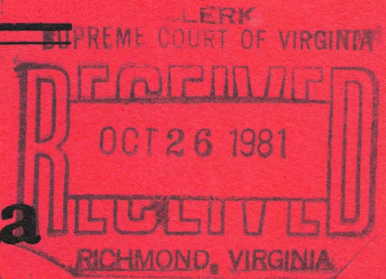


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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND



---

RECORD NO. 810337

---

RAYMOND H. HORNE, Administrator of the  
Estate of Stephen H. Horne, Deceased,

Appellant,

v.

CYNTHIA RENEE MILGRIM,

Appellee.

---

JOINT APPENDIX

---

G. Marshall Mundy, Esq.  
Jonathan M. Rogers, Esq.  
Mundy & Strickland  
131 Kirk Avenue West  
Roanoke, Virginia 24009

Counsel for Appellant

John B. Spiers, Jr., Esq.  
Spiers, Spiers & Mink  
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P. O. Box 1052  
Radford, Virginia 24141

Counsel for Appellee



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MOTION FOR JUDGMENT

The plaintiff, Raymond H. Horne, Administrator of the Estate of Stephen H. Horne, deceased, respectfully moves the Court for judgment against the defendant, Cynthia Renee Milgrim, in the sums hereinafter set forth under Counts I and II, and in support thereof states as follows:

COUNT I

1. On March 12, 1979, plaintiff qualified in the Circuit Court of Carroll County as administrator of the estate of his deceased son, Stephen H. Horne.

2. On July 3, 1978, at approximately 9:30 p.m., the plaintiff's decedent, Stephen H. Horne, was a passenger in an automobile operated by the defendant, Cynthia Renee Milgrim, which was proceeding north on the Blue Ridge Parkway near Mile Post 207 in Carroll County, Virginia. The defendant, at the time and place aforesaid, operated the said vehicle in a careless and negligent manner, causing it to leave the highway and collide with a tree.

3. The defendant was guilty of negligence in operating the said vehicle on the wrong side of the road, in driving at an excessive rate of speed, in failing to maintain a proper lookout, in failing to keep proper control of the said vehicle, in operating the said vehicle while in a state of intoxication, and in otherwise failing to exercise due care for the safety of the plaintiff's decedent.

4. As a direct and proximate result of the aforesaid accident and negligence on the part of the defendant, the plaintiff's decedent, Stephen H. Horne, sustained severe injuries which resulted in his death.

WHEREFORE, the plaintiff moves the Court for judgment against the defendant for the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), together with the costs of this action.

#### COUNT II

1. The defendant has falsely and fraudulently denied that at the time and place of the accident referred to in paragraph 2 of Count I hereof she was the operator of the automobile in which plaintiff's decedent was a passenger. Further, on August 28, 1978, at a traffic hearing before the United States Magistrate of the Western District of Virginia, the defendant was guilty of perjury by falsely testifying under oath that she was not the operator of the said automobile at the time of the accident involved herein.

2. As a direct and proximate result of the defendant's fraudulent conduct as described in paragraph 1 of this Count



II, the plaintiff has sustained considerable mental, emotional, and economic damage,

WHEREFORE, plaintiff moves the Court for judgment against the defendant under Count II hereof for compensatory damages in the amount of \$50,000.00 and for punitive damages in the amount of \$100,000.00, together with the costs of this action.

Respectfully,

RAYMOND H. HORNE, Administrator  
of the Estate of Stephen H. Horne,  
deceased

By

\_\_\_\_\_  
Of Counsel

G. Marshall Mundy  
MUNDY & STRICKLAND  
P. O. Box 2240  
131 W. Kirk Avenue  
Roanoke, Virginia 24009  
Counsel for Plaintiff

## FINAL ORDER

On November 17, 1980, came the parties to this action, in person and by counsel, issue having been joined on the pleadings heretofore filed and the case having been set this day for trial, and both parties having announced ready for trial.

The Court first considered the Demurrer herein filed on behalf of the defendant, as well as the motion to dismiss, and the plaintiff, by counsel, moved the Court for a voluntary non-suit as to Count II of the Motion for Judgment, which was granted, and it is hereby ORDERED that Count II of the Motion for Judgment be, and the same hereby is, non-suited and dismissed on motion of the plaintiff.

Defendant, by counsel, then filed her written "Motion in Limine" relative to certain evidence to be tendered by the plaintiff in the testimony of one John Farris and in portions of testimony of Carl C. Smith.

After hearing the arguments of counsel, the Court sustained the Motion in Limine as to certain of the testimony of Carl C. Smith relative to certain conclusions based upon a "Side Slip Equation" and other matters, and directed that such evidence be not commented upon in opening statements and no evidence from Carl C. Smith be offered as to the matters and things mentioned in the Motion in Limine. The Court deferred ruling upon the testimony of John Farris.

THEREUPON, came also a panel of thirteen (13) jurors, selected according to law, and found qualified to serve in the



trial of this case and, alternately, beginning with the plaintiff, each party struck three (3) from said panel, leaving a jury of seven (7) for the trial of this case, to-wit:

Vance Leland Stanley	Archa Williams Harmon
James Roy Bryant	Warren Calvin York
Herman Garfield Brown	James Anderson Tate
James B. Richardson	

The jurors were sworn to well and truly try the issues joined between the parties hereto and a true verdict render according to the law and to the evidence.

The jury then heard the opening instruction of the Court, and opening statements of counsel, and the plaintiff commenced producing the testimony of witnesses before the jury.

The evidence not having been completed on this date, the trial of this case is recessed until tomorrow morning, November 18, 1980.

---

On November 18, 1980, came again the parties to this action, in person and by counsel, and came also the jury of seven (7) heretofore empaneled for the trial of this case.

The plaintiff then called John Farris as a witness. The defendant objected to the reception of the testimony of John Farris on the grounds assigned at the bar of the Court and, before ruling upon said objection, the Court heard the testimony of John Farris out of the presence of the jury. After having heard the testimony of John Farris and further arguments of counsel, the Court overruled the objection, to which counsel for the defendant excepted, and permitted the jury to hear the testimony. The plaintiff then proceeded to produce the balance of his evidence, and rested.

THEREUPON, the defendant, by counsel, moved to strike the evidence of the plaintiff and enter summary judgment in favor of the defendant on the grounds assigned at the bar of the Court and as may be found in the court reporter's record of proceedings of this trial. After hearing the arguments of counsel, the Court ruled that the testimony of John Farris was improvidently received in the evidence and advised the parties that he would so advise the jury, and direct that the testimony of the said John Farris be disregarded. Upon further consideration of the motion to strike the evidence and grant summary judgment to the defendant, the Court overruled said motion, to which the defendant, by counsel, excepted.

After the jury returned to the bar of the Court, the Court instructed the said jury of its actions with respect to the testimony of John Farris, the particulars of which may be found in the court reporter's record of proceedings of this trial.

The defendant thereupon produced her witnesses and evidence and rested; after which the plaintiff produced rebuttal testimony and rested. The defendant renewed her motion to strike the evidence of the plaintiff and grant summary judgment to the defendant on the grounds assigned at the bar of the Court and as may be found in the court reporter's record of the proceedings for this trial, which motion the Court overruled, to which the defendant, by counsel, excepted.

The jury then heard the instructions of the Court and the arguments of counsel, and retired to consider of its verdict. After a time, the jury returned to the bar of the Court and rendered the following verdict:



"We, the jury, on the issues joined between the plaintiff, Raymond H. Horne, Administrator of the estate of Stephen H. Horne, deceased, and the defendant, Cynthia Renee Milgrim, find for the defendant.

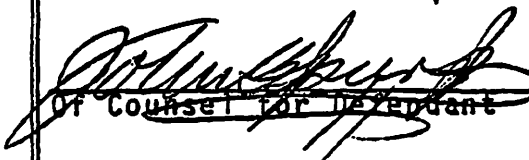
/s/ James B. Richardson  
Foreman"

The plaintiff then moved the Court to set aside the verdict of the jury non obstante veredicto and enter judgment on behalf of the plaintiff against the defendant on the issue of liability or, in the alternative, to grant a new trial, which motion, after hearing arguments of counsel, the Court overruled, to which counsel for plaintiff excepted.

Accordingly, and agreeably with the verdict of the jury, the Court doth ADJUDGE and ORDER that the plaintiff, Raymond H. Horne, Administrator of the estate of Stephen H. Horne, deceased, shall have and recover nothing of the defendant, Cynthia Renee Milgrim, but that the defendant, Cynthia Renee Milgrim, shall have and recover of the plaintiff, Raymond H. Horne, Administrator of the estate of Stephen H. Horne, her costs in this behalf expended.

Nothing further remaining to be done, this matter is stricken from the docket.

I ask for this Order,

  
Of Counsel for Defendant

I have seen this Order  
and object and except  
to the entry thereof

B. Marshall Mundy  
Of Counsel for Plaintiff

ENTER: S/ Dale W. LaRue  
Judge

DATE: November 28 , 1980

RECORDED IN LAW ORDER BOOK NO. 43, PAGE \_\_\_ IN THE CARROLL COUNTY  
CIRCUIT COURT CLERK'S OFFICE.

A TRUE COPY:

TESTE: M. B. Montgomery CLERK  
By: Helen Mc Brady, Dep.



VIRGINIA: IN THE CIRCUIT COURT OF CARROLL COUNTY

RAYMOND H. HORNE, Administrator  
of the Estate of Stephen H. Horne, .  
Plaintiff

v. | OBJECTION TO FILING OF RECORD

CYNTHIA RENEE MILGRIM,  
Defendant

TO: THE HONORABLE JUDGE OF SAID COURT

The undersigned defendant hereby moves the Court to direct the Clerk of this Court to refuse to file the transcript tendered by plaintiff for filing in this case, or if heretofore accepted by the Clerk for filing, to withdraw and reject the same, upon the following grounds:

1. Rule 5:9 of the Rules of the Supreme Court of Virginia requires that a transcript of the hearing must be filed with the Clerk within sixty (60) days after entry of the final judgment, with a notice identifying the transcript and reciting its delivery to the Clerk to which is appended a certificate of mailing to opposing counsel before it becomes a part of the record, that a transcript of the hearing has not been filed as of the date of this objection and that no notice has been filed which adequately identifies the portions of the transcript so filed.

2. That the transcript delivered to the Clerk by the appellant (plaintiff) omits all of the testimony of plaintiff's witnesses Betty Anne Horne, Randall Kyle Kegley, Jeanne H. Horne, Raymond Horne and Shirley Galyean, and thus is not a "transcript of the hearing."

009

3. That the transcript delivered to the Clerk by the

MS. SPIERS & MUNK  
ATTORNEYS AT LAW  
RADFORD, VA.

appellant (plaintiff) omits the testimony of all witnesses for the defense, ie: Tony Nunn, Renee Milgrim, Dr. Donald Blose, Trooper Fred Hensley, Jeanette Mayberry, Mrs. Shirley Jean Felts, Mr.

1.

Ronnie Milgrim, Jeff Combs and Melanie Hensley, and thus is not a "transcript of the hearing."

4. The transcript contains no record of opening statements of counsel and no record of closing arguments of counsel. Whether the record relative to exhibits introduced at trial is complete as set out in the transcript is questionable.

5. The transcript of the hearing was prepared by one or more court reporters retained by appellant (plaintiff), who directed the court reporter to prepare the transcript of the hearing but specified the transcription only of those portions which were prepared and, as the undersigned believes, directed that the omitted portions be not transcribed.

Inasmuch as Rule 5:9 of the Rules of the Supreme Court of Virginia has not been complied with, and that failure to comply therewith has been, was and is due to the intentional acts and design of appellant (plaintiff) and the alleged transcript should not be "filed" by the Clerk, nor should it be considered and treated as a part of the record, and the undersigned moves that the Court so rule.

Respectfully,

CYNTHIA RENEE MILGRIM

By 

Of Counsel

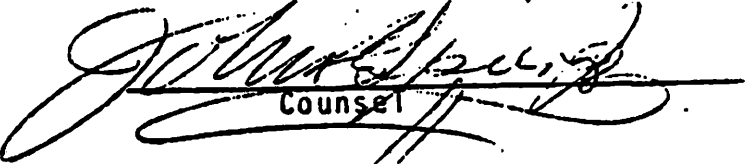
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Spiers, Spiers & Mink  
Attorneys at Law  
P. O. Box 1052  
Radford, Virginia 24141  
Counsel for Appellee

CERTIFICATE

I hereby certify that on the 27th day of January, 1981,  
a true copy of the foregoing objection was mailed to Mundy &  
Strickland, Attorneys at Law, 131 Kirk Avenue West, P. O. Box  
2240, Roanoke, Virginia 24009, Counsel for Appellant.

  
Counsel

2.

CERTIFICATE OF TRIAL JUDGE

The undersigned, Dale W. LaRue, Judge of the Circuit Court of Carroll County, Virginia, do hereby certify that, on January 23, 1981, a purported transcript of the hearing in this case was tendered to the Clerk of this Court, to which objections were filed on the 28th day of January, 1981, pursuant to Rule 5:11 of the Rules of the Supreme Court of Virginia on the grounds that the same was erroneous and incomplete; that a hearing thereon was held before the Court on February 6, 1981, both parties being represented by counsel; and that as a result of said hearing and after an examination of the transcript tendered herein, the Court doth SUSTAIN the objections thereto, and does find that the transcript of the hearing is incomplete, and CERTIFIES that the respects in which the record is incomplete are as follows:

1. Of witnesses who testified on behalf of the plaintiff, the testimony of five (5) was not transcribed and does not appear in the transcript.

2. The defendant's motion to strike the evidence and grant summary judgment at the conclusion of Plaintiff's case, the grounds therefor and the ruling of the Court thereon were not transcribed and do not appear in the transcript.

3. The testimony on behalf of the defendant, consisting of the testimony of nine (9) witnesses, including the defense testimony of the defendant herself, was not transcribed and does not appear in the transcript.

There were numerous inaccuracies in the transcript,  
and corrections have been made where felt material.

The signature of the undersigned is appended to  
certify only that those portions of the transcript of the hearing  
presented are substantially accurate, and the undersigned further  
certifies that a transcript of the entire hearing has not been  
filed by reasons of the omissions noted above, which, the Court  
finds from the evidence presented, were the result of plaintiff's  
failure to cause the same to be transcribed.

Given under my hand this the 6th day of February, 1981.

  
\_\_\_\_\_  
Judge, Circuit Court of Carroll County

SEEN:

  
\_\_\_\_\_  
Counsel for Appellant

  
\_\_\_\_\_  
Counsel for Appellee

ASSIGNMENTS OF ERROR

(1) The Trial Court committed error by refusing to allow plaintiff to introduce defendant's deposition, either in part or in whole, as substantive evidence pursuant to Rule 4:7 paragraph (a) (3) and (c), without thereby making the defendant his witness.

(2) The Court should not have struck the testimony of John Farris merely because it was contradicted by the defendant's testimony.

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF CARROLL COUNTY

3 \* \* \* \* \*

4 RAYMOND H. HORNE, Administrator \*  
5 of the Estate of Stephen H. Horne, \*  
6 Deceased, \*  
7 Plaintiff, \*

8 vs.

9 CYNTHIA RENEE MILGRIM, \*  
10 Defendant. \*

11 \* \* \* \* \*

12 The Discovery Depositions of Cynthia  
13 Renee Milgrim and Raymond H. Horne taken before  
14 Colleen Shoemaker, Registered Professional Reporter  
15 and Notary Public for the State of Virginia At Large,  
16 on Friday, the 31st Day of October, 1980 at 1:00 O'Clock  
17 in the Afternoon at the Law Offices of W. H. Jolly  
18 located at 208 North Main Street, Galax, Virginia,  
19 pursuant to Agreement of Counsel in the above-captioned  
20 case.

21 APPEARANCES:

22 G. Marshall Mundy and Jonathan  
23 Rogers, Attorneys for  
24 Raymond H. Horne

25 John B. Spiers, Jr., Attorney for  
Cynthia Renee Milgrim

Reported by:

Colleen Shoemaker  
480 Chinquapin Trail  
Christiansburg, Virginia 24073

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1 CYNTHIA RENEE MILGRIM, being duly sworn, deposed  
2 as follows:

3 DIRECT EXAMINATION BY MR. MUNDY:

4 Q: State your name, please.

5 A: Cynthia Renee Milgrim.

6 Q: How old are you?

7 A: I'm 20 years old.

8 Q: And what is your date of birth?

9 A: June 11, 1960.

10 Q: Where do you reside? Where do you  
11 live?

12 A: I live in Galax.

13 Q: What is your address?

14 A: 110 Robinhood Road.

15 Q: Are you employed?

16 A: Yes, I am.

17 Q: Where?

18 A: At Twin County Community Hospital.

19 Q: What do you do there?

20 A: I work in the Medical Records  
21 Department, I'm a clerk.

22 Q: Who is your immediate Supervisor?

23 A: Delores Edwards.

24 Q: And what is your father's name?

25 A: Ronnie Milgrim.

1 Q: What does Mr. Milgrim do?  
2 A: He's self-employed.  
3 Q: In what business?  
4 A: The A & Z Store and the Rex and Star  
5 Theaters.  
6 Q: Do you have brothers and sisters?  
7 A: No sir.  
8 Q: You are an only child?  
9 A: Right.  
10 Q: Is your mother employed?  
11 A: Yes, she is.  
12 Q: What does she do?  
13 A: She's a Deputy Clerk for the City.  
14 Q: For the City of Galax?  
15 A: Right.  
16 Q: How far did you go in school?  
17 A: I went through the sophomore year  
18 in college.  
19 Q: Where was that?  
20 A: At Virginia Intermont in Bristol.  
21 Q: And when did you stop attending  
22 Virginia Intermont?  
23 A: Last year - last May.  
24 Q: May of 1980?  
25 A: Yes.

1 Q: Miss Milgrim, did you know Stephen H.  
2 Horne?

3 A: Yes sir, I did.

4 Q: When did you become acquainted with -  
5 I am going to refer to him as Steve?

6 A: I dated him in 19 - I think it was  
7 1977 or 1976. He took me to the Homecoming, and I  
8 dated him, you know, a few times. But that was it.  
9 We still remained friends.

10 Q: When was that?

11 A: That was my sophomore year in high  
12 school.

13 Q: Around 1976?

14 A: Yes.

15 Q: And when did you stop dating Steve?

16 A: Well, I only dated - I didn't date him  
17 very much. I dated him a few times.

18 Q: And after that you continued to know  
19 him?

20 A: Yes, we were still friends.

21 Q: You were still friends. Was he a  
22 popular young person with his classmates and school-  
23 mates?

24 A: Yes, I imagine so. He was a few  
25 years older than I was. He graduated right when I got  
in high school.

1 Q: What kind of car did he own?

2 A: A Corvette.

3 Q: Do you know what model?

4 A: No, I don't.

5 Q: We are talking about in July of 1978,  
6 and that's the time frame, when I asked you what kind  
7 of car he owned - and at that time he owned a Corvette?

8 A: Right.

9 Q: What color was it?

10 A: Blue.

11 Q: Had you ever driven his automobile?

12 A: No sir.

13 Q: Had you ever asked him to drive his  
14 automobile?

15 A: No sir. Steve was real particular  
16 with his cars.

17 Q: How did you know that?

18 A: Because he always took care of them  
19 and cleaned them up, and you know, he was always  
20 talking about - he just seemed to be real proud.

21 Q: Did you see him on a frequent basis  
22 between the time you stopped dating him and the time  
23 of this accident?

24 A: No, I didn't. I didn't see him for a  
25 long period of time, and then he started calling my

1 house and he would pull me over and stop  
2 me when I was going to take a ride in his  
3 wanted me to, you know, and I never did.

4 Q: Did he ever ask you to drive his car?

5 A: No.

6 Q: Did he ever offer to allow you to  
7 drive his car?

8 A: No.

9 Q: Did you ever ask him to allow you  
10 to drive his automobile?

11 A: No sir.

12 Q: And your testimony is that you had  
13 never driven his car?

14 A: Right.

15 Q: Where did you first see Steve on  
16 July 30, 1978?

17 A: I had been out with one of my girl-  
18 friends.

19 Q: Who was that?

20 A: Toni Nunn.

21 Q: Where does she live?

22 A: Right now she is going to school in  
23 Florida.

24 Q: Where?

25 A: I'm not sure, I haven't kept in touch

1 with her. She was going to East Tennessee State, and  
2 this year she got engaged and she's going to school in  
3 Florida.

4 Q: What are her parents' names?

5 A: John Nunn and Mariah.

6 Q: What does Mr. Nunn do?

7 A: He owns Chestnut Creek. It's a  
8 furniture corporation.

9 BY MR. SPIERS:

10 Is Chestnut Creek around here?

11 BY THE WITNESS, MS. MILGRIM:

12 A: Yes.

13 BY MR. MUNDY:

14 Q: Now, what time were you with Toni  
15 Nunn?

16 A: Okay, I went and picked her up at  
17 about 7:30 - 7:00 or 7:30 - I think, somewhere around  
18 in there.

19 Q: Was that P.M.?

20 A: Right, and she was going to go home  
21 and talk to her dad about money for college, and I took  
22 her home at 9:30 and I was supposed to pick her up in  
23 about a half an hour, and we were going to go watch  
24 the fireworks.

25 Q: So were you with her from 7:30 until  
9:30 at night?



1 A: Right.

2 Q: And where did you go?

3 A: We were just in town, we were just  
4 riding around and talking.

5 Q: In your automobile?

6 A: Right, I was driving.

7 Q: When did you first see Steve that  
8 evening?

9 A: When I took Toni home, I went to the  
10 Pilot Gas Station to get gas and he pulled up; and he  
11 asked me again when I was going to, you know, come  
12 and ride around with him - take a ride in his car - and  
13 so I thought, you know - I told him that I just had a  
14 little while, that I was supposed to pick Toni back up  
15 and we were going to go watch the fireworks; and he  
16 says, you know, "Okay," and so he told me - I asked  
17 him where to leave my car, and he told me to follow  
18 him, and I followed him - I'm not familiar with the  
19 name of the road, but it's off Pipers Gap Road - and I  
20 left my car there.

21 Q: Where did you leave your car?

22 A: It was on that road, off Pipers Gap  
23 Road. It was on the side of the road. I don't know the  
24 name - it's off Country Club Lane.

25 Q: Near Country Club Lane?

1 A: Yes.

2 Q: Did you just park it on the side of  
3 the road?

4 A: Well, it was a place like - it was a  
5 field up there and you could back up. It was just a  
6 little pull-off, sort of like. It's hard to explain.

7 Q: You were by yourself then?

8 A: Right.

9 Q: And where did Steve stop?

10 A: He stopped there on the road.

11 Q: He stopped on the hard surface of  
12 the road?

13 A: Right.

14 Q: All right, what happened after that?

15 A: Then I got in the car with him.

16 Q: Did you open the door?

17 A: Yes.

18 Q: Do you recall that?

19 A: No, I'll take that back. I don't recall  
20 that, but I don't remember him getting out of the car  
21 to open my door.

22 Q: Well, how did you enter his automobile?

23 A: I just sat down in it.

24 Q: All right, in what seat?

25 A: In the passenger's seat.

1 Q: What time was that?  
2 A: Around fifteen till 10:00, till 10:00  
3 o'clock.

4 Q: Was it dark?

5 A: Yes, it was.

6 Q: What were the weather conditions?

7 A: It was clear. It wasn't raining.

8 Q: Had you been drinking?

9 A: No sir.

10 Q: Had Steve been drinking?

11 A: Not as I know of, I don't know. I  
12 did not smell anything.

13 Q: How tall are you?

14 A: Five-five.

15 Q: Were you approximately that height  
16 at that time?

17 A: Yes sir.

18 Q: How tall was Steve, approximately?

19 A: I don't - about five-eight.

20 Q: Was he as tall as I am? (MR. MUNDY  
21 STANDING UP) - You may want to stand up, so you will  
22 have a comparison.

23 A: No, I don't - no.

24 Q: I am approximately six feet-two.

25 A: No.

1 Q: Did you make any adjustments of the  
2 passenger's seat?

3 A: Not as I recall.

4 Q: Did you push it forward or push it  
5 backwards?

6 A: Not as I recall; I don't remember.

7 Q: Where did you go from there?

8 A: He drove down Pipers Gap, which led  
9 to the Parkway.

10 Q: How fast was that automobile travel-  
11 ing just prior to the accident?

12 A: I don't know.

13 Q: Approximately?

14 A: Well, I don't know, there is no  
15 way . . .

16 Q: Well, just give us your best estimate.

17 BY MR. SPIERS:

18 If you don't know, just keep saying that.

19 BY MR. MUNDY:

20 Well, Mr. Spiers, perhaps you can just  
21 answer the questions.

22 BY MR. SPIERS:

23 I'll answer that one, because she has  
24 answered you twice and said she doesn't know, and  
25 that's her answer.

1 BY MR. MUNDY:

2 Q: All right, I am going to ask you to  
3 give me an approximate estimate - just your ball park -  
4 of how fast the car was going just prior to the accident?

5 BY MR. SPIERS:

6 If you remember.

7 BY MR. MUNDY:

8 Now Mr. Spiers, you musn't interject  
9 whether she remembers or not.

10 BY MR. SPIERS:

11 I'll interject any time I feel it's neces-  
12 sary to make it a clear question.

13 BY MR. MUNDY:

14 The question is very clear.

15 BY MR. SPIERS:

16 You're trying to get her to approximate  
17 something she says she doesn't even remember, period.

18 BY MR. MUNDY:

19 She didn't say she didn't remember.

20 BY THE WITNESS, MS. MILGRIM:

21 Yes, I did. I said I don't know.

22 BY MR. MUNDY:

23 Q: You didn't say you didn't remember.

24 A: Well, it's the same thing. I don't  
25 remember. I don't know.

1 Q: Is it you don't remember, or you  
2 don't know? Or you don't know whether you remember?

3 A: I don't remember.

4 Q: All right, let's go back then. Do  
5 you remember getting in his car?

6 A: I don't remember opening the door  
7 and getting in, but you know, I know I did.

8 Q: All right, do you remember what  
9 happened after that?

10 A: I remember that he was driving down  
11 the road, and he went down the Parkway.

12 Q: Well, you weren't on the Parkway  
13 when you got in his car?

14 A: No, he went down Pipers Gap Road.  
15 He got off the road where I parked my car, which was  
16 Pipers Gap Road.

17 Q: What was he wearing?

18 A: I don't know.

19 Q: What were you wearing?

20 A: I was wearing blue jeans.

21 Q: And what kind of blouse?

22 A: I don't know.

23 Q: Short sleeved or long sleeved?

24 A: I don't know.

25 Q: And what happened after that?



1 A: After . . .

2 Q: You got in the car?

3 A: We were riding down the road.

4 Q: That's Pipers Gap Road?

5 A: Right.

6 Q: All right, how far did you drive be-  
7 fore you got on the Parkway?

8 A: It was about, I guess he drove about -  
9 it would take about ten minutes or fifteen minutes.

10 Q: Well, how far is it?

11 A: I'm not sure, but it's . . .

12 Q: Can you give us an approximate esti-  
13 mate?

14 A: About fifteen miles.

15 Q: About fifteen miles?

16 A: Yes, but that's just my guess, I  
17 don't . . .

18 Q: What did you talk about?

19 A: Just general conversation. I don't  
20 really recall, I don't . . .

21 Q: You have no recollection of what you  
22 discussed?

23 A: No sir.

24 Q: Did you make any comments about  
25 his automobile?

1 A: No sir. I don't remember what we  
2 talked about.

3 Q: Well, do you recall going on the  
4 Parkway?

5 A: Yes, I recall us . . .

6 Q: You have no problem remembering that?

7 A: No.

8 Q: And you have no problem remembering  
9 when you got in his car and where he was stopped and  
10 where your automobile was stopped and left, when you  
11 got in his car - is that correct?

12 A: Correct.

13 Q: And you recall him driving from where  
14 you got in his car to the Parkway - is that right?

15 A: Yes.

16 Q: How did he drive?

17 A: He drove - it was, I mean it wasn't  
18 real fast, but it was . . .

19 Q: Approximately how fast?

20 A: I don't really recall - I just know  
21 that, you know, it felt like we were going fast.

22 Q: Over the speed limit?

23 A: It felt that way, but you know, I  
24 couldn't see . . .

25 Q: What was the speed limit?

A: On Pipers Gap, it's 55, on that road.

