibit 31, which was a Google map that estimated the time to drive from Wagmatcook to Black Rock Road as being 45 minutes. Cpl. Dollard said he could not agree or disagree with that, because he was not from that area. Asked if, on reflection, it seemed possible that the drive took only 11 minutes, Cpl. Dollard said, "I honestly don't know. We were going 100 miles an hour, literally."

[266] Defence counsel referred Cpl. Dollard to his notes and asked him to explain what was written. Cpl. Dollard made note that the "airbags went off", and that Mr. Tweedie had said a deer popped out of the ditch, that he "couldn't see", and had "no money for a tow truck", so he "limped it to the house." Mr. Tweedie also said they "were walking back to car when cops went by" and they "were walking back to check on the deer."

[267] Defence counsel directed Cpl. Dollard to a reference in the notes to bumper plastic having been seized from the driveway evidence. Cpl. Dollard said he seized the plastic and gave it to Cst. Wallace. He did not take a photo or mark down where the bumper plastic was found.

[268] Cpl. Dollard could not remember whether, during the transport of Mr. Tweedie to the Baddeck detachment, he or Cst. Wallace informed Mr. Tweedie that a little girl had been hit, not a deer. Cpl. Dollard could not remember. He also did not remember if they went up Black Rock Road on the correct side of the street on their way to Baddeck.

[269] On re-direct examination, Cpl. Dollard said he informed Mr. Tweedie that he had hit a person when he arrested him for it. Cpl. Dollard clarified that the statement “airbags went off” in his notes was something Mr. Tweedie said to him, not his own observation.

Corporal James Jessome

[270] The final witness was Corporal James Jessome. Cpl. Jessome has been an RCMP officer for 19 years. He currently works out of Antigonish, Nova Scotia, and was also posted there in July 2019.

[271] Cpl. Jessome testified that on the night of July 11, 2019, he was in the Baddeck area, in Whycogamagh, assisting another unit on an unrelated matter when the dispatch came in about a young girl being struck by a vehicle. He did not recall what time the call came in, but he believed they arrived at the scene at 9:45 pm. Cpl. Jessome took a marked police car from Whycogamagh to the scene. Cpl. Dollard came with him in the passenger seat, and they followed Cst. Wallace who was in a vehicle ahead of them. Cpl. Jessome followed Cst. Wallace because he was not familiar with the area and did not know where they were going. Both police vehicles were travelling with their lights and sirens on.

[272] Cpl. Jessome could not recall how long it took for them to arrive at the scene. He estimated that they would have been driving at least 150 to 160 km/h due to the seriousness of the call. When they arrived on the scene, there were lots of first responder vehicles already present. Cst. Wallace was ahead of them, so Cst. Jessome stopped the vehicle behind him. As soon as they stopped, a woman approached the passenger side of the vehicle and spoke to Cpl. Dollard. The woman provided information that Colin Tweedie had been driving the vehicle and gave directions to

Mr. Tweedie's address. Cpl. Jessome then told Cst. Wallace that they were going to go to the residence to see if they could find the vehicle and locate the driver.

[273] Cpl. Jessome said as they drove through the scene, they noticed some flip flops on the road. After driving in excess of a kilometre, they saw three first responders standing on the left side of the road with a "younger fellow" who was not wearing first responder gear. Cpl. Jessome noticed they had some cones on the shoulder of the road, so he stopped to speak with them. They told him the young man had found a bicycle in the middle of the road and had moved it off the road. Cpl. Jessome told the young man to leave the bike where it was and that other people would be coming to speak to him. Cpl. Jessome confirmed that photos 140 to 142 of Appendix "A" showed the bicycle and location where he spoke to the young man and first responders.

[274] Cpl. Jessome and Cpl. Dollard continued on their way to the Tweedie residence. Between where they saw the first responders and the intersection to Black Rock Light Road, Cpl. Jessome observed a male and a female walking on the side of Black Rock Road toward the first responders' location.

[275] When the officers arrived at 78 Black Rock Light Road, Cpl. Jessome went to turn into the driveway and noticed something on the ground at the end of the driveway, near the two pillars. It was large enough that it needed to be moved before driving into the driveway, so Cpl. Jessome got out of the vehicle. He said the object looked like the a foam insert from inside the bumper of a vehicle. Cpl. Jessome could not remember who moved the piece of bumper, or if they took it or put it aside.

[276] Cpl. Jessome pulled into the driveway and drove up to where cars were parked on the right-hand side. When he exited the police vehicle, he could smell gasoline and engine coolant odour in the area. Cpl. Dollard walked around the car and noticed the damage to the Nissan Xterra. Colin Tweedie's father then came out of the residence and they advised that they were there to speak to Colin. He said Colin was not there. Cpl. Jessome then heard people coming up the driveway. He turned and saw that it was the same male and female he had seen walking on Black Rock Road.

[277] The couple approached the officers and the female, Elizabeth Hart, started speaking to Cpl. Jessome. She told him that she had been driving the vehicle and that she had hit a deer. Cpl. Jessome told Ms. Hart that she was being detained for leaving the scene of an accident and provided her with a Charter and warning, reading from his RCMP-issued card. A photocopy of the "card", which is actually

four distinct pieces of paper or cards held together by a grommet, was entered as Exhibit 34. Cpl. Jessome said that he and Ms. Hart were in his police car when he detained her.

[278] Cpl. Jessome testified that Ms. Hart began asking him questions about how the court processes worked and what the charges would be against her if she was the driver as compared to what the charges would be against Colin Tweedie if he had been driving.

[279] Cpl. Jessome stated that at one point, Colin Tweedie was taken out of the other police car so that he could urinate. Mr. Tweedie was standing outside next to the police vehicle when Ms. Hart began yelling very loudly at him from the back of Cpl. Jessome's police car, telling him, "Colin, you better make this right!" Cpl. Jessome said Colin Tweedie was probably 15 feet from Ms. Hart at the time, and the volume of her voice was loud. Cpl. Jessome believed that Mr. Tweedie would have heard her, because her voice was quite loud and she was intending for him to hear her. Cpl. Jessome could not remember if any of the windows were down in his vehicle at the time, but the doors would have been closed.

[280] Cpl. Jessome then overheard Cpl. Dollard arrest Colin Tweedie. Cpl. Dollard and Cst. Wallace then left with Mr. Tweedie. Cpl. Jessome then decided to arrest Ms. Hart for public mischief for misleading police in their investigation and transported her to the Baddeck detachment. He did not know whether an information was ever sworn on the offence.

[281] On cross-examination, defence counsel referred Cpl. Jessome to his evidence at the first trial that he had seen a bicycle tire lying on the roadway. Cpl. Jessome could not remember giving that evidence, but stated that he would not have said it unless he remembered it at the time.

[282] Cpl. Jessome was asked about the location of debris he saw at the scene. Other than the flip flops, he could not recall which side of the road the debris was on. He recalled that as he was driving northwards through the scene on his way to the Tweedie residence that the flip flops were off to the left side of the road. He did not take pictures or make notes about any debris that he saw.

[283] On re-direct examination, Cpl. Jessome said he has no present recollection of seeing a bicycle tire lying on the roadway.

Colin Tweedie

[284] Although Colin Tweedie did not testify or call any other evidence, his version of events is in evidence through a videotaped statement he gave after he agreed to travel with RCMP officers back to the scene of the collision (Exhibit 35). A transcript of the statement was admitted as Exhibit 36. The following exchange took place shortly after starting the trip:

CPL. BERTHIAUME: About how fast were you travelling here?

COLIN TWEEDIE: Fifty.

CPL. BERTHIAUME: Fifty?

COLIN TWEEDIE: This road's really – really – really, really – really rough road right.

CPL. BERTHIAUME: Yeah.

[285] Just over 30 seconds later, he said:

COLIN TWEEDIE: (Inaudible) right around here.

CPL. BERTHIAUME: Right around here?

COLIN TWEEDIE: Yeah. Right where that (inaudible) house.

[286] When asked what happened after he felt that he had hit something, Mr. Tweedie stated:

I just kept driving 'cause I couldn't see. First, the airbags so I kept driving (inaudible) making it home cause I didn't want to be stranded on the side of the road.

[287] Mr. Tweedie denied that he heard anything after the impact:

CPL. BERTHIAUME: Do you remember seeing or anything else or hearing anything else or smelling anything or...?

COLIN TWEEDIE: No. Smell was the air bags and coolant maybe. I literally just continued on the same pace.

[Emphasis added]

[288] When asked if he stopped at all in between, he said “No.” Mr. Tweedie then directed the officers to “take a left”, which brought them onto Black Rock Light Road. When asked what happened when he got home, Mr. Tweedie stated:

COLIN TWEEDIE: I got home I parked the Jeep. Went inside and I said “I hit – I hit a deer.” I said “You gotta come outside, you – you gotta see what I did to your car.” And, we went out.

CPL. BERTHIAUME: Sorry –

COLIN TWEEDIE: This is my – this is my house here. That’s where I turned up.

