

1940

State of Utah v. Jesse Andersen : Abstract of Record

Utah Supreme Court

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Ingebretsen, Ray, Rawlins & Christensen; Attorneys for Appellant;

Edward F. Richards; Attorney for Defendant and Appellant;

Recommended Citation

Abstract of Record, *Utah v. Andersen*, No. 6300 (Utah Supreme Court, 1940).

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IN THE

Supreme Court of the State of Utah.

STATE OF UTAH,
Plaintiff and Respondent,

VS.

JESSE ANDERSEN,
Defendant and Appellant.

Case No. 6300.

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH.

HONORABLE M. J. BRONSON, JUDGE.

ABSTRACT OF RECORD.

EDWARD F. RICHARDS,
Attorney for Defendant and Appellant.

FILED

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IN THE

Supreme Court of the State of Utah.

STATE OF UTAH,
Plaintiff and Respondent,

vs.

JESS ANDERSON,
Defendant and Appellant.

Case No. 6300.

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH.

HONORABLE M. J. BRONSON, JUDGE.

ABSTRACT OF RECORD.

(Title of Court and Cause.)

Tr. p.

COMPLAINT.

20 On this 1st day of March, A. D., 1940, before me, B. P. Leverich, City Judge and Ex-Officio Justice of the Peace of the City Court within and for Salt Lake City, Salt Lake County, State of Utah, personally appeared L. W. Peirce who, on being sworn by me, on his oath, did say that Jess Anderson, on

the 25th day of February, A. D., 1940, at the County of Salt Lake, State of Utah, did commit the crime of INVOLUNTARY MANSLAUGHTER, as follows, to-wit:

Jess Anderson killed Clark Romney without malice;

contrary to the provisions of the Statute of the State aforesaid, in such cases made and provided, and against the peace and dignity of the State of Utah.

(Signed) L. W. Peirce.

Subscribed and sworn to before me, the day and year first above written.

(Signed) B. P. LEVERICH,
*City Judge and Ex-Officio
Justice of the Peace.*

Filed March 1, 1940.

(Title of Court and Cause.)

INFORMATION.

21

The Defendant, Jess Anderson, having been heretofore duly committed to this Court by B. P. Leverich, a committing magistrate of Salt Lake County, State of Utah, to answer to this charge, is accused by CALVIN W. RAWLINGS, District Attorney of the Third Judicial District, State of Utah, by this Information, of the crime of INVOLUNTARY MANSLAUGHTER, committed as follows, to-wit:

That on the 25th day of February, A. D. 1940, in Salt Lake County, State of Utah, the Defendant, Jess Anderson, did unlawfully and without malice kill Clark Romney;

contrary to the provisions of the Statute of the State of Utah, in such case made and provided, and against the peace and dignity of the State of Utah.

(Signed) CALVIN W. RAWLINGS,
*District Attorney of the Third Judicial District,
in and for Salt Lake County, State of Utah.*

Filed April 12, 1940.

(Title of Court and Cause.)

MOTION TO QUASH.

23

Comes now the defendant above named and moves to quash the information filed in the above entitled matter upon the following grounds and for the following reasons:

1. That said information does not charge the defendant with the commission of an offense.

2. That the information was filed without the defendant first having had or waived a preliminary examination.

3. That there is more than one offense charged in said information, not provided for by Section 105-21-31 of the Code.

4. That the Prosecuting Attorney did not have authority to file the information.

Said Motion is based upon the files and records in the above entitled cause.

(Signed) EDWARD F. RICHARDS,
Attorney for Defendant.

Filed April 19, 1940.

(Title of Court and Cause.)

MOTION FOR BILL OF PARTICULARS.

24

Comes now the defendant above named and without waiving any of his rights under the Motion to Quash filed herein, moves the above entitled Court to order the District Attorney to file a Bill of Particulars in the above-entitled matter, setting forth the facts and circumstances as to how or in what manner said defendant did on the 25th day of February, 1940, commit the crime attempted to be alleged in the information.

EDWARD F. RICHARDS,
Attorney for Defendant.

Filed April 19, 1940.

(Title of Court and Cause.)

MINUTE ORDER.

25

On April 19, 1940, the court made and entered its minute order denying defendant's motion to quash and requiring the district attorney to file a bill of particulars by April 23, 1940.

(Title of Court and Cause.)

BILL OF PARTICULARS.

26-27 Comes now the State of Utah and in accordance with Section 105-21-9, Laws of Utah, 1935, and in pursuance to the order of the above-entitled Court, furnishes the following Bill of Particulars in the above-entitled case, to-wit:

TIME: That said offense occurred between the hours of 6:45 and 7:30 o'clock A. M., on the 25th day of February, A. D. 1940.

PLACE: That at said time the Defendant was driving an automobile in a Northerly direction on a public highway, to-wit, on Third East Street near to and approaching Twenty-first South Street, within Salt Lake County, State of Utah, and that the said accident occurred as Defendant was driving said automobile in the intersection of said Third East Street and Twenty-first South Street, and that at said time and place, one Clark Romney was then and there driving an automobile in a Westerly direction on Twenty-first South Street, across the intersection of the Third East Street.

MEANS: That at said time and place the said Defendant was operating said automobile carelessly and heedlessly and with a wilful and wanton disregard for the rights and safety of others, and without due caution and circumspection and at such a speed and in such a manner as to endanger the life of one Clark Romney who was then and there driving an automom-

bile West on Twenty-first South Street. Said Twenty-first South Street being an arterial highway with stop signs placed at the intersections of all streets entering the said Twenty-first South Street; and that at the said time and place, the said Jess Andersen was driving said automobile at a speed in excess of Forty (40) miles per hour, which speed was dangerous and excessive, and that the said Jess Andersen did not stop at the stop sign facing South on Third East Street in a position visible to drivers entering Twenty-first South Street on said Third East Street; and that the said Jess Andersen drove said automobile into Twenty-first South Street without stopping, and at a speed in excess of Forty (40) miles per hour into and against the side of the automobile then and there being driven in a proper manner, in a Westerly direction by Clark Romney on said Twenty-first South Street.

RESULT: That as a result of said collision between said automobile driven by the said Jess Andersen and the said automobile being then and there driven by Clark Romney, the said Clark Romney received injuries from which he died within the County of Salt Lake, on the 25th day of February, A. D. 1940.

CALVIN W. RAWLINGS,
District Attorney of the Third Judicial District,
in and for Salt Lake County, State of Utah,
By (Signed) BRIGHAM E. ROBERTS,
Assistant District Attorney.

Filed April 27, 1940.

(Title of Court and Cause.)

DEMAND FOR FURTHER BILL OF
PARTICULARS.

28 Comes now the defendant above named and requests the above entitled Court to make an order directing the District Attorney to file a further bill of particulars and set out therein the following:

(a) How or in what manner Defendant was operating said automobile carelessly and heedlessly and with a wilful and wanton disregard for the rights and safety of others and without due caution and circumspection and in such a manner as to endanger the life of one Clark Romney;

(b) Where and in what position the stop sign was located so as to be visible to drivers entering 21st South Street, and how and in what manner and at what speed the automobile driven by Clark Romney was operated.

EDWARD F. RICHARDS,
Attorney for Defendant.

Before the court entered the order concerning the demand for further bill of particulars, the following transpired:

The Court: State vs. Jess Anderson.

Mr. Roberts: In that case, your Honor, the State will not prove any acts except as stated; that is, excessive speed and going through a stop sign.

Mr. Richards: What about the allegation that Romney's car was being driven in a proper manner?

Mr. Roberts: That is surplusage. It does not matter how it was driven.

(Discussion.)

The Court: I am inclined to the view that the Court would preclude the State from proving any facts that they have not specifically alleged in their Bill of Particulars. I don't see how the Court could allow you to go into that, Mr. Roberts.

Mr. Roberts: I don't, either.

The Court: You have filed your Information in which you have alleged certain facts. Now, the mere fact that you say that he was careless and heedless and wilful and wanton, and all those things, that does not mean anything, does it, when you come to the proof?

Mr. Richards: That is true, except that on a general complaint, for instance, if we were ever in a negligence case, and he alleged those, and I had not come in here and had not made him get down to more specific allegations, he could prove anything under the sun.

The Court: In view of the limitations which the District Attorney has placed on the State, and the statement of the District Attorney that he considers himself precluded from proving any facts other than the facts which he has alleged, and as set out in his Bill of Particulars, I think that there is no reason why I should not deny the demand for a further Bill of Particulars.

Mr. Roberts: Of course, we will ask that the proposition of recklessness be put to the Jury; but the reckless driving will only prove the two acts.

The Court: The motion for a further Bill of Particulars is denied.

(Title of Court and Cause.)

MINUTE ORDER.

29 On April 27, 1940, the court made and entered a minute order denying defendant's request for further bill of particulars.

(Title of Court and Cause.)

MOTION.

30 Comes now the defendant above named and moves the above entitled court to require the plaintiff to elect whether said defendant is to be tried for the commission of the crime of involuntary manslaughter by having committed an unlawful act not amounting to a felony, or in the commission of a lawful act which might produce death in an unlawful manner, or having committed a lawful act which might produce death without due caution and circumspection.

Dated this 21st day of May, 1940.

EDWARD F. RICHARDS,
Attorney for Defendant.

Filed May 21, 1940.

(Title of Court and Cause.)

MINUTE ORDER.

32 On May 21, 1940, the court made and entered its minute order denying defendant's motion requiring the state to elect whether defendant would be tried for the commission of the crime of involuntary manslaughter by having committed an unlawful act which might produce death in an unlawful manner, or having committed a lawful act which might produce death without due caution and circumspection.

(Title of Court and Cause.)

BILL OF EXCEPTIONS.

62 BE IT REMEMBERED, that the above entitled matter came on regular for trial on the 21st day of May, 1940, at the hour of ten o'clock before the Honorable M. J. Brosnon, one of the Judges of the above-named Court, sitting with a jury, the defendant being personally present, and the State of Utah being represented by Calvin W. Rawlings and the defendant being represented by Edward F. Richards.

Whereupon, DR. KENNETH B. CASTLETON was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

Direct Examination by Mr. Rawlings.

68 My name is Kenneth B. Castleton and I reside in Salt Lake City. I am a physician and surgeon, licensed to practice in Salt Lake City, State of Utah.

Qualifications of Doctor admitted. I knew Clark Romney during his life and saw him on the 25th of February of this year at the St. Marks Hospital. When I arrived there he was alive. He died at approximately 2:30 that afternoon at the hospital. I was present at his death. I made an examination of him at the hospital and found he had a basal skull fracture, multiple fractures of the ribs, punctures of the lungs, and fracture of his left humerus. These injuries were caused by an external force which might have occurred in a serious automobile accident. In my opinion, his death was caused by such injuries.

70 Whereupon, ALEX ENGSTRUM was called as a witness on behalf of plaintiff and after being first duly sworn, testified as follows:

Direct Examination by Mr. Rawlings.

