

Sanchez vs. Durham School Bus Services

PRESENTERS



Geoffrey Wells



Ivan Puchalt



Christian Nickerson

Two Theories in the Case

1. Eyes and ears rule
2. Red light rule

Ex. 390

Gaucin path to cross to bus



Corazon Marin – Afternoon Path

Ex. 196





Ex. 226-1

The Red Light Rule

- The schoolbus driver shall operate the flashing red light signal system and stop signal arm, as required on the schoolbus, at all times when the schoolbus is stopped for the purpose of loading or unloading pupils. (VC 22112)



Slowing in response to bus warnings



Subaru initially traveling 38 mph, and V_o exhibiting a 1.1 s PRT in response to the school bus warnings, before decelerating from 38 to 28 mph at a “casual” rate of 0.2g. The Subaru is 365 ft away from the bus (longitudinal) and 244 ft away from the AOI at the onset of the 1.1 s PRT

ACCIDENT SITE INSPECTION

Area of Impact



Ex. 501-007

Rules of the Road for School Buses

1

Eyes and ears

2

Be vigilant - most dangerous time is getting students to bus stop and from bus stop

3

Report unsafe environment (mid-block crossings)

4

Must enforce rules

5

Vehicle Code and Durham - must have red lights on and stop signs out when stopped

Cori Cone

- Durham Training and Safety Supervisor



Cori Cone

Trial Testimony, 8/22/17, p. 51:18-21



15 Q Yes. You know what the rules are for a bus driver
16 reporting jaywalking mid block crossing, not using a traffic
17 light to get to the bus stop, don't you?

18 A They are to report that.

Cori Cone

Trial Testimony, 8/22/17, p. 52:2-7



2 Q Sure. Is there any question in your mind that the bus
3 driver can say, ah, you know what, I saw it but it's no big
4 deal, I'm not going to report it?

5 A No. They are required to report it. We have a standard
6 that any safety violation that they see, they're required to
7 report it.

Melinda Beighle

- Durham Field Supervisor



Melinda Beighle - Field Supervisor Trial Testimony, 8/28/17, p. 27: 15-21



Q Is it true that you rely on the bus drivers to be the eyes and ears for the field supervisor?

A Yes, that's correct.

Q And the bus drivers are the ones that are supposed to be vigilant and look and see what's going on out in the bus stops, right?

A That's correct.

Melinda Beighle
Trial Testimony, 8/28/17
p. 32:7-13



Q Well, do you agree that it's unsafe to cross 9th Street and not use a traffic control light?

A Absolutely, in my opinion it's dangerous.

Q And do you agree that your drivers, if they were to observe that behavior, they must report that to you immediately?

A Yes.

Melinda Beighle

Trial Testimony, 8/28/17, p. 29:6-13



6 Isn't it true that the most dangerous time for
7 students is when they're off of the bus?

8 A Yes.

9 Q But you train on that to your bus drivers, don't you?

10 A Yes.

11 Q And the most dangerous times is sometimes getting to and
12 from the bus stop; is that true?

13 A Yes.

Melinda Beighle

Trial Testimony, 8/28/17, p. 46:5-13



Q If the bus driver is at the bus stop and the parents and the kids are crossing right in front of the bus driver to cross the street, is the bus driver supposed to see that?

A Yes.

Q They're supposed to be vigilant, aren't they?

A Yes.

Q There's the picture, every day in front of the bus driver, has to be reported?

A Absolutely.

Melinda Beighle

Trial Testimony, 8/28/17, p. 29:23-30:11



BY MR. WELLS:

Q I want you to assume, ma'am, that in this case the testimony is that for the month of August and the month of September, parents and kids were crossing mid block and never using the traffic control light?

Melinda Beighle

Trial Testimony, 8/28/17, p. 29:23-30:11



Q Okay. I want you to assume that happened here. Is that dangerous?

A Yes.

Q Would you expect your bus drivers to report that immediately?

A Yes, if they saw it I would expect them to.

Q Any question on that?

A No.

Maria Espinoza

- Transportation Director since 2006
- San Bernardino City Unified School District
- 25 years in transportation industry



Maria Espinoza

Trial Testimony, 8/28/17, p. 60:9-14



9 Q Does the district have feet on the ground at the stops to
10 try and observe unsafe conditions or does the district rely on
11 Durham drivers to perform that function?

