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Supreme Court of Appeals

Record No. 7038

In the Supreme Court of Appeals of Virginia At Richmond

CLARENCE DEWEY MOTLEY

v.

JOHN DOE

FROM THE CIRCUIT COURT OF BOTETOURT 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. 7038

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 10th day of October, 1968.

Clarence Dewey Motley, Plaintiff in error,

against

John Doe, Defendant in error.

From the Circuit Court of Botetourt County
Earl L. Abbott, Judge

Upon the petition of Clarence Dewey Motley a writ of error is awarded him to a judgment rendered by the Circuit Court of Botetourt County on the 22nd day of February, 1968, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and John Doe was defendant: upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $300, with condition as the law directs.

RECORD

* * * * *

page 2 }

* * * * *

MOTION FOR JUDGMENT

* * * * *

(1) On Friday, May 13, 1966, at about 2:30 p.m., I was driving my 1961 Pontiac sedan in a southern direction over and along U. S. Highway No. 220 in Botetourt County, Virginia. The defendant, an unknown motorist, herein styled John Doe, was proceeding along the same road in the opposite direction.

(2) At a point on said U. S. Highway No. 220 approximately five miles South of Iron Gate, Virginia, you, John Doe, an unknown motorist, carelessly, recklessly and negligently drove your automobile around a curve over the double yellow line and onto my side of the road. In order to avoid a head on collision with you, I was forced to turn my car to the right and off the paved surface of the road where I perceived, immediately ahead, a cliff and large drop off. To avoid going over the cliff, I cut *sharpely* to the left and ultimately crashed into a bank on the East side of the highway.

(3) As a direct and proximate result of your negligence, I sustained severe, permanent and painful injuries, including a fractured vertebra, fractured ribs, a fractured arm and numerous contusions, lacerations and abrasions. I was hospitalized for twenty-one (21) days, suffered and still suffer great physical pain and mental anguish. I have incurred substantial hospital and medical expenses and anticipate that there may be further expenses of this nature. I was unable to work for ten (10) weeks and have sustained a reduction in my earning capacity because of my injuries.

WHEREFORE, I will move for a judgment
page 3 } against you in the amount of Fifty Thousand ($50,000.00) Dollars.

CLARENCE DEWEY MOTLEY
By Counsel

Counsel:
KOPLEN AND LAND

By Wm. E. Land
Counsel for Plaintiff
808 Masonic Building
Danville, Virginia

Filed in the Clerk's Office the 16 day of May, 1967.

Teste: George E. Holt, Jr., Clerk
B. M. Allen, D. C.

* * * * *

page 5 }

* * * * *

ANSWER

Comes now the St. Louis Fire and Marine Insurance Company, by counsel, and for answer to the motion for judgment filed in the Circuit Court of Botetourt County, denying that any sum is due the plaintiff in this action and reserving unto itself the right to amend the same should it be deemed necessary, states the following:

(1) That the defendant admits that on May 13, 1966, plaintiff was driving a 1961 Pontiac sedan on U.S. Highway No. 220, but denies each and every other allegation of paragraph 1 and calls for strict proof thereof.

(2) That for answer to paragraph 2 of the motion for judgment, the defendant denies that there was an unknown motorist, and denies each and every other allegation of paragraph 2.

(3) That the defendant denies the allegations of paragraph 3 of the motion for judgment, denies that the plaintiff was injured as complained, and calls for strict proof thereof.

(4) That the defendant avers that the plaintiff was guilty of negligence which would be a bar to his recovery in this action.

page 6 } (5) That the defendant denies that there was an unknown motorist, and calls for strict proof of the same.

WHEREFORE defendant asks that the motion for judgment be dismissed and that he may recover his costs herein.

St. Louis Fire & Marine Insurance
Company
By Counsel

F. Byron Parker, Attorney for
St. Louis Fire and Marine
Insurance Company
1103 State Planters Bank Bldg.
Richmond, Virginia

* * * * *

Filed in the Clerk's Office the 2nd day of June, 1967.

Teste:

George E. Holt, Jr., Clerk

* * * * *

page 18 } In the Circuit Court for the County of Botetourt on Tuesday, the 23rd day of January in the year Nineteen Hundred and Sixty-eight.

* * * * *

This day came the plaintiff in person and by his attorneys, Harvey Lutins and William Land and came also John Doe, by F. Byron Parker, James M. Roe Jr. and Dudley J. Emick Jr., and thereupon came a jury, to-wit: L. E. Meredith, R. H. Murray, Jr., A. L. Brugh E. N. Lacky Jr. Luther H. Gunter, J. D. Buky, Jr. W. D. Agnor, who were duly selected, tried and sworn the truth to speak upon the issue joined; and after the plaintiff rested and in the absence of the jury, the defendant, by counsel, moved the Court to strike the evidence of the plaintiff on the ground that the plaintiff was guilty of contributory negligence by his own evidence, which motion the Court over ruled and the defendant by counsel, excepted. Thereupon the Court proceeded to hear the evidence of the defendant and having fully heard the evidence of the defendant and the defendant having rested and the Court not having time to complete the case the jury is discharged for this day and directed to return at 10:00 O'clock A.M. tomorrow morning.

And this case is continued.

* * * * *

page 19 } We the jury find for Clarence D. Motley, the plaintiff and fix the amount of his damages in the sum of $10,000.00.

Andrew L. Brugh, Foreman

* * * * *

page 20-D } INSTRUCTION NO. 1-A

The Court instructs the jury that if you believe from a preponderance of the evidence in this case that there was an unknown driver operating an unidentified motor vehicle proceeding north on U. S. Route 220 in the south-bound traffic lane at the time and place of this collision, it was the duty of the unknown driver, referred to as John Doe, to use reasonable care to perform each and all of the foregoing duties:

(1) To drive the unknown motor vehicle under proper control;
(2) To drive said unknown motor vehicle at a speed or in a manner so as not to endanger the life or limb of the plaintiff;
(3) To keep a proper lookout;
(4) To drive said unknown motor vehicle upon the right half of U. S. Route 220.

The Court further instructs the jury that if you believe from a preponderance of the evidence that there was an unknown driver, and he, failed to perform any one or more of his aforesaid duties as above set out, and that such failure was the sole proximate cause of the collision, then you shall find your verdict for the plaintiff, Clarence D. Motley, against the defendant, John Doe.

Given 1-23-68 E.L.A.

page 20-E } INSTRUCTION NO. 2

The Court instructs the jury that if you believe from the evidence that the Plaintiff, Clarence D. Motley, without fault on his part and in an effort to avoid a collision, operated his motor vehicle off the hard surface to the right of the lane in which he was traveling and then crossed the hard surface of said highway to the left side of the highway striking an embankment on the left side of said highway because of a sudden emergency created by an unknown motorist approaching the Plaintiff in the Plaintiff's lane of travel, and that the Plaintiff acted as a person of ordinary prudence would have acted under the same circumstances, then in so doing the Plaintiff was not guilty of any contributory negligence even

though his choice of action was not the wisest course and actually caused the impact with the embankment and injuries to him.

Given 1-23-68 E.L.A.

page 20-F } INSTRUCTION NO. 3

The Court instructs the jury that where the Defendant relies upon contributory negligence of the Plaintiff as a defense, such contributory negligence is not presumed but the burden is upon the Defendant to prove by a preponderance of the evidence that the Plaintiff was guilty of such negligence and that any such negligence proximately contributed to cause the collision; and unless the Defendant thus proves the existence of such negligence or unless any such negligence appears from the Plaintiff's own evidence or can be fairly inferred from all the circumstances of the case, then you cannot find the Plaintiff guilty of contributory negligence.

And if the jury are uncertain as to whether the Plaintiff was guilty of contributory negligence, or if you believe that it is just as probable that the Plaintiff was not guilty of any such negligence as it is that he was, then you cannot find the Plaintiff guilty of contributory negligence.

Given 1-23-68 E.L.A.

* * * * *

page 20-J } INSTRUCTION NO. A

The Court instructs the jury that where physical facts are clearly established by a preponderance of the evidence, they may be relied upon to overcome oral testimony.

Given 1-23-68 E.L.A.

* * * * *

page 20-O } INSTRUCTION NO. F

At the time and place of the collision involved herein it was the duty of the plaintiff, Clarence Dewey Motley, to exercise reasonable care:

(1) To keep his vehicle under proper control;
(2) To keep a proper lookout;

(3) To operate his vehicle at a reasonable and safe speed under all the circumstances, having due regard to the width, surface and other conditions on the highway then and there existing;

(4) To drive his vehicle to the right side of the center line of the highway and give the approaching vehicle, if in fact you believe there was one, one-half of the main traveled portion of the highway;

and if the jury believe from the evidence that the plaintiff, Clarence Dewey Motley, failed to exercise reasonable care in the performance of any one or more of the foregoing duties, then he was negligent; and if you further believe from the evidence that any such negligence was a proximate cause of the collision, then you shall find your verdict for the defendant, John Doe.

Given 1-23-68 E.L.A.

page 20-P } INSTRUCTION NO. G

The mere fact that there has been an accident and that as a result thereof the plaintiff has been injured, does not entitle the plaintiff to recover. In order to recover against the defendant, John Doe, the burden is upon the plaintiff to prove by a preponderance of the evidence that there was in fact an unknown vehicle whose operator was negligent and that such negligence was the sole proximate cause of the collision.

And if the jury are uncertain as to whether there was an unknown vehicle and whether any such negligence has been proven by a preponderance of the evidence, or if you believe that it is just as probable that the operator of the unknown vehicle, if any, was not guilty of any such negligence as it is that he was, then you shall return your verdict in favor *the* the defendant, John Doe.

Given 1-23-68 E.L.A.

page 20-Q } INSTRUCTION NO. H

If the jury believe from the evidence that the defendant, John Doe, was negligent and that such negligence was a proximate cause of the collision, and if you further believe from the evidence that the plaintiff was also negligent and

that such negligence proximately contributed to cause the collision, then your verdict shall be in favor of the defendant, John Doe.

The law does not undertake to apportion or balance the negligence of the parties where both are at fault in order to ascertain which one is most at fault, but the plaintiff is barred from recovery if he was guilty of any negligence which proximately contributed to cause the collision.

Given 1-23-68 E.L.A.

* * * * *

page 20-T } INSTRUCTION NO. K

In order to rely upon the doctrine of sudden emergency, the party relying on such doctrine must himself have been free from negligence in bringing about such sudden emergency; therefore if you believe from the evidence that the plaintiff was confronted by a sudden emergency, if any, but that he was guilty of negligence which contributed to the emergency, then the plaintiff cannot rely upon any such sudden emergency to excuse his own negligence.

Given 1-23-68 E.L.A.

page 21 } In the Circuit Court for the County of Botetourt, on Wednesday the 24th day of January, in the year Nineteen Hundred Sixty-eight.

* * * * *

This day came again the parties, by their attorneys, and the jury adjourned over from yesterday appeared in Court pursuant to their adjournment, and having received the instructions of the Court, and heard the arguments of Counsel, were sent to their room to consult of their verdict, and after some time returned into the Court the following verdict, to-wit:

"We the jury find for Clarence D. Motley, the plaintiff, and fix the amount of his damage in the sum of $10,000.00

Andrew L. Brugh, Foreman"

Thereupon the defendant, by counsel, moved the Court to

set aside the verdict on the grounds that it was contrary to the law and the evidence and that the Court erred in giving certain instructions and that the damages were not proven in reasonable certainty, which motion the Court overruled and to the ruling of the Court the defendant, by counsel, excepted.

Thereupon, on motion of the defendant, by counsel, he is allowed 10 days to file any additional motion in writing as he may deem proper.

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page 22 }

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MOTION TO SET ASIDE THE VERDICT

* * * * *

Comes now the defendant, John Doe, by leave of Court and herewith files his written motion to set aside the verdict rendered against him on January 24, 1968 and requests the Court to enter up final judgment in his, John Doe's, favor.

The defendant, John Doe, by counsel, respectfully moves the Court under Section 8-352 of the 1950 Code of Virginia, as amended, and sets as his grounds the following:

(1) That the verdict was plainly contrary to the law and the evidence and without evidence to support it.

(2) That the plaintiff's own testimony and admissions showed him to be guilty of contributory negligence, as a matter of law, and therefore the verdict should not stand.

(3) That the plaintiff's evidence was inherently incredible, unworthy of belief, and therefore the verdict lacked the necessary support for approval.

(4) That the plaintiff's own testimony as to how the accident happened was physically impossible and was thereby so manifestly false that reasonable man ought not to believe it.

(5) For giving instructions of the plaintiff over defendant's objections and refusing to give instructions offered by the defendant.

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page 23 }

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Received and Filed Jan. 31, 1968.

George E. Holt Jr., Clerk

page 24 }

* * * * *

OPINION

February 5, 1968

This is an action by Clarence D. Motley to recover damages against an unknown motorist designated herein as John Doe, for injuries *sufferred* by him in a collision. He has a jury verdict in his favor for $10,000.00. By reason of this verdict it is established that there was in fact an unknown motorist involved who was on his side of the highway as he testified.

Defendant, in its motion to set aside the verdict of the jury contends, among other things, that the evidence of the plaintiff was incredible, unworthy of belief and not sufficient to support the verdict; that plaintiff's own testimony as to how the accident happened was physically impossible and was thereby so manifestly false that reasonable men ought not to believe it. It also objected to an instruction given by the court on sudden emergency, and that the plaintiff was guilty of contributory negligence as a matter of law.

It having been established that there was in fact a John Doe on plaintiff's side of the highway, in what manner was his evidence incredible and insufficient?

In *Tyree* v. *Lariew,* 208 Va. 382, 158 S.E. 2d 140, the court said the test for determining the credibility of witnesses and the weight of their testimony was clearly and succinctly stated in *Burke* v. *Scott,* 192 Va. 16, 23 63 S.E. 2d 740, 744 (1951), where it was said:

"* * * To be incredible, evidence must be either so manifestly false that reasonable men ought not to believe it, or it must be shown to be false by objects or things as to the existence and meaning of which reasonable men should not differ."

The plaintiff testified that as he was driving south on Route 220 at 50 miles per hour he came into a curve at Big Hill Service Station on his right. The curve was to the left.