My name is Alex Engstrum. I reside at Draper. I am a garage man and my garage is located at 7th East and Draper Road. I have been in this business for six years. I have owned an automobile and operated one since 1906. On the 25th of February of this year I was in the vicinity of 21st South and 3rd East in the automobile of Kenneth Silcox, of Riverton, at about 7 A. M. in the morning. I was sitting on the right side of the front seat and we were proceeding east approaching the intersection of 3rd East and 21st South, when I saw a car coming from the south on 3rd East and going through the intersection, striking another car approaching from the east. The

72 car from the south was a Ford V-8. I observed the
stop sign at the intersection at 21st South and 3rd
East which the Ford V-8 did not stop at before
entering the intersection. I have observed cars trav-
eling and have a fair idea of the speed of such cars.
In my judgment the Ford V-8 when it entered the
intersection was going between 40 and 45 miles per
hour. The other car was an Oldsmobile and was
73 traveling west. The impact took place at about the
middle of the intersection. The Oldsmobile was on
the north side of 21st South. I observed the im-
pact. I saw the Ford V-8 coming through the inter-
section. I hollered to Mr. Silcox, "Stop, they're go-
ing to hit!" We stopped immediately, and before he
got stopped we saw this V-8 hit the Oldsmobile. I
would say the V-8 struck the Oldsmobile in about the
center. And then the Oldsmobile seemed to rise up
in the air about 5 or 6 feet with the front end, then it
turned completely over twice. It came to rest on the
74 curbing between the sidewalk and the street on its
wheels. The motor was still running. Mr. Silcox and
I jumped out of the car and ran over there. I saw
Mr. Romney lying in the gutter. My wife and
daughter also came over and we picked up his over-
clothes that were in the car and put them under his
head to make him comfortable, but we could not
move him. The V-8 appeared to have the front end
smashed in very badly. After the impact it turned
completely around headed in a different direction
from which it came. It was headed south. We re-
mained about thirty minutes and while we were
there the officers came. I didn't see Officer Pierce,

but I saw another officer there. I don't know his name. The cars were not moved before the officers arrived. We left before Mr. Romney was removed. The picture marked Exhibit "A" looks something
75 like the Oldsmobile. To the best of my knowledge it is the picture of the car that we saw. The picture marked Exhibit "B" appears to be the Ford V-8. The Oldsmobile was coming toward us and I have no judgment as to its speed.

Cross Examination by Mr. Richards.

76 The Ford stopped in the center of the road, it was turned around. It was in the center of the intersection, but a little on the north side, about 10 feet north of the center line on 21st South, and west of the center line on 3rd East. I would estimate that it traveled about 5 feet from the point of impact. I observed the Ford first as I always look on intersections when I travel in a car. When I saw the Ford first the car in which I was traveling was between 4
77 or 5 hundred feet away from the intersection. X-1 on the board is where the car I was in was located when I first saw the Ford, at 4 or 5 hundred feet away would make the mark come below the bottom of the board. But the distance between where the arrow of $33\frac{1}{3}$, coming down to the west line where our car was located would be about 4 or 5 hundred
78 feet straight out in the street. X-2 is the point where I first saw the Ford. I would say that would be about 10 feet or 15 feet behind the stop sign which is marked by a dot or circle. I never saw the stop sign until the crash. Then I began to look around.

I am not certain whether the Ford was behind or in front of the sign when I first saw it. But in my judgment it would be where the stop sign is located. It hadn't yet passed the stop sign. When I first saw the Ford I would say that it was about 39 feet south of the south curb line of 21st South. I saw the Oldsmobile first when it was about 2 hundred feet from the intersection. X-3 is where I first saw the Oldsmobile. It should be about 2 hundred feet from the east line of 3rd East. I followed the Ford from the time I first saw it until the time of the impact. It just took a few seconds, and during that time I made an estimate of the speed of the Ford. I did, after the impact, figure the speed just for my own good, to see what could happen in case somebody would come that way at me, and to see whether I should step on her and try to get by, or to stop. In fact, I studied that quite a bit. I have met up with a lot of them that same way. I also accidentally run stop signs myself, and didn't know they were there. I saw the Ford, then the Oldsmobile, and then almost instantaneously there was an impact. The first car I saw was the Ford. The next car was the Oldsmobile, and almost instantaneously after seeing both cars the impact occurred. When I saw the Ford I was about 4 to 5 hundred feet away. We started to stop immediately. Just after the impact we were about 15 feet from the west curb line on 3rd East street. We came to a stop there, and that is where I saw the stop sign. There was no other traffic that I noticed either north or south of 3rd East or on 21st South before or immediately after the impact. I had not

83 seen much traffic since I passed the hospital. The crash happened about 7:00 A. M. We were traveling about 30 miles an hour. I was not acquainted with Mr. Romney prior to the accident, and did not know him. When I stated I saw Mr. Romney, I meant that I had seen the gentleman that had been thrown out of his car. The Oldsmobile went up in the air 5 or 6 feet. It swerved over in the air two times and lit on the pavement between the pavement and the sidewalk. The two front wheels went off the ground. I do not know whether the wheels were 5 or 6 feet, but the body of the car went that high, to me. It seemed to roll over right in the air, hit again, and rolled over once more, and then came to rest on its wheels. I don't remember whether it struck on the front or side. I did not see what distance it went after it came down on its wheels. I was too excited. I only saw one officer. I did not see Officer Pierce. I do not know if only one officer arrived before we left. I was paying too much attention to the one that was injured.

87

Redirect Examination by Mr. Rawlings.

88 When we were moving east on 21st South I saw the other car coming from the other direction about 4 or 5 hundred feet off, and as we got close to the intersection, I turned my head to see if there was anything coming from the intersection, and there was a Ford coming. Yes, I saw the Oldsmobile first. That was way down the street. When I first saw the Ford, the Oldsmobile was entering the intersection. Yes, I think I must have seen the Ford when we

were about 4 or 5 hundred feet away. I guess we were $\frac{1}{8}$ of a block west of the intersection when I first saw the Ford. I couldn't quite see whether the Ford or the Oldsmobile entered the intersection first, but it seems to me like the Oldsmobile entered the intersection first. It was light. The sun was about coming up, and the vision was good. I noticed that Clark Romney was thrown out of the Oldsmobile, but I do not know what position the car was in when he was thrown out. He was thrown against the curb. He was lying with his head against the curb at about a 45 degree angle out. I saw the defendant at the scene of the accident, but I did not see him get out of his Ford.

Recross Examination by Mr. Richards.

Mr. Rawlings did not explain the distance to me during the noon recess. That was my own rectification. I have head noises, I can't hear very well, and I misunderstood the question. I did not misunderstand your question when I put X-1 and X-2. Yes, I put figures that I saw the Ford first. I saw the Ford coming—but the other car also—but I saw the Oldsmobile coming down the street 5 hundred feet or more. And after the crash, of course, we saw both. Yes, after the crash I tried to figure out the distance. Yes, when I was 4 or 5 hundred feet away I did see the Ford. Yes, at the stop sign, but I had seen the Oldsmobile previous to that time. I did not see the Oldsmobile where I put X-3 right after I had seen the Ford. That is the only thing I want to correct.

Redirect Examination by Mr. Rawlings.

During the noon recess Mr. Rawlings asked a number of questions about where these cars were located.

Q. This might be leading. Did I ask you to change your testimony in regards to what you testified to this Ford?

Mr. Richards: Object to that as incompetent, irrelevant, immaterial and not proper redirect examination.

93 The Court: Objection overruled.

No, you told me to testify nothing else and asked me if I didn't see the Oldsmobile and saw the Ford, which I did. He asked me to testify to the accident just exactly as I saw it.

KENNETH H. SILCOX, being first duly sworn, testified in behalf of the plaintiff as follows:

Direct Examination by Mr. Rawlings.

94 My name is Kenneth H. Silcox. Mr. Engstrum is my daddy-in-law, and was with me on February 25, of this year, at about 7:00 in the morning, at which time I was driving a Chevrolet east on 21st South. As I approached the intersection of 3rd East Street, I noticed an Oldsmobile quite a little ways up the street. I observed it coming into the intersection. I have driven an automobile about nine years and have carefully observed automobiles traveling at certain rates of speed. In my opinion, the Oldsmobile was not traveling over thirty miles an hour
95 when it entered the intersection. I did not see the

Ford until it passed the stop sign. The Oldsmobile had just come into the intersection before I saw the Ford. The Ford hit the Oldsmobile broad-side. It went into the air, turned over twice, and came to rest between the road and the sidewalk. The motor was still running and I went and shut it off. I did not know Mr. Clark Romney, but I did see a man after the accident. The Ford after the accident was facing toward the south and the front end was caved in. There was a fellow and girl in it. The weather was fair. I believe the lights were burning on the Oldsmobile, but I am not sure whether the lights were on the Ford. I said that the Ford was going about 40 miles an hour, but that was just a guess.

Cross Examination by Mr. Richards.

I was driving the car but did not have any head lights on. The sun was not up, but it was light enough without lights. We had come from Riverton, and I had had the lights on before I stopped at Knowles Floral, Midvale, where I shut them off and did not turn them on again. I do not recollect the facts concerning the accident any better today than when I testified at the hearing on March 27. When I first saw the Ford I was coming up 21st South about three or four hundred feet away. I didn't see the Ford until it arrived at the stop sign. I saw the Oldsmobile first. That is how far away I was when I saw the Ford—just north of the stop sign. I did not see the stop sign at that time. I saw the Oldsmobile for some time coming down 21st South. After I saw the Ford I looked again and

99 saw the Oldsmobile just entering the intersection
that is crossing the east curb line of 3rd East Street.
I guessed at the speed of the cars first when they
asked me for my story. That was the second day
after the accident. I testified at the preliminary
hearing that I was unable to estimate the speed of
either the Ford or the Oldsmobile, that it was just a
guess and that I guessed 40 miles for the Ford. I
stopped about 15 feet from the intersection, im-
mediately after the crash. As the cars came to-
99 gether the Ford struck the center of the Oldsmobile
and the Oldsmobile rose up in the front. Both front
100 wheels went about 5 to 6 feet up in the air. It
turned over and I do not know whether it struck the
ground until it lit on its wheels, although it looked
like the front end might have struck first and then
turned over again. I don't know whether the wheels
101 went up that far, but I could see plenty of daylight
under it. There was no other traffic on 3rd East
or 21st South at that time. The Ford did not go
far after the impact. It turned around. I did not
watch it very closely after it hit because I was
watching the Oldsmobile. I saw it after the acci-
102 dent and it hardly moved out of its tracks, only
just turned around.

Redirect Examination by Mr. Rawlings.

Yes, I said that the spot I indicated for the cars
was just a guess. I made the guess on what I ob-
served. I based the guess on seeing the distance the
cars came. I saw the Oldsmobile come at least two
or three hundred feet. It is from this observation

that I based my guess. It is pretty hard to guess the speed of a car. I talked to Mr. Pierce, the officer, at my place. I remember him asking me what was the speed of the Oldsmobile and the Ford car.

106 Q. What speed did you tell Mr. Pierce that the Ford car was traveling at at that time.

Mr. Richards: I object to that as incompetent, irrelevant and immaterial.

A. I told Mr. Pierce I did not know the speed of the Ford, but in my judgment and my guess that it was 40 miles an hour, but I did not know for sure. That was just a guess. I told him between 40 and 45 miles an hour and that the Oldsmobile was going about 30 miles an hour. That was two days after the accident.

108 L. W. PIERCE, being first duly sworn, testified in behalf of the plaintiff as follows:

Direct Examination by Mr. Rawlings.

