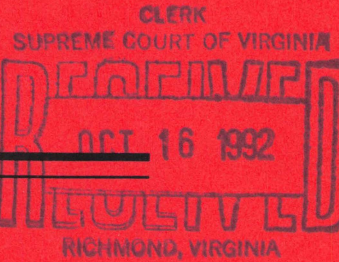
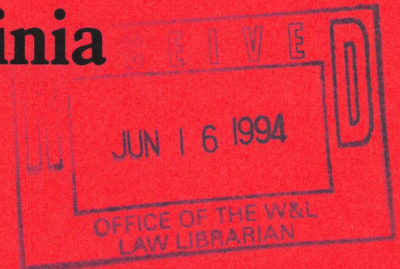


245VA311



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 920855



MONETTE HUFFMAN,

Appellant,

v.

JOSEPH A. LOVE,

Appellee.

JOINT APPENDIX

Robert J. Haddad
SHUTTLEWORTH, RUOFF,
GIORDANO & KAHLE, P.C.
4425 Corporation Lane
Corporate Center
Virginia Beach, VA 23462
(804) 671-6001

Counsel for Appellant

Edward L. Breeden, III
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555 Main Street
Norfolk, Virginia 23510

Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
MONETTE HUFFMAN.

Plaintiff,

v.

AT LAW NO.:

JOSEPH A. LOVE.

Serve: 904 Thornhill Place
Virginia Beach, Virginia 23456

Defendant.

MOTION FOR JUDGMENT

The plaintiff, Monette Huffman, moves for judgment against the defendant, Joseph A. Love, on the grounds and in the amount as hereinafter set forth:

1. On or about January 26, 1990, plaintiff was the operator of a vehicle lawfully and properly traveling in a easterly direction on Potters Road at the intersection of First Colonial Road in Virginia Beach, Virginia.
2. At said time and place, defendant, Joseph Love, was operating a vehicle in a westerly direction on Potters Road at the intersection of First Colonial Road in the City of Virginia Beach, Virginia.
3. At that time and place it was the duty of the defendant to operate his vehicle with reasonable care and with due regard for others.
4. Notwithstanding said duty, the defendant, Love, operated his vehicle in a careless, wanton, reckless and negligent manner and with a reckless disregard for the welfare and rights of others, including the plaintiff; driving drunk; failing to keep a proper lookout, approaching a dangerous curve at nearly twice the posted speed, driving on the wrong side of the road, and failing to keep his vehicle under proper control, causing his vehicle to strike the plaintiff's vehicle.

5. As a direct and proximate result of the above actions, the plaintiff was caused to sustain serious and permanent injuries, has been prevented from carrying out her daily affairs, has suffered and will continue to suffer great pain and has incurred and will incur future hospital, doctor and related bills in an effort to be cured of said injuries.

WHEREFORE, plaintiff demands judgment against the defendant, in the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00), compensatory damages, and Two Hundred Fifty Thousand Dollars (\$250,000.00), punitive damages, and her costs in this behalf expended.

MONETTE HUFFMAN,

By: _____

Of Counsel

Robert J. Haddad, Esquire
SHUTTLEWORTH, RULOFF, GIORDANO
and KAHLE, P.C.
4425 Corporation Lane
Third Floor, Corporate Center
Virginia Beach, Virginia 23462

Filed in the Clerk's office the 19 day of Feb 1991
V. _____ Teste: _____
F. _____
L. _____
S. _____
Total Paid \$ 779 [Signature] J. Curtis Fruit, Clerk
D.C.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

MONETTE HUFFMAN,

Plaintiff,

v.

AT LAW NO.
CL91-483

JOSEPH A. LOVE,

Defendant.

PLAINTIFF'S BRIEF IN SUPPORT OF HER
MOTION FOR PUNITIVE DAMAGES

Plaintiff, by counsel, submits the following brief in support of her claim for punitive damages in the above-styled matter.

This case arises out of an automobile accident that occurred on January 26, 1990. The plaintiff will be able to establish the following:

- (1) This accident occurred at approximately 6:00 p.m.;
- (2) The defendant began drinking alcoholic beverages (whiskey and soda) at approximately 5:00 p.m.;
- (3) The defendant had an accident immediately prior to the accident in the case at bar;
- (4) In that first accident, the defendant ran into the back of an individual;
- (5) This first accident happened within one mile of the defendant's collision with Ms. Huffman;

(6) At the time of the defendant's collision with Ms. Huffman, he was going approximately 25 mph in a 15 mph zone;

(7) At the time of the collision with Ms. Huffman, the defendant crossed over into her lane of travel;

(8) The defendant did not stop at the accident, but continued on down the road;

(9) The defendant was stopped approximately three miles from the accident with the plaintiff;

(10) At the time the defendant was stopped, he was given a field sobriety test, and was unable to speak coherently or stand without assistance;

(11) Prior to this accident, the defendant had two previous driving under the influence convictions and had gone through the A.S.A.P. program on two separate occasions, and had had his license suspended on two separate occasions;

(12) The defendant had had nothing to drink between the time he had the collision with the plaintiff and the time he was ultimately stopped, within three miles of the site of the accident with the plaintiff; and

(13) The defendant pled guilty to driving under the influence of alcohol arising out of the accident with the plaintiff;

While the plaintiff recognizes the difficult burden that she faces in establishing that she is entitled to punitive damages, this case clearly fits within the

parameters set by the Supreme Court, and this Court should allow the matter to go to the jury.

In Booth v. Robertson, 236 Va. 269 (1988), the Supreme Court allowed an award of punitive damages against a drunk driver. The Court was very clear in stating that alcoholic consumption was relevant to a determination of the question of punitive damages. The Court stated:

It (intoxication) is "relevant to a determination of the degree of the defendant's negligence: whether ordinary, gross, or wanton." We also said that intoxication may "serve to elevate the defendant's conduct to the level of 'negligence so gross, wanton and culpable as to show a reckless disregard of human life.'"

Booth, 236 Va. at 273.

The Court went on to say:

We think it is clear that negligence which is so willful or wanton as to evince a conscious disregard of the rights of others, as well as malicious conduct, will support an award of punitive damages in a personal injury case.

Booth, 236 Va. at 273.

What is important about the Booth case is that the Supreme Court explicitly rejected the argument that only malicious conduct warrants an award of punitive damages.

In a later case decided by the Supreme Court, the Court tacitly approved consideration of a defendant's prior DUI convictions in determining the issue of whether or not punitive damages were appropriate. In Hack v. Nester, 241 Va. 499 (1991), the Supreme Court overturned a lower court's

award of punitive damages, but recognized that relevant to the question of punitive damages was whether or not the defendant had prior DUI convictions. The Court stated:

The administrator bases his claim for punitive damages upon the evidence of:

(1) Hack's DUI convictions in 1978 and 1984;

(2) His drinking on the day of the collision;

(3) His operation of the vehicle at night on the left side of the highway, without a left headlight, while allegedly suffering from night blindness.

Hack, 241 Va. at 506.

The Supreme Court ultimately decided that the evidence was insufficient to support the award of punitive damages, but it reaffirmed the Booth holding that something short of "malice" would be sufficient to satisfy the Booth test.

In the case at bar, the plaintiff will be able to establish beyond any doubt that the defendant was drinking immediately prior to the accident; that he, in fact, was drunk at the time of the accident; that he had another accident within one mile of the accident with the plaintiff; that he had two prior DUI convictions; that he had been through the A.S.A.P. program on two separate occasions; that he was going nearly twice the posted speed limit at the time of the accident; and that he was traveling in the plaintiff's lane of travel at the time of the accident. In addition, the

jury can infer that the defendant was fleeing from detection from his first accident at the time this accident occurred, which would account for his speed. Thus, the defendant's alcohol consumption is merely one factor that comes into play in this case. All of the other factors alone, even without the alcohol, would be sufficient to allow the jury to award punitive damages.

The defendant's reliance on the case of Baker v. Marcus, 201 Va. 905 (1960) is misplaced. The Booth Court explicitly rejected a similar argument based on the Baker decision. In Booth, the Court stated:

The defendant points out that, in Baker, we said: "One who knowingly drives his automobile on the highway under the influence of intoxicants, in violation of statute, is, of course, negligent. It is a wrong, reckless and unlawful thing to do; but it is not necessarily a malicious act. . ."

