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Record No. 5210

In the Supreme Court of Appeals of Virginia at Richmond

PAUL LAMBACH

v.

JOHN BAILEY

FROM THE CIRCUIT COURT OF PRINCESS ANNE COUNTY

RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5210

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Monday the 1st day of August, 1960.

PAUL LAMBACH, Plaintiff in Error,

against

JOHN BAILEY, Defendant in Error.

From the Circuit Court of Princess Anne County

Upon the petition of Paul Lambach a writ of error was awarded him by the Chief Justice of the Supreme Court of Appeals on July 28, 1960, from orders rendered by the Circuit Court of Princess Anne County on March 17, 1960, and March 30, 1960, in a certain motion for judgment then therein depending wherein John Bailey was plaintiff and David Dudley Whitehead was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

page 19 } INSTRUCTION I.

The Court instructs the jury that the mere fact that the plaintiff was injured when the car in which he was riding as a passenger collided with Whitehead's automobile raises no presumption whatever that Lambach or Whitehead was negligent but, on the contrary, the presumption is that Lambach and Whitehead were free from negligence and that their automobiles were operated with ordinary care. The burden of proving gross negligence on the part of Lambach is on the plaintiff, and the Court instructs the jury that in order for the plaintiff to recover against Lambach in this case he must prove affirmatively, not by guess or conjecture, and by a preponderance of the evidence, that Lambach was guilty of gross negligence, as defined in another instruction in this case, which proximately contributed to the accident and the injuries complained of, and unless the plaintiff does establish such gross negligence on the part of Lambach by a preponderance of the evidence, the jury must bring in their verdict for Lambach. And you are further instructed that even if you believe from the evidence that Lambach was guilty of gross negligence which proximately contributed to the accident, and if you further believe from the evidence that the defendant Whitehead was guilty of simple negligence which proximately contributed to the accident, your verdict must be against the defendant Whitehead and in favor of the defendant Lambach, unless you believe by a preponderance of the evidence that Lambach was guilty of gross negligence which proximately contributed to the accident.

Granted.

H. W. M.

page 20 } INSTRUCTION III.

The Court instructs the jury that in your efforts to determine whether or not Whitehead was exceeding the lawful speed limit, you may take into consideration the force of the impact, the damage to the two vehicles, and tire or skid marks on the road left by the Lambach car after the impact,

even though Whitehead testified that he was driving within the speed limit.

Granted.

H. W. M.

page 21 } INSTRUCTION IV.

The Court instructs the jury that Lambach had the right to assume, until the contrary appeared, or by the exercise of ordinary care the contrary should have appeared, that all persons using the highway upon which he entered or was turning would obey traffic regulations with respect to speed, keeping a proper lookout, and having car under proper control.

Granted.

H. W. M.

page 22 } INSTRUCTION V.

The Court instructs the jury that before you can return a verdict in this case in favor of the plaintiff against the defendant Lambach, you must believe by a preponderance of the evidence that Lambach was guilty of gross negligence which proximately contributed to the accident, and you are further instructed that if you believe by a preponderance of the evidence that Lambach was guilty of gross negligence which contributed to the accident and that the defendant Whitehead was guilty of simple negligence, and that such joint and concurring negligence of the two defendants caused the accident, without any contributory negligence on the part of the plaintiff, then your verdict should be against both defendants.

Granted.

H. W. M.

page 23 } INSTRUCTION VI.

The Court instructs the jury that since the plaintiff was riding as a gratuitous guest in the car of defendant Lam-

bach, the laws of this State provide that the plaintiff cannot recover from Lambach unless he proves by a preponderance of the evidence that Lambach was guilty of gross negligence which proximately contributed to this accident, and in determining what is gross negligence you are referred to another instruction in this case.

Granted.

H. W. M.

page 24 } INSTRUCTION VII.

The Court instructs the jury that gross negligence as used in some of the instructions in this case is meant a degree of negligence more than mere or ordinary negligence; it is an aggravated or increased negligence. It is an utter disregard of prudence amounting to complete neglect of the safety of the guest and is such negligence as shows a reckless or indifferent disregard of the rights or safety of the guest.

Granted.

H. W. M.

page 25 } INSTRUCTION VIII.

The Court instructs the jury that the law requires all persons operating motor vehicles upon the highway to use due care to operate same at a proper speed, to keep a proper lookout, and to operate same in such manner as not to endanger the life, limb or property of others using the highway. and you are further instructed that if you believe from the evidence that Whitehead violated any one or more of these duties then this was negligence on his part.

Granted.

H. W. M.

page 26 } INSTRUCTION G.

The Court instructs the jury that negligence which is the proximate cause of an accident is defined in law to be negligence directly or immediately causing or contributing to the accident, and without which it would not have occurred.

Granted.

H. W. M.

page 27 } INSTRUCTION 1.

The Court instructs the Jury that in the instant case the Jury may take into consideration the physical facts. The Jury is further instructed that they may base such conclusions as may be warranted upon the physical facts established.

Granted.

H. W. M.

page 28 } INSTRUCTION 3.

The Court instructs the Jury that the sum of a number of acts of simple negligence, taken together, may amount to such a reckless and heedless disregard for the safety and well being of another as to constitute gross negligence.

Granted.

H. W. M.

page 29 } INSTRUCTION 4.

The Court instructs the Jury that between simple negligence and gross negligence there is a difference of degree. Gross negligence is not a willful and wanton intention to injure another, but gross negligence is such a degree of negligence as shocks reasonable and fair-minded men. It is a degree of negligence which shows an utter disregard of prudence amounting to complete neglect of the safety of another.

Granted.

H. W. M.

page 30 } INSTRUCTION 5.

The Court instructs the Jury that the defendant, Whitehead, in driving his automobile, was under each of the following duties to use due care.

1. To keep a proper and effective lookout.
2. To keep his vehicle under proper control at all times.
3. To keep within the speed limit established by law, on the highway on which he was driving.

