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Record No. 4964

In the Supreme Court of Appeals of Virginia at Richmond

JAMES L. JENKINS

v.

ALVANIA WOMACK

FROM THE COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4964

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 26th day of November, 1958.

JAMES L. JENKINS, Plaintiff in Error,

against

ALVANIA WOMACK, Defendant in Error.

From the Court of Law and Chancery of the City of Norfolk

Upon the petition of James L. Jenkins a writ of error and *supersedeas* is awarded him to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 11th day of July, 1958, in a certain motion for judgment then therein depending wherein Alvania Womack was plaintiff and the petitioner and another were defendants;

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of seventeen thousand, five hundred dollars conditioned according to law has heretofore been given, no additional bond is required.

RECORD

* * * * *

page 13 } INSTRUCTION P1.

The Court instructs the Jury that although the plaintiff is required to prove her case by a preponderance of the evidence, it does not necessarily mean by the greater number of witnesses. A preponderance of evidence means that evidence which is most convincing and satisfactory to the minds of the Jurors.

Given 3/5/58.

J. T. W.

page 14 } INSTRUCTION P2.

The Court instructs the Jury that if you believe from the evidence that the defendant, Parthnus L. Woodson, was guilty of negligence in the operation of his automobile and that his negligence either contributed to or proximately caused the plaintiff's injuries, he is liable to her for damages proved to you.

Given 3/5/58.

J. T. W.

page 15 } INSTRUCTION P3.

The Court instructs the Jury that the driver of a car is liable to his guest passenger if injury occurs to his passenger as a result of the driver's gross negligence.

Given 3/5/58.

J. T. W.

page 16 } INSTRUCTION P4.

The Court instructs the Jury that what is simple negligence and what is gross negligence is a question of degree only. Gross negligence is that degree of negligence which shows an utter disregard of prudence or care amounting to complete neglect of the safety of another. Conduct does not

have to be intentionally wrong, wilful or wanton in order to be gross negligence.

Given 3/5/58.

J. T. W.

page 17 } INSTRUCTION P5.

The Court instructs the Jury that the driver of an automobile does not have to act intentionally or wilfully wrong in order to be liable for injuries sustained by his guest passenger. It is enough if such injuries are caused by the negligent operation of the automobile, provided that the amount of negligence in degree is gross negligence as defined in other instructions of the Court in this case.

Given 3/5/58.

J. T. W.

page 18 } INSTRUCTION P6.

The Court instructs the Jury that if you believe from the evidence that the plaintiff, Alvania Womack, is entitled to recover from either or both defendants, then it will be your duty to award her such a sum as will be fair and just compensation for her injuries and losses, not to exceed the amount sued for; and in arriving at the sum to which she is entitled, you may take into consideration all of the following elements:

1. The nature and extent of her injuries and their duration.
2. The physical pain and suffering and mental anguish which she has already suffered in the past and that which she may reasonably be expected to suffer in the future.
3. Any expenses that have been incurred for doctors, medical treatment, and hospitalization in endeavoring to be relieved and cured of her injuries, and to be incurred in the future.
4. Any wages already lost.

Given 3/5/58.

J. T. W.

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page 21 } INSTRUCTION D J1.

The Court instructs the jury that if you believe from a preponderance of the evidence that Woodson was following the Jenkins car more closely than was reasonable and prudent, having due regard to the speed of both vehicles and traffic upon, and conditions of, the highway at the time, Woodson was guilty of negligence and if you believe that such negligence was the sole proximate or proximate contributing cause of plaintiff's injuries, you must find a verdict for plaintiff against defendant Woodson.

And this is true even though you believe from the evidence that defendant Jenkins failed to exercise ordinary care in the operation of his vehicle and that such failure was the proximate contributing cause of injury to plaintiff, since under the law, before you can hold Jenkins liable for the injury to plaintiff, you must believe from a preponderance of the evidence that Jenkins was guilty of utter disregard of prudence amounting to complete neglect of the safety of plaintiff, and failure to exercise ordinary care on the part of Jenkins is not sufficient to hold Jenkins liable for the injury to plaintiff.

Given 3/5/58.

J. T. W.

page 22 } INSTRUCTION D J2.

The Court instructs the jury that defendant Jenkins can only be held liable in this case for injury resulting from his gross negligence and you are further instructed that gross negligence is such heedless and reckless disregard of the rights of another as should shock reasonable men.

Given 3/5/58.

J. T. W.

page 23 } INSTRUCTION D J5.

The Court instructs the jury that if you believe from the evidence that the defendant, Parthnus L. Woodson, was following the Jenkins vehicle more closely than was reasonable and prudent on the occasion in question, he was guilty of negligence and if you believe that such negligence was the

sole proximate cause of the accident, you should find your verdict in behalf of the defendant, James L. Jenkins.

Given 3/5/58.

J. T. W.

page 24 } INSTRUCTION D J11.

The Court instructs the jury that no presumption of gross negligence arises from the mere occurrence of an accident. On the contrary, the defendant, James L. Jenkins, is presumed to be free from negligence and the plaintiff has the burden or proving otherwise by a preponderance of the evidence.

Given 3/5/58.

J. T. W.

* * * * *

page 29 } INSTRUCTION D J4.

The Court instructs the jury that if you believe from the evidence that defendants Woodson and Jenkins failed to exercise ordinary care on the occasion in question, and that the injury to plaintiff was the result of the combined failure of both defendants to exercise ordinary care, you must find a verdict against Woodson but not against Jenkins.

Confusing and refused 3/5/58.

J. T. W.

page 30 } INSTRUCTION D J6.

The Court instructs the jury that if you believe from the evidence that the defendant, Parthnus L. Woodson, was guilty of negligence on the occasion in question and that such negligence was the sole proximate cause of the accident, you should find your verdict in behalf of the defendant, James L. Jenkins.

Refused 3/5/58.

J. T. W.

page 31 } INSTRUCTION D J7.

The Court instructs the jury that it is your duty to try this case without being influenced by sympathy or the mere fact that the plaintiff was injured and has suffered and you are under the solemn obligation of an oath to decide according to the law and facts.

Refused 3/5/58.

J. T. W.

page 32 } INSTRUCTION D J8.

The Court instructs the jury that you cannot infer gross negligence on the part of the defendant, James L. Jenkins, from the mere happening of the accident. The presumption is that Jenkins was free from gross negligence unless and until the contrary is proven by the preponderance of the evidence.

The burden is upon the plaintiff to prove by the preponderance of the evidence that Jenkins was guilty of gross negligence and that such gross negligence was the proximate or contributing cause of the accident.

If after hearing all of the evidence, you are uncertain whether Jenkins was guilty of such gross negligence and it apears equally as probable as that he was not as that he was, your verdict should be in behalf of the defendant, James L. Jenkins.

Refused 3/5/58.

J. T. W.

page 33 } INSTRUCTION J12.

The Court instructs the jury that James L. Jenkins was not an insurer of the safety of Alvania Womack and was not required to exercise such a high degree of care as to prevent the possibility of accidents. On the contrary, Alvania Womack must prove by a preponderance of the evidence that Jenkins was operating his vehicle on the occasion in question in a grossly negligent manner and unless you believe from the evidence that the Jenkins vehicle was being operated

HANOVER AVE
JAMESTOWN CRES.
HAMPTON
Traced June 24 19
from Plat of Lorchmont
Recorded Norfolk Co. rd
Map book 9. pages
by S. W. Armstead C. E.

by him in a grossly negligent manner, then your verdict should be in favor of the defendant, James L. Jenkins.

Refused 3/5/58.

J. T. W.

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MOTION.

Defendant James L. Jenkins moves the Court to set aside the verdict rendered against him by the jury in the within cause and enter up judgment in his behalf on the grounds that the verdict was contrary to the law and evidence and without evidence to support it and that plaintiff was a guest without payment in defendant's motor vehicle being operated by him at the time of the collision and that plaintiff has failed to sustain plaintiff's burden (reference Section 8-646.1 of the Code of Virginia) that her injuries were caused or resulted from the gross negligence or wilfull and wanton disregard of the safety of plaintiff on his part.

A plat showing the area in which the collision occurred is attached hereto, made a part of this motion and reference to which is hereby made.

JAMES L. JENKINS
By MAURICE B. SHAPERO
Of Counsel.

Filed 6-27-58.

H. L. STOVALL, D. C.

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ORDER.

This day came again the parties, by counsel, and the motion heretofore made to set aside the verdict of the jury and grant the defendant, James L. Jenkins, a new trial. Now having been fully heard and maturely considered by the Court is overruled, to which action of the Court the defendant, James L. Jenkins, by counsel, duly excepted.

Whereupon it is considered by the Court that the plaintiff recover of the said defendant, James L. Jenkins, the sum of Fifteen Thousand Dollars ($15,000.00) by the jury in its verdict ascertained, with interest thereon to be computed after the rate of six per centum per annum from the 5th day of March, 1958, until paid, together with her costs about her suit in this her behalf expended.

It is further considered by the Court that the plaintiff take nothing for her Motion for Judgment as to the defendant, Parthnus L. Woodson, and that the said defendant, Parthnus L. Woodson, go hence without day and recover of the said plaintiff his costs about his defense herein expended. To all of which action of the Court the defendant, James L. Jenkins, by counsel, duly excepted.

