215 Va. 422
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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD No. 740018

SUE ANN HOLLOWAY,

Appellant,

v.

DORIS P. CONNER, EXECUTRIX OF THE ESTATE OF KENNETH E. CONNER,

Appellee.

APPENDIX

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MOTION FOR JUDGMENT
Filed August 25, 1971

Plaintiff, by counsel, moves the Circuit Court of Campbell County for judgment against the defendant in the sum of Seventy-Five Thousand Five Hundred Dollars ($75,500.00) for the wrongful death of plaintiff's decedent as will be shown by the following facts, to-wit:

1. That plaintiff, Doris P. Conner, duly qualified as Executrix of the Estate of Kenneth E. Conner, Sr., before the Clerk of the Circuit Court of Campbell County, Virginia, on the 8th day of October, 1969.

2. That on September 20, 1969, at approximately 9:00 o'clock P.M., plaintiff's decedent was lawfully riding in a 1966 Chevrolet two-door hardtop sedan automobile owned by plaintiff's decedent, and operated by the defendant in a northerly direction of U.S. Highway No. 501, approaching the Staunton River Bridge just south of the corporate limits of the town of Brookneal, Virginia.

3. That at the time and place aforesaid, defendant grossly negligently operated said automobile in that she failed to keep a proper lookout, she exceeded a reasonable speed, especially under the circumstances and conditions then and there existing, and especially in view of the fact that she was familiar with the highway, having just driven on the said highway a few minutes before, and she grossly negligently lost control of the automobile and allowed it to go over into the southbound lane of traffic, strike the west side of the Staunton River Bridge, to slide around and strike the east side of said bridge, as a result of which, the car was completely demolished, and plaintiff's decedent received serious and grievous injuries which caused his death shortly thereafter.

4. Plaintiff alleges that her decedent was not in the status of a guest passenger, and, accordingly, alleges the need to show merely simple negligence, the gross negligence of the defendant notwithstanding.

5. At the time of his death, plaintiff's decedent was forty-three (43) years of age, in good health, and the owner and operator of his own business, to-wit, Service Drug Store, Brookneal, Virginia.

6. Surviving him as his statutory beneficiaries are his widow, Doris P. Conner, age forty-three (43) and two children, to-wit, Kenneth E. Conner, Jr., age twenty-one (21) and Deborah Anne Con-

ner, age sixteen (16), all of whom were financially and pecuniarily dependent upon plaintiff's decedent at the time of his death.

7. At the time of said collision, plaintiff alleges that the defendent may have been an uninsured motorist under the laws of the Commonwealth of Virginia.

8. At the time of said collision, plaintiff's decedent was covered as an insured under the provisions of a certain motor vehicle public liability policy numbered 138 AB 49 63 63, issued by Commercial Union Insurance Company of New York, now known as Employer's Commercial Union Insurance Company; thus, process should issue against the said Employer's Commercial Union Insurance Company in accordance with the provisions of § 38.1-381 of the Code of Virginia of 1950, as amended.

Wherefore, plaintiff, by counsel, moves the Circuit Court for the County of Campbell, for judgment against the defendant for the sum of Seventy-Five Thousand Five Hundred Dollars ($75,500.00) for the wrongful death of Kenneth E. Conner, Sr., deceased, with interest and costs.

INSTRUCTION NO. 4
Granted November 27, 1972

The Court Instructs The Jury that if you believe from a preponderance of the evidence that the decedent, Kenneth Conner, without fault on his part, grabbed the steering wheel and pulled it to the right because of a sudden emergency created by his sister's negligence in the operation of her vehicle, and that the decedent acted as a person of ordinary prudence would have acted under the same circumstances, then in so grabbing the wheel the decedent was not guilty of any contributory negligence even though his choice of action was not the wisest course and actually caused the collision and death of the decedent, and you cannot find a verdict in favor of the defendant.

MEMORANDUM OPINION (LETTER)
Filed July 23, 1973

Meredith C. Dortch
Judge Thirty-fourth Judicial Circuit
South Hill, Virginia 23970

July 23, 1973

Mr. Frank O. Meade
Attorney at Law
516 Masonic Bldg.
Danville, Virginia

Mr. Thomas L. Phillips
615 Church Street
Lynchburg, Virginia

Mr. James S. Farmer
Attorney at Law
800 Court Street
Lynchburg, Virginia

Re: *Conners' Exor.* v. *Sue Ann Holloway*

Gentlemen:

I regret the delay in disposing of defendant's motion in this case. Counsel's memoranda were so late in reaching me that other difficult and time consuming matters intervened which required my prior attention.

I have little difficulty with the matter of decedent's status in the vehicle. The car was owned by the motor company and in the custody of its agent. The decedent had just traded the car to the company and he obviously felt that it was a good buy for his sister. With this interest and motivation, he initiated and dominated the negotiations which led to their taking the car out for a trial run. In fact, the company salesman made it clear that he loaned the car to "both of them" and that if decedent had not been with the defendant, he would have gone with her. This would indicate that the primary responsibility for the vehicle was entrusted to the decedent. Under these unusual circumstances, the decedent, in my opinion, could not be considered a gratuitous guest of his sister within the meaning of §8-646.1 of the Code.

The question of the sufficiency of the evidence is more difficult. The defendant contends, with much persuasion, that the evidence fails to show how or why the accident occurred and the jury should not have been permitted to speculate in this regard. I felt, at the time of the trial, that although the issue was extremely close, the totality of the evidence, together with the various inferences involved, when considered in the light most favorable to the plaintiff, was sufficient to carry the case to the jury on the question of actionable negligence. After reviewing the evidence and studying the memoranda of counsel, I feel that my initial view was the proper one. See *Hackley* v. *Robey,* 170 Va. 55, 195 S.E. 689.

Accordingly, defendant's motion will be denied. Mr. Phillips will prepare the proper order.

Sincerely yours,

/s/ Meredith C. Dortch

MCD:jgr

JUDGMENT ORDER
Entered September 10, 1973

This cause came on the 27th day of November, 1972, for trial, the parties appearing in person and by their attorneys, the defendant having theretofore filed her grounds of defense to plaintiff's motion for judgment the plaintiff replied generally thereto and issue was joined.

Thereupon came the following jury of seven, Norman Hall, Miriam Burton, Evelyn Whitlock, Henry Lee Ferrell, Hampton Logan, Barkley Fisher and John Wallace Coleman, who, upon examination being found duly qualified, were selected, tried and sworn according to law.

Thereupon the plaintiff presented evidence on her behalf, upon the conclusion of which defendant, by counsel made various motions, such motions and the Court's rulings thereon being fully set out in the transcript.

Thereupon evidence was adduced and completed on behalf of the defendant, following which the defendant, by counsel, made motions, such motions and the Court's rulings thereon being fully set forth in the transcript.

And the jurors aforesaid, having fully heard the evidence, received the instructions of the Court and heard arguments of counsel,

retired to their room to consult of their verdict and after a short time returned to the courtroom with the following verdict, to-wit:

"We, the jury, on the issue joined find for the plaintiff and award damages as follows:

1.	Funeral expenses	$ 500.00
2(a).	Solace for Doris P. Conner	8,000.00
(b).	Solace for Kenneth Conner, Jr.	8,000.00
(c).	Solace for Deborah Ann Conner	8,000.00
3(a).	Pecuniary for Doris P. Conner	16,500.00
(b).	Pecuniary for Kenneth Conner, Jr.	16,500.00
(c).	Pecuniary for Deborah Ann Conner	16,500.00

John W. Coleman, Foreman"

Whereupon the defendant moved the Court to set aside the jury verdict and enter final judgment for the defendant on the ground that the verdict was contrary to the law and evidence and without evidence to support it, and in the alternative to set aside the verdict and grant a new trial for errors in the Court's instructions to the jury. The Court, after maturely considering the same, doth overrule the motions, to which action of the Court the defendant, by counsel, duly objects and excepts.

Whereupon it is Adjudged and Ordered that the plaintiff, Doris P. Conner, Executrix of the Estate of Kenneth E. Conner, Deceased, recover and have judgment against Sue Ann Holloway in the amount of $74,000.00, that being the total sum fixed by the jury, together with her costs and legal interest from November 27, 1972, said recovery to be distributed in accordance with the jury verdict aforesaid.

The defendant having stated that she will apply to the Supreme Court of Virginia for a writ of error in this case, it is further Ordered that execution of the judgment herein granted shall be suspended for a period of four months from the date of this judgment order provided the defendant, or someone for her, executes before the Clerk of this Court proper bond in the amount of $80,000.00, with adequate surety conditioned according to law, within 15 days from entry of this judgment order. By agreement of the parties hereto by counsel, as evidenced by endorsement hereon, execution of the bond shall not be required to be made in the presence of the Clerk.