The posted safe speed at this point was 45 miles per hour which he did not see. While travelling at 50 miles per hour he looked down the highway and saw John Doe ap-
page 25 } proaching on his, plaintiff's, side of the highway and about 250 feet away. Plaintiff did nothing except possibly he may have let up a little on the *accelator*. He proceeded at his same speed thinking John Doe would pull over to his side of the highway or proper lane. After travelling 100 feet and John Doe not having pulled over, plaintiff pulled off on the shoulder on his right. The shoulder was 9½ feet wide. The service station was to his right. On the shoulder he travelled another 135 feet, at which time the north bound lane was clear and the south bound lane was also clear except for John Doe. After travelling along the shoulder for the 135 feet, John Doe still being in the south bound lane, plaintiff testified he thought John Doe would turn into the service station, and when he saw that he would not, plaintiff abruptly turned his motor vehicle to the left and John Doe passed him on plaintiff's right. As he described this John Doe was still in the south bound *land* when he passed on plaintiff's right. As he turned plaintiff for the first time applied his brakes, then lost control of his car, which crossed the highway, another 96 feet, and crashed into a shale bank on the opposite side, turning over and injuring plaintiff. John Doe continued up the highway and did not stop.

Where was John Doe all this time? Plaintiff first saw him when he was 250 feet away. He was moving since plaintiff first said he thought he would pull over and then, while 235 feet away, plaintiff thought he would pull into the service station. Or was he standing still parked in plaintiff's lane of travel? If he was moving what was his speed? Plaintiff was traveling 50 miles per hour or 73.3 feet a second. John Doe was moving so he must have been more than 250 feet away when plaintiff first saw him. But how far? In any event plaintiff had plenty of time and plenty of room to pull into the north lane and avoid the collision. But he did not do this. He pulled onto the shoulder. Had he stayed there he would have avoided John Doe for plaintiff said he was still in the south lane. When plaintiff cut sharply to the left in front of John Doe, John Doe passed on plaintiff's right safely. Was there in fact a John Doe?

Not only is this evidence incredible and cannot be *satisfactorly* explained, but where is the sudden emergency which plaintiff found himself? Did he not by his own lack of care put himself in this position? Could he not have avoided it?

He saw John Doe in the highway in time to get on

page 26 } the shoulder why did he not stay there? John Doe was never on the shoulder. The shoulder was 9½ feet wide. There was plenty of room. Why did not plaintiff slow down? He did not apply his brakes until he cut sharply across the highway in front of John Doe and it was then he lost control of his car. Besides being in plaintiff's lane of travel at the time how far away was John Doe when plaintiff cut in front of him? There are many unanswered questions which if answered could throw a lot of light on what did happen if it happened the way plaintiff said it did.

When was plaintiff faced with the sudden emergency? 250 feet away? 135 feet away? When he *thought* John Doe would turn into the station? It would appear that whenever or *whereever* it did occur plaintiff helped bring it about and it could have been avoided by the exercise of care by plaintiff. In my opinion there was no sudden emergency and it was error for the court to have given an instruction for plaintiff on this question.

It is also my opinion that the evidence of the plaintiff in this case is incredible and is insufficient to support a verdict in his favor. I realize the credibility of the witnesses and the weight to be given the evidence is usually for the jury and that the judge should stay out of the jury box but when it is so incredible and manifestly false that reasonable men ought not believe it, then it becomes, not a question of fact but one of law. The court must exercise some degree of control over verdicts of juries to prevent manifest miscarriage of justice. But this must be done only in those cases where it is apparent the jury is wrong in some manner. Here perhaps they were carried away with the fact plaintiff's own insurance company would pay for his injuries. After all, what is insurance for? Perhaps under the circumstances it was easy to forget about John Doe.

It is clear that plaintiff's injuries were brought about by his own negligence in that he failed to keep his vehicle under proper control and that he was exceeding a safe speed at the time under the circumstances. It is also clear he could have avoided the collision.

This case is not unlike *Goodwin and Reed* v. *Gilman,* 208 Va. 422, 157 S.E. 2d 912, where the defendant, Reed, driving at 55 miles per hour, saw plaintiff who was guest in another defendant's car, approximately 45 feet away, in her lane of travel, did nothing to avoid the collision, did not slow down and admitted she could have pulled into the other lane and avoided the collision.

page 27 } The verdict rendered in favor of the plaintiff will be set aside for the foregoing reasons and final judgment entered in favor of the defendant. An order to this effect may be prepared for entry.

This opinion is hereby made a part of the record in this action.

Respectfully,
Earl L. Abbott
Judge.

* * * * *

page 28 }

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FINAL JUDGMENT

The defendant, John Doe, by counsel, having reserved the right prior to the entry of judgment in this case to file any additional motion he may so desire within a period of ten days, and a written motion pursuant to § 8-352 of the 1950 Code of Virginia, as amended, to set aside the verdict of the jury rendered against the defendant on January 24, 1967, and enter up final judgment in favor of the defendant, John Doe, having been presented, the same is hereby ordered filed.

And the Court being of the opinion that said motion should be sustained, doth so Adjudge, Order and Decree, for the reasons set out in the Court's opinion dated February 5, 1968, filed in and made a part of the record in this action.

It is, therefore, Adjudged, Ordered and Decreed that the said verdict of the jury heretofore returned herein be, and the same is hereby set aside, and final judgment is hereby entered in favor of the defendant, John Doe.

To which action of the Court the plaintiff, by counsel, excepted and objected.

Enter: Feb. 22, 1968.

Earl L. Abbott, Judge

page 29 } We ask for this:
F. Byron Parker
James M. Roe, Jr.
Attorneys for defendant

Seen and objcted to:
Harvey S. Lutins
Attorney for plaintiff

page 30 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

* * * * *

NOTICE is hereby given that Clarence Dewey Motley appeals from a final judgment of the Circuit Court of Botetourt County, Virginia, entered on the 22nd day of February, 1968, and will apply to the Supreme Court of Appeals of Virginia for a writ of error to said judgment.

In support of his petition for a writ of error, the following assignment of error will be relied upon:

The Court erred in setting aside the jury verdict and entering judgment for and on behalf of the defendant.

Respectfully submitted:

Clarence Dewey Motley
Harvey S. Lutins
Of Counsel

* * * * *

page 31 }

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Filed in the Clerk's Office the 29th day of Feb., 1968.

Teste:

George E. Holt, Jr., Clerk

* * * * *

Trooper T. N. Middlecamp

Jan. 1968
page 1 }

* * * * *

Stenographic report of all the testimony together with the motions, objections and exceptions on the part of the respective parties, the action of the Court in respect thereto and other incidents of the trial in the case of *Clarence* Dewey *Motley* vs. *John Doe* tried in Fincastle, Virginia, on January 23 and 24, 1968, before the Honorable Earl *A*. Abbott and a jury, in the Circuit Court of Botetourt County, Virginia.

APPEARANCES:

William E. Land, Esquire
Harvey S. Lutins, Esquire
Counsel for the Plaintiff

F. Byron Parker, Esquire
James M. Roe, Jr., Esquire
Counsel for the Defendant

Received and Filed April 3, 1968.

Earl L. Abbott, Judge

* * * * *

Jan. 1968
page 2 }

* * * * *

TROOPER T. N. MIDDLECAMP, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Lutins:
Q. State your full name, please, sir.
A. Trooper T. N. Middlecamp.

Trooper T. N. Middlecamp

Q. By whom are you employed, Trooper?
Jan. 1968 A. The Virginia Department of State Police.
page 3 } Q. In what capacity?
A. As a trooper.

Q. Trooper, did you have an occasion on May the 13th, 1966, to investigate a collision involving the plaintiff in this case, Mr. Clarence Dewey Motley?

A. Yes, I did.

Q. Before we get into that, I believe at the request of counsel you have drawn on the blackboard the scene of the crime, of the accident, excuse me, the scene of the accident?

A. Yes, sir.

Q. Now Trooper, does this readily depict the scene as you arrived at it pursuant to a call?

A. Yes, sir. The picture is not to scale but that's the general layout of the accident scene.

Q. All right, sir. Trooper, when you arrived at the scene, what did you find?

A. When I arrived at the scene, I found a 1961 Pontiac sedan sitting in this position off of route 220 just south of the Big Hill Grocery Store.

Q. All right, sir, had that car struck anything?

A. It had struck a bank on this east shoulder here.

Q. What was the damage indicated to that vehicle?

A. There was extensive damage to the left front
Jan. 1968 and complete left side.
page 4 } Q. Who did you find was operating that motor vehicle?

A. I contacted a Mr. Clarence Dewey Motley at the C & O Hospital in Clifton Forge on that afternoon and found that he was the operator of the vehicle.

Q. What is his address?

A. I have 1400 Franklin Turnpike, Danville, which is his address.

Q. Was he there at the scene when you arrived?

A. No, sir, he wasn't.

Q. Where had he been taken?

A. He had been taken to the C & O Hospital in Clifton Forge.

Q. Did you find that there was an occupant in this vehicle?

A. Yes, sir, there was.

Q. Have you shown his vehicle on this diagram?

A. Sir?

Trooper T. N. Middlecamp

Q. Have you shown his vehicle on this diagram? Have you shown—you've shown it as vehicle number one?

A. That's correct.

Q. All right, sir. Now can you tell the Court and jury the type of layout of this scene, whether it's a graded curve or a flat curve or give us a general description of the

Jan. 1968 scene.

page 5 } A. Well it's a slight downhill grade curve. It would be downhill going south on route 220.

Q. Can you give us the degree of the curve?

A. No, sir, I can't.

Q. What are the widths of the traveled portion of the highway?

A. They are ten-foot lanes on 220 and the complete width of route 220 is twenty-one feet.

Q. What is the width of the shoulder to the left where Mr. Motley's vehicle ultimately rested?

A. I didn't measure the width of the shoulder. I can give you an approximation.

Q. All right, sir.

A. It's approximately three feet. It's a slight shoulder here. It's a red clay and shale bank on this side here.

Q. Trooper Middlecamp, you have shown Big Hill Grocery on this diagram. Is there anything between that grocery store building and the hard surface of route 220?

A. Yes, sir, there is.

Q. What is that?

A. Well coming out of the grocery store there would be a lane and then next to the lane would be gas pumps and then east of the gas pumps would be another lane and then there is a little grassy area where the telephone booth

Jan. 1968 is situated.

page 6 } Q. Can you indicate on the plat there the telephone booth?

A. Yes, sir. The telephone booth coming out of the grocery store, the gas pumps would be here (indicating on diagram) and this would be a lane and this would be another lane and here would be the telephone booth.

Q. And there is a grassy plat in front of the telephone booth?

A. It's just a small place. It's not much. It's just where the telephone booth sits.

Q. Is there any sign post on either side of Big Hill Grocery and if so, where?

A. Sign post?

Q. Yes, sir.

A. Yes, sir, there is a Big Hill Grocery sign post and I think they have an advertisement sign in front of their store there advertising the type gasoline they sell.

Q. Can you indicate either or both of those signs on this plat?

A. I think the Big Hill Grocery Store sign is situated down here and the gasoline advertising sign would be here in front of the establishment.

Q. Now you have indicated a double line dividing
Jan. 1968 the north and south lane of travel?
page 7 } A. That's correct.

Q. What was the weather condition that day?

A. It was cloudy.

Q. What was the surface of the highway?

A. It was dry.

Q. What was the nature of the surface?

A. Blacktop surface.

Q. This was at what time? Do you recall?

A. I was notified at 2:40 P. M. on the 13th of May.

Q. And you arrived at the scene at what time?

A. Five minutes after three.

Q. And Mr. Motley had already been taken to the hospital at that time?

A. That's correct.

Q. Did you make any measurements at the scene?

A. Yes, I did.

Q. Would you tell the Court and jury please what measurements you made?

A. When I arrived at the scene, I found the 1961 Pontiac sitting in this position and at an angle after leaving the hard surface, from the hard surface to the point of impact was seven foot and from the edge of the hard surface in the northbound lane crossing back over the southbound lane at an angle to the hard surface on the side where the Big Hill Store is located was ninety-six feet and then fur-
Jan. 1968 ther on north leading up to those impressions here
page 8 } was another hundred and thirty-five feet on the west shoulder of the highway.

Q. Now when vehicle one as you have shown left the hard surface, how far off the hard surface to the right did it leave?

A. I couldn't say exactly. There was room enough on that shoulder where a vehicle can get off. I didn't measure the

width from the edge of the hard surface to the tire prints.

Q. But you knew there was room enough if you were attempting to park your vehicle to park between the hard surface and the telephone booth?

A. Yes, sir, there is.

Q. Of course you have to go, I assume, fairly slow to park?

A. I don't know. I just know there is ample room on that shoulder where you can park a vehicle.

Q. What is the nature of that shoulder?

A. It would be mud and gravel.

Q. Mud and gravel?

A. Yes.

Q. Loose gravel?

A. Yes, sir.

Jan. 1968 page 9 } Q. Can you tell the Court and jury as you approached that scene operating in the direction Mr. Motley was operating his vehicle, that is, a southerly direction, at what point would you have to come onto the curve to see completely and fully around it?

A. Oh, you would have to be just north of the Big Hill Grocery and there is fairly good visibility up to the curve possibly this point right here but once you get into the curve it becomes nearly blind south of the Big Hill Grocery.

Q. Can you estimate in feet as you approach the curve what distance you would be near the curve before you could see?

A. I would say two hundred feet, two or three hundred feet you would have good visibility.

Q. If you had pictures, I guess that would depict the scene better, wouldn't it?

A. Yes, sir.

Q. Those will be introduced, but now, Trooper, pursuant to your investigation it was, you made an effort to talk to Mr. Motley?

A. That's correct.

Q. And did you see Mr. Motley?

A. I saw him at the C & O Hospital in Clifton Forge.

Q. I didn't understand that.

Jan. 1968 page 10 } A. I saw Mr. Motley at the C & O Hospital in Clifton Forge.

Q. What time did you see him?

A. I couldn't tell you the exact time. I arrived at the scene at five minutes after 3:00 and it was some time for me to clear the scene of the accident and after that I left and

went to the C & O Hospital. It was possibly around four o'clock that afternoon.

Q. About an hour or an hour and a half after he was injured?

A. Yes.

Q. Did he appear to be injured?

A. Yes, sir.

Q. And about an hour and a half after he was injured you discussed the accident with him?

A. That's correct.

Q. What did he tell you with reference to the collision?

A. Mr. Motley advised me that he was proceeding south on route 220 and when he approached Big Hill Store, he met a vehicle that was partially on his side of the road in the curve at the Big Hill Store.

Q. Did he say he attempted to avoid this vehicle and as a result the collision took place?

Jan. 1968 A. Yes.

page 11 } Mr. Lutins: Your witness. Wait. Let me just ask one other question.

