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Clerk, Supreme Court of Appeals

Record No. 7051

In the Supreme Court of Appeals of Virginia at Richmond

JERRY WAYNE BEALE

v.

ELSIE JONES

FROM THE CIRCUIT COURT OF SOUTHAMPTON 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. 7051

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1968.

JERRY WAYNE BEALE, Plaintiff in error,

against

ELSIE JONES, Defendant in error.

From the Circuit Court of Southampton County
George F. Whitley, Jr., Judge

Upon the petition of Jerry Wayne Beale a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Southampton County on the 26th day of February, 1968, in a certain motion for judgment then therein depending, wherein Elsie Jones was plaintiff and the petitioner and another were defendants; 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 $12,000, with condition as the law directs.

RECORD

* * * * *

page 15 } INSTRUCTION NO. 1

The Court instructs the jury that the plaintiff, Elsie Jones, was not guilty of any negligence.

2-9-68
Granted
G. F. W., Jr.

page 16 } INSTRUCTION NO. 2

The term "preponderance of the evidence" does not necessarily mean the greater number of witnesses but means the greater weight of all the evidence. It is that evidence which is most convincing and satisfactory to the minds of the jury. The testimony of one witness in whom the jury has confidence may constitute a preponderance.

The Court instructs the jury that the jury are the sole judges of the weight of the evidence and of the credibility of the witnesses, and the jury has the right to discard or accept the testimony or any part thereof of any witness which the jury regards proper to discard or accept, when considered in connection with the whole evidence in the case, but the jury has no right arbitrarily to disregard the credible testimony of a witness. And in ascertaining the preponderance of the evidence and the credibility of witnesses, the jury may take into consideration the demeanor of the witness on the witness stand; his apparent candor or fairness; his bias, if any; his intelligence; his interest, or lack of it, in the outcome of the case; his opportunity, or lack of it, for knowing the truth and for having observed the facts to which he testifies; any prior inconsistent statements by the witness if proven by the evidence; and from all these and taking into consideration all the facts and circumstances of the case, the jury are to determine the credibility of the witnesses and the preponderance of the evidence.

2-9-68
Granted
G. F. W., Jr.

page 17 } INSTRUCTION NO. 3

"Reasonable care" or "Ordinary care" is a relative term, and varies with the nature and character of the situation to which it is applied. The amount or degree of diligence and caution which is necessary to constitute reasonable or ordinary care depends upon the circumstances and the particular surroundings of each specific case. The test is that degree of care which an ordinarily prudent person would exercise under the same or similar circumstances to avoid injury to another.

The "proximate cause" of an event is a cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the event, and without which the event would not have occurred. It is an act or omission which immediately causes or fails to prevent the event; an act or omission occurring or concurring with another act, without which the event would not have occurred, notwithstanding such other act; provided such event could reasonably have been anticipated by a prudent man in the light of attendant circumstances.

2-9-68
Granted
G.F.W., Jr.

page 18 } INSTRUCTION NO. 4

The Court instructs the jury that in operating his vehicle Archie Jones had the right to assume and to act upon the assumption until the contrary appeared, or in the exercise of reasonable care should have appeared, that the defendant, Stecker, in operating his vehicle would operate same within the lawful speed limit and would keep his vehicle under proper control.

2-9-68
Granted
G.F.W., Jr.

page 19 } INSTRUCTION NO. 5

The Court instructs the jury that where separate and independent acts of negligence combine together to cause an injury to a third person, the third person may recover from either or all. And in determining the liability of either of two

or more persons whose concurrent negligence is the proximate cause of an injury, the comparative degrees of their respective negligence are not to be considered, each being liable for the whole even though the negligence of the other contributed in a greater degree to cause the injury.

And if you believe from a preponderance of the evidence that each defendant, Stecker and Beale, was negligent and that the negligence of each concurred and was a proximate cause or a proximate contributing cause of the collision, then you shall return your verdict in favor of the plaintiff, Elsie Jones, against both the defendants, Stecker and Beale.

2-9-68
Granted
G.F.W., Jr.

page 20 } INSTRUCTION NO. 6

The maximum speed limit at the time and place of the accident involved herein was 35 miles per hour and if you believe from a preponderance of the evidence that the defendant, Beale, and the defendant, Stecker were each driving their respective automobiles in excess of this limit, then the defendant, Stecker, and the defendant, Beale, were both guilty of negligence. And if you further believe from such evidence that the negligence of each defendant was a proximate cause of the collision or proximately contributed to cause the collision, then you shall find your verdict in favor of the plaintiff, Elsie Jones, against both the defendants, Beale and Stecker.

2-9-68
Granted
G.F.W., Jr.

page 21 } INSTRUCTION NO. 7

It was the duty of the defendant, Beale, and the defendant, Stecker, in the operation of their motor vehicles:

1. To keep a proper lookout;
2. To keep their vehicles under proper control;
3. To operate their vehicles at a reasonable speed under the circumstances and traffic conditions then and there existing regardless of any posted speed limit.

And if you believe from a preponderance of the evidence that the defendant, Beale, and the defendant, Stecker, failed to exercise ordinary care in the performance of any one or more of the foregoing duties, then both were negligent, and if you further believe from such evidence that such negligence of each defendant was a proximate cause of the collision or proximately contributed to cause the collision, then you shall find your verdict in favor of the plaintiff, Elsie Jones, against both the defendants, Beale and Stecker.

2-9-68
Granted
G.F.W., Jr.

page 22 } INSTRUCTION NO. 8

It was the duty of the defendant, Beale, to exercise reasonable care not to follow the vehicle operated by the defendant, Stecker, more closely than was reasonable or prudent, having due regard to the speed of both vehicles and the traffic upon, and conditions of, the highway at the time and place of the accident.

And if you believe from the evidence that the defendant, Beale, violated the foregoing duty, then he was negligent, and if you further believe that such negligence was a proximate cause or proximately contributed to cause the collision, then you shall return your verdict in favor of the plaintiff, Elsie Jones, and against the defendant, Beale.

If you further believe from the evidence and the other instructions of the Court that the defendant, Stecker, was negligent and that such negligence was a proximate cause or proximately contributed to cause such accident, then you shall find your verdict in favor of the plaintiff against both defendants, Beale and Stecker.

2-9-68
Granted
G.F.W., Jr.

page 23 } INSTRUCTION NO. 9

The Court instructs the jury that as a matter of law a vehicle travelling at the following miles per hour travels the following feet per second:

Miles per Hour	*Feet per Second*
35	51.3
40	58.7
45	66
50	73.3
55	80.7
60	88

2-9-68
Granted
G.F.W., Jr.

page 24 } INSTRUCTION NO. 10

If from the evidence and the other instructions of the Court you find your verdict in favor of the plaintiff, then in assessing the damages to which Elsie Jones is entitled you may take into consideration any of the following which you believe from the evidence to have resulted from the collision:

1. Any bodily injuries sustained and the extent and duration thereof;
2. Any effect of any such injuries upon her health according to its degree and probable duration;
3. Any physical pain and mental anguish suffered by her in the past, and any which may be reasonably expected to be suffered by her in the future;
4. Any deformity associated with the injury;
5. Any doctors, hospital, and medical expenses incurred in the past and any that may reasonably be expected to occur in the future;
6. Any loss of earnings in the past by reason of being unable to work at her calling;
7. Any loss of earnings or lessening of earning capacity she may reasonably be expected to sustain in the future by reason of any injury sustained;

and from these as proven by the evidence your verdict should be for such sum as will fully and fairly compensate Elsie Jones for the damages sustained by her as a result of the collision, not to exceed the amount sued for in the Motion for Judgment.

2-9-68
Granted
G.F.W., Jr.

page 25 } INSTRUCTION NO. 11

Damages are not presumed nor may they be used or based upon speculation, but must be proven; and the burden is upon the plaintiff to prove by a preponderance of the evidence each item and element of damage claimed, and unless such item or element is proven by a preponderance of the evidence, then the plaintiff cannot recover for such item.

And if the jury are uncertain as to whether any particular item of damage claimed was caused by the accident, or if it appears just as probable that any injury or element of damage complained of resulted from a cause other than the accident as that it did, then the plaintiff cannot recover for such injury or element of damage.

2-9-68
Granted
G.F.W., Jr.

page 26 } INSTRUCTION NO. 12

The burden is upon the plaintiff not only to prove by a preponderance of the evidence that the defendant, Harlen Stecker, was negligent, but also to prove by a preponderance of the evidence that any such negligence was a proximate cause of the occurrence complained of; that is, that the occurrence was a natural and probable consequence of any such negligence. Therefore, even though you may believe from a preponderance of the evidence that the defendant Harlen Stecker, was negligent; yet, unless you further believe from a preponderance of the evidence that any such negligence was a proximate cause of the occurrence, you must find your verdict in favor of the defendant, Harlen Stecker.

2-9-68
Granted
G.F.W., Jr.

page 27 } INSTRUCTION NO. 13

The Court instructs the jury that the driver of a vehicle in an intersection and turning therein to the left across the line of traffic of vehicles within or approaching the intersection shall exercise reasonable care to see that such turn may be made in safety. Therefore, if you find from a *preponderence* of the evidence that the operator of the vehicle in

which the plaintiff was a passenger undertook without using reasonable care to turn left across the line of travel of the defendant Stecker when Stecker was approaching the vehicle in which the plaintiff was a passenger, the plaintiff's operator was negligent.

If you further find from a *preponderence* of the evidence that such negligence, if any, of the plaintiff's operator was the sole proximate cause of the collision between the two cars, then the plaintiff cannot recover against either of the defendants.

2-9-68
Granted
G.F.W., Jr.

page 28 } INSTRUCTION NO. 14

The Court instructs the jury that even though you believe that Archie Jones was negligent in some particular and that this negligence was a proximate cause of the accident this would not bar a recovery by the plaintiff, Elsie Jones, unless you believe that such negligence was the sole proximate cause of the accident.

2-9-68
Granted
G.F.W., Jr.

page 29 } INSTRUCTION NO. 15

The fact that there has been an accident and that as a result thereof Elsie Jones has been injured does not of itself entitle Elsie Jones to recover against Jerry Wayne Beale. In order to recover against Jerry Wayne Beale the burden is upon Elsie Jones to prove by a preponderance of the evidence that Jerry Wayne Beale was negligent and that any such negligence was a proximate cause of the collision.

And if the jury is uncertain as to whether any such negligence has been proven by a preponderance of the evidence or if you believe that it is just as probable that Jerry Wayne Beale was not guilty of any such negligence which was a proximate cause of the collision as it is that he was, then you shall return your verdict in favor of Jerry Wayne Beale on the claim of Elsie Jones against Jerry Wayne Beale.

2-9-68
Granted
G.F.W., Jr.

page 30 } INSTRUCTION NO. 8a

The Court instructs the jury that if you believe by a preponderance of the evidence that the defendants, Stecker and Beale, were engaged in a race at the time of the collision, then both Stecker and Beale are guilty of negligence even though you further believe that only one of the defendants' automobiles struck the automobile in which the plaintiff was riding.

And if you further believe from the evidence that the negligence of each defendant was a proximate cause or proximately contributed to cause the accident, then your verdict shall be in favor of the plaintiff against both the defendants, Beale and Stecker.

2-9-68
Refused
G.F.W., Jr.

page 31 } INSTRUCTION NO. 14a

The Court instructs the jury that Jerry Wayne Beale was not guilty of any negligence which was a proximate cause of the injuries and damages of which the plaintiff, Elsie Jones, complains.

2-9-68
Refused
G.F.W., Jr.

page 32 } INSTRUCTION NO. 14b

The Court instructs the jury that if you believe from the evidence that the automobile driven by Harlen Lee Stecker collided with the automobile driven by Archie Jones and that thereafter the automobile driven by Jerry Wayne Beale collided with the Harlen Lee Stecker automobile but that the Harlen Lee Stecker automobile was not thereby caused to collide with the Archie Jones automobile again, then you shall return your verdict in favor of the defendant, Jerry Wayne Beale.

2-9-68
Refused
G.F.W., Jr.

page 33 }

Virginia: In the Circuit Court of Southampton County, the 26th day of February, 1968.

* * * * *

This day came the Plaintiff and Jerry Wayne Beale, by counsel. Whereupon the motion to set aside the verdict of the jury as to Jerry Wayne Beale, set forth in the order entered February 9th, 1968, was argued, and having maturely considered the same, the Court is of the opinion to, and doth overrule said motion, and sustains the verdict of the jury, and doth render judgment that the plaintiff recover of Jerry Wayne Beale and Harlen Lee Stecker, the sum of $10,500.00 with interest thereon from the 9th day of February, 1968, until paid, and the costs of this proceeding, to all of which counsel for Jerry Wayne Beale duly excepted. And counsel for Jerry Wayne Beale having indicated his intention to prosecute an appeal to the Supreme Court of Appeals of Virginia, it is ordered that execution upon the said judgment as to Jerry Wayne Beale not issue until the expiration of 60 days. And neither party requiring bond for suspension, no bond is required.

* * * * *

page 34 } ASSIGNMENT OF ERRORS

* * * * *

The defendant Jerry Wayne Beale hereby files this his Assignment of Errors:

(1) The Court erred in refusing the motion of the defendant Jerry Wayne Beale to strike the plaintiff's evidence as to the defendant Jerry Wayne Beale and to enter up summary judgment for the defendant Jerry Wayne Beale, which motion was made at the conclusion of the plaintiff's evidence and at the conclusion of all the evidence.

(2) The Court erred in granting any instructions on behalf of the plaintiff insofar as they submitted to the jury the ques-

tion of any negligence on the part of the defendant Jerry Wayne Beale being a proximate cause of the injuries sustained by the plaintiff.

page 35 } (3) The Court erred in refusing to grant Instruction 14A and Instruction 14B offered by the defendant Jerry Wayne Beale.

(4) The Court erred in refusing to set aside the verdict of the jury in favor of the plaintiff against the defendant Jerry Wayne Beale.

(5) The Court erred in entering up final judgment for the plaintiff against the defendant Jerry Wayne Beale.

You are further requested to promptly make up the record in this cause in accordance with Part 5, Paragraph 5, of the Rules of the Supreme Court of Appeals of Virginia.

Respectfully,

JERRY WAYNE BEALE,

By J. Samuel Glasscock
Counsel

* * * * *

Received and filed, this the 17th day of April, 1968.

