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Clerk, Supreme Court of Appeals
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207 VA 633

Record No. 6281

In the

Supreme Court of Appeals of Virginia

at Richmond

DAVID WILLIAM STONER

v.

J. T. ROBERTSON, ADMR., Etc.

FROM THE CIRCUIT COURT OF WESTMORELAND COUNTY

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 6281

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 18th day of November, 1965.

DAVID WILLIAM STONER, Plaintiff in error,

against

J. T. ROBERTSON, ADMINISTRATOR OF THE ESTATE OF HOBART DONALD SINGLETON, DECEASED, Defendant in error.

From the Circuit Court of Westmoreland County
Daniel Weymouth, Judge

Upon the petition of David William Stoner a writ of error and *supersedeas* was awarded him by one of the Justices of the Supreme Court of Appeals on November 17, 1965, to a judgment rendered by the Circuit Court of Westmoreland County on the 3rd day of June, 1965, in a certain motion for judgment then therein depending wherein J. T. Robertson, Administrator, etc., was plaintiff and the petitioner was defendant.

And it appearing that a suspending and *supersedeas* bond in the penalty of forty thousand dollars, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

RECORD

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page 26] INSTRUCTION NO. 6A

The Court instructs the Jury that the care required of a person who has become intoxicated voluntarily is the same as the care required of one who is sober, and that if you believe from the evidence that Hobart Donald Singleton was voluntarily intoxicated that this does not excuse him from assuming a risk or recognizing a danger that would have been apparent to a sober man.

Offered by Def.
Obj. to by Pltf.
Refused
Excepted to by Def
DW-Judge

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ORDER

Pursuant to an order entered herein on April 16, 1965, this case came on this day to be again heard upon the motion of David William Stoner, by his counsel, Joseph A. Billingsley, Jr., Ralph M. Whitticar, Jr. and J. Calvett Clarke, to set aside the verdict of the jury rendered the said 16th day of April, 1965; and also came the plaintiff J. T. Robertson, Administrator of the Estate of Hobart Donald Singleton, deceased, by his counsel, J. Clifford Hutt; and was argued by counsel.

IN CONSIDERATION WHEREOF, the Court doth ADJUDGE and ORDER that said motion to set aside the said verdict of the jury be, and the same hereby is, overruled, and to which said ruling counsel for the defendant noted their exception.

THEREFORE, it is considered by the Court, in accordance with the verdict of the jury, that the plaintiff, J. T. Robertson, Administrator of the Estate of Hobart Donald Single-

ton, deceased, recover of and from the defendant, David William Stoner, and have judgment against the said David William Stoner, for Thirty-Five Thousand Dollars, with interest from this date at six per cent per annum, until paid, and his costs by him in this case expended in the amount of $31.25.

page 31] WHEREUPON, counsel for the defendant expressed their intention to apply to the Supreme Court of Appeals *fora* Writ of Error and moved the Court to suspend the execution of such judgment for a period of sixty days from this date and pending said appeal upon the giving of a proper bond with good security approved by the Clerk of this Court in the amount of Forty Thousand Dollars, which next aforesaid motion is granted by this Court, and the execution of such judgment is accordingly suspended by this Court on such terms next hereinabove set forth.

ENTER—LAW
June 3, 1965
DANIEL WEYMOUTH
Judge

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July 23, 1965 Filed in the Clerk's Office of the Circuit Court of Westmoreland County.

H. HARFORD McKENNEY, Clerk

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

The defendant, David William Stoner, gives notice of appeal from the judgment of the court rendered herein on June 3, 1965, and assigns the following error as required by Rules of Court 5:1, Section 4:

1. The Court erred in failing to rule that the plaintiff was barred from recovery on the Ground that his decedent was

guilty of contributory negligence as a matter of law.

2. The Court erred in failing to rule that the plaintiff was barred from recovery as a matter of law on the ground that his decedent assumed the risk of defendant's negligence.

3. The Court erred in excluding evidence of the conduct and activities of the defendant and plaintiff's decedent on the *right* before the fatal accident.

page 34] 4. The Court failed to properly instruct the jury on assumption of risk by refusing Instruction Number 6A.

DAVID WILLIAM STONER
By Counsel

J. CALVITT CLARKE, JR.
SANDS, ANDERSON, MARKS & CLARKE
10th Floor — American Building
Richmond, Virginia 23216
Counsel for Defendant

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TROOPER C. T. LAYNE,

a witness, called on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Hutt:

Q. Trooper Layne, would you state your name, age, residence and occupation please?

A. Trooper C. T. Layne, forty years old, State Police, King George County.

Q. How long have you been a State Trooper?

A. Since March 15, 1948.

Q. On the 24th day of March, 1963, did you have an occasion to investigate an automobile accident in which David William Stoner was involved?

Trooper C. T. Layne

A. I did.

Q. Would you describe the place where this accident occurred?

page 4] A. This accident occurred on Route 205, near the intersection of Route 629 and Route 618. This is near the King George-Westmoreland County line on Route 205, which is the Colonial Beach Road.

Q. I ask you if this point that you described is not near or about at a concrete bridge?

A. It is.

Q. Across a branch of the creek?

A. Yes, sir.

Q. It is?

A. Yes.

Q. I ask you whether or not there are signs at either end of this bridge?

A. Yes, sir.

Q. And what is it that these signs say?

A. They say, "You are entering Westmoreland County" on one side, and the other side says, "You are leaving Westmoreland, entering King George County."

Q. The place where this car came to a rest, on which side of the bridge was it?

A. It would be on the east side of the bridge.

Q. And that side is marked as being in which county?

A. Westmoreland.

Q. Would you tell us what time you received the call regarding this?

page 5] A. Around the vicinity of somewhat after 2:00 o'clock P. M.

Q. In the afternoon?

A. Yes, sir.

Q. And what time did you get there?

A. I got there a few minutes after I received the call. I don't know exactly.

Q. Would you describe to the jury and the Court just generally what it was that you saw? We will go into the exact measurements later on.

A. Well, Mr. Singleton's body was at the scene. The car driven by Mr. Stoner was at the scene. There were skid marks in the highway. There, of course, were people there.

Trooper C. T. Layne

Q. Was Mr. Singleton dead at this time?
A. Yes, sir.

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Q. At the time you arrived, was Mr. Singleton's body still there?
A. It was.
page 6] Q. Where was it lying?
A. It was lying on the edge of Route 205, his head up in the dirt road that runs east of 205.
Q. How far was this point located from the bridge we have discussed a little while ago?
A. Ended up about 225 ft. from the bridge.
Q. 225 ft. from the bridge?
A. Without adding any detail.
Q. Was Mr. Stoner at the scene at the time you arrived there?
A. No, sir.
Q. He was not there at that time?
A. No.
Q. Did you subsequently see and discuss with Mr. Stoner this accident?
A. I did.
Q. Did he tell you whether or not he was the driver or operator of the car at the time of this accident?
A. He did.
Q. What did he tell you in that regard?
A. Mr. Stoner stated, "We were going to the beach to look for a house for rent. I was running fifty to sixty miles per hour. I lost control of the car and cannot remember anything after that. I don't know why I lost control. We had a couple of beers."
page 7] Q. Now, I take it that you did investigate this accident in your capacity as Trooper?
A. I did, that is right.
Q. Will you detail what your investigation disclosed?
A. My investigation disclosed that this accident occurred —

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Q. I will rephrase the question. What did your investigation

disclose in regard to the physical facts incident to this accident?

A. This accident occurred on March 24, 1963. The highway at the scene at the time of this accident was straight, level, open country, daylight. The road was dry, no defects in the highway. The traffic lane was marked. The weather was clear and the road was black top.

There was one car involved, a '57 Chevrolet sedan, at that time bearing license 62 VA 782487, and this
page 8] car was at the scene of the wreck.

At the scene of the wreck also was the body of Hobard Donald Singleton. His address at that time was Box 23, Dahlgren, Virginia. He was deceased as has already been brought out.

The driver's vision was not obscured by anything in the road there.

Q. No physical obstructions?

A. Right. Would this also cover skid marks?

Q. Yes, physical facts.

A. Examination of the pavement, shoulders and road showed that the car driven by Mr. Stoner went off the highway on Route 205, on the west side of the bridge —

Q. May I interrupt? The west side of the bridge, which county would that be?

A. That would be King George side of the bridge, King George County near No. 6 post and the guard rail there.

Sixty-five steps on the dirt shoulder, and then there were twenty-five steps in which there were no marks. The lines were in straight continuous path, but there was no mark in there.

Then it skidded for nine steps to the bridge, skidded across the bridge for eight more steps, and then skidded on down and hit a guard rail and went up along the guard rail. Then it crossed the road and hit the embankment.
page 9] It followed the embankment for thirty steps. She left no marks then for twelve steps — correction on that, ten steps, and then she hit over in the road.

Q. How far did she go after she hit over in the road?

A. When she hit in the road it was on the top, and that was the end of it.

Q. Will you check again the distances which you have

determined this car traveled from the time it first went off the road?

A. Let's see, I'll add that up. Of course, in the testimony I stopped giving the measurements.

Skid marks, eight on the bridge, then there were thirty-six more steps from the bridge to the guard rail, and then it went on across the road twenty-six steps and hit the embankment. Altogether approximately six hundred feet.

Q. Approximately six hundred feet from the time the car first —

A. From the time she went off over in King George County.

Q. Until she came to rest on the Westmoreland County side?

A. Over in Westmoreland.

* * * * *

page 16]

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Q. What parts of the Stoner car were damaged?

A. The top, both sides.

Q. Would the car be classified as a total loss or was it fixable?

A. Total loss.

Q. When you estimated that distance traveled by the Stoner vehicle as six hundred feet, were you determining this distance to be from the point where the vehicle first veered off on the shoulder of the road to the point where it came to a rest, is that your testimony?

A. Yes, sir, right.

page 17] Q. The first point occurring, as I understand it, on the King George side of the bridge and terminating on the Westmoreland side of the bridge?

A. Yes, sir.

* * * * *

Q. Trooper Layne, counting the distance that the car traveled from the time it hit the bank and left no marks until it came to a rest on the road, what is that distance?

A. Ten steps or thirty feet.

Q. I see. It is a thirty foot distance and not thirty strides?

A. That is right.

Q. Then the overall travel of the car including this thirty feet in which no marks were left is what?

A. 627 feet, approximately.

Q. 627 feet?

page 18] A. Yes.

Mr. Hutt: All right. That is all.

CROSS EXAMINATION

By Mr. Billingsley:

Q. Trooper, this accident happened on the Sunday which was March 24, 1963, isn't that correct?

A. Yes, sir.

Q. The accident happened at approximately 2:00 o'clock in the afternoon, is that correct?

A. Yes, sir.

Q. Now, where did you interview the defendant Mr. Stoner?

A. Mary Washington Hospital.

Q. At what time did you interview him?

A. I don't recall the hour. It was on the same day.

Q. It was the same day?

A. Yes.

Q. Was it before or after dark, do you recall?

A. I don't remember, Mr. Billingsley.

Q. Now, Trooper, are you familiar with the road, the secondary road that runs from U. S. highway No. 301, leaving U. S. highway No. 301, near the Gulf Station which is now run by Mr. Hall, that comes across and hits 205 at about the old Phillip's Store?

page 19] A. Yes, sir.