Q: You are familiar with the operation

1 of an automobile, and you were licensed to drive at  
2 that time - were you not?

3 A: Correct.

4 Q: And it seemed to you that you were  
5 exceeding the speed limit?

6 A: Yes sir, but it could have, you know -  
7 I had never been in that car before; it could have just  
8 been, you know - some cars seem that you're going  
9 faster in them than others do. Do you know what I  
10 mean? Some ride different than others.

11 Q: Did he have both hands on the steer-  
12 ing wheel?

13 A: I don't remember.

14 Q: Is Pipers Gap Road two lanes?

15 A: Yes, it's two lanes.

16 Q: Did he stay in his lane of travel?

17 A: I don't really recall.

18 Q: Well, you were paying attention to  
19 the way he was driving the car, weren't you?

20 A: Well, not really particularly. I  
21 mean, we were talking and everything, you know.

22 Q: Was the radio on?

23 A: I don't remember.

24 Q: Well, you were paying attention to  
25 the way he was driving, weren't you?

1                   A: Well, I would have, you know, known  
2 if he was . . .

3                   Q: Driving improperly? You would have  
4 known that?

5                   A: Well, I realized, you know, I knew -  
6 I felt like he was going faster, but you know, I felt  
7 like - you know, he wasn't swerving all over the road  
8 or anything.

9                   Q: Just going a little bit too fast?

10                  A: Yes.

11                  Q: Did you say anything to him about that?

12                  A: No.

13                  Q: Why?

14                  A: He wasn't really going, you know,  
15 that fast. I didn't know he was going over the speed  
16 limit, he may not have been. It just felt that way.

17                  Q: And you do recall that he did not  
18 swerve or anything - is that correct?

19                  A: I can't really recall.

20                  Q: Well, I believe you testified that he  
21 wasn't swerving?

22                  A: Well, that's, you know, not - I don't  
23 know if you understand, if you know what I mean - he  
24 might have gone over the lines.

25                  Q: Well, do you recall that he did?

1 A: No, I don't recall, but I don't recall  
2 him either, you know, swerving.

3 Q: Did he operate the automobile in a  
4 safe manner, as far as you were concerned?

5 A: Yes, except, you know, I just felt  
6 like we were going over the speed limit.

7 Q: Do you recall anything else unsafe  
8 about the manner in which he operated the automobile?

9 A: No sir.

10 Q: All right, and if there was anything  
11 else unsafe about the manner in which he operated the  
12 automobile, would you not recall it?

13 A: I think I would recall it.

14 Q: And then what happened?

15 A: Then we - he turned on the Parkway.

16 Q: Did he come to a stop before he  
17 entered the Parkway?

18 A: At the stop sign - there was a stop  
19 sign before . . .

20 Q: Do you recall that he stopped there?

21 A: I don't know if he came to a dead stop  
22 or not, but you know, he looked for cars.

23 Q: He stopped and looked for cars in  
24 both directions?

25 A: I don't really recall, but . . .

1 Q: You know that he stopped or reduced  
2 his speed enough so that it was a safe entry onto the  
3 Parkway?

4 A: Yes.

5 Q: And if he didn't stop, was he going less  
6 than, say five or ten miles an hour just before he  
7 entered the Parkway?

8 A: At the stop sign?

9 Q: Yes.

10 A: Yes.

11 Q: Was he going to turn right on the  
12 Parkway?

13 A: I don't remember which direction he  
14 turned.

15 Q: You don't recall whether he turned  
16 right or left?

17 A: No.

18 Q: Well, which direction were you going  
19 at the time of the accident?

20 A: I'm not sure which direction it is.  
21 I wasn't familiar with that part of the Parkway. I  
22 don't . . .

23 Q: Did you have any destination in mind?  
24 Had you discussed where you were going?

25 A: No.



1 Q: Did you know where you were going?  
2 A: No. I just thought, you know, we  
3 were going to ride around and then he was going to take  
4 me back to . . .  
5 Q: All right, what happened after that?  
6 A: Then that's when we wrecked.  
7 Q: Not when you pulled on the Parkway?  
8 A: Not long after.  
9 Q: But you can't recall whether you  
10 turned right or left?  
11 A: No sir.  
12 Q: Well, is the point where the accident  
13 occurred North or South of where you turned on the  
14 Parkway?  
15 A: I don't know.  
16 Q: Have you been out there since?  
17 A: Yes, I have been out there with my  
18 dad, but that was a long - I don't remember.  
19 Q: All right, do you recall the manner  
20 in which he entered the Parkway - was that done with  
21 safety?  
22 A: As far as I can remember, it was.  
23 Q: All right, then just tell us what hap-  
24 pened after that?  
25 A: Then we just wrecked, I guess. I

1 don't really recall. I can't recall wrecking. I can't  
2 remember wrecking.

3 Q: Well, you remember the car going  
4 out of the highway, don't you?

5 A: No, I can't remember that.

6 Q: Well, what do you recall after you  
7 entered the Parkway?

8 A: I can recall him turning at the stop  
9 sign.

10 Q: Do you have any recollection of what  
11 happened after that?

12 A: No, I don't.

13 Q: Not at all?

14 A: I can just remember bits and pieces.

15 Q: You just tell us what bits and pieces  
16 you remember.

17 A: I can . . .

18 Q: Each bit and piece that you remember  
19 from the time you entered the Parkway until that acci-  
20 dent occurred.

21 A: Yes sir. The first thing I can remem-  
22 ber is being outside.

23 Q: I mean, before the accident occurred?

24 A: I can't remember.

25 Q: You have no recollection of anything  
from the time . . .

1 A: I can just remember being on the  
2 Parkway.

3 Q: You mean from the time he turned . . .

4 A: From the stop sign and being on . . .

5 Q: All right, what do you remember about  
6 that?

7 A: I can just remember him driving on  
8 the Parkway.

9 Q: All right, now we are getting down to  
10 it. You remember him driving on the Parkway?

11 A: Right.

12 Q: And you know that he was driving?

13 A: Yes.

14 Q: And how fast was he driving?

15 A: I don't know, but . . .

16 Q: You remember his driving?

17 A: I can remember him driving when  
18 we turned at that stop sign.

19 Q: Is your recollection of that as clear  
20 as it was of him driving on Pipers Gap Road - any  
21 difference in your level of recollection?

22 A: No.

23 Q: All right, then give us the best esti-  
24 mate of that car - your approximate estimate.

25 A: Of what?

1 Q: While it was on the Parkway.

2 A: You mean the speed?

3 Q: The speed, yes.

4 A: He was going faster than the speed

5 limit. The speed limit is 45 on the Parkway.

6 Q: Right.

7 A: And when he turned at that stop

8 sign, he, you know, speeded up. He started going fast,

9 but I can't, you know . . .

10 Q: You said it was faster than the speed

11 limit?

12 A: Yes.

13 Q: All right, approximately how much

14 faster than the speed limit?

15 A: I don't really know. I can't - I don't

16 know how to estimate that.

17 Q: Well, would it be five miles an hour

18 faster than the speed limit?

19 A: It's more than that. I'd say - I'm

20 scared to say. I don't . . .

21 Q: You don't need to be afraid. If you

22 think it was more than five miles an hour . . .

23 A: Yes, I think it was more than five

24 miles an hour, but . . .

25 Q: That's more than five miles an hour

faster than the speed limit? 28

1 A: Yes.

2 Q: Would it be more like ten m:

3 hour faster than the speed limit?

4 A: At least ten.

5 Q: At least ten miles an hour faster than  
6 the speed limit. And that was just prior to the accident

7 A: Yes sir.

8 Q: Within a quarter of a mile of the  
9 accident?

10 A: Well, me and my dad measured, we  
11 had to measure, and it was three-tenths of a mile.

12 Q: From where you entered the Parkway?

13 A: From the stop sign there to where we  
14 wrecked.

15 Q: So he had to accelerate and either go  
16 from zero or five or ten miles an hour - whatever he  
17 was traveling when he entered, to the point where the  
18 accident occurred - and at some point, he got up to a  
19 speed of at least ten miles an hour over the speed limit

20 A: Yes sir.

21 Q: And you recall that?

22 A: I can recall - I was - I can recall  
23 him, you know, it sort of scared me, but you know, I  
24 didn't say anything. I can recall him, you know, speed  
25 ing up.

1 Q: And you recall the car acceler  
2 to a speed at least ten miles more than the speed

3 A: Yes sir.

4 Q: And that was just prior to the acci-  
5 dent?

6 A: Yes sir, that's just, now, what it  
7 seemed like. I didn't see the speedometer.

8 Q: I understand that. But you are cer-  
9 tain that the car was going in excess of the speed limit  
10 just before the accident?

11 A: Yes sir.

12 Q: Was there anything else erratic about  
13 the operation of the automobile just prior to the acci-  
14 dent?

15 A: Not as I recall. I can - Steve had  
16 told me before when I had talked to him - he was talking  
17 about his car.

18 Q: When was this?

19 A: I don't exactly know. It wasn't that  
20 night or anything, it was another time that he was talk-  
21 ing to me. He had pulled me over in town, and he had  
22 just gotten - he said that he had just gotten new wheels  
23 and - or I guess it was new wheels or new tires, I  
24 don't know, I guess it was the wheels - but anyway, he  
25 was saying that they didn't - he didn't think they were  
handling right or something. (40

1 Q: When did he say that?

2 A: That was when I was talking to him.

3 I don't know - I can't, you know . . .

4 Q: Well, did he say anything just before  
5 the accident?

6 A: No sir, not as I recall.

7 Q: Well, my question was: Do you recall  
8 anything else erratic about the operation of his auto-  
9 mobile just before the accident?

10 A: No sir.

11 Q: From the time you entered the Park-  
12 way?

13 A: No sir.

14 Q: Just that it was going in excess of  
15 the speed limit?

16 A: Yes sir.

17 Q: Do you recall whether the car stayed  
18 in its proper lane of travel?

19 A: No sir, I don't recall.

20 Q: Well, if it had gone across the center  
21 of the road, would you recall that? You said you don't  
22 recall anything erratic.

23 A: Well, I can't remember. I just don't  
24 remember.

25 Q: Well, how do you remember that he  
was speeding?

1 A: Because it scared me.

2 Q: I see. Was there anything else about

3 the operation of the car that scared you?

4 A: No sir, not as I recall.

5 Q: Then what happened?

6 A: Then the next thing that I remember

7 is the trees, I remember trees.

8 Q: Before you hit them?

9 A: No sir, this was after the wreck.

10 Q: All right, what do you recall about

11 the trees?

12 A: It's just the first thing I can remem-

13 ber seeing, and I was outside.

14 Q: You mean you were outside when you

15 recalled this?

16 A: Yes.

17 Q: You don't recall how you got outside?

18 A: No sir.

19 Q: You don't recall whether you got

20 outside from the passenger's side of the car or from

21 the driver's side of the car?

22 A: I don't recall how I got out of the

23 car, or how I was outside. I don't remember.

24 Q: Did the car have a roof?

25 A: What do you . . .



1 Q: Was it a convertible?

2 A: I don't think so.

3 Q: Well, you recall when you got in the  
4 car whether it had a top on it or not, don't you?

5 A: It wasn't a convertible.

6 Q: So you don't know whether you got  
7 out through a door, or a window, or the top of the car  
8 or how?

9 A: No sir.

10 Q: You have no recollection of how you  
11 got out of the car?

12 A: No sir.

13 Q: So the first thing you recall is being  
14 outside the car and seeing the trees - and where were  
15 you standing with relation to the car?

16 A: I was behind it, if I can recall. I  
17 can - that's the first place I remember being, you  
18 know . . .

19 Q: What did you do?

20 A: Well, I tried to wake Steve up.

21 Q: From behind the car?

22 A: No, I walked over to him. I walked  
23 over - as I can recall - I walked over to where he was,  
24 that side.

25 Q: Where was he?

1 A: He was on the passenger's side -  
2 across that door.

3 Q: How did he get there?

4 A: I don't know.

5 Q: You didn't move him there, did you?

6 A: No.

7 Q: No one else moved him there, did they

8 A: Not as I recall - I mean, I just re-  
9 member him being there. That's the first, you know,  
10 that's where he was.

11 Q: On the passenger's side of the car?  
12 He was pinned in, wasn't he?

13 A: I don't know. I didn't . . .

14 Q: You don't recall the dashboard being  
15 crushed in on him?

16 A: No. I can just recall I tried to wake  
17 him up. I was shaking his arm.

18 Q: And you were standing on the passen-  
19 ger's side of the car?

20 A: Yes sir.

21 Q: Did you open the door?

22 A: Not as I recall.

23 Q: Did you reach through the window?

24 A: Not as I recall.

25 Q: Well, how did you try to wake him up?

1 A: Because he was laying - he wasn't  
2 inside, he was laying outside - I mean, he was across  
3 the door, as I can - I mean that's what's I - that's how  
4 I . . .

5 BY MR. SPIERS:

6 How I - what?

7 BY THE WITNESS, MS. MILGRIM:

8 A: Maybe I better - that's how I remember.

9 BY MR. MUNDY:

10 Q: Or is that what you think?

11 A: That's how I remember.

12 Q: You do remember that?

13 A: Yes, I do.

14 Q: Miss Milgrim, this isn't the first  
15 time you have thought about how this accident occurred,  
16 is it?

17 A: No sir.

18 Q: You've thought about it a lot, haven't  
19 you?

20 A: Yes sir.

21 Q: And you've testified in Court before,  
22 haven't you?

23 A: Yes sir.

24 Q: When you were Charged with Reckless  
25 Driving?

1 A: Yes sir.

2 Q: And you have talked to different peo-

3 ple about how this accident occurred, haven't you?

4 A: What do you mean?

5 Q: You have talked to different persons

6 about how this accident occurred, haven't you?

7 A: I've talked to my family.

8 Q: Is that the only persons you've talked

9 to - your mother and your father?

10 A: Yes sir.

11 Q: Well, you have talked to Mr. Spiers

12 about it, haven't you?

13 A: Oh, yes sir.

14 Q: And you talked to . . .

15 A: I talked to Johnny Parsons.

16 Q: All right, you just give us the names

17 of every person you have talked to about how this acci-

18 dent occurred?

19 A: That's it.

20 Q: You talked to Mr. and Mrs. Milgrim,

21 your parents?

22 A: Yes sir.

23 Q: And to Mr. Spiers, your Attorney?

24 A: Yes sir.

25 Q: And you've talked to Johnny Parsons,

1 and they are the only persons that you have discussed  
2 this accident with?

3 A: Yes sir.

4 Q: Now, think real carefully?

5 A: Yes sir.

6 Q: Did you tell anyone else - anyone  
7 on this earth - other than those persons, who was driv-  
8 ing the car at the time of the accident? You take as  
9 long as you need to think about that question.

10 A: You mean, tell who was driving the  
11 car?

12 Q: I am asking you to give me the names  
13 of every person on this earth whom you have told was  
14 driving that automobile at the time of the accident?

15 A: That is all.

16 Q: Your parents . . .

17 A: My parents, Mr. Spiers and Johnny  
18 Parsons, who is an Attorney.

19 Q: All right, can you think of anyone else

20 A: No sir.

21 Q: And you have no problem recalling  
22 that?

23 A: No sir.

24 Q: Now again, where were you standing  
25 or sitting or whatever you were doing when you tried  
to - as you say, wake Steve up?

1 A: I was standing outside the car.  
2 Q: On the passenger's side?  
3 A: Yes sir.  
4 Q: Then what happened after that?  
5 A: I went around and I sat down in the  
6 driver's seat.  
7 Q: That was after you tried to wake him  
8 up?  
9 A: Yes sir.  
10 Q: All right. Did you open the door?  
11 A: I don't recall.  
12 Q: But you recall sitting down?  
13 A: Yes sir, I can recall that and I can  
14 recall walking, I was just walking around, and you know  
15 I would go and sit down; and I can remember seeing  
16 car lights coming, and I went up on the road to try to  
17 stop a car and it went on by, and I went back and I sat  
18 down; and then later I saw a car coming, you know, the  
19 lights coming in the opposite direction and this time  
20 I got out in the middle of the road and stopped the car.  
21 Q: Who was the driver of that car?  
22 A: I don't know. I can just remember  
23 it being two guys.  
24 Q: Did you tell them what had happened?  
25 A: I don't remember. I can't - the next

1 thing I can remember is - I can remember one of the  
2 guys saying that he would stay there and for the other  
3 one, you know, he said, "You take her," but I can't  
4 remember getting in the car or anything.

5 Q: Did you have anything in either of  
6 your hands when you got in the car with them?

7 A: I don't remember.

8 Q: Well, you would, if you had something  
9 in your hands, wouldn't you?

10 A: I don't know if I would or not. I  
11 had a concussion.

12 Q: I will get to that in awhile - you  
13 recall getting in the car?

14 A: No, I don't recall getting in the car.

15 Q: Did you get in the front seat or the  
16 back seat?

17 A: I don't recall even getting in the car.

18 Q: I see. All right, what happened  
19 after that?

20 A: The next thing I can remember is  
21 being on a couch.

22 Q: Where?

23 A: They had taken me, evidently to - it  
24 was at this house on Pipers Gap Road - is the couch  
25 I was laying on.

1 Q: Was that at one of their homes?

2 A: No sir, I don't think it was their  
3 home. It was somebody else's house. They had just  
4 taken me to a house, but it might have been, I don't  
5 recall. I don't know who they were.

6 Q: Prior to getting in that car, did you  
7 take anything from Steve's car?

8 A: I don't remember.

9 Q: Did you take the keys from the ignition

10 A: I could have.

11 Q: Did you?

12 A: They said I had them.

13 Q: Who did?

14 A: My mom, because I gave them to her  
15 at that house, but I don't remember taking them.

16 Q: Do you recall making any statement  
17 to either of those gentlemen who picked you up?

18 A: No sir, I don't even remember seeing  
19 them.

20 Q: All right, then what happened?

21 A: Then they took me - an ambulance  
22 came and took me to the hospital.

23 Q: And after that?

24 A: They just examined me and - well,  
25 the Park Ranger, I can remember - I think it was the



1 Park Ranger - trying to question me before I was even  
2 examined or anything.

3 Q: Did you resent that?

4 A: I didn't really know what was going  
5 on. I can just remember him being there.

6 Q: What did you tell him?

7 A: I can remember, he asked me - no,  
8 I take that back - I don't remember, because what I  
9 was going to say is what I have been told. So I'm not  
10 going to say.

11 Q: Yes, let's stick to what you recall.  
12 What did you tell the Ranger?

13 A: I don't recall.

14 Q: You have no idea what you told him?

15 A: No, I don't. I can just remember  
16 seeing him over me. I was . . .

17 Q: Did you talk to him on a later occa-  
18 sion?

19 A: I don't recall it, but they have said  
20 I did. He said I did.

21 Q: When was that?

22 A: He said that he talked to me while I  
23 was in the hospital and he said that he talked to me  
24 when I came home.

25 Q: Do you recall that?

1 A: No, I don't.

2 Q: You don't recall talking to him either  
3 in the hospital or when you came home?

4 A: No sir, I don't.

5 Q: Did you ever go to talk to him?

6 A: No sir.

7 Q: Did you ever call him?

8 A: No sir.

9 Q: Did you ever call any of the officers  
10 who investigated the accident?

11 A: No sir.

12 Q: Did you talk to your parents following  
13 the accident?

14 A: You mean about - you mean just talk  
15 to them about the accident?

16 Q: Yes.

17 A: No, I don't recall talking to them.

18 Q: Do you recall ever talking to them  
19 about the accident?

20 A: I can recall, you know, something  
21 would come up or something, you know, somebody would  
22 say something, and you know, I'd talk, but I can't  
23 recall just sitting down and talking, because I . . .

24 Q: You don't ever recall doing that?  
25 You don't ever recall talking to your parents about the  
accident?

1 BY MR. SPIERS:

2 This is any time from then until now.

3 BY THE WITNESS, MS. MILGRIM:

4 A: Oh, yes sir.

5 BY MR. MUNDY:

6 Q: What do you recall about that - when?

7 A: Well, I've talked to them a lot lately,  
8 since all of this has came back up.

9 Q: Well, before this came back up, did  
10 you talk to them?

11 A: Not very much, I didn't. I just told  
12 them, you know, like I'm telling you.

13 Q: What did you tell them?

14 A: The same thing, what I, you know . . .

15 Q: You just capsuled what you told your  
16 parents?

17 A: More or less, but I didn't, you know,  
18 have to go into details, you know, like this.

19 Q: Did you tell them that the car was  
20 exceeding the speed limit just before the accident?

21 A: Yes sir.

22 Q: You did tell them. Do you know who  
23 was driving the car at the time of the accident?

24 A: I know that Steve was driving when  
25 we got on the Parkway.

1 Q: Do you know who was driving the  
2 automobile at the time the automobile hit the trees?  
3 Do you know and do you recall?

4 A: I can't recall wrecking. I can't  
5 recall that at all. I can just recall before, when we  
6 entered the Parkway.

7 Q: When you entered the Parkway?

8 A: Yes, I can recall that. I can recall  
9 turning onto the Parkway, and Steve was driving.

10 Q: Right.

11 A: And then I can recall after . . .

12 Q: You can't recall who was driving  
13 after that?

14 A: Well, I don't think there would be  
15 any time that . . .

16 Q: I'm just asking you for your recollec-  
17 tion?

18 BY MR. SPIERS:

19 Don't keep interrupting her. I insist  
20 she be allowed to complete an answer.

21 BY MR. MUNDY:

22 I would be delighted for her to.

23 BY MR. SPIERS:

24 Then quit butting in.  
25

1 BY MR. MUNDY:

2 Q: What do you recall after that with  
3 regard to who was driving the car, if anything?

4 A: Just like I said, I recall Steve driv-  
5 ing when we were on the Parkway. As we turned on the  
6 Parkway, Steve was driving.

7 Q: Do you recall who was driving the  
8 car at the time you crashed? -- Do you recall?

9 A: No sir, I don't recall the accident  
10 at all, you know, so I can't say that I recall who was  
11 driving if I don't recall.

12 Q: Can you tell us who was driving the  
13 car at the time of the accident?

14 A: Well, isn't that the same thing?

15 Q: No. I asked you if you could recall  
16 and you said you couldn't recall - correct?

17 A: Correct.

18 Q: I now ask you: Can you tell us who  
19 was driving the car at the time of the accident?

20 A: Steve was driving when we got on the  
21 Parkway.

22 Q: I'm going to ask you one more  
23 time . . .

24 A: I can't recall wrecking, so that way I  
25 can't recall Steve driving; I can't recall me driving;

1 I can just recall Steve driving before we got on the  
2 Parkway and when we got on it.

3 Q: I am going to ask you one more time:  
4 Can you tell us who was driving the car at the time of  
5 the accident?

6 BY MR. SPIERS:

7 Stand on whatever you told him. You can  
8 take this up with the Judge. I'm telling her she has  
9 answered your question, and that's enough.

10 BY MR. MUNDY:

11 Are you instructing her not to answer?

12 BY MR. SPIERS:

13 Right.

14 BY MR. MUNDY:

15 Q: Do you have any other information  
16 upon which you could form a conclusion or belief as to  
17 who was driving the automobile at the time of the  
18 accident?

19 A: You mean other than Steve driving  
20 when we . . .

21 Q: When you entered the Parkway?

22 A: No, no.

23 Q: Did you fully understand that question

24 A: Yes sir.

25 Q: Miss Milgrim, did you go to the

1 Burger Bar in Galax any time in the evening prior to  
2 the occurrence of the accident?

3 A: Toni and I ate there.

4 Q: What time was that?

5 A: It was after I picked her up - I'd say  
6 about 8:00 o'clock.

7 Q: Did you see any of your friends there?

8 A: Not as I recall.

9 Q: But you weren't in Steve's car at the  
10 Burger Bar that evening?

11 A: No sir.

12 Q: At no time?

13 A: No sir.

14 Q: Do you recall attending the Galax  
15 Fiddlers' Convention in August of 1978, within a month  
16 or two after the accident?

17 A: I think that was - 1978, yes.

18 Q: Did you go to it?

19 A: Yes sir.

20 Q: Did anybody question you about the  
21 accident?

22 A: No sir.

23 Q: You are sure?

24 A: Yes sir.

25 Q: Then did you discuss the accident  
with anyone there?

1 A: No sir.

2 Q: Not at all?

3 A: No sir.

4 Q: Did any of your friends come to see  
5 you in the hospital after the accident?

6 A: I can't remember. The only way I  
7 know that, you know, people came, is that my mom had  
8 everybody sign a list when they came. I can't remember  
9 seeing anybody.

10 Q: All right, who were some of your  
11 friends who came to see you in the hospital?

12 A: Toni came, and then, you know, all  
13 the kids - I live in a subdivision, and they came.

14 Q: Did you discuss the accident with  
15 any of them?

16 A: No sir, not as I recall. I don't even  
17 recall seeing them.

18 Q: You recall your activities at the  
19 Galax Fiddlers' Convention without any difficulty,  
20 don't you?

21 A: You mean . . .

22 Q: You don't have any problem recalling  
23 being there?

24 A: No sir.

25 Q: And are you testifying that you did



1 not discuss the accident with anybody at the Galax  
2 Fiddlers' Convention?

3 A: Yes sir.

4 Q: Then if someone said you did, and  
5 you made certain statements, you would deny that?

6 A: Yes sir.

7 Q: So you don't have any problem recall-  
8 ing that, one way or the other?

9 A: No sir.

10 Q: So far as you know, was that car in  
11 good mechanical condition before the accident?

12 A: I don't know, you know.

13 Q: I said, so far as you know?

14 A: As far as I know, it was, you know.

15 (1) Q: And while you were driving on the  
16 Parkway, do you recall anything that would indicate  
17 any mechanical problems?

18 A: No sir.

19 (2) Q: You don't recall any obstruction in  
20 the highway, do you?

21 A: No sir, I don't recall.

22 (3) Q: And you clearly recall that the auto-  
23 mobile was going at least ten miles in excess of the  
24 speed limit just before the accident?

25 A: Yes sir.

1 Q: But you don't recall who was driving  
2 the car then - is that correct?

3 A: You mean, when we were going . . .

4 Q: Immediately before the accident?

5 A: You mean when we were speeding, I  
6 mean, when we were going . . .

7 Q: Yes.

8 A: I recall Steve driving then.

9 Q: When was that?

10 A: That was when we got on the Parkway.

11 Q: I thought you had no recollection.

12 A: I told you I had recollection of Steve  
13 driving . . .

14 Q: As you entered the Parkway?

15 A: Yes.

16 Q: But after that, you have no recollec-  
17 tion, except for the fact that the car exceeded the  
18 speed limit - is that correct?

19 A: Except - right, when he turned, you  
20 know, he . . .

21 BY MR. SPIERS:

22 He what?

23 BY THE WITNESS, MS. MILGRIM:

24 A: He stepped on it. He went faster.

25 He . . .

1 BY MR. MUNDY:

2 Q: Is it correct that immediately before  
3 the accident the car's speed exceeded the limit by at  
4 least ten miles an hour?

5 A: Yes sir.

6 Q: Do you recall who was driving the  
7 automobile immediately before the accident?

8 A: Steve.

9 Q: You recall that?

10 A: I can recall - well, that was immedi-  
11 ately before the accident occurred?

12 BY MR. SPIERS:

13 At the instant of the accident. He's  
14 trying to confuse you by - "immediately before" is from  
15 the time you got on until the accident. At the time of  
16 the accident.

17 BY MR. MUNDY:

18 No, now Mr. Spiers, let me ask the  
19 question. You are asking the question and then answer-  
20 ing it - telling her what to say.

21 Q: You told us . . .

22 BY MR. SPIERS:

23 Define "immediately before" and I'll let  
24 you do anything.

25

1 BY MR. MUNDY:

2 Q: You've testified that you last recall  
3 Steve driving the car as you entered the Parkway - is  
4 that correct?

5 A: Yes sir.

6 Q: Do you recall who was driving the  
7 car immediately before the accident - and by immedi-  
8 ate, I mean within 200 yards of where the accident  
9 occurred?

