

4011
198VA. 461

Record No. 4541

In the
Supreme Court of Appeals of Virginia
at Richmond

CHARLES A. ROTHFUSS

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF PAGE COUNTY.

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

198VA 461

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4541

VIRGINIA :

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 25th day of November, 1955.

CHARLES A. ROTHFUSS, Plaintiff in Error,
against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Circuit Court of Page County.

Upon the petition of Charles A. Rothfuss a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Page County on the 3rd day of June, 1955, in a prosecution by the Commonwealth against the said Charles A. Rothfuss for a felony; upon the petitioner, or some one for him, entering into bond with sufficient surety before the clerk of the said Circuit Court in the penalty of fifteen hundred dollars, with condition as the law directs; but said *supersedeas*, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * *

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Page, and now attending the March, 1955, term of the Circuit Court of the said County, upon their oaths present that Charles A. Rothfuss, in the said County of Page, on the 23d day of February, 1955, at the Trial Justice Court held for the said County on that day, in the Trial Justice Court Room of said County, by the Honorable John H. Booton, Judge of said Court, one Charles A. Rothfuss was tried on a summons duly issued by K. E. Kerkhoff, a member of the Virginia State Police Force, charging the said Rothfuss with reckless driving in the said County on the 4th day of February, 1955, and upon the trial aforesaid, upon the summons aforesaid, the said Charles A. Rothfuss offered himself as a witness in his own behalf, and was then and there in said County and in said Trial Justice Court aforesaid, duly sworn by the Honorable John H. Booton, Judge of said Court, to testify as a witness upon the said trial; and that the evidence he should give upon the said trial should be the truth, the whole truth and nothing but the truth, the said John H. Booton then and there having authority of law to administer said oath; and that upon the trial for the misdemeanor, namely, reckless driving, it became material to inquire as to the reason for the motor vehicle, driven by the said Rothfuss, leaving the highway, climbing an embankment, turning over and wrecking at the time and place charged in the summons aforesaid, and that upon the said Rothfuss being sworn page 2 } as a witness as aforesaid, and touching upon the said matter then and there material to be inquired into, did upon the trial aforesaid, in the Court aforesaid, feloniously, wilfully, falsely, and corruptly, depose, swear and testify among other things, that at the time and place charged in the said summons, the steering went out and the car was uncontrollable pulling to left; that the left "A frame" had broken in three places because it had been heat treated to straighten it and was weakened thereby; that the breaking of the "A frame" caused the car to leave the highway to the left, climb a bank, turn over and wreck; whereas in truth and in fact, the steering mechanism was in good working order at the time and place charged in the

summons, the "A frame" was not broken but was in one piece, and the cause of the car leaving the highway and wrecking was not in any way due to the breaking of the "A frame" or to defective steering mechanism, whereby the said Charles A. Rothfuss did then and there and upon the trial aforesaid, and in the County aforesaid, feloniously, wilfully and corruptly swear falsely and did then and there feloniously commit wilful perjury, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found upon the testimony of K. E. Kerkhoff, Charles L. Price, H. S. Farrar and A. Lee Huffman, witnesses sworn in open Court and sent before the Grand Jury to give evidence.

A True Bill.

JOHN M. DUNLAP, Foreman.

* * * * *

page 5 } At a Circuit Court of Law of the County of Page,
at the Court House of said Court, in said County,
on Monday, the 28th day of March, in the year of our Lord
One Thousand, Nine Hundred and Fifty Five, and in the One
Hundred and Seventy Ninth year of our Commonwealth.

* * * * *

This day came the Attorney for the Commonwealth, and the defendant, Charles A. Rothfuss, appeared in Court in person and by counsel, and being thereof arraigned personally tendered a plea of not guilty to the indictment, and on motion of the defendant, by counsel, it is ordered that this case be continued until the May, 1955, Term, and set for trial on May 24, 1955.

* * * * *

page 12 } INSTRUCTION NO. 1.

The Court instructs the jury that the crime of perjury is the willful giving by a duly sworn witness of false testimony concerning or touching a matter material to the determination of the proceeding in which such testimony is given, that is to say, such a matter as would normally influence the judicial determination to be made of the questions there presented.

And the Court further tells the jury that in the former trial of the accused in the Trial Justice Court of Page County on the 23rd of February on a charge of reckless driving, the reason or cause of the wreck then under consideration was a matter material to the determination of that charge.

Ex. 6/1/55.

H. H.

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* * * * *

INSTRUCTION NO. 2.

The Court instructs the jury that if you believe from the evidence beyond a reasonable doubt that on the 23rd day of February, 1955, in the Trial Justice Court of Page County, in the trial of the case of Commonwealth v. Charles A. Rothfuss, the said Charles A. Rothfuss testified that the cause of his car leaving the highway and wrecking was that the steering went out and the car became uncontrollable, pulling to the left; that the left "A frame" had broken in three places causing the car to leave the highway to the left, climb the bank, turn over and wreck and if the jury further believe from the evidence that the steering mechanism of the said motor vehicle was in good working condition and that the left "A frame" was not broken but was in one piece at the time and place in question, then you should find the said Charles A. Rothfuss guilty of perjury as charged in the indictment.

Ex. 6/1/55.

H. H.

page 14 {

INSTRUCTION NO. 3.

On the other hand, the court further instructs the jury that if there is any reasonable doubt in your minds as to whether or not the accused perjured himself in the particulars charged in the indictment, it is your duty to find the accused not guilty.

6/1/55.

H. H.

* * * * *

page 16 }

INSTRUCTION NO. 5.

The Court instructs the jury that in this case, as in all criminal prosecutions, the accused is presumed to be innocent until his guilt is established by the evidence beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence.

The burden of proof is upon the Commonwealth to establish every material fact necessary for conviction by the evidence beyond a reasonable doubt.

This presumption of innocence applies at every stage of the case until or unless the Commonwealth has established every material fact necessary for conviction by the evidence beyond a reasonable doubt.

If a set of facts or circumstances should be susceptible of two or more reasonable interpretations any one of which interpretations points to the innocence of the accused, the jury must accept that interpretation pointing to his innocence in arriving at their conclusion to be drawn from such set of facts or circumstances.

6/1/55.

H. H.

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* * * * *

INSTRUCTION NO. 6.

In considering whether or not the Commonwealth has met its burden of proving the guilt of the accused beyond a reasonable doubt, the Court instructs the jury that you should not overlook the word "reasonable" nor its meaning. A reasonable doubt is a doubt which is founded on reason, and is not to be confused with imaginable or possible doubt, for the law does not say that a man must be proven guilty beyond every imaginable, conceivable or possible doubt.

In passing upon the sufficiency of the proof of the charge, the jury must limit its consideration to the evidence presented at the trial of this case, including the natural and reasonable inferences to be drawn therefrom. The jury cannot go beyond such evidence to create doubt, nor can you go beyond such evidence to find inferences of guilt.

Furthermore, the jury should bear in mind that any such doubt arising from lack of evidence, from conflicting testi-

mony or from questionable proof of any particular fact, should be a doubt of a material fact essential to the proof of the guilt of the accused and not a mere doubt concerning immaterial and nonessential circumstances.

If, after a reasonable and honest consideration of all the evidence, your minds are left in such a state of doubt as to prevent you from reaching a convinced belief of the guilt of the accused, then the Commonwealth has failed to meet its burden.

If, on the other hand, after an impartial and reasonable consideration of all the evidence in the case, you have an abiding conviction of the truth of the charge, you are then satisfied beyond all reasonable doubt.

6/1/55.

H. H.

* * * * *

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INSTRUCTION NO. 8.

The Court instructs the jury that if they entertain a reasonable doubt as to whether the steering mechanism of the Hudson automobile operated by Charles A. Rothfuss was in good working order on the 4th day of February, 1955, at the time and place of the accident, or that the A frame was all in one piece and not in any manner broken, or that the cause of the automobile leaving the highway was not in any way due to the breaking of the A frame, or to defective steering mechanism, then the jury must find him not guilty.

Refused & Ex. 6/1/55.

Confusing & covered by #3.

H. H.

page 20 }

INSTRUCTION NO. 9.

The Court instructs the jury that before they can find defendant guilty of perjury they must believe from the evidence:

(1) That the Commonwealth has established defendant's guilt beyond all reasonable doubt, and

(2) That the Commonwealth has proven the falsity of the statements attributed to defendant by direct and positive evi-

dence and if the jury believe either (1) or (2) not proven they must find C. A. Rothfuss not guilty.

Refused as covered 6/1/55.

Ex.

H. H.

page 22 } Circuit Court of the County of Page, on Wednesday, the 1st day of June, in the year of our Lord Nineteen Hundred and Fifty Five.

This day came the Attorney for the Commonwealth, and the accused, Charles A. Rothfuss, appeared in Court pursuant to his recognizance heretofore entered into, and by counsel, and upon his previous arraignment personally tendered a plea of not guilty to the indictment, and for his trial thereof twenty jurors, summoned in accordance with the provisions of law, were examined by the Court and found free from exceptions and qualified in all respects to serve as such, and the Attorney for the Commonwealth and the accused each having stricken from said panel four alternately, the remaining twelve constituting a jury for the trial of the accused, namely: Kenneth L. Burrill, Ralph B. Emerson, C. S. Beylor, Thompson Kibler, Jesse L. Deavers, John K. Tate, Randolph H. Sours, Rufus Smith, Paul Y. Lillard, Thomas E. Burner, Garland F. Short and Emmett R. Keyser, were sworn to well and truly try and true deliverance make between the Commonwealth and the accused at the bar whom you shall have in charge, and a true verdict render according to the evidence, and having fully heard the evidence and arguments of counsel and received the instructions of the Court, retired to their room to consider of their verdict and later returned into Court with the following verdict, to-wit: "We the Jury find Charles A. Rothfuss guilty as charged and fix his fine at \$700.00." J. L. DEAVERS, Jury Foreman
—by J. K. TATE.

page 23 } Whereupon, came the defendant, by counsel, and moved the Court to set aside the verdict of the jury on the ground that the verdict is contrary to the law and the evidence in the case, and on such additional grounds that may be hereafter assigned in writing, which motion the Court takes under advisement.

It is therefore ordered that the defendant, Charles A. Rothfuss, be released on his recognizance heretofore entered into pending disposition of the aforesaid motion on June 3, 1955, to which date further proceedings hereon are continued.

* * * * *

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MOTION TO SET VERDICT ASIDE.

Motion to set verdict aside on the following grounds:

- (1) Contrary to the law and evidence.
- (2) The Court erred in over-ruling the motion to strike the Commonwealth's evidence.
- (3) The Court erred in granting instructions.
- (4) The Court erred in refusing certain instructions for the defendant.
- (5) The remarks of the Commonwealth's Attorney in commenting on the indictment in his closing remarks constituted error.

Filed June 3, 1955.

HAMILTON HAAS, Judge.

page 25 } Circuit Court of the County of Page, on Friday,
the 3rd day of June, in the year of our Lord Nine-
teen Hundred and Fifty Five.

* * * * *

This day came again the Attorney for the Commonwealth, and the defendant, Charles A. Rothfuss, likewise again appeared in Court pursuant to his recognizance heretofore entered into, and to an order of this Court entered in this case on June 1, 1955, and by counsel.

The Court having heard arguments of counsel, and being fully advised thereon, doth overrule the motion heretofore made on June 1, 1955, to set aside the verdict of the jury in this case, and it is so ordered, to which ruling and order of the Court, the defendant, by counsel, excepts.

Whereupon, it being demanded of the defendant if anything

for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the said Charles A. Rothfuss, pay a fine of SEVEN HUNDRED DOLLARS (\$700.00), in conformity with the verdict of the jury heretofore rendered on June 1, 1955, and that the Commonwealth of Virginia do recover against the said Charles A. Rothfuss its costs by it about its prosecution in this behalf expended.

The Court certifies that at all times during the trial of this case the defendant was personally present.

page 26 } The defendant, by counsel, however, having expressed his intention of presenting to the Supreme Court of Appeals of Virginia a petition for a writ of error, it is ordered that execution of the aforesaid judgment be and it hereby is suspended for a period of sixty (60) days from the date hereof, and in the meanwhile the said defendant is released on his recognizance heretofore entered into.

* * * * *

page 27 } At a Circuit Court of Law of the County of Page, at the Court House of said Court, in said County, on Monday, the 25th day of July, in the year of our Lord One Thousand, Nine Hundred and Fifty Five, and in the One Hundred and Eightieth year of our Commonwealth.

* * * * *

On motion of Charles A. Rothfuss, by his Attorney R. S. Wright, Jr., it is ordered that execution of the judgment pronounced against the said Rothfuss by this Court on June 3, 1955, be further suspended until the ultimate determination of the case by the Supreme Court of Appeals of Virginia or until the further order of this Court.

* * * * *

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NOTICE .

To Mark D. Woodward, Commonwealth's Attorney of Page County:

You are hereby notified that on the 25th day of July, 1955, at 9:30 o'clock A. M., in the Circuit Court of Page County, Virginia, the undersigned will tender to the Honorable Hamilton Haas, Judge of the Circuit Court of Page County, the original transcript of the evidence, motion to strike the evidence of the Commonwealth, exceptions to instructions granted upon the request of the Commonwealth, and exceptions to the refusal of instructions offered by the defendant, reduced to writing in the above styled cause, and respectfully asks the Honorable Judge Hamilton Haas to certify the same as a true copy of the evidence presented in the above styled cause, with the motion to strike, exceptions, exceptions to instructions granted on behalf of the Commonwealth, and exceptions to the refusal of instructions offered by the defendant.

CHARLES A. ROTHFUSS.

By R. S. WRIGHT, JR.,
Counsel for Appellant.

R. S. WRIGHT, JR.,
West Court Street,
Woodstock, Virginia.

I hereby accept due and timely service of the above Notice.

MARK D. WOODWARD,
Commonwealth's Attorney of Page
County, Virginia.

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To Robert D. Huffman, Clerk of the Circuit Court of Page County, Virginia:

Notice is given that Charles A. Rothfuss, by his attorney, appeals in this case and will apply for a writ of error and *supersedeas*, pursuant to the provisions of Section 4, Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, dated February 1, 1950, and the amendments thereto, from that certain final judgment entered on the 3rd day of June, 1955, in the above styled cause, in which the said Charles A. Rothfuss was found to be guilty of perjury.

ASSIGNMENT OF ERROR.

Further, pursuant to said Rule, the said Charles O. Rothfuss assigns the following errors:

The Circuit Court erred:

(1) In not striking out the evidence introduced for the Commonwealth of Virginia, and in over-ruling the motion of the defendant to strike said evidence.

(2) In not setting aside the verdict as contrary to the law and the evidence, without evidence to support it, and not entering final judgment for the defendant or granting a new trial, and in entering judgment for the Commonwealth of Virginia.

page 30 } (3) In granting each instruction which was granted for the Commonwealth of Virginia, this assignment being as to each of such instructions.

(4) In refusing each instruction which was refused of those asked by the defendant, this assignment being as to each such refused instruction.

(5) In not setting aside the verdict and granting a new trial on the grounds of improper remarks made by the Commonwealth's Attorney in the closing of his argument to the jury, wherein the Commonwealth's Attorney substituted his opinion for that of the Court in stating that indictments are not presented unless the Commonwealth's Attorney is thoroughly convinced that they are proper.

CHARLES A. ROTHFUSS.

By R. S. WRIGHT, JR.,
Counsel for the Appellant,
West Court Street,
Woodstock, Virginia.

I, Mark D. Woodward, Commonwealth's Attorney of Page County, Virginia, hereby certify that I have accepted a true copy of the foregoing Notice of Appeal and Assignments of Error, on this 22nd day of July, 1955.

MARK D. WOODWARD,
Commonwealth's Attorney
of Page County, Virginia.

Filed in the Clerk's Office of the Circuit Court of Page County, Virginia, July 25, 1955.

Teste:

ROBERT D. HUFFMAN, Clerk.

Trooper K. E. Kerkhoff.

STIPULATION.

