

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE, TENNESSEE**

Thomas Neely,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. 3:05-cv-304
	:	
Fox of Oak Ridge,	:	Jury Trial-Day 1
	:	
Defendant.	:	

Transcript of proceedings before the Honorable H. Bruce Guyton,
U. S. Magistrate Judge, on June 20th, 2006.

Appearances:

On behalf of the Plaintiff:

Robert J. English, Esq.
Michael C. Inman, Esq.
Knoxville, Tennessee

On behalf of the Defendant:

Clint J. Woodfin, Esq.
Jennifer M. Caywood, Esq.
Knoxville, Tennessee

Court Reporter:

Donnetta Kocuba, RMR
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1 THE COURT: All right, sir. You may be excused to
2 report back in the morning, be excused for cause.

3 (Discussion at bench concluded.)

4 THE COURT: Madam Clerk, call another juror, please.
5 (Juror No. 4 excused; and Juror No. 11 called.)

6 THE COURT: Good morning, Ms. (Juror 11).

7 JUROR NO. 11: Good morning.

8 THE COURT: Were you able to hear all the questions
9 that have been asked so far and the answers given so far?

10 JUROR NO. 11: Yes, sir.

11 THE COURT: Do you know Mr. Neely?

12 JUROR NO. 11: No, sir.

13 THE COURT: Do you know Mr. Fox?

14 JUROR NO. 11: No, sir.

15 THE COURT: Do you know any of these attorneys?

16 JUROR NO. 11: No, sir.

17 THE COURT: Okay. Have you ever had any business
18 dealings with Fox of Oak Ridge?

19 JUROR NO. 11: No, sir.

20 THE COURT: Are you currently a party in a lawsuit
21 yourself?

22 JUROR NO. 11: No, sir.

23 THE COURT: Okay. Have you ever been a party in a
24 civil case?

25 JUROR NO. 11: No, sir.

1 THE COURT: Have you ever served on a jury before in
2 a civil case?

3 JUROR NO. 11: No, sir.

4 THE COURT: Have you ever served on a jury in a
5 criminal case?

6 JUROR NO. 11: No, sir.

7 THE COURT: Having heard everything that's been
8 said in court this morning so far, do you know of any reason why
9 you could not sit on this jury and render a fair verdict based solely
10 on the evidence presented in court, in the context of the Court's
11 instructions of the law?

12 JUROR NO. 11: No, sir.

13 THE COURT: All right. The Court is going to find that
14 this juror is qualified. I suppose we'll let Mr. Woodfin continue;
15 and, of course, Mr. English can ask questions if he wants.

16 MR. WOODFIN: Your Honor, did you want to inquire
17 of Mr. (Juror 154) the same general questions? I don't think we
18 had an opportunity to ask him if he heard all those questions.

19 THE COURT: I do want to do that. I just lost my place
20 for a minute. Good morning to you, Mr. (Juror 154).

21 JUROR NO. 154: Good morning.

22 THE COURT: Were you able to hear all of the
23 questions that have been asked and the answers given so far, sir?

24 JUROR NO. 154: Yes, sir.

25 THE COURT: Do you know Mr. Neely?

1 JUROR NO. 154: I do not.

2 THE COURT: Do you know Mr. Fox?

3 JUROR NO. 154: I do not.

4 THE COURT: And have you had any business dealings
5 with Fox of Oak Ridge?

6 JUROR NO. 154: I have not.

7 THE COURT: Do you know these attorneys that are
8 here today?

9 JUROR NO. 154: I do not.

10 THE COURT: Ever had business dealings with any of
11 them or any family members have any dealings with any of them?

12 JUROR NO. 154: No, your Honor.

13 THE COURT: Are you currently a party in any type of
14 a lawsuit, sir?

15 JUROR NO. 154: In a way, yes. My daughter was in an
16 accident two years ago, and the insurance companies are still
17 wrestling with it.

18 THE COURT: Okay. Were you with her at the time of
19 the accident?

20 JUROR NO. 154: No, sir.

21 THE COURT: Is there a lawsuit or are they just still
22 talking about it?

23 JUROR NO. 154: They're still working it out.

24 THE COURT: They're working it out. Okay. Have you
25 ever been on a criminal jury?

1 JUROR NO. 154: Yes, three weeks ago, Judge Phillips.

2 THE COURT: Okay. Do you have any type of
3 problems that would affect your ability to hear this case for a
4 couple days?

5 JUROR NO. 154: No, judge, I do not.

6 THE COURT: Ms. (Juror 11), I should have asked you
7 the same question. I'm sorry I didn't. Any reason why you can't
8 hear this case for a couple of days?

