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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 800304

GLENMAR CINESTATE, INC.,
Appellant,

v.

ROBERT T. FARRELL, Administrator
of the Estate of John G. Farrell, deceased,
Appellee.

RECORD NO. 800315

RAY BENTLEY, d/b/a RAY BENTLEY PRODUCTIONS

and

NEIGHBORHOOD THEATRE, INC.,
Appellants,

v.

ROBERT T. FARRELL, Aministrator
of the Estate of John G. Farrell, deceased
Appellee.

JOINT APPENDIX

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AMENDED MOTION FOR JUDGMENT

Plaintiff, Robert T. Farrell, Administrator of the Estate of John G. Farrell, deceased, for his Amended Motion for Judgment, respectfully represents the following:

1. Plaintiff qualified and was duly appointed administrator of the estate of his son, John G. Farrell, deceased, by the Circuit Court of Goochland County, Virginia, on October 24, 1978.

2. Defendant, Glenmar Cinestate, Inc. ("Glenmar") is the owner and operator of an outdoor drive-in movie theatre immediately adjacent to Route 6, Goochland County, Virginia, known as the Patterson Drive-In Theatre.

3. Ray Bentley and Neighborhood Theatre, Incorporated are partners in a partnership known as Ray Bentley Productions. (Hereinafter, the individual partners will be referred to collectively as "Ray Bentley Productions" as if each were individually named). Ray Bentley Productions leases walk-in and drive-in theatres in the Richmond area, including the Patterson Drive-In Theatre, and promotes late night pictures at such theatres.

4. Sometime prior to June 25, 1978, Ray Bentley Productions and Glenmar agreed to promote and to show on the night of June 24 and in the early morning of June 25, 1978, late night feature presentations at the Patterson Drive-In Theatre.

5. Anticipating the need for traffic control at the entrance to and exit from Patterson Drive-In Theatre, Ray Bentley Productions or Glenmar or both employed two off-duty Goochland County police officers to control traffic at those locations on the night of June 24, 1978, and in the early morning of June 25.

6. At approximately midnight on the evening of June 24, 1978, plaintiff's decedent was lawfully driving his automobile in a westerly direction along Patterson Avenue, Route 6.

7. At approximately the same time, only one of two of Glenmar's or Ray Bentley Productions' or both Glenmar's and Ray Bentley Productions' agents and employees was on duty and attempting to control traffic at the entrance to and exit from the Patterson Drive-In Theatre.

8. The on-duty agent and employee of Glenmar or of Ray Bentley Productions or of both negligently and carelessly failed to control the flow of traffic out of and into the Patterson Drive-In Theatre and negligently and carelessly failed to control traffic proceeding west on Route 6 in the area of the entrance to and exit from the Patterson Drive-In

Theatre, as it was his duty to do as agent and employee for Glenmar or Ray Bentley Productions or both.

9. The other agent and employee of Glenmar or Ray Bentley Productions or both Glenmar and Ray Bentley Productions negligently and carelessly failed to exercise any duties and responsibilities at all in connection with traffic control in the area of Patterson Drive-In Theatre in that he did not arrive on time to perform those duties.

10. Glenmar or Ray Bentley Productions or both negligently and carelessly failed to supervise and control their agents and employees in order to assure adequate and safe traffic control in the area of the entrance to and exit from the Patterson Drive-In Theatre.

11. Glenmar or Ray Bentley Productions or both negligently and carelessly created on June 24 and 25, 1978, an unreasonable risk of harm to motorists proceeding west on Route 6 by

(a) creating a large back-up of cars at the entrance to the Patterson Drive-In Theatre;

(b) by not providing adequate traffic control at the entrance to and exit from the theatre; and

(c) by not taking adequate, available precautions to warn motorists proceeding west on Route 6 of the existence of traffic congestion at the entrance to and exit from the theatre.

12. As a direct and proximate result of the negligence of Glenmar or Ray Bentley Productions or of the agents and employees of either or both, plaintiff's decedent collided with an automobile crossing the west bound lane of Route 6 at the entrance to or exit from the Patterson Drive-In Theatre.

13. As a result of the collision, plaintiff's decedent received severe and violent injuries which caused his death on June 25, 1978.

14. Plaintiff's decedent, John G. Farrell, at the time of his death was eighteen years of age and in excellent health.

15. Plaintiff's decedent died intestate survived by the following statutory beneficiaries:

(a) Robert T. Farrell, father;

(b) Margaret F. Farrell, mother

(c) Margaret F. Taylor, sister, age 23;

(d) Robert T. Farrell, Jr., brother, age 22;

(e) Helen S. Farrell, sister, age 19; and

(f) Cornelius S. Farrell, brother, age 15.

16. The above-named beneficiaries of decedent have sustained financial and pecuniary loss as a result of his death and have suffered extreme sorrow and mental anguish at the loss of his society, companionship, comfort, kindly offices

and advice. Further, the beneficiaries have incurred expenses for the care, treatment and hospitalization of plaintiff's decedent, as well as funeral expenses.

WHEREFORE, plaintiff demands judgment against Glenmar, individually and/or against Ray Bentley and Neighborhood Theatre, Incorporated, individually, or against Glenmar, Ray Bentley and Neighborhood Theatre, Inc., jointly and severally, as appropriate, in the amount of Five Hundred Thousand ($500,000) Dollars and his costs in this behalf expended.

COUNT II

17. Plaintiff repeats and realleges paragraphs 1 through 4 herein, as if set out here in full.

18. On the night of June 24, and in the early morning hours of June 25, Glenmar, which owned the Patterson Drive-In Theatre premises, or Ray Bentley Productions, who was using the premises with the permission of Glenmar, or both, unlawfully created a nuisance in the area of the entrance to and exit from the theatre.

19. The nuisance created by Glenmar or Ray Bentley Productions, or both, on and adjacent to the Patterson Drive-In Theatre premises unlawfully interfered with the rights of those persons lawfully using the westbound lanes of Route 6.

20. Plaintiff's decedent was a lawful user of the westbound lane of Route 6 in the operation of his vehicle on June 24 and June 25, 1978.

21. As a direct and proximate result of the nuisance created by Glenmar or Ray Bentley Productions, or both, the automobile driven by plaintiff's decedent collided with an automobile exiting from the Patterson Drive-In Theatre onto Route 6.

22. Plaintiff repeats and realleges paragraphs 13 through 16 as if set out here in full.

WHEREFORE, plaintiff demands judgment against Glenmar and/or Ray Bentley and Neighborhood Theatre, Inc, individually, or against Glenmar, Ray Bentley and Neighborhood Theatre, Inc., jointly and severally, in the amount of Five Hundred Thousand ($500,000) Dollars and his costs in this behalf expended.

ROBERT T. FARRELL, Administrator
of the Estate of John G. Farrell,
deceased

By _____
Of Counsel

Randolph B. Chichester
Samuel W. Hixon, III
Sandy T. Tucker
WILLIAMS, MULLEN, CHRISTIAN,
POLLARD & GRAY
P. O. Box 1320
Richmond, Virginia 23210
804/643-1991
Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Amended Motion for Judgment upon counsel for the co-defendant Glenmar Cinestate, Inc., Lanier Thurmond, Esquire, Thurmond & Glass, 495 Seaboard Building, 3600 West Broad Street, Richmond, Virginia 23230 and upon counsel for co-defendant, Ray Bentley, d/b/a Ray Bentley Productions, A. James Kauffman, Esquire, Taylor, Hazen, Bryant & Kauffman, 700 East Main Street, Suite 1104, Richmond, Virginia 23219, by depositing same in first-class mail, postage prepaid, this 2nd day of November, 1979.

STT

Sandy T. Tucker

INSTRUCTION NO. 4

In all instructions of the court, the point in time is that moment when Lilly is directing traffic onto Patterson Avenue.

Given
WSV

INSTRUCTION NO. 5

In this case, the plaintiff, Farrell's Administrator, alleges that his decedent suffered fatal injuries in the collision here involved due to negligence on the part of one James D. Lilly in the manner in which he was directing motor vehicle traffic at the place where this accident occurred and in turn alleges that the said James D. Lilly was the agent or employee of the defendants, Glenmar or Bentley, or both, at such time, and that based upon such relationship either or both of the defendants are legally responsible for such alleged negligence on the part of the said James D. Lilly.

In order to recover against either or both defendants, however, on the above-set-forth allegations, the burden is on the plaintiff, Farrell's Administrator, to prove each of the following by a preponderance of the evidence:

1. That the said James D. Lilly was negligent in the manner in which he was directing motor vehicle traffic at the place where this accident occurred;
2. That any such negligence, if so proven, was the proximate cause of the collision between a vehicle operated by the plaintiff's decedent and another vehicle; and,
3. That at such time the said James D. Lilly was the agent or employee of such defendant or defendants.

Given
WDW

INSTRUCTION NO. 7

It was the duty of Mr. Lilly in directing Mr. Rea onto Patterson Avenue to exercise ordinary care to keep a proper lookout for traffic moving on Patterson Avenue that might be affected by his directions and to not allow or direct traffic onto Patterson Avenue until it was reasonably safe to do so.

Given
WSW

INSTRUCTION NO. 8

It is the duty of the operator of a motor vehicle to exercise ordinary care:

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

And if you believe from the evidence that the plaintiff failed to exercise ordinary care in the performance of any one or more of the foregoing duties, then he was negligent; and if you further believe from the evidence that any such negligence was the sole proximate cause of the collision or that it proximately contributed to cause the collision, then you shall return your verdict in favor of the defendants.

G. von
von

INSTRUCTION NO. 9

Even though you believe from the evidence that there was at the time of the accident as shown by chemical analysis .08 percent by weight of alcohol in John Farrell's blood, such fact does not give rise to any presumption that John Farrell was under the influence of alcoholic intoxicants, but may be considered by you with the other evidence in determining whether he was guilty of contributory negligence.

G. vw
wsw

INSTRUCTION NO. 9A

If the jury believes from the evidence that James Lilly was the employee, servant or agent of either or both defendants, and that at the time of the collision he was then about the business of either or both of them and acting within the scope of his employment, then any negligence of James Lilly is chargeable to the defendant or defendants for whom he was so employed. And if you further believe from the evidence and other instructions of the court that James Lilly was negligent and that such negligence was a proximate cause of the collision, then unless plaintiff was guilty of negligence proximately contributing to cause the collision, you shall find your verdict in favor of plaintiff.

Given
WW

INSTRUCTION NO. 10

If you find from the evidence 1) that Lilly was not negligent, or 2) that his negligence was not a proximate cause of the collision, or 3) that the plaintiff was contributorily negligent and that such negligence was a proximate cause of the collision, or 4) that Lilly was an independent contractor, or 5) that Lilly was an employee of one or both defendants but that he was acting in his capacity as a police officer while directing traffic, then you shall find for both defendants.

If you find that Lilly was not an employee of one of the defendants, then you shall find for that defendant.

G. [illegible]
[illegible]

INSTRUCTION 11

If the jury believe from the evidence that a defendant was negligent and that such negligence was a proximate cause of the collision, and if you further believe from the evidence that the plaintiff was also negligent and that such negligence proximately contributed to cause the collision, then your verdict shall be in favor of ~~that~~ the defendants.

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

INSTRUCTION NO. 13

If you find that Lilly was an employee of one or both defendants but that he had temporarily departed from the business of one or both defendants and from the scope of his employment, and was acting on behalf of the Goochland County Sheriff's Department, then the defendants are not responsible for Officer Lilly's actions and you shall return your verdict in favor of the defendants.

Given
WJW

INSTRUCTION NO. 13A

In determining whether Lilly was acting on behalf of either or both defendants in directing traffic, or whether he was acting in his capacity as a police officer, you should consider, along with the evidence, the following principles of law.

(1) Conduct may be within the scope of employment, although done in part to serve the purposes of a third person. If the purpose of serving the master's business activates the servant to any appreciable extent, the master is subject to liability if the act otherwise is within the service.

(2) The mere fact that a person in private employment also has a commission from the public as a police officer does not protect his private employer from liability to third persons for acts which are referable to the person's capacity as private employee. That is, a private employer is not immune from liability simply because his employee also has an official status.

Given
w/w

INSTRUCTION NO. 14

One of the determinations that you must make in this case is whether, when he was directing traffic, Lilly was an employee or agent of the defendants, or one of them, or whether he was acting as an independent contractor in his business relationship with them.

There is no question but that the services of Lilly were engaged by one or both defendants and that he was paid by funds belonging to the defendant Bentley.

In determining the employment status you may consider the method of payment, who made the payment, who set the hours and place of employment, who provided instructions as to Lilly's work, and who had contact with Lilly.

But the overriding factor to be considered is whether either or both defendants had the right to control the traffic directing of Lilly.

If Lilly was under the actual control and direction of either or both defendants as to this work, or if either or both defendants had the right to control and direct such work, then he was an employee. If Lilly had a contract to perform this service for the defendants but he controlled and determined how this service was to be accomplished without direction or control from the defendants, then he was an independent contractor.

Given
WJM

INSTRUCTION H

If you believe from the evidence under the contract between the defendants, Ray Bentley, d/b/a Ray Bentley Productions or Neighborhood Theatre, Incorporated, and the Goochland Police officers, that Ray Bentley had the right to specify the results of the work only, and the police officers could adopt such means and methods as they chose to accomplish those results, then the police officers were independent contractors and Ray Bentley and Neighborhood Theatre, Incorporated, would not be responsible for any negligence of the police officers, in which event you should return your verdict in favor of those defendants.

Refused
WM

INSTRUCTION NO. I

In determining whether James D. Lilly, in the course of directing traffic at the time and place where this collision occurred, was the agent or employee of the defendant, Glenmar, for such purposes, the test is whether such defendant controlled or had the right to control the said James D. Lilly in the manner in which he went about the directing of such motor vehicle traffic. If the said James D. Lilly could adopt such means and methods as he chose to accomplish the direction of motor vehicle traffic at the time and place involved, then he was an independent contractor and not the agent or employee of the defendant, Glenmar.

Refused

INSTRUCTION NO. J

If you believe from the evidence that the defendant, Glenmar, engaged the services of James D. Lilly to perform services relating to the direction of motor vehicle traffic, but had the right to specify the results of such services only, and that the said James D. Lilly could and did adopt such means and methods as he chose to accomplish such results, then James D. Lilly was an independent contractor and not the agent or employee of the defendant, Glenmar, and you must find your verdict for the defendant, Glenmar.

Refused
WM

Virginia:

In the Circuit Court of the City of Richmond, Division 1,

THE 28th DAY OF November 19 79

ROBERT T. FARRELL, Administrator of the Estate of John G. Farrell, deceased — Plaintiff

v.

GLENMAR CINESTATE, INC.

RAY BENTLEY, d/b/a RAY BENTLEY PRODUCTIONS,

NEIGHBORHOOD THEATRE, INCORPORATED — Defendants

costs due Sandy T. Tucker, Esquire - $69.75

ORDER

This day again came the parties by counsel, and came also the jury pursuant to adjournment on yesterday.

After receiving instructions from the court and hearing arguments of counsel, the jury retired to their room to consult of their verdict and after some time returned into court with the following verdict:

> We the Jury, on the issues joined, find for the plaintiff against both defendants and assess the general damages at $50,000.00.
>
> In addition we assess as medical and funeral expenses $2,911.30.
>
> We apportion the general damages as follows:
>
> Robert T. Farrell, father $25,000
> Margaret F. Farrell, mother $25,000
>
> David W. Reynolds
> Foreman

All counsel agree that the phrase in the jury's verdict, "both defendants" means all defendants; namely, Glenmar Cinestate, Inc., Ray Bentley d/b/a Ray Bentley Productions, and Neighborhood Theatre, Incorporated.

CS139052

Circuit Court of the City of Richmond, Division 1,

Robert T. Farrell, etc. vs. Glenmar Cinestate, Inc., et al page 2

Counsel for the defendants moved to set aside the verdict for reasons stated in the record, which motion was overruled and to which ruling of the court counsel for the defendants objected.

It is, therefore, ORDERED that the plaintiff recover and have judgment against the defendants in the amount of $52,911.30, and the costs.

Upon consent of the parties and pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia, it is ORDERED that the transcript of this trial will be a part of the record when the transcript is filed in the office of the Clerk within 60 days after entry of this order.

A Copy,
Teste: E.
by Mary Ellen Hughes D.C.

Assignments of Error

This defendant assigns as error the following:

1. The trial court erred in overruling this defendant's motions to strike out the plaintiff's evidence and enter summary judgment for this defendant on the grounds that the legal relationship between Sgt. James D. Lilly and this defendant was that of an independent contractor as a matter of law and that to submit the issue of independent contractor versus employer-employee for jury resolution on the evidence in this case required the jury, in order to find an employer-employee relationship, to engage in speculation or guess. This position was asserted in the form of motions to strike the plaintiff's evidence made at the conclusion of plaintiff's evidence, renewed at the conclusion of all the evidence, and again asserted in the motion to set aside the verdict of the jury (T. 211, l. 14 through l. 23; T. 292, l. 18 through l. 23; and T. 361, l. 17 through T. 362, l. 14).

2. The trial court erred in refusing this defendant's tendered Instruction No. I. (T. 296, l. 23 through T. 297, l. 4).

3. The trial court erred in refusing this defendant's tendered Instruction No. J. (T. 297, l. 5 through l. 10).

ASSIGNMENTS OF ERROR

1. The trial court erred in overruling the motions to strike the plaintiff's evidence made by the defendants, Ray Bentley and Neighborhood Theatre, at the close of the plaintiff's evidence and at the end of all the evidence in that the plaintiff had failed to adduce sufficient evidence upon which a jury could find that Officer Lilly was an employee or agent of Ray Bentley and Neighborhood Theatre.

2. The trial court erred in overruling the motions to strike plaintiff's evidence made by the defendants, Ray Bentley and Neighborhood Theatre, at the close of the plaintiff's evidence and at the end of all the evidence, as the evidence showed as a matter of law that the deceased was guilty of contributory negligence.

3. The trial court erred in failing to grant the motion of the defendants, Ray Bentley and Neighborhood Theatre, to set aside the jury's verdict in that the evidence adduced was insufficient to allow a jury to find that Officer Lilly was an employee or agent of Ray Bentley or Neighborhood Theatre and that the evidence showed as a matter of law that the deceased was guilty of contributory negligence.

4. The trial court erred in failing to grant tendered Instructions H, I, and/or J.

THE COURT: Mr. Ross, come in the courtroom, please. Come straight to the middle, please, Mr. Ross, up toward me.

EVIDENCE ADDUCED IN BEHALF OF THE PLAINTIFF

JOHN T. ROSS, having been sworn, testified in behalf of the plaintiff, as follows:

EXAMINATION BY MR. HIXON:

Q Mr. Ross, state your full name for the jury, please.

A John T. Ross.

Q And where are you employed, sir, Mr. Ross?

A Presently, I am self-employed.

Q And what kind of business are you in?

A In the restaurant business.

Q Are you opening a new restaurant?

A Yes, sir.

Q And what is the name of it?

A Market Inn.

Q And where is that located?

A 8921 Patterson Avenue.

Q Can you tell the jury where you were employed on June 24, 1978?

A I was general manager of the Tobacco Company Restaurant on 11th and Cary Streets.

Q What were the hours you worked, Mr. Ross, during

that period of time?

A I worked from 2:30 o'clock, 3:00 o'clock that afternoon until 1:00 o'clock or 2:00 o'clock in the morning.

Q What is the heaviest part of your business, at the Tobacco Company, in terms of time? Is it 9:00 o'clock? 10:00 o'clock?

A I would say from 7:30 o'clock to 10:30 o'clock.

Q Were you familiar with John Farrell?

A I was.

Q Did you see John Farrell on the night he was killed?

A I did.

Q And what time did you last see John Farrell?

A It was near the end of the evening, I would say around 11:30 o'clock or 11:45 o'clock.

Q What was John Farrell employed to do at Tobacco Company?

A He parked cars for us in the parking lot.

Q And where was your parking lot located?

A Directly across the street from the restaurant building.

Q Did John Farrell park cars on the night that he was killed?

A He did.

1 Q Did he park cars up until the time that you last
2 saw him at 11:30 o'clock or 11:45 o'clock?
3 A He did.
4 Q Would you describe to the jury John Farrell's
5 condition when he left work at 11:30 o'clock or 11:45 o'clock?
6 A When he finishes, he brings the money he collected
7 from the parking lot, and he brought the money, he spoke to me.
8 I said good night to him, he seemed fine. He seemed perfectly
9 normal to me.
10 Q Did you notice anything unusual about him?
11 A I did not.
12 Q How many cars were parked in the course of the
13 evening out there?
14 A He could have parked 150 to 200 cars.
15 Q To your knowledge, did he have any difficulty
16 parking the cars?
17 A We had no reports of any damage to any automobiles
18 or any problems from any of the customers, nothing.
19 Q After John left there at approximately 11:30
20 o'clock or 11:45 o'clock, did you see him again?
21 A No.
22 MR. HIXON: That's all the questions, if you
23 will answer the defendant's.
24 THE COURT: Any questions, gentlemen?

1 MR. THURMOND: Yes, sir.

2 EXAMINATION BY MR. THURMOND:

3 Q How long had John Farrell been employed at the

4 Tobacco Company, Mr. Ross?

5 A I don't remember the approximate time that he was

6 there. He was there, I know, for more than two weeks, probably

7 three or four. I really don't remember, but he was there for --

8 Q Did you employ --

9 A Three weeks.

10 Q Did you hire him?

11 A No, sir, I did not hire him.

12 Q You did not?

13 A Huh-uh.

14 Q You worked inside of the restaurant, didn't you?

15 A Yes, sir.

16 Q So that you actually have no personal knowledge

17 of what he might have been doing out in the parking area, do

18 you?

19 A Other than the fact that I was in charge of every

20 aspect of the operations, including the parking lot.

21 Q Did you go out there, at any time, on the evening

22 of June 24th, to see what he was doing?

23 A Yes, I was in the parking lot that evening.

24 Q At what time?

A About 9:00 o'clock, 9:30 o'clock.

Q And he was doing something outside, after that time, wasn't he?

A What do you mean?

Q Well, I mean he was still -- you don't know what he was doing outside in the parking lot from 9:30 o'clock to 10:30 o'clock, when you left, do you?

A He had to have been parking cars, with the amount of business we were doing.

Q Do you keep records of how much business you did that night?

A Yes, sir. We keep records of all the business we do.

Q Did you keep records of how much you took in, in parking fees?

A I am sure those records are available.

Q Do you have them?

A I do not. Like I said, I am no longer employed there, but I am sure the Tobacco Company has those records.

Q To your knowledge, you don't know how many cars he actually parked that night, do you?

A An exact number, no, sir.

Q All right, sir.

MR. THURMOND: That is all.

THE COURT: Mr. Kauffman.

EXAMINATION BY MR. KAUFFMAN:

Q Mr. Ross, when Mr. Farrell left between 11:30 o'clock and 11:45 o'clock, do you know where he went?

A No, sir. I spoke to him as he was going out the door, was the last time I spoke to him. I was standing in the front lobby.

Q You have no idea where he went or what he did?

A No, sir.

Q Do you know how far it is from the Tobacco Company to the Patterson Avenue Drive In Theatre?

A Yes.

Q How far?

A I would say it is a 20 to 25 minute drive.

MR. KAUFFMAN: Thank you.

THE COURT: Any further questions?

MR. HIXON: No, Your Honor.

THE COURT: All right, Mr. Ross, you may be excused. Do you need him any further?

MR. HIXON: He may be excused.

THE COURT: Mr. Ross, you are free to go.

(The witness stood aside.)

THE WITNESS: Thank you, sir.

THE COURT: Nextwitness.

MR. HIXON: Mr. John Hood.

THE COURT: I am sorry, I didn't get the name.

MR. HIXON: Mr. John Hood.

THE COURT: Hood?

MR. KAUFFMAN: Yes, sir.

THE COURT: Mr. John Hood, report to the courtroom.

JONATHAN HAWKINS HOOD, having been sworn, testified in behalf of the plaintiff, as follows:

EXAMINATION BY MR. HIXON:

Q John, would you state your full name, for the record, please.

A Jonathan Hawkins Hood.

Q How old are you, Mr. Hood?

A Eighteen.

Q Are you presently employed?

A Yes, sir, I am.

Q And where do you work, John?

A I work for Sam West Photography, which is a commercial photography house.

Q And where do you live?

A With my parents at 913 Westham Parkway.

Q And is that located in Henrico County?

A Yes, it is.

Q How long did you know John Farrell, prior to his

1 death?

2 A Well, I knew him well for about three years,

3 overall. I guess I knew him five years.

4 Q And tell the jury how it was that you knew John

5 well for three years?

6 A Well, my brother had been in school with him

7 in Watertown, Connecticut, called Taft, and I met him through

8 my brother.

9 Q Would you consider John Farrell a close friend

10 of yours?

11 A Yes, I would.

12 Q What about Mr. Farrell and the family, his other

13 brothers and sisters, did you know them as well?

14 A Yes, sir.

15 Q In June of 1978, were you employed?

16 A Yes, I was.

17 Q What were you doing, John?

18 A I was working for Patterson Avenue's McDonalds.

19 Q And what time did you get off from work, do you

20 recall, on Saturday, June the 24th?

21 A Well, June 24th, I worked early that day. It

22 was -- I worked from about 6:00 o'clock in the morning until

23 4:00 o'clock in the afternoon.

24 Q Did you have occasion to see John Farrell, on

Saturday, June 24th?

A Yes, I did, that evening.

Q At approximately what time did you see John?

A It was close to 12:00 o'clock, I would say maybe five or ten minutes before 12:00 o'clock.

Q Tell the jury how you happened to see him, where you saw him, and what took place?

A Well, I was in the TV room, watching the television, and he came up and talked to me through the window, at first. I then went outside to talk to him, after that. I say we talked about -- for about 10 to 15 minutes.

Q Approximately what time did he arrive?

A Approximately five minutes of 12:00 o'clock.

Q Are you talking about the TV room that is in your parent's house?

A Yes, sir, it is.

Q And would you describe the location of the TV room, as it relates to the garage or driveway that you have got?

A As you are facing the street, the TV room is to the far right-hand side of the house and adjacent to that is the carport.

Q Did John Farrell drive his car?

A Yes, sir, yes, sir, he did.

Q Could he drive it up to the TV room?

A Well, he drove it up to the driveway, almost in the carport, another car was in the carport, at that time.

Q Was anyone with John Farrell?

A No, there were not.

Q Was anybody with you?

A No.

Q Where were your parents?

A They had gone to bed.

Q How long did you have this conversation with John Farrell?

A I would say we talked for about 10 or 15 minutes, 10 to 15 minutes.

Q And what did you talk about?

A Nothing in particular. Just the main thing, he was looking for my brother, at that time, and apparently they had -- they were going to get together after John got off work, but he didn't find him at the house, so we just talked for a few minutes.

Q Did John Farrell tell you where he was going, when he left the house?

A No. Well, yes, sir, he did. He said he was going home.

Q Now, tell the jury, as best you can, where your house is located with respect to Patterson Avenue?

1 A Well, it's Westham Parkway, the first street
2 past the -- or the second street past the Horsepen light on
3 Patterson going west. It is about two, three blocks down
4 toward River Road on Westham Parkway.
5 Q And are you familiar with how long it takes to
6 drive from your house out to the Patterson Drive In Theatre?
7 A Yes, I am, because I worked at McDonalds right
8 behind that. It takes approximately 15 minutes.
9 Q And what time did John Farrell leave your house?
10 A I would say five or ten after 12:00 o'clock.
11 Q Would you describe for the jury John's condition,
12 when he left your house?
13 A He was in a good mood, a pleasant frame of mind,
14 he was generally happy.
15 Q During the course of the time that you have known
16 John Farrell, were there any things that he was particularly
17 good at?
18 A Getting along with -- I guess he was easy to get
19 along with, and he -- that's basically all I can think of.
20 Q Did he have any particular skill that you were
21 aware of?
22 A Well, he played the guitar some.
23 ~~MR. KAUFFMAN: I don't know what the admissibility~~
24 ~~of the plaintiff's skills are in the case. I don't~~

1 think that is relevant, sir, here before this jury.

2 MR. HIXON: This all goes to show the nature of

3 the boy who was killed, and one of the factors that the

4 jury are to consider is what type of person we are

5 involved in. That is all this question was directed

6 towards.

7 MR. KAUFFMAN: I guess there is a case right on

8 point to it, Judge. Do you want me to go into it?

9 THE COURT: If you have got a case on point, I

10 certainly want to see it.

11 MR. KAUFFMAN: (Indicating)

12 THE COURT: All right, sir, objection is overruled.

13 I think the counsel has the right to describe the

14 characteristics of the individual, and I think that is

15 what the question is directed to.

