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201VA834

# Record No. 5081

## In the Supreme Court of Appeals of Virginia at Richmond

## LINWOOD BAKER, ADMR., ETC.

v.

## EDWARD A. RICHARDSON

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

### RULE 5:12—BRIEFS.

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

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## Record No. 5081

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 8th day of October, 1959.

LINWOOD BAKER, ADMR., ETC., Plaintiff in Error,

*against*

EDWARD A. RICHARDSON, Defendant in Error.

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

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Upon the petition of Linwood Baker, administrator of the Estate of Varalie Baker, deceased, a writ of error is awarded him to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 5th day of May, 1959, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Edward A. Richardson was defendant; no bond being required.

# RECORD

* * * * *

page 9 } INSTRUCTION P-1.

The Court instructs the jury that it was the duty of the defendant to exercise reasonable care and vigilance in order to discover the presence of children in such proximity to the highway as might cause one in the exercise of ordinary care to apprehend that the child acting upon childish impulse might run into the highway in front of an approaching automobile.

Granted 5/4/59.

J. S. S., JR.

page 10 } INSTRUCTION P-2.

The Court instructs the jury that if they believe from a preponderance of the evidence that there was a large crowd gathered in the immediate area where the collision occurred before the collision and that there were small children which were seen or should reasonably have been seen by the defendant, and if the jury further believes by a preponderance of the evidence that the defendant saw or should reasonably have seen the small girl suddenly run across the highway, it was the duty of the driver to exercise reasonable care to have his car under proper control so as to reasonably avoid injury and also it was the duty of the driver not to drive in excess of a reasonable speed under the circumstances and conditions existing at the time and if you believe by a preponderance of the evidence that the defendant failed in either of these obligations, and that his failure proximately caused or proximately contributed to the injury of the plaintiffs decedent, then you shall find for the plaintiff.

Granted 5/4/59.

J. S. S., JR.

page 11 } INSTRUCTION P-3.

The Court instructs the jury that a child under the age of seven years cannot be guilty of negligence and therefore that

Varalie Baker, the deceased child in this case, could be guilty of any negligence.

Granted 5/4/59.

J. S. S., JR.

* * * * *

page 13 } INSTRUCTION NO. I.

The Court instructs the jury that the mere fact that plaintiff's decedent was fatally injured in this accident with the defendant raises no presumption whatever that the defendant was guilty of any negligence at all, but, on the contrary, the presumption is that the defendant was free from negligence and that he operated his car with ordinary care, and you are further instructed that before the plaintiff can recover you must believe, by a preponderance of the evidence, that the defendant was guilty of negligence and that such negligence, if any, proximately caused or contributed to the accident. The burden of proving negligence on the part of the defendant is on the plaintiff, and the Court instructs the jury that in order for the plaintiff to recover against the defendant in this case, he must prove, not by guess or conjecture, but by a preponderance of the evidence, that the defendant was guilty of negligence which proximately caused or contributed to the accident and the injuries complained of, and unless the plaintiff does establish such negligence on the part of the defendant by a preponderance of the evidence, the jury must bring in their verdict for the defendant.

Granted 5/4/59.

J. S. S., JR.

page 14 } INSTRUCTION NO. II.

The Court instructs the jury that if you believe from the evidence in this case that the child ran into defendant's automobile or into its path, and that the accident could not have been avoided by the exercise of ordinary care on the part of the defendant, under the circumstances, then you must find for the defendant.

Granted 5/4/59.

J. S. S., JR.

page 15 } INSTRUCTION NO. III.

The Court instructs the jury that the laws of Virginia provide that wherever possible pedestrians shall cross only at intersections and shall not step into a street at a point where their presence would be obscured by a motor vehicle or motor vehicles at the curb, and the defendant had a right to assume that no person would violate this law and he had a right to rely upon this assumption unless and until, by the exercise of reasonable care, under the circumstances, the contrary should have appeared.

Granted 5/4/59.

J. S. S., JR.

page 16 } INSTRUCTION NO. VI.

The Court instructs the jury that if you believe that this child suddenly entered the street from behind any obstruction into the path of the Richardson car and so close to the Richardson car that the driver had no reasonable opportunity to avoid striking the child after seeing her, or by the exercise of reasonable care should have seen her, then your judgment should be for the defendant.

Granted 5/4/59.

J. S. S., JR.

page 17 } INSTRUCTION NO. VII.

The Court instructs the jury that in operating his automobile the defendant owed no higher or greater duty to the child than he owed to an adult until he saw, or, by the exercise of reasonable care, should have apprehended that a child might run into the highway in front of an approaching automobile.

Granted 5/4/59.

J. S. S., JR.

page 18 } INSTRUCTION NO. P-3(a).

The Court instructs the jury that if they believe by a preponderance of the evidence that this child was crossing at the

intersection then you must find that she had the right of way over all vehicles.

Refused 5/4/59.

J. S. S., JR.

page 19 } INSTRUCTION P-5.

The Court instructs the jury that it is the duty of a driver when driving on a highway which has been divided into clearly marked lands for traffic to drive in the lane nearest the right-hand edge or curb of the highway when such lane is available for travel except when overtaking a vehicle or in preparation for a left turn and if you believe by a preponderance of the evidence that the defendant failed in this duty and that his failure proximately caused or proximately contributed to the injury of the child then you shall find for the plaintiff.

Refused 5/4/59.

J. S. S., JR.

page 20 } INSTRUCTION P-6.

The Court instructs the jury that a person shall be guilty of reckless driving who shall exceed a reasonable speed under the circumstances existing at the time regardless of any posted speed limit.

Refused 5/4/59.

J. S. S., JR.

* * * * *

page 21 } INSTRUCTION P-7.

The Court instructs the jury that children of tender years are entitled to a degree of care from others proportioned to the apparent ability of such children to foresee and avoid the perils which they may encounter, if those perils are such as have become apparent to, or might have been discovered by, the operator of an automobile in the exercise of ordinary care under the circumstances. The driver of an automobile, accordingly must not assume that an infant of the age of five years will exercise proper care for her own protection. If,

therefore, you believe from a preponderance of the evidence in this case that the defendant, Edward Richardson, failed to use such care, and that, in consequence of such failure, operating as the proximate cause, the child was killed, then you should find for the plaintiff and assess damages not to exceed the amount claimed in the declaration in this case.

Refused 5/4/59.

J. S. S., JR.

* * * * *

page 22 } INSTRUCTION P-8.

The Court instructs the jury that the driver of an automobile owes the duty of reasonable care to children on the highway, and that this obligation signifies such care as is commensurate with the danger and probability of the injury to such children. The conduct of a child on its part is not to be measured by the same rules which govern that of adults, since the child is presumed to lack the knowledge and experience to know or estimate correctly the probable consequence of his acts, or the essential danger in a given instance. The reasonable care required of an automobile driver towards children demands that the driver of an automobile should consider the age, maturity, and intelligence of the child whenever the operation of such automobile involves the safety of such a child, as the age of such child may be apparent to, or discoverable by, the operator of the automobile in the exercise of ordinary care.

Refused 5/4/59.

J. S. S., JR.

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page 23 } INSTRUCTION P-9.

The Court instructs the jury that if they believe from the evidence in this case that the defendant before the collision saw or should reasonably see children in or near Virginia Beach Boulevard ahead of him at or near the point of the accident, that, alone, was notice to him of the risk and danger of the situation and he had no right to assume that children of tender age would remain in a place of safety, but on the

contrary was required, in the exercise of ordinary care, to anticipate that the children, or some of them, acting upon some childish impulse, heedless of danger and incapable of exercising precaution to be expected of adults, might, through their thoughtlessness, expose themselves in some way to danger of injury, and it was his duty in approaching and passing the children to increase his vigilance as he approached the said children and to exercise that degree of care that a person of ordinary prudence would have exercised under similar facts and circumstances to avoid danger of injury to them, and if he failed to do so that would be negligence for which the defendant would be responsible.

Refused 5/4/59.

J. S. S., JR.

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page 26 }

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In the Court of Law and Chancery of the City of Norfolk, on the 5th day of May, 1959.

* * * * *

This day came again the parties, in person and by counsel and thereupon pursuant to adjournment came again the jury, to-wit, Anne Bagby, Eugene M. Garnett, Walter H. Gietz, John E. Phillips, M. E. Phillips, Henry W. Price, Mrs. Herman A. Ruetschi, who, now having heard all the evidence and argument of counsel returned a verdict in the following words, "We the jury find for the defendant."

Thereupon the Court polled the jury as to their verdict to which poll each of the said jurors replied that the verdict herein recorded was his or her verdict, thereupon the plaintiff, by counsel, moved the Court to set aside the verdict of the jury, and grant him a new trial, upon the grounds that the said verdict is contrary to the law and the evidence, which motion after having been fully heard and maturely considered by the Court, is overruled, to which action of the Court, Plaintiff, by counsel, duly excepts.

Whereupon it is considered by the Court that the plaintiff take nothing for his motion for judgment and that the said

defendant go hence without day and recover of the said plaintiff his costs about his defense herein expended.

To all of which action of the Court, plaintiff, by counsel, duly excepts.

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page 27 }

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## INCIDENT OF TRIAL.

On May 5, 1959, the jury in the above styled action brought in the following verdict: "We the jury find for the defendant, not guilty." Counsel for the plaintiff objected to the form of the verdict and the jury was polled as to their verdict. The Court struck out the words "not guilty." The jury was again polled and this was their verdict. All of which action to which Counsel for the plaintiff excepted.

Given under my hand this 7th day of July, 1959.

J. SYDNEY SMITH, JR.
Judge of the Court of Law and
Chancery of the City of Norfolk.

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page 28 }

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## NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To: William L. Prieur, Jr., Clerk Court of Law and Chancery of the City of Norfolk, Virginia.

The plaintiff, Linwood Baker, Administrator of the estate of Varalie Baker, Deceased, by his attorney, hereby gives notice pursuant to the provisions of Section 4 Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, of his appeal and application for writ of error from that certain final judgment entered in the above styled action on May 5, 1959.

Further, pursuant to the said Rule, the plaintiff assigns the following errors:

(1) That the Court erred and usurped the function of the jury when it changed the wording of the verdict.

(2) That the Court erred in denying the plaintiff's motion for a new trial on the grounds that the verdict was contrary to the law and evidence.

(3) That the Court erred in granting and refusing the following instructions for the reasons as set forth on pages 161, 162, 163, 164 and 165 of the transcript and in addition for the following reasons:

INSTRUCTION P-3 (A): This instruction stated the time honored principle that a chlid or pedestrian crossing at an intersection had the right of way over an approaching vehicle and there was evidence from which the jury may have gathered and found that the child was crossing at the intersection. As such the plaintiff was entitled to this instruction.

page 29 } INSTRUCTION P-5: It was an admitted fact that the defendant was not in the extreme right lane but was in the extreme left-hand lane and under Section 46.1-206 of the Code of Virginia, Old Code Section 46-22 it was the duty of a driver of a vehicle to drive in the lane nearest the right-hand edge or curb of the highway, and if the defendant's failure to drive in this lane except when overtaking a vehicle or in preparation for a left turn either proximately caused or proximately contributed to the injury of the deceased, then the jury was entitled to bring in a verdict for the plaintiff, and the plaintiff was entitled to this instruction.

INSTRUCTION P-6: This instruction stated the statutory duty that a driver who exceeds a reasonable speed under the circumstances existing at the time is guilty of reckless driving and in this case there was ample evidence that there was a large crowd of people, that there were many children present in the vicinity and that the defendant was proceeding at the same speed at the time of the accident as he was well prior to the accident area. Since his speed did not vary according to the crowd and conditions existing he was guilty of reckless driving and the jury should have been allowed to have found him so guilty if such guilt is necessary on which to base a verdict, and the plaintiff was entitled to this instruction.

INSTRUCTIONS P-7 and P-8 clearly state the rules owed to children by drivers of automobiles and that as far as a child is concerned a driver must not assume that an infant of the age of five will exercise proper care for her own pro-

tection, and that the same rules do not govern adults as they do children. This is the law and a child is owed a greater duty of care than an adult and is held to less of a decree of care than an adult. The plaintiff is entitled to at least one instruction that a child's conduct is not to be measured by the rules which govern that of an adult. The plaintiff was entitled to both of these instructions as these instructions were derived from one of the leading cases on the subject, *Harris* v. *Wright,* 172 Va. 67, 200 S. E. 597, (1939).

page 30 } INSTRUCTION P-9 was to the same effect. There was evidence that there were other children in and about the area, and this should have been noticed to the defendant. The plaintiff had a right to an instruction based on this theory and the court by refusing this instruction completely prejudicied the plaintiff's rights, and the duties owed to children.

INSTRUCTION I of the defendant over emphasized the necessity of the plaintiff to prove his case. Because of this repetition and the references to guilt and guilty it created an ambiguity in the jury's mind which lead them to bring in the "not guilty" verdict which they brought in.

INSTRUCTION III of the defendant places upon a child of five a burden that only an adult would be obligated to sustain; a child is not held by the same degree of care as an adult person and the defendant has no right to assume anything concerning this child. This instruction is a clear misstatement of the law. It places upon a child the burden of proving himself not contributory negligent if the child came out before the intersection. Certainly the jury could have believed that this child did not cross the intersection. Had they so believed under this instruction regardless of the action of the defendant they would have relieved the defendant from obligation. This instruction further assumes that there were obstructions in the path of the defendant and there was no evidence upon which to base such an assumption, and it is repugnant to instruction P-3 of the plaintiff.

INSTRUCTION VI of the defendant is a finding instruction assuming certain facts and not based upon a preponderance of any evidence but assuming the fact that the child came from behind an obstruction into the path of the Richardson car so close that the driver had no reasonable opportunity to avoid striking the child after seeing it and completely usurped

the fact finding functions of the jury and was not based on the evidence as presented nor on a full view of the evidence.

INSTRUCTION VII of the defendant reiterates the position taken in instruction No. III of the defendant and misleads the jury into believing that a child and adult are judged by the same degree of care and places upon the page 31 } plaintiff the impossible burden of proving that the defendant must have apprehended the child might run into the highway. This is not the case but from the mere presence of children alone the defendant is charged with the duty of apprehending that they may run into the highway on some foolish impulse, and it is repugnant to instruction P-3 of the plaintiff.

