216 Va. 1
CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JAN 28 1975
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 740306

CHARLES GEORGE BECK, Appellant

V.

COMMONWEALTH OF VIRGINIA, Appellee

APPENDIX

William D. Dolan, III
Louis Koutoulakos
2054 North 14th Street
Arlington, Virginia 22201

TABLE OF CONTENTS

	Date Filed	Page
INDICTMENT	4-02-73	1
JUDGMENT ORDER	12-19-73	3
NOTICES OF APPEAL AND ASSIGNMENT OF ERROR	1-15-74	9
TESTIMONY		
CRAIG LEE MOORE		10
DONALD LEE SHIFFLETT		23
CLARENCE LEWIS FORREST		27
MIKE LEE CAHILL		34
PAUL GEORGE HARRIS		44
CLIFFORD SOWARDS		47
MORRIS SAMUEL CLARK		49
ELMER T. MILLER		52
JAMES LEE McCARTY		60
CHARLES GEORGE BECK		63
GARY MITCHELL		91

COMMONWEALTH OF VIRGINIA

vs.

CHARLES GEORGE BECK

INDICTMENT FOR A FELONY
(Manslaughter)
#4832

THE GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of Prince William and now attending the Circuit Court of said County this 2nd day of April, 1973, upon their oaths present that the 23rd day of February 1973, in the County aforesaid, one CHARLES GEORGE BECK did unlawfully and feloniously kill and slay one Robert Arthur Moore, against the peace and dignity of the Commonwealth, in violation of Section 18.1-25 of the 1950 Code of Virginia, as amended.

A TRUE BILL
NOT A TRUE BILL
(Strike out one)

FOREMAN

WITNESSES summonsed by the Commonwealth, sworn and sent to testify before the Grand Jury:

SGT. HARRIS
OFFICER M.E. CAHILL
OFFICER WELSH
CLARENCE FOREST
JIMMY McCARTY
GRAIG MOORE
GARY MITCHELL

Presented By:

Paul B. Ebert
Attorney for the Commonwealth
County of Prince William

COMMONWEALTH OF VIRGINIA

vs

INDICTMENT FOR A FELONY
(Manslaughter)
#4831

CHARLES GEORGE BECK

THE GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of Prince William and now attending the Circuit Court of said County this 2nd day of April, 1973, upon their oaths present that the 23rd day of February 1973, in the County aforesaid, one CHARLES GEORGE BECK did unlawfully and feloniously kill and slay one Raymond Samuel Simpson, against the peace and dignity of the Commonwealth, in violation of Section 18.1-25 of the 1950 Code of Virginia, as amended.

A TRUE BILL
NOT A TRUE BILL
(Strike out one)

FOREMAN

WITNESSES summonsed by the Commonwealth, sworn and sent to testify before the Grand Jury:

SGT. HARRIS
OFFICER M. E. CAHILL
OFFICER WELSH
CLARENCE FOREST
JIMMY McCARTY
GRAIG MOORE
GARY MITCHELL

Presented By:

PAUL B. EBERT
Attorney for the Commonwealth
County of Prince William

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PRINCE WILLIAM

COMMONWEALTH OF VIRGINIA

#4831

VS.

FELONY - MANSLAUGHTER

CHARLES GEORGE BECK

The 19th day of December, 1973, came the Attorney for the Commonwealth and CHARLES GEORGE BECK, who stands convicted of a felony, to-wit: Manslaughter, appeared before the bar of the Court in accordance with the condition of his recognizance. And came also Louis Koutoulakos and Claude M. Hilton, attorneys at law, retained by the accused to represent him.

Pursuant to Section 17-30.1 of the 1950 Code of Virginia, as amended, it is hereby ORDERED that the evidence and incidents of trial in this case shall be recorded verbatim by a Court Reporter. Thereupon, the Court Reporter was sworn.

And the Probation Officer of this Court, to whom this case has been previously referred for investigation, appeared in open court with a written report, which report he presented to the Court in open court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for accused.

Thereupon, the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in this case.

Whereupon, the Court taking into consideration all of the evidence in the case, the report of the Probation Officer, the

matters brought out on cross-examination of the Probation Officer and such additional facts as were presented by the defendant, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant be and he is hereby sentenced to confinement in the penitentiary of the Commonwealth for a term of five (5) years, of which term the Court doth suspend the execution of four (4) years and six (6) months upon the conditions that he keep the peace and be of good behavior and that the Commonwealth of Virginia do recover against the defendant its costs by it about its prosecution in this behalf expended.

The Court being of the opinion that it is compatible with the public interest to do so, doth ADJUDGE and ORDER that the defendant shall be placed on probation under the supervision of a Probation Officer of this Court for a period of four (4) years and six (6) months after the defendant is released from the penitentiary.

It is the ORDER of this Court that the defendant, after his release from the penitentiary shall comply with all of the conditions of probation as contained and shown in Form P. B. 2 of the Virginia Probation and Parole Board, which are by reference included herein and made a part of this order.

Whereupon, the Court proceeded to advise the defendant of his right to appeal from the sentence heretofore imposed, including the right to have an attorney appointed for him and to have the attorney's fees, costs and expenses in connection with an appeal paid for him in the event he is financially unable to pay the same.

It is ADJUDGED and ORDERED that in order to permit the defendant to be present and assist his counsel should the defendant desire to seek a writ of error, that the execution of the sentence be, and the same hereby is postponed for a period of ~~thirty (30)~~ Sixty (60) days from this date and thereafter until the Supreme Court has acted on said petition, provided all steps necessary to perfect said appeal to be taken in this Court are taken within t~~he aforesaid~~ thirty (30) day period.

And the defendant is allowed to depart under the provisions set forth above.

JUDGE

A COPY - TESTE:
C. E. GNADT, CLERK
By: Deborah S. Sauliger
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PRINCE WILLIAM

COMMONWEALTH OF VIRGINIA

#4832

VS.

FELONY - MANSLAUGHTER

CHARLES GEORGE BECK

The 19th day of December, 1973, came the Attorney for the Commonwealth and CHARLES GEORGE BECK, who stands convicted of a felony, to-wit: Manslaughter, appeared before the bar of the Court in accordance with the condition of his recognizance. And came also Louis Koutoulakos and Claude M. Hilton, attorneys at law, retained by the accused to represent him.

Pursuant to Section 17-30.1 of the 1950 Code of Virginia, as amended, it is hereby ORDERED that the evidence and incidents of trial in this case shall be recorded verbatim by a Court Reporter. Thereupon, the Court Reporter was sworn.

And the Probation Officer of this Court, to whom this case has been previously referred for investigation, appeared in open court with a written report, which report he presented to the Court in open court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for accused.

Thereupon, the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in this case.

Whereupon, the Court taking into consideration all of the evidence in the case, the report of the Probation Officer, the

matters brought out on cross-examination of the Probation Officer and such additional facts as were presented by the defendant, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant be and he is hereby sentenced to confinement in the penitentiary of the Commonwealth for a term of five (5) years, to run concurrently with the sentence imposed in case #4831, of which term the Court doth suspend the execution of four (4) years and six (6) months upon the conditions that he keep the peace and be of good behavior and that the Commonwealth of Virginia do recover against the defendant its costs by it about its prosecution in this behalf expended.

The Court being of the opinion that it is compatible with the public interest to do so, doth ADJUDGE and ORDER that the defendant shall be placed on probation under the supervision of a Probation Officer of this Court for a period of four (4) years and six (6) months after the defendant is released from the penitentiary.

It is the ORDER of this Court that the defendant, after his release from the penitentiary shall comply with all of the conditions of probation as contained and shown in Form P. B. 2 of the Virginia Probation and Parole Board, which are by reference included herein and made a part of this order.

Whereupon, the Court proceeded to advise the defendant or his right to appeal from the sentence heretofore imposed, including the right to have an attorney appointed for him and to have the attorney's fees, costs and expenses in connection with an appeal paid for him in the event he is financially unable to pay the same.

It is ADJUDGED and ORDERED that in order to permit the defendant to be present and assist his counsel should the defendant desire to seek a writ of error, that the execution of the sentence be, and the same hereby is postponed for a period of ~~thirty (30)~~ Sixty (60) days from this date and thereafter until the Supreme Court has acted on said petition, provided all steps necessary to perfect said appeal to be taken in this Court are taken within ~~the aforesaid~~ thirty (30) day period.

And the defendant is allowed to depart under the provisions set forth above.

JUDGE

A COPY - TESTE:
C. E. GNADT, CLERK
By Deborah S. Sawyer
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

COMMONWEALTH OF VIRGINIA	:	
	:	Criminal No. 4891
v.	:	and
	:	Criminal No. 4892
CHARLES GEORGE BECK	:	

NOTICES OF APPEAL
AND
ASSIGNMENT OF ERROR

TO: C. E. GNADT, Clerk
Circuit Court of Prince William County
P.O. Box 146, Manassas, Va. 22110

Take notice that the undersigned intends to apply for an appeal from a judgment of conviction on the above numbered cases. The transcript is to be hereinafter filed.

Assignment of Error

1. The Court erred in refusing to grant the motion to strike the evidence as to manslaughter.

2. The finding of guilty was contrary to the law and evidence.

3. The Commonwealth did not prove the corpus delicti as to manslaughter.

Respectfully submitted,

Charles George Beck
By Counsel

VAROUTSOS, KOUTOULAKOS,
ARTHUR & DOLAN

By _____
Louis Koutoulakos
Attorney for Defendant
2084 14th Street North
Arlington, Va. 22201

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof was mailed, postage prepaid, this 11th day of January, 1974, to Paul Ebert, Esq., Commonwealth Attorney for Prince William County, Va.

_____
Louis Koutoulakos

and testified as follows:

DIRECT EXAMINATION

BY MR. EBERT:

Q State your full name and give your address?

A Craig Lee Moore, 8909 Yorkshire Lane.

Q And how old are you, Craig?

A Thirteen.

Q And do you go to school?

A Yes, sir.

Q Where do you go to school?

A Parkside Junior High.

Q What grade are you in?

A Eighth grade.

Q Now, directing your attention to the 23rd day of February, 1973, did you have occasion to witness an accident?

A Yes, sir.

THE COURT: Mr. Hilton, do you all want to voir dire him because of his age?

MR. HILTON: I'll waive that. I have no desire to do that.

THE COURT: You're satisfied, subject to cross-examination, he can testify as any other witness?

MR. HILTON: Yes, sir.

THE COURT: Proceed.

BY MR. EBERT: (Resuming)

Q Approximately what time was it when you witnessed this accident?

