

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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Investigation of:

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COLLISION OF AMTRAK TRAIN 280  
WITH MAINTENANCE-OF-WAY EMPLOYEE  
ON OCTOBER 29, 2014 IN  
COLUMBIA COUNTY, NEW YORK

Docket No.: DCA-15-FR-003

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Interview of: DAVID M. KESTLER

Courtyard Marriott Inn  
Kingston, New York

Friday,  
October 31, 2014

The above-captioned matter convened, pursuant to notice.

BEFORE: STEPHEN JENNER, Ph.D.  
Human Performance Investigator

## APPEARANCES:

STEPHEN JENNER, Ph.D., Human Performance Investigator  
National Transportation Safety Board

TOM HEBERT, Safety Task Force  
Brotherhood of Locomotive Engineers and Trainmen (BLET)

JIM FINNEGAN, Grand Lodge Representative  
Brotherhood of Railroad Signalmen

MATTHEW PORTO, Director of Safety  
Amtrak

WILLIAM COLLINS, Signal and Train Control Inspector  
Inspector-in-Charge  
Federal Railroad Administration (FRA)

PAUL HRASKA, Operating Practices Inspector  
Federal Railroad Administration

ROBERT WINSTEL, Signal and Train Control Specialist  
Federal Railroad Administration

DAN TOTH, Operating Practices Inspector  
New York State Department of Transportation

GEORGE GERNON, Investigator  
Amtrak Police Department

LONNIE McMILLAN, Safety Officer  
Mid-Atlantic Division, Amtrak

WILLIAM FOSTER, Senior Investigator  
Columbia County Sherriff's Office

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I N T E R V I E W

1  
2 DR. JENNER: Good morning. My name is Stephen Jenner.  
3 I am an investigator with the National Transportation Safety  
4 Board. Today is October 31st 2014. We are at the Courtyard  
5 Marriott Inn in Kingston, New York to conduct an interview with  
6 Mr. David Kestler. This interview is in conjunction with the NTSB  
7 investigation of a collision of Amtrak Train 280 with a  
8 maintenance employee on October 29, 2014 at milepost 100.9 on  
9 Amtrak's Hudson Line near Clermont, New York, in Columbia County.  
10 The NTSB accident reference number is DCA-15-FR-003.

11 Before we go -- start the interview, we'll just have  
12 everyone introduce themselves and spell your name as necessary.  
13 Again, my name is Stephen Jenner, S-t-e-p-h-e-n, J-e-n-n-e-r, an  
14 investigator with the NTSB. And to my right?

15 MR. HEBERT: Tom Hebert, H-e-r-b-e-t, BLET Safety Task  
16 Force.

17 MR. FINNEGAN: Jim Finnegan, F-i-n-n-e-g-a-n, Grand  
18 Lodge Representative, Brotherhood of Railroad Signalmen.

19 MR. PORTO: Matthew Porto, P-o-r-t-o, Director of  
20 Safety, Amtrak.

21 MR. McMILLAN: Lonnie McMillan, last name spelling M-c-  
22 M-i-l-l-a-n, Safety Officer for Mid-Atlantic Division, and I'll  
23 speaking today for Matthew Porto.

24 MR. COLLINS: William Collins, Inspector-in-Charge of  
25 the investigation for the Federal Railroad Administration.

1 MR. HRASKA: Paul Hraska, H-r-a-s-k-a, Operating  
2 Practices Inspector, Federal Railroad Administration.

3 MR. WINSTEL: Robert Winstel, W-i-n-s-t-e-l, Signal and  
4 Training Control Safety Specialist, Federal Railroad  
5 Administration.

6 MR. TOTH: Dan Toth, T-o-t-h, New York State Department  
7 of Transportation, Operating Practices Inspector.

8 MR. FOSTER: William Foster, F-o-s-t-e-r, Senior  
9 Investigator, Columbia County Sherriff's Office.

10 MR. GERONON: George Gernon, G-e-r-n-o-n. I'm an  
11 Investigator with the Amtrak Police Department.

12 DR. JENNER: All right, thank you.

13 INTERVIEW OF DAVID M. KESTLER

14 BY DR. JENNER:

15 Q. David, if you'd just give us your full name and spelling  
16 as well?

17 A. David Kestler, K-e-s-t-l-e-r.

18 Q. Okay. And what is your position? What is your title?

19 A. I'm a cable splicer.

20 Q. And who do you work for?

21 A. Henkels & McCoy.

22 Q. Great, thank you. Great. Is it okay if I call you  
23 David?

24 A. Sure.

25 Q. Great. Thank you. First of all, thank you for being

1 here and we're certainly sorry that, you know, this incident  
2 occurred and that, you know, that -- you were in the area at the  
3 time, so we're interested in talking to you about, you know,  
4 anything that you observed that day.

5 Well, let me just start off a little bit about your  
6 background. How long have been with Henkels & McCoy.

7 A. Actually, I just -- I returned last fall, and then I  
8 came back for this job. But I have a total of 16 years with them.

9 Q. And what had you been doing prior to your retirement?  
10 Were you working in the same capacity?

11 A. No. I -- basically, telephone cable splicer. This is  
12 something new.

13 Q. Okay. So, how did you get up to speed on this  
14 particular job? How did you learn how to do it?

15 A. Well, it's basically the same as everything else; it's  
16 just a different -- you know, the other cables were color coded  
17 and multiple wires in each cable. These are basically small, you  
18 know, the biggest one has 27 conductors. So, it's just the matter  
19 of connecting them with the connectors provided and closing them  
20 up so they're weather tight.

