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WRITTEN TESTIMONY IN FAVOR OF SENATE BILL 17 (WADE'S LAW)

The Maryland State's Attorneys' Association Supports Senate Bill 17
Life – Threatening Injury Involving a Motor Vehicle or Vessel.

As current law stands (CR §2-210), a person who causes death as the result of driving their vehicle in a “criminally negligent manner” is subject to three years of incarceration and a fine of \$5,000. “Criminally Negligent” driving is defined as “acting in a criminally negligent manner with respect to a result or circumstance when the person should be aware, but fails to perceive, that the person’s conduct creates a *substantial and unjustifiable risk* that such a result will occur and the failure to perceive constitutes a gross deviation from the standard of care that would be exercised by a reasonable person. In other words, if a person drives in such a criminally negligent manner and causes a death, they face a three year period of incarceration and a the potential \$5,000 fine. Should that driver act in the exact same criminally negligent manner yet “merely” cause a life-threatening injury to another, as current law stands, they are only liable for a \$500 fine and three points. The purpose of SB 17 (Wade’s Law) is to create a criminal penalty for driving in the same criminally negligent manner though causing a life-threatening injury to another as opposed to a death.

IT WOULD NOT be a violation of Wade’s Law if the person merely drives in a *negligent* manner. It is not even a violation if the person drives in a *reckless* manner. SB 17 makes no attempt to change or lessen the level of poor driving that would be required in order to convict of causing a life-threatening injury than would be required to convict for the charge of causing a death while driving criminally negligent.

SB 17 - Criminal Negligence Resulting in a Life - Threatening Injury - would require a finding beyond a reasonable doubt that the person’s bad driving created a “substantial and unjustifiable risk to human life.” This is a much higher standard than is required to prove simple negligent driving, which is defined in TR § 21-901.1(b) as “driving a motor vehicle in a *careless or imprudent* manner that endangers any property or the life or person of any individual.” Think of *Negligent Driving* as an act of *nonfeasance* (an act of omission or inattentiveness), while *Criminal Negligence* could be more properly thought of as an act of *malfeasance* (an overt act that the commission of which is wholly wrongful and unlawful...evil doing...ill conduct.)

As previously mentioned, simple Negligent Driving does not carry a penalty of incarceration. The penalty is 1 point (3 points if it contributes to an accident) and a \$500 fine.

The pre-payable amounts are \$140 if there is no accident and \$180 if there is an accident. Clearly, in the situations we are talking about here, an accident would have occurred, so 3 points and a \$500 fine (\$180 *pre-payable*) is the current maximum penalty. In addition, the at-fault driver can add insult to injury (literally) by not even appearing in court. The guilty party can simply mail a check to the court upon receiving a citation. In other words, the at-fault driver can drive in a criminally negligent manner, put someone in a wheelchair for life, and simply mail in a \$180 check (plus .55 cent stamp!)

The same applies to Reckless Driving, which also carries no incarceration. "Reckless Driving" is defined as driving in a wanton or reckless disregard for the safety of persons or property. If a person drives in a reckless manner and puts someone in a wheelchair for life, again, they can mail in their check and not have to appear in court.

What is a Life-Threatening Injury?

While "life - threatening injury" is not defined by statute, the meaning of the term can be found by looking into case law for CR §3-211, Life -Threatening Injury by Motor Vehicle While Under the Influence of Alcohol. The term "life-threatening injury" is clarified in the case of Todd v State, 161 Md. App. 332 (2005). There the Maryland Court of Special Appeals held:

"The statute that separately criminalized causing a life-threatening injury while driving under the influence of alcohol was neither void for vagueness nor ambiguous despite the absence of a definition for "life threatening injury" as that term could be understood and applied in an everyday sense; therefore, evidence indicating that a child in the car defendant hit head-on suffered a serious head injury that required numerous surgeries at a famous hospital, because they were too complicated to address at the local hospital, were ample to support a conviction."