We think the defendant reads this quotation out of context. The statement was made as part of a general discussion on the subject of punitive damages, and cannot be read as a holding that punitive damages may be awarded only for malicious conduct. Indeed, earlier in the Baker opinion, we noted that "[punitive] damages are allowable only where there is misconduct or malice, or such recklessness or negligence as evinces a conscious disregard of the rights of others."

Booth, 236 Va. at 271 (emphasis in original.)

Clearly, in the case at bar, the plaintiff has met her burden of establishing that the defendant's conduct was so reckless as to evince a conscious disregard of the rights of others. That being the case, the question of punitive

damages should rightfully be placed with the jury, and they should be allowed to make that determination.

MONETTE HUFFMAN

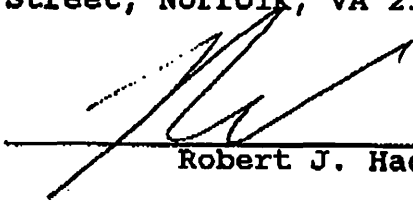
By 

Of Counsel

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CERTIFICATE

I hereby certify that a true copy of the foregoing was delivered this 6th day of February, 1992 to Philip J. Geib, Esquire, Breedon, MacMillan & Green, 1700 First Virginia Bank Tower, 555 Main Street, Norfolk, VA 23510.

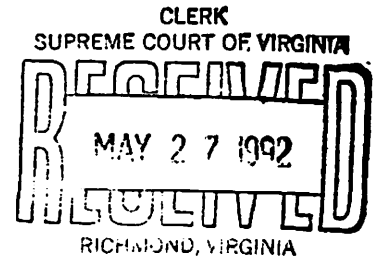

Robert J. Haddad

srgk/47-329-01/brief

920855

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA
BEACH

MONETTE HUFFMAN,
Plaintiff,



vs.

At Law No. CL91-483
EXCERPTS OF PROCEEDINGS

JOSEPH A. LOVE,
Defendant.

Taken before: The Honorable Alan E.
Rosenblatt and The Honorable Jerome
B. Friedman.

February 10, 1992 - 9:30 A.M.

Virginia Beach, Virginia

APPEARANCES: Shuttleworth, Ruloff, Giordano &
Kahle, by Robert J. Haddad,
Esquire, counsel for the Plaintiff.

Breeden, MacMillan and Green, by
Edward L. Breeden, III, Esquire,
counsel for the Defendant.

PROCEEDINGS IN THE COURTROOM OUT OF THE PRESENCE OF THE JURY
BEFORE THE HONORABLE ALAN E. ROSENBLATT

(The reporter was sworn.)

THE COURT: All right, gentlemen, this is the case
of Huffman versus Love. Is everybody ready?

MR. HADDAD: Yes, Your Honor, the plaintiff is
ready.

MR. BREEDEN: The defendant is ready, Your Honor.

THE COURT: I understand that we have got a
preliminary matter regarding whether the issue of punitive
damages should remain in this case or not. Is that correct?

MR. HADDAD: Yes.

THE COURT: How do you want to handle this?

MR. HADDAD: I think the easiest and
quickest way is for me to be able to tell you what we are
going to be able to show. Unless Mr. Breeden has some
dispute we can argue that rather than call witnesses. I
will tell you this is my witness and --

MR. BREEDEN: I don't agree necessarily with
everything he says is the evidence, Your Honor. I suppose
that is good. I think he'll tell you some things that I
don't think he'll actually prove.

THE COURT: Then it seems to me if you-all can't

1 agree on a stipulation of facts we will have to hear from
2 the people.

3 MR. BREEDEN: I think he can sort out some, and
4 most of the facts I don't think there is any dispute about,
5 and we'll take on the question of some of the other matters
6 as we get to them and maybe we can decide how we'll handle
7 them when we get to them.

8 But specifically, Your Honor please, there is an
9 allegation that the defendant had a high blood alcohol test,
10 and I think that test was excluded in traffic court. The
11 defendant pled guilty to DUI.

12 The plaintiff has identified a witness who is a
13 police officer whom he, I gather, intends to prove this, but
14 that witness has only been disclosed in the last several
15 days, certainly not within the discovery Rule, and we object
16 to that witness testifying for that reason.

17 I think there are also some other reasons to
18 object. I don't think that the police officer is qualified
19 to testify in a specific case. He is not a chemist, he is
20 not a physician, but in any event he has not been
21 identified. I believe, in accordance with the discovery
22 Rules, and in addition to that, there is a dispute as to
23 whether this accident that we are here about today was the
24 first or the second accident in which the defendant had been
25 involved on the night of the accident, and I think it is

1 clear from the police reports that this was the first of two
2 accidents. It was not the second of two accidents.

3 Mr. Haddad has an argument that there were
4 actually three accidents, but I think that --

5 THE COURT: If your intention was to clarify
6 things, Mr. Breeden, I think it has failed were all due
7 respect.

8 MR. BREEDEN: I was trying to clarify what we
9 didn't agree with. There is evidence --

10 THE COURT: Those are two very important issues,
11 whether or not we are going to allow the introduction of a
12 blood alcohol test through a police officer and whether or
13 not there were one, two, or three automobile accidents
14 before or after this particular accident. How can I resolve
15 it, though, if we can't first hear from the witnesses?

16 MR. BREEDEN: Well, I think, Your Honor, first of
17 all, as far as the blood alcohol is concerned, it was
18 admitted that he was driving under the influence. He pled
19 guilty to it, so that is stipulated.

20 THE COURT: Yes.

21 MR. BREEDEN: I don't know that the blood alcohol
22 is all that important except that the plaintiff wants to
23 show that it was, really. But the only thing, for the
24 record, I think the traffic court shows is he pled guilty.

25 Insofar as the other item is concerned, I think

1 that the cases say, at least the one that I am familiar with
2 says, that leaving the scene of an accident is not grounds
3 for an award of punitive damages.

4 I don't think that it really makes that much
5 difference whether it was the first or second or third
6 accident or whatever, but I was simply advising the Court
7 that there is disagreement on that.

8 The evidence is going to be otherwise, almost
9 identical to the evidence of Hack vs. Nester, that the
10 defendant had two previous DUI convictions, that his car
11 drifted to the left side of the line on a curve and had a
12 collision with the plaintiff's car.

13 The details of the accident otherwise, I believe,
14 are essentially identical to the Hack vs. Nester.

15 THE COURT: Mr. Haddad, in your plea for support
16 of your motion for punitive damages there is a recitation of
17 fact. Does that cover it?

18 MR. HADDAD: With the exception of the blood
19 alcohol which I have gotten this morning as point three two.

20 THE COURT: Well, he says that he is going to
21 object to it.

22 MR. HADDAD: With all due respect, I don't know
23 that he has any grounds to. I offer 18.2-268 L which
24 specifically provides that if it doesn't come in through the
25 testimony of the police officer it comes in period once it

1 has been certified, and I don't need anybody to get it in.

2 The defendant, I understand, is going to testify
3 that there were some problems with it in the lower court,
4 and I haven't been able to verify that at all. As a matter
5 of fact, the certificate simply indicates that there was a
6 blood alcohol of point three two.

7 MR. BREEDEN: Well, this is the first time this
8 has ever been produced, Your Honor please. This is
9 absolutely our first knowledge of it other than what was
10 said to me in the hall before trial, and the Statute, of
11 course, has to do with the admissibility of a criminal
12 action.

13 THE COURT: Let's do first things first, though,
14 regarding just getting it.

15 MR. BREEDEN: This apparently pertains to the
16 proceeding February 2nd, 1990. I see it, but I do object to
17 it on the grounds that it has not been produced and it is
18 our first knowledge of it, and the witness I think through
19 whom it would be offered, if it is going to be offered, is
20 Officer Jordan, who has first been identified to us this
21 morning and I believe who did not investigate this accident.
22 By the way, he was involved in a subsequent accident that
23 the defendant had.

24 MR. HADDAD: Your Honor, if I can have one
25 second.

1 THE COURT: Was that information requested in
2 discovery, Mr. Breeden?

3 MR. BREEDEN: We asked for the identification of
4 witnesses, Your Honor.

5 MR. HADDAD: Your Honor, on September 6th, 1991,
6 I filed Supplemental Answers to Interrogatories identifying
7 Officer Sheridan and Officer Jordan, and if you will look in
8 your --

9 MR. BREEDEN: I remember you identified Officers
10 Jordan and Sheridan.

11 MR. HADDAD: I think we established, number one,
12 I named the police officer in discovery; number two, you
13 don't have that, but that specifically says it is admissible
14 in any criminal or civil proceeding once it has been --

15 THE COURT: Where does it say any civil?

16 MR. HADDAD: 18.2-268 L and it specifically
17 says it shall be admissible in any court, any criminal or
18 civil proceeding as evidence of fact therein stated, and the
19 result of such analysis.