108 My name is L. W. Pierce. I reside at 940 Lake Street. I am traffic accident investigator of the Police Department of Salt Lake City. I have been on that detail since March, 1937. I do not have charge of it, but I am an investigator. I investigated a collision at the intersection of 21st South and
109 3rd East on the 25th day of February. Officer Van Ballegooie went with me. When we arrived there the Ford V-8 was headed in a north-easterly direction. At the time of the investigation I made certain measurements and observations from which I made the drawing marked Exhibit "C". I made the sketch

- 110 myself, and it is made to scale, and from that I made the drawing on the blackboard. This street represents 21st South at the intersection of 3rd East. This is east on 21st South and west on 21st South. These lines here represent the lines painted in the street, the center lines, and these two go through the intersection, but the outside lines don't. This outer line and the one near the curbing or parking lane doesn't continue through the intersection. It
- 111 is a 6 lane highway. When we arrived there the Ford was located in the position shown on the map, and Mr. Anderson and the young lady sitting in the Ford car. Mr. Anderson was behind the driver's seat. Farther down the street was an Oldsmobile standing on its wheels, the front end down off the curb, the back wheels were up on the curb. At a point 16 feet east of the Oldsmobile there was a man lying in the street. I later learned that it was Clark Romney. His feet and body were in the street, and his head was resting just on the curb. Leading into the intersection on 21st South and going in a northerly direction were some heavy tire marks. These tire marks were 44 feet long; they ended at a point 5 feet north of the center double
- 112 line of 21st South. From there one of these marks went in the form of an arc and extended in a northwesterly direction for 14 feet. The front of the Ford automobile was 17 feet from the end of the west brake marking and there were 4 skid marks of 44 feet. The Ford was a four-wheel brake car. The front one of the skid marks started 4 feet from the south curb line and the other was 9 feet farther

back. There was a stop sign that morning at the intersection of 21st South and 3rd East, which is indicated on the drawing. This street has a curb that just goes around the corner; then there is a small dirt bank that extends South about 24 feet, after which the street widens out. There setting right
113 in the small bank was the standard reflector stop sign. I do not know the size of it, but it was a hexagonal size standing on a six foot four by four post. There was written on it, "Stop," and "Through Street". It stands 24 feet south of the south curb line of 21st South. The skid marks did start about 11 feet North of the stop sign. In my observations I determined that the point of impact was at the place indicated by "X", with a circle
114 around it. I determined that the whole front end of the Ford car hit the Oldsmobile. At a point beginning 21 feet from the place where the brake mark stopped, there were two large tire burns in the form of an arc; one was 26 feet long, and the other was 20 feet long. I couldn't find any beyond that point. Beginning at that point to a point nineteen feet further west, the pavement right on the north painted line and on the curb was all gouged out and was full of green paint for a distance of fifteen feet. The color of the Oldsmobile was green. I did not observe right on top of the Oldsmobile. I did observe a portion of the damage to the top. The part in front, just above the windshield, was badly damaged on the left front corner. The grill and radiator was broken out. The distance from the point where the impact occurred, that is from the left front

wheel of the Ford to the front end of the Oldsmobile, was 78 feet. Officer Van Ballegooie stood at one point and I read the tape and took Mr. Anderson with me. The defendant was with me when we
115 made the measurements. Mr. Romney was put in an ambulance and taken to St. Mark's Hospital. I did not see him after that.

As an investigator for the Salt Lake Police Department I have had the occasion to determine the speeds that automobiles have been traveling, after taking into consideration skid marks, weights of cars and other matters. We have a formula for this matter. Yes, I made a particular study in that regard. The formula we used was from the Northwestern University School of Engineering. We attended school at California held by Lieutenant Kremel from the Northwestern University. I also
116 attended school at Pinecrest last year taught by the International Association of Chiefs of Police and received instructions from Sergeant Loveless of the Indiana State Police. The formula used at both these schools was the Northwestern University formula. It is the length of the tire marks times the coefficient of friction times a weight distribution of the automobiles times the number of tires that are
117 holding. That would give you your product. You then take the square root of your product times a constant of 5.46 which will equal the miles per hour. I have made practical applications of this formula hundreds of times and the formula checked accurately. The university gave us a coefficient of friction. The coefficient is determined by the sur-

118 face of the highway. The highway at 21st South
is what is known as a bituminous asphalt highway.
The highway leading into the intersection on Third
East is an oil and asphalt surface. Taking into con-
sideration the brake marks I used the formula to
arrive at the speed that the Ford car would have
been traveling had it come to a stop at X circle. The
factors taken into consideration is the coefficient of
the street and the weight distribution of the auto-
mobile. A Ford automobile has what is called a
fifty-fifty weight distribution, or the front end is
carrying 50% of the weight and the back 50%.
Therefore, each wheel would be carrying 25% of
119 the load. We do not consider the weight of the car.
That does not make any difference. Then we con-
sider the coefficient of friction. I use .70. Bitum-
inous asphalt very conservatively will run from .74
to .76. The reason I cut the coefficient down four
points is because there was a slight bit of dirt on
the highway right where Third East intersects with
21st South and the brake marks went through the
120 dirt. If the car came to a stop at X circle, it would
have been travelling 30.35 miles per hour. I have
taken photographs in relation to traffic accidents
ever since 1937. We carry a kodak in the car. It
is a 4.5 Graphite. I have been using that one since
March, 1937.

I had a conversation with the defendant at the
place of the accident. He said the cars had not been
moved; that they were in the position at which they
121 came to rest. The diagram shows where the cars
were when I arrived. Yes, I took a number of

photographs of the scene of the intersection and the cars. What has been marked Exhibit "F" was taken in front of Streator-Smith on the 26th day of February. It is a photograph of the Oldsmobile automobile that I found at the scene of the accident. So far as I know the car was in the same condition at the time I took the picture as it was right after the accident. It looks just the same.

122 (Exhibit "F" was offered and received.)

Exhibit "E" is a photograph of the front end of the Oldsmobile and in my recollection the car was in the same condition when this picture was taken as at the scene of the accident.

(Exhibit "E" was offered and received.)

What has been marked as Exhibit "A" is a photograph that I took of the left side of the Oldsmobile sedan.

(Exhibit "A" was offered and received.)

123 What has been marked Exhibit "B" is a photograph of the Ford.

(Exhibit "B" was offered and received.)

Exhibit "D" is a photograph of the Ford car.

(Exhibit "D" was offered and received.)

124 I took the picture marked Exhibit "H". It was taken on the 26th about noon. I was standing 132 feet east of the east curb line of Third East Street, looking west. Yes, there was a light pole at the intersection. However, the one you see in the picture was on the north side of the street. There is a pole a little further south than the stop sign on Third

East Street. The stop sign and pole in this picture, however, are on the north side of the street.

125 I took the photograph marked Exhibit "G". I was standing 54 feet south of the stop sign and about in the center of Third East. I held the kodak approximately four feet from the ground. Third East is thirty-three feet wide. That is, where the curb is. I was standing just about in the center of Third East when I took the photograph. When I took this picture I held the camera slightly east and north so I could catch the stop sign and was held approximately four feet above the ground. Just how far east it was turned I do not know, just a few degrees. I just moved it over so I could find it and saw the stop sign and shot it.

126

Mr. Rawlings: We offer in evidence Exhibit "G".

Mr. Richards: We object to Exhibit "G" if it is offered for the purpose of showing what might be shown 54 feet back. It clearly shows—

The Court: The picture was explained. It would go more to the weight than the admissibility, Mr. Richards. Objection overruled. It may be received.

(Exhibit "H" was offered and received.)

129 I had a conversation with the defendant in the evening at which conversation Mr. Beckstead was present. I had a statement with the defendant relative to the speed that he was driving his Ford car and about going through a stop sign. This conversation was reduced to writing. It is an accurate

statement of what he said on that subject matter.
He stated:

1 1 130 "I was driving about thirty-five or forty
miles per hour as I approached 21st South. I
was almost to the intersection when I noticed
the stop sign. I didn't know there was a stop
sign until I saw it. I applied my brakes and
tried to stop, but I skidded into the other car."

At that same time something was also said
about the driver of the other car. He stated:

"At the time of the impact I saw the other
driver fall out of his car at about the same place
as he was when the officer arrived. I don't
think the car rolled over him."

Cross Examination by Mr. Richards.

1 1 131 The northerly end of the skid marks was five
feet north of the center line. From the center line
to the curb line is 35 feet. So it would be 35 plus
five, or forty feet, and this mark would extend four
feet south of the curb line. Forty-four feet is the
full length of the skid mark. That is, the most
northerly one, the one that extended furthest
north. There were four separate skid marks. The
other skid mark stops nine feet back of the point X.

Mr. Rawlings: I will offer this sketch which
gives the scale, Exhibit "C", as an exact duplicate
of the sketch on the board.

Mr. Richards: I will agree to it, Mr. Rawlings,
as soon as I get X-1, X-2 and X-3 on that.

132 Both skid marks are forty-four feet long. On
Third East Street where it enters 21st South there
is a concrete curb going around the corner. The
stop sign is setting on the most southerly edge of
the concrete. Then the street widens with dirt
shoulders. Yes, there is a telephone pole in front
of the stop sign a little further south and a little
further east, about the width of the pole further
east, that is the width of the telephone pole. In my
judgment it would be about fifteen feet further
133 south. It is very close to the stop sign. That is
not put on the map. When I took the picture shown
in Exhibit "G", I held the kodak so I would get a
good picture of the stop sign. The purpose of the
picture was to show the same. It was not taken to
show what you would see driving down the street.
I wanted to show the stop sign. It does not show
a telephone pole. I did not have anything to do with
working out the formula. I took the formula given
to me by someone else and after applying certain
facts came to the result I have given. It would alter
the results of my formula if the first two brakes
134 had taken hold for a certain distance and then the
other brakes extended beyond. The coefficient of
21st South was .74 and .76 and the coefficient of
Third East which is asphalt would run about .68 to
.70. Yes, there was some gravel, some dirt, on Third
East. The gravel was mostly pushed up onto the
surface of 21st South. By the surface of 21st South,
I mean after you leave the curb line. That is where
most of it was. There was very little back in the

135 entrance. That would reduce the coefficient some
and that is the reason I took .70 instead of .76. If
it was on the .68 to .70 it would reduce it very little.
The skid marks caused by the spin, those being 14
feet, were undoubtedly caused by the Ford from
the forward motion of the west-bound car when the
Ford went into its spin. Yes, I think when the cars
came together that the forward motion of the Olds-
mobile twisted the Ford around so as to make it
face in the direction it was and that would cause the
skid marks. The stop sign is on a pole about six
136 feet high. The lettering is six feet or over above
the ground. The state law provides that your head-
lights are to show 42 inches above the ground at
seventy-five feet. As you get closer, your lights
may lower. That would depend, however, on how
high the lights were on the car. If the lights were
above 42 inches the light beam would be focused
toward the ground further ahead. I do not know
what height the right beam is on a Ford. I do not
know what time I arrived at the accident. I re-
ceived the call about 7:00 A. M. and drove directly
there. It took me five to seven minutes to get there.
I was at the police station when the call came in.
The weather that morning was clear and the visi-
bility was good. It was somewhat misty but not
enough to impair visibility to any great extent. The
pavement was dry. The sun was just coming up.
It was broad daylight. The condition of Third East
Street, of which I am somewhat familiar, isn't so
bad. It is a fair road. It has chuck holes in it but

it is not bad. I don't know if prior to the time I inspected it, which was after the preliminary hearing, it had been torn out putting in a gas pipe or sewer. It looked as though it had, but I don't know.

Redirect Examination by Mr. Rawlings.

138 When I took the photograph of the stop sign on the south side of 21st South I was 54 feet back and in my judgment the telephone pole is fifteen feet further south. I made observations to see whether it would block the view of a driver. It would not block the view of a driver coming down the proper lane.

The back wheels of the Oldsmobile were on the curb and the front wheels were down on the street.
139 By curb I mean between the curb and sidewalk. At one of the conversations I had with the defendant at the scene of the accident, he said he had to go to Magna to work. He said he had to take the young lady home and go to work at Magna that morning and that he had made arrangements with some woman to call Magna.

140 Oh, yes, I know what you mean. He said that he was in a hurry to get the young lady home to get out to Magna to work.

Recross Examination by Mr. Richards.

I may not have remembered that at the preliminary hearing.

11 Whereupon, SEYMOUR S. TAYLOR was called
as a witness on behalf of plaintiff and being first
duly sworn testified as follows:

Direct Examination by Mr. Rawlings.

My name is Seymour S. Taylor and I reside at
Salt Lake City. At the present time I am employed
by the Gallagher Company. For a period of years
I have been interested in traffic safety. I have
studied formulas by which the speed of a car might
be determined by the tracks of the car, skid marks,
coefficient of friction and weight of the car. I have
a Bachelor of Science degree from the University
of Utah in civil engineering and to obtain that de-
gree I wrote a thesis on traffic accidents in Salt
Lake City. I have done further graduation work
at the University of Kansas and the University of
12 Iowa. I have received my Master's Degree. I sub-
mitted a thesis to the University of Kansas also on
the same subject of traffic accidents and investiga-
tions and the determination of speed of vehicles in-
volved in accidents and collisions. I have been em-
ployed as consultant by Kansas City and also I have
done some corresponding consulting work with Los
Angeles, Boston and Chicago. This employment per-
tains to general traffic problems but was mainly
based on accidents that had happened and engineer-
ing analysis of these accidents. I was also con-
nected with General Motors Proving Ground and
observed experiments in which these formulas were
used. I did some actual work with them and I have
3 also studied photos quite carefully that were made

of tests they performed for the purpose of determining damage to vehicles. The purpose of the tests at General Motors was to test the strength of various types of construction. Cars were placed on an incline to give them a predetermined speed and then were allowed to collide with other vehicles also moving at predetermined speeds. Other times they were run into solid walls at various speeds. The longest period I was at General Motors was three weeks but over a period of the last five years I have been there four times and spent probably a total of three months there. From the formula I have given you I am able to determine the speed of a car.