A Well, the dance let out at ten.

Q What?

A The dance let out at ten. It was somewhere close to about eleven or eleven-thirty or twelve.

Q And where had you been prior to the accident?

A Old Centreville Road.

Q Was that at a dance?

A Yes, sir.

Q And who was with you at that time?

A Raymond Simpson, Bobby Moore and Gary Mitchell.

Q And what road were you on when you witnessed the accident?

A Old Centreville Road.

THE COURT: I didn't hear you?

THE WITNESS: Old Centreville Road.

BY MR. EBERT: (Resuming)

Q Tell the Court in your own words what you saw?

A Well, we was walking down from Drug Fair. We was eating cookies and I took to the field and I wanted them to

walk through and they were walking beside the road and I looked back --

Q (Interposing) Who is they?

A Bobby Moore and Raymond Simpson and Gary Mitchell.

Q Go ahead.

A I seen some car lights coming over the hill, coming from Drug Fair, from that direction, so I turned my head and kept on walking and then I seen a car hit Bobby.

Q Bobby who?

A Bobby Moore and Raymond.

Q Raymond who?

A Raymond Simpson.

And so I looked and I seen Gary come running through the field and so I started down the road and I seen an Impala come down the road, hit the ditch and come back out and kept going.

Q You say the car hit the ditch?

A (Indicating yes.)

Q Is that the same car that struck the individuals?

A Yes, sir.

Q And did you see how the car was being operated?

A No, sir.

Q What did it do? Did you see it before it struck

the boys?

A I seen just the lights.

Q And after it struck them, did you see it?

A I seen the back end, the tail lights, the lights on the car.

Q What did they do?

A The light in the car looked like it was on and the tail lights was on and that's when I seen it go in the ditch and come back out.

Q Went in the ditch on which side of the road?

A Coming from what direction?

Q Did the car go off the right side of the road in the direction it was traveling?

A Right.

Q Or did it go off the left side?

A The right.

Q Did you see whether it was being operated by anyone?

A Yes, I seen a head.

Q What?

A I seen the back of a head.

Q Seen one head?

A Yes.

Q Did you have occasion to notice anything about the

doors?

A Well, I seen a door; it looked like it came open and this is when the light came on.

Q Which door was that?

A That was the right-hand one.

Q The right-hand door of the car?

A (No answer.)

Q Let me ask you this, in which direction was the car proceeding?

A From Drug Fair, it was coming down towards the Seven-Eleven.

Q From Drug Fair towards the Seven-Eleven?

A (Indicating yes.)

Q Which side of the road were you walking on?

A The right.

Q And do you know in which direction Raymond Simpson and the other boy were facing?

A They were facing towards the Seven-Eleven.

Q The car was approaching them from the rear, is that correct?

A Yes.

Q Now, were they on the paved portion of the road when you last saw them or were they off the paved portion?

A They was off the paved portion.

Q Now, after the car went into the ditch, what did it do?

A It went down a distance and came out.

Q And then what did it do?

A It went on down past the Seven-Eleven.

Q In what manner did it travel?

A At a fast rate of speed.

Q A fast rate of speed?

A Yes.

Q Could you tell how fast it was traveling prior to the impact?

MR. HILTON: I'm going to object to this, if Your Honor please.

THE COURT: Sustained. Lay your foundation.

BY MR. EBERT: (Resuming)

Q Was there any difference in the rate of speed which you observed after the impact as opposed to prior to the impact?

A Well, brakes --

MR. HILTON: I'm going to object, if Your Honor please. I don't think this witness has been qualified as a driver to be able to determine or be able to testify as then to the speed of automobiles.

MR. EBERT: I'm not asking him to testify as to a speed.

THE COURT: I'll overrule you on that. I think he can say whether he was or wasn't and note your exception. I'll sustain it as to rate of speed, but as to difference in speed before and after impact, I'll overrule you.

BY MR. EBERT: (Resuming)

Q Go ahead and tell us what you saw?

A I seen the brake lights come on and slow down.

THE COURT: This was after impact or before?

THE WITNESS: After it hit the boys.

BY MR. EBERT: (Resuming)

Q Did you have occasion to look at the boys afterwards?

A After the thing was over?

Q Yes.

A Yes.

Q What did you see?

A Well, I seen them laying in the ditch. One was laying up on top and one was laying down the road from him.

Q What happened then?

A Well, a guy stopped and he went up to call from the Drug Fair, to call the ambulance and the police dame.

Q Were you there when the police came?

A Yes, sir.

Q Were you there when the ambulance came?

A Yes, sir.

Q And do you know what type car this was? Could you tell what type car it was that struck the boys?

A I couldn't tell the color. It was either bluish or green and it was an Impala Chevrolet.

Q This occurred within Prince William County?

A Yes, sir.

MR. EBERT: Your witness.

CROSS EXAMINATION

BY MR. HILTON:

Q For what distance did you see the car coming up the road prior to the time it struck the boys?

A Could you repeat that?

Q For what distance did you see the car coming up the road prior to hitting the boys?

A I just seen the headlights coming from the hill above Drug Fair and I just turned around and kept looking.

Q So you really didn't observe the approach of the car? You knew one was coming but you turned around and did not watch the car as it approached, is that right?

A (Indicating yes.)

Q Now, you were walking abreast of the others, the other boys, is that correct?

A Yes, but I was way over, about fifteen feet over.

Q You were way over but beside them in terms of distance alongside the road, is that correct?

A Yes, sir.

Q So would it be fair to say then you saw the lights of car approaching but you then turned around and you didn't see that car until it was beside you and struck the two boys, is that right?

A (Indicating yes.)

Q Now, Mr. Morre and Mr. Simpson, were they walking on the paved portion of the road?

A No, sir.

Q Had they been walking on the paved portion of the road?

A Well, not from where we got out. We walked through Drug Fair and we came down beside and we crossed the street and they were still walking in the ditch.

Q You got over in the field, is that right and Mr. Moore and Mr. Simpson were walking right alongside the shoulder of the road, is that correct?

A (Indicating yes.)

Q Is there gravel along the shoulder?

A Yeah, there's a piece about like that and then there

is grass.

Q A piece of gravel?

A Yes.

Q Or is it paved?

A It's gravel.

Q They were walking in that travel were they not?

A Yes.

Q And they were walking with their back to the traffic, is that correct?

A (Indicating yes.)

Q In other words, they were walking away from the town of Manassas, going north?

A Yes.

Q And that was the same side of the road that cars going north would be traveling on, isn't it?

A (No answer.)

Q So there came a time you observed a door come opne?

A (Indicating yes.)

Q Is that at the time the boys were struck?

A Like I heard the crash and I looked over and I seen the car light and the door came open when it came off the road in the ditch and I don't know how it came open, and then a light came on in the car after that.

Q Was that door then closed?

A After it had taken the ditch.

Q I'm sorry I didn't understand that?

A When it was coming along the road the door came open and as the car went into the ditch, it must have closed. When the car went in the ditch it hit the south bank because there is a bank there.

Q Now, Craig think back. When you heard something and you looked over, was the door of the car open at that time?

A No, sir.

Q When you first saw the car the door was not open?

A (Indicating no.)

Q Were the Simpson boy and the Moore boy walking side by side?

A No, sir.

Q They were not?

A No, sir.

Q Who was in front and who was behind?

A Raymond. he was in front and Bobby was walking behind him.

Q I'm sorry, Raymond who?

A Raymond Simpson.

Q Raymond Simpson was in front?

A Yes, sir.

Q And Mr. Moore was behind?

A (Indicating yes.)

Q How far apart were they?

THE COURT: It's easier if you say yes or no when you're answering questions because it's easier for the reporter to get it.

BY MR. HILTON: (Resuming)

Q How far apart were they walking?

A About two feet.

Q And you heard an impact and you looked around and you saw the door come open and then you saw that door hit Raymond Simpson?

A No, sir.

Q Then I misunderstand your testimony. When did the door come open?

A It was on the road I seen the brake lights come on and then when the brake lights came on I seen a light in the car and that's when I seen the back of the person's head and that's when I seen the door come open and then it went into the ditch and the light went off.

Q How far did the car go in the ditch? Did it run off onto the gravel portion of the road?

A It went into the ditch off the gravel portion.

Q But that was after both the boys had been struck?

A (Indicating yes.)

MR. HILTON: I don't believe I have any further questions.

THE COURT: Redirect?

MR. EBERT: I don't believe I have anything further.

THE COURT: Do you want him excused or subject to recall?

MR. EBERT: Perhaps he should remain. He may be recalled.

THE COURT: You're subject to recall, and that means you have to go back in the witness room. You can't discuss your testimony, what you've testified to.

Let me take up the waiver of jury now. You understand you have the right to a speedy and public trial by jury?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And the jury would determine your guilt or innocence and punishment, if any?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And by asking the Court to determine -- you're asking the Court to determine your guilt or inncoence and punishment, if any, is that correct?

Q State your full name and give your address?

A Donald Lee Shifflett, 179 Martin Drive.

Q Spell your last name, Mr. Shifflett?

A S-H-I-F-F-L-E-T-T.

Q What is your age, Mr. Shifflett?

A Seventeen.

Q Are you in school?

A Yes, sir.

Q And where do you go to school?

A Stonewall Jackson.

Q What grade are you in?

A Senior, twelfth.

Q Now, I call your attention to the 23rd day of February, 1973, did you have occasion to witness an accident?

A Yes, sir.

Q Where had you been prior to that time?

A Right across the street.

Q And where was that?

A On Old Centreville Road.

Q What were you doing across the street?

A I was going home from the dance.

Q Where had the dance been held?

A Parkside.

Q Was anyone with you?

A Yes, sir, two other fellows.

Q And who was that?

A Robert Gray and Edward Kaiser.

Q Robert Gray and who?

A Edward Kaiser.

Q And what did you observe?

A Well, we were walking down the road and they were right across the street walking.

Q Who is they?

A Raymond Simpson, Bobby Moore.

Q Was anyone else with them?

A Sir?

Q Was anyone else with them?

A Yes, sir.

Q Who was that?

A Craig Moore and Gary Mitchell.

Q And where were they walking?

A On the side of the road.

Q Off the paved portion?

A I don't really know.

Q What did you see?

A Well, we were going down the road and I was talking

to the fellows I was with and I heard this thump noise and I thought they had done hit a car or something, so I looked over and I seen the boy laying in the street and the car just went on. So, I went over to the boys.

Q Did you see the car prior to impact?

A No, sir.

Q After the impact what did you notice, if anything, about the car?