Pursuant to Rule 5:9, Rules of Court, it is Ordered And Directed that the transcript of evidence, as taken and transcribed by Earline F. Gosney, Court Reporter, and filed in this cause on February 6, 1973, to assist the Court in ruling on the various motions after verdict, shall be and is hereby made a part of the record in this cause.

The Clerk is Directed to send a copy teste of this order to counsel of record forthwith.

Seen:

.....

Of Counsel for Plaintiff

.....

Of Counsel for Defendant

Enter 9-10-73

.....

Judge

NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS
Filed October 8, 1973

Assignment of Errors

The defendant assigns as error the following:

1. The Trial Court erred with respect to whether plaintiff's decedent was in the status of a guest passenger or a paying passenger:

(a) In refusing to hold the decedent was a guest passenger upon defendant's *in limine* motions and other motions made during the course of trial; and

b) In granting plaintiff's Instruction 1, which permitted plaintiff to recover on a finding of simple negligence; and

(c) In refusing defendant's Instructions A-1, A-2 and A-3, which required a finding of gross negligence before plaintiff could recover.

2. The Trial Court erred in not entering summary judgment for defendant for insufficiency of the evidence to support a finding of primary negligence (simple or gross):

(a) Upon defendant's motion to strike and for summary judgment at the conclusion of plaintiff's evidence, and

(b) Upon defendant's motion to strike and for summary judgment at the conclusion of all the evidence, and

(c) Upon defendant's motion to set aside the verdict and to enter final judgment for the defendant.

3. The Trial Court erred in not entering judgment for the defendant on the grounds that plaintiff's decedent was guilty of contributory negligence:

(a) Upon defendant's motion to strike and for summary judgment at the conclusion of plaintiff's evidence, and

(b) Upon defendant's motion to strike and for summary judgment at the conclusion of all the evidence, and

(c) Upon defendant's motion to set aside the verdict and to enter final judgment for the defendant.

4. The Trial Court erred in granting plaintiff's Instruction 4, which permitted the jury to excuse plaintiff's decedent's negligence on a theory of sudden emergency.

Sue Ann Holloway
By Counsel

EXCERPTS FROM REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS OF NOVEMBER 27, 1972

In Chambers

[3] * * *

Mr. Phillips: The first question to be presented to the Court will be the issue of whether or not the decedent had an ownership interest in the automobile which he was occupying at the time of his death. We have the title certificate. The evidence, I believe, is uncontradicted that there had been an agreement reached with H & L Chevrolet for a trade, that the actual possession of the death car and new automobile had been exchanged, but the title certificate had not been completed and delivered. Now, H & L Chevrolet has been unable to come up with the title certificate. Mr. Herndon, one of the principal owners of H & L Chevrolet, testified on discovery to the best of his recollection the title certificate was left at H & L. He was unable to say whether or not it had been notarized, and they have been unable to find any title certificate since the accident. In any event, it is uncontradicted that the title certificate was never delivered to the Division of Motor Vehicles. We

have obtained a duplicate certificate and we intend to introduce it into evidence.

The Court: What part will that play?

Mr. Phillips: If the decedent retained a proprietary interest in the automobile, it is our position under Parker vs. Levin the owner cannot be a guest in his own automobile.

The Court: You are saying the guest law is talking about the [4] titled owner, rather than the equitable owner.

Mr. Phillips: The typical situation where this comes into play is the sale of an automobile by a motor company to a customer, where they deliver possession of the motor vehicle to the customer, and don't get around to delivering the title. There have been a number of cases in our area where the motor company's insurance has been held applicable.

The Court: You are saying although it is uncontroverted there was an actual trade, and the motor company had the death car and the deceased had another car and they simply had not gone through the the administrative act of going through the transfer of title, that is sufficient to prove the ownership of this man?

* * *

[10] The Court: I tell you where I think it ought to be. My inclination here is that this matter of title certificate is not going to be suffcient to make this man an owner within the guest law. If this evidence shows there was an exchange of property entered, then I will try it, the car belonged to the motor company. Then what the situation is will depend on the facts. I am trying it as if the motor company owned it. If title had been changed, not only a change, but the title certificate, what would be the situation? Would he be a guest?

Mr. Meade: Certainly.

Mr. Phillips: We don't agree with that.

The Court: You are taking two positions; you are taking the position first he was the owner. I will rule against you on the first. Next, who was the guest and who was the host in the car they were using?

Mr. Phillips: Our position is they were co-bailees of the car.

The Court: I could go up there and get that car to interest my sister, and the motor company lends me the car. I take it home and pick her up and let her drive it. I believe I am the host in that case because I got it, I got control over it. I go to take her for a ride. I let her drive. I think I am host, and I don't think my position changes.

Mr. Meade: I take exception to that.

The Court: Assuming the deceased went to the garage, said "I [11] want to borrow this car," then he went out and picked her up and said, "You drive it," who is the guest and host?

Mr. Meade: But that's not the way this developed.

The Court: If she got the car, then he is the guest in her car.

Mr. Meade: The salesman is not the owner. He had custody of it, but the owner was dealing with this girl. She was the person he was dealing with on the trade.

The Court: His salesman certainly had authority to deal.

Mr. Meade: But he didn't do any dealing, because Mr. Herndon, who is an officer in the motor company, he went—the ones that went to the salesman's house, Mr. Herndon who is a principal in the motor company business, the brother, his sister, the defendant, all went over to the Holts. It was actually done through Mr. Herndon. He owned it, being an officer of the motor company.

The Court: We are certainly not going to make a difference between the salesman and the owner when he had the car at his house. The question is who had control of the car, the brother or the sister?

Mr. Meade: I think it is pretty obvious she did. She was in the driver's seat when they left. The driver always had control.

The Court: We have many cases it doesn't change by virtue of who drives. I can let you drive and still be the host. [12] I can go down, borrow a car, pick you up, let you drive, and I remain the host. You don't necessarily change that relationship, and I don't think ownership is the determining factor, because I think a bailee can be the host if he has exclusive control. If a garage man lends me a car, and I take my sister out driving, I am still the driver, but I do rule the certificate doesn't make any difference. I am going to try this case as if the motor company was the owner of that vehicle.

Mr. Phillips: Your Honor, of course our position is that the ownership certificate is offered solely as a means of showing consideration and not for the sole purpose of showing who actually owned the automobile.

The Court: Consideration for what?

Mr. Phillips: To take the man out of the guest statute, and I think the evidence will be the trade, or the transaction was not consummated to the effect there was nothing else for the decedent to do. He yet had to sign the title, or acknowledge his signature on it to complete the trade. As your Honor knows, there are a lot of cases which hold a contribution toward gasoline, so forth, will take the owner out of the guest statute.

The Court: If he retained an interest as far as selling it or getting a buyer, but I understand this was not true.

Mr. Phillips: There was a complete executory contract, but [13] the contract had not been completed in the sense he had done everything to consummate the sale; to-wit: sign or acknowledge his signature on the title certificate.

The Court: If he retained any interest to the point he had to find a buyer, but if everything was done except transfer of title then I will say the owner was the garage, but it is a question of who was the guest and who was the host, who got the car, had control of it, who invited who, just as if the motor company owned it and the two people went up there to get it, and that will be in the facts as they develop here. What I am trying to say, I don't think the certificate of title is the controlling thing under the guest law. In this case if you agree the transaction was one hundred percent complete except the transfer of title, then I say the ownership for all practical purposes was in the motor company. They had control of it, and had delivered the car to the other man.

Mr. Phillips: As far as I know, that is the picture. I don't know of anything else that had to be done other than transfer of title. I think there had been an oral understanding if consideration hadn't passed.

Mr. Meade: A note had been given.

[14] * * *

Mr. Meade: I am asking the Court to rule on the discovery deposition this is a guest passenger relationship, and you are ruling against me on that point. I except to that.

[18] * * *

Trooper L. N. Walden

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

Direct Examination

* * *

By Mr. Phillips:

Q. Did you have an occasion to start and get into an investigation of a traffic crash that occurred on the bridge on 501 across Staunton River just south of Brookneal? A. Yes sir.

[19] * * *

Q. I hand you a picture marked Plaintiff's Exhibit 3. Will you tell the jury in your own words—did you take that picture? A. Yes sir. I took this picture. This picture was taken facing south, looking towards Halifax County, and it shows the front end of the automobile I found at the scene, with the front end all demolished. This automobile was over on the right-hand side in the northbound lane, across the guard rail.