12 A We rely on Durham drivers. They're our eyes and ears out
13 there. They're actually the ones conducting that service every
14 day.

Maria Espinoza

Trial Testimony, 8/28/17, p. 60:15-21



15 Q When you say the Durham drivers are your eyes and ears
16 out there, tell the jury what you mean by that?

17 A Well, they're the ones actually performing the bus route.
18 So if there are any issues or concerns, they're going to
19 witness it firsthand and report it to us, and we're going to
20 work with them to address those challenges. They see the kids,
21 they drive the route every day, 185 days a year.

Maria Espinoza

Trial Testimony, 8/28/17, p. 61:5-12



Q If, hypothetically, I want you to assume that every afternoon first graders are jaywalking across the street with parents in front of the bus for two months, is that something that you would expect a vigilant driver to observe?

A Oh, absolutely.

Q And if the driver observed that, is that something you would expect to be reported?

A Yes.

Maria Espinoza

Trial Testimony, 8/28/17, p. 62:14-18



Durham made no reports.

14 Q Okay. And did you find any complaints or referrals that
15 related to unsafe crossings, jaywalking, anything along those
16 lines at the bus stop at 9th and Victoria for the time period
17 of early August to October 3rd, 2012?

18 A No.



Andrea Gaucin



Candelaria Arana



Corazon Marin

Corazon Marin



Marin Trial Testimony, 8/23/17, p. 18:18-22 (Referring to Exhibit 195)

Q Could you just show the jury the path of travel that you took David to the bus stop every morning back in August and September of 2012?

A Right there. The line, just cross and just walked to the stop.

Corazon Marin – Morning Path to Bus Stop



Ex. 195

Marin Trial Testimony, 8/23/17

page 18:26-19:4



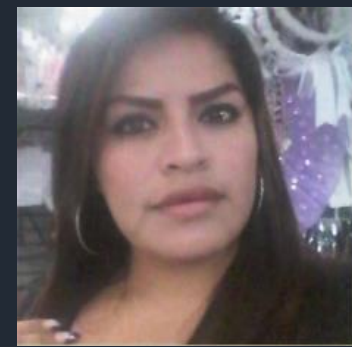
Q Okay. And when you -- did you ever go down and use the traffic light to cross 9th Street to go to the bus?

A No.

Q Never; is that correct?

A Correct.

Marin Trial Testimony, 8/23/17, p. 22:23-23:2



Q So let's leave this picture up just for a second. When you would come down to the end of your driveway would you wait -- on the morning when you were going across, would you wait to see the bus at the corner flashing its lights and then you would cross the street?

A Yes.

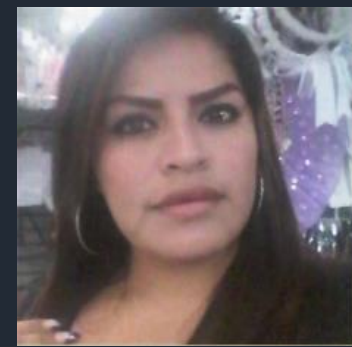
Marin Trial Testimony, 8/23/17, p. 23:3-6



Q And then where would you stand when you were waiting to see the bus with its blinking lights at the corner?

A Sometimes I would stay in the, like, in the driveway or sometimes on the side of the dirt.

Marin Trial Testimony, 8/23/17, p. 30:21-24



21 Q Okay. Some of these are really tough questions. Okay.

22 Did you ever have times where the bus was already at
23 the bus stop while you were crossing?

24 A Ah, yes.

Marin Trial Testimony, 8/23/17, p. 19:12-20

Q Now, I'm going to Exhibit 196, if I could. Okay. And the bottom portion of Exhibit 196, there's a diagram that I believe you drew at your deposition that indicates the path of travel you would go when you would come home and David was dropped off by the bus on the way home; is that right?

A Yes.

Q Okay. And did you walk David across the street every day on the drop off on the way home as well?

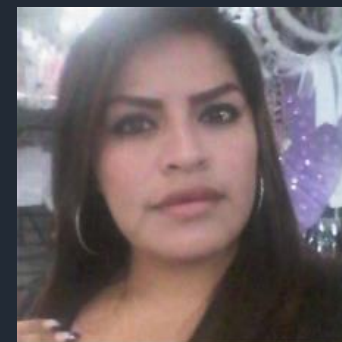
A Correct.

