

**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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Knoxville, Tennessee 37902
(865) 524-4590

1 has said, consider the following facts: the demeanor of the witness
2 on the witness stand, meaning the way the witness behaves; the
3 witness' intelligence or lack of intelligence; any biases or
4 prejudices that the witness may have shown; the relationship of the
5 witness to any of the parties in the case; whether or not the witness
6 has anything to gain or lose by a particular outcome of the case;
7 how the witness learned the facts about which he testifies; the
8 reasonableness or unreasonableness of the story the witness tells;
9 and whether the witness' testimony is consistent or inconsistent
10 with other statements the witness may have made in the past.

11 You should attach more importance to the testimony of that
12 witness or witnesses who, in your opinion, have been more truthful
13 in telling the facts of the case.

14 I want to talk to you about the law that applies in this case just
15 briefly. I will give you detailed instructions at the end of this trial,
16 and those instructions will govern your deliberations. However, in
17 order to help you follow the evidence you are about to hear, I will
18 give you at this time a brief summary of the elements which the
19 Plaintiff must prove in order to make out his case.

20 A plaintiff is entitled to recover compensation for an injury
21 that was legally caused by the negligent conduct of the defendant.
22 In this case, the Plaintiff has the burden of proving that the
23 Plaintiff(sic) was at fault. In this case, this means the Plaintiff has
24 the burden of proving that the Defendant was negligent and that the
25 negligence was a legal cause of injury to the Plaintiff.

1 Negligence is the failure to use reasonable care. It is either
2 doing something that a reasonably careful person would not do or
3 failing to do something that a reasonably careful person would do
4 under circumstances similar to those shown by the evidence. A
5 person may assume that every other person will use reasonable care
6 unless the circumstances indicate the contrary to a reasonably
7 careful person.

8 The second part of fault is what I just mentioned, legal cause.
9 A legal cause of an injury is a cause which, in natural and
10 continuous sequence, produces an injury and without which the
11 injury would not have occurred. A single injury can be caused by
12 the negligent acts or omissions of one or more persons.

13 If you find that a party was negligent and that the negligence
14 was a legal cause of the injury or damages for which claim was
15 made, you have found that party to be at fault. The Plaintiff has the
16 burden to prove the Defendant's fault. If the Plaintiff fails to do
17 so, you should find no fault on the part of the Defendant.

18 A person who violates a statute or ordinance is negligent.
19 However, a person violating a statute or ordinance is not at fault
20 unless you also find that that violation was the legal cause of the
21 injury or damage for which the claim has been made.

22 In this case, the Plaintiff alleges that the Defendant, Fox of
23 Oak Ridge's employee, Mr. Curd, violated the following statute as
24 set forth in Section 55-8-124, Subpart A, of the Tennessee Code
25 Annotated, which states: "The driver of a motor vehicle shall not