

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

THOMAS NEELY,)
) No. 3:05-CV-304
Plaintiff,)
) Knoxville, TN
vs.) June 21, 2006
) 9:30 a.m.
FOX OF OAK RIDGE,)
)
Defendant.)

TRANSCRIPT OF JURY TRIAL (CONTINUED)
BEFORE THE HONORABLE H. BRUCE GUYTON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE COURT: Are you ready, Mr. Neely?

2 MR. NEELY: Yes. I'm sorry.

3 THE COURT: That's okay.

4 Mr. Woodfin?

5 MR. WOODFIN: Thank you, Judge.

6 CROSS EXAMINATION

7 BY MR. WOODFIN:

8 Q Mr. Neely, when did you go out and take this
9 photograph?

10 A I took it yesterday.

11 Q This photograph here?

12 A It was taken Monday.

13 Q Monday of this week?

14 A Yes. I took the measurements on the curb
15 Monday. Let me clarify that, I'm sorry.

16 Q Well, when was it, sir? Monday of this week?

17 A I took the measurement of the curb, yes, on
18 Monday.

19 Q When did you take the photograph?

20 A I didn't take the photograph.

21 Q You didn't? I thought you told your lawyer
22 you did?

23 A No.

24 Q Okay. You went out there and took
25 measurements with what, a level and measuring tape?

1 A A measuring tape. Yes, sir.

2 Q So you got down and measured the curb, and
3 then measured the part where the cars turn in on that driveway?

4 A I used a measuring tape and looked at it to
5 the best of my ability. Yes, sir.

6 Q Despite the fact that you can't do anything,
7 you were able to do that, weren't you?

8 A I pulled out a measuring tape. Yes, sir.

9 Q Is it your testimony that you lost
10 consciousness at the scene of this accident?

11 A I don't know whether or not -- I did or not.

12 Q You didn't know whether you did or didn't. Is
13 that what you're telling us?

14 A I don't think I did at the time.

15 Q Do you remember when I took your deposition?

16 A Yes.

17 Q Do you remember when you told me that you did
18 not lose consciousness?

19 A I do not remember that statement.

20 Q Do you remember telling your doctors that you
21 did lose consciousness at the scene of the accident?

22 A I do not remember all the exact wording that I
23 told the doctors. No.

24 Q Do you have any explanation for why the
25 doctors say that you did tell them that you lost consciousness

1 at the scene of the accident?

2 A No, I do not.

3 Q Do you remember when I took your deposition
4 and you told me you were having memory problems?

5 A Yes, sir. I do.

6 Q Do you remember telling me that you told your
7 doctors that you were reporting to them that you had memory
8 problems?

9 A Yes, I do.

10 Q Do you have any explanation for why there's no
11 mention by the doctors that you have here testifying for you
12 today that you were reporting memory problems?

13 A No.

14 Q Any explanation for that? What was your
15 answer, sir?

16 A No.

17 Q Do you remember telling me that you had a
18 bruise on your back after this accident?

19 A No.

20 Q Did you tell your doctor you had a bruise on
21 your back?

22 A Yes. I had a place on my back. I could not
23 see it.

24 Q You say it was there ever since the accident?

25 A Yes.

1 Q Do you have any explanation for why your
2 doctor disagrees with that?

3 A No.

4 Q Do you remember I asked you what kind of pain
5 you were having in your deposition?

6 A Yes.

7 Q You told me you had pain in your back?

8 A Yes.

9 Q Pain down both your legs?

10 A Yes.

11 Q Pain into your feet?

12 A Tingling in my feet. Yes.

13 Q And your toes?

14 A Tingling in my toes. Yes.

15 Q And from your neck, you told me you had pain
16 up into your head?

17 A Yes.

18 Q Pain down your arms?

19 A Tingling going down both arms. Yes.

20 Q Pain down your hands?

21 A Yes. Tingling in my hands.

22 Q Tingling in your fingers?

23 A Yes.

24 Q You tell me your eyes hurt?

25 A The pain from the back of my head caused the

1 eyes to hurt. Yes.

2 Q And you think you reported all of those things
3 to your doctor?

4 A Yes.

5 Q You told me when I took your deposition that
6 you had been taking methadone, or had not had a day that you
7 had not taken your methadone. Do you remember that?

8 A Yes, sir.

9 Q And yesterday you didn't take your methadone?

10 A Yes.

11 Q And you told me in your deposition that you
12 wouldn't be able to function at all if you didn't take your
13 methadone?

14 A That's what I told you yesterday.

15 Q Yesterday you sat here and told this jury what
16 you believe is your problem caused by this accident?

17 A Yes.

18 Q And you told me that if you tried to pick up
19 something greater than 15 pounds, you have increased pain. Do
20 you remember that?