144 I have examined Exhibit "C" and have made an analysis of the situation so far as speed is concerned from the sketch itself, skid marks and type of road. I also took into consideration the condition
145 of the two cars. I examined both cars on the 28th of February. I saw the Ford at Petty Motor and the Oldsmobile at Streator-Smith.

Exhibits "A", "E" and "F" are photographs of the Oldsmobile that I examined and Exhibits "B" and "D" are photographs of the Ford that I examined. In determining the speed of the car I took into consideration the wheel marks or tire marks as shown on the sketch being forty-four feet in distance before the point of impact. I can tell from
145 the tire marks the speed that the car was travelling when the brakes first went on had the the car come to a stop at the point of impact. Using my formula and taking into consideration the fact that there were skid marks at a distance of twenty-four feet

on 21st South and nine feet on Third East. I can tell the amount that the speed was decreased while the brakes were applied. I have also examined the construction of 21st South and Third East. The skid marks were not all there when I examined it two days after the accident so *I used the figures*
146 *given me by Officer Pierce.* The other element I used in connection with the formula is the coefficient of friction between the tires and pavement and the length of the marks. I have made practical applications of this formula.

I was with a party testing approximately twelve cars with Ray Bestus Company on various types of pavement, various cars, various types of tires, to determine the coefficient of friction between those tires and the different types of pavement. The coefficient of friction that I used was .7. During the time that the brakes of the Ford were locked the wheels were sliding, the speed was decreased approximately thirty-three miles per hour. I am able to determine from my studies and have an opinion
147 after making observations of the automobiles and a study of the surface of the two highways, 21st South and Third East, and other elements that I took into consideration, the speed that the Ford car was going as it entered the intersection.

Exhibit "C" is a diagram that I prepared to scale. The total energy of any moving body is well
148 known according to our laws of physics to be determined if the mass of the moving body is known and its speed. Similarly, if we can determine the

total energy of the moving body and know its mass, its weight, we can determine its speed.

155 I have given you the formula that showed the decrease of speed of the car over the forty-four feet as evidenced by the skid marks and I have a satisfactory opinion as to the speed the car was going at the time the brakes were first applied. That opinion is made up of two factors. One is my conclusion as to the decrease at the point of impact and the other is the conclusion as to what happened after the impact.

156 In arriving at proposition No. 2, the decrease of speed from the impact, I have taken into consideration No. 1, the damage and extent done to the Ford car; No. 2, consideration of the extent of damage to the Oldsmobile car; No. 3, consideration of the amount of energy involved in forcing the Oldsmobile to the pavement so that it leaped into the air; No. 4, the amount of energy involved in forcing the Oldsmobile from its intended path to a path ten feet distant, approximately; No. 5, the energy involved by the movement of the Ford after the impact to its position of rest. This is all I am considering.

157 I can determine by formula the energy involved in forcing the car to the pavement so as to make it jump into the air. The formula is foot pounds of energy are equal to the weight involved multiplied by the distance through which that weight acts, which is simply the weight of the car times the distance. This is a mathematical, physical formula.

It is a formula studied in all of the better schools. I can determine by the same formula the energy involved in forcing the Oldsmobile car from its intended path to the other path. It is an accepted formula worked out on a mathematical basis and adopted by all schools. I have seen this formula
8 put to practical operation. I can determine by formula the energy involved in the movement of the Ford car as it skids around into its rest position. That formula is based on the weight of the car, the coefficient of friction between the tires and the pavement and the distance through which the car moves, which is also a recognized formula. That leaves damage as the other proposition.

Distribution of weight on the various wheels will change the coefficient of friction. I do not use
9 a distribution of weight formula. There is no formula for determining the energy required to damage a car to a certain extent. That is the only other element that we have, the damage to the two cars.

I cannot arrive at the accurate speed that the Ford was travelling at the time the brakes were applied without that element. Leaving out the question of damage, I have an opinion as to the speed the Ford was travelling when the brakes were applied. I can give the approximate speed and taking
11 100 as being the accurate speed, leaving out the consideration of damage, my estimate would be 90% or 95% accurate. I do not mean that the speed will be 95% of the total speed because I have not been

allowed to consider the damage but it would be 95% accurate without considering the damage.

163 I stated the other day that I had an opinion relative to the speed that the Ford V-8 was traveling at the time that the brakes were applied on Third East as it entered the intersection of 21st South and 3rd East. I examined the cars on the 28th of February and went to the scene of the accident on the 29th. At that time I had not seen the sketch of the accident and the placement of the cars. At the time I visited the place of the accident I made observations as to the surface of the road at Third East and at the point where skid marks appeared that were later called to my attention on the sketch. 165 I also made an observation of the surface of the highway known as 21st South Street. I made an observation as to whether at that highway there was an incline or decline. I examined the tires of the two cars and paid particular attention to the inflation of the tires.

It is a universally adopted formula by which the degree of slowing down in the speed of an automobile may be determined from the brake marks. The formula for speed in miles per hour is equal to 5.5 times the square root of the coefficient of friction times the brake marks, assuming all four wheels are sliding. That formula has been accepted generally in the United States.

Mr. Richards: Object to that as a conclusion of the witness, and move it be stricken.

The Court: Objection overruled. It is a conclusion, but I believe he is qualified.

166 With that formula I have performed more than
one hundred experiments in testing. There are sev-
eral other formulas but they resolve to the same
thing. This formula that I have given is derived
from the others. It is simply simplified to give the
speed in miles per hour, not speed per second.

I have seen Exhibit "C" before, which is the
sketch prepared by Mr. Peirce. I made a larger
sketch from Exhibit "C", drawn to scale. That is
167 the one I was testifying from yesterday.

(Exhibit "C" offered in evidence.)

Mr. Richards: I have no objection except that
it doesn't show all of the points around the acci-
dent. With the understanding that the X's will be
placed on with the notations of distances—as I un-
derstand the map is not large enough to permit them
to be placed on according to scale, and show the
telephone pole.

Mr. Rawlings: We will agree that those may
be placed in this exhibit by Mr. Richards.

(Exhibit "C" admitted.)

What has been marked Exhibit "I" is a sketch
168 that I drafted myself. It is drawn to scale.

Exhibit "I" is offered in evidence and re-
ceived with the understanding that it is merely an
enlargement so that the witness can testify a little
more accurately and is merely for the use of this wit-
ness and for no other purpose.

I saw Exhibit "C" about the first of March. I
considered the matters of distances, placement of

cars, roads and other elements contained on the sketch. I was advised what the boxes numbered 1 and 2 represent. I considered the tire marks.

169 Q. Mr. Taylor, taking into consideration your investigation and observations made at the intersection of 21st South and 3rd East, taking into consideration the sketch, *Exhibit "C", which I have called to your attention, and which you say you have discussed with Officer Peirce*, taking into consideration your observation of the automobiles which you have stated, I think, that you observed, the Ford V-8 and the Oldsmobile which were involved in the accident?

A. Yes, sir.

Q. Taking into consideration the evidence in addition to the items which I have mentioned—

Mr. Richards: Which evidence?

Q. (Continued) I am just going to say it. That the Oldsmobile car turned over twice as it went from point Circle Z to the point which indicates the place where it came to a stop, indicated on the blackboard as "X-4"; taking into consideration the movement of the cars, as is reflected on the sketch Exhibit "C"—

Mr. Richards: I object to that as being indefinite, the movement of the cars.

170 Q. (Continued) And particularly the fact that the Ford car, after the impact turned around and was pointed in a northeasterly direction, and that the Oldsmobile came to rest with the two rear wheels over the curb, and pointed in a southwesterly direction, practically west—

The Court: Right there, Mr. Rawlings, I have an objection that was made. I thought before you finished—but I don't think you have added anything since the objection was made with reference to the objection to the movement of the cars. By that do you mean directional movement of the cars?

Mr. Rawlings: Directional movement.

The Court: Objection overruled.

Q. You understand that?

A. Yes.

Q. And taking into consideration that the evidence that the Oldsmobile car came to rest at a point seventy-eight feet northwest and practically north from a direct line from the point of impact; taking into consideration the damage to the automobiles, the tread of the tires on both cars, the type of surfaces on both roads, and particularly in the intersection, the elevation transversed, if there were any elevation, the inflation of the tires, composition of the roads, the point of impact of the two cars, and any other evidence reflected on the sketch, Exhibit "C", have you an opinion as to the rate of speed that the car was traveling when the brakes were applied at point X-5.

Mr. Richards: I object to that, your Honor.

Mr. Rawlings: As is evidenced by the sketch.

171

Mr. Richards: I object to that question as being incompetent, irrelevant and immaterial. The proper foundation has not been laid; and that there are certain elements in the evidence that have not been taken into consideration; and there are certain

elements that he has taken into consideration that are not in evidence; and that also his examination of the premises was of a time different than the time of the accident. There is no proof that the conditions were the same at that time as of the time of the accident; nor that the condition of the tires, the inflation thereof, was the same at the time of the accident as they were at the time of his examination.

The Court: He can answer this question "Yes" or "No", Mr. Richards. Then when he is asked for his opinion I will consider more seriously your objection, if you have one.

A. Yes.

The other elements I took into consideration in arriving at this opinion were the weight of the two cars, the total surface of friction between the tires and the surface, and no other elements except the use
172 of the formula mentioned the other day.

Q. You say you have an opinion. All right, now will you give us your opinion of the speed the car was traveling at the time that the brakes were applied, as is evidenced by the sketch, on 3rd East?

Mr. Richards: May we have the same objection I made to the previous question.

173 The inflation of the tires made no difference. The tread of the tires is a factor.

Q. The tread of the tires is a factor. Will you describe, or give us the tread of the automobiles that you observed.

Mr. Richards: Object to that as immaterial and incompetent.

Q. And designate each car.

Mr. Richards: When did he examine it?

Mr. Rawlings: The 28th.

Mr. Richards: Object to it as incompetent, irrelevant and immaterial. The conditions may have been entirely different after—it undoubtedly was.

The Court: Objection overruled.

174 The tires on the Ford car were practically new. The tread was good on all four tires. The tires on the Oldsmobile were pretty well worn with the exception of one rear tire which was a little newer than the others. The weight of the cars enters into my computation. I know the shipping weight of the automobile. The shipping weight of a car is the weight without any gasoline, oil, accessories or extras or passengers.

Q. What is the weight?

Mr. Richards: Object to it as immaterial.

175 The Court: I think the factor I mentioned or suggested is probably a matter of rebuttal, if it exists. Objection overruled. You may answer.

A. The weight of the Ford car is 2,927 pounds shipping weight; and the shipping weight of the Oldsmobile 3,185 pounds, approximately. I think it is given on the sketch—it is shown.

Q. Now, will you give us your opinion as to the speed the car was traveling when the brakes were applied on 3rd East?

Mr. Richards: I would like the same objection as I made to the previous question; or I will restate it.

The Court: No, you may have the same objection, if you want to make your record on it that way, and the court will consider your objection previously made as going to this question. Are there any factors that you took into consideration in ascertaining the speed of this Ford car at the time the brakes were applied, which have not been mentioned by Mr. Rawlings in his question to you?

A. The extent of the damage to each car.

There is no formula which can be used to arrive at a mathematical exactitude of the dissipation of energy in connection with the damaging of the cars. I base my opinion as to the crushing effect of the automobiles on the basis of extensive tests that we
176 made at General Motors Proving Ground and at Iowa State University.