Corazon Marin – Afternoon Path

Ex. 196



Marin Trial Testimony, 8/23/17, p. 20:6-16



6 Q Did you cross in front of the bus every day on the way
7 home when you walked across 9th Street?

8 MR. RUBIN: Objection. Leading.

9 THE WITNESS: Yes.

10 THE COURT: Overruled.

11 BY MR. WELLS:

12 Q Okay. And is there any question in your mind that in
13 August and in September of 2012, every day you would walk
14 across 9th Street right in front of the bus driver; is that
15 right?

16 A Yes.

DRAFT

Calendar of Events Preceding the Incident

AUGUST 2012

SUN	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT
			1 1st Day of School	2	3	
	6	7	8	9	10	
	13	14	15	16	17	

	17	18	19	20	21	
	24	25	26	27	28	

OCTOBER 2012

SUN	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT
	1	2	3 Day of Incident	4	5	

Would a reasonably **vigilant** bus driver see parents and children crossing in front of the bus every afternoon?



Ex. 196



Ex. 355



Ex. 226-1

Mason testimony,
8/21, p. 84:19-26



Ex. 226-1

19 (Exhibit No. 226-001 was referenced.)

20 BY MR. WELLS:

21 Q This is a picture from a bus at the bus stop looking down
22 at the white mailbox. Do you see that?

23 A Yes.

24 Q Does that accurately depict the view you would have when
25 you were stopped at the bus stop out at 9th and Victoria?

26 A Yes.

Andrea Gaucin



Andrea Gaucin Trial Testimony

8/23, p. 131:6-13



Q Why don't you come down, if you could, Ms. Gaucin, and draw on the board Exhibit 390 the path of travel you would go every morning to take your daughter Yasmin to the bus?

A The way that I did it?

Q Yes, the way that you did it.

A Here is the door to my house. We would walk like this.

And here at the edge of the fence, we would stop next to the mailbox.

Andrea Gaucin Trial Testimony

8/23, p. 141:17-20



17 Q So the truth is, you never once, when you were taking
18 your child to the bus, ever went down and used the traffic
19 control light; is that true?

20 A The truth is I didn't.

Andrea Gaucin Trial Testimony

8/23, p. 142:7-16



7 Q And when you would pick up your daughter from the bus on
8 the way home, how would you get back to your house?

9 A I would cross in the same way.

Andrea Gaucin Trial Testimony

8/23, p. 143:1-7



1 Q Okay. Did you use this path in the morning and in the
2 afternoon every day in August and September of 2012 that you've
3 shown the jury?

4 A Yes.

5 Q Did anyone from the bus company ever tell you not to use
6 this crossing like this?

7 A No.

Candelaria Arana



Candelaria crossed at the "X" across 9th street



Ex. 154

Candelaria Arana Trial Testimony

8/23, p. 87:24-88:2



24 Q Okay. Okay. As you sit here today can you recall an
25 occasion when you ever used the crosswalk at the intersection
26 with the stoplights to go to bus stop in the two months prior

1 to this incident?

2 A I do not remember having ever used it.

Ex. 57, Durham Training Video No. 12



Causation

Maria Espinoza

Trial Testimony, 8/28/17, p. 69:19-24



19 Q And if the unsafe behavior that's being disciplined is
20 serious where it can lead to serious bodily harm or even death,
21 can you skip some of these steps?

22 A Yes, you can. In the case of a severe misbehavior the
23 student can move to step six, revocation of busing privileges.
24 It's in red.

Maria Espinoza

Trial Testimony, 8/28/17, p. 72:9-11



Q In your experience, does the process that we've discussed, the progressive discipline, does it work?

A Yes.

Causation

- Isabella ran into the street when she saw her bus because she had been using this path every day to get to and from her bus.
- Isabella watched others use this same path.

Andrea Gaucin Trial Testimony

8/23, p. 152:1-7



Q The two girls are on either side of you?

A Yes.

Q And Isabella said, there's my bus?

A She said "My bus."

Q Okay. And then did she take off running as soon as she said "My bus"?

A Yes, that is what happened.

