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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

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LINWOOD LEE WELLS,
Counsel for Appellant

v.

VERNITA I. McMAHON,
Counsel for Appellee

JOINT APPENDIX

Allen J. Gordon
Gordon & Brown
P.O. Box 13336
Chesapeake, Virginia 23325

Counsel for Appellant

Michael J. Blachman
Bangel, Bangel & Bangel
505 Court Street
Law Building
Portsmouth, Virginia

Counsel for Appellee

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Followed by designated portions of the transcript relating to the following Assignments of Error:	8

1. The trial court erred in ruling that the appellant was guilty of negligence as a matter of law.

2. The trial court erred in ruling that the appellee was free of contributory negligence as a matter of law.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK

VERNITA I. MCMAHON, Plaintiff, v. LINWOOD LEE WELLS Route 3, Box 24 Smithfield, Virginia, Defendant.	)	MOTION FOR JUDGMENT

Plaintiff, Vernita I. McMahon, moves the Honorable Judge of the Circuit Court of the City of Suffolk, Virginia, for a judgment and award of execution against the defendant, Linwood Lee Wells, for the sum of FIFTY THOUSAND DOLLARS ($50,000.00), with interest, from the 26th day of August, 1978, which sum of money is due from the defendant to the undersigned plaintiff, for this, to-wit:

1. That on the 26th day of August, 1978, the defendant, Linwood Lee Wells, owned, operated and controlled a motor vehicle on Bennetts Pasture Road near it's intersection with Driver Lane in the City of Suffolk, Virginia.

2. That on the 26th day of August, 1978, the plaintiff, Vernita I. McMahon, was lawfully and properly operating and controlling a motor vehicle on Bennetts Pasture Road near it's intersection with Driver Lane in the City of Suffolk, Virginia.

3. That as a result of the negligence of the defendant, Linwood Lee Wells, in the ownership, operation and control of his motor vehicle, the plaintiff's motor vehicle was struck a violent blow, as a result of which, the plaintiff was caused to sustain serious and permanent injuries.

4. That as a result of said serious and permanent injuries, plaintiff was caused to suffer, and she will in the future be caused to suffer great physical pain and mental anguish.

5. That plaintiff was caused to expend, and she will in the future be caused to expend large sums of money in an endeavor to be healed and cured of said injuries.

6. That plaintiff was caused to lose, and she will in the future be caused to lose large sums of money which she otherwise would have earned.

7. That plaintiff was caused to be unable, and she will in the future be unable to perform her necessary and lawful affairs.

VERNITA I. MCMAHON

By_____
Of Counsel

Michael J. Blachman, Esq.
BANGEL, BANGEL & BANGEL
Law Building
Portsmouth, Virginia 23704

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK

VERNITA I. McMAHON,

Plaintiff,

v. LAW DOCKET NO.

LINWOOD LEE WELLS,

Defendant.

ANSWER AND GROUNDS OF DEFENSE

NOW COMES the defendant, Linwood Lee Wells, and for his separate Answer and Grounds of Defense to the Motion for Judgment exhibited against him, states as follows:

1. This defendants admits the allegations contained in paragraph 1.

2. This defendant denies the allegations contained in paragraphs 2 and 3 of the Motion for Judgment.

3. This defendant is uninformed as to the allegations contained in paragraphs 4, 5, 6 and 7 of the Motion for Judgment and calls for strict proof thereof.

4. That the plaintiff was guilty of negligence which proximately caused or contributed to the accident.

5. This accident was caused solely by the negligence of the plaintiff.

6. This defendant denies that he is indebted to plaintiff in any sum of money whatsoever.

7. This defendant is not advised as to the injuries alleged by the plaintiff or the expenses or losses alleged, and in the event any duty, obligation or liability may later evolve upon this defendant, this defendant demands strict proof of the plaintiff with respect to the alleged injuries, losses or expenses incurred.

8. This defendant reserves the right to amend his Answer and file additional pleadings and rely upon any and all defenses which may develop at, before, or during the trial, or be justified by the evidence presented.

LINWOOD LEE WELLS

By _____
Of Counsel

ALLEN J. GORDON, p.d.
P. O. Box 13336
Chesapeake, Virginia 23325

I hereby certify that a copy of the foregoing Answer and Grounds of Defense was mailed to Michael J. Blachman, Esquire, Post Office Box 760, Portsmouth, Virginia 23705, this 20th day of December, 1979.

_____
Allen J. Gordon

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF SUFFOLK

VERNITA I. McMAHON,

Plaintiff

vs Law Docket No. L-256-79

LINWOOD LEE WELLS,

Defendant

JUDGMENT ORDER

IT APPEARING that on the 16th day of July, 1980, the jury returned a verdict in favor of the plaintiff, Vernita I. McMahon against the defendant, Linwood Lee Wells, and assessed her damages at Forty-five Thousand ($45,000.00) Dollars;

It further appearing to the Court that the defendant, Linwood Lee Wells' post-trial motion to set aside the verdict as contrary to the law and evidence should be overruled;

THEREFORE, it is ADJUDGED and ORDERED that the defendant, Linwood Lee Wells' motion to set aside the verdict is hereby overruled;

It is further ADJUDGED and ORDERED that judgment be entered in favor of the plaintiff, Vernita I. McMahon against the defendant, Linwood Lee Wells in the amount of Forty-five Thousand ($45,000.00) Dollars and costs; to which action of the Court the defendant excepts.

ENTER: this 14th day of October 1980.

S/Benjamin A. Williams, Jr.

Michael J. Blackman, p.q.

, p.d.

SEEN AND OBJECTED TO

A TRUE COPY, TESTE:
GLORIA H. MORGAN, CLERK

By , D. C.

LAW OFFICES
BANGEL, BANGEL & BANGEL
PORTSMOUTH, VIRGINIA

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK

VERNITA I. McMAHON,

Plaintiff

vs. AT LAW NO. L-256-79

LINWOOD LEE WELLS,

Defendant

NOTICE OF APPEAL

Now comes the defendant, Linwood Lee Wells, by counsel, and pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, files herewith this Notice of Appeal to the Supreme Court of Virginia from the Order of this Court entering judgment against him on the 14th day of October, 1980, in favor of the plaintiff, Vernita I. McMahon.

Transcripts of the testimony and other incidents of the case will be hereafter filed.

LINWOOD LEE WELLS

By _____
Of Counsel

Allen J. Gordon, p.d.
GORDON & BROWN
P. O. Box 13336
Chesapeake, Virginia 23325

I hereby certify that on the 12th day of November, 1980 a true copy of the foregoing Notice of Appeal was mailed to Michael J. Blackman, counsel for the plaintiff, 505 Court Street, Portsmouth, Virginia.

Allen J. Gordon

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24 Q State your name, please, sir.

25 A Robert Leon Glover, Jr.

1 Q Where do you reside, sir?

2 A 601 Hunter Court, Virginia Beach,

3 Virginia.

4 Q Are you employed, Mr. Glover?

5 A Yes, sir, by the City of Virginia Beach.

6 Q And in what capacity?

7 A I am an engineer or construction

8 inspector for the Engineering Division.

9 Q On August 26th, 1978, were you employed,

10 sir?

11 A Yes, sir.

12 Q Where was that?

13 A City of Suffolk.

14 Q And in what capacity?

15 A Police Officer.

16 Q And had you investigated motor vehicle

17 collisions prior to August 26th, 1978?

18 A Yes, sir.

19 Q How long had you been a police officer?

20 A Total or in the City of Suffolk?

21 Q Well, total, sir.

22 A Okay. Two years.

23 Q Okay. Now, I ask you, Officer Glover,

24 did you have occasion to investigate a motor vehicle collision

25 which occurred on August 26th, 1978, in the City of Suffolk?

1 A Yes, sir.

2 Q And where did this accident occur, sir?

3 A On Route 627 a hundred and fifty feet

4 north of Route 629, that is Bennetts Pasture Road; a hundred

5 and fifty feet north of Driver Lane.

6 Q All right. When you say Driver Lane,

7 is that also Sleepy Hole Road, sir?

8 A Yes, sir. That is the west side.

9 Q Okay. Now, at the point where this

10 accident -- well, how many lanes of travel are there?

11 A Two.

12 Q Which direction does that road run?

13 A North-south.

14 Q And how -- at the point where this

15 accident occurred and back to the intersection how is it

16 marked as far as lines for passing and not passing?

17 A Okay. There is passing vehicles in

18 -- northbound lane are marked passing zone. Is -- in their

19 lane they have dotted lines.

20 Q Okay. And what about southbound, sir?

21 A Southbound at that time was no passing.

22 Q Officer, -- I keep calling you Officer.

23 I'm sorry. Mr. Glover, I ask you if you can identify this

24 picture, sir.

25 A Yes, sir. This is Shoulders Hill

1 Road.

2 Q Shoulders Hill or Bennett's Pasture?

3 A Bennett's Pasture. I'm sorry.

4 Q There is an intersection here. Is that

5 what you are talking about, Driver Lane and Sleepy Hole Road, sir?

6 A Yes, sir. This is Driver Lane. Sleepy

7 Hole Road is on the west side.

8 ***

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14 (Whereupon, the aforementioned photograph

15 was received in evidence and marked for identification as Plaintiff's Exhibit

16 Number One.)

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9 Q Officer, the picture here is of Bennett's
10 Pasture Road; is that correct, sir?
11 A Yes, sir.
12 Q What is the road right here?
13 A This road here to the east is Driver
14 Lane.
15 Q All right. If the picture showed it
16 over on the west that would be Sleepy Hole Road.
17 A Yes, sir. You can see where it
18 divides right at the intersection of Sleepy Hole Road.
19 Q Is this picture looking north?
20 A Yes, sir, it is.
21 Q And the accident happened a hundred and
22 fifty feet, I think you said, north of this intersection; --
23 A Yes, sir.
24 Q -- is that correct?
25 A Yes, sir. It did.

