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CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 780278

THOMAS LANE,

.....Appellant

v.

SARAH E. SCOTT, Administratrix
of the Estate of Eugene Scott,

.....Appellee

JOINT APPENDIX

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P. O. Box 1191
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Counsel for Appellant

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Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

SARAH E. SCOTT, Administratrix of
the Estate of Eugene Scott, Deceased,
Plaintiff,

v.

MOTION FOR JUDGMENT

THOMAS LANE
Greenfield Farm
Scottsville, Albemarle County, Virginia

and

CARL EDWARD COLVIN, JR.
Albemarle County, Virginia,

Defendants.

Filed in the Clerk's Office
Dec 13 '75
15.00
50.00
45.00
D. R. H. Clerk

The plaintiff moves the court for judgment against the defendants, jointly and severally, on the grounds and in the amount as hereinafter set forth:

1. On December 15, 1973 Eugene Scott was seated in his automobile in the driveway of a house owned by defendant Lane and occupied by defendant Colvin.

2. Upon finding the automobile in said driveway, defendant Colvin armed himself with a firearm and enlisted the aid of defendant Lane to investigate the parked automobile.

3. Upon investigation of the parked car both defendants confronted Eugene Scott, whereupon the defendant Lane, armed with a firearm, did seize Eugene Scott and, without any provocation, did unlawfully, violently and abusively pull him from the automobile and kick, batter and otherwise physically abuse him.

4. Eugene Scott, in an effort to avoid further abuse and injury, broke away from the defendants and began to run away.

5. Both defendants pursued Eugene Scott, each inciting, encouraging, aiding and abetting the other, with the common intention and unlawful purpose of inflicting further injury on Scott.

6. In the execution of such common intention and purpose, one of the defendants wrongfully and unlawfully shot and killed Eugene Scott, in Albemarle County, Virginia.

7. Eugene Scott is survived by his parents, Walter Scott and Sarah E. Scott, and by his twelve siblings, namely, Juanita Scott, Walter Scott, Mary Rush, John Louis Scott, Lindsay Scott, Fred Scott, James Scott, Reginald Scott, William Scott, Helen Scott, Geneva Thomas, and Frances Scott.

8. On 1 December 1975 and in the Clerk's Office of the Circuit Court of the County of Albemarle, Sarah E. Scott was appointed and duly qualified as the Administratrix of the Estate of Eugene Scott, deceased; and said administratrix brings this action to recover for solace, for financial or pecuniary loss sustained by the defendants of said decedent and for actual funeral expenses of the decedent as provided by statute.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally, in the sum of SEVENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$75,500.00) and her costs in this behalf expended.

MOTION FOR JUDGMENT N.O.V.

The plaintiff moves the Court (1) to set aside the verdict of the jury in this case upon the ground that it is contrary to the evidence, (2) to empanel a jury at its bar to make assessment of damages and (3) to enter such final judgment as to the court shall seem right and proper. In support of this motion, the plaintiff shows that the following facts were proved by the defendant's testimony:

About midnight of December 14-15, 1973 plaintiff's decedent, Eugene Scott, was shot and killed on property of the defendant Lane by Calvin Colvin who then was a tenant and employee of Lane. As a matter of business policy, the defendant Lane objected to trespassing on his property and this was known to Colvin. Colvin followed Lane's orders unquestioningly.

Eugene Scott was and had been seated in his automobile on the defendant Lane's property. When the defendant Lane, armed with a rifle, arrived following receipt of information communicated to him by Colvin's wife, Colvin, also armed with a rifle, was some short distance away where, without being seen, he could observe Scott. Defendant Lane, after assuring himself of Colvin's presence within calling distance, opened the door of the automobile and aroused Scott. Scott was not armed.

At some time after Scott had left his automobile, he sought to run away from the defendant Lane who holloed for Scott to stop and fired his weapon upwardly. Colvin, still armed with his rifle, pursued Scott; and Lane, also armed with his rifle, followed Colvin.

When Lane got down to the field, Scott had a hold on Colvin's rifle and Colvin was down on one knee. Lane grabbed Scott by the back of his neck, telling him to stop and, by pulling, caused Scott to release his hold on Colvin's rifle; whereupon Scott resumed his flight and Colvin resumed the pursuit. While Scott was running away, Lane saw Colvin's arms go up; and when Lane reached the place where Colvin was when his arms went up, Lane ascertained that Scott was dead.

Medical testimony showed that the cause of the death was a bullet which had entered Scott's neck five centimeters to the right of the back midline. Moreover, there were other unexplained signs of injury to Scott's person.

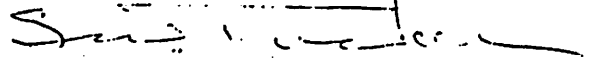
The foregoing facts not only show that the defendant initiated the armed assault during which Scott was killed; they show that the defendant Lane physically interfered on the part of Colvin in the struggle for the possession of the rifle with which Colvin immediately thereafter fired the fatal shot. Even if the defendant Lane had not initiated the armed attack upon the fleeing Scott which never ceased until Scott's death, Lane's willful act of assisting Colvin regain possession and control of the rifle, for which Colvin and Scott were contending, made Lane particeps criminis with respect to the unlawful homicide which ensued.

Moreover, Colvin as Lane's servant, subject to Lane's immediate directions and orders, jointly engaged with Lane in the prosecution of Lane's policy of ejecting trespassers; and the wrongful shooting of Scott was done from some impulse or emotion which grew out of or was incident to Lane's purpose of ejecting Scott from the premises.

WHEREFORE, having made timely motions to strike the evidence offered in defense of this action, plaintiff now moves for judgment non obstante veredicto.

SARAH E. SCOTT, Administratrix of
the Estate of Eugene Scott

By



Her Attorney

S.W. TUCKER
WILLIAM H. BASS, III
HILL, TUCKER & MARSH
214 East Clay Street
P. O. Box 27363
Richmond, VA 23261

C E R T I F I C A T E

I certify that on the 24th day of November, 1976
copies of the foregoing motion were mailed to Jay T. Swett,
Esquire, McGuire, Woods & Battle, P. O. Box 1191, Charlottesville,
VA 22902.

Commonwealth of Virginia

SIXTEENTH JUDICIAL CIRCUIT

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March 28, 1977

COUNTIES

ALBEMARLE
CULPEPER
FLUVANNA
GOOCHLAND
GREENE
LOUISA
MADISON
ORANGE

CITY OF CHARLOTTESVILLE

Jay T. Swett, Esquire
McGuire, Woods & Battle
Court Square Building
Charlottesville, Virginia 22901

S. W. Tucker, Esquire
Hill, Tucker & Marsh
214 East Clay Street
Richmond, Virginia 23219

In Re: Sarah E. Scott, Adm'x v. Thomas Lane

Gentlemen:

The Plaintiff's motion to set aside the verdict returned by the jury in the above case has been thoroughly considered along with memoranda of law filed by each of you supporting your positions.

It is certainly clear from the evidence that the killing of Eugene Scott by Carl Colvin was unlawful. At most, Scott was a mere trespasser and committed no offense which would have justified the attack made upon him. Thus, Colvin clearly would be answerable in damages and the only question remaining would be whether or not Lane was a participant in the unlawful killing of Scott by Colvin.

It is apparent from Lane's own testimony that Scott was killed at least 150 feet away from the Colvin residence. It is also clear that at the time he was killed Scott was undertaking to escape. Lane had already fired his weapon into the air and yelled at Scott to stop. In the process of pursuing both Colvin and Scott Lane came upon the two and intervened. After separating the two he again pursued Colvin and Scott and observed Colvin strike Scott. At least, he saw Colvin raise his arms and when he came upon Colvin and Scott the second time he observed that Colvin's gun was broken into two pieces. After having been thus involved and before the officers

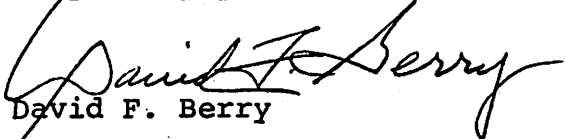
Jay T. Swett, Esquire
S. W. Tucker, Esquire
March 28, 1977
Page 2

arrived, Lane contrived with Colvin to give a false account of the occurrence by kicking in the door of the Colvin residence and claiming that Scott had broken and entered.

The above facts, coupled with the position of Lane as employer of Colvin indicates that Lane was a dominant factor in the whole episode. To say that Lane did not participate in the unlawful killing is to ignore his own statements, and Lane is bound by his own testimony.

It is my opinion, therefore, that the motion to set aside the verdict should be sustained and the issue submitted at the next trial on damages alone.

Very truly yours,


David F. Berry

DFB?je

ORDER

On October 26, 1976, this action came on to be heard upon the plaintiff's Motion for Judgment and upon the defensive pleadings filed on behalf of defendant Thomas A. Lane to such Motion for Judgment, and all necessary and proper pleadings have been filed in this action, issue as between these two parties was joined. A jury of seven was empanelled.

Plaintiff, by counsel, then presented her evidence and at the conclusion thereof counsel for defendant moved to strike the plaintiff's evidence on the grounds that the evidence failed to establish that the death of Eugene Scott was caused by an unlawful or wrongful act of defendant Lane or that defendant Lane aided and abetted another in any wrongful act to cause the death of Eugene Scott, all as more specifically set out in the transcript of the proceedings. After argument of counsel and upon due consideration, the Court overruled the defendant's motion to strike, to which action of the Court defendant noted his objection. The defendant then presented his evidence and at the conclusion thereof renewed his motion to strike the plaintiff's evidence which upon due consideration the Court overruled, to which action of the Court defendant again noted his objection. The plaintiff moved to strike the defendant's evidence and to enter judgment in favor of the plaintiff which upon due consideration the Court overruled.

Following consideration of instructions the jury retired and returned a verdict in favor of the defendant.

Whereupon the plaintiff moved the Court (1) to set aside the verdict of the jury upon the ground that it was contrary to the evidence, (2) to empanel a jury to make assessment of damages, and (3) to enter such final judgment as to the Court shall seem right and proper. Counsel for the plaintiff and counsel for the defendant Lane filed memoranda of law in support of and in opposition to plaintiff's motion and upon due consideration the Court, by letter dated March 28, 1977, sustained the plaintiff's motion to set aside the verdict and ordered that a trial be held on the issue of damages alone, to which action of the Court defendant objects on the grounds set out in his memorandum of law and specifically on the ground that the issue was properly submitted to and decided by the jury. The Court herein adopts its letter opinion of March 28, 1977, as the opinion of the Court sustaining plaintiff's motion to set aside the verdict.

WHEREFORE, the Court hereby ORDERS that the verdict of the jury be, and it hereby is, set aside and further ORDERS that defendant Lane is liable to the plaintiff as a matter of law, and that a jury be empanelled to assess damages on the basis of which a judgment notwithstanding the verdict may be entered, to which actions of the Court defendant duly notes his objections on the grounds noted above and as set out in his memorandum of law and the transcript of the proceedings.

ENTER:

Judge

David F. Brown

Date:

9-27-77

ORDER

On November 18, 1977 this action came on to be heard pursuant to the order entered herein on September 27, 1977. Counsel for the defendant, in a pre-trial motion, moved the Court to exclude all evidence pertaining to the manner in which Eugene Scott met his death; and, said motion having been fully argued, the Court ruled that the jury would be informed that Eugene Scott was fatally shot while on property of the defendant Thomas Lane and that the Court has held as a matter of law that the defendant Lane is liable in damages for Scott's death. The defendant excepted to the jury's being informed that Eugene Scott was shot and the plaintiff excepted to the ruling that she would not be permitted to show the confrontation, the subsequent armed pursuit, and the other activities of the defendants which culminated in and immediately followed the death of Eugene Scott.

A jury of seven was impaneled and, after hearing testimony offered on behalf of the plaintiff and receiving the instructions of the Court and hearing argument of counsel, retired to consider its verdict and, upon returning into Court, gave its verdict as follows:

"We, the jury, find damages as follows:

(1) For solace:

Sarah E. Scott (mother)	\$7,500.00
Walter Scott, Sr. (father)	<u>\$7,500.00</u>

Total for solace----- \$15,000.00

(2)	Funeral expenses -----	\$	500.00
(3)	For financial or pecuniary loss:		
	Sarah E. Scott (mother)	\$2,500.00	
	Walter Scott, Sr. (father)	---	
	Total for financial or pecuniary loss -----	\$	2,500.00
	Total damages -----	\$18,000.00	

Robert M. Harris, Foreman"

THEREUPON counsel for the plaintiff moved the Court to set aside the verdict as being inadequate and to grant a new trial on the question of damages; and in support of his motion counsel has argued that, by reason of the exclusion of evidence as hereinabove mentioned, the jury was precluded from making an appropriate assessment of an adequate award to the decedent's parents and siblings for solace. The said motion is overruled and the plaintiff's exception is noted.

