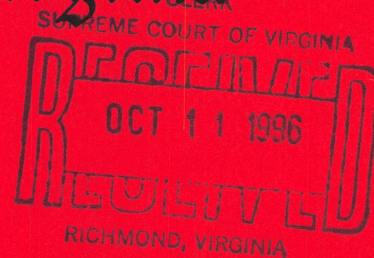


Supreme Court of Virginia

RECORD NO. 961032



ROBIN R. YOUNG and ROBERT R. YOUNG,
Administrators of the Estate of
Tammy Rutherford, Deceased,

Appellants,

v.

MARGARET A. LAMBERT,
Administratrix of the Estate of
Phillip M. Lambert, Deceased,

Appellee.

APPENDIX

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

ROBIN R. YOUNG and ROBERT R. YOUNG,)
Administrators of the Estate of)
Tammy Rutherford, deceased,)
Plaintiffs)

v.)

EVELYN K. KRIPPENDORF,)
Administratrix of the Estate of)
Phillip M. Lambert, deceased,)
3142 Brambleton Avenue, S.W.)
Roanoke, Virginia 24018,)
Defendant)

MOTION FOR JUDGMENT

CL9300071

ALSO SERVE: Phillip Dowding, Esquire
Registered Agent
Regal Insurance Company
12335 Warwick Boulevard
Newport News, Virginia 23606

COME NOW the Plaintiffs, Robin R. Young and Robert R. Young, Administrators for the Estate of Tammy Rutherford, deceased, by counsel and moves for judgment against the Defendant, Evelyn K. Krippendorf, Administratrix of the Estate of Phillip M. Lambert, deceased, on the grounds and in the amount as hereinafter set forth:

1) Robin R. Young and Robert R. Young qualified and were duly appointed Administrators of the Estate of Tammy Rutherford, deceased, by the Circuit Court of the City of Roanoke, Virginia on November 6, 1991.

2) Evelyn K. Krippendorf qualified and was duly appointed Administratrix of the Estate of Phillip M. Lambert, deceased, by the Circuit Court of the City of Roanoke, Virginia on September 8, 1992.

JEFFREY D. RUDD
ATTORNEY AT LAW

315 CAMPBELL AVENUE
P.O. BOX 862
ROANOKE, VA. 24005-0862
(703) 342-4016

3) On October 25, 1991, Plaintiff's decedent was a passenger in a vehicle owned by Plaintiff's decedent and operated by Defendant's decedent, traveling north on Route 311 in Craig County, Virginia.

4) At that time and place, it was the duty of the Defendant's decedent to operate his vehicle with reasonable care and with due regard for the safety of others.

5) Defendant's decedent did then and there so carelessly, recklessly and negligently operate his vehicle as to cause it to run off the side of the road, strike a tree and burn.

6) As a direct and proximate result thereof, the Plaintiff's decedent received severe and violent injuries which caused her death on October 25, 1991.

7) Plaintiff's decedent, Tammy Rutherford, at the time of her death was twenty-two years of age and was in good health.

8) Plaintiff's decedent died intestate, survived by her statutory beneficiaries, who have sustained financial and pecuniary loss as a result of the death of the Plaintiff's decedent and have suffered severe mental anguish at the loss of her company and counsel. Plaintiff claims damages against the Defendant on behalf of the said beneficiaries as follows:

- a) for funeral expenses of decedent;
- b) for pecuniary and financial loss suffered by statutory beneficiaries; and
- c) for mental anguish and loss of decedent's company and counsel suffered by statutory

JEFFREY D. RUDD
ATTORNEY AT LAW

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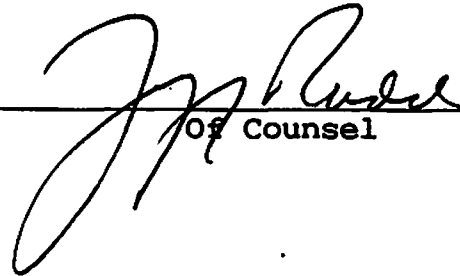
beneficiaries.

9) At the time of said accident, Tammy Rutherford was insured by Regal Insurance Company, a division of the Windsor Group, and was, therefore, insured under the Underinsured Motorist provisions of her policy. Therefore, process should be issued against The Windsor Group pursuant to Section 38.2-2206 of the Code of Virginia (1950), as amended.

WHEREFORE, Plaintiffs, Robin R. Young and Robert R. Young, Administrators for the Estate of Tammy Rutherford, deceased, demands judgment against the Defendant, Evelyn K. Krippendorf, Administratrix of the Estate of Phillip M. Lambert, deceased, in the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00), plus both pre and post judgment interest thereon and Plaintiff's costs in this behalf expended.

ROBIN R. YOUNG AND ROBERT R. YOUNG
Administrators of the Estate of
Tammy Rutherford, deceased

By



Of Counsel

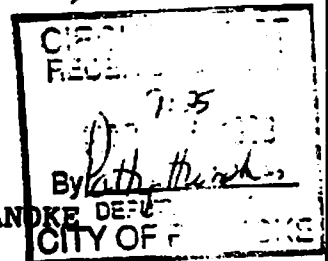
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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE



ROBIN R. YOUNG and ROBERT R.
YOUNG, Administrators of the
Estate of Tammy Rutherford,
Deceased,

Plaintiffs

v.

EVELYN K. KRIPPENDORF,
Administratrix of the Estate
of Phillip M. Lambert, Deceased

Defendant

GROUND'S OF DEFENSE

Case No. 93-171

Comes now the defendant, Evelyn K. Krippendorf, Administratrix of the Estate of Phillip M. Lambert, Deceased, by counsel, pursuant to the motion for judgment heretofore filed against her by the plaintiffs, Robin R. Young and Robert R. Young, Administrators of the Estate of Tammy Rutherford, Deceased, and in response to allegations in said motion for judgment, respectfully represents as follows:

(1) To the best of her knowledge, this defendant would admit the allegations contained in Paragraphs (1) and (2) of the plaintiffs' motion for judgment.

(2) This defendant has no independent knowledge of the allegations contained in Paragraph (3) of the plaintiffs' motion for judgment, and would require strict proof of the same.

(3) The allegations contained in Paragraph (4) of the plaintiffs' motion for judgment amount to a statement of the law and do not call for admission nor denial.

(4) This defendant denies all allegations contained in Paragraph (5) of plaintiffs' motion for judgment and requires strict proof of the same.

(5) This defendant has no knowledge of any injuries sustained by the plaintiffs' decedent as set forth in Paragraph (6) of plaintiffs' motion for judgment and demands strict proof of the same; however, this defendant denies that any injuries or damages allegedly sustained by plaintiffs' decedent were caused by any negligent acts or omissions on the part of Phillip M. Lambert.

(6) This defendant has no knowledge of the allegations contained in Paragraph (7) of the plaintiffs' motion for judgment and demands strict proof of the same.

(7) This defendant has no knowledge of any of the allegations contained in Paragraph (8) of the plaintiffs' motion for judgment, nor any of its subparts, and requires strict proof of the same; however, this defendant denies that any injuries or damages allegedly sustained by the decedent's statutory beneficiaries were caused by any negligent acts or omissions on the part of Phillip M. Lambert.

(8) This defendant has no knowledge of the allegations contained in Paragraph (9) of the plaintiffs' motion for judgment and requires strict proof of the same.

(9) This defendant alleges that, even if Phillip M. Lambert, Deceased, were guilty of any negligence which contributed to the accident in question, Tammy Rutherford, Deceased, was guilty of

contributory negligence and assumption of the risk, which would thereby bar the plaintiffs from any recovery in this action.

(10) This defendant reserves the defense of sudden emergency pending further investigation of this matter.

(11) This defendant denies each and every allegation contained in the plaintiffs' motion for judgment not hereinbefore specifically admitted, and denies that she is indebted to the plaintiffs for the sum sued for, or any sum whatsoever.

EVELYN K. KRIPPENDORF,
Administratrix of the Estate of
Phillip M. Lambert, Deceased

By: Donna Knox
Of Counsel

Donna D. Knox
Woods, Rogers & Hazlegrove
1400 Dominion Tower
10 South Jefferson Street
Post Office Box 14125
Roanoke, Virginia 24038-4125
703/983-7600

Counsel for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Grounds of Defense was mailed to Jeffrey D. Rudd, 315 Campbell Avenue, S.W., Post Office Box 862, Roanoke, Virginia 24005-0862, counsel for plaintiffs, this 4th day of March, 1993.

Donna Knox

COPY

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE
CITY OF ROANOKE

ROBIN R. YOUNG and ROBERT R. :
YOUNG, Administrators of the :
Estate of TAMMY RUTHERFORD, :
Deceased,

Plaintiff :

-vs-

MARGARET A. LAMBERT,
Administratrix of the Estate :
of PHILLIP M. LAMBERT,
Deceased,

Defendant :

OCTOBER 23, 1995
9:30 A.M.

VOLUME I

HEARD BEFORE:

THE HONORABLE RICHARD C. PATTISALL

CENTRAL VIRGINIA REPORTERS
P.O. BOX 12628
ROANOKE, VIRGINIA

1
2 **APPEARANCES:**

3 **OFFICES OF JEFFREY D. RUDD**
4 **Roanoke, Virginia**
5 **BY: JEFFREY D. RUDD, ESQ.**

6 **FISHWICK, JONES & GLENN**
7 **Roanoke, Virginia**
8 **By: BRIAN R. JONES, ESQ.**

9 **Counsel on behalf of the Plaintiff**

10 **WOODS, ROGERS & HAZLEGROVE**
11 **Roanoke, Virginia**
12 **BY: DONNA D. KNOX, ESQ.**
13 **MICHAEL A. CLEARY, ESQ.**

14 **Counsel on behalf of the Defendant**

15
16
17
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* * * * *

Honor.

*

*

*

(The lunch recess was taken from
12:43 p.m. to 1:43 p.m.)

THE COURT: Is Mr. Rudd searching for the
troopers?

MR. JONES: Exactly, Your Honor.

THE COURT: Mr. Rudd, are you ready?

MR. RUDD: Yes, sir.

THE COURT: All right, Sheriff. If you'd
bring the jury back in, please.

(The Jury entered the courtroom.)

THE BAILIFF: The jury is present, Your
Honor.

THE COURT: All right. Mr. Rudd, if
you're ready to go forward, call your first
witness.

MR. RUDD: Yes, sir. Your Honor, we have
entered a stipulation which I'd like to read now
to the jurors, it's Plaintiff's Exhibit A1; this
is a stipulation by the parties.

1 Ladies and gentlemen, this is an
2 agreement we've reached, and I'm going to read
3 this to you now, an agreement between the
4 parties in this case. The parties in this
5 action through counsel have agreed to and hereby
6 do stipulate to the following facts relative to
7 the case.

8 It is understood that these stipulations
9 are made to facilitate as efficient a trial as
10 possible, given certain rulings by the Court to
11 date, and that in making these stipulations
12 neither party waives other objections for
13 purposes of appeal in matters raised before this
14 proceeding began.

15 In other words, that paragraph, for
16 purposes of this trial, means we've entered an
17 agreement, and I'm about to read the whole thing
18 to you.

19 The parties stipulate and agree that on
20 October 25, 1991 at approximately 2:30 to 2:45
21 in the morning the following individuals were
22 involved in a motor vehicle accident: Phillip
23 Michael Lambert, Tammy Rutherford, Lisa Jones,
24 Christopher Reyes.

1 All four of the above-named individuals
2 died immediately or very nearly so as a result
3 of the motor vehicle accident.

4 The bodies of all four of the above-named
5 individuals were burned beyond recognition in a
6 fire that began sometime after the impact of the
7 crash. The bodies of the four individuals were
8 found in the respective seats of the vehicle as
9 follows: Phillip Michael Lambert was in the
10 left front driver's seat. Lisa Jordan Jones was
11 in the right front passenger seat. Christopher
12 Reyes was in the left rear seat, and Tammy
13 Rutherford was in the right rear seat.

14 This is going to be introduced as an
15 exhibit, so you'll have it later.

16 Blood, urine, and bile samples were taken
17 from the bodies of the four named individuals by
18 the Medical Examiner, Dr. Massello, who
19 performed autopsies. The samples were
20 transported to the Commonwealth of Virginia
21 Department of Forensic Science in Richmond, and
22 tests were performed to determine the level of
23 alcohol in each sample at the time of death for
24 each individual.

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Results of those tests were as follows:

Christopher Reyes had a blood alcohol content of point-one-seven and a urine alcohol content of point-one-five. Lisa Jones had a blood alcohol content of point-one-three, a urine alcohol content of point-one-six, and a bile alcohol content of point-one-three.

Phillip Michael Lambert had a blood alcohol content of point-one-two; Tammy Rutherford had a blood alcohol content of point-one-oh and a bile alcohol content of point-oh-nine.

The blood, urine, and bile alcohol tests which I've just referred to, which is written here as Paragraph 5, are correct and the corresponding certificates of analysis which will be introduced later will be admitted without objection by either side.

That's the stipulation, the agreement that was entered into, and I now introduce this as Plaintiff's Exhibit 1A, Your Honor.

THE COURT: The document is received and accepted into evidence as Plaintiff's Exhibit 1A.



1 vehicle had stopped by the time I got it called in and
2 got back up there.

3 Q How much time elapsed between when you
4 called it in and got back up there?

5 A Couldn't have been over three or four
6 minutes. I didn't stay there that long.

7 Q How long did you stay at the scene?

8 A Not very long at all, because when I
9 seen it, the car was on fire, looked like it was pretty
10 well burnt, and I was in a hurry to get back and call it
11 in. I didn't even get out of my vehicle. I just turned
12 the car around and called it in.

13 Q So when you first got to the fire there
14 was no one around and it looked like the whole car was
15 in flames?

16 A Yes, sir.

17 MR. RUDD: I don't have any questions.

18 Please answer any questions Ms. Knox may have.

19

20 CROSS EXAMINATION

21

22 BY MS. KNOX:

23 Q Mr. Wright, thank you. At some point you
24 heard what you thought to be explosions, gunshots, at

1 some point in time; do you recall that?

2 A Yeah.

3 Q When was that?

4 A I didn't put that together until later,
5 after this. I did hear something when I was getting
6 ready to go to go to work. It sounded like two
7 different explosions at two different times, maybe two
8 or three minutes apart.

9 Q And this was prior to your looking out
10 and seeing the fire?

11 A It was before, yes.

12 Q About how much prior?

13 A Well, it usually takes me about 10, 15
14 minutes to get ready to go to work, so have to be about
15 10, 15 minutes.

16 Q When you went down there the first time
17 and saw the car, is that the time you reportedly saw a
18 handful or two of glass out in the road at the curve?

19 A Well, it sticks in my mind I did see
20 glass, but I can't say exactly how much. And like I
21 say, it was in the road.

22 Q It was in the road, it was not off the
23 shoulder by where the car had impacted the tree?

24 A I don't know. Like I say, I didn't get

1 that I know as -- the Craig County folks have a slang
2 name for the turn, and I was familiar with the turn,
3 there was a car off the road in that curve, and it was
4 engulfed in flames.

5 Q Who else was there when you got there?

6 A There was only one other car, that I did
7 not recognize, and I did not know the people that were
8 in that car when I arrived.

9 Q How long did that car stay there?

10 A I don't remember. I immediately got out
11 and started putting out flares. It was there a short
12 period of time, but I don't know how long it was.

13 Q Were there any other deputies present
14 when you got there?

15 A No, sir.

16 Q You were the first one on the scene,
17 then?

18 A I think so.

19 Q Who arrived after you did?

20 A It must have been my boss, the sheriff.

21 Q Sheriff McPherson?

22 A Yes, sir.

23 Q When did the fire department get there?

24 A It was a few minutes later.



1 MR. CLEARY: No questions.

2 THE COURT: Thank you, Deputy. You're
3 excused.

4 MR. RUDD: Trooper Trott, please.

5

6 (The witness stepped down.)

7

8 J. D. TROTT

9 was called as a witness, and after having first been
10 duly sworn to tell the truth, the whole truth and
11 nothing but the truth, was examined and testified as
12 follows:

13 THE CLERK: Thank you. You may be
14 seated.

15

16 DIRECT EXAMINATION

17

18 BY MR. RUDD:

19 Q Would you state your name, please, sir.

20 A J. D. Trott, Virginia state police
21 trooper.

22 Q Trooper Trott, how long have you been
23 with the state police?

24 A 31 years.

1 Q And your primary district is where?

2 A Craig County.

3 Q How long have you worked in that area?

4 A Be 31 years in December.

5 Q In Craig County the whole time?

6 A Yes, sir.

7 Q During the last four -- about four years
8 ago, do you recall going to an accident scene on October
9 25th, 1991?

10 A Yes, sir.

11 Q And about what time did you get there?

12 A 3:30 a.m.

13 Q How did you -- how were you notified?

14 A I was notified at home by telephone, by
15 dispatcher from state police headquarters in Salem.

16 Q And when you arrived, the car was on
17 fire?

18 A As I recall, the fire was out, but it was
19 still hot, the fire, the vehicle and so forth. Some of
20 the woods may have been smoldering, so some smoke rising
21 and so forth.

22 Q In that jurisdiction, Craig County, state
23 police often assist the deputies with accident scene
24 investigations?

1 A Yes, sir.

2 Q And that was what your role was on this
3 particular day?

4 A Yes, sir.

5 Q What was the first thing that you did
6 when you got there?

7 A Talked with the deputy, I believe, to
8 find out what the situation was.

9 Q Did you take specific action to try to
10 determine what had happened?

11 A Yes, sir.

12 Q What did you do?

13 A I went to the vehicle, and looked inside
14 of it and determined what was there. And since the
15 vehicle was hot and so forth, I began retracing the
16 steps that the vehicle had taken, tracing black marks on
17 the hard top and the gravel; walked both sides of the
18 highway prior to the accident.

19 Q Were you able to trace the marks in the
20 gravel and onto the highway?

21 A Yes, sir.

22 Q Was the skid -- was this a skid mark?

23 A Skid mark, yes, sir.

24 Q Was it broken or unbroken?

1 A It was unbroken.

2 Q And this was unbroken both on the highway
3 and in through the shoulder?

4 A Yes, sir.

5 Q Were you able to track back from the car
6 all the way to what seemed to be the point of origin?

7 A Yes, sir.

8 Q What tire were you able to determine
9 caused the skid mark that you're describing now?

10 A The one I'm describing now was the left
11 front.

12 Q Did you measure that skid mark?

13 A Yes, sir.

14 Q How long did you measure it to be?

15 A I measured the left skid mark 109 feet;
16 on the hard top was 77 feet 7 inches.

17 Q And so then another 30 -- 32 feet on
18 the -- off the hard top?

19 A According to my measurements, yes, sir.

20 Q How was the car situated when you
21 conducted these measurements?

22 A It was wedged -- off the highway, wedged
23 between two pine trees.

24 Q On this particular curve, are there any

1 highway warning signs, speed limit signs?

2 A Yes, sir. Prior to this curve there's a
3 40-mile-per-hour maximum safe speed sign.

4 Q A yellow sign?

5 A Yellow.

6 Q Where was this yellow sign,
7 40-mile-an-hour maximum speed sign in relation to where
8 the skid marks began?

9 A I'd just have to estimate the distance.
10 Probably 400 feet.

11 Q Before they got to the curb?

12 A Yes. Before the skid mark.

13 Q A little over a football field?

14 A Yes, sir.

15 Q The skid marks that you've described that
16 you traced to the left front tire, which side of the
17 road did they begin on?

18 A They began in the left lane, or the
19 southbound lane, and the vehicle was traveling
20 northbound.

21 Q How far into the opposite lane of traffic
22 did the skid mark begin?

23 . Feel free to refer to your notes; I don't
24 think there's going to be any objection.

1 A The only measurement I took was that it
2 was seven feet and seven inches from the wrong side of
3 the road, or from the vehicle's left side, indicating it
4 was seven feet seven inches from the wrong side of the
5 road, or the road where it should have been.

6 Q Would you use this diagram please and the
7 pointer in front of you, and assuming for a moment that
8 that mark, Number 1, is the tree where the car was
9 lodged --

10 A Yes, sir.

11 Q Approximately, the distance that you're
12 talking about, if Number 3 is where the left skid mark
13 begins, which distance is seven feet seven inches --

14 MR. CLEARY: I've got to object to the
15 leading nature of these questions. Providing a
16 diagram for this witness to testify from,
17 telling him what to say, is totally
18 inappropriate.

19 THE COURT: Would you rephrase your
20 question, Mr. Rudd?

21 MR. RUDD: I'd be happy to go through it
22 another way.
23
24

1 BY MR. RUDD:

2 Q You conducted a measurement that you
3 found to be seven feet seven inches from one side of the
4 road?

5 A Yes, sir.

6 Q From which side of the road?

7 A From this side of the road here --

8 Q Yes.

9 A -- to where the mark started was seven
10 feet seven inches.

11 Q Referring you to the diagram where
12 Number 3 and Number 1 are, does that line accurately or
13 inaccurately depict the skid marks that you described in
14 your earlier testimony?

15 MS. KNOX: I object, Your Honor. He's
16 been talking about a single skid mark.

17 MR. RUDD: Number 3 to Number 1 is a
18 single line.

19 MS. KNOX: And you just said "skid
20 marks."

21 MR. RUDD: Oh, I'm sorry; skid mark.

22 THE COURT: Sustained.

23 MR. CLEARY: And I've got to object to
24 the leading nature of these questions. By

1 providing this man with a diagram of what they
2 expect him to testify to -- it is completely
3 inappropriate.

4 THE COURT: Just ask it in an
5 interrogatory way.

6 MR. RUDD: Yes, sir.

7

8 BY MR. RUDD:

9 Q Trooper Trott, are you able to use that
10 diagram to describe to the jury the nature of your
11 measurements?

12 A The measurement that I took was from this
13 point to as far as I could take it to this point.

14 Q Did you encounter any trouble in tracing
15 that measurement?

16 A No, sir, just up here at the end, I was
17 unable to get all the way to the vehicle because of
18 water and so forth.

19 Q When you -- did you actually walk along
20 this skid mark you've described?

21 A Yes. I walked along this skid mark on
22 both sides of the road this way, and also in this
23 direction on both sides, I walked the road.

24 Q Did you discover any debris that you

1 associated with the accident?

2 A No, sir.

3 Q How long did you stay at the scene?

4 A I was probably there for an hour and a
5 half, two hours.

6 Q Did you return to the scene at a later
7 time?

8 A Yes, sir.

9 Q With whom?

10 A Returned by myself, and later I returned
11 with Trooper Eaton and Trooper Bowen.

12 Q Were there any -- you've mentioned the
13 one skid mark to the left front tire. Did you notice
14 any other skid marks you associated --

15 A Yes, sir.

16 Q Would you describe the other skid marks
17 you associated with this vehicle.

18 A There was a short mark that I could see
19 to the right side, and it went off and into the gravel
20 and followed generally this line up to the vehicle. I
21 did not measure that one.

22 Q All right. When it was in the gravel off
23 the road area, how distinct was that mark?

24 A It was distinct.

1 Q You had no trouble locating it --

2 A No, sir.

3 Q -- or tracing it from the exit on the
4 highway all the way to the tree?

5 A Not all the way to the tree; to the
6 vehicle.

7 Q To the vehicle, I'm sorry.

8 A Yes, sir.

9 Q Trooper Trott, you were also present when
10 the car finally cooled down and the bodies were removed?

11 A Yes, sir.

12 Q What happened with those bodies then?

13 A They were placed in a body bag, separate
14 body bags, and I tagged each body bag as to the location
15 that the remains were in the vehicle, like left front,
16 right front, left rear, and right rear.

17 Q And I believe they went through
18 Dr. Still, the Medical Examiner of Craig County, and
19 eventually to Dr. Massello at the division of forensic
20 science?

21 A Yes.

22 Q Trooper, let me show you a photograph
23 we'll refer to as Plaintiff's Exhibit 2 for
24 identification purposes. Can you tell the jury what

1 that photograph depicts?

2 A It depicts the vehicle between the pine
3 trees, looking from the front.

4 Q Does that -- you took that photograph?

5 A It appears that I took it, yes, sir.

6 Q Does that photograph accurately depict
7 the front end of the car?

8 A Yes, sir.

9 Q And that is the state the car was in when
10 you --

11 MS. KNOX: I'll object as to the leading
12 nature of this question, Your Honor.

13

14 BY MR. RUDD:

15 Q To authenticate it, you recall being at
16 that scene; correct?

17 A Yes, sir.

18 Q You recall seeing the car; correct?

19 A Yes, sir.

20 Q Trooper, with the photograph in your
21 hand, Exhibit Number 2, does it accurately or
22 inaccurately depict the state of the front of the car at
23 the time you were there investigating this crash?

24 A Accurately.

1 MR. RUDD: All right. I move to
2 introduce it as Plaintiff's Exhibit 2.

3 MS. KNOX: I would note our continuing
4 objection, Your Honor.

5 THE COURT: All right. The photograph is
6 entered into evidence and received as
7 Plaintiff's Exhibit 2.

8
9 (Plaintiff's Exhibit 2 was entered.)