Q. Had the automobile been moved at the time that picture was taken? A. No sir.

Q. I hand you plaintiff's Exhibit 2. Did you actually take that picture too? A. Yes sir. I took this picture also. This was taken from the back end of the automobile, showing damage to the guard rail. The front of the automobile was facing north.

Q. Plaintiff's Exhibit 4 is a picture which has been [20] introduced. It shows something of the damage to the left rail going north? A. Yes sir.

Q. Did you observe that that night? A. I did. There was damage on the left guard rail, the steel structure of the bridge on the left side going north, but also you could see damage to the right-hand side going north.

Q. I hand you Plaintiff's Exhibit 5. Is that a clear picture of damage to the right-hand side? A. Yes sir. This photograph shows

the damage to the north—looking north—right-hand side of the bridge, the guard rail, steel structure.

Q. Did you look south of the damage on the left-hand side of the rail? Did you attempt to track the car? A. Yes sir. When I arrived on the scene I took a quick look at the automobile, then I attempted to trace back what caused all this damage to the front end of the automobile. In so doing, I found this damage to the other side of the highway from where the automobile was found.

Q. Did you then proceed on south from the initial point of impact? A. I looked south from there. I could not trace any gouges in the highway, or any pressure marks, or anything of that nature leading to the damage on the left side, from there [21] to the automobile. Automobile parts, the grill, and different parts of the metal, were strewn all over the highway.

Q. Did you, at my request, prepare a diagram showing the measurements—this is an aerial photo, Plaintiff's Exhibit 1, which has also been introduced into evidence. Perhaps if you would . . . . A. (The witness leaves the witness stand to stand before the jury)

Q. Can you get where they can all see? A. This photograph shows the bridge as you approach looking south. As you can see, the guard as it funnels into the bridge, this part along here is cement, then you go into the structure of the bridge, which is steel. This is a little diagram I drew. It is not drawn to scale, more or less free-handed. This heavy black part you see is the cement part I mentioned, you can see in the aerial photo. This represents the automobile in the approximate position I found it when I arrived on the scene. The damage to the left side of the bridge going north, or the west side of the bridge, I put an X there in approximately the position the damage was done to the steel bridge, and there was damage right behind the automobile leading up to it for approximately thirty feet. This automobile came to rest, from the front end I measured back to where it collided with the left side of the bridge, approximately eighty-six feet.

[22] Q. Is that straight up to the left edge of the bridge, or diagonally across? A. Straight up.

Q. And, how wide is the pavement at that point? A. The pavement at that point is twenty-three feet, twenty-one feet to the cement curb.

Q. You've got that marked in the diagram? A. Yes.

Q. Where have you got the eighty-six feet marked? A. The eighty-six feet is marked on the right-hand side. That's to the front of the car. The pavement leading into the bridge is twenty-three feet seven inches wide, blacktop, on the west side gravel shoulder twelve feet five inches wide, then a metal guard rail. On the east side of the highway the gravel shoulder is twelve feet six inches wide, and it also has a metal guard rail which curves into the cement part of the bridge. This part is the river bottom, the main channel is near the middle of the bridge.

Q. I hand you Plaintiff's Exhibit 3. The hood is missing off the automobile. Did you find that? A. No sir. I never did find the hood. When I arrived, the traffic was flowing on one side, one lane open. This side was completely blocked, and scattered parts off the front of the automobile were all in the area there.

[23] * * *

Q. Do you know what the posted speed limit is leading up to—I hand you the aerial photo, Exhibit 1. A. The posted speed limit is forty-five miles per hour.

Q. Where does that start? A. It starts south of the bridge, Route 501.

[24] * * *

Cross Examination

By Mr. Meade:

* * *

Q. You could not track this vehicle. I mean by that, [25] there were no tire marks to show the path of the vehicle? A. No sir.

Q. You simply could observe some damage to the left side of the bridge and to the right side looking north? A. Correct.

Q. No tire marks on the bridge itself? A. No sir.

Q. The damage you saw was to the steel portion of the bridge, is that correct? A. Yes.

Q. The side rails? A. Yes.

Q. Had it been raining? A. Been raining off and on, yes, light, misting rain.

Q. What was it doing when you arrived? A. It wasn't raining when I arrived.

Q. It had been raining intermittently during the day, had it not? A. Yes.

Q. Was anything unusual about the surface of that bridge? A. It is unusually rough.

Q. Always has been, hasn't it? A. Yes. It has been rough ever since I been in the county, which was twenty years.

Q. Did it have any particular effect on automobiles as [26] you went across? A. Yes sir. I think it does.

Redirect Examination

By Mr. Phillips:

Q. You were asked if it was an unusually rough surface and would have any particular effect on an automobile. You said it would. Tell us how. A. When you start across that bridge, it appears to have been a cement floor in it to start with and covered with blacktop, asphalt, gravel, and the traffic has apparently worn it away, and it is a lot of rough spots, little holes. When you start across with an automobile, your car will get the sensation it is going first one way and then the other. You may be able to see it in one of those photographs. I am not sure.

Q. Will you look and see? A. Photograph No. 4—see over here on the edges where it is kind of chipped away? There's one right there. That type of wear is what I am talking about.

Q. Trooper Walden, what was the surface condition of the highway—could we tell from the photographs made that night? Do you have an independent recollection? A. It was damp. It didn't have water standing on it, but it was damp. You can see in here, this photograph No. 3, [27] the highway was damp.

(Conference before the bench)

Q. Mr. Walden, you testified about the surface of the bridge. Was that on both lanes, the north and southbound? A. Yes.

Q. Or just one? It is the same on both lanes? A. Yes.

* * *

Q. (Mr. Phillips continuing redirect examination out of the presence of the jury) Trooper Walden, at the time of your investigation of the accident, how long had you been with the Virginia State Police Force? A. At the time?

Q. Yes. A. In the neighborhood of seventeen years.

Q. And were you a field trooper all that time? A. Yes sir.

Q. And was part of your duties investigating traffic crashes? A. That was the main thing I did.

Q. In and about the performance of that, were you required to file reports of your investigation? A. Yes.

Q. Did you use the standard form furnished by the Virginia Department of State Police? A. You are speaking of the SR-300? Yes sir.

[28] Q. As part of your performance of your duties was it necessary that you make a determination of maximum safe speeds? A. Yes sir.

Q. And based on your knowledge of this bridge, and of what you observed of the surface condition with reference to the roughness and the dampness, do you have any opinion as to the maximum safe speed on this bridge headed in a northerly direction, the way she was going, at 9:15 P.M. on September 20, 1969? A. I have my opinion.

Q. Would you give it to us? A. On that particular night with the weather conditions as they were, and the bridge as it was, I would think thirty-five miles per hour would be a maximum safe speed.

* * *

Q. Trooper Walden, also in and about your investigation of traffic crashes, were you all required to estimate the speed of a vehicle

before impact? Is that one of the blank forms you have to fill out? A. Yes sir.

Mr. Meade: You are leading him on this something terribly. Is he saying he is required to estimate speeds, or that the accident form has got that on it?

A. We are required—we have a field notebook, in that [29] field notebook it has on it "estimated speed before the accident." If we don't put it in there, we have to answer why.

Q. Go ahead, Trooper Walden, what is your estimate of the speed of this vehicle, and I assume you are basing it on what you found at the scene. A. This particular accident, if I had to make an estimate, I would say the automobile was driven somewhere in the neighborhood of seventy miles per hour.

Q. Is that the first initial impact? A. Yes. I base that on the amount of damage, twisted steel ripped right off. That just wouldn't happen at thirty-five or forty miles per hour.

* * *

Recross Examination

By Mr. Meade:

Q. Mr. Walden, why did you say the maximum safe speed across that bridge at the time of the accident was thirty-five miles per hour? A. Why do I say that?

Q. Yes. A. You had a bad, rainy night. You had the wet road. If the speed limit for a dry road, and that's what they base it on when the Highway Department puts those signs on which read forty-five, common sense would tell you it should be less [30] when raining. That's my personal opinion.

Q. You mean you don't drive on a dual highway sixty miles per hour in the rain? A. No sir.

Q. Doesn't everybody else do it? A. I can't tell you about everybody else.

Q. You said a little while ago it was damp. A. It was a little damp.

Q. Why is that so dangerous? What's dangerous about being damp? That's not wet. A. You get out and drive up and down the road.