Thereupon the said defendant, James L. Jenkins, having signified his intention of presenting to the Supreme Court of Appeals of Virginia, a petition for a writ of error and *supersedeas* to the judgment herein, it is ordered that execution upon said judgment be suspended for a period of sixty days from the date hereof, upon the defendant, or
page 38 } someone for him entering into and acknowledging a proper suspending bond, conditioned according to law, before the Clerk of this Court, in the penalty of $17,500.00 with security to be approved by said Clerk.

Enter this order 7/11/58.

JEFFERSON T. WALLIS,
Judge Designate.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

NOTICE OF APPEAL.

Now comes the defendant, James L. Jenkins, and gives no-

tice that he intends to appeal the final judgment entered against him by the Court of Law and Chancery of the City of Norfolk, Virginia, on the 11th day of July, 1958, in the above-styled action.

ASSIGNMENTS OF ERROR.

1. The Court erred in overruling the motion of the defendant James L. Jenkins to strike the plaintiff's evidence at the conclusion of the plaintiff's evidence.

2. The Court erred in overruling the motion of the defendant James L. Jenkins to strike the plaintiff's evidence at the conclusion of all of the evidence.

3. The Court erred in overruling all motions of the defendant James L. Jenkins, the basis of which motions were that the evidence failed to disclose that the defendant James L. Jenkins was guilty of gross negligence which was the sole proximate or proximate contributing cause of the injury.

4. The Court erred in admitting certain evidence offered by the plaintiff and in refusing to admit certain evidence offered by the defendant James L. Jenkins.

5. The Court erred in granting any instructions offered by the plaintiff.

6. The Court erred in granting plaintiff's instructions numbers 1, 3, 5 and 6.

page 40 } 7. The Court erred in refusing to grant instructions DJ4, DJ6, DJ7, DJ8, DJ12, offered by the defendant James L. Jenkins.

8. The Court erred in overruling the motion of defendant James L. Jenkins to set aside the verdict of the jury.

9. The Court erred in entering judgment for the plaintiff upon the jury's verdict against the defendant James L. Jenkins.

10. The Court erred in refusing to enter judgment for the defendant James L. Jenkins.

JAMES L. JENKINS
By WILLIAM L. SHAPERO
Of Counsel.

Filed 7-22-58.

L. M. CALVERT, D. C.

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Alvania Womack.

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ASSIGNMENTS OF CROSS ERROR.

Now comes the plaintiff, Alvania Womack, and pursuant to rule No. 5:1, Section 4, of the Rules of Supreme Court of Appeals of Virginia, assigns the following cross errors:

1. The Court erred in refusing to grant instruction P-4, P-8, P-9 and P-10.
2. The Court erred in granting Instructions DJ-1, DJ-2 and DJ-11.

ALVANIA WOMACK
By STANLEY E. SACKS
Of Counsel.

Filed 8-1-58.

L. M. CALVERT, D. C.

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page 3 }

* * * * *

ALVANIA WOMACK,
the plaintiff, having been first duly sworn, testified as follows:

Examined By Mr. Sacks:
Q. What is your name?
A. Mrs. Alvania Womack.
Q. How old are you?
A. Twenty-eight.

* * * * *

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* * * * *

Alvania Womack.

Q. Were you doing any other kind of work other than the drug store work just prior to the accident?

A. I was working for Mr. Chapel part time when I was off from the drug store.

Q. Who is Mr. Chapel?

A. He is a private detective.

Q. How long had you been associated or working for him, roughly.

A. I guess it was close to about seven or eight months, as far as I can remember.

Q. What kind of work were you doing for him?

A. Investigation work.

Q. What did that involve your doing?

A. If he had a case to go on, we went sometimes and sat in the car and watched people, where they went and who they were with.

Q. Was that or not in your hours after the drug
page 6 } store work?

A. Yes, sir.

Q. Do you know the defendant James L. Jenkins?

A. Yes, sir.

Q. How did you happen to meet him?

A. Mr. Chapel introduced us. Mr. Chapel called and told me that he had a case he wanted me to go out on, that he had someone he wanted me to go with, and he brought Mr. Jenkins and introduced us, and we went on the case together.

Q. Roughly how long was that before the accident?

A. I don't remember that. I guess it was a couple of months before.

Q. Had you known Mr. Jenkins at all up until that time?

A. No, sir.

Q. What was Mr. Jenkins' occupation?

A. He was an investigator for Mr. Chapel.

Q. Did he do that full time or did he do it part time like you did?

A. He did it part time.

Q. Do you know what he did for a living otherwise?

A. He was a salesman, as I understand, for some kind of television company.

Q. During the approximately two months that you knew Mr. Jenkins before the accident how many times would you say you saw him or were in his company?

page 7 } A. Well, up until the day before the accident, I guess close to eight times; maybe eight or nine times.

Alvania Womack.

Q. On every occasion what were the circumstances of your seeing or being with him?

A. We were to go out on a case together.

Q. Were you ever in his company before the day of the accident on any purely social situation?

A. No, sir.

Q. Was he dating you?

A. No, sir.

Q. And you had, or had not, ever been with him other than at work?

A. Only at work on a case.

Q. Did you drive a car, yourself, during the times that you and Mr. Jenkins went out on investigation work?

A. No, sir.

Q. Why did you not drive?

A. Because I did not have a license. I knew how to drive, but I did not know how to park a car, and I had never gotten any license.

Q. Did anything ever come up pertaining to your inability to drive during your working hours?

A. With Mr. Jenkins?

Q. Or with anybody?

A. Well, Mr. Chapel had said something to me
page 8 } about needing a license, that it would help in the
work, that I should get it.

Q. How would it help?

A. When we went out on a case I could have one car, driving one car, and Mr. Jenkins could drive the other, and if necessary Mr. Chapel could; probably there would be three.

Q. I could not hear you.

A. If necessary, Mr. Chapel could also drive. Then there would be three, if it was needed; if not, there would just be Mr. Jenkins and myself in separate cars.

Q. Would there be any advantage in you and Mr. Jenkins driving different cars in this work or not?

A. If we drove different cars, if we were on a case, Mr. Chapel told us that the sooner we finished a case we would get a bonus.

Q. Did Mr. Jenkins know that, or do you know whether he knew that?

A. I think he knew it, yes, sir.

Q. How did he know what you have just told us?

A. Because Mr. Chapel told him.

Q. Did you hear him when Mr. Chapel told him that?

A. (Pause) I am not sure of the street, but I know that

Alvania Womack.

we were parked on a street where we met Mr. Jenkins, and Mr. Chapel went over and talked to him and then came back over to the car. We had a case over in Portsmouth.
page 9 } When Mr. Chapel left us over there he told us that the sooner we finished it, the more there was in it for us; the sooner the case was finished.

Q. Then you were there with Mr. Jenkins when Mr. Chapel made that statement?

A. Yes, sir.

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Q. Tell us then, how did you and Mr. Jenkins happen to be together on the Sunday that this accident happened?

* * * * *

page 11 } A. Well, he called and wanted to know if I had anything to do; if not, did I want to go and learn to park so that I could get my license. I told him that I did not have anything to do, that I was off that Sunday, and if he did not have anything to do I would be willing to go and learn to park.

* * * * *

Q. On what street did his car start off and begin
page 12 } to proceed?

A. We went out Colley Avenue until we crossed the bridge, and then came on Jamestown Crescent.

Q. You speak of a bridge on Colley Avenue. Can you pinpoint it or locate it a little better?

A. I believe it is around 52nd and Colley.

Q. In which direction were you headed on Colley?

A. We were heading toward Hampton Boulevard, toward the Naval Base.

Q. Would that be in a northwesterly direction?

A. Yes, sir.

Q. Did anything unusual happen at all on your trip from the dinette out toward the Naval Base?

A. Just as we crossed the bridge, just a little ways across

Alvania Womack.

the bridge, Mr. Jenkins said, "There is a car following awfully close to us." I turned around and looked. I saw this Mr. Woodson. I did not know at the time that it was him, what his name was, but I turned around and looked and saw that he was following us close. We just kept on going. He was going between 30 and 35 miles an hour.

Q. Who was?

A. Mr. Jenkins. I saw the light when it turned caution. I knew that he was supposed to keep going instead of stopping. I knew that Hampton Boulevard traffic was supposed to stop. But, I did not tell Mr. Jenkins because he page 13 } began to slow down and I thought he was going to stop, but he didn't. He just speeded up and kept going. Then all of a sudden he stopped fast.

Q. What light is it that you are talking about?

A. The one at the intersection of Jamestown Crescent and Hampton Boulevard.

Q. Is it a light on a pole on the corner, overhanging or what?

A. It hangs in the middle of the street.

Q. Do you know to which traffic it is directed?

A. To Hampton Boulevard.

Q. What effect or control does the light that you speak of have on the traffic on Jamestown Crescent, on the street that you were proceeding?

A. As I always understood it, the traffic going out Jamestown Crescent is not supposed to stop. It is supposed to go slow, be cautious, but it is not supposed to stop.

Q. Is there any traffic control for "stop and go" at that corner for Jamestown Crescent traffic?

A. No, sir, not that I know of.

(Photographs were handed Mr. Maurice Shapero by Mr. Sacks.)

By Mr. Sacks:

Q. Mrs. Womack, I first show you a picture and ask you if that correctly shows the traffic light at that inter- page 14 } section?

A. Yes, sir.

Mr. Sacks: If your honor please, I would like to introduce this as "Plaintiff's Exhibit 1."

(Received and marked.)

Alvania Womack.

By Mr. Sacks:

Q. Mrs. Womack, I show you another picture and ask you whether or not it accurately depicts that intersection as you look south and see Jamestown Crescent and Hampton Boulevard as they intersect?

