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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 5063

In the Supreme Court of Appeals of Virginia at Richmond

JOHN G. HAILEY

v.

WILLIE EMMETT JOHNSON

FROM THE CIRCUIT COURT OF SPOTSYLVANIA 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.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5063

VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Thursday the 3rd day of September, 1959.

JOHN G. HAILEY, Plaintiff in Error,

against

WILLIE EMMETT JOHNSON, Defendant in Error.

From the Circuit Court of Spotsylvania County

Upon the petition of John G. Hailey a writ of error is awarded him to a judgment rendered by the Circuit Court of Spotsylvania County on the 6th day of April, 1959, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Willie Emmett Johnson was defendant; upon the petitioner, or some one for him, 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

* * * * *

MOTION FOR JUDGMENT.

To: Willie Emmett Johnson
Spotsylvania, Virginia.

John G. Hailey, Plaintiff in this cause, hereby moves the Circuit Court of Spotsylvania County for a judgment and award of execution against Willie Emmett Johnson, defendant herein, in the sum of Fifty Thousand ($50,000.00) Dollars, for this to-wit:

1. That heretofore, to-wit on or about the 3rd day of August, 1957, John G. Hailey was riding as a guest in an automobile then owned, operated, and controlled by the defendant, Willie Emmett Johnson, while the said automobile was proceeding in an approximately westernly direction on Route 601 in Spotsylvania County, Virginia.

2. That it was the duty of the said defendant to operate his car in a careful and prudent manner and to keep a proper lookout, to have his automobile under proper control, to drive at a reasonable speed under the circumstances and conditions then existing, to drive his automobile on the right-hand side of the road and to use reasonable care for the safety of the said John G. Hailey so as not to endanger, or be likely to endanger the life, limb or property of said Hailey.

3. Yet notwithstanding his duty as aforesaid, the said defendant then and there drove his car in a wilful and wanton disregard for the safety of the said Hailey, in that the said defendant failed to keep a proper outlook, failed to have his car under proper control, failed to have his car in proper running and operating condition, drove the car while under the influence of intoxicants, drove the said car at a grossly unreasonable and excessive rate of speed and under such circumstances and conditions that said defendant did know or page 2 } should have known that he could not have kept his vehicle under control and avoided an accident and subsequent injury or damage to the plaintiff; and that the said acts constitute wilful, wanton, and gross negligence on the part of said defendant which said negligence caused defendant's vehicle which was operated by him, to leave the road, after going around a curve, skidded tremendous distance on the side of and out of the road out of complete control and into a tree off the right-hand side of the road, hitting said tree

with such great and violent force, that said Hailey was thrown in and about the said vehicle causing serious personal and bodily injury to the said plaintiff.

4. On account of the said accident, occasioned by the gross, wilful and wanton negligence of the said defendant, the undersigned sustained severe, painful and permanent injuries, and became and still continues to be sick, sore, lame and disabled from these serious personal and bodily injuries, consisting among other things of a seriously injuried back, bruises, contusions and strains to all muscles of his body and particularly those in his back, trunk, spine and neck, and severe and serious shock to his whole body and particularly his heart, lungs and nervous system, many of which injuries were and are of so severe and serious nature that they are reasonably certain to be permanent and by reason of which the undersigned became and ever since has been and will be permanently sick, sore, lame and disabled.

5. The undersigned was, prior to the injuries sustained as aforesaid, strong, physically able, and capable of working regularly and leading a normal life performing hard labor. As a result of the aforesaid injuries, the undersigned has been rendered totally and entirely incapable of performing any work, has had to be waited on, attended to, and cared for by doctors, nurses and other help in *an* out of hospitals, and has suffered severe and prolonged mental and physical pain and suffered and sustained large medical, surgical and hospital expenses in an effort to be cured or be relieved of his pain and suffering, and will continue to require such expenditures of an undetermined time and amount.

6. The plaintiff's injuries and loss as aforesaid resulted directly and proximately of the said gross, wilful and wanton negligence of you and without any fault or negligence on his part.

page 1-B } WHEREFORE, the plaintiff brings this action and moves for judgment in the amount of Fifty Thousand ($50,000.00) Dollars as aforesaid.

JOHN G. HAILEY
By Counsel.

W. W. WHITLOCK, p. q.
Mineral, Virginia.

Filed in the Clerk's Office the 23rd day of September, 1958.

Teste:

W. CARY CRISMOND, Clerk.

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page 3 }

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ANSWER.

NOW COMES the Defendant WILLIE EMMETT JOHNSON, by Counsel, in response to motion for judgment exhibited against him, and for answer thereto and grounds of defense, says:

1. That he denies that he is indebted to the Plaintiff, John G. Hailey, in the amount of $50,000.00, or in any amount whatever;
2. That the allegations contained in Paragraph One of the motion for judgment are true;
3. That he denies that he was guilty of gross negligence or of any negligence whatever in the operation of his automobile, or that he was guilty of any such negligence which proximately caused the injuries to the Plaintiff complained of; but rather he alleges that he did operate his automobile in a careful and prudent manner, exercising every duty of care required by law and good judgment, for the comfort and safety of the plaintiff and for the safety of all others;
4. That it is true that the automobile aforesaid skidded off the road and struck a tree, but that this was not the proximate result of any gross negligence or of any negligence whatever on his part;

page 3-A } 5. That the Plaintiff was himself guilty of negligence which was the sole proximate cause of the collision complained of and of the damages resulting therefrom;

6. That the Plaintiff was himself guilty of negligence which efficiently contributed to the collision complained of and damages resulting therefrom, and which effectively bars any recovery on his part;
7. That he is not advised as to the nature and extent of the Plaintiff's injuries, and hence denies the same, calling for strict proof thereof;
8. That he reserves the right to amend this his Answer and to assert any and all defenses that may arise at or before the trial of these issues.

WILLIE EMMETT JOHNSON
By Counsel.

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page 18 }

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MEMORANDUM.