10 A: No sir, I . . .

11 Q: You don't recall?

12 A: You're confusing me.

13 Q: It's a very simple question, Miss  
14 Milgrim. Do recall who was driving the automobile -  
15 excuse me, now let me finish this question - within  
16 200 yards of where that accident occurred?

17 BY MR. SPIERS:

18 Two hundred feet or 200 yards?

19 BY MR. MUNDY:

20 Q: Two hundred yards?

21 A: We only wrecked three-tenths of a  
22 mile and how many yards is that?

23 Q: Now, I'm not asking you that.

24 A: I'm just trying to see how far 200 . .

25 Q: Well, you think about it. Do you

1 recall who was driving the car within 200 yards of  
2 where the accident occurred?

3 A: What I recall is just like I've said.  
4 Steve was driving before we got on the Parkway and  
5 when we got on the Parkway he was driving.

6 Q: All right, when you refer to "when  
7 we got on the Parkway" . . .

8 A: I can remember him . . .

9 Q: Excuse me, excuse me - what distance  
10 are you referring to?

11 BY MR. SPIERS:

12 If you don't know distances, just say so.

13 BY MR. MUNDY:

14 Mr. Spiers, I Object to your continuing  
15 to distract her . . .

16 BY MR. SPIERS:

17 The lady has told you she can't estimate  
18 feet and things like that.

19 BY MR. MUNDY:

20 She has never referred to that.

21 BY MR. SPIERS:

22 If you really want to find the facts out,  
23 let her answer the questions.

24 BY MR. MUNDY:

25 Well, I would appreciate your letting  
her answer.

1 BY MR. SPIERS:

2 I'm not going to let her answer th:  
3 just to trap her.

4 BY MR. MUNDY:

5 Q: Let me ask you this real simple:  
6 You know it was three-tenths of a mile from where you  
7 entered the Parkway to where the accident occurred,  
8 because you and your father went out and measured it -  
9 right?

10 A: Right.

11 Q: And you know that a football field is  
12 100 yards long?

13 A: No, I didn't know that, but I do now.

14 Q: All right, it is. Now, when you say  
15 you recall Steve driving the car when he entered the  
16 Parkway, what distance are you talking about?

17 A: I don't know the distance. I just  
18 know that we were on the Parkway, he had just turned  
19 on the Parkway.

20 Q: He had just turned, and that's the  
21 last you recall of him driving the car - is that correct?

22 BY MR. SPIERS:

23 She said he "turned on," Marshall, not  
24 "just turned" - "turned on."  
25

1 BY MR. MUNDY:

2 Q: All right - is that correct?

3 A: Yes, we were on the Parkway.

4 Q: How far, from where you turned on?

5 A: I don't know how far.

6 Q: Why don't you know? You were there,  
7 weren't you?

8 A: Yes, I was there.

9 Q: Then why don't you know?

10 A: I don't know why I don't know. I  
11 don't remember; I can't estimate stuff like that.

12 Q: Is it because you don't remember or  
13 you can't estimate - which is it?

14 A: I can't estimate. I can't estimate  
15 the distance . . .

16 Q: Well, can you recall?

17 A: And I can't recall wrecking. I just  
18 can't - it just happened so fast, you can't - you know,  
19 any person couldn't recall stuff like that, as I can see -  
20 as far as I can see. I surely can't, anyway.

21 Q: You can't recall what happened after  
22 you entered the Parkway - is that correct?

23 A: Correct, except for what I've told you

24 TEN MINUTE RECESS

25

1 BY MR. MUNDY:

2 Q: Were you using any drugs at the time  
3 of the accident?

4 A: No sir.

5 Q: Were you drinking at the time of the  
6 accident?

7 A: No sir.

8 Q: Had you had anything alcoholic to  
9 drink that day?

10 A: No sir.

11 Q: Did you drink alcoholic beverages at  
12 that time? I mean, did you drink beer in the summer  
13 of . . .

14 A: Yes, sometimes I did.

15 Q: Did you ever get intoxicated?

16 A: You mean . . .

17 Q: In the summer of 1978?

18 A: I drank beer, but you know, I didn't -  
19 do you mean did I get real drunk?

20 Q: Did you get drunk?

21 A: No.

22 Q: Do you use drugs now?

23 A: No sir.

24 Q: Did you ever contact Mr. and Mrs.  
25 Horne about this accident?



1 A: I went to their house. My dad went  
2 with me, and I was treated awful.

3 Q: You were?

4 A: Yes, I was.

5 Q: Can you tell us how Steve's body got  
6 in the passenger's seat of that automobile?

7 A: No sir.

8 Q: Where was the damage to the automo-  
9 bile, the principal damage?

10 A: I don't recall - I don't . . .

11 Q: Give us the names of the witnesses  
12 whom you intend to call at the trial of this case?

13 A: Not any, as I know of.

14 Q: Will you, through your Attorney, fur-  
15 nish us the names of any witnesses you intend to call?

16 A: Yes sir.

17 Q: What injuries did you sustain in the  
18 accident?

19 A: I had a concussion and my concussion,  
20 I guess, was right in here and my eye was black for a  
21 long time, and then I just had cuts and bruises all over  
22 me.

23 Q: Would you sign a medical authoriza-  
24 tion to enable us to obtain a copy of your hospital chart  
25 from your hospitalization just after the accident?

1 A: No sir.

2 Q: Your Attorney is instructing you not  
3 to sign that - is that correct?

4 A: Yes sir.

5 Q: Why do you object to our getting that  
6 hospital record?

7 BY MR. SPIERS:

8 Because your Attorney has told you to.

9 BY MR. MUNDY:

10 Q: Is that why you are objecting?

11 A: Yes sir

12 BY MR. MUNDY:

13 There are more ways than one to skin a  
14 cat.

15 BY MR. SPIERS:

16 You have already given me a subpoena.  
17 I expect you can get it that way.

18 BY MR. MUNDY:

19 Q: What was the limit of your automobile  
20 liability insurance policy at the time of the accident?

21 A: I don't know.

22 Q: Would you furnish us that?

23 BY MR. SPIERS:

24 Well, it wasn't her car. I can tell you  
25 what was on his. I expect your client can tell you that.

1 I don't even know whether I have it - (LOOKING  
2 THROUGH FILE).

3 BY MR. MUNDY:

4 Well, if you can just advise us and also  
5 on . . .

6 BY MR. SPIERS:

7 I don't represent Mr. Milgrim.

8 BY MR. MUNDY:

9 Q: Were you a resident of your parents'  
10 household at the time of this accident?

11 A: Yes sir.

12 Q: And your father had automobiles, I  
13 take it?

14 A: Yes sir.

15 Q: How many?

16 A: Three.

17 Q: His insurance was with Nationwide?

18 A: Yes sir.

19 Q: Do you know the limit of his policy?

20 A: No sir.

21 BY MR. MUNDY:

22 I have no further questions.

23 AND FURTHER THIS DEPONENT SAITH NOT.

24 SIGNATURE WAIVED BY AGREEMENT.

25 CYNTHIA RENEE MILGRIM

069

BY NOTARY PUBLIC

1 BY MR. SPIERS:

2 I don't see anything about the limit,  
3 Marshall, unless your client knows what he was carry-  
4 ing.

5 BY MR. MUNDY:

6 Well, they're your client now, so if you  
7 would confirm that, I would appreciate it.

8 BY MR. SPIERS:

9 (LOOKING THROUGH FILE) - Twenty-  
10 five - Fifty.

11 BY MR. MUNDY:

12 That's the Allstate Policy?

13 BY MR. SPIERS:

14 Right.

15 RAYMOND H. HORNE, being duly sworn, deposed as  
16 follows:

17 DIRECT EXAMINATION BY MR. SPIERS:

18 Q: Tell us your name?

19 A: Raymond Horne, sir.

20 Q: What is your current residence  
21 address?

22 A: 306 Country Club Lane.

23 Q: Where do you work?

24 A: Vaughan-Bassett Furniture.

25 Q: You are the Plaintiff in this action  
against Miss Milgrim?

670

V I R G I N I A:

IN THE CIRCUIT COURT  
FOR THE COUNTY OF CARROLL

-----  
RAYMOND H. HORNE, Administrator,  
etc.,

Plaintiff

-vs-

CYNTHIA RENEE MILGRIM,

Defendant  
-----

NOVEMBER 17, 1980  
9:30 A.M.

HEARD BEFORE:

THE HONORABLE DALE LARUE

NOTARIES PUBLIC

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Jonathan M. Rogers, Esq.

Counsel on behalf of Plaintiff

SPIERS, SPIERS & MINK, ESQS.

Radford, Virginia

By: John B. Spiers, Jr., Esq. and  
Duane Mink

Counsel on behalf of Defendant

\* \* \* \* \*

## I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Carl C. Smith	3	20	36	--
Grady Felts	39	44	47	--
Larry Combs	49	53	57	--
Clarence Wilmouth	58	62	71	72
Price Dotson	73	78	--	--
Juan F. Rios, M.D.	82	86	--	--
Tommy Ayers	87	97	--	--
Fredna Murphy	107	111	127	--
Terry Higgins	130	135	--	--
Linda Bobbitt	146	147	--	--
John Farris (Jury Excluded)	154	160	168	

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WITNESSDIRECTCROSSREDIRECTRECROSSJohn Farris  
(before the Jury)

169

175

--

--

Karl C. Smith

185

186

--

--

Cynthia Renee Milgrim

187

188

192

--

Plaintiff rests

194

(No defense witnesses transcribed)

Defendant rests

200

REBUTTAL

Joy Frost Shepherd

200

202

--

--

Plaintiff rests

206

SUR REBUTTAL

Cynthia Renee Milgrim

206

207

--

--

Defendant rests

207

Objections to Instructions

210

Verdict

213

\* \* \* \* \*

073

E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
One	Hand-drawn Diagram	11
Two	Photograph	18
Three	Photograph	18
Four	Photograph	18

071



The following cause came on to be heard before  
The Honorable Dale LaRue, Judge of the Circuit Court of  
Carroll County, and a Jury of seven, on November 11, 1980.

Miss Jody A. Daniels, Court Reporter, was  
duly sworn. The Jury was sworn on qualifications, strikes  
were made, and a Jury of seven was sworn to try the Case.  
Counsel made opening statements to the Jury, and the  
following Proceedings followed:

THE COURT: Call your first witness, please.

MR. MUNDY: We call Ranger Chuck Smith as  
Plaintiff's first witness.

CARL C. SMITH

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 MR. MUNDY:

Q State your name, please.

A Carl C. Smith.

Q How old are you, Mr. Smith?

A Twenty-nine.

075

2 Q Where do you reside?

3 A St. Augustine, Florida.

4 Q How long have you lived in St. Augustine?

5 A Roughly a year and a-half.

6 Q And what is your occupation?

7 A I work for the National Park Service.

8 Q And how long have you worked for the National  
9 Park Service?

10 A About four years, sir.

11 Q Where did you live prior to going to  
12 St. Augustine?

13 A Fancy Gap, Virginia.

14 Q And were you employed by the Park Service  
15 then?

16 A Yes, sir.

17 Q In what capacity?

18 A As a Park Technician.

19 Q What is a Park Technician?

20 A Most people would think of it as a Park  
21 Ranger. My duty at the Blue Ridge Parkway was law enforcement  
22 management.

23 Q Mr. Smith, did you have occasion to investigate  
24 an automobile accident which occurred on July 3, 1978, on the  
25 Blue Ridge Parkway near the Fancy Gap entrance or exit?

2 A It was near the Pipers Gap Road.

3 Q I beg your pardon, Pipers Gap?

4 A Yes.

5 Q How were you advised of the accident?

6 A I was notified by the Ranger.

7 Q And what time did you receive your notification?  
8

9 A The exact time was probably somewhere around  
10 quarter to 12:00 or maybe a little bit earlier than that.

11 Q Did you go to the scene?

12 A Yes, sir; I arrived there about five minutes  
13 to 12:00, midnight.

14 Q What did you find upon your arrival?

15 A There was a blue Corvette that had collided  
16 on 23 in the woods off the Parkway.

17 Q Were you able to ascertain in what direction  
18 the car was proceeding before the accident?

19 A Yes, sir; the car was going north on the  
20 Parkway.

21 Q And what kind of automobile was it?

22 A It was, I believe, a '71 blue Corvette.

23 Q That's a little sports car?

24 A Yes, sir; it is.

25 Q What did you do upon your arrival?

A The first thing I did was check with some of the people in the area as to the occupants and to the status of them.

When I was satisfied that there was nothing at the scene I could do for the occupants, I made the road safe for traffic by laying a flare pattern.

Q Did you ascertain who the occupants of the vehicle were?

A Not at that time; no, sir.

Q Well, at some point did you?

A Yes, sir; later at the hospital was when I actually found out who the occupants were.

Q And who were they?

A They were Miss Milgrim and Mr. Horne.

Q And was Mr. Horne killed in the accident?

A He was DOA at the hospital.

Q That's Dead On Arrival at the hospital?

A Yes, sir.

Q After you made the road safe for traffic, through the use of flares, did you investigate the accident?

A Yes, sir; I started looking for any evidence that could help me in the investigation. The most prominent thing was a set of yaw marks or pressure marks that were laid by the tires at the accident scene.

Q And what are yaw marks, and how do you spell yaw?

A I believe the correct spelling is Y-A-W, and yaw marks are pressure marks left by the tires. The centrifugal force of a vehicle going around a curve is greater than the force of the vehicle.

In other words, it's pushing it to the outside of the curve, and in this case there were very definite yaw marks.

Q Were you able to measure the yaw marks from a point where they started to the vehicle itself, after it had come to rest against the trees?

A Yes, sir; one characteristic about yaw marks is that they begin rather faintly. So, it's actually very hard to determine the exact spot.

The measurements may be off by the place I could ascertain then. There was at least 204 feet on one side of the vehicle tires, and the other side was, I believe that was 209 feet.

Now, this did not include the marks after it left the road, and went into the woods, because that was in the grass, and it did not leave the yaw marks in the grass.

Q Were there tire marks through the grass right

up to the vehicle?

A Yes, sir; you could easily see that these were one continuous line.

Q You mean from the point where the yaw marks began, and the surface of the road right up to the car?

A Yes, sir; actually the way I followed them was backtracking from the car to the beginning of them at night.

Q Ranger Smith, have you prepared at our request a diagram of the accident scene?

A Yes, sir; I did that.

Q And does the black outline reflect the Parkway?

A Yes, sir; this would be the edge of the road. There is roughly about ten-to-twelve-foot lines here.

Q And is this the curve where the accident occurred?

A Roughly would be.

Q All right, then would this be the direction going toward Roanoke?

A Yes, sir; that would be heading north.

Q And this would be heading south?

A Yes, sir; towards the North Carolina state line.

Q I noticed you have a north arrow?

A Yes, sir; we call the Parkway north and south traffic even though they are curved.

Q Right, so then we understand the car was going in a northerly direction?

A Yes, sir.

Q All right, and what do designations A and B reflect?

A That's the first spot that I could actually pick up the yaw marks that were left in the road lane. A to C you can notice that one did actually get off the road, and you could follow this B to D; it did get off the road, but you could see when it hit the side of the road and where it had gone through.

Q What was the surface of the road at that time?

A It was brand-new asphalt.

Q All right, was there any difference in elevation between the surface of the road and the right shoulder of the road as you were going north?

A Yes, sir; as you drop off the pavement to the edge of the shoulder there was roughly about four inches.

Q And what did the shoulder consist of?

A It was dirt with some gravel over on the side.

2 some seeded grass.

3 Q And were you able to trace these yaw marks  
4 from the Point A and B where they commenced without any  
5 interruption all the way to Point C and D where the car left  
6 the hard-surface of the road?

7 A A to C would be continuous. B to D would  
8 be a little bit harder to say it's continuous, because it  
9 was in the dirt.

10 Q On the shoulder?

11 A To leave a yaw mark, actually to be able to  
12 tell, you need pavement, because there are certain things  
13 that you need to look for a yaw mark to tell it, and in  
14 dirt it's more of a speculation than anything else.

15 Q Did you measure the distance from A to C?

16 A Yes, sir; that was, I believe, the 204 feet,  
17 6 inches.

18 Q And from B to D?

19 A Yes, sir; that's the 210 feet, 8 inches.

20 Q And then from the point where the automobile  
21 left the hard-surface of the road to the point where it came  
22 to rest after the impact, what was the distance from C to E?

23 A C to E is 22 feet, no inches; and D to F is  
24 22 feet, 9 inches.

25 Q And the tracks from C and D to E and F,



respectively; what was the surface of the ground?

A It would be seeded grass.

Q Seeded grass, all right.

A Also it entered a wood line so in that it's not really seeded in that area.

MR. MUNDY: Your Honor, we would offer this Exhibit, or this diagram as Plaintiff's Exhibit One.

MR. SPIERS: I'd like to see it.

THE COURT: There being no objection, it will be received and marked Plaintiff's Exhibit One.

(Thereupon, the above-mentioned hand-drawn diagram was marked as Plaintiff's Exhibit Number One and entered into the Record.)

BY MR. MUNDY:

Q And Ranger Smith, did this accident occur in Carroll County?

A Yes, sir.

Q Describe the damage to the 1971 Corvette.

A Well, all the impact was taken on the passenger side of the vehicle, which would be the right side. The left side of the vehicle, the driver's side, was what I consider in extremely good condition.

The impact had been so great to the right front wheel, which would be on the passenger side, it was actually in the fire wall of the passenger compartment.

Q What is the fire wall?

A It's actually the place that you put your feet on when you sit in the car, and it slopes up. It's the space between the passenger compartment and the engine area.

Q And how about the interior of the car? Was there any damage, and if so, where in the interior?

A The left driver's side was extremely little damage, if there was any at all. The damage was picked up at about the console where the gear shift had been knocked off, and then following over to the right, which would be the passenger side.

It was in extremely bad condition.

Q What kind of gear shift was it?

A It was a stick shift in the console; sticking out of the console.

Q What is the console?

A The console is the middle part of the car that you predominantly think of in any sports car that separates the two passengers.

That's the way I would define it.

Q You say the two passengers' side; you mean the driver's and the passenger's seat?

A Yes; the driver's and the passenger's.

Q They are the two only seats in the car?

A Yes, sir; this is just a two-seater car.

Q Did you talk to the Defendant, Renee Milgrim, the evening of the accident?

A At the hospital; yes, sir.

Q What did she tell you about the accident?

A I received permission from the doctor to ask her a few questions, and when I entered I informed her who I was, and she immediately started talking about trying to flag down a vehicle and sort of rambling on in that subject.

When she stopped on that subject I asked her who was driving the vehicle, and she stated to me that she thought Steve Horne was.

She wasn't very coherent at that time, I did not feel; and the parents were very anxious, I felt, not to have me in there; and because of the accident and everything, I left.

I didn't feel that I could question her and get any reliable response from her.

Q Therefore, did you talk to her again?

A Yes, sir; several days after the accident after she was released from the hospital, I called her on the telephone and again identified myself, and asked her who was driving the vehicle.

At this time she also stated that she thought Steven was.

Q Can you quote her verbatim on that occasion with regard to her response to your question as to who was driving the car?

A Yes, sir; her response was, "I think he was."

Q Did you give her any instructions with regard to any further investigation on your part?

A I not only asked who was driving, but I asked her how she got out of the car at that time; and she told me that she did not remember anything before the accident, but after the accident she remembered Mr. Horne being across her and she crawled out from under him and crawled through the sun roof, or it acutally is a T-bar in the Corvette, to the outside.

Then I asked a couple of other questions. I asked her about before the accident, and she couldn't remember anything.

So, I asked her if she did have any more information, if she could remember anything about the

accident if she would please call me, which she said she would.

Q Did she ever call you?

A No, sir.

Q Did she tell you where or how she happened to get in his automobile?

A No, sir.

Q Did she tell you she couldn't remember?

A I'm not sure whether I even questioned her on that.

Q On how many occasions did you ask her how she got out of the car?

A The one time on the telephone.

Q Then again what did she tell you?

A That Steve was lying over her, and she exited through the sun roof.

Q Was she coherent at that time?

A I thought she was extremely coherent. I would not have known that anything had gone wrong at the time when talking to her.

Q Mr. Smith, you have heard Miss Milgrim's testimony at a previous Proceeding in the matter; have you not?

A Yes, sir.

Q And what did she testify to then with regard to her first recollection after this.

MR. SPIERS: Your Honor, please, I object to this. Miss Milgrim is here, and her evidence is available.

To introduce hearsay at this point would not be permissible.

MR. MUNDY: Your Honor, this is a statement of the Defendant. It's admissible for any purpose just as the statements.

THE COURT: The Court sustains the objection.

BY MR. MUNDY:

Q When you talked to Miss Milgrim in the hospital on the evening after the accident, did you observe any blood on her?

A No, sir; I did not.

Q Mr. Smith, I show you an enlarged photograph of an automobile and ask you if this represents the automobile involved in this accident?

A Yes, sir; that was taken by the Reporter from the Galax Newspaper.

Q And were you present when the photograph was taken?

A Yes, sir; I was.

Q Does it accurately reflect the accident scene, and the automobile against the trees?

A Yes, sir; it does.

Q And referring to a smaller photograph, I would ask you if that also reflects the automobile involved in the accident, and its location immediately after the impact with the trees?

A Yes, sir; it does.

MR. MUNDY: Your Honor, I offer the larger one as Plaintiff's Exhibit Two and the smaller one as Plaintiff's Exhibit Three.

THE COURT: Have you observed them?

MR. SPIERS: Is this from a previous photograph from Mr. Smith?

MR. MUNDY: It's from this one.

MR. SPIERS: I have no objection. I ask that both of them go in.

THE COURT: They will be received and marked Plaintiff's Exhibit Two and Three.

MR. SPIERS: I think the notation on the back should be deleted.

MR. MUNDY: I have no objection to that. We can put these designations over those if you like.

(Thereupon, the above-mentioned large photograph was marked as Plaintiff's Exhibit Number Two and the small photograph was marked as Plaintiff's Exhibit Three, and both were entered into the Record.)

BY MR. MUNDY:

Q Mr. Smith, I'm showing you Plaintiff's Exhibit Number Two.

MR. SPIERS: Perhaps before you show them, I believe there were three photographs that should be shown and each of them was received into evidence.

MR. MUNDY: Your Honor, these are Two, Three and Four.

THE COURT: Yes.

(Thereupon, the above-mentioned photograph was marked as Plaintiff's Exhibit Number Four and entered into the Record.)

BY MR. MUNDY:

Q All right, Mr. Smith, I'm showing you Plaintiff's Exhibit Number Two, and I'll ask you again to identify that and tell us what it is.

A That's the vehicle involved in the accident



that I investigated on July 3rd, '78.

Q And what does Number Three reflect?

A That's also a picture of the vehicle involved in that same accident.

Q And Number Four?

A The same response; it's the same vehicle that was involved in the accident.

Q Mr. Smith, what was the speed limit at the point of this accident on July 3rd, 1978?

A The speed limit was 45 miles per hour. Oh, also there was also posted a sign "Road Under Construction."

Q What construction did this refer to?

A The new asphalt paving that was being done.

Q What caused these yaw marks?

MR. SPIERS: If Your Honor please, that's one of the ultimate questions the Jury has to decide.

MR. MUNDY: Your Honor, the Ranger indicated what yaw marks are, then testified to what causes them, without going to the ultimate question for the Jury.

THE COURT: This witness has previously explained what caused them. It's not necessary to repeat it.

BY MR. MUNDY:

Q Mr. Smith, for the Jury, you told us about the explanation of the yaw marks with the centrifugal force fields; did I understand the force of the automobile?

A Yes, sir; that would be the forces that's moving the automobile. I'm sure most people are aware that when they go around a curve sometimes it slips a little bit, and you hear a little squealing tires in this.

In this case it leaves a pattern of marks as observed at the scene, which were extremely - - well, it would have to have been an excessive speed.

MR. MUNDY: I have no further questions,  
Your Honor.

CROSS EXAMINATION

BY MR. SPIERS:

Q Mr. Smith, where was the construction you spoke of?

A At that time, I believe they laid two layers of asphalt down. They had laid one in the area where the accident occurred, I believe that they were working north of there.

However, I don't really remember that well.

Q Where were the construction signs you told Mr. Mundy about? They were there, so you must know where they were.

A Yes, sir; there is an entrance road, what I refer to as going to Pipers Gap Road. They were posted there; I also - -

Q Wait a minute, now you mean coming onto the Parkway from the Pipers Gap Road?

A Okay, from the State Road onto the Parkway there is an access road.

Q Right.

A Okay, there is warning signs about the road being under construction there. Before you enter the Parkway, there is also one on the Parkway just as you turn to the access road on the other side of the road of the Parkway.

Q You mean there is an access road from the opposite side across the road?

A Yes; what happens is that road that goes into this State Road continues across the Parkway. It is actually a dirt road not used as much as the State Road.

Q The State Road is the Pipers Gap Road you are talking about, and that was paved?

A I referred to that; that may be incorrect as far as what locals call it, but that's what I always refer

to it as.

Q It was a hard surface?

A Right.

Q There is a stop sign as you get on the Parkway?

A Yes, sir; there is.

Q And where was the construction sign in relation to that stop sign?

A If you were coming on the Parkway, it would be before you got to the stop sign.

Q Now, what part from there north was the construction sign? Was it before you got to where the car went over the road or after?

A Well, the whole section had been paved. Now, actually where they were forming the construction I couldn't testify to that because I don't remember that.

There was no construction vehicles or anything in that area, if that's what you're saying.

Q And was the surface of the road even, or uneven or what from the construction?

A The surface of the road was very even. It wasn't in extremely good shape. The only thing different about it was that the solid yellow lines were not painted on it.

They were just temporary discontinued spotted lines.

Q Just a spot to show where the lines would go when it was completed?

A Yes, sir.

Q And this pavement apparently had been put down in the last few days, or fairly recently?

A I think probably within a month, but I'm not really sure. It had been done at least a couple of weeks before that, but I don't remember exactly when.

Q And being it was plank mixed-kind of stuff; wasn't it?

A Asphalt, it came from North Carolina; yes, sir.

Q Very black when it's new?

A Yes, sir; it is.

Q Okay, and this pavement is what you remember, and were able to see these marks on. You are talking about this new pavement?

A Yes, sir.

Q And apparently the vehicle has gone off on the right; am I correct?

A It initially went off the road to the right.

Q Now that, I believe, you said was a four-inch drop?

A Yes, sir; it was.

Q And then it went back onto the road off ~~Q~~.  
four wheels, apparently the left wheel did not get off the  
road, I believe you said?

A No, sir; they did not get off the road.

Q They came right to the edge of it?

A Yes, sir; very close to the edge.

Q You said that shoulder was gravel, or was it  
grass?

A It was gravel among it. I would not consider  
a gravel like you would say gravel road; but there was gravel  
in it.

Q Dirt, gravel and grass?

A Yes, sir; the composition of all three.

Q Did the vehicle go on a straight line after  
it got off the road for any distance?

A I would not consider it an actual straight  
line; no. If you are asking me once it came on back on the  
road, it veered to the left quickly.

Q I was talking about while it was off the  
road.

A There would probably be an arc in that also.  
Not as great as what was seen by the other marks, though.

Q Was this going off the road a gradual thing?

A I don't really understand your question.

Q Was there a sharp right-hand turn when it went off the road, or gradual turnoff?

A It wasn't a sharp turn off the road; no, sir; it was not.

Q Was it a sharp turn when it came back on the road?

A When both vehicle wheels entered the back road; yes, sir; it veered sharply.

Q Sharply to the left?

A Yes, sir.

Q And went into the strand of trees?

A Yes, sir; it did.

Q How many trees did it hit before it came to rest?

A Actually the best I can tell there was two trees that caused the impact.

Q Weren't there four trees hit on the way in?

A No, sir; not to my knowledge.

Q Only two trees were struck all the way through there?

A Yes, sir; if there were more they were just little small things they ran over.

Q It did not pass by any substantial tree that

1  
2 would have been very close to the vehicle before it came to  
3 rest; did it?

4 A It could have passed by it, but it didn't  
5 hit it.

6 Q The car, as you could see, was not really  
7 close to any substantial tree; was it?

8 A Not to cause a collision until it hit the  
9 other.

10 Q Whether it caused it or not, I'm talking  
11 about as it went by the track did it not come real close  
12 to any large trees?