If you believe from the greater weight of the evidence that the defendant, Whitehead, failed to comply with either one

or more of these duties, such failure on his part was negligence, and if you further believe that such negligence either proximately caused or contributed to the accident and that the plaintiff, John Bailey, was thereby injured, then your verdict shall be in favor of the plaintiff, John Bailey, against the defendant Whitehead in such amount as you feel will fairly compensate him as defined in other instructions to you.

Granted.

H. W. M.

page 31 } INSTRUCTION 6.

The Court instructs the Jury that if you find in favor of the plaintiff, Bailey, against either or both of the defendants, then you should award him such sum as you feel will fairly compensate him for the injuries that he sustained, not to exceed the amount sued for; and in determining the amount to which he is entitled you may take into consideration each of the following:

1. The nature and extent of his injury, their duration and permanency, and their effect on his enjoyment of life.
2. The physical pain and mental anguish experienced by him in the past and any pain probably expected to be experienced by him in the future.
3. Any wages lost as a result of his disability.

In addition, you shall award to the plaintiff, John Bailey, a sum equal to the amounts of any hospital, medical and doctors expenses proven to have been incurred in the past by him in attempting to be healed and cured, and any such medical expenses probably anticipated to be incurred in the future.

Granted.

H. W. M.

page 32 } INSTRUCTION 7.

The Court instructs the Jury that the term "preponderance of the evidence" as regards the burden of proof on the plaintiff means the greater weight of the evidence, or that evidence which is more satisfactory and convincing to the Jury.

Granted.

H. W. M.

page 33 } INSTRUCTION A.

The Court instructs the jury that the basis of this claim against the defendant, Lambach, is gross negligence and the basis of this claim against the defendant, Whitehead, is ordinary negligence, and the law imposes upon the plaintiff the burden of proving gross negligence against Lambach and ordinary negligence against Whitehead by a preponderance of the evidence. You cannot find a verdict in favor of the plaintiff against the defendants, Lambach and Whitehead, unless and until the plaintiff has proved by a preponderance of the evidence that the defendant, Lambach, was guilty of gross negligence and the defendant, Whitehead, was guilty of ordinary negligence which proximately caused or contributed to the accident.

If, after hearing all the evidence, you are uncertain as to whether the defendant, Lambach, was guilty of gross negligence and you are uncertain as to whether the defendant, Whitehead, was guilty of ordinary negligence, or if you believe that the accident was caused solely by the ordinary negligence of the defendant, Lambach, then your verdict should be for both defendants.

Granted.

H. W. M.

page 34 } INSTRUCTION B.

The Court instructs the jury that gross negligence is that degree of negligence which shows an utter disregard of prudence amounting to complete neglect of the safety of another.

So, if you believe from a preponderance of the evidence that the defendant, Lambach, under all the facts and circumstances of this case, manifested an utter disregard of prudence amounting to complete neglect of the safety of the plaintiff, then the defendant, Lambach, was guilty of gross negligence.

And if you further believe from the evidence that such gross negligence was the sole proximate cause of the accident, then you should find your verdict for the plaintiff against the defendant Lambach only.

Granted.

H. W. M.

page 35 } INSTRUCTION C.

The Court instructs the jury that Laskin Road, at the place of the accident in question, is a divided highway with two East-bound traffic lanes and two West-bound traffic lanes, divided by a center strip about 2 feet wide, and the driver of a motor vehicle thereon at any cross-over intending to cross or join traffic moving in the opposite direction is required to use reasonable care to first see that such a movement can be made in reasonable safety and whenever the operation of any other vehicle may be affected by such movement, to give a proper signal plainly visible to the driver of such other vehicle of his intention for a distance of at least 100 feet before slowing down, stopping, turning, partly turning or materially altering the course of his vehicle, and the failure to do so constitutes negligence.

Granted.

H. W. M.

page 36 } INSTRUCTION D.

The Court instructs the jury that the driver of an automobile is under the absolute duty to see an on-coming vehicle which is in such plain view that looking with reasonable care he is bound to have seen it. If looking discloses approaching traffic, then the right to proceed is to be tested by whether a person of ordinary prudence would attempt it.

The Court further instructs the jury that if a person having the duty to look carelessly undertakes to cross without looking, or if looking, fails to see or heed traffic that is obvious and in dangerous proximity and continues on in its path, he is guilty of negligence as a matter of law.

Granted.

H. W. M.

page 37 } INSTRUCTION F.

The Court instructs the jury that even though you may believe from the evidence that the Whitehead automobile was traveling in excess of 55 miles per hour at the time of the accident, you must further believe that the speed of his automobile was the proximate cause or a contributing cause of the accident, and unless you so believe, you should find in favor

of the defendant, Whitehead, unless you further believe that he was guilty of other acts of negligence which proximately caused or contributed to the accident.

Granted.

H. W. M.

page 38 } INSTRUCTION II.

The Court instructs the jury that the driver of any vehicle traveling at an unlawful rate of speed forfeits any right of way which he might otherwise have had.

Refused.

H. W. M.

page 39 } INSTRUCTION 2.

The Court instructs the Jury that if you believe from the evidence in this case that the defendant Lambach knowingly and imprudently added to the risks which might have ordinarily been expected under the circumstances of a motor trip from Virginia Beach to the end of the journey and that such acts were a proximate cause of the accident then the Jury may find the defendant guilty of gross negligence and the plaintiff is entitled to recover as set out in another instruction.

Refused.

H. W. M.

page 40 } INSTRUCTION E.

The Court instructs the jury that the law looks to the proximate cause without which notwithstanding all other causes the occurrence would not have taken place and holds him liable whose negligence is the proximate cause of the accident.