20 THE COURT: Where?

21 MR. HADDAD: 18.2-268 L.

22 THE COURT: Have you got a copy of --

23 MR. BREEDEN: I do not, but I accept what he
24 says.

25 THE COURT: -- the statute? Okay, apparently that

1 is what it says, criminal or civil proceeding. Do you have
2 the same objection to it?

3 MR. BREEDEN: I have an objection based on the
4 fact that I don't think it has been disclosed to us
5 previously. He is correct about identifying Officer Jordan,
6 Your Honor.

7 THE COURT: Mr. Breedon, was it requested or
8 covered in the Interrogatories and not provided?

9 MR. BREEDEN: Your Honor, it looks to me
10 like we filed a standard set of Interrogatories. I
11 certainly don't see that it was specifically requested.

12 MR. HADDAD: Not only not specifically, but
13 nothing at all that would require the production.

14 THE COURT: Is there anything that would require
15 production?

16 MR. BREEDEN: Judge, I don't think so, Your
17 Honor. It was a request for medical and hospital reports
18 and that type of thing.

19 MR. HADDAD: Your Honor, I'm sorry, I've got one
20 other thing, the facts as set forth in the brief.

21 THE COURT: Let me ask Mr. Shuttleworth
22 something.

23 (Discussion off the record.)

24 THE COURT: All right, give me a minute.

25 (A short recess was taken after which the trial

1 continued as follows:)

2
3
4 PROCEEDINGS IN THE COURTROOM OUT OF THE PRESENCE OF THE JURY
5 BEFORE THE HONORABLE JEROME B. FRIEDMAN
6

7 MR. HADDAD: Your Honor, before we get going I
8 have about half the police force subpoenaed who have been
9 sitting here since 9:00. I think it would be fair to say
10 they can at least come back after lunch. I will tell them
11 2:00 and if you will leave a number.

12 THE COURT: Mr. McCraw has already been sworn in?

13 THE COURT REPORTER: Yes.

14 THE COURT: Do you-all have a problem if this is
15 appealed and the record is typed we wouldn't understand what
16 is happening this morning? Maybe I ought to at least on the
17 record tell whoever what is happening.

18 MR. BREEDEN: Judge Rosenblatt did that, but it
19 was not on the record.

20 THE COURT: Earlier this morning there were two
21 juries scheduled. Both were personal injury cases, both
22 plaintiffs are represented by members of Mr. Shuttleworth's
23 law firm. Mr. Shuttleworth and Mr. Fraim were involved in
24 the first case, and there is the second case on the docket,
25 and this is the case of Huffman versus Love.

1 While waiting to see if we could find a judge and
2 find a jury, argument was heard with regard to the first
3 case, and the Court after hearing some testimony and hearing
4 extended argument and in reading the briefs that had been
5 filed previously, made a ruling in that case. I believe
6 both counsel in this case were present during all of or most
7 of the argument. I believe they went to Judge Rosenblatt's
8 Court just prior to my ruling. Is that correct?

9 MR. HADDAD: Yes.

10 MR. BREEDEN: Yes.

11 THE COURT: Okay. And Judge Rosenblatt had begun
12 hearing very preliminarily argument in this particular case.
13 When the Court ruled on the other case, the first case,
14 counsel came up with an agreement on compensatory damages,
15 and the issue of -- my ruling with regard to punitive
16 damages is, at least from the plaintiff's standpoint, is to
17 be appealed to the Supreme Court.

18 Being that I am familiar with the case law in the
19 case and because Judge Rosenblatt, I understand, had not
20 really started in much depth the argument in this case, and
21 being that the issues are, except for the facts, the issues
22 are exactly the same, it was decided that it would probably
23 be easier for me to hear this case versus Judge Rosenblatt,
24 because I had already read the trial briefs with regard to
25 the issues, and, of course, I read the cases applicable to

1 the issues, and I assume that counsel have no objection to
2 it being done that way.

3 MR. HADDAD: No, sir.

4 MR. BREEDEN: No, sir.

5 THE COURT: All right. So I don't know what
6 Judge Rosenblatt heard or what he didn't hear. I will have
7 to let you-all let me know what was heard and whether there
8 are any problems up to that point. Mr. Haddad?

9 MR. HADDAD: Your Honor, I'm just going to start
10 from the beginning. He didn't hear very much. I submitted
11 a brief that sets forth thirteen different factual
12 allegations. I've got a fourteenth which shows a blood
13 alcohol level point three two on the defendant which we
14 argued in front of Judge Rosenblatt, and that part had been
15 resolved.

16 THE COURT:. Mr. Breeden?

17 MR. BREEDEN: Yes.

18 MR. HADDAD: It has not been marked yet.

19 MR. BREEDEN: I am not sure that Judge Rosenblatt
20 actually said that, but it sounded to me like he was getting
21 ready to say that.

22 THE COURT: Well, it is my recollection that the
23 certificates of blood or drug analysis are permissible in
24 certain cases, civil as well as criminal.

25 MR. HADDAD: That was the basis for his ruling,

1 Section 18.2-268 L of the Virginia Code. That was my
2 understanding.

3 THE COURT: Why don't we go ahead and for the
4 purposes of this argument then mark it. I will put it in a
5 letter to him because I don't want the Jury, if we have one,
6 I don't want them to be confused why we have letters and
7 numbers that are different. I will go ahead and mark this
8 as Plaintiff's Exhibit A.

9 (Certificate of blood analysis was marked as
10 as Plaintiff's Exhibit A.)

11 THE COURT: All right.

12 MR. HADDAD: The only other thing that I would
13 change from the factual recitation set forth in my brief,
14 Your Honor, is number 10 on page 2. In the brief it states
15 that the defendant was stopped, he was given a field
16 sobriety test and was unable to speak coherently or stand
17 without assistance. I misspoke. I talked with the police
18 officer that was at the scene and he was not given a field
19 sobriety test because they thought he was too drunk, that it
20 might be dangerous, and propped him up against the truck,
21 let him stand up against the truck because they didn't think
22 that he could do the field sobriety test without injuring
23 himself.

24 Other than that, I think everything in the brief
25 is accurate and what I would prove in this case, and I won't

1 argue it at this point, but I will argue later, but note
2 those two changes.

3 THE COURT: Thank you. Mr. Breeden?

4 MR. BREEDEN: Your Honor please, there are a
5 number of things that are in the plaintiff's brief in
6 support of the motion which we do not agree with and I think
7 it is not the fact. One and two we do agree with.
8 Three --

9 THE COURT: Just a minute. You agree with one and
10 two? All right.

11 MR. BREEDEN: And when I say I agree, essentially
12 there will be evidence to both things and we don't really
13 dispute that. Number three, the statement that there was an
14 accident immediately prior to the accident in the case at
15 bar, we think that there is no evidence on that point.

16 The other accident occurred -- this accident
17 occurred at 6:00 P.M. and the other accident occurred about
18 twenty minutes later than this accident.

19 In his deposition the defendant, Mr. Love, made
20 some statements about a previous accident, which was a
21 rear-ender that happened close to where this accident
22 happened, and so forth, but we think the record clearly
23 shows that he was mistaken and/or confused about that.
24 Either he was confused as to whether Mrs. Huffman was -- the
25 one that is suing him here was actually the party that was

1 involved in the second accident.

2 THE COURT: What you are saying is that --

3 MR. BREEDEN: There were two accidents.

4 THE COURT: This accident occurred prior to
5 another accident occurring?

6 MR. BREEDEN: The record clearly shows this
7 occurred at 6:00 and that the rear-ender accident that he is
8 referring to occurred at 6:19, according to the police
9 report. Excuse me one second. There are people sitting in
10 the courtroom. Are these people going to be witnesses?

11 MR. HADDAD: No. Your Honor, if I can clarify
12 where we are going, I am going to be able to offer evidence
13 on each and every one of these things, so for the purposes
14 of this argument you will have to accept each and every one
15 of these as true.

