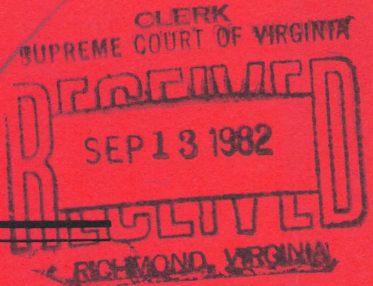


227 Va 466



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

RECORD NO. 811910

JOHN DOE

Appellant,

v.

CHARLES RANDOLPH THOMAS

Appellee.

JOINT APPENDIX

William F. Stone, Jr.  
STONE & WORTHY  
46 West Main Street  
Martinsville, VA 24114

Counsel for Appellant

John D. Epperly  
BROADDUS, EPPERLY,  
BROADDUS & HANKINS  
106 East Main Street  
Martinsville, VA 24112

Counsel for Appellee



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## MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF THE AFORESAID COURT:

The undersigned, Charles Randolph Thomas, doth move the Court for judgment against the Defendant, John Doe, pursuant to Section 38.1-381 of the Code of Virginia of 1950, as amended, for personal injuries, wrongs and damages in the sum of \$200,000.00 by reason of the negligence of John Doe about the operation of a motor vehicle, the particulars of which are as follows, to-wit:

1. On or about the 6th day of July, 1979, in the night-time the Plaintiff was operating a 1979 Camera automobile over and along Virginia U. S. Route 220 in the left-hand passing lane in a northerly direction near Smith River in Henry County, Virginia.

2. At the time and place aforesaid an unknown motorist, known under the law as John Doe, negligently drove a motor vehicle from the right-hand lane of said highway into the left lane and into the path of the vehicle then and there driven by the Plaintiff so as to block his lawful and proper passage along the said Virginia-U. S. Route 220 and did negligently, recklessly and carelessly by reason of the operation of said motor vehicle by John Doe, cause the Plaintiff to swerve his vehicle to the left to avoid a collision, thereby causing it to leave the pavement of said highway.

3. At the time and place aforesaid the Plaintiff, by reason of the negligence of the Defendant John Doe, was caused to leave the pavement of said highway and run into Smith River, colliding with various hard objects and causing his body to collide

with various hard objects within the said automobile then and there driven by him, causing him permanent personal injury and damage.

4. As a direct and proximate result of the negligence of the Defendant about the operation of said motor vehicle then and there operated by him, the Plaintiff was injured, permanently and seriously, about his head, neck, body and extremities; was caused to expend large sums of money for medical and other expenses in attempting to effect a cure of said injuries; was caused to lose time from his gainful occupation; was seriously and permanently hampered in his movements, and was caused to be less able to lead a normal and useful life, and suffered permanent diminution of his earning capacity, and was otherwise injured and damaged.

Therefore, the Plaintiff doth move the Court for judgment against the Defendant John Doe, causing process to be served upon Nationwide Insurance Company which had issued to the Plaintiff a policy of liability insurance through its agent, Turner, Shelton & Midkiff, Inc., P. O. Box 3789, Martinsville, Virginia, said policy numbered 53D 227-740, which was in full force and effect on the 6th day of July, 1979, and had, by law, standard provisions for protection against uninsured motorists, and the Clerk of this Court is hereby requested to cause to be served upon Nationwide Insurance Company, c/o David Smythe, its Registered Agent, 5401 Fort Avenue, Lynchburg, Virginia, a copy of this process.



WHEREFORE, the Plaintiff doth move the Court for judgment against the Defendant, as aforesaid.

This 10th day of March, 1980.

CHARLES RANDOLPH THOMAS

By

John D. Epperly  
Counsel

Broadus, Epperly, Broadus & Warren, p.q.  
106 E. Main Street  
Martinsville, Virginia 24112

Filed in the Clerk's Office the 11 day of March, 1980

Writ Tax \$ 25.00

Fee 1.00

Deposit 30.00

Total Paid \$ 56.00

Test:

X. P. Crouch, Clerk  
Charles R. Thomas D. C.

VIRGINIA  
CIRCUIT COURT HENRY COUNTY  
RECORDED  
19 Aug 1981  
R. F. Crouch Jr.

MOTION TO SET ASIDE JURY  
VERDICT

COMES NOW the Defendant, John Doe, by counsel, pursuant to §8.01-430 of the 1950 Code of Virginia, as amended, and herein moves the Court to set aside the verdict of the jury in favor of the Plaintiff and enter up judgment in favor of the Defendant for the following reasons:

1. The physical facts as existing at the scene of the accident as proven by the witnesses for the Defendant and uncontradicted by the witnesses for the Plaintiff demonstrate that the oral evidence of the Plaintiff upon which the jury based its verdict is incredible and this Court is not bound by such a verdict. See Early v. Mathena, Adm'r, 203 Va. 330, at page 334 (1962), where the Court set aside a jury's verdict on a counterclaim filed by the Defendant where the evidence disclosed that the two vehicles struck head-on, but the lighter vehicle driven by the Defendant was not knocked backwards by the Plaintiff's heavier truck; that the truck left skid marks where the Defendant's automobile left none, and the Court held that on this evidence the physical facts entirely supported the Plaintiff's testimony that the vehicle was traveling on the wrong side of the road at high speed and struck his truck, and discredited the testimony of the Defendant's six year old brother that the truck was on the wrong side of the road and cut back as his brother cut



left to avoid a collision. The undisputed physical facts and the overwhelming weight of the evidence in the case at bar are completely contrary to the verdict of the jury. Such facts and evidence remove all conflicts and contradict the somewhat vague and indefinite evidence of the Plaintiff. The following facts are undisputed in the case at bar:

(a) The Plaintiff left United States Route #220 North in the curve before the Smith River Bridge and traveled across the median between the north and southbound lanes to a crest of a bank overlooking the river.

(b) Grass and underbrush in the median were several feet high in growth.

(c) The guardrail stretching south from the bridge spanning the Smith River is a minimum of 160 feet in length.

(d) A reflector pole in the curve on the northwest side of U. S. Route #220 North was knocked over by the Plaintiff.

(e) The Plaintiff's vehicle came to rest at a spot 165 horizontal feet from the crest of the bank.

(f) The speed limit at the scene of the accident was 45 miles per hour, changing to 35 miles per hour at the Smith River Bridge.

(g) The Plaintiff's vehicle clipped off a telephone pole approximately two feet from its top.

(h) All underbrush and underlying material from the crest of the bank to the river's edge was undisturbed.

(i) State Trooper Blair found markings in the high grass from a place in the curve before the Smith River Bridge through the median to a point on the crest of the bank directly opposite the telephone pole that had been clipped off.

(j) The length of the marks which the Trooper found through the median to the crest of the bank overlooking the river was 310.78 feet.

(k) The height of the point on the crest of the bank overlooking the river over the point where the vehicle came to rest was 34.6 vertical feet.

The Plaintiff testified that he was traveling at 40 miles per hour and was forced off the road in the curve at a point approximately 50 feet from the crest of the bank overlooking the river. This, of course, cannot be true inasmuch as the Plaintiff would have had to run through the guardrail on the northwest side of the highway in order to accomplish such a fact and he affirmatively testified that he missed the guardrail. Additionally, it is contrary to human experience for a vehicle traveling at 40 miles per hour to pass through underbrush several feet high for 310 feet, clip off part of a telephone pole, and come to rest at a point 165 additional feet from the bank. The Plaintiff's oral testimony of how the crash occurred is overcome by the physical facts which clearly preponderate over his oral testimony. See Whittaker v. Calfee, 214 Va. 301, at page 303 (1973), where the Court reversed the jury's verdict for the Plaintiff and awarded final judgment to the Defendant on uncontroverted physical facts showing the Plaintiff guilty of contributory negligence as a matter of law. As quoted in Noland v. Fowler, 179 Va. 19, at page 23 (1942), where the Supreme Court affirmed the action of the Circuit Court in setting aside a verdict for the Plaintiff as being contrary to the physical facts disclosed by the evidence, "This Court has repeatedly declared that courts are not required to believe that which is contrary to



human experience in the laws of nature, or which they judicially know to be incredible. Though the case be heard as upon a demurrer to the evidence, the Court will not stultify itself by allowing a verdict to stand, although there may be evidence tending to support it, when the physical facts demonstrate such evidence to be untrue, and the verdict to be unjust and unsupported in law and in fact" (Citations omitted). Defendant submits that this Court is not required to believe that which is unbelievable. White v. Greyhound Lines, 158 Va. 462, 469 (1932), where the Supreme Court affirmed the action of a lower Court in setting aside the jury's verdicts in favor of the Plaintiff as being in conflict with the physical facts.

The accident in question simply could not have occurred the way the Plaintiff has said that it did occur because of the physical nature of the terrain and the course of his vehicle immediately preceding the crash. As stated in Burke v. Scott, 192 Va. 16, at page 23 (1951), "A tire mark in a road is a physical fact. If it be admitted or proved that it was made by the Plaintiff's car, and if that could not be true unless the Plaintiff's account of the accident be untrue, then Plaintiff's evidence is incredible and a verdict founded on it cannot stand." In the case at bar, the only evidence consistent with the physical facts as to the path of the vehicle was the evidence of the Defendant; to-wit, that Cloyde King followed the vehicle with siren sounding and red lights flashing for a period of approximately two miles to the point of the crash; that he saw it leave the road in the curve, which fact is corroborated by the Plaintiff, travel through the median to the crest of the bank, which fact is corroborated by the Plaintiff, and end up in the

river. State Trooper Blair found the path of the vehicle in the median, and there is no contradictory evidence from the Plaintiff that these marks were not caused by his vehicle. Indeed, to so suggest would ask the Court to believe that the vehicle traveled through the median without making any marks which would only add to the incredibility of the Plaintiff's testimony. The Trooper in turn pointed out to the engineer the location of the marks which he had found which were simply measured by said engineer. The Defendant submits that Plaintiff's story that he was only going 40 miles per hour and that he "eased" on his brakes and "eased" his vehicle over into the median is indeed incredible and that this Court is not required to countenance such a verdict which is obviously based on sympathy for the Plaintiff's condition.

2. The Court committed error in allowing the Plaintiff's sister to testify that approximately 18 hours after the accident, at the hospital, the Plaintiff told her that a car had run him out of the road. Such an out-of-Court statement is obviously self-serving hearsay and inadmissible unless allowed in evidence by an exception to the hearsay rule. The Plaintiff contends that the statement is admissible as part of the res gestae. Plaintiff reasons that since Plaintiff was unconscious from the time of the accident until the point when he spoke with his sister, that this unconscious period should not be counted in determining the spontaneity of the Plaintiff's utterance to his sister. However, the evidence does not disclose that the Plaintiff was unconscious for that length of time. In fact, the Defendant's evidence is uncontradicted that the Plaintiff was seen climbing out of his vehicle while he was down in the river,



a feat which would be impossible in an unconscious state. And indeed, the testimony of both the Plaintiff and the Plaintiff's sister was that Plaintiff was not completely unconscious for that period of time but came "in and out" during the entire period. The burden is upon the Plaintiff to show that the declarant's statement was spontaneous, and Plaintiff produced no evidence that during the entire time between the accident and the statement, Plaintiff was unconscious and unable to comprehend the nature of his surroundings. Thus Plaintiff failed to carry his burden of proving that Thomas had not regained consciousness at times prior to making the statement. Steffen v. Ritter, 214 S.W.2d 28 (Missouri 1948). Additionally, your Defendant has been unable to find any case from Virginia which would allow such a statement made 18 hours after the event to be admitted into evidence. Indeed, the Supreme Court has ruled, by our own Justice Whittle, that a statement made by the deceased to an ambulance surgeon shortly after the accident happened "... was not a part of the res gestae, nor was it admissible as constituting part of an admission made by Parker to other witnesses, at a different time and on another occasion. (Citation omitted). In short, the statement was a self-serving declaration pure and simple disassociated from any other assertion or admission withdrawing it from the influence of the general principal that such declarations are inadmissible (sic) in evidence. There was no error therefore in the Court's ruling in setting aside the verdict and granting a new trial." Chesapeake & O. Ry. Co. v. Parker's Adm'r, 116 Va. 368, 82 S.E. 183, at 187 (1914). Defendant moves that if the Court declines to enter up judgment in favor of the Defendant based on Paragraph #1 herein,

that it grant Defendant a new trial based on the admission of this evidence.

JOHN DOE

By Chas. M. Stone  
Counsel

STONE & WORTHY  
46 West Main Street  
Martinsville, Virginia 24114

CERTIFICATE

This is to certify that a true copy of the foregoing Motion to Set Aside Jury Verdict was mailed to John D. Epperly, Post Office Box 1031, Martinsville, Virginia, 24114, counsel of record for the Plaintiff, this 5th day of August, 1981.

Chas. M. Stone



**TWENTY-FIRST JUDICIAL CIRCUIT  
OF VIRGINIA**

JUDGES  
JOHN D. HOOKER  
STUART, VIRGINIA 24171

FRANK I. RICHARDSON, JR.  
MARTINSVILLE, VIRGINIA 24112

HENRY COUNTY  
PATRICK COUNTY  
CITY OF MARTINSVILLE

August 17, 1981

Mr. Charles M. Stone  
STONE & WORTHY  
46 W. Main St.  
Martinsville, VA 24112

Mr. John D. Epperly  
BROADDUS, EPPERLY & BROADDUS  
106 E. Main St.  
Martinsville, VA 24112

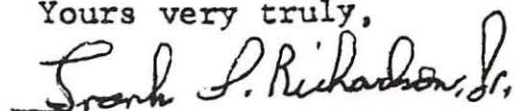
RE: Charles Randolph Thomas vs. John Doe

Gentlemen:

I have considered the motion to set aside the Jury verdict in the above-styled case, the memorandums submitted by counsel for the Defendant and counsel for the Plaintiff, and considered oral arguments made on August 17, 1981 concerning setting aside the Jury verdict.