A He went down the road a little ways and it sort of looked like he pulled over and hit his brake lights and then went on.

Q Could you tell what type car that was?

A I could tell it was an Impala Chevrolet.

Q Do you know how many persons were in that car?

A No, sir.

MR. EBERT: That's all I have of this witness.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. HILTON:

Q As I understand it, Mr. Shifflett, you didn't see the car prior to its hitting the boys?

A No, sir.

Q Do you know whether at the time these boys were

A It looked green to me.

Q Was it a light or a dark green car?

A Well, it's hard to say, but I would say it was dark. I wasn't positive of the color that night.

Q You really don't know what color it was?

A Yes, sir.

MR. HILTON: I don't have any further question.

THE COURT: Redirect?

MR. EBERT: Nothing.

THE COURT: Do you want Mr. Shifflett subject to recall?

MR. HILTON: Would you have him remain. I don't believe it's going to take us very long, if the Court please.

THE COURT: You're subject to recall which means you have to go back in the witness room.

MR. EBERT: Could I ask him one other question?

THE COURT: Do you want him to resume the stand? Mr. Hilton, Mr. Ebert wants to ask another question of Mr. Shifflett.

REDIRECT EXAMINATION

BY MR. EBERT:

Q Approximately what time was it this occurred?

A About eleven-thirty, I guess.

MR. EBERT: That's all.

THE COURT: Any questions you wish to ask, Mr. Hilton?

MR. HILTON: No, sir.

THE COURT: You're subject to recall.

(Witness stood aside.)

Thereupon,

CLARENCE LEWIS FORREST,

called for examination by counsel for the Commonwealth, and havi been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EBERT:

Q State your full name and give your address?

A Clarence Lewis Forrest, 9042 Black Mill Road, Manassas.

THE COURT: Spell your last name.

THE WITNESS: F-O-R-R-E-S-T.

BY MR. EBERT: (Resuming)

Q What is your occupation?

A Restaurant.

Q What is the name of your esstaurant?

A Park Inn.

Q Do you know the defendant in this case Mr. Beck?

A Yes, I do.

Q Directing your attention to the 23rd day of February, 1973, did you have occasion to see him?

A Yes, I did.

Q And where was it that you saw him?

A It was in my restaurant.

Q Approximately what time was it that he arrived at your restaurant?

A Off-hand, right now, it's been awhile but five or six, somewhere around there.

Q And what time was it that he left your restaurant?

A Somewhere around eleven or eleven-thirty.

Q During the time he was in your restaurant did he have anything to drink?

A Yes, he did.

Q What was he drinking?

A Beer.

Q And approximately how many beers did he have to drink?

A I would say at the most around seven.

Q Now, did you have occasion to see him leave?

A Yes.

Q How did he leave?

A The same way he came in.

Q You mean walking?

A Yes.

Q Could you tell whether or not he had had anything to drink prior to coming to your restaurant?

A No, sir.

Q Did you see him leave in an automobile or just leave the restaurant?

A Just leave the restaurant.

Q Do you know what type car he has?

A He has two cars.

Q What types?

A One is a Chevrolet and one is a Lincoln. What he had that night, I don't know.

Q What type Chevrolet?

A It's an Impala, green.

Q Dark green or light green?

A Spruce green, dark green.

MR. EBERT: That's all I have of this witness.

CROSS EXAMINATION

BY MR. HILTON:

Q Mr. Forrest, it's your testimony from the period between five and six until eleven-thirty Mr. Beck did not have

more than seven beers?

A I would say that, yes.

Q Did he have anything to eat during that period of time or do you know?

A I can't say, I really don't know.

Q And you observed him when he came in, is that correct?

A Yes, sir.

Q And you've seen Mr. Beck on other occasions?

A Yes.

Q Was Mr. Beck when he came in your restaurant that evening, did you observe anything that would lead you to believe he had had something to drink prior to coming there?

A No, I wouldn't.

Q And at the time he left was there anything peculiar about his appearance, his gait?

A No, just typical like he always comes in, happy-go-lucky; says hi and when he leaves he says hi.

Q And was there anything which would lead you to believe he was under the influence or intoxicated at that time?

A Not at that time, no.

Q From observing him on other occasions and on this evening would you say he was intoxicated?

A No.

MR. HILTON: I don't have any further questions.

REDIRECT EXAMINATION

BY MR. EBERT:

Q Are you saying you don't know whether he was intoxicated or not or wasn't intoxicated?

A I'd say he wasn't.

Q And had he had occasion to drink in your establishment prior to this time?

A Yes, quite regularly.

Q And ordinarily how many beers does he drink?

A He usually comes in -- he's the type guy who gets out of the rush coming back from his job and he stops in and has two or three beers and he's gone.

Q Has he ever had more than seven beers in your establishment that you can recall?

A Yes.

Q What is the most he's ever had in your establishment?

A I couldn't really say, it was more than seven.

Q How many more?

A Twelve.

Q Now, did you pay particular attention to him on this occasion?

A I paid attention to his table, let's put it that way. It wasn't attention to him.

Q How many people were at his table?

A Four.

Q Who was at his table?

A One was a state trooper and one was an insurance salesman and I can't think of the other person who was at the table.

Q Who was the state trooper?

A His name was Beatty. He's still with the state police but he's with the accident investigation, I believe.

Q Beatty?

A Beatty.

MR. EBERT: That's all.

THE COURT: Do you want him subject to recall?

MR. EBERT: He can be excused.

THE COURT: Any objection to him being excused?

MR. HILTON: I have one more question.

THE COURT: All right.

RECROSS EXAMINATION

BY MR. HILTON:

Q Mr. Forrest, was the state trooper there during the whole time Mr. Beck was there?

A To my knowledge, yes.

Q And when you were serving drinks at that table, were you serving a round to everybody?

A Yes. I didn't serve every round to the table. I was working behind the bar and I believe my wife was working the floor.

Q But you would say the state trooper had as much to drink and Mr. Beck during the course of that evening?

A Yes.

MR. HILTON: I have nothing further.

THE COURT: Mr. Ebert is asking he be excused.

MR. HILTON: That's all right. I have no desire to call him.

THE COURT: All right, Mr. Forrest, you're excused. You're free to go which means you can go back to work or have a seat in the court room. You may go any time you wish, it's up to you.

MR. HILTON: If Your Honor please, I believe one of my witnesses, Mr. Good just came in and I'll ask him to go to the witness room.

THE COURT: Mr. Good, if you'll please go to the witness room. Do not discuss your testimony either before or after giving it. When you've completed it, I'll tell you

A Yes, sir, it is.

Q What did you do upon arriving there?

A When I arrived on the scene, Manassas Park Police Officer Welch approached me and explained to me --

MR. HILTON: I object to what he said.

THE COURT: Sustained.

BY MR. EBERT: (Resuming)

Q Don't tell us what he said.

A When I arrived on the scene, the Manassas Park police was there and the victims supposedly had been taken to the hospital.

Q Did you have occasion to observe the scene where this accident allegedly occurred?

A Yes, sir, I did.

Q And did you observe anything unusual about the scene?

A It was pointed out to me by witnesses at the scene that there were several boys who witnessed the accident, where the victims were struck and also where a vehicle that struck them had run off the road.

Q Did you see any marks on the road at that point?

A There were some tire marks at the place where it ran off the road, yes, sir.

Q Now, in the course of your investigation did you have occasion to go to the home of the defendant?

A Yes, sir, I did.

Q What time was it that you arrived on the scene?

A I arrived on the scene of the accident?

Q Yes.

A Approximately 12:05.

THE COURT: What time?

THE WITNESS: 12:05. This would be on the 24th.

BY MR. EBERT: (Resuming)

Q What time was it you had occasion to go to the home of the defendant?

A Approximately 2:45 AM that same morning.

Q Who was with you at that time?

A Sergeant Harris of the Prince William County Police Department.

Q Did you see the defendant there?

A Yes, sir, I did.

Q Did you talk with him?

A Yes, sir, I did.

Q Prior to talking with him did you advise him of anything?

A Yes, I advised the defendant of his rights.

Q What did you advise him?

A I advised him -- I have a card here. I advised the defendant he had a right to remain silent and you're not required to say anything to us at any time or to answer any questions. Anything you say can and will be used against you in court. You have a right to talk to a lawyer for advice before we question you and to have him with you during questioning. If you cannot afford a lawyer and want one, then one will be provided for you. If you want to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

I asked him if he understood these rights and he said he did.

Q What was his reply?

A He said he did.

Q Did he appear to understand and comprehend everything you told him?

A Yes, he did.

Q Did you threaten him in any way or promise him anything in return for his statement?

A No, sir, I did not.

Q Did you question him?

A Yes, I did.

Q What did you ask him?

A I advised the defendant we were investigating an accident in which two boys had been injured and in the hospital and I asked him where he had been that night. The defendant stated he had been at the Park Inn Restaurant that evening and I asked him about what time he had left and he stated about 11:45. This would be on the 23rd around 11:45 PM.

At this time I asked him about the damage which I had seen sustained to his car, the right front of his car and I asked him if it had been in an accident or how he had sustained the damage to his vehicle. At this time, Mr. Beck stated, the defendant stated he had struck a dog. At this time Sergeant Harris said, "You mean you struck a dog and didn't bother about stopping?" and Mr. Beck stated, "Well, I don't know what I struck, it was a blur." I said to the defendant, "Where you struck this dog, was it on Old Centreville Road just down from the Seven-Eleven at Polk Drive?" and he said, "Yes, it was in that vicinity."

Then at this point Mr. Beck stated he didn't wish to answer any more questions without consulting a lawyer and I ceased to question him at this time.

Q Now you say there was certain damage you had observed

to his vehicle?

A Yes, sir.

Q What type vehicle was it?

A This was a '71 Chevrolet Impala, green.

Q Where was the car located?

A In the defendant's driveway.

Q Did you have occasion to take photographs of that car?

A Yes, sir, I did.

Q And do you have them with you?

A Yes, sir, I do.

Q For the record, would you describe the damage you observed?

A Yes, sir, the damage was sustained to the right front fender, the headlight, the grill, the hood. There were two large dents in the right front hood of the vehicle. Also, the right front tire had a substantial amount of grass and mud imbedded in the rim of the tire.

Q And these photographs accurately portray what you saw on that occasion?

A Yes, sir, they do.

MR. EBERT: I would offer these photographs in evidence.

MR. HILTON: May I ask a couple questions before those

referred to were marked and entered in evidence as Commonwealth's Exhibits 2A, B and C.)