1 Q And what is the speed limit out here,
2 sir?
3 A Fifty-five miles an hour.
4 Q Okay. Fine. You may take the stand
5 again, sir. Thank you.
6 (Whereupon, the witness resumed his
7 seat on the witness stand.)
8 BY MR. BLACHMAN:
9
10 Q Are there any obstructions out there
11 to block any views of anybody, --
12 A No, sir.
13 Q -- of any of the drivers?
14 Okay. From where the accident occurred
15 south back how far back can you see is the road straight?
16 A Estimate four to five hundred feet.
17 Q Okay. What about forward, going
18 northbound?
19 A Another five to seven hundred feet.
20 Q Okay. Now, were the roads dry at the
21 time?
22 A Yes, sir, it was.
23 Q Now, when you arrived -- what time did
24 you arrive on the scene, sir?
25 A I arrived on the scene at, okay, at

1 3:50 a.m.

2 Q Okay. At what time did you get the

3 call?

4 A The call came in when I called the

5 dispatcher at three-thirty.

6 Q Were you able to -- when you arrived,

7 were you able to ascertain names of the vehicles or parties

8 that were operating vehicles?

9 A Yes, sir. I did.

10 Q All right. And would you tell us the

11 names of the operators of the two vehicles.

12 A Okay. One operator of a 1978 Ford,

13 two-door sedan, license number LTT-192, that was '78, Virginia,

14 was Mrs. Vernita McMahon and the other operator of a 1975

15 Chevrolet station wagon, license number CAM-457, Virginia,

16 operator was Mr. Linwood Lee Wells.

17 Q Now, where were the vehicles located on

18 your arrival, sir?

19 A Okay. The vehicles were still located

20 in the traffic lane.

21 Q That would be the north or southbound

22 lanes?

23 A Northbound lanes.

24 Q All right. Now, did -- when you

25 arrived was there any distance between the two vehicles?

1 A. Yes, sir. There was about twenty,
2 thirty feet.
3 Q. Were there any skid marks, sir?
4 A. Yes, sir, there were.
5 Q. And from whose vehicle?
6 A. Okay. It was from vehicle number two
7 on my diagram, which was Mr. Linwood Wells. The skid marks
8 were located about thirty feet behind his vehicle and were
9 approximately fifty-five-and-a-half feet long.
10 Q. Okay. Now, I show you these two
11 vehicles -- two pictures and ask you if you can identify
12 those vehicles.
13 A. Yes, sir. This is a Ford Fairmont.
14 Q. Okay. Is that Mrs. McMahon's vehicle?
15 A. Yes, sir.
16 Q. Is that how it appeared on your arrival
17 as far as the damage to the rear?
18 A. Yes, sir.
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8 (Whereupon, the aforementioned
9 photographs were received in evidence and marked for identification as
10 Plaintiff's Exhibit Number Two.)
11 MR. GORDON: Both of them are going
12 to be the same exhibit, Your Honor?
13 THE COURT: Yes, sir.
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23 *** Q Where is the damage to this vehicle,
24 sir?
25 A It is to the left rear side. Well,

1 actually it is the entire rear but the heavily damaged part is
2 the left rear side.
3 Q And what does it show, sir?
4 A Shows damage to the bumper and left
5 rear section lights.
6 Q Are the lights knocked out --
7 A Yes, sir, it is, --
8 Q -- or the --
9 A -- the lenses.
10 Q -- lenses?
11 A Yes, sir.
12 Q Where does it show the bumper and
13 fender?
14 A The bumper is below the level of the
15 car on the left-hand side.
16 Q Let's see if they have any questions.
17 I think you can have a seat up there, Mr. Glover, and wait for
18 a while for them to look at it.
19
20 (Whereupon, the witness resumed his
21 seat on the witness stand.)
22
23 BY MR. BLACHMAN:
24
25 Q Now, Officer, did you -- you made an

1 investigation, did you not, sir?

2 A Yes, sir.

3 Q When you arrived on the scene were

4 Mrs. McMahon's hazard lights or flashers on or off, sir?

5 A On.

6 Q Okay. Were her front lights on or off?

7 A Front lights were on.

8 Q What is that?

9 A Her front lights were on also.

10 Q Okay. Now, did you have an occasion to

11 speak to Mr. Wells at the scene of the collision, sir?

12 A Yes, sir. I did.

13 Q And did you ask him anything about

14 the speed at the time of impact?

15 A Yes, sir. I did.

16 Q And what did he tell you, sir?

17 A His original statement was fifty miles

18 an hour. I again interviewed him where he stated that his

19 speed was thirty-five miles an hour. And again in an

20 interview, making sure everything was correct before I left

21 the scene, he stated his speed was thirty miles an hour.

22 Q All these were made while you were at

23 the scene of the collision, sir?

24 A Yes, sir.

25 Q Now, did he tell you anything about

1 where he was coming from or where he was going?

2 A. He stated he was going fishing.

3 Q. Okay. And, when you were talking to

4 him, did you notice any type of odor of anything?

5 A. Yes, sir. When I was talking to the

6 gentleman, I observed or I noticed an odor of alcohol.

7 However, the odor of alcohol wasn't as strong to warrant any

8 investigation of driving under the influence. I did, however,

9 interview him during the investigation about drinking prior to.

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11 Q Officer, I have one other question for
12 you, sir. Did you ascertain if there were any witnesses,
13 other than the two parties to the accident?
14 A Yes, sir. I did. The only other
15 witnesses I had to it were -- besides the operators of the
16 vehicles was a passenger in Mr. Wells' car and a pedestrian,
17 which was Mrs. McMahon's son.
18 Q And the person in his car was, I believe,
19 Mr. Stringfield. Is that correct, sir?
20 A I don't have the name.
21
22 MR. BLACHMAN: Thank you, sir.
23 Answer Mr. Gordon's questions.
24 CROSS-EXAMINATION
25 BY MR. GORDON:

1 Q Officer, let me ask you when you
2 arrived at the accident scene I assume as is normally expected
3 the first thing you do is inquire of injuries of anybody, did
4 you not?
5 A Yes, sir.
6 Q In fact had you had any training in
7 treating people with injuries?
8 A Yes, sir. I have.
9 Q What extent?
10 A Emergency Medical Technology Instructor
11 for the State of Virginia.
12 Q All right. Now, did you inquire of each
13 of the drivers and the passenger in the car whether they were
14 injured?
15 A Yes, sir, I did.
16 Q What did the plaintiff, Mrs. McMahon,
17 tell you with regard to injuries?
18 A At that time there were no injuries
19 stated. I advised, however, at that time if there were any
20 injuries do not hesitate to be seen by a physician.
21 Q All right. At that time you did
22 inquire and they told you they were not injured; is that
23 right?
24 A That's right.
25 Q Let me go back, if I can, again to the

1 accident scene. Actually do you know the speed the vehicles
2 were going at the time of the impact? I know before you said
3 at the time of the accident.
4 A. At the time of impact itself? When I
5 asked how fast they were going they stated --
6 Q. That was before the accident.
7 A. Right actually at the collision no, sir,
8 I cannot state how fast they were going.
9 Q. All right. So you just asked the speed
10 they were doing before the accident. Isn't that true?
11 A. Yes, sir.
12 Q. And they gave you that speed.
13 A. Yes, sir.
14 Q. Now, Officer, I have another picture.
15
16 MR. GORDON: Have you seen it,
17 Michael?
18 MR. BLACHMAN: I don't know.
19 Is that the same car?
20
21 BY MR. GORDON:
22
23 Q. Officer, the damage to the cars were
24 such that each of them were able to drive their vehicles away
25 from the accident scene I take it.

1 A Yes, sir.

2 Q In fact the only damage to the lady's

3 car was the fact that the bumper was mashed in and the

4 supporting piece to the left side of the bumper was down, the

5 supporting arm, and the lights were -- the rear lights -- the

6 lenses of the lights were knocked out, not the lights but

7 the lenses. Isn't that true?

8 A Yes, sir.

9 Q Was there any evidence of any great

10 impact, anything there that you --

11

12 MR. BLACHMAN: Judge, I think

13 that is a conclusion for the jury to draw

14 one way or the other. The evidence speaks

15 for itself.

16

17 BY MR. GORDON:

18

19 Q Is this a picture of her car that was

20 taken about the evening of the accident itself?

21 A Yes, sir.

22 Q All right.

23

24 MR. GORDON: Your Honor, I would

25 offer that.

1 THE CLERK: I will take it.

2 THE COURT: That would be

3 defendant's exhibit one.

4 THE CLERK: Yes, sir.

5 (Whereupon, the aforementioned

6 photograph was received in evidence and marked for identification as

7 Defendant's Exhibit Number One.)

8 BY MR. GORDON:

9

10 Q You didn't find any defect with

11 reference to either of the vehicles, did you?

12 A No, sir.

13 Q And you didn't find any defects with

14 reference to either of the drivers, did you?

15 A No, sir.

16 Q And as far as you could ascertain --

17 and this is the picture - was the picture referred to taken the

18 night of the accident of the vehicle.-- each of the drivers

19 were capable of operating a vehicle --

20 A Yes, sir.

21 Q -- and had no problems in that regard.

22 A No, sir, not at all, not that I

23 observed.

24 Q What size shoulders are there on the

25 road of Bennett's Pasture Road?

1 A. Size of the shoulders?

2 Q. Yes, sir.

3 A. Well, the width of the road that I

4 measured was twenty-two-and-a-half feet; from ditch to ditch,

5 from your east to west the width was approximately thirty-eight

6 feet. So I would say that was fifteen-and-a-half feet,

7 about seven foot each shoulder.