After a consideration of all of the above and the evidence in the case, the Court agrees with the Defendant's theory of this case, however, upon submitting this case to the Jury the Court was of the opinion that the Jury had the right to decide this case in favor of the Plaintiff or the Defendant. The Jury has rendered their verdict in favor of the Plaintiff, and the Court does not feel that the evidence of the Plaintiff was incredible or could not be believed by the Jury and therefore finds that the Jury has a right to render its verdict. Even though the Court disagrees with the Jury verdict, it is not felt that the Court can substitute its judgment in the place of the Jury's verdict. It is therefore the finding of this Court that the Jury verdict will remain as rendered and the Court will affirm the same.

Yours very truly,



Frank I. Richardson, Jr.

## JUDGMENT

On the 29th day of July, 1981 came the parties hereto, the Plaintiff in person and by counsel, and the Defendant by counsel, and all pleadings having been filed, the parties are at issue.

Whereupon, the Court empanelled a jury as follows, to-wit:

Inez Stegall Adkins  
Loretta H. Rakestraw  
Hurd Summons Mason  
Janey Holley Trull  
Price Hairston, Jr.  
Lawrence Ozelle Smith  
Ruth Johnson Masters

The jury, having heard all of the evidence for the Plaintiff and for the Defendant and the instructions of Court, retired and considered its verdict. The jury after due deliberation rendered the following verdict, to-wit:

"We, the jury, on the issues joined, find in favor of the Plaintiff and assess his damages at \$75,000.00."

The Defendant moved the Court to set aside the verdict of the jury on the ground that it was contrary to the law and the evidence. The Court having maturely considered the motion, the same is hereby overruled, to which action of the Court, the Defendant objects and accepts.

pursuant to a letter opinion dated 8/17/81, which is incorporated herein

FIRJr.

It is therefore, ADJUDGED and ORDERED that the Plaintiff recover of the Defendant the sum of \$75,000.00 and his costs in this behalf expended.



And nothing further remaining to be done in this cause at this time, the same is dismissed from the docket.

The transcript shall be made a part of the record pursuant to Rule 5.9 on Motion of the Plaintiff

The Court directs that the Clerk of this Court furnish forthwith attested copies of this Judgment to parties requesting the same.

ENTER this 17<sup>th</sup> day of August, 1981.

*J. Frank L. Richardson Jr.*  
JUDGE

We have seen the foregoing Judgment:

*John D. Evers*, p.q.  
Directed to:  
*J. Chas. M. Stone*, p.d.

### ASSIGNMENTS OF ERROR

1. The Trial Court committed error in allowing Linda Saunders to testify as to what the Driver told her at the hospital subsequent to the accident.

2. The Trial Court committed error in refusing to set aside the jury's verdict as being based on incredible evidence.

Petition for Appeal containing Assignments of Error filed with the Supreme Court of Virginia on November 13, 1981.



1 VIRGINIA:

2 IN THE CIRCUIT COURT OF HENRY COUNTY

3  
4 CHARLES RANDOLPH THOMAS, \*

5 Plaintiff \*

6 VS. \*

\* TRANSCRIPT OF EVIDENCE

7 JOHN DOE, \*  
8 c/o Nationwide Insurance Co. \*  
9 c/o David Smythe, its \*  
10 Registered Agent \*  
11 5401 Fort Avenue \*  
12 Lynchburg, Virginia \*

13 Defendant \*

14 A stenographic report of the evidence of Charles  
15 Randolph Thomas introduced in the above-captioned case,  
16 heard in the Circuit Court of Henry County on the  
17 29th day of July, 1981, before Honorable Frank I.  
18 Richardson, Jr., Judge, and jury.

19 APPEARANCES:

20 JOHN D. EPPERLY,  
21 Attorney for Plaintiff

22 CHARLES M. STONE,  
23 Attorney for Defendant

24 - - - - -

25 Ann K. Nichols

Court Reporter

Martinsville, VA 24112

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CHARLES RANDOLPH THOMAS

the witness, called to testify on his own behalf, being  
first duly sworn, testified and stated as follows:

DIRECT EXAMINATION BY MR. EPPERLY:

Q. What is your name?

A. Charles Randolph Thomas.

Q. How old are you, Mr. Thomas?

A. Twenty-two.

Q. How old were you when you were - let's  
back up a minute. Were you involved in a traffic mishap  
on the 6th day of July, 1979, in Henry County?

A. Yes, sir.

Q. Where was that accident?

A. On River Hill coming back towards Martins-  
ville on 220 North.

Q. On which side of the Smith River Bridge  
were you?

A. On the right-hand side.

Q. No - were you on the south side or the  
north side?

A. On the south side.

Q. South side. Where had you been?

A. I'd been to Moon's Dance Land.

Q. Did you leave there and drive straight on

1 up to Martinsville or rather to the vicinity of Martins-  
2 ville?

3 A. Yes, sir.

4 Q. Were you upset?

5 A. No, sir.

6 Q. What time did you leave the dance at  
7 Moon's?

8 A. Ten o'clock.

9 Q. How long does it take you to drive from  
10 there to where you had the accident?

11 A. About - you run 55 it takes 30 minutes.

12 Q. How fast were you going?

13 A. Forty.

14 Q. Did you have any reason to be in a hurry?

15 A. No, sir. I was just coming back home.

16 Q. Where do you live?

17 A. In Koehler - Route 4, Box 567, Martinsville.

18 Q. Is that where you lived then?

19 A. Yes, sir.

20 Q. Lived with your mother there?

21 A. Lived with my grandmother.

22 Q. Where did you work at that time?

23 A. I been working at Hite Oil Company - I  
24 got fired and went to Harmon's Service Station.

25 Q. Where were you working at the time of the



1 accident?

2 A. I was working at the Harmon Brothers'  
3 Service Station.

4 Q. What were you earning there?

5 A. About sixty - sixty-five dollars a week.

6 Q. Is that a full-time or part-time job?

7 A. Just part-time.

8 Q. You earned sixty or sixty-five dollars a  
9 week?

10 A. Right.

11 Q. You lived with your grandmother?

12 A. Yes, sir.

13 Q. Have you been able to work since the  
14 accident?

15 A. No, sir.

16 Q. Alright. You were going home to Koehler?

17 A. Yes, sir.

18 Q. At the time of the accident. As you  
19 approached the K-Mart, for instance, you remember passing  
20 any vehicle there?

21 A. No, sir.

22 Q. You remember passing any vehicle near  
23 Lowe's, farther south?

24 A. No, sir.

25 Q. Were there other vehicles on the road?

1           A. Probably farther on down the road, you  
2 know. No particular place I remember it.

3           Q. Alright. Now after you left K-Mart,  
4 there's an intersection there with Rives Road, is there  
5 not?

6           A. Yes, sir.

7           Q. Did you pass that and go on to the next  
8 bridge?

9           A. Yes, sir.

10          Q. How fast were you going?

11          A. Approximately 40 miles per hour.

12          Q. You've heard Mr. King testify before, have  
13 you not?

14          A. Yes, sir.

15          Q. Was there any vehicle behind you while you  
16 were . . .

17          A. No, sir.

18          Q. I mean from K-Mart up to where you had the  
19 accident?

20          A. No, sir.

21          Q. Alright. Now tell us what you did as you  
22 approached Smith River Bridge.

23          A. When I approached Smith River Bridge, I  
24 was in the right-hand lane behind a car and there's like  
25 a flat bottom truck in front of that.

1 Q. Wait a minute. There were two vehicles  
2 ahead of you?

3 A. Right.

4 Q. What was the first one you would have come  
5 to?

6 A. The car.

7 Q. Could you identify the driver?

8 A. No, sir.

9 Q. There was a flat bottom truck ahead of  
10 him?

11 A. Yes, sir.

12 Q. How fast were they going?

13 A. Well, slower than I was because I was  
14 running 40. So it had to be slower than that because I  
15 was getting ready to pass them.

16 Q. When you got ready to pass, what did you  
17 do?

18 A. I pulled out in the left-hand lane and  
19 started to pass and the car come over and crowded me off  
20 the road. I knowed if I didn't pull over a little bit  
21 I'd hit the bridge or could have hit it and somebody'd  
22 be dead or something.

23 Q. As you approached this vehicle, when did  
24 you get into the left-hand lane?

25 A. Well, I got behind it. I pulled over into



1 the left-hand lane.

2 Q. What time of the night was that?

3 A. It was around 11 o'clock.

4 Q. What beam did you have your lights on?

5 A. Dim.

6 Q. Could you see the rear of the vehicle  
7 driven by the unidentified driver?

8 A. Yes, sir.

9 Q. Did he give any signal of his intention  
10 to turn left or come over into your lane?

11 A. No, sir.

12 Q. Was there anything between you and him at  
13 the time you pulled out into the left lane to keep him  
14 from seeing you?

15 A. No, sir.

16 Q. Now, how far up were you along - did you  
17 get up to some point beside this vehicle when it pulled  
18 out?

19 A. I'd say right behind the driver's door.

20 Q. Your front bumper was near the driver's  
21 door?

22 A. Right.

23 Q. Or right at the driver's. Then what did  
24 he do exactly?

25 A. He just started coming over. I went over

1 to the shoulder of the road and just went over. I hit  
2 the reflector sign and went out on the grass and the  
3 grass was wet and I kept sliding.

4 Q. Did you apply your brakes?

5 A. Yes, sir.

6 Q. When did you apply your brakes?

7 A. When I eased over, applied them when I  
8 started easing on the brakes when I pulled over to the  
9 shoulder of the road.

10 Q. Do you know whether or not you skidded  
11 any?

12 A. I skidded on the grass, but not on the  
13 road.

14 Q. Not on the road?

15 A. Right.

16 Q. Now if you had continued in that lane of  
17 travel, what would have happened between you and the  
18 other vehicle?

19 A. If we hadn't collided, I would have hit  
20 the bridge.

21 Q. It was either pull off to the left or hit  
22 the bridge?

23 A. Yes, sir.

24 Q. Why did you pull on to the shoulder?

25 A. There's grass out there. I figured I

1       could stop before I got to the river and that way nobody  
2       would be injured or nothing.

3               Q. Do you know where your vehicle came to a  
4       stop of your own knowledge?

5               A. In the river.

6               Q. But of your own knowledge?

7               A. No, sir.

8               Q. Do you remember anything that took place  
9       after a certain point?

10              A. When I slid over the bank, pushed that  
11       pole which, you know, there was an old pole just standing  
12       there, when I pushed over that, that was the last thing  
13       I remember.

14              Q. Until when?

15              A. Three days later. I remember my sister.  
16       She come to the hospital. I remember her coming to the  
17       hospital and seeing me in Surgical Intensive Care and  
18       about three days later . . .

19              Q. Were you unconscious or conscious during  
20       that three day period?

21              A. I was unconscious, but when you're uncon-  
22       scious, you come and you go like that.

23              Q. Did you at any time think about the  
24       accident?

25              A. No, sir.



1 Q. Do you remember what you said to your  
2 sister?

3 A. No, sir. I just remember her coming there  
4 to see me.

5 Q. Did you later learn that you told her  
6 something about the accident?

7 A. Yes, sir.

8 Q. So far as your recollection is concerned,  
9 you don't remember specifically what you did say then?

10 A. No, sir.

11 Q. Can you tell the Court and jury whether  
12 you were lying there thinking about the accident or  
13 thinking about some way to explain what you did?

14 A. No, sir. I was unconscious. I don't know.

15 Q. How long - you had the accident on Friday.  
16 What day can you say that you fully recovered conscious-  
17 ness?

18 A. Probably on a Monday. Or a Tuesday.

19 Q. Monday or Tuesday?

20 A. Right.

21 Q. Were you in intensive care during that  
22 time?

23 A. Right.

24 Q. Tell the Court and jury whether or not you  
25 were in pain when you regained consciousness.

1 A. Yes, sir.

2 Q. What kind of pain were you suffering?

3 A. Internal bleeding, two tubes running down  
4 your nose and couldn't feel nothing on my legs - nothing  
5 like that.

6 Q. Did you know at that time that you were  
7 paralyzed?

8 A. I know I couldn't feel them and Dr.  
9 Chadduck, he came in, started taking his little pin and  
10 coming up my legs and all.

11 Q. Did you feel it?

12 A. No, sir. Felt it when it got to my chest.

13 Q. Can you feel anything in your legs now?

14 A. No, sir.

15 Q. Have you been able to work since that time?

16 A. No, sir.

17 Q. Have you been classified as totally dis-  
18 abled?

19 A. Yes, sir.

20 Q. Now after you had recovered consciousness  
21 you were aware of pain. How long did the pain last?

22 A. Still going on now. Still have back pains  
23 and all now.

24 Q. Still have it?

25 A. Right. You have muscle spasms where your

1 Q. Can you go to the bathroom by yourself?

2 A. Yes, sir.

3 Q. Did you learn that at Woodrow Wilson?

4 A. Yes, sir.

5 Q. Can you stand up by yourself?

6 A. No, sir.

7 Q. Can you tell us whether or not there's any  
8 prospect of your ever regaining the use of your legs?

9 A. No, sir.

10 Q. You will not - is that what you mean?

11 A. Never will walk again, I guess.

12 Q. How about sleeping at night. Do you sleep  
13 comfortably?

14 A. No, sir.

15 Q. What bothers you?

16 A. You got to turn every two hours to keep  
17 from getting any pressure sores on your backside and  
18 everything.

19 Q. Can you turn yourself?

20 A. Yes, sir.

21 Q. Have you trained yourself to turn every  
22 two hours?

23 A. Yes, sir.

24 Q. Do you have to wake up for that purpose?

25 A. Yes, sir.



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A. Yes, sir.

