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Supreme Court of Appeals
Richmond, Va.

Record No. 5110

In the Supreme Court of Appeals of Virginia at Richmond

WALLACE PARKER WADE

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF AUGUSTA COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5110

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 25th day of November, 1959.

WALLACE PARKER WADE, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Circuit Court of Augusta County

Upon the petition of Wallace Parker Wade a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Augusta County on the 3rd day of June, 1959, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * *

page 5 }

* * * * *

The Jurors of the Commonwealth of Virginia in and for the body of the County of Augusta and now attending the said Court, UPON THEIR OATH PRESENT, that on or about the 20th day of April in the year One Thousand Nine Hundred Fifty-seven in the said County Wallace Parker Wade, on what is known as U. S. Route 250, between Staunton and Waynesboro, in the County aforesaid, by the wanton and reckless operation of an automobile, feloniously and unlawfully did kill and slay one Fred Melvin Dickerson against the peace and dignity of the Commonwealth of Virginia.

And the Jurors aforesaid upon their oaths aforesaid, do further present, that on the day of in the year One Thousand Nine Hundred in the said County against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of H. H. Collier, J. W. Smoot, Edward H. Furr.

Witnesses sworn in Court and sent before the Grand Jury to testify.

RUDOLPH L. SHAVER, Clerk.

(on back)

Indictment For Felony—Manslaughter.

A True Bill.

....., Foreman.

* * * * *

page 14 } INSTRUCTION 1.

The Court instructs the jury that it may find any one of the three following verdicts:

(1) "That the defendant is guilty of involuntary manslaughter as charged in the indictment." Involuntary manslaughter as related to this case means the killing of one

violation of traffic laws, are not, alone and without more, sufficient to constitute such criminal negligence.

By such criminal negligence is meant that the act or acts constituting same, whether of commission or omission, were done recklessly and in a manner so greatly negligent and deserving of blame as to indicate on the part of the offender an utter indifference to consequences and the safety of others, and were done under circumstances reasonably calculated to produce personal injury to another or which made it not improbable that such injury would be occasioned, and of which circumstances and probable result of his acts the offender knew or was charged with knowledge.

WM. S. M.

page 16 } INSTRUCTION 2-A.

The Court instructs the jury that if they believe from the evidence beyond a reasonable doubt, each and all of the following three things, then they should find the accused guilty of involuntary manslaughter as charged, namely:

(a) that the accused was operating the motor vehicle mentioned in the evidence at the time and place of the accident therein mentioned: and

(b) that he was guilty of criminal negligence in the light of instruction No. 2, in the manner in which he then and there operated same:

(c) that such criminal negligence on his part, if any, was either the sole or a contributing proximate and efficient cause of said accident and death of the deceased.

On the other hand, if the jury should not believe from the evidence beyond a reasonable doubt any one or more of the three things designated above as items (a), (b), and (c), then the jury should find the accused not guilty of involuntary manslaughter.

WM. S. M.

page 17 } INSTRUCTION 3.

The jury are instructed that it is the duty of the jury to consider all the evidence with great care and caution in an earnest effort to do justice between the Commonwealth and the defendant, and if the jury are satisfied from the evidence beyond a reasonable doubt that the accused be guilty of the offense charged in the indictment, and that no reason-

accidentally, contrary to the intention of the defendant, through and by means of criminal negligence. The punishment for involuntary manslaughter is confinement in the penitentiary for not less than one nor more than five years; or, in the discretion of the jury, by a fine not exceeding $1,000.00, or confinement in jail not exceeding one year, or both. Conviction of involuntary manslaughter makes it mandatory that the Commissioner of Motor Vehicles revoke the license of the defendant to operate a motor vehicle.

(2) "That the defendant is guilty of reckless driving as charged in the indictment." Reckless driving is defined as follows:

Irrespective of maximum speed limits, any person who drives a vehicle upon a highway recklessly or at a speed or in a manner so as to endanger life, limb or property of any person shall be guilty of reckless driving; provided, however, that the driving of a motor vehicle in violation of the speed limit shall not, of itself, constitute reckless driving, unless the speed exceeds 75 miles per hour. The punishment for reckless driving is confinement in jail not exceeding twelve months or a fine not exceeding $500.00, or both. And the jury may in addition recommend suspension of the defendant's operator's permit for a period of not less than 10 days or more than six months.

(3) "That the defendant is not guilty as charged in the indictment."

WM. S. M.

page 15 } INSTRUCTION 2.

The Court instructs the jury that criminal negligence is in this case an essential element of the offense of involuntary manslaughter, and in the absence thereof there can be no conviction for that offense. And with regard to the criminal negligence and grade thereof that is essential in this case, the Court further instructs the jury as follows, namely:

Such criminal negligence is something less than that grade or character of negligence that imports malice or from which malice may be properly inferred; but it is something more than mere inadvertence, misadventure, ordinary negligence which is the failure to use ordinary care, or mere violation of traffic laws enacted for the regulation, control or safety of vehicles or persons using the public streets; for mere inadvertence, misadventure, ordinary negligence, or the mere

abiding conviction of the truth of the charge, you are satisfied beyond a reasonable doubt.

WM. S. M.

page 21 } INSTRUCTION 8.

The Court instructs the jury that the credibility of the witnesses is a question exclusively for the jury, and the law is that, where a number of witnesses testify, directly opposite to each other, the jury has the right to determine from the appearance of the witnesses on the stand, their manner of testifying, and their apparent candor and fairness, their relationship, their interest, if any is shown, their means of information, their apparent intelligence or lack of intelligence, and from all the other surrounding circumstances appearing on the trial, which witnesses are more worthy of credit, and to give credit accordingly.

WM. S. M.

page 22 } INSTRUCTION 5.

The Court instructs the jury that you can and should draw reasonable inference from the facts proven. A verdict of guilty may be found entirely on circumstantial evidence, if such evidence shows the guilt of the defendant, Wallace Parker Wade, beyond a reasonable doubt.

"Note: Instruction 5 & 6 consolidated and given as Instruction 5."

WM. S. M.

page 23 } INSTRUCTION 6.

~~The Court instructs the jury that~~ circumstantial evidence is legal, and is not only competent but is sometimes the only mode of proof, and if it is of such a character as to exclude every reasonable hypothesis, other than that the defendant is guilty, it is entitled to the same weight as direct testimony.

page 24 } INSTRUCTION 6.

The Court instructs the jury that if a blood test was made at the request of the defendant within two hours of his arrest, and the blood test shows at that time 0.15 per cent

able hypothesis is or explanation can be found or given upon the whole evidence in the case consistent with the innocence of the accused, and at the same time consistent with the facts proved, they ought to find him guilty.

WM. S. M.

page 18 } INSTRUCTION 5.

The Court instructs the jury that you can and should draw reasonable inference from the facts proven. Circumstantial evidence is legal, and is not only competent but is sometimes the only mode of proof, and if it is of such a character as to exclude every reasonable hypothesis, other than that the defendant is guilty, it is entitled to the same weight as direct testimony. A verdict of guilty may be found on circumstantial evidence alone, if such evidence shows the guilt of the defendant, Wallace Parker Wade, beyond a reasonable doubt.

WM. S. M.

page 19 } INSTRUCTION 6.

The Court instructs the jury that if a blood test was made at the request of the defendant, and the test shows at that time 0.15 per cent or more by weight of alcohol in the accused's blood, it shall be presumed that the accused was under the influence of alcoholic intoxicants, but this presumption can be refuted or rebutted and such evidence shall be considered along with all other evidence in the case.

WM. S. M.

page 20 } INSTRUCTION 7.

The Court instructs the jury, as a matter of law, that in considering the case the jury are not to go beyond the evidence to hunt up doubts, nor must they entertain such doubts as are merely fanciful or conjectural. A doubt, to justify an acquittal, must be reasonable doubt, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that, were the same kind of doubt interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty. If, after considering all the evidence, you can say that you have an

less driving is confinement in jail not exceeding twelve months or a fine not exceeding $500.00, or both. And the jury may in addition recommend suspension of the defendant's operator's permit for a period of not less than 10 days or more than 6 months.

(3) "That the defendant is not guilty as charged in the indictment."

Given as amended.

WM. S. M.

page 27 } INSTRUCTION NO. B.

The Court instructs the jury that in this case no burden whatsoever rests on the accused, to establish his innocence; on the contrary, the whole burden of proof, which never shifts, rests on the Commonwealth throughout the entire case, to prove to the jury by competent, clear and convincing legal evidence, beyond every reasonable doubt, that he is guilty as charged. Nothing is to be presumed or taken by implication against him. No suspicion of guilt, however strong, is ever sufficient to convict. No mere preponderance of the evidence will suffice as in the trial of a civil case. It is not sufficient that the jury may believe his guilt probable, or that he is more probably guilty than innocent, for in law no degree of mere probable guilt, however grave or strong, will authorize a conviction; nor can he be convicted upon proof of facts consistent with guilt, unless such facts are also inconsistent with his innocence and actually exclude every reasonable hypothesis or theory which is consistent with his innocence.

If, therefore, the evidence discloses any reasonable hypothesis or theory of innocence, or if for any reason, the evidence or lack of evidence fails to establish the defendants guilt, beyond a reasonable doubt, it is their duty to find him not guilty.

Refused as tendered but given as amended.

WM. S. M.

page 28 } INSTRUCTION NO. C.

The Court instructs the jury that if from a fair and impartial consideration of all the evidence in this case, there arises in the mind of the jury a doubt of such nature and

or more by weight of alcohol in the accused's blood, it shall be presumed that the accused was under the influence of alcoholic intoxicants, but this presumption can be refuted or rebutted and such evidence shall be considered along with all other evidence in the case.

Refused as tendered but given as amended.

WM. S. M.

page 25 } INSTRUCTION 6.

The Court instructs the jury that if a blood test was made at the request of the defendant within two hours of his arrest, and the blood test shows at that time 0.15 per cent or more by weight of alcohol in the accused's blood, it shall be presumed that the accused was under the influence of alcoholic intoxicants.

page 26 } INSTRUCTION 1.

The Court instructs the Jury that it may find any one of the three following verdicts:

(1) "That the defendant is guilty of involuntary manslaughter as charged in the indictment." Involuntary manslaughter as related to this case means the killing of one accidently, contrary to the intention of the defendant, through and by means of criminal negligence. The punishment for involuntary manslaughter is confinement in the penitentiary for not less than one nor more than five years; or, in the discretion of the jury, by a fine not exceeding $1,000.00, or confinement in jail not exceeding one year, or both. Conviction of involuntary manslaughter makes it mandatory that the Commissioner of Motor Vehicles revoke the license of the defendant to operate a motor vehicle.

(2) "That the defendant is guilty of reckless driving as charged in the indictment." Reckless driving is defined as follows:

Irrespective of maximum speed limits, any person who drives a vehicle upon a highway recklessly or at a speed or in a manner so as to endanger life, limb or property of any person shall be guilty of reckless driving; provided, however, that the driving of a motor vehicle in violation of the speed limit shall not, of itself, constitute reckless driving unless the speed exceeds 75 miles per hour. The punishment for reck-

will authorize a conviction; nor can he be convicted upon proof of facts consistent with guilt, unless such facts are also inconsistent with his innocence and actually exclude every reasonable hypothesis or theory which is consistent with his innocence.

If, therefore, the evidence discloses any reasonable hypothesis or theory of innocence, or if for any reason, the evidence or lack of evidence fails to establish the defendant's guilt beyond a reasonable doubt, it is their duty to find him not guilty.

WM. S. M.

page 31 } INSTRUCTION NO. C.

The Court instructs the jury that if from a fair and impartial consideration of all the evidence in this case, there arises in the mind of the jury a doubt of such nature and character that if the same kind of doubt were interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, then the jury is not satisfied beyond a reasonable doubt of the guilt of the accused and it is their duty to find him not guilty, since a verdict of "not guilty" means no more than that the guilt of the accused, if any, has not been established beyond a reasonable doubt.

WM. S. M.

page 32 } INSTRUCTION NO. G.

The Court instructs the jury that it is unlawful for a bus or any part thereof to be stopped on the traveled or paved portion of the highway to take on or discharge passengers, unless the operator cannot leave the traveled portion of the highway in safety; and if the jury believes from the evidence that the bus driver was attempting to stop in violation of this requirement and that such attempt, either solely or in conjunction with negligence on the part of the driver of the Wade automobile, caused the accident, they shall find a verdict of not guilty unless they also believe, beyond a reasonable doubt, that Wallace Wade was the driver of his automobile at the time of the accident and that he was guilty of such gross and culpable negligence as to amount to a wanton disregard of human life.

WM. S. M.

character that if the same kind of doubt were interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, then the jury is not satisfied beyond a reasonable doubt of the guilt of the accused and it is their duty to find him not guilty, since a verdict of "not guilty" means no more than that the guilt of the accused, if any, has not been established beyond a reasonable doubt.

Refused as tendered but given as amended.

WM. S. M.

page 29 } INSTRUCTION NO. A.

The Court instructs the jury that the accused, Wallace Parker Wade, enters upon his trial accompanied by a continuing presumption of innocence, which is not a mere form or sham to be disregarded by the jury at pleasure. On the contrary, this presumption of innocence is an essential and substantial part of the law of this Commonwealth. It goes with him and applies throughout the entire trial and at every stage thereof, and it is the duty of the jury to give him the full benefit thereof, and give due consideration and weight thereto not only through the taking of the evidence, but also during their deliberations and until they have arrived at an unanimous verdict. In doubtful cases this presumption of innocence is of itself sufficient to turn the scales in favor of the accused and require a verdict of not guilty.

WM. S. M.

page 30 } INSTRUCTION NO. B.

The Court instructs the jury that in this case no burden whatsoever rests on the accused, to establish his innocence; on the contrary, the whole burden of proof, which never shifts, rests on the Commonwealth throughout the entire case, to prove to the jury by competent, clear and convincing legal evidence, beyond every reasonable doubt, that he is guilty as charged. Nothing is to be presumed or taken by implication against him. No suspicion of guilt, however strong, is ever sufficient to convict. No mere preponderance of the evidence will suffice as in the trial of a civil case. It is not sufficient that the jury may believe his guilt probable, or that he is more probably guilty than innocent, for in law no degree of mere probable guilt, however grave or strong,

ity to result from negligence, it must necessarily be reckless or wanton and of such a character as to show disregard of the safety of others under circumstances likely to cause injury or death; unless the jury believe beyond all reasonable doubt that Wallace Parker Wade is guilty of gross and culpable negligence with a callous disregard for human life, then they should find the defendant, Wallace Parker Wade, not guilty.

Refused.

WM. S. M.

page 36 } INSTRUCTION NO. E.

The Court instructs the jury that if, after hearing all the evidence in this case, they have a reasonable doubt as to whether Wallace Wade, or Fred Dickerson was driving the Wade automobile at the time of the accident in which Fred Dickerson lost his life, they shall find a verdict of not guilty in this case.

Refused.

WM. S. M.

• • • • •

page 38 } Virginia:

In the Circuit Court of Augusta County, September 25, 1959.

• • • • •

This day again came the Attorney for the Commonwealth and the accused, Wallace Parker Wade, appeared in Court in person, according to the conditions of his recognizance, and came also Humes J. Franklin and Wayt B. Timberlake, Jr., Attorneys for the accused, and the jury shown on September 23rd to try this case appeared in Court pursuant to its adjournment, and after receiving the instructions of the Court and hearing the arguments of counsel, retired to its room to consider of a verdict, and after some time returned into Court and rendered the following verdict, to-wit: "We the jury find the defendant guilty as charged of Involuntary Manslaughter and fix his punishment at two years in the

page 33 } INSTRUCTION NO. H.

The Court instructs the jury that the average stopping distance of an automobile with four wheel brakes applied, traveling at the following speeds, is as follows:

Speed	Stopping Distance
35	63 ft.
45	104 ft.
55	155 ft.
65	217 ft.

WM. S. M.

page 34 } INSTRUCTION 4.

The Court instructs the jury that if they believe beyond a reasonable doubt that at the time and place of the accident mentioned in the evidence, the defendant was recklessly, negligently, and carelessly driving an automobile, and that such recklessness, negligence and carelessness was so gross and culpable as to indicate a callous disregard of human life and of the probable consequences of his act and resulted in the death of the deceased, Fred Melvin Dickerson, then they should find the defendant guilty of involuntary manslaughter as charged.

Refused.

WM. S. M.

page 35 } INSTRUCTION NO. D.

The Court instructs the jury that the gist of the crime charged against the defendant is criminal negligence; by the term criminal negligence is meant not simply such negligence as might be the foundation of a suit for damages by the person injured or by his personal representative if killed, but something more than that; in order to be criminal negligence, as distinguished from such negligence as is necessary for a civil damage action, it must be shown that the negligence of the accused was gross and culpable negligence; culpable and gross negligence is that which indicated a callous disregard of human life and of the probable consequence of his act; criminal liability cannot be predicated upon every act carelessly performed merely because such *carlessness* results in the death of another, but in order for criminal liabil-

dered that the execution of the sentence imposed by this judgment be, and the same hereby is, suspended
page 40 } for a period of ninety (90) days from this date, in order that the said accused may apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas,* if they be so advised.

WM. S. MOFFETT, JR., Judge.

* * * * *

page 41 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The defendant, Wallace Parker Wade, hereby gives notice pursuant to the provisions of Section 4, Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, of his appeal from that certain final judgment entered in the above-styled cause on June 3, 1959, in which certain exceptions of the defendant were overruled and judgment entered against him by sentencing him to serve two years at the State Penitentiary.

The following are errors assigned:

1. That the Court erred in ruling that the Commonwealth's Attorney could comment in his opening statement in regard to the blood test and ruled that Section 18-75.1 of the Code of Virginia authorized the introduction of a certificate of the medical examiner's analysis of blood of the accused in the prosecution for the crime of manslaughter; and further that the evidence taken in chambers was sufficient to prove that the defendant had consented to a blood test;

2. That the Court erred in allowing the certificate of the medical examiner in regard to the blood test to be introduced in evidence as Exhibit 13 under the assumption that it was authorized by Section 18-75.1 of the Code of Virginia;

3. That the Court erred in allowing E. W. Dickerson to testify in regard to the family of the deceased,
page 42 } Fred Dickerson, as the only purpose for such testimony was to prejudice and inflame the jury against the defendant;

4. That the Court erred in overruling the defendant's motion to strike the evidence at the conclusion of the Commonwealth's evidence and at the conclusion of all of the

peniten- and no fine." Signed, "J. J. Hensley, Foreman."

Thereupon the accused, by counsel, moved the Court to set aside the verdict of the jury on the grounds that said verdict is contrary to the law and the evidence and without evidence to support it, and further that the Court erred in granting and refusing certain instructions which motion the Court takes time to consider, and sets October 29, 1958, at 10:00 o'clock A. M. to hear arguments on said motion.

And the accused is committed to jail, and this case is continued.

WM. S. MOFFETT, JR., Judge.

* * * * *

page 39 } Virginia:

In the Circuit Court of Augusta County, June 3, 1959.

* * * * *

This day again came Carter R. Allen, Acting Attorney for the Commonwealth, and the accused, Wallace Parker Wade, appeared in Court in person according to the conditions of his recognizance, and came also Wayt B. Timberlake, Jr., Attorney for the accused, and the Court having maturely considered the motion of the accused to set aside the verdict of the jury rendered on September 25, 1958, on the grounds that said verdict was contrary to the law and the evidence and without evidence to support it, and that the Court erred in granting and refusing certain instructions, doth overrule said motion, to which ruling of the Court the accused, by counsel, excepted.

And it being demanded of the accused if anything for himself he had or knew to say why judgment should not now be pronounced against him, according to law, and nothing further being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the said accused, Wallace Parker Wade, be, and he hereby is, sentenced to confinement in the penitentiary of this Commonwealth for the term of three (3) years; the term by the jurors in their verdict in this case ascertained on September 25, 1958; and that the Commonwealth of Virginia do recover against the said accused, Wallace Parker Wade, its costs by its about its prosecution in this behalf expended, and to this judgment of the Court the accused, by counsel, also excepted.

Thereupon, on motion of the accused, by counsel, it is or-

evidence, as there was not sufficient evidence to establish the guilt of the defendant beyond a reasonable doubt, as there was no evidence which the jury could find beyond a reasonable doubt that the defendant was the operator of the motor vehicle, or that the accident was caused by the wilful and wanton negligence of the operator of the passenger car involved in the collision with the bus;

5. That the Court erred in giving Commonwealth's Instruction No. 1, in that there was no evidence beyond a reasonable doubt that the defendant was guilty of either involuntary manslaughter or reckless driving, and for the fact that the instruction specifically called attention to the jury that operating a motor vehicle in excess of 75 miles an hour was reckless driving and there was obsolutely no evidence on which the jury could make any such finding as to speed.

6. The Court erred in giving Instructions Nos. 2, 2(a), 3, 7 and 8, as there was no evidence on which the jury could have found the defendant guilty beyond a reasonable doubt;

7. That the Court erred in giving Instruction No. 5 for the Commonwealth in that there was insufficient circumstantial evidence on which the jury could find the defendant guilty beyond a reasonable doubt, and the instruction went beyond the scope of the case and was repetitious;

8. That the Court erred in giving Instruction No. 6 as to the presumptions as defined by Section 18-75.3 of the Code of Virginia, in that this Section is confined strictly to driving under the influence of intoxicating beverages as set out in 18-75.1, 18-75.2 and 18-75.3, and that the evidence shows that the defendant did not give his consent and
page 43 } that the blood test was not introduced in accordance with the rules of evidence;

9. That the Court erred in amending Instructions B and C, as they were proper statements of the law of the State of Virginia couched in language favorable to and from the defendant's point of view;

10. That the Court erred in refusing defendant's Instruction D, as it was a proper and accurate statement of the law and instructed on the definition of criminal negligence from the standpoint of the defendant;

11. That the Court erred in refusing Instruction E on the theory that the matters in this instruction were covered by Commonwealth's Instruction 2(a); this instruction was a proper and accurate statement of the law of the case based upon defendant's theory and was not fully covered in Instruction 2(a).

12. That the Court erred in not granting the defendant a mistrial because of the argument of the Commonwealth's Attorney; while the Court ruled that the argument was improper, the Commonwealth's Attorney repeated the argument before the jury in asking the Court whether he could argue the point, which accomplished the same purpose as if no objection had been made.

July , 1959.

HUMES J. FRANKLIN
WAYT B. TIMBERLAKE, JR.
Attorneys for Wallace Parker Wade.

Filed in the Clerk's Office of the Circuit Court of Augusta County July 16, 1959.

Teste:

C. M. WAYBRIGHT, Dep. Clerk.

• • • • •

page 2 } September 2, 1958 10:00 A. M.

(The following matter was considered immediately prior to the impaneling of the jury.)

Mr. Timberlake: Your Honor, there is one matter we would like to take up in chambers.
The Court: All right, sir.

In Chambers:

Mr. Timberlake: Your Honor, from the evidence introduced at the preliminary hearing it would appear that one of the factual issues in this case is the condition of the accused from the standpoint of intoxication at the time this accident happened; and in that connection a blood test was taken which, according to the evidence at the preliminary hearing, showed a .015 alcoholic content. In that connection there is a serious question we feel as to whether or not that blood test is admissible from the standpoint of whether or not consent was given. According to the testimony of the officer at the preliminary hearing, he asked the accused, who was in the hospital suffering from serious injuries which he

motion, of course, on information that the accused has given me to the effect that he recalls nothing following the accident for some days. He was in the hospital in a seriously-injured condition. And I am also relying on the testimony of Dr. Ryder given at the preliminary hearing of the

page 5 } nature and extent of Mr. Wade's condition which was that he had a laceration of the scalp, left cheek, several cuts in his hairline, cuts in the mouth, contusions of the ribs, which X-ray showed to be the second through the tenth on the right side, contusions of the back on the right side, fractures or contusions of the upper abdomen, bruises of both hips, numerous small cuts on the backs of his hands, and multiple fractures of the lower jaw, coupled with the testimony of the investigating officer who testified that (reading questions and answers from transcript of preliminary hearing):

"Q. Didn't Mrs. Wade actually give the consent?
"A. Yes, sir.
"Q. She did?
"A. Yes, sir.
"Q. Who asked her?
"A. Wade did.
"Q. He asked her, not you?
"A. I didn't ask her.
"Q. Who suggested the blood test to Mr. Wade?
"A. I asked him if he wanted a blood test if it was all right with his wife, and she told him to go ahead and take it.
"Q. Didn't she say to him something to the effect that it was all right? You don't have it backwards?
"A. No, sir, I don't have any reason. I'm just trying to get it to you as straight as I can."

page 6 } The Court: Then, gentlemen, might we go ahead and have the defendant arraigned and select the jury and then hear such evidence as you gentlemen might care to offer prior to the opening statement?

Mr. Taylor: I might say this for the benefit of The Court —which The Court well knows and so do the attorneys for the defense in this case—that the details were not gone into in the preliminary hearing, especially from the point of the Commonwealth where the Commonwealth does not have to do anything at the preliminary hearing except cause a man to be held for the grand jury. There were several witnesses in the courtroom that I did not use that were present at the hospital.

received in the accident, if he wanted a blood test, and the accused's wife said it was all right to take it; page 3 } and we feel that it is a question that should be gone into by The Court with some high degree of care before reference is made to the blood test even in the opening statement or before it is offered in evidence; and we simply at this stage wanted to bring to The Court's attention the serious question as to the admissibility of the matter and ask that The Court at the proper stage hear evidence out of the presence of the jury and determine whether or not it is admissible before reference is made to it in the trial of the case and in the presence of the jury.

Mr. Taylor: Your Honor, in the lower court it was shown that the defendant was in the hospital when the Trooper told him that the other man in the accident was in a serious condition and he was going to have to charge him with driving under the influence, and at that time..... Driving under the influence. I don't know whether at that time that man was dead or not. And he told him he could take a blood test if he wanted to; and the accused's wife was present standing beside him and he turned his head and asked her what she thought, and she told him she thought it was all right, to go ahead, or if he wanted to to go ahead, or some statement like that. I can show and I am prepared to show by the doctor who drew the blood that he, under no circumstances, would have drawn any blood had the ac- page 4 } cused not consented to it. I can show that by two troopers and a registered nurse—that he did request a blood test be made; and a blood test was made and it came back .15. That is the Commonwealth's case so to speak; that this man was driving an automobile in a reckless and careless and wanton manner as a result—as a major result—of what he had had to drink. That is what we are here to show—the reckless operation of the automobile and the condition of the defendant; and the Commonwealth is prepared to show the consent of the defendant, concurred in by his wife who was present and who he advised with before he gave his consent; and I think that if there is going to be any evidence heard in chambers on this question it should be heard before the jury has anything to do with it because it is an important matter, and it is a matter that the Commonwealth expects to refer to and prove—to refer to in the opening statement and to prove by competent evidence. I think the jury is entitled to know the condition. The jury is entitled to know all the facts that we are supposed to be able to prove and what the defense is in the opening statements.

Mr. Timberlake: I am relying, Your Honor, in making this

Trooper H. H. Collier.

Q. Did you or not inform Mr. Wade that he was going to be charged with driving under the influence?
A. Yes, sir.
Q. Did you or not ask him or tell him that he was entitled to have his blood checked if he wanted to?
A. I asked him if he wanted to. Yes, sir.
Q. And what was his reply?
A. He said if it was all right with his wife, and she told him to go ahead and do it.
Q. Was his wife present when this conversation went on?
A. Yes, sir.
Q. With him there?
A. Yes, sir.
Q. And she told him to go ahead and have it taken?
A. Yes, sir.
Q. And did he consent to the doctor present?
A. Dr. Ryder asked him if he wanted him to take it and he said, "Yes."
Q. Dr. Ryder asked him if he wanted him to take it and he said, "Yes." And did Dr. Ryder then draw the page 9 } blood in your presence?
A. Yes, he did.
Q. Was the container delivered to you after the blood was taken?
A. Yes, sir.
Q. Did you personally mail it to Richmond?
A. Yes, sir, I did.
Q. Was it received back from Richmond by you?
A. Yes, sir.
Q. With a report?
A. Yes, sir.
Q. In the container with the vial of blood?
A. Yes, sir.
Q. And what did the blood show?
A. 0.15.
Q. There is no question in your mind that Mr. Wade voluntarily gave his consent to take this blood?
A. No, sir.

Mr. Timberlake: That calls for an opinion and we object to it.
Mr. Taylor: He was the one giving him the opportunity to take the blood.
The Court: I think that is an opinion.

Trooper H. H. Collier.

The Court: I think it might be well to go into this evidence prior to the opening statement.

Mr. Timberlake: We simply wanted a opportunity to be heard.

In Courtroom:

(Upon returning to the courtroom the defendant was arraigned and the jury was duly impaneled. At this point a brief recess was granted the jurors in order that The Court might hear the aforesaid testimony in chambers prior to the opening statements by counsel.)

page 7 } In Chambers:

The Court: Gentlemen, I guess the question at issue is whether or not this blood count is admissible. I gather from the motion Mr. Timberlake made it is a question of whether or not the defendant consented, so I guess we should limit our inquiry to that point with the view of determining whether or not the blood test is admissible.

Mr. Taylor: I guess we limit this to the procedure at the hospital. Is that correct?

Mr. Timberlake: I would say so. That's where it—

Mr. Taylor: The only question is the actual taking of the blood.

The Court: The only question is the consent to the taking of the blood.

Mr. Taylor: Just whether or not he consented to the taking of the blood?

The Court: That's the substance of your motion?

Mr. Timberlake: That's right.

page 8 } TROOPER H. H. COLLIER,

the first witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Mr. Collier, were you at the Waynesboro Hospital shortly after this automobile accident when Mr. Wade was present?

A. Yes, sir, I was.

Trooper H. H. Collier.

sides of his lower jaw—were more or less shattered or his chin was shattered?

A. No, sir. I knew he was hurt some place there but I didn't know the extent of his injuries.

Q. When you say he was complaining of pain, you mean he was talking about pain?

A. No. He was groaning some but he wasn't groaning too much.

Q. But that was the indication of pain that you got.

A. Yes, sir.

Q. Do I understand from you, Mr. Collier, that Mr. Wade was able to communicate with you by speech or anyone else?

A. Yes, sir, he could talk a little bit.

Q. When you say a little bit, what do you mean?

A. I mean it was difficult for him to talk. He talked more or less with his teeth closed—with his teeth together.

Q. You mean he was clenching his teeth?

page 12 } A. He had them together, yes. I had talked to him before and I have talked to him since and I talked to him at that time, and he didn't talk like he did before. At the time he seemed like he tried to keep his teeth together.

Q. At that time had his face been fixed in a closed position?

A. No, sir, I don't think so.

Q. He was apparently in the same condition in which he was received at the hospital.

A. Yes, sir, as far as I know.

Q. As far as his surgical condition.

A. Yes, sir, as far as I know.

Q. You say he had his teeth clamped?

A. Yes, sir.

Q. In spite of that and in spite of evidence of physical pain, you were able to carry on a conversation with him.

A. We didn't carry on much conversation. I asked him 2 or 3 questions. I could tell what he said.

Q. How close did you have to get to understand what he said?

A. I was standing right beside him.

Q. Well, within 1 foot, 2 feet, 3 feet, or more or less?

A. I'd say no closer than 2 feet and no farther away than 4.

Q. Within 2 to 4 feet.

A. The best I remember it was in that neighborhood.

Q. And he appeared to have his teeth clenched, and you

Trooper H. H. Collier.

Mr. Taylor:
Q. Did he consent to the taking of this blood?
A. Yes, sir, he did.

page 10 } CROSS EXAMINATION.

By Mr. Timberlake:
Q. Mr. Collier, where did this conversation take place?
A. In the hospital.
Q. Was that in a room or ward?
A. It was in a room, Mr. Timberlake. There's 2 rooms there that Mr. Dickerson was in one and Mr. Wade was in the other; and if you know the set-up of that hospital—I know Mr. Franklin does—as you come in through the emergency entrance the emergency room is on your right. Then you come on through the hall and you turn right into the—I guess it's an X-ray room; and they also use that for an emergency room; and then there's a little room on the left of that room. They were back in those 2 rooms.
Q. And were you present there at the hospital when Mr. Wade was brought in?
A. No, sir.
Q. When you saw him he was in this room that you just made reference to.
A. Yes, sir.
Q. And was he standing or sitting or lying down?
A. He was lying on his back.
Q. He was lying on his back?
A. Yes, sir, and he was in that position all the time I was there.
Q. And what evidence of injury was visible or apparent there while you were in the room with him?
page 11 } A. He was having trouble with his speech and they had his legs straight so that he couldn't draw his legs up, and he was complaining that he was in pain and he didn't necessarily talk but—
Q. You mean he was moaning?
A. He wasn't moaning too much but I could tell he was in pain.
Q. And was he bleeding?
A. No, sir, not at that time.
Q. That is as far as his face or head?
A. That I could see.
Q. Now were you aware of the fact that both jaws—both

Trooper H. H. Collier.

A. Yes, sir.

Q. That time he answered you by speech and said, "I was," and that was when you were within 2 to 4 feet of him.

A. Something like that. Yes, sir.

Q. As far as you recall, that was his exact reply. "I was."

A. He said, "I was."

Q. What was your next question?

A. I told him I was going to charge him with driving under the influence. I asked him if he wanted a blood test. He said if it was all right with his wife.

Q. Exactly what was his reply?

A. Just what I told you.

Q. Quote it as best you can.

A. He said, "If it's all right with my wife."

Q. You had no difficulty in understanding that?

A. No, sir.

page 15 } Q. Where was his wife at that time?

A. She was standing right in the room.

Q. About the same distance you were from him?

A. She could have been a little farther away.

Q. Is that all the questions you asked him?

A. Yes, sir, I think so.

Q. And was Dr. Ryder in the room at that time?

A. Yes, sir.

Q. And how long after that was it that this blood sample was taken?

A. I don't know. He drew it right away. I don't know how long it was after that.

Q. Did you participate in or hear any conversation between Dr. Ryder and Mr. Wade?

A. The doctor asked him something about if he wanted him to draw it and he said, "Yes."

Q. The doctor asked him while you were still standing there?

A. Yes.

Q. If Mr. Wade wanted Dr. Ryder to draw the blood?

A. Yes, sir.

Q. Did Wade answer by speech or sign?

A. He said, "Yes, sir."

Q. He said, "Yes, sir." What, if any, other questions were propounded to him either by you or Dr. Ryder?

A. I didn't ask him anything else. I don't know if Dr. Ryder asked him anything else or not. He could have talked

asked him 2 or 3 questions and you could understand a reply given by him to each of those questions.

A. Yes, sir.

page 13 } Q. Don't you know, Mr. Collier, that it was impossible for him to clench his teeth because of fractures that he had suffered—that his jaw was just hanging?

A. No, I don't know. No, sir.

Q. It appeared to you he had his teeth clenched?

A. No, I didn't say he had them clenched. It was difficult for him to open his mouth it looked to me like. I didn't look to see if he had his teeth clenched or just what it was, but it was difficult for him to talk. I know that.

Q. You say you asked him 2 or 3 questions. What questions did you ask him?

A. The first question I asked him was who was driving the car. At that time he didn't tell me anything; he just pointed to himself.

Q. Now on that score, that was while he was laying with his legs straight out?

A. Yes, sir.

Q. Where were his arms?

A. He just pointed to himself like this (indicating with forefinger against chest).

Q. He raised his arm from the prone position he was in and pointed to himself?

A. I don't know if he had his arm beside him or where it was, but he pointed to himself.

Q. With what hand?

A. His right hand.

Q. That was in apparent reply to your asking

page 14 } who was driving.

A. Yes, sir.

Q. All right. What was the next question you asked?

A. I went out of the room and I came back and asked him again who was driving the car. At that time he said he was. He said, "I was."

Q. He made a reply to you at that time?

A. Yes, sir.

Q. How long were you out of the room?

A. I don't know; a minute or two maybe; maybe not that long.

Q. So the second question you asked was a repetition of the first; that is, who was driving.

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a blood alcohol in the presence of his wife, also in the presence of Trooper Collier; and I drew such blood alcohol as that.

Q. After the conversation Mr. Wade had with his wife, you did draw the blood alcohol.

A. I did, sir.

Q. Did you ask him whether or not he wanted you to draw the blood or anyone else or you just told him—?

A. No. We always explain to them what the test is and why we are drawing it. He didn't say, "I want somebody else."

Q. I see. Doctor, was Mr. Wade rational at that time?

A. He appeared to be, yes, sir. He talked to his wife.

Q. And after Mr. Collier told him that he was going to charge him and he had an opportunity to have the blood analysis made and after his conference with his
page 18 } wife, did he consent to the blood alcohol test?

A. He consented to the blood alcohol test.

Q. And insofar as you were able to tell, he was rational at that time.

A. Yes, sir.

Q. And you took the blood in the presence of his wife and Mr. Collier and anybody else in the room.

A. Yes, sir. Those 2 were definitely in the room. His wife was standing behind me and Trooper Collier to my left.

CROSS EXAMINATION.

By Mr. Timberlake:

Q. Dr. Ryder, where in the hospital was Mr. Wade when you first saw him?

A. Mr. Wade was first on a stretcher in the waiting room where he had been brought in—.

Q. I see.

A. Approximately in the center of the room diagonally this way (indicating position in room where testimony was being heard). I had come out of the emergency room, which is on my right as I face you. Mr. Wade was lying on the stretcher. I had to move him into the X-ray room, which is there too. There would be one approximately right behind you.

Q. I see. And who assisted you in moving Mr. Wade from the stretcher to the table in the emergency room?

to him while he was drawing the blood. I don't
page 16 } know.

Q. Did he continue to give evidence of pain and suffering by these groans or noises?

A. Yes, sir, he would groan once in awhile.

No further questions.

Witness leaves the stand.

DR. HARVEY BROWN RYDER,
the second witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Dr. Ryder, what is your full name?

A. Harvey Brown Ryder.

Q. And you are a practicing physician in Waynesboro, are you not?

A. That's correct, sir.

Q. How long have you been in Waynesboro?

A. Going on 3 years.

Q. Going on 3 years. I won't go into the details of qualifying the doctor in here. Dr. Ryder, were you on duty or were you called the night of the accident in question here that Mr. Dickerson lost his life and Mr. Wade were both brought to the Waynesboro Hospital?

A. I was, sir.

Q. Did you take care of both of these patients that night?

A. I did, sir.

Q. Were you present when the Trooper had a
page 17 } conversation with Mr. Wade about whether or not
he wanted a blood test made?

A. I was present at one such conversation. Now whether any had preceded that I don't know.

Q. Would you tell the Court as near as you can what conversation that was between Mr. Wade and Mr. Collier?

A. Well, Mr. Collier had told Mr. Wade he was going to charge him with reckless driving and under the influence and told him that he had the opportunity to have a blood alcohol test drawn which could be used for or against him and did Mr. Wade want the blood alcohol test. Mr. Wade conferred with his wife and they agreed he should have the blood alcohol test; and I told Mr. Wade that I was going to draw

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numbness in the muscles of the right leg, which we attributed to the contusions of the back, which he did have difficulty with his right leg.

Q. Dr. Ryder, to what extent, if any, did these multiple fracutres of the lower jaw affect his use of that jaw?

A. May I reword your question and say that a patient with multiple fractures of the jaw has very limited function of that jaw because the jaw is unstable and it will not—The muscular pulls are in different directions, and the patient has what we call an extremely mobile jaw. The jaw does not work as it should.

Q. Was there any bone connection between the upper and lower jaw following this fracture? I mean was the lower jaw severed as far as the fracture was concerned

page 21 } from its moorings?

A. The lower jaw has no union with the upper jaw. It is joined here just below the angle of the ear by ligaments and a ball-and-socket joint. On both sides those joints were broken; and just below them there was a fracture of both rami or bone; and then there were 3 fractures of the jaw itself down here in the region of the chin.

Q. Does that include fractures of the chin itself?

A. Yes, I am speaking of the whole jaw. There were 5 fractures of the lower jaw. Let's put it that way.

Q. To what extent, if any, did that interfere with or impair this man's ability to talk?

A. That alone would impair a man's ability to talk.

Q. To what extent, Doctor?

A. Such an individual has swelling of the—very rapidly—of the tissues of the lower jaw and of the tongue and cheek inside, which makes such a patient have difficulty in enunciating the vowel sounds. It makes speech difficult to hear, it is slurred, and you have difficulty in forming the words.

Q. To what extent, if any, was he able to speak so that he could be understood in conversation?

A. Such a patient can still be understood without difficulty.

Q. You mean at a normal distance of carrying on conversation?

A. Such a patient will speak only when he has to and will answer questions. You can understand him, but you not in-

frequently have to get close to understand what he

page 22 } is saying because many of the words are formed with the lips.

Q. As a general thing, how close would you have to get to

Dr. Harvey Brown Ryder.

A. I did not move him myself. The orderlies and nurses moved him and Mr. Wade may have helped himself. When I next came back he was on the table.

page 19 } Q. You saw him on the stretcher first.

A. Yes, sir.

Q. And the next time you saw him he was on the table in the emergency room?

A. No, the table in the X-ray room. This man sat for a moment in the X-ray office and gave his name and address.

Q. Was that in your presence?

A. Yes, sir.

Q. Was his wife present at that time?

A. His wife was present. I believe she was standing—I can't swear to this—but I believe she was standing just to his left as he sat there for a moment and gave his name and address when we were going to take X-rays.

Q. Was that between the time you first saw him on the stretcher and the time he was in the X-ray room?

A. Yes, sir.

Q. Do you know how or with whose assistance or in what manner he went from the stretcher to the chair?

A. No, sir. I may have helped him myself. I don't recall.

Q. And do you know who took him or assisted him or carried him from the chair to the X-ray room?

A. No, sir.

Q. What, if any, evidence of pain did Mr. Wade give during the times that you saw him? That is on the stretcher and on the table in the X-ray room.

A. At that time he complained specifically of his jaw. Subsequently he began to complain of pain in his right

page 20 } chest and back, and at that time I thought the man should lie down and we had to move him to the X-ray table.

Q. What, if any, injuries did you ascertain at that time or later that he was suffering from?

A. He sustained multiple fractures of the mandible. That is the lower jaw. He had a laceration of the right cheek; he had a laceration at the hairline—just within the hairline of the scalp. Subsequently he was shown in X-rays to have fractures of the second I believe through the tenth ribs on the right at the anterior axillary line. He also had several bruises around the right hip and the left hip. He did not show any fractures of the lower spine, but he did complain of pain in his lower back. He did also complain of pain and

understand him when he was in such a condition as that?

A. Initially the patient may be heard some distance; but as he converses longer, because of pain and because of the excess mobility of the jaw, he will tire and you will have to come closer to him. Initially I could hear him as far away as you. It is a matter of discomfort to the patient as to how he, shall we say, gets disgusted.

Q. Doctor, in what way were you able to tell that this patient was rational, cognizant—truly cognizant—of what had taken place or was taking place at the time?

A. The patient was able to tell me where he hurt; that he was having pain. He told me initially that only his jaw hurt. He asked several times about Mr. Dickerson—how was Mr. Dickerson's condition. He recognized his wife. He knew he was in the hospital. He knew, for instance, that I was a doctor and he knew he was being X-rayed. He knew that a Mr. Dickerson was probably more seriously injured than he because I had him in the room and he asked me several times where he was and how was his condition.

Q. Doctor, isn't it a frequent thing that a person suffering from severe trauma such as would cause the injuries that Mr. Wade suffered from that following that trauma a seemingly rational conversation is carried on of which that patient has no memory or recollection later?

A. That may occur with a concussion.

page 23 } Q. Do you know to what extent, if any, Mr. Wade was rendered unconscious—I mean totally unconscious—following this accident?

A. The accident had occurred approximately half an hour prior to the time I saw him. From the time I initially saw Mr. Wade and during his subsequent hospital course, at no time did he appear unconscious to me. He did tell me that he did not remember things related to the accident; but when asked in the mornings how he felt when he knew I was going to operate on his jaw—all of those things he knew; but subsequently he said his memory was blurred from that.

Q. For some period of time following the accident?

A. He said for 3 to 4 days as I recall.

Q. He imparted that information to you while he was still in the hospital?

A. That's correct.

Q. Dr. Ryder, now going back to the matter of the blood test, you say you were in the room and Trooper Collier was in the room?

A. That's correct.

Dr. Harvey Brown Ryder.

Q. And Mrs. Wade was in the room?

A. That's correct.

Q. There with Mr. Wade.

A. That's correct. Now there may have been others in the room that I did not see. I know Trooper Collier and Mrs. Wade were there.

page 24 } Q. And I believe you testified that Trooper Collier informed Mr. Wade that he was going to charge him with reckless driving and driving under the influence. Is that correct?

A. Trooper Collier told me that Mr. Wade wanted a blood test. How much conversation had occurred between Trooper Collier and Wade before then I do not know, but in my presence he also told Wade that he was going to charge him with reckless driving and under the influence.

Q. I see.

A. And that I was going to draw a blood alcohol if Wade wanted such a blood alcohol. Wade conferred with his wife; they agreed I should do it. I too explained to him that I was just drawing a blood alcohol.

Q. As I understand, the first conversation along that line that took place in your presence was following a communication to you from Mr. Collier that Wade wanted a *blod* alcohol sample.

A. That's correct.

Q. And after Trooper Collier had so advised you, then in your presence Trooper Collier informed Mr. Wade that he was charging him with reckless driving and driving under the influence.

A. That is correct too.

Q. And then you said that there was a conversation between Mr. Wade and his wife.

A. There was a conversation. Wade was on the table. His wife was to the right in the doorway. I won't draw a blood

page 25 } alcohol without the patient knowing what the blood alcohol is if the patient is conscious, and Wade appeared to be conscious. I told him that this was the blood alcohol; and obviously a conversation had occurred prior to this between Wade and—

Q. Mrs. Wade?

A. And Collier because Wade knew what I was going to do or appeared to know; and he turned to his wife and he said, "Should I have it drawn, honey," or "Should I have it drawn" in some manner. And she said—Her exact words

Dr. Harvey Brown Ryder.

I don't recall but she said, "Go ahead," or "I think you should," or something to that effect. She gave her consent also. Then I told Wade I was going to draw a blood alcohol from him.

Q. And he made no objection?

A. He agreed to the blood alcohol.

Q. What I'm getting at, Dr. Ryder, as I understand you didn't hear the preliminary conversation between—

A. I don't know that there was one.

Q. If there was one, you didn't hear it.

A. That's correct.

Q. And you didn't hear anything until Trooper Collier had informed you that Mr. Wade wanted a blood sample taken.

A. Wanted a blood alcohol.

Q. And then you advised Mr. Wade that you were going to extract the blood.

A. Going to draw the blood alcohol.

Q. And it was after that that some conversation
page 26 } took place between Wade and his wife.

A. No, this was all occurring simultaneously. I was putting the tourniquet on Wade's arm when he and his wife were talking. At the same time I was preparing to draw the blood alcohol.

Q. And you say that you heard something to the effect coming from Mr. Wade addressed to his wife, "Shall I take this test," or some inquiry along that line?

A. He asked her opinion of it in other words.

Q. Yes.

A. She agreed that he should have it done.

Q. And then what more, if anything, did Mr. Wade himself say?

A. No more. He said, "Go ahead and draw it," in effect or gave his—

Q. I'm not talking about in effect. I'm talking about what was said, Dr. Ryder. What I'm driving at is whether at that point he just remained docile and permitted you, after this conversation that you have already recounted, to go ahead and extract the blood or, if not, what did he say?

A. He gave a vocal consent, but it would be wrong for me to say he said, "Go ahead and do it." But he, in effect, said, "All right. Go ahead." I don't remember his exact words but he told me he wanted the blood alcohol prior to the conversation with his wife.

Dr. Harvey Brown Ryder.

Q. Just tell me when he told you he wanted the blood alcohol how he conveyed that to you.

page 27 } A. May I go back?

Q. Yes, sir.

A. Mr. Wade was lying on the X-ray table. His wife was in the room because I had permitted her to go in. He didn't appear to be seriously injured. They were talking. I had stepped into the next room to arrange some X-rays on the deceased Dickerson. As I came back by the door Collier—Trooper Collier—told me, "Wade wants a blood alcohol." I said, "All right." I went into the emergency room, obtained a syringe and tourniquet, and went back to Wade and said this: "I understand you want a blood alcohol," or "I understand you want this blood test drawn." He said, "Well, what do you think about it?" and turned to his wife. "Should I have it or should I not?" She said, "Well, if you think you should, go ahead." The exact words that transpired and during which she told me that he wanted a blood alcohol—that they agreed that he should have it—he said, "Go ahead and draw it," or—

Q. He said, "Go ahead"?

A. Whether he said, "Go ahead," or "I want it," I don't know. But he was conscious of what I was doing.

Q. You felt he was conscious. Could you look into the man's mind, Doctor, and say he was aware of what was going on?

A. Sir, when a man recognizes his wife, recognizes his presence in the hospital, recognizes what a blood alcohol is, recognizes that he is hurt, recognizes that another person was involved in the accident with him, I must

page 28 } assume that that man is conscious even if subsequently he lapses into unconsciousness.

Q. And even if subsequently it appears that he doesn't have any—at a later date—doesn't have any recollection of what transpired?

A. Yes, at the time.

Q. And it is, I believe, a fairly frequent aftermath of rather severe trauma that a person does give the outward indications of consciousness without later being able to recall what took place. Isn't that correct?

A. That is correct.

Q. And I believe you say you can't recall the exact words that Mr. Wade said?

A. No.

Q. After Mrs. Wade had conveyed to you the fact that it

was all right with her husband to have the blood test, at which time you put the tourniquet on. You can't recall the exact words that Mr. Wade said.

A. That's correct. I didn't attach any importance to what exactly was being said, but I do want the Court to understand that the blood alcohol was not drawn under coercion.