It is ORDERED by the Court that the plaintiff, Sarah E. Scott, Administratrix of the Estate of Eugene Scott, deceased, recover of and have judgment against the defendant Thomas Lane for the sum of Eighteen Thousand Dollars (\$18,000.00) with interest thereon from the 18th day of November, 1977, until paid, to be distributed by the plaintiff in accordance with the verdict of the jury, together with her costs, to which action of the Court in entering judgment as aforesaid the defendant by counsel excepts on the ground (a) that the Court erred in setting aside the original verdict of the jury, such ground being preserved in the Court's order of September 27, 1977, and (b) that it was error for the Court to advise the jury of the circumstances of the decedent's death in action where damage was the only issue.

The defendant by counsel having indicated his intention of applying to the Supreme Court of Virginia for an appeal from said judgment, it is ordered upon motion of the defendant that execution of said judgment be and it hereby is suspended for a period of three months to allow the defendant to apply for such appeal; but this suspension shall not be effective unless the defendant or someone for him shall within thirty days hereof enter into bond with surety approved by the Clerk in the penalty of \$20,000.00, conditioned as required by law.

Also, it is ORDERED that the transcript of the evidence taken at the trial of this case is hereby made a part of the record pursuant to Rule 5:9(a), Rules of the Supreme Court of Virginia.

ENTER this 1st day of Dec , 1977.

/s/ Harold H. Purcell
Judge

I ask for this:

HILL, TUCKER & MARSH
214 East Clay Street
P. O. Box 27363
Richmond, Virginia 23261

By S. W. Tucker
Counsel for Plaintiff

Seen and objections noted:

McGUIRE, WOODS & BATTLE
Court Square Building
P. O. Box 1191
Charlottesville, Virginia 22902

By Jay T. Swett
Jay T. Swett
Counsel for defendant Thomas A. Lane

NOTICE OF APPEAL

Take notice that defendant shall petition the Supreme Court of Virginia for a writ of error to a final judgment entered in this case on December 1, 1977, and is filing the original of this Notice of Appeal with the Clerk of the Circuit Court of the County of Albemarle in accordance with Rule 5:6 of the Supreme Court of Virginia.

In accordance with the final judgment order of the Court, a transcript of the case shall be filed with the Clerk of the Circuit Court of the County of Albemarle as part of the record in this action

Respectfully submitted,

THOMAS LANE

Jay T. Swett
By Counsel

COUNSEL:

Jay T. Swett
McGUIRE, WOODS & BATTLE
Court Square Building
P.O. Box 1191
Charlottesville, Virginia 22902

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice of Appeal was mailed to S. W. Tucker, Esquire, Hill, Marsh & Tucker, 214 East Clay Street, Richmond, Virginia 23261, on this 29th day of December, 1977.

Jay T. Swett
Of Counsel

ASSIGNMENTS OF ERROR

1. The Court erred in not granting defendant Lane's motion to strike the plaintiff's evidence and to enter judgment for the defendant Lane in that the plaintiff's evidence was insufficient to sustain a verdict that Lane aided or abetted in a wrongful act resulting in the death of plaintiff's decedent.

2. The Court erred in setting aside the jury's verdict rendered for defendant Lane.

ASSIGNMENT OF CROSS-ERROR

The Court erred in excluding evidence of the confrontation between the defendant and the late Eugene Scott, the subsequent armed pursuit of Scott, and the other activities of the defendants which culminated in and immediately followed the death of Eugene Scott, all of which was material to ascertainment of solatium.

1
2
3
4
5
6
7 THOMAS A. LANE, having been duly sworn,
8 testified as follows:
9

10 DIRECT EXAMINATION

11 BY: Mr. Tucker

12 Q Will you state your name?

13 A Thomas A. Lane.

14 Q How old are you, Mr. Lane?

15 A 35.

16 Q Where do you live?

17 A "Greenfield Farm".

18 Q Your occupation?

19 A Farmer.

20 Q Do you own your own farm?

21 A Yes, I do.

22 Q Is that located in Albemarle County?

23 A Yes.

24 Q Approximately where is it located?

25 A In the Esmont area.

Q What is your product, what's your produce?

A Cattle, grain and hogs.

Q About how many people do you regularly employ?

A It depends on the season, two to three.

Q Directing your attention to the night of December 14, and December 15, 1973, who were the persons employed by you - person or persons employed by you at that time?

A Carl Colvin- I believe that was all at that particular time.

Q How long had he been working for you?

A Approximately six weeks.

Q Where had he come from?

A Charlottesville.

Q Had you known him before - for any considerable period before he first came into your employ?

A No.

Q Did you find him or did he seek you out for the job?

A I put an ad in the paper for farm help.

Q Did you know anything about his background at the time that you employed him?

A No.

Q Have you subsequently found out anything about his background?

1 A Not really, no.

2 Q Where he came from or..

3 A No.

4 Q Who his people are?

5 A No.

6 Q What kind of work did you employ him
7 to do?

8 A General farm work.

9 Q And he lived in a tenant house on your
10 farm?

11 A Yes.

12 Q Who had previously lived in that tenant
13 house? Just before Colvin moved in there?

14 A There hadn't been anybody in the house
15 I don't think for six months, I don't believe.

16 Q All right, then who was the last person
17 who had moved in there - lived in there?

18 A It was a fellow that worked for Mr.
19 Stilford, I can't remember his name.

20 Q He did not work for you?

21 A Yes, he did, but I say he didn't work that
22 long. I can't remember his name. Shears I believe his name was.
23 Shears.

24 Q Did he have a family?

25 A Yes.

1 Q What size of a family if you can remember?

2 A A wife and three children, I believe.

3 Q And about how long did the Shears live
4 there?

5 A I think maybe five days.

6 Q I beg your pardon?

7 A About five days.

8 Q Five days. Who had lived there in the
9 house that had lived there for any considerable time? Before
10 the Shears then?

11 MR. SWETT: Your Honor, I think it's interest-
12 ing background, but I object ...

13 THE COURT: It may be leading to something.
14 I can't tell at this time. Mr. Tucker I assume that it is
15 getting to some ...

16 Q I'm hoping it is sir.

17 THE COURT: It may be irrelevant unless you
18 can connect it up. Go ahead sir. The objection is overruled
19 for now, Mr. Swett.

20 A I've had - you know, a number of people
21 live in the house.

22 THE COURT: If you can recall you may say so.

23 A I don't recall. I mean there are so many
24 over a period of time that ...

25 THE COURT: All right, go ahead, Mr. Tucker.

1 Q By way of the highway how far was this
2 tenant house from the house where you lived?

3 A About a mile and a half.

4 Q Now, going back to the night of December
5 14 - 15, before you went to the premises and encountered whom
6 you later discovered was Eugene Scott, you had had a previous
7 occasion to go to the premises because someone was trespassing?

8 A This same night?

9 Q The same night?

10 A Yes.

11 Q It was your concern that persons not
12 trespass on your land?

13 A Well, the car was parked and there - that's
14 what Carl told me and he thought somebody had broken into
15 the house.

16 Q This was on the first occasion?

17 A Yes.

18 Q But do you have your land posted?

19 A Yes, I do.

20 Q What kind of signs have you got up there?

21 A Well, there's posted signs, no trespassing,
22 no hunting...

23 Q You make it your business to enforce that?

24 A Not strictly, no.

25 Q Well, you made two trips down there on the

1 night of December 14 because of a report made to you of persons
2 trespassing, didn't you?

3 A Yes, after Colvin came to me for - to come
4 down there and see if somebody had broke into the house or
5 so forth.

6 Q Are you saying that Colvin told you that
7 someone had broken into his house?

8 A Well, that's what he thought, yes.

9 Q Did he indicate to you what made him think
10 that?

11 A Well, the car being there and then it
12 followed them, and wanting to know why the car was there.

13 Q You just said somebody had followed somebody?

14 A That's what Carl told me, yes.

15 Q When you went there you didn't find any
16 signs of anybody having broken in the house?

17 A No.

18 Q When you went there on this first occasion
19 you armed yourself with a 30 caliber rifle?

20 A Yes, I did.

21 Q Was Carl Colvin armed?

22 A No.

23 Q Did he subsequently arm himself on this
24 first occasion?

25 A Yes, he did.

1 Q And there was nobody there?

2 A No.

3 Q All right. Had you had any previous
4 occasions before the night of December 14 where you had concerned
5 yourself about trespassers on your land?

6 A Not really, no.

7 Q Never had been any report of persons
8 trespassing?

9 A One time during the day we had people out
10 in our cattle, shooting crows, the game warden took care of that.

11 Q At your instance?

12 A Yes.

13 Q You called the game warden?

14 A We called the game warden, yes.

15 Q It's sort of important to you that people
16 not be hunting around where you have cattle, isn't it?

17 A Well, yes, I mean they were in the middle
18 of them, with shotguns shooting, had a crow caller and the
19 cattle were just going wild.

20 Q I want the question answered - that it is
21 important to you in your business that people not be around
22 hunting where you have cattle?

23 A Yes sir.

24 Q And as a matter of your business policy
25 you don't want people trespassing on your land?

1 A Well, yes, right.

2 Q Now after you had gone down there and
3 found out that the house had not been broken into you returned
4 home, right?

5 A Yes.

6 Q There came a time later on in the night
7 when Mrs. Calvin came to your house and made a report, is that
8 correct?

9 A Right.

10 Q What was that report?

11 A That the car was back there, parked in
12 front of their house.

13 Q And did she say it was the same car,
14 or another car?

15 A The same car.

16 Q Was her husband with her?

17 A No.

18 Q At the time?

19 A No.

20 Q Did she tell you where her husband was and
21 what he was doing?

22 A Yes.

23 Q What did she tell you her husband was
24 doing?

25 A She said that he had got out of the car.

1 Q Did she say he had the 22 rifle?

2 A Yes.

3 Q All right, what did you do as a result of
4 what she told you?

5 A I went back over there.

6 Q With a rifle?

7 A Yes.

8 Q The same 30 caliber rifle?

9 A Yes.

10 Q And how did you - what vehicle did you
11 take?

12 A My pick-up truck.

13 Q And when you got over there what did you
14 observe?

15 A The car sitting in front of the house.
16 I could see a figure slumped over the wheel.

17 Q The car was in plain view?

18 A Yes.

19 Q It wasn't hidden?

20 A No.

21 Q As you drive in that driveway did the
22 lights of the car shine on the house?

23 A Yes.

24 Q Was the car in such position that if the
25 occupant had turned on the lights of the car would they have shown

1 on the house?

2 A Whose car?

3 Q The car that you observed when you
4 pulled in there?

5 A No.

6 Q Which way was it heading - headed with
7 respect to the house?

8 A Back out the driveway.

9 Q It had turned around toward the driveway?

10 A Right.

11 Q And now let's pick it up, you said you
12 saw a man slumped over the wheel?

13 A Right.

14 Q And what did you do?

15 A I got out of my pick-up and hollered for
16 Carl. He was supposed to be there.

17 Q What did you say to him?

18 A I just hollered his name, that's all.

19 Q Did he respond?

20 A Yes, he did.

21 Q What did he say?

22 A He said I'm over here.

23 Q And what did over here indicate?

24 A He was over by the house behind a bush.

25 Q Then what happened?

1 A I proceeded, got out of the truck, and
2 went around to the car and pecked on the window. And..

3 Q Where was Carl at that time? At the
4 time that you pecked on the window?

5 A Still over by the house.

6 Q All right. Did you have your gun with you?

7 A Yes, I did.

8 Q All right.

9 A I pecked on the window and I didn't get
10 any response. So I opened the door up and I reached in and I
11 shook the fellow that was on the wheel. And he slumped back
12 in the seat and came to and at that instance he just woke up
13 and you know cursed at me and came out the car.

14 Q And what happened after that?

15 A He grabbed my coat as he was getting out
16 of the car and he tore the coat and pushed me back against the
17 door and took off running.

18 Q Well, didn't you grab him and shake him?

19 A I only shook him when he was in the car.

20 Q Well, even after he got out of the car
21 didn't you grab him and shake him?

22 A No, I didn't.

23 Q When he took off running what did you do?

24 A He took off running and Carl was coming from
25 the house and he ran into Carl. Carl grabbed him.

- 1 Q The two of them were on a collision course?
- 2 A Right.
- 3 Q Ran into each other then?
- 4 A Well, Carl grabbed him as he was running.
- 5 Q All right, and what happened then?
- 6 A The fellow struck Carl in the face and
- 7 knocked Carl to the ground.
- 8 Q And what did he do?
- 9 A Sir?
- 10 Q After he knocked him to the ground what
- 11 did he do?
- 12 A Took off running.
- 13 Q What did you do?
- 14 A I stepped out away from the car and
- 15 hollered at him to stop and fired my rifle in the air.
- 16 Q Did Carl fire his rifle also? At that
- 17 time?
- 18 A Not to my knowledge. He said he did, I
- 19 don't know.
- 20 Q Now up to this point there had been no
- 21 words between you and this man who was the intruder, shall we
- 22 say?
- 23 A No sir.
- 24 Q You hadn't said anything to him at all?
- 25 A No sir.