Negligence

Red Light Rule

Jury Instruction – Presumption of Negligence per se



California Vehicle Code 22112 states:

(a) On approach to a schoolbus stop where pupils are loading or unloading from a schoolbus, the schoolbus driver shall activate an approved amber warning light system, if the schoolbus is so equipped, beginning 200 feet before the schoolbus stop. The schoolbus driver shall deactivate the amber warning light system after reaching the schoolbus stop. The schoolbus driver shall operate the flashing red light signal system and stop signal arm, as required on the schoolbus, at all times when the schoolbus is stopped for the purpose of loading or unloading pupils. The flashing red light signal system, amber warning lights system, and stop signal arm shall not be operated at any place where traffic is controlled by a traffic officer or at any location identified in subdivision (e) of this section. The schoolbus flashing red light signal system, amber warning lights system, and stop signal arm shall not be operated at any other time.

Shanita Mason Trial testimony

8/21, p. 101:4-13

4 Q "Mason said she doesn't activate the red lights until all
5 of the children are at the bus stop and ready to board the
6 bus." Did you tell Officer Cruz that?

7 A No.

8 Q Okay. And in fact, that's a violation of your rules,
9 isn't it?

10 A To wait until the students line up?

11 Q Yes.

12 A Yes.

Deputy Cruz

- Interviewed witnesses at scene
- Experience with 1000's accident investigation and witness statements



Deputy Cruz Trial Testimony

8/22/17, Page 27:19-25



19 Q Did Ms. Mason tell you that she doesn't activate the red
20 flashing lights until all the children are at the bus stop and
21 are ready to board the bus?

22 A Yes.

23 Q Is there any question in your mind that she told you
24 that?

25 A No.

Certified Translated Transcript of Corazon Marin (“bus just got here”)



Officer Donald Rusk

- MAIT Team
- 1000's of accident investigations
- Interested in determining the location of the bus and whether red lights were on at time of impact
 - Criminal implications



MAIT Officer Rusk Trial Testimony 8/24, 79:5-9



5 Q Did you -- what did you conclude as to the location of
6 the bus based on the witness statements?

7 A Based on my training and experience and the statements of
8 all the parties involved, the bus was likely at the stop with
9 its yellow flashing lights on.

Joellen Gill

- Human factors engineering



Perception-Reaction Time
(PRT)

- Detection }
• Identification }
• ~~Dec~~ Decision }
• Respond

1. Expected
2. Unexpected
3. Surprise

Slowing in response to bus warnings



Subaru initially traveling 38 mph, and V_o exhibiting a 1.1 s PRT in response to the school bus warnings, before decelerating from 38 to 28 mph at a “casual” rate of 0.2g. The Subaru is 365 ft away from the bus (longitudinal) and 244 ft away from the AOI at the onset of the 1.1 s PRT

ACCIDENT SITE INSPECTION

Area of Impact



Ex. 501-007

Vo Would Have Reacted To The Red Lights And Stop Arm

Trial Testimony, 8/24 P. 89:18-21

Q And what's your understanding of what you're required to do when you see red lights and the stop sign arm, which comes out the side of the bus?

A I would stop.

Surprise Witness - Mendez

- Dealing with the hostile witness

Comparative Fault

- Durham _____
 - Mason _____
 - Carina Sanchez _____
 - Isabella _____
 - Ms. Vo _____
- 100%



402. Standard of Care for Minors

Isabella Escamilla Sanchez is a child who was six years old at the time of the incident. **Children are not held to the same standards of behavior as adults.** A child is required to use the amount of care that a reasonably careful child of the same age, intelligence, knowledge, and experience would use in that same situation.

Although Isabella's J-walking is a vehicle code violation, the law provides that she is not necessarily negligent.



Jury Instruction 421.

Negligence per se: Rebuttal of the Presumption of Negligence (Violation of Minor Excused)

Isabella Escamilla Sanchez claims that even if she violated the law, she is not negligent because she was six years old at the time of the incident. **If you find that Isabella Escamilla Sanchez was as careful as a reasonably careful child of the same age, intelligence, knowledge and experience would have been in the same situation, then Isabella Escamilla Sanchez was not negligent.**