A. Yes, sir.

Mr. Sacks: I would like to introduce this as "Plaintiff's Exhibit 2."

(Received and marked.)

By Mr. Sacks:

Q. Mrs. Womack, looking at this picture first this way, which one of those streets is Jamestown Crescent?

A. The one where the bus is.

Q. The one on which the bus is proceeding?

A. Yes, sir.

Q. Where is Hampton Boulevard?

A. Right here (indicating).

Q. Do you point to the street where—

A. This is Hampton Boulevard. This is Jamestown Crescent here and this is Hampton Boulevard here.

Q. You will have to speak louder.

page 15 } A. This is Jamestown Crescent and this is Hampton Boulevard.

Q. Is that Hampton Boulevard where there is a passenger car in this picture?

A. Yes, sir.

Q. On which street were you proceeding?

A. On Jamestown Crescent.

Q. Were you or not proceeding in the same direction as the bus is?

A. Yes, sir.

Q. In this picture?

A. Yes, sir.

Q. Then did you or not come into the intersection in the same manner that the bus is?

A. Yes, sir.

Q. Was the traffic light that is depicted in this picture the same on that day as it is in the picture?

A. Yes, sir.

Q. You have stated at what speed Mr. Jenkins was traveling, as I understand it, from the bridge toward the intersection.

Alvania Womack.

A. Yes, sir.

Q. What is the speed limit in that locality?

A. I believe it is 25. It is residential, and the speed limit is around 25.

page 16 } Q. Is it a completely residential section?

A. Yes, sir.

Q. Did he decrease or slow up his speed before the accident?

A. He seemed to slow down for a few minutes. When the light turned on caution I thought he was going to stop. I knew he wasn't supposed to. I was going to tell him not to, because I knew he wasn't supposed to stop. But, instead he speeded up, and so I did not say anything. Then when he got to the light he stopped all of a sudden.

Q. Then after he slowed down and speeded back up, to what speed did he get up to?

A. He did not slow down too much, so I guess he was back up to his regular speed that he was going before he started slowing down.

Q. And that was what?

A. Between 30 and 35.

Q. Was that the speed he was traveling at the time he applied his brakes or not?

A. Yes, sir.

Q. Now, Mrs. Womack, could you see the traffic light clearly from where you were seated?

A. Yes, sir.

Q. What type of weather was it?

A. It was a fair day.

page 17 } Q. Was it raining, or snowing, or anything?

A. If I remember right, I believe it started to rain; just sprinkled a little bit after the accident had already happened.

Q. What was the condition of visability as far as being able to see ahead of you?

A. It was just like today. It was clear and pretty.

Q. Describe to us, if you will, how he brought his car to a stop.

A. He put his brakes on all of a sudden, and it threw me forward. By the time I got back to the seat Mr. Woodson's car had hit us from the back and it threw me forward again.

Q. At the time he stopped was he slowing down gradually?

Mr. Maurice Shapero: Just a minute.

Alvania Womack.

A. No, sir.

Mr. Maurice Shapero: I object to the question as leading.

The Court: Objection sustained.

By Mr. Sacks:

Q. Mrs. Womack, how much time elapsed from the time he applied his brakes until you were struck from the rear?

A. Just a few seconds.

Q. When he applied his brakes tell me what effect it had on you and your body, if any?

A. When he put his foot on the brake so fast, page 18 } the car stopped all of a sudden and it threw me forward.

Q. And then what happened to you?

A. By the time I went backward to the seat, the man behind us hit us and then it threw me forward again.

Q. When you were thrown forward on these occasions describe whether it was a gradual movement, forceful, or what?

A. It was forceful. It just threw me fast.

Q. Now what warning did Mr. Jenkins give to you of his intention to stop abruptly?

A. None.

Q. What did he say to you?

A. He did not say anything. If he had told me that he was going to stop, or said anything, I could have braced myself, which I usually do if I see that someone who is driving a car is going to have to stop fast. He did not say anything.

Q. Were you able to stop your forward movement, yourself, or not?

A. No.

Q. Now, Mrs. Womack, what signal did he give to the motorist in the rear that he was going to stop that way?

A. Well, all I know is that he said that he gave a hand signal. I did not see it.

Q. Who said that he gave a hand signal?

A. Mr. Jenkins told me that he gave a hand signal, and for me to say that he did because he did, but I did page 19 } not see it. I could not see his hand sticking out of the window.

Q. You don't know whether he gave one or not?

A. I don't know whether he did or not. Mr. Jenkins told me that he gave a hand signal, and for me to say that he did

Alvania Womack.

because he did, but I didn't see it. I could not see his hand sticking out of the window.

Q. You don't know whether he gave one or not?

A. I don't know whether he did or not. I said that he did, but I don't know that he did. I was going by what he said.

Q. When did he tell you that he had given a signal?

A. After the accident had happened. I wasn't looking to see if he gave a hand signal, because I did not know that he was going to stop.

Q. Did any length of time elapse from the time he first applied the brakes until the car stopped?

A. No. It stopped all of a sudden.

Q. Tell us then what happened. After the car came to a stop where was it located?

A. As well as I remember, it was almost in the intersection of the side street that runs out into Jamestown Crescent.

Q. Do you refer to a street other than either Jamestown Crescent or Hampton Boulevard?

A. Yes, sir.

page 20 } Q. Is there another street there?

A. Yes, sir. There is a side street on the right going in the direction that we were going. There is a side street that comes out toward Jamestown Crescent and Hampton Boulevard.

Q. About how far from that street were you when the car came to a sudden stop?

A. Well, I believe we were in the intersection; just a few feet past the curve of the intersection—of the other side street when he stopped.

Q. Mrs. Womack, can you tell us anything about the operation of that light? Did different colors show on that light as you approached it or not?

A. Yes, sir.

Q. What did you see as you approached that light?

A. I saw the caution light and then I saw the red light.

Q. Was there any reason why Mr. Jenkins could not have seen the caution light first as you did?

A. No, sir, not if he had been looking.

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Alvania Womack.

(A photograph was handed to Mr. Maurice Shapero by Mr. Sacks.)

Mr. Maurice Shapero: I object to this, may it please the Court. I presume that the discussion on the objection would be such that the jury probably should be excluded. He has several photographs which seem objectionable. I imagine the Court wants to pass on them at the same time.

(The following proceeding was had in the absence of the jury:)

Mr. Sacks: Would your honor want me to proceed on the record to introduce them?

The Court: The record will show that you offer to introduce them.

By Mr. Sacks:

Q. Mrs. Womack, I show you, 1, 2, 3, 4 photographs, and ask you if each of those photographs depicts you in the various medical braces that were prescribed as part of your treatment?

A. Yes, sir.

page 27 } Q. There is one I believe that indicates the type of therapy that you received over a period time. Is that correct?

A. Yes, sir.

Mr. Sacks: Your Honor, I offer these in evidence as Plaintiff's Exhibits 3, 4, 5 and 6.

Mr. Maurice Shapero: May it please the Court, we object to the photographs on the ground that they are highly inflammable. They can be introduced for one purpose only, and that is to incite the imagination of the jury. The doctors will be here. They will be here to state to the jury what they found in regard to the lady's injuries, the nature of them, the diagnosis, and extent of the injuries. These pictures were taken from various angles and under various conditions for the express purpose of really misleading the jury and to incite the imagination of the jury, and have no probative value, whatsoever. The doctors will be here, who are the best doctors that we have in town, to tell of her condition.

Mr. Wagenheim: So far as my client is concerned, we have no objection to the introduction of the pictures.

Alvania Womack.

The Court: I am going to admit them. The objection will be overruled.

Mr. Maurice Shapero: I note an exception. May it please the Court, I note an exception to the Court's
page 28 } ruling, and with the Court's permission I shall adopt the grounds of my motion as the grounds on which I make my exception, so that I will not have to repeat it, if that is agreeable.

The Court: Yes.

(The trial was then resumed in the presence of the jury.)

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CROSS EXAMINATION.

By Mr. Maurice Shapero:

Q. Mrs. Womack, you say that after Mr. Jenkins left the bridge on Colley Avenue he slowed down. Is that correct?

A. Not as soon as we left the bridge, no, sir.

Q. As he approached the intersection there of Jamestown Crescent and Hampton Boulevard he slowed down?

A. We were about a block from the stop light and he began to slow down. Then the light was on caution, and I thought that he was going to stop, and I was getting ready to tell him that he wasn't supposed to stop, that he had the right of way. But, instead, he speeded up and just kept on going until he got to the stop light, and then he stopped all of a sudden.

Q. You did make the statement that he gave a hand signal for a stop?

A. Yes, sir, I did. But, that was because he told
page 39 } me he did. I did not see him give it.

Q. But you did make that statement?

A. I made the statement, yes, sir.

Q. You also stated that you had driven some eight or nine times with Mr. Jenkins and that he was a very cautious driver. Isn't that correct?

A. Yes, sir, I stated that.

Q. And you further stated that he was particular about giving hand signals. Isn't that correct?

Alvania Womack.

A. I said what I was told to say.

Q. Who told you?

A. Mr. Jenkins told me that he gave the hand signal, and told me to say that he did, but I did not see him give it.

Q. But you made that statement?

A. I made it, yes, sir.

Q. Well, as a matter of fact, Mr. Jenkins is a cautious driver; isn't that correct?

A. I have never said anything to him. I never had to speak to him. I guess I could have. He talks a lot when he is driving. But, I never did say anything to him.