Q. Oh, I realize that, Dr. Ryder, and the really significant thing to you or the green light to you was apparently that Mr. Wade and Mrs. Wade had discussed the matter and Mrs. Wade indicated to you it was all right.

A. That's correct.

page 29 } The Court:

Q. Doctor, after a serious automobile accident we frequently have cases where a man has no recollection of what transpired for a matter of several weeks, yet during that 2-week period he can talk with you and reason with you and for all other intents he is conscious. Just as a matter of information, what is that man's condition although 2 week after the accident he remembers nothing during the 2 weeks, but after the 2 weeks he converses freely and recognizes people?

A. His condition will depend entirely upon the associated injuries at the time. Such a patient may have solely a concussion or motion of the brain with no associated injuries; no broken bones or serious injury elsewhere. His condition would be entirely satisfactory. If he has associated other injuries, his condition may improve or it may deteriorate to the point of death. Did I explain what you wanted to know? I classify it with the associated injuries.

Q. What I really wanted to ask you was this. Such a patient as I described, would you say he is conscious during that 2-week period when he recognizes people and talks to people although after the expiration of the period he remembers nothing that transpired at the time?

A. I must answer on the theory that the patient is conscious; that he just has amnesia for that period.

page 30 } RE-DIRECT EXAMINATION.

By Mr. Taylor:

Q. One question, Doctor, just for the sake of the record. What do you estimate the distance between you and Mr. Timberlake?

A. 8 feet.

Wallace Parker Wade.

RE-CROSS EXAMINATION.

By Mr. Timberlake:

Q. Doctor, one other question I wanted to ask you. Was Mr. Wade lying on his back or front or side on this table in the X-ray room?

A. He was lying on his back. Because of the statement that he was beginning to hurt here and here (indicating right side and lower back), I had him lie on his back. Now when I drew the blood alcohol he had his head turned to the right—actually watched me draw it.

Q. And was there any means used to immobilize him on the table? Was he just lying there?

A. He was lying there and told to be quiet so we could get some X-rays.

Q. His legs. Were they stretched out?

A. Stretched out.

Q. No assistance or means used to keep his legs on the table?

A. No, sir.

No further questions.

Witness leaves the stand.

page 31 } Mr. Taylor: If Your Honor please, I can go on and keep putting on evidence in this, but I think that the evidence I have already put on showed beyond a doubt that the blood was drawn voluntarily and at the request and with the consent of Mr. Wade and his wife. This procedure that we are going through now doesn't—from here on out—doesn't do anything but tell the defense what the Commonwealth's evidence is.

The Court: I think, Mr. Taylor, we can say at this point you have certainly made out a *prima facie* case; and I think if there is some evidence of lack of consent we should hear it now.

WALLACE PARKER WADE,

the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Timberlake:

Q. Mr. Wade, of course you are the accused in this case and this inquiry is limited to what took place in the Waynes-

boro Community Hospital following the accident on which this prosecution is based. I want to ask you if you will state to the Court what, if anything, you recall having taken place at the Waynesboro Community Hospital following this accident on the night on which you were admitted.

page 32 } A. No, sir.

Q. Do you recall anything?

A. No, sir.

Q. Do you recall seeing Trooper Collier?

A. No, sir.

Q. Do you recall seeing Trooper Smoot?

A. No, sir.

Q. Do you recall seeing Dr. Ryder?

A. No.

Q. Do you recall seeing your wife?

A. No, sir.

Q. Do you recall being in the X-ray room that night?

A. No, sir.

Q. Do you recall being taken to the hospital that night?

A. No, sir.

Q. When is the first occasion on which you remember finding yourself in the hospital?

A. Well, it must have been—Now I don't know the dates. It was on—My wife told me that the day was Thursday; that they were going to take me to make X-rays, and I remember a little something about being—putting me on the X-ray table. That was on the following Thursday and that's all I remember that time. How they took the pictures, whether they X-rayed me, I don't know. I don't remember; I was just told it was.

Q. If that was Thursday following the accident, do you recall anything from the time of the happening

page 33 } of the accident up until that Thursday?

A. No, sir.

Q. As to where you were or who you were?

A. No, sir.

The Court: When was the accident?

Mr. Timberlake: It was on Saturday.

The Court: Preceding the Thursday that was mentioned?

Mr. Timberlake: Yes, sir.

Witness:

A. The next thing I remember they had me in the recovery room. That was Friday morning some time. My

brother stayed with me that night and they had a special nurse with me, and I was coming out from under the anesthetic and I could hear him talking; and then some time in the morning they moved me back in my room and, of course, then I was asleep and I woke up some time that day. I might have talked to some people then on Saturday morning.

Mr. Timberlake:
Q. That was Saturday following the accident?
A. Yes, sir. I remember I began to come to.

CROSS EXAMINATION.

By Mr. Taylor:
Q. Mr. Wade, do you know Dr. Ryder?
page 34 } A. Sir?
Q. Do you know Dr. Ryder?
A. I do now. I didn't then.
Q. You did not then?
A. No, sir.
Q. Do you know Trooper Collier?
A. Yes, sir.
Q. Did you know him before the accident?
A. Yes, sir.
Q. Did you know Trooper Smoot?
A. I've heard of him but I don't know him. I couldn't—
Q. Did you know Mrs. Clemmer, a registered nurse that lives in Fishersville?
A. No, sir.
Q. Did you see her that night?
A. No, sir, not that I know of.

No further questions.

Witness leaves the stand.

MRS. WALLACE PARKER WADE,
the fourth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Franklin:
Q. You are Wallace Wade's wife. Is that right?

Mrs. Wallace Parker Wade.

A. Yes, sir.

page 35 } Q. On the night that he was involved in this accident, did you go with him to the hospital? Did you ride in the ambulance?

A. Yes, sir.

Q. Where was he placed in the hospital?

A. He was in the hall until they got through working with Mr. Dickerson and then they put him in the X-ray room.

Q. He was in the hall until they got through working with Mr. Dickerson and then they put him in the X-ray room.

A. Yes, sir.

Q. Were you with him all the time?

A. I left about twice and that was to tend to business with Mr. Collier—to give his insurance card and driver's permit to Mr. Collier. I had his billfold; his billfold; his cards.

Q. Did he ask for that?

A. Yes, sir.

Q. Did Mr. Wade, your husband, have his eyes open as he came to the hospital or not?

A. Not in the ambulance. I couldn't get him to talk to me at all. He didn't let me know in any way that he was even living except that he was breathing. That's all. I tried to get him to tell me where he was hurting but he wouldn't tell me anything in that line; but when we got in the hall where the bright lights were, he opened his eyes.

Q. When you got in the hall where the bright lights were, he opened his eyes.

A. Yes, sir.

page 36 } Q. When he was in the X-ray room did he talk to anybody?

A. No, sir, not in my presence?

Q. Did you try to get him to talk to you?

A. Yes, sir. I kept asking him where he was hurting. I kept trying to find out. He made a noise that he was in pain, but other than that he didn't say anything to me.

Q. Were you there when Trooper Collier approached him about a blood test?

A. Yes, sir.

Q. What did Trooper Collier say?

A. Well, I think I can remember his exact words. I think he said, "Mr. Wade. I guess you know what I've got to charge you with." Wallace just looked at him. He had his eyes open. He just looked at him.

Q. Then what happened next?

Mrs. Wallace Parker Wade.

A. He said, "I'd like to get permission to take a blood test." I think that's what he said.

Q. Did Mr. Wade say anything back?

A. No, sir.

Q. When Dr. Ryder came in to take the blood test, was there any conversation between Mr. Wade and Dr. Ryder?

A. I don't think so. No, sir.

Q. Was anything said there?

A. Not by Wallace there wasn't; but Mr. Collier I think said something to Dr. Ryder. I don't know whether he said he had gotten permission for the blood test or what. I didn't pay any attention; I kept my mind focused on

page 37 } Wallace.

Q. Did they ask you anything?

A. Yes, sir. They asked me if I would give permission to take the blood test.

Q. Who asked you that?

A. Officer Collier.

Q. What did you tell Officer Collier?

A. I didn't know I could do it. I had never been in a situation like that. I said, "You're going to take it any way so I guess you might as well go on and take it." Yes, that was the consent I gave.

Q. Was that the only consent that was given for the blood test?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Taylor:

Q. Mrs. Wade, where did this conversation take place between you and Mr. Collier?

A. Which you mean? About the blood test?

Q. Yes.

A. That was in the X-ray room.

Q. Who all was in the X-ray room?

A. Well, the other officer I think—Smoot.

Q. Mr. Smoot?

A. I'm not sure about a nurse. I was just excited that night. I'm not sure who all was in there.

Q. Do you know Mrs. Clemmer, a registered nurse from Fishersville?

A. I didn't know her until the day of the hear-

page 38 } ing.

Q. Was she in this room?

Mrs. Wallace Parker Wade.

A. I'm not sure but I don't think so.

Q. Is that where you gave Officer Collier the insurance card and the information that he was requesting about Mr. Wade?

A. Yes. We stepped out in the hall and went into another little room, and I gave him those; but as soon as he got through with me I went on back.

Q. You say you think the exact words that Mr. Collier asked your husband in your presence was, "I think you know what I can charge you with."

A. Well, if I could remember the exact words but I—

Q. Didn't he, Mrs. Wade, tell Mr. Wade that he was going to have to charge him with reckless driving?

A. Yes, sir.

Q. And driving under the influence?

A. Yes, sir.

Q. And tell him that he was entitled to a blood test—

A. Yes, it amounted to that.

Q. If he wanted one.

A. I don't think he come out with "if he wanted one." He said he was going to have to ask for a blood test.

Q. Are you sure he didn't tell him it could be used for or against him in court?

A. No, sir.

Q. He didn't tell him that?

A. No, sir.

Q. Those words were not in that?

page 39 } A. No, sir.

Q. You testified a few minutes ago that Mr. Collier said to your husband, "I want you to take a blood test."

A. "I'd like for you to take a blood test." I believe that's the way he said it. He didn't force himself on him but he did say that.

Q. Didn't your husband have some conversation with you about taking a blood test?

A. No, sir. He had his hand up. He dropped his hand down and pointed to me.

Q. And he did not or you did not tell the Doctor to go ahead and take the blood?

A. No, I didn't have any conversation with the Doctor.

Q. Did you have any conversation with your husband in the Doctor's presence?

A. Only just to ask him where he was hurting or something

Mrs. Wallace Parker Wade.

like that. I helped get his shirt off when they were trying to undress him.

Q. But there was some conversation about taking blood.

A. Yes. We did the talking though. Walace didn't do any talking.

Q. Wallace didn't do any talking?

A. No, sir. I never heard a word. I didn't get any conversation out of Wallace until Sunday evening and that was so feeble you could hardly hear him.

Q. You didn't hear him complaining to the Doctor about where he was hurt?

page 40 } A. No. When they moved him they could find out where he hurt.

Q. He had no conversation with Dr. Ryder at all?

A. Not in my presence, no, sir. I know the exact number of times I was out of the X-ray room and what I was out for.

Q. And you say you told the officer you guessed they were going to take it any way.

A. Yes. I had never been in a situation like this before. I guess they were going to take it whether I said so or not.

Q. You say you were pretty excited?

A. Yes, because when they come after me they told me Wallace was already dead. I just thought that. I had never been in a situation like that. I knew what I was doing. I sat up with him in the night. I didn't leave for 3 days.

Q. You tell the Court that he was unconscious all the time he was in the hospital that night?

A. That night?

Q. Yes.

A. Well, they gave him a shot.

Q. Before they gave him a shot.

A. No, he acted like he was stunned. I wouldn't say he was unconscious but I don't believe he knew what was going on. I believe he would have let me know something in the ambulance because there wasn't anybody in there but me and him.

No further questions.

Witness leaves the stand.

page 41 } Mr. Timberlake: Your Honor, we renew our motion on the grounds, first of all, that the statute dealing with blood tests provides for their use in a criminal

prosecution for driving under the influence. The statute expressly so provides. It provides for the means of taking the blood test, for the consent that is required, and then it says that once the consent is given that the blood test can be used in a prosecution under the preceding statute or city or county ordinances dealing with the same offense. Of course, this is not a prosecution under the statute that makes the provision for the blood test; and for that reason, on the first score, we feel that it is entirely inadmissible; and if it is not authorized by that statute for this prosecution, it is a violation of the accused's constitutional right not to have to testify against himself. On the second grounds, assuming for the sake of argument that the statute dealing with the blood tests authorizes and permits the use of a blood test in a felony prosecution for manslaughter, which we say it does not, then, of course, it is incumbent upon the Commonwealth to prove beyond a reasonable doubt that the consent was given for the taking of the blood sample and the making of the test, and we submit that that proof has not been afforded. In the final analysis the Commonwealth's proof in substance is that the wife consented for the husband. The Commonwealth's evidence does not refute in any way the

page 42 } fact that the accused himself was oblivious to what was going on and has no recollection of what took place on this particular night until some days later, which the Commonwealth's medical witness says is consistent with a traumatic injury of this general type; so we submit that on both grounds that this blood test is inadmissible in evidence in this prosecution against the accused.

Mr. Taylor: If Your Honor please, on behalf of the Commonwealth in this case I feel that the Commonwealth has borne its burden insofar as the introduction of the evidence beyond a reasonable doubt that this man was conscious, that he knew what he was doing, that he not only submitted to a blood test being taken after he was advised what he was going to be charged with and after his conference with his wife. It is inconceivable that this Court or any other court, when a man is charged with manslaughter or any other felony in which he receives some injury, could come into court and say now that he had no recollection of anything that had happened the night of the accident until some two or three days later. That is contrary to what his wife testified to the Court. His wife said that she got conversation out of him the next day. He says that he remembers nothing for three or 4 days—the following Thursday. This accident happened on Saturday night or early Saturday morning—Friday night.

That, in face of the Doctor's testimony of his ob-
page 43 } servation of this man from the time he came in,
that he first was working on Mr. Dickerson, the deceased, because he did not consider this man hurt fatally or hurt seriously—. There was no bleeding from him. He did have a broken jaw in some five or six places that interfered with his talk; but he recognized where he was, recognized who he was with, recognized what he was there for and where he was, and he also recognized that he was the attending physician. In a case which I say the Commonwealth has certainly shown beyond a reasonable doubt, this matter of making an inquiry as to the man's condition—. Manslaughter, if I understand the law correctly, is the wanton, reckless operation of an automobile—manslaughter of this type—by the defendant. In order to show that the Commonwealth has a right, whether it is spelled out in the driving under the influence of the blood test statute or not, to show that man's condition What would make him operate the automobile in the manner and form that he did operate it in? And I submit whether the Court of Appeals of Virginia has passed on that particular question or not, it is certainly fair to the Commonwealth and fair to the society of Virginia to show the condition of a man when he attempts to operate an automobile and does operate it on the highway and causes death by that operation because the blood test—. It is true this man is charged in this Court with driving under the influence that automobile that night. He was charged with that and in-
dicted by the grand jury for that as a result
page 44 } of his driving. This manner of investigation re-
solves to the fact that the defendant has now come before this Court and asked the Commonwealth to prove their case beyond a reasonable doubt on some aspects of it out of the presence of the jury who are to pass on this man eventually; and it can answer but one purpose—to give the defendant and defendant's counsel the right of inquiry as to what the Commonwealth expects to show before the jury. We have put on—and as I told the Court a few minutes ago—we have put on evidence and we can put on more evidence as to what transpired in that hospital down there that night. I do not believe that this Court would entertain an idea that a disinterested man such as Dr. Ryder would come into this Court and say in his professional opinion that this man knew and realized and was able to know and realize what had transpired and that he wouldn't have taken any blood if he didn't have this man's consent; and I submit that that blood test and his condition as shown by the results of that blood

test is just as legal to be used in a manslaughter case for that purpose as it is to be used in a criminal prosecution for driving under the influence; and I submit that that is certainly a strong phase of the Commonwealth's case—to show his condition as intoxicated or he was presumed to be intoxicated when he operated that automobile. Otherwise, every man charged with a crime would have the right to come into court under the same theory and then the defendant say,

page 45 } "I don't remember anything else," regardless of what the doctors say, regardless of what the laymen say, regardless of what the troopers say in relation to their observation of the defendant. In that event any man, where he is charged and received an injury, could come into court and say, "I don't remember," and it would cause all of that evidence to be eliminated; and I feel that the Commonwealth is not required or that that evidence cannot be taken away from the Commonwealth before the jury.

Mr. Franklin: Your Honor, in answer to that I'd like to recall again the first part that Mr. Timberlake suggested. Section 18-75.1 states that: "In any criminal prosecution under Section 18-75 or similar ordinance of any county, city, or town, no person shall be required to submit to a determination of the amount of alcohol in his blood at the time of the alleged offense as shown by a chemical analysis of his blood, breath, or other bodily substance. However—." Then it goes on and gives the other rules. Of course, it is customary that they get a written consent. The statute doesn't say a written consent, but certainly here proof of lack of consent has been established. Now, further, even on the presumption in this matter, the statute that specifically authorizes presumption— and I might ask the Court. What benefit would this be if the presumption wasn't told the jury? It would tend to confuse the jury. Under the presumption it says: "In any prosecution for a violation of Section 18-75

page 46 } or any similar ordinance of any county, city, or town, the amount of alcohol," etc., is presumed and it gives the presumption. If it is not a prosecution under that, even the presumption does not apply. It violates a man's constitutional rights when it specifically sets out how it should be taken. He is not being prosecuted for driving under the influence; he is being prosecuted for manslaughter, which is the wanton disregard for human life. Before they could use this blood test these statutes had to be passed, and the construction of them is certainly against the Commonwealth. Any construction of these doesn't broaden the use of this to a manslaughter case; but even if there was an indication, it would have to be set out there in

black and white; and I say the question of the blood test should not be commented on or submitted to the jury.

The Court: Gentlemen, it seems to me the motion should be overruled and it is hereby overruled.

Mr. Timberlake: Your Honor, we except to the Court's ruling for the grounds stated in the motion; and in further connection with the ruling of the Court, I want to state now that we are going to require or call upon strict proof of the taking of the blood, the transmission of the blood to the State toxicologist, and the result of the test given by the State toxicologist, and not by any report, the use of which report is limited entirely by the statute to prose-
page 47 } cutions for driving under the influence as specified in Section 18-75 or city and county ordinances of an identical nature as far as the offense is concerned. And in reserving our exception to the Court's ruling—at the cost possibly of reiterating what has already been said—I do want to direct the Court's attention to the fact that there is no testimony in this case that his man was advised that the taking of this blood sample would be used in a prosecution against him in a crime of which he is now being charged and is before the Court.

Mr. Taylor: Your Honor, before we adjourn I'd like for the Court to rule on the question of whether or not the Court will receive the report—the certified report—of the State Medical Examiner's Office, which has been customary if it is followed through with a chain of evidence. I would like to get the Court to rule on that now so I could get the Medical Examiner up here from Richmond if it would become necessary.

The Court: Gentlemen, I will admit the report.

Mr. Taylor: As to the intoxication.

The Court: I will admit the report.

Mr. Timberlake: We except to the Court's ruling on the grounds that it is in violation of the hearsay rule and not sanctioned in this type prosecution—that is a
page 48 } felon-type prosecution for voluntary or involuntary manslaughter—by any applicable statute.

In Courtroom:

Mr. Timberlake: Your Honor, we would like to move for separation of the witnesses.

The Court: All right, sir.

(At this point all witnesses for both the Commonwealth and the defense were called, sworn, and taken to respective

Court, and the Court marks each of said photographs by an exhibit number.)

Q. Mr. Alwood, I hand you picture identified as Commonwealth's Exhibit 1 and ask you if you took that picture and what it discloses (handing photograph to witness).

A. (Examining said photograph) Yes, sir. I made this when I arrived on the scene that night; and, of course, it shows a lot of oil and small debris here in the road and a picture of the bus on the side of the road.

Q. All right. Does that show any damage to the bus?

A. Yes, sir, it shows some damage on the left rear of the bus.

Q. All right. I will just pass that to the jury and let them look at these pictures. (Said photograph is received in evidence as "Commonwealth's ExhibitNo.1." Said exhibit is examined by the jury.) I hand you Commonwealth's Exhibit 2 and ask you if you took that photograph (handing photograph to witness).

page 51

A. (Examining said photograph) Yes.

Q. And if you took it that night upon your arrival to the scene of the accident before you left the scene.

A. This one was taken a few days following the accident. I believe that is over in Freed's lot where they keep these wrecked cars. It is taken from the left side of the front seat, showing the steering wheel and front seat and damage to the top, a little damage to the wheel, and, of course, the windshield is knocked out. I believe it was 2 or 3 days following the accident that this shot was made of it. (Said photograph is received in evidence as "Commonwealth's Exhibit No. 2." Said exhibit is examined by the jury.)

Q. I hand you Exhibit No. 3—Commonwealth's Exhibit 3—and ask you if you took that picture and what it discloses (handing photograph to witness).

A. (Examining said photograph) This was taken a few days following the accident after the car had been moved to Freed's yard, and it shows the back end of the car with one of the front doors leaning up against the back of the car. I believe that's the door from the back. That's the door from the right side of the car—right-hand front door.

Q. The right-hand front door?

A. The right-hand front door. It shows blood stains and some damage to the door and a broken glass.

chambers outside the courtroom. Mr. Taylor then presented his opening statement on behalf of the Commonwealth, and Mr. Franklin presented the opening statement on behalf of the defendant.)

The Court: Gentlemen, it is now lunch time. I will ask you during this recess and all subsequent recesses not to discuss the case with anyone or let anyone discuss the case with you. We will adjourn until 2 o'clock.

page 49 } September 23, 1958 2:00 P. M.

Evidence presented on behalf of the commonwealth.

W. D. ALWOOD, III,
the first witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Mr. Alwood, would you please state your full name, your residence, age, and occupation?

A. W. D. Alwood, III; photographer from Waynesboro.

Q. Mr. Alwood, did you go to the scene of an accident on the night of April 20, 1957, on U. S. 250 just east of Fishersville?

A. Yes, sir.

Q. Did you take some pictures there?

A. Yes, sir.

Q. I hand you—. Would the Court make this Exhibit 1?

The Court: Gentlemen, is there any question about any of these pictures?

Mr. Timberlake: Well, I don't know.

page 50 } The Court: Have you seen them?

Mr. Timberlake: I've seen them. Nothing that appears from the pictures.

The Court: Then in order that we can identify them, suppose I mark them by exhibit number now so it will make it easier to talk about it. Does the order make any difference, Mr. Taylor?

Mr. Taylor: No, sir, I think it doesn't make a bit of difference.

(At this point a number of photographs are handed to the

if you took that picture and—(handing photograph to witness).

A. (Examining said photograph) Yes, sir.

Q. And from where and looking where?

A. This shot is looking east towards the scene.

Q. Do you recall the date that you took that picture?

A. It was either Sunday or Monday following the accident; Sunday, Monday, or Tuesday; just within a very few days following the accident.

Q. Was that the same date you took the picture of the road that you took the picture of the car and door in the Freed lot?

A. Yes, sir.

Q. It was the same day?

A. Yes, sir.

Q. And who was with you when you made those page 54 } pictures?

A. Who was at the Freed lot?

Q. Yes.

A. You were with me and I believe Trooper Collier was with us—met us at the scene and then went down to the Freed lot.

Q. Was he also with you when you took the scene of the road?

A. Yes, he was.

Q. And that picture, I understood you to say, you took at the west of the accident—

A. West of the scene.

Q. Looking towards Waynesboro.

A. Looking back towards Waynesboro. (Said photograph is received in evidence as "Commonwealth's Exhibit No. 5." Said exhibit is examined by the jury.)

Q. Exhibit 6. Commonwealth's Exhibit 6. Did you take that picture and were the same people with you (handing photograph to witness)?

A. (Examining said photograph) Yes, sir.

Q. And on the same date?

A. Yes, sir. This one is looking west from a point east of the scene of accident.

Q. Looking west from a point east of the scene of accident.

A. Yes, sir.

Q. In this picture you are looking towards Fishersville.

A. Looking towards Fishersville. (Said photograph is received in evidence as "Commonwealth's Exhibit No. 6." Said exhibit is examined by the jury.)

W. D. Alwood, III.

Q. Would you point out to the jury where the blood stains were on the door?

page 52 } A. Well, the most pronounced stain, of course, is right here (indicating on Exhibit 3). There were some stains down in this area that weren't clear in this photograph (again indicating on Exhibit 3). (Said photograph is received in evidence as "Commonwealth's Exhibit No. 3." Said exhibit is examined by the jury.)

Q. Commonwealth's Exhibit 4. I will ask you if you took that picture and what is discloses (handing photograph to witness).

A. (Examining said photograph and a number of negatives) It's been so long since I took these that—. These happen to be the negatives these prints were made from, which I brought them along to be sure they were my pictures (referring to number of negatives). (Witness continues to examine negatives.) Yes, that's my shot. That I believe—let me see—was one of the doors.

Q. Does that show a damaged door?

A. It shows a damaged door; a very-much damaged door.

Q. Which side of the door does it show?

A. The outside of the door.

Q. The outside of the door or the inside of the door?

A. This shows the outside of the door where the damage is.

Q. Do you, Mr. Alwood, recall whether that is the same door that is in the other picture except the opposite side of it?

A. I believe that it is. It's awful when you can't recognize your own pictures, but it has been almost a year and a half since I took those and I just can't quite make out

page 53 } which side of the car that is, Mr. Taylor.

Q. You took the picture?

A. I did take the picture, yes, sir. I did take the picture. It seems to be—. May I have that last picture back? (Commonwealth's Exhibit No. 3 is handed to the witness.) I believe that is the other side of this door. We photographed both sides of that door, and I think here the door was propped against the car and this is the other side of this same door I believe. (Said photograph is received in evidence as "Commonwealth's Exhibit No. 4." Said exhibit is examined by the jury.)

Q. Now I hand you Commonwealth's Exhibit 5 and ask you

8 and ask you when you took that picture if you took it (handing photograph to witness).

A. (Examining said photograph) Yes, sir, I took this picture. This one is also looking east from a point west of the point of the accident. It just shows the general view of the road and Route 250. (Said photograph is received in evidence as "Commonwealth's Exhibit No. 8." Said exhibit is examined by the jury.)

Q. That's the last one, our Exhibit 9 (handing photograph to witness).

page 57 } A. (Examining said photograph) Yes, sir, I made this shot also. This also was taken several days after the accident, at which time Mr. Taylor and Trooper Collier were with me; and it shows the highway looking west at a point a little east of the accident. (Said photograph is received in evidence as "Commonwealth's Exhibit No. 9." Said exhibit is examined by the jury.)

Q. There is another one of the bus. I hand you Commonwealth's Exhibit 10, which shows the bus in the roadway, and it is very similar to Commonwealth's Exhibit 8—only a little different. Did you take that the night of the accident (handing photograph to witness)?

A. (Examining said photograph) Yes, sir.

Q. Or subsequent thereto?

A. This is not the same?

Q. There's just a little difference. One is a little lighter than the other. I thought you could see it better.

A. I see. Yes, sir, this was taken the night of the accident. It shows the oil in the road and, of course, the bus and shows some of the damage on the back of the bus and the stuff that was knocked off the fender of the car. (Said photograph is received in evidence as "Commonwealths' Exhibit No. 10." Said exhibit is examined by the jury.)

CROSS EXAMINATION.

By Mr. Timberlake:

Q. Mr. Alwood, how long after the accident occurred did you arrive at the scene?

page 58 } A. Approximately 30 to 45 minutes; it wasn't too long. I never knew exactly the time of the accident, but I got there in the neighborhood of 12 o'clock.

Q. You got there around 12 o'clock?

W. D. Alwood, III.

Q. Commonwealth's Exhibit No. 7. Did you
page 55 } take that picture and were the same people with
you and was it taken on the same day as the others that you have identified as being taken Sunday or Monday (handing photograph to witness)?

A. (Examining said photograph) This one I'm positive was taken on Sunday following the accident the night before, and neither you nor Mr. Collier was with me at that time. I took this one without either of you being there. I recognize my car over here to the side.

Q. This is your car up here (indicating on Exhibit 7)?

A. Yes, sir.

Q. Now would you point out to the jury, Mr. Alwood, if you can where the house is that the car came to a rest on that you took the night of the accident?

A. Yes, sir. (Witness indicates light-colored house on photograph.) This is the house that the car came—. This house; this little light-colored house there is the one behind those mailboxes. It looks like it's behind them in the picture. Actually it is not right behind them, but in the photograph it shows as being a little behind the mailboxes as the house that the car came to rest against. These are skid marks that was layed down that night (indicating marks on Exhibit 7).

The Court: What is the number of that exhibit?

Mr. Taylor: Commonwealth's Exhibit No. 7.

page 56 } Mr. Timberlake:

Q. Are you undertaking to testify that you saw the accident?

A. No, sir.

Q. Or saw the skid marks after the accident?

A. I was up there right after the accident but this was taken the next morning (referring to Exhibit 7).

Mr. Taylor:

Q. But you did examine the skid marks that night after the accident?

A. Yes, sir.

Q. And those are the skid marks that you point out in this picture?

A. That's right. (Said photograph is received in evidence as "Commonwealth's Exhibit No. 7." Said exhibit is examined by the jury.)

Q. Now, Mr. Alwood, I hand you Commonwealth's Exhibit

W. D. Alwood, III.

Q. Between the time it came to rest and the time you found it.
A. Yes.

Mr. Timberlake: Your Honor, we would like to introduce this photograph as Defendant's Exhibit A. (Said photograph is received in evidence and marked "Defendant's Exhibit A." Said exhibit is examined by the jury.)

Q. And, Mr. Alwood, I will ask you the same question in reference to this photograph and ask you if that is also a photograph of the wrecked automobile taken by
page 60 } you at the scene shortly after your arrival that night (handing photograph to witness).
A. (Examining said photograph) Yes, sir, that shot I also made.
Q. And that, insofar as you could tell, was where the car came to rest.
A. Yes, sir. Would you like for me to initial the back of those prints as being made by me?
Q. No, the evidence will show that. We would like to introduce that as Defendant's Exhibit B.
A. I usually stamp those before they leave my office but I failed to do it on these. (Said photograph is received in evidence and marked "Defendant's Exhibit B." Said exhibit is examined by the jury.)
Q. Now, Mr. Alwood, in Commonwealth's Exhibit 2 I believe you testified that this is a picture of the Buick automobile involved in the accident taken several days after the accident at Paul Freed's.
A. That's correct. Yes, sir.
Q. And it shows that it is taken from the left side of the car looking through the car to the right.
A. Yes, sir. Yes, sir.
Q. Now in that picture will you point out where, if anywhere, it appears that the wheel is damaged (handing Exhibit 2 to witness)?
A. (Examining Exhibit 2) It seems to be just pushed up there. It is not too apparent in the photograph
page 61 } but there is no visible—nothing visible there in the picture that would show that.
Q. That's what I'm asking you. You testified I believe in chief that this picture showed damage to the wheel. Can you point out where that damage is?
A. Where the damage is?

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A. Yes, sir, some time around 12 o'clock.

Q. So if the accident happened around 11:20, it was somewhere around 40 minutes.

A. Somewhere in that vicinity of time. Yes, sir.

Q. Did you at that time find the Buick automobile at rest against the house that you described?

A. It was still at that spot. Yes, sir.

Q. Was there any way for you to ascertain whether or not the car had been moved from the point where it came to rest?

A. No way, no, sir. I could not be sure that it had not been moved. It was still up against the house when I got there.

Q. You didn't see any evidence that it had been moved?

A. No evidence that it had been moved. No, sir.

Q. I'm going to introduce these 2 (producing several photographs). I think you have copies of the photographs. I don't believe you introduced those pictures of the car (handing said photographs to Mr. Taylor for examination).

Mr. Taylor: Did Mr. Alwood take these (referring to said photographs)?

Mr. Timberlake: Yes, I'm sure he did. I'll ask him.

Witness:

A. I'm sorry I didn't number those prints.

page 59 } Mr. Timberlake:

Q. I hand you photograph here that purports to show a wrecked Buick automobile and ask you if that is a photograph you took that night at the scene of the accident (handing photograph to witness).

A. (Examining said photograph) If I can refresh my recollection by checking these negatives. I believe I did but I know there were other people there who made pictures.

Q. Yes, sir.

A. (Examining aforesaid negatives) Yes, sir, I did take that one, Mr. Timberlake.

Q. And do I understand that shows the car as you found it when you arrived there?

A. That's correct. Yes, sir.

Q. And I believe you also testified that you found no evidence that the car had been moved.

A. That's right.

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Q. Where the pictures shows the damage is.

A. It just appears to be out of position there.

Q. Would that be the angle of the picture or not?

A. It could be the angle that it is taken from. When I first looked at it, it just seemed to be tipped a little bit and it still appears to be. However, it could possibly be the camera.

Q. There is no visible damage to the wheel itself.

A. No damage on the wheel. No, sir.

Q. And the wheel itself—that is the rim and the other portions of the wheel and the steering column—insofar as it appears from this picture is not broken.

A. It is still intact.

Q. And the steering column—regardless of whether or not the angle of the picture appears to make it lean slightly to the right or whether in fact it is pushed slightly to the right—the steering column is otherwise intact, is it not

A. Yes, sir.

Q. Now, Mr. Alwood, I will ask you if you also took this photograph when you were making the other photographs at Paul Freed's (handing witness still another page 62 } photograph).

A. (Examining said photograph) Yes, sir.

Q. And doesn't that photograph show the steering column and steering wheel to be intact insofar as you can see from an examination of the photograph?

A. Somehow or other it seems to be leaning a little bit. However, it could be the distortion and everything else kind of being smashed to one side that makes it appear like that.

Q. There's no other visible damage to the column or steering wheel?

A. No, sir. It appears to be slightly tipped but it may not be because of the perspective of the rest of the picture.

Q. We would like to introduce this as Defendant's Exhibit C. (Said photograph is received in evidence and marked "Defendant's Exhibit C." Said exhibit is examined by the jury.) Mr. Alwood, what did you first do when you got to the scene of the accident?

A. Well, as soon as I arrived there, of course, being a photographer my first reaction is to try to make photographs. I immediately parked the car. When I arrived there were other cars there of course. I did get my camera out and set it up. I usually keep it in the case. It isn't something I grab and go to work. I have to set it up each time. I did that and I believe I made a shot of the bus first and then went over and made a shot or two of the car.

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Q. And was it before or after that that you undertook—before taking a shot of the bus and a shot of the
page 63 } car or shots of the car—was it before that or after that that you undertook to look around in the road to see what marks, if any, were at the scene?

A. I hardly recall how I proceeded there. My normal procedure would be—if that means anything—would be to first make my pictures and then look for those marks because we work under the assumption that the road is going to be cleared immediately, and I try to photograph the cars or any other vehicle involved before I do that. That's kind of my subconscious way of doing that. I believe that night I proceeded in that same fashion. After I made the pictures of the bus and car that I looked. I don't recall definitely whether I did or not.

Q. At the time you did look, do you know how much traffic had passed there between the time of the happening of the accident and the time you undertook to make your pictures?

A. I have no idea; I wouldn't know. It was a Saturday night and you could assume that there had been considerable traffic, but that's only an assumption.

Q. And except for the obstacles created by the wreck itself—that is the bus over on the right-hand side of the road as you go west and the car over off the left side of the road—that is an open stretch of road.

A. That's correct. Yes, sir.

Q. And traffic normally moves by there at the legal limit.

A. The usual speed. Yes, sir.

Q. You can't say what cars, if any, made the
page 64 } marks there in the road that night, can you?

A. I cannot because I didn't see it made. No, sir, I cannot.

Q. Now this exhibit, Commonwealth's Exhibit 10, showing the bus in the road, which I believe is just a second shot of Exhibit 1, does that show any tire marks in the road (handing Exhibit 10 to witness)?

A. (Examining Exhibit 10) No, I don't—. Unless this is one right here—the skid mark there (indicating on Exhibit 10). They apparently are covered up. If there were they are covered up by the car.

Q. There is a visible tire mark on the curve leading up to the car just passed the bus.

A. There was a mark there after this was cleared up, yes, sir.

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Q. Well, you see the mark there now leading up to the direction in which the car was going.

A. That mark apparently comes from this oil in the road there.

Q. On around to the curve there.

A. I believe that was made by a car that passed over that oil. Yes, sir.

Q. Now you referred to some tire marks that appear in Commonwealth's Exhibit No. 7 as having been seen by you during the time you were at the scene of the accident that night. Is that right?

A. Yes, sir, they were there. Now it is very difficult to photograph these marks by flash at night. Sometimes they will come through, but more times they will not be visible because light reflects away from the surface at the page 65 } same angle it goes into the surface and it makes it difficult to pick up. This was made the next morning following the accident, and I assume that these marks were layed down by the Buick car that went into the house (referring to Exhibit 7).

Q. That is purely an assumption?

A. An assumption. Yes, sir.

Q. Do you recall from examining those marks the next morning how far they extended across the road from north to south?

A. No, sir.

Q. They appear, do they not, to lead across the line dividing the west-bound lane and the center lane?

A. Yes, sir.

Q. Here in the picture (again referring to Exhibit 7)?

A. Yes, sir.

Q. And you can't say how far out across the center lane those marks extended.

A. No, sir. I didn't make any dimensions there or any measurements.

RE-DIRECT EXAMINATION.

By Mr. Taylor:

Q. Mr. Alwood, I want to ask you one question. When you were examining the exhibit showing the steering wheel, Commonwealth's Exhibit No. 2, do you recall looking at that steering wheel when you took that picture and, if so, would you tell the Court and jury whether it was bent one way or

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the other? To the right or to the left or up or
page 66 } down to any angle?

A. My recollection was that it was bent. Now there wasn't a great degree of bend in it but it's been so long that I'm just not real, real positive, Mr. Taylor; but my recollection is there was a slight bend there.

Q. All right, sir. Now, Mr. Alwood, I hand you Commonwealth's Exhibit 10 that shows the bus and the oil and debris on the ground and ask you if Picture No. 10—the roadway to the north coming into the highway is the same roadway that your car is sitting in (handing Exhibit 10 to witness).

A. (Examining Exhibit 10) Yes, sir, it is.

Q. In Picture No. 7?

A. It is the same drive.

Q. The same driveway.

A. Yes, sir.

Q. Now doesn't Picture No. 7—the tire marks that were layed down leave the north-bound lane of traffic before it gets to the debris or oil in the road (handing Exhibit 7 to witness)?

Mr. Timberlake: Your Honor, I think the question is decidedly on the leading side. This is Mr. Taylor's witness.

Mr. Taylor:

Q. Well, point out where they start and point out where they stop.

A. The skid marks?

Q. Yes, sir.

page 67 } A. They seem to stop just after they cross that broken line to the left of the west-bound lane. They veer sharply—not sharply—but they veer to the left across to the white lines. This is the point of impact—this spot right there (indicating on Exhibit 7).

Mr. Franklin: Your Honor, we object to that opinion.

Witness:

A. Well, I hardly know how to answer his question without putting it that way. I've been trying to avoid it.

Mr. Taylor:

Q. In putting these 2 pictures together, can you see the debris in both pictures (referring to Exhibits 7 and 10)?

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The Court: Mr. Alwood, you might start where you found anything on the highway in the nature of debris or whatever.

Witness:

A. Of course, when this picture was made the next morning the road had been swept. There had been oil in the road from the car or bus; I assume it was from the car. Dust collected on the oil. Consequently when it was swept it left that mark there.

Mr. Taylor:

Q. Answer this. Were the skid marks as reflected in Picture 7 east of that point that you are just talking about or west?

A. East of the point.

page 68 } RE-CROSS EXAMINATION.

By Mr. Timberlake:

Q. Do you mean, Mr. Alwood, that this mark you have reference to here in the picture in exhibit—Commonwealth's Exhibit 7—. Do I understand from you that this tire mark that appears in that and which you described as going across the broken line dividing the west-bound lane from the center lane, do I understand from you now that that mark in its entirety is east of where this oil and debris was in the road?

A. Yes, sir. Yes, sir.

Q. So that the point over in the center lane where the mark appears to end in the photograph is still east of where the oil and debris was?

A. It almost runs out at that point. Judging from this picture, it seems to be almost across from this point here which I mentioned as being the point of impact. It seems to be just possibly right directly across from it there.

Q. When you refer to the point of impact, of course, Mr. Alwood, you are not undertaking to convey the idea to the jury that you saw the vehicles collide.

A. I did not.

Q. Or that you have any other means other than the jury has of evidence in determining where the point of impact was.

A. No, sir, I couldn't qualify that.

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Q. When you refer to the point of impact, you simply mean the debris and oil in the road.

page 69 } A. That's right.

Q. Do I understand that this point where I have my thumbprint is where the oil and debris was in the road—that light mark in the road (referring to Exhibit 7)?

A. Yes, sir.

Q. That is in Commonwealth's Exhibit 7. The witness indicated that this light-appearing substance in the west-bound lane extending from a point near the edge of the west-bound lane to a point over near the white line dividing it from the center lane is where he found the oil and debris. Is that correct?

A. Yes, sir. I believe I could locate it on this picture here if you would like for me—that spot there in this picture (referring to Exhibit 10).

Q. That's Commonwealth's Exhibit 10.

A. It would be this spot here (indicating on Exhibit 10).

Q. Just point out to the jury where this light-colored portion of the west-bound lane appears on Commonwealth's Exhibit 10.

A. I believe that this would be it through here (indicating spot on Exhibit 10). This is mud and dirt apparently there that was knocked off the bus or the car.

Q. As far as you know, there was mud and dirt in the road that you found when you got there.

A. I forget what the weather was.

Q. In other words, you understand that our only purpose here is to let the jury know what you found in the road independent of any conclusions?

page 70 } A. Yes, sir.

Q. As I understand, you pointed out to the jury that this rather light-colored substance—whether it's mud or dirt or whatever it may be—that sort of mingles with the oily substance is the same light-colored substance that appears in Exhibit 7 up there in the west-bound lane.

A. Yes, sir.

Q. And whether or not this tire mark that you have described extends beyond that point or stops with it is a question of determination and examination of the Court. Doesn't it appear to go beyond?

A. It appears to go beyond but I can't be positive.

Q. So it wasn't entirely east of the oil and debris that you found in the road.

A. The skid marks?

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Q. The tire marks.
A. They start east and end up either adjacent to or slightly beyond.
Q. Slightly west?
A. Slightly west. Yes, sir.

No further questions.

Witness leaves the stand.

DR. HARVEY BROWN RYDER,
the second witness, being first duly sworn, testified as follows:

page 71 } DIRECT EXAMINATION.

By Mr. Taylor:
Q. Dr. Ryder, would you please state your full name and your age and your residence?
A. Harvey Brown Ryder; age 38; Waynesboro, Virginia.
Q. And, Doctor, where did you take your medicine?
A. I am a graduate of the Medical College of Virginia Hospital of Richmond, Virginia; and I subsequently interned at that same institution and subsequently finished a residency in general surgery a combination of 2 places—McGuire Veterans,' Richmond, Virginia, and the Medical College of Virginia.
Q. And, Doctor, where are you practicing your profession at the present time?
A. I am a surgeon in Waynesboro, Virginia.
Q. You are a surgeon in Waynesboro, Virginia. And how long have you been in Waynesboro?
A. Going into 3 years, sir.
Q. Doctor, on the night of April 20, 1957, did you have an occasion to see the defendant here, Wallace P. Wade?
A. I did, sir.
Q. And where did you see him?
A. Waynesboro Community Hospital, Waynesboro, Virginia, emergency room.
Q. In the emergency room and approximately what time?
A. 12 midnight, sir.
Q. 12 midnight. Now, Dr. Ryder, did you see any other patient that night about the same time?
page 72 } A. The deceased, a Mr. Dickerson.
Q. Yes, sir. Did you see Mr. Dickerson? Mr.

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Fred Dickerson?

A. Yes, sir.

Q. About what time did you see him or which one of these men did you see first?

A. Mr. Dickerson.

Q. You saw him first?

A. Yes, sir. Actually it was a few minutes after 12 when I saw Mr. Wade; approximately about 12:30 I would imagine.

Q. And did you see Mr. Dickerson also in the emergency room at the hospital?

A. Yes, sir.

Q. And what was his condition? What were the nature of his injuries and to what extent if you will explain to the jury?

A. This is Mr. Dickerson?

Q. Yes, sir.

A. He had severe facial injuries and a severely fractured skull. He had a great respiratory difficulty. He was already getting rather pronounced swelling or edema of the throat. He couldn't get his breath and I did a tracheotomy, and he subsequently died of cranial injuries or brain injuries as a result of the accident.

Q. Where was the fractures on his head?

A. The right side of his head and face were severely crushed.

Q. The right side of his head and face was crushed?

A. With a large area of the cheek or side of the mouth of approximately the size of my hand avulsed or

page 73 } torn loose from the bony attachments.

Q. Was he at that time bleeding profusely?

A. Bleeding severely.

Q. Bleeding severely. And had he lost any appreciable amount of blood or could you tell?

A. Unquestionably this man had been bleeding since the accident and I'm sure he had lost a considerable amount of blood. There was a lot of blood on him, but how much he had lost prior to that I couldn't tell.

Q. But from the injuries he had and that were visible he would have to have lost a lot of blood.

A. He would have had to have lost a lot of blood.

Q. Do you have records or know approximately the time of his death?

A. He died at approximately 12:40 a. m.

Q Approximately 12:40 a. m. Was his death due to the accident or the injuries received in an accident?

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A. Yes, sir.

Q. Now, Doctor, what was the condiiton of the defendant here, Wade, when you examined him?

A. His physical condition was satisfactory. He did have multiple injuries. Do you want those enumerated?

Q. Yes, sir.

A. He had multiple fractures of the jaw, multiple rib fractures on the right side, contusions of the lower back, bruises of both hips, a laceration of the cheek, several small cuts in the head, and a laceration in the hairline page 74 } of the scalp. He had several cuts inside of his mouth presumably from teeth.

Q. Now was Mr. Dickerson conscious at any time that he was in the hospital?

A. He was never conscious.

Q How about Mr. Wade?

A. I would say Mr. Wade was conscious.

Q. He was conscious. Was he rational? Did he appear to know and recognize what he was doing and the other people were doing to him or for him?

A. Yes, sir.

Q. Doctor, did you detect the odor of alcohol on Mr. Wade?

A. I detected an odor resembling alcohol on his breath.

Q. On his breath. Were you present when the State Trooper, Mr. Collier, or Mr. Smoot was in the room with Mr. Wade and talking to him?

A. I was in the room when Trooper Collier was in the room. Smoot may have been behind me. I don't recall that he was in the room when such conversation between Mr. Wade and I took place.

Q. He may have been behind where you were working.

A. He may have been behind me.

Q. Did you overhear any conversation between Trooper Collier and Mr. Wade regarding who was the operator of the automobile?

A. I did not.

Q. You did not. Did you hear any conversation between Trooper Collier and Mr. Wade as to whether or page 75 } not he desired a blood alcohol test taken?

A. I heard one such conversation. Yes, sir.

Q. Would you please relate that to the jury, Doctor?

A. Trooper Collier told—

Mr. Timberlake: Just one minute, Dr. Ryder, please. I object, Your Honor. In view of matters that were taken

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up in chambers I assume that it can be understood that our objection stands to this line of questioning.

The Court: Yes, sir. Yes, sir. Let the record so show.

Mr. Taylor:

Q. Go ahead, Doctor.

A. Trooper Collier had told Mr. Wade he was going to charge him I believe and did tell him he was going to charge him with reckless driving and under the influence and offered him the opportunity of taking a blood alcohol, explaining to him it could be used for or against him. Mr. Wade consented to the blood alcohol. I drew the blood alcohol following a conversation between Mr. Wade and Mrs. Wade as to whether the blood alcohol should be drawn. They both agreed to have it drawn or both agreed they wanted it, and I drew it.

Q. Mrs. Wade, the wife of the defendant, was in the room at that time?

A. At that time. That's right.

Q. And there was some conversation between
page 76 } Mr. and Mrs. Wade about that blood alcohol.

A. Yes, sir. Mr. Wade turned to his wife. He was lying on the table. He turned to his wife and his exact words are difficult to recall. He asked her in effect did she think he should have it drawn. She said, "I think so," and he agreed to have it or he said, "Go ahead and draw it."

Q. And you did draw the blood from Mr. Wade?

A. I did, sir.

Q. And what did you do with it?

A. I gave it to Trooper Collier who, in our presence, sealed it up and after that I suppose he mailed it.

Q. He sealed it up in your presence?

A. Yes, sir.

Q. Doctor, what conversation did Mr. Wade have with you, if any, while you were working with him there in the hospital?

A. I recall that I asked him where he hurt. He told me his jaw. I X-rayed his jaw and checked and found it was unquestionably fractured. Subsequently he complained of pain in his right side and lower back. I recall he asked about Mr. Dickerson several times and wanted to know how he was.

Q. He asked about Mr. Dickerson several times?

A. Yes, sir. His wife came in and wanted to know if she could see him. I said she could and she wanted to know his

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teeth in his mouth at the hospital when you first examined him?

A. I don't recall.

Q. You don't recall. Well, was his jaw broken loose and hanging down?

A. The jaw was excessively mobile; excessively loose. It was flabby.

Q. Flabby. He had great difficulty in talking, did he not?

A. Rather pronounced difficulty in talking. I don't know how much you mean.

Q. In describing his injuries, was anything wrong with his right hand?

A. Yes. I did neglect that. He had several cuts on both hands. I'm sorry.

Q. His right hand or right arm wasn't broken, was it?

A. I didn't see any.

Q. Was his left arm or left hand broken?

A. I don't recall that it was. He had multiple cuts on the back of both hands.

page 79 } Q. Multiple cuts on the back of both hands. Now who brought Mr. Wade into the hospital?