The Court is of the opinion that the principles stated in *Young* v. *Dyer,* 161 Va. 434, 170 S. E. 737 (1933) and *Sibley* v. *Slayton,* 193 Va. 470, 69 S. E. (2d) 466 (1952) are applicable to this case.

The defendant's motion to set aside the verdict of the jury and enter judgment for the defendant is granted. Counsel are requested to draft an order.

JOHN D. BUTZNER, JR.

Filed February 11, 1959.

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page 30 }

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ORDER.

This day came again the Plaintiff by his attorney and the Defendant by his attorney, and the Court having maturely considered the motion heretofore made by the Defendant, by his attorney, to set aside the jury's verdict, is now of opinion, for reasons set forth in writing and filed with the record, that the Motion should be granted;

WHEREFORE, the Court doth consider and order that the verdict of the jury be, and it hereby is, set aside; that judgment be, and it hereby is, entered in favor of the defendant on the issues joined; and that the Plaintiff recover nothing of the Defendant, to which ruling of the Court the Plaintiff by his attorney notes an exception.

Motion of Plaintiff by counsel for a new trial is denied, to which ruling of the Court Plaintiff by his attorney notes an exception.

Enter April 6, 1959.

JOHN D. BUTZNER, JR., Judge.

We ask for this:

WILLIS AND GARNETT, p. d.
Law Building
Fredericksburg, Va.
By W. W. WHITLOCK, JR.

Seen and excepted to:

W. W. WHITLOCK, p. q.
Mineral, Virginia.

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page 32 }

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: Clerk of the Circuit Court of Spotsylvania County:

Counsel for John G. Hailey, the plaintiff in the above styled case in the Circuit Court of Spotsylvania County, Virginia, hereby gives notice of appeal from the orders entered in this case, the last and final order being entered on April 6, 1959, and sets forth the following assignments of error:

1. The Court erred in sustaining the defense's motion to set aside the verdict of the jury and in entering judgment for the defendant.
2. The Court erred in refusing to grant the plaintiff a new trial after having set aside the jury verdict as being contrary to the law and evidence in the case.

Given under my hand this 14th day of May, 1959.

JOHN G. HAILEY
By W. W. WHITLOCK
Counsel for Plaintiff.

Filed May 16, 1959.

W. C. C.

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page 7 }

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WILLIE EMMETT JOHNSON,
a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Whitlock:
Q. Is your name Willie Johnson?
A. Yes, sir.
Q. You are the defendant in this case, are you not?
A. Yes.
Q. How old are you, sir?
A. 46.
page 8 } Q. You were the driver of the car in which Johnny Hailey was injured on August 3rd, 1957, were you not?
A. Yes.
Q. When did you get with Johnny Hailey just prior to the accident?
A. When I came from Louisa that day, Johnny was over at the store. He went with me to the house. I told him I was going to hear some dogs, and he could go with me if he wanted to. He got in the car and went with me.
Q. Isn't it a fact after Johnny got supper you came by and picked him up?
A. I didn't come by and pick him up. I didn't work that day. I went to Louisa that day.
Q. What were you doing?
A. I was there on business.
Q. What business?
A. I went to get some shoes and some groceries, and so forth.
Q. Is that all you got?
A. I don't have to tell you. That is my business.
Q. I asked you what else you got in Louisa that day.
A. Do I have to tell you that?

Mr. Willis: May it please the Court, I object. I think the question is immaterial.
Judge: Can you show any materiality to this?
Mr. Whitlock: I think it is material, and I think
page 9 } the answer will show it is material.

A. I told you I got my groceries.
Q. Did you buy any whiskey?
A. Yes.
Q. Why didn't you tell me that?
A. I hadn't drunk any. There was none open.
Q. How much did you have?

Willie Emmett Johnson.

A. A pint of whiskey and 6 cans of beer in the trunk.
Q. Is that all you had?
A. That is all I had, and Johnny didn't know that was in the car.
Q. One pint of whiskey and 6 cans of beer, and it was all locked in the trunk?
A. Yes.
Q. How much had you drank that day?
A. I don't know. I hadn't drank the first drop because the State Trooper held my head when he took me out of the car; he ought to know.
Q. What did you go to Ashton Dickinson's for?
A. That morning?
Q. Yes.
A. I went by to get the dogs. His brother brought the dogs from Pennsylvania.
Q. Where were you going when the accident happened?
A. To hear the dogs run.

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page 11 }

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Q. What caused the accident?
A. These two dogs ran out. One was a cocker spaniel and a woman's pet dog.
Q. How do you know it was a woman's dog?
A. I know it was a woman's. No man would have a cocker spaniel for a pet dog.
Q. Do you deny you made that statement to me?
A. I deny I made that statement to you. I didn't make that kind of statement to you.
Q. I haven't told you what statement you made yet. Just wait a minute. Let me ask the question. Do you deny making a statement to me that you were not taking Johnny Hailey any place, but you asked him to go?

Mr. Willis: Is this a written question? I object.
Judge: The objection is overruled. You will
page 12 } have to lay a proper foundation. You ask the question laying a proper foundation, sir.

Q. Is the question in order if I lay a proper foundation?

Willie Emmett Johnson.

Judge: Yes.

Q. In the same conversation we just previously discussed, isn't it a fact you told me you were not taking Johnny any place, but you asked him to go?

A. I didn't say I asked him to go. He asked me at the store. I thought he was going home. I said, "Where are you going tonight? I am going up to hear the dogs run." He said, "Do you care if I go?"

Q. How far away were these dogs when you saw them?

A. I figure about 20 feet.

Q. When you first saw them were they in the road, or how?

A. Right in the road.

Q. What did you do?

A. I cut out to the right.

Q. Did you know when you cut out of the road that you were going to wreck your car?

A. No. When I cut back I slid into the tree.

Q. Do you know that you can't control a car when you cut out of the road?

A. I have cut out many times to miss dogs.

Q. Many times?

A. No, I wouldn't say that.

page 13 } Q. Were you driving on the right-hand side?