By the Court:

Those are the tests I assisted in and referred to yesterday. A measurement was always made. A comparison of damage was made at various speeds and under various conditions to determine the extent of the damage. I have conducted an experiment with an Oldsmobile of this model and year. I have not made the experiment with a Ford of this model and year. An Oldsmobile but not a Ford. In using this factor in determining the speed that the Ford was going at the time the brakes were applied I merely estimate the amount of energy dissipated by the impact of the two cars, which estimate is based
177 upon my experience. As I understood the question it was not to include the damage to the car and I esti-

mated that I could come closer than 95% right without the damage.

The Court: Objection overruled. The witness may answer and you may save your record on it, Mr. Richards.

Q. Do you recall the question asked?

A. Regarding the speed, including the damage?

.....178

A. 59.3 miles per hour.

Cross Examination by Mr. Richards.

I have not been in court during all of the trial. I came in yesterday afternoon. Mr. Peirce was the first witness after I came in. I heard your cross examination of Mr. Peirce and that is all of his evidence I heard. I did not hear the evidence of the other witnesses. *The opinion I have given is taking into consideration certain information Mr. Peirce gave to me at some other time. I read the statement of the witnesses he has in his police report and that is where I got my facts from with the exception of the facts Mr. Rawlings has shown on the board*

179 *and my own observations.* I did not examine the highway until approximately February 29th. That was the first time I examined it. I have examined it since that time. To determine an incline or decline of a highway I have an instrument on my car. When I examined Third East Street, the street looked dry. It was black asphalt pavement on 21st South and on Third East it was an oil surface. There was a small portion of loose gravel in the center of the intersection. I do not know how much loose gravel there

180 was on the day of the accident. My opinion is based
on what I saw at the time I examined it. I made al-
lowance in regards to friction but I based that on
what I found when I examined it. I figured approxi-
mately the speed of the Oldsmobile from several fac-
tors at 37 miles per hour. When I say "approximi-
tely," I mean that would be about 90% correct. I
figured the Ford a little closer because the movement
of the Ford after the impact was less and not as
complicated as the movements of the Oldsmobile.
181 The skid marks I figured as a reduction of speed at
30.5. In the 14 foot skid marks I took into considera-
tion and added it to the Ford's speed. That is, a por-
tion of the 14 foot skid marks. This made a reduc-
tion of about three miles per hour. The momentum
of the Oldsmobile would assist the Ford in swinging
182 around and I took that into consideration. The dis-
tance mentioned in the direction of the Oldsmobile
could be accredited to the Oldsmobile whereas the
distance moved in the direction of the Ford could be
accredited to the Ford. It is true that if the Ford
came to rest and the Oldsmobile hooked on, the
momentum of the Oldsmobile could advance the Ford
to some extent in the same direction that it was go-
ing. From a study of the photographs and experience
in similar accidents I would say that the Oldsmobile
did not catch the Ford with part of it and throw it.
Yes, I have seen accidents very nearly the same as
this. That is, one car going 59 miles per hour and
the other going 37 and striking under the same con-
ditions and causing the same result. I have not seen
an Oldsmobile hit a Ford but have seen a car with

the same weight. The construction of different cars makes a difference but the chassis is practically the same on new cars. The body cushions the impact but it does not take the impact. I doubt if it would give something to hang on to. I did not use the same formula for figuring the speed of the Oldsmobile because there are no brake marks. The skid marks of 26 feet I applied to the Oldsmobile. That is, the straight portion. The arc was contributed possibly by the change in direction. Taking the speed at 33.5 up to the arc in the 14 foot skids to make up the 59 miles per hour, I take into consideration the direction over to here in the air, is the product of the weight of that car by the distance which it travels in the air. The distance is the perpendicular distance to the intended direction of travel over to a point approximately the center of where the skid marks begin. As to whether the Oldsmobile was absolutely free and clear, that is all four wheels off the pavement from the point of impact to the beginning of the skid marks, which are marked 20 and 26 feet, I take it that if they had not been there would be some indications on the pavement where the wheels had been touching. No, there are no skid marks down 21st South but anything in the air hitting the pavement would leave a mark, of any weight. It would have to go one or two feet to leave a mark. Every time the car goes over a bump, if it goes sufficiently high it would leave a mark on the pavement where the wheels come down. It would leave a definite mark if the distribution of weight was the same as in this case. By that I

186 mean that the heavy portions of the car that are in the air tend to go to the ground first so that the front end or front wheels in the air would hit first. If the evidence showed that only two wheels left the ground, that would make a difference in my calculations, and if the back wheels were still rolling on the ground, they would not make a mark. The distance I used for the car being in the air was ten feet and the energy consumed thereby would be 3,400 pounds weight of the Oldsmobile down to that ten feet, or 34,000 pounds of energy. I have not broken that down to miles per hour. I use total energy. I didn't break each of them down. I summed them up and then arrived at my total factor.

Q. Would it take long?

A. No, I will do it right here on the board, if you want.

Q. All right.

A. (Witness figures on blackboard.) That is, if this were all the energy that were involved—it doesn't amount to quite that much, considered as a whole, so you really get into a larger—

$$\begin{aligned} V &= 5.5 \sqrt{\frac{E}{W}} \\ &= 5.5 \sqrt{\frac{34000}{3200}} \\ &= 17.9 \text{ miles per hour} \end{aligned}$$

Q. What is your final figure?

A. It is a square root. It is just a complication. When you take a square root of a number, you, for instance—if you double this number and that square root you don't double this, so it is better

187 —it is correct (indicating), this wouldn't be correct. Trying to break these down it would be correct; trying to determine the total energy at this point and applying it, if I add all these together then I would probably get 75 instead of 59.3.

188 If only two wheels were off the ground, this 34,000 would be about 28,000. It would not make any difference which two wheels were off the ground nor their height. The distance off the ground is not involved in this calculation but I used four feet off the ground the other day as that is another portion of the energy. *One witness' testimony which I read said five or six, but I use three.* In considering that energy I considered all four wheels off the ground. The only difference this would make, if the car were raised so its mass were raised three feet, it wouldn't make any difference, but if the high point were only three feet off the ground, then it would cut the energy approximately in half. Even though the evidence indicated that the front end was all that could be seen off the ground five or six feet, I say I have never seen a collision of that kind where all four wheels did not go off the ground. By the downward force I mean the force which pushed the Oldsmobile to the pavement, the weight of the Ford as it suddenly stopped pitches to the front, as anyone who drives a car knows. (Using the models in court as a demonstration.) To exaggerate, these wheels might not come entirely off the ground but the springs would be raised so that 189 the weight of the car is directed in a downward direction and the fact, from this photograph, that

this running board on the Oldsmobile, and everything is pushed down, indicates that there was a force pushing down on this car so that the springs and tires of the other car were pushed down and acting as a catapult so that the car pushed down immediately after the impact. Then the spring motion of the two cars releases them and the car pushed down by reason of the tension in the springs and because the air in the tires is compressed, will come out into the air, and that is what forces it up three feet. Sometimes it is the combination of forcing down and lifting up. That is, if the car was low enough down so it could get under the other, which I do not think it would in this case, it would knock it up into the air like hitting a golf ball. The speed of the Oldsmobile would not have any appreciable effect on it going up in the air. It is true that if a body is moving at quite a rate of speed and gets caught on something it has a tendency for its upper end to raise, particularly if it is struck towards the rear, but in this case the striking was practically in the center.

190

Q. That wouldn't mean right instantly after the striking of the back fenders or door handles or something on the Oldsmobile, wouldn't stop some of that speed of the Oldsmobile and shoot it in the air—

A. No.

Q. So that part of this raising would be the speed of the Oldsmobile?

A. No.

Q. It wouldn't. You don't concern with that at all?

A. Not appreciably. In the range of tests from twenty to sixty miles per hour of the car, which would be the yellow car, the Oldsmobile car in this case, the difference in the lift over that range was only approximately six inches, and the cars were lifted around five to five and one-half feet by a car going at sixty miles per hour.

191 In the test that I have made there was only a difference of six inches in the height which the car jumped. We ranged the speed of the cars from 20 to 60 miles an hour, with the other car going at a speed of sixty when it reaches the point of impact. That is, increasing its velocity. We tried other cases with a man at the wheel applying the brakes. I have never seen an accident where the front went up and the back didn't. I have seen the front go a little higher but both left the ground. We had tests having them hit at the point of gravity which is back about $3\frac{1}{2}$ feet from the front axel and 24 inches off the ground. This might vary some with
192 passengers and accessories in the car. The combination of gouge and paint marks was contributed to the speed of the Oldsmobile and the coefficient between metal and pavement is around 6/10. The gouges would probably increase this. I did not increase it. However, it would not make the Oldsmobile be going much faster. The difference of one or two points in coefficient does not change much. This distance of seventy-eight feet was used to de-
93 termine the actual distance parallel to the direction

- of travel of the Oldsmobile. The distance from where the skid marks are to where the car jumped over the curb, I contribute the loss of energy or speed to the Oldsmobile. I did not break that down, however. It would make a difference as to how the Oldsmobile struck the pavement in making its turns.
- 194 I did not see it but I think I know from the photograph and other experiences and the damage to the car that it was quite on its nose. Yes, I attributed to the Ford a portion of the damage to the Oldsmobile. All of the damage which was done to the left side of the car and the damage that was done to the frame of the car in springing the frame out in the direction of the travel of the Ford and the tearing loose of its supports underneath the frame itself. If the car went up in the air six feet and dropped, it couldn't damage the frame by the fall to the extent of the way it was damaged. I mean that absolutely. The dropping of the drive shaft and so on possibly might have been done by that.
- 195 I eliminated that part and considered it in determining the speed of the Oldsmobile. But it wasn't a big factor. Taking the rule of physics where two forces are pulling in different directions, the resultant will lie closer to the greater force. The reason the Oldsmobile was not further north on Third
- 196 East rather than west on Twenty-first South was because a large portion of the energy of the Ford had been dissipated in the brakes and another part of the energy was dissipated in the damage to the cars at the time of impact and that the speed and force of the Oldsmobile was not retarded as much

as the Ford by the impact. The total swing of the
97 Ford was not caused by the momentum of the Oldsmobile. It might probably have been assisted by the Ford's wheels being cramped. I do not know whether it would have been assisted by the power of the motor carrying the Ford forward. This could not have had much bearing on the matter, though, as it only moved fourteen feet. From my experience, the time a man starts to put on his brakes and when they take a hold, and having brakes and the type of road and tires here involved, is practically nil. Of course, if you are going sixty miles
98 an hour and see an object and go to stop, before skid marks would appear there is a reaction time which is different with different drivers. There are formulas worked out for this. They are worked out the same as the other formulas from experience and practice. The paper you showed me is one I developed. At sixty miles an hour I have sixty-six feet. That is the so-called reaction time of $\frac{3}{4}$ second which is an average for drivers for ordinary conditions. The reaction time in this case would probably be much shorter. It all depends on the individual. It has been registered as low as .5 of a
199 second. "Thinking distance" means the time you are coming down the street and you see something and you have got to stop and you have to flash to your brain and the brain back to the foot in order to apply the brake. That is, at sixty miles an hour you would go sixty-six feet in $\frac{3}{4}$ of a second. And if you had somebody that thought a little slower than the average, it would extend to a greater time.

200 I contributed to the speed of the Ford all of
the damage to the frame of the Oldsmobile that in-
dicated the direction of travel of the Ford. If a car
fell hard on its nose, it would not bend the frame
out if it had tires and springs to cushion the motion.
By the time it got to the frame it was considerably
damped out because of the action of the tires and
springs and it wouldn't be a direct impact on the
frame and chassis of the car. By cushioned I mean
201 that some of the force had been absorbed. As to
just how much, it is hard to tell. Once in the while
there is a defect which would make a difference but
I did not find a defect from my examination of the
Oldsmobile. There wasn't any such bending out-
ward shown by the tests that I was a party to. The
Oldsmobile is a 1935 model and we tested those cars
in 1936. No, the question of crystalization would
202 not make any difference. I never saw the Oldsmo-
bile before the accident and I do not know whether
it had ever been in any other accident before.

Redirect Examination by Mr. Rawlings.