21 Q. Okay. Had you worked with Amtrak or any other type of  
22 railroad before?

23 A. No.

24 Q. Okay. So, what sort of preparation were given about,  
25 you know, the railroad industry and what to expect on --

1           A.    We had a video and whatnot. I had to be -- get my  
2 clearance and all that. And every morning, there's a safety as to  
3 who's doing what and where and whatnot.

4           Q.    Okay. Let's talk a little bit about the safety meeting.  
5 Well, on the day of the incident, if you can just walk us through  
6 your day, what time you went on duty and who you saw and what sort  
7 of meetings you had, including the safety meeting? So, when did  
8 you go on duty that day?

9           A.    They -- they're practice is to meet at 6:30, and that  
10 was at the Tripoli crossing there.

11          Q.    Okay. And who's -- so a group meets at 6:30?

12          A.    Yes.

13          Q.    About how many people are there?

14          A.    Twenty plus.

15          Q.    Okay. And who ran the meeting that day?

16          A.    It was -- a person from Amtrak gave the meeting  
17 briefing, and then our -- my construction foreman always has  
18 something to add, and usually it's about safety.

19          Q.    Do you recall the name of the Amtrak person?

20          A.    No, I don't.

21          Q.    Okay. And who's the construction foreman?

22          A.    Tim Hockenberry.

23          Q.    Okay. So, is it typical that those two are both at the  
24 meeting and running the meeting?

25          A.    Like I said, this was my second day, so it's --

1 Q. Oh.

2 A. -- I can't say, you know --

3 Q. Oh.

4 A. This was basically my second day on the job.

5 Q. Okay, I -- let's get that on the record then. I think  
6 you told me that --

7 A. Yes.

8 Q. -- when we were talking off the record --

9 A. All right.

10 Q. -- and thanks for bringing that up. So, you had started  
11 on Tuesday?

12 A. Yes.

13 Q. Okay. What sort of introduction did you get in  
14 preparation on your first day there, on Tuesday? You mentioned  
15 videos, so --

16 A. Well, that was quite a while ago. I'd been working  
17 since July, but I'd been in the warehouse testing the cable. All  
18 cables have to be tested before they're installed.

19 Q. Okay. Okay, so from July, how long were you in that  
20 position working testing the cables?

21 A. They had me out on the tracks, oh, a month or so ago.  
22 Because there was a special part called Ice House that they wanted  
23 to turn over to the state for some reason, so I had some  
24 terminations there and some prep work through the railroad, which  
25 took -- and then some more testing. I worked with one of the



1 employees on the railroad to test the cables to make sure they  
2 were -- we both agreed that they were ready to turn over.

3 Q. Okay. So, now I'll bring you up to Tuesday. So, you --  
4 was your first day at this job.

5 A. Um-hum.

6 Q. Okay. And what are your general responsibilities?

7 A. Just the cable splicing and the -- making closures  
8 weatherproof.

9 Q. Okay. Now, there are Amtrak employees there that are  
10 sort of looking out for your safety?

11 A. Yes.

12 Q. Okay.

13 A. Nobody was supposed to work alone, so she was assigned  
14 to -- for my safety on Tuesday and Wednesday.

15 Q. And she is Nikki?

16 A. Yes.

17 Q. Okay. What sort of interaction and introduction did you  
18 have on Tuesday? Did you meet her Tuesday?

19 A. Yeah. I had met her before. When I was doing that  
20 particular Ice House thing, she was also there --

21 Q. Okay.

22 A. -- and we just -- she, you know, she says we'll go up  
23 the tracks and I'll get you set across the tracks and set up to  
24 work. You know, we didn't chat for a long time or anything.

25 Q. All right. Okay. Well, let me go back to -- sorry to

1 jump around. But, on Wednesday, you were talking about the safety  
2 briefing --

3 A. Um-hum.

4 Q. -- about 20 people there, including the Amtrak official  
5 and the construction foreman.

6 A. Um-hum.

7 Q. What are some of the things that were discussed in terms  
8 of the safety briefing?

9 A. Who was -- what was going on, if I remember correctly,  
10 there was pre-ripping for the placement of the cable, there was a  
11 bridge crew for placing pipes and whatnot on the bridge, and then  
12 there was -- then me for the splicing.

13 Q. Okay. So, what type of instruction, safety advisements,  
14 do they give to you? They talk about the track is out of service  
15 from here to there, or you're not supposed to go from point A to  
16 point B? Do they discuss that?

17 A. Um-hum.

18 Q. As best you recall --

19 A. Yes.

20 Q. -- can share that?

21 A. I can't tell you about the whole briefing because it's,  
22 it's -- you know, my part was splicing and that's what I was  
23 interested in, and the splicing wasn't going to have anything to  
24 do with the trains. I was going to be out of the way, so the rest  
25 of it didn't matter to me.

1 Q. So, why do you need an Amtrak person assigned to you if  
2 you're out of the way?

3 A. I was working on the east side of the tracks and the  
4 access road is on the river, the west side of the tracks --

5 Q. Um-hum.

6 A. -- and to get across them, and I believe it's the Amtrak  
7 policy where nobody works alone.

8 Q. Okay. So, when you have to go from the east -- from the  
9 west to the east, what has to happen?

10 A. I have to get permission from Nikki to cross the tracks.  
11 She'll tell me if I can cross or not.

12 Q. And what is -- so you go and you talk to her. Is she  
13 usually within vision of where you're working?

14 A. Very close. Yes, very close.

15 Q. Okay. And what is her procedure? Does she get on the  
16 radio to call someone?

17 A. Well, yeah. She makes sure that there's no trains in  
18 the vicinity, which track is hot and which track isn't, and so  
19 forth.

20 Q. Okay. On that day, do you recall which track was in  
21 service, out of service?

22 A. They had changed. The track -- the east track was the  
23 live track that day.

24 Q. Okay. How many times, you know, did you have to cross  
25 from the west to the east? Is that a common back and forth for

1 you?