A. In the middle of the road.

Q. Around that curve in the middle of the road?

A. No, sir.

Q. The accident happened in the middle?

A. They came out in front at the crossroad.

Q. Isn't it a fact the roads cross after you go around the curve?

A. Just about the time you get out of the curve. They came right across in front of me.

Q. In other words, you didn't get out of the road until you got around the curve?

A. Sure.

Q. Your statement is you didn't get out of the road until you got around the curve, is that right?

A. It was all about at the same time; it was all right there together.

Q. Isn't it a fact you went out of the road at the beginning of the curve?

A. No. I could show you where I come out of the road. I know just where I ducked the dogs.

Q. You willingly cut out of the road to miss the dogs?

Willie Emmett Johnson.

A. Yes.

Q. What did you do after you cut out of the road?

A. I slid into the tree.

page 14 } Q. Did you put on your brakes?

A. Sure, but I was in the tree then.

Q. Did you put on your brakes at all before you cut out of the road?

A. No.

Q. Did you mash down on your gas then?

A. No.

Q. Referring to the conversation we had at your house, didn't you tell me you didn't put your brakes on, but you mashed down on your gas?

A. No, I didn't tell you that.

Q. That is wrong?

A. Absolutely.

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page 15 }

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Q. You didn't eat any supper?

A. No.

Q. It was time to eat supper, wasn't it?

A. Yes, but I didn't eat none.

Q. You usually eat supper every night, don't you?

A. Sure.

Q. Why didn't you eat this night?

A. I didn't want none.

Q. Any particular reason why you didn't want any?

A. No.

Q. You had been drinking, hadn't you?

A. No, I hadn't, and I never had a charge against me for drinking.

Q. You say you never had a charge against you for drinking?

A. I never had a charge against me for drinking,

page 16 } and I never had a mark against my driving in my life.

Q. Isn't it a fact that you were charged just a little bit ago for driving under the influence?

A. No, it isn't. I never had a charge in no Court House. I never had a charge in the car in my life since I had one.

Willie Emmett Johnson.

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page 17 }

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Q. Then you said Johnny Hailey was guilty of negligence that contributed to the accident. Did he do anything to contribute to the accident?

A. He didn't do anything to cause the accident. The dogs caused the accident.

Q. Then that is wrong, too. Your answer that you filed here in Court is wrong, isn't it? Is that right?

A. Johnny never caused no accident.

Q. And didn't contribute to the accident either, or did he? He didn't do anything that contributed to the accident? He had no control over it at all?

A. That is right.

Q. The car went into the tree. Did you slow page 18 } down any before you got to this curve?

A. Sure.

Q. Did you put on your brakes?

A. I didn't have to put on my brakes.

Q. How fast were you going?

A. Around 45.

Q. That is not too fast for a steep curve?

A. That is not too fast for a steep curve.

Q. Do you do that all the time?

A. I do that all the time.

Q. And do you think going 40 or 45 miles an hour around this curve is safe speed?

A. Yes, you can go around there faster than that.

Q. You did go around that curve normally at 45 miles an hour?

A. Round about 40.

Q. But this time you were going 45?

A. I'm not sure it was 45.

Q. You said it was 45.

A. I said 40 or 45.

Q. I didn't hear you say 40. As a matter of fact, you were going too fast to make that curve, were you not?

A. No, I was not.

Q. But you didn't make it.

A. I would have if it had not been for the dogs.

Q. And you don't think you did anything wrong

page 19 } by doing that?

A. I don't want to kill dogs.

Q. You think it is better to injure a man than to kill a dog?

A. I don't want to hurt nobody. I don't want to hurt myself either.

Q. You said here you were driving in a careful, prudent manner, exercising care and good judgment for the safety of Johnny Hailey and the safety of all others. Can you tell the Jury that is true?

A. Yes.

Q. Were you driving in a careful and prudent manner, concerned about the safety of this man and everyone else, is that what you did?

A. Yes.

Q. And yet you willingly cut out of the road to miss the dogs?

A. I did.

* * * * *

JOHN G. HAILEY,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Whitlock:

Q. Your name is Johnny Hailey, is that right?

A. Yes, sir.

Q. How old are you?

page 20 } A. 55.

Q. What kind of work did you do prior to the accident?

A. I worked on a farm most of the time.

Q. Who did you work for?

A. Earl Dickinson.

Q. How long did you work for Earl Dickinson?

A. About 3 years.

Q. Did you or did you not work regular, or did you lose any time from work?

A. I lost some days when there was nothing to do on the farm.

Q. How many days would you say on an average you were working a year while you were working for Earl Dickinson?

A. A year?

Q. Yes.

John G. Hailey.

A. I would probably lose 30 days a year.

Q. Directing your attention to the date of this accident, August 3rd, 1957, I ask you to tell the Jury what happened from the time you got with Willie Johnson just prior to the accident up until the accident. Tell them when you got with Willie Johnson.

A. I got with Willie around 7:00 o'clock, and went with Willie to his house. He asked me to hear them dogs, and I told him I would.

Q. Did you have any conversations with him on the way over there?

page 21 } A. No.

Q. How was he driving over there?

A. He was driving pretty fast. I told him to slow down a time or two, and not to drive too fast around the curves.

Q. What did he do?

A. He did slow down.

Q. Did he stay slowed down?

A. No. He would speed up a bit; then I would tell him to slow down again.

Q. Could you tell whether or not Willie had been drinking?

A. I couldn't tell. I didn't smell or see anything.

Q. What happened that caused the accident? Could you tell us?

A. The only thing I could see that caused it was a little too fast going around the curve.

Q. Did you see any dogs or anything at that time?

A. No, I didn't see any dogs or anything. I was lighting a cigarette, I raised up, and the car was headed for the tree.

Q. Do you have any idea how fast Willie was driving?

A. I would say around 50 or 55.

Q. Did he slow down any for this curve?

A. Not that I could tell.

Q. Did you know you were coming on this curve at the time you got there?

A. We were pretty close to it when I started

page 22 } lighting the cigarette.