ROBERT G. DOUMAR,
Attorney.

Filed 7-2-59.

H. L. STOVALL, D. C.

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page 5 }

* * * * *

MRS. MARIE PARKER,
called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

page 6 } By Mr. Doumar:

Q. Please state your name?

A. Mrs. Marie Parker.

Q. And your position, Mrs. Parker?

A. Chief Medical Record Librarian, Norfolk General Hospital.

Q. And in the course of your business as Chief Medical Record Librarian, do you have the records of one Varalie Baker?

A. I do.

Q. Are these the records there with you?

A. Yes, they are.
Q. All right.

Mr. Doumar: I wonder if we might put these records in evidence, your Honor, with leave to withdraw them after the case is over?
The Court: You wish them left here so they can be referred to?
Mr. Doumar: Yes, so they can be referred to.
The Court: All right, they will be marked as Exhibit P-1.
Mr. Taylor: We don't want to see it.

page 7 } (Received and marked in evidence by the Court as Plaintiff's Exhibit P-1.)

Mr. Doumar: That is all.
Mr. Taylor: No questions. Let me see those records that you are going to introduce in evidence?

(Documents shown to opposing counsel for examination.)

Mr. Doumar: While we are waiting, I would like to introduce the certificate of death as Exhibit 2.
The Court: I will mark it P-2.

(Received and marked in evidence by the Court as Plaintiff's Exhibit P-2.)

Mr. Doumar: And the administration certificate as Exhibit P-3.

(Received and marked by the Court as Plaintiff's Exhibit P-3.)

page 8 } Mr. Doumar: Just the death certificate and the certificate of Linwood Baker, father of the child who qualified as administrator.
The Court: Are you ready to proceed now?
Mr. Taylor: Yes.
Mr. Doumar: Mr. Southall Bass.

MR. SOUTHALL BASS, 3RD,
called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Southall Bass, 3rd.*

DIRECT EXAMINATION.

By Mr. Doumar:

Q. Please state your name, sir?

A. Southall Bass, the third.

Q. And where are you employed?

A. Norfolk Journal and Guide Publishing Company, a weekly newspaper.

page 9 } Q. Norfolk Journal and Guide?

A. Yes, sir.

Q. I call your attention to the date of the 29th day of June, 1958. Were you in the vicinity of Wide Street and Virginia Beach Boulevard?

A. I was.

Q. What were you doing there?

A. There was a church under construction at the corner of Wide and Virginia Beach Boulevard, and they were laying the corner stone that day, and I happened to be taking pictures for the paper.

Q. Taking pictures for the paper?

A. That's right.

Q. And what else was present there?

A. Oh, there were the congregation of the church, the local high school band and spectators.

Q. At that time did you take pictures after an accident that occurred there?

A. I did.

Q. I show you—

Mr. Taylor: Let me see it, Mr. Doumar?

(Photographs shown to opposing counsel for examination.)

Mr. Taylor: All right.

page 10 } By Mr. Doumar:

Q. I show you this picture and ask you if you can identify it.

(Shown to witness for identification.)

A. Yes, I can.

Q. What is that a picture of?

A. That is a picture of a little girl that was struck by an automobile while the corner stone laying was going on.

*Southall Bass, 3rd.*

Mr. Doumar: I ask that this picture be admitted in evidence as plaintiff's exhibit.
The Court: Exhibit P-4.

(Received and marked in evidence by the Court as Plaintiff's Exhibit P-4.)

By Mr. Doumar:
Q. How soon after the accident was this picture taken?
A. The length of time it took me to cross the Virginia Beach Boulevard. The Virginia Beach Boulevard is divided by an island, and for the length of time to get from out of the crowd across the first island and over to the other side, and I snapped it then.

page 11 } Q. I notice in that picture that there is a rear tire. Is that the rear tire of the car that was there?

A. May I see the photograph a minute?

(Handed to the witness for examination.)

A. Yes, it is.

Mr. Taylor: Let me see that just one second.

(Shown to opposing counsel for examination.)

By Mr. Doumar:
Q. Now, subsequent to that day, at my request, did you take some pictures of the accident scene?
A. Yes, I did, and the intersection where that was located.
Q. All right.

The Court: Has Mr. Taylor seen them?

(Photographs shown to opposing counsel for examination.)

Mr. Taylor: What are these supposed to be?
Mr. Doumar: Pictures of the scene of the accident.

By Mr. Doumar:

page 12 } Q. I show you these pictures. Are these the pictures that you took? A few days after the accident?

(Shown to the witness for identification.)

A. They are.

The Court: Ask him what they represent.

By Mr. Doumar:
Q. Do they represent pictures of the scene of the accident?
A. Not at the scene of the accident, but the scene where the accident was located. In other words, where it happened, because it was taken the Sunday prior to the time the accident actually happened.
Q. You mean "after?"
A. That is what I mean, afterwards; the accident was one Sunday and the following Sunday I made these pictures.

The Court: Let me mark them.
The first one will be marked P-5, and up to P-11.

(Received and marked in evidence by the Court as Plaintiff's Exhibits P-5 through P-11 respectively.)

By Mr. Doumar:
Q. I show you Exhibits P-7, P-5 and P-10, and page 13 } ask you if you can identify the spot in the road.

Mr. Taylor: What spot?
The Court: What spot in the road? Explain what spot.

By Mr. Doumar:
Q. Could you explain what that spot is on those exhibits?
A. (Examining exhibits) Yes, that is the blood from the little girl. That was the stain still left on the highway.
Q. That is on Exhibit—
A. That is in all three of the pictures.
Q. All right. Now, would you mark those, please; would you mark that spot there with a red pencil?
A. (Witness complied).
Q. Just put an X there.
A. Okay.
Q. Will you put an X on this one and put a circle around it?
A. (Witness complied.)
Q. Now, that blood spot was where the child was laying

when you took this other picture, the picture that shows the child laying there?

A. That's right.

Q. When were they taken?

page 14 } A. They were taken one week after the accident.

The Court: Just put them altogether and pass them around. Put them all in one group and let each juror look at all the pictures.

Mr. Doumar: I have no further questions.

## CROSS EXAMINATION.

By Mr. Taylor:

Q. The band was on Wide Street, was it not?

A. That's right, the formation of the band was on Wide Street facing Virginia Beach Boulevard.

Q. Uh-huh. How high is the island on Virginia Beach Boulevard dividing the east and west lanes of travel?

A. I would say about six inches.

Q. About six inches. Well, now, that island was lined with people, was it not?

A. No.

Q. Nobody on it?

A. Well, I wouldn't say it was "lined" with people, but I do say there might have been one or two just standing on there.

page 15 } Q. There were more than one or two, weren't there, or did you look particularly?

A. Well, in glancing, in moving from one spot to the other I looked, but the majority of the people were standing on the sidewalk across the street.

Q. But the band was down on Wide Street?

A. The band was on Wide Street.

Q. And this accident happened fifty or sixty feet west of Wide Street, did it not?

A. From where?

Q. Where the child was lying you don't know where it happened?

A. No, from where the child was lying I would say approximately between 25 and 50 feet from the corner.

Q. You didn't measure it, did you?

A. No, I did not.

Q. Now, in Plaintiff's Exhibit 4, here, there appears the

rear-wheel of an automobile. Your understanding is that that is the car that the child came in contact with?

A. That is my understanding. The officer at the scene, I think, asked the driver of the car to move up after he had looked at the situation.

Q. Well, it had not been moved at the time this picture was taken, was it?

A. It hadn't been moved.

page 16 } Q. Yes. In other words doesn't this rear-wheel of this car here represent the place where the car stopped after the collision with the child?

A. I really don't know.

Q. You don't know?

A. No, I don't know.

Q. But certainly, it was there when you took this picture, and that it is your understanding that that is the right-rear wheel of the car with which the child came in contact?

A. That's right.

Q. I wonder if I could interrupt you for just one minute. Let me get just one of these pictures here. Now, in Plaintiff's Exhibit 7, there is a spot there, and I believe you showed us where the spot was, the blood spot. In what direction is that from, is that photograph looking? I mean is this Wide Street right—?

A. That is it.

Q. And then to the left-side of the picture, then, is looking east, I mean if you hold this photograph up?

A. Up, un-huh.

Q. And where your left-hand is there now is in the easterly direction?

A. Now, I'm not positive about the location, but

page 17 } I know going this way is towards Virginia Beach, going to the east.

Q. Well, this intersecting street is Wide Street?

A. That is Wide Street.

Q. Did you take any other pictures besides those you have introduced in evidence here today; did you take any other pictures?

A. Yes, the day of the accident, I imagine I took one more shot at that scene.

Q. What did you take, or what did that shot show?

A. Just the crowd.

Q. The crowd where?

A. Around the accident.

Q. Why don't you have that here; where is that picture?

*Jean Pearson.*

A. Now, let me say this. When the accident occurred I ran across the street. I would actually have to check my file and my negatives, but I know that that is the picture that I turned into the paper, submitted to the paper for them to use. If there is another picture it was taken practically at the same spot as that one.

Q. Do you know what direction you were looking at the time the missing picture was taken?

page 18 } A. (Pause) It would be practically the same as this. I didn't take any more pictures from any different angle than that.

Q. Did you develop it?

A. It was on the roll. It was developed but it was not printed.

Mr. Taylor: I think that is all. Thank you.

Mr. Doumar: Just one minute, Mr. Bass.

RE-DIRECT EXAMINATION.

By Mr. Doumar:

Q. I never knew anything about that other picture, did I, Mr. Bass, you never told me?

A. No, sir, this is the only one anybody has seen because the other one was never printed.

Q. When you say "printed" you mean the negative was developed but no picture—

A. No picture was processed, that's right.

Mr. Doumar: Thank you, sir.

The Court: You are excused.

Mr. Doumar: Jean Pearson.

page 19 } Hold that witness, Mr. Miller. I would like to call Vera D. Garner.

* * * * *

page 24 }

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JEAN PEARSON,

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

*Jean Pearson.*

DIRECT EXAMINATION.

By Mr. Doumar:

Q. Please state your name?

A. Mrs. Jean Pearson.

Q. Where do you live?

A. 871 Virginia Beach Boulevard.

Q. Where is 871 Virginia Beach Boulevard in relation to Wide Street?

A. It is about two blocks from Wide Street.

Q. Now, I want to call your attention, Jean, to
page 25 } the day of June the 29th, 1958. You may remember
it as a Sunday when the Cavalry Church was having its dedication ceremony; do you recall that day?

A. Yes, I do.

Q. I wonder if you could tell the jury what you were doing and, you know, just tell the jury your story.

A. There was a ceremony going on that Sunday. The Church was laying their corner stone, and they were having a parade. The Booker T. Washington High School band was playing, and we thought that the band was coming down Chapel Street to Virginia Beach Boulevard and go up to the Church, but instead it turned at the corner of Henry Street from Chapel and went up to Wide Street and come up Wide Street to the corner of Virginia Beach Boulevard.

And I have three children, and I wanted my children to see the band and the ceremony, so I took them to the corner of Wide Street and Virginia Beach Boulevard to see it. And I was standing on the same side of the street in which I lived. The band was on the opposite side playing and there were a crowd. There was a crowd of people standing at the corner watching and I was looking across the street to see if the traffic was so that I could get my children closer to the band.

Q. Now, you say how many children do you have?

A. I have three.

page 26 } Q. And what are their ages?

A. Now their ages are five, four and three.

Q. How old were they then?

A. Four, three and two.

Q. All right. And you said you were standing on the corner?

A. Yes.

Q. I show you Plaintiff's Exhibit 7. I wonder if you can show me where you were standing on this corner.

*Jean Pearson.*

(Exhibit shown to the witness for examination.)

A. I was standing on this corner here (pointing).

Mr. Taylor: Now, identify it.

By Mr. Doumar:

Q. Would you take a red pencil and mark that with a circle. It is not very strong, you are going to have to bear down.

A. Well, just about here (marking photograph).

The Court: Why don't you punch a hole in it?

Mr. Doumar: With Mr. Taylor's permission I will punch a hole.

Mr. Taylor: Yes, it's all right.

By Mr. Doumar:

Q. Now, you were standing on that corner, is that
page 27 } correct?

A. That is correct.

Q. With your three children?

A. Yes.

Q. Who else was there right there?

A. Well, I didn't notice whom I saw that I knew but I knew that there was a crowd of people at the corner, and there were a lot of children too.

Q. All right, and then what happened?

A. Well, as I say I looked down the street to see if the traffic was coming or whether or not I could get across the street closer to the band so that my children could see everything that was happening because they were small and not being able to see behind people or, you know, over the traffic going by, as I was, and I noticed that from Church Street the light had just turned green and there were cars coming, and I thought to myself it would be best for me to wait until after those cars passed before I tried to get across the street.

Q. How many cars were coming?

A. Well, there was two cars, I know. I don't know how many more, but I did see two cars coming and I thought that maybe after those cars had passed I could get across.

Q. Two cars were coming; where were they?

A. From the corner that I was standing on they
page 28 } were in the third lane, the lane next to the thoroughfare.

Q. Now, go ahead, what happened then?

*Jean Pearson.*

A. Well, just as this first car approached Wide Street, the intersection of Wide Street and Virginia Beach Boulevard a child from the curb, from around the curb started out to run across the street, and I don't know, she was running so fast that before I could yell at her to stop, because the cars were coming, the first car hit her. The man wasn't driving fast but it all happened so quick, and I just didn't have a chance to yell at her to come back. And I yelled at him. I told him that he had hit a child, and then he turned and looked in my direction, and I repeated myself, and then he started to come to a stop, to a complete stop.

Q. Did he ever slam on brakes?

A. No, he did not.

Q. Now, when you say he looked and turned in your direction, did you see him when he passed before he hit the child?

A. Well, actually, I did not notice him too much then until I saw the collision.

Q. When you saw the collision, what happened? Did you see his head?

A. Well, when he turned and looked at me his head was turned in the direction of the ceremony.

Q. And that was on his left?

page 29 } A. That was to his left; yes.

Q. What did you do then, what did you say to him, if anything; did you say anything to him?

A. I said "You hit a child."

Q. What did he say?

A. He didn't say anything, he just turned and looked in my direction, and I repeated myself, and then he started to come to a complete stop, and by the time he come to a complete stop the child's body had released from the car and her head was lying at the rear fender.