10
11 MR. CLEARY: Your Honor, also the Record
12 needs to reflect that the exhibit numbers have
13 been changed since we discussed this photograph
14 earlier, so our conversation about that exhibit
15 now deals with this particular number.

16 THE COURT: This is the photograph in
17 question earlier?

18 MR. CLEARY: That's correct.

19 THE COURT: All right. The Record will
20 so reflect.

21 MS. KNOX: Your Honor, did you want to
22 give your limiting instruction at this time with
23 regard to this photograph?

24 THE COURT: All right.

1 MR. RUDD: Your Honor, we'd ask that the
2 photograph be published also, and I was actually
3 going to get into that for you.

4 MS. KNOX: Well, I'll leave it to Your
5 Honor, then, at what you feel is an appropriate
6 time.

7 THE COURT: As long as it's not going to
8 be gotten into at this time.

9 MR. RUDD: I was just going to get into
10 it for them.

11

12 BY MR. RUDD:

13 Q The Jaws of Life were used to open this
14 car?

15 A Yes, sir.

16 Q And the body of the car was affected by
17 the equipment used to get the bodies out?

18 A Yes.

19 Q As were the doors?

20 A Yes, sir.

21 Q But the photograph accurately depicts the
22 front end?

23 A Yes, sir.

24 THE COURT: The Court will instruct the

1 jury, as this photograph is passed around and
2 you can get a closer view of it, the purpose for
3 entering the photograph is to show you the front
4 of what the vehicle looked like, because this is
5 what the trooper has testified the front
6 appeared to him on the scene when he was there.

7 The photograph was taken at a time after
8 the Jaws of Life were used, and so the portion
9 over here on the side, around the door and the
10 top, were not in this photograph as the trooper
11 observed them first on the scene, so keep that
12 in mind.

13 But for the purposes of the front of the
14 vehicle, this is the depiction that the trooper
15 saw when he arrived on the scene.

16

17 BY MR. RUDD:

18 Q Trooper, did you measure the indentation
19 in the front of the car?

20 A No, sir, I did not.

21 Q Were you present when it was measured?

22 A I don't recall.

23 Q All right.

24 A I don't recall. I don't remember when

1 Troopers Bowen and Eaton measured it. I just don't
2 recall.

3 Q You went back out there with Troopers
4 Bowen and Eaton?

5 A Yes, sir. As I recall, the vehicle
6 wasn't there when we went back out, and I think they
7 went to the vehicle by themselves. I don't recall
8 going with them.

9 Q When they came out and met you at the
10 scene, did you go through with them what you'd found and
11 what you'd done?

12 A Yes, sir.

13 Q Did you point out to them the location
14 where the car had been?

15 A Yes, sir.

16 Q And you described for them the skid mark,
17 unbroken, as well as the other skid mark that you had
18 found?

19 A Yes.

20 MR. RUDD: All right. I have no other
21 questions for this witness, Your Honor, at this
22 time.

23 THE COURT: Ms. Knox, Mr. Cleary?

24 MS. KNOX: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. KNOX:

Q Trooper, you testified you inspected the area by walking along the highway and so forth. If there had been a handful or two of glass out in the road at the curve, do you believe you would have noticed it?

A If it had been in the road, yes, I believe I would have noticed it.

Q Now, this road, 311, as it comes from Roanoke to the point of the accident, can you estimate how many miles that would be?

A From Roanoke?

Q Yes, from where 311 begins at the Roanoke end.

A It would be approximately 23 miles.

Q And can you describe for us the nature of the road, in terms of it's windy, curvy, and hilly?

A It's windy, curvy, and hilly.

Q I guess I pretty much did that for you, didn't I?

When you walked up the road, you didn't find any other evidence of problems this vehicle had had?

1 A No, ma'am.

2 Q No evidence he'd been off the road?

3 A No.

4 Q No skid marks or scuff marks you could
5 associate with this vehicle?

6 A No, ma'am.

7 Q Now, when you were there, there were
8 other people there unassociated with the fire and police
9 and so forth, weren't there?

10 A There very well could have been. I
11 really don't recall. I'm sure there was, but I wouldn't
12 be able to tell you who they were.

13 Q Do you recall specifically that there
14 were some unidentified individuals there?

15 A At times.

16 Q I'm talking about when you arrived.

17 A At times -- when I arrived, ma'am, it was
18 dark, and the lighting was bad. I don't recall.

19 Q Okay. That's fair enough.

20 A I'm sure there probably was, but I don't
21 recall.

22 Q Oh. Well, let's talk then about the skid
23 marks that we've been talking about. The left one, the
24 one that's numbered up here, beginning at Number 3,

1 you've testified that this was the left, in your
2 estimation, the left front tire?

3 A Yes, ma'am.

4 Q Now, this was a black, dark, continuous
5 mark, was it not?

6 A Yes, ma'am.

7 Q Went right up to the tree?

8 A Yes, ma'am.

9 Q Are you familiar with the term yaw marks?

10 A Not real familiar, no, ma'am.

11 Q Do you know what yaw marks are?

12 A I think I do.

13 Q Would it comport with your understanding
14 that they are indications that the car was in a slide, a
15 sideways skid --

16 A Yes, ma'am.

17 Q -- back and forth, something of that
18 nature?

19 A Okay.

20 Q And would you agree that this mark, this
21 skid mark did not contain any yaw marks?

22 A I don't feel that it did, no.

23 Q Now, let's talk about the second skid
24 mark. It did not begin up over the center line, did it?

1 A No, ma'am.

2 Q And it was by no means dark and
3 continuous like the other one, was it?

4 A No, ma'am.

5 Q In fact, haven't you referred to it as
6 more like a pressure mark, actually, than a skid mark?

7 A Yes, ma'am.

8 Q In fact, it was entirely different than
9 the one on the left? Wouldn't you describe that as
10 such?

11 A It was lighter, but it appeared to be,
12 you know, a mark belonging to that vehicle.

13 Q Trooper, I'd like to show you a
14 photograph of the scene. This would appear to have been
15 taken after the -- let me show it to opposing counsel;
16 I'm sorry.

17 MR. RUDD: That's all right. Go ahead.

18

19 BY MS. KNOX:

20 Q Do you recognize that photograph as one
21 that you took at the scene?

22 A No, ma'am.

23 Q Let me ask you this. Does it accurately
24 depict the scene as you recall it when the sun came up

1 that day?

2 A Yes, ma'am.

3 Q Okay. And would you say that it's a fair
4 representation of the skid marks?

5 A I'm not sure of the skid marks; of the
6 skid mark.

7 Q Let me show you the others, so we can be
8 clear on this.

9 A Yes, ma'am.

10 MR. RUDD: Do you want to refer to them?

11 MS. KNOX: Well, I don't know. We'll
12 narrow one down before I offer it. And I
13 haven't even had them marked. Would you like me
14 to --

15 MR. RUDD: No, just to keep it clear.

16 I've seen them.

17

18 BY MS. KNOX:

19 Q Trooper, I show you two others. I ask
20 you to look at those and see if they fairly depict what
21 you recall being present in the way of skid marks that
22 day when you were taking photographs, that morning when
23 the sun came up?

24 A I can see both marks in this one better

1 than I can the other two. This accurately depicts the
2 scene, but I cannot see the second skid mark in either
3 one of these.

4 Q Well, that actually is the point.

5 A But I can in this one.

6 Q Where is the second skid mark? And I
7 will --

8 A Right here. It's real light.

9 MR. RUDD: Your Honor, may he please be
10 given the opportunity to designate that with his
11 pen in some way?

12 MS. KNOX: I'm going to get to that right
13 now.

14

15 BY MS. KNOX:

16 Q Trooper, could you show to the jury and
17 the judge with your pen where you were pointing to the
18 second -- or the right front skid mark?

19 A Right here (indicating).

20 MS. KNOX: Okay. Your Honor, we would
21 offer this as Defendant's Exhibit -- what are
22 you using, numbers?

23 MR. RUDD: Numbers, letters, take your
24 pick.

1 MS. KNOX: Our first exhibit.

2 THE COURT: This will be Defendant's
3 Exhibit 1.

4 MS. KNOX: Okay. And we would ask that
5 it be published to the jury, Your Honor.

6 MR. RUDD: No objection.

7

8 (Defendant's Exhibit 1 was entered.)

9

10 BY MS. KNOX:

11 Q Isn't it true, Trooper, that there is a
12 slight downgrade once you leave the shoulder of the road
13 heading to the tree in question?

14 A I believe that's correct, yes, ma'am.

15 Q Okay. And the marks, as far as you could
16 tell, left by this vehicle, went right up to that tree,
17 didn't they?

18 A Yes, ma'am, up to the vehicle.

19 Q Okay. But the car was leaving marks all
20 the way up to where it went; is that correct?

21 A Yes, ma'am.

22 Q It was not airborne at any point?

23 A Not that I could tell.

24 Q So by common deduction, as it was

1 approaching the tree that it hit, its nose was down and
2 its rear was up, at least to a certain extent?

3 A Yes, ma'am.

4 Q Now, you did not order any mechanical
5 inspection of the vehicle, did you?

6 A No, ma'am.

7 Q So it would be safe to say that you have
8 no information as to the condition of the brakes at the
9 time of the accident?

10 A No.

11 Q The steering mechanism?

12 A No, ma'am.

13 Q The rubber was burned off all the tires,
14 wasn't it, by the time you got there, so you have no
15 information as to whether there were any blowouts of any
16 tires, or --

17 A I could see no indentation in the hard
18 top to indicate a rim had been scrubbing on the road.
19 Other than that, no, ma'am.

20 MS. KNOX: If I could have the photograph
21 that was admitted on behalf of plaintiffs?

22 MR. RUDD: The jury has it.

23 MS. KNOX: No, the one that plaintiffs --

24 MR. RUDD: Oh, I'm sorry.

1 MR. CLEARY: Why don't you wait a minute;
2 let them finish looking at that other one.

3 MS. KNOX: Okay.

4 Okay. I think we've about finished. Has
5 everyone had a chance to see it?

6

7 BY MS. KNOX:

8 Q Trooper, as the jury is finishing looking
9 at the photograph of the skid mark, marks, you weren't
10 able to tell conclusively if it was the front or the
11 rear tires that left those marks, were you?

12 A According to the way the marks ended up,
13 and the location they ended up at the car, they would
14 have had to have been on the front.

15 Q Okay. So you feel that you could, based
16 on the position of the car, tell that they were the
17 front?

18 A I feel like I could.

19 Q All right. I think they're finished
20 now.

21 I'd like to talk about the damage to the
22 car. When you arrived, it was consumed by fire, was it
23 not, or had been?

24 A Had been.

1 Q And it had also been doused with
2 considerable amounts of water in order to extinguish
3 that fire; correct?

4 A Yes, ma'am.

5 Q And at some point in time, the Jaws of
6 Life were needed in order to remove the bodies; is that
7 correct?

8 A Yes, ma'am.

9 Q And this Plaintiff's Exhibit that has
10 already been admitted into evidence that we have already
11 shown to the jury, could you please for the jury point
12 out the damage that was caused by the Jaws of Life, if
13 you're able to, as it ripped the door off and ripped the
14 roof off?

15 A It appears to me in this photograph, as
16 near as I can tell, that the top is still on the
17 vehicle, and also appears that the door, left front door
18 is bent down.

19 Q That would be this door right here
20 (indicating)?

21 A Yes, ma'am.

22 Q So when you say bent down, do you recall
23 from which point they detached it and moved it?

24 A No, ma'am, I don't recall.

1 Q From looking at this photograph, can you
2 see where it --

3 A No.

4 Q -- still appears to be intact?

5 A It appears to be intact, but what, you
6 know, at the front door post, it appears at the
7 hinge --

8 Q You recall, don't you, Trooper, that they
9 did in fact, if not by this point, but at some point,
10 remove the roof or at least some part to get into the
11 vehicle?

12 A Yes, ma'am.

13 MR. RUDD: We've agreed to that.

14 Stipulated.

15 MS. KNOX: I don't recall it being any
16 part of the stipulation.

17 MR. RUDD: I don't have any problem with
18 that.

19

20 BY MS. KNOX:

21 Q Were you present when the wrecker removed
22 the vehicle?

23 A Yes, ma'am.

24 Q The vehicle was wedged between two trees?

1 A Yes, ma'am.

2 Q The wrecker did not lift the vehicle, did
3 it, in order to remove it?

4 A I don't recall exactly how it did it. It
5 seems like he made several attempts to get it out. I
6 don't recall exactly how he did it.

7 Q Do you recall that they attached a rope
8 and dragged the vehicle out? Does that refresh your
9 recollection to hear that description?

10 A They dragged the vehicle at some point,
11 yes, ma'am. I don't know if they dragged it out from
12 between the trees or whether they raised some part of
13 it. I just don't recall.

14 Q You just don't recall?

15 A No, ma'am.

16 Q When you were looking at the vehicle,
17 Officer, did you ever see the underside?

18 A I saw parts of it when it was not at the
19 scene.

20 Q That's my question, at the scene.

21 A No, ma'am, I did not.

22 Q Did you stand and take notes of specific
23 items of damage?

24 A No, ma'am.

1 Q As far as you know, and having concluded
2 your investigation, there are no eyewitnesses to the
3 accident; is that correct?

4 A As far as I know.

5 Q And you had no reports of any speeding on
6 the part of the driver of this vehicle prior to this
7 accident?

8 A No, ma'am.

9 Q No reports of erratic driving or any
10 complaints whatsoever anywhere along the road prior to
11 this accident; is that correct?

12 A We had no complaints.

13 Q And when did you close out your
14 investigation, Officer?

15 A I don't know. I can't tell you that.
16 Perhaps if you have Officer Keesee, maybe he can tell
17 you what time he took over.

18 Q You turned the investigation over to
19 Officer Keesee, and he's with Homicide?

20 A Yes, ma'am.

21 Q And why did you do that? It's not
22 customary, is it, for Homicide to investigate motor
23 vehicle accidents?

24 A No, ma'am.

1 Q And why did you turn the investigation
2 over to Homicide?

3 A There was considerable uproar as to the
4 cause of the -- what would cause the accident.

5 Q And the uproars were by whom?

6 A By the Jordan, Rutherford family.

7 MS. KNOX: Thank you, Trooper. I have no
8 further questions.

9

10 REDIRECT EXAMINATION

11

12 BY MR. RUDD:

13 Q Trooper, in response to Mrs. Knox's
14 questions, you've described the descent and the solid
15 unbroken skid mark, and earlier testimony, you've
16 described the skid mark which appeared to be made by the
17 right front tire.

18 Having retraced your -- retraced these
19 skid marks and investigated the accident, are you able
20 to tell the Court, tell this jury how you think this car
21 traveled from when the skid marks began?

22 A How it traveled?

23 Q The path of its travel, based on the skid
24 marks and your investigation?

1 A From the skid marks to the tree?

2 Q Yes, sir.

3 A I'm not sure that I understand your
4 question, Mr. Rudd.

5 Q If you were -- based upon -- all right.
6 Let me just back it up a little bit. The car traveled
7 from where the skid marks began to the tree, as best you
8 can recall?

9 A Yes.

10 Q And you retraced that path; correct?

11 A Yes.

12 Q How does your retracing of that path
13 compare with your two marks on that diagram from
14 Number 3 to Number 1 and Number 2 to Number 1? How does
15 the way you walked when you retraced the skid marks
16 compare with that path?

17 MR. CLEARY: Again, object, Your Honor.
18 He's leading the witness.

19 MR. RUDD: I'm not leading.

20 MR. CLEARY: He's providing the witness
21 with a diagram of what he wants him to say.

22 THE COURT: I overrule the objection. I
23 think it's fair.

24 THE WITNESS: It appears that that's the

1 way the skid marks work, as they left Point 1 to
2 Point 2 and Point 3.

3

4 BY MR. RUDD:

5 Q All right. Thank you. Now, one other
6 question. 31 years you've been with the state police?

7 A Yes, sir.

8 Q I expect you've had extensive training on
9 investigating accident scenes?

10 A No, sir, I have not.

11 Q But how many have you investigated over
12 time?

13 A Probably approximately 70 a year.

14 Q So in 30 -- 70 a year for 30 years; your
15 experience, then, has come hands-on?

16 A Yes, sir.

17 MR. RUDD: That's quite a few accidents.

18 All right. I have no other questions.

19 MS. KNOX: I have none either, Your
20 Honor. We'd release Trooper Trott from our
21 subpoena.

22 MR. RUDD: We'd ask he be excused as
23 well.

24 THE COURT: You are excused. Thank you

1 very much.

2

3 (The witness stepped down.)

4

5 MR. RUDD: Based on this witness's
6 testimony, Judge, I'd move to introduce this
7 exhibit, subject to the earlier discussions we
8 had.

9 MR. CLEARY: Judge, there's been no
10 foundation.

11 MR. RUDD: Oh, yeah, there has, there's
12 definitely foundation. He just testified that
13 it accurately depicts the path of travel; he
14 just testified that 3 to 1 represents the left
15 front skid mark.

16 MR. CLEARY: Judge, let's take up this
17 objection up outside the presence of the jury.

18 THE COURT: I don't think it's necessary
19 to excuse the jury. We've had previous
20 discussions on this, and conditionally accepted
21 as an exhibit subject to each of the troopers
22 being able to link up the factors there.

23 MR. CLEARY: There's been no testimony
24 with respect to the drawing itself and a

1 foundation for it, nothing for the jury on that.

2 MR. RUDD: I'll bring Trooper Eaton.

3 I'll get him to testify about that.

4 THE COURT: All right. Let's go on with
5 Trooper Bowen here.

6 MR. RUDD: Trooper Bowen, then, please.

7

8 CECIL BOWEN, JR.

9 was called as a witness, and after having first been
10 duly sworn to tell the truth, the whole truth and
11 nothing but the truth, was examined and testified as
12 follows:

13 THE CLERK: Thank you. You may be
14 seated.

15

16 DIRECT EXAMINATION

17

18 BY MR. RUDD:

19 Q Would you state your name, please.

20 A Cecil Edward Bowen, Jr.

21 Q How long have you been with the state
22 police?

23 A 15 years.

24 Q What is your role with the state police

1 now?

2 A I work in the safety division. I'm a
3 senior trooper.

4 Q What does your job entail, working in the
5 safety division?

6 A I supervise an inspection program in
7 Craig County, Montgomery County, City of Radford, and
8 half the City of Salem.

9 Q Have you had experience in investigating
10 accident crash scenes?

11 A Yes, I have.

12 Q Have you had any specific training in
13 that area?

14 A Yes, I have.

15 Q Would you describe that training for the
16 jury, please.

17 A I had basic accident investigation when I
18 was in the state police academy prior to becoming a
19 trooper. I had 80 hours of at-the-scene accident
20 investigation from North Florida University --
21 University of Traffic Management; I had 80 hours of
22 accident reconstruction investigation at the North
23 Florida University of Traffic Management.

24 I then had 40 hours of advanced accident

1 reconstruction training through Virginia Commonwealth
2 University out of Richmond. I had 40 hours of railroad
3 crossing investigation through Norfolk Southern Railway.

4 Q So you've had quite a bit of training in
5 this area?

6 A Yes, sir.

7 Q About how many accidents do you think you
8 have investigated in your career?

9 A Probably somewhere fifteen to sixteen
10 hundred.

11 Q Directing your attention back to October
12 25th, 1991, did you have occasion to go to Craig County
13 in relation to an accident?

14 A Yes, I did.

15 Q When you went out -- did you go out to
16 the scene?

17 A Yes.

18 Q Approximately where is that?

19 A It's on Route 311, approximately
20 six-tenths of a mile south of the forest service road
21 number 257.

22 Q And what's the roadway like in that
23 particular location?

24 A The roadway is a downward grade with a

1 curve going towards the left in the northbound lane.

2 Q All right. Take a look at that diagram
3 to your right, and without paying any attention right
4 now to the numbers and the lines connecting Number 1
5 with Number 2 and Number 1 with Number 3, how does that
6 diagram that's labeled, actually, Route 311 compare with
7 the location where you investigated this accident?

8 A It looks similar to the roadway.

9 Q Does it appear to you to be an accurate
10 reflection?

11 A I guess so, yes, sir.

12 Q All right. Trooper, when you arrived on
13 the scene, who was with you?

14 A Trooper C. F. Eaton Jr.

15 Q Were you accompanied by any other
16 troopers, or did you meet anyone else out there?

17 A We met Trooper Trott there at the scene.

18 Q All right. What did Trooper Trott help
19 you with while you were there?

20 A He showed us the final resting point of
21 the vehicle when it was engulfed in flames.

22 Q Were you able to identify any other
23 physical -- well, you guys used physical evidence;
24 anything else that you associated with the accident

1 besides the location where the accident occurred?

2 A Well, we found skid marks in the roadway
3 itself and on the right shoulder leading up to the two
4 trees.

5 Q Did you measure the skid marks?

6 A Yes, I did.

7 Q What measurement did you take -- what
8 measurements did you take? You took more than one;
9 right?

10 A I found two skid marks at the scene. The
11 first skid mark I found was -- started in -- could I use
12 this?

13 Q Yes, sir.

14 A This would be the southbound lane; this
15 would be the northbound lane of Route 311.

16 Q There's a pointer right here, Trooper.

17 A Okay. The first skid mark I found I
18 guess would be labeled as Number 3. This mark I found
19 to be four feet zero inches from the center of the
20 roadway. The center of the roadway would be between the
21 two double, solid yellow lines. This mark was four feet
22 zero inches to the left of the center of the roadway in
23 the southbound lane.

24 I followed the mark, which would have

1 been the direction of travel of the vehicle, crossing
2 the center line, then traveling across the northbound
3 section of the pavement until it came to the shoulder.

4 Now, it traveled on the pavement from
5 this location 61 feet zero inches until it came to the
6 shoulder.

7 Q From the center of the road or from the
8 beginning of the skid mark?

9 A From the center of the road.

10 Q All right.

11 A It traveled four feet zero inches to
12 here, and then 60 -- I'm sorry, 61 inches from here to
13 here.

14 Q Inches or feet?

15 A Feet; zero inches. I'm sorry.

16 Q Go ahead.

17 A The vehicle then skidded 44 feet 11
18 inches on the right shoulder before it struck this tree.

19 Q Did you do deduce what -- the vehicle was
20 not there at that time; right?

21 A No.

22 Q All right. Did you measure any other
23 skid marks?

24 A We then found some other skid marks,

1 which would be -- was indicated at Number 2, found these
2 to be the right front skid marks of the vehicle. Now,
3 this was six feet one quarter of an inch from this white
4 line over to where this mark began, and this was in the
5 northbound lane.

6 Q How wide is the northbound lane at that
7 point, do you know?

8 A The roadway width is 22 feet four inches
9 from white line to white line, so --

10 Q Roughly eleven feet?

11 A Probably ten-six.

12 Q Ten-six?

13 A Right.

14 Q And Number 2, the skid mark you found was
15 six feet into the northbound lane of travel?

16 A Six-foot, one quarter of an inch from
17 this white line into the northbound lane.

18 Q Go ahead.

19 A We followed this skid mark. It measured
20 24 feet 9 inches on the pavement till it started off the
21 pavement onto the shoulder. Then at that point it
22 traveled 58 feet 7 inches on the shoulder before it
23 struck the tree.

24 Q You've used the mark from Number 2 to

1 Number 1 to talk about the second skid mark, and
2 Number 3 to Number 1 to talk about the first skid mark.
3 How does that diagram compare with what you experienced
4 when you retraced those skid marks?

5 A I would say it's pretty accurate.

6 Q All right. Now, let's make one thing
7 clear, though. The skid marks on Number 2, were they
8 solid in the pavement?

9 A These were solid all the way to the tree.

10 Q Both sets?

11 A (Witness nods head).

12 Q So you didn't have any trouble following
13 them?

14 A No.

15 Q When you got out there, about what time
16 was this that you were conducting this --

17 A I arrived in Craig County at 11:30 a.m.
18 on 10/25/91.

19 MR. RUDD: You've already seen these.

20 I'm not done yet.

21

22 BY MR. RUDD:

23 Q Trooper, I'm going to show you some --

24 MR. CLEARY: Your Honor, if I may look

1 over the trooper's shoulder while he's reviewing
2 these photographs?

3 MR. RUDD: I don't object.

4 THE COURT: All right.

5

6 BY MR. RUDD:

7 Q Trooper, let me show you what we've
8 referred to as Plaintiff's Exhibit 3. Can you identify
9 that, please?

10 A This photograph is taken north of the
11 accident scene itself, going around this curve, from the
12 northbound side of the roadway.

13 Q Let me show you a few more photographs.
14 This photograph was taken after that morning you were
15 out there?

16 A While we were there, it was taken.

17 Q Let me show you a couple other
18 photographs, what we'll refer to as Plaintiff's
19 Exhibit 4. Can you identify that, please.