Q. Was there any particular reason for your smoking at that time?

A. I smoke right smart now. I am kind of nervous, and I smoke right smart.

Q. How long had Willie been driving in this manner?

A. I hadn't been with him over a half an hour.

Q. Did he stop any time after you started riding with him and he was driving in this manner?

John G. Hailey.

A. No.
Q. Was there anything said about stopping?
A. No, nothing was said about stopping.

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page 23 }

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Q. What did he say when he came by to get you?
A. He asked me to come on and go to Ashton's with him to hear some dogs.

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page 28 }

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Q. Do you drive a car?
A. No, I haven't drove any for some time. I
page 29 } haven't gotten a driver's permit.
Q. You say you don't have a driver's permit?
A. No, sir.
Q. On this speed question, were you actually looking at the speedometer?
A. No, sir.
Q. Were you really paying much attention to the driving of this car?
A. Yes. He was driving pretty wildly. I said, "Willie, cut down a bit."
Q. Where did you tell him that?
A. Right after we left Luck's Store. I said, "Don't drive so fast."
Q. But his speed is your estimate, is it not?
A. Yes, sir.
Q. At the time the wreck occurred, what were you doing?
A. Lighting a cigarette.
Q. What position were you in the car doing that?
A. Leaning over. The windows were down, so I leaned over to keep the wind from blowing the match out.
Q. You were leaning over with your head down under the dash board?
A. Yes, sir.

Earl Dickinson.

Q. And you were caught in that position when the wreck occurred?

page 30 } A. Yes.

Q. Did you see the dogs run into the road?

A. No, I didn't see the dogs.

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page 31 }

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Q. You told Mr. Willis you had ridden with Willie quite a lot. Did he drive on those occasions like he did on this occasion?

A. No. Willie always drove all right. I wasn't afraid.

Q. You told him the speed was your estimate. What did you use as a basis for judgment that he was driving too fast?

A. For them curves, 40 to 50 miles an hour is too fast.

* * * * *

EARL DICKINSON,

a witness of lawful age, being first duly sworn, testified as follows:

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page 33 }

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Q. How long have you known Johnny Hailey personally?

A. All my life.

Q. Do you know his reputation in the community for veracity?

A. Yes, it is good.

Q. And when he says something to a person in the community, they believe him?

A. That is correct.

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page 34 }

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TROOPER DANIEL W. BISHOP,
a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Whitlock:

Q. State your name, age and occupation, please, sir?

A. Daniel W. Bishop, 31, Virginia State Trooper.

Q. Were you so employed on August 3rd, 1957?

A. I was.

Q. Did you make an investigation of the accident in which Johnny Hailey was injured, and Willie Johnson was driving the automobile?

A. Yes, sir.

Q. Would you tell the Jury what you found at page 35 } the scene of the accident when you arrived?

A. The accident happened on the 3rd of August, 1957, at approximately 8:30 p. m., which would be on a Saturday. It happened on Route 601, just west of Route 643, I believe. It happened on a curve. The condition of the road was dry. Loose material was on the curve. It was blacktop, darkness, the weather was clear, it was open country. When I arrived at the scene, I found a 1949 Chevrolet 4-door sedan with 1957 Virginia license 802-806. The driver was Willie M. Johnson, Spotsylvania, Virginia, who was lying by the left door. Johnson seemed to be in very much pain due to a broken leg. The car was damaged on the top, both front fenders, the grill, the hood, the frame and the motor. Also in the car was John G. Hailey, Brokenburg, Virginia, who was pinned in the car in an upright position, pinned in the right front seat. It required the wrecker to hook a chain around the door post to pull it off so we could get him out of the car.

Q. Was Johnny Hailey conscious or unconscious?

A. He was conscious, and also in right much pain evidently, and hollering.

Q. Could you determine where this car left the road?

A. The car left the road approximately 37 paces from where it hit the tree.

Q. 37 paces?

page 36 } A. Yes, sir.

Q. Is that at the beginning of the curve, the end of the curve, or the center of the curve?

A. It is just after you go in the curve. The car was starting in the curve.

Q. I wonder if you could draw a diagram of the scene and the tree and the car over on the blackboard for the Jury?

(The Trooper did so.)

Trooper Daniel W. Bishop.

A. This is the car travelling in this position. It left the road approximately here, in relation to the curve.

Q. Show where the car ended in relation to the tree.

(The Trooper did so.)

Q. Does that mean it was headed in the opposite direction?

A. Yes, sir.

Q. From your observation of the scene and the car, could you tell what apparently caused the car to leave the road?

A. It appeared from the evidence at the scene that Willie Johnson did not have the car in proper control when he went across here. The car was apparently out of control. Right here there was a stump, and then he ricocheted into the tree, and it knocked him back across here.

Q. Did you see any evidence of any skid marks prior to leaving the road, or anywhere along where it travelled?

A. The car appeared to just suddenly go off the road here. When you get down to here, the marks are a little

page 37 } heavy, which could indicate brake marks.

Q. Which was after it started to skid?

A. Yes.

Q. What impact did it make with that tree there? Heavy, light, or could you tell?

A. There was considerable damage done to the car.

Q. Do you know what part of the car hit the tree?

A. According to the damage, this stump here is responsible for the damage to the front. He must have turned the car at an angle or sideways, which indicated the tree hit the windshield post.

Q. The car hit the stump and passed on over it, is that right?

A. Yes. This is the stump sticking out of the ground.

Q. Did it hit the tree with a considerable or light impact?

A. I couldn't see any damage to the tree.

Q. What about the car?

A. The post was bent at the top.

Q. Was it bent badly?

A. Badly enough to hit Mr. Hailey.

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page 38 }

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Trooper Daniel W. Bishop.