Q. Now, you said the child's body was released from the car. What do you mean by "released from the car?"

A. Well, when he hit her, by him still traveling along the street her body stuck to the car, and when he started to come to a stop that released her body from the car. She fell to the ground, and by the time he stopped completely she was lying at the rear fender.

Q. Now, which direction was the child running?

A. The child wasn't running straight across the corner. She was running sort of diagonally across the street.

Mr. Pincus: Step down here, please?

*Jean Pearson.*

(Witness left witness stand and stood in front of the jury box.)

By Mr. Doumar:

page 30 } Q. This is going towards Virginia Beach, which is east, and this is west, and this will be Wide Street, and this will be the island here. All right. Now, suppose you show the jury what the child did and which direction she ran.

A. Well, the new building is on this corner.

Q. Across the street?

A. Yes, and the band—

Q. Well, just a moment—

A. —was in here.

Q. The church is on the northeast corner then?

A. Yes.

Q. The northeast corner. Go ahead.

A. The band was in the street, in Wide Street here.

Q. In Wide Street?

A. Yes. You say this is the thoroughfare?

Q. Let's put this in here and say that is the island. I think it comes to about like that.

A. Uh-huh. Well, this car was coming into the intersection like this, and—

Q. The car was in an easterly direction?

A. Yes. He wasn't going fast.

Q. That's right.

A. And I was standing, not directly at the corner, but there is a telegram post here, and I was standing on this side of the telegram post.

page 31 } Q. You were standing on the eastern side of the telegraph pole?

A. That's right.

Q. And I show you Plaintiff's Exhibit P-7, and the telephone pole with the hole in it; is that what you are referring to?

A. Yes, this is what I am referring to. I was standing on the east side of the telegram pole.

Q. All right.

A. And the child was on the west side of the pole.

Q. All right.

A. She darted out and ran—started to run like this across the street (demonstrating).

Q. In a northerly direction, northeasterly direction?

A. That's right.

*Jean Pearson.*

Q. That's all.

(Witness resumed the witness stand.)

Q. Now, you say there were two cars on Virginia Beach Boulevard?
A. Yes, traveling you mean?
Q. Yes.
A. Yes.
page 32 } Q. And they were going east?
A. That's right.
Q. And one was behind the other one?
A. That's right.
Q. Were there any other cars present? I am not talking about in the inside lane. In the center lane, were there any cars there?
A. I couldn't really say because I just didn't notice.
Q. You said there were some children standing on that corner. About how many children do you think there were there?
A. Well, I couldn't say how many, but there were a crowd of children at the corner.

Mr. Doumar: Your witness, Mr. Taylor.

CROSS EXAMINATION.

By Mr. Taylor:
Q. How far is your home from that of the parents of this little child?
A. Well, it's about two blocks.
Q. You know them, do you?
A. I have known them better since the accident
page 33 } than I did before.
Q. But you knew them before the accident?
A. I was introduced.
Q. Well, you knew them, I say.
A. Yes.
Q. Yes. Now, you had your three children. Was there a pedestrian crosswalk there at the corner?
A. What do you mean?
Q. You know at some intersections there are some white lines for pedestrians to cross?
A. Oh; no.

*Jean Pearson.*

Q. I see. But with your three children you were going to cross at the intersection, were you not?

A. Yes.

Q. You know that you are supposed to do that?

A. Yes.

Q. And this accident happened about sixty feet down the street from where you were standing, didn't it?

A. Well, I couldn't say exactly how many feet.

Q. You don't know how far?

A. No.

Q. But it was down the street, to your right?

A. Well, it wasn't too far from the corner.

Q. But you said you didn't know how far it was, but I say it was down the street to your right?

page 34 } A. No, it didn't happen on the other side, off my right. It was more or less in front of me rather than to my right.

Q. Now, you don't know in what direction the driver of the car was looking at the time the child was struck—

Mr. Doumar: I object to that, your Honor. She stated she knew.

The Court: Well, that doesn't make any difference, he is not bound by what she stated.

Mr. Taylor: She said that after she called to him—

The Court: Regardless of that, I overrule the objection. It is cross examination.

By Mr. Taylor:

Q. I say, of course you don't know in what direction the driver of the car was looking at the time of the impact and immediately before the impact?

A. Well, at the time of the impact he had his head turned towards the direction of the church ceremony.

Q. Do you know whether or not he was looking to see what he had hit? You don't know what he was looking at.

A. I don't know what he was looking at, no, but page 35 } he didn't have his head in the direction of the highway.

Q. But you don't know in what direction he was looking immediately before this accident, do you?

A. No, I don't.

Q. All right. Now, if the testimony develops in this case that this accident happened 58 feet east of Wide Street, you are not in a position to contradict that, are you?

*Jean Pearson.*

A. No, I am not.

Q. All right. Now, you say you were standing there at the corner and you were going to cross from the south to the north side of Princess Anne Road at the intersection?

A. Yes.

Q. Yes. Well, now, after—and you, of course, were intent on watching traffic and getting across the street there, weren't you?

A. Yes.

Q. Yes. Well, now, will you please explain to the jury, if you are standing on that corner right here on this corner—

A. No, I was standing on the opposite corner.

Q. On this corner?

A. I was standing on this side of the corner.

Q. Oh, yes, yes, over here. Well, now, were you on the east or the west side of Wide Street?

page 36 } A. Well, this is the east side of Wide Street.

Q. Well, no. I mean Wide Street runs north and south, and right near here, I think, the church is over here. Maybe that will help you. The church is over here?

A. Yes.

Q. And this is the south side of Virginia Beach Boulevard where you were standing?

A. I was standing over here. I was standing on this corner.

Q. And what street were you going to try to cross, Wide Street?

A. I was going to try to cross Virginia Beach Boulevard to get over here.

Q. Oh, yes, I see.

A. By the church.

Q. And the car was going east. I see. Is that what you mean now?

A. Yes.

Q. All right. Now, if you were there then standing on that corner, and you say you were going to cross at the intersection—

A. Yes.

Q. —and were intent on watching the traffic, how did you happen to see in what direction that man was looking if the accident happened down the street to your right?

page 37 } Mr. Doumar: Now, just a minute, your Honor. That question is very complex.

*Jean Pearson.*

The Court: Well, I sustain the objection. She already testified differently.

By the Court:

Q. Where were you standing? Just show us again where you were standing?

A. Well, your Honor, I said that there was more or less a curve here rather than coming up straight and it goes around like that, and there is a telegraph post near the curve. I was standing on the east side of the telegraph post and from where I was standing she was on the west side of the telegram post, but when I saw her she had started to run out in the street.

By Mr. Taylor:

Q. And diagonally in a northeasterly direction?

A. That's right, yes.

Q. All right. There is an island in the middle of Virginia Beach Boulevard dividing the east bound lane and the west bound lane of traffic?

A. Yes.

Q. And how wide is that island?

A. I couldn't say by how many inches or feet.

page 38 } Q. I see, but there is an island there?

A. Yes.

Q. There were a lot of people standing on that island there, weren't there?

A. There were some.

Q. Yes, and now the band of which you spoke was on Wide Street, wasn't it?

A. That's right.

Q. Now, the children of whom you spoke, they were standing up on the sidewalk?

A. That's right.

Q. Now, you say that you wanted to get across the street so as your children would be able to get a better view of the ceremony?

A. Uh-huh.

Q. Because they were obstructed by the people. Now, they were adults, grown people, standing in front of them, and you wanted to get across so you could see better?

A. Well, the adults were more or less standing to the side. I was able to get them close to the curb but by the people standing on the island I wanted to get them closer to the band so they could see the band.

*Jean Pearson.*

Q. People on the island obscured your view over there?

A. Well, not my view, but small children have
page 39 } difficulty seeing around grown people.

Q. Yes. Now, what did you do after this accident happened? I mean after you had called to the boy and told him that he had hit a child?

A. I ran out into the street.

Q. And then what did you do?

A. Well, I didn't do anything. I just wondered if the child was dead.

Q. And you stayed there to find out if it were dead?

A. Well, I thought about my children whom I had left on the sidewalk, and it was such a terrible sight for them to see, I thought it was best for me to take them on back home.

Q. Uh-huh. Were you there when the police officers came, Police Officer Farr came?

A. Well, I don't know Police Officer Farr.

Q. Well, you were there when the police officers got there, weren't you?

A. No, I left.

Q. Did you hear the police officer come in the assembled crowd there and ask if there were any witnesses?

A. No, I didn't.

Q. You think probably you had gone by that time?

A. Yes.

page 40 } Q. Well, when was it that you gave your name to your friends here, the Bakers, your acquaintances?

A. Well, I wondered if the child would live.

Q. Won't you just answer my question?

Mr. Doumar: Let her finish her answer—

The Court: Well, she can answer the question without any preliminaries. He asked her a simple question. He asked her when.

By Mr. Taylor:

Q. I asked you when you gave your name to the parents of this child or to their attorney?

A. It was the next day. I went down to the home of the child to see how she was getting along.

Q. The day of the accident was June the 29th? And after this accident happened you were in touch with the Baker family right much, weren't you?

A. Yes, I were.

*Jean Pearson.*

Q. And you knew, of course, that there was going to be a hearing in police court?

Mr. Doumar: Now, I object to this, your Honor. I just told Mr. Taylor—

The Court: Objection overruled.

page 41 } If he wishes to contradict the witness he has got to show as to where her alleged statement was made. Is that the basis?

Mr. Taylor: No, sir, it is not the basis, I just want to show that she wasn't there.

Mr. Doumar: She wasn't there because I told her not to be there.

The Court: Mr. Doumar, you can bring that out. Go ahead.

By Mr. Taylor:

Q. Why weren't you in police court?

A. I wasn't notified.

Q. You were not notified?

A. No.

Q. Mr. Doumar just told the Court that he told you not to come, didn't he?

A. I didn't even know when the hearing was.

Q. Mr. Doumar did not tell you not to come to police court?

A. I didn't know when the hearing was.

Q. Well, did you just hear him say that he told you not to go to police court?

A. Yes, I heard him say that.

page 42 } Q. Is he mistaken?

A. I don't know whether he is or not. I don't remember him saying anything to me about going to police court.

Q. Well, from June 29th until July the 9th, how many times did you see the Baker family?

A. Oh, a couple of times, I guess, I can't say exactly how many.

Q. And those occasions on which you did see the Baker family they did not tell you anything about the police court hearing?

A. No.

Q. In other words you were an eye-witness, or supposed to be an eye-witness to the accident, and you mean they did not tell you anything about being in police court?

A. No.

*Jean Pearson.*

Q. Now, do you know what part of the car came in contact with the child?
A. The front-right fender.
Q. The right-front fender?
A. Yes.
Q. And the car did not run over the child, did it?
A. No, it didn't.
Q. Well, now, how far did the car go after the child was disengaged from the car, as you say?
page 43 } A. Only a short distance. I couldn't say how many feet.
Q. You said the car was going slowly?
A. Yes.
Q. As a matter of fact didn't that child run right into the right-front fender of this defendant's car slightly to the rear of the right headlight?
A. (Pause) Well, to be truthful about it, I couldn't say whether it was to the rear or directly in front of it.
Q. But the fender was the part that struck her?
A. That's right.
Q. And the fender struck her head, did it not?
A. Yes.
Q. Well, the child was by itself and was running across the street?
A. Yes, it was.
Q. And it was running fast?
A. Yes.

Mr. Taylor: That's all.

RE-DIRECT EXAMINATION.

By Mr. Doumar:
Q. Mrs. Pearson, were you ever subpoenaed to
page 44 } police court at all? Did you ever receive any papers, a subpoenae?
A. To this Court?
Q. Not to this Court, to any other court?
A. No.
Q. Have you ever appeared in any other Court?
A. Not for this case.
Q. All right. Were you subpoenaed here today?
A. Yes.
Q. Did you get a piece of paper from the Sheriff or the City Sergeant?

*Jean Pearson.*

A. Yes, I did.

Q. Now, do you remember on July the first, did you see me, on or about July the first?

A. It was a short while after. I couldn't say exactly what date, but it was a short while after the accident.

Q. And did you give me a full statement at that time?

A. Yes, I did, sir.

Q. Do you know how far the defendant's car dragged the child?

Mr. Taylor: She didn't say it "dragged" it.

The Court: Wait a minute, if you object I sustain
page 45 } the objection. In the first place it is leading.

The Witness: Shall I answer that?

The Court: No, no.

By Mr. Doumar:

Q. No, don't answer that question. Was the child—did the child fall at the point where she was hit?

A. No, she didn't.

Q. What happened to the Baker child if she did not fall at the point where she was first hit?

A. Well, when I yelled at him and told him he had hit a child he immediately turned in my direction, turned his head in my direction, and I repeated myself; then he began to come to a complete stop.

Q. Where was the child?

A. She was, shall we say, "stuck" to the car, and when he started to come to a stop, that is what released her body from the car.

Mr. Doumar: No further questions.

RE-CROSS EXAMINATION.

By Mr. Taylor:

Q. Now, this child was just about as tall as the headlights on the car that struck her, wasn't it?

A. I should say so; yes.

page 46 } Q. And if she ran into the right-front of the fender what part of the car dragged her; do you know?

A. Well—

Q. If she wasn't in front of it?

A. If she wasn't in front?

*Jean Pearson.*

Q. You say she wasn't in front of the car when it hit, she was in the right-front side of it.

A. I said she was at the right-front fender. I couldn't say whether she was on the side of the headlight or whether she was in front of the headlight.

Q. I thought you said—I see. You say you don't know which it was?

A. That's right. I know that the right fender hit her.

Q. Or she hit the right-front fender?

A. Oh, well, yes.

Q. All right, just one other question. How long were you there in the area of the accident after—or before you left?

A. After the accident?

Q. Yes, uh-huh?

A. Not long, because I thought about my children, and I left to take them on home.

Q. Would you say ten minutes?

A. I couldn't say exactly how long, but I didn't
page 47 } stay out there too long.

Q. Well, I mean just try—I don't want you to guess, but give us the best estimate of the time that you can. I am not trying to tie you up or anything like that; but we want to get the facts in this case.