1 Q What had he said to you?

2 A When I pecked on the window I asked him
3 what he was doing there, this all happened so fast that
4 he was gone.

5 Q At this time you didn't know who he
6 was?

7 A No sir.

8 Q Did you leave the lights of your truck
9 on or did you put them off?

10 A I think I left them on.

11 Q And your truck was right behind his car
12 or right in front of his car?

13 A In front of his car.

14 Q In other words the front of your truck
15 was facing the front of his car?

16 A Right.

17 Q And you had the lights on, so that your
18 lights were playing right on this person's face?

19 A No, he was slumped over the wheel with his
20 head on the wheel, with his face towards the right hand side
21 of the car. The only thing I could see when I pulled up was
22 the top of his head.

23 Q Well, when he did become aroused he was
24 in the light of your truck, wasn't he?

25 A Yes.

1 Q I think we were at the point where he
2 had knocked Carl down and started running again and you
3 discharged your weapon?

4 A Right.

5 Q What happened after that?

6 A Carl got up and took off running after
7 him.

8 Q And what did you do?

9 A When I fired my carbine, the gun jammed,
10 and I went back to the pickup truck to unjam it.

11 Q Did you?

12 A Yes.

13 Q And after you got your gun in working
14 condition again then what did you do?

15 A Well, I thought about turning the pickup
16 around because they were running around through there.

17 Q What did you do, not what you thought
18 about doing?

19 A Well, after they took off - I took off
20 running after Carl.

21 Q With your gun?

22 A Yes.

23 Q Well, you were running after Carl or were
24 you running after the man whom you had - whom you considered
25 the intruder?

1 A No, I was running after Carl.

2 Q Well, what were you going to do to
3 Carl?

4 A Just see where he went. He had run behind
5 a woodshed I couldn't - they were out of my view, I couldn't
6 see them.

7 Q Well, any how the man whom you considered
8 the intruder was running away from you?

9 A Yes.

10 Q Carl was following him, running?

11 A Right.

12 Q You were following Carl, running?

13 A Right.

14 Q How far did you run?

15 A Oh, it was six or seven hundred feet or
16 better away.

17 Q Six hundred feet?

18 A Yes.

19 Q Two hundred yards, the length of two foot-
20 ball fields?

21 A No, half the length of a football field.

22 Q And what happened, whatever distance it was,
23 what happened when you stopped running?

24 A When I got to..

25 Q When he stopped running?

1 A When I got to them Carl was down on one
2 knee, Scott had a hold of Carl's rifle. They were scuffling
3 with the gun.

4 Q Did the man who was later identified
5 as Eugene Scott ever gain possession of Carl's rifle?

6 A He had a hold of it at that time.

7 Q Did he ever break Carl's hold on it?

8 A Not that I know of, no.

9 Q Now when you came upon the scene then what
10 did you do?

11 A I grabbed the fellow by the back of the
12 neck and told him to stop.

13 Q You didn't grab Carl?

14 A No.

15 Q So you really weren't taking off after
16 Carl, you were taking off after the man whom you considered an
17 intruder?

18 A Well, I went to see where Carl went.

19 Q Yes. When you got - when you caught up
20 with them, you grabbed the man who was the intruder?

21 A Yes.

22 Q And told him to stop?

23 A Yes.

24 Q And what was it you wanted him to stop
25 doing?

1 A Stop scuffling there with Carl.

2 Q The whole time that Carl was in your
3 view and while you grabbed him by the back of the neck, Carl
4 was still down on one knee?

5 A Yes.

6 Q All right, you told the man who was the
7 intruder to stop, what happened then?

8 A Well, like I said I pulled him off and
9 he - at that same instant he turned and swung at me.

10 Q Did he hit you?

11 A No, I backed up away from him and fell
12 over backwards.

13 Q But you applied enough strength to pull
14 him off Carl? Right? You pulled him off Carl?

15 A Yes.

16 Q It was your strength that got him off
17 Carl?

18 A Yes.

19 Q But he wasn't on Carl though, he was holding
20 onto Carl's rifle?

21 A Well, he was over top of Carl, holding
22 the rifle.

23 Q And you pulled him so that it caused him
24 to break his hold on the rifle?

25 A Yes.

1 Q He swung at you and didn't hit you,
2 did you hit him?

3 A No sir.

4 Q Had you at any time up to that point
5 hit him?

6 A No sir.

7 Q Had you hit him when he was back at the
8 car?

9 A No sir.

10 Q Nobody had done anything violent to him
11 when he was back at the car?

12 A No sir.

13 Q And he just - had you threatened him?

14 A No sir.

15 Q Just for no reason at all he started
16 running?

17 A Yes sir.

18 Q Without any words having been passed between
19 you?

20 A No sir.

21 Q No blows passed between you?

22 A No sir.

23 Q All right, now back to the point where you
24 just separated him from Carl's rifle, and he swung at you. Then
25 what happened to you?

1 A I feel over backwards on the ground.

2 Q And then go on with the story, what happened
3 after that?

4 A When I got up they had run off some 150
5 feet. And I couldn't see them plain. And when I got there
6 the fellow was on the ground.

7 Q All right, let me see now. You got up,
8 they had run some 150 feet. Do I correctly understand that
9 Scott was out in front and Carl was chasing him?

10 A Yes.

11 Q Did Carl catch up with him?

12 A Yes, I reckon so, yes.

13 Q Well, as you got up what if anything
14 did you see then?

15 A Like I said I could see Carl's arms
16 come up in the air, but when I got there the fellow was already
17 on the ground. It was too dark for me to really see anything.

18 Q At the time you saw Carl's arms going up
19 in the air, this man was still running wasn't he?

20 A Yes.

21 Q Was Carl running?

22 A Yes.

23 Q When you caught up with them again what was
24 the situation?

25 A The fellow was on the ground.

1 Q And where was Carl?

2 A Carl was standing there with the gun in
3 his hand....two pieces.

4 Q Was the man living then or dead?

5 A I reached down and felt his pulse and
6 I couldn't get any response.

7 Q He didn't move from there?

8 A No.

9 Q Until long after the Sheriff's Deputies
10 had made their investigation?

11 A Right.

12 Q Did you ever see a trail of blood leading
13 back from his body?

14 A No.

15 Q How was he lying, what was his position
16 on the ground, face up, face down, on his side, how?

17 A Face up.

18 Q And then - was it then or some later time
19 that you recognized who the man was?

20 A It was when the officer came with a flash-
21 light. It was really too dark for me to see him. I didn't
22 recognize him at that time.

23 Q You didn't recognize him at what time?

24 A At that particular time right there, I
25 did not recognize him.

1 Q Later on in the night when the officers
2 were investigating and the officers were out there - that was
3 Sgt. Hawkins?

4 A Yes.

5 Q Sgt. Hawkins was out there with the flash-
6 light, then you recognized this man who had gotten killed?

7 A Right.

8 Q And who was it?

9 A Eugene Scott.

10 Q And why was it that you recognized him?

11 A Well, he had a beard, that's why I didn't
12 recognize him.

13 Q But Scott had worked for you before?

14 A Yes.

15 Q Doing what?

16 A General farm work.

17 Q How long did he work for you?

18 A About two weeks.

19 Q Now, after you recognized that the man had
20 been killed, this was before the officers arrived, what was ...
21 what were your instructions to Mr. Colvin?

22 A Well, we went back to the house and
23 the phone was ringing and I talked to my wife and found out
24 whether she had called the police.

25 Q Well, essentially I'm interested in this

1 idea of kicking in the door and trying to make it appear that
2 you surprised a burglar. Will you tell the jury about
3 that?

4 A Yes, after the fellow was there on the
5 ground he was dead, this was an hour I guess before the officers,
6 because the officers didn't arrive for I think close to two
7 hours. And the more I thought about it, the more I got scared.
8 I was terrified really. And I made up this story, trying to
9 delete myself from being involved.

10 Q And what was the story that you made up
11 for Mr. Colvin to tell?

12 A That we kicked in the door and found him
13 in the house.

14 Q Did Colvin hesitate about adopting that
15 story?

16 A No.

17 Q As a matter of fact both of you told
18 that story to the officers that night, didn't you?

19 A Yes sir.

20 Q Was it part of your plan that you asked
21 Colvin - suggested to Colvin that you move the body to the -
22 from where it was in the field to - down to the house?

23 A No.

24 Q A part of the story was, however, that
25 the man was dead when you arrived on the scene, at the farm house?

1 A No, I was to pull up and the fellow was
2 to run from the house.

3 Q As you were pulling up?

4 A Right. And then Carl pursued him.

5 Q Do you know where Colvin is now?

6 A No, I do not.

7 Q How long did his family stay on after
8 this tragedy?

9 A They moved out Monday following - this
10 happened on Friday or Saturday morning, they moved out Monday.

11 Q When's the last time that you saw Colvin?

12 A At his trial.

13 Q You don't know where they went?

14 A No, I do not.

15 Q You don't know where he is now?

16 A No, I do not.

17 Q Have you made any effort to find him since
18 this suit was pending?

19 A No.

20 Q In making up this story you told Colvin
21 to kick in the door?

22 A Yes, I did.

23 Q He kicked it in?

24 A Yes, I did.

25 THE COURT: Who did you say kicked it in?

1 A Carl.

2 Q Did he question anything you told him
3 to do?

4 A No, not really.

5 Q The situation between you was you were
6 the boss and he was your employee?

7 A At that time...

8 Q You paid him?

9 A Yes, he worked for me, yes.

10 Q And he did what you told him to do?

11 A Yes, generally, yes.

12 Q Your witness.

13

14

CROSS EXAMINATION

15 BY: Mr. Swett

16

17 Q Mr. Lane, would you characterize the
18 location of the farm and proximity whether it's in a rural area?

18

A Yes, it's in a very rural area.

19

Q How far would the closest neighbor be?

20

A Approximately a mile.

21

22 Q Now you stated in response to Mr. Tucker's
23 question that Mr. Colvin had related to you, when he first came
24 to your house, that they had been followed.

24

A Yes.

25

Q Would you tell the jury exactly what Mr.

1 Colvin related to you had happened?

2 A He came to the house and said there was a
3 car pulled up in front of the woodshed and-when they came
4 home from town. This was approximately 10:30. And not knowing
5 the car and where it was parked at that time they backed out
6 the driveway and proceeded up the road and the car followed
7 them. They went up and turned around, made a U turn in the
8 road and they passed the car. They said the car blew its horn
9 at them, and hollered something out the window. They went
10 down the road and made another U turn and the car followed
11 them back down the road. And then they proceeded to my house.

12 Q Did he - had he taken down the license
13 number of the car?

14 A Yes he did.

15 Q Did he give that to you?

16 A Yes.

17 Q Describe what you saw as to the condition
18 of the Colvin family?

19 A They were upset, wondering who it was
20 and they were very emotional.

21 Q How many children do the Colvins have?

22 A Three boys.

23 Q Were all the children at your house at
24 that time?

25 A Yes.

1 Q Did he tell you what they had done with
2 the children in terms of while they were going up and down the
3 highway?

4 A What they had done with them? They were
5 in the car.

6 THE COURT: Just a moment....Mr. Tucker...

7 MR. TUCKER: Your Honor please I think we have
8 gone into the area of hearsay
and also irrelevant as far as I see.

9 THE COURT: You're leading your own witness
10 now. And I think the hearsay part of it has been opened up
11 and it may well be that from the standpoint of motive in this
12 case on the part of Mr. Lane, it's not being offered for the
13 truth of what was said, but the fact that he was informed.

14 Q Exactly Your Honor.

15 THE COURT: The question is at this point,
16 Mr. Swett, whether or not you should lead this witness. Now,
17 it's not cross examination. You're leading him as to this
18 question. It seems to me for that purpose the ...

19 Q I'll withdraw the particular question,
20 Your Honor.

21 THE COURT: All right, sir.

22 As to the explanation give by Mr.
23 Colvin to Mr. Lane that is the area that Mr. Tucker opened up.

24 THE COURT: Yes sir. Now you must not lead
25 the witness, but I will allow the area of hearsay so long as it

1 pertains to what may have motivated Mr. Lane to go to the
2 Colvin house. Anything else would be objectionable as hearsay
3 and even that to that extent may be subject to the objection,
4 but as I understand it it's being offered to show why Mr. Lane
5 left and went there. Not for the truth of what was said.

6 Q Precisely.

7 THE COURT: All right, sir, the Court will
8 allow it for that purpose. Mr. Tucker's objections are
9 noted. Go ahead, sir.

10 Q I believe you testified in response to
11 Mr. Tucker's questions that you went back to the house with
12 Mr. Colvin?