Q. Do you know the number of that road offhand?

A. No, sir.

Q. Isn't it true that it is a very narrow road?

A. It is.

Q. It is also a very crooked road, isn't it?

A. Yes, sir.

Walter F. Klotz

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DIRECT EXAMINATION

By Mr. Billingsley:

Q. What type of road is this, Trooper?

A. This is a hard surface road. It is a narrow road. It is a crooked road and it is a hilly road

Q. Do you know aproximately how far it is from where it leaves 301 to where it hits 205?

A. At least a couple of miles or maybe more.

CROSS EXAMINATION

By Mr. Hutt:

Q. What is the designation of this road?

A. By number I don't know. Poplar Neck Road, I believe that is what they normally call it.

* * * * *

page 21] WALTER F. KLOTZ,

a witness, called on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Hutt:

Q. Would you state your name, age, residence and occupation?

A. Walter F. Klotz, Colonial Beach, Virginia. Age fifty-four, merchant.

Q. Mr. Klotz, on the afternoon of the 24th day of March, a Sunday I understand, in 1963, did you have an occasion to travel Route 205 from Colonial Beach, traveling in the direction of 301?

A. I did.

Q. And during the course of your travel on this road, did

you see anything which particularly attracted your attention near the junction of the Westmoreland-King George County line with that road?

A. I did.

Q. Now, who was riding in the car with you?

A. In the front was my son-in-law —

Q. What is his name?

A. William Frank. — and my little grandson, about three and a half or four. And in the back was my wife and my daughter.

page 22] Q. Well, sir, at the time you saw this unusual situation, were you in Westmoreland County or King George?

A. Westmoreland.

Q. Westmoreland County?

A. Yes.

Q. Would you just generally tell us where you were when you saw this and what it was that you saw?

A. I just passed the Round Hill Rows, as we call it, and looked ahead and saw this car coming down the hill.

Q. Which hill are you talking about?

A. Over in King George County approaching the bridge at the King George-Westmoreland line.

Q. All right.

A. When I first glanced at it, it looked like all four wheels were off the ground. I hollered to the family and said, the damn fool will never make it.

Q. Why did you think that?

A. The excessive rate of speed it was going. The car was hurdling.

Q. Then detail what else took place.

A. It came down on the foot of the hill, went off the road, hit a soft spot of ground which threw the car back on the road. I immediately, when I first saw the car, I slowed down. There was no place for me to pull off and I did not dare stop because if I did I would lose control of my car.

page 23] One time the car was approaching sideways towards me at a high rate of speed. And as it came across the bridge, the car straightened out and I went by it. And as soon as I had gotten by it I heard my daughter scream. I went across the bridge, stopped on

the right-hand side of the road, stopped my car and my son-in-law and I went back.

Q. What did you find?

A. The car was overturned. One body was laying face down in front of it and the other body was down beyond the car on the east side of the road on its back. In the road was a set of human brains.

Q. Could you identify where these came from?

A. Yes, from the boy that was down beyond the car, the Singleton boy, I understand.

I waved my wife and daughter to stay back because I did not want them to see it.

Q. Could you estimate the speed at which the vehicle was traveling when you first saw it?

A. I figured over a hundred miles an hour.

Q. Could you determine how many people were in the car when it went by you?

A. No, sir, I could not. I was just looking at the car and hoping to get by it. I don't know who was driving it or how many were in there.

Q. At what point did this car pass your vehicle?

A. Well, he had come across the bridge separat-
page 24] ing the King George-Westmoreland line. That is when I slipped by him, this side of the bridge in Westmoreland County.

Q. Just immediately prior to your entry on the bridge, is that right?

A. That is right.

Q. After he had gotten by you, you did not see the travel of the car?

A. I did not.

Q. Where did you find the car at rest when you went back?

A. In front of possibly between Lloyd Farmer's house and Farmer Senior's house. The car was facing back from the direction it had come.

Q. I show you Plaintiff's Exhibit No. 1, and ask if that discloses to you the point, or depicts the point where your vehicle and his vehicle passed?

A. That is right.

Q. Would you mark on that picture and initial it, approximately where in your judgment your vehicle and his vehicle

passed, marking the location of your vehicle if you can at the time. Just an "X" I think will be sufficient.

A. All right. (Marking on picture)

Q. I ask you to re-examine Plaintiff's Exhibit 1, and ask if that picture shows you the roadway traveled by the defendant's vehicle at the time you first saw it?

page 25] A. It does.

Q. And in relation —

A. Just a minute. (Witness putting on his glasses) That is right.

Q. In relation to the turn, would you endeavor to mark the point where you first saw his vehicle with a circle and initial it, please, if you can on that picture? I don't know whether you can or not.

A. (Witness marking on picture) Do you want me to initial this?

Q. Yes, sir. Thank you. I take it, Mr. Klotz, that you were really the first person upon the scene after the accident, is that true?

A. That is right.

Q. And do I understand that at the time that you arrived there — Did you find anybody in the automobile at all?

A. No.

Q. And you found, I believe you said two people or two bodies outside of the car?

A. That is right.

The Court: May I ask a question? Is this circle the place where he first saw the car?

Mr. Hutt: Where he first saw the car.

The Court: It was not at that bridge?

page 26] Mr. Hutt: No, sir.

Q. Mr. Klotz, would you be kind enough to stand over here now?

Note: At this point, the witness is standing in front of the jury.

The Court: It looks like the circle is right on the bridge there.

Walter F. Klotz

By Mr. Hutt: (Cont'd.)

Q. Where you have marked this circle, are you endeavoring to mark on the roadway intself the point?

A. You asked me when I first saw the car coming down the hill. I looked way ahead further back here (indicating). This is actually where I passed him. This is a straight road here, you can see up there a good distance. It was approximately right up there where I put the circle.

Q. This circle is put on a light spot just opposite a bare tree. Is this on the road surface itself that you put the circle?

A. That is on the road surface.

Q. As it goes around the turn?

A. That is right. There is a slight bend there.

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Q. Mr. Klotz, I believe you have testified that when you first saw this automobile it was hurdling. Would you describe particularly with regard to the hard surface of the road, was the car on the hard surface of the road or not on the hard surface of the road at the time you first saw it?

A. It was on the hard surface. Like I testified, it looked like all four wheels were off the ground, but it was on the hard surface.

Q. Then what did you see the car do?

A. Hurdling down the hill. There is a slight bend there, it went off the road, and after the accident when we went by we noticed it hit a soft patch approximately two and a half or three feet off the road. It was real soft because the wheels went there and the way I was looking at it, it threw it back on the road.

Q. At the point where it went off the road the first time, you said you saw where it hit a soft spot. Were the wheels marking the roadbed, the shoulder of the road, at that point?

A. It was off on the shoulder.

Q. Did you go up to that point and look?

page 31] A. No, as we drove by we looked over there.

Q. Could you see wheel marks at that point?

Walter F. Klotz

A. Yes, you could see where it went into the soft dirt. Only the wheels on the right side went through that soft spot.

Q. I see.

A. Just on one side of the car.

Q. Then this car was in the process of attempting to make a turn at this time, is this so or not?

A. You cannot tell, because when it came down the hill it went straight off the road in the soft spot.

Q. Did the road make a turn at this point?

A. A slight bend.

Q. What you are saying is that the car did not make that bend with the road, is that correct?

A. That is right. That is when it hit the soft spot.

Q. When it hit the soft spot, what happened?

A. It swung back on the road, swung out of control there. That was the time it came sideways towards me.

Q. From that point on, was the car ever under control of the driver in your opinion?

A. I cannot answer that. I was not watching the driver, I was just watching the car hoping to get by.

Q. What was the car doing at the time it ap-
page 32] proached you?

A. Sliding sideways. I had no time to look who was driving it or anything else. I was just watching the movements of the car. As it came across the bridge it started slanting away from me and I slipped by it. I just pushed down on the accelerator and I went by. And as soon as I went by it I heard my daughter scream and I heard a crash.

Like I said, I went beyond the bridge by the guard rail, parked the car and my son-in-law and I went back.

Q. At the time the Stoner car passed you, in relation to the center of the road, were you on the right or left side?

A. Over to the right as far as I could get without getting off the black macadam.

Q. In your right lane and over as far as you could get without being on the shoulder?

A. Absolutely. That is right.

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David William Stoner

DAVID WILLIAM STONER,
the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Billingsley:
Q. You are David Stoner, the defendant in this case?
A. Yes, sir.
Q. What is your age?
A. Twenty-six.
page 69] Q. Where do you live?
A. I live at Dahlgren, Virginia.
Q. And what are you doing now?
A. College student at VPI.
Q. Mr. Stoner, I direct your attention back to the Saturday night prior to this accident in March and ask you if you were together with Mr. Singleton on that night?
A. Yes, sir, I was.
Q. Where did you and Mr. Singleton go on that particular night?

Mr. Hutt: Objection. That is not connected in any way with the accident on Sunday, if Your Honor please, it is irrelevant and immaterial.
Mr. Billingsley: What was the objection?
Mr. Hutt: Not connected, irrelevant and immaterial.
Mr. Billingsley: Your Honor please, one of the —
The Court: Wait a minute. We cannot hear that in the presence of the jury. Take them to the room.

Note: At this point, the jury is retiring to the jury room, whereupon Mr. Billingsley states as follows, out of the presence of the jury:

JURY OUT

Mr. Billingsley: Your Honor, in the grounds of the defense,
one of the grounds of defense in this case
page 70] is contributory negligence, and another ground of
the defense is assumption of the risk.
Now, in the defense of assumption of the risk particularly, and also in contributory negligence, it is necessary to go back

and ascertain the actions of the parties prior to the accident. The Court has said that the assumption of the risk is venturousness if contributory negligence is negligence.

The Court: It says what?

Mr. Billingsley: That contributory negligence, the basis for that is negligence. To show in an assumption of risk the venturousness, we have to go back to show the conditions these parties got into the vehicle; whether there was an opportunity for the man to alight from the vehicle and get out of it after he possibly realized the danger, and whether he was a party to this or not. And we submit, sir, it is necessary to go back to show the conditions of the parties.

The Court: Go ahead and ask him the question. The jury is out. I am not going to rule on it until I find out what he is going to say.

Maybe what you say is so, and then maybe after what he has to say, it is not.

By Mr. Billingsley:

page 71] Q. You said that you all were together on this night in question, Saturday night prior?

A. Yes, sir.

Q. And where did you go?

A. We went to a party at Potomac Beach.

Q. Who was with you other than you and Singleton?

A. Ed Price and Ken Gass.

Q. What did you all do on this particular night?

A. Just had steaks and played cards.

Q. Did you do anything else, were any alcoholic beverages consumed?

A. We had some drinks, yes, sir.

Q. Who had the drinks?

A. Everybody there had them, had some to drink.

Q. Do you know what time this party broke up?

A. Yes, sir. I think it was around 1:00, 2:00 o'clock.

Q. And what did you do after the party broke up?

A. We went back to Dahlgren.

Q. Were you all together in the same car?

A. We were all together in the same car, yes, sir.

Q. Whose car was it?

A. It was my car.

David William Stoner

Q. When you got back in the Dahlgren area,
page 72] what did you then do?

A. We went over to Ed's house, and Don and Ken got out and Ed came down to my place and spent the night there.

Q. Do you mean Donald Singleton and Kenneth Gass?

A. Yes, sir.

Q. Where is this Price's house?

A. This is in Owens, Virginia.

Q. How far is that from Dahlgren?

A. That is approximately three miles from Dahlgren.

Q. And then what did you and Price do?

A. We went back to my place and spent the night there.

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Mr. Billingsley: Your Honor, we submit that on the defense of assumption of risk and contributory negligence this is evidence that is admissible.

