CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
NOV 29 1974
RICHMOND, VIRGINIA

215 Va. 431

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JUL 16 1974
RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

BARNEY ARNOLD, SHERIFF, ADMINISTRATOR OF
THE ESTATE OF JERRY LEE PRICE,
Appellant

vs. RECORD NO. 740303

DOROTHY M. REYNOLDS, ADMINISTRATRIX OF
THE ESTATE OF JACKIE LEE REYNOLDS,
DECEASED,
Appellee

FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY

APPENDIX

Ralph B. Rhodes
Bruce E. Welch
Hutcherson and Rhodes
Attorneys at Law
118 Main Street
Rocky Mount, Virginia, 24151

Attorneys for Appellant.

INDEX

APPENDIX

	Page:
MOTION FOR JUDGMENT.	1
FINAL ORDER OF THE CIRCUIT COURT OF MONTGOMERY COUNTY.	4
NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.	7
TESTIMONY OF VIRGINIA STATE TROOPER R. C. KEESEE	9
TESTIMONY OF RICHARD J. McCARY	20
PLANITIFF'S EXHIBIT NO. I. . . . . (Diagram of Trooper R. C. Keesee of scene of accident)	30

VIRGINIA: IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

DOROTHY M. REYNOLDS, ADMINISTRATRIX OF THE ESTATE OF JACKIE LEE REYNOLDS, DECEASED, Plaintiff	)	
vs:	)	MOTION FOR JUDGMENT
BARNEY ARNOLD, SHERIFF, ADMINISTRATOR OF THE ESTATE OF JERRY LEE PRICE, Christiansburg, Virginia Defendant	)	

TO: THE HONORABLE W. S. JORDAN, JUDGE OF THE ABOVE NAMED COURT:

Comes now the plaintiff, Dorothy M. Reynolds, Administratrix of the Estate of Jackie Lee Reynolds, deceased, and moves the Court for judgment against the defendant in the sum of SEVENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS ($75,500.00), and in support of said motion, sets forth the following:

(1) That on or about April 18, 1972, at approximately 10:00 p.m., the plaintiff's decedent was riding in a motor vehicle owned by Jerry Lee Price, the defendant's decedent, on Interstate Route No. 81, 2.1 miles north of Exit 37, in Montgomery County, Virginia.

(2) That the aforesaid vehicle was being operated at a speed of approximately 80 to 100 miles per hour at the time and place aforesaid, and the speed limit at the time and place was 65 miles per hour.

(3) That at the time and place aforesaid it was the duty of the operator of the motor vehicle to exercise ordinary care to keep his vehicle under proper control; to operate his vehicle at a reasonable rate of speed under the circumstances then and there existing; and to refrain from the operation of a motor vehicle while he was under the influence of intoxicating beverages.

ITH & PIERCE
ORNEYS AT LAW
KSBURG, VIRGINIA

(4) That in violation of the foregoing duties the operator of the motor vehicle was then and there grossly negligent in that he failed to keep his vehicle under proper control; operated his vehicle at an excessive rate of speed; operated the vehicle while he was under the influence of intoxicating beverages; and was otherwise then and there grossly negligent, causing the 1969 Ford Sedan to go out of control; skid off the highway into the median area and overturn at least four times.

(5) That as a result of the wrongful acts of the operator of the motor vehicle the plaintiff's decedent was instantly killed.

(6) That while there are no eyewitnesses to the accident, the presumption is that the owner of the vehicle, Jerry Lee Price, was the operator thereof.

(7) That Dorothy M. Reynolds qualified as Administratrix of the Estate of Jackie Lee Reynolds in the Montgomery County Circuit Court of Montgomery County, Virginia, on March 16, 1973, as will appear from a Certificate of Qualification which is attached hereto and asked to be made an exhibit.

(8) That the sole statutory beneficiaries of the plaintiff's decedent are the following: Maxwell Lee Reynolds, father; Dorothy M. Reynolds, mother; Donald Wayne Reynolds, age 20, brother; George Nelson Reynolds, age 18, brother; Joseph Maxwell Reynolds, age 8, brother; and Shelbie Louise Reynolds, age 17, sister.