20 A This is the accident scene itself, the
21 two trees that were charred from the burning, showing
22 the left skid mark.

23 Q All right. Let me show you,
24 collectively, Plaintiff's Exhibit 5 through 8. Would

1 you take a look at those photographs; tell the jury what
2 they reflect?

3 A This photograph shows the left skid mark
4 as it comes into the northbound lanes and skids into the
5 tree on the left side.

6 Q That's Plaintiff's Exhibit 5.

7 A This is just another picture of the
8 same --

9 Q All right.

10 A -- from a different --

11 Q Plaintiff's 6.

12 A This shows the skids as it goes off the
13 pavement onto the shoulder, following the skids on up to
14 the crash site itself.

15 Q And the last photograph I've handed you
16 so far, Plaintiff's 8?

17 A I don't recognize this as one of my
18 photos, to be honest with you. I don't know what that
19 mark is.

20 Q Okay. We won't offer that one, then.

21 Let me show you what we'll just refer to as Plaintiff's
22 8, 9, 10, and 11. What's that photograph depict?

23 A It appears to me to be the right tree
24 where the rear bumper -- after the vehicle hit the tree

1 on the left, the vehicle went counterclockwise up in the
2 air, and the rear bumper came down, catching the tree
3 here and here.

4 Q Let me show you three more photographs,
5 if you could just describe those for the jury.

6 A I'm not sure which tree this one is.

7 Q That's one of the trees that was involved
8 in the accident?

9 A Appears to be.

10 Q All right. That's Plaintiff's 10.

11 A That shows the main tree that was struck,
12 right here.

13 Q That's Plaintiff's 11. That's
14 Plaintiff's 10; I'm sorry.

15 A This just shows from the northbound side,
16 northwesterly side of the tree, this tree.

17 Q To the best of your knowledge and belief,
18 based on your memory, those photographs accurately
19 depict the things you've just described for the jury?

20 A Yes.

21 MR. RUDD: If we could have just a
22 minute, Judge. We changed the numbers twice,
23 which for lawyers sometimes gets confusing.

24 THE COURT: Good point. Get the right

1 numbers on them.

2

3 BY MR. RUDD:

4 Q Did you go and investigate the car
5 itself?

6 A Yes, I did.

7 Q Where was the car when you went to
8 investigate it?

9 A Found it at a garage in New Castle.

10 Q How would you describe the condition of
11 the car at that time?

12 A It was completely burned, burned up,
13 total loss.

14 Q Was it intact at all?

15 A The roof had been cut off, but placed on
16 top of the vehicle itself, and the whole front of the
17 vehicle was crushed, I believe at the maximum point,
18 30 --

19 MR. CLEARY: Your Honor, I'd object to
20 the fact that there's been no foundation laid
21 with respect to the providing of this evidence
22 at this time.

23 This has been the subject of prior
24 discussions with the Court, and until there has

1 been some link to this witness, or somebody else
2 testifying that the condition at the tow yard
3 was the same as it was as it rested against that
4 tree, then this witness cannot testify with
5 respect to his observations at a time after the
6 vehicle has been pulled away, been pushed and
7 pulled free of the trees, et cetera.

8 THE COURT: All right. Objection
9 sustained.

10 MR. RUDD: Could I see the photograph?

11

12 BY MR. RUDD:

13 Q Trooper, referring to Plaintiff's
14 Exhibit 2, how does the front end of that car compare
15 with the car that you saw at the garage in New Castle?

16 A It looks just like the vehicle I looked
17 at at the garage.

18 Q You're referring right now to the
19 indentation from the tree?

20 A Right.

21 Q Did you measure that indentation?

22 A Yes, I did.

23 MR. CLEARY: Your Honor, if I may --

24 MR. RUDD: He's just testified that

1 what's already been established as the car at
2 the scene looks the same as what he measured at
3 the garage.

4 MR. CLEARY: If I may voir dire on that
5 point, please, Your Honor.

6 THE COURT: All right.

7

8 BY MR. CLEARY:

9 Q Trooper, let me ask you this question.
10 With respect to the photograph, this shows the car as it
11 rests between the two trees after the accident; correct?

12 A Right.

13 Q We're talking about -- this would be
14 Plaintiff's Exhibit 2. This car, where you took
15 measurements, about which you're about to testify, was
16 sitting at a wreck yard or tow yard some distance away?

17 A At a garage, yes.

18 Q At a garage. The vehicle had been pulled
19 away from this area by some means. Are you aware of
20 what means it was pulled away?

21 A No, I'm not.

22 Q Are you aware of what additional damage
23 occurred to the front end as a result of that procedure?

24 A No.

1 Q Can you say looking at this photograph
2 that there was no damage at all that occurred to the
3 front end, the measurement about which you're about to
4 give some testimony, as a result of the towing process
5 or the pulling process out of the tree?

6 A Probably the measurement I'm going to
7 give you, they couldn't have caused any more --

8 Q You can say that with clarity in your
9 mind?

10 A Yeah.

11 Q That there was no damage done to the
12 front of this vehicle as a result of the tow process
13 that you did not witness?

14 A No, I can't say that.

15 Q I didn't think so. Thank you.

16 MR. CLEARY: Your Honor, we continue to
17 object.

18 MR. RUDD: He didn't establish it,
19 because what the trooper just said was he
20 doesn't think that the measurement that he
21 took -- and he can say with clarity of mind, as
22 Mr. Cleary himself just pointed out -- the
23 measurement he took would not have been affected
24 by the towing process. I think I have the

1 opportunity to follow up on that and clarify why
2 he believes that.

3 MR. CLEARY: Your Honor, the witness also
4 said that he can't say that no damage occurred
5 to the front end, where he got -- which he has
6 given his measurements --

7 MR. RUDD: That is --

8 MR. CLEARY: -- as a part of that
9 process. So the jury would be given information
10 from which they cannot decide. They'd have to
11 speculate as to the amount of damage that was
12 caused by the accident and how much was caused
13 by the towing process.

14 MR. RUDD: Let's be clear, Judge. He
15 testified just now that he can't state with
16 certainty that no damage happened at all to the
17 front end when it was moved from the tree, but
18 he can state with clarity and certainty that the
19 measurement he took of one spot in the front end
20 was not affected by the towing process.

21 And I believe that he's able to testify
22 about this one measurement for reasons that I
23 can bring out through his experience, and what
24 this measurement refers to. There's a

1 difference.

2 THE COURT: I will allow it, subject to
3 you being able to link it up.

4 MR. RUDD: Yes, sir.

5

6 BY MR. RUDD:

7 Q You just testified -- did I accurately
8 express what you told Mr. Cleary?

9 A Yes.

10 Q And what was the measurement that you
11 took of?

12 A I found on the damage to the front -- to
13 the approximate center of the front bumper, I found the
14 penetration depth to be 33 inches --

15 Q How --

16 A -- from where its original wheelbase
17 would have been.

18 Q And why is it your opinion that that
19 could not have been caused by being moved by the tow
20 truck?

21 A This is where the vehicle impacted with
22 the tree, pushing the front bumper and the engine back
23 into the fire wall toward the driver's compartment of
24 the vehicle.

1 Q Why don't you believe that could have
2 been caused by the tow truck?

3 A If you had pulled it out from the side,
4 or however you pulled it out, you would not have altered
5 the penetration of the damage shown.

6 Q And that was 33 inches in?

7 A 33 inches in depth, yes.

8 Q All right. Now, are you able to testify
9 about the difference between the length of the left part
10 of the car and the right part of the car, subject
11 without -- and be able to testify with certainty that
12 that could not have been caused by the towing or moving
13 of the car?

14 A Not with certainty, because of --

15 Q That's fine.

16 A The other penetrations would have been on
17 the side.

18 Q So the measurement that you are certain
19 about that would not have been affected would have been
20 the 33-inch impression in the front of the car?

21 A Okay. The 33 inches -- I've misread my
22 notes.

23 Q Okay; fine.

24 A The 33 inches would have been on the left

1 fender, and the penetration in the middle would be 19
2 inches.

3 Q All right. 33 inches penetration on the
4 left, 19 inches in the middle?

5 A Right.

6 Q And what we're talking about is the
7 indentation that's depicted in the photograph that I
8 showed you a moment ago, Plaintiff's Exhibit 2?

9 A Right.

10 Q Okay. Clear enough.

11 THE COURT: All right. Now, the Court is
12 going to instruct the jury that this portion of
13 the testimony that you will take into and
14 consider -- the evidence that the trooper
15 testified to as to the penetration in the center
16 of the vehicle, but not the penetration on the
17 left side of the vehicle; disregard that.

18 MR. RUDD: I think it's the penetration
19 on the left side is what he said he is able to
20 testify about.

21 THE COURT: Penetration in the center.

22 THE WITNESS: Right.

23

24

1 BY MR. RUDD:

2 Q Penetration in the center. Are there any
3 other measurements you took that you're able to testify
4 about with a reasonable degree of probability that would
5 not have been affected by the movement of the car, the
6 towing?

7 A Well, I checked the wheel bases on both
8 sides of the car.

9 Q And the wheelbase measurement is what?

10 MR. CLEARY: Your Honor, I would --

11 MR. RUDD: I'm asking not for the
12 measurement, but what it would depict, and
13 clarify that he's got a reasonable degree of
14 probability that it's not affected by the
15 towing.

16

17 BY MR. RUDD:

18 Q Wheelbase measurement is what part of the
19 car?

20 A The wheelbase would be from the center of
21 the front wheel to the center of the rear wheel on each
22 side.

23 Q Right. And are you able to testify with
24 a reasonable degree of certainty, reasonable degree of

1 probability, that that measurement that you've described
2 would not have been affected by the towing?

3 A I don't see how it could be affected.

4 Q All right.

5 MR. RUDD: He said I don't see how it
6 can be affected.

7

8 BY MR. RUDD:

9 Q So what measurement is that?

10 MR. CLEARY: No -- now, we're not talking
11 about just the towing process by which the
12 vehicle was moved from the scene back to this
13 garage; we're also talking about the forces that
14 the vehicle was subjected to to pry it free from
15 these two trees in which it had become jammed.

16 MR. RUDD: Then I'll make sure to cover
17 that too, Mr. Cleary.

18 THE COURT: Let's see.

19

20 BY MR. RUDD:

21 Q You're aware the car was wedged between
22 the two trees?

23 A Right.

24 Q You're aware of the process that would

1 have been conducted to remove that car from between the
2 two trees?

3 A Right.

4 Q Are you able to say with a reasonable
5 degree of probability that in spite of having removed
6 the car between the two trees, that the wheelbase
7 measurement would not have been affected?

8 A No, I can't, because I don't know how
9 they removed it.

10 Q All right; fair enough. When you
11 inspected the car, the brakes were fried?

12 A Burnt up.

13 MR. RUDD: All right. If I may have just
14 a moment, Your Honor.

15 THE COURT: All right.

16
17 (Counsel for the plaintiff conferred.)
18

19 MR. RUDD: Your Honor, we need to
20 supplement the stipulation that we went into
21 that I read earlier, and I think now we've got a
22 witness who has seen the car.

23 We've stipulated, ladies and gentlemen,
24 that the brake pads were melted off of this car;

1 we've reached an agreement that that is a fact
2 in evidence. We've also agreed and stipulated,
3 and this is considered to have been proven,
4 since we've agreed, that there was -- this fire
5 was caused by the accident, and not by arson;
6 that the transmission fluid dripped down and
7 started the fire as a result of the collision.

8 I have no additional questions for this
9 witness. Thank you.

10 THE COURT: Mr. Cleary?

11

12 CROSS EXAMINATION

13

14 BY MR. CLEARY:

15 Q Trooper, Plaintiff's Exhibit Number --

16 MR. RUDD: Can't read my writing? 3.

17 MR. CLEARY: Okay.

18

19 BY MR. CLEARY:

20 Q Plaintiff's Exhibit 3 is the photograph
21 taken in the northbound lane looking south, back toward
22 the accident scene; correct?

23 A That's correct.

24 Q Is it true, Trooper, that that photograph

1 clearly shows skid marks on the southbound side of the
2 highway coming into this curve where a vehicle has come
3 to a sharp stop; correct?

4 A I can't say that it came to a sharp stop,
5 but there are skid marks there.

6 Q Okay. Going into the curve?

7 A Yes.

8 Q A vehicle coming from this direction,
9 heading toward the accident scene lays down actually two
10 sets of skid marks on each side of the vehicle; correct?

11 A There are left-side and right-side skid
12 marks.

13 Q And if that's a four-tired vehicle, that
14 means the vehicle is actually also into a slide, doesn't
15 it?

16 A It could be that, or a dual-rear-wheel
17 truck.

18 Q Dual-rear-wheel truck; could be either
19 one. But it also shows, those wheels too, those tire
20 marks show that as that vehicle came into the curve, it
21 approached the center line; as a matter of fact, came
22 right to the center line?

23 A Yes.

24 Q With the rear of the vehicle -- or the

1 front of the vehicle, perhaps, since it would extend
2 beyond the wheels, over the line itself; correct?

3 A Yes.

4 Q The photographs, Plaintiff's Exhibit 4 --
5 4 particularly, that's the photograph that is intended
6 to depict the left-side skid mark; correct?

7 A Yes.

8 Q The left-side skid mark that you could
9 see in that particular photograph actually begins at
10 some point here, does it not, inside the northbound
11 lane, some distance from the center line?

12 A I actually see it across the yellow.
13 That's what we refer to as a shadow. It's very light.

14 Q A shadow. But you're saying a jury will
15 be able to look at this photograph and see some portion
16 of that line going across the two center lines, two
17 yellow lines?

18 A I don't know if they can see it. I can.

19 Q You can testify to that?

20 A Yeah.

21 Q Where in this particular photograph, sir,
22 is the right-side skid mark?

23 A I believe this reporter is standing on
24 the location. It has a shadow. You have to look at it

1 at a certain angle in order to see it.

2 Q Did you take these photographs?

3 A I was present when they were taken.

4 Q And the purpose of the photographs is to
5 take a photograph of the things that are significant at
6 the accident scene so you can look at it later and refer
7 to it?

8 A Right.

9 Q And you're saying where the reporter, the
10 gentleman in the white shirt, is standing, there is a
11 mark of some kind on the shoulder of the highway, down
12 here?

13 A We may have to look at another photograph
14 to actually pick that skid up.

15 Q I hand you Plaintiff's Exhibit 5,
16 Plaintiff's Exhibit 6. You see the one skid mark, do
17 you not, sir?

18 A Okay. What's this, right here?

19 Q Again, you're pointing to the shoulder,
20 off the traveled portion of the highway; correct?

21 A Right.

22 Q All right.

23 A As I see -- on this photograph, I
24 actually start picking it up somewhere right in there.

1 Q You're saying these ladies and gentlemen
2 of the jury are going to be able to see something, or
3 only the trained eye you have?

4 A I'm not saying they can see it, no, sir.

5 Q Any of the other photographs show in any
6 better detail this right-side skid mark that you've been
7 referring to?

8 A Not out of these photographs, no.

9 Q And you also looked at Plaintiff's
10 Exhibit Number 6, and that photograph shows a mark on
11 the highway. I guess from that photograph it's hard to
12 tell whether it's the left or the right?

13 I believe you have to say "yes" or "no"
14 so the reporter can pick it up.

15 A I can't tell which one that is.

16 Q Now, you've testified that you don't know
17 how they actually removed the car from the tree?

18 A No, I don't.

19 Q You do know that -- from what you were
20 told by Trooper Trott, that the vehicle had jammed or
21 wedged itself between the two trees, which you can see
22 here in Plaintiff's Exhibit Number 10?

23 A Right.

24 Q And to get it free, something had to be

1 done to unwedge it; correct?

2 A Right.

3 Q And you weren't present when that
4 happened?

5 A Right.

6 Q But it's your testimony, you're telling
7 the jury today that you can say with a clear mind that
8 no damage was done to the indentation to the front of
9 that vehicle as a result of the process you did not
10 observe?

11 A That's not what I said a minute ago.

12 Q That's what I understood. You correct me
13 where I went wrong.

14 A Okay. I said the measurement I took of
15 the penetration from where it struck the tree could not
16 be changed by prising it out.

17 Q The force made in pushing that vehicle
18 back against the tree where that indentation had been
19 made couldn't have increased the depth of that
20 particular indentation?

21 A No.

22 Q No way?

23 A No way.

24 Q You did no mechanical inspection of the

1 vehicle?

2 A I checked what I was able to check with
3 what was left.

4 Q And that wasn't much. You couldn't check
5 the brakes, you couldn't check the steering; correct?

6 A (Witness shrugs).

7 Q You have to say "yes" or "no."

8 A No. Sorry.

9 Q The condition of the tires, you weren't
10 able to check that?

11 A No tires left.

12 Q The lighting, couldn't check that?

13 A Couldn't check.

14 Q You weren't able to check -- I assume you
15 weren't able to determine what this other vehicle was
16 that was coming from the other direction?

17 A No.

18 MR. CLEARY: Thank you, Trooper.

19

20 REDIRECT EXAMINATION

21

22 BY MR. RUDD:

23 Q Trooper Bowen, you've already established
24 that the skid marks on what you refer to as the left

1 front are more marked -- or darker, at least depicted in
2 these photographs.

3 Is there a reason why the skid marks are
4 not picked up as well in the photograph on the right
5 side as from the left?

6 A Why they're picked up better on the left
7 side --

8 Q Yes, sir.

9 A -- instead of the right side?

10 Q Yes, sir.

11 A Probably by the angle of -- this is just
12 speculation by me --

13 MR. CLEARY: Objection, Your Honor.

14 THE COURT: Well, don't speculate.

15

16 BY MR. RUDD:

17 Q In your experience, have you had trouble
18 with getting photographs of skid marks before?

19 A They don't detect them as well as you can
20 see them with your eye at the scene.

21 Q Is there any question in your mind about
22 the existence of these skid marks?

23 A No.

24 Q Both sets?

1 A No.

2 Q And there were no other accidents
3 reported on that particular evening in that area, were
4 there?

5 A I couldn't answer it. I don't know.

6 Q You didn't investigate any other
7 accidents?

8 A I didn't, out there, no.

9 Q While you were at the scene, did you look
10 for debris that you might associate with this accident?

11 A We checked for other pieces of evidence,
12 but we were not able to find anything.

13 Q And by checking, what did you do?

14 A We checked both shoulders, probably 700
15 feet from both sides of the accident scene.

16 MR. RUDD: All right. I don't have any
17 other questions. Thank you very much, Trooper
18 Bowen.

19 MR. CLEARY: Your Honor, at this time
20 we'd like to publish the photographs that we've
21 been referring to.

22 MR. RUDD: I was going to introduce them,
23 first.

24 THE COURT: All right. You've got the

1 right numbers on them?

2 MR. RUDD: Yes, sir.

3 THE COURT: They will be admitted then,
4 into evidence as exhibit numbers as the clerk
5 determines.

6 MR. RUDD: All right. That's fine.
7 Should start with 3, although that was a 2.

8 Judge, I'd ask that Trooper Bowen be
9 excused, but I also believe that we've
10 established plenty of foundation to introduce
11 this diagram now as Plaintiff's Exhibit B.

12
13 (Plaintiff's Exhibits 3 through 11 were marked.)

14
15
16 MR. CLEARY: Your Honor, I think that's
17 going to have to be taken up outside the
18 presence of the jury.

19 THE COURT: All right.

20 THE SHERIFF: Come this way, please.

21
22 (The Jury left the courtroom.)

23
24 MR. RUDD: Judge, we're still on the

1 the conclusion of Dr. Massello's direct
2 examination.

3 MR. CLEARY: Your Honor, close in time at
4 which the testimony came in is the time they
5 should be seen.

6 THE COURT: Let's let the jury see those,
7 if you would pass them around.

8 If you would start the photographs down
9 after you've had an opportunity to examine one.
10 As you finish with it, if you would just start
11 it in the process, perhaps it would speed things
12 up.

13
14 (Plaintiff's Exhibit B was entered.)

15
16 WILLIAM MASSELLO
17 was called as a witness, and after having first been
18 duly sworn to tell the truth, the whole truth and
19 nothing but the truth, was examined and testified as
20 follows:

21 THE CLERK: Thank you. You may be
22 seated.

23
24

DIRECT EXAMINATION

BY MR. RUDD:

Q Would you state your name, please.

A William Massello.

Q You're Dr. Massello; is that correct?

A That is correct.

Q And Dr. Massello, you're employed by the
division of forensic science?

A By the Office of the Chief Medical
Examiner.

Q Located here in the Roanoke office?

A That's correct.

Q What do you do for the Chief Medical
Examiner's office?

A I'm a forensic pathologist. My job title
is Assistant Chief Medical Examiner for Western
Virginia, and being a forensic pathologist, I examine
dead human bodies, I investigate suspicious and violent
deaths in the western half of the state, and I perform
examinations on bodies, known as autopsies.

Q In that capacity, you perform many
autopsies in relation to work for the state; correct?

A That is correct, yes.

1 Q You have worked with various Commonwealth
2 Attorney's offices; correct?

3 A Yes, I have.

4 Q Where did you go to school, Dr. Massello?

5 A I went to -- well, I guess start with
6 medical school, I completed medical school in 1972 at
7 Southwestern Medical School in Dallas, Texas. 1973, I
8 finished my internship at Los Angeles County Harbor
9 General, UCLA Medical Center.

10 I was a general practitioner in the
11 United States Army until 1976, and in 1980 I finished my
12 residency in general pathology, again at the Los Angeles
13 County Harbor General, UCLA Medical Center.

14 Q As a forensic pathologist -- perhaps we
15 can cut through some of this. Forensic pathology --
16 certainly not to diminish your credentials or your
17 credibility, but we may be able to reach a stipulation.

18 As a forensic pathologist, do you draw
19 certain conclusions as a result of conducting autopsies
20 on dead human bodies?

21 A Yes, I do.

22 Q Such as cause of death?

23 A That is correct, yes.

24 Q And you're familiar with various ways of

1 reaching conclusions by looking at and examining bodies
2 concerning the cause of death?

3 A Yes, I am.

4 Q Such as -- give us some examples.

5 A Well, certainly one example, a gunshot
6 wound, you can observe a certain type of hole in the
7 body, which we call a bullet hole. You can look
8 internally and see that there's been damage to organs
9 such as heart, or lungs, and you can also see large
10 amounts of blood which are present inside body cavities,
11 and you conclude that a person died from a gunshot.

12 Q As part of your autopsy procedures, you
13 examine internal organs; correct?

14 A Yes, I do.

15 Q Part of forensic pathology requires you
16 to be very familiar with skeletal anatomy?

17 A Yes, it does.

18 Q As well as with biochemistry?

19 A Yes, it does.

20 Q And you have received extensive training
21 and education in each of those fields?

22 A Yes, I have.

23 Q In the past you've examined bodies where
24 people have been killed by fire?

1 A Yes, I have.

2 Q And internal injuries?

3 A Yes, I have.

4 Q Since you've been with the Medical
5 Examiner's Office, I suspect you've performed thousands
6 of autopsies?

7 A Yes, I have.

8 MR. RUDD: Will you stipulate he's
9 qualified in the field of forensic pathology to
10 render an opinion on the cause of death of the
11 four individuals who were killed in the accident
12 on October 25, 1991?

13 MR. CLEARY: We'll so stipulate.

14 MR. RUDD: All right. Now that they've
15 stipulated, Your Honor, I'll ask he be qualified
16 and considered by this jury as a forensic
17 pathologist for the opinions he will testify to.

18 MR. CLEARY: So stipulated, Your Honor.

19 THE COURT: All right.

20

21 BY MR. RUDD:

22 Q Now that we've formally established your
23 forensic pathology background, you did conduct autopsies
24 of individuals that were killed in a car crash that

1 occurred on October 25th, 1991; correct?

2 A Yes, I did.

3 Q There were four individuals in the car,
4 Doctor, Phillip Michael Lambert, Tammy Rutherford, Lisa
5 Jordan and Chris Reyes?

6 A Yes.

7 Q Beginning, please, with Tammy Rutherford,
8 did you conduct her autopsy?

9 A Yes, I did.

10 Q In this particular case, after the bodies
11 were taken from a vehicle, they eventually were brought
12 to your office shortly thereafter. A conclusory
13 statement that obviously the people had been killed was
14 issued by Dr. Still in Craig County?

15 A Yes.

16 Q And then they were transported to the
17 Chief Medical Examiner's Office for you to examine them?

18 A Yes, that's correct.

19 Q How did you begin your -- first of all,
20 what was the deceased Tammy Rutherford's condition when
21 you first began your examination?

22 A The body was in a state of what we call
23 incineration. That means the body is charred to the
24 extent that it is not recognizable visually as the

1 person that he or she is known to be, and is instead
2 sort of reduced to a burned-out cinder, very much
3 smaller than their normal size and quite blackened and
4 charred, as a piece of coal would be.