13 A You know I can't really testify, because I  
14 can't remember exactly how close, when you talk about close  
15 where being - -

16 Q Six inches?

17 A I can testify to the fact that it hit two  
18 trees.

19 Q That was at the end of its travel?

20 A Yes, sir.

21 Q All right, when you got there was the right  
22 door open or closed?

23 A When I arrived at the scene the Rescue Squad  
24 had already taken Mr. Horne from the vehicle.

25 Q Right.



A I don't remember whether it was open or closed at that time.

Q Now, these photographs that were introduced into evidence as Exhibits Three and Four were taken later that night; am I correct?

A They were taken probably within an hour after we received the call.

Q By the Reporter from the - -

A Galax Newspapers.

Q And were you there when they were taking it?

A Yes, sir.

Q Was the car in the same position and same condition when they took the picture as it was when you arrived at the scene?

A Yes, sir.

Q Had anything been changed?

A No, sir; not to my knowledge.

Q I want to hand you Exhibit Four and ask if you can tell the Jury, and you can walk up towards the Jury so they will know what we are talking about; can you tell if the right-hand door is partially open then?

A I believe the impact from the trees has opened it some; yes, sir.

Q How do you know it's the impact of the tree?

A It's wrapped around the tree sort of there.

Q But it is partially open?

A Wrapping around the tree would partially open it, I believe.

Q Well let's show the Jury what you're talking about, because looking at both Exhibits it's not wrapped around any tree.

Let's take Four; this is the door; is it not?

A It appears to be the door.

Q Right, and looking at Exhibit Three there is no tree up against the door; is there?

A That is correct, sir.

Q Thank you, who was at the scene when you got there, Mr. Smith?

A Ranger Kendrick was at the scene. The Rescue Squad was leaving when I went to see him, and I'm not sure, but it was either Mr. Felts or Mr. Combs that was at the scene.

They are the people that I remember. Now, there may have been other people that I just do not remember.

Q Right, now, Mr. Kendrick you say?

A Yes, sir.

Q What was he doing?

A Ranger Kendrick actually received a call either from the Carroll County Police Department, I guess; and when I first got there I saw him at the vehicle.

I would say that he was, you know, starting to look at it for possible uses in investigation. What he was actually doing I could not testify.

Q You said the Rescue Squad was leaving the scene when you got there?

A Yes, sir.

Q Were there any flares or anything out there then?

A No, sir; I believe that I was the person that laid the flare pattern.

Q Did Mr. Hendrick help you in the investigation?

A No, sir; I predominantly made the investigation. The answer to that would be: Yes, sir; he did help me in it.

Q He did?

A Yes, sir.

Q What did he do?

A Primarily gave me some information about what had transpired as he knew.

Q I just want to know if you saw him doing anything? Did he help with your measurements for instance?

2 A No, sir.

3 Q How did you take the measurements?

4 A It's called a roller tape, I believe.

5 Q Something that rolls along on a smooth surface  
6 and it turns and clicks up feet?

7 A Yes, sir.

8 Q All right, did you use that in measuring  
9 the right-hand wheels of this vehicle as it went off the  
10 road and back on the road?

11 A Yes, sir; I did.

12 Q And that you told Mr. Mundy that it was 210  
13 feet from where you first saw the marks until they went off  
14 the hard surface on the left?

15 A That's what's on the diagram. If I can see  
16 the diagram I can answer, but I can get confused very easily.  
17 Would you repeat your question, please?

18 Q Well, this diagram you drew before?

19 A Yes, sir.

20 Q Mr. Mundy asked you to draw one for him?

21 A Yes, sir.

22 Q That's the one you filed with the official  
23 report, I think?

24 A I believe so; yes.

25 Q You measured all the way from this right-hand

track across the grass, across the road with the little marker thing?

A You are talking about from B to D?

Q Yes.

A Yes, sir.

Q How far was it from B to where the right wheel went off the road?

A That I cannot testify to now.

Q Can you tell the Jury how far the right wheel was off the road?

A The distance?

Q Yes.

A No, sir; I cannot.

Q The only thing you can give us is from B to D or A to C from you measuring with the machine you had?

A That's the only one that I recorded at that time.

Q And did the measurements follow the course of the tracks?

A The measurements?

Q Or was it a straight line?

A What I did was measure the tracks; the roller tape was right in the tracks.

Q As they went around wherever they turned?

2 A Yes, sir.

3 Q Do you recall what time of night was it you  
4 got to the hospital?

5 A No, sir; I was not keeping an accurate count  
6 of the time.

7 Q Did you meet Mr. and Mrs. Milgrim at the  
8 hospital?

9 A In the room where Miss Milgrim was.

10 Q In what room was she in?

11 A I would call it an examination room. However,  
12 I don't know the term they would use at the hospital.

13 Q Was the doctor with her?

14 A I think the doctor was out of the room when  
15 I was talking to her. However, I could not testify to that  
16 for sure.

17 Q Do you know whether he had given her a shot?

18 A No, sir; I do not.

19 Q Did she seem to be pretty dazed?

20 A I would say she was not very coherent, and  
21 she was talking about something else. She was talking about  
22 the accident. At first she was trying to flag down the car.

23 Q And that kind of conversation that you heard  
24 was rambling?

25 A Yes, sir.

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2 Q Did she mention anybody named Tom?

3 A No, sir; I did not hear anything about that.

4 Q She never mentioned Mr. Horne's name at all?

5 A No; it was referred to as he.

6 Q He, and you asked her a question of who was  
7 driving and she said, "I think he was."

8 A Yes, sir; that's correct.

9 Q And then because she was so upset and incoherent  
10 you decided you had better wait?

11 A No; it wasn't that. The only thing I can  
12 testify is that she was incoherent or not coherent and that  
13 I was not able to get answers from her, so then I decided  
14 not to question any further.

15 Q Okay, and then you called her how many days  
16 later?

17 A It was roughly about four or five days. I'm  
18 not really sure to be honest with you. It was after she had  
19 gotten home from the hospital.

20 Q You talked to her only by phone?

21 A That's right; that is correct; yes, sir.

22 Q And she again told you, "I think he was  
23 driving"?

24 A Yes, sir; she did.

25 Q You don't know whether she was on any medication

then?

A No, sir; I have no knowledge to that.

Q And did you ask her how she got out of the car?

A Yes, sir; I did.

Q She said, "I got out the roof, or he was on me; I got out the roof, or the sun roof"?

MR. MUNDY: I would object, and let the witness state what she told him rather than Mr. Spiers.

THE COURT: Ask your question again, Mr. Spiers.

BY MR. SPIERS:

Q You previously said that basically, she said something about him being on her and she got out the sun roof; as I understand you?

A She said that he was lying across her. She got out from under and exited through the sun roof, which would be the bar.

Q Did she say she exited through the sun roof?

A Yes, sir; well, I don't know whether she used the word exit.

Q That's what I mean. She gave you the impression that she got on out from under him?



A The idea was, "How did you get out of the car," and the answer to that was she got out through the sun roof.

Whether she said exit, got out, I don't remember.

Q Did you ever talk to her anymore during the investigation?

A No, sir; I did not.

Q Did you go by and see her at all?

A No, sir; I did not.

Q Just purely by phone?

A Yes; well the one time in the hospital and one time on the phone.

Q That's what I mean, after the hospital?

A Yes, sir; that's correct.

Q Was there anything on the car door that showed Mr. Horne's wound that he had bled on her or anything?

A There was blood on the right side of the passenger side of the door.

Q Inside?

A I remember it being on the outside.

Q Outside of the door?

A Yes, sir.

MR. SPIERS: Thank you, that's all.

REDIRECT EXAMINATION

BY MR. MUNDY:

Q Was Mr. Milgrim present when you interviewed his daughter in the hospital?

A Yes, sir; he was.

Q And how did he treat you?

A He helped me exit the visiting room.

Q How did he help you exit?

A Well - -

MR. SPIERS: I don't think that has anything to do with it. I don't know, an upset father or - -

MR. MUNDY: I don't know about upset, but it goes to the Defendant's credibility. I ask for him to be allowed for that purpose.

THE COURT: He hasn't testified yet.

MR. MUNDY: I understand this.

THE COURT: I sustain the objection.

MR. MUNDY: To the Defendant's credibility, Your Honor.

THE COURT: How the father acted goes to the Defendant. This Court sustains the objection.

BY MR. MUNDY:

Q Mr. Smith, with regard to the yaw marks, and the surface of the road which you have described as being fairly new asphalt pavement, would this type of pavement be more or less to - -

MR. SPIERS: I object to this; he is going into opinion, and I think the Court already ruled on it.

THE COURT: He has not been established an expert on the subject.

BY MR. MUNDY:

Q Do you know what type surface it was?

A Asphalt.

Q Do you know what the composition is?

A I couldn't tell you.

MR. MUNDY: I'll not proceed there, Your Honor.

THE COURT: May this witness be excused?

MR. MUNDY: We would like for Mr. Smith to remain in case we need him.

THE COURT: Any objection to his remaining in the Courtroom? We are looking for other rooms.

MR. MUNDY: I have no objection to it.

MR. SPIERS: Your Honor, he might be recalled.  
I ask that he be excused and separated.

THE COURT: Is the Library now available?  
Anyway, you may step down, sir.

THE WITNESS: Thank you, sir.

(The witness was excused.)

THE COURT: And I want to take a brief  
recess.

(Thereupon, a short recess was taken.  
Following the recess, the parties returned to the  
room and the Proceedings were continued.)

THE COURT: You may proceed on. Call your  
next witness, Counsel, please.

MR. ROGERS: Your Honor, Grady Felts, please.

GRADY FELTS

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 MR. ROGERS:

Q Mr. Felts, please state your name.

A Grady Felts.

Q Where do you live, sir?

A Right on the corner of Pipers Gap where you turn to go up to the Parkway.

Q And were you living there on July 3rd, 1978?

A Yes, sir.

Q How far is that from the Blue Ridge Parkway where Pipers Gap Road, or access road intersects with the Blue Ridge Parkway?

A Approximately 300 yards.

Q Do you recall where you were July 3rd, 1978, towards the evening?

A I was in Myrtle Beach.

Q And how long were you going to stay there?

A Well, we came home that night.

Q Is that the night of the accident?

A Yes, sir; we came home that night.

Q All right, who were you with?

A My wife and son was with me.

Q As you were coming home were you on the Blue

Ridge Parkway?

A Yes, sir.

Q Would you tell the Jury what you saw as you approached the Pipers Gap Exit from the Blue Ridge Parkway?

A Well I came up 52 and went out the Parkway that way.

Q Which direction were you heading?

A Towards Asheville.

Q Is that south?

A I guess it is. I came around to turn, and you couldn't see the car coming that way, but I saw Miss Milgrim. She was trying to flag me down.

Q Did you stop?

A No; I took my wife and son on to the house and got Larry Combs to ride back up there with me.

Q Larry Combs lived near you?

A He lives next door.

Q When you returned to the accident, would you tell the Jury what transpired?

A Well, going back the other way you could see the vehicle. I pulled off the road where my lights would shine on the car, and Miss Milgrim was standing behind the car still trying to flag me down, but I was going to stop anyway.

Q Then what happened?

A She said that we've had an accident, and well I got out of the pickup, and she handed me the keys to the car.

Q She handed you the ignition keys to the Corvette?

A Yes.

Q Then what did you do?

A I went down and checked to see if I could help anyone in the vehicle. She told me that there was - - I can't recall whose name she called, but it wasn't Steve.

She said that she couldn't get him to talk to her. So, I went down and thought maybe I could help him, you know, and that's when I just checked him to see if he was still alive.

Q Would you describe, as best you can recall, the condition of the car and the position of Steve Horne's body in relation to the car?

A Well, the car had hit a - - I'd say it sideswiped one tree, and then hit another in the front fender.

Q How far apart were the trees you just mentioned?

A I'd say maybe five or six feet.

Q Let me show you what has been marked Plaintiff's

Exhibit Number Two, and also it's a blowup of a picture marked Plaintiff's Exhibit Number Three; and ask you whether or not these pictures in your opinion accurately reflect the condition of the vehicle as you saw it?

A Yes; that's just like it.

Q Are the two trees you are referring to pictured in the pictures?

A Yes; this one.

Q These two right here (indicating)?

A Yes.

Q Can you describe what damage you saw to the car?

A Well, I noticed that where the tree went over that hit right in the wheel. It just busted everything up, you know, and it drove that wheel back to the floorboard on the passenger's side.

Q Where was Steven's body?

A From his waist up he was hanging out the door on the passenger's side.

Q Was the top of his body pointed in any direction, up or down or sideways?

A Well, he was more sideways. He was hanging out the door.

Q And where was his lower extremities, his



legs?

A I couldn't say for sure, because I didn't notice his legs. They were inside the car.

Q Yes; they were inside the car. Did you notice any blood whatsoever on the car or on Steven?

A Yes; he had blood all over his face, but I couldn't say where in the car.

Q Was he alive at that time as far as you could tell?

A No.

Q What did you do to check that out?

A Well, I just felt his neck, you know, and there wasn't any pulse and he was already cold.

Q Did you talk with Miss Milgrim?

A No.

Q What happened with Miss Milgrim? Did she remain at the accident scene?

A No; Mr. Combs took her back down to my home, and I told Larry to call the Rescue Squad and the Police and she stayed down there.

Q Do you recall whether or not there was any blood on Miss Milgrim?

A I couldn't say for sure.

MR. ROGERS: I have no further questions.

CROSS EXAMINATION

BY MR. SPIERS:

Q Mr. Felts, when you came back from your house with Mr. Combs, was this young lady standing out in the road or beside the road or what?

A She was beside the road right behind the car.

Q Behind the car?

A Yes.

Q Was she any distance from the hard surface or right near it?

A Not over a couple of feet.

Q She was trying to flag traffic down?

A Yes.

Q But you were going to stop anyway; did you pull off the road right behind the car?

A No; I parked and got off on the shoulder where my lights would shine on the car.

Q On the right-hand side?

A No; on the left-hand side.

Q On the left-hand side?

A Yes.

Q When you went out to the car, did you notice

that the right front door was open about a foot?

A No, sir; I didn't.

Q It was partially open; was it not?

A I couldn't say for sure; I just don't know.

Q When you walked up to the car, you walked from the back end of it; right?

A Yes.

Q No trees got in your way to get beside the car?

A You had to walk around the tree.

Q And the tree you are speaking of is the front end where it hit the car; it was still against that tree?

A Yes.

Q And the other tree was where in relation to the side?

A It was along towards the rear wheel, you know, on the back side of the car.

Q Right, you had to go around it to get to the door, and you just felt Mr. Horne, and then what did you do?

A I then went back up in and told Larry to go call the Rescue Squad and the Police.

Q Okay, how long was it before they arrived; do

you know?

A I'd say 25 minutes; 20 to 25 minutes.

Q Twenty to 25 minutes and the only thing the girl said to you was, "We've had a wreck?"

A She said, "We've had an accident."

Q And gave you some keys?

A Right.

Q Is that as soon as you got there?

A Yes.

Q After you checked the boy in the car that's when you told Mr. Combs to take her back to your house?

A Yes.

Q Was she talking at all? Did she seem coherent or know what she was saying?

A I can't remember; I just can't remember.

Q Did you direct traffic; or what did you do?

A I stayed with the vehicle; I stayed up there, you know, while they went down to the house and waited on the Rescue Squad.

There wasn't anybody passing.

Q Right, at what time would you say it was when you first went by and saw the car, roughly?

A I'd say 15 to 11:00, quarter to 11:00.

Q And when you went back to the house was it

11:30 by then?

A No; I'd say around 11:00 o'clock.

Q 11:00 o'clock?

A Yes.

Q The Rescue Squad apparently got the call around 11:20, or 11:30; something like that. Do those time sequences sound about right?

A The best I can remember.

MR. SPIERS: Thank you.

REDIRECT EXAMINATION

BY MR. ROGERS:

Q Mr. Felts, let me just ask you, were you present when the Rescue Squad arrived at the accident?

A Yes.

Q And were you there when they removed Mr. Steven Horne's body from the accident?

A Yes.

Q Would you describe that?

A Well, they had trouble getting him out of the car, and I walked down and helped try to pull the door open so they could get him out.

Q Were you able to pull the door open?

A I don't think so; no, not all the way.

Q Do you know who came from the Rescue Squad?

A Yes.

Q Who?

A I know one of them. He was Price Dotson.

Q And he and another member of the Rescue Squad were the ones who removed Mr. Horne's body from the vehicle?

A Yes.

Q Could you see what was hindering them in removing and causing the trouble in removing Steven Horne's body from the vehicle?

A No, sir; I couldn't.

MR. SPIERS: Thank you, sir.

THE COURT: No further questions; Mr. Spiers?

MR. SPIERS: No further questions.

THE COURT: May this witness be excused?

MR. MUNDY: Yes, sir.

MR. SPIERS: Yes, sir.

(The witness was excused.)

MR. MUNDY: Larry Combs.

LARRY COMBS

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 MR. MUNDY:

Q State your name, please.

A Larry Combs.

Q Where do you live, Mr. Combs?

A On the access road close to the Parkway.

Q And is Mr. Felts a neighbor of yours?

A Next door.

Q Mr. Combs, do you recall going to the scene of an accident on the Blue Ridge Parkway near your home on July 3, 1978?

A Yes, sir.

Q How did you happen to go to the accident scene?

A I went with Mr. Felts.

Q And what did you find when you got there?

A Miss Milgrim was standing on the side of the road.

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1  
2 Q Did she make any statement to you?

3 A Something like, "We've had an accident; I  
4 can't get anybody to stop," or something.

5 Q Do you recall whether she said, "We"?

6 A I think she said, "We had an accident."

7 Q Did you see the automobile?

8 A Yes, sir.

9 Q Describe it's condition, please.

10 A It was damaged very bad.

11 Q Excuse me?

12 A It was damaged very heavy on the right front  
13 side.

14 Q Do you recall where the right front wheel  
15 was?

16 A It was pushed back towards the passenger  
17 compartment.

18 Q Did Miss Milgrim appear to be injured?

19 A Not very much, she had a cut on one leg.

20 Q How about the other one in the automobile;  
21 where was he?

22 A He was from the waist up lying on the passenger  
23 door.

24 Q And how about from the waist down?

25 A Well, I really didn't look in the car that good



at that time.

Q All right, did you observe any blood on Miss Milgrim?

A Maybe a small amount on her leg.

Q And how about on Mr. Horne?

A Yes, sir; he had very much out of his mouth and nose.

Q Mouth and nose?

A Yes, sir.

Q Did Miss Milgrim have any keys in her hand?

A Yes, sir; she handed Mr. Felts the keys when we drove up.

Q The ignition keys?

A Yes, sir.

Q Did she make any reference to the keys?

A No.

Q Were you present when the Rescue Squad arrived?

A Yes, sir.

Q And did you observe them removing Steven's body from the automobile?

A Yes, sir.

Q Did they have any difficulty?

A Yes; his feet.

Q What was the problem with his feet?

A Well, I don't know exactly, but they had trouble getting his feet loose.

Q Where did you go after you left the accident scene?

A Well, Mr. Felts stayed there, and I took Miss Milgrim back to his house to make the calls.

Q To call whom?

A The Rescue Squad.

Q Was your wife there?

A Yes, sir; and she also called some of her parents' friends.

Q Some of Miss Milgrim's parents' friends?

A Yes, sir.

Q Do you know whether her parents were called?

A I don't think she called them, but she had the lady to make her call.

Q I'm showing you an enlarged photograph designated as Plaintiff's Exhibit Two, which has already been introduced into evidence, and I ask you if that accurately reflects the automobile at the accident.

A Perfectly, no better.

MR. MUNDY: No further questions, Your

Honor.

## CROSS EXAMINATION

BY MR. SPIERS:

Q Mr. Combs, did you go up to the car at the same time Mr. Felts did after you all got there?

A Approximately the same time.

Q Did you go right up to the car?

A Yes, sir.

Q On the side of it?

A Yes, sir.

Q Did you see Mr. Felts feel to see if there was any pulse?

A Yes, sir.

Q You didn't do that; did you?

A No; he did.

Q He did that, and you all were standing there together; were you?

A Yes, sir.

Q Was the right door partially open at the time?

A To the best of my recollection; no.

Q Do you think it was closed tight?

A Yes, sir.

Q When you first saw the Milgrim girl, she said,

2 "We've had an accident," or words to that effect?

3 A Yes, sir.

4 Q Did she immediately hand some keys to  
5 Mr. Felts?

6 A Yes, sir.

7 Q Did she say anything about what the keys  
8 were to?

9 A No.

10 Q Just handed him the key?

11 A Right.

12 Q And I gather from what you and Mr. Felts  
13 say, he came back and told you to take her to his house?

14 A Right.

15 Q What kind of vehicle were you in?

16 A Four-wheel drive pickup.

17 Q Did it have two seats or one?

18 A One.

19 Q She was in the front seat with you?

20 A Yes, sir.

21 Q Did she seem confused or have any trouble  
22 identifying who she had been with, or what happened?

23 A Yes, sir; I found out her name. I mean I  
24 asked her name. I thought I might get some help for her,  
25 and she also told me that the other one in the car was

Mr. Tom Dendy.

Q Dendy?

A Dendy.

Q Dendy?

A Yes, sir.

Q Did she make any other comments that seemed incoherent to you or dazed?

A No; she told me she would like for me to take her to her car or something like that.

Q Did she complain of pain in the head or in the stomach?

A Yes; I think she did.

Q She did seem to realize that she had been in an accident or could you tell? Did she seem to realize she had been in an accident on the way home, or could you tell?

A I think she seemed to realize it was an accident, because when we got there I think she said, "We've had an accident."

Q All right, you took her on to the Felts' home and then you took her inside?

A Right.

Q And your wife was there, and Mrs. Felts was there?

A Yes, sir.

Q You didn't smell any alcohol or anything on her; did you?

A No, sir.

MR. SPIERS: Thank you very much.

THE COURT: May this witness be excused.

MR. MUNDY: As far as we're concerned,

THE COURT: You may remain with us or you may leave. Thank you.

MR. MUNDY: Mrs. Combs.

(Sandra Combs was called as a witness.)

MR. MUNDY: Your Honor, we would like to ask Mr. Combs one more question before he is excused. I think he is still there; if he hasn't gone it would save me calling him back tomorrow.

THE COURT: Come back to the witness stand, Mr. Combs, please.

LARRY COMBS

was recalled as a witness and was examined and testified as follows:

REDIRECT EXAMINATION

BY MR. MUNDY:

Q Mr. Combs, I've just got to ask you one more question before you are excused. I believe you testified on Direct Examination that you observed Miss Milgrim giving some keys to Mr. Felts?

A Yes, sir.

Q And did you get those same keys from Mr. Felts?

A Yes, sir.

Q What did you do with them?

A I put them back in the car.

Q In the Corvette?

A Yes, sir.

Q Did they fit the ignition?

A Yes, sir.

MR. MUNDY: Thank you.

THE COURT: Any questions, Mr. Spiers?

MR. SPIERS: No questions.

THE COURT: You may step down one more time.

(The witness was excused.)

THE COURT: Call your next witness, please.

I believe before you take the next witness I'll take a five or ten-minute recess.

(Thereupon, a short recess was taken.

Following the recess, the parties returned to the room and the Proceedings were continued.)

THE COURT: Would you call your next witness, please?

MR. MUNDY: Clarence Wilmouth.

#### CLARENCE WILMOUTH

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 MR. MUNDY:

Q State your name, please.

A Clarence Wilmouth.

Q Where do you live, Mr. Wilmouth?

A Martinsville at the time being.

Q You live in Martinsville?

A That's right.



Q In July of 1978, where did you live?

A Galax.

Q What is your occupation? What do you do?

A I work selling now.

Q In July of 1978, were you a member of a Life Saving Crew?

A Yes; I was.

Q What crew was it; Pipers Gap Rescue Squad?

A Right.

Q Did you assist in an automobile accident, which occurred on the Blue Ridge Parkway on July 3, 1978?

A Yes; I did.

Q And who was present with you?

A Mr. Price Dotson.

Q Price Dotson?

A Right.

Q What did you find when you got to the scene of this accident?

A Well, we found Steven Horne in the car hanging on the right side of the car with half his body pinned in the car.

Q Which half of his body was pinned in the car?

A Well, from his hips down, his legs.

2 Q And where were his legs pinned?

3 A His right leg was under the front seat. V

4 The left leg was underneath the dash.

5 Q And what portion of his body was actually  
6 pinned in the car?

7 A Well, from his hips down.

8 Q All right, what part of the car was pinning  
9 that portion of his body?

10 A The right-hand side, passenger's side.

11 Q Right side, do you recall whether the right  
12 door was open or closed?

13 A It was closed.

14 Q Who removed his body from the automobile?

15 A Me and Mr. Dotson.

16 Q Did you encounter any difficulty in getting  
17 his body out?

18 A Well, his left leg was hung pretty much so  
19 his right leg came out pretty easy. That left leg was hung  
20 pretty much under the dash, but I did have a little trouble  
21 getting that left leg out.

22 Q Were you injured in removing his body?

23 A Just slightly.

24 Q How?

25 A A little cut of the arm.

2 Q And when did you cut your arm?

3 A Reaching in and out to pull his leg out.

4 Q Reaching under where?

5 A You know, reaching in the car.

6 Q Yes.

7 A To pull this left leg out from underneath  
8 the dash.

9 Q Was that open, the passenger side of the  
10 car?

11 A Yes; it was.

12 Q Do you recall where the right front wheel  
13 of the car was?

14 A No, sir; I don't. I can't tell you, because  
15 we didn't pay any attention to the car. All we knew was  
16 caring about getting the boy to the hospital.

17 Q Was there any room in that passenger seat  
18 for another person between where Mr. Horne's body was and  
19 the door?

20 A No, sir.

21 Q Did you see the Defendant Renee Milgrim that  
22 evening?

23 A Later on.

24 Q Where did you see her?

25 A At Mr. Felts' house.

Q Was there any blood on her?

A Not that I can remember.

Q Did you have any conversation with her?

A No, sir.

Q Mr. Wilmouth, I am going to show you a photograph, which has already been introduced into evidence as Plaintiff's Exhibit Number Two, and I ask you if that accurately reflects the scene of the accident with the automobile against the tree?

A Yes, sir.

Q And do Exhibits Number Three and Number Four also reflect the accident scene and the car?

A Yes, sir.

Q This is Four and this is Three.

A Yes, sir.

MR. MUNDY: All right, you may answer any questions that Mr. Spiers or Mr. Mink may have.

CROSS EXAMINATION

BY MR. SPIERS:

Q Mr. Wilmouth, do you all know when you got the call?

A Well, we got the call approximately around

11:45.

Q Were you at home?

A Yes, sir.

Q And you got the call at your home at 11:45?

A Approximately around 11:30, I mean what I am trying to say is we got there around 11:45, to the scene.

Q You got to the scene at 11:45, not 12:15?

A No, sir.

Q And you don't know when the accident was?

A No, sir.

Q Are you sure you got there before midnight?

A Yes; I am sure.

Q And when you got there who was there?

A Mr. Combs and Mr. Felts.

Q And they were the only two there; the investigating officer had not arrived?

A That's right, sir.

Q Were you all in the ambulance?

A Yes, sir.

Q You and Mr. Dotson and Mr. Dotson's wife, I believe?

A That's right, sir.

Q All in the front of the thing?

A (Witness nods head.)

Q And you all came from Pipers Gap?

A Yes, sir.

Q Did Mr. Felts' car have its lights pointed towards the wrecked vehicle when you arrived? Was there anything that lit up the car so you could see?

A Well, we used flashlights.

Q You used flashlights; you don't recall any car lights?

A No, sir; I don't remember that.

Q And when you got there was Mr. Felts near the car or side of the road?

A He was on the edge.

Q He and Mr. Combs both?

A Right.

Q Did you go immediately to the car?

A Yes; I did.

Q Could you tell whether Mr. Horne was living or not?

A No, sir; he was dead.

Q Did you feel for a pulse?

A Yes; I did.

Q You say from the waist up he was outside of the car?

A Yes, sir; hanging over the car like my hand

would be hanging, his body was hanging, both arms hanging straight down.

Q Both arms and everything out?

A (Witness nods head.)

Q Could you tell whether the window had been rolled down or whether it was open, or was it broken?

A I'd say it was rolled down.