[289] The officers passed Mr. Tweedie’s residence before turning the vehicle around and heading back up Black Rock Light Road. After turning right onto Black Rock Road, Cpl. Berthiaume said, “Colin, just on the way back I’ll get ya just – just get ya to stop us where you think you – you felt the collision.” Mr. Tweedie said, “OK.” Cpl. Berthiaume proceeded to ask Mr. Tweedie why he thought it was a deer that he had hit. Mr. Tweedie stated, “Because I didn’t see anything”. He continued:

COLIN TWEEDIE: And automatically I assumed the deer jumped out of – out of the ditch or you know? You ever see them leap over the roads? Then when they’re going back. I’ve seen them leap right over someone’s hood.

CPL. BERTHIAUME: Yup.

COLIN TWEEDIE: You don’t – you don’t know until it’s too late.

CPL. BERTHIAUME: Yup.

COLIN TWEEDIE: That’s why I thought it was a deer and my dad just hit a deer three months ago. Just thought you know – just thought that [sic] what happened right.

CPL. BERTHIAUME: Yeah.

COLIN TWEEDIE: I seen a deer here literally two days ago. This area is littered with deer.

CPL. BERTHIAUME: So, when did you realize Colin that it wasn’t a deer it was in fact the ah, the young girl?

COLIN TWEEDIE: When – when ah, I was in the back of the police car.

[290] Mr. Tweedie advised the officers when they reached the point where he believed the collision occurred. A set of mailboxes is visible through the car window next to Mr. Tweedie. The officer driving the vehicle pulls over on the side of the

road and stops. Mr. Tweedie was asked, “[w]hy didn’t you stop ... at that time to see what was going on?” He responded “Well the airbags went off ... And I thought to myself if I stop the car – it was smoking. I didn’t want to be broke down on the side of the road. I figured it’s a deer... I’m gonna keep going.”

[291] The driver then pulls the police vehicle back onto Black Rock Road and continues driving southbound toward Old Route 5. When asked if there was anything else that he thought was important for investigators to know, Mr. Tweedie said:

COLIN TWEEDIE: How dark it was.

CPL. BERTHIAUME: OK. So tell me about that.

COLIN TWEEDIE: It was really – really dark. And, you know, windshield was dirty (inaudible). I just remember not being able to see very much.

CPL. BERTHIAUME: OK. And um.

COLIN TWEEDIE: It was a really – really cloudy night. There was no stars out.

CPL. BERTHIAUME: OK. And just ah, two things from that. What time of night was it about? From your best recollection.

COLIN TWEEDIE: I’d say a little after 10 maybe, 10:30.

CPL. BERTHIAUME: Alright.

COLIN TWEEDIE: I’d say ah, like 10:30. Maybe even closer to 11.

[292] As the police vehicle continued southbound on Black Rock Road toward Old Route 5, Mr. Tweedie told Cpl. Berthiaume that the collision occurred in the northbound lane:

CPL. BERTHIAUME: OK. And what side of the road did this happen on? (inaudible) happen on.

COLIN TWEEDIE: On the – on that side of the road. On the other side.

CPL. BERTHIAUME: The other side?

COLIN TWEEDIE: I was heading down.

[293] Mr. Tweedie denied that he had been driving in the middle of the road:

COLIN TWEEDIE: The road’s really rough a lot of people drive in the middle of the road.

CPL. BERTHIAUME: OK. And was that the case for you?

COLIN TWEEDIE: I don't – I don't think it was, no but I mean a lot of the time the – the side of the road's falling apart.

Burden of Proof, Credibility and Reliability

[294] Colin Tweedie is presumed innocent until such time as the Crown proves his guilt beyond a reasonable doubt. The Crown bears the onus of proving all the elements of the offences charged beyond a reasonable doubt. The burden never shifts to Mr. Tweedie to establish his innocence. He does not need to prove anything.

[295] The presumption of innocence will be overcome only where credible and reliable evidence establishes all the essential elements of the offences beyond a reasonable doubt. A reasonable doubt is not an imaginary, far-fetched or frivolous doubt. It is not a doubt based upon sympathy for or prejudice against anyone. It is not a doubt based upon conjecture or speculation. It is a doubt that is based upon reason and common sense. It is a doubt that logically arises from the evidence or the absence of evidence.

[296] In assessing the ultimate issue of reasonable doubt, I must evaluate the credibility and reliability of each witness. A witness's credibility and their reliability are not the same thing. In *R. v. H.C.*, 2009 ONCA 56, Watt J.A. explained the difference between the two:

[41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately

- i. observe;
- ii. recall; and
- iii. recount

events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514, at 526 (C.A.).

[297] Witnesses are not presumed to tell the truth. "The evidence of each witness is to be assessed in the light of the totality of the evidence without any presumptions

except the general and over-riding presumption of innocence” (*R. v. Thain*, 2009 ONCA 223, para. 32).

[298] As the trier of fact, I am entitled to believe all, some or none of a witness’s testimony. I may accept parts of a witness’s testimony and reject other parts. In assessing credibility, I am “expected to apply common sense and human experience as a benchmark against which to weigh the plausibility of the evidence” (*R. v. Kruk*, 2024 SCC 7, at para. 155).

[299] The ultimate question in any criminal trial is whether, on the whole of the evidence, the trier of fact is left with a reasonable doubt about the guilt of the accused. A criminal trial is not a credibility contest, and a trial judge does not simply choose between competing versions of events.

[300] In *R. v. D.D.S.*, 2006 NSCA 34, the Nova Scotia Court of Appeal observed, at para. 77, that “one of the best tools to determine credibility and reliability is the painstaking, careful and repeated testing of the evidence to see how it stacks up. How does the witness's account stand in harmony with the other evidence pertaining to it, while applying the appropriate standard of proof in a civil or a criminal case?”

[301] Although Colin Tweedie did not testify, his explanation of what happened on the night of July 11, 2019, is before the court in the form of his videotaped statement. As a result, I must consider whether this case raises credibility issues that require reference to *W.(D.)*.

[302] Where an accused gives significant exculpatory evidence, the trier of fact is bound to consider the direction set out in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, as modified in *R. v. J.H.S.*, 2008 SCC 30. In *R. v. N.M.*, 2019 NSCA 4, the Nova Scotia Court of Appeal adopted the following articulation of the modified *W.(D.)* instruction at paragraph 23:

First, if you believe the evidence of the accused, obviously you must acquit.

Secondly, if you do not know whether to believe the accused or a competing witness, you must acquit.

Thirdly, if you do not believe the testimony of the accused but you are left in a reasonable doubt by it, you must acquit.

Fourthly, even if you are not left in doubt by the evidence of the accused, that is that his or her evidence is rejected, you must ask yourself whether, on the basis of

the evidence that you accept you are convinced beyond reasonable doubt by that evidence of the guilt of the accused.

[303] The Court of Appeal went on to note that, “The purpose of the *W.(D.)* framework is to ‘explain what reasonable doubt means in the context of evaluating conflicting testimonial accounts’ where the credibility of those accounts are at issue” (para. 25).

[304] The classic *W.(D.)* instruction cannot be applied mechanically to all criminal trials where there is evidence from an accused. In some cases, it may be possible to find an accused guilty even where the trier of fact accepts their evidence. The Alberta Court of Appeal expressed it this way in *R. v. McClenaghan*, 2010 ABCA 222, at paragraph 27:

If none of the accused’s evidence directly negates any of the essential elements of the crime (nor would found a freestanding defence), *W.(D.)*’s obligation to acquit would not apply.

[305] For offences with a modified objective fault requirement, such as dangerous driving, the accused’s testimony, even if believed, will not result in an acquittal if the degree of care exercised by the accused is found to be a marked departure from the standard of care a reasonable person would have observed in the accused’s circumstances (*R. v. Hecimovic*, 2014 BCCA 483; *R. v. Ibrahim*, 2019 ONCA 631). Evidence of the accused person’s perceptions of the situation must still be considered, however, as it may be capable of raising a reasonable doubt on whether the modified objective standard is met (*Ibrahim*, at paras. 47-49).

[306] The court in *Ibrahim*, at paragraph 63, recommended the following modified *W. (D.)* instruction in cases involving a charge of dangerous driving:

1. If you accept the accused’s evidence and, on the basis of it, you have a reasonable doubt about whether the Crown has satisfied any one of the offence elements required to prove dangerous driving, as I have explained those elements to you, you will find the accused not guilty.
2. Even if you do not accept the accused’s evidence, if, after considering it alone or in conjunction with the other evidence, you have a reasonable doubt whether the Crown has satisfied any one of the elements required to prove dangerous driving, as I have explained those elements to you, you will find the accused not guilty.

[307] A similar modification is useful in cases where the *mens rea* of the offence charged can be established through the doctrine of wilful blindness. Failure to stop

after an accident is one such offence. In the present case, for example, even if the court accepts that Mr. Tweedie did not see what he hit but believed that it was a deer, he could still be found guilty of the offence if his evidence supports a finding of wilful blindness.