5 Q And in all of these cases we've already
6 stipulated the identity, but that was determined through
7 medical records?

8 A Dental records, yes.

9 Q Dr. Massello, each one of these bodies
10 was in this incinerated condition. How did you begin
11 your autopsy on the deceased Ms. Rutherford?

12 A Well, you begin by externally examining
13 the body and seeing if you can find any material such as
14 clothing or personal effects which are stuck on the
15 body. You then photograph the body, and then you do the
16 best internal examination that you can, given the
17 condition of the body.

18 Q Were you able to conduct an internal
19 examination of the deceased, Ms. Rutherford?

20 A Yes, I was.

21 Q What did you find?

22 A We found that there was -- well, there
23 was a great deal of heat destruction of the internal
24 organs, which rendered them in essence less suitable for

1 examination as to what diseases might be present than
2 normal. But we found a great deal of blood or blood
3 clots present within the abdominal cavity or the area
4 here, which we sometimes call the stomach area.

5 Q What significance did you ascribe, if
6 any, to the blood clotting in the stomach region?

7 A This would indicate that there had been
8 bleeding into the abdominal cavity due to injury of
9 blood vessels and internal organs.

10 Q After having conducted the internal
11 examination, were you able to determine -- did you
12 conduct any other examination?

13 A Well, we collected the fluids for -- the
14 blood and bile, for toxicology. And that was about the
15 only other additional examination that we did, or I
16 think that you're interested in.

17 Q In this particular case, Ms. Rutherford,
18 blood and bile and possibly urine were sent off to the
19 lab?

20 A That's correct.

21 Q And the reason for sending that off to
22 the forensics lab in Richmond is what?

23 A This is normally done to determine the
24 presence of drugs or alcohol. And in the case of where

1 a body is burned, and there was fire associated with the
2 death, whether the person had breathed in any toxic
3 fumes or smoke.

4 Q And in this particular case, what was
5 your conclusion about the cause of death?

6 A This was due to injuries to the abdomen
7 due to an impact resulting from a motor vehicle
8 collision.

9 MR. RUDD: Excuse me just a moment,
10 Judge. Mr. Jones is simply going to retrieve a
11 document for me in relation to the next
12 witness. May he have the Court's permission to
13 go through here, Judge?

14 THE COURT: All right.

15

16 BY MR. RUDD:

17 Q Excuse me; I'm sorry, Dr. Massello. So
18 in this particular case, Ms. Rutherford was killed by
19 blunt injury to the abdominal region?

20 A That's correct.

21 Q Were you able to examine the body to the
22 extent that you are able to compare how severe those
23 injuries were, or not, with other cases?

24 A Well, you mean -- you can get -- you can

1 associate it with other cases; yes, in other words,
2 having done other cases, you know that there were --
3 well, let me review these. You can draw a rough
4 comparison of this with other similar types of events,
5 injuries received by other people in similar types of
6 events.

7 Q Are you able to give an opinion about the
8 size of the blunt object that would have struck the
9 abdomen region?

10 A No, I can't give you a precise size of
11 the exact impact point.

12 Q Are you able to tell the jury about the
13 degree of force that would have been required to cause
14 these injuries?

15 A I can tell you that there were some -- in
16 addition to abdominal injuries, which resulted in death,
17 there were facial injuries, and this would be a -- well,
18 the best way to describe the force would be a person in
19 an automobile crash, say in excess of 30 miles an hour,
20 or in excess of that. A 50-foot drop onto concrete;
21 this would be another example, say, that would give you
22 this.

23 Q All right. Would you say that the other
24 three autopsies you did of Michael Lambert, Lisa Jordan

1 and Chris Reyes also would lead to the conclusion of a
2 similar force?

3 A Yes. Well, they would indicate that
4 there's a lot of force being exerted; say much more
5 force than you would get from falling downstairs or
6 falling to the ground or tumbling down a hill or
7 something, injury of this type of event.

8 Q In each of the other cases, was the cause
9 of death similar to Ms. Rutherford's abdominal injury?

10 A Yes. Let me double-check all of this.
11 Yes, there were all of, one, two, three -- all of these,
12 yes -- well, one individual had head and chest injuries,
13 and the other two individuals autopsied at this same
14 time had abdominal injuries in addition to other
15 injuries.

16 Q And the person with head and chest
17 injuries was Mr. Lambert, I believe?

18 A That's correct. No, this is Mr. Reyes.

19 Q Mr. Reyes?

20 A Chest injuries without abdominal
21 injuries.

22 Q All right. Without going into each of
23 the other autopsies in great detail, is there any other
24 variance from what you've described concerning

1 Ms. Rutherford's injuries, in addition to what you've
2 already testified to?

3 A You say variance; you mean --

4 Q Aside from the facial and head injuries
5 of Mr. Reyes, each one of the individuals who was killed
6 had abdominal injuries. Anything else that you note in
7 your examination of any of the decedents that would
8 differentiate the cause of death from what you've
9 described in Ms. Rutherford's case?

10 A No. They all died of the same type of
11 force, which was a blunt impact force to the front of
12 the body.

13 MR. RUDD: I don't have any other
14 questions for Dr. Massello. Doctor, please
15 answer any questions Judge Pattisall or
16 Mr. Cleary or Ms. Knox may have.

17 MR. CLEARY: Judge, we don't have any
18 questions for this particular witness.

19 THE COURT: All right.

20 THE WITNESS: May I be excused?

21 MR. CLEARY: Doctor, if we may have a
22 sidebar before Dr. Massello is excused?

23 THE COURT: All right.

24 MR. RUDD: If Mr. Cleary might have a



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DIRECT EXAMINATION

BY MR. RUDD:

Q You are Dale Carpenter; correct?

A That's correct.

Q Mr. Carpenter, you are currently employed
by the division of forensic science?A Division of forensic science as the
western regional toxicologist, and also by the national
laboratory certification program as a laboratory
inspector.Q What do you do for the division of
forensic science? What's your job entail?A I am the supervising toxicologist for the
western lab.

Q What kind of work do you do?

A We analyze body fluids and tissues for
the presence of drugs, poison, and other chemical
substances, then make an evaluation as to their effects.Q Prior to taking this position, you
obviously had to have some extensive schooling?

A That's correct.

Q Where did you go to school?

A Started my academic career at

1 West Virginia University, where I obtained a bachelor of
2 science degree in chemistry, and that was 1983. Then I
3 moved to the University of South Carolina, where in 1990
4 I obtained my Ph.D. in chemistry.

5 Before actually obtaining my Ph.D. in
6 chemistry I became employed with the South Carolina law
7 enforcement division as a forensic toxicologist. And
8 then after finishing my Ph.D. work I accepted two
9 faculty positions with the University of South Carolina,
10 one in the department of chemistry as an organic
11 chemistry instructor, and the other in the college of
12 pharmacy as a research adviser for graduate students.
13 Then I moved to Virginia in 1992.

14 Q And when you moved to Virginia, at that
15 time did you become employed by the forensic science
16 division?

17 A That's correct.

18 Q The other job that you've mentioned, what
19 do you do for the national --

20 A It's the national laboratory
21 certification program.

22 Q What do you do for the national
23 laboratory certification program?

24 A I act as a consultant. And what we do is

1 we inspect federally regulated urine drug testing
2 laboratories as for their proficiency in operation.

3 Q When you came to the division of forensic
4 science, did you have any additional training besides
5 the doctorate that you've described and the bachelor of
6 science in chemistry from West Virginia?

7 A Nothing other than attending professional
8 meetings as they come available.

9 Q As part of your job, what you do is
10 analyze tissue samples, or blood samples; bile, urine,
11 sometimes, for the presence of alcohol?

12 A That's correct.

13 Q You have also testified -- have you ever
14 been qualified as an expert in toxicology in this court?

15 A I've been involved with civil cases in
16 Virginia.

17 Q For criminal court; you've qualified as
18 an expert in toxicology in DUI cases?

19 A I've testified as many as four times in a
20 day, six times in a week. I don't know how many times.

21 Q You've testified all over this circuit, I
22 know.

23 A Many times.

24 Q And you've testified throughout the

1 western region?

2 A That's correct, and once in Emporia.

3 Q So you've been qualified as an expert in
4 toxicology in circuit courts throughout the state of
5 Virginia?

6 A That's correct.

7 Q As part of your training, experience, you
8 have learned how to analyze tissue samples for the
9 presence of blood alcohol content?

10 A That's correct.

11 Q You're also trained and experienced in
12 testifying about the ways that alcohol affects a
13 person's motor coordination?

14 A Correct.

15 Q The way that alcohol affects a person's
16 perception?

17 A Correct.

18 Q The way that alcohol affects the
19 relationship between the person's perception of external
20 events and that person's ability to react?

21 A That's correct.

22 MR. RUDD: I'd like to introduce, as
23 Plaintiff's Exhibit C, Mr. Carpenter's resume'.
24 You've got a copy of this?

1 MS. KNOX: Yes, I have seen it.

2 MR. RUDD: I'd move this into evidence,
3 Your Honor, and I'd ask that Mr. Carpenter be
4 qualified as an expert in toxicology for the
5 purpose of giving opinions about the way blood
6 alcohol content affects a person's motor
7 coordination and perceptions, and the relation
8 between a person's perceptions and reactions,
9 and also the way that alcohol is ingested into
10 the body, eliminated from the body, what's
11 commonly thought of as the
12 absorption-elimination process; the way that
13 different tissue samples may be affected by
14 alcohol content.

15 I'd ask he be qualified as an expert in
16 toxicology for the purpose of rendering opinions
17 in those issues.

18 MS. KNOX: I'd like to conduct some voir
19 dire.

20 THE COURT: All right, Ms. Knox.
21
22
23
24

DIRECT EXAMINATION (Continued)

BY MR. RUDD:

Q Mr. Carpenter, have you been qualified as an expert in circuit courts throughout the state in all the areas -- and testified in all the areas I've just described?

A Yes, I have.

Q On numerous occasions?

A As many as four times in a day and six times in a week.

Q And this has gone on for --

A Seven years.

MR. RUDD: Seven years. I believe we've established his qualifications.

MS. KNOX: We have no objection, Your Honor.

THE COURT: All right. Dr. Carpenter is recognized as an expert in his field; toxicology and associated areas.

MR. RUDD: Thank you, Judge.

BY MR. RUDD:

Q Dr. Carpenter, let's talk about some of

1 the things you alluded to during your voir dire for the
2 purposes of establishing your qualifications as an
3 expert. You alluded to the fact that you have a
4 background in organic chemistry?

5 A That's correct. That's what I did my
6 Ph.D. dissertation in.

7 Q When alcohol is placed in a body, alcohol
8 that's drank in whatever form, beer, liquor, whatever,
9 initially what happens to the alcohol?

10 A Through passive diffusion it gets into
11 your bloodstream. Goes into the stomach, small
12 intestine, absorbed into the bloodstream.

13 Q Passive diffusion meaning it goes into
14 the stomach and then is absorbed out through the small
15 intestine into the blood?

16 A That's correct.

17 Q And that process is called absorption?

18 A That's correct.

19 Q What type of things affect the rate of
20 absorption of alcohol into the bloodstream?

21 A Certainly it's based on how much is
22 available to be absorbed. There have been long-standing
23 citations in the literature and in texts about food
24 delaying the absorption of alcohol.

1 In most cases I've found in the texts
2 where it says that, yes, it's true that alcohol could be
3 absorbed two hours after drinking from the stomach where
4 it's been absorbed through the food and gets off and is
5 available to get into the circulation.

6 But that alcohol that's being absorbed at
7 those later periods of time is a small amount compared
8 to what got you to your blood alcohol level, okay. What
9 we find with the later literature, the '92, '93 range,
10 is that food really only delays the time to peak by
11 about 10, 15 minutes compared to when you normally have
12 arrived at your peak, which is 30 to 45 minutes after
13 you drink.

14 Now, what it does do is it lowers that
15 theoretical maximum which you could have obtained.

16 Q You're talking about depending on the
17 amount of alcohol that goes into the system?

18 A Right.

19 Q When we talk about blood alcohol content,
20 a BAC that for example was reported in this
21 particular -- in one of the individuals as point-one-two
22 ethanol by weight by volume, what does that mean to you?

23 A That's the amount in grams per deciliter.
24 That's the number of grams for every deciliter of blood;

1 deciliter is a hundred milliliters.

2 Q So the one-two is going to be consistent;
3 it's a uniform testing mechanism for determining the
4 amount of alcohol in a person's system?

5 A Zero-point-one-two is a standard way to
6 say it in the forensic community. Now, in the clinical
7 community, that would be milligrams per deciliter, and
8 that would be equivalent to a 120.

9 Q On a point-one-two -- let me show you
10 what's been labeled as Plaintiff's Exhibit 12; this
11 refers to the blood alcohol content of a person named
12 Phillip Lambert. The analysis was conducted by J. D.
13 Armstrong in Richmond; I'm sure you're familiar with
14 him?

15 A Yes, I worked with Don Armstrong for the
16 first two months of my arrival in Virginia.

17 Q Point-one-two alcohol content, what
18 functions would point-one-two affect in a human being?

19 A I'll preface this by saying on a specific
20 night for a specific individual for a specific level I
21 cannot tell you what specific symptoms they would
22 express. I can't tell you that they would fall down, I
23 can't tell you they would have slurry speech, but I'll
24 give you the general symptomatology, and at this level I

1 would expect one or more of these symptoms to be
2 expressed.

3 Inhibitions and judgment are the first
4 things to be impaired, and that's why -- the mistaken
5 concept of alcohol being a stimulant is that you're --
6 normally your inhibitions are controlled; you drink
7 alcohol, those systems are depressed, so now you become
8 a little bit talkative, lively, early on in the drinking
9 episode. It's not that you're being stimulated; it's
10 actually depression of your natural inhibitions.

11 You move on to visual impairment at low
12 levels, fine motor skills impairment, gross motors
13 skills impairment, slowed reaction time. With regard to
14 the visual impairment, that can be tracking of multiple
15 targets, targets in the periphery --

16 Q How would you expect a point-one-two to
17 affect visual perception?

18 A It would have an effect. One perhaps
19 important issue with vision at this level would be glare
20 recovery, and it's something that you can't practice.

21 Q What is glare recovery?

22 A If we were to take a bright light and
23 shine and then remove that bright light, it's the amount
24 of time it takes for your eyes to recover back to a

1 normal lighting situation, and that has been slowed in
2 drinkers.

3 Q Let's talk for a second about something
4 related to an individual's vision. What happens -- the
5 optic nerve is involved with the visual process;
6 correct?

7 A Correct.

8 Q The optic nerve connects the brain with
9 the eye?

10 A That's correct.

11 Q How does alcohol at the molecular level
12 affect the incoming information that's perceived and
13 analyzed by an individual through their sight?

14 A Well, alcohol has many sites of action in
15 the body. Alcohol is distributed fairly much equally
16 throughout your total body water. So it's in your
17 bloodstream; it's in every tissue that you have water.

18 The action -- there are probably many
19 different types of action, but probably the single most
20 agreed-upon is the membrane interaction. Now, this
21 could be membrane interactions in organs, nerve cells --

22 Q Let's clarify something before you go any
23 further. You're talking about cell membrane?

24 A That's correct. Cell membrane

1 interaction.

2 Q And cell membrane is what, explain to the
3 jury what happens --

4 A It's the layer that protects the cell
5 from its outside environment. The cell has to interact
6 with its outside environment through ion exchange, or
7 the release or uptake of neurotransmitters.

8 Q Which are chemicals; correct?

9 A Which are chemicals. The alcohol is in
10 this environment outside the cell, all around the cell,
11 so it disrupts the cell's ability for ion transport.

12 Q In other words, is it fair to say it
13 interferes with the transfer of information, electrical
14 or chemical, from cell to cell?

15 A That's correct.

16 Q When we take information in through our
17 eyes, does that involve the transfer from cell membrane
18 to cell membrane of chemicals and electrical signals?

19 A It's a very complex process that starts
20 with just chemical changes in the retina, and so --

21 Q I don't mean to oversimplify --

22 A Right. Well, the problem here is that
23 alcohol is affecting many different sources, and to
24 pinpoint or isolate one, yeah, it's going to disrupt ion

1 transport in this nerve system, but it's also going to
2 affect other nerve systems and other organs.

3 Q Well, describe for the jury, besides the
4 eye, what other perception systems -- let me withdraw
5 that.

6 How does alcohol affect an individual's
7 motor coordination if the individual's alcohol content
8 is point-one-two, blood alcohol content?

9 A Well, certainly it's a disruption of the
10 central nervous system. It's a depression of the
11 central nervous system. Can it do it in a single way,
12 or multiple ways? I don't think we're ever going to
13 know how many ways alcohol can disrupt or depress the
14 central nervous system.

15 Q You're familiar with the legal blood
16 alcohol going from point-one-oh to point-oh-eight?

17 A That's correct.

18 Q And you've testified in many DUI cases
19 involving that?

20 A That's correct.

21 Q Can you describe for the jury why -- let
22 me withdraw that.

23 Point-oh-eight currently is a level of
24 alcohol that's considered -- a person who has that is

1 driving under the influence?

2 A That's correct.

3 Q How does alcohol at the level
4 point-one-two affect a person's driving?

5 A We went through the general
6 symptomatology earlier, the inhibition, judgment, fine
7 motor skills, slowed reaction time, gross motor skills,
8 visual impairment; all those things can be adverse to
9 one's driving.

10 To tie it together, going back to what I
11 said earlier, with the fellow who I noticed with the
12 one-six who was in control and the fellow I noticed with
13 the one-five who was falling down, that's a very small
14 difference between those two levels, and they're
15 flip-flopped on what we would expect, one to be drunker
16 than the other.

17 It's well-documented in the literature
18 that people with elevated blood alcohol levels, chronic
19 alcoholics, can perform single-functioning tasks
20 relatively flawlessly.

21 Q Give us an example, please, of a single
22 functioning task.

23 A Well, it's not truly single-functioning,
24 but let's say I were to get up, step down, go by the

1 board and out the door. There are alcoholics who could
2 get down and do that without being noticed.

3 Q When you're talking about
4 documented chronic alcoholics -- excuse me; literature
5 that refers to chronic alcoholics and bases conclusions
6 on how alcohol affects the chronic alcoholic, what do
7 you mean by "chronic alcoholic"? How often is that
8 person drinking, and what rate?

9 A Well, I guess I didn't define -- I mean,
10 if you use the strictest definition I've heard, it's one
11 drink a day, and I'm not talking about one drink a day.
12 These people are doing -- to get to a three-four,
13 they're doing some serious drinking and they do it
14 frequently, and they're used to the effects of alcohol.

15 Q So chronic alcoholic in the literature is
16 somebody who may be getting up to a three-four on a
17 regular basis?

18 A Regular basis. Now, let me go back to
19 another single-function task: slowed reaction time.
20 It's something you can't mask, you can't cover up, like
21 walking. When walking, you might use a wider stance;
22 you're might walk a little slower, you're a little more
23 careful, so in a social setting we might not notice this
24 person.

1 Going back to the reaction time, let's
2 say we were to put a light in front of a chronic
3 alcoholic, and we were to say, When you see that light,
4 you press this button, they might not do that bad. But
5 that's not realistic. They are sitting there studying
6 that light; they have no other task to perform but watch
7 that light. When that light comes on, they hit the
8 button.

9 Driving reaction time is totally
10 different. It could be a number of things; braking,
11 turning. So when we talk about driving, we're talking
12 about a multifunctioning task: lane control, speed
13 control, perception of signs, perception of dangers,
14 tracking other cars.

15 So when you put a person who can walk or
16 talk with elevated blood alcohol into that environment,
17 you increase the complexity of the task, they will break
18 down, they will make mistakes.

19 Q Is it your opinion with a reasonable
20 degree of scientific certainty that a point-one-two
21 would or would not affect a person's driving ability?

22 A It does, and I would expect one or more
23 of those symptoms that I -- general symptomatology to
24 be expressed at that level.

1 Q Is it your opinion with a reasonable
2 degree of scientific certainty that a point-one-two
3 would or would not affect a driver's ability to manage
4 his or her speed, keep a lookout for signs, other road
5 obstructions, negotiate turns?

6 A If you put an alcoholic, somebody who is
7 experienced with drinking, in a car, and their only
8 function was to keep it between the lanes, they may do
9 that. But when you add all the other factors, signs,
10 speed control, all the things you mentioned, that's when
11 you break down, and that's when you -- mistakes occur.

12 Q Then it's your opinion that the
13 point-one-two would affect all of those areas?

14 A I would go back to what I said, that I
15 would expect one or more of those symptoms, and all
16 those symptoms that I described would be adverse to
17 one's driving could be expressed. One or more of them
18 could be expressed; all of them could be expressed.

19 MR. RUDD: I don't have any other
20 questions for Dr. Carpenter. I'm sure that
21 someone on the other side may.

22 THE COURT: Mr. Cleary, Mrs. Knox?

23

24

CROSS EXAMINATION

BY MS. KNOX:

Q Dr. Carpenter, you were talking about, or Mr. Rudd was talking about, the current legal level for driving under the influence being point-oh-eight. That of course was not the level back in 1991, was it?

A No. And when we talk about these legal levels, these are administrative numbers, and --

Q I understand. I just wanted to establish that it was not point-oh-eight at the time of this case.

A Oh, okay.

Q And you've been talking about chronic alcoholics. Is there some reason why you keep talking about a chronic alcoholic?

A What I'm trying to do is paint the picture that in society, alcohol does not affect everyone the same way, and that I would not come in here and try to tell you that you don't know an individual who can drink a twelve-pack and walk a straight line.

Maybe that person is out there, but they are not safe drivers. That's why I take the worse-case scenario, which is a chronic alcoholic, versus a naive teenager or whatever.

1 Q I just wanted to make it clear to this
2 jury that you have no information whatsoever that Mike
3 Lambert was a chronic alcoholic.

4 A No, no. The only reason I did that was
5 to try to paint the whole window and bring in the fact
6 that most of us have some perception or social
7 interaction with people who drink, and what we see may
8 not -- we may get misinformation from what we see, and
9 that's all I was trying to do.

10 MS. KNOX: Okay. Thank you. I have
11 nothing further, Your Honor.

12 THE COURT: Any redirect?

13 MR. RUDD: No, sir.

14 THE COURT: All right. Thank you,
15 Doctor.

16 MR. RUDD: Judge, I'd move to introduce
17 the certificates of analysis that we alluded to,
18 Plaintiff's Exhibit 12, 13, 14, and 15. They're
19 alluded to in the stipulation that was
20 previously introduced.

21 MS. KNOX: Okay. No objection. I mean,
22 we've already agreed.

23 THE COURT: The certificates of analysis
24 are received in evidence, then, as Plaintiff's



1 understand the impact of her sister's death on her?

2 A Sometimes when she gets like that, you
3 don't know if she wants to live. You can't do anything
4 for her, you can't help her, can't talk to her, all you
5 can do is leave her alone. It's all I can do. If I do
6 anything, it makes it worse.

7 MR. RUDD: I don't have any other
8 questions.

9

10 CROSS EXAMINATION

11

12 BY MR. CLEARY:

13 Q Mr. Young, do you know Special Agent
14 Keesee with the Virginia State Police Department?

15 A Yes, I do.

16 Q He works in homicide, as far as you know?

17 A Yes, sir, as far as I know.

18 Q And he investigated the accident?

19 A He didn't investigate the accident, he
20 looked into it after the police did.

21 Q He looked into it for the purpose of the
22 contention of you and your other family members that
23 your sister had been murdered?

24 A Yes.

REDIRECT EXAMINATION

BY MR. RUDD:

Q You know his conclusion about that murder, too, don't you?

A Yes, sir.

Q No one charged, no suspects?

A Right.

MR. RUDD: Okay. Nothing further, Judge.

THE COURT: Anything further?

MR. CLEARY: No.

MR. RUDD: What's your pleasure, Your Honor, as far as --

THE COURT: How long do you expect Ms. Young?

MR. RUDD: Well, as we discussed, it could be a while. Probably 45 minutes to an hour.

THE COURT: 45 minutes, an hour. Well, let's see if we can get her testimony in today, if you're prepared to go through.

MS. KNOX: Were you saying 45 minutes to an hour on direct?

10/23/95

RCP

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

ROBIN R. YOUNG and ROBERT R. YOUNG,)
Administrators of the Estate of)
Tammy Rutherford, Deceased,)

Plaintiffs,)

v.)

Case No. CL-93-0171

MARGARET A. LAMBERT,)
Administratrix of the Estate of)
Phillip M. Lambert, Deceased,)

Defendant.)

STIPULATIONS BY THE PARTIES

The parties to this action, through counsel, have agreed to, and hereby do, stipulate to the following facts relative to this case. It is understood that these stipulations are made to facilitate as efficient a trial as possible given certain rulings by the court to date and that, in making these stipulations, neither party waives his or her objection for purposes of appeal to any matters heretofore raised before the Court.