Q. He was cautious enough for you to ride with him eight or nine times prior to this?

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Q. You had gotten in the car where?

A. At the Do-Nut Dinette shop on Colley Avenue.

Q. So you had driven a couple of miles before the accident; isn't that right?

A. Yes, sir.

Q. Do you drive an automobile?

A. I can drive, but I don't drive because I don't have a driver's license.

Q. What is your basis for determining the speed of an automobile since you don't drive?

A. I have drove, but not in the State of Virginia.

Q. So when you tell this jury as to the speed of Mr. Jenkins' car, it is simply a guess on your part. Isn't that correct?

A. No, sir.

Q. How did you determine it? What was your guidepost?

A. I happened to look at the speedometer before we even got to the bridge, and after we crossed the bridge. I noticed that when I turned around to look to see that Mr. Woodson was following.

Q. Why would you look at the speedometer?

A. I don't know why. I usually do.

Q. I see. There was no question about the fact
page 42 } that when Mr. Jenkins came to a stop the light
was red?

A. Yes, sir, it was red.

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page 48 } DR. GEORGE HOLLINS, JR.,
called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Examined by Mr. Sacks:

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Q. What is your prognosis—that is, your outlook—for her future as far as your part of the injury is concerned?

A. I believe that she will eventually recover. I think that she probably will have some symptoms off and on for several more months, but probably about a year from the accident she will be recovered.

Q. Doctor, can you tell us what charges have been incurred for your services thus far?

A. My total charges up until the present are $240.00.

Q. Do you reasonably anticipate any future charges as far as you are concerned for necessary treatment for this lady?

A. I believe there may be a few more visits.

Q. There would be more or less nominal charges in the future?

A. Yes.

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DR. WILLIAM F. GIBBS,
called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Examined by Mr. Sacks:

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Dr. William F. Gibbs.

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Q. Have you in your professional capacity, based on everything you witnessed yourself and your knowledge, formed an opinion as to a prognosis—that is, a look into the future—for this lady?

A. Yes, sir.

Q. What is this, sir?

A. I am going to bring up this point that I can't introduce anything at all without mentioning this record. Is that okay?

Q. Just tell us what the future holds for this lady medically speaking as far as you in your professional opinion are concerned.

A. I believe she is going to have to continue to see a psychiatrist for some period of time, from six months to a year. This is to eradicate the remaining part of her neurosis. The second thing is that I believe she has epilepsy. I have given her medicine which is useful in aborting epileptic attacks—

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Q. Doctor, it is admitted that you have been qualified here as an expert in your specialty. As to your diagnosis of epilepsy or your prognosis concerning the future, are you
page 97 } qualified, or would any expert in psychiatry be qualified, to make that diagnosis and prognosis on what you have seen and are working with as regards this patient?

A. Yes, sir. First the fact that I am a physician, and in our medical training we learn about brain disorders such as epilepsy, and so forth. Secondly, I also had to take neurological training as part of my duties. This includes epilepsy and all sorts of disorders of the brain, itself, as well as the nerves, and so forth.

Q. This that you are telling us is within your field and specialty?

A. Exactly.

Q. I ask you then, based on your professional examination, and so forth, and treatment of this lady, have you made a

Dr. William F. Gibbs.

diagnosis and prognosis pertaining to the presence or absence of epilepsy?

A. Yes, sir.

Q. What is your diagnosis as to epilepsy?

A. I believe that she has epilepsy.

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Q. Assuming that you are correct in your diagnosis, what would your prognosis be as far as any further blackout spells will occur?

A. I believe that with the medication she is taking now, these blackout spells or convulsions can be controlled by medication. I do believe that if she leaves off her medication, she is quite liable to have convulsions or blackout spells in the future. I certainly cannot say that for the rest of her life she is going to be under the same shadow. I cannot say that. I doubt if anybody could make that statement, un-
page 100 } less she was having very severe convulsions very frequently and you could see deterioration.

* * * * *

Q. Is there any way of knowing how much longer she will have to take the medication and be subject to the shadow, as you say?

A. I will have to tell you what I will do. We will try her from, say, at six months' intervals, leaving her medicine off for a period of a month. If in that time she has no trouble, she can leave it off for two months. We will continue
page 101 } in this way. So, within a six-month period I will say to her, "Let's try without your medicine and see how you do." If she then has the trouble, the blackouts or the convulsions, then we will put her back on the medicine. It is a trial and error sort of thing.

Q. Do you have any idea of the minimum or the least number of six-month periods that might be involved?

A. Certainly we are going to keep her on medicine for the next six months, but past that I don't know. It will have to be just trial and error.

Q. As far as the probabilities, percentage-wise, of the num-

ber of months or years that you have to test her, can you give an opinion as to that?

A. I would guess one to two years.

Q. You say, "guess." Do you base that on probability?

A. That is probable, yes. If she has epilepsy, which I feel that she does have, I would not expect it to disappear entirely under one or two years.

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OFFICER E. W. FARR,

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Examined By Mr. Sacks:

Q. Would you state your name, please, sir?

A. E. W. Farr.

Q. And your occupation?

A. Patrolman, Police Department, City of Norfolk.

Q. Have long have you been such?

A. One year.

Q. On September 8, 1957, were you so employed?

A. I was.

Q. Did you have occasion to investigate an accident involving Alvania Womack and James Jenkins and Parthnus Woodson?

A. I did.

Q. Tell us where it happened and what you found when you got there?

A. It was an accident that occurred at Jamestown Crescent and Hampton Boulevard intersection.

page 108 } Q. Is that intersection controlled by any traffic control or not?

A. There is a traffic light to control the northbound traffic on Hampton Boulevard. There is also a sign on Jamestown Crescent stating "Merging Traffic."

Q. Then the sign on Jamestown Crescent advises traffic that it is merging into Hampton Boulevard, does it not?

A. Yes, sir.

Q. Does the traffic light on Hampton Boulevard at that

intersection in any way affect the flow of traffic on Jamestown Crescent?

A. It is not supposed to.

Q. Is it a three-shade light, I would say: red, amber and green?

A. Yes, sir.

Q. Does it change to amber just before it changes to red?

A. It is supposed to run through that phase there: red, amber, green and then green, amber red.

Q. Did you talk with the defendant James L. Jenkins when you got to the scene of the accident?

A. I did, sir.

Q. Do you remember any statement that he had to make about what happened?

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Q. Was the other driver, Parthnus Woodson, present when Mr. Jenkins made his statement or had a conversation with you?

A. I conducted my investigation in the presence of both drivers.

Q. All right, sir. Tell us what both said while they were there in each other's presence to you.

A. I inquired, beginning with Mr. Jenkins who was driving the Chevrolet, who was in front—I inquired as to what had occurred. He stated that he was traveling at a speed of about 20 miles an hour going north on Jamestown Crescent, and that as he came to this intersection he became confused at the traffic light; that he made a sudden stop. Woodson stated that he was following along behind him about 20 miles an hour, and Mr. Jenkins when he made his sud-
page 110 } den stop, he collided into the rear end of him.

Q. Was anything said about any signals given or not?

A. He stated that he gave no signal, that he made a sudden stop.

Q. What is the speed limit right at that point approaching the intersection?

A. You have a speed limit on Jamestown Crescent of 30.

Officer E. W. Farr.

As you enter into Hampton Boulevard there the speed limit is 35.

Q. It is 35 beyond the intersection on Hampton Boulevard?

A. It is on Hampton Boulevard. It is 30 miles up to Hampton, and then it begins 35.

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page 111 } CROSS EXAMINATION.

By Mr. William Shapero:

Q. Your name is Officer E. W. Farr?

A. Yes, sir.

Q. Your number is 352 in the Norfolk Traffic Department?

A. It was at that time. It has been changed to 329 now.

Q. I am referring to your official traffic report, Officer, which was filed with the Division of Motor Vehicles in Richmond. On that official report you placed as the speed limit at the place where the accident occurred 35 miles per hour. Is that not correct?

A. I don't have my report here.

Q. Would you like to see it? Isn't that correct?

A. I don't have my report, but I believe I listed it as 35.

Q. (Hands the report to the witness.)

A. Yes, sir.

Q. So you made your investigation of this accident, and from your determination of where it took place you put down in your official report the speed limit at that location as 35 miles per hour. Is that correct?

A. That is what my report says, yes, sir.

Q. Did you notice any skid marks from either
page 112 } car?

A. None.

Q. You had occasion to look, did you not?

A. Yes, sir.

Q. There were no skid marks?

A. No, sir.

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Q. A person proceeding in a vehicle in a northwesterly direction on Jamestown Crescent, approaching the
page 113 } intersection of Jamestown Crescent and Hampton Boulevard, could see the light changing on Hampton Boulevard, could he not?

A. I will answer that by stating that the light has a protective shield. As you approach going north on Hampton Boulevard, the full face of the light is there, but on Jamestown Crescent you can catch a portion of the light.

Q. You did not have occasion to give Jenkins a ticket for any traffic violation, did you?

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JAMES L. JENKINS,

one of the defendants, called as an adverse witness, having been first duly sworn, testified as follows:

Examined by Mr. Sacks:

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page 123 } Q. Mr. Jenkins, I suppose it is correct that you met Mrs. Womack by reason of the two of you working off hours with Mr. Chapel?

A. That is correct.

Q. You did not know her before that time?

A. No.

Q. You worked for him for some time before she did?

A. Yes.

Q. Isn't it also correct that on some occasions after she began to work for Mr. Chapel you and she would go out together on a case in your automobile?