16 MR. KAUFFMAN: Note my exception.

17 BY MR. HIXON:

18 Q The question was, did John Farrell have any par-

19 ticular skills or talents that you were aware of?

20 A Well, he did a lot of things. For instance, we

21 did -- we did some sports together, like we bowled together,

22 we played tennis at the Farrell's house. I don't think he was

23 specialized in anything particular. He played the guitar.

24 That's all.

MR. HIXON: All right, fine, thank you. Answer these gentlemen's questions.

THE COURT: Mr. Thurmond.

EXAMINATION BY MR. THURMOND:

Q Mr. Hood, you say you fixed the time of John Farrell's call at your house about five or ten minutes before 12:00 o'clock or midnight?

A Yes, sir.

Q And I believe you told us that he drove into your driveway?

A Yes, sir.

Q And did he come knock on the door or peek in the window to see who was there?

A Well, he looked in the window.

Q Looked in the window and saw you?

A Yes, sir.

Q How did he get your attention to let you know he was there?

A He just called to me through the window, I was very close to the window.

Q You were watching television?

A Yes, sir.

Q How were you able to fix this time that you saw him?

A Well, the particular show that was on was Star Trek, and that's an hour-long show. It starts at 11:30 o'clock and it was close to half over.

Q Close to half over?

A Yes, sir.

Q How could you tell it was close to half over?

A Because I had seen this particular version three or four times.

Q Rewatching something you had seen before?

A Yes, sir.

THE COURT: You do that with Star Trek.

BY MR. THURMOND:

Q Mr. Hood, you told us, I believe, that you got up from what you were watching and went outside.

A Yes, sir.

Q Some particular reason to go outside?

A No, sir, except that my parents were asleep, and I would just as soon talk to him outside and not disturb them.

Q You were concerned that loud voices would wake your parents?

A Yes, sir.

Q But you weren't worried about voices outside the house?

A No, sir.

1 Q Were the house windows up or down that night?
2 A They were up.
3 Q In other words, you got plenty of air, by the
4 same token everybody in the house would hear what was going
5 on outside, is that correct?
6 A Yes, sir.
7 Q You said that John Ferrell was in a good mood,
8 pleasant frame of mind and quite happy, is that the way you
9 described him, when you went out there and talked to him?
10 A Yes, sir.
11 Q Did you do anything else, in the course of talking
12 to him, other than just talking to him?
13 A No, sir.
14 Q All right. Now, how were you able to fix the
15 length of time that he stayed there at your house?
16 A Well, I have no definite explanation of it, that
17 was just -- I mean, I didn't look at any clocks or watches, at
18 that time.
19 Q What time do you think he left?
20 A Approximately, I would say about five or ten after
21 12:00 o'clock.
22 Q All right, sir. And you say, from your own
23 experience, that it takes 10 to 15 minutes to go from your
24 house on Westham Parkway to the McDonalds which is right close

to the Patterson Drive In?

A Yes, just down the street.

Q That would vary with the time of day and traffic conditions, wouldn't it?

A Yes, sir.

MR. THURMOND: All right, thank you, sir.

THE COURT: Anything further, Mr. Hixon?

MR. HIXON: No, sir.

THE COURT: May Mr. Hood be excused?

MR. HIXON: Yes, sir.

THE COURT: You are free to go, sir.

(The witness stood aside.)

THE COURT: Next witness.

MR. HIXON: Marvin Clements.

THE COURT: Mr. Clements, report to the courtroom.

Gentlemen, I have told all the witnesses that they are excused, but they can stay, if they want to, of course, I have told them that.

MARVIN H. CLEMENTS, JR., having been sworn, testified in behalf of the plaintiff, as follows:

EXAMINATION BY MR. HIXON:

Q Mr. Clements, will you tell the jury your full name, for the record.

A Marvin H. Clements, Jr.

THE COURT: Do you spell that M-a-r-v-i-n, and C-l-e-m-e-n-t-s?

THE WITNESS: Yes, sir.

BY MR. HIXON:

Q And what is your position?

A I am chief deputy sheriff of Goochland County.

Q How long have you been chief deputy sheriff out in Goochland?

A I have been chief deputy for approximately ten years.

Q How long have you been with Goochland County?

A Twelve years.

Q Who is the sheriff in Goochland County?

A John W. Amos.

Q And Mr. Amos has recently had some heart surgery and he is not working full-time now?

A That is correct.

Q He is out of the hospital now?

A He is out of the hospital, yes, sir.

Q Are you the chief deputy sheriff in charge of Goochland right now?

A Yes, sir.

Q Do your deputy sheriffs work shifts, at Goochland County?

A Yes, sir.

Q And what normal shift hours a week do they work?

A It depends on what shift they are on. If they are on what we call the A shift they go on at 12:00 o'clock midnight. They are on call at that time, but they do not actually have to come out until they are called at 7:00 o'clock a.m. They go off at anywhere from 3:00 o'clock to 4:00 o'clock in the afternoon.

The B shift comes on at 3:00 o'clock and works until midnight.

The C shift comes on at 11:00 o'clock and works until 7:00 o'clock a.m.

Q And you are familiar with the accident involving John Farrell?

A Yes, sir.

Q On the night in question, June 24th, on Saturday night, Mr. Lilly and Mr. Payne, were they deputy sheriffs at Goochland?

A Yes, sir, they were.

Q And what shift did they work?

A They had been working the B shift, which would have been from 3:00 o'clock to 12:00 o'clock.

Q Did both of these people get off work at 12:00 o'clock?

A They were scheduled to get off, as well as I recall, according to the records, Deputy Payne had not completed his call at that time.

Q What about Deputy Lilly?

A He had completed his and had reported to Patterson Drive In Theatre.

Q Was he off duty at Goochland County?

A Yes, sir.

Q You have worked with the Patterson Drive In Theatre, have you not?

A To the best of my knowledge, I worked one night when they were short-handed.

Q And did you get paid for that?

A Yes, sir.

Q Do you recall how much you got paid?

A It was either $20.00 or $25.00, if I recall correctly.

Q Tell the jury how the Patterson Drive In made the arrangements with the sheriff's department to have a deputy work that job?

A Well, Jim Lilly, that was a deputy for us that -- he was a sergeant, and we more or less left it up to him to work it out with the proprietors of the Patterson Drive In. He scheduled whatever uniform men that were off and available

1 and wanted to work extra for the weekend or whatever it might
2 be.
3 So, actually the arrangements were made between
4 the proprietor and Jim Lilly.
5 Q When you refer to the proprietor, who are you
6 referring to?
7 A I cannot say who was always in charge.
8 Q Well, would this be the person who was in charge
9 at the theatre?
10 A Yes, sir, whoever was handling the activities
11 as far as the movies. To my knowledge, that is who Jim always
12 spoke with.
13 Q On the one occasion you went out there and reported
14 for duty at the Patterson Drive In Theatre, how did you know
15 what to do?
16 A Well, as I said, I only worked it once, because
17 it was short-handed for some reason. They called me, I was at
18 home. If I recall correctly, one of the officers asked me, he
19 said if I wanted to work -- he said, "We do not have anyone to
20 handle the traffic tonight."
21 Well, I said, "I don't want--particularly want
22 to work, but to help out, I will."
23 And to my -- as far as knowing what to do, I was
24 advised that they were concerned about getting traffic --

1 Mr. Hixon, that the arrangements with Mr. Lilly and
2 Mr. Payne were in the ongoing course of dealings that
3 will tie into this? because you could have one contract
4 one year, you don't have to have the same arrangements
5 every year.
6 MR. HIXON: Over the period of three years, the
7 arrangements were exactly the same, irrespective of
8 which deputy sheriff --
9 THE COURT: I will let you pursue that, if you
10 can get this hearsay bit --
11 BY MR. HIXON:
12 Q On the night that you worked, can you tell this
13 jury what you did --
14 MR. THURMOND: If Your Honor please, that has
15 not been fixed, either, whether it was after the
16 accident or --
17 THE COURT: No, it has not. You will have to lay
18 some foundation. We don't know when he worked.
19 MR. HIXON: All right.
20 BY MR.HIXON:
21 Q On the night that you worked, Mr. Clements, did
22 you sign a petty cash receipt showing receipt of payment of
23 your $25.00?
24 A I do not recall.

1 Q Let me ask you if you can identify this as your
2 signature (indicating)?
3 A Yes, that's my signature.
4 Q And does it show the receipt of $25.00?
5 A Yes, sir, it does.
6 Q Is that dated?
7 A July 21, 1976.
8 Q Would that have been the night that you worked?
9 A I would have to say yes.
10 MR. HIXON: I would like to offer that as Plaintiff's
11 Exhibit No. 1.
12 THE COURT: It is received. (marking).
13 (Petty cash receipt in the amount of $25.00,
14 dated July 21, 1976, paid to Marvin H. Clements,
15 Jr., was marked PLAINTIFF'S EXHIBIT NO. 1.)
16 BY MR. HIXON:
17 Q Now, on that night, that has been identified
18 July 21, 1976, what did you do?
19 MR. KAUFFMAN: I am going to object, because it
20 is two years prior to the accident in question. I
21 think it is too remote to have any probative value to
22 this accident.
23 THE COURT: I am going to overrule your objection,
24 with a comment to the jury. Ladies and gentlemen, Mr.

Hixon is going to ask what he did on a given night some two years prior, this may or may not have been what was done on the 24th of June. It will be necessary for Mr. Hixon to make that connection. The relevancy is open to question.

A I reported to the Patterson Drive In Theatre shortly before midnight, due to the fact they were running movies that ended at approximately midnight, and then would start other movies after midnight. They had to pay in order to see the second movie, therefore, the theatre had to be cleared of the earlier traffic. Then, anyone wishing to see the late movies had to get in line and go back into the theatre.

So my duty that night was to control traffic that was arriving, prior to midnight, and then to let the traffic out after the movie ended, and let the traffic back in for the late movies.

BY MR. HIXON:

Q Did you perform any duties, while you were there?

A Traffic control was basically the thing that I fooled with that night, but if I would have had any disturbances, I would have had to have acted in a police capacity. But traffic was the only thing I handled.

Q Who paid you the $25.00 for working that night?

A I don't recall.

Q Is there any policy of the sheriff's department of

Goochland, that you are familiar with, that would prohibit off-duty deputy sheriffs from working?

A The policy we have, we do not like any deputy to have a part-time job, per se, as far as being consistently part-time job. As far as helping on various functions and traffic control, we do not prohibit that.

Q On the occasion that you worked, did you drive your automobile?

A Yes, sir.

Q Was this the County of Goochland's automobile?

A No, sir, my car is one that I drive, is my own vehicle, and it -- the county reimburses me by mileage.

Q Does it have a flasher on it?

A Yes, sir, it is fully equipped as a police vehicle.

Q On the night you directed traffic, did you have a flasher on your car?

A I had a flasher and red lights on.

Q Did you utilize any reflective devices?

A No, sir.

Q Did you have any flares available?

A I used a number of flares.

Q And where did you put the flares?

A I would start the line of flares from the entrance going into Patterson Drive In and extend them eastwardly to the

Goochland-Henrico line.

Q On the night you worked, how many off-duty sheriffs or deputy sheriffs were present at Patterson Drive In?

A I do not remember.

Q Was there more than one?

A Yes, sir.

Q Where do you live, Mr. Clements?

A Where do I live?

Q Yes, sir.

A I live in Goochland County, of course, and it is approximately 15 miles west of the Patterson Drive In, I would say.

Q Have you had occasion to drive by Patterson Drive In at approximately 12:00 o'clock or shortly thereafter, other than the time you worked there?

A Yes, sir.

Q Have you ever seen vehicles lined up, waiting to get in?

A Yes, sir.

Q Where would those be parked?

A They would be parked on an emergency lane in the westbound lane.

Q And can you estimate the maximum number of vehicles you have ever seen waiting to get in?

MR. THURMOND: What he may have seen on other occasions doesn't have any relevancy to this. It is extraneous.

THE COURT: Objection sustained.

MR. HIXON: That is all the questions I have, Your Honor.

EXAMINATION BY MR. THURMOND:

Q Officer Clements, you have told us that on the night you went there you didn't want to, but you were perfectly willing to do it. You were doing it as a police officer, weren't you, sir?

A I was. I would say yes, being as I had police powers was the only authority I had.

Q You had on your uniform, didn't you?

A I do not recall. Ordinarily, I do not wear a uniform, I wear plain clothes. Now, whether or not I put on a uniform that night, I do not recall. I would say, if I had to get -- usually yes, I did usually put a uniform on if I am working night traffic.

Q The way you decided to handle the traffic on Patterson Avenue, getting the traffic in and out of the Drive In Theatre, was the way you decided on your own to do it, wasn't it?

A Yes, sir.

Q Nobody told you you have got to put flares down anywhere or anything else, did they?

A No, sir.

Q You did it according to your own experience, as a police officer, and in a manner that was within your sole discretion, as to how you carried it out, didn't you, sir?

A Yes, sir, because I had worked uniform, prior to becoming the chief deputy sheriff.

Q Have you ever worked any other places, on and off-duty places, such as the Little Hawk Farm and places like that, traffic?

A I can't say any places, as far as specifics. I have helped various civic organizations that were having functions in the county, I have helped. Most of the time I was not paid for it, just did it as a citizen and police officer.

Q You did that on your off-duty time?

A Yes, sir.

Q And you did it as a police officer, functioning as such?

A Yes, sir.

Q Anybody wanted to know who you were, you would have told them who you were?

A Yes, sir.

Q Identified yourself as a police officer?

A Yes, sir.

Q And that if anybody you stopped, in the line of traffic, wanted to know who you are, that would have been your response, wouldn't it?

A That is correct.

Q Now, you said that while the sheriff's department doesn't want police officers to take pure moonlighting jobs, members of your sheriff's department, but that you make an exception if somebody needs traffic control for some function, the police officers are free to fill that --

A Yes, sir.

Q -- aren't they, sir?

MR. THURMOND: All right, sir, thank you, sir.

EXAMINATION BY MR. KAUFFMAN:

Q In fact, this responsibility was turned over to Deputy Sheriff Lilly, wasn't it, to coordinate this activity?

A That is correct, sir.

Q And one of his functions was to coordinate which of the officers wanted to work, when they were to work, and so forth, he coordinates all of that?

A That is correct.

Q Now, when you arrived at the theatre that night, would you say it was approximately midnight? Did you report to anyone, say, "Here I am. I am Deputy Sheriff Clements.

What do you want me to do?" or anything like that?

A It was a gentleman that was employed, who he was, I don't know, employed by the theatres that had already reached the entrance or exit, whichever you want to refer to it as, but it is right at Patterson Avenue, stopping traffic. He had taken his car and put it across the drive, the entrance of the theatre.

I cannot say, verbatim, what our conversation was. It was something to the effect, "Are you going to handle this spot here?" And his reply was, "yes."

I said, "Well, I am willing to take care of the traffic on Route 6."

Q So, he was keeping traffic from entering into the theatre?

A Yes, sir.

Q And you said, I will take Route 6. Now, as a private individual, could he have gone out into Route 6 and directed traffic, himself?

MR. HIXON: Objection, Your Honor, that calls for a speculation by the witness, and probably a conclusion of law.

THE COURT: Doesn't it call for a conclusion of law?

MR. KAUFFMAN: I think he would be the best person, being a law officer, as to whether a person can

go out and direct traffic or whether it takes a policeman. I think that is perfectly within the power of what he is hired to do.

THE COURT: I think you can -- no.

BY MR. KAUFFMAN:

Q Are you trained in traffic control, did you have specific training in traffic control?

A Yes, sir.

Q Did you go to police school?

A Yes, sir.

Q And is that one of the courses taught there?

A Yes, sir.

Q Now, when you went out into Patterson Avenue, you went out there for the purpose of directing traffic, is that correct?

A That is correct.

Q Is that a state highway?

A State highway.

Q Now, can you tell me whether or not if this man you previously talked to came out to you, after you were out in Patterson Avenue, and said, "I don't like the way you are doing it, I want you to do it another way," would you have paid any attention to him?

MR. HIXON: Objection.

THE COURT: What is your objection based on?

MR. HIXON: What he might have done three years ago, if something happened, that is just asking for speculation.

THE COURT: Objection overruled.

A No, sir, I would not have listened to him, as I felt I was doing my job in a safe manner.

BY MR. KAUFFMAN:

Q You had done it according to the training you had received as a police officer and not with regard to what anyone else told you?

A That is correct.

Q And I believe you said there was traffic arriving and was over in the emergency lane. That would have been off the hard surface?

A Yes, sir.

Q And parked them over there and directed them to park off over there?

A Yes, sir.

Q And then you assisted cars out of the theatre?

A Yes, sir.

Q Do you know who paid you for doing this service?

A By name, I do not.

Q Do you know what this receipt that Mr. Hixon

has introduced into evidence says on it?

THE COURT: Doesn't that speak for itself?

BY MR. KAUFFMAN:

Q Does that help you any, does that ring a bell any?

A As I stated, that's where I signed and received $25.00.

Q But you don't know who paid you?

A I don't remember the individual, no, sir.

Q Or what entity?

A No, sir.

MR. KAUFFMAN: May the jury see this, Your Honor?

THE COURT: Yes.

BY MR. KAUFFMAN:

Q And if you had seen someone --

THE COURT: Don't hand the jury something and then start off questioning.

MR. KAUFFMAN: All right, excuse me.

THE COURT: All right, start.

BY MR. KAUFFMAN:

Q And if you had seen someone climbing the fence to sneak in, you would have had arrest power over that individual?

A Yes, sir, I would.

Q And that was pursuant to the fact you are a

policeman?

A Yes, sir.

Q And not because you were being paid by whoever paid you on that receipt?

A That is correct.

Q That has nothing to do with your police power?

A No, sir.

MR. KAUFFMAN: Thank you.

THE COURT: Mr. Hixon?

MR. HIXON: Just one question.

FURTHER EXAMINATION BY MR. HIXON:

Q How did you know when to let the traffic into the theatre?

A When I was advised that the previous movie was over.

Q And who advised you?

A Someone employed by the theatre, by name, I cannot say.

MR. HIXON: Thank you.

THE COURT: Anything further of Officer Clements, gentlemen? May he be excused? You don't need him?

MR. HIXON: No, sir.

THE COURT: You are free to go, Mr. Clements.

Next witness, Mr. Hixon.

(The witness stood aside.)

1 MR. HIXON: I would like to call Margaret Weston,
2 please.
3 THE COURT: Mrs. Weston.
4
5 MARGARET H. WESTON, having been sworn, testified
6 in behalf of the plaintiff, as follows:
7 EXAMINATION BY MR. HIXON:
8 Q Mrs. Weston, where do you live?
9 A Short Pump, Virginia.
10 Q And that is in Goochland County?
11 A No, Henrico.
12 Q How long have you lived out there?
13 A About 28 years.
14 Q And how long have you been working at the
15 Patterson Drive In Theatre?
16 A Ten to eleven years.
17 Q And what type of work did you start off doing?
18 A Grill cook.
19 Q That's at the concession stand?
20 A Yes, sir.
21 Q And how long did you remain a concession worker?
22 A About eight years.
23 Q And what position did you take after that?
24 A I went from grill cook to concession manager, and

then to manager of the theatre.

Q And what were your duties, the responsibilities as manager of the theatre?

A In charge of the money, the grounds, crowd control.

Q And who pays you for being manager of the theatre?

A Glenmar Cinestate.

Q You are paid by Glenmar Cinestate?

A Yes, sir.

Q Who was the individual that hired you to become manger?

A Mr. Sterling.

Q And can you identify who Mr. Sterling is?

A If I am not mistaken, he was the city manager or the district manager.

Q For whom?

A Glenmar Cinestate.

Q Was he located here in Richmond?

A Yes.

Q Do you know where he is today?

A Texas.

Q Now, do you have a definite schedule? I am talking now about you being manager of the theatre, do you have

a definite schedule for the time that you work?

A What do you mean?

Q Do you report to work at a given time, are you off at a given time? How does that work?

A I get to the theatre in time to count my money, see that the film gets in, and stuff like that.

Q And when do you start showing movies, in terms of seasons?

A In the wintertime, it is 7:30 o'clock.

Q And what about in the summertime?

A Roughly, 9:00 o'clock.

Q Do you show movies year around?

A No, we are closed now.

Q How about in 1976, did you show movies year around?

A I wasn't the manager then.

Q You were not the manager in 1976, excuse me.

A No, we closed for wintertime. It is a seasonal thing.

Q So, in 1978, though, when did you start the showing of the movies, in the springtime?

A I think we opened in April, March or April.

Q And do you normally show one movie? two movies?

A Two movies.

1 Q And you start at approximately 9:00 o'clock, was
2 the running time for those two movies?
3 A Depends on the particular movie it is, each one
4 has different running time.
5 Q As a general matter, what time do they normally
6 conclude?
7 A Depends on the length of the movie.
8 Q What is the normal length of a movie?
9 A Well, now this week, we had one was 80 minutes
10 and the other was 112 minutes. So, it depends on the movie.
11 Q Would you describe for the jury, if you will, the
12 physical setup at the theatre?
13 A What do you mean?
14 Q Do you have a concession stand?
15 A Yes, we do.
16 Q And what does it look like?
17 A Well, it's roughly 40 feet wide and I would say
18 about 75, 80 foot long.
19 Q And what do you serve in that?
20 A Do you want the whole menu?
21 THE COURT: No, we surely do not. I want to
22 know where you are going, Mr. Hixon.
23 MR. HIXON: I want the witness to describe the
24 general appearance.

THE COURT: Is that an issue in the case, the appearance of it?

MR. HIXON: Yes, sir, the physical setup that was there.

THE COURT: What does that have to do with it?

MR. HIXON: That there was a wall around the theatre.

A Yes, sir, we have got two big windows in front of the concession stand.

BY MR. HIXON:

Q In front of the concession stand?

A Yes, sir, you can see the field.

Q How many employees did you have at the concession stand?

A It depends on how heavy a crowd, we have roughly three to four.

Q And when you lease the premises to Mr. Bentley, do you continue to pay these employees?

A They are in the employment of Glenmar Cinestate, yes.

Q What about your projectionist?

A Yes.

Q What about the ticket taker?

A No, Mr. Bentley provides his own cashiers.

1 Q Around the outside of the theatre, or around the
2 outside grounds, is there a wall?
3 A It's a fence.
4 Q Can you see through it?
5 A Not to my knowledge.
6 Q How tall is that fence?
7 A I would say 10 to 15 foot.
8 Q And that encircles the entire theatre area?
9 A No, sir, just the front and the sides, the side
10 where the cashier's office is.
11 Q And when you are talking about the front, you
12 are talking about the front as it borders on Patterson Avenue?
13 A Yes, sir.
14 Q How far is the theatre screen from Patterson
15 Avenue?
16 A I have no idea, sir.
17 Q Can you give us a reasonable estimate?
18 A No, I can't.
19 Q Tell the jury where the box office is.
20 A It's on the road, main entrance coming in off of
21 Patterson.
22 Q And approximately how far is the box office off
23 of Patterson Avenue?
24 A Well, there is about 30 cars to line up there,

if there has to be, so whatever that is.

Q So, 30 cars between the box office and Patterson Avenue.

A Yes, sir.

Q Is there a little turn-out on Patterson Avenue that is hard surfaced?

A Well, the road is hard surfaced.

Q Well, what about, is there a little turn around on Patterson Avenue? Is that, also, hard surfaced?

A I don't know what you mean.

Q Well, in front of the theatre, describe what Patterson Avenue looks like.

A It is a four-lane surface with approximately ten-foot edge on each side.

Q And when you are talking about the ten-foot edge, this is the shoulder of the road?

A Yes, sir.

Q Have you ever seen cars parked out there, on prior occasions, waiting to get in?

MR. KAUFFMAN: Your Honor.

THE COURT: Yes, sir.

MR. KAUFFMAN: "...ever seen cars parked out there, on prior occasions..." is remote.

THE COURT: Let's see where he is going.

1 BY MR. HIXON:

2 Q And on these prior occasions, how many vehicles

3 would you estimate line up on the shoulder?

4 THE COURT: Objection sustained.

5 BY MR.HIXON:

6 Q Do you recall the night of the accident, Mrs.

7 Weston?

8 A Yes, sir.

9 Q And you were working that night?

10 A Yes, sir.

11 Q Where were you, at the time of the accident?

12 A In the concession stand.

13 Q Were you getting paid that night, Mrs. Weston?

14 A I get paid every night.

15 Q Who paid you that night?

16 A For what?

17 Q Well, had you worked up until 12:00 o'clock that

18 night?

19 A Yes.

20 Q For the first two shows?

21 A Yes.

22 Q Who paid you for that?

23 A Glenmar Cinestate.

24 Q Did you work after 12:00 o'clock that night?

A I worked the late shows.

Q And how late did you work that night?

A Until the shows ended.

Q Can you tell the jury what time that was?

A It's been a long time, sir, I have no idea.

Q For that period of time, for working the two shows, did you get paid?

A Yes.

Q Who paid you?

A Mr. Bentley's cashier.

Q At the time you got paid, did you sign a voucher acknowledging that you got paid?

A I don't remember if I did or not.

Q Let me ask you if you can identify this as your signature (indicating).

A Yes, sir.

Q And how much did you get paid per night?

A $25.00.

MR. HIXON: I would like to offer that as Plaintiff's Exhibit No. 2.

THE COURT: All right (marking).

(A voucher in the amount of $25.00, signed by Margaret H. Weston, was marked PLAINTIFF'S EXHIBIT NO. 2.)

1 MR. THURMOND: May we see it, Mr. Hixon?

2 MR. HIXON: I am sorry, Mr. Thurmond, I will be

3 glad to show it to you. This was produced by Mr.

4 Kauffman.

5 May I hand that to the jury now, sir?

6 THE COURT: Yes.

7 BY MR. HIXON:

8 Q Mrs. Weston, when you get paid that, do you get

9 paid that in cash?

10 A Yes, sir.

11 Q And you simply sign this voucher in return for

12 getting the cash?

13 A Yes, sir.

14 Q Now, Mrs. Weston, the practice of utilizing

15 off-duty deputy sheriffs, are you familiar with that practice?

16 A Yes.

17 Q And tell the jury how the practice developed,

18 and what you know about it.

19 A That practice started before I became manager.

20 Q Did it continue during the time you were manager?

21 A Yes, sir.

22 Q And how did you know to get deputy sheriffs to

23 report to duty?

24 A Mr. Sterling, my supervisor, would call me and tell

me we were going to have a midnight movie and to contact Goochland County and order two deputies, or whatever we needed. It was generally two nights in succession.

Q And would you call Goochland County?

A Yes.

Q Who did you talk to out there?

A It was generally a lady that answered the phone.

Q What did you ask for?

A I would tell her I needed two deputies, to please schedule two deputies for Friday and Saturday nights.

Q Did you tell her what you needed them for?

A They knew what I needed them for.

Q This lady knew what you needed them for?

A Yes, traffic control for midnight movies.

Q When they came to report for duty, what time did they normally get there?

A Sir, I have no idea.

Q Did you see them, during the course of the evening?

A They had their job, and I had my job.

Q Well, did you know when they were supposed to be there?

A Roughly 12:00 o'clock, whatever time the movie started.

Q You mean the late show, whatever time that started?

A Yes, sir.

Q Do you know how the deputy sheriffs would know what time that movie would start?

A Well, I tell them approximately what time it is when I call up.

Q When they reported for duty, did they have any conversations with you?

A No, they knew what their job was. They went and did it, and I did my job.

Q What else did they do at the theatre, besides direct traffic?

A If I had a disturbance, I would call for them and they would have come and helped me.

Q Anything else?

A Well -- well, if I have a big concession receipt, they would go to the bank with us.

Q How about checking identification?

A Yes, they did that, too.

Q And can you explain to the jury why?

A Because no one under 18 was allowed in the theatre.

Q And when that would arise, what type of movies would prohibit --

A Mostly R and X rated.

Q Did you, physically, observe, at any time, any of

these deputy sheriffs checking identification?

A No. Like I said, I wouldn't see them from where I was at.

Q The place that you normally stayed was back in the concession stand?

A I was all over the place, but wherever I was needed, that's where I go.

Q At any time that you ever worked there, did you observe any deputy sheriffs directing traffic?

A No, sir.

Q Never saw it?

A No, they had their job, and I had my job.

Q On the night in question, did you -- that is the night of John Farrell's death, did you observe any of these deputy sheriffs directing traffic?

A No, sir.

Q Describe, if you can, for the benefit of the jury, tell them about how you get off of Patterson Avenue and get into the theatre, and how vehicles get out of the theatre? What is the arrangement of the roads in and out of the theatre?