9 JUROR NO. 154: No, sir.

10 THE COURT: Okay. The Court is going to find Mr.
11 (Juror 154) is also qualified to sit on this jury. Mr. (Juror 154), I
12 assume you know of no reason why you couldn't sit on the jury and
13 render a fair verdict based only on the evidence and the law as
14 given to you, correct?

15 JUROR NO. 154: That's correct.

16 THE COURT: All right. Mr. Woodfin?

17 MR. WOODFIN: Thank you. Mr. (Juror 154) and Ms.
18 (Juror 11), I'll just try to get caught back up with you all. Both of
19 you all are licensed drivers; is that correct?

20 JUROR NO. 11: Yes.

21 JUROR NO. 154: Yes.

22 MR. WOODFIN: Have either of you been in an
23 accident, whether it's a minor accident or a major accident? I know
24 you mentioned your daughter. But have you all personally been
25 involved in any automobile accidents?

1 JUROR NO. 11: Yes, years ago.

2 MR. WOODFIN: Years ago. Mr.(Juror 154), the same
3 thing?

4 JUROR NO. 154: Yes.

5 MR. WOODFIN: Anyone claim any type of injury?

6 JUROR NO. 11: No.

7 JUROR NO. 154: No.

8 MR. WOODFIN: Mr. (Juror 154), is your daughter the
9 one that is seeking damages for an injury or is she the one that
10 damages are being sought against her?

11 JUROR NO. 154: Damages are being sought against her.

12 MR. WOODFIN: Okay. Thank you. We've alluded a
13 little bit to how this proof will be presented in this case, and I think
14 you all understand and will be told by the Court that the Plaintiff
15 gets to go first, that they get to put their proof on and that they
16 have certain burdens that they must meet before they can be
17 awarded damages.

18 Can everyone agree with me that if the Plaintiff does not put
19 on evidence which is of sufficient weight, you all will be able to
20 turn him out of here without any damages for those things that he's
21 not able to prove? Can everyone agree to do that?

22 He's going to go up there, he's going to tell you about his
23 problems. But you may find, as the sole eight people who weigh the
24 evidence, that the evidence doesn't necessarily carry that burden.
25 And you all acknowledge that you will be able to return a verdict

1 which reflects that?

2 Good. Thank you. That's all we ask for, is for eight people
3 who can sit there and listen to the evidence, listen to the
4 instructions from the Court, and be fair to both sides, considering
5 the claims that are made in this case.

6 Ms. (Juror 155), you said you work as a nurse. How long have
7 you been a nurse?

8 JUROR NO. 155: Twenty-five years.

9 MR. WOODFIN: I know you will hear from doctors in
10 this case; Dr. Thomas Koenig, who is an orthopedic doctor, and Dr.
11 Joe Browder, who is a doctor here in Knoxville who does pain
12 management.

13 JUROR NO. 155: The Browder name is just slightly
14 familiar by hearing it, but I do not know either of them personally.

15 MR. WOODFIN: You said you worked in the hospital
16 as a triage nurse, meaning the one who kind of encounters the
17 patients when they first come in?

18 JUROR NO. 155: No. I worked at U.T. Medical Center
19 just recently in the emergency department as just a nurse in the
20 trauma unit. But now, currently, I am employed— I am a telephone
21 consultant. I'm licensed in 15 states. I work for a company. When
22 people call in with medical complaints, I give them the advice on
23 what they should do.

24 MR. WOODFIN: Okay. Good. And I would suspect
25 that your experience will not impact you one way or the other—

1 JUROR NO. 155: No.

2 MR. WOODFIN: – and you will be able to listen to the
3 evidence in this case?

4 JUROR NO. 155: No.

5 MR. WOODFIN: Okay. Thank you. Ms. (Juror 160), is
6 it? I keep saying that wrong. I'm sorry. You work in Maryville, I
7 think you said. I live there. You don't look familiar to me. I hope I
8 that I don't look familiar to you for whatever reason. Did you say
9 you've not served on a jury before?

10 JUROR NO. 160: I have not.

11 MR. WOODFIN: And, again, you understand that the
12 Court's going to tell you that in this case, a civil case, that there
13 are burdens that must be met by the Plaintiff and tell you how the
14 Plaintiff is going to try to meet those burdens and what the
15 necessary elements are. And you will be able to distinguish that
16 from what we see on television with these criminal cases?