B. A. Williams, Jr., Clerk

* * * * *

page 2 }

* * * * *

Stenographic transcript of the testimony introduced and the proceedings had upon the trial of the above-entitled case in said Court on February 9, 1968 at 10:00 o'clock a. m., before the Honorable George F. Whitley, Jr., and Jury.

APPEARANCES: Messrs. Parker & Clark, by Mr. F. E. Clark, and,
Messrs. Breeden, Howard & MacMillan, by Mr. William E. Baggs, appearing on behalf of the plaintiff.

Trooper B. G. Bell

Mr. William J. Rhodes, Jr., appearing on behalf of the defendant, Harlen Lee Stecker.

Messrs. Godwin & Glasscock, by Mr. J. S. Glasscock, appearing on behalf of the defendant, Jerry Wayne Beale.

* * * * *

page 4 }

* * * * *

TROOPER B. G. BELL, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

page 5 } DIRECT EXAMINATION

By Mr. Baggs:

* * * * *

Q. When did you arrive at the scene?

A. This accident occurred on the 3rd of July, 1966 at approximately 11:30 p. m. And sometime after that hour I arrived there. Exactly how long I couldn't tell you, but I would say within a half-hour of that time.

Q. Had any of the vehicles been moved by the time you had gotten there?

A. No, sir.

Q. Have you prepared a diagram?

A. Yes, sir.

Q. Would you mind getting it out and stepping over here to the Jury?

page 6 } Would you first—what route is this?

A. Route 58.

Q. And which way is Franklin?

A. Franklin is back this way (witness indicating) and this is heading east on 58. This is the road that goes over to the office building of Union Bag-Camp. This is the Union Bag-Camp lumber shed and this is the small parking lot at the end of the lumber shed.

Trooper B. G. Bell

Q. How many lanes wide is the road down here? (Indicating.)

A. The road is four lanes wide—correction, west of this intersection it narrows to two lanes as it proceeds on east.

Q. Officer, let me show you Plaintiff's Exhibit Number 1. Are you familiar with that?

A. Yes, sir.

Q. All right, would you explain to the Jury what that depicts?

A. This picture was taken apparently looking east and looking straight down these two lanes of traffic. In other words, this "Through Only" is the lane that the Number One vehicle was shown in the diagram, and the "Only Turn Right" is the uppermost lane on the diagram, as you look east.

Q. Who was in the Number One vehicle?

A. That was the Jones vehicle.

page 7 } Q. That was being driven by whom?

A. Archie Jones.

Q. Would you explain the signal lights here—what does this light here (indicating) that has "Only Turn Right?"

A. That particular light is to control the traffic in the eastbound lane, right turn traffic going over to the Union Camp office building.

Q. I see. And the other lane which is marked "Only Through?"

A. That controls left turn traffic off Route 58 into what is known as Lear Place.

It controls the left turn traffic and through traffic on Route 58.

Q. I see. And as you are heading—which direction would be heading west on your diagram? Would you be going this way? (Indicating.)

A. Yes, sir, to my left.

Q. What is this area right here with the hash-marks? (Indicating.)

A. That is the median strip marked on the pavement. The road is actually wide enough for more lanes, but has only two lanes of traffic, one eastbound traffic and one westbound.

Q. This drawing is not drawn to scale?

page 8 } A. No, sir, it is not.

Q. What have you indicated by this mark here? (Indicating.)

A. These are traffic signals.

Trooper B. G. Bell

Q. Would this be the first traffic signal coming from Suffolk?

A. Yes, sir, it would.

Q. Let me show you Plaintiff's Exhibit Number 2. Would you explain to the Jury what this is?

A. This is a picture taken on the east side of the intersection of Route 58—let me rephrase that—it is a picture taken from the east side of the intersection on Route 58 looking west. It is taken from this direction looking back this direction. (Witness indicating.)

Q. Could you tell me, is it level, the road, say, from this first stop light as you are coming from Suffolk and heading towards Franklin? Is the road level there or is there a grade?

A. It is primarily level. In other words, it is possibly a slight downgrade, but primarily it would be considered level.

Q. And let me show you, finally, Plaintiff's Exhibit Number 3. Would you explain to the Jury where that is?

A. This is a picture taken from approximately
page 9 } this point on the diagram (indicating), looking
back in an easterly direction toward Suffolk or Carrsville.

Q. I see. And could you identify this object right here, Trooper? (Indicating.)

A. That is the bridge over the N. F. & D. underpass just east of the Union Camp intersection.

Q. All right. In relation to this underpass or railroad overpass, where is Gray's Texaco Station, in which direction?

A. If I may use this point rather than the bridge, Gray's Texaco is located six-tenths of a mile from this intersection in an easterly direction. (Witness indicating.)

Q. In other words, back down through the underpass?

A. Yes, sir.

Q. Were you familiar with Walters Road?

A. Yes, sir.

Q. How far is that from this intersection?

A. One and two-tenths miles.

Q. One and two-tenths and Gray's is six-tenths?

A. Yes, sir.

Q. Officer, what is the speed limit at this particular intersection?

A. Thirty-five miles an hour.

Trooper B. G. Bell

Q. How far, as you are coming from Suffolk, is
page 10 } this speed limit of 35?

A. This 35-mile-an-hour speed limit is posted just east of the underpass.

Q. On the other side of the underpass as you are coming towards the intersection?

A. Yes.

Q. Norfleet's Grocery, is the sign placed near there?

A. Yes, sir, Norfleet's Grocery, I would say, is approximately 150 feet east of the underpass and this speed limit sign is just east of that, approximately 100 feet.

Q. Where is this grocery in relation to Gray's Texaco? About how far would you say?

A. Maybe a third of the way from this point to Gray's Texaco or two-tenths of a mile from this point towards it. (Indicating.)

Q. I am sorry, Officer, from Gray's Texaco to the grocery is how far?

A. Four-tenths of a mile, six-tenths from this point to Norfleet's Grocery (witness indicating.) and four-tenths to the Texaco Station.

Q. Now, Officer, when you arrived at the scene where were the automobiles? Refer to them by name and number so the Jury might know.

A. The Jones vehicle in this diagram shown as
page 11 } Vehicle Number One, the Stecker vehicle as Vehicle Number Two and the Beale vehicle as Vehicle Number Three. And they were located in this, this and this position (witness indicating) when I arrived at the scene.

Q. How far was the Beale vehicle from this intersection, would you say?

A. The Beale vehicle was, I don't have the exact measurements, but some two to three hundred feet from this intersection, back towards Franklin. (Witness indicating.)

Q. All right, let me show you Plaintiff's Exhibit Number 1. Could you show the Jury where the Jones car was, approximately, on that?

A. This picture doesn't clearly show the road identified in the diagram as Lear Place. But you will see there these markers on this photograph, Lear Place turns to your left off of Route 58, in this direction. (Witness indicating.)

Actually I believe from the diagram it is plainer that the

Trooper B. G. Bell

Jones vehicle was just about in this location. (Witness indicating.)

Q. And how close was the Stecker vehicle to the Jones vehicle?

A. The Stecker vehicle was back in the westbound lane, in the right-hand westbound lane of Route 58 as shown in the diagram.

page 12 } Q. Do you recall how far the Stecker vehicle was from the Jones vehicle, the closest point?

A. No, sir, I don't recall the distance, only a short distance.

Q. Officer, going back to your diagram now, in which direction was the Jones vehicle going and what was he doing?

A. The Jones vehicle prior to the accident had been headed in an easterly direction on Route 58 and it made a left turn heading into the street identified as Lear Place.

Q. And where was the Stecker vehicle and Beale vehicle?

A. The Stecker and Beale vehicles were headed west on Route 58 driving one behind the other prior to the accident.

Q. I see. And were you able to determine the approximate points of impact in the road?

A. Yes, sir.

Q. What made you think that this was the point of impact?

A. General area of debris.

Q. Where would that be?

A. Approximately under this signal light. (Witness indicating.)

page 13 } Q. So you have signal lights at this intersection and you have another signal light here? (Indicating.)

A. Yes, sir.

Q. And another here? (Indicating.)

A. Yes, sir.

Q. These two control westbound traffic?

A. Yes, sir.

Q. I see. Did you, after the accident, have occasion to speak to Stecker?

A. Yes, sir.

Q. Did you ask him what his speed was?

A. Yes, sir.

Q. What did he say it was?

A. Mr. Stecker stated that his speed was approximately 50 miles an hour.

Q. And what is the speed limit?

Trooper B. G. Bell

A. Thirty-five, sir.

Q. Did you question Beale as to what his speed was?

A. Yes, sir.

Q. What did he say his speed was?

A. About 60 miles an hour.

Q. Did you question either of them as to the distance between the cars as they were going through inter-

page 14 } section?

A. I questioned Beale as to his distance from the Stecker vehicle.

Q. What was his statement to you?

A. That he was following about two car lengths behind the Stecker vehicle.

Q. Now, Trooper Bell, did you have occasion to notice the condition of Stecker after the accident?

A. As well as I remember I talked to Mr. Stecker at the hospital. His condition, of course, he was injured somewhat, and his condition at this late date after the accident I would be afraid to say what it was.

Q. Did you smell any alcohol on his breath?

A. I don't remember whether I did or not, sir.

Q. Did you talk to Beale?

A. Yes, sir.

Q. What was his condition, physical condition?

A. It was very noticeable that Mr. Beale had been drinking. There was a strong odor of alcohol on his breath. His speech was somewhat impaired normally, but even that night more so.

Q. In other words, you had heard him speak normally and this night it was what?

A. Rather incoherent.

Q. I see. Did you observe his physical movements?

A. Yes, sir.

page 15 } Q. And how were they?

A. They weren't too far from normal, I would think—possibly somewhat.

Q. Some staggering?

A. Unsteady, but not to the extent that you would say he was actually staggering.

Q. What was his manner after the accident?

A. To me rather normal. However, I didn't feel that he was such that I could tell him to go home. I tried to get in touch with his parents and later got in touch with his grand-

parents and he was rather belligerent to them when they arrived and rather unruly.

Q. Officer, have you stepped off any distance from this intersection to what we call the first light as you come from Suffolk?

A. Yes, sir.

Q. What is that distance?

A. One hundred sixteen of my steps from this point to these lights. (Witness indicating.)

Mr. Glasscock: Could we get for the record what that point is?

The Witness: That is the crosswalk just west of the stop light at which the accident occurred. And from that point to the first stop light coming from the east.

page 16 } By Mr. Baggs:

Q. Now, Officer, did you inspect the scene for skid marks?

A. Yes, sir.

Q. What did you find, if anything?

A. There were some skid marks there but due to the position of the vehicles and debris and what-not, it was not discernible exactly which vehicle made which skid marks.

Q. Officer, did you find any skid marks between the first light as you come from Suffolk or the east and this second light here? (Indicating.)

A. No, sir.

Q. Just by pointing out to the Gentlemen of the Jury, whereabouts in the diagram did you find them?

A. The skid marks were in this general vicinity. (Witness indicating.)

Q. In the intersection?

A. Just prior to where the impact took place.

Q. And what was the damage done to the Jones vehicle?

A. The Jones vehicle was damaged on the right side, in the area of the right front door most severely damaged.

Q. Where was the damage to the Stecker vehicle?

A. The Stecker vehicle was damaged to the front mostly, with some damage extending down the right side

page 17 } and some damage to the right rear.

Q. And did you notice the damage on the Beale vehicle?

Trooper B. G. Bell

A. Yes, sir, the Beale vehicle was damaged slightly to the right front and down the right side.

Q. Officer, do you recall if any of the tires blew out on the Beale vehicle?

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

Q. Did you observe the plaintiff, Elsie Jones, at the scene at all?

A. I don't remember. I believe—I don't believe I did.

Q. Officer, as you are coming from the east in the direction that Stecker and Beale were coming and say you were at the railroad underpass, can you see all the way through this intersection, say, to where the Jones vehicle was?

A. No, sir.

Q. When you are coming from the east when are you first able to see the entire intersection?

A. I would think that—of course, this is entirely an estimate—but possibly 150 feet to 200 feet prior to this stop light, then you can see this intersection. (Indicating.)

Q. And what was the condition of the road on this particular night?

page 18 } A. The road was dry, if that answers your question.

Q. Yes.

Mr. Baggs: I think—let me check my notes.

By Mr. Baggs:

Q. Officer, on this particular night did you notice any loose debris or dirt or gravel at this particular intersection?

A. Now, I am not quite clear on your question. Do you mean debris that would have been there prior to the accident?

Q. Just road debris, not from the accident.

A. Not sufficient amount so it would have contributed to the accident.

Q. Officer, is there any difference between, in your mind, the difference between brake and skid marks? I ask you—perhaps if I rephrased the question—were there any skid marks? I mean, was there any evidence that brakes had been applied?

A. I am not in a position to say that the brake marks were not discernible, as to which vehicle made which. And I make no reference in my notes as to skid marks. And from memory, I wouldn't say whether they were made by brakes being ap-

plied or by movement of the automobile other than
page 19 } brakes being applied.

Q. But they were in the intersection area there?

A. Near the accident.

Q. Did you measure any of these marks?

A. I did, but I don't have the distances now.

Q. Did Beale make any statement to you as to what he had to drink?

A. Yes, sir.

Q. What did he tell you?

A. Mr. Beale stated that he had drank about six beers since 7:00 o'clock while riding around and that he had one 50-cent shot of whiskey at about 9:30.

Q. Did Stecker make any comment as to what he had to drink?

A. Yes, sir, he had two cans of beer at approximately 10:30.

Q. Officer, when you investigate an accident is there any place in your notes that you could indicate what their condition is after the accident?

A. Yes, sir.

Q. Would you look at your notes to see what you indicated for Stecker?

A. I don't have a condition indicated for Stecker in my notes.

Mr. Baggs: I see. Thank you very much.
page 20 } Your Honor, I meant to introduce these.

The Court: Yes. I understood that you had introduced the drawing of Trooper Bell's which was received without objection as Plaintiff's Exhibit 1 and then two photographs; is that right?

Mr. Glasscock: Yes, sir, with the stipulation that the diagram is not to scale and of course it does show the location of the vehicles after he was there. But he would not know before. Based upon his statement.