Q. What would you judge a safe speed at that scene might be knowing the possibilities of what might be on the road?

A. I think you can go around that curve at 40 or 45 miles per hour anytime from my own experience.

Q. From your investigation, can you say whether or not this car was travelling at a speed safe enough for this road in its condition?

A. The only statement I can make is from this point here, the car was not under proper control. For what reason it wasn't under proper control I can't say; but, he left the road, and he wrecked the car here. From this point, it definitely was not under control.

page 39 }

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Q. Mr. Bishop, is this a sharp curve at that point?

A. It is a fairly good curve, I would say. I wouldn't say it was a real sharp curve.

* * * * *

Q. Is this a picture of the curve where the collision occurred?

A. Yes, it is.

Q. Is this another closer view of the same curve?

A. Yes, sir.

Q. And is this a picture of the tree that the car
page 40 } collided with?

A. Yes, sir.

* * * * *

Q. Do they fairly depict the scene?

A. They are pictures of the scene.

Q. Are they at all distorted, or is that a picture of the road as it truly appeared?

A. Yes, I would say they depict the scene.

Judge: As of the time of the accident?

A. Yes, with the exception of the brush that was there on this corner. At the time of the scene that was there, but as far as the curve is concerned, that hasn't been changed.

Q. And of course these were daylight pictures, and that was night.

Trooper Daniel W. Bishop.

A. Yes, sir.
Q. And what material composes that shoulder?
A. Loose gravel.
Q. Along the right-hand side?
A. Yes, sir.
Q. There has been talk of a side road crossing. Does this picture show that side road?

page 41 } A. Yes, sir.

Q. Is the shoulder at the point on the right-hand side where the side road enters Route 601, is that shoulder wide or narrow?
A. Where are you speaking of?
Q. On the right-hand side of Route 601, is that a wide or narrow shoulder?
A. It is fairly wide at that point there.
Q. Did the defendant's car leave the shoulder before crossing Route 643?
A. No, sir.
Q. I should like to have these pictures admitted in evidence.

(The pictures were handed to the Judge, and were admitted into evidence.)
Q. With respect to your estimate of speed, you said it depends on how much of those marks are brake marks. Could you determine how much were brake marks?
A. No, sir.
Q. Was your estimate of speed very rough?
A. It would be an estimate.
Q. Would you want to set it forth as a certain fact? Would you care to state your estimate as a true fact?
A. I don't think I could classify it as a fact, not hardly.

* * * * *

page 42 }

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Q. Do you think a person standing under this picture #3 was in part of the curve, or was he before you get to the curve?—Travelling in the direction the car was travelling.
A. I would say it was just prior to getting in the curve.
Q. The road here that Mr. Willis spoke of, the shoulder, is that lower than the main road?
A. It is at an angle, yes.

Otis Perry.

Q. How about outside of the road? Is it lower than the center, or is the road level there?

A. The whole road, I would say, is almost level. Right on the shoulder, I am not sure of that.

Q. Would you say the curve is normally banked, or the shoulder is lower than the road?

A. This shoulder here is lower than the road.

Q. That is the outside shoulder you spoke of?

A. Yes.

Q. You say you couldn't tell whether there were any brake marks or not. Were there skid marks?

A. No. I couldn't distinguish between the two.

Q. You did say there was no evidence of any brake marks prior to the car leaving the road, did you not?

page 43 } A. Yes, sir.

Q. That is all.

* * * * *

page 57 }

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OTIS PERRY,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Whitlock:

Q. State your name, age and occupation, please?

A. Otis W. Perry, 31 years old, machine operator, American Viscose.

Q. Do you recall an accident that occurred in which Johnny Hailey was injured and Willie Johnson was the driver of the automobile?

A. Yes, sir.

Q. I believe it occurred on August 3rd, 1957, is that correct?

A. Yes, sir.

Q. Did the accident occur near where you live?

A. Very close.

Q. Would you tell the Jury what you know about

page 58 } the accident, if anything attracted your attention to the accident at the time it was happening or prior to it happening?

A. On the night the accident occurred, I was working the

Otis Perry.

eleven to seven shift. I leave home at 9:30 in order to get to the plant. I was sitting in the kitchen reading "Field and Stream." My wife was in the living room with the TV on. A few minutes before, I told her to turn the television down. It was on very low. My attention was first attracted to this accident by the sound of a car skidding, and there may have been a flying lapse of a few seconds, then, a terrific impact. I couldn't puzzle out what it was at first. I ran in the backyard and looked in the front. Here was a car in the tree. The lights were shining almost straight up. In about a minute or less a car stopped behind it. There was a colored fellow who got out and ran in my yard and said, "Call the man, call the man. They had an accident." I said, "Yes, that is very easy to see." I ran back to the house. My wife had started out of the house. This other fellow, Ed Freeman, had gotten there. He said, "Call the Rescue Squad. A man is pinned in it." I asked my wife to call the Rescue Squad. She did. We got back out there. Here was Hailey and Johnson pinned in the car. I saw there wasn't anything we could do immediately due to the fact that they were pinned in pretty bad, which we thought as long as the car was not catching on fire, so we got the

page 59 } idea of leaving them where they were until the Rescue Squad got there, not knowing how badly

they were injured. That was 45 minutes before the Rescue Squad arrived. They sounded like they were pretty badly injured. We gave them water and made them as comfortable as we could. The dash had pinned them both across the upper part of their legs here. We got the wrecker hooked to it and got them out, but the car when it hit went into the tree. They came around the curve at an excessive rate of speed beyond all doubt. They was on the side of the road and they went into the tree like that. This big oak tree caught it on the cowl of the car. So, after the Rescue Squad got there, I believe Mr. Hailey was passed out when he left. I went out to the rescue wagon and called his name, but he didn't answer. In the meantime, it was pretty late. Me and the other fellow had to drive to the plant to make the shift. The next morning, I looked and of course the brake marks—they had taken the car away, but there was a terrific crash as the results showed. At that time I couldn't tell how badly either was hurt. I could see both were badly banged up. I think both were fortunate to get out with their lives.