[308] As to the charge of having a BAC equal to or exceeding 80 mg of alcohol in 100 ml of blood within two hours after ceasing to operate a vehicle and thereby causing the death of Talia Forrest, the Crown submitted that criminal liability does not require proof that Mr. Tweedie's BAC was a significant cause of the collision. If the Crown's proposed interpretation is correct, then Mr. Tweedie's evidence does not directly negate any of the essential elements of the offence and the classic *W.(D)*. direction does not apply. If the Crown's proposed interpretation is wrong, then Mr. Tweedie's evidence that he was driving in the correct lane of traffic and had no warning before the collision, if believed, does not directly negate the essential element of causation, but would be relevant to it. For this reason, the modified *W.(D)*. instruction proposed in *Ibrahim* is equally appropriate on this charge.

Credibility/reliability findings

[309] Revisiting the traumatic events of the night of July 11, 2019, was deeply upsetting for some of the witnesses in this case. Even with her father next to her for support, Mia White was visibly anxious and emotional throughout her testimony. Her limbs bounced and shook uncontrollably as she gave her evidence. Ellie Fraser sobbed as she described reaching Talia's body and performing CPR on her. As Clayton Devoe watched the video footage of the two girls riding by on their bicycles, he became overwhelmed with emotion and let out an anguished cry, referring to Talia as "that little angel" between sobs. Noelle MacLean needed to pause several times during her testimony to regain her composure as she recounted the search for Talia, finding her body, and watching the paramedics take her away in the ambulance. She said July 11, 2019, was the worst night of her life.

[310] Each of these witnesses impressed me as honest and forthright. Although it was clearly difficult, they each did their best to push through their grief to provide the most accurate evidence possible. They were apologetic when they became upset, which, while unnecessary, reflects the seriousness with which they viewed their obligation to the court. I had no concerns about their credibility.

[311] Defence counsel argued that Mr. Devoe was clearly sympathetic to Talia and her family, and that the court should disregard his evidence concerning the state of

the road in front of his residence. I disagree. Although defence counsel took particular issue with Mr. Devoe's statement that the road in front of his house was "perfect" in July 2019, it is clear from the rest of his evidence that he simply meant that there were no potholes or other hazards on that specific stretch of the road. Moreover, Mr. Devoe's evidence on this point is consistent with the evidence of other witnesses and the photographs taken on the night of the collision and the following day.

[312] I have no concerns about the credibility of David Edwards, Leah Luker, Dr. Erik Mont, Cpl. Jennifer Klip, Cpl. James Jessome and David MacLean, either. They all gave their evidence in a straightforward and candid manner.

[313] With respect to the evidence of Cst. Wallace and Cpl. Dollard, the defence made much of the fact that the officers testified that they received the dispatch at 10:11 pm while they were in Wagmatcook and they arrived at the scene at 10:22 pm, 11 minutes later. Nothing turns on this point and I do not find that it undermines their overall credibility. The Agreed Statement of Facts establishes that Cpl. Dollard, along with Cpl. Jessome, arrived at the Tweedie residence by 10:36 pm, and Leah Luker's evidence confirms that she had a conversation with Cpl. Dollard at the scene beforehand and gave him directions to Mr. Tweedie's house.

[314] The defence also pointed out that Cpl. Dollard struggled to recall what he said to Colin Tweedie when he initially detained him. Defence counsel suggested that Cpl. Dollard was so disinterested in the proceedings that he did not bother to review his notes before testifying or to obtain a copy of the card he read to Mr. Tweedie when he subsequently arrested him. It is unclear why Cpl. Dollard had so much difficulty articulating what he said to Colin Tweedie when he detained him. It might also be true that Cpl. Dollard could have done more to reacquaint himself with his notes prior to giving his testimony. That said, these observations do not mean that his evidence on key matters, most of which was based on contemporaneous notes, is not credible.

[315] Although I found all these witnesses to be credible, not all of their evidence was reliable. This is not surprising in the circumstances. Almost five years have passed since the collision occurred. Some witnesses had no present recollection of evidence they testified to only two years ago in the first trial. Noelle MacLean had no present recollection of having stepped on a piece of plastic, despite having given

that evidence at the first trial. Cpl. Jessome had no present recollection of having seen a bicycle tire lying on the roadway, as he testified previously.

[316] Other witnesses were confident in their recollection of details that turned out to be incorrect. For example, David Edwards testified that he knew that Colin Tweedie and Beth Hart arrived at the Luker residence at exactly 9:14 pm because he specifically recalled standing next to the driver's side of Mr. Tweedie's vehicle and asking him what time it was. It is apparent, however, based on all the evidence, that Mr. Tweedie would have arrived about 20 minutes earlier. Ellie Fraser's recollection of where she parked when she and Mia drove to the scene to look for Talia is another example. She was confident that she parked across from Clayton Devoe's driveway, stating, "I know where I stopped at." When shown the video clip of her parking past Mr. Devoe's driveway, however, she realized that her memory had been wrong. After acknowledging that the two individuals getting out of the vehicle must have been herself and Mia, she testified, "I don't remember parking that far up." These examples illustrate that even credible witnesses who are confident in their recollections can get the details wrong, so many years later.

[317] It is also relevant that the collision was a traumatic event for the witnesses who lived on Black Rock Road. The distressing nature of the experience may have affected their ability to accurately observe, recall and recount some of the details.

[318] In Mia White's case, the traumatic nature of the collision and her young age at the time give rise to significant reliability concerns. She was only 11 years old on the night that her best friend was killed. She was understandably hysterical as she stood in the middle of the road, screaming, unable to find her friend. Her testimony as to the lighting conditions and the timing of the collision was plainly inaccurate, as was her recollection that there was a man and a woman in the Nissan Xterra. Her previous statement about the driver attempting to hit her with the vehicle door was highly implausible. As a result of these issues with her evidence, I am uncomfortable relying on her uncorroborated testimony in critical areas.

[319] To be clear, my comments are not intended as a criticism of Mia White. She experienced an almost unimaginable horror, and has had to relive that experience on the stand on more than one occasion. It was obvious to me that Mia did her best to remember the details of that night and to recount them accurately to the court. Her parents should be very proud of her.

Credibility and reliability of Cpl. Ford's evidence

[320] The defence argued that Cpl. Ford's refusal to agree that the Nissan Xterra was driving on the correct side of the road in clip video footage was "a big credibility issue for him." Having watched the video clip numerous times, I cannot agree. While it is obvious from the video that the Nissan Xterra was not entirely in the southbound lane, against the shoulder, as it passed the Devoe residence, the perspective of the video and the lighting make it impossible to discern exactly where the vehicle was positioned on the roadway. It may have been entirely within the northbound lane or straddling the centre line. It is simply impossible to tell. Cpl. Ford conceded that the video clip did not establish that Mr. Tweedie was driving in the wrong lane, and that is the most that can be said for it.

[321] In terms of the reliability of the conclusions in Cpl. Ford's Reconstruction Report, the defence argued strenuously that numerous deficiencies make the report completely unreliable. The defence submitted that neither Cpl. Ford, nor the court, could be certain as to the location where Talia's body came to rest after the collision, which means that Cpl. Ford's calculations of the Nissan Xterra's speed are unreliable. The defence also argued that the scene had been contaminated by bystanders and emergency vehicles driving through it, making it impossible to reliably determine where the impact occurred. I will deal with both of these criticisms.

[322] First, I have no doubt whatsoever that Talia Forrest's body came to rest at the location depicted in photograph 63 of Appendix "A", which Cpl. Ford called Mark U, and that the body was never moved prior to the paramedics' arrival at the scene. This location was consistently described by the witnesses who saw her body.

[323] Noelle MacLean testified that she found Talia on David Wylde's lawn, "close to the bottom of the ditch, but more on the lawn", near some shrubs. Although there was some evidence suggesting that David Wylde found Talia on his lawn, I find that Ms. MacLean was the first to find and approach Talia's body, after following the 911 dispatcher's directions to walk farther up the road in the northbound direction. She further testified, and I accept, that she stayed near Talia from when she found her until the paramedics arrived, because the 911 dispatcher was directing her to give CPR instructions to Ellie Fraser.

[324] Ellie Fraser testified that the Wylde's had three shrubs on their lawn, about 10 feet from the ditch, and that Talia was between the shrubs and the ditch, lying on her side, facing the shrubs.

[325] Even David Edwards, who gave inadmissible hearsay evidence that a firefighter said he had moved Talia's body, testified that the original location "was just off the road, in somebody's front yard." He also testified that he knew where the body had been because "when we were walking by, you could see where the blood stains were." Photograph 63 is a photo taken of a roughly oval-shaped area of reddish-brown staining, consistent with the appearance of blood, on the grass of David Wylde's lawn at 143 Black Rock Road. Next to the staining there appears to be some sort of medical waste product, possibly left behind by paramedics.

[326] The other critical detail, for the purposes of Cpl. Ford's calculations, was the area of impact. The defence argued that the court cannot rely on Cpl. Ford's conclusion that the impact occurred right of centre of the southbound lane (closer to the shoulder than the centre of the road), adjacent to 135 Black Rock Road, because the scene was contaminated by bystanders and emergency vehicles. The defence submitted that pieces of debris relied on by Cpl. Ford in determining the area of impact may have been moved or disturbed prior to his arrival on scene, four hours after the collision. Again, I disagree that Cpl. Ford's conclusion is unreliable.

