Return to
FILE COPY
Clerk's Supreme Court of Appeals
Richmond, Va.

201VA239

Record No. 4975

In the Supreme Court of Appeals of Virginia at Richmond

ANNA WHITE

v.

ROBERT CLAUDE GORE, ET AL.

FROM THE CIRCUIT COURT OF CULPEPER COUNTY

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.

NOTICE TO COUNSEL

This case probably will be called at the session of court to be held.

JUN 1959

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

Howard G. Turner, Clerk

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4975

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 22nd day of January, 1959.

ANNA WHITE, Plaintiff in Error,

against

ROBERT CLAUDE GORE, ET AL., Defendants in Error.

From the Circuit Court of Culpeper County

Upon the petition of Anna White a writ of error is awarded her to a judgment rendered by the Circuit Court of Culpeper County on the 11th day of September, 1958, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Robert Claude Gore and another were defendants; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

page 8 } INSTRUCTION #1.

The jury is instructed that our law does not require that the claim by the Plaintiff, Anna White, be proved beyond and to the exclusion of all reasonable doubt or to a moral certainty; it need be proved only by a preponderance of the evidence or what is known as the greater weight of evidence.

C. C. B.

page 9 } INSTRUCTION #2.

The Court instructs the jury that if you believe from all of the evidence in this case that both Robert Claude Gore and Winfrey White were negligent and that the negligence of both of them was the proximate or efficiently contributing cause of the accident, the plaintiff is nevertheless entitled to recover a verdict against the defendants, Robert Claude Gore and the Merchants Grocery Company, Inc.

C. C. B.

page 10 } INSTRUCTION #3.

The Court instructs the jury that at the time of the accident of which the plaintiff, Anna White, complains in this action, it was the duty of the defendant, Robert Claude Gore, while driving the truck owned by Merchants Grocery Company, Inc. on the Main Street of Culpeper, which is also U. S. Routes #15 and #29, to use ordinary care:

(1)—To keep said truck under proper control;
(2)—To keep a proper lookout for others using the street, particularly the plaintiff;
(3)—Not to make a left turn unless the same could be made in reasonable safety;
(4)—Not to cross the center line of Main Street in making his left turn until after his truck had passed the intersection of the center lines of Main and Stevens Street.

If the jury believes from the preponderance of the evidence that the defendant, Robert Claude Gore, who was then operating a truck for the defendant, Merchants Grocery

Company, Inc., within the scope of his agency, immediately before and at the time of the accident complained of, failed to use ordinary care to perform any one or all of the foregoing duties, and by reason thereof the truck he was driving struck the car in which the plaintiff was riding; and if the jury believes from the preponderance of the evidence that such negligence was the proximate cause of injuries to the plaintiff, then the jury is instructed that the plaintiff, Anna White, is entitled to recover damages in this case from both of the defendants.

C. C. B.

page 11 } INSTRUCTION #4.

The Court instructs the jury that, if they believe from the evidence that the defendants in this case negligently inflicted an injury upon the plaintiff, Anna White, the defendants are responsible for all of the ill effects which, considering the condition of health in which she was when she received the injury, naturally and necessarily followed such injury. While the defendants are not liable for any condition of plaintiff existing before the injury, or for anything that would have resulted to her from her condition independent of the accident; nevertheless, the defendants' liability is in no way lessened or affected by reason of the fact that the injury would not have resulted had the plaintiff been in good health, or that it was aggravated and rendered more difficult to cure by reason of the fact that she was not in good health.

C. C. B.

page 12 } INSTRUCTION NO. 5.

The Court instructs the jury that if you find for the plaintiff she should be awarded compensation for all reasonable results of her injuries sustained in the accident or that may be suffered in the future. You may take into consideration all of the effects of the injuries complained of, including sums reasonably expended for medical care and treatment since the accident; the pain and suffering which the plaintiff has endured and may endure in the future, if any; the loss of earnings or the loss of the power to earn money which the plaintiff has suffered since the accident, if any, and may suffer in the future, if any; the personal inconvenience, mental anguish, if any, and loss of personal attractiveness, if any, which the plaintiff has suffered since the accident and

may suffer in the future as a result of scars or of other bodily disfigurements resulting from the injuries, if any, the total not to exceed the amount claimed in the motion for judgment.

In your deliberations you may consider the fact that mortality tables tend to prove that the life expectancy of the plaintiff is 17 years. Such tables are not binding, however. You have a right to consider the possibility of accident, illness, or other untoward events reasonably likely to terminate the results of the injuries suffered by the plaintiff.

C. C. B.

page 13 } INSTRUCTION NO. 6.

The Court instructs the Jury that if you believe from the evidence that Winfrey G. White, the driver of the automobile in which the plaintiff was riding, failed to keep a proper lookout for other vehicles as he drove his automobile from its position at the curb of Main Street, then he was negligent, and if you further believe that such negligence was the sole proximate cause of the collision, you should find a verdict in favor of the defendants, Robert Claude Gore and Merchants Grocery Company, Incorporated.

C. C. B.

page 14 } INSTRUCTION NO. 7.

The Court instructs the Jury that the basis of this suit is that the defendants' negligence caused the injuries complained of. You cannot infer that the plaintiff's injuries were caused by the defendants' negligence from the mere fact that the accident occurred. On the contrary, the presumption is that her injuries were not caused from this accident unless and until the contrary is proven to your satisfaction by a preponderance of the evidence. The burden of proving this case by a preponderance of the evidence rests upon the plaintiff throughout the whole case and applies at every stage thereof and unless you believe from the evidence that the plaintiff has sustained that burden, you must find a verdict for the defendants.

If you believe from the evidence that the condition of which the plaintiff, Mrs. White, complains is the result of causes other than the accident in question, then you cannot allow her damages for such condition, or for any expenses incurred in connection with such condition or for any loss of earnings resulting from such condition. If, after hearing all of the

evidence, you are doubtful as to whether her condition is the result of the accident and you believe that it is just as probable that her condition was not caused by the accident as that it was caused by the accident, then you cannot allow her damages for such condition, or for any expenses incurred in connection with such condition or for any loss of earnings resulting from such condition.

C. C. B.

page 15 } INSTRUCTION NO. 8.

The Court instructs the Jury that if you believe from the evidence that the plaintiff, Mrs. White, is entitled to recover and you further believe from the evidence that her condition is partially the result of the accident and partially the result of other causes, then you shall award her only such damages as will compensate her for the injuries received in the accident and you shall award no damages for her condition which has resulted from other causes.