Difference Between Criminal Negligence and Texting Violations Resulting in Serious Bodily Injury

Last year, the Committee had a question regarding the difference between Criminal Negligence and Jake's Law (TR § 21-1124.3). "Jake's Law," which addresses a person committing a violation of the texting or cell phone usage sections of the traffic code (TR §§ 21-1124.1 and 1124.2) that causes an accident that directly results in the death or serious bodily injury of another is subject to imprisonment not exceeding 1 year or a fine not exceeding \$5,000 or both. The proposed penalty for Criminal Negligence Resulting in a Life-Threatening Injury is 18 months. So while the penalty proposed in SB 17 is slightly greater than is the texting law, SB 17 requires a showing of much more egregious driving than does the texting law, which merely requires simple negligent driving and texting.

In order to charge Criminal Negligence versus a violation of Jake's Law, the State must prove *additional evidence of bad driving* over and above texting. Jake's Law merely requires texting and it must be the inattentiveness due to the texting "that causes" the accident. Criminal Negligence, on the other hand, requires such additional bad driving that rises to a much greater degree of negligence. As previously stated above, it must be shown that the driver should have been aware of – but failed to perceive – that his manner of driving created a substantial and unjustifiable risk to human life and that the failure to perceive that risk was a

gross departure from the conduct of a reasonable person under the circumstances. In a case involving texting, in order to take it to the next level of criminal negligence, the driver must be exhibiting other bad behavior, such as significantly speeding, weaving in and out of traffic, tailgating, running a red light or stop sign, etc.

Conclusion

It is extremely difficult to have to explain to a victim – or to the family of a victim – that had they or their loved one been killed in a crash caused by a criminally negligent defendant, the at-fault driver would have been facing jail time and a significant fine, but because the victim may have “only” been maimed or paralyzed (but lived), the at-fault driver merely faces points on their driving record and a fine amounting to a pittance. **It is for the reasons stated above that the Maryland State’s Attorneys’ Association supports a favorable recommendation of House Bill 352.**

Respectfully Submitted,



David Daggett, MDSAA

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On Monday, June 18, 2018 at approximately 10:50 p.m. at the northbound 78 mile marker of the JFK Memorial Highway (I 95), in Harford County, Maryland, construction was taking place that required traffic to be funneled down from three lanes to one. A number of signs were posted beginning about a mile south of the crash scene. Lanes one (the fast lane) and two (middle) were merging into the far right (slow) lane of travel. The speed limit at that location was 65 MPH. The weather was clear and dry and traffic was fairly heavy.

A Volvo tractor-trailer pulling a white Great Dane semitrailer with appx. 45,000 pounds (22.5 tons) of shingles, had been hauled up from Greensboro, North Carolina, beginning at about 10:30 that morning by a single driver, who was the sole occupant of the tractor-trailer. While the driver was not in violation of any commercial vehicle regulations, he had been on the journey for slightly over 12 hours and though he had made a number of stops along the way, his driving logs indicated that he had not taken any *sleep* breaks.

Prior to impact, as other vehicles were either slowing or coming to a complete halt, the tractor-trailer continued travelling at close to 60 MPH, making no effort to slow down. The tractor-trailer then plowed into the queue, causing a chain reaction of destruction.

The first vehicle struck was a 2010 Toyota Camry with New Jersey registration. The Camry was being driven by Ms. Carla Ortiz. Her daughter Je'ani ("Gee ah nee") Lyles (13 y.o. at the time of the crash) was in the right front seat. Carla Ortiz was in the far right hand lane travelling at stop and go speed when "she felt a bomb go off and her vehicle was struck from behind." She did not hear any noises of pre-impact braking nor the sounds of horns to warn her about the potential crash. After being struck, her car was pushed forward by the tractor-trailer at a high rate of speed, causing her to impact with other vehicles.