17 JUROR NO. 160: Yes, sir.

18 MR. WOODFIN: Thank you. Ms. (Juror 8), your
19 husband's an attorney?

20 JUROR NO. 8: Yes.

21 MR. WOODFIN: What type of practice does he have?

22 JUROR NO. 8: Well, business law. He does not
23 litigate.

24 MR. WOODFIN: Okay. Is he with a firm here in town?

25 JUROR NO. 8: Hunton & Williams.

1 MR. WOODFIN: Oh, sure, I know that firm. I'm sorry,
2 I don't know him. But he doesn't do the type of litigation that
3 we're involved with here today--

4 JUROR NO. 8: No.

5 MR. WOODFIN: --with personal injury claims? Okay.
6 Have you ever been a party to a lawsuit or been sued yourself?

7 JUROR NO. 8: No.

8 MR. WOODFIN: I noticed on your questionnaire you
9 had checked off that maybe a family member or someone had been
10 involved in a personal injury case or maybe I just read it wrong?

11 JUROR NO. 8: No.

12 MR. WOODFIN: Okay. Ms. (Juror 11), you had
13 checked that you had had a close family member or someone
14 involved in a personal injury case before; is that correct?

15 JUROR NO. 11: Ex-husband.

16 MR. WOODFIN: Who was that?

17 JUROR NO. 11: My ex-husband.

18 MR. WOODFIN: Oh, ex-husband?

19 JUROR NO. 11: Yes.

20 MR. WOODFIN: What kind of case was that?

21 JUROR NO. 11: He got hit in the rear end.

22 MR. WOODFIN: Was he sued?

23 JUROR NO. 11: No.

24 MR. WOODFIN: He did the suing?

25 JUROR NO. 11: Uh-huh.

1 MR. WOODFIN: What type of injuries did he have?

2 JUROR NO. 11: Just hurt his neck. It's still going on.

3 MR. WOODFIN: The case is still going on?

4 JUROR NO. 11: Yes.

5 MR. WOODFIN: Have you had to testify at all in that
6 case or anything?

7 JUROR NO. 11: No, no.

8 MR. WOODFIN: You just kind of heard about it?

9 JUROR NO. 11: Uh-huh.

10 MR. WOODFIN: Do you know anything about the
11 extent of his claimed injury?

12 JUROR NO. 11: No.

13 MR. WOODFIN: Not really? You don't think that's
14 going to impact you one way or the other in this case?

15 JUROR NO. 11: No, sir.

16 MR. WOODFIN: Ms. (Juror 9), I tried to make a note
17 here, and I didn't write it well enough to figure out what it said.
18 Have you been on a jury before?

19 JUROR NO. 11: No. I have been called several times,
20 but never served.

21 MR. WOODFIN: That's what I have written down, that
22 you have been maybe through this. Have you ever sat in the box
23 before and been questioned by the lawyers or has it gotten that far
24 for you?

25 JUROR NO. 11: Yes.

1 MR. WOODFIN: What types of cases were those?

2 JUROR NO. 11: Well, it was in Judge Phillips'. There
3 was the man that shot at a drug enforcement task officer. That's, I
4 guess, that's considered criminal.

5 MR. WOODFIN: Probably, probably.

6 JUROR NO. 11: And one other one, and I don't really
7 recall right now what it was, but I was dismissed off of that also.

8 MR. WOODFIN: And I hope that didn't leave too
9 much of a bad taste in your mouth and that won't affect your ability
10 to sit and listen to this case today if you are selected?

11 JUROR NO. 11: No, sir. I realize it's just part of the
12 process.

13 MR. WOODFIN: Okay. Thanks. Mr. (Juror 154), we
14 had talked a little bit earlier about your daughter's situation. And
15 had you commented that you had been on a criminal jury before?

16 JUROR NO. 154: And a civil, that's correct.

17 MR. WOODFIN: And a civil. What type of civil case
18 was it?

19 JUROR NO. 154: Civil was about 20 years ago, and it
20 was a child that was injured in a school bus accident.

21 MR. WOODFIN: Do you remember how you ruled in
22 that case as a jury?

23 JUROR NO. 154: Yes.

24 MR. WOODFIN: What did you all do?

25 JUROR NO. 154: We awarded in her favor.

1 MR. WOODFIN: How seriously injured was the child?

2 JUROR NO. 154: Very serious.

3 MR. WOODFIN: I'm sorry to hear that. And how
4 about on your criminal case? Did you have a good experience with
5 that as well, I hope?

6 JUROR NO. 154: I was the alternate juror. I got to sit
7 through the entire process, but didn't get to go through
8 deliberations. It was okay.

9 MR. WOODFIN: Mr. (Juror 5), I haven't meant to left
10 you out today, but I haven't talked to you too much. In looking
11 back at my notes, I had seen that you didn't respond, or maybe did
12 and I just didn't notice, about whether you had been on a jury
13 before?