It is stipulated between the Commonwealth and the attorney for the accused that John H. Booton is the Trial Justice of Page County, Virginia, and that on the 23rd day of February, 1955, he occupied the position of Trial Justice of Page County, and as such he was authorized by law to administer the oath in the case upon which this case is based; and, furthermore, that at the time and place charged in the indictment the said John H. Booton did lawfully administer the oath.

page 2 }

* * * * *

Whereupon,

TROOPER K. E. KERKHOFF

was called as a witness on behalf of the Commonwealth, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Woodward:

* * * * *

Q. And you are a member of the Virginia State Police Force, is that correct?

A. Yes, sir.

Q. Did you occupy that position on the 4th of February of this year?

A. Yes, sir.

Q. On that day, Mr. Kerkhoff, were you advised that there had been a wreck on U. S. 340?

A. Yes, sir.

Q. And approximately what time did you receive this advice?

A. At about 1:40 a. m.

Q. Did you investigate this report, Mr. Kerkhoff?

page 3 } A. Yes, sir.

Q. At that time, Mr. Kerkhoff, were you familiar with the automobile of Charles A. Rothfuss?

A. Yes, sir.

Trooper K. E. Kerkhoff.

Q. And will you please tell the court and the jury the type of motor vehicle he was driving at that time?

A. He was driving a 1954 Hudson club coupe. It had a light cream bottom and a wine or red top, a two-tone automobile.

Q. When you arrived at this reported scene of a wreck, Mr. Kerkhoff, will you please tell the court and the jury what you saw?

A. The automobile was upside down over toward a bank.

Q. What was the condition of the car?

A. It was in a total wreck. The entire top was smashed down, the glass was broken. All the glass in the car was broken. It was just bent up and torn all over.

Q. Did you recognize this automobile, Mr. Kerkhoff?

A. Yes, sir.

Q. And whose was it?

A. It belonged to Dr. Rothfuss.

Q. Now, Mr. Kerkhoff, what other physical evidence was there concerning this wreck at that time?

A. There was marks on the ground and on the hard surface where the car had skidded.

Q. Did you determine in which direction the car
page 4 } originally had been going, Mr. Kerkhoff?

A. Yes, sir, it was heading north.

Q. And that would be toward Front Royal?

A. Toward Front Royal.

Q. And were you able to examine the marks on the road as to where it went off and the distance, Mr. Kerkhoff?

A. Yes, sir.

Q. Please give the jury that information.

A. The car was heading north and crossed over the white line and ran off the left-hand side of the road. It ran a distance of 51 feet, at which time it went up over a 5-foot rock ledge. There the automobile looped. It just turned over in midair and landed 40 feet away on top of the automobile, right on its top. Then it skidded down the road and off of the road up against a bank for another 120 feet.

Q. At the time you arrived, what was the position of this car? I mean, was it on its wheels, or was it on its top?

A. It was still on its top.

Q. And in which direction was it headed, Mr. Kerkhoff?

A. It was headed back. It was headed back toward Luray.

Q. As I understand it, it was on its top with the front back toward Luray? Is that correct?

A. Yes, sir.

Trooper K. E. Kerkhoff.

Q. Now, when you arrived, Mr. Kerkhoff, was there anyone present at this wreck?

page 5 } A. Yes, Dr. Rothfuss was at the scene.

Q. And did you talk with him at that time?

A. Yes, sir.

Q. Will you please tell the court and the jury, Mr. Kerkhoff, if Dr. Rothfuss made any statement to you concerning the happening of this event at that time?

A. Yes, sir, he stated to me—

Mr. Wright: If Your Honor please, I object to statements made. This was at the scene of the accident. I don't think that has anything to do with this charge, irrelevant and immaterial.

Mr. Woodward: Now, may it please the court, the whole basis of the perjury charge is the former reckless driving charge, and it is the Commonwealth's contention that statements of the accused in connection with the former reckless driving charge are pertinent and material to this matter.

The Court: If it goes to shed any light on whether or not later statement made on the trial under oath was true or not, I don't see why it wouldn't be admissible.

Mr. Wright: Of course, Your Honor, we are not trying him for reckless driving. That's been disposed of. The question is what he said there at that hearing.

The Court: It is only to be considered by the jury in passing upon the question of the truth or falsity of the statement later made under oath at the trial before the Trial
page 6 } Justice, and the court tells the jury that it is only to be considered for that purpose and not to be given any consideration as to whether or not, in truth, he was guilty of reckless driving, because that matter is not in issue in this particular case.

By Mr. Woodward:

Q. Did he make any statements concerning this happening at that time, Mr. Kerkhoff?

A. Yes, sir, he stated to me that he was driving the automobile.

Q. Did he make any statements to you concerning what caused his car to leave the road at that time?

A. No, sir.

Q. What did he make along that line? Did he make any statements concerning the wreck at all?

Trooper K. E. Kerkhoff.

A. He said he didn't remember anything after he gave a left-hand signal at the stop light in Luray until the time of the accident.

Q. Mr. Kerkhoff, did Dr. Rothfuss accompany you back to Luray?

A. Yes, sir.

Q. And did he receive medical treatment at that time?

A. He stated he didn't want anything.

Q. Did you offer to procure medical attendance for him?

A. Yes, sir, I offered to call another doctor, and page 7 } he stated that he did not want another doctor.

Q. Now, as a result of this investigation, Mr. Kerkhoff, did you prefer charges against Dr. Rothfuss?

A. Yes, sir.

Q. And what charge did you prefer?

A. Reckless driving.

Q. Mr. Kerkhoff, in due course of time were you present at the Trial Justice Court on the 23rd of February of this year when your reckless driving charge was to be heard?

A. I was.

Q. And were you present when Dr. Rothfuss was sworn?

A. Yes, sir.

Q. Were you present when he testified in his behalf on this reckless driving charge?

A. Yes, sir.

Q. Will you please tell the court and jury, Mr. Kerkhoff, the testimony of Dr. Rothfuss insofar as it related to the reason for his vehicle leaving the road and wrecking, as charged in your summons?

A. Yes, sir. He stated that he was having some trouble with his front end, was having some work done on it. He also stated that the reason he had the accident was because the A-frame which he was having the work done on had broken in three places and that caused the car to drop down and throw his car out of control and caused him to run off of the highway.

page 8 } Q. Did he make any statement concerning the steering mechanism of the car at that time, Mr. Kerkhoff?

A. He stated that he couldn't steer it, it became uncontrollable.

Q. Now, Mr. Kerkhoff, after this wreck had occurred, did you have occasion to examine this vehicle?

A. Yes, sir.

Q. And where did you examine it?

Trooper K. E. Kerkhoff.

A. At the Graves Motor Company, at the storage lot.

Q. Approximately when did you examine it, Mr. Kerkhoff, in relation to the time of the accident?

A. Very shortly after the accident, one or two days afterwards.

Q. Will you please tell the court and the jury the result of your examination of the steering of the car at that time?

A. I examined the car, both underneath and the steering, and I couldn't find anything wrong with the car.

Q. Was there anyone present with you at the time you examined the car that time, Mr. Kerkhoff?

A. Yes, sir.

Q. Who was that?

A. Frank Mauck, mechanic at Graves Motor Company.

Q. At that time, Mr. Kerkhoff, did you pay any particular attention to the A-frame?

A. No, sir, I didn't pay any particular attention page 9 } to the A-frame.

Q. As I recollect, you testified that apparently the steering mechanism worked properly. Is that correct?

A. Yes, sir.

Q. I ask you, Mr. Kerkhoff, if at a later time you again examined that automobile.

A. Yes, sir.

Q. And when was that?

A. That was on February the 23rd, the date of the trial for reckless driving.

Q. Was that before, or after the trial had been had?

A. After the trial.

Q. And was there anyone present with you when you examined the car at that time?

A. Yes, sir.

Q. Who was with you?

A. Frank Mauck.

Q. And where did you examine it then, Mr. Kerkhoff?

A. At the storage lot at Graves Motor Company.

Q. At this time, Mr. Kerkhoff, did you use any method to be able to make a more careful examination?

A. Yes, sir.

Q. Please tell the court and the jury what you did.

A. First of all, I tried the steering and tried to turn the steering wheel, opened the door as far as I could, page 10 } and I turned the wheel and observed that—and later had Frank Mauck to turn the wheel—and observed that both wheels were turning properly in both

Trooper K. E. Kerkhoff.

directions. And after that we got the wrecker and backed it back toward the car and put two lines down to the bumper and pulled the car up by the bumper so that the front end was entirely off the ground.

Q. At this time, Mr. Kerkhoff, did you examine the A-frames on this car?

A. Yes, sir.

Q. Did you examine the left A-frame?

A. Yes, sir.

Q. Please tell the court and the jury the condition of the A-frame on the 23rd of February when you examined it.

A. The A-frame was bent.

Q. Was this the left A-frame you are talking about?

A. Yes, sir.

Q. When you say the left A-frame, left in what regard, Mr. Kerkhoff.

A. If I were driving the automobile, the A-frame which would be on my left.

Q. The left-hand side of the car if the person is in the driver's seat, is that correct?

A. Yes, sir.

Q. What was the condition of that A-frame, Mr. Kerkhoff?

A. It was bent, but it was not broken. It was
page 11 } intact. It was loose. I could take my hand—I
did—feel the different bars on the different controls on the A-frame and steering, and some of them were loose, but none of them were broken.

Q. Were there anything to indicate that this damage had been of recent origin, Mr. Kerkhoff?

A. Yes, sir, was some rock dust on the metal, different parts of the automobile, where the rocks had scraped and dented and cut into the metal.

Q. Did this appear to be of recent happening?

A. Yes, sir.

Q. Now, Mr. Kerkhoff, with respect to the right A-frame, did you examine that at this time?

A. Yes, sir.

Q. And please tell the court and the jury the result of that examination?

A. The right A-frame was completely intact; also, there was nothing broken about it. One place you could tell where it had been welded in the past.

Q. But it was in one piece, is that correct?

A. It was in one piece.

Trooper K. E. Kerkhoff.

Q. Mr. Kerkhoff, was there any other car in the Graves Motor Company lot at that time in a similar condition as to damage?

A. No, sir.

Q. Was there any other car in the lot, to your page 12 } knowledge, at that time, of similar make, model and color?

A. No, sir.

Mr. Woodward: Your witness, Mr. Wright.

CROSS EXAMINATION.

By Mr. Wright:

Q. Mr. Kerkhoff, how soon after this accident did you arrive at the scene, or at least, how soon from the time you had learned of it did you arrive there?

A. In approximately five minutes.

Q. After you learned of it?

A. Yes, sir.

Q. And you don't know, I suppose, just how long it had been from the time of happening until you got there?

A. As near as I could learn, the accident happened at 1:30.

Q. And you got there at what time? What time did you reach there?

A. I arrived at 1:45.

Q. Where was Dr. Rothfuss when you arrived?

A. He was in another car right near the scene.

Q. Were other people there when you arrived?

A. Yes, sir.

Q. Did you cause the car to be moved from the scene of the accident?

A. Yes, sir.

page 13 } Q. And who did that?

A. Frank Mauck, driver of the Graves wrecker.

Q. Where did he take it?

A. To the storage lot at Graves Motor Company here in Luray.

Q. How long did it remain there, do you know?

A. Until, I'd say, approximately three weeks, to the best of my knowledge.

Q. Approximately three weeks?

A. Yes, sir.

Q. Then it stayed there for some time after the trial of

Trooper K. E. Kerkhoff.

the reckless driving summons on February 23rd, is that correct?

A. Yes, sir.

Q. Now, when did you first examine this car with reference to its steering?

A. It was the day after—within several days right after the accident.

Q. And where was that examined?

A. That was at Graves Motor Company.

Q. Who was present then?

A. Frank Mauck.

Q. And you don't know how it was conveyed, I guess, from the scene of the accident to the Graves Motor Company?

A. By wrecker. The wrecker pulled the car up by the front end so it was clear off the ground and towed it on page 14 } the rear wheels to the garage.

Q. And it remained there, you say, until after February 23rd, is that correct, or the trial of reckless driving summons?

A. Yes, sir.

Q. And you did not see it, as I understand you, or examine it until after that trial, again, or the second time?

A. The second time right after the trial.

Q. Was Dr. Rothfuss injured in this accident?

A. Yes, sir.

Q. Do you know whether he was able to bend or stoop?

A. He was able to sit down. I never saw him stoop over.

Q. Do you recall his saying at the trial of the reckless driving summons that the car had been examined by a mechanic—that is, Dr. Rothfuss saying?

A. No, sir.

Q. You don't recall that?

A. No, sir.

Q. Do you recall his stating what that mechanic told him?

A. No, sir.

Q. I suppose there were a number of people present at that hearing, were there not?

A. Yes, sir.

Q. Do you know what did cause this accident?

A. No, sir, I don't.

Q. I take it that such an accident could have page 15 } been caused by a number of things, could it not?

A. Yes, sir.

Q. And he was acquitted of the charge of reckless driving, was he?

Trooper K. E. Kerkhoff.

A. Yes, sir.

Q. Have you had any trouble with Dr. Charles Rothfuss?

A. What kind of trouble do you mean?

Q. Well, is there any enmity or animosity between you?

A. Not on my part.

Q. You have known him for how long?

A. Approximately 18 months.

Q. You have been a trooper here for a somewhat longer time than that, haven't you?

A. Yes, sir, approximately 18 months.

Q. Was he living here when you came here?

A. Yes, sir.

Q. Had you known him during the time that you have lived here?

A. Yes, sir.

Q. Have you taken occasion to keep him under pretty close surveillance as far as his driving is concerned?

A. His came to my attention a number of times, the manner in which he drove.

Q. Well, then, you have been keeping a pretty good eye on him, is that right?

page 16 } A. I didn't put any special—I didn't go out of my way, look around and wait for him, try to find him.

Q. Now, you say it has come to your attention. Is that things that were told to you, or things that you saw yourself?

A. Things I saw myself.

Q. Do you know where the shock absorber on the left front side—that is, the left front side if you are sitting in the driver's seat looking toward the front of the car—do you know where that is located with reference to the A-frame?

A. It's right—I'd have to guess. I couldn't state exactly, the exact position. It's right in the general vicinity of the A-frame.

Q. As a matter of fact, isn't it attached at one end to the A-frame?

A. I believe it is.

Q. And did you examine that shock absorber when you examined this car two or three days after the accident and again on the trial date, after the trial?

A. Yes, sir.

Q. What was there, if anything, about the shock absorber?

A. The shock absorber was loose is the only thing I could tell about it.

Trooper K. E. Kerkhoff.

Q. When you say "loose," will you please explain to the jury what you mean by that?

A. I mean, I could take it and shake it.

page 17 } Q. As a matter of fact, was it attached at the end that is supposed to be attached to the A-frame?

A. You say, was it attached?

Q. Was it detached at the point where it fits into the A-frame and is supposed to be attached to the A-frame?

A. No, sir, it was loose. I didn't see it hanging down. It was in about the same position as it should have been in, about the same position as the other shock absorber.

Q. They are located above the A-frames, are they not—that is, the car sitting on its wheels as it normally is?

A. Yes, sir.

Q. And you didn't examine, I presume, with care to see whether it was broken loose from the A-frame there?

A. I only shook it.

Q. Do you know what the effect of that shock absorber breaking loose from the A-frame, what effect that would have on the car being driven at the time it came loose?

A. Yes, sir.

Q. What effect would it have?

A. It would cause the car to—it wouldn't give it the balance that it should have, would cause it to sag.

Q. Now, would that be likely to put the car out of control?

A. Couldn't hardly say. I have *know* some occasions where it has, and I have known of another occasion where
page 18 } it hasn't.

Q. And, of course, you do not know what the case was here in this particular case?

A. No, sir.

Q. Did you observe this A-frame on the left side? That's the same one we are talking about, looking toward the front of the car. You stated, I believe, it was bent, is that correct?

A. The A-frame on the driver's left, yes, sir, I stated it was bent and loose.

Q. And was it not, as a matter of fact, shifted toward the rear of the car to the extent of maybe two or three inches?

A. I couldn't tell how far it was shifted. I could tell it was bent—bent back. The rods were bent and some of the parts were loose on it.