By Mr. Lutins: (Continuing examination)

Q. What is the speed limit there?

A. The speed limit is fifty-five miles an hour on route 220.

Q. At what speed did Mr. Motley tell you he was going?

A. He advised me that prior to the accident he was traveling approximately fifty miles per hour.

Mr. Lutins: Your witness.

CROSS EXAMINATION

By Mr. Roe:

Q. Trooper Middlecamp, to help the jury with your diagram I want to show you some pictures—(to the Reporter—Will you mark these?)

(Photographs marked "Defendant's Exhibits 1 through Defendant's Exhibit 7" for identification and filed herewith)

By Mr. Roe: (Continuing examination)

Q. Now Trooper, I show you "Defendant's Exhibit Number One". Would you tell the jury what that depicts and if that is a true picture of the way the road was in

Jan. 1968 May. I might add that those were taken while

page 12 } snow was on the ground but is that a true picture of the road and the area as you observed it, as you found it on the 13th day of May 1966?

A. That's correct.

Q. And that is looking in what direction?

A. That would be looking south on route 220.

Q. And this would be the direction in which Mr. Motley was traveling?

A. That's correct.

Q. I ask you to look at plaintiff's, "Defendant's Exhibit Number Two" and is that still another photograph of the same highway closer toward Big Hill Grocery Store?

A. That's correct.

Q. And I show you "Defendant's Exhibit Number Three" which is still a closer view of the southbound traffic lane on the curve that is depicted, the same direction.

A. That's correct.

Q. Now you testified that Mr. Motley had approximately two or three hundred feet of visibility as he was traveling south, is that correct?

A. That's correct.

Jan. 1968 page 13 } Q. And if a car was in Mr. Motley's lane as he claimed, partially in his lane, then he would have been able to see it sooner than if the car had been in its own lane, is that correct?

Mr. Lutins: Objection.

The Court: I will have to overrule it.

Mr. Lutins: Exception.

By Mr. Roe: (Continuing examination)

Q. Would you answer the question now, Trooper. If you say the visibility—if you will point with the pointer, maybe the jury can see—if the visibility of Mr. Motley's car coming south was approximately two or three hundred feet as you have testified earlier, is that correct?

A. That's correct.

Q. And if there had been a car partially in Mr. Motley's lane traveling north, he would have been able to see it sooner than if it had been in its own lane, is that correct?

A. Yes, sir.

Q. Now what is the maximum safe speed and is it so posted out there?

A. Forty-five miles per hour.

Q. And how far approximately is that from the curve or from the front of the Big Hill Grocery Store?

A. I couldn't say exactly. It's just north of the Big Hill Grocery. It's on the west shoulder of route 220.

Jan. 1968 page 14 } Q. I see, and Mr. Motley told you, you say, that he was doing approximately fifty miles per hour?

A. That's correct.

Q. Now in your investigation the car was still in place when you arrived, is that correct?

A. That's correct.

Q. Did you find any skid marks or any marks that would indicate to you that an application of brakes had been made either by Mr. Motley or by a phantom car traveling north?

A. Yes, sir, I did.

Q. And where did you find those?

A. I found those marks leading from the southbound lane at an angle across the southbound lane and into the northbound lane.

Q. And this is the first point you saw any application of brakes, is that correct?

A. That's correct.

Q. And was there any application of brakes in the northbound lane within a hundred feet or two hundred feet of that curve?

A. I checked the scene and I didn't see any skid marks or impression marks in the northbound lane at the accident scene.

Jan. 1968 page 15 } Q. All right, and was there any in the southbound lane that would have been laid down by Mr. Motley before he left the hard surface?

A. No, sir, other than those marks.

Q. Where he came back onto the highway?

A. Yes, sir.

Q. All right, as I understand the shoulder of the road on Mr. Motley's side is nine and a half feet wide, is that correct?

A. That's correct.

Q. And this would have been wide enough to bring a car to a full stop, in other words, you could have stopped a car in that width?

Mr. Lutins: Now if Your Honor please, under these circumstances or under what circumstances?

The Court: I will have to sustain the objection.

Trooper T. N. Middlecamp

By Mr. Roe: (Continuing examination)

Q. Trooper, did you have any indication of how Mr. Motley's car left the hard surface north of the Big Hill Grocery Store?

A. Yes, sir. Mr. Motley's vehicle left the southbound lane on the westbound shoulder and traveled along route 220 for a hundred and thirty-five feet.

Q. And when he left the highway at this point

Jan. 1968 somewhere within the maximum safe speed sign,
page 16 } was it a gradual or an abrupt departure from the highway from what you observed?

A. It wouldn't be close to the maximum safe speed sign. It would be about where the entrance to the Big Hill Grocery Store would be coming south on route 220.

Q. In other words, on one of the defendant's exhibits, "Defendant's Exhibit One"—well let's take "Defendant's Exhibit Two". Would you show by marking on the photograph just where Mr. Motley left the hard surface approximately?

A. He left the hard surface in this area here. It's about where the entrance headed south on route 220 where a motorist could pull into the Big Hill Grocery Store (witness marks photograph).

Q. All right, and that's right where you have the "X" in the bottom part of "Defendant's Exhibit Number Two", is that correct?

A. That's correct.

Q. And that's where he left the highway?

A. Yes.

Q. Now I show you "Defendant's Exhibit Number Four" and would you tell the Court what that shows.

A. That shows route 220 just south of the Big Hill Grocery Store.

Jan. 1968 Q. And would this photograph cover the area in
page 17 } which Mr. Motley came back onto the hard surface?

A. Yes, sir, it would cover a part of the area.

Q. Will you mark that with an "X" where he came back onto the hard surface.

A. I don't believe it would be on this photograph right here.

Q. It wouldn't be on that photograph?

A. No, sir.

Q. All right, I show you "Defendant's Exhibit Number Seven" and would you tell the Court what that is showing?

Trooper T. N. Middlecamp

A. It shows route 220 heading north.

Q. Headed north?

A. Yes, sir.

Q. All right, can you identify by marking an "X" on that photograph where Mr. Motley came back onto the hard surface.

A. Yes. (Witness marked photograph)

Q. And I believe by your diagram where he left and where he came back on was a hundred and thirty-five feet?

A. That's correct.

Q. And there was available over this hundred and thirty-five feet, this nine and a half foot shoulder on the west side?

Jan. 1968 page 18 } A. Yes, there was a shoulder on the west side nine and a half feet.

Q. All right. Now Trooper, was there, Trooper, any evidence of any contact whatsoever between Mr. Motley's vehicle and the phantom vehicle?

A. No, sir.

Q. And I believe Mr. Motley's statement to you was that it was partially on his side of the road?

A. That's right.

Q. Did he indicate to you how far the vehicle was away from him at the time he first viewed it?

A. No, sir, he didn't.

Q. He did not?

A. No, sir.

Q. I believe, Trooper, there was another passenger in the vehicle with Mr. Motley, is that true?

A. That's correct.

Q. Did your investigation reveal whether or not he could shed any light on how the matter happened?

A. No, sir, he couldn't.

Q. Why was that?

A. He was asleep at the time of the accident.

Q. In other words, your investigation indicated he was asleep at the time of the accident?

A. That's correct.

page 19 } Mr. Roe: I believe that's all at this time, Your Honor. We would like for the Trooper to stay around.

Clarence Dewey Motley

REDIRECT EXAMINATION

By Mr. Lutins:

Q. Let me ask you one question. Did your investigation reveal that Mr. Williams stated that Mr. Motley had made any exclamation when this was taking place?

A. I didn't talk to Mr. Williams. Mr. Williams, when I arrived at the C & O Hospital, was in the operating room and he was contacted by a Trooper Jasinowski in Alleghany County who relayed the information to me.

Q. Now I hand you "Defendant's Exhibit Three" and that shows the telephone booth?

A. That's correct.

Q. Are you suggesting to the Court and jury that the surface between the telephone booth and the hard surface, a car could pull in?

A. Well here is the edge of the hard surface and from the edge of the hard surface to this ditch line is nine and a half feet and from the ditch line to the telephone booth I don't know the distance.

Jan. 1968 page 20 } Q. And you are telling the Court and jury that there is space in there if a man desires to park to go into the Big Hill Grocery?

A. That's correct.

Q. All right, there was room to park if a man intends to do so under normal circumstances, there is ample room to park?

A. That's right.

* * * * *

Jan. 1968
page 71 }

* * * * *

CLARENCE DEWEY MOTLEY, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Land:

Q. Mr. Motley, will you please state your full name, your age, your address and your occupation.

Clarence Dewey Motley

Jan. 1968 page 72 } A. Clarence Dewey Motley, 1400 Franklin Turnpike, Danville, Virginia, age 52.

Q. What is your occupation?

A. I am an electrician.

Q. On May 13th, 1966, did you have occasion to be up here in Botetourt County?

A. Yes, sir, I was coming through Botetourt County.

Q. Where were you working prior to that time?

A. Well I had just left a job in Covington, Virginia.

Q. Who were you working for in Covington?

A. Richardson-Wayland, electrical contractors out of Roanoke, Virginia.

Q. When did you go to work for Richardson-Wayland in Covington?

A. Well I had just accepted the job. I went up on Tuesday. I went to work and I worked up there one day and I made preparations to be off to go back home and I went, I started back home on Friday afternoon in the early part of the afternoon.

Q. This would be the 13th? Friday the 13th?

A. Friday the 13th, yes, sir.

Q. Of 1966?

A. 1966.

Jan. 1968 page 73 } Q. All right, sir, just tell the Court and jury, after leaving, beginning at the time that you left Covington, what did you do?

A. Well I had this fellow with me and he said he was going to go back with me.

Q. Who was that?

A. Floyd Williams. And I told him I was going to leave sometime that day and we got together and we left. I don't remember exactly what time it was we left Covington. It was somewhere around 2:00, 1:30 or 2:00 or 3:00, 2:30, I don't know, and I had my car, I changed the oil.

Q. Where did you have it?

A. I had the oil changed and the tank filled in Covington and was coming on down the road and I told him, I said, "I should have the car greased." I said, "I can feel those shocks or something rubbing," and we stopped in Clifton Forge.

Q. This conversation, Mr. Motley, that you had with Mr. Williams about the shocks, this was between Covington and Clifton Forge?

A. Clifton Forge, yes.

Clarence Dewey Motley

Q. Then after they finished your automobile, what did you do in Clifton Forge?

A. Well I had asked the man if he could grease the car and he said yes, but he had one more ahead of me and just in a few minutes he'd get to it and so I waited around and I ate a pack of nabs and I drank a Coca-Cola and waited around till he greased it and Mr. Williams, he disappeared. I don't know where he went. He told me later he went to get something to eat.

Jan. 1968 page 74

Q. Then after they finished your automobile what did you do?

A. Well we proceeded on toward home and after we—we came on down the highway a bit and I saw this car coming around the curve and he just cut right over on my side. The first thought I had was he was going to get back on his side and I didn't even cut my speed. I said, "Well I'll just—" that was just a thought, that he was going to get back and so I veered to the right to give him room and it looked like to me he was coming to the right too, coming to my right and so I said, "I got to get out of his way," and I whipped it over to the left and I lost control of it then.

Q. This was—look at this diagram here that the state trooper has drawn. Does this look like something like what might have happened up there then, just in front of the Big Hill Grocery? Your car was coming this way down 220?

A. Yes.

Q. Heading south, were you not?

A. Yes.

Q. You got over to the right and then back over to the left and ended up against—

Jan. 1968 page 75

A. Against the bank, yes, sir.

Q. When you first saw this vehicle—wait a minute, before we get to that—no, when you first saw this oncoming vehicle on your side of the road, how far away from him were you or what distance was it?

A. Well in my judgment, I would say in feet, not exactly accurate, but I would say around two hundred and fifty feet anyway.

Q. All right, and what kind of car was this that you met?

A. Well I wouldn't be sure, to swear to it, I wouldn't say for sure but I had the impression it was a 1958 Ford.

Q. And the color?

A. Black or dark. It was very dark.

Clarence Dewey Motley

Q. Black or dark. Did that car stop?

A. I wouldn't know. It went by me as I got out of the way, it was gone.

Q. It went by you?

A. Yes, on my right.

Q. He passed you on your right?

A. Yes, sir.

Jan. 1968 page 76 } Q. Now let's go back to Covington a moment. On the night or the day before this accident happened which was, the accident happened on May 13th, let's go back to May the 12th, Thursday. What did you do on Thursday? You said you didn't work on the 12th?

A. No, I didn't. Well that afternoon I washed out some clothes by hand, some underwear, that was very soiled.

Q. Where was this?

A. In my room.

Q. And then did you go out?

A. Yes, I went out and had supper and I drank a beer or two down at, I don't even remember the name of the street in Covington.

Q. Now did you—what time did you go to bed?

A. I guess it must have been around 11:00 or 11:30 anyway before I went to bed.

Q. Thursday night?

A. Thursday night.

Q. And what time did you get up on Friday, the 13th?

A. Well I'm an early riser and I got up around 5:30 or 6:00.

Q. Did you have anything to drink on Friday, the 13th?

A. Oh, no. No, I didn't drink anything that day.

Jan. 1968 page 77 } Q. No beer at all?

A. No beer at all.

Q. No whiskey?

A. No whiskey.

Q. How long have you been driving an automobile, Mr. Motley?

A. Well I've been driving since along about 1927. I first started when I was about twelve years old. I drove a T-model some before they had driving licenses.

Q. You had a valid operator's license at the time of this?

A. Yes.

Q. What kind of car were you driving?

A. A 1961 Tempest.

Clarence Dewey Motley

Q. I believe that's a Pontiac, that Tempest?
A. Yes, sir, it's a Pontiac.
Q. A four-door?
A. A four-door, yes, sir.
Q. And this was titled in your name?
A. Yes, sir.
Q. What happened to the car? Was there any damage in the collision with the bank?
A. It was a total loss.
Q. A total loss?
Jan. 1968 page 78 } A. About $800 damage and that was exceeding the value of the car.
Q. What do you put as the value of the car?
A. Well if you wanted to borrow some money on it or go to a bank for evaluation—

Mr. Roe: Your Honor.
Mr. Land: That's not what I wanted.
Mr. Roe: First of all, it is an opinion. We object to his giving opinion evidence. The best evidence would be to have somebody testify as to the value before and after.
The Court You are right, Mr. Roe. I sustain the objection.
Mr. Land: I agree.
Mr. Roe: Okay.