[327] Cpl. Ford's conclusion as to the area of impact was based primarily on three things – (1) marks left on the road surface (Marks M – O) which he concluded were made by the front bicycle wheel, (2) the onset of debris from the Nissan Xterra (Marks A – E), and (3) the continual spread of vehicle, bicycle, biological and other debris in a northbound direction, almost entirely within the southbound lane or onto the southbound shoulder. Marks M to O – marks on the road surface that could not be moved – appear consistent with the scuffing and scraping visible on half of the rim of the front bicycle tire (most clearly visible in photo 6816 of Exhibits 12 and 13), which broke free from the bicycle after impact. Marks A to E were paint chips consistent with the paint chipped and absent from the buckled and dented area of the front hood of the Nissan Xterra. Mark M, the southernmost of the marks on the road surface, was right next to Mark A, the southernmost paint chip debris. In my view, this is not a coincidence. Cpl. Ford's conclusion that the point of impact was in the area of Marks M and A is a logical one, and I accept it.

[328] Defence counsel emphasized that Ellie Fraser recalled seeing debris on Clayton Devoe's lawn, which would have been farther south than the point of impact identified by Cpl. Ford. It is true that Ms. Fraser testified that she saw large pieces of plastic on Mr. Devoe's front lawn, and other debris scattered all over the road in front of his house and up farther. Recall, however, that Ms. Fraser also believed that

she parked her vehicle directly across the street from Mr. Devoe's driveway. In reality, she parked farther north. Recall, also, that Mr. Devoe had a video camera pointed at the road in front of his house, which captured his driveway and lawn. Clip 7 of the video shows Mr. Tweedie's vehicle pass Mr. Devoe's property entirely before the collision occurs. Moreover, there was no evidence in the video footage of debris scattering across Mr. Devoe's lawn, or on the road in front of his house, following the impact. Ms. Fraser was obviously mistaken in her recollection.

[329] Finally, I am not convinced that any meaningful amount of debris was moved as a result of bystanders or emergency vehicles. I recognize that there was evidence that someone picked up the bicycle wheel and put it back down, that Noelle MacLean picked up one piece of debris that looked like part of a bumper, and that David MacLean moved the bicycle from the middle of the road to the shoulder. I agree with Cpl. Ford, however, that although this evidence might have been concerning had there only been a few pieces of debris at the scene, that was not the case here. In addition, larger pieces of debris, marks on the road, and biological material stains and streaks on the grass or in the gravel would not have moved. Cpl. Ford's analysis was based on the totality of the evidence, not on the placement of one or two paint chips or pieces of plastic.

[330] For all of these reasons, I find Cpl. Ford to be a credible witness who gave reliable evidence. I accept the conclusions set out at pages 12 to 14 of the Reconstruction Report.

Credibility and reliability of Colin Tweedie's statement

[331] Turning now to Colin Tweedie's explanation of the collision, how does his account "stack up" against all the other evidence before the court? The short answer is – it doesn't.

[332] Almost everything Colin Tweedie told police during the re-enactment video was a fabrication. Mr. Tweedie said he was driving northbound down Black Rock Road at "a little after 10, maybe 10:30", which he then changed to "like 10:30; maybe even closer to 11." It was "really – really dark", a "really – really cloudy night", and "[t]here was no stars out." His windshield was dirty and he remembered "not being able to see very much." He said he was driving "50" (at least at the start of Black Rock Road), telling officers that it was a "really – really – really, really – really rough road." He was driving in the northbound lane when he hit something. The airbags went off.

[333] Mr. Tweedie said he “automatically assumed” that a deer had jumped out of the ditch, because he “didn’t see anything”. He said the area is “littered with deer”. Mr. Tweedie denied hearing anything after the collision. He did not stop, because he did not want to be broken down on the side of the road. According to Mr. Tweedie, after the airbags went off, he “just kept driving ‘cause I couldn’t see.” He “literally just continued on the same pace.” When asked at what point he realized that it was a young girl and not a deer, Mr. Tweedie said, “When – when ah, I was in the back of the police car.”

[334] Nothing Colin Tweedie told police is consistent with the preponderance of credible evidence in this case. As stipulated in the Agreed Statement of Facts, the 911 call reporting the collision occurred at 9:43 pm, not 10:30 pm or closer to 11 pm. It was not “really – really dark” at the time. Video clips 5 to 7, which are consistent with the testimony of Ellie Fraser and Noelle MacLean, prove that it was still dusk. There were streetlights along the southbound lane in the area of the collision, as shown in photographs and testified to by Clayton Devoe and Noelle MacLean.

[335] Mr. Tweedie was driving at least 76 km/h, not 50 km/h, as he approached the collision site. Nothing “popped out” of the ditch alongside the northbound lane in front of his vehicle. Instead, Mr. Tweedie’s vehicle was in the southbound lane when it collided with Talia Forrest on her bicycle. The Nissan Xterra struck the bicycle side on, as there was no direct impact sustained to either of the bike wheels. Talia was projected forward on impact, coming to rest 52.78 metres away, on David Wylde’s front lawn.

[336] The Nissan Xterra kept driving, dragging the bicycle underneath it for approximately 1.15 kilometres, grinding down the right pedal, the right side of the seat, and the right front fork in the process. Mia White testified that she saw the bike under the vehicle and heard a squealing noise, like road and metal scraping together, as it drove away. Her evidence is consistent with the damage to the vehicle and the bicycle, the location of the bicycle when David MacLean came across it in the middle of the road near 423 Black Rock Road, and common sense. Colin Tweedie’s statement that he heard nothing after the collision is completely unbelievable.

[337] According to Mr. Tweedie, he did not realize that he had hit a little girl and not a deer until he was sitting in the back of a police car. This is also inconsistent with the other evidence in this case.

[338] Leah Luker testified that she called Beth Hart on Mr. Tweedie's cellphone from the scene and told her that the collision had been a hit and run involving a child, prior to the police arriving at the Tweedie residence. Defence counsel rightly pointed out that there is no evidence that Beth Hart shared this information with Mr. Tweedie before she told police that she had been driving and thought that she had hit a deer. However, Cst. Wallace testified that after Beth Hart and Colin Tweedie returned to the Tweedie residence from their attempt to find the deer (that Ms. Hart already knew did not exist), officers separated them to obtain their independent accounts of the collision. They were never together again prior to Mr. Tweedie being driven to the Baddeck detachment. If Mr. Tweedie truly had no idea until he sat in the back of the police cruiser that a child had been hit and not a deer, why did Beth Hart yell at him that he "better make things right" when he was removed from the police vehicle to urinate? And why did Mr. Tweedie tell Cst. Wallace, on the way to Baddeck, that he thought Beth was going to "take the blame"? "Take the blame" for what? Hitting a deer, as Mr. Tweedie's father had allegedly done recently, is not a crime, nor is leaving the scene after hitting a deer. Mr. Tweedie's evidence on this topic is completely implausible, and I reject it.

[339] As the Supreme Court of Canada noted in *Kruk*, an accused person cannot be found guilty simply because they are disbelieved:

[62] ... Some elements of the totality of the evidence may give rise to a reasonable doubt, even where much -- or all -- of the accused's evidence is disbelieved. Any aspect of the accepted evidence, or the absence of evidence, may ground a reasonable doubt.

[340] I will now consider whether the Crown has proved all the essential elements of each of the offences beyond a reasonable doubt.

Dangerous driving causing death – s. 320.13(3)

[341] Section 320.13(3) of the *Criminal Code* states:

320.13(3) Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public and, as a result, causes the death of another person.

[342] The Crown must prove the following essential elements of this offence:

1. That Mr. Tweedie is the person who committed the offence.

2. That the offence occurred at the time and the place set forth in the Indictment.
3. That Mr. Tweedie operated a conveyance.
4. That Mr. Tweedie's operation of the conveyance was dangerous to the public, considering all the circumstances, and
5. That Mr. Tweedie's operation of the conveyance caused the death of Talia Forrest.

The first three elements are not in dispute. The fifth element of causation is also not disputed, given the evidence of the medical examiner that Talia Forrest's death was caused by blunt head trauma arising from the collision.

[343] In *R. v. Roy*, 2012 SCC 26, Cromwell, J. summarized the law in relation to the offence of dangerous driving causing death as follows:

[1] Dangerous driving causing death is a serious criminal offence punishable by up to 14 years in prison. Like all criminal offences, it consists of two components: prohibited conduct — operating a motor vehicle in a dangerous manner resulting in death — and a required degree of fault — a marked departure from the standard of care that a reasonable person would observe in all the circumstances. The fault component is critical, as it ensures that criminal punishment is only imposed on those deserving the stigma of a criminal conviction. While a mere departure from the standard of care justifies imposing civil liability, only a marked departure justifies the fault requirement for this serious criminal offence.