The Court: That is right, that the Trooper stated that the drawing was not to scale, and the photographs are received as Plaintiff's Exhibits 2 and 3.

(Whereupon, the foregoing diagram and photographs were marked for identification and received in evidence as Plaintiff's Exhibits Numbers 1, 2 and 3, respectively.)

Trooper B. G. Bell

By Mr. Baggs:

Q. Let me show you Plaintiff's Exhibit Number 5 and introduce that into evidence and ask you if you know what that is.

A. Yes, sir, that is a picture of the Jones vehicle.

Q. And will you look at that and identify that
page 21 } picture?

The Court: The picture of the Jones vehicle has already been received in evidence as Plaintiff's Exhibit 4.

Mr. Baggs: I am sorry, Plaintiff's Exhibit 4, which I now show the officer and introduce into evidence, as Plaintiff's 4.

The Court: The Stecker vehicle will be received in evidence as Plaintiff's Exhibit 4 and the Beale vehicle as Plaintiff's Exhibit Number 5.

(Whereupon, the foregoing photographs were marked for identification and received in evidence as Plaintiff's Exhibits Numbers 4 and 5.)

Mr. Clark: Let's go through it. Let the officer identify.

By Mr. Baggs:

Q. Officer, for the record, Plaintiff's Exhibit Number 1—

A. Is a picture taken looking east on Route 58 from the eastbound lanes just east of the intersection in *auestion.*

Q. And would this depict the place where Jones was making his left turn?

A. Yes, sir.

page 22 } Q. Let me show you Plaintiff's Exhibit Number 2 and ask you what that is.

A. This is a picture taken looking west on Route 58.

Q. And as you look at the picture in what direction would the Stecker and Beale vehicles have been traveling, away from you?

A. Away from me, yes.

Q. In which lane, as you look at this picture?

A. In the right-hand-most lane.

Q. It would be marked "Through?"

A. Yes, sir.

Q. Would you look at Plaintiff's Exhibit Number 3 which I introduced?

A. This is the photograph taken from the south shoulder of Route 58 looking in an easterly direction away from the scene of the accident.

Mr. Baggs: I see, thank you.

The Court: What we have here are four exhibits—

Mr. Baggs: Five, actually, your Honor.

The Court: One Exhibit "A" is the drawing of the scene. It is stipulated, but it is not drawn to scale.

And then there are four photographs which page 23 } were received as Plaintiff's Exhibits 1, 2, 3 and 4.

Mr. Baggs: Five.

The Court: Five.

Mr. Clark: Three large pictures and two small pictures.

The Court: All right.

By Mr. Baggs:

Q. Officer, on the measurements that you stated to the Jury as the distance beyond the first stop light that you could see, in other words, you stated that you stepped off the distance from the intersection where the accident happened to the first stop light?

A. Yes, sir.

Q. I think that was 116 steps?

A. Yes, sir.

Q. Did you step off any distance beyond that light?

A. No, sir.

Mr. Baggs: I see. Thank you.

The Court: Are you through with him, Mr. Baggs?

Mr. Baggs: Yes, your Honor.

The Court: All right, you gentlemen may cross-examine.

page 24 } CROSS-EXAMINATION

By Mr. Rhodes:

Q. Officer Bell, did I understand you correctly to say that the point of impact did take place in the westbound lane?

A. Yes, sir.

Q. In what lane of traffic was Mr. Stecker driving?

A. In the westbound lane, sir.

Q. All right, sir, according to the exhibits introduced by the plaintiff, the photos looking east, this is the photograph looking east toward the church and toward Suffolk, is that not correct, sir?

A. Yes, sir.

Q. What would be the distance from the intersection at

this point where the Jones vehicle was to the church, sir, approximately?

A. Actually to the church?

Q. Yes, sir.

Mr. Clark: What was that question, Mr. Rhodes?

By Mr. Rhodes:

Q. The question was, what is the approximate distance from the intersection where the vehicles had the impact to the church itself, looking east?

page 25

A. I would assume that it is approximately 175 steps.

Q. All right, those 175 steps you would multiply by three?

A. Yes, sir, it could be a little more.

Q. Is visibility good looking in that direction there, those 175 steps?

A. Yes, sir.

Q. Visibility would be clear?

A. Yes, sir.

Q. Was the visibility clear on the night and on the occasion that you went there, sir?

A. Yes, sir.

Q. Do you know the width of the lanes at the point of the impact, the westbound lanes?

A. The road is approximately 50 feet wide, that is the pavement portion including the concrete gutters. This would make it approximately twelve and a half foot lanes.

Q. For westbound lanes?

A. Yes, sir, this is along that four-lane section that I am speaking of.

Q. Now, when does the 50-mile-per-hour zone change to a 35-mile-per-hour zone after you leave the Texaco Station heading west?

page 26

A. As an estimate I would say approximately three or four-tenths of a mile from the station.

Q. Could you use any landmarks to show where the 35-mile zone would be?

A. Just east of Norfleet's Grocery, I think is correct.

Q. Did you interview Mr. Stecker at the accident scene?

A. I don't recall, but I think I talked to him at the hospital and not at the accident scene.

Q. What kind of condition did you find him in at the hospital, sir?

Trooper B. G. Bell

A. He was injured. I don't recall exactly how serious or to what extent, sir.

Q. Did you see any blood on him when you went to the hospital?

A. I don't recall, sir.

Q. Do you know whether he was treated by Dr. Hirsch at the hospital that night?

A. No, sir, I don't.

Q. Did your investigation reflect whether he was unconscious after the accident?

A. I don't recall, sir.

page 27 } Q. Do you know whether he was taken to the hospital from the scene in an ambulance or not, sir?

A. No, sir.

Q. Am I correct in understanding that you stated that the Stecker vehicle was only a short distance from the Jones vehicle after the accident?

A. Yes, sir.

Q. And would you reemphasize for me again, sir, the point of impact as you found it and determined it to be?

A. In the general vicinity of the traffic light on the north side of Route 58. And when I say "north side" I am speaking from the center of the highway, sir, which would have been in the westbound lane of traffic.

Q. Thank you, sir. When you discussed this matter with Mr. Stecker at the hospital and made mention of the fact that he stated to you that he was driving 50 miles per hour—is that correct?

A. Yes, sir.

Q. Do you know what he meant or understood the 50 miles to be prior to reaching the 35-mile zone or after?

A. I couldn't venture to even guess what his intentions were. My questions from force of habit are just prior to the accident.

Q. Do you know, or not know, whether he understood what you were referring to as the speed limit?

page 28 } A. No, I couldn't tell you what he understood. That is his mind, not mine.

Mr. Rhodes: All right, thank you, Mr. Bell.

Trooper B. G. Bell

By Mr. Glasscock:

Q. I show you a photograph marked Defendant's Exhibit Number 1 and ask you, sir, if you will please identify that.

A. This is a picture taken looking in an easterly direction looking from Franklin toward Suffolk, showing Route 58 at the intersection in question.

Q. Would this have been taken in the direction in which the Jones vehicle was traveling?

A. Yes, sir.

Mr. Glasscock: We would like to offer this as Defendant's Exhibit.

The Court: All right, the photograph will be received in evidence as Defendant's Exhibit 1.

(Whereupon, the foregoing photograph was marked for identification and received in evidence as Defendant's Exhibit Number 1.)

By Mr. Glasscock:

Q. I show you another photograph marked Defendant's Exhibit Number 2 and ask you if you will please identify that, sir.

A. That is the Beale vehicle that was involved page 29 } in the accident in question.

Q. Does the damage shown there look like the damage you saw as you viewed the car after the accident?

A. Yes, sir.

Mr. Glasscock: We would like to ask for the introduction of this as Defendant's Exhibit 2.

The Court: The photograph will be received as Defendant's Exhibit Number 2.

(Whereupon, the foregoing photograph was marked for identification and received in evidence as Defendant's Exhibit Number 2.)

By Mr. Glasscock:

Q. Officer Bell, I show you now the photograph previously introduced and marked Plaintiff's Exhibit Number 1. Would you look at that, please, sir? That is also looking in an easterly direction, is it not?

A. Yes, sir.

Trooper B. G. Bell

Q. Just like the picture of the scene we introduced a moment ago as Defendant's Exhibit Number 1?

A. Yes, sir.

Q. And if there were a vehicle in the centermost lane headed in an easterly direction the driver of that vehicle would have a better view of the road up ahead, would he not, than we have in this photograph?

page 30 } Mr. Baggs: Your Honor, I object to that question. I don't think the officer can answer that question.

The Court: I will let him answer it for what it is worth. Overrule the objection.

By Mr. Glasscock:

Q. First of all, Officer Bell, this photograph is taken some distance to the west of that intersection, is it not?

A. Yes, sir.

Q. And it appears to be taken from a point almost at the line dividing the two lanes headed east, does it not?

A. Yes, sir.

Q. And a driver in a vehicle in the center lane headed east would be further down the highway than is shown in this photograph, would he not?

A. Yes, sir.

Q. And a little to the left of this pose from which this photograph was taken?

A. Yes, sir.

Q. Then the driver there would have a better view than what is in this photograph?

A. Than the camera eye would have, yes, sir.

Q. Officer Bell, you talked with all three drivers, did you not?

page 31 } A. Yes, sir.

Q. Would you tell us whether or not either one of these drivers indicated to you that after the Beale car struck the Stecker car the Stecker car was then knocked into the Jones car again?

Mr. Clark: Objection, your Honor, on the grounds that he is asking what all three of the drivers might have said about something which necessarily includes his own client. And anything his own client said at that time would be self-serving. What Mr. Beale might have said would be a self-serving

declaration. I object to it.

The Court: Were they all present at the time? Well, of course, they were questioned.

Mr. Glasscock: They were not all present at the same time, so we will modify the question.

The Court: Yes, sir.

By Mr. Glasscock:

Q. You did talk with Mr. Stecker following the accident?

A. Yes, sir.

Q. Did he say anything to you about his vehicle after it was struck by the Beale car going back again into the Jones car?

page 32 } Mr. Clark: I raise the same objection, as to what Mr. Stecker might say in an attempt on his part to explain his non-guilt, would be a self-serving declaration. If he made an admission against interest, yes, I would be glad to hear it. But if it is a self-serving declaration it would be inadmissible.

The Court: It wouldn't be inadmissible against Beale. We are asking what he said.

Mr. Clark: If it is not a part of the *res gestae*. The officer said he got there how long after the accident, doesn't know how long it was. Unless he made an admission or declaration against interest it is not admissible.

Mr. Glasscock: Your Honor, at this time we simply withdraw the question. We might get it in at a later time.

By Mr. Glasscock:

Q. Officer Bell, you mentioned a moment ago that the distance from the point where the Jones vehicle might have stopped preparing to make its turn to the traffic light closest to the east would be 116 steps?

A. Yes, sir.

Q. You figure steps about three feet?

A. Roughly.

page 33 } Q. So this would have been about three hundred fifty feet?

A. Yes, sir.

Q. How far could a driver seated in his automobile where the Jones vehicle stopped and looking towards the east, how far could he see vehicles coming from the east?

Trooper B. G. Bell

Mr. Baggs: At night, your Honor?

The Witness: This would purely be an opinion of mine. I haven't measured it. If you care for me to answer it that way—

By Mr. Glasscock:

Q. You have indicated 350 feet to the stop light?

A. Yes, sir.

Q. How far beyond that?

A. I would say approximately 150 to 200 feet farther.

Q. So the driver in a vehicle stopped at the stop light where the Jones vehicle was stopped could see from 500 to 550 feet vehicles coming in the opposite direction?

A. Approximately.

Q. You have mentioned that Stecker was operating his vehicle in the westbound lane of travel?

A. Yes, sir.

Q. Was the Beale vehicle also being operated in
page 34 } that lane?

A. Yes, sir.

Q. Then the accident did occur in the westbound lane of travel?

A. Yes, sir.

Mr. Glasscock: That is all, sir.

Mr. Baggs: All right, sir, one or two more questions.

REDIRECT EXAMINATION

By Mr. Baggs:

Q. Could you tell us how far the Jones vehicle would have to travel from where it had stopped to reach the point of impact?

A. I suppose that you mean from the left-hand eastbound lane to the point of impact?

Q. Yes.

A. Approximately 25 or 30 feet, I would say, sir.

Q. In other words, across one lane of travel into the next lane?

A. Into the next lane of travel, yes, sir.

Q. And, Officer, you have investigated a great many accidents; is that right?

A. Quite a few, sir.

Archie Jones

page 35 } Q. How do you phrase the question when you ask somebody about his speed?
A. I ask him about his speed just prior to the accident.
Q. You don't care what his speed is before, farther away?
A. Not primarily involved in the accident, no, sir.

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ARCHIE JONES, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

page 59 } DIRECT EXAMINATION

By Mr. Clark:

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page 60 }

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Q. On the night that the accident happened who was driving the car that you were in?
A. Me.
Q. And where was your wife seated in the car?
A. In the front with me.
Q. Was she on the right-hand side or middle or sitting in your lap?
A. On the right-hand side.

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page 65 }

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Q. What did you do when you got to the traffic light?
A. Before I got to the traffic light I give my signal, which was a left-hand signal, and I pulled up.

Archie Jones

Q. Hold it just a minute, now. How many lanes are there going towards Suffolk at that point, at the end of the lumber shed, one lane or two lanes?

A. It is one lane.

Q. And there was only one lane that goes to Suffolk, is that what you are saying?

A. That is right.

Q. There is not another lane to the right of that lane?

A. Yes, sir, there is another lane going to the right across the overhead bridge.

Q. When you get in the right lane where do you go, or have to go?

A. Over to Union Bag-Camp.

page 66 } Q. Did you intend to go to Union Bag-Camp?

A. No.

Q. Which way did you intend to go when you got past that first traffic light, to the left or right?

A. To the left.

Q. Would it have been necessary for you to make a left turn to go to Viola Merrell's son's home?

A. Yes, sir.

Q. What did you do? You started to tell the Jury, what did you do as you approached—strike that—I believe you testified that you were not in the right lane, you were in the lane next to the right lane?

A. That is right.

Q. Do you recall what kind of marks are in that lane? Is there any lettering in that lane? Come over here a minute.

I hand you Plaintiff's Exhibit 1—turn around that way so you can see the picture. Is that a picture as the intersection looks to you as you drove up to it that night except it was night instead of day?