A. I don't know, sir. He was on the stretcher when I first saw him. I think the first aid crew brought him in.

Q. Was his wife with him then?

A. No. sir. She may have been there. She wasn't there when I first saw him.

Q. He was on the stretcher in the hall?

A. That's right.

Q. She wasn't there?

A. She appeared. Who called her I don't know; but at the time I initially saw him I didn't see her.

Q. The first time you saw him was about 12:30. Is that right?

A. If it please the Court, the time element there was a little indefinite because Mr. Dickerson was seriously ill. I had sent a nurse out to see how Mr. Wade's condition was to see if it was necessary to send for another surgeon. She reported back to me that his condition appeared satisfactory so I ducked out, just glanced at him, spoke to him for a minute, and went on back in and started working on Mr. Dickerson, realizing that this man (indicating Mr. Wade) wasn't in danger of life. Exactly the time there I don't know, but I started working on the man definitively about 12:30.

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condition first, and I told her she could see him and we talked together about his condition. I told her he had certainly a fractured jaw and would have to be admitted.

Q. And he was subsequently admitted to the
page 77 } hospital.

A. Yes, sir.

Q. And how long did he remain a patient at the hospital, Doctor?

A. Approximately 2 weeks.

Q. Approximately 2 weeks. Was he from the first time you saw him until he was discharged from the hospital ever unconscious to your knowledge?

A. Not to my knowledge.

CROSS EXAMINATION.

By Mr. Franklin:

Q. Dr. Ryder, in the fractures that Mr. Wade had in his jaw, would you describe those, please, sir?

A. There were fractures of the ramus or portion of the jaw on this side (indicating right jaw); similarly on this side (indicating left jaw). There were 3 fractures of what is generally called the chin in such matters.

Q. What was necessary as far as you were concerned to correct that? What did you have to do?

A. He had false teeth above so I had nothing to work with up above. I had to drive a Stine pin, which is a wire or heavy steel rod, through both cheeks—one through here (indicating upper jaw or cheek) and out the other side (indicating from left to right), and then 2 pins in front to secure his false teeth to the upper jaw; and then I wired the fractures in the lower jaw and wired them to the upper jaw, maintaining them in that position approximately 8 weeks, and cut the wires loose.

page 78 } Q. In other words, you wired practically his mouth shut so to speak.

A. His mouth was wired shut.

Q. His mouth was wired shut.

A. I mean the teeth were wired together but the lips were open.

Q. It was very difficult for him to talk during that period, wasn't it?

A. Yes, sir, it was difficult.

Q. Now when you first examined him did he have his false

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jury. I don't know. Certainly there is not a disabling injury. I'm sure the man has good function of his hands now but he may have had a fracture. It's been over a year and I'm not certain whether I treated such a small fracture or not. I do recall he had several cuts on his hands and may well have had a fracture of the metacarpal. It seems to me he did.

Q. Doctor, on October 3, 1957, as a result of a question, your answer was as follows: "He had a laceration of—."

The Court: Can you tell him where that was, Mr. Franklin?

Mr. Franklin:

Q. That was when you were on the witness stand in this matter at a preliminary hearing. Your answer page 82 } was as follows: "He had a laceration of the scalp, left cheek, several cuts in his hairline, cuts in the mouth, contusions of the ribs, which X-ray showed to be the second through the tenth on the right side, contusions of the back on the right side, fractures or contusions of the upper abdomen, the cause of which I do not know. He had tenderness in the lower part of his back, the cause of which we never did determine. He was X-rayed subsequently. Bruises of both hips, numberous small cuts on the backs of his hands, and multiple fractures of the lower jaw."

A. If I didn't list a fracture, I don't recall that the man had one. If the X-ray at the time shows that he did have one, why that's right.

Q. We are not suggesting that he did have one. That's all.

RE-DIRECT EXAMINATION.

By Mr. Taylor:

Q. Doctor, I believe Mr. Franklin answered the question as to your former testimony. You testified about these broken ribs. Were they on the right side or left side?

A. The right side.

Q. Did this man have any chest injuries?

A. You can't help but have chest injuries with the second to the tenth ribs broken as well as contusions.

Q. And it was also—. I believe you testified that it was

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Q. Did you treat him for injuries to his legs or not?

The Court: Treat him for injuries to what?

page 80 } Mr. Franklin:

Q. His legs.

A. Yes, sir. He had contusions of the right leg, numbness, and some disability of the muscles persisted even for 6 or 8 weeks after he left the hospital. Such treatment, however, was only incidental to the treatment of injuries the man had elsewhere.

Q. I believe you said it was necessary for this man to stay in the hospital approximately 2 weeks.

A. Yes, sir.

Q. Let me ask you. In your examination of him, in answer to Mr. Taylor's questions, you said you smelled alcohol or smelled something simulating alcohol. Was that only when you got down to examine his mouth?

A. At that time it was necessary to get close to manipulate the jaw. At that time I detected the odor of alcohol.

Q. There wasn't any odor of alcohol on him that you could detect at any great distance?

A. I was not aware of the odor when I was not in his immediate presence.

Q. But you detected it when you got down and worked—

A. When I was down examining the patient and checking his jaws, yes, sir.

Q. Doctor, state whether or not Mr. Wade, in discussing his condition with you, that you found out from him as his doctor that he didn't know anything about what happened to him the first 2 or 3 days he was in the hospital.

page 81 } A. Approximately about the third or fourth day Mr. Wade said he couldn't remember much about the accident and his condition. Subsequently, as late as about the tenth he said that he didn't remember anything of those first 3 or 4 days. He said his memory was blurred.

Q. Doctor, going back to the injury to his right hand, you didn't observe any injury that would prevent him from writing his name if he had had all his faculties? Was there any injury that would prevent him from writing?

A. I believe the man in retrospect had a fracture of this finger (indicating little finger of right hand). I didn't mention it this morning but, if I may be permitted, you have the statement of the first list of injuries before the grand

the right side of his head that was crushed. I mean of the Dickerson man's head.

A. The right side of Dickerson's head. Yes,
page 83 } sir.

Q. Do you recall, Doctor, whether or not Mrs. Clemmer was on duty, a registered nurse, in the Waynesboro Hospital or came to the hospital with these injured men that night?

A. Yes, sir, she was on duty. She had replaced this large flap of this man's face on the right and was holding it in place and attempting to control the bleeding and pressure. She subsequently helped me control this bleeding and helped me sew this man's face up; and as soon as we finished that we also did a tracheotomy. She helped me do that. When she left I do not know.

No further questions.

Witness leaves the stand.

ELWOOD HAMILTON FURR,
the third witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Mr. Furr, your full name is Elwood H. Furr?
A. That's right, sir.
Q. Or Elwood Hamilton Furr.
A. That's right.
Q. What is your age?
A. I'm 38.
Q. What is your occupation?
A. I'm a Trailway coach operator.

Q. Where do you live, sir?
page 84 } A. I live on the old New Hope Road on Route 3.
Q. Route 3?

A. Yes, sir.
Q. How long have you been operating a Trailway bus?
A. 13 years.
Q. 13 years?
A. Yes, sir.
Q. In April, 1957, were you on duty the 20th day of April?
A. Yes, sir.

Elwood Hamilton Furr.

Q. What was your run that day?

A. From Staunton to Richmond and return from Richmond back to Staunton.

Q. On your return trip from Richmond to Staunton, approximately what time did you get into Fishersville?

A. Approximately 11:20.

Q. Approximately 11:20?

A. That's right.

Q. Were you running on time that night?

A. No, a little late.

Q. A little late?

A. A little late.

Q. Can you tell the Court approximately what time you arrived at Fishersville?

A. Approximately 11:20.

Q. Did anything happen that night? Was there an accident in which your bus was involved?

A. Yes, sir.

page 85 } Q. Would you tell the jury just what did happen just prior to the accident?

A. All right, sir. I was traveling west on 250. Two passengers were to be discharged at this point in Fishersville, and I gave my signal to make a smooth stop in plenty of time. This car was traveling back approximately a city block or more; and before the bus become—or I could bring it to a stop, this car had run into the back of the bus.

Q. Did you see the car in the rear of the bus before it struck the bus?

A. Yes. Yes, sir.

Q. And how far do you say it was behind you when you first noticed it?

A. A city block or more.

Q. About a city block?

A. Yes, sir.

Q. And I understand you to say that you were going to make a stop at this point.

A. Yes, sir.

Q. And you say you gave your signal for that?

A. Yes, sir.

Q. Had you actually stopped the bus when the collision happened?

A. No, sir. The bus hadn't come to a complete stop.

Q. Hadn't come to a complete stop.

A. No, sir.

Elwood Hamilton Furr.

Q. The place in the road where you were going
page 86 } to make this stop. Was that a junction of a road or what?

A. At this particular point it's a dead-end street I understand there and then the entrance to Mr. Botkin's house, which is his drive. That gives us the widest point to pull off to make the discharge. That's what I was trying to make.

Q. That's what you were trying to make.

A. Yes, sir.

Q. You say you were hit before you actually made that?

A. Yes, sir.

Q. Was the bus hit hard or a glancing blow or how was it hit?

A. It was hit at a glancing blow.

Q. It was hit at a glancing blow?

A. Yes, sir.

Q. Were you at that time meeting any east-bound traffic?

A. No, sir.

Q. To your knowledge.

A. No, sir.

Q. There was no east-bound traffic passing you?

A. No, sir.

Q. Well, when this car hit the rear end of your bus, what happened then, Mr. Furr?

A. Well, the first thing was the hood went up the highway. The next thing—

Q. Wait a minute. What do you mean by "the hood went up the highway"?

A. The hood flew off the car and went on up the highway.

Q. In front of you?

page 87 } A. Yes, sir. And the next thing was the car with the door falling about opposite or midways from the bus.

Q. The door fell off?

A. From the car about middleways of the bus.

Q. About middleways of the bus.

A. That's right, sir.

Q. Then what happened?

A. The car continued on traveling west on the left-hand side of the road and then turned and went into this lawn and into this man's house.

Q. It went into the lawn of a house.

A. That's right.

Q. You say the door fell off the car. What door, if you know, and where did it land in the highway with reference

to the bus and with reference to the center of the highway?

A. It was the right-hand door of the car and it fell about the center of the highway.

Q. The right-hand door of the car.

A. That's right, sir.

Q. And you say it fell in the center of the highway?

A. That's right, sir.

Q. Well, what did you do, Mr. Furr? Did you bring your bus to a stop or did you go on up the highway or what did you do?

A. No, I brought the bus on to a stop within about half a length.

Q. Half a length of what?

page 88 } A. Half a length of the bus after the car had struck the bus. Then I got out of the bus and we run to the highway and removed the door from the highway.

Q. To get out of the bus what did you have to do?

A. There's a door on the right-hand side.

Q. There is no door on the driver's side?

A. There is no door on the driver's side.

Q. Then you have to get out of the bus on the opposite side from which you were sitting.

A. Yes, sir.

Q. Did you get out of the bus immediately?

A. Yes, sir.

Q. What did you do?

A. We removed the door from the highway and then I went to phone for help.

Q. You say "we" removed the door from the highway.

A. Yes, sir.

Q. Who is we?

A. Some other gentleman. I do not know who he was.

Q. Where did you remove it to?

A. Off to the side of the road.

Q. Where the car was?

A. That's right; the same side.

Q. As you went across the road you took the door with you?

A. That's right.

Q. Did you go right straight to the car?

A. Yes, sir.

page 89 } Q. What did you find when you got to the car?

A. I found Mr. Dickerson laying with his head to the right of the car and Mr. Wade was to the left of the

Elwood Hamilton Furr.

actually stopped your bus until you got over across the road where this car was?

A. Well, it was just a matter of seconds. No quicker than I could get out of the bus, run across the road, help sling the door up, and run right straight to the car.

Q. And that is the position you found these men in at that time.

A. That's right, sir.

page 91 } Q. You say you went in the house and called the State Trooper and called the ambulance?

A. Well, the neighbor next door—in the house next door, which would have been to the left of the car—she *holloed* across from her house and asked if she could help. I said, "Yes, call the ambulance and the State Trooper." Meanwhile, the house where the car struck opened the door and asked if they could help and they said they had a telephone. So I called for the State Trooper and the ambulance.

Q. You called for the State Trooper and the ambulance.

A. Right from their house.

Q. Were either one of these men moved in any respect while you were there?

A. No, sir.

Q. Until they were moved to the ambulance?

A. No, sir.

Q. You didn't see either one of them being moved?

A. I didn't see either one of them being moved.

Q. Now, Mr. Furr, did you stay there constantly until the Trooper got there?

A. Well, I was standing right on the porch right inside the door with the door open and using the telephone when Trooper Collier came in to use the same phone to call for blood. He called the Waynesboro Hospital to find out if they had a supply of blood on hands. I was right there until Trooper Collier and Trooper Smoot came.

Q. Did you go back to the car?

page 92 } A. There was such a crowd I didn't go back to the car after Trooper Collier and Trooper Smoot got there.

Q. Did you examine the car before you went into the house? The inside of the car?

A. Yes, sir, I did.

Q. Did you have a flashlight or what did you have?

A. Yes, sir, I had a flashlight.

Q. What did you see in the car besides these 2 men?

car, and Mr. Wade was sitting in a slumped position to the left of the car. Mr. Dickerson was laying to the right of the car with his head to the right and more or less in a bow, and blood was flowing from his head over the side of the car into this man's lawn. The next-door neighbor *holloed* across to see if I needed help. I said, "Yes, call the State Trooper and the ambulance." Then the house which was struck by the car—they came to the door and asked if they could help. I asked them if I could use their phone. They said, "Yes." I called for the State Trooper and the ambulance myself from their phone.

Q. Now, Mr. Furr, the testimony is that Mr. Dickerson was lying with his head partially out of the car.

A. Yes, sir, to the edge of the car; to the right of the car.

Q. Is that the door that was removed from the highway?

A. That's right.

Q. There was no door between him and the outside.

A. No, sir.

Q. How about the door on the other side of the car?

A. The door on the other side of the car was closed.

Q. The door on the other side of the car was closed.

A. Yes, sir.

Q. It had not been spun open.

A. No, sir.

page 90 } Q. It wasn't open when you got over there?

A. It wasn't open when I got over there.

Q. With reference to the steering wheel, who, if anybody, was under the steering wheel?

A. Mr. Wade was under the steering wheel.

Q. Mr. Wade was under the steering wheel?

A. That's right.

Q. You say he was lying in a slumped position?

A. To the left.

Q. To the left of the car. Now were you the first man to get to this car?

A. At the time I was the first one.

Q. You were the first one.

A. Yes, sir.

Q. Nobody was there before you?

A. No, sir.

Q. And, of course, no one could have been moved. Is that right?

A. That's right.

Q. How long do you think it was from the time you

Elwood Hamilton Furr.

A. That's right, sir.

Q. Mr. Furr, I hand you Commonwealth's Exhibit No. 7, the picture showing the highway looking towards page 94 } Fishersville from Waynesboro and showing tire marks in the highway, and ask you whether or not you saw any tire marks there that night (handing Exhibit 7 to witness).

A. (Examining Exhibit 7) Yes, sir.

Q. Did you see those tire marks there before you left the scene that night?

A. Yes, sir. Yes, sir.

Q. Can you tell the jury how long or how far this man had been following you, the operator of this Buick car that hit you?

A. No, I cannot tell that.

Q. Or where he first came into your view?

Mr. Timberlake: He has already testified to that, Mr. Taylor. About a city block behind.

Witness:

A. Of course, how long he had been following me in the distance I don't know.

Mr. Taylor: I believe that's all.

CROSS EXAMINATION.

By Mr. Timberlake:

Q. Now, Mr. Furr, as I understand your testimony, you are 39 years of age and employed as a driver for Trailways.

A. 38.

Q. 38. And how long have you been employed—?

A. 13 years.

Q. Going into 14 years as a driver for Trail- page 95 } ways.

A. That's right, sir.

Q. And on this particular day you had made the run from Staunton to Richmond.

A. That's right, sir.

Q. And were making the return trip.

A. That's right, sir.

Q. And you had how many passengers, do you recall, that were to debark there at Fishersville?

Elwood Hamilton Furr.

A. The back of the car and the floor of the car was covered with beer cans.

Q. With beer cans?

A. That's right.

Q. You don't know or do you know whether they were beer cans or beer—whether they had been opened or not?

A. That I can't say whether they were empty or full. All I can say they were beer cans.

Q. Mr. Furr, did you personally have any conversation with either one of these men or hear either one of these men have any conversation with anybody else while they were in the automobile there?

A. No, sir, I did not.

Q. You did not?

A. No, sir.

Q. Where did this car eventually come to a standstill?

A. Against a house.

Q. Up against the house?

A. Up against the house. That's right, sir.

page 93 } Q. Mr. Furr, what damage was done to the bus as a result of this impact?

A. There was about $500.00 damage to the bus. The rear was caved in. The stop light and the signal light on the left side was knocked out.

Q. Just one question (producing photographs previously received in evidence). I hand you, Mr. Furr, Commonwealth's Exhibit 1 and ask you if the bus shown in that picture is the bus that you were operating that night (handing Exhibit 1 to witness).

A. (Examining Exhibit 1) Yes, sir.

Q. And is that the position on the road the bus was stopped?

A. That's right, sir.

Q. The street right in the rear of that bus. Is that the street that—?

A. Which I attempted to stop at.

Q. Which you attempted to stop at.

A. That's right.

Q. And that is the street you referred to as a dead-end street?

A. That's right.

Q. And the left rear corner of that bus. Is that what you spoke of as being the damaged part?

A. That's right.

Q. Where the light was broken, etc.?

Elwood Hamilton Furr.

Q. The signal was on indicating your intention to stop?
A. That's right, sir.
Q. Then you looked in the side mirror and saw
page 97 } the car approaching about a block away.
A. That's right, sir.
Q. And you continued to slow up to make a gradual, easy stop.
A. A smooth stop.
Q. Is that correct?
A. That's right.
Q. Had you reached a full stop?
A. No, sir.
Q. When this accident occurred?
A. No, sir.
Q. I believe you testified that you were within about half a bus length of your stop.
A. The bus moved—I moved it about half a bus length after it was struck.
Q. Would that have been about the distance it would have required you to come to a complete stop?
A. It could probably. What I mean, if I could have continued on without getting the blow and continued on in a smooth stop, I could probably have stopped in a little less.
Q. A little less than that?
A. That's right.
Q. And there is no question but what you were stopping the bus on the traveled portion.
A. The right rear wheel was off.
Q. The right rear wheel was off. What about the right front?
A. The right front wheel was leading more off.
Q. So you were stopping with the right wheels
page 98 } on the shoulder off the paved surface and with the left wheels on the paved surface.
A. That's right, sir. At the point you can't get any more of the bus off.
Q. Of course, you are aware that that is in violation of the law, are you not, Mr. Furr?
A. In one sense of the word, yes. But what am I going to do with it?
Q. Don't you know that the law prohibits you from stopping or loading or unloading a bus on the traveled portion of the highway?
A. Yes, sir. That's why I try to get as much off as I can.

Elwood Hamilton Furr.

A. 2 passengers to debark there at Fishersville; 9 left aboard.

Q. I see; 11 passengers in all.

A. Yes, sir.

Q. Do you recall who those 2 passengers were?

A. I know them when I see them but to call their names I can't say. I don't know their names.

Q. Where do you live, Mr. Furr?

A. I live on Staunton, Route 3, on the New Hope Road.

Q. Middlebrook Road?

A. New Hope Road.

Q. The New Hope Road.

A. Yes, sir.

Q. Did you obtain or make any record of the names of the passengers that night that were going to get off at Fishersville?

A. They filled out the courtesy cards, the 2; all of them filled out courtesy cards.

Q. Did you preserve that?

A. Yes, sir.

page 96 } Q. By consulting those cards can you tell us who the 2 passengers were that were getting off?

A. No, not by name I couldn't say unless they put their address.

Q. Were they men or women or a man and a woman?

A. No, one was a little boy and the other—I would say maybe he was 20 years old. He was a man.

Q. Do you have any recollection of whether they were traveling together?

A. No, they were from different homes. One lived directly across from where the accident happened and the other lived about a block below from where the accident happened.

Q. Which lived directly across the road from where the accident happened?

A. The older one.

Q. The 18-or-20-year-old one.

A. That's right, sir.

Q. As I understand, when you were preparing to stop you saw a car approaching from the rear also heading west at about a distance of a city block from you.

A. That's right.

Q. And you thereupon gave a stop signal.

A. I gave my signal that I was stopping before looking into my side mirror. The signal was on.

Elwood Hamilton Furr.

Q. And during that time the car that struck you traveled up beside you and to the left.

page 100 } A. That's right.

Q. The hood of the car came off. Is that correct?

A. That's right.

Q. Where did that drop with reference to your bus?

A. The hood traveled on up the road completely on by the bus.

Q. And the right front door dropped beside your bus.

A. That's right, sir.

Q. Is that correct?

A. That's right.

Q. And then the car continued on over to the left into this house.

A. That's right, sir.

Q. Now after you had brought your bus to a complete stop, I take it that you then opened your right door.

A. That's right.

Q. Preparatory to getting out.

A. That's right.

Q. Did any of your passengers get out at the same time you did?

A. The little boy—. He was excited; he got out first.

Q. He got out before you did?

A. That's right.

Q. You were the second one out?

A. That's right.

Q. Do I gather that you walked around in front of the bus in order to get over toward the center of the road?

A. That's right.

Q. And do you know who this man was that

page 101 } you met there in the road that helped you get the door of the car?

A. No, sir, I do not.

Q. You didn't know him then and you don't know him now.

A. No, sir, I didn't pay any attention to who he was.

Q. Did you and he together carry the door over to the left side of the road?

A. That's right.

Q. And disposed of it over there off the traveled portion?

A. That's right.

Q. And then what became of this man?

Elwood Hamilton Furr.

Q. And you had just passed the place at the side of the road where you could get your bus entirely off the road.

A. No, I was coming in by the mailboxes to go to this point. I was struck before I got to the point where I could go off.

Q. But you weren't undertaking to pull the bus off the highway.

A. I certainly was.

Q. You were going to leave it straddled a portion of the highway.

A. No, sir. I was pulling off.

Q. You mean to tell the Court and jury in light of what you just testified, Mr. Furr, to the effect that you would have normally stopped in less than half a bus length that you actually stopped in, that during that distance of less than half a bus length that your bus would have moved

page 99 } completely off the traveled surface of the road when the right wheels were only on the shoulder

within half a bus length of where you were stopping?

A. At a normal smooth stop I could have stopped safely in about half the length of the bus in this drive other than the bus being struck.

Q. Your bus at the time it was struck was entirely on the traveled portion of the road except for the right wheels.

A. The right rear wheel and the front wheel was leading off.

Q. And you are telling the jury in moving the bus half a bus length that your bus would have been entirely off the paved surface entirely.

A. I couldn't say the entire length, but the biggest portion of it would have been.

Q. And part of it would have been on the highway.

A. Yes, sir, at that particular point, certainly it would. There's no way I could get it all off.

Q. When this impact occurred, had you heard any sound of horn or warning prior to the impact?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. Then as soon as the impact occurred, you completed bringing your bus to a stop and did so within half a bus length.

A. Yes, sir.

Elwood Hamilton Furr.

door of the car in Defendant's Exhibit B (hand-
page 103 } ing Exhibit B to witness). Is that right?

A. (Examining Exhibit B) That's right, sir.

Q. According to your best recollection, that door was closed also.

A. Yes, sir.

Q. Now, Mr. Furr, tell us just where Mr. Dickerson was positioned in the car when you got there.

A. Mr. Dickerson was slumped to the right of the car with his head laying right sharp to the right of the car, and blood was flowing from his head down into this man's lawn where the car was resting.

Q. Where were Mr. Dickerson's shoulders?

A. Where were Mr. Dickerson's shoulders?

Q. Yes, sir.

A. His shoulders were more back in the car.

Q. In the car?

A. That's right, sir.

Q. Where was the trunk of his body?

A. He was laying in more or less of a balled up ball you might say in the car with his head laying parallel up and down with the side of the car.

Q. In other words, he was down—. As far as his head was concerned it was in a horizontal position.

A. That's right.

Q. And his shoulders.

A. That's right.

Q. And the trunk of his body was extending on back into the car.

page 104 } A. His body was balled up in a ball with his feet balled up in the car like that (indicating with feet together and drawing them closer to body).

Q. Were his feet on the seat or on the floor?

A. His feet were on the floor.

Q. His feet were on the floor.

A. Yes, sir.

Q. You are positive of that?

A. Yes, sir.

Q. And you say although he was laying down with his shoulders at the edge of the seat and his head sticking out that his body—the rest of his body—didn't project on back toward the left side of the car?

A. No, sir. He was more or less just laying in a ball like with his head right up at the edge of the car up on the right side of the car.

Elwood Hamilton Furr.

A. Well, I don't remember where he went—whether he went to telephone or whether the little boy met him. I didn't pay any attntion to where he went. I went toward the car.

Q. As a matter of fact, he went toward the car too, didn't he?

A. I couldn't say.

Q. And if he did, he would have gotten there about the same time you did.

A. I suppose.

Q. You don't recall in the excitement whether he went to the car.

A. No, sir, I do not.

Q. When you got to the car it was perfectly manifest that the car was torn all to pieces.

A. Yes, sir.

Q. The front door was off and you all had picked that up out of the road.

A. That's right.

page 102 } Q. Did I understand you to say that the left front door was closed?

A. That's right.

Q. You are as positive of that as anything else you testified to?

A. Yes, sir. It was closed.

Q. Do you recognize this Defendant's Exhibit A as depicting the general appearance of the car, leaving out any reference to the left front door (handing Exhibit A to witness)? Does the general appearance of that car show where it came to rest?

A. (Examining Exhibit A) Yes, it came to rest right there.

Q. And that appears to be the car?

A. Yes.

Q. And is the left front door open or closed?

A. In this picture it is open.

Q. And is or not the back of the front seat projecting out into the open portion there of the door?

A. It is; but at the time I was over on this side, the right-hand side of the automobile, neither of those doors was open and neither was that seat knocked like that.

Q. So I understand from you, according to your best recollection, this seat wasn't and couldn't have been in the position it is in now.

A. Not at the time I was at the right of the car.

Q. And the same thing would apply to the car and the rear

Elwood Hamilton Furr.

Q. Well, are you sure his knees weren't on the floor?

A. I couldn't be positive that his knees weren't on the floor.

Q. Then as I understand, although you can't be positive whether Mr. Wade's knees were on the floor or not, that he was slumped to the left side of the front seat.

A. That's right, sir.

Q. And his feet appeared to be on the floor.

A. That's right, sir.

Q. Was he sitting forward in the seat or back against the rear of the seat?

A. No, he was more back to the rear of the seat.

Q. Now you are just as positive of these positions that you fix these men in as you are any other testimony in this case, are you, Mr. Furr?

A. Yes, sir, that's the way I saw it.

Q. And the only thing you can't be positive about is whether or not his knees were on the floor.

A. I know his knees weren't on the floor. They were more up under this steering column.

Q. Now are you stating his knees weren't on the floor?

page 107 } A. Truly his knees weren't on the floor. They were more up under the steering column of the car.

Q. Then you want to correct your testimony in that respect?

A. Yes, sir.

Q. What light was over there to assist you in making this examination of the people in this car?

A. I had my own flashlight.

Q. Did you bring that from the bus?

A. Yes, sir.

Q. And you were using your flashlight there?

A. That's right.

Q. Did you recognize these 2 men as men you had known before?

A. No, not at that time I didn't recognize either one.

Q. How was the man you identified as Dr. Dickerson dressed?

A. I can't describe the dress of either one. They were in need of help more than my standing there looking at how they were dressed.

Q. You are undertaking to describe the positions of the men in the car. I want you if possible to give us some idea how they were dressed.

Elwood Hamilton Furr.

Q. There was no evidence that his back was broken, was there?

A. No, not to my knowledge.

Q. If his head was sticking out to the right, his body had to some extent go back to the left.

A. That's right.

Q. Did you undertake to ascertain how far back toward the left side of the seat his body went?

A. No, sir.

Q. Of course, necessarily if he were laying in that position and his feet were on the floor, they had to be farther on back to the left than his shoulders, didn't they?

page 105 } A. Well, they were doubled up so to speak. The way he was doubled, his knees probably struck right in the chest the way he was doubled up.

Q. And still he had his feet on the floor.

A. Yes. His feet were balled on the floor just like that (indicating with feet together). They were on the floor.

Q. And was Mr. Wade in whole or in part on the floor of the car?

A. Mr. Wade was to the left of the car near the door slumped over.

Q. Where were his feet?

A. His feet were normally right up under the front of the car there.

Q. Where was his body in reference to the steering wheel?

A. His body was more or less just straight back of the steering wheel.

Q. And was he sitting erect?

A. Sir?

Q. Was he sitting up straight?

A. No, he was more slumped like that (indicating a slumped-forward position).

Q. Was he slumped on the streering wheel?

A. Well, no, not exactly on the steering wheel.

Q. Was he slumped to the right or left?

A. More to the left of the steering wheel.

Q. And as far as you could tell nothing but his feet were on the floor.

page 106 } A. That's right.

Q. His knees weren't on the floor?

A. No, sir.

Q. You're sure of that?

A. Well, I didn't see his knees on the floor, sir. All I seen was the way he was sitting there.

Elwood Hamilton Furr.

A. I'm sorry; I cannot tell you how they were dressed.
Q. Can you recall whether either one—
A. I didn't pay any attention to either one's clothes.
Q. You can't say—
A. I didn't pay—
Q. Let me finish the question. You can't say whether either or both of them were in shirt sleeves?
A. I can't say.
page 108 } Q. Or whether either or both of them had their coats on?
A. No, sir.
Q. You can't say whether either one had a sweater on?
A. No, sir.
Q. You can't say what type trousers they had on?
A. No, sir.
Q. Were they both bareheaded when you saw them?
A. Both were bareheaded. Yes, sir.
Q. Was the motor still running to the Buick car?
A. No.
Q. You are certain of that?
A. Yes, sir.
Q. Were the headlights on?
A. Yes, sir.
Q. Were they still giving forth light?
A. One was still giving light; I can't say whether the other was. Of course, they turned lights on at the houses. I didn't pay no attention.
Q. Was the taillight on?
A. I didn't pay any attention whether the taillights were on or not.
Q. You said some time during this investigation that you were making that you saw some beer cans on the back floor.
A. That's right, sir.
Q. And I believe you testified in response to Mr. Taylor's question that you couldn't say whether they were empty beer cans or full beer cans.
page 109 } A. That's right, sir.
Q. How many were they?
A. That I didn't count, sir.
Q. Well, roughly how many would you say?
A. I wouldn't want to say roughly. All I said, it was just covered with beer cans.
Q. Would you say there were 2 or 3 beer cans or more?
A. It was more than that.
Q. Would you say there were more than half a dozen?

Elwood Hamilton Furr.

A. I would say there were more than half a dozen.

Q. Were you there—? I believe you left after looking in the car.

A. To use the telephone.

Q. To use the telephone.

A. That's right, sir.

Q. And how long were you away?

A. Well, I was on the porch or otherwise in the house where the car was at rest. I made my complete telephone calls and the troopers were there. Therefore, the troopers carried on. I didn't go back.

Q. After you finished your telephone call, where did you go?

A. I went back to my bus with my passengers.

Q. You didn't go back to the car at all?

A. No, sir.

Q. You never did go back to further examine the car?

A. No, sir.

Q. Did you observe what make or brand of beer page 110 } these cans were?

A. No, sir.

Q. Did you throw your flashlight on them?

A. Yes, sir.

Q. And just saw the beer cans.

A. I just saw the beer cans in there. I didn't look at the brand.

Q. You didn't look any further at any time in the evening to see whether the beer cans were full or empty or anything about them?

A. No, sir.

Q. Did you notice whether or not the radio of the car was still playing when you got over there?

A. No, sir. I didn't hear no music.

Q. Was the horn blowing?

A. No, sir, it wasn't.

Q. You are sure of that?

A. Yes, sir.

Q. So you don't recall whether the radio was turned on and giving forth sound. You do remember positively that the horn was not blowing.

Q. And you are just about as positive of that fact as you are about the position of these men in the car. You are as positive of the fact that the horn was not blowing as you are about the position you have described these men were in in the car.

A. No, sir.
Q. I believe you testified when you first went to this car the doors on the left side were closed.
A. They were, sir.
Q. Is that correct?
A. That's right, sir.

RE-CROSS EXAMINATION.

By Mr. Timberlake:
Q. Mr. Furr, you did testify positively that when you got to that car the horn was not blowing.
A. Yes, sir.
Q. And that is a fact, isn't it?
A. Yes, sir. I didn't hear no horn blowing.
Q. Well, you would have heard it.
page 113 } A. Sure I would have heard it.

No further questions.

Witness leaves the stand.

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page 114 } MICHAEL JUDSON DUNDORE,
the fourth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:
Q. Mr. Dundore, what is your full name?
A. Michael Judson Dundore.
Q. Where do you live, Mr. Dundore?
A. 125 Sproul Lane, Staunton.
Q. What is your occupation?
A. I'm a reporter with the Staunton Leader.
Q. And do you or not do some photographic work?
A. Yes, sir.
Q. In connection with your reporting for the Staunton News-Leader.
A. Yes, sir, I do.
Q. Did you go to the scene of an accident on April 20, 1957, just east of the village of Fishersville in which a man by the name of Dickerson lost his life?

A. Yes.

page 111 } Q. All right. That's all.

RE-DIRECT EXAMINATION.

By Mr. Taylor:

Q. As I understood it, Mr. Furr, you said you didn't pay any attention to whether the radio was playing or not.

A. No, sir, I didn't pay any attention to the radio.

Q. And you don't know whether the horn was blowing or not?

A. No, sir.

Q. Was the horn blowing? You didn't hear the horn blowing?

A. No, sir.

Q. I imagine there was a good bit of excitement there, was there not?

A. Yes, there was.

Q. Do you recall whether or not you were there when Mr. Alwood—? Do you know Mr. Alwood, the photographer in Waynesboro?

A. I was using the telephone I believe at the time he was there due to the fact that I was calling Charlottesville, and I remember seeing the camera flash.

Q. You were in the house when the camera was flashing outside?

A. That's right. I was standing on the inside of the house. The door was open on the house.

Q. And do you know, Mr. Furr, whether or not these men were still in the car when the pictures were taken that were exhibited to you by Mr. Timberlake? Do you see any evidence of anybody being in that car (handing Exhibits A and B to witness)?

page 112 } A. (Examining Exhibits A and B) No, sir.

Q. Can you see any evidence of anybody being in the car in that picture (referring to Exhibit A)?

A. No, sir.

Q. This Picture No. A does show the front door open and the rear door open on at least the left side of that car, does it not?

A. Yes, sir.

Q. And the same way with this picture (referring to Exhibit B)?

A. That's right, sir.

Q. And you can see no person in there whatever?

could possibly make it, and I heard my tip about the same time the police were notified.

Q. As soon as you got the tip that there had been an accident, you headed for Fishersville I take it.

A. Yes, sir.

Q. Were the troopers there when you got there, Mr. Dundore, or do you recall?

A. I believe—Yes, sir, they were.

Q. Do you remember what troopers?

A. I remember seeing Mr. Collier. I don't recall seeing any others although there were some others there later.

Q. Were there many people there or just a few people there when you got there?

A. There were quite a few people.

Q. Quite a few people.

A. Yes, sir, quite a crowd. (At this point Exhibits 11 and 12 are examined by the jury)

Q. Mr. Dundore, I will ask you to look at this
page 117 } picture closely and see if you recognize anyone
in that picture (handing Exhibit 12 to witness).

A. (Examining Exhibit 12) Yes, sir, I do.

Q. Who do you recognize?

A. That appears to be Trooper Smoot in the picture.

Q. Appears to be Trooper Smoot in the picture. I believe that's all.

Mr. Franklin: If Your Honor please, no questions.

No further questions.

Witness leaves the stand.

SHIRLEY ANN CLEMMER,
the fifth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Mrs. Clemmer, what is your full name, please?

A. Shirley Ann Clemmer or Mrs. W. L. Clemmer.

Q. You are Mrs. W. L. Clemmer?

A. My husband's name is William.

Q. Where do you live, Mrs. Clemmer?

A. Route 2, Fishersville.

Q. And what is your profession or occupation?

Michael Judson Dundore.

A. Yes, sir, I did.

Q. Did you take any pictures down there that night?

A. Yes, sir, I did.

Q. I hand you a photograph here marked Commonwealth's Exhibit 11 and ask you whether or not you took that picture (handing photograph to witness).

A. (Examining said photograph) Yes, sir, I did.

Q. And had the passengers been removed from
page 115 } the automobile when you took the picture?

A. Yes, sir.

Q. And what does that picture disclose, Mr. Dundore?

A. Well, that is just a picture of the wrecked vehicle as it sat in the position where it ended up against the house.

Q. Can you tell from your recollection when you were down there that night what these dark spots are on the running board on the west or right-hand side of the automobile and the dark spot in the grass?

A. That appeared to be blood stains.

Q. That appeared to be blood stains.

A. Yes, sir.

Q. And can you point that out to the jury? (Witness indicates dark spots on running board of car and in the grass on Exhibit 11. Said photograph is received in evidence as "Commonwealth's Exhibit No. 11.") I hand you Commonwealth's Exhibit No. 12 and ask you whether or not you took that picture (handing photograph to witness).

A. (Examining said photograph) Yes, sir, I did.

Q. And what does that picture disclose?

A. That's a picture taken from just behind the wrecked car shooting towards the house.

Q. Shooting towards the house. Had the car been moved or was it against the house when that picture was taken?

A. It was against the house.

Q. It was against the house.

A. Yes, sir.

page 116 } Q. Had the occupants been removed or were they in the car?

A. The occupants had been taken from the car.

Q. Neither Mr. Dickerson nor Mr. Wade was at the scene when you arrived there?

A. No, sir. (Said photograph is received in evidence as "Commonwealth's Exhibit No. 12.")

Q. Can you tell the Court and jury approximately what time you got to the scene of this accident?

A. No, sir, I don't recall. It was as soon afterwards as I

Shirley Ann Clemmer.

Q. What did you do then, Mrs. Clemmer? Did you go to the scene?

A. Yes, I did. The young man said that—. We asked if anyone was hurt. He said he thought one of the men was dead. At that time I did go over to the scene.

Q. You left your home and went on to the scene?

A. Across the field to the scene.

Q. Now when you got to the scene of this accident, where was the automobile? Where was the automobile that was involved in the accident?

A. It was resting against the Glenn home.

Q. The whose home

A. Glenn.

page 120 } Q. The Glenn home.

A. I am not sure that those people still live in that home however.

Q. Were the occupants still in the automobile?

A. Yes, sir.

Q. Now would you tell the jury when you got there who was on the driver's side of the automobile and who was on the other side or how the occupants were in the automobile when you arrived there?

A. When I arrived there Mr. Dickerson was hanging out of the car I'd say on the right side. I'd say half his body was hanging on the outside and some gentleman was there supporting his head.

Q. Someone was supporting his head?

A. Yes. They were in a kneeling position supporting his head when I got there.

Q. You mean the man or woman—? Was it a man or woman?

A. It was a man.

Q. He was out on the right-hand side of the car kneeling and holding Mr. Dickerson's head?

A. That's correct.

Q. Where was Mr. Wade at that time?

A. He was to the left of Mr. Dickerson pitched apparently—. Well, he was forward in the car in this manner (indicating a leaning-forward position).

Q. You mean he was leaning forward?

page 121 } A. That's correct.

Q. Was he against or under or near the steering wheel?

A. Against it.

Shirley Ann Clemmer.

A. Registered nurse.

Q. And how long have you been practicing your
page 118 } profession?

A. I completed my training in 1949; 9 years.

Q. Were you at home on the night of April 20, 1957, the night that there was an accident on U. S. 250 just east of Fishersville in which Mr. Dickerson lost his life?

A. I was.

Q. Just about where do you live if you will explain to the jury from the point in the highway from where this accident took place?

A. I live a block back off the highway almost directly across from where the accident happened.

Q. You live a block back off the highway almost directly across from where the accident happened.

A. Yes, sir.

Q. Did you hear any collision between the 2 cars?

A. Yes, I did.

Q. What kind of noise was it?

A. Well, I was almost asleep and it aroused me. It was quite a loud noise.

Q. Quite a loud noise.

A. Quite a loud noise.

Q. What did you do, Mrs. Clemmer, when you heard this collision or noise?

A. I got up out of bed. I went to my front porch and I could see a lot of lights. That's all I could see, and I went out into the road in front of my home. At that time a young boy, who was on the bus and lives next door to me—

Q. A young boy who was on the bus and lives next door came to you?

page 119 } A. Yes, he did.

Q. What is that young boy's name?

A. David Weed.

Q. David Weed?

A. Yes, sir.

Q. Approximately how old is he?

A. I think he's 13 now. He would have been about 12 at the time.

Q. All right. How long after you heard this noise was it before this young boy showed up at your house?

A. I'd say approximately 3 or 4 minutes.

Q. Approximately 3 or 4 minutes.

A. He was going into his home. He saw me in the road. He stays at my home quite a bit.

Shirley Ann Clemmer.

Q. Did you examine him or Mr. Dickerson to see if you could administer any first aid or anything there?

A. I did Mr. Dickerson, yes.

Q. How's that?

A. I did Mr. Dickerson, yes. As I had heard Mr. Wade ask for his wife and he was—I assumed from that—conscious and Mr. Dickerson was very evidently unconscious, I did put my attention on Mr. Dickerson.

page 123 } Q. You put your attention on Mr. Dickerson because he was apparently unconscious and Mr. Wade was conscious.

A. Yes, sir.

Q. And you rode on to the Waynesboro Hospital with Mr. Dickerson.

A. That's correct.

Q. Did you, Mrs. Clemmer, assist Dr. Ryder in his treatment or examination, etc., of Mr. Dickerson?

A. Yes, I did.

Q. And did you observe or have any conversation with Mr. Wade there at the hospital in Waynesboro?

A. Mr. Wade was brought into the—I guess you would call it an anteroom, not directly into the emergency room—while we were in the emergency room with Mr. Dickerson. The door was closed; I don't know when they brought him in, although when we moved Mr. Dickerson to the X-ray department Mr. Wade was there on the stretcher. I do remember of Trooper Collier asking Mr. Wade who was driving the car. He didn't answer but pointed to himself.

Q. How did he point?

A. (Witness answers by indicating with forefinger against chest.)

Q. You heard Mr. Collier ask Mr. Wade who was driving the car.

A. That's right.

Q. And you say he didn't answer at that time but pointed to himself.

A. That's right.

page 124 } Q. Did he appear to you as a registered nurse at that time to be rational and know what he was talking about?

A. Yes, sir.

Q. Did you later assist Dr. Ryder in his examination of Mr. Wade?

Shirley Ann Clemmer.

Q. Against it. And did you see or could you see where his feet were at that time?
A. No, sir, I do not recall.
Q. You did not see?
A. No.
Q. But he was in a pitched condition leaning on the steering wheel or against the steering wheel?
A. Against the steering wheel. He wasn't on it.
Q. He wasn't on it but he was against the steering wheel.
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. Now, Mrs. Clemmer, how long were you there at the scene of the accident or in the yard where this car was against the house before the ambulance arrived or before the 2 men were removed from the car?
A. I'd say about 10 minutes.
Q. Possibly 10 minutes.
A. Yes.
Q. Were either one of the men moved from the position that they were in while they were in the car to your knowledge?
A. No, sir.
Q. You did not see either one of them moved?
A. No, sir.
page 122 } Q. And when they were removed, did you go to the hospital?
A. I accompanied Mr. Dickerson in the ambulance to the hospital.
Q. You got in the ambulance and rode to the hospital with Mr. Dickerson.
A. That's right.
Q. And did you hear any conversation between Mr. Wade and anyone else there at the scene while he was in the car before he was removed to the ambulance?
A. I heard Mr. Wade ask for his wife.
Q. I can't hear you.
A. I heard Mr. Wade ask for his wife.
Q. You heard Mr. Wade ask for his wife?
A. Yes, sir.
Q. Had she arrived there at that time?
A. She had not arrived at the scene before I left. No, sir.
Q. Before you left she had not arrived at the scene.
A. No, sir.
Q. But you did hear him ask for his wife?
A. Yes, I did.

nician; she knew the other nurses. She just does
pag 126 } not know, I guess, who made the remark that the
blood test was going to be made.

Q. Is that correct?

A. That's correct.

The Court: Under those conditions I'm going to ask the jury to disregard the statement. I do not think it is relevant.

By Mr. Taylor:

Q. But you did see Mr. Wade point to himself in response to a question by Mr. Collier when he asked him who was driving.

A. Yes, sir.

Q. That he pointed to himself in that manner (indicating with forefinger against chest).

A. That's correct.

CROSS EXAMINATION.

By Mr. Timberlake:

Q. Mrs. Clemmer, as I understand it, when you got to the car there was someone . Was there one or more persons holding Mr. Dickerson? Holding his head?

A. One person.

Q. Just one person?

A. Yes.

Q. And you don't know who that is?

A. No, sir, I do not.

Q. And his head was projecting out of the car and his shoulder was partly out of the car.

A. His shoulders were completely out.

page 127 } Q. His shoulders were completely out. And, of
course, you don't know whether the person administering assistance to him had pulled him or moved him from the position he was in immediately after the collision or not.

A. No, sir, I do not.

Q. And while you were there at the scene of the accident it was obvious to you that Mr. Dickerson was completely unconscious.

A. Yes, sir.

Q. And due to the fact that you heard Mr. Wade ask for his wife, you became aware of the fact that he certainly wasn't totally unconscious.

Shirley Ann Clemmer.

A. No, sir, I did not.

Q. Did you hear any other conversation between the Trooper and Mr. Wade or Dr. Ryder and Mr. Wade?

A. The only other conversation—. I was in the X-ray room and Trooper Collier came in and looked at Mr. Dickerson, went back out, and told Mr. Wade that he would have to charge him with something—that the other fellow was in bad shape. He didn't say with what. He just said, "I'll have to charge you with something. The other fellow is in bad shape," I believe is the words he used.

Q. Did you hear any response from Mr. Wade?

A. No, sir, I didn't.

Q. Did you hear any conversation about a blood test between Mr. Collier and Mr. Wade?

A. Yes, I remember the remark being made that a blood test was going to be made. I was not present at the time it was made, however.

Q. You were not present at the time it was made.

A. That it was drawn.

Q. But you did hear somebody say that a blood test was going to be made.

page 125 } Mr. Timberlake: I think she ought to identify who that somebody was.

By the Court:

Q. Do you know?

A. I'm sorry sir. I don't recall. I knew the people there. I knew the laboratory technician personally and several other people were there. Consequently, I don't remember who said it.

Mr. Timberlake: I move that that be stricken, Your Honor, if this witness—.

Mr. Taylor: She hasn't testified to anything.

Mr. Timberlake: She testified she heard somebody say a blood test was going to be made. Unless she can identify who that somebody was and identify it as the defendant, I don't think that's proper.

The Court: What is your view about it, Mr. Taylor?

Mr. Taylor: Your Honor, I don't think this witness's testimony has too much significance at the present time. She said she just overheard that a blood test was going to be made. That's all she heard. She hasn't identified anybody. She says she can't remember who made the remark. She knew the tech-

Shirley Ann Clemmer.

Q. That's all the talking you heard him do?

A. That's correct.

Q. And, of course, it was perfectly obvious that both he and Mr. Dickerson had been in a terrific accident and had suffered severe trauma just from the appearance of the car and just from the appearance of the men. Isn't that correct?

A. Yes, I think as far as Mr. Dickerson was concerned. As I said, I didn't pay a whole lot of attention to Mr. Wade after I heard him speak.

Q. The only reason you concluded that Mr. Wade was in a different state from Mr. Dickersen as far as consciousness was concerned was that you heard him on some 3 occasions calling for or asking for his wife.

A. Yes.

Q. You didn't see him move around any?

A. Yes, he moved his head.

Q. Moved his head?

A. Yes; but as far as actually changing his position—.

Q. You didn't see that?

A. He didn't to my knowledge.

Q. Outside of the fact that he made these 3 requests for his wife and moved his head and that you saw him there at the X-ray or emergency room at the hospital laying on the stretcher, there is no way for your telling the de-
page 130 } gree of consciousness or awareness that Mr. Wade had of what was going on, is there?

A. No, sir, only the experience that I have had in my profession.

Q. Well, now, Mrs. Clemmer, based upon the experience that you have had in your profession, would you say that a man who has been in an accident that caused him to suffer these injuries—.

The Court: Is this going to be a hypothetical question?

Mr. Timberlake: Yes, sir.

Q. These injuries. A laceration of the scalp, a laceration of the left cheek, several cuts in the hairline, cuts in the mouth, contusions of the ribs, which X-ray showed to be the second through the tenth on the right side, contusions of the back on the right side, fractures or contusions of the upper abdomen, tenderness in the lower back, bruises of both hips, numerous small cuts on the backs of the hands, and multiple fractures of the lower jaw. Would you say, based upon your experience, that a man who had suffered trauma to the extent that those

Shirley Ann Clemmer.

A. That's correct.

Q. And that being the case, you decided you had better direct your attention to being of what aid you could to Mr. Dickerson?

A. That's right.

Q. And, accordingly, you did accompany him to the hospital in the ambulance.

A. Yes, sir.

Q. Do you have any way of knowing how long it was that the second ambulance brought Mr. Wade to the hospital?

A. No, sir, I do not.

Q. Did you notice whether there were 2 ambulances there at the time Mr. Dickerson was put in the ambulance?

A. I believe there was one ambulance and the rescue squad. I understand there was another one but I didn't notice it.

page 128 } Q. Did you hear any other word spoken by Mr. Wade in the course of that evening?

A. Several times I heard him ask.

Q. Some question?

A. About his wife or to call his wife or something about his wife.

Q. Did you see his wife there?

A. No, sir.

Q. Do you know of your own knowledge whether or not his wife arrived at the scene in time to accompany him in the ambulance?