Mr. Hutt: If the Court pleases, my objection was to the question that *dealth* with activities the night before.

There was a complete separation of the parties after whatever activities took place the night before
page 87] and resumption of association the following morning. I can see no connection between Saturday night and Sunday afternoon, and I objected to Saturday's testimony. I still do.

The Court: Frankly, the Court sees no connection between Saturday night and Sunday afternoon.

So, I will strike that and go on from there.

Mr. Hutt: In regards to the testimony of what occurred on Sunday, particularly the testimony which deals with the travel from Owens to the junction of Poplar Neck Road with 205, this testimony has to be corroborated.

Mr. Whitticar: We will.

Mr. Hutt: Now, I submit, of course, he has a right to make this testimony, but it stands in suspense until the corrobora-

tion has been put forward, at which time it becomes firm testimony.

The Court: Has he testified in any cases before in connection to this?

Mr. Hutt: Judge, I was not connected with the case at the time these other things came along and I could not say. I don't know.

The Court: I don't know. It looks like to me you are opening up a lot of [illegible]ers here.

page 88] You ha[illegible] right to cross examine him about any prior testimony if he has given any. In the opinion of the Court, he made a statement here that really, standing by itself, is really something as to the wantonness and willfulness and the grossness of what he did. So you have all those angles to consider.

Of course, the jury is out. That is the reason I am asking these questions.

Mr. Whitticar: This is a civil case, Your Honor, and there was a criminal hearing.

The Court: I don't know anything about this.

Mr. Whitticar: That, of course, is over the dam. He was found guilty and paid the fine.

The Court: Did he take the stand?

Mr. Whitticar: No, he did not.

The Court: Of course, if he did, then you would be opening up statements he made in that case.

Mr. Whitticar: No, he did not take the stand in that case.

The Court: You have all those things to consider.

Mr. Whitticar: Yes, sir, I understand.

Mr. Hutt: I call the Court's attention, while we are talking about this testimony we have here, to the wanton

page 89] disregard of the safety. That is more than gross negligence.

I think that you will find that the law in Virginia is that where there is a wanton action on the part of the defendant, that the plea of contributory negligence does not stand. I think this is the law. I think it bars the plea of contributory negligence.

The Court: The Court rules that this testimony, except what happened the night before, is admissible testimony in the opinion of the Court, and I do feel that this witness would be permitted to say that he had been with him the night be-

David William Stoner

fore, or say something that would indicate why he knew where to go to see him the next morning. He can tell them he knew where they were when he went over there. But I don't see any bearing on it other than that.

Mr. Billingsley: We, of course, except to the ruling on the grounds that it makes a complete picture of it.

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page 90] By Mr. Billingsley: (Cont'd.)

Q. Mr. Stoner, of course, we know that you had been with Mr. Price, Mr. Singleton and Mr. Gass on the evening before this accident *occured*, is that correct?

A. Yes, sir.

Q. And that you all returned to the Owens-Dahlgren area during that night?

A. Yes, sir.

Q. Now, with reference to Mr. Gass and Mr. Singleton, where did they spend that night?

A. They stayed at Ed's place at Owens.

Q. Ed Price?

A. Ed Price's.

Q. He had a house that he lived in, is that correct?

A. Yes, sir.

Q. Where did you and Price go to spend that night?

A. We went down to my place, just the other side of Dahlgren.

Q. Did you have an apartment there?

A. Yes, sir.

Q. The next morning when you got up, where did you go?

A. We went back over to Price's place in Owens.

Q. Who went with you?

A. Ed Price.

page 91] Q. What time did you all arrive at Price's house where Singleton and Gass were spending the night?

A. Somewhere around 9:30, I believe.

Q. Did they get up when you all got there?

A. Yes, sir.

Q. Now, what did you all do when the four of you got together at Price's house?

A. Started drinking.

Q. What did you start to drink?

David William Stoner

A. Whisky.
Q. Now, how much whiskey was in the house, if any?
A. There was one bottle in the house.
Q. Was it a pint bottle or fifth bottle?
A. It was a fifth.
Q. Do you know how much was out of it?
A. No, sir, I don't.
Q. Who was drinking that whisky?
A. I was drinking it, Don was drinking it, Kenneth had one drink out of it.

The Court: Let's call full names here.

A. Kenneth Gass had one drink.
Q. And you drank out of it and Singleton drank out of it, is that correct?
A. Yes, sir.
Q. Did anybody else come in while you were
page 92] over at Price's house?
A. Yes, sir.
Q. Who?
A. A man by the first name of Milton, who lived right across from Ed Price's place, came in.
Q. He lived across the street from him?
A. Yes, sir.
Q. Is he anywhere in this area now?
A. No, sir, he is not.
Q. Was he a Government employee at Dahlgren?
A. Yes, sir.
Q. Has he been transferred?
A. He worked there, yes.
Q. What time did he got over there, as you recall?
A. I am not sure of the exact time he came in. It was probably around 11:00 o'clock, somewhere around there.
Q. Did he have anything to drink?
A. Yes, sir, he had a couple drinks.
Q. How long did you all stay at Price's house that day?
A. We stayed over there until approximately 1:00 or 1:30.
Q. This was the day of the accident?
A. I mean, about 12:00 or 12:30.
Q. This was the day of the accident?
page 93] A. Yes, sir.
Q. When you left Price's house, did the five of

David William Stoner

you who were then present, you, Singleton, Gass, Price and this other man all leave together?

A. Yes, sir.

Q. Where did you go?

A. We went over to Milton's house.

Q. That is the man across the street who came in?

A. Yes, sir.

Q. What did you do when you got there?

A. We had a couple drinks over there.

Q. Did you have any drinks?

A. Yes, sir, I did.

Q. How many?

A. I had two or three.

Q. Did Singleton have any drinks?

A. He had just the same amount.

Q. Did anyone else have any drinks, as you recall?

A. Everybody had some drinks.

Q. Now, the bottle of whisky that you had at Price's house, did you all finish that?

A. Yes, sir.

Q. And whose whisky was this you were drinking across the street?

A. This was Milton's whisky.

page 94] Q. Did anybody else come in there?

A. About 12:30 Shirmer came in.

Q. Is Shirmer another friend of the group?

A. Yes, sir.

Q. Were all of you all single, unattached?

A. Yes, sir.

Q. How, how long did you stay at this house across the street?

A. Oh, we stayed there about an hour, I guess.

Q. And what time did you leave that house?

A. We must have left there at 1:30, or right around there.

Q. Where did you leave to go?

A. We left to go down to Potomac Beach. We were interested in renting a house down there.

Q. Did all of you leave together?

A. Yes, sir.

Q. Were all in the same car?

A. No, sir.

David William Stoner

Q. Did you drive your car?
A. Yes, sir, I did.
Q. When you left, who was with you?
A. Gass and Singleton were with me when I left.
Q. How were you sitting in the car, who was driving the car?
page 95] A. I was driving the car. Gass was in the middle, front seat, and Singleton was by the window.
Q. Now, who was in the other car?
A. Price and Shirmer were in the other car.
Q. Who was driving the other car?
A. Shirmer.
Q. Which car pulled out ahead of the other?
A. Shirmer's car pulled out first.
Q. And you pulled out behind it?
A. Yes, sir.
Q. Now, where is Price's house located in relation to 301 highway?
A. It is located about a mile from 301 highway, over in Owens.
Q. At Owens?
A. Yes, sir.
Q. That is in the Dahlgren area in King George County?
A. Yes, sir.
Q. Did the other car, the one that you were not driving, did that lead all the way to 301?
A. Yes, sir.
Q. Now, when you got to 301, which way did the other car turn?
A. It turned to the right.
page 96] Q. To go south?
A. Yes, sir.
Q. Which way did you turn?
A. I turned to the right.
Q. You were following?
A. Yes, sir.
Q. Did you pass the other car?
A. Yes, sir.
Q. How fast was the other car going when you passed it as best as you can tell?

David William Stoner

A. Somewhere between forty and fifty-five.
Q. How fast were you going?
A. I went sixty and then got up to ninety a couple of times.
Q. Did anyone in the car with you make any complaint about the speed that you were operating?
A. Yes, sir.
Q. Who?
A. Gass.
Q. What did he do or attempt to get you to do?
A. He wanted me to slow down.

The Court: Use the full names here.

Q. This was Kenneth Gass?
A. Kenneth Gass, yes, sir.
Q. He attempted to get you to slow down?
page 97] A. Yes, sir.
Q. As a result of Kenneth Gass' request that you slow down, did you slow down?
A. Yes, sir.
Q. What did Singleton then do?
A. He wanted — Don Singleton wanted us to go faster.
Q. Did Don Singleton encourage you to go faster?

The Court: Let's tell what Don Singleton said.

Q. What did Don Singleton say, if you recall?
A. I don't remember his exact words.

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Q. Mr. Stoner, if you don't remember the exact words by Mr. Singleton, substantially what did he say?
A. Go faster.
Q. Now, how far did you all proceed in a southerly direction on U. S. Highway 301?
A. Down to this Poplar Neck Road that was referred to by Mr. Layne.

David William Stoner

Q. Is that the one that turns off by the Gulf Station and goes to 205, that Mr. Layne testified?

A. Yes, sir.

Q. On 301, did the other automobile that Mr. Price and Mr. Shirmer were in, did that stay in sight of you?

page 100] A. No, sir.

Q. Now, when you got to the so-called Poplar Neck Road, what did you do?

A. Turned off on that road.

Q. Now, going through that road, how fast were you driving?

A. Between fifty and seventy.

Q. Did anyone in the car complain of the way you were driving when you were going through there?

A. Yes, sir.

Q. Who?

A. Kenneth Gass.

Q. What did he do or say relative to your driving?

A. Slow down.

Q. As a result of Kenneth Gass' request that you slow down, what did you do?

A. I did not slow down.

Q. Did Donald Singleton make any objection to your driving?

A. No, sir.

Q. Going through this road that Trooper Layne has testified as narrow, hilly, and has a lot of turns—

The Court: Was that before or after he just testified he said go faster?

Mr. Billingsley: That was on 301, Your Honor.

page 101] Q. Going through this road that Trooper Layne testified to, did you have any trouble keeping the car on the road?

A. It went off the road one time.

Q. What did it do?

A. The hind wheel went off in a small gutter off on the left-hand side of the road.

Q. Did you stop at that point?

A. No, sir.

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Q. Where did you stop?
A. I stopped where that road intersects or comes into 205.
Q. What happened when you stopped?
A. We got out of the car.
Q. Who got out of the car?
A. I got out of the car, Donald Singleton and Kenneth Gass.
Q. When you got out of the car, what did you first do?
A. We went around and checked the fender to see if it had been hurt.
Q. Did Singleton get out of the car?
A. Yes, sir.
Q. What did he do?
A. He came around and checked it, also.
page 102] Q. Did Gass get out?
A. Yes, sir.
Q. Did you all get back in the car?
A. Yes, sir.
Q. Had the other car with the other two boys come up at that time?
A. No, sir.
Q. How long did you wait there?
A. We waited there a few minutes.
Q. Did the other car then come?
A. Yes, sir.
Q. Did Singleton get out of the car again?
A. Yes, sir.
Q. Did Gass get out?
A. Yes, sir.
Q. Now, when you got back in the first time after you stopped at this intersection, how were you sitting in the car? I mean, who was sitting under the wheel and who was in the middle and who was on the right?
A. I was sitting under the wheel. I don't remember exactly who was sitting — just what the seating arrangement was.
Q. But coming up to that point, Gass had been in the middle?
A. Up to that point Gass had been in the middle.
page 103] Q. Now, did all three of you get out when this other car came up?