The parties stipulate that:

1. On October 25, 1991, at approximately 2:30 - 2:45 a.m. the following individuals were involved in the motor vehicle accident in question:

Phillip Michael Lambert
Tammy Rutherford
Lisa Jordan Jones
Christopher Reyes

2. All four of the above-named individuals died immediately, or very nearly so, as a result of said motor vehicle accident.

3. The bodies of all four of the above named individuals were burned beyond recognition in a fire that began sometime after the impact of the crash.

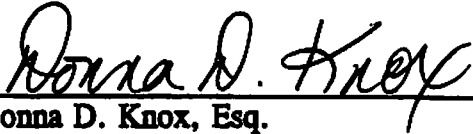
4. The bodies of the four named individuals were found in the respective seats of the vehicle listed below:

Phillip Michael Lambert:	Left front, driver's seat
Lisa Jordan Jones:	Right front, passenger seat
Christopher Reyes:	Left rear seat
Tammy Rutherford:	Right rear seat

5. Blood, urine and bile samples were taken from the bodies of the four named individuals by the medical examiner who performed autopsies on the bodies. Said samples were transported to the Commonwealth of Virginia Department of Forensic Science, in Richmond, where tests were performed to determine the level of alcohol in each sample at the time of death for each individual. The results of those tests were as follows:

Christopher Reyes: (FS File # W91-06192)	.17% blood alcohol; .15% urine alcohol
Lisa Jordan Jones: (FS File # W91-06193)	.13% blood alcohol; .16% urine alcohol .13% bile alcohol
Phillip Michael Lambert: (FS File # W91-06189)	.12% blood alcohol
Tammy Rutherford: (FS File # W91-06186)	.10% blood alcohol; .09% bile alcohol

6. The blood, urine, and bile alcohol test results referenced in Paragraph No. 5 above are correct, and the corresponding certificates of analysis will be admitted at trial, without objection.



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of the Estate of Tammy Rutherford, Deceased.



Plaintiff's Exhibit No. 3 - Photograph of Roadway from a Distance



Plaintiff's Exhibit No. 4 - Photograph of Roadway with Skid Marks



Plaintiff's Exhibit No. 5 - Photograph - Close-up of Skid Mark



Plaintiff's Exhibit No. 6 - Photograph of Accident Scene



Plaintiff's Exhibit No. 7 - Photograph of Shoulder of Roadway



Plaintiff's Exhibit No. 8 - Photograph - Close-up of Tree Struck



Plaintiff's Exhibit No. 9 - Photograph of Tree Struck



Plaintiff's Exhibit No. 10 - Photograph - Close-up of Accident Scene
(where vehicle came to rest)



Plaintiff's Exhibit No. 11 - Photograph of Accident Scene
(where vehicle came to rest)

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE
CITY OF ROANOKE

* * * * *

ROBIN R. YOUNG, and ROBERT R.
YOUNG, Administrators of the
Estate of TAMMY RUTHERFORD,
Deceased,

Plaintiffs,

-VS-

MARGARET A. LAMBERT,
Administratrix of the Estate
Of PHILLIP M. LAMBERT, Deceased,

Defendant.

* * * * *

CASE NO.: CL93-171

VOLUME II

October 24, 1995

9:30 a.m.

HEARD BEFORE:

THE HONORABLE ROBERT C. PATTISALL

CENTRAL VIRGINIA REPORTERS
PO BOX 12628
ROANOKE, VIRGINIA 24027
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APPEARANCES:

JEFFREY D. RUDD, ESQ.
Roanoke, Virginia

JONES & GLENN, ESQS.
Roanoke, Virginia
BY: **BRIAN R. JONES, ESQ.**

Counsel on behalf of the Plaintiffs

WOODS, ROGERS & HAZLEGROVE, ESQS.
Roanoke, Virginia
BY: **DONNA L. KNOX, ESQ.**
MICHAEL A. CLEARY, ESQ.

Counsel on behalf of the Defendant

* * * * *

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
FOR THE PLAINTIFFS				
Lynwood Day, Ph.D.	5	14	23	-
Barry R. Keesee	25	31	37	-
Robin Young	40	46	55	56
Wiley Rutherford, Jr.	57	-	-	-
Plaintiffs Rest			60	
FOR THE DEFENDANT				
Margaret Lambert	79	-	-	-
Kenneth Barton	87	-	-	-
Jerry Woolwine	91	-	-	-
John Franklin	94	97	-	-
Danny Montgomery	97	106	-	-
Theresa Harmon	108	116	-	-
Destinie Brads	125	135	-	-

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E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
FOR THE PLAINTIFFS		
16		42
17	List of funeral expenses incurred	16

Agent Keesee - Direct

*

*

*

1

BARRY R. KEESEE

2

3

was called as a witness and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

6

7

DIRECT EXAMINATION

8

9

BY MR. RUDD:

10

Q Good morning, Agent Keesee.

11

A Good morning, sir.

12

Q I appreciate your being here just a couple

13

minutes earlier than I told you we might need you.

14

You are employed by the State Police?

15

A Yes, sir, I am.

16

Q How long have you been with the State

17

Police?

18

A Going on 31 years.

19

Q Are you still with BCI?

20

A Yes, sir, Bureau of Criminal

21

Investigation.

22

Q Over what time frame have you been with

23

BCI?

24

A Twenty-six years.

Agent Keesee - Direct

1 Q During that time what have you primarily
2 done?

3 A Well, for the last several years I have
4 been a homicide investigator.

5 Q Last several years, how long?

6 A Probably 16, 17 years.

7 Q During that time period you have received
8 extensive training about homicide investigations?

9 A Yes, sir.

10 Q Through the State Police?

11 A State Police and other organizations.

12 Q About how many homicide investigations do
13 you think you have conducted over that sixteen-year
14 period?

15 A To tell you the truth I don't keep up with
16 them. Probably 45 or 50.

17 Q In comparison to other agents of the State
18 Police, how does your experience rate?

19 A As far as investigating homicides?

20 Q Yes. In other words, you have been there
21 about as long as anybody, right?

22 A Yes, sir.

23 Q Do you recognize the people seated to my
24 right, Robin and Robert Young, to my right?

Agent Keesee - Direct

1 A Yes, sir.

2 Q Were you involved in the investigation of
3 a homicide as a result of a car accident that happened
4 back in 1991?

5 A Yes, sir. The uniform division of the
6 Virginia State Police initially investigated the accident
7 that occurred in Craig County on Route 311 north of New
8 Castle.

9 Approximately a month later -- the
10 accident occurred on Friday October 25, 1991.
11 Approximately a month later they assigned me to look into
12 the accident to determine if there was any foul play or
13 if there was a homicide involved in the accident.

14 Q Agent Keesee, how long did you investigate
15 this?

16 A Off and on for over a year.

17 Q About how many witnesses do you think you
18 interviewed over that time frame?

19 A It was several, sir, probably ten or
20 fifteen, maybe more.

21 Q Were you able to ever bring charges
22 against anyone?

23 A No, sir.

24 Q In your experience of conducting homicide

1 investigations, you have at different times brought
2 charges against individuals for murder?

3 A Yes, sir.

4 Q That requires you to make a finding in
5 good faith that there is probable cause to believe an
6 individual has committed a murder?

7 A That is correct.

8 Q In this particular case how far or how
9 close were you to identifying a suspect?

10 A There never was a suspect in the deaths of
11 these four young people.

12 Q You spoke with Robin and Robert Young
13 about this case?

14 A Yes, sir.

15 Q What do you think got the homicide
16 investigation moving to begin with?

17 A Well, I think Mr. and Mrs. Jordan, the
18 parents of Lisa Nichole Jordan, and Mr. and Mrs. Young,
19 Mrs. Young being the sister of Tammy Lynn Rutherford, and
20 the grandmother of Tammy Rutherford, they had concerns as
21 to whether or not the vehicle had been forced off the
22 road by some unknown person or persons and had caused it
23 to wreck, and that prompted the case being assigned to me
24 as a homicide investigator to look into this situation.

Agent Keesee - Direct

1 And that was how it basically got started
2 as far as being assigned to me to see if there was any
3 indication that the vehicle had been forced off the road.

4 Q As a result of this investigation
5 starting, I gather you discussed this with Trooper Trott?

6 A Yes, sir.

7 Q As well as Trooper Bowen perhaps or at
8 least --

9 A I believe Trott and a couple of the
10 troopers that did the crash analysis investigation of the
11 accident scene.

12 Q How would you describe the degree of
13 credible evidence to support the notion that this car was
14 forced off the road?

15 A I didn't find any credible evidence to
16 indicate that this automobile was forced off the road.

17 Q You arrived at that conclusion after
18 conducting your investigation for a year?

19 A Yes, sir.

20 Q Is it usual or unusual for someone who has
21 experienced a loss of a family member to approach the
22 State Police about a homicide possibility?

23 A Well, in this particular case concerning
24 the young people involved in the time and the place that

Agent Keesee - Direct

1 it occurred, away from where they ordinarily abode, would
2 be the Roanoke area -- this happening in Craig County --
3 it is not so unordinary to me from the standpoint of
4 being a homicide investigator to have concerned parents
5 to want a further inquiry from the investigation.

6 Q As a result of your experience, you dealt
7 with many family members who have lost individuals in
8 suicide cases or accident cases?

9 A Yes, sir.

10 Q And then have begun to conduct
11 investigations into whether or not a homicide exists?

12 A That is correct. I mean, it is not great
13 numbers. Generally the ones that I investigate are
14 homicide.

15 Q Have you had other cases in which you
16 found no credible evidence to support the notion that a
17 person was murdered?

18 A This is the only one. All other cases
19 that I can think of that I have investigated the victims
20 were murdered.

21 MR. RUDD: Thank you very much. Please
22 answer any questions Judge Pattisall or either
23 Mr. Cleary or Ms. Knox may have.

24

Agent Keesee - Cross

CROSS-EXAMINATION

BY MS. KNOX:

Q Agent Keesee, it is not customary, is it, for homicide to be brought in to investigate motor vehicle accidents?

A Not as a general rule.

Q In fact, haven't you previously stated that the most -- actually all of these family grief reactions that you have talked about where they have sought to find some other explanation were suicides and that this is the first time that you have seen this in a case of a motor vehicle accident?

A Well, as far as the motor vehicle accident scenario in this case, it is a first, but inquiries are made often by the parents or close relatives of victims in unusual automobile or vehicle accidents, but they are not pursued to the degree that this one was pursued.

Q Let's talk about that a little bit. You received the case in November of 1991, correct?

A Yes, ma'am.

Q You kept the file open until March of 1993?

A Yes, ma'am.

Agent Keesee - Cross

1 Q During that time you spoke with the
2 Rutherfords, as you have mentioned, and the Jordans and
3 you spoke with all of them on more than one occasion,
4 didn't you?

5 A Yes, ma'am.

6 Q Throughout that time period they -- I
7 think the word you used in the past was they insisted
8 that this was not an accident but that it was a homicide,
9 correct?

10 A They were very adamant that they thought
11 their relatives were murdered.

12 Q And the reason they thought that their
13 relatives were murdered was because they had been
14 threatened, correct?

15 A They said they had by --

16 Q That was their report to you?

17 A -- somebody.

18 Q Their report was that their daughter and
19 the cousin and the other daughter had been forced off the
20 road and their belief was because it was due to an unpaid
21 drug debt of Tammy Rutherford and Robin Young's father to
22 a man we will not name because there is no need to name
23 him here and now, and that the girls had been threatened
24 specifically with regard to that death; is that correct?

Agent Keesee - Cross

1 A That was their theory.

2 Q In fact, the family had been threatened in
3 more than one way and on more than one instance, isn't
4 that correct, according to them?

5 A According to what they said.

6 Q I understand you don't have any first-hand
7 knowledge of this. I am talking about what their report
8 was to you. That is understood.

9 There were other concerns that they
10 reported to you. Mr. Young, for example, reported
11 himself to be what we would call a self-acclaimed expert
12 in vehicular damage resulting from motor vehicle
13 accidents, and he and those with him were adamant that
14 the damage to the rear of the car could not have been
15 caused by just coming down against the second tree.
16 Isn't that true?

17 A Mr. Young told me that his experience in
18 towing automobiles and vehicles -- he is in the towing
19 business -- that the damage on the automobile that the
20 victims were in, the damage to the rear bumper could not
21 have been made by the tree that it came down in between,
22 and he never changed that.

23 Q You have characterized their conviction on
24 this theory as a strong one, haven't you?

Agent Keesee - Cross

1 A As far as their belief that it was
2 homicide?

3 Q Yes.

4 A Yes, ma'am.

5 Q This was not a passing belief, was it?

6 A No, ma'am.

7 Q In fact, as far as you know they never
8 changed that belief, did they?

9 A Not as far as I know.

10 Q In fact, haven't you previously stated
11 that as late as the summer of 1993 it was your
12 information that they were still pursuing the matter?

13 A Yes, ma'am.

14 Q When I say pursuing it, they didn't just
15 pursue it with you, did they?

16 A No, ma'am.

17 Q Didn't they, in fact, write letters and/or
18 make phone calls to the Colonel of the State Police?

19 A I believe letters were written to the
20 Colonel of the State Police and the Secretary of Public
21 Safety for the Commonwealth of Virginia.

22 Q Didn't they contact several state
23 legislators to move this along?

24 A (Nods head affirmatively)

Agent Keesee - Cross

1 Q Wasn't the family --

2 A Yes.

3 Q Excuse me. I saw your nod.

4 Wasn't it your information that, in fact,
5 Mr. Rutherford himself, the man who reportedly was
6 involved with the drug debt, was cooperating with
7 narcotics to facilitate an investigation into this
8 matter?

9 A Yes, ma'am.

10 Q The only other question I have, at some
11 point wasn't there a report -- and I guess as it turns
12 out it was unrelated to this accident, but I did want to
13 establish that there was a deer that had been killed
14 right on this very stretch apparently sometime after this
15 accident, but there was a deer that had been hit and
16 killed on this stretch of the road. Wasn't there a
17 report to you?

18 A I was told by Mr. Young that --

19 Q I realize it was not related to this
20 accident. I am not trying to --

21 MR. RUDD: Then why is it relevant?

22 MS. KNOX: It is relevant to this case.

23 MR. RUDD: I will stipulate deer have
24 crossed the road, 311, near that location and

Agent Keesee - Cross

1 have been killed before over the past 20 years.

2

3 BY MS. KNOX:

4 Q Agent Keesee, at some point in your
5 investigation did you speak with the Plaintiff's mother
6 Betty Rutherford?

7 A Yes, ma'am. I knew Betty from where she
8 worked at the Texaco, Wildwood Texaco. Also, I knew
9 Tammy when she worked there briefly with her mama.

10 Q Didn't at some point Betty Rutherford make
11 the comment to you that "They are all getting greedy
12 now"?

13 MR. RUDD: Objection. If she wants to get
14 into what Betty has said, she can call her as a
15 witness.

16 MS. KNOX: That would be fine. You can
17 hold Agent Keesee if necessary until I --

18 MR. RUDD: If you want to hold Agent
19 Keesee, you can do that.

20 MS. KNOX: That's what I meant.

21 THE COURT: Sustain the objection.

22 MS. KNOX: Nothing further at this point.

23

24

REDIRECT EXAMINATION

Agent Keesee - Redirect

1

2 BY MR. RUDD:

3

4

5

6

Q We have gotten into the fact now that there was a strong conviction by Mr. and Mrs. Young that some foul play resulted in Tammy Rutherford's death, correct?

7

A Yes, sir.

8

9

10

Q We have gotten into the fact that you had actually seen Tammy Rutherford and knew her from that particular gas station, service station, correct?

11

A That is correct.

12

13

Q How would you describe Tammy Rutherford to this Jury?

14

15

16

17

18

MS. KNOX: I will object, Your Honor. It is totally irrelevant to this case what kind of person Tammy Rutherford is. We will stipulate that although we never met her, she was a wonderful girl.

19

20

It has nothing to do with the issues in this case.

21

22

MR. RUDD: Fine. I will withdraw the question.

23

24

BY MR. RUDD:

Agent Keesee - Redirect

1 Q Agent Keesee, Ms. Knox has brought up the
2 fact that there was strong belief by Mr. and Mrs. Young
3 that foul play had resulted in the death of Tammy,
4 correct?

5 A Yes, sir.

6 Q You have had 16 years of experience in
7 dealing with homicide cases, correct?

8 A Yes, sir.

9 Q You testified a moment ago that there was
10 no credible evidence to support this murder theory,
11 correct?

12 A That is correct.

13 Q That judgment is based upon your
14 experience and training as a State Police agent dealing
15 with homicide cases?

16 A Yes, sir.

17 Q What is your professional opinion as to
18 why it is that two people would continue to believe
19 something like that in spite of all the evidence to the
20 contrary?

21 A They can't accept the fact that their
22 loved ones died as a result of an accident.

23 MR. RUDD: I don't have any other
24 questions.



1 occasion, a Doctor Sarvay, do you remember that, in
2 October of 1994?

3 A Yes.

4 Q You told Doctor Sarvay, did you not, that
5 this litigation is keeping your grief alive for you? Do
6 you recall that?

7 A No, I don't.

8 Q You don't recall telling him first that
9 you fantasize about what might or might not have happened
10 and that this litigation is keeping your grief alive for
11 you?

12 A No. I didn't tell him I fantasized
13 either.

14 Q Let's see if we can look to his notes?

15 MR. RUDD: She has answered your
16 question. I'm going to object to the
17 introduction of his notes.

18

19 BY MS. KNOX:

20 Q I wasn't going to introduce the notes. I
21 wanted to see if it might refresh your recollection, but
22 if you don't recall that we will leave it alone.

23 Just a couple questions about this murder
24 theory that we have been hearing about. Tammy told you

Ms. Young - Cross

1 that she had been threatened, didn't she, that she and
2 Lisa had been threatened?

3 A Two weeks before my brother and my
4 sister's house was broken into and she had went over to
5 that person's house and knocked on the door because she
6 thought it was my father who did this and was looking for
7 my father, he did make a remark to her but I didn't hear
8 it. I just heard from my sister.

9 Q In fact, she told you that the remark was
10 that he could have them killed for \$500 and make it look
11 like an accident. Isn't that your recollection?

12 A I am not real sure what the remark was.

13 Q Does that ring a bell with you? You
14 testified before --

15 MR. RUDD: Objection. She just answered
16 the question. Bring in your witness to testify.

17 MS. KNOX: I am trying to be delicate. I
18 can whip out her deposition.

19 THE COURT: Rephrase your question.

20

21 BY MS. KNOX:

22 Q Do you recall giving your deposition in
23 this case on August 3rd of this year?

24 A Yes.

Ms. Young - Cross

1 Q Do you recognize -- actually she waived
2 signature. Is that your signature or did you waive?

3 A I waived.

4 Q But you recall giving your deposition. I
5 will have you review this testimony and see if you can
6 recall whether or not this is a statement that you made.

7 If you would take a look at it and then I
8 will ask you the question again.

9 MR. RUDD: What page are you on?

10 MS. KNOX: Page 45 of her deposition
11 starting at line two.

12 THE WITNESS: It says yes but I don't
13 remember it. I am not sure.

14

15 BY MS. KNOX:

16 Q Have you read the testimony?

17 A Yes, I did.

18 Q Now, do you recall then my question when I
19 asked you about the fact that Tammy and Lisa had gone
20 over to this man's house and had a confrontation with him
21 and that it came back -- and this is what I was
22 presenting to you in the form of a question -- that he
23 said "Better watch out" -- and I was admitting that those
24 were my words, that particular phrase -- "I can have you

Ms. Young - Cross

1 killed for \$500 and make it look like an accident"?

2 Do you recall at any time hearing that and
3 your answer was "Yes, I do recall it now, yes"?

4 Do you recall giving that testimony during
5 the deposition?

6 A Yes, and if you read on it says I don't
7 really remember that.

8 Q I believe the message was that "I think it
9 was Tammy. I can't remember," is your next statement,
10 and that was in response to my question "Who did you hear
11 it from?" Do you recall that after having read it?

12 A I recall you asking me the question.

13 Q Do you recall giving the testimony that I
14 just read?

15 A Yes.

16 Q The only other question that I wanted to
17 ask you about this, I was asking you again about the
18 threats posed to your sister -- would you like to look at
19 this? Why don't we have you refresh your memory. We are
20 on page 48.

21 I am only going to be questioning you
22 about the top of the page but take your time and read
23 what you like.

24 Have you had a chance to review it? In my

Ms. Young - Cross

1 question to you I was referring to the Answers to
2 Interrogatories which you have provided in this case,
3 which is a sworn statement.

4 Do you recall that you made that? It was
5 an answer in writing earlier in this case. I was quoting
6 you from your interrogatories where you had said, "Evan
7 said he knew where she lived," meaning Tammy, "He knew
8 where you lived and that he would hurt you through your
9 dad -- hurt your dad through his family one by one and
10 that he could make it look like an accident."

11 That was my question to you, and then I
12 asked you -- that was my statement to you and my question
13 was "Is that the same threat basically we are talking
14 about or a different threat," and your answer was "No, I
15 think that is the only one that I know of."

16 Do you recall giving that testimony?

17 A I recall giving a stack of papers of
18 questions that I had asked pertaining to this.

19 Q I am asking you if you recall --

20 A That is all that I do recall, is handing
21 those papers over.

22 Q Do you recall making this statement here
23 in the deposition or do you acknowledge that it says that
24 in your deposition?

Ms. Young - Cross

1 A That was in the top of the paper. That is
2 all that I remember. No, I don't remember it being in
3 the deposition.

4 MS. KNOX: Thank you, Ms. Young. That is
5 all that I have at this time.

6

7 REDIRECT EXAMINATION

8

9 BY MR. RUDD:

10 Q Robin, do you continue to believe that
11 your sister was murdered?

12 A No. I believe that the person driving the
13 vehicle lost control or something. I don't understand
14 how they went directly straight into the tree with so
15 many skid marks directly to the tree. No, I don't think
16 anyone else had anything to do with it.

17 Q Why do you no longer believe that?

18 A No longer think what?

19 Q That someone else had something to do with
20 it, outside parties.

21 A I didn't really in the beginning. I just
22 questioned it. I didn't know what to think at the time.
23 I just questioned a lot of things.

24 I wanted to make sure that that was not

Ms. Young - Redirect

1 what happened.

2 Q Ms. Knox has brought out the fact that
3 perhaps this ongoing litigation, also known as this case,
4 courtroom proceedings, what have you, has delayed or
5 inhibited your ability to get over it.

6 Do you feel responsible for the fact that
7 this case has taken this long to get resolved?

8 A No. That it is my fault?

9 Q Yes.

10 A No.

11 Q Do you think it is my fault?

12 A No.

13 MR. RUDD: I don't have any other
14 questions.

15

16 RECROSS-EXAMINATION

17

18 BY MS. KNOX:

19 Q Ms. Young, when did you file the lawsuit?

20 A Sometime right after it happened.

21 Q Does February of 1993 sound familiar? If
22 not we can get out the Motion for Judgment.

23 MR. RUDD: I will stipulate to that.

24 MS. KNOX: Thank you. Nothing further.

MS. KNOX: We call Margaret Lambert.

MARGARET LAMBERT

was called as a witness and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. KNOX:

Q Would you state your name and address for the Record, please.

A Margaret Lambert, 2120 Mountain View Terrace, Southwest.

Q Mrs. Lambert, what was your relationship to Phillip Michael Lambert?

A He was my son.

Q How old was Mike?

A He had just turned 21.

Q At the time of his death?

A Yes.

Q He was referred to as Mike --

A Yes.

Ms. Lambert - Direct

1 Q -- even though his name is formally
2 Phillip; is that correct?

3 A Yes.

4 Q Where did Mike live at the time?

5 A He lived with his father and me.

6 Q Where was that?

7 A 2120 Mountain View -- I mean, 1319
8 Campbell.

9 Q Are you familiar with the neighborhood
10 where Chris Reyes lived, Patterson?

11 A Yes.

12 Q Where is your residence in relation to
13 that?

14 A It is about three blocks and one street
15 over.

16 Q Is today the first time that you have ever
17 seen the Plaintiff, Ms. Young?

18 A No.

19 Q When have you ever seen her before?

20 A I saw her about two weeks after my son was
21 killed.

22 Q Where was she at the time?

23 A She was at the garage where her husband
24 works.

Ms. Lambert - Direct

1 Q What was she doing?

2 A She was sitting there at the desk right
3 there in a chair and I asked her -- my husband and I
4 asked her if we could see the car and she said we would
5 have to wait until her husband come out.