A. No, sir.

Q. But you do recall there at the scene hearing him ask for his wife.

A. Yes, sir.

Q. And you also recall his asking for his wife at the hospital.

A. When we went out into this little anteroom after we were through with Mr. Dickerson, his wife was there.

Q. The only time you heard him ask for his wife was there at the scene?

A. Yes, sir.

Q. And that was the only thing you heard him say the whole evening?

A. Yes; several times.

Q. Several time he asked for his wife.

A. 3 times I believe to be exact he did ask about his wife.

Q. So on 3 occasions you heard him ask for his

page 129 } wife there at the scene of the accident?

A. Yes, sir.

injuries would result may easily not be cognizant of what is taking place about him even though he is not thoroughly unconscious?

A. I think a person that is hurt that badly in a lot of instances knows what is going on.

page 131 } Q. And there's a lot of them that don't—isn't that right—when they are hurt that bad even though they give outward appearance of consciousness?

A. They might be in what we call a state of shock, but I would say the majority of them still know what they are doing.

Q. Also it frequently happens with an injury that severe that for some day or days afterwards the person has no recollection of what intervened between the time of the accident and the time that he fully recovers his faculties.

A. I have never experienced that.

Q. You have never experienced that?

A. No, sir.

Q. Now I wanted to get the position that you found these men in when you got there. As I understand, Mr. Dickerson was on his right side—would that be correct—with his shoulders and head out of the car resting—and the head resting in some man's hands.

A. Yes, sir, as much as half of his trunk hanging out of the car.

Q. As much as half of his trunk hanging out of the car.

A. To his waist.

Q. And he was being supported about his head or shoulders by some Good Samaritan. If the greater portion of his trunk was out of the car as you described, where was the rest of his body? His lower trunk and his legs?

A. In the floor of the car.

Q. Was any part of his body resting on the seat of the car?

A. No, sir.

page 132 } Q. He was entirely in the floor of the car except that portion of his body that was projecting out of the car. Is that correct?

A. Yes, sir.

Q. And Mr. Wade was, do I understand it, sitting on the seat?

A. Yes, sir.

Q. And was he—? Did I understand you to say he was behind the wheel or beside the wheel—the steering wheel?

A. He was leaning on the side of the steering wheel.

Shirley Ann Clemmer.

Q. On the right or left side?

A. On the right side of the steering wheel leaning against it.

Q. You mean his shoulder was against it?

A. No, his chest along in here was against it (indicating left center chest).

Q. Was against the right side. And his head was beside the wheel or up against the dash or how would that be?

A. It was up close to the windshield.

Q. And his left side or chest was against the right side of the steering wheel. Is that right?

A. Yes, sir.

Q. And was his seat—? Was he sitting on the seat?

A. Yes, sir.

Q. How much—? Was he tilted forward on the seat?

A. Tilted forward. Yes, sir.

Q. Could you tell whether his knees were on the floor of the car?

page 133 } A. No, sir.

Q. And could you tell whether his lower extremities were in front of some portion of Mr. Dickerson's lower extremities as they extended back in the car?

A. I couldn't tell you, sir.

Q. I believe you have already testified that you, of course, can't say or don't know whether the man who was rendering assistance to Mr. Dickerson had found him initially that far out of the car or whether he, in an effort to help, had pulled him forward or not.

A. No, sir. I don't know. I wasn't there at the scene.

Q. Now when you were at the hospital, Mrs. Clemmer, having heard Mr. Wade talk to the extent of having asked some 2 or 3 times for his wife at the scene of the accident, I believe you heard Mr. Collier ask him who was driving.

A. That's right.

Q. And he didn't answer verbally?

A. No, sir.

Q. But pointed with his right hand, was it?

A. I don't remember which hand.

Q. You don't know which hand it was, but he pointed to himself?

A. That's right.

Q. Did you think it was peculiar, in view of the fact that you heard him talk previously, that he would undertake to make a motion to himself rather than give a reply to Trooper Collier?

Shirley Ann Clemmer.

A. The right forehead and the complete right jaw was severed all the way through.

Q. Was Mr. Dickerson—? Up at Fishersville when this man was holding his head, was he bleeding profusely at that time?

A. When I got to the scene of the accident, the man who was holding his head had some sort of towel or cloths that he was supporting his head with; and at that time—when I got over there—that was saturated and the blood was dripping from the cloths.

Q. The blood was dripping from the cloth.

A. Yes.

Q. I hand you a picture here of Commonwealth's Exhibit No. 11 and ask you if that is the side of the car. Do you recognize that as being the side of the car when you got

page 136 } to Fishersville that Mr. Dickerson was hanging out over that running board (handing Exhibit 11 to witness,

A. (Examining Exhibit 11) Yes, sir, that's correct.

Q. Is that the car?

A. Yes, sir.

Q. Do you see a spot on the ground there?

A. Yes, I do.

Q. Was there a spot on the ground there that night?

A. Yes, sir.

Q. Of what?

A. Of blood.

Q. Of blood. And you recognize that as the premises and the blood that you saw there that night?

A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. Timberlake:

Q. Just one other question I wanted to ask, Mrs. Clemmer. Mrs. Clemmer, do I understand that you saw no blood from the laceration of Mr. Wade's scalp or the laceration of his left cheek or the cuts on his forehead?

A. No, sir, I did not.

Q. Were you present in the hospital when the blood was sponged from his face and head with one of these absorbers?

A. No, sir.

Q. You were immediately—. When you went to the hospital you devoted your attention to Mr. Dickerson.

page 137 } A. Yes, sir. We were in a closed room with the door closed.

Shirley Ann Clemmer.

A. No, sir, I did not because at that time he was
page 134 } complaining or holding his jaw, I should say, and
he was expectorating a small amount of blood from his mouth.

Q. Do you recall what hand he was holding his jaw with?

A. No, sir.

Q. Did you hear Trooper Collier ask him any questions about where he had been preceding this accident and who may have been driving prior to the accident?

A. No, sir. The only thing I heard was Trooper Collier asked him who was driving and he pointed to himself. After that the only other remark I heard between the 2 was the remark that he would have to charge him with something—that the other fellow was in bad shape.

Q. And you didn't hear any reply made to that by Mr. Wade?

A. No, sir. I was in the other room.

RE-DIRECT EXAMINATION.

By Mr. Taylor:

Q. Mrs. Clemmer, you testified that at the hospital when he was holding his jaw there was some evidence of blood at his mouth.

A. Yes, sir, a small amount.

Q. Just a small amount. While you were at Fishersville and you saw him there, was there any evidence of his bleeding anywhere else?

A. No, sir. I saw no blood from his mouth there. The only time I saw blood on Mr. Wade was when he expectorated a frothy amount of blood.

Q. At the hospital?

page 135 } A. Yes, sir.

Q. And you did say, I believe in answer to a question Mr. Timberlake propounded to you, that you did see Mr. Wade moving his head at the time that he was asking for his wife. Was that at the time he was asking for his wife up at Fishersville?

A. Yes, sir.

Q. And you saw this gentleman holding Mr. Dickerson's head. You helped—. I believe you testified you helped Dr. Ryder work on Mr. Dickerson.

A. That's correct.

Q. What part of his head was hurt?

Allen Thomas Harris.

A. I was captain of the Waynesboro first aid crew and we were called to the accident.

Q. You were captain of the Waynesboro first aid crew.

A. Yes, sir.

Q. Did you drive a vehicle—a first aid car—?

A. Yes, sir.

Q. To the scene of the accident?

A. Yes, sir.

Q. Can you tell the jury approximately what time you got there?

page 139 } A. I don't remember, sir. I would have to look it up on the crew records for that. It was somewhere in the vicinity of midnight; I mean plus or minus an hour and a half or so. I don't know without looking.

Q. When you arrived at the scene of the accident where did you find the automobile that was involved in the accident?

A. Going west on 250, it had gone off the left side of the roadway and up into a man's yard. I believe it was abutted against a house or close to it.

Q. Were there any occupants in the car at that time?

A. Yes, sir, there were 2.

Q. Did you know Mr. Fred Dickerson prior to the time of the accident?

A. No, sir.

Q. Did you know the defendant here, Mr. Wade, prior to the time of the accident?

A. No, sir.

Q. Can you tell the jury the positions of Mr. Wade and Mr. Dickerson in the car when you arrived there?

A. Mr. Dickerson—. Now I learned their names afterwards, associated with the injuries that I saw at the scene.

Q. Yes, sir.

A. Was laying down in the car. His head was out about even with where the door or you would call the running board or where running boards used to be. His head was down in that vicinity, and some woman I believe was holding

page 140 } his head. She had inserted a spoon in his mouth. He was laying kind of sideways down—with his feet turned down in the floor. He was laying sideways down in the car and Mr. Wade was also laying in that direction about halfway on top of Mr. Dickerson.

Q. About halfway on top of Mr. Dickerson?

A. And his feet was also down in the floor. They were both laying as you would sit and just lay over.

Allen Thomas Harris.

No further questions.

Witness leaves the stand.

The Court: Gentlemen, we will adjourn until 9:30 tomorrow morning.

September 24, 1958 9:30 A. M.

ALLEN THOMAS HARRIS,
the sixth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:
Q. Mr. Harris, would you state your full name, please?
A. Allen Thomas Harris.
Q. And your age, residence, and occupation.
A. My age is 25; my residence is Annandale, Virginia; and my occupation is public relations representative for the American Memorial Services.
Q. Mr. Harris, where do you live, sir?
A. It was in Waynesboro until last week.
Q. And whereabouts did you live in Waynesboro and when did you move from Waynesboro?
A. I lived on Wayne Ridge Road and I moved
page 138 } to Fairfax County, Annandale, over the week-end.
Q. Mr. Harris, were you living in Waynesboro, Augusta County, in April, 1957?
A. Yes, sir.
Q. What was your occupation at that time?
A. I was employed by General Electric Company.
Q. Did you have occasion to go to the scene of an accident on Route 250 just east of Fishersville on the 20th of October last year?

The Court: The 20th of when?

By Mr. Taylor:
Q. The 20th of April last year?
A. I don't remember the exact date but I was out there. Yes.
Q. The accident that Mr. Fred Dickerson lost his life in and the defendant here was in?
A. Yes, sir.
Q. And how did you happen to go to this accident?

Allen Thomas Harris.

page 142 } CROSS EXAMINATION.

By Mr. Timberlake:

Q. Mr. Harris, I just wanted to ask you one question. You described the positions of these 2 men in this car with Mr. Dickerson lying more or less on his side. That would be his right side?

A. That would be his right side. He may not have been exactly on his side.

Q. I understand.

A. But in that general direction.

Q. But if you were designating the right or left side, it would be the right side.

A. Yes.

Q. So that his face would be in a forward direction.

A. His face—. The front of it was forward and the side that was injured severely—.

Q. Was down?

A. Was down at the roadway.

Q. And do I gather from that that his lower trunk and hips appeared to be on the seat of the car?

A. I believe that portion of the seat was torn up some, and he may have been partially on the seat and partially on the floor; but it would be in that nature.

Q. And do I gather that Mr. Wade was more or less upright or was he lying over to his side too?

A. He was lying pretty much in the same angle or position that Mr. Dickerson was just one layer up so to speak.

Q. Was any part of his body insofar as you
page 143 } could tell on the seat?

A. Yes, I would say so.

Q. It would be on the forward portion of the seat?

A. Most likely. I don't remember exactly how far forward or back he was.

Q. Was his feet, I believe you described, about the center of the floor.

A. In the area where the raise for the transmission is.

RE-DIRECT EXAMINATION.

By Mr. Taylor:

Q. Did I understand you correctly in the area where the brake or pedals were?

A. The area—. You have a raise see—this raise where the

Allen Thomas Harris.

Q. Which one of these men was closest to the steering wheel?

A. Mr. Wade would be the closest to the steering wheel.

Q. And he was lying kind of on top of Mr. Dickerson but over that way?

A. His head was in the vicinity of Mr. Dickerson's waist; along that general area there.

Q. Did you help to remove these men from the car?

A. Yes, sir.

Q. Can you tell the jury approximately where Mr. Wade's feet were with reference to the pedals or the foot pedal or brake or clutch or whatver it was?

A. We first held Mr. Wade up and removed Mr. Dickerson because he looked to be in the worst condition; and we, of course, took care of him first. Then we removed Mr. Wade. His feet was approximately in the middle where the raised portion of the floor is where the transmission, etc., sits. His feet were in that general area there.

Q. Mr. Harris, was Mr. Dickerson unconscious? That man who was on the bottom so to speak?

page 141 } A. Yes, I believe he was. He may have groaned or something of this nature, but he certainly wasn't in any condition to be in any way responsible for questions, etc., I don't believe.

Q. How about Mr. Wade here? Did you hear him do any talking to anybody or any conversation from him whatever?

A. I don't remember it if I did. No.

Q. You don't remember if you did?

A. No, sir.

Q. Which one of these men did you take to the Waynesboro Hospital?

A. Mr. Wade. We sent Mr. Dickerson in an ambulance and then we took Mr. Wade in our vehicle.

Q. You took Mr. Wade in your vehicle.

A. I believe that's correct.

Q. Do you recall who rode in the vehicle with him?

A. No, sir, I don't.

Q. You don't recall?

A. No, sir.

Q. You left after delivering Mr. Wade to the hospital? You didn't go in the hospital or stay around there?

A. I'm not even sure that I went to the hospital myself. Sometimes I will go on with the vehicle and sometimes I will send one of the other men with the vehicle and I stay at the scene of the accident to see if there is anything else we should do.

Russell W. Wright.

came home my wife was in the bathroom. I was in the kitchen washing my hands and I heard this crash. I looked up from the kitchen sink and looked out the window and I saw this car. The bus was coming to a stop, and this car ran into the back of the bus and it swerved across the highway into the house. I then dried my hands and told my wife there had been an accident down the highway and I was going to see about it. I got out of my bedroom slippers and got my shoes on and put a shirt on, and on my way out I stopped with the car. I remembered I had a first aid kit in the back of my car. I got the first aid kit and I proceeded to the accident. When I arrived at the scene I could see that there was some injured people in the automobile, so I immediately took some bandages from the first aid kit and began to render first aid. I asked one of the persons at the scene to take the bandage that I had and get it wet for me; and when the person returned I took the bandage and wiped blood from, I believe, Mr. Wade's forehead, the occupant of the automobile that was sitting to the far left of the automobile.

Q. The occupant of the automobile that was sitting to the far left?

A. Yes, sir.

Q. Is that the steering wheel side of the automobile?

A. Yes, sir.

Q. All right, sir.

page 146 } A. After wiping his forehead I could tell that his injuries, as far as I could see, weren't as bad as Mr. Dickerson's. I asked Mr. Wade could he hear me, and the only reply that I could get back from him was, "What happened to Dickerson?"

Q. Was "What happened to Dickerson?"

A. At that time I changed my position from Mr. Wade and started on Mr. Dickerson. His injuries were—from what I could see—was more severe than Mr. Wade's and he was bleeding from the mouth, and I tried to apply pressure to stop the bleeding. Of course, after a little while there was another person helping to render first aid. It wasn't long after that time that this first aid crew arrived.

Q. From Waynesboro?

A. And took the occupants of the automobile to the hospital.

Q. Now, Mr. Wright, would you describe as nearly as you can the position of Mr. Wade in that automobile and Mr. Dickerson? What was Mr. Dickerson's position in the automobile when you arrived there?

A. Mr. Dickerson was in the front seat on the right side with his feet forward on the floorboard in a curved position

transmission sits. His feet were sitting I believe on the left side right up against this raised portion.

Q. On the left side?

A. Yes, sir, right against this raise in the center portion of the car.

No further questions.

Witness leaves the stand.

RUSSELL W. WRIGHT,

the seventh witness, being first duly sworn, testified as follows:

page 144 } DIRECT EXAMINATION.

By Mr. Taylor:

Q. Mr. Wright, you are Mr. Russell W. Wright?

A. That's right, sir.

Q. What is your age, Mr. Wright?

A. 28 years old.

Q. And your residence and occupation?

A. I work for the Waynesboro Police Department. I'm living in Waynesboro at the time also.

Q. How long have you been with the Waynesboro Police Department?

A. Approximately 13 months.

Q. Mr. Wright, where were you living in April of 1957?

A. I was living at Fishersville, Virginia.

Q. Were you at home on the night of April 20 last year?

A. Yes, sir, I was.

Q. Did you see or hear a collision between 2 automobiles near your home on that night?

A. Yes, sir, I did.

Q. Do you know where the house known as the Glenn house at that time is?

A. Yes, sir.

Q. And about how far is that from your house or the house you were living in at that time?

A. Approximately 75 yards.

Q. Approximately 75 yards. Where were you and what happened? You say you saw or heard this collision between the 2 vehicles. Where were you when you heard that?

page 145 } A. On this night the accident happened me and my wife had been to the drive-in movie, and as we

Russell W. Wright.

A. The car that had swerved across the highway into the house.

Q. Well, did you see it going or was it already in the house?

A. I saw it moving; it was in motion.

Q. Was it near the house when you saw it?

A. It hadn't got to the yard.

Q. It hadn't got to the yard?

A. No.

Q. Then you—. When you testified just a few minutes ago you heard it and then testified you saw it hit the bus, you didn't actually see it hit the bus.

A. No, sir, I didn't.

Q. You were just assuming that that happened from what you saw later, but you didn't actually see it.

A. No, sir, I didn't actually see it hit the bus.

Q. How many were there when you first arrived, Mr. Wright?

A. I don't remember that, sir.

Q. Were there many?

A. There were a few.

page 149 } Q. You were one of the first?

A. No, sir. I wasn't one of the first.

Q. Well, did you see Mr. Guyer there when you came to the accident?

A. No, sir.

Q. You didn't see Mr. Guyer. Did you see Mr. Furr?

A. Yes, sir.

Q. Did you see Mr. Buchanan?

A. I don't remember, sir.

Q. Did you see Mrs. Clemmer, the nurse?

A. Yes, sir.

Q. Was she there before you were or were you there before she?

A. I was there before she was.

Q. You were there before she was. Now you say that Mr. Wade—I believe I understood you correctly—you say Mr. Wade was back on the seat kind of like this with his head back over the seat (indicating a backward position with head thrown back)?

A. It wasn't over but it was in a back position.

Q. A back position. And I believe in answer to Mr. Taylor's question you said he didn't move and remained that way until the first aid came and removed him. Is that right, sir?

A. Yes, sir.

and his head to the right. His head was lying over the running board on the right side.

Q. Protruding out over the automobile some?

A. Yes, sir.

Q. All right, sir. And what was Mr. Wade's position in the automobile?

page 147 } A. Mr. Wade was to the left of the front seat in a back position, and his head was more or less throwed back overtop of the front seat.

Q. Did either one of these men move while you were there? Mr. Wade or Mr. Dickerson?

A. No, sir, they weren't moving.

Q. They were not moving?

A. No, sir.

Q. Until the first aid crew came?

A. That's right, sir.

Q. Did you see or hear Mr. Wade talk to anybody or do any talking or ask any questions?

A. Just what I testified to before.

Q. That's the only talking that he did?

A. Yes, sir.

Q. And you did not see him move any part of his body while you were there?

A. No, sir.

Q. And you were there until the first aid crew removed him from the car.

A. That's right, sir.

Q. Mr. Wright, in your rendering first aid assistance on Mr. Wade, the first one that you say you wiped his face off, could you tell or did you notice where his feet were in the automobile?

A. Yes, sir. His feet was on the floorboard somewhere around the brake and clutch pedal.

page 148 } Q. And Mr. Dickerson was in a curved position?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Franklin:

Q. Mr. Wright, you say that the first thing that you knew that there was something happened you heard a noise?

A. Yes, sir.

Q. Then you looked out your window of your house?

A. Yes, sir.

Q. And what was the first thing you saw?

George Richard Buchanan.

of this automobile wreck between the bus and the defendant here, Mr. Wade?

A. Yes, sir.

Q. Where were you when you first received knowledge of this wreck?

A. I was watching television there at the house.

Q. At home?

A. Yes, sir.

Q. About how far is your home from the Glenn house where the car finally came to rest?

A. Directly across the road.

Q. Directly across the road?

A. Yes, sir.

Q. You say you were watching television. How did you happen to know there was a wreck?

A. I could hear it.

Q. You could hear it.

A. Yes, sir.

Q. And what did you do?

page 152 } A. Well, I got up to the door and seen the car going across the road.

Q. You saw the car running across the road?

A. Yes, sir.

Q. All right. What did you do then?

A. Well, I didn't have any shirt on or shoes. I put my bedroom slippers on and went on across the road.

Q. Went on across the road.

A. Yes, sir.

Q. On your way across the road did you see anything in the road?

A. It seems like I did. I can't recall. I just took a glance up the road.

Q. Did you go directly to the automobile?

A. Yes, I did.

Q. Were the occupants of the automobile still inside or not?

A. Yes, they were.

Q. Were there many people present at that time?

A. There was a few.

Q. A few people had gathered at the scene.

A. Yes, sir.

Q. Did you see Mr. Furr, the bus driver?

A. Right at that time I went to the door of the car, and I think Mr. Furr was using the telephone.

Q. You think he was using the telephone?

George Richard Buchanan.

Q. Now. So then from the time you arrived until the first aid removed Wade, he didn't change.
A. No, sir.
Q. He was in the same position all time.
page 150 } A. Yes, sir.
Q. And that was true I presume of Mr. Dickerson, was it?
A. That's right, sir.
Q. Did Mr. Wade continue to bleed? Did you notice the bleeding on Mr. Wade from then on or not?
A. Yes, sir, his bleeding was continuous.
Q. Mr. Wade's bleeding was continuous. That's all.

No further questions.

Witness leaves the stand.

GEORGE RICHARD BUCHANAN,
the eighth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:
Q. Mr. Buchanan, your full name is George what Buchanan?
A. Yes, sir.
Q. What is your middle initial?
A. Sir?
Q. What is your middle initial?
A. Richard.
Q. George R. or Richard Buchanan. What is your age, residence, and occupation?
A. My age is 29; my residence is Fishersville; and I work at DuPont.
Q. Your age is 29, your residence is Fishersville, and you work at DuPont. Now whereabouts do you live at
page 151 } Fishersville, Mr. Buchanan?
A. Just east of the underpass.
Q. Just east of the underpass?
A. Yes, sir.
Q. Do you know where the house is that was occupied by a family by the name of Glenn last year?
A. Yes, I do.
Q. On April 20 did you have an occasion to go to the scene

George Richard Buchanan.

A. Yes, sir.

Q. You went to the door of the car. Which side of the car did you go to?

page 153 } A. The right-hand side.

Q. The right-hand side?

A. Yes, sir.

Q. Was that door on or off the car?

A. It was off.

Q. It was off.

A. Yes, sir.

Q. Now if you will, just describe to the jury what you saw inside of the car—the persons you saw and the positions that they were in in the car.

A. When I first got to the car I saw Mr. Dickerson and Mr. Wade were in the car. Mr. Dickerson was sitting with his back towards the seat slumped over to the right-hand side with his head hanging out on the side over the running board. Mr. Wade was in front of Mr. Dickerson—laying in front—with his shoulders to the right of the car.

Q. With his shoulders to the right of the car?

A. Yes, sir.

Q. Where were his feet?

A. Well, in that position his feet would be laying towards the steering wheel.

Q. Toward the steering wheel.

A. Yes, sir.

Q. In the left side of the car?

A. Yes, sir.

Q. And did you see either one of these people move or see them being moved by anyone?

page 154 } A. I did not.

Q. They did not move?

A. I did not see anyone move them or they move at the time I was there.

Q. Did you have any conversation with Mr. Wade?

A. Yes. He looked up to me and asked me what went on—what happened. I told him to lay still; that I would call an ambulance for him.

Q. He asked you what had happened?

A. Yes, sir.

Q. You told him to lay still and that you would call an ambulance.

A. Yes, sir.

Q. Was there any other conversation?

George Richard Buchanan.

A. He was mumbling something about his mouth.
Q. He was mumbling something about his mouth?
A. Yes, sir.
Q. And what did you do about that?
A. I reached in and took his false teeth out and stuck them in his shirt pocket.
Q. And put them in his shirt pocket.
A. Yes, sir.
Q. Did you hear him say anything else?
A. No, I didn't.
Q. Were you there constantly with him or just around in the crowd?

A. Well, I was sitting there with Mr. Dickerson
page 155 } holding his head until Mrs. Clemmer came.

Q. You didn't administer to Mr. Wade?
A. No, sir.
Q. But you did hold Mr. Dickerson's head up.
A. Yes, sir.
Q. And was his head inside of the car or—?
A. It was on the outside.
Q. It was on the outside?
A. Yes, sir.
Q. Was he bleeding or not?
A. Yes, sir, he was bleeding quite freely.
Q. He was bleeding quite freely.
A. Yes, sir.
Q. And after you took the teeth out of Mr. Wade's mouth, you centered your attention to Mr. Dickerson.
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. You knew both of these men, did you. Mr. Buchanan?
A. Yes, sir.
Q. Did you go to the hospital?
A. No, sir, I didn't.
Q. And you say you held this Mr. Dickerson's head until Mrs. Clemmer came?
A. Yes.
Q. Did you know Mrs. Clemmer before?

A. No, I didn't.
page 156 } Q. Did you know she was a nurse?
A. No, I didn't.

Q. But she did take over.
A. She went in and got a spoon and put in Mr. Dickerson's mouth.

George Richard Buchanan.

Q. You didn't see him there?
A. No, sir.
Q. Who else did you recognize there? Did you recognize Mr. Guyer?
A. No, I didn't.
Q. You didn't recognize Mr. Guyer?
page 158 } A. No.
Q. When you heard the crash and looked out the window, where was the bus?
A. Well—. I mean there were trees right in my direct view of the bus; so when I went out the driveway I took a glance at the bus was the only thing I seen.
Q. Was this bus sitting on the highway or partially on the highway?
A. Partially I'd say.
Q. You say you don't remember whether or not there were any doors or hoods of cars or anything else lying in the highway?
A. I don't recall that.
Q. You don't recall that. I believe in answer to Mr. Taylor's question you said something to the effect that since Mr. Wade was lying across Mr. Dickerson and perhaps in front of him, his feet would be, I believe you said, toward the steering wheel but you didn't actually see them.
A. No, sir, I wouldn't testify they actually were.
Q. You don't know where his feet were but he was lying over on—overtop of Mr. Dickerson.
A. In that position.
Q. Was his head farther to the west of Mr. Dickerson? In other words, was he in front of Mr. Dickerson?
A. He was in front, yes.
Q. And his head was a little farther to the west.
A. That's correct.
Q. And you say, I believe, that Mr. Wade's
page 159 } head was perhaps to Mr. Dickerson's shoulder.
A. Well, at that position—. I mean it would be hard for his head to be at his shoulders on account of Mr. Dickerson's shoulders were laying partially out of the car.
Q. How close was he?
A. Well, he was just in front of him. His door post in the Buick—. His head was laying approximately at that door post.
Q. Mr. Wade's head was laying at the door post?
A. Where the front hinge is.
Q. The front hinge of the right-hand door?
A. That's right.

George Richard Buchanan.

Q. She went in and got a spoon and put in Mr. Dickerson's mouth.
A. Yes, sir.

CROSS EXAMINATION.

By Mr. Franklin:
Q. Mr. Buchanan, I believe that in answer to Mr. Taylor's question you said Mr. Wade was lying in the same direction to the right but a little in front of Mr. Dickerson. Is that right?
A. That's right.
Q. Both their heads were in the same direction.
A. Yes, sir.
Q. And it was there that he was mumbling something about his teeth and you reached in his mouth and pulled out his upper plate, was it?
A. Yes, sir.
Q. And put it in his pocket.
A. Yes, sir.
Q. Was Wade completely on the floor or was any part of him on the seat?
A. I couldn't say what he was sitting on—whether any part of his body was on the seat—because I didn't pay
page 157 } that much attention to them. I looked at him and seen Mr. Dickerson laying there.
Q. Were you standing on the ground by the side of the car that the door was gone?
A. Yes, sir.
Q. And it was there that you reached in and removed the teeth?
A. That's right.
Q. His false teeth.
A. Yes, sir.
Q. And you say that perhaps there was 1 or 2 there when you arrived?
A. Yes, sir.
Q. Did you regard Mr. Wright's arrival?
A. Not at that time.
Q. He wasn't there at that time?
A. No, sir, I didn't see him. If he was, I didn't know him because he had just moved into town at that time.
Q. You know him now . You met him here at the trial?
A. Yes, sir.
Q. Did you see him there?
A. No, sir.

page 161 } No further questions.

Witness leaves the stand.

TROOPER H. H. COLLIER,
the ninth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:
Q. You are Mr. H. H. Collier?
A. Yes, sir.
Q. Mr. Collier, you are a member of the Virginia State Police Force?
A. Yes, sir.
Q. And how long have you been a member of the Virginia State Police Force?
A. Oh, about 11 1/2 years.
Q. About 11 1/2 years. And how long have you been stationed in Augusta County?
A. About 8 1/2.
Q. About 8 1/2?
A. Yes, sir.
Q. Where do you live, sir?
A. Waynesboro.
Q. Waynesboro. Were you on duty on the night of April 20, 1957?
A. Yes, sir.
Q. Did you receive a call of an accident hap-
page 162 } pening near Fishersville on that night?
A. Yes, sir.
Q. Where were you when you received a call?
A. I was on top of Afton Mountain.
Q. And did you immediately come to the scene of this accident?
A. Yes, sir.
Q. In which Mr. Wade and the Trailways bus was involved?
A. Yes, sir.
Q. How long would you estimate it took you to come from where you received that call until you arrived at the scene?
A. I'd say between 7 and 10 minutes.
Q. 7 and 8 minutes?
A. 7 and 10 minutes.

George Richard Buchanan.

RE-DIRECT EXAMINATION.

By Mr. Taylor:

Q. I show you Commonwealth's Exhibit 11 which shows the right side of that automobile. The door hinge which you speak of is not there, is it (handing Exhibit 11 to witness)?

A. (Examining Exhibit 11) No, sir, it is not.

Q. And in examining that picture it is obvious that the front end of that car was torn loose. I mean insofar as the braces of the door.

Mr. Timberlake: Are you testifying, Mr. Taylor?

Mr. Taylor: I'm examining this witness.

Q. Is that the condition you saw the car in page 160 } when you went down there?

A. Yes, sir, it is.

Q. Would you point out as near as you can where Mr. Dickerson's head was and where Mr. Wade was?

A. Yes, sir.

Q. Point that out to the jury so they can see it.

A. Mr. Dickerson was laying right here at the seat with his body folded over and his arms would come back under the side of this seat (indicating on Exhibit 11). Mr. Wade was laying through here with his shoulders resting just about the front of this seat and his body was back through here (again indicating on Exhibit 11).

Q. The major portion of his body was in front of Mr. Dickerson?

A. Yes, sir.

Q. Was it against Mr. Dickerson?

A. His back was. I mean the back part of his shoulders was, it seemed to me like, against him.

RE-CROSS EXAMINATION.

By Mr. Franklin:

Q. On this picture here, you stated when I asked you while ago that his head was at the post. Is that the post you are talking about (indicating front door post)?

A. Yes, that's where the door hinges set so his head was laying right in this position. Mr. Dickerson was over here. His body was laying through here kind of in a curved position (again indicating on Exhibit 11).

Trooper H. H. Collier.

A. Somebody had Mr. Dickerson's head—was holding his head. I don't know who it was.

Q. Where was or what was Mr. Wade's position as far as you remember it in that automobile?

A. He was lying down partly on the seat with part of his body down in the floor.

Q. Part of his body in the floor?

A. Yes, sir.

Q. And part of it in the seat?

A. Yes, sir.

Q. Was he at or near Mr. Dickerson or on Mr. Dickerson? Where was he in reference to Mr. Dickerson?

A. He would have been to the left of Mr. Dickerson in the car.

Q. He was to the left of Mr. Dickerson?

A. Yes, sir.

Q. What was his position? How was he sitting in the car or lying in the car?

A. He was lying with his feet stretched forward and he was lying, as best I remember, on his right side down on the seat.

Q. That was Mr. Wade?

A. Yes, sir.

Q. You say his feet were stretched out in what direction or what portion of the car?

page 165 } A. His feet were right down to the left of the center of the car. There's a crown or something that runs through the center of that car or that model, and his feet were down close the brake pedal. I don't know if they were under it or overtop but they were in that direction.

Q. In that direction.

A. Yes, sir.

Q. Of the brake pedals.

A. Yes, sir.

Q. Now, Mr. Collier, did you have any conversation with Mr. Wade there at the car?

A. No, sir.

Q. Or did you hear him talking or speaking to anyone?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did you attempt to talk to him yourself?

A. No, sir, I didn't.

Q. And you didn't attempt to talk to Mr. Dickerson?

Trooper H. H. Collier.

Q. 7 to 10 minutes. Now, Mr. Collier, when you arrived there were there many people there?

A. Yes, sir, there were several people.

Q. And what did you find? Where was this Greyhound bus and where was this automobile that was involved?

A. It was a Trailways bus. It was sitting partly off the road, and part of the bus was off and part of it was on the highway; and the car was sitting over to the left of the highway against a house.

Q. Were there any persons in the automobile?

A. Yes, sir; 2.

Q. Did you know the occupants of that car, Mr. Dickerson and Mr. Wade?

A. I knew them.

page 163 } Q. I mean prior to that night?

A. Yes, sir.

Q. You did know them prior to that night?

A. Yes, sir.

Q. Did you recognize who it was when you arrived there?

A. No, sir.

Q. And saw them?

A. No, sir, not at the time.

Q. When you first got there you did not.

A. No, sir.

Q. Where were these people in the automobile when you got there? Where was Mr. Dickerson? What position did he occupy in the car when you got there?

A. He was in the floor on the right side of the car with his head hanging out where the right door had been.

Q. With his head hanging out the right door. Was the right door on the car when you got there?

A. No, sir. It had been torn off.

Q. It was not on the car at all?

A. No, sir.

Q. And you say Mr. Dickerson's head was hanging out of the door space?

A. Yes, sir.

Q. And what is your recollection as to the rest of his body and his feet, etc.?

A. The seat had been knocked to the left and backwards, and his feet was up under the dash toward the

page 164 } center of the car and his head was outside the car.

Q. Now was there someone administering to Mr. Dickerson or Mr. Wade when you got there?

Trooper H. H. Collier.

Q. And where was that door when it was taken?
A. It was sitting up against the car.
Q. And what does that picture disclose?
A. This is blood from here on down to the bottom of the door (indicating dark spots beginning just under window).
Q. Is that the inside of the door or the outside?
A. That's the inside.
Q. That's the inside.
A. Yes, sir.
Q. I hand you another picture, which is Commonwealth's Exhibit 4, and ask you what that picture discloses (handing Exhibit 4 to witness).
A. (Examining Exhibit 4) This is the same door but it is the outside.
Q. The same door but the opposite side.
A. Yes, sir.
Q. How did that door get in that position when the picture was taken?
A. We just set it up.
Q. You just set it up.
A. Yes, sir.

page 168 } Q. Mr. Collier, did you go to the scene of this wreck the following morning, Sunday morning, with Mr. Alwood, or were you there when he was there and took any pictures on Sunday morning?
A. I'm not sure if it was in the morning or after lunch. We did go on Sunday. I'm not sure if it was right before lunch or afterwards.
Q. I hand you Commonwealth's Exhibit No. 7 and ask you if you recognize that picture and if you were there when that picture was taken (handing Exhibit 7 to witness).
A. (Examining Exhibit 7) Yes, sir. That's a picture of the highway where the accident happened.
Q. And what does that picture disclose, Mr. Collier?
A. That shows the skid marks going from the right of the northern lane over toward the center lane.
Q. Did you the night of this accident make any measurements of the road down there?
A. Yes, sir.
Q. From what point to what point?
A. I measured from the beginning of the skid marks to the point of impact. That was to get the—.
Q. You mean the beginning of the skid marks prior to—.
A. The collision.
Q. The accident or collision between the Buick—.

A. No, sir.

Q. You said that the seat of that car—the front seat—had been pushed forward. From which side of the car?

A. I think I stated it had been knocked backwards. The right side was knocked back and the left side was knocked forward.

Q. The left side was knocked forward and the right side was knocked back.

A. Yes, sir.

page 166 } Q. I hand you a picture here, Commonwealth's Exhibit 2, and ask you if you will explain to the jury what you meant by that statement (handing Exhibit 2 to witness). If you will come right down here where all of them can see.

A. (Examining Exhibit 2 and taking a position in front of the jurors) This seat ordinarily would be back on the track. When it was struck, the right side came back and pushed the left side forward. That's what this track is right here. If that seat was in place, you couldn't see this track here (indicating track at bottom of Exhibit 2).

Q. That is what you mean by the left side of the seat going forward.

A. Yes, sir.

Q. And the right side coming back. And this picture, Mr. Collier. Exhibit No. 11. Does that or not show the seat back on the right side which gives a larger space on that right side of the automobile than on the other (handing Exhibit 11 to witness)?

A. (Examining Exhibit 11) Yes, sir. This spring right here holds the seat in place and that was knocked—. You can see where that has been, and it was knocked over this far and knocked back. I don't think they can see that spring from this distance (indicating spring on Exhibit 11). (Said Exhibit 11 is examined by the jury.)

Q. Mr. Collier, I will ask you another question about the pictures while we are here. Were you present when Mr. Alwood took some pictures at the Freed wreck-

page 167 } ing lot in Waynesboro on Sunday or Monday following this accident?

A. Yes, sir.

Q. Would you look at Commonwealth's Exhibit 3 and I ask you what that picture discloses (handing Exhibit 3 to witness).

A. (Examining Exhibit 3) That's the right front door off the automobile.

Trooper H. H. Collier.

Mr. Franklin: He's already stated there wasn't any skid marks?

Mr. Taylor:

Q. After the debris were there any tire marks or skid marks?

A. No, sir.

Q. Was this automobile or this Buick automobile that you found there lodged against a dwelling or was it in the yard of a dwelling?

A. It was both; it was against the house and also in the yard.

Q. Of course, the pictures show the damage to the automobile, but was it of any value after this wreck?

A. I don't think so.

Q. That you could place on it? A total loss?

page 171 } A. I estimated it at a total loss.

Q. Was there any object in the highway when you got there in the way of parts to the automobiles or pieces of the automobiles?

A. There could have been some small pieces in the highway. Nothing—. No large pieces.

Q. Now, Mr. Collier, did you go with the occupants to the hospital or did you stay at the scene of the accident when they were moved?

A. I stayed at the scene.

Q. And your purpose of staying there was what?

A. Well, I stayed to get the vehicles out and get the road cleaned up.

Q. Did you subsequently go to the hospital?

A. Yes, sir.

Q. Did you see both Mr. Wade and Mr. Dickerson when you arrived at the hospital?

A. Yes, sir.

Q. And where were they when you arrived at the hospital?

A. Mr. Dickerson was in one room and Mr. Wade was in another room.

Q. Mr. Dickerson was in one room and Mr. Wade was in another room.

A. Yes, sir.

Q. And who did you see in attendance there working with or on these people?

A. Dr. Ryder was the doctor.

page 172 } Q. Dr. Ryder was the doctor?

A. Yes, sir.

Trooper H. H. Collier.

Mr. Timberlake: Do I understand that Mr. Collier is testifying as an eye-witness as to where the point
page 169 } of impact is? I think otherwise he would be limited to what physical evidence he saw.

The Court: You are correct, sir. I think when he says the point of impact you will have to substitute something for that.

Mr. Taylor: All right.

Q. Mr. Collier, would you tell the jury what area of the road did you—if you found any skid marks—what area of the road did you find them in? Where did they start and where did they stop and where did they lead to?

A. They started in the right-hand lane and led up. They were in a curved position—the 2 skids; and 2 feet to the right of the right-hand line, which was a broken line, is where they stopped.

Q. And in what direction were they going then?

A. They were going from the right side of the highway toward the center.

Q. Was there any debris in the highway there?

A. Yes, sir.

Q. And in what proximity did the skid marks go to that point where the debris was?

A. They went to that and then there was no skid marks after that point.

Q. And what was the distance of that skid mark?

A. It was 80 feet.

Q. 80 feet?

A. Yes, sir.

page 170 } Q. And that was up the highway in the right-hand and northern lane.

A. Yes, sir.

Q. Now from that point how far was this automobile—Buick automobile—from that point when you got there?

A. 149 feet.

Q. 149 feet?

A. Yes, sir.

Q. Were there any skid marks or tire marks showing the course of that automobile from the debris?

Mr. Timberlake: I object to that question. I think it is improper. You can ask if there were any tire marks beyond the debris and have that witness describe it.

Trooper H. H. Collier.

Q. And what was that conversation, Mr. Collier, and where was Mr. Wade at that time?

A. He was in the room there at the hospital. He was lying down when I saw him, and I walked in and I think I asked him how he felt. I don't remember what I did ask him when I first went into the room, and then I asked him who was driving the car and he pointed to himself.

Q. In what manner?

A. He pointed wtih his right hand and just pointed to himself like this (indicating with forefinger against chest).

Q. Do you know who was present at that time in the room where you and Mr. Wade were?

A. Mrs. Wade was there; Trooper Smoot; and
page 174 } there was 2 or 3 other people. I don't know
who they were.

Q. Is that all the conversation you had with Mr. Wade at that time?

A. At the first time, yes, it was.

Q. And did you later have another conversation with him?

A. Yes, sir.

Q. And approximately how much later?

A. It wasn't much later. I walked out into the room where Mr. Dickerson was and looked at him again, and then I came back into the room where Mr. Wade was.

Q. All right, sir. When you came back into the room where Mr. Wade was, did you have any conversation with him at that time?

A. Yes, sir.

Q. What was that conversation? What did you say to him?

What did he say to you?

A. I told him that Fred was in right bad shape and I asked him the second time who was driving the car and he said, "I was."

Q. All right.

A. I told him that I was going to charge him with something. I told him I was going to charge him with driving under the influence at the time, and I asked him if he wanted a blood test.

Q. If he wanted a blood test.

A. Yes, sir.

Q. And what did he have to say?

Trooper H. H. Collier.

Q. Do you recall the nurse?
A. No, sir, I don't remember there. I don't know who they were.
Q. Did you have any conversation with Mr. Dickerson upon your arrival at the hospital?
A. No, sir.
Q. Did you have any conversation with Mr. Wade?
A. Yes, sir.
Q. About how long would you estimate it from the time that you received the call on the mountain? Or do you know what time that was that you received the call when you were on the mountain?
A. Just about 11:30.
Q. Just about 11:30?
A. Yes, sir.
Q. Now what time would you say it was when you had this conversation with Mr. Wade in the hospital?
A. It was well after midnight; I don't know.
Q. Well, when you say well after midnight what do you mean by that?
A. I got there about 11:40; I'd say I was at the scene of the accident 45 minutes. I didn't time it but for 45 minutes to an hour.

(At this point a brief recess was taken.)

Mr. Taylor: (To court reporter) Would you read the last couple questions?

page 173 } Court Reporter: (Reading)
Q. Now what time would you say it was when you had this conversation with Mr. Wade in the hospital?
A. It was well after midnight; I don't know.
Q. Well, when you say well after midnight what do you mean by that?
A. I got there about 11:40; I'd say I was at the scene of the accident 45 minutes. I didn't time it but for 45 minutes to an hour.

Mr. Taylor:
Q. From 45 minutes to an hour after you received the call on the mountain you had a conversation with Mr. Wade in the hospital.
A. Yes, sir.

Trooper H. H. Collier.

A. He said if it was all right with his wife.
page 175 } Q. If it was all right with his wife.
A. Yes, sir.
Q. Was his wife present?
A. Yes, sir.
Q. Was there any conversation between Mr. Wade and his wife?
A. He asked—. He said if it was all right with his wife and—.
Q. Was his wife present?
A. Yes, sir.
Q. What did she say or what did he say?
A. She told him to go ahead and take it.
Q. She told him to go ahead and take it?
A. Yes, sir.
Q. Did she say that to you or to Wade?
A. She said it to him.
Q. She said it to him?
A. Yes, sir.
Q. And what did he say then?
A. She told him to go ahead and take it. He said, "All right." I asked Dr. Ryder if he would draw the blood, and then Dr. Ryder asked him if he wanted him to draw the blood.
Q. Did you hear what he said to Dr. Ryder?
A. He said, "Yes."
Q. That he wanted him to draw the blood?
A. Yes, sir.
Q. Now, Mr. Collier, did you—? Was the blood drawn in your presence?
page 176 } A. Yes, sir.
Q. And what happened to it after the blood was drawn?
A. It was put in the tube and was given to me and I sealed it up.
Q. Did you seal it there in the presence of the doctor?
A. Yes, sir.
Q. And Mr. Wade?
A. Yes, sir.
Q. And what did you do with it?
A. I mailed it that same morning to Richmond.
Q. You mailed it that morning to Richmond?
A. Yes, sir.

Trooper H. H. Collier.

Q. And did you receive a certificate back from Richmond?
A. Yes, sir.
Q. As a result of that mailing?
A. Yes, sir. (At this point the said certificate is handed to Mr. Timberlake and Mr. Franklin for examination.)

Mr. Timberlake: Your Honor, we object to the introduction of this for the reasons heretofore stated to the Court.
The Court: Yes, sir. May I see that, please?
Mr. Taylor: Yes, sir. (Said certificate is handed to the Court and examined by the Court.)

page 177 } Mr. Timberlake: Of course, Your Honor, our objection, to be specific, is based upon the fact that there is no statutory authority in this type of prosecution for the abrogation—.

Mr. Taylor: I think this should be heard out of the presence of the jury.
Mr. Franklin: We want to make our objection.
Mr. Timberlake: I'm simply stating my objection to the jury.
Mr. Taylor: But you are stating it to the jury where you asked to be heard in chambers, and you were heard in chambers.
The Court: If you wish to be heard further, suppose we retire to chambers.

In Chambers:

page 178 } Mr. Timberlake: Your Honor, we are simply renewing our objection to the introduction of this report on the grounds that it completely violates the hearsay rule of evidence under the common law which would apply in this case, there being no statutory authority in a felony prosecution such as this for the introduction of such a report in lieu of tracing all the steps by which the blood sample was transmitted and passed to the State toxicologist and the findings of the State toxicologist on that blood test. It abrogates entirely the right of cross examining the State toxicologist; and it is in no way, we submit, authorized by any statutory authority applicable to this proceeding.

The Court: Your contention, I take it, is that the statute is apropos only to the charge of driving under the influence. Is that correct?
Mr. Timberlake: Yes, sir. And assuming that, for the sake of argument, in this prosecution it is proper to in-

page 180 } wheel of an automobile unconscious and drive out and kill a dozen school children and come in and say that is designed for a misdemeanor and come in and go free. That is not the case, and it is not a loophole to turn a man loose who, by his own voluntary action, causes the death of another person.

Mr. Timberlake: Your Honor, in reply I want to make it perfectly clear that we are not contending that proof of intoxication is not evidence that can be considered by the jury in determining whether a motorist is guilty of the degree of negligence that constitutes manslaughter. The point that we are making is that the statute 18-75, with the amendatory Sections 18-75.1, 18-75.2, and 18-75.3, all deal with a statutory offense; that that offense and the proof of that offense, insofar as it conflicts with the common law rules of evidence, is in derogation of common law and must be strictly construed; and nowhere, either by strict or liberal construction of these statutes involved, is the rule of evidence abrogating the hearsay requirements and limitations made applicable to any type of prosecution except the statute offense created by Section 18-75, Code of Virginia, or county or city ordinances creating, as is permitted, the same type of offense; and our objection is directed to the abrogation of the rule of evidence as far as proof is concerned, which is made expressly applicable only under the statutory offense set out in Section 18-75.

page 181 } The Court: All right, gentlemen. I'm going to admit the report.

Mr. Timberlake: We except to the ruling of the Court for the reasons stated in our objection.

In Courtroom:

Direct examination of Trooper Collier (Continued).

By Mr. Taylor:

Q. Mr. Collier, I hand you a blood alcohol report of the Office of the Chief Medical Examiner in Richmond, Godfrey T. Mann, and ask you if you received this blood alcohol report from Richmond as a result of the blood sample that you sent to Richmond that was sealed in and sent by you as you testified, taken in your presence from the defendant here by Dr. Ryder in Waynesboro (handing blood alcohol report to witness).

Trooper H. H. Collier.

troduce the blood test to show the condition of the alleged driver, the driving under the influence statute—18-75.1 which affords a means of circumventing or bypassing the ordinary rules of evidence—is strictly limited to the type of prosecution in which such abrogation of the ordinary rules is permitted and in no way is made to apply to a felony prosecution.

Mr. Taylor: Your Honor, I stated the Commonwealth's position in chambers. The only objection I had to the objection before the jury was that the defendant asked to be heard on this question out of the presence of the jury, and it was gone into fully and understood that the same objection would carry through when the evidence was submitted; and I don't think it was proper to renew the motion before the jury when it was the defendant's motion that it be heard outside of the jury and which was done and thrashed out in chambers.

The Court: Let's have your view now on the page 179 } motion itself.

Mr. Taylor: My view, Your Honor, has not changed insofar as the admissibility of the evidence for the simple reason, as stated in chambers, that this is a prosecution for the operation of an automobile where not a misdemeanor is involved but a more serious crime is involved. The statute is designed, as I understand it, to protect the lives and property of citizens and society, and that is the case. The point has not been decided by our local Court of Appeals. It has been decided by the Federal courts and the evidence is admissible. There is a New Mexico case where the evidence was admissible. It has not been passed on by the Virginia Court of Appeals that I could find; but the mere fact of the requirements of the Commonwealth as placed upon the Commonwealth to prove a man guilty of the wanton, reckless operation of an automobile and the fact that we have on the books a statute making this type evidence admissible in a misdemeanor case where he is charged with reckless driving and driving under the influence would certainly, if a man was drunk—and .15 according to our statute says a man if he has that degree of alcohol content in his blood stream he is presumed to be intoxicated—if he is presumed to be intoxicated he is certainly guilty of gross negligence in the operation of the motor vehicle and wanton negligence in the operation of the automobile; and I submit it is bound to follow along or a man could get under the

Trooper H. H. Collier.