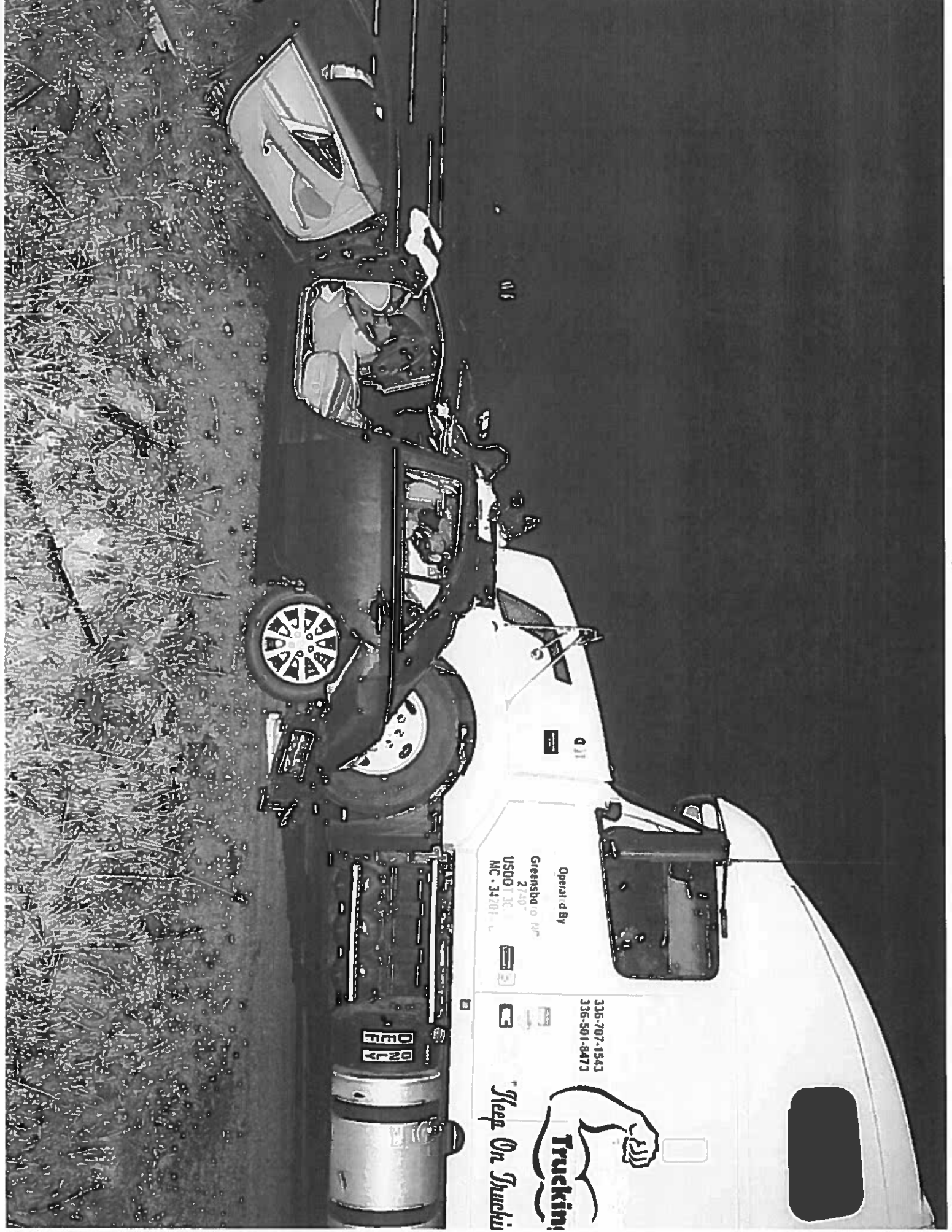
Je'ani was transported to John's Hopkins Pediatric Hospital and she suffered a severing of her T8 vertebrae. She continues to be paralyzed from the chest down to this day.

After the initial collision, the Volvo truck "overrode" the Camry's bumper and effectively became interlocked, becoming one unit. The Camry and tractor-trailer then continued forward at a high rate of speed, with the truck then striking a Honda Civic. The Civic was stationary and was being operated by Paul Manion. His wife Angela was the front seat passenger and their daughter, Morgan Rose Manion (14 y.o.a.) was in the left rear passenger seat. The Manions were in the far right lane preparing to exit the highway and they had noticed the bright yellow signs going back some distance. They had been stopped for 2-3 seconds when they felt a crash and multiple occurring hits, as the truck side-swiped the Civic. The Civic then flipped and Paul, Angela and Rose were hanging upside down from their seat belts. They never heard the sound of any brakes or horns nor did they see the truck approaching from the rear.