Q. I am asking the question—was it damp or wet? A. It was wet. That caused it to be slick.

Q. The highway was slick? A. Yes.

Q. Then it wasn't just damp? A. Yes. It was damp, which would make it slick.

Q. How long had it been since it rained? A. I couldn't tell you. It had been raining off and on that afternoon.

Q. Was it raining enough to make any standing water, any puddles on that bridge? A. I don't know.

[31] * * *

(The jury returns to the courtroom)

* * *

Edwin Carwile

the next witness, being first duly sworn, testified and stated as follows:

Direct Examination

[32] By Mr. Phillips:

* * *

Q. * * * I will transfer you over to a diagram, Plaintiff's Exhibit 7, and the automobile has been sketched on there. If you will, look at that. Where were the two bodies or people lying with reference to the automobile that has been marked on that? A. The man was about here. The girl was about here.

Q. Would you stand up so the jury could see it? I will [33] ask him to mark "M" for the man and "G" for the girl and circle it on the diagram. A. That's the man here. The girl was about here.

Q. And, in terms of feet, could you say how many feet they were from the car? A. I would be afraid to guess. I would say roughly a car length, something like that, a car length and a half.

[34] * * *

Cross Examination

By Mr. Meade:

Q. Mr. Carwile, which way were you going? A. I was heading south.

Q. And you saw them in your headlights? A. Yes.

Q. And they were in your lane? A. Yes.

Q. And, where was the car? A. The car was in the other lane, on the opposite side.

Q. And you reached the girl first? A. Yes.

Q. So, she was laying at a point north, or on the Brookneal side from the man? A. Yes.

[35] * * *

Trooper T. G. Moore

the next witness, being first duly sworn, testified and stated as follows:

Direct Examination

By Mr. Phillips:

[37] * * *

Q. * * * Did you determine the initial point of impact? Can you recall the initial point of impact, on which side of the road it was? A. It was on the left.

* * *

Q. Do you recall the weather conditions? A. The road was wet at the time. That was my first occasion of being in that part of the county that night. In my travels, it had rained off and on during that night.

[38] * * *

Cross Examination

By Mr. Meade:

* * *

Q. Mr. Moore, it is true, is it not, that the speed limit on the

bridge, or before you get to the bridge going north, the speed limit changed from fifty-five to forty-five? A. Yes sir.

Q. This bridge, was it not, was a steel structure bridge, but it had an approach with concrete side rails before you got to the steel portion? A. Yes sir.

Q. You were familiar with this bridge, were you not? A. Yes sir.

Q. Was it anything unusual about the surface of the pavement there on the bridge itself, or was anything unusual about it, Trooper Moore? A. I don't recall it.

[39] Q. Was it anything about the surface or the pavement on the bridge that would make a car veer from one way to the other that you know of? A. No sir.

Q. I believe you have already testified the surface conditions at the time you arrived was wet? A. Yes.

Q. It had been raining throughout the day off and on? A. I know it had during the night. I don't know about earlier that day.

* * *

L. W. Dickerson

the next witness, being first duly sworn, testified and stated as follows:

Direct Examination

By Mr. Phillips:

* * *

Q. In September, 1969 were you a member of the Citizens Emergency Rescue Squad, the Brookneal branch? A. Yes.

Q. Did you, as a member of that rescue squad, have [40] occasion to answer a call on the Staunton River Bridge leading, on 501, from Brookneal to Halifax County? A. Yes.

[41] * * *

Q. Was any statement made by Mrs. Holloway on the way to Lynchburg from Brookneal? A. Yes sir. She kept repeating, "If he

dies, I killed him." Once or twice she said, "If he dies, I will kill myself." One time she asked me if I would join her in a word of prayer for him.

* * *

Q. I asked if she said whether or not Mr. Conner did or said anything to her prior to the collision. A. If she did, I don't remember. No sir.

Q. Can you tell us how many times—or what was her course of conduct on the way up there? A. I was afraid at the time she was going into shock [42] She was pretty upset and she kept repeating about "if he dies, I killed him."

Q. And how many times would you say she repeated that? A. A number of times, and she also would—I knew he was dead, but she didn't, but she figured it, I guess, because she would ask me if he died and I would tell her "No." I never did tell her he was dead. I waited until they could tell her at the hospital, but every mile or so she wanted to know what his heartbeat and pulse rate was.

[44] * * *

Gordon Holt

the next witness, being first duly sworn, testified and stated as follows:

Direct Examination

By Mr. Phillips:

* * *

Q. Now, did you have possession—did you have this automobile, I believe a 1966 Chevrolet, in your possession on this Saturday afternoon? A. I did.

Q. And, will you tell the lady and gentlemen of the jury, [45] in your own words, Mr. Holt, who you turned over possession of the car to, why you turned it over. Just give them a whole background of the situation. A. There was a call at my home,—I have forgotten whether my wife or myself received the call—and asked if the car was at my house. They both came over.

Q. Who is that? A. With Doris. Kenneth, the sister, and Doris

came to my house to try—or Kenneth wanted his sister to see the automobile.

* * *

A. The three of them came to the house. Doris stayed with the wife and myself, and the two, Mr. Conner and his sister, the both of them, I gave them permission to take the car and leave with it, and that's it.

Q. To whom did you turn over the possession of that car? A. Both of them.

Q. And who, primarily, did the talking with you with reference to turning it over to them for the try-out? [46] A. Kenneth mentioned it. I don't think she did. Mr. Conner.

Q. And, had he not been along . . . .

Mr. Meade: I object to that as leading.

The Court: That is supposition.

Q. Does your company have a policy insofar as a prospect trying out an automobile? A. If we know the customer, it is all right for him to try it out. If Kenneth hadn't been along, I would have certainly have gone with Sue Ann.

Cross Examination

By Mr. Meade:

Q. Mr. Holt, did Mr. Herndon come over to your house too? A. Yes. He lives in back of me.

Q. Mr. Herndon came to your house too, didn't he? A. Right.

Q. He had already talked to Sue Ann about this 1966 Chevrolet? A. I don't know.

Mr. Phillips: That is hearsay there, too.

The Court: I understand. I think this man can tell what transpired between these people in connection with the deal he was making with them.

Q. Did the person that called on the telephone to your house talk to you or your wife? [47] A. I have forgotten.

Q. Do you know who called? A. No.

Q. You don't know. Did you talk to Sue Ann Holloway at all over at your house? A. No.

Q. You did not? And Mr. Herndon was there? A. I might have spoken to her. I didn't talk to her.

Q. Mr. Herndon was there, is that correct? A. That's right.

Q. You happened to be a custodian of the car, didn't you? A. Right.

Q. This car had been traded in for a new Chevrolet, had it not? A. Yes.

Q. Been traded in by Mr. Conner, is that correct? A. Right.

Q. This was the day before the accident, wasn't it? A. That's right.

Q. What happened to Mr. Conner's tags on the '66 Chevrolet that was traded in? What was done with those tags, do you know? A. I don't know.

Q. What sort of tags were on the '66 Chevrolet? A. Dealer tags.

[48] Q. Your dealer tags? A. That's right.

Q. Are you an officer of H & L Motors? A. I am a salesman.

Q. You are not an officer? A. That's right.

Q. You are not an owner then? A. That's right.

Q. Am I correct you are not a stockholder, and not an officer in the company? A. That's right.

Q. You didn't have any discussion with anybody about selling this car, did you? A. No, not actually selling it.

Q. If there had been any negotiations relative to the sale of this '66 Chevrolet with Mrs. Holloway, it had been with Mr. Herndon and not you? A. That's right.

Q. You were inside the house when they arrived, weren't you? A. Either inside or on the back porch, yes.

Q. The keys were in the car, weren't they? A. That's right.

[49] Q. Did this car have new tires on it? A. A week old. Around a week old.

Q. You saw them leave the house? A. Yes sir.

Q. She was driving? A. Yes sir.

* * *

Q. And somebody had called your house before they arrived? A. Yes, to tell me they were coming.

Q. You don't know who called? A. No.

Q. And you don't know who received the call? [50] A. The wife or myself; we were the only two there.

Q. Mr. Conner and his wife and Sue Ann Holloway and Mr. Herndon came to your home, is that correct? A. I am not sure whether Mr. Herndon was with them. I don't think so. He lives right back of me. I think the three of them came and he walked down there.

Q. He did come over to your house, no question about that? A. Yes, he was there.

Q. You had no negotiations whatsoever with either Kenneth Conner or Sue Ann Holloway relative to this car? A. Nothing other than "We would like to try the car out." That's it.