By Mr. Land: (Continuing examination)
Q. Mr. Motley, you were taken to the hospital in Clifton Forge, weren't you?
A. Yes.
Q. How did you get to the hospital?
A. By ambulance.
Q. Do you recall, what do you recall, remember, immediately after the accident?
A. Well my first recollection was I came to and I heard some fellows talking to my left and they said, "We
Jan. 1968 page 79 } better get that guy out, he's bleeding pretty bad," and I looked up, kind of cut my eyes up, and this fellow was laying across me over here and blood was dripping down and it seemed to me if I could just straighten my legs, I could have come down, I could have raised up, but I couldn't. My legs was paralyzed from the waist down and I couldn't straighten my legs whatever.
Q. But somebody did get you out of the car?
A. They went around and pulled the other fellow out and

Clarence Dewey Motley

I just kept thinking if I could straighten my legs but I couldn't and I asked the other fellow to give me a hand, will you please, help me get out, and he said, "Don't worry, we'll get you out," then they pulled me out and I went out again and I don't remember anything more until I was in the ambulance and that was just for a brief period and I went out again and the next thing I remember was, I really, really know, was Dr. Edmunds telling me, said my back was broke.

Q. Mr. Motley, before we get into the medical aspects of it and of your injuries, let's go back to the first time you saw this car on highway 220 at the Big Hill Grocery or thereabouts. You testified I believe you saw him on your side of the road and you thought he was going to get back on his side and therefore you didn't cut your speed any?

Jan. 1968 page 80 } A. I didn't. I didn't make any effort at all when I first saw him. My impression was he was going to cut back.

Q. Did you take your foot off the accelerator?

A. Naturally I released up on the gas.

Q. And did you go to your right, go to the right side?

A. I veered to the right. How much, I don't know. I know I veered to allow him room and I saw he was veering the same way I was, directly in my path so I said heck with it, I didn't want to go over the bank. I couldn't see beyond the store. I didn't know what kind of bank it was so I hit the other lane. It wasn't anything coming in the other lane and I headed for that and I lost control, complete control of it when I cut back.

Q. Do you recall applying your brakes at any time?

A. Well I tell you the truth, I thought I applied the brakes. That's what I meant to do to gain control of it. I don't know.

Q. At what point?

A. As soon as I cleared him. As soon as I cleared the southbound lane. I wanted to get out of his way because it looked like he completely had that lane and I wanted to get out of his way and then I was going to concentrate on gaining control of it.

Jan. 1968 page 81 } Q. How fast did this happen, all of this?

A. Well it was quicker than you think. When I first saw the car, if I had had any idea or any inclination that it was going to happen, I would have stopped. I would have pulled over to the side and stopped and let him hit me. It would have been a little better but I just thought he was going to veer back and I proceeded on and then I

saw he wasn't going to cut back. I don't know if he was going to turn in at that store but he was going too fast to do anything like that and I just whipped around and it was just a matter of seconds, me getting out of the way, split seconds I'd say.

Q. Let's get back, get you back to the hospital. The doctors have testified here today so I'm not going to have you repeat all that. While you were in the hospital did you receive medication for pain on innumerable occasions?

A. Yes, I did.

Q. On the 19th, did you receive a lot on the 19th of May?

A. Yes, I did. I received pain shots several times.

Q. I believe it was on the 18th that the doctor operated on your left wrist?

A. The 18th, yes, he set my wrist on the 18th

Jan. 1968 and it was severe pain.

page 82 } Q. Now he gave you a general anesthetic to knock you out to set that, didn't he?

A. Yes, and when I came to after that, they give me several shots.

Mr. Roe: He has been leading for some time. I didn't want to object but I must. He has been leading.

Mr. Land: I know. I didn't intend to do so. I apologize. I thought it would be quicker that way because the doctor has already testified.

By Mr. Land: (Continuing examination)

Q. How long were you in the C & O Hospital?

A. From May the 13th, I think I left there about June the 2nd.

Q. And where did you go when you left the C & O Hospital?

A. Well I had a friend that worked for the town's ambulance service and the doctor said I could go home if I went by ambulance only so I had my wife to call my friend that run this ambulance service and he said yes, he'd come after me and he came after me and I went straight home and went to bed and I had to have a board put under my bed.

Q. E. L. Townes, Inc. ambulance, you said?

A. Danville, Virginia.

Jan. 1968 Q. All right, what was the charge for that?

page 83 } A. $25. It would have been more but he was just a good friend of mine.

Clarence Dewey Motley

Q. You mentioned your wife just a moment ago. I take it you are married. Do you have any children?

A. Yes, sir, I have four children.

Q. How old are they?

A. Well my oldest one is twenty-nine and my youngest one is fourteen.

Q. How many at home with you?

A. I have two. I have a son twenty-two and a daughter fourteen.

Q. Your son twenty-two, is he self-supporting?

A. Oh, yes.

Q. But your daughter, I take it, fourteen?

A. No, she's still in high school.

Q. Now after you got to Danville you said something about having a board in the bed. Explain that to me, will you, please, sir.

A. Well they told me, Dr. Edmunds or Dr. Keffer one, I can't recollect just which one told me that if I went home, I'd have to sleep on a very straight bed for a good while, which I did. I slept on that. I went home in June and I slept on it until September and then I bought a real firm mattress, extra firm.

Jan. 1968 page 84 } Q. In the meantime when you went home, were you wearing your brace?

A. Oh, yes. I couldn't even, they wouldn't allow me to sit up until I had the pharmaceutical in Covington fitted me with a brace. They come up and taken measurements and fitted me with a brace.

Q. Do you recall the date that this brace was fitted and you began wearing it?

A. No, I don't but I do know, I do know it was just a few days after they put the brace on me that I rode in the ambulance home.

Q. Shortly before you went home, that was a few days before you went home?

A. Yes.

Q. The latter part of May?

A. Sometime in June, I don't remember the exact day.

Q. How long did you wear the brace?

A. Well I wore the brace continuously on up until October. I didn't take it off I don't think September or October or along there and then I would take it off and I'd try to walk around without it and at first it was hard on me to do without

it but every day I would keep it off longer and longer and I finally got to where I could do without it.

Jan. 1968 page 85

Q. Now when you went back to Danville from the hospital, you saw Dr. J. J. Neal, Sr., did you not?

A. Yes.

Q. Your family physician?

A. Yes.

Q. Did he make any, prescribe any medication or things for you?

A. Well he gave me some pills to make me, pain pills I guess, when I'd have severe pain and nervous condition. It seemed to affect my nerves to some extent and he recommended me to go to Dr. Boyer or Musgrove for further X-rays.

Q. And you did go to see Drs. Boyer and Musgrove?

A. I went to Dr. Boyer, yes.

Q. And why did you go to him other than the recommendation?

A. Well I didn't think my back was ever going to be straightened out any more. I was in a right good bit of pain and I went to see him to see if there was anything he could do for me.

Q. Were you seeking relief?

A. Seeking relief, yes, sir.

Q. Are you still in pain, Mr. Motley?

A. Well yes, sir. If I don't take extremely good care of myself, I am. If I reach out my hands and go to lift anything slightly upward, I can feel a good bit of pain in my back and my lower part of my back it seems that something happens when I'm walking without any warning whatever it gives way to my right leg. I just don't have, I lose altogether support of it.

Jan. 1968 page 86

Q. Before this accident happened, what was your condition about lifting and everything?

A. Well before that I never had any trouble with my back in my life that I can recall. I was considered a strong man.

Q. On your job?

A. On my job. Well they considered me as a good lifter, almost a weight lifter they figured.

Q. Does your job as an electrician require you to do certain lifting or did it?

A. Well in my capacity my job required me to get places with my arms. I do electrical installation like igniters on

boilers and things like that that I have to get to them and you don't, a lot of times you don't have any way to get to them except jump from pipe to pipe and rod to rod and hanger to hanger and I have to, I did before, I haven't since this accident.

Q. This electrical work that you are doing, Mr. Motley, is this house wiring?

A. Oh, no.

Q. What kind of electrical work do you do?

Jan. 1968 page 87 } A. Well we install heavy equipment, anything from 4,160 volt motors on down and sometimes they were up in the air, they're elevated up to the second floor on steel beams. We don't do any small work. Of course we have to have temporary lighting too but the small electricians come on behind us.

Q. Was this power generating stuff that you were working on?

A. Yes, sir, it generates the power, yes, sir, but what we have to pertain to is the electrical on the boiler end of it.

Q. Does your wrist bother you now?

A. Well in damp weather it does. I feel it quite a bit in damp weather but I don't have any strength at all in it. I don't have any strength in my left wrist.

Q. What do you mean by strength?

A. I can't grip anything. I can't hold tight to anything.

Q. Now have you incurred medical expenses in connection with your injuries?

A. Oh, yes.

Q. What are they, sir, do you know?

A. Well I have Dr. Keffer $155.

Q. Just a moment, before you go into that I'm going to hand you this.

Jan. 1968 page 88 } Mr. Land: Excuse me, Your Honor.

Mr. Parker: If you want to take something up, we will take it out of the presence of the jury here if you want to.

The Court: Show them what you've got. Mr. Parker, you read them and look at them one at a time. Show him what you've got.

(Bills shown to counsel for the defendant)

Mr. Parker: If Your Honor please, there is one thing we

are in disagreement on, just one bill of Dr. Keffer that we are in disagreement on. I object to him telling the jury. I think we should please discuss this out of the presence of the jury.

The Court: Give him what you've got and I will take it up.

Mr. Land: I have done so.

The Court: Let the witness testify to what you've got and I will take that one up.

By Mr. Land: (Continuing examination)

Q. Mr. Motley, I'm going to show you some statements or bills from the doctors and I'm going to hand it to you and se if this is the amount the doctors charged you with. Don't refer to that, refer to what I show you. That is Dr. Boyer's bill for his treatment to you?

Jan. 1968 page 89 } A. That's right.
Q. How much is that, sir?
A. $65.

The Court: I don't know whether the jury understood him or not.

By Mr. Land: (Continuing examination)

Q. Will you repeat it?

A. $65.

Mr. Lutins: Dr. Boyer?

Mr. Land: Dr. Boyer.

The Court: Are you objecting to the bills, Mr. Parker?

Mr. Parker: Not that amount, no.

The Court: All right, just ask the witness if Dr. Boyer's bill is correct.

By Mr. Land: (Continuing examination)

Q. All right. Is Dr. Neal's bill correct? What amount?

A. I've got $14. I went to him twice I know before he sent me this.

Q. Sir, I have only a bill for $5 and you say it is not correct, that you have $14?

A. $14. I went to him twice.

Q. How much was your bill at the C & O Hospital?

A. $351.

Jan. 1968 page 90 } Q. Is this that statement?
A. Yes, sir.

Clarence Dewey Motley

Q. Is this statement of the associated doctors correct in the amount of $179.50?

A. Yes, I've got $179, yes.

Q. Does that include—who was the doctor?

A. That includes Dr. Edmunds, Dr. Ross and Dr. Chafa. It does not include Dr. Keffer's because I got a statement from him but I also got a statement from Dr. Keffer for $155.

Q. $155?

A. Yes, $155 separate from this doctors associated

Q. All right.

The Court: Is that all except the one in controversy?

Mr. Land: That's all except the one we are in disagreement on.

The Witness: I got a brace, $92.50.

Mr. Land: Oh, wait a minute. He's got some more things I didn't know about.

The Witness: I got braces $92.50 and Dr. McClelland, $25 and then I got the loss of my car, $530.

Jan. 1968 page 91 } Mr. Land: We're just asking for the doctors.

The Witness: Just the doctors, I'm sorry.

Mr. Roe: How much was Dr. McClelland?

Mr. Land: $25.

The Court All right, gentlemen, retire to your room.

(Jury left the Courtroom and the following matter was taken up out of the presence of the jury)

Mr. Parker: He didn't sue for the property damage.

Mr. Land: And we withdraw the last answer in the evidence. We didn't properly put it in.

The Court: All right, what is your objection to this bill?

Mr. Land: They are objecting to the entry of this bill of Dr. Keffer for $155.

The Court: For being here today?

Mr. Roe: For being here today and he examined him yesterday and took X-rays.

The Court: And for a report to the attorney.

Mr. Land: I think he's entitled to this.

Jan. 1968 page 92 } Mr. Roe: Actually, Judge, it wasn't part of a treatment. It was for a pre-trial conference for testifying today.

Clarence Dewey Motley

The Court: When you go to the doctor for examination to testify, I don't think it's proper.

Mr. Parker: I don't think it is either. I feel it should be excluded.

The Court: We will allow $145.

Mr. Parker: Just give him that figure and let him read it. I think the jury ought to be told to disregard the statement of the witness made about the automobile.

Mr. Land: Your Honor, I have another statement from the same doctor.

The Court: Just let him testify to $145. All right, you can bring the jury in.

(Jury returned to the Courtroom at which time the trial proceeded as follows with the Court, counsel, jury and all interested parties present)

By Mr. Land: (Continuing examination)

Q. All right, Mr. Motley, I hand you a statement of Dr. Ernest Keffer in the amount of $145 and ask you if this is correct?

A. That's right.

Jan. 1968
page 93 } The Court: (To the jury) Before you went to the jury room, the witness voluntarily made a statement that he lost $500 in the automobile. Disregard that statement completely because if he's entitled to recover in this case, he's not entitled to recover that.

By Mr. Land: (Continuing examination)

Q. You stated also that you had a brace. How much was your statement for your brace?

A. $92.50.

Q. What was that to?

A. That was a pharmacy in Covington.

The Court: He's already testified to that. Let's go on. You're wasting an awful lot of time here.

By Mr. Land: (Continuing examination)

Q. Mr. Motley, you testified before this thing happened you were an electrician working?

A. Yes, sir.

Clarence Dewey Motley

Q. When did you go back to work after the accident?

A. Well it was in the last days of July they offered me a job at light work that I could go to and said I wouldn't have to do anything but sit around.

Jan. 1968 page 94 } Q. Where was this?

A. Over at for Fishback and Moore over at Goodyear Tire & Rubber Company.

Q. As an electrician?

A. As an electrician, yes, sir.

Q. Do you remember what day you went back to work?

A. I believe it was around July the 26th, 5th or something. 25th I believe.

Q. That's two and a half months?

A. Yes.

Q. May the 13th to July the 25th or 26th?

A. Yes. I lost about ten or eleven weeks work.

Q. What were you earning, sir, as an electrician? What was your hourly rate of pay?

A. I went back to work at $4 an hour.

Q. Immediately before this accident happened, what was your hourly rate, sir?

A. Well at Covington I was making $4.22.

Q. $4.22?

A. Yes, sir.

Q. And what was your weekly payroll?

A. Well I was at $4, I was earning $160 a week.

Q. Do you usually work forty hours a week every week?

A. I usually work that much or more.

Jan. 1968 page 95 } Q. If you lost ten weeks at $160, that would be $1,600?