(9) That there was no insurance coverage on the automobile owned and operated by the defendant's decedent, but that the plaintiff's decedent was covered under a family automobile policy, No. A504 141-D02-46B, issued by State Farm Mutual Automobile Insurance Company, whose registered agent is Donald T. Zimmerman, 1001 N. Emmet Street, Charlottesville, Virginia 22901.

WHEREFORE, the plaintiff respectfully moves the Court for judgment against the defendant in the sum of $75,500.00.

Respectfully,

DOROTHY M. REYNOLDS, ADMINISTRATRIX
OF THE ESTATE OF JACKIE LEE REYNOLDS,
DECEASED

BY: _____
OF COUNSEL

Frith & Pierce
Attorneys at Law
P.O. Box 25
Blacksburg, Virginia 24060
Counsel for Plaintiff

Filed in the Clerk's Office the 17th day of April, 19 73

Writ Tax $ 15.00
Fee 30.00
Deposit 1.00
Total Paid $ 46.00

Teste: _____, Clerk
By _____ D. C.

VIRGINIA: IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

DOROTHY M. REYNOLDS, ADMINISTRATRIX OF THE ESTATE OF JACKIE LEE REYNOLDS, DECEASED,

Plaintiff

v.

BARNEY ARNOLD, SHERIFF, ADMINISTRATOR OF THE ESTATE OF JERRY LEE PRICE,

Defendant

O R D E R

This case came on to be heard on the 30th day of November, 1973 and came the parties, both plaintiff and defendant, and announced they were ready for trial.

And came a jury, a panel of thirteen, summonsed from the regular venire for this term of the Circuit Court, who were examined and found to be free of all lawful exceptions and duly qualified to serve as jurors, from which panel the plaintiff and the defendant each struck three and there remained for the trial of the case the following jurors, to-wit: Kenneth L. Britt, Madeline G. Craven, Richard J. McGuire, Betty L. Mitchell, Leslie M. Shelor, Doris R. Welch and Janis C. Young, who were sworn to well and truly try the issues joined between the plaintiff and the defendant and a true verdict render according to the law and the evidence.

WHEREUPON, the plaintiff proceeded to introduce her evidence and rested. And after the plaintiff had rested her case the defendant moved the Court to strike the evidence of the plaintiff on the grounds that the plaintiff had failed to

LAW OFFICES
DALTON, STONE & CLAY
RADFORD, VIRGINIA

make out a prima facie case against the defendant on the following grounds:

(1) That there was no proof of gross negligence on the part of Jerry Lee Price.

(2) That even if a jury issue had been presented as to gross negligence on the part of Jerry Lee Price, the plaintiff had failed to prove that such gross negligence was a proximate cause of the death of the plaintiff's decedent.

And the Court having considered the defendant's motion to strike the plaintiff's evidence, and being of the opinion that a jury issue was presented, overruled the motion, to which action of the Court in so doing the defendant, by counsel, duly objected and excepted.

The defendant then introduced his evidence and announced that he rested and renewed his motion to strike the evidence of the plaintiff on the grounds previously assigned, which motion the Court again overruled and to which action of the Court in so doing the defendant, by counsel, duly objected and excepted.

And the jury having heard the evidence of both parties, the instructions of the Court and the argument of counsel retired to their jury room to consider their verdict, and after a time returned to the bar of the Court with the following verdict, to-wit:

> "We, the members of the Jury, find in favor of the plaintiff, Mrs. Dorothy M. Reynolds, Administratrix of the Estate of Jackie Lee Reynolds, and award the sum of $10,000.00
>
> /s/ Leslie M. Shelor
> Foreman"

LAW OFFICES
N. STONE & CLAY
FORD, VIRGINIA

WHEREUPON, the defendant, by counsel, moved the Court to set aside the verdict of the jury on the grounds that it was contrary to the law and the evidence, without evidence to support it, and plainly wrong and on the grounds previously assigned at bar, and moved the Court to enter judgment on behalf of the defendant, which motion the Court overruled and to which action of the Court in so doing the defendant, by counsel, duly objected and excepted.

Wherefore, in accordance with the verdict of the jury, it is ADJUDGED and ORDERED that the plaintiff have and recover judgment against the defendant in the sum of $10,000.00, plus taxable costs.

And the defendant having indicated an intention to appeal this judgment to the Supreme Court of Virginia, it is accordingly ORDERED that the execution of this judgment be suspended for a period of 60 days from this date and thereafter until the Supreme Court has acted on the petition for a writ of error, provided that the defendant execute before the Clerk of this Court a suspending bond in the sum of $500.00, with surety approved by the Clerk and conditioned according to law, within a period of 21 days from the entry of this Order.