A We have a -- I reckon it's a two car, four-lane thing with a median strip in the middle, we have a light that says "Entrance," it's well lighted; that is, one comes in and one goes out -- I don't know.

1 Q When you are talking about "one comes in and one --"
2 A One is an entrance and one is an exit.
3 Q Is there any incline of that entrance as it goes --
4 A Yes.
5 Q And would you describe that to the jury?
6 A Well, it's just a slight hill.
7 Q And as it relates to Patterson Avenue, it is uphill
8 to Patterson Avenue?
9 A Yes.
10 Q Has there been anything, since you have been
11 manager, about who these deputy sheriffs have down, when they
12 started to work, anything different around this period of time?
13 A No, sir.
14 Q How many people would you request?
15 A Two.
16 Q When did you become manager?
17 A I have been manager two years.
18 THE COURT: As of right now?
19 THE WITNESS: Yes, sir.
20 THE COURT: You became manager sometime in 1977?
21 THE WITNESS: Yes, sir.
22 BY MR.HIXON:
23 Q On the night in question, the night of John
24 Farrell's death, who was working the box office that night?

A Mr. Bentleys' cashiers, I don't know them personally. I don't know.

Q Did you have anything, at all, to do with how they collected the money or what they did with it?

A No, sir.

Q For the evening show, between let's say 8:00 o'clock and 12:00 o'clock?

A My son, George Weston, worked it.

Q And you took responsibility for that?

A For the money, yes, sir.

Q Did you ever even go to the ticket booth that night?

A Yes, I go up and collect the money. That is, they call me and tell me there was a large amount up there and I go up and get the money.

Q What did you do with it?

A Put it in the safe in the concession stand.

Q Did you ever go up and get any of Mr. Bentley's money?

A No, sir.

Q Mrs. Weston, what kept the vehicles from coming in the theatre for the late night movie, was there a barricade or anything?

A As near as I can remember, my son went up there

1 and stopped the traffic so it wouldn't come in.

2 Q Do you have any physical devices?

3 A A flashlight.

4 Q A flashlight?

5 A Yes.

6 Q Is there any blinker light at the exit?

7 A No, sir.

8 Q Was there, at the time of the accident back in

9 1978, was there a STOP sign as you exited from the theatre?

10 A As near as I can remember, yes -- I am not sure.

11 Q Were there any mail boxes located in the vicinity?

12 A Yes, in the median strip.

13 Q And if one stopped on the highway, how close

14 would it be to the edge of the highway looking left? How close

15 would he be to those mail boxes?

16 A Where would he be located, sir?

17 Q Right at the edge of Patterson Avenue, looking

18 west.

19 A Coming in?

20 Q Going out.

21 A I have no idea.

22 Q I have got some photographs here.

23 THE COURT: These have been exchanged previous?

24 MR. HIXON: No, sir.

THE COURT: All right, we are going to lunch. You-all do that during the luncheon recess.

You-all come back, please, at a quarter to two. During the lunch recess, and all of the recesses, ladies and gentlemen, don't let anyone discuss the case with you, attorneys, litigants, anyone in the case.

I have already told all of you, go where you want to. One of the closest and perhaps easiest place to get in and out of is in the basement of the Safety, Health and Welfare Building.

Other places, Federal Building, City Hall up on Broad Street, but try to get back here. I think giving you 40 minutes is time enough to get a quick lunch.

We will move the case along as quickly as we can.

(A recess was taken for lunch; and trial was resumed at 1:52 o'clock p.m.)

AFTERNOON SESSION

THE COURT: Mrs. Weston, come back on the stand, please.

BY MR. HIXON:

Q Mrs. Weston, I want to show you a photograph and ask you to take a look at it (indicating). Does that photograph show the Patterson Drive In Theatre?

1 A Yes, sir.

2 Q Does it appear to be an accurate picture of a

3 photograph taken back in 1978, the condition of the theatre,

4 at the time?

5 A Yes, sir.

6 MR. HIXON: I would like to have that marked

7 as Plaintiff's Exhibit No. 3.

8 THE COURT: (Marking) All right, sir, so marked.

9 (Colored photograph of the Patterson Drive

10 In Theatre, showing the theatre's marquee, was

11 marked PLAINTIFF'S EXHIBIT NO. 3.)

12 BY MR. HIXON:

13 Q Now, Mrs. Weston, for the benefit of the jury,

14 I will pass them this photo, this EXHIBIT. Can you describe

15 the photo, showing which direction it is taken from and what

16 it appears to be?

17 A It's going west on Route 6, it shows the marquee

18 of the theatre.

19 Q Does it, also, show Patterson Avenue?

20 A Yes, that's Route 6.

21 Q And is that the photograph looking back toward

22 the City of Richmond?

23 A Yes, sir.

24 Q Can you see the shoulder of the road, in that

photograph?

A Yes, sir.

THE COURT: Mr. Hixon, how many are you going to put in?

MR.HIXON: Four.

THE COURT: Are you-all objecting to them?

I think we will go ahead and mark them, it will benefit the jury.

MR. HIXON: Can I pass this one now?

THE COURT: Hold on just a minute.

Since the pictures are all so small, Mr. Hixon, I think the best method would be if we let Mrs. Weston stand and have the pictures over where the jury can look at it and she can describe it, as they are looking into the picture.

MR. HIXON: Thank you, Your Honor.

THE COURT: (Marking) And use the numbers all the time so the record will reflect what we are doing.

(Colored photograph of mail boxes on Patterson Avenue, looking toward Richmond, was marked PLAINTIFF'S EXHIBIT NO. 4; colored photograph of Patterson Drive In Theatre, looking west on Patterson Avenue, also showing D & B used car lot, was marked PLAINTIFF'S EXHIBIT NO. 5;

colored photograph of Patterson Drive In Theatre's entrance, looking west on Patterson Avenue, was marked PLAINTIFF'S EXHIBIT NO. 6.)

BY MR. HIXON:

Q Mrs. Weston, let's take this photograph first and --

MR.HIXON: Is it all right if the jurors come forward?

THE COURT: Yes, they can move over to where they can see.

MR. HIXON: You can stand, too, if you like.

BY MR.HIXON:

Q Now, Mrs. Weston, point out on here, do you see part of the screen, itself?

THE COURT: Some of them can't see. I don't know how you are going to handle this, Mr. Hixon. It is going to be hard for all the jurors to see, I am afraid.

BY MR. HIXON:

Q Can you see on this photograph the marquee?

A This is the marquee right here (indicating).

Q And Tuckahoe Creek, do you know where that is located?

A You can't see that on that. It's right there at the bridge, approximately right in here (indicating).

Q And the westbound lane of Route 6, going toward Goochland, is which lane?

A It's the one on this side over here (indicating).

Q This area that I am pointing to right here, would you describe that as --

A I don't know what you call it.

Q Okay.

MR. HIXON: That is PLAINTIFF'S EXHIBIT NO. 3.

Q Now, let's look next at PLAINTIFF'S EXHIBIT NO. 5. Can you point out on this EXHIBIT the entranceway to the theatre?

A There is a sign right here (indicating).

Q All right. And this photograph is taken looking west on Patterson Avenue?

A Yes, that is correct.

Q What is this across the street?

A It looks like a used car lot, D & B used car lot.

Q Was that there, at the time?

A It has been there as long as I can remember.

Q EXHIBIT NO. 6, that view is taken looking, again, west on Patterson Avenue, is that correct?

A Yes, sir.

Q All right, now, where in this photograph is the ticket office located?

1 A It's not on there.
2 Q Would it be back in this area somewhere (indicating)?
3 A Back behind the entrance sign, down along the
4 fence.
5 Q Would you point to that on the photograph?
6 A This entrance sign right here (indicating).
7 Q Okay. This photograph, which is PLAINTIFF'S
8 EXHIBIT NO. 4, is taken looking which way on Patterson Avenue?
9 A This is going toward Richmond.
10 Q Now, these mail boxes, were they there at the
11 time of this accident?
12 A Yes, sir.
13 Q And where are they located?
14 A Now?
15 Q Then.
16 A In the median strip, right where the entrance sign
17 is.
18 Q Now, if a car was exiting from Patterson Drive In
19 Theatre, would he be exiting on that road?
20 A Some goes on that side, some goes on the other side,
21 yes; two roads there (indicating), one on each side of the
22 median strip.
23 Q Where would the cars be lined up to get in?
24 A Mostly on Patterson Avenue.

HERBERT KENNETH RAE, having been sworn, testified in behalf of the plaintiff, as follows:

EXAMINATION BY MR.HIXON:

Q Mr. Rae, state your full name for the jury.

A Herbert Kenneth Rae.

Q And how old are you, Mr. Rae?

A Forty.

Q Where do you reside?

A 8919 Huguenot Road.

THE COURT: How do you spell your last name, please.

THE WITNESS: R-a-e.

BY MR.HIXON:

Q Is that in the City of Richmond?

A Chesterfield.

Q And how long have you resided in the Richmond-Metropolitan Area?

A Fifteen years, roughly.

Q Are you familiar with the Patterson Drive In Theatre?

A Yes.

Q Have you been there on more than one occasion?

A Yes.

Q I want you to tell me, Mr. Rae, if you were there

on the night of the accident, which was June 24th, or early morning of June 25th, 1979, do you recall that night, sir?

A Yes.

Q Tell the jury what kind of automobile you were driving?

A '76 Chevrolet Monte Carlo.

Q And was anyone in the automobile with you?

A No.

Q What time did you get to the Patterson Drive In Theatre that night?

A Approximately 9:30 o'clock or 10:00 o'clock.

Q And did you watch both of the shows before you left?

A No.

Q Just the second one of the --

A Right.

Q Can you describe the size of the crowd that was at the theatre that night?

A Large.

Q Approximately when was the second movie over?

A 11:30 o'clock, quarter to 12.

Q And did you leave, as soon as that movie was over?

A Yes.

Q Were you one of the first cars out of the theatre?

A One of the first, yes.

Q Were there any cars in front of you?

A Yes.

Q How many?

A Roughly, four to six.

Q When you exited the theatre, did you turn your lights on?

A Yes.

Q Did you see whether or not the cars that were in front of you had their lights on?

A I am not sure, I didn't notice.

Q When you came out of this theatre, did your car come to a complete stop before it went on to Patterson Avenue?

A No.

Q Can you estimate for the jury how fast you were rolling, before you --

A Five to ten miles an hour.

Q Did you see anyone directing traffic?

A Yes.

Q Describe what you saw.

A A police officer in full uniform, standing in the middle of the -- I guess it would be the westbound lane, waving a flashlight, directing traffic out of the theatre.

Q Was he facing you?

A Yes.

1 Q Which hand did he have the flashlight in?

2 A I guess, I can recollect it was the right hand,

3 but I am not sure.

4 Q Did he have on any reflective vest?

5 A Not that I recall.

6 Q What kind of uniform did he have on?

7 A Well, I mean, I am partially color blind, it was

8 either green, brown, or something to that effect.

9 Q Could you see the deputy sheriff, or whoever it

10 was, directing traffic clearly?

11 A Sure.

12 Q At the time you were exiting, is there any

13 flashing light there?

14 A No, sir, not to my knowledge.

15 Q Were there any flares?

16 A Not to my knowledge.

17 Q Did you see the sheriff's police car?

18 A I didn't notice it.

19 Q Now, as you were exiting from the theatre, did

20 you look back to your left, toward Richmond?

21 A Yes, I did.

22 Q What did you see?

23 A As you came out of the theatre, there was a --

24 there is a little hill, and there was, also, a line of traffic

waiting to come into the theatre, which somewhat obliterated my view of the highway. So, I really couldn't see the highway until I was out into the --

Q And why couldn't you see the highway?

A For the reason I just gave.

Q Were there parked cars on the highway?

A They were waiting to enter the midnight movie.

Q And can you estimate approximately how many there were?

A It was a good-size line, I would say 25 to 30, maybe more.

Q Which way were they strung out, back toward Richmond or --

A Yes.

Q And how far back up Patterson Avenue were they strung out?

A I could just guess fifteen.

MR. KAUFFMAN: I am going to object to guessing, Judge.

THE COURT: Objection sustained.

BY MR. HIXON:

Q Can you make a reasonable estimate of how far they extended back toward Richmond?

A It appeared to be 30 to 50 yards.

1 Q Let me ask you, if you would, to look at some
2 photographs. Photograph No. 4, if you would, do you recall
3 on the night of the accident seeing that mail box?
4 A No, I don't.
5 Q What on Photograph No. 4 -- excuse me, on
6 PLAINTIFF'S EXHIBIT NO. 3, would you point out to the jury where
7 these cars were parked that you were talking about a minute ago?
8 A The cars waiting to enter the theatre?
9 Q Yes, sir.
10 A They was as far over onto the shoulder as they
11 could get, on this side (indicating).
12 Q Was there a barricade in that photograph?
13 MR. KAUFFMAN: I think he is leading him as to --
14 THE COURT: Objection overruled.
15 A Pardon me?
16 BY MR. HIXON:
17 Q The cars that were parked on the shoulder, were
18 they past this barricade here on the left (indicating)?
19 THE COURT: What barricade are you referring to,
20 the median divider?
21 MR. HIXON: Let me ask the witness.
22 BY MR. HIXON:
23 Q How would you describe this (indicating)?
24 A The shoulder device, you are talking about?

1 Q Yes, sir.

2 A How would I describe it?

3 Q Yes, sir.

4 A I would describe it as a barricade of sorts.

5 Q All right, sir. Were the cars parked as far back

6 as that barricade?

7 A I would estimate they were. Yes, back here

8 (indicating). They weren't any closer.

9 Q On that photograph, will you mark on that photo-

10 graph where you saw Officer Lilly standing?

11 A I can't, you know, have enough road there, but

12 he was approximately in the middle of the westbound lane.

13 Q All right, sir. Let me ask you, on the photograph,

14 on PLAINTIFF'S EXHIBIT NO. 5, to mark on that approximately

15 where Officer Lilly was standing, if you can.

16 A (Marking)

17 THE COURT: Now, what is the mark, Mr. Hixon?

18 MR. HIXON: I am sorry, it is a red X.

19 THE COURT: An X, all right, sir.

20 BY MR. HIXON:

21 Q What motion, if any, did the police officer

22 dressed in uniform, make to you?

23 A Waving with the flashlight.

24 Q And do you recall whether he was waving it with

his right hand or left hand?

A No, I don't.

Q Did the flashlight have a red nose cone on it?

A Best I can recall, it had a red flash on the end.

Q At the time he made the motion to you, which way was his back directed?

A Well, he was facing the exiting traffic, which would make his back, you know, facing the eastbound lane.

Q His back would be toward Richmond?

A Sort of, but, you know, he was facing the exiting traffic, which would make his back toward the other side of the road.

Q I see. When did you first see the vehicle that struck you?

A I saw that vehicle, as soon as the Officer jumped out of the way.

Q So, on PLAINTIFF'S EXHIBIT NO. 5, where you put an X, that would be about the location where you saw the vehicle?

A Right.

Q Describe the Farrell vehicle, when you first saw it.

A It appeared to be swerving slightly, as if he might have had his brakes applied, and he was very close to me.

1 Q When you say "very close", can you estimate the
2 distance he was from you?
3 A Ten to fifteen yards.
4 Q When you first saw the Farrell vehicle, where
5 was your vehicle located?
6 A Approximately straddled the middle line, or very
7 close to that.
8 Q And when you say "straddled the middle line",
9 what middle line are you talking about?
10 A The line where the Officer is standing in the
11 westbound lane.
12 Q Now --
13 THE COURT: Are you talking about the line that
14 divided the two westbound lanes?
15 THE WITNESS: Yes, sir.
16 BY MR. HIXON:
17 Q What did you do, when you saw the vehicle?
18 A The only time I had, a split second, I felt to
19 get out of the way, and I jumped to the right of -- into the
20 right seat. I didn't even have time to even land in the seat
21 on impact, because on impact it jerked my head back the other
22 way. It was just a split second it was on me.
23 Q What part of your car was struck by the Farrell
24 vehicle?

1 A Driver's side, the left front fender, the door
2 on the driver's side.
3 Q Were you hurt in the accident?
4 A Nine stitches.
5 Q What type of damage was done to your automobile?
6 A Monetary, $2400.00, I think.
7 Q When your car was struck, did it continue to go
8 forward or did it stop?
9 A It may have went forward just a foot or two, it
10 stopped.
11 Q Did the impact cause your car to go in a sideways
12 direction?
13 A Uh-huh, right.
14 Q How far?
15 A I don't know, a foot or two, probably.
16 Q What effects, if any, did the incline have on
17 your vehicle, back toward Richmond?
18 A Coming out of the theatre, you mean?
19 Q Yes, sir.
20 A Well, at one point, you can't see at all, coming
21 out of the theatre, especially with the cars parked on the side.
22 Q You have been to this theatre on prior occasions,
23 haven't you?
24 A Yes.

1 Q Have you ever seen deputy sheriffs, or someone
2 in uniform, directing traffic?
3 A Well, it has been quite some time since I have
4 been there before, but I couldn't answer that.
5 Q Have you, on other occasions that you have been
6 to the theatre, seen vehicles lined up on the right-hand side
7 of the westbound lane of Patterson Avenue?
8 A I wouldn't recall, it has been so long ago.
9 Q The vehicles that you saw that night, were they
10 lined up on the westbound lane of Patterson? Did they actually
11 have any part of their vehicle, or their wheels, touching
12 Patterson Avenue, itself?
13 A I didn't notice.
14 Q Have you ever lined up in that lane, waiting to
15 get in?
16 A No.
17 Q Did you see whether or not the Farrell vehicle
18 had its lights on?
19 A It did.
20 Q And when Mr. Lilly jumped out of the way, which
21 way did he jump? Did you see that?
22 A To the best of my recollection, he jumped back
23 toward the shoulder of the road, toward the theatre.
24 MR. HIXON: That is all I have, thank you.

THE COURT: Mr. Thurmond.

EXAMINATION BY MR. THURMOND:

Q I believe you said there were four or five cars ahead of you exiting from the theatre?

A Approximately, yes.

Q And had they gone on across the eastbound lane, toward Richmond, ahead of you?

A The nearest car was approximately two to four car lengths ahead of me.

Q It had gone out and turned toward Richmond?

A Right.

MR. THURMOND: All right, sir, that's all I have.

EXAMINATION BY MR. KAUFFMAN:

Q Did you say you were the fourth or sixth car?

A Approximately, right.

Q All those cars had already preceded out?

A Yes.

Q Before you got to Patterson Avenue?

A I could see the preceding car, which was two to four car lengths.

Q And do you know whether it had its lights on?

A I wouldn't recall, no.

Q Was Officer Lilly out in Patterson Avenue, when that car went across?

A Yes.

Q Was he motioning that car across, as he motioned you across?

A Yes.

Q And so, you got to Patterson Avenue. You didn't stop and look to your left, you kept on going?

A Right.

Q Now, you had your headlights on, at that time?

A Yes.

Q Were your headlights shining in front of you, across Patterson Avenue? They illuminated Officer Lilly, then?

A I'm sure they did.

Q You had no trouble seeing Patterson Avenue?

A No.

MR. KAUFFMAN: That is all I have, Your Honor.

THE COURT: Okay.

FURTHER EXAMINATION BY MR. HIXON:

Q Your headlights were not directed toward Officer Lilly, were they?

A Sure.

Q Was Officer Lilly right in front of you, to your right, or to your left?

A No, slightly to the left.

Q How far to the left?

A As I pulled up the side of him, he was very close to my car, because my vision had been obliterated. And what drew my attention to the Farrell car was that he wheeled around and dived. I knew something was happening then. So, he was close.

MR. HIXON: That is all I have.

MR. THURMOND: Nothing further.

THE COURT: May Mr. Rae be excused? Do you need him further?

Mr. Rae, you are excused.

(The witness stood aside.)

THE COURT: Your next witness, Mr. Hixon.

MR. HIXON: At this time, I would like to read Answers to Interrogatories.

MR. KAUFFMAN: I wasn't provided with a copy of them, and I don't know if they affect me. They are his answers and if they don't affect me, I don't have any objections, but I don't really know what they are.

THE COURT: Then it would be a good idea if you looked at them.

MR. HIXON: These are Glenmar's Answers to Interrogatories, sir.

THE COURT: Do you want Mr. Kauffman to see them?

MR. KAUFFMAN: I never got a copy of the questions or answers.

MR. HIXON: I am sorry, Your Honor. I am sure I just assumed the defendant sent his answers to Mr. Kauffman.

MR. KAUFFMAN: I have no objection, Your Honor.

THE COURT: Gentlemen, as I recollect this morning's conference that we had, there are some objections that need to be taken up with respect to this, Mr. Thurmond, on one of the questions and answers.

MR. THURMOND: Yes, sir. On the record, I take the position, if he is going to read any portion of the answer he is compelled to read all of it.

THE COURT: What interrogatories?

MR. HIXON: No. 11.

THE COURT: As soon as we get a break, the jury goes out, we will relate this back in time and put that objection in specifically as to that.

MR. THURMOND: Yes, sir.

MR. HIXON: Your Honor, may I explain to the jury?

THE COURT: Yes, sir.

MR. HIXON: Ladies and gentlemen, these are questions, written questions that were sent to Glenmar Cinestate, in which questions have been answered in writing by Glenmar's executive vice president, Mr. James S. Lipsner, in the District of Columbia.

I am going to read these into evidence, and I

believe the Judge will tell you that the questions and answers should be taken by you just as if the witness were here testifying to this effect.

Is that appropriate, Judge?

THE COURT: This is substantive evidence in the case, ladies and gentlemen, for whatever purpose it might have, and these interrogatoires, I assume, were answered under oath --

MR. HIXON: Yes, sir.

THE COURT: -- which they are required to be.

MR. HIXON: "4. Describe fully the business of Glenmar.

"A. Glenmar engages in the exhibition of motion pictures and provides ancillary services in connection with, such as concession sales, at 14 theater locations in Washington, D. C., Virginia and Maryland.

"5. Describe the boundaries of the property owned by you where the Patterson Drive-In Theater is located.

"A. Boundaries may be described by plat which is believed to be a public record in the Clerk's Office of the Circuit Court of Goochland County, Virginia.

"6. When did you purchase the property? From whom?

"A. The property was purchased on August 20, 1965,

[redacted]

"9. Identify all films shown or promoted by Ray Bentley or Ray Bentley Productions (hereinafter "Bentley") at the Theater subsequent to your acquisition of it and prior to June 24-25, 1978, and as to each, state the following:

"a. the dates shown;

"b. which were late night or midnight showings;

"c. the attendance for each showing by number of cars and number of people;

"d. the identification of all records or documents from which the information provided in answer to this interrogatory is obtained;

"e. the identity of the custodian and the location of such documents.

"A. It is important to understand our arrangements with Ray Bentley Productions ("RBP"). We have what is commonly referred to in the trade as a "four-wall deal". What this means is that Ray Bentley Productions leases the entire theater to show its own product; we have no control over and do not necessarily know what product will be shown, RBP, which is Ray Bentley Productions, pays the box office cashier (who, in some cases, may be our cashier prior to the four-wall deal taking effect, but with respect to this specific litigation, RBP

supplied its own individual) and pays our manager to remain on the premises. In addition, we staff the concession stand, at our expense, and take all proceeds and provide the projectionist, and ushers where applicable, who are also paid by Glenmar. We do not consider this arrangement as a joint venture or partnership but merely lessor-lessee. Therefore, with specific reference to Interrogatory No. 9, this information, except for a very few exceptions, would be found, we presume, in RBP records.

"11. Were Goochland County policemen retained to assist in any way at presentations of the Theater? If so, describe the occasions customarily requiring their services.

"A. Generally, for our normal evening presentations at the Patterson, no policemen or other security personnel are called for services as law enforcement officers relative to traffic, crowd control, or security. Occasionally, policemen will be on the premises doing routine checks. With respect to a four-wall deal, policemen generally are called upon by lessee to assist in the egress after our standard presentation and ingress for the commencement of the first show under the four-wall deal. In addition to traffic control services, policemen check patrons' identifications to conform with the movie ratings and to assist generally in security . . .

"12. Explain how arrangements were customarily

made for the services of Goochland County policemen at the Theater.

"A. Arrangements customarily made on behalf of Ray Bentley Productions for the services of Goochland County Policemen at the theaters for late or midnight shows were made with the assistance of Mrs. Margaret Weston, theater manager for the Patterson Drive-In, who would call in the early part of the week where any particular Bentley production is scheduled for the end of the week or weekend following. She would simply leave word at the Sheriff's office that deputies would be needed for a particular show. The deputies themselves had no dealings with our staff concerning the arrangements.

"23. What was the attendance in cars for the movie immediately preceding the late night or midnight feature at the theater on the night of June 24th, 1978, also in persons.

"A. According to our records the attendance in number of cars for the show immediately preceding the Bentley Production was a 284 count. We believe that count in terms of number of persons was 629.

"24. What was the attendance in cars for the Bentley promoted film on that night? In persons?

"A. Ron Sterling our Richmond supervisor at that time estimates that there were 89 cars. Glenmar does not require under these arrangements that its personnel monitor or

know the number of cars or patrons attending during a four-wall deal. One explanation for his knowledge of the number of cars might be that prudent controls require car count in order to determine whether concession sales (based on historical averages) were sufficient.

"28. Who paid the policemen for their services?

"A. Because of the four-wall deal Glenmar does not pay for security or traffic control services. This is the responsibility of Ray Bentley Productions based on past arrangements. We assume that such officers were paid."

And these were signed, I believe I told you, by James Lipsner, executive vice president, under oath.

THE COURT: Next witness, Mr. Hixon.

MR. HIXON: I would like to call Mr. Lilly.

THE COURT: Mr. Lilly, report to the courtroom.

MR. HIXON: I would like to call Mr. Lilly as an adverse witness.

THE COURT: What would qualify him to do that?

MR. HIXON: I would like to under the code section 8.01-401. I believe I may call any party or witness who is determined to be adverse. I would take the position before the Court that Mr. Lilly is, in fact, adverse, and I would like to state my reasons. May I approach the bench to do it?

Counsel, let me see you-all here, please.

(Side-bar conference.)

THE COURT: Let's go officially on the record at this point that Mr. Thurmond objects to the Court's excluding from the Answers to Interrogatories No. 11, the last sentence in that, or the next to the last sentence, that dealt with, in my opinion, evidence that would not be material, and he felt that the entire question and answer should have been read to the jury.

(The jury, upon its return to the courtroom, handed a note to the bailiff for the Court. After examining the note, the Court asked the reporter to mark the place where this occurred and he read the contents of the note, as found on page 187 of this transcript.)

THE COURT: You-all read that.

He wasn't asked that on voir doire, as far as he knows. He is just another witness, as far as I am concerned.

JAMES D. LILLY, called as an adverse witness in behalf of the plaintiff, was sworn and testified as follows:

EXAMINATION BY MR. HIXON:

Q State your full name for the record, please.

A James D. Lilly.

Q How old are you, Mr. Lilly?

A Forty-seven.

Q Where do you live, Mr. Lilly?

A In Goochland, Goochland County, Virginia.

Q Is that where you presently reside today?

A Yes, sir.

Q How long have you been living in Goochland County, Virginia?

A Well, approximately 31 years; all except five months, I went to Florida and just moved back.

Q By whom are you employed now?

A Richmond Engineering Company.

Q And what do you do with the Richmond Engineering Company?

A Drive a tractor trailer.

Q How long have you been employed there?

A Just went to work with them in October.

Q Tell the jury when you first went to work for the sheriff's office in Goochland and when you left.

A I went to work in July, 1968, and quit in August of '78.

Q August of what?

A 1978.

Q What type of educational background do you have, Mr. Lilly?

A Well, I don't have -- I didn't get all the way

through high school.

Q Before you --

A Two years of high school.

Q Before you went to work at Goochland, as a deputy sheriff, what did you do?

A Various types of security work, worked at the Federal Reserve Bank for eight years, worked at the penitentiary, worked for Chesterfield County as a licenses inspector.

Q When you were employed by the Goochland County Sheriff's Office, how many hours did you work a week?

A When I first went there, there was no telling, just seems you might work 50, sometimes it might be 70, you just work whenever they needed you.

Q Did you work a given shift?

A No. The first year or so that I was at -- no, sir.

Q What about in 1978, at or about the time of the accident, Mr. Farrell's death, were you working a shift then?

A Yes, yes, sir, we were working 12-hour shifts.

Q And when did you go to work?

A From noon until midnight or midnight until noon.

Q And June 24th, Saturday, 1978, when did you go to work?

A I don't recall -- rather, I don't know whether I went on at night, on day, or whether I was on the midnight shift.