BY MR. EBERT:

Q Did you have occasion to make measurements of the road at that point?

A Yes, sir, when I arrived on the scene I did take pertinent measurements and photographs.

Q How wide is the road at that point?

A The road from shoulder to shoulder is thirty-one feet.

Q How wide is the shoulder at the area where this accident is alleged to have happened?

A I believe the roadway is twenty-eight feet and from shoulder to shoulder is thirty-one feet.

Q Is there a ditch along the edge of this road?

A Yes, sir, there is.

Q And how far is that ditch from the paved portion of the road?

A I would say approximately three feet.

THE COURT: You say three feet, you mean on each side or a foot and a half on each side.

THE WITNESS: On the west-bound lane I would say three feet. On the other side there was a sidewalk and a curb. There

were houses on the other side. On this side where the boys were struck it is a field.

THE COURT: It would be about three feet?

THE WITNESS: I would say before you went off in the ditch it would be about three feet.

BY MR. EBERT: (Resuming)

Q Now, I'm going to show you a photograph and ask you if you can tell the Court what that portrays?

A Yes, sir, this portrays what was pointed out by Officer Welch to me. This is where one of the victims was laying.

Q In any event what did you see there?

A There was a small amount of debris. It was not blood but I really don't know what it was. It could have been beer.

Q The debris you saw in this area where the accident allegedly occurred, how far off the paved portion was that?

A I would say approximately -- off the paved portion?

Q Yes.

A This was on the shoulder of the road, just as you get off the shoulder of the road, still on the pavement.

Q Did there come a time when you had occasion to transport certain items to the FBI laboratory?

A Yes, sir.

entered in evidence as

Defendant's Exhibit No. 1.)

THE COURT: You all better point this out to me. Defendant's Exhibit 1 is a photograph of the scene and is entered without objection.

BY MR. HILTON: (Resuming)

Q Now, you testified, I believe Officer Cahill, that in your measurements you measured the right-of-way to be twenty-eight feet, is that correct?

A From hard surface to hard surface.

Q And then you said there was a ditch about three feet from the pavement, the paved portion of the roadway, and is that all gravel between the roadway and the ditch?

A No, sir, it's not.

Q How wide is that gravel strip alongside the road at this point?

A The gravel strip is only approximately not even a foot. In some spots it varies because it's a very narrow road and in some spots there's not any gravel portion at all, it's just field or ground.

Q At the point where that picture was taken, the picture that was just then entered in evidence, how wide is the gravel portion of the road at that point, do you recall?

A If I could see the picture again.

(Short pause.)

I would say that the gravel portion itself would be, if there's any gravel at all it would be only about a foot.

Q About a foot?

A Right.

Q So it would be fair to say that can is within one foot, or maybe two inches from the hard surface of the road?

A Right, yes, sir.

This is where one of the victims was laying after they were struck.

Q Yes, I understand your testimony.

Now, you indicated you received some fiber samples on February 24, is that correct?

A Yes, sir.

Q Who did you receive those fiber samples from?

A Investigator Sowards.

Q And how many samples did you receive from him?

A I have to go over to my manifest to check it. Approximately, I believe, three different fibers.

Q Three different fibers?

A Right. I'm just saying that from the top of my head. I'd have to look it up to be sure.

Q And was that just one strand of fiber? Describe to me what you got is what I'm getting at?

A Yes, sir. What he gave to me he had packaged at this time.

Q How did he have it packaged?

A We put it in a plastic bag or container.

Q You put it in a plastic bag?

A No, he did.

Q So how many plastic bags did he hand you?

A Well, he handed me some other metal fragments also, so the fibers part -- I really couldn't say. I imagine two to three fibers.

Q And those were in individual plastic bags?

A Yes, sir. We packaged it up in manila envelopes.

Q Were they sealed when you got them?

A Yes, sir.

Q They were?

A Yes, sir.

Q And after you received those, what did you do with them? Did you open them at any time?

A No, sir, I did not.

Q And where did you put them?

A I put them in the evidence box with the rest of the

Q Yes.

A The damage was sustained to the right front of the vehicle.

Q The point of impact with regard to the physical location?

A No, sir. I had an approximate location where the boys were or what the witnesses showed.

MR. EBERT: That's all.

THE COURT: Do you want him subject to recall?

MR. EBERT: No.

MR. HILTON: He can be excused.

THE COURT: You may be excused and you're free to go.

(Witness excused.)

MR. EBERT: I would ask he be allowed to remain in the court room and sit over here with counsel.

THE COURT: Do you have any objection to that?

MR. HILTON: No, I have no objection.

THE COURT: Why don't we take about a five minute break.

(Whereupon, a short recess was taken.

MR. EBERT: Sergeant Harris.

Thereupon,

PAUL GEORGE HARRIS,

called as a witness by counsel for the Commonwealth, and having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EBERT:

Q State your full name and give your place of employment?

A Paul George Harris, sergeant, Prince William County Police Department.

Q Did you have occasion to investigate an alleged accident which occurred on the 23rd day of February, 1973?

A Yes, sir.

Q And in the course of that investigation did you have occasion to take certain soil samples?

A Yes, sir.

Q Where did you take the soil samples from?

A From the scene of the accident and also from a vehicle that was in the driveway of Mr. Beck's residence.

Q Were you present with Officer Cahill at the time Mr. Beck was questioned relative to the alleged accident?

A Yes, sir.

Q Were you present when certain photographs which have been introduced in evidence as Commonwealth Exhibits 2A, B and C were taken?

A Yes, sir.

Q Now, I show you Commonwealth's Exhbit 2C and ask you if you'll tell us what that portrays?

A This is the right front wheel and tire of the vehicle that was found in Mr. Beck's driveway.

Q Did you take any soil from that?

A Yes, sir.

Q And is that before you?

A Yes, that is.

Q For the record, it would be Commonwealth's Exhibit No. 4 for identification purposes?

A Yes.

Q Now, did you return to the alleged scene of this accident?

A Yes, sir.

Q Did you take any soil samples at that area?

A Yes, sir.

Q Do you have those before you?

A Yes, sir.

MR. EBERT: For the record, that would be Commonwealth Exhibit No. 5.

BY MR. EBERT: (Resuming)

Q After taking these samples, what did you do with them

A I packaged them and hand delivered them to Officer

CLIFFORD SOWARDS,

called as a witness by counsel for the Commonwealth, and having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EBERT:

Q State your full name and give your place of employment

A Clifford Sowards. I'm an investigator with the Prince William County Police Department.

THE COURT: Spell your last name?

THE WITNESS: S-O-W-A-R-D-S.

BY MR. EBERT: (Resuming)

Q Did there come a time when you had occasion to examine a vehicle allegedly belonging to the defendant in this case?

A Yes.

Q And when was that?

A The 24th day of February, 1973.

Q Approximately what time was it?

A Approximately 9:15 or 9:30.

Q Where was the vehicle located?

A It was at the defendant's home. I believe it was on MacBeth Street in Yorkshire.

Q Was there any damage done to that vehicle?

A Yes, there was damage to the right front fender and the parking light area of the car.

Q What type of vehicle was it?

A It was a 1971 Chevrolet.

Q Looking at Commonwealth's Exhibits 2B and 2A and do they accurately portray the damages you saw at that time?

A Yes, it does.

Q And did you have occasion to remove anything from the damaged area of the vehicle?

A Yes, I removed what appeared to be clothing fibers that were stuck to a piece of broken fiberglass on the right front fender of the car.

Q Do you have those before you?

A This is it here. Little tiny, appear to be blue fibers, clothing fibers.

Q And do you have any others before you?

A I think there is some more here. Yes, here are some more of them, dark blue fibers, and also some more of them. These are all -- well, that's not one of them there and that's not.

Q In any event, you did take certain samples of fibers or what appeared to be fibers and what did you do with those

Thereupon,

MORRIS SAMUEL CLARK,

called as a witness by counsel for the Commonwealth, and having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EBERT:

Q State your full name and give your place of employment?

A My first name is Morris, middle name is Samuel, last name Clark; C-L-A-R-K. I'm a special agent with the Federal Bureau of Investigation assigned to the FBI laboratory in Washington, D. C.

Q How long have you been so employed?

A About sixteen and a half years.

Q And what are your duties as a special agent assigned to the laboratory?

A I make examinations and comparisons of hairs, fibers, fabrics and related materials in criminal cases.

Q And have you received special training and qualifications in the field of identification of various substances that you mentioned?

A Yes. After I was transferred to the laboratory I

underwent a years training under older experienced examiners. At that time the laboratory considered me qualified and since then I've examined a large number of cases on my own responsibility.

Q And have you qualified as an expert in a court of record before?

A Yes, many times in both state and federal courts. In most of the states, including Virginia.

MR. EBERT: I would ask he be permitted to testify here.

MR. HILTON: I have no objection.

THE COURT: All right.

BY MR. EBERT: (Resuming)

Q Did there come a time when you had occasion to see certain items from Officer Cahill?

A Yes.

Q When was that and what did you receive?

MR. HILTON: Excuse me for interrupting. I have a continuing objection to those items being admitted into evidence on the basis that they were obtained as a result of an improper search. I understand that's been overruled but I want my exception noted to his testimony concerning these items.

THE COURT: All right, sir.

THE WITNESS: I received a number of items from a car, including soil from a car.

BY MR. EBERT: (Resuming)

Q Taking the soil, what did you do with these samples? Who did you deliver those to?

A I gave the soil from the car and the soil from the scene to Special Agent Miller for examination. There were also other items, including clothing and various items from a car, such as fibers and hairs.

Q I show you what has been marked for identification purposes as Commonwealth's Exhibit No. 3 and ask you if you can identify that exhibit?

A These items contained known fiber samples of clothing. Samples that I made include hairs and fibers removed -- or submitted as being removed from the car by the officers and also fibers that I found on a piece of metal from the car.

Q And could you tell us what type of fibers these were, in your opinion?

A Well, the fibers I removed from the car or from the piece of metal which was submitted as being from the car include polyester fibers, cotton fibers, woolen fibers and acrylic fibers which, in my opinion, would be from clothing.

MR. EBERT: That's all I have of this witness.

Thereupon,

ELMER T. MILLER,

called as a witness by counsel for the Commonwealth, and having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EBERT:

Q State your full name and give your place of employment?

A My name is Elmer T. Miller. I'm employed as a special agent with the Federal Bureau of Investigation assigned on a full time basis to the FBI laboratory, Washington, D. C.

Q How long have you been so employed?

A I've been employed by the FBI since 1950 and assigned to the laboratory since 1959.