13 A Yes.

14 Q Was there any light on in the house when
15 you went back the first time?

16 A The bathroom light was on.

17 Q Did Mr. Colvin make any statement about
18 the light?

19 A Yes, he did. He said he didn't remember
20 leaving it on.

21 Q But there was no car at the house at this
22 particular time?

23 A No.

24 Q When Mr. Colvin came out of the house
25 did he have the 22?

1 A Yes.

2 Q Did he tell you why he had it?

3 A He said his wife wouldn't come back over
4 there unless he had his gun.

5 Q And then you and Mr. Colvin got back in
6 your truck?

7 A Yes.

8 Q And what did you do at that time?

9 A Carl said that the car had went up the
10 Esmont Road, and turned its lights off. So we went up the
11 Esmont Road to see if the car was parked there for some reason,
12 and we didn't see any car and proceeded down 6 and went by
13 a farm that I rent. We was having trouble with the cattle
14 getting out on the road and stopped there and seen if the
15 cattle were all in and come on home.

16 Q When you got home approximately how long
17 did the Colvins stay at your house?

18 A At least a half hour.

19 Q And then the Colvins left to go back to
20 their house?

21 A Yes.

22 Q What did you do then?

23 A I proceeded to go to bed.

24 Q What was your next involvement?

25 A They had been gone for about fifteen - twenty

1 minutes and Carl's wife came back in the driveway, blinking
2 the lights and came to the door with the children. And she
3 was in hysterics. The kids were all crying and saying-that
4 please go over there and help Carl, he got out of the car with
5 a gun. I don't know what he will do. Please go over there and
6 help him, so I went back.

7 Q Before you went back did you call the
8 police or did you tell your wife to call the police?

9 A Yes.

10 Q You went back by yourself in the pickup
11 truck?

12 A Yes.

13 Q When you drove back into the - when you
14 drove back into the driveway you pulled your car up to face
15 the car that had parked at Mr. Colvin's house?

16 A Yes.

17 Q You stated that when you - the first thing
18 you did was peck on the window?

19 A Yes.

20 Q And then you opened the door and shook
21 Mr....the occupant of the car?

22 A Yes.

23 Q How hard did you shake him?

24 A Oh, I just you know shook him. To me he
25 appeared to be sleeping on the wheel.

1 Q And you did not know him at that time?

2 A No.

3 Q I'd like this marked for identification.

4 THE COURT: That's exhibit 1 for the
5 defendant.

6 Q Defendant...

7 THE COURT: All right, that will be marked
8 as exhibit 1, and we'll hear further from the plaintiff, if
9 there's any objection.

10 MR. TUCKER: I would ask for the record
11 that we show my objection to it then.

12 THE COURT: It's not admitted yet, Mr. Tucker.
13 He's had it marked for identification at this time.

14 Q Mr. Lane, Mr. Young placed a jacket here
15 could you identify this jacket for the Court and jury please?

16 A Yes, it's my jacket.

17 Q Would you hold it up. Now you stated you
18 were wearing a jacket on the evening of December 14, is that
19 the jacket you were wearing?

20 A Yes.

21 Q Now when Mr. Scott - I believe you said
22 came out of the car...

23 THE COURT: Before we go any further with the
24 jacket being exposed - Mr. Tucker, you say you have an objection
25 to the exhibit being admitted into evidence?

1 MR. TUCKER: Yes, Your Honor.

2 THE COURT: All right, what's the nature of
3 the objection?

4 MR. TUCKER: Well, I don't see what the
5 pertinence of the jacket and the happening there at the car has
6 anything at all that is an appropriate defense or anything
7 to the man's being killed up there in the field.

8 THE COURT: It may go to the weight of it.
9 It may be a point that would be considered on the summation, but
10 as of the time this occurred it seems to me it is all essentially
11 part of one occasion. The Court will allow the jacket as exhibit
12 1 for the defendant. Mr. Tucker's objections are noted and
13 overruled. It may be admitted and you may present the jacket
14 for further testimony or further observation....at this time.

15 MR. SWETT: Thank you, Your Honor.

16 THE COURT: If you have any other questions
17 go ahead with it or if not you may ...

18 Q I'm holding the jacket up, is this the
19 area of the jacket that you said was torn by the occupant of
20 the car?

21 A Yes.

22 THE COURT: Let him describe it. You're leading
23 your witness, Mr. Swett. He may describe exactly what it
24 consists of, but don't tell him.
25

1
2 The jacket was marked and received into
3 evidence as Defendant's Exhibit Number 1.
4

5 Q At that particular time did you know why
6 the person was there?

7 A No.

8 Q You stated the suspect or the individual ..
9 I'm sorry - tell the jury again what the individual did after
10 he tore your jacket?

11 A He came out of the car, grabbed my jacket...
12 trying to get himself out, that's how he tore it and pushed me
13 back against the door and took off running.

14 Q And what did he do with Mr. Colvin?

15 A Carl tried to stop him and that's when he
16 hit Carl.

17 Q I'd like this marked as defendant's
18 exhibit 2.

19
20 The photograph was marked as Defendant's
21 Exhibit Number 2.
22

23 Q Mr. Lane, do you know the individual in
24 that picture?

25 A Yes, Carl Colvin.

1 Q Do you know when that picture was
2 taken?

3 A The officer took a picture of Carl
4 that night.

5 Q Do you know what these marks are on the
6 left side of Mr. Colvin's cheek?

7 A Yes, that's where the fellow hit Carl.

8 Q Your Honor, I'd like to move that this
9 be admitted as exhibit number 2.

10 THE COURT: Those have been admitted....
11 any objection to the picture, Mr. Tucker?

12 MR. TUCKER: No objection.

13 THE COURT: All right, it may be admitted
14 as Defendant's Exhibit 2.

15
16 Q Mr. Lane, would you identify what that
17 picture shows?

18 A It shows the house and the vicinity where
19 the fellow had run, through briars and sticker bushes and...

20 Q Is there any objection to this as Defendant's
21 exhibit 3?

22 THE COURT: Any objection to number 3, Mr.
23 Tucker?

24 MR. TUCKER: No objection.

25 THE COURT: All right, it will be admitted.

1
2 The photograph was marked and received
3 into evidence as Defendant's Exhibit Number 3.
4

5 Q I'd like if you would - Mr. Lane, would
6 you stand and come around. I'd like you to...

7 THE COURT: Let him stand a little closer to
8 the jury box.....move up to the microphone there where it will
9 pick up his voice and where the jury can see it.

10 Q Mr. Lane, would you identify the several
11 buildings in the picture?

12 A Yes, this is the house and this is the
13 woodshed here. This is the stickers, briar bushes and osage
14 tree.

15 Q All right, now where was the car located
16 in this picture when you came up to Mr. Colvin's house?

17 A In front of that woodshed.

18 Q And where is the path that was taken by
19 Mr. Scott and Mr. Colvin?

20 A Mr. Scott ran on that side of this woodshed
21 right through here, and down through here. And Mr. Colvin ran
22 on this side of the woodshed - like this.

23 Q You stated in response to one of ...

24 MR. TUCKER: Could we stop here and have the
25 record show that he is saying that Scott ran on the side of the

1 side of the woodshed to the right as we face the picture and
2 Colvin ran on the side of the woodshed that is to our left
3 as we face the picture, is that correct?

4 A Yes.

5 THE COURT: All right, sir.

6 Q Could you identify in the picture where
7 you first came upon Mr. Scott and Mr. Colvin?

8 A There's a lime pile right there, right
9 about in here,

10 Q What were they doing at that time?

11 A That's when Carl and the fellow had Carl's
12 gun and Carl was down on one knee.

13 Q Would you describe for us and show us
14 what you saw exactly - Mr. Colvin's position?

15 THE COURT: If you're going to have any
16 further testimony from the picture, let's do that, Mr. Swett.

17 Q All right, Your Honor. What happened
18 when you Mr. Scott off of Mr. Colvin?

19 A He turned and swung and I fell on the
20 ground.

21 Q And then where did they run? Could you
22 show on the picture?

23 A They ran in this area right here.

24 Q All right, and where did you next come upon
25 Mr. Colvin and Mr. Scott?

1 A Right in here.

2 MR. TUCKER: Could we disturb again - that
3 he indicated they are running in the area that is to our right
4 of the cornfield.

5 THE COURT: Is that a cornfield?

6 A Yes.

7 THE COURT: In the picture, Mr. Lane?

8 A Yes.

9 MR. TUCKER: Not running in the cornfield
10 but in this area that's to our right in the cornfield.

11 THE COURT: Running in the cornfield or on
12 the edge of the cornfield?

13 A On the edge of the cornfield.

14 THE COURT: But not in the cornfield?

15 A No.

16 THE COURT: All right.

17 Q And can you identify again the approximate
18 location of where you came upon Mr. Calvin standing over Mr.
19 Scott?

20 A It was right in the edge of the cornfield.
21 Right about here.

22 Q No further questions on this picture.

23 THE COURT: All right, then you may resume
24 the stand and we'll come back to the picture on cross examination.
25

1 (Juror asking question)

2 THE COURT: We'll come back to that. We
3 can come back to that. We'll hold that question for just a
4 moment and let the testimony...

5 Q I can do that, Your Honor.

6 THE COURT: The juror is asking about exhibit
7 number 2, the picture of Carl Colvin. Any objection to that
8 question being answered. He's asked for the witness to point
9 out the marks on Mr. Colvin's face.

10 MR. TUCKER: Well, I object - I think I objected
11 to the entire exhibit, Your Honor.

12 THE COURT: I'm not sure but it's been admitted.

13 MR. TUCKER: Assuming that the exhibit is in
14 I have no reason ...

15 THE COURT: All right, sir, we'll let the
16 witness...

17 MR. TUCKER: ...for the jury not to...

18 THE COURT: All right, the question is where
19 on the face of Mr. Colvin are the marks the witness referred to?
20 Would you point out on there - stand up close to the witness
21 box....

22 Q Mr. Lane, would you come out and demonstrate
23 to the jury where these marks are?

24 A Here.

25 THE COURT: All right, he's pointing to...

1 Q Blemishes on the cheek?

2 THE COURT: To the left cheek.

3 A Right here.

4 THE COURT: All right, sir, you may take the
5 stand.

6 Q With regard to your observation of Mr.
7 Colvin, did Mr. Colvin have a bruise on his cheek that evening?

8 A Yes.

9 Q This was after the altercation with Mr.
10 Scott?

11 A Yes.

12 Q I'd like this marked for identification.
13 Mr. Lane do you recognize what is in that picture?

14 A Yes, I do.

15 Q Is there any objection to the introduction
16 as an exhibit?

17 MR. TUCKER: No.

18 THE COURT: All right, sir.

19 MR. TUCKER: That's the one of the rifle,
20 the broken rifle?

21 Q Yes sir.

22 THE COURT: That will be admitted as exhibit
23 4 then, if there's no objection.

24

25

The photograph was marked and received into

1 evidence as Defendant's Exhibit Number 4.

2
3 Q Could I have Mr. Lane come up again ...

4 THE COURT: All right, sir, yes sir.

5 Q Mr. Lane, is that the rifle that Mr. Colvin
6 had in his hand when you came upon him and Mr. Scott?

7 A Yes.

8 Q Where was that picture taken?

9 A That was taken in his house.

10 THE COURT: All right, it has been admitted
11 and may be passed to the jury.

12 Q You stated that when Mr. Scott came out of
13 the car, he cursed you?

14 A Yes.

15 Q What did he say?

16 A He went back on the seat and called me
17 a white, fucking, son of a bitch.

18 Q And then what did he do?

19 A Proceeded to come out of the car.

20 Q When you saw Mr. Colvin run after Mr. Scott
21 did you tell Mr. Colvin to do that?

22 A No.

23 MR. TUCKER: I didn't get that question please.

24 Q The question was when Mr. Lane saw Mr.
25 Colvin run after Mr. Scott at the house, the question was did he

1 direct or tell Mr. Colvin to run after him, and your answer?

2 A No.

3 THE COURT: Now Mr. Swett be mindful of the
4 fact that you are not to lead your witness. That's gone past
5 us, that's a leading question, but you are getting into an
6 area now which is maybe very crucial, so don't lead your own
7 witness.

8 Q When you came upon Mr. Colvin and Mr.
9 Scott struggling, did you say anything to Mr. Colvin?

10 A No.

11 Q Did you say anything to Mr. Scott?

12 A I told him to stop.

13 Q After you had found the individual dead and
14 you came back to the house, tell the jury why you decided to
15 tell a different explanation to the police?

16 A Well, as I said before I was scared.
17 A man had been - was dead in the field and I was there with a
18 gun and I had financial obligations to - in business and I never
19 had been involved with the police before. And I was just
20 scared.

21 Q With respect to the story that you told
22 was there any difference in the story from the point when Mr.
23 Colvin was following Mr. Scott past the woodshed?

24 A Repeat the question?

25 Q The explanation that you first gave to the

1 police as opposed to what you - as opposed to what happened,
2 was there any difference in terms of what happened at the
3 point when Mr. Colvin began to chase Mr. Scott?