16 He is going to contest it and he'll say my
17 defendant was confused about this and confused about that,
18 but for the purposes of your deciding whether you've got
19 enough facts to go forward you've got to accept it as true.
20 There is no procedure for the state courts --

21 THE COURT: Well, you are right, and the procedure
22 that we used in the last case -- but it appears that this
23 might be a little bit more complicated than the last case
24 with regard to what issues are agreed to and what issues are
25 not agreed to.

1 The Court is being placed in the position of if
2 we take everything in your brief as being true, and then,
3 you know, impanel the jury and pick a jury and start the
4 case, obviously you are going to open and you are going to
5 tell the jury what you expect the evidence will be, and it
6 will be a blood alcohol count and it will be a prior
7 accident, I think you say it was, and all the other items
8 that you have in your brief, and Mr. Breeden is going to get
9 up there and say that is not going to be the evidence here
10 and we expect the evidence to be this and that and whatever,
11 and then we get to the motions to strike portion of the
12 case.

13 If the Court -- let's say the Court at that point
14 did strike the evidence with regard to whether or not the
15 jury should make a decision as to whether punitive damages
16 would be applicable in this case, that was the part I was
17 trying to avoid because of the obvious implications that
18 would have to the defendant, and I don't think that by
19 cautioning the jury to disregard everything that the jury
20 heard, or whatever it might take in order to do that is
21 enough, so what I was trying to avoid in the last case I
22 would like to avoid in this case.

23 What I would like to do is come up with some
24 procedure whereby we can determine what the facts might be
25 so that as a matter of law I can make that decision. Now, I

1 am not sure -- you know, it is not an easy way to handle
2 this. In the last case we were able to hear from one
3 witness and there were enough depositions taken and some
4 proffers made that the Court was in a position to make a
5 ruling.

6 But with regard to whether or not this case falls
7 within the parameters of this case or the other cases that
8 were cited, and, you know, that is where we are at this
9 point. I don't know how we can do it other than -- I don't
10 want to necessarily have to have a mistrial is what I'm
11 trying to say. I don't think it would be to anyone's
12 advantage to do it, and it is my understanding that the
13 Court as a matter of law has to make this decision.

14 So I guess what I'm being put into the position
15 of doing is I have to make a decision as to what the
16 evidence is in order to make a decision as to whether the
17 jury ought to be able to decide whether punitive damages
18 would be appropriate in this case.

19 MR. HADDAD: Exactly. And I think that is
20 improper and I think it is improper because one of the key
21 issues in this case is that he had this prior accident and
22 ran from that accident and had mine.

23 Now, he says clearly in his deposition, and I
24 asked him point blank, "Have you had any other accidents
25 before you ran into Mrs. Huffman?" His answer was, "Yes,"

1 and I said, "And that was before Mrs. Huffman?" "Yes."
2 Then I stated, "Did you have any other accidents after Mrs.
3 Huffman?" "No, I didn't." And I asked him to describe the
4 accident he had before Mrs. Huffman and he described it in
5 detail.

6 There are police officers who, in fact, did know
7 that he did have an accident after Mrs. Huffman and will
8 testify to the facts of this accident, where it was, because
9 they saw it and it is completely different from what he
10 testified in his deposition.

11 I've got the defendant in his deposition saying,
12 "I had an accident within a mile of this accident with
13 somebody else before your client," and he is now telling the
14 Court you need to disregard that because he is confused.
15 That is something we can argue to the jury, but for the
16 purpose of this argument I submit when you let the jury
17 decide this you have to instruct them, if you believe that
18 the plaintiff has shown he had this other accident and a
19 blood alcohol of point three two, then they have got
20 punitive damages.

21 He can argue that, but he can't tell you at this
22 point, "Disregard what they have said because he was
23 confused." That is not proper at this stage of the
24 proceeding. If anybody is prejudiced by this, it is
25 prejudice they brought on them by waiting until nine o'clock

1 the morning of trial to ask to be heard.

2 There is a specific Supreme Court case I cite to
3 the Court, Eubank versus Spencer 203 Va. 923, a 1962 case,
4 and that clearly says that it is not prejudicial error to
5 have evidence of drinking and punitive damages come in the
6 case and then for the jury to be instructed after the Court
7 takes it away that they'll have to disregard that.

8 The Supreme Court has specifically approved an
9 instruction, "In that case I have taken away punitive
10 damages, you are to disregard any evidence of drinking and
11 decide this case based upon the other evidence."

12 So the Supreme Court said, "Okay, they have
13 waited until the morning of trial to bring it up, now they
14 are asking you to disregard certain factual statements made
15 by this defendant."

16 MR. BREEDEN: We'll respond that, if Your Honor
17 please. We wrote a letter to the Court and clerk and
18 counsel some while back offering to take it up in advance if
19 that is the way we were to proceed, so it is not something
20 that we have brought to the Court in the last minute.

21 The Eubank case -- as a matter fact, it is a
22 holding that where there is an admission of liability there
23 is error to let in the evidence of drinking because the
24 drinking evidence will serve simply to exacerbate.

25 THE COURT: I don't agree with that under normal

1 circumstances, but punitive damages, that is where the Court
2 is in an awkward position because --

3 MR. BREEDEN: But --

4 THE COURT: It is not --

5 MR. BREEDEN: If it is an appropriate case of
6 punitive damages --

7 THE COURT: But that is what we have got, and I'm
8 trying to figure out how we get to it.

9 MR. BREEDEN: So all I'm saying, the Eubank case,
10 it is a clear holding that unless you've got punitive
11 damages, something of that nature involved, it is
12 inappropriate to let it in, so I think that is basically
13 what it stands for, and insofar as the evidence of there
14 being three accidents, I am unaware -- that the accident
15 that Mr. Love described in his deposition sounds like the
16 rear end accident that he had later, about twenty minutes
17 after 6:00, after he had this accident. I am unaware of
18 anybody who has any knowledge, the plaintiff or the
19 defendant or anybody else has any knowledge that he was
20 involved in three accidents on the night of this accident.

21 So I think that it is clear in looking at the
22 record that he was involved in two accidents. He was wrong
23 as to which one occurred first, and we can speculate as to
24 why he was wrong. He was just wrong about that. He was in
25 a rear-ender accident and he was in this accident, which was

1 a sideswipe type of accident, and they are the only two
2 there is a record of and they are the only two that we know
3 anything about, and I think they are the only two that
4 anybody is going to testify about. It is just a matter of
5 what the sequence is, and the record clearly shows this was
6 the first, so that is the reason I raise the question as to
7 the propriety or whether or not this is an act of statement.
8 Even if it is an act of statement you don't get to punitive
9 damages.

10 THE COURT: Let's go to something else.

11 MR. BREEDEN: All right, Your Honor. Five also
12 refers to the second accident as though it was the first
13 accident, and I could not agree to that. Six has to do with
14 -- it says the defendant was going 25 miles an hour in a 15
15 mile an hour zone. I think it was an advisory sign, maximum
16 safe speed sign. I think the speed limit was really 25, and
17 one of these signs says it is a sharp curve that says
18 maximum -- I think the law there is you can't get an
19 instruction exceeding the speed limit if --

20 THE COURT: I think we can all agree that if, in
21 fact, it was only 25 and if he was going 25 in a 15 zone, it
22 would not be so egregious as to -- that alone would not be
23 such that there would be punitive damages. So he was drunk
24 and that was it. It wouldn't make it on punitive damages.

25 MR. HADDAD: I agree.

1 THE COURT: All right.

2 MR. BREEDEN: The only thing, I was just trying
3 to show the Court where I think there really is no dispute,
4 and the other item which I put a question mark by is number
5 nine, that the defendant was stopped about three miles from
6 the accident. I don't think the distance -- but he was
7 stopped after he had this accident.

8 Our position basically, Your Honor, is that this
9 case is a whole lot closer to Hack vs. Nester. The facts of
10 the accident itself I think are practically identical to
11 Hack vs. Nester.

12 THE COURT: BAT.

13 MR. BREEDEN: Plus the BAT, that is true, but I
14 don't think anything in these cases would suggest the
15 language that I heard Mr. Shuttleworth read to the Court
16 several times from Booth vs. Robertson. The Court said, and
17 he sort of eased over the part that sticks out in my mind,
18 the Court said the fact that the defendant had drunk enough
19 alcohol to drive as he did, i.e., this egregious set of
20 circumstances that the Court described at the opening of the
21 opinion, that was the thing.