Q. Then, regardless of how far it was shifted, it was bent or shifted to the rear to some extent, is that correct?

A. Yes, sir.

Q. Did you see any cracks in any part of this A-frame?

Trooper K. E. Kerkhoff.

A. No, sir.

Q. Did you look at it in daylight, or night?

A. I looked at it in daylight.

Q. In what position was the car?

A. I looked at it both while all four wheels were on the ground and I also looked at it while the front two wheels—
while the wrecker had the car by the bumper, had it
page 19 } up in the air and in such position as I was able to
get under it and look up at it.

Q. And in addition to the A-frame being bent to some extent, at least, toward the rear of the car and being loose, why, the steering controls were loose, too, is that correct?

A. They were somewhat loose. They wasn't loose enough to affect the steering ability. Could shake the rods and the bars, but you could still turn the steering wheel and the tires and the steering mechanism would respond.

Q. But they were bent some, is that correct?

A. Yes, sir.

Q. And the shock absorber was loose, although you are not able to say whether or not it was detached from the A-frame, is that correct?

A. That's correct, yes, sir.

Mr. Wright: I believe that's all.

RE-DIRECT EXAMINATION.

By Mr. Woodward:

Q. Mr. Kerkhoff, at the time of the reckless driving hearing, did Dr. Rothfuss make any mention of the shock absorber in his testimony, to your recollection?

A. No, sir, he did not.

Mr. Woodward: I think that's all.

The Court: Let me ask you this, Trooper Kerkhoff. My
lack of knowledge of automobile mechanics compels
page 20 } me to inquire as to what is the function or purpose
of an A-frame.

Mr. Woodward: May it please the court, the Commonwealth intended to introduce one more mechanic who might be in a better position to answer the court's question.

Shall I proceed?

The Court: All right.

* * * * *

Whereupon,

FRANK MAUCK

was called as a witness on behalf of the Commonwealth, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Woodward:

* * * * *

Q. What is your occupation?

A. Mechanic, Graves Motor Company.

Q. How long have you been employed with Graves, Mr. Mauck?

A. About ten years.

Q. Mr. Mauck, were you familiar with the type and make of car which Dr. Charles A. Rothfuss drove in the first part of February of this year?

page 21 } A. Yes, sir, I saw him—I saw the car, yes, sir.

Q. Did you have occasion to examine that car around the first part of February of this year?

A. Yes, sir.

Q. And where did you examine it?

A. Down in our storage lot there at the garage.

Q. Was there anyone with you at the time you made that examination?

A. Yes, sir, I had Kenny Kerkhoff and Charlie Price.

Q. Now, Mr. Mauck, at the time you made this examination did you make an examination with respect to the steering of this automobile?

A. I was asked to check the steering, yes, sir.

Q. And will you please tell the court and the jury the result of that check?

A. Well, the first we checked it on the ground, off the wheels. The steering wheel moved around all right, both ways, right and to the left.

Q. When you say that, do you mean that the wheels of the car responded to the steering wheel? Is that what you stated?

A. Yes, sir, take the steering wheel, cut it, go to the right, and you could cut it back. You couldn't feel no faulty steering that way.

Q. All right, sir anything else at that time?

Frank Mauck.

A. Then we raised it up with the wrecker off the page 22 { ground with the bumper and checked that, got down under it, looked up under and felt around to see if there was anything broken or loose because of the accident.

Q. What was the result of that investigation, Mr. Mauck?

A. We couldn't find anything broken under it. We found some stuff bent, which naturally had an impact.

Q. Mr. Mauck, at that time did you make a particular examination of the left A-frame?

A. Left A-frame is the one that was checked.

Q. What was?

A. The one we was checking mostly.

Q. Were you present, Mr. Mauck, on the 23rd of February in the Trial Justice Court when Dr. Rothfuss here was charged on this reckless driving?

A. I was there, yes, sir.

Q. Were you in the courtroom the whole time, Mr. Mauck?

A. No, sir.

Q. When you were not in the courtroom, were you within hearing of the testimony being given?

A. I was in the office right by the—I think it's Judge Booton's office, if I ain't mistaken.

Q. Does that adjoin the courtroom, Mr. Mauck?

A. Yes, sir.

Q. When you were in there were you able to hear the testimony being given from the witness stand?

A. I didn't hear him sworn in. I could hear the page 23 { best part of it. Sometimes I was out in the hall.

Q. You didn't hear the doctor sworn, but you heard parts of his testimony, is that correct?

A. That's right.

Q. Will you please tell the court and the jury, Mr. Mauck, what you heard of the doctor's testimony with reference to what caused his car to leave the road and wreck?

A. I heard him say the A-frame was broken, see.

Q. Did you hear him make any testimony concerning the steering of the car?

A. Well, not as I recall, just the A-frame was broken, which threw him out of the road.

Q. Did you hear him make any statement as to what the effect of the A-frame breaking—what happened when the A-frame broke?

A. It threw him out of the road, right across the road.

Q. It threw him out of the road?

Frank Mauck.

A. Yes, sir.

Q. Across the road? Did you examine this car the same day this trial was heard, Mr. Mauck?

A. Yes, sir.

Q. And at that time what was done to the car to enable you to make an examination.

A. Just like I just said, we jacked—pulled it up page 24 } with the wrecker, put the wrecker down there, put cables under the bumper, raised it up, crawled under it, looked all around and checked everything possible in the way of steering.

Q. And the result of that was what, in your opinion, sir?

A. I couldn't find no fault in the steering?

Q. Could find no fault in the steering?

A. That's right.

Q. And what was the condition of the left A-frame at that time, Mr. Mauck?

A. That was knocked back and bent like it had a hard impact, which naturally it did.

Q. Was it broken?

A. No, sir.

Q. What was the condition of the right A-frame, Mr. Mauck?

A. I noticed that had been heated and straightened and bent back out like this had been done sometime before.

Mr. Woodward: Your witness.

CROSS EXAMINATION.

By Mr. Wright:

Q. You say you examined this car on two different occasions, is that correct?

A. Yes, sir.

Q. Now, you say the A-frame was, on the left-side looking toward the front of the car, bent back?

A. Bent back—pushed back, yes, sir.

page 25 } Q. Toward the rear of the car?

A. Yes, out of line.

Q. How far out of line was it, could you say?

A. I couldn't say that until you put it on the front-end machine. My judgment is not very good on it. When you line up the front end, maybe, I'd say, half an inch, it might be out that much, it might be an inch.

Q. Were the steering rods that attach to the left front wheel—were they bent?

Frank Mauck.

A. The tie rods and drag links, they wasn't. They control the wheels from the steering—

Q. You say they were, or were not?

A. Not.

Q. Did you examine the shock absorber on that side?

A. I didn't pay much attention to the shock. I noticed the bottom part where it was hooked on was loose, because naturally a shock don't—it has some control over an automobile, but it wouldn't throw you out of the road if it was clear off, if it's an airplane type shock, see. Now, if you have your fluid type that work from the upper control arm, if that would break, it would throw you out of the road, but you can be out of fluid, and it will throw you out of the road.

Q. Now, this shock was attached to, or supposed to be attached to the A-frame?

A. That's right.

page 26 } Q. Did you notice anything about the points
where it is attached to the A-frame?

A. It's supposed to be in between the coil spring, the center of it.

Q. On this particular car, that is, Dr. Rothfuss's car, did you see what that condition of that attachment, or that place where it attaches to the A-frame was?

A. No, I just said I didn't pay much attention to the shock. We was checking the A-frame and the steering.

Q. Now, I am correct, am I not, when I state that the shock absorber on this particular car is attached at its bottom to the A-frame?

A. Um-hum.

Q. And at its top to the frame of the car, is that correct?

A. Up in your cross-member, yes, sir.

Q. Cross-member of the frame of the car?

A. (Nodding affirmatively.)

Q. And how long is a shock absorber, about eight inches, or something like that?

A. You can guess one is about that long to that long (indicating). I never taken it out to check it. But some of them run from, oh, that long to that long (indicating from approximately 10 inches to 18 inches) airplane type.

Q. Did you pay any attention to what type of ab-
page 27 } sorber this one was?

A. Shock absorber? No, sir.

Q. Did you see any cracks in the A-frame?

A. No, sir, there were no cracks.

Q. Did you examine it by daylight?

Frank Mauck.

A. Yes, sir.

Q. Now, the shock absorber constitutes a part of the A-frame, doesn't it?

A. Not necessary. You can take it off if you want to, if it's an airplane type, see. It gives, oh—a shock just takes the shock off of your front end, just keeps you from bouncing too much.

Q. There is a large coil spring that sets on top of it, isn't there?

A. That's right, in between the cross-member and the A-frame.

Q. Where is the shock absorber in reference to that?

A. On his car?

Q. Yes, on the car.

A. If I am not mistaken, runs right up in the center of that coil spring. I wouldn't say for sure. We wasn't checking for shock absorbers, we was checking for steering and A-frame.

Q. Now, if we assume that that shock absorber on that particular car came loose at its bottom end, what would page 28 } be the effect if you were rounding the turn?

A. Your car would sway down some. If you weren't driving at a high rate of speed you could stay under control.

Mr. Woodward: I didn't hear that.

The Witness: If you are not driving too high a speed around a turn, if that shock was loose, it would sway down, the front end of it would go down, naturally, but it shouldn't throw you out of the road.

By Mr. Wright:

Q. Would it have a tendency to lower the left side of the car, or make it bounce, or what would it do?

A. Left, make it bounce?

Q. Make it bounce.

A. Yes, sir.

Mr. Wright: I think that's all.

* * * * *

Whereupon,

H. S. FARRAR

was called as a witness on behalf of the Commonwealth, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Woodward:

page 29 } Q. Your name is H. S. Farrar?

A. Yes, sir.

Q. You are the Chief of Police of the Town of Luray, Mr. Farrar?

A. Yes, sir.

Q. Mr. Farrar, directing your attention to the 23rd of February of this year, were you present in the Trial Justice courtroom at the trial of the Commonwealth against Rothfuss on the reckless driving charge?

A. Yes, sir.

Q. Were you present when the defendant Rothfuss testified?

A. Yes, sir, I was.

Q. Will you please tell the court and jury, Mr. Farrar, the defendant's testimony with respect to the reason for his motor vehicle leaving the road and wrecking?

A. The only cause he said he saw caused the wreck, the A-frame broke and let down on him.

Q. Did he give any reason, Mr. Farrar, as to why he stated that the A-frame had broken?

A. He said what caused it to break so easy, in the past he had had it bent before, and it should have been cold treated; instead of that, the mechanic didn't understand it and give it a heat treatment, caused it to break.

Q. Did he state, Mr. Farrar, as to what the effect of this A-frame breaking would be on the driving of the car?

page 30 } A. He said it let the front end down on the side that it threw him into the bank, jerked him out of the road.

Q. Did he testify as to which A-frame he was talking about?

A. On the left front of the car.

Mr. Woodward: Your witness, Mr. Wright.

H. S. Farrar.

CROSS EXAMINATION.

By Mr. Wright:

Q. Mr. Farrar, were you just in the courtroom that day for some other purpose? Is that the idea?

A. Yes, sir.

Q. Are you related to Mr. Kerkhoff, the state trooper?

A. Am I related to him?

Q. Yes.

A. No, sir.

Q. Did he live with you, or you live with him?

A. He has a room with me.

Q. Rooms with you?

A. Yes, sir.

Q. Do you recall Dr. Rothfuss testifying that a mechanic that examined this A-frame, that is, prior to the statement that you heard him make?

A. I do not.

Q. You don't recall that?

A. No, sir.

page 31 } Q. Were you there during the entire hearing?

A. Yes, sir.

Q. Were you interested in it?

A. No, sir.

Q. Were you paying particular attention to what was said?

A. Most of it. I was sitting there in the courtroom quiet. Nobody was talking except the witness.

Q. Were there a number of other witnesses present that day?

A. I don't recall how many people was in the courtroom. I'd say probably six or eight, including the officers there on trial, other court sessions.

Q. There was to be another case there, was there not, that same day?

A. Yes, sir.

Q. Were there people there in connection with that case?

A. I had a couple of cases there myself.

Q. Was there any reason why you should pay particular attention to what was said—the 23rd of February, of course, I mean?

A. Any reason for it?

Q. Yes.

A. Not as I know of, no, sir.

Q. You had not been to the scene of the accident, or anything of that sort?

A. Lee Huffman.

page 32 } A. No, sir.

Q. Did you say that he said it had been heat-treated when it should have been cold-treated, is that what he said?

A. That is correct.

Q. What was he talking about?

A. The A-frame had been bent in the past, and he had taken it to the shop to have it fixed, and the man heat-treated it instead of straightening it cold.

Q. Now, didn't he say that he had been told it was broken?

A. I didn't hear him say so.

* * * *

Whereupon,

A. LEE HUFFMAN

was called as a witness on behalf of the Commonwealth, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Woodward:

* * * *

Q. You are one of the deputy sheriffs of Page County?

A. Yes, sir.

page 33 } Q. Mr. Huffman, were you present in the Trial
Justice courtroom on the 23rd of February of this
year in the case of Commonwealth *against* Roth-
fuss on the charge of reckless driving?

A. Yes, sir, I was.

Q. Were you present when the accused, Rothfuss, testified in his own behalf?

A. Yes, sir.

Q. Will you please relate to the court and the jury, Mr. Huffman, the testimony of Rothfuss with respect to the reason for his vehicle leaving the road and wrecking?

A. He stated that the A-frame broke to the left and let his car down on that side and that caused his car to lead to the left-hand side of the road.

Q. Do you recollect, Mr. Huffman, if he gave any testimony as to the reason for this A-frame breaking?

A. No, sir, I don't recall myself.

A. Lee Huffman.

Q. Do you recollect any testimony, Mr. Huffman, as to the steering mechanism of the car?

A. No, sir.

Mr. Woodward: Your witness, Mr. Wright.

CROSS EXAMINATION.

By Mr. Wright:

Q. Mr. Huffman, were you in the courtroom at the time Dr. Rothfuss testified?

A. I was sitting—I wasn't in the courtroom, I was sitting in the Clerk's Office right off from the courtroom, page 34 } which the chair I was sitting on, I could look straight through the door and see Dr. Rothfuss sitting on the witness chair, yes, sir.

Q. Were you interested in the case?

A. Not any further from him than I am right now. Sir?

Q. Were you interested in the case?

A. No, sir, I had no interest in the case. I just happened to be—I had taken some papers over to the court, and I just happened to be in there at the time.

Q. Now, as I understood you, all you remember is that he said that the A-frame on the left side broke and caused the car to lead to the left?

A. Yes, sir—I recall him making the statement that when the frame broke that lowered that side of the car, and it pulled to the left.

Q. Did he say when the A-frame broke?

A. Well, I don't recall if he did. I assume it must have broken, that's what caused the car to leave the road. It must have broken at that time.

Q. Well, we are interested here in not what you assume, but in what you heard. That is right important as to what he did actually say, maybe not so much as to what you heard.

A. Well, I heard what I am telling you.

Q. Do you recall his saying that a mechanic had page 35 } examined that A-frame.

A. No, sir, I don't think I heard all of his testimony.

Q. Well, then, he may have said that so far as you know, and you didn't hear it, is that right?

A. I don't recall him saying it, no, sir.

Aldine Painter.

Q. Were you at the scene of the accident on the 4th of February, or not?

A. Yes, sir, I was. I happened to be at the Police Department when the call came in, I believe, and I followed Trooper Kerkhoff down. I arrived later.

Q. Where was Dr. Rothfuss when you arrived there that morning?

A. I believe at the time I got there he was in Trooper Kerkhoff's car, if I remember correctly.

Q. Did you talk to him?

A. No, sir.

* * * * *

Whereupon,

ALDINE PAINTER

was called as a witness on behalf of the Commonwealth, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

page 36 { By Mr. Woodward:

* * * * *

Q. You are deputy sheriff of Page County?

A. Yes, sir.

Q. Mr. Painter, were you present in the Trial Justice courtroom on the 23rd of February of this year at the trial of Commonwealth *against* Rothfuss on the reckless driving charge?