Examination By The Court:

[51] * * *

Q. Had you had this car in your possession since it was traded the day before? A. Yes.

Q. Had you been driving it? A. Yes sir. In fact, I think I was the only one did drive it.

Q. Had you made any test, or just drove it? A. Just drove it back and forth, and if I had to go any place.

Q. Do you know when it was last inspected? A. Yes.

Q. When? A. The day before he traded it, by H & L.

[52] * * *

Deborah Ann Conner

the next witness, being first duly sworn, testified and stated as follows:

Direct Examination

By Mr. Phillips:

[53] * * *

Q. Did you go to see your aunt shortly after this accident happened? A. I went the day after, on a Sunday.

[54] * * *

A. Yes sir, I did. She was upset at the time. I tried to console her, because she was really upset, and she kept saying over and over that she had killed my daddy. I told her that I knew she didn't do it intentionally and that, you know, I was trying to console her, because I knew how bad she felt, and she just kept repeating herself how she had killed my daddy.

Q. Was anything said to you about anything he did about the crash? A. No. She didn't say—nothing was mentioned about how it happened, or anything like that. I was just mainly trying to console her and she just kept repeating herself. Nothing was said about the wreck, how it happened or anything. She just kept repeating herself.

[59] * * *

Doris P. Conner

the plaintiff, being first duly sworn, testified and stated as follows:

Direct Examination

By Mr. Phillips:

* * *

[63] Q. Who initiated the trip or the parties going to look at the car that he previously owned? A. Well, Sue Ann, I think, started questioning him about the miles he had on his car, and she told him the miles she had on her car, but actually, as far as who initiated it, really I don't know.

Q. Did you have conversation with Sue Ann after his death? A. Yes.

Q. Where, under what circumstances, and what conversation did you have? A. Where? The first time was at Lynchburg General Hospital on Sunday after my husband was buried on Tuesday. You want to know what else?

Q. I want to know what she told you, the exact conversation you had with her. A. This is to the best of my knowledge. When I first saw her, she started crying, and she said, "I killed him just as surely as if I put a gun to his head and killed him." I tried to console her, told her it was not intentionally, but she did repeat herself quite a bit that day. We talked about her health and different things.

Q. Did she ever tell you exactly how it happened? A. I asked her how it happened, and she said all she [64] could remember the car started sliding to the left and she said, "Kenneth!" and he said, "Sue Ann!" and grabbed it and pulled it to the right, but she said it kept sliding to the left.

Q. Is that the exact conversation? A. To the best of my knowledge, that's the exact conversation.

* * *

Cross Examination

By Mr. Meade:

[67] * * *

Q. When she [Sue Ann Holloway] arrived, your son was there? A. I think my son and his wife were in the yard, just [68] getting ready to leave when she arrived.

Q. Your son had a new car? A. That's correct.

Q. How long had he had that? A. I think he got that on Tuesday before Kenneth was killed on Saturday night.

Q. Your husband got his the day before? A. Yes.

Q. So, there were two new cars at the home when she arrived? A. Yes, I think so.

Q. And, actually, Sue Ann went out with your brother in his

car, he showed her the car? A. They went out in his new car. They also went out in my son's new car, which one they were in first, I don't know, but I didn't go on either.

Q. You didn't go on either ride? Did Sue Ann have supper with you that night? A. She had her supper, but we had eaten in shifts, as I told you before.

Q. She had shown some interest in this car your husband had traded in? A. Yes. She had questioned him about the mileage on it.

Q. He didn't have too much mileage on the car? A. Thirty-some thousand.

[69] Q. The car was in good shape? A. Yes.

Q. She was interested in his car? A. Seemed to be.

Q. Do you recall how much mileage she might have said was on hers? A. No. I heard it mentioned in the courtroom today, but I did not recall until today.

Q. Did you go to H & L Motors? A. Sue Ann and I went to H & L Motors.

Q. In whose car? A. Kenneth's new car, because he had driven Sue Ann's on up to H & L.

Q. And you and Sue Ann went up in Kenneth's new car? Are you sure of that? A. I think I am right on that.

Q. So you went up in Kenneth's new car. Did you drive? A. Yes, to the best of my knowledge I did.

Q. When you got there was Mr. Herndon there? A. Yes.

Q. Your husband was there, and Sue Ann was there? A. She went with me.

Q. She went with you? Did Mr. Herndon make her a price on her car? A. They talked prices.

[70] Q. Talked prices on the '66 Chevrolet? A. To the best of my knowledge they did.

Q. What was the purpose of going over to Mr. Holt's house? A. Because that's where the '66 Chevrolet was.

Q. I know, but why were you all going over there, for what reason? A. For Sue Ann to see the new car—the old car, to the best of my knowledge.

Q. For her to try it out to see if she liked it? A. I guess so. That's the way it ended up.

Q. You obviously went to Mr. Holt's house to see the car she was interested in, is that true? A. Yes.

Q. And how did you get over to Mr. Holt's house? A. I drove Sue Ann's car. We drove her car up to Willard Austin's and back on 501 north of Brookneal. I drove her car up there and back.

Q. You mean you left H & L Motors in her car? A. Right.

Q. Mr. Conner had taken it up there? A. Right.

Q. So you drove her car from H & L? A. Yes.

Q. Were you trying the car out yourself? [71] A. I think she suggested I try it out, see how it drove compared to the '66 Chevrolet.

Q. That Kenneth had? A. Right.

Q. The two of you went in her car over to Mr. Holt's? A. After we went to Mr. Willard Austin's. We went up there simply for me to drive her car.

Q. When you arrived at Mr. Holt's house, that would be you and Sue Ann, your husband was there, Mr. Holt was there, Mrs. Holt was there? A. Mrs. Holt was there, and she was inside.

Q. And Mr. Herndon was there? A. Yes, to the best of my knowledge.

Q. Did you go inside the house? A. Yes, Sue Ann and I both went inside the house, passed the time of day with Mrs. Holt for a few minutes, and talked about the sharks' teeth and looked at them I talked to you about.

Q. You made a social visit? A. It started out a social visit. Before the night was over, it was a nightmare.

Q. Sue Ann and your husband left with the car while you were still there? A. Right.

[72] * * *

Q. Now, when you first talked to Sue Ann at the hospital, she was rather distraught, to say the least? A. We were all distraught to say the least.

Q. Later you had occasion to talk with her, and she told you what happened, that is, about the car pulling to the left? A. She told me the car slid to the left, the car started sliding to the left.

Q. She has told you this on two occasions, hasn't she? A. I think so.

Q. And actually, she told you that she said "Kenneth!" and he said "Sue Ann!" and he pulled the car to the right, but she told you it went back to the left? A. She said the car started sliding to the left and she said "Kenneth!" and he said "Sue Ann!" and pulled it to the right, but it kept going to the left.

Q. Actually, she said it went back to the left, isn't that what you said before? A. I am not sure. It is hard to remember the exact words because it has been three years since for me to forget some things, but not the big hurt.

[74] * * *

In Chambers

Mr. Meade: Please the Court, at this stage of the proceedings, the plaintiff having rested, defendant, by counsel, moves the Court to strike that portion of the evidence which relates to plaintiff's contention that the plaintiff's decedent was not a guest passenger in the automobile.

[75] * * *

The Court: That particular motion, I don't have too much problem. I don't think the title certificate, the facts in the case, has anything to do with whether this man was a guest passenger. I take the position the car was owned by the motor company, was loaned or bailed to both of them. The decedent [76] was in the car helping his sister to make a purchase. I don't think he was a guest. Therefore, I will hold the only thing necessary was simple negligence.

* * *

The Court: My ruling is simple negligence on the grounds he was in the car trying to help his sister buy a vehicle. I don't see how he could be considered a guest under those circumstances.

Mr. Meade: I take exception to that. The next motion I make is that the plaintiff has failed to prove any primary negligence on the part of the defendant.

[80] * * *

The Court: I think the motion presents a rather serious problem for the Court, but at this particular stage of the proceedings I am not inclined to rule in favor of the motion. My understanding of the law—I don't have these things in front of me—that the very presence of a vehicle on the wrong side of the highway is prima facie evidence of negligence and the burden shifts to the defendant to give an explanation why it was over there, and it is up to the jury to believe it. I can understand the girl saying she thought she had killed her brother. It could be a hysterical, emotional reaction, which I suspect it was. At the same time, it could be a guilt that motivated those statements. The evaluation should be for the jury. If they feel it was an admission against interest, or a statement she had done something she shouldn't have done, it is up to them to consider. If you add that, plus the physical facts, indicating to any reasonable person this vehicle was traveling at a high rate of speed to cause physical damage—I realize that courts have held that physical damage alone is not sufficient to create an inference of speed, but considered along with all the evidence, the weather, the bridge, the posted speed limit, her admitted purpose for which they had that car, the terrific damage that was done to it, almost unbelievable to see the front of that [81] car almost severed in the distance of eighty-six feet. So when you take all that in consideration, plus the presumption I believe the law gives the plaintiff where a defendant is on the wrong side of the road. There is a case a man contended a tire blew and pulled him over there. He explained it. It was up to the jury whether they believed him. I overrule the motion.