Q. Can you drive an automobile?

A. Yes, sir.

Q. What kind of equipment has to be attached  
to this?

A. Have to put hand controls on it.

Q. Hand controls?

A. Right.

Q. That's brake and gear shift?

A. No. Just brake and gas.

Q. Where are they located?

A. Right under the steering wheel.

Q. Going back to the scene of the accident,  
Mr. Thomas, would you tell the Court and jury whether  
there was anything you could have done to avoid this  
accident?

A. No, sir.

Q. Will you tell the Court and jury whether  
or not you were going too fast to make the curve?

A. No, sir. I wasn't going too fast.

Q. Will you tell the Court and jury whether  
or not even if you had been going fast, whether this car  
would have forced you off the road?

A. Yes, sir.

Q. How many times have you driven 220 North?

1 A. I don't know. A whole lot.

2 Q. Thousands of times?

3 A. Yes, sir.

4 Q. Do you know the road very well?

5 A. Yes, sir.

6 Q. What is the maximum speed at which you  
7 can take the curve at the Smith River Bridge?

8 A. Speed limit is 40 - 45. I guess you can  
9 take it at 50 or 60 miles per hour.

10 Q. You can do it at that?

11 A. Yes, sir.

12 Q. There's no claim being made for your  
13 damage to your motor vehicle, but was it damaged in the  
14 mishap?

15 A. Yes, sir. It was total loss.

16 Q. Have you learned later where they took it?

17 A. Yes, sir. Took it to Jesse Mabry's -  
18 towed it in to his storage lot.

19 Q. You were making about sixty to sixty-five  
20 dollars a week. Would you have been able to continue  
21 with that job or would you have?

22 A. Yes, sir. Until I, you know, I found  
23 another job. It was just part-time.

24 Q. You lost two years earnings at, say,  
25 sixty dollars a week?

1 A. Yes, sir.

2 Q. If my arithmetic's right, that would be  
3 about sixty-five hundred dollars that you've lost thus  
4 far in wages if you'd continued there?

5 A. Right. Yes, sir.

6 Q. And so far as the future is concerned, do  
7 you have any prospects of getting a job in your present  
8 condition?

9 A. Not 'til I finish college.

10 Q. You hope to do that within the next - how  
11 long?

12 A. This will be my first year right here.

13 Q. You have four years to go?

14 A. Yes, sir.

15 Q. Alright. You may examine, Mr. Stone.

16

17 CROSS EXAMINATION BY MR. STONE:

18 Q. Mr. Thomas, do you know any reason why Mr.  
19 King would say you were going so fast when you weren't?

20 A. Any reason why he would say it?

21 Q. Um-hmm.

22 A. Probably because he's lying.

23 Q. Did he have any reason to lie that you  
24 know of?

25 A. Not exactly. But you know how people tell



1 things. Like the girl at the Hop-In said I was running  
2 180 miles an hour, jumped across the river and came back  
3 the other side. Why do people tell things like that?

4 Q. Do you know any reason why he'd make that  
5 up?

6 A. Same reason she made hers up.

7 Q. Which is what?

8 A. They don't tell the truth.

9 Q. What had you been doing that day before  
10 you went down there?

11 A. Been working at the service station.

12 Q. You didn't actually work for Mr. Harmon -  
13 he just allowed you to use his facility?

14 A. Right. I'd go pick up old peoples' cars  
15 and work on them. Old people can't live on social  
16 security no more.

17 Q. They would pay you direct rather than Mr.  
18 Harmon paying you?

19 A. Right.

20 Q. When did you decide to go down to Moon's?

21 A. Well, my brother-in-law and sister came  
22 by and asked if I'd like to go to Moon's. I told them I  
23 didn't know. Later on when I talked to this girl, she-  
24 said she'd like to go, so we went together.

25 Q. What time did you go down there?

1 A. I got there about 9 o'clock.

2 Q. And at first you told us that your brother-  
3 in-law and your sister were the only people that you knew  
4 there?

5 A. That's right.

6 Q. But actually your girlfriend was there  
7 with you, wasn't she?

8 A. Right.

9 Q. What time did you leave?

10 A. I left around 10 o'clock.

11 Q. And you didn't take her home, did you?

12 A. No, sir.

13 Q. You just left her there. You didn't even  
14 tell her you were leaving?

15 A. I sure did.

16 Q. Why didn't she go with you?

17 A. I told her I wasn't having a good time.  
18 She wanted to stay. I told her to ride along with my  
19 brother-in-law and sister.

20 Q. So you weren't upset with her?

21 A. No, sir.

22 Q. You all had been going together for a  
23 pretty good while, hadn't you?

24 A. Off and on - yeah.

25 Q. And your statement to the Court and the

1 jury is that you were going 40 miles per hour all the  
2 way back to where the accident happened?

3 A. Yes, sir.

4 Q. And never exceeded the speed limit in the  
5 whole distance between Moon's and the Smith River?

6 A. You mean getting over the speed limit at  
7 all?

8 Q. Um-hmm.

9 A. I didn't have no reason to. I wasn't in  
10 no hurry.

11 Q. In response to Mr. Epperly's question, you  
12 said you didn't remember passing a vehicle around the  
13 state police headquarters. Are you saying you did not  
14 pass one or you don't remember whether you did or not?

15 A. I'm pretty sure I ain't passed no  
16 vehicles. If I'd passed one - what he says - if he  
17 started chasing me down, I'd remember that.

18 Q. Your statement is you didn't pass a  
19 vehicle. Are you saying you don't remember whether or  
20 not you didn't pass one or you didn't pass one period?

21 A. I really can't remember.

22 Q. You also stated there weren't any vehicles  
23 behind you from the K-Mart on.

24 A. Right.

25 Q. In like manner, are you saying you don't



1 remember whether or not there was a vehicle behind you  
2 or not or you're positive there were no vehicles behind  
3 you?

4 A. I'm positive because a vehicle - you'd  
5 see lights in your mirror.

6 Q. So if Mr. King says he was behind you,  
7 that's not true?

8 A. That's not true. That's exactly right.

9 Q. Now when you got down near the clover leaf  
10 where 58 and 220 intersect, where was it that you came  
11 upon this unknown vehicle?

12 A. When you start into the curve. ✓

13 Q. Started into the curve?

14 A. Right.

15 Q. And do you know what kind of vehicle it  
16 was?

17 A. No, sir.

18 Q. Do you know what color it was?

19 A. No, sir.

20 Q. Do you know whether it was a car or a  
21 truck?

22 A. It was a car.

23 Q. Do you know how many doors it had?

24 A. No, sir. Not really.

25 Q. Do you know how many people were riding in

1 it?

2 A. No, sir.

3 Q. And you say that there was a flat bed  
4 truck in front of it?

5 A. Right.

6 Q. Do you know the color or anything else  
7 about it?

8 A. No, sir.

9 Q. And your statement is that the vehicle  
10 pulled out to pass the truck?

11 A. Right.

12 Q. And you were going 40 miles per hour?

13 A. Right.

14 Q. And you were passing them?

15 A. Right.

16 Q. It's true, is it not, that just as you  
17 approach that bridge, the speed limit changes to 35,  
18 isn't it?

19 A. I don't know.

20 Q. You say you've traveled this highway  
21 thousands of times?

22 A. That's right. I know it was 45.

23 Q. You don't remember it changes to 35?

24 A. No, sir. Sure don't.

25 Q. What action, exactly, did you take when

1       this unidentified vehicle pulled to its left?

2               A. When it pulled to the left, I pulled to  
3 my left.

4               Q. Did you hit your brakes?

5               A. Yes, sir. Eased on my brakes when he  
6 was pulled to the left.

7               Q. Why did you ease them on?

8               A. If you slammed them on, throw you through  
9 the windshield.

10              Q. You would concede there's a difference  
11 between easing them on and slamming them on?

12              A. Ease you ease them on and complete . . .

13              Q. Nothing different between those two  
14 braking actions? At any rate, you didn't hit the brakes  
15 hard enough to skid your tires?

16              A. No, sir.

17              Q. Did you take any action with the steering  
18 wheel?

19              A. I eased it over to the left. Eased the  
20 whole car over to the left.

21              Q. And you say the grass was wet?

22              A. Yes, sir.

23              Q. It hadn't been raining, had it?

24              A. No, sir. But the waterfalls running at  
25 the dam - the mist came on the grass.



1 Q. You're saying the mist from the waterfall  
2 was on the grass?

3 A. Right.

4 Q. How high was the grass, do you know?

5 A. It hadn't been mowed.

6 Q. How far was it from the point you left the  
7 highway to where you went off into the river?

8 A. Fifty feet. Forty - fifty feet.

9 Q. Are you aware of where the guard rail is  
10 there?

11 A. Right.

12 Q. Do you know how long that guard rail is  
13 approximately?

14 A. No, sir.

15 Q. Do you know how long 50 feet is?

16 A. Well, I just know it's 50 feet. I couldn't  
17 tell you exactly because I don't know.

18 Q. How far would you say it is from that wall  
19 to this wall?

20 A. Thirty feet.

21 Q. So it would be somewhat less than twice  
22 that distance?

23 A. Right.

24 Q. Your statement to the jury is you were not  
25 able to slow your car down enough at 40 miles per hour to

1 keep from going over the bank?

2 A. Yes, sir.

3 Q. I believe you also hit a telephone pole  
4 or the wires leading to the pole?

5 A. The pole was hundred percent depreciation  
6 when they sent me for the bill.

7 Q. The question is, though, did you hit it?

8 A. Yes, sir.

9 Q. And how far out into the river did you  
10 land?

11 A. Just right past the pole.

12 Q. Just right past the pole?

13 A. Right.

14 Q. Did you land in the river?

15 A. Yeah. I landed in the river. The dam  
16 was going. The water was flowing down through there.

17 Q. Did your car roll down the bank or did it  
18 go off into the river?

19 A. It just went out, hit the pole, went into  
20 the river. That's all I remember. Just hit the pole is  
21 all I remember.

22 Q. So it was in the air when it left the bank -  
23 it didn't come up to the crest of the bank and then rolled  
24 up to the . . .

25 A. A car always has to go up to the - it will

1 automatically keep going before it nose-dived down.

2 Q. My question is, though, were you in flight?

3 A. You mean air-borne or something like that?

4 Q. Um-hmm.

5 A. No, sir.

6 Q. You were not?

7 A. No, sir.

8 Q. You're saying all four wheels remained on  
9 the ground all the time?

10 A. No, sir. They couldn't remain on the  
11 ground the whole time because the car hit the pole so  
12 it - two wheels had to be off the ground.

13 Q. How high on the post did you hit it?

14 A. I don't know. I didn't go back down and  
15 look at it.

16 Q. Are you saying that one of your four wheels  
17 was on the ground the whole time?

18 A. Probably so. I don't remember really. I  
19 was too busy trying to stop the car.

20 Q. You don't remember whether it was on the  
21 ground or not, then?

22 A. No, sir.

23 Q. You said that you could take that curve at  
24 60 miles per hour. Have you ever done that?

25 A. No, sir.



1 Q. How do you know you can take that curve  
2 at 60 miles per hour?

3 A. It was just an estimate.

4 Q. You don't know how fast you'd been going  
5 before you lost it in that curve, do you?

6 A. Right.

7 Q. Alright. No further questions.  
8

9 REDIRECT EXAMINATION BY MR. EPPERLY:

10 Q. Do you remember anything that took place  
11 after you struck the pole?

12 A. No, sir.

13 Q. You don't really know whether you were  
14 air-borne or not when you struck the pole, do you?

15 A. No, sir.

16 Q. You may stand aside.  
17

18 ~~THE WITNESS STANDS ASIDE.~~  
19  
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25

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF HENRY COUNTY

3  
4 CHARLES RANDOLPH THOMAS,

5 Plaintiff

6 VS.

7 JOHN DOE,

c/o Nationwide Insurance Company

8 c/o David Smythe, its Registered Agent

5401 Fort Avenue

9 Lynchburg, Virginia

10 Defendant

\*  
\*  
\*  
\* TRANSCRIPT  
\*  
\* OF  
\*  
\* EVIDENCE  
\*  
\*  
\*

11  
12 A stenographic report of the evidence introduced  
13 in the above-captioned case, heard in the Circuit Court  
14 of Henry County, on the 29th day of July, 1981, before  
15 Honorable Frank I. Richardson, Jr., Judge, and jury.

16  
17 APPEARANCES:

JOHN D. EPPERLY,  
Attorney for Plaintiff

18  
19 CHARLES M. STONE,  
Attorney for Defendant

20  
21  
22  
23 - - - - -

24 Ann K. Nichols  
25 Court Reporter  
Martinsville, VA 24112

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1 THE COURT: If you and Mr. Stone have  
2 got a stipulation, you've got a stipulation.

3  
4 LINDA SAUNDERS

5 the witness, called to testify on behalf of the plaintiff,  
6 being first duly sworn, testified and stated as follows:  
7

8 DIRECT EXAMINATION BY MR. EPPERLY: 7

9 Q. What is your name?

10 A. Linda T. Saunders.

11 Q. How old are you, Mrs. Saunders?

12 A. Thirty-one.

13 Q. Are you a sister of Randy Thomas who is  
14 the plaintiff in this case?

15 A. Yes, I am.

16 Q. When and where did you receive word that  
17 your brother had been injured in an accident?

18 A. I was in Statesboro, Georgia and my sister  
19 called and said he had a car accident and was in serious  
20 condition and for me to come home.

21 Q. Did you come home?

22 A. Yes I did. I left that day coming home.

23 Q. What time did you get to Martinsville?

24 A. I got there approximately 5 or 6 o'clock  
25 that afternoon.

1 Q. What did you do immediately after getting  
2 to the hospital?

3 A. I went straight to the hospital.

4 Q. Do you remember where he was?

5 A. Yes. In Surgical Intensive Care.

6 Q. When you first saw him, what was his  
7 condition?

8 A. When I first went in, he was laying there  
9 with his eyes closed. I spoke to him several times. He  
10 opened his eyes. He was groggy. He just come and went.