Q And what are your duties with the FBI laboratory?

A I'm assigned to the soil, sands and minerals unit of the FBI laboratory. My work involves the analysis and comparison of inorganic materials; mainly soils, glass, safe insulation, building materials and other items that might be submitted to us along that line.

Q And have you received special training in the field of identification of soil and minerals?

A Yes, I have. May I start with my early education?

Q Yes, sir.

A I received a Bachelor of Science degree in 1938 from the University of Richmond, Richmond, Virginia and subsequently received a Master's Degree from the George Washington University in Washington, D. C. in Forensic Science.

My work includes ten years, except for three years in the Navy, with the Virginia Department of Agriculture at Richmond, Virginia much of which was spent in analysis of minerals, ores and soils. Having been assigned to the FBI laboratory, I received a year of specific training in the comparison of items submitted to the laboratory including those I've mentioned, soils, minerals, safe insulation, glass.

Q And have you qualified as an expert in the field of soil identification prior to this date?

A On numerous occasions and specifically in the state of Virginia.

MR. EBERT: I would offer his testimony. Do you have any questions?

MR. HILTON: No questions, and no objection.

BY MR. EBERT: (Resuming)

Q Did there come a time when you had occasion to receive what has been marked for identification purposes as

Commonwealth's Exhibit 4 and Commonwealth's Exhibit No. 5?

A Yes. Each of these have my initials on them and a symbol put on there to identify them in the FBI laboratory.

Q Upon receiving them did you conduct any tests on the samples?

MR. HILTON: If Your Honor please, excuse me for the interruption, I'd like my exception to go -- objection to go to this witness as well as the others as far as any testimony concerning these items.

THE COURT: You're objecting to No. 5 also?

MR. HILTON: No, I do not object to that but I object to the sample that was taken from the car.

THE COURT: Which I believe is No. 4. It's a continuing objection.

BY MR. EBERT: (Resuming)

Q Go ahead.

A The purpose of my examination was to compare Exhibit 4 with Exhibit 5. In other words, to see if they were alike or whether they were different.

Q Did you reach any conclusion after you made your comparison and test?

A Yes, I compared these by microscopic examination determining the soil to be alike, determining that grass roots,

grass blades were in each although slightly more in Exhibit 5 than Exhibit 4 which would, in my opinion be normal for soil at a scene, on the ground that is and soil which would be taken from an automobile. I examined it by microscopic means by removing the silt portion, the organic portion and examining the minerals on the basis of some thirteen different mineral forms and species. I found Exhibit 4 to be like Exhibit 5. Essentially, the two are alike and therefore, in my opinion, came from the same general source.

MR. EBERT: That's all I have.

CROSS EXAMINATION

BY MR. HILTON:

Q Mr. Miller, you testified that you had been with the Department of Agriculture in Virginia and done soil samples in this state for quite a bit of time?

A Among my duties were the examination of soils.

Q Can you tell us what type of soil this was in both of these samples, 4 and 5?

A Yes. It's a silty -- first they're both the same color. It's a brown silty soil which has grass roots and grass in it indicating that it is growing material. I don't think we would call it a loam. I think we would call it a shaley, sandy silt.

Q And what kind of grass did you find there? Did you make any kind of examination of the grass?

A I can't identify grass on the basis of blades and roots. One needs seeds and we didn't have seeds.

Q Now, this type of soil that you just described, is that peculiar to any one area of Virginia?

A This particular type of soil is peculiar to a rather large part of Virginia. I don't go on type because that would mean nothing at all. It's the fact that the mineral species are in the same quantity in each soil. That's what we look for, differences in the amount of minerals, whether it's larger or smaller grain size, whether it is a silt or whether it is more shale and so on; the quantities of these things is what makes the difference because the water washes this area and doesn't wash this area. The roots retain certain minerals in one area and not another and so on.

Q And those characteristics would change from area to area, is that correct?

A That's been our experience and is the reason we examine soils now in our laboratory because we have found differences in comparatively short spaces.

Q But since this soil is fairly widespread, the type of soil would be fairly widespread to most all areas of Virginia

and it would not be uncommon to find other areas in Virginia where there would be soil that had the same characteristics, the same composition as could be found here? Would that be a fair statement?

A No, it would not. Otherwise, we wouldn't do soil comparisons at all. It is possible but improbable that another soil would be found to match this soil and it's not widespread all over Virginia by a long sight. The soil might be common to this portion of Virginia or Fairfax County that hasn't been made into roads and yards and farms and what have you.

Q Would this soil be fairly common to all of Prince William County and all Fairfax County? Would that be a fair statement?

A No, I don't think it would.

Q It would not?

A No.

Q Would there be other areas in Fairfax and Prince William County where you could find soil with the same type of characteristics?

A I can't eliminate that possibility. I don't have those soils before me so I can't eliminate it.

Q Now, on any given stretch of road for a distance of two or three miles, if you took a sample of soil at one point

along that stretch of road and took another sample say several yards down the road, in your experience would those soils normally check out to be about the same?

A No. That is why we compare soils. If it was the shoulder soil that has been hauled in by truck and spread along the shoulder of the road, yes, but the soil that was there, I have worked numerous cases where we could eliminate soil ten yards away easily by the characteristics.

Q But you are saying that along a shoulder of a road where there's been grading or dirt hauled in, it could turn out the same, is that correct?

A Yes, it could. This is not road shoulder soil. It's not what they put on the shoulders of roads. This is soil, as you mentioned earlier, that was in this part of this county for a long time. It's not shoulder road soil.

Q You would say from your examination of the soil you examined, it did not come from the shoulder of any road?

A Not the hauled in shoulder; somewhat off.

Q But that depends on where they haul it from, doesn't it?

A Except that you don't haul to make a shoulder of this soil, you haul coarse sand and gravel and clay. You do not haul in silt and very fine soil like this. You would make

a mud hole of it.

Q So you would say that did not come from a shoulder of a road?

A Not the hauled in portion, no. Close by maybe.

MR. HILTON: I have no further questions.

THE COURT: Mr. Ebert?

MR. EBERT: Nothing further.

THE COURT: Do you want Agent Miller excused?

MR. EBERT: Yes. I would offer Exhibits 4 and 5.

THE COURT: Any objection to the agent being excused?

MR. HILTON: No, sir.

THE COURT: You're excused and free to go.

(Witness excused.)

THE COURT: Any objections to 4 and 5 other than what you've previously stated?

MR. HILTON: No, just the objections I've previously stated.

THE COURT: I'll overrule them and admit 4 and 5.

(Whereupon, the items above-referred to were entered in evidence as Commonwealth's Exhibits 4 and 5.)

THE COURT: Any further evidence, Mr. Ebert?

THE COURT: Any further argument on the Motion to Strike?

MR. EBERT: I know it's unusual but I have a witness I'd like to call. I have another witness I'd like to call who just arrived. He was summonsed. I haven't got the return but I did send one out and the officers during the lunch recess did go out and locate him and he's here and I'd like the Commonwealt to have permission to reopen it's case.

THE COURT: Who is the witness? What's his name?

MR. EBERT: James McCarty.

MR. HILTON: I don't have any objection to that. He can offer him in rebuttal or any way.

THE COURT: All right, take Mr. McCarty.

Thereupon,

JAMES LEE MCCARTY,

called as a witness by counsel for the Commonwealth, and having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EBERT:

Q State your full name and give your address?

A James Lee McCarty. I live at 7707 Clark Place.

THE COURT: Spell your last name?

Q And did you see him leave?

A Yes, I did.

Q Approximately what time was it he left the restaurant?

A About eleven-thirty.

Q And would you tell the Court what, if anything, you observed as he left?

A Well, he got up from the table, he stood around for a few minutes talking with everybody and he told them he was going home and he would see them later and throwed his hand up an smiled and he opened the door and went out the door and there was a step about that big (indicating) as you go out the door and he sort of hung his heel on that a little bit and stumbled and caught hisself, got in his car and when he got in his car he pulled out sort of back around to the right like going back into the park and his door flew open and he leaned out his car door and pulled it shut and drove on.

Q Was the car moving when he did that?

A Yes, sir.

Q Did you have occasion to observe how he walked?

A He was pretty steady. He wasn't stumbling or nothing but he was a little unsteady.

Q A little unsteady?

A Yes, sir.

MR. EBERT: That's all.

CROSS EXAMINATION

BY MR. HILTON:

Q Mr. McCarty, when you say a car door came open and he closed it, which door was that, the right or the left door?

A The left-hand door, the driver's side.

Q And when you saw him leave he was by himself, was he not?

A Yes, sir.

MR. HILTON: I don't have any further questions.

MR. EBERT: I have one other question.

REDIRECT EXAMINATION

BY MR. EBERT:

Q What type car was he operating?

A It was a new car. I think it was fairly new. I think it was a Chevrolet, I believe it was.

Q Do you recall what color it was?

A It was blue, I think. I believe its blue.

Q Light or dark?

A Light blue.

MR. EBERT: All right.

THE COURT: Any recross?

MR. HILTON: Yes.

THE COURT: Anything further?

MR. EBERT: No, sir.

THE COURT: Any further argument on the Motion to Strike.

MR. HILTON: No, sir.

THE COURT: The Court will deny the Motion to Strike and note the defendant's exception.

MR. HILTON: Would you take the stand, Mr. Beck.

Thereupon,

CHARLES GEORGE BECK,

the defendant, called as a witness by counsel for the defense, and having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HILTON:

Q Would you state your name and your address?

A Charles George Beck, 8507 Stokley Drive, Manassas, Virginia.

Q Mr. Beck, directing your attention to the 23rd of February, 1973, did you have occasion to be in the Park Inn Restaurant?

A Yes, sir.

Q And did you drive there?

A Yes, sir.

Q What kind of car were you driving?

A A 1971 Chevrolet.

Q What color is that car?

A Dark green.

Q Did you stay in the Park Inn Restaurant for a period of time?

A Yes, sir.

Q How long do you recall that you were there?

A I got to the Park Inn between seven and seven-thirty and left approximately eleven-thirty.

Q And did you drink anything while you were there?

A I made a habit of not drinking more than one beer per hour.

Q Do you recall how many beers you had while you were there?

A Five or four; I can't definitely state. Either four or five.

Q And for what reason did you not drink more than one beer per hour?

A I never drink more than a beer per hour because I'm obligated to go to the FAA which is Federal Aeronautics and if something should break down, I'm the man that's to be there

to put it back.

Q Who do you work for?

A Western Electric Company.

Q And that's a specific part of your duty to be on call for such emergencies?

