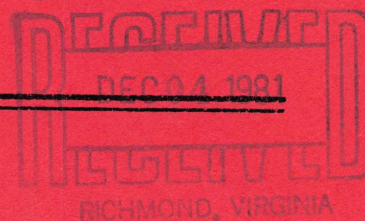


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CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

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Record No. 810041
VIRGINIA P. HOGAN,

Appellant,

JAN 3 1 1984

v.

ROBERT JACKSON CARTER, ET AL.,
Appellees.

— — —
Record No. 810065
WILLIAM FRANZ GRINSTEAD,
Appellant,

v.

ROBERT JACKSON CARTER, ET AL.,
Appellees.

— — —
Record No. 810090
ROBERT JACKSON CARTER,
Appellant,

v.

VIRGINIA P. HOGAN, ET AL.,
Appellees.

JOINT APPENDIX

Richard W. Davis
Post Office Box 3448
Radford, Virginia 24141
Counsel for V. P. Hogan

Richard C. Rakes
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Roanoke, Virginia 24005
Counsel for R. J. Carter

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105 Franklin Road, S.W.
Roanoke, Virginia 24004
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324 Washington Ave., S.W.
Roanoke, Virginia 24002

Counsel for W. F. Grinstead

TABLE OF CONTENTS

APPENDIX
PAGES

1. CASE OF WILLIAM FRANZ GRINSTEAD V. ROBERT JACKSON CARTER	
a) Motion for Judgment filed November 29, 1979 -----	1
2. CASE OF VIRGINIA P. HOGAN V. ROBERT JACKSON CARTER AND WILLIAM FRANZ GRINSTEAD	
a) Motion for Judgment filed December 7, 1979 -----	5
b) Order entered January 16, 1980 -----	9
c) Order entered February 5, 1980 -----	11
d) Instruction No. 8 filed June 30, 1980 -----	13
e) Judgment Order filed October 17, 1980 -----	14
f) Court Opinion -----	18
3. ASSIGNMENTS OF ERROR. -----	20
4. EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE R. WILLIAM ARTHUR, JDUGE, ON JUNE 30, 1980	
a) Testimony of Trooper Paul W. O'Dell, Jr. -----	21
b) Testimony of George Tarasidis, M.D. -----	68
c) Testimony of William Franz Grinstead -----	79
d) Testimony of Mary F. Phillips -----	128
e) Testimony of Robert Jackson Carter -----	146
5. EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE R. WILLIAM ARTHUR, JDUGE, ON JULY 1, 1980	
a) Testimony of Virginia Bertha Graham -----	174
b) Testimony of Rosa Velvet Duncan -----	199
c) Testimony of Connie Whittaker Hudson -----	210
d) Testimony of Virginia Purdy Hogan -----	216
e) Colloquy in Chambers -----	247
f) Testimony of Virginia Purdy Hogan -----	258
g) Instruction No. 8 -----	260
h) Closing Statement by Mr. Davis with objection -----	262
6. CARTER EXHIBIT NO. 1 -----	265
7. GRINSTEAD EXHIBIT NO. 1 -----	266

filed in the Clerk's Office on the 29th day of November, 1925.

Writ Tax \$	150.00	Yards:
Fee	30.00	
Deposit 1/9	1.00	
Total Paid \$	481.00	

Time 10.30 AM

Pulaski Co. Pa.

Henry H. H. H. H.

Clint

D.C.

3. At that time and place, it was the duty of Defendant, to operate his vehicle with due care and caution; to keep the same under proper control; to keep a proper lookout for other vehicles, then and there using said highway and especially Plaintiff's vehicle which was then and there lawfully proceeding in a through lane of travel and to avail himself as circumstances reasonably dictated, of what a proper look-out would disclose, or should have disclosed in the exercise of reasonable care, at the time and place in issue; to keep his vehicle in its proper lane of travel while proceeding on this highway and permit the lawful passing of all incoming vehicles, to-wit: Plaintiff; to obey with due care and caution all the "rules of the road" and statutes governing the operation of vehicular traffic on the highways of this State; to not make a left-turn across the lane of oncoming traffic; and to continue to operate his vehicle within the proper lane of travel and not to, in any other manner, interfere, impede, obstruct or adversely affect the operation of Plaintiff's vehicle as it was lawfully proceeding in a northerly direction on U. S. Route 11, and not to cause a collision with the vehicle operated by Plaintiff.

4. Notwithstanding said duties, Defendant, Robert Jackson Carter, did then and there so carelessly, recklessly and negligently operate his automobile that it collided with Plaintiff, William Franz Grinstead's automobile with great force and violence. Defendant was negligent in that he:

- a. Failed to keep a proper look-out;
- b. Operated his vehicle at an excessive rate of speed under the circumstances and conditions then and there existing;

- c. Failed to keep his vehicle under proper control;
- d. Failed to avail himself of what a proper look-out would disclose and should have disclosed in the exercise of reasonable care, at the time and place in issue;
- e. Failed to keep his vehicle in a proper lane of travel;
- f. Failed to obey with due care and caution all "rules of the road" and statutes governing the operation of vehicular traffic on the highways of this State;
- g. Failed to yield right-of-way to Plaintiff.
- h. Failed to operate his vehicle on a proper portion of the highway;
- i. Negligently impeded, obstructed and adversely affected Plaintiff, who was proceeding in his proper lane of travel;
- j. Encroached upon the lane of travel designated for through or north-bound movement on U. S. Route 11; and otherwise operated his vehicle in such a careless, reckless, negligent and wanton manner in complete disregard for the safety of Plaintiff, William Franz Grinstead.

5. As a direct and proximate result of Defendant, Robert Jackson Carter's negligence, as aforesaid, Plaintiff's vehicle was forced to collide with the vehicle driven by Robert Jackson Carter, causing Plaintiff to be thrown about inside his automobile with such force and trauma as to cause him to sustain serious, painful and grievous injuries, including, but not limited to multiple contusions, and abrasions; injuries to his shoulders, arms legs and other extremities; and particularly severe injuries to his knees, right elbow, and right shoulder, and other anatomical and

internal injuries too numerous to mention; has suffered in the past, continues to suffer at present and can be expected to suffer in the future, grievous pain, physical suffering, inconvenience, embarrassment, disfigurement, and mental anguish occasioned by reason of the trauma hereinbefore described which caused the hereinbefore serious and permanent injuries; has been prevented from transacting his business; has been forced to curtail his physical activities; has suffered a considerable loss of income on account of his injuries in the past and will undoubtedly have impairment to his ability to earn an income and livelihood in the future; has suffered and will continue to suffer great pain of body and mind; has suffered permanent disability, deformity and loss of earning and earning capacity; has incurred and will incur in the future hospital, doctor's and related medical bills in an effort to be cured of said injuries; and has otherwise been permanently injured, maimed, wounded and disabled, all on account of the negligence of Defendant, Robert Jackson Carter, hereinbefore recited.

WHEREFORE, Plaintiff, William Franz Grinstead, demands judgment against Defendant, Robert Jackson Carter, in the sum of Seventy-Five Thousand Dollars (\$75,000.00), together with the costs in his behalf expended and such interest as the Court may see fit to award on any amounts recovered herein.

Respectfully submitted,

WILLIAM FRANZ GRINSTEAD

By


Of Counsel

Jackson M. Bruce
Gilmer, Sadler, Ingram,
Sutherland & Hutton
P. O. Box 878
Pulaski, Virginia 24301

V I R G I N I A:

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

VIRGINIA P. HOGAN,	:	
Plaintiff	:	
v.	:	MOTION FOR JUDGMENT
ROBERT JACKSON CARTER	:	
Lot 47	:	
Snidow's Trailer Park	:	
Christiansburg, Virginia	:	
and	:	
WILLIAM FRANZ GRINSTEAD	:	
Route 1, Box 176B	:	
Dublin, Virginia,	:	
Defendants	:	

TO: THE HONORABLE KENNETH I. DEVORE, JUDGE OF SAID COURT:

NOW COMES the plaintiff, Virginia P. Hogan, and files this Motion for Judgment against the above-named defendants, and each of them, in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00) for the following wrongs, damages and injuries, to-wit:

1. That on Sunday, July 23, 1978, at approximately 10:00 P.M., plaintiff was riding as a passenger in an automobile operated by Robert Jackson Carter and owned by Allen Jackson Whittaker, which vehicle was stopped or approximately stopped preparatory to making a left turn off of U. S. Route 11 in Pulaski County, Virginia, into the parking lot of McDonald's Restaurant.

2. That as the driver of the vehicle in which

plaintiff was riding commenced to make his turn into McDonald's parking lot, a vehicle operated by William Franz Grinstead was proceeding north on U. S. Route 11, headed in the direction of Radford, approached the Carter vehicle, which vehicle cut across the Grinstead lane of travel.

3. That as the vehicle in which plaintiff was riding crossed the north bound lane of traffic on U. S. Route 11, and was entering the McDonald's parking lot, it was struck in the right side by the Grinstead vehicle.

4. That at the time of the accident in question, it was the duty of the defendant, Robert Jackson Carter, to operate his vehicle on a proper portion of the highway, to maintain and keep a proper lookout, to have his vehicle under proper control, and to otherwise operate his vehicle in a careful, prudent, and non-negligent manner in conformity with the laws of the State of Virginia.

5. That notwithstanding the duties aforesaid, the defendant, Robert Jackson Carter, was then and there guilty of negligence in the operation of his vehicle in that he failed to operate his vehicle on a proper portion of the highway, failed to maintain and keep a proper lookout, failed to have his vehicle under proper control, and otherwise operated his vehicle in a negligent manner in complete disregard for the safety of the plaintiff.

6. That at the time of the accident in question,

it was the duty of the defendant, William Franz Grinstead, to operate his vehicle on a proper portion of the highway, to have his vehicle under proper control, to maintain and keep a proper lookout, to operate his vehicle in a careful, prudent and non-negligent manner in conformity with the laws of the State of Virginia.

7. That notwithstanding the duties aforesaid, the defendant, William Franz Grinstead, was then and there guilty of negligence in the operation of his vehicle in that he failed to operate his vehicle on a proper portion of the highway, failed to have his vehicle under proper control, failed to maintain and keep a proper lookout, failed to operate his vehicle at a reasonable rate of speed and otherwise operated his vehicle in a negligent manner in complete disregard for the safety of the plaintiff.

8. That as a result of the negligence of the defendants as aforesaid, plaintiff was severely injured in that she sustained a fractured pelvis, multiple contusions, aggravation of pre-existing osteoarthritis and heart condition, numerous bruises and abrasions to her body, injuries to her nervous system, from all of which injuries plaintiff has suffered great pain and mental anguish and will suffer great pain and mental anguish in the future, has incurred hospital and medical expenses in an effort to be relieved of her pain and suffering, and has been permanently injured, disfigured, and disabled.

WHEREFORE, plaintiff moves this Honorable Court


for judgment against the above-named defendants, and each of them, in the sum of \$50,000.00 plus costs and interest.

Respectfully,

VIRGINIA P. HOGAN

By: 

Of Counsel


RICHARD W. DAVIS
DAVIS & STONE, ATTORNEYS, INC.
P. O. Box 3448 FSS
Radford, Virginia

Counsel for Plaintiff

VIRGINIA:

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

VIRGINIA P. HOGAN,
Plaintiff

v.

ROBERT JACKSON CARTER

and

WILLIAM FRANZ GRINSTEAD,
Defendants

O R D E R

On motion of the defendants, to which there is no objection by the plaintiff, it is according ADJUDGED and ORDERED that this action be, and the same hereby is, transferred to the Circuit Court of Pulaski County for further proceedings therein.

We ask for this:

GENTRY, LOCKE, RAKES & MOORE

By Richard B. Rakes
Counsel for the defendant,
Robert Jackson Carter

ENTER this 16th day of January,
1980.

s/ K. I. Devore
Judge

WOODS, ROGERS, MUSE, WALKER
& THORNTON

By James F. Johnson
Counsel for the defendant,
William Franz Grinstead

SEEN:

DAVIS & STONE, P.C.

By 

Counsel for Plaintiff

A Copy--Teste:

JOHN B. MYERS, JR., Clerk

By: *May A. Shewart* ,D.C.

VIRGINIA:

IN THE CIRCUIT COURT OF PULASKI COUNTY

VIRGINIA P. HOGAN,)
)
 Plaintiff)
)
 v.)
)
 ROBERT JACKSON CARTER)
)
 and)
)
 WILLIAM FRANZ GRINSTEAD,)
)
 Defendants)

O R D E R

WILLIAM FRANZ GRINSTEAD,)
)
 Plaintiff)
)
 v.)
)
 ROBERT JACKSON CARTER,)
)
 Defendant)

On February 5, 1980, argument was heard upon the written motion of Robert J. Carter, defendant, in these actions for consolidation of these cases for trial. And it appearing unto the Court that the legal issues are the same in both actions for personal injury arising out of a single accident and that substantial justice will be served thereby, it is accordingly ADJUDGED and ORDERED that these actions be, and they hereby are, consolidated for trial.

✓ And the clerk of this court is directed to file one certified copy in each of the court files and to certify copies to each counsel of record.

We ask for this:

GENTRY, LOCKE, RAKES & MOORE

By: [Signature]
Counsel for Robert Jackson Carter

Seen: _____

DAVIS & STONE ATTORNEYS, INC.

By: [Signature]
Counsel for Virginia P. Hogan

GILMER, SADLER, INGRAM, SUTHERLAND & HUTTON

By: [Signature]
Counsel for William Franz Grinstead

Enter this 5th day of February, 1980.

[Signature]
Judge

INSTRUCTION NO. 6

The Court instructs the jury that William Grinstead was guilty of negligence as a matter of law in driving in excess of the maximum speed limit. And if you further find that such negligence was a proximate cause of the collision with the Carter vehicle then you shall return your verdict in favor of Virginia Hogan against William Grinstead and also in favor of Robert Carter in the case of Grinstead v. Carter.

Grinstead
Carter

VIRGINIA:

IN THE CIRCUIT COURT OF PULASKI COUNTY

VIRGINIA P. HOGAN,
Plaintiff

v.

ROBERT JACKSON CARTER

and

WILLIAM FRANZ GRINSTEAD,
Defendants

O R D E R

WILLIAM FRANZ GRINSTEAD,
Plaintiff

v.

ROBERT JACKSON CARTER,
Defendant

On June 30, 1980, came the parties, in person and by counsel, and announced themselves ready for trial, these actions at law having previously been ordered consolidated for trial. Whereupon, came a jury, to-wit: Carol D. Kirk, Joel R. Pugh, Roy L. Sutherland, Shirley T. Peterson, Betty C. Wright, Dorothy W. Layman, and Pearl L. Melton, who were sworn to well and truly try the issues joined and a true verdict render according to the law and the evidence.

The evidence of the parties was then heard, and after all parties rested their cases on July 1, 1980, the defendant Robert Jackson Carter moved the Court to strike the plaintiffs' evidence against him in both actions. The Court, after hearing the argument of counsel, overruled that motion, to which action of the

Court the defendant Robert Jackson Carter, by counsel, duly objected.

The plaintiff, Virginia P. Hogan, by counsel, moved the Court to strike the evidence of the defendants, Robert Jackson Carter and William Franz Grinstead, and to submit to the jury only the question of damages, which the Court refused, and was duly excepted to by counsel.

Thereupon the jury received the instructions of the Court and heard the argument of counsel, following which it retired to its room to consider its verdicts. After deliberating for some time, it returned into Court on July 2, 1980, with the following verdicts:

"We, the jury, upon the issues joined find our verdict in favor of the plaintiff, Virginia P. Hogan, and award her damages jointly against defendants, Robert J. Carter and William F. Grinstead, in the amount of \$50,000.

(signed) Betty Wright
Foreman"

"We, the jury, upon the issues joined find our verdict in favor of the Defendant, Robert J. Carter, in the case of William F. Grinstead against him.

(signed) Betty Wright
Foreman"

After the verdicts were received, the defendants Robert Jackson Carter and William Franz Grinstead, by counsel, moved the Court to set aside the jury's verdict in favor of the plaintiff Virginia P. Hogan in her case and the plaintiff William Franz Grinstead also moved the Court to set aside the verdict in his

case in favor of the defendant Robert Jackson Carter. The Court took said motions under advisement and granted the moving parties leave to file their motions with supporting authorities in writing, which were thereafter submitted to the Court. The parties appeared, by counsel, before the Court on September 8, 1980, and argued said motions.

The Court, having considered said motions, the various grounds thereof, and the authorities submitted in support thereof, is of the opinion that such motions should be overruled on all grounds except the ground that the verdict rendered in favor of the plaintiff Virginia P. Hogan is excessive in the amount of damages awarded, it being the opinion of the Court that the plaintiff Virginia P. Hogan should be required to remit the sum of Twenty-Five Thousand and no/100 Dollars (\$25,000.00) or else submit to a new trial.

Accordingly, it is hereby ORDERED that the motion of the plaintiff William Franz Grinstead to set aside the verdict in his case in favor of the defendant Robert Jackson Carter be, and it hereby is, overruled, and it is further ORDERED, pursuant to the verdict of the jury, that the plaintiff William Franz Grinstead have and recover nothing of the defendant Robert Jackson Carter, to which action of the Court the plaintiff William Franz Grinstead, by counsel, objected.

Further in accordance with the Court's ruling, it is hereby ORDERED that the motions of the defendants Robert Jackson Carter and William Franz Grinstead to set aside the jury's verdict in favor of the plaintiff Virginia P. Hogan be, and they hereby are, overruled on all grounds except the ground that the verdict rendered in favor of the plaintiff Virginia P. Hogan is excessive

in the amount of damages awarded, to which action of the Court the defendants Robert Jackson Carter and William Franz Grinstead objected insofar as it overruled their motions. It is further ORDERED that the plaintiff Virginia P. Hogan remit the sum of Twenty-Five Thousand and no/100 Dollars (\$25,000.00) or else submit to a new trial. Whereupon the plaintiff Virginia P. Hogan elected, under protest, to remit the aforesaid sum and accept judgment for the amount of Twenty-Five Thousand and no/100 Dollars (\$25,000.00) in lieu of the amount of the verdict, and therefore it is hereby ORDERED that the plaintiff Virginia P. Hogan have and recover from the defendants Robert Jackson Carter and William Franz Grinstead the sum of Twenty-Five Thousand and no/100 Dollars (\$25,000.00) together with interest and her costs in this behalf expended.

Upon the request of all counsel, it is ORDERED that the transcript of the hearing before this court on June 30, July 1 and 2, be, and the same hereby is, made a part of the record.

Enter this 17th day of October, 1980.

5/ R. William Arthur
Judge

Seen:

[Signature]
Of Counsel for Virginia P. Hogan

[Signature]
Of Counsel for Robert Jackson Carter

[Signature]
Of Counsel for William Franz Grinstead

[Signature]

A TRUE COPY—

TESTE:

GERRY J. ATKINSON, CLERK

BY: James B. Owsen, D. C.

TWENTY-SEVENTH JUDICIAL CIRCUIT

JUDGES:

R. WILLIAM ARTHUR
Wytheville, Virginia

KENNETH I. DEVORE
Christiansburg, Virginia

DALE W. LARUE
Hillsville, Virginia



P. O. BOX 380
WYTHEVILLE, VIRGINIA 24382

COUNTIES

Carroll
Floyd
Grayson
Montgomery
Pulaski
Wythe

CITIES:

Galax
Radford

October 24, 1980

Richard W. Davis, Esq.
Attorney at Law
P.O. Box 3448
First Street Station
Radford, Virginia 24141

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Attorneys at Law
P.O. Box 720
Roanoke, Virginia 24004

Harvey S. Lutins, Esq.
Attorney at Law
P.O. Box 180
Roanoke, Virginia 24004

Re: Hogan
v.
Carter and Grinstead
Pulaski County Circuit Court

Gentlemen:

It is required in a case of remittitur that the trial court state on the record its reasons for ordering such remittitur. Bassett, etc. v. McReynolds, 216 Va. 897, 224 S.E. 2d 323. I may have done this on the record when I made my ruling on the several post-verdict motions but I am not sure. I am, therefore, writing this letter and making it a part of the record in this case.

Plaintiff Hogan sued for \$50,000.00 for personal injuries arising out of a motor vehicle collision and the jury returned a verdict in her favor

against both defendants in the amount sued for. The Court ordered a remittitur of \$25,000.00.

Mrs. Hogan, an elderly lady, sustained a non-displaced fracture of the pelvis. She was in the hospital five days and received physical therapy during that time. When she was released from the hospital, she was using a walker. On October 3, 1978, she had x-rays and Dr. Tarasidis found them to be satisfactory. He did not see Mrs. Hogan again until June 10, 1980, apparently in preparation for trial. Dr. Tarasidis testified that Mrs. Hogan had arthritis at the time of the accident and that trauma often aggravates that condition. It was his opinion that Mrs. Hogan had made a complete recovery from the injuries sustained in the accident. Her medical bills amounted to \$1404.63 and she paid her daughter \$750.75 for looking after her during her recuperation, a total of \$2155.38.

Mrs. Hogan testified that her back and neck pained her and that her knee would give out on her. In April, 1980, she saw Dr. Foster, who prescribed medication for pain. Mrs. Hogan testified that she had had mild arthritis for several years prior to the accident and that Dr. Foster told her that she had an aggravation of her osteo arthritis but that there was no permanent injury to her neck.

The verdict of \$50,000.00 shocked the Court's conscience and appeared to be the product of anger toward the youthful drivers of the two cars for causing this unfortunate accident. The award also seemed to me to be so great and so out of proportion to the injuries sustained by the plaintiff as to suggest that it was not fair and impartial. If the jury was not angered, then it would appear that it misconceived the facts or the law of the case. Mrs. Hogan was only in the hospital five days; she sustained no economic losses except for the medical expenses and payment to her daughter above mentioned; and she had no permanent injury. She did not see a physician from October 3, 1978, until April, 1980, about two months before the trial date. It is true that there was evidence that her arthritis may have been aggravated by her injuries but that evidence was rather vague and general. When Mrs. Hogan went to see Dr. Foster in April, 1980, she was complaining of back and neck pain but Dr. Foster reported that there was no permanent injury to her neck. Dr. Tarasidis testified that Mrs. Hogan had made a complete recovery.

For the foregoing reasons I felt compelled to reduce the amount of the award by fifty percent.

This letter-opinion will be made a part of the record in this case.

Very truly yours,


R. William Arthur, Judge

RWA:ew

cc Clerk of the Circuit Court of Pulaski County

ASSIGNMENTS OF ERROR

1. In the case of Virginia P. Hogan, Appellant, v. Robert Jackson Carter, et al., Appellees, Record No. 810041
 - a. The trial court erred to the prejudice of Appellant in requiring her to remit a part of her recovery, as ascertained by the verdict of the jury.
2. In the case of William Franz Grinstead, Appellant, v. Robert Jackson Carter, et al., Appellees, Record No. 810065
 - a) The trial court committed error in granting Instruction No. 8.
3. In the case of Robert Jackson Carter, Appellant v. Virginia P. Hogan, et al., Appellees, Record No. 810090
 - a) The trial court erred in refusing to strike the evidence of Mrs. Hogan against Carter and in refusing to set aside the verdict as to Carter and enter final judgment in his favor.

* * *

1 disclosure at this time. During the break it was dis-
2 covered, in talking with fellow counsel here, I thought
3 I had summonsed Mr. Ronnie Carter but apparently I
4 did not. I summonsed his two sisters. We could find
5 nothing in the Record to indicate that I had and my
6 files do not indicate that I had.

7 BY THE COURT:

8 All right, that resolves the problem of
9 the missing witness. Now gentlemen, you may proceed
10 and call your first witness.

11 TROOPER PAUL W. O'DELL, JR., being duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION BY MR. BRUCE:

14 Q: Would you state your full name for
15 the Record, please?

16 A: Paul W. O'Dell, Jr.

17 Q: And how long have you been a State
18 Trooper with the Virginia State Police Department?

19 A: Twenty-six years.

20 Q: And did you have the opportunity to
21 investigate an automobile accident on July 23, 1978
22 on Route 11 in the Fairlawn area near the Radford
23 Shopping Plaza?

24 A: Yes sir.

25 Q: About what time did that accident
happen?

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A: About 10:00 p. m.

Q: When did you get there, Trooper?

A: 10:20.

Q: Could you tell the Jury what your investigation revealed?

A: This occurred on U. S. Route 11 approximately three-tenths of a mile West of Radford at the - it would be on the Eastern side or the Radford side of McDonald's at the entrance that goes into the Radford Shopping Plaza and McDonald's. It's the one toward Radford from the red lights. My investigation revealed that two vehicles were involved in the collision in the right-hand lane of Route 11 as you are heading into Radford at this entrance. One was operated by William Grinstead, a 1964 Plymouth two-door, and the other car was a 1967 Chevrolet operated by Robert Jackson Carter.

Q: Trooper, let me interrupt for just a second - is this Mr. Grinstead - (IDENTIFYING)?

A: Yes sir.

Q: And is that Mr. Carter - (IDENTIFYING)?

A: Yes sir.

Q: Go ahead.

A: When I arrived, the Grinstead car

1 was partly - the rear of it was out on Route 11 and the
2 remainder was up in this entrance, headed into the
3 entrance that goes into the shopping plaza and
4 McDonald's, and the Carter car was between the
5 Executive Restaurant and the motel building.

6 Q: Let me show you a very rough sketch
7 or diagram, and taking into consideration that this is
8 not drawn to scale and that it is a rough sketch, do
9 you think it fairly depicts the area where the accident
10 happened?

11 A: Yes sir.

12 BY MR. BRUCE:

13 Could we mark that as Plaintiff Grin-
14 stead's Exhibit Number 1, please?

15 BY THE COURT:

16 Any Objections? All right, let it be
17 marked as an exhibit.

18 BY MR. RAKES:

19 Would it be helpful to Your Honor, to
20 call that Grinstead Exhibit 1?

21 BY THE COURT:

22 Well, I was just wondering - do you want
23 to make it a Joint Exhibit?

24 GRINSTEAD EXHIBIT 1
25

1 BY MR. BRUCE:

2 Let me mark on here - we covered it
3 earlier and I hadn't put it down that the way - towards
4 Radford we'll call East, and the way towards Pulaski
5 and Dublin we'll call West.

6 Q: A couple of things, Trooper, about
7 that diagram - the traffic lights there, you will note,
8 are at the Easternmost corner of the entrance to the
9 Radford Shopping Plaza. Is that correct - as opposed
10 to the middle?

11 A: Yes sir. Well, the ones controlling
12 East/West traffic are at this - well, they are almost
13 lined up with the edge of the entrance.

14 Q: And from your investigation, was
15 Bill Grinstead traveling East on Route 11?

16 A: Yes sir.

17 Q: And was Robert Carter traveling
18 West on Route 11 turning left across the Eastbound
19 lane into McDonald's?

20 A: Yes sir.

21 Q: Did you happen to take any measure-
22 ments of the accident scene?

23 A: Some, yes sir.

24 Q: And have you happened to have occa-
25 sion to take the measurement of the distance from this

1 traffic light to the Westernmost edge of the entrance
2 to McDonald's?

3 A: Yes sir.

4 Q: And how far is that?

5 A: Two hundred and twelve feet.

6 Q: All right, let me draw that in in
7 red. (DRAWING ON DIAGRAM) - as measurement taken
8 by Trooper O'Dell from here to this point. At this
9 entrance into McDonald's, do you have any idea as to
10 the width of it on the road surface?

11 A: Well, these corners aren't square,
12 they're at an angle.

13 Q: More like this - (INDICATING ON
14 DIAGRAM)?

15 A: Yes sir.

16 Q: Let the Record show I'm drawing the
17 angles in, trying to mark out the squares. All right,
18 and how far are they across at the edge of Route 11?

19 A: Well, the point I measured was from
20 this point back to this extreme, was 56 feet.

21 BY MR. RAKES:

22 Fifty-how many?

23 BY THE WITNESS, TROOPER O'DELL:

24 A: Six.
25

1 BY MR. BRUCE:

2 Let me draw that in also in red as the
3 distance across this opening and ask you:

4 Q: Does that mean that from the Eastern-
5 most edge of the Radford Shopping Plaza to the Eastern-
6 most edge of the entrance going in beside McDonald's,
7 it's a total of 268 feet? This figure - the 212 plus the
8 56 feet?

9 A: Yes sir.

10 Q: Trooper, did you also have occasion
11 to measure any distance from the Gulf Station - I
12 believe this is Northside Gulf?

13 A: Yes sir.

14 Q: Excuse me - from the Gulf Station
15 to the traffic light?

16 A: Yes sir.

17 Q: And how far is that distance?

18 A: From the approximate center of that
19 building, the service station building, down to the
20 edge of the intersection here was 242 feet.

21 Q: So from the middle of the Gulf Station?

22 A: Yes sir.

23 Q: Two hundred and forty-two feet -

24 I'm also writing that in in red, for the Record. So
25 now, if we add up these figures from the middle of the

1 Gulf Station to the East edge of the entrance to
2 McDonald's on the North side of Route 11, it would be
3 510 feet - is that correct?

4 A: Yes sir.

5 Q: Now let me just draw that in, also
6 at the top in red - (DRAWING ON DIAGRAM). Trooper,
7 let me ask you also in red if you - first, we've heard
8 in the Opening Statements that there were some thirty
9 feet approximately in skidmarks from the Grinstead
10 car - is that your correct findings?

11 A: Yes sir, approximately.

12 Q: Could you mark in - and I'd like for
13 you to do the marking - on this map where the Grinstead
14 skidmarks were, if you would please?

15 A: (MARKING ON DIAGRAM).

16 Q: And could you put, for these skid-
17 marks, could you put your initials over those to indi-
18 cate that you marked those skids as opposed to my
19 scratching all over the diagram?

20 A: (MARKING INITIALS ON DIAGRAM).

21 Q: The area where the accident happened,
22 with McDonald's and Wilco and Radford Shopping
23 Plaza - is that a fairly well-illuminated area?

24 A: It's fairly well-illuminated. There's
25 really no street lights, though.

1 Q: Was there any debris or car parts
2 or mud or gouge marks or anything in the road?

3 A: Not that I recall. I don't have any-
4 thing, no notes or anything marked.

5 Q: Did you have occasion to measure
6 the width of the lanes on Route 11 going in an Easterly
7 direction?

8 A: I measured the - well, the highway
9 width between curves is 56 - let's see - 56 feet, four
10 inches.

11 Q: That's all the way across?

12 A: All the way across.

13 Q: Both lanes?

14 A: Yes sir.

15 Q: But you don't know, don't have
16 measurements as to what the width of each individual
17 lane is?

18 A: Well, at that time - there used to
19 be a concrete median in this area, and it was removed
20 and replaced by a set of double solid lines and now -
21 well, it has been changed again, and I didn't take a
22 measurement of the width in that center at the time.

23 Q: And it has been changed now?

24 A: It has been changed again, but the
25 normal - well, the lanes would have been between -
approximately thirteen feet.

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Q: For each lane?

A: Yes sir.

Q: Let me write on here - (WRITING ON DIAGRAM). Did you have occasion to talk to Mr. Carter about this accident?

A: Yes sir.

Q: And did he tell you what happened?