4 A Yes, I wasn't involved at all, I was
5 still - I just had drove up in my pickup.

6 THE COURT: Your story that you first gave
7 was that you did not pursue anybody into the cornfield?

8 A Right.

9 THE COURT: But rather stayed at your pickup,
10 was that what you told the officers?

11 A Yes, and then I went to the cornfield
12 but Scott was already dead.

13 THE COURT: You went there but not in pursuit?

14 A No.

15 Q Why were you running after Mr. Colvin?

16 A Well, he had went around behind the wood-
17 shed and I couldn't see either party. They were all out of my
18 view. And I just- I went there to see what was going on.

19 Q Did you at any time tell Mr. Colvin to do
20 anything to Mr. Scott?

21 A No.

22 Q Did you at any time encourage ..

23 MR. TUCKER: I'll object to that.

24 THE COURT: You're leading the witness. Don't
25 do that, Mr. Swett. ~~Objection sustained. The question is what~~

1 he did....from his own words, not what counsel may lead.

2 Q When you and Mr. Colvin were back at the
3 house and you were deciding upon the story to tell the police,
4 how did you believe Mr. Scott was killed?

5 MR. TUCKER: Beg your pardon?

6 Q How - the question is - Mr. Colvin and
7 Mr. Lane were back at Mr. Colvin's house before the police
8 arrived, I asked Mr. Lane at that time he knew he was dead,
9 I've asked him how he believed that Mr. Scott met his death?

10 MR. TUCKER: How he believes he met his death?

11 Q Yes sir.

12 MR. TUCKER: I object to the question.

13 THE COURT: The question as I understand
14 it is is what way as far as this witness understood it, Mr.
15 Scott had met his death. What was the cause of death you mean?

16 Q Yes sir. I think it's imperative that
17 the jury understand Mr. Lane's thoughts, understand ...

18 THE COURT: Insofar as it relates to the
19 story that he gave the police. It doesn't have any bearing
20 it seems to me on the events up to that point, but the matter
21 of the different story having been related - I will allow the
22 question, the objection is overruled. If it applies to what he..

23 Q Your Honor, I'll withdraw the question
24 and ask another question.

25 THE COURT: All right.

1 Q At that time did you know Mr. Scott had
2 been shot?

3 A No.

4 THE COURT: Let me ask you this, Mr. Lane.
5 Now, you say you felt his pulse, understood him to be dead?

6 A Yes sir.

7 THE COURT: What if anything about him
8 indicated any cause of death as far as you could see at that
9 time, when you first examined him?

10 A I just reached down and felt his pulse
11 and tried to get a heart beat and I couldn't get any response.
12 He wasn't breathing.

13 THE COURT: Well, you say you didn't under-
14 stand he had been shot, was there anything to indicate about him, what
15 might have been the cause of his death? From his condition,
16 his appearance?

17 A Well, Carl stood there with two pieces
18 of gun in his hand and said he hit him too hard.

19 THE COURT: I see. All right, go ahead, Mr.
20 Swett. Well, let me ask you this, had you heard a shot fired?
21 After you fired your own gun in the air?

22 A No sir.

23 THE COURT: Go ahead, Mr. Swett.

24 Q The next morning, which would be Saturday
25 morning, did you and your wife have a discussion about this

1 incident?

2 MR. TUCKER: I object to what went on between
3 he and his wife.

4 THE COURT: Yes sir, I think it's objectionable.
5 Apparently it doesn't relate to the version he gave to the
6 police that night and it's an after thought. Objection sustain-
7 ed.

8 Q When did you decide to tell the police
9 what actually happened?

10 A The next morning when I gave my statement.

11 Q Did the police come to your house?

12 A Yes, they did.

13 Q Had you decided to tell the truth before
14 or after they came to your house?

15 A Before.

16 Q At the time that you decided to tell them
17 the truth did you know that Scott had been shot?

18 A No.

19 Q When did you first learn that Scott had
20 been shot?

21 A After the officers were there about an
22 hour.

23 THE COURT: That night you mean?

24 A No sir, the next morning at 9.

25 Q I think to go back and explain the answer to

1 the Court's question. The police had left the Colvin scene
2 and you had gone back to your house?

3 A Right.

4 Q And it was the next morning, later Saturday
5 morning...

6 A Right.

7 Q When the police came back?

8 A Right.

9 Q When Mr. Scott had worked for you before
10 did he have a beard?

11 A No.

12 Q When Mr. Scott worked for you before
13 did he have any altercations or difficulties with him?

14 A No.

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REDIRECT EXAMINATION

BY: Mr. Tucker

Q Mr. Lane, do you recall how many times
you have testified regarding this matter?

A No sir, not really.

Q All right, you have given a statement to
the officers. You did not testify in the preliminary hearings
in the District Court?

A No.

1 Q You did testify in the homicide trial
2 in the Circuit Court?

3 A Yes.

4 MR. SWETT: I object, Your Honor. I don't
5 know what the purpose of these types of questions is.

6 THE COURT: Well, a question of how many
7 times he has testified - it seems to me to be material. Objection
8 is overruled. Go ahead, Mr. Tucker.

9 MR. SWETT: I think an explanation of what
10 homicide trial...

11 THE COURT: Well...

12 Q The homicide...

13 THE COURT: Not necessarily what trial but
14 how many times he has testified. This I take it is a matter
15 of pinpointing the occasions. Can you do it by date, Mr.
16 Tucker?

17 Q The homicide trial is the trial of
18 October 9 and 10 of 1974, the Commonwealth v. Carl Evans
19 Colvin, Jr.. You testified in that?

20 A Yes.

21 Q You testified last week on discovery
22 depositions?

23 A Yes.

24 Q In addition to making statements to the
25 officers?

1 A Yes.

2 Q And this is the first time you have used
3 that expression of white, fucking, son of a bitch, isn't
4 it? In all of your testimony, was today?

5 A No sir, I don't believe so.

6 Q What other time have you ever attributed
7 those words to Eugene Scott?

8 A I told the officers the morning after it
9 happened.

10 Q I see. But no other time in court or
11 when your testimony was being taken down have you used the
12 expression, have you?

13 A I can't recall.

14 Q You didn't use it in the trial of
15 Carl Evans Colvin on October 9 and 10 of 1974?

16 A I can't recall.

17 Q Now, do I correctly understand you to
18 have said, that Mrs. Colvin came to your house and said words
19 to this effect - please go there and help Carl, he got out of
20 the car with his gun and I don't know what he will do?

21 A Yes.

22 Q She was concerned that he would use that
23 gun?

24 A I reckon so, yes.

25 Q How much do you weigh?

1 A About 240.

2 Q How tall are you?

3 A 6' 11 and a half. I mean 5'11½"

4 Q Scott was a much smaller person than
5 you wasn't he?

6 A Yes, he was shorter.

7 Q Now, during all of this altercation from
8 the time that you first saw Scott and the time that you saw his
9 body lying prone on the ground, dead, nobody had hit Scott?

10 A Not that I know of, no.

11 Q You never hit him?

12 A No.

13 Q You never saw Carl hit him?

14 A Not - no.

15 Q As far as you know the only thing that
16 ever hit Scott was that bullet in the back of his neck?

17 A I mean I don't know.

18 Q Now, the pictures that you put in - the
19 picture of Colvin that you identified, that has been put into
20 evidence showing a couple of bruises on his cheek ...

21 A Yes.

22 Q Did you see those bruises inflicted?

23 A Yes I did.

24 Q Where was Scott at the time those bruises
25 were inflicted?

1 A About 25 foot from the car.

2 Q Before the chase began?

3 A Yes.

4 Q How soon after the infliction of those
5 bruises did the chase begin?

6 A Just seconds.

7 Q Did you at that time have in mind Mrs.
8 Colvin's concern as to what Carl might do with that gun?

9 A Not really, no.

10 Q You didn't tell Carl to put his gun
11 down?

12 A No.

13 Q You didn't tell Carl not to pursue him?

14 A No.

15 Q As a matter of fact Carl started pursuing
16 him right after you fired your shot in the air, didn't he?

17 A Yes.

18 Q You fired the shot in the air in order
19 to - for Scott to know that you wanted him to stop, didn't you?

20 A What was the question again?

21 Q You fired the shot because you wanted
22 Scott to know that you wanted him to stop?

23 A Yes.

24 Q And that same shot let Carl know that you
25 wanted Carl to stop?

1 MR. SWEET: Objection, Your Honor. I
2 don't know how he would know what Mr. Colvin would know.

3 THE COURT: Well, he may answer it if he -
4 what his purpose was in firing it, not what he knew. But
5 the question is what - for what purpose did you fire the shot?

6 A To - what purpose did I fire the shot?

7 THE COURT: Yes sir. When you fired the
8 shot in the air, what was the purpose of it?

9 A To let Scott know that I wanted him to
10 stop.

11 THE COURT: Go ahead, Mr. Tucker.

12 Q And Carl was right there to hear that
13 shot?

14 A Yes.

15 Q And get the same message from the firing
16 of the shot, that you intended for Scott to get?

17 A I wouldn't know that.

18 Q There was no other message he could get
19 was it?

20 A I don't know.
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REDIRECT EXAMINATION

BY: Mr. Tucker

Q Mr. Lane, you have exhibited the jacket that you were wearing on this night of December 14 - 15, had the jacket been torn in any respect to your encounter with Eugene Scott?

A No.

Q Now did he - I think you said that he pulled himself out of the car by your jacket, grabbing you and gave himself leverage to get out of the car?

1 A Yes sir.

2 Q Did he make more than one pull or just
3 one pull?

4 A He pulled himself out using the jacket
5 as a leverage, yes.

6 Q Did you hear the jacket tear?

7 A No, not at that time, no.

8 Q Were you sensible of his having pulled
9 once or twice or three times or - on your jacket?

10 A Yes sir, it startled me, that's what...

11 Q What I want to know is was it only one
12 tug on your jacket?

13 A No, he grabbed a hold of it and pulled
14 himself out of the car.

15 Q With which hand did he grab hold of your
16 jacket?

17 A His right hand.

18 Q Did he grab hold of it once or more than
19 once?

20 A Just the one time.

21 Q Just the one time?

22 A Right.

23 Q Did you hear - was the tug downward or
24 upward?

25 A Yes, pulled me toward the car and I had to

1 restrain myself.

2 Q Where was - what part of the jacket
3 as you felt it was being tugged?

4 A He just had a hold of my jacket. I
5 mean....

6 Q Can you demonstrate, using my body as
7 to where he put his hand on your jacket? What part of your
8 jacket he grabbed? Demonstrate using me, as if you were
9 Eugene Scott and I'm you?

10 MR. SWETT: Your Honor, to demonstrate it
11 would help to have the people in the position that they were
12 in.

13 THE COURT: All right...

14 Q All right...

15 THE COURT: Can you - are you close enough
16 to the same position, now as to events that you could
17 demonstrate what you recall about it, Mr. Lane?

18 A I mean - of course, Scott was setting in
19 the car.

20 THE COURT: All right, you're in a position
21 that Scott was in.

22 A Right.

23 THE COURT: Show the jury exactly what Scott
24 did - Mr. Tucker is standing - if he's not standing where you
25 were then, then put him in the position where you were standing.

1 A Well, he was standing right there.

2 Q All right, now you do to me what
3 Scott did to you?

4 A He grabbed my jacket.

5 Q Two - you used two hands, did he use
6 two hands?

7 A I don't know.

8 Q All right, grab my jacket like - grab
9 my coat like he grabbed your jacket?

10 A I mean he grabbed my coat.

11 Q All right, you grab my coat in the
12 position where he grabbed your jacket - where he grabbed your
13 jacket? Put your hand on my coat in the position that he
14 put his hand on your jacket?

15 A He grabbed me just like that right there.

16 Q So that he got a - was it above the
17 pocket?

18 A Right at the pocket.

19 Q Right at the pocket?

20 A Right.

21 Q Did his hand go into the pocket?

22 A I don't know.

23 Q Well, you grabbed me above the pocket,
24 that wasn't quite accurate was it?

25 A I grabbed your coat.....

1 MR. SWETT: Your Honor, we have...

2 THE COURT: We will take note of the fact
3 that you've got on different clothes, Mr. Tucker.

4 A Clothes....

5 MR. SWETT: Yes, Your Honor...

6 THE COURT: The fact that he grabbed you
7 and the position of your pocket has no bearing on where the
8 jacket pocket is.

9 Q Very well...

10 THE COURT: The jury will take into account
11 Mr. Tucker's not dressed with the same clothing. Now I think
12 the observation that he had you in a different place would be
13 disregarded.