Therefore, even if you believe from the evidence that Whitehead was guilty of some prior negligence creating danger, but further believe from the evidence that the defendant Lambach saw, or in the exercise of reasonable care could have seen the danger in time to avoid the accident and failed to do so, and such failure was gross negligence, then Lambach's negligence, if any, was the proximate cause of the accident and

plaintiff is not entitled to recover against Whitehead, even though you may believe from the evidence that the accident would not have occurred but for some prior negligence of Whitehead.

Refused.

H. W. M.

page 40-A } INSTRUCTION XII.

The Court instructs the jury that if you believe from the evidence in this case that the accident happened as related and described by Lambach then he was not guilty of gross negligence as a matter of law and in that event your verdict should be in favor of Lambach.

Refused.

H. W. M.

page 41 } INSTRUCTION XIII.

The Court instructs the jury that if you believe from the evidence that as Lambach approached this intersection he saw Whiteheads car approaching from the west and at such a distance away as would lead an ordinary prudent person to believe that he could make the crossing on a left turn in reasonable safety and Lambach accordingly started in his turn, there was no duty upon Lambach to keep a continuous lookout for the approaching automobile after he had seen it a safe distance away under the circumstances as above mentioned.

Refused.

H. W. M.

page 42 } INSTRUCTION XIV.

The Court instructs the jury that the driver of a vehicle turning left shall begin his turn from that portion of the right hand side of the roadway nearest the centerline and wherever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

Refused.

H. W. M.

page 43 } INSTRUCTION XIV.

The Court instructs the jury that mere inadvertance, lack of attention or failure to skillfully operate an automobile do not constitute gross negligence.

Refused.

H. W. M.

page 44 } INSTRUCTION IX.

The Court instructs the jury that if you believe from the evidence that Whitehead discovered, or by the exercise of reasonable care should have discovered, the position of peril of Lambach in time to have avoided this accident by the exercise of reasonable care under the circumstances and failed to do so, and such failure proximately contributed to the accident then your verdict should be against defendant Whitehead.

Refused.

H. W. M.

page 45 } INSTRUCTION X.

The Court instructs the jury that if you believe from the evidence in this case that the defendant Lambach came up to this intersection where he made a left turn and before making the turn, or in the process of making the turn, looked to his right and saw the light or lights of cars on the boulevard coming towards the intersection a sufficient distance away to lead an ordinary prudent person to believe that he could execute the turn in reasonable safety and then proceeded on to complete his left turn and in the process of making the turn Lambach's car was struck on the right side by the car of defendant Whitehead, then this was not gross negligence on the part of Lambach as a matter of law.

Refused.

H. W. M.

page 46 } INSTRUCTION XI.

The Court instructs the jury that the defendant Lambach was only required to look down the road to his right for a reasonable distance and was not required to foresee that

Whiteheads car would be driven into the intersection at a speed in excess of the lawful speed.

Refused.

H. W. M.

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page 48 }

* * * * *

In the Circuit Court of Princess Anne County, on the 17th day of March, 1960.

* * * * *

ORDER.

This day again came the parties and their attorneys, and also came a jury heretofore sworn for the trial on yesterday, again appeared in Court pursuant to their adjournment and after fully hearing the evidence and argument of counsel, retired to their room to consider of a verdict, and after sometime returned into Court with the following verdict, to-wit: "We the Jury find for the plaintiff against both defendants, Whitehead and *Lamback* as charged, ordinary Negligence in the case of Whitehead and Gross Negligence in the case of *Lamback* and set the damages at the sum of Twenty Seven Thousand Five Hundred Dollars, ($27,500.00)."

Whereupon, it is considered by the Court that the said plaintiff recover of the defendants the sum of Twenty Seven Thousand Five Hundred ($27,500.00), Dollars, with interest from the 16th day of March, 1960, until paid and his costs in this behalf expended.

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page 49 }

* * * * *

ORDER.

Let the records show that following return of the jury verdict for the plaintiff in this case that the defendant, Paul

Lambach, moved the Court to set aside the verdict and order a new trial on account of errors made during the trial of the case or in the alternative to enter up a judgment in favor of Lambach on the grounds that the verdict was contrary to the law and the evidence, that the Court overruled both of these motions, to which action of the Court the defendant, Paul Lambach, excepted.

Enter 3/30/60.

H. W. M., Judge.

* * * * *

page 50 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS.

Defendant Paul Lambach hereby gives notice of appeal in this case, and to that end will apply to the Supreme Court of Appeals of Virginia for a Writ of Error to judgment rendered in favor of the plaintiff in this action against defendant David Dudley Whitehead, III, and defendant Paul Lambach in the sum of Twenty-Seven Thousand Five Hundred Dollars ($27,500.00) on the 17th day of March, 1960, and sets forth his assignment of errors below.

ASSIGNMENT OF ERRORS.

The Court erred as follows:

1. In refusing to set the verdict aside and enter up final judgment for the defendant Lambach on the ground that the verdict of the jury was contrary to the law and the evidence.
2. In refusing to set aside the verdict of the jury and order a new trial because of the grantnig of and refusing to grant certain instructions, and for other errors committed in the trial of the case.
3. In refusing to instruct the jury to disregard the statement made to the jury in the opening statement of counsel for the defendant Whitehead wherein he told the jury he expected to prove defendant Lambach had the odor of alcohol on his breath at the time of the accident and also wherein counsel for defendant Whitehead stated defendant Lambach

was on his way to the American Legion Club "where you can get a drink of whiskey."

4. In allowing evidence to be introduced showing nineteen (19) paces of brake marks in the west lane of traffic, which brake marks were allegedly left by defendant Lambach's car.

page 51 } 5. In allowing counsel for defendant Whitehead to question the defendant Lambach as to the purpose for which he was going to the American Legion Club.

6. In the refusal of the Court to tell the jury to disregard the evidence of Mrs. S. Reynolds and strike same in so far as it related to the alleged odor of alcohol on the breath of defendant Lambach.