11 Q. Did you have any conversation with him?

12 A. Yes. Randy at the time didn't know he  
13 was paralyzed, so we was told not to mention his injuries  
14 to him, so I said, "Randy, what happened?"

15 MR. STONE: I have to put my objection  
16 on the plaintiff as any statement by the plaintiff to  
17 her as hearsay.

18 THE COURT: I would ask Mr. Epperly to  
19 get it straight. I'm not exactly sure at what time it  
20 was.

21 MR. EPPERLY: Five o'clock in the after-  
22 noon. The accident occurred 11 o'clock the night before.  
23 Is that right?

24 A. That's right.

25 THE COURT: I'll overrule the objection

1 for purpose of the record.

2 MR. STONE: Note my exception.

3 BY MR. EPPERLY:

4 Q. Was your brother conscious or unconscious  
5 when you went into the room?

6 A. When I went into the room, I would say he  
7 was unconscious.

8 Q. How did you get his attention?

9 A. I spoke to him. I called his name several  
10 times.

11 Q. Can you tell us whether or not his eyes  
12 were closed when you first went in?

13 A. Yes. His eyes were closed.

14 Q. What response did you get when he opened  
15 his eyes?

16 A. He just looked at me and I said, "Hey,"  
17 and he said, "Hey," and I said, "Do you remember what  
18 happened, Randy?" He said, "A car ran me out of the road,"  
19 and he closed his eyes.

20 Q. Did you have any further conversation with  
21 him at that time?

22 A. No I didn't. I just stood there.

23 Q. What was his condition when you left?

24 A. When I left going back to Georgia?

25 Q. No. When you left his room that day.

1                   A. He was laying there with his eyes closed.  
2                   He was still just groggy.

3                   Q. Could you tell whether or not he was con-  
4                   scious?

5                   A. When I left he wasn't saying anything. He  
6                   was just laying there with his eyes closed so I'd say  
7                   no, he didn't realize what was going on.

8                   Q. Did he appear to think at all or take any  
9                   time to think when he answered the question?

10                  A. No. When I asked him, he just went ahead  
11                  and said, "A car ran me out of the road." He didn't  
12                  appear to think at all.

13  
14                  CROSS EXAMINATION BY MR. STONE:

15                  Q. I believe you filed the accident report  
16                  for your brother, did you not?

17                  A. Yes I did.

18                  Q. You didn't mention anything in your report  
19                  about another car, did you?

20                  A. No, I didn't.

21                  Q. No further questions.

22  
23                  REDIRECT EXAMINATION BY MR. EPPERLY:

24                  Q. Mrs. Saunders, why didn't you?

25                  A. Because I knew Randy had told me a car ran



1 him out of the road. I didn't know what kind of car it  
2 was or who was driving and the accident form wasn't one  
3 like I filled out before.

4 Q. In the accident form you had, was there a  
5 place to show what took place?

6 A. No it wasn't.

7 Q. Mrs. Saunders, I show you a piece of paper  
8 and ask if you'll identify that?

9 A. This is the accident report I filed - a  
10 copy of it.

11 Q. Doesn't say anything about a second car.  
12 Why didn't you say anything about a second car?

13 A. I didn't know anything about the second  
14 car. I knew a car ran Randy off the road, but I didn't  
15 have any information about what kind of car or who was  
16 driving or anything.

17 Q. Is there any space on there for saying  
18 what happened?

19 A. No, it's not.

20 Q. We'd like to introduce this into evidence.

21 THE COURT: That particular report?

22 MR. EPPERLY: This is a private report,  
23 I believe.

24 THE COURT: Do you have any objection to  
25 it?

1 MR. STONE: No, sir. That's the state  
2 report, but I don't have any objection to it.

3 MR. EPPERLY: Actually I think the  
4 trooper's report is not admissible.

5 THE COURT: Alright.

6 MR. EPPERLY: We're just explaining why  
7 she didn't say - didn't identify the car.

8 THE COURT: We'll mark this as Plaintiff's  
9 Exhibit 1.

10

11 RE CROSS EXAMINATION BY MR. STONE:

12 Q. Mrs. Saunders, there is a place on here,  
13 is there not, for you to tell the authorities how many  
14 cars were involved, isn't there?

15 A. Yes, sir. It is.

16 Q. It says right here, "Number of vehicles"?

17 A. Yes, sir.

18 Q. And you just put "one", didn't you?

19 A. Right. I thought that meant was the other  
20 car damaged or anything like that.

21 Q. It doesn't say anything about the damage,  
22 does it?

23 A. No, sir.

24 Q. If you didn't know anything about the other  
25 vehicle, why didn't you just put "unknown"?

1 We object and except to the ruling of the Court.

2 THE COURT: Alright.

3  
4 CLOYD KING

5 the witness, called to testify on behalf of the defendant,  
6 being first duly sworn, testified and stated as follows:  
7

8 DIRECT EXAMINATION BY MR. STONE:

9 Q. Would you state your name and address for  
10 the Court, please?

11 A. Cloyd King, Route 2, Martinsville.

12 Q. Mr. King, how are you employed?

13 A. I'm employed at DuPont.

14 Q. Do you have any other employment?

15 A. Yes, sir. I work for the Sheriff's  
16 Department.

17 Q. Of Henry County?

18 A. Of Henry County.

19 Q. Do you recall the night of July the 6th,  
20 1979?

21 A. Yes, sir. I do.

22 Q. Did you have occasion to become involved  
23 in an accident that occurred at the twin bridges that go  
24 over the Smith River at the Hydroelectric Plant?

25 A. I saw an accident there. Yes, sir.

1 Q. When did you first become involved in that  
2 series of events?

3 A. The vehicle passed me on 220 just north  
4 of the State Police Office on 220 South.

5 Q. Do you know how far that is from Smith  
6 River down at the bridge?

7 A. I would guess approximately a mile.

8 Q. Okay. Now you say the vehicle passed you  
9 there. What kind of vehicle was it? When did you first  
10 see it?

11 A. A blue Camaro. I saw it coming up behind  
12 me. Appeared to be traveling at a high rate of speed and  
13 I kept noticing it in the mirror - didn't seem to be  
14 getting in the left lane or slowing down. The vehicle  
15 passed me and was traveling at a very high rate of speed.  
16 I had gotten almost off the road to give the vehicle room  
17 to pass. At the time I had a Henry County radio in my  
18 car. I called the Henry County Sheriff Department.

19 Q. You can't say what you told somebody else.  
20 How did the vehicle pass you?

21 A. The vehicle still had two wheels in my  
22 lane on my side of the center line at a very high rate of  
23 speed.

24 Q. What did you do then?

25 A. I called the dispatcher at the Sheriff's



1 Office to notify the city.

2 Q. Assume they have an objection to what you  
3 told somebody else, but other than talking on the radio,  
4 what did you do?

5 A. I speeded up to get a better description  
6 of the vehicle.

7 Q. What kind of vehicle were you driving?

8 A. '78 Ford.

9 Q. And you say that you're a part time  
10 deputy, is that correct?

11 A. Yes, sir.

12 Q. Is it specially equipped?

13 A. Yes, sir.

14 Q. With what?

15 A. With red lights, siren and police radio.

16 Q. Did you turn on your siren when the vehicle  
17 passed you up there at the State Police Headquarters?

18 A. Yes, sir. And the red lights.

19 Q. And then what did you do?

20 A. Attempted to stop the vehicle near the  
21 K-Mart stop light. As the light changed, the vehicle had  
22 slowed down. As the light changed, the vehicle speeded  
23 up again, still headed north on 220.

24 Q. Did you ever lose sight of this vehicle  
25 from the time it passed you until you reached the K-Mart

1 stop light there?

2 A. No, sir.

3 Q. What speed were you traveling when you  
4 were pursuing the vehicle?

5 A. At what point?

6 Q. Between the State Police Headquarters and  
7 the light there at the K-Mart?

8 A. Probably 80 or 90 at the foot of the hill  
9 there.

10 Q. Was the light red or green when the vehicle  
11 you were pursuing approached it?

12 A. It was red.

13 Q. And did it change or not? Did the vehicle  
14 you were pursuing stop at that light?

15 A. No, sir. It changed green before he got  
16 to the light.

17 Q. Then what happened?

18 A. He proceeded to speed up again.

19 Q. And you had your siren and your lights on?

20 A. Yes, sir.

21 Q. What did you do?

22 A. Other than radio contact with the Sheriff  
23 Department, I just followed the car to see if it turned  
24 off, to keep in sight of it, to notify the city of the  
25 vehicle.

1 Q. How far did you follow him?

2 A. I followed it all the way from just north  
3 of the State Police Office to the Smith River Bridge.

4 Q. Do you recall what time of night this was?

5 A. It was shortly before 11 p.m.

6 Q. Did you still have the vehicle in sight  
7 as you approached the cloverleaf down there where U.S.  
8 58 intersects with U.S. 220?

9 A. Yes, sir. I did.

10 Q. How far behind the vehicle were you?

11 A. Probably 300 feet.

12 Q. And what was your speed at that point?

13 A. Approximately 90 miles an hour.

14 Q. Were you gaining on the vehicle or not?

15 A. No, sir. I was losing ground.

16 Q. And what did you see as it passed that  
17 intersection?

18 A. I started slowing down and the other car -  
19 I didn't notice it slowing down at all.

20 Q. Why were you slowing down?

21 A. Sir?

22 Q. Why did you slow down?

23 A. Because I was running too fast to make the  
24 curve. The other car went almost straight and missed the  
25 bridge - went on the . . .

1 Q. At what point - what do you mean "it  
2 went almost straight"?

3 A. When it went into the curve, it didn't  
4 turn with the curve.

5 Q. And where did it go?

6 A. It went in the median between the bridges  
7 and then into the river.

8 Q. Did you see any other vehicles out there?

9 A. Yes, sir.

10 Q. Did you notice - what did you see?

11 A. There was a car in the right lane, but I  
12 don't know what kind of car it was.

13 Q. The right lane going north?

14 A. Yes, sir.

15 Q. You don't know what kind it was?

16 A. No, sir.

17 Q. Was that ahead of the car you were pursuing?

18 A. Yes, sir.

19 Q. Did you see any other vehicles?

20 A. No, sir.

21 Q. Did you see a flatbed truck in front of  
22 that car?

23 A. No, sir.

24 Q. Were you in a position to determine - if  
25 there had been a flatbed truck in front of it, would you



1 have seen it?

2 A. I think so. Yes.

3 Q. So you were some - what - 300 feet behind  
4 or to the south of the car you're describing?

5 A. Yes.

6 Q. What elevation is it as compared to the  
7 cars you were describing?

8 A. It's somewhat higher. I don't know what  
9 the exact elevation would be.

10 Q. Did you see the car that the blue Camaro  
11 passed? Did you see it do anything - veer into the other  
12 lane or off the road or anything?

13 MR. EPPERLY: If the Court please, I  
14 object to the leading question.

15 THE COURT: Overrule.

16 MR. EPPERLY: Exception.

17 BY MR. STONE:

18 Q. What, if anything, did you see that car do?

19 A. I didn't notice it doing anything unusual.  
20 Just traveling north in the right-hand lane.

21 Q. Could you say whether or not it had anything  
22 to do with the vehicle going off into the Smith River?

23 A. Could I say if it had anything to do with  
24 it?

25 Q. Whether it did or not, do you know?

1 A. I didn't notice anything, but I couldn't  
2 say.

3 Q. Could you tell whether or not either  
4 vehicle ever hit its brakes?

5 A. I don't recall.

6 Q. Did you - I assume that you did stop at  
7 the scene?

8 A. Yes, sir.

9 Q. Did you see the Camaro go into the river?

10 A. Yes, sir.

11 Q. And you stopped?

12 A. Yes, sir.

13 Q. And what did you do?

14 A. I got out with a flashlight. Went out on  
15 the bridge and shined the light down in the water to see  
16 if they could locate it and I saw the car in the river.

17 Q. About how far out in the river was it?

18 A. Just, I would guess, 30 - 40 feet.

19 Q. That's just an estimate on your part?

20 A. Yes, sir.

21 Q. Did you actually go down in the river?

22 A. No, sir.

23 Q. Did you go out on the median between the  
24 two bridges there?

25 A. In the grass area?

1 Q. Yeah.

2 A. Yes, sir.

3 Q. Can you describe the height of the grass?

4 A. Yes, sir. Very deep. Probably three feet  
5 deep - three feet tall.

6 Q. Can you say whether or not it was wet or  
7 dry or had any other unusual characteristic?

8 A. I didn't notice anything unusual. I didn't  
9 notice it being wet or anything.

10 Q. Were there any other markings through the  
11 grass or on the highway that you witnessed?

12 A. There were markings of the tire tracks that  
13 had gone through the grass where the grass was pushed over.

14 Q. Is that where you saw the vehicle go  
15 between the median there?

16 A. Yes, sir.

17 Q. Did you notice anything else?

18 A. No, sir.

19 Q. Is it your testimony that from the time  
20 this vehicle passed you at the State Police Headquarters,  
21 that you did not lose sight of it until it went in the  
22 river?

23 A. Yes, sir.

24 Q. Before this law suit was filed, did you  
25 know any of the people that were involved, myself or Mr.

1 Epperly or Mr. Thomas or any of the witnesses?

2 A. No, sir. I know Mr. Mabry.

3 Q. Mr. Mabry?

4 A. Mr. Mabry and Trooper Blair.

5 Q. Okay. Have you got any reason to testify  
6 in this case one way or another?

7 A. No, sir.

8 Q. Answer to Mr. Epperly.

9  
10 CROSS EXAMINATION BY MR. EPPERLY:

11 Q. Mr. King, when were you employed by the  
12 Sheriff's Department?

13 A. About eight or nine years ago. Maybe ten  
14 years ago.

15 Q. Are the same rules in force now as were in  
16 force then when you started?

17 A. No, sir.

18 Q. The rule has always been that you're not  
19 to stop a vehicle unless you had a full time deputy with  
20 you. Is that correct?