14 Q Very well. And he pulled on that jacket
15 to give him leverage to get out of the car?

16 A Yes.

17 Q One pull?

18 THE COURT: He's already answered that, Mr.
19 Tucker.

20 Q I'm disturbed as to whether the answer to
21 one pull was yes or no.

22 THE COURT: He's already said it's yes.

23 Q Yes sir. Did one pull disconnect this
24 pocket from the jacket and also cause this rip up from the pocket?

25 A Yes.

1 Q All right. Did the pocket come completely
2 off when he pulled it?

3 A Yes.

4 Q Where did you recover the pocket?
5 Where were you with respect to the automobile when you recovered
6 the pocket?

7 A It was laying on the ground.

8 Q Right there by where he had - where you
9 were standing when he pulled?

10 A Yes.

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DIRECT EXAMINATION

BY: Mr. Tucker

Q Mr. Lane, I show you what has been marked
as Plaintiff's Exhibit Number 3, and ask you if you can identify
that as the body of the decedent in the cornfield where you first
saw him?

A Yes.

1 Q That is how he was lying in the cornfield?

2 A Yes.

3 Q Now we offer it in evidence, Your Honor.

4 THE COURT: All right, that will be admitted
5 as Plaintiff's Exhibit Number 3....it may be presented to the
6 jury.

7

8 The photograph having been previously marked
9 was received into evidence as Plaintiff's Exhibit Number 3.

10

11 Q You didn't see that rifle get broken, did
12 you?

13 A No.

14 Q Was it broken when you arrived at the
15 scene where the man fell?

16 A Yes.

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DIRECT EXAMINATION

BY: Mr. Swett

Q Mrs. Lane, would you state your full name
for the record?

A Scarlet Geneva Lane.

Q Please speak up and speak so the jury will
hear you?

A Scarlet Geneva Lane.

Q Are you the wife of Mr. Thomas Lane, the
defendant in this case?

A Yes, I am.

MR. TUCKER: Excuse me, I haven't heard that
first name yet.

1 A Scarlet - S-C-A-R-L-E-T.

2 Q Mrs. Lane, how long have you been married?

3 A 12 years.

4 Q How many children do you have?

5 A Three.

6 Q Are you employed, Mrs. Lane?

7 A Yes.

8 Q Where?

9 A Doctor Cary Moon.

10 Q And what are you employed as?

11 A Nurse.

12 Q Mrs. Lane, how long have you lived in the
13 Albemarle County area?

14 A All my life.

15 Q How did you first meet your husband?

16 A Through a girlfriend at the hospital. I
17 was working at the hospital at the time.

18 Q Have you lived at the farm for the dura-
19 tion of your marriage to Mr. Lane?

20 A We were married there.

21 Q You were married at the farm?

22 A Yes.

23 Q And you have lived there for the duration
24 of your marriage?

25 A Yes.

1 Q Referring now to the evening of December
2 14, 1973, would you tell the jury the first incident which
3 you can recall in terms of your involvement?

4 A It would be when Carl and Millie arrived
5 at our house late that night. I didn't look at the time.
6 And..

7 Q Carl and Millie who?

8 A Isn't that terrible - I can't think of
9 his last name....Colvin.

10 THE COURT: Speak a little louder, Mrs.
11 Lane, so we can hear you.

12 A Colvin.

13 Q Mr. and Mrs. Colvin?

14 A Right. They arrived at our house with
15 the children and they said there was a prowler, or didn't say
16 it was a prowler, was a car following them and they proceeded
17 to tell us that they had left the house and the car followed
18 them. And they had turned around and the car turned around
19 and had turned the lights on and was honking the horn.
20 So they didn't know what else to do, they were new in the area
21 and so I guess we were the only people that they knew where
22 to come to.

23 Q What time in the evening was this?

24 A I didn't look at the clock but it was
25 night.

1 Q Had you gone to bed already?

2 A Yes, uh-huh.

3 Q All right, and then what happened after
4 they came?

5 A Well, then my husband and Carl left.
6 And Millie stayed at our house, and ..

7 Q Did they have the children then?

8 A Yes - uh-huh.

9 Q The children stayed at your house?

10 A Yes. And...

11 Q Describe - before you go ahead, describe
12 the condition of Mr. and Mrs. Colvin and the children at this
13 particular time?

14 A Well, they were very upset and real
15 concerned. And they kept saying, you know, wonder who he
16 could be, who would do something like that. And we tried to
17 reassure them that it was just probably a prowler or someone
18 stopping to have a few drinks, or we really didn't know who
19 it was. And so after Tom and Carl had gotten back...

20 Q All right, and how long was it between
21 the time that they - Mr. Lane and Mr. Colvin left your house
22 and before they came back?

23 A I didn't even look at the clock. That was
24 the last thing that was on my mind was time. I just didn't
25 look.

1 Q What happened then?

2 A What do you mean, when they came back?

3 Q Yes.

4 A Well, they came back, we had coffee,
5 and they talked about what they were going to do tomorrow
6 on the farm. And just farm ideas. So then we sort of tried
7 to assure them that everything was okay and there was no car
8 in the area to bother them. And they bundled the children
9 up and took them - started home.

10 Q And then what did you do?

11 A Well, I gathered the coffee cups up
12 and I put them in the dishwasher and tidied the kitchen up
13 a little bit and then turned around to turn the light off,
14 and I saw this car coming back in the driveway. And the lights
15 were blinking on high and dim. So I just knew it was them,
16 so Tom had already gone upstairs to go to bed. So I yelled
17 up the steps that a car was coming back in and I was sure it
18 was Millie and Carl. So at that time Millie was at the door,
19 rather banging on the door. So I answered the door and she
20 was in a state of hysterical. She was crying, the children
21 were all screaming and crying. It was horrible. And so I
22 in turn, she said the car was there, so I in turn said I was
23 going to call the police. And so..

24 Q Did you have the license number of the
25 car at that time?

1 A Yes, Carl had gotten the license number
2 the first time that the car was there. But we just thought it
3 was a prowler or somebody having a few drinks and so when the
4 car wasn't there when they went back, we figured it wasn't
5 any sense in calling the police department and bethering them
6 with something useless. There was nobody there. So I called -
7 first I called Steve Huffman. He had given me a number.

8 Q Steve Huffman is who?

9 A The deputy - deputy I guess he is.

10 Q For Scottsville or ...

11 A For Albemarle County, I gather, I'm not
12 sure.

13 Q But he is a police officer?

14 A Right. I had had a threat call once
15 and..

16 Q What kind of a call?

17 A I had had a threat call.

18 Q Threat call?

19 A Once. So he gave me that number and
20 said if I had any more trouble to call this number, that he
21 could be reached there. So I called his number. There was no
22 answer, so then I called the Sheriff's Department, and told
23 them that we had a prowler or somebody and I thought they should
24 come down and check on it. And they said that they were mighty
25 busy but they would try to send somebody down. So...

1 Q Had your husband left at the time?

2 A No, he hadn't left yet. The second
3 time when I found - then I looked on the cabinet and I found
4 the car license number written down. So I called back and
5 gave them the car license number and by that time Tom was
6 going out the door. And from then we just waited. I don't
7 know how long, it didn't seem like very long....before I called
8 Carl's house.

9 Q The next thing you did was call whose
10 house?

11 A Carl's house, because I was worried.
12 I just didn't - couldn't think of why somebody would come
13 back twice. I mean, it just wasn't right.

14 Q What were Mrs. Calvin's children doing
15 at the time?

16 A They were all still crying and I was trying
17 to tell them, I mean, everything is going to be all right.
18 Don't worry, just be calm and sit. Nothing is going to happen.
19 And we probably - I think we had another cup of coffee and
20 just waited really, until finally I said, well, I'm going to
21 call.

22 Q Why did you call?

23 A Impatient I guess because I hadn't heard
24 anything from Tom or no car - no one had come back and I was
25 just concerned and inquisitive of what was going on.

1 Q Did anybody answer the telephone?

2 A Yes. I was trying - it was either Tom
3 or Carl. I knew I talked to both of them that night. And
4 which one was first I can't remember. But I asked if everything
5 was all right. If I remember I think it was Carl that answered
6 the phone, and he said, he thought someone had been hurt.
7 And I said, how bad and he said I hit him too hard. And I
8 said is Tom okay, and he says, yes, and then I said let me
9 talk to Tom. So I asked Tom, you know, was everything okay
10 and what was the problem. And he said he thought the man was
11 dead. So when he told me that I - after I hung up - then I
12 told him I had already called the police, they should be on
13 their way. He said, well, nobody's here yet. So after I talked
14 to him, I in turn called the police and told them somebody
15 had been hurt and I wished they would send somebody - somebody
16 down. So then we got help.

17 Q All right. After that happened did you
18 go down to the Colvin house with Mrs. Colvin?

19 A I went with Millie because I felt like
20 she needed somebody.

21 Q Did someone call and request Mrs. Colvin
22 to come down? What prompted you to go to the Colvin house?

23 A A deputy may have called - I can't really
24 remember. I just know we went. I took her in my car.

25 Q You and Mr. Lane then returned home?

1 A Yes. After...

2 Q And then what did you do when you
3 returned home?

4 A I really - I knew Tom was upset. He had
5 a right to be. And I think I may have had a cup of coffee
6 or he did, I can't remember, but any way we finally got to
7 bed. And the next thing I remember was the phone ringing the
8 next morning.

9 Q Who was on the telephone?

10 A Somebody from the Sheriff's Department,
11 it could have been Mr. Higgins. I'm not sure. But they were
12 talking to Tom when I came down the steps. And after he ..
13 they were talking about what happened. I don't recall - I don't
14 know what they were talking about, but he was talking to him.

15 Q Now had you noticed anything about your
16 husband...

17 A I know Tom and I knew that something was
18 missing. And so after he had gotten off the phone I asked
19 him was he sure he was telling the truth, because it can only
20 make more trouble. And then he broke down and started crying
21 and he said if I tell the truth, they'll - they won't believe
22 me. They'll think I did it, I was there. I opened his car
23 door and that was my first mistake. I shouldn't have opened
24 his car door. And I said, why, and he said, because that is
25 like his house. He was in it and I opened the door. And I said,

1 well, that shouldn't - he was on your property, that shouldn't
2 have any - make any difference. But to him, it did. So we
3 talked about it and that was the morning that he told the
4 truth.

5 Q At that particular time how had your
6 husband explained that Mr. Scott had met his death? At that
7 time?

8 A He thought he had been hit over the
9 head. You know, that Carl had hit him too hard.

10 Q Carl Colvin?

11 A Yes. That's what Carl told me, he had
12 hit him too hard, and so it was sort of left at the hit - the
13 blow.

14 Q What else happened that morning, Mrs.
15 Lane?

16 A Higgins came and ...

17 Q Did your husband speak with Mr. Higgins
18 at that time?

19 A They went outside in the car and were
20 talking. I didn't hear that conversation, but I knew then that
21 he was going to tell exactly what happened.

22 THE COURT: You are referring to Mr. Higgins,
23 the investigator of the Albemarle Sheriff's Department?

24 A Yes sir.

25 Q Did your husband come back into the house?

1 After that conversation?

2 A Yes.

3 Q Did he tell you that he had learned
4 anything new about the incident?

5 A He told me he had told the truth of what
6 happened.

7 Q What about the cause of death?

8 A Still - oh, then he - I don't know ...
9 I can't recall if it was then he found out he had been shot.
10 It was some time that day now, I'm not sure if it was right
11 that instant but it was in the morning that he found out he
12 had been shot. It was the cause of death.

13 Q Prior to the incident did you know
14 Mr. Scott, Eugene Scott?

15 A I didn't know him personally. I probably
16 wouldn't have known him if I had seen him, you know. Because
17 I wasn't in contact with him that much. I work and it's hard
18 being a housewife and a mommy too. So I really don't get
19 involved with the help. We were at Doctor Moon's one afternoon
20 and this was - I gather about six months before all this
21 happened and Scott and I think there were three other boys
22 in the car. We were fixing fence and he stopped and him and
23 Tom chatted and they asked how each other were and so forth
24 and so on. And I didn't know it was him then until after he had
25 left and I asked Tom who was that and he was saying that was

1 Scott, that was him.

2 Q No further questions.

3 THE COURT: All right, Mr. Tucker.

4
5
6 CROSS EXAMINATION

7 BY: Mr. Bass

8 Q You mentioned that when you called Mr.
9 Colvin's house you spoke to both Mr. Colvin and your husband,
10 is that correct?

11 A Right.

12 Q Did your husband at that time tell you
13 that he thought that Eugene Scott was dead?

14 A Yes.

15 Q When you later called the police, did you
16 relate that to the police?

17 A I told them that someone had been badly
18 hurt. And would they - because I didn't know if Tom knew
19 that much about medicine, if he could really - some people look
20 dead and they're not dead. You get my point? I mean, you knew,
21 you can look at somebody and you think they are dying and
22 they are still awake.