8 Q. And the roadway itself, each lane of

9 the roadway?

10 A. Each lane of the roadway, the total,

11 about eleven foot each lane.

12 Q. And was the roadway level at that point

13 in time?

14 A. Yes, sir, basically.

15 Q. What was the makeup of the roadway,

16 the material?

17 A. Okay. As far as material was concerned

18 it was standard S-5 surface, asphalt surface.

19 Q. All right. Now, the direction they

20 were coming was there a broken line or solid line?

21 A. There was a broken line, passing lane.

22 Q. Passing?

23 A. Yes, sir.

24 Q. The direction the vehicles going in

25 the opposite direction what condition of the roadway --

1 A They had a solid line. And it was the
2 same condition as far as asphalt surface.
3 Q Did you see each of the parties walking?
4 A Yes, sir, I did.
5 Q Did the plaintiff, Mrs. McMahon, appear
6 to be able to walk all right?
7 A Yes, sir, at that time.
8 Q All right. Did she appear to have any
9 difficulty getting around?
10 A No, sir, not really, --
11 Q All right.
12 A -- that I can recall.
13 Q I take it Mr. Wells could walk okay.
14 A Sobriety was fine. Yes, sir.
15 Q And he had no difficulty in getting
16 around.
17 A No, sir.
18 Q I am speaking also of physically --
19 A Yes, sir.
20 Q -- with both of them.
21 A Yes, sir.
22 Q I take it that the damage on the other
23 vehicle was commensurate with the pictures show what the
24 damage was to this vehicle.
25 A Pardon me?

1 Q I mean there was similar type damage to
2 each vehicle. One was the front; one was the rear.
3 A Yes, sir.
4
5 MR. GORDON: Thank you, sir. That's
6 all.
7
8 REDIRECT-EXAMINATION
9
10 BY MR. BLACHMAN:
11
12 Q One other question, Officer. How fast
13 did the plaintiff, Mrs. McMahon, tell you she was going at
14 impact?
15 A She stated that she was traveling at
16 thirty miles an hour.
17
18 MR. BLACHMAN: Thank you, sir.
19
20 RECROSS-EXAMINATION
21
22 BY MR. GORDON:
23
24 Q She said that was before impact, was
25 it not, when you asked her how fast she was going before?

A. At that time, yes, sir. I asked her how fast she was going before the accident occurred. One stated fifty miles an hour; the other stated thirty miles an hour.

***

***

1 Q. Wasn't your question phrased in how
2 fast you were going prior to impact or before -- how fast you
3 were going prior to the accident? Isn't that what you asked?
4 A. I asked what -- at the time my standard
5 questions were how fast were you going at the time of the
6 accident. That is my exact phrase I used in almost every --
7 at that time I got a statement from Mr. Wells fifty miles an
8 hour and from Mrs. McMahon I got thirty miles an hour.
9 Q. Do you know if they meant that to be
10 at the time they were going before the accident, the events
11 leading up to when the accident happened, or how fast they
12 were going at the time of the collision?
13 A. At this time I can't actually speak for
14 them what they thought.
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24 ***
25 BY MR. BLACHMAN:

1 Q Johnny, how are you this morning?
2 A Okay.
3 Q Okay. Lean forward now so everybody can
4 hear you all right.
5 State your name, please.
6 A John McMahon.
7 Q Okay, Johnny. And how old are you son?
8 A Seventeen.
9 Q And where do you live now?
10 A 555 Adams Drive in Newport News.
11 Q And with whom do you live?
12 A My daddy.
13 Q Okay. Do you work, Johnny?
14 A No, sir.
15 Q Now, on August 26th of 1978 where did --
16 with whom did you live?
17 A My mother and father.
18 Q And was that in Suffolk in Nansemond
19 Shores?
20 A Yes, sir.
21 Q Okay. Now, do you recall witnessing an
22 accident that your mother was involved in earlier that
23 morning of the 26th of August?
24 A Yes, sir.
25 Q Now, that previous night or that Friday

night, which would have been the 25th, where had you been?

A. At the Plaza Roller Rink in Portsmouth.

Q. Now, how did you get there?

A. My mother took me.

Q. Did you have any arrangements on how you were to get home?

A. Yes, ma'am. I mean yes, sir. She was going to come pick me up at twelve.

Q. Now, you would have been 15 at that time or 16.

A. Fifteen.

Q. You, I presume, didn't have a driver's license either.

A. No, sir.

Q. Do you have one now?

A. Yes, sir.

Q. And did you stay at the Plaza Roller Rink until twelve?

A. Yes, sir.

Q. And at twelve o'clock was your mother there?

A. No, sir.

Q. And did you wait any period of time for her?

A. Yes, sir. I waited about forty-five

1 minutes after twelve.

2 Q Now, where did you wait, Johnny?

3 A Sitting out front and on the side on the

4 sidewalk.

5 Q Why didn't you wait inside?

6 A Because the place was closed.

7 Q They close at twelve?

8 A Yes, sir.

9 Q Did you have any money with you?

10 A No, sir.

11 Q At quarter-to-one what did you do then?

12 You said you had waited forty-five minutes.

13 A Started walking home.

14 Q All right. Why?

15 A That is the only way I had to get home.

16 Q Did you know anybody that lived in that

17 area that perhaps you could go see to use the phone or

18 anything like that?

19 A No, sir.

20 Q Now, you say you started walking home.

21 Where did you go? What route did you take?

22 A Straight down Portsmouth Boulevard until

23 you get to that road --

24 Q Bennett's Pasture Road?

25 A Yes. -- Bennett's Pasture Road and then

1 walked down, straight down that a couple of miles.

2 Q Is the entrance to your house or

3 subdivision you lived in off of Bennett's Pasture Road?

4 A Yes, sir.

5 Q Now, did you cross -- do you know where

6 Sleepy Hole Road and Driver Lane is as where they intersect

7 Bennett's Pasture Road?

8 A Yes, sir.

9 Q Did you cross that?

10 A Yes, sir.

11 Q And did it come a point in time that you

12 saw some headlights coming along?

13 A Yes, sir.

14 Q All right. And do you remember approximatel

15 how far you were beyond this intersection of Sleepy Hole Road

16 and Bennett's Pasture Road when you noticed these headlights?

17 A Say approximately about two hundred feet

18 from the intersection.

19 Q All right. Now, where were you? Were

20 you on the road or where?

21 A I was on the side, on the shoulder.

22 Q All right. And when you saw -- and about

23 what time was this that you saw these headlights?

24 A About three o'clock.

25 Q That would be in the morning.

1 A Yes, sir.

2 Q Now, when you saw these headlights what

3 did you do?

4 A Turned around to see what it was that was

5 coming.

6 Q Did you at first recognize the car?

7 A Not at first, no, sir.

8 Q Now, did you see any signals eventually

9 come on this car?

10 A Yes, sir. She had the turn signal on and

11 then --

12 Q What -- you say turn signal. What do you

13 mean by that?

14 A Right-hand turn signal.

15 Q Is that by the electric blinker or by

16 hand, by arm?

17 A That is by hand.

18 Q I mean you say you saw the signal.

19

20 MR. GORDON: Well, he is your witness.

21 Now you have got the wrong answer. And I object,

22 Your Honor.

23 MR. BLACHMAN: Judge, I don't understand

24 what he is saying.

25 MR. GORDON: It is obvious. He said he

1 saw a turn signal by hand.

2 MR. BLACHMAN: He indicated by his

3 hand that it was --

4 MR. GORDON: All right. I think the

5 record speaks for itself. I may have the court

6 reporter read it back.

7 MR. BLACHMAN: If she can show his

8 motion of his hand like she was putting on a turn

9 signal, Mr. Gordon, --

10 THE COURT: All right. Go ahead.

11

12 BY MR. BLACHMAN:

13

14 Q Did you see a signal on the car?

15 A Yes, sir.

16 Q And how -- what was the signal?

17 A It was a right-hand turn signal.

18 Q Where did you see the signal?

19 A On the car when she got right past the

20 intersection.

21 Q Was the signal by way of electric

22 blinker or was it by way of an arm?

23 A Electric signal.

24 Q All right. Now, did you see another

25 vehicle at that time?

1 A Yes, sir.

2 Q And was that -- where was that car?

3 A I would say it was about a couple --

4 let's see -- about a hundred feet behind her; maybe more than

5 that.

6 Q Now, when you say -- all right. Now,

7 what direction were these -- were these cars coming away

8 from you or towards you?

9 A Towards me.

10 Q And was there any traffic coming the

11 other way?

12 A No, sir.

13 Q And would this traffic have been on the

14 same side of the street that you were on, that is the two

15 cars that you saw?

16 A Yes, sir.

17 Q Did you ultimately realize who the first

18 vehicle was, whose car that was?

19 A After I had glanced at it for a while

20 then I noticed it was my mother's car.

21 Q How did you know it was your mother's

22 car?

23 A Because of the CB antenna and the headlights

24 were on it.