I HAVE SEEN THIS ORDER AND
ASK FOR ITS ENTRY:

Counsel for Plaintiff

I HAVE SEEN THIS ORDER AND
OBJECT TO ITS ENTRY:

Counsel for Defendant

ENTER THIS ORDER:

This 11 day of December, 1973.

Judge

A Copy--Teste:

JOHN B. MYERS, JR., CLERK

BY Georgia Elliott D.C.

LAW OFFICES
LTON, STONE & CL-Y
RADFORD, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

DOROTHY M. REYNOLDS, ADMINISTRATRIX OF THE ESTATE OF JACKIE LEE REYNOLDS, DECEASED, Plaintiff	
v.	NOTICE OF APPEAL AND ASSIGNMENT OF ERROR
BARNEY ARNOLD, SHERIFF ADMINISTRATOR OF THE ESTATE OF JERRY LEE PRICE, Defendant.	

TO: JOHN B. MYERS, JR.
CLERK OF THE CIRCUIT COURT OF MONTGOMERY COUNTY, VIRGINIA:

NOTICE IS HEREBY GIVEN, as provided under Rule 5:6 of the Rules of Court of the Supreme Court of Appeals of Virginia, that the undersigned defendant hereby files this as his Notice of Appeal and Assignment of Error, to the Supreme Court of Appeals of Virginia, Richmond, Virginia.

The undersigned plaintiff assigns as error that the Judge of the Circuit Court of Montgomery County Virginia, erred in failing to sustain defendant's motion to strike plaintiff's evidence at the conclusion of plaintiff's evidence, failed to sustain plaintiff's motion to strike plaintiff's evidence at the conclusion of all the evidence, and failed to set aside the verdict of the jury, for the following reasons: (1). That there was no proof or evidence of gross negligence on the part of the defendant's decedent Jerry Lee Price, and (2), that even if a jury issue had been presented as to gross negligence on the part of the defendant's decedent Jerry Lee Price, plaintiff failed to prove that such gross negligence was a proximate cause of the death of plaintiff's decedent.

Further, this is to give notice that the undersigned defendant will ask for a transcript of the testimony be hereinafter filed.

LAW OFFICES
ERSON & RHODES
MONT, VIRGINIA

Dated this 27TH day of December, 19 73.

BARNEY ARNOLD, SHERIFF,
ADMINISTRATOR OF THE ESTATE OF JERRY LEE PRICE
By Counsel

_____ of
Hutcherson & Rhodes, Attorneys
118 Main Street
Rocky Mount, Virginia, 24151

This is to certify that I have this the 27TH day of December, 19 73, served a copy of this Notice of Appeal and Assignment of Error on the plaintiff, Dorothy M. Reynolds, Administratrix of Jackie Lee Reynolds deceased, by mailing a copy of this Notice to Thomas D. Frith, Jr., Frith & Pierce, Attorneys at Law, 105 Wilson Avenue, P. O. Box 25, Blacksburg, Virginia, 24060, and Edwin C. Stone, Dalton, Stone & Clay, Attorneys at Law, Radford, Virginia.

_____
Ralph B. Rhodes, Attorney for Appellant.

FILED IN CLERKS OFFICE
Circuit Court of Montgomery County
27th DAY OF Dec. 19 73
John B. Myers Jr. CLERK
By Renee S. Turman D.C.

TESTIMONY OF VIRGINIA STATE TROOPER R. C. KEESEE:

"DIRECT EXAMINATION

BY MR. STONE:

Q. You are Trooper R. C. Keesee?

A. Yes sir.

Q. A member of the State Police Department?

A. Yes, sir.

Q. You are stationed in Montgomery County?

A. Yes, sir.

Q. Were you stationed in Montgomery County on April the 19th, 1972?

A. Yes, sir.

Q. Did you have occasion on that evening at approximately 10:00 p.m. to investigate an accident on Route 81?

A. Yes, sir.

Q. What kind of vehicle did you find to be involved in that accident?

A. A 1969 Ford two-door.

Q. Did you determine the owner of that vehicle?

A. Yes, sir.

Q. Who was the owner of that vehicle?

A. Jerry Lee Price, 101 Winston Avenue, Blacksburg, Virginia.

Q. Did you determine also that a Mr. Jackie Lee Reynolds had been occupying that vehicle?

A. Yes, sir.

Q. Describe please for the Jury what you found when you arrived at the scene of the accident.

A. When I arrived at the scene, I found a 1969 Ford sitting in the median, it appeared that the vehicle had been traveling towards Roanoke and when I arrived the vehicle was headed back towards Christiansburg.

