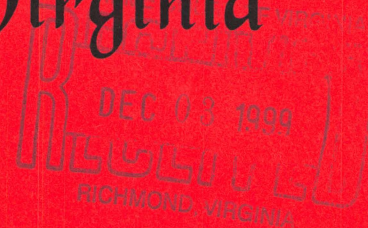

In The
Supreme Court of Virginia



RECORD NO. 991880

**JOHNNIE W. RICE and RITA S. RICE,
Co-Administrators of the Estate of
LEONA LYNN RICE, Deceased,**

Appellants,

v.

CLIFFORD ANTHONY CHARLES,

Appellee.

APPENDIX

**Michael R. Munsey
ARRINGTON, SCHELIN
& HERRELL, P.C.
1315 Euclid Avenue
Building E, Suite 2
Bristol, Virginia 24201
(540) 669-9111 - Telephone
(540) 669-9674 - Facsimile**

Counsel for Appellants

**William M. Moffet
PENN, STUART,
ESKRIDGE & JONES
205 East Main Street
Post Office Box 2288
Abingdon, Virginia 24210-2288
(540) 628-5151 - Telephone
(540) 628-5621 - Facsimile**

Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF DICKENSON COUNTY

JOHNNIE W. RICE AND RITA
S. RICE, CO-ADMINISTRATORS
OF THE ESTATE OF LEONA
LYNN RICE,
Deceased

Plaintiff

AT LAW NO.: _____

vs.

CLIFFORD ANTHONY CHARLES,
P.O. BOX 2112
GRUNDY, VA 24614

Defendant

ALSO SERVE:

E. LEWIS KINCER, JR.,
REGISTERED AGENT FOR
LIBERTY MUTUAL FIRE
INSURANCE COMPANY
1111 EAST MAIN STREET
SUITE 600
RICHMOND, VA 23219

MOTION FOR JUDGMENT

Comes now the Plaintiffs, Johnnie W. Rice and Rita S. Rice, and moves for judgment against the Defendant, Clifford Anthony Charles, pursuant to Code Section 8.01-50 of the Code of Virginia, 1950, on the grounds and in the amount hereinafter set forth:

1. The Plaintiffs, Johnnie W. Rice and Rita S. Rice, qualified and were duly appointed Co-Administrators of the Estate of Leona Lynn Rice, deceased, by the Circuit Court of Buchanan County, Virginia, on May 14, 1997.

RECEIVED AND FILED, THIS THE
DAY OF June, 19 97

NOE TATE, CLERK
Ang S. Meade DEP. CLERK
TIME: 1:10 p.m.

(See attached Certificate marked "Exhibit A").

2. On April 5, 1997, the Plaintiff's decedent, Leona Lynn Rice, was a passenger with the Defendant, Clifford Anthony Charles, while traveling east on Route 80 in Dickenson County, Virginia.

3. At the same time and place it was the duty of the Defendant, Clifford Anthony Charles, to operate his vehicle free from negligence and with due regard for the safety of other persons.

4. Notwithstanding said duties, the Defendant, Clifford Anthony Charles, acted in a negligent and reckless manner, and as a result thereof his vehicle left the roadway and overturned down an embankment.

5. As a direct and proximate result of the negligence and recklessness of the Defendant, Clifford Anthony Charles, the Plaintiff's decedent was seriously injured in the aforementioned accident, said injury caused her death on April 5, 1997.

6. At the time of her death, Plaintiff's decedent was sixteen (16) years of age and was in good health.

7. Plaintiff's decedent, Leona Lynn Rice, died intestate survived by the following statutory beneficiaries:

Johnnie W. Rice - Her Father

Rita S. Rice - Her Mother

Beverly Rice - Her Sister

8. Liberty Mutual Fire Insurance Company is being served pursuant to the underinsured provisions of Policy Number, A02-231-9492270906 4, Policy Holder, Johnnie W. Rice and Rita S. Rice.

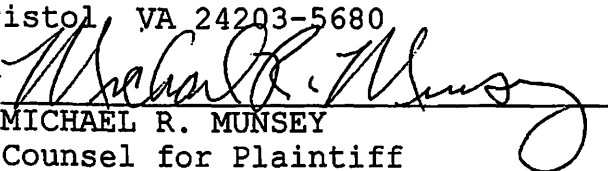
WHEREFORE, the Plaintiffs, on behalf of said beneficiaries, hereby move this Honorable Court for judgment against the Defendant, Clifford Anthony Charles, in the sum of ONE MILLION (\$1,000,000.00) DOLLARS to include, but not limited to, sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent; compensation for reasonably expected loss of income of the decedent and services, protection, care and assistance provided by the decedent; and reasonable funeral expenses together with interest at the highest rate provided by law from April 5, 1997, in addition to all costs incurred in prosecuting this action.

Johnnie W. Rice and
Rita S. Rice,
Co-Administrators of the
Estate of Leona Lynn Rice,
deceased

By Counsel

ARRINGTON, SCHELIN & HERRELL, P.C
P.O. Box 5680
Building E, Suite 2
1315 Euclid Avenue
Bristol, VA 24203-5680

BY


MICHAEL R. MUNSEY
Counsel for Plaintiff

ARRINGTON
SCHELIN &
HERRELL, P.C.
Attorneys at Law
Bristol, VA 24203-5680

CERTIFICATE/LETTER OF QUALIFICATION

VA. CODE §§ 6.1-70, 6.1-195.28,
6.1-208.3, 6.1-208.5, 13.1-428,
64.1-122, 64.1-128

..... Buchanan County, Virginia Circuit Court

I, the duly qualified clerk/deputy clerk of this Court, CERTIFY that on

..... May 14, 1997

DATE

..... Johnny W. Rice and Rita S. Rice

NAME(S) OF PERSON(S) QUALIFYING

....., duly qualified in this court, under applicable provision of law, as

- ☐ executor of the estate of
Co-
☒ administrator of the estate of
☐ curator of the estate of
☐ guardian of
☐ committee of

..... Leona Lynn Rice, deceased The powers of the fiduciary(ies)
NAME OF DECEDENT, WARD, OR INCAPACITATED PERSON

named above continue in full force and effect.

\$ 100.00, without surety bond has been posted.

Given under my hand and the seal of this Court on

..... May 14, 1997

DATE

..... James M. Bevins, Jr., Clerk

by *Patricia L. Linn*, Deputy Clerk

991880

IN THE CIRCUIT COURT FOR DICKENSON COUNTY, VIRGINIA

CLERK
SUPREME COURT OF VIRGINIA

RECEIVED
JUL 08 1999
RECEIVED

RICHMOND, VIRGINIA

Case No. CL97-30

JOHNNIE W. RICE and
RITA S. RICE,
Co-Administrators, of the
Estate of Leona Lynn Rice,
Deceased,

Plaintiffs,

vs.

CLIFFORD ANTHONY CHARLES,

Defendant.

TRIAL

December 11 and 14, 1998
Clintwood, Virginia

APPEARANCES:

For the Plaintiffs: [Johnnie W. Rice, Rita S. Rice;
and by counsel]:

MICHAEL R. MUNSEY, ESQ.
Arrington, Schelin & Herrell
1315 Euclid Avenue
P.O. Box 5680
Bristol, Virginia 24203-5680

For the Defendant: [Clifford Anthony Charles; and
by counsel]:

WILLIAM M. MOFFET, ESQ.
Penn, Stuart & Eskridge
208 East Main Street
P.O. Box 2288
Abingdon, Virginia 24212-2288

BETTY KREGER ATKINS
Court Reporter
281 Stonewall Heights
Abingdon, Virginia 24210
540-628-2806

6

RECEIVED AND FILED, THIS THE

DAY OF July, 19 99

JOE TATE, CLERK

DEP. CLERK

TIME: 2:00 pm

1 MR. MOFFET: Judge, here is the order. And it
2 does include in the order that her death was caused by--was
3 the proximate result of the defendant's negligence and the
4 accident.

5 THE COURT: Okay. That was the 2nd of November,
6 and I should be able to work my way to that date. The clerk
7 is real good about filing chronologically.

8 MR. MOFFET: Judge, one, I'll go ahead and state
9 on the record at this point in time that I will not be
10 proceeding on the defense of assumption of the risk. I will
11 be proceeding just on the contributory negligence. I had
12 pled and reserved both of them. But in preparing, I have
13 decided that I will only be proceeding on contrib. Just
14 thought it would be fair to notify everybody that that is
15 the only defense I will be proceeding on.

16 MR. MUNSEY: Thanks. Because I was going to ask
17 if we could leave that to the end to discuss that.

18 MR. MOFFET: Yes. But it will just be contrib.

19 THE COURT: Well, that helps some.

20 MR. MUNSEY: Simplifies a little bit.

21 THE COURT: Yeah. We're getting closer to 5:00
22 o'clock all of the time.

23 MR. MUNSEY: I think this case is going to go
24 faster than what we had initially anticipated.

25 THE COURT: Joe, find that order for me, would

1 seat that is convenient now. There is no seating order. Is
2 the plaintiff ready to call the first witness?

3 MR. MUNSEY: Yes, sir. We would call Helen
4 Elswick to testify.

5 THE COURT: Helen Elswick?

6 MR. MUNSEY: Yes.

7 THE COURT: Ms. Elswick, come around to the
8 witness stand. Ms. Elswick, the Court recalls that you were
9 sworn earlier when the clerk swore the witnesses, but I want
10 to say that for the record.

11 HELEN ELSWICK: Yes, sir.

12 THE COURT: Go ahead, Mr. Munsey.

13
14 The Plaintiffs' Evidence

15
16 The witness, HELEN ELSWICK, having been duly sworn by
17 the Clerk of the Court, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. MUNSEY:

21 Q Would you state your name for the jury, please?

22 A Helen Elswick.

23 Q Ms. Elswick, where do you live?

24 A I live at Harman, Virginia.

25 Q And can you tell us what your occupation is or has

1 been in the past?

2 A I am a retired postmaster. I was postmaster at
3 Harman for 13 years.

4 Q Where do you live in relation to Rita and Johnnie
5 Rice's home?

6 A I live about a third of a mile above them.

7 Q How long have you known Rita Rice and her
8 family?

9 A I have known Rita all her life.

10 Q Do you remember when she was born?

11 A Yes, sir.

12 Q And have they lived there close to you the whole
13 time she and Johnnie have been married and their children
14 have grown up?

15 A They have lived there or owned on down the road
16 just a little way below us.

17 Q The reason that we're here today concerns the
18 death of Rita and Johnnie's youngest daughter, Leona. Were
19 you familiar with Leona?

20 A Yes, sir. I knew Leona all of her life.

21 Q Did you watch her grow up and mature?

22 A Yes.

23 Q How did you have opportunity to interact with her
24 or observe her over the years?

25 A I didn't know Leona when she was a baby per se,

1 but Rita started working for me cleaning house for me
2 when--before Leona started to school. And she loved to come
3 to my house and--

4 Q Can you describe Leona as a young child?

5 A She was a happy child. She was very pleasant.

6 Q Did you have an opportunity to observe her in any
7 other setting other than as a neighbor or with her mother
8 when she was working for you?

9 A Yes, sir, she went to church where I go.

10 Q Where do you all worship?

11 A Harman Memorial Baptist Church. And Leona was
12 very active in the GAS and Mission Friends and the
13 Acteens.

14 Q Can you describe the relationship that you
15 observed between Leona and her sister, Beverly, in their
16 growing-up years?

17 A They were typical sisters. Leona sort of looked
18 up to Beverly because she was her big sister. They'd argue
19 once in a while like sisters do, but nothing ever bad that I
20 saw.

21 Q How would you describe Leona's personality as she
22 grew to an older child and into her adolescence?

23 A She was a very pleasant young lady. She didn't
24 care to tell you what she thought, you know.

25 Q Why do you say that?

1 A Well, if you joked with her, she came back to you
2 with her joking. She was--she was a very nice young lady.

3 Q Can you describe the relationship that you
4 observed between Leona and her mother, Rita?

5 A Leona was close to her mama. She loved her mama.

6 Q Why do you say that?

7 A She when--I can remember when we would have lunch,
8 I'd come home at lunch time, and she would always stand
9 beside of her mother. And I would say, "Well, there's a
10 chair here. Sit down." And she would say, "No, I'm going
11 to stand with my mom."

12 Q As Leona grew older and into adolescence, did she
13 ever come and do work for you herself?

14 A Yes, she would come and do cleaning, a little
15 cleaning for me. I remember one time she got in the bottom
16 of my cabinets cleaning them up, and she went home and asked
17 her mama, said, "Does Helen use all of that stuff that she
18 has got in the bottom of those cabinets?"

19 Q When did you hear about Leona's death?

20 A About 11:00 o'clock that night. I think it was
21 about 11:00. My son called me.

22 Q How did he know?

23 A He works at the jail. He's a jailer.

24 Q The sheriff's department?

25 A Yes, sir.

1 Q What did you do at that point?

2 A He called me, and he knew that I would go down to
3 Rita's. And he said, "Mom, don't go yet." He said, "They
4 don't know." He said, "Wait until the state police get
5 there." And then he called me back later, and he said, "Go
6 on down." He said, "They're on their way."

7 Q When you got down there to the house, were Rita
8 and Johnnie there?

9 A Yes.

10 Q Can you describe your interaction with Rita when
11 you saw her that evening?

12 A When I walked up on the porch, Rita was sitting on
13 the porch. And she says, "Helen, my baby is gone." She
14 said, "Why my baby?"

15 Q How about Johnnie, how did he appear that evening?

16 A Johnnie was upset. He was--he was upset. He,
17 Johnnie don't talk much but--

18 Q How about Beverly, did you have an opportunity to
19 interact with Beverly?

20 A Yes, sir. Beverly came to me, and she says--she
21 got down on her knees in front of me. And she said, "Helen,
22 why did this happen to Leona? Why?" And I said, "Beverly,
23 I don't know." I said, "God works in mysterious ways." I
24 said, "There may have been something later in life that
25 Beverly--I mean that Leona could not deal with, and she may

1 have been taken." I said, "I don't know. That is just the
2 reasoning that I have."