25 Q Did you notice at any other time or --

1 scratch that. Did you notice if the lead car or what turned
2 out to be your mother's car ever gave any other type of
3 signal?
4 A. She had her flashers. After her turn
5 signal then both of her lights started blinking on and off.
6 Q. Both of her lights. You mean the turn
7 signals down on the front of the car?
8 A. Yes, sir.
9 Q. Now, was there a collision that ultimately
10 occurred between the two vehicles? An accident occurred.
11 A. Yes, sir.
12 Q. Now, when the accident occurred, were
13 you -- where were you in regards to your mother's car?
14 A. In front of it.
15 Q. Okay. And can you tell us approximately
16 how far in front of it you were?
17 A. I would say about five foot.
18 Q. Five feet. Okay.
19 A. Five feet.
20 Q. And at the time of the accident, at the
21 time of impact can you approximate for us how fast your mother
22 was going?
23 A. I would say about thirty, forty miles an
24 hour.
25 Q. Okay. Now, at the time of impact did you

1 hear any brakes coming from the vehicle that struck your
2 mother's car?
3 A. Yes, sir.
4 Q. And was the operator -- did you subsequently
5 ascertain that the operator of that car was Mr. Wells, who is
6 sitting over here at the other table?
7 A. Yes, sir.
8 Q. Now, was your mother's car knocked
9 forward?
10 A. Yes, sir.
11 Q. Can you tell us, if you can, approximately
12 how far?
13 A. I would say between eighty and a hundred
14 feet.
15 Q. Okay. Did the vehicles subsequent to
16 impact come to a stop?
17 A. Yes, sir.
18 Q. And after both vehicles had come to a
19 stop, did either party move their vehicle before the police
20 came?
21 A. Yes, sir.
22 Q. And who moved their vehicle and where?
23 A. Linwood Wells moved his car up right
24 behind my mamma's car.
25 Q. And, after the accident, did you talk to

1 your mother?

2 A. Yes, sir.

3 Q. Did you get in the car, or just what did

4 you do?

5 A. Well, I ran around -- I ran to the side

6 first; tried to open that door. It was locked. So I ran

7 back around to the side she was at and asked her if she was

8 all right. She said she was all right. She thought so.

9 She was all right. And --

10 Q. Did you get into the car?

11 A. Yes, sir.

12 Q. And what did you do or try to do?

13 A. I got on the CB and tried to get help on

14 the CB.

15 Q. And were you able to?

16 A. No, sir.

17 Q. And what did you do?

18 A. Walked down to Driver Lane, a phone, and

19 called the police.

20 Q. And did you come back?

21 A. Yes, sir.

22 Q. Were the police there when you got back?

23 A. Yes, sir.

24 Q. From the accident, after the police

25 investigated, where did you and your mother go?

1 A. Home.

2 Q. Okay. And when did your mother first, if

3 ever, start complaining of any problems?

4 A. Well, it was that next day that she -- I

5 got up and she was still laying in bed. I went outside and

6 came back out -- came back. And it was just like three

7 o'clock in the afternoon. And she was laying down in bed.

8 She doesn't usually lay down in bed during the say.

9 Q. This would have been Saturday; is that

10 correct?

11 A. Yes, sir.

12 Q. And did she continue to seem to have

13 problems from that time on?

14 A. Yes, sir.

15 Q. Now, I believe your parents separated

16 approximately a couple of weeks after this accident. Is that

17 correct?

18 A. Yes, sir.

19 Q. And your father left the home.

20 A. Yes, sir.

21 Q. And so it was you and your mother there

22 for a while; is that correct?

23 A. Yes, sir.

24 Q. After the accident did your mother spend

25 a lot of time in bed, or did she go about her normal duties,

1 or just what, sir?
2 A. Lot of time in bed.
3 Q. Came a time when she went into the
4 hospital; is that correct?
5 A. Yes, sir.
6 Q. And do you know when she went in as an
7 inpatient in the middle of September -- do you know what that
8 was for?
9 A. I think it was for pancreatitis. I think.
10 Q. Okay. For something with her stomach; is
11 that right?
12 A. Yes, sir.
13 Q. In fact did you -- well, you weren't
14 driving at that time.
15 A. No, sir.
16 Q. Did you-all have any help around the
17 house?
18 A. Yes, sir.
19 Q. Okay. Who was that?
20 A. Mrs. Gooch.
21 Q. Anybody else?
22 A. And her daughter.
23 Q. Okay. Johnny, answer Mr. Gordon's
24 questions.
25 CROSS-EXAMINATION

1 BY MR. GORDON:

2

3 Q Johnny, as a matter of fact, your mamma
4 was in such pain for a period of two, three days before she
5 went to the hospital, in fact the morning of the hospitalization
6 you called an ambulance, didn't you?
7 A Ambulance. Yes, sir.
8 Q In fact she was complaining about pains
9 and cramps, was she not?
10 A Yes, sir, in her stomach.
11 Q And they took her to the hospital, did
12 they not?
13 A Yes, sir.
14 Q And she had been complaining about this
15 for several days prior to then, had she not?
16 A Yes, sir.
17 Q All right. As a matter of fact, you say
18 she couldn't get around. She was able to get around, was she
19 not? She was able to get up and go around when she wanted to
20 get up and go have a beer or two at night, wouldn't she?
21 A No, sir.
22 Q She would --
23 A No. She was laid in bed.
24 Q If she told somebody she was out having
25 beer at night two, three beers at night she is mistaken if she

1 told somebody that in the hospital.

2 A. Yes, sir.

3 Q. You are now living with your dad, are you

4 not?

5 A. Yes, sir.

6 Q. When did you move in with your dad?

7 A. I would say about two months ago.

8 Q. You were with your mother the entire time

9 up until two months ago.

10 A. Yes, sir.

11 Q. Now, did you have an opportunity to

12 observe the speed of the other vehicle, which you determined

13 to be --

14 A. I couldn't really tell how fast he was

15 going. I know he was going fast, but I can't give you an

16 approximate speed he was going.

17 Q. Was he going in excess of the speed limit?

18 A. Yes. He was going in excess of the speed

19 limit.

20 Q. Well, how fast was he going? Tell us.

21 A. I don't know. I would say he was doing

22 about fifty.

23 Q. Well, the speed limit is fifty-five.

24 A. Yes, sir.

25 Q. So he was doing less than the speed limit

1 then, was he not?

2 A. Well, yeah. Yes, sir.

3 Q. So you want to change your answer now to

4 say he was doing less than the speed limit.

5 A. Yes, sir.

6 Q. All right. As a matter of fact, wasn't

7 your mamma stopped when the accident happened?

8 A. No, sir.

9 Q. Now, I am going to suggest to you that

10 when the accident happened that both vehicles came to a stop

11 just as it happened. Isn't that right?

12 A. No, sir.

13 Q. Let me ask you wasn't a very great impact,

14 was it?

15 A. Yes, it was.

16 Q. It was a great impact?

17 A. (Witness nodding head affirmatively.)

18 Q. Were the cars demolished in the accident?

19 A. No, sir. They weren't demolished.

20 Q. Were they badly damaged?

21 A. Fair damage. They weren't really badly

22 damaged.

23 Q. In fact it was very mild damage, was it

24 not?

25 A. Not mild. Well, it was mild to my mom's

car.

Q It was mild to the other car. It was less to the other car than it was to your mom's car, was it not?

A That I couldn't tell you. I couldn't tell you how much.

Q Well, as a matter of fact, the damage to your mamma's car was merely the bumper was knocked loose and the lights or the lenses of the car were knocked out. You know that, do you not?

A Yes, sir.

Q So it was -- as a matter of fact, this was a picture that was taken the night -- this would show the condition of the car right after the accident, does it not, with the bumper and lenses out, does it not, referring to Defendant's Exhibit Number One?

A Yes, sir.

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8 DIRECT EXAMINATION
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10 BY MR. BLACHMAN:
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12 Q. State your name, please.
13 A. Vernita McMahon.
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25 Q. I have to ask you this, ma'am. What is

1 your age?

2 A. Fifty-five.

3 Q. And are you married?

4 A. Yes.

5 Q. Are you and your husband living together?

6 A. No, sir.

7 Q. And when did you separate?

8 A. September 14th, 1978.

9 Q. And who left the residence?

10 A. My husband.

11 Q. Now, do you have any children?

12 A. Yes. I have a seventeen-year-old boy.

13 Q. And is that Johnny McMahon, who testified

14 previously today?

15 A. Yes, sir.

16

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23 ***
24 Q Now, calling your attention to August 26th,
25 1978, do you recall the day of the week?

1 A. Yes, sir. It was early Saturday morning.

2 Q. Okay. Now, were you operating a vehicle

3 at that time?

4 A. Yes, sir.

5 Q. And what kind?

6 A. Nineteen seventy-eight Ford Fairmont.

7 Q. And whose car was that?

8 A. Mine.

9 Q. Now, why -- let me go back. The previous

10 evening, which would have been Friday, the 25th, had you

11 taken your son anywhere?

12 A. Yes. I had taken him to the Plaza Rolling

13 Rink.

14 Q. Where is that located, Mrs. McMahon?

15 A. Portsmouth Boulevard and Hodges Manor

16 Road.

17 Q. In what city?

18 A. Portsmouth.

19 Q. Now, presumably he had gone there to go

20 roller skating with other kids.

21 A. Yes.

22 Q. How did you -- were you supposed to pick

23 him up?

24 A. Yes, sir. I was supposed to pick him up

25 at midnight. The rink closed at midnight.

1 Q Did you go home and ultimately go to
2 sleep?
3 A Yes, I did. And my alarm clock didn't go
4 off and I overslept.
5 Q What time did you awake?
6 A Around five after two, something like that.
7 Q At that time what did you do?
8 A I got in the car and left to go to see if
9 I could find him. I thought probably he had begun to walk on
10 home.
11 Q And on your way there did you go down
12 Bennett's Pasture Road?
13 A Yes, sir.
14 Q Did you see him?
15 A No, sir.
16 Q Now, where did you go?
17 A I went down Bennett's Pasture Road to
18 Portsmouth Boulevard and straight on Portsmouth Boulevard to
19 Hodges Manor Road.
20 Q And did you go to the roller skating
21 rink?
22 A Yes, sir.
23 Q And was he there?
24 A No, sir.
25 Q Was it open or closed?

1 A It was closed.

2 Q Did you go anyplace else?

3 A Yes. I went to two, three restaurants to

4 see if possibly he had gone with friends to a restaurant.

5 Q Was he there?

6 A No, sir.

7 Q So what did you do then? Where were you

8 going?