A. That is correct.

Q. And is it not also true that up until the day of the accident she had never been in your automobile except on one of those occasions? You and she did not know each other socially, but through this work you did know each other.

A. Yes.

Q. Isn't it also correct, sir, that there had been a discussion about Mrs. Womack's inability to take a car out, herself, because she did not have a driver's permit?

A. Yes.

Q. Hadn't you discussed that at least on some occasions with Mrs. Womack and with Mr. Chapel?

James L. Jenkins.

A. That is correct.

Q. And wasn't it felt that it would be beneficial in the speedy disposition of these pending detective cases if this lady could also get a license and put her efforts into that?

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A. Only to the agency.

Q. Only to the agency?

A. Yes.

Q. But it was discussed that it would help the detective agency if she could get a license and thereby put her extra efforts with another automobile into the case?

A. Yes.

Q. Didn't Mr. Chapel discuss with you the fact that, "the sooner we successfully finish up a case, the more there is in it for my operators"?

A. That is right.

Q. Then, sir, didn't you know and feel—properly so, if I might say—that the sooner a case was finished, the more chance you had, and Alvania and anybody else who was working, in getting a bonus or extra compensation?

A. That is right.

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Q. So, therefore, if you had not called her on that Sunday morning, as far as we know from the nature of things, you would not have gone out with her to give her those parking lessons?

A. That is correct.

Q. You never had gone over to her home before for any reason before this day?

A. No.

Q. Didn't you, sir, have in mind the fact that this was going to be beneficial to this lady, that by getting her license, the sooner she could get her car into this agency business?

A. To her, yes.

Q. But it also would have the effect of being beneficial to you?

A. Well, with the agency as a whole.

Q. If the agency as a whole did better, then you would do better?

page 126

A. That is right.

James L. Jenkins.

Q. You had that in mind when you went there that day, didn't you?

A. Not specifically that way, no.

Q. But you had it in mind, not specifically that way, but you did it have in mind?

A. I had it in mind as discussed.

Q. Then clearly this was not a social get-together between you and this lady?

A. Well, in one sense of the word, yes. It was more or less an invitation to benefit.

Q. To do what?

A. To be a benefit to her and to the agency, at my convenience.

Q. There clearly was no other object in your going to get her that day and take her out and give her parking lessons?

A. That is right.

Q. You told her that was why you were coming by, to take her out and give her those lessons?

A. That is right.

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Q. Isn't it also true, sir, that you noticed, at least about the time you reached the bridge on Colley Avenue, that Woodson was following you in traffic?

A. Well, I could not say whether it was right
page 128 } at the bridge, but it was between there and
Hampton Boulevard that I noticed several cars
behind me. I did not know at the time that it was his specific car that was behind me.

Q. Did you call that to Mrs. Womack's attention, that this fellow was riding close behind you?

A. That there was a car that was driving pretty close.

Q. That was unusual then? You certainly would not have called her attention to just any car behind you, would you?

A. Well, had it been that particular car I would have.

Q. I mean any car as close as he was driving?

A. That is right.

Q. He was very close to you, wasn't he?

A. Well, at the time I observed him I would not say that he was too far; I would say within a carlength.

James L. Jenkins.

Q. He was within a carlength?
A. Maybe a little more.
Q. Of your car, or maybe a little more, traveling at what speed?
A. Well, I estimated my speed about that time as around 25 miles an hour.
Q. And he was doing about the same thing, wasn't he?
A. I could not say.
Q. You knew that he was certainly close enough to you that if you had to apply your brakes for any reason suddenly, this man could not have stopped at that
page 129 } speed without hitting you?
A. I could not say that.
Q. Within a carlength or a little more?
A. I could not say that, because I could not determine as to his reaction at that time.
Q. Do you tell us that you think at about 25 miles an hour he could have stopped his car within two carlengths without hitting you?
A. Oh, yes.
Q. You think so?
A. I do.
Q. How long have you been driving, sir?
A. I would say twenty-nine years.
Q. What kind of car was he driving, Mr. Woodson?
A. The particular car that I observed after the collision was a Buick. I believe it was a '52 Buick.
Q. So it did not then unduly alarm you, that it was unusually close, because you figured it was far away sufficiently not to hit you?
A. At the time I observed him.
Q. That was within two carlengths, was it not?
A. More or less, yes.
Q. Obviously he continued behind you that way, because later on he hit you, didn't he?
A. Evidently.
page 130 } Q. He hit you just a few seconds from the time you stopped?
A. That is correct.
Q. Wasn't he just about as close to you when you finally stopped as he was when you first saw him?
A. Well, I could not say, because I had quit observing him as we approached the intersection, watching the traffic.
Q. Why did you quit observing him?
A. Because I had my eyes on the traffic ahead.

James L. Jenkins.

Q. So you knew he was behind you, but you were not looking at him when you had to look forward?
A. That is right.
Q. How long have you been in Norfolk?
A. At the time of the accident a little over three years.
Q. Did you drive in business during those three years?
A. Oh, yes.
Q. All around Norfolk?
A. Not in that particular area.
Q. But you were familiar with the traffic lights and merging traffic and traffic signs, were you not?
A. Yes.
Q. You did not see the sign telling you that there was merging traffic, did you?
A. No, I didn't.
page 131 } Q. You missed that sign completely?
A. Well, that was because I was watching the traffic on Hampton Boulevard.
Q. So, whatever that sign said did not help you, because you did not see it?
A. That is right.
Q. Weren't you doing about 30 or 35 miles an hour as you approached that intersection?
A. I don't think so.
Q. You don't think so, but you don't deny it?
A. Yes, I deny doing 35. I would say between 25 and 30.
Q. Then you had increased your speed somewhat from back near the bridge?
A. About middle way between the bridge and the boulevard.
Q. You sort of increased your speed?
A. Yes, because of the traffic.
Q. What traffic?
A. The traffic that was following. There were several cars behind.
Q. Can you tell us whether or not Woodson also increased his?
A. No, I could not answer that.
Q. Because you did not look back to see
page 132 } whether he did or not?
A. Not at that particular time, no.
Q. As you approached the Hampton Boulevard intersection you don't know how close or how far back he was from you?

James L. Jenkins.

A. No.

Q. Of course you were aware of the fact that he had to be behind you?

A. That is correct.

Q. It is a fact, is it not, sir, that you made a mistake when you looked ahead and saw that light, and, thinking that the red light was for you, you jammed on your brakes?

A. No.

Q. What did happen?

A. As we approached Hampton Boulevard and I was watching the traffic on Hampton Boulevard proceeding north, I dropped my hand automatically out the window as a slow-down signal, and then when I came on up to the boulevard, maintaining I will say around 20 miles an hour for that particular area, I reduced my speed due to the fact that traffic was still continuing. When I saw the traffic begin to stop I looked up and saw that the light had turned red, and came to a complete stop.

Q. Without an abrupt stop?

A. You can term it what you may. It was a complete stop.

page 133 } Q. From what speed?

A. Well, I would say I dropped about to five then.

Q. What you are saying is that you gradually slowed down to five miles an hour, and then stopped going at that speed?

A. I had reduced my speed within, I will say, 150 yards.

Q. Then you deny that you were doing 30 miles an hour when you jammed on the brakes?

A. At the time I braked, yes.

Q. And you deny that it was a sudden stop at all?

A. Well, I will say a complete stop.

Q. Wasn't it a sudden stop?

A. When I saw the light turn red, naturally I braked.

Q. You hit the brakes hard, didn't you?

A. Well, I could not say how hard I hit them. It was hard enough to stop the car.

Q. Did you hit them hard enough to damage them?

A. No.

Q. Were they damaged in the accident?

A. In the accident, yes.

Q. They were not damaged before the accident, were they?

A. No.

James L. Jenkins.

Q. But as a result of being hit from behind you say that your brakes were damaged?

page 134 } A. The wheel cylinder in the right rear wheel, yes.

Q. The right rear wheel?

A. The right rear wheel.

Q. You are positive that you gave a hand signal?

A. I am positive.

Q. And that was clearly visible to the man behind you?

A. Well, I could not say that. I just know that I had my hand out the window.

Q. Do you know that the law requires your signal to be clearly visible?

A. It is entirely on the way you are looking at it. If you are looking for a man's signal you might see it. If you are not looking for it, you cannot see it.

Q. There was no reason for him to be looking for your signal, was there? There was nothing there to make you stop?

A. I could not tell what that man was doing.

Q. There was no traffic in front of you, was there?

A. Except on Hampton Boulevard.

Q The road was there, open for you to merge right on in the way the sign directed you to, wasn't it?

A. Oh, it was there.

Q. What could Mr. Woodson see that would make him think you would stop?

A. What he thought, I could not say. All I could say is that he was probably familiar with that inter-

page 135 } section.

Q. Do you say, sir, that the kind of signal you gave was one that he might see if he was looking for it, but if he wasn't looking for it he might not see it?

A. That depends, since there is a slight curve right there just before you go out to the boulevard.

Q. Then that leaves a question in your mind as to whether your signal was clearly visible to that man?

A. Whether it was, I don't know. All I know, I gave a signal.

Q. Of course, as it turned out the light was not red to stop you, was it?

A. Well, I could not say that before the accident.

Q. I am talking about after the accident. Did you ever look up at the traffic light at the intersection?

A. Yes.

James L. Jenkins.