23 Q So you didn't tell the police that?

24 A I just told them that someone had been
25 hurt bad.

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8 DOCTOR BEN STURGILL, having been duly sworn,
9 testified as follows:
10

11 DIRECT EXAMINATION

12 BY: Mr. Tucker

13 Q Would you state your name and occupation?

14 A Doctor Ben Sturgill. I'm a pathologist.

15 Q And by whom are you employed?

16 A By the University of Virginia.

17 Q And how long have you been a pathologist?

18 A About 12 years.

19 Q Would you give the jury just some of your
20 professional background?

21 A I was educated at the University of
22 Virginia, received my M.D. degree there. And did my residency
23 in pathology at the University of Virginia, and was certified
24 in pathology in 1966.

25 Q Would you just give us in lay language a

1 notion of what a pathologist does?

2 A A pathologist examines tissues, does
3 autopsies.

4 Q Did you on the night of December 15, 1973
5 examine the remains of one, Eugene Scott?

6 A Yes.

7 Q Did you determine the cause of death?

8 A Yes.

9 Q And what did you determine was the cause of
10 death?

11 A A bullet wound in the neck.

12 Q In the neck, what part of the neck, would
13 you demonstrate on your body what part of the neck the wound
14 was?

15 A On - it entered the neck rather high,
16 below the right ...left ear..

17 Q Let me interrupt for a minute, Doctor,
18 and show you what has been marked here as Plaintiff's Exhibit
19 number 2 and ask you if you can identify it?

20 A Yes.

21 Q Would you say what that is?

22 A That's an entrance wound just below the
23 hairline and just to the right of the midline at about the level
24 of the bottom of the right ear.

25 Q Would it be fair to say that that is a

1 wound in the back of the neck?

2 A Well, it's more in the back than the side,
3 yes.

4 Q The bullet apparently came from behind
5 the man?

6 A Well, sort of behind and to the side,
7 I would say.

8 Q I offer that into evidence.

9 THE COURT: What's the exhibit number?

10 Q Number, Plaintiff's 2.

11 THE COURT: Plaintiff's exhibit 2 is admitted
12 into evidence and may be presented to the jury.

13
14 The photograph having been previously marked,
15 was received into evidence as Plaintiff's Exhibit Number 2.

16
17 Q And you are satisfied that the cause of death
18 was that bullet wound?

19 A Yes sir.

20 Q Do you have any idea of the caliber of
21 the bullet?

22 A Not precisely. It appears to be a small
23 caliber.

24 Q It could have been a 22?

25 A Could have been.

1 Q I shall show you what has been marked
2 as exhibits 1,- Plaintiff's exhibits 1, 3, 4 and 5, and ask
3 you if you can identify them?

4 A I should say that these pictures and
5 the picture that I have just looked at are not pictures that I
6 took personally. I did take pictures myself, but these are
7 of the same individual and are of more or less the same views
8 that I took.

9 Q They are all pictures of the body of
10 Eugene Scott?

11 A Yes.

12 Q Now returning to - you just hold onto those
13 for a minute. We'll discuss them one by one, but returning
14 to Plaintiff's Exhibit number 2 that showed the bullet wound.
15 Was there anything else about the - that your autopsy revealed
16 about the bullet, its path and whether or not there was debris
17 accompanying the bullet?

18 A The bullet was found in the left cerebellar
19 hemisphere, which is a part of the brain, which is above and to
20 the left of the entrance wound. So it would appear that the
21 bullet traveled to the left and upward. The exact path would be
22 very difficult to be sure about because of the many boney struc-
23 tures and the opportunity for deflection and so forth. But
24 if we assumed that it were a straight line then it would be
25 upward and to the left.

1 Q Was there any other substance accompanying it,
2 other than the slug itself that you found, in the wound?

3 A In and around the entrance wound there
4 is some extraneous debris....material that has been carried
5 in. And while the - just the appearance doesn't allow one to
6 say that this is gun powder, it is of that general nature.

7 Q And assuming that it's gun powder, would
8 that be indicative of anything? The range at which the bullet
9 was fired?

10 A In general that's considered to be a close
11 range.

12 Q Could you approximate in feet?

13 A Well, I'm not an expert but the experts
14 generalize somewhere around two feet, as a maximum. But this
15 varies with the gun and a lot of other things. That also assumes
16 that that is gun powder.

17 THE COURT: Doctor, do you have any opinion
18 on that, though from your own personal analysis of it?

19 A Well, I would say that it probably is, but
20 it's not anything I could state with any certainty.

21 THE COURT: All right, go ahead, Mr. Tucker.

22 Q Turning to what has been marked as Plaintiff's
23 Exhibit number 1, will you say what injuries are indicated there?
24 What injuries to the man?

25 A The only one I can definitely see in this

1 picture is one on the left hand, the knuckle of the ring finger,
2 which is a laceration...

3 THE COURT: Which picture number is that?

4 Look on the back, Doctor.

5 A Number 1.

6 Q And will you also look at number 5 and say
7 whether or not...

8 THE COURT: Number 1 may be presented to the
9 jury.

10
11 The photograph having been previously marked,
12 was received into evidence as Plaintiff's Exhibit Number 1.

13
14 A Yes..

15 Q That's another picture of the same injury?

16 A Yes.

17 Q Doctor, can you tell us what kind of
18 instrument produced that injury?

19 A Well, not precisely, but it's an irregular
20 tearing sort of lesion, which would suggest to me that it was a
21 blunt instrument of some sort.

22 THE COURT: Which picture are you referring
23 to, Doctor?

24 A Number 5.

25 THE COURT: All right, let me see that for a

1 moment, if you will, Sheriff? I think that can be admitted.
2 Mr. Tucker, there's one picture that was obviously taken in an
3 area that the doctor has not testified that he's familiar with,
4 and I don't think you have come to that one. This picture
5 doesn't show that. It will be admitted as number 5....that will
6 be admitted as Plaintiff's Exhibit Number 5.

7
8 The photograph having been previously marked,
9 was received into evidence as Plaintiff's Exhibit Number 5.

10
11 Q I now show you what has been marked as
12 Plaintiff's Exhibit Number 4 and ask you what does that show?

13 A That shows a laceration or tear in the
14 scalp, just above the left eye, into the hairline.

15 Q Would you put your hand on your own body
16 where that laceration is?

17 A I guess it's about there....somewhere like
18 that.

19 Q Do you have an opinion - did you examine
20 that wound?

21 A Only grossly, that is to say I examined it,
22 but we did not take portions of it for any examination.

23 Q I understand. Do you have an opinion as
24 to what kind of instrument caused that wound?

25 A Again, most probably a blunt instrument.

1 It's an irregular tear.

2 Q Does that indicate metal?

3 A Not necessarily.

4 THE COURT: What was the....the question...

5 Q Metal - M-E-T-A-L and he said not necessarily.

6 A Not necessarily.

7 Q But it's - by saying a blunt instrument
8 you are saying it was not a sharp knife..

9 A Exactly.

10 THE COURT: Don't lead the witness now.

11 Q I'm sorry, sir.

12 THE COURT: He's your witness. Now let me
13 see that one before you pass it up.....all number 4 may be
14 admitted, and be presented to the jury.

15
16 The photograph having been previously marked
17 was received into evidence as Plaintiff's Exhibit Number 4.

18
19 Q This is the one His Honor was concerned
20 about. Plaintiff's Exhibit Number 3.

21 THE COURT: Now it may be some question as
22 to whether he can testify as to the area from which that photo-
23 graph was taken. So you should be forewarned on that one, Mr.
24 Tucker.

25 Q I show you what has been marked as Plaintiff's

1 Exhibit Number 3 and merely ask you if that appears to you
2 to be Eugene Scott, the man whom you examined?

3 A It appears to be.

4 THE COURT: Are you familiar with the area
5 that it purports to be taken in, Doctor?

6 A No.

7 THE COURT: You were not at the scene where
8 that photograph was taken?

9 A No sir.

10 Q We'll hold that until we recall Mr. Iana.

11 THE COURT: We will not admit that one at this
12 time, Mr. Tucker.

13 Q Doctor, was there any other signs of injury
14 that you recall observing when you made examination of this
15 man?

16 A I don't believe there are any more recorded
17 and I don't recall....any others. We do mention one on the
18 ear. I don't know whether we went over that one or not.

19 Q What was that?

20 A The one on the left ear. Did we go over
21 that one?

22 Q And what kind of injury was that?

23 A A similar laceration.

24 Q Have you an opinion as to what kind of
25 instrument caused that injury?

1 A The same - blunt....instrument. Qualitatively
2 they seemed quite similar.

3 Q Do you have any notation as to anything
4 on his right arm?

5 A Yes, there was a cruciform, very super-
6 ficial abrasion on the right forearm, which looked different
7 from the others.

8 Q And what respect was it different?

9 A It was more like a scratch.

10 Q Doctor, did you make further examination of
11 the man himself and his organs?

12 A Yes, we did a complete autopsy.

13 MR. SWETT: Your Honor...

14 THE COURT: Mr. Tucker, I think the objection
15 that we discussed earlier may be well taken at this point. Now
16 you're getting into an area which gets outside of the area that
17 the Court indicated to you you would be permitted to cover.
18 an
19 I think you may well be facing/objection, the Court will sustain
20 at this point on going any further into detail. Other than
21 what was observed from an exterior, superficial nature.

22 Q Not even if I could show the possibility
23 that this interior was the result of violence?

24 THE COURT: Connected to one of these other
25 wounds?

Q Yes sir..... possibly it's too specialist,

1 I won't press the point.

2 THE COURT: It may well be, I think that's
3 the point. I think the objection should be sustained unless
4 he can definitely connect it to one of these wounds that was
5 observed, Mr. Tucker. That would be getting into a speculative
6 area.

7 Q Your witness.

8 THE COURT: All right, Mr. Swett.

9
10 CROSS EXAMINATION

11 BY: Mr. Swett

12 Q Doctor Sturgill, your opinion is that
13 a blunt instrument may have caused the wounds on the forehead
14 and the one on the hand, is that correct?

15 A Yes.

16 Q Do you consider a rock to be a blunt
17 instrument?

18 A Yes.

19 Q A rock could have caused the wounds?

20 A Yes.

21 Q Would a side of a board, such as the corner
22 of a house, if the head or hand came in contact with that, would
23 that have caused such an injury?

24 A Yes, it could.

25 Q The scratches on the arm were they similar to

1 scratches that would get from briars?

2 A I suppose, although these looked almost
3 like - like an impression from something. I'm not sure exactly-
4 I mean they didn't have any particular shape other than seemed
5 to be two lines crossed. I'd rather think it was something
6 thin that may have struck or brushed across rather forcefully
7 rather than a scratching, as I may have indicated when I said
8 scratch.

9 Q It's my understanding if the debris
10 that you found in the wound was gun powder, the answer to
11 Mr. Tucker's question, that this would indicate a close shot?

12 A Yes.

13 Q The figure you have stated of being two
14 feet, do I understand that to be in your opinion a maximum?

15 A Yes.

16 Q Anywhere up to two feet?

17 A Yes.

18 Q I have no further questions.

19 THE COURT: All right, any further direct of
20 Doctor Sturgill?

21
22 REDIRECT EXAMINATION

23 BY: Mr. Tucker

24 Q If the injury - say the one on the forehead,
25 on the head had been made with a rock, do you think that someone

1 used a rock and struck the blow?

2 A Well, not necessarily. I suppose one
3 could - any way in which the rock struck the head, either by
4 someone having used the rock or falling on the rock. I don't
5 know that I could tell the difference.

6 Q I see. I have no further questions.

7 THE COURT: Any other questions on cross?

8 MR. SWETT: Could I see the pictures that
9 were admitted?

10 JUROR VASCOTT: May I direct a question to
11 the Doctor, please?

12 THE COURT: You may ask the Court and I'll
13 see whether it shouldn't be.... what's the question sir?

14 JUROR VASCOTT: We have heard before the
15 testimony concerning the broken rifle and I would like to ask
16 the Doctor if the wounds on the man's head and hand could have
17 been caused by the rifle? And whether they would have
18 indicated sufficient force to break the rifle?

19 THE COURT: All right, do we have a picture
20 on that rifle? Where is the picture? Will you see if you can
21 find that picture and show it to Doctor Sturgill. Doctor
22 Sturgill, will you read the number off of it?

23 MR. TUCKER: Number 4.

24 THE COURT: Looking at Defendant's Exhibit
25 Number 4, which is the picture of a rifle, could that instrument

1 in your opinion have caused any of the injuries which you
2 described?

3 A It could.

4 THE COURT: And what is your opinion with regard
5 to the injury and the nature of it, insofar as it might have
6 been sufficient to break the rifle, if the rifle had been the
7 instrument used?

8 A I don't believe that I could answer that.

9 THE COURT: You could not answer it from the
10 standpoint of what force it would have taken to break the
11 rifle?

12 A Exactly.

13 THE COURT: All right, you may proceed with
14 your cross examination, Mr. Swett.

15
16 RECROSS EXAMINATION

17 BY: Mr. Swett

18 Q First of all I show you a picture of
19 some fencing wire, based on your examination do you have an
20 opinion as to whether some of the wounds could have been caused
21 by someone running by or near the open ends of that wire?