2 A. No, because I got everything together and she helped me  
3 take my material across -- and mine, like I said, takes quite a  
4 bit of time, so I was set for hours. So, we took everything over  
5 and that was it. It was a couple of boxes of material and a box  
6 full of tools and I was set for the morning.

7 Q. Okay. Did you -- are they just hand carried across?

8 A. Yes, yes.

9 Q. Okay. And how many trips back and forth?

10 A. One.

11 Q. Just one trip?

12 A. Yeah.

13 Q. Okay. As far as you can tell, when she's on the radio,  
14 was communication efficient? Did she have problems reaching  
15 anyone?

16 A. Not that I know. Because, like I said, she was -- I was  
17 busy and I really didn't pay attention to her. I heard her on the  
18 radio a few times, but I'm not sure what she was doing.

19 Q. Okay. Let me -- I think I, you know, understand the  
20 picture there, but what we're trying to understand is, you know,  
21 -- at the time of the incident, you know, we understand that she  
22 was walking on the tracks.

23 A. Um-hum.

24 Q. And do you know why she was walking on the tracks at  
25 that moment? Had she said anything to you?

1           A.    Yeah.  She -- before that, the last thing we -- she said  
2 she had been sitting and her legs were -- she was tired of  
3 sitting; she wanted to pace.

4           Q.    Where was she sitting?

5           A.    In her pickup.

6           Q.    And why was she in her pickup?

7           A.    Well, the weather wasn't very nice.  It was trying to  
8 rain every few minutes.

9           Q.    Okay.  And --

10          A.    And like I said, I was out of the way, so there was no  
11 need for -- you know, I wasn't in the way of anything.

12          Q.    Um-hum.

13          A.    So, there was no need for me -- for her to be right over  
14 me being that I was out of the way.

15          Q.    Sure.

16          A.    If I needed her, I would have got her attention.

17          Q.    How would you have gotten her attention?

18          A.    Probably if I just stood up, she would have come over  
19 because she was very alert, you know, as far as my -- the time  
20 that I had been with her.

21          Q.    Right.  Where was her pickup in relation to where you  
22 were doing your work?

23          A.    Right across the tracks, right --

24          Q.    Right across the tracks?

25          A.    -- right under the railroad right-of-way.

1 Q. So, she was in her -- how long was she in the pickup,  
2 can you estimate?

3 A. Probably, I -- the guess is two hours.

4 Q. Okay. Okay. So, she got out of the pickup, she walked  
5 over to you, and you had a brief discussion that she's tired of  
6 sitting and needs to stretch her legs?

7 A. Yes.

8 Q. Okay. Did you see where, where she stretched her legs?  
9 Where did she take off?

10 A. The last time I saw her, I believe she was walking like  
11 north away from me, but I -- I'm sure she didn't go very far.

12 Q. Okay. Approximately -- after your conversation, how  
13 long do you think it was before the train came?

14 A. Less than a half hour.

15 Q. Okay. Okay. So, she had been -- okay, less than a half  
16 hour, so more than just a few minutes?

17 A. Um-hum.

18 Q. Okay. So, had you seen her walk up when one -- the  
19 tracks north and then turn around and head south?

20 A. No, because, like I said, I was in the hole bent over  
21 and that was what I was doing. I was right in this 3-by-3 spot.

22 Q. Okay.

23 A. I wasn't looking around, you know.

24 Q. So, the last interaction you had was she says I'm going  
25 to stretch my legs and that was less than a half hour when the

1 incident occurred?

2 A. Um-hum.

3 Q. Okay. And -- but, when she says stretch my legs, that  
4 was the last visual contact -- you saw her head north and that was  
5 the last visual contact you had?

6 A. Yeah.

7 Q. Okay. Did she -- and any casual conversation about what  
8 was going on with her? Did she mention it's a busy day today or,  
9 you know, this is what's going on with me. The weather is  
10 terrible and --

11 A. No. We said very little. It was, you know, very  
12 little. We said good morning and that was about it, and she said  
13 do you need anything else, after she got me across the tracks.  
14 So, it was very little conversation.

15 Q. Okay. Do you think there was an understanding about,  
16 you know -- you had mentioned to me that -- what track was out of  
17 service. Did she seem to have a good understanding about --  
18 because things had changed that day, if --

19 A. Yes.

20 Q. Okay.

21 A. Yes.

22 Q. But, did she seem to have a good -- was she up to date  
23 with that?

24 A. I believe so. We didn't -- not to my -- I heard  
25 somebody say that she was asking for foul time on the tracks for

1 -- I guess the radio in her truck was better than the handheld  
2 radios; I don't know. I'm guessing. It's --

3 Q. Oh, did you see her use the handheld radios to ask for  
4 foul time or would she go to the truck?

5 A. She was in her truck, so I assume she was using the one  
6 in the truck. This --

7 UNIDENTIFIED SPEAKER: Did you -- sorry. Sorry.

8 BY DR. JENNER:

9 Q. Okay. Did you see her use the handheld radio at all?

10 A. No.

11 Q. Okay. But, but your impression is the truck radio was  
12 better than the handheld?

13 A. I would assume, yeah.

14 Q. Did you see her at least holding on to it? Or, what --  
15 do you know if it was --

16 A. Yes. Yes, she had it. She definitely had it.

17 Q. Right. Was it -- was she physically holding it in hand  
18 or was it part of her, you know, uniform or --

19 A. I have no idea.

20 Q. Okay.

21 A. I don't. It was a clip-on type thing, so I don't know.  
22 I don't know whether she clipped it on or if she was holding it.  
23 I have no idea.