9 A I went back the same route that I had

10 taken, which he normally would take --

11 Q Okay.

12 A -- walking home, looking for him.

13 Q And that ultimately put you on Bennett's

14 Pasture Road.

15 A Yes, sir.

16 Q Now, are you familiar with this road?

17 A Yes, sir.

18 Q Travel it -- had you traveled it often

19 prior to this time?

20 A Yes, sir.

21 Q How many lanes of traffic are there on

22 Bennett's Pasture Road where this collision occurred in?

23 A Two.

24 Q Do you know the speed limit?

25 A Yes.

1 Q What is it?

2 A Fifty-five.

3 Q Now, at the point where impact occurred

4 is it a straight line of road back of you and -- north and

5 south?

6 A Yes, sir.

7 Q What direction were you proceeding?

8 A North.

9 Q Now, as you approached the intersection of

10 Bennett's Pasture Road and either Driver Lane or Sleepy Hole

11 Road, whatever you want to call it, what was your approximate

12 speed?

13 A Between thirty and forty miles an hour.

14 Q Okay. Why were you going at that speed?

15 A Because I had been looking for my son

16 along the road.

17 Q Did you have an occasion to see your son?

18 A Yes. Just before I came into the

19 intersection I picked him up in my headlights. I had put my

20 high beams on because there was no traffic.

21 Q All right. When you saw your son where

22 was he?

23 A He was approximately two hundred feet or

24 so, -- I can't be exact -- in front of me on the shoulder.

25 Q Okay. Now, I'm sorry. What did you do at

1 that point?

2 A. I glanced in my rear-view mirror and saw

3 car lights behind me. I turned my right turn signal on.

4 Q. Okay. Did you give any other type of

5 signal?

6 A. Yes, sir. I put my left hand out of the

7 window and down to indicate that I was planning on slowing

8 down to pull over.

9 Q. Now, when you looked in the rear-view

10 mirror, I think you said you saw a car. Is that correct?

11 A. Yes.

12 Q. Can you estimate at this point

13 approximately how far back that car was at that point from

14 you, if you have any -- if you can?

15 A. I would estimate about three hundred

16 feet.

17 Q. Okay. Now, as you proceeded -- where were

18 you when you put - gave this signal and put your hand out of

19 the window?

20 A. I was just coming into the intersection

21 of Bennett's Pasture Road and Sleepy Hole Road.

22 Q. Did you have any occasion to put any

23 other type of signal on?

24 A. Yes. I put my flashers on.

25 Q. What do those flashers do? I mean don't --

1 A They just constantly flash.

2 Q What constantly flash?

3 A Turn signals.

4 Q Front and back or just back or what?

5 A Front and back.

6 Q And how do you know they were on?

7 A Well, I have a blinker that clicks on the

8 dashboard.

9 Q And was that clicking?

10 A Yes, sir.

11 Q Now, why did you do that, Mrs. McMahon?

A Because I -- the car behind me -- I

13 wanted to make sure that he saw me. And he didn't seem to be

14 slowing down any.

15 Q Did it appear that he was gaining on you?

16 A Yes, it did.

17 Q Now, did you continue on down the road?

18 A Yes, sir.

19 Q Did you increase your speed, decrease,

20 maintain the same or just what?

21 A I maintained the same speed that I was

22 going.

23 Q Why did you not slow down?

24 A Because I wasn't certain of what he was

25 going to do. I felt that if I slowed down he would hit me for

1 sure.

2 Q Now, did you -- was any traffic at this

3 point going southbound towards you, coming towards you in the --

4 A No, sir.

5 Q And what happened? Tell us what happened,

6 if you would, please.

7 A Well, he didn't seem to be slowing down.

8 I -- my flashers were on. He just ran into the back of me.

9 Q And what happened to your car when he

10 ran into the back of you?

11 A It was knocked forward.

12 Q Now, at the time of the impact were these

13 flashers on?

14 A Yes, sir.

15 Q What was your approximate speed at the

16 time of impact?

17 A I hadn't slowed down. I was still going

18 thirty to forty miles an hour.

19 Q I show you Plaintiff's Two and Defendant's

20 One and ask you if this is your car after --

21 A Yes, sir.

22 Q And does this show the damage to your

23 vehicle?

24 A Yes, sir.

25 Q Would you state what the damage was,

1 please.

2 A. The rear bumper is torn down. The

3 taillight lense assembly is broken out.

4 Q. Okay. Was it damaged -- is there any other

5 damage across the rear?

6 A. I can't see if the arm -- the shock

7 absorber is dented or not.

8 Q. Okay. But this accurately depicts the

9 damage to your vehicle; is that correct?

10 A. Yes, sir.

11 Q. Now, what happened to you when you were

12 struck?

13 A. I was thrown into the steering wheel and

14 then over to the side, to the right side.

15 Q. When your car came to rest did you get out?

16 A. Yes, I did.

17 Q. And when you got out had Mr. Wells' car

18 come to a stop by that point?

19 A. Yes, sir.

20 Q. And did he move his car at all from that

21 point until the police arrived?

22 A. Yes, sir. He pulled it up directly right

23 behind mine.

24 Q. Okay. Now, at the time this accident

25 happened where was your son?

1 A He was about -- I think about ten feet in
2 front of my car on the shoulder.
3 Q Okay. Did you attempt to call the police
4 from your car?
5 A Yes, sir.
6 Q Why -- how did you try this?
7 A On the CB. My son got on the CB and
8 tried to get a base station.
9 Q Excuse me. Was he successful?
10 A No, sir.
11 Q Did he ultimately leave to go call the
12 police?
13 A Yes.
14 Q What time did this accident happen?
15 A Approximately three o'clock.
16 Q Okay. Now, at that time what was your
17 condition at the scene of the accident?
18 A I was very nervous, dazed, very
19 frightened.
20 Q Did the police arrive?
21 A Yes, sir.
22 Q Did you tell the police officer how fast
23 you were going at the time of the accident?
24 A Yes, sir. I can't remember if it was
25 right there at the accident or if it were later when he was

asking questions, but I did tell him.

Q And you told him that -- I believe he testified you told him thirty miles an hour.

A Yes.

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CROSS-EXAMINATION
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9 BY MR. GORDON:
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16 Q. Now, moving on to the facts of the
17 accident, you are saying you were moving when it happened.
18 A. Yes, sir.
19 Q. And you are saying that the impact
20 knocked you forward or backwards?
21 A. Forward.
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DIRECT EXAMINATION
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21 BY MR. GORDON:
22
23 Q You are Linwood L. Wells.
24 A Yes, sir.
25 Q Mr. Wells, where do you live?

1 A Route 2, Box 108-A, Windsor, Virginia.

2 Q And where do you work?

3 A Brown and Jordan Company in Suffolk.

4 Q What kind of job do you have there?

5 A Making tables.

6 Q All right. And you work in a factory?

7 A Yes, sir.

8 Q Now, do you recall this accident that

9 happened back in 1978, in August of '78?

10 A Yes, I do.

11 Q And whose vehicle were you driving at

12 that time?

13 A Mine.

14 Q What kind of car did you have?

15 A Seventy-five Chevrolet station wagon.

16 Q All right. And where were you working

17 at that point in time?

18 A Working on the farm at that time.

19 Q Who were you working for?

20 A Mr. Bruce Spady down in Carlton.

21 Q Bruce who?

22 A Spady.

23 Q What kind of job did you have?

24 A Did labor.

25 Q You ran a tractor and so forth.

1 A. Yes.

2 Q. And since that time you have gotten a

3 better job and gone to work.

4 A. Yes, sir.

5 Q. Now, this date this accident happened do

6 you remember what time you got off work that day?

7 A. Got off somewhere around four-thirty in

8 the afternoon.

9 Q. All right. Now, do you remember -- that

10 was on a Friday I take it, was it not?

11 A. Yes, sir.

12 Q. That was Friday, the 25th of August.

13 A. Right.

14 Q. All right. The accident happened at

15 three o'clock on the 26th in the morning.

16 A. Right.

17 Q. Do you know which road it was it happened

18 on?

19 A. Bennett's Pasture Road.

20 Q. All right. Now, I am going to go back.

21 Where had you been just prior to that accident?

22 A. Been down to Brentwood, down with George

23 Washington Highway, down there.

24 Q. Where? Brentwood?

25 A. Um-hum.

1 Q And what had you been there for?
2 A Go there to eat, get something to eat
3 there in the mall.
4 Q Just before going to Brentwood where had
5 you been?
6 A Been to Frank's Truck Stop.
7 Q Been to Frank's Truck Stop. And just
8 prior to Frank's Truck Stop where had you been?
9 A Been to the Moonlight Room.
10 Q And what time did you arrive at the
11 Moonlight Room?
12 A Somewhere around nine-thirty,
13 quarter-to-ten estimating now.
14 Q And what time did you leave the Moonlight
15 Room?
16 A One-thirty.
17 Q And you went from the Moonlight Room to
18 Frank's and then to Brentwood.
19 A That's right.
20 Q When you left the Moonlight Room was
21 anyone with you?
22 A No, sir.
23 Q Did you later pick up somebody?
24 A I picked up Johnny -- I forget -- at
25 Brentwood.

1 Q Where did you pick him up?

2 A Brentwood. He left Frank's Truck Stop

3 with somebody else.

4 Q Let me ask you, coming on up, are you

5 familiar with Bennett's Pasture Road?

6 A I have been through there a few times.

7 Q It is a two-lane road.

8 A Right.

9

10 MR. GORDON: If you have no objection,

11 I will just describe the road. You have no

12 objection.

13 MR. BLACHMAN: No.

14

15 BY MR. GORDON:

16

17 Q It is north-south I believe at that

18 point. Is it an asphalt road?