A: Well, I talked to him at the scene - as I recall, it was at the scene - and his statement to me was that the other car - that he had stopped in the left-hand lane headed West and three cars, he had waited while three cars went by going East and that there was one other car back in the distance approaching, you know, coming in his direction, and that the first time that he saw the other car was when his grandmother shouted, and that this other car - his statement was that it had brights on and he indicated to me that it had bright lights on.

Q: From his statement, he indicated he did not see the oncoming Grinstead car until after his grandmother shouted?

A: Yes sir.

Q: And did he also indicate to you that he was turning left from the Westbound lane of Route 11 across the Eastbound lanes into McDonald's?

1 A: Yes sir.

2 Q: Where did the Carter vehicle come

3 to rest?

4 A: Well, there's a grass area here, an

5 embankment that goes down into a parking lot at the

6 Executive.

7 Q: Going downhill?

8 A: Yes sir.

9 Q: (MARKING ON DIAGRAM) - It goes

10 this way - the embankment goes towards the Executive?

11 A: Yes sir, and the Carter car went

12 through the rail fence and went down across the park-

13 ing lot and the building is gone, but say this was the

14 restaurant, and the motel would be over here, it went

15 between the restaurant, in front of the restaurant

16 building and a sign, and stopped approximately halfway

17 between the old restaurant and the motel.

18 Q: Kind of over here somewhere -

19 (DIAGRAM)?

20 A: Yes sir.

21 Q: Facing towards the river?

22 A: Towards Radford, yes sir. It was

23 at an angle approximately like that.

24 Q: And did you happen to measure how

25 far it traveled from where it got hit?

A: I did, but I can't find it now.

Q: Okay. The skidmarks that you have

1 placed from the Grinstead car, were they stopped still
2 in the right-hand lane for Eastbound travel on Route
3 11?

4 A: Yes sir.

5 Q: Did you talk to anyone at the scene
6 who may have seen the accident?

7 A: I talked to Mary Phillips.

8 Q: And what did she tell you?

9 A: She was in the area of McDonald's
10 and she said that the car that was going East on Route
11 11 was - her statement to me was that the car was
12 going fast and that the other car was going into
13 McDonald's, and that's about all she told me. When
14 I went back to talk to her again, she had left.

15 Q: And she didn't go into any detail
16 about the going fast?

17 A: No sir.

18 Q: As to what she called fast?

19 A: No sir.

20 Q: Did you take a statement from Bill
21 Grinstead?

22 A: Yes sir.

23 Q: And what did Bill tell you?

24 A: He said that the other car came
25 across in front of me, said he was going forty-five to
fifty through a green light and the other car, he

1 didn't see the other car until it was right in front of
2 him.

3 Q: Did he indicate to you where he
4 looked at his speedometer to approximate his speed at
5 forty-five to fifty?

6 A: According to my notes, he said
7 forty-five to fifty through the green light, and that's
8 what I've got.

9 Q: You didn't ask him any further details
10 along those lines?

11 A: No sir.

12 Q: At any time do you have in your notes
13 that Bill Grinstead told you that he knew what the
14 speed limit was through that stretch of Route 11?

15 A: Not that I recall.

16 Q: Trooper, I just want to ask you one
17 or two more questions regarding the skidmarks that
18 you have put in: Did those skidmarks lead right up to
19 where the Grinstead car stopped?

20 A: Yes sir.

21 Q: And they are - or are they entirely
22 in the right-hand lane for the Eastbound travel on
23 Route 11?

24 A: Yes sir. Well, what I put up here
25 should be wider in relation to the width that you have.

1 They're obviously too close together, but this one
2 right here is the approximate location that I found it.

3 Q: So what you're saying is the one
4 from the right tire is correct?

5 A: Yes sir.

6 Q: And the one from the left tire maybe
7 should be over a little bit?

8 A: Maybe a little wider, yes sir.

9 Q: And the slight angle that you have
10 here, is that a good approximation as to the angle of
11 the skidmarks?

12 A: Yes sir.

13 BY MR. BRUCE:

14 That's all I have.

15 CROSS EXAMINATION BY MR. DAVIS:

16 Q: Trooper O'Dell, the skidmarks that
17 Mr. Bruce was asking you about on the Grinstead
18 vehicle - did you measure how close they were to the
19 curb there?

20 A: No sir, I didn't.

21 Q: You actually did not measure the
22 marks themselves, did you?

23 A: No sir.

24 Q: I believe you told me previously in
25 our discussion that you estimated they were about the
length of a car and a-half?

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A: Yes sir.

Q: The average car you told me, I believe is about twenty feet, so you estimated the skid-marks of the Grinstead vehicle to be about thirty feet?

A: Yes sir.

Q: And of course it hasn't been brought out, but the Jury and everybody knows, this was a very serious accident. Were the parties still there or were they being removed when you arrived? How about Mrs. Carter, the lady that was killed?

A: I'm not certain whether she was still - whether the ambulance was still there or not. Most of them were still there.

Q: They had some trouble getting the people out of the car, I believe - did they not?

A: Yes sir.

Q: Mrs. Hogan, do you know whether she was still there?

A: I'm not certain.

Q: You said you arrived some twenty minutes after the accident. I believe you told me you were in Dublin when you got the call?

A: Yes sir.

Q: And were there quite a number of people around there?

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A: Yes sir.

Q: At that time you told us that there was a motel and a restaurant complex here. The motel is still there, but the restaurant has been torn down?

A: Yes sir.

Q: And there was a large sign right there - (DIAGRAM)?

A: Yes sir.

Q: Wilco, of course, and Gulf - was this area fairly well lit?

A: Yes sir, it was fairly well-illuminated.

Q: From McDonald's and the motels and restaurants and service stations?

A: Yes sir.

Q: And when you got there, was the Grinstead boy there at the scene?

A: Yes sir.

Q: And how about Robert Carter - was he also there?

A: Yes sir.

Q: Is that where you talked to both of them?

A: Yes sir, I talked to them there.

Q: There at the scene of the accident?

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A: Yes sir.

Q: Did you talk to them any time other than there at the scene?

A: No.

Q: I know it's been about two years.

A: No, I don't think so.

Q: You've investigated hundreds of accidents, I'm sure, since then. Did you get a measurement or can you give us an estimate as to what type of angle - you say that these two skidmarks were thirty feet, estimated thirty feet, should be a little wider in proportion to the highway here. What's the average width of an automobile?

A: On large cars, about six feet wide.

Q: And I believe the Grinstead vehicle was a Ford?

A: Plymouth.

Q: Plymouth - a 1964 Plymouth, I believe you told me. Am I correct?

A: Yes sir.

Q: A 1964 Plymouth - so would we estimate that the wheel base on that would be about six feet?

A: No, it wouldn't be quite.

Q: Five and a-half?

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A: Probably five or a little over.

Q: So the two marks we're talking about, for the Record, should be approximately five and a-half feet separating them on the two skidmarks?

A: Yes sir.

Q: Do you know how far back towards the middle of the right-hand lane they started? What kind of an angle are we talking about, Trooper O'Dell?

A: Well, they started - I don't know exactly how many feet back from this point because I didn't measure. They started out faint and they gradually got darker up to where they stopped.

Q: They started out faint and gradually got darker?

A: Yes sir.

Q: And did they also get closer to the curb as they continued?

A: Yes sir.

Q: Now you don't have a measurement of how close they came to the curb?

A: No sir.

Q: Were there any skidmarks on the Carter vehicle?

A: No sir.

Q: Your investigation revealed that the impact occurred approximately here at the entrance?

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A: Yes sir.

Q: Would the Carter automobile operated by Robert Carter - would it have been partially into the entrance-way there to the shopping center, or where did your investigation reveal that it was?

A: It would have been partly in that entrance.

Q: Partly in the entrance?

A: Yes sir.

Q: And I assume by that Answer, you are also saying that the rear of the vehicle would be partly out into Route 11?

A: Yes sir.

Q: Did you take pictures of this accident Trooper?

A: Yes sir. Well, I didn't take any - I took some pictures of the cars later.

Q: Let me let these gentlemen look at these pictures, and then I want you to tell me if those are the pictures that you took? (SHOWING COUNSEL) - Is it normal and usual for you to take pictures of vehicles in accidents like this?

A: Yes sir.

Q: These are taken on State Trooper film and camera, I assume?

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A: Yes sir.

Q: I believe you have three pictures here of the Grinstead vehicle, a 1964 Plymouth - would you please identify these for the Record?

A: Well, that's it.

Q: These are the three pictures you took of the Grinstead vehicle?

A: I believe they are.

Q: And they actually depict the Grinstead vehicle as it looked following the collision with the Carter vehicle - is that right?

A: Yes sir.

Q: Where is the damage done primarily to the Grinstead vehicle?

A: The front end.

Q: The entire front end is mashed in - is that right?

A: Yes sir.

BY MR. DAVIS:

Your Honor, if it please we would like these three . . .

BY THE COURT:

All right. If there are no Objections, these will be marked Hogan Exhibits.

HOGAN EXHIBIT 1
HOGAN EXHIBIT 2
HOGAN EXHIBIT 3

BY MR. DAVIS:

Q: I believe Mr. Bruce brought out you have been a State Trooper for twenty-some years. Did you estimate the Grinstead vehicle to be a total loss?

A: Yes sir.

Q: How about the Carter vehicle - did you also take pictures of the Carter vehicle?

A: Yes sir.

Q: Would you look at those pictures and see if those are the ones you took?

A: Yes sir.

Q: Now do those pictures accurately depict the Carter vehicle as it appeared shortly after the collision?

A: Yes sir.

Q: And the damage is done to the middle of the vehicle on the passenger door?

A: To the driver's door - passenger's door on the right front.

HOGAN EXHIBIT 4
HOGAN EXHIBIT 5

Q: Did you also have an estimate as to the damage done to the Carter vehicle?

(-23-)

1 There is Authority on this that this type of questioning
2 is improper. It puts Mr. Davis in the position of
3 being both Counsel and Witness.

4 BY THE COURT:

5 Well, he can't do that. I see no impropriety,
6 however, just in order to fix in the Witness' mind
7 what Mr. Davis is talking about. I think he can
8 ask him if he recalls about a certain time talking to
9 Mr. Davis and what did he say at that time; but of
10 course, Mr. Davis is going to get himself in the posture
11 of having to testify, to comment on what the
12 Trooper supposedly said or anything of that kind. It
13 can get in a sticky situation, but please rephrase your
14 question.

15 BY MR. DAVIS:

16 I'll do my best, Judge.

17 Q: Trooper O'Dell, you and I have discussed
18 this matter on several occasions prior to
19 today - is that right?

20 A: Yes sir.

21 Q: We've been to the scene of the accident
22 and sat down and discussed it at other places -
23 is that right?

24 A: Yes sir.

25 Q: Now in our prior discussions, do

1 you recall at any time telling me that the Grinstead
2 boy . . .

3 BY MR. BRUCE:

4 Your Honor, I think he's doing the same
5 thing. I think he can ask him what he said but he
6 can't testify.

7 BY THE COURT:

8 Mr. Bruce, he's cross-examining the
9 Witness.

10 BY MR. DAVIS:

11 Yes sir, I've got him on Cross Exami-
12 nation.

13 BY MR. RAKES:

14 I would like to know what it is that you
15 are going to ask him.

16 BY MR. JOHNSON:

17 There is a Virginia Authority on this -
18 situation.

19 BY THE COURT:

20 If you would like to be heard on it
21 further - I know the Rule you are referring to. I will
22 be glad to see the Authority that you have. Members
23 of the Jury, would you retire to your room for a
24 moment, please.

25 JURY RETIRES TO THE JURY ROOM

1 BY MR. RAKES:

2 Your Honor, please, before we get into
3 the Argument, may we hear the whole question first?
4 I never have understood what it was that he was going
5 to ask him.

6 BY THE COURT:

7 All right, go ahead and state your whole
8 question.

9 BY MR. DAVIS:

10 I was going to ask Paul O'Dell if he
11 remembered talking to me about this accident and tell-
12 ing me that when he talked to Grinstead, Grinstead
13 told him he knew that the speed limit there was 40 miles
14 an hour.

15 BY MR. RAKES:

16 I think I can give you a way out of this,
17 over the Objection of Counsel for Grinstead, and that's
18 simply ask the Trooper if in talking to Grinstead at
19 the scene of the accident he stated that he knew the
20 speed limit was 40 miles an hour.

21 BY MR. DAVIS:

22 Jack asked him that and he told Jack in
23 Direct Examination that he did not recall Grinstead
24 telling him that he knew the speed limit was 40 miles
25 an hour. Do you remember telling him that?

1 BY THE WITNESS, TROOPER O'DELL:

2 I just don't remember.

3 BY MR. DAVIS:

4 Okay, fine.

5 BY MR. JOHNSON:

6 That's the reason, Your Honor, we
7 Object to the question being asked because the question
8 itself serves to undercut or impugn to some degree.

9 BY MR. RAKES:

10 Well, this may complicate the matter
11 further but I was present at the time that the Trooper
12 was asked these questions by Mr. Davis, and it was
13 recorded and transcribed and there's a question in
14 here: "Q: Did the Grinstead boy talk to you and tell
15 you that he knew the speed limit was 40 miles per
16 hour there? A: Yes sir. Q: Did he tell you why he
17 was exceeding the speed limit of about ten miles per
18 hour? No." Now whether or not that refreshes the
19 Witness' memory or not, I don't know but . . .

20 BY THE COURT:

21 Do you have any recollection of this
22 matter now, Trooper?

23 BY THE WITNESS, TROOPER O'DELL:

24 I suppose it's so.
25

1 BY THE COURT:

2 No, I'm not asking you to assume that
3 this happened. I'm asking you that now that your
4 recollection has been refreshed, do you recall indepen-
5 dently that such a question was asked you, and do you
6 recall what your answer was. If you don't recall it,
7 just say so.

8 BY THE WITNESS, TROOPER O'DELL:

9 Well, really I just don't.

10 BY THE COURT:

11 All right, bring the Jury back, please.

12 JURY RETURNS TO COURTROOM

13 BY MR. DAVIS:

14 Q: You've told us previously, Trooper
15 O'Dell, that the speed limit there was 40 miles per
16 hour?

17 A: Yes sir.

18 Q: And I believe you also told us that
19 there was an eyewitness, a lady told you she was an
20 eyewitness to the accident, that you talked to there at
21 the scene?

22 A: Yes sir.

23 Q: I believe her name was Mary Phillips?

24 A: Yes sir.

25 Q: And am I correct that Mrs. Phillips,

1 according to your testimony, told you that the Grin-
2 stead vehicle was going fast?

3 A: Yes sir.

4 Q: Were you able - I know there was a
5 lot of confusion, people were hurt and things of that
6 nature - but were you able to follow-up on that in any
7 way as to what she meant by fast?

8 A: She left before I could talk to her
9 again, and I never did specifically question her about
10 it.

11 Q: Did the Grinstead boy, young man,
12 tell you where he was going at the time of the accident?

13 A: Yes sir.

14 Q: Where was he going?

15 A: He said he was going home.

16 Q: Where does he live?

17 A: He lives at Tiny Town, just off the
18 Claytor Lake exit.

19 Q: Is that up next to Claytor Lake?

20 A: Well, it's on the North side of 81
21 and just - it's on Route 611.

22 Q: Did he tell you where he had been?

23 A: As I recall, he had took his girl-
24 friend home and he was going home.

25 Q: Do you know where his girlfriend
lives?

1 A: Well, I don't know. As I recall, it
2 was back up West of where he was, I mean West of
3 McDonald's. It's back up in that area.

4 Q: Back up in this section - (DIAGRAM)?

5 A: Yes sir.

6 Q: Well now, if you were going to Tiny
7 Town and Claytor Lake and you were up in this section,
8 would you go back to Radford - would Radford be the
9 closest way to go home?

10 A: No sir, I don't think it is.

11 Q: Did he give you any explanation as to
12 why he was heading East towards Radford if he was
13 going to his home?

14 A: Well, what I recall about that was
15 that he just said that he went that way.

16 Q: He said that he went that way?

17 A: Yes sir.

18 Q: Did he indicate to you at any time that
19 he had seen any of the persons over in the parking lot,
20 whether it be Mrs. Phillips, or the Callahan boy or
21 anybody else?

22 A: Not then, no sir.

23 Q: How about at a later time?

24 A: No.

25 Q: Mrs. Hogan had already been taken

1 to the hospital when you arrived, so you didn't get a
2 chance to talk to her?

3 A: No sir.

4 BY MR. DAVIS:

5 All right, sir.

6 CROSS EXAMINATION BY MR. RAKES:

7 Q: Trooper O'Dell, tell us just a little
8 bit, if you will, about the lay of the land there at the
9 place where this accident occurred? From the diagram,
10 I take it that the road was relatively straight?

11 A: It's a grade, relatively straight.

12 Q: And at that particular point, it's
13 also relatively level - is it not? There might be just
14 a little bit of downgrade going East at that point, but
15 it's relatively level - is it not?

16 A: Well, it levels off in the vicinity of
17 the Golden Corral, on back West of there, and it stays
18 approximately level up to somewhere around the Gulf
19 or Wilco, and then it starts down again. There's
20 just a dip in there, but right through here it's down.

21 Q: It's pretty level at that point, isn't
22 it? I mean, it's just a little downgrade at that point,
23 isn't it?

24 A: Yes sir.

25 Q: Now, is it also relatively free of

1 loose materials, gravel and so forth, on the paved
2 portion of the highway?

3 A: Yes sir.

4 Q: Now this 40 mile speed limit in the
5 area is posted in the area?

6 A: Yes sir.

7 Q: Do you know, as one comes from
8 Dublin towards Radford on U. S. Route 11, where the
9 first sign that would diminish speed from 55 miles an
10 hour down to something else is?

11 A: Well, going towards Radford there
12 are some reduced speed signs right around the inter-
13 section of Route 114, and I'm not certain exactly where
14 the forty sign is. It's in the area of that intersection.
15 It could be past that, just East of that intersection.

16 Q: And then as you get on closer to
17 Radford does it further reduce it down from 40?

18 A: It's 40 until you hit, I believe it's
19 the corporate limits of Radford on the bridge, it goes
20 to 25.

21 Q: And had those signs been there in
22 that scene relative to speed limit for some period of
23 time before this accident occurred?

24 A: Yes sir.

25 Q: Would your statement be that it is

1 your recollection that they had been there a year or
2 more?

3 A: Oh, yes sir.

4 Q: All right. Now some businesses are
5 already shown on this area there on this diagram. I
6 believe it is true that there aren't any residence
7 dwellings along in that area and that everything, cer-
8 tainly that's shown on the diagram, is a business
9 establishment - is that right?

10 A: Yes sir.

11 Q: And do you think that it would be a
12 reasonable estimate that from the point where the
13 accident occurred, both East and West for a distance
14 of 500 feet, is business establishments? You indicated
15 that the Gulf Station down to that point, I think, was
16 510 feet.

17 A: Going back toward Dublin it's cer-
18 tainly 500 feet, but from the motel on there is nothing
19 on that side of the highway. There are businesses on
20 the opposite side all the way down to the bridge.

21 Q: Did you inquire at the accident
22 scene - of course, it was obvious with regard to Mrs.
23 Juanita Carter and Mrs. Hogan - but did you inquire if
24 there were any other injuries in the accident?

25 A: The only two that I carried were

1 Mrs. Hogan and Rosa Carter. According to my record,
2 there were six people in the car.

3 Q: And is it your customary practice to
4 inquire about injuries when you investigate an accident?

5 A: Yes sir.

6 Q: Did you ask Mr. Carter and Mr.
7 Grinstead if they were injured in the accident?

8 A: I recall asking Mr. Grinstead. The
9 others - I just don't recall.

10 Q: What did Mr. Grinstead say?

11 A: I don't think it hurt him at all. Not
12 that I recall. He stayed there and I stayed there until
13 a wrecker came to get his car which was a pretty good
14 while, an hour or more.

15 Q: And he hadn't complained of any
16 injuries?

17 A: I just don't recall, if he did.

18 Q: If he did, would you have noted them?

19 A: Yes sir.

20 Q: Do you have your field notes with
21 you there?

22 A: Yes sir.

23 Q: All right sir. Where is your diagram
24 (LOOKING AT TROOPER'S DIAGRAM) - From that dia-
25 gram, I take it Trooper O'Deill, that this part - not

1 where it flares out here - but this part right here,
2 the curb in the driveway, was 30 feet wide - is that
3 right?

4 A: Yes sir.

5 Q: You have testified previously, I
6 think, that the left wheel skidmarks of the Grinstead
7 car would have been farther over toward the center
8 line dividing the Eastbound right driving lane and the
9 Eastbound passing lane as you have it shown in this
10 diagram - (EXHIBIT DIAGRAM)?

11 A: Yes sir.

12 Q: Do you think that the way that you
13 put it on your diagram at the time you did this investi-
14 gation would fairly accurately reflect the way you saw
15 them out there?

16 A: Yes sir.

17 Q: Does that diagram show that the left
18 wheel skidmark started very close to the center line?

19 A: No sir.

20 Q: Well, let's let Counsel and the Jury
21 look at the diagram then. I'm just a little confused
22 about it.

23 COUNSEL AND JURY LOOKING AT DIAGRAM

24 BY MR. RAKES:

25 Q: Realizing that the diagram is not

1 drawn to scale, Mr. O'Dell, but you have drawn the
2 center lines in there - now I'm talking about just the
3 Eastbound lanes?

4 A: Right.

5 Q: All right. Now what would be . . .

6 BY MR. JOHNSON:

7 Mr. Rakes, are you referring to the
8 center lines or to the dividing lines?

9 BY MR. RAKES:

10 That may be, it may be my fault and my
11 phraseology. I'm talking about the dividing broken
12 lines. Like right here. (EXHIBIT DIAGRAM) - Put
13 it over here and let me show you what I'm talking about.
14 I'm talking about these lines right here, rather than
15 the center lines. Now looking at your diagram, based
16 upon . . .

17 BY MR. JOHNSON:

18 Your Honor, isn't the diagram the best
19 evidence? Mr. Rakes has suggested that it be shown
20 to the Jury and we agree with it . . .

21 BY MR. RAKES:

22 I'm going to, but let me phrase my
23 question and handle my Cross Examination.

24 Q: Based upon your recollection of the
25 location of those skidmarks, Trooper O'Dell, what

1 would be your best estimate as to where the left wheel
2 skidmark of the Grinstead vehicle - how close it was
3 to this divider line?

4 A: You're talking about . . .

5 Q: In the Eastbound lane, when it first
6 started to be laid down?

7 A: Well, I don't know exactly. Those
8 two marks, there would be as much distance between
9 from the left wheel over to the broken line and from
10 the right wheel over to the curb is approximately the
11 same, the way I look at it.

12 Q: All right, sir.

13 A: Was I clear on that?

14 Q: I think so. Whatever your testimony
15 is, that's all we're trying to get at here.

16 A: I mean, I'm going by what I've got.

17 Q: I understand.

18 A: And I did not measure from the curb
19 over to the first mark, but from what I have here right
20 now, the distance seems to be equal from the left wheel
21 to the broken line and from the right wheel to the curb;
22 and I think I said previously that my width on that up
23 here is not accurate, as to the width of the highway.

24 Q: The problem, of course, is that we
25 don't have this drawn to scale. If I understand what

1 you've testified to previously, the skidmarks were not
2 parallel with the roadway, they were at an angle headed
3 toward the right?

4 A: Yes sir.

5 Q: And started just about in the cen-
6 ter . . .

7 A: Of the right-hand lane.

8 Q: Of the right-hand lane?

9 A: Yes sir.

10 Q: And angled over toward the edge, or
11 toward the curb of the right-hand lane?

12 A: Yes sir.

13 Q: Did the impact occur in the entrance
14 to the driveway into McDonald's and Kroger's there?

15 A: Are you saying that it was off of
16 Route 11 - was it off of Route 11?

17 Q: Well, where with reference to this
18 South curb of Route 11 would you place the point of
19 impact?

20 A: About right here - (EXHIBIT
21 DIAGRAM).

22 Q: Just about parallel with that South
23 curb line?

24 A: Not quite.

25 Q: Within how many feet?

1 A: Just a . . .

2 Q: Foot?

3 A: See when the front of the Grinstead
4 car hit almost dead center on the right door of the
5 Carter car, it bent that door post separating the door
6 so that would have put it back just slightly from the
7 center of the door, and then the Grinstead car turned
8 and ended up partly up in the entrance into McDonald's.
9 The back end was sticking out in the road, and that's
10 where the damage was, on the sides of those two cars
11 where it turned around sideways.

12 Q: How much would you say of Grinstead's
13 car was up in the driveway at the time you arrived at
14 the scene? Two-thirds, three-fourths?

15 A: At least half of it was up in there.
16 It could have been a little more.

17 Q: All right. Did it appear to you that
18 the point of impact was approximately equal distance
19 between the two curb lines of the driveway? In other
20 words, was the Carter vehicle turning into the center
21 of that driveway?

22 A: Well, according to what I have, it
23 would be just slightly to the West of the center.

24 Q: All right, sir. Did you undertake to
25 get back to the witness, Mary Phillips, later on to

1 discuss with her more about what she saw? I mean,
2 did you look for her again later on after you had com-
3 pleted your investigation?

4 A: I never did question her again.

5 Q: I understand that, but was it your
6 understanding when she came and told you that she was
7 a witness and that the Grinstead car was going fast,
8 did you tell her or ask her if she could wait around
9 awhile so you could talk with her some more?

10 A: Someone came up to me and told me
11 that this lady sitting over here saw something about
12 it, and so I went over and asked her about her name
13 and her address; and her statement to me was as I
14 gave it a few minutes ago, and when I could get back
15 to her she was gone.

16 Q: Well, that's what I was getting at.

17 A: In the meantime, after that - well,
18 she was hard to find.

19 Q: I understand, but was there some
20 interval of time, during which you were trying to clear
21 the injured out and just generally take care of the
22 situation there that had to be done, before you were
23 able to go back and look for her again?

24 A: Yes sir.

25 Q: Would you estimate approximately
how long it was?

1 A: Probably twenty minutes or more.

2 Q: At any time during that twenty-minute

3 or more interval did you happen to see her around this

4 area?

5 A: No sir, not that I recall.

6 Q: But you don't know just what time

7 during that interval it was that she apparently left?

8 A: No sir.

9 Q: Did your investigation reveal anyone

10 else at the scene who may have seen the accident?

11 A: No sir.

12 Q: Besides Mary Phillips and the occu-

13 pants of the vehicles?

14 A: No sir.

15 BY MR. RAKES:

16 All right, Your Honor, apparently there

17 are no Objections - Mr. Davis, do you have an Objec-

18 tion to introducing this diagram into Evidence at this

19 time as Carter Exhibit 1? We can probably have a

20 copy of that made so we won't be using the Trooper's

21 investigation book.

22 BY MR. JOHNSON:

23 We would like to have a copy made and

24 make it an exhibit.

25

1 BY MR. BRUCE:

2 Only to the diagram itself and not to any
3 of the notes he has.

4 BY MR. RAKES:

5 Right.

6 BY THE COURT:

7 Mr. Davis, do you have any Objection?

8 BY MR. DAVIS:

9 I have no Objection.

10 BY MR. RAKES:

11 All right, while that's being done, I
12 think I'm about through, Trooper O'Dell, with this
13 exception:

14 Q: Did I recall your testifying on Direct
15 Examination by Mr. Bruce that when you questioned
16 Bill Grinstead about the accident that he stated to you
17 that he did not see the other car until it was right in
18 front of him?

19 A: That's correct.

20 RE-DIRECT EXAMINATION BY MR. BRUCE:

21 Q: Let me ask just a couple of questions
22 and maybe the diagram will be back by then: Trooper,
23 do you know back - (EXHIBIT DIAGRAM) - if we could
24 extend back down here where that entrance to Route 11
25 comes in at the Northside Flower Shop, and I believe

1 the Kentucky Fried Chicken is across the road from
2 that?

3 A: Yes sir.

4 Q: Do you know where I'm talking about?
5 Before you would get back to Route 114. From that
6 entrance to Route 11 down to where the collision took
7 place, there's no posted speed sign, is there?

8 A: I don't know.

9 BY MR. BRUCE:

10 I'd like to wait until the diagram gets
11 back. Judge, can we wait for just a second. I know
12 we want to break for lunch.

13 BY THE COURT:

14 All right, gentlemen, this will be marked
15 as Carter Exhibit 1.

16 CARTER EXHIBIT 1

17 BY MR. BRUCE:

18 Mr. Rakes, on the copy of the one we
19 are marking, these skidmarks are very faint. If you
20 have no Objection, I'd like for the Trooper to just
21 mark over top of them just to distinguish them.

22 BY MR. RAKES:

23 My copy is about as well as the original
24 one. Let me see what that one looks like. (LOOKING
25 AT COPY) - That's a better one than mine. I don't
think the Jury is going to have any trouble seeing it.

1 BY MR. BRUCE:

2 Do you Object to us clarifying the marks?

3 BY MR. RAKES:

4 If the Jury can't see the skidmarks I
5 have no Objection, but if they can see them I don't
6 see any necessity for him to mark over them. If any
7 member of the Jury has a problem seeing those skid-
8 marks, I'll have no Objection to him marking over
9 them.

10 BY THE COURT:

11 Maybe the Trooper should step forward
12 and point them out to the Jury.

13 BY MR. RAKES:

14 Sure, that will be fine.

15 JURY LOOKING AT EXHIBIT COPY

16 BY MR. BRUCE:

17 Q: Mr. O'Dell, just to clarify, showing
18 you another copy of the same diagram that you marked.
19 The skidmarks, the way that you have them in the dia-
20 gram which you made, I assume following your investi-
21 gation?

22 A: Yes sir.

23 Q: The angle to the right - is that a big
24 angle, or a very slight angle?
25

1 BY MR. RAKES:

2 I Object, Your Honor. It shows itself
3 whether it's a big angle or a slight angle. I think that
4 the Exhibit speaks for itself.

5 BY THE COURT:

6 Well it does, but of course it's not an
7 engineering drawing. If he can help clarify it, I will
8 permit him to do so.

9 BY MR. RAKES:

10 I'll withdraw the Objection.

11 BY THE COURT:

12 Trooper, how would you describe the
13 angle of the skidmarks?

14 BY THE WITNESS, TROOPER O'DELL:

15 A: Slight.

16 BY MR. BRUCE:

17 Q: And Trooper, the skids originated
18 approximately where they are in relation to this dia-
19 gram?

20 A: Yes sir.

21 Q: And there are markings in this 13-
22 foot lane where you say the right skidmark is about
23 the same distance from the center lane divider, spaced
24 line, as the left skidmark is about the same distance
25 from the center lane divider, spaced line, as the right
skidmark is from the right edge of the road?

1 A: Yes sir.

2 Q: That's the point where they originated?

3 A: Yes sir, where they started.

4 Q: Where they started - and in this 13-
5 foot lane, if the skidmarks are about five feet apart,
6 would that mean that each of them started about four
7 feet from their respective lane borders?

8 A: Well, I said previously that their
9 distance on each side where they started was equal,
10 as far as I could determine, and there's a curb in
11 there approximately that wide - (INDICATING) - and
12 whether they count that as a part of the travel portion
13 or not is another question that I'm not - that I wasn't
14 concerned with then. I was concerned with the distance
15 in relation to from the curb over to the center, and if
16 I had stayed out there to measure them, I would have
17 been run over because that place was swarming with
18 people for a long time.