24 Q. Okay. All right. Okay, that's the questions I have  
25 right now. Do you need a break or anything?



1 A. No, I'm fine.

2 Q. Great. Okay, we'll go around the table for some follow-  
3 ups. Thank you.

4 BY MR. HEBERT:

5 Q. Tom Herbert, BLE. You had mentioned -- did you take  
6 roadway worker protection courses?

7 A. Yes. I had -- to work there, I had to take that to get  
8 the clearance card.

9 Q. Um-hum?

10 A. Yeah, I had to take that computer course on the  
11 computer. I had to answer the question.

12 Q. And when did you take that?

13 A. I would say the first one, I showed up like the very  
14 first -- second week of July.

15 Q. July. Okay. And what were some of the things that were  
16 discussed during the online training?

17 A. Oh, about the distance from rails and whatnot. There  
18 was -- I think there was 25 questions on the test. Yeah.

19 Q. All right, that's all I have.

20 BY MR. FINNEGAN:

21 Q. Jim Finnegan. I have a couple of questions. That  
22 morning before you went across the track, did she get foul time at  
23 that time to go across the track? Did she talk to somebody on the  
24 radio before you moved your equipment over to the --

25 A. I'm not sure because we -- she had our own pickup and I

1 got my stuff out and she come up. So, I can't answer that.

2 Q. That's fine. Well, I guess that answers my second  
3 question, but I'm going to ask it. Did you ever hear her get foul  
4 time that day while -- or was she --

5 A. I can't answer that because that is -- like I said, she  
6 was across the tracks and I was busy down in that hole.

7 Q. Sure.

8 A. And I sort of tuned everything out because it was lousy  
9 weather and I wanted to get it done before I got it all wet.

10 Q. Okay. Third question, were you surprised when the train  
11 came by or did other trains pass your while you were working?

12 A. There had been other trains, yeah.

13 Q. Okay. No further questions. Thank you.

14 BY MR. McMILLAN:

15 Q. Again, Lonnie McMillan speaking for Matthew Porto. Did  
16 the same person give you the briefing on Tuesday and Wednesday?

17 A. For me on the track?

18 Q. Yes, sir.

19 A. Yes. Yeah.

20 Q. Okay. How many times did she actually cross the tracks  
21 that morning while you were --

22 A. Did she cross the tracks?

23 Q. Nikki, yes.

24 A. She helped me across, went back to her vehicle, and then  
25 came back. Just, you know, over, back, and back over.

1 Q. Thank you. No further questions.

2 BY MR. COLLINS:

3 Q. William Collins, C-o-l-l-i-n-s. So, when you got  
4 prepared with your material and and she got out of her truck and  
5 walked back and you got your materials ready to carry over, she  
6 didn't brief you and say we have foul time between here and here,  
7 you just automatically just started walking across the tracks?

8 A. I'm not sure. She, you know, she said it was okay. She  
9 picked up one of the boxes and she said we -- I assume she did say  
10 that because we -- you know, she said it was okay to go.

11 Q. Okay, so she did then confirm that it was safe to cross?

12 A. Yes.

13 Q. So, I remember speaking to you on Wednesday and you had  
14 no indication why she would have been walking on the track, but  
15 since then, you came to the conclusion that she had been sitting  
16 in the truck and her legs were cramped? Is that what she said?

17 A. Yes.

18 Q. She was basically -- did she say I'm going to stretch my  
19 legs? Was that the language?

20 A. Basically, yes.

21 Q. Okay. So, in coming over, she left the truck and walked  
22 across track 2 and then came over and spoke to you at whatever  
23 time it was and said I'm going to go -- you looked up -- she  
24 called your name and got your attention --

25 A. Yeah.

1 Q. -- you were --

2 A. Yep.

3 Q. -- and she then spoke to you and explained what she was  
4 going to do?

5 A. Yes. But -- yeah, she indicated that she'd be close by,  
6 you know.

7 Q. And was she standing then on track 1 and talking --  
8 looking down and talking to you, or did she come down below grade  
9 and talk to you at your -- where you were working on the splice?

10 A. I think she was on the east side of the rails.

11 Q. In the gauge?

12 A. She was on like the ties. I don't know what you call  
13 them. The -- both rails were there and she was on the east side  
14 of the rails.

15 Q. Oh, so she was standing on the ties just right next to  
16 you basically, looking down? Because --

17 A. Yeah.

18 Q. -- after you step off the ties, you go down a little  
19 bit, and then that's where the box is --

20 A. Yeah.

21 Q. -- the pull box, or whatever you want to call it --

22 A. Right. It's the --

23 Q. -- the junction box.

24 A. It's right in line with the plowing, the, the cable  
25 route.

1 Q. Right. And I understand that part, but I'm just trying  
2 to figure out where she was when she addressed you. And then the  
3 conversation was over and you went back to work and --

4 A. I saw her start up the tracks north and that's the last  
5 time I saw her.

6 Q. That would be to your right?

7 A. No, I -- it was -- if this is the tracks, I was down in  
8 the hole sort of facing this way, so she would be off to my left.

9 Q. Okay. So, she's off to your left. In other words, you  
10 were facing north and she was left -- on the track to your left?