David William Stoner

A. Yes, sir.
Q. What did Gass do at that point?
A. He went back and got in the other car.
Q. What did Singleton do?
A. He got back in my car.
Q. What did you do?
A. Got back in my car.
Q. Who got under the wheel?
A. I did.
Q. Where did Singleton sit?
A. Across from me the in front seat.
Q. Did you all then leave this point?
A. Yes, sir.
Q. What car left first, what car pulled off first?
A. Shirmer's car pulled off first.
Q. Was any comment made when he pulled off?
A. When he pulled off there was a comment made right afterwards.
Q. What was that?
A. I pulled off behind him. I passed him and told him I will beat him to the beach.
Q. Did Singleton make any objection to that page 104] statement?
A. No, sir.
Q. How fast did you go after you passed the other car?
A. I don't know, sir. I don't remember anything after I passed that car.
Q. You don't remember anything?
A. No, sir.
Q. Now, were you hurt in this accident?
A. Yes, sir, I was.
Q. What did your injuries consist of?
A. I had multiple contusions and a brain concussion.
Q. Where were you hospitalized?
A. Mary Washington Hospital in Fredericksburg.
Q. How long did you stay there?
A. I spent a week there.

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David William Stoner

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CROSS EXAMINATION

By Mr. Hutt:

Q. Mr. Stoner, you said that you had been drinking some on this Sunday?

A. Yes, sir.

Q. Were you drunk?

A. No, sir.

Q. You were not drunk?

A. No, sir.

Q. The fact that you don't remember anything from the time you pulled out on 205 and passed the car in which Mr. Kenneth Gass had gotten, and shouted to it at

page 112] that time that you would beat it to the beach, you don't connect that with the fact that you had been drinking?

A. Yes, sir.

Q. You do or don't?

A. I do connect that with the fact?—

Q. In other words, you cannot remember because you were drunk?

A. No, sir.

Q. Why is it that you cannot remember what happened after that?

A. I just cannot remember.

Q. Then I ask you again, did the fact that you had been drinking have anything to do with your failure to remember what happened after you passed that car the last time?

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

Q. The reason that you cannot remember what happened after that is because of the fact that you suffered a concussion in this automobile accident, is that what you are saying?

A. I am not sure. I believe it probably was.

Q. Prior to this time, had you been accustomed to drink any sizeable amounts of whisky?

A. Yes, sir, I drink occasionally.

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Q. Now, how long had you known Mr. Singleton?

A. I had known Mr. Singleton for approximately five months.

Q. When you testified on direct examination to the jury regarding the events which took place this Sunday morning, are you positive that what you said is so?

A. Yes, sir.

Q. When you and Mr. Singleton, and Mr. Gass and Mr. Price and the other gentleman — I don't recall his name — left Mr. Price's house that Sunday morning and went over to Milton's place?

A. Yes, sir.

Q. What time of day was this?

A. This was noontime.

Q. This was noontime?

page 114] A. Yes, sir.

Q. Do you recall prior to now, but on this day, and under oath from the stand, you were relating that it probably might have been as late as 1:00 o'clock?

A. I don't think it was as late as 1:00 o'clock.

Q. Do you know what time it was?

A. It was somewhere between 12:00 and 1:00.

Q. Somewhere between 12:00 and 1:00?

A. Yes, sir.

Q. You are not now testifying that it was at noon, are you?

A. I am not sure of the exact time. I did not look at my watch when we went over there.

Q. Now, when you did go over to Milton's house, you have testified that you had a couple of drinks, is this so?

A. Yes, sir.

Q. You have also testified that you had two or three drinks, do you recall which it was?

A. I am not positive of the exact amount of drinks I had there.

Q. You have also testified that Mr. Singleton had just the same amount as I had, talking about yourself, is this true?

A. He had approximately the same amount as I

David William Stoner

had.

page 115] Q. Let's not say approximately, because you said, I quote you, "He had just the same amount as I." Is that true or false, do you know?

A. I don't know if he had the same amount.

Q. Then why did you say under oath that you did know?

A. I assumed he had. He got drinking about the same time I did.

Q. Mr. Stoner, do you feel that you are privileged to assume when you testify under oath?

A. (Pause)

Q. I would like an answer.

A. Yes, sir.

Q. You do. Then do I take it that you are assuming for example that it was Singleton who said go faster?

A. No, sir.

Q. You are not assuming that?

A. No, sir.

Q. Then how are we to know though when you testify whether you are assuming or testifying to that which you know to be a fact, would you tell us?

A. On the drinks part I assume it, because I was not counting the drinks, each one watching it poured.

Q. You have not assumed anything else?

A. No, sir.

page 116] Q. But you do feel that you are privileged to assume when you testify?

A. In that one case, yes, sir.

Q. Now, you are familiar with State Route 205?

A. Yes, sir.

Q. You have traveled it a number of times?

A. Yes, sir.

Q. You know, I take it then, where it is that this Poplar Neck Road intersects with 205?

A. Yes, sir.

Q. And the distance from there to the bridge, which is known as the county line bridge?

A. Yes, sir.

Q. How far is it?

A. I don't know the exact distance in miles, but I would say it is a few miles from there. I know approximately what

the distance is.

Q. Well, in minutes of travel, how long would it take you to go from one to the other?

A. I am not sure.

Q. You don't remember anything from the time you passed the car in which Gass, William Gass — Is that his name?

Mr. Whitticar: Kenneth Gass.

By Mr. Hutt: (Cont'd.)

page 117] Q. — Kenneth Gass got, nothing whatsoever?

A. No, sir. I don't remember anything.

Q. You do, however, remember making this statement to the driver of the other car about that you would beat him to the beach?

A. Yes, sir.

Q. Well, just how many minutes after you made that statement, was it before your mind went blank?

A. It must have been right after that. I don't know.

Q. You think it was directly after that, is that right?

A. It must have been. I don't remember.

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Q. How long would you say you and Singleton and Gass spent at the junction of Poplar Neck Road and 205, before the other car came along?

A. I would say we spent about five minutes there.

Q. About five minutes?

A. Yes, sir.

Q. I believe you said you don't recall how the parties were seated in the car while you were waiting for this other car to come, is this true?

A. Yes, sir.

Mr. Billingsley: If Your Honor please, I would like to have him clarify that, at what time, because they got out of the car a couple of times.

David William Stoner

By Mr. Hutt: (Cont'd.)

Q. As I understand it, Mr. Stoner, you came to this junction and you stopped?

A. Yes, sir.

Q. And you stopped because Mr. Gass asked you to stop, is this true?

A. Yes, sir.

Q. And when you did stop, at that time Mr. Gass was sitting in the middle?

A. Yes, sir.

Q. And Mr. Singleton was sitting on the right-
page 119] hand side and you were driving?

A. Yes, sir.

Q. The three of you, according to your testimony, got out of the car and almost immediately, a very short period of time thereafter, the three of you got back in the car, is that true?

A. Yes, sir.

Q. Now then, you then waited for the other car to come?

A. Yes, sir.

Q. And none of you got out of the car until the other car did arrive?

A. Yes, sir.

Q. The time that I am talking about is the time that you waited for the other car to arrive. Now then, do you know where the parties were sitting at that time?

A. No, sir, I was not paying that much attention.

Q. Now, you have testified that Mr. Singleton made a remark to you, which you remember to the best of your ability as saying, go faster. You don't, I take it, purport to state that this is exactly the words that he used, is that right?

A. No, sir.

Q. Are you prepared to state whether or not he used more than two words?

page 120] A. I don't know how many words he used.

Q. Did he make the observation, whatever it might have been, more than one time?

A. He might have.

Q. You don't remember?

A. I do not recall directly how many times he said it. We were talking regular conversation in the car and I cannot

remember everything that we were talking about.

Q. Do you recall how fast you were traveling at the time he made this observation?

A. I was going pretty fast. I don't recall the exact speed.

Q. You were traveling on 301 at this time, were you not?

A. Yes, sir.

Q. You say this was just a remark made in conversation with the group of you as you were riding down the road?

A. Yes, sir.

Q. You did not pay any particular attention to it, is that right?

A. I started to go faster.

Q. Do you know how fast you were going when you started to go faster?

A. No, sir. I don't know the exact speed.

Q. Do you know whether or not this remark
page 121] was made prior to or after you had passed the
other vehicle which left Owens with you?

A. It was made after we passed the other vehicle.

Q. And before you turned off of 301?

A. Yes, sir.

Q. Now then, you have testified that Mr. Gass urged you to slow down?

A. Yes, sir.

Q. Did he urge you to slow down after Mr. Singleton had made this observation?

A. He made it before.

Q. Did he urge you after?

A. After he had made it?

Q. Yes.

A. Yes, sir, also afterwards.

Q. And did you in fact slow down after he had asked you to slow down?

A. I slowed down once.

Q. Was this on 301 or on the Poplar Neck Road?

A. This was on 301.

Q. And this was after Mr. Singleton had said, go faster?

A. This was before.

Q. Are you positive?

David William Stoner

A. (Pause)

page 122] Q. Is it that you don't know?

A. This was before. Gass said slow down. I slowed down. So then Singleton said to go faster.

Q. And this was on 301?

A. Yes, sir.

Q. When you were taken to the hospital, did you regain consciousness or were you ever unconscious?

A. I was unconscious, yes, sir.

Q. Did you regain consciousness at the scene of the accident?

A. I regained it one time.

Q. You have been in the courtroom today and you have heard a statement prescribed to you. Do you recall making it?

Mr. Billingley: State what statement it is.

Mr. Hutt: There was only one statement prescribed to him.

Mr. Billingsley: Your Honor, I think the lawyer should state what this statement is that the man made.

The Court: I think you should refer to the statement you are talking about.

By Mr. Hutt: (Cont'd.)

Q. During the testimony of Mr. Klotz, he testified that you aroused and looked at your car and said, quote, "Did I do that?" Or words to that effect. Do you recall?

page 123] A. No, sir, I do not.

Q. You do not recall that statement?

A. No, I do not.

Q. You do not remember anything from the time you passed the other car until after the accident? At what time do you again start to recall things?

A. One time I came to on the road and passed out again. I just saw the car and that was it. There was a man from the rescue squad bending over me.