I don't recall.

Q What time did you get off work?

A If you get off at midnight or noon at daytime?

Q I'm talking now, specifically, whether you recall the night of John Farrell's death.

A I recall the accident, yes, sir.

Q On that night, when did you go -- when did you get off work at the sheriff's office?

A It was 12:00 o'clock midnight.

Q Had you worked the Patterson Drive In Theatre before?

A Yes, sir, many times.

Q How many occasions?

A I have no idea.

Q Well, would it be one or half a dozen?

A Half a dozen or more.

Q On these occasions, who talked to you about working?

A Well, the manager of the theatre. The guy that used to contact me, his name was Mike, and he was not even employed there when this happened, but he is the one we used to talk with when they wanted us to work the midnight shift at the theatre.

Q When he contacted you, would he tell you what

you were to do?

A Well, it was just, "Please work security at the theatre, midnight movie."

Q You were asked to direct traffic?

A Not specifically, but traffic is one of a police officer's duty, so we just always did the traffic work. It wasn't specified that I know of to work traffic or whatever, they would just say please work at the theatre.

Q On the occasions when you worked at the theatre, did you, in fact, direct traffic?

A Yes, sir.

Q Who paid you?

A The manager of the theatre, when the feature started, would always hand us our money. That's all I know; where it came from, I don't know.

Q You know Mrs. Margaret Weston, don't you?

A Very well.

Q Did she ever pay you?

A I think toward the last, she paid me a time or two.

Q How much did you get paid?

A I believe it was $25.00.

Q And when you got paid, did you get paid in cash?

A Yes, sir.

Q Did you sign a voucher, when you got paid?

A Yes, sir.

MR. HIXON: This has been introduced by the defendant, do you want to see them again?

MR. THURMOND: I want to see what you have got.

BY MR. HIXON:

Q Mr. Lilly, when you got paid, did you sign a voucher for your work?

A Yes, sir.

Q I want to hand you a stack of vouchers and ask you if each one of these contain your signature (indicating).

A There is one that doesn't look like mine, but the rest of them are.

Q You say one there is not yours, can I pull that out?

A This one doesn't look like my writing, is the only one.

Q That one does not. I will pull that one out.

MR. THURMOND: What is the date on it?

MR. HIXON: September 16, 1977. I will remove this from the stack.

BY MR. HIXON:

Q This one on September 16, 1977, that is your name?

A Yes, sir.

Q Okay. Who handed you these petty cash vouchers to sign?

A I couldn't recall. I would say Mike handed me the majority of them, and one or two may have come from Mrs. Weston right at the last, after she took over the theatre. I don't recall, but it was in the office of the back of the theatre.

Q And you signed these vouchers, at the same time you were paid the $25.00?

A Yes, sir.

Q When you are referring to Mrs. Margaret, for the record, that is Mrs. Margaret Weston?

A Yes, sir.

MR. HIXON: I would like to offer these, jointly, as Exhibit No. 7. Could I just staple them all together?

THE COURT: Yes, sir, I will get them (marking).

(Petty cash vouchers, in the amount of $25.00 each, signed by James D. Lilly, were marked PLAINTIFF'S EXHIBIT NO. 7.)

BY MR. HIXON:

Q Mr. Lilly, do you know who filled in these petty cash receipts?

A No, sir, I don't.

Q At the time you signed them, were they already filled in?

A Yes, sir.

Q Yes, sir?

A Yes, sir, as far as I know, I just signed the slip.

Q Did you say that traffic control is not one of your responsibilities at Patterson Drive In?

A No, sir, I didn't say that.

Q Would you explain then what you said?

A I said traffic is a police officer's duty and that what you were doing is police work and traffic is police duties.

Q When you got off work at 12:00 o'clock, from the sheriff's department, were you free to go where you wanted to go?

A Yes, sir.

Q How did you know what time to report for work at Patterson Drive In Theatre?

A Well, it was the only thing we did when we got off watch from the sheriff's department, we go out and work the theatre, it was 12:00 o'clock. Sometimes the movie already started and traffic was gone, and sometimes the first movie hadn't let out or the second one started yet.

Q And what functions, if any, did you normally perform, when you worked the theatre?

A Checked through the theatre to see around what the situation was, to see if everything was fine and quiet. If the movie was breaking up, the first one breaking out, we let the traffic out, get all the traffic out of the theatre and then let the other traffic back in.

Then you just walk the theatre to see if everything was quiet.

Q You had been doing this for more than three years?

A Off and on, yes, sir.

Q Was it only on weekends?

A Yes, sir.

Q Did you normally have someone else with you?

A Yes, sir, you always -- two of us.

Q Ever an exception to that where you had just one person?

A I don't recall, not that I know of.

Q What about the night of Mr. Farrell's accident, how many deputy sheriffs were on duty at the time of the accident?

A At the time of the accident, I was the first one there. I was there, the other officer hadn't gotten there yet.

Q What is his name?

A Mr. Payne, Temple Payne.

Q What time did Mr. Payne get there?

A I have no idea, it was -- it was shortly after the accident, because when the accident happened, I called him on the radio and he was close by. I would say within six minutes, very close, I know that.

Q Mr. Lilly, how did you keep the vehicles from going into the theatre, automatically, when they arrived?

A For the late movie?

Q Yes.

A Well, they was lined up and they just wouldn't let them through the gate. They would pull the gate, a chain or bar against the gate and stop them.

Q When you talk about "they", who would stop them?

A I don't know, whoever put the chain across the gate.

Q How did you know when to put this chain down?

A I didn't.

Q Who did?

A Whoever run the theatre.

Q Well, on the night in question, do you know who that was?

A No, sir, I have no idea, I don't know what happened after the accident.

Q Well, are you talking about, would Mrs. Margaret Weston ever come out and put the chain down?

A I don't know. I don't have no idea, I never saw nobody put it up or down.

Q Over the course of the years that you have been working there for the late night movie, had your duties always been the same there?

A Yes, sir, I think so.

Q You weren't doing anything unusual on the night of June 24th, 1978 that --

A No, sir.

Q -- you hadn't done in the past?

A No, sir.

Q Did anyone from the theatre ever tell you what you were supposed to be doing?

A Not really, not nobody ever sat down and said this is going -- we want this done or whatever. We just worked the theatre, walked around and see that everything is quiet, keep the trouble down, keep the traffic coming and going, keep the trouble down.

Q The very first time you went to work there, did you direct traffic then?

A I have no idea, that has been a long time.

Q Can you tell us about how it came about that you

first directed traffic at the entrance there?

A To my knowledge, what started the traffic, as far as I am concerned, if you go to a job and traffic is tied up in both directions, coming into the theatre and coming up and down the highway, one of a police officer's duty is to keep things under control. I have done it many times, got out of the car, parked it on the side of the road, and start directing traffic, keeping it all moving down so as not to get it bottled up in one place.

Q On the night in question, what type of equipment did you have with you?

A What do you mean "what type of equipment"?

Q Did you have any flares?

A Not burning, no.

Q Did you have any with you?

A Well, my car was sitting there, didn't have the red light on, but I was standing in the road with a police officer's uniform on with a flashlight, a three-cell flashlight.

Q Did it have any red cone on it or white cone?

A Neither one, just a big round flashlight.

THE COURT: Where was your car parked?

THE WITNESS: It was parked alongside into the entrance, going into the theatre. That's a big, wide entrance there, and my car was parked alongside the little aisle, headed

into the theatre.

THE COURT: As if you were going to be coming in?

THE WITNESS: As if I was coming into the theatre, yes, sir. I came down Patterson Avenue and made a left turn and parked at a little aisle going into the theatre.

THE COURT: That is where the cars were starting --

THE WITNESS: There's a hill, and there is, obviously, a road on both sides of the aisle from the west and east.

THE COURT: You parked on the east side, that in-ramp, the one closest to Richmond?

THE WITNESS: Yes, sir.

THE COURT: You parked alongside the aisle?

THE WITNESS: Yes, sir.

THE COURT: Where, with reference -- do you know where the mail boxes are located?

THE WITNESS: The mail boxes, right along the end.

THE COURT: Where were you in reference to those, where was your car parked?

THE WITNESS: Right alongside.

THE COURT: Backed out into Patterson Avenue, front end toward the --

THE WITNESS: Yes, sir.

BY MR. HIXON:

Q Did you have the beacon on top of your car operating?

A No, sir.

Q Did you wear a reflective vest?

A No, sir.

Q The flashlight that you had, is it an ordinary three-cell-type flashlight?

A Yes, sir.

Q I want you, if you will, to look at these photographs.

THE COURT: This time, Mr. Hixon, I think we should get down in front of the jury and try to hold it up so all the jury can get a glance at it. They have seen it before, they will be able to pick it up.

BY MR. HIXON:

Q Looking at PLAINTIFF'S EXHIBIT NO. 3, I want you to point, on this EXHIBIT, if you can, approximately where you were standing at the time this accident happened.

A I don't know whether you can talk about it in this picture, I was out here in the highway. This is the entrance to the theatre (indicating), and that island is on this side of this entrance.

I was somewhere, this is the wait line here, and

that's the theatre line, and I was somewhere out this way, in the middle of this lane, right here (indicating), where this car is coming up, but where I was, this don't show where.

Q You were in the middle of the right-hand lane?

A Yes, sir, right in the island on this.

Q Let me get another photograph. Looking at PLAINTIFF'S EXHIBIT NO. 5, will you tell where you were located?

A I can't see. Somewhere, I can't tell.

THE COURT: That is looking west?

THE WITNESS: This is looking the other way, I was down in the lane somewhere, right in here (indicating), approximately back to this side of the red X somewhere.

BY MR. HIXON:

Q Why don't you put a black X where you were standing.

A (Marking) Right across that right lane. See, this is the island here and this is the entrance, up this island, this island here (indicating). So, this is the entrance going into the theatre, so I was directly across from the island where the mail box is, on this island (indicating). That's the mail box right there, I was parked there, and I was standing back from my car.

THE COURT: Let me see that.

THE WITNESS: All right.

BY MR. HIXON:

Q Can you just put a C where your car was parked?

A (Marking) Somewhere in the neighborhood of here.

Q Let me get you another one, PLAINTIFF'S EXHIBIT NO. 4, would you describe the location of that mail box, as it relates to where you were standing?

A I was standing right out in the highway from the mail box, but my car was in that area over here (indicating), the rear bumper of the car was approximately even or just about even with those mail boxes.

Q When Mr. Rae was exiting from the Drive In Theatre, which side of these mail boxes would his car had passed?

A It would be on the west side, this is the east side (indicating).

Q Now, at the time of this accident, were the cars parked on the right-hand side of Patterson Avenue?

A Yes.

Q How far back did they go?

A I couldn't tell, probably as far as the bridge. I don't know, I wasn't --

THE COURT: Is that the bridge over Tuckahoe Creek?

THE WITNESS: Yes, sir.

BY MR. HIXON:

Q PLAINTIFF'S EXHIBIT NO. 3, point out on there

where the bridge begins across Tuckahoe Creek.

A Back, approximately, where the car is or a little bit behind the car.

Q Were cars backed all the way behind the bridge?

A What we call the stacking lane, and then off the pavement, on the side of the highway.

Q How much distance is there between that rail and the pavement (indicating)?

A I don't know, approximately, I would say six, seven feet, something like that, enough room for a car to get off the road.

Q Both wheels?

A Well, depends on how close the driver gets, but some of them sat with the wheels on the edge of the surface.

Q On the night in question, some of the cars weren't with part of their wheels on Patterson Avenue?

A I have no idea. There were cars parked back there, but I didn't go back there.

MR. HIXON: I think that's all of the photographs. Your Honor, could I pass it to the jury, an EXHIBIT that they have not seen? It is EXHIBIT NO. 7, it is marked, but they haven't had a chance to look at it.

THE COURT: You may want them to look at it now.

MR. HIXON: Yes, sir, could I do that?

THE COURT: Are those receipts essentially the same, although you have multiple receipts?

MR. HIXON: Yes, sir.

THE COURT: All right.

The rest of the jury, I think we can safely tell you that once you have seen one of them, you have seen them all. So, if you look at the receipt, you have seen what they want you to see, at this point.

MR. HIXON: Your Honor, they may want to look them over a little bit.

THE COURT: They will have them to look at in the jury room, and you-all can argue the matter to them.

MR. HIXON: Thank you.

THE COURT: All right, sir.

BY MR. HIXON:

Q Mr. Lilly, on the night in question, you started to work the traffic as soon as you got to the theatre, is that correct?

A Yes, sir.

Q And was there a particularly large crowd there that night?

A Well, as far as I remember, there was a lot of

traffic. I never made it inside the theatre, but traffic was steadily coming.

Q There aren't any parking lights, at the exit, are there?

A No, sir.

Q There is no lighting at all, is there?

A No, sir.

Q Is there a car lot across the street?

A Yes, sir, kitty-corner across.

Q Had you directed any vehicles out of this Drive In Theatre, prior to the time of Mr. Farrell's accident?

A Yes, sir.

Q How much traffic had you directed out?

A 40, 30, 50, I don't know, I have no idea.

Q Your testimony is that you directed 50 cars out of the theatre, prior to Mr. Farrell's accident?

A I didn't say 50, I said I don't know. I said approximately 50, maybe, I don't know.

Q Approximately 50?

A 30 to 50.

Q What about Mr. Rae's vehicle, did it come to a complete stop?

A I can't recall.

Q Did you motion Mr. Rae's vehicle out?

A Yes, sir, I was steadily motioning all vehicles out.

Q At the time you were doing that, your back was toward Richmond, was it not?

A Not directly, I never did stand directly with my back to oncoming traffic, I always stood kitty-corner style to it. I could look over my shoulder.

Q And you weren't looking over your shoulder?

A I very much so did.

Q You did?

A I did.

Q Did you see the Farrell vehicle coming?

A No, sir.

Q When was the last time you saw or looked over your shoulder, prior to the time of the accident?

A I have no idea.

Q Would it have been a couple of minutes?

A Maybe.

Q You never saw the Farrell vehicle, at all, did you, sir?

A No, sir.

Q First thing you had was an impression that the Farrell vehicle was there?

A The noise of the tires squealing, that is what

alerted me.

Q And you jumped back toward your right, toward the theatre?

A Yes, sir.

Q You never saw the Farrell vehicle until it actually passed you, did you?

A No, sir.

Q And the Farrell vehicle was in which lane?

A It was in the right-hand lane, approximately, about over toward the center, but it was in the -- skid marks starting and ending in the right-hand lane.

Q And that is the lane closest to the shoulder, beside the Patterson Theatre, is that correct?

A Yes, sir.

Q And you never saw the vehicle, until it went past you?

A No.

Q It struck Mr. Rae's vehicle?

A I beg your pardon?

Q Mr. Farrell's vehicle struck Mr. Rae's vehicle?

A Yes, sir.

Q How far away were you from Rae's vehicle, at the time of impact?

A 20, 30 feet, something like that.

Q Where was Mr. Rae's vehicle located?

A At the point of impact?

Q Yes.

A Across the right-hand lane, the front wheels was out on the center line or just moved back to the center line.

Q That would be the center line dividing the two westbound lanes on Patterson Avenue?

A Yes, sir.

Q The car skidded by you?

A Yes, sir.

Q Did it skid in a straight line?

A Very much so, yes, it didn't but very, very little.

Q You had on your brown deputy sheriff's suit, is that correct?

A Yes, sir.

Q Are you right-handed?

A Yes, sir.

Q You had your flashlight in the right hand?

A Yes, sir.

Q You didn't have any reflective clothing on, did you?

A No, sir.

Q Is any issued by the sheriff's department?

A Not at that time.

Q Do you know the speed limit on Patterson Avenue, at that point?

A I think it is 45. I think it is 45, I think they put it down to 45 all the way through there.

Q Could you be mistaken about that, could it, in fact, be 55?

A It could have been at the time, I don't recall. I think at that time it was 55. I think it is 45 now.

Q I am sorry, at the time of this accident?

A Yes, I believe it was 55 through there.

Q Were there any cars in the eastbound lane, waiting to get in?

A I believe there were one, or there was one sitting there, or it got there shortly after, but there was one car over on that side.

Q Did you determine whether or not they saw this accident?

A No, sir, I don't know.

Q Did the Rae vehicle have its lights on?

A Yes, sir.

Q What about the Farrell vehicle?

A Yes, sir.

Q Had there been a period of time, right before the

accident occurred, for three to four minutes, where there had been no westbound traffic on Patterson Avenue?

A Yes, sir.

Q How long had you been standing out on Patterson Avenue?

A I don't know, five to ten minutes maybe.

Q If you had looked back up Patterson Avenue, toward the City of Richmond, was there anything to obstruct your view?

A No.

Q If you had looked, you would have seen the Farrell vehicle, wouldn't you?

A Probably so.

Q Was it fair to say that at least for some period of time before the accident you didn't look back toward Richmond?

A Right, I was watching the traffic coming in.

Q Since you didn't see the Farrell vehicle, you can't estimate its speed, can you, sir?

A No, sir.

Q Mr. Payne did not arrive that night?

A He what?

Q He had not arrived, at the time?

A No, sir, not at the time.

Q After ten years, you quit the sheriff's department?

A Yes, sir.

Q And that was in August of 1978?

A Right.

Q Did that have anything to do with this accident?

A No, no, sir.

Q Did you work there any, after the accident?

A Did I work there?

Q Yes. From the time of the accident, I am sorry, at the Patterson Drive In Theatre.

A Not that I recall, I don't remember.

Q Was there ever an occasion in which you got double pay, that is pay from one of these defendants and the county at the same time?

A No, sir.

Q Are there any policies of Goochland County that would prohibit you from working out there?

A Yes, there are.

Q What are they?

A Well, you can't just take a part-time job and go around and work, it has to be cleared through the sheriff's department. It has to be cleared through the sheriff to do part-time work.

Q Did you clear with the sheriff's department your

part-time work at Patterson Drive In?

A It has been cleared, yes.

Q Well, did you clear it?

A No, I can't say as I did.

Q Did you get the names of any witnesses who saw this accident?

A No, sir.

Q Did you get paid for the night in question, that is, did you get paid for June the 25th, for working that night?

A I believe I did.

Q And did anybody else get paid that was working with you?

A I don't recall.

Q What about Mr. Payne?

A Temple, he might have, I don't know.

Q Did he, in fact, work there that night?

A He was there part of the time, but he was working this accident.

MR. HIXON: That's all the questions I have, Your Honor.

THE COURT: Mr. Thurmond.

EXAMINATION BY MR. THURMOND:

Q Mr. Lillie, you have described to us how long you had been out in Patterson Avenue on that night before this

accident, and how you were standing, and how you were using your flashlight. Were you waving it or holding it still?

A Yes, sir, I was standing with my left hand up for the oncoming traffic, and my right hand directing traffic out of the Patterson Theatre.

Q Now, had you had any problems with westbound cars understanding that signal that you gave?

A No, sir.

Q Before, earlier that night?

A No, sir.

Q Had any stopped and complied with that signal?

A Yes, sir.

Q How about on prior occasions, when you were down there, had you had any problems with the westbound traffic on Patterson Avenue obeying your stop?

A Very, very seldom.

Q Now, the color of your uniform, you had a dark brown jacket or blouse on, didn't you?

A Well, not at that time, it was just a dark brown shirt and pants.

Q Didn't have a coat on. You had on the typical hat that you wore up there with Goochland Sheriff's Department?

A Yes.

Q And had light brown trousers?

A Yes, sir.

Q Now, Mr. Hixon asked you if there is any reason why you couldn't have seen the Farrell vehicle coming. You said no, as I understand it, if you actually looked in that direction, but by the same token, there is no reason he wouldn't have seen you, was there?

A No, sir.

Q You got a long line of visibility there, going west, haven't you, coming down through that little bridge across Tuckahoe Creek?

A Yes, sir.

Q Could you give us any estimate of the visibility at this point?

A No, just roughly a half to three quarters of a mile.

Q All right, sir. Now, you indicated that you had done this type of traffic control work many times with the sheriff's department. And you did it whether you were on duty or off duty, in the same manner, didn't you?

A Yes, sir.

Q Nobody at the Drive In Theatre was telling you how to conduct your traffic?

A No, sir.

Q If anybody had told you to stand on the shoulder

of the road, you would not have complied with that, would you?

A No, sir.

Q You would have done it as a police officer?

A Yes, sir.

Q Now, this is not the only off-duty type of work that you gentlemen have done up there that is strictly done at the Drive In Theatre, is it?

A No, sir.

Q You work Tuckahoe Plantation when it is open for work?

A Yes.

Q And they pay you something for it, handling traffic off River Road?

A Yes.

Q And have you ever worked any for the Reynolds family at the Little Hawk Farm?

A Yes.

Q And they didn't tell you how to go about directing traffic on Route 60?

A No, sir.

Q And they paid you something for your services down there, didn't they?

A Yes, sir.

Q Same thing goes for weddings and things of that

nature. And all that you were concerned about is you can't take your police car or anything like that out of Goochland County, isn't that correct?

A Yes, sir.

Q Now, when you were enroute there and officially off duty with the sheriff's department, if you saw any law violations, such as speeding or anything of that nature, you make it your business to apprehend that party, if you can, don't you?

A Yes, sir.

Q You don't base it on the mere fact that you went off duty at 12:00 o'clock at night?

A No, sir.

Q All right, sir.

MR. THURMOND: That's all I have.

EXAMINATION BY MR. KAUFFMAN:

Q Mr. Lilly, in line with that last question, is it fair to say that as a deputy sheriff, you are a deputy sheriff 24 hours a day?

A Yes, sir.

Q And if you see any police business or anything that needs police business, you would do it regardless of the time of day?

A Yes, sir.

MR. KAUFFMAN: Note my exception to that, Your Honor.

BY MR. KAUFFMAN:

Q Mr. Lilly, when you got out there, on the night in question, did you talk to anyone at the theatre?

A Not prior to this.

Q Prior to the accident?

A No, sir.

Q No one told you what to do when you got there?

A No, sir.

Q What other things did you normally do, at the theatre, when you got there?

A Well, as a rule, we would work the traffic in and out, get the cars inside the theatre. Then, after all the cars got in, then we would go inside and work the aisles or whatever, just to keep things quiet so that everybody was quiet and there was no trouble starting.

Q What did you do if trouble started?

A Well, it was a police officer's -- we would have arrested -- we arrested a whole lot of them down there and carried them to court for different things.

Q And when you arrested someone, what would you do with them?

A Carry them to Goochland County to the magistrate,

take them before the magistrate.

Q And of course, when you did that, you were no longer at the theatre?

A Not for the time being, no.

Q And you would return to the theatre?

A Yes, sir.

Q And that was one of your functions, as a police officer, to make your arrests?

MR. HIXON: Objection, Your Honor, that is another legal conclusion.

MR. KAUFFMAN: I will withdraw the question.

BY MR. KAUFFMAN:

Q Well, you were in uniform at all times, while you were there?

A Yes, sir.

Q And you had on your badge?

A Yes, sir.

Q Can you tell us, at the time that you arrived there and began directing traffic, whether the marquee lights were on in front of the theatre?

A What do you call the marquee lights?

Q The billboard and sign that says the theatre is there.

A The theatre sign, the little long sign might have

been on, but the billboard-type lights wasn't on.

Q The theatre lights were on?

A I would say they were, yes, sir.

Q Were there any lights on across the street, at the car lot?

A There was one big light on that stays on over there.

Q And how about the Rae vehicle lights, where were they shining, when you were directing them out of the theatre?

A Approximately, across the highway, as I was directing them across, then they swerved to the right.

Q Made a right turn?

A You are talking about the --

Q The Rae vehicle, not the Farrell vehicle.

A Yes, the Rae vehicle, when he came out of the theatre, he came out the theatre, he went across the highway, then he made a right turn. He was going west, I mean he was across the highway. I assume he was going right, I don't know, but that's the way he came out of the theatre to cross the highway, to make a turn.

Q And so his lights were heading straight, when he came out onto the highway?

A Yes.

Q And you were motioning him out?

A Yes, sir, I was directing all the traffic out of the theatre, you just keep waving them right on out.

MR. KAUFFMAN: I have nothing further, Your Honor.

FURTHER EXAMINATION BY MR. HIXON:

Q The Rae vehicle, were his lights shining in your eyes?

A No, sir.

Q And you say that the Rae vehicle was going west?

A I assume it was. When he came out across the highway, he never did really make a turn that I know of, but he was across the highway when this accident occurred. The side of the highway he was on, I assume he was going out to go west, I really don't know.

Q In response to Mr. Kauffman's question, you said that when "they" saw something, we would stop it. Who is "they"?

A I don't know, they saw something, we stopped it, I don't remember.

Q When there were any disturbances in the theatre, who would tell you about it?

A Nobody. You find out for yourself, unless somebody hollers or something for a police officer that something was going on, but we just walked the aisles.

Q Well, did Margaret Weston, or any other employee

ever holler out to you to do something?

A No, they was in the concession stand.

Q How about somebody in the crowd?

A Well, I can't recall anybody hollering, we -- I have, too, somebody threw some firecrackers and somebody hollered, but I don't have no idea who it was.

Q In response to Mr. Thurmond's question, you said that you very seldom have any problems there?

A True.

Q Had you any accidents there before?

A No.

Q Never had?

A There might have been some accidents there, something not pertaining to anything else. About 50 yards west of there, I worked an accident where somebody run into the ditch; but right at the intersection, I don't recall any.

Q Now, the light that you call the entrance light that was on that night, approximately how high off the ground is that entrance light?

A Two, two and a half feet, something like that.

Q In EXHIBIT NO. 6, there is a light with the word "Entrance" written on it, is it not?

A Yes, that's the big entrance light going into the theatre, yes, sir.

Q Is it your testimony that is about four to six feet off the ground?

A No, not four to six feet -- well, it might be three, four feet, I don't know. By that picture, I can't tell. It is this high (indicating), approximately four feet, three and a half, four feet, that is.

Q That is located on the other side of the exit road toward the theatre, is it not?

A Yes, sir.

MR. HIXON: That's all I have.

MR. THURMOND: I have nothing further.

THE COURT: Mr. Lilly, did you, personally, ever have any sit-down discussion with any of the people with the theatre such as, "Now what am I going to do when I come down here? Are we going to sit down and talk about this?" Did you ever have any discussions like that?

THE WITNESS: No, sir.

THE COURT: Did this understanding come about just because they were things you should do when you got there?

THE WITNESS: Yes, sir. When they first started, the best I can recall, that whoever had the theatre -- I have no idea -- called the sheriff's office and probably talked to the sheriff, because the sheriff told

us that there would be -- they wanted employees down there to do police work at this theatre during the night movies. So, really, I never -- well, I have sat down and talked with Mrs. Margaret and the guy, Mike, both, about things, about what goes on, but nobody said any specific duty, to do this or that or anything else. It was understood through the sheriff's department that this was police work.

THE COURT: Who, if anyone, did you have any dealings with or whoever would tell you what to do when you got there, if anyone, or did you just do what you needed to do?

THE WITNESS: Well, I really didn't know. I figured if there is anything specific they wanted done, somebody at the theatre, management-wise or whoever, would tell us what to do, otherwise we would just go down and walk in the concession stand, say hello, let them know you were there, and go out on the lot, walk around.

THE COURT: Come out from the witness stand, Mr. Lilly, and stand, if you would, out in front of that round table facing the door. I am going to ask you to believe that the round table behind you is the median, that the traffic coming from Richmond is coming from your left. Do you understand? You have got your back to

the theatre entrance, the driveway is over on your left side coming in, and one coming out is over here on that side (indicating), and that's this end of the island where your car is parked.

I know you are not far enough out there, assume you are standing there. Would you describe now, tell the jury how you held your flashlight and which way your body was positioned.

THE WITNESS: As a rule, I was standing on the highway here, I was standing, motioning with this hand like this (indicating), and my light there, and my hand is up this way (indicating), I am directing traffic. Every now and then, I looked over my shoulder to see -- to watch to see if anything is coming, because we stopped this traffic back here (indicating). Then, anything back here, we let them go through.

THE COURT: Any questions while he is up there?

FURTHER EXAMINATION BY MR. HIXON:

Q Who has the right-of-way on that right?

A As a rule, the oncoming traffic on the main road has the right-of-way.

Q Over the driveway-type that would be traveling west on Patterson Avenue, is that correct?

A Yes, sir, as a rule, yes, sir.

Q The direction from which Mr. Farrell's vehicle was coming --

A No traffic control, yes, sir.

THE COURT: Mr. Rowe, do you want to tell me what the question is first?

JUROR ROWE: Is it my understanding he had his back to the traffic coming out of the theatre, or is he facing the traffic coming out of the theatre?