A. I was.

Q. Were you present, Mr. Painter, when the accused, Rothfuss, testified in that trial?

A. Yes, sir, I was.

Q. Will you please tell the court and the jury, Mr. Painter, the testimony of Rothfuss in that trial as to the reason for his vehicle leaving the highway and wrecking?

A. Dr. Rothfuss stated that the A-frame on the left broke and the front end dropped down on that side and pulled him to the left-hand side of the road.

Q. Do you recollect any testimony, Mr. Painter, in connection with the steering mechanism of the car?

A. No, sir, I don't believe I do.

Q. You do not recall any as to that?

Aldine Painter.

A. No, sir, I don't recall that.

Q. Do you recollect, Mr. Painter, whether Dr. Rothfuss gave any reason for this particular A-frame having broken?

A. Mr. Woodward, he made some statement page 37 } about some heat treatment, but I just don't recall what it was about.

Q. You recollect that he made some statement along that line?

A. Yes, I do. It was something along the line of a heat treatment, but I don't recall exactly what he said.

Q. You do not know the details?

A. No, sir, I don't.

Mr. Woodward: Your witness, Mr. Wright.

CROSS EXAMINATION.

By Mr. Wright:

Q. Did he say anything about when the A-frame was broken?

A. No, sir, I don't believe he did.

Q. Do you recall his saying a mechanic had examined the car?

A. He might have, but I just don't recall. I mean, he could have said it. I didn't pay attention to all of the trial. Of course, I was working the court, but I didn't pay attention to everything he said.

Q. Do you recall whether he said that this mechanic had advised him that the A-frame was broken?

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

Q. You were there with no part in this hearing, or no interest in it, you were just there for other purposes, is that the idea?

page 38 } A. Yes, sir, I was working in the court there that day.

* * * * *

Whereupon,

CHARLES L. PRICE

was called as a witness on behalf of the Commonwealth, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Woodward:

* * * * *

Q. Where are you employed, Mr. Price?

A. Graves Motor Company.

Q. And how long have you been employed at the Graves Motor Company?

A. Eight or nine years, I don't know exactly which one.

Q. Do you specialize in any particular type of work there, Mr. Price?

A. Yes, sir, in front ends.

page 39 } Q. In connection with your front-end work, do you have any machines to aid you in that?

A. Yes, sir.

Q. And what type of machine do you have?

A. Front end alignment machine.

Q. Is it your job to operate the alignment machine, Mr. Price?

A. Yes, sir.

Q. In connection with that, Mr. Price, were you given any training in the use of an aligning machine?

A. Yes, sir.

Q. And what training was that?

A. It was a factory representative came here and given me instructions.

Q. Was that on the type of machine which you use? Is that correct?

A. Yes.

Q. Mr. Price, I ask you if you had occasion to examine the front end of a wrecked automobile on the 25th of February of this year?

A. Yes, sir, I was asked to—

Q. And what type of automobile was that, Mr. Price?

A. It was a Hudson.

Q. And where was that automobile?

A. Down in our back lot.

page 40 } Q. And do you know whose machine that was, Mr. Price?

Charles L. Price.

A. Yes, sir.

Q. Whose was it?

A. Dr. Rothfuss'.

Q. Now, Mr. Price, when you examined that machine, were you asked to make an examination with particular reference to the steering mechanism?

A. Yes, sir.

Q. Did you make such an examination?

A. Yes, sir.

Q. And were you also asked to make an examination with particular reference to the A-frames of that car?

A. Yes, sir.

Q. And did you make such an examination?

A. I did.

Q. At that time and place, Mr. Price, did you draw a diagram of the A-frames of that car?

A. Yes, sir.

Mr. Wright: This is a very rough diagram, but I guess we don't object to it.

Mr. Woodward: They are rough, admittedly.

By Mr. Woodward:

Q. I show you this paper and ask you if you recognize it, Mr. Price.

A. Yes, sir.

page 41 } Q. Are these diagrams that you drew of that car?

A. Yes, sir.

Q. Will you please take them and tell the court and the jury, Mr. Price, the condition of the steering mechanism at the time you examined this car on the 25th of February?

A. What was that again, sir?

Q. Will you please tell the court and jury the mechanical condition of the steering mechanism of this car at that time you examined it?

A. Well, the steering mechanism of the car on the left side, I found that the side had evidently struck rock or something, and that was the side that was bent but not broken, and on the right side was the side where the heat treatment had been and also a weld.

Q. Are you speaking of the A-frames now?

A. Yes, sir, on A-frame, that's right.

Q. And you stated that the A-frames were bent, is that correct?

Charles L. Price.

A. Yes, sir.

Q. And how badly bent were they, Mr. Price?

A. Well, they was right badly bent. Were they out of line?

A. Oh, yes.

Q. Were there any breaks or cracks that you could determine?

page 42 } A. Not on the A-frame, no, sir.

Q. Now, Mr. Price, did you examine the steering wheel and the steering mechanism of this car at that time?

A. Yes, sir.

Q. Will you please tell the court and the jury what the results of your examination as to the steering wheel and mechanism was?

A. That was in good shape. I mean, nothing wrong on the turning of the steering wheel at all.

Q. The wheels responded to the steering wheel, is that correct?

A. Yes, sir.

Q. Mr. Price, you stated that the A-frame had been bent. Was there anything to indicate what had caused that bending?

A. It evidently had hit something.

Q. Did it appear to be of recent happening, or of an old happening?

A. Well, you couldn't hardly tell, but it appeared like it wasn't too old of scratches on it, anyway.

Q. As I understand you, the left A-frame was bent but showed no breaks. The right A-frame had been broken and welded, is that correct?

A. That's right.

Q. And the steering mechanism at that time was in working order?

page 43 } A. Yes, sir.

Mr. Woodward: Your witness, Mr. Wright.

CROSS EXAMINATION.

By Mr. Wright:

Q. Mr. Price, had there been any welding of the left A-frame that you could see?

A. No, sir, not as I could see.

Q. Are you sure that there wasn't?

A. Yes, sir.

Q. How about the end up close to the car—I mean, close to the frame and body of the car; in other words, the opposite

Charles L. Price.

end from where the wheel attaches to the A-frame, had that been welded?

A. No, sir.

Q. Could you observe the shock absorber, particularly on the left side?

A. Yes, sir.

Q. And that sets above and is attached to the left A-frame, is it not, the shock absorber on that side?

A. No, sir. No, sir.

Q. Where is it located?

A. It's hooked to the top of your cross member.

Q. That's the upper end of it, is that correct?

A. Yes, sir. Well, your shock goes up through. It goes between the two A-frames that come out.

page 44 } Q. Well, at its upper end the shock absorber attaches to the cross member, what is known as the cross member of the frame of the car, is that right?

A. (Nodding affirmatively.)

Q. And the lower end of it, does that not rest on a piece that goes from one arm of the A-frame to the other arm of the A-frame?

A. Are you talking about the shocker bolt?

Q. Where does it rest, the bottom end?

A. Yes. Yes, sir, fastened between the two arms of the A-frame. That makes the A-frame.

Q. That's what makes the A-frame?

A. Yes.

Q. So the shock absorber is attached to and a part of the A-frame, is that correct?

A. It's attached to it, yes, sir, but it isn't a part of it.

Q. Well, then, does the large coil spring surround the shock absorber on that car?

A. Yes.

Q. And that rests on the A-frame also, does it not, in the lower end?

A. Yes, sir.

Q. And against the frame of the car on its upper end?

A. Yes, sir.

page 45 } Q. So the shock absorber runs up through the coil spring?

A. Yes, sir.

Q. Now, did you notice the condition of the connection between the shock absorber, the lower end of it, and the A-frame or the cross piece in the A-frame, so to speak?

A. What was that?

Charles L. Price.

Q. Did you notice the condition of the connection between the lower end of the shock absorber and the A-frame?

A. Yes, sir.

Q. What was that condition?

A. Well, it was broke loose.

Q. Broken loose?

A. (Nodding affirmatively.)

Q. Is that attached by bolt and nut? Is that the way it is connected?

A. Yes.

Q. Did you notice the threads on that bolt?

A. Yes, sir.

Q. Were they stripped?

A. No, sir.

Q. They were not?

A. (Shaking head negatively.)

Q. And yet it was detached, it was broken loose from the A-frame?

A. Yes, sir.

page 46 } Q. Now, you just examined this car on one occasion, I believe?

A. That's right.

Q. And you say the A-frame on the left side was bent?

A. Yes, sir.

Q. In which direction was it bent?

A. Drove back towards the rear, towards the steering wheel.

Q. Towards the rear of the car, is that right?

A. (Nodding affirmatively.)

Q. How about the A-frame on the right, was that also bent back?

A. No, sir.

Q. Just the left?

A. (Nodding affirmatively.)

Q. Doesn't that throw the wheel out of line, that is, out of its normal position, the left front wheel?

A. Oh, yes, sir.

Q. And would it not have also bent the steering rod and the linkage for that wheel?

A. Well, it could have, but it wouldn't be too awful much.

Q. Were those connections loose, or tight, when you examined them?

A. They were tight.

page 47 } Q. But the shock absorber was broken loose from the A-frame?

Charles L. Price.

A. Yes, sir.

Q. Now, suppose a car were being driven around a curve at a reasonable rate of speed and your shock absorber in that particular car became detached from the A-frame—I mean, broken loose, so to speak, from the A-frame at the point that you found that it did in that case, what would be the effect on the car?

A. Well, at a high rate of speed it would let that side lower, let it go down a little.

Q. And would the left side go down?

A. Yes.

Q. What would that have a tendency to do in the operation of a car? What would the car probably do?

A. It would have a tendency to go more to the right.

Q. More to the right, or the left?

A. It would have a tendency to go to the right.

Q. Now, of course, you can't say when this A-frame was bent, can you?

A. No, sir.

Q. How far out of line would you say it was, approximately?

A. It would be hard to say, I mean, as far as that goes, but it was a good bit out of alignment.

page 48 } Q. Very obviously? I mean, apparently so?

A. Yes.

Q. The car was very badly wrecked, was it not?

A. Indeed it was, yes, sir.

Mr. Wright: I believe that's all. Thank you.

RE-DIRECT EXAMINATION.

By Mr. Woodward:

Q. You have no way of knowing, either, Mr. Price, whether the bending of the A-frame and the loosening of the shock absorber—you have no way of knowing what that would do, either?

A. No, sir.

* * * * *

Whereupon,

TROOPER K. E. KERKHOFF

was recalled as a witness on behalf of the Commonwealth, and being previously duly sworn, was examined and testified further as follows:

RE-DIRECT EXAMINATION (Continued).

By Mr. Woodward:

Q. Mr. Kerkhoff, in the testimony of Dr. Rothfuss in this former trial in the Trial Justice Court, did he make any statement as to what had caused the left A-frame to break?

page 49 } Mr. Wright: If Your Honor please, if I recall correctly, this witness has already testified in chief at some length on that. I think the ground has been covered.

Mr. Woodward: May it please the court, the Commonwealth can recall a Commonwealth's witness for testimony even after closing his case. The Commonwealth has not closed the case. I know of no rule of law which prevents the Commonwealth from recalling a witness after he has once testified.

The Court: If objection is made on the ground that the testimony sought has already been once given, isn't that—

Mr. Woodward: By this witness?

Mr. Wright: That is my objection.

Mr. Woodward: Then that's my misunderstanding. I frankly thought I had overlooked it, Mr. Wright.

The Court: I don't recall it myself, but I see no harm in permitting the question to be asked to be sure. I am not positive whether the question was asked or not, so the objection will be overruled.

Mr. Wright: I except.

By Mr. Woodward:

Q. Did the defendant Rothfuss at that time make any statement as to the reason for this A-frame breaking, Mr. Kerkhoff?

A. Yes, sir, he testified to the effect that the A-frame had been heat-treated instead of cold—given the cold
page 50 } treatment, and consequently, the heat treatment wouldn't hold as well as the cold treatment, and that was the reason for the A-frame to break and cause it to drop down and for him to run off the left side of the road.

Q. One other question, Mr. Kerkhoff. In the former testi-

Trooper K. E. Kerkhoff.

mony do you recall Dr. Rothfuss testifying as to a shock absorber in any way?

A. No, sir, I do not.

* * * * *

Mr. Wright: If Your Honor please, the defense would like to make a motion. I presume you will wish to hear it in chambers.

The Court: All right, sir.

(Whereupon, a recess was taken and the court and counsel retired to chambers where the following proceedings were had:)

Mr. Wright: If Your Honor please, we, of course, would like to move that the evidence at this stage be stricken and that the indictment be dismissed on the grounds, first, that the evidence, at best, goes to prove an expression of opinion, rather than a material fact in reference to this case; second, that the evidence is vague, for the most part, and certainly is contradictory in parts.

page 51 } The rule, I believe, is that in a perjury testimony it must be by direct, positive evidence of at least two witnesses, or one witness corroborated by other facts and circumstances and that it must be a material fact about which the person is alleged to have falsely sworn and not just an opinion proposition.

We submit that it is self-evident in this case that no one can say, Dr. Rothfuss or anybody else, whether they say it truthfully or untruthfully, what the exact cause of this accident was. Trooper Kerkhoff says he doesn't know. I don't think anybody can say. It seems to me that whatever the accused may have said at the former trial could not have been a statement of a fact that could flatly be testified to, one way or another but in its very nature would have had to have been merely an opinion. Even if we believe everything that the Commonwealth's witnesses have testified, by its very nature, it would have been merely an opinion as to what caused that accident.

Now, it is not said in the evidence that he said when the A-frame was broken. I noted that very carefully. The record is silent at this time. There is evidence that he said on the former trial that the A-frame was broken, and there is evidence that he said that it caused the car to lead to the left

Trooper K. E. Kerkhoff.

and then out of the road. Now, I don't see, frankly, how he or anybody else could say that that did or did not cause the accident, and I don't think that this evidence shows page 52 } positively that he did say that it did cause the accident and that the A-frame broke before the accident and caused it.

I may be entirely in error as to my understanding of a perjury charge, but I think it is pretty generally recognized that it must be a fact and not just a statement of opinion that the man expresses and that it must, of course, have material bearing on the issue. I take it that there could be some materiality here, but I think that the evidence itself shows that at the most it was merely an expression of opinion on the part of the witness, even if we believe that he did say what the Commonwealth's witnesses assert, somewhat contradictorily, that he did say.

It is a very serious charge to make against any man, particularly a man of his professional position or profession and in his position, and it seems to me that it is quite far-fetched to go out and accuse this man of perjury on the basis of this evidence.

There is no evidence that he is an expert on what causes accidents or anything of that sort. I can't believe that he would get up in court and, whether he intended to tell the truth or attempted not to tell the truth, to attempt to pinpoint what caused this accident, when it is so obvious that so many things might have caused it. I submit that the evidence is insufficient, and it should be, and we ask that it be struck.

Mr. Woodward: May it please the court, with page 53 } respect to the materiality, the basis, of course, of the reckless driving charge was that the defendant had been driving recklessly. He countered that charge and his defense was that he was not driving recklessly but that it was because of this mechanical failure which had caused his car to leave the road and wreck, which, of course, was the basis of the reckless driving charge. There were no eye witnesses.

With respect to the Commonwealth's evidence, Your Honor, the Commonwealth has shown that the accused at that trial stated that the A-frame broke, that it caused the left-hand side of the car to drop down and that was what caused his car to leave the road, climb the embankment, etc.

I am in complete agreement with Mr. Wright that no one actually knows what caused the car to do that way, but the Commonwealth contends that it has certainly proved suffi-

Clark Taylor.

ently to go to the jury that this accused stated at the former trial that what did cause the car to go that way was the breaking of that A-frame. Now, Mr. Wright has asked the witnesses whether they have any recollection of the testimony that the accused stated it as an opinion, or on information that a mechanic had told him, but two or three of the Commonwealth's witnesses have stated definitely that he testified that the A-frame broke. They testified that he even gave the cause as to the breaking of the A-frame, that it had been heat-treated instead of cold-treated, and that he testified that the A-frame breaking caused the left-hand side of the car to drop down and caused the car to leave the road.