A Yes, sir.

Q Now, what time did you say you left?

A Approximately eleven-thirty.

Q And what did you do after you left?

A I got in my car and I started to pull out and the car door just doesn't close all the way.

Q Which door is this?

A The left door, the driver's side, and when I started to pull out and I could hear the road noise of the tires and I stopped and opened the door and closed it and drove on.

Q You say you opened the door and closed it, was it just ajar? Was that the situation?

A Yes, sir.

Q Has that happened to you before?

A Several times.

Q So you opened the door and closed it and drove off?

A Yes, sir.

Q And what route did you follow home?

A Old Centreville Road.

Q Now, as you proceeded up Old Centreville Road -- well, tell us how far up Old Centreville Road you travel in order to get to your house?

A To Spruce Street.

Q How far would that be from the Park Inn?

A Three blocks or three streets, in that area.

Q Would it be farther than three blocks or would it be about three blocks?

A Three blocks.

Q Do you know how fast you were driving as you proceeded up Old Centreville Road?

A Then between thirty and thirty-five miles per hour.

Q And did you look at your speedometer during that period of time?

A Yes, sir.

Q Now, tell the Court exactly what happened, if you can, step by step from leaving the parking lot at Park Inn, as you drove up Old Centreville Road?

A After I stopped to close the door, I hit Route 28, Old Centreville Road and I made a left and I would say approximately three hundred yards from Cabell Drive I heard a thump on the front of my car and I pulled over, put on the

brakes, stopped, opened my door, looked back, assuming I had struck a dog. I heard no noise from a dog. I closed my door and proceeded home.

Q At the time you pulled over, were you off of the hard-surface portion of the roadway?

A Yes, sir.

Q From the time you left the Park Inn Restaurant until the time you pulled over after you thought you had hit a dog, did you ever, at any time, go off of the traveled portion of the roadway, the paved portion of the roadway?

A No, sir.

Q Now, did you ever, at any time, see anybody walking on either side of the road?

A No, sir.

Q Now, that's from the time you left the Park Inn until the time you got home? Did you ever see anybody walking alongside the road?

A No, sir.

Q Now, this was at night, wasn't it?

A Yes, sir.

Q It was dark?

A Yes, sir.

Q Are there any street lights or any lighting on Old

Centreville Road.

A There are street lights on the side of the houses.

Q But are there any lights on the road itself?

A No, sir.

Q Now at the time you left the Park Inn Restaurant and you said you had had either four or a maximum of five beers, were you, in any way, intoxicated or impaired by what you had had to drink?

A No, sir.

Q Were you in full control of your faculties at that time?

A Yes, sir.

MR. HILTON: I don't have any further questions.

CROSS EXAMINATION

BY MR. EBERT:

Q Mr. Beck, as I understand it your testimony is that you arrived there at seven-thirty?

A Between seven and seven-thirty.

Q And where had you been prior to that time?

A At home.

Q And what day of the week was this?

A Friday.

Q And for what purpose did you go to the restaurant?

A To listen to country music.

Q And when you arrived there -- you've heard the testimony that you arrived there about five o'clock, and that's an error, is that correct?

A Yes, sir.

Q That's wrong?

A Yes, sir.

Q How often did you frequent that particular restaurant?

A At that time of night, very, very seldom.

Q Well, how about any time of day or night?

A On the way home from work I would stop and have a beer or two.

Q And how long would you normally stay in the restaurant on your way home from work?

A A couple hours.

Q And what time would you arrive at the restaurant?

A Four-thirty.

Q Where do you work?

A Western Electric.

Q Where?

A I have the northern Virginia area.

Q Do you have any place you leave from?

A Not any specific day, no, sir.

Q Well, where is the closest place to the restaurant you would leave from when you got off work?

A Centreville, Virginia.

Q You travel?

A Yes, sir.

Q And what do you go to Centreville for?

A There's a telephone building there we do work in.

Q And then you would get home around six-thirty?

A Yes, sir.

Q And I assume you would have your dinner, is that correct?

A Right, sir.

Q Did you have anything to eat on this occasion?

A Yes, sir.

Q What did you have to eat that day?

A I couldn't tell you exactly. I came straight home that night.

Q Straight home from work?

A Yes.

Q What time did you get home?

A Approximately four-thirty.

Q Did you eat at home?

A Yes, sir.

Q You don't know what you had to eat?

A No, sir, not now.

Q But you are sure you had something to eat?

A Yes, sir.

Q Did you tell your wife where you were going?

A Yes, sir.

Q Now, when you got up there, you sat down at a table and started to drink some beer, is that right?

A Yes, sir.

Q And as I understand it, you watched the clock to make sure you didn't have more than one beer per hour?

A Very close.

Q If the testimony you heard earlier is correct, then you would have had two more beers, would you not, because you had been there two more hours, right?

A No, sir, I didn't get there until seven-thirty.

Q Assuming you had gotten there at five-thirty you would have had the opportunity to have two more beers, is that right?

A Yes, that would be right if I had gotten there at five thirty.

Q Now, what time was it that you had your last beer?

A I couldn't sey exactly.

Q You were watching the clock, weren't you?

A I would say eleven o'clock.

Q Approximately eleven o'clock?

A Yes, sir.

Q Did you finish it by eleven-thirty?

A I would say yes, sir.

Q And what time was it you ordered the beer next to the last one you ordered?

A I really couldn't answer that, sir.

Q You were watching the clock, weren't you?

A Yes, sir.

Q And you watched your speedometer, didn't you?

A Yes, sir.

Q And you recall what your speedometer said, don't you?

A Yes, sir.

Q Why can't you recall what the clock said?

A Well, I wouldn't remember specifically the hour, no, sir.

Q Did you drive here this morning?

A Sir?

Q Did you drive here today?

A Yes, sir.

Q What route did you follow?

A Route 28.

Q Have you talked to him since that day?

A No, sir.

Q Have you tried to have him subpoenaed here as a witness?

A No, sir.

Q And you said goodbye to him?

A Yes, sir.

Q How do you know this was a state patrolman?

A Well, he was just a gentleman at the table.

Q Did he say he was a state patrolman.

A I did not know he was a state patrolman.

Q How do you know he is today?

A From the witness you had here today.

Q Do you recall stumbling out the door?

A No, sir.

Q You don't recall that?

A No, sir.

Q Well, did you stumble or didn't you?

A No, sir.

Q You did not?

A (Indicating no.)

Q So that testimony is also in error, is that correct?

A Yes, sir.

Q Were you steady on your feet or unsteady?

A Steady.

Q Weren't you a little unsteady?

A No, sir.

Q That testimony is also incorrect, is that your testimony?

A To my knowledge, yes, sir.

Q Well, now you knew what was going on, didn't you?

A Yes, sir.

Q So is your knowledge correct?

A Correct.

Q Now, do you recall leaving and your door flying open?

A My door didn't fly open, it was halfway open.

Q Do you recall opening the door?

A Yes, sir.

Q You say it was halfway open, what do you mean?

A It has two catches on it.

Q The second catch was caught?

A Yes, sir.

Q And how far had you traveled before you noticed your door was ajar?

A Two lengths of the car.

Q And did you stop the car or keep going on?

A Stopped the car.

Q And then you went out on Old Centreville Road, is that correct?

A Yes, sir.

Q And do you recall seeing anybody on Old Centreville Road?

A No, sir.

Q Do you recall seeing anybody from the time you left the restaurant until the time you got home?

A No, sir.

Q You saw nothing but heard a thump, is that correct?

A Yes, sir.

Q Was anything wrong with your car prior to the time this accident allegedly occurred?

A No, sir.

Q Was the damage which has been described and portrayed in Commonwealth's Exhibit 2A and 2B done to your car before this alleged incident?

A To my knowledge, no, sir.

Q It was your car wasn't it, you had driven it all day?

A Yes, sir.

Q When did you first notice there had been some damage to the car?

A The next day.

Q You mean you didn't notice it when the officers were there?

A No, sir.

Q Your testimony is that you never ran off the road at any time, is that correct?

A No, sir. I pulled off the road after I heard the thump.

Q And you stopped?

A Yes.

Q And you got out?

A No, sir.

Q Well, where were you when you heard the thump?

A Driving the vehicle.

Q Where was the vehicle located physically?

A I would say approximately 300 yards beyond Cabell Drive down toward the Seven-Eleven.

Q On what road were you traveling?

A Old Centreville Road.

Q And your car did not run up in the ditch and the right-hand door fly open?

A No, sir.

Q You would remember that would you not?

A Yes, sir.

Q And this thump you heard, could you tell from what portion of the car the thump came?

A From the right front or the side.

Q Right front or the side? When you got home you made no effort to see whether or not that thump had done any damage to your car, is that your testimony?

A Yes, sir.

Q Now, do you recall talking to the officer?

A Yes, sir.

Q Do you recall telling him you hit a dog?

A Yes, sir.

Q And do you recall telling him you didn't know what you hit, something flew up?

A I told him it was a dog or another object.

Q Well, now just what was it? What did it look like to you?

A I didn't see it.

Q Do you recall saying it was a blur?

A No, sir, it wasn't a blur.

Q Do you recall saying that?

A No, sir.

Q You didn't say that?

A I don't recall saying I seen a blur, no, sir.

Q Do you recall what you said?

A Yes, sir.

Q What did you say to the officers?

A I told the office I had hit something that I assumed was a dog because I didn't see it.

Q That's exactly what you told him?

A That's what I told the officer, yes, sir, and he stated later I said it was a blur.

Q You didn't say that?

A I'm not saying I didn't say that. I don't remember telling the officer that because he told me at that time I had the right not to say anything until I got a lawyer.

Q So you didn't say anything to him?

MR. HILTON: That's not what he said, if Your Honor please.

THE COURT: Sustained.

BY MR. EBERT: (Resuming)

Q Did he tell you that you had a right to obtain counsel prior to answering any questions or afterwards?

A He told me prior and he told me again. He told me twice.

Q Did he tell you that you had a right to have a lawyer

more questions?

A That's true.

Q And what he said today is contrary to what you remember?

A He actually read the car rights, sir.

Q Bur he didn't say that today, did he?

A I believe today, to the best of my knowledge, he stated that he repeated to me that I did not have to answer any questions until I got a lawyer.

Q At what stage of the questioning was it that he told you that?

A I specifically couldn't answer.

Q Well, now what had you told him, as best you can recall, before he repeated that?

MR. HILTON: I think he's answered that question, if the Court please.

MR. EBERT: This is cross examination.

MR. HILTON: He's asked it on cross examination.