In the tests made I have never seen a Ford car
used but we did use cars of approximately the same
weight and construction as the Ford. From my
203 examination of the Oldsmobile I saw that the near
side of the car, the left side, on which it was struck,
was smashed in considerably and on the far side
the upright post was torn loose and the front door
was torn from its hinges. The frame itself was
bowed out approximately three inches from its
normal position and the X frame was torn loose

204 from the gusset plate, the rivets were torn out and the plate which supports the motor in the knee action was also torn in the near side and it was quite washboardy near the center. The tires and wheels were not damaged. The main damage as far as energy which was involved is concerned was to the frame itself which was constructed of pressed steel shapes and supported by an X frame riveted to the side. By an X frame I mean that the X meets the four corners of the frame back of the motor. The X frame is constructed of steel sections which have been pressed into shape. The channel is constructed of approximately 3/32 thick material, bent into a channel "C" shaped, which is the main member on each side of the frame. Both were bowed, the near one more than the far one and the X was torn from the gusset plate. They are a little better than three inches in width. That is, the long part of the "C" and the short part of the "C" is about 1¼ inches wide. The damage to the Ford was restricted to the front and the engine was not damaged. The radiator was pushed back and the bumper was pushed against the front tires and beyond. On one side it was skewed and the support to the bumpers on one side was completely crushed and one bolt was torn out. The frame beyond the front axle was not harmed. The bumper took a good deal of the shock as it is so designed.

Recross Examination by Mr. Richards.

The Ford shows that something took a hold of the right side and pulled it to the left. Very likely

205 that was the rear that was probably up here momentarily and slipped along. I would not say that it hooked on. I would say that you got a crushing action which isn't very much in order to crush twenty gauge fenders. Yes, you can make the front of a car look pretty bad with very little damage. As near as I can tell, the engine was pushed back but I did not work on the car. When a car is pushed down to the pavement, as I have described the Ford pushed the Oldsmobile down, usually the tires grip the pavement with such force that they don't move enough to burn any rubber and the forward motion would not make a mark. Sometimes they do move, however. So a mark would not be made by pushing it down but by a force hitting its side. If it should bounce in the air two feet and drop to the pavement, it would leave a mark.

206 IT IS STIPULATED between counsel that the south line of 21st South Street is the end of Salt Lake City limits and that the land lying south of that line is in Salt Lake County.

Both parties rest.

MOTION FOR DIRECTED VERDICT AND DISMISSAL.

207 Mr. Richards: Comes now the defendant, Jess Anderson, and moves this court for a directed verdict, and also for a motion of dismissal in this case upon the following grounds:

1. That the defendant has never had a preliminary hearing.

2. That the Information does not state a cause of action, or crime against this defendant.

3. That there is no evidence to support the charges alleged in the information, or any fact shown that the defendant wilfully, and with wanton disregard of the rights of others and without due caution and circumspection did endanger or kill Clark Romney.

There is also no evidence to show that the person who was in the automobile accident was Clark Romney.

5. That there is clearly evidence to show that the injury to the person driving the Oldsmobile was caused by the wrongful and negligent act of that party, and that said party was not driving in a proper manner.

The Court: By that you mean the sole proximate cause of the death was the act and conduct of the party driving the Oldsmobile. Is that what you mean?

Mr. Richards: That is one ground though I was going a little lighter than that, due to their allegations.

The Court: Just so I understand. I am not trying to tell you how to make your motion.

Mr. Richards: I also make the further ground that the party injured in the Oldsmobile—such injuries were caused by the sole and personal acts of the driver of the Oldsmobile.

The Court: Motion denied.

Mr. Rawlings: Your Honor, I would like, at this time, to reopen the case for one bit of evidence which I think maybe should be presented to your Honor, and the jury, in respect to the stop sign.

Mr. Richards: The defendant resists on the ground it prejudices the defendant, and we have already rested and closed our case, and also submitted our instructions to the court.

Mr. Rawlings: I won't have any objection to them putting on any evidence they desire, after I conclude.

The Court: You may make your record on it, Mr. Richards, in case the court is in error, but I will grant the motion over your objection.

FOSTER KUNZ was called as a witness on behalf of the plaintiff and after being first duly sworn testified as follows:

210 My name is Foster Kunz and I reside at 145 Third Avenue. I have lived in Salt Lake for about a year. I have been working for about a year for the State of Utah in the Traffic Safety Department with the State Road Commission during that period of time. I am Traffic Safety Engineer. It is my duty and responsibility to supervise matters pertaining to the erection and maintenance of stop signs. I am familiar with the highway commonly known and designated as "Twenty-first South", particularly in the vicinity of Third East Street. Twenty-first South Street is under the jurisdiction of the

State Road Commission so far as erection of state highway signs is concerned.

Voir Dire Examination by Mr. Richards.

211 I was not there when it was erected and I did not see it erected.

Further Direct Examination by Mr. Rawlings.

212 The jurisdiction of the State Road Department to erect stop signs comes by virtue of statute. The signs are erected at Third East and Twenty-first South Street by our sign department. The sign department is under my direction. I have nine men in that department. I keep a record of the work that they do and the signs that they erect. That record is kept under my jurisdiction by those men. I have examined the records to determine by whom the sign at Twenty-first South and Third East was erected.

Further Voir Dire Examination by Mr. Richards.

213 I do not keep the record myself. It is kept by the sign shop foreman.

By the Court:

I do not check the record ordinarily for accuracy. I do not make any kind of inspection. I do go to see that the work is being done.

By Mr. Rawlings:

I did go and investigate to see if the stop sign was erected at 21st South at the time the project was completed on November 3, 1939. The road was widened in that vicinity and the improvements to the

road were made by the State Road Commission. After that was done, I checked to see if the signs were erected. I made a general inspection of the entire project and all signs were erected in accordance with our log. The log provides that stop signs be erected on the southeast corner of that intersection.

215 Q. Do you know whether or not the State Road Commission erected a stop sign at the intersection of Twenty-first South and Third East on the southeast corner.

Mr. Richards: I object to it as being incompetent, immaterial and not within the knowledge of this witness.

The Court: Objection overruled.

A. Yes, it did.

It was erected between October 23rd and November 3rd. The sign shown in Exhibit "G" is one like our signs. I could not say definitely that it is the sign. It is a regular standard stop sign erected by the State of Utah.

Cross Examination by Mr. Richards.

216 I do not know the exact date I made the inspection but I always go over the projects after they have been signed. I do this within a week after. I remember I went over this in November, 1939. It is correct that all I know is that as Engineer of the Safety Department I ordered a stop sign to be put at that street and that thereafter was advised by a report that one had been put there and later I inspected it and there was a sign.

Mr. Richards: Your Honor, I move that his testimony be stricken on the ground that it is clearly shown it is not within his knowledge to testify that the sign was actually put there by the State Road Commission.

The Court: Motion denied.

217 (Both parties rest with the understanding that the motion of dismissal and for directed verdict heretofore made shall be considered as made after the introduction of this last testimony and that the same rulings made at that time are now made.)

(Title of Court and Cause.)

COURT'S INSTRUCTIONS TO JURY.

No. 1.

7-219 You are instructed that the defendant, Jess Anderson, is charged by the information which has been duly filed in this case with the crime of involuntary manslaughter, in substance committed as follows: That on the 25th day of February, 1940, at Salt Lake County, State of Utah, the defendant, Jess Anderson, did unlawfully and without malice kill Clark Romney.

No. 2.

7-219 You are instructed that instruction No. 1 is not to be regarded by you as a statement of the facts proved in this case, but is to be regarded by you solely as a summarized statement of the essential allegations contained in the information.

No. 3.

7-219 You are instructed that to the charge contained in the information the defendant has entered a plea of not guilty. The plea of not guilty denies each and all of the essential allegations contained in the information and casts upon the State the burden of proving each and all of the essential allegations therein contained to your satisfaction beyond a reasonable doubt. The mere fact that the defendant stands charged with a crime is not to be taken by you in and by itself as any evidence of his guilt.

No. 4.

8-219 You are instructed that involuntary manslaughter, insofar as material to this case, is defined by the laws of the State of Utah as the unlawful killing of a human being, without malice, in the commission of an unlawful act not amounting to a felony, when such unlawful act is committed by the defendant in such manner as to evince on his part marked disregard for the safety of others, or recklessness.

No. 5.

9-220 You are instructed that the laws of the State of Utah in force on the 25th day of February, 1940, provide as follows :

First: That it shall be unlawful for any person to drive any vehicle upon any highway carelessly and heedlessly in willful or wanton disregard of the rights and safety of others.

Second: That it shall be unlawful for any person to drive any vehicle upon any highway with-

out due caution and circumspection and at such a speed or in such a manner as to endanger any person or property.

Third: That it shall be unlawful for any person to drive any vehicle upon any highway at a speed greater than is reasonable and prudent, having due regard for the traffic, surface and width of the highway and the hazards at intersections, and any other condition then existing.

Fourth: That it shall be unlawful for any person to drive any vehicle upon any highway at a speed which is greater than will permit the driver to exercise proper control of the vehicle and to decrease speed or to stop, as may be necessary, to avoid colliding with any person, vehicle or other conveyance upon or entering the highway in compliance with the legal requirements and with the duty of drivers and other persons using the highway, to exercise due care.

Fifth: That it shall be unlawful for any person to fail to stop in obedience to a stop sign, bearing the words "Stop" in letters of a size to be clearly legible from a distance of one hundred feet, placed at an intersection, which said stop sign is placed there by the State Road Commission or by the local authority having said intersection under its jurisdiction.

You are further instructed that anyone violating any of the provisions of law as set forth above is guilty of the commission of an unlawful act not amounting to a felony.

No. 6.

10-221 You are instructed that before you can find the defendant guilty of involuntary manslaughter as charged in the information you must believe from the evidence beyond a reasonable doubt the following:

First: That the defendant, Jess Anderson, at the time and place alleged in the information was driving and operating an automobile on said highway, and in so doing violated one or more of the provisions of the statutes of the State of Utah set forth in instruction No. 5.

Second: That in violating one or more of the provisions of the statute set forth in instruction 5, if you find such violation beyond a reasonable doubt, the defendant acted recklessly or in such a manner as to evince marked disregard for the safety of others.

Third: That in so driving and operating his automobile, as set forth in paragraphs numbered "First" and "Second" of this instruction, the defendant proximately caused the collision between his automobile and the automobile which was being operated by the deceased, Clark Romney.

Fourth: That the said Clark Romney received injuries as a result of said collision from which he died within a year and a day from February 25th, 1940.

Fifth: That the killing of Clark Romney was directly and proximately caused, as that term is hereafter defined for you in these instructions, by

the violation of one or more of the provisions of the statute as set forth in instruction 5 committed in such a manner as to evince on the part of the defendant marked disregard for the safety of others or recklessness.

Sixth: That the killing of Clark Romney was without malice.

- 1-222 You are further instructed that the burden is upon the State to convince you by evidence beyond a reasonable doubt that all of the above enumerated elements of the crime of involuntary manslaughter are present in this case. If the State has failed to prove beyond a reasonable doubt one or more of said enumerated elements set forth in this instruction then you must acquit the defendant.

No. 6-A.

- 2-222 You are instructed that if you believe from the evidence that the defendant, Jess Anderson, was guilty of an unlawful act or acts, not amounting to a felony, in the manner in which he operated his automobile at the time and place in question, and in the commission of such unlawful act or acts evinced a marked disregard for the safety of others, or recklessness, but also believe from the evidence that such act or acts committed in such manner in no way proximately caused the collision of his automobile and the automobile of the deceased, Clark Romney, and the injuries to Clark Romney, then you may not find the defendant guilty of involuntary manslaughter, but must return a verdict of not guilty.

No. 7.

- 13-223 You are instructed that by the term “Proximate cause”, as used in these instructions, is meant that cause which in a natural and continuous sequence, unbroken by any other cause, produced the injury and without which the injury would not have occurred.

No. 8.

- 14-223 You are instructed that the phrase “Wilful and wanton disregard for the rights and safety of others” means recklessness or marked disregard for the rights and safety of others. It does not involve an active, conscious or specific intent or determination on the part of the defendant to violate a law or to injure another.