11 A. Um-hum.

12 Q. And in which direction did she head, continuing to your  
13 left?

14 A. Yeah. She --

15 Q. Okay, that would be south.

16 A. No.

17 Q. You were adjacent -- you were east of track 1, okay?

18 A. Yes.

19 Q. So, you're east, the river west, so as you face the  
20 river, north is to your right --

21 A. I'm not facing the river; I'm facing the rock ledge. My  
22 back was to the --

23 Q. Okay, so you're facing due east?

24 A. Yes.

25 UNIDENTIFIED SPEAKER: Back to the track.

1           MR. KESTLER: Yes. My back was to the river and the  
2 tracks and everything else.

3           BY MR. COLLINS:

4           Q. Okay, so to your right would be --

5           A. Yeah. Yes.

6           Q. Okay. So, which way did she head, to your right?

7           A. She went north. She went to my left.

8           Q. Okay.

9           UNIDENTIFIED SPEAKER: You last saw her --

10          Sorry.

11          BY MR. COLLINS:

12          Q. You last saw her then walking north?

13          A. Yes.

14          Q. And do you remember if she had her head covered or not?

15          A. No.

16          Q. If she did have a hard hat or not?

17          A. Yes, she did have a hard hat.

18          Q. And she had a sweatshirt on?

19          A. Something orange, but I don't know what it was. There  
20 was orange on her. I remember seeing that.

21          Q. Do you remember if she had her hood pulled up over the  
22 hard hat or anything?

23          A. I can't tell you that.

24          Q. You don't remember? Could you hear any chatter on her  
25 radio or her portable, anyone else talking?

1 A. I wasn't paying attention, you know, I really wasn't.

2 Q. You were --

3 A. I was more interested in what I was doing and I sort of  
4 tuned everything else out.

5 Q. Okay. No further questions. Thank you.

6 BY MR. HRASKA:

7 Q. This is Paul Hraska. I just want to clarify something.  
8 You only needed to cross the tracks once --

9 A. Yes.

10 Q. -- to bring your boxes, your equipment, over? So, it  
11 was just one time that she requested foul time for you to get over  
12 where you needed to work with your equipment?

13 A. Yes.

14 Q. And you didn't need foul time any time after that --

15 A. Not up until the point -- I would have needed it after  
16 that, but not up until that point.

17 Q. Up until that point. Okay, thank you. No further  
18 questions.

19 MR. WINSTEL: I have no questions.

20 MR. TOTH: Dan Toth. No questions.

21 BY MR. FOSTER:

22 Q. William Foster. Do you recall if she was at the safety  
23 briefing in the morning that you attended?

24 A. I can't answer that. I don't know. I don't know  
25 whether she was or not. Like I said, there was quite a group.

1 There was over 20 people. There's, I think we have 20 of us and  
2 then however many Amtrak were there, you know.

3 Q. Second question. So, it's entirely possible -- you  
4 stated that you last saw her walking northbound, but due to your  
5 concentration on what you were doing, your splicing, then it's  
6 quite possible she had turned around and went back south and you  
7 wouldn't have noticed?

8 A. I didn't notice, no, but she must have because she --  
9 when I discovered her missing, she was south of me.

10 Q. Okay, thank you.

11 BY MR. GERNON:

12 Q. So, just to clarify that, you last saw her walking  
13 towards the curb. Do you know where the curb is?

14 A. Yeah.

15 Q. She was walking that way towards the curb?

16 A. Yes.

17 Q. Okay, so that's north. A couple of other questions.  
18 George Gernon, by the way. Sorry. When you did the safety  
19 briefing, where -- did you go with her from there to the site or  
20 did you meet her at the site that morning?

21 A. I followed her for a ways up the track and she pulled  
22 over, and I went by and I pulled over to get out of the -- because  
23 they wanted the right-of-way open in case there was an emergency,  
24 so I found a spot to get off the right-of-way and she came up  
25 behind me.



1 Q. Okay, but what I mean is in the -- did you meet her at  
2 the briefing and go from the briefing to your job location --

3 A. Yes.

4 Q. -- or did you just meet her at the job location?

5 A. No, because I talked to her in the truck. Of course --

6 Q. You talked to her in the truck?

7 A. -- I said good morning and whatnot, then she's says I'm  
8 going to cross the tracks, and I had to get back in my vehicle and  
9 whatnot to cross the tracks.

10 Q. Okay. I don't have anything else.

11 DR. JENNER: Great. Okay.

12 BY DR. JENNER:

13 Q. We'll, we'll go around the room a second time. Do you  
14 need a break right now? We're turning the corner here. We  
15 appreciate everything you've done so far. If you don't know,  
16 that's okay, but just trying to -- I heard less than 30 minutes  
17 that she stretched her legs. Do you think it was between 15 and  
18 30 minutes or --

19 A. I don't know --

20 Q. Okay.

21 A. -- because, like I said, I was busy. I -- it was a  
22 while. I don't know. I'm guessing it. I know it wasn't more  
23 than 30 minutes, but I can't tell you anything better than that.

24 Q. That's fine. Okay, we'll go around a second time here.

25 MR. HEBERT: Tom Hebert. No questions.

1 BY MR. FINNEGAN:

2 Q. Jim Finnegan. One question. I apologize if somebody  
3 already asked this. The first time you went across the track, do  
4 you recall what time that was?

5 A. A little -- around 8:00.

6 Q. 8:00. Thank you.

7 BY MR. McMILLAN:

8 Q. Lonnie McMillan again, speaking on behalf of Matthew  
9 Porto. Do you the train horn blowing?

10 A. Yes, but they all seemed to -- every time, one went by,  
11 it blew the horn.

12 Q. Okay. So, did you take any exception to excessive train  
13 horn blowing?

14 A. The only thing that got my attention was after it  
15 passed, it sounded different than the other trains. That's what  
16 got my attention.

17 Q. Different how?

18 A. It just -- there was a different noise than the trains  
19 before. And then I sort of straightened up, and then I saw the  
20 train was stopped and there was two guys out of it. And with  
21 that, I looked around and I didn't see her, so I didn't know -- I  
22 gave her a minute, and then I started calling her and that's when  
23 I knew something was up, and I come out of the hole and started  
24 down the tracks.