22 A It would be possible. It would be - I
23 think it would be easier to explain the injury on the hand than
24 the one on the head. But assuming that this is a level, which I
25 have no way of knowing, I suppose it's conceivable that this could

1 have caused the lesion of the head as well. Although I think
2 it's much less likely.

3 Q What about the - I believe you called it
4 scratches on the right forearm?

5 A I suppose that's possible, yes.
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7 THE COURT: I don't undertake to belittle the positions
8 taken by either one of you all gentlemen and it seems to me that
9 the strength of each of your arguments indicates that these
10 inferences and conclusions from the evidence do differ making
11 it even more apparent to the court that it is a proper case for
12 the jury and making it appropriate it seems to me that the motions
13 be overruled on both sides. And I say so for this reason, the
14 circumstances under which this occurred would have to be viewed
15 in the light of reasonable and ordinary people and the infer-
16 ences to be drawn from those circumstances that are proven are
17 the province of the jury when it is a jury case. There isn't
18 too much dispute in the direct evidence but the inferences to
19 be drawn, it seems to me may widely vary. For instance the
20 point that Mr. Swett makes that Mr. Lane would have no reason
21 to think that death would ensue may be very appropriate if
22 there had been no known firearms. For instance if a firearm
23 had been secreted by Mr. Colvin and pulled out of his pocket,
24 I think you would say that in that case you wouldn't have any
25 reason to expect any such violence but it seems to me that when

1 both of them have a rifle the outcome of this is not one which
2 would be beyond expectation. Now you may not be able to con-
3 vince the jury of that and I am not saying what the jury should
4 find, depends on their view of the evidence but certainly one
5 view of the evidence is that those who use firearms can expect
6 death to ensue. It shouldn't be a surprising development. Now
7 that's one theory of the case. So that however, Mr. Lane may
8 have felt about what was going to be done, he was aware of the
9 fact that Colvin had a rifle and he had a rifle, that he was
10 there for the purpose of investigating an intruder and he cer-
11 tainly started out assisting. The question of whether or not the
12 evidence would be sufficient to convince the jury that he abandoned
13 it, that's a matter of inference. It certainly started out as
14 a common purpose. They arrived on the scene somewhat together
15 in the sense that Colvin awaited the arrival of Mr. Lane, sent
16 a messenger to secure his presence. That's undisputed and upon
17 the arrival of Mr. Lane, the events began to unfold which led
18 to this person's death. What participation occurred is not
19 too much in dispute but the inferences it seems to me to be
20 drawn are very much within the province of the jury. So that's
21 the basis upon which the court overrules the motions on both
22 sides. I consider it a matter for the jury to determine. Now
23 the difficulty we are going to have is getting instructions to
24 guide the jury in dealing with these facts. I will note both
25 parties exceptions to the court's rulings on these motions.

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THE COURT: All right, if the parties know something
about the facts and since this is a case in which there is a

1 directed verdict, what difference does it make gentlemen? --other
2 than we get back to Mr. Swett's motion, don't we, if they know
3 something about the facts they shouldn't hear the case, is that
4 it?

5 MR. SWETT: Your Honor, I can't say because I don't
6 know what they know until they tell us.

7 THE COURT: All right, what's your position Mr.
8 Tucker?

9 MR. TUCKER: My position is opposition of Mr.
10 Swett's motion.

11 THE COURT: I understand. In other words you are
12 going to maintain that really they should know something about it
13 - should know the facts?

14 MR. TUCKER: I think they should know the facts.

15 THE COURT: All right. Well, it appears to the court
16 that the question is how much - how many facts they do have
17 to know. If they know too much about this matter, I am afraid
18 they...

19 MR. SWETT: The point is, Your Honor, that the court
20 had decided what the jury is going to be told by the court or
21 by Mr. Tucker - what Mr. Tucker is going to be permitted to
22 tell the jury, the fact that they know the facts are limited
23 to those and - I don't see where there would be an issue.

24 THE COURT: Well, I am just wondering what would
25 make the record sound the best in this regard, whether it wouldn't

1 be best to establish that by your respective motions at this
2 point before I even question this jury. Let the record show
3 that I have already heard counsel in my chambers in reference
4 to a motion to limit the evidence. I would like Mr. Swett
5 to state the motion in the record now. Proceed sir.

6 MR. SWETT: Your Honor, our motion arises from
7 the fact that this case is before the court on the question
8 of damages only and we ask the court to not permit any
9 testimony about the circumstances of how this accident happened
10 and the case law - under the case law of *Breeding Administrator*
11 *v. Johnson*, 208 Va., 652 and *Wilson v. Whittaker Administrator*,
12 207 Va., 1032. The basis for that is that the holding in those
13 two cases demonstrate that when the sole issue for the jury
14 to decide or to be presented is the question of damages, in
15 a wrongful death action, the circumstances of how the decedent
16 died is not relevant to damages, only to liability and it would
17 be prejudicial to permit any evidence at all as to how the
18 decedent died since that is not an element under the statute
19 for damages.

20 THE COURT: All right, now do you want to read
21 into the record also exactly what that case held, that was
22 the essential case in point. State in the record what you
23 are reading from Mr. Swett?

24 MR. SWETT: Page 659 of *Breeding Administrator*
25 *v. Johnson*, 208 Va., 659. The issue is whether or not circumstances

1 of the death of the decedent, a wrongful death case, were
2 admissible as evidence in the case and the court said "In view
3 of our decision the possibility that this case may be retried
4 we think it appropriate to observe that in an action for
5 death by a wrongful act, the measure of damages is the pecuniary
6 loss, if any, sustained by the beneficiaries, compensation for
7 their loss of the decedent's care, attention and society for
8 their solace and comfort, for the sorrowing and suffering
9 occasioned by the death of the decedent. Evidence regarding
10 the magnitude and seriousness of the injury of the decedent,
11 the extent of the mutilation of the body and other circumstances
12 is likely to inflame or prejudice a jury or invite sympathy
13 should not be permitted.

14 THE COURT: All right, now Mr. Tucker, I will be
15 glad to hear from you.

16 MR. TUCKER: Your Honor, I am afraid in chambers
17 I referred you to our memorandum in support of the motion
18 for judgment rather than the motion itself...

19 THE COURT: Yes...

20 MR. TUCKER: And I would like for the court to be
21 familiar with the motion for judgment, which precedes the
22 memorandum and they are the facts that we would like to show.
23 I would like to pause for the court to read that...

24 THE COURT: Do you mean the motion for judgment?

25 MR. TUCKER: Motion for Judgment N.O.V.

1 THE COURT: All right, sir, proceed.

2 MR. TUCKER: I want the - if His Honor is familiar
3 with those facts which we think the jury should know. May I
4 approach the bench, Your Honor...

5 THE COURT: Yes, please. I don't know exactly
6 what you are talking about. You are not speaking of the original
7 motion...

8 MR. TUCKER: No sir. This is it.

9 THE COURT: Oh, I see. All right, sir, I have
10 read that.

11 MR. TUCKER: Well, those are the facts that I think
12 the plaintiffs are entitled to have the jury know. Our position,
13 and we know that the case Mr. Swett is relying on was about an
14 automobile accident. This goes to something more deliberate
15 and our position is that the statute makes solace an element
16 of damages and the family, of course, knew the facts and knows
17 the facts that are recited in our motion N.O.V. They are pretty
18 well known throughout the community. I am surprised that only
19 three people on the jury panel have heard about it. And
20 certainly I think we know enough about human nature to know that
21 it's great to burden, great to anguish, to know that a loved one,
22 a son, a sibling, has been brutally - shall we say murdered senseless-
23 ly, than he has become a victim to what has become modern means
24 of transportation in our industrialized society. We can accept
25 accidents. We can accept them with a whole lot more grace than

1 we can a malicious, uncalled for, senseless killing. And I
2 think that goes to the measure of solace and I think that is
3 what the jury needs to know in order to adequately compensate
4 as far as the law will allow them, on the item of solace.

5 THE COURT: All right, now this is a suit against
6 the defendant Lane only, is it not?

7 MR. SWETT: Yes sir.

8 MR. TUCKER: Colvin was not found for service of
9 process.

10 THE COURT: All right. Gentlemen, the Supreme
11 Court has held that when the suit is one for damages only,
12 that the court cannot go into the mutilation of the body and
13 that kind of thing. Now it would appear to me and this court
14 is going to rule, I must sustain Mr. Swett's motion, and I
15 am going to limit you to showing that this man was shot on
16 the property of Lane. And we are going to instruct this jury
17 that they must bring in a verdict for the plaintiff, that the
18 sole issue is the measure of damages. So with that in mind,
19 we will proceed to examine these particular jurors to ascertain
20 what they do know about it and whether or not it would be proper
21 for them to sit. Now let the record show that Mr. Tucker
22 excepts to the ruling of the court in that regard and let the
23 record further show that Mr. Swett excepts to the ruling of the
24 court in permitting even that much to be brought to the attention
25 of the jury so that you are both protected. Does that...

1 MR. TUCKER: I want to go a little further Your
2 Honor.

3 THE COURT: Yes, certainly Mr. Tucker.

4 MR. TUCKER: The jury is going to be told that
5 the decedent was fatally shot on the property of Lane...

6 THE COURT: Yes.

7 MR. TUCKER: Then the jury is not going to under-
8 stand, be sympathetic with any ruling that Lane is responsible
9 because somebody got shot on his property. I don't think the
10 jury or I don't think any of us are going to say that property
11 owners are insurers of persons on their property...

12 THE COURT: Yes, but...

13 MR. TUCKER: I think it should be shown something
14 else so that they as human beings can appreciate the fact
15 that there is a legal responsibility on Lane for the circumstances
16 that the man was shot on his property. They could believe that
17 Lane was in Europe somewhere when the man was shot on his property
18 and the court is trying to hold him liable and I think that any
19 juror would think that was senseless and would not respond fairly
20 to that.

21 THE COURT: Well, then you may be getting back to
22 the position of Mr. Swett. I think Mr. Swett wants to show
23 that Lane didn't actually shoot him, that Colvin shot him.

24 MR. TUCKER: Your Honor, please, I don't mind all
25 the facts coming in...

1 THE COURT: Yes...

2 MR. TUCKER: What I mind is the insulating or the
3 anesthetizing of this case.

4 THE COURT: All right, sir. Mr. Swett.

5 MR. SWETT: If I may respond, I think the point made
6 by Mr. Tucker goes to the very heart and reason for my motion.
7 It's obvious that the reason why Mr. Tucker would want the presence
8 of Mr. Lane or more facts to come in is so - the verdict of
9 this jury on damages is not going to be based on the loss
10 of the plaintiff but to argue to punish the defendant somewhere.
11 And that is exactly what the court said in the case that I
12 cited was trying to remove, the issue in trying to inflame
13 the jury to inflate a verdict, the issue is damages, it's not
14 punishment, it's not retribution but damages based on evidence.
15 And I would ask the court to note my exceptions and the court
16 did but to also make - to assure that the jury is aware that
17 Mr. Lane did not shoot this young man.

18 THE COURT: No, I am not going that far. The only
19 thing I know that this jury can be told gentlemen, is that this
20 is a death by virtue of shooting and that the court has held
21 Mr. Lane liable. That's all I know that this jury can be told.
22 I think if you go into it any further, you must open up all the
23 facts and it occurred to the court that maybe counsel, both
24 counsel want to open up all the facts. If you do, the court
25 is going to permit you to do it but I think the case that you

1 cited is very much in point, that in this type of a case if
2 you are going to limit the jury to a question of damages
3 only, you do not go into the facts of the case. If you are
4 going into the facts of the case, then you would have a case
5 of liability but here you have a case of damages only. Now
6 the court wants counsel to try the case. The court doesn't
7 want to try the case but I can't commit error when the point
8 is raised. I think the case that you have cited is very much
9 the law in Virginia, that you cannot go into the facts of
10 a case in a suit for damages only. So I must stick with my
11 ruling and note that both sides do except. So let's proceed
12 and now let's bring in Mr. Thomas Cobb.

13 MR. TUCKER: May I say Your Honor, I am assuming
14 that you have added that you will also tell the jury, that the
15 court has held Lane liable as a matter of law.

16 THE COURT: Yes, certainly, we are going to tell
17 the jury that Lane has been held liable as a matter of law
18 and the sole issue before them is one of damages. That's right.

19 MR. SWETT: Your Honor, is the jury then - then I
20 misunderstood what I thought we had discussed in chambers, the
21 fact that the jury was not going to be allowed to believe
22 - that my client, Mr. Lane, actually shot the decedent.

23 THE COURT: I can't do that now. I can't do
24 that. I am going to tell this jury that this is a shooting
25 death and that Lane has been held liable as a matter of law

1 and we are not going into the facts of the case. Now that is
2 what I am going to tell this jury, that the sole question is
3 one of damages. I don't see how you can do it any other way
4 in this case gentlemen. So both sides except to the ruling
5 of the court. Let's proceed.
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