Rose Manion was transported by air to the Johns Hopkins Pediatric Intensive Care Unit, suffering from extensive injuries. On Wednesday, June 22 at approximately 8:20 p.m., 14 year old Rose succumbed to her injuries.

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While the defendant was found guilty of Criminally Negligent Homicide for the death of Morgan Manion, the lack of Criminal Negligence Resulting in Life-Threatening Injury severely limited the charging options related to the injuries suffered by Je'Ani, other than a payable offense.

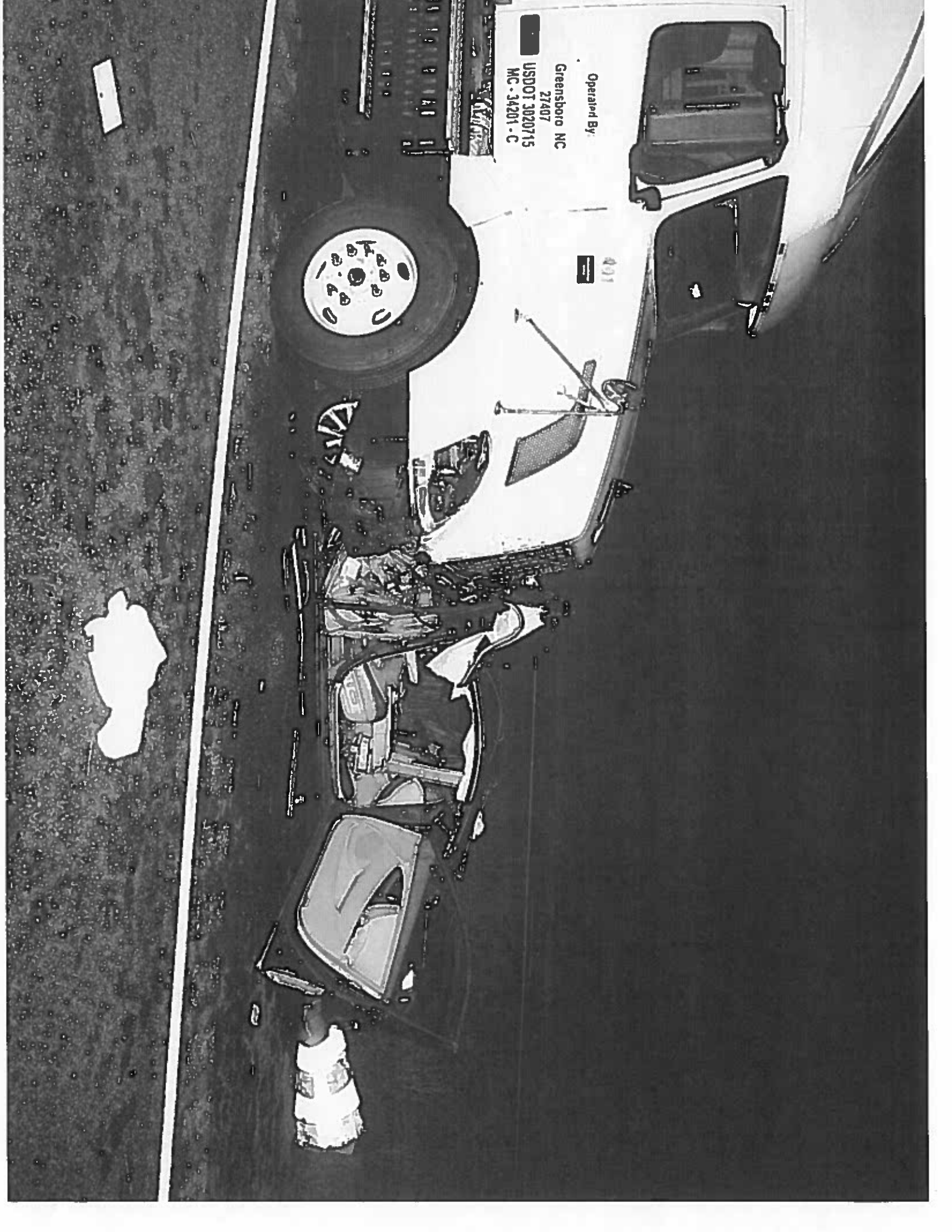


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