THE COURT: I'll let him answer for the last time. Go ahead and answer.

BY MR. EBERT: (Resuming)

Q What had you told him prior to his saying you had a right to talk to a lawyer the second time?

A I told him I came down Centreville Road and I had

struck something which I had assumed was a dog and I stopped the vehicle, opened my door, I looked back and I heard no noises. I closed the door and proceeded home.

Q Did he ask you was this dog in the vicinity of Centreville Road?

A No, sir.

Q He didn't ask you that?

A To the best of my knowledge, no, sir.

Q And did he also say, "You mean you hit a dog and then left?" and you said well, it was something, a blur; I saw a blur and I don't know if it was a dog.

A If I said a blur, I meant to say a dog.

Q In other words, what you told the officers is not what you meant to tell him, is that correct?

MR. HILTON: I think that's argumentative.

THE COURT: Sustained.

BY MR. EBERT: (Resuming)

Q When you pulled off the road, did you pull all the way off?

A Yes, sir.

Q How wide is this shoulder in the area where you pulled off?

A Very narrow.

Q You say very narrow; two feet, three feet, five feet or what?

A I would say to the edge of the gravel it wouldn't be over a foot.

Q Then you weren't all the way off the pavement, were you?

A Not the whole car, no, sir.

Q Was there a ditch there?

A Yes, sir.

Q Did you pull down in that ditch?

A Well, it was really a wide place where I pulled in and I was in the ditch, the right wheel.

Q The right wheel was in the ditch?

A Yes, sir.

Q Since this accident have you gone back to see where this accident allegedly occurred?

A I've been up Old Centreville Road, yes.

Q Have you tried to ascertain where this object was that you struck with relation to where it allegedly happened?

A It was approximately 300 feet beyond Cabell Drive -- 300 yards, pardon me.

Q And where ever you hit, whatever it might have been, is the same place where everyone says these boys were hit?

A No, this is beyond the place they're stating the boys were hit.

Q And you pulled over some place other than where these boys were hit?

A That was approximately 300 yards beyond Cabell Drive.

Q Do you know where these boys were allegedly hit with relation to where you pulled over?

A I don't know what the statement was in yardage.

Q Well, did you ever go back and try to see where this crime happened that you were accused of committing?

A I've been down that road.

Q Did you ascertain where people said it happened?

A I looked to see the place it happened, where I hit the dog.

Q You looked to see where you hit the dog but not where the boys were hit?

A I went right past that place. I have no idea of the place they're talking about to be certain.

Q You mean no one has indicated to you where this crime was supposed to have been committed or where it happened?

A No.

MR. HILTON: I object. That's the third time he's asked that.

THE COURT: Sustained.

BY MR. EBERT: (Resuming)

Q Had you, to your knowledge, or had anyone else ever struck any object or any object wearing clothing, with your car?

A No, sir.

Q Never had?

A (Indicating no.)

Q When is the last time you looked at the right front of your car?

THE COURT: Prior?

BY MR. EBERT: (Resuming)

Q Prior to this accident?

A Well, I would have looked at it some time during the day of February 23rd. I don't know whether I looked at the front of the car but I drove the car that day.

Q After you were arrested when did you next look at the car, the front of the car?

A That Saturday morning.

Q What time?

A I would say approximately ten o'clock or eleven o'clock.

Q Ten or eleven?

A Right, sir.

Q And who was present at that time?

A I was by myself.

Q Do you recall the officers coming up and knocking on the door and talking to you Saturday morning about nine o'clock?

A No, sir.

Q You don't recall that?

A No, sir.

Q No one came to your door and asked if they could take some samples from your car?

A Not me, sir.

Q Did they ask anybody in your presence?

A No, sir.

Q Were you home when the officers came to look at your car?

A Yes, sir.

Q Who did they ask?

A My wife and two boys was home.

Q Do you recall them knocking on the door?

MR. HILTON: Your Honor, he ought to determine which time it was to determine if he was home or not. They took samples at two different times.

BY MR. EBERT: (Resuming)

Q Nine o'clock in the morning or soon thereafter. Were you home?

A Yes, sir.

Q And at that time do you recall the officer knocking on your door?

A Are you stating did I speak to the officer at my door?

Q Do you recall an officer knocking on your door, whether you spoke to him or not?

A No, sir.

Q You don't recall that?

A No, sir.

Q Do you know or have any knowledge of an officer coming and knocking on your door at approximately nine o'clock on the 24th?

A Yes, sir.

Q And how did you come to know that?

A My wife told me.

Q You weren't home?

A Yes, sir.

Q Where were you?

A In the bedroom.

Q And what time did you get home from the Justice of

the Peace after you were arrested?

A It was approximately four-thirty or five o'clock. I really couldn't give you a definite answer.

Q But you didn't bother to look at your car, did you?

A No, sir, I didn't.

Q You weren't concerned about it?

A I wasn't concerned about it because the little thump I heard, I didn't even think to look at it.

Q You mean you had been arrested and put under bond and didn't even think about looking at your car to see what had been done to it.

MR. HILTON: I object to that. It's argumentative. He testified what happened.

THE COURT: Sustained. He's answered that.

MR. EBERT: That's all I have.

REDIRECT EXAMINATION

BY MR. HILTON:

Q Mr. Beck, did you ascertain either through this hearing and discussion with the officers or other hearings were they alleged that this accident occurred in relation to Old Centreville Road and Cabell Drive.

A To the best of my knowledge they stated it was approximately 150 to 200 yards beyond Cabell Drive.

Q And how far beyond Cabell Drive was it you indicated you felt a thump and you thought you hit a dog?

A It would be 300 yards.

Q Now, at the time you heard a thump, leaving everything else aside, whatever else you may have said before, did you see anything at that time?

A No, sir.

Q Going back now, did you tell the officers you saw anything?

A I didn't tell them I seen a thing. I said I assumed I took for granted it was a dog.

Q But you don't know what it was as a matter of fact?

A No, sir.

Q Is that correct?

A Right, sir.

Q And you never saw anything?

MR. EBERT: He's leading this witness.

THE COURT: Sustained.

BY MR. HILTON: (Resuming)

Q After this thump, you testified before, you looked back, is that correct?

A Yes, sir.

Q After you heard a thump, you pulled over in the

ditch, you testified to and then you looked back, is that correct?

A I did, sir.

Q And how did you look back?

A I opened the door of my car and looked back.

Q Did you get out of the car?

A No, sir.

Q And did you lean your head out of the car?

A To my knowledge, no.

Q Did you see anything?

A No, sir.

MR. HILTON: I don't have anything further.

RECROSS EXAMINATION

BY MR. EBERT:

Q As I understand, you pulled your car with the right front wheel out in the ditch, is that right?

A Yes, sir.

Q And the rest of the car was still on the paved portion of the road or at least a good portion of the car?

A A majority of the car was on the road because the berm was very narrow.

Q And opened the door and looked back?

A Yes, sir.

Q But the bump you felt came from the right side of that car?

A No, the front.

Q How far did you travel after you felt the bump?

A I don't guess it would be over thirty feet; just started to pull off the road.

Q How fast were you going when you felt the bump?

A Between thirty and thirty-five.

Q And your testimony is you traveled thirty feet. Did you apply your brakes immediately.

A I did.

Q Did you squeal the wheels?

A No, sir.

Q And your testimony is your car came to a stop approximately thirty feet from where you heard the bump?

A Approximately thirty feet, yes.

Q What is the furtherest it could have been, forty or fifty?

A Between forty and fifty I would guess.

Q What does the edge of the road look like in the area where you felt this bump?

A There's a little gravel and a ditch.

Q And is there an open field?

A Yes, sir.

Q You didn't look over in the field, did you?

A No, sir.

Q That was to the right of you, where you felt the bump, is that right?

A Yes, sir.

MR. EBERT: That's all.

MR. HILTON: I have nothing further.

THE COURT: You may step down, sir.

(Witness excused.)

Thereupon,

WADE SIRK,

called as a witness by counsel for the defendant, and having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HILTON:

Q Would you state your name and your address, please?

A My name is Wade Sirk and I'm the pastor or St. Mark's Methodist Church and I live at 7803 Wild Street.

THE COURT: Spell your last name?

THE WITNESS: S-I-R-K.

BY MR. HILTON: (Resuming)

1 Whereupon,

2 GARY MITCHELL,

3 a witness, called for examination by Counsel for the Plain-
4 tiffs, and, after having been first duly sworn, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MURPHY:

8 Q. State your name and address.

9 A. Gary Mitchell 7425 Bull Run Drive.

10 Q. Is that Manassas?

11 A. Yes.

12 Q. How old are you, Gary?

13 A. Seventeen.

14 Q. Directing your attention to the 23rd of February
15 of this year, where were you on that evening?

16 A. That evening, I guess, I was at the school.

17 Q. Where do you go to school?

18 A. I went in the day.

19 Q. The evening in question, were you at the school?

20 A. Yes, sir.

21 Q. What time did you get to the school?

22 A. I guess around 7:00.

23 Q. What had you gone to school for?

1 A. A dance.

2 Q. What time did you leave the school?

3 A. About 11:00. I guess around about ten after.

4 Q. Ten after 11:00?

5 A. Yes.

6 Q. How do you know it was that time?

7 A. It was on the clock. It was 11:00.

8 Q. Where did you proceed after that?

9 A. Just around to the back of the school and then

10 we went over to the Safeway.

11 Q. Then where did you go from the Safeway?

12 A. Down on Old Centreville Road.

13 Q. Who was with you at that time?

14 A. Raymond Simpson, Bobby Moore and Graig Moore.

15 Q. What side of the road did you walk on as you

16 walked down Old Centreville Road?

17 A. Right side.

18 Q. Where were you walking in relation to where?

19 A. In the ditch.

20 Q. Where had you started walking in the ditch?

21 A. Since I left. After you come out on the road

22 where the park ends.

23 Q. Where the park ends?

1 A. Yes.

2 Q. Is that where the shopping center parking lot

3 comes out onto the road?

4 A. Right.

5 Q. How far did you walk down the road?

6 A. I guess about fifty feet. Something like that.

7 About a hundred feet, I guess.

8 Q. Were there any intersections on the roadway that

9 you came to?

10 A. To the left.

11 Q. What street is that?

12 A. Cabbel, I guess.

13 Q. Had you gotten past Cabbel Drive?

14 A. Right.

15 Q. What happened then?

16 A. Then we got to the top of the hill and something

17 hit me and the boys got hit.

18 Q. What was it that hit you?

19 A. I don't know. I guess it was Raymond as he got

20 hit in the head.