A. Well, I guess so but I just couldn't say exactly how long I stayed out there.

Q. Uh-huh.

A. I know it was something terrible for my children to see, and I went to take them on home.

Q. And you don't know whether the police officers got there before you left or not?

A. No, the only thing I do know is that somebody called for them.

Mr. Taylor: All right, that's all.

RE-DIRECT EXAMINATION.

By Mr. Doumar:

Q. Now, when you left had the child been taken to the hospital yet?

A. No.

Q. She was not?

A. No, because the police car passed my house
page 48 } after I had gotten home.

*Martha Williams.*

Mr. Doumar: All right.
The Court: Is that all of this witness?
Mr. Taylor: That is all I have, your Honor.
The Court: We will take a short recess.

(The Court recessed at 11:30 A.M. o'clock. At 11.40 A.M. o'clock the trial continued as follows:)

Mr. Doumar: I want to call Officer Farr.
The Court: Has he arrived yet?
Mr. Doumer: All right, call Martha Williams.

MARTHA WILLIAMS,
called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

page 49 } DIRECT EXAMINATION.

By Mr. Doumar:
Q. Please state your name?
A. Martha Williams.
Q. And where do you live?
A. 801 Virginia Beach Boulevard.
Q. Do you remember the day that the corner stone was laid over at the church on Virginia Beach Boulevard?
A. Yes, I do.
Q. Where is the church in relation as to where you live?
A. Right across the street.
Q. Right across the street?
A. It's kind of cater-cornered right across the street. My back door is right at the end of the church building where the corner stone is laid.
Q. Now, were you watching the parade and the festivities that day?
A. Yes, I was. I was on—
Q. Where were you?
A. —the corner of Wide and Virginia Beach Boulevard.
Q. Which corner were you on?
A. Right on the corner.
page 50 } Q. All right, now suppose you come down here and show me in relation to the church on this diagram which corner you were on.
A. (Witness left witness stand.)
Q. This is east, this goes towards Virginia Beach, this goes

towards town, this goes downtown. This is Wide Street going south downtown, and this is going north, going in that direction. Well, now, do you know where the church is?

A. Yes.

Q. Put the church on there.

The Court: Put your finger on where the church is.

A. You mean according to my house?

The Court: No, he asked you what corner, which of those four corners.

A. You say this is going towards downtown?

By Mr. Doumar:

Q. That's right, and that is going towards Tidewater Drive.

A. That means this is Wide Street going the other way?

Q. Yes, that's right.

A. That makes the church on this side of Wide Street. I was standing across the street from the church. My

page 51 } house is right there.

Q. Was that your house?

A. Yes, that is my apartment building right there. This is the corner I was standing on, right here.

Q. Right where, here?

A. Yes, I was standing right there on the corner.

Q. All right, punch a hole in this Exhibit 6, punch a hole where you were standing.

A. Right in here, right on the end.

Mr. Taylor: Did you get that, Mr. Reporter?

(The reporter indicated that he did.)

By Mr. Doumar:

Q. You were standing, on Exhibit 6, there is a hole punched on the corner where you were standing, is that right?

A. Uh-huh.

Q. Now, do you remember the accident that happened there?

A. I remember it; yes.

Q. All right, sit down.

A. (Witness resumed witness stand).

Q. Who was with you?

*Lizzie Baker.*

A. I had my four kids with me, and there was a
page 52 } neighbor standing there. There was lots of other people around.

Q. You had your four children?

A. Yes.

Q. Now, I am showing you Plaintiff's Exhibit 4. Do you recognize that child there?

A. I recognize her from seeing her in the street I had never seen her before in the Court, not to my knowledge.

Q. You had never seen her before?

A. No, because I never get out that often, not out in front no way.

Q. Now, was this child standing on the corner?

Mr. Taylor: I object to the question.

The Court: Objection sustained.

By Mr. Doumar:

Q. Do you know where this child was standing?

A. No, no.

Q. Did you see her run out?

A. No, I couldn't say I saw her run out.

Mr. Doumar: No further questions.

Mr. Taylor: We have no questions.

The Court: You may leave if you wish or remain in the court room.

Mr. Doumar: Officer Farr.

page 53 } Mr. Pincus: Your Honor, I went to both courts. He left there just a little while ago. I understood he was coming over here.

The Court: Call another witness.

Mr. Doumar: Mrs. Baker.

LIZZIE BAKER,

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

DIRECT EXAMINATION.

By Mr. Doumar:

Q. Please state your name?

A. Lizzie Baker.

Q. How old are you, Lizzie?

A. 32.

*Lizzie Baker.*

Q. How many children do you have?
page 54 } A. Three.
Q. Who are they?
A. Linwood, Jr., Beverly Jean and Dollie Frances Baker.
Q. How old is Dollie Frances?
A. 15 months.
Q. And how old is Linwood, Jr.?
A. Nine.
Q. And Beverly Baker?
A. She is 7 years old.
Q. She is seven?
A. Yes.
Q. Now, where are your children today?
A. Two are in school.
Q. Where is the other one?
A. And the baby is at home with my cousin.
Q. Now, I show you these two pictures—

The Court: Have you shown them to counsel yet?
Mr. Doumar: No.
The Court: Show them to counsel.

(Photographs shown to opposing counsel for examination.)

By Mr. Doumar:
Q. I show you these two pictures and ask you if
page 55 } you can tell me what they are pictures of.
A. (Examining photographs).
Q. What are they pictures of?
A. My children.
Q. Which one is Varalie Baker?
A. The littlest one right there, and that one and this one.
Q. The littlest one?
A. The smallest.
Q. You are referring—would you make a little X by Varalie Baker, please?
A. (Witness complied.)

Mr. Doumar: I ask that these two pictures be marked.
The Court: Exhibits 12 and 13.

(Received and marked in evidence by the Court as Plaintiff's Exhibits 12 and 13.)

The Court: All right.

*Lizzie Baker.*

By Mr. Doumar:
Q. Now, Lizzie, where do you live?
A. 827 Virginia Beach Boulevard.
Q. And how old was Varalie when she got into this accident?
A. Five.
page 56 } Q. Five.
A. Uh-huh.
Q. And was she in good health at that time?
A. Yes, she was.
Q. Could she talk?
A. Yes.
Q. Was—did she understand?
A. Yes.
Q. On the day of the accident what happened?
A. (Pause).
Q. That you remember about.

By the Court: That you know yourself.

By Mr. Doumar:
Q. That you know yourself, not what anybody else told you.
A. She was across the street to a neighbor's house playing and when all the children heard the ban—

The Court: Wait a minute now. Suppose you show here where she was. We don't know whether she was there or not.
Mr. Doumar: She wasn't at the scene. I am explaining it.

By Mr. Doumar:
Q. Go ahead, Lizzie.
page 57 } A. She was across the street—

By the Court:
Q. Did you see her across the street?

Mr. Taylor: I object to this.
The Court: Mr. Doumar, the Court will not permit the testimony until you have laid some proper foundation for it.

By Mr. Doumar:
Q. Was she at home?
A. No.
Q. Did she come home?
A. Yes.
Q. All right. Now what happened when she came home?

*Lizzie Baker.*

A. She went upstairs to the bathroom and came back down and asked me for a piece of bread, and she left and went out. I don't know what happened then. She left out of the house after I gave her the bread.

Q. You did not see the accident?

A. No.

Q. Where was her brother and sister?

A. She was out looking too.

By the Court:

Q. You were not out there, were you, you don't know?

A. (No response.)

page 58 } The Court: Mr. Doumar, I don't think it is proper for you to put this witness on, and to make the Court rule on it. It is clearly improper testimony.

By Mr. Doumar:

Q. Did you go to the hospital, Lizzie?

A. Yes.

Q. When did you go to the hospital?

A. Just about four o'clock or a little after.

Q. And what happened when you got there?

A. (Pause) But I didn't see her right away when I got over there because, you know, we had to sign papers. But I did see her a little later on, and I stayed to help out till 8:00 o'clock on.

Q. Why did you leave?

A. Because the nurse and the doctors told me I could leave after they operated on her. They operated on her, and after they brought her down they told me I could leave and come back the next morning.

Q. Did you go back the next morning?

A. Yes.

Q. What happened?

page 59 } A. I got up around 9:30 Monday morning and stayed over there all day with her, but about six o'clock, that is when she passed away.

Mr. Doumar: No further questions.

By Mr. Doumar:

Q. Was Varalie a normal child?

A. Yes.

Q. Was she sickly?

*Lizzie Baker.*

A. No.
Q. She was in good health?
A. Yes.
Q. She was normally intelligent?
A. Yes.

Mr. Doumar: No further questions.
The Court: Do you have any questions?

CROSS EXAMINATION.

By Mr. Furniss:
Q. Mrs. Baker, you knew the ceremony was going on out there and heard the band and so on?
A. Yes.
Q. You knew that the corner stone ceremony was going on and you heard the band over there?
A. Yes.
page 60 } Q. And you thought your other children were over there too?
A. Yes.
Q. Is that right?
A. Yes.
Q. In other words you anticipated that this child was going over there too when she left the house?
A. I don't know what happened to her after she left out when I give her the bread. I don't know where she went.
Q. You thought she was going over there didn't you?
A. I don't know. I don't know where—
Q. You don't know where she was going?
A. All I know is she went out the house.
Q. You didn't know where she was going?
A. No.
Q. She didn't tell you where she was going?
A. No.
Q. And you didn't ask her where she was going, did you?
A. No.
Q. It didn't make any difference?
A. Because they all were out there.

page 61 } Mr. Pincus: Objection. Counsel is intimating that she didn't care.
The Court: Well, that is the point. I will just sustain the objection. It is not a proper question.

*Lizzie Baker.*

By Mr. Furniss:

Q. Well, didn't you just testify the child was going over to see the other children?

A. No, I said she was playing with the other neighbor's children across the street.

Q. Where was your husband at the time of the accident?

A. He was upstairs.

Q. Was he asleep?

A. No.

Q. He was home, though?

A. Yes.

Mr. Furniss: That's all.

RE-DIRECT EXAMINATION.

By Mr. Doumar:

Q. Now, after you gave her a piece of bread did she leave the house?

page 62 } A. When I gave her the bread she walked right out of the kitchen. I was in the kitchen cooking and she just walked right out and I didn't see her anymore.

Q. Did you see how she—

A. She went out the door. I figured, you know, she was running through the hall and right out the front door.

Q. Do you know where she was going?

A. No.

Q. Where had she been before that?

A. Across her friend's house right in front of me inside. They were playing a combination in there and dancing.

Q. Playing the combination?

A. Yes, and they was dancing and playing over there.

Q. Do you live in one of those units in Calvert Park?

A. Yes.

Q. And when you speak of her being across the way, you mean another unit in there?

A. Another house. See, the houses face just like this, there is a driveway and there is a house across there; and she was just across the court, you know, right in front of me.

Q. At another house?

page 63 } A. Yes, at another house.

Mr. Doumar: No further questions.

Mr. Furniss: That's all.

Mr. Doumar: That's all.

The Court: If you want her to stay in here she can. Have a seat in the court room.

Mr. Doumar: Linwood, take the stand.

The Court: By the way, I saw the officer come in. Would you rather call him first?

Mr. Doumar: Yes, sir.

OFFICER E. W. FARR,

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

DIRECT EXAMINATION.

page 64 } By Mr. Doumar:

Q. Please state your name?

A. E. W. Farr.

Q. Did you have occasion to investigate an accident on June 29th, 1958 in the City of Norfolk?

A. I did, sir.

Q. And where was this accident?

A. Virginia Beach Boulevard and Wide Street.

Q. What did you find when you got to the scene?

A. When I arrived at the scene I found cars parked—

By the Court:

Q. When did you arrive, Officer?

A. I received the call as to a severely injured person there and I arrived approximately five minutes later, probably about 3:30 in the afternoon. When I arrived there were cars parked at the curb. There was a large crowd of people gathered on the corner and out into the street, a very large crowd, and found a 1955 Dodge sedan sitting in the extreme inside lane next to the dividing lane between the east bound and west bound traffic, and to the rear of this automobile was a pool of blood laying there, and the child had previously been moved by an automobile which arrived on the scene just prior to my arrival, and he had left at the scene a piece of bread indicating the point at which the child's head was laying.

page 65 } That was the conditions when I arrived.

By Mr. Doumar:

Q. When you arrived the child was not there?

A. That is correct, sir.

Q. Now, I show you Plaintiff's Exhibit P-5, and note the blood there. Is that what you are speaking of that you saw?

*Officer E. W. Farr.*

A. Let's see. This would be Virginia Beach Boulevard, I believe, looking east (examining photograph).

Q. Uh-huh.

A. I believe the blood was along in this area here, but I can't tell by your photograph whether that is actually blood there on that photograph or not, sir.

Q. Now, Officer Farr, were there any skid marks at the place of the collision?

A. No skid marks.

Q. No skid marks. What kind of weather was that?

A. Clear, bright, a sunshiny afternoon.

Q. Did you subsequently conduct a test of the automobile at approximately the same stretch of road and determine if it would leave skid marks?

A. (Pause) I did conduct a test there, and at a speed—I was trying to recall it—a '55 Dodge sedan. I did take a test on it at a speed, and the brakes were functioning
page 66 } properly.

Q. Didn't it also leave skid marks?

A. Yes.

The Court: I will have to instruct counsel again not to lead the witness.

By Mr. Doumar:

Q. Now, did you interview the defendant?

A. I did, sir.

Q. Did you ask him where the position of the child was when he first saw her?

A. From my investigation I determined that Edward A. Richardson, I believe, was the operator of the automobile. The best that I can recall it now, his mother was seated on the front seat with him and his father was in the rear seat, I believe, was the situation. They were traveling east. A vehicle which remained on the scene had been following it, and the best of my recollection is that they didn't have to stop at the traffic signal at Church Street as they were traveling east and Richardson stated to me that the child came from his right, which would be coming from the south side of the street traveling to the island, which would be going north from between parked automobiles, and that he struck the child just about the same time he saw it.

Q. He said he saw it just about the same time
page 67 } he struck it?

A. That is correct, sir.

*Officer E. W. Farr.*

Q. You say they were proceeding down Virginia Beach Boulevard and didn't stop at Church Street but kept going?

A. That is the best of my recollection, that they had the—that they told me that the light at the Church Street intersection and Virginia Beach Boulevard was green as they approached it and came on through.