22 Mr. Booth, I guess the defendant in their case
23 had drunk enough alcohol to go up the wrong side of the
24 Interstate and continue doing so despite the fact that there
25 were folks along the way that were calling his attention to

1 the fact that he was doing something that was exceedingly
2 dangerous, and in this case, regardless of what Mr. Love may
3 have had to drink, what he was doing was simply -- the
4 accident that we are here about today was the accident that
5 occurred, essentially the same facts that you have in Hack
6 vs. Nester. There was a sharp curve and he drifted to the
7 left side and had a sideswipe type accident with the
8 plaintiff.

9 That essentially is what we are here about, and
10 maybe I am getting way ahead of myself, but I would also
11 like to point out to the Court the fact that he left the
12 scene of the accident did not -- according to a case that I
13 have here decided in the Circuit Court of Richmond, is not
14 sufficient and has no bearing on the question of punitive
15 damages, because this accident occurred, whatever violation
16 there was of the plaintiff's rights, and so forth, be it
17 intentional or merely gross and wanton and whatever the
18 appropriate language, it had already occurred at that time,
19 and, therefore, that fact does not put the case into the
20 realm of punitive damages, and I am referring to the case of
21 Morris vs. Koukoutchas that was decided in Fairfax County by
22 Judge McQueen in which that was the issue. The defendant,
23 among other things, had left the scene of the accident, and
24 the court held that that circumstance was not relevant on
25 the issue of punitive damages.

1 THE COURT: Well, again as I mentioned before,
2 when you use the term contest -- but I guess in a case such
3 as this we have to look at all the circumstances, and that
4 was why I didn't -- in the case that I heard earlier -- and
5 that is what I am going to have to do in this case, and the
6 Court -- I don't think anyone in this room would say that it
7 is an easy decision to make for the trier -- the trial judge
8 in a case such as this based on the precedents that we have
9 from the Supreme Court, because we know that the Booth case
10 said, "Here is a specific set of facts." It is the only
11 case that I know of where the Supreme Court said it was
12 proper for the jury to determine whether or not punitive
13 damages might be appropriate in a case where we are talking
14 about someone driving under the influence, and they have
15 clearly said that we decided the Booth case based on the
16 facts of this case, and the facts of this case only.

17 That, of course, was the -- the next case came
18 in, Hack vs. Nester case comes in with some facts where they
19 decided contrary to the ruling in the Booth case, so what
20 the Court is being placed in the position of having to do,
21 as the Court was placed in the position of in the earlier
22 case, basically having to decide whether -- we have three
23 two in this case. We might have had a two something in the
24 other case, and we have got some prior convictions of DUI in
25 this case, and as they did in the Hack vs. Nester case, but

1 in the Hack vs. Nester case they didn't have such a high
2 blood alcohol case.

3 The facts of the accident are not that much
4 dissimilar, I guess, from the Hack case. Unfortunately in
5 the Hack case there was a death in that case, and it went on
6 to say even though there was a death, and an injury couldn't
7 be any more severe than that, they still ruled as they did.

8 So the Court has a very difficult job in
9 determining whether or not to allow the jury to hear the
10 evidence with regard to the drinking and to the prior DUIs,
11 and in order to make that decision, and I don't know of any
12 other way to do it but to hear it again, you know, we are
13 going to sit here and try the whole case and then decide
14 whether or not the jury should hear it. I think we have got
15 enough with the BAT and with the facts, and if you want to
16 put some evidence on you certainly can, but to argue, I
17 don't know how else to do it, frankly.

18 MR. BREEDEN: I don't know, either.

19 THE COURT: But I think you will admit I don't
20 have a whole lot of guidance. I was just talking to Mr.
21 Shuttleworth earlier about a case where I decided to set
22 aside a jury verdict on the question of damages only, and I
23 can't remember the case off the top of my head, but it was a
24 specific case that gave five steps or five different tests,
25 and you look at the cases that you have and look at that

1 particular case and see whether or not the case that he
2 tried fits into one of those five tests to be able to
3 determine that, and in this type of case there is no test
4 because the only case that allowed it is the Booth case, and
5 the Booth case, in fact, is specific.

6 I will have to make a ruling one way or the other
7 whether I think it is proper, or not proper and there is no
8 test that I can use other than trying to distinguish the
9 facts of their case -- basically two cases, and I think
10 based on the two latter cases we have to make a
11 determination, other than hearing your argument or any
12 evidence that you might want to present.

13 The fact that the second accident may have
14 occurred or maybe a prior accident or the first accident
15 isn't in and of itself, wouldn't make that much difference
16 to me. I think there are an enough other issues involved
17 where I could make my decision whether the second accident
18 was the second accident or whether it was the first
19 accident, or running from that accident and that caused this
20 accident.

21 That is the only way that I can handle it. So I
22 will be glad to hear any evidence, any additional evidence
23 you might have or any further argument you might have before
24 I stop.

25 MR. HADDAD: I don't have any other evidence,

1 Your Honor, but it worries me when we keep separating things
2 out and --

3 THE COURT: No, I know that; I know that.

4 MR. HADDAD: You are never going to have a case
5 any better than this one to come in front of you to make law
6 on. We have got somebody who the evidence is going to show
7 was in an accident within minutes of our accident, didn't
8 have anything to drink between that accident and our
9 accident, has our accident then goes down the road and has
10 another accident, and again doesn't have anything to drink
11 from that second accident to the third accident, and gets
12 stopped within minutes, two or three miles is his testimony,
13 of our accident and he can't stand up, can't talk, and is so
14 drunk that the police officers are afraid to give him the
15 field sobriety test in fear that he might hurt himself.

16 We have a gentleman that has gone through the
17 ASAP program on two separate occasions, being convicted of
18 driving under the influence on two separate occasions, going
19 ten miles faster than the safe speed in this area who
20 doesn't stop for this accident, and I disagree with Mr.
21 Breeden. I think that is relevant in a question that you
22 have in front of you, because you've got to determine
23 whether or not, as Booth says, his conduct was such that it
24 was reckless or negligent so as to show conscious disregard
25 for the rights of others.

1 I think the fact that we have an automobile
2 accident and don't even stop to see if somebody is hurt goes
3 to the question of whether or not you are guilty of such
4 negligence as to consciously disregard the rights of people
5 on the road.

6 Not only have we got one of those things with
7 this accident, with this gentleman, but we have got three
8 accidents with this gentleman within the space of four miles
9 -- within the space of maybe 15 minutes, and I don't think
10 you are ever going to have another case in front of you
11 where there is a clearer disregard of the rights of the
12 other individuals on the road than we have with this
13 gentleman on -- this was back in January of '90.

14 Then you throw in the point three two on the
15 blood alcohol, which was three times the legal limit, and it
16 just buttresses what the police officer says about this. He
17 was in exactly the condition that he should have been with
18 the point three two when they found him and stopped him, and
19 I think it is a miscarriage of what the Supreme Court has
20 ruled in Booth that says what you should do if you deny
21 punitive damages in the case.

22 They can argue all they want to argue, "He didn't
23 have this prior accident and the cop was mistaken. He
24 wasn't out of control when they talked to him," but you
25 accept all of that stuff as true and there is clear and

1 convincing evidence, not just -- more than that, there is
2 clear and convincing evidence this man would show a
3 conscious disregard for her rights and the rights of other
4 people on the road that day.

5 THE COURT: Mr. Breeden?

6 MR. BREEDEN: If I may, Your Honor, I really
7 think if you look at the Booth case and this accident, the
8 Court is saying that a person who operates an automobile in
9 such a way as he knows or should know that he is likely to
10 injure somebody, in the context the Court is using it I
11 think really means probable. Not that someone is exceeding
12 the speed limit, which most of us do on some occasions
13 without leading to anything.

14 Most of the things that you do in the operation
15 of an automobile, even though there may be a conscious
16 disregard of someone's rights if I operate an automobile
17 over the speed limit of 10 miles an hour and I don't stop at
18 a stop sign or if I don't give a proper signal before making
19 a lane change, all of those things are in a sense a
20 conscious disregard of the rights of others.

21 So surely the Court must mean something more than
22 simply doing something that you know you should not be
23 doing, and I would suggest that really the core of what the
24 Court is saying is sort of similar to what they said in the
25 Lomack vs. Eldridge case.