Otis Perry.

Q. How severe a blow did the car hit the tree? Could you tell from the damage or sound how severe the blow was?

A. The fact is, the car was a total loss. It would page 60 } have to be a terrific impact.

Q. What part of the car hit the tree, do you know?

A. The cowl of the car, and the right part of the windshield.

Q. What type sound came from the car?

A. It sounded similar to a stick of dynamite. In fact, the people around thought it was a stick of dynamite going off. It scared me half to death. I didn't know which way to turn or what.

Q. From your observation of the road, the scene, and the condition of the car, what would you say the cause of the accident was?

A. Excessive speed, beyond all doubt.

Q. Do you own any dogs?

A. Yes, I have two dogs.

Q. What kind do you have?

A. A big dog, between a Dalmatian and a Great Dane, and the other I didn't have at the time is a Setter dog. I don't have him now. He disappeared somewhere, somehow.

Q. Do you have any little dogs?

A. No, they were fairly good sized dogs. The Great Dane was a puppy at the time, but he stood 18 to 20 inches at the time. Of course, he is a matured dog now.

Q. Do you have a cocker spaniel?

A. No, sir.

Q. That is a little dog?

page 61 } A. Yes, sir.

Q. Does anybody in your community have any kind of dog like that?

A. Not to my knowledge, they don't.

Q. When you got to the scene of the accident, did you see any dogs or hear anything about any dogs?

A. No, I didn't see any dogs.

Q. Did you see any evidence of brakes being applied before the car left the road?

A. I couldn't say there was, but there were some tire marks left. What they were caused by, I couldn't say definitely.

Q. Regarding the curve, where did the car leave the road, beginning, the center or around the curve?

A. To me it was at the beginning of the curve, right where my mailbox is.

Otis Perry.

Q. Are the crossroads there?
A. Yes.
Q. Are the crossroads at the beginning, the center, or the end of the curve coming from this direction, or from the direction these people were travelling?
A. The crossroad the way they were travelling is little more than half.
Q. How far from where this car left the road to where the crossroads are, where the other road crosses?
A. I think close would be 125 feet.
page 62 } Q. How far from where this car left the road to where it stopped at this tree?
A. It must be at least 50 or 75 feet more.
Q. So, the total of 175 to 200 feet?
A. Yes, that is my estimation.
Q. Do you have anything or any trees or mailboxes in front of your house at about where the car left the road?
A. Yes, a cluster of mailboxes.
Q. Is that where the car left the road?
A. Yes, beside a cluster of mailboxes, 5 or 6 boxes.

By Mr. Willis:
Q. Mr. Perry, you say you were in your kitchen just before the collision occurred?
A. Yes, sir.
Q. Where is your kitchen, in the back or the front of the house?
A. Yes.
Q. Is it on the far side of your house with regard to the road or towards the road?
A. It is on the far side with regard to the road, but on the side where the crash occurred.
Q. In other words, in the corner of your house back from the road and towards the crossroad?
A. Exactly.
Q. From the back end you didn't see the wreck
page 63 } occur, did you?
A. No, I didn't see it.
Q. You only heard a car skidding and heard a crash?
A. Yes, sir.
Q. Of course, not seeing the car, you could not say of your own observation how fast the car was going, could you?
A. No, I couldn't say how fast it was going.

* * * * *

BRYAN BROOKS,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Whitlock:

Q. State your name, age and occupation, please, sir?

A. Bryan D. Brooks, age 42, machine operator, Sylvania Plant, American Viscose.

Q. Do you live near Otis Perry?

A. Yes, sir.

Q. Do you recall an accident that happened on a curve in which Willie Johnson was driving and Johnny Hailey was a passenger, and they were injured?

page 64 } A. Yes, sir.

Q. Did you go to the scene of the accident that night?

A. Yes. I guess it was about 10 minutes after it happened.

Q. Tell the Jury what you found and what appeared to have happened to cause the accident.

A. I got there and the car was wrapped around this tree. It had hit across in front of the windshield. Both doors were opened. The back end of the car was up, and the trunk part. I found a couple pints of whiskey on the ground. There was a spare wheel that rolled down the road I would say about 30 feet, and I did see some skid marks on the driveway there. I couldn't tell whether they were brake marks, or whether the car was skidding.

Q. You found two pints of whiskey? Where were they, in the trunk or where?

A. On the ground.

Q. Was that near the car?

A. Within 15 feet of the car.

Q. Did you find any evidence of anything else around there to drink?

A. Another pint throwed out hit the stump. The top wasn't broken off. The seal was still on that. The seal was on the two pints I found.

Q. Did you find any other evidence of alcoholic beverages?

A. No, I did not.

page 65 } Q. About what time of day was it when this thing happened?

A. Just starting to get dark.

Q. Can you give an approximate hour?

A. I don't know. That time of year I don't know exactly what time it would be.

Bryan Brooks.

Q. When you got there, were Willie Johnson and Johnny Hailey conscious, or were they talking?
A. They were hollering, yes.
Q. In pain?
A. Yes, it seemed so to me, yes, sir.
Q. Did you see them leave?
A. Yes. I was there when they left.
Q. Who came and got them?
A. The Rescue Squad from Fredericksburg.
Q. Did they have any trouble getting them?
A. No, the wrecker hooked a cable through the windshield with a big hook on it. They hooked it underneath and pulled the car that they had mashed on top of them, and pulled it off.
Q. This tree you say hit the cowl of the car, what part of the cowl was hit?
A. Straight across in front of the windshield. The car must have gone in sideways.
Q. Was it the top or the side that hit the tree?
A. I would say straight across the hood, the part
page 66 } that hit the windshield.
Q. Straight across the top?
A. Yes, sir.
Q. Do you think the car was turned over at the time it went into the tree?
A. I couldn't see no other way.
Q. How badly was the car damaged?
A. I would say it is a total loss, not worth fixing.