19 Q: Was there any indication in your
20 entire investigation, on the night of the accident and
21 afterwards, that Bill Grinstead's car at any time from
22 the time that he went through the light ever left the
23 right lane prior to the impact?

24 BY MR. RAKES:

25 I Object, if Your Honor please. The

1 Trooper was not an eyewitness to the accident. If he
2 wants to be more specific in his question, I think
3 that . . .

4 BY MR. BRUCE:

5 Your Honor, we've had point of impact
6 and everything else the Trooper could be asked . . .

7 BY THE COURT:

8 I Sustain the Objection. You can ask
9 him anything relevant to his investigation, what he
10 saw there, what he found out from statements and so
11 on; but for him to draw a conclusion from that evidence,
12 I think would be improper.

13 BY MR. BRUCE:

14 Q: Trooper, from your investigation
15 and the placement of the skidmarks, was Bill Grinstead's
16 car entirely within his right lane at the point of im-
17 pact?

18 A: Yes sir.

19 Q: And anywhere in your investigation,
20 either the night of the collision or in talking to any of
21 the parties or witnesses who say they saw the accident,
22 did anybody in any of the vehicles ever mention directly
23 to you anything about Bill Grinstead not having lights
24 on his car?

25 A: Not that night, no sir. I don't have

1 any notes to that effect or I don't recall any conversa-
2 tion specifically about it. It could have been. I just
3 don't recall that.

4 Q: You don't have any record of anything
5 like that?

6 A: No sir.

7 BY MR. BRUCE:

8 Thank you. That's all.

9 RE-CROSS EXAMINATION BY MR. RAKES:

10 Q: Trooper, I don't mean to beat a dead
11 horse to death and I apologize, but I'm inclined to
12 agree with Mr. Bruce's mathematics - and I'm not much
13 of a mathematician - but if you feel that when the skid-
14 marks began that the right and left wheels were about
15 equal distance between the right curb, the South curb,
16 and the broken divider line in the Eastbound lane; and
17 if there is approximately a five to five and a-half foot
18 wheel base, then that would leave somewhere between
19 three and a-half to four feet on either side of the
20 skidmarks when they commenced between the broken
21 divider line and also over to the right side of the curb.
22 Now, do you follow me that far?

23 A: Yes sir.

24 Q: Now if I understood before what you
25 testified to that, the right skidmark at the point of

1 impact was just out into the Eastbound lanes from the
2 extension of the South curb line at the entrance to the
3 driveway at McDonald's, I think maybe about a foot or
4 so?

5 A: Yes sir.

6 BY MR. RAKES:

7 That's all I have. Thank you.

8 BY THE COURT:

9 Do you have anything further of this
10 Witness? We will have our luncheon recess at this
11 time.

12 WITNESS ASIDE

13 12:45 - 1:40 - LUNCHEON RECESS

14 BY THE COURT:

15 Members of the Jury, we are calling
16 Dr. Tarasidis at this point out of order. This is a
17 witness for Mrs. Hogan, but in order to accommodate
18 his busy schedule, we are going to let him testify at
19 this time. You may call your Witness around, Mr.
20 Davis.

21 GEORGE TARASIDIS, M. D., being duly sworn, testified
22 as follows:

23 DIRECT EXAMINATION BY MR. DAVIS:

24 Q: Doctor, would you state your full
25 name, please?

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A: George Tarasidis.

Q: And your profession?

A: M. D.

Q: Where do you practice, Doctor?

A: In Radford.

Q: And how long have you practiced there?

A: Thirteen years.

Q: Do you have a specialty?

A: Yes.

Q: And what is that?

A: General Thoracic Surgery.

Q: Now under General and Thoracic Surgery, how long have you been practicing in that specialty?

A: Close to ten years.

Q: Would you give us the benefit of your medical background, please sir?

A: Well, I was educated in my country, Greece, and I repeat all the studies in this country in Tennessee - in the University of Tennessee.

Q: And when did you come to the City of Radford?

A: 1966.

Q: And you've been there for the last 14 years?

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A: Since then.

Q: Do you practice out of the Radford Community Hospital?

A: No.

Q: You do work there in the hospital - do you not?

A: Yes.

Q: Dr. Tarasidis, were you practicing your trade and art on July 23, 1978?

A: Yes.

Q: Did you have an occasion to see Mrs. Virginia Hogan on that date, who was involved in an automobile accident?

A: Yes, I did.

Q: Would you please tell the Jury under what circumstances you saw her and what the conditions were?

A: It was a car accident. I reached the Emergency Room, and in the same accident with her was that a daughter was also killed. When she came to the Emergency Room, she was complaining of pain in the chest and on the back, and she also was complaining that she could not move that right leg. She told us that she was taking Lanoxin and she is also mild diabetic and takes another kind of medicine. We did a

1 chest x-ray on admission. We did x-ray of the lumbar
2 spine and we did x-rays of the pelvis. All were nega-
3 tive except the pelvis . . .

4 Q: Excuse me, let me interrupt you just
5 a second. You had x-rayed then - when she came in
6 she was complaining, you said, of back and chest pain?

7 A: Chest pain, back pain and difficulties
8 to move the right leg.

9 Q: Now, you x-rayed that entire area -
10 is that right?

11 A: Yes.

12 Q: And the lumbar - you're talking about
13 the lower back?

14 A: The low back.

15 Q: And you also x-rayed the pelvic area?

16 A: Yes.

17 Q: All right, tell us about that, please
18 sir?

19 A: The only abnormal finding we had was
20 fracture of pelvis, and also incidentally we had - the
21 size of the heart was a little bigger than normal.
22 From the history, we knew what she said, that she had
23 old heart attack and that she was taking Lanoxin.
24 Lanoxin is a cardiac medicine.

25 Q: Of course, there was no relationship
of that to the accident?

1 A: No.

2 Q: But that was the history that you took
3 to find out what you could do?

4 A: Yes. The x-rays of the pelvis show
5 us it was a fracture of the pelvis in the upper part,
6 and after we insist for awhile, she start moving her
7 right leg. In other words, the moving of the right leg
8 was difficult for her because of pain.

9 Q: Now, do you have the x-rays that
10 were taken there at the hospital that night?

11 A: (VIEWBOX) - Now, the only abnormal
12 thing that we can see, this is a very small line of frac-
13 ture here in the upper part of the pelvic bone.

14 Q: When were these pictures, these
15 x-rays taken, Doctor?

16 A: This is the time of the x-rays.

17 Q: On July the 23rd?

18 A: Yes.

19 Q: The other x-rays taken, you say,
20 were . . .

21 A: Then after we put her to bed and we
22 treat her for awhile, the pain subside, we had the
23 Physical Therapy people also helping her. Then a
24 little while later, we decreased the pain and she started
25 to walking and with the walker, we sent her home.

1 Q: What type of physical therapy would
2 you have prescribed, Doctor?

3 A: Mostly encouragement to move.

4 Q: Was she taking physical therapy there
5 at the hospital?

6 A: At the hospital, and four days - five
7 days later, we discharged her to her home. We did
8 see her four weeks later, less than four weeks - little
9 more than four weeks - and we re-x-rayed, and we saw
10 that it had started some healing.

11 Q: Now let me stop you right there,
12 Dr. Tarasidis, if you would. You discharged her,
13 you said on the 29th, I believe, five days later - am
14 I correct?

15 A: 28th.

16 Q: The 28th?

17 A: Yes, that was the 28th.

18 Q: And she was discharged to return home?

19 A: Yes.

20 Q: Now was she able to care and look
21 after herself at that time?

22 A: Well, not a hundred percent. With
23 a little effort, she could walk around and move, with
24 her walker and some help from the surroundings would
25 also be advisable.

1 Q: All right sir, now your medical re-
2 port examination reflects that she had contusions?

3 A: Yes.

4 Q: What do you mean by that?

5 A: The whole body - the fact that she
6 had pain in the chest, pain in the spine, pain in the
7 back, all of those are related to contused muscles,
8 contused tissue.

9 Q: Do you relate that directly to the
10 automobile accident?

11 A: Accident, yes.

12 Q: Now the soft tissue damage that you're
13 talking about, the ligaments and tendons and muscles
14 and what-have-you - do they show up on x-rays?

15 A: No, those are the things that we can-
16 not see. Those are the things why some people have
17 prolonged-type of pain, and we cannot x-ray.

18 Q: All right sir, now four weeks later
19 you say that the healing had started?

20 A: Yes.

21 Q: Do you have those x-rays there with
22 you?

23 A: Yes, I do. There's nothing much to
24 see on those x-rays. (VIEWBOX) - Is the same area
25 that we were looking just awhile ago - here (X-RAY).

1 Q: And you can see that that . . .

2 A: Still the lines of the fracture are
3 visible.

4 Q: What was the date of that examination?

5 A: This was a month later.

6 Q: What complaints, if any, was she
7 having?

8 A: The same thing - pain in the area,
9 yes.

10 Q: Was she having any complaints about
11 pain in her back or neck at this time?

12 A: No.

13 Q: It was still primarily the . . .

14 A: The soft contusions, yes.

15 Q: Now following that examination, did
16 you see her again - do you have the date on that?

17 A: Yes, I do. I saw her two months
18 later.

19 Q: For the Record, Doctor, I have your
20 bill here. Your bill reflects that you saw her on 9-1
21 and again on 10-4, October 4 - is that . . .

22 A: October 3.

23 Q: 10-3?

24 A: Yes.

25 Q: All right, sir. Tell us about that,
if you would please?

1 A: The x-ray findings - we x-rayed again
2 the pelvis, and we didn't find anything else. The x-ray
3 this time show us that the fracture had healed, and
4 since, then I did not see her until this month, on 10th
5 of this month, when again she came in and complain of
6 pain in the right knee. We did x-ray the pelvis, we
7 x-rayed the chest and - the pelvis. The pelvis showed
8 completely healed. On the right knee we didn't see
9 anything but arthritis, and the chest was okay.

10 Q: Doctor, going back to October of
11 1978, the second time you saw her in the office . . .

12 A: Yes.

13 Q: You indicated that she was still
14 complaining of pain in the pelvic area at that time, and
15 then you next saw her in June of this year. Was that
16 at my request, Doctor?

17 A: Yes.

18 Q: I called you up, or had her call you
19 up, and requested that you examine her so that you
20 would be able to testify today - is that correct?

21 A: Yes sir.

22 Q: And you did examine her?

23 A: Yes sir.

24 Q: Does your history also reveal, Doc-
25 tor, that she had a family physician, Dr. Foster in
Roanoke?

1 A: I don't know exactly who in Roanoke,
2 but the conversation that we had together were that
3 always she was going to Roanoke for her medical treat-
4 ments.

5 Q: Your records reflect that this lady
6 lives in Buchanan?

7 A: No, I don't have it here, but I do
8 know about it - what she told me then, that someone in
9 Roanoke was giving her medicine. When I asked who
10 gave it to her, who prescribed the medicine, this is
11 what she told me.

12 Q: So you were aware that she did have
13 a family physician in Roanoke that was treating her?

14 A: Yes.

15 Q: In fact, I believe you have indicated
16 that she was taking prescriptions before the accident?

17 A: Yes.

18 Q: Doctor, you mentioned the arthritic
19 condition of this lady - do you know her age? I can
20 tell you right-quickly, she's 59; I'm sure your records
21 will reflect that.

22 A: Yes.

23 Q: A lady of this age with an arthritic
24 condition, will that be affected by the trauma of this
25 accident?

1 A: Any injury will aggravate arthritic
2 change and any injury to joints will aggravate - will
3 produce arthritis.

4 Q: Is that more common the older that
5 you get?

6 A: Yes.

7 BY MR. DAVIS:

8 I think that's all I have. I have the
9 Doctor's bill. We will submit them all at one time,
10 I have his bill and the hospital bill.

11 CROSS EXAMINATION BY MR. JOHNSON:

12 Q: Dr. Tarasidis, the fracture of Mrs.
13 Hogan's pelvis was not displaced?

14 A: No.

15 Q: By that, we mean that it was simply
16 a crack in the pelvis?

17 A: Correct.

18 Q: So that the pelvis was in proper
19 alignment?

20 A: Yes.

21 Q: And in good position?

22 A: Correct.

23 Q: And I believe you indicated that good
24 healing was achieved?

25 A: Yes.

1 Q: And a complete recovery was made -
2 was it not?

3 A: Yes.

4 BY MR. JOHNSON:

5 All right sir, that's all.

6 BY MR. RAKES:

7 I have no questions, Your Honor.

8 ~~WITNESS ASIDE~~

9 WILLIAM FRANZ GRINSTEAD, being duly sworn, testi-
10 fied as follows:

11 DIRECT EXAMINATION BY MR. BRUCE:

12 Q: You are Bill Grinstead?

13 A: Yes sir.

14 Q: How old are you, Bill?

15 A: Nineteen.

16 Q: And where do you live?

17 A: Tiny Town - it's close to Claytor Lake.

18 Q: Who do you live there with?

19 A: My parents.

20 Q: And what is your mom and dad's name?

21 A: Charles and Myrtle Grinstead.

22 Q: Does your daddy have a business there
23 in Tiny Town?

24 A: Yes sir, he owns Tiny Town Mobile
25 Home Unit.

1 Q: Did you go to school - where?
2 A: Pulaski County High School.
3 Q: Did you play sports in school?
4 A: Yes sir, I did.
5 Q: What?
6 A: Football, wrestled.
7 Q: When did you graduate, Bill?
8 A: 1978.
9 Q: So you graduated a couple of months
10 before this accident happened two years ago?
11 A: Yes sir.
12 Q: Did you work anywhere when you
13 were going to school?
14 A: I was working part-time at Inland
15 Motors in Radford.
16 Q: Anywhere else?
17 A: No sir.
18 Q: And since you've been out of school,
19 have you been working at Inland Motors?
20 A: Yes sir, I started full time.
21 Q: What do you do at Inland Motors?
22 A: I'm a bonder.
23 Q: What is a bonder?
24 A: I make a core of the motor inside.
25 Q: And what does that require you to do?

1 A: I have to carry fixtures around. I
2 clean them, bale them. I just have to carry a lot of
3 heavy equipment, fixtures and stuff.

4 Q: Right before this accident on July 23
5 of 1978, where were you?

6 A: I was at my girlfriend's house, Donna
7 Trebaugh.

8 Q: Where does Donna live?

9 A: She lives right above the North side
10 of the flower shop in Fairlawn. I don't know the add-
11 ress.

12 Q: What day of the week was this?

13 A: It was on a Sunday.

14 Q: Did you have a habit of going to
15 Donna's house on Sunday?

16 A: Yes, I always go there and eat supper.

17 Q: Do you still go there?

18 A: Yes sir.

19 Q: Was there any special occasion that
20 day that you remember at Donna's?

21 A: It was Donna's birthday.

22 Q: How old was she?

23 A: Seventeen.

24 Q: Had you had any type of celebration
25 or party for her birthday?

1 A: We had had a little party - it was
2 about 7:00 or 8:00 o'clock that night. We had my parents
3 down.

4 Q: Was anybody there other than your
5 family and her family?

6 A: Just my sister, and a friend of mine
7 come down later that night.

8 Q: At the party, what did you have to
9 eat, the birthday party?

10 A: Some cake and ice cream.

11 Q: Had you had anything alcoholic to
12 drink?

13 A: No sir.

14 Q: About what time did you leave Donna's
15 house?

16 A: It was right before 10:00 o'clock,
17 something to 10:00. I think the accident happened
18 around 10:00.

19 Q: When you left, explain to the Jury
20 what you had to do to get out of the driveway?

21 A: You've got to back up - it's not a
22 real embankment, it's just a grade and it's dark,
23 there's no street lights or anything. I've got to back
24 out of there, and after I back out . . .

25 Q: About how far do you have to back out?
Guessing?

1 A: I'd say the length of this room. A
2 little bit further.

3 Q: Would you have to have your lights
4 on to get out of there?

5 A: Yes sir.

6 Q: Did you have your lights on when you
7 backed out of there?

8 A: Yes sir.

9 Q: Was Donna outside when you left?

10 A: Yes sir.

11 Q: Where did you enter Route 11?

12 A: It was right there where the North-
13 side Flower Shop is. It's not on there, it's right
14 above Gulf, I guess five hundred feet or so.

15 Q: Across from the Kentucky Fried
16 Chicken?

17 A: Yes sir.

18 Q: And where you entered, that would
19 be East - or looking at that diagram, would be this
20 side of the Route 114 intersection?

21 A: Yes sir.

22 Q: Are there any speed limit signs be-
23 tween where you entered Route 11 and where the accident
24 happened?

25 A: No sir.

1 Q: Are you sure of that?

2 A: Yes sir.

3 Q: When you entered Route 11 and pro-

4 ceeded, you were going towards Radford?

5 A: Yes sir.

6 Q: There's been some question that

7 might not be your shortest way home. Is that the way

8 you always went?

9 A: Yes sir.

10 Q: I mean before this accident?

11 A: Yes sir.

12 Q: Every Sunday night?

13 A: Yes sir.

14 Q: And every time you took Donna home?

15 A: Yes sir.

16 Q: Why did you go that way instead of

17 the other way?

18 A: Everybody I run around with had

19 gotten killed there. Everybody I graduated with and

20 stuff - I just don't like to go Route 11.

21 Q: Because friends have been killed on

22 Route 11?

23 A: Yes sir.

24 Q: Is it that much farther to go to

25 Radford and then hit the Interstate?

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A: No sir.

Q: Were you in any particular hurry to get home that night?

A: No sir.

Q: Were you by yourself?

A: Yes sir.

Q: Had your mama and daddy left before you or after you?

A: About five minutes before.

Q: What kind of car were you driving?

A: A 1964 sport coupe Plymouth.

Q: Is it a white car?

A: Yes sir.

Q: Was that your car?

A: It was going to be my car.

Q: It was your daddy's?

A: Yes sir.

Q: When you came out onto Route 11 and proceeded toward Radford, what lane were you in?

A: I went straight across into the right lane, you had to cross the left lane, but I went across and got into the right lane.

Q: Did you happen, at any time before the wreck happened, did you happen to look at your speedometer?

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A: Yes sir.

Q: Where were you when you looked at your speedometer?

A: I'd say approximately right there where the Gulf is.

Q: Do you remember what your speedometer said?

A: Between forty-five and fifty.

Q: Do you remember exactly how fast you were going?

A: I couldn't tell you exactly.

Q: Do you think that's what you told the Trooper, or do you remember what you told the Trooper?

A: That's exactly what I told the Trooper. I told him I was going between forty-five and fifty.

Q: Was your speedometer correct?

A: No sir.

Q: How far is it off?

A: Five miles.

Q: Did you know that at the time?

A: Yes sir.

Q: The light there at the intersection - what color was that light as you approached it?

A: As long as I remember, it was green.

Q: Did you ever see it turn to green?

1 A: I didn't see it turn to green; I just
2 remember it being green.

3 Q: From the time you looked at your
4 speedometer back at the Gulf Station, did you have any
5 recollection of speeding up or slowing down?

6 A: No sir, I was just checking the speed
7 so I could see if that light was going to change or not.
8 That's what I was worried about, and it never did
9 change. I don't know if I slowed down or speeded up.

10 Q: Did you have any idea that there was
11 going to be a wreck up ahead?

12 A: No sir.

13 Q: What recollection do you have in
14 your mind about the accident itself?

15 A: In my mind I just see a car sitting
16 there in front of me, but I know I had to see it or I
17 wouldn't have applied my brakes and slid.

18 Q: Were you in the right-hand lane at
19 all times proceeding from the Gulf Station down to
20 where the . . .

21 BY MR. RAKES:

22 If Your Honor please, I'm going to have
23 to Object to the leading nature of the question. I think
24 he can ask him what lane he was in at the time he first
25 pulled into the highway.

1 BY THE COURT:

2 Objection sustained. Please rephrase
3 your question.

4 BY MR. BRUCE:

5 Q: Bill, which lane were you in from
6 the time you pulled onto the highway until the accident
7 took place?

8 A: I was in the right-hand lane.

9 Q: Do you know what part of your car
10 hit what part of the Carter car?

11 A: My very front hit the - I think it
12 was right there at the door, right dead-center between
13 the doors.

14 Q: Before you hit, did your car go up
15 into the McDonald's driveway?

16 A: No sir - before we hit?

17 Q: Before you hit?

18 A: No sir.

19 Q: Did you see the 30 feet of skidmarks
20 the Trooper has testified to?

21 A: No sir.

22 Q: I show you Plaintiff's Exhibit 3 and
23 ask, is this a picture of the front of your car?

24 A: Yes sir.

25 Q: And I show you Plaintiff's Exhibit -

1 I'm sorry, Defendant's Exhibit - Plaintiff Hogan, yes.
2 Exhibit Number 1, and does this show damage to the
3 side of your car?

4 A: Yes sir.

5 Q: Were there two impacts to your car?

6 A: Yes sir.

7 Q: How did that happen?

8 A: When I hit the Hogan car, it seemed
9 like it kicked or whatever. When we hit, it spun me
10 back around and made us hit sideways.

11 Q: So did you hit the first time in the
12 front?

13 A: Yes sir.

14 Q: And the second time was on the
15 driver's side, as this photo shows?

16 A: Yes sir.

17 Q: So the impact would have spun you
18 towards your right?

19 A: Yes sir.

20 Q: Bill, do you know where on the Carter
21 car that you hit?

22 A: Not when I wrecked I didn't. I just
23 know I hit right in the side, after I seen that I hit it
24 right dead between the center there - that door.

25 Q: Do you have any recollection of ever

1 telling the Trooper at any time that you knew the speed
2 limit was 40 miles an hour?

3 A: No sir.

4 Q: Right before the impact, did you do
5 anything right when you knew you were getting ready to
6 hit?

7 A: Applied my brakes as hard as I could.

8 Q: And then what what happens to you,
9 personally?

10 A: Sir?

11 Q: What happens to you personally?

12 A: I got throwed into the windshield.

13 Q: Do you have your hands up?

14 A: Yes sir.

15 BY MR. RAKES:

16 The Question is already out now, but it
17 is just constant leading of the Witness.

18 BY THE COURT:

19 Don't lead your Witness, Mr. Bruce. I
20 know it's difficult sometimes.

21 BY MR. BRUCE:

22 Yes sir.

23 Q: Go back - I forgot your Answer,
24 Bill - before the impact, what did the impact do to
25 you personally?

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A: Threw me into the windshield.

Q: And what is the next thing you remember?

A: I just remember I got out of the car, and I was scared and I just went over there and sat down on the curb.

Q: Do you remember talking to anybody at the accident scene?

A: I think it was a manager or something some woman come running down from McDonald's, come down there and wanted to know if I was all right. I told her I was just shook up and scared.

Q: Would you know her again if you saw her today?

A: No sir.

Q: Why do you think she might have been the manager of McDonald's?

A: She had on the brown suit. I think they've got two different suits they wear, you can tell them apart, who's manager or whatever.

Q: Bill, when did you go to the doctor?

A: The very next morning.

Q: And what doctor did you go to?

A: Dr. Kelly in Dublin.

Q: Why did you go to Dr. Kelly?

1 A: I had a knot on my head and my knees
2 was hurting.

3 Q: Did you have any other injuries other
4 than the knot on your head and your knees?

5 A: My shoulder was kind of stiff.

6 Q: What did Dr. Kelly do for you?

7 A: He x-rayed my knees and I think he
8 might have give me some pain pills, I'm not for sure.
9 I'm not positive about that. He sent me home and told
10 me to stay off of my knees.

11 Q: Was it both knees?

12 A: Yes sir.

13 Q: Did you miss any time from work at
14 that time?

15 A: I missed two days right after the
16 accident.

17 Q: Following that, did you have any more
18 trouble with your knees?

19 A: This leg goes out on me. I'd be
20 walking around and all of a sudden this leg would go
21 out - my right leg would fall down. It just ached all
22 the time. When I'd have to carry stuff at work, heavy
23 equipment or something, it just hurt.

24 Q: After that two days, you went on back
25 to work - is that right?

* * *

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1 Q: Do you know what's wrong with your
2 left knee?

3 A: He told me that . . .

4 BY THE COURT:

5 I sustain the Objection. It's hearsay.

6 BY MR. BRUCE:

7 Q: Do you know personally what's wrong?

8 A: No, I don't know. Personally, I
9 don't know.

10 BY MR. BRUCE:

11 That's all I have.

12 CROSS EXAMINATION BY MR. DAVIS:

13 Q: Mr. Grinstead, you were proceeding
14 in an Easterly direction on Route 11 on the evening of
15 the accident, and I believe you told us on Direct
16 Examination that your speed was forty-five to fifty
17 miles per hour when you were in front of the Gulf Sta-
18 tion - is that right?

19 A: Yes sir.

20 Q: Trooper O'Dell testified this morning
21 you were here when he testified?

22 A: Yes sir.

23 Q: He testified that you told him that
24 your speed was forty-five to fifty when you went under
25 the light?

1 A: Well, that wasn't what I meant. I
2 checked my speed before I went under the light.

3 Q: Am I misquoting Trooper O'Dell?
4 That's what he testified to, wasn't it?

5 A: That's what he testified to, yes sir.

6 Q: But that's not what you told him?

7 A: It might sound different, it's worded
8 different or something, is what it is. You might take
9 it the wrong way. But I checked my speed before I
10 went under the light. I was up there by the Gulf Station.

11 Q: You checked your speed before you
12 went under the light, but you were back up at the Gulf
13 Station some two hundred and forty-two feet - I believe
14 that's Mr. Bruce's measurements?

15 A: Yes sir.

16 BY MR. BRUCE:

17 The Trooper's measurements.

18 BY MR. DAVIS:

19 The Trooper's measurements, your writ-
20 ing - (REFERRING TO DIAGRAM). So now we're talking
21 about your speed in front of the Gulf - that's the last
22 time that you recall knowing of your speed?

23 A: Yes sir.

24 Q: And I assume - am I correct - that
25 the terminology that the Trooper used: "What was your

1 speed limit, what was your speed" and you told him
2 forty-five to fifty?

3 A: Yes sir.

4 Q: Then your speedometer would have
5 read fifty to fifty-five, would it not?

6 A: No sir.

7 Q: Why wouldn't it?

8 A: Because I was going between forty-
9 five and fifty when I checked it there at the Gulf.

10 Q: Now, wait a minute - he didn't ask
11 you what the speedometer read, he asked you what your
12 speed was, and that's what you just told him.

13 A: I couldn't tell you what my speed was.

14 Q: What was your speed?

15 A: I don't know.

16 Q: You said your speedometer was incor-
17 rect?

18 A: Yes sir.

19 Q: How much was it incorrect?

20 A: Five miles off.

21 Q: Then if I asked you what your speed
22 was, then your speedometer would have read fifty or
23 fifty-five - right?

24 A: It would have been about forty or
25 forty-five because . . .

1 Q: Now wait a minute, Mr. Grinstead.
2 We're not asking you what your speedometer read. The
3 Trooper asked you and I've asked you what your speed
4 was, and you said your speed was forty-five to fifty.
5 A: Yes sir.
6 Q: Now in that case, then your speedo-
7 meter would have read fifty to fifty-five if it was five
8 miles off?
9 A: No sir, it wouldn't. If it was five
10 miles off the other way it would be forty or forty-five.
11 Q: Maybe I'm confused. I thought the
12 Trooper asked you what your speed was?
13 A: That's when I checked my speedometer
14 that's what my speedometer said.
15 Q: Wait a minute, that's not what we're
16 talking about here. I've asked you what your speed
17 was . . .
18 A: Why don't you reword it a different
19 way, something I can understand. I don't know what
20 you want.
21 Q: What did Trooper O'Dell ask you
22 concerning your speed? Did he ask you what your speed
23 was?
24 A: No sir, I told him.
25 Q: What did Trooper O'Dell tell you?

1 A: He didn't tell me nothing. I said I
2 told him.

3 Q: What did you tell him?

4 A: I told him I was going between forty-
5 five and fifty miles an hour.

6 Q: You were going between forty-five
7 and fifty miles per hour?

8 A: Yes sir.

9 Q: And your speedometer, you knew,
10 was five miles slow - five miles fast?

11 A: Fast.

12 Q: Okay. so then your speedometer read
13 five miles faster than what you told him that your
14 speed was - is that right?

15 A: We had the speedometer sent off. I
16 don't know what you're asking or which way you want
17 to ask it, but I'll tell you right now I was going - my
18 speedometer said I was going approximately between
19 forty-five and fifty. It could've been forty-nine or
20 it could've been forty-seven and . . .

21 Q: Then . . .

22 A: Let me finish.

23 Q: Excuse me, I'm sorry.

24 A: We had the speedometer sent off and
25 it was five miles fast, so that would put it about forty

1 miles an hour. I didn't really know that at the time.
2 I knew it was off some, but I didn't know what.

3 Q: Now, it was sent off after the acci-
4 dent?

5 A: Yes sir, it was.

6 Q: And there was enough impact on that
7 automobile of yours for it to be a total loss?

8 A: I guess so.

9 Q: Enough impact on the vehicle you
10 hit for it to be a total loss? When did you send the
11 speedometer off?

12 A: I couldn't tell you how long, exactly.
13 Maybe a week.

14 Q: A week?

15 A: Maybe, I don't know. I couldn't tell
16 you.

17 Q: Do you remember testifying about
18 this matter in another Court?

19 A: No sir, I just remember giving some
20 Depositions in Radford.

21 Q: And those were in my office?

22 A: Yes sir.

23 Q: Did you ever mention anything about
24 the speedometer being off at that time?

25 A: I don't remember.

1 Q: You would remember if you had told
2 me about the speedometer?

3 A: I don't know if I told you down there
4 or not.

5 Q: Do you recall ever telling anybody
6 about the speedometer before?

7 A: Mr. Bruce.

8 Q: Mr. Bruce, your Attorney?

9 A: Yes sir.

10 Q: Do I understand that the reason that
11 you went the long way home . . .

12 A: Excuse me - but why do you call that
13 the long way home? It takes the same time either way
14 you want to go. That's just the way that I go, 'cause
15 all the boys that I run around with has been killed on
16 Route 11.

17 Q: That's what I understood you to say;
18 I just wanted to make sure I heard it right. All your
19 friends have been killed for speeding on Route 11?

20 A: Not speeding, they've had wrecks.

21 Q: Wrecks. So you . . .

22 A: I just don't travel that road.

23 Q: You go another way?

24 A: That's right.

25 Q: I believe you had just turned 18, had
you not, Mr. Grinstead?

1 A: I was 18 - no, I was 17.

2 Q: That's what I say. Were you not 18

3 on the day of the accident? Had you not had a birthday

4 just five days before?

5 A: No sir.

6 Q: When is your birthday?

7 A: July 28.

8 Q: So your birthday was five days after?

9 A: Yes sir.

10 Q: You were 17 at the time of the acci-

11 dent?

12 A: Yes sir.

13 Q: And you were going to turn 18 in five

14 more days on the 28th?

15 A: Yes sir.

16 Q: You'd had how much time operating

17 an automobile, how much driving experience?

18 A: I had it since I was 15 and eight

19 months, so I don't know how long that is.

20 Q: So you had been operating a car

21 for . . .

22 A: About a year.

23 Q: Something over a year?

24 A: Yes sir.

25 Q: As you proceeded on down Route 11,

1 do you recall diminishing your speed at any time or
2 putting on the brakes or anything before you saw the
3 Carter vehicle?