Q. Did you see that you had therefore made a stop on a red light that was controlling traffic in another street?

A. Well, I came to that conclusion.

Q. You saw that when you got out of your car and looked at the light?

A. Not right then; shortly afterwards.

Q. As soon as you directed your attention to the light you had no difficulty in seeing it then?

A. That is right.

Q. But as you approached the intersection you
page 136 } did not see that in maintaining your lookout?

A. No.

Q. Were you looking at the light or were you looking at the Hampton Boulevard traffic?

A. As I approached the boulevard I was looking at the traffic.

Q. So you were not looking at the light?

A. Not directly.

Q. If you had been looking at the light earlier enough, this accident never would have happened, because you never would have made that emergency stop to get hit in the rear by this other man?

A. I could not say that, because I don't know.

Q. Could you sav that if you had looked straight ahead at the light you would not have been confused?

A. I could not sav that, not being familiar with the area, because when the light turned red I automatically on impulse figured that it was a stop sign for me.

Q. Therefore you did not see the light when it turned yellow, because you were looking at the traffic?

A. That is correct.

Q. So you were not even preparing to make a stop for the light that you thought controlled you?

A. Oh, yes. I always slow down for a boulevard or an intersection.

page 137 } Q. But vou did not notice it turning yellow?

A. No, I didn't.

Q. So you were not looking at the signal that was telling you "caution" in a mistaken way, as you thought the signal applied to you?

A. No.

Q. You were not exercising caution, were you, sir?

A. I was exercising caution as far as the traffic was concerned. When that light turned red I was in a position to stop.

James L. Jenkins.

Q. As far back as your counsel had this picture taken, when you got back that far couldn't you see the traffic and the light all within the same general gaze?

A. Yes. When I looked at it I did.

Q. You could not tell then that the light was not for you?

A. No, not at that distance.

Q. Were you wearing your glasses on that day?

A. I don't recall whether I was or not.

Q. Do you wear glasses all the time?

A. No.

Q. But you have them on now. I suppose they help your vision, don't they?

A. Close up, yes.

Q. You say, "Close up." Are they helping you
page 138 } now?

A. Yes.

Q. You mean that in this room they help your vision.

A. That is right.

Q. So they are not just reading glasses, because you are not reading anything.

A. Normally I just use them to read.

Q. But you have them on today.

A. I figured that I would be shown stuff and I would have to be digging them out of my pocket.

Q. I won't press it, but you say that you don't recall whether you had glasses on or not.

A. No.

Q. Sometimes when you drive you do wear them?

A. At times.

Q. Sir, isn't it also true that part of the reason you were confused with this light was that your eyes are not up to par?

A. I would not say that, because I am farsighted.

Q. You don't think that had anything to do with it at all?

A. No.

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page 139 } Q. You gave no warning, whatsoever, to Mrs. Womack that you were going to stop?

A. No.

Q. You could have very easily said to her, "Hold on, watch out, I have got to stop," could you not?

James L. Jenkins.

A. That is not a normal reaction to a person driving an automobile, to tell his passenger to take caution, that "I am going to stop."

Q. If you were going to make a sudden stop wouldn't you make some effort?

A. If I had been going to made a sudden stop.

Q. So if it had been a sudden stop you would have warned her in some way?

A. Possibly.

Q. But you made no effort with your hand to hold her back, or you did not raise your voice to warn her?

A. I couldn't. I had my right hand on the steering wheel and the other out the car window.

Q. Mrs. Womack says that when you stopped the car it threw her forward. Do you remember that?

A. Well, I could not say how things took place right then, it happened so fast.

Q. So then you don't deny that when you did stop the car she lunged forward, because you don't know?

A. No, I could not say.

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By Mr. Wagenheim:

Q. Mr. Jenkins, as I understand, there was a regular line of traffic proceeding down Jamestown Crescent, was there not?

A. Yes, sir.

Q. The truth of the matter is that when you got to that intersection you became confused as to whom the red light was for, whether it was for you or whether it was for Hampton Boulevard traffic. Isn't that correct?

A. Well, you might term it that way. I interpreted it to be for me.

Q. You interpreted it as being for you?

A. That is right.

Q. It subsequently developed that that was an error, that it was for Hampton Boulevard.

A. Yes, sir.

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PARTHNUS L. WOODSON,
one of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Sacks:

Q. Tell us your name, please.

A. Parthnus L. Woodson.

Q. What is your occupation?

A. Bus driver down at the Army Base.

Q. How long have you been doing that?

A. I have been doing it off and on for eight years.

Q. Were you operating an automobile on Jamestown Crescent in a northwesterly direction toward Hampton Boulevard on Sunday, September 8, 1957?

A. Yes, sir.

Q. What kind of car were you driving?

A. '52 Buick, four-door.

Q. Was there any other traffic proceeding the same way you were?

A. Well, there was some coming when we first crossed over the Jamestown Crescent bridge, but they

page 145 } passed us.

Q. You mean opposing traffic?

A. Yes.

Q. Did you see Mr. Jenkins' automobile in front of you?

A. Yes, sir.

Q. Did you follow him right around Jamestown Crescent until the time the accident occurred?

A. Yes, sir.

Q. Tell us what happened as you approached the intersection.

A. I was following him on around Jamestown Crescent. I glimpsed at my speedometer. I was making 26 miles an hour right at that time. When he got to the intersection I was just about a carlength behind, or just a little better, and without any signal whatsoever he just came to a sudden stop. As fast as I could I grabbed my wheel and swung to the left, but I just could not miss him. He did not give no signal, whatsoever—no hand signal was given.

Q. Are you sure about that?

A. I am quite sure.

Parthnus L. Woodson.

Q. If he had his hand out the car window could you have seen it?

A. Yes, sir. If I had gotten any kind of signal, whatsoever, I could have missed him.

Q. You deny that he gave a signal showing that he was slowing down?

page 146 } A. There wasn't no hand signal, or nothing.

Q. Was the stop sudden and abrupt?

A. That is right. That is what made me hit him. I tried all I knew how to keep from hitting him.

Q. What could you see around there that would suggest to you that this man was going to stop like that?

A. Nothing.

Q. Was there anything in his way?

A. There was nothing in front of him, and there were no cars coming out of Hampton Boulevard trying to cross.

Q. Was the weather clear enough and visible so that you could see the intersection and he should have seen the intersection?

A. Yes, sir.

Q. Was there anything obstructing him from merging right into the traffic, the way the sign says?

A. There was nothing to keep him from going right straight on around that curve into Hampton Boulevard, because there was no traffic coming or going on that side.

Q. Could you see the light from where you were behind him?

A. Yes, sir.

Q. You were going about 26 miles an hour when he suddenly stopped?

A. Yes, sir.

page 147 } Q. So you struck him going almost that fast, did you?

A. I don't know how fast he was going, but that was the rate of speed I was going, myself, when I first glimpsed.

Q. He did not slow down to 5 miles an hour, did he?

A. No, sir.

Q. Would you have kept going at 26 miles an hour if he had slowed down to 5 miles an hour right in front of you?

A. No, sir.

Q. And he did not slow down his speed at all, did he?

A. No, sir. There wasn't any slowing down.

Q. Did he stop abruptly from the same speed he was traveling the whole way around Jamestown Crescent?

Parthnus L. Woodson.

A. No, sir. He was going faster when he went over the bridge.

Q. I say, when he approached Hampton Boulevard was he doing the same speed that he had been doing all along Jamestown Crescent, or had he slowed up?

A. He had slowed up some, because Jamestown Crescent after you get over the bridge is a 30 mile speed limit.

Q. How fast do you think he was going?

A. I could not say how fast he was going, because I was going 26 miles an hour.

Q. He was at least going that fast?

A. He was going faster than I.

Q. He was going faster than you?

page 148 } A. He was going faster than I, because I was making 26 and I was a carlength behind him.

Q. Did he slow down at all from the speed he was going after you left the bridge? Did he slow down at all before he slammed on his brakes?

A. Oh, yes, sir, he slowed down after he got over the bridge. That is when he got up to 30 miles an hour.

Q. Once he got up to 30 miles an hour did he ever slow up again until he stopped?

A. He slowed up some. I don't know how much, but he slowed up some, because when I looked at my speedometer, like I said, I was doing 26 miles an hour. How much he had slowed up I don't know.

Q. Had he slowed down to 5 miles an hour?

A. No, sir.

* * * * *

CROSS EXAMINATION.

By Mr. William Shapero:

Q. Who was with you on that day?

A. My stepfather.

Q. Is he here today?

A. No, sir, he is not here because he is real old.

Q. When was the first time you ever saw Mr.

page 149 } Jenkins' car?

A. The first time I remember seeing it?

Q. When was the first time you remembered seeing his car?

A. I had been trailing him before I hit that bridge.

Parthnus L. Woodson.

Q. When you got on the opposite side of the bridge how fast did you say you were going?

A. I did not say how fast I was going when I got on the other side of the bridge. I said he was going 30 miles an hour.

Q. When you got on the other side of the bridge?

A. Yes. He got up to 30 miles an hour.

Q. How did you determine that?

A. Because I was going then about 27 miles an hour and he was still in front of me.

Q. Did he pick up speed and leave you behind?

A. I was already behind him all the time.

Q. How far were you behind him when you left the bridge? How close was your car to his car when you left the bridge?

A. I would say about a couple of carlengths, something like that.

Q. How fast did you drive your car until you got to the intersection of Jamestown Crescent and Hampton Boulevard?

A. I never did get up to 30 miles an hour.

Q. You never passed 30?

A. No.

page 150 } Q. When you got up to the intersection of Jamestown Crescent and Hampton Boulevard had Jenkins slowed down any?