Q. Did he mention anything to you about any other automobiles?

A. I don't fully understand your question there, sir.

Q. Did he mention anything concerning what may or may not have been in the center lane?

A. I don't recall that now, sir.

Q. Did you ascertain what occurred to the child?

A. You mean what occurred?

Q. Yes, did you ascertain—

A. After I completed my investigation, as far as I could on the scene there, I went to the General Hospital over there where she was being treated, in my rough terminology, not being a doctor, for a puncture wound of the skull and a fracture of the left-hip and leg which she, I believe, died from at 5:15 P.M. the following day.

page 68 } Q. Now, did you examine the car to determine what could have caused this puncture wound?

A. Yes, I did examine the car at the scene. Also the car was examined at the Norfolk General Hospital. The doctor from the emergency room, I believe, also came out and looked at the car. We couldn't find any point on the car that would give us any indication which point of the car it was that struck the child.

Q. Now, how wide is Virginia Beach Boulevard?

A. It is 30 feet wide for the east bound lane and about 30 feet wide for the west bound lane. It has a dividing island in the middle. There is parking on the curb and there is ample room for two more lanes of traffic.

Q. In which lane was the child found?

A. She was found with her head two feet three inches on the inside lane next to the traffic divider.

Q. Now—

A. That was the indication, I mean. The witnesses told me that when the officer—when they picked the child up there was a piece of bread where they picked her head up, indicating to me that was the point from where they had picked up the child, the child having been removed when I arrived there.

Q. Do you know who laid the bread down there?

*Officer E. W. Farr.*

A. One of the officers that moved it, so the wit-
page 69 } nesses told me; and I wasn't interested as to who
laid the bread down to give the point of—

Q. So you don't know of your own knowledge where this bread was laid down?

A. It was laying by the blood and they stated that the Officer laid the slice of bread there to indicate the position that the head was in when he picked it up.

Q. When you refer to the child's head being two feet, three inches from the traffic line, you mean her head was over in the inside lane?

A. You've got some kind of diagram here. Use this as the dividing island for the east bound and west bound traffic. There would be a ten-foot lane here that would permit parking, a ten-foot lane with another painted strip, and the position that they left me with the slice of bread, which would be two foot and three inches north of the painted line there next to the dividing lane. That would be the lane nearest the dividing line.

Q. Now, did you make certain measurements?

A. I did, sir.

Q. Now, from where did you make your measurements?

A. I measured from Wide Street up to the point of impact.

Q. Now, are you familiar with the physical lay-
page 70 } out of Wide Street at this particular point?

A. Yes, sir.

Q. Now, were your measurements made along the island?

A. Yes.

Q. Along the island?

A. That is correct, sir.

Q. Does the island protrude physically, there is a protrusion of the island into Wide Street?

A. It is.

Q. Did you measure the protrusion of that island?

A. No, sir, not the protrusion of the island.

Q. You did not measure that?

A. No, sir.

Q. You did not measure the protrusion from the projected curb line?

A. No, sir.

Q. Now, your measurements were made then from the blood spot to the end of the island; is that correct?

A. That is correct, sir.

Q. Now, how far was—how long was that distance?

A. I measured a distance of 58 feet.

*Officer E. W. Farr.*

Q. Now, do you know how far the curb line of
page 71 } Wide Street, the south east corner of Wide Street
cuts in at that point?

A. No, sir, I just stated that I did not measure the extension of the island beyond the prolongated curb line going straight across. I measured from the curb line.

Mr. Doumar: No further questions.

CROSS EXAMINATION.

By Mr. Taylor:

Q. Officer, do you mean to say that if a car was driving north on Wide Street and it ran up against the eastern curb that that car would have to turn to the left to avoid the island?

A. The island does not run out that far. It does not run out but the abutment extends as far as this room here. However, there is a slight differentiation between the end of it and the dividing line and curb line.

Q. You mean if you draw a straight line down the east side of Wide Street and from the south to the north that that line would run over the tip of the island?

A. To the best of my knowledge.

Q. And it would be just a matter of inches if it did not?

A. I said I did not know exactly the width, I did
page 72 } not determine it exactly but the curb line I am not
stating is a long prolongation or a short one; however there is a slight differentiation between the island and the curb line.

Q. And the blood spot that you measured was 58 feet east of the end of that island?

A. That is correct, sir.

Q. Now, you say you got there about five minutes after the accident happened?

A. That is correct, sir.

Q. And at the time you got there there were cars parked on the south side of Virginia Beach Boulevard?

A. Beginning at the corner.

Q. Beginning at the corner.

A. And extending eastward.

Q. And no one in those cars, were there?

A. No, sir.

Q. And there were a whole line of cars there?

A. There were several cars.

*Officer E. W. Farr.*

Q. Yes, sir. And at the time you got there were there people standing on the island?

A. On the island, in the street, and on the sidewalk. There were a large number.

Q. The speed limit in that area is what?

page 73 } A. Thirty miles an hour.

Q. And how fast did Mr. Richardson tell you he was going?

A. Approximately 20 to 25.

Q. Well, Officer, as a matter of fact a car going 20 to 25 miles an hour ordinarily when you stop it wouldn't leave much skid marks, would it?

Mr. Doumar: Now, I object, your Honor, unless he establishes—there is a table of skid marks and stopping distances in the Code.

The Court: There isn't anything about skid marks. There is stopping distances, but it doesn't use the words "skid marks." This is cross-examination. Go ahead and answer it.

By Mr. Taylor:

Q. I say, ordinarily you wouldn't expect a car going twenty to twenty-five miles an hour to lay down skid marks any way, would you?

A. That would depend on the manner in which the brakes were applied.

Q. That's right, if you came to a gradual stop. Well, now, how far east of the blood spot was the rear of the Richardson car?

page 74 } A. 16 feet.

Q. 16 feet?

A. Yes, sir.

Q. Was that from the wheel or bumper?

A. The bumper.

Q. I see. Do you know the braking distance of a car—first, I will ask you this: how long have you been in the police department?

A. I have been here for about two and a half years, and about eight years prior service with the State Highway Police in Georgia.

Q. You have had, then, a great deal of experience investigating accidents?

A. Quite a bit, sir.

Q. Do you know what the average—withdraw that question. The street was dry at the time of this accident, wasn't it?

*Officer E. W. Farr.*

A. That is correct.
Q. No gravel or anything on the street?
A. No loose material.
Q. And do you know, going at, say 25 miles an hour, what the average braking distance is, that is after the brakes are applied, not counting reaction time?
A. I use the same chart you do.

page 75 } Mr. Taylor: Will you stipulate that?
Mr. Doumar: I haven't any choice. The Court can take judicial notice of it.
Mr. Taylor: This table shows here that a car going at 25 miles an hour goes 36.62 feet a second and average braking distance is 32 feet. And then the reaction time it will go 27 feet before that. That is the reaction time, which we can argue, of course, later.

By Mr. Taylor:
Q. Now, when you arrived there you made inquiry in a rather loud voice as to whether or not there were any witnesses to the accident, isn't that correct?
A. When I arrived there was a car being operated by Mr. E. G. Maloney of Westerfield Road.
Q. And he is here today, isn't he?
A. I haven't seen him. I have been in the other court, sir.
Q. Did anybody besides Mr. Maloney—
A. Just a moment, sir—who stated to me that he had been following the car driven by Mr. Richardson and was a witness to the accident.
page 76 } Q. Yes.
A. I went to the island and also to the sidewalk and announced in a loud voice as to anyone who had witnessed this accident, would they please come forward, and let me discuss the accident with them. No one came forward other than Mr. Maloney.
Q. Yes. Now, the band was on Wide Street was it not?
A. I don't know about any band, sir. I gathered they were having some kind of entertainment over on the corner, I believe the northeast corner of Wide Street. They were not playing when I was there.
Q. However, they were not playing when you arrived. That blood spot of which you spoke and of which you pointed out on that photograph is the only blood spot on the street, wasn't it?

*Officer E. W. Farr.*

A. To my knowledge.

The Court: Any more questions?

RE-DIRECT EXAMINATION.

By Mr. Doumar:
Q. When you referred to the distance of the car as being 16 feet from the bumper, you are talking about the front bumper, is that correct?

page 77 } The Court: What distance?

By Mr. Doumar:
Q. The car being 16 feet from the blood spot?
A. The rear bumper.
Q. Well, now—
A. The rear bumper back to the blood spot extended in this position.
Q. Would you look at that picture. Do you see that car there?
A. (Examining photograph) Yes, sir, I see a portion of a car here. Your Honor, I believe I have got myself crossed up. After looking at this photograph here—

The Court: All right, explain it to the jury.

A. After looking at the photograph and my notes here this vehicle sitting here, the rear of this picture here would be approximately the rear bumper. The rear bumper would be approximately four feet from the bloodstain with the wheel base of approximately 16 feet is what I have here on my report, being 16 feet east of the victim there, which actually would be roughly 20 feet, using the front bumper back to the child. The 16 feet here that I have does not refer to the end of the bumper.

By Mr. Doumar:
page 78 } Q. 20 feet from the front of the bumper?
A. It would be approximately; yes, sir.
Q. From where the child was?
A. That is correct, sir.

Mr. Doumar: I have no further questions.

*Officer E. W. Farr.*

RE-CROSS EXAMINATION.

By Mr. Taylor:

Q. In other words if we have the wheel base of the Richardson car as 16 feet, then that would put the bumper only four feet east of the blood spot?

A. That is correct, sir.

Mr. Taylor: All right.

RE-DIRECT EXAMINATION.

By Mr. Doumar:

Q. You did conduct a test on the Richardson vehicle?

A. That is correct.

Q. At the same speed which he told you he was operating?

page 79 } A. I don't know if it was the exact speed or not. I was checking the brakes due to the absence of skid marks, and I was checking the brakes to see if it was functioning properly.

Q. What did you find?

A. I couldn't find any defects in the brakes.

Q. Did it leave any skid marks?

Mr. Taylor: You have asked him that. He said he didn't look at that.

A. I answered that question.

Mr. Doumar: What was his answer, I don't remember. As I remember, Mr. Taylor, we have got two questions here.

By the Court:

Q. What is your answer?

A. I stated that I did not recall checking it as to the exact speed that he testified to me. I checked his car and moved it forward a little distance and applied the brakes to see if it was functioning properly, and I jammed on the brakes to see if it would leave skid marks if the brakes were roughly applied in the manner in which I did jam the brakes.

RE-CROSS EXAMINATION.

By Mr. Taylor:

page 80 } Q. You checked them primarily to see whether or not they were functioning properly?

A. That is correct, sir.

Mr. Doumar: I still haven't got an answer to my question.

RE-DIRECT EXAMINATION.

By Mr. Doumar:

Q. At the time you checked it was anything on the highway after you checked them?

A. Mr. Doumar, I stated that I moved the car forward and I jammed the brakes and not necessarily at the speed in which he stated that he was driving, because I didn't get to 25 miles an hour and try to lock all four wheels, but I did check the brakes by jamming the brakes, that they would leave skid marks.

* * * * *

page 89 } AFTERNOON SESSION.

The Court: Does the plaintiff have a statement to make?

Mr. Pincus: We have a stipulation in regard to the distance and location of the street and the island.

Mr. Doumar: Let's see if we are correct on this. That if the curb of Wide Street at the northeast corner were prolongated—

The Court: Northeast or southeast?

Mr. Doumar: The southeast corner, right here, if this curb line were prolongated and were to meet this curb line here, that this point here would be eight feet east of this island up here, the prolongation would be eight feet east of this, is that correct?

Mr. Taylor: Yes.

Mr. Furniss: Yes.

Mr. Doumar: That the sidewalk on Wide Street, still speaking of the of the southeast corner; is four and one half feet wide, that the southeast corner is a curve like
page 90 } so, it is a curved corner, and that if these lines were prolongated, that is, if the eastern line of Virginia Beach Boulevard and the southern line of Wide Street were prolongated, that the indentation made by this curve with this prolongated point would be ten feet off the closest east line of the curb to the prolongated point; that is, that this curb—I will show this to the jury—the curb comes in like this, and it is ten feet five inches from the closest point of the

curb line; the prolongation of these extended lines of Virginia Beach Boulevard and the extended line of Wide Street, both outside points, that if this line were prolongated, that is, the eastern side of Virginia Beach Boulevard, the southern side of Virginia Beach Boulevard, this line here, and the east side of Wide Street, if those two lines were prolongated, that point which we have already established, is eight feet from the end of the island, eight feet west of the island; eight feet east of the island, the point where that curb

page 91 } ends is 24 feet, seven inches from that point there, that this is the telephone pole that is shown in the pictures at the intersection, as shown in Exhibit P-7. This telephone pole right here; that the telephone pole next to which a hole is punched in the exhibit, thus the telephone pole is approximately 32 feet, seven inches east of the island, of the end of the island; the entire width of the sidewalk would be approximately 12 feet, 6 inches.

Mr. Taylor: The width?

Mr. Doumar: Is four feet, six inches, but it would be approximately 12 feet, 6 inches from the end of the island, the entire width plus the eight feet, and I think this diagram—

Mr. Furniss: And the only other thing is that Wide Street going north out of Virginia Beach Boulevard, is west of this intersection, that is, Wide Street, if prolongated, this east curb line of Wide Street on the north side does not come in even with the curb line but comes in down like this.

page 92 } The church is up here. In other words, the intersection, the north side of Wide Street is considered narrower than the south side of Wide Street, that is, south of the boulevard, and that is what makes this different.

Mr. Taylor: And Mr. Doumar, you also agree and admit, I believe, that the blood spot on the street was 45½ feet east of the southernmost line of the sidewalk. You have got eight feet and four and a half feet of sidewalk.

In other words the blood spot, we agree, was 45 feet beyond the sidewalk?

Mr. Doumar: If the sidewalk were extended straight.

Mr. Taylor: Certainly. Of course.

Mr. Doumar: Instead of curving.

Mr. Taylor: Well, the sidewalk doesn't curve. That is, if the sidewalk were extended the blood spot would be 45 feet east of that. Well, now, do you show the sidewalk on there?