Q. Bending over you?

A. Yes, sir.

Q. Do you recall saying anything at that time?

A. No, sir, I do not.

Q. You do recall looking at the car?

A. I remember seeing the car, yes, sir.

David William Stoner

Q. Did you recognize it as yours?
A. Yes, sir.
Q. You did?
A. (Witness is nodding, indicating a "yes" answer.)
Q. When is the next time that you remember anything?
A. It was in the hospital.
Q. You have testified that you were in the hospital for approximately a week.
A. Yes, sir.
Q. Do you remember whether it was the first
page 124] day that you were there?
A. Yes, sir.
Q. It was. Was it during the night that you were admitted or during the next day?
A. The day that I was admitted.
Q. You were admitted during the daytime?
A. Yes, sir.
Q. And you came to during that very day, is that right?
A. Yes, sir.
Q. Were you unconscious thereafter for any period of time other than to sleep, of course?
A. Well, during that day I came to and passed out a few times during the process in the hospital.
Q. This is the day when you were admitted to the hospital, is that right?
A. Yes, sir.
Q. And during that night, how were you that night?
A. Later on that evening I was beginning to regain consciousness and I was not passing out any more.
Q. Do you remember when Trooper Layne came and talked with you?
A. I vaguely remember it, sir.
Q. You were, of course, driving this car, were you not?
page 125] A. I was driving at the time we left on that junction on 205.
Q. You were driving it when you left?
A. Yes, sir.
Q. Were you under any sedation a the time Trooper Layne talked to you?
A. I don't know.

Q. Did you have any further conferences with Trooper Layne?

A. No, sir, not that I know of. I did not have any.

Q. What was it that prompted you to drive as fast as you drove on that day, Mr. Stoner?

A. I was just feeling pretty good.

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EDWARD L. PRICE,

a witness, called on behalf of the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Billingsley:

Q. Please state your name.

page 126] A. Edward L. Price.

Q. And what is your age?

A. Twenty-five.

Q. And where do you live?

A. King George County, Virginia.

Q. What is your occupation?

A. Physicist.

Q. Where are you employed?

A. Naval Weapon Laboratory in Dahlgren.

Q. Mr. Price, I direct your attention back to the Sunday the 24th day of March, the date of this accident. Did you and David Stoner stay together that night prior to that, that Saturday night?

A. Yes, we did.

Q. Where did you stay?

A. We stayed at David's apartment in Dahlgren.

Q. Do you also have a house there, as he testified, near Owens?

A. I rented a house there at the time.

Q. You were renting it yourself?

A. Along with Mr. Singleton.

Q. You and Mr. Singleton rented the house together?

A. Right.

Q. Now, on this morning, do you recall what time you and

Edward L. Price

David Stoner got up?

page 127] A. It was approximately 9:00 o'clock.

Q. And what did you do?

A. We dressed and went immediately over to my house at Owens.

Q. How did you get over there, in whose vehicle?

A. Mr. Stoner's.

Q. How far is it over there?

A. It is approximately three miles.

Q. What did you find when you got there?

A. We found Mr. Gass and Mr. Singleton in bed asleep.

Q. Did they get up then?

A. Yes, they did.

Q. How long had you all been there before they got up?

A. Just very few minutes.

Q. What relationship is Mr. Gass to you?

A. He is a second cousin of mine.

Q. Was he visiting you at that time?

A. Yes, he was.

Q. After they got up, what took place?

A. Well, I had breakfast. I don't think I ate a whole lot of it, I cannot be sure. And then we began to clean up the dishes.

Q. Who was cleaning up the dishes?

page 128] A. Mr. Gass and myself.

Q. What did Stoner and Singleton start to do, if anything?

A. They were in the living room engaged in conversation. They began drinking.

Q. What were they drinking?

A. Whisky.

Q. Do you know where the whisky came from?

A. Yes, from the kitchen out at my house.

Q. Do you know how much whisky was in this? Was it a full bottle when they started or did it have anything out of it?

A. It had been opened, but not much had been taken out. I cannot be certain exactly how much remained in the bottle.

Q. Do you know — I know you don't know exactly, but do you know approximately what time they started to drinking?

A. Well, it was 9:30 or 10:00 o'clock, somewhere around that time.

Edward L. Price

Q. Did you have anything to drink out of this bottle in your house?

A. Not that day.

Q. How about Gass, do you know whether he had anything or not?

page 129] A. I remember one drink Mr. Gass had out of that bottle.

Q. Do you remember anyone else coming to the house?

A. Yes, the fellow who lived across the street from Mr. Singleton and I dropped in that morning.

Q. Did he have anything to drink out of that bottle?

A. Yes, he did.

Q. Do you know how many drinks he had out of it?

A. I don't know exactly, it was approximately two. I cannot be certain.

Q. That made five out at your house, you, Gass, Stoner, Singleton and this man from across the street?

A. That is correct.

Q. How long did you all stay at your house, did you all leave together?

A. We all left together.

Q. Do you know at what time, as close as you can testify to, what time did you leave?

A. It was approximately noontime.

Q. And where did you go?

A. We went across the street to Milton's house.

Q. And what took place over there?

A. He poured us all a round of drinks.

Q. Whose whisky was this?

A. It was his.

page 130] Q. What happened to the bottle over at your house?

A. It had been emptied. That was one thing that prompted us to go across the street.

Q. Did you have any drinks across the street?

A. Yes, I did.

Q. Do you recall how many?

A. I don't recall exactly. I had at least two.

Q. How about the other parties?

A. We were all drinking at about the same rate, and as

I recall, when we refilled the drinks, why each person got a refill.

Q. Now, did anybody else come to that house?

A. Yes.

Q. Who was that?

A. Roger Shirmer.

Q. Do you know what time he got there?

A. It was just a very short time after we went over to Milton's house when Roger arrived.

Q. Did he drink anything?

A. Yes, he did.

Q. The same amount?

A. Right. He was drinking along with the rest of us.

Q. How long did you all stay at this house across the street from your house?

page 131] A. It was one and a half to two hours.

Q. Did you all leave that house?

A. Well, Mr. Shirmer and myself, Mr. Stoner, Mr. Singleton and Mr. Gass left the house.

Q. Where did you leave to go?

A. Mr. Shirmer had previously told me of a house for rent in Colonial Beach, and we were thinking of renting it ourselves, and —

Q. "Ourselves," who do you mean?

A. Mr. Shirmer and myself. And as I recall, Mr. Stoner suggested that he might find a house down in that area to rent for himself. So they decided to follow us down there.

Q. Now, did you all go in the same car?

A. Mr. Shirmer and myself went in his car. Mr. Gass, Mr. Singleton and Mr. Stoner left in Mr. Stoner's car.

Q. Who left first?

A. Mr. Shirmer and myself.

Q. Did you see the position that the other party was sitting in the other car when they left?

A. No, I did not.

Q. Did you all proceed from there over to 301?

A. That is correct.

Q. How far it is across there?

A. It is about one half mile.

Edward L. Price

Q. Which car reached 301 first?

page 132] A. Mr. Shirmer's car.

Q. Which way did it turn?

A. It turned south.

Q. Did the other car follow it?

A. Yes, it did.

Q. After you got on 301 headed south, did the other car pass you?

A. Yes, almost immediately after we got on 301.

Q. At what speed were you going when this car passed you, if you recall?

A. It was approximately fifty miles an hour.

Q. Were you driving or was Shirmer driving?

A. Shirmer was driving.

Q. Do you know who was driving the other car?

A. Yes, Stoner was driving the car.

Q. Did you recognize him?

A. Right.

Q. Do you know who was sitting in the middle?

A. Yes.

Q. Who?

A. Mr. Gass.

Q. And where was Singleton sitting?

A. He was sitting by the door.

Q. Now, at what speed did you all proceed south on 301, if you recall?

page 132-A] A. It was an approximate limit of fifty-five miles per hour.

Q. Did the other car stay in your sight?

A. No, it did not.

Q. When did you next see the Stoner car?

A. The car got out of our sight immediately after we got on 301. I next saw the car at the junction of 205 and this Poplar Neck Road.

Q. What was the car doing at that time?

A. It was waiting there on Poplar Neck Road at the stop sign.

Q. Now, did you stop the car you were in, did it stop?

A. Yes, we stopped behind Mr. Stoner's car.

Q. Now, did you observe anyone get out of the Stoner car?

Edward L. Price

Mr. Billingsley: Witness with you.

CROSS EXAMINATION

By Mr. Hutt:

Q. Mr. Price, how far is it from the junction of Poplar Neck Road and 205, to the point where the accident happened?

A. I would say approximately four miles, possibly five.

Q. And how fast did you all drive when you left this junction?

A. We drove around fifty-five miles per hour.

Q. I see. Then it took you approximately five minutes to come up on the accident?

A. That is correct.

Q. When you got there, who was there at that time?

A. I don't recall exactly. There were about five cars there.

page 135] Q. There were about five cars there?

A. Five or six. Several cars.

Q. In other words, there were a number of cars there when you got there?

A. That is correct.

Q. Was there dust and debris still hanging in the air as so frequently happens when an accident of this kind occurs?

A. I did not notice any.

Q. You did not?

A. No, sir.

Q. Were there a group of people standing around?

A. There were two or three people right around the car and around the persons who had been in the car. But most of the people were standing by their parked automobiles.

Q. Then you did not arrive there just as the accident happened, it had happened for a few minutes before you got there, isn't that true?

A. I assume so. I saw no part of the accident and, as you say, I noticed no smoke or dust or anything in the area.

Q. And a gathering of people?

A. Right.

Q. At the time you all left Milton's house, was Mr. Stoner in a condition to drive an automobile?

page 136] A. I don't believe I can judge that.

Q. You were riding with Mr. Shirmer?

Edward L. Price

A. Yes. Mr. Singleton got out first and then Mr. Gass got out.

Q. Did Stoner get out at that time?

A. I don't recall.

Q. Did Singleton come back to your car?

A. No, he did not.

Q. What did he do?

A. He got back into Mr. Stoner's Car.

Q. What did Gass do?

page 133] A. He came back and got in the car with Mr. Shirmer and myself.

Q. Do you know why Gass got out of the other car of your own knowledge?

A. I only know what Mr. Gass told me.

Q. That is all right. What did the cars do then?

A. Well, Mr. Shirmer pulled out. He pulled out on to 205 first.

Q. Which way did he head?

A. He headed east.

Q. And what did the Stoner car do?

A. He pulled out immediately after us and passed us.

Q. Did you hear anything from either occupants of the Stoner car as it passed you?

A. Well, as we were pulling around Mr. Stoner's car on to 205, Mr. Stoner said, we will beat you to the beach.

Q. Do you know whether Singleton did anything? What was he doing at that time?

A. I did not notice anything in particular he was doing.

Q. Was the Stoner car moving at that time or standing still?

A. I cannot be certain. We were pulling around the car and he pulled out behind us. If it was moving it was at a very slow rate of speed.

page 134] Q. That was on the Poplar Neck Road before you went on to 205?

A. That is correct.

Q. After you got on to 205, what happened?

A. Mr. Stoner's car pulled around us and went over the hill and out of sight, and we did not see it any more until we arrived on the scene of the accident.

A. Yes.

Q. Was he in a condition to drive a car?

A. As far as I could tell he was, yes.

Q. In regards to sobriety, what was Mr. Singleton's condition?

A. Well, it seemed evident to me that he was influenced by the alcohol that he had been drinking. However, he did not seem to be in a condition I would determine as drunk. He still was aware of what was happening around him. He was carrying on coherent conversation.

Q. In regards to the group of people who were there, was Mr. Singleton's condition approximately the same as, better than, or worse than, the others in regards to sobriety?

A. In answer to that question, could I compare his condition with another member of the party and then compare them with the rest?