A. Yes, sir.

Q. You said, you testified you lost ten or eleven weeks?

A. Around ten to eleven weeks, yes, sir.

Q. But $1,600 is close enough?

A. Yes, sir.

Q. You are just telling the Judge, Mr. Motley, that you lost $1,600 earnings?

A. Yes, sir, I lost at least that.

Mr. Roe: He is leading, Your Honor, I hesitate to object.

The Court: Let's go on. Don't ask questions that are leading.

Mr. Land: I'm going to let you all ask him some questions now. I may have to ask him a few more later on.

Clarence Dewey Motley

CROSS EXAMINATION

By Mr. Parker:

Q. Mr. Motley, you are a resident of Danville, Virginia?

A. Yes.

Jan. 1968 page 96 } Q. And have been there all your life?

A. Yes, I was born and raised there.

Q. And I believe you are an electrician?

A. Yes, sir.

Q. How long had you been up here on this job, the last job that you were working on before you were hurt?

A. I came up on Tuesday, I believe it was.

Q. You came up on Tuesday?

A. I think so.

Q. And you worked how many days?

A. I just worked one day.

Q. And that was a new job?

A. Yes, sir.

Q. And at the end of the first day, you did not go back the second day?

A. No, sir. I went to work, I came up on Tuesday and I went over there and made arrangements and I went to work on Wednesday and I didn't go back Thursday. I think I just worked the one day.

Q. Why didn't you work on Thursday?

A. Well I'll tell you. I got my clothes and myself so dirty on that carbon up there that I decided that I wasn't going to go back to that job.

Q. In other words, you decided not to go back on Wednesday evening when you quit?

Jan. 1968 page 97 } A. Yes.

Q. Had you drawn your pay?

A. No, sir.

Q. Then what did you do all day Thursday?

A. Well I washed my clothes and I cleaned up and I got myself cleaned up and got ready to what I thought ready to go back home. I called my wife and told her I was coming on back home.

Q. Well you were up there with Mr. Williams. How long had you known Mr. Williams?

A. Well I've been knowing Mr. Williams since 19—I believe it was 1952 the first time I met him. '51 or somewhere around there.

Clarence Dewey Motley

Q. Had you been working together off and on ever since that time up to the time you were hurt?

A. Mr. Williams and I never had been on but one job together. I mean we've been on the same job but not I mean in the same crew except while, for a while in New York City we were together in the same crew but we have been on several different jobs together but not, I mean, for the same company.

Q. Well when you were out of town, did the two of you go together normally?

A. Well not necessarily.

Jan. 1968 page 98 } Q. But you do on occasion?

A. Yes, sir.

Q. You went to New York together?

A. Yes—no, we didn't go to New York together, no. He was already up there and I went up there and went to work and I helped, I hit the same job and they paired me and him off together.

Q. And you were both close personal friends?

A. Yes, we were considered friends, yes.

Q. And you both have union cards?

A. Yes, sir.

Q. Now on this Thursday, you spent all day just washing your clothes?

A. Well I slept kind of late that day and, no, I got up and walked around and looked around a little bit.

Q. Was that in Covington?

A. There in Covington, went down to a restaurant and ate and I walked around quite a bit there.

Q. What did you do that evening? Did you and Mr. Williams go out together?

A. We went up, we was looking at television that evening after supper.

Q. Did you go out to eat together?

A. No, I don't think we went out to eat together. He had gone out and I went out walking and when I came

Jan. 1968 page 99 } back, he was gone and we didn't go out to eat together.

Q. You sat in the room together?

A. Yes.

Q. And you looked at television together?

A. Yes.

Q. How long?

Clarence Dewey Motley

A. Well I looked, it was about eleven or eleven-thirty I guess.

Q. That was on Thursday, then you went on to sleep?

A. Yes.

Q. What time did you get up on Friday morning?

A. Well I woke up early Friday morning, real early and I asked Mr. Williams, I said, "Do you want to try it again?" and he said, "No, I don't believe I do," and I said, "Well I don't think I do either," I said, "I'm going to make arrangements to go home. I'm going out to see if I can get a haircut," and I went out to get a haircut and stayed out, that was about between nine and ten. When I saw him again, it was about time for lunch and I hadn't eaten much breakfast, nothing but a doughnut, and I told him, I said, "I'm going down and have something to eat," and he said well he had just eaten down the street so I went on down the street and I left him and he went on to the room. I told him, I said, "Go ahead and get your stuff ready, I'm going to leave here."

Jan. 1968
page 100 }

Q. What time did you finish eating?

A. I don't know. I imagine it was around twelve-thirty. I think twelve-thirty or one, somewhere around there.

Q. And that was on Friday?

A. That was on Friday.

Q. Then you packed up, did you?

A. Yeah, I told him I was going home and work in the garden some.

Q. Where did you go next?

A. Well by the time we got everything in the car it was, I don't know what time it was, but it was somewhere around two o'clock and we started out and I went down, no, it was just before that, I'm wrong on that, I went down and had the car fixed after I had eaten and I came back.

Q. It was after two when you went down to get the car fixed?

A. I had the car, the oil changed.

Q. And when you went down to get the oil changed, I believe there was another car ahead of you and you had to wait for that?

A. No, I don't know that it was. I went down and filled it with gas and had the oil changed right away. All right and then you started out on your trip and

Jan. 1968

page 101 } you say what time it was you did get away from Covington then?

A. Well I imagine it was somewhere around two or two-thirty, twenty-five after two, somewhere close to that.

Q. Then what did you do?

A. Then we stopped in Covington and I didn't have the car greased in Covington and we stopped in Clifton Forge and I had the car greased. It felt like as you would go up in the air, it felt like the shocks were rubbing and I told him, "I'd better have this thing greased," so I pulled to the service station and there is where I had to wait for the car to get off the lift.

Q. What time did you get in there to get the car greased?

A. Well I don't know just exactly what time it was. It was somewhere between, somewhere close to three o'clock.

Q. How long did it take to get the car greased? You had another car ahead of you.

A. Well he let that car down and rolled it off the lift, pulled it off the lift and put mine up, I wouldn't know exactly how long it did take. I wouldn't say over fifteen minutes.

Q. Then you think it was around three o'clock before you got the car on the lift?

Jan. 1968

page 102 } A. No, I wouldn't. I think maybe it was around ten or fifteen or twenty minutes to three, anywhere along there. I don't know now, I'm just guessing at this time. If I stated for the truth, I couldn't.

Q. Well then you left after you got your car, your friend had gone to eat, hadn't he, again?

A. Well he went somewhere, I don't know where he went.

Q. You didn't go with him?

A. No, I didn't.

Q. Did you have something?

A. I ate a pack of nabs and maybe a drink, a Coca-Cola.

Q. And then you left there with him? He came back and went with you, didn't he?

A. With my friend?

Q. Yes, you took him with you, didn't you?

A. No.

Q. Didn't you put him in the car and take him with you as you went on down the road?

A. Oh, yes, he got in the car.

Q. You took him with you?

A. Yes.

Clarence Dewey Motley

Q. And he was on the front seat, wasn't he?
Jan. 1968 A. Yes.
page 103 } Q. And you were driving on down the road on down this way toward here, weren't you?

A. Yes.

Q. Coming on down 220?

A. 220, yes.

Q. And he was asleep, wasn't he?

A. Well he made the statement that, he said after he got back in the car and started out and we cleared out through Clifton Forge, he said, "I think I'll settle back and take me a nap," and I said, "Go ahead."

Q. As far as you know, he was asleep?

A. That's right, as far as I know.

Q. Now how fast were you driving coming on down the road?

A. Well I was driving at least around fifty miles an hour.

Q. How fast were you going just prior to the time that you saw this other car, before you saw the other car, how fast were you going?

A. I was going at least, I was going around fifty, about fifty or fifty-five anyway.

Q. Now just before you got to where this accident occurred, did you see the sign on the side of the road that said "Maximum Safe Speed 45 Miles An Hour"? You saw
Jan. 1968 that sign, didn't you?
page 104 } A. I don't. I didn't remember paying any attention to it.

Q. You didn't see the 45-mile-an-hour sign?

A. I didn't notice it particularly at that time. I don't know, Iwas looking at the road and I didn't notice the sign.

Q. Well you heard the officer testify that the sign was there back up the road from where you came when you had this accident, didn't you? You sat there and listened to the testimony of the trooper, didn't you?

A. Yes, but I couldn't say that I saw it.

Q. And you don't remember whether you saw the sign?

A. No, I didn't see the sign.

Q. You didn't see it?

A. I didn't notice it.

Q. Well then had you ever driven this road before?

A. Not in quite a while, not this same road. I don't think I had ever driven it before.

Clarence Dewey Motley

Q. Now the pavement was dry, wasn't it?
A. Yes, sir.
Q. And the sun was shining?
A. Well it was considered a fair day. It was hazy.

Jan. 1968 page 105

Q. And when is the first time that you saw the the car or another car that you thought involved you on the highway?

A. Well at first when I first saw him, a car coming around this curve in front of me, I didn't pay too much attention at him and then I thought he was swinging over on my side of the road and then I glued my eyes to him pretty much.

Q. Well at the time you saw him swinging over on your side of the road, how far away from you?
A. I was I guess two hundred and fifty feet or more or right at that.
Q. You say you were around two hundred and fifty feet from him?
A. I would think that would be.
Q. And you didn't do anything right then, did you?
A. No, I just.
Q. You saw him coming on your side of the road and you didn't do anything?

Mr. Lutins: Let him answer.
Mr. Parker: All right, let him answer.
The Witness: I just was so certain in my mind that he would swing back to his left.

By Mr. Parker: (Continuing examination)

Jan. 1968 page 106

Q. How long did you keep right on down the road at fifty or fifty-five, miles an hour and do nothing? How long did you do that?

A. Well I didn't go very far, I didn't go any ways practically. I had swung to the right and I said I'll give him room and it looked to me as if he was coming this way in my direction and I thought I would cut over in the other lane and I thought I'd get out of his way that way.

Q. You didn't apply your brakes, did you?
A. Well to get up here now and say that I did or didn't, I don't know. I thought I did, I thought I applied the brakes.
Q. Do you remember going all the way off the right shoulder of the road? All the way off?

Clarence Dewey Motley

A. I remember when I was cutting over and getting over and the next thing I remember I was hitting that slick bank.

Q. You do not recall applying the brakes at all, do you?

A. I can't say that I do. I can't say or swear to it that I did apply my brakes or didn't.

Q. You heard the officer say your vehicle went a hundred and thirty feet off the shoulder of the road?

A. Yes, sir, but it don't take but a very few seconds at fifty miles an hour to go a hundred and thirty feet and I thought that in meeting that car I thought he was

Jan. 1968 page 107 } going to cut back and I was going to get in my lane but I went off the road but I saw he was headed my way so I cut the other way and he kept going.

Q. But you could have stopped your car and stayed on the side of the road if you had wanted to?

A. At the very first if I had had any inclination at all that he was going to proceed, I would have stopped. That's what I would have done. I would have stopped but at first I thought he was going to cut over and I just kept my speed, maintained my speed, and then till it got too late to do anything but get out of his way.

Q. And do you remember telling the trooper that just testified here today, the state trooper, talking to him after the accident?

A. I remember vaguely. I'll tell you the truth I don't remember altogether what I said.

Q. Do you remember telling him that? You told the trooper that this car was partly on your side of the road?

A. I don't remember telling him that, no, sir.

Q. But you could have told him?

A. Sir?

Q. You could have told the trooper that when you talked to the trooper, could you not?

A. Well I'll tell you the truth I don't remember

Jan. 1968 page 108 } exactly what I told the trooper. At the time I talked with him I was in a state of shock and I don't even know what I told him.

Q. You remember talking to Mr. Fraley here, the gentleman that came from your insurance company?

A. Yes, sir, I remember him.

Q. You weren't in a state of shock when you talked to him, were you?

Clarence Dewey Motley

A. No, I wasn't in too much of a state of shock. I was pretty well clear.

Q. Do you remember telling him that you were only a hundred feet from that car when you first saw it?

Mr. Lutins: Now is that a statement that was taken?

A. I don't remember telling him that. I said maybe I was a hundred feet when I decided I had to do something about it, I was around a hundred feet. I don't remember what, how he got the hundred feet. When I first saw the car, naturally I saw the car beyond a hundred feet.

Q. Now what kind of car was this?

A. Well I couldn't be sure but it looked to me like it was a '58 Ford, dark colored. That's what I thought it was because it didn't have the little square blocks in the grill.

Q. Did you see who was driving?

Jan. 1968 page 109 } A. No, sir, I didn't get a look at the driver.

Q. Whether it was a man or a lady or who it was?

A. No, I couldn't say who was driving.

Q. I believe you said you returned to work in July, 1966?

A. Yes, sir, the last week I think it was.

Mr. Parker: I have no further questions of this witness.

The Court: All right.

REDIRECT EXAMINATION

By Mr. Land:

Q. Do you remember exclaiming aloud as to the presence of a car on your side of the road?

Mr. Parker: Your Honor please, they had direct examination, we had cross examination, and that matter has not been covered in either one and I object to it.

The Court: I sustain the objection.

Mr. Land: Note exception to it, Your Honor. I said he might ask questions but I reserved the right to re-examine him.

The Court: You should have gone ahead. Mr.

Jan. 1968 page 110 } Motley, if there is any objection to any question that Mr. Land asks, don't answer until the Court has an opportunity to rule on it.

Clarence Dewey Motley

By Mr. Land: (Continuing examination)
Q. Was Mr. Williams drunk at the time of this accident?
A. No, sir.

* * * * *

Mr. Roe: At this point, Your Honor, we would like to make a motion.
The Court: Just retire to your jury room, please.