THE COURT: As he is standing up there now, the traffic, that would be going in, would be coming behind his back, toward you; over here toward me would be the traffic along the side that he has got his back to the median strip. If you can relate to the photograph that is in evidence, the line of cars are down toward that door behind you, they are coming up waiting to turn in around the jury box.

JUROR ROWE: But he is not facing in the direction of the traffic out of the theatre. By facing in that direction, he is standing just like this and traffic is going -- coming from the direction of the court reporter up along his side, and oncoming traffic is coming from his left shoulder down Patterson Avenue. So, is he really diagonally to both traffic? Is that right, sir?

THE WITNESS: Yes, sir, I never did turn my back

to either one.

THE COURT: Another way of looking at it, your shoulder, the right shoulder, is to the outgoing traffic.

THE WITNESS: Yes, sir.

THE COURT: Anything else while he is up?

FURTHER EXAMINATION BY MR. KAUFFMAN:

Q With regard to the question Judge Walker asked you about specific duties when you got to the theatre, did you ever have any dealings, at all, with Mr. Bentley or anyone from R B Productions?

A Not that I know of, I didn't, I didn't know Mr. Bentley. In fact, I don't think I ever seen him. I heard about him, but I had never talked to him.

Q But he never did give you any instructions or anything else?

A No, sir.

THE COURT: Mr. Thurmond.

FURTHER EXAMINATION BY MR. THURMOND:

Q Mr. Hixon asked you to put your back to the jury, would you get out of the witness box once again. Mr. Hixon asked you who had the right-of-way on Patterson Avenue, traffic out on Patterson Avenue or traffic coming out of the theatre. You told him, of course, that under general rules the ones on Patterson Avenue. Now, that rule changes when the police officer

is there directing traffic, doesn't it?

A I said with no traffic control.

Q And what you meant by that would be an officer directing traffic?

A Yes, sir.

Q Did the flashlight do any good at all?

A Yes, sir.

Q You had plenty of light from it, did you?

A Yes, I think so.

Q Were you motioning it so that it would be visible to anyone westbound?

THE COURT: Mr. Thurmond, you are back on redirect, you are going back into your old case. I didn't mean to open up everything. One shot is enough at one time.

Anything else for Mr. Lilly? May he be excused?

MR. HIXON: Yes, sir.

THE COURT: Mr. Lilly, you are free to go.

(The witness stood aside.)

THE COURT: Next witness.

MR. HIXON: For the record, we have a stipulation that is a matter of fact that John Farrell was killed, as a result of this automobile accident. I believe the defendants have agreed.

THE COURT: Is that true, gentlemen?

MR. KAUFFMAN: No dispute.

THE COURT: That is part of the evidence in the case.

MR. HIXON: If I could have just a moment.

THE COURT: I believe we have been up here about two hours, we will take a brief recess.

(A brief recess was taken.)

THE COURT: Next witness, Mr. Hixon.

MR. HIXON: Mr. Alvin Wood.

THE COURT: Mr. Wood, report to the courtroom.

ALVIN L. WOOD, having been sworn, testified in behalf of the plaintiff, as follows:

EXAMINATION BY MR. HIXON:

Q Mr. Wood, will you state your full name for the record, please.

A Alvin L. Wood.

Q And where do you live, Mr. Wood?

A Route 634, Box 581, Gum Spring, Virginia.

Q And by whom are you employed?

A Goochland County Sheriff's Department.

Q And how long have you been with the Goochland Sheriff's Department?

A Seven years.

Q Have you ever worked at the Patterson Drive In

Theatre?

A Yes, I have.

Q What kind of work did you do, when you were over there?

A Checked the vehicles to make sure that everyone was of age before entering into the movie, and assisting with traffic if needed.

Q And what?

A Assisted with traffic if needed.

Q Did you do that customarily, on a routine basis?

A It depended on the amount of traffic involved.

Q When you worked, how much did you get paid?

A $25.00.

Q And who paid you?

A Patterson Drive In Theatre.

Q And they paid you in cash?

A Yes, sir.

Q You would sign a voucher for the work you had done?

A Yes.

Q Are these your signatures, Mr. Wood, on these vouchers?

A Yes, they are.

MR. HIXON: I would like to have those marked as Plaintiff's Exhibit No. 8.

THE COURT: So marked.

(Petty cash vouchers, in amounts of $25.00 each, signed by Alvin L. Wood, were marked PLAINTIFF'S EXHIBIT NO. 8.)

BY MR. HIXON:

Q On these vouchers, you have got the words "traffic control", did you write that on there?

A No, I did not.

Q Do you know who did?

A No.

Q What about this one that is not typed on, but handwritten the words "traffic control", did you write that on there?

A I can't recall writing that.

Q Okay.

A I believe -- I don't believe that's my handwriting.

Q Do you know who did write it on there?

A No, I don't.

Q Were these vouchers given to you, when you received your $25.00 payment?

A We signed them upon receipt of the $25.00, yes.

Q Who presented them to you to be signed?

A Sometimes, it was the manager at that time, at the Patterson Drive In Theatre, or either another gentlemen

who worked at the booth for people coming in.

Q The "manager", who are you referring to?

A At that time, it was, we called him Mike, I don't know his last name.

Q And who was the manager at the time of Mr. Farrell's accident?

A I imagine -- I don't know your name.

Q The lady that is seated --

MR. THURMOND: Your Honor, please, I object to "I imagine", that is worse than guess.

BY MR. HIXON:

Q Point to the person in the room for whom you signed the vouchers.

A At that particular time?

Q Yes.

A No one in the room.

Q Did you receive payment from anybody in the room for performing services?

A No.

Q Mr. Wood, when you reported to work, how would you know what you were supposed to do?

A What are you referring to, my job, itself?

Q No, at the Patterson Drive In?

A It was a routine thing, each time I reported

there, it was the same routine, according to how much traffic was involved, whether I do this or whether I handle traffic or whether I checked cars or whatever, it always depends on what movie is playing.

THE COURT: How did you decide whether or not to direct traffic or not?

THE WITNESS: When you are referring to traffic, I am referring to 3:00 o'clock and 4:00 o'clock in the morning, when traffic comes out, traffic going in, all we worry about was the age limit.

THE COURT: But how was it you determined that is what you would deal with, at all, who made that decision?

THE WITNESS: No one made that decision. At that time Mike asks will we help, that they were handling maybe 325 cars. The earlier show, you had traffic that needed to come out and you had maybe 50, 60 cars sitting there waiting to go in. Someone had to handle it or else you would have more confusion.

BY MR. HIXON:

Q And when Mike asked you to do this, what was your response?

A We helped them.

Q "We", who are you referring to?

A What other deputy was on.

Q At the time you worked, always two deputies on?

A Yes.

Q Did you have any special equipment with which you were directing traffic?

A What are you referring to as special?

Q Well, did you have any flares?

A Yes.

Q Did you use flares?

A When I worked traffic, yes.

Q What about the light on top of the sheriff's vehicle?

A Sometimes I might, sometimes I won't.

Q Depending on the circumstances?

A Yes.

Q Did you ever have a reflective vest?

A No.

Q Did you ever wear one?

A No.

Q When did you know when you were to let cars in the theatre?

A We got permission, at that time. I would say the manager, he let us know when he wanted the cars coming in.

Q Would he come out and tell you to let the cars in?

A Right.

Q I see. On one of these, you marked, on May 5th, 1978 --

A I can't recall.

Q Do you recall seeing that (indicating)?

A I see the date on it.

Q Who was the manager?

A I have no idea, I can't recall back in '78.

Q When you were working, was Mrs. Margaret Weston ever the manager?

A I took it for granted Mrs. Weston was the manager.

Q Well, did Mrs. Weston ever come out and tell you to let the cars in?

A I can't say Mrs. Weston ever told me to let the cars in. I worked with her son more than I worked with her.

Q Her son. What is his name?

A I imagine Mr. Weston, I have no idea.

MR. THURMOND: Imagine is worse than guess, imagine this and imagine that is not a qualified response with knowledge.

THE COURT: What do you know about the gentleman you worked with, Mr. Wood. Did you know his name?

THE WITNESS: No, sir, I just knew he worked there.

BY MR. HIXON:

Q Do you know who employed him?

A No, I do not.

Q How many cars have you seen, backed up on the side of Patterson Avenue, waiting to get in?

MR. KAUFFMAN: I would object to that.

THE COURT: Objection sustained.

BY MR. HIXON:

Q On the nights you worked, what time were you supposed to report to work?

A Usually, 12:00 o'clock.

Q And how late did you work?

A Until the last movie was over, which was between 3:30 o'clock and 4:00 o'clock.

Q During the time you were working, did you ever get paid by both Patterson Drive In and the County of Goochland for services, serving as a deputy sheriff?

A No, sir.

Q You only received pay from one at a time, is that correct?

A Yes, sir.

MR. HIXON: That is all I have.

THE COURT: Mr. Thurmond.

EXAMINATION BY MR. THURMOND:

Q Mr. Wood, on that point, you were paid a flat salary, as a deputy sheriff, weren't you, sir?

A That's true.

Q And you are paid that whether you work at Patterson Drive In or anywhere else, don't you?

A That's true.

Q Now, your reason for two deputies going, that is a police rule that the sheriff's office has, isn't it, they don't want you working alone?

A That is correct.

Q All right, sir. You work in fairs?

A Correct.

MR. THURMOND: That is all I have.

THE COURT: Mr. Kauffman.

EXAMINATION BY MR. KAUFFMAN:

Q Mr. Wood, as deputy sheriff, aren't you on call 24 hours a day?

A Yes, sir.

Q And you get paid the same salary whether you work 50, 60, or 80 hours—is that correct?—as a deputy sheriff?

A That is correct.

Q And when you arrive at the Patterson Drive In Theatre, don't you call in to the police department to let them

know you are there?

A Most cases, we advise the dispatcher when we leave the office or if we are at the office that we are marking out of service, but we will be at the Patterson Drive In if they needed us, if anything else arises.

Q You aren't subject to call, if you are on duty at Patterson Drive In?

A Yes, sir.

Q You always work in uniform directing traffic, don't you, at Patterson Drive In?

A Yes, sir.

Q Did you ever have any dealings with Ray Bentley, at Patterson Drive In Theatre?

A No, sir.

Q Did he ever tell you what you were supposed to do?

THE COURT: If he didn't have any dealings with him, he couldn't have told him. Let's go on.

BY MR. KAUFFMAN:

Q When you refer to the manager there, were you referring to the gentleman as Mike?

A That's what we called him, just Mike.

Q And he was the one that talked to you about what you were supposed to do there?

A Yes.

Q Do you know of anyone else, besides Mike, who gave you any directions as to what you were supposed to do?

A No, after he left Patterson Drive In, the procedure continued to be the same.

Q Did you ever see Mr. Bentley there?

A I can't recall that I have.

MR. KAUFFMAN: That is all I have.

THE COURT: Mr. Hixon.

MR. HIXON: Your Honor, I would like to ask a question I did not ask on direct, with regard to whether or not he was working that night. I mean, I didn't ask him.

THE COURT: Any objections?

MR. THURMOND: You mean --

MR. KAUFFMAN: The night of the accident?

MR. THURMOND: -- working the night of June 24th or 25th?

THE COURT: Were you working the night of the 24th, or morning of the 25th?

BY MR. HIXON:

Q The night the Farrell boy was killed?

A No, sir.

Q I hand you a petty cash voucher --

MR. KAUFFMAN: Can we see that?

RAYMOND B. BENTLEY, JR., called as an adverse witness in behalf of the plaintiff, was sworn and testified as follows:

EXAMINATION BY MR. HIXON:

Q State your full name.

A Raymond B. Bentley, Jr.

Q Where do you work, Mr. Bentley?

A I am employed by Neighborhood Theatre.

Q And how long have you been with Neighborhood Theatre?

A Since 1968.

Q And would you describe, or tell the jury what the defendant in the case, R B Productions is.

A R B Productions is a partnership between Neighborhood Theatre and myself.

Q A fifty-fifty partnership?

A Yes.

Q What is the business of that partnership?

A The exhibition and promotion of specific midnight and late shows in theatres around the country.

Q Do you just work here in the Richmond area?

A No, I don't.

Q You cover the State of Virginia?

A Yes, sir.

Q Is the nature of that work known in the trade business a four-wall deal?

A Much of it, yes.

Q Was the nature of the transaction that you had for the use of the Patterson Drive In Theatre on June 24th and 25th, 1978 a four-wall deal?

A Yes, it was.

Q Tell the jury what a four-wall deal is?

A A four-wall deal is when we go in and rent a theatre, it is all four-walls. We rent the theatre and present the show. The money that comes from the box office belongs to us.

Q Who pays the projectionist?

A The theatre pays the staff, and the projectionist comes out of the rental that we pay to the theatre.

Q How about the income from the concession stand?

A That belongs to the theatre, 100 per cent.

Q Who pays the manager?

A Well, the manager may be paid by the owners of the theatre. We pay the manager a bonus for staying late with us, seeing the show out.

Q How much did you pay Margaret Weston, if anything, on June the 24th and 25th?

A We paid her $50.00 for that weekend.

Q Did you do that each time that Mrs. Margaret Weston stayed there?

A Yes, sir.

Q Was there a requirement, a condition of your contract to lease the premises, that you pay Margaret Weston?

A Yes, sir.

Q What about the deputy sheriffs, did you pay them?

A Yes, sir.

Q How much did you pay them?

A $25.00 per man, per night.

Q What services did you pay them for?

A The theatre owners insisted that we have a policeman on the premises during the late shows, because of the late hour and the nature of the crowd that came to the late shows. The County of Goochland had a requirement that two police officers had to work together, they couldn't send just one.

So, we went along with the theatre's requirement that the police officer, or in this case, the police officers, be there each time we had a show.

Q Now, this requirement you say was a requirement of the theatre?

A Yes.

Q You are talking about Mr. Thurmond's client, Glenmar?

A Yes.

Q And this required you to have these policemen there?

A Yes.

Q And required you to pay them?

A Yes.

Q Did they tell you why they wanted these policemen there?

A The management, they had a general overseer manager at the time we started during the late shows, and he said he wanted a policeman there, if they should ever have a situation arise that I could not handle in the theatre.

Q Well, now, Mr. Bentley, didn't you know that one of the reasons they were there was to direct traffic?

A No, I did not.

Q You didn't know that?

A Not to direct traffic, no.

Q Okay. Who were the police to report to? I am talking about the deputy sheriffs.

A I would assume they would have reported to the manager that called and hired them each week.

MR. THURMOND: If Your Honor please, that is an assumption, isn't it? I don't know, other than that I object to that answer.

THE COURT: Ladies and gentlemen, the answer is an assumption and conjecture, and will not be admissible.

BY MR. HIXON:

Q Do you recall the depositions that were taken in our office September 24th, 1979?

A Vaguely, yes.

Q And your answer to questions that --

MR. THURMOND: What page?

MR. HIXON: Page 91.

MR. KAUFFMAN: What line are you on?

THE COURT: What line are you referring to, Mr. Hixon?

MR. HIXON: Line 18, Your Honor.

The question was asked, "And did you find that they assisted in any way in getting traffic in and out of the theatre?"

THE COURT: Well, that isn't along the line you asked him.

MR. HIXON: His answer is directed to that issue.

MR. KAUFFMAN: I disagree with that, but I certainly have no objection to him reading the answer.

MR. HIXON: I would like to read the answer then.

THE COURT: All right, sir.

MR. HIXON: The answer is, "They generally sat in

the patrol cars in the back of the theatre, in the concession building and watched the movie, and if we had someone run the gate, that is someone coming in without paying and just driving past the gate, or if we had a rowdy crowd and bothering someone, had a complaint, then they would assist. If the manager wanted them for any purpose, they reported directly to the manager, to this woman, and they were to do so. Other than to just greet them and observe that they were paid on a couple of evenings, I never talked with them myself."

BY MR. HIXON:

Q Do you recall making that statement?

A Yes.

Q In that statement, you say they reported directly to the manager, correct?

A Yes.

Q And the woman you are talking about is Mrs. Margaret Weston?

A I did not know who the manager was, during the summer of 1978. I knew Mike was the manager of '77 and '76. And I knew he worked closely with the police officers, but after he left --

Q To whom are you referring to?

A The woman, Mrs. Weston, whom I just met this

afternoon, this morning.

Q And it was your answer that these deputies reported to that woman?

A Well, I was told that there was a lady manager, and if an issue arose -- and that is who I assume they would report to.

Q Now, who told you that?

MR. THURMOND: Your Honor, that again is a mere guess or assumption. What he has been told by somebody else is not admissible. Objection.

THE COURT: If it was told to him by the defendant Glenmar. And the next question is: Who told you?

THE WITNESS: I believe it was Mr. Sterling, the district manager at the time.

BY MR. HIXON:

Q And he was the district manager for whom?

A For Glenmar.

THE COURT: Objection is overruled.

BY MR. HIXON:

Q How many ticket sellers did you send out to the theatres to collect money?

A Normally one, but if we sent a woman, she often would take her boyfriend or husband. Because of the late hours, she didn't want to be there, by herself, in the box office.

Q Did you ever have any discussions with her? Was she your employee? Right?

A Yes.

Q And she worked, during that time, for Neighborhood Theatre?

A Some of the girls did, some didn't.

Q What about the one that worked the night of June 24th, the night of John Farrell's death?

A Rita Chapman.

Q Did she work for Neighborhood Theatre?

A No.

Q She did not?

A No.

Q These petty cash vouchers that have been introduced into evidence, are these your forms?

A Some of them. Most of them that I observed today were District Theatre, which was the former owner of the theatre before Glenmar. There may be a few later that were my form, they would just say "petty cash voucher" on them.

Q And these forms that we have introduced, the petty cash vouchers, they are from your books and records?

A Yes.

Q And you fished them out, yourself?

A Yes.

Q You have seen them before this case arose, haven't you?

A Well, if you will show me specifics ones, I can tell you whether or not I have.

Q Well, let's take this one, 8-19-77, what does it say the expenditure is for?

A "Traffic control, Patterson Drive In Theatre".

Q And these are your records, correct?

A These were typed by the Drive In. They came out and they are given to us for the $25.00 deduction from our box office receipt.

Q Now, these are your records, correct?

A Right.

Q Who typed in "traffic control"?

A The Drive In Theatre.

Q And they sent it on to you, right?

A Yes.

Q And you would put this in your files to substantiate this payment?

A Yes.

Q Did you ever call up Glenmar and tell them not to type "traffic control", because these people aren't supposed to do that?

A No, because I knew it was for a police officer.

I knew what it was for.

Q Don't almost all of them say for "traffic control"?

A All but two of them, yes, sir.

Q And on each of those occasions, these records went into your file and you never made any effort to strike out the words "traffic control"?

A No, sir, it wasn't normal to do that.

Q Mr. Bentley, didn't you know, as a matter of fact, that these Goochland County deputy sheriffs were out, in fact, directing traffic?

A No, sir.

Q You never saw them, did you?

A No, sir.

Q Did you ever go to the theatre?

A Yes.

Q And on the occasions when you went out there, you never saw --

A I sold tickets at the box office. And from the box office, I knew when they were at the theatre, they were checking ID's or I may have saw them directing traffic.

Q Did you ever tell anybody at the theatre, either Mrs. Margaret Weston or anybody else, don't let these deputy sheriffs direct traffic while they are employed by us?

A No, sir.

Q And you didn't ever see the traffic back up on the side of the road, prior to the opening of the box office?

A Yes, sir.

Q And how far back would it extend on Patterson Avenue?

MR. KAUFFMAN: I object to that for the same reason, Your Honor.

THE COURT: Objection sustained.

BY MR. HIXON:

Q Did you see it on the night of John Farrell's death?

A I was not there.

Q Were you aware of the need of some sort of traffic control, for the production that you were playing?

MR. KAUFFMAN: I will object to that, it is a legal conclusion whether or not there was a need for traffic control.

THE COURT: Objection sustained.

BY MR. HIXON:

Q Now, going back to your payment of Margaret Weston, you were paying her $50.00 per weekend, is that correct?

A I was paying whoever the manager was, yes, sir. I didn't know it was specifically Margaret Weston.

Q What was she supposed to do for this payment?

A This was a compensation for her staying with the theatre until sometimes 4:00 o'clock or 5:00 o'clock in the morning.

Q Was she supposed to handle any problems that came up, during that period of time?

A Well, as manager of the theatre, she would handle anything that arose, yes, sir.

Q Do you recall the two movies which were shown?

A "Carrie" and "Autopsy".

Q All right, sir, that is all I have.

MR. THURMOND: I reserve the right to call him, Judge, but I have no questions.

THE COURT: All right, Mr. Thurmond.

MR. KAUFFMAN: I have no questions of him.

THE COURT: Mr. Bentley, you may step down, sir.

(The witness stood aside.)

MR. HIXON: I think we have agreed to call Mr. Walker out, if you are prepared to go forward, Mr. Kauffman.

THE COURT: Ladies and gentlemen, there is a witness here for one of the defendants, who has some problem coming in tomorrow, and while the defense would not ordinarily start their case until after the plaintiffs' witnesses, we will take a couple of witnesses out of sequence. The reason we are going to do that is so that we are at a point now where, I

believe, the remaining witnesses for you, Mr. Hixon, are Mr. Farrell and some of their children.

MR. HIXON: Yes, sir.

THE COURT: Any others?

MR. HIXON: Just the school teacher.

THE COURT: So, we are ready to take this witness out of turn.

Mr. Walker, report to the courtroom, please.

EVIDENCE ADDUCED IN BEHALF OF THE DEFENDANTS

FRED C. WALKER, having been sworn, testified in behalf of the defendants, as follows:

EXAMINATION BY MR. KAUFFMAN:

Q State your full name.

A Fred C. Walker.

Q And where do you live, sir?

A Route 1, Box 190, Glen Allen.

Q And what is your age?

A Thirty-seven.

Q Mr. Walker, did you have occasion to go to the Patterson Drive In Theatre on June 24, 1978?

A Yes, sir.

Q Do you remember what time you arrived at the theatre that night?

A Right before dark.

Q And did you see two movies?

A Yes, sir.

Q What time was it when you left?

A I suppose around midnight.

Q And as you were leaving the theatre, can you describe the traffic, as you left through the exit of the theatre, itself?

A Very heavy.

Q Were there any cars behind you and ahead of you?

A Yes, sir.

Q Do you have any idea of how many cars were ahead of you?

A One.

Q All right. What did that car do, what did you see that car do?

A Well, he was waiting to get on to the main highway, which the rest of us were. There was an officer directing traffic, motioning him out.

Q Where was the officer?

A He was standing on the pavement, on the outside lane.

THE COURT: Let me get a clarification. You say there was one car ahead of you. You say this was the

only car, the first car out?

THE WITNESS: No, sir.

THE COURT: There were other cars in front of that one?

THE WITNESS: Yes, sir.

BY MR. KAUFFMAN:

Q Had you seen any other cars exiting, before you got up to the point ready to go on to Patterson Avenue?

A I would say 15 to 20, from the time you get to the point where you can see the main road where you exited.

Q And you saw one car in front of you?

A Yes, sir.

Q Did he have his lights on?

A Yes, sir.

Q Did you have lights on?

A Yes, sir.

Q Where was the police officer, when you first saw him?

A He was on the pavement, on the outside lane.

Q And he had been there for some period of time that you observed?

A All the time that, like I said, there was 15 to 20 cars ahead.

Q What was he doing?

A Directing traffic.

Q Would you tell us how he was directing traffic?

A Looked to me like he had a flashlight.

Q Could you tell which way he was facing?

A He was facing toward the theatre.

Q And what was he doing?

A He was directing traffic with his right hand, with the flashlight, coming out the theatre.

Q And you say 15 or 20 cars left?

A Yes, sir.

Q What happened when the car in front of you pulled out?

A Well, it was an accident. Another car comes, going westbound, ran into the side of him.

Q Did you see this other car?

A Just a glimpse, before it hit. It happened very quick.

Q Did the other car have his lights on?

A Yes, sir.

Q Where was the police officer, when these cars hit?

A Well, he made a very quick jump to get out of the way of the other car.

Q Do you know what lane of traffic this car was in,

westbound on Patterson Avenue?

A Inside lane, when it hit.

Q The right-hand lane. And what part of that car hit the car that was in front of you?

A The front end.

Q And what part of the car that was in front of you hit?

A It hit the left side, right about the door.

Q How far were you behind that car, Mr. Walker, do you have any idea, that is the car that went out?

A It was almost bumper to bumper going out of there.

Q Did you stop when you got to Patterson Avenue, or was it steadily moving along?

A It seemed to me like one car at a time.

Q And did you ever look to your left and your right, as you were stopped there?

A Yes, sir.

Q Do you see any oncoming traffic from Richmond, going westbound on Patterson?

A I didn't see any traffic moving until this accident occurred, just a few seconds before it happened, but there were a lot of cars parked on the left-hand side waiting to get in.

Q You never saw any westbound traffic?

A No, sir.

Q Other than the cars parked to get in to the movie?

A That's the only ones.

MR. KAUFFMAN: I have no further questions, Your Honor.

THE COURT: Mr. Hixon.

EXAMINATION BY MR. HIXON:

Q Mr. Walker, you say the only thing you saw was just a glimpse of the Farrell vehicle, before the accident occurred, is that correct?

A Yes, sir, a moving light. The other cars setting on the left-hand side was stationary.

Q The cars that were stationary off the shoulder of Patterson Avenue, how far back up Patterson Avenue did they go?

A After he left, I would say about two miles, all the way back to the shopping center.

Q Is that all the way back across Tuckahoe Creek?

A Yes, sir.

Q And up to a shopping center, up in Henrico County?

A Yes, sir.

Q And you saw those cars stacked up there, when you left?

A Yes.

Q Now, when you were coming out of that drive-in, how far, or how close do you have to get to Patterson Avenue before you clear the line and can look back toward Richmond?

A I don't believe I understand your question.

Q Okay. There is a screen and a large wall that surrounds the Drive In Theatre, correct?

A Yes, sir.

Q You come out of the Drive In Theatre on the exit, or the far west side, correct?

A Yes, sir.

Q And when you are coming out, you can't see around that screen until you have gotten up to Patterson Avenue, can you?

A I would say probably two car lengths.

Q Two car lengths?

A Yes.

Q And you can look back to your left?

A Yes, sir.

Q Now, when you are looking back to your left, you only saw a bunch of cars stacked up on Patterson Avenue, is that correct?

A Yes, sir.

Q You didn't see Mr. Farrell's car, or the car in this litigation, until it got right on out in front of where the accident occurred, isn't that correct?

A Yes, sir, just a few seconds before it occurred.

Q The time you saw it, had it begun to skid or stop?

A Not that I could tell, no, sir.

Q Can you estimate the speed of Mr. Farrell's car?

A No, sir.

Q Now, you say that the deputy sheriff was out on the edge of Patterson Avenue, is that correct?

A He was on the blacktop, I would say about in the center of the outside lane.

Q The center of the outside lane, that would be the lane that is closest to the Drive In Theatre?

A Yes, sir.

Q And if I told you that the middle of that lane was approximately 12 feet, and you place him about 6 feet off the edge of the --

A Yes, sir.

Q -- shoulder, is that correct?

A Yes, sir.

Q You couldn't see him very well, could you?

A It was right dark and I believe he did have on a dark uniform.

Q You saw this police officer was letting cars out one at a time?

A Yes, sir.

Q And when he was letting them out, he was facing toward the vehicles that he was letting out?

A Yes, sir. He was stationed toward the theatre.

Q All right. And he had the flashlight in his right hand, is that correct?

A Yes, sir.

Q And now, if he were facing toward the theatre, that means his back was toward Richmond, isn't that correct?

A No, sir.

Q No? Okay. Well, perhaps you can tell me then. He is facing -- let's assume the theatre is here (indicating) at the jury box. Richmond is back here (indicating). Patterson Avenue runs this way (indicating). He was facing toward the theatre like this (indicating)?

A I know that road runs west and east, and Richmond is to the east of the theatre.

Q Okay. And was his back toward the east?

A No, his back was toward the south. He would be facing like this (indicating), with the theatre -- if that was the theatre, yes, sir.

Q And the Farrell vehicle was approaching from this area (indicating)?

A Yes, sir.

Q His left hand was pointing toward Goochland then,

is that right?

A Yes, sir.

Q And had the flashlight in the right hand?

A Yes, sir.

Q Did you see the deputy sheriff stand there with his left hand up for traffic, where the Farrell vehicle was coming from?

A No, sir.

MR. HIXON: Thank you, that is all.

THE COURT: Mr. Thurmond.

EXAMINATION BY MR. THURMOND:

Q Sir, Mr. Walker, you didn't have any problem seeing that light that the deputy sheriff had in his hand, did you?