The Commonwealth respectfully requests, Your Honor, that the motion to strike be overruled. I might add that the Commonwealth is not unaware of the seriousness of the charge, Mr. Wright, nor of the particular circumstances of this case.

(Counsel argued the motion further.)

The Court: I frankly don't see any sound merit in your motion, and the motion will be overruled.

Mr. Wright: I would like to take exception to that.

The Court: Note your exception to the court's ruling.

(Whereupon, the court and counsel returned to the courtroom, where the court dismissed the jury for lunch, to reconvene at 1:30 o'clock, p. m. of the same day.)

page 55 }

* * * * *

Whereupon,

CLARK TAYLOR

was called as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wright:

* * * * *

Clark Taylor.

A. Fire control aide for the Government.

Q. That's Federal Government, Park Service?

A. Yes.

Q. Did you have occasion to be in the Trial Justice Court of Page County on the 23rd day of February, 1955?

A. Yes, sir.

Q. And did you, on that occasion, see Dr. Charles A. Rothfuss there?

A. Yes, sir.

Q. Were you there in any way in connection with page 56 } a case that related to him, or some other case?

A. No, sir, not with his case. I had a case of my own there that day.

Q. You had a case of your own? You were just waiting there, were you?

A. For my case to come up.

Q. Did you hear him testify under oath that day in the Trial Justice Court?

A. Yes, sir.

Q. And did you hear him testify in reference to an accident which had occurred on the 4th day of February, 1955?

A. Yes, sir.

Q. What did Dr. Rothfuss say about that accident or what caused it?

A. Well, he said he talked to the mechanic, and the mechanic told him that the A-frame was broken and that could have caused it, before the accident or just during the accident.

Q. Do you recall anything else that he said?

A. Well, not exactly, only—

Q. But you do remember what you have stated, is that correct?

A. That's right.

Q. Was that said by him while he was on the stand?

A. Yes, sir.

Q. Do you remember who had asked him the page 57 } question that caused him to answer that, or in which he answered that?

A. No, I don't recall.

Q. Did you stay around there till his case was over?

A. Yes, sir.

Mr. Wright: I believe that's all I want to ask.

Clark Taylor.

CROSS EXAMINATION.

By Mr. Woodward:

Q. Mr. Taylor, as I understand it, you testified that he said he had talked to a mechanic?

A. That's correct.

Q. And that the mechanic said it could have happened before or during the accident?

A. Correct.

Q. I mean, in other words, as I gather it, that the accident could have caused the breaking of the A-frame?

A. Well, I don't know about that. He said it could have happened before or it could have happened during the accident.

Q. Or during the accident?

A. Yes.

Q. But your recollection was that he said that the A-frame was broken, is that right?

A. He said the A-frame was broke.

Q. The testimony was that the A-frame was broken, is that it?

A. The mechanic said it was.

page 58 } Q. That the mechanic said the A-frame was broken?

A. That's right.

Q. Mr. Taylor, as I understand it, you were there in connection with another case. That's correct, is it not?

A. Yes, sir.

Q. And in that case it involved a criminal matter in which your daughter was a prosecuting witness, is that correct?

A. I didn't quite understand you.

Q. It was a case which involved your daughter, is that correct?

A. Yeah, that's correct.

Q. And your daughter had been injured?

A. Yes, sir.

Q. And there was a criminal prosecution against the person who had injured your daughter?

A. That's right.

Q. And is it not true, Mr. Taylor, that Dr. Rothfuss was called on behalf of the Commonwealth in connection with this injury to your daughter?

A. Correct.

Q. Is Dr. Rothfuss your family physician, Mr. Taylor?

A. At present, yes, sir.

Clark Taylor.

Q. Mr. Taylor, do you recollect that during the course of Dr. Rothfuss' testimony that when I was cross-examining him

I asked him what would happen if the A-frame page 59 } broke? Do you recollect that, sir?

A. It seems to me like I heard you mention that, but I just don't know his reply.

Q. Maybe this will refresh your recollection. Mr. Taylor, do you remember I said to Dr. Rothfuss that, "I am unfamiliar with the mechanics of an automobile, I'd be likely to put the carburetor in the differential, please tell me what would happen if the A-frame broke." Do you recollect that?

A. Yeah, I think so.

Q. And do you recollect what his answer was to that?

A. It seems to me like that he said, the way that I gathered, he said it would cause it to drop down.

Q. That it would cause the left front of the car to drop?

A. Yes.

Q. Do you recollect that he also testified at that time and place that that was what caused his car to leave the road?

A. No, I don't remember.

Q. You don't remember that?

A. No.

Q. The former trial was held on the 23rd of February of this year, is that right, Mr. Taylor? Do you remember the date?

A. No, I don't remember the date. It was on the same date we had that trial, the trial of mine.

Q. I will state it was held on the 23rd of February.

A. Twenty-third, I guess.

page 60 } Q. I wasn't trying to trap you. And when were you first asked as to your recollection of Dr. Rothfuss's testimony at that time, Mr. Taylor, after that had happened?

A. I didn't understand your question.

Q. When, after this trial was had, were you asked about your remembrance of the testimony for this trial?

A. I haven't been asked as I know of. Let's see, yes, I talked with—I don't know, I talked with his lawyer.

Q. That's what I meant.

A. I didn't catch you.

Q. When did Mr. Wright see you concerning—about testifying in the case today?

A. I yet don't understand you.

Q. When did Mr. Wright see you about testifying in the case today and talk with you about it? How long ago?

Ruth Taylor Bosley.

A. Oh, it's been, oh, I just don't remember. It's been a week or so ago.

Q. A week or so ago?

A. I guess so.

Q. Was it more than that, sir?

A. I just don't recall what day it was.

Q. It was fairly recently, though, is that correct?

A. Well, I'd say it's a week or so ago.

Q. Now, Mr. Taylor, at the time that you heard Dr. Rothfuss testify, of course, your main interest was in page 61 } the case concerning your daughter, was it not?

A. Yes, sir.

Q. At that time you didn't take any notes as to Dr. Rothfuss's testimony, did you?

A. No, I didn't take down any.

Q. Your testimony today is your recollection from the 23rd of February, is that correct?

A. That's right.

Q. And the only thing you recollect about the testimony definitely was that he said that he talked to a mechanic who said that the A-frame could have broken before or during the accident, is that correct?

A. That's right.

Mr. Woodward: I have no further questions.

Mr. Wright: That's all.

* * * * *

Whereupon,

RUTH TAYLOR BOSLEY

was called as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wright:

* * * * *

page 62 } Q. And you are the daughter, are you not, of Mr. Clark Taylor?

A. Yes, sir.

Q. Where do you live, Mrs. Bosley?

Ruth Taylor Bosley.

A. I live up at Ida.

Q. Do you recall being in the Trial Justice Court of Page County on February 23rd, 1955?

A. Yes, sir.

Q. And what was the occasion of your being in court on that day?

A. I just went to hear this Joe Campbell case that Dad was just talking about.

Q. That was the same case that your father was interested in, was it?

A. Yes, sir, it was supposed to come up that day, and I went to hear that, and they had this one first.

Q. Did that have anything to do with the case that was heard in reference to Dr. Rothfuss that day?

A. No, sir, that I know of.

Q. Were you in the courtroom during the time that Dr. Rothfuss testified?

A. Well, I was in there part of the time and out part of the time.

Q. Do you remember whether you were there all the time that he was on the stand or not?
page 63 } A. No, sir, I wasn't in there quite all the time when he was on the stand.

Q. What did he say that you heard?

A. Well, I heard him say that he had a mechanic to check the A-frame, and the mechanic said that it was broken and he didn't know when it was caused, before or after the accident, he didn't know.

Q. Did he say anything about what caused the accident?

A. No, sir, he didn't say what caused it.

Q. Now, of course, you are speaking of what Dr. Rothfuss said while he was testifying when you say that?

A. Yes, sir.

Q. Did you remain in the courtroom, then, until the other case was heard?

A. Yes, sir, I heard the other case, but I wasn't there all the time during this one.

Q. Did you hear Dr. Rothfuss say anything about the broken A-frame causing the accident?

A. No, sir, he didn't say that the A-frame was broken that caused the accident. He said it could have caused the accident, or it could not have caused the accident.

Mr. Wright: That's all I want to ask.

Ruth Taylor Bosley.

CROSS EXAMINATION.

By Mr. Woodward:

Q. It's Mrs. Bosley, isn't it?

A. Yes, sir.

page 64 } Q. Mrs. Bosley, do you recollect at that trial
that on cross-examination I asked the doctor what
would be the effect of an A-frame breaking?

A. No, I don't recall you saying that. I wasn't in at that time.

Q. You may not have been there at that time?

A. (Shaking head negatively.)

Q. Do you recall the doctor stating that the A-frame was broken?

A. He said that the mechanic said the A-frame was broken.

Q. Do you recollect that the doctor stated at that time that it caused the left front of his car to drop down?

A. No, he didn't say that it did cause it to break down.

Q. Well, I asked you if you recollected him saying that it caused the left front of the car to drop down.

A. No, I don't.

Q. Do you recollect that he said it caused the left front of the car to drop down and that made the car leave the road?

A. I heard something that was said that it could drop down if an A-frame would break. That's all I know.

Q. Of course, Mrs. Bosely, you weren't in the courtroom the whole time the doctor was testifying, were you?

A. No, I just heard sketches of it.

Q. I mean, when you say you didn't hear a cer-
page 65 } tain thing, or rather, I think you stated that he
did not say a certain thing, what you mean is he
did not say it while you were in the courtroom?

A. That's right.

Q. He could have said it otherwise, is that correct?

A. He could have. I don't know what he said if I wasn't in there. I didn't hear it.

* * * * *

Whereupon,

MILDRED TAYLOR

was called as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wright:

* * * * *

Q. And are you the daughter, also, of Mr. Clark Taylor?

A. Yes, sir.

Q. And where do you live?

A. At Ida.

Q. Were you in the Trial Justice Court on page 66 } February the 23rd, 1955?

A. Yes, sir.

Q. And while there did you hear Dr. Charles A. Rothfuss testify?

A. Yes, sir.

Q. In a hearing that was being heard there?

A. (Nodding affirmatively.)

Q. Do you remember him saying anything about an accident in which he had been involved in which his car was wrecked?

A. Yes, sir.

Q. What did you hear him say, or what did he say?

A. Well, I heard him say that the mechanic said the A-frame was broken.

Q. How is that, ma'am?

A. I heard him say that the mechanic said that the A-frame was broken.

Q. And what else did he say about it?

A. I don't know, he just said that that could have caused the accident. He didn't say whether it did or not, he just said it could have caused the accident.

Q. And it could have caused the accident, is that what he said?

A. Yes, sir.

Q. Do you recall him saying anything about the left front of the car changing level, or going down, or any-
page 67 } thing of that sort?

A. I don't remember. I wasn't too interested in it.

Mildred Taylor.

Q. You were interested in another case that was to come up later, is that correct?

A. Yes.

Q. Now, was his statement that the mechanic was the man who said that the A-frame was broken?

A. Yes, sir.

Q. He didn't say so himself, is that correct?

A. He said the mechanic said.

Mr. Wright: I believe that's all.

CROSS EXAMINATION.

By Mr. Woodward:

Q. Miss Taylor, of course, you were primarily interested in the case concerning yourself, were you not?

A. Yes, sir.

Q. And did you take any notes, or anything, as to the evidence in this other case?

A. No, I didn't.

Q. When were you first approached by Mr. Wright or Dr. Rothfuss to testify in this case?

A. I don't know, week or so ago. I don't know.

Q. A week or so ago. And had you had any reason to try to remember the testimony from the 23rd of February until a week or so ago?

page 68 } A. No.

Q. Had anyone else discussed his testimony with you before that?

A. (Shaking head negatively.)

Q. Then you are relying on your memory of the 23rd of February in your testimony today, is that correct?

A. Yes, sir.

Q. And as you stated, you weren't particularly interested in this case, is that correct?

A. Yes, sir.

Q. And if I am correct, also Dr. Rothfuss had treated you for your injuries which was the subject of that case?

A. Yes, sir.

Q. And he is, I understand, your family physician?

A. (Nodding affirmatively.)

Mr. Woodward: I have no further questions.

Louis Bosley.

RE-DIRECT EXAMINATION.

By Mr. Wright:

Q. Since Mr. Woodward has asked it, as a matter of fact, I talked to you and your father at the same time, did I not?

A. Yes, sir.

Mr. Wright: I believe that's all.

* * * * *

page 69 { Whereupon,

LOUIS BOSLEY

was called as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wright:

* * * * *

A. At Cave Brothers.

Q. Cave Brothers?

A. At Stanley, yes, sir.

Q. What kind of business are they in?

A. Garage.

Q. By the way, are you related to Ruth Taylor Bosley?

A. She is my sister-in-law.

Q. But you are not her husband?

A. That's right.

Q. Now, did you see a Hudson automobile that was owned by Dr. Charles A. Rothfuss that had been in an accident?

A. Yes, sir.

Q. And when did you see that?

A. When they brought it up there.

page 70 { Q. Do you remember when that was?

A. No, sir.

Q. You mean, when they brought it up to Cave Brothers?

A. Cave Brothers, yes, sir.

Q. Would that have been about the first of March?

A. Something around that time. It was, oh, a week or so after the accident, I think. It may have been longer. Something around a week or two.

Louis Bosley.

Q. And did you examine it at that time?

A. Yes, sir, I looked at it when it was brought up there, and I have looked at it several times since.

Q. Now, is the car badly wrecked?

A. It's a total.

Q. Did you have any occasion to examine the A-frames on that particular car?

A. Yes, sir.

Q. What was the condition of the right A-frame?

A. The right one?

Q. Yes.

A. It's got a welded spot on it, and it may have a dent or two on it, but other than the welded spot on it, the right one seems to be in right good shape.

Q. What is the condition of the left one?

A. It's twisted, rivets knocked out of it and—what do you—
oh, there is a break or a crack, whatever you want
page 71 } to call it. I think there is three of them and a tore
spot in it.

Mr. Woodward: May I have that last answer repeated?

(The last above-recorded answer was read by the reporter.)

By Mr. Wright:

Q. Did I understand you to say there are three cracks, or—

A. Well, what you do, you call it a crack or a break. It's a crack or a break.

Q. Are you calling it cracks, or breaks?

A. Cracks or breaks, yes, sir.

Q. And are those in the A-frame?

A. Yes, sir.

Q. Now, is there a shock absorber attached to the A-frame?

A. Yes, sir, the lower part of the shock absorber would actually be part of the A-frame, I would say. The A-frame is an assembly. Not just one piece, it's an assembly.

Q. What do you say that the A-frame consist of, then, or what is the A-frame?

A. There's two. It's hard to talk to you all, you don't know what I mean. There's two—well, you call them plate—rods, or should we call them wishbones, and a couple plates, and the shocks go in part of the plate, and then there's pivot pins and inner support pins.

Louis Bosley.

Q. Well, the idea of the point is that this A-page 72 } frame attaches in two places to the frame of the car?

A. The A-frame?

Q. Isn't that right?

A. It attaches one place to the frame of the car, yes, sir.

Q. One place to the frame of the car, and on the other end of it is the wheel?

A. It's not free, it's fastened with pivot pins and support arms going to the top A-frame or top support.

Q. And then where is the shock absorber located?

A. It fastens nearly in the middle of the A-frame to a plate, and the shock was pushed through—to the *looks* of the A-frame, the shock was pushed down through the A-frame plate, or through its mount.

Q. How is the shock attached to the A-frame?

A. Two bolts.

Q. Two bolts?

A. Yes, sir.

Q. Did you notice the condition of those bolts?

A. I think the bolts are gone, even. They may be hanging on the shock, I don't remember, but the A-frame where it mounts is pushed out, broken. The shock was broken loose from the A-frame.

Q. Then, as I understand you, in any event the lower end of the shock absorber is detached—that is, not at-page 73 } tached anymore to the A-frame?