Q Rolled down, all right, and did you reach in from the right side?

A Yes, sir; on the passenger's side.

Q And loosened his left leg, you said?

A Yes, sir.

Q It was under the dash towards the fire wall of the car?

A Yes, sir.

Q There wasn't any wheel or anything in the passenger's seat?

A Wheel?

Q Yes.

A No, sir; I didn't see any wheel.

Q Do you recall whether the gear shift was a four-on-the-floor or do you know?

A Yes, sir; it was.

Q Was it wrung off?

A Not that I could say; I don't know.

Q And when you got his left leg loose, was it straight ahead of him or could you tell?

A Well, it was sort of, you know, the leg was sort of in like this, you know. The right leg was under the seat.

Q Yes; and the right leg you said you had no problem with.

A I had a little trouble getting it out.

Q You had to reach under the dash?

A Right.

Q You say there was no space, between where he was and the door, for any other person?

A Yes, sir; that's what I said.

Q I gather this car had two seats, sort of bucket seats; am I right?

A Yes, sir.

Q Was the left door open?

A I don't remember.

Q And all the damage was on the right front or the right side of the car?

A Well, now truly I can't say that either, because I didn't look at the layout.

Q But you know it was on the right anyway?



A Right.

Q Did you all pull him out of the window?

A Out the side door there, you know, otherwise we didn't open the door. We just reached in and got him and laid him on the ground.

Q Through the window?

A Yes, sir.

Q You did not open the door?

A No, sir.

Q While you were there did anyone open the door?

A No, sir.

Q And the door was shut when you got there?

A Yes, sir.

Q Was the investigating officer there by the time you left?

A He was there by the time we were leaving. He came while we were leaving.

Q And as far as you know no one came to the car and opened the right door at all?

A No, sir; not as I know of.

Q And I believe you said that these Exhibits Mr. Mundy showed you, and I think it was these: Two, Three and Four. Are they the ones he showed you?

2 A Yes, sir.

3 Q And that's the way the car was when you got  
4 there?

5 A Yes, sir; the door was closed, and his body  
6 was out; you know, his body was hanging out the door here.  
7 His whole face, head and arms were hanging downwards.

8 Q Was his hip all the way down on the seat?  
9 It was sort of up a little, wasn't it?

10 A I can't remember exactly where his hips were.  
11 It looked like he had his legs hung under the seat.

12 Q Right, from the middle of his body up it was  
13 hanging out the car?

14 A Yes, sir.

15 Q And do you recall whether his hips were up  
16 off the seat?

17 A I would say they were.

18 Q They were?

19 A (Witness nods head.)

20 Q All right, do you recall whether this vehicle  
21 had a broken window in it?

22 A I never noticed it.

23 Q Do you know whether it had a sun roof?

24 A Yes, sir; it had a sun roof.

25 Q And when you got there the sun roof was not on

2 the car; was it?

3 A Oh, let me see; I believe it was one of those  
4 types that slide to the left.

5 Q This is Exhibit Three.

6 A See right here (indicating) it was slid back  
7 like this.

8 Q It was not right over the seat?

9 A (Witness nods head.)

10 Q Sir, do you recall whether it was still on  
11 the car or had it flown off?

12 A I really don't know; I really hadn't paid  
13 that much attention to it.

14 Q But you know the part right above the passenger  
15 was gone; it wasn't there?

16 A It was open.

17 Q It was open; Mr. Dotson was assisting you  
18 during this?

19 A Yes, sir.

20 Q And you went on back to the hospital; is that  
21 where you took him?

22 A We took Mr. Horne to the hospital, and while  
23 we were at the hospital we got a call to come and pick this  
24 lady up.

25 Q And you went to Mr. Felts' home to get her?

2 A That's right.

3 Q Were her parents there then?

4 A Yes; they were, at least her father was.

5 Q Yes; well didn't her mother go over there  
6 with her in the ambulance?

7 A The best I remember her father did.

8 Q Her father?

9 A I'm not really positive which did. I'm pretty  
10 sure it was her father.

11 Q Pretty sure it was her father; when you got  
12 there was she lying on the couch?

13 A Yes; she was.

14 Q Did you put her on a stretcher?

15 A Yes; I did.

16 Q Someone was in the back with her?

17 A Mrs. Price Dotson.

18 Q And one of her parents?

19 A (Witness nods head.)

20 Q Is that right?

21 A Right.

22 Q And you heard no conversation or anything?

23 A No, sir.

24 Q Was she complaining of any pain?

25 A The best I recall she was complaining that her

2 head was bothering her.

3 Q Her head was bothering her?

4 A (Witness nods head.)

5 Q Did she mention anybody's name that might  
6 have been with her?

7 A I don't have any memory.

8 Q Was she complaining loudly about her head?

9 A No; she just said her head was hurting.

10 MR. SPIERS: That's all; thank you.

11

12 REDIRECT EXAMINATION

13

14 BY MR. MUNDY:

15 Q Mr. Wilmouth, was any blood on Miss Milgrim?

16 A Well, I don't remember seeing any; it could  
17 have been.

18 Q You don't recall seeing any, though?

19 A No, sir.

20 Q How about on Mr. Horne's body?

21 A Plenty of it.

22 Q Was any blood on the inside of the car?

23 A Now, I didn't look that close; I would say  
24 it would be.

25 Q Because of the blood that was on his body?

A Right; you see when we go to an accident, the thing we try to do is get them to a hospital.

Q I understand that, sir, where was the blood on his body?

A Well, his face was bloody, and it seems to me one arm was bloody.

MR. MUNDY: I have no further questions,  
Your Honor.

RECROSS EXAMINATION

BY MR. SPIERS:

Q Mr. Wilmouth, I don't even like to talk about it, but you say his face was outside the car?

A Yes, sir.

Q And his arms were outside the car?

A Yes, sir.

Q And that's where you saw the blood; right?

A (Witness nods head.)

Q You don't know whether it was any inside the car or not?

A The blood or Mr. Horne?

Q The blood.

A No; I'm sorry, I didn't understand. I can't

say for sure.

Q What you saw was his head and arm?

A Right.

MR. SPIERS: Thank you, sir.

THE COURT: May this witness be excused?

MR. ROGERS: Yes, sir.

MR. MUNDY: Yes, sir.

THE COURT: You may remain with us or you may leave.

(The witness was excused.)

THE COURT: Call your next witness.

MR. ROGERS: Mr. Price Dotson.

PRICE DOTSON

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 MR. ROGERS:

Q Sir, would you state your name, please?

A Price Dotson.

Q Where do you live?

A I live on Poplar Hill Road.

Q And what is your employment?

A I'm not employed; I'm retired.

Q What were you doing July, 1978?

A I was retired in '78.

Q Did you work for the Rescue Squad?

A Yes, sir.

Q Which one was that?

A Pipers Gap Rescue Squad.

Q Do you recall being called to the scene of an accident that occurred on the Blue Ridge Parkway July 3rd, 1978?

A Yes; I do.

Q All right, who did you go to that accident with?

A Clarence Wilmouth.

Q Can you tell the Jury what you saw when you arrived at the accident scene?

A We got the call to go up there. They said there's been a bad accident on the Parkway, so we went up there. When we got up there half of Mr. Horne's body was outside on the passenger's side with one foot stuck under the seat, and one up under the dash.



Q All right, how did you get him free from the wreckage?

A Well, when we first got there we examined him and he was already dead, and he was getting cold. So, we examined him there and then we got him loose.

We laid him out on the ground and examined him again. When we started lifting him out of the car his left foot came loose, but his right foot was stuck up under the dash and wouldn't get loose.

So, I told Mr. Wilmouth to get in there. "You are going to have to loosen it up." So, he got in there and loosened his foot from up under the dash.

Q Do you know which leg you are talking about "under the dash"?

A It was his left leg under the dash; the right leg was under the seat.

Q Could you tell what was holding in his left leg?

A I couldn't say what it was, because Clarence is the one that loosened it. We couldn't move it out until he got him out.

Q Was there any blood on Mr. Horne's body?

A Yes; it was on his head and his arm.

Q What did you do after you removed him from the

vehicle?

A We took him and laid him on the ground, and examined him again. Then we put him in the ambulance and brought him in.

Q How did you remove his body? Did you open the door?

A No; we didn't open the door. He was already halfway out, just his hips sticking inside; and we just lifted him up.

When we lifted him up it wouldn't come loose. So, I told Clarence to get up under there and we unloosened his foot and took him out that way.

Q After you took him to the hospital what did you do next?

A Well, we got a call while I was at the hospital to go back up there and pick up this girl.

Q All right, would you tell the Court and Jury about what you did when you picked her up.

A We went in the house to pick her up.

Q Do you know whose house that was?

A I think it was the Felts' house; I'm not sure. I think Mr. Felts lived there. I'm not sure of that now, but anyway we went in to pick her up, and her father was very upset for some reason.

In other words, he was trying to tell us what to do.

Q I see.

A So, he kept on and on. He was claiming we were being rough with his daughter, which we weren't.

Q Did you put her in the ambulance?

A We put her in the ambulance.

Q Did anyone go along with you on the way to the hospital?

A What do you mean?

Q Who was in the ambulance when you drove Miss Milgrim to the hospital?

A Her father and mother, and Clarence and myself.

Q Where was her father and mother?

A In the back with her.

Q Do you recall any conversation from Miss Milgrim on the way to the hospital? What was she saying?

A I couldn't understand what she was saying, but every time she started to say something they would say, "Keep quiet, hush and be quiet."

Q Who said that?

A Her father.

Q I see.

A And the mother, both; now I couldn't figure out what she was saying. I could not understand, but it seems as though they wanted her to be quiet.

Q Do you know whether or not there was any blood on the car or in the car?

A No; I don't.

Q Did you look in the car after you got Mr. Horne's body out?

A No; I didn't.

Q Did you see where the damage was to the car?

A No.

Q Could you tell if the right side was damaged?

A No; because I wasn't interested in the car.

MR. ROGERS: All right, I have no further questions.

#### CROSS EXAMINATION

BY MR. SPIERS:

Q Sir, when you arrived the Horne boy was more than halfway out hanging over?

A His arms and head were leaning down over like that (indicating).

Q At least half of him was out of the car?

A I would say so; yes, sir.

Q And his head was injured, and his arm?

A Right.

Q And that's where you saw the blood?

A Right.

Q Could you tell whether his hips were on the seat or raised up partially?

A No; his hip was not on the seat. It was hanging up on the car and his foot was up this way and one back under the seat this way (indicating). He was not on the seat.

Q Do you know whether the car had a stick shift or what kind of shift? I know you weren't interested, you were really trying to get him out.

A I think it had a shift in it.

Q Stick shift, did you notice if that was broken off?

A No; I didn't.

Q You don't know whether it was or not?

A No.

Q And your main concern, of course, was for the victim. You wanted to get him to the hospital?

A That's right.

Q You said his body was getting cold at that

time?

A It was already starting to get cold; yes.

Q And this was in July; it was kind of a warm night?

A Yes; I would say it was.

Q So the accident happened quite awhile before?

A Evidently it had.

Q Do you recall approximately when you got the phone call?

A Yes; at 11:45.

Q 11:45, and when were you there; do you think?

A Within 15 to 20 minutes.

Q So, around midnight or a few minutes after?

A Something like that.

Q And you went all the way to Galax, and then had to go back to the Felts' house?

A That's right.

Q To get her; was she on the couch when you went in?

A Yes.

Q Was she complaining of pain in her head or chest or stomach or anything?

A I can't remember exactly how it was. She said she was hurting in her chest through here (indicating). I

think that's what she said.

Q Chest and stomach?

A Yes.

Q But you didn't hear her say anything about the accident?

A Not in there; no.

MR. SPIERS: That's all.

THE COURT: May this witness be excused?

MR. MUNDY: Yes, sir.

MR. ROGERS: Yes, sir.

THE COURT: You may remain with us or you may leave.

(The witness was excused.)

MR. ROGERS: Doctor Rios, Your Honor.

MR. SPIERS: I'll stipulate the cause of death.

MR. ROGERS: Your Honor, before I begin questioning Doctor Rios, I understand that Mr. Spiers has offered to stipulate that the cause of death of Mr. Steven Horne was head injuries due to a motor vehicle accident; is that correct?

MR. SPIERS: Yes.

THE COURT: Gentlemen of the Jury, you will

receive this as any other evidence that has been made, and there being no dispute about it.

JUAN F. RIOS, M.D.

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 MR. ROGERS:

Q Doctor Rios, will you state your name?

A My name is Juan F. Rios from Galax, Virginia.

Q All right, and would you tell the Court what your profession is?

A By trade I'm a surgeon located in Galax, Virginia. I have been appointed the Medical Examiner for the City of Galax, and Carroll and Grayson County.

Q What does a Medical Examiner do?

A Three main things: Mainly the violent deaths, deaths that occur that are suspicious, and the deaths that may occur in the operating room.

Q Did you have occasion to examine the body of Steven Horne on July 3rd, 1978?



A At the Twin County Community Hospital in Galax, Virginia, the nursing staff notified me that in the early hours of July 4th, 1978, according to my investigation, the remains of Steven Henry Horne were viewed, as you said, in the Twin County Community Hospital located at the Vaughan-Guynn Funeral Home.

My investigation suggested that this young man had been dead sometime within two or three hours before I saw him.

In other words, on July the 3rd, 1978, sometime after 9:00 or 10:00 p.m.

Q I see, would you describe what your examination of Mr. Horne revealed in that respect?

MR. SPIERS: Mr. Rogers, I would like to discuss something with you in chambers, if you don't mind.

THE COURT: You may do so.

(Thereupon, Counsel and the Court retired to chambers for a brief discussion.)

BY MR. ROGERS:

Q Mr. Rios, what I would like to question you about is the location of injuries to Mr. Horne. Would you describe where you found the injuries; on which side of

his body?

A Okay, the remains were viewed in the hospital, and the local funeral home. When I first saw him in the Emergency Room, all of the clothing had been removed, and he had had blood from the nose, from the mouth and both ears.

There was a little bit of swelling to both eyes. There was an abrasion about the lining of the left eye. The right ear had been severed in two, and had been cut in here and had been peeled off.

Q Was that where the major blow was?

A That is correct.

Q On the right side?

A Yes.

Q With that type of blow in the instance of impact, assuming the impact caused that, would that cause massive bleeding?

A That is correct.

Q Did you ever have occasion to do a blood alcohol test on Mr. Horne's body?

A The blood was done; yes.

Q And what was the result of that?

A The Commonwealth of Virginia reported to the Officer of the Medical Examiner in Roanoke that there was no

alcohol in the blood.

Q All right, did you know Steven Horne personally?

A Yes; I did.

Q How well did you know him?

A Well, he was my neighbor. I had seen him medically and surgically in the past, and for some reason or another he's a friendly young man that waved at many people including myself.

Q And how would you describe him?

A Friendly, happy, straight; that's just about it.

MR. ROGERS: Your Honor, if there is no objection from Mr. Spiers I'd like to introduce into evidence the Certificate of Death.

Do you want to see this, Mr. Spiers?

THE COURT: It has been stipulated; the Court would not add anything to it.

MR. ROGERS: Yes, sir.

THE COURT: Stipulation was agreed to that the cause of death was the injuries he received from the automobile accident.

MR. ROGERS: I have no further questions of Doctor Rios.

CROSS EXAMINATION

BY MR. SPIERS:

Q Doctor Rios, the principal bleeding was from the head or the top of the body?

A Yes.

MR. SPIERS: Thank you, that's all I had.

THE COURT: May this witness be excused?

MR. MUNDY: Yes, sir.

MR. ROGERS: Yes, sir.

THE COURT: You may remain or you may leave.

(The witness was excused.)

THE COURT: Call your next witness, please.

MR. MUNDY: Mr. Ayers.

THE COURT: Have a seat, please.

TOMMY AYERS

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 MR. MUNDY:

Q State your name, please.

A Tommy Lee Ayers.

Q Where do you live?

A About a mile and a-half off 52 South.

Q Are you employed?

A Yes, sir; at Leonard and Brown Aluminum  
Utility.

Q How old are you?

A Twenty-nine.

Q Did you know Steve Horne?

A Yes, sir.

Q Were you good friends?

A Yes, sir; I worked with him about four or  
five years at Hanes.

Q Did you know his family?

A Yes, sir.

Q How long have you known the Horne family?

A About as long as I've known Steve; I'd say  
about four years.

Q And during those four years did you spend a  
lot of time with Steve?

A Yes, sir.

Q Did you spend a lot of time with the Horne family?

A Yes, sir.

Q When had you last seen Steve prior to his death on July the 3rd?

A On the last day we worked; it was either Thursday or Friday.

Q Do you recall what day of the week July the 3rd was?

A Monday.

Q So, you last saw him on Thursday or Friday prior to that Monday?

A Yes, sir.

Q What was his state of health, generally, so far as you knew?

A Excellent.

Q Did he have an automobile?

A Yes, sir; a '71 Corvette.

Q Had you ridden in it?

A Yes, sir; I rode in it several times. We used to ride around work in it.

Q How often would you have ridden in it for the last several months prior to his death?

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- 2 A Three times a week.
- 3 Q Was it in good mechanical condition?
- 4 A Excellent mechanical condition. ]
- 5 Q Do you recognize this photograph?
- 6 A That's Steven's car.
- 7 Q Who took the photograph?
- 8 A I did.
- 9 Q When?
- 10 A It was about a month before the wreck.
- 11 Q And is that the car that was involved in the
- 12 accident?
- 13 A Yes, sir.
- 14 Q And do you recognize that photograph?
- 15 A Same year after the accident.
- 16 Q Who took that photograph?
- 17 A I did.
- 18 Q Where?
- 19 A It was out at Grady Felts', out on the Parkway.
- 20 Q All right, does that reflect the automobile
- 21 and the damage to it after the accident?
- 22 A Yes, sir.
- 23 MR. MUNDY: Your Honor, if we could have the
- 24 photograph taken of the car by Mr. Ayers, approximately
- 25 one month before the accident, as our next Exhibit.

THE COURT: It will be received without objection.

MR. MUNDY: And we would also offer the photograph taken by Mr. Ayers after the accident as our next Exhibit.

MR. SPIERS: Might I ask where it was taken, where it was towed, and whether it was in the same condition at the scene or whether it was modified or changed in any way because of the pulling.

MR. MUNDY: Would you like to ask him that?

MR. SPIERS: I don't think he knows. Do you know who towed it?

THE WITNESS: Grady Felts; he had it covered up with tarp so people couldn't be down there messing with it.

MR. MUNDY: Your Honor, we offer the photograph for that purpose.

THE COURT: If it was in the same condition the Court would sustain the objection.

MR. SPIERS: Object.

BY MR. MUNDY:

Q And Mr. Ayers, at our request did you obtain a brochure showing a 1971 Stingray Chevrolet Corvette?

A Yes, sir.

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Q And is this it?

A Yes, sir.

Q Is that the type car Steve had?

A Yes, sir.

Q Does this accurately reflect the interior of the car?

A Yes, sir.

MR. MUNDY: Your Honor, we would offer this as our next Exhibit.

MR. SPIERS: Your Honor, I'm objecting to this. I don't know what it's designed to show other than the interior, but I do object to the entry of a commercial photographic catalogue of a car.

MR. MUNDY: Your Honor, this is the brochure showing the characteristics of the precise car involved in the accident, and I think it certainly is relevant insofar as the Jurors' understanding of this particular automobile.

THE COURT: The Court lays the proper foundation. It has not led for introduction, and it hasn't been shown to be in the same condition as before. The Court sustains it.

BY MR. MUNDY:

Q Mr. Ayers, just with regard to the interior of the car and not the overall appearance of the car, is the interior as reflected on Page Nine of the brochure in the same condition as Mr. Horne's automobile just prior to the accident?

A All of them are completely the same on the inside. That is practically the same on all of them, except for the gear shift.

MR. MUNDY: Your Honor, in that regard we offer this as Page Nine.

THE COURT: It would be held in the same tradition as he's testified. The Court would not permit it into introduction.

BY MR. MUNDY:

Q Would you describe the interior of Steve's car?

A He kept it clean all the time. He kept everything straight. There wasn't any cuts on the dash.

Q There was a console?

A Yes.

Q And describe the console and tell us where it was located.

A The console is between the seats about eight inches wide. It was all the way up to the radio. All the way from the dash down, completely separates the seats.

Q What kind of gear shift was it?

A Four speed.

Q Is that a stick shift?

A Yes, sir.

Q And where was the steering wheel with regard to the driver's seat?

A Close to where Steve was driving. It is about two, two and a-half inches from the legs. It's a pretty tight fit.

Q You mean above the legs?

A Yes, sir.

Q How much head room was there in the automobile?

A About four to six inches at the most.

Q How tall was Steve, approximately?

A Five-ten.

Q Do you know in what location he had the seat when he normally drove it?

A All the way back.

Q All the way back; did you examine the seat after the accident?

A Yes, sir.

Q Where was it?

A It was about an inch from the front; it was almost up.

Q Where was the damage to the automobile as a result of the accident?

A All of it was just on the right side, the majority; on the left side was a little bit, but it was the fact just about the front wheel was in the fire wall.

Q Through where?

A Through the fire wall.

Q The front wheel was in the right front wheel?

A Yes, sir.

Q Did you see the right front wheel?

A Yes, sir.

Q All right, and how about the interior of the car in the vicinity of the driver's seat? Was there any damage to it?

A The driver's seat was bent just a little bit, but the left side was all in perfect shape. The gear shift was broken off.

It was to the right about two inches.

Q Was the gear shift - -

MR. SPIERS: What was to the right?

THE WITNESS: The brake lever.

BY MR. MUNDY:

Q First, with regard to the gear shift; was it completely broken off?

A Yes, sir.

Q And was that an upright stick shift?

A Yes, sir; about eight inches tall coming out of the console.

Q Now, how about the brake lever?

A It was bent over to the right about two or three inches.

Q What was the damage to the interior of the passenger's side of the car?

A The fire wall was busted all to pieces. The front door was sticking through it to the right.

MR. SPIERS: I can't hear him.

THE COURT: Mr. Ayers, just look at me and speak louder.

BY MR. MUNDY:

Q I'm asking you about the damage to the interior to the right, or passenger's side of the car?

A The fire wall on the right side was busted. The front wheel was sticking through there and the tire was still pumped up.

Q A little bit slower. Now, we're all trying to listen to you.

A The right door panel was busted off. The right bumper was bent and the right fender was busted in the front. The back fender was busted loose where it's put together.

The right top was thrown off. The window was busted all to pieces.

Q Was the car totally demolished in the accident?

A It was a total loss.

Q Could the right door be opened after the accident?

A No.

Q Mr. Ayers, you testified that you knew the Horne family; were you in their home after the accident?

A Yes, sir.

Q Would you tell the Jury how it appeared to affect the family?

A It was a severe tragedy, something that should not have happened. It tore them all to pieces. It was something that was real hard to take.

Q Have you seen them on frequent occasions since the accident?

A Yes, sir.

Q Can you tell whether it still affects them?

A Yes, sir; it still affects them.

MR. MUNDY: I have no further questions,  
Your Honor.

CROSS EXAMINATION

BY MR. SPIERS:

Q Mr. Ayers, I gather you all had been friends  
for years and years?

A Yes, sir.

Q And you are very close to the family and to  
Steve?

A Yes, sir.

Q And you had gone out of town; had you?

A I had been out of town that weekend.

Q And when did you get back?

A The 3rd, that was on Monday night, and then  
we went down to this friend's house, and then I went back  
home that morning.

Q Is that when you discovered an accident had  
occurred?

A They had been down to my house and I went over.

Q To the Horne home?

A Yes, sir.

Q And then you said you went to Felts'?

A When I found where the car was I went to see it.

Q And was it the same Mr. Felts that testified to that? Do you know, is it a garage or just a home?

A It's just a wrecker service out at Fancy Gap.

Q A wrecker service at Fancy Gap?

A Yes.

Q And the car was at Fancy Gap?

A Yes, sir.

Q And how far is it from Fancy Gap to where this accident happened?

A Five or six miles.

Q Five or six miles?

A I'd say closer to ten or twelve.

Q All right, ten or twelve; and a wrecker had pulled the car in?

A Yes, sir; they had to pull it on a dolly. It tore it up, and they pulled it on a dolly.

Q And you weren't there when it was pulled in?

A No.

Q When you saw it it was covered up with a tarp over it?

A Yes; he told me I couldn't touch it, just to



look at it.

Q I'm not complaining about that; you did look at the car?

A Yes, sir.

Q And you looked at the front seat?

A Yes, sir.

Q Left front seat?

A Yes, sir.

Q And you say it was up almost all the way?

A Almost all the way, like an inch all the way from being to the front.

Q Did you get in and sit in the front seat?

A Yes, sir.

Q You did?

A Yes, sir.

Q How tall are you?

A Six-five.

Q You are quite a bit taller than Steve?

A A little bit, not much.

Q Aren't you at least six inches taller?

A Yes.

Q You did not see the car when it was at the scene of the accident?

A No, sir.

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Q When you saw it, the front door was closed tight?

A Yes; it would not open.

Q We are talking about when you saw it; was the front right door closed at the time you saw it?

A Yes.

Q And as far as you could tell it would not have been opened after the wreck?

A No.

Q Now, did you look inside to see that the gear shift was broken off?

A Yes, sir.

Q And where is the brake lever; isn't it in that console also?

A Gear shift, right at your leg.

Q A lever about that long (indicating)?

A It's about two inches high and it pulls up.

Q It comes up above - -

A The console.

Q The console?

A (Witness nods head.)

Q And it was bent to the right? That is, with regard to the passenger's side of the car?

A Yes, sir.

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2 Q And it was bent a couple of inches?

3 A Yes, sir.

4 Q Could you tell which way the gear shift had  
5 gone? Had it gone also to the right?

6 A No; you could tell it was very hard.

7 Q But that gear, I mean that brake lever is  
8 kind of heavy metal; isn't it, it was just bent?

9 A Yes.

10 Q To the right towards the passenger's side of  
11 the car?

12 A Yes, sir.

13 Q The right front wheel, you say, was up against  
14 the fire wall?

15 A Through the fire wall.

16 Q Was the tire in good condition?

17 A It was still pumped up, and had plenty of  
18 tread on it. It didn't bust it.

19 Q Did you know when he had bought a new tire,  
20 recently?

21 A He bought two new tires for the back.

22 Q Two new tires for the back, but not for the  
23 front?

24 A The one on the front was perfect.

25 Q I gather from what you say he was proud of

this car and worked on it a whole lot?

A He took real good care of it.

Q And you would help him?

A Yes, sir.

Q Work on the car?

A (Witness nods head.)

Q And apparently from the photograph he kept it very clean?

A Yes, sir.

Q Very particular about his car?

A (Witness nods head.)

Q Do you know how long he had had the car?

A I'd say around a year, I guess.

Q 1971 model?

A Yes, sir.

Q And that blue is sort of a royal blue; was it?

A Yes, sir.

Q Marina blue?

A Marina blue.

Q Did you drive his car?

A Yes, sir.

Q Both of you could drive a car and check its condition?

A Yes, sir.

Q You are a mechanic, too?

A I just work on them; I'm not a certified mechanic, but I just work on them.

Q That's what I mean, it's sort of a hobby of yours?

A Yes, sir.

Q It was a hobby of his?

A Yes, sir.

Q And you had seen him Thursday or Friday whenever you got off from work?

A It was the last day I worked, because we were getting the 4th of July vacation, and it was the last day we went that week.

Q Where are the front headlights broken out of the car?

A Left one was completely gone. I never did find it, and the right one was completely gone. The left one was still there, but it was busted all to pieces, but it was on the car.

Q The left one was broken all to pieces?

A Yes, sir.

Q Wasn't there damage all across the car?

A Not on the left side.

Q Well, the headlight is on the left side?

A There was from the impact; the lights were busted. They've got little flip-up things, and this flip-up thing wasn't broken on the left side; the right was busted completely out.

Q Were the flip-up things up or down?

A The one on the left was up.

Q Did this have a top?

A T-top.

Q You could take it off?

A Yes, sir.

Q And was the left top still on it?

A Yes, sir.

Q And where was the right top; or do you know?

A We found it down the road about 100 feet.

Q You do just what somebody tells you?

A No; I know the guy that found it.

Q I know that, did you see it down in the woods?