21 A. No, sir.

22 Q. When did that change?

23 A. When Sheriff Rodgers took office.

24 Q. You concede, then, you had the right to  
25 stop this vehicle?



1 A. Yes, sir. I did.

2 Q. But you wouldn't now, would you?

3 A. No, sir. I wouldn't disobey orders.

4 Q. Well, your orders were the same then, in  
5 1979, as they are now, weren't they?

6 A. No, sir.

7 Q. You mean that you are authorized to stop  
8 vehicles in a private car, not in uniform?

9 A. That's correct.

10 Q. Was your car marked in any fashion?

11 A. No, sir.

12 Q. So it was your intention to stop this car?

13 A. Yes, sir.

14 Q. Didn't know who was driving it?

15 A. No, sir. I didn't.

16 Q. You say that you followed it from somewhere  
17 near the State Police Headquarters?

18 A. Yes, sir. Just north of the State Police  
19 Headquarters.

20 Q. And he went about 90 miles an hour, did you  
21 say?

22 A. That's how fast I was traveling - yes.

23 Q. I see. He slowed down enough to stop at  
24 the stop light at K-Mart, did he not?

25 A. Yes, sir. He slowed down for the K-Mart

1 stop light.

2 Q. He could have stopped, couldn't he?

3 A. Yes, sir. If necessary.

4 Q. Then it's your testimony he got up to 90  
5 miles an hour again?

6 A. Yes, sir.

7 Q. Now, didn't you lose sight of this vehicle  
8 when it went over the bridge at the cloverleaf?

9 A. No, sir. I didn't.

10 Q. Didn't you testify previously that you  
11 did lose sight of it?

12 A. No, sir. I did not.

13 Q. What did you testify to?

14 A. I didn't testify that I lost sight of the  
15 vehicle anywhere.

16 Q. You did give depositions in this case, did  
17 you not?

18 A. Yes, sir.

19 Q. On the 1st day of July, 1981, didn't you?

20 A. Yes, sir. At your office. I don't recall  
21 the date. I did give a deposition on it.

22 Q. Deposition taken for discovery. Now your  
23 testimony today is that this car went on straight. This  
24 car that was ahead of you, went on straight off the road,  
25 is that right?

1           A. As it went into the turn, into the curve?  
2 Is that what you're referring to?

3           Q. Yeah. I'm talking about. . .

4           THE COURT: I think you've got to narrow  
5 it down - what you're talking about.

6           BY MR. EPPERLY:

7           Q. We're talking about when he went into the  
8 south end of the Smith River Bridge. When he was approaching  
9 it, he continued straight?

10          A. Yes, sir. He didn't make very much turn.

11          Q. He did turn, though, didn't he?

12          A. Somewhat, yes, but very little.

13          Q. But on your direct testimony, didn't you  
14 testify he went straight on?

15          A. Yes, sir. Somewhat. But I can't say for  
16 sure if it's a direct straight line with no variation.  
17 I didn't check it that close, but didn't appear to turn.

18          Q. Didn't you say in your deposition that you  
19 lost sight of the vehicle after it went over the bridge  
20 in the cloverleaf?

21          A. I lost sight when it went over the bank in  
22 the river.

23          Q. I realize that. You also testified you  
24 didn't know whether this car beside Mr. Thomas' car  
25 crowded him out or not?

1 A. No, I didn't - I didn't see it.

2 Q. You were looking right at it, you say?

3 A. Yes, sir. I saw the car.

4 Q. I'm going to read you a question. The page  
5 number is 20-King. "I mean you couldn't possibly see him  
6 there?" You said to be fair, you lost sight of it. You  
7 said when he went over the bank - of course you did that.  
8 Question: "I mean you couldn't possibly see him there?"  
9 Answer: "Right. I couldn't say whether or not the car  
10 crowded - whether the car crowded him or not. Really I  
11 couldn't truthfully say the car did or did not. I don't  
12 know, but there was a car in the right lane."

13 A. That's correct.

14 Q. Did you testify to that?

15 A. Yes, sir.

16 Q. Didn't you mean to give the impression  
17 here today that this car didn't crowd him out of the road?

18 A. I didn't mean to give the impression either  
19 way.

20 THE COURT: Just a minute, Mr. King. We're  
21 not interested in impressions. We're interested in what  
22 the testimony is.

23 MR. EPPERLY: I understand that, sir.

24 BY MR. EPPERLY:

25 Q. Your testimony is the car, Mr. Thomas's,



1       went straight off into the river?

2               A.   Um-hmm.

3               Q.   But now you say, in response to this cross  
4       examination, knowing I have the deposition in front of  
5       me, that you don't know whether the car crowded him off  
6       the road or not, do you?

7               A.   No, I don't know. I didn't see it.

8               Q.   It certainly could have, couldn't it?

9               A.   Could possibly have.

10              Q.   In response to the question was "Right.  
11       I couldn't say whether the car crowded him or not. Really  
12       I couldn't truthfully say the car did or did not. I don't  
13       know. There was a car in the right lane." Question:  
14       "That's what he says." Answer: "There was a car in the  
15       right lane, but I couldn't say if it did or didn't."  
16       Was that your testimony?

17              A.   That's correct.

18              Q.   That's your testimony today?

19              A.   That's correct.

20              Q.   That this car that Mr. Thomas testified  
21       ran him out of the road - could have?

22              A.   It may have crowded him. I don't know.  
23       I wasn't . . .

24              Q.   You weren't close enough to say, were you?

25              A.   I was 300 feet behind Mr. Thomas.

1 Q. So you weren't close enough to say whether  
2 or not the other car crowded him out of the road?

3 A. I didn't see the car crowd him.

4 Q. I asked you a simple question - whether or  
5 not the car did? You weren't close enough to say whether  
6 he . . .

7 A. I couldn't say whether he did or not.

8 THE COURT: He said that three times, Mr.  
9 Epperly.

10 BY MR. EPPERLY:

11 Q. You're not saying that he didn't do it?

12 A. No. I'm not saying he didn't.

13 Q. Were you on duty?

14 A. No, sir. I was not.

15 Q. Was anybody in the vehicle with you?

16 A. No, sir.

17 Q. Did your car have any special markings?

18 A. No, sir.

19 Q. And you say you weren't in uniform?

20 A. No, sir.

21 Q. You don't know whether there was a car  
22 ahead of the car that Mr. Thomas said crowded him out of  
23 the road or not, do you?

24 A. I didn't see one.

25 Q. You don't know whether there was one or not?

1           A. No. I don't know. I didn't see one.  
2 That's all I can answer.

3           Q. Can't you just answer the question, Mr.  
4 King? Do you know whether . . .

5           MR. STONE: Objection.

6           THE COURT: He said he didn't see one.

7           MR. EPPERLY: I want to know if he knows  
8 whether or not there was one.

9           BY MR. EPPERLY:

10          Q. You can't say truthfully you don't know  
11 that there wasn't one?

12          A. No. I didn't see one.

13          Q. Alright. There could have been one there  
14 but you just didn't see it if there was one?

15          A. Possibly.

16          Q. Alright. You may stand aside.

17          THE COURT: Let me ask you this, Mr.  
18 King. You started pursuing this vehicle in the vicinity  
19 of the State Troopers Office and you say it stopped or it  
20 slowed down near the K-Mart stop light. How close did  
21 you get to it in that area?

22          A. At the K-Mart stop light I got probably  
23 within two car lengths of it. I got close enough to read  
24 the license number.

25          THE COURT: And did you have your siren

1 and red lights on at that point?

2 A. Yes, sir.

3 THE COURT: Then what happened?

4 A. The car speeded up, started gradually  
5 pulling away from me.

6 THE COURT: And what distance did you  
7 maintain between that car and your car as you went up  
8 toward the bridge?

9 A. When we approached the 58 intersection,  
10 I would say he was approximately 300 feet ahead of me then.

11 THE COURT: Alright. That's all the  
12 questions I have.

13 BY MR. EPPERLY:

14 Q. What was your speed when you lost sight of  
15 this vehicle?

16 A. I didn't lose sight of the vehicle.

17 Q. You just said you lost sight of it when it  
18 went over the bank?

19 A. Yes, sir. I don't . . .

20 Q. What was your speed then?

21 A. I don't know. I was starting to stop -  
22 slowing down. I wasn't looking at the speedometer.

23 Q. You were 300 feet behind it before you  
24 started slowing down, is that right?

25 A. Yes, sir.



1 Q. Is the end of Smith River Bridge lower  
2 than the middle of the cloverleaf?

3 A. Yes, sir.

4 Q. So you were on the south side of the clover-  
5 leaf, weren't you, when this car went in the river?

6 A. No, sir. I was approximately on the bridge -  
7 on the bridge that goes over 58.

8 Q. Did you pull over and stop?

9 A. Yes, sir.

10 Q. When?

11 A. At the bridge.

12 Q. Alright. You may stand aside.

13 THE WITNESS STANDS ASIDE.

14

15 TROOPER L. W. BLAIR

16 the witness, called to testify on behalf of the defendant,  
17 being first duly sworn, testified and stated as follows:

18

19 DIRECT EXAMINATION BY MR STONE:

20 Q. Would you state your name, please?

21 A. Trooper L. W. Blair.

22 Q. Trooper Blair, I believe you're employed  
23 by the Virginia State Police?

24 A. Yes, sir.

25 Q. Did you have an occasion to investigate an

1 automobile accident on the 6th day of July, 1979?

2 A. Yes, sir.

3 Q. Where did this accident take place?

4 A. At the bridge down at River Hill coming  
5 into the city of Martinsville before you get to the city  
6 limit of Martinsville.

7 Q. Can you say how far that is from the  
8 Virginia State Police Headquarters?

9 A. Approximately two miles, I'd say. I don't  
10 know. I didn't measure.

11 Q. What type of highway do you have there at  
12 the bridge?

13 A. It's curved blacktop, four lane marked  
14 with passing lines.

15 Q. How wide is that highway?

16 A. Approximately 20 foot.

17 Q. At what time did you arrive at the scene?

18 A. I arrived approximately 11:15 - 11:20.

19 Q. What did you find when you arrived?

20 A. When I arrived I found a 1979 Chevrolet,  
21 it had been owned by Charles Randolph Thomas, sitting off  
22 in the river itself. Also found a post that had been  
23 knocked over on northbound.

24 Q. A post?

25 A. Yes, sir.

1 Q. What kind of post?

2 A. Just a marker post - marking a curve of  
3 the highway there.

4 Q. Didn't have a sign on it?

5 A. I think it had a reflector on it, I believe.

6 Grass had been mashed down going northbound up to the  
7 embankment where the vehicle had ran off. A small tree  
8 had been uprooted. A telephone pole - the top of the  
9 pole had been knocked off and several of the wires were  
10 hanging down and the vehicle was on out in the river  
11 further than where this took place.

12 Q. How far out in the river was it?

13 A. I didn't go down and measure it with a  
14 tape or anything. I just estimated it was a hundred foot  
15 out into the river.

16 Q. Where was the pole damaged?

17 A. At the very top where the wires connect on  
18 to the top of the pole.

19 Q. How does that relate to the . . .

20 A. The embankment is high and the pole comes  
21 off almost level with the top of the embankment where the  
22 vehicle left. It clipped the top of the pole and the  
23 wires were hung down.

24 Q. What shape was the grass in?

25 A. It had been mashed down. The grass was

1 approximately two or three feet high. Just regular grass.

2 Q. Could you tell whether or not it was wet?

3 A. Not to my knowledge. It was - might have  
4 been some dew or something on it.

5 Q. Did you notice any?

6 A. No, sir.

7 Q. Were the marks in the median sufficient  
8 that you could follow them from the road to the bank there?

9 A. Yes, sir.

10 Q. Did you step that off?

11 A. Yes, sir.

12 Q. Do you have an estimate of approximately  
13 how far it was from the point the vehicle left the highway  
14 to where it left the bank there?

15 A. Yes, sir. I stepped it off and where the  
16 vehicle left the top - hard top, was 273 feet and I  
17 estimated another hundred foot out into the river where  
18 the vehicle come to rest.

19 Q. Could you find any marks in the road itself?

20 A. No, sir.

21 Q. I assume that you got out of your vehicle  
22 when you made your investigation?

23 A. Yes, sir.

24 Q. In looking over the bank there, as you look  
25 into the river, could you determine whether or not any of



1 the underbrush or grass or what have you, had marks on  
2 it going down the bank?

3 A. Not that I could see there wasn't. Not  
4 touched the ground 'til it hit the river.

5 Q. What color was that car, do you recall?

6 A. I don't recall. It was a dark color -  
7 blue or black. I don't recall.

8 Q. As a result of this law suit, did you have  
9 occasion to meet Mr. Jud Gustin, a surveyor and engineer,  
10 down there at the scene?

11 A. Yes, sir.

12 Q. What did you point out to him when you met  
13 him down there?

14 A. I just pointed out to Mr. Gustin where the  
15 vehicle had left the highway.

16 MR. EPPERLY: If the Court please, I  
17 believe that is being a little beforehand on that situation.  
18 It's premature - hasn't laid the groundwork for it.

19 THE COURT: We're going to have to get to  
20 it sooner or later.

21 MR. EPPERLY: Maybe so, but I don't think  
22 the trooper can give his opinion about various things to  
23 Mr. Gustin and have Mr. Gustin translate them to paper.  
24 He can say what was there and that's all.

25 THE COURT: I think he can tell what he

1 saw physically. I don't think he can probably give any  
2 opinions.

3 MR. EPPERLY: That's, in my opinion, this  
4 is what he would be doing if he says, "This is where the  
5 car left the highway." He can say there were marks,  
6 certainly.