6 Q Could you describe her demeanor for the
7 Jury?

8 A She seemed all right to me.

9 Q Did she appear to be working?

10 A Yes.

11 Q I want to talk now about Mike and his
12 friends. Did Mike work?

13 A He worked at Roanoke Fruit and Produce.

14 Q What shift did he work?

15 A He usually went around 5:00 in the
16 afternoon and he would get off at around 10:00 or 11:00
17 at night.

18 Q Were you familiar with any of his friends?

19 A A couple of them.

20 Q Did you know Chris Reyes?

21 A Yes, he called him Paco.

22 Q How did you know Paco?

23 A Because Michael had run with him, they
24 hang together.

Ms. Lambert - Direct

1 Q How old was Paco?

2 A He had just turned 16.

3 Q Could you describe him physically in terms
4 of height and everything?

5 A I think he was around five foot, ten,
6 close to six foot tall.

7 Q Was he what you might call a good looking
8 man?

9 A Yes. He is big for his age.

10 Q Had you ever had occasion to visit with
11 him or talk to him?

12 A Yes.

13 Q How would you describe him in terms of
14 maturity?

15 A He was really big for his age. I'd say he
16 weighed maybe 165 or 70 pounds.

17 Q I mean the way he acted.

18 A He was mature for his age.

19 Q Did you know Lisa --

20 A No.

21 Q -- Jordan?

22 A No, ma'am.

23 Q Did you know Tammy Rutherford?

24 A No, I didn't know her.

Ms. Lambert - Direct

1 Q Did you know who she was?

2 A Yes.

3 Q How did you know who she was?

4 A She came by the house one day in her car
5 and Christopher Reyes was driving the car and she tooted
6 the horn to my son. We were out in the front yard and I
7 asked him who that was and he said that is Tammy
8 Rutherford.

9 Q Is that the only time you have seen --

10 A No. I had seen her several times,
11 together, that he's been driving her car.

12 Q Are you talking about Chris Reyes?

13 A Yes.

14 Q Could you describe the car that you are
15 talking about?

16 A Yeah, it's a yellow Oldsmobile.

17 Q I want to talk about the day October 24,
18 1991. That would be the evening before Mike was killed
19 with the others. Had Mike been home that day?

20 A Yes, he had been home all day.

21 Q What was he doing at home that day?

22 A He was asleep. He had worked the night
23 before.

24 Q What time did he get up?

Ms. Lambert - Direct

- 1 A He got up around 2:30.
- 2 Q In the afternoon?
- 3 A In the afternoon.
- 4 Q I take it he slept in that day?
- 5 A Uh-huh.
- 6 Q Were you home with him?
- 7 A Uh-huh.
- 8 Q Did you --
- 9 A I got home around 12:00.
- 10 Q Where did you come home from?
- 11 A From my mother's. I take care of her at
- 12 nights.
- 13 Q Did you see Mike that day after he got up?
- 14 A Yes.
- 15 Q Did he leave the house at some point?
- 16 A He left between 4:30 and quarter to 5:00.
- 17 Q Between when he got up at 2:30 and 4:30 or
- 18 quarter to 5:00, did you see him drink anything
- 19 alcoholic?
- 20 A No, ma'am.
- 21 Q Where was he going at 4:30 to quarter to
- 22 5:00?
- 23 A He was on his way to work.
- 24 Q When he left did he have anything with

Ms. Lambert - Direct

1 him?

2 A No.

3 Q Did he have any containers or anything in
4 his hands?

5 A No.

6 Q Did you ever see Mike again after that?

7 A No.

8 Q Thank you. Would you answer any questions
9 Mr. Rudd has.

10 MR. RUDD: Thank you very much, ma'am, for
11 being here and I am sorry for you to have to go
12 through this. I have no questions.

13 THE COURT: You may step down. Thank
14 you.

15
16 (The Witness was excused
17 from the Witness Stand.)

18
19 MS. KNOX: As we discussed in terms of
20 timing.

21 THE COURT: Ladies and gentlemen, we are
22 going to take our lunchtime recess now. Again, I
23 ask you not to discuss the case among yourselves
24 or with anyone.

Mr. Barton - Direct

1 If you will be back at 1:00 we will resume
2 at that time.

3
4 (The Jury was excused from the Courtroom
5 and the Lunch Recess was taken.)

6
7 (Following the Lunch Recess,
8 the Parties returned to the Courtroom
9 and the following took place before the
10 Court and Jury.)

11
12 THE COURT: Are we ready for the Jury to
13 come back?

14
15 (The Jury returned to the Courtroom and
16 the following proceedings were had in
17 the presence of the Court and Jury.)

18
19 THE COURT: Call the next witness.

20 MS. KNOX: We call Kenneth Barton.

21
22 KENNETH BARTON

23
24 was called as a witness and after having first been duly

Mr. Barton - Direct

1 sworn to tell the truth, the whole truth, and nothing but
2 the truth, was examined and testified as follows:

3
4 DIRECT EXAMINATION

5
6 BY MS. KNOX:

7 Q State your name for the Record.

8 A Kenneth Barton, Jr.

9 Q Do you work?

10 A Yes, I do.

11 Q Where?

12 A Community Hospital and Roanoke Fruit.

13 Q You have two jobs?

14 A Yes.

15 Q Which one, if either, is full time?

16 A Community I would say would be full time.

17 Q Then at Roanoke?

18 A Part time.

19 Q Do you remember Mike Lambert?

20 A I do.

21 Q What was your relationship to Mike?

22 A My cousin.

23 Q Cousin to what degree?

24 A Well, my mother's sister's -- it would be

Mr. Barton - Direct

1 my first cousin. That would be my first cousin, I will
2 put it that way to you.

3 Q Did you work at Roanoke Fruit and Produce
4 back at the time when Mike was killed?

5 A Yes.

6 Q Did you work on the evening of October
7 24th of 1991, the evening leading up to his death?

8 A Yes.

9 Q Did Mike work there with you?

10 A Yes.

11 Q Did he work with you that night?

12 A Yes.

13 Q Could you please tell the Jury about
14 Mike's demeanor that night? Let me get right to the
15 point. I am not asking you in general about his
16 demeanor.

17 Did he work the full shift?

18 A That evening, yes. He come in in the
19 afternoon.

20 Q What time would that shift have ended?

21 A That shift ended between -- that
22 particular night, it was on a Thursday night, it was
23 probably between 10:00 and 11:00. I don't know the exact
24 time but it was in that area.

Mr. Barton - Direct

1 Q Did you see Mike throughout the evening?

2 A That evening, yes.

3 Q Did you at any time see him drink anything
4 alcoholic?

5 A No.

6 Q Did he act at all intoxicated or drunk
7 that night?

8 A No. He didn't come in with nothing on his
9 breath.

10 Q How about his behavior?

11 A He worked fine.

12 Q Do you know what Mike drove for a vehicle?

13 A Moped.

14 Q Did you see him handling the moped that
15 evening --

16 A Yes.

17 Q -- before he left work?

18 A Yes, before and --

19 Q Could you describe for the Jury, please,
20 how he handled it on the occasion before he left when you
21 saw him?

22 A Well, that particular night when he got
23 ready to leave I had asked him did he want me to take him
24 home and he could leave the moped there and he said no,

Mr. Woolwine - Direct

*

*

*

1 MS. KNOX: Thank you, Mr. Barton. Please
2 answer any questions.

3 MR. RUDD: I don't have any questions. I
4 appreciate your being here.

5
6 (The Witness was excused
7 from the Witness Stand.)

8
9 JERRY WOOLWINE

10
11 was called as a witness and after having first been duly
12 sworn to tell the truth, the whole truth, and nothing but
13 the truth, was examined and testified as follows:

14
15 DIRECT EXAMINATION

16
17 BY MS. KNOX:

18 Q Would you state your name, please.

19 A Jerry Woolwine.

20 Q Mr. Woolwine, are you employed?

21 A Yes, ma'am.

22 Q Where are you employed?

23 A Roanoke Fruit and Produce.

24 Q What is your position there?

Mr. Woolwine - Direct

1 A Night supervisor.

2 Q Did you retain that position or have that
3 position back in October of 1991?

4 A Yes.

5 Q At that time did Mike Lambert, Phillip
6 Mike Lambert, work for you?

7 A Yes, ma'am.

8 Q How long had he worked for you at that
9 time, if you recall?

10 A I don't remember. About six months, four
11 to six months, something like that.

12 Q Did you have any relationship with Mike
13 outside of work?

14 A No, ma'am.

15 Q Did you have any problems with him as an
16 employee?

17 A No, ma'am.

18 Q Do you remember hearing about his death --

19 A Yes, ma'am.

20 Q -- on October 25, 1991. Do you recall
21 whether he worked the evening before, October 24th?

22 A Yes, ma'am.

23 Q Did he perform his duties that night to
24 your satisfaction?

Mr. Woolwine - Direct

1 A Yes, ma'am.

2 Q Was there anything about his demeanor or
3 the way in which he behaved that suggested to you that he
4 might have been intoxicated?

5 A No, ma'am.

6 Q Do you remember how late he worked that
7 evening?

8 A Probably 10:30 or 11:00 o'clock.

9 Q At the time he left would your statement
10 that you did not see him act intoxicated still hold true?

11 A Yes, ma'am.

12 Q Did you see him possess any alcoholic
13 beverages at all at any time that evening?

14 A No.

15 MS. KNOX: Thank you, that is all I have.

16 MR. RUDD: I don't have any questions for
17 you. Thank you.

18

19 (The Witness was excused
20 from the Witness Stand.)

21

22 JOHN FRANKLIN

23

24 was called as a witness and after having first been duly

Mr. Franklin - Direct

1 sworn to tell the truth, the whole truth, and nothing but
2 the truth, was examined and testified as follows:

3
4 DIRECT EXAMINATION

5
6 BY MS. KNOX:

7 Q State your name for the Record, please.

8 A John Franklin.

9 Q Mr. Franklin, are you aware of the
10 accident about which we are all here today?

11 A Yes, ma'am.

12 Q Do you know the four people or know the
13 names of the four people who were killed in that
14 accident?

15 A Yes.

16 Q Did you know any of those individuals?

17 A I knew two.

18 Q Which two?

19 A Tammy and Lisa.

20 Q Which of those two did you know better?

21 A Tammy.

22 Q How did you come to know Tammy Rutherford?

23 A She lived in the same apartment building
24 when I first met her. She lived right across the hall

Mr. Franklin - Direct

1 from me.

2 Q When was that?

3 A That was years ago.

4 Q Do you know about how many?

5 A I would guess '90, '91.

6 Q In the course of -- would you call it a
7 friendship that you had with Tammy?

8 A Yes.

9 Q Did you ever hear her mention a woman
10 named Sherry or Destinie Reyes as being friends of hers?

11 A I know Sherry, I think, yes.

12 Q And her daughter, Destinie?

13 A I am not sure about her name but I have
14 probably seen her.

15 Q Did you see either Tammy or Lisa on the
16 evening of October 24, 1991, the evening before they were
17 killed?

18 A Not before, no. The evening they took off
19 I did.

20 Q They were killed actually into the morning
21 of the 25th. I am talking about the evening of October
22 24th.

23 A Okay, yes.

24 Q About what time of the evening was that?

Mr. Franklin - Direct

1 A It was I would guess around 9:30, 10:00,
2 something like that, still kind of early.

3 Q Were they both together?

4 A Yes.

5 Q How long did they stay at your apartment?

6 A Thirty minutes, forty-five at the most.

7 Q Did they state what their plans were for
8 later?

9 A No; just run around.

10 Q Did they have anything to drink at all
11 when they were at your apartment?

12 A Just one beer each.

13 Q Did they appear drunk or intoxicated when
14 they left?

15 A No.

16 MS. KNOX: Thank you. That's all I have.

17

18 CROSS-EXAMINATION

19

20 BY MR. RUDD:

21 Q What time did they leave your apartment?

22 A It was early, it was probably something to
23 10:00.

24 MR. RUDD: I don't have any other

Mr. Franklin - Cross

1 questions.

2 MS. KNOX: That is all. Thank you, sir.

3

4 (The Witness was excused
5 from the Witness Stand.)

6

7 DANNY MONTGOMERY

8

9 was called as a witness and after having first been duly
10 sworn to tell the truth, the whole truth, and nothing but
11 the truth, was examined and testified as follows:

12

13 DIRECT EXAMINATION

14

15 BY MS. KNOX:

16 Q Would you state your name for the Record,
17 please.

18 A Daniel Montgomery.

19 Q Mr. Montgomery, where do you live?

20 A 1141 Penmar, Apartment Three.

21 Q Do you know the accident we are here to
22 discuss back in October of 1991?

23 A Yes, ma'am.

24 Q Where did you live at that time?

Mr. Montgomery - Direct

1 A 1624 Patterson Avenue, Apartment B.

2 Q Did you know any of the four people who
3 were killed in the accident?

4 A Yes. I knew Christopher Reyes and Michael
5 Lambert.

6 Q Christopher had a nickname, didn't he,
7 Paco?

8 A Yes.

9 Q So that the Jury will be reminded of that
10 if you refer to him as that. I would like to talk a
11 little bit about the friendships that you knew to exist
12 between the four of them.

13 With regard to Tammy and Chris or Paco,
14 what information do you have as to whether or not they
15 knew each other and to what extent?

16 A Well, Paco and Tammy came -- Paco was over
17 at my house probably about two weeks before the accident
18 and he was going out with Tammy that night. I can't
19 recall where they were going, but they were going out
20 somewhere. He introduced me to Tammy that night.

21 Q Was that the first time you had met her?

22 A Yes. That is pretty much the only time I
23 had met her.

24 Q Did Paco ever say anything else about her

Mr. Montgomery - Direct

1 and their relationship?

2 A He said that he would like to get
3 something started as far as a relationship would go, but
4 nothing ever escalated from there.

5 Q How would you describe her apparent
6 response to him when you saw them together?

7 A She acted like she liked him.

8 Q Anything in particular that she said or
9 did that makes you say that?

10 A Well, she was just kind of flirtatious
11 with him. They were back and forth flirting with each
12 other.

13 Q Now, how about Chris, where did he live in
14 relation to your home at that time?

15 A He lived -- I don't know the exact
16 address. I believe it was 1628, right across the street,
17 across the street and three houses down at the end of the
18 corner.

19 Q Did you have other friends in the
20 neighborhood?

21 A Yes, Mike Lambert and Theresa Harmon and
22 Micky Harmon.

23 Q Did the group of you hang out fairly
24 regularly?

Mr. Montgomery - Direct

1 A Yes, pretty much every day or every other
2 day.

3 Q Now, I would like to talk about the night
4 of October 24, the night leading into the morning when
5 the four of them were killed. What time did you arrive
6 into the neighborhood -- had you been gone at all during
7 the day?

8 A Yes, ma'am. I was out with one of my
9 friends named Pat and we hung out there -- we hung out at
10 his house for a while playing Sega and a bunch of games.
11 After that we left and we came over to -- I seen Paco
12 standing outside.

13 Q What time?

14 A That was probably around 10:20 or 10:25.

15 Q At night or in the morning?

16 A At nighttime.

17 Q Let me back you up. Is that the first
18 time you saw him that day?

19 A Yes.

20 Q You saw him. Go ahead.

21 A Me and him talked to each other, we were
22 just chit-chatting, you know, just every day "How are you
23 doing?"

24 Q Let me ask you about his demeanor at that

Mr. Montgomery - Direct

1 time. Did he have anything to drink that you saw?

2 A No.

3 Q Did he act at all drunk or intoxicated at
4 that time?

5 A No, ma'am.

6 Q That was going on 10:30 at night?

7 A Yes, about 10:25 or so.

8 Q What happened after that?

9 A I told him I was going to go over to my
10 house just to put down my jacket and put down things that
11 I had had that day, and he came over about probably five
12 minutes later, 10:30 or 10:35.

13 We hung out there probably a minute, a
14 minute and a half, and then we went over to Theresa's
15 house, my next-door neighbor. We hung out there.

16 Q Did Chris or Paco make any mention of what
17 his plans were for the evening?

18 A Yes. He said he was going out with Tammy
19 Rutherford and Lisa Jordan.

20 Q Did he mention Mike at all?

21 A Yes. He said that they were all going out
22 that night.

23 Q Did he describe directly or indirectly
24 what the feel of the evening was going to be, what the

Mr. Montgomery - Direct

1 plans were?

2 A Yeah. He pretty much said it was going to
3 be a date more or less. They were all going out together
4 as a date.

5 Q You mean like a double date?

6 A Yes.

7 Q Did he give you the feeling or say
8 directly which of the two girls he was supposed to be
9 with?

10 A Yeah, he said he was going to be with
11 Rutherford.

12 Q How long then were you at Theresa Harmon's
13 house?

14 A I was at Theresa's with Paco and Theresa
15 for approximately about ten, probably about ten or
16 fifteen minutes, then Mike walked up.

17 Q You say Mike walked up?

18 A Yes.

19 Q What did he usually drive?

20 A He drove a moped.

21 Q Did you see the moped?

22 A No.

23 Q Do you know where it was?

24 A No.

Mr. Montgomery - Direct

1 Q When Mike walked up did he have anything
2 in his hands?

3 A No.

4 Q Were you outside at this point?

5 A We were outside on Theresa's porch.

6 Q Had the girls arrived yet?

7 A No, not yet.

8 Q When did they arrive?

9 A Probably about I would say around five or
10 ten minutes after me and Paco -- no -- after Mike had
11 been sitting there.

12 Q I can't remember if I asked you this. Did
13 Mike have anything to drink in your presence?

14 A No.

15 Q Did he appear at all intoxicated at that
16 time?

17 A No.

18 Q So, the girls arrived. Did they get out
19 of the car?

20 A No, ma'am.

21 Q I am assuming they were in a car.

22 A Yes, they were.

23 Q Did you recognize the vehicle?

24 A Yes, I recognized it as Tammy's car.

Mr. Montgomery - Direct

1 Q Who was driving?

2 A Tammy.

3 Q Who was with her?

4 A I would say probably Lisa.

5 Q You hesitate. Is that because you didn't
6 know Lisa?

7 A That is because Paco said that Lisa and
8 Tammy was going to be coming up there in the car, and
9 when I went out there I didn't really see Lisa, but I
10 mean there were two girls in the car.

11 Q I take it you didn't know Lisa to
12 recognize her?

13 A No, I didn't know her.

14 Q You say Tammy was driving?

15 A Yes.

16 Q Lisa was in the front with her?

17 A Yes.

18 Q Did the girls get out of the car at all?

19 A No.

20 Q Did you go up to the car?

21 A Not really up to the car. I was probably
22 about 15 feet away probably.

23 Q How long did the four of you or the five
24 stand and talk?

Ms. Harmon - Direct

*

*

*

1 THE COURT: I think it is proper on
2 cross-examination given the scope of the direct.
3

4 BY MR. RUDD:

5 Q You are familiar with whether he was
6 intoxicated or not because he had been in your presence
7 roughly three times a week when he had been drinking?

8 A Yes, sir.

9 MR. RUDD: I have no other questions.

10 MS. KNOX: No, nothing further. Thank
11 you.

12
13 (The Witness was excused
14 from the Witness Stand.)
15

16 THERESA HARMON

17
18 was called as a witness and after having first been duly
19 sworn to tell the truth, the whole truth, and nothing but
20 the truth, was examined and testified as follows:

21
22 DIRECT EXAMINATION

23
24 BY MS. KNOX:

Ms. Harmon - Direct

1 Q Would you state your name for the Record,
2 please.

3 A Theresa Harmon.

4 Q Ms. Harmon, I am going to ask you about
5 the automobile accident in which Mike Lambert and Chris
6 Reyes were killed. That is why we are here today.

7 Do you remember the date when they were
8 killed in October of 1991?

9 A Yes.

10 Q Can you tell the Court and the Jury where
11 you lived at the time?

12 A I lived at 1628 Patterson Avenue.

13 Q Did any of those four live in the
14 neighborhood with you?

15 A Yes.

16 Q Could you tell us please who?

17 A Chris Reyes lived across the street on the
18 corner from my house and Mike Lambert, he lived two
19 blocks behind us, two blocks back and three blocks down
20 approximately on Campbell Avenue.

21 Q Were you friends with both of those young
22 men?

23 A Yes.

24 Q Were there others of you in the

Ms. Harmon - Direct

1 neighborhood that hung out together?

2 A Yes.

3 Q Could you tell us?

4 A It was -- the people that always hung out
5 together usually were Danny Montgomery, Chris Reyes, Mike
6 Lambert, Billy Asbury, Robert Smith. There was a lot of
7 us that hung out together.

8 Q Did you know Tammy Rutherford or Lisa
9 Jordan?

10 A Not very well. I seen them from a
11 distance from my house to where they were parked a couple
12 of times that they met them near my house.

13 Q They met who?

14 A Chris Reyes and Mike Lambert.

15 Q How long before the accident, if you can
16 recall, were they over there to visit Mike and Chris?

17 A I am not exactly sure. They had been
18 there one other time like within that week to meet them,
19 one other time before.

20 Q Any before that?

21 A There was like one or two other times that
22 I seen their car over there and I didn't see who all was
23 in the car, you know, that the car was there and Paco had
24 walked over and talked to them one other time.

Ms. Harmon - Direct

1 Q Do you know whose car it was?

2 A Tammy.

3 Q Now, what relationship, if any, do you
4 know to have existed between Paco or Chris and Tammy?

5 A They liked each other so he said. I
6 wasn't positively sure. He liked her.

7 Q Did you have any information about her
8 liking him other than seeing them together and her coming
9 over?

10 A She used to call my dad's house to talk to
11 him on the phone because he didn't have a phone at his
12 house.

13 Q Were you living with your dad at the time?

14 A Yes.

15 Q You had a phone and he did not? Can you
16 approximate how many times she called over and talked to
17 him?

18 A No. It was quite a few. They would call
19 over sometimes every day, sometimes every other day. I
20 am not sure.

21 Q On the day of October 24, 1991, right
22 before they were killed, were you home in the
23 neighborhood?

24 A Yes.

Ms. Harmon - Direct

1 Q What part of the day?

2 A Just about all day.

3 Q Were any of the other of those four people
4 there also?

5 A Earlier in the day Paco was at my house
6 with me because he watched my little boy for a little bit
7 while I had to go use the bathroom, take a bath and
8 everything like that, and he sat there, and then he had
9 went back home because he was always coming over and
10 sitting with me and my little boy and talking to me and
11 Danny and everybody, and Billy was with us, too.

12 Q During the course of the afternoon did you
13 see him more than once?

14 A Yes.

15 Q Did you see him drink anything alcoholic
16 during the day?

17 A No.

18 Q Did he act intoxicated to indicate perhaps
19 he had had anything to drink out of your presence?

20 A No.

21 Q Was Mike Lambert there?

22 A He didn't get there until later on that
23 night.

24 Q Did the girls call -- when I say "the

Ms. Harmon - Direct

1 girls," did you have any indication that either of the
2 girls called on that particular day or evening?

3 A Yes. Paco had talked to -- I am not sure
4 which of the girls because it was one of them because he
5 said that Tammy had called him, and he was in my kitchen
6 talking to them on the phone and I was in the living
7 room. I didn't listen to everything that was said on the
8 phone conversation.

9 Q Did he mention any plans?

10 A He said that him and Mike and Billy Asbury
11 was supposed to have went with them, were going to go out
12 with the two girls, Tammy and Lisa.

13 Q As the hour at which they left approached,
14 were you with Paco?

15 A Yes.

16 Q What time was that?

17 A From the best of my knowledge it was
18 around 10:30, or a little bit after that.

19 Q I realize it has been four years.

20 A That is when they had gotten ready to
21 leave. They had sat there for a while. It was me, Danny
22 and Paco together, because they had come back over to my
23 house.

24 Q Let me interrupt. Was Billy Asbury still

Ms. Harmon - Direct

- 1 there?
- 2 A No.
- 3 Q So he was no longer with you all?
- 4 A Right.
- 5 Q Mike Lambert wasn't there at that point?
- 6 A No.
- 7 Q Were the girls there at that point?
- 8 A No.
- 9 Q You and Danny and Paco were outside
- 10 talking?
- 11 A Yes.
- 12 Q Was anybody doing any drinking?
- 13 A No.
- 14 Q Who arrived next?
- 15 A Mike Lambert.
- 16 Q Did he arrive on foot or in a vehicle?
- 17 A Foot.
- 18 Q Did he have anything with him?
- 19 A No.
- 20 Q Did you see him drinking anything?
- 21 A No.
- 22 Q How did he behave in terms of
- 23 intoxication?
- 24 A He was sober.

Ms. Harmon - Direct

1 Q Would you feel confident in your statement
2 that you know he was sober?

3 A Yes.

4 Q Have you ever seen him drink before?

5 A Yes.

6 Q Have the group of you all gone out and had
7 drinks before?

8 A Yes.

9 Q So you have seen him drunk before?

10 A Yes.

11 Q You feel comfortable he was not drunk this
12 time?

13 A Yes.

14 Q Tell us about when the girls came up.

15 A They pulled up. After Mike had gotten
16 there they came there about five or ten minutes later.
17 They had gotten there and that is when they had walked
18 across -- Mike walked across the street and got ready to
19 get in on the passenger side of the car, because they
20 parked across the street, and Mike walked over to the
21 passenger side getting ready to get into the backseat.