3 Q Was she comforted by that?

4 A She told me later that if we had not had that
5 conversation, she didn't know how she would have dealt with
6 it.

7 Q Were you with the family through the funeral
8 process and the days following?

9 A Yes, sir.

10 Q Was it a difficult time for them?

11 A It was very difficult.

12 Q Have you had opportunity to be with Beverly and
13 with Rita now in the months following?

14 A I have not been with Beverly that much. Beverly
15 has married, and she has a small baby, and I don't see her.
16 And once in a while when Rita is out walking, she and I
17 will--I'll go out and sit with her. She has went with me to
18 church, and we made a trip to Bluefield. And we've had some
19 conversations, yes.

20 Q Can you describe for us from your observation how
21 Rita is doing with the loss that she is suffering?

22 A Not good, not good. She's suffering very bad.

23 Q Why do you say that?

24 A I just feel like her heart is broken, that she's
25 just having a hard time dealing with this situation.

1 Q Of the times that you have been with Rita since
2 the happening of this accident, has there ever been an
3 occasion that the subject has not turned on Leona?

4 A Never. We always talk about Leona every time
5 we're together.

6 MR. MUNSEY: That's all of the questions I have.

7 THE COURT: Cross examination.

8 MR. MOFFET: No questions.

9 THE COURT: Can this witness be released?

10 MR. MUNSEY: Yes, sir, she can. You can stay in
11 the courtroom if you would like or go home.

12 THE COURT: Ms. Elswick, you're certainly
13 welcome to stay for the balance of the trial. But your
14 requirement as a witness is finished here, and you're free
15 to leave if you choose to do that. Thank you for your
16 attendance.

17 THE WITNESS: Thank you. [Stands aside.]

18 THE COURT: Call your next witness.

19 MR. MUNSEY: Your Honor, the next witness we would
20 call would be Leslie Sawyers.

21 THE COURT: Leslie?

22 MR. MUNSEY: Sawyers.

23 THE COURT: Sawyers. Leslie Sawyers.

24 Ms. Sawyers, would you come around to the witness
25 stand that is here before the Court? Before you have a

1 seat, face the clerk here to my left, raise your right hand,
2 and be sworn.

3
4 THE WITNESS, LESLIE SAWYERS, WAS DULY SWORN BY THE
5 CLERK OF THE COURT.

6
7 The witness, LESLIE SAWYERS, having been duly sworn by
8 the Clerk of the Court, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. MUNSEY:

12 Q Leslie, will you state your name for the jury,
13 please?

14 A Leslie Nicole Sawyers.

15 Q And, Leslie, where do you live?

16 A Slate Creek.

17 Q Over in Buchanan County?

18 A Uh-huh.

19 Q How old are you?

20 A Nineteen.

21 Q Leslie, are you familiar with the Rice family?

22 A Yes, I am.

23 Q Were you friends with Leona Rice?

24 A Yes.

25 Q Can you describe your friendship that you had with

1 them?

2 A With the family?

3 Q Well, first with Leona.

4 A We were very close, very.

5 Q Did you consider yourself best friends?

6 A Yes.

7 Q How long had you known Leona?

8 A Two years.

9 Q When did you first become acquainted with her?

10 A In '95 at school.

11 Q Had you moved back to the area at that point in

12 time?

13 A Uh-huh.

14 Q You had moved back from Florida?

15 A Florida, yes.

16 Q Through your friendship with Leona, did you have

17 an opportunity to meet and get to know her family?

18 A Yes.

19 Q Are you familiar with her mom and dad?

20 A Uh-huh.

21 Q And you're familiar with her sister, Beverly?

22 A Yes.

23 Q Did you have occasion to visit in that home during

24 the years that you knew Leona?

25 A Yes.

1 Q How often would you go and see or stay there?
2 A Every weekend. And I stayed part of a summer with
3 them one year.
4 Q Can you describe for us Leona? How would you
5 describe her?
6 A She was happy all the time. She always smiled,
7 from ear to ear, I mean.
8 Q What color was her hair?
9 A Blond.
10 Q What color were her eyes?
11 A Green.
12 Q Did you have the opportunity during the period of
13 time that you knew her to observe the relationship that she
14 had with her mother?
15 A Uh-huh.
16 Q How would you describe the relationship they had
17 together?
18 A You know, they got along. She loved her. You
19 know, they had normal family problems, you know.
20 Q Normal growing-up teenager--
21 A Right.
22 Q --conflicts with Mom?
23 A Right.
24 Q How about her sister, Beverly, can you describe
25 the relationship that they had?

1 A She confided in her, you know. She--she would go
2 to her and talk to her about anything pretty much.

3 Q Did they appear to be close?

4 A Uh-huh, yes.

5 Q When did you find out that Leona was gone?

6 A The morning after, April 6th.

7 Q Did you have an opportunity to go and be with the
8 family?

9 A Yes.

10 Q After you found out?

11 A [Nods head, yes.]

12 Q Can you describe the family's reaction to this
13 loss at that point in time?

14 A They were heartbroken, you know. They took it
15 very hard.

16 Q How about since that point in time, have you had
17 the opportunity to be with and talk with Beverly on
18 occasion?

19 A Uh-huh.

20 Q How does she appear to be doing with the loss of
21 her sister?

22 A There's--every time I talk to her she brings her
23 up, you know. She--she hasn't got over it, and I
24 don't--she--she won't.

25 Q What was Leona's nickname?

1 A Smiley.

2 Q Why was that?

3 A Because that is all she did was smile.

4 MR. MUNSEY: Answer any questions that Mr. Moffet
5 has for you.

6 MR. MOFFET: No questions from me.

7 THE COURT: Thank you, Ms. Sawyers. You may stand
8 aside. And do you want to keep this witness?

9 MR. MUNSEY: We may need to recall her at a later
10 time.

11 THE COURT: If you'd remain in the hallway and, of
12 course, don't discuss your testimony with any other witness.

13 THE WITNESS: [Stands aside.]

14 THE COURT: Call your next witness.

15 MR. MUNSEY: We would call Rita Rice to the stand.

16 THE COURT: Mrs. Rice. Mrs. Rice, for the record,
17 you were also sworn earlier by the clerk.

18
19 The witness, RITA S. RICE, having been duly sworn
20 by the Clerk of the Court, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. MUNSEY:

24 Q Rita, I need for you to state your name for this
25 jury panel.

1 A It's Rita Rice.

2 Q I know how hard it is, but try and talk as loud as

3 you can so you can be heard.

4 A My name is Rita Rice.

5 Q Rita, where do you live?

6 A I live at Harman.

7 Q Where did you grow up?

8 A At Harman.

9 Q Who are you married to?

10 A I'm married to Johnnie Rice.

11 Q How long have the two of you been married?

12 A Twenty-four year.

13 Q Have you had children from your marriage?

14 A I had two.

15 Q And tell us who those two children are.

16 A Beverly.

17 Q And what is Beverly's birth date and age?

18 A Bev was born March the 26th, 1976. Leona was born

19 May 30th, 1980.

20 Q And you are the natural mother of Leona?

21 A I am the natural mother.

22 Q And Johnnie is the natural father?

23 A Natural father.

24 Q No other siblings? She had no other siblings?

25 A Just two.

1 Q Can you describe for us your pregnancy with Leona?

2 A First three months I was like sick at my stomach,
3 morning sickness. The rest of it was good.

4 Q How about the birth? How about the birth?

5 A The birth, I had a C-section because the cord was
6 wrapped around Leona's neck. She weighed nine pound eleven
7 and a half ounces. She was twenty inches long.

8 Q Was she healthy?

9 A Very healthy.

10 Q Can you describe how she developed in those early
11 years?

12 A The early years she was a happy little girl. She
13 liked to go on little fishing trips up in the holler. She
14 loved her Barbie dolls. She loved to color. Most of the
15 time followed me around.

16 Q Can you describe the relationship the two of you
17 had when you were there when she was little?

18 A To me it was very special because each day we'd go
19 down to the store, and we'd get us a pop and a candy bar.
20 We'd fix us a sandwich. And just that one hour was our time
21 to set and watch Perry Mason. To her that was something
22 that we had to do. If we didn't do that, it wasn't done.

23 Q Every day?

24 A Every day till she started to school.

25 Q Where did she go to elementary school?

1 A Harman.

2 Q Did she like school when she started?

3 A Sometimes. She--she enjoyed school. She was a
4 cheerleader.

5 Q In elementary she was a cheerleader?

6 A Yeah, in elementary. She got some trophies in
7 creative writing and some in spelling, and I think she got
8 one or two in art.

9 Q How can you describe your child's personality as
10 she grew from a child into an adolescent? How would you
11 describe it?

12 A She was happy. She liked to play tricks and jokes
13 just to get you to laugh at her. She was just happy, always
14 smiling.

15 Q As Leona grew older, what type of activities did
16 she enjoy as she became an adolescent?

17 A She liked rock climbing. And she'd go to church
18 with the GAs. Sometimes they would go to old folks' home.
19 And they would sometimes bake cookies and take to the
20 elderly people.

21 Q Did they go on trips?

22 A She would go on trips with the ROTC. She loved
23 that.

24 Q Now what about the ROTC? Was this in high school?

25 A Yeah, she liked that. Because there was one time

1 she told me she thought about going to the Air Force, but
2 she never did get to finish.

3 Q Can you describe the relationship that Leona had
4 with your eldest daughter, Beverly?

5 A Leona could go to Bev and tell her anything that
6 was on Leona's mind, and Leona knew that Bev would not tell
7 me if she did not want Bev to tell it. Leona trusted her.
8 They always went places together.

9 Q They were close?

10 A They were very close. I could trust Bev watching
11 Leona, and I knowed that Bev and Leona would be all right
12 because they--wherever one went, the other one went. They
13 would hold hands when they were little. When they would
14 walk somewhere, they would have their hands together.

15 Q Can you describe Leona and Johnnie's relationship?

16 A She loved her daddy. He would take her fishing
17 sometimes. And he taught her how to drive up Jessees Fork.
18 And sometimes Johnnie would ask her to help me around the
19 house like wash dishes or clean the house, and she'd look at
20 him, and she'd smile, and she said, "You're not disabled."
21 She'd want her daddy--

22 Q Now I understand that prior to the happening of
23 this accident, prior to Leona's death that she had been
24 seeing the defendant in this matter, Clifford Charles?

25 A Yes.

1 Q Is that correct? To your recollection, how long
2 had the two of them been dating?

3 A For the last year they had been going pretty
4 steady. But she had knowed him ever since, I think, in the
5 ninth grade.

6 Q Had Leona ever had a serious boyfriend
7 relationship before Clifford?

8 A No, Clifford was the first one.

9 Q How serious was their relationship to your
10 understanding?

11 A Well, he had gave her a little engagement ring.
12 And she had told me one time after she got out of school
13 that they was going to get married.

14 Q How did you feel about their relationship?

15 A To be honest, I thought she could do a lot better
16 because she told me that-- She told me she loved Spike.

17 Q Is that his nickname, Spike?

18 A Yeah, I'm used to calling him Spike because that
19 is what Leona called him in front of me.

20 Q And what the other kids referred to him?

21 A Yeah, it was his nickname.

22 Q Did you encourage that relationship early on?

23 A No, I tried to pull them apart, you know, tell
24 her, you know, she could find somebody else. But the more I
25 pulled, the closer her and Spike got. So at the end there I

1 wanted him to start coming in the house, you know, sit down
2 and talk to me, but he didn't want to. He wanted to stay
3 outside. I think he come in about two, maybe three times.

4 Q To really sit down and talk with you?

5 A To really sit down and talk to me. I talked to
6 him on the phone. Like when I got off from work, she'd be
7 talking to him, and I'd tell Leona I wanted to aggravate him
8 and all. And we'd talk, you know, maybe two or three
9 minutes, sometimes five minutes. But that was it.

10 Q Did Leona ever confide in you that Clifford had a
11 problem?

12 A Yes.

13 Q What did she confide in you?

14 A She told me that he had a drinking problem.

15 Q And did you discuss that with her?

16 A Yeah, me and her, we talked about it. And then
17 one time she come home and told me, you know, he was going
18 to go out there to that hospital. And she told me, she
19 says, "Mommy, if he just stays," she said, "everything will
20 be all right." She wanted him to quit because she didn't
21 like it. He'd sometimes--he'd call of a night, and I'd come
22 home from work, and she'd be crying because he'd quarreled
23 at her. Sometimes he'd cussed her. And she wouldn't tell
24 me what he'd say, but she would be crying very hard.

25 Q Can you describe for us Leona's mood when you last

1 saw her when she left your home?

2 A The last time I saw Leona she had the biggest
3 smile on her face that ever was because Spike had called and
4 they were going out. She kissed me on my cheek, and she
5 told me, "Mommy, I love you." And she looked at her daddy
6 and said, "Bye." I said, "Leona, will you please be
7 careful?" And she went out the door.

8 Q What was your understanding as to where Leona and
9 Clifford were going on the Saturday evening that this
10 accident happened?

11 A They were going to the movies, and he was supposed
12 to have brought her home by 11:00.

13 Q Do you have any personal knowledge of how this
14 accident happened?

15 A Uh-uh.

16 Q When did you find out that your daughter had died
17 in the accident?

18 A It was Saturday evening at 11:00 o'clock, between
19 11:00 and 11:30. I pulled in the driveway. I got off from
20 work. Two state trooper cars was in the road, and I saw one
21 go up the steps. I got out of my car, and I ran up, and
22 Johnnie was as white as a sheet. Trooper Skeens asked me,
23 he said, "Are you Leona's mother?" And I said, "What
24 hospital is she in?" I asked him twice. And he was--
25 Gone, Leona was gone. Leona and Bev, they're my life.