7 THE COURT: Alright. Then Mr. Stone, you  
8 can examine him in that fashion.

9 BY MR. STONE:

10 Q. Trooper Blair, as Mr. Epperly says, we're  
11 not interested in your opinion as how the accident  
12 happened, but the question is what actually did you show  
13 Mr. Gustin there on the ground?

14 A. I just showed Mr. Gustin where the vehicle . .

15 Q. You testified earlier that you could follow  
16 the tracks of the vehicle through the grass. Is that  
17 right?

18 A. Yes, sir.

19 Q. Did you show Mr. Gustin those tracks or  
20 what did you show him?

21 A. I just - I showed him where it went off  
22 the bank.

23 MR. EPPERLY: If the Court please, that's  
24 exactly what we're getting at. He can show him what was  
25 on the bank, but telling Mr. Gustin, "This is where an

1 automobile went over," is absolutely improper.

2 BY MR. STONE:

3 Q. Let me ask you this, did you show Mr.  
4 Gustin where the tire marks had been that you saw on the  
5 night of the accident?

6 A. Yes, sir.

7 Q. Did you show Mr. Gustin where those marks  
8 started?

9 A. Yes, sir.

10 Q. Did you show Mr. Gustin where they ended?

11 A. Yes, sir.

12 Q. Did you point out to Mr. Gustin where the  
13 automobile was situated when you saw it?

14 A. Yes, sir.

15 Q. Did you point out to Mr. Gustin the  
16 telephone pole?

17 A. It was an old pole that was there. I  
18 showed him where the old one had been sitting.

19 Q. Where the old one was?

20 A. Yes.

21 Q. I assume that the place where the marks  
22 that you saw stopped was the crest of the bank. Is  
23 that right?

24 A. Yes, sir.

25 Q. What were the weather conditions that night?

1 A. Clear night.

2 Q. You recall the temperature?

3 A. No, sir.

4 Q. Do you have anything else in your investi-  
5 gation that relates to this accident?

6 A. No, sir.

7 Q. Alright. Answer to Mr. Epperly.

8  
9 CROSS EXAMINATION BY MR. EPPERLY:

10 Q. Mr. Blair, did you ever have any conversa-  
11 tion with the plaintiff?

12 A. No, sir.

13 Q. Have you to this day?

14 A. No, sir.

15 Q. Can I see your notes on this? Notes made  
16 that night?

17 A. Yes, sir.

18 Q. The original notes show that the speed of  
19 the vehicle is 40 miles an hour. Is that right?

20 A. No, sir.

21 Q. Your original notes?

22 A. No, sir. That's the speed limit for that  
23 particular area on the highway there is 40 - 45.

24 Q. And on speed, didn't your original notes  
25 show that?



1 Q. If the Court please, my next question  
2 would be something that I think I would have to take up  
3 with the Court.

4 THE COURT: Let's ask it and see. Then  
5 I'll rule on it.

6 BY MR. EPPERLY:

7 Q. Didn't your original notes show an  
8 estimated speed of 40 miles an hour?

9 A. I don't recall it.

10 Q. Alright, sir. You may stand aside.

11 THE COURT: Trooper, I've got a couple  
12 questions. Was there any skid marks on the road?

13 A. No, sir.

14 THE COURT: The telephone pole from the  
15 ground to the top, is that a normal sized telephone pole?

16 A. Yes, sir. Sort of under the ground be-  
17 cause it's an embankment there where the vehicle went off.

18 THE COURT: What do you estimate the  
19 height of the pole from the ground up? Just an average  
20 size pole?

21 A. Just an average size pole.

22 THE COURT: Now the grass, you said that  
23 you saw that was knocked down. Where was that in relation  
24 to the telephone pole?

25 A. That's just prior - before you get to the

1 telephone pole going north. Just right off the hard top.

2 THE COURT: Well, just describe to me  
3 the road - how you leave the road, the telephone pole,  
4 the grass and the terrain. I can't get it in my mind -  
5 this telephone pole - in relation - whether it's short  
6 or what.

7 A. Okay. When the vehicle left the hard top,  
8 you go through the grass behind the tall embankment and  
9 the telephone pole is behind the embankment before you go  
10 to the river.

11 THE COURT: Did the guardrail run the  
12 whole way?

13 A. No, sir. It run probably 50 - 75 feet up  
14 just before the vehicle went off.

15 THE COURT: Was the rail hit?

16 A. No, sir.

17 THE COURT: Then how far was it from the  
18 guardrail to the telephone pole - approximately?

19 A. Approximately 75 - 100 foot.

20 THE COURT: Is this the area that you saw  
21 the grass was down?

22 A. Yes, sir.

23 THE COURT: And then what happened at the  
24 telephone pole in this area? How was the terrain?

25 A. It's embankment there where the vehicle

1 left the ground. It went air-borne, hit the top of the  
2 pole. If I could show you this picture it might help  
3 you better.

4 THE COURT: Well, if they haven't put it  
5 in, I don't want to see it. What did you see beyond the  
6 pole?

7 A. There's brush that goes right down to the  
8 edge of the river. Then some water on out to the center  
9 of the river. Out there there's a little island and the  
10 vehicle was out next to the island.

11 THE COURT: Alright. I think that sort  
12 of clears it up for me.

13  
14 REDIRECT EXAMINATION BY MR. STONE:

15 Q. The speed limit changes to 35 when you  
16 cross the bridge?

17 A. Yes, sir.

18 Q. That's all.

19  
20 RECROSS EXAMINATION BY MR. EPPERLY:

21 Q. Were there any black tire marks in the  
22 highway?

23 A. No, sir. Not that I could see.

24 Q. Sir?

25 A. None that I could see.

1 on the highway, saw it go into the curve, he was losing  
2 ground and he was approximately 300 feet behind him when  
3 he went in the curve and he went down through this  
4 direction. So I feel that the foundation has been laid  
5 and this is consistent with the defendant's other evidence  
6 that he will introduce. So with that in mind, I'll over-  
7 rule it and let's get along with it.

8  
9 TROOPER L. W. BLAIR

10 the witness, further testified and stated as follows:  
11

12 REDIRECT EXAMINATION BY MR. STONE: (continued)

13 Q. Trooper Blair, could you go into somewhat  
14 more detail concerning the terrain between the point on  
15 the bank where you followed the marks through the grass  
16 and the point where the vehicle ended up?

17 A. Yes, sir. Where the vehicle had left the  
18 hard top, it left imprints in the grass. The grass had  
19 been mashed down and the grass had been pushed toward the  
20 embankment where the car was heading when it went off the  
21 bank. Like I say, it mashed the grass down.

22 MR. EPPERLY: If the Court please, we're  
23 not interested in what Mr. Blair's opinion is to whether  
24 something was mashed down. I think we objected to this  
25 before. He can say what he found there and what he saw.



1 THE COURT: Just tell us what you saw, at  
2 what point you found the grass mashed down.

3 A. The grass was mashed down from where the  
4 hard top ended to the point where it started over the  
5 embankment.

6 BY MR. STONE:

7 Q. Where what started over the embankment?  
8 What did you actually see?

9 A. Well, the vehicle was out in the river  
10 and the tracks stopped on top of the embankment and he  
11 had not touched down until it had settled into the river  
12 out there.

13 Q. You don't know that the tracks that you  
14 saw in the grass belonged to the vehicle out in the river?

15 A. No, sir. They didn't connect up to the  
16 vehicle at all.

17 Q. You just saw tracks there. You don't know  
18 who made them or where they came from?

19 A. Yes, sir.

20 Q. Did you investigate the terrain between  
21 the crest of the bank and the river bank there where the  
22 river starts?

23 A. Yes, sir.

24 Q. Did you find any kind of marks or impressions  
25 there?

1 A. No, sir.

2 Q. How did you make that investigation?

3 A. There's several bushes through there. It's  
4 weeds, underbrush and none of that had been disturbed  
5 at all - not been uprooted or knocked over or anything.

6 Q. Where was the telephone pole in relation  
7 to the point on the bank where the tracks ended and the  
8 place where the vehicle was situated?

9 A. Just beyond the embankment. The top of  
10 the telephone pole is even with the top of the embankment.

11 Q. How far down on the pole was it clipped off?

12 A. Approximately a foot.

13 Q. You don't know that this vehicle clipped  
14 it off? Could you say if it was a fresh break?

15 A. It was a fresh break on the pole.

16 Q. If you were standing on the bank at the  
17 place where the marks through the grass ended and you were  
18 looking towards the vehicle, would the telephone pole be  
19 to the right or to the left or where would it be?

20 A. Almost directly in line to where the car  
21 was at. It might have been to the left slightly.

22 Q. Did you actually look down into the river  
23 itself and, I mean the distance between where the river  
24 bank is down there under the bridges and where the car  
25 ended up?

1 A. I don't know what you're saying.

2 Q. What I'm saying is, did you actually look  
3 at the terrain where the river is? It's not the bank of  
4 the river, but the river, could you determine whether or  
5 not any disturbance of the river - its rocks in the river  
6 or whatever - had been disturbed?

7 A. I couldn't tell.

8 Q. You can't say yes or no?

9 A. I couldn't say yes or no. I really didn't  
10 pay that much attention to the rocks or anything in the  
11 river. I didn't get right down and see them from where  
12 I was at.

13 Q. Did you look?

14 A. No, sir. I don't think I did.

15 Q. You just looked down towards the river bank  
16 itself?

17 A. Yes, sir.

18 Q. Have you been back to the scene of the  
19 accident since then?

20 A. Yes, sir.

21 Q. Did you go back the next day?

22 A. Yes, sir.

23 Q. Did you re-examine the scene?

24 A. Yes, sir.

25 Q. Were there any changes in what you'd seen

1 the night before? Had you seen any marks you didn't see?

2 A. No, sir.

3 Q. Did you look on the bank there itself  
4 between the crest of the hill and where the vehicle had  
5 ended up? Did you examine that again?

6 A. Yes, sir.

7 Q. Did you see any evidence that any object  
8 had traveled down that terrain?

9 A. No, sir. No different than what I saw  
10 that night.

11 Q. When's the latest time you've been back  
12 to the scene?

13 A. Last week, I believe.

14 Q. Had the actual terrain itself changed any  
15 from the way it looked two years ago?

16 A. No, sir. The grass had been cut and stuff  
17 like that.

18 Q. Could you tell whether or not the river  
19 had eroded the bank away?

20 A. No, sir. It was still in the same condition  
21 that it was.

22 Q. Answer to Mr. Epperly.

23  
24 RECROSS EXAMINATION BY MR. EPPERLY: (continued)

25 Q. Mr. Blair, you're not telling us that you



1       went down to the automobile by foot that night, are you?

2               A. No, sir. I didn't. It was out in the  
3       river. I didn't go down the embankment.

4               Q. Did you go down the bank on foot?

5               A. No, sir.

6               Q. The next day?

7               A. No, sir.

8               Q. You just stopped at the top of the bank  
9       and looked down, didn't you?

10              A. Yes, sir.

11              Q. So you don't know whether there were really  
12       any marks beyond the light pole, do you?

13              A. You could see if there were marks.

14              Q. You didn't see any?

15              A. I didn't see any - no.

16              Q. You didn't go down to examine the ground  
17       close up, did you?

18              A. I could see enough from the top of the  
19       hill. I didn't have any reason to go down there.

20              Q. But you didn't go down there?

21              A. No, sir. I didn't go down there.

22              Q. Are you sure you went back the next day?

23              A. Yes, sir.

24              Q. Did you take any pictures?

25              A. No, sir.

1 Q. Mr. Blair, you actually never did go down  
2 to the point on the bank of the river where - near the  
3 river - where the car was resting, did you?

4 A. No, sir.

5 Q. And you couldn't see from the top of the  
6 bank whether it was any damage to any of the shrubbery  
7 or anything like that?

8 A. Yes. I said as far as I could see there  
9 was no damage at all.

10 Q. What time did you go back the next day?

11 A. I don't recollect. I don't know what time  
12 it was.

13 Q. This was in July, was it not, when the  
14 accident occurred?

15 A. Yes, sir.

16 Q. Isn't it usual for the river to cause a  
17 fog of some kind at night along a river?

18 A. I don't know if it is or not.

19 Q. Couldn't say that?

20 A. I couldn't say.

21 Q. The river is usually colder than the  
22 surrounding air - I mean the surrounding air - isn't it?

23 A. I guess. I don't know.

24 Q. Alright. May I see your notes again, Mr.  
25 Blair? Let me show you that isn't a copy of what you

1 originally made?

2 A. I don't know if it is or not.

3 Q. Look and compare the markings and see.

4 A. It looks similar. I don't know.

5 Q. That's your name, isn't it?

6 A. Yes, sir.

7 Q. This was made on 7-7-79 - came from your  
8 original notes, didn't it??

9 A. Possibly could have. I didn't make it,  
10 but I don't know. I didn't make this report myself. I  
11 don't know who copied it from my notes.

12 Q. It does show the estimated speed at 40  
13 miles an hour?

14 A. That's what this shows.

15 Q. Alright, sir.

16  
17 REDIRECT EXAMINATION BY MR. STONE: (continued)

18 Q. But you didn't make that report?

19 A. I don't recall making that one. No, sir.

20 Q. Do you type?

21 A. No. I don't type. Secretary does all the  
22 typing.

23 Q. And that's typed, isn't it?

24 A. Yes, sir.

25 Q. Was there any fog out there that night?

1                   ~~A. No, sir.~~

2                   Q. Is there anything in the river that you  
3 can use as a reference point to tell where that car ended  
4 up?

5                   A. Just there's a small island out in the  
6 river and it was over next to the embankment in the  
7 island.

8                   Q. Okay. Thank you. That's all.

9                   THE COURT: Trooper, just tell me where  
10 the car was in the river and how was it situated? Was  
11 it turned over, sitting upright?

12                  A. It was sitting upright in the river.

13                  THE COURT: And in reference to the south  
14 bank of the river, where was it? That would be the side  
15 that you were standing on?