(The jury left the Courtroom at which time the following motion and ruling was made)

Mr. Roe: Your Honor, on behalf of John Doe, we'd like to move to strike the plaintiff's evidence on the following ground, that by the plaintiff's own testimony, first of all it was a physical impossibility. He said the car passed him on his right. Necessarily, by his own inaction at a time when he should have been doing something when he saw this car two hundred and fifty feet away and then did nothing until about a hundred, plus his speed, we think that is
Jan. 1968 sufficient to show contributory negligence on the
page 111 } part of the plaintiff in this action.
Mr. Lutins: Shall we reply?
The Court: Yes.
Mr. Lutins: If Your Honor please by the testimony, uncontroverted testimony if Your Honor please, of the plaintiff seeing this car that he estimated two hundred and fifty feet approximately from him coming at a rapid rate of speed on his, the plaintiff's, lane of travel, in an effort to avoid striking this car, the sudden emergency which confronted the plaintiff, he turned first to his right, then lost control of his car and skidded across the highway ninety-six feet and ended up on that embankment, had John Doe not operated his motor vehicle in the negligent manner as shown by the evidence today, we wouldn't be in Court.
The Court: Where is your sudden emergency of two hundred and fifty feet?
Mr. Lutins: Where is the sudden emergency?
The Court: Well two hundred and fifty feet away, that wasn't a sudden emergency.
Mr. Lutins: Do you know how far it takes a
Jan. 1968 car in one second, how much a car would travel,
page 112 } 80.2 feet. This whole thing happened in a period

of three seconds or approximately four at the top. Here comes a car on the wrong side of the road. Now certainly if this man had expected the situation and had he been in a position to know it was coming about, I'm sure he could have done any number of things, had the whole thing stopped and he said what must I do, go up, go down, go right, go left, that wasn't the case. This was not what the man testified to. He saw the car approaching him at a high speed and he likewise was going according to his own testimony fifty miles an hour traveling eighty feet every second having let off his accelerator, he has no recollection of applying the brakes. At this point during this short period of time he had to make a decision.

The Court: That isn't what he said though. He said he went along at the same rate of speed because he thought it was going back to its side of the road.

Mr. Lutins: Yes, but he said he didn't apply, has no recollection of applying his brakes but he said he took his foot off the accelerator which means that his car was maintaining approximately the same rate of speed. Now am I or is the Court or Mr. Roe to say under those circumstances that this man was guilty of negligence as a matter of law? That's the question.

Jan. 1968 page 113

The Court: I don't know. I'll probably let the jury pass on it but I have serious doubts about this sudden emergency.

Mr. Roe: With reference to the sudden emergency, it was brought on by him and he's not entitled to an instruction.

The Court: It certainly was.

Mr. Lutins: We maintain that at the proper time we will offer such an instruction to the Court and of course the Court can then rule on it. On our side, our theory is that this is no question but what there was a sudden emergency that existed and he's not measured by what he would have done had he been able to stop and think but he had to make his decision then and there, wrong or right. The smartest thing for him to have done would be not to get up that morning and get on the road.

The Court: All right, I will overrule your motion to strike.

Mr. Roe: We have just a little rebuttal by the trooper. We except to the ruling by the Court.

Jan. 1968 page 114

Trooper T. N. Middlecamp

TROOPER T. N. MIDDLECAMP, recalled on behalf of the defendant in the above-styled cause, being previously duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roe:

Q. Trooper Middlecamp, do your records show the time of this accident?

A. Yes, sir.

Q. What is that?

A. 2:30 P.M.

Q. And how do you base that, what do you base that on?

A. I based that on talking with Mr. Motley and also the time I was notified at the accident.

Q. In other words, Trooper, you would not have been notified prior to the accident? It would have had to have happened before you were notified, is that correct?

A. That's correct.

Q. Trooper Middlecamp, do you have any idea how long it would take to drive from Clifton Forge to where this accident happened?

Jan. 1968 page 115 } Mr. Lutins: If Your Honor please, under what conditions?

The Court: I'll sustain the objection to that.

Mr. Roe: Your Honor, we are trying to show the time.

By Mr. Roe: (Continuing examination)

Q. How far is it from Clifton Forge to the accident scene?

A. It's approximately seven miles.

Q. Thank you. Now in your investigation, Trooper, did you have any indication that the phantom vehicle or John Doe had passed Mr. Motley on the right?

A. No, sir.

Q. To have passed him on the right would he have to have left the hard surface on the left?

Mr. Lutins: Just one moment, if Your Honor please. This calls for an opinion on the part of the witness.

Mr. Roe: It's what his investigation revealed.

The Court: He said his investigation. That's not an opinion. Your objection is overruled. He's not expressing an opinion.

Mr. Lutins: Exception.

Trooper T. N. Middlecamp

Jan. 1968 By Mr. Roe: (Continuing examination)
page 116 } Q. Answer the question, Trooper.
A. No, sir, I didn't see any evidence where the vehicle had passed on Mr. Motley's right.

The Court: I don't remember, did you talk to Mr. Motley?
The Witness: Yes, sir, I did.
The Court: Did he tell you a car passed him on his right?
The Witness: No, sir, he didn't.
Mr. Lutins: Have you finished?
Mr. Roe: Yes.

CROSS EXAMINATION

By Mr. Lutins:
Q. Trooper, did Mr. Motley tell you a car was coming in his lane of travel?
A. Mr. Motley told me there was a car partially in his lane of travel.
Q. Partially? How much, Trooper?
A. He said just, he said it was partly.
Q. Could it have been three-quarters of it, three-quarters into this lane?

Jan. 1968 The Court: He said he didn't say so how can
page 117 } the witness say whether it was two-thirds or three-quarters?
Mr. Lutins: That's the point, Judge.

By Mr. Lutins: (Continuing examination)
Q. Let me assume, Trooper, that a car was traveling on the lane that Mr. Motley was traveling. If the car continued on, what evidence would there have been that a car traveled over that road coming toward this lane that this collision took place in?
A. There would be none if he stayed on the hard surface.
Q. That's right and you can't say he didn't stay on the hard surface and there has been no evidence in your investigation that he didn't stay on the hard surface, the unknown driver, is there?
A. No, sir.

Mr. Lutins: All right.

Mr. Roe: Are you finished?
Mr. Lutins: Yes.

REDIRECT EXAMINATION

By Mr. Roe:
Q. But Trooper, wouldn't it be physically impossible for the car to stay on the hard surface? Would it not be physically impossible for a car to have passed Mr. Motley on his right and stay on the hard surface?

Jan. 1968 page 118

Mr. Lutins: Objection.
The Court: Sustain the objection. This witness can't express an opinion.
Mr. Roe: All right, sir, stand aside.

(The witness stands down)

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

DIRECT EXAMINATION

By Mr. Roe:
Q. Your name is Ed Fraley?
A. Yes, sir.
Q. And did you have occasion to talk with Clarence Motley, the plaintiff?
A. Yes, I did.
Q. In what capacity, sir?
A. I was the claims representative at that time for the insurance company he was insured with.
Q. When did you talk with Mr. Motley?
A. May the 19th, 1966.
Q. And who was present at that time?
A. Mr. Floyd Williams in the bed next to him.
Q. And how close were their beds?

Jan. 1968 page 119

A. About the width of this box here I'd say between beds.
Q. And would you just tell the jury what you recall of your conversation with Mr. Motley at that time with reference to this accident.
A. Well at first I identified myself, told Mr. Motley who I was and asked him if he felt like talking with me on that particular day or if I should come back another day and he said

no, that he would talk with me. He said he felt all right and I took a written statement from him as to how the accident happened. He told me he was traveling south on route 220 at approximately fifty-five miles an hour.

Mr. Lutins: Your Honor, we object to his telling us about the *ex parte* statement.

Mr. Roe: He can tell what Mr. Motley told him.

The Court: The statement itself is not admissible but he can tell what he was told.

Mr. Lutins: Exception.

The Witness: (Continuing) He said that he was in his lane of travel, with the sun shining, a nice day, the road was dry and he was approaching a curve to his left and as he approached the curve, as he approached the curve he said approximately a hundred feet north of it a car came around the curve on his side of the road. He said he veered to the right into the gravel, lost control, veered back across the road and hit the bank on his left.

Jan. 1968 page 120

Q. Now you are sure that was within a hundred feet he said this vehicle was when he saw it?

A. Yes, after I finished talking with him, I asked him to read the report and he read it and he said it was okay.

Q. Did he say anything about trying to stop or anything of this nature?

A. No, he didn't say anything about trying to stop. I asked him if he applied his brakes and he said he doesn't remember applying his brakes, he doesn't think he had time it happened so fast.

Q. Was this statement taken in the presence of Mr. Williams?

A. Yes, it was.

Q. Did you take the statement of Mr. Williams at that time?

A. When I finished talking with Mr. Hotley, I turned around and I began talking with Mr. Williams.

Q. What did Mr. Williams relate to you with reference to what he saw?

Jan. 1968 page 121

A. He told me that shortly after they left Clifton Forge he was sitting on the right front seat and he became sleepy so he went to sleep. He said he went to sleep and the last thing he remembered, the next thing he knew he woke up in the Clifton Forge hospital. I

asked him about at least three times if he remembered anything at all about the accident and he said, "No, I was asleep."

Mr. Lutins: I can't hear you, sir.
The Witness: I'm sorry.
The Court: Talk a little louder so Mr. Lutins can hear you.

The Witness: (Continuing) I asked Mr. Williams approximately three times if he remembered anything at all about the accident and each time his answer was, "I was asleep, I don't know anything."
Q. Then he made no statement to you about hearing someone cry out?
A. No, sir.

Mr. Lutins: Now the man has testified, if Your Honor please, and to lead him further, we would object.
Mr. Roe: I'll withdraw the question. Answer any questions Mr. Lutins has.

Jan. 1968
page 122 } CROSS EXAMINATION

By Mr. Lutins:
Q. Mr. Fraley, what is your job over at Crawford & Company, going around taking statements from people that are sick?
A. No, he was in an accident, Mr. Lutins.
Q. And you get them as soon as you can, don't you?
A. Not necessarily.
Q. Well they don't write out anything, you ask questions, don't you?
A. Right.
Q. And whatever you ask they give you answers and you sit there and you write out the stuff that they say and then you say, no matter what their condition is, you read that over and look at it and if it looks right, sign it?

The Court: Mr. Lutins, do you want that statement introduced?
Mr. Lutins: No, sir, I'm just asking the procedure.
The Court: Well you are opening the door, sir.
Mr. Lutins: Well I will close it.

Ed J. Fraley

Jan. 1968 page 123 } The Court: You're opening the door real wide there.

Mr. Lutins: I'll close it real quick.

By Mr. Lutins: (Continuing examination)

Q. But your job is to obtain statements?

A. Yes, sir, when an accident is serious.

Q. Now this man was hurt and he was in a hospital when you saw him?

A. Yes.

Q. And do you know that he was in pain and he was sick?

A. I asked him, like I said I asked the man if he felt like talking with me and he said, "I feel like talking with you if you want to," and I said, "I can come another day," if he preferred.

Q. When you said do you feel like talking, what would you have done if he had said no?

A. I would have left.

Q. But he didn't say that?

A. He didn't say that, no, sir.

Q. What did he say?

A. He said, "Yes, I feel like talking with you."

Q. All right. I'll talk with you? And you represented to be the carrier of his insurance?

A. Right.

Jan. 1968 page 124 } Q. Do you know that as a matter of fact he got one, two, three, four, five, six, seven, eight, nine, ten, eleven shots that day for pain and suffering in the hospital?

A. No.

Q. You don't know that? But was he bandaged up any?

A. The best I can remember he wasn't. I believe he had a cast maybe on one arm.

Q. And in accordance with your job, you went ahead and talked to him?

A. Yes.

Q. Well if you had gone back, if he had indicated he didn't want to talk to you, did you indicate to him you would have had to go back to Roanoke and come back?

A. No, sir, I told him I was in the area about twice a week.

Q. From Roanoke?

A. From Roanoke.

Q. And you went ahead and you asked him and he said what you testified to?

Ed J. Fraley

A. Yes, sir.

Q. And he told you that the man was coming at him, the unknown driver?

A. Yes.

Q. He told you he didn't know him?

A. That's right.

Jan. 1968 page 125 } Q. He was coming at him and he turned in an effort to avoid striking him?

A. Yes.

Q. And he said that was all he could do under the circumstances?

A. He said that's all he had time to do.

Q. All he had time to do? Right, that was all he had time to do. Now you asked Mr. Williams, what was the question you asked him?

A. Well I wouldn't say the way I phrased it but I asked Mr. Williams what he knew about the accident.

Q. What he knew about the accident? And I believe you said he said he was asleep?

A. Said, "I was asleep."

Q. Said, "I was asleep"? As a matter of fact, he didn't know anything as far as the collision was concerned, is that right?

A. His statement was, "I don't know anything about the accident. I was asleep."

Q. When did you ask him if he heard this man say, "Look out, that guy's coming at us"?

A. I didn't ask him that.

Q. You didn't ask him that? Stand aside.

A. I didn't ask him that but it would be reasonable to assume if you asked him if he knew anything about the accident.

Jan. 1968 page 126 } The Court: What was your answer?

The Witness: I said it would be reasonable to assume that if you asked him if he knew anything about the accident.

By Mr. Lutins: (Continuing examination)

Q. That's what you assumed, right?

A. Right.

Ed J. Fraley

REDIRECT EXAMINATION

By Mr. Roe:
Q. Mr. Fraley, Mr. Williams didn't volunteer that he knew anything about it?
A. No.

Mr. Lutins: The question was he didn't volunteer?
The Witness: All the statement he made to me was, "I was asleep."
Mr. Lutins: He was asleep and your investigation revealed that he was asleep?
The Witness: Right.

By Mr. Roe: (Continuing examination)
Q. One other question. Did Mr. Motley ever object to Mr. Williams saying he was asleep?
A. No, sir.

Jan. 1968
page 127 } RECROSS EXAMINATION

By Mr. Lutins:
Q. Mr. Motley told you that Mr. Williams was asleep, didn't he?
A. That's right.
Q. So why would he object to it if that statement was true?
A. (No answer)

Mr. Lutins: Stand aside.
Mr. Roe: You may be excused.
The Court: Stand aside.
Mr. Roe: Your Honor, John Doe rests.

(The witness stands down)

The Court: Any rebuttal?
Mr. Lutins: No rebuttal.

IN CHAMBERS

Mr. Parker: Before we go forward, I would like to renew our motion to strike the evidence for the reasons previously given and the fact that there has been no change in it, that the

plaintiff convicts himself of contributory negli-
Jan. 1968 gence as a matter of law and would not be en-
page 128 } titled to recover.

Mr. Roe: And his statement, Your Honor, of the car passing him on the right, to me, is a physical impossibility along with the other evidence.

The Court: Motion overruled.

Mr. Parker: We except on the grounds given previously.

INSTRUCTIONS

Instruction One A amended by the Court, given.

Mr. Lutins: The plaintiff, by counsel, excepts to the Court's failure and refusal to grant Instruction One A as tendered, which instruction contained subparagraph three setting out that one of the duties of the unknown driver was if he is believed to have been there and unknown, was to drive said unknown motor vehicle so as not to exceed a reasonable speed under the circumstances and conditions existing at the time and further, we take exception to the Court's changing the closing paragraph of the instruction and adding
Jan. 1968 that if the jury again believe there was an un-
page 129 } known driver, they should so find according to the instruction. It unfairly comments upon the presence or lack of presence of an unknown driver in the instruction because it's mentioned in the first paragraph.