Damages

Key Damage Issues at Trial

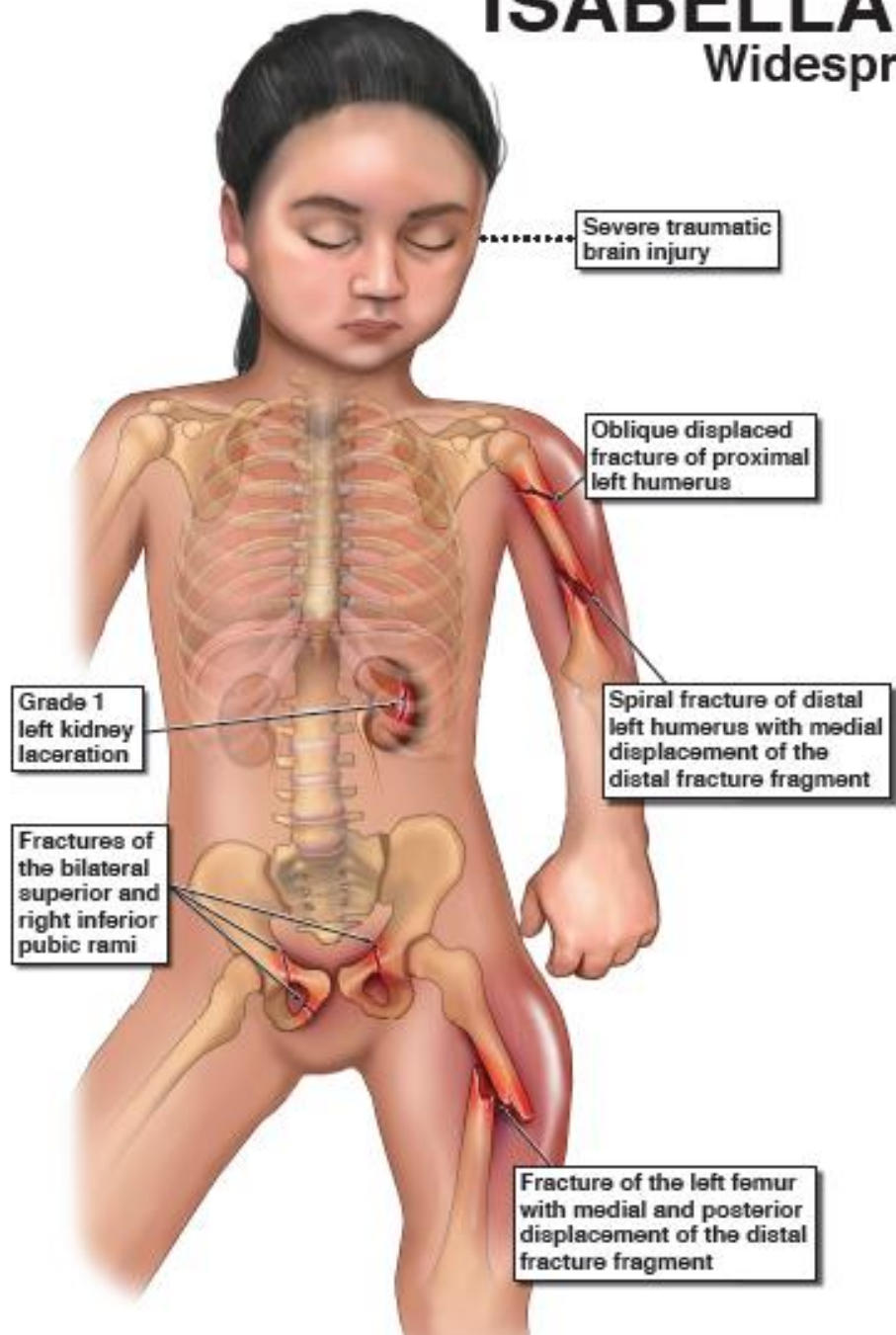
1. Life Expectancy
2. Cost of Attendant Care