16                  A. Yes, sir. It was out in the river approxi-  
17 mately 50 - 60 foot, I guess, out in the river next to  
18 the island.

19                  THE COURT: Was it in water?

20                  A. Yes, sir. All four wheels were in the  
21 water.

22                  THE COURT: What was the depth of the  
23 water at that point?

24                  A. I don't know at that exact point. A  
25 deputy went out there and it was up to his waist or higher



1 at that point on the car.

2 THE COURT: That's all the questions I  
3 have. You can step down.

4 THE WITNESS STANDS ASIDE.

5  
6 THE COURT: Ladies and gentlemen, we'll  
7 adjourn for our lunch hour at this point.

8 (The Court then recessed until 2:00 p.m.)  
9

10 AFTERNOON SESSION

11 (The trial was continued.)  
12

13 JUD GUSTIN

14 the witness, called to testify on behalf of the defendant,  
15 being first duly sworn, testified and stated as follows:  
16

17 DIRECT EXAMINATION BY MR. STONE:

18 Q. Would you state your name and address for  
19 the Court, please?

20 A. I'm Jud A. Gustin. I reside at 1206  
21 Mulberry Road, Martinsville, Virginia.

22 Q. Mr. Gustin, what do you do for a living?

23 A. I'm a professional engineer and a land  
24 surveyor.

25 Q. Would you mind stating for the Court what

1 qualifications you have to hold that title?

2 A. Well, I'm a licensed professional engineer  
3 in the Commonwealth of Virginia as well as a licensed  
4 surveyor. I also hold a license to practice professional  
5 engineering in New York, North Carolina, South Carolina,  
6 Georgia and Florida.

7 Q. How long have you engaged in such business?

8 A. I've been residing in Martinsville since  
9 1956. Roughly 24 years in consulting work.

10 Q. Are you a member of any societies or  
11 organizations professional in nature that require  
12 expertise in that field?

13 A. I'm a member of the National Society of  
14 Professional Engineering. I'm a member of the State  
15 Board of Architects, Professional Engineering and Land  
16 Surveyors and certified landscape architect for the  
17 Commonwealth of Virginia.

18 Q. If the Court please, I would tender Mr.  
19 Gustin as an expert in engineering and land surveying.

20 MR. EPPERLY: I have one question only.  
21 Mr. Gustin, you're not an expert at automobile accident  
22 reconstruction, are you?

23 A. No. No, I'm not.

24 MR. EPPERLY: Alright. I have no further  
25 questions.

1 BY MR. STONE:

2 Q. Mr. Gustin, can you tell us generally what  
3 engineering is? What professional engineers do?

4 A. Well, they deal in the physical sciences  
5 involving the physical sciences of math and chemistry,  
6 physics and its application to the various phases and  
7 branches of engineering as civil, mining, mechanical and  
8 so on.

9 Q. Do you use your knowledge of those subjects  
10 in your every day business?

11 A. Yes, sir.

12 Q. Did you have occasion to visit a site in  
13 Henry County, Virginia just south of the city of Martins-  
14 ville Hydroelectric Dam where U.S. Route 220 passes over  
15 the Smith River?

16 A. Yes, sir.

17 Q. Did you meet State Trooper Blair at the  
18 site?

19 A. Yes, sir.

20 Q. When did you do that?

21 A. Well, Trooper Blair pointed out to me the  
22 path of a vehicle . . .

23 MR. EPPERLY: I believe he asked when he  
24 did that.

25 BY MR. STONE:

1 Q. When did you do that?

2 A. The exact date would be July the 10th.

3 Q. Had you ever been down to that site before?

4 A. Yes. I had been down there once on a  
5 previous occasion.

6 Q. Do you recall when that was?

7 A. That was around, approximately, June the  
8 20th.

9 Q. Of what year?

10 A. Of this year.

11 Q. Can you state to the jury what physical  
12 characteristics the trooper pointed out to you down there  
13 on the land?

14 A. Well, he pointed out to me the path of  
15 the . . .

16 MR. EPPERLY: If the Court please, that's  
17 the very objection we made once before to this. He can't  
18 testify as to what the trooper told him about something  
19 the trooper doesn't know himself and that is what the  
20 path of the vehicle was. He might have pointed out certain  
21 things on the ground, but his learning from the trooper -  
22 I mean, apparently this is what the trooper told him and  
23 if he told him that, that's not admissible - certainly  
24 wouldn't be from Mr. Gustin. We object to his saying what  
25 the path of the vehicle is based on what the trooper said



1 because the trooper doesn't know himself. He only knows  
2 there were marks on the shoulder of the road and that's  
3 it.

4 MR. STONE: I can rephrase it if you'd like.

5 BY MR. STONE:

6 Q. You don't know anything about an automobile  
7 accident down at that site other than what you've been  
8 told, is that right?

9 A. That's right. Only what I've been told -  
10 what I read in the paper.

11 Q. Did the trooper point out to you any  
12 positions on the ground that he found in his own investi-  
13 gation of an accident?

14 A. He did. He pointed out . . .

15 Q. I don't want you to go into any assumptions  
16 by yourself or the trooper about any vehicles involved.  
17 All I want you to testify to is places on the ground that  
18 the trooper pointed out to you.

19 A. Well, he pointed out the approximate point  
20 where the vehicle left the pavement.

21 MR. EPPERLY: If the Court please, that's  
22 exactly what we're objecting to.

23 BY MR. STONE:

24 Q. The trooper found some marks in the grass  
25 out there in the median. Can you tell us whether or not

1 the trooper showed you where those marks began and where  
2 they ended?

3 A. Yes. Yes. They were on the bank of the  
4 river.

5 Q. And did he tell you where they started?

6 A. Yes.

7 Q. Did he tell you where he visualized a  
8 vehicle in the water on the night of an accident he in-  
9 vestigated?

10 A. Yes, sir.

11 Q. From what he told you were you able to go  
12 out with your surveying crews and measure off the dis-  
13 tances between these points that the trooper pointed out  
14 to you?

15 A. Yes, sir.

16 Q. In addition to that, what other measure-  
17 ments did you take down there on the land?

18 A. We made the measurements of different - of  
19 the elevation from the top of the bank and the elevation  
20 on the point of rest.

21 Q. What do you mean by "point of rest"?

22 A. Point of rest - at the point in the river  
23 where the . . .

24 Q. Where the trooper told you he saw the  
25 vehicle?

1 A. Yes, sir.

2 Q. There wasn't any vehicle out there when  
3 you were there?

4 A. No, sir.

5 Q. Have you prepared a drawing or sketch from  
6 those measurements?

7 A. Yes, sir.

8 Q. Do you have it with you? The defendant  
9 would submit to offer this map in evidence as defendant's  
10 first exhibit.

11 THE COURT: Let's mark it Defendant  
12 Exhibit A.

13 MR. EPPERLY: We object to the entry of  
14 that exhibit.

15 THE COURT: Have any other objection  
16 other than the ones in the record?

17 MR. EPPERLY: No, sir. Except this.  
18 Obviously from what Mr. Gustin has said thus far, he is  
19 basing what he found there on the trooper's conclusions  
20 and the trooper told him this is the path of the vehicle  
21 when the trooper couldn't say that himself. The markings  
22 on the map that indicate that something had to be based  
23 on hearsay.

24 THE COURT: All I understand, the map is  
25 being introduced now, if, at the place that this marking

1 started, if you measured it off in feet, this witness can  
2 testify how many feet there were to the bank and so I'll  
3 overrule your objection for the purpose of the record.  
4 I think the jury has to find from the evidence whether -  
5 where this car traveled and this map is not being intro-  
6 duced for the purpose of showing exactly where the car  
7 went.

8 MR. EPPERLY: But the map is so marked.  
9 It says, "Path of the vehicle."

10 MR. STONE: That's not necessarily the  
11 vehicle that your client was riding in. We can mark that  
12 out if you'd like.

13 MR. EPPERLY: It's absolutely incompetent  
14 evidence.

15 THE COURT: We'll strike that from the  
16 map.

17 MR. EPPERLY: I don't think that overcomes  
18 the objection.

19 THE COURT: Well I do and I overrule you.

20 MR. EPPERLY: We except to the ruling of  
21 the Court.

22 BY MR. STONE:

23 Q. Mr. Gustin, is this the plat that you con-  
24 structed from the marks the trooper showed you?

25 A. Yes, sir.



1           Q. And I believe - will you come down off  
2 the stand a minute? Would you point out to the jury and  
3 the Court the place where the trooper told you the marks  
4 in the grass began?

5           A. Right in this area right here. And then  
6 there was a hole.

7           Q. I just want to know where they start?

8           A. About in this area right here.

9           Q. Do you have anything on the map to design-  
10 nate that?

11          A. Just a point number 5.

12          Q. Okay. And what is the significance of  
13 the number? Why did you start with 5 other than 1 or  
14 some other designation?

15          A. Just for a designation where the vehicle  
16 left the pavement.

17          Q. What other points did the trooper show  
18 you on the ground?

19          A. He pointed out down in here a tree or  
20 either a bush that had been uprooted right in the top of  
21 this bank right here. And also the telephone lines which  
22 were suspended on a pole in there and which was in this  
23 area and the pole and telephone pole being in this area  
24 here.

25          Q. Have you got numbers on the plat?

1 A. In the area of 13, 14 and 15.

2 Q. What is 13?

3 A. 13 is the top of the bank. We represent  
4 the crest of the bank right here.

5 Q. Was that shown to you by the trooper?

6 A. Yes, sir. The position of it.

7 Q. Did he show you where any signs or anything  
8 else had been knocked down?

9 A. He said one sign was up here that was cut  
10 off about in this area between 5 and 6.

11 Q. And what do numbers 16 and 17 . . .

12 A. 16 represents the beginning of the main  
13 channel of Smith River and 17 is on the opposite side.

14 Q. The trooper pointed out 17 to you?

15 A. He pointed out that that was the point of  
16 rest or the point where the vehicle stopped.

17 Q. That's where the vehicle was that he saw,  
18 is that right?

19 A. That's right.

20 Q. I assume this is U.S. Route 220 going  
21 north?

22 A. That's correct.

23 Q. And this is the bridge right here?

24 A. Yes, sir.

25 Q. And this would be the beginning of the

1       cloverleaf where you turn back to go up 58?

2               A. Right.

3               Q. How does this documentation down here  
4 below the survey connect up with what you have at the top?

5               A. This represents the elevation of the  
6 ground along the path of the proposed, alleged path of  
7 the vehicle which is along this line here - and the grade  
8 was approximately two and a half percent.

9               Q. Well, let me ask you this. If you were to  
10 go out on the ground and look at the ground the way you've  
11 drawn it up here at the top of the plat, how would you  
12 have to be situated? As I'm looking at it here? Would  
13 you be looking down at it?

14              A. I'd be looking down on it here.

15              Q. You'd be in an airplane looking down on  
16 it the way you visualized it?

17              A. That's correct.

18              Q. How about here at the bottom?

19              A. You'd be looking at it at elevation or in  
20 front.

21              Q. Let me ask you this. You've got a number  
22 13 up here at the top - at the top of the bank there - and  
23 then you've got a 13 down here at the bottom where you've  
24 got the grade. How do you connect those two 13s?

25              A. These are the identification points in

1 elevation represented by this point. You're looking down  
2 on it. This is what you see if, as you look at it at  
3 elevation, this is how it's shaped.

4 Q. When you say "in elevation", does that  
5 mean sideways?

6 A. Yeah. Sideways.

7 Q. This would be the river here?

8 A. That's correct.

9 Q. This would be the bank?

10 A. That would be the bank as it slopes off  
11 gradually to the beginning of the main channel.

12 MR. EPPERLY: If the Court please, I  
13 want it understood that we object to all of the questions  
14 and the answers of Mr. Gustin without having to restate  
15 them each time.

16 THE COURT: Alright. And I'll overrule  
17 each one of them.

18 BY MR. STONE:

19 Q. Mr. Gustin, with your knowledge of physics  
20 and math, can you tell us whether or not it's possible to  
21 determine the velocity of any object if you are given a  
22 point of elevation where it starts or leaves from a bank,  
23 say, and you are also given the height of that elevation  
24 and the distance that it traveled horizontally?

25 A. Yes, sir.



1           Q. What knowledge or information in those  
2 fields that you're an expert in did you use in determining  
3 such a thing? I don't want you to - just in general.

4           A. It's a very elementary - it's the Law of  
5 Falling Bodies - elementary law of physics - which is the  
6 law which is in respect to the gravity pull or the effect  
7 of gravity force on a body - any body or any object falling  
8 to the ground.

9           Q. Well, how long have these laws of physics  
10 been established?

11          A. Since the time of Galileo and he was the  
12 one that made the experiments.

13          Q. What types of motions or forces or whatever  
14 are required in determining such a thing?

15          A. You have the horizontal force, which is  
16 of an object leaving an embankment such as this, due to  
17 the velocity. Then also you have the force of gravity  
18 which pulls the vehicle towards the earth's surface and,  
19 of course, they too act, both act, in a straight line as  
20 a horizontal force and vertical force of gravity. If  
21 you had no gravity force, the horizontal force, the  
22 object would be kept in orbit - no gravity pull. But on  
23 this particular instance, the gravity is working on the  
24 object as well as the forward motion due to the velocity.  
25 Then the two act together and the vehicle or object

1 follows a path of curve into the point of rest.

2 Q. You've got to realize math is not my  
3 strong subject. Where does the horizontal - what do you  
4 mean by "horizontal"?

5 A. Horizontal distance as we've expressed on  
6 the plat, is from the point of the crest of the bank and  
7 the point of rest which is the horizontal distance  
8 between those two points.