No. 8-A.

- 15-223 You are instructed that in the crime of involuntary manslaughter, so far as material to this case, there must be a union or joint operation of the unlawful act and criminal negligence. And in this connection criminal negligence means that the unlawful act must be done in such a manner as to more than constitute a mere thoughtless omission or slight deviation from the norm of prudent conduct. It must be reckless or in marked disregard for the safety of others.

Throughout the whole of these instructions the terms “Reckless” and “Recklessness” mean conduct evincing marked disregard for the safety of others; that is; the terms as here used mean more than a mere thoughtless omission or slight deviation from prudent conduct.

No. 9.

16-224 You are instructed that the mere fact that an accident happened and that the defendant was involved therein is not to be taken by you as proof in and of itself that the defendant was at the time and place in question engaged in an unlawful act or acts, or that he acted recklessly or in such a manner as to evince a marked disregard for the safety of others.

No. 10.

17-224 You are instructed that the defendant in this case had a right to go upon the witness stand and testify in his own behalf, if he chose so to do. The law, however, expressly provides that no presumption adverse to him is to arise from the mere fact that the defendant has not availed himself of the privilege which the law gives him and should not be permitted by you to prejudice him in any way.

No. 11.

18-224 The Court charges you that it is the imperative and sworn duty of the jury to hear and determine this case on the testimony of the witnesses given on the trial. In determining questions of fact, you are not at liberty to indulge in conjectures not based on evidence introduced in the case; nor are you at liberty to follow your own ideas of what the law is or ought to be. On the contrary, you should look solely to the evidence for the facts, and to the instructions given you by the Court for the law, and return a verdict according to the facts established by the evidence and law laid down by the Court.

Sympathetic feelings have no place whatever in the trial of a case in a court of justice. You should disregard all such influence and determine the case according to the law and the evidence given you in open court, and with fairness and impartiality.

You should not consider, or be influenced by, any evidence offered but not admitted, nor any evidence stricken out by the Court, but only such evidence as has been admitted in the case. You should not consider, or be influenced by, any statement of counsel as to what the evidence is, unless they state it correctly, or by any statement of counsel of facts not shown in evidence, if any such has been made. You should not be influenced by any statements the court may have made in ruling upon questions of law or otherwise in your hearing, if any have been made, that seem to indicate any opinion upon any question of fact.

No. 12.

181½-225 You are the sole judges of the weight of the evidence, the credibility of the witnesses and the facts. In weighing the testimony you may consider the bias of any witness, if any is shown, to testify in favor of or against either party; the interest, if any is shown, which any witness has or may have in the result of the trial. You may consider the appearances of the witnesses on the witness stand, and any motive or probable motive which any witness may have to tell that which is not true, and from all the facts and circumstances given in evidence before you, determine what weight ought to be given to the testimony of any witness.

You are not bound to believe all that the witnesses may have testified to, nor are you bound to believe any witness; you may believe one witness as against many, or many witnesses as against one.

In case there is a conflict in the testimony of the witnesses, it is your duty to reconcile such conflict so far as you can, but it is still for you to determine for yourselves where the ultimate truth of the case is.

If you shall believe any witness has wilfully testified falsely, as to any material fact in the case, you are at liberty to disregard the whole of the testimony of such witness, except as he may have been corroborated by credible witnesses or credible evidence in the case.

All presumptions of law, independent of evidence, are in favor of innocence, and a man is presumed to be innocent until he is proved guilty beyond a reasonable doubt. And in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to an acquittal.

By a reasonable doubt is meant a doubt based on reason, and which is reasonable in view of all the evidence.

9-226 And if, after an impartial consideration and comparison of all the evidence in the case, you can candidly say that you are not satisfied of the defendant's guilt, you have a reasonable doubt; but if, after such impartial consideration and comparison of all the evidence, you can truthfully say that you have an abiding conviction of the defendant's guilt, such

as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt. It must be a real, substantial doubt, and not one that is merely possible or imaginary. It should fairly, naturally and reasonably arise out of the evidence or lack of evidence in the case.

Proof beyond a reasonable doubt is that degree of proof which satisfies the mind and convinces the understanding of those who are bound to act conscientiously upon it.

To warrant you in convicting the defendant, the evidence must, to your minds, exclude every reasonable hypothesis other than that of the guilt of the defendant. That is to say, if after an entire consideration and comparison of all the testimony in the case, you can reasonably explain the facts given in evidence on any reasonable ground other than the guilt of the defendant, you should acquit him.

No. 13.

19-227 These instructions, though numbered separately, are by the jury to be considered and construed as one connected whole. Each instruction should be read and understood in reference to and as a part of the entire charge and not as though one instruction separately were intended to present the whole law of the case upon any particular point.

No. 14.

When you retire to deliberate you should appoint one of your number foreman. Your verdict must be in writing, signed by your foreman, and

when found must be returned by you into Court. Your verdict in this case must be guilty of Involuntary Manslaughter as charged in the information, or not guilty, as your deliberations may result.

In criminal cases it requires a unanimous concurrence of all the jurors to find a verdict.

M. J. BRONSON, *Judge*.

Dated May 22, 1940.

(Title of Court and Cause.)

EXCEPTIONS TO COURT'S INSTRUCTIONS.

228 Mr. Richards: Comes now the defendant and excepts to the court giving the following instructions:

 Excepts to the whole of Instruction No. 4.

229 Excepts to the whole of Instruction No. 5.

 Excepts to the first paragraph, No. 1, of Instruction No. 5.

 Excepts to paragraph No. 2 of Instruction No. 5.

 Excepts to paragraph No. 3 of Instruction No. 5.

 Excepts to paragraph No. 4 of Instruction No. 5.

 The Court: Your reasons?

 Mr. Richards: Do you want me to state them? I don't think it is necessary for the record. I will tell you frankly—do you want this in the record?

 The Court: It is up to you.

 Mr. Richards: Excepts to the following portion of Instruction No. 5:

“You are further instructed that anyone violating any of the provisions of law as set forth above is guilty of the commission of an unlawful act not amounting to a felony.”

Excepts to Instruction No. 6, and the whole thereof.

Excepts to paragraph No. 1 of Instruction No. 6.

Excepts to the following portion of paragraph No. 1 of Instruction No. 6:

“And in so doing violated one or more of the provisions of the statutes of the State of Utah set forth in Instruction No. 5.”

Excepts to the second paragraph of Instruction No. 6.

Excepts particularly to the following portion of the second paragraph of Instruction No. 6:

“That in violating one or more of the provisions of the statute set forth in Instruction 5.”

230 Excepts to the third paragraph of Instruction No. 6.

Excepts to the fifth paragraph of Instruction No. 6.

Excepts to the following portion of the fifth paragraph of Instruction No. 6:

“By the violation of one or more of the provisions of the statute as set forth in Instruction 5.

Excepts to Instruction No. 6-A, and the whole thereof.

Excepts to the following portion of Instruction No. 6-A:

“You are instructed that if you believe from the evidence that the defendant, Jess Anderson, was guilty of an unlawful act or acts, not amounting to a felony, in the manner in which he operated his automobile at the time and place in question.”

Excepts to Instruction No. 8, and the whole thereof.

Excepts to the following portion of Instruction No. 9:

“Engaged in an unlawful act or acts.”

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 1.

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 2.

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 3.

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 4.

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 5, marked as given.

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 6.

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 7.

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 8.

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 9.

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 10.

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 11.

Excepts to the refusal of the court to give Defendant's Requested Instruction No. 12.

(Title of Court and Cause.)

VERDICT.

232 We, the Jurors impaneled in the above case, find the defendant Jess Anderson guilty of involuntary manslaughter as charged in the information.

(Title of Court and Cause.)

DEFENDANT'S REQUESTED INSTRUCTIONS.

No. 1.

35 You are instructed that unless you find beyond a reasonable doubt from the evidence introduced in this case each and every one of the following:

1. That the defendant, Jess Anderson, was driving the automobile at the time and place of the accident involved in this case.

2. That a person known as Clark Romney died as a result of injuries received in an automobile accident between a car driven by the defendant and a car in which the said Clark Romney was driving.

3. That the accident was caused by reason of the fact that the defendant drove his automobile in excess of forty miles per hour immediately before he entered the intersection in question and because he failed to stop at a stop sign facing south on Third East Street at the intersection of said street with 21st South Street.

4. That the acts of failing to stop at the stop sign and driving in excess of forty miles per hour, taken into consideration with the surrounding circumstances such as the time of day, the amount of traffic upon said highway and the condition of said highway, are determined by you to be such acts as would be considered as driving in a reckless manner and with marked disregard for the rights of others, as otherwise defined and explained in these instructions; then your verdict must be not guilty.

No. 2.

36

You are instructed that before you can find the defendant guilty you must find that he failed both to stop at a stop sign at which he was required to stop and was going in excess of at least forty miles per hour when he entered the intersection.

No. 5.

39

You are instructed that unless you find from the evidence that the stop sign on the east side of Third

East Street approximately 24 feet south of the south curb line of 21st South Street was erected by either the State Road Commission or the authorities of Salt Lake City, then you are instructed that the defendant had no duty to stop at said sign and you shall not take into consideration his failure to stop at said intersection.

No. 7.

- 41 You are instructed that the laws of the state of Utah provide that where no special hazard exists the following speed limits shall be lawful: Outside of the business or residence districts, except as otherwise limited by this chapter, speeds at all times shall be reasonable and safe under the general conditions prevailing upon the highway, providing such speed shall not exceed fifty miles per hour. You are further instructed that business and residence districts are defined as follows:

“Business District. The territory so designated by local authorities and clearly defined by signs posted on the highway at the limits of said districts.

“Residence District. The territory within cities and towns other than the business districts.”

No. 8.

- 42 You are instructed that if you find from the evidence that the stop sign facing south on Third East Street is not in a position visible to drivers entering 21st South Street and was not observed by the said

Jess Anderson, then you are instructed that your verdict must be in favor of the defendant, not guilty.

No. 9.

13 You are instructed that though one while driving an automobile may accidentally kill another, even though he be chargeable with some actionable negligence, he is not guilty of the crime here charged unless his negligence is so gross and culpable as to indicate a callous disregard of human life and of the probable consequences of his act.

No. 10.

44 You are instructed that by the words “recklessness and wanton disregard for the rights of others” is meant that the misconduct or negligence of the accused was of more reprehensible character than mere inadvertence or want of ordinary care. It must be that there was on his part either a willful intent to injure or that recklessness and wanton disregard of the rights and safety of another or his property was such as would be equivalent to intent to injure.

No. 12.

46 You are instructed that if you find from the evidence beyond a reasonable doubt that said defendant did fail to stop at the stop sign at Third East and 21st South Streets and that he was driving in excess of forty miles an hour and that such were the cause of the accident which resulted in the death of one Clark Romney, but you further find that the failing to stop at said stop sign and the going in

excess of forty miles an hour was not done by the said defendant, Jess Anderson, with a wilful and wanton disregard for the rights of others, then your verdict must be in favor of the defendant, not guilty.

SETTLEMENT OF BILL OF EXCEPTIONS.

238 The defendant herein proposes and serves the foregoing as and for its Bill of Exceptions herein, consisting of 177 pages.

EDWARD F. RICHARDS,
Attorney for Defendant.

STIPULATION.

239 The foregoing Bill of Exceptions is returned by the plaintiff to the defendant this 24th day of August, 1940, with no amendments offered or proposed and it is stipulated that the foregoing Bill of Exceptions may be allowed and settled by the Court as a true and correct Bill of Exceptions in the within entitled action.

Dated this 24th day of August, 1940.

CALVIN W. RAWLINGS,
By Brigham E. Roberts,
Deputy,
Attorney for Plaintiff,
EDWARD F. RICHARDS,
Attorney for Defendant.

CERTIFICATE SETTLING BILL OF
EXCEPTIONS.