14 JUROR NO. 5: A long time ago I was on a rape jury.

15 MR. WOODFIN: Criminal case?

16 JUROR NO. 5: Yeah. And it was over in the city-
17 county building. It was a long time ago.

18 MR. WOODFIN: Probably can't remember too much
19 about it?

20 JUROR NO. 5: I was kind of young then.

21 MR. WOODFIN: Had you been called back for jury
22 service and then just not to be called on in the case?

23 JUROR NO. 5: I did that back years ago. This is only
24 the second time I've been called back.

25 MR. WOODFIN: And we're glad to have you here.

1 And you have not been involved in any type of personal injury suits
2 or anything like that?

3 JUROR NO. 5: No.

4 MR. WOODFIN: And you don't know of any reason
5 why you can't be fair and reasonable in this case today?

6 JUROR NO. 5: No, sir.

7 MR. WOODFIN: All right. Ms. (Juror 29), I didn't
8 mean to ignore you; you were just last as I was going down the list.
9 Again, thank you for being here today. Do you know of any reason
10 or have anything in your past with regard to previous exposure
11 with the legal system which may affect your ability to listen to this
12 case today?

13 JUROR NO. 29: (Shook head.)

14 MR. WOODFIN: You ever had any type of injury
15 where you made a claim against someone?

16 JUROR NO. 29: Never.

17 MR. WOODFIN: Okay. Mr. English has said it, and
18 I've said it, too, what we're really looking for are people that can
19 listen to what the evidence is and be fair and reasonable in how
20 they decide this case. Sometimes people think that the legal system
21 itself is not fit for deciding this type of case, that there are too
22 many lawsuits or that people shouldn't file suit; or if someone does
23 file suit, they're automatically entitled to something.

24 Does anyone have any feelings about the legal system in
25 general which may impact your ability to listen and decide this

1 case?

2 (No response.)

3 MR. WOODFIN: Well, I appreciate you all listening to
4 me. Our legal system is the best one that I know of, and I don't
5 imagine that there's any other way to decide issues like this that we
6 can't decide amongst ourselves. So we appreciate you listening to
7 us today and helping us decide these issues. Thank you.

8 THE COURT: Mr. English, any questions, please?

9 MR. ENGLISH: Yes, your Honor. I'll direct my
10 questions to Mr. (Juror 154) and Ms. (Juror 11). Mr. (Juror 154),
11 the jury that you sat on, the civil jury involving the child, how long
12 ago was that, sir?

13 JUROR NO. 154: Twenty years.

14 MR. ENGLISH: Twenty years ago?

15 JUROR NO. 154: Yes, sir.

16 MR. ENGLISH: The child was hurt pretty badly?

17 JUROR NO. 154: Yes, sir.

18 MR. ENGLISH: A lot of money in the verdict—

19 JUROR NO. 154: Yes, sir.

20 MR. ENGLISH: —that was given? If we prove that Tom
21 Neely is hurt badly as a result of this rear-end collision, would you
22 have any problems in awarding him adequate damages even though
23 it would be a large number?

24 JUROR NO. 154: No, sir.

25 MR. ENGLISH: Okay. Ms. (Juror 11), I'd ask you the

1 same question. Would you have any problems, if we prove our
2 case, as we must, by a preponderance of the evidence, not beyond a
3 reasonable doubt, in awarding an adequate award in this particular
4 case, if we prove it?

5 JUROR NO. 154: I wouldn't have any problem with it.

6 MR. ENGLISH: Thank you very much.

7 THE COURT: All right. Thank you, counsel. there are
8 peremptory challenge forms on your table. If you'd please execute
9 those promptly, and, Madam Clerk, if you'll collect those.

10 COURTROOM DEPUTY: Yes, your Honor.

11 (Counsel filled out juror strike sheets; Court reviewed them.)

12 THE COURT: All right. Mr. (Juror 154), you are
13 excused; and Ms. (Juror 8), you are excused; and Mr.— I'm sorry—
14 Ms. (Juror 29), you are excused. If you'll just report back
15 tomorrow morning, please. Thank you.

16 (Jurors 8, 29 and 154 excused and left the courtroom.)

17 THE COURT: Madam Clerk, if you could give us three
18 jurors, please.

19 COURTROOM DEPUTY: Yes, your Honor.

20 (Whereupon, Jurors 27, 7 and 18 were called to the jury box.)

21 THE COURT: Good morning to you folks. Have all of
22 you had a chance to hear the questions that have been asked and the
23 answers given so far? If so, please raise your right hand, all three
24 of you. Thank you.

25 Do any of you know Mr. Neely? Do any of you know Mr. Fox?