C. C. B.

page 16 } INSTRUCTION NO. 9.

The burden of proof is upon the party who asserts a fact. This rule requires that the Jury shall be satisfied from the whole case that the fact is proved, and if they are not so satisfied from the whole case, the party asserting the fact may be regarded as having failed to bear the burden of proof. If the facts are evenly balanced in your minds, if you cannot honestly and fairly, after reviewing the evidence, arrive at any conclusion upon this subject, then the benefit of that doubt must be resolved in favor of the defendant.

C. C. B.

page 17 }

* * * * *

STIPULATIONS.

It is stipulated by counsel for plaintiff and defendants that the following discourse took place when the jury, after considering their verdict for some time, returned to the Court room and propounded questions to the Court.

Tom Franklin, Foreman, first asked that the Court define the term "proximate cause," which the Court did without objections from any party.

Foreman Franklin then asked the Court whether, if a person violated the letter of the law, would negligence be presumed. Judge Bowles replied that negligence is never presumed but must be proved.

Counsel for plaintiff and defendants then approached the Bench, with consent of Judge Bowles, and plaintiff's counsel asked that Judge Bowles tell the jury that violation of a traffic regulation is negligence *per se* which, if it was an efficient contributing cause to the accident, was a basis for a plaintiff's verdict. The Court stated to counsel that the jury had been fully instructed and declined to further instruct the jury. Whereupon plaintiff excepted to the Court's ruling.

Thereafter, the Court stated to the jury that nothing he had said was intended to modify any of the written instructions previously given to the jury and that all the instructions given by the Court were to be followed by the jury in arriving at their verdict.

JOSEPH H. STRATTON
Of counsel for plaintiff.

ATWELL W. SOMERVILLE
Of counsel for defendant.

Filed July 23, 1958.

C. T. GUINN, Clerk
By MARGARET BROWN
Deputy Clerk.

page 18 }

* * * * *

August 20, 1958.

Bickers, Button and Stratton
Attorneys at Law
Culpeper, Virginia

Somerville and Moore
Attorneys at Law
City National Bank Building
Orange, Virginia

Re: Annie White *v.* Robert Claude Gore and Merchants Grocery Company, Inc.

Gentlemen:

This case is before the Court on motion of the plaintiff to

set aside the verdict of the jury because the Court, in response to a question by the foreman of the jury, told the jury that negligence is never presumed but must be proved and the refusal of the Court at the request of plaintiff Counsel to further instruct the jury that violation of a traffic regulation is negligence per se, which, if it was an efficient contributing cause of the accident, would be a basis for a verdict for the plaintiff. The Court refused the plaintiff's request and told the jury that nothing that had been said by the Court was intended to modify any of the written instructions and that all of the instructions were to be read and considered by the jury.

The attorneys have filed written Memorandums of Argument and the Court has also heard Oral arguments.

This incident of the trial has given me considerable concern because it is earnestly insisted by the plaintiff that the failure to further instruct the jury on negligence as a matter of law resulted in a verdict for the defendant. This may or may not be true, however, the jury was told in Instruction #3 that if they believed from the preponderance of the evidence that the defendant, Robert Claude Gore, failed to use ordinary care to perform any one or all of the duties mentioned in this Instruction, and by reason thereof, the truck he was driving struck the car in which the plaintiff was riding; and that if such negligence was the proximate cause of the plaintiff's injuries, then the plaintiff is entitled to recover.

page 19 } I cannot say from the record whether the jury found that the defendant failed to use ordinary care and neither can I say from the record that the jury believed that the negligence of the defendant was the proximate cause of the injuries to the plaintiff.

Instruction #6 told the jury that if "the driver of the automobile in which the plaintiff was riding, failed to keep a proper lookout for other vehicles as he drove his automobile from its position at the curb of Main Street, then he was negligent, and if you further believe that such negligence was the sole proximate cause of the collision, you should find a verdict in favor of the defendants, etc."

I cannot say from the record that the jury did not find that the driver of the plaintiff's automobile was negligent and that such negligence was the sole proximate cause of the injuries suffered by the plaintiff. I do not believe the Court is permitted to set aside the verdict of a jury merely on speculation as to what the jury may have done or what may have been in their minds. The Court must assume that the jury followed the written instructions as they were told to

do and that the verbal instruction in answer to the jury's question did not relieve them of so doing.

In view of this, I have reached the conclusion that the motion to set aside the verdict of the jury should be denied. The attorneys will prepare an appropriate order and present it for the signature of the Court.

With kind regards, I am

Very truly yours,

C. CHAMPION BOWLES.

CCB:vb

Filed Sept. 11, 1958.

C. T. GUINN, Clerk
By MARGARET BROWN, D. C.

page 20 }

• • • • •

August 25, 1958.

Bickers, Button and Stratton
Attorneys at Law
Culpeper, Virginia

Somerville and Moore
Attorneys at Law
City National Bank Building
Orange, Virginia

Re: Annie White *v.* Robert Claude Gore and Merchants Grocery Company, Inc.

Gentlemen:

I thank you for your letter dated August 22, 1958 in which you state that you are concerned by my failure to discuss in my letter of August 20th what you consider the chief point made in your brief and oral argument, that is, that the verbal statement made by the Court to the jury in response to the question from the Foreman of the jury was error and was in conflict with one of the written instructions. Your con-

cern about this is understandable because I did discuss other matters, however, the letter was not intended as a written opinion, but was to advise you of my conclusion.

The point made by you and not expressly referred to in my letter was given serious consideration. I do not have before me a copy of the agreed stipulation, because it has been returned to the Clerk with the other papers in the suit, however, I believe this will show that the question asked by the Foreman of the jury was very general as argued by counsel for the defendants. The inquiry did not concern the violation of a particular statute, but was to the effect that if a person violated the law, would negligence be presumed and the reply was that negligence would not be presumed, but must be proved. The jury was then told that this was not to modify in any way the written instructions; that the written instruction must be followed to the letter. I thought then, and I think now, that this was and is a correct statement of the law.

page 21 } You feel this was error and the jury should have been instructed further on negligence to tell then that if a person violated a statute this was negligence *per se*. Such would not have been responsive to the question and the defendants would have had every right, as they did, to object, because Instruction 3 had fully and fairly given the jury the law on the plaintiff's theory of the case. This instruction told the jury the duties imposed by the statute law on the operator of a motor vehicle and if the defendants failed to use ordinary care to perform any one or all of the duties mentioned in the instruction and this was the proximate cause of the plaintiff's injuries, then the plaintiff is entitled to recover. This was the basis of the plaintiff's case and correctly stated the law. The Court cannot conceive that to tell the jury that negligence cannot be presumed but must be proved is in conflict with this instruction. It would have, I believe, been error to have told them that if a person violated the law that he would be guilty of negligence per se. This is true, because the Court of Appeals has stated the rule many times to be that where the violation of a statute or ordinance is the *proximate cause* of the injury, or *contributed thereto*, this imposes liability. In the case of *Wyatt v. Chesapeake etc., Telephone Company*, 158 V. 470, 163 S. E. 370, the Court says:

"The element of proximate cause must be established and will not necessarily be presumed from the fact that an ordinance or statute has been violated."