Q. It was headed back towards Christiansburg?

A. Yes, sir.

Q. Did you see any of the passengers when you arrived?

A. Yes, sir.

Q. Where were those passengers?

A. All three had been thrown from the vehicle and they were lying in the median.

Q. Have you drawn, at my request, a diagram, not to scale, of the scene of the accident?

A. Yes, sir.

MR. STONE: Do you gentlemen have any objection to the Trooper testifying from the diagram?

MR. RHODES: No.

BY MR. STONE:

Q. Have you drawn in the median, Trooper, the approximate location of the vehicle involved?

A. Yes, sir.

Q. Would you mark the center of the vehicle with

an X?

A. (Witness complies.)

Q. And now you have three other X's located on the diagram, what are those, what do they designate?

A. The position of the bodies when I arrived.

Q. All right, and if you will tell us the approximate distance, if you have the approximate, or the exact distance between the car and the bodies.

A. This would represent Price - -

Q. That was the owner of the vehicle?

A. Yes, sir.

Q. He was the closest to the vehicle?

A. Thirteen feet from the vehicle. This is Reynolds - -

Q. You are designating the one furtherest from the vehicle?

A. Yes, sir; 52 feet.

Q. That body was 52 feet from the vehicle?

A. Yes, sir; this is Shepherd between those two bodies, I don't have the distance there.

Q. Did you, during the course of your investigation, find any marks which led up to the vehicle?

A. Yes, sir.

Q. All right, if you would please in red again, indicate to the Jury where they started and the distances of those particular markings.

A. The right wheels of the vehicle - -

MR. STONE: May I move this behind the seat here, Judge, so everybody can see it?

THE COURT: Can all of you see it now?

THE WITNESS: The right wheels of the vehicle started marking at about the center of the inside lane - -

BY MR. STONE:

Q. In the inside lane?

A. The lane nearest the median and it continued for 150 feet to where it left the edge of the pavement.

Q. Mark 150 feet and we will put these distances in green since it is not to scale.

A. (Witness complies.)

Q. 150 feet to the median, all right.

A. All right, it traveled 15 feet in the median to where the left wheels apparently left the ground - -

MR. RHODES: Your Honor, I am going to object to that as to "apparently" and ask the Trooper to testify to what he found.

THE COURT: He is leading him a little bit.

BY MR. STONE:

Q. I want to lead him to it but I don't want him to testify to an opinion.

Trooper, if there is an occasion or an instance where you found no marks between two points, just say that and leave it at that, don't give your opinion about what happened.

A. There was one point that I found no marks.

Q. All right, you had a 15-foot distance there, would you mark that down?

A. (Witness complies).

Q. Was there a point at which there were no marks after that?

A. Well, there was another 73 feet after this that was tied in - -

Q. Right, after the 15 feet, what did you find, did you find nothing?

A. No; I found 73 feet.

Q. Immediately after the 15 feet?

A. Yes, sir.

Q. Mark on there 73 feet.

A. (Witness complies.)

Q. What sort of mark was the 73 feet?

A. That was two marks.

Q. Were they parallel marks indicating both wheels?

A. Yes, sir.

MR. HUTTON: Mr. Stone, how about telling what kind of marks, not what they indicate.