25 Q. Okay. No further questions.

1 BY MR. COLLINS:

2 Q. Bill Collins again. How did -- if your briefing was at  
3 6:00 or you got to the site at 6:30 and then you -- it was  
4 probably an hour before you headed up the track?

5 A. At least. Yeah. This -- the Amtrak people, personnel,  
6 I think, are usually there right about 7:00, it seems to me, and  
7 then the briefing and whatnot, and then by the time everybody gets  
8 their act together, it's a good hour.

9 Q. How did you know where to go to -- where the splice box  
10 was located? How did you know -- how did you determine that?

11 A. Well, that was the second day there. We had been there  
12 the day before.

13 Q. You and Nikki were at that, at 100.9 the day before?

14 A. Yes.

15 Q. How long, the entire day?

16 A. No, I got called off around 1:00 because there was a --  
17 what they thought was a damaged cable down the track and they  
18 wanted me to look at it.

19 Q. Okay. Can you describe -- then early -- that would be  
20 Tuesday morning. Can you describe the -- what you did Tuesday  
21 morning?

22 A. I set up and spliced two cables Tuesday morning. I  
23 closed one and I set up and spliced the other one.

24 Q. Okay, but backing up to 6:30 on Tuesday morning, same  
25 routine basically?

1 A. Yes.

2 Q. Job briefing, they said you're going to -- Nikki's going  
3 to accompany you, or somebody tells this -- give you this  
4 information --

5 A. Yes.

6 Q. -- so you know?

7 A. Yes.

8 Q. Was that Tim Hockenberry who said you're going to go  
9 with Nikki or what?

10 A. I'm not sure who said that; I really don't. Because he  
11 said there'd be three things going on and the one was the splicing  
12 and, you know, as always, somebody went with me and it was Nikki.  
13 As a matter of fact, the first day, she didn't have a vehicle --

14 Q. So, she --

15 A. -- so somebody dropped her off.

16 Q. And so, all she had was a portable?

17 A. The first day, yes. It is when I get called to go look  
18 at the cable, she went with me.

19 Q. Okay. So, Tuesday then, you had to -- which track was  
20 live on Tuesday?

21 A. I think it's -- it was the opposite of whatever was live  
22 Wednesday.

23 Q. Okay. So, track 1 was out of service on Tuesday; track  
24 2 was then live? The one closest to the river was live?

25 A. I believe so, yes.

1 Q. Okay. So, you -- you -- somebody told you you've got to  
2 go to one -- somebody -- somehow, someone knows you're going to  
3 109 -- 100.9?

4 A. That would be Tim Hockenberry. He said that there was a  
5 -- reel ends there. There was three splice to be made up the  
6 tracks.

7 Q. Okay. They -- someone had to know exactly where that  
8 was. Did you -- did they -- somebody bring you updates like there  
9 it is there, or Nikki knew where it was or -- I mean, there's  
10 miles and miles of right-of-away there. I'm trying to figure  
11 out --

12 A. One of the guys running a grade-all said I'll show you  
13 where it is. One of our guys drove -- they had -- the track was  
14 okay to use and the loaded the grade-all on the track and he drove  
15 up the tracks and he showed me where it was.

16 Q. So, you were driving the truck in the right-of-way and  
17 he was in the grade-all on the high railing or --

18 A. Yes.

19 Q. Okay. I'm just trying to visualize how this all came  
20 about. So, he stops --

21 A. Okay. That was Tuesday.

22 Q. That's correct, it was Tuesday.

23 A. Yes.

24 Q. He stops, he's on one, and he says it's right down  
25 there?

1 A. Um-hum.

2 Q. And is 101 right up the -- right up here?

3 A. Right.

4 Q. This milepost 101 --

5 A. Right.

6 Q. -- it's right there? Okay. So, the he leaves and  
7 you're there in your truck with Nikki?

8 A. I was there. Nikki was dropped off by another Amtrak  
9 truck.

10 Q. Okay. but, now you haven't moved your equipment across  
11 the track yet, right?

12 A. No.

13 Q. Okay. So, how did that proceed?

14 A. The same as Wednesday. She, you know, said it's clear  
15 to cross the track and I took over what I need for Tuesday.

16 Q. Okay. So -- and how long were -- that was 8-ish in the  
17 morning?

18 A. I think we got a late start Tuesday for some reason. I  
19 think it was closer to 9:00.

20 Q. Okay. But, then when -- did you -- do you have lunch  
21 right there on the spot?

22 A. I don't each lunch.

23 Q. Okay. So, you just work until you get done or somebody  
24 comes and says I think we have a damaged cable somewhere?

25 A. Um-hum.

1 Q. So, someone shows up from Amtrak or Henkels & McCoy.

2 A. Somebody called her on the radio --

3 Q. Okay.

4 A. -- and asked me to go down. Because they were, they  
5 were almost in sight -- you know, it was that close -- so we went  
6 down there and there was a damage in one of the cables.

7 Q. So, you had to walk down there? You had no truck?

8 A. No, I had a truck.

9 Q. You had a truck. Okay. So, Nikki and you turn around  
10 and drive down?

11 A. Yes.

12 Q. And 2 is still alive. So, then were there -- did you  
13 foul time to cross the track or do they have to determine if it's  
14 safe to cross the track?

15 A. When we got down to where the cable was damaged, there  
16 was three backhoes there and there was people from Amtrak and  
17 there was a fellow that said it was all right to cross.

18 Q. Okay. So, you --

19 A. Because I stopped and he was standing there and he said  
20 it was all right to cross. Because I asked --

21 Q. Oh, good.

22 A. -- because I had never seen him before that I remember.

23 Q. Okay. So, then the day ended pretty much from that  
24 location?

25 A. Yes. I stayed there.

1 Q. (Indiscernible)?

2 A. I had to put the -- to look at the cable and put the  
3 closure on it, and then we placed a box over the closure and  
4 graded it and backfilled it, and that was the end of the day.