7. In refusing to grant the motion of counsel for defendant Lambach to preclude counsel for defendant Whitehead from making any mention or reference in his argument to the jury concerning any alleged drinking on the part of defendant Lambach.

8. In refusing the motion of counsel for defendant Lambach for a mistrial because of the evidence of Mrs. S. Reynolds, a witness for the defendant Whitehead, to the effect that she smelled alcohol when she went up to the side of the car in which defendant Lambach was sitting without any showing on the part of the defendant Whitehead that this odor of alcohol was on the breath of the defendant Lambach, and also without any showing whatever that any drinking in which the defendant Lambach allegedly indulged had any casual connection with the accident.

9. In refusing to grant defendant Lambach's Instruction II.

10. In refusing to grant defendant Lambach's Instruction IX.

11. In refusing to grant defendant Lambach's Instruction X.

12. In refusing to grant defendant Lambach's Instruction XI.

13. In refusing to grant defendant Lambach's Instruction XII.

14. In refusing to grant defendant Lambach's Instruction XIII.

15. In refusing to grant defendant Lambach's Instruction XIV-A.

16. In refusing to grant defendant Lambach's Instruction XIV.

PAUL LAMBACH
By PRESTON P. TAYLOR
Of Counsel.

John K. Fyfe, Jr.

* * * * *

page 52 }

* * * * *

Filed May 13, 1960.

JOHN V. FENTRESS, Clerk
By R. H. WEST, D. C.

* * * * *

Dep.
page 3 } JOHN K. FYFE, JR.,
called as a witness on behalf of the defendant, Paul Laurbach, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Furniss:
Q. Would you state your name and address, please?
A. John K. Fyfe, Jr., Rolfe Lane, Bay Colony, Virginia Beach.
Q. How old are you, John?
A. Seventeen, now.
Q. On the night of August 7th, 1959, did you have occasion to be in the vicinity of Laskin Road, near the American Legion Club?
A. Yes, sir.
Q. About what time of night was it?
A. A little bit after twelve.
Q. That is a little bit after midnight?
A. Yes, sir.
Q. When you arrived in that area had an automobile accident occurred?
Dep. A. Yes, sir.
page 4 } Q. Was there anyone else on the scene other than you at the time you arrived?
A. Yes, sir.
Q. Who were they?
A. It was just one man when we came up.
Q. Do you know who that man is?
A. No, sir.

John K. Fyfe, Jr.

Q. When you say, "We came up," who do you mean by that?
A. Tommy Howard and John Ballio.
Q. You were with those two fellows?
A. Yes, sir.
Q. Did you talk to anyone in either of the two cars involved in this accident?
A. Yes, sir.
Q. Who did you talk to?
A. The driver of the Chrysler.
Q. Did you know him beforehand?
A. No, sir.
Q. Did you know anyone involved in the accident beforehand?
A. No, sir.
Q. Do you know what the make of the other car was involved in the accident?
Dep. page 5 } A. I am not sure.
Q. Do you know now what the name of the driver of the Chrysler is?
A. Yes, sir.
Q. What is his name?
A. Whitehead, I believe.
Q. How old a fellow was he?
A. I would say about sixteen.
Q. Did he say anything to you about what had happened?
A. Yes, sir.
Q. What did he say?
A. He complained about his missing teeth first, and wondered what he had hit, and wondered if the other people in his car were all right.
Q. Where was he when he said these things to you?
A. He was on the ground next to the car.

Mr. Furniss: That is all. Do you wish to inquire, Mr. Stant?
Mr. Stant: Just a few questions.

CROSS EXAMINATION.

By Mr. Stant:
Dep. page 6 } Q. Younr man, you came up and talked to this boy you later identified as Whitehead, the driver; is that right?
A. Yes, sir.

John K. Fyfe, Jr.

Q. How close in point of time, if you can say, and if you can't, say so, do you imagine you arrived on the scene after the accident; would it have been seconds, or was it a long period of time?

A. In seconds, I guess.

Q. When you talked to this young man, did you ask him what happened?

A. I don't remember that, not that I recall it.

Q. You have said he said he wondered what he had hit. Is that about as close and as accurately as you can quote him?

A. Yes.

Q. Did he at that time have any idea that he had struck another automobile?

A. Not as I know.

Q. He didn't express himself in that respect?

A. No, sir.

Q. Was he able to give you any explanation of why he had hit any object?

A. No, sir.

Q. Were you or were you not the driver of another automobile or were you a passenger in another automobile?

A. Passenger.

Dep.
page 7 } Mr. Stant: I haven't any other questions.

CROSS EXAMINATION. (Continued)

By Mr. Wahab:

Q. Mr. Fyfe, where had you and the occupants of your car been prior to the time you were traveling east on Laskin Road?

A. The East and West game.

Q. The East and West football game held in the City of Norfolk?

A. Yes, sir.

Q. You boys were on your way home?

A. Yes.

Q. What route did you take going home? That is Laskin Road, is it not, at that point?

A. Yes.

Q. Before you arrived at the scene of where the accident happened, had you seen the Chrysler automobile before that night?

John K. Fyfe, Jr.

A. Yes, sir.

Q. When did you see it?

Dep. page 8 } A. Not before that night but before the accident.

Q. You saw it before you arrived at the accident?

A. Yes.

Q. Where did you see it?

A. They passed us up near the bowling alley, which is the Thunderbird.

Q. At that time you were riding in an automobile operated by Tommy Howard?

A. Yes, sir.

Q. Where were you seated in the automobile?

A. On the far right-hand side.

Q. In the front seat?

A. Yes, sir.

Q. Was there someone else seated between you and Tommy Howard?

A. Yes.

Q. Who might that be?

A. John Ballio.

Q. Can you estimate the speed of the car in which you were riding at the time the Chrysler passed it?

A. No, sir.

Q. Can you estimate the speed of the Chrysler at the time it passed your car?

A. No.

Dep. page 9 } Q. But you said that at the time the Chrysler passed the automobile in which you were riding your car was about abreast of the Thunderbird Bowling Alley?