Mr. Parker: Exception to One A as amended and given.

The Court: One C was offered and refused, Mr. Lutins.

Mr. Lutins: Counsel for the plaintiff objects and excepts to the refusal of the Court to grant Instruction One C inasmuch as we feel the jury should be instructed and told of the speed of a motor vehicle under certain circumstances and the average stopping distances and total stopping distances of a motor vehicle as provided under the Code which is applicable to the facts and circumstances surrounding this case.

The Court: Mr. Roe, I think Mr. Lutins' statement is made with reference to this.

Mr. Roe: Your Honor, I think it is rightly refused, first of all we are dealing with a phantom vehicle and he's talking about the speed of a phantom vehicle. There has been no evidence as to the speed of the phantom vehicle.
Jan. 1968 Secondly, we don't know what kind of an auto-
page 130 } mobile it was, whether it was a truck or not and these wouldn't be applicable. Thirdly, these things only apply to a level dry road and this was an upgrade and

the phantom vehicle in the downgrade or the plaintiff's vehicle and they would not be applicable.

The Court: One B was offered and refused.

Mr. Lutins: In response to that, the witness testified, the plaintiff, that it was an automobile and not a truck.

The Court: You're talking about One A now?

Mr. Lutins: Yes.

The Court: One B was offered and refused.

Mr. Lutins: Counsel for plaintiff excepts to the refusal of the Court to grant Instruction One B as tendered inasmuch as this instruction sets out that as a matter of law if the jury believe that an unknown driver was present and that he was traveling on the wrong side of the road in direct contravention to the statutes made and provided that as a matter of law he is negligent, the unknown driver, and if they believe he did such an act and if he was present, then this instruction amply and properly covers the law as to what the jury must do once that is ascertained and determined as to the presence of a motor vehicle and that vehicle being on the wrong side of the road under the circumstances of this case.

Jan. 1968 page 131

The Court: All right. It was refused because the Court was of the opinion it was covered by other instructions.

Instruction Two amended by the Court was given.

Mr. Roe: For the record we except to Instruction Two as given on the basis that it mentions a sudden emergency created by an unknown motorist. We feel that the sudden emergency portion of it is, the plaintiff is not entitled to it because of his own actions and the physical facts surrounding the accident and the fact that they are telling the jury in the last paragraph there that the plaintiff acted as a person of ordinary prudence would have acted. I think you should have in there that if they believe that the plaintiff acted.

Instruction Number Three offered by the plaintiff was given without objection.

Jan. 1968 page 132

Instruction Number Four offered by the plaintiff was given.

The Court: I'm going to give Number Four except I'm going to cut out the last line.

Mr. Roe: Yes, there was no testimony as to any future medical. No objection.

Instruction Number Five offered by the plaintiff was given.

Mr. Parker: We object to the giving of Number Five on the ground that there was no evidence to establish when the previous injury, or when the injury to L-4 occurred. It was first discovered in March, 1967 and was thought to be an old

injury but the burden is on the plaintiff to establish this injury was caused by the accident or aggravated by the accident.

Instruction Number Six offered by the plaintiff was given without objection.

Instruction Number A offered by the defendant was given.

Mr. Lutins: We object to Instruction A for the reason that this points out physical facts. I think it is unfair and prejudicial.

Instruction Number B offered by the defendant was given without objection.

Jan. 1968 page 133

Instruction Number C offered by the defendant was given without objection.

Instruction Number D offered by the defendant was given without objection.

Instruction Number E offered by the defendant was given without objection.

Instruction Number F offered by the defendant was given.

Mr. Lutins: The plaintiff excepts to the Court's granting of Instruction F inasmuch as subparagraph 4 reiterates that if they believe an unknown motorist was present, they should find under this instruction. It is repetitious in that it mentioned the presence of an unknown motorist's vehicle by the Court's instruction, which is covered by a prior instruction as to the presence of the unknown motorist if present at all.

Instruction Number G offered by the defendant was given without objection.

Instruction Number H offered by the defendant was given without objection.

Instruction Number I offered by the defendant was given.

Mr. Lutins: The plaintiff, by counsel, objects to the granting of Instruction Number I given on behalf of the defendant. These matters are amply covered in instructions given by the Court previously, particularly in Instructions Six and Four and it is redundant and superfluous.

Jan. 1968 page 134

Instruction Number J offered by the defendant was given.

Mr. Lutins: We object to the granting of J in that there is no evidence to support it in the presentation of their case and therefore the instruction should not be granted.

Instruction Number K offered by the defendant was given.

Mr. Lutins: Counsel for plaintiff objects and excepts to the granting of Instruction K tendered by the defendant in that it does not show or tell the jury that the defendant must prove by preponderance of the evidence that under the sud-

den emergency doctrine he was confronted with such an emergency.

The Court: Mr. Roe, Exhibits five and six were marked but not introduced so they will not be in evidence. Do you understand that?

Mr. Roe: That's right. We did not introduce five and six. We introduced them for impeachment purposes only. I do want to take a picture of the blackboard drawing and enter it as "Defendant's Exhibit 8".

Jan. 1968 page 135

(Court adjourned at 5:00 P.M. Reconvened at 10:00 A.M. January 24, 1968, at which time the Court, jury, counsel and all interested parties were present and the trial resumed as follows:)

(The jury was instructed.)

After closing argument of counsel, the jury retired to consider their verdict and returned with the following verdict:

The Clerk: "We the jury find for Clarence D. Motley, the plaintiff, and fix the amount of his damages in the sum of $10,000. Andrew L. Brugh, Foreman." Gentlemen, is this your verdict?

Jury: It is.

The Court: Do you gentlemen have a motion to make now?

Mr. Parker: If the Court please, the defendant, John Doe, by counsel, moves to set aside the verdict of the jury on the grounds that it is contrary to the evidence. There is no credible evidence here on which, under the plaintiff's own testimony, he could have recovered. The plaintiff's case can rise no higher than the plaintiff's statements. Also, on the giving by the Court of the sudden emergency instruction particularly and other instructions which were given by the Court over the objection of the defendant and we therefore move to set aside the verdict of the jury on the grounds that it is contrary to the law and to the evidence and the giving the instruction by the Court.

Jan. 1968 page 136

The Court: That's your motion?

Mr. Parker: Yes.

The Court: If that is your motion, I will have to overrule it.

Mr. Roe: I would add further that the damages were not proven with reasonable certainty so that the jury would have something to base their verdict on. There was never any summation of the amount of damages. The damages were

never actually introduced in the evidence as exhibits other than orally.

The Court: If that's your motion, it will be overruled.

Jan. 1968 page 137 } Mr. Parker: We respectfully except to the Court's ruling for the reasons stated when the instructions were given and on the argument on the motion to strike the plaintiff's evidence at the conclusion of the plaintiff's evidence and at the conclusion of all of the evidence.

The Court: Well now, gentlemen, how broad is your motion? You are just taking an exception at this time, aren't you?

Mr. Parker: I was just making an exception to the Court's ruling and including in the reasons, the reasons we've stated at the conclusion of the plaintiff's evidence that the Court should have sustained the motion to strike and we renewed the motion again at the conclusion of all the evidence.

The Court: You're talking about the plaintiff's evidence being incredible. Isn't that really a jury question for them to believe?

Mr. Parker: Well.

The Court: I don't believe it myself but the jury had a right to believe it.

Jan. 1968 page 138 } Mr. Parker: The plaintiff's evidence cannot rise any higher than what he said. I mean the case can't rise any higher than the minor case. The plaintiff's case cannot rise any higher than his own statement and if you can't believe, if the people should not believe it, then the Court would have to set aside the verdict of the jury and enter judgment for the defendant or in the alternative of course grant a new trial so we would like to add that to our motion.

The Court: No, I don't see where granting a new trial will help you any but there is a question in this case that you don't mention. That's the reason I don't think I should say anything about it and that's why I asked you how broad is your motion.

Mr. Roe: Your Honor, may we have time to submit the motion in writing?

The Court: I will let you do this. I will withdraw what I said about overruling your motion. You made your motion, I will let it be docketed and if you want to, it's not necessary to submit it in writing, but if you want to. I don't see how putting it in writing is going to help any for you. Suppose I give you ten days to make your motion in writing and it will

be docketed. Do you gentlemen have anything you want to say?

Jan. 1968 page 139 } Mr. Lutins: Well in response to the motion, if Your Honor please, this was a factual situation, well and truely submitted to the jury under appropriate instructions that the jury would either believe or disbelieve the facts presented. The jury then tries the facts and comes back with a verdict, a true and correct verdict and of course it must stand. That would be the plaintiff's position.

The Court: All right, both of you get a camera and take that picture there because I don't know what is going to happen.

* * * * *

Dep.
11/8/67
page 1 }

* * * * *

The deposition of Floyd E. Williams was taken before the undersigned Notary Public on Wednesday, November 8, 1967, at 11:30 o'clock a.m., at the offices of Koplen and Land, Attorneys, 808 Masonic Building, Danville, Virginia.

Present for the taking of the deposition were F. Byron Parker, Attorney for the defendant, and Herman G. Koplen and William E. Land, Attorneys for the plaintiff, and the following stipulations were agreed upon and made a part of the record in this case:

STIPULATIONS

1. Pursuant to Stipulation, I, Mary F. Crawford, a Notary Public in and for the City of Danville, State of Virginia, proceeded to take the deposition of Floyd E. Williams at 11:30 a.m., Wednesday, November 8, 1967, in the offices of Koplen and Land, Attorneys, 808 Masonic Building, Danville, Virginia, all notice of the taking of said deposition having been waived by counsel for the defendant.

Dep. 11/8/67 A. It is stipulated and agreed that the signing of this deposition be and the same is hereby waived.

Floyd E. Williams

page 2 } FLOYD E. WILLIAMS, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Land:

Q. Mr. Williams, state your full name for the record, please.

A. Floyd Elton Williams.

Q. Is that E-L-T-O-N?

A. Yes, sir.

Q. Where do you live?

A. 719 King Street, Reidsville, North Carolina.

Q. How old are you?

A. 41, sir.

Q. Mr. Williams, you, of course, know Mr. Motley, the plaintiff in this case, do you not?

A. Yes, sir.

Q. Did you have occasion to be with Mr. Motley on May 13, 1966, in Botetourt County, Virginia?

A. Yes, sir, I did.

Q. When did you get with Mr. Motley?

A. We were working on the same job together in Covington, Virginia.

Q. Where, sir?

A. Covington, Virginia, and we started home that day around noon and we—it was a little before or after, I never had a watch on—we stopped in Clifton Forge, had the car serviced, and I went to eat a bite, and on the way in a few miles beyond there, we had the accident.

Dep. 11/8/67 page 3 }

Q. Did you see the accident, Mr. Williams?

A. No, not direct.

Q. Why didn't you see it?

A. The weather was clear and I told Mr. Motley when we left at Clifton Forge I believed I would take a nap, and I slipped down in the seat and I was dozing at the time when I heard Mr. Motley make the expression that "that son of a bitch is on the left-hand side of the road and it looks that he ain't going to get over", and when I regained full consciousness I was in the hospital.

Q. Then what you know of this accident is what you heard and not from what you saw, is that right?

A. That's right.

Floyd E. Williams

Q. What exactly to the best of your recollection was Mr. Motley's condition as to being a driver? Had you ridden with him before?

A. Yes, sir, for a number of years. We worked different jobs together and my knowledge of his driving is that he has always seemed to be a very careful and reasonable driver. We worked in different states together on different jobs.

Q. What kind of work do you do?

A. We are electricians.

Q. Both of you?

A. Yes, sir.

Q. You say you didn't know anything more after the accident until you woke up in the hospital, is that right?

Dep. 11/8/67 page 4 }

A. That's right.

Q. In the hospital, what room were you in, do you know? What type of room—was it a private room?

A. No, I was not in a private room.

Q. Was Mr. Motley in the room with you?

A. Not to begin with. They moved him in my room on Monday or Tuesday following the accident. 232—I can't remember the number of the room.

Q. I believe the accident happened on Friday?

A. Yes, on Friday.

Q. And then the following Tuesday Mr. Motley was moved in your room?

A. Monday or Tuesday. It probably was Tuesday, I don't remember.

Q. Did you talk about the accident at that time—the two of you?

A. Yes, naturally we mentioned it. We was both in the same predicament.

Q. Do you know what kind of automobile it was that was on your side of the road?

A. No, I don't.

Q. You don't know? You didn't see it?

A. No.

Q. Mr. Williams, in addition to hearing Mr. Motley cry out just before the accident happened as you have previously testified, did you notice anything else, any unnatural motion in the vehicle?

A. No, I was dozing at the time and nothing unordinary that I recall. He roused me up when he *holloed* and I don't have to go through that language again.

Floyd E. Williams

Q. Go ahead and testify.

Dep. 11/8/67 page 5 } A. He said, "he is on the wrong side of the road and the son of a bitch don't look like he is getting over—he ain't getting over", or something like that and it happened fast.

Q. Do you mean there was an impact immediately following that exclamation?

A. To the best of my knowledge it was.

* * * * *

Dep. 11/8/67 page 6 }

* * * * *

Q. Mr. Williams, you have testified that you were knocked unconscious by the collision?

A. Yes, sir.

Q. Do you know how long you were unconscious?

A. No, I don't.

Q. Do you remember when you first awakened after the accident?

A. When I was in the hospital in Clifton Forge.

Q. Was that the same day or the next day?

A. That was the same day.

Q. Were you thereafter conscious at all times or did you lapse into unconsciousness from time to time?

A. I was conscious I guess the majority of the time because I remember I never rested well that night and I remember talking to the doctor and telling him how in case Mr. Motley—I didn't know how bad he was hurt—and I was telling them how they could notify his wife in case he wasn't in the condition to give them the information.

Q. Were you given any drugs or sedation when you were admitted to the hospital?

A. Sir?

Q. Were you given any drugs or any other type of pain killer when you were admitted to the hospital?

A. Not as I remember.

Q. Were you given any later in the hospital that you recall?

Dep. 11/8/67 A. They gave me some pain pills during the period of time I was there and then at night they gave me a sleeping pill.

page 7 } Q. How long were you in the hospital altogether?
A. 16 days.