Q. Perhaps. I asked you the question, so I will have to let you make the answer as best as you can.

A. As best as I can answer the question, Mr. Stoner and Mr. Singleton were in approximately the same condition as far as influence of alcohol is concerned, and the rest of the group seemed quite sober to me.

page 137] Q. You think both of them were under the influence to a certain extent?

A. Yes, I do.

Q. When you pulled up behind the Stoner car at the Poplar Neck — 205 junction, did anyone in your car get out?

A. I don't remember for sure.

Q. Mr. Gass, you say, came back and got into your car?

A. That is correct.

Q. Did he get into the front or the back seat?

A. Well, this was a sports car, Mercedes 190 SL. It did not have a back seat. However, there is an area behind the seats that is a luggage compartment of some sort, and Mr. Gass was sitting back there.

Q. You mean he sort of got in behind the two seats in what would be termed the luggage compartment behind the seats?

A. Yes, sir.

Q. It would be covered if the top was up?

A. That is correct.

Q. Was the top up?

Edward L. Price

A. I don't remember for sure. I don't believe it was, but I cannot make a positive statement on that.

Q. This car belonged to Mr. Shirmer?

A. That is correct.

page 138] Q. I want you to think about this. Are you positive that Mr. Singleton got out of the car at the same time that Mr. Gass got out and came back to the car in which you were riding? I am talking now about the junction of the Poplar Neck Road and 205.

A. Yes, I am positive I noticed that. Mr. Gass was sitting in the middle and when we stopped behind the car he called back and asked us if we had room for another passenger. And Mr. Shirmer replied yes, I guess so. Then Mr. Singleton got out and let Mr. Gass out and got back in the car.

Q. Let me understand this. This car in which you were riding was a two passenger automobile to begin with?

A. That is correct.

Q. And when Mr. Gass got out of the Stoner car and got into it, he was overloading it and making it a three passenger deal, and it had no seat for a third person, is that right?

A. It was not designed to accommodate three persons, no.

Q. Now, three people evidently could get into it because three people did get into it.

A. That is correct.

Q. Could a fourth person have gotten into it?

A. Well, I am sure a fourth person could have

page 139] gotten in there. I am not sure as to how this would have limited the driver.

Q. In other words, what you are saying is how the fourth person would have gotten into would have quite probably interfered with the safe operation of the car?

A. Yes.

* * * * *

Q. Did you hear Mr. Singleton say anything during the time you all were parked at this junction of the Poplar Neck Road and 205?

A. I was aware of a conversation between Mr. Singleton, Mr. Stoner and Mr. Gass before he got out of the car, but I could not tell what they were talking about.

* * * * *

page 140] WILLIAM KENNETH GASS,

a witness, called on behalf of the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Whitticar:

Q. Mr. Gass, state your name and age, please.

A. William Kenneth Gass, twenty-six.

Q. Mr. Gass, calling your attention to the day prior, and the period around March 24, 1963, state whether or not you were visiting any of the persons connected with this testimony today?

A. I was visiting Ed Price.

Q. That is the gentleman that just testified?

A. Yes, sir.

Q. Are you related?

A. Second cousins.

Q. Then to expedite and save a little time, on the morning of March 24th, which is the date this accident occurred, where did you stay the night before?

A. I stayed at Ed Price's house with Don Singleton.

Q. Don Singleton. When you awoke that morning, that Sunday morning, state where you went.

A. Well, when I got up I went into the living room. Dave Stoner and Ed Price had arrived there.

page 141] Q. Dave Stoner and Ed Price had arrived?

A. Yes.

Q. And that was at the house where you slept?

A. Yes, sir.

Q. All right. Were you out of bed or up at the time that they arrived?

A. I was in bed when they arrived.

Q. How soon after they arrived did you get up?

A. I got up immediately.

Q. Then what did you do?

A. Well, I got up and went in and said good morning to them and went back in and got ready for breakfast.

Q. Did you eat breakfast?

A. Yes, sir.

Q. Who else ate breakfast?

William Kenneth Gass

A. Ed Price.

Q. State whether or not Dave Stoner or Singleton ate breakfast?

A. Dave Stoner or Don Singleton, neither one had any breakfast.

Q. To your knowledge they had no breakfast that morning?

A. I know Don had not had any. I don't know if Dave had or not.

Q. All right. What did you do after you ate

page 142] breakfast?

A. I helped Ed Price clean up the kitchen.

Q. And while you were doing that, what if anything, and if you know, were Dave Stoner and Mr. Singleton doing?

A. Dave Stoner and Don Singleton had mixed themselves a drink and were in the living room talking.

Q. A drink of what?

A. Whisky.

Q. Whose whisky was it?

A. I don't know who it belonged to.

Q. Did you have a drink that morning?

A. Yes, later on I did.

Q. How much did you have to drink, Mr. Gass?

A. I had one drink.

Q. Was that from the same bottle that the others were mixing their drinks from?

A. Yes, it was.

Q. Who else had a drink at that time and place?

A. Just myself and Don Singleton and Dave Stoner at that time, and then the man from across the street came over.

Q. How many drinks, if you know, did Stoner have?

A. I could not say for sure how many he had.

Q. How many did Mr. Singleton have?

A. I don't know how many he had, either.

page 143] Q. How much time elapsed between the time that Stoner and Price arrived and the time you left to go over to the house across the street?

A. Approximately three hours.

Q. And in that time you had one drink?

A. Yes, sir.

Q. And your cousin, did he have any to drink out of it?

A. No, he had not.

William Kenneth Gass

Q. Was the bottle empty when you left to go across the street?

A. Yes, it was.

Q. Now then, who was it you went across the street to see?

A. There was a guy who lived over there. He invited us over. Milton, I don't know his last name.

Q. And who all went over there?

A. Milton, myself, Ed Price, Don Singleton and Dave Stoner.

Q. What time would you say, Mr. Gass, it was when you arrived at Milton's?

A. It was approximately 12:30.

Q. Approximately 12:30. And how many drinks did you all have there, if you know?

A. I am not certain. I know we all had two

page 144] rounds a piece.

Q. A minimum of two rounds a piece?

A. Minimum, yes, sir.

Q. You are certain as to what you had?

A. I know I had only two.

Q. Do you know whether any of the others had more?

A. No, I do not.

Q. Well then, by the time you had those two rounds, about what time did it get to be?

A. It was somewhere between 1:00 and 1:30.

Q. What, if any, decision as to a venture or trip was made?

A. Well, some time, or a few minutes before we left, maybe a half hour, Roger Shirmer came and he wanted Ed Price to go to Colonial Beach with him to look at a house.

Q. And how did it come about, if you know, that the others also made it or started the journey to Colonial Beach?

A. I think Dave Stoner was trying to find him an apartment down there, too.

Q. Be that as it may, you all decided that you would go to the beach?

A. Yes.

Q. In which car did your cousin go?

A. He went with Shirmer.

page 145] Q. Price went with Shirmer?

A. Yes.

Q. And what kind of car was that?

William Kenneth Gass

A. It was a sports car.
Q. And with whom did you travel?
A. I went with Dave Stoner and Don Singleton.
Q. And what kind of a car was that?
A. '57 Chevrolet.
Q. And whose car was that?
A. David Stoner's.
Q. When you left the house, which car left first, if you recall?
A. The car of Shirmer left first.
Q. So that you were riding in the rear car?
A. Yes, sir.
Q. Now, where were you riding?
A. I was in the middle of the front seat.
Q. And who was driving?
A. David Stoner.
Q. And where was the other boy riding?
A. Don Singleton was riding next to the door.
Q. Next to the door. The other car was ahead of you, is that correct?
A. That is right.

Q. Where did you go from there, to what route, page 146] from the house?

A. To 301.

Q. To 301. Now, was the car ahead of you in sight as you approached 301?
A. Yes, it was.
Q. And was it ahead of you after you had made a right turn, if you did?
A. We made a right turn and the car was in front of us. We passed it immediately.
Q. You passed it immediately?
A. Yes, sir.
Q. That is you, Dave and Mr. Singleton?
A. Yes, sir.
Q. How fast was the Shirmer car going, if you know, when you passed it?
A. I could not be certain. Approximately fifty.
Q. How fast were you going in the car in which you were riding in the middle when you passed the Shirmer car?
A. Somewhere around sixty at the time.

William Kenneth Gass

Q. Did you state whether or not, and if you know, did you get out of sight from the Shirmer car?

A. Yes, we did.

Q. In how much time?

A. Oh, just a minute or so. We passed another car, too, on the road and after that I did not see it.

page 147] Q. As you were going down the road which is 301, before you turned off of it, what was the top speed that that car attained to your knowledge?

A. I had seen the speedometer at ninety miles an hour at one time.

Q. And what did you do at that one time?

A. I tried to get David to slow down.

Q. In what way?

A. I told him he was driving too fast and I would like for him to slow down.

Q. And what, if anything, did Mr. Singleton say at that time and place?

A. I am not certain if he said anything right then. Dave Stoner did slow down. And then we maybe traveled a quarter of a mile and Don Singleton told him to speed up.

Q. Now, let me hear that again. Talk a little louder, please, so they can hear you and the Court also. You had gone about a quarter of a mile and what?

A. Don Singleton urged David Stoner to speed up.

Q. Do you recall his exact words?

A. I cannot recall the exact words. It was something like, speed up, we won't never get there. Those are not his exact words.

Q. That was the import of the language as you heard it?

page 148] A. Yes.

Q. Where did you turn off of Route 301?

A. Well, I am not sure. I was not familiar with the road. They said it was a short cut to Colonial Beach.

Q. Do you reckon that is the road they have been calling Poplar Neck Road here today?

A. Well, if that is the name of it, that was it.

Q. Was it a road between a filling station and did it run diagonally down to 205, which is the Colonial Beach Road?

A. Yes.

William Kenneth Gass

Q. All right, Kenneth, this turn off road, what kind of road was it?

A. It was awfully curvy and narrow.

Q. At what speed did you all travel on that road?

A. We traveled as high as, say sixty-five or seventy. Say at least seventy miles an hour.

Q. What, if any, mishaps or irregularities occurred while you were traveling on that narrow road at sixty or seventy?

A. We ran off the road going around the curve. The left rear tire got in kind of a little ditch.

Q. The left rear tire got into which ditch?

A. On the left side.

Q. So that at that time your car was on the
page 149] wrong side of the road?

A. Yes, sir.

Q. State whether or not the car during that trip on that winding road was on the wrong side of the road at any other time?

A. At a number of times it was.

Q. Now, at the time that car went in the ditch as you say, what happened and what did you do?

A. I told David Stoner that he better slow down before he tore his car up.

Q. And what at that time was the reaction of the other passenger in the car?

A. Don Singleton slapped me on the leg and said, "Give it hell, Dave."

Q. What was that?

A. Donald Singleton slapped me on the leg and said, "Give it hell, Dave."

Q. Well, you are not Dave. He slapped you on the leg?

A. Yes.

Q. And said, give it hell, Dave, to him?

A. Yes.

Q. Did he give it hell?

A. He did not slow down.

Q. What were your feelings about at that time?
page 150] A. I was scared to death.

Q. Did you ask to get out?

A. Yes, I did.

Q. How many times?

A. A number of times.

Q. What was the purpose of the stop when he finally did stop down at 205?

A. I had talked Dave into stopping and waiting on the other car behind us.

Q. For what purpose?

A. I was going to get out and ride with them in the other car.

Q. Were you the only one that wanted to get out?

A. Yes, sir.

Q. Did anyone else ask to get out?

A. No, sir.

Q. Now then, when you stopped there, state whether or not Singleton got out and let you out, and whether Dave got out and what you did.