A. That's right.

Q. And you say that the shock absorber constitutes a part of the A-frame?

A. Yes, sir, I believe you'd say it would.

Q. And it is attached by two bolts, normally?

A. By two bolts.

Q. I mean, when it is attached, it's attached by two bolts?

A. Yes, sir.

Q. Now, you speak of these three cracks or breaks, I believe you said, and a torn place, is that what you said?

A. Yes, sir.

Q. Was that in the A-frame proper, or in something else?

A. Well, it's in the plates that help hold the A-frame—part of the A-frame.

Q. You are a mechanic, I assume. Is that right?

A. Yes, sir.

Q. You are employed at Cave Brothers?

A. Yes, sir.

Louis Bosley.

Q. If we assume that a shock absorber had been detached from the A-frame in this particular car at the time it was rounding a curve or just coming out of a curve, what would be the effect?

Mr. Woodward: Now, may it please the court, page 74 } I don't think a proper foundation has been laid to qualify this witness as an expert witness to ask him a question based on a hypothetical question such as this. Nothing has been shown of his training, other than that he is a mechanic at a garage, and that is all.

Mr. Wright: I will ask a few more questions.

By Mr. Wright:

Q. How long have you worked for Cave Brothers?

A. About ten or 11 years.

Q. And you say they are a garage?

A. There is a garage and service station.

Q. Do they repair automobiles?

A. Yes, sir.

Q. What are your duties there?

A. In fact, I run the garage.

Q. You run the garage?

A. Yes, sir.

Q. Have you been familiar, then, for ten years with wrecked cars or damaged cars?

A. Well, I have about six or seven of them, I guess.

Q. Do you work on them yourself?

A. Yes, sir.

Q. And you are in charge of the garage, is that correct?

A. Yes, sir.

Q. All right, sir, I will ask you if we assume that page 75 } this Hudson car owned by Dr. Rothfuss was being driven around the curve or just coming out of the curve and the shock absorber attached to the left A-frame—that is, the left A-frame looking toward the front of the car from the driver's seat—became detached in the manner that you found this one to be, what would you say would be the effect on the operation of that car?

A. Rounding a curve to the right, the car would normally go down on that side, and if it went down all at once, it would be about the same effect of walking along a smooth floor and then stepping in a hole without seeing it.

Q. Then what would become of the car?

A. Well, I mean, the same thing doesn't happen every time.

Louis Bosley.

It may go out of control, a man may hold it. It depends on the strain in the curve and how good a hold he had on the wheel.

Q. Would it cause that side to go down, would you say?

A. Yes, sir. Yes, sir, it would, if it were making a curve to the right. Now, to the left it probably wouldn't affect at all, but to the right it would affect.

Mr. Wright: I believe that's all. Thank you.

CROSS EXAMINATION.

By Mr. Woodward:

Q. Would your last answer be changed somewhat depending upon the speed of the vehicle, Mr. Bosley?
page 76 } A. Yes, sir, that would affect it.

Q. Would it change somewhat depending upon the degree of the curve?

A. Yes, sir.

Q. Now, you say you have worked some ten years for Cave Brothers, Mr. Bosley?

A. Yes, sir. I believe it's 11 now.

Q. Eleven?

A. I think so.

Q. And how long have you been in charge of their garage, repair shop?

A. It's someplace between five and seven years. I think it's about 7.

Q. Do you have a wheel alignment machine there?

A. We have got some front-end equipment, yes, sir.

Q. And who handles that type of work?

A. I do some of it, and the other fellow that works there does some of it.

Q. Have you ever had any special training in front end wheel alignment, in that type of work, Mr. Bosley?

A. Only the factory representative—I mean, when they sell you a piece of equipment, they show you how to use it.

Q. You state you have some equipment. Now, how much equipment do you have along that line?

A. We don't have the big frame straightener, we
page 77 } have toe-in gauges and camber and caster gauges.
It's not big equipment. We don't specialize in front-end work, but we do quite a bit of it.

Q. You do some front-end work. Now, when was it you say you saw this wrecked car, Mr. Bosley?

Louis Bosley.

A. It was a couple of weeks after the accident. I don't remember just when.

Q. The accident happened on the 4th of February, Mr. Bosley. The trial was had on the 23rd of February. Was this after the trial was had?

A. I believe it was, because I believe it was a couple days after the trial.

Q. Do you know how the car was brought to your place?

A. Yes, the front end was picked up with a dump truck.

Q. Did you do it?

A. No, sir.

Q. You did not bring the car down?

A. No, sir.

Q. Then you don't know what the condition of the car was prior to that time, is that correct?

A. That's right.

Q. And as I understand it, you say that the left A-frame was twisted, the rivets were out, that it was cracked in three places?

A. Yes, sir, I know of three cracks, or breaks, as page 78 } you may call them.

Q. Well, now, was it still in one piece, or was it in separate pieces?

A. No, it's still together.

Q. You might say it was fractured, then, instead of broken, is that correct?

A. Well, I say cracked.

Q. It was cracked, but it hadn't come apart?

A. No, sir, it hadn't fell to pieces, no, sir.

Q. It was all together?

A. Except the shock. Now, the shock was separated from it.

Q. The shock absorber was separate?

A. Yes, the plate that fastens in the A-frame.

Q. Ordinarily, Mr. Bosley, if someone stated to you that an A-frame was broken in three places, would you take that to mean that the shock absorber had pulled loose?

A. Well, no. Normally, no.

* * * * *

Whereupon,

ROBERT KEYSER

page 79 } was called as a witness on behalf of the Defendant,
and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wright:

* * * * *

Q. And you have practiced law here for some years, I expect?

A. Thirty years.

Q. And you are acquainted with Dr. Charles A. Rothfuss, I guess?

A. I am, sir.

Q. And were you present in the Trial Justice Court of Page County on the 23rd day of February, 1955?

A. I represented Dr. Rothfuss at that time, sir.

Q. You were present, then, during the entire trial in which he was involved?

A. Necessarily so, sir.

Q. And was that a summons in reckless driving, was it?

A. It was a reckless driving charge. I don't recall whether it was a warrant or a summons. I rather think it was that there was a summons issued.

Q. Did you hear all of Dr. Rothfuss's testimony on that occasion?

A. I examined him in chief and heard the cross examination.

Q. And, of course, he had been placed under oath, I believe?

A. Yes, sir.

Q. Do you recall what he said on direct examination in that case?

A. The question was asked Dr. Rothfuss on direct examination as to how his accident happened. There had been an accident down towards Rileyville. Dr. Rothfuss testified that he was going into this curve and had gotten into the curve around to the right and that suddenly the car pulled to the left as if something happened, and he saw that he couldn't control it, and when he saw that he couldn't control it, he cut the switch on the engine and fell over in the seat, and the car went on and wrecked, and he was pinned under the car for

Robert Keyser.

a considerable time. And he blew his horn on several occasions until people—whenever he heard a car coming by, trying to attract attention. Finally someone did come near. And I asked him then whether or not anything had happened to the front end of the car on any other occasion. He testified that the frame or A-frame had been broken on another occasion. He testified that his wife was driving the car on that occasion, and he testified that the A-frame—that is, it then was, not using the term that it was—he testified that then the A-frame was broken in two or three places, and that is about the extent of the direct examination, other than to ask him whether or not speed was involved in the accident, what rate of speed he was driving and questions along that line. And that was about the extent of his direct examination, and then he was turned over for cross examination.

Q. Did you hear him being cross examined by the Commonwealth's Attorney?

A. I did, sir.

Q. What was asked him then with reference to the accident, or the condition of the car?

A. There was quite a bit of examination and questions asked concerning the breaking of an A-frame and what effect the breaking of an A-frame would have on the operation of the car, and Dr. Rothfuss, my recollection is he testified that it would let it down and that it would ordinarily cause it to pull to the left. And then there were quite a lot of questions asked concerning that, and the answers were about the same as I have given you now.

Then on cross examination he was asked this question, and being his attorney, I was paying strict attention to what was being said. The question was asked him as to whether he could tell if the A-frame was broken before the accident or after the accident. Dr. Rothfuss's testimony was that he could not tell whether it was broken before or after the accident. That is about the extent of his testimony, except that there were numerous questions asked, and they were all answered along the same line.

page 82 } Q. Did he testify what caused the accident?

A. His testimony was, when I asked him what caused the trouble, that when he went into this curve and was going into the curve, suddenly something was wrong in the front, something happened that caused him to pull off to the left.

Q. And that was all he said?

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A. That's what he gave as the reason for the cause of the accident, and then my question was as to whether or not anything had happened to the front end of that car before that time, and then he testified that the A-frame had been broken when his wife was driving the car. These other questions all came on cross examination, and answers.

Mr. Wright: I believe that's all.

CROSS EXAMINATION.

By Mr. Woodward:

Q. Now do you recollect that Dr. Rothfuss at that time testified that the steering went out?

A. I don't recollect the use of the term "steering." I recollect him saying that something happened to the car which caused it to pull to the right, and he was unable to steer it.

Q. Pull to the right?

A. To the left, rather.

Q. May I ask you, Mr. Keyser, did you take notes of that testimony?

page 83 } A. Mr. Woodward, I very seldom take notes in the trial of a case. I did take some notes, but after there was a decision for an acquittal, the notes were taken back to my office and they were destroyed. They were not kept, because there was no point.

Q. You have no recollection of his using the term that the steering went out and the car made a left-hand turn?

A. Not exactly in that way, Mr. Woodward. I have testified as to my recollection of what Dr. Rothfuss said.

Q. Yes, sir, I am aware of that, Mr. Keyser, and you stated that in answer, I think, on cross examination to a question of mine.

A. I did not say to yours, but you were cross examining, of course.

Q. That he could not state whether the A-frame had broken before or after the accident, is that correct?

A. Mr. Woodward, I distinctly recollect that, and I appreciate the fact that—and I have investigated this case myself—the other witnesses who have testified here perhaps do not recall that statement, but I was paying strict attention to the answer, because I was somewhat concerned as to what the answer would be.

Q. Mr. Keyser, do you recollect my asking him a question,

Robert Keyser.

if the A-frame could have been broken during the wrecking
of the car?

page 84 } A. Yes, sir, you did.

Q. All of these questions that I asked concerning
the breaking of the A-frame were cross examination as to
direct testimony that the A-frame had broken, were they not?

A. I told you just exactly what was said in the beginning.

Q. I mean, so far as you recollect.

A. That I asked him whether or not anything had happened
to that thing before this occasion and testified that the A-
frame had been broken when his wife was driving. Then
when you cross examined, you went into the breakage of the
A-frame.

Q. He testified that the A-frame had been broken prior
but had been repaired, did he not?

A. Yes, sir.

Q. And did he state that it had been welded?

A. Yes, sir.

Q. And there was testimony—I don't know whether you
were in court this morning or not, Mr. Keyser, but there is
testimony that the right-hand A-frame had been welded.

A. I also saw it, sir.

Q. That the right-hand frame had been welded?

A. Shall I answer as to the left?

Q. Yes, sir.

A. I also had pointed out to me by a mechanic that right
up close to where the A-frame hooks onto either the
page 85 } body of the car—that it had been welded there, the
left frame.

Q. On the left A-frame?

A. Yes.

Q. It was?

A. It was pointed out to me by the mechanic when I went
up with Dr. Rothfuss to investigate after he was indicted.

Q. I have a note on his statement that the left A-frame
broke at the time, causing the accident.

A. Very decidedly, I have no recollection of him saying
that the breaking of the A-frame caused the accident.

Q. Do you have a recollection, Mr. Keyser, of my asking Dr.
Rothfuss what happened when an A-frame broke?

A. Yes, sir.

Q. And do you recollect that his answer was that it caused
the left-hand front part of the car to drop down?

A. I can answer you better by telling you how my recollec-
tion of that is, rather than answering your direct question,

Robert Keyser.

sir. I remember you asking Dr. Rothfuss what effect the breaking of an A-frame would have on a car. He testified that the breaking of an A-frame would cause it to let down on that side and pull to the left, is my recollection of what he testified, sir.

Q. Do you recollect, Mr. Keyser, that at the conclusion of that trial you and I had a conversation in the hall of the County Office Building?

A. I don't remember any of the specific conversation. I mean, we very often have conversations after a case in the Trial Justice.

Q. True. I will make it more specific. Do you recollect, Mr. Keyser, that we had a conversation concerning Dr. Rothfuss's testimony as to the breaking of an A-frame?

A. I don't recall, sir, that we specifically said that. I know we discussed it. Not whether it was right after that or not. I remember you called me up, sir, and told me that upon examination of the frame—

Q. This was prior to that time, Mr. Keyser. It was at the conclusion of the case.

A. I don't recall that, Mr. Woodward. If you refresh my memory, maybe I can.

Q. I will go one step further, Mr. Keyser. At that time do you recall, with this additional step, that I stated that I could not conceive that it was other than so that the A-frame had been broken, as the doctor had testified, because it was a matter so easy of proof?

A. That statement was made, Mr. Woodward. Whether it was made right at that time or not, Mr. Woodward, I don't know, sir. Some statement was made concerning that, because it would have been so easy to prove, and I agreed with you that certainly the A-frame was broken, because that's a matter that you could check on. That's why I was paying particular attention to the answer to the cross-examination when he was asked whether it was broken before or after—whether he could say it was broken before or after.

Q. I mean, are you sure, Mr. Keyser—I am sure that you are sure, but I feel duty bound to ask this question—that the question was not whether it was broken before or after, but whether it could have been broken during the accident?

A. Mr. Woodward, I can only tell you what my recollection of it is, sir, and I was paying very close attention to that, because I was very anxious to know what the answer was to

Robert Keyser.

that question. I can explain my reasons if you would like me to.

Q. The Commonwealth was attentive, too, Mr. Keyser.

A. Yes, sir. I say that I appreciate the fact that the other witnesses have not testified to the same thing, but I still know what I know.

Q. I am still not clear, Mr. Keyser. If the doctor's testimony had been that the A-frame had previously been broken and repaired, then it would appear that the questions as to the effect of an A-frame breaking would have been immaterial.

A. Do you want me to answer a question, or are you making a statement?

Q. Is that correct?

A. What is correct, sir?

Q. That if the doctor's sole testimony had been that the A-frame previously had been broken and repaired, page 88 } then there would have been no occasion to ask him as to the effect of the breaking of an A-frame at this accident?

A. You did that on cross-examination. You inquired into many things on cross-examination concerning the breaking of an A-frame.

Q. Did you object?

A. No, sir, I didn't object, because it wasn't hurting.

Mr. Woodward: I have no further questions.

The Witness: I think, Mr. Woodward, you appreciate that I am a defense attorney, and I know somewhat what I am doing along that line, and I pay attention to some things, and some things I don't pay attention to.

Mr. Woodward: The Commonwealth will stipulate, Mr. Keyser, you are a defense counsel, and the Commonwealth will stipulate you are an able one.

The Witness: Thank you. Any further questions, Mr. Wright?

Mr. Wright: Thanks, Mr. Keyser. I think not.

(Witness excused.)

* * * * *

Whereupon,

DR. CHARLES A. ROTHFUSS

was called as a witness on his own behalf, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

page 89 } By Mr. Wright:

* * * * *

Q. And you live in Luray. And how long have you lived here, sir?

A. Approximately almost three years.

Q. And you practice medicine, I believe?

A. Yes, sir.

Q. Have you practiced in Luray during the three years that you mention, or almost three years?

A. I won't have started practicing three years until October, this coming October.

Q. Now, Doctor, were you the owner of a Hudson automobile on the 4th day of February, 1955?

A. Yes, sir.

Q. And were you driving that night?

A. Yes, sir.

Q. For what purpose?

A. I was making a house call on Paul Dixon's youngsters down in Compton.

Q. And did you have an accident?

A. Yes, sir.

Q. All right, will you describe the road that you were travelling just immediately prior to your accident?

A. You mean, the condition of the surface?

page 90 } Q. Yes, please.

A. It was essentially dry, except there were, oh, very scattered patches of ice on the road from Luray to Front Royal, and on the brim, on the shoulder of the road there was ice.