A No, sir; I wasn't there.

Q At the time you saw the car, it was not on the car?

A It was on the car when I saw it.

Q It was on the right side?

A They took it out there and put it on.

Q So, it was still covering the passenger's seat

at the time you saw it?

A Yes, sir.

Q Okay, how about the rear window?

A It was down; it had been rolled down.

Q Back window?

A It was at Steve's house. He took it out at that house and left it.

Q It was one of those removable windows also?

A Yes, sir.

Q And did you later see it at Steve's house?

A Yes, sir.

Q So, apparently at the time of the accident there was no window in the back?

A Right.

Q And the right window was down?

A It had been rolled down.

Q So, apparently the window was open as far as you know?

A Yes, sir.

Q You don't know whether anybody cranked it or did anything since the accident?

A It couldn't be rolled up or down after the accident.

Q You don't know whether you tried or not?

A No; I know it wouldn't go up or down and it wouldn't; the whole mechanism was smashed.

Q So, the window was open?

A Yes, sir.

Q In your opinion?

A Yes, sir.

Q Were any of the tires down?

A The right back one was busted, but I believe that was from when they were pulling it up in the axle when it broke.

Q At anytime you saw it the tire was down?

A The back one was busted.

Q And at the time you saw it the entire front end was down on the ground; right?

A Yes.

Q Was the left front tire down?

A No.

Q You are sure of that?

A Positive.

Q How about the left rear?

A It was still up.

Q Positive of that?

A Yes, sir.

Q This car didn't have a trunk in it; did it?



A No, sir.

MR. SPIERS: That's all.

THE COURT: Any questions, Mr. Mundy?

MR. MUNDY: No.

THE COURT: May this witness be excused?

MR. ROGERS: Yes, sir.

MR. SPIERS: Judge, it may be necessary to recall this witness.

THE COURT: Show this witness to the lounge area.

(The witness was excused.)

THE COURT: Now, call the next witness.

MR. MUNDY: Fredna Murphy.

FREDNA MURPHY

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 MR. MUNDY:

Q State your name, please.

A Fredna Murphy.

Q All right, Miss Murphy, if you will speak up just a little bit louder, and direct your responses to the Judge then the Jury will have no difficulty in hearing you.

A All right.

Q All right, tell us your name again.

A Fredna Murphy.

Q And how old are you?

A Twenty-one.

Q Where do you reside?

A Pulaski.

Q Are you employed?

A No, sir; not at the moment.

Q Where are you from originally?

A Galax.

Q Did you go to Galax High School?

A Yes, sir.

Q Did you know Steven Horne, and the Defendant Renee Milgrim while they were students at Galax High School?

A Yes, sir.

Q Did you see Miss Milgrim on July 3, 1978?

A Yes, sir.

Q When did you see her?

A Well, I had classes with her at school.

MR. SPIERS: I'm sorry, what did you say?

THE WITNESS: I had classes with her at school.

MR. MUNDY: You will have to speak up just  
a little bit louder.

BY MR. MUNDY:

Q But you did see her at school?

A Yes, sir.

Q What year were you in school?

A This was my senior year; it was 1977.

Q It was 1978; wasn't it?

A '77.

Q Well, the accident occurred on July 3, 1978;  
did you see her on that day?

A Not until around, I guess it was between  
5:00 and 7:00 on the day of the accident.

Q Did she make any statements to you about what  
her plans were on that day?

A To go out partying.

Q Did she say what she was going to do?

A No, sir.

Q Did she say who she was going with?

A She and Toni Nunn were going out.

Q Did she state whether she intended to drink

or smoke anything?

A That's what's considered partying.

Q What?

A Smoking and drinking.

Q Smoking what?

A Pot.

Q All right, and drinking alcoholic beverages?

A Yes, sir.

Q What time was that when she told you that?

That was that afternoon of the day of the accident?

A Yes, sir.

Q Did you see her again that day?

A Yes, sir.

Q Where?

A It was somewhere between 5:00 and 7:00 o'clock,  
and we saw her in front of the shopping mall.

Q What was she doing?

A She was riding around with Toni Nunn. They  
were in Toni's car.

Q At some point did you see her at the Burger  
Bar in Galax?

A Yes, sir.

Q What was that; on the day of the accident?

A Yes, sir; that was later on that night.

Q About what time was that?

A I'd say around 9:00, because it just had turned dark.

Q Approximately 9:00 o'clock p.m.?

A Yes, sir; 9:00, 9:30.

Q And who was Miss Milgrim with at that time?

A Steven Horne.

Q Whose car were they in?

A Steven Horne's.

Q And who was driving Steven Horne's car?

A Renee Milgrim.

MR. MUNDY: Answer any questions that Mr. Spiers may have.

CROSS EXAMINATION

BY MR. SPIERS:

Q Miss Murphy, you talked to me this morning; didn't you?

A Yes, sir.

Q Mr. Mink was there?

A Yes, sir.

Q Now, when did you graduate from high school?

A In 1977.

Q Okay, did you graduate in May or June or July?

A It was in June.

Q June of 1977?

A Right.

Q Now, I believe you told me, and also told Mr. Mink that you saw Renee at school on July 3rd, and she said she was going out partying that night?

A Right; I was up at the school that afternoon.

Q You saw her at the school?

A Right.

Q And this was the year you graduated; that's what you told me.

A Well, I was out of school already; I graduated in '77.

Q But it was the year of your graduation?

A No; it wasn't.

Q Isn't that what you told - -

MR. MUNDY: She told you it was a year later. Will you let her answer the question?

MR. SPIERS: She's changing it now.

THE WITNESS: I graduated in '77. This wasn't while I was in school. I had classes with Renee before, that's how we were familiar with each other.

BY MR. SPIERS:

Q Okay, did you or did you not either tell Mr. Mundy or me that you saw Renee at school in the year of your graduation after you graduated?

A I had classes with her the year I graduated.

Q Right; and that's where you saw her?

A No; I saw her at the same school.

Q And you are telling us that what you are relating now occurred a year later?

A Right.

Q At the school?

A Right.

Q What were you doing at the school?

A I had gone up there to take Melissa Hamden up there.

Q What was she doing in school?

A Her brother attended school up there, and he was practicing later on in the afternoon.

Q Who?

A It was Melissa Hamden, Odell Hamden's daughter, and we had gone up there for that.

Q For practice?

A To take her brother practice uniforms I guess, it was a little satchel that you carry.

2 Q And you saw Renee Milgrim at the school?

3 A Right.

4 Q Was she attending classes or do you know?

5 A This was after school; this was, I guess,  
6 3:15. It was right after school, or either five or 3:10.

7 Q You think about 3:15?

8 A Probably.

9 Q Okay, was Renee coming out of the school?

10 A Yes, sir.

11 Q And as far as you know she had been attending  
12 classes at the school?

13 A Right.

14 Q So, you saw her right after she finished her  
15 classes?

16 A Right; it was after school.

17 Q And are you a good friend of hers?

18 A Yes, sir.

19 Q And you all started talking?

20 A Right.

21 Q Was anybody with you?

22 A No; not at the time, because she was coming  
23 out the door down from, I guess, the steps out the back  
24 door.

25 Q Did she have any books with her?



2 A Sure.

3 Q She had her school books with her?

4 A Yes.

5 Q Okay, she was heading out somewhere and you  
6 saw her?

7 A Right.

8 Q Were you still in your car?

9 A No, sir; I was inside the school.

10 Q You were in the school?

11 A Right; inside the door, right as you go in,  
12 she was coming out.

13 Q And where were you going; where did you intend  
14 to go in the school?

15 A In the gym.

16 Q To the gym?

17 A Right.

18 Q For what?

19 A I was with Melissa to go get her brother there.

20 Q Yes; so you were all going to the gym?

21 A Well, just Melissa and I.

22 Q Just you and Melissa?

23 A Right.

24 Q What were you going to the gym for?

25 A To take her brother his clothes.

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Q And Melissa had Tom's clothing to take to her brother?

A Yes.

Q Okay, and you ran into Renee, and what happened?

A Right; we stopped and said, "Hello, how are you," and then we talked for a few minutes. I said, "What are you going to do?"

She said that she and Toni were going out partying.

Q Was Toni with her?

A No, sir; not at the time.

Q Do you know Toni, too?

A Yes, sir.

Q Are you all good friends?

A No, sir.

Q You're enemies; aren't you?

A Not really enemies, we don't speak.

Q Don't speak?

A Right.

Q But you and Renee did speak?

A Yes, sir.

Q And she told you what, now?

A That they were planning on going out partying.

Q Yes; and she didn't say just that, she kept on talking?

A No.

Q Is that all she said?

A Well, she said that she had to go. Melissa had to go; she had to get his clothes down there for practice. It was just like, "How are you? How have you been?"

Q Okay, and she said, "Toni and I are going out partying tonight"?

A Right.

Q And you all parted company?

A Right.

Q Okay, did you see her in her car leaving the school?

A No, sir; I was inside the school when she left.

Q And how long were you in the school?

A Maybe 15 to 20 minutes.

Q So, you and Melissa came back out of the school?

A Right.

Q And you're in your car?

A I think we were in her parents' car.

Q Yes.

2 A In her parents' car.

3 Q In her parents' car?

4 A Right.

5 Q That was about 3:15 p.m.?

6 A It was closer to about 3:30 when we left.

7 Q Right; after the school was over?

8 A Right.

9 Q And the next time you saw her was between  
10 5:00 and 7:00?

11 A I'd say it was somewhere between 5:00 and  
12 7:00; it wasn't dark, and it wasn't early.

13 Q And where did you see her?

14 A We were going along down the interstate this  
15 way, where there is a Gulf Station and she - -

16 Q Interstate?

17 A Interstate; yes, sir; right beside the  
18 shopping mall.

19 Q Towards Hillsville?

20 A We were going to town.

21 Q And you were near Interstate 77 then?

22 A If it's 77.

23 Q Well, the one that goes - -

24 A Right by the mall.

25 Q And you were in one car and she was in another?

A Right.

Q Whose car were they in; do you know?

A I imagine it's Toni's parents.

Q But it wasn't Renee's car?

A No.

Q Do you know what kind of car she has?

A Yes, sir.

Q And you didn't get a chance to talk to anybody?

A No.

Q Either one of you?

A No, sir.

Q And you think that it was around 5:00, between 5:00 and 7:00?

A I'd say closer between 6:00 and 7:00, but it was in between that time.

Q Between 6:00 and 7:00?

A Yes.

Q And they were going towards Hillsville?

A Right.

Q And did you see Toni and Renee anymore that night?

A No, sir.

Q But you did see Renee?

A Right.

Q You know Debbie Dalton; don't you?

A Yes, sir.

MR. MUNDY: Who?

MR. SPIERS: Steve's girlfriend.

THE WITNESS: Ex-girlfriend.

BY MR. SPIERS:

Q Well, was his girlfriend there at that time?

A I'm not sure if they were dating at that time.

Q Okay, and you went to the Burger Bar?

A Right.

Q Yes?

A Right.

Q And is that a drive-in place or restaurant or what?

A That's a little like a restaurant, drive-in.

Q And do you get waited on sitting in your car?

A Yes, sir.

Q Did you get in your car?

A No, sir.

Q Was anyone with you?

A Well, I was eating with Melissa. She was with

ne.

Q Did Melissa stay with you?

A No, sir.

Q You know Terry Higgins?

A Yes, sir.

Q Did you see her that night?

A I don't recall seeing her.

Q All right, now this is the same night that you had seen this young lady at the school?

A Right; yes, sir.

Q And she had told you she and Toni were going out partying?

A Right.

Q And then you later saw her; this was the same day with Toni heading towards Hillsville?

A Yes, sir.

Q And you were just sitting in your car?

A Eating.

Q What?

A Eating.

Q Eating?

A Yes, sir.

Q And no one was with you?

A No, sir.

Q And it was around 9:00 o'clock, and it had just gotten dark?

A Right.

Q And what did you see? Now, you saw Steve's car?

A Steve's car, and Renee was driving the car.

Q Renee was driving the car?

A Yes, sir.

Q Did they stop?

A No, sir.

Q They just drove in and drove out?

A Well, just paused for a few minutes, because there is a lot of cars driving through there.

Q But they didn't park?

A No, sir.

Q Just came in and went out?

A Right.

Q Did you wave at them, blow your horn or anything?

A No, sir; because they weren't looking at me. I was sitting on this side.

Q On which side?

A Facing this way, when you first pull in, there is a side here and there is a side over here. They were going



this way, and I was sitting on this side.

Q And how long were you there?

A The whole time?

Q At the Burger Bar, roughly?

A 45 minutes.

Q When you left there where did you go?

A I went home.

Q Did you see Steve on your way home?

A I can't be positive that it was Steve, I thought that I saw Steve, and he was alone by himself driving his own car.

Q What kind of car did he have?

A It's a metal flake blue Corvette.

Q Is there any other Corvette of that kind in Galax?

A No, sir; not that I can recall.

Q What?

A No, sir; I've never seen one other than Steve's.

Q And you went through the Burger Bar when you saw that car?

A Yes, sir.

Q And when you went downtown later, near the mid town, did you still see that car?

2 A Yes, sir.

3 Q Yes?

4 A (Witness nods head.)

5 Q And this was one person in it?

6 A Yes, sir.

7 Q And that was Steve?

8 A Yes, sir.

9 Q Okay, which way was Steve headed? Was he  
10 heading down 89, down Main Street, out of town, towards the  
11 Parkway?

12 A Well, I live on East Drive. That's back out  
13 of town, and he was going back in towards town.

14 Q Towards town?

15 A Right.

16 Q Well, what time of night do you think that  
17 was?

18 A I would say around 10:00.

19 Q About 10:00 o'clock?

20 A 9:30, 10:00.

21 Q And he was alone?

22 A Yes, sir.

23 Q And there was enough light for you to see that  
24 he was alone?

25 A Yes, sir.

2 Q And he was driving his own car?

3 A Yes, sir.

4 Q Now, you said something when Mr. Mundy was  
5 talking. You told me that when you were with Melissa  
6 Hamden, you saw Renee at the school?

7 A Right.

8 Q That you were going, and she was getting out  
9 of class and had her books and all. She passed the time of  
10 day near the entrance to the school?

11 A Yes, sir.

12 Q And the only thing she said to you was that  
13 she and Toni were going to party that night?

14 A Yes, sir; and then she left.

15 Q What was this you told Mr. Mundy about pot  
16 and alcohol and things like that? She didn't say anything  
17 like that; did she?

18 A No, sir; she didn't come right out and say  
19 it.

20 Q She just said, "We're going to party."

21 A Yes, sir.

22 Q She didn't mention pot and she didn't mention  
23 alcohol or beer?

24 A No, sir.

25 Q You just thought that's what she meant, "We're

going to party"?

Is that what you - -

A Call partying.

Q Smoking pot and drinking, that's what you consider a party?

MR. MUNDY: That's what everyone considers it.

MR. SPIERS: Everybody is not who we are talking about, and she didn't say anything about pot or alcohol on this day; did she?

THE WITNESS: No, sir.

BY MR. SPIERS:

Q And she was not under the influence of anything when you saw her?

A I can't say that; I don't know.

Q When you talked to her at the school, I'm talking about.

A I know; I couldn't swear to it whether she was or wasn't.

Q Did she appear to be; she talked all right with you; didn't she? She had just gotten out of school?

A Yes, sir.

Q Right?

A Yes, sir.

Q You didn't mention to tell the Jury she said those things, if this was just what you thought about alcohol and pot?

A I'm positive of that; right.

MR. SPIERS: That's all.

REDIRECT EXAMINATION

BY MR. MUNDY:

Q You are positive of that?

A The partying.

Q What about it?

A Smoking pot and drinking.

Q You say that you know Renee well. How did you mean that in connection with pot and alcohol?

A Well, it's considered - -

MR. SPIERS: He's going into something on this day.

MR. MUNDY: I'm talking about this day, Your Honor.

MR. SPIERS: Do what?

MR. MUNDY: We're talking about this day, this particular day.

THE COURT: Go ahead, then.

BY MR. MUNDY:

Q Go ahead.

A When we discussed partying, we were close friends, and when you discussed partying that was drinking and smoking pot.

Q On this day?

MR. SPIERS: On this day; now, I hope this is a generalization, that you will instruct the Jury to disregard.

THE COURT: Was this conversation had on this day, young lady?

THE WITNESS: About the partying; yes, sir; but not about smoking pot or drinking; no, sir.

THE COURT: The Jury will completely disregard her statement about what the partying means to her.

MR. MUNDY: All right.

BY MR. MUNDY:

Q Are you close friends of Genny?

A Horne; yes, sir.

Q I believe that's not a correct name, she's married, I believe?

A Yes, sir.

Q But you know who I'm talking about?

A Yes, sir.

Q Were you all in school together?

A Yes, sir; we graduated together.

Q You sort of grew up together; didn't you?

A Yes, sir.

Q Very close friends?

A Well, I didn't live in Galax all my life.

Q I'm sorry.

A I didn't grow up with her.

Q Well, you went all through high school with  
her?

A Yes, sir.

Q Close friends?

A Yes, sir.

Q Still are?

A Yes, sir.

MR. SPIERS: That's all.

MR. MUNDY: We have no further questions,  
Your Honor; but we ask that the witness not be  
excused. We may need her for rebuttal.

THE COURT: You may retire to the library.

THE WITNESS: Thank you.

(The witness was excused.)

THE COURT: Would you call your next witness,  
please.

MR. MUNDY: Terry Higgins.

TERRY HIGGINS

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 MR. MUNDY:

Q State your name, please.

A Terry Higgins.

Q How old are you?

A Twenty-one.

Q And where do you live?

A 427 Poplar Knob Road, Galax.

Q Are you employed?

A Yes, sir.

Q Where?

A Grandfather's.

Q Where?

A Grandfather's.



- 1
- 2 Q You also go to school?
- 3 A Yes, sir.
- 4 Q Where?
- 5 A Wytheville Community College.
- 6 Q Did you know Steven Horne?
- 7 A Yes, sir; I did.
- 8 Q And do you know Renee Milgrim?
- 9 A Yes, sir.
- 10 Q How long had you known Steven prior to his
- 11 death?
- 12 A Practically all my life.
- 13 Q Did you know his family?
- 14 A Yes, sir.
- 15 Q And how long have you known Miss Milgrim?
- 16 A I just knew her in school; we went to school
- 17 together.
- 18 Q Which school?
- 19 A Galax High School.
- 20 Q Were you in the same class?
- 21 A No, sir.
- 22 Q What year did you graduate?
- 23 A '76.
- 24 Q Do you know which year she graduated?
- 25 A '77, I think, I'm not sure.

Q You are not sure of that?

A No, sir.

Q It's in evidence that Steve Horne was killed in an automobile accident on July 3, 1978; do you recall that date?

A Yes, sir.

Q And do you recall what you did in the late afternoon or early evening hours of July the 3rd?

A I was just riding around town, and I was parked at the Burger Bar at Galax.

Q At what time was that?

A Late evening, I sat there until after dark.

THE COURT: Ma'am would you speak up here to me and speak a little louder, please.

MR. SPIERS: I can't hear.

MR. MUNDY: You have a cold?

THE WITNESS: Yes, sir.

BY MR. MUNDY:

Q Just speak up quite loud enough for Judge LaRue and all the members of the Jury to hear you.

A Okay, it was all in the late evening. I sat there for a couple of hours at Burger Bar.

Q Was anyone with you?

2 A No, sir; I was by myself.

3 Q Were you in an automobile?

4 A Yes, sir.

5 Q Did you see Renee Milgrim that evening?

6 A Yes, sir; I did.

7 Q Where did you see her?

8 A I saw her right in the Burger Bar.

9 Q About what time was that?

10 A It was around dark, or just after dark.

11 Q All right, give us an approximate idea of  
12 the time, as best you can recall?

13 A I guess it was around 9:00.

14 Q All right, was she in an automobile?

15 A Yes, sir; she was driving Steve Horne's car.

16 Q What kind of car was it?

17 A Corvette.

18 Q What color?

19 A Blue.

20 Q Was there anyone else in there?

21 A Yes, sir; Steve was a passenger in the car.

22 MR. SPIERS: Who?

23 THE WITNESS: Steven Horne.

24

25

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BY MR. MUNDY:

Q Did you later learn that Steven had been killed in an automobile accident that night?

A Yes, sir.

Q Did you attend the Galax Fiddler's Convention in August of 1978?

A Yes, sir.

Q Do you recall when that was in August?

A That was in early August, first or second weekend; I'm not sure which one.

Q And while you were there did you see the Defendant Renee Milgrim?

A Yes, sir; I did.

Q Did she make any statement to you regarding the accident?

A She didn't talk directly to me, but I overheard her say in a group of people that she was the driver of the car that night, and she was high at the time.

Q Again, would you tell the Jury what you said.

A That she was the driver of the car that night that Steven was killed, and that she was high at the time of the accident.

MR. MUNDY: No further questions, Your Honor.

## CROSS EXAMINATION

BY MR. SPIERS:

Q Miss Higgins, I believe that you said that you had known the Horne family for many years?

A Yes, sir.

Q And you knew Genny in particular?

A Yes, sir.

Q And she was only your best friend?

A We went to school together all of our lives.

Q Yes; you all would consider each other very good friends?

A Yes; I have a lot of good friends.

Q Well, what do you think of Genny; is she a good friend or not?

A Yes; she is a real nice person.

Q On July the 3rd of 1978, do you recall that specific date?

A Yes, sir.

Q Do you have any reason why you would remember that date?

A Because that's the night Steve was killed.

Q You had known Renee in high school?

A Yes, sir.

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2 Q She was a year or two behind you?

3 A Yes, sir.

4 Q And Genny was what, a classmate of yours?

5 A I graduated a year before Genny did.

6 Q Okay, and Steve was he a classmate of yours?

7 A No, sir; he graduated a year before I did.

8 Q On the night, then, of July the 3rd, you say  
9 around dark you saw Renee and Steve at the Burger Bar?

10 A Yes, sir.

11 Q How long had you been at the Burger Bar?

12 A An hour or two.

13 Q An hour or two, by the time you saw them?

14 A Yes, sir.

15 Q So, I gather that you went there before it was  
16 dark?

17 A Yes, sir.

18 Q And you were alone?

19 A Yes, sir.

20 Q Did you order anything?

21 A No, sir; I didn't.

22 Q I believe you were parked outside. This is  
23 not a restaurant that you go in; or is it?

24 A No, sir.

25 Q You did not go in?

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A No, sir.

Q You were in your car?

A Yes, sir.

Q Do you know what kind of a car Renee has?

A No, sir; I don't.

Q Did you ever see her riding around in a car?

A I don't know what kind of car she had.

Q What color was it?

A I don't even know what kind it was.

Q Had you ever seen her in a car?

A During my life or anytime that I've known her?

Q That year, year before, anytime while you were in high school?

A I guess I have but I don't remember.

Q When you saw her, you had been sitting there a couple of hours, and it had just gotten dark, and it was just 9:00 at night?

A Yes, sir.

Q And you saw her come through in the blue Corvette?

A Yes, sir.

Q Was the car stopped?

A When they started to pull out they stopped.

2 Q You mean they stopped at the street?

3 A Yes; right before they pulled out on the  
4 street.

5 Q And Renee was driving the car?

6 A Yes, sir.

7 Q And Steve was sitting on the passenger's side?

8 A Yes, sir.

9 Q Did you see him anymore that night?

10 A No, sir; I didn't.

11 Q You said that sometime later you went to a  
12 Fiddler's Convention, the same year?

13 A Yes, sir.

14 Q And that's in August?

15 A Yes, sir.

16 Q Do you recall the night of the week?

17 A It was on a Saturday night.

18 Q Do you recall what time Saturday night you  
19 saw her?

20 A No, sir; I don't. I saw her several times  
21 during the night walking around.

22 Q With whom?

23 A Horace Sutherland.

24 Q Horace Sutherland; do you know Trooper  
25 Hensley?

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A No, sir; I don't.

Q Do you know Melanie; is that her name,  
Melanie Hensley?

A I know who he is, but I don't know her.

Q Did you see her that night?

A No, sir; not that I recall.

Q And as far as you know Renee was only with  
Horace Sutherland, Jr.?

A I just saw them walking around together.  
I don't know who was with her.

Q But you were in the group of people?

A Yes, sir.

Q And who was in the group?

A That I was walking around with? Okay, there  
was me, Fredna Murphy, Linda Bobbitt, Melissa Hamden, I  
think; I don't know if there was any other people or not.

Q Fredna Murphy is the girl that just testified?

A Yes.

Q Melissa Hamden?

A Yes, sir.

Q Linda Bobbitt?

A Yes, sir.

Q And that's all?

A I don't remember if there is any others or not.

Q And when you overheard this conversation, were you all standing in a group?

A Yes, sir.

Q And everybody was not walking around at that moment?

A No, sir.

Q What time do you think that was?

A I don't remember.

Q When does the fair start?

A It depends on what day it is.

Q This was Saturday?

A It starts during the day on Saturday around noon, and goes until around 2:00 o'clock in the morning.

Q Okay, and you were there that night?

A Yes, sir.

Q And you didn't know whether it was 9:00 o'clock, 10:00 o'clock, 11:00 o'clock, or 12:00 o'clock?

A No, sir; I don't.

Q It was dark; wasn't it?

A Yes, sir.

Q And when you say Renee was just in the car with Sutherland, Jr.?

A I don't know whether there was any other people with her. I remember seeing Horace with her, because

I hadn't seen him in a long time.

Q And you were stopped, standing in a group talking?

A Yes.

Q And what were you talking about?

A We were talking about the accident.

Q You overheard Renee say, "I was driving Steve's car - -" or words to that effect?

A Yes, sir.

Q " - - and I was high."

A Yes, sir.

Q And who was she talking to?

A I don't know who she was talking to.

Q Was she talking to Fredna?

A No, sir.

Q Fredna was there?

A Yes.

Q She should have heard it?

A Yes.

Q Linda Bobbitt could have heard it.

A I don't know who they were talking to.

MR. MUNDY: I couldn't hear.

THE WITNESS: I don't know who they were talking to.

BY MR. SPIERS:

Q You don't know who she was directing the comment to? She said it loud enough for you to hear it?

A Yes, sir.

Q Did anyone ask her who was driving?

A I don't know if they did or not.

Q Did you hear anyone ask her who was driving?

A No; I didn't.

Q And all you heard was this announcement relative to the wreck that, "I was driving the car the night Steve got ~~hit~~, and I was high."

A Yes, sir.

Q And then what did you all do; stay together?

A We left; Linda Bobbitt and all left.

Q Where did you go?

A We walked a couple of minutes and left.

Q And what about Fredna?

A I don't know what she did.

Q Yes; but you all did separate from Fredna?

A Yes.

Q And where did Renee and Horace Sutherland, Jr. go?

A I have no idea.

Q Now, I'm sorry, did you say you knew the

Trooper whose name I just mentioned?

A No, sir; I don't.

Q You didn't know him; you didn't see Fredna with any large older man that you didn't know walking around?

A No, sir; we didn't all walk around together.

Q I mean Renee, excuse me.

A We didn't all walk around together all night. I saw a lot of people; I don't remember seeing anybody like that.

Q You said you do know Melanie Hensley?

A I know who she was.

Q Well, you know what she looks like?

A Yes, sir.

Q She was not with Renee that night; was she?

A I don't recall, sir.

Q All right, she wasn't in that group where she made this shocking announcement; was she?

A I didn't see her.

Q Terry, I think I asked you this; but you got a call from Mr. Mink, my partner, last Friday?

A Yes, sir.

Q Relative to the accident; did you refuse to talk to him?

A Yes, sir.

Q And then you were subpoenaed to appear at Mr. Jolly's office on Saturday?

A Yes, sir.

MR. MUNDY: Objection to that, Your Honor, that matter has not been ruled on, I believe.

MR. SPIERS: No, sir; this has to do with bringing things open at this time.

MR. MUNDY: Your Honor, with regard to that - -

THE COURT: I will see Counsel in chambers.

(Thereupon, Counsel and the Court retired to the chambers for a brief discussion.)

THE COURT: Proceed, please.

BY MR. SPIERS:

Q Okay, I think I asked you if you remember Mr. Mink getting hold of you on probably Thursday, and you did not talk to him?

A Yes, sir.