Therefore, if the question had been more specific and pertained to the violation of a statute, the Court would not have been justified in telling the jury that negligence would be presumed and nothing further could have been properly told the jury, except perhaps to have re-stated Instruction 3, because proximate cause must be proved and is not presumed.

The violation of a statute or ordinance may be negligence per se, but this is not actionable negligence unless such negligence was the *proximate cause* or *efficiently contributed to* the injury, So through abundance of caution, I called their attention to all of the written instructions and this was the last thing the jury was told, that is, to follow the written instructions to the letter. It must be presumed that they did as they were told to do.

page 22 } Therefore, when the jury returned to their room and read the written instructions and came to instruction 3, having in mind that negligence would not be presumed, they were clearly told that they could find a verdict for the plaintiff if they believed from the preponderance of the evidence that the defendant, Robert Claude Gore, failed to use ordinary care to perform any one or all of the duties mentioned in this instruction, and by reason thereof, the truck he was driving *strick* the car in which the plaintiff was riding; and such negligence was the proximate cause of plaintiff's injuries, then the plaintiff would be entitled to recover. There was no objection made to the Court's explanation of "proximate cause," although there may well have been.

If the jury believed the defendants violated any of the duties imposed upon them by the statute and such violation was the proximate cause of the injuries, how could there be any necessity for presuming negligence to find a verdict for the plaintiff or how was the verbal answer of the Court in any way in conflict with this instruction If the Court had told the jury under the circumstances, that negligence would be presumed or simply stated that the violation of a statute is negligence per se and the jury had returned a verdict in favor of the plaintiff it would have been error because such verdict could have been reached without *determing* that the negligence of the defendants was the proximate cause or efficiently contributed to the injury.

Presumption of negligence was not an issue in the case and the question by the jury and the Court's reply did not made it an issue. There was no necessity to presume negligence to find a verdict for the plaintiff and the verbal answer of the Court was not in conflict with the written instructions. If, as before stated, the plaintiff's request for an additional

instruction had been granted, the only proper one which could have been given would be a re-statement of the law in instruction 3. The jury already had the law of the case set forth in this instruction and was told to follow all of the instructions. There is no reason to think that the jury was misled by the answer of the Court to them regarding negligence as the answer was just as applicable to the defendants and to the plaintiff.

I believe this brings us to the points discussed in my letter of August 20th. Here I sit at home on my vacation without the papers in the case and the benefit of a single law book except the Code and the rain is pouring on the outside, trying as best I can to give you my reasons for ruling extemporaneously on a complicated point of law. Is there any wonder that I may be perplexed and troubled?

page 23 } I hope my thinking is straight and I believe it is, if not, may you and the good Lord forgive and the Supreme Court correct.

With warm personal regards, I am

Sincerely,

C. CHAMPION BOWLES.

CCB:vb

Filed Sept. 11, 1958.

C. T. GUINN, Clerk
By MARGARET BROWN, D. C.

page 24 }

• • • • •

FINAL ORDER.

On July 1, 1958, came the parties plaintiff and defendant in proper person, all duly represented by counsel, and all parties by counsel having announced that they were ready for trial, and issue being joined in the case, thereupon came a jury of thirteen (13) who had been selected, drawn and impaneled as prescribed by law and who were examined by the Court upon their *voir dire* and found to be duly qualified in all respects to serve as jurors in this case; and thereupon counsel for the parties, beginning with counsel for the plaintiff, alternately struck off one (1) from the thirteen (13)

so chosen and qualified until the number was reduced to the following seven (7) jurors, to-wit: Collie Curtis, Isaiah Colbert, Thomas E. Franklin, Chester R. Lucas, William R. Walker, Marvin Ankers and Garnett N. Crane, against whom no legal objection was made or found and who were duly sworn to well and truly try the issues joined and a true verdict render according to the law and the evidence.

Thereupon the jury heard the evidence for the plaintiff and the evidence for the defendants, and when both the plaintiff and the defendants had rested their cases, the Court retired to chambers with counsel to consider instructions, and after the Court had considered the instructions, the jury returned to their jurybox and received the instructions of the Court and heard the argument of counsel. Upon conclusion of the argument of counsel, the jury retired to their room to consider of their verdict, and after awhile returned into open court and the foreman of the jury asked certain questions of the Court which were answered by the Court, and counsel for the plaintiff requested the Court to further instruct the jury, which request the Court denied, and counsel for the plaintiff objected and excepted to the reply made by the Court to a question propounded by the foreman of the jury and to the Court's refusal to further instruct the jury, and the jury retired to their room to further consider of their verdict, and after a time returned into open court and rendered their verdict in the following words:

page 25

"We, the jury, find a verdict in favor of the defendants, Robert Claude Gore and Merchants Grocery Company, Incorporated.

/s/ THOMAS E. FRANKLIN
Foreman.

July 1, 1958."

Thereupon the Court ordered the verdict to be recorded, and the jury was discharged and the plaintiff by counsel moved the Court to set aside the verdict on the ground that the verdict was contrary to the law and the evidence and on the further ground that the Court had erred in replying to a question propounded by the foreman of the jury and in refusing to further instruct the jury, and the Court took the motion of the plaintiff under advisement and after receiving and considering the written memoranda filed by the plaintiff and the defendants and after hearing oral argument by counsel for the plaintiff and counsel for the defend-

ants, the Court overruled and denied the motion of the plaintiff to set aside the verdict of the jury.

WHEREUPON and in accordance with the jury's verdict, the Court doth order that the plaintiff take nothing of the defendants and that the defendants recover their page 26 } costs in this action expended, to which action of the Court the plaintiff by counsel duly objected and excepted on the grounds stated in written memoranda filed with the Court to the effect that the verdict of the jury in this case should have been set aside because it was contrary to the law and the evidence and because the Court erred in its answer given to a question propounded by the foreman of the jury and the failure of the Court, upon request timely made, to correct the answer so given.