4 A: No sir.

5 Q: Do you remember looking over in
6 this area here - (DIAGRAM) - if you did, to see your
7 boss, Tommy Callahan - do you work with him?

8 A: He's not my boss.

9 Q: I thought Mr. Rakes may have said
10 he was your boss.

11 A: Yeah, he said he's my boss, but . . .

12 Q: But he's not?

13 A: He's not.

14 Q: Do you work with Mr. Callahan?

15 A: I used to.

16 Q: You do not any longer?

17 A: No sir, he's in a different department
18 from mine.

19 Q: But he was correct, both of you do
20 work at Inland Motors?

21 A: Yes sir.

22 Q: I believe from facts that you and I
23 both know about, he was in this area here - is that
24 right?

25 A: That's what the facts are. I didn't
know at the time where he was at.

1 Q: Do some of your friends kind of park
2 here and watch the traffic go back and forth on Sunday
3 night?

4 A: No sir.

5 Q: You've never done that?

6 A: No sir.

7 Q: So that wouldn't have distracted your
8 attention or anything?

9 A: No sir.

10 Q: What do you reckon caused you not to
11 see that Carter vehicle?

12 A: I don't remember seeing it in my
13 mind, but I had to see it a little bit up the road, or I
14 wouldn't have had time to put on my brakes and tried
15 to stop.

16 Q: But you don't remember seeing it,
17 I believe you told me, until it was right in front of you?

18 A: That's all I remember in my mind.
19 That's the only thing that's in my mind, is that car
20 sitting there.

21 Q: When you first saw it, did it have
22 its lights on?

23 A: I couldn't tell you if it had lights on
24 or not.

25 Q: If the lights had been - this was

1 about 10:00 o'clock at night - if the lights had been on,
2 they would have been flashing directly to you, would
3 they not?

4 A: If he was turning, they would've
5 flashed.

6 Q: No, I'm talking about just the head-
7 lights - straight ahead.

8 A: His lights wouldn't have been on me,
9 if he was turning, I don't know. If they'd been on, I
10 guess they would've. I didn't see any.

11 Q: Well, what I'm asking: (DIAGRAM) -
12 If this is your car, the yellow car, proceeding in an
13 Easterly direction, and Mr. Carter's car - we'll
14 correct where he is - (DIAGRAM) - and the headlights
15 were on, they would have been shining in your direction.
16 I believe you said you were always in the right-hand
17 lane - is that right?

18 A: Yes sir.

19 Q: You never were in the left-hand lane?

20 A: No sir.

21 Q: All right, if you had been in the
22 right-hand lane and he had his headlights on, they would
23 have been shining in your direction. I believe you said
24 you were always in the right-hand lane - is that right?

25 A: Yes sir.

1 Q: You never were in the left-hand lane?

2 A: No sir.

3 Q: All right, if you had been in the

4 right-hand lane and he had his headlights on, they

5 would have been shining in your direction, would they

6 not?

7 A: Yes sir.

8 Q: Then as he started to turn, they

9 would have right-dead into you head-on, would they not?

10 A: Yes sir.

11 Q: Then they would have veered away

12 from you and then your headlights - we would normally

13 assume, if he were in this direction, - (INDICATING

14 ON DIAGRAM) - would cover his entire car as he crosses

15 this inside lane?

16 A: Yes sir.

17 Q: And then he continued on this way

18 until he was directly in front of you, and you were

19 about thirty feet away - well, let's say forty feet away

20 I think that would be fair, don't you?

21 A: I don't know what you could say.

22 Q: Well, we know - excuse me, the

23 Trooper said light skidmarks that got heavier, and so

24 reaction time, you'd have to be thirty feet or more

25 away, wouldn't you?

1 A: Yes sir.

2 Q: And you don't remember anything about
3 the Carter car?

4 A: I just remember it was . . .

5 Q: Right in front of you?

6 A: That's the last thing I remember.
7 That's what I see in my mind.

8 Q: But I'm not talking about the last
9 thing, I'm talking about the first thing?

10 A: I couldn't tell you. I hit my head on
11 the windshield, and the last thing I remember is seeing
12 the car sitting in front of me.

13 Q: You do remember the car being in
14 front of you?

15 A: Yes sir.

16 Q: But you don't remember it crossing
17 any of these lanes of travel?

18 A: No sir.

19 Q: There were no cars in front of you,
20 were there, Mr. Grinstead?

21 A: No sir.

22 Q: Do you recall any cars being behind
23 you?

24 A: No sir.

25 Q: After the collision occurred, there
was a devastating crash, was there not Mr. Grinstead?

1 A: It was a pretty good impact.

2 Q: It totaled your car and the other car.
3 It took them some time to get some of the passengers
4 out of the Carter car, did it not?

5 A: I don't recall.

6 Q: You don't recall?

7 A: I didn't go down there.

8 Q: You didn't go down there. What did
9 you do after the accident?

10 A: As soon as I come to a stop, I just
11 sat there on that curb.

12 Q: As soon as you came to a stop, you...

13 A: I got out of my car and sat down.

14 Q: Sat down?

15 A: Yes sir.

16 Q: Do you remember this Carter boy
17 coming over to you and asking you how you were?

18 A: I just - the first thing I remember
19 after him coming up there, I think the Trooper was
20 there and we was telling him what happened.

21 Q: Do you remember the Carter boy
22 coming to you and asking you how you were?

23 A: No sir.

24 Q: I believe the Rescue Squad came
25 there pretty quick and took them to the hospital?

1 A: Yes sir.
2 Q: And you talked to Trooper O'Dell?
3 A: Yes sir.
4 Q: Were you there when Mr. Carter talked
5 to him?

6 A: Yes sir. I was standing there.

7 BY MR. DAVIS:

8 I think that's all.

9 CROSS EXAMINATION BY MR. RAKES:

10 Q: How far did you say it was down to
11 the road that enters Route 11 by the Northside Flower
12 Shop, about how far is that from the Gulf Station?

13 A: I couldn't tell you exactly, I think
14 it's probably about five hundred feet maybe, something
15 like that. I couldn't tell you exactly what it is.

16 Q: I believe Trooper O'Dell testified
17 that it was about five hundred and ten feet from a point
18 across Route 11 directly opposite the Gulf Station to
19 the East curb line to the driveway entering into McDon-
20 ald's - is that right?

21 A: Yes sir.

22 Q: So we are talking about something in
23 excess of a thousand feet?

24 A: I guess so, yes sir.

25 Q: We are talking about something around

1 seven hundred and fifty feet, more or less, from where
2 you entered U. S. Route 11 to where the traffic light
3 is? Correct?

4 A: I couldn't tell you exactly, sir, what
5 it is.

6 Q: Well I understand, but if the Trooper
7 says it's two hundred and forty-two feet from the Gulf
8 Station to the traffic light and you say it's approxi-
9 mately five hundred feet, more or less, to the road
10 where you pulled out, that would be something in the
11 neighborhood of seven hundred and fifty feet, wouldn't
12 it?

13 A: Yes sir.

14 Q: When did you first look at the traffic
15 light when you pulled into Route 11?

16 A: I don't know when I first looked at it.
17 I just remember it being green.

18 Q: Didn't you see it green when you first
19 pulled into Route 11?

20 A: I just remember it being green on
21 the way.

22 Q: That's the point I'm getting at - right.
23 So when you first crossed the Westbound lanes and got
24 into the right Eastbound lane, which you say you got
25 into, at that very point pulling out from the road from

1 the Northside Flower Shop, you could see the light was
2 green and it was green all the way, wasn't it?

3 A: When I got into the right lane, yes
4 sir.

5 Q: And you checked your speedometer
6 along about the Gulf Station, you say?

7 A: Yes sir.

8 Q: And you were worried about the light
9 changing red on you?

10 A: Yes sir. I wasn't really worried
11 about it. I checked my speed to see if it was going to
12 change, because I was going to make time for me to
13 stop.

14 Q: Weren't those your very words on
15 Direct Examination "worried about the light changing?"

16 A: I don't know if they was or not. I
17 don't remember.

18 Q: Do you think it's possible that you
19 might have speeded up some from the Gulf Station in
20 order to be sure to make the green light, Mr. Grinstead?

21 A: No sir.

22 Q: That has never happened to you be-
23 fore in your lifetime?

24 A: I don't know if it has or not.

25 Q: But you are positive it didn't happen
on this occasion?

1 A: No sir.

2 Q: Just a little bit more about your
3 speedometer: I believe you testified that you knew that
4 it was off a little bit at the time of the accident?

5 A: Yes sir.

6 Q: But you didn't mention that to the
7 Trooper?

8 A: No sir.

9 Q: And when you told the Trooper how
10 fast you were going back there somewhere in the
11 neighborhood of the traffic light or the Gulf Station
12 or what have you, did you attempt to tell him what you
13 thought the speed was based upon your knowledge that
14 the speedometer was off a little bit?

15 A: No sir, I told him what the speedo-
16 meter said.

17 Q: Are you telling us, Mr. Grinstead,
18 that you consciously told the Trooper that you were
19 going faster than you actually were?

20 A: Why don't you reword that so I'll
21 understand what you are talking about?

22 Q: All right, I'll do my best: Are you
23 telling us that you purposely told the Trooper that you
24 were going at a higher speed than you really were?

25 A: I guess that's right. I told him what
my speedometer said.

(-102-)

1 Q: All right now, let me ask you this
2 question: How long have you lived at the place down
3 on the lake that you have described?

4 A: About nine years, eight or nine.

5 Q: And how often would you say that you
6 had traveled U. S. Route 11 from Dublin to Radford
7 during that eight or nine years?

8 A: Quite a few times.

9 Q: In fact, you had driven it some your-
10 self, had you not?

11 A: Yes sir.

12 Q: Are you trying to tell us today, Mr.
13 Grinstead, that you didn't know that the speed limit
14 was 40 miles an hour in that area where you pulled
15 out into?

16 A: Yes sir, they just made that stretch
17 down through there, and I didn't even know if there
18 was a sign down through there or not. There wasn't
19 a sign then, there could be now. There wasn't a sign -
20 there was one sign right up there to the red light.
21 There's not a 40-mile sign going down that stretch.

22 Q: All the way from Dublin to Radford?

23 A: That's not the speed from Dublin to
24 Radford.

25 Q: I understand that sir, but are you

1 telling us that the speed has not been lowered any on
2 the way from Dublin to Radford below 55 miles an hour
3 up until the point where you pulled out into the road-
4 way? Is that what you're telling us?

5 A: I didn't know it was 40, no sir.

6 Q: But you had driven that road many
7 times, and that's what the Trooper testified, didn't he?

8 A: I know it.

9 Q: Well, are you disagreeing, that the
10 signs hadn't been there for over a year?

11 A: All I know, I didn't know it was 40
12 miles an hour.

13 Q: But you knew it was something less
14 than 55, didn't you?

15 A: Yes sir.

16 Q: After this accident happened, you
17 saw Tommy Callahan at the scene and asked him to go
18 get your girlfriend's father and send him down to the
19 accident scene, didn't you?

20 A: Yes sir.

21 Q: And of course, you had occasion to
22 talk to Tommy Callahan, who you worked with or who
23 worked at the same place you did, after this accident
24 happened - after that night, didn't you?

25 A: What do you mean by talking to him?
We hadn't discussed the accident at all.

1 Q: Are you telling us, Mr. Grinstead . . .

2 A: I hadn't talked to Mr. Callahan about

3 the accident. I've talked to him. I've seen him and

4 talked to him, but we haven't discussed the accident.

5 Q: Though you knew he was present at

6 the scene?

7 A: I know he was there - now. I didn't

8 know he was there when it happened. He come down

9 there right after the wreck.

10 Q: That's the point I'm getting at -

11 excuse me, I don't mean to confuse you, sir - but at

12 least after the accident happened when he came down

13 there to see about you and you asked him to go get

14 your girlfriend's father, at that time you knew he was

15 in the vicinity of the accident scene - right?

16 A: Yes sir, at that time.

17 Q: Yes, right. Now, my point is: Maybe

18 not that night, but sometime later at work or otherwise,

19 did you ever have occasion to talk to Tommy Callahan?

20 A: I don't talk to him - I never did talk

21 about the wreck to him.

22 Q: Even though you knew he was close by?

23 A: Yes sir.

24 Q: You didn't ask him if he saw what

25 happened?

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A: No sir.

Q: As you were passing under the traffic light, did you notice any cars over at McDonald's - whether you were looking for them or not - or notice any people standing out there congregating around the parking lot?

A: No sir.

Q: What do you recall doing when you first became aware of the Carter vehicle being cross-ways to the road in front of you?

A: I just remember slamming on my brakes trying to stop.

Q: Do you remember doing anything else?

A: No sir. It happened so quick, I don't know.

Q: Can you explain how your car traveled a distance of three and a-half to four feet to the right after you applied your brakes?

A: No sir.

Q: Could you tell that the Carter vehicle was headed into the McDonald's driveway when you saw it broadside in front of you?

A: I didn't know it was right there at the driveway, no sir.

Q: The car was blocking your right lane when you first saw it - right?

1 A: That's the thing I remember.

2 Q: That's the point I'm getting at: So
3 it was blocking your right lane when you first saw it,
4 and it was headed into McDonald's driveway - right?

5 A: I guess.

6 Q: I mean, is that the way you saw it at
7 the time - is what I'm getting at?

8 A: Yes sir.

9 Q: Now, could you tell the speed of that
10 vehicle in relation to your own speed?

11 A: No sir.

12 Q: But you could tell it was moving,
13 couldn't you?

14 A: No sir.

15 Q: Did it look like it was stopped?

16 A: I don't know, sir. I told you, I said
17 the last thing I remember was that car sitting in front
18 of me, it happened so quick, we just hit.

19 Q: Did the thought ever occur to you to
20 try to steer to your left, go around that way?

21 A: No sir.

22 Q: Son, do you have any explanation in
23 the world as to why you were so close up on that ve-
24 hicle before you ever observed it and took any action
25 at all to avoid the collision?

1 A: It was so close. I had to see it up
2 here, because it left time for me to try to hit my brake
3 and try to do something to try to keep from hitting
4 those people.

5 Q: You are not in a position to comment
6 one way or the other on the length of the skidmarks,
7 which the Trooper has said were approximately thirty
8 feet?

9 A: No sir, I didn't see them.

10 Q: Were you conscious of your wheels
11 being locked?

12 A: No sir. I just remember trying to
13 stop.

14 Q: If there had been any pedestrians
15 crossing the road right there at that driveway, there
16 wouldn't be any way in the world you could have avoided
17 them, could you?

18 BY MR. JOHNSON:

19 Objection. That's hypothetical.

20 BY MR. BRUCE:

21 I Object . . .

22 BY MR. RAKES:

23 It's going to the question of look-out,
24 Your Honor. It's Cross Examination.
25

1 BY THE COURT:

2 What was the Question?

3 BY MR. RAKES:

4 My Question is: If there had been any
5 pedestrians crossing the highway in the vicinity of
6 this driveway going into McDonald's and Kroger's,
7 would you have been able to see them?

8 BY MR. JOHNSON:

9 Objection . . .

10 BY THE COURT:

11 Just a minute, I'm going to sustain the
12 Objection. It's hypothetical and irrelevant to the
13 issues in this case.

14 BY MR. RAKES:

15 All right, sir.

16 Q: You have stated before, and I think
17 it's perfectly obvious to all of us and to you, and I'm
18 sure to Mr. Carter too, before this situation got so
19 serious that nobody was expecting anything to happen
20 is that a fair statement?

21 A: Yes sir, you just don't drive down
22 the road looking for a wreck.

23 Q: You don't have any conscious recol-
24 lection of steering any to your right after you applied
25 your brakes?

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A: No sir.

Q: As you have pointed out, you had to have some reaction time from the time you first saw the vehicle until the time you could get your foot on the brake and start laying down rubber?

A: Yes sir.

Q: And even though the angle of those skidmarks, from where they started right up to where they stopped at the point of impact were to the right, you don't feel like you were ever in the left lane at any time?

A: I was not in the left lane.

Q: If you weren't expecting anything to happen, how did you recall looking at your speedometer back there at the Gulf Station before you even got to the traffic light?

A: Because I was going to see if I was going to make the light or not. I was going to allow enough time for me to stop, if I had to.

Q: Do you ever recall sounding your horn

A: Sir?

Q: Do you ever recall sounding your horn

A: No sir.

Q: You really didn't have time, did you?

A: I don't know.

1 Q: Do you recall testifying earlier in
2 this case in Depositions on January 23, 1979, which
3 would have been about six months after the accident?

4 A: I remember we had Depositions.

5 Q: In Mr. Davis' office?

6 A: Yes sir.

7 Q: And all of the Attorneys that are
8 here today were there at that time?

9 A: Yes sir.

10 Q: On pages 20 and 21. Do you recall
11 this question and this answer at that time - this is
12 Mr. Davis' question - "Question: Do you recall why,
13 Bill, that you might not have seen the Carter vehicle
14 until it was just a few feet in front of you? Answer:
15 No sir." Do you recall that question and answer?

16 A: I don't recall, no sir.

17 Q: Do you think that's accurate, though?

18 A: Yes sir.

19 Q: And I believe you've already answered
20 Mr. Davis' question that all during the testimony that
21 you gave in that Deposition that lasted sixty pages, you
22 never once mentioned anything about the speedometer,
23 did you?

24 A: I don't know if I did or not.
25

1 BY MR. RAKES:

2 Gentlemen, can we stipulate that there
3 is nothing in that transcript about any speedometer
4 test?

5 BY MR. BRUCE:

6 Yes sir, if we can stipulate that you and
7 Mr. Davis asked the questions, and you never asked
8 that question.

9 BY MR. RAKES:

10 We will agree with that.

11 Q: You were questioned extensively at
12 that time about your speed, and what you told the
13 Trooper, weren't you?

14 A: Yes sir, I guess. It's in there.

15 Q: You remember that though, don't you?

16 A: Yes.

17 Q: Don't you remember we asked you a
18 lot of questions about that?

19 A: Yes sir.

20 Q: You just heard your Counsel stipulate
21 that no mention was ever made about the speedometer
22 test?

23 A: That's right. You didn't ask me.

24 Q: Oh, we didn't ask you?

25 A: No sir.

1 Q: But coming to Court today, it's
2 important that you say it?

3 A: That's right.

4 Q: On pages 29 and 30 of your testimony
5 by way of Deposition, Mr. Davis is asking you, Line
6 27: "I take it that you have talked to Tommy Callahan
7 and Bill Mabry, both, between the night of the accident
8 and the time of the traffic hearing? Answer: What do
9 you mean by talk to them? I talk to them whenever I
10 seen them, you know, at work or whatever. Question:
11 Well, what I mean is talk to them about the accident.
12 You have talked to them about the accident between
13 the night it happened and the time of the traffic hear-
14 ing - had you not? Answer: What do you mean by
15 talk to them? Question: I don't know how I could be
16 more plain. Answer: What do you mean - like ask
17 them about it or what - I don't know. Question: What
18 can I say if I ask you if you talked to them about the
19 accident, if I could be plainer. I'll try if you'll ask
20 me in what way, I just don't know what else I could say
21 about it. Your Answer: We talked, but I don't really
22 understand what you want. Question: We'll get to
23 what I want, I just want to know first of all if you
24 talked to them about the accident between the night of
25 the accident and the time of the traffic hearing?

1 Answer: We had talked. Question: About the accident?

2 Answer: I guess." Now, do you remember that ex-
3 change? Am I quoting accurately from the Record?

4 A: Yes sir, if it's there, you are.

5 Q: But today you say that you haven't
6 talked to them about it?

7 A: I've talked to them, but I can't say
8 I talked to them about the accident. I don't remember
9 saying anything to them about the accident.

10 Q: When you first saw the Carter vehicle,
11 you had no idea of where it had come from, did you?

12 A: No sir.

13 Q: What time did you have to go to work
14 the next day?

15 A: 4:00 o'clock that evening.

16 Q: 4:00 o'clock Monday afternoon?

17 A: Yes sir.

18 Q: Was that kind of early for you to be
19 going home that night, when you didn't have to get up?

20 A: I always leave my girlfriend's house
21 early on Sunday night because she gets up.

22 Q: She gets up?

23 A: Yeah, she works.

24 Q: Was it kind of early for you to be
25 going in?

1 A: I'm always in about 10:00 o'clock -
2 9:00 or 10:00 o'clock on Sunday night.

3 Q: You never get out with the boys?

4 A: I do ever once in awhile. Not very
5 often.

6 Q: I mean even, you know, if you don't
7 have to go to work until 4:00 o'clock the next afternoon?

8 A: I'm usually not out until about 9:00
9 or 9:30 every Sunday.

10 Q: When did you first begin to feel any
11 pain from being thrown around in the car?

12 A: As soon as it happened.

13 Q: At the time it happened?

14 A: Yes sir.

15 Q: Did your knees hurt then?

16 A: No sir, I just had a scrape on there.
17 I was just so nervous and shook up. I don't know if
18 you'd call it pain or what. The next morning I was so
19 sore I couldn't hardly move, and that's when I went to
20 the doctor.

21 Q: Do you recall whether you had any
22 pain in your knees the night of the accident?

23 A: I don't know. I was so scared, I
24 just sat down.

25 Q: But you have no conscious recollec-
tion of having pain in your knees on the night of the
accident?

1 A: I couldn't tell you. I was so scared.
2 I could've had pain, I don't know. I was so scared
3 and shook up, I went over there and sat down.

4 Q: Do you understand how I'm phrasing
5 the question? I'm sort of having the same problem
6 Mr. Davis did. Today can you tell us positively that
7 you felt pain in your legs the night of the accident?

8 A: No sir.

9 Q: Thank you, sir. How did you get
10 home to your parents that night?

11 A: My parents come down there and got
12 me.

13 Q: And did you see any doctor between
14 the time you saw Dr. Kelly, I believe you said the day
15 after the accident, until the time you went to see Dr.
16 Strelka sometime in September?

17 A: No sir.

18 Q: You didn't go back to Dr. Kelly?

19 A: I went back to Dr. Kelly; that's
20 when he referred me to Dr. Strelka.

21 Q: Son, are you positive that you went
22 back to Dr. Kelly?

23 A: You have to go to your doctor. You
24 have to be referred to Montgomery County to Dr.
25 Strelka.

1 Q: We're going to get into that in just
2 a minute. First of all I want you to answer the ques-
3 tion: Are you positive that you went back to see Dr.
4 Kelly the second time?

5 A: I don't know if I seen him or not. I
6 just know he made the appointment for me.

7 Q: Isn't it true that you called Dr.
8 Kelly's office and asked him if he wouldn't refer you
9 to Dr. Strelka?

10 A: I don't know.

11 Q: Isn't that possible?

12 A: It's possible. I couldn't give you
13 an answer on that.

14 Q: In any event, he did make the arrange-
15 ments and you did go over to Dr. Strelka's office?

16 A: Yes sir.

17 BY MR. RAKES:

18 I believe that's all.

19 RE-DIRECT EXAMINATION BY MR. BRUCE:

20 Q: Mr. Rakes has read you a couple of
21 things out of this Deposition. You remember being
22 there?

23 A: Yes.

24 Q: He read you page 20 where Mr. Davis
25 was asking you questions and after a series of

1 questions - "Do you know why, Billy, you might not
2 have seen the Carter vehicle until it was just a few
3 feet in front of you, and the Answer was No sir."

4 A: Yes sir.

5 Q: Do you recall - and this is in page
6 14, which is six pages before page 20 - do you recall
7 the Question: "When did you first see the Carter
8 vehicle, the vehicle being operated by Robert Carter?"
9 And your Answer was: "I couldn't tell you. I don't
10 really remember exactly when I seen the vehicle, but
11 in my mind I can see the car sitting sideways in front
12 of me, but I had to see it sometime before the accident
13 because I laid skidmarks. I couldn't tell you how far
14 up the road I seen it." Do you remember that state-
15 ment?

16 A: Yes sir.

17 Q: Bill, I asked you about the distance
18 from the Gulf Station back to the Northside Flower
19 Shop - have you ever measured that distance?

20 A: No sir.

21 Q: How do you know it's about five
22 hundred feet, more or less?

23 A: That's just a guess of distance. It
24 could be more, I don't know.

25 Q: And there's a question about your

1 speedometer, and you have testified you know it was
2 off a little bit before the accident. How did you know
3 it was off?

4 A: We followed my mother home a lot of
5 times when we'd take another car to get it worked on,
6 and she'd set hers and we'd be behind her and ours would
7 be off.

8 Q: Between what she said she was going
9 and what you say?

10 A: Yes sir.

11 Q: Had you ever had it tested or anything
12 like this before the accident?

13 A: Not till, no sir.

14 BY MR. BRUCE:

15 That's all I have.

16 WITNESS ASIDE

17 MYRTLE GRINSTEAD, being duly sworn, testified as
18 follows:

19 DIRECT EXAMINATION BY MR. BRUCE:

20 Q: Mrs. Grinstead, would you state
21 for the Record your full name, please?

22 A: Myrtle Grinstead.

23 Q: Where do you live, Mrs. Grinstead?

24 A: Route 1, Dublin.

25 Q: Where is that?

* * *

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1 Given under my hand and official notarial
2 seal this 19th day of June, 1980.

3
4 (Original Signed)
5 Notary Public

6 * * * * *

7 BY MR. BRUCE:

8 The Plaintiff Grinstead Rests at this
9 time.

10 MARY F. PHILLIPS, being duly sworn, testified as
11 follows:

12 DIRECT EXAMINATION BY MR. DAVIS:

13 Q: State your full name, please ma'am.

14 A: Mary F. Phillips.

15 Q: And where do you reside, Ms.

16 Phillips?

17 A: Bruce's Trailer Court in Dublin.

18 Q: In Dublin?

19 A: Yes.

20 Q: Could you give us your age?

21 A: Thirty-five.

22 Q: Now on July 23, 1978, approximately
23 twenty-three months ago or thereabouts, were you in
24 the vicinity of McDonald's hamburger establishment
25 down on Route 11 near Radford?

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A: Yes.

Q: Do you recall that evening?

A: Yes, I do.

Q: Do you know what day it was?

A: I just know it was on Sunday.

Q: Sunday - do you know what time an accident occurred down in the vicinity of McDonald's?

A: I couldn't recall exactly what time it was. It was dark.

Q: Where had you been that evening?

A: I had been - well, I had been home all day. I worked late that night, Saturday night, and I slept all day and then I decided to go riding that afternoon, late.

Q: And where do you work?

A: White Motor Company.

Q: And you still work there today?

A: Yes sir.

Q: And you were working there then?

A: Yes.

Q: What shift did you work on that occasion?

A: I was working second shift, but I was off on Sunday, but I had worked Saturday night.

Q: What are you talking about - what hours did you work?

1 A: Well, on Saturday night I just worked
2 eight hours, like 4:00 to 12:00.

3 Q: 4:00 to 12:00 - and you had gotten
4 up on Sunday, and I believe you told us you went riding
5 around?

6 A: That's right.

7 Q: On this evening, Sunday evening,
8 did you stop in the vicinity of McDonald's in the park-
9 ing lot?

10 A: That's right.

11 Q: Could you point out to the Court and
12 the Jury - (DIAGRAM) - could you point out about
13 where you were, Ms. Phillips, in the parking lot?

14 BY THE COURT:

15 You'd better point out the landmarks to
16 her.

17 BY MR. DAVIS:

18 Q: All right. This is the old Executive
19 Steak House. Are you with me? The motel is down
20 in this area. This is the entrance to Kroger's, come
21 in through here and you would come into the McDonald
22 lot. This is the entrance to the Radford Shopping
23 Plaza over here next to the stop light, this is the
24 Gulf Station and the Wilco Station. Proceeding in the
25 Easterly direction, you go to Radford, cross New

1 River Bridge; and in a Westerly direction you would
2 go back toward Heck's or 114. This is the McDonald's
3 hamburger establishment.

4 A: And you want to know where I was?

5 Q: I want to know where you were on
6 this sketch.

7 A: I was approximately right around in
8 here - (DIAGRAM).

9 Q: Let me get a pen and you can mark
10 that.

11 BY MR. RAKES:

12 Why don't you just have her put her
13 initials in, M. P.?

14 BY MR. DAVIS:

15 That would be fine.

16 Q: Ms. Phillips, now if you would just
17 step up here - this is the parking lot, this is the road
18 coming into the plaza - are you with me?

19 A: Yes.

20 Q: And this is the parking lot here.

21 A: I would say about right here -
22 (MARKING INITIALS ON DIAGRAM).

23 Q: And you're designating that with an
24 M. P.?

25 A: Yes sir.

1 Q: Now this was nighttime, you say -
2 dark?

3 A: Yes, I can't recall what time.

4 Q: How did you happen to stop there,
5 Ms. Phillips?

6 A: I knew that my brother and his friends
7 usually hangs around McDonald's parking lot, or some-
8 where like that, and so I decided well, that's the only
9 time I get to see him - to catch him down there some-
10 wheres, so I went down there. We hadn't been there
11 very long. I was sitting there talking to him and his
12 friends.

13 Q: Did you find your brother in the park-
14 ing lot?

15 A: Yes.

16 Q: And you say that he normally hangs
17 out there, are there others that hang out in the parking
18 lot?

19 A: Wilco or either McDonald's, or
20 somewhere around there.

21 Q: What was he doing - anything in
22 particular?

23 A: Just sitting around talking.

24 Q: What is your brother's name?

25 A: William Mabry.

1 Q: You were a Mabry before you married?

2 A: That's right.

3 Q: Who was he talking to?

4 A: Tommy Callahan, and I think there
5 was somebody else. Tommy's the main one that I've
6 known for years.

7 Q: You knew Tommy Callahan?

8 A: Yes.

9 Q: And where were they? Were they in
10 the same general area where you have M. P. marked
11 on the diagram?

12 A: Yes sir.

13 Q: What were they - in one car, two
14 cars, what?

15 A: There were several cars. My brother
16 with his car, and I can't recall the name of the other
17 friend. I just know Tommy Callahan's name.

18 Q: And there were others there?

19 A: Yes, but I can't recall their names.

20 Q: Just tell us what you did, please
21 ma'am.

22 A: Well, I was standing there talking
23 to them and I noticed - is it Grinstead or Grimstead?

24 Q: This young man?

25 A: Yes. Grinstead or Grimstead -

1 well, whatever - I noticed his car coming through the
2 light, and the Carter car was turning into the McDon-
3 ald's parking lot.

4 Q: Now where were you facing, Ms.
5 Phillips, at this time?

6 A: I was facing them. I was facing
7 where I could see the highway up and down.

8 Q: All right, and when did you first see
9 the Grinstead vehicle?

10 A: I guess he was headed under the light.

11 Q: What caused you to look at the
12 Grinstead vehicle - what brought your attention to it?

13 A: It was a white car.

14 Q: It was a white car? Was there any-
15 thing else, other than just the color of the car?

16 A: Well, he was traveling pretty fast
17 to go, you know, in that vicinity.

18 Q: Would you have an estimation as to
19 the speed that the white car was making when it went
20 under the light?

21 A: I would say in excess of what it
22 should be doing. I don't know what the speed limit
23 is through there, but I'd say too fast for going through
24 that spot.

25 Q: Did you see the car that it hit?

1 A: He was already turning into McDon-
2 ald's.

3 Q: Why don't you just take this blue
4 vehicle and we'll designate it as the Carter vehicle,
5 and just point out where the Carter vehicle was when
6 you first saw it - (DIAGRAM)?