BY MR. STONE:

Q. Were they parallel marks?

A. Yes, sir.

Q. And after the 73-foot distance, did you find a vacant space or spaces?

A. I found a 24-foot mark.

Q. And then describe those markings, please, without giving an opinion.

A. That was one mark.

Q. One mark?

A. Yes , sir.

Q. All right then what after that?

A. Then I found a vacant space of 27 feet.

Q. A vacant space of 27 feet, mark down 27 and mark it "vacant", if you will.

A. (Witness complies.)

Q. After the 27 feet where there were no markings, what did you find?

A. From the 27 feet, well, actually from the 27 foot vacant mark and then the mark started again and went for 241 feet.

Q. Two hundred and forty-one feet, would you mark that under here, please.

A. (Witness complies).

Q. Were there any markings, what type of markings were those, if you will describe them?

A. They were gouge-type markings.

Q. Gouge-type markings?

A. Yes, sir.

Q. Did you find anything after that?

A. That is where the vehicle stopped.

Q. Those let up to the vehicle?

A. Yes, sir.

Q. Did you examine the bodies of the occupants?

A. Yes, sir.

Q. Do you recall examining the body of Jackie Lee Reynolds, the one who was furtherest away from the car?

A. Yes, sir.

Q. Did you get any signs of life from him at that time?

MR. RHODES: Your Honor, I am going to object to that.

MR. STONE: Withdraw the question, we can prove it otherwise.

BY MR. STONE:

Q. What was the speed limit on that highway at that time?

A. Sixty-five.

Q. What were the weather conditions?

A. Clear.

Q. Was the road dry or wet or do you know?

A. Dry.

Q. In your investigation, and this may be objectionable, but I think these gentlemen want to know, did you find any witnesses to this accident?

A. No, sir.

MR. STONE: Your witness.

CROSS EXAMINATION

BY MR. RHODES:

Q. Trooper, was this road level, downhill or uphill?

A. Downhill.

Q. Downhill?

A. Yes, sir.

Q. And was it straight or did it curve to the right or to the left?

A. It curved to the left.

Q. What time did you arrive at this accident, Trooper?

A. I received the call at 10:21, I was in Christiansburg and I drove directly to the scene so I must have arrived at around 10:35.

Q. Were there any other vehicles at the scene of the accident when you arrived, sir?

A. Yes, sir; lots of vehicles were parked on the shoulders.

Q. All of them left marks?

A. Sir?

Q. All of these vehicles left marks?

A. Well, I didn't notice

Q. The vehicles were parked in the median strip also?

A. I don't recall whether there were vehicles in the median but there were vehicles on the shoulder, on the

outside shoulder.

Q. Now this median strip, what was it like? Describe it to the Jury so that they will know what it was like.

A. At the time, that median was fairly rough, it hadn't been grassed over, it did have some grass, but it was mostly dirt.

Q. All right now, Trooper, you testified to Mr. Stone, and I believe he led you a little bit, as to the position that you found the bodies of each of these individuals?

A. Yes.

Q. And you testified that the owner was Jerry Lee Price and you found his body at the scene and Jackie Lee Reynolds was there, too?

A. Yes, sir.

Q. Now in response to Mr. Stone's question, well, you didn"t know whether Mr. Jackie Lee Reynolds was occupying that car, did you?

A. No, sir.

Q. The only thing you - -

A. Of my own knowledge I did not know.

Q. The only thing you did was find the three bodies there?

A. Yes, sir.

Q. I believe you told Mr. Stone that the speed limit was what?

A. Sixty-five at that time.

Q. We are aware, Trooper, that the speed limit has been lowered now.

A. Yes.

MR. RHODES: That is all the questions I have.

REDIRECT EXAMINATION

BY MR. STONE:

Q. One other question: What was the condition of the car that you found there?

A. It was totally demolished.

Q. What was the condition of the top?

A. Well, it was, the vehicle was just beat all to pieces, really.

Q. What was the condition of the sides?

A. They were torn up.

Q. So to summarize, it was damaged all over?

MR. RHODES: Object to Mr. Stone's leading the witness.

THE COURT: He is testifying a little bit.

BY MR. STONE:

Q. What was the condition of the top, Trooper?

A. Torn up.

Q. What was the condition of the back part?

A. Torn up.

Q. Was there any indication that it had collided with any other vehicle?

A. No sir.

MR. STONE: All right, thank you.

RECROSS EXAMINATION

BY MR. RHODES:

Q. You couldn't really tell, Mr. Keesee, whether or not it had collided with any other vehicle, could you?

A. I checked the vehicle for any foreign paint and I didn't find any, it would have had to have collided with another vehicle of the same color.

MR. RHODES: That is all.

THE COURT: Thank you, Trooper.

MR. STONE: May he be excused?

THE COURT: Yes. . . . . ."