Enter.

C. CHAMPION BOWLES, Judge.

Date: 9/11/58.

* * * * *

page 27 } * * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The plaintiff, Anna White, hereby gives notice that she will appeal this case.

ASSIGNMENTS OF ERROR.

1. The verdict was contrary to the law and the evidence.
2. The Court erred in replying to a question propounded by the jury.
3. The Court erred in refusing the timely request of the plaintiff to correct the erroneous oral instruction given the jury by a further oral instruction.

ANNA WHITE
By JOSEPH H. STRATTON
Of Counsel.

Filed Nov. 5, 1958.

C. T. GUINN, Clerk
By MARGARET BROWN, D. C.

Horace Johnson.

* * * * *

page 5 }

* * * * *

HORACE JOHNSON,
was called as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Button:

Q. Please state your name, age and occupation.

A. H. W. Johnson, 54; Culpeper Police Department.

Q. Did you have occasion on Saturday, January the 21st, 1956, to investigate an accident between the car of Mr. White and a truck of the Merchants Grocery Company?

A. I did.

Q. Please tell the jury where the accident occurred and what your investigation disclosed.

A. This accident occurred at 12:20 p. m. on January the 21st, 1956, at Main and Steven Street. Mr. Gore
page 6 } was operating an International truck owned by the Culpeper Grocery Company.

Q. You mean the Merchants Grocery Company?

A. I mean the Merchants Grocery Company. Mr. White was operating a car owned by his brother, F. L. White, White Shop. Mr. White was pulling away from the curb along in front of the hotel. Mr. Gore was driving north on Main Street making a left turn into Steven Street.

The Court: You mean that was north, or south?

The Witness: Driving south, excuse me.

The Court: We will correct that.

The Witness: The width of Steven Street is 24 feet. Mr. White was 10 feet and a half to the right of the center of the white line in the road. He was 26 feet through Steven Street on North Main side, that is, coming through Steven Street. It was two feet through the intersection. He had approximately four feet of skid marks on all four wheels of Mr. White's car.

Mr. Gore's right front wheel was 27 feet from the west side of Main Street. That is the west side, his front wheel. His left front wheel was 29 feet to the west side of Main Street. Mr. Gore was struck in the left front fender, bumper, just

under the headlight. There were about one foot of skid marks on the road. Truck skidded to left of the road after being struck on or in the northeast direction. The truck was carried around approximately one foot.

page 7 } Do you want the damage of the truck?

By Mr. Button:

Q. Yes.

A. The bumper and the tip end of the grille—

Q. That is not necessary. I will let Mr. Somerville ask that.

A. Mr. White was struck in the left front fender, headlight. They were about—the same thing I gave you about the—left front fender, tip end of grille, headlights, splash pan, the right side of the windshield were broken, radiator busted.

Q. I understood you to say that Steven Street was 24 feet wide.

A. That's correct.

Q. And I understood you to say that Mr. White's car was 26 feet from the intersection. What do you mean by that, sir?

A. Well, he was passed over the intersection.

Q. What is "the intersection," the middle of Steven Street, or what do you mean?

A. Intersection? See, the truck, which was operated by Mr. Gore, was going south on Main Street and making a left turn. He was cutting the corner.

Q. Mr. Gore was cutting the corner?

A. That's right. Mr. White's car was approximately two feet from the skid marks on the road where it had came to rest and where the truck hit it and skidded around,

page 8 } about 26 feet, which would have been about 2 feet over a truck going in on an angle.

Q. Where was the accident with reference to the north curb line of Steven Street or the north curb line is 24 feet north of the south curb line of Steven Street, 24 feet away?

A. Yes, sir.

Q. Where did the accident occur with reference to that north curb line?

A. About two feet north of the curb line.

Q. So the accident occurred about two feet north of Steven Street curb line, is that correct, sir?

A. That is correct.

Mr. Button: O. K., sir. Witness is with you.

Horace Johnson.

CROSS EXAMINATION.

By Mr. Moore:

Q. Sergeant Johnson, I believe you said this was an International truck, is that correct?

A. That's correct.

Q. How big a truck was it?

A. I would say—I don't know the ton capacity of it. I'd say about a two-and-a-half-ton truck.

Q. Two-and-a-half-ton?

A. Yes.

Q. Closed body?

A. Yes, closed body.

page 9 } Q. Now, you have stated that the White car was about 10 and a half feet from the center line of Main Street?

A. That's correct.

Q. As far as you can determine, is that where the point of impact was?

A. Yes.

Q. Point of impact was 10½ feet from the center line of Main Street?

A. That is right. That's correct, 26 feet through the intersection of Steven Street.

Q. Now, a substantial portion of the White car was still in the intersection itself, was it not?

A. The back part of it would be. The front part of it was over through the intersection, the north side of Steven Street.

Q. That was two feet, I believe, is that right?

A. Two feet wheel track. That would probably throw the front end of the car maybe a little further measuring—I was measuring from the track.

Q. Now, you say the car laid down four feet of brake marks, is that right?

A. That's right, on all four wheels.

Q. All four wheels? And I believe you also mentioned a mark that was made by the truck?

A. That was approximately a foot, skidded kind

page 10 } of in a northeast direction, I would say.

Q. Were those marks caused after the impact?

A. That's correct.

Q. Was the truck actually pushed by the impact a foot?

A. Carried to the left a foot, yes, sir.

Q. And this was a two-and-a-half-ton truck?

Horace Johnson.

A. That's it. I would say. Now, definitely, I don't know, actually.

Q. But that was your best judgment by looking at it?

A. Yes, I would say so.

Q. No evidence that the car was pushed anywhere, was there?

A. No, no more than where it went with the truck.

Q. Now, where was the impact, primarily on the front of the truck?

A. Mr. Gore was struck in the left front fender and bumper just under the headlight.

Q. That is where the main impact was, right under the headlight, sir?

A. Right under the headlight, yes.

Q. What about the White car? Where was the main point of impact on that?

A. Left front fender, headlight, the tip end of grille, the splash pan, right side of the windshield broken and the radiator also.

page 11 } Q. Was the main point of impact on the car also under the left headlight?