Mr. Meade: I want to move the Court to strike the evidence and enter summary judgment on the grounds the evidence convicts the plaintiff's decedent of contributory negligence, grabbing the steering wheel.

The Court: The only testimony of grabbing it is the statement given by another witness, said she heard the defendant make that statement which would mean no more than she very clearly said she was sliding to the left before he grabbed it. If that's all he did, it is obvious the car was out of control when he grabbed it. What caused it is something else.

Mr. Meade: I move the Court at this point to strike all the evidence with regard to statements the defendant made with respect it was her fault, "I killed my brother," all that sort of business. I objected to that before the evidence was put on at a side bar conference, and said I would get that in the record later.

The Court: You did say that to me.

Mr. Meade: I took exception. Now I want to move the Court [82] to strike that as not being proper evidence, has no probative value.

The Court: I will overrule that. My impression, if I were on the jury, I would consider it hysterical and emotional.

* * *

In Court

W. R. Herndon

the next witness, called to testify on behalf of the defendant, being first duly sworn, testified and stated as follows:

Direct Examination

By Mr. Meade:

* * *

Q. Mr. Herndon, what is your position with H & L Chevrolet Sales, Incorporated of Brookneal, Virginia? A. Secretary-Treasurer.

Q. Are you one of the owners of that business? A. Yes sir.

Q. You are a director and stockholder, as well as an officer? [83] A. Yes sir.

Q. Does Mr. Gordon Holt work for your company? A. Yes.

Q. What is he employed as? A. He is employed as an automobile salesman.

Q. Both new and used cars? A. Yes, sir.

Q. He is not an officer in the corporation? A. No sir.

Q. He is not a stockholder or owner of the corporation? A. No sir.

Q. Do you know Mrs. Sue Ann Conner Holloway? A. Yes.

Q. Did you know her before this accident occurred near Brookneal back in 1969? A. Yes sir.

Q. Did you see her on the date of this accident, prior to the accident? A. Yes sir.

Q. And where did you see her? A. At H & L Chevrolet, and at Gordon Holt's house, two places.

Q. Did you know what sort of automobile she owned? A. Yes sir.

Q. Had you seen it before? [84] A. Probably, but I couldn't swear to it.

Q. Did you see it on the date of the accident? A. Yes sir.

Q. Where did you see it? A. At H & L Chevrolet.

Q. That's in Brookneal, Virginia? A. Yes sir.

Q. Who brought that car to your place of business? A. Kenneth Conner.

Q. And you say you saw Mrs. Holloway there at your place of business too? A. Yes sir.

Q. Who came to your place of business first? A. Mr. Conner.

Q. Had he made a telephone call to you prior to that? A. Yes sir.

Q. Did Mrs. Holloway come by herself? A. No sir.

Q. Who did she come with? A. With Mrs. Conner.

Q. Did you examine or look at her automobile there at your place of business? A. Yes sir.

Q. Was this inside or outside? A. Inside.

[85] Q. Any reason to be inside? A. Well, for lights, because it was dark, and I don't remember whether it was raining at the time, but it had been, but as I recall it was dark and we had it inside, drove it in the shop where the lights were.

Q. You examined this car? A. Yes sir.

Q. And after she arrived you talked a little business with Mrs. Holloway, didn't you? A. Yes sir.

Q. Did you negotiate a possible transaction with her? A. A price was quoted, yes sir.

Q. You quoted her a price? A. Yes.

Q. Did you give her an appraisal figure on her car? A. I made a price on the trade, and a price on the Conner car straight out.

Q. You gave her these figures? A. Yes sir.

Q. You were dealing then with her? A. Yes sir.

Q. You were not dealing with her brother? A. No sir.

Q. Where was the '66 Chevrolet that you were talking business about? [86] A. It was at Gordon Holt's house in Brookneal.

Q. Did he happen to have it there? A. Yes sir.

Q. Now, did you go somewhere from your place of business? A. We went from my place of business to Gordon Holt's house.

Q. For what purpose? A. To look at the automobile.

Q. To look at the car? A. Yes sir.

Q. And did you call Mr. Holt's house before you went over there? A. Yes sir.

Q. What was the purpose of that? A. To see if he was at home and had the car.

Q. To see if the car was there? A. To see if the car was there.

Q. And you determined the car was there? A. Yes sir.

Q. Then you went from your place of business over to Mr. Holt's house to see the car? A. Yes sir.

Q. Why not bring the car over to your place of business? A. I don't know of any particular reason. He was off. He was at home, and he had the car.

[87] Q. You all did go over to Mr. Holt's, is that correct? A. Yes sir.

Q. And you went over there? A. Yes sir.

Q. Mrs. Conner went over there, Mr. Conner went over there, and Sue Ann went over there, is that correct? A. Yes.

Q. Actually, the Conners and Holts are social acquaintances and friends, are they not? A. Yes sir.

Q. Now, what was Sue Ann going to do? Was she going to try the car out? Was that the idea? A. Well, she looked at the car. We all were standing there, probably walking around it, as you would look at a used car. It seems to me one of them—I can't swear as to who said it—"Let's drive it and see how it runs" or something to that effect. Whether Sue Ann did or Kenneth did, I don't know. I would be inclined to say it was Kenneth.

Q. So, this was all right with you to try the car out? A. Yes sir.

Q. You always let a customer try the car out? A. A reputable person.

Q. Was she a reputable person? A. Yes sir.

Q. You let her have the car? [88] A. Yes.

Q. She drove it? A. Yes.

Q. In fact, she was driving when they left, is that right? A. Best I can say she was.

Q. You negotiated with her, giving her the price and everything. Was that done at your place of business or at Mr. Holt's house? A. At my place of business.

Q. You gave her the price of the traded in car, as well as what you would give her on her car? A. Yes. I don't believe price was mentioned after we left the garage.

Q. This was something between you and Sue Ann? A. Yes sir.

Q. Not Mr. Conner? A. He might have said, "What are you going to give her?"

Q. You weren't dealing with him? A. The way I was thinking I was not. I was dealing with her.

Q. You deemed you were dealing with her, not him? A. Yes sir. I felt she was the person that would be buying the car..

* * *

[89] Cross Examination

By Mr. Phillips:

* * *

Q. Did Gordon Holt have custody of the car? Was he the custodian of the car? A. Yes sir.

Q. It was in his custody to sell, right? A. Yes sir, it was. He took it for the weekend at that particular time.

[91] * * *

Q. Do you recall—did you understand they were going to both go? A. Yes sir.

Q. Who had the keys to the car? Did Gordon have them? A. The car was in his possession. They were either in the car, or he had them, but he has the habit of leaving the keys in it.

Q. But the car was in his possession? A. Yes sir. It was on his property. He had taken it home. I didn't expect to see it again until Monday morning.

Q. He was the custodian? A. Yes sir.

[92] * * *

Sue Ann Connor Holloway

[93] the defendant, being first duly sworn, testified in her own behalf, and stated as follows:

Direct Examination

By Mr. Meade:

* * *

Q. Do you have brothers and sisters? A. Yes sir.

Q. Kenneth was one brother. How old was he when this accident happened? Forty-three? A. Forty-three.

Q. How old were you? [94] A. Twenty-seven.

* * *

Q. What sort of work did you do? A. I am a pharmacist for People's Drug Store.

Q. Is that what you do now? A. Yes sir, it is.

Q. Mrs. Holloway, your brother was a pharmacist and operated a store in Brookneal, is that correct? A. Yes sir.

[95] * * *

Q. What was the relationship between you and Kenneth, can you tell us? A. I loved him very much, and we were probably closer than average.

Q. Closer than average? A. Yes sir, I would say we were.

Q. Did the age difference between you have any bearing on that, or can you say? A. He was older than I was, and I relied on him a great deal for advice.