A. We all three got out and Singleton and I walked around to the left-hand side of the car to see if any damage had been done when we ran off.

Q. Did you think there had been damage?

A. I thought there had been, yes, sir.

Q. Was there any damage?

page 151] A. No, sir.

Q. Then after you looked and found there was no damage, then what did you all do?

A. We got back in the car.

Q. For what purpose?

A. To wait on the other car behind us.

Q. When that car pulled up, what if anything did you do?

A. I called back to the other car and asked if they had room for another passenger.

Q. And did they have room for another passenger?

A. He did. He told me yes, and I got out.

Q. Where were you sitting at that time?

A. I was in the middle of the car between Stoner and Singleton.

Q. Singleton got out, too?

A. Yes.

Q. To let you out, is that true?

A. Yes, he let me out.

Q. Then you went back to the other car?

A. Yes, sir.

William Kenneth Gass

Q. Did Singleton at any time ask to ride in the other car that you were going into?

A. No, he did not.

* * * * *

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Q. Having gotten in the car, where were you riding in the little car?

A. I was behind the two seats in the little space there.

Q. You now were riding in the car behind the car in which you were originally riding in, is that correct?

A. Yes.

Q. Who pulled away from that scene first?

A. The car I was in pulled out on 205 first.

Q. You pulled up alongside the car that David Stoner and Singleton were in?

A. Yes.

Q. What, if anything, was said at that time?

A. David Stoner said, I will beat you to the beach.

Q. Did you say anything?

A. No, sir, I did not say anything.

Q. That was said in the presence of Singleton, Dave, yourself, your cousin and Shirmer?

page 153] A. Yes, sir.

Q. What, if anything, was said or done by Mr. Singleton at that time?

A. He was just laughing and I did not hear him say anything at that time.

Q. He was laughing when he said I will beat you to the beach?

A. Yes.

Q. You pulled around ahead then. What happened then, which car proceeded on?

A. They came right in behind us and immediately passed our car.

Q. Was anything said then at that passing?

A. Not that I recall.

Q. All right. How long were you able to keep that car in view which was ahead of you?

A. It went out of sight immediately.

Q. Were you able to estimate its speed as it left?

A. No. I could tell it was accelerating, that is all.

Q. Did it draw away from you gradually? State whether or not it did, or if it just took off?

A. Well, it got out of sight quite fast. I think you go down a slight hill there, and it went right on down and out of sight.

page 154] Q. All right. Then when was the next time that you saw the car in which Dave was driving and Singleton was a passenger?

A. When we arrived at the scene of the accident.

Q. How many miles would you say that is from the point where you made the change in vehicles, you yourself?

A. Approximately four miles.

Q. And how long, or about what speed were you driving, how long did it take you to get there?

A. It took four or five minutes.

Q. As you approached the scene, were there any other cars or persons there at the scene?

A. There were some cars there, I am not certain how many.

Q. And you observed, of course, I take it the Stoner car overturned?

A. Yes.

Q. And did you observe if Mr. Stoner was unconscious, did you observe him?

A. I did not go up very close. He was at the scene lying in the road.

Mr. Whitticar: Witness with you, Mr. Hutt.

CROSS EXAMINATION

By Mr. Hutt:

page 155] Q. When you approached the scene where the accident had occurred, Mr. Gass, was there any dust or debris still hanging in the air?

A. I did not notice any.

Q. You did not notice any?

William Kenneth Gass

A. No.

Q. There was a gathering of people around?

A. Yes.

Q. And this was some four miles or so from where you had last seen the car?

A. That is right.

Q. And some four or five minutes from the time that you had last seen the car?

A. Yes, sir.

Q. At which time who was driving the car?

A. When I last seen it?

Q. That is right.

A. Stoner. David Stoner was.

Q. Now, how long had you been up here visiting your cousin?

A. I don't know. Approximately three weeks.

Q. Was it customary for you to stay at your cousin's house?

A. Yes, sir.

Q. Was it customary for your cousin to stay page 156] at Stoner's house?

A. That was the first time that he stayed over there since I had arrived.

Q. In other words, there was room in the house for all three of you, you, Singleton and your cousin? There was plenty room in there for the three of you to stay there?

A. Yes, by using the same bed.

Q. And is that the way in which you had been staying?

A. Yes, sir.

Q. Now, then you had lived in the same house with Mr. Singleton for about three weeks?

A. Yes, sir.

Q. On 301, you testified that Mr. Stoner got up to about ninety miles an hour on occasions?

A. Yes, sir. One time I seen it.

Q. And you urged him to slow down?

A. Yes, sir.

Q. And he did slow down?

A. Yes, sir.

Q. How slow did he slow down?

A. He got down to close to the speed limit.

William Kenneth Gass

Q. Did he get down to within the speed limit?

A. Yes, I would say he did.

Q. Did he get down to below the speed limit?

A. We got behind some cars and I would say

page 157] we got down to forty-five.

Q. Do you recall whether or not this was the time that Singleton suggested that we might never get there?

A. It was a couple, maybe a minute or two minutes after that, after that we had slowed down.

Q. To about forty miles an hour you say?

A. About forty-five. That is maybe as slow as we got.

Q. That is when Singleton suggested that he might speed up?

A. Yes.

Q. Now then, on this ride, I gather it was a right wild ride from what you say?

A. Yes, sir.

Q. What was Mr. Singleton's condition with regards to sobriety during that ride?

A. You could tell that he had been drinking, but he knew what was going on.

Q. He did?

A. Yes, sir.

Q. I suggest to you that he might have been drunk. Was he drunk?

A. No, he was not.

Q. He was not?

A. No.

page 158] Q. At the time when the car came to a stop at the junction of 205 and Poplar Lane — Poplar Neck Road, what was his condition at that time, Mr. Gass?

A. It seemed to be the same as before. You could tell he had been drinking, but he was aware of what was going on.

Q. Mr. Gass, you are quite positive that Mr. Singleton was not stone blind drunk so-to-speak at the time this car pulled off?

A. I am positive.

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William Kenneth Gass

page 159]

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Q. Mr. Gass, I take it that during the ride down this narrow road you made serious efforts to slow down the driver?

A. Yes, I did.

Q. And did he slow down?

A. Not much, if any.

Q. Did he slow down some?

A. I would say he slowed down approximately five miles an hour.

Q. And you urged him to stop the car and let you out?

A. Yes, I did.

page 160] Q. How many times did you urge him to do this?

A. Continuously.

Q. You were quite agitated, were you not?

A. Yes, I was.

Q. How is it that Mr. Stoner did in fact stop then? He acceded to your request finally, is that right?

A. Yes, he did.

Q. Did he make any observations while he was doing it? Did he say anything to you?

A. No, not that I know of. I know at times I asked him to stop or slow down and he said he would make it all right.

Q. He said he would make it all right?

A. Yes.

Q. Did he seem to be developing a little bit better control over the car when he approached this point where he ultimately did stop?

A. Yes, he did.

Q. Then progressively his handling of the car, his driving of the car while he drove down this winding road, became more sensible and safer, is this so?

A. It did not, until just right before we came up to the intersection.

Q. Then when he did pull up he stopped and he stayed there and waited for the other car to come, is that

page 161] right?

A. That is right.

Q. He did not tell you, for example, that you just have to get out and stand on the side of the road if you did not like to ride with him, nothing like that?

A. No, he did not.

Q. What did you all talk about while you were waiting there for the other car to come?

A. I told him to let me drive.

Q. What did he say to that?

A. He wanted to drive himself.

Q. Did Mr. Singleton make any observation about your request to drive?

A. I don't remember if he did or not.

Q. Well, what else did you talk about while you were there? You were there for five minutes or so.

A. Well, the biggest part of that time we were looking at the car for damage that we thought may have been done when we ran off the road.

Q. Now, you said that Singleton got out of the car with you and went to the rear to look to see about the damage?

A. Yes, he did.

Q. Did he seem to be concerned that possibly the car might be damaged?

A. Well, he got out when the rest of us did to look and see. I don't know whether he was or not.

page 162] Q. Was he able to walk in a normal fashion or was he staggering?

A. No, he was walking as good as I was it seemed to me. He did not stagger any. He did not have to hold on to anything.

Q. How long did the three of you stay out of the car while it was stopped at this junction?

A. Oh, couple three minutes.

Q. How is it that you happened to get back in the car? Why did you get back in the car?

A. Well, I was in hopes of talking him into letting me drive. And if he had, I would have gone on with him.

Q. Did you know whether or not the other car was following the same path that you all had taken?

A. No, I did not.

Q. You did not know that they were going to come behind you?

A. No, sir.

Q. So then it was a surprise to you when they did come behind you?

A. It was not a surprise. I knew they would come one way or the other. I was waiting for them.

Q. But they might have not taken that cutoff and gone right on by, might they not?

A. I could have seen them. They would have
page 163] seen the car right from where we were parked
if they had come the other way.

Q. Was this car pulled off the road or just stopped right at the stop sign?

A. It was over to the right as far as it could pull over.

Q. In a safe place for it to be?

A. Yes, I would say so.

Q. You were not under the influence in any way, were you?

A. No, I was not. I had had three drinks of whisky and I was not feeling it none whatsoever.

Q. Well, during the course of the trip down the Poplar Neck Road, whatever effect you may have felt you lost, did you not? I am serious.

A. I was not feeling it to start with.

Q. All right. Now, you tell me that Mr. Singleton may have been drinking but he was not drunk, and yet you say that all during this, the course of this ride in which you say that you were scared to death, he did not seem concerned at all, is that right?

A. No, it did not bother him it seemed to me.

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page 164]

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Witness stood aside.

Mr. Billingsley: We rest.

The Court: The defendant rests.

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page 166] JURY OUT

* * * * *

Mr. Billingsley: Your Honor, this is a motion at this time to take the case from the jury, to strike the evidence, for the reason that Mr. Singleton in going on this venture, and in participating in this venture — it has been shown from the uncontradicted evidence, there is no dispute on the evidence as to what took place between that morning at approximately 9:00 o'clock and the death.

The boys were drinking together. They left one house when they finished drinking the whisky there and went to the other house. They continued drinking. I am talking about the two principals now, Singleton, the dead boy, and Stoner.

They were in the Stoner automobile that proceeded up 301 at a very high rate of speed, at such a high rate of speed that Gass, who was a witness in the car, complained. He got Stoner, the driver, at one time to slow down.

The uncontradicted evidence is that Singleton made him to speed up again, to go faster. And they cut page 167] across on this other road, this cut-across road, that the Trooper testified is a narrow, winding, hilly road. The uncontradicted evidence is they were running at a high rate of speed; that they ran off of the road.

Gass who was in the car was scared and was constantly begging Stoner to slow down. Singleton at one time on this cut-across road slapped Gass on the leg, said give her hell, Dave. And then they stopped as a result of Gass' constant efforts. First thing, they looked at the car. Gass got out of the car and, of course, that is what probably saved his life.