A. Yes.

Q. I believe that is a new bowling alley which has recently been built on the Laskin Road?

A. Yes, sir.

Q. You have said that when you arrived at the scene of the accident that everything had come to a stop and the accident had already occurred?

A. Yes, sir.

Q. Where, generally, were the two automobiles involved?

A. The Chrysler was astraddle of the island between the feeder road and Laskin Road.

Q. That would be the eastbound lanes of Laskin Road?

A. Going toward the beach.

Q. Where was the other automobile?

A. Further down.

John K. Fyfe, Jr.

Q. In the eastbound lane?
A. Yes.
Q. At the time you arrived there the driver of the Chrysler was lying beside his automobile?
A. No.
Q. Where was he?
A. They were inside of the car when we came in.
Q. What position was the automobile in?
Dep. page 10 } A. On its side.
Q. Where was Whitehead when you talked to him?
A. On the ground.
Q. From your observation, what kind of condition did he appear to be in?
A. I think pretty bad. There was lots of blood.
Q. Was he bleeding from the accident?
A. I couldn't be sure he was.
Q. You have said that in all probability it was a matter of a few seconds from the time the accident happened until you arrived at the scene?
A. Not a few meaning one or two, but a minute or so, I guess. I can't be sure, but it was a short time.
Q. Would you say it took you as much as two or three minutes?
A. It could have been, yes.

RE-DIRECT EXAMINATION.

By Mr. Furniss:
Q. Did you hear the accident happen?
A. No, sir.
Dep. page 11 } Q. Did you see the accident happen?
A. No, sir.
Q. Could you see the taillights on the Chrysler at the time the accident happened?
A. Just afterwards.
Q. Just afterwards?
A. Yes.
Q. Were those taillights when you saw them setting level with the road or was the car on its side?
A. It was.
Q. On its side?
A. Yes.
Q. Where were you, approximately, when you saw the taillights?

John K. Fyfe, Jr.

A. Near Linlear.

Q. By that you mean the roadway that enters into the Linlear area?

A. Yes.

Q. That entry way is off to the left side of the road as you were traveling?

A. Yes, sir.

Q. Can you state whether or not you were or were not paying close attention to traffic at the time the Chrysler passed you?

A. Yes, sir.

Dep. page 12 } Q. Were you, or were you not?

A. I was not.

Q. How were you sitting in the car?

A. I was slumped down in the seat.

Q. And your eyes were open or were they closed?

A. Just kind of dozing.

Q. Did you notice any other traffic on the highway other than the Chrysler?

A. No, sir.

Q. You said that you could not estimate the speed of the car in which you were riding and that you could not estimate the speed of the car that passed you.

Can you estimate the approximate difference in the speed between the two cars?

A. Yes, sir.

Mr. Wahab: I objeict to that. If he doesn't know what speed his car was going, how can he tell?

By Mr. Furniss:

Q. Can you estimate about how much faster the Chrysler was going than the car in which you were?

A. Yes.

Mr. Wahab: I object to that. He testified he didn't know how fast he was going and how could he determine it?

Dep. page 13 } By Mr. Furniss:

Q. What is your estimate of the difference in the speed of the two cars?

A. About 10 miles an hour.

Q. Did you see the taillights on the Chrysler after it passed you?

John K. Fyfe, Jr.

A. No, sir.
Q. Not even when it was in front of you?
A. No, sir.

Mr. Furniss: That is all.

RE-CROSS EXAMINATION.

By Mr. Stant:
Q. Young man, when you came up to the scene you said the Chrysler was on its side and people were in it?
A. Yes.
Q. How did those people get out?
A. We pushed the car over and the door on the left-hand side we opened and pulled them out.
Q. Did you help the boys out yourself?
A. Yes, sir.

Dep.
page 14 } Mr. Stant: I haven't any further questions.

RE-DIRECT EXAMINATION. (Continued)

By Mr. Wahab:
Q. I believe you testified that you saw the taillights just after the accident occurred; is that correct?
A. I just saw one taillight just after the accident.
Q. How do you know when the accident occurred? You said it was just after the accident occurred.
A. I presumed it to be an accident because the driver of our car, Tommy Howard, made a statement which brought my attention to the scene, and I saw a high red light over on the side of the road and I thought something had gone amiss.
Q. I believe you testified at that time you were what you might say abreast of the entrance to Linlear?
A. Yes.
Q. That would be just before crossing the bridge on Laskin Road, would it not?
A. Yes.
Q. When you arrived on the scene did you have any occasion to see or talk to the driver of the other car?
Dep. A. No.
page 15 } Q. Did you see him at all?
A. I saw a man after the accident but I don't

John K. Fyfe, Jr.

know whether he was the driver, or the other man in the car.

Q. Did you have occasion to get near the other automobile involved?

A. I approached it and surveyed what was what.

Q. Did you have occasion to notice the other automobile involved?

A. No, sir, not until we had gotten the other people out.

Q. After you got the people out of the Chrysler did you have occasion to notice the other automobile?

A. Yes.

Q. Can you recall whether or not it had any headlights on?

A. No.

Q. You can't recall one way or the other?

A. No, sir.

Mr. Wahab: That is all.

By Mr. Stant:

Q. Young man, you said that the Chrysler that passed you was going, you felt, approximately 10 miles per hour more than your automobile; is that right?

Dep. page 16 } A. Yes.

Q. What was the distance from the Thunderbird Motel to the scene of the accident?

Mr. Wahab: The bowling alley?

By Mr. Stant:

Q. What was the distance from the bowling alley to the scene of the accident, have you any idea?

Q. You don't?

A. No.

Q. Is the distance from the bowling alley to the entrance to Linlear about half the distance to the scene of the accident?