1 If you remember that case, it was the case where
2 the woman came in under the pretense, took this man's
3 photograph and then took it to court and used it in a court
4 proceeding which involved, I think, a child molestation, and
5 suggested that this individual who looked like the defendant
6 in this case was maybe the one that really did it. The
7 court said in that case, "In this event you are entitled to
8 get punitive damages or have the jury consider punitive
9 damages." He said, "Here the defendant did something maybe
10 not intending to hurt the plaintiff, but not caring that it
11 hurt the plaintiff, did it deliberately, deliberately knew
12 that they were invading his right, not caring about the
13 consequential injury to him."

14 I think in the Booth vs. Robertson case the court
15 was saying that where you have a person who goes on the
16 wrong side of the Interstate and is proceeding at a high
17 rate of speed, and the evidence shows that his attention was
18 called to the fact that he was on the wrong side of the road
19 going against the flow of traffic, and so forth, by virtue
20 of this truck who dodged to avoid him, blinked his lights
21 on, gave a constant blast on the air horn, the facts of this
22 case shows that that person, drunk or sober for that matter,
23 was doing something that was so egregious that he is bound
24 to have known that there was probably going to be an
25 accident.

1 And in this case, despite, you know, considerable
2 egregious type of activity perhaps on the part of the
3 defendant in terms of his intoxication, in terms of the
4 things that he may have done after the accident, I don't
5 think there is anything here to show other than Mr. Love's
6 vehicle strayed on a sharp turn to the left side of the
7 center line of the road, resulting in what was, in fact, a
8 very minor collision, a sideswiping type of collision
9 between his vehicle and the vehicle that was being operated
10 by the plaintiff.

11 Certainly the facts of the accident in this case
12 are not distinguishable from those in Hack vs. Nester as far
13 as what the man was actually doing with respect to the
14 operation of his motor vehicle at the time of the accident.

15 The court said specifically, the basis of their
16 claim for punitive damages upon the evidence of Hack's DUI
17 convictions in 1978 and 1984; two, his drinking on the day
18 of the collision; and, three, the operation of his vehicle
19 at night on the left side of the highway without a left
20 headlight and while suffering from night blindness. It is
21 correctly pointed out that Booth rejected the notion that
22 malice must be shown in order to recover punitive damages.

23 In other words, the negligence required to
24 sustain a punitive damages award must rise to the level of
25 wanton negligence immediately before colliding head-on with

1 the plaintiff. The defendant drove his vehicle four-tenths
2 of a mile down the wrong side of the highway, almost
3 striking an approaching tractor-trailer who blew a constant
4 blast on the air horn and turned to his right and left to
5 avoid striking the defendant.

6 Even though this accident produces a much more
7 tragic result, the evidence does not present the egregious
8 set of facts produced in Booth. Hack's negligence certainly
9 caused Nester's difficulties. We cannot say that it showed
10 the conscious disregard for Nester's safety necessary to
11 sustain an award for punitive damages. Therefore, the trial
12 court erred in submitting this issue to the jury and in
13 entering judgment on the verdict, and accordingly they were
14 reversed.

15 I just think that the facts in this case, how the
16 accident happened, are as close to Nester as you can get.
17 The distinguishing fact principally that they rely upon is a
18 higher blood alcohol content than was present in that case.

19 This allegation there has been some prior
20 accident, the Court already stated that was not too
21 relevant.

22 THE COURT: I didn't say it wasn't relevant. I
23 said that in itself it might not been too relevant. You
24 know, it is a real balancing act.

25 MR. BREEDEN: Well, I think it should not be

1 relevant. I don't think that it happened. I think the only
2 evidence of it is what Mr. Love said in his deposition, and
3 it is clear on his deposition he had two accidents and he
4 got them out of sequence, the order in which they occurred,
5 and I don't think there is any evidence other than that as
6 to there being any other rear-end accident where he has hit
7 somebody prior to this accident.

8 THE COURT: Mr. Haddad?

9 MR. HADDAD: One other thing, I don't know what
10 better evidence of a prior accident rather than the
11 defendant coming and saying, "I did it," and, number two,
12 everybody talks about Booth and says he almost had this
13 other accident before his collision four tenths of a mile
14 back, truck driver waving him down.

15 Here he has got a guy in an accident within a
16 mile of our accident. Not only should he have been aware
17 that he was not able to drive his car safely, he was
18 actually aware that he could not drive his car safely
19 because he had an accident. That was stronger than Booth.
20 In that accident -- we don't have a warning, we have the
21 other accident, so it can't be any stronger than this, and
22 if this case doesn't get punitive damages, the only case
23 that is going to have a repeat of Booth right down the line
24 because this can't get any closer.

25 MR. BREEDEN: If I may simply say about the other

1 accident, assuming that is his evidence, and I guess it is,
2 he says there is nothing to show who is at fault in this
3 accident, nothing to show anything about that accident that
4 put him on notice that he was on the wrong side of the road,
5 and nonetheless he continued on the wrong side of the road
6 and continued with the type of activity that resulted in an
7 accident, the way that the defendant Booth continued with
8 the activities that he was warned of resulting in that
9 accident.

10 THE COURT: We'll take a brief recess and I will
11 read your briefs. Okay?

12 MR. HADDAD: All right.

13 (A short recess was taken, after which the trial
14 continued as follows:)

15 MR. HADDAD: I am not sure where you draw the line
16 in these cases, but Mr. Breeden and everybody who has been
17 up against them, they draw the line and you have got to have
18 some horrible conduct by the defendant, and if you don't
19 have the warning signals you can't get punitive damages.

20 Taking that to its logical conclusion, if you
21 have got a guy who has got a point three two or fourteen or
22 whatever, he is drinking, unless he is almost unconscious,
23 he gets in the car and starts it up in his driveway, drives
24 back down the driveway and runs over somebody. All he has
25 done is drive his car three feet, but because he was almost

1 unconscious he runs over somebody, and all they say is that
2 was somebody that wasn't paying attention. He momentarily
3 looked forward or he didn't --

4 THE COURT: Up until the Booth case he didn't
5 have --

6 MR. HADDAD: No, sir, I don't think the court was
7 ever faced with a situation like that. I don't think it was
8 faced with someone with a very high blood alcohol content,
9 and you have an accident like that and then nothing else
10 would have to be decided. I think that that is where we are
11 headed, so instead of Booth loosening up the question of
12 punitive damages and performing the purposes that it was
13 designed to perform, that is punishing drinking, that case
14 has done nothing but constrict it, and it is now more
15 difficult to get punitive damages because everybody is
16 pointing to Booth and saying if you are not driving down the
17 wrong side of the road at night and having traffic coming at
18 you it isn't punitive.

19 MR. BREEDEN: If I may respond to that, I think
20 the Booth case has specific language that says that the
21 defendant is suggesting that because he was so intoxicated
22 he was unable to perform any kind of intent that would allow
23 you to get punitive damages. Intoxication is not to be
24 construed whereas it was otherwise of such egregious nature
25 as to get punitive damages.

1 THE COURT: Let me ask you, Mr. Haddad, the issue
2 of whether the second accident, the third, whatever you want
3 to call it, was either a prior accident or an accident that
4 occurred after. You took the defendant's deposition?

5 MR. HADDAD: Yes, sir.

6 THE COURT: Okay. And in the defendant's
7 deposition he says that he had an accident prior to the
8 accident in question here?

9 MR. HADDAD: Yes.

10 THE COURT: Okay.

11 MR. HADDAD: Not only said that, he described
12 where that accident was, and he described it as being close
13 to Virginia Beach Boulevard and First Colonial Road.

14 THE COURT: Is there, in fact, a record of an
15 accident at that time prior to this accident?

16 MR. HADDAD: No, sir.

17 THE COURT: All right.

18 MR. HADDAD: It was a hit and run. By his own
19 admission he hit somebody and takes off and ran from them,
20 because theoretically there was nobody there except him and
21 the person.

22 THE COURT: What about the question of fact that
23 the accident occurred after this accident?

24 MR. HADDAD: Yes. I asked him specifically, "Did
25 you have any other accident after you left the scene?" His

1 answer was, "No." And the accident after he left our scene
2 didn't occur anywhere near Virginia Beach Boulevard. In
3 fact, it occurred beyond our accident at South Lynnhaven and
4 Selina or somewhere close to there.