Mr. Timberlake: Your Honor, by stipulation between Mr. Taylor and ourselves it has been stipulated that the 2 photographs that I hold in my hand are among the group of photographs taken by Mr. Alwood in the presence of Mr. Taylor and Mr. Collier at the Paul Freed lot 1 or 2 days after the—1, 2, or 3 days I believe the evidence was—after the accident with which we are concerned; and I would like to tender this photograph pursuant to that stipulation as Defendant's Exhibit D and this one as Defendant's Exhibit E. (Said photographs are received in evidence and marked "Defendant's Exhibit D" and "Defendant's Exhibit E" respectively.)

CROSS EXAMINATION.

By Mr. Timberlake:

Q. Mr. Collier, does this photograph which I hand you marked Defendant's Exhibit D represent a front view of the Dickerson automobile as it appeared on the Freed lot (handing Exhibit D to witness)?

A. (Examining Exhibit D) You mean Wade?

Q. I mean the Wade automobile.

A. Yes, sir.

page 184 } Q. And that, of course, is the photograph which shows it to be without the hood.

A. Yes, sir.

Q. I believe it is in evidence that the hood was knocked off or left the automobile at the time of the collision.

A. Yes, sir.

Q. And I will ask you if Defendant's Exhibit E shows the Wade automobile taken from the left-hand side as it appeared on the Freed lot (handing Exhibit E to witness).

A. (Examining Exhibit E) Yes, sir. (At this point Mr. Taylor handed to the Court the aforesaid blood alcohol report.)

The Court: You are tendering this as an exhibit?

Mr. Taylor: Yes, sir.

Mr. Timberlake: Of course, we want it understood that that is subject to our objection.

The Court: Yes, sir. Yes, sir. (Said blood alcohol report is received in evidence and marked "Commonwealth's Exhibit No. 13." Exhibits D and E are examined by the jury.)

Trooper H. H. Collier.

A. (Examining said blood alcohol report) Yes, sir, this was sent back to me.

Q. And what does that blood alcohol content show on that report?

A. It shows 0.15.

Q. 0.15% alcohol.

A. Yes, sir.

Q. Now as I understand your testimony, you had informed Mr. Wade that you were charging him with driving under the influence and reckless driving. Is that correct?

page 182 } A. I told him I was charging him with driving under the influence, yes, sir.

Q. And you have testified as to the proceeding there in the hospital and this is the report that you got back from Richmond.

A. Yes, sir.

Q. Now, Mr. Collier, did you have any other conversatoin—? You said you had known Mr. Wade prior to the time that you found him in this automobile.

A. Yes, I had known him quite some time.

Q. Sir?

A. I had known him for some time. Yes, sir.

Q. And when you saw him in the hospital and talked with him in the hospital, was he unconscious at any time that you saw him in the hospital?

A. I don't think he was unconscious.

Q. Was he rational insofar as you could tell?

A. Yes, sir.

Q. Did Mr. Dickerson ever regain consciousness to your knowledge—?

A. Not as far as I know. No, sir.

Q. Before he died? How close were you to Mr. Wade in the hospital?

A. Oh, I was in 2 to 4 feet of him I'd say when I was talking to him.

Q. Did you smell anything on his breath?

A. Yes, sir.

page 183 } Q. What?

A. I don't know what it was. It had an odor of alcohol. I don't know if it was beer or whiskey or what it was.

Q. You don't know whether it was beer, whiskey, or wine but it had the odor of alcohol.

A. Yes, sir.

Trooper H. H. Collier.

Q. With his body or trunk extending back from the right side towards the left—from right to left in the car.

A. He was the best I remember the position of his body—the way the seat was knocked back—that he was lying almost parallel with the car with his feet up under the dash and his head back behind where the seat had been knocked backwards.

Q. You mean more or less parallel with the seat?

A. No, sir, with the car.

Q. I see. You mean with his feet forward and his head back?

A. Yes, sir.

Q. I see. And did I understand that, according to your best recollection, Mr. Wade was also tilted or lying on his right side?

A. Yes, sir.

Q. In front of or to the rear of Mr. Dickerson from the standpoint of the front of the car?

A. He would have been to the left rear.

page 187 } Q. Well, I understand that he was to the left of Mr. Dickerson in the car.

A. Yes, sir.

Q. But you place him as I understand to the rear rather than the front of Mr. Dickerson.

A. Mr. Dickerson was on the floor and part of Mr. Wade's body was on the seat. No, sir, I couldn't put him to the rear.

Q. Well, I don't know exactly how we can illustrate this; but if this is the front of the car, this is the way the seat runs crosswide. I realize the seat was out of adjustment—was knocked loose.

A. Yes, sir.

Q. And as I understand, Mr. Dickerson's body was at somewhat of an angle like that with his head and upper part of his body farther towards the rear of the car than the lower part of his body (indicating positions with brief case, water glass, and 2 pencils).

A. His head was to the rear.

Q. And the front of his body extending on the floor towards the front portion of the—.

A. Yes, sir. If I can borrow this just a minute. Assume this is the seat and this is the front of the car. The right side of the seat was knocked back and the left side forward. Well, that put—(indicating with aforesaid brief case, water glass, and 2 pencils).

Trooper H. H. Collier.

Mr. Timberlake:

Q. Mr. Collier, as I understand when you arrived at the scene of the accident there were already some people there.

A. Yes, sir.

Q. Just how many I don't suppose you could

page 185 } say.

A. I couldn't say, Mr. Timberlake. I don't have any idea.

Q. And I take it at that time the Trailway bus was sitting in the position shown in the photograph designated as Commonwealth's Exhibit 1.

A. Yes, sir.

Q. And that the Wade automobile, the 1950 Buick, was sitting against the Glenn house as indicated in Commonwealth's Exhibit 11.

A. Yes, sir, that's right.

Q. What kind of structure was that Glenn house?

A. Shingle.

Q. Asbestos shingle?

A. Asbestos shingle. Yes, sir.

Q. Now I believe upon your arrival both Mr. Wade and Mr. Dickerson were still in the automobile.

A. Yes, sir.

Q. And insofar as you knew, they were in the same positions that they were in when the automobile came to rest.

A. As far as I know.

Q. I believe you also stated that at that time some person was holding Mr. Dickerson's head as it projected out from the car.

A. Yes, sir.

Q. Now, Mr. Collier, do I understand from your testimony that Mr. Dickerson was lying more or less on his right side facing the front of the car with his head projecting out of the car?

A. On his right side and the right side of his

page 186 } face was toward the ground and also his mouth.

Q. His face was twisted?

A. Turned down.

Q. Turned down?

A. Yes, sir.

Q. His body was more or less—I don't mean to be 100% accurate from the standpoint of degrees—but it was more or less on its right side.

A. The best I remember it was.

Mr. Dickerson as far as the front of the car was concerned, wouldn't it? I mean the seat was still—. Even though it was knocked-out of position the seat was still to the rear of the car, wasn't it?

A. Yes, sir.

Q. If Mr. Dickerson was on the floor of the car—I realize at an angle—but if his body was on the floor of the car and Mr. Wade's body or a substantial portion of it was on the seat, he was rearward from Dickerson, wasn't he, as well as to Dickerson's left?

A. Yes, sir, he would be to the left rear.

Q. Were you there—? Do you know Mr. Buchanan?

A. Yes, sir.

page 190 } Q. Were you there when he was there at the car?

A. Yes, sir.

Q. And did Mr. Buchanan insofar as you could tell have just as good an opportunity to see the positions of these men in the car as you did?

A. Yes, he did.

Q. Now while you were there at the car, Mr. Collier, did you hear Mr. Wade ask what had happened?

A. No, sir.

Q. Did you hear him moaning or calling for his wife?

A. No, sir.

Q. I believe you testified that when you examined the highway you found what you described as skid marks leading from the extreme right-hand side of the right lane—that is all on the paved surface of the road—.

A. Yes, sir.

Q. Extending a distance of 80 feet to where you found the debris in the highway. Is that correct?

A. Yes, sir.

Q. And was that debris in the right-hand lane?

A. Yes, sir.

Q. And these marks were still in the right-hand lane but in a curve toward the center?

A. A curve toward the center. Yes, sir.

Q. And that stopped at the debris?

A. Yes, sir.

Q. Now when you refer to skid marks, Mr.

page 191 } Collier, you have reference to the marks made in the road by the tires of an automobile apparently through the application of brakes?

Trooper H. H. Collier.

Q. As you go along, approximately how many inches would you say this corner—that is the right rear corner of the front seat—was knocked back out of position?

page 188 } A. I didn't measure it; I'd say from 18 inches to 2 feet.

Q. I see. And was the left side forward a corresponding or substantially corresponding amount or had it tilted?

A. I think this side was back farther than the left side was going forward.

Q. I see. Could you give us any idea just in approximation from the standpoint of inches how much the left side had gone forward?

A. I'd say a foot just in guessing.

Q. So this would have been back in position over on this side from 18 inches to 2 feet and over here approximately a foot forward (again indicating with aforesaid brief case, water glass, and 2 pencils).

A. That's what it looked like.

Q. Let's go on from there with a couple pencils.

A. That's what I was going to do. After the seat was knocked back here, Mr. Dickerson was lying in this position. His feet, of course, he had to have them bent around some; otherwise his feet would have been out of the car. His head was out of the car and he was positioned on the right side here (placing pencil to indicate body of Dickerson).

Q. Leave that here. Now if you can and will, show us, this still being the seat, approximately how Mr. Wade was positioned.

A. Mr. Wade—. Of course, this seat was knocked over here some too. If this is the steering wheel, it would be like this. The seat was knocked over like that, but as

page 189 } far as the seat it would be near the center. Mr. Wade was down in here with his feet and lying on his right side—as best I remember over on his right side on the front part of the seat here (placing pencil to indicate body of Wade).

Q. Well, now, Mr. Collier, wasn't Mr. Wade's body against and in proximity with Mr. Dickerson's body?

A. Well, after you put 2 bodies in here with Mr. Wade down in here and his head here (again indicating with pencils), they were right close together there.

Q. And you say that Mr. Wade—? Do I understand that the upper portion of Mr. Wade's body was on the seat?

A. Yes, sir.

Q. Well, that would put him a rearward direction from

in the emergency or X-ray room at the hospital. Is that right?

A. Yes, sir.

Q. And he appeared when you saw him at the hospital to be in great pain, did he not?

A. Yes, he did.

Q. And it is correct that during the time you saw him at the hospital you only asked him 2 or 3 questions, didn't you?

A. I didn't talk to him too much. No, sir.

Q. Did you ask him or attempt to find out
page 193 } where he and Fred Dickerson had been?

A. Not that night, no, sir.

Q. And, correspondingly, you didn't undertake to ask him whether or not Fred Dickerson had been driving that car that night.

A. No, sir.

Q. The only thing, as I understand from your testimony, that you asked him while he was lying there in the hospital in great pain was who was driving.

A. Yes, sir.

Q. And that was the substance of the questioning of Mr. Wade—who was driving.

A. Yes, asking who was driving.

Q. And you say he pointed to himself with his right hand?

A. Yes, sir.

Q. And then I believe it is correct, is it not, Mr. Collier, that you didn't have any more contact with Mr. Wade until you had gone into the room where Mr. Dickerson was being cared for?

A. Yes, sir.

Q. And saw that he was in very serious condition. And then you came back to Mr. Wade and in substance told him you were going to have to charge him with something—driving under the influence; and I take it in making that statement to him you had previously to that when you were within, as you described, 2 to 4 feet of him smelled the odor of something resembling alcohol on his breath.
page 194 } A. Yes, sir.

Q. And do I understand that while he was lying there in pain in the hospital with his jaw broken that you made the statement to him that he could have a blood alcohol test that could be used for or against him?

A. I asked him if he wanted one, yes, sir.

Trooper H. H. Collier.

A. It could be brakes or it could be made without using the brakes.

Q. You mean if a car is skidding sideways the brakes wouldn't have to be on to make them?

A. That's right.

Q. But did not these marks that you have reference to simply go in a gradual arc or turn from the extreme right-hand side of the right lane up over a distance of 80 feet to a point still in the right-hand lane?

A. Yes, sir.

Q. So that throughout that 80-foot period or distance the car, as far as going sideways is concerned, the car that made those marks didn't get outside of the right 10-foot lane of travel on the highway. Is that correct?

A. I'd say the left side did. The left—.

Q. The tire mark made by the left wheel?

A. Yes, sir.

Q. Had it gotten beyond the dividing line between?

A. Yes, sir.

Q. How much?

A. From my investigation where the debris was, the right front wheel was 2 feet to the right of the broken line.

Q. Of the broken line.

A. Yes, sir.

page 192 } Q. So then if the car is some 6 feet wide, it would put the left wheel about 4 feet across into the center lane.

A. No, sir, it wouldn't put it that far because the car was going at an angle and it wouldn't put it that far.

Q. Well, how far into the center lane?

A. I don't know.

Q. Several feet would you say?

A. I couldn't say, Mr. Timberlake. Going in that position, I don't know just how far it would put the left wheel over there.

Q. However that may be, Mr. Collier, these marks were marks that could have been made by a car which had its brakes applied and was veering or turning to its left with the brakes applied. Isn't that right?

A. Could have. Yes, sir.

Q. And as I understand, Mr. Collier, you didn't hear Mr. Wade either ask what had happened or ask for his wife there at the scene of the accident.

A. I didn't hear him say anything. No, sir.

Q. And the next time you saw him he was lying on a table

Trooper H. H. Collier.

A. No, sir. I took it with me.

Q. You took it with you. And you mailed it to Richmond?

A. Yes, sir.

Q. It went out of your possession when it was placed in the mail addressed to the—. Who was it addressed

page 196 } to?

A. To the Chief Medical Examiner in Richmond.

Q. And what is his name?

A. What is his name?

Q. Yes, sir.

A. In those packages that they have the tube for the blood, they also have a sticker with the delivery of the Medical Examiner on it and we just take that out and stick it on.

Q. You just simply put a sticker on and put it in the mail.

A. And put my return on it.

Q. Put your return on it.

A. Yes, sir.

Q. You did that the following day?

A. I did it that morning.

Q. You did it Sunday morning?

A. Yes, sir. I filled it out at the time they put the blood in it and sealed it.

Q. And you didn't see any more of that blood sample thereafter.

A. Not after I mailed it.

Q. No, sir. And how long after that was it that you received this report which has been introduced as a Commonwealth's exhibit?

A. 2 or 3 days.

Q. That short a time?

A. Yes, sir. Usually if we mail them on Sunday we get them back on Tuesday.

Q. You're just going by what is usual. You can't tell us what day you got it back, can you?

page 197 } A. No, sir, I can't. I can't tell you the exact day.

Q. And the last you saw of the blood sample was when you mailed it Sunday morning.

A. Yes, sir.

Q. And the next thing that transpired insofar as that blood sample was concerned was your receipt of the report that has been introduced some 2 or 3 days or thereabouts later. Is that correct?

Trooper H. H. Collier.

Q. And I believe you stated you understood him to say that if it was all right with his wife it was all right.

A. Yes, sir.

Q. And then did he or not have any conversation with his wife?

A. She told him—. He said if it was all right with her and then she said, "Go ahead, honey, and take it."

Q. I see. And then did he nod his assent?

A. No, he didn't nod. He said, "All right."

Q. He said, "All right." Of course, he appeared to be conscious at that time.

A. Appeared to be; yes.

Q. You had no way of looking into his mind and knowing whether or not he was appreciating what was going on. It was just from outward appearance.

A. Yes, sir.

Q. Mr. Collier, did you undertake to have him sign a consent to taking this blood test?

A. No, sir.

Q. That is the customary thing, isn't it?

A. No, sir. Sometimes they do; sometimes they don't sign it.

Q. It is a matter of common procedure for
page 195 } them to sign.

A. Yes, sir. We like for them to sign it.

Q. Where are those consent forms kept?

A. They have some at the hospital.

Q. Did you undertake to procure one?

A. No, sir.

Q. By the same token you didn't undertake to have Mr. Wade sign it?

A. No, sir.

Q. Also I believe you said he used his right hand to point to himself.

A. He did.

Q. And was there anything that indicated to you that he wasn't capable of signing his name?

A. I didn't think he was in any condition to sit up. I don't know if he could have signed it lying on his back or not, but I think it would have been very difficult for him to sign it.

Q. Now, Mr. Collier, did you take that blood sample from the hospital with you?

A. Yes, sir.

Q. It wasn't mailed to you by the hospital?

Dr. Carl Ferdinand Menk.

A. I got the result and also the tube that the blood was sent in to Richmond.
Q. But you didn't get the blood back?
A. No, sir, not the blood.

RE-DIRECT EXAMINATION.

By Mr. Taylor:
Q. Mr. Collier, just for the sake of the record, did this accident happen in Augusta County?
A. Yes, sir.
Q. Was that container that this blood went in sealed while you were in the hospital in the presence of anyone?
A. I didn't understand you, Mr. Taylor.
Q. Was the container sealed and prepared for mailing while you were in the hospital or where?
A. Yes, sir.

The Court:
Q. Mr. Collier, what sort of label did you put on this container that we are discussing?
A. The one that came with the tube.
page 198 } Q. Do you label the name of the defendant?
A. No, sir, the doctor writes that on the tube. The outside label is a green label that has the address of the Chief Medical Examiner and it has a place for the return address.
Q. Is the defendant's name labeled on the tube itself?
A. Yes, sir.
Q. Who did that in this case?
A. Dr. Ryder.
Q. In your presence?
A. Yes, sir. He wrote Mr. Wade's name and also wrote his own name on there as being the person to draw the blood.
Q. That tube came back to you, but the blood, of course, had been—.
A. They used it in Richmond to make the analysis. Yes, sir.

No further questions.

Witness leaves the stand.

DR. CARL FERDINAND MENK,
the tenth witness, being first duly sworn, testified as follows:

Dr. Carl Ferdinand Menk.

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Doctor, would you please state your full name?

A. Carl Ferninand Menk.

Q. Your age and profession?

A. 38.

Q. Your profession?

page 199 } A. Doctor and pathologist.

Q. Pathologist. Doctor, where did you get your medical education?

A. University of Virginia.

Q. How long have you been practicing your profession?

A. I got my license in 1944.

Q. And where did you practice before coming to Staunton?

A. I was in—. I had a position with the Armed Forces Institute of Pathology in Washington, and prior to that I was in residency training.

Q. How long have you been practicing in Staunton?

A. Since '51.

Q. Are you specializing in any branch of medicine in Staunton?

A. I'm specializing in pathology, which is laboratory medicine.

Q. Are you in charge of the laboratory at King's Daughters' Hospital?

A. Yes, sir.

Q. In your work there the blood bank and the dealings with the blood, I believe, come under your supervision, do they not?

A. Yes, sir.

Q. Doctor, are you familiar with the blood alcohol content of a person's body?

A. Yes, sir.

Q. When extracted? I hand you a report from the Chief Medical Examiner's Office in Richmond showing a blood alcohol content report on Wallace Parker Wade dated April 23. Is that the date that is on there (handing

page 200 } said report to witness)?

A. (Examining said report) Yes, sir.

Q. What does that alcohol blood content show on that report?

A. It says: "Blood, 0.15% alcohol."

Q. Would you tell the jury what 0.15 alcohol blood content means to a person with that much blood alcohol in his body?

Dr. Carl Ferdinand Menk.

A. A 160-pound man who drinks 6 ounces of whiskey or 6 bottles of beer will have a 0.15% alcohol within 30 to 45 minutes.

CROSS EXAMINATION.

By Mr. Timberlake:

Q. Doctor, it's true, is it not, that the tolerance of people as far as the consumption of alcohol is con-
page 202 } cerned varies with each individual. Isn't that right?

A. Yes, sir.

Q. And an alcohol blood content of a certain degree for one person would affect that person in all probability differently from a person having different qualities. Isn't that correct?

A. Yes, sir.

Q. This 0.15 that you referred to that is according to the standards that you referred to, that is absolutely the minimum at which any presumption exists of intoxication. Isn't that correct?

A. Not exactly. They set the level at 0.15—that level and above as the standard under which a person is considered to be unfit to drive. Below that they say the evidence has to be substantiated by physical findings of the patient.

Q. In other words, a finding of less than 0.15 creates no presumption at all, does it?

A. It doesn't eliminate presumption.

Q. I realize that. I'm going by these standards to which you apparently subscribe that provide, do they not, that under 0.15 there is no presumption. It is a question of proof—independent proof—one way or the other as far as whether intoxication of a degree making it unsafe to drive exists. Isn't that right?

A. It needs additional evidence.

Q. And isn't it true that under 0.15, as far as alcohol is concerned, no presumption exists by virtue of the
page 203 } test alone?

A. Yes, sir.

Q. So that is the minimum degree at which a presumption arises, isn't that correct, under these standards by virtue of the test?

A. They don't make any presumption. They say it is 0.15 and above.

Q. Presumed, isn't it?

Dr. Carl Ferdinand Menk.

A. According to the National Safety Council it is their interpretation, accepted by the State—.

Mr. Franklin: Your Honor, we object. If he is a medical doctor and is going to testify, he ought to testify from his own knowledge, and not what the National Council of Safety has got to do about it.

Mr. Taylor: His own knowledge would certainly come from records and diagnoses of the medical profession such as our decisions from law would come from the books I would think.

Mr. Franklin: Your Honor, the National Safety Council certainly isn't the Americal Medical Society.

The Court: It seems to me, gentlemen, that this witness can give his own views from standards recognized by his profession.

Mr. Taylor: That's all I want.

Witness:

A. Well, the National Safety Council set up various values, and these values are accepted by the State of Virginia. They say a person who has blood alcohol—.

page 201

Mr. Franklin: Your Honor, that's the very same thing. He's saying what they say.

The Court: I take it his profession recognizes these standards that he is referring to.

Q. Is that correct?

Witness:

A. Yes, sir.

Mr. Taylor:

Q. Go ahead, Doctor.

A. 0.15% alcohol in a person's blood is *prima facie* evidence that the person is under the influence of alcohol as far as driving is concerned.

Q. Doctor, from the analysis of blood and from the tests taken as they are recognized by the medical profession, how much blood—how much alcohol in the way of whiskey, wine, or beer would have to be consumed in the way of whiskey to get a .15 alcohol content?

Dr. Carl Ferdinand Menk.

Q. And is it or is it not your understanding that the provisions of the National Safety Council as recognized here in the State of Virginia is that a blood test of
page 205 } 0.15 or more is in itself proof of intoxication or simply creates a *prima facie* presumption of intoxication?

A. They say a person, as I understand, with a blood alcohol level of 0.15% as far as driving is concerned can be considered under the influence of alcohol.

Q. That is it, period, without any *prima facie* case of presumption. Is that right?

A. That's the way I understand it.

Q. Didn't you testify in direct examination that it was your understanding that a blood test of 0.15 or more creates a *prima facie* presumption?

A. I don't know what I said. I think I said *prima facie* evidence.

Q. I see. I believe that's all.

RE-DIRECT EXAMINATION.

By Mr. Taylor:

Q. Doctor, just one other question. What is the recognized disappearance or absorption of alcohol by the body per hour where one has had nothing to drink say after 11:30? At what degree or percentage does it decrease the alcohol blood content in the body?

A. According to these same authorities, on an average it decreases 0.02% per hour.

Q. 0.02% per hour.

RE-CROSS EXAMINATION.

By Mr. Timberlake:

Q. Doctor, how is this blood analysis made
page 206 } upon which a finding of a percentage of blood alcohol is found?

A. In these cases the analysis is made by the State Toxicology Department in Richmond, and I am unfamiliar with their exact methods.

No further question.

Witness leaves the stand.

Dr. Carl Ferdinand Menk.

A. No, sir.
Q. Are you sure of that, sir?
A. That's my understanding of it.
Q. Sir?

Mr. Taylor: He's not talking about the law. He's talking about the medical profession.

Mr. Timberlake:
Q. Were you testifying on the basis of standards of the Safety Council?
A. The National Safety Council.
Q. The National Safety Council.
A. Yes, sir.
Q. And do I understand you to say, Dr. Menk, that from 0.15 up that it is not a question of a presumption and a presumption alone? A *prima facie* presumption?
A. They use the term "*prima facie.*" I don't know whether that is presumption or not.
Q. Do you know what *prima facie* means in connection with presumption?
page 204 } A. I am not a lawyer.
Q. Well, do you know?
A. No, sir.
Q. But insofar as the information you have, upon which you are basing your testimony, a *prima facie* presumption exists at the starting point of 0.15 and from there on up. Is that correct?
A. My understanding is it is not a presumption. I don't remember the term presumption having been made. Maybe it *it*. It is my understanding that a 0.15 subject is said to be under the influence of alcohol as far as alcohol is concerned.
Q. That is your understanding of the provisions of the National Safety Council?
A. Yes, sir.
Q. And that is independent of any *prima facie* presumption. It is just a proposition of it being a case of intoxication rather than a *prima facie* case of presumption of intoxication.
A. I'm confused. I don't know the terminology of the law.
Q. Well, aren't you undertaking to quote the terminology of the standards of the National Safety Council?
A. I was not quoting, sir. I was saying what I understood about it.

Trooper Joseph Welford Smoot, Jr.

A. It may have been a few minutes one way or the other but about 10 minutes.

Q. Was the Trialways bus sitting on the west side of U. S. 250?

A. West side?

page 208 } Q. North side?

A. North side. Yes, sir.

Q. And where was an automobile located that was in that accident?

A. It would be on the south side of Route 250 sitting against a house.

Q. Were there any persons in the car when you got there?

A. Yes, sir.

Q. How many and who?

A. There were 2 men in the front of the car and I didn't know the men at the time, but it was later determined that Mr. Wade was one man in the car and Mr. Dickerson was the other one in the car.

Q. Now, Mr. Smoot, can you or did you that night determine who was who insofar as Wade and Dickerson were concerned?

A. Yes, sir.

Q. Can you tell the jury the positions of these 2 men? The position that they occupied in the car? Where they were at the time you first found them?

A. Yes, sir. Mr. Dickerson whom I identified—. How I separated the 2 at the time was by their injuries, not who I knew and didn't know. It was by the injuries they received; that's the way I identified each man.

Q. You say you identified Mr. Dickerson by his injuries. What injuries did you see to him?

A. I'm not a doctor. When I say injuries I don't mean internal injuries; just what I could see. Mr.

page 209 } Dickerson was bleeding profusely around his head and face. Blood was gushing from his face; and also the car—. The right front door of the car was completely gone.

Q. The right front door was gone?

A. It wasn't even anywhere in the vicinity of where the car was when I got there. I don't remember exactly where the door was. Mr. Dickerson was lying balled up so to speak bent over in this manner (bending forward), but his feet were under the dash to the right side of the car on the passenger's side; and his body was hanging out of the door or

TROOPER JOSEPH WELFORD SMOOT, JR.,
the eleventh witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Mr. Smoot, what is your full name, sir?

A. Joseph Welford Smoot, Jr.

Q. What is your age?

A. 26.

Q. And you are with the Virginia State Police Department?

A. Yes, sir.

Q. And how long have you been with the Virginia State Police?

A. It was 5 years this past June.

Q. And where were you stationed in April, 1957?

A. In Augusta County.

Q. How long have you been stationed in Augusta County?

A. It will be 5 years the first of next month; the first of October.

Q. You have been here the entire time of your service?

A. Yes, sir.

page 207 } Q. Where do you live, Mr. Smoot?

A. I live now at Verona.

Q. Verona.

A. Yes, sir.

Q. Were you on duty the night of—?

A. Yes, sir.

Q. April 20, last year, 1957?

A. Yes, sir.

Q. Did you receive a call regarding an accident at or near Fishersville?

A. Yes, with Trooper Collier, and Trooper Collier actually received the call. I was in the car with Trooper Collier.

Q. You were in the car with Trooper Collier and where were you all?

A. In the vicinity of Howard Johnson's on Afton Mountain.

Q. Did you immediately come to Fishersville?

A. Yes, sir, we proceeded straight on to Fishersville.

Q. How long do you estimate the time it took you to get to Fishersville?

A. I will say within 10 minutes. We were there within 10 minutes.

Q. You were there within 10 minutes.

Trooper Joseph Welford Smoot, Jr.

Q. Did you hear either one of them do any
page 211 } talking, asking any questions, or any speech come
from either one of them?

A. No, sir. I don't believe I heard them say anything at all.

Q. You didn't hear them say anything at all.

A. No, sir.

Q. No one was trying to talk to them then?

A. I don't recall that they were. There was a good many around but I don't recall that they were.

Q. Were you still there, Mr. Smoot, when both of the men were removed from the automobile?

A. Yes, sir.

Q. You were there when the ambulance took one and the first aid the other?

A. Yes, sir.

Q. I wanted to ask you one question about this (producing one of photographs previously introduced in evidence). In this picture, Exhibit No. 2, you say the seat was forward on the left side and to the rear and backwards so to speak on the right side of the car.

A. Yes, sir.

Q. Does that picture indicate—(handing Exhibit 2 to witness)?

A. (Examining Exhibit 2) It indicates on the left side, which would be the driver's side, that the seat was forward. It doesn't show too much where it was pushed back on the other side, but the way the picture was taken you can't see it too much.

Q. I hand you Defendant's Exhibit C and ask
page 212 } if that shows the seat of that car from the oppo-
site side (handing Exhibit C to witness).

A. (Examining Exhibit C) Yes, sir.

Q. Does that show the seat back on that side and forward on the left side?

A. Possibly so but from the way this picture faces it doesn't show the bottom of the car to tell exactly where the door post would have been normally. It's kind of hard to see in this picture here.

Q. Now in the one statement you made about Mr. Dickerson's head being to some extent out of the automobile, I hand you Commonwealth's Exhibit No. 11. Does that picture disclose or do you recognize that picture as showing the right-hand side of that car at the time you arrived there (handing Exhibit 11 to witness)?

A. (Examining Exhibit 11) Yes. sir. This shows the blood

where the door would be with his head—. I'd say his head was probably 6 or 8 inches outside of the car. There was somebody—at the time I don't recall who it was—holding his head; holding it up to keep it from dangling down. The seat was forced back from the front of the car, which made more room in the floorboard so to speak in front of the seat.

Q. Which side of the car was that?

A. On the right-hand side of the car. If you were sitting in the driver's seat, it would be the right-hand side of the car.

Q. Yes, sir.

A. Mr. Wade was to the left of Mr. Dickerson in that his feet and legs were in the vicinity of the brake pedal on the driver's side and his hips were up on the seat; and he was slumped over to the right with his head partially against the lower part of the dash and just about the floor-
page 210 } board in the center of the car, and I believe that's about as well as I can describe it verbally.

Q. Which one of these men was closest to the steering wheel?

A. Mr. Wade was the gentleman closest to the steering wheel. His feet and legs were under the steering column and down towards the brake pedal, and he was slumped forward and to the right at the same time.

Q. Forward and to the right?

A. Yes, sir. I might add that in identifying—. As I said before, I identified them as to their injuries. Mr. Wade didn't seem to be bleeding to any extent at all. In fact, I didn't notice any blood on him.

Q. You don't recall seeing any blood on Mr. Wade?

A. No, sir.

Q. Mr. Dickerson was bleeding profusely you say?

A. Yes, sir. That's the way I identified them; one was bleeding profusely and the other one didn't seem to be bleeding.

Q. Mr. Smoot, did either one of these men move while you were there at the car?

A. Yes, sir. Mr. Wade wasn't moving his whole body but he was turning his head from side to side—not to any great extent but he was moving his head.

Q. He was moving his head.

A. Yes, sir.

Q. You observed that?

A. Yes, sir.

car, and at that time he didn't say anything. He just pointed to himself—took his finger and pointed to himself that would indicate that he was driving.

Q. All right. Now was there any further conversation about that particular thing? About who was driving the car?

A. Yes. Trooper Collier later asked him again about who was driving the car; and that time he did talk and he said that he was driving the car.

Q. Did Trooper Collier tell him why he was asking who was driving the car?

A. Yes, sir. He told him he was going to have to charge him with driving under the influence and he wanted to know who was driving the car.

Q. And he told him he was driving the car?

A. He said, "I was driving the car." I don't know whether that was his exact words or not.

Q. You don't know whether that was his exact words or not.

A. I don't recall the exact words he used but he said he was.

Q. And that was in direct response to a question the Trooper asked him as to who was driving the car.

A. Yes, sir.

Q. Did you hear any conversation, Mr. Smoot, page 215 } about a blood test being made?

A. Yes, sir. I was present when Trooper Collier asked him about the blood test.

Q. Do you recall what the Trooper said to him about his blood test?

A. I believe he asked him if he wanted a blood test—that he was going to be charged with driving under the influence. And he asked him if he desired a blood test. I don't remember the exact words he used but it was something to that effect.

Q. And what was his response? Well, what did he do after the Trooper explained that to him?

A. Mrs. Wade was in the room at the time and Mr. Wade said, "Whatever my wife wants me to do." I don't remember if they were the exact words he used but to that effect. "Whatever my wife says," or "Whatever she wants me to do." She was present and heard him say it. She immediately said, "Yes, go ahead and take it." And he told Trooper Collier, "Yes, I want to take it. I will take the blood test." The conversation was between Mr. Wade and his wife—between them. Trooper Collier or myself neither one was talking between them; it was back and forth between them.

Q. You did not personally join in this conversation.

A. No. After Trooper Collier tried to find out if he wanted

down here on the ground where his head was over and out of the side of the car and bleeding down on the ground. It also shows the seat that I was speaking of where it is back on the passenger's side. You can see the framework where the seat was hooked on where it is pushed back.

Q. Where a person would be sitting in the right-hand side. and not the driver's side.

A. Yes, sir.

Q. Now, Mr. Smoot, did you subsequently go to the hospital in Waynesboro?

A. Yes, sir. Yes, sir.

page 213 } Q. Did you go there in your own car or with Trooper Collier?

A. I went with Trooper Collier.

Q. After the wreck had been cleared up?

A. Yes, sir.

Q. Do you have any independent recollection or memorandum of what time you all got to the hospital?

A. I don't have anything written down. It would be just from memory and I'd say approximately 12.30.

Q. Approximately 12.30.

A. Approximately 12.30. It may have been 5 minutes one way or the other; I don't think it would be too far from 12.30.

Q. Mr. Smoot were you in the room where Dr. Ryder was working on Mr. Dickerson?

A. I passed through that room going to the room in which Mr. Wade was in. I didn't stay in that room. No, sir.

Q. You did go to the room Mr. Wade was in?

A. Yes, sir.

Q. Were you in that room when Mr. Collier was in the room with Mr. Wade?

A. Yes, sir.

Q. Who else was in that room at that time if you remember?

A. Mrs. Wade was in the room.

Q. Mrs. Wade?

A. She wasn't in the room I don't believe when I first went in but I believe she came in just a minute or two later. It is possible she could have been in there when I went in but I don't think she was.

page 214 } Q. Did you hear any conversation between Trooper Collier and Mr. Wade regarding the driver of the automobile?

A. Yes, sir.

Q. What did you hear?

A. Trooper Collier asked Mr. Wade who was driving the

Trooper Joseph Welford Smoot, Jr.

Q. Did you see him there?
A. Yes, sir, he was there.
Q. Do you know Mr. Dundore?
A. Yes, sir.
Q. Did you see him there?
A. Yes, sir. I saw him there. I spoke to him.
Q. You recognize this, I believe you said, as a picture of the car (handing Exhibit 11 to witness).
A. (Examining Exhibit 11) Yes, sir, that is a picture taken of the car at the time of the accident.
Q. You were not over on the lot at Freed's when Mr. Alwood took pictures?
page 218 } A. No, sir.
Q. Mr. Smoot, when you arrived at the scene of this accident and went to the Buick automobile, was the door open or shut on the left-hand side?
A. They were closed. They may not have been latched but they were not standing open.
Q. On which side?
A. The left side or driver's side.
Q. The left side or driver's side.
A. They may have been cracked; the latch may not have been completely latched but they were not standing open.
Q. They were not open like that when you arrived there (referring to Defendant's Exhibit B)?
A. No, sir, they were not.
Q. Do you recognize that as being the house and the position the car was in when you arrived there (handing Exhibit B to witness)?
A. (Examining Exhibit B) Yes, sir, that's the house and car.
Q. And that picture shows a different view of the car against this house. Is that the position you found it in (handing Exhibit 12 to witness)?
A. (Examining Exhibit 12) Yes, sir. That's the same position it was in at the time I was there.
Q. And this is a picture of the bus. Do you recall that position of the bus when you were there (handing Exhibit 10 to witness)?
A. (Examining Exhibit 10) Yes, sir. That's
page 219 } the same position the bus was in when I was there.
Q. You were not present—you testified to that —when the pictures were made over at the Freed lot.
A. No, I wasn't there.

the blood test, Mr. Wade said, "Whatever my wife thinks I should do." We didn't ask his wife. She immediately said, "Yes, I think you should take it." He told Trooper

page 216 } Collier he would take it.

Q. Did you hear a conversation between Dr. Ryder and the defendant, Wade?

A. Yes, sir, Dr. Ryder asked him if he wanted him to draw the blood for the blood test. Mr. Wade indicated he did. I don't recall whether he motioned his head or actually spoke, but he indicated he did want him to take it.

Q. Did Dr. Ryder take the blood?

A. Yes, sir, he drew the blood.

Q. Were you present at that time?

A. Yes, sir.

Q. When the blood was taken from his arm?

A. Yes, sir.

Q. What happened to the blood when it was taken insofar as your recollection?

A. It was put in the usual tube that is used for a blood test. Trooper Collier sealed it up in the presence of the doctor and Mr. Wade both.

Q. And it was taken in your presence by the doctor and sealed by Mr. Collier in your presence?

A. Yes, sir.

Q. Can you tell the Court approximately at what time that blood was taken, Mr. Smoot?

A. Well, I would estimate it was a few minutes after 1. I'd say between 1.00 and maybe 1.15; not later than 1.15 I don't believe.

Q. Between 1.00 and 1.15.

page 217 } A. I'd say somewhere between 1.00 and 1.15.

Q. Did you and Mr. Collier stay at the hospital any longer or leave after that?

A. We were there a short time after that.

Q. You were there a short time after that.

A. Not any great length of time I don't believe.

Q. Were you present, Mr. Smoot, when any of these pictures were taken of the automobile or the roadway up there?

A. I couuldn't say that they were these pictures here but pictures were being taken while I was at the scene. I know that pictures were being taken because I saw the flash bulbs going off, but I wasn't watching to see who was taking them.

Q. Do you know Mr. Alwood?

A. Yes, sir.

and according to the Troopers who were in attendance at the hospital, he knew and realized what he was doing. We have the admission of him of the operator of the automobile. We have the direct testimony as to his condition at the time he was driving the automobile, coupled with the physical facts of where the automobile went after striking the bus and the damage to the bus and the damage to the automobile to show the force and manner in which he was operating it. Nothing can be assumed that he wasn't the operator of the automobile at the time. Nothing can be assumed that he was in his right mind and able to operate an automo-
page 240 } bile or if he saw the bus. If he didn't see it, he should have seen it before striking the bus. Possibly he couldn't see it until he applied his brakes, but he certainly shouldn't have been operating an automobile in the manner in which that automobile was operated to cause the damage and death that has been caused here; and we submit that the Commonwealth has made out a case to show that he was showing total disregard for human life and property and that he was the operator of the automobile.

The Court: Gentlemen, this would seem to me to be a jury question and I will overrule the motion.

Mr. Timberlake: We except to the Court's ruling.

In Courtroom:

Evidence presented on behalf of the defendant.

PHILLIP L. PLEASANTS,
the first witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Franklin:

Q. Would you please state your name?
page 241 } A. Phillip L. Pleasants.
Q. Where do you live, Mr. Pleasants?

A. 1839 Mt. Vernon Street, Waynesboro.

Q. Where do you work, Mr. Pleasants?

A. DuPont.

Q. Mr. Pleasants, on April 20, 1957, did you have occasion to pass where there was an accident occurred out near Fishersville?

A. Yes, sir.

Phillip L. Pleasants.

Q. What were you doing?

A. I was returning home from Staunton from visiting a friend.

Q. Visiting a friend. And you were driving east on 250?

A. Yes, sir.

Q. What did you first see when you came up on this place where this accident occurred?

A. I saw the bus parked on the side of the road, and I was paying particular attention to the bus, watching to see what it was going to do—whether it was going to pull out or somebody would pull out around it. I noticed someone getting off the bus. I couldn't identify the person getting off. I do know someone was getting off the bus. Then I became aware of something in the road—an object—and I swerved around it and made the statement to my wife—.

Q. You can't tell what you said to her.

A. I beg your pardon.

Q. What did you do, Mr. Pleasants, from that page 242 } point on?

A. Well, that's a little bit in the statement what I told my wife. I didn't realize the car had hit the bus. I just knew I missed an object and I didn't know actually what the object was, and my wife informed me that a car had hit the house on the other side of the road; so I immediately swerved around at the filling station—Simmons' station located about 100 or 200 yards on up the road—and came back and parked in the driveway of my wife's sister who lives just a couple houses above where the accident occurred and ran down to the scene of the accident and the house where the car was.

Q. What did you find there?

A. Well, it was—. Of course, the car hit the house and there were—. I do not remember the number. There were several people there at the time I arrived.

Q. Did you look in the car and did you see how the 2 men in the car—? Their positions in the car?

A. Yes, sir.

Q. Would you describe those to the jury, please?

A. I remember Mr. Dickerson laying down with his head laying out on the door out on the running board more or less, I guess you would say, with his head hanging down and his face more or less facing toward the front of the car; and I remember Mr. Wade laying also down in the floor with his head over on the right-hand side—the lady's side; and he

lier simply to the effect of who was driving that Mr. Wade pointed to himself. We do not feel that that evidence taken together amounts to the necessary proof as to operation. As far as the happening of the accident is concerned, the facts show that this passenger bus was in the act of stopping and unloading a passenger or passengers on or partly on the traveled portion of the highway in violation of the statutory prohibitions for such operation and that the Wade automobile, which proceeding in its right-hand lane, collided with the left rear corner of this bus after traveling a distance of approximately 80 feet apparently with its brakes applied and thereafter went out of control across the road in the Glenn residence. In a recent decision of the Court of Appeals in a civil case under the style of *Barnes* v. *Barnes* either 199 Va. or 200 Va., the Court held that such evidence of physical facts alone was insufficient to sustain the allegation of gross negligence in a civil case where the degree of proof is, of course, lower than in a criminal case and ruled that the trial court acted properly in striking the evidence. In the Barnes case the automobile went out of control for some considerable distance, struck an embankment, and killed a passenger in the car; and it was on the showing of the physical facts, which were in many respects similar if not identical with the physical facts in this case, that the Court held that that was not sufficient to establish gross negligence. That's all page 237 } we have.

Mr. Taylor: First, Your Honor, I remember the case Mr. Timberlake is talking about and it is not like this case as I remember it; but regardless of that, the case referred to the physical facts in the operation of the automobile and nothing else. In this case it is different in many respects. To start this accident in the course of becoming an accident, the testimony is up to this point that this bus was proceeding slowly in the act of stopping with the signal lights working. The bus driver testified, as I recollect his testimony, that he was trying to get into this dead-end driveway where he stopped to discharge passengers, and he would have gotten in there if he had not been hit in the rear; and he went up the road and the pictures disclose that this bus was at least 2/3 off the hard surface of the road, which is plenty safe for anybody to pass without going over the center lane which is shown in the pictures. The signals were being given. Now the evidence in this case, and the only evidence that the jury has to this point, is that this man, while carrying a blood alcohol of .15 actually when the blood was taken and approximately .19 at the time of the accident—because the testimony in this case is that the blood alcohol content de-

creases at the rate of .02 per hour and at the outside the taking of the blood was between 1:00 and 1:15 according to the Troopers' testimony, and the accident accord-
page 238 } ing to all the evidence that we have happened at about 11:30 which, of course, would elevate the blood content in his body to approximately .19—which would certainly show that he was passed the border line in the operation of this automobile, coupled with this man under the wheel of this automobile; and when I say under the wheel I mean to point out to the Court in a minute that he drove that bus and skidded those tires some 80 feet before striking the bus. The pictures of the bus disclose the force of the wreck to the bus, the skid marks before he hit the bus after his brakes were applied, and then he went possibly out of control some 149 feet and he was stopped by ramming into the corner of this house. The evidence that the jury has at this time further shows by I think 6 disinterested witnesses that he was under the wheel or on the driver's side of that automobile. Mrs. Clemmer testified as to his position in the car—that he was on that side of the car leaning up against the steering wheel. There is evidence in the case that the steering wheel was bent. There is evidence in the case that he had 2 broken ribs and a broken jaw and that the other man had the whole side of his head—the right side of his head—and the right side of his cheek practically torn away in a pulp. The physical facts would certainly show that he was on the right side of that automobile when it hit the bus and was thrown into that corner where the greatest lick passed, and if Wade had been on that side of the automobile he probably wouldn't have been here to-
page 239 } day. Mrs. Clemmer testified to that. Mr. Wright, the police officer who was over there almost immediately, Mr. Buchanan, Mr. Collier, and Mr. Smoot and the Doctor testified as to the injuries of the 2 occupants of the car, and the position of the Commonwealth is—and coupled with all of that that this defendant was never unconscious or out of his head at any time from the time of the accident up to and including the time that he left the hospital. And I submit that when he was approached by the officer who did not see the wreck and he asked him the question as to the driver of the automobile, he first pointed to himself and which was observed by several witnesses; and at a later—a few minutes afterwards he was asked the question and told he was going to be charged with driving the automobile and that his companion was in bad shape and he said, "I was driving it"; and he at that time, according to the Doctor

ever since he came from our home and his home and went to work at DuPont.

Q. Do you know how long he had been an employee of DuPont

A. 11 years.

Q. 11 years?

A. I think that's right; I'm sure it is.

Q. What is his age?

A. 31.

Q. 31?

A. That's right.

Mr. Timberlake: No questions.

No further questions.

Witness leaves the stand.

page 235 } Mr. Taylor: We rest, Your Honor.

In Chambers:

Mr. Timberlake: Your Honor, we move The Court to strike the Commonwealth's evidence and dismiss the indictment in this case on the grounds that the Commonwealth has not established by the degree of proof required in a criminal case—that is beyond all reasonable doubt—either of the 2 following propositions: First, that the accused, Wallace Wade, was operating the automobile involved in this accident at the time of said accident; and, second, that the accident was caused by the willful and wanton negligence of the operator of the passenger car involved in the collision with the bus. That is the motion. I don't feel that there is any use to elaborate on it, Your Honor. The Court has heard the evidence. The Court knows as far as the operation is concerned the Commonwealth's proof of that operation consists of proof of ownership of the automobile by the defendant; proof that after the collision, which according to the evidence, pictures, and exhibits demolished the automobile, that the 2 passengers, Dickerson and Wade, were found in the front seat with Wade nearer the driver's side of the automobile than Dickerson; and the further fact that while Mr. Wade was in the hospital receiving emergency treatment for injuries that necessitated his hospitalization for a period of 2 weeks or more, that in response to a question asked by Trooper Col-

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Mr. Taylor: Our man is dead and we can't show who he is. I mean that's your position.

page 233 } The Court: Gentlemen, I will consider this matter during the lunch hour.

(At this point a recess was taken for lunch.)

September 24, 1958 2.00 P. M.

In Chambers:

The Court: Gentlemen it is the view of the Court that Mr. Taylor can proceed with the line of questioning with Mr. Dickerson and I so rule.

Mr. Timberlake: We except to The Court's ruling for the reason stated.

In Courtroom:

EMMETT WALTER DICKERSON,
upon returning to the stand, continued to testify as follows:

DIRECT EXAMINATION (Continued).

By Mr. Taylor: (To court reporter)
Would you read the last question I asked Mr. Dickerson?
Court Reporter: (Reading)
Q. And what family did Mr. Dickerson have?
A. He has his wife and—.

page 234 } By Mr. Taylor:
Q. All right, Mr. Dickerson. Did you hear Mrs. Byrd?
A. No, I can't hear quite good.
Q. What did Mr. Fred Dickerson's family consist of? The members?
A. It consists of his wife and his children, of course; and then there is a daughter which is 11 and a little boy 7.
Q. A daughter 11 and a little boy 7?
A. That's right.
Q. And his wife?
A. Yes, sir.
Q. And where did Mr. Dickerson live?
A. I think—. Well, I'm sure of it. He lived at Fishersville

voluntary or involuntary manslaughter. Now the question that was propounded to this witness—.And of course, I neglected to say that Fred Dickerson lost his life in that accident which, of course, has been fully established and proved. Now the only purpose and object of the question that was propounded to this witness is to inflame the jury and arouse the sympathy of the jury for the deceased man. It couldn't be otherwise. What relevancy to the issues in this case has the question of whether or not Fred Dickerson was unmarried, married, or the father of children? It has nothing to do with the issues and has no bearing on this case whatever, and the only conceivable purpose for it would be to inflame the jury and arouse its hostility toward the defendant and its sympathy for Mr. Dickerson or Mr. Dickerson's family; and for that reason I say not only is the question irrelevant and immaterial to any conceivable issue in this case, but it couldn't have any purpose and objective except to arouse hostility on the one hand towards the defendant or sympathy on the other hand in favor of the family of the deceased; and page 230 } we submit that it is improper and would be a matter of serious prejudice to the defendant.