9 Q. Would it have to be the crest of a bank?

10 A. Well, it would have to be at a higher  
11 elevation than the point of rest.

12 Q. Would this be the same theory that you  
13 use in firing a weapon?

14 A. Yes. The same thing. It's a projectile.

15 Q. What would give some object a horizontal  
16 force?

17 A. Well, any - like an explosion or the  
18 velocity speed.

19 Q. I assume that that can vary?

20 A. Yes, it could.

21 Q. The horizontal force could vary. What  
22 about the gravity?

23 A. The gravity pulls on the object as it's  
24 in flight and then, I said, the body takes a position -  
25 the path of the body takes the position of a horizontal

1 curve at the point of rest.

2 Q. Does the gravity vary?

3 A. Gravity does not vary.

4 Q. So that's a constant?

5 A. That's a constant.

6 Q. Would it be fair to say these two forces  
7 work against each other?

8 A. They do. The gravity overcomes the  
9 horizontal force.

10 Q. I assume that gravity always wins?

11 A. Hopefully.

12 Q. Unless it's a space rocket or something.

13 Is there a formula in the law of physics that you can use  
14 in determining what that velocity is at a given point if  
15 you know the horizontal and the gravity forces?

16 A. If you know the horizontal and vertical  
17 distance, you can compute the velocity at the point of  
18 take off.

19 Q. Can you tell us what that formula is?

20 A. Well, the velocity is equal . . .

21 Q. Do you need that chart?

22 A. I need the chart, but I can do it with  
23 what I have here.

24 Q. It might be easier to follow if we have  
25 something to look at. I don't want you to - we're just

1 talking in generalities.

2 A. If I might, let D equal the horizontal  
3 distance and V is the initial velocity at point of take  
4 off and T is the duration in time for the fall.

5 Q. How can you relate D, V and T to what's  
6 out there on U.S. . . .

7 A. We have to equate the two Ds, the gravity  
8 component, and when we equate the two and come up with  
9 this formula.

10 Q. The formula is what's on the bottom here,  
11 is that right?

12 A. That's right. This is the real velocity  
13 equals 0.68 times 4.01 since distance divided by the  
14 square root of the vertical heights.

15 Q. Are you saying that formula will give the  
16 speed in any situation where any object leaves a point  
17 that's higher than some other point where it lands?

18 A. Yes, sir.

19 Q. What is the .68? Is that a constant?

20 A. That's a constant. The gravity velocity  
21 is in feet per second and the 0.68 converts it to miles  
22 per hour.

23 Q. That's just gravity?

24 A. Yes, sir.

25 Q. .68 is gravity. What is 4.01?



1           A. It happens to be the square root of the  
2 speed, the acceleration of gravity divided by 2.

3           Q. Is that a constant?

4           A. Yes, sir.

5           Q. Always the same?

6           A. Always the same.

7           Q. In that formula the V equals 0.68 and D  
8 equals what?

9           A. The horizontal distance.

10          Q. And H is what?

11          A. The vertical distance - the height of fall.

12          Q. Now, did you go out - when you went out to  
13 the scene here, did you measure any distances that would  
14 give you D and H in a hypothetical situation?

15          A. Yes.

16          Q. Let me ask you this - if you assume that  
17 some object, whether it be a motor vehicle or anything  
18 else, left U.S. highway Route 220 at the point that the  
19 trooper told you that the marks he found began, and if  
20 you assume that this object followed the same course down  
21 the median there as the marks that he found in the median  
22 the night of the accident and pointed out to you, and  
23 that those marks led up to the crest of the hill and this  
24 object followed that course, you assume that, and if you  
25 further assume that this object did not come back and

1 touch the earth after it left the crest of the bank out  
2 there until the place that the trooper pointed out to  
3 you where the car rested - in other words, it was in  
4 free flight, if you want to assume that - we don't know  
5 that it was - but if you assume that, can you say, based  
6 on your knowledge of math and physics and this formula  
7 that you described for us, what the velocity of that  
8 object would have been at the time it left the bank?

9 A. Yes.

10 Q. How would you do that?

11 A. By plugging the values into this - the  
12 horizontal distance as expressed as D and vertical dis-  
13 tance expressed as H.

14 Q. In this hypothetical, what did you use as  
15 D?

16 A. The horizontal distance.

17 Q. What is that in this particular case?

18 A. It's the distance from the crest of the  
19 hill to the point of rest - from the point of take off to  
20 the point of rest.

21 Q. Is that the point where the trooper said  
22 the marks he found ended at the bank to the place that he  
23 said the vehicle ended up?

24 A. This is correct.

25 Q. And what is that distance?

- 1 A. A hundred and sixty-five feet.
- 2 Q. Is that shown on your plat there?
- 3 A. Yes. I believe.
- 4 Q. What would H be?
- 5 A. H would be - I think it's 34.5.
- 6 Q. What does that mean?
- 7 A. That means the vertical distance from the
- 8 point of rest to the crest of the bank.
- 9 Q. Would you show those distances on this
- 10 plat?
- 11 A. This is the horizontal distance expressed
- 12 as D equals 165 feet.
- 13 Q. That's from where to where?
- 14 A. From the crest of the bank to the point of
- 15 rest. From point 13 to point 17.
- 16 Q. What would H be?
- 17 A. H would be the elevation difference or the
- 18 height from point 17 to the crest of the bank.
- 19 Q. And what would that be?
- 20 A. That is 34.6 expressed as H.
- 21 Q. In other words, that's just how high the
- 22 bank is in the air over the place where the trooper
- 23 pointed out the vehicle was?
- 24 A. This is correct.
- 25 Q. If you plugged those into that formula you

1 described . . .

2 A. Yes, sir.

3 Q. What does the formula tell us?

4 A. The formula indicates that the velocity at  
5 point of take off was 76 miles per hour.

6 Q. And you just get that plugging it into the  
7 formula, is that right?

8 A. That's correct.

9 Q. If you change those distances that you've  
10 just pointed out to us, does that change the 76 miles per  
11 hour?

12 A. Yes.

13 Q. And the 76 miles per hour is what again?

14 A. 76 is velocity in miles per hour.

15 Q. Where?

16 A. From the point of take off to the point I  
17 was shown that the point of rest to be.

18 Q. In this particular hypothetical, the point  
19 of take off was where?

20 A. At the crest. As I have indicated, is the  
21 crest.

22 Q. Suppose rather than having the vehicle  
23 where the trooper pointed out, suppose it landed on the  
24 margin or edge of the river rather than out there where  
25 he showed it to you. Is that going to effect the result



1 here?

2 A. Yes, it would. It would lower the  
3 velocity.

4 Q. I believe your plat indicates that it's  
5 104.68 feet from the crest of the bank to the edge of  
6 the river here.

7 A. Yes.

8 Q. Is that right?

9 A. I think that's correct.

10 Q. If you assume all those things that I  
11 asked you to assume in my first question, what would be  
12 the velocity if the object had landed at the edge of the  
13 river rather than where the trooper showed you he found  
14 it?

15 A. It would come out to about forty-eight  
16 and a half miles per hour.

17 Q. Velocity. Would it be fair to say that if  
18 the vehicle or the object in the hypothetical landed any-  
19 where between the edge of the river and the place that  
20 the trooper pointed out to you, the velocity would have  
21 to be somewhere between 48 miles per hour and 76 miles  
22 per hour?

23 A. Yes, sir. Because the elevation remains  
24 virtually the same.

25 Q. The gravity remains the same?

1 A. That's right.

2 Q. The only thing that changes is how far out  
3 into the river?

4 A. Right.

5 Q. Does the weight of the object have anything  
6 to do with it?

7 A. No, sir. The weight has nothing to do  
8 with gravity. The acceleration of a 100 pound object,  
9 due to gravity, is the same as a thousand pound object.  
10 In other words, it's all 32 feet per second per second.

11 Q. When you say "acceleration", does that  
12 mean they fall at the same rate?

13 A. They accelerate at the same rate. They  
14 fall at the same rate because they fall at the same rate.

15 Q. No matter what the weight?

16 A. That's right.

17 Q. Answer to Mr. Epperly.

18

19 CROSS EXAMINATION BY MR. EPPERLY:

20 Q. Without waiving any previous objections,  
21 I would like to cross examine. Mr. Gustin, say if the  
22 object had landed in the edge of the river and floated  
23 over to where - the point where the trooper pointed out  
24 the location of the vehicle, the velocity would have been  
25 about 48 miles per hour at the time of take off?

1 A. Yes, sir.

2 Q. Now was there a difference in the elevation  
3 at this point here on the map and the point where the  
4 light pole was?

5 A. There's a difference in elevation. Yes, sir.

6 Q. Is it downhill?

7 A. Yes, sir. I think about a two percent -  
8 two and a half percent grade.

9 Q. You may stand down, Mr. Gustin.

10 THE COURT: Could you give me the distance  
11 from the point you started on the highway to the crest of  
12 the hill?

13 A. Yes, sir. I'd have to look at it, your  
14 Honor. Approximately 315 feet.

15 THE COURT: Alright. You gentlemen have  
16 any further questions?

17 MR. STONE: Is that the question you  
18 asked? I thought you asked the distance between the  
19 bank and the telephone pole?

20 THE COURT: No. I was asking him the  
21 distance where he started on the highway to the crest of  
22 the hill.

23 MR. STONE: We'd only like to introduce  
24 the calculation of this formula into the evidence.

25 MR. EPPERLY: We have the same objection,

1       behalf of the defendant.)

2                       (Mr. Epperly gave the final summation to  
3       the jury in behalf of the plaintiff.)

4                       (The jury then retired at 4:15 p.m.)

5                       (The jury returned to the courtroom at  
6       5:10 p.m.)

7                       (The Clerk read the verdict.)

8                       THE CLERK: "We the jury on the issue  
9       joined find for the - in favor of the plaintiff and  
10      assess his damages at seventy-five thousand dollars."

11                      MR. STONE: I'd like the jury to be  
12      polled.

13                      (The jury was polled. The verdict was  
14      unanimous.)

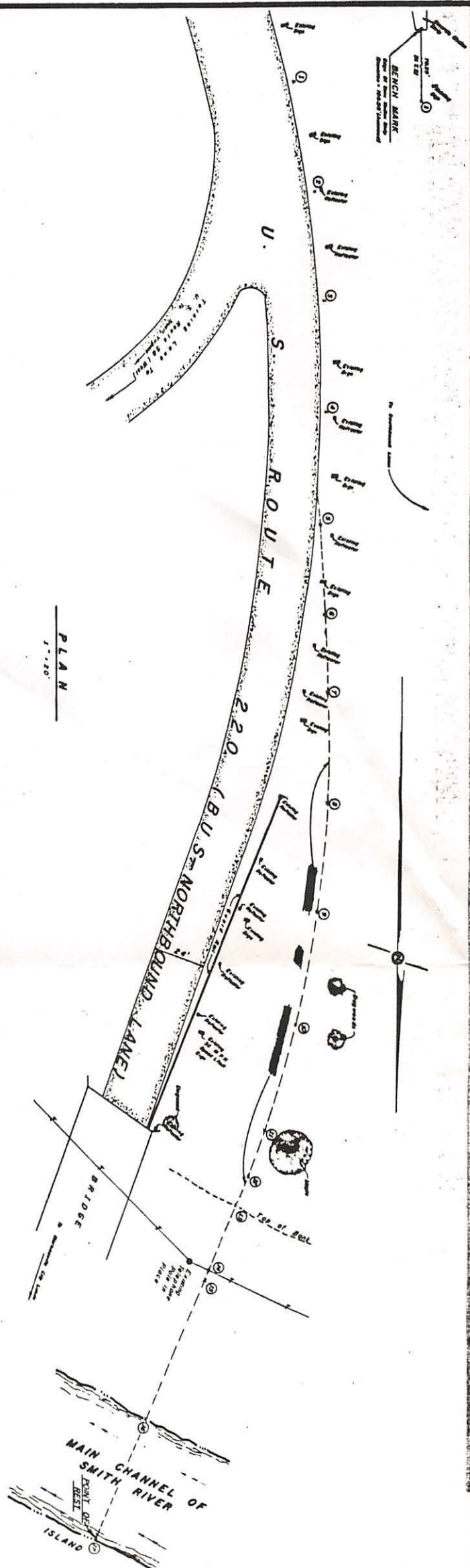
15                      (The jury was excused.)

16                      THE COURT: Any motions?

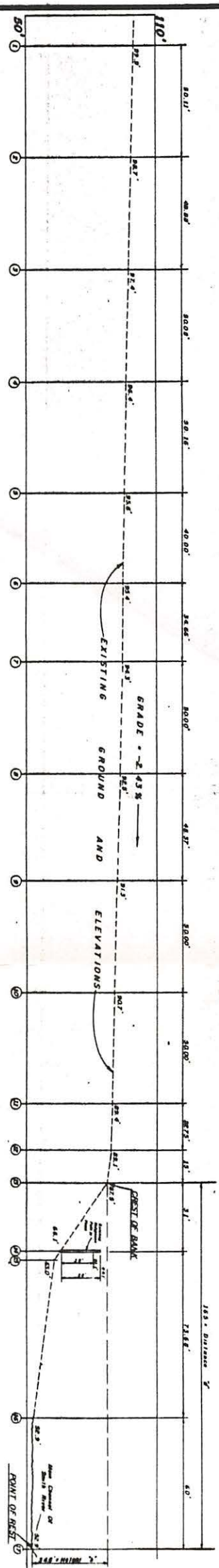
17                      MR. STONE: Just the defendant would move  
18      that the verdict of the jury be set aside as being  
19      completely contrary to the law and evidence presented to  
20      them.

21                      THE COURT: Submit me your objections in  
22      writing and let me reflect on them. We'll set a date and  
23      get Mr. Epperly and we'll argue at that point.





PLAN  
1" = 20'



PROFILE  
1" = 20'

*J. A. Gustin*

CHARLES RANDOLPH THOMAS  
VS  
JOHN DOE  
Sited in The Ridgeway District, Henry County, Virginia

*J. A. Gustin*