1 That's what I live for.

2 Q How did you feel when you found out, when you
3 realized that your daughter was gone?

4 A That is the awfulest feeling that any person can
5 have. It's part of them that's gone; part of their body and
6 their soul and their spirit is in their children.

7 Q It's been more than a year and a half now?

8 A It's been twenty months and six days.

9 Q Has the loss--do you feel the loss any less today?

10 A No, sometimes I feel it's worsen. Sometimes I
11 want to hold her so bad that I could just reach out, and
12 they ain't nothing there. And when I go look at her where
13 she's buried, she ain't but six foot down, and I can't get
14 ahold of her. Her body is there, but I can't get her. I
15 can't hold her. And it hurts so bad.

16 Q How do you deal with the grief you feel today?

17 A I cry, and I pray because I hope that some day I
18 can see Leona again.

19 THE COURT: Mrs. Rice, take your time.

20 A Can you imagine when you see her again what that
21 is going to be like? I won't have to give her up no more.

22 Q Since the date of this accident has Clifford
23 Charles ever come to you and talked to you?

24 A [Shakes head, no.] Spike has never called me or
25 said I'm sorry, or he's never told me what happened. There

1 is a lot of questions I don't know. This makes the second
2 time I've seen him since this accident. I saw him on
3 November 10th of last year. I sit there right across from
4 him all day at that deposition.

5 MR. MUNSEY: I don't have any further questions.
6 Thank you, Rita.

7 THE COURT: Mrs. Rice, would you like to take a
8 break before we do the rest of the examination? Are you
9 ready to go forward, or do you need a break?

10 MR. MUNSEY: Do you want to go ahead?

11 THE COURT: Are you ready to go forward?

12 THE WITNESS: [Nods head, yes.]

13 THE COURT: Mr. Moffet.

14 CROSS EXAMINATION

15 BY MR. MOFFET:

16 Q Mrs. Rice, you mentioned the deposition. Can you
17 hear me?

18 A [Shakes head, no.]

19 Q Do you hear better out of the other ear?

20 A [Nods head, yes.]

21 Q Would you like for me to get over here?

22 A Just over there.

23 Q Be glad to. If you don't hear me, let me know.

24 Okay? At the deposition we were much closer than this.

25 Ma'am, do you remember we talked about when Leona

1 got her learner's permit that you had a conversation with
2 her? Do you remember?

3 A Well, it's like every parent does, they tell them
4 not to get into a vehicle with someone that has been
5 drinking.

6 Q And she indicated to you that she wouldn't do
7 that, didn't she?

8 A She told me she would not.

9 Q And you told her that if she got into a situation
10 where she was with somebody who had been drinking to call
11 you--it didn't matter what time or day or night--and you
12 would come and get her. Right?

13 A Yes.

14 Q And, ma'am, with regard to Clifford or Spike, you
15 all--there was discussion between you and Clifford's mother
16 that Clifford should not come to the funeral, that you
17 counseled that he shouldn't come there. Isn't that right?

18 A Johnnie didn't want to see him. That is why he
19 didn't want him there.

20 Q Okay. But I mean the reason he wasn't at the
21 funeral was because it had been communicated to Clifford's
22 mom that he was not to come?

23 A No, we didn't say nothing like that.

24 Q Didn't you make arrangements for Clifford to come
25 and say good-by to Leona at the church when no one else was

1 around so that Clifford and your husband wouldn't see each
2 other?

3 A What we done, we wanted Spike to see Leona, but we
4 did not want to see Spike.

5 Q Okay. And he honored that wish and didn't come to
6 the funeral?

7 A Yes, he did.

8 MR. MOFFET: No further questions. Thank you,
9 ma'am.

10 THE COURT: Thank you, Mrs. Rice. Call your next
11 witness.

12 THE WITNESS: [Stands aside.]

13 MR. MUNSEY: We call Johnnie Rice to testify.

14 THE COURT: Mr. Rice, you were previously sworn
15 when the clerk swore the witnesses?

16 JOHNNIE RICE: [Nods head, yes.]

17 THE COURT: Go ahead and have a seat and respond
18 to counsel's questions.

19

20 The witness, JOHNNIE W. RICE, having been duly
21 sworn by the Clerk of the Court, was examined and testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. MUNSEY:

25 Q Johnnie, would you state your name please?

1 A Johnnie Rice.

2 Q Johnnie, where were you born and raised up?

3 A Breaks, Virginia, Buchanan side of the county.

4 Q And since you and Rita have been married, you all

5 have resided in the Harman community?

6 A Yes, sir.

7 Q And I believe it's been testified you all have

8 been married for 24 years.

9 A That's correct.

10 Q Is that right?

11 A That's correct.

12 Q Two children?

13 A Yes, sir.

14 Q And the reason we're here is because of the loss

15 of Leona.

16 A Yes.

17 Q How would you describe your daughter?

18 A Well, I loved her very much.

19 Q What sort of things did the two of you all enjoy

20 doing together?

21 A We liked to fish, and I taught her to drive. We'd

22 do a lot of driving, you know, off road. She had a lot of

23 fun out of that.

24 Q Did she like to do any tomboy things that you

25 taught her to do?

1 A Yes, sir. I bought her a BB gun. She got good
2 shooting a BB gun. And when she got to the age about around
3 14, I think, she wanted to shoot my .22 rifle, and we done a
4 lot of that. And we spent a lot of time out Breaks Park.
5 She loved out there. That was her favorite place. And we'd
6 spend a lot of time out there. She was all the time, you
7 know, saying, "Daddy, let's do something." She said, "Take
8 me driving, or let's go walking," you know.

9 Q Can you describe the relationship you observed
10 between your two girls as they grew up?

11 A They was close. I didn't have no problem with
12 them. They always told me the truth. And I raised them the
13 best I knowed how. We were all the time doing things
14 together. Just the whole family was close.

15 Q When--how did you get the word?

16 A Sir?

17 Q How did you get the word that your daughter was
18 gone?

19 A The state trooper come home to the house and told
20 me. I was at home alone at the time. And they come to the
21 house and told me.

22 Q How did you feel at that point in time?

23 A I was hurt and anger--and angry at the same time.

24 Q What did you do?

25 A I just couldn't believe that. I just couldn't

1 believe it, you know. And I kept asking Jesus Christ, "Why?
2 Why her? Why her?" I just couldn't believe it. Why her,
3 you know? It just--I had a porch--I was on the porch, and
4 there was a railing something about like this. And I took
5 my fist, and I beat that I was hurting so bad. And I never
6 even felt that. That didn't even bother me. What hurt me
7 is I was hurting inside over her is how bad it hurt me. I
8 know it'll hurt me all my life.

9 Q Mr. Moffet has asked Rita about the funeral. Did
10 you have feelings about whether or not you could face this
11 young man at the funeral?

12 A At the time I didn't want him there. And then--
13 then I thought again, and I said, "Well, it's God's church.
14 It's not my decision to say he can't come. It's the Lord's
15 church." And I thought it wasn't my--I can't say that he
16 can't come because, you know, it's the Lord's church.

17 Q But did you feel a lot of anger at that time
18 though?

19 A Yes, sir, I did, a lot.

20 Q It's been more than 20 months.

21 A To me it was like yesterday.

22 Q Describe for me, if you can, the effect that this
23 has had on your family.

24 A It's hurt Rita, my wife, there. She cries about
25 all the time continuously. She tries to keep busy to get

1 her off her mind, but that don't work. Of a night she can't
2 sleep of a night. Sometimes she'll wake up in her sleep and
3 holler for Leona. And she woke up scared to death, and I
4 have woke her up just because I know what she'll be crying
5 about. I have woke her up so I know she'd have Leona on her
6 mind and--

7 Q Do you have good memories of your daughter?

8 A Yes, sir, I sure do.

9 Q What do you do today to deal with the grief that
10 you feel?

11 A I try to find me something to do, you know, or I
12 do a lot of walking. Just have to live and bear with it the
13 best you can, but it's, you know, hard. People says in time
14 it'll get easier. But that may be true, but for right now
15 it's not working. My other daughter, she's not happy like
16 she used to be.

17 MR. MUNSEY: I'd like to get these two exhibits
18 marked.

19

20 PLAINTIFFS' EXHIBITS NO. 1 AND NO. 2--

21 MARKED FOR IDENTIFICATION

22

23 Q How do you feel like it's affected Beverly?

24 A I feel like Leona just took part of Beverly with
25 her, you know. Beverly just don't act the same. She acts

1 different. I mean she's not as happy like she was when
2 Leona was there. She--I think she's kind of like me; she's,
3 you know, having a hard time to deal with it and, you know,
4 can't accept it I mean.

5 Q Johnnie, where did you all bury Leona?

6 A It's on the Breaks.

7 Q Family cemetery?

8 A Slone and Rice cemetery.

9 Q Who took care of the arrangements for the
10 funeral?

11 A Grundy Funeral Home.

12 Q Let me show you what we have marked as Plaintiffs'
13 Exhibit No. 1. And I'm going to ask you if this is an
14 itemized statement of the funeral expenses that were
15 incurred.

16 A Yes, sir, that's it.

17 MR. MUNSEY: Your Honor, we would offer this into
18 evidence.

19 THE COURT: Any objection?

20 MR. MOFFET: No, your Honor.

21 THE COURT: Plaintiffs' 1 without objection.

22

23 PLAINTIFFS' EXHIBIT NO. 1--ADMITTED

24

25 Q Johnnie, let me show you what's been marked as

1 Plaintiffs' Exhibit No. 2, and I'll ask you what this
2 represents. Is that an invoice for the marker?

3 A Yes, sir, yes.

4 MR. MUNSEY: Your Honor, we would offer this into
5 evidence also.

6 MR. MOFFET: No objection. I assume those are
7 both the copies that you have given to me before.

8 MR. MUNSEY: Would you like to see them?

9 MR. MOFFET: Yeah, just to-- No objection.

10 THE COURT: Plaintiffs' 2 without objection.

11

12 PLAINTIFFS' EXHIBIT NO. 2--ADMITTED

13

14 MR. MUNSEY: I believe that is all of the
15 questions that I have.

16 THE COURT: Cross examine.

17 CROSS EXAMINATION

18 BY MR. MOFFET:

19 Q Mr. Rice, can you hear me all right, or do I need
20 to move to the other side? You both hear better from over
21 here?

22 A Yeah, I have a slight hearing problem too.

23 Q Okay. Mr. Rice, you indicated that you taught
24 Leona how to drive?

25 A Yes.

1 Q Did she learn how to drive? I mean did she do all
2 right? How did she do with your teaching her?

3 A I thought she done very well. I mean she--I never
4 let her drive on the--let her drive on the hardtop. It was
5 kind of off road, you know, kind of up in the holler, you
6 know.

7 Q How about after she got her learner's permit, did
8 she ever ride with you then?

9 A No.

10 Q Did she ride with her sister or her mom? Who did
11 she ride with?

12 A Her sister and her mother.

13 Q Okay. Sir, like your wife, you had a conversation
14 with Leona at some point in time about the time she was
15 starting to drive about not riding with someone who had had
16 any alcohol to drink?

17 A Yes.

18 Q And you explained to her that that would be
19 dangerous to do it?

20 A Yes, yes.

21 Q And she indicated to you that she understood that;
22 is that right?

23 A Yes.

24 Q And she told you that she wouldn't do it?

25 A Yes.

1 MR. MOFFET: Thank you, sir. Those are all of the
2 questions I have.

3 THE COURT: Thank you, Mr. Rice. You may stand
4 aside and have a seat back at counsel table.

5 THE WITNESS: [Stands aside.]

6 THE COURT: Call your next witness.

7 MR. MUNSEY: Your Honor, we would call Beverly
8 Rice McClanahan.

9 THE COURT: Beverly Rice McClanahan.

10 MR. MUNSEY: Your Honor, before we begin that
11 testimony, I would like to read a stipulation between
12 counsel.

13 THE COURT: Mrs. McClanahan, come around here to
14 the witness stand. Mrs. Rice--Mrs. McClanahan (pardon me).

15 BEVERLY RICE McCLANAHAN: Yes, sir.

16 THE COURT: Face the clerk, raise your right hand,
17 and be sworn.

18

19 THE WITNESS, BEVERLY RICE McCLANAHAN, WAS DULY
20 SWORN BY THE CLERK OF THE COURT.

21

22 MR. MUNSEY: Your Honor, the stipulation between
23 both parties is that while they (referring to Clifford
24 Charles, Leona Rice, and J. D. Baker) were at Scott Mullins'
25 house, he (meaning Mr. Charles) asked Scott to purchase the

1 alcohol and offered to pay Scott to do so. Scott indicated
2 that he would do it. Beverly objected. Beverly and Scott
3 got into an argument.. The three of them left (meaning
4 Mr. Charles, Leona Rice, and J. D. Baker) while Beverly and
5 Scott were arguing.

6 THE COURT: Is that the stipulation?

7 MR. MOFFET: Yes, your Honor. We have entered
8 into that to expedite things so there wouldn't be a need for
9 an additional witness.

10 THE COURT: Thank you, Counsel. The Court
11 certainly appreciates that.

12 MR. MUNSEY: It's stipulated that if Mr. Mullins
13 were here, that would be his testimony.

14
15 The witness, BEVERLY RICE McCLANAHAN, having been
16 duly sworn by the Clerk of the Court, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MUNSEY:

20 Q Beverly, could you state your name for the jury,
21 please?

22 A Beverly McClanahan.

23 Q Beverly, where do you live?

24 A Harman.

25 Q And who are you married to?

1 A Billy McClanahan.
2 Q Do you have any children?
3 A One.
4 Q And is that a boy or a girl?
5 A A boy.
6 Q What's his name?
7 A Luke.
8 Q Beverly, we're here today concerning your sister,
9 Leona. Leona is your only sister?
10 A [Nods head, yes.]
11 Q Correct?
12 A Yes.
13 Q You did not have any brothers?
14 A No.
15 Q Can you describe for us your sister, Leona?
16 A Beautiful.
17 Q Can you describe for us the relationship the two
18 of you all had together?
19 A We was very close.
20 Q When you say that you're close, what do you mean
21 by that? How did your closeness affect that relationship?
22 A I think we were closer than what normal other
23 sisters were.
24 Q Did you talk?
25 A Yeah.