A. Same place, yes.

Q. In other words, neither vehicle was struck in the side?

A. No.

Q. Directly into the front in both vehicles?

A. Onto the left fenders of both of them, left headlight, left front end.

Q. Did you examine the signal lights on the truck of Merchants Grocery?

A. I don't recall. I don't have any notes on it, and I wouldn't like to say.

Q. Do you recall what type of signal lights the truck has?

A. No, I don't.

Mr. Moore: That's all.

RE-DIRECT EXAMINATION.

By Mr. Button:

Q. One further question. Did you make measurements of the width of Main Street?

A. Yes, sir; the width of Main Street at that point on that side is 46 feet. On the south side of Steven Street there is an offset there of approximately four feet or two feet.

Joseph I. Brown.

Mr. Button: That's all, sir.

(Witness excused.)

* * * * *

page 12 } JOSEPH I. BROWN,

was called as a witness on behalf of the plaintiff, and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Button:

Q. Please state your name, age, and occupation.

A. Joseph I. Brown, age 31; funeral director.

Q. Did you have occasion on the 21st day of January 1956 to see an accident between a car of Mr. White's and Merchants Grocery Company truck?

A. Yes, sir.

Q. Please state to the court where you were.

A. I was on the west side of Main Street across from the hotel standing on the sidewalk at the time, and I was facing the hotel. I saw a car—I didn't realize at the time who it was—I saw a car pull up in front of the hotel. Then I saw a car moving gradually off out from the sidewalk. I saw a truck coming up going south on Main, and the car proceeded to pull on in the street, and the truck proceeded to the center of the street pulling over to the center line as if he was getting ready to make a turn, and the truck was moving very slowly, and Mr. White at the time was moving slowly also. As they got into the intersection the truck turned and they collided.

page 13 } Q. When you first saw Mr. White's car, the car you later found out to be Mr. White's car, it was in front of the hotel?

A. Yes, sir.

Q. And it was proceeding in a north direction in front of the hotel?

A. Yes, sir.

Q. And it proceeded to go into the intersection, across Steven Street, I believe is correct, isn't it?

A. That is correct; he was pulling away from the hotel. I mean, he was moving gradually from the front of the hotel.

Q. But when you first saw it the car was in motion?

Joseph I. Brown.

A. No, sir, I saw this car start.

Q. You saw it start?

A. I saw it sitting there, and then it moved off.

Q. When it was first parked, when it was at rest, it was up in front of the hotel?

A. Yes.

Q. Now, where with reference to the intersection of Main and Steven Street did the impact occur?

A. I am not clear on that. You mean from the—

Q. Was it on the north side of the intersection, or south side, or what side of the intersection?

A. It was to the north side.

Q. North side of the intersection of Steven and Main Street?

page 14 } A. Yes.

Q. Would you be able to estimate how far Mrs. White's car had gotten at the time it was struck?

A. It was well into the intersection. It was into the intersection of Steven Street and Main.

Q. You mean that the front of the car had gotten out of Steven Street?

A. Yes, sir, gotten into the intersection, yes.

Q. I am not absolutely positive, Mr. Brown, as to what you mean by "intersection." Would you draw something rough there? The street that goes down beside the hotel is named Steven Street?

A. Steven Street, yes. (Drawing.)

Q. Now, would you place there approximately with reference to the north curb line of Steven Street where the impact occurred?

A. Well, this, we will say, is the center of the street here. The truck had—

Q. All right, sir, now would you show that to the jury, explain it to them?

The Court: Have you seen it, Mr. Somerville?

Mr. Somerville: No. I will just look at it.

The Witness: I drew this small one here.

The Court: Just stand right back there and hold it up so the jury can see it. Do you want to explain any-

page 15 } thing about it?

The Witness: This is the hotel corner, this is the parking lot, this being North Main this way, South Main here.

Joseph I. Brown.

By Mr. Button:

Q. And this is Steven Street?

A. Steven Street, yes, sir.

Q. And this is the north curb line of Steven Street?

A. Yes, sir.

Q. And you place the truck as just close to the north curb line of Steven Street?

A. Right in that vicinity, yes, sir.

Q. Was the truck of the Merchants Grocery Company stopped and at rest at the time of the impact, or was it moving?

A. No, sir, they were both moving.

Q. Both moving?

A. Yes.

Q. So the truck was cutting to its left and was still moving at the time of the impact?

A. Yes, sir.

Q. Was the traffic heavy on the street at that time?

A. Yes, sir, it was right much traffic, and it was on a Saturday. I recall it was pretty close to lunch time. I am not certain of the time, but I know it was in that vicinity.

Q. After you saw the collision did you go to the scene?

A. Yes, sir.

page 16 } Q. What did you find, sir?

A. I found Mrs. White, I recognized her at the time there, and I saw that she was hurt, and she had, as I recall it, a cut on the forehead. I couldn't tell you exactly where, but it was a cut on her forehead. I applied pressure and stopped the bleeding on the forehead, and in the meantime someone called the rescue squad. They came and removed Mrs. White to Dr. Burnette's office.

Q. You are a member of the rescue squad?

A. Yes, sir.

Q. You have had experience at scene of accidents?

A. Yes.

Q. Did you notice the windshield?

A. Yes, sir.

Q. What did you find the windshield was like?

A. Mrs. White, on her side, on the passenger side of the car, in other words, on the right side, we will say, the windshield was broken in the car.

Q. How do you mean, broken? I mean, describe it.

A. Broken, shattered.

Q. Was it the same way most safety glass looks after a blow?

Joseph I. Brown.

A. Yes.

Q. Was Mrs. White conscious after you first got there?

A. Groggy, as I recall. She was down in the
page 17 } seat of the car, but I don't recall her as being
unconscious, no, sir.

Q. She was lying down in the seat?

A. Just slumped down. I mean, she had slipped down on the seat more or less.

Q. Going back to the truck, the truck in making this turn, had it reached the center of Steven Street before making its turn, or was it cutting the corner, so to speak?

A. No, it was in the intersection. I mean, he was—I wouldn't say that he was cutting short, if that's what you are speaking of, no, sir.

Mr. Button: All right, witness is with you.

Mr. Moore: May I see that drawing, please?

Did you want to introduce this as an exhibit?

Mr. Button: Yes, I will.

(The drawing above referred to was received in evidence as Plaintiff's Exhibit No. 1.)

CROSS EXAMINATION.

By Mr. Moore:

Q. Mr. Brown, what about the speed of the truck as it came up to the intersection? Do you remember anything about whether it was going fast or slow?