Mr. Taylor: If Your Honor please, the only reason for the testimony of this witness has to do with the situation of Mr. Dickerson at the time that he was killed at the hands, we contend, of the defendant. The defendant in his opening statement said that he wasn't the driver of the automobile. The defendant went further—. That is not evidence in court—the opening statement I mean—in the record; but the defendant went further than that and said that this man—these 2 men—were very close friends. Of course, they have not put on their evidence. They may have been very close friends; but I know from experience, I know from the handling of cases by the defendant's attorneys that that is what is going to happen when they do put on their evidence and that Mr. Wade is a family man. He has been employed possibly at the same company as Mr. Dickerson was employed; and to arouse, as my friend Mr. Timberlake says, sympathy for the defendant, they are going to show that he wouldn't by any means hurt or cause to be hurt his best friend; and as the record stands at the present time, Mr. Wade was just an individual. I mean Mr. Dickerson was an individual that was killed; and if the doors are closed to show who Mr. Dickerson was, then Mr. Timberlake and Franklin can build up Mr. Wade to the sky, and still some man by the name of Dickerson was killed, not as a re- page 231 } sult of his wrongdoings at all, but because he was a good friend of his. It is not my purpose to in-

flame the jury. It is the purpose to have the jury know the facts and circumstances all the way through the case from start to finish. I am not trying to inflame the jury; I am not trying to gather sympathy; but the fact is that this man is a married man—was a married man—and had 2 children. That is before the jury in the opening statement and it is also before the jury that they were friends as put into the jury's mind by the defendant. Now the time comes I think that we can show and rightly show that Mr. Dickerson was a married man. He was the father of 2 children and he was an employee of the DuPont Company for some 11 or 12 years. What that would have to do with the operation of his automobile would be nothing, but it would put the facts before the jury by the same token that the defendant will put those facts before the jury; and I feel that if The Court would not allow it to be explained to the jury who Mr. Dickerson was, that the Court should not allow the defense to explain to the jury who Mr. Wade is other than an individual.

Mr. Timberlake: Your Honor, I think we stated our position. Of course, if we follow Mr. Taylor's reasoning—. He says in one breath that he recognizes that the evidence that he is seeking to introduce has no bearing or connection with the manner of the operation of this automobile or page 232 } who was the driver and by that very concession puts it outside of the issues of the case; and any issue outside of the case I think is irrelevant and immaterial, and I think this particular evidence would only serve the purpose as I stated. It is perfectly true that any witness who takes the stand—I don't care whether it is the accused or some other witness—can identify himself by stating who he is, who he works for, where he lives, and I take it he can state that he is married. I am perfectly willing not to have Mr. Wade state that, but I think when his wife testifies it will be self-evident that he is. We don't expect to go any further than that. We expect to have Mrs. Wade testify and she will have to testify that she is Mr. Wade's wife. We don't intend to ask Mr. Wade if he is married or anything other than who he is and where he lives just as any Commonwealth's witness taking the stand —Mr. Wright, Mr. Buchanan; but I don't think that opens the door to other evidence that is utterly irrelevant and immaterial to the issues and couldn't have any purpose except to raise the sympathy of the jury.

The Court: What family does Mr. Wade have?

Mr. Timberlake: His wife.

Court. That's all.

page 226 } Mr. Timberlake: I can't vouch that it is.

Mr. Taylor: I just don't know, Wayt.

The Court: All right, Mr. Taylor. I will let you go ahead with your question.

By Mr. Taylor:

Q. Did you notice Mr. Wade bleeding at the scene of the accident when you got there?

A. I didn't see any blood on him.

Q. You didn't see any blood on him.

A. No, sir.

Q. Did you notice any blood on him or him bleeding while you were at the hospital?

A. No, sir.

CROSS EXAMINATION.

By Mr. Timberlake:

Q. Mr. Collier, did you see this Mr. Wright, the gentleman who is now a member of the Waynesboro Police Force, there at the scene of the accident?

A. I could have seen him. I didn't recognize him.

Q. Did you see him or anyone else wiping the blood from the forehead and face of Mr. Wade?

A. No, sir.

Q. You don't know of your own knowledge whether that took place or not?

page 227 } A. No, sir.

No further questions.

Witness leaves the stand.

EMMETT WALTER DICKERSON,

the twelfth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Mr. Dickerson, what is your full name?

A. Emmett Walter.

Q. What is your age?

A. How's that?

Emmett Walter Dickerson.

Q. Your age and occupation.
A. I'm 59 years old this coming November 12.
Q. And where do you live, sir?
A. Fishersville.
Q. And what is your business?
A. Well, my wife operates a motor court and I together, and I buy and sell cattle and haul cattle.
Q. Were you related to Fred Dickerson who was killed in this accident?
A. I sure am. He is my brother's boy.
Q. He is your brother's boy. He was your nephew.
A. That's right.
Q. And what family did Mr. Dickerson have?
A. He has his wife and—.

page 228 } Mr. Timberlake: Your Honor. I object to that on the grounds that it is not material or relevant to this case.

The Court: What is the relevancy, Mr. Taylor?

Mr. Taylor: If Your Honor please, I think the jury has a right to know the family of the deceased—what the family consists of. By the same token, when Mr. Wade takes the stand he is certainly going to testify as to what family he has, what this man did, etc. I do not believe it could be taken by the Court that the defendant could not show what family he has.

Mr. Timberlake: Every witness that takes the stand can testify as to his family.

Mr. Taylor: That's all I'm asking this witness; whatever family this deceased man had.

Mr. Timberlake: Your Honor, we would like to be heard in chambers.

The Court: All right, gentlemen, I will hear you in chambers; and we will adjourn insofar as the jury is concerned and I will ask the jury to come back at 2 o'clock.

(At this point the jury is excused for the luncheon recess. The Court and counsel retire to chambers.)

page 229 } In Chambers:

Mr. Timberlake: Your Honor, the issues in this case are whether or not the defendant, Mr. Wade, was driving his automobile at the time and place of this accident in a gross and wantonly negligent manner, such negligence, of course, having to be of the degree that would support a conviction of either

Trooper Joseph Welford Smoot, Jr.

A. I think his feet were still. He could move his hands. At the time we were talking to him and all. he was moving his hands and was doing so.

Q. There wasn't anything wrong with his hands?

A. There didn't appear to be. He could move them all right.

Q. How about his jaw? Was he moving his lower jaw any?

A. Not to any extent.

Q. It was broken and he couldn't do anything.

A. I later found out it was broken. I am no doctor as I say, but I later found out it was broken.

Q. You found out it was broken in about 5 places. Did you find that out?

A. Yes, sir.

Q. You say he was on the stretcher when you arrived?

A. Table or stretcher.

page 223 } Q. He wasn't in the hall?

No. They seem to have 2 little rooms.

Q. Where was Dr. Ryder when you arrived?

A. I belive in the room with Mr. Dickerson. At the time I went through that room he was in there working on him at that time.

Q. And Mr. Wade. You say he semed to be in great pain but he wasn't moaning?

A. His face would wince or something, but I mean he wasn't moaning and groaning where you couldn't hear other people talking if that's what you mean. He may have taken a deep breath or sighed several times but he wasn't moaning or groaning.

Q. But his face would wince now and then and that's the way you determined he was in great pain.

A. Well, in pain. How great it is I couldn't tell.

Q. Did you see Mr. Wright wiping any blood from Mr. Wade's face or hands out at the scene?

A. No, sir.

Q. Did you see anybody administering any aid to Mr. Wade there at the scene?

A. I don't recall seeing anyone.

Q. No one. I believe you stated that there wasn't any blood on Mr. Wade. Is that right?

A. I didn't see any.

Q. You didn't see any?

A. No, sir.

page 224 } Q. And you looked at him, didn't you?

A. Yes, sir, I looked at him.

Q. And you didn't see any blood on him?

A. I don't recall seeing any. No, sir.

Trooper H. H. Collier.

RE-DIRECT EXAMINATION.

By Mr. Taylor:

Q. As I understood your testimony, you didn't get there until approximately 10 minutes after the accident. It took you about 10 minutes to get there.

A. It took us about 10 minutes to get there and it possibly took about 5 minutes to get the call to us, so that would make it about 15 minutes after the accident happened.

Q. You don't know what transpired between the time the accident happened and the time you arrived there?

A. No, sir, I don't.

No further questions.

Witness leaves the stand.

* * * * *

page 225 } TROOPER H. H. COLLIER,

upon being recalled to the stand, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Mr. Collier, I think I asked you and we got on some other subject. But did you testify as to what time this blood was taken in Waynesboro by Dr. Ryder or approximately what time as well as you remember?

A. I don't know if I testified to it or not. I'd say it would be between 1 and a quarter past.

Q. Somewhere between 1.00 and 1.15?

A. Yes, sir.

Q. And I believe you testified that the defendant here wasn't bleeding in the hospital.

Mr. Timberlake: I object to that, Your Honor. That's been covered. I don't think it is proper for the Commonwealth's Attorney to bring a witness back just for the purpose of reviewing or repeating evidence that has already been introduced.

Mr. Taylor: Will you concede that that evidence is before The Court?

Mr. Timberlake: It is my recollection.

Mr. Taylor: I just wanted to be sure that it is before The

the middle of the car. His head was not laying on that but just up from that.

Q. Under the dash?

A. No, it wasn't under it. As I remember, his head was resting against the dash in the center of the car.

Q. Laying against it?

page 221 } A. Yes, sir.

Q. Was it on the right post?

A. The right post?

Q. The right post where the door hooks.

A. No, this was in the center of the dash.

Q. In the center of the dash?

A. Directly above the hump in the middle of the car. Just his head; not his whole body.

Q. How was he moving his head if it was laying up against the dash? How was he moving it?

A. He was rolling his head from side to side.

Q. He was rolling his head on the dash from side to side?

Mr. Taylor: He didn't say he was rolling it on the dash.

Witness: A. His head was against the dash.

Mr. Franklin: So he was rolling his head backwards and forwards on the dash. If his head was on the dash and he was rolling it, he's bound to have been rolling it on the dash, wasn't he?

Mr. Taylor: All right.

By Mr. Franklin:

Q. Was Mr. Wade moaning or making any noise whatsoever?

A. I didn't hear any.

Q. You didn't hear any.

A. No, sir.

page 222 } Q. Now when you were in the hospital wasn't he moaning and making a noise and complaining?

A. No.

Q. He wasn't moaning?

A. No.

Q. Did he appear to be in great pain?

A. Yes, he was in pain but he didn't seem to be moaning and groaning to any extent.

Q. He was laying perfectly still when you arrived at the hospital?

A. Well, he wasn't up moving around. I'll put it that way.

Q. Well, was he lying still? Was his feet still?

Trooper Joseph Welford Smoot, Jr.

CROSS EXAMINATION.

By Mr. Franklin:

Q. Mr. Smoot, when you arrived on the scene how many people were there?

A. A good many. I didn't count but there were a good many people there.

Q. You think half a dozen?

A. More than that I'd say.

Q. A couple dozen?

A. I'd say at least 25.

Q. At least 25. Did you see Mr. Buchanan there?

A. I don't remember whether I did or not. I don't know Mr. Buchanan. Not knowing him, he could have very easily been there. There were so many people I'm not sure.

Q. You do not know who was holding Mr. Dickerson's head?

A. No, I do not know who that was.

Q. Did you see Mr. Wright there?

A. I don't recall if he was there or not. I didn't know him at the time. I do now.

Q. Did you see Mr. Furr?

A. The bus driver?

Q. Yes.

A. Yes.

page 220 } Q. Where was he?

A. When I first arrived I don't remember whether he was at the car or at the bus.

Q. Did you talk to Mr. Furr?

A. Yes, I did talk to him.

Q. Did you talk to him before you cleared the accident up or was it after the bodies had gone to the hospital?

A. Well, it was probably both; before and after.

Q. You knew Mr. Furr?

A. Just casually. I knew who he was; not a personal friend but I knew who he was. I had seen him and met him on several occasions.

Q. I believe you told Mr. Taylor that Mr. Wade never said anything while you were there. You never heard anything.

A. Not at the time I was where I could hear it. He could have been talking at other times and I wasn't right at the car and didn't hear him.

Q. How close to the right side of the car was Mr. Wade's head?

A. Well, I'd place his head as being almost in the center of the car where that hump in the middle of the floorboard is in

Phillip L. Pleasants.

was laying across Mr. Dickerson's leg or legs—
page 243 } I'm not sure whether it was both legs—but he
was laying kind of across his leg and his back was kind of arched.

Q. His head, as I understand you, was very close to the post where the door would be on the right side of the car. Is that right? Mr. Wade?

A. When you say the post—.

Q. I mean where—. Was it pretty close to where the door hinges on?

A. Yes, sir.

Q. Was his head somewhat under the dashboard?

A. Kind of underneath the dash and kind of hanging back.

Q. Did you remain there at the scene for any length of time?

A. I stayed until the ambulances and State Troopers arrived and then I left.

Q. Then you left?

A. Yes, sir.

Q. Did either of the parties move during that time?

A. Were they moved?

Q. Yes. Did they move or were they moved before—?

A. No, sir.

CROSS EXAMINATION.

By Mr. Taylor:

Q. Mr. Pleasants, you say you were headed east toward Waynesboro?

A. Yes, sir.

Q. And as you went down the road you saw the bus unloading passengers or somebody getting off the
page 244 } bus.

A. Yes, sir, someone was getting off.

Q. And you saw some object in the road.

A. Yes, sir.

Q. Then your attention was called to the fact that there was a car against the house.

A. Yes, sir.

Q. On the other side of the road, on the right-hand side going towards Waynesboro.

A. Yes, sir.

Q. And you went on to the filling station, turned around, and came back.

A. Yes, sir.

Phillip L. Pleasants.

Q. And then got out. Now how many people do you think were over there when you got there, Mr. Pleasants?

A. I couldn't say for sure, sir, but it seems to the best of my recollection around 3 men, and I remember seeing a woman there somewhere near. A lady was standing somewhere near and the only one that I actually believe I could identify—. I remember Mr. George Buchanan I believe because he didn't have a shirt on.

Q. You believe you saw Mr. George Buchanan.

A. Yes, sir.

Q. You say as well as you remember that Mr. Dickerson was lying with his head a little ways out of the automobile on the right-hand side?

A. Yes, sir.

Q. There was no door on that automobile on page 245 } that side, was there?

A. No, sir.

Q. The front door?

A. No, sir.

Q. And was he laying in a crouched position?

A. It was in a twisted position.

Q. It was in a twisted position?

A. Yes, sir.

Q. And as I understood you to say that Wade was partly across Dickerson's body.

A. I remember Wade laying with his back—. His back was arched and I thought it strange it should be arched, and I remember him laying on his leg. I don't know whether it was one leg or 2 legs.

Q. He may have been laying on a leg of Mr. Dickerson?

A. Yes, sir.

Q. Could you see where Mr. Wade's feet were?

A. Yes, sir.

Q. Or did you notice?

A. Yes, sir.

Q. Where were his feet?

A. His feet were extended into the floor over under the wheel section.

Q. Over under the wheel section?

A. Yes, sir.

No further questions.

Witness leaves the stand.

David Guyer.

A. Yes, sir.

Q. Mr. Guyer, were you the first person to the car?

A. I would say yes.

Q. Now will you tell the jury what you found when you got there?

A. When I got to the car I found the 2 men were laying in the front seat and they both appeared to be unconscious.

Q. Did you ascertain who they were?

A. Not until after I had—. The lady in the house where the car ran into turned the porch light on, and then I recognized it was Mr. Wade. I did not know Mr. page 248 } Dickerson.

Q. Would you describe to the jury the position of the bodies in the car when you got there first?

A. Well, Mr. Dickerson was partly—. His body was laying on the seat with his head hanging down about where the running board would be; and Mr. Wade was laying in the floorboard with this part of his back across Mr. Dickerson's legs (indicating center back).

Q. He was laying in the floorboard?

A. Yes, sir.

Q. In which direction was his head? About where was Mr. Wade's head?

A. I'd say it was approximately 2 to 3 feet from Mr. Dickerson's head laying on the same side of the car.

Q. Was it 3 feet to the left or 3 feet to the front?

A. Mr. Wade was in front; towards the front of the automobile.

Q. Towards the front of the automobile?

A. Yes, sir.

Q. Did you stay there, Mr. Guyer, until the Troopers came?

A. Yes, sir.

Q. Were you there all the time?

A. Yes, sir.

Q. Did you stay near the car?

A. Yes, sir.

Q. What did you do?

A. I was trying to make Mr. Wade as comfortable as possible. He was laying in such a strained position. I was holding his shoulders and his head up to get him page 249 } out of the strain he was laying in.

Q. Did you hold Mr. Wade until the first aid came?

A. Yes, sir.

page 246 } DAVID GUYER,

the second witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Franklin:

Q. Would you state your name, please, sir?

A. David Guyer.

Q. How old are you, Mr. Guyer?

A. 38.

Q. Where do you live?

A. Fishersville.

Q. Where do you work?

A. Virginia Electric and Power Company.

Q. Mr. Guyer, did you go to an accident that happened there in Fishersville on April 20, 1957?

A. Yes, sir.

Q. What called your attention to the accident?

A. I heard the brakes scream and the crash.

Q. Where were you at that time?

A. I was in my—. In the dining room of my home.

Q. Did you come right immediately on out?

A. Yes, sir.

Q. What did you find when you first came out of the house?

A. When I first came out of the house, the automobile was moving slowly up the road and it curved off the road into the house.

Q. You saw the automobile moving and curving into the house?

A. Yes, sir. It was just about to where it was page 247 } going to swerve off the highway.

Q. Was the bus stopped at that time?

A. I cannot say; I don't remember.

Q. Where did you immediately go?

A. I went immediately to the car.

Q. Did you see any objects in the road or anything?

A. Yes, sir. There was a door and the hood was in the road.

Q. Did you attempt to move those?

A. Yes, sir, I removed them as I went up the road.

Q. Did any cars pass you while—?

A. Yes, sir. One passed slow before I got the hood out of the road, and then one passed very fast afterwards.

Q. In which direction were they going?

A. They were going east.

Q. East?

David Guyer.

A. Yes, sir.
Q. Both of them.
A. I didn't carry it. I drug it; pulled it.
Q. Both of those articles?
A. Yes, sir.
Q. And no one helped you?
A. No, sir.
Q. And you say you did know Mr. Wade?
A. I recognized him, yes, sir. I had met Mr. Wade once before at a neighbor's house.
Q. And you recognized him there that night?
page 251 } A. Well, later on as I told you after I had been there for quite awhile.
Q. Now as you say—. Let me get your description of these men in the car when you arrived there. Were you the first one there?
A. Yes, sir.
Q. Who was the second one there? Do you know?
A. Sir, I cannot answer that.
Q. How long was it before a lot of people were there?
A. Just a very few minutes.
Q. Just a very few minutes.
A. Yes, sir.
Q. Were these bodies of these 2 men ever moved in the car while you were there?
A. Not until they were moved out on the stretcher.
Q. They never were?
A. No, sir.
Q. And you were there when the Troopers got there?
A. Yes, sir.
Q. Do you know Mrs. Clemmer?
A. Yes, sir.
Q. A nurse down there?
A. Yes, sir.
Q. Were you there when she got there?
A. Yes, sir.
Q. Do you know Mr. Buchanan?
A. I had never met him, no, sir. I have seen
page 252 } him since but I still have never met him personally.
Q. Do you know Mr. Wright?
A. No, sir.
Q. Who was a Waynesboro policeman who lived about 2 houses from this wreck?
A. I knew he lived there but I never met him.

David Guyer.

Q. Did you ever leave?
A. No, sir.
Q. Who took Mr. Dickerson and Mr. Wade out of the car?
A. It was the folks with the ambulance and the first aid wagon I believe.
Q. Did they take them out and lay them on the highway or did they put—?
A. They put them on the stretcher right away.
Q. They put them on the stretcher right away.
A. Yes, sir, they put them on the stretcher.
Q. Did you stay with Mr. Wade when he was on the stretcher?
A. No, sir, when they taken him from the car—.
Q. Then's when you left?
A. That's right.
Q. Is there any other fact you know about it?
A. No, sir.

CROSS EXAMINATION.

By Mr. Taylor:
Q. Mr. Guyer, as I understood your testimony the first thing you knew of it you said you heard the brakes scream and a crash.
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
page 250 } Q. And then when you went out you saw a door and a hood in the roadway.
A. That was when I started up the road to the car. Yes, sir.
Q. Yes, sir. Did you help to move the door or the hood from the road?
A. Yes, sir. I did remove it, sir.
Q. You did help Mr. Furr? Did you see him there?
A. No, sir. Mr. Furr wasn't there at the time.
Q. Do you mean to tell the jury he didn't help you carry the door out of the road?
A. No, sir.
Q. Who carried it out?
A. I did.
Q. By yourself?
A. Yes, sir.
Q. Did you carry the hood out too?

David Guyer.

Q. Were you in the automobile?
A. No, sir. I was standing beside of it.
Q. You were standing beside of it. And he was lying where in the automobile?
A. He was lying in the floorboard across Mr. Dickerson's legs.
Q. Mr. Dickerson was under his legs or he was on top of Mr. Dickerson's legs?
page 254 } A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. Where was his head?
A. His head was almost with the side of the car almost as far out as Mr. Dickerson was.
Q. You mean his head was outside of the automobile?
A. No, sir; about where the running board would be.
Q. And where was his hips?
A. His hips was in the floorboard.
Q. His hips was in the floorboard?
A. Yes, sir.
Q. Was the seat bent back or forward?
A. I do not know, sir.
Q. Couldn't you tell whether the seat was in an angle or not in an angle?
A. I may have if I had noticed but I didn't notice it.
Q. You didn't notice it?
A. No, sir.
Q. Who was closest to the steering wheel?
A. Well, I hardly know how to answer that. One was laying partially on the seat and the other was laying down in the floorboard.
Q. And where were Mr. Wade's feet?
A. They were over under the steering wheel over on the other side.
Q. They were over under the steering wheel?
A. Yes, sir.
page 255 } Q. Could you tell where Mr. Dickerson's feet were?
A. His feet were just inside of the car on the right-hand side.
Q. On the right-hand side just inside of the car?
A. Yes, sir.
Q. He was laying in a hump?
A. Sort of a curled-up position.
Q. Sort of a curled-up position?
A. Yes, sir.

David Guyer.

Q. Did you see him there?
A. They said that was him; I guess it must have been him.
Q. Did you see him administer some kind of treatment to Mr. Wade?
A. No, sir.
Q. You didn't see him?
A. No, sir, not to Mr. Wade.
Q. Not to Mr. Wade. Did you see him do anything to Mr. Dickerson?
A. Yes. He was holding his head or something I believe trying to make him comfortable, and there was blood coming from his mouth.
Q. But you didn't see him doing anything in the way of wiping Mr. Wade's head or face off?
A. No, sir.
Q. You wouldn't say that he didn't do that, would you?
A. Yes, sir. I believe I would say he didn't do that.
Q. You believe you would say that he didn't do that?
A. That's right, sir.
Q. Did you see Mrs. Clemmer do anything to Mr. Wade?
A. No, sir.
page 253 } Q. Would you say that she didn't do anything to him?
A. Yes, sir, I would.
Q. No one did?
A. That's right, sir.
Q. Did you see anybody take any teeth out of his mouth?
A. Yes, sir. There was a fellow taken his teeth out of his mouth.
Q. You did see somebody take his teeth out?
A. Yes, sir, but I didn't recognize the fellow that did it.
Q. Did I understand your testimony that you stood there and held Mr. Wade the entire time he was in that automobile?
A. Yes, sir.
Q. Until the ambulance came?
A. Yes, sir.
Q. And on what side of the automobile were you?
A. The right-hand side.
Q. The right-hand side?
A. Yes, sir.
Q. And was he in the automobile or out?
A. In the automobile.

Wallace Parker Wade.

A. It will be 21 years the 29th of February.

Q. 21 years the 29th of February. Were you employed there during World War II?

A. Yes, sir.

Q. Were you there on the job continually during World War II?

A. I went in the Navy in July, 1943; I returned
page 257 } to work in December, 1945.

Q. Well, except for the interruption of that wartime service in the Navy, you have been at DuPont throughout the past 21 years.

A. That's my service date. They give you the time you were in Service.

Q. You were credited with that time there at the plant. All right, Mr. Wade. Did you know the late Fred Dickerson?

A. Yes, sir.

Q. How long had you known him?

A. Well, I'd say since about '46. His Uncle Emmett ran a beer joint down there and that's the first place I met the boy was there.

Q. That was around 1946?

A. Somewhere around there. Yes, sir.

Q. Did you know him at DuPont prior to that time or you just got to know him?

A. No, sir.

Q. It is in evidence that he also worked at DuPont. Is that correct?

A. Yes, sir.

Q. Over that period from 1946 until April 20 of last year, will you state to the jury whether you and Fred Dickerson got to be close friends?

A. We were.

Q. How close?

A. Well, we were almost—. I thought as
page 258 } much of him as I do my brother because we
hunted together, ran around together, and we were always together a whole lot.

Q. I see. Now, Mr. Wade, will you state to the jury whether or not you worked at the DuPont plant at your regular job on Friday, April 19?

A. Yes, sir.

Q. What time did you get off from work that day?

A. 12 o'clock Friday night.

Q. That would be midnight Friday night?

A. Yes, sir.

Wallace Parker Wade.

RE-DIRECT EXAMINATION.

By Mr. Franklin:

Q. Mr. Guyer, I failed to ask you one question. Was the car motor running when you went over there?

A. Yes, sir.

Q. Was the horn blowing?

A. Yes, sir.

Q. Was the radio on?

A. It was on. Yes, sir.

Q. How was the motor and all that stopped?

A. By some man that came there directly after I got there.

Q. And what did he do?

A. I believe he pulled the wires loose from the horn and cut the radio and engine off.

No further questions.

Witness leaves the stand.

page 256 } WALLACE PARKER WADE, the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Timberlake:

Q. Mr. Wade, please state to the jury—and please talk distinctly so the members of the jury can hear you—your full name.

A. Wallace Parker Wade.

Q. And what is your age?

A. 41.

Q. Mr. Wade, where do you live?

A. Fishersville.

Q. And how long have you lived in Fishersville?

A. Well, right in the village since about 1937.

Q. Did you live in Augusta County prior to that?

A. Yes, sir.

Q. Lived there all your life?

A. Yes, sir.

Q. Where are you employed, Mr. Wade.

A. DuPont.

Q. How long have you been employed there?

Wallace Parker Wade.

A. Yes, sir.

page 260 } Q. How long were you there at Fred Dickerson's house?

A. Oh, it wasn't but just a few minutes.

Q. And when you left Fred Dickerson's house did Fred Dickerson go with you?

A. Yes, sir.

Q. And when you left who was driving the automobile?

A. I was.

Q. What automobile were you driving?

A. My car.

Q. What kind of car was that?

A. '50 Buick 4-door sedan.

Q. That is the car that was involved in this accident?

A. Yes, sir.

Q. After leaving Fishersville with Fred Dickerson, tell the Court and jury where you went, Mr. Wade.

A. Well, you want where we stopped and the whole details?

Q. Yes, just tell everything.

A. Well, we left Fred's house. I believe when I got to Fred's house it was 12:35; approximately that; and we drove—. We got in the car and headed—. He went back and he started to get in the car and he went back and brought out a carton of beer. Then he got in the car and said, "You want a beer?" I said, "Yes, I'll drink one." He opened up 2 beers. We proceeded on up the road west. So we went up on Central Avenue and stopped at the ice plant.

Q. In Staunton?

page 261 } A. Yes, sir. The machine wouldn't work; I couldn't get any ice out of it so I drove down to Blue Ridge Storage. A fellow—. Mr. McCauley is the night watchman there I believe. I asked him if I could get some ice. He said, "Sure." I asked him if he would like to have a beer. He said, yes, he would drink one.

Q. That was that beer that Fred had brought?

A. Yes, sir. So we each—. I had 2 cartons of beer; that's 12 cans; 6 cans to a carton. It's really a trash can but a galvanized can that has a lid on it, and I always take it with me when I go fishing and put ice in it and cool the beer or whatever you want. So we drank 2 beers there at the ice plant.

Q. When you say "we," who do you mean?

A. That's myself and Fred and Mr. McCauley.

Wallace Parker Wade.

Q. Did you have any plans as to what you were going to do after you got off from work at midnight on Friday, April 19?

A. Yes, sir.

Q. What were your plans?

A. I had planned to go fishing on Saturday morning.

Q. Had you formulated a plan as to where you were going?

A. Had I what?

Q. Had you planned where you were going fishing?

A. Yes, sir.

Q. Where?

A. Bull Pasture Gorge.

Q. To what extent, if any, did Fred Dickerson figure in this plan?

A. Well, at approximately 11:30 he called me up at the plant.

Q. 11:30 at night?

page 259 } A. Friday night. Yes, sir. And he told me over the phone—. He said, "I hear you are going fishing tomorrow." I said, "That's right." He said, "I'd like to tag along with you. I'm not going to do any fishing but I'd like to tag along." I said, "I'll be glad to have you." I asked him over the phone how he found out I was going fishing. He said he had talked to Ernest Hartbarger and Ernest said he was going out Saturday morning, and he said he could go out with Ernest but he would rather go out with me. I told him to be ready not later than 12:30—that I was going to leave as soon as I got home because I was ready and had everything ready to go.

Q. Did you go by your home immediately after getting off from work?

A. Yes, sir.

Q. What did you do while you were at home?

A. I went in the house. I have a bag that I put my clothes and fishing gear and things like that in. I put on a pair of khaki pants and a khaki shirt, and I had a suit of clothes and a white shirt and I carried that out to the car and left my home there then.

Q. And where did you go after leaving your home?

A. I went down to Fred Dickerson's house.

Q. Did you go in the house at that time or just blow for him?

A. Yes, sir, I went on in.

Q. And met him there?

Wallace Parker Wade.

to go see Bunk awhile. I said, "All right." Fred asked me to get a couple cartons of beer. I did. I bought 2 cartons of beer. We went up to Bunk's house but Bunk wasn't there. His wife was there. Fred said, "Let's leave old Bunk a drink." I said, "All right." Now how many cans of beer he got I can't—. I think it was 3 or 4; I think it was 4 cans of beer that he left with Bunk's wife to give Bunk. We come on back then and stopped by Glenn Swearinger's house. Glenn wanted to buy this one carton of beer. I said, "No, take it. I don't want any." So we gave Bunk one carton of beer.

Q. What time of day was that?

A. I suppose around 1 o'clock.

Q. In the afternoon?

A. Yes. So we went on up to Hartbarger's camp. I had a license plate for Hartbarger's trailer.

Q. That was a car trailer?

A. Yes, sir.

Q. For hauling cargo?

A. Yes, sir. I went up there and his brothers were up there—a couple of them. We fooled around a little while and talked to them. I put the license plate on the

page 264 } trailer.

Q. Now as I understand, Fred Dickerson was with you all the time.

A. Yes, sir. And we went and come on down then and went up on Bull Pasture Gorge again where I had first been that morning fishing. There's a big sawdust pile and it's real rotten and I wanted some to put on my shrubbery and garden. We went down and threw some sawdust on.

Q. Threw it on what?

A. The trailer.

Q. The trailer attached to your car or Hartbarger's?

A. It was to my car then. We pulled up out of there and parked on the road. Well, in the meantime Ernest, while we were putting on the sawdust, had drove up and gone above the road and gone fishing. We just waited. They stopped there—Ernest did—and asked if that was all the sawdust I was going to haul. I told him that was all I wanted to put on. He said he could haul more than that. I had a '50 Buick and he had a '55, and those dynaflows won't pull too good anyway. He said, "I'll put on some more." I said, "That's up to you." We unhooked the trailer and went down and threw on some more sawdust.

Q. Dickerson was with you all the time?

Wallace Parker Wade.

Q. Now do I understand that you had 2 cartons of beer and Fred had a carton?

A. Yes, sir, but I believe one had been taken out of his. I wouldn't say for sure.

Q. All right.

A. I put the beer I had down in this can—the 2 cartons or whatever was left of it—put it in the can.

Q. With the ice?

A. Yes, sir. And then we drove on out through Churchville and Fred layed over—layed his head down about on my leg here (indicating thigh) and went to sleep. So I drove on to Glenn Swearinger's home. He knew I was page 262 } coming out.

Q. Is that in Highland County?

A. That would be in Bath County and it's over near Millboro Springs. It's on the road that cuts off and goes over to Hot Springs. You can go either way. We got there I'd say in the neighborhood of 3 o'clock; 3:30; somewhere along there. I wouldn't know exactly the time. So Glenn got up and told me to come on in the house. He asked me if I brought anybody with me, and I told him I had Fred Dickerson with me but he was asleep. He said, "Just let him sleep." So we did. Just about daylight why we—Glenn Swearinger and one of his boys—we drove up to Bull Pasture Gorge. That's back up in Highland County approximately a mile and a half north of Williamsville. So I went up to the river there and fished.

Q. Where was Fred all this time?

A. He was along with me. He had woke up by that time. I went up the river and fished a little while and come back and Fred said, "Why didn't you leave the key to the car here?" I said, "I did. It's there in the trunk." The trunk was up with the key in it. I said, "What do you want with the key?" He said, "I'm getting thirsty. I want a beer." I said, "There's plenty of beer in there if you want it. Why don't you look?" He looked in and got out a beer. I went up and fished around another little stream and came back so then we left there and went over to Millboro Springs. There's a restaurant there just a little the other side called the Coffee Pot Grill. We went in there and drank a beer page 263 } and I ate a cheeseburger.

Q. Was Fred with you?

A. Yes, sir, and Glenn Swearinger and his boy. So while we were there, Bunk Porter they call him—I don't know his real name—. So while we were that close Fred wanted

Wallace Parker Wade.

A. Yes, sir. We pulled around there and as well as I remember we drank some of this beer that I had in the trunk in this can. I drank one but I don't remember who all did, but I drank one; and so it was getting just about dark and so Ernest—. I hooked the lights up on the trailer
page 265 } for him and we come on out. Ernest said he would cut through Scottstown Draft. He said that's the way he was going. I had to take the Swearinger boy back.

Q. To Millboro?

A. Back to his home. He had came over with us so we pulled around there at Swearinger's house; and I drank—I don't know—it was 3 or 4 cups of coffee. So we left there somewhere around 8:30. My watch had stopped. I asked the boy what time it was. He said, '25 after 8,'' but we stayed there awhile after that. I asked Fred if he wanted to drive a little. He said, yes, he would drive a little.

Q. At that point, Mr. Wade, will you state whether or not it was a usual practice for Fred Dickerson to drive your car?

A. Yes, sir.

Q. When he was out with you?

A. Yes, sir.

Q. For how long had that practice existed?

A. Well, he did a lot of driving for me because, see, I had lost my driver's license and he did a lot of driving for me.

Q. And so he was accustomed to driving your car from time to time.

A. Yes, sir.

Q. When you left Swearinger's, where did you go?

A. We left Swearinger's and come on up the road. It's about 3 miles to where you cut off see on the Deerfield Road. I forget the route number. Anyway, we come on up there. There's a patch of woods and we stopped there
page 266 } for a few minutes. Fred said, ''How about you driving on this crooked road? You drive part of the way in and if you get sleepy I'll drive then.''

Q. How long had it been since you had had any sleep?

A. I had gotten up Friday morning about 9 o'clock.

Q. And this was Saturday evening about 8:30 or 9.

A. So I drove on in; and when we got off the Deerfield Road and hit 250, there was a car layed right on my bumper for a long ways. After I got on 250 he passed me. Then he slowed up to maybe 30 or 35 miles an hour. It's pretty straight up through there.

Wallace Parker Wade.

Q. Where was that in reference to Hankey Mountain?
A. It's just down Hankey Mountain; the other side.
Q. On the Deerfield side of Hankey Mountain?
A. Yes.
Q. Or the Staunton side?
A. And so when I went to pass this car he speeded up so I just floorboarded mine and went on around him. How fast I had to get up to pass I don't know, but I went on around him. Then I slowed down to 45 or 50 miles an hour—somewhere in the neighborhood of that—and proceeded on. Then down about the rifle range—. Do you know where that is? Buckhorn Tavern?
Q. Yes, sir.
A. I noticed I believe a panel truck and some kind of an automobile and somebody waving a flashlight. I went on down. It looked like the game warden to me.
page 267 } I didn't recognize who it was. I kept on going. I heard this siren and I gave my turn signals and went on down and come to a stop. It was a State Trooper and he checked my driver's license, registration, and checked my lights, checked the brake lights, checked the signal lights, and then he asked me why I didn't stop when he flagged me down. I told him I didn't recognize him—that I didn't stop for everybody on the highway flagging me down. He said, "The next time you see us flagging you down you stop so we don't have to run you down." I said, "All right."
Q. Do you know who that Trooper was?
A. No, sir, I don't. He was a young fellow, rather tall, maybe he would weigh 180 pounds—somewhere in that neighborhood.
Q. All right. Just proceed.
A. We drove on down to White's. That's a restaurant there and they serve beer, etc.
Q. That is on the Staunton side of Buckhorn Tavern?
A. Yes, sir; and we went in there and Ernest Hartbarger and Sam Jordan was there; so we sat down at the table—a round table—and we sat down there and we drank a beer.
Q. When you say we, who do you mean?
A. Fred and I; and so I gave Fred the keys to my car. I said, "This is the last beer you're going to get because you're going to have to drive." "All right." So Ernest and Sam left ahead of us and we stayed around there a little while

Wallace Parker Wade.

Q. Had you passed where you would ordinarily turn off to go to your and Fred's home?

A. Yes, sir.

Q. And you asked Fred what he was doing down there.

A. Yes. He said he was going down to get a cup of coffee or a pack of cigarettes. I said, "O. K." So I went to sleep and that's the last I remember until I come to in the hospital.

Q. You don't know where, from your own knowledge or recollection, where the car went from the time it passed Mr. Hartbarger's driveway—?

A. No, sir.

Q. Until the accident occurred?

A. No, sir.

page 270 } Q. How were you dressed?

A. Sir?

Q. How were you dressed?

A. I had on a red baseball cap, khaki shirt and khaki pants, and brown shoes.

Q. How was Fred dressed?

A. He had on—. When he left he had a sport coat with him and he had on dress trousers and tan shoes and a white shirt, but out there in the mountain he had put on a pair of khaki pants.

Q. When you were on the way back when you were at White's, how was he dressed?

A. He had on a white shirt and khaki pants because we didn't change clothes out there coming back.

Q. When is the first you remember being—? You said the next thing you remembered was in the hosptal. When was that?

A. Well, my wife told me—.

Q. Now don't—.

A. Now you asked me—.

Mr. Taylor: Don't testify to what your wife said.

Witness:

A. I didn't know the time. I lost track of the time and my wife told me it was Saturday.

Mr. Taylor: You can't testify to what some-

page 271 } body told you.

The Court: You can't testify as to what some-

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and got in the car and come on. Fred was driving
page 268 } and he drove on down to The Willows.

Q. You came through Staunton?

A. Yes, sir, and we stopped at The Willows and pulled up beside Ernest Hartbarger. Ernest was sitting there in the car.

Q. The last time you had seen Mr. Hartbarger was out at White's. Is that right?

A. Yes, sir. He said, "They're closed up." I said, "It don't make any difference to me. I'm ready to go home anyway," or something like that. Fred got out and walked over. I talked to Ernest a little bit, walked around the car, and walked up to the door. He was talking to Jake Coffman through the screen door.

Q. That's the man that runs The Willows?

A. Yes, sir. I don't know whether I said anything to Jake or not; I might have; I've forgotten now. I said, "Come on, Dickerson. Let's go." "O. K." Ernest said, "I will see you." I said, "O. K." So Ernest drove out and we drove out behind him.

Q. What side of the car did you get in on?

A. The right.

Q. What side did Fred get in on?

A. The left side.

Q. You say after Mr. Hartbarger left you all left?

A. Yes, sir.

Q. Who was driving?

A. Fred was driving.

page 269 } Q. Now go on from there.

A. We come on down the road and followed Ernest awhile, and Fred said, "Let's go down to the lodge awhile."

Q. What lodge is that?

A. That's the Moose Lodge in Waynesboro. I said, "No, Fred, I'm going home and go to bed because I'm tired and sleepy." "O. K." I was sitting there in the car nodding. He blew the horn and I looked up, and I seen Ernest Hartbarger going up this hill. He was going up this steep driveway to his house. He lives on the right across from where Sheriff Gilkeson used to live.

Q. The right which way?

A. I mean the left going east. I looked up and he was going up this hill. I said, "Fred, what are you doing down here?"

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and there was one pin underneath my nose here, and the doctor said my jaws were broke on both sides; and it was broke here and he said the chin was shattered he didn't know how many—. It was broken 2 places here (indicating right jaw). They had my mouth wired shut so I couldn't move it.

Q. Is there any evidence on the outside of your face now where this wiring was?

A. Yes, sir.

page 273 } Q. Just point that out.

A. Here is the scar there—the hole there—and there is one on this side. This doesn't show as much as this one (indicating scars on both left and right cheeks, the scar on the left cheek being more pronounced).

Q. Any other evidence?

A. I have a cut under this eye (indicating left eye) and another scratch here (indicating right side of face), and I have a few scars up here (indicating forehead).

Q. You testified you had broken ribs. Where was the injury to your ribs centered?

A. Dr. Ryder said I had 8 broken on this side (indicating right side) and 3 torn loose from the back.

Q. Do you know how far around on the side those fractures were?

A. He said on this side (again indicating right side) and 3 of them—I don't know which 3 they were—the way the doctor described it to me which were just torn loose from the backbone or broke short off the backbone. My left leg was paralyzed. He said that came from the back injury. I couldn't move my left leg. I think it was for 4 or 5 days they said that I never moved it. Then I was injured inside the—. Dr. Ryder stated to me after that—I mean after I come to and knew—he said I was injured inside in the lower part of the stomach. My lower organs were paralyzed and that's the reason he had to catheterize me. I stayed that way for a week.

page 274 } Q. Now as I understand from your testimony, Mr. Wade, that the last time you and Fred Dickerson had anything to drink was you each had a beer out at White's.

A. That's right.

Q. That is this side of Buckhorn Tavern. Is that right?

A. Yes, sir.

Q. Did I understand you correctly to say that you didn't have any at The Willows?

A. That's right.

body else told you. Mr. Timberlake asked you the question. If you can answer it, go ahead and answer it.

Mr. Timberlake:

Q. Did you find out from any source what day it was that you recall of being in the hospital?

A. I had no way of knowing without asking somebody as to when I come to.

Q. Were you able, when you realized your surroundings and where you were, were you able through inquiry to find out what day it was?

A. Only by asking somebody what day it was.

Q. What day was it?

A. It was Saturday.

Q. Was it daytime or night?

A. It was daytime.

Q. Was it the same Saturday on which you had gone fishing?

A. I couldn't say because I don't know. I was told it wasn't; that I had been there—that I had already been in the hospital for a week.

Q. Do you recall anything that took place at the scene of the accident that night?

A. No, sir.

Q. Do you recall anything that took place down at the hospital on the night following the accident?

A. No, sir.

page 272 } Q. Do you recall seeing or talking with anyone the following day?

A. No, sir.

Q. And that same situation applied until the day came that you were advised was Saturday?

A. Yes, sir.

Q. Do you have any recollection or piecemeal recollection or otherwise of being in the hospital during that time until the next Saturday?

A. No, sir.

Q. What kind of shape were you in when you realized your surroundings and were advised it was Saturday?

A. Well, I was pretty well banged up.

Q. Well, just tell us to what extent insofar as you knew and you were informed.

A. Well, I had—. My wife told me I had some broken ribs, and my jaws were broke but they had wires in them; and there was a steel pin drove through here indicating cheeks)

Wallace Parker Wade.

Q. Which driveway is almost opposite the former residence of Sheriff Gilkeson in Fishersville.

page 276 } A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And did you go to sleep after that?

A. Yes, sir. I was already nodding anyway before we got there.

Q. You were already nodding?

A. Yes, sir.

Q. And you went to sleep?

A. Yes, sir.

Q. You did not wake up. You don't know where he went, where he turned around, when he came back up that road.

A. No, sir.

Q. And if I understand your testimony correctly, you never saw the bus.

A. No, sir.

Q. You don't remember hitting the bus; you don't remember hitting the house; you don't remember anything.

A. That's right.

Q. And you don't remember anything until a week from that in the hospital at Waynesboro.

A. That's right.

Q. You don't remember talking to your wife, the nurses, or the doctor at the hospital?

A. No, sir.

Q. And you know absolutely nothing about this accident.

A. That's correct.

Q. Is that correct?

page 277 } A. Yes, sir.

Q. And I want to get that clear. That is the last thing you remember is when you saw Mr. Hartbarger pull his car up in his driveway.

A. Yes, sir.

Q. Until a week after that.

A. Approximately that.

Q. You don't know anything about being injured, you don't know anything about hitting the house or being there in the car or being taken out of the car, going to the hospital, or being treated at the hospital for a week.

A. That's right.

Q. That is correct?

A. Yes, sir.

Wallace Parker Wade.

Q. Was there any other alcoholic beverage than this beer that you have described—?
A. No, sir.
Q. Used or consumed by you and Fred or either one of you during this time?
A. No, sir.

CROSS EXAMINATION.

By Mr. Taylor:
Q. Mr. Wade, starting with the last part of your testimony, did I understand you to say that when you finally arrived at White's filling station at Buckhorn Tavern that you drank some beer there?
A. Drank 1 bottle apiece, Fred and I.
Q. One bottle apiece there.
A. Yes, sir.
Q. Approximately what time was that?
A. That was in the neighborhood of 10 o'clock I'd say when we arrived there.
page 275 } Q. In the neighborhood of 10 o'clock?
A. Yes, sir.
Q. And you and Fred Dickerson both drank a bottle of beer.
A. Yes, sir.
Q. And I believe you stated that at that time you gave the keys to Fred. The keys to your car.
A. Yes, sir.
Q. And that he drove from then on. Is that correct?
A. Yes, sir.
Q. He drove from White's filling station and the next stop was at The Willows.
A. Yes, sir.
Q. And did you and Fred both get out at The Willows?
A. Yes, sir.
Q. And who drove away from The Willows?
A. Fred.
Q. But he had actually been driving from White's filling station?
A. Yes, sir.
Q. To The Willows and then from The Willows.
A. Yes, sir.
Q. And the last you knew anything about the maneuvering or driving of the car was when you saw Mr. Hartbarger go up in his drive?
A. Yes, sir.

which time you say you received a call from Mr. Fred Dickerson.

A. I said approximately 11:30 he called me. Yes.

Q. Approximately 11:30. And after you quit work you got in your automobile and went home, got your fishing tackle or paraphernalia, and then went to Mr. Dickerson's house?

A. I didn't say I got in my car and drove home.

Q. Well, you got in your car when you got home. Is that correct?

A. My car was already at home. I had a ride with some other people.

Q. You rode with someone else.

A. Yes, sir.

Q. And you got in your car and took 2 cases of beer.

A. I said 2 cartons of beer.

Q. 2 cartons of beer. Pardon me. And then started to Mr. Dickerson's house and picked him up.

A. That's right.

Q. And he had a carton of beer.

page 280 } A. Yes, sir.

Q. Is that correct?

A. That's right.

Q. And the 2 of you drank a bottle of beer or a can of beer—whatever it was—before you actually started to the mountain.

A. Yes, sir.

Q. And you were driving at that time?

A. Yes, sir.

Q. And you came to Staunton.

A. That's right.

Q. The first place you stopped in Staunton was the ice plant on Central Avenue.

A. That's right.

Q. And you could not get the ice—.

A. That's right.

Q. Dispenser to work. Then you went to the cold storage plant.

A. Yes, sir.

Q. On Route 250.

A. That's right.

Q. And there you drank a couple more bottles of beer or cans of beer.

A. Yes, sir.

Q. Is that correct?

A. That's right.

Wallace Parker Wade.

Q. Now, Mr. Wade, you say you have known Fred Dickerson since about 1946?

A. I said approximately. I believe that's right.

Q. Approximately 1946.

A. Yes, sir.

Q. About 12 years. And you knew him so well that you felt towards him as you would a brother of yours.

A. That's correct.

Q. Is that correct?

A. Yes, sir.

Q. Will you tell the jury why, if you felt that way toward Mr. Dickerson, that you have never up until this day called upon his widow or his children as a result of his page 278 } being killed with you in an automobile accident?

Mr. Timberlake: I don't think that's relevant, Your Honor.

Mr. Taylor: This man says that he felt towards Fred Dickerson as he would a brother. There must be some reasons for his actions.

The Court: What is your objection?

Mr. Timberlake: I object to the question on the grounds that it is not relevant and that the fact, during the pending of this prosecution, that this man may or may not have been to see Fred Dickerson's family is not relevant or germane to the issues in this case and is not proper cross examination.

The Court: I think you would have to establish the fact of whether or not he has. I will ask you to rephrase your question.

Witness: Could I have a conference with my attorney?

The Court: Mr. Taylor, the witness has asked for an opportunity to have a conference with his attorney.

Mr. Taylor: I'd like to have an answer to my question.

Q. Mr. Wade, have you since the night of April 20, 1957, contacted Mrs. Dickerson or any member of her page 279 } immediate family regarding this accident?

A. No, sir. May I ask you a question (directing question to Mr. Timberlake)?

Mr. Timberlake: No.

Mr. Taylor:

Q. That's all I wanted to know. As I understand it, you worked at DuPont until 11:30 on the night of the 19th, at

Wallace Parker Wade.

A. Yes, sir, about a mile and a half or 2 miles north of Williamsville.

Q. Did you have any more beer before you went fishing?

A. No, sir.

Q. When did you next have some beer?

A. Around 11:30; approximately 11:30.

Q. Approximately 11:30 that morning. Is that correct?

A. Yes, sir.

Q. The morning of the 20th.

A. Yes, sir.

Q. And where and how much did you drink at that time?

A. One bottle.

page 283 } Q. You drank one bottle and where?