1 Q What sort of things did the two of you enjoy doing
2 together?

3 A Talking about our plans and doing outdoor things.
4 She loved to shop.

5 Q Were you able to confide in each other?

6 A Yeah, we were.

7 Q How much time between the two of you, how much age
8 difference?

9 A Four years.

10 Q Four years?

11 A Yeah.

12 Q I believe for a period of time you were away from
13 home and then returned back home in November of 1996 before
14 this accident happened in April of '97?

15 A Yeah.

16 Q Can you describe to us the relationship the two of
17 you all had when you returned back to the home?

18 A We got closer than what we were. We tried to help
19 each other with what was bothering us. I realized how much
20 I'd missed her where I'd been gone and appreciated her more
21 when I got back home. And I think that is what brought us
22 closer together.

23 Q Now it's my understanding that prior to this
24 accident happening that Leona had been dating the defendant,
25 Clifford Charles, for some period of time.

1 A Yeah.

2 Q Do you know approximately how long they had been
3 dating?

4 A I know I think it was over a year, maybe a little
5 bit longer. I'm not for sure exactly how long.

6 Q How serious was their relationship?

7 A I think she loved him.

8 Q Did she consider the two of them engaged?

9 A We never talked about that.

10 Q Did he give her a ring?

11 A I don't know. We never talked about them getting
12 married. We had our own plans, so I would assume that they
13 wasn't because of, you know, our plans.

14 Q What were your plans?

15 A We was going to open a shop. I like to do art
16 work. She was going to be mechanic where she was taking
17 trade school, and I was going to do auto body and put
18 details on vehicles, stuff like that. We were going to call
19 the shop Leonard's. It was her nickname.

20 Q Did she have another nickname?

21 A Smiley.

22 Q Did that suit her?

23 A Yeah.

24 Q Did Leona ever talk with you about Clifford's
25 problems with drinking?

1 A Some.

2 Q Did she tell you about his going over to Brookside
3 in Lebanon?

4 A A little bit, not much.

5 Q Was she concerned about his drinking?

6 A Yes.

7 Q Did she relate to you how she felt about Clifford
8 drinking?

9 A She thought it was a problem, more serious problem
10 for, you know, 18- or 19-year-old boy to have.

11 Q Did she relate to you how he--how they interacted
12 together once he was drinking?

13 A I don't think she was comfortable with it. I know
14 she didn't--didn't like him drinking.

15 Q How did Leona feel about alcohol?

16 A She didn't like it.

17 Q Beverly, I understand that you saw your sister
18 early the evening before this accident happened. Where did
19 you see her?

20 A At Scott's house.

21 Q Scott Mullins?

22 A [Nods head, yes.]

23 Q Was that the boy that you were seeing at that
24 time?

25 A Uh-huh.

1 Q Approximately when was it up in the evening that
2 you saw them?

3 A I think it was after 5:00 or 6:00, around that
4 time. It's been a long time.

5 Q Was it before dark?

6 A Yeah.

7 Q April 5th?

8 A [Nods head, yes.]

9 Q 1997.

10 A Uh-huh.

11 Q Did you have an opportunity to talk with Leona at
12 that point in time?

13 A No.

14 Q You didn't speak to her?

15 A Not in detail, you know. I asked where she was
16 going, told her to be careful and that I loved her.

17 Q What did she tell you at that time?

18 A Said she was going straight home. And that is
19 when I told her, you know, to be careful and I loved her and
20 I'd see her later.

21 Q How did she appear at that point in time to your
22 observation?

23 A Was upset.

24 Q Now there was something else going on there at
25 Scott's at that point in time too, wasn't there?

1 A What do you mean?

2 Q Conversation between Clifford and Scott.

3 A From somebody, yeah.

4 Q Did Scott tell you that he was going to go and buy
5 beer for Clifford and J. D.?

6 A Yeah.

7 Q And what did you do at that time?

8 A I told him no. And he said, "Is it because your
9 sister is with them?" I said, "That's one reason." I said,
10 "But he's underage, so it's not happening with him anyway.
11 You don't buy underage people beer," because Scott knew how
12 I felt about it.

13 Q And did you all get in an argument at that time?

14 A Uh-huh, yeah.

15 Q What's the last thing that Leona said to you that
16 night?

17 A "I'm going straight home." She didn't say, "I'm
18 going home" or "I'll see you later." She said, "I'm going
19 straight home."

20 Q Did you see her leave?

21 A I don't think I did. I can't remember.

22 Q They were just gone while the two of you were
23 arguing?

24 A So much happened. And I was so upset at Scott.

25 Q When did you find out that Leona was gone?

1 A Later on that night.

2 Q How did you find out?

3 A State trooper told me.

4 Q Did he come and get you?

5 A Yeah.

6 Q Did he take you to your mom and daddy?

7 A Yeah.

8 Q How did you feel? How did you react to that news?

9 A Hit me hard.

10 Q Beverly, are you still suffering over this today?

11 A It's an everyday thing, you know, trying to deal

12 with it because nobody can take someone's place. No matter

13 if you're married or have a baby, it's still it's not the

14 same. I'll never have my shop.

15 Q Do you miss her?

16 A Yeah.

17 MR. MUNSEY: That is all of the questions I have.

18 Do you need to take a break?

19 THE WITNESS: [Nods head, yes.]

20 MR. MUNSEY: Can we take a short break?

21 THE COURT: Are you finished?

22 MR. MUNSEY: Yes.

23 THE COURT: Mrs. McClanahan, do you want to take a

24 break before we begin with the cross examination?

25 THE WITNESS: Please.

1 THE COURT: Ladies and gentlemen of the jury,
2 let's take about a ten-minute break. Feel free to stretch,
3 have a refreshment. Do not discuss or permit a discussion
4 of the elements of the trial or the testimony during this
5 break.

6
7 THE COURT WAS IN RECESS FROM 2:03 P.M. UNTIL
8 2:21 P.M., AFTER WHICH THE FOLLOWING PROCEEDINGS
9 OCCURRED:

10
11 THE COURT: Did Mrs. McClanahan go out of the
12 courtroom?

13 MR. MUNSEY: She did.

14 MR. MOFFET: I think she's out in the hall.

15 MR. MUNSEY: I think that there was a bailiff that
16 was with her. Will you ask her to come in?

17 THE COURT: Mrs. McClanahan, if you will go ahead
18 and have a seat back on the witness stand. I think you have
19 done a real good job of controlling your emotions up to this
20 point. If you can maintain that through the cross
21 examination, we'll be fine. All right, are you ready to go?

22 Have the jury come back.

23
24 AT 2:23 P.M. THE JURY RETURNED TO THE COURTROOM.
25

1 THE COURT: Mr. Moffet, you may begin your cross
2 examination.

3 CROSS EXAMINATION

4 BY MR. MOFFET:

5 Q Beverly, can you hear me all right?

6 A Yes, sir.

7 Q Beverly, I'm just going to ask you some of the
8 same questions that we talked about at your deposition.
9 Okay?

10 A [Nods head, yes.]

11 Q Now after Clifford got out of detox, you and Leona
12 had a discussion about his drinking at that point, didn't
13 you?

14 A Yes.

15 Q And she indicated to you that she thought that his
16 problem had gotten worse, that his drinking was worse than
17 it had been before, didn't she?

18 A Yes.

19 Q And you all had a discussion about the danger of
20 her riding with Clifford after he'd been drinking, didn't
21 you?

22 A Yes.

23 Q And you urged her not to ride with him after he
24 had been drinking, didn't you?

25 A Yes.

1 Q And Leona told you that she wouldn't do that,
2 didn't she?

3 A Yes.

4 Q And wasn't there a time in January of '97, and I
5 guess that would be about three or four months before this,
6 when Leona was riding with some friends, not with Clifford
7 but with some other friends to the bowling alley, and some
8 of the kids broke out some beer? And do you remember what
9 I'm talking about?

10 A Yes, sir.

11 Q Okay. And on that instance Leona asked them to
12 pull over and let her out. And she went and called, and
13 somebody came and got her, didn't they?

14 A Yes.

15 Q Beverly, one thing I don't understand Mr. Munsey
16 asked you about. Your mother has already testified that
17 Leona loved Clifford and that Clifford had given her a ring
18 and that they were engaged. And you testified on direct
19 examination from Mr. Munsey that you didn't know about the
20 ring and you didn't know about the marriage plans?

21 A No.

22 Q Do you know of any reason why Leona would tell
23 your mom and not tell you about that?

24 A No, I'm just telling you what I know.

25 MR. MOFFET: Okay. Thank you. That's all I have.



1 MR. MOFFET: No, we're ready, your Honor.
2 Can I go ahead and--
3 THE COURT: Call your first witness.
4 MR. MOFFET: Call Clifford Charles, sir.
5 THE COURT: I believe this witness was previously
6 sworn when the clerk swore the witnesses.
7 MR. MOFFET: Yes, yes.
8
9 The Defendant's Evidence
10
11 The witness, CLIFFORD ANTHONY CHARLES, having been duly
12 sworn by the Clerk of the Court, was examined and testified
13 as follows:
14 DIRECT EXAMINATION
15 BY MR. MOFFET:
16 Q Clifford, go ahead and tell the ladies and
17 gentlemen of the jury your full name.
18 A Clifford Anthony Charles.
19 Q Clifford, where do you live?
20 A Slate Creek.
21 Q Who do you live with?
22 A My parents.
23 Q Those are these two people seated out here?
24 A Yes.
25 Q What are their names and ages?

1 A Rondal and Brenda Charles.

2 Q Clifford, could you talk up a little bit? I'm

3 closer to you than most of the jurors, and I'm having a hard

4 time hearing you, so talk up a little bit.

5 Clifford, you and Leona went to school together?

6 A Yes.

7 Q Were you all the same age?

8 A No.

9 Q What was the difference in age?

10 A Two years.

11 Q She was two years younger?

12 A Yes.

13 Q Were you all the same grade at school?

14 A No.

15 Q What grade?

16 A She was one grade below me.

17 Q One grade behind you, okay. How long before this

18 accident had you and Leona been boyfriend and girlfriend?

19 A Probably little over a year and a half.

20 Q Were you all in love?

21 A Yes.

22 Q Were you engaged?

23 A Yes.

24 Q Had you given her a ring?

25 A Yes.

1 Q Clifford, in '97 did you have a problem with
2 alcohol?
3 A Yes.
4 Q How much beer were you drinking a day?
5 A Depend.
6 Q Okay. If you were drinking, what would be the
7 least amount you would drink, and what would be the most?
8 A From a 12-pack to a case and a half.
9 Q Did you and Leona have arguments about your
10 drinking?
11 A Yes.
12 Q Did she get you to go to detox in January of '97?
13 A Yes.
14 Q Did you stay the full time?
15 A No.
16 Q Why did you leave?
17 A Couldn't handle it.
18 Q I'm sorry?
19 A Couldn't handle it.
20 Q Okay. After you got out of Brookside then in
21 January of '97, did you go back to drinking?
22 A Yes.
23 Q Right away or did that occur over time?
24 A Over time.
25 Q Within a month were you back to drinking like you

1 were before?

2 A Yes.

3 Q Did you drink and drive?

4 A Yes.

5 Q Did you drink and drive when Leona was riding with

6 you?

7 A Yes.

8 Q Before this accident how many times would you

9 estimate that you had probably been drinking and Leona had

10 ridden with you?

11 A Many number of times.

12 Q Okay.

13 MR. MUNSEY: I'm sorry. I didn't hear that.

14 MR. MOFFET: He said, "Many number of times."

15 Q After you got out of Brookside, did you get a job

16 down in North Carolina?

17 A Yes.

18 Q Where in North Carolina, and what were you doing?

19 A Lenoir. I was working in a furniture factory.

20 Q In Lenoir?

21 A Yes.

22 Q Were you living down there?

23 A Yes.

24 Q What about on weekends, what were you doing?

25 A Coming in.

1 Q Coming in where?
2 A Buchanan County.
3 Q And when you came in weekends, who did you see?
4 A Leona and my family.
5 Q Okay. Did you and Leona spend a lot of time
6 together when you would come in on weekends?
7 A Yes.
8 Q Clifford, let's talk about the weekend of April
9 4th and 5th of '97. April 4th was a Friday. Did you come
10 back from North Carolina to Buchanan County that day?
11 A Yes.
12 Q After you got in, who did you go see?
13 A Leona.
14 Q And after you got Leona, did you and Leona go some
15 place?
16 A Yes.
17 Q Where?
18 A My house.
19 Q Did you all then visit Friday evening?
20 A Yes.
21 Q Saturday April 5th, the day of this accident, did
22 you and Leona spend the whole day together?
23 A Yes.
24 Q Did you all have plans for that evening as to what
25 you were going to do that evening?

1 A Yes.

2 Q What were those plans?

3 A Go to the movies.

4 Q Okay. What time did you leave the house to go to

5 the movies?

6 A Around 5:00.

7 Q And was that early for getting to the movies?

8 A Yes.

9 Q Why did you leave at 5:00?

10 A Was going cruising around for a while.

11 Q And it was just you and Leona?

12 A Yes.

13 Q And that was in--what vehicle were you in?

14 A Truck.

15 Q Pickup truck?

16 A Yes.

17 Q And after you left your house and went cruising

18 around, did you all see somebody that caused you to stop?