[2] Defining and applying this fault element is important, but also challenging, given the inherently dangerous nature of driving. Even simple carelessness may result in tragic consequences which may tempt judges and juries to unduly extend the reach of the criminal law to those responsible. Yet, as the Court put it in *R. v. Beatty*, 2008 SCC 5, [2008] 1 S.C.R. 49, at para. 34, “If every departure from the civil norm is to be criminalized, regardless of the degree, we risk casting the net too widely and branding as criminals persons who are in reality not morally blameworthy”. Giving careful attention to the fault element of the offence is essential if we are to avoid making criminals out of the merely careless.

[344] The *actus reus* of this offence requires proof that at the time of the collision, Mr. Tweedie was driving in a manner that was dangerous to the public, having regard

to all the circumstances. The former iteration of the dangerous driving provision – s. 249 – provided a non-exhaustive list of relevant circumstances which are still relevant under s. 320.13:

249. (1) Every one commits an offence who operates

(a) a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place;

...

(4) Every one who commits an offence under subsection (1) and thereby causes the death of any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

[345] In assessing whether the *actus reus* has been established, the focus must be on the risks created by the accused's manner of driving, not the consequences. In *R. v. Beatty*, 2008 SCC 5, Charron J. noted that there must be a meaningful inquiry into the manner of driving:

[46] As the words of the provision make plain, it is the manner in which the motor vehicle was operated that is at issue, not the consequence of the driving. The consequence, as here where death was caused, may make the offence a more serious one under s. 249(4), but it has no bearing on the question whether the offence of dangerous operation of a motor vehicle has been made out or not. Again, this is also an important distinction. If the focus is improperly placed on the consequence, it almost begs the question to then ask whether an act that killed someone was dangerous. The court must not leap to its conclusion about the manner of driving based on the consequence. There must be a meaningful inquiry into the manner of driving. The consequence, of course, may assist in assessing the risk involved, but it does not answer the question whether or not the vehicle was operated in a manner dangerous to the public.

[Emphasis added]

[346] In *Roy*, Justice Cromwell instructed courts conducting this meaningful inquiry to bear in mind that driving, although inherently risky, is a legal activity that has social value:

A manner of driving can rightly be qualified as dangerous when it endangers the public. It is the risk of damage or injury created by the manner of driving that is relevant, not the consequences of a subsequent accident. In conducting this inquiry into the manner of driving, it must be borne in mind that driving is an inherently

dangerous activity, but one that is both legal and of social value (*Beatty*, at paras. 31 and 34). Accidents caused by these inherent risks materializing should generally not result in criminal convictions.

[347] The focus of the *mens rea* analysis is on whether the dangerous manner of driving was the result of a marked departure from the standard of care which a reasonable person would have exercised in the same circumstances. In *Roy*, Justice Cromwell recommended approaching the *mens rea* analysis by asking two questions:

The first is whether, in light of all the relevant evidence, a reasonable person would have foreseen the risk and taken steps to avoid it if possible. If so, the second question is whether the accused's failure to foresee the risk and take steps to avoid it, if possible, was a marked departure from the standard of care expected of a reasonable person in the accused's circumstances.

(para. 36)

[348] Justice Cromwell offered the following guidance on determining whether the "marked departure" fault element has been proven:

[39] Determining whether the required objective fault element has been proved will generally be a matter of drawing inferences from all of the circumstances. As Charron J. put it, the trier of fact must examine all of the evidence, including any evidence about the accused's actual state of mind (para. 43).

[40] Generally, the existence of the required objective *mens rea* may be inferred from the fact that the accused drove in a manner that constituted a marked departure from the norm. However, even where the manner of driving is a marked departure from normal driving, the trier of fact must examine all of the circumstances to determine whether it is appropriate to draw the inference of fault from the manner of driving. The evidence may raise a doubt about whether, in the particular case, it is appropriate to draw the inference of a marked departure from the standard of care from the manner of driving. The underlying premise for finding fault based on objectively dangerous conduct that constitutes a marked departure from the norm is that a reasonable person in the position of the accused would have been aware of the risk posed by the manner of driving and would not have undertaken the activity: *Beatty*, at para. 37.

[41] In other words, the question is whether the manner of driving which is a marked departure from the norm viewed in all of the circumstances, supports the inference that the driving was the result of a marked departure from the standard of care that a reasonable person in the same circumstances would have exhibited.

[42] Driving which, objectively viewed, is simply dangerous, will not on its own support the inference that the accused departed markedly from the standard of care of a reasonable person in the circumstances (Charron J., at para. 49; see also McLachlin C.J., at para. 66, and Fish J., at para. 88). In other words, proof of the *actus reus* of the offence, without more, does not support a reasonable inference that the required fault element was present. Only driving that constitutes a marked departure from the norm may reasonably support that inference.

[Emphasis added]

[349] In this case, the condition of Black Rock Road, the nature and use of the area, the lighting and visibility, the speed of Mr. Tweedie's vehicle, and the fact that he drove into the oncoming lane are relevant to whether Mr. Tweedie's driving, viewed objectively, was dangerous to the public.

Condition of Black Rock Road

[350] The court has a great deal of evidence on the condition of Black Rock Road at the time of the collision, including photographs taken later that night, and the following day. David Edwards testified that Black Rock Road is a standard country road that was in "very bad" condition, with "a lot of bumps and stuff". He denied that there were lots of potholes. Clayton Devoe said Black Rock Road has not been paved in 38 years. He said it was bad at the beginning near Old Route 5, with pieces of the road missing, and that it got bad again not far from where the dirt road starts. However, the stretch of road in front of his property was in very good shape, with no potholes.

[351] Ellie Fraser testified that the end of Black Rock Road was in "really bad condition", from the mailboxes onward, but that there was nothing wrong with the road from her house to the first set of mailboxes. She said there were no potholes or cracks in the pavement in that stretch of road. Noelle MacLean said Black Rock Road is always going back and forth between a state of needing repair and of being repaired, and she was not sure which condition it was in, in July 2019.

[352] Cpl. Ford described Black Rock Road as follows:

Black Rock Road was a two lane highway that travelled primarily north and south in the immediate area of the collision with one lane in each direction. For northbound traffic the highway was straight, followed by a clockwise (CW) curve north of the scene. For southbound traffic the scene was within a straight section of highway after a counter clockwise curve (CCW).

The northbound and southbound sides of the highway were bordered by gravel shoulders and shallow vegetative covered ditches. The highway was also intersected by several residential driveways. The northbound and southbound lanes were separated by a faded double solid yellow line.

...

There were cracks in the surface of the highway and pieces of the northbound lane adjacent to the gravel shoulder were deteriorated and absent. The northbound lane was in poor repair with an uneven surface for northbound traffic.

[353] Based on all of the evidence, I find that Black Rock Road was a bumpy, rough, country road that was in poor repair, with an uneven surface in the northbound lane. The worst parts of the road were at the start, near Old Route 5, and at the end, not far from where the dirt portion began. In these areas, pieces of the road were missing. I further find that the straight stretch of road where the collision occurred was the best part of Black Rock Road, with no potholes or other driving hazards.

Nature and use of the area

[354] There are a number of residences along Black Rock Road, on both sides of the road. It is a rural, residential neighbourhood. There are two sets of community mailboxes on the northbound side of the road. There are no stores or businesses in the area. Several families with children lived along Black Rock Road in 2019, and a sign north of the collision scene warned drivers to drive slow due to children playing.

[355] Ellie Fraser testified that the neighbourhood in 2019 was “quiet”. The houses were about an acre apart. In terms of traffic, she said it was the quietest road she had lived on. Noelle MacLean described the traffic on Black Rock Road in 2019 as “fairly steady”.

Lighting and visibility

[356] It was dusk at 9:42 pm on July 11, 2019, with darkness having not fully set in. There were no streetlights on the northbound side of the road, but there were several on the southbound side in the area of the collision. Clayton Devoe testified that there was a streetlight in front of his house at 127 Black Rock Road, two streetlights in a row before his driveway, and one in front of David Wylde’s former property at 143 Black Rock Road. Noelle MacLean testified that there were streetlights on the poles in the area around her home at 135 Black Rock Road in 2019.

[357] In terms of visibility of the two girls on their bicycles in the area of the collision, I find that they would have been clearly visible to drivers from a considerable distance. The weather was clear and there were no obstructions on the straight section of road from the mailboxes to Mia White's residence. Although the girls were not wearing helmets and had no lights on their bikes, the southbound lane and shoulder in the collision area was illuminated by streetlights, Mia was wearing a red long-sleeve shirt, and Talia's pink, red and white bicycle had three reflectors, two of which would have been visible from the side, and tires with white walls and rims. I find that northbound drivers would have been able to see the girls clearly, well in advance of the collision area.

[358] As to visibility from inside the Nissan Xterra at the time of the collision, Colin Tweedie said his windshield was dirty.