Q Did he tell you it was about this Case and that he represented Renee Milgrim?

A I think so.

THE COURT: Would you speak up a little louder?

THE WITNESS: I think so.

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BY MR. SPIERS:

Q I believe you told me that you didn't want to talk to him, because you were on the Horne's side, the witness for the Horne's side.

A No, sir; I didn't tell him that on that day.

Q Isn't that what you told him that day?

A Oh, yes; I told you that I was a witness for Horne and you were representing Rensee and that I didn't think I should talk to you at this time, and you would hear it in Court this morning anyway.

Q And that Mr. Mundy told you that you didn't have to talk to me?

A If I didn't want to.

MR. SPIERS: That's all.

THE COURT: Any questions, Counsel?

MR. MUNDY: No further questions, Your Honor.

THE COURT: May this witness be excused?

MR. SPIERS: Yes.

MR. MUNDY: Your Honor, we ask that she stay as a Rebuttal Witness.

THE COURT: Go to the library, please.  
Do you expect your witness to be brief?

MR. MUNDY: We have two that will be very brief, Your Honor. We call Linda Bobbitt.

LINDA BOBBITT

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 MR. MUNDY:

Q Would you state your name, please?

A Linda Bobbitt.

Q And you're currently in college?

A Right.

Q What college is that?

A Radford University.

Q And I believe you are a teaching assistant there?

A Right; I'm doing my student teaching now.

Q Do you recall attending the Galax Fiddler's Convention in '78?

A Yes, sir; I did.

Q Do you recall whether or not Terry Higgins was there?

A Yes; Terry and I went together that year.

Q Did there ever come a time where you and Terry



Higgins were in the presence of Miss Milgrim?

A Yes; we were.

Q All right, can you tell the Court whether or not the subject of the accident in which Steven Horne was killed was discussed, and tell the Court that.

A Well, like I said before, Galax is a small area, and it hadn't been long after the wreck that the subject did come up.

Q And that was in the presence of Terry Higgins and yourself and Miss Milgrim?

A Right; we were in a group.

MR. MUNDY: I have no further questions.

CROSS EXAMINATION

BY MR. SPIERS:

Q You don't recall anything that was said?

A No, sir; I don't recall anything about the conversation or anything.

Q What day of the week was this; do you recall?

A No; now Terry and I went on Friday and Saturday night both, and I couldn't tell you for sure what day it was.

Q Did you go with anybody else?

A No; it was just Terry and I.

Q On whichever night it was you saw Renee Milgrim?

A Sir, will you repeat it?

Q Did you go with anyone else on the night you saw Renee Milgrim?

A No, sir.

Q Just you and Terry?

A Right.

Q Fredna Murphy was not there; was she?

A She wasn't; she didn't go with Terry, because I drove that night and I picked up Terry.

Q Was she in the crowd?

A She was at one time; yes.

Q Was she in the crowd when this conversation came up?

A Honestly I couldn't say for sure if she was.

Q And do you know Horace Sutherland, Jr.?

A Yes; do you want to know whether he was in the crowd?

Q Yes.

A As far as I know I think he was.

Q And who was he with?

A Well, like we were all standing in a group.

I don't know who he came with or what.

Q Okay, where were you all standing?

A I don't really know, I mean we were standing at the Fiddler's Convention, you know; but you stop and talk to so many different people that I couldn't tell you the exact location.

Q And you don't recall who brought the subject up or what was discussed about the accident?

A No, sir.

MR. SPIERS: That's all.

THE COURT: May this witness be excused?

MR. MUNDY: Yes, Your Honor.

THE COURT: You may remain or depart.

(The witness was excused.)

MR. MUNDY: Your Honor, as our next witness or evidence in this Case I will ask to put into evidence a page from Miss Milgrim's Discovery Deposition, which was taken - -

MR. SPIERS: Your Honor, I think that's a matter we could discuss in chambers, and I have a comment on it.

(Thereupon, Counsel and the Court retired to the chambers for a brief discussion.)

1  
2 THE COURT: Gentlemen of the Jury, we have  
3 been bothered with a cold day, and it is obvious  
4 we cannot finish this Case today, so we are going  
5 to take an adjournment at this time, and ask you  
6 to return and be here at 9:30 in the morning.

7 Now, during the recess until tomorrow, do  
8 not discuss this Case with anyone. When you return  
9 in the morning, you will go to the Jury Room and  
10 wait until you are called; and you may go, because  
11 I have a little instructions to some witnesses.

12 Now, Mr. Bailiff, ask those witnesses in the  
13 library and those in the room to come and stand  
14 before the Court, please.

15 Will you just stand right here until the  
16 other witnesses come in, please?

17 First, will each of you raise your right  
18 hands? Do each of you acknowledge yourself to be  
19 indebted to the Commonwealth of Virginia the sum of  
20 \$500 on your appearance to this Courtroom in the  
21 morning following this the 18th day of November,  
22 1980 at 9:00 o'clock a.m.

23 In other words, each of you come back without  
24 any summons under the penalty of \$500. When you come  
25 in at 9:30 in the morning will you go to the same

room that you are now occupying.

Now, the Court gives you strict advice not to discuss this Case with each other or with any other person between now and your return in the morning.

If you do so, and if it is brought to the attention of the Court you will be subject to the penalties provided by the law for contempt of Court.

You do not discuss this Case, or testimony with any other party including your neighbor, relatives, friends, or with anybody. Do I make myself clear?

THE WITNESSES: Yes, sir.

THE COURT: You may discuss the Case with your own Lawyer if you decide. The Lawyer can decide to discuss with each of these witnesses, you may do so.

9:30 is the commencing hour. 9:30 in the morning; of course, you have the right to discuss the Case with the Lawyer with either side if you do so, and if they desire to do so, but nobody else.

Okay, it is adjourned until 9:30.

(Thereupon, the evening recess was taken at 5:00 o'clock.)

(The parties returned to the Courtroom at 9:30 a. m. for the second day of trial and the following proceedings were had.)

(Counsel had motions to present out of the presence of the Jury.)

MR. MUNDY: Your Honor, as Plaintiff's next evidence in this case we would tender Page Forty-three of a Discovery Deposition of the Defendant, Cynthia Renee Milgrim, which was taken in Galax pursuant to agreement of Counsel on October 31, 1980.

Alternatively, we would offer the entire Deposition of the Defendant, Milgrim, if the Court deems.

MR. SPIERS: I object to the introduction of a portion of the testimony of a witness.

(Thereupon, opposing Counsel argued the Motion to the Court.)

THE COURT: The Defendant being present, the Court rules that neither a portion nor the entire Deposition may be introduced pursuant to Rule Four:

1  
2 Seven Paragraph Three as it being inapplicable to  
3 this case, provided however that if the Plaintiff  
4 decides (to make the Defendant his witness,) the  
5 Court would permit the introduction of the whole  
6 Deposition.

7 MR. MUNDY: Your Honor, for the Record, I  
8 would like to state that our tender of this portion  
9 or all of the Defendant's Deposition is pursuant to  
10 Rule Four: Seven A, Sub-paragraph Three, and with  
11 regard to the Court's condition of the introduction  
12 of this evidence, we submit respectfully that  
13 Rule Four: Seven A, Sub-paragraph Three provides that  
14 since we are not introducing the Deposition or part  
15 of it for purposes of impeachment or contradiction,  
16 that we do not make the Deponent the witness of  
17 the Plaintiff.

18 We seek to introduce this evidence or this  
19 Deposition as substantive evidence of the Plaintiff  
20 and not for purposes of impeachment or contradiction.

21 THE COURT: The Court understood the posi-  
22 tion of Counsel at the time of the ruling.

23 (The Jury was returned to the Courtroom and  
24 the following took place in the presence of the  
25 Court and Jury.)

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MR. MUNDY: Plaintiff calls John Farris.  
Your Honor, he has not been sworn.

MR. SPIERS: If it please the Court relative to this witness, I would like to make it clear on the Record that I object to the testimony.

THE COURT: The Court will hear the witness, you may go ahead.

JOHN FARRIS

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 MR. MUNDY:

Q State your name, please.

THE COURT: The Court will hear the witness either here or in Chambers before making a ruling.

MR. SPIERS: I would prefer that you not do it in front of the Jury.

THE COURT: I cannot anticipate what the witness is going to say. Would the Jury retire,



1 Farris - Direct

2 please?

3 (Thereupon, the Jury was excluded from the  
4 Courtroom and the following took place in the  
5 presence of the Court.)

6  
7 BY MR. MUNDY:

8 Q State your name, please.

9 A John Farris.

10 Q Where do you reside?

11 A Route 1, Hillsville.

12 Q What do you do, Mr. Farris?

13 A I'm unemployed right at the moment; I  
14 generally do mechanical work.

15 Q Mr. Farris, do you know that an automobile  
16 accident occurred on the Blue Ridge Parkway near the Pipers  
17 Gap Entrance to the Parkway on the evening of July 3, 1978?

18 A Yes, sir.

19 Q Were you present on the Parkway that night?

20 A Yes, sir.

21 Q Approximately what time were you in the  
22 vicinity of where the accident occurred?

23 A Approximately ten-thirty.

24 Q And what were you doing?

25 A I was riding my motorcycle south toward

2 Galax.

3 Q Where had you been prior to that?

4 A I had been in an area near Wytheville,  
5 Fort Chiswell; I had stopped in at a Pilot Station, got gas.

6 Q Again, what time was this when you were  
7 near the vicinity of where the accident occurred?

8 A I'd say it was approximately ten-thirty.

9 Q You've testified you were going south on  
10 the Parkway?

11 A Yes, sir.

12 Q Was anyone with you?

13 A No, sir.

14 Q At a certain distance north of the accident  
15 scene, did you see an automobile?

16 A Yes, sir.

17 Q Which direction was this automobile proceed-  
18 ing in?

19 A North.

20 Q Approximately what distance was this from  
21 the accident scene; that is what distance at the point where  
22 you first saw the automobile was it from the accident scene?

23 A Approximately eight-tenths of a mile.

24 Q Describe the operation of the automobile.

25 A Well, I went into a curve to the right and

2 I saw this car coming with its bright lights on. I thought  
3 it looked like it was over on my side of the road so I got  
4 over a little bit.

5 The car kept getting closer and I saw then  
6 that it was about middle-ways of the road. I didn't want  
7 to get off the pavement because the Parkway had real high  
8 shoulders.

9 I geared down to about twenty-five miles an  
10 hour; the car got right up on me. I flashed the bright lights  
11 to make sure they had seen me.

12 Q Can you describe the car?

13 A Yes, sir; it was an early model Corvette.

14 Q What color?

15 A Blue.

16 Q Was it light blue?

17 A Yes, sir.

18 Q Could you estimate the speed of that  
19 automobile?

20 A I would say it was approximately sixty to  
21 seventy miles an hour.

22 Q Do you know what the speed limit is on the  
23 Parkway?

24 A Forty-five miles an hour.

25 Q Again, where was the automobile with

reference to the center of the road?

A I would say it was right in the center of the road.

Q Was any portion of it over in your lane?

A Yes, sir.

Q At that point when you first saw it, are you telling the Court that it was approximately eight-tenths of a mile south of where the accident occurred?

A Yes, sir.

Q Did you see the automobile again after it passed you as it was going north?

A Yes, sir; I looked in my rearview mirror to see if they were going to slow down and I didn't see any sign of any brake lights or anything.

Q You did not see any brake lights come on?

A No, sir.

Q When you last saw it, where was it in the roadway?

A It was still pretty much in the center of the road.

Q At that point where you last saw it in the rearview mirror of your motorcycle, would you estimate the distance that it was then from where the accident occurred?

A I'd estimate approximately a-half a mile.

2 Q Are you familiar with automobiles such as  
3 a Corvette?

4 A Yes, sir.

5 Q After you learned that there had been an  
6 accident, did you observe the 1971 Corvette, owned by  
7 Steven Horne, which had been involved in the accident?

8 A Yes, sir.

9 Q In your judgment, was it the same automo-  
10 bile as the one you saw?

11 A It was either the same car or an identical  
12 car just like it.

13 Q Do you know whether there are any other  
14 identical 1971 Corvettes in that vicinity or were there at  
15 that time, July 3, 1978?

16 A Not to my knowledge; no, sir.

17 Q How familiar are you with this type of  
18 automobile, '71 Corvette?

19 A I work on them, do mechanical and body work.

20 Q Mr. Farris, how did you learn where the  
21 accident occurred?

22 A I had told a friend of mine that night that  
23 a car had about run me off the road over on the Parkway.  
24 Tommy Ayers, who is a good friend of mine, was talking to  
25 my friend one day and mentioned the accident.

2 My friend told him that I'd about been  
3 run off the road.

4 Q Did you go to the accident scene?

5 A Yes, sir.

6 Q You referred to these distances of eight-  
7 tenths of a mile south of the accident scene where you first  
8 saw the Corvette, and then five-tenths of a mile south of  
9 the accident scene when you last saw it in your rearview  
10 mirror.

11 Have you measured those distances?

12 A Yes, sir.

13 MR. MUNDY: I have no further questions,  
14 Your Honor.

15  
16 CROSS EXAMINATION

17  
18 BY MR. SPIERS:

19 Q Mr. Farris, you said you were at Hillsville  
20 at the Pilot Station?

21 A Yes, sir.

22 Q What time was that?

23 A Approximately nine-thirty.

24 Q And you filled up with gas and went to  
25 Fancy Gap to the Parkway?

A Yes, sir.

Q And you came toward Galax?

A Yes, sir.

Q Do you know that it was July 3rd, or could it have been the 4th or the 2nd?

A Yes, sir; I know it was July the 3rd.

Q Why do you know that?

A Because July the 4th is a holiday.

Q So? Does that bring it to your mind or something?

A I try to keep track of the days of the year.

Q How far is it from Fancy Gap to Galax?

A Approximately twelve, fifteen miles.

Q How far is it from Fancy Gap to where you saw the car?

A I'd say approximately seven miles.

Q So you'd been about fourteen miles from the time you got gas; it's about seven miles from Hillsville to the Gap, seven miles from there to where you saw the car?

A Yes.

Q You say it took you an hour to do that?

A No, I didn't say it took me an hour.

Q You said you saw the car at ten-thirty?

A I said approximately ten-thirty.

Q That's approximately an hour, isn't it?

A Yes, sir.

Q When you first saw the vehicle you didn't know what kind of a car it was, did you?

A I could tell at a distance that it had four bright headlights.

Q Had what?

A Had bright headlights.

Q But you couldn't tell what kind of a car it was?

A No, sir; not when I first spotted it coming, I couldn't.

Q You say the vehicle was halfway on your side of the road?

A Yes, sir.

Q And you were trying to get out of its way?

A Yes, sir.

Q You slowed down to twenty-five?

A Yes, sir.

Q You estimated its speed at sixty to seventy?

A Yes, sir.

Q You all were approaching each other about eighty-five miles per hour; you were closing the gap that fast; right?



2 A Yes, sir.

3 Q You flipped your brights on and saw what  
4 kind of car it was?

5 A That's right.

6 Q Did you know Mr. Horne, Steve Horne?

7 A No, sir.

8 Q You never did meet him, did you?

9 A No, sir.

10 Q You say it was a light blue Corvette?

11 A Yes, sir.

12 Q Light blue; eggshell blue?

13 A No, sir; a little darker than that.

14 Q Darker than that?

15 A Yes, sir.

16 Q Dark blue; middle-medium blue?

17 A Light-medium blue.

18 Q Light-medium blue?

19 A (The witness nods head.)

20 Q The car passed you and you had time to look  
21 in the rearview mirror and didn't see any brake lights?

22 A No, sir.

23 Q You don't know whether it slowed before you  
24 looked or not?

25 A Before I looked? No, sir.

2 Q You testified down in Roanoke, didn't you?

3 A Yes, sir.

4 Q Did you there testify that it was a mile  
5 from where the accident happened when you saw the car?

6 A Sir?

7 Q Did you testify there that it was a mile  
8 from where you saw the car?

9 A Approximately a mile.

10 Q Approximately a mile; that's correct, isn't  
11 it?

12 A Yes, sir; right about eight-tenths of a  
13 mile.

14 Q Well, about eight-tenths and a mile are  
15 different; which is it?

16 A I said approximately one mile.

17 Q You told a friend of yours about it that  
18 night?

19 A Yes, sir.

20 Q Where did you see the friend and who was it?

21 A At the residence where I was staying at  
22 the time.

23 Q I'm sorry; where?

24 A At the residence where I was staying at the  
25 time.

Q Where were you staying?

A Gladeville, Virginia.

Q Who was your friend?

A Chevy Huff.

Q How much later was it that Tommy Ayers got in touch with you?

A It was about two weeks, three weeks.

Q You testified in Roanoke that it was August 30th; does that sound right?

A Yes, sir.

Q August 30th; that's almost two months later, a month and a-half.

A Yes, sir; I can't remember exactly.

Q It was in August anyway; wasn't it?

A Yes, sir.

Q Did Tommy Ayers get ahold of you?

A Yes, sir.

Q You and he were friends?

A Yes, sir.

Q And he took you to where the accident happened?

A Yes, sir.

Q You told him about a mile or so before you had seen this car?

2 A Right.

3 Q Do you know who was driving the car?

4 A Sir?

5 Q You didn't know who was driving?

6 A No, sir.

7 Q You couldn't identify the car itself at  
8 that time as to who it might have been owned by?

9 A No, sir.

10 Q Did Ayers take you to see the car that had  
11 been wrecked?

12 A Yes, sir.

13 Q It was mashed up pretty good, wasn't it?

14 A Yes, sir; it was.

15 Q You don't know whether it was the same car  
16 or not?

17 A It was either the same car or an identical  
18 car just like it.

19 Q I know that, but there's more than one  
20 Corvette in the country that is the same color, isn't there?

21 A Yes, sir.

22 Q Do you know where the Pipers Gap Road comes  
23 onto the Parkway?

24 A Yes, sir.

25 Q Which side of that were you on at the time

you saw this vehicle, toward Galax or toward Fancy Gap?

A I really can't remember.

Q That mile you're talking about is past that road on toward Galax, isn't it, from where the accident happened?

A Yes, sir; I think so.

Q How long after the accident did you see the car?

A After the accident?

Q Yes; how long after you told Ayers? You say that was in August sometime?

A Did I see the car?

Q The wrecked car.

A I would say it was within a week.

Q Within a week after you talked to Ayers?

A Yes, sir.

Q Where was it?

A It was over here in Hillsville.

Q In Hillsville?

A Yes, sir.

Q It wasn't at Fancy Gap, was it?

A No, sir.

Q You don't know what time the accident happened or anything like that, do you?

A I think I was informed it happened around eleven or twelve, ten o'clock; I don't know.

Q Around eleven, twelve or ten?

A I don't know when it happened.

Q Somebody told you?

A Yes, sir.

Q Where were you going that night?

A I was going home.

Q To Gladeville?

A Yes, sir.

Q You were heading toward the North Carolina line?

A Yes, sir.

MR. SPIERS: I think that's all.

REDIRECT EXAMINATION

BY MR. MUNDY:

Q Mr. Farris, does this look like the automobile you saw (indicating)?

A Yes, sir.

MR. MUNDY: Your Honor, that's Plaintiff's Exhibit Five.

THE COURT: The Court will permit this

witness to testify before the Jury.

MR. SPIERS: Judge, in fairness to the Court, would you mind if I cite you some authority?

THE COURT: You may do so; yes, sir.

(Thereupon, opposing Counsel argued the Motion to the Court.)

THE COURT: The witness may testify.

MR. MUNDY: Thank you, Your Honor.

MR. SPIERS: We except to the Court's ruling.

THE COURT: You may proceed, Mr. Mundy.

MR. MUNDY: Thank you, Your Honor.

(Thereupon, the Jury returned to the Courtroom and the following took place in the presence of the Court and Jury.)

DIRECT EXAMINATION

BY MR. MUNDY:

Q State your name, please.

A John Farris.

Q How old are you, Mr. Farris?

A Twenty-four.

Q Where do you reside?

A Route 1, Hillsville.

Q Are you employed at this time?

A No, sir.

Q What is your usual occupation?

A Mechanical work.

Q Mr. Farris, were you present on the Blue Ridge Parkway in the vicinity of the Pipers Gap Entrance to the Parkway on the evening of July 3, 1978?

A Yes, sir.

Q Approximately what time were you in that vicinity?

A Approximately ten-thirty.

Q How were you traveling?

A Motorcycle.

Q Where were you going?

A To Galax.

Q From where were you coming?

A Hillsville.

Q Were you proceeding south on the Parkway?

A Yes, sir.

Q Was anyone with you?

A No, sir.

Q After you passed the Pipers Gap Entrance



2 to the Parkway, did you observe another automobile coming  
3 in the opposite direction from the way you were traveling?

4 A After I passed the Pipers Gap?

5 Q Yes.

6 A Yes, sir.

7 Q Would you describe the operation of this  
8 automobile?

9 A It was coming on pretty keen and it looked  
10 like it was on my half of the road.

11 Q Subsequent to this occasion, did you learn  
12 that an accident had occurred in that vicinity that same  
13 night later? Did you learn that an accident had occurred  
14 that night in that vicinity?

15 A Yes.

16 Q Did you go to the accident scene?

17 A Yes, sir.

18 Q And you learned that the accident resulted  
19 in Steve Horne's death?

20 A Yes, sir.

21 Q Can you tell us, Mr. Farris, approximately  
22 how far south of the accident scene it was when you first  
23 saw this automobile?

24 A Approximately eight-tenths of a mile.

25 Q Did you later measure that?

A Yes, sir.

Q If you will, again describe the operation of this automobile when you first saw it.

A When I first saw the car, I saw its bright lights on. It was coming on and it looked like the closer it got that it was on my side of the road. I started slowing down, shifting down to second gear on my motorcycle, and got over to the side of the road.

I wasn't going to get off the road because the curb was high, because they had just paved the Parkway. I didn't want to get off the road on my bike.

Q It was elevated above the shoulder?

A Yes, sir.

Q Where was this approaching automobile with regard to the center of the road?

A It was half on my side and half on its side, I would say approximately.

Q Were you able to estimate the speed of the automobile that was approaching you?

A I would say approximately sixty, seventy miles an hour.

Q What was your approximate speed when you first saw it?

A When I first saw it?

2 Q Yes.

3 A About forty, forty-five.

4 Q Did you then gear down?

5 A Yes, sir.

6 Q What was your speed when you passed each  
7 other?

8 A About twenty-five miles an hour.

9 Q Approximately how fast was the approaching  
10 automobile going when you passed each other?

11 A I would say sixty, seventy miles an hour.

12 Q Do you know the speed limit on the Parkway?

13 A Yes.

14 Q What is it?

15 A Forty-five miles an hour.

16 Q Were you able to see what kind of car this  
17 was?

18 A Yes, sir.

19 Q What was it?

20 A It was an early model '70 Corvette.

21 Q What color was it?

22 A It was a light blue, medium blue.

23 Q Does this look like the automobile that you  
24 saw (indicating)?

25 A Yes, sir.

2 Q Would it be identical to the automobile  
3 that you saw?

4 A I would think so.

5 MR. MUNDY: This is Plaintiff's Exhibit  
6 Five of one automobile.

7  
8 BY MR. MUNDY:

9 Q Mr. Farris, did you continue to observe  
10 this automobile after it passed you?

11 A Yes, sir.

12 Q How did you observe it?

13 A I looked in my rearview mirror to see if  
14 it was going to slow down or anything. I didn't see any sign  
15 of any brake lights.

16 Q When you last saw it in your rearview  
17 mirror, where was it with regard to the center of the road?

18 A It looked like it was still in about the  
19 center of the road.

20 Q How far was the automobile at the point  
21 where you last saw it from the scene?

22 A Approximately half-a-mile.

23 Q Are you familiar with this type of automo-  
24 bile, a 1971 Chevrolet Corvette?

25 A Yes, sir.

1 Farris - Direct

175

2 Q How are you familiar with such an automobile?

3 A I do mechanical and body work.

4 Q On July 3, 1978, as far as you know, were  
5 there any other '71 light blue Corvettes in the Galax or  
6 Hillsville vicinity?

7 A Not to my knowledge.

8 Q Mr. Farris, as you passed the accident  
9 scene going south, were there any obstructions in the road  
10 such as animals or anything?

11 A No, sir.

12 Q The road was clear?

13 A Yes, sir.

14 MR. MUNDY: I have no further questions,  
15 Your Honor.

16  
17 CROSS EXAMINATION

18  
19 BY MR. SPIERS:

20 Q Mr. Farris, when you were in Hillsville,  
21 did you stop in Hillsville?

22 A Yes, sir.

23 Q What did you do there?

24 A I stopped and got gas.

25 Q At what, the Pilot Station? 247

2 A Yes, sir.

3 Q Where had you been that day?

4 A I'd been riding around an area near  
5 Wytheville, Fort Chiswell.

6 Q You'd been riding around all day?

7 A Yes, sir.

8 Q Was anyone with you?

9 A No, sir.

10 Q Not any during the day?

11 A Well, I'd stopped at a couple of places  
12 and seen some friends.

13 Q How many places did you stop at during the  
14 day?

15 A Probably two or three.

16 Q Did you stop at any restaurants to eat?

17 A No, sir.

18 Q Did you have anything to drink?

19 A No, sir.

20 Q Did you see anybody that you know?

21 A Yes, sir; I think so.

22 Q You think so?

23 A Yes, sir.

24 Q Who?

25 A Steve Hawks.

Q That's the only one that you saw that you recall?

A To my knowledge, I think so; yes, sir.

Q You did not know Steve Horne?

A No, sir.

Q You were in Hillsville about nine-thirty?

A Approximately nine-thirty.

Q And you got gas?

A Yes, sir.

Q How did you know what time it was?

A I'd asked someone and they said they thought it was around nine-thirty.

Q Then you went directly to Fancy Gap and got on the Parkway?

A Yes, sir.

Q It's seven miles from Hillsville to the Parkway?

A Yes, sir.

Q And how far is it from Fancy Gap to where you saw this car?

A Approximately seven miles.

Q You went fourteen miles and it was about ten-thirty you say?

A Yes, sir.

Q Were you aware at the time that you had passed the entrance to the Pipers Gap Road at the time you saw the car?

A Yes, sir.

Q You were aware of it or did Mr. Mundy suggest it to you in his question?

A No.

Q No what?

A I know where I was at.

Q You know where you were at and you know you had passed the entrance that leads off of Pipers Gap Road?

A Yes, sir.

Q You think you were as much as eight-tenths of a mile beyond that toward Galax?

A Approximately; yes, sir.

Q It could have been as much as a mile, couldn't it?

A Yes, sir; approximately.

Q Was traffic heavy or light on there the day before the 4th of July?

A Light.

Q When you saw the car coming, were you in a curve?



A Yes, sir.

Q Which way did the curve go?

A To my right.

Q To your right?

A Yes, sir.

Q It would have been to the left for the car approaching you?

A Yes, sir.

Q When you first saw the car, the first thing you noticed was bright lights?

A Yes, sir.

Q That's when you started to get over?

A Yes, sir.

Q Then you say it was partly on your side of the road?

A Yes, sir.

Q You slowed down; did you pass any construction signs anywhere?

A As I recall, I believe there were some construction signs along the Parkway; I can't remember exactly.

Q Right between Hillsville or Fancy Gap and where you were?

A Yes, sir.

Q Did you see any signs of construction?

A I think there were some signs on the Parkway at the time.

Q Do you recall how close to where you saw this car the construction was?

A No, sir.

Q The car must have approached you and gone by in just a flash; right?

A Yes, sir.

Q It was going that fast; you were going your speed, so you passed each other at the combined speed of both vehicles; right?

A Yes, sir.

Q You were in a curve to your right?

A Yes, sir.

Q And you looked in your rearview mirror?

A Yes, sir.

Q You saw no brake lights?

A I saw no brake lights.

Q So as far as you know, the accident then was eight-tenths of a mile or a mile from there?

A Yes, sir.

Q Toward Fancy Gap?

A Yes, sir.

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2 Q And you learned that how much later?