5 THE COURT: So the evidence that you have with
6 regard to a prior accident is his deposition?

7 MR. HADDAD: Yes.

8 THE COURT: No police report? You see where I am
9 coming from?

10 MR. HADDAD: I see it and I am concerned about it
11 because I didn't know why, because the police report of an
12 accident would be better than an eyewitness report.

13 THE COURT: No eyewitness other than what he
14 testified?

15 MR. HADDAD: What would be better than his
16 testimony? He is involved in an accident and he runs
17 unsuccessfully to avoid detection and he goes ahead and
18 tells somebody about it. What better evidence could I have
19 unless I can find the woman that he hit? So I am very
20 concerned that you seem to be thinking that is not enough to
21 get that evidence in front of the jury, because when the
22 defendant says, "I had another accident and it was before
23 your accident," then he gives me the details of where it is.

24 THE COURT: Isn't it always taken into
25 consideration?

1 MR. HADDAD: You are scaring me to death.

2 THE COURT: I am not trying to scare you. I am
3 trying to take all of these facts into consideration, and I
4 think it is another factor that I have to take into
5 consideration in making the decision as to whether to allow
6 it or not to allow it.

7 MR. HADDAD: If he were to testify about it and
8 you make the determination that the other accident didn't
9 happen or I don't have enough evidence to prove that it
10 happened, then you are invading the province of the jury.

11 THE COURT: I understand that; I understand that.
12 Again I have to make this decision, and the decision in the
13 Booth case in fact is specific, and one of the facts in the
14 Booth case was that a truck was coming toward him and
15 blinked his lights and blew his horn. I have to take all of
16 this into consideration in making my decision. That is what
17 I was asking, what type of evidence do you have. Believe
18 me, that is not the determinative factor in my decision. I
19 was just asking you what you had, that is all.

20 Now, Mr. Breeden, what do you have?

21 MR. BREEDEN: Well, I just wanted to add that,
22 hoping that the Court has not overlooked, as Mr. Haddad
23 correctly reiterated to the Court when asked whether or not
24 he had any other accidents after this accident, in his
25 deposition Mr. Love said, "No." The deposition clearly was

1 about two accidents and the police report is right here.
2 The police officers are out in the hall.

3 The accident that we are here about occurred at
4 6:00 and the other one at 6:19, and I think what is
5 perfectly clear when you put it together is that Mr. Love
6 was just mistaken as to which accident he was then being
7 sued for at the moment that he was being questioned.

8 There is no evidence that I am aware of that he
9 was actually involved in any other accidents other than the
10 one that he was involved with Mrs. Huffman and another one
11 involving a lady named Baet which occurred at 6:19, and I
12 think that is really asking the Court and the jury to
13 believe something which if you really look at the record in
14 totality you will realize that he was just mistaken, that
15 there were only two accidents.

16 THE COURT: Did you have anything else?

17 MR. HADDAD: No.

18 THE COURT: All right. The Court is going to
19 rule that there is not sufficient evidence too egregious
20 that the issue of punitive damages should go to the jury. I
21 am telling you gentlemen it is a tough call, and, as I said
22 in the earlier case, and this is even a tougher call, to be
23 frank with you, but that is my ruling.

24 Because of that ruling, Mr. Haddad, you will be
25 allowed to present evidence as to the facts and

1 circumstances as to the accident, impact and things of that
2 nature, but there will be no evidence with regard to what
3 the defendant did afterward. There will be no evidence as
4 to the consumption of alcohol.

5 Come back at ten after two and we'll begin the
6 trial at that time.

7 MR. HADDAD: Your Honor, I'm sorry, we had spoken
8 like the record is going to have all of the things I was
9 going to prove, but really only in my brief. I'd like to
10 make sure my brief is made part of the record, and I'd also
11 like to protect myself when we go to lunch, reading to the
12 court reporter those thirteen or fourteen things I put in my
13 brief that would have been my evidence. In fact, put an
14 offer of proof into the record of what we would be able to
15 show in this case.

16 THE COURT: I think, and I certainly meant for
17 you to do that because you said that in your brief you had,
18 what, thirteen points or whatever?

19 MR. HADDAD: Yes.

20 THE COURT: That is perfectly all right for you to
21 do that during the break. I have filed it in the Court's
22 file, and if you don't feel comfortable with that you can do
23 whatever you like in order to preserve it.

24 MR. HADDAD: Just to make sure. Please note my
25 objection and exception to the ruling of the Court.

1 THE COURT: Yes, and I want everyone to know again
2 how difficult this decision is. It is a very difficult
3 decision, and, frankly, if the Supreme Court feels that I am
4 incorrect, I don't take it -- I haven't appeared up here
5 long enough to have one, but I certainly wouldn't take it
6 personally, and I would welcome the Supreme Court's ruling
7 on another case and maybe a case not being as specific as
8 the Booth case is, to give the bench and to give counsel
9 more guidance in cases such as this. I don't think that the
10 Booth case again gives us that much guidance, and I think
11 that it is clear and justice rules.

12 I think, if I am not mistaken, somewhere in the
13 opinion that I read that the ruling of that case does not
14 give the bench and the bar sufficient guides, so, you know,
15 it is only my opinion and I can certainly be incorrect, but
16 I am doing it based on argument and based on the prior law.

17 MR. HADDAD: So the record is clear, were you
18 basing your decision on whether or not this was the first or
19 second accident? When I take it up on appeal we can say
20 whether or not that factored in your decision.

21 THE COURT: This really didn't factor in my
22 decision. Just everything. Again, the fact that the later
23 case, the Hack vs. Nester case, the opinion said what it did
24 based on the fact that this was a sideswipe type of
25 collision. That doesn't fall within the type of accident

1 they had in the Booth case.

2 In other words, the fact situation, going up -- I
3 guess he was entering the Interstate on an exit ramp of an
4 Interstate, and the fact that the truck was blowing its horn
5 and lights and whatever, nothing scientific. It is just my
6 opinion based on reading the cases as to whether I can allow
7 it, and I based the decision, rightly or wrongly, and I will
8 be told if it is not right, obviously, and I am not trying
9 to be funny, I am taking this very seriously. It is a very
10 serious matter, but that is basically my ruling. Basically
11 reading the cases, hearing your arguments and having to make
12 a very tough call, and I have made it and we'll find out
13 whether it is a right or a wrong call.

14 MR. HADDAD: I am probably asking you something
15 you can't do, but I'm trying to save my client money on the
16 appeal, and the question I'm sure is going to come up when I
17 get in front of the Supreme Court, we don't know whether the
18 Judge accepted the evidence that that accident happened and
19 we didn't actually prove that it happened. I'd like to get
20 some affirmative statement that you accepted that that
21 accident happened based on the testimony from the defendant,
22 and with the prior accident I didn't have enough evidence to
23 go forward.

24 THE COURT: That is --

25 MR. HADDAD: Thank you.

1 THE COURT: We'll be back at ten after two, I
2 guess.

3 MR. BREEDEN: Well --

4 THE COURT: Yes.

5 MR. BREEDEN: I was going to say I can't speak
6 for the Court, but whether or not the Court accepted there
7 was a prior accident or accepted there would have been some
8 evidence as described by counsel, namely from the
9 deposition, as to whether there was a prior accident, I
10 don't think the court could say whether the jury would have
11 believed it or not believed it.

12 THE COURT: Well, that is where it gets difficult.
13 I am in the place of a jury determining what facts are true
14 and what facts aren't true. Assuming the fact that Mr.
15 Haddad's facts are as stated in his brief, I so make my
16 ruling.

17 MR. HADDAD: That is all.

18 THE COURT: And so if you are before the Justices
19 and the Justices ask you that question, it is clear on the
20 record that the Court took that into consideration.

21 MR. HADDAD: Thank you.

22 THE COURT: All right.

23 MR. BREEDEN: Thank you, Your Honor. Ten after
24 two?

25 THE COURT: Yes.

1 MR. HADDAD: The facts that the plaintiff would
2 have proven on the question of punitive damages as follows:

3 Number one, that the accident in this case
4 occurred at approximately 6:00 P.M. on the evening of
5 January 26, 1990.

6 Number two, that the defendant began drinking
7 alcoholic beverages, specifically whiskey and soda at
8 approximately 5:00 P.M.