A. That is right.

Q. Show the Jury what lane you were in as you approached the traffic light.

A. I was in this lane here with "Through" on it. (Witness indicating.)

page 67 } Q. As you came up in this lane which said "Through Only" approximately how fast were you going?

A. Well, I had cut my speed and give my signal and rolled up and stopped.

Q. How far were you from the light when you came to a

stop? Were you right under the light or one, two, three or four car lengths from it?

A. No, I wasn't—I was just about a car length from that light.

Q. You said you had put the signal on before you ever came to a stop?

A. That is right.

Q. Did you actually stop or just go on and make your turn?

A. I stopped.

Q. Was the traffic light green for you or not?

A. It was green.

Q. Well, if the light was green why did you stop?

A. It was two cars—two cars was coming.

Q. Now, will you tell the Jury with relation—will you tell the Jury where these cars were that you saw in relation to the traffic light nearest Suffolk when you first saw them?

A. Well, when I first saw these cars coming they hadn't got to that first stop light, the first traffic light. And

page 68 } I thought they was far enough ahead for me to make my turn and get out of the way before they got there.

Q. You saw them, then, before they ever got to the first traffic light, the one nearest Suffolk?

A. That is right.

Q. Can you give the Jury any idea how far they were past that traffic light when you first saw them? Can you point anything out in the Courtroom or outside of the Courtroom?

A. When I pulled off these cars were under that traffic light, that is when I pulled off.

Q. Now, there are a number of traffic lights there. You say when you pulled off they were at this traffic light. Which traffic light do you mean, the one nearest Suffolk or the one nearest Franklin?

A. The one nearest Suffolk.

Q. As you pulled off did you pull off and go straight down the highway, did you turn to the right or turn to the left?

A. I turned to the left.

Q. What was your signal indicator doing all this time, was that on or not?

A. That was on.

Q. What happened after you pulled off and started to make your left turn?

page 69 } A. I pulled off and made—after I pulled off, well, the first thing I knowed I was hit.

Archie Jones

Q. Do you know where your car had gotten to, how far it had moved before it got hit?

A. No, no.

Q. Now, did you see the car that hit you at any time before it hit you other than at the far light? Did you see the other car as it was coming into your car?

A. Yes, it was all, just looked like a flash.

Q. When you saw these other cars approaching you at the traffic light nearest Suffolk which lane of traffic were they in? Were they in their proper lane, were they traveling where they were supposed to be or not?

A. As far as I know they were.

Q. Did you ever see them get out of that lane before they hit you?

A. No.

Q. So then what lane were you in at the time that you got hit? Were you in the other man's lane or were you in the lane that you started out from under the traffic light?

A. Oh, I had got from under it—will you ask that question again?

Q. Let me rephrase it. How many lanes, starting at the traffic light nearest to Franklin—and let's suppose you were going to Franklin and you start out at the traffic

page 70 } light nearest Franklin—how many lanes are there going into Franklin?

A. You mean after you get by the light?

Q. That is right, if you are coming from Suffolk, after you get by all the lights how many lanes going towards Franklin?

A. Four.

Q. Four lanes, two going to Franklin and two coming from Franklin; is that right?

A. Yes.

Q. Opposite which one of these lanes were you when you got hit, the one nearest the shoulder of the road or the one furthest from the road?

A. The one nearest the shoulder of the road.

Q. That shoulder you are talking about is the shoulder that would have been on your left; is that what you are talking about?

A. That is right.

Q. What happened to your car when it was struck, Archie? Did it knock your car anywhere or did it just sit there?

A. Yes, sir, it knocked it a good ways.

Q. Approximately how far did it knock it, can you show the Jury? Could you show the Jury anything in the Courtroom here about how far it knocked it?

page 71 } A. Well, I know at least 10 or 15 feet.

Q. Was that sideways or frontways?

A. Sideways.

Q. What kind of car were you driving that night, Archie?

A. 'Sixty-three Pontiac.

Q. Is that what it looked like after it was hit that night? (Indicating.)

A. That is right.

Q. Did you see the other car after the accident or any of the other cars after the accident? Did you see Mr. Stecker's car after the accident?

A. I saw it out there at Mr. Jack Story's.

Q. Mr. Jack Story is in the wrecker business, isn't he?

A. Yes.

Q. Is that what Mr. Stecker's car looked like after it wrecked? (Indicating.)

A. That is right.

Mr. Clark: Let the record show that the witness was first shown Plaintiff's Exhibit 5 and next shown Plaintiff's Exhibit 4, which shows the Jones vehicle and the Stecker vehicle, respectively.

By Mr. Clark:

page 72 } Q. What part of the Stecker vehicle came in contact with your vehicle, that you know of, Archie?

A. The front of it.

Q. Front of what? The Stecker vehicle?

A. That is right.

Q. What part of your vehicle did it come in contact with?

A. In the side.

Q. Which side, right or left?

A. Right side.

Q. Where was your wife seated—you say in the car on the right side?

A. That is right.

Q. Now, what, if anything, do you recall that your wife was doing as you were slowing down to make your turn, as you started to make your turn what was she doing?

A. I don't know.
Q. Was she telling you how to drive the car?
A. No. sir.

(Whereupon, the preceding question and answer were read by the Reporter.)

Mr. Glasscock: We object to any leading questions.
The Court: All right.
Mr. Clark: I withdraw it.

By Mr. Clark:
page 73 } Q. Was anybody in any manner interfering with you while you were driving the car?
A. No, sir.
Q. Did anybody interfere—who was operating the car?
A. Me.

Mr. Glasscock: Objection, your Honor, still leading.
The Court: Rephrase the question.
The Witness: Me.

By Mr. Clark:
Q. Who was operating the car, Archie?
A. Me.
Q. Did anybody else in that car say anything to you about how to operate it?
A. Didn't have anything to say.

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page 75 }

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Q. Do you recall the white convertible Chevrolet, seeing a white convertible Chevrolet near the scene of the accident that night right after the accident?
page 76 } A. Yes, sir.
Q. Where did that Chevrolet come to rest right after the accident, when the accident was over how far from you was it?

Archie Jones

A. I don't know exactly how many feet it were.

Q. Can you tell the Jury some object that he stopped near or at?

A. I reckon, according to what I can remember about it, it probably was about 10 or 15 feet, I reckon, or probably more.

Q. You are just not certain where that car stopped?

A. That is right.

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CROSS-EXAMINATION

By Mr. Rhodes:

Q. Archie, you have indicated that you saw the cars coming prior to this collision; is that correct?

A. That is right.

Q. I refer you to Plaintiff's Exhibit Number 1, a photograph, and show this to you. Which lane were you in prior to making your turn? You have shown Mr. Clark, just show me.

A. This one that says "Through Only." (Witness indicating.)

Q. Can you see from that point or were you able to see that night the church?

A. Could I see the church?

Q. Yes, sir.

A. I saw that traffic light.

page 79 } Q. You saw the traffic light? Now show me which traffic light you saw, on this diagram, the picture.

Mr. Clark: The witness has testified—the Trooper testified that the photograph was not accurate.

The Court: It shows the traffic light?

Mr. Rhodes: It shows the traffic light. I just want to know which light he is referring to.

The Witness: You ask me which one of these lights did I see?

Archie Jones

By Mr. Rhodes:

Q. Which one of these lights did you see?

A. I saw both of them, both.

Q. Did you see the headlights on the automobiles?

A. Yes.

Q. Where were the vehicles headlights on these cars on this night when you began to make your turn?

A. When I pulled up to this light and stopped these cars was down there at the light coming from Suffolk.

Q. All right, sir.

A. And when I pulled off I thought they was down far enough for me to make my turn without getting hit.

Q. You thought they were down far enough?

A. That is right.

Q. When you last saw them, as I understand, page 80 } they were down here at that light nearest Suffolk, is that right?

A. That is right.

Q. Did you ever look again and see the cars?

A. Yes.

Q. Where were the cars then?

A. They had got—these cars then had got just about at the light.

Q. Which light?

A. The one coming from Suffolk.

Q. Which lane were you in at this time?

A. You mean before I pulled off?

Q. Right, sir.

A. In the lane where it says "Through Only."

Q. Where were you when you last saw the lights of the car, what lane?

A. Ask your question again.

Q. What lane were you in when you last saw the lights of the cars?

Mr. Clark: I don't think the witness understands the question, your Honor.

By Mr. Rhodes:

Q. There are four lanes there, are there not, Archie? Had you left your through lane in which you were sit- page 81 } ting?

A. Yes, I pulled off.

Archie Jones

Q. Where did you go?
A. Started across.
Q. Which lane did you get into then, the first or second lane?
A. The second lane.
Q. Did you see any car lights then?
A. Yes.
Q. How far away were these lights then?
A. After I pulled off and got over to the second lane the first thing I knowed I was hit. And after I got hit that is just about all I know.
Q. Did you ever look when you got into the second lane to see if the cars were coming again?
A. (No audible answer.)
Q. As a matter of fact, Archie, you never looked after you left your through lane again to see where the cars were coming, did you?
A. Yes.
Q. When did you look?
A. I looked before I made my turn, after I stopped.
Q. All right, did you ever look again?
A. Yes, I looked again.
Q. Where were the cars then?
page 82 } A. Just about right down there, just about that light.
Q. As I understand, then, you proceeded across the lane; is that correct, made your left turn? Was this the last time you ever saw the vehicles, the lights from the cars?

Mr. Clark: I don't know what time the attorney is referring to.
Mr. Rhodes: Mr. Clark, from his testimony I don't know myself.
Mr. Clark: I resent that remark. No evidence anybody has told any tales.
The Court: Let Mr. Rhodes clarify his question.
Mr. Clark: These things are not static. You ask a man where a car was some other place.

By Mr. Rhodes:
Q. Did you ever get into any of the opposite lanes from you before you were hit?

Mr. Clark: He testified two or three times that he had pulled across one lane and was in the lane nearest the shoulder when he was struck.

Mr. Rhodes: I want him to answer.

By Mr. Rhodes:

page 83 } Q. Now, Archie, when you got into the lane after executing the left turn, did you ever look again to see the cars coming?

Mr. Clark: Which lane were you referring to?

Mr. Rhodes: The first or the second lane, Mr. Clark.

Mr. Clark: Ask him which one.

By Mr. Rhodes:

Q. The first lane to your left across the median line?

A. I got hit in the second lane.

Q. In the first lane, did you ever see the cars coming, did you look to see the cars coming?

A. I told you yes.

Mr. Rhodes: No further questions.

The Court: All right, how about you?

By Mr. Glasscock:

Q. Yes, one or two. Archie, you say you drove up to the traffic light and stopped; is that correct?

A. Yes, that is correct.

Q. All right, sir, and as you looked down the highway you saw two cars coming towards you?

page 84 } A. That is right.

Q. And you say that they were a little beyond the light which was closest to Suffolk?

A. That is right.

Q. All right, sometime later you began your left turn; is that correct?

A. Yes, that is right.

Q. When you began your left turn where was the car which was approaching you, the closest car approaching you?

A. He got just about through that light.

Q. All right, after you started your turn and the car closest to you was just about at the light closest to Suffolk, did you look at that car any more?

Archie Jones

A. Yes.
Q. Where was that car when you saw it again?
A. Just about at the light as far as I know.
Q. Where were you at that time?
A. When I got hit I was in the second lane.
Q. Where were you when you saw that other car at the traffic light which was closest to Suffolk?
A. You say where was I at?
Q. That is right.
A. I was in my car.
Q. Where was your car?

page 85 } Mr. Glasscock: Gentlemen, will you all look at Page Number 9 of the discovery deposition?

By Mr. Glasscock:
Q. Archie, let me ask you this question: You recall testifying in the Municipal Building in Franklin on February 28th?

Mr. Clark: Wait a minute, let me look at the record. I might object to you even referring to the transcript.
Ask the question, Mr. Glasscock.

By Mr. Glasscock:
Q. Do you recall giving some testimony in this case previously in the Municipal Building in Franklin on February 28, 1967?
A. I do.
Q. Do you recall there making this statement in answer to a question? The question is:

"Question: Well, after beginning your left turn did you notice the other car at all?
"Answer: No, because I just thought that I had time enough to get out of the way, at the distance I saw him."

Do you recall that answer in response to that
page 86 } question?

Mr. Clark: If your Honor please, if this question is being asked for the purpose of impeachment I say it is improper because he has never said here today anything different than this.

Archie Jones

Mr. Glasscock: This problem is, your Honor, we can't get him to say anything.

Mr. Clark: I object to it. If he can demonstrate that this man has said something here today different or in conflict at a previous hearing under oath, all right, then that evidence comes in.

Mr. Glasscock: Let me rephrase the question.

The Court: All right, we have asked him some questions about that. I thought that at one time that he did say he looked again and then one time say he hadn't.

Mr. Glasscock: I think we can get to it very quickly.

Mr. Clark: To speed things up I withdraw the objection, go ahead.

By Mr. Glasscock:

Q. Do you recall making that statement previously and I will read it again to you.

"Question: Well, after beginning your left turn page 87 } did you notice the other car at all?

"Answer: No, because I just thought that I had time enough to get out of the way, at the distance I saw him."

Mr. Clark: What is your question?

By Mr. Glasscock:

Q. My question is, do you recall making that statement?

A. I remember telling you when I pulled up to that red light.

Q. Do you recall making this particular statement?

A. No, I don't.

Q. You don't recall? All right, well, answer this particular question, then: After beginning your left turn did you notice the other car at all?

A. I did.

Q. Then you deny that you said previously "No, because I just thought I had time enough to get out of the way, at the distance I saw him?"

Do you deny making that statement?

A. When I pulled up at that traffic light I looked and I thought I had time enough to cross the highway before I got hit.

Archie Jones

Q. All right, but the question is—

page 88 } Mr. Clark: Wait a minute, Mr. Glasscock, I think he has very fully answered. He has said he doesn't deny or does deny, but he repeats the very same answer.

Mr. Glasscock: If Mr. Clark would like to testify let's put him on the stand.

The Court: He says he knows he looked before he left. We could ask him one more question, Mr. Glasscock, if he looked, after he first ascertained that he was safe, did he look again?

By Mr. Glasscock:

Q. Archie, you say that when you started off from your stopped position to make your turn you saw a car approaching you and it was down about the light closest to Suffolk, that is true?