Q. And thereafter, when were you first able to return to work?

A. February 14 of this year.

Q. 1967?

A. Yes, sir.

Q. Do you have any financial interest in the outcome of this case?

A. Not whatsoever.

* * * * *

Mr. Land: That is all. Mr. Parker, you may examine.

CROSS EXAMINATION

Dep. By Mr. Parker:
11/8/67 Q. Your name is Floyd E. Williams?
page 8 } A. Yes, sir.
Q. When did you first know and meet Clarence Motley?

A. April, 1952.

Q. Had you worked together since that time up to the time of the accident, as electricians?

A. Not continuously, but we had been on a number of jobs together since then.

Q. Did you see him frequently and work with him?

A. Yes, sir.

Q. Do you both have the same union card?

A. Yes, sir. His number is the same one as mine, less one.

Q. Where had you been working before this accident occurred?

A. Covington, Virginia.

Q. And who were you working for?

A. Richardson Whalen Company in Roanoke—I believe that was the name of it.

Q. What day did you go to work?

A. The 11th.

Q. You worked there on the 11th?

A. I believe it was the 11th. The 11th would be on Wednesday.

Q. This accident happened what day?

A. The 13th.

Q. What?

Floyd E. Williams

A. The 13th.

Q. Now, the 11th of May of 1966 is what you are talking about, isn't it?

A. Yes, sir.

Q. The 11th of May was a Wednesday and the 13th of May of '66 was a Friday?

Dep. 11/8/67 page 9

A. Yes, sir.

Q. What did you do after you got off of work on the 11th? Where did you go?

A. We went back to our room and we went to eat supper.

Q. Where was your room?

A. In Covington.

Q. Then where did you go after supper? Did you stay out that night?

A. No, we stayed at the house.

Q. Where did you go on the 12th?

A. We stayed at the house.

Q. Why didn't you go back to work?

A. It took us all day long to get cleaned up from the black dust we had on us.

Q. Did you stay at the house all day on the 12th?

A. We went out and eat and got a haircut.

Q. But you were supposed to have reported back to work on the 12th, weren't you?

A. That is the agreement. If you are supposed to go to work you go to work, but I had made up my mind to quit.

Q. What did you do all day of the 12th? You say you just went out to eat and cleaned up. What did you do the night of the 12th?

A. Stayed at the house.

Q. Did you have anything alcoholic to drink?

A. Yes, we did.

Q. That night?

A. We drank a couple of beers.

Dep. 11/8/67 page 10

Q. At the house?

A. At the house. The car wasn't moved.

Q. Did you have any whiskey the night of the 12th?

A. No.

Q. When did you get up the next morning?

A. About 9:00.

Q. Where did you go?

A. I went down and had breakfast.

Q. Did Mr. Motley go with you?

Floyd E. Williams

A. I don't know whether he went down to eat breakfast the same time I did or not.

Q. Did you eat at your rooming house?

A. No, I went down to the restaurant. We only had a room.

Q. What did you do during that day?

A. Come back and started home around noontime.

Q. You were going home?

A. Yes, sir.

Q. Where was home?

A. His home was in Danville and my home was in Reidsville.

Q. You were coming back towards Danville?

A. Yes, sir.

Q. What had you had to drink that morning?

A. Nothing.

Q. When did this accident happen?

A. Friday afternoon.

Dep. Q. At what time?

11/8/67 A. I don't know for sure; it won't late, but it
page 11 } was somewhere around noontime when we stopped in Clifton Forge to have the car serviced. I went to eat lunch, but Mr. Motley never went with me.

Q. Did you have any beer?

A. I drank a beer.

Q. How many beers did you have?

A. I had one—Schlitz.

Q. What time of day did this accident happen, do you know?

A. No, I never had a watch on. It was in the afternoon.

Q. Had the sun gone down, was it daylight or what?

A. It was daylight; the sun was shining.

Q. And you say you ate lunch and had a bottle of Schlitz and then you got in the car and you went to sleep?

A. Yes, sir.

Q. And after you went to sleep, do you remember anything of the accident, the collision?

A. I remember the statement I made to you before. I wasn't too sound asleep—I was dozing—and Mr. Motley made the statement that the other fellow was on the wrong side of the road and it looked like he won't getting over, he ain't getting over.

Q. Did somebody come to see you and talk to you and Mr. Motley—some representative of Mr. Motley's insurance com-

pany? Did he come to see you and talk to you about this matter?

A. Yes, sir.

Q. Do you know when he came to see you?

Dep. 11/8/67 A. Not the exact date. One came to see me in Clifton Forge and one in Richmond.

page 12 } Mr. Land: We want to enter an objection at this time to any reference to an ex-party statement made by the witness and we would ask that if the questioning be continued it be identified as to date, place, time, party taking the statement and we further ask that a copy of the statement be appended to the deposition as an exhibit.

Q. Did the police officer ever come to see you?

A. Yes, sir, the following morning.

Q. He came to see you in the hospital and you remember talking to him?

A. Yes, sir.

Q. Did you tell him at that time that there was another car that had run you off the road?

Mr. Land: We want to object to this testimony as being hearsay. The direct testimony of the police officer, of course, would be evidential at this point.

Q. What did you tell the police officer the next morning?

A. I told him I was not driving, to ask Mr. Motley.

Q. You did not tell him anything about any other car then, did you?

A. I don't remember, because I had a restless night and you have to have consideration for a person being in that condition.

Q. That same morning, was the police officer able to talk to Mr. Motley, do you know?

Dep. 11/8/67 A. I don't know.

page 13 } Mr. Land: Mr. Parker, we have reached an understanding that we are not waiving any of our objections to this testimony, but that you have been kind enough to give us a copy of the purported statement bearing date of May 19, 1966, consisting of two pages, and I ask that you please be good enough to insert your initials on both pages.

Mr. Parker: I have so initialed these. I agree to give you a photostat and to produce the original in court at the trial if you so request.

Floyd E. Williams

Q. While you were in the hospital at Clifton Forge, it is the C & O Hospital, I believe, you have already said you talked to somebody that presented himself as being a representative of the insurance company of Mr. Motley?

A. Yes.

Q. If I told you to call his name, perhaps you might recognize it. Is it E. J. Fraley?

A. I don't remember.

Q. At the time you talked to him you gave him a statement, didn't you?

A. Yes, sir.

* * * * *

Q. and you also gave him permission to obtain medical information in regards to your case?

A. That is right.

Dep. 11/8/67 page 14

Q. That was at the same time you gave that statement, wasn't it?

A. Yes, sir.

Q. And is this a copy of the medical statement which you signed? Is that your signature?

A. That is my name, my handwriting.

Mr. Parker: I offer this as Defendant's Exhibit "1".

Q. At the same time, this gentleman took a statement from you as to your wages and about your injuries and also about how the accident occurred, did he not?

A. Yes, sir.

Q. And you told him that you went to sleep after you left Clifton Forge, didn't you?

A. Yes.

Q. And you were on the front seat?

A. Yes, sir.

Q. And then after you left Clifton Forge again, the sun was shining bright and you went to sleep again, didn't you?

A. I only went to sleep between Clifton Forge and the time we had the accident. I was not asleep when we got to Clifton Forge.

Q. But it was Clifton Forge where you had the beer?

A. Yes, sir.

Q. Now, in your statement to him you said, "I do not remember anything else until I woke up in the C & O Hospital in Clifton Forge, Virginia".

A. What I meant by that was that I never saw anything.

Floyd E. Williams

Q. But you did give him that statement?

Dep. A. I probably did.

11/8/67 Q. And you didn't tell him anything then about
page 15 } you were awakened by somebody exclaiming that "somebody is on my side of the road", did you?

A. I told him I never saw anything.

Q. Did you tell him you never heard anything?

A. No.

Q. You did tell him you didn't remember anything else?

A. All that happened fast and he caught me at a state when I was in misery.

Q. Well, this was the 19th day he came to see you, of May, 1966. When was it that you first talked to Mr. Motley?

A. On Tuesday after the accident happened on Friday. Monday or Tuesday, I believe it was Tuesday.

Q. Well, if Friday was the 13th of May then Tuesday would have been the 17th of May, would it not? Look at the calendar here of May.

A. Yes, it would be the 17th.

Q. I believe I asked you—you said the accident occurred on the 13th and I believe it has been established that this man came to see you on the 19th, which was a Thursday, and I have asked—you talked to this man and gave him a statement and authority to get a report on the 19th, and then I asked you when you first talked to Mr. Clarence Motley, your friend that you were riding with.

A. That was, I believe, on Monday or Tuesday which would make it the 17th of May.

Q. Now, at that time he told you that it was a 1947 or '48 dark colored Chevrolet or Ford that ran him off the road, didn't he?

A. His statement was that he was in the middle

Dep. of the road, the son of a bitch is on my side and he

11/8/67 ain't getting over.

page 16 } Q. All right, and then after that time this gentleman came to see you and you told him about the case but you made no mention of the fact that you heard these words spoken when the accident occurred, did you?

A. He never asked me what I heard. He asked me did I see it, and I told him no.

Q. You also told him, did you not, that, "I did not remember anything else until I woke up in the C & O Hospital".

A. After the accident, naturally I didn't remember nothing.

Q. Now, in regards to the C & O Hospital, who was the doctor that treated you?

Floyd E. Williams

A. I don't remember his name right off.

Q. Well, let's see if I can refresh your memory on the name of the doctor.

A. There was two doctors there. One walked around and looked and talked and one treated me, but I don't remember neither one of their names.

Q. Dr. Edmonds was in charge of the C & O Hospital, was he not?

A. Edmonds or his father-in-law one. It was a family affair there, I think.

Q. You don't know what time you arrived at the hospital, do you?

A. No, sir.

Q. Now, I am going to ask you if you know your admission history states, "Patient is drunk but conscious"?

Mr. Land: We object strongly to this. We have objected to this entire testimony with reference to the statement as we noted at the very beginning, and we object to any further examination by counsel for the defendant which is based upon heresay or written records.

Dep. 11/8/67 page 17 } Mr. Parker: Well, he has stated that he had had one beer. His condition as far as his ability to remember what has transpired or to remember what somebody has said at the scene as far as *res gestae* is concerned is important, and if he was drunk on admission, then it is important as to his credibility as a witness, so, therefore, we think it is *permissable* to examine him.

Q. What was your answer to the question of whether *of* not you knew that your record showed that you were drunk on admission?

A. I've never been asked that before.

Mr. Land: Mr. Parker, of course we have agreed that each side shall state its objection and that the other shall nevertheless proceed with its testimony in view of the fact that it is too far for all of us to seek a ruling on each point.

Mr. Parker: That's right.

Q. You stated that you were not interested in the outcome of this matter now?

* * * * *

Floyd E. Williams

Dep.
11/8/67
page 18 } Q. But you are still a friend of Mr. Motley's, aren't you?

A. Yes, sir.

Q. And you still work together?

A. Yes, sir.

Q. And he came here with you today? He brought you here today?

A. Yes, sir.

Q. Did you ever talk to the police officer more than once?

A. Once was all.

Q. And you talked to him on the morning after the accident which would have been a Saturday, wouldn't it?

A. Yes, sir.

Mr. Parker: I have no further questions.

Mr. Land: Without waiving our objections in any manner to any testimony concerning the purported statement by Mr. Williams, but in light of the previous statement by me in which Mr. Parker has concurred that it has been agreed that all testimony be received after objection and without admitting in any way that any part of the statement should be admitted as evidence, I now want to ask Mr. Williams a question or two about this purported statement.

RE-DIRECT EXAMINATION

* * * * *

Dep.
11/8/67
page 19 }

* * * * *

A. I had a headache that day with all them stitches in my head.

Q. By the way, what injuries did you have?

A. Head . . .

Q. What was wrong with your head?

A. I received 40 stitches up here.

Q. Is that the upper part of your head and your forehead?

A. Yes.

Q. Did you have a concussion?

A. Not to my knowing.

Floyd E. Williams

Q. Was anything broken in your head or jaw?

A. I've got the report at the house, but I don't remember.

Q. Did you have bones broken throughout your body?

A. Yes, I did. I had a fractured left rib which wasn't determined until I was in the hospital in Richmond.

Q. Did you have bones in your foot broken?

A. Yes.

Q. And your ankle?

A. Yes, sir.

Q. At the time this statement was taken, were you under any kind of sedation or pain killing medicine?

A. They give me some kind of medicine, but I don't know what that was for.

Q. The gentleman that took the statement, did he identify himself to you?

Dep. 11/8/67 page 20 } A. Yes, sir, he said he was an adjuster for the insurance company and he wanted a report.

* * * * *

Q. What was your immediate concern at that time, Mr. Williams?

A. I was wondering if I would ever be able to walk again, because at that time I was in misery. I couldn't hardly stand the pain of a sheet on my feet. My ankles are two different sizes now—the left one and the right one.

Dep. 11/8/67 page 21 } Mr. Land: We have no further questions at this time.

* * * * *

Mr. Land: Mr. Williams, do you authorize the notary to sign your name to this deposition?

A. Yes, sir.

Mr. Parker: Now, I would like to put this on the record that, I guess it would go for you, too, that we observe the right to object to any part or all of the testimony that was taken according to the rules of evidence, if and when the same is presented at court.

Mr. Land: That is the understanding of counsel for both sides

Floyd E. Williams

And further this deponent saith not.

Floyd E. Williams
By Notary

CERTIFICATION

I Mary F. Crawford, a Notary Public in and for the City of Danville, State of Virginia, do hereby certify that the foregoing deposition of Floyd E. Williams was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting by me; that the foregoing deposition of Floyd E. Williams was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting by me; that the foregoing twenty-one pages represent a true and correct transcript of the evidence given by said witness upon said hearing.

Given under my hand this 15th day of November, 1967.

My commission expires April 5, 1971.

Mary F. Crawford, Notary Public

Received under seal by Certified Mail and Filed Nov. 20, 1967

George E. Holt, Jr., Clerk

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

Page

Writ of Error Awarded 1
Record 2
Motion for Judgment 2
Answer of St. Louis Fire and Marine Insurance Company 3
Order—January 23, 1968 4
Verdict of Jury 4, 8, 60
Instructions 5, 57
Order—January 24, 1968 8
Motion to Set Aside Verdict 9
Opinion—Memorandum, February 5, 1968 10
Judgment—February 22, 1968 13
Notice of Appeal and Assignment of Error 14
Witnesses:
  Trooper T. N. Middlecamp 15, 49
  Clarence Dewey Motley 25
  Ed J. Fraley 51
Depositions:
  Floyd E. Williams 63
Stipulation 62
Proceedings 36, 47, 56
Certificate of Notary Public 75