Plaintiff Testified for One Minute

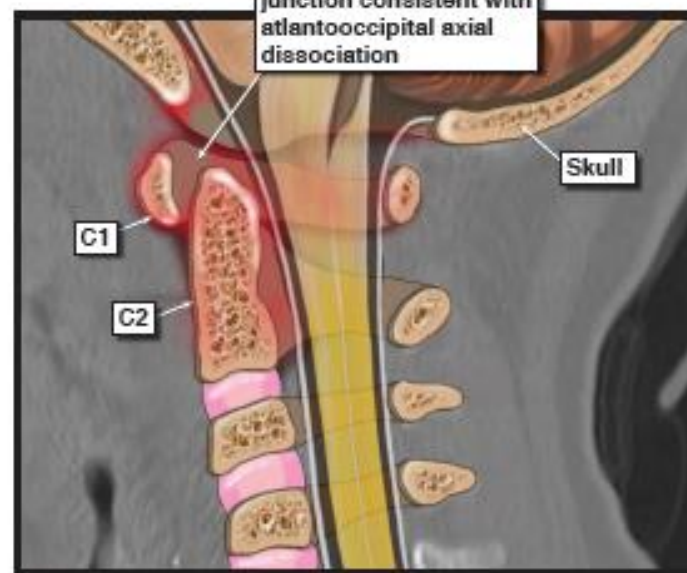


ISABELLA ESCAMILLA

Widespread Injuries

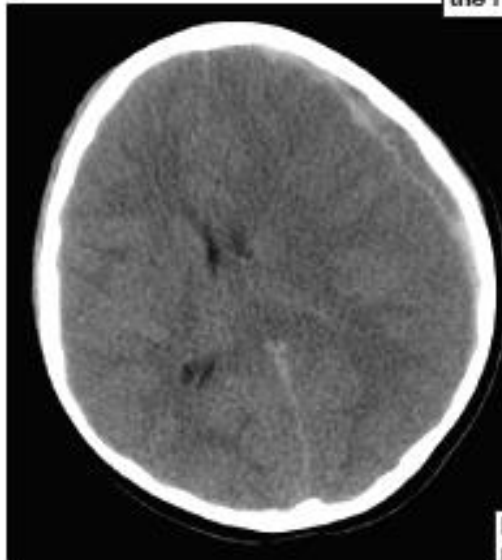


10/3/12 Cervical Spine CT (sagittal)



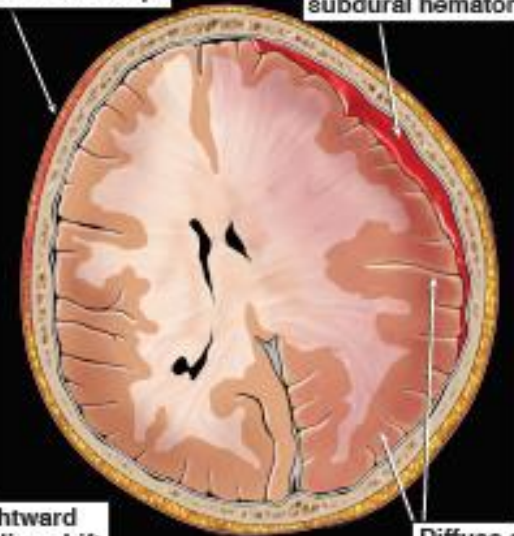
Craniectomy with Evacuation of Subdural Hematoma (10/3/12)

10/3/12 Head CT (axial)