Q. On the day of this accident where were you going? A. I was going to my father's in Chatham, Virginia.

* * *

Q. Did you stop in Brookneal? [96] A. Yes sir, I did.

Q. Why? A. I stopped to see my brother and his family.

Q. Was this a usual or unusual thing for you to do? A. No, it was the usual thing for me to do.

* * *

Q. Other than your automobile, were any other automobiles there at their home? A. Yes sir, there were other automobiles there besides mine.

Q. Whose were they? [97] A. My brother's new car was there, and my nephew's new car was there, and my sister-in-law's car was there.

* * *

Q. Did you have occasion to ride in those cars? A. Yes sir. I rode in both of the new cars, the one belonging to my brother, and the one belonging to my nephew.

Q. Why did you go in these two cars? A. Well, they were new cars. They wanted me to see how they rode.

Q. They were showing their cars to you? A. Yes sir.

Q. Was there any conversation there about the car that your brother had traded in? Don't tell me what the conversation was, but was there conversation about the car your brother had traded in? A. Yes sir, there was some conversation about the car he traded in.

Q. Did you later go over to H & L Motors? A. Yes sir, I did.

[98] Q. What was the purpose of your going over there? A. I went over to H & L Motors because my brother had driven my automobile over to Mr. Herndon's for him to look at it, and I went by there. That's where my car was.

Q. Now, did Mr. Herndon put any value on your car for trade-in purposes while you were there? A. Yes sir. He put a value on my car.

Q. Did he negotiate or deal with you, talk to you about figures on a trade or sale? A. Yes, sir, he did.

* * *

Q. After Mr. Herndon made you some figures there about your car and the other car, did you go from there to somewhere else? A. Yes, sir, I did.

Q. Where did you go? [99] A. Well, I went to Mr. Holt's house.

* * *

Q. Now, what was the purpose of you all's going over to Mr. Holt's house? A. I went over to Mr. Holt's house to drive the car, to drive the Chevrolet my brother had traded in.

Q. When you got over there, did you get in the car to go out and drive it? A. Yes sir, I did.

Q. Did your brother get in the car? [100] A. Yes sir.

Q. Who was driving when you left there? A. I was driving the car.

Q. Now, who was in charge of this car you were driving? A. I was driving, I was in charge of the car, if that's what you mean.

Q. And you were test driving it, so to speak? A. Yes sir.

Q. And your brother was in the front seat with you? A. Yes sir, he was.

Q. Where did you go? A. We went down from Gordon Holt's house down Route 40, turned onto highway 501, headed away from Brookneal, and we went across the Staunton River Bridge.

Q. Into Halifax County? A. Into Halifax County.

Q. And then where did you go after you crossed the bridge? A. We continued on out highway 501 a ways, and then we turned around and came back.

Q. You were coming back then towards town? A. Yes sir.

Q. You were twenty-seven years of age at that time? A. Yes sir.

Q. How long had you been driving a car? [101] A. Since I was sixteen.

Q. Since you were sixteen? Were you a competent driver? A. Well, I hope I am a competent driver. I never had any violations, anything like that.

Q. How many miles did you have on your car? A. Sixty-some thousand.

Q. Had you put those on there? A. I had put a great number of them on there.

Q. You owned your own automobile for how long? A. Eight years.

Q. And you were licensed to operate? You had a driver's license? A. Yes sir.

Q. From the time you left Mr. Holt's house until you got up there and turned around on 501 south of the bridge there, what had been your speed as you drove along? A. Within the speed limit.

Q. During this time had there been any criticism or complaint of your driving? A. No sir, there had not been.

Q. Was it dark? A. Yes sir, it was dark.

Q. Do you recall whether or not the highways were wet? A. The road was wet.

Q. Was it raining at this time, or do you know? [102] A. I can't say for sure.

Q. Had it rained during the day? A. Yes sir.

Q. Were your headlights on? A. Yes sir.

Q. Now, after you turned around, you were coming back towards Brookneal? A. Yes sir.

Q. Did you go over the bridge to get back to Mr. Holt's house? A. We would have to cross the bridge to get back to Mr. Holt's house.

Q. Had you noticed anything unusual or different about the bridge when you went over the first time, going south? A. No sir.

Q. Had you had any trouble with the car on the bridge? A. No sir.

Q. How do you get to this bridge, do you come down a hill to get to the bridge coming back? A. There is a slope downward as you come onto the bridge, but it levels out right before you come onto the bridge.

Q. Can you tell the jury what your speed was as you approached the bridge and went onto the bridge? A. Well, I would say I wasn't going over forty.

Q. Were not going over forty? [103] A. No sir.

Q. Was there a center line in the road? A. Yes sir, the road is marked.

Q. With reference to that marking, where were you driving? A. I was driving on my side of the road.

Q. Your headlights were on? A. Yes sir.

Q. Where were you looking as you were driving? A. I was looking straight ahead at the road.

Q. As you drove onto the bridge, were you driving on your right side of the road? A. I was driving on my right side of the road.

Q. Describe to the jury, if you will, the first thing that happened out of the ordinary as you got onto the bridge. A. As I came onto the bridge, the only way I can describe it, it was like a shimmy, and then the car pulled to the left.

Q. How far left did it pull? A. I can't say for sure.

Q. With reference to the center line, how far did it pull? A. I would say maybe it pulled a couple of feet.

Q. Did it pull over, or to the center line? A. I would say it pulled to the center line.

Q. To the center line? A. Yes.

[104] Q. What did you do? A. I pulled it back to the right.

Q. Did you have any difficulty pulling it back? A. No sir.

Q. When you pulled it back, where did you pull back to? A. I pulled back on course.

Q. Then what happened? A. The car went back again.

Q. Same way? A. To the left, yes sir.

Q. Was it any stronger than it was the first time, or what? A. It was about the same.

Q. About the same? What were you going to do at that point? A. I would have pulled it back again.

Q. Did you have control of the vehicle? A. Yes sir, I had control of the vehicle.

Q. What happened at this point? A. My brother reached over and grabbed hold of the steering wheel and jerked it back.

Q. And then what happened? A. That's when we had the accident.

Q. After he jerked it back, or after he jerked the car, did it move to the right? A. When he reached and grabbed the wheel?

[105] Q. Yes. A. Yes, to the right.

Q. How do you know he grabbed the wheel? A. Because I felt the steering wheel when it pulled, and I felt.... (The witness begins to cry)

Q. Felt what? A. The touch of his hand.

Q. Felt the touch of his hand? Is that what you said? A. Yes sir.

Q. Was it dark? A. Yes sir, it was dark.

Q. Do you know whether or not your brother released the steering wheel after he grabbed it? A. No sir, Mr. Meade, I don't.

Q. Did you turn the steering wheel aloose? A. No sir.

Q. What side of the bridge did you hit first? A. The left-hand side.

Q. Do you know whether or not your brother still had his hands on the steering wheel when you were going to the left there before you hit? A. No sir, I don't.

Q. You don't know one way or the other? A. No sir.

[106] * * *

Q. Was anything said, or any exclamation made by you or your brother prior to this? A. I spoke his name to him and he spoke my name to me.

Q. What sort of tone of voice did you use when you spoke his name? A. I said like "Kenneth."

Q. What was the purpose of saying "Kenneth"? A. Because I wanted to know what was happening with the car.

Q. Did he respond to that? A. Yes sir, he said, "Sue Ann."

Q. Was that after you said "Kenneth," or simultaneously, or can

you say? A. It was pretty much one following the other. They were right in there together.

Q. How did that relate to his grabbing the steering wheel? A. I don't know how it relates to his grabbing the steering wheel.

Q. Where was the car when he grabbed the steering wheel, [107] on your side? A. I had pulled it back to my side, and it was going back to the left side when he grabbed the wheel.

Q. Was it on your side of the bridge when he actually grabbed it? Was the car on your side of the center line when he grabed the wheel? A. No, I would say the car moved to the center line.

Q. To the center line? A. On each time it moved. I am approximating, but I would say it moved to the center line.

Q. It had moved to the left again when he grabbed it, but had it just moved to the center line itself? How far had it moved? A. I don't know.

Q. Before he grabbed the wheel, what were you doing, or what were you going to do? A. I was going to pull it back again.

Q. Were you able to do this? A. No sir, I wasn't

Q. Why? Is that when he grabbed the wheel? A. Yes sir.

[108] * * *

Q. The attendant in the rescue vehicle, you heard him testify today you said over and over again you killed your brother. Did you say those things? A. Yes, I said those things.

Q. Did you say those things to the young Conner girl at the hospital? A. I am sure I said that to all my family.

Q. What did you mean by that? A. Well, I felt like if I hadn't been there and if we hadn't of been together, that he would still be living.