21 Q. Did you see a car?

22 A. Yeah.

23 Q. Where did that --

1 (Objection.) (Overruled.)

2 Were you still walking in the ditch at this time?

3 A. Right.

4 Q. Where were Raymond and Bobby?

5 A. Raymond was beside me and Bobby was right behind

6 us.

7 Q. You say you felt something hit you?

8 A. Right.

9 Q. Then what happened?

10 A. I looked around and I didn't see nothing. I

11 looked down the road and Raymond was on his knees and this

12 car came by and the door hit him. He kind of swerved over

13 like.

14 Q. How far in front of you was Raymond at that point?

15 A. About 35 feet, I guess.

16 Q. After?

17 A. After he got hit. That's when I looked. I was

18 hit in the leg.

19 Q. How much prior to that time had he been walking

20 beside you?

21 A. I guess -- ever since we got on the road.

22 Q. At the time that you saw him up in front of you,

23 you say that he was about 30 feet or so?

1 A. Right.

2 Q. How much prior to that time was it that he had

3 been walking beside you?

4 A. Ever since we left up there at the store.

5 Q. What was the last time prior -- I will rephrase

6 the question.

7 You saw him laying in the road and the car door

8 had hit him?

9 A. Right.

10 Q. In the ditch. How long before that time had he

11 been beside you?

12 A. I don't know. You mean how long he had walked

13 beside me?

14 Q. No, I don't mean how long he had walked beside

15 you. How long a time span from the time that you saw him

16 up in front of you had he been at your side?

17 A. I don't know for sure.

18 Q. Where was he walking from the time you left the

19 shopping center?

20 A. On the left side.

21 Q. How long did he continue walking on the left side?

22 A. All the way down there until he got hit.

23 Q. Where was he when he got hit? Do you know?

1 A. Right beside of me.

2 Q. Then what's the next thing you saw?

3 A. Well, I seen the car door hit him down in front of

4 me.

5 Q. How did he get down in front of you? Do you know?

6 A. I guess the car drug him along, a long way down.

7 I don't really know, because I got hit on the leg and I

8 didn't look up until he was already down there.

9 Q. Where was the car at this time?

10 A. In front of me.

11 Q. Would you say it was on the road or off the road

12 or where?

13 A. It was on the road until it hit him and then it

1 swerved over off the pavement.

Q. Which side of the road?

16 A. To the right.

17 Q. How far did he go off the road?

18 A. Just a little bit. About a foot.

19 Q. Then what happened? How far is the ditch from the

20 side of the road?

21 A. I guess about four feet.

22 Q. Do you know if the car was in the ditch?

23 A. After it hit him it swerved over. It didn't go

NORTHERN VIRGINIA REPORTING SERVICE, INC.
10560 MAIN STREET
SUITE 215
FAIRFAX, VIRGINIA 22030
TELEPHONE: 591-3388

1 in the ditch, but after it went about ten feet further it
2 went in the ditch.
3 Q. Do you know if the car slowed down or stopped?
4 A. It slowed down, but it didn't completely stop.
5 Q. How do you know it slowed down.
6 A. Cause I seen his brake lights on.
7 Q. What kind of car was it? Do you know?
8 A. An Impala.
9 Q. How do you know it was an Impala?
10 A. It has them three square taillights in the back.
11 Q. Do you know what color the car was?
12 A. It was green or light blue. Light color. I
13 couldn't say exactly.
14 Q. Then what happened after you saw the car go in
15 the ditch?
16 A. It took out. Took off on down the road.
17 Q. Where did he go? Do you know?
18 A. Went on around the Seven-Eleven, around the
19 curve. I don't know which way it went after it went around
20 there.
21 Q. Did you lose sight of the car?
22 A. (Indicated in the affirmative.)
23 Q. About how long would you say it had been since

1 you left the school, saw the clock, until this accident
2 happened?
3 A. About 35 minutes.
4 Q. Is that a guess or what?
5 A. That's a guess, because I didn't have a watch.
6 Q. Did the police officer arrive on the scene after
7 the accident?
8 A. Right.
9 Q. Who was the officer that first arrived?
10 A. Manassas Park Police.
11 Q. How long was it after the accident did he arrive?
12 A. About a minute and a half.
13 Q. Did you see the officer that came in here earlier
14 that testified?
15 A. I don't believe so.
16 CROSS EXAMINATION
17 BY MR. HILTON:
18 Q. Mr. Mitchell, I understand that you were at the
19 school until, you say, 11:10?
20 A. I would say that, yes.
21 Q. Did you look at a clock when you left the school?
22 A. Right. Right before I went outside it was 11:00
23 o'clock and I would say we goofed around there about ten

1 minutes.

2 Q. Were you with Craig Moore when you left the school?

3 A. Right.

4 Q. Were the other two boys with you as well?

5 A. Yes, sir.

6 Q. There were a total of four of you that were there

7 together?

8 A. Right.

9 Q. Did you boys stay together for the remainder of

10 the evening?

11 A. Yes, sir.

12 Q. I understand that after you left the school grounds

13 you walked down to the Safeway.

14 A. Right.

15 Q. Do you recall how long you stayed there?

16 A. I guess about 15 minutes.

17 Q. Where was it your intention to go after that?

18 A. Home.

19 Q. What route were you taking to get home?

20 A. Old Centreville Road.

21 Q. Were you going north or south on Old Centreville

22 Road?

23 A. I don't know.

1 Q. Were you going towards or away from the Town of
2 Manassas?
3 A. Going away from it.
4 Q. Did you say you were walking on the right side of
5 the road?
6 A. Right side, uh huh.
7 Q. You were in the ditch?
8 A. Right.
9 Q. There were two other boys with you alongside the
10 road?
11 A. Yes, sir.
12 Q. Who were they?
13 A. Raymond Simpson and Bobby Moore.
14 Q. Were they walking nearer to the road than you
15 were?
16 A. Yes, sir.
17 Q. Were they walking on the road?
18 A. No, sir.
19 Q. Were they at any time walking on the road?
20 A. Yeah.
21 Q. When the three or the four of you started out
22 walking up Centreville Road, were you all walking on the
23 road?

1 A. Yes, sir.

2 Q. At what point did you finally get into the ditch?

3 A. Right straight across from the intersection after

4 you come out of the parking lot.

5 Q. As you walked up across the road?

6 A. Had to go across the road to get on the other

7 side.

8 Q. Did you walk directly down into the ditch then?

9 A. Yes, sir.

10 Q. You didn't walk alongside the road?

11 A. I was walking along the side about ten feet or so.

12 Q. The other two boys did the same?

13 A. Yeah -- what do you mean? Yeah, they walked along

14 the side.

15 Q. Where was Craig Moore at this time?

16 A. Walking with us until we got about, I guess,

17 about ten or 20 feet further and he had gotten into the

18 field.

19 Q. Were the other two boys, the Simpson and the Moore

20 boy, were they still walking on the road as you proceeded

21 up?

22 A. No. They was on the side too.

23 Q. They were on the side of the road all of the time,

NORTHERN VIRGINIA REPORTING SERVICE, INC.
10560 MAIN STREET
SUITE 215
FAIRFAX, VIRGINIA 22030
TELEPHONE: 591-3355

1 as far as you know?

2 A. Right, as far as I know.

3 Q. You say the car that you saw, after hitting the

4 Simpson boy, you saw the brake lights come on?

5 A. Right.

6 Q. Did that car come to a full stop?

7 A. No, sir.

8 Q. Did you ever see a door open on the car?

9 A. Right.

10 Q. Which door was it?

11 A. The right door.

12 Q. The right door?

13 A. Yes, sir.

14 Q. Was that open at all times when you saw the car?

15 A. No, sir.

16 Q. Explain to me how you saw the door open.

17 A. I looked down the road and first the car went

18 about ten or 20 feet with these lights on, the brake lights,

19 then I seen headlights shining on Raymond. The car swerved

20 over to the right and the car door opened and knocked him

21 down. It looked like he was on his knees.

22 Q. And the car door opened while you were looking at

23 him?

1 A. Right.

2 Q. Did you ever see that door go closed again?

3 A. Right after it hit him. It knocked it closed.

4 Q. You say the car was an Impala, either a light

5 green or a light blue?

6 A. Right.

7 Q. In any event, it was a light-colored car that you

8 saw?

9 A. Right.

10 Q. Do you know what year it may have been? Could

11 you tell that from looking at it?

12 A. '71 or '72.

13 Q. And it was the right door of the car that you saw

14 open?

15 A. Yes, sir.

16 Q. Could you see anybody in the car?

17 A. I seen two people in it.

18 Q. There were two people in the car?

19 A. Yes, sir.

20 Q. The Impala that hit the Simpson boy?

21 A. Right.

22 Q. Do you know or could you tell whether it was two

23 men or two women?

1 A. I couldn't tell. I know one was a men.

2 Q. Which one was the man?

3 A. Sitting on the right side.

4 Q. That would be on the passenger's side of the car?

5 A. Right.

6 Q. You don't know whether the driver was a man or a

7 woman?

8 A. No, sir. I couldn't tell.

9 Q. But there is no question in your mind that there

10 were two people in that car?

11 A. There were definitely two people in it.

12 Q. And that there was a man on the right-hand pas-

13 senger side?

14 A. Right.

15 Q. Did you have an opportunity to get a good look at

16 the car?

17 A. Not really, but I knew what kind it was, because

18 I saw it. I seen it from a distance, I guess, about ten

19 or 15 seconds.

20 Q. But you had an opportunity to get a good look

21 inside and see who was in there in terms of how many

22 people?

23 A. I knew how many people because the light come on

1 and we had enough to see.

2 REDIRECT EXAMINATION

3 BY MR. MURPHY:

4 Q. Do you know if the car had headrests?

5 A. I couldn't really tell. All I seen was two

6 people.

7 Q. You saw two persons?

8 A. Yeah, because there was a guy on the right side

9 laying down in the car when the door opened.

10 THE COURT: What did you say?

11 THE WITNESS: I said his hand was on the car door

12 when it come open. That's when I seen the guy laying down.

13 BY MR. MURPHY: (Resuming.)

14 Q. could that have been the driver laying down?

15 A. No, because I seen another head of the driver.

16 Q. Could it have been the headrest that you saw?

17 A. Could have been, but it looked like --

18 (Objection.) (Overruled.)

19 Q. Was it light or dark?

20 A. Dark.

21 RECROSS EXAMINATION

22 BY MR. HILTON:

23 Q. You did say the dome light in the car came on,