Q. Now, did you have occasion to drive through a curve?

A. Yes, sir.

Q. Which was that, a right-hand curve?

A. Right-hand, down-hill curve.

Q. All right, sir, did anything happen as you were in that curve, or pulling out of the curve?

A. As I was coming out of the curve, it suddenly just became uncontrollable. I mean, something happened, and it

Dr. Charles A. Rothfuss.

just swerved left. But I had gone through the curve and was just coming out of it.

Q. And it swerved left and out of the road, is that correct?

A. Left (nodding affirmatively).

Q. What did you do?

A. Well, when I saw it was right next to the bank, I just cut off the ignition and laid down, relaxed.

Q. Do you know what happened?

A. No, I was unconscious for a while. I expect the top was coming up and I was going down, and I was pinned in. After I woke up, I was pinned in the car till a couple of boys from Winchester found me.

page 91 } Q. Do you know how long you were pinned in the car?

A. An hour or so.

Q. And you, I suppose, you were unable to get out?

A. No, sir, I couldn't get out.

Q. Do you recall Trooper Kerkhoff being there that night?

A. He brought me home.

Q. Do you remember whether you were still in your car, or out of it, when he arrived there?

A. I was sitting in the car of the boys from Winchester.

Q. And he brought you home, is that correct?

A. He and a boy that was with him.

Q. Was that Mr. Huffman?

A. No, is was a local boy.

Q. Do you recall talking to Mr. Kerkhoff at the scene of the accident about what had happened?

A. Immediately afterwards I was suffering from the effects of concussion. I mean, I didn't remember too much at the time. I mean, I remember riding home with Mr. Kerkhoff, and he stopped at the local police station and wrote out a ticket for reckless driving and for reporting an accident.

Q. And that was on your way home from the accident?

A. Yes, and then he called my office to ask my wife to bring down a rib splint, which I asked him to do.

Q. Did you need medical attention that night?

A. My wife called Tom Amiss, and I had her call page 92 } him back, because I was O. K.

Q. Now, did you see the car in which you were driving that night—when did you first see it after you left the scene of the accident.

A. Well, it was three or four days before I could move around much out of bed, and I expect it was about five days after the accident before I saw it the first time.

Dr. Charles A. Rothfuss.

Q. About five days?

A. (Nodding affirmatively.)

Q. And where was it then?

A. Graves Motor Company.

Q. Did you have anyone with you when you looked at it?

A. I looked at it the night before the reckless driving hearing. I had a mechanic, Elmo Dovel, from Stanley and Mac Ruffner up at Graves Motors let us in, and he got under the car and looked at it. I mean, I was too stiff, I couldn't even stoop over to look at it, much less get under the car.

Q. Did you, yourself, see the A-frame anytime from the time of the accident up until the reckless driving hearing?

A. No, I wasn't able to stoop over.

Q. You were there, but you weren't able to get down and look at that time?

A. I mean, he just told me.

Q. Who is "he"?

A. Mr. Dovel.

page 93 } Q. Elmo Dovel, is that it?

A. Yes, sir, he is mechanic for Cave Brothers.

Q. What did he tell you?

A. Well, he said it was cracked, or broken in two or three places, looked like it had been beat with a hammer, were his words.

Mr. Woodward: I didn't get that last.

The Witness: He said it looked as though it had been beat with a hammer. That's when we were up at Graves Motor.

By Mr. Wright:

Q. Did I understand you to say he said it was cracked or broken in two or three places?

A. Yes, sir.

Q. And looked like it had been beaten with a hammer.

A. Yes, sir.

Q. You were present, of course, the next day, then, at a hearing on reckless driving summons?

A. Yes.

Q. And you were sworn? I mean, the oath was administered to you by Trial Justice Booton, I suppose?

A. Yes.

Q. Do you recall what you stated at that hearing about the accident?

Dr. Charles A. Rothfuss.

A. About the accident?
page 94 } Q. Yes, in reference to what caused it, or any
broken parts of the automobile.

A. I said it became uncontrollable after I come out of the curve, but I also made the statement that I had had a mechanic check it and this is what he found, and then I made a statement that it had been broken in two or three places, but I was merely quoting him.

Q. You mean, what had been broken?

A. The A-frame on the left, but I didn't say that it caused the accident.

Q. Well, then, if I understand you, in your testimony you said that this mechanic Dovel had examined the car?

A. Yes, sir.

Q. And that he said it was broken in two or three places, is that correct?

A. Yes, sir.

Q. You did not make that as your statement?

A. No, sir.

Q. Now, did you tell the court, either on that day, either on cross-examination or direct examination what caused the accident?

A. No, sir, I didn't know.

Q. Did you know then, or do you know now what caused it?

A. Don't know.

Q. Do you remember stating that the car had
page 95 } been damaged at some prior time?

A. Yes, sir. I made the statement my wife had—I guess she was looking around at pedestrians up at the railroad crossing, and one wheel fell off the side of the crossing, I believe, and hit the signal up there and both A-frames were damaged, and then they were repaired at Cave Brothers.

Q. They were repaired at Cave Brothers?

A. (Nodding affirmatively.)

Q. Do you know how long that was before February the 4th?

A. I don't recall.

Q. Some days or weeks after?

A. It was—there was a period of time.

Q. Now, did you state when the A-frame was broken—that is, when you testified?

A. I made the statement that the mechanic had told me that it could have been broken at the time of the accident, or prior to.

Q. But that was what he told you, and not what you said, is that correct?

Dr. Charles A. Rothfuss.

A. I had no way of knowing.

Q. You had no way of knowing. Do you recall making any statement or testifying that these A-frames, or one of them, had been heat-treated when it possibly should have been cold-treated or cold-straightened?

A. I made a statement it had been heated and
page 96 } straightened. I don't recall making any statement
it should have been straightened cold.

Q. But you did make a statement heat had been used when it was straightened?

A. Yes.

Q. That was the time when it was straightened after your wife had it on the railroad track, is that correct?

A. Yes.

Q. Do you recall stating what would be the result if the left A-frame broke?

A. Yes, sir. Mr. Woodward expressed his ignorance as to what an A-frame was. He had it mixed up with the frame of the automobile, and then he asked me what the effect would be, and I said it would cause a sudden shift in weight and the dropping of the side that broke.

Q. Now, you were acquitted, I believe, in the Trial Justice Court?

A. Yes, sir.

Q. Have you since seen the A-frame, I mean, after you were able to stoop, so to speak, to see it?

A. Mr. Keyser and I went up following the reckless driving hearing, after we were able to get the car moved, and Louis Bosley and Mr. Keyser and I looked at it, jacked the front end up.

Q. When you say "moved", do you mean moved
page 97 } from the Graves Motor Company to Cave Brothers?

A. Yes, sir.

Q. Was that done by you, or by somebody else?

A. By Mr. Miller: He lifted the front end up with the dump truck so it was off the ground to move it.

Q. But you had him do it?

A. I had him do it.

Q. All right, what did you see, then, when you took it down to Cave Brothers?

A. The leading edge of the A-frame was pushed back and twisted under. The metal plate that the shock absorber fastens onto at the bottom was broken completely loose from the A-frame and there were numerous cracks or breaks—I

Dr. Charles A. Rothfuss.

don't know, there is a fine edge between them in the A-frame itself.

Q. And was the lower end of the shock absorber attached, or detached from the A-frame?

A. It was detached, broken free.

Q. And the shock absorber sits right over the A-frame, does it not, or attaches to it at its lower end?

A. It's inside the coil spring and bolts onto a plate. The two bolts, that comprises the "A" of the A-frame.

Q. You mean, comprises the cross-member?

A. Makes the "A".

Q. Makes the "A". In other words, your statement is that the piece to which the shock absorber attaches is
page 98 } what makes the "A" in the A-frame, makes the cross piece?

A. That's my way of thinking. That's my understanding.

Q. I think that's right as far as that goes. Now, of course, the coil spring is around the shock absorber?

A. Around the shock absorber.

Q. You were not seriously injured, I suppose?

A. No, sir, just some cracked ribs.

Mr. Wright: I think that's all.

CROSS EXAMINATION.

By Mr. Woodward:

Q. When did you examine this A-frame, Doctor?

A. When?

Q. Yes.

A. Following the reckless driving hearing.

Q. That was following the 23rd of February?

A. That's right.

Q. And at that time was it in one piece, or was it in several pieces?

A. Oh, it was in one piece. I mean, it was all fast to the car.

Q. I mean, it was all together, is that correct? I mean, it wasn't in separate loose pieces?

A. Oh, no.

Q. It was all together. You are not unfamiliar with automobile mechanics, are you, Doctor?

page 99 } A. No, sir.

Q. You used to be a stock car racer, I believe?

A. I used to drive them.

Dr. Charles A. Rothfuss.

Q. And you are familiar with the mechanical operation of an automobile?

A. I am.

Q. Doctor, wouldn't there be a difference between an A-frame assembly and an A-frame?

A. I don't think your part—I think you'd have a hard time buying an A-frame by itself.

Q. Would you consider that the shock absorber is considered a part of the A-frame?

A. The plate where the shock absorber bolts onto the A-frame?

Q. I am talking about the shock absorber.

A. The plate is what's broken off.

Q. How is that?

A. It's broken loose from the frame.

Q. But the shock absorber itself is not considered part of the A-frame, is it?

A. The shock absorber itself? No.

Q. The shock absorber itself?

A. No, but it mounts are.

Q. What's that?

A. The mounts of the shock absorber are.

page 100 } Q. That may well be.

A. That's what was broke. The shock absorbed itself wasn't broke; the mounts were.

Q. But the shock absorber was loose?

A. It was loose from the mount.

Q. From the plate on which it fits, is that correct?

A. Yes.

Q. Doctor, do you recollect testifying in the Trial Justice Court that the steering went out?

A. I never testified to that.

Q. Do you recollect testifying that the steering went out and the car made a left-hand turn?

A. I testified that the car pulled—

Q. I ask you if you recollect making these statements, Doctor.

A. I didn't make that statement.

Q. I asked you if you recollect testifying that the A-frame was broken in three places.

A. I was quoting the mechanic.

Q. Did you state that you were quoting the mechanic?

A. I did. At the very beginning I did.

Q. Did you state who that mechanic was?

A. No. You didn't ask me.

Dr. Charles A. Rothfuss.

Q. Did you call the mechanic as a witness?

A. I had made the suggestion to Mr. Keyser.

page 101 } Q. Well, I asked you if the mechanic was called
as a witness at that trial?

A. No, sir.

Q. When you stated that you were quoting a mechanic, did the commonwealth object because it was hearsay evidence?

A. I was wondering why you didn't.

Q. I asked you if I did, Doctor, I didn't ask what you were wondering. Did the Commonwealth object?

A. No.

Q. And you didn't state the name of the mechanic?

A. No, I wasn't asked.

Q. Now, Doctor, do you recollect my asking you if this left A-frame could have been broken as a result of the wreck?

A. Yes.

Q. Do you recollect your answer to that?

A. I said it could have been.

Q. In other words, you indicated that the A-frame was broken, did you not?

A. The A-frame is broken.

Q. You indicated at that time that the A-frame was then broken, did you not?

A. I indicated that was my understanding.

Q. That the A-frame was broken?

A. Yes.

Q. In three pieces?

page 102 } A. Yes.

Q. And did you also indicate in an answer to a question what would happen if a left A-frame broke?

A. Well, you asked me, and I told you.

Q. That's what I am asking you, Doctor.

A. And that's what would happen.

Q. What did you state would happen?

A. I said you'd get a sudden shift in weight, and the car would move towards the side where it broke. I said it would. I didn't say it did.

Q. You stated that it would pull the car to the left and make it leave the road, is that correct?

A. That's right.

Q. Now, Doctor, when you say that that is true if an A-frame is broken, do you mean if an A-frame is broken in pieces, or just cracked?

A. Well, bending would do just as well.

Q. We are talking about breaking, now. As long as that

Dr. Charles A. Rothfuss.

A-frame is in one piece, if it is cracked, the car will not drop until it gives way, will it?

A. A motor that is cracked is broke.

Q. Doctor, we aren't talking about motors, we are talking about A-frames. I ask you again if an A-frame stays together in one piece, the car will not drop until those pieces separate, is that correct?

page 103 } A. If they bend, it will, and it can still be in one piece.

Q. Doctor, I didn't ask you what would happen if it bent, I asked you what would happen—

A. You said if it stayed together.

Q. That is correct.

A. All right, it can bend and stay together.

Q. But if it is cracked and does not separate.

A. You mean, does not bend?

Q. All right, call it bend. Will it cause the car to drop?

A. No.

Q. You were being tried on a charge of reckless driving at that time?

A. I was.

Q. Had you previously been convicted of reckless driving?

A. About—oh, I got in that—

Q. What is that?

A. About 11 months previous, yes.

Q. And were you aware that two convictions of reckless driving would automatically revoke your license?

A. I was aware of it.

Q. What is that?

A. I was aware of it.

Mr. Woodward: I have no further questions.

page 104 } RE-DIRECT EXAMINATION.

By Mr. Wright:

Q. Doctor, you say that what you stated about the A-frame being broken, then, was what the mechanic told you?

A. That's right.

Q. And not what you said, you are sure about that?

A. I am sure of it.

* * * * *

Whereupon,

ELMO L. DOVEL

was called as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wright:

* * * * *

Q. What occupation do you have, Mr. Dovel?

A. Mechanic.

Q. For whom do you work?

A. Cave Brothers.

page 105 } Q. Cave Brothers?

A. Yes.

Q. How long have you been a mechanic?

A. About 12 years.

Q. And have you worked during that time for Cave Brothers, or worked for others?

A. I worked seven at Cave Brothers.

Q. And the five other years someplace else, is that correct?

A. Yes.

Q. And by a mechanic, you mean an automobile mechanic, I suppose?

A. Yes.

Q. You actually work on repairing cars all the time, I suppose?

A. Yes.

Q. Are you familiar with a Hudson automobile which is owned by Dr. Charles A. Rothfuss?

A. Yes, sir.

Q. And do you recall that he had an accident in February, 1955, with that car?

A. Yes, sir.

Q. In which that car was involved?

A. Yes, sir.

page 106 } Q. Did you examine the car on the second or third of February?

A. It was on Sunday after they had the accident.

Q. Of course, the accident, I believe, was on the 4th. Do you recall when it was you first examined it?

A. Yes, sir.

Q. Do you know the date?

Elmo L. Dovel.

A. No, I don't, not exactly.

Q. Where was the car when you looked at it?

A. It was up to the garage to Stanley.

Q. Do you recall seeing it at Graves Motor Company before that?

A. No, sir, I saw it after that. I mean—well, before the accident I saw it up at the garage, and I saw it after the accident up here at Graves.

Q. That's what you mean. I am talking about between the time of the accident and now, where did you first see it?

A. I first saw it after the accident?

Q. Yes.

A. Up at Graves Motor Company.

Q. At Graves Motor Company?

A. Yes, sir.

Q. Who was with you then?

A. Dr. Rothfuss and a Breeden boy.

Q. And did you look at the A-frame then?

A. Yes, sir.

Q. What condition did you find it in?

page 107 } A. Well, it's got about two or three cracks in it,
and the shock had pushed down through it and a rivet pulled out of that.

Q. Two or three cracks?

A. Yes, sir.

Q. Shock pushed—

A. Pushed in through it.

Q. Does that mean down through the A-frame?

A. Yes.

Q. And what else? A rivet, you say?

A. And a rivet pulled out. And it's all bent up.

Q. Where was this rivet?

A. Oh, it's down about the center.

Q. You mean the center of the A-frame, or center of the shock absorber, or what?

A. Center of the A-frame.

Q. Where were these two or three cracks that you speak of? Where were they, do you recall?

A. Well, not—I can't tell you exactly where they are at, but I know they are there.

Q. Are they in the A-frame itself?

A. Yes, in the A-frame, yes, sir.

Q. You are not speaking of the shock absorber when you talk about cracks?

Elmo L. Dovel.

page 108 } A. Not the shock absorber. The shock absorber is all right.