A. That is right.

Q. Now, after that time did you look to see the other car at all?

A. I looked.

Q. All right, where were you when you looked the second time?

A. I looked and I was sure that this car was down there far enough for me to make my turn.

page 89 } Mr. Glasscock: I think we are entitled to a reply.

The Court: Archie, you have said when you got ready to make your turn you looked. Now, what Mr. Glasscock has asked you, after you decided to make your turn did you look again?

The Witness: I did.

The Court: Now he wants to know where you were when you made the second look.

Mr. Clark: If he knows.

The Court: If you know. You said you looked again. Do you know where you were when you looked again?

The Witness: When I looked the second time.

The Court: But you don't know where?

The Witness: And I pulled on off and made my turn and got hit in the second lane.

The Court: I think he has answered as well as he can, Mr. Glasscock.

Archie Jones

Mr. Glasscock: Your Honor, my point is simply this: The witness has stated that he started off to make the left turn. He said at that moment in time there was a vehicle approaching him down at the far light, some 350 feet away. Now, we asked him if he looked and saw the car approaching at another time and he says, "Yes, I did."

page 90 } All we would like to find out is where his vehicle was when he looked and saw the approaching vehicle a second time. If he doesn't know, all right, but I don't think he has said he doesn't know.

Mr. Clark: I think he has thoroughly indicated that he doesn't know how to say, "I don't know."

But I raise this point, what is the materiality? He says he looked and thought he had sufficient time to make his turn and then he moved in to the lane which would put him in front of approaching traffic. Suppose he did look and see the man coming, what is he going to do about it?

The Court: It is something the Jury might want to know.

Mr. Clark: He is not the plaintiff in the case, his negligence doesn't have a thing to do with it.

Mr. Glasscock: Yes, it does.

Mr. Clark: Not unless it was the sole cause.

The Court: All right, Mr. Glasscock, see if he can tell you and if he can't we will go on to something else, like lunch.

By Mr. Glasscock:

Q. When you started into your turn you said

page 91 } you looked a second time at the car approaching you. Do you know, or do you not know where your car was when you saw the approaching car the second time?

A. After I give my signal and stopped and when I pulled off I thought that car was down there far enough for me to get across before I got hit.

Q. You don't recall, then, where you were when you saw the car the second time?

A. I just said I got hit in the second lane.

Q. You mean you didn't see that other car until it hit you in that second lane? Is that what you are saying?

A. I told you I saw that car down there at that red light.

Q. That is not my question. My question is: Did you see it the second time at the time that car ran into your car?

A. I looked the second time.

Q. All right, was that at the time the collision occurred?
A. No.
Q. Well, when was it?
A. The second time I looked that car was just about at that light and then I pulled on off and got hit in the second lane.

page 92 } Q. Did you notice the other car from the time it was at the second light until it came into your car?

A. I done told you exactly what I know about it.
Q. This is a very simple question. Did you notice the other car from the time you saw it at the other light, the far light, the light closest to Suffolk, until the time of the collision?
A. I told you what I knowed about it.
Q. Then you don't know?

Mr. Clark: Archie, if you don't know the answer just say so. We will be here until midnight at this rate. If you know, answer the question.
The Court: Let's take it that he doesn't know and let it go at that.

By Mr. Glasscock:
Q. Archie, the Stecker car hit your car only one time, did it not?
A. As far as I know.

* * * * *

page 93 }

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ELSIE JONES, the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Baggs:

* * * * *

page 94 } Q. Where were you sitting in your husband's car on the night of this accident?

A. In the front seat on the right.

Q. In the front seat on the right?

A. Yes.

Q. Let me direct your attention, as you all pulled up to the stop light there do you remember if he stopped or slowed or what?

A. No, I don't. I mean, because I was talking to my sister at the time and I just wasn't paying him any mind.

Q. And your sister, where was she in the car?

A. She was in the back seat on the left behind my husband.

Q. How were you positioned in the car?

A. This way. (Witness indicating.)

Q. Did you look up the road before the turn was made?

A. I don't understand.

Q. Well, as you were sitting there you all came up to the stop light; is that right?

A. That is right.

Q. Tell us what happened after that.

A. I am going to tell you, I was talking to my sister and I just heard some brakes or something squeal and page 95 } I just happened to look around like that (witness indicating) and a bright light come right on into us and that is all I remember.

Q. Do you know whereabouts the car you were in was in the road?

A. No, I don't.

Q. What is the next thing that you remember after that, Elsie?

A. I remember asking my husband to get me out of the car and he ran around on my side and he said, "I can't get you."

* * * * *

page 102 }

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CROSS-EXAMINATION

By Mr. Rhodes:

Q. Mrs. Jones, prior to reaching the stop light or making the turn did you see any cars coming?

A. I don't know.

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page 104 }

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HARLEN LEE STECKER, a Defendant, having been first duly sworn, was called as an adverse witness and was examined and testified as follows:

ADVERSE EXAMINATION

By Mr. Clark:

* * * * *

page 105 }

* * * * *

Q. This accident happened on the night of July 3, 1966; is that correct?

A. Yes, sir.

Q. Do you know approximately what time?

A. Eleven twenty-five p. m.

Q. All right, now, where were you employed at the time the accident happened?

A. Gray's Texaco.

Q. And where is Gray's Texaco Station located with reference to Franklin Concrete Products?

A. Directly across the street from it.

Q. How far is Gray's Texaco Service Station
page 106 } from the traffic light at which this accident occurred, approximately?

A. Approximately half a mile.

Q. How far is Gray's Texaco Service Station from the 35-mile-an-hour speed limit sign which is situated near Norfleet's Grocery?

A. I would say about a fifth of a mile.

Q. Approximately how far is it from that sign down to where the accident happened? At least two to three-tenths of a mile, isn't it, Mr. Stecker?

A. Something like that.

Harlen Lee Stecker

Q. At the time this accident happened, when your car came in contact with Archie's car, you had been in a 35-mile speed limit for at least three-tenths of a mile, had you not?

A. Yes, sir.

Q. What kind of automobile were you driving on the night of this accident?

A. 'Fifty-seven Ford.

Q. What kind of automobile was Jerry Wayne Beale driving?

A. 'Sixty-two Ford convertible.

Q. When did you first see Jerry Wayne Beale on the night of July 3rd?

A. About 8:30 that night.

page 107 } Q. Where did you see him?

A. On the station.

Q. On the station?

A. The station lot.

Q. What was he doing at that time?

A. Well, he wanted me to go with him, to close up and go out and celebrate. And I told him no, I had to work the next day, which was the 4th of July.

Q. He wanted you to close up the station and go out with him and celebrate?

A. Yes, sir.

Q. He had already commenced his celebration, hadn't he?

A. It looked that way.

Q. What makes you say that? What was he doing that made you think he was celebrating?

A. His sister and her boy friend were driving his car and he was in the passenger side of the car drinking.

Q. Did you see him partake of some alcoholic beverages?

A. He had a bottle in the car.

Q. What kind of bottle was it?

A. Pint bottle.

Q. Of what? Whiskey, gin, wine?

A. Looked like Bourbon.

page 108 } Q. How much Bourbon was in that bottle, if you know?

A. I didn't pay that much attention.

Q. Where was this bottle in the car, how did you happen to see it?

A. Well, I walked over to the car when they first come on the lot, because they was honking the horn and making noise. And I told him—he was using profane language.

Harlen Lee Stecker

Q. Using profane language?

A. Yes, sir. And I told him to try and knock it off, because I had customers out there being waited on. And he didn't listen. And I walked over to the car and I saw that he had the bottle in the front seat with him.

Q. Did you ever actually see him take anything to drink out of that bottle?

A. Not at that time I didn't.

Q. Was he driving the vehicle in which he was riding or was someone else driving?

A. Somebody else was driving.

Q. Who?

A. His sister.

Q. Anybody else in the vehicle?

A. I believe her boy friend.

Q. Where were the occupants of the vehicle seated, what seats?

page 109 } A. All in the front.

Q. What kind of car?

A. 'Sixty-two Ford white convertible.

Q. All right, sir, what happened then after you talked to him and he acted boisterous and so forth out on the apron of the service station?

A. We got right busy there, station at night, 8:30 at night. On Sunday nights a lot of cars come in, people you know riding around. And I had to help on the front and leave him for a few minutes. And when I come back I told him I didn't want to go nowhere that night, because I had to work the 4th of July, so he left.

Q. He left then?

A. He left then.

Q. What time did you see him next?

A. About 9:30.

Q. Before we get to this, who is Will Galtress?

A. He is a part-time boy that Mr. Gray, that owns the service station, had working for him.

Q. A part-time boy working at the service station?

A. Yes.

Q. Was he present when Jerry Beale came in the first time?

A. Yes, sir.

Q. Did he see what went on?

page 110 } A. Yes, sir.

Q. Is he present here today?

Harlen Lee Stecker

A. No, sir.

Q. Do you know where he is? Could you have had him here if you wanted to?

A. Probably could.

Q. Now, Mr. Beale left and when was your next encounter with Mr. Beale?

A. He came back the second time around 9:00 o'clock.

Q. What automobile were they in or was he in?

A. Same one.

Q. Who was with him?

A. Same people.

Q. What occurred on that occasion?

A. About the same routine.

Q. About the same routine?

A. About the same.

Q. Did you see the whiskey bottle again?

A. Not that time.

Q. Was his condition such that he seemed to have been celebrating some more after he left you the first time?

A. Yes, sir.

Mr. Glasscock: I believe he can answer that only if he knows. I don't know how anybody can know that kind of thing.

page 111

Mr. Clark: I will rephrase it.

By Mr. Clark:

Q. Did you notice any difference between his behavior the first time he came up and the second time?

A. It was about the same.

Q. You say about the same?

A. He was in no condition to drive, I know that much.

Q. And he wasn't driving at that time?

A. No, sir.

Q. All right, did anything particular happen on this occasion any different from the previous occasion?

A. Well, he got out of the car and came inside of the office and was using some more profane language, carrying on. I told him I couldn't stand for it, and he finally left, mad that time.

Q. He left mad?

A. Yes, sir.

Q. What did he do to indicate to you that he was mad?

Harlen Lee Stecker

A. He told me to plainly go to hell.

Q. And you at that time, any time during the day up to that time, had you had anything to drink yourself?

page 112 } A. No, sir.

Q. How close did you get to Mr. Beale during this occasion?

A. Close enough that I could smell his breath.

Q. How did it smell?

A. Bad.

Q. Can you describe it? Did it smell like alcohol or the essence of perfume, or what?

A. Smelled like alcohol to me.

Q. How did he walk?

A. Well, he walked with a swing. I mean, he didn't walk normal.

Q. Had you known Mr. Beale prior to this occasion?

A. I would say a few—a month or two beforehand.

Q. You had seen and been in his company when you knew him to be absolutely sober on other occasions?

A. Yes.

Q. Was his manner different on this occasion than you knew him to be sober?

A. Yes, sir.

Q. I assume he left the service station again?

A. Yes, sir.

Q. Did he come back again?

page 113 } A. About 10:15. We normally close at 10:00 o'clock, but I was late getting closed because I had a car from out of town being worked on. And it was about 25 after 10:00 when I got the station locked up.

Q. What did he want you to do at that time?

A. Go with him.

Q. What did you do?

A. Well, we locked up and went to his house which is down the road about a mile.

Q. For what purpose did you go to his house?

A. Went and picked up a couple of cans of beer.

Q. Was he in an intoxicated condition when he came back the last time?

A. Yes, sir.

Q. And knowing that he was in an intoxicated condition you went off with him to consume some beer yourself? Is that right?

A. Yes, sir.

Q. Where does he live in relation to the Texaco Station, on the Franklin side of the Texaco Station or in the opposite direction?

A. On the Suffolk side of the station going towards Suffolk.

Q. Now, who was driving the car when the car came back the last time some few minutes after 10:00?

page 114 } A. Same party, his sister.

Q. Did she still have her boy friend with her or do you recall?

A. Yes, sir.

Q. His sister was driving, where was Beale seated in the car?

A. Still in the front seat, right-hand side.

Q. Now, he asked you to go with him to his house and go off with him and you all got in his car and you went? Who drove from the service station down to where Mr. Beale lived?

A. His sister.

Q. His sister drove?

A. Yes, sir.

Q. All right, how long did you stay at Mr. Beale's house and what did you do there?

A. Well, he had a couple of cans of beer in his refrigerator so we went down there and I consumed two of them down there at his house. And I told him I would like to go back to the service station because I had to be to work in the morning.

So we left, and then he told me I should ride around with him so he could pick up his wife.

Q. It was then getting close to 11:00 o'clock?

A. Getting close to 11:00 o'clock.

page 115 } Q. Where does Mr. Beale's wife work?

A. At the telephone company in Franklin.

Q. So approximately what time was it that you left Beale's home and started to ride around to pass the time while you were waiting for his wife to get off at 11:00 o'clock?

A. About 10:45, something like that, or ten minutes to 11:00.

Q. So you had about 15 or 20 minutes to kill?

A. Yes, sir.

Harlen Lee Stecker

Q. Describe what you and Mr. Beale did to kill that 15 minutes while you were waiting for his wife.

A. Just rode around town.

Q. And his sister and her boy friend that were in the car, when you went to Mr. Beale's house what happened to them?

A. After we left the house and went back to Franklin she was driving. We made several passes through town and she and her boy friend had to go. So she got out and I got behind the wheel.

Q. All right, you say you made a couple of passes around town, what do you mean?

A. Went down Main Street and come back through Main Street once or twice.

Q. Now, you said that you drank two bottles of beer at Mr. Beale's house. How many did he drink while

page 116 } you were present at his house?

A. About the same amount.

Q. So you left and rode around until you let his sister out? You rode around town—where did you let his sister off at?

A. I think by Mr. Beale's garage, I am not sure.

Q. You stopped at Mr. Beale's garage? Do you remember Mr. Beale yelling at people while you all were riding around town?

A. Yes, sir.

Q. Who was driving the car after Mr. Beale's sister got out of it?

A. I was.

Q. Why didn't you let Mr. Beale drive his car?

A. He wasn't in no condition to drive.

Q. And when you stopped down at Mr. Beale's garage you had a drink, didn't you?

A. No, sir.

Q. You deny that?

A. Yes, sir.

Q. Do you recall testifying before this young lady that took the evidence down in February, February 28, 1967, in the Municipal Building in Franklin?