5 Q. Okay, so then Wednesday come along. And, again, now,  
6 you followed her or she follows you up there? Because I don't  
7 remember where her truck was. I thought your truck was south of  
8 hers, but --

9 A. No. Wednesday, she started up the tracks and then, for  
10 some reason, she pulled over and I went by her. But, it was just  
11 a matter of a couple of minutes and she was there behind me. Like  
12 I said, I was getting my stuff out of the truck.

13 Q. Okay, I guess I have no further questions. Thanks,  
14 David.

15 BY MR. HRASKA:

16 Q. I have just one more follow-up. This is Paul Hraska.  
17 And you probably answered this already; I just want to make sure.  
18 After you, after you got foul time the first time and you went  
19 across with all your gear, did you ever hear her, did you ever  
20 hear Nikki request foul time again?

21 A. I can't answer that. I don't think so. I don't think  
22 so.

23 Q. Okay. Thank you. No further --

24 BY MR. WINSTEL:

25 Q. Bob Winstel. I have one question or clarification



1 relating to the job briefing on Wednesday morning. Are you  
2 required to sign the job briefing?

3 A. Yes.

4 Q. And did you sign the job briefing?

5 A. Yes.

6 Q. And who had the job briefing form for you to sign?

7 A. Well, it was passed around -- it would be like passing  
8 it around the room.

9 Q. So, you received it from another person who was there --

10 A. Yes.

11 Q. -- participating at the job briefing?

12 A. Yes.

13 Q. Thank you. That's all I have.

14 BY MR. TOTH:

15 Q. Dan Toth. I have a question for you. The day before  
16 that you worked with Nikki, what was she doing while you were  
17 working that day? What was she doing to -- while you were working  
18 that day? Where did you see her position herself?

19 A. I'm not sure. I know she ate lunch right next to me.

20 Q. She didn't stretch -- you didn't notice any stretching  
21 her legs that day also or --

22 A. I'm not sure. I'm not sure.

23 Q. Okay.

24 A. Like I said, I wasn't watching her. There is no reason  
25 for me to watch her, so I, I don't know what she was doing. I

1 was, you know, I was busy. I was bent over.

2 Q. Sure, sure.

3 A. The position I'm in is I'm like this --

4 Q. Right.

5 A. -- okay, looking at the ground.

6 Q. Right. Okay. The day of the incident, did you notice  
7 -- do you remember -- recall anything with the Cloud train on the  
8 other track? Do you remember that ever passing you by or --

9 A. I think I passed that when I was driving up the right-  
10 of-way.

11 Q. You passed it?

12 A. I believe.

13 Q. And that was to the south of you?

14 A. Yes. It was -- I was at almost 101 and I believe they  
15 were down below 100 a little bit.

16 Q. And you never -- you don't recall it ever going past you  
17 to the north?

18 A. Not until way late in the day, I mean, many hours after  
19 the incident.

20 Q. Okay. No further questions.

21 MR. FOSTER: I have no further questions.

22 MR. GERNON: No further questions.

23 MR. FINNEGAN: Ask him --

24 UNIDENTIFIED SPEAKER: I don't --

25 DR. JENNER: Okay, we've got a couple of follow-ups.

1 You're -- we're going to finish up with you real soon here.

2 BY MR. FINNEGAN:

3 Q. It's just a -- Jim Finnegan -- a point of clarification.

4 You said there were three -- the day before, you had worked at  
5 that location and you had said there were three splices. Were  
6 they all in that box or --

7 A. Yes. Yeah.

8 Q. Okay, all three were --

9 A. They were like reel ends, a good spot to make -- to tie  
10 the cables together --

11 Q. Okay.

12 A. -- because they come in basically the same lengths.  
13 They're like 30 600-foot reels --

14 Q. Sure.

15 A. -- so they all ran out basically at the same spot.

16 Q. So, did you get two of them done and you came back the  
17 day of the incident and did the last one or --

18 A. Well, I had one done and one -- one done and closed, one  
19 done, then I was getting ready to close that when I got pulled  
20 away.

21 Q. Thank you.

22 A. Yep.

23 BY MR. McMILLAN:

24 Q. Bobby McMillan again speaking for Matthew Porto. In  
25 follow-up to Dan's question, did she leave your side at all on

1 Tuesday?

2 A. She was always close, you know, but not right on top of  
3 me or anything. She was always around, but I can't tell you  
4 exactly where she --

5 Q. About how far, the same side of the tracks, opposite  
6 side of the tracks --

7 A. I'm not sure because, like I said, I was working down in  
8 that hole and I -- watching her wasn't what I wanted to do.

9 Q. Thank you. Nothing further.

10 DR. JENNER: Okay, no --

11 MR. COLLINS: I have one more point.

12 BY UNIDENTIFIED SPEAKER:

13 Q. If -- when you say she was in close proximity to you,  
14 was she in voice range --

15 A. Sure.

16 Q. -- where you could have --

17 A. Yeah. If I --

18 Q. -- yelled for her and she would have responded?

19 A. Yes.

20 Q. Would you say 50 feet, a hundred feet? I know that's  
21 arbitrary, but --

22 A. A hundred feet.

23 Q. Thank you.

24 DR. JENNER: Okay, anything -- okay.

25 BY UNIDENTIFIED SPEAKER:

1 Q. David, one more question, if I may? Do you recall  
2 speaking to the deputy and you gave a statement --

3 A. Um-hum.

4 Q. -- the day of the incident. If I may refresh your  
5 memory, one thing that you did put in the statement then was that  
6 Nikki made a comment that she had to stretch her legs, and also  
7 that she was bored. Do you remember her saying that again?

