

Newman v. Walker

Virginia Supreme Court

September 16, 2005

In this case the plaintiff was in an automobile accident and the defendant gave the police officer the wrong name and identification. Although neither the plaintiff nor his attorney knew this, the defense did. The vehicle was owned by a corporation, and about a month after the accident, the liability carrier asked to interview the driver. At this point it was discovered that the name given was not correct, the company had no driver by that name, and an investigation revealed who the actual driver was and that he was operating the vehicle without permission.

The plaintiff's attorney filed six days before the statute ran. The defense admitted the incident but denied that the person that the plaintiff named was driving the vehicle. Weeks later the defense informed the plaintiff who the proper person was. Because the name that the defendant went by, William Walker, was not his legal name, Leonard Walker, Jr., it was many months before service was properly obtained on the right person. Note that this was not months, but years, after the statute had run.

The trial court held that the giving of false identification to the police officer did not toll the statute, and the plaintiff appealed. The Virginia Supreme Court distinguished between concealment of identification, as in wearing a mask, which did not toll the statute, and an affirmative act of concealment, giving false identification, which might. Basically the court said that if the defendant, by giving the police officer the wrong identification, intended to obstruct the filing of the lawsuit, then the statute would be tolled. The case was sent back to the trial court for this factual determination as well as to determine if the statute was tolled, for how long.