Mr. Doumar: It is also agreed that the end of the curve

of the southeast corner of Wide Street and Vir-
page 93 } ginia Beach Boulevard would be 25 feet, five inches
from where the blood spot has been testified would be. I think this is certainly not to scale.

Mr. Taylor: Yes, that's right.

Mr. Doumar: We might as well mark this.

The Court: Exhibit P-14.

(Received and marked by the Court as Exhibit P-14.)

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EUGENE G. MALONEY,

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Will you please talk loud enough so that this last lady can hear you, Mr. Maloney?

page 104 } A. Okay.

Q. What is your name?

A. Eugene G. Maloney.

Q. How old are you?

A. 34.

Q. Where do you live?

A. 1603 Westerfield Road in Bayside, Virginia.

Q. And what is your occupation?

A. Salesman.

Q. For whom?

A. William C. Robinson and Son Company.

Q. Did you witness the accident which is the subject of this litigation on June 29th, 1958?

A. Yes, sir, I did.

Q. Mr. Maloney. of course you are here today because you were *summons?*

A. Yes, sir.

Q. And prior to the time of this accident did you know any of the parties involved?

*Eugene G. Maloney.*

A. No, sir, I did not.
Q. Have you any interest in the outcome of this case?
A. No, sir.
Q. Now, in what direction were you driving at the time of the accident?
page 105 } A. I was driving in an easterly direction.
Q. On what street?
A. Virginia Beach Boulevard.
Q. I see. And what car was in front of you?
A. The defendant's car.
Q. You mean Mr. Richardson's car?
A. Yes, sir.
Q. Now, will you just tell the jury and the Court in your own words just exactly what you know about this accident—but first I would like for you to state as near as you can where you first came up behind Mr. Richardson.
A. Well, we left the Norfolk City Arena, and we left behind, or shortly behind the defendant's car. I do know I was behind him for several blocks before the accident occurred.
Q. But you were not in the Richardson company at the arena?
A. No, sir.
Q. I see. All right.

By the Court:
Q. You recognized the car, did you?
A. Yes, sir, I did.
Q. As being the same car involved in the accident?
A. Yes, sir.

page 106 } By Mr. Taylor:
Q. And you came up behind him several blocks before the accident happened?
A. I'm sure.
Q. All right. Now, tell what happened.
A. We stopped at the stop light at Church Street and Virginia Beach Boulevard and proceeded east.
Q. In what lane?
A. In the lane closest to the island.
Q. Closest to the center?
A. Yes, sir. There was a church over to the left. There was a lot of people around, and a band was playing, and I glanced over to the left right before we got to Wide Street or approximately at that time, and when I glanced back the

little girl had ran out in the street. When I saw her she was approximately in the center of the middle lane. There are three lanes of traffic there.

Q. All right, then what happened?

A. She kept running. She was struck by the car in the front-right section of it, somewheres in the general vicinity of the bumper or the headlight. She fell off to the side.

Q. Was the child dragged any at all forward?

A. No, sir.

Mr. Doumar: Your Honor, I would like to ask page 107 } Mr. Preston not to lead the witness.

The Court: That is not leading. Was she dragged or not. I don't know that he can ask it any other way.

By Mr. Taylor:

Q. All right, go ahead.

A. She wasn't dragged. The car stopped, I'd say, approximately five feet or six feet. The back of the car was approximately five or six feet beyond the little girl.

Q. Do you know of your own knowledge whether or not Mr. Richardson applied his brakes prior to the time that the child was struck?

A. (Pause) Well, he must have. The car stopped, so I mean, I can't say for certain, no. Only the driver could actually say that, when he actually applied his brakes.

Q. Please state whether or not there were parked cars on either side of Virginia Beach Boulevard at the time of this accident, and if so, where were they?

A. I am not sure. At the time of the accident, or shortly after it happened, I talked to my wife concerning that. She was with me along with our children.

Q. Was your wife in the car with you?

A. Yes, she was, and my two children were with page 108 } me.

Q. I see.

A. I am not sure if there were cars parked on the side or not.

Q. You mean on either side?

A. That is correct.

Q. You just didn't notice that particularly?

A. That is correct.

Q. It could have been or could not have been?

A. That is correct.

*Eugene G. Maloney.*

Q. Well, now, immediately after the accident, did you see any cars parked anywhere?
A. Yes, sir.
Q. Where were they?
A. On the right-hand side of the street or on the south side of the street.
Q. Well, how long after the accident was that?
A. A few minutes.
Q. I see.
A. When I noticed it.
Q. Uh-huh. And how fast were you and Mr. Richardson going, if you know?
A. Normal speed, I would judge. I didn't look at the speedometer at the exact time. I would say between 20 and 25 miles an hour.
page 109 } Q. I see. Well, now, from the time that you came up from behind the Richardson car until the time of the accident, state whether or not the space between your car and the Richardson car remained uniform and constant?
A. (Pause).
Q. I mean it didn't increase or decrease any appreciable amount?
A. Not to any appreciable amount, I wouldn't say.

Mr. Taylor: All right, answer Mr. Doumar. Wait one minute. Excuse me, Mr. Doumar.

By Mr. Taylor:
Q. When you stopped at Church Street for the light, do you recall whether or not there were any cars in front of Mr. Richardson or to his right?
A. (Pause) I feel comparatively certain that there were cars on our right, that would be in the center lane. I am not sure if there were any cars in front of Mr. Richardson, or not.

Mr. Taylor: All right, sir.

CROSS EXAMINATION.

page 110 } By Mr. Doumar:
Q. Did that car you saw—you say you saw this child though, didn't you?
A. Yes, sir, I did.

*Eugene G. Maloney.*

Q. There wasn't anything blocking your view from seeing this child in the center lane, was there?
A. No, sir.
Q. There was nothing between you and the child to block your view, then, to the right of it?
A. No, there was not.
Q. Did this car turn at Church Street?
A. I don't know.

The Court: Which car?

By Mr. Doumar:
Q. I don't know. You said there were some cars to the right of you?
A. This was at the stop light. I know there were cars there at the stop light at Church and Virginia Beach Boulevard, which is one block from where the accident occurred, approximately one block. Now, where the cars went, I don't know.
Q. Now, when the defendant hit the child, prior to the time of the impact had the defendant slowed down at all?
A. (Pause) It is difficult to say. If there is
page 111 } any doubt in my mind, it is on that particular point, I cannot say for sure how hard he applied the brakes or how fast he applied his brakes, and whether he actually saw the child before he came in contact with it or not. I can't say for certain. I don't know for sure. I think the only person who can answer that is the defendant himself.
Q. Had you been following him from the arena back from the arena?
A. Yes. I don't know for absolute certainty that I had been behind him the complete time. I do know that I had followed him for several blocks on Virginia Beach Boulevard and I am quite sure I—I feel fairly certain that I left with him from the area or followed that particular car.
Q. Were you all going along at a normal speed along Virginia Beach Boulevard?
A. We were.
Q. Did it create in your mind—did you think it odd about the crowd being on the corner of Wide Street?
A. When you see a crowd—

Mr. Taylor: Just a minute.
The Court: If you object I sustain the objection.
Mr. Taylor: I do object. Of course, I do.

*Eugene G. Maloney.*

By Mr. Doumar:

page 112 } Q. All right. Did you slow down—you were proceeding at the same speed on Wide Street as you all had been proceeding previously, is that correct?

A. Approximately, other than stopping at the stop light which was one block away.

Q. But you had already gotten one block from the stop light?

A. That is correct. We were up to a normal speed of 20 to 25 miles *and* hour at that particular time, I would judge.

Q. And you had been proceeding at that time, prior to Church Street, is that correct?

A. Approximately that speed, yes.

Q. And when you saw the child, the child was in the center lane?

A. It was in the middle of the center lane, approximately, I'd—

Q. Well, now about—

The Court: Let him finish. Approximately what?

A. Well approximately, I'd say, eight feet from the car.

By Mr. Doumar:

Q. You are talking about—

page 113 } A. From where the car came in contact with the girl, where the girl came in contact with the car.

Q. When you speak about the eight feet you are talking about sideways or down from the car? Do you know how far the girl was in front of the car?

A. No, sir.

Q. You do not?

A. No, sir.

Q. You mean she was eight feet from the side of the automobile?

A. She was out this way (demonstrating), I would say, approximately eight feet.

Q. How many feet in front, if she were in front of it?

A. I don't know. Evidently she must have been in front of it because the car struck her in the front, but I was judging eight feet from the time I saw her from the car.

Q. That is from the side, the side distance without any relation to the frontal distance?

A. Right; correct.

*Eugene G. Maloney.*

Q. Approximately how far was your car from the defendant's car after the accident?
A. Approximately—

The Court: After the accident?

By Mr. Doumar:
page 114 } Q. After the accident; after you came to a stop?
A. Thirty feet.
Q. Approximately how far behind were you following?
A. Well—

The Court: At the time of the accident?

By Mr. Doumar:
Q. At the time of the accident.
A. Approximately the same distance.
Q. How did you come to a stop?
A. (Pause) A normal stop.
Q. You didn't slam on brakes?
A. I didn't have to. I had thirty feet in between me and the car in front of me.
Q. Well, you ended up, you still was 20 feet distant from the car in front of you, isn't that right?
A. That's right, approximately.

Mr. Doumar: No further questions.

RE-DIRECT EXAMINATION

By Mr. Taylor:
Q. Just one more question. State whether or
page 115 } not the child was running straight across the street or diagonally. Was she running straight towards the car or diagonally?
A. I can't say for sure.

Mr. Taylor: I see. That's all, thank you.
The Court: Any more questions of this witness?
Mr. Doumar: No questions.
Mr. Taylor: I have no further questions.
The Court: All right. You are excused, Mr. Maloney, if you want to leave.
Mr. Taylor: Call Mr. Richardson; and, your Honor, Mr.

Furniss is going to examine Mr. Richardson, I have got to go upstairs to see Judge Jacob, if you will excuse me.

The Court: Would you rather have a recess?

Mr. Taylor: No, Mr. Furniss will question. I will be right back.

The Court: Very well.

Mr. Furniss: Mr. Richardson.

page 116 } KENNETH RICHARDSON,

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Furniss:

Q. Would you please state your name, sir?

A. *Kennth* Richardson.

Q. Where do you live?

A. 416 Saddle Rock Road, Poplar Halls.

Q. What is your occupation, Mr. Richardson?

A. I am in the navy, sir.

Q. And were you with your son on June 29th, 1958, when he had this accident that is the subject matter here today?

A. Yes.

Q. Where had you been, sir?

A. We had been to the foreign auto show at the Municipal Arena.

Q. And where were you going at the time of the

page 117 } accident?

A. Home.

Q. Where were you seated in the car?

A. In the rear seat on the right side.

Q. Do you drive an automobile yourself?

A. Yes.

Q. On what street were you riding at the time of the accident?

A. Virginia Beach Boulevard.

Q. And traveling in which direction?

A. East.

Q. And in which lane of traffic on Virginia Beach Boulevard were you driving?

A. The inside lane.

Q. About how long before the accident, for how long a distance had you been in the inside lane?

A. (Pause) I think when we came through Church Street,

*Kenneth Richardson.*

which is the next one before Wide, that possibly just before Church Street is when we went into the inside lane.

Q. And do you recall whether you stopped at Church Street or not?

A. (Pause) No, sir.

Q. You don't recall that?

A. I don't recall.

Q. Well, will you describe to the jury here in
page 118 } your own words just what you saw yourself there
at the time of the accident.

A. (Pause) Well, the first thing I would say my reaction is, we passed through Wide Street. I recall that the car made a sort of a stop, and then almost simultaneously with this stop the car struck something, and I thought that it was something like a paper sack in the road, and I wondered why my son had stopped the car, so naturally he continued to stop, and the car came to a complete stop and I jumped out on the right side and saw the girl lying in the street.

Q. So you had not seen the girl at all yourself until you got out of the car and saw her lying there?

A. That is correct.

Q. Could you give us an estimate of the speed of which your son was driving?

A. I would say between 20 and 25 miles an hour.

Q. Do you recall any other traffic east bound on Virginia Beach Boulevard?

A. Yes.

Q. And what traffic do you recall?

A. There were two lanes of traffic, the inside lane and the center lane, and it was, I would describe it as a block of traffic, the two lanes going down one side of Virginia Beach Boulevard.

Q. Were these cars behind you, beside you or
page 119 } ahead of you?

A. (Pause) Well, I would say that there were cars in front of us and a car to the right side of us and also there were cars in back of us.

Mr. Furniss: That's all, answer Mr. Doumar's questions.

CROSS EXAMINATION.

By Mr. Doumar:

Q. You said you had these two sensations simultaneously, is that correct?

*Kenneth Richardson.*

A. Yes, sir.
Q. The thump and the car slowing down?
A. I didn't give it in that order.
Q. But they were simultaneous sensations, is that correct?
A. Yes, almost.
Q. You don't know which direction your son was looking, do you?
A. (Pause).

The Court: When?

By Mr. Doumar:
Q. At the time of the impact.
A. (Pause).
page 120 } Q. Isn't that correct?
A. Well, I don't quite understand that.
Q. You cannot say where your son was looking at the time of the impact, isn't that correct?
A. That is correct.
Q. As a matter of fact you were looking over to the left, isn't that correct?
A. (Pause) At the time of the impact?
Q. Yes, that is correct.
A. Yes.
Q. How about preceding the impact, were you looking over to the left?
A. Well, I had probably glanced to the left.
Q. Was there a band, did you notice a band over there?
A. Yes, it appeared that there was a—I don't recall a band. There were people, and I think some people were on horses.
Q. When the car slowed down, did your son say anything?
A. No.
Q. Didn't he say, "oh!?"
A. (Pause) I don't recall that he did.
Q. You are not certain what he said then, are
page 121 } you?
A. (Pause) I would say that there was nothing said.
Q. Do you recall testifying on the 9th day of July last year?
A. Yes.
Q. Did you make this statement: "When the car slowed

down my son made the exclamation, 'Oh.' " Did you make that statement?

A. I may have.

Q. So your son did say something, didn't he?

A. He may have.

Q. And you are not certain what he did say then, are you?

A. No, no.

Q. Now, if you were looking to the left how do you know—withdraw the question.

Mr. Doumar: No further questions. Your witness.