Q. And that is normally attached to the A-frame, is it not, at its lower end?

A. That's right. It's bolted down to the A-frame.

Q. But you say this one was not, when you saw it, attached to it?

A. No, sir.

Q. And did you notice anything about the threads on the bolts that hold the shock absorber?

A. There was not any bolt in there.

Q. Not any bolts?

A. No, sir.

Q. Did you tell Dr. Rothfuss what the condition of it was there?

A. Yes. Yes, sir.

Q. Do you remember whether he was able to look at it or not?

A. No, sir, I know he couldn't stoop down. He had himself all bandaged up, and he couldn't stoop down and look at it.

Q. Then I assume that the car was just setting on its wheels when you examined its *breaks*?

A. Yes, sir.

Q. And you say he was unable to look at it?

A. That's right.

page 109 } Q. Do you know whether there was a trial, then, after that, reckless driving, in which he was involved?

A. That was sometime after that. I don't know when it was.

Q. You were not present at the trial?

A. No, sir.

Q. But you had told him the results of your examination?

A. Yes, sir.

Q. Now, when did you next see this car, if you recall?

A. After it pulled up to the garage.

Q. That's up at Cave Brothers, is that right?

A. Yes.

Q. Do you remember when that was?

A. No, not exactly. It was on Sunday, I know. Don't know exactly what day it was.

Q. Did you see it as it was brought in, or were you there when it was brought in?

A. I was busy at the time, and they backed across the road over there in the shade.

Elmo L. Dovel.

Q. Then did you go over then, or later, and look at it?

A. I went over later and looked at it, yes, sir.

Q. And what did you find to be the condition of the left A-frame at that time?

A. I found the same thing as I did up here.

Q. Same as you did up there?

page 110 } A. Yes.

Q. Was there any change in it at all?

A. No, sir.

Q. Do you recall whether the A-frame on these two occasions that you speak of that you looked at it, whether it was bent back toward the rear of the car?

A. That's right, yes.

Q. And how far? Could you state approximately how far out of line it had been?

A. I wouldn't know exactly. Maybe it's two or three or four inches, something like that.

Q. Two or three or four inches?

A. Yes.

Q. Did you examine the steering rods and linkage?

A. Yes, sir.

Q. What condition were they in?

A. Seemed to be all right.

Q. Seemed to be all right?

A. Yes, sir.

Q. Now, you have stated, I believe, that you have been a mechanic for about 12 years?

A. Yes.

Q. Worked on automobiles about that long?

A. Yes.

Q. If this particular Hudson automobile was
page 111 } being operated around a curve to the right and the shock absorber became detached where it attaches to the A-frame—became detached—what would you say would be the effect on the operation of the car?

A. Well, it would lower that side down and throw it around to the left.

Q. You mean, lower that corner of the car, that side of the car?

A. Yes, lower that side down and throw the other side up and throw it to the left.

Q. Have you, on other occasions, then, looked at this particular A-frame?

A. Yes, sir.

Q. Is the condition of it the same as it was then?

Elmo L. Dovel.

A. Yes, sir.

Q. In other words, you found in the first instance what was there, and that's been the situation ever since?

A. Yes.

Mr. Wright: I believe that's all.

CROSS EXAMINATION.

By Mr. Woodward:

Q. Mr. Dovel, I am not quite clear on the date when you first looked at this car after the wreck. When was that?

A. I am pretty sure—see, this happened on Thursday, I believe.

page 112 } Q. Happened on the 4th of February. I will tell you what day it was.

A. It was on a Sunday when I come down here.

Q. The fourth of February was on a Friday.

A. Yes.

Q. You say you came down the following Sunday?

A. Yes.

Q. And *did* can you say was with you?

A. Breeden boy. Talford Breeden.

Q. And anyone else? Was the Doctor with you?

A. Yes, sir, Malcolm.

Q. Was Dr. Rothfuss with you?

A. Yes, sir.

Q. I understood he was incapacitated for four or five days.

A. Well, see, it may have been the following week, now.

Q. Oh, it might have been the following week?

A. Yes. That's probably what it was, then. I knew it was on a Sunday.

Q. Could it have been the week after that?

A. Let's see, from the 4th? It was about the 11th, I guess.

Q. The eleventh?

A. The Sunday—

Q. The Sunday that's nearest the 11th?

page 113 } A. Yes.

Q. Now, I notice, Dovel, that you said that the A-frame had two or three cracks?

A. Yes, sir.

Q. Is that what you told Dr. Rothfuss?

A. Yes, sir.

Q. Now, he stated you told him it was broken in two or three places.

Elmo L. Dovel.

A. Well, part of it is broken and bent back.

Q. Was it broken loose?

A. Well, it's not clear apart.

Q. Well, I mean, do you consider it broken when it isn't apart?

A. Well, no, sir.

Q. That's usually bent, isn't it?

A. It's—you know, kind of an "A" shape, and part of the "A" shape was broken and went back.

Q. It's bent back?

A. Yes, sir.

Q. Well, I mean, when you say it's broken and bent back, you mean, it's parted company?

A. Part of it is broken. The plate that goes over there is broken.

Q. You mean, it's broken where the shock absorber pulled loose?

page 114 } A. Yes, sir.

Q. Well, where the nuts have pulled through?

A. No, it's broken more than—no, sir, where it goes down.

Q. Where the nuts go down? Is it broken in pieces?

A. Yes.

Q. Can you see light through it?

A. Yes. Oh, you can see light through it.

Q. When you examined the car this time, Dovel, how did you fix it for examination? Did you jack it up, or anything?

A. No, I never—you mean, up here?

Q. Yes.

A. Well, up here I didn't, but up here at the garage I did.

Q. That was sometime later, wasn't it?

A. It wasn't long. I mean, maybe a week later.

Q. You say you examined it first on the Sunday nearest the 11th?

A. Yes.

Q. Now, this trial wasn't had until the 23rd, which is a good two weeks afterwards. So it was after the trial that you examined it up at Cave Brothers, wasn't it?

A. No, sir, not after the trial. You say the trial was the 23rd?

Q. Twenty-third.

page 115 } A. No, sir, it was before the trial.

Q. Before the trial?

A. Yes, sir.

Q. Well, now, Dovel, the car was taken from the place it wrecked to the Graves Motor Company lot, and it's been testi-

Elmo L. Dovel.

fied that it stayed at that lot until it was moved down to the shed at Cave Brothers, and it wasn't moved—I think the Doctor, himself, testified it wasn't moved until the Sunday after the wreck—I mean, after the trial. So it must have been after the trial that you examined it at Cave Brothers, wasn't it?

A. It may have been. I can't recollect now. The tires or wheels that was on it, I could see back under there.

Q. The what?

A. The tires and wheels was on it. I could see under it what was wrong.

Q. You mean, when it was up here?

A. Yes.

Q. Did you crawl under the car?

A. Yes, sir.

Q. But you didn't jack it up or anything?

A. Yes.

Q. Did you get on one of these dollies and slide under?

A. No, just got on my back.

Q. Just crawled under on your back?

A. Yes.

page 116 } Q. Have you had any training in automobile mechanic schools, Dovel?

A. Yes, sir.

Q. Where?

A. Comer's Garage at Stanley.

Q. Is that a recognized school?

A. Well, no, sir, it's not. Just took GI training there.

Q. You took your GI training there as a mechanic?

A. Yes.

Q. But what I asked you is if you had gone to any recognized school for the training of automobile mechanics?

A. No, sir.

Q. Have you had any specialized training in front-end work?

A. No, sir, not more than what we do up there.

Q. Now, can you tell the court and the jury when these cracks were made in this A-frame?

A. Well, I wouldn't know.

Q. You can't tell them, either, when the rivets were torn loose or missing?

A. No, sir, it could be before the wreck, or it could be when it happened. I wouldn't know that.

Q. It's quite possible, is it not, that a car wrecked as badly as that would have the damage that you saw?

Trooper K. E. Kerkhoff.

- page 117 } A. It could have.
 Q. And it could have been caused by that wreck?
 A. Could be.
 Q. The car is badly wrecked, is it not?
 A. Yes, sir, pretty bad shape.

* * * * *

Whereupon,

TROOPER K. E. KERKHOFF

was recalled as a witness on behalf of the Commonwealth in rebuttal, and being previously duly sworn, was examined and testified further as follows:

REBUTTAL DIRECT EXAMINATION.

By Mr. Woodward:

Q. Mr. Kerkhoff, you investigated the scene of this wreck, did you not?

A. Yes, sir.

Q. Will you please describe to the court and the jury to the best of your ability the type of curve that was involved where this happened?

A. Well, I'd say it was a gentle curve. It was not a sharp curve.

page 118 } Q. Could you give the court and the jury your opinion as to how fast one safely could take that curve?

A. I, in pursuit of other violators in other instances, had made the curve at between 60 and 70 miles an hour with safety.

Q. And, Mr. Kerkhoff, in your former testimony, you stated that this car laid tracks as it left the highway? I am correct on that, am I not?

A. As it left the highway.

Q. Are those tracks as the car was going into the curve, or coming out of it?

A. Going into the curve.

Q. As it was going into the curve?

A. Yes, sir.

Mr. Woodward: I have no further questions.

Trooper K. E. Kerkhoff.

CROSS EXAMINATION.

By Mr. Wright:

Q. Mr. Kerkhoff, was this curve what we might speak of as a down-hill curve on the side of a hill?

A. It was a down-grade.

Q. Down-grade, and a curve to the right as this automobile was travelling?

A. Yes, sir.

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Mr. Wright: I would like to except very respectfully to Instruction No. 1, on the grounds that it unduly emphasizes the reckless driving charge and that while it states the law, it is unnecessary, in view of the other instructions that are given.

The Court: The court, of course, overrules the objection to the instruction and will give it subject to the exception and objection of the accused.

Mr. Wright: I object to Instruction No. 2, first on the ground that it is an unnecessary instruction and unduly emphasizes the reckless driving charge.

The Court: Instruction 8 is the instruction tendered by the accused that if the jury entertain reasonable doubt as to whether the steering mechanism was in good working order, etc. The court feels that that is too confusing and also feels that it is amply covered by other instructions.

Mr. Wright: I would like to except to that on the ground that a binding instruction has been given the Commonwealth setting forth the particulars of the charge, and page 120 } therefore the defendant, we believe, should be entitled to a like instruction.

The Court: Notwithstanding the objection to the court's refusal to grant the instruction, the court adheres to its position of refusal.

Mr. Wright: Exception is made to the refusal of Instruction No. 9 on the ground that it is a correct statement of the law and that the accused is entitled to the giving of such an instruction and that the points embodied therein are not covered by other instructions given in the case.

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ARGUMENT ON BEHALF OF THE DEFENDANT.

Mr. Wright: May it please the court and you gentlemen of the jury, it seems to me that this case has reached a rather tortured position in that here we have a man who, unfortunately, had an accident on the 4th of February where his car suddenly went off the road to the left and turned over. You haven't heard much evidence as to what caused it. You have heard evidence as to what the accused, Dr. Rothfuss, says about it, but nobody knows what caused it. That's the whole truth of it. And I think, after all, that you gentlemen will realize that we are dealing pretty largely in speculation as to what did or did not cause it. I don't think anybody can say. I don't think the Commonwealth's Attorney can say, I don't think I could say, I don't think Dr. Rothfuss could say, and I don't think you all could say.

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Now, these several witnesses for the Commonwealth, that is, the deputy sheriff and Chief of Police of the Town of Luray and Mr. Kerkhoff—I mean, I have no desire to criticize them. As Mr. Woodward says, it is true it is their duty to observe things carefully and investigate these cases. Sometimes criminal cases come within their jurisdiction, come to their attention. But, gentlemen, I think that if we take Mr. Kerkhoff, to start off with, there is certainly some indication that he had had some difficulty with Dr. Rothfuss before that, he was keeping a pretty good eye on him. He testified that he had seen him on several occasions. He didn't testify he had given him any tickets or summonses, except this one, but reckless driving had been brought to his attention, and it didn't go any further. I think you can assume that probably Mr. Kerkhoff was somewhat anxious to make a case out of this reckless driving charge, and he probably wasn't too happy about having the doctor acquitted on that case.

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Again the Commonwealth is asking you to deal in inferences, rather than facts, and that's what the evidence of the Commonwealth boils down to here, apparently.

I don't think that the evidence shows that Dr. Rothfuss said that the breaking of this A-frame was the cause of his going out of the road. I think these witnesses have just inferred, because he said something about the breaking of the A-frame, that that's what he said. I think that's a fair statement of it, and I think that's borne out by the evidence in the case.

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Now, I think Mr. Woodward, of course, would be very happy if you all would infer from what was said that Dr. Rothfuss did actually say that that is what caused the accident, but that isn't the evidence, I am afraid.

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page 139 }

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I think that when this case boils down, although it is a terribly serious thing to a man in Dr. Rothfuss's position to be accused of this crime, I think it is just one of those situations where there has been a lot of misunderstanding on the part of Commonwealth's witnesses, for what reason I don't know. But what they are dealing in is inferences, or what we might call interpretations of what they put upon what they heard, rather than what was actually said.

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I hope you will realize what a matter of great importance this is to this doctor who has had this charge brought against him in this light, and it is a thing that seems to me to be taking quite a stretch of somebody's imagination to try to get a perjury charge out of this. It is certainly not the type of case that perjury would ordinarily be based upon.

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CLOSING ARGUMENT FOR THE COMMONWEALTH.

By Mr. Woodward:

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Now, Dovel stated that he had examined the car and that he did not know about Dr. Rothfuss's trial. Maybe he did not. No doubt he did, but he was very confused as to the dates. Even on direct examination it was difficult to determine when he did examine this car, and then he would have you believe that he examined it before it was taken from Graves, just two weeks after the accident, when it is clearly before this jury that that car was not moved from Graves Motor lot until the 25th of February or later.

Gentlemen, if Dovel examined that car, if Dovel told him that the A-frame was broken in three places, page 146 } even if that be so, now, when Rothfuss took that stand, he stated it as a fact of his own knowledge and not that Dovel said it, as the Commonwealth contends, the Commonwealth submits that that is perjury. If he received his information from other sources and when he testified to that as his own knowledge, the Commonwealth submits that is perjury.

The Commonwealth has no way of knowing how this happened. I do not know whether Mr. Kerkhoff was unhappy about the acquittal in the lower court or not. I know that indictments for perjury are not presented in this county because a State Trooper is disgruntled over an acquittal. Much has been said about the impropriety of this indictment, that the

Commonwealth was reaching out for things that were not so. Indictments are not presented in this county at this time unless the Commonwealth's Attorney is thoroughly convinced that they are proper.

What is more natural on the trial of a reckless driving charge than that the person accused would give some reason to show that it was not reckless driving but it was a mechanical failure? What is more natural than, as the Commonwealth's witnesses testified, that this man, when he found himself faced with the reckless driving charge, and as he admitted, it was the second reckless driving charge and he was further aware that if he were convicted, it could mean his operator's license—what is more natural than that he would get on the stand and state, as the Commonwealth
page 147 } contends, the reason why it was not reckless driving.

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Mr. Wright: If Your Honor please, we would like to make a motion to set the verdict aside on the grounds it is contrary to the law and the evidence, that the court erred in overruling the motion to strike the Commonwealth's evidence, on the giving of certain instructions and refusal of instructions and upon error committed by the Commonwealth's Attorney in his closing remarks in argument in reference to not submitting any indictments to a grand jury in Page County—
page 148 } I mean, invoking his personal opinion and judgment on that, which I think is error. And we would like to have an opportunity to be heard on it at a later date, if it suits Your Honor.

Mr. Woodward: May it please the court, do you intend to make that motion in writing, Mr. Wright, so that the Commonwealth's Attorney will be better advised?

Mr. Wright: I will be glad to, of course, submit it in writing.

The Court: The court will entertain the motion, and in view of the fact that only one other engagement has been scheduled for the remainder of this term and that being for next Friday, I would like to hear your argument on Friday.

(Whereupon, the trial of the above-entitled matter was closed.)

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A Copy—Teste:

H. G. TURNER, Clerk.

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