A. It was slow.

Q. Moving slowly?

A. Yes.

Q. Would you say very slowly?

page 18 } A. Yes. As a matter of fact, it looked like it
was almost to a stop; I mean, moving so gradually
that it was almost to a complete stop.

Mr. Moore: Your witness.

Mr. Button: That's all.

* * * * *

page 62 }

* * * * *

WINFRED G. WHITE,

was called as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

page 63 } By Mr. Button:

Q. Please state your name.

A. Winfred G. White.

Q. Your age?

A. Sixty-three.

Q. Your place of residence?

A. 605 South Macoy Avenue, Culpeper, Virginia.

Q. What relation are you to Anna White?

A. Husband.

Q. Were you involved in an automobile accident in January 1956?

A. Yes, sir.

Q. Please state to this jury the circumstances and how it occurred.

A. My wife and I had gone down to the hotel for lunch and we parked in front of the hotel headed north on Main Street. Had our lunch, and we came out, got in the car and started to proceed to the store. I looked back—

Q. Where was your car parked?

A. Parked in front of the hotel, I said.

Q. All right.

A. I looked back, and I saw a car coming in the same block I was in, so I waited until he passed. I saw another one two blocks back, so after the first one, backed, pulled out in the line of traffic and proceeded on to the store,

page 64 } and after I had gone past the intersection of Steven Street this truck cut across in front of me, hit my left front fender very forcibly, threw my wife's head through the windshield.

Q. Was the truck moving at the time of the collision?

A. Yes, sir.

Q. You were proceeding north on Main Street?

A. Yes, sir.

Q. And Steven Street runs perpendicular to Main east, does it not, sir?

A. Yes.

Q. How far across Steven Street had you gotten at the time of the impact?

A. I was completely past Steven Street. The front end of my car was right at the intersection of the walk on Main Street and past the intersection of Steven.

Winfred G. White.

Q. Now, there is a sidewalk, then, on the north side of Steven Street, is that right?

A. Yes, sir.

Q. And the front of your car was even with the sidewalk, is that correct?

A. Yes, probably a little past the sidewalk of Steven Street.

Q. Little past the sidewalk? What happened to Mrs. White when the accident occurred, Mr. White?

A. Oh, she was unconscious for a minute or two.

page 65 } Q. What part of her body was struck, Mr. White?

A. Her head. She was speaking to some people on the walk, and the side of her head hit the windshield.

Q. What happened to the windshield?

A. Well, her head went right through the windshield, shape of her head, looked like.

Q. Did it go all the way through, or just shattered?

A. No, it didn't, it only shattered. Those windshields don't the glass break completely out, just shattered in the shape of her head.

Q. You say that she was unconscious for some minutes?

A. Yes, sir.

Q. Where was she carried after that?

A. Well, someone put in a rescue squad call. She was carried over to Dr. Burnette's office.

Q. How much time was it estimated elapsed from the time you called until the rescue squad got there?

A. Well, it was negligent, I guess, because time seems awful long.

* * * * *

page 75 }

* * * * *

CROSS EXAMINATION.

By Mr. Somerville:

Q. Mr. White, I'd like to go back to the accident itself for a few moments. The street along there in front of the Lord Culpeper Hotel and on the right-hand side as you are coming north on Main Street, how close to the corner were you parked?

Winfred G. White.

A. My car was probably third car from the corner.
Q. Third car?
A. Um-hum. I mean in distance.
Q. Were there any cars in front of you?
A. No.
Q. There was no car parked between you and the corner?
A. No.
Q. Now, you had looked back and there was a car coming and you let that go past?
page 76 } A. Yes.
Q. And there was another car some distance back?
A. Two more back.
Q. And you determined that it was all right for you to go ahead and you went ahead?
A. Yes.
Q. As you drove forward did you drive on through those parking places in front of you, or did you pull right on out into the traffic?
A. No, pulled right out into the traffic.
Q. Pulled right on into the traffic, and how close from the center line did you get?
A. I was about midway between the center line and the curb.
Q. About midway of that line?
A. Yes.
Q. But in coming from your parking area you made a sharp turn out to your left?
A. Yes, sir.
Q. To get into the travelling lane?
A. Yes, sir.
Q. And then turned right again and went on forward?
A. Straightened up, yes.
Q. Went on straight up the street?
A. Yes.
page 77 } Q. Now, before you pulled out into the highway there, main street, did you give a signal?
A. Yes, sir.
Q. What kind of signal did you give?
A. Hand signal.
Q. You gave a left-hand signal?
A. (Nodding affirmatively.)
Q. Before pulling out?
A. (Nodding affirmatively.)

Winfred G. White.

Q. Now, what did you observe in front of you in the way of traffic?
A. Nothing.
Q. Nothing?
A. No, except this car that was passing on by me.
Q. That was going on north?
A. Yes.
Q. Was there any other traffic in that block immediately in front of you?
A. I never noticed any.
Q. You didn't see any?
A. (Shaking head negatively.)
Q. You didn't see the truck?
A. No. I didn't see the truck until it got right on me.
Q. You didn't see the truck until it was right on you?
A. No.
page 78 } Q. What size truck was this?
A. Pretty good sized truck. Had a covered body on it.
Q. About a two-and-a-half-ton?
A. Something like that, one of Merchants Grocery trucks that they deliver with. It's a big truck. It wasn't any pick-up.
Q. And you didn't see it until it was right on you?
A. Didn't see it until it cut right in front of me.
Q. How far in front of you?
A. It was right on the fender when I saw it.
Q. Well, pick out an object between you and the wall there.
A. When I saw the truck I'd say it was almost touching my fender.
Q. So then for practical purposes we can say that it was just before touching?
A. I guess same time of the impact when I saw it.
Q. And you had not seen the truck before that?
A. No, sir.
Q. Do you know why you hadn't seen it, Mr. White?
A. Wasn't there if I hadn't seen it.
Q. Well, you didn't see it until it was just about touching.
A. It was just about to the—well, I will say I probably saw it a second or so before and he slapped his
page 79 } brakes on and I slapped mine on, and it was right on me.
Q. That's what I want to get now, how far away from

Winfred G. White.

you this truck was when you first saw it. A minute ago I believe you said it was almost touching your fender.