A. Yes, sir.

Mr. Rhodes: For the purposes of impeach-

page 117 } ment?

Mr. Clark: Yes, sir.

By Mr. Clark:

Q. Now, you testified here today that you left the sister off at Mr. Willard Beale's. Did you stop either time near Mr. Willard Beale's garage on Barrett Street?

A. I believe that is where we left her off at.

Q. And didn't you and Mr. Beale have a drink at Mr. Willard Beale's garage?

A. I don't recall.

Q. Would you deny that you so testified on February 27th at the Municipal Building in Franklin under oath? Do you deny that you testified under oath that you stopped at Willard Beale's garage and had a drink?

A. I don't recall, sir.

Q. You don't deny it?

A. I don't recall.

Q. Has anything happened to your memory since February 27, 1967?

A. I don't believe it has.

Q. I would like to read to you Page 57 of a transcript of that proceeding beginning at Line 21.

"Question: Did you stop any place while you were driving around town, to drink?

"Answer: We stopped on a side street.

page 118 } "Question: What, and you drank there?

"Answer: Yes, sir, down there at, I think, by Willard Beale's garage."

Now, do you still deny that you took a drink at Willard Beale's garage?

A. I know I didn't take a drink.

Q. So what you testified to under oath on February 28, 1967 before this same young lady, was false; is that correct? Which time are you telling the truth, then or now? You were under oath then and you are under oath now.

A. I realize that.

Q. Then which time were you telling the truth? Did you take a drink or did you not take a drink?

A. I don't recall.

Q. Do you recall Mr. Beale yelling and waving at people as you drove through town up and down Main Street?

A. Several times.

Q. You were completely sober and you permitted him to carry on that way in your presence?

Harlen Lee Stecker

A. What could I do?
Q. You could have put him out of the car, couldn't you?
A. It was the man's automobile.
Q. Were you under any obligation to drive it for him?
A. No, sir, none whatsoever.
page 119 } Q. Did anybody compel you to get under the wheel of that car? You knew his condition when you got in?
A. Yes, sir.
Q. The thing is, you both were having a good time and celebrating together the 4th of July that was coming up?
A. No, sir.
Q. What happened when you drove around? Did you finally go pick up his wife?
A. Yes, we did.
Q. After you picked her up who drove the car?
A. I did.
Q. Where was his wife seated in the car?
A. In the middle.
Q. You were at the steering wheel and Mr. Beale on the right front seat on the outside?
A. Yes.
Q. No other occupants?
A. No.
Q. Then you started back to the Texaco Station; is that correct?
A. Yes, sir.
Q. What time, just a minute or two after 11:00?
A. About five minutes after 11:00.
page 120 } Q. For what purpose did you go back to the Texaco Station?
A. To pick my car up.
Q. What kind of car was that?
A. 'Fifty-seven Ford.
Q. I hand you Plaintiff's Exhibit 4 and ask you if that is the vehicle that you were driving at the time of the accident?
A. Yes, sir.
Q. Is that the vehicle that you got into at the Texaco Station on the east side of Franklin when you got out of the Beale vehicle?
A. Yes, sir.
Q. All right, when you got out of the vehicle, the Beale vehicle, that left the steering wheel or the seat under the steering wheel of the Beale vehicle empty. What happened then?

Harlen Lee Stecker

A. I went and got in my own car.

Q. Who got under the steering wheel of the Beale vehicle then?

A. Jerry Beale.

Q. Did you see him get under it?

A. Yes.

Q. Where was his wife seated at that time?

A. Still in the middle.

page 121 } Q. When you drove around town did you have your lights on high or low beam?

A. Low beam.

Q. After you got back out of town and came up to the Texaco Station you put your lights back on high beam, did you not, when you got out on the highway?

A. No, sir.

Q. Can you swear that you know what the lights were on, whether they were on low beam or high beam when you got out of the car?

A. They were on low beam.

Q. When you got out and got in your car did you notice whether or not—strike that—you say Beale got under the steering wheel of his own car at that time?

A. Yes, sir.

Q. With his wife as a passenger?

A. Yes, sir.

Q. You got in your car and what did you do?

A. Proceeded towards Franklin.

Q. When you came out of the Texaco Station you then turned right on 58 right in front of the Franklin Concrete Products?

A. Yes, sir.

Q. What did the Beale vehicle do?

A. Followed right behind me.

page 122 } Q. It made a right turn, too?

A. Yes.

Q. Who was under the wheel of that car?

A. Jerry Beale.

Q. When you say that car was right behind you, what do you mean by that?

A. Several car lengths.

Q. Didn't you testify that the car was a car length behind you before, Mr. Stecker?

A. One or two car lengths, several car lengths.

Harlen Lee Stecker

Q. Let's get it right, there is a lot of difference between several car lengths and two or three car lengths.

Mr. Glasscock: What page?
Mr. Clark: Page 62.

By Mr. Clark:
Q. From the same transcript which I previously read I read to you from Page 62, Line 6 through 9 and this is your answer to a question which has been asked.

"Answer: After I left the station I just went right on up, down the road, and he followed right behind me. He couldn't have been more than one or two car lengths behind me at the most."

Do you want to change that now and increase
page 123 } it beyond two car lengths or two car lengths at
the most, as you said on February 28th?
A. Well, to me several car lengths would be one or two.
Q. Well, it is fair to say one or two car lengths; is that right?
A. Yes, sir.
Q. How do you know he was one or two car lengths behind you?
A. Well, by the distance he was behind me.
Q. Well, you wouldn't know that unless you looked behind you, would you?
A. I glanced in my rear view mirror.
Q. You looked in your rear view mirror, then, as you left the Texaco Station and he was behind you. When you got down to Norfleet's Grocery Store was he one or two car lengths behind you at that time?
A. I would say he was.
Q. And how do you know he was that distance behind you at that point?
A. By the brightness of his lights, took a quick glance in my rear view mirror.
Q. Were his lights on high beam or low beam?
A. I couldn't tell.
Q. But you could see the lights reflected in
page 124 } your mirror?
A. Yes.

Harlen Lee Stecker

Q. How many mirrors did you have in your car?

A. Two.

Q. You have a mirror on the left door and one over top of the windshield?

A. Yes.

Q. And those lights were reflected in both of your mirrors and reflected back in your eyes?

A. Yes, sir.

Q. Did that bother you any?

A. Not to impair my driving any.

Q. When you got down to Norfleet's Grocery Store was this car still behind you?

A. Yes, sir.

Q. How far behind you?

A. About the same distance.

Q. It stayed the same until the time of the accident?

A. Yes, sir.

Q. And you knew it was behind you at Norfleet's Store because you looked in the mirror and saw the lights then?

A. Yes, sir.

Q. And you knew it was behind you also when you got to the railroad because you looked in your mirror

page 125 } and saw the lights then?

A. Yes, sir.

Q. And you knew he was behind you when you got to the first set of traffic lights because you looked in your mirror and he was still behind you?

A. I could see the reflection on the mirror.

Q. Now, when you left the station what is the top speed that you obtained?

A. Approximately 50 miles an hour.

Q. And how fast were you driving when you got to Norfleet's Grocery Store?

A. I would say about 50.

Q. How fast were you going when you got to the railroad underpass?

A. I started slowing down when I got to Norfleet's because I knew it was a 35-mile zone up there.

Q. How fast were you going when you got to the first set of traffic lights?

A. Thirty or 35.

Q. How fast were you going when you got within two or three car lengths of where the accident happened?

Harlen Lee Stecker

A. About 30 or 35 miles an hour, I guess.

Q. Now, Mr. Bell came to see you at the hospital, didn't he, Trooper Bell?

A. Yes, sir.

page 126 } Q. And what time was it when he talked to you?

A. I don't recall.

Q. Well, if you don't recall how do you know he talked to you at all?

A. I don't recall what time it was because I was in a daze. I knew he was there.

Q. Was it the same day of the accident or the next day?

A. I don't know that either.

Q. Well, did he talk to you in the emergency room or after you had been put in your own room?

A. In the emergency room.

Q. He talked to you in the emergency room?

A. Yes, sir.

Q. Did you tell Trooper Bell that you estimated your speed immediately before the accident as 50 miles an hour?

A. He asked me about what my speed was. That was 50 miles an hour at Norfleet's store.

Q. I see. The accident happened up at Camp's shed so the Trooper in investigating asked you what speed you were traveling at Norfleet's Store; is that right?

A. He asked me—estimated what my top speed was.

Q. Estimated what your top speed was? He didn't ask you at what speed you were traveling immediately before the accident happened, did he?

page 127 } A. I don't recall.

Q. What good, could you possibly tell me, would it do for the Trooper to know what your top speed was between the Texaco Station and the scene of the accident? What good would that do him?

A. I don't know, that is not my job.

Q. The truth of the matter is he asked you how fast the two cars were traveling immediately before they came together; is that right?

A. I don't know.

Q. You don't know what he asked you? You are telling the Jury that you don't know now what he asked you? You are telling the Jury that you don't know now what he asked you? I thought you just told me—

Harlen Lee Stecker

A. I assumed he asked the speed from the time I left the station up to the time of the accident.

Q. Did he ask you what your top speed was or just say, "How fast were you going?"

A. I don't recall just how he put it.

Q. So if he asked you what your speed was right at the time of the accident you are not in a position to deny that that is the way he asked you, do you?

A. You will have to rephrase that, I don't know what you mean.

page 128 } Q. You heard the Trooper testify today that he asked you what your speed was immediately before the impact.

Mr. Glasscock: My recollection is that the Trooper said his usual practice was to ask that.

Mr. Rhodes: That is correct. And he further stated that he wasn't sure what Mr. Stecker understood about immediately before the accident.

Mr. Clark: Nobody can tell what you mean exactly, nobody can read the inside of your mind. But these officers have certain ways of asking questions.

The Court: I think he said that that was his usual practice, but I don't believe he tied it right down to that. I think there are two inferences that the Jury can take, whichever way they wish.

By Mr. Clark:

Q. Mr. Stecker, you wanted the officer to know you weren't involved in this accident? You didn't want him to think it was your fault?

Mr. Rhodes: I object to that, he has asked a leading question. This man doesn't know what fault is.

Mr. Clark: I intend to ask him leading questions. He is on as an adverse witness.

The Court: I overrule the objection.

page 129 } By Mr. Clark:

Q. You didn't want the Trooper to think this accident was your fault, did you?

A. You will have to rephrase that, I don't understand.

Q. I don't know any way to rephrase it.

Harlen Lee Stecker

At the time the Trooper was talking to you you didn't want to give him the impression that you were at fault?
A. It is not his judgment.
Q. Just answer my question yes or no.
A. I can't answer that.

Mr. Clark: I will ask the Court to direct him to answer. I will ask him if he intended to convey that to the Trooper or if he wanted him to think this accident was his fault.
The Witness: At what time?

By Mr. Clark:
Q. Whenever he talked to you. You know. Did you want to give him the impression that this accident was your fault?
A. Still—it is fuzzy to me.
Q. What is fuzzy to you?
A. What you are trying to get at.
page 130 } Q. Don't you worry about that, just answer my question.

The Court: Can you answer that question yes or no, Mr. Stecker?
The Witness: Will you ask that one more time, sir?

By Mr. Clark:
Q. When Trooper Bell interviewed you at the hospital and was ascertaining from you and asking you questions about how this accident happened, I want to know if at that time you wanted to make the Trooper think this accident was your fault, and I want a yes or no answer.
A. Well, I don't believe I was in a position to give a yes or no answer, because I was in a daze. And if I said something I could have said something I didn't mean.
Q. So you were in a daze and you don't know what you told the Trooper, do you?
A. I don't even recall what he asked me, because I was in a daze.
Q. If you don't recall what he asked you how can you now recall that he asked you about top speed and not the speed at the time of the accident?
A. I think this was after I got out of the hospital.
Q. All right, whenever you talked to the
page 131 } Trooper and whenever it was that the conversa-

tion took place and when you were not dazed, at that time did you intend to convey to the Trooper the idea that this accident was your fault?

Mr. Glasscock: That is the question that seems to be extremely difficult to answer. Why doesn't he get at it by just asking him if he is trying to tell the truth.

Mr. Rhodes: He is asking him to state a legal conclusion which I don't think he is qualified to make.

Mr. Clark: I know the opposition would like for me to ask the questions like they want them asked.

The Court: We don't want to make the witness answer something that he is giving a legal conclusion, but I think he can answer that without doing that.

Mr. Clark: Was he trying to tell the Trooper he was at fault or not at fault.

Mr. Glasscock: It seems to me that the witness can state that he was trying to tell the officer what he recalled about it, but whether he was trying to tell him whether he was at fault or not at fault requires a lot of consideration.

Mr. Rhodes: That is one of our primary
page 132 } reasons for being here today to determine who is at fault.

The Court: I know what Mr. Clark wants to get at, but I think we ought not to be bound by the legal conclusions from whatever he was saying.

Mr. Clark: I can get at it in another way, your Honor.

By Mr. Clark:

Q. What was the speed limit at the scene of this accident, Mr. Stecker?

A. Thirty-five.

Q. And you had been in a 35-mile zone for some three-tenths of a mile, I believe you testified to, at the time the crash occurred?

A. Yes, sir.

Q. Well, then, and you were going 35 at the time of the accident?

A. Yes, 30 to 35.

Q. Did you tell the Trooper that at any time, any place, up to now have you told the Trooper that?

A. I don't recall.

Harlen Lee Stecker

Q. If you told the Trooper you would recall it, wouldn't you, Mr. Stecker?

A. This happened two years ago and I don't
page 133 } remember everything I told the man.

Q. But if, in fact, you had been going 35 you would have wanted above all for him to know you were going the speed limit, wouldn't you? Yes or no.

Mr. Rhodes: Your Honor, I think that question, he says it another way, but I think the witness has very ably stated that he was doing 30 to 35 miles an hour, and I think that should suffice.

The Court: What he wants to know, if he told the Trooper anything about going 35.

Mr. Clark: I would like to know where it is.

We hear that for the first time today.

The Court: All right, see if you can answer the question, Mr. Stecker.