A No, sir.

Q Good flashlight?

A Well, I don't -- didn't see how bright it was, it was dark. A small light was right noticeable.

Q Right noticeable.

A At the distance I was from, yes, sir.

MR. THURMOND: All right, that is all I have.

THE COURT: Mr. Walker, in order to come out, you have to come back by the ticket booth from the right side as you exit, or do you come back --

THE WITNESS: You come by the ticket booth going to the right.

THE COURT: And you are going to get in line, of course?

THE WITNESS: Yes, sir.

THE COURT: At what point, as you come out the theatre, will you see what is happening up on the highway? How far back are you before you can see the road and the officer, and all those things?

THE WITNESS: Well, to see the road and the officer, I would say approximately two or three car lengths.

THE COURT: So from the time you can see, there are only a couple of cars in front of you, as you are waiting to go out?

THE WITNESS: Yes, sir.

THE COURT: And this is the first visibility you have --

THE WITNESS: Yes, sir.

THE COURT: -- of the situation?

THE WITNESS: Yes.

THE COURT: And at some point, you could see the cars immediately in front of you. Could you see the ones in front of that car?

THE WITNESS: Yes.

THE COURT: And what did you see happen, in terms of their going out?

THE WITNESS: Like I said, the officer was using his right hand with the flashlight, and motioning the cars to come out with his left hand, and moving his flashlight to point out, telling them when to go.

THE COURT: Anything else? Mr. Walker, you are excused.

(The witness stood aside.)

THE COURT: Next witness. Did you have some short witnesses you wanted to get on this afternoon? Do you have some people you want to get on besides Mr. Walker that have problems? I think there was an Officer Payne here.

MR. KAUFFMAN: Mr. Payne is out there. Dr. Imajo is on call, I didn't call him.

THE COURT: Would you like to put him on?

MR. KAUFFMAN: Yes, sir, that will be fine.

THE COURT: Mr. Payne, report to the courtroom. Same thing, this will be taken out of order, ladies and gentlemen, same thing, we just want to get this out of the way.

JAMES T. PAYNE, having been sworn, testified in behalf of the defendants, as follows:

EXAMINATION BY MR. KAUFFMAN:

Q Mr. Payne, state your full name.

A James Temple Payne.

Q And where do you work, sir?

A Goochland County Sheriff's Department.

Q How long have you worked for the Goochland County Sheriff's Department?

A Started the first day of August, 1977.

Q And you are still employed there?

A That is correct.

Q And you were employed there on June 24 of 1978, when this accident happened involving the Patterson Drive In?

A I was employed on June the 24th, and I believe this accident occurred on June 25th.

Q In the early morning hours?

A Yes, sir.

Q What were your work hours that day?

A From 3:00 o'clock to midnight.

Q And you got off work at midnight?

A You are supposed to be off at midnight, yes.

Q What did you plan on doing that night, after you got off work?

A On this particular night, I was going down to work at the Patterson Drive In.

Q Who contacted you with regard to working at the Patterson Drive In?

A As a general rule, Sergeant Lilly, at that time he was a sergeant in the department, he would contact -- ask the officers, the ones that wanted to work. Of course, I was working on a shift with him, at that given time.

Q Were you-all in separate patrol cars?

A We were.

Q What time did you arrive at the Patterson Drive In that night?

A I can't recall, sir. I stopped a speeding violation over on my way down on Route 6. Of course, at that time, I was issuing a summons when I heard the traffic, over the radio.

Q So you had stopped a traffic violator on Patterson Avenue, between the time you got off duty at midnight and the time you arrived at this theatre to report to work there?

A That is correct.

Q Were you off duty, at that time?

A I don't consider it being off duty, no, sir, we are actually on duty 24 hours a day.

Q Did you arrive at the theatre, after the accident occurred?

A I did, sir.

Q What did you find, when you got there?

A When I arrived, of course, I had heard the traffic come over the radio about the accident had occurred, and the rescue squad was notified. Of course, when I arrived, I did determine that one of two cars -- two vehicles had collided together.

Q Did you take any measurements of the point of impact and where the accident happened?

A I did, sir.

Q And what did you find?

A If my recollection serves me right--of course the Court is supposed to have all of the records--if my recollection serves me right, it was 127 feet of skidding, skid marks, left by the Farrell vehicle up to the point of impact.

Q And where did you determine the point of impact to be?

A It struck Mr. Rae's vehicle right in the left front fender and the passenger door.

Q Which lane of traffic was that in?

A It would be -- the Farrell vehicle was traveling westbound. Of course, Mr. Rae's vehicle, if my recollection serves me right -- if I am pronouncing the name -- was onto Route 6, Mr. Farrell's vehicle was in the extreme right-hand lane.

Q Did you find any damage to these two vehicles?

A I did.

Q What damage did you find?

A Very extensive damage to the Farrell vehicle, of the far front of his vehicle, I estimated it as a total loss on the scene. And it was extensive damage done to Mr. Rae's vehicle. If my recollection serves me right, I think I estimated the damage to be approximately $2,000.00 on the scene.

Q Now, had you ever worked at the theatre, before that night, June 24th or 25th, had you ever been hired to work there?

A Yes, I had worked down there on two or three other occasions.

Q Had you ever met Mr. Ray Bentley on those occasions?

A No, sir, I had not.

Q Had you ever been advised by anyone what you were supposed to do, when you were hired or when you worked at the theatre?

A No, I hadn't.

Q Sir?

A No, I was never advised of, you know, specific details or nothing, no, sir.

Q Did you ever talk to or contact any of the employees down there about what you were supposed to do?

A I never have, no, sir.

THE COURT: Mr. Hixon.

MR. HIXON: Yes, Your Honor.

EXAMINATION BY MR. HIXON:

Q Mr. Payne, you have been working with the Goochland County Sheriff's Department since August of 1977, is that correct?

A That is correct.

Q So, you had been there less than a year at the time of this accident, is that correct?

A Yes, I would have been.

Q Now, when you went out and worked, you got paid $25.00 a night, correct?

A I believe that was the correct figure, yes, sir.

Q And each time you worked, you signed a petty cash voucher, isn't that correct?

A That is correct.

Q And these are your signatures, aren't they, Mr. Payne, on the petty cash vouchers (indicating)?

A Yes, they are my signatures.

MR. HIXON: I would like to have these two introduced as Exhibit 9.

MR. KAUFFMAN: May we see them, Your Honor?

THE COURT: Let me clip them first (marking).

(Two petty cash vouchers, in the amounts of $25.00 each, signed by James T. Payne, were marked PLAINTIFF'S EXHIBIT NO. 9.)

BY MR. HIXON:

Q These vouchers show, don't they, that you were getting paid for traffic control, isn't that correct?

A Well, we were down there to check I.D.'s to make sure everyone was 18 years of age or above. If there were any other disturbances, I would assist. If there were any traffic problems, I might have.

Q You checked I.D. for X-rated movies, helped with any disturbances, and helped with traffic, isn't that right?

A I never had any contact with directing traffic, myself. The few nights that I worked, if I came to a bottleneck situation, I am sure that any of the officers working would have.

Q You say you, yourself, never directed any traffic?

A I never have. The few nights that I worked, myself, I never did. I helped checking I.D.'s for all the vehicles that was entering in, and being there if there is any other occurrance.

Q How did you happen to sign the voucher that said you were paid $25.00 for directing traffic?

A I just -- when we arrived, sir, a lot of nights when you would arrive at the early movie, you would get there when people would have already gotten themselves out. At the

starting time, we started letting the other cars in for the late movie, started conducting the vehicles, checking I.D.'s so that all passengers in the vehicle -- to make sure they were 18 years above, or if any infants were in the vehicle, we would turn them away.

Q You didn't object to signing a voucher typed "traffic control"?

A I never did consider that it was considered a voucher just strictly for traffic control.

Q Who handled the schedule at Goochland County for off-duty deputy sheriffs?

A I don't know that it was ever actually what you considered a schedule.

Q Didn't Jim Lilly head this up?

A Most of the time it was Jim that was conducting this, I would say, being in that he was a sergeant.

Q And he was the one that went around to get people like yourself to help out?

A He would go around and ask the men, if you want to work the drive in this weekend.

Q And the vouchers I have shown you, I think they indicate that you worked there some five or six occasions, prior to the Farrell accident, is that right?

A I don't recall what dates I worked. Those vouchers

that you showed me, I did sign, I do not know what dates.

Q When you went to work, how did you know what to do, when you got there? How did you know that you were supposed to either take care of crowd control, check identifications, or, if necessary, direct traffic?

A Well, when you arrive, of course, you knew that the natural, main job was to check I.D.'s. Of course, like I said again, if the traffic was backed up, jammed up, as a listed officer, we would proceed to get that out of the way, to get the other people in there.

Q Well, didn't somebody from the theatre tell you that these were the types of things that you might be called upon to do?

A They might have, when the first thing started, sir. When I started working the department, I worked out there a few times. When I worked, I was with another police officer that had been with the department, I just fell right in there and done whatever I see fit to do, or see what he first told me to do.

Q That would have been Mr. Lilly, who first told you something?

A I worked with Mr. Lilly, I would say, most of the occasions. I have probably been with him, because he and I were scheduled on the same shift.

Q And he had been working a couple of years before

you, so he knew what to do?

A Yes, sir.

Q And you just followed him around?

A That is correct.

Q All right. Now, you got off duty at 12:00 o'clock midnight, isn't that correct?

A I don't consider it really off duty, because as I stated earlier, we are on duty 24 hours a day.

Q Well, do you recall a deposition where I asked you what time you got off work?

THE COURT: That is quite a different question. Ask him -- go to that question before you go to impeach him. What time did he get off of work?

BY MR. HIXON:

Q Now, the question, Mr. Payne, "Did you have any particular time you were -- "

MR. THURMOND: Page number and line number.

MR. HIXON: Page 118, line 13.

BY MR. HIXON:

Q "Did you have any particular time you were supposed to be off duty?"

A As a normal thing, you would mark off at midnight on the evening shift.

Q That is what you did, you marked off at midnight

on the evening shift, isn't that correct?

A I don't recall, at that particular time, whether I had officially marked off duty with the dispatcher or not.

Q You arrived at the scene of the accident, what, about half an hour after it occurred?

A I don't recall exactly how many minutes I arrived after it had occurred.

Q You were the investigating officer for this accident, weren't you?

A That is correct.

Q You were the same man who got paid that night for working at the Patterson Drive In Theatre, didn't you?

A I don't recall having no voucher or slip on that particular night. That I know of, I didn't, I don't recall any.

Q Is it that you don't recall getting paid, or are you telling us you did not get paid that night?

A I don't recall it, sir.

Q You were the investigating officer for that accident, isn't that correct?

A That is correct.

Q And you were the only person who investigated that accident, isn't that correct?

A That is correct.

Q And in part of your investigation, you went over to St. Mary's Hospital and you determined that John Farrell had died in the accident?

A That is correct.

Q And you say you took some measurements of some skid marks?

A That is correct.

Q Did you do that with a tape measure?

A Roller tape.

Q You took them that night?

A I took measurements that night, yes, sir.

Q Did you take them again some other time?

A No, sir.

Q Just that night?

A Just that night.

Q And did you take them, before you went over to St. Mary's Hospital?

A Yes, I did.

Q Did you take them, after you let out the traffic in the Drive In Theatre?

A No, sir, I took the measurements before the vehicles was ever moved.

Q And when you took them, it was dark, correct?

A That is correct.

Q And you are sure, you are confident that those skid marks were 127 feet?

A I have confidence.

Q Did you take any photographs?

A It was a photograph taken, yes.

Q Did you take any photographs?

A Yes, I have some photographs that I had taken.

Q Well, Mr. Lilly took some photographs for you, too, didn't he?

A Yes.

Q Let me show them to you. Is that a photograph you took of the Farrell vehicle (indicating)?

A This is one.

MR. THURMOND: You said he subpoenaed all of his records in the Court.

MR. HIXON: That is part of what has been subpoenaed into Court.

MR. THURMOND: What are you doing with them?

MR. HIXON: I got them out of the clerks file.

THE COURT: Do you have anything you want to say to me?

MR. THURMOND: I wanted to make sure what they were.

MR. HIXON: Is there an inference that I did

anything wrong?

MR. THURMOND: No, sir, I am not suggesting that.

MR. KAUFFMAN: Could I go on? May I see the pictures, Your Honor?

THE COURT: You may see the pictures.

MR. KAUFFMAN: I was advised by the clerk's office they had been misplaced.

THE COURT: It's getting late, gentlemen, you must be getting tired.

How many more are you going to use, do you know?

MR. HIXON: Probably three or four more, Your Honor.

THE COURT: Is there any objection to these photographs being --

MR. THURMOND: No, sir, not if they are the ones the witness took.

THE COURT: Well, let me go on and mark them now. Which ones are you going to offer? It will be easier to keep up with them that way.

MR. HIXON: Do you have the one I just handed to you?

THE COURT: I will mark that No. 10, I will go in sequence.

MR. KAUFFMAN: May I see that one please, Judge,

the one I haven't seen?

THE COURT: Yes, sir. These will be marked Exhibits 10, 11, 12, and 13.

(Photograph of the plaintiff's car, showing the front end, was marked PLAINTIFF'S EXHIBIT NO. 10; photograph of the accident scene, itself, was marked PLAINTIFF'S EXHIBIT NO. 11; photograph of the accident scene, showing mostly the plaintiff's car, also showing the Patterson Drive In lights, was marked PLAINTIFF'S EXHIBIT NO. 12; photograph of the skid marks at the scene of the accident, was marked PLAINTIFF'S EXHIBIT NO. 13.)

THE COURT: Are you going to want him out in front of the jury, or what is the best way to do this?

MR. HIXON: No, sir, I don't think so, not right at this point.

BY MR. HIXON:

Q EXHIBIT NO. 10, can you describe -- isn't it correct that your photograph and your report were subpoenaed into Court, isn't that correct?

A Yes, sir, they were subpoenaed into Court and then they were lost.

Q Now, does that appear -- did you see them before they were subpoenaed into Court?

A I had seen them, the pictures, but they were much, much earlier when I brought them into Court, I can't recall that.

Q Let me ask you: Can you identify that photograph (indicating)?

A Yes, I can.

Q And what is that?

A That is the picture of the Farrell vehicle.

Q And when was that taken?

A I would say this picture here was taken at Robert Collin's service station, which is Manakin Auto Service, while it was being worked on on his lot, after the vehicle was towed in.

Q And the picture shows the damage to the Farrell vehicle?

A Yes, I would say so.

Q Now, I hand you EXHIBIT NO. 11 and ask you if you can describe what scene is in that picture (indicating)?

A This is the accident scene, itself.

Q And it shows the collision of the two automobiles?

A That is correct.

Q Okay. I show you EXHIBIT NO. 12, and is that, also, showing the collision of the two automobiles (indicating)?

A It does, sir.

Q Were the skid marks on the Farrell vehicle straight?

A They were.

Q Were they in the entire right-hand lane, or west-bound lane of Patterson Avenue?

A They were.

Q I show you NO. 13, and ask you if that shows the skid marks, part of them, that you measured (indicating)?

A I cannot say, sir.

Q Is this one of the photographs that you took?

A I don't recall whether it was or not, sir.

Q All right, sir.

MR. HIXON: That is EXHIBIT NO. 13, I don't believe the witness can identify it, so I will withdraw it. The other ones I will offer in evidence.

THE COURT: All right, let me have 13 back and I will remove this label.

BY MR. HIXON:

Q In the remainder of the photographs, do you have any photographs that show where the skid marks started and where the skid marks ended?

A These skid marks here (indicating), I am not able to advise, because I don't know which ones I took, and I don't know which ones the other deputy took.

Q Well, my question is: Do you have any photographs showing the point in which the skid marks ended?

1 A No, sir.

2 Q Why didn't you get photographs of the skid marks,

3 Mr. Payne?

4 A I took photographs the best I could with the

5 camera I had. They did not develop out sufficiently.

6 Q And you are saying that from the point of impact

7 to where the skid marks started is 127 feet?

8 A That is correct, sir.

9 Q Who helped you measure those?

10 A I done it, myself.

11 Q All by yourself?

12 A Yes, sir.

13 Q Mr. Lilly didn't help you?

14 A He might have when I done it, but the figures

15 and findings was by me.

16 Q I don't understand, did he help you do it?

17 A No, sir.

18 Q So you did it all by yourself?

19 A Yes, sir.

20 Q And you can't be mistaken about the fact that they

21 were 127 feet?

22 A No, sir, that is exactly what I recorded.

23 Q Did you go out there the next day and look?

24 A I went back to the scene the next day, yes, sir.

1 Q Did you see the 127 feet of skid marks?
2 A I did, sir.
3 MR. HIXON: That is all I have.
4 THE COURT: Mr. Thurmond.
5 EXAMINATION BY MR. THURMOND:
6 Q Officer Payne, did you determine the characteristics
7 of the road, as to whether it was essentially level, at the
8 point this accident occurred or not?
9 A The area where the accident occurred, the terrain
10 is straight and level right there.
11 Q Did you examine the tires on the Farrell car?
12 A I did.
13 Q Did they appear to have good tread?
14 A That is they had sufficient tread to be tires.
15 Q Did you determine whether the driver was alone in
16 the car, at the time, sir?
17 A As far as I know, he was the only occupant in the
18 vehicle.
19 Q Is that what your investigation revealed, at the
20 scene?
21 A That is what my investigation revealed.
22 Q Can you tell us whether the Rae car was knocked
23 sideways, at all, by the impact, or --
24 A It was knocked slightly, I don't know exactly how

1 far, but it was knocked slightly, yes.

2 Q All right, sir. Now, it was past midnight, when

3 your shift that you worked normally had ended, when you stopped

4 the speed violator in the Manakin area, right?

5 A Yes, sir, it was.

6 Q Isn't it a fact that you were technically past

7 your duty hours, but this didn't prevent you from stopping a

8 speeding driver?

9 A Right.

10 Q You didn't let the fact that you were specifically

11 past your shift hours bother you in stopping this speeder that

12 you observed?

13 A No, sir.

14 Q You were dressed in your regular police officer's

15 uniform, weren't you, sir?

16 A That is correct.

17 Q Driving a police car with equipment, with a siren

18 and whirling light on top of it?

19 A That is correct.

20 Q All right, sir. Can you tell us, Officer Payne,

21 what the visibility is on Patterson Avenue, looking west and

22 approaching the scene of the accident, how far can a driver

23 see along Patterson?

24 A Approximately one half to three quarters of a mile

visibility.

Q Is that all, essentially, a straight and level road through there?

A Essentially straight and level, yes, sir.

MR. THURMOND: That is all I have, thank you, sir.

THE COURT: Any redirect, Mr. Kauffman?

MR. KAUFFMAN: Yes, Your Honor.

FURTHER EXAMINATION BY MR. KAUFFMAN:

Q Mr. Payne, these four or five tickets here that you have identified as PLAINTIFF'S EXHIBIT NO. 9, which bear your name, they also say "traffic control" on them, don't they?

A That is what is indicated on here, yes, sir.

Q But on none of these occasions, is it your testimony, on none of these occasions you directed traffic, did you?

MR. HIXON: Objection, Your Honor. This is leading the witness, it is his witness.

MR. KAUFFMAN: I am on redirect, Your Honor.

THE COURT: You are leading.

BY MR. KAUFFMAN:

Q Did you, on any of these occasions, have anything to do with traffic control?

A I didn't sir, no, sir.

Q But you did sign the ticket?

A Yes, sir.

Q And you were paid for working at the theatre?

A That is correct, sir.

Q But not for traffic control?

A That is what they are indicating on this slip, but I never got out in the road and directed traffic, as it is stated. I checked I.D.'s, and watched the theatre if there was any occurrances.

MR. KAUFFMAN: Thank you, sir, I have no further questions.

THE COURT: May Mr. Payne be excused?

MR. HIXON: May I ask him one question?

FURTHER EXAMINATION BY MR. HIXON:

Q At the scene of this investigation, did you take a statement from anyone, other than Mr. Lilly and Mr. Rae?

A No.

Q Did you find any other witnesses who had seen the accident?

A None that give any statement, no, sir.

MR. HIXON: Thank you.

THE COURT: May Mr. Payne be excused?

MR. THURMOND: Yes, sir.

MR. KAUFFMAN: Yes, sir.

THE COURT: You are excused.

(The witness stood aside.)

ROBERT THOMAS FARRELL, having been sworn, testified in his own behalf, as follows:

EXAMINATION BY MR. HIXON:

Q Mr. Farrell, will you state your name for the record, please.

A Robert Thomas Farrell.

Q And you are the father of the deceased John Farrell?

A Yes, I am.

Q Mr. Farrell, how old are you?

A Fifty-seven.

Q And where do you reside?

A In Goochland, Crozier.

Q And how long have you resided at Goochland?

A About three and a half years.

Q And prior to living in Goochland, where did you live?

A We lived in Richmond at 1514 Park Avenue.

Q How many children are currently in your family?

A Four, three of them are here today, and one --

Q Who is the fourth child?

A It is our older daughter, Margaret Farrell Taylor.

Q And why isn't she present today?

A Well, she is married and lives in Goochland, and we just felt it was not necessary for her to be here today.

Q Mr. Farrell, by whom are you employed?

A Reynolds Metals, the international division of Reynolds.

Q And what do you do for Reynolds?

A I am vice-president of operations.

Q Does that require you to travel extensively?

A Yes, sir.

Q Inside the United States or --

A Very seldom, mostly overseas.

Q Were you at home, on the night of John Farrell's death?

A Yes, I was.

Q Approximately what time were you notified of the death?

A It was around a quarter of three in the morning.

Q And did you get to St. Mary's Hospital?

A Yes, I did.

Q Did you see the scene of the accident as you went by?

A Yes.

Q Sunday night?

A Yes, I did, both going down and coming back.

Q You have to pass that in between Goochland and St. Mary's Hospital, is that correct?

A Yes, the part of Goochland in which we live, normally, yes.

Q And did you have occasion to return to the scene of the accident the next day?

A Yes, I did.

Q Did you take a look at the physical surroundings of the scene the next day?

A Yes, I did.

Q At the time you looked, did you see any skid marks?

A Yes, I did.

Q Will you describe the skid marks?

A Well, they were quite pronounced and, certainly, in length, not more than 50 feet.

Q I want to show you some photographs, and ask you if that photograph depicts what you saw the day of John Farrell's death, at the scene of the accident (indicating)?

A Yes.

Q All right. Do you see the skid marks, in that photograph?

A Yes, sir, right here (indicating).

Q Would you point those out to the jury?

MR. HIXON: Can you see that? Do you mind if he comes around?

THE COURT: No, go right ahead.

BY MR. HIXON:

Q Can you see in the photograph the skid marks?

A These are the skid marks right here (indicating), not this part here.

Q Can you see the Farrell skid marks?

A Yes, I see it over here (indicating), it is the ones that are most pronounced.

Q Approximately how long would you estimate the skid marks to be?

A Not more than 50 feet.

MR. HIXON: Your Honor, could I have that marked as --

THE COURT: Yes, sir.

MR. HIXON: I have got one more here.

THE COURT: Plaintiff's Exhibit 13.

(Photograph of the skid marks, at the scene of the accident, with the D & B car lot also depicted, was marked PLAINTIFF'S EXHIBIT NO. 13.)

MR. HIXON: Can I go ahead and mark this one as 14?

THE COURT: (Marking)

(Photograph of the skid marks, at the scene of the accident, was marked PLAINTIFF'S EXHIBIT NO. 14.)

BY MR. HIXON:

Q What has been marked as PLAINTIFF'S EXHIBIT 14, does that accurately portray the scene that you saw the day following the accident?

A Yes, that is correct.

Q Can you point out on this EXHIBIT the skid marks?

A It is right here (indicating).

Q Are both skid marks in that photograph?

A Again, it is difficult to see, but there was another skid mark along here (indicating).

Q Can you see where that skid mark begins?

A Not too well.

Q All right, sir. There again, are these the skid marks that you saw on the night of the accident, and on the day following the accident?

A Yes.

MR. HIXON: And that is all, thank you.

Q Mr. Farrell, did you see clearly where the skid marks had started and where the skid marks had stopped?

A Yes, I did.

Q And your best estimate of these skid marks were approximately how long?

~~MR. KAUFFMAN: Judge, I think he has asked that twice now, that is the third time.~~

1 MR. KAUFFMAN: I have one question, Mr. Farrell.
2 EXAMINATION BY MR. KAUFFMAN:
3 Q How did you measure the skid marks, did you have a
4 tape?
5 A No, it was a visible measure.
6 Q Just your best estimate?
7 A Yes.
8 MR. KAUFFMAN: Thank you.
9 FURTHER EXAMINATION BY MR. HIXON:
10 Q Is there any question about these, that the photo-
11 graphs accurately portray what you saw?
12 A No, that is what I saw.
13 THE COURT: Anything further, gentlemen?
14 MR. KAUFFMAN: Nothing.
15 THE COURT: Mr. Farrell, you may step down, sir.
16 (The witness stood aside.)
17 MR. HIXON: I would like to call Mr. Frank Felton.
18 THE COURT: Mr. Frank Felton, report to the
19 courtroom. Was he sworn yesterday?
20 MR. HIXON: No, sir.
21 THE COURT: Mr. Felton, report to the courtroom.
22 MR. HIXON: If he is not here, I would like to
23 call Dan Kennedy.
24 THE COURT: Mr. who? Kennedy?

MR. HIXON: Yes, sir.

THE COURT: Mr. Dan Kennedy, report to the courtroom.

MR. HIXON: Your Honor, I have asked these people to be here for rebuttal. I have taken them out of turn as rebuttal. That is the plaintiff's case. I will call these witnesses as rebuttal witnesses.

THE COURT: All right, sir. Mr. Thurmond.

MR. THURMOND: Yes, sir, I would like to be heard out of the presence of the jury, Judge.

THE COURT: Ladies and gentlemen, I will let you-all take an early break this morning, for a few minutes, in the jury room.

(The jury retired to the jury room.)

MR. THURMOND: Your Honor, I am the defendant Glenmar Cinestate, Inc. I respectfully move to strike out the plaintiff's evidence and make judgment for the defendant, Judge, on the grounds that the plaintiff has failed to put on sufficient evidence upon which the jury could find that the officer, James D. Lilly, was the agent, servant, or employee of this defendant, in the course of directing traffic at that time.

No finding could be made in that record, without engaging -- filling voids in this evidence, based upon speculation and guess. Since the jury can't answer on the second grounds that, as a matter of law, the plaintiff's decedent was guilty of

contributory negligence, they have proved, through their own witnesses, to the extent of which one could see. And he fails to see an individual out in this road with a flashlight, and comes on; fails to, obviously, to see any of the other things that were quite significant in the area; puts on evidence that doesn't involve traffic, and has this accident, sir.

And what he is guilty of, as a matter of law, of negligence, which was the proximate cause of his accident, and in turn his death.

THE COURT: All right, sir, that motion is overruled. Mr. Kauffman.

MR. KAUFFMAN: May it please the Court, on behalf of the defendant Ray Bentley and Neighborhood Theatres, doing business as R B Productions, we move the Court to strike the plaintiff's evidence and enter summary judgment for those defendants, or that defendant, on the basis of the factual evidence produced by the plaintiff to the effect: one, starting with Officer Clements, who didn't know who paid him. He was there in police uniform. He said he was directing traffic, pursuant to his knowledge and training as a police officer. He said that if anyone at the theatre had told him to do it in a different manner, he would not have done so. This negates any control of him in the manner in which he was directing traffic.

Now, Mrs. Weston testified that Mr. Sterling told

(The jury was returned to the jury box.)

DANIEL J. KENNEDY, JR., having been sworn, testified in behalf of the plaintiff, on rebuttal, as follows:

EXAMINATION BY MR. HIXON:

Q State your full name for the jury, please.

A Daniel J. Kennedy, Jr.

Q And how old are you, Dan?

A Twenty-six, twenty-seven this month.

Q And where do you live?

A 2519 Prestwick Circle, in Richmond.

Q Did you have an occasion to investigate the accident involved in the death of John Farrell?

A Yes, I did.

Q Did you go to the scene of the accident?

A Yes.

Q When did you go to the scene of the accident?

A My best recollection would have been the week following the accident.

Q Did you, at that time, observe any skid marks at the scene?

A Yes.

Q Will you tell the jury approximately how long it was?

A I would estimate, probably, between 50 and 70 feet.

Q Let me show you a photograph, which is PLAINTIFF'S EXHIBIT NO. 13, and ask you if that is your photograph?

A Yes, it is.

Q Does that photograph fairly depict what you saw, approximately a week later?