TESTIMONY OF RICHARD J. McCARY

"DIRECT EXAMINATION

BY MR. STONE:

Q. What is your full name, please?

A. Richard James McCary.

Q. What is your occupation?

A. I am a toxicologist.

Q. You live in Roanoke, I believe.

A. That is correct.

Q. Do you have a title in connection with your practice of toxicology?

A. Just Mr. McCary, no title.

Q. For whom do you work?

A. For the State of Virginia.

Q. In the medical examiner's office?

A. That is right.

Q. What is your educational background? First of all tell us what toxicology is?

A. Toxicology is the field of medicine that deals with poisons. There are several branches of toxicology but the branch that I am associated with is more analytical toxicology, the analysis of body fluids and so on for poisons.

Q. Does your job involve the analysis of blood samples to determine the alcoholic content?

A. Yes, it does.

Q. Were you employed by the State medical examiner

on April 18th, 1972?

A. Yes, sir.

Q. On that date or within a few days thereafter, did you have occasion, in the course of your employment, to analyze the blood sample of Mr. Jerry Lee Price?

A. Yes, I did.

Q. Are you familiar with the books and records of the State medical examiner's office in Roanoke?

A. Yes, I am.

Q. Have you gone back through those medical records to determine that you made the test?

A. Yes I have.

Q. And you did make the test?

A. Yes, sir.

Q. And do those records show what result you found when you made the test?

A. Yes, sir; the blood submitted of Jerry Lee Price had a 0.12 percent of alcohol.

Q. If you will please, before we go into what that 0.12 percent means, will you tell me again how much specalized training you have in toxicology?

A. Well, after I had gotten a Bachelor of Science degree of pharmacy in 1963, I went to MCV - -

Q. Medical College of Virginia?

A. That is correct, in Richmond, and worked in the medical examiner's office and got another degree in the science of toxicology in 1966 and stayed there in Richmond

until 1967 when the medical examiner's office opened in Roanoke and I have been the toxicologist there since then.

Q. Does toxicology also or the study of toxicology also study the effects of certain poisons, including alcohol, on the body?

A. Yes, sir.

Q. Tell us, if you can, what a blood test of 0.12, what effect the alcohol would have to the human body?

MR. RHODES: Your Honor, I am going to object to the question. He has stated that he is a medical examiner or that he got his degree as a medical examiner in toxicology that is that he takes the blood samples, I don't think that qualifies him to tell the effects.

THE COURT: I understood him to say in his answer to Mr. Stone's question that the field also covered the effects of those poisons including alcohol on the human body, is that right, Doctor?

THE WITNESS: Yes, sir; it is.

THE COURT: Overrule the objection.

THE WITNESS: Well, at a level of 0.12 percent alcohol, the most prominent effects on the human body would be the higher center of the central nervous system, the involuntary system.

The first effect which is noticeable in everyone is a symptom called nystagmus.

BY MR. STONE:

Q. Nystagmus?

A. That is correct, which is an involuntary eye movement and it lasts for a varying duration. It is observable in everyone at levels of about .04.

Q. Point zero four?

A. That is correct.

Q. Which is much lower than .12?

A. Right. This symptom does last even after no alcohol can be detected in the body, after it has been all burned off.

Q. What effect does that have on vision?

A. Well this has a distracting effect on the vision in that during the periods of nystagmus, focus of the eyes is impossible and until it is voluntarily overcome, vision doesn't return.

The eyes have a tendency to wander back and forth until it is voluntarily directed and the focus is then directed straight ahead.

Q. Would you be able to see this clearly in someone who was sitting and talking to you?

A. Not necessarily. You might notice the eyes wandering but unless you were looking for it, you probably wouldn't see it.

Q. Unless you were looking for it?

A. That is correct.

Q. What other symptoms would the individual have?

A. There is an impairment of coordination, especially in fine coordination, there is a slowing of the reflex time,

all of these are observable at a level of .12 percent.

Q. Would they have been present at 0.12?

A. Yes sir.

Q. When do they begin being present, at what alcohol level, if I make my question clear?

A. In the majority, they would be present in less than .10.

Q. And that increases as the percentage gets higher?

A. Yes, sir.

Q. Would the effect on a person of .20 percent - -

MR. RHODES: Object to that.

THE COURT: Sustain the objection.

BY MR. STONE:

Q. At .12, would the symptoms - -

MR. RHODES: Your Honor, he is leading the witness, I object to it.