By Mr. Clark:

Q. Did you ever tell the Trooper at any time that you were going 35 and if you didn't, why didn't you?

The Court: Can you answer it, Mr. Stecker?

The Witness: I don't recall whether I did or not.

By Mr. Clark:

Q. Mr. Stecker, when you left the service station and Mr. Beale was behind you one or two car lengths, no
page 134 } question about your knowing that you had a drunk man behind you; is that right?

A. Yes.

Q. Now, where were you and Mr. Beale going at that time?

A. I don't know about him, but I was going home.

Q. And did Mr. Beale at any time increase his speed and come up closer to you and then drop back?

A. He did, several times.

Q. Did he at times act like he was going to pass you and wouldn't pass you and fall back behind you?

A. Not that I know of right offhand, I don't believe he tried to pass me.

Q. Did he seem to act like he was going to pass you and then drop back behind you?

Harlen Lee Stecker

A. I think at one time he tried to and then he didn't.

Q. Did this driving on his part detract your attention as to where you were going?

A. No.

Q. You were able to look behind you and in front of you equally well?

A. I was concerned mainly with what was in front of me, but a glance in the rear view mirror or two would tell me where he was at. I mean, I saw where he was at behind me.

page 135 } Q. Suppose you had wanted to slow down, weren't you worried about what this drunk behind you was going to do if you slowed down?

A. I was concerned, yes.

Q. And if you had slowed down or put on your brakes suddenly he would have gone right into your tail, wouldn't he?

A. Yes.

Q. As a matter of fact, when you hit the Jones car then he hit you—

A. I didn't hit the Beale car.

Q. When your car hit the Jones car immediately after that Beale ran into you; is that right?

A. Yes, sir.

Q. And if he had been a reasonable distance behind you, proper distance behind you, he wouldn't have hit you?

A. Yes, sir.

Q. And that did concern you, the way he was driving behind you, didn't it?

A. It concerned me.

Q. And it detracted your attention, it took your attention another place momentarily from where you were going, away from the road in front of you?

page 136 } A. I could tell by the reflection on the rear mirror he was behind me, but I kept my eyes on the road because I had to see what was in front of me.

Q. But you would at times have to look behind you and worry about what this man behind you was going to do and you, in fact, did worry about what he was going to do?

A. Yes, I worried about what he was going to do.

Q. Mr. Stecker, do you recall talking to Mr. Jerry Beale the day after this accident?

A. Yes.

Harlen Lee Stecker

Q. Do you recall Mr. Jerry Beale talking to you about what your speed was?

A. I don't recall that. The only thing I was concerned about was my automobile at the time.

Q. You sure have a terrible memory. Didn't you talk to Jerry Beale the day after the accident and he asked you how fast you were going and didn't you tell him 70 miles an hour?

A. No, sir.

Q. I am going to put you on your guard because we intend to ask Mr. Beale on the witness stand the very first question, that did you state the very next day that you were going 70 miles an hour. Do you still maintain that you didn't tell him that?

A. Yes, sir.

Q. When did you first slow down to 35?

page 137 } A. By Norfleet's, started slowing down.

Q. You started slowing down at Norfleet's?

A. About.

Q. By the time you got to the railroad underpass you were going only 35 miles an hour?

A. Approximately.

Q. At what point did you apply your brakes before your car struck the Jones car?

A. Immediately before the impact.

Q. Could you point out something in the Courtroom to show to the Jury how far you were when you finally put your foot on the brake?

A. I would say approximately not quite the length of this Courtroom.

Q. From where you are sitting to the back door?

A. No, sir, not that door.

Q. Will you get up, sir, and walk down to the proper row of seats and mark it off, how far it was?

A. About here. (Witness indicating.)

Mr. Clark: Let the record show that the witness has indicated in the Courtroom by standing how far he was from the Jones vehicle when he applied the brakes. According to the Sheriff of the County the distance indicated was 33 feet, I would like for the record to show.

page 138 } By Mr. Clark:

Q. When you first saw the Jones vehicle where was it in the highway?

Harlen Lee Stecker

A. In my lane of traffic.

Q. In what?

A. In my lane of traffic.

Q. When you first saw it it was in your lane of traffic?

A. Rephrase that.

Q. When you first saw the Jones vehicle where was it, on which side?

A. It was sitting on the inside lane of the eastbound traffic.

Q. On the lane marked "Through Only?"

A. Yes.

Q. You say "sitting." Was it sitting or was it moving?

A. Well, when I first saw it I couldn't tell whether it was moving or sitting.

Q. Was it coming straight up the highway or making a turn?

A. It was coming straight up.

Q. Then did it stop, did it come to a stop?

A. I thought it did, I wasn't sure.

Q. And it was giving a left-turn signal, was it page 139 } not?

A. I didn't see no turn signal.

Q. You didn't see any left-turn signal?

Page 68, Line 5 to 16. You are positive now, Mr. Stecker, you did not see any left-turn signal being given by the Jones vehicle?

A. I am not sure on the signal light.

Q. Now you are not sure. Let me read you from the transcript of the evidence, same transcript taken February 28, 1967 before this same young lady, same building, Municipal Building in the City of Franklin, Page 68, Lines 5 through 16.

"Question: Where were you in your car when you first saw the car by the stop light at Lynn Road?

"Answer: After I had completely come around the curve.

"Question: You were around the curve? Had you hit the first light?

"Answer: No, I hadn't.

"Question: What was he doing—and as you saw him could you tell what he was doing? Was he moving?

"Answer: I saw he had his signal light on when I first come around the curve."

Harlen Lee Stecker

Does that refresh your memory, Mr. Stecker? Are you prepared to say now that he didn't have a signal
page 140 } light on?
A. (No audible answer.)

Mr. Clark: I would like to ask the Court to direct the witness to answer the question.
The Court: Answer the question, Mr. Stecker.
The Witness: If I recall now, I think he did have it on.

By Mr. Clark:
Q. But you were knocked unconscious right after the accident and you don't know what went on just immediately before the accident, do you, Mr. Stecker?
A. You mean immediately afterwards?
Q. Or immediately before. It doesn't seem that way, you didn't remember these lights and you were knocked unconscious?
A. Yes, sir.
Q. Now, isn't it kind of fuzzy, just what happened right before the accident, in your mind?
A. Everything happened.
Q. Right, so you are not certain at all just what happened in those last few moments?
A. Not directly before the impact.
Q. You don't know where your car was, then, when Archie Jones began to make his turn?
page 141 } A. I know I was in the right lane.
Q. But you don't know how far you were from Archie Jones when he began his turn, do you?
A. No.
Q. Because you didn't know, didn't even know whether he was giving a signal?
A. Not the distance in feet, no, I don't.

Mr. Clark: I have no further questions of this witness.
The Court: Do you gentlemen want to ask him anything at this time?
Mr. Rhodes: Just one question.

DIRECT EXAMINATION

By Mr. Rhodes:
Q. Mr. Stecker, on the same date of February 28, 1967 be-

fore this young lady when you had depositions taken, do you recall giving testimony at that time that you were going 35 miles an hour before the accident?

Mr. Clark: Objection, leading his witness.
The Court: I think—
Mr. Rhodes: All right, I will rephrase it.

By Mr. Rhodes:
page 142 } Q. Do you remember making any statements about speed in the proceedings on February 28th? If so, please advise the Court and Jury.
A. I did.

Mr. Clark: This is all self-serving, coming from this witness. They have depositions here that speak for themselves as far as that is concerned.
Mr. Rhodes: You are trying to show prior inconsistent statements and I am trying to show that he has made this statement at a prior date, that he did in the depositions at that time.
Mr. Clark: My recollection of what he said was that he told the officer that he was going 35 miles an hour and he understood the officer was asking him about his top speed and that he never told the officer he wasn't going 35 at any time.
The Court: He didn't remember ever saying 35.

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JERRY WAYNE BEALE, a Defendant, having been first duly sworn, was called as an adverse witness, and was examined and testified as follows:

ADVERSE EXAMINATION

By Mr. Clark:

* * * * *

Jerry Wayne Beale

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* * * * *

Q. The night of the accident? What would you say—strike that—do you recall talking to Harlen Stecker the next day after this accident at the hospital?

A. Yes, sir, I do.

Q. Do you recall him saying anything to you about how fast he was going?

A. Yes, sir, he did.

Q. What did he say?

A. He told me his speed was 70 miles an hour.

Q. Do you recall talking to Officer Bell about how fast you were going?

A. Yes, sir, I do.

Q. And you told Officer Bell you were going 60 miles an hour, didn't you?

A. Yes, sir.

Q. Do you recall testifying before Judge Edwards over in Isle of Wight County in a related case to this?

A. Yes.

Q. Do you recall pleading guilty to a reckless driving charge over there arising out of the same accident?

A. Yes, sir.

Q. Why did you plead guilty to the reckless
page 145 } driving charge?

A. Because I thought that speeding was reckless driving.

Q. You thought that 60 in a 35-mile zone was reckless driving?

A. Yes, sir, more than 60 in a 35.

Q. When the two of you left the Texaco Service Station how many car lengths were you apart?

A. I can't recall.

Q. You were right up on him, weren't you, you were tailgating him, weren't you?

A. No, sir, I weren't.

Q. What do you mean by "tailgating?" What do you mean?

A. (No audible answer.)

Q. You never heard of that?

A. Riding on somebody's tail end.

Q. You were riding up behind him, weren't you?

Jerry Wayne Beale

A. No, sir, I weren't.

Q. How far did you tell the police officer that you were, that is, Trooper Bell, how far did you tell him that you were behind the Stecker vehicle?

A. I told him, I think, I was three cars.

Q. Could you have told him two car lengths as well?

A. I could have told him two or three.

page 146 } Q. How far did your car go after you struck Mr. Stecker's car?

A. I don't know for sure.

Q. Immediately before the accident you were two or three car lengths behind the Stecker car; is that right?

A. Yes, sir.

Q. And immediately upon the Stecker car hitting the Jones car you then plowed into the back end of the Stecker car, didn't you?

A. Yes, sir.

Q. How far did it take you to stop, Jerry?

A. I don't know for sure.

Q. You went all the way down to where the little car goes across taking lumber from one lumber warehouse to the other, didn't you, some two or three hundred feet?

A. I could have, I am not for sure.

Q. You won't deny what Trooper Bell said this morning about how far you went?

A. No, sir, I wouldn't.

Q. Were you driving with your headlights on high beam or low beam immediately before the accident?

A. I don't know.

Q. Were your headlights on?

A. Yes, sir, they were.

page 147 } Q. Don't you know that the law requires you to dim your headlights coming up behind another automobile so it won't reflect in his mirror?

A. Yes, sir.

Q. But you didn't make any effort to find out whether they were on dim or not?

A. No, sir.

Q. You have heard Mr. Stecker testify here about you coming up like you were about to pass him and then dropping back; is that right?

A. No, sir.

Q. That is not right?

A. No, sir, that is not.

Mr. Clark: We have no further questions at this time.

By Mr. Rhodes:

Q. Did Mr. Stecker tell you he was driving 70 miles an hour in a 35-mile zone?

A. No, sir, he didn't.

Mr. Rhodes: All right, no further questions.

Mr. Glasscock: All right, come down.

Mr. Clark: Just a minute, Mr. Beale—take the stand.

The Court: I thought you were through.

page 148 } Mr. Clark: I was until that last question came in.

By Mr. Clark:

Q. Did you ask Mr. Stecker how fast he was going in the 35-mile zone?

A. No, sir.

Q. You asked him how fast he was going and he said 70 miles an hour, didn't he?

A. Yes, sir.

* * * * *

TROOPER B. G. BELL previously sworn was recalled to stand and was examined and testified further as follows:

page 149 } DIRECT EXAMINATION (Recall)

By Mr. Baggs:

Q. Trooper Bell, you have testified previously that you questioned Mr. Stecker this evening, or was it the next morning?

A. I don't remember exactly when, sir, sometime after the accident.

Q. At the time you questioned him was he unconscious?

A. No, sir.

Q. Let me ask you this: How did you find out his name?

A. I don't remember exactly, I would imagine from the operator's license.

Q. Did he give that to you?

A. I couldn't tell you that, sir.

Q. And at the time you were talking to him how did he appear to you?

A. I don't remember that much about his general appearance. As I stated before, this is in July of '66 and my memory doesn't serve me that well.

Trooper B. G. Bell

Q. Let me ask you this: You question many people after accidents, don't you?

A. Yes.

page 150 } Q. Do you question them when their condition doesn't warrant it?

A. No, sir.

Q. Did Stecker ever say anything to you that his speed was 35 miles an hour?

A. No, sir.

Q. Did you ever ask him what his top speed was?

A. No, sir, I asked him his speed prior to the accident, just prior to the accident, and his statement was approximately 50 miles an hour.

Mr. Baggs: Thank you, your witness.

CROSS-EXAMINATION

By Mr. Rhodes:

Q. Trooper Bell, when you saw him in the hospital he was a patient, was he not, sir?

A. As well as I remember, yes.

Q. And when you asked him the questions, with all due respect to your fine ability for conveying impressions, you don't know what his thinking was about the speed, as to where you were questioning about the speed?

A. No, sir, I think that was my question this morning.

Q. Did you ever ask him the question if he was

page 151 } going more than 35 miles an hour?

A. No, sir.

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The Court: All right, Mr. Glasscock, you have a motion?

Mr. Glasscock: Yes, sir.

Your Honor, at the conclusion of the plaintiff's evidence the defendant, Beale, would move the Court to strike the plaintiff's evidence as to the defendant, Beale, and enter up summary judgment on his behalf.

Your Honor, that motion is made quite seriously and on the grounds that there has been absolutely no showing by the plaintiff of any negligence on the part of Beale, which is a proximate cause of the injuries of which the plaintiff complains. Even if we concede that the defendant, Beale, was drunk out of his mind and had no business driving a car, that he was operating his car at 60 miles an hour or so, his car did not hit the Jones vehicle, it hit the Stecker vehicle. And there is no showing that the plaintiff, Elsie Jones, received any of her injuries from any negligence on the part of Beale.

The Court: Well, there was evidence that certainly would show that Beale was negligent and I think it is a question, as you say, of whether it was a proximate cause.

page 153 } And I think there is sufficient evidence here to show that the Beale car did hit the Stecker car. It might be a little tenuous to infer that that caused the damage, but I think the Jury possibly could infer from that. But I think there is other testimony that indicated that his negligent driving had a definite bearing on the negligent driving of Stecker.