A Well, it might have been a week later, I think the accident happened on the 25th. From my best recollection, I went out there the next day or the day after that. Although I don't have any dates to refresh my memory on, but that was the picture I took, at that time.

Q Did the scene clearly indicate to you where the skid marks started and where they stopped?

A Yes.

MR. HIXON: That is all I have.

EXAMINATION BY MR. THURMOND:

Q Mr. Kennedy, how did you happen to make an investigation of the accident?

A I was investigating it for the other party, the other vehicle involved, Mr. Rae.

Q All right, sir. And you did not prepare any memorandum of the date, of course, of your visit to the scene, sir?

A No, I did not.

Q And nor did you actually measure any skid marks,

did you, sir?

A No.

MR. THURMOND: That is all I have.

MR. KAUFFMAN: No questions, Your Honor.

THE COURT: Mr. Kennedy, you may be excused.

MR. HIXON: I have one question to follow that up with.

THE COURT: All right, sir.

FURTHER EXAMINATION BY MR. HIXON:

Q Does the nature of the business require you to observe estimates of skid marks?

A Yes, I was subpoenaed to come back. I went out and measured the distances involved to get some idea, but I originally felt that they were probably shorter than the distance.

Q And you actually made some measurements since then?

A I went out there and measured it, and got an approximation of the area, but I didn't measure them, at the time.

EXAMINATION BY MR. KAUFFMAN:

Q You are testifying that your estimate of 50 to 70 feet came from your measurements you made this morning?

A I originally thought the estimate on the skid marks would have run, approximately, maybe four to five car lengths, somewhere in that neighborhood.

Q But your testimony --

A But I went out and measured the scene from copies of pictures that I have, to get an idea as to the distance from where the median is in the road back to where, approximately, the skid marks would have started.

Q And so your testimony is based upon what you measured today, when you went back to the scene and reconstructed it from your recollection and the pictures?

A It increased the distance, as far as the skid marks, yes. I would have guessed probably 50 feet or less, but I think they were a little longer than that.

MR. KAUFFMAN: May I approach the bench?

THE COURT: Yes.

(Side-bar conference.)

MR. KAUFFMAN: I want to strike his testimony, it is not admissible, because his testimony is based on guess.

THE COURT: I think we will wait. The objection is overruled.

MR. KAUFFMAN: Note my exception. My objection is to the fact that he said it was a guess, and not an estimate. Note my exception.

(End side-bar conference.)

THE COURT: Anything further of this witness? Mr. Kennedy, you may step down.

(The witness stood aside.)

1 MR. HIXON: Mr. Frank Felton.

2 THE COURT: Mr. Felton, report to the courtroom.

3

4 FRANK D. FELTON, having been sworn, testified in

5 behalf of the plaintiff, on rebuttal, as follows:

6 EXAMINATION BY MR. HIXON:

7 Q Mr. Felton, give us your full name, please?

8 A Frank D. Felton.

9 Q And where do you reside, Mr. Felton?

10 A 5709 Finborough Drive, Richmond, Virginia.

11 Q Did you have occasion to investigate the scene

12 of the accident in which John Farrell was killed?

13 A Yes, I did.

14 Q And when did you go out to the scene of the

15 accident?

16 A In checking my field notes, I find it was June

17 28th.

18 Q Do you know the date of the death of Mr. John

19 Farrell?

20 A It was the late night of the 24th or early morning

21 hours of the 25th, I believe.

22 Q Between the time of John Farrell's death and the

23 time that you went to the scene, had there been any precipitation

24 in the Richmond area?

A Not to my knowledge.

Q Did you see any skid marks, at the scene?

A Yes, I did.

Q Can you estimate to the jury, approximately, how long these skid marks were?

A At the time, it looked like they would be 25 to 30 feet.

Q Did you take any photographs of them?

A Yes, I did.

Q I show you PLAINTIFF'S EXHIBIT NO. 14, and ask you if that is the photograph that you took of these skid marks?

A Yes, it is.

Q Does this show the beginning of the skid marks and the end of the skid marks?

A Yes, it does.

Q And your best estimate was somewhere in the neighborhood of 25 to 30 feet?

A That was my guess, at the time, yes, sir.

MR. HIXON: Okay, answer these gentlemen.

EXAMINATION BY MR. THURMOND:

Q Mr. Felton, that is purely just a guess, as to the length of them, too, isn't it?

A Yes, sir, it is.

MR. THURMOND: All right, sir, that is all I have.

MR. KAUFFMAN: I have no questions, Your Honor.

THE COURT: Ladies and gentlemen, with respect to the last two witnesses, to the extent that they gave you evidence on which their estimate was based on observation, and gave you some basis of the estimating being reliable, you may consider their estimate and weigh it in terms of what it means. To the extent that they told you they were guessing, you can ignore everything they said.

May the witness be excused?

MR. HIXON: Yes, sir.

THE COURT: You may step down.

(The witness stood aside.)

THE COURT: Any further witnesses on rebuttal?

MR. HIXON: No, sir.

THE COURT: Mr. Thurmond.

MR. THURMOND: Mrs. Weston return to the witness stand, please.

~~EVIDENCE ADDUCED IN BEHALF OF THE DEFENDANTS (con'd).~~

MARGARET H. WESTON, having been sworn, testifed in behalf of the defendants, as follows:

EXAMINATION BY MR. THURMOND:

Q Mrs. Weston, you don't have to tell us your name again, but I want to clear up one thing. I hand you some

documents which have been marked as PLAINTIFF'S EXHIBIT NO. 7 and PLAINTIFF'S EXHIBIT NO. 8, which constitute petty cash receipts that you heard the various Goochland police officers identify. Can you tell us, while you are looking at them -- look them over, if you want to, as to the dates and whatnot.

Now, they have been identified, Mrs. Weston, as documents coming from Ray Bentley records.

MR. HIXON: Your Honor --

MR. THURMOND: Isn't that correct?

MR. HIXON: I object to the form of the question. You are taking her on direct testimony. Are you testifying?

MR. THURMOND: I don't think that I am testifying, Judge, at all.

THE COURT: Well, you were making a statement. We have already heard what they are.

MR. THURMOND: All right, sir.

BY MR. THURMOND:

Q Mrs. Weston, from whom did the proceeds, that is, the funds come from that went to pay these off-duty officers?

A Mr. Bentley.

Q From Mr. Bentley. What do you mean "Mr. Bentley", somebody that worked for him?

A The cashier that worked for him.

MR. THURMOND: All right, that is all I have.

EXAMINATION BY MR. HIXON:

Q Mrs. Weston, your predecessor was Michael Hope?

A Yes, sir.

Q And he was the manager before you?

A Yes, sir.

Q And they called him Mike?

A Yes, sir.

MR. HIXON: Thank you.

EXAMINATION BY MR. KAUFFMAN:

Q Do you still have that EXHIBIT?

A No, sir.

MR. THURMOND: 7 and 8.

THE COURT: It is on top of the railing.

BY MR. KAUFFMAN:

Q NO. 8, PLAINTIFF'S EXHIBIT NO. 8, whose form is that, Mrs. Weston?

A District Theatre.

Q And that was the predecessor to Glenmar, your employer?

A Yes, sir.

Q Do you know who filled out these forms?

A No, sir.

Q But you or someone at the theatre got the police officers to sign them?

A Yes, sir.

Q All right. Now, Mrs. Weston, when there was a Ray Bentley Production at the movie theatre, you were still the manager, is that correct?

A That is correct.

Q And you had all of your responsibilities as manager, at that time?

A That is right.

Q And the only person there from Bentley's office was the cashier that was collecting the proceeds?

A That is correct.

Q And all of the other people on the premises would have been Glenmar people, correct, or these police officers?

A That is correct.

Q These were the people that you normally had working at the theatre, and had no duties that were any different for a late movie then if you had the early movie?

A That is correct.

Q And I believe you testified earlier that Ray Sterling would normally advise you when there was to be a late movie.

Did you tell me that Mr. Bentley's association had contacted him and specified on what nights that the movies would be showing and they needed officers?

1 A Yes.

2 Q Did they also tell you what times the movies would

3 start?

4 A Yes.

5 Q And then, in response to that, you called the

6 Goochland County Police Department?

7 A That is correct.

8 Q Sheriff's office.

9 Did you ever see Mr. Bentley, at one of these

10 performances?

11 A Once, twice, to the concession stand.

12 Q And what was he doing at the concession stand?

13 A Getting a drink or something to eat.

14 Q Buying something?

15 A Yes.

16 Q Did you ever see him in the ticket office collecting

17 money?

18 A I couldn't tell you, sir, it is not in the vicinity

19 of the concession stand.

20 Q Because you were doing what you had to do?

21 A Yes, sir.

22 Q Did you ever give the Goochland County police

23 officers any instructions as to what you wanted them to do, when

24 they were on the premises for these late night movies?

A No, sir.

Q Did you ever tell them what not to do?

A No, sir.

Q Did you ever tell them anything?

A No, they were well-behaved, well-mannered, and highly conscientious about their jobs.

Q Well, how did they know what to do?

A Well, they had been coming there three or four years before I ever became manager, I guess it was a matter of routine.

Q Can you tell us whether or not there were any occasions, Mrs. Weston, when the Goochland County Sheriff's Department helped traffic exit from the theatre, when there wasn't a late movie?

A When Mr. Hope was the manager.

MR. KAUFFMAN: I have no further questions, Your Honor.

THE COURT: Anything further?

MR. THURMOND: No, sir.

MR. HIXON: Just one follow up on that.

FURTHER EXAMINATION BY MR. HIXON:

Q You say the police officers helped to direct traffic out of there, when Mr. Hope was manager?

A Before I became manager.

Q H w do you know that?

A I worked the concession stand, I was the manager of the concession stand.

Q Well, did you see it?

A Well, it was a matter of record, sir, the police officers was in and out.

Q Well, when Mr. Hope was manager, are you talking about for the late night movie?

A No, sir.

Q During Glenmar's presentation?

A It was the District Theatre then.

Q And when Mr. Hope was manager, he used deputy sheriffs from Goochland to direct traffic?

A He managed the theatre on two separate basis, he was a strict traffic control. I, more or less -- the people are, more or less, on good behavior.

Q Well, maybe you don't understand my question, because I have stated it improperly. Did Mr. Hope employ deputy sheriffs?

A I don't know, that was his job. My job was concession stand.

Q You don't know anything about what Mr. Hope did about police sheriffs?

A Yes.

Q And if you said something contrary in response to Mr. Kauffman's question, you didn't mean to say that, did you?

A I don't understand.

MR. KAUFFMAN: I don't understand, either, I think she was perfectly clear in response to my question.

THE COURT: Is that all, gentlemen?

MR. THURMOND: Yes, sir.

THE COURT: You may step down, Mrs. Weston.

(The witness stood aside.)

THE COURT: Thank you.

Any other witnesses, Mr. Thurmond?

MR. THURMOND: No, sir.

THE COURT: Mr. Kauffman.

RAYMOND B. BENTLEY, JR., having been sworn, testified in his own behalf, as follows:

EXAMINATION BY MR. KAUFFMAN:

Q Mr. Bentley, you have already stated your name and occupation, I believe, with regard to the Patterson Drive In Theatre, and the late movies you put on there. Could you tell the jury what people you sent to the theatre on the night of the late movie?

A I sent a cashier, a ticket seller.

Q Were you required by anyone to have the Goochland County Police or Sheriff's Department there?

A I was required, as a matter of leasing this theatre, by the owners of the theatre.

Q Did you, at any time, ever call the Goochland County Police Department to make arrangements for them to be there?

A No.

Q Did you, at any time, ever discuss with the Goochland County Police Department anything that was supposed to be done there?

A No, sir.

Q Can you tell us whether or not you ever formulated any rules or duties or things that were supposed to be done at the theatre by anyone?

A Other than my ticket sellers, no, sir.

Q Did you ever give ticket sellers instructions as to what to do?

A Yes, sir.

Q Did you ever confer with Mrs. Weston about the movies and what was to be done from there?

A No, sir.

Q With regard to the vouchers that the plaintiff has introduced into evidence, can you tell us whether or not you

prepared any of these vouchers?

A May I see them?

MR. THURMOND: Personally, or --

MR. KAUFFMAN: Whether he personally prepared them.

A I prepared this particular petty cash voucher, the manager's bonus, on the weekend in question, June 24th.

BY MR. KAUFFMAN:

Q That would be PLAINTIFF'S EXHIBIT NO. 2, is that correct?

A Yes, sir.

Q You wrote and prepared it, put your name on it?

A Yes, sir.

Q How about the other ones that are on the District Theatre form?

A The others were always prepared on District Theatre's form and typed on the typewriter at the Drive In.

Q Do you know who did this?

MR. THURMOND: If Your Honor please, if he didn't do that, how does he know that?

THE COURT: I don't understand what you are cross examining him on. Who did what?

BY MR. KAUFFMAN:

Q Do you know who typed them?

A I do not know, for a fact, no, sir.

Q How did you come to have them in your possession?

A For every amount of money that is taken out of the receipts, we have to have a voucher, so we would require the ticket seller to bring back all vouchers and submit the receipts.

Q So that is an accounting procedure for you, to show why, if the proceeds do not correspond with the amount taken in?

A Yes, sir.

Q How many times did you go to the Patterson Drive In Theatre, when you put on a performance there?

A Over a period of three years, I was probably there half-a-dozen times.

Q And what were you there for?

A To check my tickets and ticket seller, and see how she or he was doing.

Q Did you do anything else?

A Watch the movie.

MR. KAUFFMAN: Answer counsel's questions.

EXAMINATION BY MR. HIXON:

Q Mr. Bentley, were you paying Margaret Weston $50.00 per night, is that correct?

A Per weekend.

Q That is for the two nights?

A Yes, sir.

Q Now, isn't it a fact that, among other things, you were paying Margaret Weston that $50.00 to help you arrange for these security guards?

A No, sir, I didn't know whether Margaret Weston arranged for the security guards or not, whether it was Mr. Sterling, or anyone, or Mrs. Weston.

Q You knew you were required to have them there, isn't that what you testified to?

A Yes, I knew they would be there.

Q How did you carry out your functions of making sure these deputy sheriffs were there?

A It was left entirely up to the theatre.

Q Left up to Margaret Weston?

A Left up to Glenmar Cinestate.

Q You knew you were required to do it, even if somebody else did it for you?

A The theatre, yes, sir, I knew that the policemen would have to be at the theatre. I knew that, because it was the theatre's responsibility to obtain them.

MR. HIXON: Thank you.

EXAMINATION BY MR. THURMOND:

Q Mr. Bentley, other than the fact that these petty cash voucher receipts appeared on little, blank forms that have

been filled in, that have the District Theatre at the top, you have no knowledge as to who did the typing or who made those entries on them, do you?

A I know that on one or two earlier occasions in at the theatre, in '76 and '77, that I saw Mr. Hope type them, yes, sir.

Q But you don't know who typed this one?

A Specifically, I could not say, no, sir.

Q For all you know, your cashier might have typed them up, herself, because she had to, in turn, give them to you.

A I do not believe my cashier would use the theatre typewriter, no, sir.

Q You do not know that.

A I don't know that, but I don't believe she would do that.

Q You don't know one way or the other, do you?

A I would have to say he or she wouldn't, I don't think -- well, I know they are not typists.

Q You don't have to be a typist to hunt and peck that type of thing?

A No, sir.

Q Sir?

A No, sir, you wouldn't have to be a typist.

~~THE COURT: Anything further?~~

MR. THURMOND: Note my exception to that on the grounds that it is prejudice to the defendant that I represent.

THE COURT: Most any ruling is prejudicial, unduly prejudicial.

Now, since we have taken this thing outside of the presence of the jury, Mr. Hixon, the procedure that you might follow in the ordinary case, allowing you to have the voir dire on qualifications, may be necessary, because it will allow --

MR. HIXON: I will take that up in my order.

THE COURT: Bring the jury in.

(The jury took its place in the jury box.)

MR. KAUFFMAN: I didn't understand that.

THE COURT: In the average case, when you don't have the preliminary questions, you had put that man on and in fact tendered him that you -- we don't go through the formalities of the other side, to stop you and ask you for voir dire on qualifications.

MR. KAUFFMAN: Just on qualifications, right.

EXAMINATION BY MR. KAUFFMAN:

Q State your name for the jury.

A Yes, sir. My name, the first name Takeshi, T-a-k-e-s-h-i, the last name is Imajo, I-m-a-j-o.

1 Q What is your age, sir?

2 A My age is forty-three years old.

3 Q What is your occupation?

4 A I am a forensic pathologist.

5 Q Forensic pathologist?

6 A Yes.

7 Q Where are you employed?

8 A I am working, currently work at the office of

9 the medical examiner; this is a part of the Commonwealth of

10 Virginia.

11 Q How long have you been employed at the office

12 of the chief medical examiner's office, the Commonwealth of

13 Virginia?

14 A About two years and five months.

15 Q Dr. Imajo, you are, also, a licensed medical

16 doctor?

17 A Yes, sir.

18 Q What states are you licensed to practice medicine

19 in?

20 A I am licensed in Virginia, Vermont, and Rhode

21 Island.

22 Q Where did you take your medical training?

23 A I graduated from a medical school in Japan.

24 Q Did you --

A And I had training in pathology in Rhode Island, internship in Vermont, and pathology training in Richmond here.

Q How long were you in school in Rhode Island and Vermont?

A In Rhode Island, I stayed there almost five years in training. In Vermont, for internship, one year. And I was in private practice in Vermont for five years.

Q Five years in private practice?

A Private practice in pathology, yes, sir.

Q In the field of pathology?

A Yes, sir.

Q Did you have any special training in Virginia?

A Yes, sir, I had training in the same office I am working in now, training for forensic pathology.

Q What is forensic pathology?

A Forensic pathology is the legalness--actually what we will do is the investigation or examination of any non-natural form of death, including violent death and homicide.

Q You investigate any death that is not by natural causes?

A Yes, sir, including some natural cases where there is some suspicion.

Q Now, as a part of this work, do you perform what is known as autopsies?

A Yes, I perform autopsies, yes.

Q How many autopsies have you performed?

A I will be performing about 300 cases.

Q And as a part of your duties as a medical examiner, do you test the decedents for substances to see if there are foreign substances in the body?

A I do not perform the test, itself, but I do order for chemists or toxicologists to perform tests and determine the level of drugs or alcohol, any substance in the blood or body system, yes, sir.

Q Do you, physically, remove the blood, yourself?

A Yes, I do.

Q What do you do with it, after you remove the blood?

A We have a system with a dumb-waiter, put the specimen in the dumb-waiter, itself -- elevator -- it goes to the toxicology laboratory, which is located upstairs in the same building as our office.

Q And what do they do in the toxicology department?

A They will pick up the specimen. Specimens are all labeled and dated and assigned by us -- in my case, I assign, myself -- and toxicologists pick up a specimen from the dumb-waiter and they will give specimens their own number and, also, enter their own book.

Q And do they run the tests there?

A Yes, then they will run the tests.

Q And are you provided with the result of these tests?

A Yes, sir, we receive a report from toxicologists.

Q And what do you do with that report?

A We end up with the result of the physical examination, about drug level or alcohol level, in relation as a cause of death. Some of it—most all of these cases in the drug level will be sufficient to be fatal to the person. In the case of alcohol, same thing or if driving, or traffic accident involved. We get down and determine if the alcohol level was high enough to influence the person's driving skill or judgment.

Q So, you interpret the result of the toxicology report?

A Yes, sir.

Q Is that one of your duties, as a forensic pathologist?

A Yes, sir.

Q Do you, as a forensic pathologist, make determinations of the cause of death?

A Yes, sir.

Q Do you, also, make determinations as to the effect those foreign substances had on the individual?

A Yes, sir.

Q Is that a part of your training, as a forensic pathologist?

A Yes, sir, a part of my training and, also, a part of my daily functions, yes.

Q Now, do you remember the case of John Guy Farrell --

A Yes, sir.

Q -- on or about June 25th, 1978? Did you have occasion to make an examination of this young man?

A Yes, sir.

Q Did you remove a blood sample and urine sample from Mr. Farrell?

A Yes, sir.

Q Was this handled in the normal manner that you handle these things?

A Yes, sir.

Q And did you receive a toxicologist's report, with regard thereto?

A Yes, sir.

Q What was this report, Dr. Imajo?

A The level blood -- alcohol level, level 0.08 percent, and also urine level, 0.11 per cent.

Q Now, Dr. Imajo, as a medical doctor and a forensic pathologist, given the size and weight of John Guy Farrell, do

you have an opinion as to whether or not this amount of alcohol content in the blood and urine would have any effects on his ability to function, such as to drive a car?

MR. HIXON: Your Honor, if I have not already made my objection for the record, I would like to, for the purpose of the record.

THE COURT: The objection is overruled and noted.

A Yes, 0.08 percent is below legal limit, but legal limit is arbitrary. 0.08 has a definite effect on a person's driving skill, judgment, or physical skill, reflex or reaction time. These will prolong what -- reflex, reaction will be slower, it depends on the person's experience with driving, but certainly there would be some effect.

MR. KAUFFMAN: Your witness, Mr. Hixon.

MR. HIXON: Am I next?

THE COURT: Yes, Mr. Hixon.

Did you indicate, Dr. Imajo, how long you had been with the medical examiner's office?

THE WITNESS: Two years and five months, yes.

EXAMINATION BY MR. HIXON:

Q Dr. Imajo, you are a pathologist?

A Yes, sir.

Q And would you agree with this definition that pathology is the branch of medicine dealing with the nature of

the disease, that is, with the cause of the disease and with the process of developing the disease and its effect upon the functions of the parts involved, and especially with the changes and structure of the effected areas. Would you agree with that definition of pathology?

A Yes. One thing I have to say is --

Q Doctor --

THE COURT: No mistaking, let him complete his answer, don't cut him off.

A This definition is a classical definition, and a hospital type of pathology. This may not include certain functions of forensic pathology or legalism.

BY MR. HIXON:

Q And you are an assistant medical examiner in the State of Virginia, is that correct?

A I think my title would be chief assistant medical examiner.

Q You are not the chief medical examiner?

A I am not the chief medical examiner.

Q And received your medical education in Japan, is that correct?

A Yes, sir.

Q And spent your entire career studying pathology, is that correct?

A Yes, sir.

Q Do you know what toxicology is?

A Yes. Are you asking me the definition?

Q Yes, tell the jury what toxicology is.

A It is the study of a substance or drugs or poison or alcohol in relation to body functions and, also, includes examination of that level, actually what legal --

Q So, a toxicologist is someone who studies the effects of blood alcohol on the body, isn't he?

A Yes, sir.

Q And you are not a toxicologist?

A I am not a toxicologist, but like physicians, they have to cover that area.

Q You are not a licensed, qualified, practicing toxicologist, are you?

A No, sir.

Q All right. And you do autopsies, among other things, on bodies, don't you?

A Yes, sir.

Q And you did not do an autopsy on John Farrell's body, did you?

A No, sir.

Q Isn't it true, Doctor, that one's ability to react to alcohol depends on, for example, what food he might

have had to eat that day?

A Yes, sir. Well, excuse me, food may interfere in the absorption of the alcohol in the blood.

Q And it may affect a person's ability to handle alcohol, isn't that true?

A I do not think the food, itself, will affect the person's ability to reaction to the alcohol blood -- alcohol level, but food will interfere in absorption. A certain food will, maybe, slow absorption of blood level.

Q Do you know what John Farrell had to eat two to three hours before his death?

A No, sir.

Q Do you know what he had to drink?

A No, sir.

Q You did not perform the tests, the chemical analysis of John Farrell's blood, did you?

A No, sir.

Q Somebody else did that?

A That is correct, sir.

Q And you took two vials of blood and sent it to somebody else to perform a test, is that correct?

A Somebody else in toxicology, technician in toxicology, in the laboratory.

Q Why did you send two vials of blood?

A We always send two or if we have more, sometimes three tubes, because we anticipate for some cases we may need more.

Q More than one tube?

A Yes.

Q In this case, only one test was done, isn't this correct?

A Yes, procedures are one, but they will determine other -- excuse me, one test will determine ethyl alcohol or some other type form of alcohols and some other chemicals, whatever evaporates.

Q My question, though, in this case, there was only one test done to determine the blood alcohol?

A No, sir.

Q No, sir?

A Only the blood, but not the -- excuse me, just talking about the blood?

Q One test, right.

A Yes.

Q And don't you sometimes request more, sometimes, to make sure the first one is accurate?

A Usually, when we have a urine or some other fluid, fluid from the eye, we ask for blood -- no, drug screen, they are screening the drug - If there is any drugs identified, they

will get back the blood and determine the level of that drug in the blood.

Q Well, let's straighten that out. Any other drugs or anything else, there was no indication, at all, of any of that in John Farrell's blood?

A They did a drug screen on the urine, the drug screen was negative.

Q That means nothing was found, right?

A Drug screen then, urine directs most of the drugs taken by the person from a vein or mouth will go into the urine. So urine, if they work on the urine, very good chance that they can detect any medications, drugs in the urine. And the standard of procedure in the toxicology laboratory, our laboratory, they will do screening on the urine for any drugs. Those drugs include narcotics, sleeping pills, this type of thing, and stimulants, along with Valium, Librium, some others, aspirin --

Q Well, Doctor, I don't mean to interrupt you --

THE COURT: Let me interrupt. Doctor, in this particular test, were any drugs, other than alcohol, found in the urine screen?

THE WITNESS: Those are all negative.

THE COURT: All negative means none were found. And the other question is: Do you require --

is it necessary to run more than one test on the blood to establish the blood alcohol content? Do you require two tests?

THE WITNESS: One test will determine the blood alcohol level, yes.

BY MR. HIXON:

Q Well, isn't it better to have two tests so you can compare the accuracy of the first one against the second one?

A If there is a question, a discrepancy between the urine alcohol and the blood alcohol, they will run again.

Q Which of the two tests is better, blood or urine?

A Blood alcohol is better.

Q And it is more accurate, is it not, blood?

A Both are accurate, as a level, but urine alcohol level will not affect a person's behavior function. But blood alcohol is the one to affect a person's skill, physical actions, judgment.

Q In the urine test, is an accumulation of urine in the bladder, for whatever period of time since it has been last passed, that urine may be there for a long period of time, may be an accumulation, isn't that correct?

A This is right, yes. That is right, correct. So, we do not judge a person on how many is drugs or intoxicated

by the urine level only.

Q You don't look at the urine analysis?

A We do look at it and compare. Suppose urine alcohol was high, but blood alcohol was zero, something must be wrong, vice versa. We can, also, see the time of drinking, if urine alcohol is much higher than blood alcohol, then a person had to drink a much longer time, many hours before. And blood alcohol is very high, but urine alcohol is lower than we can estimate it, a person had to drink just before the test.

THE COURT: Dr. Imajo, in this case, with the reading of 0.08 blood and 0.11 urine, and I take it you have the time of death on your report, what does it indicate, if anything, to you, the relationship of the ingestion of alcohol and the death?

THE WITNESS: This would be only an estimate, this would be only an estimate. And what I can see, this person did not drink just a few minutes before his death. He must have had some drink more than -- longer than a few minutes ago.

BY MR. HIXON:

Q Dr. Imajo,--

A Yes.

Q -- you were called that night, from St. Mary's Hospital, at approximately 2:00 o'clock or 3:00 o'clock in the

morning?

A 1:15 o'clock a.m., yes.

Q And you were at home that night?

A Yes.

Q I take it you were asleep, probably?

A Yes, sir.

Q And you did not go to St. Mary's Hospital, did you?

A No, sir.

Q As a matter of fact, you did not see the body until the following morning, Sunday morning, isn't that correct?

A Same morning, but later, yes, later morning.

Q About 8:00 o'clock or 9:00 o'clock in the morning?

A I don't know the exact time, probably later, but it was morning.

Q Later than 9:00 o'clock?

A Probably, yes.

Q And it was, at that time, that you took your blood sample?

A Yes, sir.

Q And John Farrell, you know, had been dead for eight hours, is that correct?

A Yes.

Q You don't know -- you didn't personally observe the body during that eight hours, did you?

A No, sir.

Q And you took your sample and sent it to the analytical chemist, isn't that correct?

A Yes, sir.

Q And you sent it up to him that very day, on Monday morning?

A Okay, this was a weekend -- brought in -- then, we do make a different procedure, we will keep specimens in the refrigerator.

Q Did you send it in the dumb-waiter that very morning, did you?

A I make a correction, this was a weekend, I kept it -- I left it in the refrigerator.

Q And did you go home?

A Yes, sir.

Q And it wasn't until the following Monday that you reported to work, isn't that correct?

A I am not sure. This is a Saturday, and I was on call, so I must have come back in for it on Sunday.