Speed

[359] I accept Cpl. Ford's conclusion in his Reconstruction Report that Colin Tweedie was driving at a minimum speed of 76 km/h at the time of the collision. There was no speed limit posted on Black Rock Road and Ellie MacLean and Noelle MacLean each gave different answers when asked what the speed limit was. Ms. Fraser believed that it was 60 km/h, while Noelle MacLean thought the speed limit was 50 km/h. Cpl. Ford originally concluded that the speed limit was 80 km/h, pursuant to s. 106 of the MVA. He then changed his report at trial to state that the speed limit was 50 km/h, pursuant to s. 102(2)(g) of the MVA. Section 102(2)(g) provides that the speed limit is 50 km/h "in a residence district as defined herein." Again, s. 2(bc) defines "residence district" as follows:

(bc) "residence district" means the territory contiguous to a highway not comprising a business district when the frontage on the highway for a distance of 100 metres or more is mainly occupied by dwellings or by dwellings and business premises and includes any section of a highway so designated by the traffic authority by the erection of appropriate signs;

[360] Cpl. Ford testified that he took measurements and confirmed that there is less than 100 metres between 127 and 135 Black Rock Road, and less than 100 metres between 135 and 143 Black Rock Road. Cpl. Ford took the position that this information was sufficient to meet the definition of "residence district".

[361] While preparing this decision, I located two Nova Scotia decisions where the definition of “residence district” was judicially considered. I wrote to the parties on May 6, 2024, to invite their comment on these cases, which they each provided on May 8.

[362] In *R. v. Leger*, 1976 CarswellNS 290 (N.S. Co. Ct.) and *R. v. Ross*, 1981 CarswellNS 290 (N.S. Co. Ct.), the court held that the words “mainly occupied by dwellings” means that over half of the 100 metres or more of frontage on one side of the highway is occupied by dwellings.

[363] The Crown conceded that Cpl. Ford’s evidence that there is less than 100 metres between 127 and 135 Black Rock Road and less than 100 metres between 135 and 143 Black Rock Road is of no particular assistance in determining whether the area is a residence district. The Crown argued, however, that the relevant stretch of Black Rock Road is plainly a residence district because there is nothing but residential properties along both sides. It pointed out that there is actually no distance between 127, 135, and 143 Black Rock Road, because the properties abut one another.

[364] The defence submitted that the Crown has failed to prove that the alleged area is a residence district because it provided no precise measurements of the area or the distance between the houses. It also failed to prove that more than half of the area in question was occupied by residences. When asked how many houses were in the area, Cpl. Ford was unable to answer. Moreover, it was clear from other testimony and the drone footage that Black Rock Road is not a densely-populated area.

[365] In my view, the Crown’s interpretation substitutes the word “properties” for the word “dwellings” in the definition of “residence district”. I find that the word “dwellings” is intended to refer to houses or other residential buildings along the highway, not to large residential lots or properties with a house somewhere on them. In other words, the definition requires that more than half of the frontage of the highway on one side is occupied by houses. This ensures that a certain level of population density is required to trigger the 50 km/h speed limit. In this case, the Crown has not provided evidence to establish how much of the frontage along Black Rock Road is occupied by houses. As a result, the Crown has not proven that the area was a “residence district” with a 50 km/h speed limit.

[366] That said, my decision on whether the *actus reus* has been met in this case does not turn on a finding that the speed of Mr. Tweedie's vehicle at the time of the collision – 76 km/h – exceeded the speed limit for the area.

Crossing into the oncoming lane

[367] The evidence proves that Mr. Tweedie crossed into the oncoming lane of traffic at the collision area. Crossing the centre lane of a highway will not always endanger public safety. For example, on a clear summer day, a driver who briefly crosses into the oncoming lane to avoid a pothole or other hazard on a straight, flat stretch of road with an unobstructed view and no oncoming traffic is not endangering anyone. However, in this case, Mr. Tweedie crossed the centre line and drove into the oncoming lane when there was a child on a bicycle in that lane, with the front of her bicycle pointed toward the shoulder of the road.

Conclusion on *actus reus*

[368] I find that driving at a speed of 76 km/h and crossing into the oncoming southbound lane of traffic, while there is a child on a bicycle in that lane who would have been clearly visible to northbound drivers from a considerable distance, is objectively dangerous driving. The Crown has established the *actus reus* of the offence.

Mens rea

[369] A finding that an accused operated a motor vehicle in a manner dangerous to the public does not necessarily prove that the manner of driving amounted to a marked departure from the standard of care a reasonable person in the accused's circumstances would have observed. It is only where an accused's conduct constitutes a marked departure from the norm that it will be sufficiently morally blameworthy to attract criminal liability.

[370] The consumption of alcohol, even short of impairment, is relevant to the *mens rea* for the offence of dangerous driving causing death. In *R. v. McLennan*, 2016 ONCA 732, the Ontario Court of Appeal stated:

23 The fact that a person voluntarily consumes some alcohol, albeit short of the point of impairment, is a factor -- and only that -- that can be considered in determining whether the necessary *mens rea* has been made out. It is an indication

of a mindset, in my view, of a willingness to assume a degree of risk -- a risk that the amount they have consumed will not rise to level where it impairs their ability to operate a motor vehicle.

[371] Evidence of driving while impaired may be sufficient to establish the *mens rea* for dangerous driving causing death and for criminal negligence causing death (*R. v. Colby*, [1989] A.J. No. 1041 (Alta. C.A.); *R. v. Anderson*, [1990] S.C.J. No. 14; *R. v. Brogan*, 2008 NSPC 42, at para. 11). In *Beatty*, the Supreme Court of Canada noted:

[72] A momentary lapse of attention without more cannot establish the *actus reus* and *mens rea* of the offence of dangerous driving. However, additional evidence may show that the momentary lapse is part of a larger pattern that, considered as a whole, establishes the marked departure from the norm required for the offence of dangerous driving. For example, a momentary lapse might be caused by the consumption of alcohol or by carrying on an activity incompatible with maintaining proper control of the automobile. The trier of fact might conclude in such a case that considering the total driving pattern in all the circumstances, a marked departure from the norm is established.

[Emphasis added]

[372] In determining whether Colin Tweedie's conduct in crossing the centre line and hitting Talia Forrest was morally blameworthy, I make the following findings of fact.

[373] I find that on the night of July 11, 2019, Colin Tweedie arrived back at Leah Luker's residence on Old Route 5 between 8:50 pm and 8:52 pm. His vehicle is seen driving northbound past Mr. Devoe's residence at 8:42 pm in clip 1 of Exhibit 7, presumably dropping off Ms. Hart. Clip 2 shows his vehicle passing Mr. Devoe's residence heading southbound toward Old Route 5 at 8:48 pm. In addition to the video, I rely on David Edwards' testimony, based on Exhibit 3, that Mr. Tweedie's residence was a five-minute drive from 1649 Old Route 5. I reject Mr. Edwards' evidence that Mr. Tweedie arrived at about 9:20 pm.

[374] David Edwards said Mr. Tweedie brought three bottles of Budweiser beer with him when he came back. He offered one to Mr. Edwards, who put it in the fridge, and Mr. Tweedie began drinking one. Mr. Edwards said he did not know what happened to the third bottle. He did not see it being consumed or see it go anywhere. There was no evidence of a Budweiser bottle being found in the Nissan Xterra when it was inspected by police after the collision.

[375] Leah Luker testified that when she returned home from her walk, between 8:30 pm and 8:45 pm, Mr. Tweedie was in the barn with Mr. Edwards. Based on the video evidence referred to above, I find that Ms. Luker returned closer to 9 pm than 8:45 pm. Ms. Luker said hello to Mr. Edwards and Mr. Tweedie before heading into the house. She put water on the stove to boil potatoes for supper.

[376] While waiting for the water to boil, Ms. Luker went back out to the barn and chatted with Mr. Tweedie and Mr. Edwards for about 10 minutes. She showed Mr. Tweedie one of the photos she had taken on her camera. Ms. Luker observed Mr. Tweedie drinking a bottle of beer. He did not finish the entire bottle while she was there. Ms. Luker said Mr. Tweedie seemed “normal”, and she had no concerns about him driving during the 10 minutes she spent in the barn. She added, however, that she was not there when he got into his vehicle and pulled out of the driveway. Mr. Edwards testified that he, too, had no concerns about Mr. Tweedie’s sobriety when he left. He said he had not smelled alcohol coming from Mr. Tweedie, but noted that they were “in a fresh barn” and “that’s pretty much what you smell.”

[377] Leah Luker testified that Colin Tweedie stayed for about 40 to 45 minutes. Mr. Edwards testified that Mr. Tweedie left at around 9:45 pm or 9:50 pm. Mr. Edwards’ estimate is clearly incorrect, since the collision happened at 9:42 pm. I find that Mr. Tweedie left sometime between 9:30 and 9:40 pm. In clip 7 of Exhibit 7, Mr. Tweedie’s vehicle is seen passing Mr. Devoe’s property at 9:42 pm, right before the collision. The 911 call reporting the collision was received at 9:43 pm.