But be that as it may, Your Honor, this case in our opinion is on all fours with the case of *Arrington* vs. *Graham*, decided on March 5, 1962, and is reported in 203 Va. 310, and at 125 S.E. 2nd 199. And the facts in the *Arrington* case, of course, that was a wrongful death case. Two boys in the car, both of them were killed. The jury returned a verdict. A writ was obtained and the opinion written by Mr. Justice Spratley reversed it and entered final judgment for the defendant. In that case, there were a number of boys; they were drinking together; they went and got gin; the two boys that were killed drank together. They got in and out of the car on several

different occasions. Before the last time, there
page 168] was evidence that the boy driving was driving
recklessly. Another boy suggested that he would like to drive, I believe that is a correct statement.

Mr. Whitticar: Yes.

Mr. Billingsley: Then all got out of the car except the driver and the passenger. They went down the road at a high rate of speed, passed a truck — it is so close to this case — it even hit a bridge abutment as in this case.

The Court in that opinion says here Graham, who was the plaintiff's intestate, got in the automobile and rode with Aliff, the defendant's intestate, after he knew Aliff had been drinking for some time immediately prior thereto, after he had heard Cline, another boy who got out of the car, repeatedly refuse to ride in the car with Aliff driving, and had given special reason for his refusal, which Gass did.

And after he had seen Aliff's conduct, movements, behavior, and manner of operating a car improperly. Graham got in the car with his eyes and ears wide open to the dangers and risks threatened. It is difficult to conceive of stronger warnings of danger. He must be held to have accepted the
risk and the consequences. He was not merely
page 169] careless; but he was venturesome in accepting
the obvious risk. It is our conclusion that the uncontradicted evidence shows that plaintiff's decedent, Graham, with full notice that Aliff could not, or would not, drive properly, voluntarily assumed the risk of traveling in the automobile driven by the latter. In view of this conclusion, we do not find it necessary to discuss or pass upon the correctness of the ruling of the trial court upon the granting or refusal of instructions, upon the admission or rejection of the evidence, and so forth, and the verdict should be set aside.

And in this case, the Court distinguished between contributory negligence and assumption of the risk as one of them, that is an assumption of the risk in venturousness, and in contributory negligence it is carelessness. The court says that they are very close together. But the facts are as close in these cases as I think I have ever seen them in two cases. The speed, the drinking, some boy refusing to ride, the plaintiff's intestate riding with the man after he knew all of this, had the opportunity to get out and, in fact, did get out and got back in.

We respectfully submit, sir, that in view of the ruling of the Court in this matter in this case — Mr. page 170] Whitticar and I could find no decision changing it — that it now no longer becomes a matter for the jury but it is a matter for the Court.

Mr. Hutt: If the Court pleases, I am not familiar with the case cited by counsel for the other side, perhaps I should have been.

I have some cases of my own, which I think have a bearing on this case. I did not bring my legal notes with me at this stage of the game, because to be quite honest, I did not visualize we would be quite along as we have. We came along further than I thought we would.

However, I feel that first of all the jury does have a right to accept or reject the testimony in whole or in part of any witness. They have a right, for example, to accept or reject Mr. Gass' testimony in whole or in part. Certainly some of the things that he testified to, in my judgment, raise a serious question because in a measure is almost contrary to human experience. I feel that is a jury issue and at this stage of the game I feel that nothing could be served by not allowing this case to go to the jury.

I so request that it be so.

Mr. Billingsley: Your Honor, I believe Mr. page 171] Hutt has overlooked one fact. The jury in this case, as in any law case, is bound by the uncontradicted evidence. The uncontradicted evidence in this case is the same as the uncontradicted evidence in the *Arrington* case, that the boys drank together; they rode together; the plaintiff's intestate had the opportunity to get out of the car. He did get out of the car. Another boy, or other boys, refused to ride because of the way that the driver of the car was operating. And we submit, sir, that it is now a question of law.

The Court: In this particular case here we have some of the witnesses testifying that all of these persons were drinking. I think the implication is that they drank about the same amount. One witness testified they passed the glasses and said fill them up again. And we have further testimony here that not withstanding the fact that they more or less drank about the same, we have some of these witnesses who drank about the same telling the jury that it affected, or had a greater effect, on some other persons than it did on them and, in effect, saying that while they had so many drinks and the

other fellows that had about the same number,
page 172.] they knew what was going on, but the others did
not seem to appreciate what was going on or the effect of what was going on.

One of these witnesses tells that he was very much alarmed at the situation. He was afforded an opportunity to get out of the car. He did get out of the car. *If he was so alarmed, why did he get back in?* He could have walked or stayed out, run down through the fields or woods, never get back in the car.

But he gets back in the car with this man that he has absolutely no control over, acting like some mad man with the automobile on the highway according to his testimony, according to the testimony of the defendant here himself. Not withstanding that, he gets out of the car, he just places himself right back in the car. He is not too clear whether he got back in the middle seat or where he got, but he got back there in the middle of the front seat. And he stayed there for a number of minutes, nothing in the world to stop this fellow here, who was drinking to excess, acting like a mad man on the highway, from hauling off again.

You have all these things going through the testimony.
A bunch of people here drinking together. One
page 173] of them said he never had any breakfast. The
other one said he had some breakfast but does not know how much breakfast he had. Maybe they had a half a banana, maybe three corn flakes. Everybody knows that whether or not you had something to eat has a lot to do with the way liquor affects you. People who have had some experience with liquor, grown people, know that that is the most prevalent thing in the world in drinking whisky and having the effect of it.

I think they have a right to pass on all of that. The next thing, he says he does not remember what happened five miles up the road. He just does not remember. We don't know what happened.

If you want to speculate a little bit, we don't know what that other fellow did. Maybe that other fellow got tired of it himself and asked him to slow down. We don't know what happened. You have five miles there.

Where do you cut off these things, anyhow? You have these cases in criminal cases, civil cases, where are you going to stop?

When a man starts down in southern California going to New York, are you going to trace everything he did from southern California right on to New York? For
page 174] a week or ten days? Are you going to trace it for fifteen miles or are you going to trace it within ten miles of where it happened, or five miles of where it happened? Or are you going to trace it to one mile? I don't know.

But here we don't have any evidence as to exactly what happened other than the physical evidence down at the road, which is very bad. But we don't have any evidence as to what actually happened in the five miles, or the four miles, close to five miles preceding that. That would be very important.

Maybe this other is important. I am not saying it is not important, it is probably all important. But I think the jury should pass on it myself.

I don't think it is like that case you were reading about. I think that case would be more like the case where they killed somebody right beside these people, fifty or one hundred yards right in their sight.

He said, we will pass you. We will get to Colonial Beach before you do. But there are close to five miles that we don't have any evidence as to what actually happened.

I don't think I should take this case away from the jury. That is the way I see it.

page 175] Mr. Billingsley: If Your Honor please, we note exception to the ruling of the Court.

The Court: I take it your motion is to strike the evidence and to instruct the jury as a matter of law, that this evidence constitutes contributory negligence or assumption of the risk?

Mr. Billingsley: My motion is to strike the evidence at this time —

The Court: I overrule that.

Mr. Billingsley: — on the grounds stated in my opening statement, and we of course, except to the Court's ruling.

The Court: Yes, sir.

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IN CHAMBERS

Mr. Whitticar: If the Court please, before we start on the instructions I would like to renew the motion to strike the evidence which was made yesterday at the close and ask that you reconsider and respectfully request the Court in the interest of the law and the evidence that he read the *Arrington* case, and this short article in the law review which I think points out the best our point we are making on the assumption of risk.

The Court: You can read it in the record if you want. I will listen to it. Is it a real long case?

Mr. Whitticar: Fairly long.

The Court: I tell you what I would prefer to do in this particular case. I do not mean to even infer there is absolutely no pertinence to the proposition that you made yesterday, or Mr. Billingsley, with reference to contributory negligence existing in this case as a matter of law. I don't think it is a terribly one-sided thing at all.

page 179] I would be inclined in this case if they came in with a substantial verdict and you made a motion to set aside the verdict as being contrary to the law and evidence, that you file briefs if you want, or preferably setting down a day for the hearing. And then I would have an opportunity to look at all of these cases.

This Court does not do much of that, because we don't have any cases under *advicement* at all now and try to avoid that, but every now and then we have a case, maybe once every two months, where we feel it is advisable that we do that. I think this is such a case.

Mr. Whitticar: May we, for the record, Judge, except to your ruling on the contributory negligence ruling of yesterday and renew it today, and on assumption of risk.

The Court: For the time being, the Court overrules it at this time.

Mr. Whitticar: We note exception to the ruling for the reasons stated.

HERE BEGINS THE OBJECTIONS AND EXCEPTIONS TO INSTRUCTIONS

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I object to the granting of INSTRUCTION
page 181] NO. 6A, insofar as it includes within the frame work of the instruction the doctrine of assumption of the risk.

The Court: INSTRUCTION NO. 6A, offered by defendant; objected to by plaintiff; refused; excepted to by defendant.

Mr. Whitticar: The defendant excepts to the ruling of the Court in refusing INSTRUCTION NO. 6A, for the reason the defendant maintains that the care required of a person who has become intoxicated voluntarily is the same as that required of one who is sober, and that this applies to negligent acts, contributory negligence, and to assumption of the risk.

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page 187]

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NOTE: The jury retires at 2:30 o'clock P.M., and returns at 2:45 o'clock P. M.

Clerk: Lady and gentlemen of the jury, have you agreed upon a verdict?

Jurors: We have.

A Juror: We, the jury find for the plaintiff in the amount of $35,000.00 to be divided equally between the mother and father.

Clerk: So say you all?

Jurors: Yes.

The Court: I must admit that this verdict is rather legalistic in form.

NOTE: At this point, the Court is putting the verdict of the jury in proper legal form, thereupon the Court states as follows:

page 188] The Court: Lady and gentlemen of the jury, hearken to your verdict, that is listen to your verdict as changed in form but not in substance.

"We, the jury, upon the issue joined find for the plaintiff

J. T. Robertson, Administrator of the Estate of Hobart Donald Singleton, deceased, and fix his damages at $35,000.00. And we, the jury, direct that said recovery be divided equally among Nell Singleton, mother, and Hobart Singleton, father, of the said Hobart Donald Singleton, deceased, on the within notice of motion for judgment."

So say all of you? If you agree with this as being your verdict as changed for you in form but not in substance, each of you raise your right hands.

Let the records show, all of the jurors raised their right hands.

The foreman will come up here and read the verdict to himself, not out loud, that the Court has correctly read it to you. Then you sign your name here where the word "foreman" appears. Take your time. Read it to yourself and that is where you sign.

NOTE: At this point, the verdict is read and signed by the foreman.

The Court: Gentlemen of the plaintiff's counsel, are there any objections to the form of the verdict?

page 189] Mr. Hutt: No, sir.

The Court: Gentlemen of the defense counsel, are there any objections to the form of the verdict?

Mr. Billingsley: No.

The Court: Let the record show that all counsel on both sides offered no objection to the form of the verdict.

The Court accepts the verdict of the jury in this case. We thank you for your services.

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JURY OUT

The Court: Gentlemen, there any motions?

Mr. Billingsley: If Your Honor please, we move to set the verdict aside as being contrary to the law and evidence, and without evidence to support it.

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A Copy—Teste:

H. G. TURNER, Clerk

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