A. I drank one bottle of beer and ate a cheeseburger at the Coffee Pot Grill.

Q. At the Coffee Pot Grill?

A. That's right.

Q. You had one beer and you had coffee?

A. Yes, sir.

Q. After you left the Coffee Pot Grill, where did you go then?

A. We went up to Bunk Porter's.

Q. How much beer did you drink up there?

A. We didn't drink any.

Q. You didn't drink any.

A. No, sir.

Q. All right. How long did you stay there?

A. Oh, approximately 10 minutes maybe; it wasn't very long.

Q. You only stayed there 10 minutes. Now where did you go when you left there?

A. We come on back to Glenn Swearinger's and he got out of the car and we gave him this carton of beer, and we went up to Hartbarger's camp.

Q. Went up to Hartbarger's camp.

A. Yes, sir.

Q. And what did you do up there?

A. Well, there was a couple of his brothers there.

Q. A couple of Hartbarger's brothers?

A. Yes, and there was several other people there with them. I believe there was a Campbell boy and Hunter Ayers I believe was there; and we fooled around there a

page 284 } little while and then we hooked up to this car trailer and went on back up in the Gorge.

Q. How much beer did you drink up at Hartbarger's camp?

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Q. And then you started for the mountains.
page 281 } A. Yes, sir, we started out there.
Q. Started out. Now did you drink any more beer before you got out to this place at 3:30, the fishing place where you woke the gentleman up?
A. No, sir.
Q. Did you drink any more there before you went to bed, or did you go to bed?
A. I didn't go to bed.
Q. You didn't go to bed?
A. No, sir.
Q. What did you do from 3:30 until the time you started to go fishing?
A. I said it was approximately 3:30 that we arrived at Glenn Swearinger's house.
Q. When you arrived at Mr. Rankin's house?
A. Swearinger.
Q. Swearinger.
A. Yes, sir.
Q. You arrived at Mr. Swearinger's house at approximately 3:30.
A. Yes, sir.
Q. And what time did you leave Mr. Swearinger's house?
A. To go fishing?
Q. Yes, sir.
A. It was daylight. Now the time—. I couldn't say the definite time.
Q. And this was April 20 I believe.
page 282 } A. Yes, sir.
Q. And it would have had to be 5 or 6 o'clock, wouldn't it?
A. Something like that. Yes, sir.
Q. What did you do during those 2 hours from 3:30 to 5:30?
A. I talked to Glenn Swearinger in his home. I went in his house.
Q. Talked to Glenn Swearinger.
A. Yes, sir.
Q. Then Fred, I understand, was asleep in the automobile.
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. You left there at daylight and went where?
A. Up in Bull Pasture Gorge. That's up in Highland County.
Q. Up in Bull Pasture Gorge.

Wallace Parker Wade.

A. Yes, sir.
Q. All right. And where did you go from there?
A. We come on in to White's service station. That was our first stop.
Q. You came on in towards White's service station.
A. Yes, sir.
Q. You had been driving all that time?
A. No. Fred drove approximately 3 or 4 miles
page 286 } up the road. Then I drove from there into Buckhorn Tavern and White's service station.
Q. Where did Fred start to driving?
A. You mean first?
Q. Yes, sir.
A. He drove from Swearinger's. He started there and drove up the road about 3 or 4 miles approximately.
Q. He only drove 3 or 4 miles?
A. Yes, sir.
Q. What was the occasion of him getting out from under the wheel and your getting under?
A. What do you mean?
Q. Why did you change driver's when you had just changed drivers about 3 or 4 miles back?
A. I told you we had to stop for relief. He said, "You drive over this crooked road down to White's anyway or Buckhorn Tavern if you can." I said, "O. K."
Q. What did he mean "if you can"?
A. He meant if I felt like driving; if I wasn't too tired or sleepy.
Q. And you drove on to White's?
A. Yes, sir.
Q. You say you were driving when somebody that you thought was the game warden tried to stop you?
A. Somebody was flagging me down with a flashlight. Yes, sir.
Q. And your expression was, I believe when you were testifying in chief, "I floorboarded mine and went
page 287 } around him." Is that correct?
A. I said this car had been following me on my bumper.
Q. Yes, sir.
A. Almost on my bumper. That's what you refer to. And as I got out on 250 this car passed me.
Q. Yes, sir.
A. And then he slowed down to say 30 or 35 miles an hour. So I went to go around him, and when I got up beside him

Wallace Parker Wade.

A. We didn't drink any.
Q. You didn't drink any?
A. No, sir.
Q. No whiskey? No wine?
A. No, sir.
Q. Did you have any whiskey or wine at all that day?
A. No, sir.
Q. Or night?
A. No, sir.
Q. All right. Then after you got this sawdust you say—or Mr. Hartbarger got the sawdust finally on his car—you started back toward Staunton.
A. We come out of the Gorge. As you come off the road there's a green down in there. We call it a green. There's a stream that comes underneath the road and comes down and hits the big river. That's Bull Pasture River. The river goes down like that (indicating with hands). That's where I had been fishing up this river and up this small stream. When we got back up on the road, Hartbarger's car was sitting there and he and Sam Jordan were coming down out of the other small stream above the road. So Ernest said he would pull the trailer back and put some more sawdust on. We unhooked the trailer from my car and put it on his car.
Q. And that's when you started back towards
page 285 } Staunton?
A. We went back down and put on some more sawdust. We talked awhile; played around awhile. I drank a beer and I don't know who else drank one. I don't know whether Ernest did. I think Sam Jordan did and the Swearinger boy and Fred drank one I believe. Then we took the Swearinger boy on home then.
Q. All right, sir. Now what time did you let him out if you know?
A. What? The Swearinger boy?
Q. Yes, sir.
A. We left the Gorge down there—. It was getting dusky dark; somewhere around dusky dark.
Q. What time do you think it was when you got to Swearinger's house?
A. I wouldn't know what time it was.
Q. Didn't you have a watch?
A. I had a watch on but it had stopped.
Q. Well, was it dark when you left there?
A. What? The Gorge?
Q. No, Swearinger's house.

he stepped on it. He speeded up. I speeded my car up and went on around him, and I slowed down to within the speed limit.

Q. And then you said you later heard the siren—.

A. That was on down the road farther.

Q. Of a State Trooper's car and at that time you pulled over.

A. Yes, sir.

Q. And you got on down to White's filling station and restaurant out there at Buffalo Gap.

A. Not Buffalo Gap.

Q. Buckhorn Tavern.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Did you drink any beer there?

A. I drank one beer. Yes, sir.

Q. You only drank one beer there?

A. Yes, sir.

Q. Did you get anything else there?

A. No, sir.

page 288 } Q. You had had no supper then?

A. No, sir.

Q. And from there is where you say you turned the keys over to Mr. Dickerson.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And you drove no more that night?

A. That's right.

Q. Now were you—? According to your testimony you were not asleep when you got to The Willows.

A. No, sir.

Q. What did you stop at The Willows for?

A. Well, now I don't know. Fred was driving. He just pulled in there.

Q. You said you and he both got out.

A. We did.

Q. Well, what were you going in there for?

A. Well, Fred was over at the door. I went over to tell him to come on and go.

Q. You didn't go over to the door with him?

A. No, he went to the door first. I talked to Ernest Hartbarger there a little bit and walked around the car and walked up behind Junior and Fred was talking to Jake Coffman. I

believe Jake said to me, "We're closed up, Wallace." I said, "That's all right." I said, "Come, on Fred
page 289 } Let's go."

Q. You stopped there and did go up to the door.

A. Yes, sir.

Q. And Mr. Coffman said that they were closed up.

A. Yes, sir.

Q. As a matter of fact, Mr. Coffman told you "No more beer tonight," didn't he, that it was passed hours?

A. I don't recall him saying, "No more beer." No, sir. I didn't hear him saying that.

Q. I don't mean to give it to you. Just that expression. No more beer to anybody—that he was closed up.

A. All I recall Mr. Coffman saying to me is, "I'm closed up, Wallace."

Q. He called you by the name of Wallace?

A. I believe he did. I wouldn't say for sure.

Q. That he was closed up. And you tell The Court and jury that you did not get in under the wheel of that automobile down there and drive on down the road?

A. Yes, sir.

Q. Do you know anything about the beer cans or empty cans or full cans that were in the automobile at the time of the wreck?

A. Do I know about any being in the car?

Q. Yes, sir. Yes, sir.

A. Well, now Ernest Hartbarger brought this can, this can I was telling you about—this galvanized can—. They went over there—he and my wife—to Freed's lot to get the things out of my car, and this can—. He brought my stuff
page 290 } all home; and after I got out of the hospital and was looking in this can, Ernest had gathered the stuff out of the car and had put a lot of stuff down in there. There was 2 cans of Budweiser beer in there.

Q. There was 2 cans of Budweiser beer in there.

A. I asked Ernest later on after that where they came from.

Mr. Timberlake: I don't think you can testify as to the conversation you had with him.

Mr. Taylor: I don't think you can testify as to the conversation you had with him.

Witness: A. That's all the beer I know of in the car. I didn't even know those 2 cans were in there because I didn't know how much we drank, how much we gave away, or how

like that; and he told me how it happened or as near as he could—what he heard—a lot of it.

Q. Did you or did you not tell him that when you all stopped at The Willows that Fred Dickerson started to drive the automobile?

A. Did I what?

Q. Tell him that Fred Dickerson started to drive the automobile at The Willows?

A. That he started to drive it at The Willows?

Q. Yes.

A. I don't quite follow you there.

Q. You have testified that Fred Dickerson started to driving the automobile on the way to Staunton at White's.

A. That is correct.

Q. That is correct?

A. Yes.

Q. That's what I understood. I asked you did you or not tell Mr. Buchanan after you got out of the hospital that Fred started to drive the automobile that night at The Willows?

A. That I told him—? That I told Buchanan that Fred Dickerson drove the car from The Willows or started there?

page 293 } Q. Started to drive at The Willows.

A. And that he hadn't drove from White's in?

Q. Yes, sir.

A. I didn't tell George that. No.

Q. You didn't tell him that?

A. No, sir.

Q. Did you tell Mr. Buchanan that Fred was driving the car and that you saw there was going to be a wreck and that you jumped down on the floor?

A. I told George Buchanan. I might have told several people that something like that come in my mind. When it did I don't know but I couldn't swear to it and I won't swear to that statement.

Q. But you have testified here that you were asleep when that car was headed east on Route 250 and you never knew anything about the automobile accident.

A. Now how was that? The first of that?

Q. Do you remember telling The Court and the jury just a few minutes ago that you were asleep immediately after you left Mr. Hartbarger's or he drove up in his driveway?

A. Yes, sir.

Q. And that you didn't know where Dickerson turned the car around or where he went or you didn't remember hitting

many was left; but they must have been mine—the ones I took —because they were Budweiser beer cans.

By Mr. Taylor:

Q. How much more beer was bought after what you took away from home and what Mr. Wade took away from home?

A. You mean Mr. Dickerson?

Q. I mean Mr. Dickerson.

A. It was 2 cartons; that would be 12 cans. We bought those at the Coffee Pot. Fred suggested that I buy 2 cartons of beer. He said, "I'll give you the money back when we get home because I didn't bring any money with me."

page 291 } Q. Fred suggested that you buy that?

A. Yes, sir, because he asked me to buy some. I said, "We don't need no more beer," or something like that. He said, "Well, we're going up to see Bunk. We'll take him some." I said, "O. K."

Q. Altogether there was 5 cartons in among you that particular day.

A. Yes, sir; but now the last 2 cartons that we got, I gave Glenn Swearinger that one carton there to him. Out of that I didn't see Fred drink any of that last beer we bought. Whether he did I don't know, but I know I didn't drink any of that beer that was bought.

Q. Now, Mr. Wade, you know Mr. Buchanan who lives down there at Fishersville.

A. George Buchanan? Yes, sir.

Q. Do you know him very well?

A. Well, I didn't know him too well. I mean I knew him. He works the same shift at the plant that I do; and I had met him through Fred Dickerson because they worked at the same place—I believe the same department—and they rode—. George Buchanan—. Fred hauled him to work. They rode together.

Q. Did you have any conversation with him regarding the operation of this automobile after you got out of the hospital?

Q. Did I have any with him?

Q. Yes, sir.

A. I talked to him about it. Yes.

page 292 } Q. Do you remember that conversation that you had with him about the operation of the automobile?

A. Well, you mean what we talked about or what I—?

Q. Yes, sir.

A. I asked him if he knew how it happened or something

Q. In fact, you remember nothing.
A. That's right.
Q. From the time you went to sleep before the accident. Is that correct?
A. That's right.

No further questions.

Witness leaves the stand.

ERNEST LINCOLN HARTBARQER,
the fourth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Timberlake:
Q. Mr. Hartbarger, please state to the jury your full name, please.
page 296 } A. Ernest Lincoln Hartbarger.
Q. How old are you?
A. 46.
Q. Where do you live?
A. Fishersville.
Q. And where are you employed?
A. Out here at Whitesell Brothers at the present time.
Q. *During* construction work?
A. Yes, sir.
Q. Contracting work.
A. Yes, sir.
Q. Mr. Hartbarger, where is your home in Fishersville in reference to the scene—well, to former Sheriff Gilkeson's home?
A. Right up on the opposite side of the road.
Q. Right across the road. Right across Route 250 from Mr. Gilkeson's?
A. That's right.
Q. And that would be—. Your house is on the north side?
A. Going to Waynesboro, yes, sir.
Q. And how far back from the road is it?
A. Oh, it sets back about 100 feet.
Q. It sets back about 100 feet. Will you state whether or not there is a lane or driveway going up from the road to your house?

the bus or hitting the house and didn't remember anything until the following Saturday after the accident in the hospital?

A. That's right.

Q. Now my question was: Did you not tell Mr. Buchanan that you remembered or saw that there was going to be an accident and you jumped down on the floor?

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A. Now Buck and I were talking and during the general conversation I told him something about dreams—things like that I dreamed about; but I thought that is what it was but I told him I couldn't swear to it because it might have been a dream. I didn't know; I couldn't swear to it.

Q. You told him you couldn't swear to it. You told him it might have been a dream.

A. Yes.

Q. Didn't you, Mr. Wade, as a matter of fact, stop at The Willows to get beer that night?

A. No intention of mine. No, sir.

Q. No intention of yours?

A. No, sir.

Q. And you, as a matter of fact, were driving that automobile.

A. Sir?

Q. Weren't you driving that automobile?

A. No, sir.

Q. You were not driving that automobile at all after you left White's filling station that night.

A. That's right.

Q. Have you seen that automobile since it was wrecked?

A. Have I—? Yes, sir.

Q. You know where it was wrecked?

A. Yes, what I was told.

Q. You don't remember hitting the steering wheel in that automobile?

page 295

A. No, sir.

Q. And you don't remember hitting anything with your chin whether it was the steering wheel or the windshield?

A. No, sir.

Q. You don't remember hitting anything with your chest?

A. No, sir.

Q. You don't remember asking for your wife and asking how Mr. Dickerson was?

A. No, sir.

Q. At the hospital or at the scene of this accident?

A. No, sir.

Ernest Lincoln Hartbarger.

Q. You say you parted company around dusk or around 6 o'clock?

A. That's right.

Q. Did you have the trailer attached to your car?

A. That's right.

Q. You left where you were there at the camp about that time?

A. That's right.

Q. Where did you go?

A. I started back home.

Q. Did Wallace Wade and Fred Dickerson go in the same direction?

A. Well, they may have for a little ways but they had another party with them that lived over in that
page 299 } section and they took him home. They didn't catch up with me until out here at White's the other side of Churchville.

Q. That's what I'm getting to. Did you or not see Fred Dickerson and Wallace Wade at White's?

A. Yes, sir.

Q. Were you already there when they arrived?

A. Yes, sir.

Q. Were you inside or outside?

A. Inside.

Q. What were you all doing?

A. We got us a sandwich and drank us a beer.

Q. You were inside when Fred Dickerson and Wallace Wade came in.

A. Yes, sir.

Q. And will you state which of these 2 groups—that is you and your companion or Wade and Dickerson—left White's first or did you leave at the same time?

A. We left before they did.

Q. You didn't see them leave?

A. No, sir.

Q. Will you state whether or not you heard any statement made by either Wade or Dickerson about who was to drive?

A. Well, I seen Mr. Wade give Dickerson the keys and ask him to drive from there on; so whether he did or not, we left before they did.

Q. All right. Now did you see these 2 men later?

A. I saw them later on down here at Brand's flat.

Q. Was that at The Willows?

page 300 } A. Yes, sir.

Q. Were you there when they arrived?

Ernest Lincoln Hartbarger.

A. Yes, sir.

page 297 } Q. Mr. Hartbarger, do you know or did you know Wallace Wade and Fred Dickerson?

A. Yes, sir.

Q. Did you see these 2 men on Saturday, April 20?

A. Yes, sir.

Q. Of last year?

A. Yes, sir.

Q. That is '57. Where were they when you first saw them?

A. Over in Bath County over there at Cow Pasture River trout fishing.

Q. What were you doing out there?

A. I was out there fishing that afternoon.

Q. About what time of day did you run into them?

A. I'd say approximately around 4 o'clock.

Q. Will you just very briefly tell the jury what took place after you met up with Wallace Wade and Fred Dickerson?

A. Well, we were fishing. There was a fellow with me—a fellow Jordan. We met them on the river bank fishing around 4 o'clock in the afternoon. We saw them off and on until we quit that evening just before dark. I don't remember particularly what time. I saw them off and on between times.

Q. And, Mr. Hartbarger, did you all have any beers or any other drinks together?

A. I didn't myself. Maybe Jordan did. I wasn't with those boys regular. We were along the bank. I didn't see any.

Q. Will you state to the jury whether or not you had any trailer or anything of that kind out there?

page 298 } A. Yes, I did.

Q. What was the purpose of having the trailer?

A. I had a pick-up trailer and brought back a load of sawdust—rotten sawdust—to put on the garden.

Q. Did any one of these people that you mentioned help you with loading the sawdust?

A. This fellow Jordan helped me throw some on there. I don't remember whether Wallace and the other boy did or not. When they got through fishing they come up on the bank. I told them I was going to take the sawdust home. I threw some on and started home.

Q. Did you get the license plates that day for the trailer?

A. Yes, sir.

Q. Who got those?

A. I think Mr. Wade got those.

Ernest Lincoln Hartbarger.

A. Yes, sir.
Q. You saw him give him the keys to the car.
A. Yes, sir.
Q. Whether or not they made any changes after you left from The Willows, of course, you don't know.
A. No, sir, I don't.
Q. But it appeared to you that Wade was getting in on the right side when you left The Willows.
A. Yes, sir.

page 302 } CROSS EXAMINATION.

By Mr. Taylor:
Q. Mr. Hartbarger, you did not actually see and you are not testifying under oath that Mr. Wade did get in under the wheel of that car—Mr. Dickerson did get in that car under the wheel at The Willows.
A. No, I didn't see him get under the wheel because he was talking to the man at the restaurant just as I was fixing to pull out.
Q. And you did not see Mr. Wade get in the car on the right side. You saw him go back towards the car.
A. That's right.
Q. But you cannot tell the jury that he actually got in the car on the right-hand side.
A. No, sir, because he walked back between the car as I was pulling out.
Q. Whether he got in the driver's side or the other side you don't know.
A. No, sir.
Q. And you don't know who drove it away from White's.
A. No, sir.

RE-DIRECT EXAMINATION.

By Mr. Timberlake:
Q. Will you state, Mr. Hartbarger, whether or not you saw Mr. Wade open the door of the car preparatory to entering it at The Willows?
A. I never looked back that close. I never paid
page 303 } that much attention.

No further questions.

Witness leaves the stand.

Ernest Lincoln Hartbarger.

A. I just had pulled in. They pulled in shortly behind me because I hadn't got out of my car. They pulled out and got out. I think one of them went over to talk to somebody in the restaurant but they were closed up.

Q. You were by yourself at that time?

A. That's right.

Q. Mr. Hartbarger, how far was Wade's car from your car when they pulled up and stopped?

A. Well, it was kind of opposite my trailer. It wasn't up the complete side of me. It was kind of back.

Q. On the right or left side?

A. On the left side.

Q. And you were still in your car when they pulled up and stopped?

A. Yes, sir.

Q. Did you see who got out of the right side of the Wade car?

A. Well, Wade come up to me on my side. It looked to me like he got out the right side of their car.

Q. Did you see Dickerson get out?

A. I didn't see him when he got out. It was dark. They had done cut the lights off. He come up and talked. He wanted to know how I was getting along with the trailer. I said, "All right. It ain't giving no trouble." Someone come to the door and said they were closed up.

Q. Did you see Wade get back in the car?

page 301 } A. He went back to the car.

Q. Did he get in on the right or left?

A. It looked like he got in on the right unless they changed after I pulled out.

Q. Unless they changed after you pulled out.

A. That's right.

Q. But what you saw insofar as while you were there, when he first got back in the car you saw Wade get in on the right side.

A. He went back to that side as far as I could see. I didn't pay too much attention.

Q. Mr. Hartbarger, did you see Wade's car any more that night?

A. Not except until after the wreck.

Q. Not until after the wreck. Did you go direct to your home from The Willows?

A. Yes, sir.

Q. So as I understand from your testimony, you heard out at White's Mr. Wade ask Fred Dickerson to drive and gave him the keys to the car.

William H. Shuey.

CROSS EXAMINATION.

By Mr. Taylor:

Q. You are known as Hal Shuey, are you not?

page 305 } A. That's right.

Q. Where do you work, Mr. Shuey?

A. Well, I'm picking apples right now.

Q. You're picking apples right now?

A. Yes, sir.

Q. You have no regular job?

A. No, sir.

Q. And you say you know Mr. Wade very well.

A. Both of them.

Q. Both of them. And Mr. Wade is a very good friend of yours.

A. Both of them was.

Q. Both of them were. I asked you about Mr. Wade.

A. Yes, he is.

Q. What did you go to The Willows for that night?

A. Well, I had been at my brother's and I stopped by there.

Q. You had been at your brother's.

A. That's right.

Q. And you stopped by there.

A. That's right.

Q. For what reason?

A. Well, I generally stop there pretty often.

Q. You generally stop there pretty often?

A. That's right.

Q. And you say the first thing that you saw was Mr. Wade and Mr. Dickerson coming from the door of The Willows.

A. That's right.

Q. Is that correct?

page 306 } A. That's right.

Q. And you say you saw Mr. Wade go to the left side of the car?

A. No, to the right side of the car.

Q. The right side of the car.

A. He walked between the 2 cars.

Q. He walked between the 2 cars.

A. That's right.

Q. And you saw the other man, Dickerson, go on the other side of the car?

A. Under the steering wheel.

Q. Sir?

A. On the left side.

WILLIAM H. SHUEY,
the fifth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Timberlake:

Q. Mr. Shuey, what is your full name, sir?

A. William H.

Q. William H. And where do you live?

A. Down at Brands.

Q. Mr. Shuey, were you at The Willows during the night of April 20, 1957?

A. I was.

Q. That was the night on which this accident occurred.

A. That's right.

Q. Were you there when a car operated by Mr. Hartbarger came there?

A. No. I was there before it left.

Q. I see. Was a 1950 Buick car of Mr. Wade's there while you were there?

A. It was.

Q. Did you know Wallace Wade and Fred Dickerson?

A. Real well.

Q. Sir?

page 304 } A. Real well.

Q. Now were you there when—? Were both of those cars there, the Hartbarger car and the Wade car, when you came there?

A. Yes, sir.

Q. Did you drive there or walk?

A. I drove there.

Q. You drove. And did you when you drove up there—? Do you recall where Wallace Wade and Fred Dickerson were?

A. They were coming from Jake's store.

Q. Coming from the store?

A. Yes, sir.

Q. Did they leave while you were still there?

A. They did.

Q. Who drove when they left?

A. Well, Mr. Dickerson was on the left side and Wade walked around and got in on the right side, and Hartbarger pulled off ahead of them. As they pulled on the pike, I turned and went home.

Q. And you are positive that Fred Dickerson was at the wheel at the driver's side?

A. That's right.

Q. You didn't see anything more of them that night?

A. No, sir.

Hugh Jacob Coffman.

A. Hugh Jacob Coffman.

page 308 } Q. What is your age, residence, and occupation?

A. I'm 59 years old and I own and operate Jake's Grill down 3 miles east on 250.

Q. Is that what is commonly known as The Willows?

A. That's right. Yes, sir.

Q. Mr. Coffman, do you recall on the Saturday night of April 20, 1957, the night that Fred Dickerson and Wallace Wade were involved in this accident, do you recall their being there at your place of business that night?

A. They were there after I closed.

Q. Do you know about what time that was?

A. 10 minutes after 11 by my clock.

Q. Did you see them drive up?

A. No, sir.

Q. Did you see them drive away?

A. No, sir.

Q. What, if any, conversation did you have with either or both of them?

A. Well, they came to the door and asked for 2 cartons of beer. I looked back at the clock. I didn't open the door. Mr. Snyder that works for me—. He was helping out over the week-end. He said, "Junior Dickerson and Wallace Wade are knocking on the door." And Mr. Snyder was helping me over week-ends. He happened to be at the door and he told me that Wallace and Fred Dickerson was at the door and wanted to know if I wanted to let them in. I said, "Open the door and see what they want. They might want some cigar-

page 309 } ettes." He opened the door. The counter has an opening there almost in front of the door just probably 20 feet from the door. I happened to be standing right in the opening. When he opened the door they said, "Jake, how about a couple cartons of beer to go?" I said, "No, sir." I looked at the clock; it was right over my head. I said, "It's 10 minutes after 11. No beer is going out of here tonight." That's all that was said. They went away. I didn't see them walk away from the door.

Q. Do you recall which one of the 2 actually asked you?

A. I think Mr. Dickerson.

Q. You think Mr. Dickerson made the request for the 2 cartons of beer.

A. Yes, sir.

Q. And you recognized them both as being Fred Dickerson and Wallace Wade.

Hugh Jacob Coffman.

Q. Did you see them actually get in the automobile?
A. I did.
Q. You did. And did you see the car pull away?
A. They pulled away just as I pulled away.
Q. They pulled away just as you pulled away.
A. Yes, sir.
Q. Which pulled away first?
A. They went that way (indicating towards Waynesboro); I went this (indicating towards Staunton). They went toward Waynesboro and I came back towards home.
Q. Had you been drinking anything that night?
A. No, sir.
Q. What did you stop for?
A. Well, I just stopped. I don't know how come. I just stopped. I generally stop there.
page 307 } Q. You generally stop there.
That's right.
Q. You had not been drinking anything at all?
A. No, sir.
Q. Were there any lights on the outside of that building?
A. No, sir.
Q. There were no lights on the outside of that building.
A. No. sir. They were getting ready to close.
Q. They were getting ready to close and there were no lights there at all.
A. I didn't see any.
Q. And you saw that car pull out—.
A. I did.
Q. And go down the road towards Waynesboro.
A. I did.
Q. And you don't know what happened after that.
A. No, sir.

No further questions.

Witness leaves the stand.

HUGH JACOB COFFMAN,
the sixth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Timberlake:
Q. Mr. Coffman, please state your full name.

Phillip Hawthorne Young.

A. Yes, sir.
Q. And you didn't go outside.
A. No, sir.
Q. And did you have any conversation—? Well, that is your only contact with them?
A. That's all that was said.
Q. You didn't see them drive up and you didn't see them leave?
A. No, sir.

CROSS EXAMINATION.

By Mr. Taylor:

Q. Mr. Coffman, are you absolutely certain it page 310 } was Mr. Dickerson that asked for the beer?

A. I wouldn't say for sure which one it was.
Q. You wouldn't say for sure which one it was.
A. No, sir.
Q. They were both together?
A. Yes, sir. They were both together. They didn't come inside the building. They were just standing right at the door.

No further questions.

Witness leaves the stand.

PHILLIP HAWTHORNE YOUNG,
the seventh witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Franklin:
Q. Would you state your full name?
A. Sir?
Q. Would you state your full name?
A. Phillip Hawthorne Young.
Q. How old are you, Mr. Young?
A. 57.
Q. 57?
A. Yes, sir.
Q. Where do you live?
A. I live at Harry Coiner's place 4 miles north of Waynesboro.
Q. What is your occupation?

Phillip Hawthorne Young.

A. Carpenter work.
page 311 } Q. Carpenter work?
A. Yes, sir.
Q. How long have you known Mr. Wallace Wade?
A. I'd say 14 years; something like that.
Q. Did you know Fred Dickerson?
A. Yes, sir, I knew him.
Q. Mr. Young, when did you last see Fred Dickerson?
A. I last saw him on Saturday night.
Q. Saturday night before he was killed?
A. Yes, sir.
Q. Where did you see him?
A. I saw him down at the sandwich place on 250 right below Mason's station.
Q. Wayne-Way?
A. Yes, sir.
Q. Drive-In I think.
A. Yes, that's the place.
Q. What time did you see him?
A. It was around 11 o'clock or a little after. I wouldn't say because I never thought nothing about it only I had to be home before midnight so—. My dad was sick.
Q. Under what circumstances did you see—?
A. He pulled in there.
Q. Who pulled in there?
A. Mr. Dickerson and he spoke to me. He come on out of the restaurant there and he got in the car. There was somebody in the car with him, and he pulled out. Somebody
page 312 } else pulled around and I didn't know who that was.
Q. Did you see him when he pulled in there? Was he driving this car?
A. Yes.
Q. What kind of car was it?
A. A black Buick; a black car.
Q. Did you see him when he pulled out and started towards Staunton?
A. Yes, sir.
Q. Who was driving then?
A. He was driving it.
Q. Fred Dickerson was driving it?
A. Yes, sir. I never thought nothing about it until the next morning when I heard it.
Q. When did you hear about this accident, Mr. Young?
A. Sunday morning. I don't recall just what time.

Phillip Hawthorne Young.

Q. How did you hear about it?

A. Well, I had to go to the drug store in Waynesboro—Fishburne's Drug Store—that morning and I heard it then.

Q. How did you hear it? Did you hear it by hearing somebody talk about it or over the air?

A. Yes, sir, I heard somebody talking about it.

Q. You heard somebody talking about it.

A. Yes, sir; and you know I couldn't really believe it at first until I really found out about it.

Q. Did you go to see Mr. Wade while he was in the hospital?

page 313 } A. I went up there on Monday morning. I couldn't get in on Sunday. Monday they wouldn't let me go in. Then I called but I didn't go in the hospital after the one time. I talked with his wife and there was a doctor on the floor. They wouldn't let me see him.

Q. You never did actually get to talk to him while he was in the hospital.

A. No, sir.

Q. Did you recognize Wallace Wade as the person in the car when you saw it there at the Drive-In?

A. Well, I was just under the impression it was Wade because it was his car. I see them so much together. Where I see one I see the other, and so they looked like they were good friends—the best of friends; and I have seen him driving Wallace's car—Junior—so—.

Q. The other person you saw in the car. Did he appear to be awake or sitting up or was he asleep in the car?

A. He was sitting over to one side. I didn't look right—. You know. You wouldn't look. It looked like everybody was in a hurry and I was too. I couldn't say for sure but I know he was sitting in the car kind of over to the right side over next to the door. That's the way he was. That's all.

Q. Did you say you talked to Fred Dickerson? Spoke to him?

A. He spoke to me.

Q. He spoke to you.

A. Yes, and I spoke. That's all. He got right in the car and pulled out.

page 314 } Q. He got in the car and pulled out.

A. Yes.

CROSS EXAMINATION.

By Mr. Taylor:

Q. Mr. Young, where do you live?

Phillip Hawthorne Young.

A. I live 4 miles north of Waynesboro at the Harry Coiner place.

Q. The Harry Coiner place?

A. Yes, sir. I come right on up the road and turned at what they call—.

Q. What is known as the White Bridge Road?

A. Yes. That's the way I went to go home.

Q. How did you happen to be up to this restaurant that night?

A. I had been over here.

Q. Sir?

A. I had been to Staunton and I went in there to get some coffee. I stopped in there and got a sandwich.

Q. About what time was it?

A. I'd say around 11 o'clock or after. I wouldn't say because I didn't look. I never thought about it only I had to get home before midnight.

Q. Why did you have to get home before midnight?

A. Because I had a sick father. I always give him his medicine between 11:30 and 12 o'clock.

Q. And this was after 11 o'clock?

A. Somewhere around there. Yes, sir.

Q. Where did you park when you drove into this restaurant?

page 315 } A. Well, I pulled—. I don't know whether I can tell you or not. I can take you down there and show you.

Q. Can you tell me? The restaurant faces the highway, doesn't it?

A. Yes, sir.

Q. And it has a large parking area there, doesn't it?

A. Yes, sir, fairly large.

Q. Were you parked on the Waynesboro side of the restaurant or the motel side?

A. Yes, sir.

Q. Sir?

A. Waynesboro.

Q. On the Waynesboro side?

A. Yes, sir.

Q. Is that correct?

A. I think so. In fact—.

Q. Do you remember?

A. I won't say. I can tell you where the car was parked but I couldn't tell which side.

Phillip Hawthorne Young.

Q. Were you inside of the restaurant when you saw Mr. Dickerson?
A. No, he was coming out.
Q. Sir?
A. He came out.
Q. He came out?
A. Yes, sir, he came out.
Q. Were you going in then?
A. Sir?
page 316 } Q. Were you going in then? In the restaurant?
A. No. I was in the car when he came out of the restaurant.
Q. You were in the car when he came out of the restaurant.
A. Yes, sir.
Q. Where had he parked or the car parked that he was in?
A. I pulled in this way and he come out this way (indicating opposite directions).
Q. Was his car close to your car?
A. Yes, tolerable close.
Q. How many cars were in between?
A. I don't know. One pulled in when he went on out.
Q. One pulled in when he went out?
A. Right out behind him.
Q. When you were parked there and he was parked there, how many cars were between you and he or the car that he was supposed to be in?
A. I don't know.
Q. You don't know?
A. No.
Q. Did you see him get out of this automobile?
A. Sir?
Q. Did you see him get out of this automobile or not?
A. No, he got in the car.
Q. You saw him get in?
A. Yes, sir.
Q. You did not see him get out?
A. No, sir.
page 317 } Q. And you say that there was some man in the car that you assumed was Mr. Wade.
A. Yes, sir.
Q. Because of the fact that they had been seen together.
A. And the automobile. It was a black Buick. I know that.
Q. It was a black Buick. Well, there are lots of black Buicks, aren't there?
A. Yes, sir, I now that but I had seen him drive so much.

Phillip Hawthorne Young.

Q. You had seen him drive so much.
A. Yes, sir.
Q. And you had seen them together a lot?
A. Yes, sir.
Q. You just assumed that was Mr. Wade.
A. Yes, sir.
Q. You did not positively identify him or say under oath that that was Mr. Wade in that automobile, can you?
A. Well, I don't guess I could.
Q. Going on what you had seen before that night, you assumed it was Mr. Wade.
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. Now were you still there, Mr. Young, on the parking lot when this car drove off?
A. Yes.
Q. And what were you doing then?
A. Sir?
page 318 } Q. What were you doing then? I say what were you doing there at the parking lot? You had had your coffee.
A. No, I was going to get me something to eat.
Q. Oh, you were going to get something to eat. I thought you were going to get some coffee.
A. I say I may have eat a sandwich.
Q. You don't know whether you did or not?
A. I don't know; I could have.
Q. Who else was on that lot that night?
A. I don't know.
Q. You don't recall seeing anyone there?
A. There was other cars there. I know that.
Q. There was other cars there.
A. Yes, sir.
Q. Were there any other people there that you recognized?
A. In fact, I don't recall.
Q. You don't recall any?
A. No, sir. As far as—. I didn't think there would ever be a question of anything of this kind.
Q. Did you see the operator of the place?
A. I guess so.
Q. Well, let's don't guess.
A. Now I don't know whether I saw the owner or not.
Q. You don't know whether he was there or not.
A. No, sir.

Phillip Hawthorne Young.

Q. In fact, you don't know whether any other person was there except this one man. Is that correct?

page 319 } A. No.

Q. Sir?

A. There was other persons there.

Q. But no one that you knew or recognized. Is that correct?

A. There was other people there. I know that.

Q. Now, Mr. Young, you say you had known Mr. Wade for some time.

A. Yes, sir.

Q. And you went to the hospital the next morning to see him?

A. I went Monday morning.

Q. Monday morning.

A. Yes, sir.

Q. Did you get to see him?

A. No, sir.

Q. You did not get to see him?

A. No, sir.

Q. And you never did go back?

A. No, sir, I didn't go back. I called in and asked about him.

Q. You called to ask about him?

A. Yes, sir. I naturally would.

Q. Now who was the first person you ever told that you saw Mr. Dickerson drive this car away from the Drive-In restaurant?

A. Well, I told Mr. Franklin is one.

Q. You told Mr. Franklin there. He is one.

A. Yes, sir.

Q. And when did you tell him?

page 320 } A. I don't know the date. I never kept up with the dates.

Q. Well, can you give us any idea when you told him?

A. No. I don't know the date.

Q. Sir?

A. I don't know the date.

Q. You don't know the date.

A. No, sir, not right off.

Q. Well, you went to the hospital on a Monday morning after the accident.

A. Yes, sir.

Q. And you did not see Mr. Wade?

A. No, sir.

Q. When was the first time you told Mr. Wade about it?

A. Well, I don't know. I told him about it and that was—.

Phillip Hawthorne Young.

I remember telling him. I told him how surprised I was in finding it out.

Q. Well, did you tell him about it immediately upon his release from the hospital?

A. It couldn't have been too long afterwards I know.

Q. It couldn't have been too long afterwards.

A. No, sir.

Q. After his release from the hospital.

A. Yes, sir. Yes, sir.

Q. Did you testify to that effect in the County Court when this matter was heard

page 321 } Mr. Timberlake: I object to that, Your Honor. There wasn't any evidence introduced on behalf of the defendant and Mr. Taylor knows it.

Witness: A. Here's what I said. I said, "Anything I can do to help—."

The Court: Was this witness called in the County Court?

Mr. Timberlake: No, sir. No evidence was put on on behalf of the defendant.

Mr. Taylor: There was a preliminary hearing. This witness says he told his attorney and Mr. Wade shortly after he got out of the hospital—.

Mr. Timberlake: Mr. Taylor knows, as well as The Court knows, in 9 out of 10 of these cases that no evidence is put on.

The Court: The only proper use that could be made of that would be impeachment; and if the witness were not called, he could not be impeached, and I will ask Mr. Taylor to discontinue.

Mr. Timberlake: I move that it be stricken.

The Court: Members of the jury, I will ask you to disregard the question Mr. Taylor asked whether he so testified at the preliminary hearing. You are not to consider that in any way, shape, or form.

page 322 } By Mr. Taylor:

Q. Did you see any other car leave there that night, Mr. Young?

A. Yes, sir.

Q. Who?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. The only thing you know is you saw Mr. Dickerson drive a car out of that driveway.

Sheriff John E. Kent.

Q. Approximately how far is the Wayne-Way Restaurant from the city limits of Waynesboro? Can you tell us?

A. Just about a mile I'd say.

Q. And on what side of Route 250 is the Wayne-Way?

A. It's on the right going east.

Y. That would be on the south side of the road?

A. Yes, sir.

Q. And I believe it is just adjacent to the All-State Motor Court. Is that right?

A. That's right, sir.

Q. Mr. Furr, about how far is it, as nearly as you can estimate it, from the Wayne-Way Restaurant as you travel west on 250 to the eastern limits of the village of Fishersville?

A. I'd say that would be just about a mile; about a mile I'd say.

Q. How far is it from Fishersville to the city limits of Waynesboro? Do you know?

A. I've never checked it by the speedometer. They annexed and moved the city limits out.

Q. The city limits are there about the Skyline Drive-In?

A. The Skyline Drive-In. That's right, sir.

Q. Would you say it is as much as 4 miles from the city limits of Waynesboro to Fishersville? The eastern

page 325 } limits of Fishersville?

A. I couldn't say because I just don't know.

Q. That's all. Possibly Sheriff Kent will know more definitely.

Mr. Taylor: No questions.

No further questions.

Witness leaves the stand.

SHERIFF JOHN E. KENT,

the ninth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Timberlake:

Q. Sheriff Kent, you are familiar with Route 250 from Fishersville to Waynesboro, are you not?

A. Yes, sir.

Q. Could you tell us with any greater degree of certainty than Deputy Sheriff Furr did the distance from the Wayne-

Deputy Sheriff Paul C. Furr.

A. Yes, sir; and if Junior hadn't spoke to me I wouldn't have paid much attention.

Q. You wouldn't have known him. You don't know what happened between there and 11.20, the time of this accident?

A. No, sir.

Q. And you did not see him buy anything at that restaurant. He was coming out I believe you testified to.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

No further questions.

Witness leaves the stand.

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page 323 } Mr. Timberlake: I want to call Mr. Furr.

The Court: Of course, he has been in the courtroom. Any objection, Mr. Taylor?

Mr. Taylor: Mr. Furr?

The Court: Yes, sir.

Mr. Taylor: No, sir. I have no objection to anybody testifying. I'm just trying to find out the facts.

DEPUTY SHERIFF PAUL C. FURR,
the eighth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Timberlake:

Q. Please state your full name.

A. Paul C. Furr.

Q. And are you a deputy sheriff of Augusta County?

A. Yes, sir.

Q. And where do you live, sir?

A. Fishersville, Route 2.

Q. Mr. Furr, you are familiar with Route 250 from Staunton to Waynesboro, are you not?

A. Yes, sir.

page 324 } Q. Travel it regularly?

A. Yes, sir.

Q. Do you know the location of the Wayne-Way Restaurant?

A. Yes, sir.

Mrs. Wallace Parker Wade.

Q. Mrs. Louise Wade. Where do you and your husband live?
A. Fishersville.
Q. Are you employed or a housewife?
A. Yes, sir.
Q. Where do you work?
A. Staunton Manufacturing.
Q. Staunton Manufacturing in Staunton?
A. Yes, sir.
Q. And, Mrs. Wade, where were you on the evening of April 20, 1957, when this accident occurred?
A. Well, I was at home until about 8.30. Then I went down to Mrs. Hartbarger's to watch TV.
Q. Were you at Mrs. Hartbarger's when the accident occurred?
A. No, sir, I was at home. She brought me home at 11 o'clock.
Q. Mrs. Wade, when, before that, had you last seen your husband?
A. Friday night when he came home from work. I fixed his things so they could go fishing—the bedclothes.
Q. So this fishing trip, he had planned that before?
A. Oh, yes, sir!
page 328 } Q. About what time Friday night did he come home for his fishing things?
A. He usually gets home from work about a quarter after 12. I had his things ready when he come. He must have left around 12:30.
Q. In what car did he leave?
A. Our car.
Q. That is the '50 black Buick that was wrecked?
A. Yes, sir.
Q. Now, Mrs. Wade, did you know where he was going fishing?
A. I didn't know the exact destination because I don't know too much about that section, but I knew they were going fishing.
Q. When you say "they," who do you mean?
A. Mr. Dickerson and my husband.
Q. Now, Mrs. Wade, how did you first learn that there had been an accident?
A. Mrs. Hartbarger came after me at my home.
Q. Did you go immediately to the scene?
A. Yes, sir.
Q. And will you state whether or not Mr. Wade and Mr. Dickerson were still there when you got there?
A. Mr. Dickerson wasn't but my husband was.

Way Restaurant to Fishersville? To the eastern limits of Fishersville?

A. If you call the eastern limits of Fishersville—.

Q. I have particular reference to where this accident happened.

A. I'd say about a mile or just in excess of a mile.

Q. Just in excess of a mile. And you would say it is about an equal distance from the Wayne-Way to the city limits of Waynesboro?

page 326 } A. A little less.

Q. From the Wayne-Way to the city limits of Waynesboro. So it would be approximately—I gather—approximately 2 miles from the city limits of Waynesboro to the scene of this accident.

A. Probably 2 miles or a little more; less than 3.

Q. That's all.

Mr. Taylor: No questions.

No further questions.

Witness leaves the stand.

(At this point the Court and all counsel conferred in chambers. Upon retuning to the courtroom, Mr. Timberlake made the following statement.)

Mr. Timberlake: Your Honor, we stated to The Court that we only had one other witness. There is a witness who we didn't think was available and is not a lengthy matter, and that witness will be here while this witness is testifying; but I wanted to clarify the fact.

The Court: All right, sir.

page 327 } MRS. WALLACE PARKER WADE

the tenth witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Timberlake:

Q. You are Mrs. Wallace Wade?

A. Yes, sir.

Q. What is your given name, Mrs. Wade?

A. Mrs. Louise Wade.

Mrs. Wallace Parker Wade.

A. Well, I knew he was in a lot of pain. He couldn't move and his face had drawn crooked. His face started swelling and his chin got crooked. It didn't look like he had any control of the lower part of his face.

Q. You didn't know anything about his bodily injuries?

A. No. I asked him. Of course, I couldn't tell so I didn't know whether he was hurt inside or not.

Q. Were you present when Trooper Collier was in there?

A. Yes, sir.

Q. Just the jury as best you can recall what took place between you, Trooper Collier, and your husband while you were all in there.

A. Well, when I noticed Mr. Collier come in the X-ray is after they had pronounced Mr. Dickerson dead.

page 331 } When he came in he said to my husband—. He said, "Well, Wade, I guess you know what I've got to charge you with." He didn't come out and say. I was afraid he would because my husband wasn't supposed to know about Mr. Dickerson because they were afraid he would go into shock. He said, "Now I guess you know what I have to charge you with." Wallace just looked at him. He said, "Well, I'd like for you to take a blood test." Wallace still just looked at him.

Q. Was there any conversation on your part about the blood test?

A. No, sir, not until Mr. Collier asked me.

Q. What did he ask you?

A. He asked if it was all right with me if he took it.

Q. What was your reply?

A. I told him, yes, sir. I guessed he was going to take it anyway so I guessed it was all right for him to go ahead and take it. I didn't know anything about it.

Q. Did you hear Mr. Collier make any inquiry of Mr. Wade as to who had been driving his car that night?

A. No, sir.

Q. You didn't hear that?

A. No, sir.

Q. Did you remain on at the hospital, Mrs. Wade?

A. Yes sir. I stayed there for 3 days.

Q. You stayed there for 3 days?

A. Yes, sir.

Q. The whole time?

page 332 } A. Yes, sir. I only left to go to the cafeteria.

Q. What was your husband's condition during those 3 days?

Mrs. Wallace Parker Wade.

Q. How long was he there after you got there?
A. Just a few minutes. They were getting ready to put him in the ambulance when I got there.
page 329 } Q. Was he actually on the stretcher when you got there?
A. Yes, sir.
Q. Did you go up close to him and see him?
A. Well, I couldn't go too close. Mr. Collier was standing on the side of him. I asked Mr. Collier if that was my husband. He said he didn't know. I pulled the cover back for myself and looked and I knew it was my husband.
Q. Did you go to the hospital?
A. Yes, sir.
Q. How did you go?
A. In the ambulance with my husband.
Q. What was your husband's apparent condition during the ambulance ride?
A. He just layed with his eyes shut. He didn't say anything to me. I tried to get him to talk but he wouldn't say anything to me.
Q. Was there any evidence that he was conscious?
A. No, he never let me know he was. He was just groaning.
Q. When you got to the hospital, where did you go?
A. We stayed in the hall. The doctors and nurses were busy with Mr. Dickerson. We stayed in the hall until they got through with him.
Q. Where was your husband?
A. Right outside in the hall; outside, I guess, of the emergency room.
Q. Did you notice any change in him?
A. His eyes were open. That's all.
page 330 } Q. Did you accompany him to the emergency room?
A. They took him in the X-ray room. They didn't put him in the emergency room.
Q. Did you go in the X-ray room with him?
A. Yes, sir.
Q. Where did they have him in the X-ray room?
A. On the X-ray table.
Q. Who was in there when you got in there?
A. The doctor and I think the nurse was in there too.
Q. That was Dr. Ryder?
Q. And what did you notice or observe about your husband's condition while you were in the X-ray room?

Mrs. Wallace Parker Wade.

A. He was doped up a lot of the time. He didn't know anything most of the time.

Q. Were you able to tell when he apparently first realized his surroundings and what had happened?

A. Well it was a good while because they set his face on Monday. He was out all day Monday and most of Tuesday. They broke it loose then on Wednesday—the places they fixed. They reset him again on Thursday. He was doped up on Thursday and most of Friday. Really he didn't know much of anything until over the following week-end. It was over a week until he knew anything about Mr. Dickerson.

Q. It was over a week?

A. That's right. He didn't even know that his car was torn up. He kept insisting that I drive the car down—that I was having trouble getting to the hospital. I let him think I had plenty of friends to bring me. I didn't tell him the car was torn up.

Q. How long was your husband in the hospital?

A. 2 weeks. 2 weeks to the day.

Q. And you saw him there every day while he was there?

A. Yes, sir.

Q. Did you see Mrs. Dickerson, Fred Dickerson's wife, any during that period?

A. No, sir.

Q. Did you at any time following Fred's death see Mrs. Dickerson?

page 333 } A. After we brought Wallace home I went to visit her. Yes.

Q. When you visited Mrs. Dickerson will you state whether or not she expressed any desire to see or not to see your husband?

A. Well, the first visit we didn't say anything about it—for or against it. We really didn't discuss that. I went as a neighbor and friend because we had been friends for a long time. After that I went again; it must have been a couple weeks after that. I asked her if my husband would come down would she see him, and she said she didn't want to see him.

CROSS EXAMINATION.

By Mr. Taylor:

Q. Mrs. Wade, as I understand it, you were first at the Hartbarger home that night watching television and you were taken home by Mrs. Hartbarger about 11 o'clock, and Mrs. Hartbarger then came back for you after the accident.

Mrs. Wallace Parker Wade.