7 A: Well, I would say it had already
8 crossed the - is this the McDonald's parking lot?

9 Q: That's exactly right. This is the
10 entrance going into McDonald's here.

11 A: It had already crossed the lines,
12 you know, the center lines.

13 Q: Do you recall anything about the
14 speed, or anything about the Carter vehicle?

15 A: Well, it all happened so fast. The
16 Grinstead car just hit the . . .

17 Q: Were the lights on the Carter vehicle?

18 A: I couldn't say for sure.

19 Q: How about the Grinstead vehicle -
20 were the lights on the white vehicle?

21 A: I couldn't say for sure.

22 Q: Now, what did you see at that point,
23 Ms. Phillips?

24 A: The Grinstead car hit the Carter car
25 in the right door and it knocked it down, there's two

1 posts - I think they're gone now, I'm not for sure -
2 two big posts where the sign was and knocked it between
3 it and that building.

4 Q: Where did the impact occur?

5 A: I would say about like that -
6 (INDICATING ON DIAGRAM).

7 Q: Where was the Grinstead vehicle at
8 impact?

9 A: I would say about like that -
10 (INDICATING ON DIAGRAM).

11 Q: And what happened to the Carter
12 vehicle after the collision?

13 A: It knocked the Carter vehicle down
14 between that big post . . .

15 Q: Well, go ahead and take that blue
16 vehicle and show us the path as best you can remember
17 it.

18 A: This is the path?

19 Q: This is the Executive Steak House.

20 A: The building?

21 Q: This is the building, and the Trooper
22 testified that there's a sign right here, used to be.

23 A: A great big post there - knocked it
24 down between the building and that big post.

25 Q: All right, and what about the Grin-
stead vehicle - where did it wind up?

(-164-)

1 A: I think, as I recall, it stopped right
2 where it hit.

3 Q: What did you do then, Ms. Phillips?

4 A: Well, I went down to - I walked down
5 to where it happened, and I think it took them a long
6 time to get the mother out 'cause she was moaning and
7 groaning when they got her out, and I talked to one of
8 the daughters and the little son, I forget his name.

9 Q: You talked to one of the Carter
10 children that were in the car?

11 A: I don't recall her name. She had
12 long hair.

13 Q: I understand, but you did talk to one
14 of the children that were in the car?

15 A: Yes.

16 Q: And do I understand that you talked
17 to a little boy that was in the car?

18 A: Yes, the little boy said - he was
19 crying - and he said that boy was flying.

20 Q: Now wait a minute, don't testify
21 what the little boy said. Did you make a statement to
22 the little boy yourself?

23 A: Yes, I said I knew it. I told him
24 his mother would be all right, not to worry about her.

25 Q: Did you talk to the Trooper?

1 A: Yes, I believe it was O'Dell.

2 Q: Trooper O'Dell?

3 A: Yes.

4 Q: And you did see him there at the scene

5 A: Yes.

6 Q: So I understand you think you talked
7 to one of the Carter girls and you talked to the little
8 boy and you talked to Trooper O'Dell - was there any-
9 one else there that you talked to Ms. Phillips, or do
10 you recall?

11 A: I think that was all. The little boy
12 and one of the daughters with the long hair and Trooper
13 O'Dell. I think that's all.

14 Q: Have you testified about this case
15 in another hearing?

16 A: Yes, I did. In another Courtroom.

17 Q: And at that hearing, did you testify
18 essentially to the same things that you've told me here
19 today?

20 A: Yes, I did, to the best of my knowl-
21 edge.

22 Q: At that hearing, did you testify
23 concerning anything about the Grinstead speed?

24 A: I testified that - I believe I said I
25 didn't see anything because I didn't want to get in-
volved. As I recall, that's what I said in Court.

1 Q: At the other hearing you said you
2 didn't see anything because you didn't want to get in-
3 volved?

4 A: Yes.

5 Q: What you have told us today, is that
6 what you told Trooper O'Dell?

7 A: That's the truth.

8 Q: And what you've told us today is
9 what you actually saw?

10 A: To the best of my knowledge.

11 CROSS EXAMINATION BY MR. JOHNSON:

12 Q: Mrs. Phillips, as I understand it,
13 you placed the Carter car something like that position -
14 (DIAGRAM) - at the point of impact - is that approxi-
15 mately correct? Would you please adjust it, if it
16 needs adjusting?

17 A: Well, I don't believe it was that
18 far - (DIAGRAM).

19 Q: All right, so most of the Carter
20 vehicle was still in what we call the inside or passing
21 lane at the point of collision - (MS. PHILLIPS
22 ADJUSTING ON DIAGRAM) - about half and half?

23 A: I'd say about half and half.

24 Q: Did I understand correctly that when
25 you first saw the Grinstead car, it was back here at
the traffic light?

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A: It was going through the light.

Q: It was actually going under the light and you were looking at it?

A: Yes.

Q: You've initialed this as being the spot at which you were standing - is that correct?

A: Yes sir.

Q: And when you saw Mr. Grinstead's car, it was coming through the traffic light?

A: Yes sir.

Q: And you were looking at it?

A: I was leaning up against my car, against my car facing the highway.

Q: We've indicated it's 212 feet down to this driveway where this accident occurred. Do I understand correctly that at the same time that you saw Mr. Grinstead coming through the light, that you saw the Carter car already turning? (I believe was the way you put it?)

A: I noticed the Grinstead car going under the light, and my eye kind of followed the Carter car, because it happened real quick.

Q: Which one did you see first?

A: The Grinstead.

Q: So you don't know what the Carter car was doing at that point, do you?

1 A: Yes, I saw it about the same time I
2 saw Grinstead.

3 Q: Some two hundred or more feet down
4 the road - correct?

5 A: Yes sir.

6 Q: Do I understand, Mrs. Phillips, that
7 you watched Mr. Grinstead's car after it went under
8 the traffic light on down to the point of impact?

9 A: Yes.

10 Q: Mrs. Phillips, how long had you been
11 at the scene of the accident when it happened?

12 A: I would say about thirty, forty min-
13 utes.

14 Q: What were you all doing there?

15 A: We were just sitting there talking.

16 Q: Were you drinking any beer?

17 A: My brother and his friends had been
18 sitting there a long time, I think, but I had just got
19 there.

20 Q: You were drinking too, weren't you?

21 A: Yeah, I drank a beer.

22 Q: As a matter of fact, you had had at
23 least a couple of beers before you got there, hadn't
24 you?

25 A: Maybe one.

1 Q: And another after you got there?
2 A: Yes, because I had just got out of
3 bed. I had slept all day.
4 Q: Do you have children?
5 A: Yes.
6 Q: Did you have children at the time?
7 A: Yes.
8 Q: How old are they?
9 A: They're teenagers.
10 Q: Did they live with you at the time?
11 A: I just had two of them with me at
12 that time.
13 Q: Mrs. Phillips, you indicated that
14 you had testified previously regarding this accident?
15 A: Yes.
16 Q: And the day that you testified was
17 October 17, 1978, wasn't it?
18 A: I don't recall the exact date. I did
19 testify.
20 Q: It was in the General District Court
21 of Pulaski County, wasn't it?
22 A: Yes sir.
23 Q: And there were two judges present,
24 weren't there - Judge Cooley and Judge Thomas?
25 A: I can't recall who the judges were.

1 Q: In any event, you were placed under
2 Oath before you testified, weren't you?

3 A: Yes sir.

4 Q: Just as you were placed under Oath
5 today?

6 A: Yes sir.

7 Q: And you admit, don't you, Mrs.
8 Phillips, that when you previously testified in Court
9 about this accident, you testified under Oath that you
10 did not see either car before the impact?

11 A: That's what I said, yes sir.

12 Q: That was your testimony?

13 A: Because . . .

14 Q: Well, I understand that your explana-
15 tion is that you did not want to get involved?

16 A: Yes, because just like today, I'm
17 losing work and I can't afford to lose money.

18 Q: Do you understand, Mrs. Phillips,
19 the significance of what you're telling us?

20 A: Yes sir.

21 Q: Do you understand what perjury is?

22 A: Yes sir.

23 Q: And you are today confessing that
24 you committed perjury?

25 A: I didn't know if it was perjury or not,
but I just didn't want to get involved.

1 Q: Well, you are admitting that you
2 previously testified falsely under Oath. That's what
3 you're telling us - correct?

4 A: Yes sir.

5 Q: And you're under Oath today?

6 A: Yes sir.

7 BY MR. JOHNSON:

8 That's all, Your Honor.

9 CROSS EXAMINATION BY MR. RAKES:

10 Q: Just a couple of questions, Mrs.
11 Phillips. Weren't your brother, Bill Mabry, and
12 Tommy Callahan both subpoenaed to testify at that
13 same traffic hearing that you were?

14 A: Yes sir.

15 Q: And do you know who subpoenaed you
16 and Tommy and Bill Mabry? Wasn't it Mr. Grinstead?

17 A: I'm not sure.

18 Q: They both testified at that same
19 traffic hearing?

20 A: Yes.

21 Q: At the time you were out there talking
22 to your brother, Bill Mabry, and to Tommy Callahan,
23 and your attention was called to this car coming down
24 through this intersection at what you considered a
25 speed higher than it should have been or greater than

1 it should have been for that area, didn't Tommy
2 Callahan make a statement, there goes Bill Grinstead?

3 A: No, I don't know.

4 Q: You don't recall that?

5 A: 'Cause I wouldn't know him anyway.

6 Q: I just wondered if you recalled hear-
7 ing him just make that statement?

8 A: No.

9 Q: Now, how long had you been there
10 would you estimate - fifteen - twenty minutes?

11 A: I would say about thirty minutes.
12 I hadn't been there very long.

13 Q: All right, and had you been virtually
14 in that same location during that time?

15 A: Yes.

16 Q: Had you had occasion to see a lot of
17 traffic go up and down the road that night?

18 A: I have a habit of watching the cars.

19 Q: So you had seen a lot of traffic go
20 up and down the road that night? Is that right?

21 A: Yes.

22 Q: Would it be a fair statement that the
23 speed of this car which attracted your attention to it
24 was going substantially faster than any other traffic
25 you had seen out there that night?

1 BY MR. JOHNSON:

2 Objection, Your Honor. That's imma-
3 terial.

4 BY THE COURT:

5 Objection overruled.

6 BY MR. RAKES:

7 You may answer it.

8 A: Would you repeat the question?

9 Q: Having observed all the other traffic
10 out there that evening, as you said making it a point
11 to watch traffic, was your attention called to this
12 particular vehicle because it was traveling substan-
13 tially faster than any of the other traffic you had seen
14 going up and down the road that night?

15 A: Yes.

16 BY MR. RAKES:

17 That's all.

18 WITNESS ASIDE

19 ROBERT JACKSON CARTER, An Adverse Witness
20 Called to The Witness Stand by The Plaintiff Hogan,
21 being duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. DAVIS:

23 Q: State your full name - may I call
24 you Robert?

25 A: Yes sir. Robert Jackson Carter.

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Q: How old are you now, Robert?

A: Twenty-one.

Q: Do they call you Robert or Bob?

A: Robert.

Q: You're 21?

A: Yes sir.

Q: How old were you on July 23, 1978?

A: I think I was 19. I ain't sure.

Q: When is your birthday?

A: April 4.

Q: Do you recall the events that took place on that day?

A: I recall most of them. Some of them I might not.

Q: Do you recall what happened earlier that night when you took the family to church in Christiansburg?

A: Yes sir.

Q: What time had you left home?

A: We left home about 6:30 and then we went to church. Church let out somewhere around 9:00 or 9:30, I would say, and then we was driving home.

Q: Whose car were you operating, Robert?

A: Allen Whittaker's.

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Q: Is he any kin to you?

A: He's my uncle.

Q: Your uncle - you left the church around 9:30 you say?

A: Yes sir.

Q: And where were you going after you got out of church?

A: Well, we had planned on going straight home, but as we neared the bridge one of the kids in the car said they was hungry, so we decided to go to Kroger's and get something to take home.

Q: Had you driven over there to Christiansburg?

A: Yes sir.

Q: Had you driven back to Radford?

A: Yes sir.

Q: Would you tell us, please sir, the positions everybody was occupying in the car?

A: In the front seat it was me, then my grandmother and then my mother at the door.

Q: That's Mrs. Hogan - is that your grandmother, the lady seated here?

A: Yes sir.

Q: And your mother was next to the door?

1 A: Yes sir.

2 Q: All right, go ahead.

3 A: And I wasn't sure about how they was

4 seated in the back.

5 Q: Who was in the back?

6 A: Velvet Carter, Virginia Carter and

7 Ronnie Carter.

8 Q: Are they all kin to you?

9 A: Yes sir, sisters and brother.

10 Q: So you had two sisters and a brother

11 in the back?

12 A: Yes sir.

13 Q: Your mother and grandmother, and

14 you were operating the car as you came across the

15 bridge?

16 A: Yes sir.

17 Q: Now tell us what happened, Robert,

18 as you approached the McDonald's Restaurant there?

19 A: I pulled up to about . . .

20 Q: Now, wait a minute. (DIAGRAM) -

21 This is the Eastbound traffic in these two lanes, and

22 this is the Westbound traffic, these two lanes.

23 A: I pulled up to about right here -

24 (DIAGRAM) - and then I stopped, and there was some

25 cars up ahead so I let them pass. There was about

1 three cars and I let them all pass. Then I looked
2 again and I didn't see no cars up here or nothing. I
3 seen one way back there, right near where Heck's was,
4 but it was way back there - (DIAGRAM) - I had a long
5 time, so I started my turn. I gave my signal, then I
6 turned in right here. All of a sudden when I was about
7 right here - (INDICATING) - my grandmother hollered,
8 "Robert," and when I looked I seen some bright lights
9 coming from a car - it would be right about somewhere
10 in this section here. So when I seen them, I gave all
11 the gas to the car I could and went on through here
12 like that, and I thought I had it made, you know, and
13 then the next thing I knew when I was about right in
14 here, something just hit me. The road's kind of rough
15 in here and it's a small hill and everything, then the
16 car hit me and I pushed forward like that and every-
17 thing. I might have blacked out for a minute. I wasn't
18 sure.

19 BY MR. RAKES:

20 Look this way, if you would when you're
21 testifying, so we can all hear you.

22 BY THE WITNESS, MR. CARTER:

23 A: Anyway after I went over the bumps
24 and everything, I raised back up and I noticed that the
25 car was going through here - (DIAGRAM). So I believe
I put on the brakes and it kind of skidded the car,

1 because it was headed to the sign that was right here,
2 and it went right into a brick wall that was about this
3 high - (INDICATING) - but I steered the car through
4 right inthere and stopped it about right there.

5 BY MR. DAVIS:

6 Q: This was around 10:00 o'clock?

7 A: Yes sir.

8 Q: How long had you been stopped there
9 in the middle Westbound lane waiting for traffic,
10 Robert?

11 A: I'd say for about a minute, minute
12 and a-half.

13 Q: And how many cars do you think
14 passed you proceeding toward Radford?

15 A: Three.

16 Q: Was there anything else coming down
17 in this Eastbound lane after those three cars passed?

18 A: Not as I remember.

19 Q: Now, when your mother yelled
20 "Robert" . . .

21 A: My grandmother.

22 Q: Your grandmother yelled "Robert,"
23 where was the Grinstead vehicle when you looked up
24 at that point?

25 A: It looked like it would have been
somewhere about right in here - (INDICATING).

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Q: Now, you've put the Grinstead vehicle in the inside passing lane - is that right?

A: Yes sir.

Q: Is that the lane it was in?

A: Yes sir.

Q: When you first saw it?

A: Yes sir.

Q: Did you ever see the Grinstead vehicle in the right-hand lane?

A: I don't recall seeing it in the right-hand lane, but it would have had to cross the right-hand lane to hit it.

Q: Could you tell anything about the speed of the Grinstead vehicle?

A: All I seen was two lights, and it looked like it was just coming awful fast towards me.

Q: When you looked up, you saw two lights?

A: Yes sir.

Q: Were they from the Grinstead vehicle?

A: Yes sir.

Q: Do you know why you hadn't seen those lights before?

A: No sir. The only reason I could see would be if they had been off or something.

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Q: Well, when you turned into the parking area you, at one time during the course of your turn, had to be directly in front of this Grinstead vehicle - did you not?

A: I guess so, sir.

Q: Well, in order to get in this position, you at one time certainly had to be facing any vehicles that were coming East - is that right?

A: Yes sir.

Q: And you didn't see anything at that time?

A: No sir.

Q: Did your vehicle have its lights on?

A: Yes sir.

Q: Bright or dim?

A: I can't recall, sir.

Q: Do you recall any conversation going on between you and your brothers and sisters or your mother and your grandmother?

A: No sir. I remember the other people in the car was talking and everything, but I don't believe I was, but I ain't sure. Usually when I drive, I won't talk.

Q: Did you have your car equipped with a radio?

1 A: Yes sir, but I don't believe we was
2 listening to it, because we don't usually listen to it.

3 Q: Do you know of anything that would
4 have distracted your attention and caused you not to
5 have seen the Grinstead vehicle?

6 A: No sir.

7 Q: When your grandmother yelled
8 "Robert" - where were you at this point when she
9 yelled "Robert"?

10 A: I believe I would be somewhere right
11 around about like that - (DIAGRAM).

12 Q: Just starting into the extreme right-
13 hand lane - is that right? Crossing the center of the
14 passing lane?

15 A: Yes sir.

16 Q: And that's the time you stomped on
17 the accelerator?

18 A: Yes sir.

19 Q: And where do you think your car was
20 at the point of the impact, Robert?

21 A: I believe it was about like this -
22 (INDICATING).

23 Q: And where you're putting the car -
24 (DIAGRAM) - you're saying at least half the vehicle
25 was into the parking area?

1 A: Yes sir, I remember I could kind of
2 see out of my eye sideways and stuff like that, and I
3 can remember seeing the McDonald's parking lot and
4 everything - no fence or this thing come into my vision
5 or anything - and I thought I had gotten out of the way
6 and everything.

7 Q: You thought you had gotten out of the
8 way?

9 A: Yes sir.

10 Q: Do you recognize pictures of this
11 automobile? I'm handing you now Plaintiff's Exhibits
12 4 and 5.

13 A: Yes sir, it looks like the one I was
14 driving that night.

15 Q: How much damage was done to the
16 vehicle that you operated, Robert?

17 A: I can't recall now.

18 Q: You don't know? Has the car been
19 repaired?

20 A: I don't think so. I think it was
21 scrapped. I ain't sure what happened to it.

22 Q: Do you recognize this car, Robert?
23 I'm now handing you Plaintiff's Exhibits 2, 1 and 3.

24 A: Yes sir, it looks like the car I was
25 driving.

1 Q: The car you were driving?
2 A: Oh, no sir. I ain't really sure.
3 Q: You weren't operating a Plymouth,
4 were you?
5 A: I ain't sure, I ain't too sure about
6 the makes of cars and stuff.
7 Q: You don't know what kind of car you
8 were operating that evening?
9 A: I don't remember, sir.
10 Q: All right. Robert, let me hand you
11 three pictures here, they are little closer looks of
12 the vehicle that you were operating. Do you recognize
13 those pictures?
14 A: Yes sir.
15 Q: Does that accurately depict the
16 automobile that you were operating on the evening of
17 July 23 following the accident?
18 A: Yes sir.
19 Q: Your mother was next to the door?
20 A: Yes sir.
21 Q: And your grandmother was in the
22 front seat?
23 A: Yes sir.
24 Q: Between you and your mother?
25 A: Yes sir.

1 BY MR. DAVIS:

2 Your Honor, if it please we would like
3 to have these as Plaintiff's Exhibits 6, 7 and 8, I
4 think.

5 HOGAN EXHIBIT 6
6 HOGAN EXHIBIT 7
7 HOGAN EXHIBIT 8

8 BY MR. DAVIS:

9 Q: What happened after the accident,
10 Robert?

11 A: My mother and grandmother were hurt,
12 and the rest of the kids, we just got out of the car.

13 Q: Your mother and grandmother were
14 hurt and the rest of the kids just got out of the car?

15 A: Yes sir, as far as I remember I
16 think they all got out.

17 Q: Was the Rescue Squad called?

18 A: I think so, sir.

19 Q: Do you recall talking to Trooper
20 O'Dell?

21 A: Yes sir.

22 Q: Did you ever talk to or see Mary
23 Phillips while she was there?

24 A: I believe so, but I aint' sure if I
25 talked to her or if I was just standing next to her when
she was talking to my sister. I might have said a few
words to her. I believe I did.

1 Q: Did you ever talk to Mr. Grinstead?

2 A: Yes sir.

3 Q: What was the reason for you talking

4 to Mr. Grinstead?

5 A: I wanted to see if he was all right

6 and everything. At the time I didn't know that my

7 grandmother and mother was as serious as they was.

8 Q: Were they still in the vehicle?

9 A: Yes sir.

10 Q: They remained there until they were

11 removed?

12 A: Yes sir.

13 Q: Did you have an opportunity to see

14 the Grinstead vehicle long enough to get a judgment as

15 to the speed of that vehicle?

16 A: I got about a second, second and

17 a-half, maybe two second glance at it, as it was com-

18 ing towards the car.

19 Q: Do you have an estimation as to the

20 speed the Grinstead vehicle was going?

21 A: I couldn't be positive, but I'd say

22 it was at least fifty-five, maybe more.

23 Q: Do you know what your speed was at

24 the time of impact?

25 A: No sir.

1 BY MR. DAVIS:

2 Your witness.

3 CROSS EXAMINATION BY MR. JOHNSON:

4 Q: Robert, you were on your way to
5 Kroger's at the time the accident happened?

6 A: Yes sir.

7 Q: Now, you can reach Kroger's by going
8 through the way of the traffic light and taking a left
9 there, can't you?

10 A: Yes sir.

11 Q: Did you know that at the time of the
12 accident?

13 A: Yes sir.

14 Q: Had you been to Kroger's before?

15 A: Yes sir.

16 Q: I presume you thought you could get
17 to Kroger's quicker by turning off back to the East
18 where there's no traffic light?

19 A: You mean right here - (DIAGRAM)?

20 Q: Yes sir.

21 A: Yes sir, I also figured it was safer,
22 because any time I went up here and everything and
23 the light turns green, you always have the traffic
24 backed up here and everything.

25 Q: But you would have a traffic signal

1 up there, a left turn arrow, wouldn't you - had you
2 gone to the light?

3 A: I ain't for sure if I would've or not.
4 It just seemed like to me up here, whenever the light
5 turned green that cars on the other side always went
6 by me. It just seemed like I never could hardly get
7 to Kroger's that way without waiting a long time.

8 Q: And you are telling us you had to
9 stop and wait down at the lower driveway?

10 A: Yes sir.

11 Q: And you waited for three cars to pass

12 A: Yes sir.

13 Q: Now all three of those cars were in
14 the inside lane, weren't they - the same lane that you
15 say that Grinstead's car was in?

16 A: I'm not sure, sir.

17 Q: You recall, Robert, when your
18 Deposition was taken, don't you?

19 A: Sir?

20 Q: You recall, don't you, when your
21 Deposition was taken in this case in Mr. Davis' office?

22 A: Yes sir.

23 BY MR. RAKES:

24 What page are you looking at?
25

1 BY MR. JOHNSON:

2 Page 74.

3 Q: And you were represented at that
4 time by Mr. Rakes - is that correct?

5 A: Yes sir.

6 Q: And you were placed under Oath be-
7 fore you testified that day, weren't you?

8 A: I affirmed.

9 Q: You affirmed. And you recall, don't
10 you, on page 74 being asked these questions: "How
11 are you able to remember, Robert, that there were
12 three cars that passed by?" And you answered "I
13 just remember just 'cause I looked and was looking
14 for them, and I seen three cars coming, and I waited
15 till they passed." A little further down the page at
16 the bottom you were asked: "Were they in the same
17 lane?" And you answered "Yes sir," didn't you?

18 A: I ain't sure. It's been so long. If
19 it's on there, I guess I did.

20 Q: And at the top of page 75 you were
21 asked "Which lane were they in?" And you answered
22 "The left-hand lane."?

23 BY MR. RAKES:

24 If Your Honor please, I really don't
25 think this is contradicting the witness. All he said

1 was, when he was asked today, that he couldn't remem-
2 ber what lane they were in when he asked him about it.

3 BY MR. JOHNSON:

4 Well, if he remembers before . . .

5 BY THE COURT:

6 I guess that's the basis of contradiction.

7 You may continue.

8 BY MR. JOHNSON:

9 Q: The next question was "Coming
10 towards Radford?"and you answered "Yes sir."; and
11 the next question was "That would be the lane closest
12 to the yellow line dividing the highway?", and you
13 answered "Yes sir."; and the next question "All three
14 of them were in that lane?" , and the answer was "Yes
15 sir." Now, you're telling us today that you don't
16 recall which lane they were in?

17 A: Yes sir, I recall that they was all
18 in the same lane.

19 Q: But you're not sure today whether
20 it was the inside lane or the outside lane?

21 A: Since you read that, it seems like
22 I do recall that they was in the left-hand lane.

23 Q: All right Robert, after those three
24 cars passed by, you began your turn, I take it?

25 A: Yes sir

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Q: And when you looked up the road behind the three cars, you saw nothing coming - is that correct?

A: True.

Q: And it's true, isn't it, that when you looked up the road again, that you turned your head to the right to look up there, didn't you?

A: What you mean like - are you talking about when my grandmother hollered?

Q: No, before your grandmother yelled - when you looked up the road and saw nothing coming, you turned your head to the right, didn't you? In fact, you looked out the window on the passenger side of the car, didn't you, Robert?

A: I don't recall doing it. I might have. As for today, I don't recall doing it.

Q: All right, on page 77, line 17 through 19, then on through line 23. Now Robert, to go back to what you testified to previously, you were asked at line 13: "Q: The way you indicated, you turned your head to the right?" The answer was "See, I was looking up towards the traffic light." The next question: "Well, did you turn your head to the right to look up there?" Answer: "I think so." "Q: And did you see that traffic light out of the passenger's window on the right side or out of the windshield, or where?" Answer: "Yes sir." "Q: Out of the passenger side?"

1 A: "Passenger side." Continuing on the next page:
2 "And that's when you saw the car way up at Heck's?"
3 The answer: "Yes sir." Next question: "And you
4 couldn't see anything else?" "No sir. Well, I noticed
5 that the light was green, but that's all."

6 Now Robert, in view of that prior testi-
7 mony, do you recall it being the case that when you
8 looked and saw nothing coming, that you looked out of
9 the passenger's window on the right-hand side of the
10 car, that's where you made the observation?

11 A: This window here? On this side?

12 Q: That's your right side, yes sir.

13 A: Yes sir, I did look out that window.

14 Q: And that's when you saw nothing
15 coming?

16 A: I didn't see nothing coming when I
17 was looking straight looking out the windshield, and
18 as I was turning, I was still kind of looking and I still
19 didn't see nothing, and then I looked to the way I was
20 turning so I could drive on in.

21 Q: And you say that the traffic light
22 was green?

23 A: I think so. I can't recall that now.
24 If I said it then, it was green.

25 Q: Now Robert, you didn't see the car

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that was involved in the collision with you until your grandmother yelled, did you?

A: Correct.

Q: And you admitted that the night of the accident to the State Trooper who investigated it, didn't you?

A: Yes sir.

Q: You indicated to us that your grandmother yelled when you were just starting into the right lane?

A: Yes sir.

Q: And the impact occurred when the rear of your car was sitting - well, it was sitting right where it is right now - (DIAGRAM) - when the impact occurred - is that correct?

A: Yes sir, approximately like that.

Q: After your grandmother yelled, as I understand it, you looked to your right?

A: Yes sir.

Q: And that's when you saw the car for the first time?

A: Yes sir.

Q: And you say its headlights appeared bright?

A: Yes sir.

1 Q: How close was it, Robert, to you at
2 that point?

3 A: I couldn't say for sure. I might try
4 to show you on this thing here - (DIAGRAM).

5 Q: Well, that's not scaled, so I think
6 the best way to do it is for you just to describe it as
7 best you can in your own words. Was it pretty close?

8 A: It was pretty close, and then in a
9 way, it wasn't. It depends on how you're thinking
10 about it. Maybe the length of this room here; maybe
11 a little farther.

12 Q: So it was about - so it was well past
13 the traffic light at that point, wasn't it?

14 A: Are you talking about in front of the
15 traffic light?

16 Q: Right - it was a good bit closer to
17 you than you were to the traffic light? Which was
18 closer, Robert?

19 A: The car was closer.

20 Q: The car was on your side of the traffic
21 light - was it not?

22 A: Yes sir.

23 Q: You say you can't tell us any more
24 closely than to say the length of this Courtroom is
25 about how far away it was?

1 A: Approximately.

2 Q: Would you say that would be about

3 three car lengths - would that be a fair estimate?

4 A: I don't know whether it would or not.

5 I'm not too good at lengths.

6 Q: Well, look at the wall, and wouldn't

7 you say about three cars, maybe three and a-half,

8 four, something in that area could go in there, if you

9 lined them up end to end?

10 A: It could be.

11 Q: And you say it was in the inside lane?

12 A: Yes sir, the lane next to the lines.

13 Q: To the yellow lines, and coming

14 straight at you?

15 A: Yes sir.

16 Q: When you first saw it, you were in

17 the inside lane yourself?

18 A: Yes sir.

19 Q: And you saw it for just a second or

20 two?

21 A: Yes sir.

22 Q: Now do I understand that - I think the

23 way you put it was that "you gave it the gas," after

24 you saw the car?

25 A: Yes sir, even while I was looking at

it, I think I was pushing down on the gas. 167

1 Q: You floorboarded it, didn't you?

2 A: Yes sir.

3 Q: So the car must have been pretty

4 close to you?

5 A: Close enough to scare me.

6 Q: Well, you realize that if you floor-

7 boarded that car, I take it you realize that you were

8 in a position of real danger?

9 A: Yes sir.

10 Q: You would not have floorboarded the

11 car at that particular spot if you weren't, would you?

12 A: No sir.

13 Q: You don't normally drive like that,

14 do you Robert?

15 A: No sir.

16 Q: It's true, isn't it, that after you

17 floorboarded the car that you turned your head back

18 towards the side road that you were driving into? You

19 looked away from the car that was coming, didn't you?

20 A: Yes sir.

21 Q: And did not look back at the highway

22 again?

23 A: I don't believe I did.

24 Q: Now you say that you reached the

25 point that you've indicated up here, with the blue car,

when you were hit?

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A: Yes sir.

Q: Do I understand that you had eased up on the accelerator at that point?

A: When I got up to about right here, I did ease up - I was easing up, I think just about . . .

Q: Show us where you were, Robert, when you eased up?

A: I was giving it the gas till I got about right here. When I got about right here, I eased up on it - was about to begin to ease up on it. When I was hit, I believe my foot was just locked on it.

Q: Well, that's the same point you were at when you were hit, as I understand it?

A: Yes sir.

Q: Did you ease up at the same time that you got hit?

A: I was in the motion of doing it, I believe. I remember thinking that I had got out of his way and was beginning to relax a little and let my foot up, you know, to slow down and everything, and that's when I was hit.

Q: And at the instant of the collision, your car was still taking up the entire outside lane - that's true, isn't it?