[378] When Cpl. Dollard and Cpl. Jessome arrived at the Tweedie residence at 10:36 pm, just under an hour after the collision, Cpl. Dollard spoke to Mr. Tweedie and observed indicia of impairment. Cpl. Dollard reported that Mr. Tweedie’s speech was slurred, there was a “very strong odour of alcoholic beverage on his breath”, and he “kind of swayed back and forth” while talking to Cpl. Dollard. When Cst. Wallace arrived at the Tweedie residence shortly thereafter, he noted that Mr. Tweedie’s balance was off, he was unsteady on his feet, and the smell of “alcoholic beverage” was coming from his breath. At one point, Mr. Tweedie was placed in Cst. Wallace’s police vehicle. Cst. Wallace said that the next time he entered the vehicle, he could smell the odour of alcoholic beverage inside the car.

[379] While speaking to police, Colin Tweedie said he had consumed three or four beer that evening, and had drunk the last one at 9:30 pm. This would have been just minutes before he left to drive home along Black Rock Road.

[380] In addition, as will be discussed later, there is no dispute that at 1:51 am, Mr. Tweedie provided a breath sample that showed a BAC of 60 mg per 100 ml, and his presumed BAC within two hours of the accident was 80 mg of alcohol per 100 ml of blood.

[381] While it is true that Leah Luker and David Edwards did not see the same visible indicia of impairment noted by the officers about an hour after the collision, Ms. Luker spent only 10 minutes in the barn with Mr. Tweedie while she waited for water to boil, and was not present for the rest of his visit. Mr. Edwards did not smell alcohol or marijuana on Mr. Tweedie, but pointed out that he was in a “fresh barn”, which has its own smell.

[382] Having considered the totality of the evidence, I find that Colin Tweedie’s conduct of crossing the centre line and striking Talia Forrest on her bicycle was not the result of a morally blameless moment of inattention, a medical event, a mechanical issue with his vehicle, a road defect, poor lighting or visibility, or other factor outside his control. I find that the only reasonable inference as to why Mr. Tweedie crossed into the oncoming lane and struck Talia Forrest is that his ability to properly operate his vehicle was impaired as a result of his alcohol consumption.

[383] In *Brogan*, Judge Derrick (as she then was) noted at paragraph 11:

... while courts have held that impairment alone could ground a conviction for criminal negligence, dangerous driving or impaired driving causing death, (see, for example, *R. v. Colby*, [1989] A.J. No. 1041 (Alta. C.A.); *R. v. Anderson*, [1990] S.C.J. No. 14 at paragraph 18), criminal responsibility is not established unless it is proven beyond a reasonable doubt that the impairment was a significant, contributing cause of the death. (*R. v. Nette*, [2001] S.C.J. No. 75; *R. v. Fisher*, [1992] B.C.J. No. 721 (B.C. C.A.)) Absent other explanations for an accident, causation can be established from evidence that includes the circumstances of the accident itself. (*R. v. Rhyason*, [2006] A.J. No. 1498 at paragraphs 39-40 (Alta. C.A.))

[Emphasis added]

[384] I find that that a reasonable person in Colin Tweedie’s position would have foreseen the risk of injury or death to another user of the roadway – whether a pedestrian, cyclist, or motorist – created by driving down Black Rock Road at or near the apparent speed limit of 80 km/h after having consumed enough alcohol to create the potential for impairment. I further find that Mr. Tweedie’s failure to

foresee that risk and take steps to avoid it was a marked departure from the standard of care expected of a reasonable person in the accused's circumstances.

[385] I find Mr. Tweedie guilty beyond a reasonable doubt of dangerous driving causing death.

BAC of 80 or over causing death – s. 320.14(3)

[386] The relevant provisions of s. 320.14 of the *Criminal Code* are as follows:

Operation while impaired

320.14 (1) Everyone commits an offence who

(b) subject to subsection (5), has, within two hours after ceasing to operate a conveyance, a blood alcohol concentration that is equal to or exceeds 80 mg of alcohol in 100 mL of blood;

...

Operation causing death

(3) Everyone commits an offence who commits an offence under subsection (1) and who, while operating the conveyance, causes the death of another person.

[387] In *R. v. Tweedie*, 2023 NSCA 11, the Nova Scotia Court of Appeal summarized the law in relation to s. 320.14:

[12] Section 320.14 of the Criminal Code was part of a legislative package which came into effect in 2018 and made significant changes to the law concerning impaired driving and related offences. ...

[13] The Charter Statement tabled in the House of Commons on May 11, 2017, by the Minister of Justice concerning the amendments to the Criminal Code's impaired driving provisions describes the purpose of s. 320.14(1)(b) as follows:

Change to 'over 80' offence

Clause 15 (new paragraph 320.14(1)(b)) rewords the current 'over 80' offence to prohibit having a BAC at or over 80 mg/100ml within two hours of driving. This would be subject to an exception for 'innocent intervening consumption,' meaning consumption that occurred after driving, where the individual had no reason to expect a breath or blood demand, and where the quantity consumed was consistent with a BAC that was below 80 at the time of driving. **This would criminalize consumption of alcohol prior to driving in quantities sufficient to result in a BAC at or over 80 ('bolus drinking'), even where the BAC at time of driving may have not yet**

risen above the limit. It also criminalizes consumption after driving, in situations where an individual had a reasonable expectation that he or she may be required to provide a sample (for example, after an accident), and that may serve to obstruct investigation of the offence.

The following considerations support the consistency of this section with the Charter.

By criminalizing bolus drinking and drinking that may obstruct an investigation, the offence captures two categories of reckless, morally culpable conduct, the prohibition of which serves the Government's objective of combating impaired driving. The definition of the offence in terms of BAC within two hours of driving and the 'innocent intervening consumption' exception combine to ensure that dangerous conduct is covered while innocent consumption after driving is not captured.

[Emphasis added]

[14] As part of the 2018 legislative package, the Criminal Code was amended to include s. 320.31(4) which created a conclusive presumption of BAC in certain circumstances:

Presumption — blood alcohol concentration

(4) For the purpose of paragraphs 320.14(1)(b) and (d), if the first of the samples of breath was taken, or the sample of blood was taken, more than two hours after the person ceased to operate the conveyance and the person's blood alcohol concentration was equal to or exceeded 20 mg of alcohol in 100 mL of blood, the person's blood alcohol concentration within those two hours is **conclusively presumed** to be the concentration established in accordance with subsection (1) or (2), as the case may be, plus an additional 5 mg of alcohol in 100 mL of blood for every interval of 30 minutes in excess of those two hours.

[Emphasis added]

...

[15] Section 320.31(4) creates a conclusive presumption. It is not rebuttable.

[388] The Crown must prove the following essential elements of this offence:

1. That Mr. Tweedie was operating a conveyance, (i.e., a motor vehicle);
2. That Mr. Tweedie had a blood alcohol concentration equal to or exceeding 80 mg of alcohol in 100 ml of blood within two hours of ceasing to operate the motor vehicle;

3. That Mr. Tweedie, while operating the motor vehicle, caused the death of Talia Forrest.

[389] There is no dispute that Mr. Tweedie was operating the 2004 Nissan Xterra that collided with Talia Forrest at 9:42 pm on July 11, 2019. Nor is there any dispute as Mr. Tweedie's breath sample results, or the result of applying the conclusive presumption under s. 320.31(4), as summarized by the Court of Appeal in *Tweedie*:

[17] After Mr. Tweedie's arrest, breath samples were taken and analyzed for BAC. The second sample, which was the one relied on by the Crown, was at 1:51 a.m. on July 12th and showed a BAC of 60 mg per 100 ml. The accident occurred at 9:42 p.m. on July 11th and, therefore, the presumption in s. 320.31(4) was applicable. Since the sample was taken two hours after the expiry of the period referred to in s. 320.14(1)(b), the conclusively presumed BAC would be calculated at 80 mg of alcohol (60 mg + (4 x 5mg)) per 100 ml of blood.

[390] The first two elements are clearly met. As to the third element, the Crown submitted that it only needs to prove that Mr. Tweedie's driving caused Talia's death, and not that his BAC was causally connected to the collision. There is support for this interpretation (see, for example, *R. v. Bulmer*, 2023 NBKB 135; *R. v. Thijs*, 2022 ABKB 608; *R. v. Bakko*, 2022 ABPC 217; *R. v. Andre*, 2022 YKTC 9). The defence argued, however, that proof of a causal connection between the BAC and the collision is necessary for a conviction. There is some support for that position, as well. In *R. v. Kahlkoran*, 2023 ONSC 1997, the court stated:

10 In my view, the offence set out in s. 320.14(3) requires that there be a causal link between the impairment and the accident which caused the death. The Crown retains the burden of establishing that the impaired operation was a significant contributing cause of the accident which resulted in the harm/death which is the subject of the charge.

11 I find support for this interpretation in the decision of *R. v. Phan*, 2015 ONSC 2088, which also dealt with the preceding sections.

...

16 There are numerous decisions in which courts have concluded that, but for a person's impairment, a collision that results in death or bodily harm was avoidable: see, for example, *R. v. Hall* (2004), 11 M.V.R. (5th) 188 (Ont. S.C.J.). In such cases, the accused's moral culpability for the injury/harm is clear.