8 A. Um-hum. She said that she could only play with her  
9 phone so long before she got bored. Because she had her phone in  
10 the -- her cell phone, and she said there was only so much she  
11 could do with that. That's how she got bored.

12 Q. So, assuming that she referring to while she was in the  
13 truck, she was playing with her cell phone?

14 A. Yes. Yep.

15 Q. She said that to you?

16 A. Yep.

17 Q. Now, are you aware that -- I mean, did she convey to you  
18 or do you know that she can only use that cell phone while in the  
19 truck? Is that --

20 A. She never mentioned it, no.

21 Q. No? Okay.

22 A. Because I know there was on that thing that we had --  
23 you're not supposed to use any electronic within 25 feet of the  
24 tracks, so I just leave mine in the truck. I don't, I don't --  
25 there's no problem that way. It's not hurting anybody.

1 Q. Okay. So, can you, again, just for clarity, go over the  
2 conversation she had about her phone?

3 A. Something about you can only stare at the thing so long,  
4 so I assume she was -- whatever.

5 Q. And that was at the same time she was telling you that  
6 she needed to stretch her legs?

7 A. Yeah.

8 Q. So, she talked about stretching her legs, talking about  
9 that she no longer wanted to stare at her phone?

10 A. Right, that's what she said. The first thing was you  
11 can only stare at your phone so long; I'm going to stretch my  
12 legs.

13 Q. Okay. Thank you.

14 BY UNIDENTIFIED SPEAKER:

15 Q. I just have one follow-up in regards to his. Did you  
16 ever see her on the phone outside, you know, talking on the phone  
17 or playing with her phone outside by you at any --

18 A. Her cell phone?

19 Q. Yeah -- at any point?

20 A. No, I can't say that I did.

21 Q. Okay. Thank you very much.

22 BY UNIDENTIFIED SPEAKER:

23 Q. I want to go back to the training that you received. It  
24 was -- did they give you a computer disk to -- and then it was a  
25 multiple choice test, or did somebody proctor the test and give

1 you the test and go over -- how did -- can you describe the?

2 A. It was done in our construction trailer. It was done on  
3 the computer in our construction trailer.

4 Q. Okay. Did anybody go -- did you go through any formal  
5 training or did they just say -- how did that work?

6 A. We watched a video. There's a video that accompanies it  
7 for like 45 minutes or something.

8 Q. Okay.

9 MR. KESTLER: Right? Isn't there video that comes with  
10 it?

11 UNIDENTIFIED SPEAKER: I don't know.

12 MR. KESTLER: Oh, okay.

13 Yeah, I'm sure there's a video --

14 BY UNIDENTIFIED SPEAKER:

15 Q. Okay.

16 A. -- and you watch that, and there was like -- the  
17 importance was like the footages as far as the radios in the  
18 safety zones and stuff like that. That was a big part of it, and  
19 that was part of the -- some of the questions on the test also.

20 Q. Was the test pass/fail or -- how did you know you  
21 passed, they just --

22 A. It was automatic. Once -- it was an online thing. I  
23 get 20 right out of 25 or 21 right out of 25, something like that.  
24 Because if I didn't, I didn't get the badge to work on the --

25 Q. Sure. If you didn't get 20 out of 25, did they let you

1 take it again or watch the video again or --

2 A. I got it the first time.

3 Q. So, you don't know? Okay.

4 A. I have no idea.

5 Q. Okay. All right. Thank you.

6 DR. JENNER: Okay, good, good, good, good, good, good, good,  
7 good.

8 BY DR. JENNER:

9 Q. Okay, just a couple more questions for me.

10 A. You keep saying that.

11 Q. I know. This time I promise. A couple is one of those  
12 words that -- okay. Did you -- after the safety briefings, did  
13 you feel that everything necessary was covered? Did you still  
14 have questions or did you think that all the necessary hazards  
15 were identified and your concerns were addressed?

16 A. Yeah, everything was covered because it was -- you know,  
17 it identified each work group. And I was, like I said, I was  
18 going to be out of the way, so that was the only thing I was  
19 concerned about.

20 Q. Okay. And last one.

21 A. Yes.

22 Q. When she headed -- when she said she was going to  
23 stretch her legs and headed north and that was the last time you  
24 saw her, was she walking on track 1 while headed north, the track  
25 closest to you?



1 A. Yes, yes.

2 Q. Okay. Very good. I promised that was the last one,  
3 so --

4 A. You're done.

5 Q. I'm done. You're done too. Thank you very much for  
6 your time --

7 A. Okay.

8 Q. -- and your information is helpful.

9 A. All right, like I said, I don't know anything. You know  
10 what I mean? I --

11 Q. Nonetheless, you're painting -- you're helping us to --

12 A. All right.

13 Q. -- complete the picture there, so we appreciate your  
14 time.

15 A. All right.

16 Q. If you have any questions for us --

17 A. No, not that I know of.

18 Q. Okay. With that in mind, we'll finish up this  
19 interview. Again, thank you very much.

20 A. All right.

21 (Whereupon, the interview was concluded.)

22

23

24

25

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF:            COLLISION OF AMTRAK TRAIN 280  
                                      WITH MAINTENANCE-OF-WAY EMPLOYEE  
                                      ON OCTOBER 29, 2014 IN  
                                      COLUMBIA COUNTY, NEW YORK  
                                      Interview of David M. Kestler

DOCKET NUMBER:                DCA-15-FR-003

PLACE:                            Kingston, New York

DATE:                             October 31, 2014

was held according to the record, and that this is the original,  
complete, true and accurate transcript which has been transcribed  
to the best of my skill and ability.

---

Karen M. Galvez  
Transcriber