21 A Yes.

22 Q But you told me that if something was less
23 than 15 pounds, you were able to pick that up. Do you remember
24 that?

25 A No.

1 Q You told me that you applied for jobs at
2 Kroger and at Walmart?

3 A Yes.

4 Q And you didn't have any response back from
5 them. Is that what your answer or response was then?

6 A Yes.

7 Q You told this Court and jury yesterday that
8 you had filled out the applications, but you don't have the
9 applications to show them today, do you?

10 A No. It's done on a computer.

11 Q You and your wife were selling things at a
12 flea market on the weekends; is that right?

13 A My wife is. Yes.

14 Q You go with her?

15 A Yes.

16 Q Do you help her?

17 A I watch the children.

18 Q Okay. You have a three year old and a nine
19 month old, or six-month old; is that right?

20 A My daughter is seven months. (Inaudible) is
21 almost three.

22 Q And you're able to watch the children while
23 your wife is engaged in --

24 A I help with that, along with my sister and
25 brother-in-law.

1 Q But you're there doing that?

2 A Yes. I try to.

3 Q Okay. Helping watch those children is
4 something that's difficult to do, is it not?

5 A It's not too bad.

6 Q You told me that you helped your wife
7 transport the things that you sell back and forth to the flea
8 market; is that correct?

9 A I ride with her. Yes.

10 Q And you drive as far as Bristol, Virginia to
11 pick things up?

12 A I ride with her.

13 Q And you've driven out there before, sir,
14 haven't you?

15 A No. I ride with her.

16 Q You've driven to the flea market before?

17 A I ride with her. And on occasion, I do drive.

18 Q And you drive to your doctor, which is an hour
19 and a half away?

20 A I very seldom ever drive. And it is never
21 without the assistance of someone.

22 Q What kind of assistance are you talking about,
23 sir?

24 A My wife is usually at my side.

25 Q You told me in your deposition that there were

1 times that you drove by yourself to the doctor. Do you
2 remember that?

3 A No. I do not.

4 Q In addition to the money that's generated from
5 the flea market, you and your wife also have rental property
6 that generates income; is that correct?

7 A We have a rental property. Yes.

8 Q And recently you and she have come up with a
9 name for the flea market business. Do you remember telling me
10 that?

11 A We had to do that in order to apply for a
12 business license.

13 Q Because the flea market was turning a profit
14 for you and your wife?

15 A Well, we thought it would.

16 Q When you were working at Ridge View, you had
17 that job for approximately 14 months before this accident
18 happened?

19 A Something like that. Yes.

20 Q And Ridge View is an outpatient psychiatric
21 facility; is that right?

22 A Inpatient, too.

23 Q What hours did you work?

24 A I worked 40 hours a week.

25 Q What times of the day did you work?

1 A There's three different shifts. I worked all
2 three at different periods of time.

3 Q Before that, you worked at the hospital in
4 Scott County as a security guard?

5 A And orderly. Yes, sir.

6 Q And while you were working there, you hurt
7 your knee?

8 A Yes, I did.

9 Q You filed a workers' comp case for that?

10 A Yes, I did.

11 Q And you actually filed something asking the
12 court to approve the settlement that you reached in your
13 worker's comp case?

14 A The worker's comp case -- did settle it. Yes.

15 Q And you had to appear before the judge to have
16 that approved?

17 A Yes, I did.

18 Q And part of the settlement that you reached
19 paid you money to close out your right to go back to the
20 doctor, did it not?

21 A Yes, it did.

22 Q And Scott County was the longest job that you
23 had had, correct, at the hospital?

24 A Yes.

25 Q Why did you leave there?

1 A The position was dissolved.

2 Q Did you have any problem going back with your
3 knee?

4 A No.

5 Q Other jobs that you've had include being a
6 photographer for a newspaper; is that correct?

7 A Yes.

8 Q The doctors that you have here to testify for
9 you today are doctors that your lawyers sent you to; correct?

10 A These are doctors that I chose.

11 Q The lawyers gave you a name?

12 A They gave me a group of names that I selected
13 from.

14 Q How many were in the group?

15 A At least three.

16 Q Who else was in the group, Mr. Neely?

17 A I don't have those names in front of me.

18 Q Do you remember when I took your deposition
19 and asked you who had referred you to these doctors?

20 A Yes.

21 Q Do you remember being -- what you said,
22 confused about that?

23 A Yes, I do.

24 Q How come you weren't confused yesterday?

25 A I don't know.

1 Q You told your doctors that you had hurt your
2 knees in this accident, did you not?

3 A I told them my knee was hurt. I didn't say it
4 was due to the accident.

5 Q You didn't tell them that you hurt your knee
6 in this accident? Is that what you're telling this jury today?

7 A No. I didn't tell them that it was due to the
8 accident. I said my knee was hurt. I didn't say it was due to
9 the accident.