Q The fact of the matter is, you don't know when, precisely, you sent the blood to the analytical chemist, do you?

A The Monday morning, because --

Q That would be --

A The following Monday morning.

Q That would be Monday morning the 26th, correct?

THE COURT: That is correct, he doesn't have a calendar in front of him.

MR. HIXON: I think the date is important.

BY MR. HIXON:

Q Dr. Imajo,--

A Yes.

Q -- you did not get a report back from that analysis until July 18, 1978, isn't that correct?

A That is correct, sir.

Q It stayed up there with the chemists for two and a half weeks, correct?

A That is correct, sir.

Q You did not do an autopsy of John?

THE COURT: You already asked that question.

A No, sir.

BY MR. HIXON:

Q Now, let us take this reading 0.08. Different people have different tolerances to alcohol, do you agree with that statement?

A Yes.

Q One person of the 0.08 may reflect differently than another person at 0.08?

A That is correct.

Q You stated in your testimony that 0.08 is not within the legal limits in Virginia of being intoxicated, isn't that correct?

A The legal limit is an arbitrary line.

Q You said he wasn't within that limit, didn't you?

A Legal limit is 0.10.

Q 0.10?

A Yes.

Q So, John Farrell had 0.08?

A Yes.

Q Tell the jury waht the highest reading for blood alcohol content is that you have ever seen in a living body?

A 0.40, I believe.

Q That is five times as much as John Farrell?

A One thing I have to say is more, so people with that high level are dead.

MR. HIXON: That is all I have, Your Honor.

THE COURT: Mr. Thurmond?

MR. THURMOND: Judge, I have no questions.

THE COURT: Mr. Kauffman?

MR. KAUFFMAN: Judge, one question.

FURTHER EXAMINATION BY MR. KAUFFMAN:

Q Dr. Imajo, forensic pathology is different from regular pathology, is it not?

that you will apply to the facts in the case.

This case has a number of issues in it, which you will find out about when I read you the instructions. We have had some difficulty in getting the instructions worded in a manner that I think will stand the scrutiny of the appellate court, and will be for your consideration.

That is what has taken all this time. Because the hour is going to push us late -- this morning, after consulting with you, I am going to discharge you from the case and ask you to come back tomorrow at 9:00 o'clock. You can leave your badges here.

(The jury was excused to return on tomorrow at 9:00 a.m.)

THE COURT: Counsel wants to go on record to review their motions.

Mr. Thurmond.

MR. THURMOND: For the record, Judge, at the conclusion of all of the evidence, I renew my motion that the Court should strike out the plaintiff's evidence and enter summary judgment for the defendant Glenmar on the same grounds stated at the conclusion of the plaintiff's evidence. To the extent -- and I won't restate it completely, at this time, sir.

THE COURT: All right, sir. That motion is

overruled.

MR. KAUFFMAN: May it please the Court, on behalf of the defendants, Bentley and Neighborhood Theatre, I would like to renew my motion that was made at the conclusion of the plaintiff's case to strike the plaintiff's evidence and enter summary judgment for the defendant Bentley and Neighborhood Theatre on the grounds, I believe, I stated in detail, at that time. But the fact that there is no testimony as to the right of control by Bentley over Officer Lilly and no control being exercised or right of control that he does not fall -- or his conduct does not fall within the criteria required to establish employment. And the burden is on the plaintiff to establish that Lilly was the employee of Bentley. Having failed to do this, as a matter of law, the Court should strike the evidence on the grounds that the plaintiff decedent was guilty of contributory negligence, as a matter of law.

THE COURT: That motion is overruled.

MR. KAUFFMAN: Note my exception.

~~(The trial was adjourned to tomorrow, November 20, 1979, at 9:00 o'clock a.m.)~~

1 The defendant Bentley objects and excepts to the
2 refusal of the Instruction C, which was tendered by Bentley.
3 It is a proper statement of law, regarding the burden of the
4 plaintiff to prove the negligence of the police officer. It
5 comes directly from Virginia Jury Instructions 1306. It has
6 been offered by our Supreme Court as being a correct statement
7 of law, which -- and it embodies Bentley's theory of the case
8 regarding the police officers, as they functioned at the time
9 in question.
10 Defendant Bentley objects and excepts to the
11 refusal of the Instruction D, since it instructed the jury
12 that Farrell had a duty to exercise reasonable care for his
13 own safety. This particularly applied to the use of alcohol.
14 The jury would have known, from this instruction, that by
15 voluntarily ingesting alcohol he, Farrell, violated the duty
16 of care for himself.
17 Defendant Bentley objects and excepts to the
18 Court's refusal of Instruction H, which correctly states the
19 law regarding the police officers setting forth the fact that
20 they are independent contractors. The defendant Bentley was
21 entitled to have this theory of this case presented, as set
22 forth in this instruction.
23 Defendant Bentley objects to the Court's -- to the
24 refusal of Instruction I and J, as tendered by defendant Glenmar,

in that they are proper statements of the law and would apply to either defendant. But since the Court rejected Instructions I and J, as they applied to Glenmar, there was no need of tendering the same instruction on behalf of the defendant Bentley. These two instructions set up the test for control of the police officer and to establish whether or not he was an employee or independent contractor. The jury should have been fully instructed by the Court, in the light of the defendants theory of the case, which is correctly set forth therein.

MR. THURMOND: The defendant Glenmar, by counsel, objects and excepts to the Court's refusal to grant its tendered Instruction D, on the grounds that it could relate and inform the jury of other areas of possible contributory negligence or negligence on the part of the plaintiff's decedent, which is not embraced in any instruction granted by the Court, and particularly not embraced within the confines of the language of Instruction No. 8, given by the Court.

This is true in the sense that the jury had a perfect right to take into account the extent to which the plaintiff's decedent had been effected by alcohol consumed by him sometime prior to the accident, all of which is evidence by the uncontradicted testimony of Dr. Imajo.

The defendant Gelnmar, by counsel, objects and excepts to the Court's refusal to count its tendered Instruction I,

on the grounds that it is a correct statement of law, that it was made by its language applicable to this particular defendant, and was fully supported by the evidence, and that it is not clearly spelled out in any other instruction given by the Court.

The defendant Glenmar, by counsel, objects and excepts to the Court's refusal to grant its tendered Instruction J, on the grounds that it is a correct statement of law applicable herein, and was fully supported by the evidence, and was not adequately covered by any other instruction granted by the Court.

The defendant Glenmar, by counsel, objects to the Court's granting its Instruction No. 7, which was prepared by the Court, on the grounds that it amounts to a comment by the Court on the evidence in the case, and that it was improper to zero in on the specific conduct of Mr. Lilly, as therein referred to, and if given, at all, should have been in the same way as a rule-of-road instruction imposing the obligation on a party to exercise ordinary care in the performance of certain duties, and not to give it an amount that the Court has, in effect, commented on the evidence.

MR. HIXON: On behalf of the plaintiff, I object to the granting of Instruction No. 10, in the form that it was granted -- written. It was stated that the defendants may avoid liability if they believe that Lilly was employee of one or both

there was at the time of the accident as shown by chemical analysis 0.08 percent by weight of alcohol in John Farrell's blood, such fact does not give rise to any presumption that John Farrell was under the influence of alcoholic intoxicants, but may be considered by you with the other evidence in determining whether he was guilty of contributory negligence.

If you believe that from the evidence that James Lilly was the employee, servant or agent of either or both defendants, and that at the time of the collision he was then about the business of either or both of them and acting within the scope of his employment, then any negligence of James Lilly is chargeable to the defendant or defendants for whom he was so employed. And if you further believe from the evidence and other instructions of the court that James Lilly was negligent and that such negligence was a proximate cause of the collision, then unless plaintiff was guilty of negligence proximately contributing to cause the collision, you shall find your verdict in favor of plaintiff.

If you find from the evidence that Lilly was negligent, or that his negligence was not a proximate cause of the collision, or that the plaintiff was contributorily negligent and that such negligence was a proximate cause of the collision, or that Lilly was an independent contractor, or that Lilly was an employee of one or both defendants but that he was

acting in his capacity as a police officer while directing traffic, then you shall find for both defendants.

If you find that Lilly was not an employee of one of the defendants, then you shall find for that defendant.

If you believe from the evidence that the defendant was negligent and that such negligence was a proximate cause of the collision, and if you further believe from the evidence that the plaintiff was also negligent and that such negligence proximately contributed to cause the collision, then your verdict shall be in favor of that defendant.

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

If you believe from the evidence that James Lilly was the employee, servant or agent of either or both defendants this establishes a prima facie case that he was acting as agent of such defendant or defendants on the night of June 24-25, 1978, and the burden is upon such defendant or defendants to prove that James Lilly was not acting within the scope of his employment at the time.

If you find that Lilly was an employee of one or both defendants but that he had temporarily departed from the

business of one or both defendants and from the scope of his employment, and was acting on behalf of the Goochland County Sheriff's Department, then the defendants are not responsible for Officer Lilly's actions and you shall return your verdict in favor of the defendants.

In determining whether Lilly was acting on behalf of either or both defendants in directing traffic, or whether he was acting in his capacity as a police officer, you should consider, along with the evidence, the following principles of law: conduct may be within the scope of employment, although done in part to serve the purposes of a third person. If the purpose of serving the master's business activates the servant to any appreciable extent, the master is subject to liability if the act otherwise is within the service.

The mere fact that a person in private employment also has a commission from the public as a police officer does not protect his private employer from liability to third persons for acts which are referrable to the person's capacity as private employee. That is, a private employer is not immune from liability simply because his employee also has an official status.

One of the determinations that you must make in this case is whether, when he was directing traffic, Lilly was an employee or agent of the defendants, or one of them, or

whether he was acting as an independent contractor in his business relationship with them.

There is no question but that the services of Lilly were engaged by one or both defendants and that he was paid by funds belonging to the defendant Bentley.

In determining the employment status you may consider the method of payment, who made the payment, who set the hours and place of employment, who provided instructions as to Lilly's work, and who had contact with Lilly.

But the overriding factor to be considered is whether either or both defendants had the right to control the traffic directing of Lilly.

If Lilly was under the actual control and direction of either or both defendants as to this work, or if either or both defendants had the right to control and direct such work, then he was an employee. If Lilly had a contract to perform this service for the defendants, but he controlled and determined how this service was to be accomplished without direction or control from the defendants, then he was an independent contractor.

~~If from the evidence and other instructions of the court you find your verdict in favor of the plaintiff, you shall award damages with reference to the following and may include: Such sum as to you may seem fair and just by way of~~

So you should be seeing 15, Joe, according to my notes. And the instructions of the Court.

I will ask you, when you go to your jury room, to select from your number one person to serve as foreman or forelady of the jury. The function of this individual is not to cast any superior vote in the case, or to direct other people how they should decide, but where to sign the verdict and, also, to keep peace among the family, if that is necessary, which I am sure it won't be.

You have four, and only four, possible forms of verdict in this case. I have tried to write out on a yellow sheet here -- I hope I haven't repeated myself -- and I want to explain to you, you will use this as a guide to go by, but let me tell you what the four are. You can find for the plaintiff against both defendants, both Glenmar and Bentley; you can find for the plaintiff against one of these, Glenmar, but in favor of Bentley; or you can find for the plaintiff against Bentley, in favor of Glenmar; and that you can find in favor of both of these defendants. Those are the four possible verdicts.

(The Court explained the special verdict form to the jury; the jury retired to the jury room to consider its verdict, and after consideration of it, requested to be returned to the courtroom, where the

following occurred:)

THE COURT: The jury has made the following request: They want the Court to give them a legal definition of the following: agent, employee, independent contractor.

Well, gentlemen, it seems to me we can tell them, for the purposes of this case, agent and employee are synonymous, we are not trying to give them two different concepts. We have not drawn any distinction in the case, between agent and employee. We used the words as the same thing.

Inasfar as defining employee and independent contractor, that is what the instructions were intended to do. I don't think there is anything prohibiting the granting of a further instruction to the jury, but once the case has been submitted, it has to be something done by the agreement of counsel, because you-all have argued the case to these instructions, not to any other instructions.

I would like to help the jury where we can, but I am not sure whether we will be able to come up with any more definitions than this.

MR. HIXON: Your Honor, I would not have any problem with instructing the jury that the terms agent and employee are used interchangeably, but I do -- they are picking out one instruction --

THE COURT: What other instruction gives them any

idea with respect to defining between employee and agent?

MR. HIXON: For example 13a says an off-duty policeman can be an employee. In addition to that it contains other statements.

MR. THURMOND: The last paragraph in the instruction you mentioned certainly spells out about as much as you can tell a jury, doesn't it? Instruction 13 and 14, Mr. Hixon, are instructions that pertain to the question of defining between a person being an employee and being an independent contractor.

MR. HIXON: Yes, sir.

THE COURT: I will so advise the jury that they have got the law. And you-all have no proposal of any additional instructions you want to give them, do you?

MR. THURMOND: I had tendered one that said the test in determining whether he is. That is why I tendered it, because it said the test, and so on.

THE COURT: Bring the jury in.

(The jury took its place in the jury box.)

THE COURT: Ladies and gentlemen, I have consulted with counsel. I can give you some help, but I can only give you so much help. We are not in a position, once the case is submitted, to reinstruct you on the case. But I can tell you that we are in agreement in the case that the Court is using

the words agent and employee in the same context. Counsel has considered these words synonymous, we are using the two words for one.

The Court has given you Instruction Nos. 13a and 14, which undertake to go into when a person is an employee, and when a person is an independent contractor. It is within the frame of those instructions, and any others you might have to make the decision as to what in the case Mr. Lilly was.

I cannot redefine the matter to you at this point in time.

(The jury retired to consider further of its verdict and then were returned to the courtroom where the following occurred:)

THE COURT: You have agreed upon a verdict, Mr. Foreman?

FOREMAN REYNOLDS: Yes, sir.

THE COURT: Mr. Reynolds, hand that to the bailiff, please.

"We the Jury, on the issues joined, find for the plaintiff against both defendants and assess the general damages at $50,000.00.

"In addition we assess as medical and funeral expenses $2,911.30.

"We apportion the general damages as follows:

1 Robert T. Farrell, father, $25,000.00.
2 Margaret F. Farrell, mother, $25,000.00."
3 Signed "David W. Reynolds, Foreman, November 28, 1979."
4 THE COURT: Is that your verdict?
5 FOREMAN REYNOLDS: Yes.
6 THE COURT: Is there any motion, before the jury
7 is discharged, gentlemen?
8 MR. KAUFFMAN: No motion.
9 MR. THURMOND: No motion.
10 THE COURT: Thank you-all, again, very much. I
11 know it has been a long three days for you, and you-all have
12 been very patient with us.
13 We have had to keep you waiting out in the hall,
14 and we don't like to do that.
15 (The jury was excused and retired from
16 the courtroom.)
17 MR. THURMOND: Judge, on behalf of the defendant,
18 Glenmar, I respectfully move to set aside the verdict of the
19 jury, on the grounds that is contrary to the law and the
20 evidence, and that there is no evidence to support it; in
21 respect to the jury's finding that has been that Officer Lilly
22 was an agent or employee of the defendant, Glenmar, and on the
23 further grounds that the Court refused to grant certain of
24 the defendants tendered instructions, which will appear

specifically from the court reporter's transcript of the trial and the motions or the objections made in that record; objections and exceptions to the Court's failing to give; and on the grounds that the jury's verdict finding the necessary elements of employee or agent had to be filled by guess; that the plaintiff's evidence was not sufficient upon which the jury could properly find that Officer Lilly was an agent or employee of this defendant, and that is specifically illustrated by the jury's inquiry and the tendered instructions, which told them a plain and simple test, as to what an independent contractor and right of control, the necessary elements in it; and for any such other errors, misdirection of the jury, may appear more specifically from the court reporter's transcript of the testimony and incidents of trial.

THE COURT: I will take that under advisement for the moment.

MR. KAUFFMAN: On behalf of the defendants Bentley and Neighborhood Theatre, I would respectfully move that the verdict of the jury be set aside and judgment be awarded for these defendants, on the grounds that the plaintiff failed in his case in chief to establish employment of Lilly by Bentley. There is no evidence to support the verdict or the refusal of the Court to instruct the evidence in that record at the end of the plaintiff's case, or at the end of all

the evidence, being clear from the plaintiff's own witnesses that they were not Bentleys' employees, that they were merely paid by him, and that is all the evidence as to Bentley, with regard to Lilly or any of the other police officers, so that the instructions of the Court and the refusal to strike was not supported by the evidence.

There is no evidence to support it, and confusion existed in the jury's mind when they asked for further direction, and the reason of the Court's refusal of tendered instructions by Bentley, on behalf of Bentley, which is directly stated in our view the position of Bentley, which the Court refused, and which has been specifically objected to and noted in the record.

And furthermore, on the grounds that Mr. Farrell was guilty of negligence, as a matter of law, of contributory negligence, as a matter of law. And the Court should have stricken the plaintiff's evidence on that grounds, as the plaintiff's evidence indicated that or showed that.

And further that this was further brought out by the testimony of Dr. Imajo that the plaintiff was guilty of contributory negligence, as a matter of law.

And I ask the Court to set aside the verdict on that basis.

THE COURT: All right, sir. Do you, gentlemen, feel that you had a fair chance to discuss the case with the

Court on the question of agency employment versus independent contractor? because I think that is where this case really comes down to, or do you -- are you looking for an opportunity to be heard further, in the way of memorandum, either you file a memorandum in the case -- we have gone over the cases, I have read the cases.

MR. KAUFFMAN: I don't think I can find anything more than -- I don't think so.

THE COURT: I am not trying to push you into it, I am trying to make sure you get a fair shake.

MR. KAUFFMAN: I don't think I could come up with any more, in that regard.

MR. THURMOND: The only thing I would like to add, in my motion to set aside, are the same reasons that were assigned at the conclusion of the plaintiff's evidence, on the striking of the plaintiff's evidence, and at the conclusion of all of the evidence, as to the extent, as I stated at great length, at that time.

THE COURT: All right, sir. That will, also, stand for you, Mr. Kauffman, the same.

MR. KAUFFMAN: Yes, I don't think there is any need to brief this, I don't think you understand it better than we.

THE COURT: I don't, personally, feel a need for

1 it, I wanted to make sure you-all get a fair chance to say
2 what you wanted.
3 Gentlemen, there is no doubt, whatsoever, that
4 the defendants negligence was proper for the jury, and in my
5 opinion that the contributory negligence of the plaintiff was
6 a proper jury issue, and that the instructions, in that area,
7 were given in accordance with the law, as applicable to those
8 instructions.
9 I also feel quite strongly that it was not up
10 to the Court to decide, in any way, between independent con-
11 tractor and employee, but a matter for the jury to resolve,
12 since there is a sharp contradiction in the evidence, as to
13 specific duties and the status of Mr. Lilly.
14 The evidence, as the jury could have seen it,
15 certainly justified their finding against both defendants.
16 This specific activity of Mr. Lilly, while he
17 might not have been personally engaged by Mr. Bentley or
18 arranged for by him or for his benefit, required by contract,
19 they were put there to assist him to get the theatre cleared
20 for his operation. And in that sense, I think the evidence
21 thoroughly justified the jury in believing that Margaret Weston
22 was acting in a dual capacity as his employee for Glenmar.
23 Glenmar Cinestate rightly used its own people to
24 engage the services of Lilly, and they benefited from his

activity to clear the traffic from the theatre and to get the cars in, from which activity they also benefited.

So I think there is ample evidence that would support the belief of the jury, and the finding by the jury, that Mr. Lilly was acting in a relationship with both defendants.

There was also ample evidence that he was in a situation where the right to control him existed, because based on the previous patterns that everybody agreed that set the format for not only what happened that particular night or call, but the fact that these two employers had set the pattern on what these men were expected to do.

The jury had the issue before them, as to whether or not he was acting in his capacity as a police officer for Goochland, and had, I think, some instructions very favorable to the defendants, frankly, on all those issues, and they resulted against you.

The instructions in the case, as I viewed them, I think I had -- I know I had a great deal of concern about some of the instructions being fairly stated with respect to the plaintiff's case. I have no concern, at all, that they were fairly stated from the standpoint of the defendant's case, and I was a little bit concerned that maybe they had not been stated as closely as, maybe, on control of the issue, from the plaintiff's standpoint.

I find no basis on the receipt of evidence or law, refusing of instructions, or the ruling on motions previously made, to disturb this verdict, and therefore, I will enter judgment on the verdict.

Do you-all want to agree, at this point, as I enter my order that the transcript shall be a part of the record when it is filed and/or a later order in that regard?

MR. KAUFFMAN: Yes.

MR. THURMOND: Yes, sir.

Would you, under the rules of court, in the final order, enter final judgment that counsel agrees the Court can at that time -- that once the transcript has been filed, it will become part of the record without having to go through the process of tender?

MR. HIXON: No problem, Your Honor.

When you enter judgment, I request it be entered against all three defendants.

THE COURT: It will. That is clearly understood. When they came back against the defendants, they are talking about Glenmar Ginestate, Bentley, d/b/a Bentley Productions, and Neighborhood Theatre.

Thank you, gentlemen.

MR. HIXON: Thank you, Your Honor.

(The trial in this matter was adjourned at 2:01 p.m., November 28, 1979.)

DISTRICT THEATRES

PETTY CASH RECEIPT

PLAINTIFF'S EXHIBIT 1

Date 7-31- 19 76

CEIVED Melvin H. Plimpton, Jr. ($ 25,00 Dollars

expend For

arge Week Ending 8-6-76

proved For $ 25,00

Signed Melvin H. Plimpton Jr.

PETTY CASH VOUCHER

JUNE 23 19 78

PATTERSON THEATRE RICHMOND
(PLACE)

DATE	FOR	AMOUNT	
6/24	MANAGER'S BONUS	50	00
TOTAL	FIFTY AND (WRITE IN AMOUNT) & 00/100 DOLLARS	50	00

PLAINTIFF'S EXHIBIT 2

Approved

Received Payment
Margaret Weston

INSTRUCTIONS

If no original receipt or invoice can be obtained this voucher should be signed by the person receiving payment and approved by the manager before being mailed to the Accounting Department.
AMOUNTS and SIGNATURES MUST BE WRITTEN with INK or INDELIBLE PENCIL.

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 5/13/77 19

CEIVED J. D. Lilly ($ 25.00)Dollars

Expend For Traffic Control

arge Week Ending 5/14/77

proved For $ 25.00

Signed J D Lilly

PLAINTIFF'S EXH. 7

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 5/15/77 19

ECEIVED J. D. Lilly ($ 25.00)Dollars

Expend For Traffic Control

harge Week Ending 5/21/77

pproved For $ 25.00

Signed J D Lilly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 7/8/77 19

CEIVED J. D. Lilly ($ 25.00)Dollars

Expend For Traffic Control

arge Week Ending 7/9/77

proved For $ 25.00

Signed J D Lilly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 7/23/77 19

CEIVED James W Kelly ($ 25.00)Dollars

Expend For Traffic Control

rge Week Ending 7/23/77

proved For $ 25.00

Signed J W Kelly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 7/29/77 19

CEIVED J. D. Lilly ($ 25.00)Dollars

Expend For Traffic Control

arge Week Ending 7/30/77

proved For $ 25.00

Signed J D Lilly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 7/30/77 19

CEIVED J. D. Kelly ($ 25.00)Dollars

Expend For Traffic Control

arge Week Ending 7/30/77

proved For $ 25.00

Signed J H Kelly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 8/26/77 19

IVED J. D. Lilly ($ 25.00)Dollars

xpend For Traffic Control

ge Week Ending 9/3/77

oved For $ 25.00

Signed J. D. Lilly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 8/27/77 19

EIVED J. D. Lilly ($ 25.00)Dollars

Expend For Traffic Control

ge Week Ending 9/3/77

roved For $ 25.00

Signed J. D. Lilly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 9/2/77 19

EIVED J. D. Lilly ($ 25.00)Dollars

xpend For Traffic Control

ge Week Ending 9/3/77

oved For $ 25.00

Signed J. D. Lilly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 9/3/77 19

IVED J. D. Lilly ($ 25.00)Dollars

xpend For Traffic Control

ge Week Ending 9/3/77

oved For $ 25.00

Signed J. D. Lilly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 9/17/77 19

EIVED J. D. Lilly ($ 25.00)Dollars

Expend For Traffic Control

rge Week Ending 9/17/77

roved For $ 25.00

Signed J. D. Lilly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 5 May 19 78

EIVED Twenty five & 00/100 ($ 25.00)Dollars

Expend For Security

rge Week Ending

roved Petty Cash Collections For $ 25.00

Signed

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 9-4- 19 76

CEIVED J D Lilly ($ 25.00)Dollars

Expend For Traffic Control

arge Week Ending 9-10-76

proved For $ 25.00

Signed J D Lilly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 9-3- 19 76

CEIVED J W Fell ($ 25.00)Dollars

Expend For Traffic Control

arge Week Ending 9-10-76

pproved For $ 25.00

Signed J D Fell

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 2-31- 19 76

CEIVED J D Lelly ($ 17.50)Dollars

Expend For Security

arge Week Ending 8-6-76

proved For $ 17.50

Signed J D Lelly

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 7-30- 19 76

CEIVED J R Kelly ($ 25.00)Dollars

Expend For Tempe Central

arge Week Ending 8-6-76

proved For $ 25.00

Signed J R Kelly

PETTY CASH VOUCHER

8/19/77 19

Patterson Drive-Inn THEATRE
(PLACE)

DATE	FOR	AMOUNT
8/19/77	Traffic Control	25.00

TOTAL Twenty five & 00 /100 DOLLARS
(WRITE IN AMOUNT)

Approved

MANAGER

Received Payment J W Lilly

INSTRUCTIONS

If no original receipt or invoice can be obtained this voucher should be signed by the person receiving payment and approved by the manager before being mailed to the Accounting Department.
AMOUNTS and SIGNATURES MUST BE WRITTEN with INK or INDELIBLE PENCIL.

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 7/22/77 19

CEIVED Olin C. Ward ($ 25.00)Dollars

Expend For Traffic Control

arge Week Ending 7/23/77

proved For $ 25.00

Signed Olin C. Ward

286 PLAINTIFF'S EXH. 8

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 5 May 19 78

EIVED Twenty-five + No/100 ($ 25.00)Dollars

Expend For Security

rge Week Ending

roved For $ 25.00

Signed

x

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 7/2/77 19

EIVED Joe Wood ($ 25.00)Dollars

Expend For Traffic Control

rge Week Ending 7/2/77

proved For $ 25.00

Signed Clem L. Wood

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 7/23/77 19

CEIVED Alvin L. Ward ($ 25.00)Dollars

Expend For Traffic Control

arge Week Ending 7/23/77

proved For $ 25.00

Signed Alvin L. Ward

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 9-5- 19 76

CEIVED Olivia L. Wood ($ 25.00)Dollars

Expend For Traffic Control

arge Week Ending 9-10-76

proved For $ 25.00

Signed Olivia L. Wood

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 9/4/77 19

EIVED J. T. Payne ($ 25.00)Dollars

Expend For Traffic Control

rge Week Ending 9/10/77

roved For $ 25.00

Signed James J. Payne

291 PLAINTIFF'S EXH. 9

DISTRICT THEATRES

PETTY CASH RECEIPT

Date 9/3/77 19

EIVED J. T. Payne ($ 25.00)Dollars

Expend For Traffic Control

rge Week Ending 9/3/77

roved For $ 25.00

Signed James T. Payne

PETTY CASH VOUCHER

8-13-1977

Patterson Drive-In THEATRE
(PLACE)

DATE	FOR	AMOUNT
8/13	Traffic Control	25.00

TOTAL Twenty five (WRITE IN AMOUNT) & 00/100 DOLLARS

Approved

MANAGER

Received Payment
James Temple Payne

INSTRUCTIONS

If no original receipt or invoice can be obtained this voucher should be signed by the person receiving payment and approved by the manager before being mailed to the Accounting Department.
AMOUNTS and SIGNATURES MUST BE WRITTEN with INK or INDELIBLE PENCIL.

PETTY CASH VOUCHER

8/19/77 19

Patterson Drive-Inn THEATRE
(PLACE)

DATE	FOR	AMOUNT
8/19/77	Traffic Control	25.00

TOTAL Twenty five & 00/100 DOLLARS
(WRITE IN AMOUNT)

Approved
MANAGER

Received Payment
Jamie T. Payne

INSTRUCTIONS

If no original receipt or invoice can be obtained this voucher should be signed by the person receiving payment and approved by the manager before being mailed to the Accounting Department.
AMOUNTS and SIGNATURES MUST BE WRITTEN with INK or INDELIBLE PENCIL.