17 In some cases, however, pedestrians can act unpredictably or place themselves in harm's way. Situations can arise where the accident was unavoidable, and the

impairment may not be a contributing factor in bringing about the injury and/or death. See *R. v. Phan*, supra, at paras. 77-82.

18 If criminal liability were derived simply from a temporal link, there would be no necessary connection between the wrongful conduct (impairment or over 80) and the significantly aggravating element of the offence outlined in s. 320.14(3), namely the death which ensued.

19 The Crown's suggested approach would import a legal presumption of liability for the death where there is an illegal BAC/impairment. This legal presumption would be automatic.

20 As such, the serious consequences which flow from a conviction from s. 320.14(3) would have no necessary correlation to the accused's moral blameworthiness. I have concerns with the interpretation advanced by the Crown for this very reason.

[391] In my view, where an accident is unavoidable because a pedestrian had placed themselves in harm's way, or for some other reason, the Crown would not be able to establish that the driver caused the person's death. That said, it is not necessary to resolve the issue in this case, in light of my conclusion that there was a causal connection between Mr. Tweedie's alcohol consumption and the collision. Under either interpretation, the essential elements have been proven and Mr. Tweedie is guilty beyond a reasonable doubt of the offence under s. 320.14(3).

Failure to stop – s. 320.16(3)

[392] Section 320.16 states as follows:

320.16 (1) Everyone commits an offence who operates a conveyance and who at the time of operating the conveyance knows that, or is reckless as to whether, the conveyance has been involved in an accident with a person or another conveyance and who fails, without reasonable excuse, to stop the conveyance, give their name and address and, if any person has been injured or appears to require assistance, offer assistance.

(2) Everyone commits an offence who commits an offence under subsection (1) and who at the time of committing the offence knows that, or is reckless as to whether, the accident resulted in bodily harm to another person.

(3) Everyone commits an offence who commits an offence under subsection (1) and who, at the time of committing the offence, knows that, or is reckless as to whether, the accident resulted in the death of another person or in bodily harm to another person whose death ensues. 2018, c. 21, s. 15

[393] The Crown must prove the following essential elements of this offence:

1. That Mr. Tweedie is the person who committed the offence.
2. That the offence occurred at the time and place set out in the Indictment.
3. That when Mr. Tweedie was operating a conveyance, he knew or was reckless as to whether the conveyance was involved in an accident with a person or another conveyance.
4. That Mr. Tweedie knew or was reckless as to whether the accident resulted in the death of another person; and
5. That Mr. Tweedie failed, without reasonable excuse, to stop the conveyance, and offer assistance.

The first two elements are not in dispute.

[394] The evidence before the court clearly establishes the *actus reus* of this offence. Mr. Tweedie was operating the Nissan Xterra when it struck Talia Forrest. He did not stop and offer assistance. The evidence does not disclose a reasonable excuse. The weather was clear, the road at the collision site was straight and there were nearby driveways where it would have been safe for him to stop. Mr. Tweedie told police he continued to drive the remaining two minutes to his house because he did not want to be broken down on the side of the road. This is not a reasonable excuse. The collision caused Talia's death. The critical issue on this count is whether Mr. Tweedie knew or was reckless as to whether the accident resulted in the death of another person.

[395] The Court of Appeal in *Tweedie* explained the *mens rea* for an offence under s. 320.16 at paragraph 28:

[28] The *mens rea* for this offence requires the Crown to prove one of the following:

- 1) Mr. Tweedie knew he had been in an accident with a person.
- 2) Mr. Tweedie was wilfully blind as to whether he had been in an accident with a person.

3) Mr. Tweedie was reckless as to whether he had been in an accident with a person.

[396] The Court of Appeal referred to *R. v. Dionne*, 2022 BCSC 959, where Justice Shergill explained the *mens rea* options for an offence under s. 320.16 as follows:

[28] The *mens rea* for an offence under s. 320.16(1) and (3) is knowledge or recklessness that they were involved in an accident, and knowledge or recklessness as to whether death or bodily harm ensued.

[29] Knowledge can be proven by either actual knowledge or imputed knowledge based on wilful blindness: *R. v. Edwards*, 2020 BCCA 253 at para. 95.

[30] In *R. v. Farmer*, 2014 ONCA 823 at para. 26, the court explained wilful blindness as occurring when an accused becomes aware of the need for some inquiry, but declines to make the inquiry because the accused does not ‘wish to know the truth’. Put another way, an accused is wilfully blind if they shut their eyes because they know or strongly suspect that ‘looking would fix [them] with knowledge’.

[31] The deliberate nature of wilful blindness was expressed by Justice Moldaver in *R. v. Morrison*, 2019 SCC 15 at follows:

[98] Wilful blindness exists where an accused’s ‘suspicion is aroused to the point where he or she sees the need for further inquiries, but *deliberately chooses* not to make those inquiries...Wilful blindness has been characterized as ‘deliberate ignorance’ because it connotes ‘an actual process of suppressing a suspicion’.

[32] Recklessness occurs where an accused is aware of a risk, but proceeds despite that risk: *Edwards* at para. 99, and *R. v. Alekozai*, 2021 ONCA 633 at para. 42.

[33] In *R. v. Sansregret*, [1985] 1 S.C.R. 570, 1985 CanLII 79 (SCC) at p. 582, Justice McIntyre explained recklessness as follows:

In accordance with the well-established principles for the determination of criminal liability, recklessness, must have an element of the subjective. It is found in the attitude of one who, aware that there is a danger that his conduct could bring about the result prohibited by the criminal law, nevertheless persists, despite the risk. It is, in other words, the conduct of one who sees the risk and takes the chance.

[34] Recklessness has been described as a less stringent standard than wilful blindness: *R. v. Sandhu*, [1989] OJ No 1647, 1989 CanLII 7102 (O.N.C.A.) at para. 19.

[35] In *Sansregret* at p. 582, the court distinguished between recklessness and wilful blindness, as follows:

Wilful blindness is distinct from recklessness because, while recklessness involves knowledge of a danger or risk and persistence in a course of conduct which creates a risk that the prohibited result will occur, wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth. He would prefer to remain ignorant. The culpability in recklessness is justified by the consciousness of the risk and by proceeding in the face of it, while in wilful blindness it is justified by the accused's fault in deliberately failing to inquire when he knows there is a reason for inquiry.

[397] It is not possible to know what, if anything, Colin Tweedie saw immediately before he drove into the oncoming lane and collided with Talia on her bicycle. The Crown suggested that it was open to the court to find that Mr. Tweedie saw Talia and hit the brakes immediately before impact. In saying this, the Crown relies on clip 7 of Exhibit 7, where the Nissan Xterra's brake lights appear to flash as it exits the left side of the screen, very close to the area of impact. I am not prepared to make that inference. As Cpl. Ford acknowledged, it is not possible to know from the video whether the lights came on before or after the impact. However, the evidence in this case overwhelmingly establishes that Mr. Tweedie was wilfully blind as to whether he had been in an accident with a person.

[398] After turning onto Black Rock Road from Old Route 5, Colin Tweedie would have seen a sign reminding him to slow down on account of children playing. Mr. Tweedie was very familiar with Black Rock Road, as he lived only minutes from the collision site. He travelled it frequently, including several times earlier that day. Mr. Tweedie would have known that there is a cluster of houses in the area of the collision site. In other words, Mr. Tweedie would have realized that people, including children, might be walking or cycling in the area.

[399] In explaining why he assumed that he had hit a deer, Mr. Tweedie said it was because he did not see anything. He mentioned that the area is "littered with deer", and that his father had hit a deer three months earlier. It is not clear where Mr. Tweedie's father hit a deer. Having reviewed the drone footage of the neighbourhood, it is entirely plausible that deer living in the heavily-wooded areas around Black Rock Road sometimes jump out onto the roadway from the ditch in front of drivers. In this case, however, nothing jumped out of the ditch along the northbound lane in front of Mr. Tweedie. The evidence is clear that the collision occurred in the oncoming lane.

[400] Even more problematic for Mr. Tweedie is the fact that his vehicle dragged a child's bicycle underneath it for 1.15 km, causing a squealing noise as the right side of the bicycle scraped along the road surface. This sound, coupled with the residences in the collision area, would have made Mr. Tweedie aware of the need for some inquiry. The circumstances required Mr. Tweedie to stop and determine what or who he had hit, but Mr. Tweedie did not want to know. Instead, he shut his eyes to the horrible truth of what he had just done and continued on at the same pace, his view obstructed by the deployed airbags, until he reached his house, and left the residents of Black Rock Road to deal with the tragic aftermath.

[401] I find that the Crown has proven, along with all the other elements, that Mr. Tweedie was wilfully blind as to whether he had been in an accident with a person. I find Mr. Tweedie guilty beyond a reasonable doubt of the offence under s. 320.16.

Conclusion

[402] I find Colin Hugh Tweedie guilty beyond a reasonable doubt of all three offences charged.

Coady, J.