19 A Yes.

20 Q Who?

21 A J. D.

22 Q J. D. who?

23 A Baker.

24 Q Okay. And when you stopped with J. D. Baker, tell

25 me what was discussed.

1 A I asked him if he wanted to go to the movies with
2 us, and he said, "Yeah."

3 Q What was J. D. on at the time that you saw him?

4 A His four-wheeler.

5 Q His four-wheeler?

6 A Yes.

7 Q So you're there, what, in the parking lot along
8 Slate Creek?

9 A Yes.

10 Q And the decision was that he was going to go with
11 you. What did you all do then?

12 A Went to his house.

13 Q So he drove the four-wheeler, and you drove the
14 pickup?

15 A Yes.

16 Q And Leona is riding with you, obviously?

17 A Yes.

18 Q And then what happened when you got to J. D.'s
19 house?

20 A He changed clothes, and we decided we was going to
21 get some beer instead of going to the movies.

22 Q When you all made this decision, where was Leona?

23 A Right beside me.

24 Q I mean was she there? I mean she heard the
25 discussion and the discussion between you and J. D. about

1 going and getting the beer rather than going to the movies?

2 A Yes.

3 Q Did she have any objection to that?

4 A No.

5 Q None of the three of you were 21, were you?

6 A No.

7 Q So how were you going to get the beer?

8 A Going to get Scott to buy it for us.

9 Q Scott Mullins?

10 A Mullins, yes.

11 Q Scott was Leona's sister's boyfriend, right?

12 A Yes.

13 Q And Scott lived nearby?

14 A Yeah.

15 Q So the three of you all decided to go to Scott's?

16 A Yes.

17 Q When you got to Scott's, what happened?

18 A Leona was talking to Bev, and I was talking to

19 Scott about buying the beer.

20 Q Did then Beverly--I mean did, yeah, Beverly and

21 Scott start exchanging words?

22 A Yes.

23 Q And when they started exchanging words, what did

24 Leona do?

25 A Got back in the truck.

1 Q And did you all then talk about what you were
2 going to do, whether you were still going to get the beer,
3 whether you were going to go somewhere else? Tell me what
4 was discussed when Leona got back in the truck.

5 A We was going to go get the beer.

6 Q How were you going to go get it?

7 A At Medical Park.

8 Q Is that where you went when you left Scott's then?

9 A Yes.

10 Q That's Medical Park Pharmacy?

11 A Yes.

12 Q And Medical Park Pharmacy sells beer?

13 A Yes.

14 Q When you got to Medical Park Pharmacy, what did
15 you do?

16 A We sit there. And a guy come out with some beer,
17 and I asked him if he'd care to go and get me two cases of
18 beer. And he agreed to do that.

19 Q So while you were waiting for somebody to come out
20 with the beer, where were you all waiting?

21 A Parking lot of Medical Park.

22 Q Were the three of you in the pickup?

23 A Yes.

24 Q When you had this discussion with this fellow
25 about buying beer for you, were the three of you still in

1 the pickup truck, or were you out?

2 A In the pickup.

3 Q So he came over to the pickup truck?

4 A Yes.

5 Q And who was seated beside you when you were

6 talking to this fellow?

7 A Leona.

8 Q And J. D. was where?

9 A Passenger side.

10 Q By the window?

11 A Yes.

12 Q So this fellow agreed to buy the beer for you all?

13 A Yes.

14 Q Did he do that?

15 A Yes.

16 Q What did he buy you?

17 A Two cases of Budweisers.

18 Q Two cases of Budweiser what size?

19 A Seven ounce.

20 Q Seven-ounce bottles?

21 A Yes.

22 Q Once you got the two cases of beer, where did you

23 all go?

24 A Enochs Branch.

25 Q Is that--we're in Dickenson County, and I guess

1 some people may know where that is with relation to Medical
2 Park Pharmacy, and some people may not. How far away was
3 that from Medical Park Pharmacy? How long did it take you
4 to drive?

5 A About five minutes.

6 Q What did you do when you got to Enochs Branch?

7 A Rode up in there and parked and drank a beer.

8 Q Who drank the beer?

9 A Me and J. D.

10 Q Did Leona drink any?

11 A No.

12 Q While you were there and drinking beer, did you
13 talk about where, what you were going to do the rest of the
14 evening?

15 A Yes.

16 Q And what was the discussion?

17 A We decided to go somewhere else.

18 Q Did you talk about different places?

19 A Yes.

20 Q What places did you talk about?

21 A Talked about Compton Mountain. J. D. didn't want
22 to go there, so--

23 Q Who suggested Compton Mountain?

24 A I did.

25 Q What did Leona say about Compton Mountain?

1 A She wanted to go there.

2 Q She wanted to go there. But J. D. didn't?

3 A No.

4 Q What is at Compton Mountain?

5 A A graveyard.

6 Q What were you going to do when you got to the

7 graveyard?

8 A Sit and drink a beer.

9 Q So you discussed Compton Mountain and where else?

10 A Haysi.

11 Q And you all decided to go to Haysi?

12 A Yes.

13 Q What were you going to do in Haysi?

14 A Go to Kiwanis Park.

15 Q And what were you going to do there?

16 A Go up on top of the mountain.

17 Q And what were you going to do?

18 A Just ride around the strip job road and drink.

19 Q Then after this discussion at Enochs Branch, did

20 you get back in the pickup truck?

21 A Yes.

22 Q And what did you all do?

23 A Got a case of beer and set it up front with us.

24 Q Where did you put it?

25 A In the floorboard.

1 Q Floorboard on which side?
2 A J. D.'s.
3 Q Passenger side?
4 A Yes.
5 Q And so Leona was sitting between you and where the
6 beer was?
7 A Yes.
8 Q And so you left Enochs Branch, and you headed
9 towards Haysi. As you were doing that drive, were you
10 drinking?
11 A Yes.
12 Q And as you drank additional beer, finished a beer,
13 and got a new one, how did you get it?
14 A J. D. would hand it to me.
15 Q So it would be handed across in front of Leona?
16 A Yes.
17 Q Okay. On the way from Enochs Branch to Haysi, did
18 you drive by Leona's house?
19 A Yes.
20 Q How close?
21 A Right beside the road.
22 Q Okay. Tell me, Clifford, at any time that night
23 did Leona ask you to take her home?
24 A No.
25 Q Did she ask you to let her out?

1 A No.

2 Q When you drove by her house, did she ask you to
3 stop and let her out?

4 A No.

5 Q Before you got to--before the accident happened
6 and after you left Enochs Branch, did you stop anywhere?

7 A Yes.

8 Q Why did you stop?

9 A To relieve myself.

10 Q To go to the bathroom?

11 A Yes.

12 Q How close was that to where this accident
13 happened?

14 A About a mile.

15 Q Okay. When you stopped, did Leona ask to get out?

16 A No.

17 Q Did Leona have her learner's?

18 A Yes.

19 Q Did she ask to drive at any time that night?

20 A No.

21 Q If she had asked to drive, would you have let her?

22 A Yes.

23 Q Clifford, when you got out to go to the bathroom
24 about a mile before this accident, at that point in time how
25 many beers had you had?

1 A About five.

2 Q And the first one you had, about what time was
3 that that you had the first one there at Enochs Branch?

4 A About 6:00, I guess.

5 Q About when?

6 A About 6:00.

7 Q Okay. Let me see. The accident happened--do you
8 recall what time the accident happened?

9 A Close to 8:00, I believe.

10 Q The police report indicates about ten minutes to
11 8:00. Does that jell with what you recall?

12 MR. MUNSEY: We will stipulate 7:50 that the
13 accident happened according to the police report.

14 THE COURT: The accident occurred at 7:50 on this
15 date?

16 MR. MUNSEY: Yes, sir.

17 THE COURT: At 7:50 p.m.

18 Q Clifford, during the roughly hour and a half, hour
19 and 45 minutes between the time of your first beer and the
20 accident, how many beers total did you have?

21 A About six.

22 Q Okay. Were you drinking one at the time of the
23 accident? Did you have one opened at the time of the
24 accident?

25 A Yes.

1 Q And during the course of that period of time, had
2 you been drinking then just sort of in regular intervals, or
3 did you drink them all at one time?

4 A Just not all at one time.

5 Q You were just drinking at the same pace?

6 A Yeah.

7 Q And had you had lunch or dinner that day?

8 A No.

9 Q Clifford, tell the ladies and gentlemen how the
10 accident happened.

11 A Came into a curve too fast, truck wouldn't handle
12 it.

13 Q Clifford, how fast was too fast?

14 A About 55, 60.

15 Q Describe the curve for the ladies and gentlemen.

16 A It's steep.

17 Q Clifford, I show you what has been marked as
18 Defendant's Exhibits 1 and 2, photographs taken by the
19 trooper the next day, and ask you if these photographs show
20 the curve where this accident happened?

21 A Yes.

22

23 DEFENDANT'S EXHIBITS NO. 1 AND NO. 2--

24 MARKED FOR IDENTIFICATION

25

1 Q Are these photographs taken in the direction you
2 were traveling at the time of the accident?

3 A Yes.

4 Q And does one of the pictures, No. 2, actually show
5 the first part of the curve and No. 1 show the curve
6 continuing on around?

7 A Yes.

8 MR. MOFFET: Your Honor I move to introduce these
9 photographs.

10 THE COURT: Any objection?

11 MR. MUNSEY: No, your Honor.

12 THE COURT: Defendant's 1 and 2. Do you want to
13 publish those to the jury?

14 MR. MOFFET: I'll wait and publish them when I'm
15 through with cross examination.

16 THE COURT: Hand those to the Court for marking.

17 MR. MOFFET: Okay.

18

19 DEFENDANT'S EXHIBITS NO. 1 AND NO. 2--ADMITTED

20

21 Q Clifford, you said the curve was steep, and you
22 went into it too fast. When you stopped to go to the
23 bathroom, Clifford, tell me how you felt.

24 A I had a buzz.

25 Q A buzz?

1 A Yeah.

2 Q Did that mean you could feel the effect of the
3 alcohol?

4 A Yes.

5 Q Clifford, this curve, did you--why did you go into
6 this curve at the speed that you did?

7 A I thought I had done went through.

8 Q You thought you had already been through it?

9 A Yes.

10 Q So you didn't--you thought you had already been
11 through the steep curve?

12 A Yes.

13 Q Clifford, when you went into the curve and you
14 were going too fast, what happened?

15 A Wrecked.

16 Q What happened?

17 A Started flipping.

18 Q When it started flipping, what happened to you and
19 your two passengers?

20 A Thrown out.

21 Q I'm sorry?

22 A Was thrown out.

23 Q All three of you were thrown out?

24 A Yes.

25 Q Did you get hurt in the accident?

1 A Yes.

2 Q Were you conscious or unconscious after the
3 accident?

4 A I was conscious.

5 Q Okay. Did you go in and out?

6 A Yes.

7 Q Okay. When you came to, what did you do,
8 Clifford?

9 A I started hollering for Leona and J. D.

10 Q Did J. D. answer you?

11 A Yes.

12 Q Did Leona answer you?

13 A No.

14 Q Could you see Leona?

15 A No.

16 Q Did you then look for Leona?

17 A Yes.

18 Q Did you find Leona?

19 A Yes.

20 Q When you found Leona, was she alive, or was she
21 dead?

22 A Dead.

23 Q You could tell that?

24 A Dead.

25 Q You could tell that she was dead?

1 A Yes.

2 Q What did you do, Clifford?

3 A I tried to give her CPR. Didn't help.

4 Q Clifford, at any time that night did Leona ask to
5 be taken home?

6 A No.

7 Q Did she ask to get out of the vehicle?

8 A No.

9 Q Did she ask to drive?

10 A No.

11 MR. MOFFET: Thank you, Clifford. If you would,
12 answer Mr. Munsey's questions.

13 CROSS EXAMINATION

14 BY MR. MUNSEY:

15 Q Clifford, I have a few questions I need to ask
16 you. You and Leona started dating when she was in the tenth
17 grade. Is that right?

18 A Yes.

19 Q During that period of time you did not have a
20 driver's license though, did you?

21 A No.

22 Q And actually it was just fairly recently before
23 the accident that you got a driver's license, wasn't it?

24 A Right.

25 Q A couple of months before?



1 A No.

2 Q And you had not had anything to drink all that
3 Saturday up till about 6:00 o'clock when you got to Enochs
4 Branch. Isn't that right?

5 A Right.

6 Q And when you left your mama and daddy's house on
7 Slate Creek at 5:00 o'clock that evening, the plan was to go
8 to the movies, wasn't it?

9 A Yes.

10 Q Your mama had given you money for the two of you
11 to go to the movies, hadn't she?

12 A Yes.

13 Q And, in fact, you all considered or at least Leona
14 considered this sort of a four-month anniversary of you
15 giving her her ring on December 4th of 1996, didn't you?

16 A Yes.

17 Q But when you traveled on down Slate Creek that
18 night and you saw Jessie Baker, you stopped. Right?

19 A Yes.

20 Q And at some point after that you and Jessie
21 started making plans as to how the evening was going to be
22 spent, didn't you?

23 A Yes.

24 Q Leona never encouraged you all to go get any beer,
25 did she?

1 A No.

2 Q She never asked anyone to buy you any beer, did
3 she?

4 A No.

5 Q She didn't help in any way to buy that beer, did
6 she?

7 A No.

8 Q Now, Clifford, do you remember when you gave a
9 deposition, I asked you questions under oath on May 18th of
10 this year? You remember that, don't you?

11 A Yes.

12 Q And there was a gentleman who was a court
13 reporter, just like Ms. Atkins, who was there and put you
14 under oath at that time. Correct?

15 A Yes.

16 Q And I asked you questions, and I asked you about
17 what you all did after you got with Jessie Baker that night,
18 didn't I?