Mr. Glasscock: Your Honor, on that point it seems that here Stecker has indicated that he did not affect his driving. He *sai* at one point he was more concerned about what was up ahead. He said he kept his eyes on the road so he could tell what was up ahead. He said that Beale's driving concerned him some, but he said it did not detract from his driving because he was looking ahead, that he was able to see the reflection in the mirror that Beale was behind, but he says he was looking up ahead.

And there is no showing, your Honor, in any way that negligence on the part of Beale contributed to this woman's injuries. There is no showing that he hit the Jones vehicle or caused the Stecker car to hit the Jones vehicle.

And there has got to be more than just a mere possibility here, there has got to be some evidence from

page 154 } which that inference might be made, and there is no evidence on which the Jury can logically infer that Beale either hit the Jones car or caused the Stecker car to hit the Jones car.

The Court: I think there is, I will overrule the motion.

Mr. Glasscock: We would like to except, your Honor.

* * * * *

Faye Beale

FAYE BEALE, called as a witness on behalf of the defendant, Jerry Wayne Beale, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Glasscock:

* * * * *

page 155 } Q. How old are you, Mrs. Beale?
A. Twenty-four.
Q. You are the wife of Jerry Wayne Beale, are you not?
A. Yes, sir.
Q. Mrs. Beale, directing your attention to the night of July 3, 1966, did you have occasion to see your husband late that evening?
A. Yes, sir, I got off work at 11:00 o'clock and he picked me up at approximately five minutes after 11:00.
Q. Who was with him at the time?
A. Harlen Stecker.
Q. Where did you all go from that time?
A. We rode around town for about 20 minutes.
Q. Then where did you all go?
A. Then we went back out to J. K. Gray's Texaco.
Q. What was your purpose in going there?
A. Stecker had to go back to pick up his car.
Q. What did you do after taking Mr. Stecker to the Texaco Station?
A. He got out of the car and walked over to his car and pulled off.
Q. Which way did he go?
A. Towards Franklin.
Q. Which way did you go?
page 156 } A. We sat there a few seconds and I asked him to let me drive the car because it was a new car and a convertible and he said he wanted to drive.
Q. Whose name was it in?
A. Mine.
Q. Then what happened?
A. We pulled off and I believe we went towards Franklin, I am not sure.
Q. What happened as you went towards Franklin?

Faye Beale

A. We followed him on in approximately three or four car lengths behind. I don't know exactly how fast he was running, I couldn't tell. When he came to the underpass he went under the first green light. As we rounded the corner I saw Mr. Stecker when he applied his brakes and I saw the Jones car turn in front of him and I knew what was going to happen.

Q. What happened then?

A. I was in a state of shock, I couldn't tell my husband or say anything.

Q. Can you tell me whether or not you saw the Jones and Stecker vehicles collide?

A. I did.

Q. What position was the Jones vehicle in when the Stecker vehicle hit him?

A. When he hit him, or after?

Q. When he hit him?

page 157 } A. When he hit him he was almost completely across the two lanes of traffic.

Q. What happened to the Stecker car after that?

A. It swung around and blocked over the two lanes, about a foot and a half of the rear of his car was in the path of what I call the passing lane.

Q. That is the Stecker car?

A. Yes.

Q. What did you and your husband in your car do then?

A. He pulled to the left to try to avoid hitting the Stecker car. There wasn't any other way to go because traffic was coming in the oncoming lanes.

Q. Then what happened?

A. As we hit him we pulled him away from the Jones automobile and spun him around in the road.

Q. Would you tell us whether or not your car at any time collided with the Jones car?

A. No, sir, it did not.

Q. Would you tell us, please, whether or not when you hit, your car hit the Stecker car, that the Stecker car went back and hit the Jones car again?

A. No, sir.

Q. It did not?

page 158 } A. No, sir.

Mr. Glasscock: All right, that is all, answer these gentlemen.

Faye Beale

CROSS-EXAMINATION

By Mr. Baggs:

Q. Mrs. Beale, you say you went back to the Texaco Station and sat a few seconds after Stecker had taken off; is that correct?

A. Yes, sir, just a few seconds.

Q. And then you weren't sure which way you went? Isn't it correct that your husband—are you sure of which way you went?

A. I am not positive.

Q. So you could have gone to the left?

A. It is possible.

Q. Why do you say it is possible?

A. I am not exactly sure which way he went when he took off.

Q. Why is your memory hazy on that point?

A. Mainly because it's been a year and a half ago. I am not exactly sure just which way we went. It is possible that he may have started to pull out to the left and then changed his mind and pulled to the right.

page 159 } Q. Has he ever told you which way he went?

A. Yes, he has told me, yes, sir, he said he went to the left.

Q. The left towards your house?

A. Yes.

Q. As a matter of fact, he has told you he went all the way to Walters Road?

A. He has said that.

Q. But you don't know which is correct?

A. I am not positive, no, sir.

Q. And you were sitting in the front seat at the time?

A. Yes, sir.

Q. Well, so Mr. Stecker's car had a couple of seconds start on you; is that right?

A. That is right.

Q. Well, let me ask you this: You don't know how fast the cars were going?

A. No, sir, I don't.

Q. They were going right fast, though, weren't they?

A. They was a little over the speed limit, but I don't know how fast.

Q. A little over the 55 speed limit?

A. Yes, sir.

page 160 } Q. And a good deal over the 35 speed limit?

A. But we weren't in the 35-mile zone.

Q. You were never in the 35-mile zone?

A. Not when we was running over 55.

Q. What happened when you got to the 35-mile zone?

A. He slowed up.

Q. Was he still going over the speed limit?

A. Over the 35 zone?

Q. Over the speed limit?

A. Over the 35.

Q. But he couldn't be going 60 miles an hour, could he, your husband, your husband wasn't going 60 miles an hour, was he?

A. In the 35-mile zone?

Q. Any time.

A. I don't know for sure.

Q. So he could have been going 60 miles an hour in the 35-mile zone?

A. Not in the 35-mile zone, no, sir, not that fast.

Q. Could he have been going 60 miles an hour right prior to the impact?

A. No, sir.

Q. Could he have been one or two car lengths

page 161 } behind the Stecker car at impact?

A. One or two?

Q. Was your husband ever as close as one or two car lengths to the Stecker car?

A. Not up until the time he hit him, no, sir.

Q. So what would you say was the distance he was most of the time?

A. Approximately three to four car lengths behind him.

Q. And you said that when you saw what was going to happen you went into shock; is that right?

A. I couldn't say anything right then, yes, sir.

Q. But your memory seems to be very good at that time?

A. That is something I will never forget.

Q. But you forget which way you actually went when you came out of Gray's Texaco Station?

A. Yes, sir, I wasn't paying that much mind to it.

Q. And as all this was happening you were looking out of the window observing what was going on?

A. I was looking through the windshield.

Faye Beale

Q. And you weren't concerned at all, you didn't put your head down or get in a bundle?

A. I didn't have time to bundle up.

page 162 } Q. You just kept—

A. It surprised me.

Q. Just as though you were going on a Sunday drive and you looked out the window and there it was?

A. Yes, I did.

Q. You hit the Stecker vehicle a good whack, or did you just touch it, just kiss it as you went by?

A. It was a pretty good whack.

Q. This all happened in the snap of a finger, didn't it? You didn't have time to think or do anything?

A. No, we didn't have time to think.

Q. Almost instantaneous?

A. No, sir, not instantaneous. The two automobiles were sitting still in the road when he hit them.

Q. Your husband was going slow, why couldn't he stop?

A. I didn't say he was going slow.

Q. So you agree he was going 60 miles an hour?

A. No, sir, he was going over 35.

Q. When was the first time you saw the Jones vehicle, the one Stecker hit?

A. As he was turning in front of Stecker.

Q. As it was coming across in front of Stecker?

A. Yes, sir.

Q. Was it in the right-hand lane, the lane you

page 163 } all were in at that time?

A. When I first saw it begin to turn it was in the passing lane.

Q. It was in the passing lane?

A. Yes, on the right-hand side of the road.

Q. At this time where were you all?

A. Just beginning to come under the first red light.

Q. And you are the defendant, Beale's, wife?

A. Yes, sir.

Q. Did you see your husband drink anything that night?

A. No, sir, I didn't.

Q. Did you smell alcohol on his breath?

A. I didn't smell of his breath.

Q. You didn't kiss him when you got in the car?

A. No, sir.

Q. In other words, he was perfectly normal when you saw him?

Faye Beale

A. Yes, sir, as far as I could tell.

Q. But you don't know if he had drunk anything this night or not?

A. I didn't have any way of knowing.

Q. Do you know whether his lights were on
page 164 } high or dim?

A. I don't remember, I believe they were on dim.

Q. Let's go back. As you all were proceeding down the road—are you familiar with the railroad underpass?

A. Yes, sir.

Q. When you all were at the railroad underpass where was Stecker's vehicle?

A. Going under the light.

Q. At the top of the hill?

A. Not a very steep hill.

Q. No, but at the top of the grade. I am sorry. Was your husband trying to catch him?

A. No, sir.

Q. He didn't have any idea of catching him?

A. No, sir.

Q. Where were you going?

A. To Franklin to get something to eat.

Q. You had just been to Franklin? But yet you were going back to Franklin?

A. We had to take Mr. Stecker to get his automobile and I told my husband I would like to have something to eat and we went back to Franklin.

Q. And you still don't know when you came out of Gray's whether you went to the right or left first?

A. I am not positive.

Q. But your husband tells us he went to the
page 165 } left?

A. That is what he said.

Q. How far is Walters Road?

A. I don't know approximately how far it is.

Q. Is that half a mile?

A. It could be.

Q. So your husband says he went half a mile down to Walters Road and came back. So he went a mile further than Stecker went?

A. That is what he said.

Q. He was driving, he would know, wouldn't he?

A. I don't know.

Mr. Glasscock: I don't know how this witness would know an answer to a question like that.

Mr. Baggs: I just wanted to make sure he was driving.

By Mr. Baggs:

Q. Mrs. Beale, according to your husband's admissions to you, you went down Walters Road, came back to Gray's Station and then went from Gray's Station to the intersection?

A. That is what he said.

Q. So while Stecker was going from Gray's Station to the scene of the accident your husband, in effect, was going a mile further?

A. That is what he said.

page 166 } Q. And this is even after you all had sat there and waited a few seconds?

A. Yes, sir.

Mr. Baggs: I have nothing further.

By Mr. Rhodes:

Q. Mrs. Beale, you stated that Mr. Stecker left ahead of you; is that correct?

A. Yes, sir.

Q. Do you know what speed Mr. Stecker was driving?

A. No, sir, I have no way of knowing.

Q. Do you know what speed he was driving during the 35-mile zone?

A. No, I don't.

Q. Did you see the Stecker vehicle collide with the vehicle being driven by Jones?

A. Yes, sir, I did.

Q. What lane of traffic did this occur in?

A. The collision occurred in the right-hand lane.

* * * * *

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* * * * *

EXCEPTIONS

Mr. Baggs: The plaintiff wishes to note its objection and exception to the Court's refusal of Instruction 8-A, that the defendants were engaged in a race at the time of the collision. It is the plaintiff's position that there was sufficient evidence to show close proximity of the cars right before impact, going at a high rate of speed, coming from the same point a short distance away.

Further, the evidence is uncontradicted that they came around the curve into the intersection where their vision was blocked by the curve.

It is the plaintiff's position that there was sufficient evidence for the Jury to consider whether the de-
page 169 } fendants were engaged in a race and if that were true as to whether same was the proximate cause of the accident. Upon these grounds the plaintiff notes its objection and exception to the Court's refusal to grant Instruction 8-A.

Mr. Glasscock: At the conclusion of all of the evidence the defendant, Beale, renewed his motion that the Court strike the plaintiff's evidence as to Beale and enter up summary judgment in favor of Defendant Beale. This motion is made on the grounds previously cited, that any negligence which may have been shown on the part of Beale was not a proximate cause of the accident and the injuries of which the plaintiff, Elsie Jones, complains.

To which motion the Court overruled the motion and the defendant, Beale, duly excepts.

Now, as to the instructions, the defendant, Beale, objects and excepts to the granting of any instructions for the plaintiff as far as the defendant, Beale, is concerned. These instructions being numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 14, on the grounds that there has been no evidence to show that any negligence, if any, on the part of the defendant,
page 170 } Beale, was a proximate cause of the collision and the injuries of which the plaintiff, Elsie Jones, complains.

The defendant, Beale, particularly objects and excepts to the Court's granting of Instruction 4, because if Stecker were going at the speed of 60 to 70 miles an hour as contended by

the plaintiff, then Archie Jones should have seen this and not made a left turn in front of the Stecker vehicle.

The defendant, Beale, objects and excepts particularly to the granting of Instruction Number 8 on the grounds that even if Beale were following the Stecker vehicle too closely there is no evidence that this was a proximate cause of the accident and the injuries of which the plaintiff complains. The only evidence concerning the effect of Beale's following of the Stecker car came from Stecker, to the effect that his driving was not affected by Beale and that Stecker was looking ahead.

The defendant, Beale, objects and excepts to the refusal of the Court to grant Instruction Number 14-A offered on behalf of the defendant, Beale, on the grounds that there was no evidence upon which the Jury could conclude that Beale was guilty of any negligence which was a proximate cause of the collision and the injuries and damages of which the plaintiff complains.

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The defendant, Jerry Wayne Beale, objects and excepts to the refusal of the Court to grant Instruction Number 14-B offered on behalf of the defendant, Beale. This instruction correctly sets forth in this particular case, as there was no showing that the defendant, Beale, vehicle caused the injuries of the plaintiff, nor was there other evidence upon which the Jury could conclude that Jerry Wayne Beale was guilty of any negligence which was a proximate cause of the accident and the injuries to the plaintiff.

* * * * *

Your Honor, the defendant, Jerry Wayne Beale, moves the Court to set aside the verdict of the Jury insofar as it is against the defendant, Beale, and to enter summary judgment for the defendant, Beale, on the grounds that the verdict is contrary to the law and the evidence and without evidence to support it. And on the further grounds of misdirection of the Jury.

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A Copy—Teste:

Howard G. Turner, Clerk.

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