A. I would say I saw it just as it cut over the line into my lane and hit me.

Q. And how far away from you in front of you?

A. It could have been from here to that post before it hit me.

Q. Well, would you say that is six feet?

A. No, it wasn't six feet away.

Q. Wasn't six feet away.

A. No.

Q. Less than six feet?

A. I'd say less than six feet.

Q. And you hadn't seen this truck until it was less than six feet away from you?

A. Right.

Q. And you were travelling north on Main Street on your side of the street?

A. Right.

Q. And he was coming south?

A. Right.

Q. Well, was the reason you hadn't seen it because you weren't looking or because you looked and didn't see?

page 80

A. No. My lane was clear all the way through. I looked at my lane. The truck didn't get over in my lane until after I had passed the intersection there. The front part of my car was at least three feet past the intersection of the street.

Q. I believe the officer stated that the point of impact was about 10 1/2 feet over in your lane from the center line. Would that be about right?

A. Ten and a half feet from where?

Q. From the center line measured over into your lane.

A. Of what street?

Mr. Button: Of what street?

By Mr. Somerville:

Q. On Main Street.

A. Ten and a half feet from Main Street?

Q. About ten and a half feet from the center line on Main Street over into your lane of traffic was where the officer put the point of impact. Would that be correct?

A. You mean from Steven Street, don't you?

Winfred G. White.

Q. No, sir, I mean from Main Street.

A. Ten and a half feet from the center line of Main Street?

Q. That is right.

A. That my car was over in here ten and a half feet?

Q. Point of impact, according to the officer's testimony, was.

page 81 } A. Well, it could have been close to that, because when the car hit me I was almost to the—wasn't very far from the curb on the right-hand side.

Q. You weren't far from the curb?

A. Wasn't too far from the curb on the right-hand side.

Q. Well, when you saw this truck come, Mr. White, what was the speed?

A. I couldn't tell you. I didn't see it until it was almost right on the car. I just couldn't imagine where in the world it came from.

Q. Was it travelling slowly or rapidly?

A. I don't think it was travelling very slowly. The damage it did, couldn't have been travelling very slowly, because I had only gone about 25 or 30 feet, little more than that, probably.

Q. Well, are you in a position to give us any kind of an estimate of the speed of the truck?

A. I wouldn't know what the speed of it was, but I think it was travelling probably 25 or 30 miles, I will say.

Q. Twenty-five or thirty miles an hour?

A. (Nodding affirmatively.)

Q. At the time that it struck you?

A. (Nodding affirmatively.)

Q. Did it push your car over, or did you push him over?

page 82 } A. Well, it kind of bucked. Both of them bucked.

Q. Was his truck pushed over to the center line a little?

A. I don't remember. I was so upset at the present time my thoughts was on Mrs. White, and I didn't remember anything, the other part of it. But I do know some ladies came over from the curb on the side with handkerchiefs to assist Mrs. White.

* * * * *

page 106 }

* * * * *

ROBERT CLAUDE GORE,
was called as a witness on behalf of the defendant and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Moore:
Q. State your name, please.
A. Robert Gore.
Q. I believe you are a defendant in this case?
A. That's right.
Q. On January 21st I believe you were driving a truck of the Merchants Grocery Company on Main Street, is that right?
A. That's right.
Q. What type of truck was this?
A. This was an International, closed body, two-and-a-half-ton truck.
Q. Two-and-a-half-ton truck?
page 107 } A. That's right.
Q. Where were you going?
A. I was going to the Merchants Grocery, back to the office.
Q. You were proceeding south on Main Street, is that right?
A. Yes, sir, thats' right.
Q. Did you intend to make a left turn?
A. Yes, sir.
Q. Into Steven Street?
A. That's right.
Q. As you proceeded along Main Street, what did you do prior to making this turn?
A. Well, as I came along in front of the theater, which is just about a block or almost—well, I say the theater is approximately a block from the intersection of where I was going to turn in, I cut my signal lights on. As I went on up the block a little bit, there was a car coming down the other block. I was meeting a car coming down, going north on Main Street. I slowed up for this car to come on through the intersection before I entered the intersection, and when I got in the intersection I looked up the street, and there was nothing coming within—moving within a block and a half. About a block and a half up there was another car coming down.
Q. Now, was this prior to the time you crossed
page 108 } the white line in the middle of the street that you looked up the street?

Robert Claude Gore.

A. Yes, before I crossed the white line.

Q. Well, now, as you approached the intersection, what was your speed?

A. Maybe as much as five miles an hour. I was rolling very slow, because I slowed back for this car to come through the intersection before I got in the intersection.

Q. Mr. Gore, I believe you were sick this morning, is that right?

A. Yes, sir.

Q. Does that affect your voice?

A. That's right.

Q. You can't talk?

A. I can't breathe through my nose. I have to breathe and talk both through my mouth.

Q. Now, I believe you told us that you came up to this intersection at a speed of about five miles an hour?

A. That is true.

Q. Did you look up the street?

A. I certainly did, yes, sir.

Q. Did you see anything?

A. There was nothing moving after this car had crossed on over the intersection before I got in it. There was nothing else that I saw moving in that block.

page 109 } Q. Then what did you do?

A. I then proceeded to turn on in the street and went to the Merchants Grocery, and as I got, oh, I would say at least six or eight feet across the white line I glanced in—as I started to turn I glanced in the street to see if there was anything coming out of the street, and I looked back up the street, and as I looked back Mr. White had left the curb coming right straight to me. I put on my brake and stopped and set there and waited for Mr. White to hit the truck. Wasn't anything I could do; couldn't back up, couldn't cut the other way, was moving too slow to do anything but stop.

Q. And you brought your truck to a complete stop?

A. I brought my truck to a complete stop.

Q. You saw Mr. White coming from the curb?

A. I saw Mr. White coming from the curb, and I looked up the street and saw nothing coming, except—

Q. And as I understand, he was looking over his left shoulder?

A. He was looking to see if anything was coming down the street when I first observed him.

Q. He was not looking in your direction?

Robert Claude Gore.