22 Then Paco came over there and he was
23 telling Danny bye and he was telling me bye and then Mike
24 ran back across the street and told us bye, and they gave

Ms. Harmon - Direct

1 me a hug and then they got into the car.

2 Q Did you smell any alcohol on his breath or
3 about his person when he got into the car?

4 A No.

5 Q Did either of them have anything in their
6 hands, anything alcoholic or anything that could have
7 contained alcohol when they got in the vehicle?

8 A No, they were empty-handed.

9 Q Did Tammy or Lisa ever get out of the car?

10 A No.

11 Q Who was driving?

12 A Tammy.

13 Q Lisa was in the front?

14 A Yes.

15 Q Did you look in the car or the trunk to
16 see what was in the car?

17 A No.

18 Q How did the boys position themselves in
19 the car when they got in?

20 A Mike had gotten in on the passenger's side
21 backseat and Paco had gotten in on the driver's side
22 backseat.

23 Q So, they followed through with that after
24 they gave you the hug?

Ms. Harmon - Direct

1 A Yes.

2 Q Did you see them leave?

3 A Yes.

4 Q Can you tell us about when it was that
5 they left?

6 A About 10:45, maybe a little bit after
7 that.

8 Q Did you ever see them again after that?

9 A No.

10 MS. KNOX: That is all the questions I
11 have.

12

13 CROSS-EXAMINATION

14

15 BY MR. RUDD:

16 Q You used to hang out with Paco and drink
17 with him?

18 A Yes.

19 Q The majority of the time when you drank
20 with Mike, Paco was also there?

21 A Yes.

22 Q You are familiar with how Mike looked when
23 he was intoxicated because you have seen him drunk?

24 A Yes.

Ms. Harmon - Cross

1 Q Approximately how often did you see him
2 drunk, a couple times a week, weekends?

3 A Sometimes a couple times a week, just
4 whenever everybody decided to get together.

5 Q You guys weren't smoking pot together,
6 were you?

7 A I didn't smoke it.

8 Q But you have seen them, right?

9 A Sometimes everybody did, yes.

10 Q Do you know whether or not Mike was
11 smoking this night?

12 A I know he wasn't. I know how he was when
13 he was high.

14 Q When he smoked?

15 A Yes.

16 Q So you had seen him high correct?

17 A Yes.

18 Q You had also seen him drunk?

19 A Yes.

20 MR. RUDD: I don't have any other
21 questions.

22 MS. KNOX: Thank you. That is all that we
23 have.

24 THE COURT: May the witness be excused?

*

*

*

1 to read into the Record and make you aware of and
2 after that is done, I am going to let you go out
3 and go downtown, walk around, smoke a cigarette,
4 go into the stores and shop a little bit and come
5 back at 3:30.

6 We think we are going to have another
7 witness here at 3:30. We have got that witness
8 and we will be finished for the day, and I hate
9 to make predictions because sometimes they just
10 don't come out, but things are looking good that
11 we might be finished with the evidence and the
12 case will go to you by sometime tomorrow
13 afternoon.

14 If that is the way it goes, and then of
15 course once you get it it is in your hands, then
16 that is your time table, not mine, but in any
17 event, it looks like we are going to get through
18 the case sooner than what we had anticipated. We
19 are moving toward that goal. So we hope it is
20 going to work out that way.

21 Counsel, if you all are ready to read the
22 stipulations.

23 MS. KNOX: Thank you. The parties have
24 agreed to the following information and we will

1 be reading it to you and it is to be accepted as
2 evidence as though the witness who would have
3 testified to this were here to testify.

4 I guess you should have said that, Your
5 Honor. I am sorry.

6 THE COURT: Yes, I should have. Let me
7 caution you as I did in the beginning of the
8 trial.

9 You are going to hear what a witness would
10 have testified to, what the parties have agreed
11 that the witness would have testified to if the
12 witness had been here.

13 So, you will not get the benefit of
14 hearing it from the witness, so you have got to
15 remember this particularly and you have got to
16 listen particularly close because when you try to
17 recall it you are not going to recall a
18 particular person sitting up there saying this to
19 you.

20 Pay particular attention to this part of
21 it so you can remember it.

22 MS. KNOX: Thank you. It has been agreed
23 by the parties that Tammy Rutherford took a
24 course of driver's education at Patrick Henry

Ms. Brads - Direct

*

*

*

1 Q Did Tammy ever have occasion to discuss
2 with you the subject of any medications that her sister
3 was taking?

4 A Yes.

5 Q Could you tell us what if anything she
6 ever told you about that?

7 A Pills, Xanax.

8 Q Xanax pills? Did she ever describe to you
9 any frequency, the frequency with which she was aware
10 that her sister took these pills?

11 A She said she was a pill head.

12 Q Those were her words?

13 A Yes.

14 Q I would like to move on. Did Tammy and
15 Chris Reyes know each other?

16 A Yes.

17 Q Would you explain a little bit to the Jury
18 how they came to know each other?

19 A With me and my mom. Chris would come over
20 to my house and Tammy would come over to my house and
21 they met through us.

22 Q Did they ever socialize with each other?

23 A Yes.

24 Q How would you describe their relationship?

Ms. Brads - Direct

1 A Friends. There was some talk about them
2 seeing each other but nobody ever knew for sure. I
3 didn't know for sure.

4 Q I want to talk about the evening of the
5 accident, the evening prior to the actual morning of
6 their deaths. Did you see any of them that night?

7 A Yes.

8 Q We will start with Tammy and Lisa because
9 they evidently were together that evening. Did you see
10 them?

11 A Yes.

12 Q Could you tell us about what time?

13 A Tammy came over that evening. I don't
14 remember exactly what time it was but it was dark. I
15 don't remember exactly. It has been a long time, I don't
16 remember what time, but she came over. Brandy had sold
17 some stuff.

18 Q Who is Brandy?

19 A Robin's daughter. Tammy had brought it to
20 my mom. My mom had bought stuff like sales from school
21 or something, and she come over to get the money for that
22 and Lisa waited in the car.

23 Q How long did Tammy stay?

24 A Probably 10 minutes, 15 minutes. She

Ms. Brads - Direct

1 left.

2 Q Did she mention what her plans were for
3 the evening?

4 A No.

5 Q Did you see her drink anything?

6 A No.

7 Q Did she seem at all intoxicated?

8 A No.

9 Q I guess you stated you don't know for sure
10 when she left. Did you see the vehicle she was in
11 outside?

12 A Yes. She walked in the door and it was --

13 Q Whose car was it?

14 A Her car.

15 Q Did you see her drive off?

16 A Yes.

17 Q Who drove?

18 A She did.

19 Q Let's talk about the others. Did you see
20 Christopher?

21 A Yes.

22 Q Better known as Paco, I take it.

23 A Yes.

24 Q Would you describe for the Jury the

Ms. Brads - Direct

1 circumstances under which you saw him?

2 A He was in a little bit of trouble or
3 whatever and he called my uncle to come over there to his
4 house.

5 Q When was this in relation to when you saw
6 Tammy and Lisa?

7 A This was after we seen Tammy, after Tammy
8 came over. I don't know how long but it was after.

9 Q So, he called and asked your uncle to come
10 over to his house. Did you go with him?

11 A Yes. Me and Trinidad rode over there and
12 we pulled up in the front of his house and he come out
13 and he was by himself. He come out and he was getting
14 ready to go somewhere because he had socks and stuff in
15 his hands, he was getting ready, but we didn't know where
16 he was going and I didn't really -- he just gave me a hug
17 and said hi. I didn't talk to him about anything.

18 Q Where were you when he gave you a hug and
19 said hi?

20 A In the car.

21 Q Which position in the car?

22 A Passenger side.

23 Q How did he give you a hug?

24 A He reached through the window and gave me

Ms. Brads - Direct

1 a hug.

2 Q Did he have anything to drink with him at
3 the time?

4 A No.

5 Q Did he smell of alcohol?

6 A No.

7 Q Did he act intoxicated at all?

8 A No.

9 Q How long did that visit or interaction
10 last?

11 A We were only there -- Trinidad got out of
12 the car and talked to him maybe 10 or 15 minutes, not
13 long.

14 Q Then you left?

15 A Yes.

16 Q Was there anybody there with Chris at the
17 time when you left?

18 A His family but they were in the house.
19 Chris come out by himself.

20 Q Was Mike Lambert there yet?

21 A Not that I know of.

22 Q You didn't see Mike?

23 A No.

24 Q Did you see Tammy or Lisa again?

COPY

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
CITY OF ROANOKE

ROBIN R. YOUNG and ROBERT
P. YOUNG, Administrators of
the estate of TAMMY
RUTHERFORD, deceased,

Plaintiffs

-VS-

MARGARET A. LAMBERT,
Administratrix of the
estate of **PHILLIP M.**
LAMBERT, deceased,

Defendant

CASE NO.: CL-93-171

VOLUME III

October 25, 1995
9:30 A.M.

HEARD BEFORE THE HONORABLE:

RICHARD C. PATTISALL

CENTRAL VIRGINIA REPORTERS
P.O. BOX 12628
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Counsel on behalf of the Plaintiff

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BY: DONNA D. KNOX, ESQ.
MICHAEL A. CLEARY, ESQ.

Counsel on behalf of the Defendant

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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FOR THE DEFENDANT:

Robert Blanke, Ph.D.	6	29	38	39
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(The Defendant Rested - 43)

E X H I B I T S

FOR THE DEFENDANT:

MARKED

ADMITTED

Stipulation

5

5

MATTER

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4

1 MS. KNOX: And then we have Dr. Blanke here,
2 and he will be the defense's final witness.

3 THE COURT: All right. Ready for the Jury?

4 MR. RUDD: Yes, sir.

5 THE COURT: Sheriff, bring the Jury in. I
6 don't know whether it's the judge or the lawyers,
7 it's still taking its toll on the court reporters.
8 You are the third reporter that we have had.
9 Somebody is wearing out your cohorts.
10

11 (The Jury returned to the Courtroom and the
12 following took place before the Court and
13 Jury.)
14

15 THE COURT: All right. I think we have a
16 stipulation to be read into evidence. Mr. Cleary?

17 MR. CLEARY: Ladies and gentlemen of the
18 Jury, there is a stipulation that has been reached
19 between the parties, and I'm going to read that to
20 you now.

21 The parties stipulate that since there is no
22 evidence to the contrary, you may presume that
23 Tammy Rutherford, Lisa Jordan, Michael Lambert, and
24 Christopher Reyes remained together from the time

1 they were seen departing as a foursome from Roanoke
2 in Tammy Rutherford's car, on October 24, 1991,
3 until the time when they were next known to be
4 together; that is, at the time of the accident.

5 Thank you. We will introduce this as a
6 Defendant's Exhibit.

7
8 (The Stipulation was marked and admitted
9 into Evidence.)

10
11 THE COURT: Ladies and gentlemen of the
12 Jury, this stipulation comes into evidence for you
13 to consider just as the other stipulation did.

14 It's an agreement of the parties, and it's
15 just part of the overall evidence that you are to
16 consider. It is not to be emphasized any more than
17 any other evidence.

18 You will treat this evidence just as you
19 would any of the other evidence that you have heard
20 in weighing and giving credibility and weight to
21 it. Okay.

22 All right, Ms. Knox, if you are ready to
23 proceed.

24 MS. KNOX: Thank you, Your Honor. The



1 and committees and honors and so forth. Would you
2 like to conduct any voir dire?

3 MR. RUDD: No. I don't have any questions,
4 and I'm not going to object to his qualifications
5 as an expert.

6 MS. KNOX: Okay. I think, then, we can move
7 along to save time for everyone. I would offer
8 Dr. Blanke to the Court as an expert on the matters
9 of toxicology and related aspects when it comes to
10 the adverse effects of alcohol on human beings.

11 MR. RUDD: We have no objection, Judge, to
12 Dr. Blanke's qualifications.

13 THE COURT: The Court accepts and recognizes
14 Dr. Blanke as an expert in the field of toxicology
15 and its related areas.

16 MS. KNOX: Thank you, Your Honor.

17

18 BY MS. KNOX:

19 Q Doctor Blanke, before we begin, I want to
20 ask that any opinions that you offer to the Jury here, and
21 the Court, be only opinions that you hold to a reasonable
22 degree of scientific certainty or -- excuse me, probability
23 is the standard -- reasonable degree of scientific
24 probability in your field.

1 We don't want any speculation or guesswork
2 here so if we can have that understanding, when you do
3 offer an opinion, that it would be one you hold to that
4 level, okay?

5 A Yes, thank you.

6 Q Would you just briefly tell the Jury what
7 blood alcohol level is?

8 A The blood alcohol level is the chemical
9 measurement of the amount of alcohol in blood, and it is
10 usually expressed in terms of grams percent, weight by
11 volume; in other words, so many grams -- that's a metric
12 term for a weight -- so many grams of alcohol in 100
13 milliliters of blood.

14 So it's a weight by volume percentage, and
15 it's a term that has been in common use for many, many
16 years now.

17 Q And when you say "in common use," how is it
18 typically referred to in common parlance when people are
19 speaking?

20 A Well, blood alcohol concentration is usually
21 expressed in percent, 0.10 percent or 0.20 percent,
22 something of that nature.

23 Q So when we were talking about those
24 percentages here, that's what we are talking about, blood

1 alcohol level?

2 A That's correct.

3 Q Does alcohol also concentrate in other
4 fluids in the body?

5 A Oh, yes. Alcohol distributes in the body
6 just like water does. So whatever tissue is high in water
7 content would be also relatively high in alcohol content.

8 Blood obviously contains a fair amount of
9 water so the blood alcohol -- and it's a specimen that's
10 easily obtained by inserting a needle and drawing an amount
11 out with the syringe and so that can be measured. But that
12 is an indication of what alcohol is, maybe, present in
13 other tissues, like the brain or the liver or the muscle
14 and so forth.

15 Q Would urine and bile also be fluids that
16 retain --

17 A Yes, they would. Urine, of course, is even
18 more so, even a higher content of water than blood, and
19 it's the primary route of excretion of alcohol.

20 It's also -- bile is a fluid, liquid, which
21 is secreted by the liver, and the liver is the primary
22 organ of metabolism of alcohol so alcohol would be present
23 in those specimens as well.

24 Q Doctor Blanke, prior to coming here today,

1 were you provided with certificates of analysis with regard
2 to the four individuals who were killed in the car accident
3 about which we are here today?

4 A Yes, I was.

5 Q And those four individuals would be Phillip
6 Michael Lambert, Lisa Jordan, Tammy Rutherford, and
7 Christopher Reyes?

8 A Yes, I was.

9 MS. KNOX: Does counsel have any objection
10 to working off of copies? The certificates have
11 been previously admitted into evidence.

12 MR. RUDD: I have no objection at all,
13 Judge.

14 THE COURT: All right.

15
16 BY MS. KNOX:

17 Q Doctor Blanke, do you have your
18 certificates? If not, I've got copies for you.

19 A I have them all clipped together. You may
20 want to refer to them in a particular order.

21 Q Yes, I will guide you in that regard if you
22 have got them.

23 A Okay.

24 Q Going to begin with Lisa Jordan.

1 A Probably the last one.

2 Q If you don't have them handy, I can provide
3 you with a another copy.

4 A Okay. That may be more convenient.

5 Q Here you go. All right. Would you tell the
6 Jury what Lisa Jordan's blood alcohol level was?

7 A Lisa Jordan's blood alcohol concentration
8 was 0.13 percent weight by volume at the time of her death.

9 Q I'm going to indicate blood alcohol level by
10 those initials there. Were there any other fluid levels
11 present in tests?

12 A Yes, urine was tested and found to contain
13 0.16 percent alcohol weight by volume.

14 Q And anything else?

15 A And bile was also tested and found to
16 contain 0.13 percent alcohol weight by volume.

17 MR. RUDD: Ms. Knox, if you want to lead him
18 through this, we have already read this in the
19 Record through the stipulation. I would be happy
20 to let you do that.

21 MS. KNOX: Thank you.

22

23 BY MS. KNOX:

24 Q Now, we are going to Tammy Rutherford, and

1 if you would, note there her blood alcohol level.

2 A Blood alcohol was 0.10 percent.

3 Q Any other fluids for her?

4 A Her bile was 0.09 percent.

5 Q Was there anything else available?

6 A No other fluids were examined.

7 Q Okay. Christopher Reyes, please?

8 A Christopher Reyes had a blood alcohol
9 concentration of 0.17 percent and a urine alcohol
10 concentration of 0.15 percent.

11 Q Anything else for him?

12 A A blood clot was examined and found to be
13 negative for alcohol.

14 Q So for our purposes, that's not relevant; is
15 that correct?

16 A That's correct.

17 Q And then Michael Lambert?

18 A Michael Lambert had a blood alcohol
19 concentration of 0.12 percent.

20 Q Were there any other fluids submitted for
21 testing as far as you know?

22 A No other fluids were tested.

23 Q All right. I'm going to ask you some
24 questions about these particular levels. First of all,

1 given the blood alcohol levels of the four individuals,
2 starting with Michael Lambert, can you please tell the
3 Jury, if you are able to based on your professional
4 experience, in your opinion what outward signs of
5 intoxication he would have been demonstrating at this
6 level?

7 A Well, I should preface my remarks by stating
8 that outward signs vary somewhat in individuals depending
9 upon their experience as drinkers, depending upon any
10 disease that they may have, depending upon their age.

11 For example, a very young person may show
12 the effects of alcohol much more early than an older person
13 or an experienced drinker would not show the effects as
14 readily as a naive drinker. So there are those
15 variations.

16 But all of these blood alcohol
17 concentrations from Rutherford's level of 0.10 to Reyes'
18 level of 0.17 fall within a range that's generally referred
19 to as the excitement effects of alcohol.

20 The excitement effects of alcohol include
21 such things as emotional instability, where a person may
22 get angry very easily or may laugh very easily, much more
23 so than they would normally, or even cry more easily.

24 Emotions are much more unstable and more

1 difficult for the person to control at this range of about
2 0.10 up to even higher than the Reyes' concentration. So
3 that's one of the primary features of this particular
4 concentration range.

5 Other things which were affected are
6 inhibition of sensory motor functions. Sensory functions
7 are the ability to feel or sense things, and motor is the
8 ability to use muscles to carry out coordinated actions.

9 I'm sure you are familiar with the roadside
10 sobriety tests that police officers use, picking up coins,
11 walking a straight line. All those things are impaired.
12 The ability to do those things are impaired at alcohol
13 concentrations of this order of magnitude.

14 The patient also can see less clearly, and
15 due to a variety of things, depth perception is impaired so
16 they can't judge distances as well. Peripheral vision is
17 narrowed so when they look straight ahead, what they can
18 see to the side is not as great as it was without alcohol.

19 Even at higher concentrations, in some
20 individuals, the muscles that control the eye are affected
21 so they may have double vision. And I wouldn't expect that
22 so much in a 0.10 percent alcohol as much as a 0.17 for
23 example. The higher the alcohol concentration, the more
24 intense or the greater the effect.

1 The ability to exercise good judgment,
2 particularly critical judgment, judgment that's important
3 in making decisions, that ability is impaired in all
4 individuals at this range of 0.10 to 0.17.

5 Again, a reason why driving under the
6 influence is such a hazardous thing is because the driver's
7 judgment is important in driving appropriately. Those
8 would be the primary things.

9 Q Let me ask you, would an ability to
10 appreciate the consequences of one's behavior be affected
11 at these levels?

12 A Yes, they would. That's part of the ability
13 to exercise good judgment. An individual is not really
14 thinking ahead to the outcome of what's going to happen for
15 a particular action.

16 Q Doctor, if you make the assumption that
17 somebody has a basis of knowledge about drinking and
18 driving and the dangers and so forth, through common sense
19 and through other means, can you give us an opinion as to
20 whether or not someone at a 0.12 percent blood alcohol
21 level would be obviously drunk to another individual?

22 A Well, again, there is some variability, but
23 generally I would say a person with normal intelligence who
24 has, with normal experience, in other words, who has seen

1 people under the influence of alcohol before or has
2 attended some course in how to -- in the value of not
3 driving under the influence, that kind of an individual in
4 my opinion would recognize a person at a 0.12 percent
5 alcohol as being drunk.

6 Q Okay. Now, Doctor, I'm going to ask you a
7 hypothetical question. Given Mr. Lambert's blood alcohol
8 level at 0.12 percent, and it is a fact in this case that
9 that was his level at the time of death, at 2:30,
10 approximately, in the morning, is it possible for you to
11 take back, through the science of toxicology, to a time
12 earlier in the evening?

13 And I'm going to bring that time to 10:30 in
14 the evening, four hours earlier, and the assumption I want
15 you to make is that he did not drink anything from 10:30 on
16 until he was found dead at 2:30 in the morning with this
17 blood alcohol level.

18 Can you tell us what his blood alcohol level
19 would have been at 10:30, had he not had anything to drink
20 later and still died at this level?

21 A Yes. That's a common need to try to
22 estimate what earlier blood alcohol concentrations were
23 when the alcohol is measured at a known time. The body
24 clears alcohol from the body in normal, healthy

1 individuals, clears alcohol from their bodies by two
2 general procedures.

3 One is by metabolism, I mentioned before
4 that the liver is the primary organ of metabolism, and by
5 excretion. And the kidney, again, is the primary organ of
6 excretion, although it can be excreted by perspiration or
7 in the breath and so forth.

8 The clearance of alcohol is rather constant,
9 it clears at a rather constant rate in a given individual.

10 Now, I may clear alcohol at a different rate
11 than what any one of you, but I usually would clear it the
12 same way, at the same rate today and next week and so forth
13 if I am normally healthy. And so it's possible to assume
14 normal clearance between a range of those individuals who
15 clear slowly and those individuals who clear rapidly.

16 And I did that calculation in this case for
17 the approximately four and a quarter hours between 10:30
18 and 2:45 a.m., 10:30 p.m. and 2:45 a.m., when the accident
19 occurred.

20 Q This is with regard to Michael Lambert at
21 0.12 at the time of death?

22 A Yes. Mr. Lambert was 0.12 at the time of
23 death, and assuming that he clears the alcohol at a fairly
24 slow rate, his blood alcohol concentration at 10:30 would

1 be about 0.16 percent, but assuming he is clearing it at
2 the most rapid rate of all, his blood alcohol concentration
3 would have been 0.23 percent at 10:30.

4 Q And did you calculate, let's say, an
5 average, what most people would do?

6 A Most people clear it at some rate in
7 between, and it happens that most people that are tested
8 clear it at about 0.018 percent per hour, and in this case,
9 Mr. Lambert's blood alcohol concentration at 10:30 would be
10 about 0.20 percent. It would be somewhere between 0.16 and
11 0.23.

12 Q More than likely, if he is average, 0.20?

13 A That's right, that's correct.

14 Q And that would have been back at 10:30 if he
15 didn't drink anything thereafter?

16 A That's correct.

17 Q And could you tell us what outward signs he
18 would have had of intoxication at that time if he were at
19 these levels?

20 A Well, he would have the signs that I have
21 described before only at a more intense, you know, in a
22 greater degree of certainty as far as observing them.

23 In addition, since alcohol acts as an
24 anesthetic agent really, he would be showing some signs of

1 drowsiness at this concentration of 0.20 or higher, and/or
2 he might -- he would be staggering much more obviously and
3 may even have difficulty walking or standing. He would be
4 markedly intoxicated.

5 Q So in your opinion, Doctor, if several
6 people saw him at 10:30 or thereabouts, would it be likely
7 that they would think that he had not been drinking at all?

8 A In my view, yes, it would be likely.

9 Q Let me make sure you understand my
10 question. Would it be likely that they thought he had not
11 been drinking at all when they saw him, if he had been at
12 those levels?

13 A Likely not. Particularly if they knew him.
14 I think that it would be highly likely -- I would rather
15 say it in my terms, highly unlikely that they would not be
16 able to see that he was under the influence of alcohol.

17 Q Okay, thank you. Now, another and final
18 matter that I would like to address has to do with the
19 other fluids here that we can tell from the other three
20 individuals. For whatever reason, samples were not
21 submitted on Mike Lambert so we won't be going into it with
22 regard to him.

23 Is it possible from looking at these levels,
24 the blood alcohol versus the other two types of fluids, to

1 tell with any degree of probability when -- and you can
2 tell us, if so, how wide of a time parameter we are talking
3 about -- these individuals last had something to drink?

4 A Well, this is a much more difficult question
5 to answer. I mentioned earlier that alcohol, after it is
6 distributed throughout the body, if alcohol continues to be
7 ingested, the alcohol is absorbed in the stomach and
8 intestine into the blood and so the blood concentration
9 will rise. It rises a little bit more rapidly than the
10 other tissue concentrations would rise.

11 If alcohol consumption stops, then obviously
12 the absorption or that blood alcohol rise will stop, and it
13 will tend to plateau off while the tissues catch up and
14 rise to reach equilibrium.

15 After that plateau period, then the blood
16 alcohol concentration will begin to fall at the constant
17 rate that I mentioned before, and with a little lag, other
18 concentrations will also fall in the other tissues.