* * * * *

Q. Mr. Brooks, did you see this wreck?
A. No, sir, not actually happen.
Q. You did not see it happen?
A. No, sir.

* * * * *

page 67 } Mr. Whitlock: That is all the witnesses we have. I would like to move that the Court let the Jury see the scene. I think it would be helpful to them. I think they would want to. I would like to make that request.
Mr. Willis: I have no real objection to it. It is rather a long trip. We have pictures of the scene here, and an abundance of testimony about it.

Judge: Sheriff, do you have a way of getting the Jury there?

Sheriff: I have one car.

Judge: Can you help us, Trooper Bishop?

Trooper: Yes, sir.

Judge: We will view the scene, but testimony will not be taken.

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ELEANOR SACRA,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Whitlock:

Q. State your name and occupation, please?

A. Eleanor Sacra, Clerk of the County Court of Spotsylvania.

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page 72 }

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By Mr. Whitlock:

Q. Mrs. Sacra, would you tell the Jury what the records of your Court showed as to any traffic convictions that the defendant, Willie Johnson, has had in your Court since the time of this accident?

A. On September 22nd, 1958, he was charged in our Court with reckless driving and also having improper brakes; at least he was tried October 29th, but the offense was September 22nd. He was tried and convicted. Do you want the amount and costs, or anything?

Q. He was convicted of what charges?

A. Reckless driving and improper brakes.

Q. Is that offense recorded against his driver's permit?

Judge: The record doesn't show that.

Q. As a matter of law, this witness would be able to testify as to what the effect of this conviction is.

Willie Johnson.

Judge: You are using it for a different purpose now, as an expert on the law.

Q. Perhaps in her duties as a Clerk she knows. If there is any objection, I don't mind striking the question.

Judge: There is no objection.

A. The abstract of conviction is sent into the Division of Motor Vehicles at the end of the month. This was sent in around the 1st of November, showing therein that
page 73 } he was charged with improper brakes and reckless driving.

Judge: Gentlemen, this evidence has no bearing whatsoever on the manner in which the defendant operated the car in the accident in question, and should not be used for that. It was introduced simply for the effect of his credibility. Whether it has that effect is entirely up to you, but it is not to be considered for any bearing on the manner in which he operated the vehicle in the accident in question. I might add this conviction mentioned to you had nothing whatsoever to do with this accident. It is an entirely separate occurrence.

Mr. Whitlock: I rest the plaintiff's case.

Mr. Willis: If it please the Court, I would like to make a motion.

Judge: Take the Jury out again.

(The Jury were taken to the Jury Room.)

Mr. Willis: May it please the Court, I move that the plaintiff's evidence be stricken and his case against the defendant dismissed.

* * * * *

page 80 } WILLIE JOHNSON,
returned to the stand and testified as follows:

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page 81 }

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Willie Johnson.

Q. How fast were you driving just before the
page 82 } accident?

A. I think I was driving between 40 and 45 miles an hour. I told the truth before. I won't say I was driving 40.

Q. Then what happened?

A. Two dogs ran out, a black hound (black one first), then one with a brown breast and brown legs, and a red cocker spaniel dog.

Q. Where did they come from?

A. From the Battery Road beside the house.

Q. The road just past Mr. Perry's house?

A. Yes, and they were running at something, a small cat or something. All I seen was a black dot going across the road.

Q. You did see something go across the road in front of them?

A. Yes, sir.

Q. These dogs came from right to left?

A. From right to left.

Q. What did you do?

A. I cut out.

Q. How far did you cut out?

A. I didn't cut to the shoulder of the road, I just cut a little.

Q. Sort of swerved?

A. Yes, and it must have gotten away from me.

Q. How far were the dogs from you when they ran out?

A. I would say as far as that table back there.

page 83 } Q. Where were you with regard to Mr. Perry's house when those dogs ran out?

A. I had just about passed his house. I was almost to the other road, as close as to where you are standing, and they ran across.

Q. When the car was out of control and you started skidding, did you try to stop?

A. It all happened at once.

Q. Did you hit your brakes and try to stop?

A. I hit my brakes, yes.

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page 84 } By Mr. Whitlock:

Q. Willie, I refer you to the conversations I had with you at your home just after this accident. You testify

Willie Johnson.

now you got with Johnny Hailey about 4:30 that afternoon. Why did you tell me that day you got with him about 7:00 o'clock?

A. I didn't tell you that. You keep telling me things I told you, and I didn't tell you nothing.

Q. Do you deny that?

A. Yes, I do.

Q. Why did you tell the Jury this morning there was only one pint of whiskey in the car? Didn't you have three pints?

A. No, sir.

Q. Did you have any beer in the car?

A. I told you this morning, six cans, and Johnny didn't know those were in there.

Q. Six cans of beer and one pint of whiskey?

A. Yes.

Q. Did you say you would rather say you were not driving 40?

A. Yes.

Q. Not that that is true, but you would rather say that?

A. Yes. I am to tell you the truth.

Q. Did you try to tell the truth in everything you said here today?

A. Yes, I certainly did. I didn't tell them what I told you.

Q. Why did you tell the Jury you had not had

page 85 } any charges?

A. I had never had a mark against my driving.

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page 86 }

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Q. Where did the car go?

A. It slid into the tree.

Q. Off the road or on the outside of the road?

A. I didn't have time to look. All I can tell you the car was getting away from me.

Q. You say these dogs were about as far as from here to the end of that table when you saw them?

A. Yes, sir.

Q. And you say they were coming down that lane?

A. I said they were coming across the road.

Q. They were coming down that crossroad?

Willie Johnson.

A. Yes.

page 87 } Q. Do you want to tell this Jury you could see dogs before you got down to that road to the intersection?