Mr. Furniss: That's all.

Mrs. Richardson.

page 122 } OLGA BERNICE RICHARDSON,

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Furniss:

Q. Now, speak up, Mrs. Richardson, so the jury can hear you. Would first give us your full name?

A. Olga Bernice Richardson.

Q. And you are the mother of the defendant here today?

A. Yes, I am.

Q. On the day of the accident, that is, June 29th of 1958, were you riding in the car being driven by your son?

A. Yes, I was.

Q. Where were you in the car?

A. I was sitting in the front seat.

Q. And what street were you driving on?

A. On Virginia Beach Boulevard.

Q. And you were going from where to where?

A. We were coming from the Arena and we were on our way home. We live in Poplar Halls just off the Military Highway.

page 123 } Q. Now, do you recall—well, first in which lane of traffic were you in on Virginia Beach Boulevard?

A. Well, the island is on the left, and there were two lanes of traffic, and we were on this side next to the island.

Q. You were on the left lane next to the island?

*Olga Bernice Richardson.*

A. Uh-huh.

Q. Do you recall how long you had been in the left lane?

A. It seems we were in that lane—

Q. And what was the state of the traffic on Virginia Beach Boulevard east bound; that is, was it heavy, light or medium?

A. East bound?

Q. In the direction you were going.

A. In the direction we were going it seemed heavy to me. There was a large gathering and a lot of traffic.

Q. Do you recall whether your car stopped at the Church Street intersection?

A. (Pause) I recall stopping at a stop light. We were stopped at a stop light. I don't know what street that was.

Q. About how far was that from the accident
page 124 } scene?

A. (Pause) It seemed a short distance to me.

Q. Now, as you approached the accident scene, that is, the place where the accident occurred, did you notice anything unusual at the intersection?

A. A large gathering there, a lot of people around.

Q. And will you just tell us in your own words what you saw and what your son did at the time of the accident there?

A. At the time of the accident I did not see anything. I did not see the child at all. I just remember stopping very suddenly and hearing a thump and I wondered why we made such a sudden stop with so much traffic on Virginia Beach Boulevard, and we still did not—I did not know anything until they got out of the car, my husband and my son got out of the car, and then I could hear people discussing what had happened, and someone had come over to the car and kept saying "it isn't your fault, are you insured?"

Q. That's all right, don't say what others said to you.

A. Oh, I'm sorry.

Q. In which direction were you looking at the time the car suddenly stopped?

A. Well, I was—my son was driving, and I was
page 125 } sitting just about like this (illustrating).

Q. That is, looking a little to your left, sideways, sort of?

A. Uh-huh, just but not actually sideways, but just about like this, through the windshield.

Q. Do you recall whether there were any other cars on Virginia Beach Boulevard ahead of you or beside you?

A. Yes, there was—it seemed to me there were two lanes of traffic in this other lane. It seemed to me in the distance

*Olga Bernice Richardson.*

there was a car had already gone ahead. Vaguely I can remember a car going ahead, but of course there were two lanes.

Q. All right. Right after the impact occurred and your car stopped, did you look to your right then, did you look around the car?

A. I don't remember.

Q. Do you recall whether there were any cars parked on Virginia Beach Boulevard?

A. Oh, yes, uh-huh.

Q. Where were these parked cars?

A. They were all on the right. They were all parked on the right.

Q. And by the "right," you mean your right?

A. My right, yes.

page 126 } Q. And as you looked out the right-front window were these cars right alongside of you right opposite where you were sitting, these parked cars?

A. Yes, un-huh.

Q. Well, do you know whether or not the car—I will rephrase that. Do you know whether or not the child was carried along on the car up in front of you where you were sitting?

A. I don't understand just what you—

Q. You did not see the child?

A. No, I did not.

Q. And you did not see it after the impact, did you; is that correct?

A. No, I didn't. I didn't get out of the car.

Mr. Furniss: That's all, answer Mr. Doumar's questions.

CROSS EXAMINATION.

By Mr. Doumar:

Q. You were all traveling at a normal speed, is that correct, Mrs. Richardson?

A. A normal speed?

Q. Yes.

A. About.

page 127 } Q. Now, you had proceeded up Virginia Beach Boulevard, isn't that correct, before you got to Church Street I am talking about.

A. Uh-huh.

*Olga Bernice Richardson.*

Q. And you all were traveling a normal speed, then, were you not?
A. About 20-25.
Q. The same speed?
A. Uh-huh.
Q. That you were traveling at the time the accident occurred, weren't you?
A. Well, I don't know. I wouldn't know. I think when you are driving you are more conscious of your speed.
Q. Do you drive?
A. Yes, I do, uh-huh.
Q. Did it seem like you all were going the same speed as you were before and after?

The Court: Well—

By Mr. Doumar:
Q. Before and after you passed Church Street I am talking about.
A. I really don't know.
Q. Which lane were you traveling on before you got to Church Street?
A. The same lane that we were in.
page 128 } Q. The inside lane?
A. Uh-huh.
Q. When you got on Virginia Beach Boulevard you got into the inside lane right after you left the Arena, isn't that correct?
A. I believe we did.
Q. Yes. And in which lane were you in when you left the Arena, the inside lane too?
A. I believe so.
Q. And you stayed in this inside lane all the way to Church Street, is that correct?
A. Uh-huh.
Q. That is the lane next to the island?
A. Uh-huh.
Q. And at Church Street you proceeded along at the same speed or approximately that, is that correct?
A. Yes.
Q. Now, did you notice the band there?
A. Yes, I noticed that when we came to the red light. It was red and we stopped and I could see it.
Q. You could see the band from Church Street?

*Edward A. Richardson.*

A. When you are speaking of the band, I could hear the band but I could see a large group of people.
Q. You could see the crowd there?
A. A huge crowd.

page 129 } Mr. Doumar: No further questions.
Mr. Furniss: That's all.
Mr. Taylor: Mr. Richardson.

EDWARD A. RICHARDSON,
the defendant, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:
Q. Will you please look at the jury and talk to them and give them your name?
A. Edward A. Richardson.
Q. And you are the son of the two people who have preceded you on the stand?
A. Yes, sir.
Q. How old are you?
A. I am 24 years old, sir.
page 130 } Q. And what is your occupation?
A. I am a student, sir.
Q. Edward, how long have you been driving an automobile?
A. I got my license one year after the legal age in Virginia. I believe it is 16.
Q. You have been driving then about eight years?
A. Yes, sir.
Q. In what mechanical condition was the car that you were driving?
A. In excellent condition, sir.
Q. What year car?
A. '55 Dodge.
Q. And without a lot of preliminaries, I believe you had been to the Arena to a boat show or something like that?
A. Yes, sir, an auto show.
Q. And you had in the car with you whom?
A. My mother and my father.
Q. And your mother was sitting on what seat?
A. In the front seat beside me.
Q. And your father?

*Edward A. Richardson.*

A. In the right rear seat.

Q. Yes, and were you in a hurry to get any-
page 131 } where?

A. No, sir.

Q. And now, will you tell the Court and the jury just what happened?

A. Well, we were driving along Virginia Beach Boulevard, and then there was a little bit of traffic. We were going home towards Virginia Beach.

Q. How many lanes of traffic there?

A. Well, there was about three lanes, sir.

Q. All right, for the east bound traffic?

A. Yes, sir.

Q. In what lane were you with reference to the island?

A. Well, prior to Church Street, I was—

Q. I am talking about after you left Church Street.

A. After we left Church Street I was in the lane closest to the—I was in the left-hand lane.

Q. Closest to the island?

A. Closest to the island.

Q. And did you know Mr. Maloney previous to the accident?

A. No, sir.

Q. Where was he driving with reference to your car?

A. He was in back of me, sir.

page 132 } Q. All right. Now, as you were proceeding down Virginia Beach Boulevard state whether or not as you approached the scene of the accident there were any cars parked anywhere.

A. There were cars parked in the right-hand side, sir.

Q. Your right-hand side?

A. On my right-hand side.

Q. And what, if any, cars were in the middle lane backward or forward of you?

A. Well, there had been a car in back of me, and he turned someplace, I don't know where he went because he was gone, and the car that was—there was one ahead of me but he was pulling away.

Q. In the right-hand lane ahead of you?

A. Yes.

Q. Going faster?

A. Yes, sir.

Q. I see, and where was he with reference to your car at the time or about the time this accident occurred? Was he forward or to the rear?

A. He was forward.

*Edward A. Richardson.*

Q. I see. Well, now, as you were proceeding so, state how fast you were going.

A. 20 to 25 miles an hour.

page 133 } Q. As you were so proceeding tell the Court and jury what happened.

A. Well, I was coming before the intersection on Virginia Beach Boulevard. I noticed a large crowd to the left-hand side. There were people standing on the island and there were people on the right-hand side, and I didn't see any children at all. It looked like, I don't know, a Sunday meeting, they were all dressed up just like dudes and standing around, and we came across the intersection of Wide Street, and all of a sudden from the right I saw this little girl come running. She had a piece of bread in her hand and in her mouth, and I caught her—well, I caught—I glanced and looked and I saw her just about—just prior to the center of the lane, which is on my right.

Q. You say you saw her prior to the center. What do you mean prior to the center?

A. Well, sir, when you are looking down the road, I wasn't focusing on her. I saw a white blur and I focussed on her when she hit the center.

Q. I see, just prior to the center lane?

A. Yes.

Q. All right, what, if anything did you do then?

A. Well, I thought about turning left, and there was nothing —I just put on the brakes and stopped.

page 134 } Q. Why didn't you turn left?

A. Well, sir, there was the island there and people on the island. I wasn't sure exactly whether they were right on my fender or not.

Q. And do—are you in a position to state whether or not your foot actually went on the brake pedal before you came in contact with the child?

A. I am sure it did.

Q. I see. And how far forward of the child did your car stop?

A. Well, I put on the brake, and I heard the thump, and she went and then I stopped.

Q. Well, now, while I think of it, please state whether or not, or what happened to the child at the time of the impact.

A. Well, I saw her on my right-front fender in my headlight and her head was just to the right of my headlight, and she just went down, just disappeared.

Q. Did you drag the child?

*Edward A. Richardson.*

A. I am sure I didn't, sir.

Q. And what part of your car did the child come in contact with?

A. Well, just slightly aft of the front-right fender headlight.

Q. Well, now, by "aft—"

page 135 } A. Back—

Q. —you mean to the rear of it?

A. Just slightly.

Q. I see. Now, Officer Farr—what did you tell Officer Farr about the accident or where the child was when you saw it?

A. I said I saw her running and then "bang," we hit.

Q. Well, now, he testified this morning that you told him that you saw the child practically at the time of the impact. Now, what did you mean by that?

A. Well, sir, from the center of the street, the lanes are only ten feet wide, and the child running, even at the speed she was running, it was just a split second before, you are traveling, and she was running, and by the time you see her and put the brakes and stop there is no time at all.

Q. Well, now, what, if any, effect, did the presence of this car in the right-lane forward of you have upon your ability to see that child?

A. I wouldn't have been able to see the child.

Q. Huh?

A. Anything lower, I couldn't see anything where he was.

Q. And after he passed?

page 136 } A. It would have been too late to see.

Q. Well, then after he passed, did you then see the child?

A. No, I did not see her until, like I say, she ran out from between the cars.

Q. I see, and was the child running straight across the street or diagonally across the street?

A. I would say she was running diagonally straight across the street.

Q. And how far—

A. I'm sorry. I meant straight across the street.

Q. Straight across; and where did the accident happen with reference to the intersection; was it at the intersection or what?

A. No, sir, we were driving through a normal intersection and we had sufficiently passed the intersection where no one would be crossing the street at that point.

*Edward A. Richardson.*

Q. Do you know how far beyond the intersection the child was running?
A. Well, I know what they measured, sir.
Q. Did you see the measurements made?
A. Yes, sir.
Q. How far was the child from the intersection
page 137 } when it fell?
A. It was 58 feet, according to the measurements.
Q. I see. Just one second.

Mr. Taylor: That's all. Answer Mr. Doumar.

CROSS EXAMINATION.

By Mr. Doumar:
Q. Mr. Richardson—
A. Yes?
Q. —the position of the girl's head was just about over your headlights, is that correct?
A. No, sir, if the headlight was here (illustrating), it was just slightly to the right, sir, over just to the right from my angle.
Q. You slammed on brakes, didn't you?
A. Well, sir, the way I put on brakes, you put them on gradually, some people skid, but if you put—apply the brakes intermittently it is much more effective, so at a point like that I am not sure that they would skid.
Q. You mean when you saw this child you had had enough self-containment to put on the brakes and take your foot off and put the brakes back on?
A. Well, sir, I put it the way I do in an emer-
page 138 } gency. You can practice with things and it just come out just so that the car won't skid or stand on its nose or what, sir.
Q. Your car doesn't normally leave skid marks?
A. If you apply the brakes intermittently she won't sir.
Q. How about if you are in a hurry?
A. I still can apply the brakes hard, sir.
Q. This car ahead of you had pulled away, is that correct?
A. He had not pulled away. He was in the process of pulling away.
Q. Didn't you just say he had pulled away?
A. Could you refer to that a little more explicitly?

*Edward A. Richardson.*

Q. There had been a car ahead of you but he had pulled away; Did you say that on direct examination?
A. Well, I said that but I meant—yes, sir.
Q. You said that?
A. Yes, sir.
Q. What do you mean?
A. I said that he was in the process of pulling away, sir.
Q. I thought he had already pulled away.
A. Well, sir, "pulled away" is relative to what
page 139 } position he was in, sir.
Q. Was she running diagonally or straight across the street?
A. Straight across the street, sir.
Q. When you saw this crowd you were proceeding at 20 to 25 miles an hour, is that correct?
A. Yes, sir.
Q. Had you been in the inside lane all the way?

The Court: Mr. Doumar, he can hear you if you keep your face towards the witness.