10 Q Do you remember telling me in your deposition
11 that you thought your knees were hurt as a result of this
12 accident?

13 A No. I do not.

14 Q And you agree, do you not, that you don't have
15 any doctor here today who's going to testify about any problem
16 that you have with your memory, do you?

17 A I have no knowledge.

18 Q You told me that you had this TENS unit that
19 was prescribed for you that did not help you. Do you remember
20 that?

21 A I don't think it gave me much relief.

22 Q Do you remember telling your doctor that it
23 did give relief, and that's why you were prescribed another one
24 from Dr. Koenig?

25 A I only had the one prescribed.

1 Q You don't think that Dr. Degnan prescribed you
2 one?

3 A I only have the one TENS unit, as I stated.

4 Q Before this accident, you had been on
5 medication for high blood pressure; correct?

6 A I have been on high blood pressure medicine
7 for a great number of years.

8 Q And you were having problems with cramps in
9 your legs that you take medication for?

10 A When I take water pills, yes.

11 Q And that was before this accident as well?

12 A Yes.

13 Q In the accident itself, you told me and this
14 jury that you were about three or four car lengths behind this
15 car that was turning in front of you; correct?

16 A Yes.

17 Q And your car, the Kia, is what, about eight
18 feet long?

19 A I have no idea.

20 Q So you think you were about 20 feet behind
21 this other car?

22 A Three to four car lengths.

23 Q And you said that you saw that van that hit
24 you just seconds before it hit you?

25 A Yes.

1 Q And you have no idea how long it had been
2 behind you?

3 A Well, you notice the traffic behind you. But
4 as far as singling out different vehicles...

5 Q You don't know how long this vehicle had been
6 traveling behind you, do you, sir?

7 A No.

8 Q You don't know anything about the speed of the
9 vehicle?

10 A No.

11 Q You told this jury yesterday that your seat
12 was broken off as a result of this accident. Do you remember
13 that?

14 A I said it was broken.

15 Q The seat itself has a little lever on the side
16 which will allow it to recline back, did it not?

17 A Yes, it does.

18 Q You told this jury also that you drove this
19 vehicle back from Kentucky after this accident; correct?

20 A Yes.

21 Q Were you able to adjust the seat after that
22 accident so that you could drive the vehicle back?

23 A No.

24 Q You just drove it with the seat in the
25 reclined position?

1 A No.

2 Q What happened? Tell us, sir.

3 A I used a bunch of items that we had with us to
4 prop the seat into an upright position and hold it there while
5 I drove the vehicle home.

6 Q How much were you weighing at the time of this
7 accident, sir?

8 A The same as I am now.

9 Q What do you weigh now?

10 A Right around 300 pounds.

11 Q Did you have trouble ever getting in and out
12 of this car before this accident?

13 A No. I did not.

14 Q You live approximately an hour and a half from
15 Knoxville?

16 A About an hour and 15 minutes.

17 MR. WOODFIN: That's all.

18 THE COURT: Just a moment, Mr. English, before
19 we go any further.

20 I notice you've taken a few notes this
21 morning?

22 THE JUROR: Yes.

23 THE COURT: Anyone else taking notes?

24 Unfortunately, we're not -- jurors aren't allowed to
25 take notes during the trial. I should have mentioned

1 that yesterday. That's kind of a local rule we have
2 here. I'm going to ask you to stop doing that. I
3 hate to do that because I know you're trying hard to
4 follow what is being said. But there are reasons why
5 we have that rule, and I'll go into that. When we are
6 all through here, I'll explain to you why that is.

7 THE JUROR: Okay.

8 THE COURT: All right, Mr. English.

9 REDIRECT EXAMINATION

10 BY MR. ENGLISH:

11 Q Mr. Neely, when you went out and measured at
12 my request, the height of the curb right next to where the man
13 was turning in, what type of a measuring device did you use?

14 A A little bitty ten-foot tape measure. A
15 little square tape measure that --

16 Q Is it a rigid tape measure, or one that folds
17 up, or --

18 A One that retracts inside into itself.

19 Q Is it rigid? Like if I held it out here three
20 feet, would it be rigid?

21 A Oh, yes.

22 Q Could you take that and hold it down and look
23 and see how high the curb was without bending down? Did you
24 bend down to measure the curb?

25 A No, I did not. I just leaned over.