3 A I would say it was approximately - - as  
4 far as I can remember - - three or four weeks.

5 Q It was sometime later in August, wasn't it?

6 A Yes, sir.

7 Q Who came to see you?

8 A Tommy Ayers.

9 Q Is he a good friend of yours?

10 A Yes, sir.

11 Q Do you all ride motorcycles together?

12 A No, sir.

13 Q You never did?

14 A We have once or twice.

15 Q Do you have a chopper or a regular bike?

16 A Stock motorcycle.

17 Q Chopper?

18 A No; it was a stock motorcycle.

19 Q Tommy has a chopper bike?

20 A Yes, sir.

21 Q He came to you several weeks later and  
22 asked you about what you just told us?

23 A Yes, sir.

24 Q Did he take you to where the accident  
25 happened?

A Yes, sir.

Q So all you know about where it happened was what Mr. Ayers showed you?

A Yes, sir.

Q The vehicle you saw you saw in just a flash like that when you flashed your headlight?

A I saw it coming and everything.

Q That's what I mean.

A Yes, sir.

Q You said you put your lights on bright and then you saw that it was a blue car?

A Yes, sir.

Q You don't know who owned the car?

A (The witness shakes head.)

Q You don't know who was driving the car; you don't know whether it was from Galax, North Carolina or where it was from?

A Yes, sir.

Q You say it was a light blue Corvette?

A Light-medium blue Corvette.

Q And the vehicle you saw much later was at Mr. Ayers' request; he took you to where it was?

A Yes, sir.

Q How much time after the time you first

talked to him was it that you saw this wrecked car?

A. Approximately a week or so.

Q This would have been up in September?

A I can't really remember; it's been so long.

Q Mr. Ayers said, "This is the car that wrecked"?

A Yes, sir.

Q He asked you if it looked like the car you passed?

A Yes, sir.

Q You said it was identical with the one you saw?

A I would think so; yes, sir.

Q You would think so?

A I would say it was either the same car or an identical one just like it.

Q Where did you see the car?

A It was over here in Hillsville.

Q It wasn't at Fancy Gap?

A Well, it wasn't in the Town of Hillsville; it was in Carroll County.

Q Was it at Fancy Gap?

A No, sir; not Fancy Gap.

Q Is that the only time you saw the car?

A Yes, sir.

Q Have you talked with Tommy Ayers about it since then?

A No, sir.

Q You don't know when this accident happened except from what somebody may have told you?

A Yes, sir.

MR. SPIERS: That's all.

MR. MUNDY: I have no more questions, Your Honor.

THE COURT: Step down, please. May this witness be excused?

MR. MUNDY: Yes, sir.

THE COURT: You're free to leave.

(Witness excused.)

(Betty Ann Horne was called as a witness.)

(Shirley Carico Galyean was called as a witness.)

(Randall Kyle Kegley was called as a witness.)

(Charlsie Jean Kegley was called as a witness.)

(Raymond H. Horne was called as a witness.)

MR. MUNDY: Your Honor, we call Ranger Smith.

2 KARL C. SMITH

3  
4 was recalled as a witness and testified as follows:

5  
6 DIRECT EXAMINATION

7  
8 BY MR. MUNDY:

9 Q Mr. Smith, you testified here yesterday;  
10 you're still under oath.

11 A Yes, sir.

12 Q Mr. Smith, when you arrived at the accident  
13 scene, what was the condition of the four tires, as best  
14 you can recall?

15 A To the best of my recollection or knowledge,  
16 I believe that the right front tire, which would have been  
17 the passenger side, was pushed in; the tire wall was popped  
18 or wouldn't hold air.

19 I don't remember the other front tire. I  
20 believe the back two tires, rear tires, were still inflated.

21 Q You don't have any indication in your  
22 record that either of the back tires were down?

23 A No, sir; I believe I would have noted that  
24 if it was there.

25 MR. MUNDY: No further questions, Your

Honor.

CROSS EXAMINATION

BY MR. SPIERS:

Q I think it's on your map but this is Mile Post 205.9?

A Yes, sir; roughly.

Q Do you know the Mile Post at the Pipers Gap Entrance?

A I can't recall, to be honest with you. It would be further on down two or six.

Q Three-tenths of a mile or half-a-mile?

A Yes.

MR. SPIERS: That's all.

MR. MUNDY: May he be excused, Your Honor?

THE COURT: Mr. Spiers?

MR. SPIERS: As far as I am concerned.

THE COURT: Yes.

(Witness excused.)

MR. MUNDY: We would call Cynthia Renee Milgrim as our next witness as an adverse witness.

THE COURT: Were you sworn yesterday?



2 MS. MILGRIM: Yes, sir.

3  
4 CYNTHIA RENEE MILGRIM

5  
6 was called as a witness, and after having first been duly  
7 sworn to tell the truth, the whole truth and nothing but  
8 the truth, was examined and testified as follows:

9  
10 DIRECT EXAMINATION

11  
12 BY MR. MUNDY:

13 Q Ms. Milgrim, I'm going to ask you three  
14 questions and I believe you can answer all three with a yes  
15 or no answer.

16 MR. SPIERS: If Your Honor please, I don't  
17 even like to put that kind of restriction on her.

18 THE COURT: Of course she may explain any  
19 answer she desires.

20  
21 BY MR. MUNDY:

22 Q Was the Corvette automobile exceeding the  
23 speed limit just before the accident?

24 A Yes, sir; as far as I know. I can't esti-  
25 mate speed; it was the first time I had been in the car and

2 some cars feel like they're going faster than others. Other  
3 cars feel like you're going slower.

4 Q The best you can recall, was it exceeding  
5 the speed limit just before the accident?

6 A Yes, sir.

7 Q As best you recall, was there any obstruc-  
8 tion in the highway just before the accident?

9 A Not as I recall.

10 Q As best you recall, was the automobile in  
11 good mechanical condition just before the accident?

12 A As far as I know.

13 MR. MUNDY: That's all I have, Your Honor.

14  
15 CROSS EXAMINATION

16  
17 BY MR. SPIERS:

18 Q Ms. Milgrim, you say the car, as far as you  
19 know, was in good mechanical condition. Do you know anything  
20 about car mechanics?

21 A No, I don't.

22 Q Had Mr. Horne told you anything relative to  
23 the mechanical or other condition of the car which may have  
24 indicated it was not in good condition?

25 A At one time when he was talking to me, he

2 mentioned that he had - - I don't know if it was new tires  
3 or new wheels; it was one of the two and he didn't think  
4 that they were handling right.

5 Q He didn't think the tires or wheels were  
6 handling right or the car wasn't handling right?

7 A I imagine it was the tires and the wheels.

8 Q Was this before or after you got on the  
9 Parkway?

10 A This was before; it was a different time.  
11 I had talked to him in town.

12 Q It wasn't on the night of the accident?

13 A No, sir.

14 Q When you got to the Parkway who was operating  
15 the car?

16 A Steve was.

17 MR. MUNDY: Your Honor, I'm going to object  
18 to this; this is beyond the scope of the Direct  
19 Examination.

20 (Thereupon, opposing Counsel argued the  
21 Motion to the Court.)

22  
23 THE COURT: The Court permits the question.  
24  
25

BY MR. SPIERS:

Q When you got to the Parkway and before you entered it, who was driving the car?

A Steve was.

Q Where were you seated?

A I was seated in the passenger's seat.

Q There's no back seat?

A No, sir; not as I recall.

Q When you turned onto the Parkway, who was driving?

A Steve was.

Q Relative to where you got on, did you get on at the Pipers Gap Entrance there?

A Yes, sir.

Q From that point to where the crash occurred, did you at any time go back up and measure with your father the distance between the entrance and where the accident occurred?

A Yes, sir; it was three-tenths of a mile.

Q Three-tenths of a mile?

A (The witness nods head.)

Q What is the last recollection you have after you turned onto the Parkway?

A I just recall entering the Parkway, and I

can remember speed.

Q Speeding up?

A Yes; it sort of scared me.

Q Then do you recall anything from that point until after the accident?

A No, sir, I do not.

Q What is the first thing that you remember after that?

A I was outside.

Q Of the car?

A Yes, sir.

Q The crash had already occurred?

A Yes, sir.

Q Do you know what happened in the crash?

A No, sir; I don't remember.

Q At that point, three-tenths of a mile from the scene of the accident and while the vehicle was speeding up, who was operating it?

A Steve was.

Q As far as you know had Steve, during the time you were with him that night, had anything to drink?

A Not that I know of.

Q Had you?

A No, sir.

Q Did either one of you have any dope or anything like that?

A No, sir.

Q He appeared normal to you?

A Yes, sir.

Q Were you normal in every way?

A Yes, sir.

MR. SPIERS: That's all for now, Your Honor.

REDIRECT EXAMINATION

BY MR. MUNDY:

Q Ms. Milgrim, do you know which way you turned when you got to the Parkway? Do you recall whether you turned right or left?

A I think it was left, but I'm not sure.

Q Do you recall when we took your Deposition in Mr. Jolly's office?

A Yes, sir.

Q On Page Nineteen, do you recall my questioning that you couldn't recall whether you turned right or left?

A Yes, sir.

Q What was your answer?

A Well, I said I wasn't sure. 264

Q Would you read your answer?

A "No, sir."

Q Are you changing that?

A No, sir.

Q Do you recall whether you turned right or left? What did you say when we asked you here?

A I said, "No, sir."

Q Is that your testimony today, that you don't recall?

A I'm not sure; no, sir.

Q You don't know whether you turned right or left?

A Yes, sir.

Q The same as in your Deposition then?

A Yes, sir.

Q Do you remember anything other than the car speeding up after you pulled onto the Parkway?

A No, sir.

MR. MUNDY: That's all; no further questions.

THE COURT: Do you have any further questions at this time, Mr. Spiers?

MR. SPIERS: What page are you on, Mr. Mundy?

MR. MUNDY: Her question is on Page Nineteen

1  
2 of the Deposition, Lines Nine through Eleven.

3 MR. SPIERS: That's all I have at this  
4 point.

5 THE COURT: You may step down, ma'am.

6 (Witness stands aside.)  
7

8 MR. MUNDY: The Plaintiff rests, Your  
9 Honor.

10 MR. SPIERS: If it please the Court, I  
11 have some Motions.

12 THE COURT: I'm going to excuse the Jury  
13 at this time for their noon recess. We will take  
14 an hour's recess, Gentlemen of the Jury.

15 (Thereupon, the Jury was excluded from the  
16 Courtroom and the Court heard various arguments  
17 by Counsel.)  
18

19 THE COURT: On the question of Mr. Farris's  
20 testimony, the Motion was made that his evidence  
21 be excluded. At that point, the Court overruled  
22 the Motion that his evidence be excluded.

23 The Court believes that the Motion to  
24 exclude his evidence was proper at the time. Then  
25 the evidence showed the entrance of the car off of



1  
2 the Pipers Gap Road, known to the Court to be Route  
3 620, and all of the evidence shows, the opening  
4 statement of Counsel and the Pleadings in this case,  
5 that the car was traveling north from this inter-  
6 section.

7 The best recollection of the Defendant as  
8 testified to by her as an adverse witness was that  
9 the car turned left. The evidence of Mr. Farris  
10 is that he saw a car meeting the description of  
11 this car eight-tenths of a mile south of the  
12 entrance rather than north.

13 He further testified that he saw the car  
14 last at five-tenths of a mile before the collision  
15 which is absolutely contradictory to the Plaintiff's  
16 recollection which is the only evidence before the  
17 Court as to where the car entered onto the Parkway  
18 and that it was headed in a northern direction.

19 With this in mind, with these additional  
20 facts of evidence in mind, the Court is going to  
21 grant the Motion to Strike the evidence of John  
22 Farris from the evidence in this case.

23 The Court will consider the matter of  
24 proof of negligence without his statements and  
25 without his evidence. I'm going to instruct the

Jury to disregard his testimony.

MR. SPIERS: I would like to move the Court for a mistrial because I don't think an instruction to the Jury is adequate to remove from their minds what he testified about.

THE COURT: In my opinion, a properly phrased instruction to the Jury that they should clearly not be misled by his evidence is sufficient. The Court would overrule the Motion for a mistrial.

MR. SPIERS: I would like to note an exception to that.

(The noon recess was taken at 12:30 p. m.)

(The parties returned to the room at 1:15 p. m. and the trial continued.)

(Thereupon, the Jury was excluded from the Courtroom and the following took place in the presence of the Court.)

MR. MUNDY: Your Honor, we fully understand the Court's ruling with regard to Mr. Spiers' Motion to Strike the Plaintiff's evidence. The only point that I would like to make is to ask the

1  
2 Court to reconsider its decision to strike Mr.  
3 Farris's testimony.

4 In this regard, Your Honor, the only point  
5 that I would make is that Ms. Milgrim testified,  
6 when we called her as an adverse witness, she first  
7 said she thought they turned left.

8 When we reminded her of her testimony at  
9 the Deposition, and particularly the reference on  
10 Page Nineteen, Lines Nine through Eleven of her  
11 testimony at the Deposition, she concluded by  
12 agreeing that she could not remember whether they  
13 had turned right or left when they got onto the  
14 Parkway.

15 I think, therefore, the Jury should be  
16 permitted to reasonably infer that they could have  
17 turned right and perhaps at some point down the  
18 road had turned around which would then make Mr.  
19 Farris's testimony with regard to the identification  
20 of the car consistent with the facts.

21 THE COURT: The Court would only say that  
22 it would not make it consistent with his testimony.  
23 He testified that he saw the car the first time  
24 at one point seven-tenths of a mile south of the  
25 intersection.

Again, he testified seeing the car first seven-tenths of a mile north of the intersection. He then last saw the car five hundred feet prior to the point of collision.

His testimony that he saw the car south eight-tenths of a mile of the intersection does not have a probative value at all as to the identity of the car involved in the accident in this case.

Will you bring the Jury in, please?

(The Jury returned to the Courtroom and the following took place in the presence of the Court and Jury.)

THE COURT: Gentlemen of the Jury, you heard the first witness who testified this morning; his name was John Farris. You heard his testimony about observing a car south of the intersection and he described that car.

The evidence you heard from all sources is that the car turned left in a northerly direction. The Court has concluded that his testimony is not proper for your consideration in this case.

You will completely disregard his testimony

1  
2 entirely because as stated, there is no identifica-  
3 tion of the car in that the car, the evidence shows,  
4 turned left; he testified seeing and identifying  
5 a car south of that point.

6 In your deliberations in this case, you will  
7 totally disregard his entire testimony. I hope I  
8 have made this clear in your consideration of the  
9 case; it will be as if he did not testify at all.

10 You will remove from your minds, as far as  
11 is possible, his total testimony.

12 (Judith Nunn was called as a witness.)

13 (Cynthia Renee Milgrim was called as a  
14 witness.)

15 (Donald C. Bloes, M. D. was called as a  
16 witness.)

17 (Fred Hensley was called as a witness.)

18 (Jeanette Mayberry was called as a witness.)

19 (Mrs. Shirley Jean Felts was called as a  
20 witness.)

21 (Mrs. Evidena Milgrim was called as a  
22 witness.)

23 (Ronnie Milgrim was called as a witness.)

24 (Jeff Combs was called as a witness.)

25 (Melanie Hensley was called as a witness.)

MR. SPIERS: Defense rests, Your Honor.

MR. MUNDY: Your Honor, in rebuttal we call Joy Frost.

MR. SPIERS: Of course, the Court understands that our objection is to the nonavailability of this witness for our interview.

THE COURT: The Court will take under advisement your Motion.

JOY FROST SHEPHERD

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 MR. MUNDY:

Q State your full name, please.

A Joy Frost Shepherd.

Q Where do you live?

A Fairview, Galax, Virginia.

Q Did you know Steve Horne?

A Yes.

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Q How well did you know him?

A I knew him for about two years as a real close friend.

Q That was prior to his death?

A Yes.

Q What kind of automobile did he have?

A A '71 light blue "Vette".

Q Is this the automobile (indicating)?

A Yes.

Q Was he particular about his automobile?

A Yes; he didn't want anything to happen to it and he was real careful with it.

Q On July 3, 1978, which is the date that Steve was killed, did you see his automobile?

A Yes.

Q Where did you see it?

A In Lesse's Superette parking lot.

Q Is that in Galax?

A Yes.

Q Was Steve in the automobile?

A Yes; he was in the passenger's seat.

Q Was anyone in the driver's seat?

A No.

Q Did you see the automobile later that

evening, July 3, 1978?

A Yes; about ten minutes after that.

Q About what time was that?

A I'd say maybe eight o'clock.

Q Where did you see it?

A It was coming out of Hardee's, going left up 89 south.

Q Going south on 89?

A Yes.

Q Was Steve in the automobile?

A Yes; he was still on the passenger's side.

Q Who was driving the car?

A Renee Milgrim.

Q Is that the young lady that is seated at Counsel's table?

A Yes.

MR. MUNDY: I have no further questions,  
Your Honor.

CROSS EXAMINATION

BY MR. SPIERS:

Q You say this was about eight o'clock?

A I can't be exactly sure about the time; I'd



say it was anywhere from seven-thirty to eight o'clock.

Q But it was light?

A Yes.

Q And you say the vehicle had been in Hardee's or you were in Hardee's or what?

A We were going south on 89 as Steve's "Vette" was pulling into the road going also south on 89.

Q Were you all behind it?

A Well, as we got right even to it, it was the next one to pull out right behind us.

Q Who is we?

A Monty Davis and myself.

Q Monty?

A Yes.

Q Do you know Toni Nunn?

A No; I don't think so. Is that the blonde-headed lady?

Q I think she does have blonde hair; do you know her?

A I saw her.

Q Was she around?

A I didn't see her that afternoon.

Q Did you see her sometime later or something?

A No; I went south on 89 into the Parkway.

Q Where did you go?

A Right up past Fox Hunter's Paradise.

Q You went all the way to the Parkway?

A Yes.

Q Where was this "Vette"? Did it follow you?

A No; the last time I saw it was past the Pilot maybe.

Q Past the Pilot?

A Maybe.

Q Maybe.

A Well, at the next stoplight through town, the last one at Horton's, we turned up on Pipers Gap Road. When we came back down to get back on 89, I didn't see the "Vette" anywhere.

Q You don't know what happened to the "Vette"?

A No.

Q How long have you known Renee Milgrim?

A I only know her through what Steve had told me and after I saw her.

Q So you didn't really know her before that?

A No.

Q Do you work at Hanes?

A Yes.

Q Did you work with Steve?

A No; my brother-in-law worked with Steve. He came over to my sister's and her husband's house a lot - - I lived with them - - and they worked on their cars and they both had "Vettes".

Q That was your brother or your brother-in-law?

A My brother-in-law; my sister's husband.

Q What's his name?

A Barnett Leonard.

Q When you say "Vette", do you mean a Corvette automobile?

A Yes.

Q Steve also worked at Hanes?

A Yes.

Q Did you ever date him or anything?

A No.

Q Did you run around with him in the same crowd?

A No; the only relationship I had with Steve was when he would come over to my sister's house and they would get out there and work on their cars and stuff like that.

Q He cared a lot about that car?

A Yes; he did.

MR. SPIERS: I have no further questions.

MR. MUNDY: We have no further rebuttal evidence, Your Honor.

MR. SPIERS: We would recall Cynthia Renee Milgrim as rebuttal.

CYNTHIA RENEE MILGRIM

was recalled as a witness, and after having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY SPIERS:

Q Ms. Milgrim, do you know Joy Frost?

A No, sir.

Q Did you know her in July of 1978?

A No, sir.

Q Have you ever talked with her or spoken with her or anything?

A No, sir; I've never seen her before.

Q You've never seen her before just now?

A No.

Q You heard her say that you were in Hardee's

in his "Vette". Were you there on July the 3rd, 1978?

A No, sir.

Q Were you with Toni Nunn at all times?

A Yes, sir.

MR. SPIERS: That's all.

CROSS EXAMINATION

BY MR. MUNDY:

Q You don't know whether Joy Frost Shepherd knows you, do you?

A No, sir, I don't; I've never seen her before.

Q A number of people probably know you whom you don't know?

A I don't know; it could be.

MR. MUNDY: I have no further questions.

THE COURT: Step down, please, ma'am.

Gentlemen of the Jury, the evidence has been concluded in this case. We're going to ask you to go to the Jury Room very briefly. During this long recess, we have already prepared the instructions that you'll be given in this case.

After you go to the room briefly, you will

be asked to return and will be instructed. Then Counsel will make arguments. It is our intention to conclude this case today.

(Thereupon, the Jury was excluded from the Courtroom and the following took place in the presence of the Court.)

MR. SPIERS: If it please the Court, I want to renew my Motions at this time; I feel a little awkward about it since the Court has already discussed instructions which leads one to believe that the argument is futile.

I do want to seriously renew my Motions on the grounds that the evidence here, as you noted on the ruling on the Motion previously, the testimony of physical facts alone would not lead one to conclude that Renee Milgrim was operating the motor vehicle.

(Thereupon, opposing Counsel argued the Motion to the Court.)

THE COURT: The credibility of witnesses is primarily the function of the Jury. There is even dispute as to whether that tire was blown or not blown. On the whole of the case, the Court

believes there is sufficient evidence which a Jury could find for either the Plaintiff or the Defendant in this case.

The Court so overrules the Motion.

MR. SPIERS: We except the Court's ruling.

(Thereupon, the Jury returned to the Courtroom and the following took place in the presence of the Court and Jury.)

THE COURT: Gentlemen of the Jury, the evidence has been concluded in this case and shortly it will become your responsibility to pass upon the case.

The Court gives you the following instructions of Law to which you will apply to the evidence as you found it to be from the evidence that you've heard yesterday and today.

(Thereupon, the Court instructed the Jury as to the Law applicable to the case.)

(Thereupon, Mr. Mundy made the opening portion of his closing statement to the Jury.)

(Following the statements by Mr. Mundy, Mr. Spiers presented his final argument to the Jury.)

(Following Mr. Spiers' final argument, Mr. Mundy made his final presentation to the Jury.)

THE COURT: Sheriff, give the instructions and exhibits to the Jury. Gentlemen, the first thing you do when you go to the room is select a Foreman who will preside over your deliberations. When you have arrived at a verdict in the case, place it on the appropriate form which has been prepared for your use and knock on the door.

Would you all go to the Jury Room?

(The Jury retired to the Jury Room at 7:30 P. M. to consider their verdict.)

(While the Jury was out, Counsel dictated the objections to the instructions to the Court Reporter.)

MR. SPIERS: Instruction Number One was given without objection. Defendant objects to giving the Jury Instruction Number Two since it's incomplete and permits the Jury to disregard all of the testimony of a witness without qualifying that option by a complete statement of the right to which a Jury is given an instruction.

Instruction Number Three is objected to by the Defendant on the grounds that it permits the



Jury to speculate and deduce and go outside or beyond the evidence in doing so and invites conjecture and surmise.

Number Four was given without objection. The Defendant objects to giving the Jury Instruction Number Five; the first ground being that it relates as a duty of a driver keeping a proper lookout and there's no evidence that a proper lookout was not kept by whoever was operating the car.

Secondly, the physical facts are insufficient to support the giving of the instruction since there's no credible evidence of Defendant having driven the car and no credible evidence on how and why the accident happened.

Number Six was given without objection. Number Seven was given without objection. Number Nine was given without objection. Defendant excepts to the refusal of the Court to give Instruction Number Fifteen on the credibility of witnesses since it is a more complete statement than Number Four.

The Defendant also excepts the refusal of Number Sixteen since it is a correct statement of the Law and properly told the Jury what consideration should be given to prior inconsistent statements.

1  
2 MR. MUNDY: At the conclusion of the  
3 evidence in this case, the Plaintiff objects to the  
4 Court's refusal to give Instruction Number Eight.  
5 Further, the Plaintiff objects to Instruction  
6 Number Ten which was given by the Court at the  
7 request of the Defendant for the reason that the  
8 presumption which is stated in that Instruction is  
9 not applicable to the facts and evidence of this  
10 case.

11 Plaintiff objects to Instruction Number  
12 Twelve which was given by the Court at the request  
13 of the Defendant for the reason that we do not  
14 think this Instruction is applicable to the evidence  
15 in this case or proper under the evidence.

16 Plaintiff objects to Instruction Number  
17 Thirteen which was given by the Court at the  
18 request of the Defendant for the reason that the  
19 Instruction is likely to confuse the Jury.

20 (The Jury returned to the open Courtroom  
21 at 10:10 p. m. and the following took place before  
22 the Court and Jury.)

23  
24 THE COURT: Have you arrived at a verdict  
25 in this case?

MR. RICHARDSON: Yes, sir.

THE COURT: Would you hand it to the Sheriff?

MR. RICHARDSON: He has it.

THE SHERIFF: "We the Jury on the issues joined between the Plaintiff, Raymond H. Horne, Administrator of the Estate of Steven H. Horne, Deceased, and the Defendant, Cynthia Renee Milgrim, find for the Defendant. Signed James B. Richardson."

THE COURT: Is this your verdict?

MR. RICHARDSON: Yes.

THE COURT: The Court wants to express its appreciation of you gentlemen; it's been a long and tiresome day. We have a special appreciation because of the late hour which you stayed in an effort to arrive at a verdict in this case.

The Court appreciates your services and you will receive good pay and compensation for your time which the State specifies for Jury service.

(Thereupon, the Jury was excluded from the Courtroom at 10:20 p.m. and the following took place before the Court.)

THE COURT: Mr. Mundy?

1  
2 MR. MUNDY: I have a Motion for the Court.  
3 Your Honor, for the Record, Counsel for the  
4 Plaintiff respectfully moves the Court to set  
5 aside the verdict of the Jury and either order a  
6 new trial or alternatively, enter a verdict for  
7 the Plaintiff.

8 The basis for the Motion is that the  
9 verdict is contrary to the Law and the evidence.

10 THE COURT: The Court having duly considered  
11 this case during the course of the trial and have  
12 made various rulings on Motions heretofore. The  
13 Court has addressed its considered opinion that the  
14 case presented a Jury question on behalf of both  
15 the Plaintiff and Defendant.

16 The Court believes that the Jury was  
17 properly instructed; they gave it their best  
18 consideration, I'm sure. The Court denies the  
19 Motion and will enter ~~summary~~ judgment in accordance  
20 with the Jury's verdict.

21 The Court will ask Counsel for the Defendant,  
22 if he will, to please prepare an order for entry.

23 MR. SPIERS: If you have the verdict, I'll  
24 copy it.

25 THE COURT: I'm certain that the Clerk put

1  
2 it in the file and the file is gone, but I'm sure  
3 the office is open. We'll go downstairs and check.

4 THESE WERE ALL THE PROCEEDINGS HAD AND  
5 EVIDENCE INTRODUCED IN THE TRIAL OF THIS CAUSE.  
6  
7

8 \* \* \* \* \*

9  
10 C E R T I F I C A T E

11 COMMONWEALTH OF VIRGINIA

12 CITY OF ROANOKE  
13

14 I, Shirley S. Bassett, Notary Public in  
15 and for the Commonwealth of Virginia, at Large, do hereby  
16 certify that Pages 152 through 216 of the above  
17 encaptioned proceedings were by me reduced to machine  
18 shorthand in the presence of the witnesses, afterwards  
19 transcribed upon a typewriter under my direction; and that  
20 the foregoing is a true and correct transcript of the  
21 proceedings so given as aforesaid.

22 I further certify that these proceedings  
23 were taken at the time and place in the foregoing caption  
24 specified.  
25

1  
2 I further certify that I am not a relative,  
3 counsel or attorney for either party, or otherwise interested  
4 in the outcome of this action.

5 IN WITNESS WHEREOF, I have hereunto set my  
6 hand at Roanoke, Virginia on this the \_\_\_\_\_ day  
7 of \_\_\_\_\_, 19\_\_\_\_.

8  
9  
10  
11 \_\_\_\_\_  
12 SHIRLEY S. BASSETT  
13 Notary Public  
14  
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17  
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22  
23

24 My commission expires February 28, 1984.  
25 I was commissioned as Shirley Stanley.

C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

CITY OF SALEM

I, Jody A. Daniels, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that Pages 4 through 151 of the Proceedings were by me reduced to machine shorthand in the presence of the witnesses, afterwards transcribed upon a typewriter under my direction; and that the foregoing is a true and correct transcript of the Proceedings.

I further certify that these Proceedings were taken at the time and place in the foregoing caption specified.

I further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Salem, Virginia on this the \_\_\_\_\_ day of January, 1981.

JODY A. DANIELS  
Notary Public

My commission expires October 20, 1984.