9 Number three, the defendant had an accident
10 immediately prior to the accident in the case at bar.

11 Number four, in the first accident the defendant
12 ran into the back of an individual.

13 Number five, the first accident happened within
14 one mile of the defendant's collision with Mrs. Huffman.

15 Number six, at the time of the defendant's
16 collision with Mrs. Huffman he was going approximately 25
17 miles an hour in a 15 mile an hour zone.

18 Number seven, at the time of the collision with
19 Mrs. Huffman the defendant crossed over into her lane of
20 travel.

21 Number eight, the defendant did not stop at the
22 accident but continued on down the road.

23 Number nine, the defendant stopped approximately
24 three miles from the accident with the plaintiff.

25 Number ten, at the time the defendant was stopped

1 he was unable to perform any field sobriety tests, and, as a
2 matter of fact, the testimony of the police officers would
3 have been that it would have been unsafe to perform a field
4 sobriety test on him because he couldn't stand without
5 assistance. He couldn't walk and couldn't talk, and the
6 best they could do was to prop him up against his truck so
7 he wouldn't fall over, and they were afraid of him injuring
8 himself if they performed any field sobriety tests at all.

9 Number eleven, prior to this accident the
10 defendant had two previous driving under the influence
11 convictions, had gone through the ASAP program on two
12 separate occasions, had his license suspended on two
13 separate occasions.

14 Number twelve, the defendant had nothing to drink
15 between the time that he had the collision with the
16 plaintiff and the time that he ultimately stopped three
17 miles from the site of the accident with the plaintiff.

18 Number thirteen, the defendant pled guilty of
19 driving under the influence of alcohol arising out of this
20 accident.

21 Number fourteen, the defendant's blood alcohol at
22 the time of the accident was point three two.

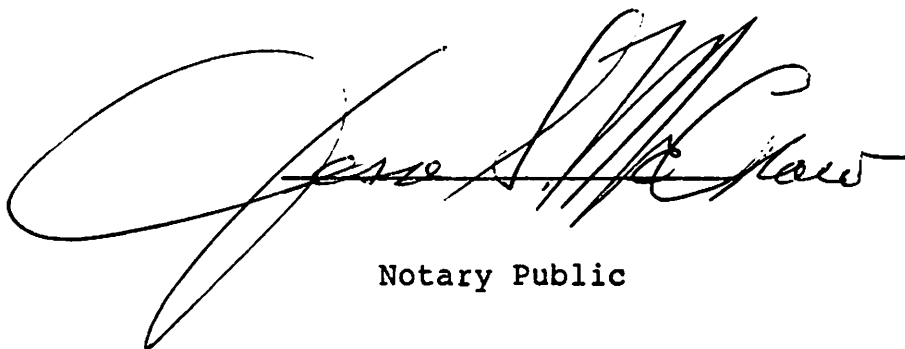
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24 *****
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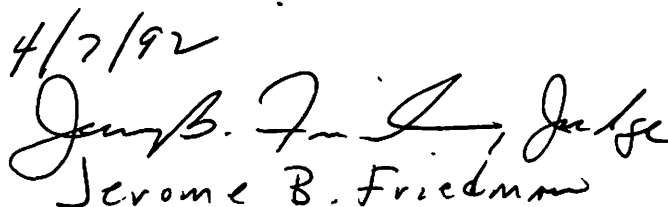
1 COMMONWEALTH OF VIRGINIA AT LARGE, To-Wit:

2
3
4 I, Jesse S. McCraw, RPR, a Notary Public for the
5 Commonwealth of Virginia at Large, certify that the
6 foregoing is a correct transcript to the best of my ability
7 of the excerpts of proceedings taken in the case of Monette
8 Huffman versus Joseph A. Love, in the said court on February
9 10, 1992.

10 I further certify that I am not a relative or
11 employee of attorney or counsel of any of the parties or
12 financially interested in the action.

13 Given under my hand this 25th day of
14 March, 1992.

15
16
17
18 
19 Notary Public

20
21 4/7/92
22 
23 Jerome B. Friedman

24 My Commission expires

25 December 31, 1994

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

MONETTE HUFFMAN,

Plaintiff,

v.

AT LAW NO.
CL91-483

JOSEPH A. LOVE,

Defendant.

FINAL JUDGMENT ORDER

THIS DAY came the parties, in person and by counsel, and also came Mr. Jess McCraw, court reporter, who was sworn to faithfully and accurately take down and transcribe the proceedings herein.

Prior to impaneling a jury, the Court heard argument on the defendant's motion to strike the plaintiff's claim for punitive damages. The Court considered the arguments of the attorneys representing each party and considered the briefs filed in support of their respective positions. After due consideration, the Court granted the defendant's motion to strike the plaintiff's claim for punitive damages from the motion for judgment and directed that the trial move forward, solely on the plaintiff's claim for compensatory damages.

Counsel for the plaintiff objected, based on the reasons set forth on the record in oral argument, and based on the brief in support of her claim for punitive damages

that had previously been filed with the Court. Specifically, the plaintiff objected, based on the fact that the allegations in the motion for judgment and the facts, as they were proffered by counsel for the plaintiff, clearly established that the plaintiff would be entitled to punitive damages in this case.

After striking the plaintiff's claim for punitive damages, the Court summoned a jury of seven persons, to-wit: Warren K. Clements, Douglas M. Cooke, Patricia Ann Holcomb, Ian E. Ross, Kevin L. Vankirk, Reid J. Woodruff, and Laura M. Yawin, who had been summoned and impaneled as the law directs, and who being sworn the truth to speak upon the issues joined.

After hearing all of the evidence, the instructions of the Court and the arguments of counsel, the jury retired to their room to consider their verdict and, after some time, the jury returned into court, having found the following verdict:

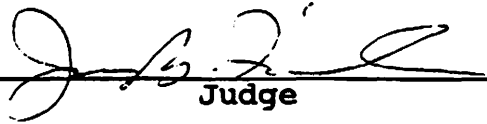
We, the jury, on the issues joined,
find in favor of the plaintiff and
assess her damages at \$30,000.00.

Therefore, it is considered by the Court that the plaintiff recover from the defendant the sum of \$30,000.00 compensatory damages, and her costs in this behalf expended. In addition, interest shall run at the legal rate of 9% from Tuesday, February 11, 1992 until the judgment is paid in full.

DM

It is so ORDERED.

ENTER this 2nd day of March, 1992.


Judge

SEEN AND OBJECTIONS NOTED, AS
STATED HEREIN AND IN THE RECORD
OF THE TRIAL:


Robert J. Haddad p.q.


Edward L. Breeden, III p.d.

srgk/47-329-01/judg.order

Certified to be a TRUE COPY
of record in my custody.

J. Curtis Fruit, Clerk
Circuit Court, Virginia Beach, Va.

BY:


Deputy Clerk

SENTARA NORFOLK GENERAL HOSPITAL

NAME OF LABORATORY APPROVED BY THE DIVISION OF CONSOLIDATED LABORATORY SERVICES

CERTIFICATE OF BLOOD ALCOHOL/DRUG ANALYSIS

7000

February 2, 1990

Date of Report

ACCUSED: Love, Joseph A.

Name of Court: Traffic B
Virginia Beach, VA 23456

Address:

Examined By: Anneth M. Dunn CLACASCPDate: Jan. 31, 1990 Time: 1030

Received:

A Vial Containing Blood for Alcohol/Drug Content

BY: Anneth M. Dunn CLACASCPDATE: Jan. 31, 1990 TIME: 0730

The vial seal had not been broken or tampered with when received. The container and vial were provided by the Division of Consolidated Laboratory Services.

Blood alcohol content .32 % by weight by volume

TESTE:

(PATHOLOGIST)

(LABORATORY SUPERVISOR)

This certificate when attested shall accompany the empty blood vial of the accused and shall be returned to the Clerk of the Court in which the charge will be heard. The approved Laboratory may retain a copy for its files.

DGS-24-016 (REV 6/88)

I certify that the document to which this authentication is affixed is a true copy of a record in the Virginia Beach General District Court, that I have custody of the record and that I am the custodian of that record.

2-10-92 On [Signature]
Date () Clerk Deputy Clerk



It's Exhibit A

57

II. ASSIGNMENT OF ERROR

A. THE COURT ERRED IN STRIKING THE CLAIM FOR PUNITIVE DAMAGES FROM PLAINTIFF'S MOTION FOR JUDGMENT.