19 A Sir?

20 Q It is an asphalt road.

21 A Yes, sir.

22 Q And at the point where the accident

23 happened it is fairly straight.

24 A Well, just before you go in a curve, yes.

25 Q How far away is the curve from where the

1 accident happened?

2 A. I would say three hundred yards further

3 from where the accident happened at.

4 Q. All right. And behind you how far is the

5 road straight?

6 A. About the same.

7 Q. All right. And the speed limit is

8 fifty-five miles an hour.

9 A. Fifty-five miles an hour.

10 Q. How fast were you going at that time?

11 A. Well, I didn't look at my speedometer. I

12 would say between forty, forty-five miles an hour.

13 Q. All right. Now, in your own words tell

14 just what happened.

15 A. Well, I was going on down Bennett's Creek

16 going home. That is where I was going. And this lady here

17 was in front of me. She passed her son on the right, which is

18 on the side of the road.

19 Q. Did you see the pedestrian before the

20 accident happened?

21 A. Yes, I did.

22 Q. How far past the pedestrian did she go?

23 A. I would say twenty-five, thirty steps,

24 something like that. Yards I didn't estimate that.

25 Q. Go ahead.

1 A And she stopped right in the middle of
2 the road.
3 Q Stopped where?
4 A In the road.
5 Q All right. And what happened?
6 A Then I couldn't -- I just hit her then.
7 Q Where did you hit her?
8 A On the left-hand rear.
9 Q I mean what portion of your car struck
10 what portion of hers?
11 A Struck her left-hand rear and struck my
12 right-hand front.
13 Q Let me ask you just prior to the
14 accident happening how fast had you been going?
15 A Probably fifty.
16 Q All right. Just prior to the accident
17 happening how fast had she been going?
18 A Had I been going?
19 A She, Mrs. --
20 A I would say around forty, forty-five.
21 Q Now, did you get your foot on the brake?
22 A Yes, sir.
23 Q At the time that your car struck her how
24 fast were you going?
25 A I would say not over six, seven miles

1 an hour.

2 Q Now, how far away was your -- did you

3 move your car between the time the accident happened and the

4 police came there?

5 A No, sir, I did not.

6 Q You did not. Now, what type of impact

7 was it?

8 A Real light impact.

9 Q Real light impact?

10 A Yes, sir.

11 Q You seen the damage to her car.

12 A Yes, I have seen it.

13 Q This picture -- let me show it to you.

14 Was yours similar to that?

15 A Yes, sir.

16 Q Were you able to drive your car away?

17 A Yes, sir.

18 Q Was she able to drive her car away?

19 A Yes, sir.

20 Q Did you inquire of her was she injured or

21 not?

22 A I asked her was she injured and she said

23 no.

24 Q Did she give any signal or anything prior

25 to --

1 A I didn't see them.

2 Q Sir?

3 A I didn't see none.

4 Q Was any given was what I asked you.

5 A Any signals?

6 Q Yes, sir.

7 A No, sir.

8 Q If she had on a signal light would you

9 have seen it?

10 A Yes, sir, I would have.

11 Q Did she have any blinkers on, anything

12 like that?

13 A No, sir.

14 Q Did she have any right-turn signal on?

15 A No, sir.

16 Q Did you see her rear lights?

17 A Yes. I saw her stoplights.

18 Q You saw her stoplights. Did you see her

19 brake lights come on?

20 A Yes, sir.

21 Q Did you see any signal light before her

22 brake lights came on?

23 A No, sir.

24 Q Did you see any flasher lights come on?

25 A No, sir.

1 Q Did any flasher lights come on before the
2 accident happened?
3 A No, sir.
4
5 MR. GORDON: Answer counsel's
6 questions.
7
8 CROSS-EXAMINATION
9
10 BY MR. BLACHMAN:
11
12 Q Mr. Wells, several questions. At the
13 time you struck Mrs. McMahon's vehicle --
14 A Um-hum.
15 Q -- how fast was she going?
16 A I estimate say around forty, forty-five
17 miles an hour.
18 Q She was going forty to forty-five miles
19 an hour.
20 A I was estimating that because, like I
21 say, I was running fifty-five, fifty.
22 Q I am talking about at the time you struck
23 her.
24 A At the time I struck her she was sitting
25 still.

1 Q She was still. Now, as Mr. Gordon has
2 alluded to, we have had depositions in this case in my office
3 on June the 17th, is that correct, before a notary public?
4 A Yes.
5 Q And Mr. Gordon was there, was he not, --
6 A Yes, he was.
7 Q -- and along with myself? Do you recall
8 testifying on that day that she was going twenty-five miles
9 an hour at the time that you struck her?
10
11 MR. GORDON: I think he said two
12 different speeds; zero at one time, too. If
13 you want to go --
14 MR. BLACHMAN: Well, please, sir, --
15 THE COURT: Where --
16 MR. BLACHMAN: I am getting to it.
17 I have been interrupted, Your Honor.
18
19 BY MR. BLACHMAN:
20
21 Q Do you recall testifying on page 17 to
22 the following: "At the time you struck her what was her
23 speed?"; Answer: "I would say about twenty-five." Do you
24 recall that?
25 A Ain't going to deny that, no.

1 Q Okay. Do you recall at page 24 question:
2 "But she was doing about twenty-five at the time of the
3 accident."; answer: "Right." Do you remember saying that?
4 A I don't remember saying that.
5 Q You don't. You deny saying that, sir?
6 A I am not going to deny neither.
7 Q Okay. At page 29 question: "At the time
8 you struck Mrs. McMahon she was going twenty-five miles an
9 hour, at the time you struck her. Isn't that what you
10 testified to?"; answer: "Yes, sir." You testified to that,
11 is that correct, sir?
12 A I am not going to deny that because,
13 like I say, --
14 Q You are not going to deny it. Is that
15 correct? Your lawyer was present then, was he not?
16 A Yes, he was.
17 Q And you were under oath, weren't you?
18 A Yes.
19 Q Okay. And you are not denying that
20 you said that.
21 A I am not going to deny that.
22 Q Okay. Now, let's go to something else.
23 You testified at the depositions, did you not, -- and I am
24 not going to go back to exactly your language, but --
25 basically you went to the Moonlight Room and then to the

1 Brentwood Restaurant. Do you deny that?

2 A No, sir.

3 Q You never mentioned going to Frank's Truck

4 Stop, did you, sir?

5 A No, I didn't.

6 Q Okay. And you testified that you met

7 Johnny Stringfield at the Moonlight.

8 A I met him then, but I did not leave with

9 him.

10 Q Didn't you testify you left with him?

11 A No. I did --

12

13 MR. GORDON: No, sir, he didn't.

14

15 BY MR. BLACHMAN:

16

17 Q But he was there with you; is that

18 correct?

19 A He was there.

20

21 MR. GORDON: You said you are going

22 to contradict him, that he left with him. I want

23 to get to that.

24 MR. BLACHMAN: We'll get to that.

25 BY MR. BLACHMAN:

1 Q All right. Well, I apologize. You
2 testified -- question: "What did you do" --
3
4 MR. GORDON: Wait a minute. If
5 you are going to contradict him --
6 MR. BLACHMAN: Well, I am putting
7 it in if you let him --
8 MR. GORDON: I don't think you will
9 contradict him.
10
11 BY MR. BLACHMAN:
12
13 Q Let me ask you this: did you go to the
14 Brentwood Restaurant with anyone?
15 A No, sir.
16 Q On the deposition the question was
17 "What did you do at one-thirty?"
18 "We went out to a place called
19 Brentwood," --
20 "Um-hum."
21 -- "dance hall down there."
22 Then further down I did ask you "Who was
23 with you there?"
24 Answer: "Johnny."
25 MR. GORDON: Now, Your Honor, that is

1 not a contradiction of who he left --

2 THE COURT: Wait a minute now,

3 Mr. Gordon. Let him finish. And I think he

4 is going to reconstruct it.

5 MR. GORDON: What page are you on?

6 MR. BLACHMAN: Top of page 10.

7

8 BY MR. BLACHMAN:

9

10 Q Now, doesn't tell me who was "we" when

11 you went to the Brentwood.

12 A Speaking of me and Johnny.

13 Q You did testify you and Johnny --

14 A I said we met there. Now, we didn't

15 leave together now.

16

17 MR. GORDON: Now, Your Honor, that

18 isn't a contradiction.

19 THE COURT: He hasn't finished yet.

20 Then I am going to give you plenty of

21 opportunity to be heard.

22 MR. GORDON: Just to go to a record

23 that doesn't contradict him and it doesn't --

24 MR. BLACHMAN: Mr. Gordon and I

25 differ on that, Your Honor.

1 BY MR. BLACHMAN:

2

3 Q Did you testify to anything about --

4

5 MR. GORDON: Now, Your Honor, we

6 have been through he said he didn't say

7 anything about Frank's. Now, --

8 THE COURT: I don't know what his

9 question is going to be. He hasn't stated it

10 yet.

11 MR. GORDON: He is going to get to

12 Frank's again I think, what it is.

13 THE COURT: What is your question,

14 Mr. Blachman?

15 MR. BLACHMAN: Judge, I will have

16 to -- Mr. Gordon has interrupted me.

17 MR. GORDON: Go ahead. Tell him what

18 his question was. Mr. Blachman, tell me if I

19 am wrong.

20

21 BY MR. BLACHMAN:

22

23 Q You testified today that you went from

24 the Moonlight Room to the Brentwood Restaurant. I'm sorry.

25 Today you testified -- let me make sure -- that you went from

1 the Moonlight Room to Frank's --

2 A Right.

3 Q -- to the Brentwood Restaurant. And that

4 is what you are saying you were doing.

5 A Yes.

6 Q Now, at the Moonlight Restaurant were you

7 with anyone, sir?