A: It was either about right here -
(DIAGRAM) - or somewhere like that.

1 Q: You think maybe it was further into
2 the driveway, now?

3 A: It could have been possible. I couldn't
4 say it would have been.

5 Q: But you placed that rear end at that
6 broken line, didn't you?

7 BY MR. RAKES:

8 If Your Honor please, this is not to scale.
9 We don't know that.

10 BY MR. JOHNSON:

11 Q: Well, you've told us Robert, earlier
12 today, haven't you, that at the time you were hit that
13 the rear end of your car was at the broken line?

14 A: I don't believe it was . . .

15 BY MR. RAKES:

16 I don't recall that - do you have it, Mr.
17 Johnson?

18 BY MR. JOHNSON:

19 I sure do. Let's read it back.

20 BY THE COURT:

21 I don't think it's necessary. Go on with
22 your questioning.

23 BY MR. JOHNSON:

24 Q: Robert, you had never driven that
25 car that you were driving before the night of the acci-
dent, had you?

1 A: No sir, that was the first time.

2 Q: And you don't really even remember
3 what make or model it was?

4 A: I could've driven it for months and
5 not really have been able to tell you that. I just don't
6 know too much about stuff like that.

7 Q: On the matter of the headlights, you
8 say they were on bright?

9 A: On my car?

10 Q: On the other car.

11 A: Yes sir.

12 Q: Were they double headlights or single
13 headlights?

14 A: I can't really recall, but I think they
15 were single. I ain't really sure.

16 Q: Now your brother Ronnie was in the
17 back seat of the car, wasn't he?

18 A: Yes sir.

19 Q: Robert, I'm not asking you what
20 Ronnie says about the accident, but I want to ask you
21 this question: Ronnie claims that he knows things
22 about how the accident happened, doesn't he?

23 A: I believe so, sir.

24 BY MR. JOHNSON:

25 All right, that's all the questions.

1 CROSS EXAMINATION BY MR. RAKES:

2 Q: Robert, in response to Mr. Davis'
3 question earlier, you testified, I believe, that when
4 you drove up there headed West attempting to turn into
5 Kroger's that you gave your signal and stopped?

6 A: Yes sir.

7 Q: What kind of signal did you give?

8 A: What do you mean?

9 Q: What kind of a signal was it - was it
10 an arm signal or was it a directional signal on the car
11 or what kind of signal was it?

12 A: A directional signal.

13 Q: A directional signal - how did you
14 put that directional signal on?

15 A: You reach it and put it on like that
16 by pushing it down.

17 Q: Was it working?

18 A: I believe so, sir.

19 Q: How long was that signal on before
20 you started to make your turn?

21 A: I would say it was on about a minute
22 and a-half. It was on while I let the three cars that
23 went by go by.

24 Q: All during the time you were sitting
25 there waiting for them to go by, the signal was on?

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A: Yes sir.

BY MR. RAKES:

That's all I have at this time, Your Honor.

BY THE COURT:

Is that all of this Witness?

BY MR. JOHNSON:

That's all we have, Your Honor.

WITNESS ASIDE

COURT ADJOURNED 5:30 P. M.

LAST PAGE OF TRANSCRIPT, FIRST DAY OF TRIAL,
JUNE 30, 1980, GRINSTEAD VS. CARTER AND
HOGAN VS. CARTER & GRINSTEAD.

1 VIRGINIA BERTHA GRAHAM, being duly sworn, testifies
2 as follows:

3 DIRECT EXAMINATION BY MR. DAVIS:

4 Q: State your full name, please ma'am.

5 A: Virginia Bertha Graham.

6 Q: Were you a Carter?

7 A: Yes sir.

8 Q: Are you the sister of Robert Carter?

9 A: Yes sir.

10 Q: Are you the granddaughter of Mrs.

11 Hogan?

12 A: Yes sir.

13 Q: How old are you - do they call you

14 Ginny?

15 A: Yes sir.

16 Q: How old are you, Ginny?

17 A: Seventeen.

18 Q: How old were you on July 23, 1978?

19 A: Fifteen, I think.

20 Q: Do you remember the date?

21 A: Yes sir.

22 Q: Do you recall - these gentlemen
23 won't mind me leading you a little bit to expedite
24 things - had you been to church that night?

25 A: Yes sir.

1 Q: I believe that was in Christiansburg?

2 A: Yes sir.

3 Q: And you had come back to Radford?

4 A: Yes sir.

5 Q: Take up from there if you would,

6 Ginny - as you came back into the city, did you go across:
7 the New River Bridge?

8 A: Yes sir.

9 Q: All right, tell us what happened as
10 you proceeded West on Route 11?

11 A: When we turned in at McDonald's?

12 Q: Yes ma'am. Before we get to that,
13 let me show you this diagram - do you recognize this
14 diagram - the Gulf Station and Wilco and McDonald's
15 is here, stop lights are here going into the shopping
16 plaza here, Kroger's is here, the theater is here,
17 Sears, Montgomery Ward, K-Mart is over here, there's
18 an entrance going into the shopping center and to
19 McDonald's here. The Executive Steak House used to
20 be here, now it's been torn down and it's just a park-
21 ing area but the motel is still here?

22 A: Yes sir.

23 Q: Do you recognize this diagram?

24 A: Yes sir.

25 Q: All right now if you would, Ginny,

1 just tell us what happened as you proceeded towards
2 McDonald's?

3 A: Well, we started pulling in and we
4 stopped here, and there was three cars that went by
5 and one stopped at the red light and Robert started
6 coming in . . .

7 Q: Now wait a minute, slow down . . .

8 BY MR. RAKES:

9 Excuse me. Can you turn this way when
10 you're testifying, young lady?

11 BY MR. DAVIS:

12 Q: Let's use this blue car as the car
13 that you were in. Now, who was driving your car?

14 A: Robert Jackson Carter.

15 Q: That's your brother?

16 A: Yes sir.

17 Q: Who was in the front seat with your
18 brother?

19 A: My grandmother and my mother.

20 Q: And where were they seated?

21 A: My mother was sitting at the door
22 on the passenger side and my grandmother was in the
23 middle.

24 Q: And Robert was driving?

25 A: Yes sir.

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Q: And were you in the back seat?

A: Yes sir.

Q: And where were you seated?

A: On the passenger side at the right window.

Q: And who was beside you?

A: Ronnie - Ronnie or Velvet. I think it was Ronnie.

Q: You think it was Ronnie in the middle?

A: Yes sir.

Q: And Velvet on the other side?

A: I don't remember.

Q: You're not sure?

A: I think it was Velvet at the window and Ronnie in the middle.

Q: You think Ronnie was in the middle - okay, that's not that important - but you just tell it as you recall it. The three of you kids were in the back seat?

A: Yes sir.

Q: Had you stopped at this intersection - as you proceeded on Route 11, had you stopped at this intersection before you pulled in - (DIAGRAM)?

A: Yes.

Q: How long had you stopped?

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A: We was there for about - well, three cars went by - we were there long enough for three cars went by, and then Robert looked both ways.

Q: Did you see the three cars?

A: Yes sir.

Q: You were in the back seat?

A: Yes sir.

Q: And you could see the three cars that were proceeding toward Radford?

A: Towards to go across the bridge.

Q: And how long were you there, Ginny?

A: At least about close to a minute or more. I just remember three cars going by.

Q: What time of the day was this?

A: The date - the 23rd of July.

Q: What time during the day?

A: Close to 10:00 o'clock.

Q: Were the lights on the vehicle that you were in?

A: Yes sir.

Q: Were there any other lights, any signal lights of any kind on the car that you were in?

A: I didn't see none.

Q: Now the cars that passed you while you were seated there, were there lights on those cars?

1 A: Yes sir.

2 Q: Do you recall the conversation that
3 was taking place, if there was any conversation?

4 A: In our car?

5 Q: Yes.

6 A: Mommie was going to go to Kroger's
7 to get something to eat.

8 Q: Your mother was going over there
9 to get something to eat for you kids?

10 A: Yes sir.

11 Q: Is that what you were talking about,
12 or discussing, as you were sitting there waiting for
13 traffic to pass?

14 A: Yes sir. Well, that's what me and
15 Velvet was - she said she was going to go across there
16 to get something to eat, and they was talking about -
17 I don't know what they was, but that's the last thing I
18 remember us talking about. That's why we was going
19 over there.

20 Q: Do you remember what you kids were
21 talking about?

22 A: Yeah, we were fussing 'cause we
23 wanted to go to McDonald's and Mommie was going to
24 go to Kroger's.

25 Q: You kids were talking among your-
selves that you wanted to go to McDonald's? 179

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A: Yes sir.

Q: And your mother said - she was in the front seat - said that you all were going to go to Kroger's?

A: Yes sir.

Q: Okay, now would you tell us what happened when Robert . . .

A: Started crossing?

Q: Started crossing the highway there?

A: Well, he had gotten started across the first lane to go to the second lane, and when he got halfway through the second lane, to the second lane, I heard my mommie scream and I think my grandma said something. Mommie hollered "Robert" and I turned around and I didn't see any - I seen some lights flashed on - then Robert stepped his foot down, put speed on the car and the car lights moved over to the second lane and then it hit us.

Q: Okay, now using this as the other car that subsequently struck you, struck your vehicle - (DIAGRAM). Can you tell us where this yellow car was that turned out to be a young man by the name of Grinstead - where was his vehicle when you first saw it?

A: I think it was up there.

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Q: Would you put it on there, please - (DIAGRAM)? Now, here is the intersection - this is the right-hand lane going towards Radford, this is the middle or inside lane, passing lane going towards Radford; these two lanes go to Radford, these two lanes go to Dublin.

A: When I first saw it, it was on this lane.

Q: Would you put it - this is not to scale - but was it on this side of the light?

A: It was a lane here and a lane here, and it was on this lane.

Q: All right, and where was your vehicle when you first saw it?

A: It was about . . .

Q: Now, here is the intersection?

A: It was about right like that - (INDICATING) - just about across.

Q: And what took place then, Ginny?

A: I seen the lights flash on, then I seen it coming in this lane and Robert was speeding, and he was coming like this and he come and hit us like that.

Q: When you first saw the Grinstead vehicle, the car that subsequently hit you, it didn't have any lights on?

1 A: I didn't see no lights. I didn't when
2 my mother hollered. I turned and I didn't see it, and
3 then I seen some lights flash on because it hurt my
4 eyes and I turned my head real quick.

5 Q: What else do you remember, Ginny?

6 A: I just remember us going into the
7 parking lot, and then the cops come on.

8 Q: After the collision took place . . .

9 A: We went this way, like that -
10 (DIAGRAM) - and we ended someshow in-between a
11 building here - I think it was a motel.

12 Q: And ended up over next to the motel?

13 A: Yes sir.

14 Q: And the Grinstead vehicle - where
15 did it come to rest? Do you recall that?

16 A: I think it was - I think it was about
17 right here - (INDICATING) - sitting right there, not
18 completely in that lane - I don't remember. I think it
19 was.

20 Q: What happened next, Ginny?

21 A: After the wreck and everything?

22 Q: After the wreck.

23 A: I went in and called my Aunt Connie
24 and told Connie what had happened and she . . .

25 Q: Connie - is that your aunt?

1 A: Yes sir. I told her, I said we
2 wrecked at McDonald's, or a restaurant - I said
3 restaurant - and then she went to Christiansburg look-
4 ing for us, and then a cop come. I think he was talk-
5 ing to Robert before - we bumped into that lady and
6 started talking to her and she told us . . .

7 BY MR. JOHNSON:

8 Objection, for what it's worth at this
9 point.

10 BY MR. DAVIS:

11 Q: I think that's right, Ginny, you can't
12 tell what somebody else has told you. Did you talk to
13 some of the persons there at the scene of the accident?

14 A: Yes sir.

15 Q: Did the person that you saw there
16 at the scene of the accident indicate that they had seen
17 the accident?

18 A: Yes sir.

19 Q: All right. Did you talk to Trooper
20 O'Dell? Was Trooper O'Dell there - do you remember
21 the State Trooper being there?

22 A: I remember a cop being there, but
23 I don't remember - I think I talked to him. I don't
24 remember if I did or didn't. I just remember seeing
25 him. I don't think I talked to him. I don't know.

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1 Q: Did the person that you saw there at
2 the scene - was that a male or a female?

3 A: Female.

4 Q: Did that same person talk to your
5 younger brother, Robert?

6 BY MR. JOHNSON:

7 Ronnie?

8 BY MR. DAVIS:

9 Q: Ronnie, excuse me - little Ronnie.

10 A: Yes sir, Ronnie.

11 Q: How old was Ronnie at this time?

12 A: Fourteen.

13 Q: Fourteen. And you were 15?

14 A: He was thirteen or fourteen. I think
15 he was thirteen or fourteen. I don't remember.

16 Q: About a year's difference between
17 your age?

18 A: Two years. No - almost two years.
19 I'm 17 now, he's 15.

20 Q: Do you recall the Rescue Squad com-
21 ing there?

22 A: Yes sir.

23 Q: How long was it before they removed
24 all of you from the car?

25 A: It was something till 11:00 or after
10:30. It was a long time.

(-212-)

1 Q: It took them quite awhile to get your
2 mother and your grandmother out of the car?

3 A: Yes sir.

4 Q: Were you there the entire time?

5 A: Yes sir, all but I left when they took
6 my mother in the ambulance. That's when I left. They
7 took us - I went home first, and then they took us to
8 the doctor.

9 Q: You eventually went to the hospital?

10 A: Yes.

11 Q: Now, your grandmother was admitted
12 as a patient there in the hospital?

13 A: Yes sir.

14 Q: She stayed for a number of days and
15 then returned home - is that correct?

16 A: I think she stayed about a week. I
17 think she come home on a Saturday.

18 Q: The home that she returned to - was
19 that your home?

20 A: Yes sir.

21 Q: What was her condition when she
22 returned home, Ginny?

23 A: She stayed in bed the whole time.

24 Q: Could she look after her personal
25 needs - could she go to the bathroom and things like
that by herself?

1 A: No sir, Connie kept her.

2 Q: Connie?

3 A: My aunt.

4 Q: Your aunt stayed there - could she
5 handle the normal everyday household duties like cook-
6 ing and things like that?

7 A: No sir, she used to, but she couldn't
8 no more.

9 Q: When did your grandmother come to
10 Radford?

11 A: To live with us? She come off and
12 on all the time, but I think she was there for almost
13 about a month.

14 Q: Okay, but how about just before the
15 accident - I believe she lived in Buchanan?

16 A: Yes sir.

17 Q: When had she come up to Radford
18 just before the accident - do you recall how long she
19 had been there?

20 A: I think she come up there when the
21 camp meeting started, but I don't remember.

22 Q: Was she a pretty constant visitor in
23 your home?

24 A: Yes sir, she'd come and stay for a
25 couple of weeks and go for about a week - she stayed
there most all the time. She stayed there a lot.

1 Q: How many brothers and sisters do
2 you have, all total?
3 A: Six brothers and two sisters.
4 Q: Six brothers and two sisters?
5 A: I've got a stepbrother.
6 Q: I'm talking about at the time in 1978,
7 July of 1978.
8 A: Six brothers and two sisters.
9 Q: And you lived there in Radford?
10 A: Yes sir.
11 Q: Now what type of activities would
12 your grandmother enter into prior to this accident?
13 What could she do before the accident?
14 A: She done all the washing, she baby-
15 sitted James, she got supper cooked, she cleaned the
16 house for Mom, she got all of us - see, my mother
17 picked up night crawlers at night and I worked in the
18 daytime, Grandma done all the work - she sold night
19 crawlers and stuff in the day.
20 Q: And your grandmother was there
21 while you all were working?
22 A: Yes sir. I think she come there
23 when we started working.
24 Q: How about since the accident, for
25 the last two years, what has your grandmother been
able to do?

1 A: I ain't seen her do nothing. After
2 that she stayed for awhile and then Aunt Connie -
3 Connie had to keep going to Buchanan to get her medi-
4 cine and got her medicine and stuff 'cause she needed
5 it.

6 Q: She stayed there at your home for
7 some five or six weeks or so after the accident - is
8 that right?

9 A: She stayed there the rest of the
10 summer, or most of it.

11 Q: Since July of 1978, has your grand-
12 mother been able to enter into the same activities as
13 she did before the accident?

14 A: No sir.

15 Q: Has she been able to do the household
16 chores of washing and cleaning and ironing that she
17 did before?

18 A: No, I ain't seen her sweep or nothing
19 since the accident. Connie comes in on the weekends
20 and cleans her house 'cause she can't do it.

21 Q: That's your aunt cleans your house?

22 A: Yes sir.

23 BY MR. DAVIS:

24 Your Witness.
25

CROSS EXAMINATION BY MR. JOHNSON:

Q: Virginia, you say that you saw three cars go by?

A: Yes sir.

Q: Did you keep count of the cars? Is that how you remember that?

A: I just remember that it was three or four cars. I remembered three, positively three, at least three.

Q: And Robert was stopped during that time?

A: Yes sir.

Q: After the three cars passed by, did you see anything else coming?

A: No sir. I seen that car sitting up at the red light, sitting still.

Q: But nothing else in the road?

A: No sir.

Q: And that's when Robert started crossing the road?

A: He looked both ways and started crossing it then.

Q: Now Ginny, as I understand it, you did not see the other car that was involved in the accident until after your grandmother yelled?

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A: Yes sir.

Q: And that you turned your head to the right when she yelled and saw the car - is that correct

A: I turned and then when I looked I saw some lights flash on, then I seen it go in the other lane. That's when I seen it, when the lights come on.

Q: How close was the other car to you when you first saw it?

A: It was far enough away, if it hadn't of come in the other lane we could've went on over without it hitting us.

Q: Ginny, if I remember correctly, you say that Mr. Grinstead's car was in this lane - (DIAGRAM) - when you first saw it?

A: Yes sir.

Q: And if I remember correctly - and you change it if I have forgotten - but you placed Robert's car something like this when you first saw the other car?

A: Yes, it was just barely past the red light when I seen it.

Q: Oh, it was way back up here at the red light?

A: It was closer to the red - it was far enough - it was least from here - it was at least three or four car lengths away or more.

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Q: Where were you seated in this car?

A: On this side, the passenger side at the door.

Q: And Robert's car, most of it was into the outside lane - correct?

A: Just about.

Q: So when your grandmother yelled and you looked back to your right, you had to look all the way back somewhat to the rear, even, to see this car - is that right?

A: I looked straight ahead on the back of the lane, I saw the car lights and then I seen it come in this lane.

Q: Was it straight ahead out of your right side window?

A: I just looked straight - it was . . .

Q: Straight out to your right?

A: Yes sir.

Q: Well, if you were right here and looked straight off to your right, that means he was in this lane, doesn't it?

A: No.

Q: Are you telling us today that the car was up nearly to the traffic light?

A: It was far enough away that we had plenty of time to get in that other lane.

1 Q: Robert had plenty of time to get out
2 of the way, if that's true?

3 A: That's what I'm saying.

4 Q: Do you remember, Ginny, when we
5 took your Deposition in this case in Mr. Davis' office?
6 Do you recall when you testified previously?

7 A: When I went to his office a long time
8 ago?

9 Q: Right, when all of us were there and
10 you were placed under Oath and we asked you questions

11 A: Oh, yes sir.

12 Q: This is at page 135 - Ginny, it's
13 true at the Deposition you were asked, page 135, line
14 13, this question: "When she yelled out, what did you
15 do?" And your answer: "I turned and looked and then
16 I saw a car about three cars away from us."

17 A: It was three or four cars away.

18 Q: So the car was not all the way back
19 up there at the traffic light, which you told us just a
20 few minutes ago, was it?

21 A: I said it was far enough back that
22 we had plenty of time to get in the other lane. It was
23 at least three cars - it was plenty enough back, if it
24 had come in that other lane we could've gotten out of
25 the way.

1 Q: Ginny, I'm having some trouble be-
2 cause I understood that you were already into this
3 lane, - (DIAGRAM) - in this position that you placed
4 the car?

5 A: The first half part was over.

6 Q: This is where your car was when
7 you first saw the other car?

8 A: Yes sir, my part was - I was still,
9 my side - the back part was still in this lane.

10 Q: So you weren't here - (DIAGRAM)?

11 A: The back part was . . .

12 Q: You were back like this?

13 A: It was just - like where the lane is
14 striped, my part was still on that side.

15 Q: So the position that you had the car
16 in a few minutes ago is not correct?

17 A: It was about right there.

18 Q: Where it is now?

19 A: Just about right. I ain't a good
20 judgment on a piece of paper like that.

21 Q: And you say that the lights were not
22 on on the other car?

23 A: Not when I first turned around, I
24 didn't see nothing. When Grandma hollered, I turned
25 and looked, and then I seen the lights flash on and go

1 in the other lane 'cause I turned my head. They started
2 over in the other lane, and that's when I turned my
3 head 'cause it hurt my eyes.

4 Q: Now Ginny, you tell us that you saw
5 the other car come across into the outside lane?

6 A: Into the other lane.

7 Q: And at some point his headlights
8 popped on?

9 A: Yes sir.

10 Q: And that didn't happen, as I under-
11 stand it, until the other car got at least most of the
12 way over into your lane, into the outside lane?

13 A: Well, when I turned, I saw the car
14 and it popped its lights on as it started turning onto
15 the other road towards the front of the car.

16 Q: Where do you say that the lights
17 came on?

18 A: I just remember turning and it was
19 a couple of car lengths away and it turned its lights on.

20 Q: Which lane is it in, Ginny?

21 A: When it first turned its lights on?

22 Q: When the lights came on - is it still
23 in the inside lane?

24 A: In this lane, and it was turning like
25 that - (DIAGRAM).

1 Q: Ginny, in your Deposition on page
2 142, line 8, you were asked this question: "Okay, but
3 stick with me for a minute. When the lights popped on,
4 it was partly in one lane and partly in the other, as I
5 understand it?".

6 A: That's what I mean, right there -
7 (DIAGRAM).

8 Q: Yes, but your answer then was: "It
9 was almost all the way in the right lane."

10 A: Just about when it was going over,
11 but when I first saw it . . .

12 Q: But you're telling us, as I understand
13 it now, that it was in the left lane when you saw the
14 lights come on?

15 A: Turning into this lane, in the other
16 lane.

17 Q: And as I understand it, when the
18 lights popped on you turned your head away?

19 A: Well, they started - the lights popped
20 on, then I . . .

21 Q: He was real close to you, I gather,
22 when the lights came on?

23 A: He wasn't that close. If the car
24 had of been going slow, we would have had plenty of
25 time to get out of the way.

1 Q: Ginny, how much time elapsed
2 between the time those lights came on and the impact?

3 A: I wouldn't know, I just - all I can
4 remember is just seeing the lights.

5 Q: It couldn't have been more than a
6 split second, as you tell it, could it?

7 A: All I remember - I couldn't tell any
8 time. All I remember is seeing the lights pop on,
9 going in that other lane, then I turned my head and
10 then he hit us.

11 Q: Okay. Take it a little easy. The
12 lights popped on and how much time passed before the
13 impact occurred?

14 A: When I turned my head, then a couple
15 of seconds later it hit us.

16 Q: How much?

17 A: About five or six seconds, or less.
18 I don't know. I just remember I turned my head - I
19 had my head completely turned, then it hit us.

20 Q: You didn't look back at the other car
21 after you turned your head away from it, did you?

22 A: Well, when the lights popped on, it
23 was a little in one lane and a little in the other one,
24 and then I seen it crossing over the other one, then I
25 turned my head and then it hit us.

1 Q: Robert's car was still out in the
2 highway when you were hit, wasn't it?

3 A: He was going over into McDonald's.

4 Q: But it was still out in the highway,
5 wasn't it?

6 A: In this lane. The back end.

7 Q: In fact, most of it was out there,
8 wasn't it?

9 A: I don't think so. I don't know. The
10 back part, I think, was a little in the lane, some of it.

11 Q: You're saying a little bit of the back
12 was out into the highway?

13 A: Some of it. I don't know how much.
14 I just remember we were just going into McDonald's.
15 I remember our front part was at least touching that
16 going into McDonald's, at least.

17 Q: Ginny, let's go back to your Deposi-
18 tion again, at page 143 you were asked this question:
19 "What I'm trying to find out is where Robert's car
20 was when the other car hit it?" And you answered
21 "I don't know." The next question you were asked
22 was: "Do you know if it was partially into the entrance
23 road into McDonald's?" And your answer was: "No,
24 it wasn't that far." You were then asked: "Was any
25 part of Robert's car into the entrance road?" And

1 you answered: "Maybe a little, I don't know. I doubt
2 it, though." And you say that you felt the car that you
3 were in accelerate?

4 A: What do you mean accelerate?

5 Q: Speed up.

6 A: All I know is when I seen it - I know
7 he hit us hard . . .

8 Q: I'm talking about Robert's car -
9 did you feel Robert's car speed up?

10 A: Oh, yeah. When Grandma and
11 Mommie hollered, Robert turned - I mean, I was look-
12 ing at Robert when Mommie hollered.

13 Q: Ginny, where was Robert's car when
14 he speeded up?

15 A: Crossing over to the second lane.
16 He was going this way.

17 Q: When he speeded up?

18 A: When Mommie hollered, he looked
19 and saw the car and that's when he speeded up. I
20 reckon he saw it, because when I saw it, the lights
21 come on.

22 Q: And again, the position of the blue
23 car is where you were - (DIAGRAM) - is where the
24 car was when you first saw the other car?

25 A: It was . . .

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Q: It was in that position?

A: I'd say it was about there.

Q: About where it is now, when you first saw the other car?

A: See, some of this is in McDonald's.

Q: And between the time that you first saw the other car and the time the impact occurred and your grandmother yelled, you looked to the right, you felt Robert speed up, you saw the headlights on the other car come on and you watched it come over into the right lane - all of those things happened before the impact occurred, right?

A: Yes sir.

Q: And the impact occurred in that right lane - correct?

A: I think so.

BY MR. JOHNSON:

All right, that's all.

BY MR. RAKES:

I have no questions, Your Honor.

BY THE COURT:

All right, thank you. You may step down.

WITNESS ASIDE

ROSA VELVET DUNCAN, being duly sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. DAVIS:

2 Q: Would you state your full name,
3 please Ms. Duncan?

4 A: Rosa Velvet Duncan.

5 Q: And do they call you Velvet?

6 A: Yes sir.

7 Q: Were you a Carter?

8 A: Yes sir.

9 Q: This young man seated over next to
10 Mr. Rakes - is that your brother?

11 A: Yes sir.

12 Q: And the lady seated over here at
13 this table?

14 A: My grandmother.

15 Q: Your grandmother. How old are you,
16 Velvet?

17 A: Eighteen.

18 Q: How old were you in July of 1978?

19 A: Seventeen.

20 Q: Seventeen - you must have a birthday
21 pretty quick then.

22 A: January.

23 Q: January. In July of 1978, you were
24 a passenger in an automobile that was involved in an
25 automobile accident in this county - is that correct?

1 A: Yes sir.

2 Q: Can you see the diagram, Velvet,
3 that's right behind you?

4 A: Yes sir.

5 Q: Would you take just a minute and get
6 yourself acclimated - (DIAGRAM) - this is the area
7 going into Radford, the bridge is down here, 114 is
8 back up this way, the Gulf Station, Wilco, McDonald's
9 Restaurant is here; in July of 1978, the Executive
10 Steak House was here, it has now been torn down.
11 The stop lights are here proceeding into the shopping
12 area, Kroger's is here, the theater, K-Mart, Sears,
13 Montgomery Ward - are you familiar with this diagram
14 now?

15 A: Yes.

16 Q: All right, tell the Jury if you would,
17 Velvet, as you came across the New River Bridge
18 where the car that you were in stopped? By the way -
19 where were you seated in the car?

20 A: I was in the middle.

21 Q: You were in the middle?

22 A: Yes.

23 Q: And who was on your right?

24 A: My brother Ronnie.

25 Q: That would have been Ronnie?

1 A: Yes.

2 Q: That's your left?

3 A: No, my sister, Ginny, was on the

4 right.

5 Q: Ginny was on the right?

6 A: Yes.

7 Q: That's the young girl that just testi-

8 fied?

9 A: Yes.

10 Q: You were in the middle?

11 A: And my brother, Ronnie, was on the

12 left.

13 Q: And Ronnie would have been on your

14 left, which would have put him behind the driver - is

15 that right?

16 A: Yes sir.

17 Q: Okay now, where did the car stop,

18 if it did stop there on Route 11?

19 A: We was going like we was going to

20 make a right - a left turn into McDonald's . . .

21 BY THE COURT:

22 Just a minute, gentlemen. Move that

23 (Diagram) somewhere so the Witness doesn't have to

24 turn her back to the Jury.

25 BY MR. DAVIS:

Q: Now Velvet, this is the two lanes Eastbound going into Radford. There were two lanes

1 Westbound going toward Dublin and you were proceeding
2 this way - right?

3 A: Yes.

4 Q: Here's McDonald's here?

5 A: Yes.

6 Q: Here's an entrance into McDonald's
7 and this is a stop light, there's an entrance up there?

8 A: All right.

9 Q: Now, would you use the blue car and
10 tell us where you had stopped. Now, these are the
11 Westbound lanes.

12 A: Okay, we was coming across the
13 bridge from Radford . . .

14 BY THE COURT:

15 Speak a little louder please so everybody
16 can hear you. I'd like to call this to your attention.
17 I know it's natural, Mr. Davis is standing right next
18 to you and you're just talking in a conversation so that
19 he can hear you. Now that's natural, but everybody
20 in the Courtroom needs to hear you, so just speak
21 right up.

22 BY THE WITNESS, MS. DUNCAN:

23 A: We were coming from Radford, and
24 we were going to make a turn in here at McDonald's.
25

1 BY MR. DAVIS:

2 Q: Now what happened when you got to
3 that intersection?

4 A: My brother, I think he stopped, you
5 know, to look for the other cars coming the other way.

6 Q: Do you know whether he stopped or
7 not - do you recall?

8 A: I can't remember. And looked for
9 cars, we didn't see no cars or nothing - I didn't. I
10 wasn't watching.

11 Q: Were you looking? Were you paying
12 attention to the traffic?

13 A: Well I usually look, I was looking,
14 but I wasn't paying any attention though.

15 Q: Do you recall what conversation was
16 taking place between the kids in the back?

17 A: No sir.

18 Q: Do you recall any conversation tak-
19 ing place between your mother or your grandmother
20 or brother in the front?

21 A: No sir, I don't really remember.
22 All I remember is we just turned into McDonald's and
23 something hit us and that's all I could tell you. We
24 were just turning into McDonald's and something hit
25 us, and that's all I know.

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Q: All right, now where - did you ever see the car that hit your brother?

A: No sir.

Q: You never did see the car?

A: No.

Q: Do you know - if you never did see the car, you don't know what lane it was in or anything of that nature?

A: No sir.

Q: The impact occurred . . .

A: We was about halfway.

Q: Then what happened to the car that you were in?

A: It hit my mother's door here on her side.

Q: All right, and then where did the car go?

A: Into the steak place right there, in front of the steak house.

Q: The steak house?

A: Yes.

Q: That would have been down in this area?

A: Yes.

Q: In this direction?