THE COURT: He hasn't finished the question yet.

BY MR. STONE:

Q. At .12 percent, would you be able to recognize that I was intoxicated?

MR. RHODES: Your Honor, I object to that.

THE COURT: Sustain the objection.

BY MR. STONE:

Q. Can you, by seeing people, tell that they have a .12 level of alcohol?

MR. RHODES: Objection.

THE COURT: Sustain the objection.

BY MR. STONE:

Q. Let me pose a hypothetical: Your test revealed that Jerry Lee Price had a .12 blood test?

A. Yes, sir.

Q. And assume a person had a .12 percent blood alcohol and was sitting beside him, could he be expected to notice that?

MR. RHODES: Object to that.

THE COURT: Sustain the objection.

MR. STONE: It is a hypothetical question to an expert witness. I will withdraw the question.

Your witness.

CROSS EXAMINATION

BY MR. RHODES:

Q. Mr. McCary, alcohol has different effects on different people, does it not?

A. No, sir; it has the same effect on everyone.

Q. Some people - -

A. It just, more people are affected by different levels, I will put it that way.

Q. So in other words with .12 percent, someone could not have as much impaired coordination or slowed reflexes as someone else at 1.2, correct?

A. Well, that is correct.

Q. You didn't know Jerry Lee Price, did you?

A. No, sir.

Q. You don't know what effect .12 alcohol would have on him do you?

A. I know that at .12 percent alcohol, everyone is going to be affected to the extent that I cited earlier.

Q. But you don't know whether it had more or less effect as far as the impaired coordination of the reflexes or vision?

A. I would have to have individual tests to determine his impairment in comparison to someone else's but at .12 percent alcohol level, everyone would have slowed reflexes.

Q. You have given the evidence here just a minute ago concerning .12 and what effect that has on individuals. Have you actually seen that on individuals or have you learned that in textbooks?

A. We have done experiments in Roanoke and we have observed all the way up to .05 and .06 percent.

Q. But nothing at .12?

A. Well, assuming that that is a higher level than .06 - -

Q. In your experiments, I believe you said at .05 and .06 - -

A. That is correct.

Q. - - that if affected people in different ways, did it not?

A. Well, I didn't really say that. The experiment was divided into drinkers, those who had had alcohol before

and those who were non-drinkers and at the level of .06, the non-drinkers were more obviously affected in that their faces were flushed and more physical signs were observed but in some of the finer tests which we did to measure reflexes where tests were made to measure errors in typing, there was not much difference.

MR. RHODES: That is all the questions I have.

REDIRECT EXAMINATION

BY MR. STONE:

Q. Let me ask you this: Then what you are saying - - and they went into the testing on their examination.

THE COURT: You are entitled to redirect examination on what they brought out.

BY MR. STONE:

Q. In this testing, in your sophisticated testing, you could determine the effects or what you call the observable effects?

A. That is correct.

Q. But I assume that is in testing and not simply in casual observation?

A. That is correct.

MR. STONE; Thank you.

THE COURT: Thank you, Doctor. You may stand aside."

TESTIMONY OF RICHARD J. McCARY, who was recalled as a witness and testified further on his oath as follows:

" DIRECT EXAMINATION

BY MR. RHODES:

Q. Is it Dr. McCary?

A. No, Mister.

Q. Mr. McCary, you have previously testified this morning, and to save time, if Plaintiff's Counsel doesn't object, you are the toxicologist in the medical examiner's office in Roanoke, are you not?

A. That is correct.

Q. And I believe you stated your education this morning. Did your office have occasion or did you have occasion to examine the blood alcohol content of Jackie Lee Reynolds?

A. Yes, sir.

Q. What was the blood alcohol content and when was this made?

A. Jackie Lee Reynolds, the blood was received on the 20th of April, 1972, and the blood was analyzed and found to contain 0.13 blood alcohol by weight.

Q. How about James Shepherd?

A. The blood on James Lyle Shepherd was received in the office on the 21st of April, 1972, and it was found to contain 0.11 percent alcohol by weight.

MR. RHODES: All right, that is all the questions I have.

MR. STONE: We don't have any questions.

THE COURT: Thank you, Doctor, you can be excused.

THE WITNESS: Thank you.

(The witness was excused)."

150
15
73
24
27 VACANT
241

P.E. #1