A. No, sir. I would say it was more.

Q. A little more?

A. Yes.

Q. Is it a little more or a whole lot more?

A. I would say it was three-quarters of the way.

Q. When you traveled three-quarters of the way the Chrysler was at the scene where the accident occurred?

A. Yes.

Leonard Capps.

Q. And you place the speed at which the Chrysler was going when it passed you as 10 miles faster than the speed of the car you were in?

Dep. page 17 } A. That is right.

Mr. Wahab: Note on the record I object to the last several questions as calling for conclusions of the witness.

And further this deponent saith not.

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page 11 }

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LEONARD CAPPS,

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

DIRECT EXAMINATION.

page 12 } By Mr. Stant:

Q. What is your name, please, sir?

A. Leonard Capps.

Q. What is your occupation?

A. Police Officer.

Q. How long have you been so employed?

A. Four years.

Q. Prior to that what did you do, Mr. Capps?

A. I was an insurance man.

Q. Now, Mr. Capps, during the four years that you have been on the police force have you investigated many accidents?

A. Yes, sir, quite a few.

Q. And on the night of the 8th of August, did you have occasion to go to the scene of an accident?

A. Yes, sir.

Q. Now, would you state to us, please, sir, where that accident was?

A. It was on Laskin Road adjacent to the American Legion Club.

Q. All right, sir. Now, approximately, Mr. Capps, what time did you get there?

A. About 12:30.

Leonard Capps.

Q. When you arrived there, sir, would you tell us exactly what, if anything, you found?

page 13 } A. Yes, sir. Both cars were in the eastbound lane going towards Virginia Beach. The Whitehead car, a Chrysler, was right at the curb of the outside lane, not the feeder lane but the outside lane of traffic. The Lambach car, a Dodge, was 21 yards east of the intersection.

Q. All right, sir. Now, will you state to us what was the position of the Lambach car. Was it right side up or not?

A. It was right side up when I got there, yes, sir.

Q. All right, sir. Now, what was the condition of the Whitehead car; was that still—

A. That was on its wheels. Of course, I was told it had been turned back over.

Q. Don't state to us what you had been told, we will get that by someone else. Now, I will ask you to look at these pictures and see if they correctly show the damage to the Whitehead automobile as you remember it.

(Handed to the witness for examination.)

A. Yes, sir.

Q. All right, sir.

Mr. Stant: Now, I ask your Honor ot mark this one and this one.

page 14 } The Court: This will be Exhibit P-1 and P-2.

(Received and marked by the Court as Exhibits P-1 and P-2.)

By Mr. Stant:

Q. And I ask you to look at these pictures and see if these properly identify the damage done to the Lambach car.

(Handed to the witness for examination.)

A. Yes, sir.

Mr. Stant: I ask your Honor to mark those.

The Court: Three, four and five.

(Received and marked in evidence by the Court as Plaintiff's Exhibits three, four and five.)

Leonard Capps.

By Mr. Stant:

Q. And is this the scene looking eastward toward Laskin Road, and is that the cross point where the accident occurred?

(Handed to the witness for examination.)

A. Yes, sir.

page 15 } The Court: This will be Plaintiff's Exhibit 6.

(Received and marked in evidence by the Court as Plaintiff's Exhibit Number 6.)

Mr. Stant: Your Honor, we stipulated that these plats are technically correct, and I will explain it to the jury.

The Court: This will be Plaintiff's Exhibit 7 and 8.

(Received and marked in evidence by the Court as Plaintiff's Exhibits Number 7 and 8 respectively.)

By Mr. Stant:

Q. Now, counsel has stipulated that these two plats are technically correct or very close as to distance, and this is Exhibit 8; and they have been worked out for you because distance may be important in the case.

Mr. Stant: I will ask you to look here. Can you all see this? Now, we have stipulated this, your Honor.

The distances, as you can see, are 87 feet across the intersection here, with a three-foot island in the middle; then to get everything in the whole map had to be pro-
page 16 } jected up this way (indicating) from the end of this island here to the bridge, which is 545 feet.

Across the bridge is 128 feet; and from the bridge to the opening of the road here is a distance of 737 feet. Then there is an additional 375 feet to the Linkhorn Park School.

Now, you all can have that when it becomes material; you can look at it and the measurements are on there.

By Mr. Stant:

Q. Now, Mr. Capps, did you have occasion there at the scene—you state that this is the damage—did you have occasion to look and see if the vehicle traveling east toward Virginia Beach, which would have been young Whitehead's car,

Leonard Capps.

did you have occasion to see whether or not any skid marks apparently came from that car?

A. No, sir.

Q. You did not. Were there any that you noticed?

A. No, there wasn't any that I could see.

Q. I see. As to Lambach's automobile proceeding from Virginia Beach in a westerly direction, did you have any skid marks there that led up to the point the car

page 17 } was resting at when you saw it?

A. No, sir.

Q. Now, would you tell the jury—come down here, please, sir—if that is the intersection there?

A. (Witness complied and left witness stand).

Q. Would you take these two little cars and let the red car denote the Whitehead car and the yellow car denote the Lambach car. Place those cars where they were resting when you came to the scene of the accident. This red is the Whitehead car.

A. (Witness complied.)

Q. Now, that is the car coming from Norfolk?

A. Yes.

Q. All right, sir. Now, Mr. Capps, would you step right around here. Tell the jury how many feet had the yellow car, the Lambach car been knocked or pushed, or whatever it might have been, and show how you determined that.

A. It was 21 yards at least—paces.

Q. Whose paces now do you speak of?

A. Mine.

Q. Your paces; and will you demonstrate to the jury what you mean by a "pace?"

A. Well, I try to make it about a yard (demonstrating.)

Q. About a yard. And there were 21 of those

page 18 } paces, you say?