19 A Yes.

20 Q And you told me that the three of you all went to
21 Scott Mullins' house?

22 A Yes.

23 Q And you told me the reason that--

24 MR. MOFFET: Your Honor, I'm going to object.

25 This is not the correct method for impeachment.

1 is posed, I'm going to exclude any reference to that for the
2 purposes of impeachment.

3 Q Clifford, when you left Scott Mullins' house and
4 you went to Medical Park Pharmacy, you and J. D. bought
5 beer. Is that right?

6 A I did.

7 Q You did. And the beer that you bought were
8 7-ounce bottles. Is that correct?

9 A Yes.

10 Q And, that is, contrasted with the regular 12-ounce
11 bottle, a 7-ounce bottle is a smaller one. Is that right?
12 Am I understanding that correctly?

13 A Yes.

14 Q And when you bought that beer at Medical Park
15 Pharmacy, you put that beer in the back of the truck?

16 A Yes.

17 Q You all didn't put any of it up front at the time
18 you left Medical Park Pharmacy, did you?

19 A No.

20 Q And you did not crack open that beer until you had
21 driven up to a deserted area on Enochs Branch. Is that
22 correct?

23 A Yes, right.

24 Q And this is an area, an old strip mine area or
25 fire road or something like that?

1 A Yes.

2 Q Secluded, isn't it, away from things?

3 A Yes.

4 Q And it was not until you got there that you and

5 Jessie, J. D., drank the first beer?

6 A Right.

7 Q And then you got back in the vehicle, one beer?

8 A Yes.

9 Q And then over the next, let's see, I believe you

10 said about 6:00 o'clock to 7:50 when this accident occurred,

11 an hour and 50 minutes, you drank four more beers making a

12 total of five?

13 A Yes.

14 Q Correct?

15 A Yes.

16 Q And you stopped then along the side of the road to

17 use the bathroom?

18 A Yes.

19 Q How long did you stop there?

20 A Five minutes, not long.

21 Q And this was on Route 80 that you stopped?

22 A Yes.

23 Q About a mile from where the accident happened?

24 A Yes.

25 Q And when you got back into the vehicle at that

1 point in time you opened the sixth 7-ounce beer. Is that
2 right?

3 A Yes.

4 Q And you were approximately a mile away from where
5 the accident happened, correct?

6 A I don't know if it was approximately a mile. That
7 is what I estimated.

8 Q You estimated it, give or take?

9 A Yes.

10 Q You wouldn't say it's five miles, was it?

11 A No.

12 Q So it was relatively close?

13 A Yes.

14 Q And at that point in time you were drinking on
15 that sixth 7-ounce bottle?

16 A Yes.

17 Q And you were still drinking on that bottle at the
18 time this accident occurred, correct?

19 A Yes.

20 Q And at that time that you got back in the vehicle
21 after the fifth beer and started drinking on that sixth
22 beer, you had had no trouble with your driving; isn't that
23 correct?

24 A Yes.

25 Q It's what you have told me before; is that right?

1 A Yes.

2 Q And from your observation of yourself at that
3 time, you do not believe that anyone would have known that
4 you were intoxicated or impaired had they not tested your
5 blood, did you?

6 A Yes.

7 Q And at that time you did not feel like you were a
8 danger in that vehicle, did you?

9 A How do you mean?

10 THE COURT: Do you have a question?

11 MR. MUNSEY: Yes. I'm sorry, your Honor.

12 Q Clifford, was Leona the type of girl that spoke
13 her mind?

14 A Yes.

15 Q And the type of girl that would have told you if
16 she was concerned for her safety?

17 A Yes.

18 Q Clifford, was Leona going to drive you and J. D.
19 back from Haysi that night after you all had drank all of
20 that beer?

21 A Probably so.

22 Q Or had she asked you to take her home earlier that
23 night?

24 A No.

25 Q And you're certain of that?

1 THE COURT: Go ahead, Mr. Moffet.

2 DIRECT EXAMINATION

3 BY MR. MOFFET: (continuing)

4 Q Mr. McGarry, I think we had just gone through the
5 material that you had reviewed in preparing for testifying
6 today. Is that correct?

7 A That's right.

8 Q Sir, there are a couple of additional factors that
9 I would like to advise you that have been testified, to
10 factor in your opinions. Mr. Charles has testified that he
11 had not had lunch or dinner that day. And he has also
12 testified that during the period of time that he was
13 drinking--he said he started roughly around 6:00, and the
14 accident was at 7:50--that he was drinking the five and a
15 half to six beers fairly evenly spaced out over that period
16 of time. Okay?

17 A Yes, sir.

18 Q Sir, the certificate that you reviewed, at least
19 one of the documents you reviewed is this defendant's
20 Exhibit 3. Is that correct?

21 A That's correct.

22 Q That shows that his blood alcohol content was
23 what?

24 A 0.08 percent alcohol and the blood was taken at
25 9:24 p.m.

1 while they're drinking, it can take longer than that. With
2 some people it can take longer than 30 minutes, but that is
3 typical absorption time is 30 minutes. And then after all
4 of the alcohol gets into a person's bloodstream that is
5 going to because they have finished drinking, then the body
6 uses up the alcohol that is in the bloodstream.

7 So since you are talking about an hour-and-a-half
8 interval from the time of the accident until the blood was
9 taken from Mr. Charles, it's likely that the blood alcohol
10 concentration was at least as high as a .08 percent at the
11 time of the accident, which was 7:50, or perhaps even a
12 little bit higher, and then the blood alcohol concentration
13 declined a little bit. So it would be my opinion that it
14 could be at its low point about a .07 at the time of the
15 accident at 7:50 to as high as a .10 percent at the time of
16 the accident as reflected by the .08 that was measured at
17 9:24.

18 Q Okay. And, sir, at that level was Mr. Charles'
19 judgment affected?

20 A Yes. With all individuals regardless of the
21 drinking experience at these alcohol concentrations of even
22 to a .07 up to a .10, all individuals will have their
23 judgment adversely affected. Their divided attention skills
24 or their ability to concentrate on more than one task
25 simultaneously will be adversely affected. Their

1 concentration will be diminished. The reaction time will be
2 longer. Peripheral vision will be decreased.

3 Certainly somebody who has a fair amount of
4 experience with drinking might not look to an observer as if
5 they had been drinking, but they will still have these
6 effects that I mentioned because they are on a person's
7 brain. Those effects are on a person's brain, and you can't
8 compensate for that.

9 Q Okay. So you indicated that it would adversely or
10 that it did adversely affect his judgment at the time of the
11 accident?

12 A Yes, it did.

13 Q And would that be such things as perceiving how
14 fast he was going and his judgment about how fast he should
15 be going?

16 A Yes.

17 Q And you talked about couple of other things.
18 Would his ability to keep an automobile in the road going
19 around a curve be diminished?

20 A Yes, that requires divided attention for one
21 thing, tracking skill. And it's been seen that at
22 relatively low blood alcohol concentrations, even about a
23 .05 percent, tracking or keeping a vehicle in the lane of
24 traffic requires observation in advance, anticipation,
25 decreasing speed, and skill in maneuvering a vehicle. Those

1 are all compromised and decreased at blood alcohol
2 concentrations such as we're talking about here.

3 Q And lastly, sir, what about his ability to recall
4 such as thinking that he had already been through this curve
5 when in fact he hadn't been through that curve yet?

6 A That would be diminished by the fact alcohol
7 decreases a person's attention, and so the awareness of what
8 a person has done while they've been drinking is decreased.
9 The subsequent recall or recollection at a future date is
10 decreased as well.

11 MR. MOFFET: Okay. Thank you, Mr. McGarry. If
12 you would, answer any questions Mr. Munsey might have.

13 CROSS EXAMINATION

14 BY MR. MUNSEY:

15 Q I want to make sure that I understand,
16 Mr. McGarry. How many years of training and experience have
17 you had in order to understand what the effects on the human
18 are at these particular levels of blood alcohol?

19 A Well, I started a graduate program in 1963, and
20 this is 1998. Thirty-five years of training and experience
21 in this field is what I'm basing it on.

22 Q So that amount of expertise and time spent on this
23 type of subject is what allows you the competence and the
24 knowledge to qualify before this Court and to be able to
25 tell how that affects an individual?

1 A Yes, sir.

2 Q You also provided an additional opinion to
3 Mr. Moffet, didn't you? And that would be that
4 approximately 30 percent of the drinking population might
5 appear impaired at this level of blood alcohol content, but
6 the remaining would not objectively appear impaired to
7 observation. Is that correct?

8 A Yes, I addressed that this afternoon when I said
9 that it would not be likely that at this blood alcohol
10 concentration that a person would appear to be visibly
11 drunk.

12 Q And also you have been given information that
13 Mr. Charles had experience with drinking larger quantities
14 of alcohol, have you not?

15 A Yes. From his deposition, he had said that he had
16 been treated for alcohol abuse earlier in the year in
17 question.

18 Q And that might further place him in more probably
19 that portion of the drinking population that would not
20 appear impaired objectively at this blood alcohol content,
21 wouldn't it?

22 A That's true.

23 Q So with your expertise you certainly know that
24 there is subtle and real impairment at this level of blood
25 alcohol content. But an objective observer would not see

1 that, would they?

2 A They would not--an objective observer would not
3 readily see that such a person would be drunk. They would
4 detect things like an odor of alcohol regardless of what a
5 person's drinking experience would be.

6 Q How much alcohol does a person have to ingest to
7 have an odor of alcohol?

8 A Just one or two beers might be necessary.

9 Q Now I want to make sure that I understand this
10 point too, Mr. McGarry. It's impossible for you to tell us
11 the exact blood alcohol level that the defendant had at the
12 time of this accident at 7:50 p.m. Is that correct?

13 A That's correct.

14 Q And if I'm understanding correctly, when we
15 initially drink alcohol, I'm standing here, and I drink it
16 right now, it does not immediately have an effect on me,
17 does it?

18 A That's correct.

19 Q It requires absorption into the bloodstream before
20 we feel the effects of the alcohol?

21 A That's right.

22 Q And that absorption process, is that requiring
23 that we digest that through the stomach and let it go to the
24 small intestine to be then absorbed in the bloodstream?

25 A That's right.

1 Q And I believe that you stated that that full
2 absorption takes at least 30 minutes, doesn't it?

3 A Yes, it does.

4 Q And in some individuals it can take as long as 60
5 or 90 minutes for absorption?

6 A That's correct. That has been reported.

7 Q And with regard to Clifford Charles, you again
8 cannot say with any precision, certainly not with exact
9 precision, his level of absorbing the alcohol that evening?

10 A No, that's correct. That's why I gave the range
11 of the expected blood alcohol concentration at the time of
12 the accident.

13 Q And, additionally, we could not even take
14 Mr. Charles here today and recreate that by having him
15 ingest same amount of alcohol over the same period of time,
16 could we?

17 A Well, it's possible that it would duplicate the
18 absorption time, but it's also possible that absorption
19 today for Mr. Charles might be slightly different from what
20 it was the night in question.

21 Q Now, additionally, we're taking time to absorb
22 into the bloodstream, and at the same time over time we're
23 getting this alcohol out of the blood too. Is that correct?

24 A That's correct.

25 Q Do I understand that process? And that is sort of

1 a metabolizing or a metabolic rate after it goes into the
2 bloodstream that it then works its way back out. Is that
3 right?

4 A That's correct.

5 Q Some type of (what is it?) oxidation or--

6 A That's right. Alcohol is changed primarily to
7 carbon dioxide which is just exhaled in your breath. To
8 some extent some of the alcohol is excreted in urine, but
9 the biggest portion is eliminated as carbon dioxide.

10 Q And do I understand correctly that the rate of
11 actually metabolizing the alcohol out of the bloodstream is
12 at a level of about .018 per hour? Is that right?

13 A Yes, that is pretty well accepted in toxicology,
14 and I have actually verified that rate of metabolism a
15 number of times myself on individuals.

16 Q And that is really even a little more constant
17 that the absorption from person to person, isn't it?

18 A Yes, it is.

19 Q Okay. So to make sure that I understand
20 ultimately the opinion that you express here today, that is,
21 while Mr. Charles probably did not appear intoxicated, he
22 was suffering impairment from the level of alcohol that was
23 in his system?

24 A That's correct.

25 Q Did not have an objective appearance of

1 intoxication?

2 A Well, I couldn't say he did not have, but it would
3 be more likely that he did not have.

4 Q More likely than not, correct?

5 A Correct.

6 MR. MUNSEY: That is all of the questions I have.

7 THE COURT: Any redirect?

8 REDIRECT EXAMINATION

9 BY MR. MOFFET:

10 Q Mr. McGarry, although if an individual was sitting
11 with someone while they were drinking those beers, they
12 would know they had consumed that amount of beer, right?

13 A Yes, they would.

14 MR. MOFFET: Nothing further.

15 RECROSS EXAMINATION

16 BY MR. MUNSEY:

17 Q That would assume that they had counted them and
18 kept notice of that number, would it not?

19 A To be able to answer specifically how many beers
20 did such an individual consume, they would have to have
21 noted them accurately. But just to see a person drinking
22 beer over a space of an hour and a half or two hours,
23 regardless of knowing how many they consumed, they wouldn't
24 have to count them; they would just have to know that they
25 were drinking them over that period of time.



1 A Yes, sir.

2 MR. MOFFET: And I move to introduce this.

3 THE COURT: Any objection?

4 MR. MUNSEY: No objection, your Honor.

5 THE COURT: Do you want to remove your tag mark?

6 MR. MOFFET: Well, I'm going to remove the tags as

7 I--I want to ask him about certain things, your Honor, and

8 my memory is not good enough to remember it without tabs.

9 THE COURT: All right.

10

11 DEFENDANT'S EXHIBIT NO. 4--ADMITTED

12

13 Q Sir, before we get to that, the textbooks, was

14 each student issued--I mean was there a textbook available

15 for each student during this class?

16 A During the classroom period, yes.

17 Q There weren't enough textbooks for them to take

18 them home, but they had them available to them during the

19 class time. Is that correct?

