

# MACOMB DAILY

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## Jury acquits man in fatal fiery Shelby Township crash

By Jameson Cook, [jcook@digitalfirstmedia.com](mailto:jcook@digitalfirstmedia.com) and [@JamesonCook](https://twitter.com/JamesonCook) on Twitter Jan 20, 2019



Attorney Goran Antovski points to his client, Daniel Tobey, on Friday during closing arguments at Tobey's trial for reckless driving causing death in Macomb County Circuit Court in Mount Clemens. Antovski displayed a 3:03 to represent the number of seconds over which the accident occurred.



Assistant Macomb County Prosecutor Cory Newman argues Friday in Macomb County Circuit Court in Mount Clemens.

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A jury Friday night acquitted a 46-year-old Capac man of a felony charge for a Shelby Township traffic crash that killed a father and husband.

Daniel Tobey was found not guilty after a jury deliberated nearly two hours following a four-day trial in front of Judge James Maceroni in Macomb County Circuit Court. Tobey was charged with reckless driving causing death, punishable by up to 15 years in prison.

Tobey was driving a 2001 Ford Explorer about 75 mph in the left lane southbound M-53 between 23 and 24 Mile roads in Shelby Township the afternoon of Sept. 23, 2016, when his vehicle crossed the downward-sloping median and vaulted into a Chevy Malibu driven about 70 mph by Bajorek, who was killed instantly due to massive injuries.

Eric Biretta, one of Tobey's attorneys, said his client was "relieved" by the verdict.

"I think it was the proper verdict," Biretta said. "It was a tragedy for all parties involved."

The eight-man, five-woman jury began deliberating late Friday afternoon following closing arguments.

During his closing argument, Assistant Macomb Prosecutor Cory Newman told the jury that Tobey drove with a "wanton and willful disregard for the safety of people and property." Evidence shows there was no legitimate reason for Tobey to lose control of the vehicle, he said.

"The law says you drive recklessly and you kill someone, that's a crime," Newman said. "Scott



Accident reconstruction expert David Shepardson points to an image of the place where a 2001 Explorer driven by Daniel Tobey drove off the southbound lanes of M-53 in Shelby Township and crashed into a Chevy Malibu driven by Scott Bajorek on the northbound side. A dead raccoon that may have contributed to the crash can be seen.



Daniel Tobey appears at his trial last week in Macomb County Circuit Court in Mount Clemens.

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Bajorek never had a chance. He (Tobey) went straight through the median like a missile towards Scott Bajorek's vehicle. He (Bajorek) was in the wrong place at the wrong time."

Newman said during a prior argument that the evidence "can lead to an inference he (Tobey) fell asleep."

Witnesses said they saw Tobey's vehicle veer left slightly, then veer right slightly then go left into the median.

In his closing argument, another Tobey lawyer, Goran Antovski, told the jury the incident was an accident. Tobey reacted to "an unexpected emergency," swerving to avoid a raccoon; a dead raccoon was found on the left shoulder.

He noted the entire incident took place over about 3 seconds.

"He could not do anything about it," Antovski said of his client.

He added most of the doctors who initially treated Tobey indicated he told them he swerved to avoid an animal. But Newman said there is no evidence to back the theory. Tire tracks showed the Explorer traveled over the animal.

Antovski criticized the prosecution.

"What they've done over and over again is focus on what a tragedy it is ... instead of proving what the defendant did," Antovski said. "Maybe he (Tobey) is not the villain he is being cast as."

He said the prosecution caved to pressure from Bajorek's family.



A diagram of the crash involved a Ford Explorer driven by Daniel Tobey and a Chevy Malibu driven by Scott Bajorek is shown Friday in Macomb County Circuit Court in Mount Clemens at Tobey's criminal trial.

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"They lacked the courage to tell his family this was an accident," he said.

Crash reconstruction expert David Shepardson, hired by the defense, testified earlier Friday that Tobey made a mistake by making a "quick jerk" to the left but still said he wasn't to blame.

"I believe a raccoon in the lane was struck by the Explorer, whether it (the raccoon) was dead or alive," he said.

Another defense expert testified a steering arm on the Explorer was found broken, implying it could have caused the accident. But Newman said the expert indicated a broken steering arm would have made the vehicle take a drastic turn, not enter the median at a 10-degree angle as evidence showed.

Antovski noted his client suffered facial injuries, 100 fractures, a "crushed" back and knee, and four facial surgeries. Biretta said more surgeries are planned.

"He will never be the same," Biretta said.

Newman retorted the injuries "were due to his own recklessness."

Bajorek, who worked as an accountant in Sterling Heights, was married to Megan O'Neil Bajorek and the father of three children. His estate filed a civil negligence lawsuit against Tobey. It has not been resolved.