A. Yes, sir.

Q. Now, that was from the end of this place here or from what point?

A. (Pause).

Q. How do you determine that point from where it was moved?

A. From the edge of the island.

Q. From the end of the island?

A. Yes, sir.

Q. Now, would you take and show the jury with this small blue marker where, if any—where did you find debris in the intersection there to show where the collision occurred?

Leonard Capps.

A. Oh, I thought you meant to write with it.

Mr. Stant: All right; your Honor, he has placed a blue mark in the left-lane, the lane closest to the island in the right-hand side of the intersection.

Do you all want to see this now, Mr. Taylor, Mr. Wahab? Do you have any objection to my circling that with a pencil?

Mr. Taylor: I have none.

Mr. Wahab: That's all right.

page 19 } By Mr. Stant:

Q. All right, sir. Now you state when you measured off the 21 paces you measured from the end of this island (indicating)?

A. Yes, sir.

Q. But this is where the major debris was, right here in this lane closest to the island?

A. Yes, sir, that is correct.

Q. All right, sir, step back up there.

(Witness resumed witness stand.)

By Mr. Stant:

Q. Now, Mr. Capps, you state you have been an officer for four years, and you state you have examined the scene of many accidents?

A. Yes, sir, quite a few.

Q. From the—and don't answer this question until—just don't answer it until any objection maybe made that is desired. From the physical facts and surroundings there were you able to form an estimate of the speed of the Whitehead automobile at the time of the collision?

Mr. Wahab: I object, your Honor. The question is not proper and not competent for this witness to answer.

The Court: I sustain the objection.

page 20 } Mr. Stant: All right, sir, you note my exception to that. I anticipated an objection.

Mr. Taylor: I also join in the exception for what it's worth, your Honor.

Mr. Fine: We move to strike out counsel's remark about anticipating an objection as not proper.

The Court: Well, I don't think that has any part in it. I don't think it is prejudicial.

Mr. Stant: I thought I was being rather fair.

Leonard Capps.

The Court: Now, wait a minute, let's have no more comments on that. Let's stick to the evidence.

Mr. Stant: Excuse me, your Honor.

By Mr. Stant:

Q. Mr. Capps, did you have occasion then to speak to any of these persons who were injured in this accident?

A. No, sir, everybody was hurt pretty bad, and I didn't get a chance to talk to any of them that night.

Q. What was the condition of these various people in particular; do you remember Mr. Bailey?

page 21 } A. Well, Mr. Bailey, I never saw. He was at the Virginia Beach Hospital but he wasn't in condition for anybody to see him at that time.

Q. He was not. Now, did you go to the Virginia Beach Hospital later to talk to Mr. Bailey?

A. Yes, sir.

Q. And when did you go, how many days later?

A. Oh, well, I couldn't say exactly.

Q. Would you state what his condition was at that time?

A. Well, he was still right bad off.

Q. All right, sir. Now, these other young men who were injured and Mr. Lambach, did you have occasion to talk to them at the scene of the accident?

A. Not at the scene, no, sir. Everybody was moved on off in the ambulance.

Q. Moved on off. All right, sir.

Mr. Stant: Your witness.

CROSS EXAMINATION.

By Mr. Wahab:

Q. Mr. Capps, I believe you testified that you did not or were not able to as a result of your investigation

page 22 } to discern or determine any skid marks in the eastbound lane; that would be the lane going toward Virginia Beach?

A. Yes, sir.

Q. Did you examine the westbound lanes for any skid marks that might have been there?

A. Yes, sir.

Q. Did you find any skid marks there?

A. I found some skid marks, yes, sir. It was 19 yards, 19 paces of skid marks in the westbound lane.

Leonard Capps.

Q. I wonder if you would step down here, if I may use Mr. Stant's chart?

Mr. Stant: Please do.

(Witness complied and left witness stand.)

By Mr. Wahab:
Q. Would you point out to the jury where those skid marks were?
A. Right up next to the island (indicating).
Q. Were they straight—

Mr. Taylor: Where were they, Mr. Capps?
The Witness: Right up next to the island here in the westbound lane (indicating).
Mr. Taylor: All right.

page 23 } By Mr. Wahab:
Q. Would they be parallel to the island, Mr. Capps?
A. Not quite. There was more—

Mr. Taylor: Your Honor, I want to move that the Court, even if it is proved that these skid marks were left by the Lambach car, to tell the jury to disregard that because it does not matter if the skid marks were 100 feet east of the end of the island here where he made the turn. What happened—I mean it hasn't been shown that the skid marks lead up to our car.
He said they were in the inside westbound lane, and what counts is the speed at which he was traveling, that is the defendant, as he was making that turn.
Mr. Wahab: I submit—
The Court: It is proper evidence to go before the jury. I overrule your objection.
Mr. Taylor: Note our exception.

By Mr. Wahab:
page 24 } Q. Would you explain whether or not this is parallel with the island, Mr. Capps, or just what direction did they run?
A. They want me to draw them on there?

Leonard Capps.

Mr. Stant: I have no objection to them putting them in there, if you will put it in with—here, let me—if you will put that in lightly so we don't—

(Witness complied and drew on the chart.)

Mr. Wahab: If it please the Court, I would like to show for the record that the skid marks which Mr. Capps has drawn in the left westbound lane are almost parallel to the grass highway divider and almost up to what would be the east end of it and represents 57 feet of skid marks and they are slightly to the south.

Mr. Stant: Mr. Wahab, before I forget, because this will have to be preserved, may I draw these two cars in? I think it ought to be done.

I am going to put an "L" by Lambach and page 25 } "W" by Whitehead, if that is all right with you.

Mr. Taylor: That's all right.

Mr. Fine: That's all right.

By Mr. Wahab:

Q. Now, Mr. Capps, you have already answered that night you did not have occasion to talk with Mr. Paul Lambach, who was the operator of the Dodge. Did you at any time after the accident had occasion to talk to him a few weeks or maybe a month later?