20 A Yes, sir.

21 Q And were the students tested on this material?

22 A Yes, sir.

23 Q And how did Leona test? What was her grade on the

24 test on this section on this chapter?

25 A Ninety-six.

1 objection.

2
3 DEFENDANT'S EXHIBIT NO. 5--ADMITTED

4
5 Q Sir, in addition to the material, what did you
6 teach Leona's class, and what do you teach your driver's
7 education classes about what they do if they find themselves
8 out with someone who is drinking?

9 A I teach them to call for a backup ride either from
10 parents or to ride a bus if it's available, call a taxi, or
11 stay where they are at instead of riding or to ride with a
12 friend that hasn't been drinking.

13 Q Okay. What do you teach with regard to what is a
14 safe level of alcohol for someone to ride with in terms of
15 another kid?

16 A We teach zero tolerance.

17 Q Zero tolerance means there is no amount that is
18 safe to get in with another driver who is under 21?

19 A Yes, sir.

20 MR. MOFFET: Thank you, Mr. Keen. If you would,
21 answer any questions Mr. Munsey might have.

22 THE WITNESS: Okay.

23 CROSS EXAMINATION

24 BY MR. MUNSEY:

25 Q Mr. Keen, do you remember Leona Rice?

1 A Yes, sir, I do.

2 Q She was a young lady that had a big smile, wasn't
3 she?

4 A Yes, sir.

5 Q You drove her school bus as well as taught her in
6 this class, didn't you?

7 A Yes, sir.

8 Q Now can you say exactly how many class periods of
9 this driver's education class Leona attended?

10 A In order to have a grade, she would have had to
11 have been there at least 32 of 36.

12 Q Okay. So she may have missed four of those five
13 classes that you taught in this area? You can't say, can
14 you?

15 A Not that she was present, no.

16 Q What has been marked as Defendant's Exhibit No. 4
17 and which Mr. Moffet has picked selected portions for you to
18 read to the jury, this was a text that was kept in the
19 classroom, right?

20 A Yes, sir.

21 Q And the kids were given one class period to read
22 this chapter?

23 A Yes, sir.

24 Q Do you have any independent recollection or can
25 you say whether Leona Rice ever read this chapter?

1 A No, sir.

2 Q The passages that Mr. Moffet had you eloquently
3 read to the jury, do you know that she ever read those
4 passages?

5 A No, sir.

6 Q Can you say that you ever read them to her or
7 instructed her through a lecture on those very eloquent
8 passages, well written passages in this chapter?

9 A No, sir..

10 Q With regard to this "You...Alcohol and Driving"
11 pamphlet, can you state from your knowledge that Leona Rice
12 ever read this pamphlet?

13 A No, sir.

14 Q Specifically, can you state that the passages that
15 Mr. Moffet read, had you read to the jury, whether she read
16 those particular passages?

17 A No.

18 Q There is some conflicting information in these
19 materials in that the materials show that legally sober goes
20 up as high as .05. Doesn't the material say that?

21 A One of the overlays that we use did, yes, sir.

22 Q And that was on a bulletin board right there in
23 the class?

24 A Yes, sir.

25 Q .05 blood alcohol content. But we make a

Grundy Funeral Home of Southwest Virginia, Inc.

P.O. BOX 1016 - RIVERSIDE DRIVE
GRUNDY, VIRGINIA 24614
TELEPHONE 540/935-4571



I.D. # 940628-208

ITEMIZED STATEMENT OF GOODS AND SERVICES SELECTED AND AGREEMENT

DECEASED: Leona Lynn Rice ACCOUNT NUMBER: _____
DATE OF DEATH: April 5 1997 TODAY'S DATE: _____
FUNERAL DIRECTOR: J.P. Muller

A. PROFESSIONAL SERVICES & EQUIPMENT SELECTED

Transfer of Remains to Funeral Home \$ 50.00
Embalming \$ 225.00
Remains \$ _____

If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve, if you selected arrangements such as direct cremation or immediate burial.

*If we charged you for embalming, we will explain why below.

Embalming authorized by:

Cosmetology, grooming, dressing and casketing \$ 75.00

Alternate Care \$ 50.00

_____ Hrs. Restoration @ \$50.00 per hour \$ _____

Basic services of funeral director & staff \$ 675.00

Transfer to other location viewing/visitation \$ _____

_____ Days viewing @ \$ _____ per day \$ _____

Staff & Equipment for: _____ service \$ _____

Transfer to funeral home (Next day Committal) \$ _____

Use of Our Facilities, staff & equipment for viewing and or visitation (each night & portion of any day) \$ _____

Use of our staff & equipment: for viewing and or visitation at Another Local Facility (each night & portion of any day) \$ _____

Use of facilities, funeral director and staff including necessary equipment for services using our chapel \$ _____

Use of funeral director & staff, including necessary equipment for: church services \$ 200.00

Use of funeral director & staff, including necessary equipment for: graveside services \$ _____

Use of facilities, funeral director and staff, including necessary equipment for: Memorial Services using our chapel \$ _____

Use of funeral director and staff, including necessary equipment for: Memorial Services at another facility \$ _____

Staff to close grave & move excess earth \$ _____

Hearse (funeral coach) \$ 75.00

Lead and/or service vehicle \$ _____

_____ Each @ \$ _____ per flower vehicle \$ 75.00

_____ Each @ \$ _____ per family vehicle \$ _____

Utility vehicle \$ _____

_____ Miles @ \$ _____ per loaded mile \$ _____

TOTAL PROFESSIONAL SERVICES AND EQUIPMENT ... (A) \$ 1425.00

B. MERCHANDISE SELECTED

Casket \$ 2500.00

Outer burial container \$ 985.00

Alternative container \$ _____

Cremation urn \$ _____

Shipping container \$ _____

Clothing \$ _____

Remembrance Package \$ _____

_____ Boxes acknowledgement cards @ \$ _____ \$ 25.00

_____ Register/attendance book @ \$ _____ \$ 25.00

_____ Memorial folders @ \$ _____ each \$ 50.00

Temporary grave maker \$ _____

TOTAL MERCHANDISE SELECTED ... (B) \$ 3585.00

Grundy Funeral Home of Southwest Virginia, Inc.

P.O. BOX 1016 - RIVERSIDE DRIVE
GRUNDY, VIRGINIA 24614
TELEPHONE 540/935-4571

I.D. # 940628-208

C. CASH ADVANCES

_____	\$ _____
_____	\$ _____
_____	\$ _____
Beautician	\$ _____
Paid obituary notices	\$ <u>100 00</u>
<u>2</u> Death certificates @ \$ _____ each	\$ <u>16 00</u>
Cemetery fees (opening and closing)	\$ _____
Flowers	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL OF CASH ADVANCES SELECTED ... (C)	\$ <u>116 00</u>

D. SPECIAL CHARGES

1. Forwarding Remains	\$ _____
Includes local transfer of remains to funeral home, basic service of funeral director & staff, embalming, other preparation of remains, and transfer to the Tri-Cities Airport.	
2. Receiving Remains	\$ _____
Includes local transfer of remains from Tri-Cities Airport, basic service of funeral director & staff, and, local transportation to cemetery.	
3. Immediate Burial	\$ _____
Includes local transfer of remains to funeral home, basic service of funeral director & staff, alternate care of remains for identification, and, local transportation to cemetery.	
4. Direct Cremation	\$ _____
Includes local transfer of remains to funeral home, basic service of funeral director & staff, alternate care of remains for identification, crematory fee.	
TOTAL SPECIAL CHARGES SELECTED ... (D)	\$ _____

SUMMARY OF ALL ANTICIPATED CHARGES

Total Services	A — \$ <u>1425 00</u>
Total Merchandise Selected	B — \$ <u>3585 00</u>
Total Cash Advance Items	C — \$ <u>116 00</u>
Total of Special Charges	D — \$ _____
Sales Tax	\$ <u>161.32</u>
Less Credits: _____	\$ _____
ANTICIPATED TOTAL CHARGES	\$ <u>5287.32</u>

DISCLOSURES: * REASON FOR EMBALMING

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.

REQUIRED ITEMS:

The only warranty on the casket and/or outer burial container sold with this service is the express written warranty, if any, granted by the manufacturer. This funeral home makes no warranty, express or implied, including an implied warranty of merchantability and an implied warranty of fitness for a particular purpose, with respect to the casket or outer burial container.

Grundy Funeral Home of Southwest Virginia, Inc., makes no warranties, express or implied, with respect to the casket or outer burial container or both.

5. ACKNOWLEDGEMENT AND AGREEMENT:

I/We hereby acknowledge that I/We have the legal right to arrange the final services for the deceased, and I/We authorized Grundy Funeral Home of Southwest Virginia, Inc., to perform services, furnish goods, and incur outside charges specified on the Statement. I/We acknowledge that I/We have received, on this date, the General Price List and the Casket Price List and Outer Burial Container Price List. I/We also acknowledge execution and receipt of a copy of this Statement.

Grundy Funeral Home of Southwest Virginia, Inc.

P.O. BOX 1016 - RIVERSIDE DRIVE
GRUNDY, VIRGINIA 24614
TELEPHONE 540/935-4571

I.D. # 940628-208

TERMS OF PAYMENT:

It is acknowledged by the undersigned that the above list of items have been examined with the arrangement requested by the Buyer and found to be correct. I (or we) the undersigned Buyer further acknowledge that I (or we) have sufficient assets legally available to pay Grundy Funeral Home of Southwest Virginia, Inc., and now covenant and agree, jointly and severally, to make payments of the Unpaid Balance of the Cash Price within a period of sixty (60) days from the date of this contract unless some extension of payment is otherwise agreed upon. A Finance Charge at the Periodic Rate of 1 1/2% per month being equivalent to an 18% Annual Percentage Rate will be charged to any unpaid balance on the account after sixty (60) days and on each monthly billing date thereafter.

I, or we, accept and approve the above, and acknowledge that the general price list effective 1-1-95, casket price list effective 1-1-95, outer burial container price list effective 1-1-95, were made available prior to selecting the above arrangements.

BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THIS DOCUMENT BEFORE SIGNING

<hr/>		<u>X Economy Price</u> <hr/>	
Co-signed	Dated	Signed	Dated
<hr/>		<u>Box 322</u> <hr/>	
Street		Street	
<hr/>		<u>Maxie, Va 24</u> <hr/>	
City	State	City	State
	Zip		Zip

Acceptance: Grundy Funeral Home of Southwest Virginia Inc., agrees to provide all services, merchandise, and cash advances indicated on this Statement.

JC Mullins
By Licensed Funeral Director or
Funeral Service Licensee



I N V O I C E

I N V O I C E

I N V O I C E

MULLINS MONUMENT COMPANY
P. O. BOX 1016
GRUNDY, VIRGINIA 24614

Phone: (703) 935-4571

TERMS: Net 10 days
Past due accounts subject
to 1½% interest per month.
Annual percentage rate 18%.

SOLD TO: Mr & Mrs Johnny Rice

Box 322

Maxie, Virginia 24628

FOR: Leona Lynn Rice

CEMETERY: Rice Family Cemetery

Monument for Leona Lynn Rice	-----\$1,420.00
Additional lettering for back of monument	150.00
#3 Jadco Color Picture	340.00

Sub Total \$1,910.00

4½ percent Sales Tax 85.95

Total \$1,995.95



Commonwealth of Virginia
Department of Criminal Justice Services
DIVISION OF FORENSIC SCIENCE

ORIGINAL

CERTIFICATE OF ANALYSIS

April 15, 1997

Western Laboratory
6600 Northside HS Road
Roanoke, VA 24019-2837

Tel. No.: (540) 561-6600
Fax: (540) 561-6808
TDD/Voice: (804) 786-6152

TO: JOSE ABRENIO, M.D.
OFFICE OF THE CHIEF MEDICAL EXAMINER
6600 NORTHSIDE HIGH
SCHOOL RD. - SUITE 100
ROANOKE VA 24019-2837

FS Lab # W97-2903

Your Case #: - - -

Victim(s): RICE, Leona Lynn

Suspect(s): - - -

Evidence Submitted By: Nancy J. Maus

Date Received: 04/11/97

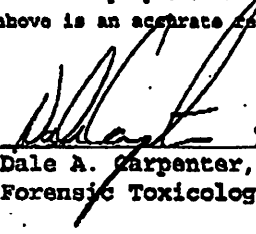
Item TX1 One vial of blood

RESULTS:

Blood: - Ethanol not detected.

Attest:

I certify that I performed the above analysis or examination as an employee of and in a laboratory operated by the Division of Forensic Science, and that the above is an accurate record of the results of that analysis or examination.


Dale A. Carpenter, Ph.D.
Forensic Toxicologist

DAC





Commonwealth of Virginia
Department of Criminal Justice Services
DIVISION OF FORENSIC SCIENCE

CERTIFICATE OF ANALYSIS

RECEIVED AND FILED

DATE 5-1-97

Deborah R. Bell
CLERK - DISTRICT CLERK

Central Laboratory
P.O. Box 999
Richmond, VA 23208

Tel. No.: (804) 786-1707
Fax: (804) 371-8128
TDD/Voice: (804) 786-6152

April 23, 1997

TO: CLERK GENERAL DISTRICT COURT
DICKENSON COUNTY
CLINTWOOD VA 24228

FS Lab # C97-4921

ACCUSED: CHARLES, Clifford A.

Received at Division of Forensic Science
Vial No. 060205 containing Blood for
Alcohol/Drug Content.

By: J. D. Armstrong
Date: 04/10/97 Time: 11:12 a.m.

Examined By: J. D. Armstrong
Date: 04/21/97 Time: 12:16 p.m.

The vial seal had not been broken or tampered with when received. The container and vial were provided by the Division of Forensic Science. The attached Certificate of Blood Withdrawal was affixed to the vial.