A. I saw this small black thing that ran in front first.

Q. And you went off the road?

A. No, I didn't.

Q. Then the offcer is not telling the truth, is he?

A. I can't help it what the officer said.

Q. Is that a proper diagram?

A. I don't know.

Q. You can see this diagram here, can't you?

A. Sure, I can see it.

Q. Is that a proper drawing?

A. How can I tell you? When they took me out of the car and put me in an ambulance, I couldn't get out to look.

Q. So you don't know. You can't say where you went off the road?

A. I know I was in that crossroad when I cut out.

Q. So you know you didn't go off the road here?

A. I will tell you why I went off the road.

Q. If you went off the road here, you couldn't have seen the dogs coming down here, could you?

A. You can see a dog crossing the road anywhere.

Q. You could see the dogs running down this lane?

Mr. Willis: I would like to object to that diagram being used as a scale model to determine somebody's

page 88 } liability. That is just a rough diagram.

Judge: I will permit the question. The man is under cross examination.

Q. If the officer is telling the truth when he says it was back here, I asked if you could see the dogs coming down that road?

A. No, I couldn't tell that.

Q. There is a bank here that keeps you from seeing, is there not?

A. Yes, sir.

Q. It was as far as from that table to you when you first saw it?

A. That is right.

Q. Had you put on your brakes at all before you saw these dogs?

A. No.

Willie Johnson.

Q. You didn't slow down any for that curve?
A. I didn't have to slow down for that curve. There was nothing coming.
Q. How did you know there wasn't anything coming?
A. I didn't have to put on lights.
Q. How did you know there wasn't a child standing in the middle of the road?
A. There was no child would be standing in the middle of the road. It would have no right to be there.
page 89 } Q. Did the dogs have a right to cross the road?
A. No, but they was in there.
Q. You were coming, so they had no right to be there, is that right? Is that your testimony, that you were coming down the road, so no animal had a right to be there?
A. I said a person shouldn't be in the middle of the road.
Q. And the dogs had no right to cross, is that right?
A. I never killed a dog in my life.
Q. So, in order to avoid hitting the dogs you cut off the road?
A. Yes.
Q. How wide is that road there?
A. I don't know.
Q. Can you pass a car with ease without getting off the hard surface?
A. Yes.
Q. Is it as wide as a normal road, the road out here?
A. No, sir.
Q. And you were on your side of the road when you saw the dogs?
A. I told you I was in the middle of the road when I saw the dogs.
Q. What did you do when you saw the dogs?
A. I cut to the right.
Q. Is that all?
page 90 } A. I cut to the right and the car got away from me.
Q. You didn't put on your brakes?
A. Sure.
Q. You didn't put on your brakes and cut back?
A. Mr. Whitlock, everything happened so quick I couldn't tell you everything I did.
Q. You really don't know how fast you were going, do you?
A. Yes, I do.
Q. How do you know?
A. Because I can tell how fast without looking at the speed-

Emanuel Coleman.

ometer if I am speeding. I said it was between 40 and 45 miles an hour, but I would rather say 40.

Q. It could be between 40 and 45?

A. I guess so.

Q. You guess like everybody else has testified?

A. Yes, but I really don't think I was driving 45.

Q. All right, that is all.

EMANUEL COLEMAN,

a witness of lawful age, being first duly sworn, testified as follows:

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page 91 }

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Q. How far behind Willie Johnson were you?

A. I wouldn't say exactly, 200 or 300 feet, or something like that. It might not have been quite that far behind him.

Q. How long were you following him?

A. 5 or 10 minutes.

Q. 5 or 10 miles?

A. Do you mean miles?

Q. Yes, how long a distance had you been following him?

A. I would say 2 miles from Luck's Store down there.

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page 92 }

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Q. How fast were you travelling?

A. I never looked at the speedometer. I would say approximately 40 or 45. I never looked at it.

* * * * *

Q. Did you see any evidence of him putting on his brakes prior to this accident?

A. I didn't never see his brake lights.

page 93 } Q. Did he slow down for the curve?

A. I was about the same distance behind him, so

Emanuel Coleman.

he maybe lightened up on his gas. As I say, I didn't see any brake lights, but I was staying behind him.

* * * * *

page 94 } Q. Did you stay in sight of him from the time you left Brooks' or Luck's Store, and he didn't get out of sight?

A. Yes. This street stretches maybe 300 feet. You can see that long. I drove a school bus for over two years, and I know the road.

Q. You didn't see any cars at all?

A. No, not a one.

Q. You didn't have trouble going around that curve, did you?

A. No, but I stopped when I seen him.

Q. Could you have made that curve at the speed you were driving?

A. I would say I wouldn't like to try it at 45 or 50.

Q. You wouldn't like to try to make it at 45 or 50 miles per hour?

A. No, sir.

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page 95 }

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Q. But you wouldn't go around that curve at the speed you were driving?

A. You could make it, but I wouldn't like to try it.

Q. Willie Johnson didn't make it, did he?

A. I wouldn't say he wouldn't if it had not been for the dogs.

Mr. Willis: If it please the Court, at this time I shall renew my motion to strike the plaintiff's evidence.

Judge: You have fully argued before. Unless something has come up since, I am inclined to deny that.

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page 98 }

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Clerk: Gentlemen of the Jury, I will read your verdict. "Due to gross negligence by the defendant, we find for the plaintiff; we set the sum of $5,000."

Judge: Put the verdict in form on the Declaration.

Clerk: Will you hearken unto your verdict, please? "We, the Jury, on the issues joined, find for the plaintiff, and fix his damages in the amount of $5,000. Alfred Coates, Foreman." So say you all?

page 99

Jury (in chorus): Yes.

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A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Motion for Judgment	2
Answer	4
Memorandum	5
Judgment—April 6, 1959	5
Notice of Appeal and Assignments of Error	6
Witnesses:	
Willie Emmett Johnson	7, 27
John G. Hailey	12
Earl Dickinson	15
Trooper Daniel W. Bishop	16
Otis Perry	20
Bryan Brooks	24
Eleanor Sacra	26
Emanuel Coleman	32
Proceedings	25, 27, 33

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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