[109] Q. Did you mean by those statements that you had done something wrong in driving the car to cause this accident? A. I didn't mean I had operated the car improperly, but I felt like if I hadn't of been there, then the circumstances would not have been as they were. We wouldn't have been together. I wished I had stayed at home.

Q. Since the accident have you talked with your sister-in-law about this acident? A. Yes sir.

Q. Did you tell her how it happened? A. Yes sir, I did.

Q. Did you tell her what you told us here today? I don't mean this lengthy, but did you tell your sister-in-law about it pulling to the left and his grabbing the wheel? A. Yes sir, I did.

Q. Was there any traffic approaching you on the bridge prior to this accident? A. No sir, there was no traffic on the bridge.

Q. You all were the only vehicle? A. We were the only vehicle.

Cross Examination

By Mr. Phillips:

Q. Mrs. Holloway, I understood that when you entered the south end of the bridge the car started shimmying. You said it gave a shimmy and pulled to the left? [110] A. Yes sir.

Q. That you pulled it back, it started to the left again. Now, were you still going at the same rate of speed at that time? A. Once the car started pulling?

Q. Uh huh. Was your foot on the accelerator? A. I don't think my foot was on the accelerator.

Q. Did you apply brakes? A. I would say my foot was probably on the brake.

Q. Did the speed of your vehicle slow down appreciably from the time it shimmied and started pulling to the left when you went on the bridge until the time you struck the bridge on the left? A. Did the car accelerate?

Q. Did it slow down? Was any change in the speed? A. I don't know.

Q. Now, you recall talking to Doris Conner? A. Yes.

Q. Do you recall telling her the car was sliding? A. I heard her testimony.

Q. Was her testimony wrong? Did you tell her what she testified? A. I heard her testimony. I would not say the car slid, I would say the car pulled.

Q. Do you deny telling her the car slid? [111] A. I don't recall using the term "slid."

Q. Would you know where she got it if you didn't tell her? A. No sir.

[112] * * *

Q. As you say, at that time it was no appreciable change of speed in the car, and it was pulling to the left? A. I don't know.

Q. As a matter of fact, you have never told Mrs. Conner, or anyone, the speed you entered that bridge, have you? A. I don't know if I have ever discussed the speed with her.

Q. And now, you don't know whether you slowed down when the car started pulling to the left or sliding, or whichever the proper adjective might be. Do you know whether or not the speed was decreased from the point of entering onto the bridge to the point of impact? A. Mr. Phillips, the only way I know to answer your question is to tell you I would think I had my foot on the brakes, but I can't say for sure I had my foot on the brakes, but I think I had it on the brakes.

* * *

Q. Now, do you really know how fast you were going, or is that an estimate of your speed? A. I am telling you how fast I think I was going.

[113] Q. You think you were going? That is an estimate, right? A. I can't give you my exact speed.

Q. And what I am getting at, you say you entered the bridge at forty miles per hour. Do you think you slowed down before impact? A. I said I wasn't going over forty.

* * *

Q. Do you recall the fact you did not tell this Rescue Squad man, Dickerson, anything about your brother grabbing the steering wheel? A. I didn't explain the accident to him. I was concerned solely for my brother's welfare, and I did say over and over again that I killed him.

Q. You weren't blaming him for it that night? What I am getting at, when did you decide he was responsible for this crash? And is that the position you are taking here today?

Mr. Meade: That is the position counsel is taking.

Mr. Phillips: I would appreciate it if the witness be allowed [114] to answer.

Mr. Meade: I think you are asking her a legal question, calls for a legal opinion.

The Court: I don't see anything wrong with it. She is testifying. He wants to know what her position is.

Mr. Phillips: I asked her when she decided Kenneth Conner was responsible for his death.

A. I don't know.

Q. You don't know when you decided that? A. No sir.

[115] * * *

Q. Is that your position, that your brother, Kenneth Conner, caused his own death by grabbing the steering wheel after you called his name? A. I feel like when he grabbed the wheel and jerked it, that it interfered—he interfered with my driving.

Q. Can you tell us why he grabbed the wheel? A. No sir, I cannot.

Q. Now, you have already told us the car was pulling to the left? A. Yes sir.

Q. And you called his name? A. I spoke his name and he spoke mine.

Q. Was that the only time on this course, this occurrence, this exchange of words occurred between you? A. That was all we said.

[116] * * *

Q. Mrs. Holloway, have you ever, before today, communicated your thoughts to Doris Conner, Kenneth Conner, Jr. or Deborah Ann Conner that Kenneth Conner's action in grabbing the steering wheel

was the cause of that crash? [117] A. Well, I have never told them —I told them he grabbed the wheel. That's as much as I have said.

Q. But you told them that the car was sliding, or moving to the left at the time he grabbed it? A. It pulled to the left.

Q. Do you know whether he jerked the wheel toward the left or toward the right, or which way? A. I would say he jerked the wheel to the right.

Q. But it didn't respond, did it? A. It didn't respond?

Q. Uh huh. The automobile didn't go to the right. A. It moved towards the right.

Q. Then what happened? A. It went immediately back to the left.

* * *

Redirect Examination

[118] By Mr. Meade:

* * *

Q. What was your state of mind when he grabbed the wheel? Was it unexpected or expected? A. It was unexpected. I was surprised.

Q. Now, when he grabbed the wheel, before he grabbed the wheel, did you have the steering wheel in your hand? A. Yes sir, I did.

[119] * * *

Doris P. Conner

recalled to testify as a rebuttal witness, still under oath, testified further as follows:

Redirect Examination

By Mr. Phillips:

Q. Mrs. Conner, you have already testified you had a number of conversations with Mrs. Holloway? A. Yes.

Q. When was the first time you were made aware she blamed this crash on your husband's action in catching the steering wheel? A. Today.

Mr. Meade: I don't see where this is rebuttal.

The Court: When was the first time?

A. Would you ask the question again?

Q. When was the first time you were made aware it was her position that your husband's action in catching the steering wheel caused this crash, and his death? [120] A. Today, in this courtroom.

Q. Have you previously specifically asked her how fast she was going as she entered the bridge? A. Yes.

Q. When, and what was her answer? A. The first time was when I visited her in the hospital, and she told me she did not know how fast she was going.

* * *

(Court and counsel go into chambers)

In Chambers

Mr. Meade: Defendant, by counsel, at the conclusion of all the evidence, moves the Court to strike the evidence and enter summary judgment for the defendant on two grounds; first, the uncontradicted evidence in this case, particularly as established by the only testifying witness to the actual accident itself, establishes that the defendant was not guilty of any negligence proximately causing this accident, and that there is no evidence of gross negligence on her part proximately contributing to cause this accident. My motion is first on primary negligence, and secondary, that the testimony of the defendant, who is the only testifying witness, clearly establishes that prior to her brother's grabbing the steering wheel, she had control of the vehicle, and that he interfered with her control of the vehicle, and he is convicted of contributory negligence as a matter of law.

[121] The Court: The record will show the motion is overruled.

* * *

Mr. Meade: * * *

[122] * * *

Instruction No. 4 relates to sudden emergency, lets the jury decide that there was a sudden emergency when there is no testimony to that

point. The emergency created was created by the decedent in grabbing the wheel, and there is no evidence to contradict that. I submit there is no evidence to submit it on sudden emergency.

[126] * * *

Mr. Meade: May it please the Court, the jury having been discharged, I move the Court to set aside the plaintiff's verdict and to enter final judgment for the defendant on the grounds that the verdict is contrary to the law and evidence and without evidence to support it, as stated in my various motions during the course of the trial. In the alternative I move the Court to set aside the verdict and grant a new trial on the grounds error was committed during the course of the trial, specifically the instructions given to the jury, and the instructions not given to the jury offered by the defendant, by counsel. I think the fact this jury was only out something like twenty-five minutes, possibly thirty, is an [127] indication the jury was confused by the instructions, and obviously this verdict is based on speculation and surmise. The only evidence as to how this accident occurred was the testimony of the defendant herself. That evidence is not contradicted by any other evidence. Therefore, they are the facts of the case. If the Court wants a memorandum on this, I will submit it. If the Court does not, and wants to summarily overrule the motion and enter summary judgment it may, but I would be pleased to submit briefs to the Court.

The Court: I think the motion is one deserving of some consideration by the Court. I wouldn't summarily cut off anybody. It has been a lot packed into one day, and it has been a difficult case. Therefore, I will withhold any judgment at this time and ask for a memorandum filed with me, with a copy to opposing counsel. Are you going to take the responsibility of furnishing the record to me?

* * *