19 Now, if you look at these numbers --

20 Q Let's start with Ms. Jordan.

21 A Ms. Jordan, her blood and bile
22 concentrations are the same, 0.13. This suggests to me
23 that she was in equilibrium, that she had reached a point
24 where her blood alcohol concentrations and tissue alcohol

1 concentrations were in equilibrium and her blood alcohol
2 was not rising anymore, which would suggest that she was
3 not absorbing alcohol anymore.

4 Q Let me stop you right there and ask you if
5 it's possible to make that statement with regard to the
6 last moments, the last window before her death when, say,
7 perhaps the blood would not have yet absorbed it.

8 A Well, it depends upon a lot of things that
9 at least I don't know about. It depends upon what was in
10 her stomach besides what she was drinking.

11 It depends upon her state of health. It
12 depends on the nature of the alcoholic beverage that was
13 being consumed.

14 The rate at which alcohol is absorbed varies
15 between about 30 minutes to about 90 minutes. So I would
16 have to say that this would indicate that she had not --
17 her absorption had stopped, she was not absorbing any more
18 alcohol within a range of 30 to 90 minutes before death.

19 It would suggest that she had reached
20 equilibrium and that somewhere in that one-half hour or
21 hour and a half period before death, she was no longer
22 absorbing alcohol.

23 Q So is another way of putting it, to make
24 sure the Jury understands, that she probably had her last

1 drink 30 to 90 minutes before she died?

2 A Yes, that would be the probability.

3 Q Okay. Now, let's discuss just the bottom
4 line with regard to Ms. Rutherford.

5 A Well, same thing would apply to
6 Ms. Rutherford. Even though the bile is 0.09 and blood
7 0.10, the standard there of the measurement of alcohol is
8 such, plus or minus 10 percent, that these numbers could be
9 considered to be the same.

10 You round 0.09 to 0.10. So again, this
11 would suggest that she was in equilibrium, or very near
12 equilibrium, and that her last consumption of alcohol would
13 be between 30 and 90 minutes prior to death.

14 Q Thank you. And with regard to Mr. Reyes?

15 A Mr. Reyes, we can't say that much very
16 precisely because we have a blood and a urine alcohol
17 concentration, and urine alcohol concentrations can vary
18 widely depending upon the degree of hydration of the
19 patient, whether they were dehydrated or not; depending
20 upon when the last time was that he emptied his bladder
21 would depend upon how long that urine had been stored in
22 the bladder, and factors such as that.

23 There is nothing here to suggest that his
24 blood alcohol -- that his alcohol consumption was any

1 different than the others, although the certainty of that
2 is not as great.

3 Q The fact that his blood alcohol level is
4 higher than his urine, does that change your opinion as to
5 the 30 to 90 minutes?

6 A No. In fact, if we just look at the urine
7 alcohol in comparison to the blood alcohol concentration,
8 the urine alcohol concentration being less than the blood,
9 his blood alcohol concentration may have been rising, which
10 may mean that he had drunk something closer to the time of
11 his death.

12 But I would hate to state that with any
13 degree of reasonable medical probability because of the
14 variables in estimating urine alcohol concentrations.

15 Q So if you can't move it up closer than the
16 30 to 90 minutes, would you at least include it in the 30-
17 to 90-minute window that you have discussed with regard to
18 the other two?

19 A Yes. I think that that's the most likely
20 explanation.

21 Q Okay.

22 A But the certainty is much less in that case
23 than the other three.

24 MS. KNOX: Thank you, Doctor Blanke. Let me

1 just make sure that we have covered everything.
2 Those are all the questions I have at this time.
3 If you would answer any from Plaintiffs' counsel.

4 MR. RUDD: Thank you.

5
6 CROSS-EXAMINATION

7
8 BY MR. RUDD:

9 Q Doctor Blanke, in the different professional
10 jobs that you have held in the past, you have analyzed
11 blood alcohol content of both living and dead persons?

12 A That's correct, yes, sir.

13 Q And it's the practice of the office of the
14 chief medical examiner in the state of Virginia to obtain
15 as many tissue samples as possible from an accident victim
16 to send off to the lab for analysis?

17 A Yes. I can't state what the practice is
18 currently, but at the time that I was practicing, generally
19 it was blood only; however, the brain alcohol is much more
20 important than blood alcohol. So when the brain was
21 available, we would try to do brain or spinal fluid
22 analysis.

23 Q But oftentimes, in an accident case, certain
24 tissue samples are unavailable due to the severity of the

1 injuries?

2 A Yes, that's true.

3 Q And that would explain why, in some cases,
4 you are only able to get blood alcohol content and not have
5 urine samples and not have bile samples?

6 A That's true, yes, sir.

7 Q Doctor, also in your capacity as chief
8 toxicologist with the office of the chief medical examiner
9 back in between '63 and '72, I believe you said that you
10 were associated with setting the range of legal alcohol?

11 A No. I was responsible for the testing of
12 all blood samples collected on alleged drunk drivers as
13 well as certifying the private laboratories doing blood
14 alcohol testing for the State as to their accuracy.

15 Q I was under the impression that you had
16 worked in the connection with the State about setting legal
17 alcohol limits or advising --

18 A I have done some advising. I have testified
19 at the legislative hearings and things of that sort, yes,
20 sir, but I don't set those.

21 Q Yes, sir. Well, you have provided
22 information to the State legislature on the blood alcohol
23 level that should be considered the legal limit for
24 driving?

1 A Yes, I have.

2 Q And you are familiar with the legal blood
3 alcohol level has been decreased from 0.10 to 0.08?

4 A Yes, sir, I am.

5 Q And one of the primary reasons for that is
6 even at the level of 0.08, a person's sensory motor skills
7 are so adversely affected it causes them to be an unsafe
8 driver?

9 A That, in my opinion, is true, yes, sir.

10 Q And in addition to having the sensory motor
11 skills affected at the 0.08 level, also sight, as you
12 pointed out, is also adversely and negatively affected at
13 the level of 0.08?

14 A Yes, it is.

15 Q Driving involves a number of different
16 interrelated functions in terms of motor coordination,
17 perception, and reaction?

18 A Yes, it does.

19 Q And when a person is driving, they are
20 receiving information and reacting to that information,
21 correct?

22 A That's correct, yes.

23 Q They receive information through their eyes,
24 and their reaction includes eye-to-hand skills on a

1 steering wheel as well as foot-to-eye skills with brake
2 pedals and the accelerator, too?

3 A That's correct, yes.

4 Q In addition, not only does the individual
5 have to perform those functions, but the individual also
6 has to move his or her head to the left and right and
7 receive incoming information?

8 A That's true, yes, sir.

9 Q All at the same time while negotiating a
10 stretch of road that may be a decline, may be an incline,
11 may be curving, may not, correct?

12 A That's right, yes, sir.

13 Q And the alcohol, even at the level of 0.08,
14 has an adverse impact upon the brain's ability to process
15 all of this information?

16 A Yes, sir. It would impair a person's normal
17 ability to do that.

18 Q And it impairs a person's normal ability,
19 not only on receiving the information, but then on
20 coordinating the functions that must be properly performed
21 to maintain control of an automobile?

22 A That's correct, yes, sir.

23 Q A person who has drunk alcohol to the point
24 of being intoxicated three times a week over a course of

1 six months, would that person be able to mask his
2 appearance of being intoxicated at the level of 0.12?

3 A Well, it's hard to say. There are some
4 people who are alcoholics who have learned to mask certain
5 motor function skills so that they may not stagger as
6 noticeably. They may not -- they may speak more slowly so
7 that they are more clearly understood. So those motor
8 functions can be masked.

9 However, there are some autonomic functions
10 that cannot be masked, and these are the functions that
11 relate to visual acuity, to reflex times and so forth.

12 Q Okay. But talking about external
13 appearances for a moment, an individual with a 0.12, if
14 someone else is to observe that person with a 0.12 blood
15 alcohol content, to say that we knew that the second person
16 would know the 0.12 was drunk, we are assuming a number of
17 things, correct?

18 A Yes, assuming normal intelligence and so
19 forth, yes.

20 Q Let me put it this way: Mr. Lambert was a
21 0.12, correct?

22 A Uh-huh.

23 Q Assume for a moment that another individual
24 sees Mr. Lambert with that 0.12. Outward appearances by

1 Mr. Lambert are going to be dependent upon Mr. Lambert's
2 rate of drinking in the past and frequency of becoming
3 drunk, correct?

4 A Not necessarily.

5 Q But the appearance to someone else is going
6 to depend, in part at least, on their familiarity with
7 Mr. Lambert?

8 A Yes, that's a factor to be considered. The
9 more familiar they are with him, probably the more they
10 would be able to recognize these intoxicating effects.

11 Q But if they haven't spent much time with him
12 in the past, they are not going to be able to notice the
13 changes in outward behavior that might occur with a person
14 0.12 BAC?

15 A That's true up to a point. Just as an
16 arresting police officer arresting a person probably has
17 never seen that person before and they make a judgment as
18 to whether they are likely to be under the influence, I
19 would think that a normal citizen, normal individual, could
20 do a similar thing depending upon their state of knowledge.

21 Q Depending upon, exactly, their state of
22 knowledge. A police officer, we are talking about before
23 they can become a police officer, and I'm sure you are
24 familiar with this, is trained in conducting field tests,

1 field sobriety tests?

2 A That's correct.

3 Q And those field sobriety tests that you have
4 alluded to, and the Jury may not be familiar with them, now
5 may involve heel-to-toe tests, nine steps out, nine steps
6 back, where the heel and toe are put together and the
7 individual is required to turn and come back, correct?

8 A That's correct.

9 Q Sometimes they involve touching the fingers,
10 as I am right now, back and forth, correct?

11 A That's correct, yes, sir.

12 Q Sometimes they will involve dropping an
13 object on the ground; the police officer drops the object
14 to the ground and has someone else pick it up, correct?

15 A That's correct, yes, sir.

16 Q Sometimes they will involve the
17 finger-to-nose test where the individual tilts their head
18 back, closes their eyes, and is asked by the officer to go
19 from right to left and back?

20 A That can also be a test, yes.

21 Q And these police officers have been trained
22 to notice differences in ability to perform these tests as
23 one factor that may indicate that an individual is under
24 the influence of alcohol, correct?

1 A That's right, he is.

2 Q And that is one of the factors that
3 contributed to your statement that the degree of an
4 individual's knowledge will help them, dramatically, make a
5 determination as to another individual's state of
6 intoxication?

7 A Yes, knowledge and their experience in
8 having seen people who are intoxicated.

9 Q Exactly. And police officers, in many
10 cases, have much more experience performing these field
11 tests than ordinary citizens?

12 A Yes. I wouldn't expect an ordinary citizen
13 to perform field tests, but I think ordinary citizens
14 frequently can identify a drunk.

15 Q An individual who has not been around
16 persons who have drank very much in the past, or been
17 drunk, is going to be less likely than a person who has
18 been around people drinking often and been drunk?

19 A Probably so.

20 Q To recognize outward characteristics?

21 A Yes, that's probably true.

22 Q So you would expect, ordinarily, a younger
23 person to be less able to identify the characteristics of a
24 person under the influence than an older, more experienced

1 person?

2 A Probably, in general terms, that would be
3 true.

4 Q All right. And let me clarify a couple
5 points. When I talked about masking, masking is a term
6 that -- well, define masking for me within the context of
7 this discussion about blood alcohol content and how it will
8 affect a person's outward appearance.

9 A Masking, my understanding, would be the
10 either conscious or unconscious effort of an individual who
11 is intoxicated to keep the signs of intoxication from being
12 noticeable by others.

13 Q And a person who gets drunk three times a
14 week is going to have developed, consciously and/or
15 unconsciously, some of these masking characteristics?

16 A Well, I have known cases on both sides.
17 There are individuals who are professional people and go to
18 their office every day and are alcoholics and have alcohol
19 in their blood at various concentrations, and their
20 colleagues are unaware of that. They have learned how to
21 mask those features.

22 There are other individuals who are almost
23 continually drunk, and we often see them on the streets,
24 that are obviously intoxicated and make no effort to mask.

1 So there are examples on both extremes, I think, that can
2 be found.

3 Q And in Mr. Lambert's case, you never had the
4 opportunity to examine Mr. Lambert in any way?

5 A No, I did not.

6 Q Before or after he died?

7 A That's correct.

8 Q Assuming for a moment that Mr. Lambert got
9 drunk three times a week, you are unable to tell the Jury
10 whether he masked very efficiently as the individuals you
11 described who go to work and carry on or very poorly?

12 A That's correct, yes, sir.

13 MR. RUDD: Doctor, thank you very much. I
14 don't have any other questions.

15 THE COURT: Any redirect?

16 MS. KNOX: Just a couple of follow-ups, Your
17 Honor.

18

19 REDIRECT EXAMINATION

20

21 BY MS. KNOX:

22 Q Bottom line, Doctor Blanke, someone 0.12,
23 are they obviously drunk, more than likely?

24 A In my opinion, the probability of being more

1 obviously drunk, more than likely, would be yes.

2 Q And would that probability, in terms of
3 being obviously drunk to another person, increase if the
4 person sat there and watched them drink and knew that he
5 had been drinking?

6 A In my view it would, yes.

7 Q And from your experience, Doctor, the
8 subject of masking, do young people who get together and
9 drink beer and party a few times a week often attempt to
10 mask that they are intoxicated?

11 A I think if they are with colleagues who are
12 engaged in the same activity, there would be no perceived
13 need to mask.

14 MS. KNOX: Thank you, Doctor. That's all
15 that I have.

16 MR. RUDD: I want to follow up on that and
17 make clear a couple things.

18

19 RE CROSS-EXAMINATION

20

21 BY MR. RUDD:

22 Q An individual's ability to tell that another
23 person is intoxicated depends on a number of factors,
24 correct?

1 A Yes.

2 Q It depends on that individual's knowledge
3 and experience in dealing with other intoxicated persons,
4 correct?

5 A Yes.

6 Q And it depends on an individual's
7 familiarity with the person who is now intoxicated in front
8 of them, correct?

9 A That can be a factor dependent upon the
10 degree of intoxication.

11 Q Because an individual is more likely to
12 know, if the person knows the individual and has seen them
13 drunk many times before, they are going to notice changes
14 in behavior, correct?

15 A I would believe so, yes.

16 Q So there are a number of factors that would
17 contribute to whether or not someone is able to identify
18 another individual as being intoxicated?

19 A Yes. And one of those factors is the amount
20 of alcohol that individual has in their bloodstream.

21 MR. RUDD: Okay. All right.

22 MS. KNOX: I'm sorry, I didn't hear the
23 last --

24 THE WITNESS: One factor is the amount of

1 alcohol that the intoxicated individual has in
2 their bloodstream.

3 MS. KNOX: Are you talking about the person
4 who is observing?

5 MR. RUDD: Yes.

6 THE WITNESS: Both cases actually.

7 MS. KNOX: So that if, for example -- I'm
8 sorry, are you finished? I don't want to jump in.

9 MR. RUDD: You have gone through redirect
10 and recross.

11 MS. KNOX: You have raised one further
12 question for me.

13 THE COURT: Ask your question.

14 MS. KNOX: All right.

15

16 REDIRECT EXAMINATION

17

18 BY MS. KNOX:

19 Q So if a person who is observing someone at a
20 0.12 had also been drinking and gotten intoxicated by that
21 person's own actions, they would decrease their ability to
22 tell if those around them were drunk; is that what you are
23 saying?

24 A Well, their judgment would be affected. I

1 can't say specifically that they would not be aware that
2 their colleagues are drunk, but their judgment in any
3 subsequent action would be impaired because of the alcohol
4 they also have in their system.

5 MS. KNOX: Okay. Thank you, Doctor. That's
6 all.

7 THE COURT: Anything further, Mr. Rudd?

8 MR. RUDD: No, Judge. I think we have
9 covered it thoroughly.

10 MS. KNOX: Thank you, Dr. Blanke.

11 THE COURT: Thank you, Doctor. May
12 Dr. Blanke be excused?

13 MS. KNOX: If I could confer with counsel
14 one second, I will be able to answer that question
15 for you.

16
17 (Counsel confer.)

18
19 MS. KNOX: Yes, Your Honor, he may be
20 excused.

21 THE COURT: Doctor Blanke, you are excused.

22
23 (The Witness was excused.)
24

*

*

*

1 that this is a Jury question and that there is
2 sufficient evidence and issues there for the Jury
3 to decide. The Court overrules the defendant's
4 motion to strike plaintiffs' evidence.

5 Now, let's go to the plaintiffs' motions to
6 strike the defense's theories on contributory
7 negligence and assumption of the risk.

8 In order to do that, the shoe is over on the
9 other foot, and the Court would have to find as a
10 matter of law that the evidence would be
11 insufficient to support a Jury's finding, should
12 the Jury so find, that plaintiff has assumed a
13 risk.

14 We know from the evidence that
15 Ms. Rutherford started out the evening operating
16 the vehicle. We know that Mr. Lambert ended up
17 operating the vehicle, and we know that during the
18 course of the evening, that all of them consumed
19 alcohol.

20 We do not know when the driver change
21 occurred, we do not know under what conditions, we
22 do not know the blood alcohol content at that
23 point, if any. There are a number of factors that
24 are just not known.

1 The Court feels that the evidence, as a
2 matter of law, on the contributory negligence issue
3 is insufficient and grants the plaintiffs' motion
4 to strike that defense, contributory negligence.

5 On the assumption of the risk, the Court
6 feels that given the evidence and given the
7 knowledge that all of the parties had about what
8 was going on in the presence, that that raises a
9 Jury question.

10 The Court feels that a Jury could reasonably
11 find that the evidence would be sufficient to
12 sustain a Jury's verdict, if it so found, that the
13 plaintiff had assumed a risk, and the Court denies
14 the plaintiffs' motion to strike the assumption of
15 the risk doctrine.

16 Anything further, motions at this point?

17 MS. KNOX: I don't think so.

18 MR. RUDD: No, sir.

19 THE COURT: I guess we are down to the
20 instruction phase.

21 MS. KNOX: Yes.

22 MR. RUDD: Yes, Your Honor.

23 MR. JONES: I think if we could have a few
24 minutes, we would probably be able to narrow to

* *

INSTRUCTION NO. 1

The Court instructs the jury that you shall find your verdict for the plaintiffs if they have proved by the greater weight of the evidence that

- (1) Mike Lambert was negligent; and that
- (2) his negligence was a proximate cause of the accident and Tammy Rutherford's death.

You shall find your verdict for the defendant if:

- (1) the plaintiffs failed to prove either or both of the two elements above; or if
- (2) you find by the greater weight of the evidence that Tammy Rutherford assumed the risk of this accident and that the risk assumed was a proximate cause of the accident and her death.

✓ Granted
10-25-95
RCP

INSTRUCTION NO. 15

The Court instructs the jury that if at the time Tammy Rutherford voluntarily entered the vehicle, or if at any time while she continued as a passenger after she had a reasonable opportunity to leave, she knew that Mike Lambert had consumed enough alcoholic beverages to impair, or to be likely to impair his ability to drive, and if Tammy Rutherford fully appreciated the nature and extent of the risk in entering the vehicle, or continuing as a passenger after she had a reasonable opportunity to leave, then she assumed the risk of any injury resulting from Mike Lambert's intoxication.

Granted

10-25-95

RCP

M8300724

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1 had an opportunity to observe drinking, as she was,
2 as well as the other two occupants in the car,
3 gives rise to a Jury issue as to whether or not
4 this was negligence on her part.

5 THE COURT: All right. Mr. Cleary, your
6 objections are noted for the Record, and your
7 exceptions taken are also noted.

8 Anything else?

9 MR. RUDD: No, sir.

10 MR. JONES: I don't believe so.

11 THE COURT: Anything else for the defense?

12 MR. CLEARY: No, Your Honor.

13 MS. KNOX: I don't believe so.

14 THE COURT: Okay. Off the Record.

15

16 (A Recess was taken.)

17

18 THE COURT: Sheriff, I understand the Jury
19 is ready to come in with a verdict.

20 THE BAILIFF: Yes, sir.

21 THE COURT: All right. Bring the Jury in,
22 sir.

23

24 (The Jury returned to the Courtroom with its

1 Verdict at 3:50 p.m.)

2

3 THE BAILIFF: Jury is present, Your Honor.

4 THE CLERK: Members of the Jury, have you
5 all agreed upon a verdict?

6 THE JURY: Yes.

7 THE CLERK: Verdict, we the Jury on the
8 issues joined find our verdict in favor of the
9 defendant; signed, the foreperson.

10 Members of the Jury, is this your verdict
11 and so say you all?

12 THE JURY: Yes.

13 THE CLERK: Thank you.

14 THE COURT: Mr. Rudd, Mr. Jones, do you wish
15 to have --

16 MR. RUDD: No.

17 THE COURT: All right. Ladies and gentlemen
18 of the Jury, this will conclude your service.
19 Thank you very much for being here and hearing this
20 case and rendering your civic duty.

21 You have the thanks of the Court. You will
22 now be excused, and in all likelihood, you probably
23 won't have to come back and hear another one, but I
24 can't promise you that.

3/2
VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

4
ROBIN R. YOUNG and ROBERT R. YOUNG,)
Administrators of the Estate of)
Tammy Rutherford, Deceased,)

Plaintiffs,)

v.)

MARGARET A. LAMBERT,)
Administratrix of the Estate of)
Phillip M. Lambert, Deceased,)

Defendant.)

ORDER

Case No. CL-93-0171

On October 23, 1995 came the plaintiffs, Robin R. Young and Robert R. Young, Administrators of the Estate of Tammy Rutherford, Deceased, in person and by counsel, and came also the defendant, Margaret A. Lambert, Administratrix of the Estate of Phillip M. Lambert, Deceased, in person and by counsel, and all parties announced that they were ready for trial upon the pleadings heretofore filed.

Whereupon came a jury of twenty one persons and, each side having struck off five of said jurors and the Court having struck off two of said jurors, the remaining nine jurors were sworn to well and truly try the issues joined, and a true verdict render according to the law and the evidence.

Whereupon the plaintiffs presented their evidence on the issues of liability and damages and rested their case-in-chief on the second day of trial. Counsel for defendant then moved the Court to strike the plaintiffs' evidence, and to enter summary judgment in her favor on the grounds appearing in the record. Said motion was denied, over objection.

RCP

Whereupon some evidence was presented on behalf of the defendant on the issues of liability, contributory negligence and assumption of the risk, following which the proceedings were adjourned until the following day. On the third day of trial, the parties appeared again and the defendant presented additional evidence on the aforementioned issues, plus some evidence on the issue of plaintiff Robin Young's damages. At the close of her evidence, defendant rested her case-in-chief.

At the close of defendant's case-in-chief, she renewed her motion to strike plaintiffs' evidence and enter summary judgment in her favor on grounds appearing in the record. After hearing argument of counsel, the Court again denied defendant's motion, over objection.

Whereupon plaintiffs moved to strike defendant's evidence of contributory negligence and assumption of the risk on grounds appearing in the record. After hearing argument of counsel, the Court granted plaintiffs' motion as to defendant's evidence of contributory negligence and denied plaintiffs' motion as to defendant's evidence of assumption of the risk, over objection of defendant and plaintiffs, respectively.

Plaintiffs offered no rebuttal evidence.

Whereupon two of the nine jurors were excused as alternates and the seven remaining jurors heard closing arguments and were instructed on the law by the Court. The jury then retired to consider its verdict.

After some time, the jury returned with a verdict in favor of the defendant. Whereupon the plaintiffs, by counsel, orally moved the Court to set aside the verdict and requested leave to file a written motion and legal authorities in support of same. The Court

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took plaintiffs' motion under advisement and granted leave to file a written motion and legal authorities in support of same.

Whereupon plaintiffs, by counsel, did file a written motion to set aside the verdict and legal authorities in support of same. Thereafter, defendant, by counsel, filed her opposition to said motion, and legal authorities in support of her opposition.

On January 10, 1996 came the parties, by counsel, and made argument to the Court in support of their respective positions pertaining to plaintiffs' motion to set aside the verdict. The Court, having found that its instructions to the jury were appropriate, based on the evidence adduced at trial, and that the jury's verdict was sustainable based on the evidence adduced at trial, denied plaintiffs' motion, over objection.

Accordingly, the Court does ADJUDGE and ORDER that the plaintiffs take nothing from this defendant and that judgment be entered in favor of the defendant. This action shall be dismissed from the docket, with prejudice.

The Clerk of Court is directed to furnish certified copies of this order to counsel of record.

Entered this 23rd day of February, 1996.

Richard C. Pattison
Judge

We ask for this:



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Donna D. Knox, Esq. (VSB # 32884)

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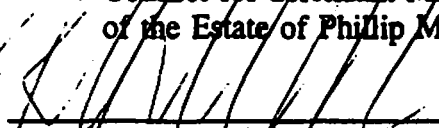
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**Young, Administrators of the Estate of Tammy Rutherford,
Deceased**