A. Yes. She come on to the hospital. I saw her at the hospital.

Q. She came on to the hospital?

A. Yes, she came on to the hospital.

Q. Didn't she take you to the accident?

A. She took me to the accident.

Q. And she went to the hospital and brought you home?

A. I stayed all night.

Q. After she took you home from watching television, she came and told you about the accident.

page 334 } A. Yes.

Q. And they were putting your husband in the ambulance when you arrived there. Is that correct?

A. Yes, sir.

Q. You didn't talk to your husband on the way to the hospital?

A. I tried to but he wouldn't answer me.

Q. He didn't answer you?

A. No, sir.

Q. But when you got to the hospital you say he opened his eyes?

A. Yes, sir. There was light in there; I guess that's why he did it.

Q. Did he answer you then?

A. I didn't bother him then.

Q. You didn't bother him then?

A. No, sir, I didn't.

Q. Did you hear him when he was talking to Dr. Ryder?

A. No, sir.

Q. You did not hear him then?

A. No, sir.

Q. You say you did not hear him or see him when he was talking to Mr. Collier about who was the driver of the automobile?

A. No, that was not mentioned in my presence.

Q. That was not mentioned in your presence.

A. No, sir.

Q. And you say that Mr. Collier did ask him or say to him in your presence, "I guess you know what I'm

page 335 } going to charge you with."

A. Yes, sir. I think that's the words he used.

Q. You think those were the words.

A. I'm almost positive. Yes, sir.

Q. Could it have been that he would have to charge him with driving under the influence or reckless driving?

Mrs. Wallace Parker Wade.

A. Charging under the influence wasn't mentioned in my presence.

Q. What he was going to charge him with was not mentioned in your presence?

A. No, sir.

Q. Whether he told Mr. Wade that or not, it wasn't in your presence if he did tell him that.

A. If he did it wasn't in my presence. No, sir.

Q. And you say now Mr. Collier asked you if it was all right for your husband to take a blood test?

A. Yes, sir.

Q. Are you certain of that?

A. Yes, sir.

Q. That he asked you or your husband asked you?

A. No, my husband didn't ask me. Mr. Collier did.

Q. You think Mr. Collier did?

A. I know he did.

Q. You know he did?

A. Yes, sir. I'm positive.

Q. You are positive of that?

A. Yes, sir.

page 336 } Q. And what did you tell him?

A. I told him to go ahead; that I guessed he was going to take it anyway.

Q. You told him to go ahead—that you guessed he was going to take it anyway.

A. Yes, because I didn't know anything about it and I figured he would.

Q. Why was he going to take the blood test?

A. I guess to find out about the alcohol is the only reason he would give the blood test I guess.

Q. You assumed he was going to take it to find out what alcohol he had in his system.

A. Yes, sir.

Q. Did you smell any alcohol on him?

A. No, sir.

Q. You didn't smell any alcohol on him?

A. No, sir.

Q. Now did you talk to your husband any at all that night?

A. I tried to. Of course, after they put him in his room they gave him a shot.

Q. He went to sleep?

A. Oh, he didn't know anything!

Q. When was the first time you talked to your husband?

Mrs. Wallace Parker Wade.

A. It must have been Monday before they operated on his face.

Q. It must have been Monday before they operated on his face.

A. Yes, sir, that Monday evening.

Q. Did he know where he was or what he was
page 337 } doing?

A. No, sir. The first thing he tried to say—he couldn't talk because his face was swelled so bad—was "Where am I?"

Q. You don't think he knew he was in the hospital?

A. No, sir.

Q. The nurses were working on him?

A. Most of the time.

Q. Dr. Ryder was seeing him and operating on him?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And he saw him every day.

A. 2 or 3 times a day.

Q. 2 or 3 times a day?

A. Yes, he seen him regular.

Q. And when did he first talk to you about anything, Mrs. Wade?

A. Who? My husband?

Q. Your husband.

A. Well, it was the latter part of the week before we could discuss anything.

Q. How's that?

A. It was the latter part of the week before we could discuss anything. I don't know exactly what day. It was the latter part of that week.

Q. The latter part of the week before he discussed anything about the accident?

A. That's right.

page 338 } Q. The latter part of the week he did discuss with you the accident.

A. He just asked if the car was hurt very bad. He asked about Mr. Dickerson. I kept telling him he was all right. I had to keep it from him; I couldn't let him know.

Q. He asked about Mr. Dickerson?

A. Yes, sir.

Q. And he asked about whether the car was hurt.

A. Yes, sir.

Q. Did he ask about anything else?

Mrs. Wallace Parker Wade.

A. No.

Q. He didn't tell you anything else?

A. No, sir. I didn't bother him because I didn't want him to know anything about it.

Q. The doctors and nurses didn't treat your husband until after Mr. Dickerson's death?

A. That's right.

Q. Is that your understanding?

A. That's right. Well, the nurse checked on him. She come out in the hall to check on him to see if he was in pain or anything.

Q. Did you see her report back to the doctors what she found when she checked?

A. She went back in the emergency room. I guess that's what she did.

Q. You guess that's what she did.

A. Yes, sir.

page 339 } Q. Then subsequent to Mr. Dickerson's death you say they brought your husband in—?

A. Yes, sir.

Q. And started working on him.

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Timberlake:

Q. There were one or two other questions, Mrs. Wade. As I understand, it was quite some time before you told your husband that Fred Dickerson had lost his life.

A. Yes, sir.

Q. Do you recall how long that was?

A. It was over a week. It was the first of the second week because the doctor said he would go into shock if he knew it.

Q. How long was it before you first told your husband that there had been an accident?

A. The latter part of that week. It must have been on a weekend when they got through setting his face for the second time.

Q. I believe you testified you thought that was on Thursday.

A. Yes. The last time they set his face was on Thursday.

Q. And was that the first time, according to your best recollection, that you told him there had been an accident?

A. Yes. He was doped all day Thursday and Friday after

Mrs. Wallace Parker Wade.

the operation. It must have been over that week-end after the operation that we discussed it, but very little.

page 340 } Q. Did you render any attention to your husband either on the way to the hospital in the ambulance or after you got down there?

A. Well, I wiped some blood off his face.

Q. When did you do that?

A. In the ambulance and the nurse did it after we got in the hall before they put him in the X-ray room. She wiped the place on his face.

Q. What did you use in the ambulance?

A. I used Kleenex that I had in my pocketbook.

Q. And what was used after you got to the hospital?

A. The nurse gave me gauze and I thought there was something on it. I'm not sure but I thought there was, and I wiped his face with that.

No further questions.

Witness leaves the stand.

Mr. Timberlake: Your Honor, we have this witness who is supposed to be here right now. We just learned that he is available. He was the occupant of the house that was struck. I realize it is late.

The Court: Yes, sir. I wonder if, to conserve time, we could proceed with the rebuttal.

page 341 } Mr. Taylor: I don't know what this witness is going to testify to, Your Honor. Wait a minute. I'll see. (Mr. Taylor leaves the courtroom but returns in a few minutes and makes the following statement.) Your Honor, one witness didn't understand and has gone so we won't have to wait. I'll rest.

Mr. Timberlake: Your Honor, if you will give us just a few more minutes. Mr. Fletcher Watson is on his way up here with Mr. Glenn.

Mr. Taylor: Is he the man that was living in the house that was struck?

Mr. Timberlake: Yes, sir.

Mr. Taylor: I was at his house last night and he's supposed to be in New York.

Mr. Timberlake: We got a massage that he was leaving for New York but was on his way up here.

(At this point a brief recess was granted by the Court to allow time for the arrival of the additional witness for the defendant. When the said witness did not appear in the courtroom after some lapse of time, Mr. Timberlake made the following statement.)

Mr. Timberlake: Your Honor, we, in good faith, can't ask that this matter be held over any longer. This witness hasn't arrived. Other than that, we are through with our evidence; and so we are compelled to rest.

page 342 } The Court: Do you want the testimony of this witness?

Mr. Timberlake: I feel from information—I haven't talked to him—but based on that information it would be helpful but cumulative.

The Court: Mr. Taylor, under those circumstances then we will consider that the defendant has rested. Mr. Taylor, what about the rebuttal evidence?

Mr. Taylor: I'm going to rest, Your Honor. One witness I had left and went home and I know I can't hold the jury here long enough to get him back.

The Court: Members of the jury, I'm afraid I have some bad news for you. I had hoped to conclude this case with a night session. However, after taking the evidence and trying to budget the time as to how much time would be required for instructions and for argument of counsel, it is perfectly apparent that you would not get this case to take to your jury room until after 10 tonight. I think a case as serious as this case is, it is not fair to the jury to give you this case something after 10 o'clock tonight. Therefore, we are going to work tonight on the instructions, and I'm going to ask you to come back at 9:30 tomorrow morning. I do have another two-day case starting but that case will have to be de-

page 343 } layed until you gentlemen go to your jury room; so we will ask you to come back at 9:30 tomorrow morning, and as soon as you go to your jury room I will start the other case.

(At this point a dinner recess was taken from 5:45 p. m. to 8:00 p. m.)

September 24, 1958 8:00 P. M.

In Chambers:

Mr. Timberlake: Your Honor preliminary to these instructions, we want to renew the motion that we made at the con-

clusion of the Commonwealth's evidence for the same reasons and on the same grounds.

The Court: Yes, sir. Yes, sir.

page 344 } INSTRUCTIONS.

The following instructions are all of the instructions which were granted by the Court in the trial of this case. Objections and exceptions of both the Commonwealth and the defendant, insofar as any were made to the granting of such instructions, are also recorded.

COMMONWEALTH'S INSTRUCTION NO. 1.

(Given as amended).

The Court instructs the jury that it may find any one of the three following verdicts:

(1) "That the defendant is guilty of involuntary manslaughter as charged in the indictment." Involuntary manslaughter as related to this case means the killing of one accidentally, contrary to the intention of the defendant, through and by means of criminal negligence. The punishment for involuntary manslaughter is confinement in the penitentiary for not less than one nor more than five years; or, in the discretion of the jury, by a fine not exceeding $1,000.00, or confinement in jail not exceeding one year, or both. Conviction of involuntary manslaughter makes it mandatory that the Commissioner of Motor Vehicles revoke the license of the defendant to operate a motor vehicle.

(2) "That the defendant is guilty of reckless driving as charged in the indictment." Reckless driving is defined as follows:

page 345 } Irrespective of maximum speed limits, any person who drives a vehicle upon a highway recklessly or at a speed or in a manner so as to endanger life, limb, or property of any person shall be guilty of reckless driving; provided, however, that the driving of a motor vehicle in violation of the speed limit shall not, of itself, constitute reckless driving, unless the speed exceeds 75 miles per hour. The punishment for reckless driving is confinement in jail not exceeding twelve months or a fine not exceeding $500.00, or both. And the jury may in addition recommend suspension

of the defendant's operator's permit for a period of not less than 10 days or more than six months.

(3) "That the defendant is not guilty as charged in the indictment."

Mr. Timberlake: Of course, we object to Instruction No. 1, Your Honor, on the grounds that there is no evidence upon which the jury can find beyond all reasonable doubt that this defendant was guilty of either involuntary manslaughter or reckless driving; and we further object to the instruction on the grounds of the second section thereof, wherein the jury is told in substance that they can find that the defendant was driving in excess of 75 miles an hour and for that reason guilty of reckless driving, because there is absolutely no evidence upon which the jury could make such a finding as to speed; and we except to the giving of the instruction for the reasons and on the grounds stated in the objec-
page 346 } tion.

The Court: I will give Instruction No. 1 as amended.

Mr. Timberlake: We except to the granting of Instruction No. 1 for the reasons stated.

COMMONWEALTH'S INSTRUCTION NO. 2.

(Given).

The Court instructs the jury that criminal negligence is in this case an essential element of the offense of involuntary manslaughter, and in the absence thereof there can be no conviction for that offense. And with regard to the criminal negligence and grade thereof that is essential in this case, the Court further instructs the jury as follows, namely:

Such criminal negligence is something less than that grade or character of negligence that imports malice or from which malice may be properly inferred; but it is something more than mere inadvertence, misadventure, ordinary negligence which is the failure to use ordinary care, or mere violation of traffic laws enacted for the regulation, control, or safety of vehicles or persons using the public streets; for mere inadvertence, misadventure, ordinary negligence, or the mere violation of traffic laws are not, alone and without more, sufficient to constitute such criminal negligence.

By such criminal negligence is meant that the act or acts constituting same, whether of commission or omission, were

done recklessly and in a manner so greatly negli-
page 347 } gent and deserving of blame as to indicate on the
part of the offender an utter indifference to consequences and the safety of others, and were done under circumstances reasonably calculated to produce personal injury to another or which made it not improbable that such injury would be occasioned, and of which circumstances and probable result of his acts the offender knew or was charged with knowledge.

Mr. Timberlake: We just object to Instruction No. 2 on the grounds that there is no evidence upon which the jury could find beyond reasonable doubt that the defendant was guilty of involuntary manslaughter.

The Court: I will give Instruction No. 2.

Mr. Timberlake: We except to the granting of Instruction No. 2 for the reason stated.

THE COURT'S INSTRUCTION NO. 2A.

(Given).

The Court instructs the jury that if they believe from the evidence beyond a reasonable doubt each and all of the following three things, then they should find the accused guilty of involuntary manslaughter as charged, namely:

(a) That the accused was operating the motor vehicle mentioned in the evidence at the time and place of the accident
therein mentioned; and
page 348 } (b) That he was guilty of criminal negligence
in the light of Instruction No. 2, in the manner in which he then and there operated same;

(c) That such criminal negligence on his part, if any, was either the sole or a contributing proximate and efficient cause of said accident and death of the deceased.

On the other hand, if the jury should not believe from the evidence beyond a reasonable doubt any one or more of the three things designated above as Items (a), (b), and (c), then the jury should find the accused not guilty of involuntary manslaughter.

Mr. Timberlake: The general objection to Instruction 2A is on the grounds that we object to any instruction upon which a finding of guilt beyond all reasonable doubt can be based for the reason that there is not sufficient evidence to support a conviction; and, further, we object to the giving of Instruc-

tion 2A in lieu of our Instruction D, which we consider a proper and correct statement of law.

Mr. Taylor: The Commonwealth objects to the giving of 2A in lieu of Instruction No. 4 of the Commonwealth on the grounds that the Instruction No. 4 is a correct statement of the law, and not repetitious of Instruction 2.

The Court: I will give Instruction No. 2A.

page 349 } Mr. Timberlake: We except to the granting of Instruction No. 2A for the reasons stated.

COMMONWEALTH'S INSTRUCTION NO. 3.

(Given).

The jury are instructed that it is the duty of the jury to consider all the evidence with great care and caution in an earnest effort to do justice between the Commonwealth and the defendant; and if the jury are satisfied from the evidence beyond a reasonable doubt that the accused be guilty of the offense charged in the indictment, and that no reasonable hypothesis is or explanation can be found or given upon the whole evidence in the case consistent with the innocence of the accused, and at the same time consistent with the facts proved, they ought to find him guilty.

Mr. Timberlake: We simply object to No. 3 on the grounds that there is no evidence upon which the jury can find beyond a reasonable doubt that the defendant is guilty.

The Court: I will give Instruction No. 3.

Mr. Timberlake: We except to the granting of Instruction No. 3 for the reason stated.

page 350 } COMMONWEALTH'S INSTRUCTION NO. 5.

(Given).

The Court instructs the jury that you can and should draw reasonable inference from the facts proven. Circumstantial evidence is legal, and is not only competent but is sometimes the only mode of proof; and if it is of such a character as to exclude every reasonable hypothesis, other than that the defendant is guilty, it is entitled to the same weight as direct testimony. A verdict of guilty may be found on circumstantial evidence alone, if such evidence shows the guilt of the defendant, Wallace Parker Wade beyond a reasonable doubt.

Mr. Timberlake: We object to No. 5 on the general grounds that there is insufficient evidence, circumstantial or direct,

upon which the jury can find beyond all reasonable doubt that the defendant is guilty as charged in the indictment, which is, of course, the objection we have made to all of the instructions. Further, we object to this instruction on the grounds that it, in the second sentence, goes beyond the scope of the case at bar and deals with apparently other cases where circumstantial evidence may constitute the only mode of proof; and, third, that the second and third sentences of the instruction are repetitious.

The Court: I will give Instruction No. 5.

page 351 } Mr. Timberlake: We except to the granting of Instruction No. 5 for the reasons stated.

COMMONWEALTH'S INSTRUCTION NO. 6.

(Given as amended).

The Court instructs the jury that if a blood test was made at the request of the defendant and the test shows at that time 0.15 per cent or more by weight of alcohol in the accused's blood, it shall be presumed that the accused was under the influence of alcoholic intoxicants; but this presumption can be refuted or rebutted and such evidence shall be considered along with all other evidence in the case.

Mr. Timberlake: We object to this instruction as written on a number of grounds, Your Honor. First of all, we object to Instruction No. 6 on the grounds that the evidence fails to show the consent of the defendant to the making of a blood test. Second, that the taking of the blood and the using of the test by statute is limited to prosecutions under Section 18-75 of the Code of Virginia or city and county ordinances embodying the same offense. Third, that the obtaining of the report of the blood test was not in conformity with the requirements of the Court of Appeals as they existed in all cases prior to the amendment or amplification of Section 18-75 of the Code by the enactment of Sections 18-75.1,

page 352 } 18-75.2, and 18-75.3, all of which are solely applicable to prosecutions under Section 18-75 and similar ordinances. Fourth, that there is absolutely no evidence of a request on the part of the defendant to the taking of the test, and there is certainly no evidence of any such request within two hours of his arrest because the record in this case shows that he wasn't arrested until May 6 I believe. Fifth, we object to the granting of the instruction in the language that "it shall be presumed that the accused was under the influence of alcoholic intoxicants" because that

excludes from the consideration of the jury all other evidence in the case; and it in substance tells the jury that in spite of any or all other evidence in the case it is presumed that the accused was under the influence of intoxicants; and, of course, that is not the case and not the law. The presumption only exists in the absence of other evidence; and the jury, assuming they are to be instructed on this blood test, would have to be told that the presumption would necessarily have to give way in the face of other evidence. Even in a proceeding under Section 18-75, Code of Virginia, for driving under the influence, that prosecution by Section 18-75.3 is not designed to prevail in the face of or in the teeth of other evidence to the contrary; and I think that if any such instruction as this is to be given it would have to be qualified in the absence of evidence to the contrary.

Mr. Taylor: What evidence to the contrary?

page 353 } Mr. Timberlake: There's the evidence of the defendant himself.

Mr. Taylor: He never did say he wasn't under the influence.

Mr. Timberlake: He outlined—. It is perfectly proper for the jury to consider his testimony as to what he had been doing and what he had had to drink and determine whether or not he was under the influence.

Mr. Taylor: I think that instruction as written follows the wording of the statute.

The Court: Gentlemen, I had one of these not long ago and I just added this: "But this presumption is rebutable."

Mr. Timberlake: I don't believe the jury would know what that means.

The Court: Gentlemen, I'm going to amend this instruction by adding this: "But this presumption can be refuted or rebutted and such evidence shall be considered along with all other evidence in the case." I will give the instruction as amended.

Mr. Timberlake: We take the position that the amendment to Instruction No. 6 removes only one of our objections to that instruction, and we renew our other objec-

page 354 } tions made to Instruction 6 as originally submitted and except to the granting of this instruction.

COMMONWEALTH'S INSTRUCTION NO. 7.

(Given).

The Court instructs the jury, as a matter of law, that in considering the case the jury are not to go beyond the evi-

dence to hunt up doubts, nor must they entertain such doubts as are merely fanciful or conjectural. A doubt, to justify an acquittal, must be reasonable doubt; and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that, were the same kind of doubt interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty. If, after considering all the evidence, you can say that you have an abiding conviction of the truth of the charge, you are satisfied beyond a reasonable doubt.

The Court: Do you have any objection to 7 other than the general objection?

Mr. Timberlake: No, sir. We make the general objection, of course, that there is insufficient evidence for a conviction in this case.

The Court: I will give Instruction No. 7 as page 355 } tendered.

Mr. Timberlake: We except to the granting of Instruction No. 7 for the reason stated.

COMMONWEALTH'S INSTRUCTION NO. 8.

(Given).

The Court instructs the jury that the credibility of the witnesses is a question exclusively for the jury; and the law is that, where a number of witnesses testify, directly opposite to each other, the jury has the right to determine from the appearance of the witnesses on the stand, their manner of testifying, and their apparent candor and fairness, their relationship, their interest, if any is shown, their means of information, their apparent intelligence or lack of intelligence, and from all the other surrounding circumstances appearing on the trial, which witnesses are more worthy of credit, and to give credit accordingly.

Mr. Timberlake: I think that is a correct statement. We will make the general objection.

The Court: I will give Instruction No. 8 as tendered.

Mr. Timberlake: We except for the reason stated.

page 356 } DEFENDANT'S INSTRUCTION A.

(Given).

The Court instructs the jury that the accused, Wallace Parker Wade, enters upon his trial accompanied by a con-

tinuing presumption of innocence, which is not a mere form or sham to be disregarded by the jury at pleasure. On the contrary, this presumption of innocence is an essential and substantial part of the law of this Commonwealth. It goes with him and applies throughout the entire trial and at every stage thereof, and it is the duty of the jury to give him the full benefit thereof, and give due consideration and weight thereto not only through the taking of the evidence, but also during their deliberations and until they have arrived at an unamimous verdict. In doubtful cases this presumption of innocence is of itself sufficient to turn the scales in favor of the accused and require a verdict of not guilty.

Mr. Taylor: I object to the form of Instruction No. A because I think it tells the jury more than the law provides that a jury is to be told. The first part of the instruction reads "that the accused, Wallace Parker Wade, enters upon the trial accompanied by innocence," which is correct and that innocence goes with him through the entire trial; but the jury should not be told that "it is not a mere form or sham to be disregarded by the jury at pleasure." And the instruction goes on and speaks of the presumption of innocence as a substantial part of the law of the Commonwealth. page 357 } It isn't any more essential or substantial than any other law of the Commonwealth; and if that be true, the wording as invited in this instruction should be embodied in every instruction that the Court gives. It does apply at every stage of the trial and the jury can be told that, but not to reiterate the meaning of the law in telling the jury that this is something they must give due consideration to and weight to and telling the jury the same thing during every stage of the trial in different language. I think there is embodied in this instruction entirely too much emphasis on the presumption of innocence that every defendant is entitled to and should have; but it shouldn't be picked out all during the trial and during the deliberations of the jury, and the jury should not be told a number of times in one instruction what they should do. The instruction should be worded that he is presumed to be innocent of the charge, and that presumption of innocence goes through the entire trial and all proceedings thereof; but to pick out every stage of the trial and the Court tell the jury that they must consider this and must consider that, I think that is going too far.

Mr. Timberlake: Your Honor, we submit that that is absolutely a correct statement of the law and in the form of an instruction that has been given time and time again. It is taken from an approved instruction—I mean it is a verbatim

page 358 } approved instruction—of one of our neighboring courts; and I don't think there is any statement in that instruction that is not absolutely correct insofar as the presumption of innocence is concerned. I think we are entitled to have our instruction on the presumption of innocence in the form and and in the language that, of course, would be most favorable to the accused as long as it doesn't misstate the law or the principle on which it is based. As I say, further than that, it is an approved instruction.

Mr. Taylor: I have never seen this instruction approved by the Court of Appeals in any criminal case I have ever read, and I have never seen it approved in this Court. Whether it has been approved in a court in this Circuit or in the Valley or not, I don't know; but I have never read this instruction in this language before.

Mr. Franklin: Mr. Taylor, if you haven't read it, you didn't read it the last time I had a case here. This instruction was approved by Judge Smith, who was later on the Supreme Court, in Charlottesville some 15 years ago; and I have never tried a case of presumption that I haven't presented it.

Mr. Taylor: I've never seen it. I would like to see it if it has been given in this Court.

page 359 } The Court: Gentlemen, I have given this instruction time after time. I don't know that I have given it here. I have given it in Lexington and Buena Vista. It is practically verbatim.

Mr. Timberlake: I am satisfied, Your Honor, that we can show you approval by the Court of Appeals that "in doubtful cases this presumption of innocence is of itself sufficient to turn the scales in favor of the accused and require a verdict of not guilty."

The Court: I will give Instruction A as tendered.

DEFENDANT'S INSTRUCTION B.

(Given as amended).

The Court instructs the jury that in this case no burden whatsoever rests on the accused to establish his innocence; on the contrary, the whole burden of proof, which never shifts, rests on the Commonwealth throughout the entire case to prove to the jury by competent, clear, and convincing legal evidence, beyond every reasonable doubt, that he is guilty as charged. Nothing is to be presumed or taken by implication against him. No suspicion of guilt, however strong, is ever sufficient to convict. No mere preponderance of the evidence

will suffice as in the trial of a civil case. It is not sufficient that the jury may believe his guilt probable, or that he is more probably guilty than innocent, for in law no degree of mere probable guilt, however grave or strong, will authorize a conviction; nor can he be convicted upon proof of
page 360 } facts consistent with guilt, unless such facts are also inconsistent with his innocence and actually exclude every reasonable hypothesis or theory which is consistent with his innocence.

If, therefore, the evidence discloses any reasonable hypothesis or theory of innocence, or if for any reason the evidence or lack of evidence fails to establish the defendant's guilt beyond a reasonable doubt, it is their duty to find him not guilty.

Mr. Taylor: I think the Court has already instructed the jury on the major part of this instruction.

Mr. Timberlake: Your Honor, we don't feel that there is any repetition. Instruction A is on presumption of innocence; Instruction B is on burden of proof. We are certainly entitled to both.

Mr. Taylor: I guess that's pretty close to a correct statement. I won't object to B.

The Court: How about that last statement? It seems to me it goes a little far. "If for any reason the evidence or lack of evidence fails to produce upon the minds of the jury a certainty of his guilt."

Mr. Taylor: The word "certainty" might come
page 361 } out.

Mr. Timberlake: That language, Your Honor, I think is correct. I think it has been approved.

The Court: I'd feel better about this if it would say "if the evidence or lack of evidence fails to establish the defendant's guilt beyond a reasonable doubt." "Fails to establish the defendant's guilt beyond a reasonable doubt" instead of "fails to produce upon the minds of the jury a certainty of his guilt." I will give the instruction as amended.

Mr. Timberlake: Your Honor, of course, you have the last word. We feel that the language we used is correct; and, of course, we except to the Court's modification.

The Court: Gentlemen, I believe I have uniformly made some amendment. I will eliminate that word "certainty" because I think it is a little strong. I think the rest of it is a stock instruction that we have given time after time. Mr. Taylor, do you have any comment on that amendment?

Mr. Taylor: No, sir. That's all right.

The Court: Mr. Timberlake, if you will put in your exception.

Mr. Timberlake: We submit that the instruction as submitted correctly states the principle of law, and
page 362 } we object and except to the Court's amendment of the instruction as submitted.

DEFENDANT'S INSTRUCTION C.

(Given as amended).

The Court instructs the jury that if from a fair and impartial consideration of all the evidence in this case, there arises in the mind of the jury a doubt of such nature and character that if the same kind of doubt were interposed in the graver transactions of life it would cause a reasonable and prudent man to hesitate and pause, then the jury is not satisfied beyond a reasonable doubt of the guilt of the accused, and it is their duty to find him not guilty since a verdict of "not guilty" means no more than that the guilt of the accused, if any, has not been established beyond a reasonable doubt.

Mr. Taylor: In C, Your Honor, I object to the wording in the fifth line, "Then the jury is not satisfied to a moral certainty of the guilt of the accused." I think that should be amended and read, "Then the jury is not satisfied beyond a reasonable doubt of the guilt of the accused." And the last line of the instruction should read, "If any, has not been established beyond a reasonable doubt," but not the wording "in the precise, specific, and narrow form prescribed by law." I don't think that is the correct wording.

page 363 } Mr. Timberlake: Your Honor, we take the position, of course, that the Commonwealth is entitled to submit what instructions it feels proper in the language that the Commonwealth's attorney feels is most favorable within the boundaries of the legal principles involved to the prosecution. Now this instruction that we have submitted to Your Honor we think correctly states the law. We think that it is in correct and proper language which we have selected, of course, as being most favorable to the accused; and it certainly is in the form that has been approved by courts in adjoining jurisdictions, and I think it is in the form that has been approved by the Court of Appeals.

Mr. Taylor: I also feel that the jury has been amply instructed on doubts—reasonable doubts.

The Court: Gentlemen, I'm going to have to amend this one in this fashion, and I will give the instruction as amended. In Line 5 immediately after "satisfied" I'm going to line out

"to a moral certainty" and interline in lieu thereof "beyond a reasonable doubt"; and in Line 7 the last two words, "in he," and all he words in Line 8 have been lined out and substituted therefor the language "beyond a reasonable doubt." Now if you would put your exception in on that.

Mr. Timberlake: We except to the Court's page 364 } amendment of Instruction C on the grounds that the instruction as submitted is a correct and proper statement of the law in the language which counsel believe is most favorable within the boundaries and limitations of a proper instruction to the accused, and we feel that the amendment by the Court impairs the value of the instruction from the standpoint of the accused.

DEFENDANT'S INSTRUCTION G

(Given as amended).

The Court instructs the jury that it is unlawful for a bus or any part thereof to be stopped on the traveled or paved portion of the highway to take on or discharge passengers, unless the operator cannot leave the traveled portion of the highway in safety; and if the jury believes from the evidence that the bus driver was attempting to stop in violation of this requirement and that such attempt, either solely or in conjunction with negligence on the part of the driver of the Wade automobile, caused the accident, they shall find a verdict of not guilty unless they also believe, beyond a reasonable doubt, that Wallace Wade was the driver of his automobile at the time of the accident and that he was guilty of such gross and culpable negligence as to amount to a wanton disregard of human life.

Mr. Taylor: I think that I object to this instruction because I do not feel that there is any evidence to support it. The bus driver testified that he was in the act of stop- page 365 } ping and would have pulled into this what-you- call-them down there—this dead-end street that he called it—if he had not been hit by the automobile. The bus had not stopped and was only slowing down to make a stop as he described it. The statute only says that he can load and unload passengers where the rest of the highway was left in safety for other users. In this particular case it was testified to by one defense witness that 2 cars passed, one car very fast and another car slow; and regardless of the door and hood being thrown into the highway from this car, there was no traffic tie-up or anything else happened which certainly

showed that traffic wasn't—the safety of other persons on the highway wasn't impaired by the bus actually stopping where he did as a result of being hit, and I do not think that that is a follow-up of the statute regarding safe discharge of passengers from the bus. And the last part of this instruction deals with the same thing we have been talking about: That in order to convict Wallace Wade we would have to show that he was guilty of gross and culpable negligence and that he was the driver of the automobile, and I think that has been covered in other instructions in the case.

Mr. Timberlake: In regard to that, in the first place I think Mr. Taylor is in error as to the provision of the statute as far as loading and unloading passengers is concerned. It doesn't say that a bus shall load or unload—make a stop

page 366 } on the highway and load and unload passengers as long as it doesn't create a safety hazard to other people. It says a bus may not stop on the paved portion of the highway or any part thereof to load or unload passengers unless it cannot get off the paved portion with safety. This bus driver has already testified that there was a roadway—a dead-end roadway—that he could have pulled off in; but he also said on cross examination—and if the Court has any misapprehension about that I'll have the record read back—he said that in making the stop he was making he would have stopped had he not been hit in less than the half a bus length he did stop in and that he would have stopped partly on the paved portion of the highway; and there wasn't a thing in the case that would tend to show that he couldn't have gotten off the highway in that general area in safety; and this instruction merely submits the proposition to the jury that if they believe he was acting contrary to the mandate of the statute and was thereby negligent and if they believe that negligence caused the accident solely or in conjunction with negligence on the part of the driver of the Wade automobile, but on the other hand the jury must find that Wade was driving the car. I submit from the defendant's theory of the case that that is a proper instruction.

The Court: I got the impression that he was not stopped but was going to a point where he could get completely off of the road.

Mr. Taylor: That's what I understood.

page 367 } The Court: Mr. Timberlake says on cross examination a different version came up. Let's turn to that cross examination and explore that. (At this point the court reporter, as requested, read to the Court and counsel various portions of the testimony of Elwood Hamil-

ton Furr.) This is a very confusing situation. It is true that the bus did slow up and pull off a little bit, and I think it is something the jury ought to consider. I'm going to give it.

Mr. Taylor: Would you let me read that again? This instruction says, "It is unlawful for a bus or any part thereof to be stopped"—to be stopped—"on the traveled portion of the highway to take on or discharge passengers." Now there was no evidence that he stopped where he did to discharge or taken on passengers. He stopped as a result of being hit where he did stop. "Unless the operator cannot leave the traveled portion of the highway in safety. And if the jury believe from the evidence that the accident in this case was caused by the violation of this requirement by the bus driver, either solely or in conjunction with some negligence on the part of the automobile, then they shall find a verdict of not guilty unless they also believe, beyond a reasonable doubt, that Wallace Wade was the driver of the automobile," which is a repetition. I certainly object most strenuously to the giving of that instruction because that is not in

page 368 } conformity with the evidence in this case as read by the court reporter from the evidence given by the bus driver; and the pictures in this case do show the bus partly on the hard surface of the highway, and by giving that instruction it would certainly tend to tell the jury that the bus was sitting there and did stop and passengers were discharged there. It is true that passengers were discharged, but they were discharged not at his bus stop but at a place he was driven to as a result of being hit, which his testimony discloses.

Mr. Timberlake: Your Honor, that instruction doesn't tell the jury anything. It gives them the opportunity of finding in light of the evidence. We submit this bus driver's testimony was self-contradictory and that the jury is entitled to find from his testimony in light of the physical facts that he was in the act of stopping with his bus partly on the traveled portion of the road because the bus driver, regardless of what else he said, in self-exoneration he said he was making a stop for the purpose of unloading passengers. He said that he was within less than a half a bus length of where he would have come to a stop; his forward motion was within less than half a bus length of where he would have stopped had the accident not occurred; and according to the physical facts in this case, coupled with the testimony of Trooper Collier, the bus was somewhere in the left side of it—was somewhere in the neighborhood of 2 feet from the double white line in the

page 369 } left side of it—at the time of impact because Trooper Collier says that that is where the right tire marks of the automobile were and he says that's where the debris was; and the jury is certainly entitled to consider and to find that that bus, in coming to a stop, was in the act of coming to a stop partially on the traveled portion of the highway. The bus couldn't have been less than a bus length and gotten completely off the highway when it was in the position it was in less than a half a bus length from where it was destined to stop or was in the act of stopping.

Mr. Taylor: There is no evidence in this case as to what it takes a bus—that particular bus—to get off the highway or the length of the bus or anything else other than the bus driver's testimony as to what he intended to do and what he could have done if he had not been hit.

Mr. Franklin: He never said a single time that the hit bothered him to the slightest degree except that he said being hit—he could have stopped less than half the length of the bus if he wasn't hit and did stop within a half length of the bus.

Mr. Taylor: He didn't say that because the bus was clean beyond the intersection. I mean the pictures show that.

The Court: I will give Instruction G.

page 370 } DEFENDANT'S INSTRUCTION H.

(Given as amended).

The Court instructs the jury that the average stopping distance of an automobile with four-wheel brakes applied, traveling at the following speeds, is as follows:

Speed	Stopping Distance
35	63 ft.
45	104 ft.
55	155 ft.
65	217 ft.

Mr. Taylor: There is no evidence in this case of any kind showing any rate of speed. I do not think that instruction would be proper for you to tell the jury—unless you are going to tell the jury every rate of speed from 5 miles to 100 miles—the stopping distance at 55 miles an hour. There is no evidence here that the car, bus, or anything else was going 55 miles an hour.

Mr. Timberlake: We simply took the lawful speed limit.

Mr. Taylor: I think if the Court would give that instruc-

tion you would have to tell the jury the stopping distance from 5 miles an hour to 100 miles an hour. There is no evidence in this case as to what the speed was at that particular place where the accident happened.

page 371 } Mr. Timberlake: In the absence of any evidence, it would be 55.

Mr. Taylor: Not necessarily.

Mr. Timberlake: Yes, sir.

Mr. Taylor: At that particular point?

Mr. Timberlake: I think the Court takes judicial notice that in the absence of a lower speed requirement it is 55.

The Court: The thing that bothers me is that there is no evidence of speed at all so where would we—?

Mr. Timberlake: Start and stop?

The Court: Yes, sir. We don't know whether he was going 30 miles an hour or 65 miles an hour. There's nothing.

Mr. Timberlake: That is one of the bases for our motion to strike.

Mr. Franklin: It seems to me in this matter that you have in evidence here that there were 80 feet of tire marks; and it looks to me like in view of that that the jury ought to be told something about distances for stopping an automobile, and this merely takes the legal limit.

page 372 } Mr. Timberlake: We are perfectly willing, Your Honor, to take that instruction and it wouldn't be any great effort to say: "The Court instructs the jury that the average stopping distance of an automobile with four-wheel brakes applied, traveling at the following speeds, is as follows," or something to that effect and give 30, 45, 55, 65, or 70 or any range in there. But we know Mr. Taylor is going to argue the physical facts of the accident, connote, and show excessive speed that constitutes in itself a basis for conviction.

Mr. Taylor: That would not necessarily be true.

The Court: Gentlemen, there isn't any evidence in this record to show that it was clear or what the condition of the highway was.

Mr. Timberlake: Other than the pictures. The pictures show the highway to be dry. We are not suggesting that the 80 feet represents the distance the car stopped in through the application of brakes.

Mr. Taylor: There's no way to fix it. You don't know what it would have stopped at.

Mr. Timberlake: If Mr. Taylor—as I'm sure he is going to do—argues that the tire marks and physical facts and damage and injury in itself connotes and indicates an unlaw-

ful and excessive rate of speed, we feel that we are entitled to have a guide in the instruction to argue to the
page 373 } jury as to speed. We are not wedded to the idea of 55 miles an hour. It can show lower rates of speed on up to higher rates of speed.

Mr. Taylor: I don't think the defense is entitled to an instruction on what they assume I'm going to argue about.

The Court: What is your view about giving a wide range? Say 35 to 65?

Mr. Taylor: I do not think much about it because no speed was mentioned either by the driver or the truck driver; and, of course, these gentlemen will object very strenuously if I tried to introduce an opinion as to the speed of this automobile.

Mr. Timberlake: Are you telling us that you are not going to argue there was speed involved in this?

Mr. Taylor: No, it's up to the jury to determine whether he was going too fast or too slow or whether he was too drunk and drove right into the rear of it. I know he hit the automobile and I know he was drunk. That's all I know.

Mr. Timberlake: You know he was driving.

Mr. Taylor: I'm pretty sure he was driving. I didn't see him.

Mr. Timberlake: This goes to the very proposition of circumstantial evidence. Mr. Taylor asked for and
page 374 } received what we say are two instructions on circumstantial evidence, and he is going to ring the changes I know—I would myself if I were Commonwealth's attorney—on circumstantial evidence that indicates the speed at which this car was going. As I say, we are not wedded to 55 miles but I think it is entirely proper to show a range.

Mr. Franklin: From 25 to 75.

Mr. Taylor: But there is no evidence in the case to show. I think the instruction has to be predicated on the evidence.

The Court: What you are trying to do is keep the speed down by showing the skid marks.

Mr. Timberlake: I'm not trying to keep the speed down. We're just trying in our rebuttal to be in a position to say that this car had a brake mark, tire mark, or skid mark—whatever you want to call it—of 80 feet leading up to the point of impact. That doesn't necessarily show an unlawful and excessive rate of speed because at the lawful speed limit it takes 155 feet to stop, practically twice the distance of this tire mark; and I think we are entitled to it.

The Court: Well, gentlemen, I'm going to give it if you will start it at 35 and take it up to 65.

Mr. Timberlake: At what intervals?

page 375 } The Court: 10 miles I should think would be all right. This ground was fairly level.

The following instructions are all of the instructions which were refused by the Court in the trial of this case. Objections and exceptions of both the Commonwealth and the defendant, insofar as any were made to the refusal of such instructions, are also recorded.

COMMONWEALTH'S INSTRUCTION NO. 4.

(Refused).

The Court instructs the jury that if they believe beyond a reasonable doubt that at the time and place of the accident mentioned in the evidence the defendant was recklessly, negligently, and carelessly driving an automobile and that such recklessness, negligence, and carelessness was so gross and culpable as to indicate a callous disregard of human life and of the probable consequences of his act and resulted in the death of the deceased, Fred Melvin Dickerson, then they should find the defendant guilty of involuntary manslaughter as charged.

Mr. Timberlake: We object to No. 4 on the

page 376 } grounds that there is insufficient evidence upon which the jury could find beyond a reasonable doubt that the defendant was operating his automobile and operating it in such manner as to amount to criminal negligence.

Mr. Franklin: We object further because of the fact that the points covered in Instruction No. 4 have been previously covered in other instructions.

The Court: I will refuse Instruction No. 4.

DEFENDANT'S INSTRUCTION D.

(Refused).

The Court instructs the jury that the gist of the crime charged against the defendant is criminal negligence; by the term criminal negligence is meant not simply such negligence as might be the foundation of a suit for damages by the person injured or by his personal representative if killed, but something more than that; in order to be criminal negligence, as distinguished from such negligence as is necessary for a civil damage action, it must be shown that the negligence of the

accused was gross and culpable negligence; culpable and gross negligence is that which indicated a callous disregard of human life and of the probable consequence of his act; criminal liability cannot be predicated upon every act carelessly performed merely because such carelessness results in the death of another, but in order for criminal liability to result from negligence it must necessarily be reckless or wanton and of such a character as to show disregard of the safety of others under circumstances likely to cause injury or death. Unless the jury believe beyond all reasonable doubt that Wallace Parker Wade is guilty of gross and culpable negligence with a callous disregard for human life, then they should find the defendant, Wallace Parker Wade, not guilty.

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Mr. Taylor: I object to Instruction No. D because criminal negligence has been defined clearly in this case in Instruction No. 2, which this instruction is repetitious in effect as to the definitions of criminal negligence given in Instruction No. 2. I also object to this instruction as, in effect, telling the jury that the personal representative of the deceased has an action at law in the civil courts for the death of her husband whether it was by gross negligence or any negligence, which I do not think is a proper statement to tell the jury; and I think the definition of criminal negligence as here given should not be elaborated on and compared with ordinary negligence in which the accused could be held liable for damages, and that is what, in effect, this instruction tells the jury.

Mr. Timberlake: Your Honor, we again take the position that simply because the Commonwealth has been granted certain instructions, that doesn't preclude us from instructions from the defendant's standpoint on the same principle. Mr. Taylor here objects to our having a finding instruction on the proposition of criminal negligence when he took a diametric objection to his Instruction 4. The Court raised the question as to whether or not there was repetition, and in frankness to Your Honor I pointed out that I recognized Instruction No. 2 was a defining instruction of criminal negligence and that Instruction No. 4 offered by the Commonwealth was a finding instruction from the Commonwealth's standpoint. Now we come along with a finding instruction on the question of criminal negligence from the standpoint most favorable to the defendant, couched in what we submit is a correct statement of law, and we run into the proposition that Mr. Taylor, although he didn't think Instruction No. 2 precluded him from a finding instruction, he turns around and says because the definition of criminal negli-

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gence is in Instruction No. 2 we can't have a finding instruction.

Mr. Taylor: You certainly can't—according to my way of thinking—you can't have an instruction submitted in a criminal case to tell the jury that the administrator of the deceased has an opportunity to proceed civilly.

Mr. Timberlake: We are not undertaking to do that. This instruction simply says: "In order to be criminal negligence, as distinguished from such negligence as is necessary for a civil damage action, it must be shown that the page 379 } negligence of the accused was gross and culpable negligence," which is certainly correct.

Mr. Taylor: It is certainly telling the jury, in effect, that this man can be proceeded against civilly.

Mr. Timberlake: I don't think it carries any such implication. We certainly feel that we are entitled to an instruction in accordance with our Instruction D.

The Court: Gentlemen, I will refuse Instruction D.

Mr. Timberlake: W except to the refusal of the Court to grant Instruction D.

DEFENDANT'S INSTRUCTION E.

(Refused).

The Court instructs the jury that if, after hearing all the evidence in this case, they have a reasonable doubt as to whether Wallace Wade or Fred Dickerson was driving the Wade automobile at the time of the accident in which Fred Dickerson lost his life, they shall find a verdict of not guilty in this case.

Mr. Taylor: I think that is correct. If he wasn't driving he certainly wasn't guilty.

page 380 } The Court: It is covered in 2A.

Mr. Taylor: Yes, sir, it is covered in that 2A that you gave. I didn't realize that it is covered in there because I just read it hurriedly; but I do think it is covered in 2A, the one given by the Court, and therefore object to it.

Mr. Timberlake: Your Honor, in further connection with that Instruction E as compared with Instruction 2A, one of our specific defenses in this case is the defense that Fred Dickerson was driving the car at the time this accident occurred; and we do feel that we are entitled to an instruction dealing with the proposition as to whether Fred Dickerson or Wallace Wade was driving the car over and beyond the Court's Instruction 2A, which simply submits to the jury the bare propo-

sition as to whether or not the accused was operating the motor vehicle at the time and place of the accident.

The Court: Gentlemen, what I have tried to do in these cases—. When getting into a manslaughter case there are so many ways of saying and defining the degree of negligence which is necessary to support the conviction. What I have tried to do—and I must confess that I am not the author of these instructions and I am not taking pride in the language of them because they are not mine—but I do think

page 381 } Instructions 1, 2, and 3 pretty well cover the field, perhaps not to the satisfaction of anybody, but it prevents a conglomeration of instructions to confuse the jury; and for that reason I have more or less stuck to these stock instructions so I think I'm going to have to refuse that. I can see the point you make but I believe it is carried in 2A.

Mr. Timberlake: We except to the refusal of the Court to grant Instruction E. We want to except to the granting of the Commonwealth's instructions on the grounds and for the reasons assigned in the objections to those instructions, and we want to except to the rejection or amendment of the defendant's instructions on the grounds that the instructions as submitted were correct statements of the law.

page 382 } September 25, 1958 9:30 A. M.

Note: This reporter was not employed for the final day of this trial. However, at the request of and by agreement of counsel, the following incidents of trial are made a part of this record.

At this point the Court proceeded to read to the jury the instructions given in this case. Closing arguments were then presented by counsel, with Mr. Taylor opening the argument on behalf of the Commonwealth. During the course of his argument the Commonwealth's Attorney argued to the jury that there was no evidence in this case that the defendant, Wade, had denied to anyone since the happening of the accident that he was driving the automobile. Mr. Timberlake objected to this statement on the grounds that the argument was improper and moved the Court for a mistrial. The Court sustained Mr. Timberlake's objection to that particular phase of the Commonwealth Attorney's argument, and the Court further directed the jury not to consider that phase of the argument. The motion for a mistrial was overruled, to which ruling of the Court Mr. Timberlake excepted.

Immediately after this exception, Mr. Taylor, in the presence of the jury, asked if the Court meant that he could not

argue that the defendant had failed to deny to the bail commissioner or anyone else before the trial of this
page 383 } case that he was driving the automobile. Mr. Timberlake thereupon again moved the Court for a mistrial on the grounds that that statement of the Commonwealth's Attorney in the presence of the jury was improper, particularly because the bail commissioner, by statute, is not a qualified witness. The motion for a mistrial was again overruled by the Court, to which ruling of the Court Mr. Timberlake excepted.

Mr. Timberlake and Mr. Franklin presented arguments on behalf of he defendant, and Mr. Taylor closed the argument on behalf of the Commonwealth.

After the closing argument of counsel, the jury retired to consider their verdict and, after consideration, returned to the courtroom and rendered the following verdict:

"We, the jury, find the defendant guilty as charged of involuntary manslaughter and fix his punishment at two years in the penitentiary and no fine.

(Signed) J. J. HENSLEY, Foreman."

Upon motion of counsel for the defendant, the jury was polled, with each juror answering as follows:

Hubert J. Arbogast	"Yes, sir"
J. J. Hensley	"Yes, sir"
Richard C. Bosserman	"Yes, sir"
R. B. Dunlap	"Yes, sir"
George E. Jenkins	"Yes, sir"
John A. Mohler	"Yes, sir"
Manson M. Baylor	"Yes, sir"
John O. Harden	"Yes, sir"

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O. R. Engleman	"Yes, sir"
Charles H. C. McKenney	"Yes, sir"
Thomas J. Minor	"Yes, sir"
Sylvester N. Hite	"Yes, sir"

Following the poll of the jury, the following motion was made by Mr. Timberlake.

Mr. Timberlake: Your Honor, I move that the verdict be set aside on the grounds that the said verdict is contrary to the

law and evidence and without evidence to support it and on the further grounds that the Court erred in granting and refusing certain of the instructions.

The Court: Mr. Timberlake, I shall consider your motion and I will fix October 29, 1958, at 10:00 a. m. as the date for hearing arguments on your motion. (This date was later continued to November 24, 1958.)

page 385 } Commonwealth of Virginia,
County of Augusta, to-wit:

I, Mary F. Byrd, the undersigned court reporter in the Cir-Court of Augusta County at Staunton, Virginia,

DO HEREBY CERTIFY that the foregoing is a true and correct transcript of all the evidence introduced and proceedings had, with objections, rulings, and exceptions thereto, as contained in Volumes I, II, III, and IV, Pages 1 to 384 inclusive herein, in the trial of Commonwealth of Virginia *v.* Wallace Parker Wade as reported by me on September 23 and September 24, 1958.

Given under my hand this 8th day of January, 1959.

MARY F. BYRD, Court Reporter.

Teste:

.....
Commonwealth's Attorney for
Augusta County, Virginia (acting)

HUMES J. FRANKLIN
Attorney for Defendant.

WAYT B. TIMBERLAKE, JR.
Attorney for Defendant.

Received 7/17/59.

WM. S. M.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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