Soft tissue swelling of the right frontal scalp

Left frontoparietal subdural hematoma

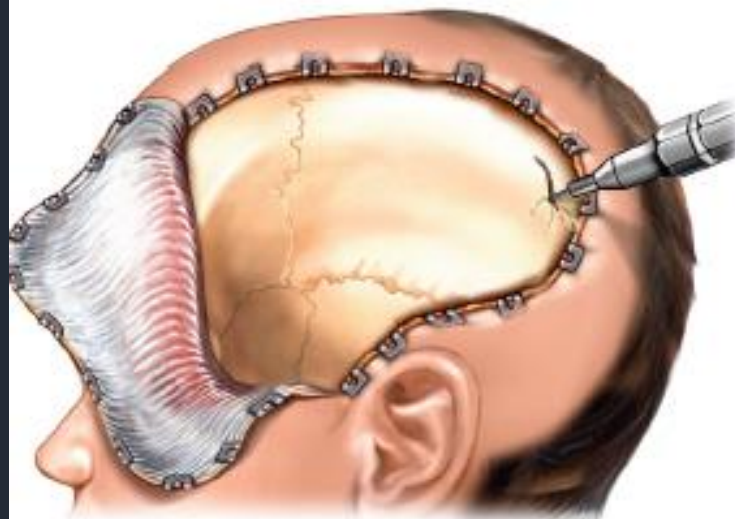


Rightward midline shift

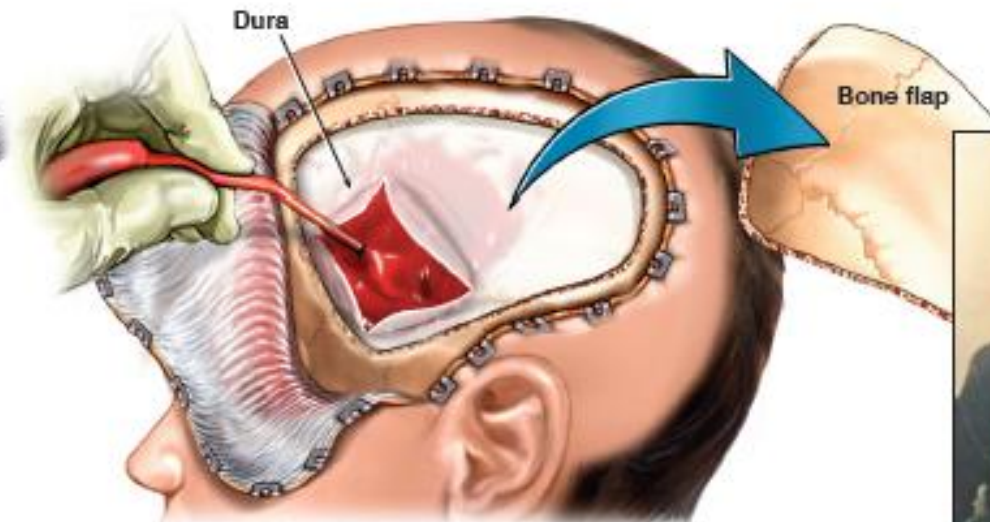
Diffuse cerebral edema



A. An incision is made in the scalp.



B. A bone flap is cut in the skull.



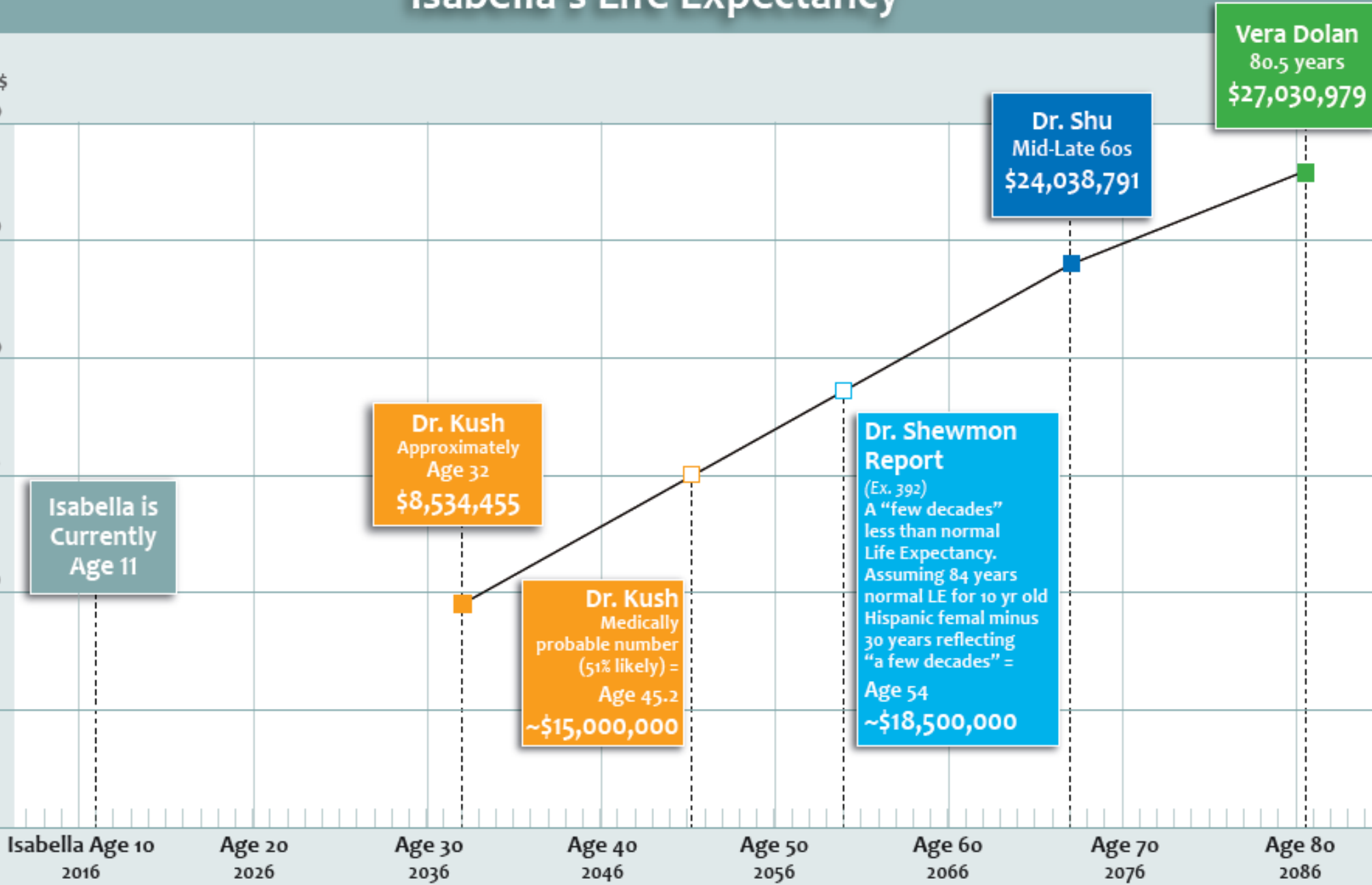
C. The bone flap is removed. The dura is opened and the hematoma is evacuated.