8 A My sister.

9 Q All right. Did you go there with her?

10 A No. I drove by myself down there.

11 Q All right. Is your sister Johnny

12 Stringfield's mother?

13 A Right.

14 Q And were they together when you arrived?

15 A Yes, they were.

16 Q Did you sit with them?

17 A Yes.

18 Q And who would -- what is the Moonlight?

19 A It is a dance hall.

20 Q And who did you leave the Moonlight with?

21 A Didn't leave with nobody.

22 Q And where did you go from there?

23 A I went from there to Frank's Truck Stop.

24 Q And why did you go to Frank's?

25 A To get a cup of coffee.

1 Q And did you meet up with anybody there?
2 A No, sir, I didn't.
3 Q And where did you go from Frank's?
4 A Went to the Brentwood.
5 Q All right. And why did you go to the
6 Brentwood?
7 A Well, they claimed there was a band
8 playing there all night. So I went on down to listen to them.
9 Q Why did you -- who told you about that?
10 A Some friends of mine.
11 Q Now, you have heard the police officer
12 testify that you told him you were going fishing; is that
13 correct?
14 A I did not tell him that.
15 Q You deny that?
16 A I deny that I told the officer -- he
17 asked me where I was going. I told him I was going home.
18 Q I'm sorry.
19 A He asked me where I was going. I told
20 him I was going home.
21 Q You deny telling the police officer that.
22 A Yes, I do.
23 Q What time did this accident happen?
24 A Around three o'clock in the morning.
25 Q Do you recall testifying at the

1 deposition that you left the Brentwood Restaurant at
2 quarter-after-three?
3
4 MR. GORDON: Your Honor, that is
5 not contradiction and he can't use a
6 deposition for that, Your Honor. If you are
7 going to contradict you have to lay a
8 foundation. That isn't anything different
9 from leaving the Brentwood Restaurant about
10 quarter-after-three and the accident
11 happened at three o'clock. That isn't the same
12 question. I don't know what that has to do
13 with the case.
14 MR. BLACHMAN: I am trying to
15 continue on, Your Honor. If Mr. --
16 THE COURT: All right. Go ahead.
17
18 BY MR. BLACHMAN:
19
20 Q Do you remember testifying to that?
21 A I remember I didn't know what time I left
22 there.
23 Q And how long did it take you to drive
24 from the Brentwood to where the accident happened?
25 A Probably thirty minutes.

1 Q And what time did you leave the Brentwood?
2 A I think around two-thirty, something like
3 that. Like I say, I mean I didn't look at the clock.
4 Q How far behind Mrs. McMahon were you when
5 you -- you said she -- you call them stoplights; is that
6 correct?
7 A Stoplights.
8 Q Do you mean brake lights?
9 A Brake lights. I call them stoplights.
10 Q And you have testified she put them on.
11 Is that correct, sir?
12 A Yes.
13 Q How far behind her were you when she did
14 that, when you first saw her brake lights?
15 A I will say around five, six car lengths,
16 maybe a little more.
17 Q All right. Have you previously testified
18 that it was a hundred and seventy-five yards? Did you
19 testify to that at the deposition, that when her brake
20 lights came on you were a hundred and seventy-five yards
21 back?
22 A Yes, I did.
23 Q You did.
24 A I did. I remember it now.
25 Q I'm sorry.

1 A. I said yes. I remember it.

2 Q. And today you are saying five or six car

3 lengths.

4 A. Yes.

5 Q. How long is a car?

6 A. Fifteen -- a car itself or the car length?

7 Q. Car length. I'm sorry.

8 A. Say around fifteen foot.

9 Q. So if you say seven that would be a

10 hundred and five feet.

11 A. A hundred and five.

12 Q. Okay. Well, which is correct? As a

13 matter of fact, you were a hundred and seventy-five yards

14 behind her when you saw her stoplights came on; is that

15 correct?

16 A. Approximately could have been, yes. Like

17 I say, I don't -- it is hard to judge it at nighttime like

18 that.

19 Q. When you saw lights come on you were a

20 hundred and seventy-five yards behind her; is that correct?

21 A. I ain't going to deny that I said that.

22 Yes, I said that.

23 Q. And that is what your testimony is today.

24 A. Yeah.

25 Q. Yeah. Did you get that?

1 COURT REPORTER: (Court reporter
2 nodding head affirmatively.)
3 THE WITNESS: Yes. You got it in the
4 book.
5
6 BY MR. BLACHMAN:
7
8 Q In regards to where Sleepy Hole -- are
9 you familiar with Sleepy Hole Drive and Driver Lane, that
10 intersection that intersects with Bennett's Pasture Road?
11 A I have been through there a few times.
12 Yes.
13 Q How far -- and both of you -- the
14 accident was north of that intersection, wasn't it?
15 A Right.
16 Q How far north of that was the accident?
17 A I would say between two-fifty, three
18 hundred yards.
19 Q Okay. It wasn't three-quarters of a mile.
20 A Could have been. Like I say, I didn't
21 estimate it at that. I didn't say how far it was.
22 Q Well, did you testify at depositions that
23 it was a half to three-quarters of a mile from that
24 intersection?
25 A It might have been.

1 Q Huh? You are just not sure, are you?

2 A I am not sure.

3 Q Any pictures of your car?

4 A No, sir.

5 Q Didn't someone take some pictures?

6 A I don't remember.

7 Q It is a straight road there, isn't it,

8 sir? I think you have testified three hundred yards each side

9 of where the accident happened it was straight, is that --

10 A Yes.

11 Q -- if I understand you correctly. And

12 going northbound where the accident happened it is broken

13 lines, isn't it, passing?

14 A Could have been. They might have changed

15 them since then. I don't know.

16 Q You have heard the police officer

17 testify there was and the other witnesses. Are you denying

18 there wasn't?

19 A Let me see that picture there.

20 Q Sure. I'm sorry.

21

22 MR. GORDON: He said he doesn't know.

23 MR. BLACHMAN: He asked to see the

24 picture.

25 MR. GORDON: You are asking him is he

1 denying it.

2 MR. BLACHMAN: All right.

3 THE WITNESS: I will show you where it

4 happened. That isn't where it happened at.

5

6 BY MR. BLACHMAN:

7

8 Q That is not where it happened at? I'm

9 sorry. Does this picture show where it happened?

10 A Yes, around by that third light pole up

11 there.

12 Q Okay. Isn't it a fact that you could have

13 gotten around Mrs. McMahon without striking her? Is that

14 correct?

15 A Yes, I could have if she hadn't stopped,

16 slowed down so quick.

17 Q That is not -- are you -- you are saying

18 that the only reason that you were not able to get around

19 her is because she stopped suddenly; is that correct?

20 A No. She didn't stop suddenly. Like I

21 say, she was stopped in the road when I hit her.

22 Q She was stopping in the road when you

23 hit her.

24 A She was stopped.

25 Q And you -- at the time this accident

1 happened was there a double line or broken line for passing
2 going northbound?
3 A. There was a broken line on the south lane.
4 Q. Oh, you were going northbound.
5 A. I was going north.
6 Q. So you are saying you had a solid line.
7 A. Yes. It was there this morning when I
8 came through there. I will put it that way.
9 Q. Excuse me?
10 A. It was there this morning when I went
11 through. I will put it that way.
12 Q. I am talking about two years ago, August
13 26th. Is that still your testimony, there was a solid line
14 there?
15 A. Yes, on north lanes it was.
16 Q. For your direction of traffic.
17 A. Yes.
18 Q. And had that solid line been there you
19 could have passed her and gotten around her, couldn't you?
20 A. Yes, I could have.
21 Q. How fast were you going, sir?
22 A. Estimate forty-five, fifty miles an hour.
23 Q. At impact. I'm sorry.
24 A. Six, seven miles an hour, not over that.
25 MR. BLACHMAN: Thank you.

***

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12 ***
13 Q. I want to ask you do you recall testifying
14 in the deposition that she was stopped?
15 A. Yes.
16 Q. And you did testify to that.
17 A. Right.
18 Q. How do you reconcile then saying in one
19 breath she was stopped and in the next breath she was moving?
20 A. Now, you didn't get me mixed up with
21 Johnny now, did you?
22 Q. I am speaking of you. You just a minute
23 ago said on direct examination that she was moving. Which is
24 right? Was she moving or stopped?
25 A. She was sitting still.

1 Q How do you keep saying she was moving then?
2 A I am going to stick to that.
3 Q Sir?
4 A I am going to stick with she was sitting
5 still.
6 Q What was she really doing?
7 A She was stopped.
8 Q How fast were you going when you struck
9 her?
10 A I was going six, seven miles.
11 Q How do you reconcile it is in the
12 deposition -- you admitted to Mr. Blachman it is in the
13 deposition at one point she was moving?
14 A She was sitting still.
15 Q That isn't the question I asked you, sir.
16 Let me go back. Do you understand what I am saying? Did you
17 understand the question that has been asked? How do you come
18 up with the fact at one point in the deposition she is sitting
19 still and then in another place in the deposition, when the
20 question is asked you, you say she was moving? Are you --
21 A I don't know how to answer that.
22 Q Were you confused?
23 A Confused. I don't know how to answer
24 that. I am going to be honest with you.
25 Q What was she really doing at the time this

accident happened?

A. I can't say because -- she might have been moving just barely, slow, maybe a mile a minute, something like that.

Q. Well, are you saying -- well, I want you to give me your best estimate of what she was doing.

A. In my opinion I think she was sitting still.

Q. Okay. That is what I want to know. In your opinion she was sitting still.

MR. GORDON: Thank you, sir. That's all.

RECROSS-EXAMINATION

BY MR. BLACHMAN:

Q. I am not going to go through that, Mr. Wells, again with you. I think it is obvious. I have got one question. Mr. Stringfield was in your car, was he not?