By Mr. Doumar:
Q. Had you been in the inside lane all the way from Virginia Beach Boulevard from the Arena?
A. Not all the way, sir. I was in the right-hand lane for a time.
Q. When did you switch?
A. Prior to reaching Church Street.
Q. Sometime prior to reaching Church Street?
A. Yes, sir.
Q. You don't know how far prior to reaching Church Street?
A. Not exactly sure; within that block.
Q. And you were going 20 to 25. Do you know what the speed limit is there?
page 140 } A. Yes, sir, it's 30 miles an hour, sir.
Q. So you were going well below the speed limit, is that correct?
A. Yes, sir.
Q. And you were in the inside lane, is that correct?
A. That is close to the island, sir.
Q. Closest to the island?
A. Yes, sir.
Q. And you were going from five to ten miles an hour below the speed limit?

*Edward A. Richardson.*

A. Yes, sir.

Q. Were you passing any cars?

A. You mean prior to Church Street or after Church Street?

Q. Both prior to and after.

A. After Church Street, the reason I was going at such a low speed was because of the crowd up ahead, and before Church Street there was traffic there and it caused us to slow down anyway.

Q. But anyway you were not passing any cars?

A. Prior to Church Street?

Q. That's right.

A. Yes, sir, I did, that is why I pulled into the left-hand lane because there were cars in front of me and

page 141 } the second car was rather slow.

Q. Where was that?

A. At the stop light.

Q. The second car was rather slow?

A. Yes, sir.

Q. So there were two cars at your right at Church Street, weren't there?

A. Yes, sir.

Q. Not one?

A. No, sir.

Q. All right. Now, what happened to the first car?

A. He was the one that pulled off.

Q. All right, the second car was right behind or adjacent to you?

A. Yes, sir.

Q. Yet you saw the crowd on the right-hand side of the road, didn't you?

A. Between the distance of the car you can see across there, because the car on my right—

Q. Didn't you have trouble seeing the crowd on the right-hand side of the road?

A. At what point?

Q. At the time that you *approached* Wide Street?

A. Well, you could see through the car. You

page 142 } couldn't see exactly the number of people but you could just see people there.

Q. All right. Now, when Mr. Taylor was questioning you, I understand that there was one car to your right and he had pulled away. Now, it develops that there was another car on your right?

A. No, sir, no, sir, he questioned me after Church Street.

*Edward A. Richardson.*

He mentioned the car at Church Street that disappeared. Apparently he had turned off at Church Street or he parked, I don't know, sir.

Q. This car had disappeared, the second car?

A. Yes, sir.

Q. You don't know what happened to it?

A. No, sir.

Q. This car had pulled—

A. He was in the process of pulling away. He was still in front of me, I mean he wasn't going 20 to 25 miles an hour. He was perhaps going 30 to 35 miles, maybe not that fast, about 30.

Q. And you told the Police Officer you saw this child about the time you hit it, is that correct?

A. What I meant was—

Q. Did you tell the Police Officer—

Mr. Taylor: Let him finish.

By Mr. Doumar:

page 143 } Q. I am asking him: Didn't you tell the Police Officer that you saw the child at about the time you hit it?

A. I believe I told him I saw her prior to hitting her, sir.

Q. Then you deny telling the Police Officer—do you deny telling the Police Officer—let me get the exact quotation—" that you struck the child at the same time you saw it?"

A. Yes, sir, I don't deny telling the Police Officer, but I don't believe that is—

Q Well, is that what you told the Police Officer.

A Sir, is that the statement the Police Officer made this morning, sir?

Q. Did you tell the Police Officer you struck the child at the same time you saw it?

A. (Pause) No, sir, I couldn't have told him that, sir.

Q. You did not tell him that, sir?

A. Not to my knowledge.

Q. What did you tell him?

A. I told him that I saw the child prior to hitting the child.

Q. You tell me that the Police Officer was mistaken if he testified that way, is that right?

page 144 } A. Well, sir, I was under an emotional condition at the time, and I don't believe that is what I said, he *he* must have been mistaken.

*Edward A. Richardson.*

Q. Now, you don't have any trouble remembering what happened to the car and in placing the child's position over the headlight. Now, let's go back to something important like the question of what you told that Police Officer. Did you tell him these words: "I struck the child at the same time I saw it?"

A. No, sir.

Q. You did not. You maintain that you struck the child—you saw the child prior to the time that you struck it?

A. Yes, sir.

Q. And that is what you maintain you told the Police Officer?

A. Sir, I don't know the exact words I told the Police Officer. If I am not mistaken I think I said I saw the child and then I hit her.

Q. Then you hit the child?

A. No.

Q. You hit the child and saw her head above the headlight, is that correct?

A. Yes, sir.

Q. What happened to her head?

page 145 } A. It just went down, sir, out of view.

Q. Out of view. You don't know what happened to the child after you saw her head, do you?

A. No, sir.

Q. You don't know whether you dragged the child or not then?

A. I am sure you can tell if you are dragging something.

Q. I am asking you, did you know. Did you see yourself dragging that child, or not?

A. No, sir.

Q. How do you know you were not dragging the child?

A. Through experience, sir.

Q. You have dragged people before with your automobile?

A. No, sir.

Q. What experience have you had at it, then?

A. Sir, not dragging people, sir, but I am using things like debris or something like that. You can tell if your car is being slowed or something is dragging from the bottom, I am sure.

Q. Why didn't you ever mention these cars on your right in testimony in Police Court?

A. I did not mention them, sir.

page 146 } Q. No, you did not. Why didn't you?

A. Well, sir, perhaps we started from the in-

*Edward A. Richardson.*

tersection on. I said that the car in front was pulling away from my right.

Q. There wasn't a car to your right when you got to Wide Street?

A. Not directly abeam of me, there was no car on my right.

Q. How far in front of you was this car?

A. (Pause) Three car lengths maybe.

By the Court:

Q. Was that at the time of the accident?

A. No, sir, that was about—

Mr. Court: Don't answer my question. I just don't understand Mr. Doumar's question.

By Mr. Doumar:

Q. Just prior to the accident?

A. Yes, sir.

Q. How far—when you were in the intersection of Wide Street, how far in front of you—Wide Street, mind you—how far in front of you was the car to the right?

A. At Wide Street, the car to my right was approximately two to three car lengths.

Q. That is your car you are speaking of now?

page 147 } A. Yes, sir, my car.

Q. And your car is about 16 feet long, is that correct?

A. Approximately, sir.

Q. So this other car was 45 feet in front of you, is that correct?

A. Well, about. Like I say approximately two to three car lengths, sir.

Q. Did this child come out just after that car had passed?

A. Yes, sir.

Q. You saw the child?

A. Apparently, sir.

Q. Had you?

A. Apparently, sir.

Q. You saw the child come out just after that car had passed?

A. Sir, I did not see the child step from the car. I told you I saw her just prior to reaching the center of that lane.

Q. Just prior to reaching the middle lane? Was that just

*Edward A. Richardson.*

Q. How far was the girl in front of your car when you first saw her?

A. (Pause) Just about, oh, less than a 45 degree angle, roughly between 35 and 50 degrees.

Q. How far was the girl in front of your car when you first saw her?

A. In distance, I don't know, sir.

Q. You don't know. You didn't see the girl before she was in the middle lane?

Mr. Taylor: He just stated that about a dozen
page 150 } times. He has answered that more than once.

By Mr. Doumar:

Q. When the measurements were made, were you there when the Police Officer made his measurements?

A. Yes, sir.

Q. And he rolled them off to the island, is that correct?

A. Yes, sir.

Mr. Doumar: The witness is with you.

Mr. Taylor: Just one question.

RE-DIRECT EXAMINATION.

By Mr. Taylor:

Q. Just one question. What direction were you looking at the time of the impact?

A. I was looking right at the girl, sir, as I recall.

Q. Which way.

A. Right at the girl, sir, at this little child.

Q. I see. Well, do you know on what street the band was?

A. Well, sir, I never did see the band, but the crowd was on Wide Street, sir.

page 151 } Q. On Wide Street, I see. Please state what, if any, reason prior to the time of this impact did you have which would have caused you to look over to your left.

A. Well, sir, there were people lined up in the middle—I mean on the island, sir, and because of that, sir, I mean you had to watch out because I was right in. All they had to do was step down and they would be in your path.

Q. But generally, what direction were you looking?

A. Straight ahead, sir.

*Edward A. Richardson.*

after the car on your right had passed the position of the child?

A. I couldn't say, sir, it happened so fast.

Q. That's all right, withdraw that. Do you
page 148 } know what caused the puncture wound in the
child's head?

A. No, sir, I couldn't imagine.

Q. I there anything on your car that could have caught the child's head?

A. Not a thing, sir. We looked at the car very thoroughly and there was not a trace or mark on it any place. We jacked it up and there was absolutely no evidence of anything hung to it or hit by it or anything.

Q. But you don't know what happened to the child after her head disappeared?

The Court: Wait a minute, I can't permit you to go over and over the same thing.

Mr. Doumar: All right.

By Mr. Doumar:

Q. Did you see her before she was in the street?

A. No, sir.

Q. You never saw her before she was in the street?

A. I never saw her, sir.

Q. Did you see the children standing on the corner?

A. No, sir.

Q. Did you see the band?

A. No, sir.

Q. You did not see the band; were you looking
page 149 } to your left?

A. I looked but I wasn't looking to my left as far as my head turned.

Q You did not notice whether there was a band or a crowd there?

A. I noticed there was a crowd there.

Q. But you don't know what it was there?

A. Pardon me?

Q. You don't know what was there?

A. Yes, sir, a crowd, sir.

Q. Did you hear the orchestra playing?

A. No, sir.

Q. You did not hear the orchestra playing?

A. No, sir.

page 161 } Mr. Doumar: I except to the granting of Instruction I for the defendant, on the ground that it reiterates and over-emphasizes the necessity of the plaintiff to prove by a preponderance of the evidence his case. Because of this repetition it creates ambiguity in the jury's minds which might lead them to believe that the burden of the plaintiff is greater than that which it is.

Mr. Doumar: The plaintiff excepts to Instruction III of the defendant in that this is not a question of a pedestrian crossing at an intersection, but rather that of a child, and the defendant did have a duty that once he saw or should have seen children, instead of assuming that no person would cross the intersection, his duty would be to assume that a child might suddenly dart in front of him, especially when he saw or should have seen by the exercise of reasonable care children standing on the corner and in the immediate vicinity. The evidence in this case is that children were so standing. Consequently he had no right to assume that page 162 } this law would not be violated. This instruction places upon the plaintiff a burden not commensurate with the duty that the defendant owes to children.

Mr. Doumar: The plaintiff excepts to the Defendant's Instruction No. VI and III on the grounds, one, that there was no evidence that there was any obstruction in the path of the Richardson car, since the defendant's own testimony states that any cars which may have been in front of him were two to three carlengths in front of him, in which event he had more than ample opportunity to see the child.

Mr. Doumar: Plaintiff excepts to Defendant's Instruction No. VII, on the ground that this instruction reiterates the position taken in Instruction No. III, and adds undue emphasis to the defendant's position of seeing or should have seen the child. The defendant's duty is a great duty which he has to anticipate that a child might act on a foolish impulse. This instruction places upon the plain- page 163 } tiff the burden of proving that a child might act on foolish impulse, whereas the normal child would not.

Mr. Doumar: The plaintiff excepts to the refusal of the court to grant Instruction P-3-A, on the ground that there is evidence in this case that the child was crossing at the intersection, and on that ground the plaintiff had a right to this instruction.

*Edward A. Richardson.*

Mr. Taylor: That's all.
The Court: All right.
Mr. Doumar: Just a minute.

RE-CROSS EXAMINATION.

By Mr. Doumar:

Q. You say you were looking at the people on the island because you were afraid one of them might step off?

A. He asked me what reason would have caused me to look at the island, and I told him I looked because of the people standing there, sir.

Q. But you did not look to the left?

A. I was looking straight ahead, sir.

Q. Then you did not look to the left?

page 152 } A. At what point, sir?

Q. Before you got to Wide Street?

A. Yes, sir, I did.

Q. All right, after you got to Wide Street?

A. I was looking straight ahead.

Q. You were not looking to the left any more. Then you were not concerned about who might step into the street?

A. What is your definition of "looking to the left?" You can look and you can see the people right directly on your left close by the island, sir, and a left turn, to me, is by turning your head to the left, sir (illustrating).

Q. And you were not interested in the festivities across the street?

A. No, sir.

Q. You did not look—you were not curious?

A. I looked at it back at Church Street as to what the whole situation was. There was a crowd.

Q. You weren't curious?

A. No, sir, I am not curious about parades.

Q. Did you hear any people hollering at the time of the accident?

A. Just after the accident, yes, sir, voices. I didn't hear a word, just a lot of voices, I mean. Everybody was talking and milling around.

page 153 } Q. I am talking about right at the time of the collision.

A. Not to my knowledge, sir; I didn't hear a thing.

* * * * *

Mr. Doumar: The plaintiff excepts to the court's failing to grant Instruction P-5, on the ground that there was no reason or excuse for the defendant being in the extreme left-hand lane, and if he violated his statutory duty under the code by keeping to the right, and this proximately caused or contributed to the accident, then the plaintiff should recover.

Mr. Doumar: The plaintiff excepts to the refusal of the court to grant Instruction P-6, since this is a statutory rule adopted from the code, and that a person is guilty page 164 } of reckless driving who exceeds a reasonable speed under the circumstances existing at the time. Here we have the following circumstances: 1, that there were children present in the vicinity; 2, that there was a big crowd over the entire area; 3, that the defendant was proceeding at the same speed at the scene of the accident as he was well prior to the accident and to the accident area. Since his speed did not vary according to the crowd and conditions existing, he was guilty of reckless driving.

Mr. Doumar: The plaintiff excepts to the refusal of the court to grant Instruction P7, since this clearly states the law, and that a child is owed a greater duty of care once he has been seen or should have been seen, and there was evidence to maintain this position.

Mr. Doumar: The plaintiff excepts to the refusal of the court to grant Instruction P-8, on the ground that it is entitled to at least one instruction that a child's page 165 } conduct is not to be measured by the same rules which govern that of an adult. And, since this child should have been discovered by the defendant in time to have avoided the collision, the child was entitled to such an instruction.

Mr. Doumar: The plaintiff excepts to the refusal of the court to grant Instruction P-9, on the ground that this instruction was the very instruction approved in *Williams* v. *Blueberry Cab Company,* and covers the case in question—189 Virginia 402-407.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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## RULE 5:12—BRIEFS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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