A. He probably could have slowed down some by me catching up with him to get the distance I was behind him. Just like I say, when I noticed my mileage I was going 26 miles an hour. We were near about then at the intersection of Jamestown Crescent and Hampton Boulevard.

Q. So when you reached the intersection of Jamestown Crescent and Hampton Boulevard, at that time your car was only about a carlength behind Mr. Jenkins' car, wasn't it?

A. I would say it was about a car or a little bit better.

Q. So between the time you left the Colley Avenue bridge where you were two carlengths behind him, at the time you reached the intersection where the accident happened you had actually picked up one carlength on him, hadn't you?

A. When I got near to the intersection of Jamestown Crescent and Hampton Boulevard.

Q. And you, yourself, had not driven over 26 miles an hour during that time, had you?

A. I had not driven over 26?

Parthnus L. Woodson.

Q. You had not exceeded 26 miles an hour, had you?

A. I had not exceeded 30. When I looked at my speedometer, right behind him at that particular time, I was going 26 miles an hour.

page 151 } Q. But Mr. Jenkins certainly could not have been going any faster than you were going, could he, because you had gained a carlength on him?

A. I don't know how fast he was going when he got that distance ahead of me. All I know is that from the bridge to Hampton Boulevard I had made 27 miles an hour, see? But, how much he had slowed down ahead of me I don't know. I know that I gained on him until I got to 26 miles an hour.

Q. Would you say then that he slowed down a little, so that you caught up with him?

A. I don't know.

Q. But you did pick up a little distance on him, didn't you?

A. I picked up some, from 25 to 27 miles. How much he was doing I don't know. But, he did not give no signal when he got ready to stop.

Q. When you saw him stop what did you do?

A. When I saw him stop? When he applied his brakes all of a sudden I tried to cut from behind him as fast as I could. My right fender struck his rear left.

Q. Did you put on your *breakes?*

A. I could not put on my brakes. I was trying to miss him. I went to apply them some. After I found that I could not get them on enough to stop to miss him, I tried to cut by him as fast as I could.

page 152 } Q. If you had put on your brakes it would have slowed you down some, wouldn't it?

A. I did put them on some to slow me down, but I did not want to give it the full force, so I cut as fast as I could. It was done so sudden.

Q. You say that you had a chance to put on your brakes?

A. Yes, sir, some.

Q. You know that you did not leave any skid marks? You know that?

A. No, sir, there were not no skid marks.

Q. Just before this man Jenkins stopped his car you looked at your speedometer, didn't you?

A. I don't know if it was just before he stopped. It was just before we had the accident that I looked at my speedometer. I was making 26 miles an hour.

Parthnus L. Woodson.

Q. When you looked up had he stopped?

A. When I took my eyes off the speedometer, that was the time he was applying his brakes and I could not miss him to save my life.

Q. So in that brief moment you looked at your speedometer to see how fast you were going, and that is when he stopped?

A. I did not look personally to see how fast I was going. I just happened to glance at the speedometer and I was doing 26 miles an hour.

page 153 } Q. While you were looking down at your speedometer that was when he stopped?

A. He made that sudden stop. I tried to grab the wheel and cut as fast as I could to the left.

Q. While you were looking down at your speedometer that was when he came to a stop?

A. Sir?

Q. While you were looking at the speedometer that was when he made his stop?

A. I can't say whether I was looking down at the speedometer. I just glanced at my speedometer; I wasn't looking down. Just as I glanced at my speedometer it was 26 miles. He applied his brakes. But, it was so sudden that I could not keep from hitting him.

Mr. William Shapero: That is all.

By Mr. Wagenheim:

Q. You work at the Army Base?

A. Yes, sir.

Q. How long have you been driving a car?

A. I have been driving ever since I have been down there. I have got 15 years in Civil Service. I have been driving ever since I have been there.

Q. How often do you go down that street?

A. Every day.

Q. Every day?

page 154 } A. Every day.

Q. To and from work?

A. To and from work, and four and five and six times a *a* day.

Q. You are familiar with the light, aren't you?

A. Yes, sir.

Q. Did you expect him to stop?

A. No, sir. I had no idea, whatsoever, that the man was

going to stop. They always keep going. I had no idea that he was going to stop.

Q. When that light was red for Hampton Boulevard was there any reason for him to stop?

A. No, sir. It doesn't affect you, whatsoever.

Q. What kind of stop was it?

A. He made a sudden stop. When he stopped I went around to his car and told him that he hadn't given a signal, or nothing. I told him also when the policeman was there. He admitted, himself, that he did not know that you were supposed to keep going. They are the words that he spoke, himself.

Q. He told the policeman that, himself?

A. He admitted it in the presence of myself and the policeman.

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JAMES L. JENKINS,

one of the defendants, being recalled, further testified as follows:

Examined by Mr. Maurice Shapero:

* * * * *

Mr. Jenkins, will you tell this jury exactly what transpired at the intersection of Jameston Crescent and Hampton Boulevard—that is to say, in connection with this accident which is the basis of this suit? Firstly, what time of day was it?

A. It was about 12:50.

Q. I want you to speak sufficiently loud so that the gentleman with the glasses on can hear you. If you do, everybody can hear you. Picking up from the bridge on Colley Avenue, which is called Jamestown Crescent as you get out there a little ways, tell us just what transpired right straight through to the point of impact.

A. We were proceeding down Jamestown Crescent about 20 or 25 miles an hour, and as I got about middle way I guess

James L. Jenkins.

between the bridge and the boulevard I noticed
page 159 } traffic following along behind me. I called Mrs.
Womack's attention to the fact that there was a car that was traveling at a very close distance behind me. There is a curve to the right, out to the intersection.

As we were approaching the intersection I noticed a heavy flow of traffic on Hampton Boulevard. Not being familiar with this road or intersection, as I came out to it I gradually slowed down. I was noticing there was traffic on the boulevard.

Q. What boulevard?

A. On Hampton Boulevard.

Q. Which way was the traffic going?

A. It was heading north.

Q. When you say "north" do you mean toward the Naval Base?

A. Toward the Naval Base.

Q. All right, sir.

A. As I got up to the intersection, all of a sudden I looked up at the light which hangs in the middle of the intersection, and it turned red. Well, assuming that the light was for me, I came to a complete stop.

Q. Mr. Jenkins, when you first noticed the traffic on Hampton Boulevard proceeding north, approximately how far were you from the intersection of Jamestown Crescent and Hampton Boulevard?

page 160 } A. Oh, I would say about 75 feet.

Q. About 75 feet? How fast were you going at that time?

A. Well, I was gradually decreasing my speed.

Q. Decreasing, you say?

A. Decreasing.

Q. Why did you decrease it?

A. Because I was watching this traffic and wasn't sure of my intersection there. You have to slow down for this traffic.

Q. Did you slow down for it?

A. I was gradually decreasing my speed as I came up to the place.

Q. How far were you from the intersection when you noticed that the light turned red?

A. Well, when I noticed the light turn red I was about 25 feet.

Q. What if anything did you do?

A. I applied my brakes.

James L. Jenkins.

Q. When you were approximately 75 feet from the intersection and were noticing this traffic, what if anything did you do? Did you or did you not give any signal about slowing down and stopping?

A. Yes. That is one of my habits. I dropped my hand out of the window of my car.

Q. Which hand did you drop out of the
page 161 } window?

A. The left. I dropped my left hand out of the window at this angle (illustrating), because that is one of my greatest habits, as this car that I was driving did not have turn signals on it.

Q. At the time you applied the brakes for stopping how fast were you proceeding at that time, approximately?

A. Well, at the time I applied my brakes I estimate it to be down to around 5 miles.

Q. Why had you gotten down to 5 miles an hour?

A. Because I was intending to stop.

Q. You mean that you intended to stop whether there was a red light or not?

A. Yes.

Q. Why?

A. Because I assumed the light was for me. I wasn't about to run a red light.

Q. How long have you know this lady?

A. Well, let's see. I imagine about six months now.

Q. You are rather friendly, are you not?

A. The only association was through our work.

Q. I see. When Mrs. Womack was on the stand she admitted that when the light turned red you stopped, and she admitted that she made the statement that as you approached the intersection you gave a hand signal for a stop, just as you have said you did. But, she also said that you
page 162 } told her to say that.

A. That is in the negative.

Q. What do you mean by "negative"?

A. I did not tell her to say that. I told Mrs. Womack that I had made a hand signal.

Q. But you did not tell her to say that?

A. I did not tell her to say that I had.

Q. Mr. Jenkins, will you please answer Mr. Sacks' questions?

James L. Jenkins.

CROSS EXAMINATION.

By Mr. Sacks:

Q. Mr. Jenkins, some of this will probably be a little repetitious, but I want to cross examine you to the extent that you were examined on direct. You state in response to your counsel's question that you turned to Mr. Womack about halfway from the Colley Bridge to Jamestown Crescent, and called her attention to the closeness of the car that was following you?

A. I did not turn to her. I called her attention to it as I glanced in my rearview mirror that there was traffic behind us, and a car was approaching rather close.

Q. That would be at least three or four blocks from the intersection, if it were midway, would it not?

page 163 } A. Not being familiar with that strip, I would estimate it to be in the vicinity of six blocks, something like that. In other words, it was what I would roughly say as between the bridge and the boulevard. The number of blocks I could not say.