A. Yes, he was.

Q. And his deposition was taken at the same time, was it not, in my office?

1 A. Yeah.

2 Q. He was there the same day you were there;

3 is that correct?

4 A. He was there.

5 Q. Where does he live?

6 A. Next door to me.

7 ***

8

9

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20 PROCEEDINGS IN THE CONFERENCE ROOM OUTSIDE OF THE PRESENCE OF

21 THE JURY

22

23 MR. BLACHMAN: Your Honor, do you have

24 a motion, because I have got one?

25 MR. GORDON: I have got one. Your Honor,

1 I submit that I move to strike the evidence. She is guilty
2 of negligence as a matter of law. She was stopped in the
3 highway and not giving a signal. I appreciate that may be a
4 jury issue.
5 THE COURT: I am going to overrule your
6 motion.
7 MR. BLACHMAN: Judge, we have a motion
8 that we don't think it is a jury issue. And we would like --
9 we move to strike the defendant's evidence as to negligence.
10 I think it is clear from his testimony that he was negligent
11 as a matter of law. Where everything he could have been
12 doing: lookout, control, speed -- not speeding. There is no
13 evidence of his violating the speed limit -- but speed under
14 the conditions testified -- he said two, three different
15 things. He can't rise any higher. He testified a hundred and
16 seventy-five yards back he saw her "lights come on". He
17 referred to them as the stoplights. He testified he could
18 have gotten around it had it not been a double yellow line.
19 And in fact the uncontradicted testimony was at that date it
20 was a solid -- I'm sorry -- a broken line. I think it is a
21 matter of law the defendant is negligent. And we would move
22 to strike the evidence of the defendant to negligence in this
23 case. That is our first motion.
24 MR. GORDON: Your Honor, let me reply to
25 that. He has testified to many things. And I am the first to

1 acknowledge that. And I think we are entitled under Massie
2 versus Firmstone to take the best view of the thing. And under
3 his best view of the thing he isn't guilty of negligence. Now,
4 under one view he certainly would be. I submit that is
5 strictly a jury issue.
6 Certainly there is ample evidence of her
7 negligence here if they chose to believe she stopped in the
8 highway without giving a signal.
9 MR. BLACHMAN: Judge, that is not my
10 motion now. My motion is as to the defendant's negligence.
11 We'll get to that in a moment. We submit he is negligent as a
12 matter of law. Absolutely no evidence here as to the
13 plaintiff's negligence. We submit to the Court it is just
14 plain from the evidence the jury could not find anything less
15 but that man was negligent in the operation of his motor
16 vehicle.
17 THE COURT: All right. What is your
18 next motion, or do you want me to go ahead and rule on that
19 one first?
20 MR. BLACHMAN: Yes, sir.
21 THE COURT: Okay. I am going to overrule
22 you.
23 MR. BLACHMAN: Note our exception.
24 Our next motion is that we strike the
25 evidence as to any evidence of contributory negligence on her

1 behalf. He cannot rise higher than his own testimony:
2 Massie versus Firmstone. He testified her "stoplights came on
3 a hundred and seventy-five yards" when he first saw her.
4 That is his testimony. That is uncontradicted by him at any
5 point. Surely she can't be negligent under his theory of the
6 case.
7 MR. GORDON: Your Honor, are you finished?
8 That was one of the things he said, but you forgot some of the
9 other things. One of the things he said was five car lengths
10 and the other thing that she stopped so suddenly he couldn't
11 stop in time; and she was stopped in the highway.
12 And I submit that he has given a lot of
13 contradicting things. And I don't question that for one
14 moment, that he made a lot of contradictory statements. And
15 I am the first to acknowledge it. It gets down to his
16 intelligence. And I don't think that someone should be
17 penalized for their lack of intelligence. That is what you
18 are dealing with here, one who is not very bright.
19 MR. BLACHMAN: I don't think because a
20 person is -- that doesn't enter into it, Your Honor. I think
21 that is a frivolous argument.
22 It seems to me this is a case that should
23 go on damages only. I think they are both -- that he is just
24 outright --
25 THE COURT: Well, his testimony is -- as

1 I recall his testimony, he said -- that is what I am going
2 with -- that she was stopped. That was his testimony he said.
3 I am going with it.
4 MR. BLACHMAN: Yes, sir.
5 THE COURT: And his testimony also is
6 though when he saw her brake lights come on he was a hundred
7 and seventy-five yards away.
8 MR. BLACHMAN: Yes, sir.
9 THE COURT: I mean that is his testimony.
10 MR. GORDON: There was one other
11 testimony, Your Honor. When he saw the brake lights come on
12 he said at first it was five yards -- I mean five car lengths.
13 I can go back in the record. I think that is what he said.
14 THE COURT: He said car lengths.
15 MR. GORDON: He gave a contradictory
16 thing.
17 THE COURT: He said five or six car
18 lengths.
19 MR. GORDON: Maybe he did. Mr. Blachman
20 inquired how long is a car length. You want to say that --
21 THE COURT: A hundred and five feet to
22 a hundred and seventy-five yards.
23 MR. BLACHMAN: That is not what he said.
24 And then I said is it a hundred and seventy-five yards; is
25 that what you are saying.

1 THE COURT: He said five or six or seven
2 car lengths I think. And by that it is -- it was -- multiplied
3 it out and said if it is seven it is a hundred and five feet;
4 is that right. And then after that he said it was a hundred
5 and seventy-five yards. I believe that was the testimony.
6 MR. BLACHMAN: Yes, sir. He said that
7 he saw the brake lights at a hundred and seventy-five yards;
8 that he went back on the five to six, seven, whatever car
9 lengths.
10 To me there is no jury issue as to
11 negligence either as to the defendant or to the plaintiff.
12 Under his testimony, taking his testimony at its best -- and
13 he can surely rise no higher than that -- there is no evidence
14 of any contributory negligence on Mrs. McMahon from her
15 testimony or from the testimony of the police officer or her
16 son, the other witness. The only evidence that it could come
17 from would be his testimony. And there is no evidence of
18 contributory negligence.
19 And we submit our motion now as to his
20 evidence there is no issue.
21 MR. GORDON: Judge, except the law
22 requires one not to stop their car in the middle of the
23 highway and if they did it -- and he said she was stopped --
24 unless they have on emergency flashing lights, and if they
25 did this they are guilty of negligence. And, according to

1 our testimony, those things happened. And I think it is a
2 jury issue.
3 THE COURT: The statute says though that
4 if you -- you have to give a signal; is that correct?
5 MR. GORDON: Yes, sir.
6 MR. BLACHMAN: Yes, sir.
7 THE COURT: If that jury instruction
8 added another section later on I think in the supplement;
9 said you had to give a signal and so forth and so on --
10 MR. BLACHMAN: Right. And then the
11 evidence that she had with her brake lights --
12 MR. GORDON: He said, she didn't, her
13 brake lights came on.
14 MR. BLACHMAN: A hundred and seventy-five
15 yards back. My God, --
16 THE COURT: Let's see what signal they
17 are talking about there now.
18 MR. BLACHMAN: I don't have the Code
19 with me.
20 MR. GORDON: I have got the instruction.
21 THE COURT: It's in the instruction?
22 MR. GORDON: It is my instruction, Your
23 Honor. I have got it in my file.
24 MR. BLACHMAN: But, well, --
25 MR. GORDON: Do I cite the cases to you

1 that instruction, Your Honor?

2 MR. BLACHMAN: I don't think I did, Your

3 Honor, and I apologize.

4 MR. GORDON: I think I did.

5 THE COURT: All right.

6 The Court instructs the jury that it was

7 the duty of the plaintiff not to stop her motor vehicle on the

8 highway in such a manner to impede or render dangerous the

9 use of the highway by others except in the case of emergency

10 as a result of an accident or mechanical breakdown in which

11 case the emergency flashing lights of such vehicle shall be

12 turned on as if the vehicle is equipped with such lights and

13 such lights are operating.

14 MR. GORDON: I cited the authority for

15 that, Your Honor.

16 THE COURT: All right. The Court

17 instructs the jury that every driver of a motor vehicle who

18 intends to stop exercise safety and whenever the operation of

19 any other vehicle may be affected by such stop shall give a

20 signal plainly visible to the driver of such vehicle of her

21 intention to stop. She put on the brake lights. I mean,

22 you know, there is no question about that.

23 MR. BLACHMAN: Judge, I don't see where

24 there is any negligence on her and I don't see where there is

25 any question.

1 THE COURT: I don't either. And I am
2 going to grant your motion. And we are going to go to the
3 jury on the question of damages.
4 MR. GORDON: Your Honor, I am going to
5 note my exception to the Court's ruling on that.
6 THE COURT: I think the evidence is --
7 as I recall it is that, his testimony, that the brake lights
8 came on and that she saw that he saw her. That was a hundred
9 and seventy-five yards away.
10 MR. BLACHMAN: Yes, sir. I think that
11 is negligence as a matter of law on the defendant.
12 My understanding is that the Court is
13 granting our motion to strike and we are going to the jury on
14 damages only. Thank you, Your Honor.
15 THE COURT: (The judge nodding head
16 affirmatively.)
17 MR. GORDON: I note my exception to the
18 Court's ruling in that regard. I submit there is ample
19 evidence for this jury -- going to note my exception.
20 THE COURT: All right.
21 MR. GORDON: There is ample evidence
22 that this jury could conclude that this plaintiff was also
23 guilty of contributory negligence in two regards: (1) failure
24 to give a signal and (2) stopping her vehicle on the travel
25 portion of the highway without turning on blinkers. And if

1 the jury chooses to abide this and chooses to believe that
2 this is a portion or contributed to the accident then the
3 plaintiff is barred from recovery.
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