RESULTS:

Blood Alcohol Content 0.08% by weight by volume

5172 Vial No. 060205
FS LAB No. C97-4921
4-10-97
Division of Forensic Science
CLINTWOOD VA 24228
CERTIFICATE OF BLOOD WITHDRAWAL FOR ALCOHOL/DRUG DETERMINATION

Accused: Charles A. Charles
(Print Name) (Print Name) (Last Name)

Address: P.O. Box 2112
CLINTWOOD, VA 24219

I certify that the blood in the vial to which this Certificate was attached was withdrawn from the above named accused, and that the vial was provided by the Division of Forensic Science.

Blood Taken By: LORETTA TAYLOR RN
Date: 4-5-97 Time: 4:00 PM

Officer's Name: C. S. Miller Badge No. 1340
(Print Name)

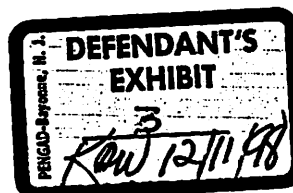
Court: Dickenson Co. Gen. Dist.

this certificate of blood withdrawal was removed from the vial and attached hereto by the Division Director or Employee.

I certify that I performed the above analysis or examination as an employee of and in a laboratory operated by the Division of Forensic Science, and that the above is an accurate record of the results of that analysis or examination.

TESTE

J. D. Armstrong
(Division Employee)



INSTRUCTION NO. 1

The court has found that defendant is liable for the death of Leona Lynn Rice and any damages suffered by the beneficiaries, Rita S. Rice, Beverly Rice McClanahan, and Johnnie W. Rice. Therefore, the only issue you have to decide is the amount of damages each is entitled to recover, if any.

The fact that the Court is submitting only the question of damages to you, and not the question of legal liability, should not influence you in any way in considering the issue of damages.

INSTRUCTION NO. 2

If you find your verdict for the plaintiffs, then in determining the damages to which they are entitled, you may consider, but are not limited to, any of the following which you believe by the greater weight of the evidence were caused by the negligence of the defendant as damages suffered by the beneficiaries:

- (1) any sorrow, mental anguish, and loss of solace suffered by the beneficiaries. Solace may include society, companionship, comfort, guidance, kindly offices, and advise of the decedent.

If you award damages, you may distribute these damages among Rita Sue Rice, Johnnie W. Rice, and Beverly Rice McClanahan.

If you find your verdict for the plaintiff, you shall award damages for:

- (1) reasonable funeral expenses.

INSTRUCTION NO. 3

Any fact that may be proved by direct evidence may be proved by circumstantial evidence; that is, you may draw all reasonable and legitimate inferences and deductions from the evidence.

INSTRUCTION NO. 4

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

INSTRUCTION NO. 5

You must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely upon the evidence and instructions of the court.

GIVEN
1/11/19
12/14/19

INSTRUCTION NO. 6

The amount sought is not evidence in this case; you should not consider it in arriving at the amount of your verdict, if any.

100

228

Given
12/14/14

VIRGINIA:

IN THE CIRCUIT COURT OF DICKENSON COUNTY

JOHNNIE W. RICE AND RITA
S. RICE, CO-ADMINISTRATORS
OF THE ESTATE OF LEONA
LYNN RICE,
Deceased

Plaintiff

vs. AT LAW NO. CL97-30

CLIFFORD ANTHONY CHARLES,
Defendant

We, the jury, find for the plaintiffs and assess damages at \$7283.27,
apportioned as follows:

- 1) \$ _____ to Rita S. Rice.
- 2) \$ _____ to Beverly Rice McClanahan.
- 3) \$ _____ to Johnnie W. Rice.
- 4) \$ 7283.27 for reasonable funeral expenses.

Patricia A. Davis
Foreman

VIRGINIA:

IN THE CIRCUIT COURT OF DICKENSON COUNTY

JOHNNIE W. RICE AND RITA)
S. RICE, CO-ADMINISTRATORS)
OF THE ESTATE OF LEONA)
LYNN RICE,)
Deceased)

Plaintiff)

AT LAW NO.: CL97-30

vs.)

CLIFFORD ANTHONY CHARLES,)

Defendant)

We, the jury, find for the plaintiffs and assess
damages at _____, apportioned as follows:

- 1) \$ _____ ~~for sorrow, mental anguish,~~
~~and solace~~ to Rita S. Rice.
- 2) \$ _____ ~~for sorrow, mental anguish,~~
~~and solace~~ to Beverly Rice McClanahan.
- 3) \$ _____ ~~for sorrow, mental anguish,~~
~~and solace~~ to Johnnie W. Rice.
- 4) \$ _____ for reasonable funeral
expenses.

FOREMAN

Arrington Schelin & Herrell, P.C.

Charles E. Schelin (1940 - 1989)

James E. Arrington, Jr. (VA)
Gregory R. Herrell (VA & TN)
Michael R. Munsey (VA & TN)
D. Edward Wise, Jr. (VA & TN)
D. Allison Mullins (VA)
Traci M. Coleman (VA)

1315 Euclid Avenue, Building E, Suite 2
Bristol, VA 24201-3817

P. O. Box 5680
Bristol, VA 24203-5680
1-800-336-4062
(540) 669-9111
Fax: (540) 669-9674

December 28, 1998

Joe Tate, Clerk
Circuit Court Of Dickenson County
P.O. BOX 190
CLINTWOOD, VA 24228

RE: Rice vs. Charles
At Law No.: CL97-30

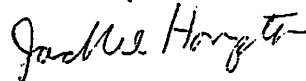
Dear Mr. Tate:

Enclosed please find a Motion to Set Aside Verdict
and Award a New Trial with regard to Damages concerning the
above matter.

By copy of this letter, we are forwarding a copy
of same to counsel of record.

Should you have any questions, please feel free to
contact me.

Sincerely yours,



Jacqueline C. Hampton
Case Manager

Enclosure/As Noted

cc: William M. Moffet, Esquire
Hon. Keary R. Williams, Judge

DEC 29 1998

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✓
VIRGINIA:

IN THE CIRCUIT COURT OF DICKENSON COUNTY

JOHNNIE W. RICE AND RITA)
S. RICE, CO-ADMINISTRATORS)
OF THE ESTATE OF LEONA)
LYNN RICE,)
Deceased)

Plaintiffs)

AT LAW NO.: CL97-30

vs.)

CLIFFORD ANTHONY CHARLES,)

Defendant)

RECEIVED AND FILED, THIS THE 27th

DAY OF Nov., 1998

JOS TATE, CLERK

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TIME: 11:20 A.M.

MOTION TO SET ASIDE VERDICT AND AWARD A NEW

TRIAL WITH REGARD TO DAMAGES

Plaintiffs, Johnnie W. Rice and Rita S. Rice, Co-Administrators of the Estate of Leona Lynn Rice, Deceased, by counsel, respectfully move that the Court set aside the verdict of the jury and award a new trial on the issue of damages only, and for their grounds therefor state as follows:

1. The verdict of the jury was contrary to the Law and evidence in this case in that the verdict for only funeral and monument expense clearly demonstrates that the jury disregarded the Court's instruction and the uncontroverted evidence concerning the statutory beneficiaries damages.

Wherefore, Plaintiffs, Johnnie W. Rice and Rita S. Rice, Co-Administrators of the Estate of Leona Lynn Rice,


Deceased, move that the Court set aside the jury verdict and award a new trial on the issue of damages only.

Johnnie W. Rice and
Rita S. Rice,
Co-Administrators of the
Estate of Leona Lynn Rice,
deceased

By Counsel

ARRINGTON, SCHELIN & HERRELL, P.C
P.O. Box 5680
Building E, Suite 2
1315 Euclid Avenue
Bristol, VA 24203-5680

BY


MICHAEL R. MUNSEY
Counsel for Plaintiff

CERTIFICATE OF MAILING

I, Michael R. Munsey, do hereby certify that I have mailed a true and correct copy of Plaintiffs Motion to Set Aside Verdict and Award a New Trial with Regard to Damages to William Moffet, Esquire, Penn, Stuart & Eskridge, P.O. Box 2288, Abingdon, VA 24212 this the 28th day of December, 1998.


MICHAEL R. MUNSEY

ARRINGTON
SCHELIN &
HERRELL, P.C.
Attorneys at Law
Bristol, VA 24201

VIRGINIA:

IN THE CIRCUIT COURT OF DICKENSON COUNTY

JOHNNY W. RICE and)
 RITA S. RICE, Co-Administrators)
 of the Estate of)
 LEONA LYNN RICE, Deceased)
 Plaintiffs)

vs.)

Court File No.: CL97-30

CLIFFORD ANTHONY CHARLES)
 Defendant)

ORDER

On December 11 and 14, 1998, came plaintiffs Johnny W. Rice and Rita S. Rice, Co-Administrators of the Estate of Leona Lynn Rice, deceased, and their counsel, Michael R. Munsey, and came defendant Clifford Anthony Charles and his counsel, William M. Moffet, and announced that they were ready for trial.

Thereupon, the jury was duly selected, empaneled and sworn. The jury was composed of Patsy Baker, Patricia A. Davis, Rebekah A. Fannon, Barbara Lynn Fletcher, Lester T. Flint, Christopher L. Powers and Holly R. Ritchie.

Thereupon, the plaintiffs introduced their evidence and rested.

Thereupon, the defendant introduced his evidence and rested.

Thereupon, plaintiff made a motion to strike defendant's defense and to submit the case to the jury solely on the issue of damages. Following argument and consideration of the motion to strike, the Court granted the motion.

Copies to Counsel 3/2/99

Thereupon, counsel for the parties presented arguments to the jury and the Court instructed the jury as to the law applicable to the sole remaining issue of damages. Whereupon, the jury retired to the jury room to deliberate. After sufficient time for consideration of the verdict, the jury returned the following verdict, "We, the jury, find for the plaintiffs and assess damages at \$7,283.27, apportioned as follows:

1. \$_____ to Rita Rice.
2. \$_____ to Beverly Rice McClanahan.
3. \$_____ to Johnny W. Rice.
4. \$7,283.27 for reasonable funeral expenses.

/s/Patricia A. Davis, Foreman."

Thereupon, the plaintiffs moved the Court for leave to file any post-trial motions they might wish to file. Thereupon, the Court granted plaintiffs ten days from December 14, 1998 to file in writing any post-trial motions they wish to file.

This action shall remain on the Court's docket pending further Order of this Court.

The Clerk shall mail attested copies of this Order to counsel of record.


IT IS SO ORDERED

ENTER this 1st day of MARCH, 1999, nunc pro
tunc the 14th day of December, 1998.


HON. KERRY R. WILLIAMS, JUDGE

SEEN:

PENN, STUART & ESKRIDGE
P.O. Box 2288
Abingdon, VA 24212-2288
Phone: 540/628-5151
Fax: 540/628-5621

By: 
WILLIAM M. MOFFET
Counsel for Defendant

ARRINGTON, SCHELIN & HERRELL, P.C.
P.O. Box 5680
Building E, Suite 2
1315 Euclid Avenue
Bristol, VA 24201

By: 
MICHAEL R. MUNSEY
Counsel for Plaintiff

VIRGINIA :

IN THE CIRCUIT COURT OF DICKENSON COUNTY

JOHNNY W. RICE and)
RITA S. RICE, Co-Administrators)
of the Estate of)
LEONA LYNN RICE, Deceased)

vs.)

Court File No.: CL97-30

Plaintiffs)

CLIFFORD ANTHONY)
CHARLES,)

Defendant)

FINAL ORDER

On April 5, 1999 came the parties, by counsel, to be heard on plaintiffs' Motion to Set Aside Verdict and Award a New Trial with Regard to Damages. Following argument of counsel and consideration of the briefs filed herein, the Court being of the opinion that the motion is not well taken, denied the motion. It is accordingly ORDERED that judgment be, and hereby is, entered in favor of the plaintiffs in the amount of \$7,283.27.

Thereupon, counsel for plaintiffs represented unto the Court that they intended to petition the Virginia Supreme Court for an appeal of this judgment. In consideration whereof, it is hereby ORDERED that execution hereon be stayed for 30 days from the date of this Order and thereafter until such time as the Virginia Supreme Court rules on said petition.

ARRINGTON
SCHELIN &
HERRELL, P.C.
Attorneys at Law
Bristol, VA 24201

Copies to Counsel 5/18/99

There being nothing further to be done herein, it is FURTHER ORDERED

that this action be stricken from the docket of the Court with full prejudice to the parties as to the matters considered herein. The Clerk shall mail attested copies of this Order to counsel of record.

ENTER this 17th day of May, 1999.


HON. KEARY R. WILLIAMS, JUDGE

Requested:

PENN, STUART & ESKRIDGE

P.O. Box 2288

Abingdon, VA 24212-2288

Phone: 540/628-5151

Fax: 540/628-5621

By: 

Willaim M. Moffet,
Counsel for Defendant

Seen and Objected to on the ground that the Jury's damage award was inadequate as a matter of law and for all additional reasons cited in plaintiffs' Briefs:

ARRINGTON, SCHELIN, & HERRELL, P.C.

P.O. Box 5680

Building E, Suite

1315 Euclid Avenue

Bristol, VA 24201

By: 

Michael R. Munsey
Counsel for Plaintiffs

ARRINGTON
SCHELIN &
HERRELL, P.C.
Attorneys at Law
Bristol, VA 24201

ASSIGNMENT OF ERROR

1. The Trial Court erred in denying a new trial on damages where there was uncontroverted evidence of sorrow, mental anguish, and loss of solace and the jury was given a Virginia Model Instruction on wrongful death damages but only awarded funeral expenses.

ASSIGNMENT OF CROSS-ERROR

The trial court erred in striking the defense of contributory negligence on the grounds of the dead man's statute where defendant's version of the accident and facts was supported by both testimonial evidence and attendant circumstances to provide sufficient corroboration by the jury.