1 A: Yes.

2 Q: What happened after the accident,
3 Velvet?

4 A: Just, we got out of the car. At
5 first, you know, it sort of knocked the breath out of
6 him, and I, you know - my brother, he had already
7 got out of the car, Ronnie Carter, and then I got out,
8 you know, it took me a few minutes to get my breath
9 and I just, you know, come to myself and I seen my
10 mother, you know, she was on that side on the floor-
11 board and my grandmother, her head was laying back
12 like that. I don't know if she was unconscious, and
13 somebody had called the ambulance and they come
14 there and took my mother to the hospital, and that's
15 all I can remember.

16 Q: How long did it take them to get
17 your mother and grandmother out of the car - do you
18 recall that?

19 A: No sir.

20 Q: Some time?

21 A: Yes sir, it was a lot 'cause, you
22 know, they didn't know how bad my mother was hurt
23 and all and they had to put her on a stretcher or
24 something, you know, they didn't want to move her
25 that much.

1 Q: Were there quite a few people around
2 there, Velvet?

3 A: Yes sir.

4 Q: This happened, I believe it has been
5 testified to, around 10:00 o'clock at night?

6 A: Yes.

7 Q: And your mother and grandmother
8 were taken to the hospital?

9 A: Yes sir.

10 Q: Were you subsequently taken to the
11 hospital?

12 A: Yes sir, but I went in the car. We
13 followed the ambulance and went in the car.

14 Q: I believe your grandmother was
15 admitted as a patient?

16 A: Yes sir.

17 Q: And remained there for some time?

18 A: Yes sir.

19 Q: When she was discharged from the
20 hospital, where did she return to?

21 A: At our house.

22 Q: To your home?

23 A: Yes.

24 Q: I believe that's located in Radford?

25 A: Yes sir.

1 Q: Was your grandmother a frequent
2 visitor to your home?

3 A: She visited us a lot, you know. She
4 would go to Buchanan and stay a week, and maybe come
5 back and stay a week with us, and then she'd go back
6 and then come back. She visited us a lot.

7 Q: Before the accident, what activities
8 and functions would your grandmother do around the
9 home?

10 A: Wash dishes, she helped cook, she
11 washed clothes and she watched us before the accident.

12 Q: Babysat you kids?

13 A: Yes.

14 Q: How about after the accident?

15 A: Sir?

16 Q: How about after the accident - for
17 the last two years?

18 A: After the accident, she just laid in
19 the bed and she had this walker that she used.

20 Q: That was immediately after the
21 accident, she was convalescing there at home - is
22 that right?

23 A: Yes.

24 Q: And who stayed with her?

25 A: Connie, my aunt.

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Q: Your Aunt Connie. Now since that time, let's bring it from, say August or September of 1978 up till the present time, July 1, 1980, has your grandmother been able to perform the same activities and functions that she did before the accident?

A: No sir.

Q: What can't she do now that she did before?

A: She used to, you know, get around a lot - okay, before the accident, she could drive back and forth a lot and now she don't drive and she gets wore out real easy. She just can't get around very good.

BY MR. DAVIS:

Your Witness.

CROSS EXAMINATION BY MR. JOHNSON:

Q: Velvet, you say that all you know about the accident is that you got hit?

A: Yes sir, I don't remember that much.

Q: You never saw the other car, did you?

A: No sir.

BY MR. JOHNSON:

Nothing further, Your Honor.

BY MR. RAKES:

No questions.

WITNESS ASIDE

1 CONNIE WHITTAKER HUDSON, being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION BY MR. DAVIS:

4 Q: I believe your full name is Connie
5 Whittaker Hudson - is that right?

6 A: Yes sir.

7 Q: And what relationship are you to
8 Mrs. Hogan?

9 A: I'm her daughter.

10 Q: That would make you the aunt of
11 Robert?

12 A: Yes sir.

13 Q: And the aunt of the two young ladies
14 that just testified?

15 A: Yes sir.

16 Q: Where do you live, Mrs. Hudson?

17 A: I stay with my mother over the week-
18 ends, and during the week I have to stay with my father
19 so I can work.

20 Q: Where are you employed?

21 A: Dublin Garment.

22 Q: Now, in July of 1978, where were
23 you employed at that time?

24 A: Dublin Garment.

25 Q: And what position did you occupy
there?

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A: I was a seamstress.

Q: You were not involved in an automobile accident on the 23rd of July, were you?

A: No sir.

Q: How did you find out about the accident?

A: Well, I had just come home from church, and I stopped at my sister's house and was waiting for her to come home, and Virginia Carter called home to tell us they had been in a car wreck.

Q: That's the little girl you call Ginny?

A: Yes.

Q: You found out about the accident from her?

A: Yes sir.

Q: Did you later on wind up at the hospital that night?

A: Yes, I did.

Q: Was your mother admitted as a patient?

A: Yes sir, she was.

Q: And how long did she stay in the hospital?

A: She stayed from that Sunday night until, I believe it was Saturday.

1 Q: Did you know who her attending
2 physician, or doctor, was there?

3 A: Tarasidis.

4 Q: Was she able to do anything while
5 she was in the hospital - get up and care for herself?

6 A: No sir, she wasn't.

7 Q: Who did that?

8 A: I did when I was there.

9 Q: Did you continue with your job, your
10 occupation, your work at Dublin Garment?

11 A: No sir, I called in and told them
12 that my sister had been killed in a wreck, and that
13 my mother had been injured and I'd have to be off to
14 take care of her.

15 Q: Did you, in fact, take off at that
16 time?

17 A: Yes sir, I did.

18 Q: Now, when your mother was dis-
19 charged from the hospital some five or six days later,
20 where did she go to?

21 A: I took her to my brother-in-law's
22 house where she had been staying over the weekend.

23 Q: I believe she had come up Saturday
24 from Buchanan - is that right?

25 A: Yes sir, she did.

1 Q: You took her to Robert's home?

2 A: Yes sir.

3 Q: And that was the home of the sister
4 that was in the accident?

5 A: Yes sir, it was.

6 Q: How long did she stay there?

7 A: She stayed there until after October,
8 I know.

9 Q: What was her condition when she
10 returned home?

11 A: She couldn't do anything. I had to
12 take and pull her up out of the bed if she had to get
13 up, or give her a bath or fix her meals, take care of
14 her.

15 Q: Could she take care of her personal
16 needs?

17 A: No sir, she couldn't.

18 Q: Could she get up and go to the bath-
19 room, things like that?

20 A: No sir, she couldn't.

21 Q: You would have to tend to the bed
22 pan?

23 A: Well, I'd have to pull her out of the
24 bed and walk her to the bathroom and be right with
25 her till she was done, and then take her back to her
bed.

1 Q: How about the feeding and things of
2 that nature - was she able to get food for herself?

3 A: Well, I would fix her food for her
4 and then cut it up so all she had to do was put it on
5 the fork and eat it.

6 Q: Did she require this constant atten-
7 tion and care?

8 A: Yes sir, she did.

9 Q: How long did you remain off from
10 work while this was being done?

11 A: Well, I got off from work on July
12 the 24th and I went back to work September the 12th.

13 Q: September the 12th - I believe if
14 my figures are right, that's seven weeks?

15 A: Yes sir, it is.

16 Q: And what was your wage during that
17 period?

18 A: It was \$107.75 a week.

19 Q: \$107.75 a week?

20 A: Yes sir.

21 Q: What kind of activities did your
22 mother perform, duties and womanly things - what
23 would she do before the accident?

24 A: Well, she could do just about any-
25 thing she wanted to before the accident. She could

1 clean her house and go places, anywhere she wanted
2 to, take care of the kids and things when Juanita went
3 to church; or if Juanita went off on a trip or something,
4 she'd stay there with them and take care of them.
5 Just about anything.

6 Q: How about since the accident?

7 A: She can't do anything. She always
8 has to have somebody there with her to help her do
9 for herself.

10 Q: What are her complaints, Mrs.
11 Hudson?

12 A: Well, she complains with her legs
13 and her knees hurting all the time and her back, the
14 upper part of her back, and she says her neck hurts;
15 and she just gives out getting from the bed walking to
16 the kitchen or something, she just gives completely
17 out any more.

18 Q: Is she the same woman as she was
19 before the accident?

20 A: No sir, she's not. Before the acci-
21 dent she could work rings around me and I would give
22 out way before she would. Now she can't do anything.

23 Q: Who does her housework and those
24 chores now?

25 A: I do. When I'm there on the weekends

1 I clean it up for her so it will stay clean until the
2 next weekend.

3 Q: How about the other activities of
4 dressing her and feeding her and things of that nature?

5 A: Yes sir, I have to help her get
6 dressed. Well, she can cook her own meals now, but
7 as far as getting dressed and having to go somewhere
8 I have to do that, and I have to drive the car for her
9 any more. She can't even drive a car like she did.

10 Q: Do you drive her everywhere she goes?

11 A: Everywhere she goes, I have to drive
12 her.

13 BY MR. DAVIS:

14 Your Witness.

15 BY MR. JOHNSON:

16 No questions.

17 BY MR. RAKES:

18 No questions, Your Honor.

19 BY THE COURT:

20 You may step down.

21 WITNESS ASIDE

22 VIRGINIA PURDY HOGAN, being duly sworn, testified
23 as follows:

24 DIRECT EXAMINATION BY MR. DAVIS:

25 Q: State your full name please, Mrs.

Hogan?

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A: Virginia Purdy Hogan.

Q: How old are you, Mrs. Hogan?

A: I'm 59.

Q: How old were you on July 23, 1978?

A: I believe I was 57.

Q: Were you involved in an automobile accident which took place in front of McDonald's?

A: Yes sir.

Q: Where were you seated in the vehicle?

A: In the middle in the front seat.

Q: You've been here through all this testimony, Mrs. Hogan, and of course I don't want to take up too much time but I'm sure that all these gentlemen of the Jury want to know your version of the accident, so if you'll tell us what you recall, put the cars where you think that they should be -

(DIAGRAM) - you were seated in the front seat, you say?

A: Yes sir.

Q: And your daughter was beside you on the right and Robert was driving - is that right?

A: That's right.

Q: Now just tell us what happened as you came across the bridge. (DIAGRAM) - Step up here if you would, Mrs. Hogan. Do you recognize this entire diagram that is laid out? This is McDonald's . . .

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A: This is coming from Dublin here.

Q: No, these are the two lanes coming across New River Bridge going toward Dublin - (INDICATING) - these are the two lanes coming from Dublin going across New River Bridge into Radford; this is the Executive Steak House, McDonald's Restaurant, this is the road going into the shopping plaza here at the stop light, this is an entrance going into the shopping plaza and to McDonald's, Wilco Service Station, Gulf Service Station. Do you recognize the two lanes going toward Dublin and the two lanes coming toward Radford?

A: Yes sir.

Q: Okay, now would you take the blue car and tell us where the car that you were in stopped and what occurred?

A: It was turning in right there - (PLACING ON DIAGRAM).

Q: It was turning in at McDonald's?

A: We were stopped here waiting for other cars to pass.

Q: How many cars went by, Mrs. Hogan?

A: I remember three.

Q: You remember three?

A: Yes sir.

1 Q: And how long were you stopped there?

2 A: We stopped there about a minute,
3 maybe a minute or more.

4 Q: Do you recall any conversation taking
5 place?

6 A: I don't recall any conversation.

7 Q: Either in the front or back seat -
8 you don't recall?

9 A: I don't recall any at all.

10 Q: This was at night - were there lights
11 on your vehicle?

12 A: Yes sir.

13 Q: Any other lights on your vehicle?

14 A: A turn signal.

15 Q: Was there a signal being given by
16 the driver?

17 A: Yes sir.

18 Q: How do you know that?

19 A: I seen it on. I watched him put it
20 on.

21 Q: You could see the blinker on?

22 A: Yes.

23 Q: Now tell us what happened, Mrs.
24 Hogan, as he moved from that stationary spot and
25 proceeded over to . . .

1 A: I looked up the road and there was
2 a car stopped in this lane - (INDICATING ON DIAGRAM
3 coming this way towards us, he was stopped up at the
4 light - it was stopped, I don't know who was in it, but
5 it was stopped.

6 Q: Was that the car that subsequently
7 hit you?

8 A: No, the last I seen it was sitting
9 there.

10 Q: So what lane was that car in at the
11 light , right or . . .

12 A: The right.

13 Q: The right lane rather than the middle
14 lane?

15 A: Yes sir.

16 Q: All right ma'am, what else did you
17 see?

18 A: Robert aimed to make the turn, and
19 I looked back up the road and this car was coming at
20 us at a high rate of speed.

21 Q: Where did you look back up the road?

22 A: Back up toward the light.

23 Q: And where was the car when you saw
24 it?

25 A: It was coming in the left-hand lane
over here - (DIAGRAM).

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Q: Coming in this lane?

A: Yes sir, and I seen it coming and I screamed.

Q: Where was the car? Was this the car that subsequently struck your vehicle - the car that you saw?

A: That's right.

Q: Where was it when you first saw it, Mrs. Hogan?

A: It was three, maybe four cars, I'll say maybe three cars back. I'm not a good judge of distance, but I'm just guessing at that. It was close enough that it scared me. I screamed.

Q: What did you scream?

A: I screamed "Robert."

Q: Were the lights on this vehicle?

A: No sir.

Q: You didn't see any lights on the vehicle?

A: I never did see any lights.

Q: Did you ever see any lights on that vehicle?

A: I never did. I blacked out when Robert made his turn and I screamed. I thought that if he speeded up, he could get out of the way of the car. That's the last I remember, I blacked out.

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Q: You don't remember the impact at all

A: I don't. I went into shock or something.

Q: Do you remember driving into the entrance-way there?

A: No, the next thing I remember I woke up in the hospital begging somebody to see about my daughter.

Q: What about the Carter vehicle - where was it in the highway when you last remember it, Mrs. Hogan?

A: The last I remember, he had made the turn over about there - (DIAGRAM).

Q: It was crossing the inside, or middle lane?

A: Right.

Q: Of the Eastbound traffic when you last saw it?

A: The last I seen it, he made the turn over into the other lane.

Q: How about the car that struck you - where was it when you last saw it?

A: The last I seen it, it was still coming down that lane there. I don't remember it coming over in the other lane.

1 Q: And you have no recollection whatso-
2 ever of the impact or anything that took place after
3 that?

4 A: No, I don't.

5 Q: When do you recall waking up in the
6 hospital?

7 A: I don't know when I waked up. I
8 guess I had been x-rayed and everything, I don't know.
9 My boy was sitting beside of me.

10 Q: How long were you a patient in the
11 hospital, Mrs. Hogan?

12 A: They'd taken me in there on Sunday
13 night, the 23rd and discharged me on Saturday, the
14 29th.

15 Q: You were discharged on the 29th of
16 July?

17 A: Yes sir.

18 Q: What injuries did the doctors - who
19 was your doctor?

20 A: Dr. Tarasidis.

21 Q: What injuries did Dr. Tarasidis tell
22 you that you had?

23 A: I had a fractured pelvis, and he
24 didn't really tell me too much of anything because I
25 didn't know too much of anything, they kept me kind
of doped-up, like.

1 Q: Now prior to this accident, had you
2 had some medical problems?

3 A: Oh yes, I've had a heart condition.

4 Q: How about your family physician -
5 who is your family physician?

6 A: Dr. William Foster.

7 Q: And where does he practice medicine?

8 A: Melrose Clinic in Roanoke.

9 Q: Had you seen Dr. Foster for other
10 health problems prior to this accident?

11 A: Yes, I'd seen the doctor for diabetes

12 Q: Now when you were discharged on
13 the 29th of July from the hospital, where did they take
14 you then?

15 A: My son-in-law's house. My daughter
16 had been killed.

17 Q: That's Melvin Carter?

18 A: That's right.

19 Q: And you remained there?

20 A: I remained there up until sometime
21 in September, about the last part of September, I
22 believe.

23 Q: For the first six weeks or so after
24 you returned home, were you able to care for and look
25 after yourself, Mrs. Hogan?

1 A: No sir.
2 Q: Who did that?
3 A: My daughter, Connie.
4 Q: I believe she testified that she had
5 been working at Dublin Garment during this period?
6 A: She was.
7 Q: Did she also stay with you at the
8 hospital?
9 A: Yes, she was there everyday.
10 Q: For the period of some seven weeks
11 until she returned to Dublin Garment, did she constantly
12 stay with you and look after you?
13 A: She constantly looked after me. She
14 tended to all my personal needs, my bath, she brought
15 my food to the bed to me, she helped me from the bed
16 to the bathroom, would help me up off of the bathroom,
17 take me back to the bed, help me back in bed.
18 Q: Did you subsequently get better,
19 Mrs. Hogan, so that you could kind of look after your-
20 self and do the necessary things?
21 A: Yes, I got so I could use my walker.
22 I could get around and go to the table and eat.
23 Q: Now how long did you remain in the
24 Carter household before you returned to Buchanan?
25 A: About the last part of September.

1 Q: The activities - I've asked your
2 grandchildren and your daughter - the activities that
3 you entered into of things that you could do before the
4 accident, could you describe those for the Jury?

5 A: I could do most anything anybody
6 else could do.

7 Q: What would that be?

8 A: Housework, drove a car, go to
9 church. I attended church regular.

10 Q: What about your chores?

11 A: I could do all my cooking, washing
12 dishes, washing my clothes, make my beds, vacuum
13 my house, mop and wax my floors.

14 Q: Since the accident of July, 1978,
15 have you been able to do these things?

16 A: Nothing but cook my meals.

17 Q: Why can't you do them, Mrs. Hogan?

18 A: I just can't get around that good.
19 I hurt in my back and my legs.

20 Q: What are your complaints?

21 A: I get weak in my legs, my back hurts
22 me all the time, my neck hurts me all the time.

23 Q: Have you been to the doctor about
24 these complaints?

25 A: Yes, Dr. Foster.

1 Q: You've been to Dr. Foster - did you
2 have these complaints before the accident, Mrs. Hogan?

3 A: No sir.

4 Q: When was the last time you saw Dr.
5 Foster?

6 A: In April of this year.

7 Q: April of this year?

8 A: Yes sir.

9 Q: In April of this year, what were
10 your complaints to Dr. Foster, Mrs. Hogan?

11 A: My back was giving me a lot of
12 trouble, the upper part of my back and my neck. I
13 was having a lot of pain.

14 Q: Did he prescribe medication for you?

15 A: Yes, he did.

16 Q: Let me hand you a bottle -
17 (SHOWING TO MR. JOHNSON) - this bottle that Mr.
18 Johnson is looking at, prescription medication - who
19 prescribed this for you?

20 A: Dr. Foster.

21 Q: And when was that prescribed?

22 A: In April.

23 Q: And what was that for?

24 A: Pain. They have prescribed those
25 pills before, but this is the last one.

1 Q: This is your last prescription?

2 A: This is the last prescription.

3 BY MR. DAVIS:

4 Your Honor please, this prescription
5 states: "Radford Drug Company, Dr. Foster, Prescrip-
6 tion Number 495302, Mrs. Virginia Hogan. Take one
7 four times a day as needed for pain, Darvocet, 50
8 milligrams, four allowable refills."

9 Q: Was that Dr. Foster's prescription
10 for you?

11 A: Yes sir.

12 Q: Before that, when did you see Dr.
13 Foster?

14 A: I see Dr. Foster every one or two
15 months.

16 Q: I think these gentlemen are going to
17 stipulate a bill that I have here of Dr. Foster's for
18 \$50.00. On that bill it reflects that you were x-rayed,
19 your cervical spine was x-rayed in October of 1978;
20 that you saw Dr. Foster on an office visit in November
21 of 1978, and then on January of 1979 - is that correct?

22 A: That's correct.

23 Q: The total amount of that bill is
24 \$50.00?

25 A: Yes sir.

Q: On your trips to see Dr. Foster,
did he give you prescription medicine?

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A: Yes sir.

Q: These gentlemen have copies of this bill from Radford Drugs - are these prescriptions from Dr. Tarasidis when you were his patient, are they related to the accident?

A: Yes, they are.

Q: They indicate total medications bill of \$8.00, is that right, from Radford Drug?

A: I believe so.

Q: Now, the total medication bills from Dr. Foster beginning in August of 1978 and concluding in April of 1980 for Darvocet, the same medications you have here, Valium and what-have-you - what are the total bills of those, Mrs. Hogan?

A: \$73.33.

Q: And that is related to this accident?

A: Yes sir.

Q: The total hospitalization bills for your confinement at Radford Community Hospital beginning in July of 1978, total \$1,0005.30. These gentlemen all have copies of these bills. Are these bills directly related to this accident?

A: This one is, this one is, this one is.

Q: Dr. Tarasidis, your attending physician, did he submit a bill to you, Mrs. Hogan, for

1 his treatment to you for the time you were in the
2 hospital and for subsequent outpatient care?

3 A: I don't believe I got the bill myself.
4 If I did, I don't remember it.

5 Q: I talked to Dr. Tarasidis yesterday
6 and I told him that we would submit the bill here -
7 who is the bill made out to?

8 A: Mrs. Virginia P. Hogan.

9 Q: And who is the bill from?

10 A: George Tarasidis.

11 Q: And the total bill from Dr. Tarasidis
12 the total bill is \$167.00. Did you see Dr. Tarasidis
13 about anything else other than your injuries related
14 to this accident?

15 A: No sir.

16 Q: Radiology Consultants of Radford
17 performed the x-rays that we saw yesterday from Dr.
18 Tarasidis. Have you had any x-rays from Radiology
19 Consultants other than those directly related to this
20 accident, Mrs. Hogan?

21 A: No sir.

22 Q: That bill was \$101.00. And the final
23 bill that I want to submit is that your daughter,
24 Constance - did you indicate anything to her about her
25 loss of time from work?

1 A: I told her that I would repay her.

2 Q: You told her that you would repay
3 her?

4 A: Yes sir.

5 Q: She indicated that she was off from
6 work for seven weeks?

7 A: Yes sir.

8 Q: And that her wage during that period
9 would have been \$107.25 per week?

10 A: Yes sir.

11 Q: So you are stating to the Court and
12 Jury under Oath that you have indicated that you will
13 repay her the \$750.75?

14 A: Yes sir.

15 Q: What are your chief complaints today?

16 A: My back and my neck and my knee
17 gives out on me.

18 Q: What are you doing about those com-
19 plaints?

20 A: Taking pain pills.

21 Q: Are you able to take any therapy or
22 anything of that nature?

23 A: No sir.

24 Q: The condition - I'm going to read a
25 letter here that it has been stipulated that I can,

1 from Dr. Foster. The condition that Dr. Foster refer
2 to is arthritis. How long have you had arthritis?

3 A: I've had mild arthritis for a few
4 years, I guess. I don't remember, it didn't bother
5 me that much.

6 Q: You don't remember your arthritis
7 bothering you?

8 A: Not that much. When it did, it was
9 just in the lower part of my back.

10 Q: How about since the accident?

11 A: Since the accident my knee bothers
12 me, the upper part of my back bothers me and my neck
13 bothers me, and it never done it before.

14 Q: Has that been there for the last two
15 years?

16 A: Yes, it has.

17 BY MR. DAVIS:

18 If it please the Court, I would like to
19 conclude with a letter that I have from Dr. Foster
20 that these gentlemen have been kind enough to consent
21 that I be able to read into the Record. It states:
22 "Mr. Davis, I apologize for the delay in answering
23 your letter regarding Mrs. Hogan. Mrs. Hogan was
24 seen by me on October 26, 1978 after being involved
25 in an automobile accident on July 23, 1978. She

1 complained of pain in her neck following the accident.
2 Her history obtained from Radford indicated she had
3 a fractured pelvis. Examination of the neck revealed
4 some residual soreness and stiffness, but no limitation
5 of motion. X-rays of the cervical spine reveal changes
6 in the cervical spine, C-6, 7 associated with osteo-
7 arthritis. C-6 and C-7 are suggestive injury, but I
8 am unable to ascertain the time. This may have
9 occurred since the time of injury to initial visit was
10 prolonged. It is my opinion that the accident did
11 aggravate her preexisting osteoarthritis, but she
12 probably will have no permanent disability resulting
13 directly from the accident as far as the neck is con-
14 cerned." Signed, Very truly yours, William L.
15 Foster, M. D. His office is in the Melrose Clinic,
16 Roanoke, Virginia.

17 HOGAN EXHIBIT 9

18 BY MR. DAVIS:

19 Your Witness.

20 CROSS EXAMINATION BY MR. JOHNSON:

21 Q: Mrs. Hogan you, like the others,
22 recall three cars passing while you waited before
23 making the turn?

24 A: Yes sir.

25 Q: And right after those three cars
passed, Robert started his turn, as I understand it?

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A: Yes sir.

Q: And you saw nothing coming when Robert began his turn - is that correct?

A: That's correct.

Q: And did you continue to look straight ahead up the road as Robert turned?

A: No, I turned my head back towards Robert.

Q: How long did you look toward Robert?

A: I just turned my head toward him and turned it back.

Q: For just a second?

A: Just a second, it could have been a half a second.

Q: But just for an instant?

A: Just like I turn my head - (INDICATING).

Q: Just like you're doing it now?

A: Yes sir.

Q: When you looked back to your right away from Robert, that's when you saw the car?

A: Yes sir.

Q: And you say it was three to four car lengths away?

A: That's just a guess. I'm not real good at distances, I'm just guessing at it.

1 Q: And it had no headlights on it?
2 A: It had no headlights on.
3 Q: You never saw lights?
4 A: I never saw a light.
5 Q: And when you looked up the road
6 just a second before, you had not seen anything?
7 A: No sir.
8 Q: That area is well illuminated through
9 there, isn't it?
10 A: Pretty well so.
11 Q: That's how you were able to see the
12 car without its headlights on?
13 A: Yes sir.
14 Q: Can you account for why you did not
15 see the car just a second before when you were look-
16 ing up the road?
17 A: No sir, I can't.
18 Q: Well, if it had been there you would
19 have seen it, wouldn't you?
20 A: Yes, if it had been there I would have
21 seen it.
22 Q: You recall testifying previously in
23 the case at the Depositions, don't you, Mrs. Hogan?
24 A: Yes sir, I remember.
25 Q: Pages 129 and 130 you were asked

1 this question - line 1: "Why was it then that you
2 didn't see the car before you turned your head for a
3 second and looked at Robert?"

4 BY MR. RAKES:

5 If Your Honor please, I think we've had
6 a little bit perhaps too much liberty already with the
7 reading of former testimony for other than impeach-
8 ment purposes, and I think that's the only reason it
9 can be done; and I can't see, from looking at this
10 answer right-quick, that this Witness has testified at
11 variance with that answer. I think he needs to lay a
12 proper foundation before he can go on.

13 BY THE COURT:

14 There's no question about that. I had
15 assumed that process was being done, but if Counsel
16 disagrees with whether or not there is any prior
17 inconsistency, maybe we'd better go over that. Do
18 you disagree with the statement, Mr. Johnson?

19 BY MR. JOHNSON:

20 Yes, Your Honor, I do. Let's go back
21 and clear up one thing:

22 Q: Are you telling us today, Mrs.
23 Hogan, that you're not sure whether you would have
24 seen the car just a second before you looked away at
25 Robert if it had been up the road?

1 A: I looked up the road, but I didn't
2 see the car.

3 Q: I understand you didn't see it.

4 A: I looked back toward Robert and
5 turned my head back, and then I seen it.

6 Q: But the area was well lighted?

7 A: Yes.

8 Q: Are you saying that if it was not
9 there, you might not have seen it - or if it was there,
10 that you might not have seen it?

11 A: Well, if it was there, I would have
12 seen it. If it wasn't there, I couldn't have seen it.

13 BY MR. JOHNSON:

14 I think, Your Honor, we've got an
15 inconsistency.

16 BY THE COURT:

17 Well, members of the Jury, will you
18 retire to your room and take a little recess.

19 JURY RETIRES TO JURY ROOM

20 BY THE COURT:

21 All right, gentlemen, proceed with
22 your questions.

23 BY MR. JOHNSON:

24 Q: Mrs. Hogan, why didn't you see the
25 car before you turned your head and looked at Robert?

1 BY MR. JOHNSON:

2 Out of the Jury's presence.

3 BY MR. RAKES:

4 No, she said that before they went out.

5 BY MR. JOHNSON:

6 Well, Your Honor, I think we've got an
7 inconsistency. I propose to proceed with simply just
8 asking the same questions that were asked in the
9 Deposition. Certainly that's valid as part of Cross
10 Examination.

11 BY THE COURT:

12 All right, I'll permit you to do that.

13 BY MR. RAKES:

14 Objection.

15 11:05 - 11:20 RECESS

16 JURY RETURNS TO COURTROOM

17 BY MR. JOHNSON:

18 Q: Mrs. Hogan, can you tell us why it
19 was that you didn't see the car before you turned your
20 head for a second to your left to look at Robert?

21 A: It wasn't there to see.

22 Q: Where did it come from?

23 A: I don't know.

24 Q: Are you telling us that if the car
25 had been coming down the road just before you turned
your head for a second to look at Robert . . .

1 A: If it had been coming down the road
2 when I looked the first time, I would have seen it.

3 Q: You're positive about that?

4 A: Yes.

5 Q: So it had to come from somewhere
6 other than straight down the road?

7 A: It had to come from somewhere. I
8 don't know where it come from.

9 Q: But you're certain that it had to
10 come from somewhere else, some other direction than
11 straight down the road?

12 A: I would think so, but I'm not - it
13 could have come out of the sky, I don't know.

14 Q: You recall in your Deposition, don't
15 you, that you were asked that same question, and
16 didn't you tell us then that you were certain that it
17 had to come from another direction?

18 A: Yes.

19 Q: And you're certain that you would
20 have seen it, whether or not it had had its headlights
21 on?

22 A: Yes sir.

23 Q: Is it your testimony today that the
24 other car was in the inside lane; that is, the left lane
25 when you first saw it?

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A: Yes sir.

Q: Do you recall testifying in the General District Court of Pulaski County about this accident?

A: Yes sir.

Q: This is at page 19: It's true, isn't it, Mrs. Hogan, that at that time - and that was back on October 17, 1978 - that you testified that you couldn't say which lane the other car was in?

A: I don't remember testifying to that.

Q: This is at line 14 - it was your testimony at that time, wasn't it Mrs. Hogan, that: "It was coming toward us, I can't say which lane it was in."

BY MR. DAVIS:

Go ahead and finish the answer, please sir.

BY MR. JOHNSON:

Q: "When I seen it, it scared me."

A: I don't remember testifying to that. I remember there was a car already sitting under the light in the right-hand lane.

BY MR. JOHNSON:

Your Honor, the authenticity of the transcript has been stipulated previously.

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Q: When you gave that prior testimony, Mrs. Hogan, the accident of course was fresher in your mind because it was back in 1978, wasn't it?

A: Yes, I guess so.

Q: You also testified at that time in the General District Court, didn't you, that the car that hit you was coming in the same lane where the impact occurred - didn't you?

A: I don't remember no impact. I don't know where it was at.

Q: This is at page 20 beginning at line 16: "Question: In other words, it was coming, we have to concede that, don't we, but you just didn't see it until it was that close to you; and then of course, it was too late, wasn't it?" Your answer was "I don't know where it came from." You were then asked: "When you saw it, it was too late for your grandson?" And your answer: "Well, I screamed, and I thought if he throwed the gas to it he could get out of the way." "Question: But he hadn't gotten across the road yet, though, had he?" Answer: "Yes, he had gotten it across the road. Well, he hadn't gotten out of the road because . . ." Answer: "He got out of the first lane over into the other one." - meaning the outside lane - correct?