Isabella's Life Expectancy

COST OF
CARE IN \$\$
30,000,000

25,000,000
20,000,000
15,000,000
10,000,000
5,000,000



Isabella Age 10
2016

Age 20
2026

Age 30
2036

Age 40
2046

Age 50
2056

Age 60
2066

Age 70
2076

Age 80
2086

Need for 24 Hour LVN Care is Undisputed

39. ATTENDANT CARE (LVN)

1.0%

09/01/2017 - 08/31/2077

\$360,546

16,296,021

- LVN from an agency costs \$41.13 per hour
 - Carol Hyland

Ed Bennet

Defense Life Care Planner



- Agrees that there are many advantages to hiring an LVN through an agency, which drives up the cost:
 - Legal arrangement
 - comply with laws to pay Workers Compensation
 - Hiring
 - Firing
 - Scheduling
 - Benefits for workers results in:
 - Less turnover/ burnout
 - Better continuity of care
 - Coverage when LVN is sick/ unavailable
 - Certified workers
 - **\$20.76 LVN rate is for no agency, no worker's compensation, etc.**

Ed Bennet Trial Testimony, 9/11, p. 87:17-19



17 Q Okay. So you have no problem with the family using an
18 agency?

19 A I don't.

Ed Bennet Trial Testimony, 9/11, p. 90:3-8



3 Q Okay. And even though you did different research with a
4 different number, you don't have any opinion that the rate that
5 Carol Hyland came up with for an agency of \$41.13, is
6 inaccurate or unreasonable?

7 A No. I'm not saying she's inaccurate or unreasonable for
8 \$41 for an agency.

Cost of Attendant Care

Medi-Cal rate which Ms. Phillips was paid is inadmissible under *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308.

- “...Evidence of the full amount billed for past medical services cannot support expert opinion on the reasonable value of future medical services.” (*Id.* at 7:5-10.)
- The court also noted that both Ms. Hyland and Mr. Bennet could testify about the reasonable value of the services, which both experts did.

Tamara Hunt, MBA, PhD.

Economist

- Life Care plan
- Lost Earning capacity



Present Value of
LCP

DR Shu - \$24,038,791
60 yr LE

Ms DOLAN \$27,030,979
70.5 yr
yr

Special Jury Instruction No. 1



Carina Sanchez is the mother of Isabella Escamilla Sanchez. She is not a party and is not making a claim for damages. She has been appointed by the Court as Isabella's guardian ad litem for this action. A guardian ad litem is responsible for representing a minor's interests in a civil case for damages. If a judgment is rendered in favor of Isabella Escamilla Sanchez any monies paid to Isabella must be managed by the guardian ad litem according to terms and conditions approved by the Court.

Human Damages