240 I, M. J. Bronson, District Judge who tried the foregoing cause, do hereby certify that the above and foregoing Bill of Exceptions, consisting of 17..... pages numbered from 1 to 17....., inclusive, together with plaintiff's Exhibits "A" to "I", contains all of the testimony and evidence offered, admitted or ad-duced upon the trial of said cause, together with all of the objections and exceptions taken and correc-tions made and all proceedings had during the trial thereof and contains sufficient reference to all ex-hibits therein referred to to identify the same. There being no amendments thereto, said Bill of Ex-ceptions is hereby approved, signed, settled and allowed as a true Bill of Exceptions in the cause of State of Utah vs. Jess Anderson, and the Clerk hereby ordered to file the same.

Dated this 24th day of August, 1940.

M. J. BRONSON, *Judge.* (Seal)

(Title of Court and Cause.)

51 NOTICE OF INTENTION TO
MOVE FOR NEW TRIAL.

To the above named plaintiff and its attorney, Calvin
W. Rawlings:

YOU AND EACH OF YOU WILL PLEASE
TAKE NOTICE that the above named defendant in-tends to move the above entitled court to vacate and

set aside the verdict rendered in the above cause on the 23rd day of May, 1940, and to grant a new trial in said cause upon the following grounds, to-wit:

1. That the Court misdirected the jury in matters of law.

2. That the court erred in the decision of questions of law arising during the course of the trial,

3. That the court did allow acts in the cause prejudicial to the substantial rights of the defendant.

4. That the verdict is contrary to the law.

5. That the verdict is contrary to the evidence.

Dated this 25th day of May, 1940.

EDWARD F. RICHARDS,

Attorney for Defendant.

Filed May 25, 1940.

(Title of Court and Cause.)

52

MOTION IN ARREST OF JUDGMENT.

Comes now the defendant above named and moves the above entitled Court to enter an order arresting the judgment rendered on the verdict in the above entitled matter upon the following grounds and for the following reasons:

1. That the information does not charge the defendant with the commission of the offense for which he was tried in that said information charges voluntary manslaughter, whereas, said defendant was tried for involuntary manslaughter.

2. That the information was filed without the defendant first having had or waived a preliminary examination in that the original complaint filed by the County Attorney's office does not state or charge that the defendant has committed any crime whatsoever.

3. That the prosecuting attorney did not have authority to file the information for the reason that said defendant had neither had nor waived a preliminary examination in that the complaint filed by the County Attorney's office upon which a preliminary examination was held did not state that the defendant had committed any crime whatsoever and particularly did not state that said defendant had committed the crime of involuntary manslaughter or voluntary manslaughter.

Said motion will be based upon the files and records in the above entitled cause.

EDWARD F. RICHARDS,
Attorney for Defendant.

Filed June 3, 1940.

(Title of Court and Cause.)

53

MINUTE ORDER.

Whereupon said motions are argued to the Court by respective counsel and submitted and the Court being now fully advised in the premises, ordered that said motion in arrest of judgment and motion for a new trial be and the same hereby are

denied. Whereupon the defendant is asked if he has any legal cause to show why judgment and sentence should not be pronounced at this time and the defendant having answered that he has none, the Court now pronounces the following judgment and sentence:

The judgment and sentence of this Court is that you Jess Anderson be confined and imprisoned in the Salt Lake County Jail for a period of 12 months for the crime of Involuntary Manslaughter of which you were found guilty.

(Title of Court and Cause.)

55 CERTIFICATE OF PROBABLE
 CAUSE.

Upon motion of Jess Andersen, defendant in the above named case, for a certificate of probable cause, and in the opinion of the court there being probable cause therefor,

IT IS HEREBY CERTIFIED that in the opinion of the court there is probable cause for appeal in this cause and the defendant is released without bond to the custody of Dan Beckstead.

Dated this 22nd day of June, 1940.

M. J. BRONSON, *District Judge.*

Filed June 22, 1940.

(Title of Court and Cause.)

60

CLERK'S CERTIFICATE.

I, WILLIAM J. KORTH, Clerk of the above entitled Court, do hereby certify that the above and foregoing and hereto attached files contain all the original papers filed in this Court in the above entitled case, including the original Bill of Exceptions and Notice of Appeal, together with true copies of original orders made by the Court the whole constituting the judgment Roll therein. And that the same is a full, true and correct transcript of the record as it appears in my office.

I further certify that a Certificate of Probate Cause, duly signed by the Honorable M. J. Bronson, Judge, was filed on the 22nd day of June, A. D. 1940. I further certify that an Order of Court was entered on the 22nd day of June releasing the defendant Jess Anderson on his own recognizance.

And I further certify that said Transcript is by me transmitted to the Supreme Court of the State of Utah, pursuant to such appeal.

WITNESS my hand and the seal of said Court at Salt Lake City, Utah, this 29th day of August, A. D. 1940.

William J. Korth,
Clerk Third District Court,
By Alvin Keddington,
Deputy Clerk.

(Title of Court and Cause.)

ASSIGNMENTS OF ERROR.

Comes now the defendant and appellant above named and assigns the following errors occurring in the trial of this cause before the Honorable M. J. Bronson, one of the Judges of the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, and which errors he relies upon for a reversal of the judgment in this cause:

I.

The court erred in denying defendant's motion to quash the information (Tr. 23, Abst. 3).

II.

The court erred in denying defendant's demand for a further bill of particulars (Tr. 29, Abst. 9).

III.

The court erred in denying defendant's motion to require plaintiff to elect upon which ground of manslaughter the plaintiff would rely (Tr. 32, Abst. 10).

IV.

The court erred in denying defendant's motion for a directed verdict of not guilty (Tr. 207, Abst. 54).

V.

The court erred in overruling defendant's motion for a new trial (Tr. 51, Abst. 77).

VI.

The court erred in denying defendant's motion in arrest of judgment (Tr. 52, Abst. 78).

VII.

The court erred in overruling defendant's objection to the following question:

"Q. How fast did you tell him the Oldsmobile was travelling?" (Tr. 106, Abst. 20.)

VIII.

The court erred in admitting Exhibit "G" in evidence without limiting the purpose of its admission. (Tr. 126, Abst. 26.)

IX.

The court erred in overruling defendant's objection to the following question:

"Q. Mr. Taylor, taking into consideration your investigation and observations made at the intersection of 21st South and 3rd East, taking into consideration sketch, Exhibit 'C', which I have called to your attention and which you say you have discussed with Officer Pierce, taking into consideration your observation of the automobiles which you have stated, I think, you observed the Ford V-8 and the automobile which were involved in the accident and the evidence in addition to the items which I have mentioned that the Oldsmobile car turned over twice as it went from point Circle X to the point which indicates the place where it came to a stop indicated on the blackboard as X-4, taking into consideration the movement of the cars as reflected on sketch, Exhibit 'C', and particularly the fact that the Ford car after the impact turned around and was pointed in a north-

easterly direction and that the Oldsmobile came to rest with the two rear wheels over the curb and pointed in a southerly direction practically west and that the evidence that the Oldsmobile car came to rest at a point 78 feet northwest and practically north from a direct line from the point of impact, the damage to the automobiles, the tread of the tires on both cars, the type of surface on both roads and particularly at the intersection, the elevation transversed, if there were any elevation, the inflation of the tires, composition of the road, point of impact of the two cars and any other evidence reflected on Exhibit 'C', have you an opinion as to the rate of speed that the car was travelling when the brakes were applied at X-5? (Tr. 169-171, Abst. 38-39.)

X.

The court erred in overruling defendant's objection to the following question:

"Q. Now will you give us your opinion as to the speed the car was traveling when the brakes were applied on Third East? (Tr. 176-178, Abst. 41-43.)

XI.

The court erred in overruling defendant's objection to the following question:

"Q. What is the weight?" (Tr. 174, Abst. 41.)

XII.

The court erred in giving Instruction No. 4 (Tr. 229, Abst. 69).

XIII.

The court erred in giving Instruction No. 5 (Tr. 229, Abst. 60).

XIV.

The court erred in giving Paragraph No. 1 of Instruction No. 5 (Tr. 229, Abst. 60).

XV.

The court erred in giving Paragraph No. 2 of Instruction No. 5 (Tr. 229, Abst. 60).

XVI.

The court erred in giving Paragraph No. 3 of Instruction No. 5 (Tr. 229, Abst. 61).

XVII.

The court erred in giving Paragraph No. 4 of Instruction No. 5 (Tr. 229, Abst. 61).

XVIII.

The court erred in giving the following portion of Instruction No. 5:

You are further instructed that anyone violating any of the provisions of law as set forth above is guilty of the commission of an unlawful act not amounting to a felony. (Tr. 229, Abst. 61.)

XIX.

The court erred in giving Instruction No. 6 (Tr. 229, Abst. 62).

XX.

The court erred in giving Paragraph No. 1 of Instruction No. 6 (Tr. 229, Abst. 62).

XXI.

The court erred in giving the following portion of Instruction No. 6:

And in so doing violated one or more of the provisions of the statutes of the State of Utah set forth in Instruction No. 5. (Tr. 229, Abst. 62.)

XXII.

The court erred in giving the second paragraph of Instruction No. 6. (Tr. 229, Abst. 62.)

XXIII.

The court erred in giving the following portion of the second paragraph of Instruction No. 6:

That in violating one or more of the provisions of the statute set forth in Instruction No. 5. (Tr. 229, Abst. 62.)

XXIV.

The court erred in giving the third paragraph of Instruction No. 6. (Tr. 229, Abst. 62.)

XXV.

The court erred in giving the fifth paragraph of Instruction No. 6. (Tr. 229, Abst. 62.)

XXVI.

The court erred in giving the following portion of the fifth paragraph of Instruction No. 6:

By the violation of one or more of the provisions of the statute as set forth in Instruction 5. (Tr. 230, Abst. 62-63.)

XXVII.

The court erred in giving Instruction No. 6-a.
(Tr. 230, Abst. 63.)

XXVIII.

The court erred in giving the following portion
of Instruction No. 6-A:

You are instructed that if you believe from
the evidence that the defendant, Jess Andersen,
was guilty of an unlawful act or acts, not
amounting to a felony, in the manner in which
he operated his automobile at the time and place
in question. (Tr. 230, Abst. 63.)

XXIX.

The court erred in giving Instruction No. 8.
(Tr. 230, Abst. 64.)

XXX.

The court erred in giving the following portion
of Instruction No. 9:

Engaged in an unlawful act or acts. (Tr.
230, Abst. 65.)

XXI.

The court erred in refusing to give defendant's
Requested Instruction No. 1. (Tr. 35, Abst. 72.)

XXXII.

The court erred in refusing to give defendant's
Requested Instruction No. 2 (Tr. 36, Abst. 73).

XXXIII.

The court erred in refusing to give defendant's
Requested Instruction No. 5. (Tr. 39, Abst. 73.)

XXXIV.

The court erred in refusing to give defendant's Requested Instruction No. 7. (Tr. 41, Abst. 74.)

XXXV.

The court erred in refusing to give defendant's Requested Instruction No. 8. (Tr. 42, Abst. 74.)

XXXVI.

The court erred in refusing to give defendant's Requested Instruction No. 9. (Tr. 43, Abst. 75.)

XXXVII.

The court erred in refusing to give defendant's Requested Instruction No. 10. (Tr. 44, Abst. 75.)

XXXVIII.

The court erred in refusing to give defendant's Requested Instruction No. 12. (Tr. 46, Abst. 75.)

XXXIX.

That the verdict is contrary to the law and evidence in the following particulars:

(A) That the evidence does not show that the person injured and who thereafter died by reason of the accident was one Clark Romney.

(B) That the evidence does not show that the defendant drove his automobile in a reckless or marked disregard for the safety of others but shows that he was driving an automobile at a lawful rate of speed on Third East and that as soon as he apprehended the stop sign, did everything in his power to avoid the accident and to protect the rights of others.

WHEREFORE, this appellant and defendant prays that the foregoing may be considered by this Court as his assignments of error and that the verdict and judgment appealed from be reversed.

Dated this 27th day of September, 1940.

EDWARD F. RICHARDS,
Attorney for Appellant.

(Duly served and filed.)