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A: That's right.

Q: "Next question: Into the lane this man was coming in, obviously; and your answer was, well yes."

A: I don't remember that.

Q: You don't recall that?

A: No sir, I don't.

Q: Did you say whether or not you recall Robert speeding up the car?

A: The last I remember I screamed.

Q: That's the last thing you recall?

A: The last thing I remember I screamed.

Q: And you never saw headlights on the other car?

A: No, I didn't.

BY MR. JOHNSON:

That's all, Your Honor.

CROSS EXAMINATION BY MR. RAKES:

Q: At the time of this accident, I believe you drove an automobile yourself?

A: Yes sir.

Q: And how long had you been driving a car?

A: Since about 1955 - 1956.

Q: So you had been driving a car for over twenty years, at least, at the time of this accident?

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A: Yes.

Q: Did you own a car of yours at that time?

A: Yes sir.

Q: After leaving the Church of God in Christiansburg and deciding that you all were going to stop at Kroger's to buy something to take home, and Robert crossed the New River Bridge, crossed into Pulaski County and came up to the entrance there that goes to Kroger on the lower side of McDonald's - you were sitting right beside of Robert?

A: Yes sir.

Q: Do you feel that you had an opportunity to see everything that he could see?

A: Yes sir, I believe so.

Q: And is it your testimony, ma'am, that you were observant and that you were looking at the traffic on the road and watching how he was making that turn into the driveway at the time?

A: Yes sir, I was watching.

Q: You were - and you testified that he gave a left directional signal as he was stopped there?

A: Yes sir.

Q: And that you waited for some traffic, or that he waited for some traffic to go by?

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A: Yes sir.

Q: Now just before he began to make the left turn to enter into the driveway on the lower side of McDonald's, did you look up the road to see if there was any more traffic coming?

A: Yes sir.

Q: Now Mrs. Hogan, was there any traffic, at least between the traffic light and Robert's car, at the time he first began to make his turn?

A: No sir.

Q: You're positive about it?

A: Yes sir.

Q: Then is it your testimony that this car that you looked and saw without lights on it, after turning your head to look at Robert and after he started to make his turn - when you looked back at that point, was that car without lights then somewhere in the vicinity of the traffic light, or just on your side of it?

A: It was on our side coming towards us.

Q: On the other side of the traffic light coming towards you?

A: No, it was . . .

Q: Just on your side?

1 A: Under the light.

2 Q: I see. In other words, that car was
3 much closer to the light then, when you did see it the
4 first time, than it was to your car? It was closer to
5 the light than it was to your car?

6 A: I can't say that. I don't remember
7 that much about it. I just know it was coming close
8 on us.

9 Q: All right. And you screamed?

10 A: I screamed "Robert."

11 Q: And then you don't remember any-
12 thing after that?

13 A: No, I don't.

14 Q: I take it that if you had been driving
15 at that time yourself and looked and saw no traffic
16 on your side of the traffic light, you would have felt
17 safe to make the turn at the time he did?

18 BY MR. JOHNSON:

19 Your Honor please, we Object. That
20 question is hypothetical.

21 BY MR. RAKES:

22 This is the Witness who has brought
23 action against this Defendant. I think this is proper
24 Cross Examination, Your Honor.
25

1 BY THE COURT:

2 I'll permit the question.

3 BY MR. RAKES:

4 Q: Had you been driving at the time and
5 looked and saw no traffic on your side of the traffic
6 light, would you have felt like it was safe to make
7 the turn at the time Robert did?

8 A: Probably so.

9 BY MR. RAKES:

10 I have no further questions.

11 BY THE COURT:

12 What was that answer?

13 BY MR. RAKES:

14 She said "Probably so."

15 BY THE COURT:

16 All right, any further questions?

17 BY MR. DAVIS:

18 No, Your Honor. The Plaintiff Hogan
19 Rests.

20 WITNESS ASIDE

21 BY MR. RAKES:

22 Your Honor, I would like to see the
23 Court in Chambers.

24 (IN CHAMBERS)

25

1 BY MR. RAKES:

2 Your Honor please, Counsel for Defen-
3 dant Robert Carter, now that both Plaintiffs have
4 rested, would respectfully move the Court to Strike
5 the evidence of Plaintiff Hogan and Plaintiff Grinstead
6 and to enter Summary Judgment for Defendant Carter
7 on both of those cases.

8 With regard first to the case of Plaintiff
9 Hogan, the Law is well settled that a Plaintiff or a
10 Party who testifies unequivocally to facts which are
11 within their own knowledge, and they had an oppor-
12 tunity to see and testified categorically with regard
13 to those facts that go to the very issue of the case,
14 that their case can rise no higher than their own
15 testimony and they cannot rely upon other evidence
16 in order to make out a case, and Mrs. Hogan has
17 testified categorically that there was no traffic
18 coming at the time this young man began to make his
19 turn. Now, the Right-of-Way Statute with regard to
20 this, and the Code of Virginia, required one to yield
21 if on-coming traffic is close enough to cause a hazard,
22 approaching in such proximity as to cause a hazard
23 if the turn is completed. This lady has testified
24 unequivocally that there was no such traffic imposing
25 any hazard at the time he undertook to make the turn.

1 She has testified to no negligence on the part of the
2 Defendant Carter, none whatsoever, no inferences
3 from any of her testimony. Yet, she was there, she
4 drove an automobile, she was sitting right next to
5 him at the time, had an opportunity to see everything
6 that he did, and testified that if she had been driving
7 she would have probably made the turn at the time he
8 did. Now, none of the other witnesses which she
9 called put any negligence on the part of Defendant
10 Carter.

11 Now with regard to the Plaintiff Grin-
12 stead, in the position he occupies as a Plaintiff, he
13 has not testified to any facts that would bring the
14 Right-of-Way Statute into play. He has not testified,
15 for example, that he was driving down the highway -
16 a favored position on the roadway - within the speed
17 limit, and that he was exercising with care and caution
18 ahead of him and that he saw the vehicle on the side
19 of the road with the signal light going and assumed
20 that the vehicle was going to remain there and yield
21 the right-of-way to him, and that he watched that
22 vehicle and when he got very close to it that it sud-
23 denly turned in front of him and that he had no oppor-
24 tunity to do anything, which if he had testified, then
25 of course, that would bring the Right-of-Way Statute

1 into effect and it would make a Jury issue in the case.
2 Instead, and certainly with regard to the Plaintiff
3 Grinstead's case, he has convicted himself of con-
4 tributory negligence as a matter of Law. He has
5 testified that he told the Trooper that he was going
6 forty-five to fifty miles an hour at the time; he said
7 that he couldn't say whether it was forty-six, forty-
8 seven or what it was with regard to the forty-five to
9 fifty; that he had his speedometer tested, that it was
10 five miles off; and any way you cut the mustard, he
11 was going over the 40 mile speed limit at the time this
12 accident happened. There has been other testimony,
13 of course, but we go with what he has bound himself
14 by, by his own mouth. He has also testified that he
15 never saw the other vehicle until it was blocking his
16 lane, the right lane, at the time - the right Eastbound
17 lane heading into Radford at the time.

18 Now, if Your Honor please, a motorist
19 on the highway is bound to see what is in the roadway
20 in front of him; and if he were going fast, as the
21 testimony has been - as his own testimony has indi-
22 cated - this would explain why he would not have been
23 seen by Mr. Carter on Carter's side of the traffic
24 light beforehand. We know, and the Tables - and I've
25 laid the groundwork - the Tables of Stopping Distances

1 show feet per second, and they show that a motor
2 vehicle going 45 miles an hour is going 66 feet per
3 second. At 60 miles an hour, it is going 88 feet per
4 second. At 45, which is above the speed limit - 66
5 feet per second - it would take just barely over three
6 seconds for a vehicle to traverse the distance from
7 the traffic light down to where this impact occurred;
8 and certainly a vehicle is going to take three to five
9 seconds in making a turn from a completely stopped
10 position and that, if Your Honor please, is the uncon-
11 contradicted evidence in the case. There has never
12 been any evidence that the Carter vehicle was not
13 completely stopped. It is uncontradicted at the time
14 that he waited for traffic to pass, that he gave a
15 signal - it's all uncontradicted - he undertook to
16 make a turn at that point.

17 Now, the only thing that Grinstead
18 would ask you to infer from his testimony is that,
19 I'm going down the highway and I've got my lights on
20 and everybody ought to be able to see me coming and
21 they ought not to make any turns if I'm anywhere
22 close around. Mary Phillips testified that at the
23 time he passed under the light, this young man had
24 begun his turn at that particular point in time. Now
25 I understand that Mr. Grinstead is not bound by what

1 Mary Phillips testified, but he's bound by what he
2 testified out of his own mouth, and he has convicted
3 himself of speeding and failure to keep a proper look-
4 out, as a matter of Law. The reaction time - he kept
5 talking about reaction time in his testimony - and in
6 the Tables, it gives the Average Driver Reaction
7 Time at three-quarters of a second if he were going
8 45 miles an hour, 66 feet per second, at that time;
9 and if we take three-quarters of that, we are some-
10 where in the neighborhood of about fifty feet, and you
11 add the 50 to the 30 feet of skidmarks that he left
12 and we're talking about 80 feet, and when he is
13 traveling 66 feet per second at 45 miles per hour,
14 it's no wonder that he impacted with this car at the
15 speed that he did. He's got to have seen that vehicle
16 when it began to make its turn, if he were anywhere
17 in the vicinity of it at the time, which if he were
18 traveling at the lawful speed he would have had to
19 have been somewhere in the neighborhood of the traf-
20 fic light from that point on.

21 So the physical facts, his own testimony
22 is such, that he is guilty of negligence as a matter
23 of Law, and Mrs. Hogan has not made out a case.

24 BY MR. DAVIS:

25 Your Honor, I think Mr. Rakes is very

1 eloquent and very persuasive in his argument, and I
2 would agree with him if I thought there was any duty
3 on Mrs. Hogan. Mrs. Hogan was a passenger in the
4 automobile. She had no duty to be on the lookout;
5 she had no duty to see what there was to be seen.
6 She had no duty to do anything other than ride there,
7 to be a passenger, and that's what she did. She has
8 testified that she didn't see the car. Robert Carter
9 has testified he didn't see the car. There are other
10 people that testified they didn't see the car, but
11 undoubtedly, without question, Judge, the car was
12 there. Mr. Grinstead admits he going in excess of
13 the speed limit. I think that's a Jury question for
14 the Jury to decide as to whether the excess speed
15 that he was going was a proximate cause of the acci-
16 dent. I think that's a fair question for the Jury to
17 decide. If there was a duty on Mrs. Hogan to be on
18 a proper lookout, if there was a duty on Mrs. Hogan
19 to in any way control that automobile, then there may
20 be some merit to what Mr. Rakes was saying that
21 "she can rise no higher." Mr. Rakes - I'm sure he
22 didn't mean to misquote the evidence - but he was
23 totally wrong when he said we presented no evidence
24 as to the negligence of Robert Carter. I'm sure the
25 Court will recall that we put Robert Carter on as an

1 Adverse Witness. We asked Robert Carter to explain
2 where he was and what he was doing and why he didn't
3 see the car, and he indicated that he pulled the car
4 from a place of safety in the zone where he was waiting
5 for on-coming traffic, across one lane and into another
6 lane and never saw the car - never saw the car. When
7 he did see the car, the lights were on bright. He
8 doesn't say that the lights were not on. He said that
9 they were on bright when he first saw them, and the
10 fact is he didn't see the car until such time as his
11 grandmother yelled - and she indicated that she yelled
12 and screamed "Robert" - and he looked up and saw the
13 car and he said he saw it, the lights were on bright.
14 I don't think there is any question about the lookout.
15 The car was there to be seen, and he didn't see it.
16 Everybody else in the car saw it. Even, if the Court
17 believes that the Jury has a right to decide, it's
18 possible the lights were not on. I think the lights
19 were on, but I think that's a Jury question, a factual
20 question for them to decide whether the lights were
21 on. It's also a factual question, as I see it, for the
22 Jury to decide as to whether the speed of Grinstead
23 was a proximate cause of the collision. I agree with
24 Mr. Rakes when he says Grinstead makes himself
25 guilty of negligence as a matter of Law, because

1 undoubtedly the Carter vehicle, as well as the Grin-
2 stead vehicle, was there to be seen; the lights were
3 on, the blinker lights were on, the car had passed right
4 in front of Mr. Grinstead. He denies ever seeing it
5 stopped there, he denies ever seeing it going across
6 to the middle lane, going toward Radford; and his
7 testimony is "When I first saw the automobile, it was
8 directly in front of me."

9 It is our position that certainly we have
10 made out a Prima Facie Case against both parties.
11 There may be some merit to the contention Mr. Rakes
12 makes against Grinstead, but there is certainly no
13 merit against Mrs. Hogan. I think the Court ought to
14 enter a Summary Judgment for her against both Defen-
15 dants and let the Jury decide as to the amount of
16 damages. I certainly think she's in Court and in
17 Court on all fours against both Defendants.

18 BY THE COURT:

19 Gentlemen, I'm going to deny the Motion
20 as to Mrs. Hogan. I'll be glad to hear you gentlemen
21 as to Mr. Grinstead.

22 BY MR. BRUCE:

23 Judge, as far as Mr. Grinstead is con-
24 cerned, I think his speed, if any - you recall he last
25 looked at his speedometer back some five hundred feet

1 before the impact - there are numerous Virginia cases
2 that say that if he was speeding, it is definitely a
3 Jury issue as to whether that was a contributing cause
4 to the accident; that it is not negligence, contributory
5 negligence, as a matter of Law. His evidence, as I
6 recall it, on seeing the Carter car Mr. Grinstead
7 said, "My impression today, the only impression I have
8 is the car right in front of me and I slammed on the
9 brakes and threw my hands up." That's the only
10 impression he had. He received a blow to his head,
11 a bump on his head in the accident, and that's what he
12 remembers. I agree with Mr. Rakes, I think he saw
13 the car before he turned - he had to, to have ever taken
14 evasive action. Certainly, I think there's no question
15 that he saw it, but it's blocked out of his mind, as
16 Dr. Strelka points out in his Deposition, if you had
17 instant replay on this then you would know what hap-
18 pened, you'd know how the whole thing happened.

19 So I think any negligence by Mr. Grin-
20 stead is strictly a Jury question to determine the
21 negligence, and it's another Jury question to decide
22 if that was a contributing cause of the accident. On
23 the contrary, I think Robert Carter is negligent as a
24 matter of Law. I don't think there's any question
25 about that. He turned into the face of Mr. Grinstead;

1 he never saw him until after everybody else in the car
2 saw him. He was proceeding across the lanes, looking
3 straight ahead, didn't see him before he turned, didn't
4 see him after he turned; Grandma hollered, one of the
5 girls in the back seat saw the car with no lights and
6 she saw Robert turn his head, and that's when Robert
7 said he saw the car, after he was already blocking
8 both lanes in an obvious position of danger to himself
9 and to the on-coming traffic. I think by his own testi-
10 mony that he is guilty of negligence, as a matter of
11 Law, and I think the issue of any contributory negli-
12 gence from Mr. Grinstead's automobile is one for the
13 Jury.

14 BY THE COURT:

15 Gentlemen, in the Grinstead case,
16 Defendant Grinstead convicts himself of negligence on
17 speeding, if nothing else. Now, whether that speed
18 was the proximate cause of the collision, or whether
19 inattention on the part of Carter caused it or whether
20 inattention on the part of both, coupled with speed,
21 caused it; whether Grinstead's lights were not on and
22 that contributed to it, are all factual issues, and I
23 think it would be wrong for the Court to take these
24 issues away from the Jury; and I'm going to submit
25 the entire case to the Jury, because it seems to me

1 that the questions of negligence on the part of Carter,
2 the admitted negligence on the part of Grinstead, the
3 question of remote proximate cause are classic exam-
4 ples of issues that should be presented to the Tryer
5 of Fact.

6 BY MR. RAKES:

7 Exception.

8 BY THE COURT:

9 Now, the Plaintiffs have Rested. Mr.
10 Rakes, do you wish to put on any more evidence?

11 BY MR. RAKES:

12 Judge, it looks as if all the witnesses
13 have testified. However, I do believe I would like to
14 call Mrs. Hogan for one question.

15 BY THE COURT:

16 You reserved the right earlier to put
17 Mr. Carter on.

18 BY MR. RAKES:

19 I understand, but I think he has testified
20 fully.

21 BY THE COURT:

22 All right, let's call the Jury in. We
23 will complete the evidence before our luncheon recess.

24 COURT RECONVENES
25

1 VIRGINIA PURDY HOGAN, having previously been sworn,
2 testified further as follows:

3 FURTHER EXAMINATION BY MR. RAKES:

4 Q: Mrs. Hogan, I can't recall whether
5 you were asked this question before when you were on
6 the Stand, and that's why I've asked you to come back.
7 When you saw the vehicle in the roadway that you say
8 had no lights on, after Robert had already began to
9 make his turn, were you able to form any estimate of
10 its speed?

11 A: Well, it was coming so fast, I would
12 say it was sixty-five to seventy-miles an hour coming
13 down through there.

14 Q: That was your best impression?

15 A: That was my opinion. That's a guess.

16 BY MR. RAKES:

17 That's all I have.

18 FURTHER EXAMINATION BY MR. JOHNSON:

19 Q: Mrs. Hogan, if I recall a little earlier
20 you told us that you had Mr. Grinstead's car in your
21 view for only a second or so?

22 A: Yes.

23 Q: That's true?

24 A: That's true.

25 Q: And he was about three car lengths
away, I believe you told us, when you first saw him?

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A: That's a guess.

Q: And it's on that basis that you make
your estimate of speed?

A: Yes sir.

BY MR. JOHNSON:

All right. That's all.

WITNESS ASIDE

BY MR. RAKES:

If Your Honor please, I don't know when
would be the proper time to do it, but I do want to
offer into evidence the Tables of Speed and Stopping
Distances. We can do that by way of Instruction, and
I have one prepared for it. I just did not want anybody
to say that it should have been offered at this point.

BY MR. BRUCE:

Your Honor, we have no Objection to that.

BY THE COURT:

All right, by agreement, this matter
will be presented by way of Instructions.

BY MR. RAKES:

All right sir, and since all of the other
principals have testified in the case, Your Honor, the
Defendant Carter Rests at this time.

BY THE COURT:

Now members of the Jury, that completes

* * *

(-290-)

1 a duty to see whatever was in such plain view that by
2 looking with ordinary care, he is bound to have seen it
3 in time to have avoided an accident. So we think that
4 the Instruction is couched in terms that do not properly
5 reflect the standard by which his duty to keep a proper
6 lookout is to be appraised.

7 INSTRUCTION 8, GIVEN AS OFFERED, WITH THE FOL-
8 LOWING OBJECTION:

9 BY MR. JOHNSON:

10 Again, on behalf of Mr. Grinstead, we
11 respectfully Object to Instruction Number 8 which says
12 that William Grinstead was guilty of negligence as a
13 matter of Law in driving in excess of the maximum
14 speed limit. I think when we take the evidence in the
15 case most favorable to Mr. Grinstead, which must be
16 done in that type of Instruction, that he indicates that
17 he looked at his speedometer some five hundred feet
18 prior to the impact and at that time his speedometer
19 registered between a speed of forty-five to fifty miles
20 per hour and that he has no recollection of that speed
21 varying, either an increase or decrease. He just
22 doesn't know between that point and the time of impact,
23 and further evidence shows that his speedometer was
24 five miles off, through tests made on his speedometer
25 subsequent to the accident, which would indicate that

1 if the speedometer reading was between forty-five and
2 fifty, its actual speed was somewhere between forty
3 and forty-five miles per hour at the time he last looked,
4 and the speed limit in this area is 40 miles per hour.
5 There's no evidence to show that he was exceeding that
6 40 mile per hour speed limit some five hundred feet
7 later at the time of the impact. I think the question
8 of speed is strictly a Jury question to determine from
9 the evidence whether Mr. Grinstead was actually speed-
10 ing or not at the time when he did or should, as an
11 average prudent driver would, become aware of the
12 circumstances in the accident.

13 INSTRUCTION 9, GIVEN AS OFFERED, WITHOUT
14 OBJECTION.

15 INSTRUCTION 10, GIVEN AS OFFERED, WITHOUT
16 OBJECTION.

17 INSTRUCTION 11, GIVEN AS OFFERED, WITHOUT
18 OBJECTION.

19 INSTRUCTION 12, GIVEN AS OFFERED, WITHOUT
20 OBJECTION.

21 INSTRUCTION 13, GIVEN AS OFFERED, WITH THE FOL-
22 LOWING OBJECTION:

23 BY MR. RAKES:

24 Counsel for Defendant Carter respectfully
25 excepts to the Court granting Instruction 13 on the

1 than the Grinstead car. That may be true, but it's for
2 the Jury to decide and it is for them to determine from
3 the evidence and reasonable inferences therefrom
4 whether or not the car that was "way back" was the
5 Grinstead car. It appears to me, therefore, that
6 Instruction Number 23 is appropriate.

7 INSTRUCTION 24, GIVEN AS OFFERED, WITHOUT
8 OBJECTION.

9 COURT RECONVENES

10 COURT READS THE INSTRUCTIONS TO THE JURY

11 CLOSING STATEMENT BY MR. BRUCE

12 CLOSING STATEMENT BY MR. DAVIS

13 CLOSING STATEMENT BY MR. RAKES

14 CLOSING STATEMENT BY MR. JOHNSON

15 FINAL CLOSING STATEMENT BY MR. DAVIS: (With
16 the Following Objection)

17 I would like just a word. The Court a
18 few minutes ago instructed you, and the Court said,
19 as follows: If, from the evidence and other instruction
20 of the Court, you find your verdict in favor of the
21 Plaintiff, Mrs. Hogan - and apparently everybody
22 agrees that Mrs. Hogan ought to recover; somebody
23 ought to pay Mrs. Hogan - and the Court says if you do
24 believe that, if that is your decision - and there seems
25 to be little doubt that that should be your decision -

1 then you are to take into consideration the following:
2 Any bodily injuries sustained, and the extent and
3 duration thereof - the fractured pelvis, the back, the
4 neck, the extent and duration thereof; to date it has
5 been over twenty-three months - any effect of such
6 injuries upon her health, according to its degree and
7 probable duration. You heard the testimony of its
8 effect upon her health, what she can do and what she
9 can't do. Any physical pain and mental anguish suffered
10 by her in the past and which she may reasonably be
11 expected to suffer in the future. You've heard for the
12 past 23 months . . .

13 BY MR. JOHNSON:

14 If Your Honor please - Mr. Davis,
15 excuse me for interrupting - but Your Honor, this is
16 not in the nature of rebuttal.

17 BY THE COURT:

18 I'm inclined to agree. I don't believe
19 that damages have been referred to by either Defense
20 Counsel, have they?

21 BY MR. DAVIS:

22 Certainly because they don't refer to
23 damages, Judge, does not preclude the Plaintiff . . .

24 BY THE COURT:

25 Well, the Closing Argument, of course,

1 is supposed to be rebuttal to argument made by the
2 opposing Counsel.

3 BY MR. DAVIS:

4 Mr. Rakes referred to damages.

5 BY THE COURT:

6 I thought he said he was not going to go
7 into damages.

8 BY MR. RAKES:

9 I don't think I said anything about Mrs.
10 Hogan's damages.

11 BY THE COURT:

12 I'll have to sustain the Objection.

13 BY MR. DAVIS:

14 All right sir, we except to the Ruling of
15 the Court.

16 MR. DAVIS CONCLUDES FINAL CLOSING STATEMENT.

17 5:20 P.M. JURY RETIRES TO THE JURY ROOM
18 6:50 P.M. COURT ADJOURNED

18 * * * * *

19 STATE OF VIRGINIA)

20)

20 COUNTY OF PULASKI)

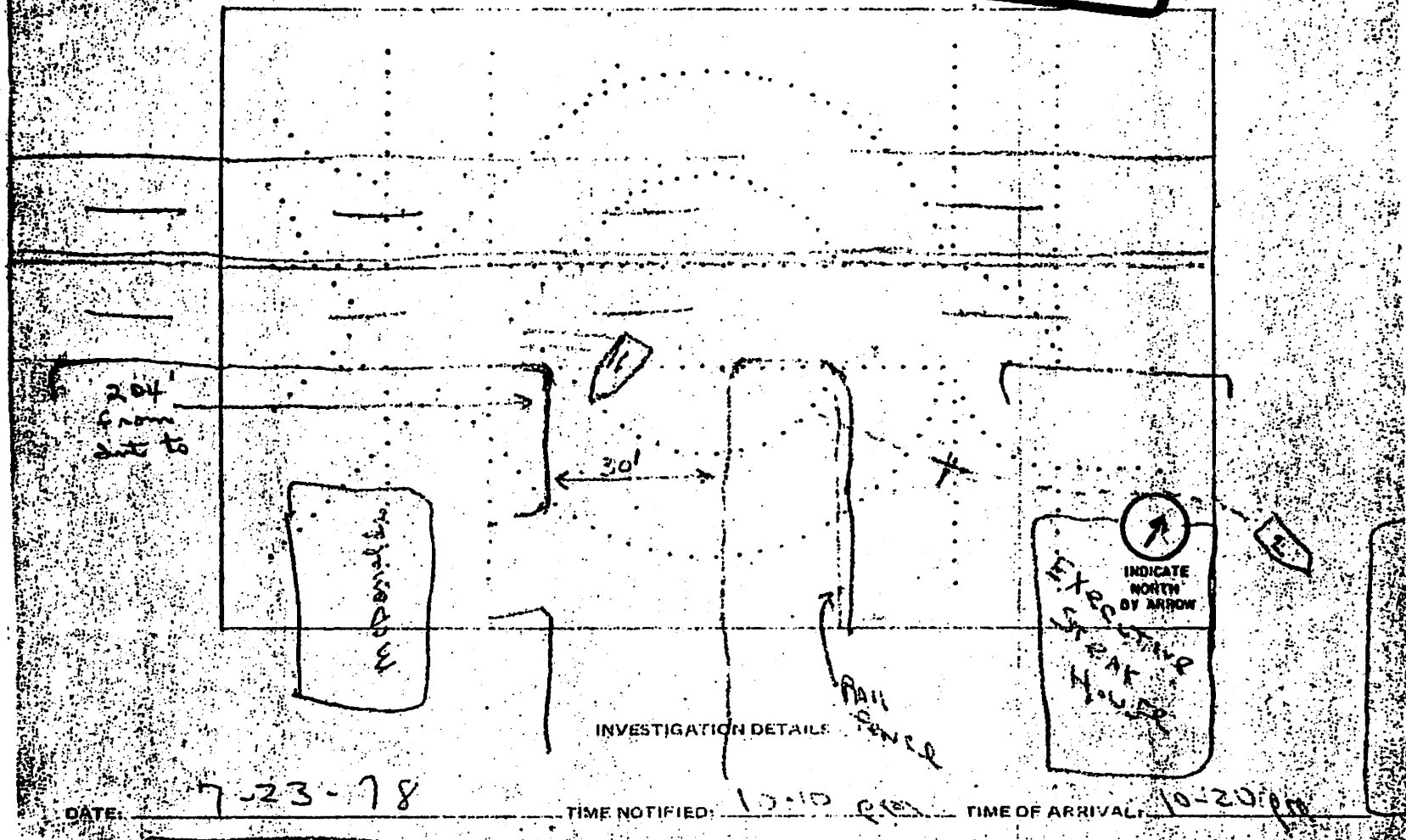
TO WIT:

21 I, Colleen Shoemaker, do hereby certify
22 that the proceedings herein were taken down by short-
23 hand and machine and accurately transcribed, to the
24 best of my ability; and that this transcript is a true
25 and accurate account of all the evidence taken and

(-305-)

* * *

DEFENDANT'S
EXHIBIT
Dura



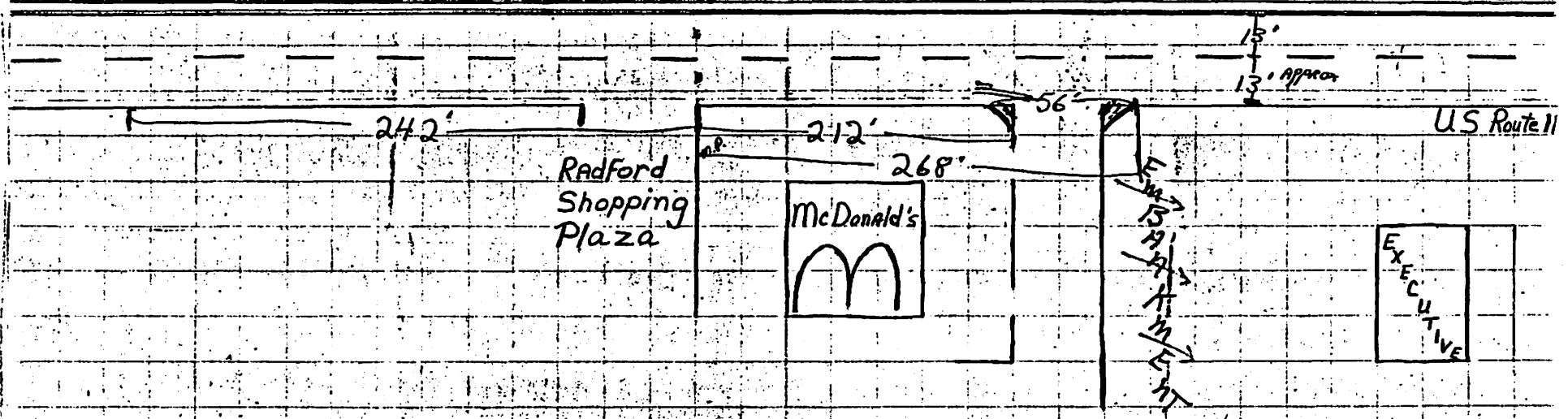
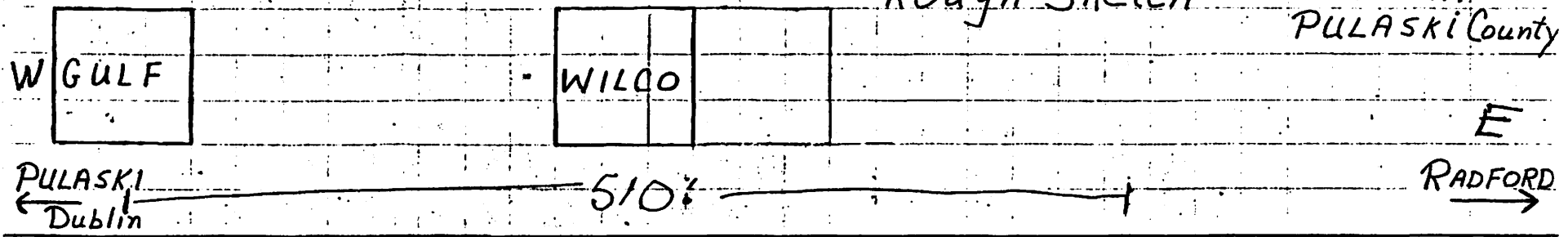
CARTER EXHIBIT NO. 1

PRINTERS' NOTE:

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Rough Sketch

7-23-78
10:00 PM
PULASKI County



K-MART Theaters

KROGER'S

GRINSTEAD EXHIBIT NO. 1