A. No, sir, he was not looking in my direction.
Q. Did he ever look in your direction?
A. Not until he had almost hit it.
Q. Did you see him turn his head?
page 110 } A. Well, no, I didn't see him turn his head, because I jammed the brakes on and stopped. That's the only thing I figured I could do. I couldn't cut back out of his way, I was moving too slow. I couldn't have gotten out of the way, anyway.
Q. Did you see Mr. White put on his brakes?
A. He did put on his brakes about the time he hit it.
Q. About the time he hit it?
A. Yes, sir.
Q. Now, was the truck driven any distance by the impact?
A. As well as I remember, that day Mr. Johnson measured it 18 inches where he pushed the truck around down the street, the front end.
Q. That was back to the north he pushed the truck?
A. That was back to the north. Mr. Johnson measured it. He said approximately a foot this morning, but if I am not mistaken, the tape line said 18 inches when he measured it. That's been about two and a half years. I don't remember exactly.
Q. Were there any marks on the road to indicate where the truck had been pushed?
A. Yes, sir, marks on the road.
Q. Were you in the position of actually waiting for the White car to hit you?
A. I was.
Q. How far across the northbound lane of
page 111 } Main Street had you gotten before the collision occurred?
A. I would say about 10 feet. I don't remember the measurements. I didn't catch the tape line on all of them. Mr. Johnson and Mr. White that used to do tree surgery here was doing the measuring. I would say about 10 feet across the white line when he hit me.
Q. Now, Mr. Gore, you stated previously that you put your signal lights on about a block away from this intersection?
A. About a block away, that is true.
Q. And did you leave them on?
A. Yes, sir.
Q. Were they on at the time of the impact?
A. They was on at the time of the impact.
Q. Were they on after the impact?

Robert Claude Gore.

A. They was on when Mr. Johnson told me to move the truck off on the side of the street, they were still on.

Q. They were still blinking at that time?

A. Yes, sir.

Q. Was there anything on the truck, mud or any other similar substance which would have obscured the signal light?

A. No, sir, not for Mr. White. It set up on the fender with a big red light up on top of the fender.

Q. This was a red signal light?

A. Red signal light. Red on the back and red one on the front side.

page 112 } Mr. Moore: Your witness.

CROSS EXAMINATION.

By Mr. Button:

Q. Mr. Gore, you were making that turn into Steven Street from Main Street?

A. Yes, sir.

Q. Did you go up to the center of Steven Street and make the turn?

A. Not quite, no, sir.

Q. In other words, you cut the corner?

A. Well, I wouldn't say I was cutting with the truck, because if you go up to the center of Steven Street before you start turning off of Main Street, you are going to have to back up in the highway to make that turn with a two-and-a-half-ton truck.

Q. But you did not actually go up to the center?

A. I didn't cross over the center line and then turn in, no, sir.

Q. Did you blow your horn?

A. No, sir.

Mr. Button: That's all, sir.

Mr. Moore: All right, come around here, Mr. Gore.

(Witness excused.)

* * * * *

page 113 }

* * * * *

ANNA WHITE,

was called as an adverse witness on behalf of the defendants and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Somerville:

Q. Mrs. White, I am Atwell Somerville, and I would like to ask you a few questions about the accident. First of all, if you will speak so that Judge Bowles can hear you, then every one of us here can hear you.

I believe the evidence here is that at the time of the accident you were 56 years of age?

A. Yes.

Q. Now, I'd like to ask you to recollect, if you will, the events of the day of the accident. I believe you and your husband were both working at the store?

A. Yes.

Q. And you went down to the hotel to have some lunch?

A. Yes.

Q. And after lunch you came out and got into your car?

A. Yes.

Q. Where was the car parked?

A. Right in front of the hotel.

page 114 } Q. In front of the hotel?

A. Uh-hum.

Q. On which side?

A. On the hotel side.

Q. On the hotel side?

A. We went up the street and turned and came down and parked.

Q. In other words, your car would have been facing this way?

A. Yes.

Q. As you came out and got in the car to come away, were there any cars parked in front of you?

A. No, sir.

Q. No cars in front?

A. No.

Q. And how close to the corner were you?

A. About like that, I reckon.

Q. You mean, from here to the—

A. No, that railing. Maybe not quite that far.

Q. Well, now, let's see, from you—

A. From this rail.

Q. Oh, from here.

Anna White.

A. Like the car was parked here.
Q. From this corner post here up to this?
A. Yes.
page 115 } Q. Up to this corner post here?
A. May not have been that far.
Q. So that it was up very close to the corner?
A. Yes.

The Court: For the record you better estimate.
Mr. Somerville: For the record, Senator Button, what would you estimate that?
Mr. Button: I don't know, 12 feet, 15 feet, 10 feet. I don't know.
Mr. Somerville: I would say ten feet at a maximum.

By Mr. Somerville:
Q. About ten feet from the corner. And you got in the car and sat next to Mr. White on the right?
A. On the right.
Q. And he got under the wheel?
A. Yes, sir.
Q. And then you all pulled out from there and shortly afterwards the accident happened?
A. (Nodding affirmatively.)
Q. Now, did you see a car pass you all going north shortly before you—
A. Mr. White had to wait for a car to go by before he pulled out.
Q. Had to wait for a car to go by?
A. Yes.
page 116 } Q. And then atfer that car went by you pulled on out?
A. Yes.
Q. Did he make a sharp left turn out into the lane of travel?
A. No, he didn't.
Q. Or just gradually eased out?
A. No, eased right out, didn't have to make a turn.
Q. Just almost went straight forward?
A. Um-hum.
Q. Veering a little bit?
A. Of course, there were cars on the opposite street, he had to—
Q. —get around?
A. —get around those.

Anna White.

Q. Now, when did you first see the truck that Mr. Gore was driving?
A. I didn't see the truck.
Q. You didn't see the truck?
A. No, sir.
Q. So you didn't see his signals?
A. I didn't know anything until I opened my eyes and glass was in the front of my face.
Q. The last thing you recall?
A. I was looking across the street at a lady coming up the street.

page 117 } Q. Looking to your left, this was?
A. I was looking to my right.

Q. You were looking over towards the sidewalk?
A. Yes.
Q. To the right?
A. Yes.
Q. That was a friend of yours?
A. I don't know who it was. I just remember seeing this woman.

The Court: What kind of hat she had on?
The Witness: I remembered at the time what kind of coat she had on, but I have forgotten.

By Mr. Somerville:
Q. And so you were looking out there, and you don't really know anything about the movement of your car?
A. I don't. The next thing I remember I hit the windshield, and when I opened my eyes it was all this glass.
Q. And then after that the rescue squad took you down to Dr. Burnette's office?
A. Yes.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Instructions	2
Stipulations	5
Judge's Letter to Counsel August 20, 1958	6
Judge's Letter to Counsel August 25, 1958	8
Final Order—September 11, 1958	11
Notice of Appeal and Assignments of Error	13
Witnesses:	
Horace Johnson	14
Joseph I. Brown	18
Winfred G. White	22
Robert Claude Gore	28
Anna White	32

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.

CLERK
SUPREME COURT OF APPEALS
RECEIVED
APR 3 1959
RECEIVED
RICHMOND, VIRGINIA