Q. Had you ever been on Hampton Boulevard before?

A. Yes, sir, enroute to the Naval Base.

Q. How long did you sav you had been living in Norfolk?

A. Well, at the time of the collision I had been in Norfolk a little over three years.

Q. I understood that you drove daily in your work as a salesman.

A. That is right.

Q. Certainly you had been on Hampton Boulevard during those three years, had you not?

A. I had been on Hampton Boulevard, yes.

Q. You had gone through this intersection before on Hampton Boulevard?

A. Well, evidently.

Q. Hadn't you been there?

A. I probably had to go through there to get to the ferry to go to Newport News.

Q. How often did you go to Newport News?

A. I would say approximately twice a month.

Q. Twice a month for the three years that you have been here?

page 164 } A. Yes.

Q. Didn't you go down Hampton Boulevard to get to the Newport News ferry?

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A. I did.

Q. Then every time you went down Hampton Boulevard didn't you go through that light, or underneath that light, on Hampton Boulevard?

A. Evidently I did.

Q. All right, sir. Jamestown Crescent every one of those times came into Hampton Boulevard the same way, didn't it?

A. I never paid any particular attention to it.

Q. When you tell us that you were not familiar with that intersection, that was not exactly correct, was it?

A. As relating to Jamestown Crescent it is.

Q. But you were familiar with the light, itself?

A. Well, if it turned red, if I was approaching it, I stopped; and if it didn't, I kept on through it.

Q. I understand. But, on Hampton Boulevard, going through there that often, you had to be familiar with the light and how it worked?

A. I was familiar with Hampton Boulevard—let's put it that way—in my course of duty.

Q. Isn't there a sign on Hampton Boulevard as you approach this light that tells you to watch for merg-
page 165 } ing traffic from Jamestown Crescent?

A. If there is, I never noticed it.

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Q. Mr. Jenkins, so that there will be no misunderstanding, I direct your attention to your testimony, as I understood it, that twice a month approximately for a period three years you went down Hampton Boulevard going to the Newport News ferry to go to Newport News?

A. That is correct.

Q. Then I understand from that that you either had to go through this light by going on Hampton Boulevard or you had to come down Jamestown Crescent. You say that you had never been on Jamestown Crescent before?

A. I had no reason to.

Q. Had you been on Jamestown Crescent before?

A. Not to my remembrance.

Q. You don't know whether you had or not?

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A. No. I was unfamiliar with the city. If I did, I don't recall it.

Q. I ask you, during any of those times that you went to Newport News did you get on Hampton Boulevard by going down Jamestown Crescent?

A. No, sir.

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By Mr. Sacks:

Q. Now, Mr. Jenkins, you say that when you first saw the traffic on Hampton Boulevard you were 75 feet from the intersection?

A. Approximately.

Q. What do you mean by "the intersection"? Do you mean where the light was?

A. Where the traffic was flowing, and the light that was discovered later, where it was hanging.

page 169 } Q. 75 feet is about 25 yards. Is that correct?

A. I will say 75 feet.

Q. You had not seen the traffic at all before that?

A. I was watching the traffic.

Q. Had you seen it before that?

A. As I came up approaching the intersection, yes. I could see for quite a distance.

Q. Why did you tell your lawyer that you were 75 feet from the intersection when you first saw the traffic?

A. I don't think I said that.

Q. How far away from the intersection were you when you first did notice the Hampton Boulevard traffic?

A. I was quite a distance from the traffic. In fact, it was when I was coming around this curve. It is around 150 yards from that curve out to the intersection, approximately that. You can see the traffic. I answered the question, if I remember correctly, that I was within 75 feet of the traffic when I began to decrease my speed for that traffic.

Q. But you could see that traffic and you were aware that there was traffic 150 yards away?

A. From that curve, approximately that.

Q. So you thought then that you were approaching an in-

James L. Jenkins.

tersection, and traffic was moving, crossing your path, and you knew that there was a traffic light ahead of you?

A. Yes.

page 170 } Q. As I understand it, you went up to within 25 yards, nevertheless, of the traffic light before you applied your brakes?

A. I beg your pardon. I went within that to the intersection. The light hangs way out in that intersection.

Q. Within 25 yards of the intersection?

A. Of the beginning of the intersection.

Q. My understanding of your testimony yesterday was that when you saw the traffic you were watching the traffic and not the light.

A. That is correct.

Q. And you never looked back at the light from the time you first saw the traffic?

A. Oh, yes. That was when I discovered that it had turned red, and I assumed that it was for me, when that traffic began slowing down and stopping.

Q. 150 yards less 25 yards that you were from the intersection you continued to watch the Hampton Boulevard traffic and did not look at the light. Isn't that what you have said?

A. Up to close to the intersection.

Q. 25 yards away—75 feet?

A. Yes.

Q. When at any time you could have during those 150 yards, as you neared the intersection, examined

page 11 } the light and determined that it wasn't for you?

A. Well, that all depends on how you look at it. If you assumed that the light was for you, you would, yes.

Q. You did not give yourself a chance to know what the light was, because you did not look at it until you were 25 yards away from the intersection.

A. When you look at that light it looks like it is just as much for you in that intersection as it does for the other side.

Q. That was only because you had a momentary glance, wasn't it, before you thought you had to stop?

A. That is right.

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Q. You testified yesterday that you found out after you

James L. Jenkins.

did stop that you were not required to stop?
page 172 } A. Afterwards, yes.
Q. And we know from yesterday that you never saw the sign directed to you on Jamestown Crescent telling you that you were in merging traffic.
A. The reason I did not see that sign was because I was watching the traffic.
Q. So you missed the sign?
A. I did not see the sign for watching the traffic.

* * * * *

Q. There is one more thing that I don't understand. Here was a light that you thought was for you, yet you never saw it turn yellow or amber?
A. That is right.
Q. It went from green the last time you saw it, I suppose, to red when you stopped?
page 173 } A. I don't know what it did. All I know is that I did not see it for watching the traffic on Hampton Boulevard. Whenever I saw the traffic on Hampton Boulevard slowing down, that was when I looked at the light. As it turned red I assumed that the light was for me, and I stopped.
Q. Did you assume that the light was going to go from green to caution to red?
A. No.
Q. You did not think that?
A. No, I did not have time to think that.
Q. How about 150 yards back?
A. I did not even think that.
Q. Why didn't you think that?
A. I was watching the traffic.

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Q. Since you did not see the yellow light and you were not expecting it to go to yellow, you did not give the signal that you say you did for any length of time before you actually stopped, did you?
A. I had my hand out the car window from the time I left

that curve, coming around to the intersection, as indicated on the photograph.

Q. We know that you say you don't know whether it was clearly visible to the man behind you?

A. No, I could not say that it was visible to the man behind me.

Q. After the accident you say it is correct that you told Mrs. Womack you had given a hand signal?

page 175 } A. That is right.

Q. You all had a discussion about that, didn't you?

A. I just told her that I had made a hand signal.

Q. The reason you told her, wasn't it because somebody had said out there that you did not give a hand signal?

A. (No answer.)

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Mr. William Shapero: The defendant Jenkins objects and excepts to the refusal of Instruction D-J4, on the ground that it is not only a correct and exacting statement of the law, but is particularly applicable to this case, in that the primary issue is the question of gross negligence on the part of Jenkins and/or simple negligence on the part of Woodson, and the fact that if both parties were merely guilty of failing to exercise ordinary care, the verdict must of necessity be against Woodson, and Jenkins must be exonerated from any liability.

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Mr. William Shapero: The defendant Jenkins objects and excepts to the refusal of Instruction D-J6, on the ground that it is a correct statement of the law in that if the negligence of Woodson was the sole proximate cause of the accident, Jenkins should be exonerated from liability. This in-

struction is speaking of general negligence, whereby any other instructions may have been speaking only of a certain particular phase of negligence.

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Mr. William Shapero: The defendant Jenkins objects and excepts to the refusal of Instruction D-J7, on the ground that it is not only a correct statement of the law but is applicable to the facts adduced at this trial, and it is prejudicial to the defendant Jenkins that this instruction be refused, on the ground that the damage instruc-
page 219 } tion heretofore granted plaintiff sets out various elements of mental anguish, and so forth, upon which the jury should not base their verdict insofar as liability is concerned, but should only base their verdict on the law and the facts as set out in Instruction D-J7.

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Mr. William Shapero: The defendant Jenkins objects and excepts to the refusal of Instruction D-J8, on the ground that not only is it a correct statement of the law but it is particularly applicable to the facts in this case. It sets out that no inference of gross negligence can be made from the mere happening of the accident, which should be told to the jury. It further sets out that the presump-
page 220 } tion is that Jenkins was free from gross negligence unless and until the contrary is proven by the preponderance of the evidence, which should also be mentioned to the jury. It further sets out that the burden is upon the plaintiff to prove by the preponderance of the evidence that Jenkins was guilty of gross negligence, and that such gross negligence was the proximate or contributing cause of the accident. This should also be told the jury by the Court. The instruction further sets out that if after hearing all of the evidence the jury is uncertain whether Jenkins was guilty of gross negligence, and it would appear equally as probable to the jury that he was not as that he was, the jury's verdict should be in behalf of the defendant Jenkins. This should be made clear to the jury, also.

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Mr. William Shapero: The defendant Jenkins objects and excepts to the refusal of Instruction D-J12, on the ground that the jury should be instructed that Jenkins was not an insurer of the safety of the plaintiff, and Jenkins was not required to exercise such a high degree of care as to prevent the possibility of accidents, and this fact has not been covered in any other instruction.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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