A. Yes, sir.

Q. What was the nature of that conversation with him?

A. I asked him if he wanted to make a statement and he said he didn't want to make one at that time.

Q. Didn't he tell you that he didn't remember anything about the accident?

A. Yes, he told me that.

Q. And he refused to give you any statement concerning the accident, Mr. Capps?

A. Well, he didn't refuse. I just asked him if he wanted to make a statement, which is not necessary unless he wanted to, and he said he rather not say anything at that time.

Q. But he said he didn't remember anything page 26 } about the accident?

A. Yes, sir.

Q. Do you know what the speed limit is at this particular point on Laskin Road?

A. Yes, sir, it is 55.

Q. 55 miles an hour.

Leonard Capps.

Mr. Wahab: Thank you, Mr. Capps.

CROSS EXAMINATION.

By Mr. Taylor:

Q. Officer Capps, are there any traffic controls at that particular intersection?

A. No, sir. The only thing for traffic control would be your lines.

Q. Yes, sir, I know that, but I say there are no signals or anything?

Mr. Fine: Let him answer. He said the lines.

Mr. Taylor: All right. Is there anything else you want to add to that answer. Do you want him to add anything else?

page 27

Mr. Fine: I just want to show that he said "lines" in answer to your question.

By Mr. Taylor:

Q. Now, how far from the east end of this island did these skid marks end that you saw, that you have drawn in with black lines?

A. I would say a couple of feet.

Q. A couple of feet. I see. Now, you say from the position of the Whitehead car when you got there to the position of the Lambach car there was how many paces?

A. 21.

Q. 21. And your paces are about a yard. In other words that would be about 63 feet. Now, that was from the Whitehead car to the Lambach car?

A. No, that was from the point of the intersection right—

Q. Well, I understood you to say—

A. —at the end of the island would be the same thing, but I'm going by—

Q. Because the Lambach car was just about opposite the end of the island?

A. Yes, sir, that's right.

Q. And you say where you have drawn up here with a blue pencil the place of the debris, about how many feet would you say that was from the center of the westbound lane?

page 28

A. Well, those islands are, I'd say about four foot.

Q. I see. Now, do you know how far it is from the point

of the impact to where the Lambach car was when you got there?

Mr. Fine: We object to that; that would be purely surmising and speculation. He couldn't tell the debris; he couldn't know where the point of impact is.

Mr. Taylor: All right.

By Mr. Taylor:

Q. I will ask you this then. How far was it from the debris to where the Lambach car was lying when you got there?

A. I didn't measure that in particular.

Q. Can you look at the plat there? It's supposed to be 18 feet between the ends of the island there, and tell?

Mr. Stant: Now, your Honor—

Mr. Fine: If your Honor please, if he said he don't know and the plat is introduced, of course that would be a question of measurement of the plat as shown and the jury could determine, or you can argue it from the plat.

page 29 } By Mr. Taylor:

Q. I will ask you this. It is 87 feet between the ends of the island; the debris, was it east or west of the two islands, the center of the two islands? You can come up here and look.

A. Isn't it east or west of the center?

Q. Yes, was the debris—suppose you look at a point in the center between the two islands here (indicating on chart.)

A. Yes, sir.

Q. Then is that debris west of the center?

A. Yes, sir, west.

Q. Between the two islands. All right. And how far does the plat show there the islands are apart? I want to get it in the record. Look at it.

A. 87.

Q. 87 what?

A. 87 feet, I guess.

Q. All right. Now, what model Chrysler was this Whitehead driving, do you know?

A. 1959.

Q. Do you know whether or not those engines are equipped with powerful engines?

A. Well, I would imagine so, yes, sir.

Leonard Capps.

Q. Now, do you know about how far the bridge is
page 30 } up there from that intersection?
A. I measured it with the car. It was one-tenth of a mile.
Q. One-tenth of a mile. All right. Was that little plat that was introduced in evidence. Do you know whether or not or as a matter of fact the road that leads from Virginia Beach Boulevard into the American Legion Club narrows down considerably; doesn't it?
A. Yes, sir.
Q. Now, I understand you to say that the Lambach car had turned over. Was it lying on its side; wasn't it?
A. When I got there it was up.
Q. Up?
A. On the wheels.
Q. I see. Now, the skid marks from the point of where you measured them were left by the Lambach car?
A. I couldn't say that; no, sir.
Q. What?
A. I couldn't say that.
Q. No, I mean wasn't the Lambach car knocked sideways; didn't you say?
A. Yes, sir.
Q. 21 paces down the road?
A. Yes, sir, that's true.
Q. In other words the skid marks were smudge
page 31 } marks?
A. Yes, that is so.
Q. Skidded kind of sideways?
A. That's right.
Q. And from the point you measured them they measured 21 yards?
A. Yes, sir.
Q. And there were no skid marks whatsoever left by the Whitehead car prior to the debris here (indicating)?
A. No, sir.
Q. That is correct, is it not?
A. That's right, sir.

Mr. Taylor: That is all, thank you.

By the Court:
Q. Officer, let me ask you: What was the condition of the weather that night?

Leonard Capps.

A. It was—just a moment, I have it right here, sir. The weather was fair, the road was dry.

The Court: All right.

RE-DIRECT EXAMINATION.

By Mr. Stant:

page 32 } Q. Did either driver give you a statement as to what occurred, Mr.—

A. No, sir.

Q. —Capps? Did both of them wouldn't give you any statement?

A. No, it wasn't exactly a refusal. I talked to Whitehead that night but he had some teeth knocked out, and I didn't press the point at all. In fact it is not necessary for us to obtain statements any way.

Q. I understand. Did he give you an explanation as to what happened?

A. No, sir.

Q. Did he state to you that he had never seen the Lambach car?

A. No, sir.

Mr. Fine: If your Honor please, we object to the leading question.

By Mr. Stant:

Q. Did he or did he not give you any statement or make any statement as to whether or not he had even seen the car that was in the accident with him?

A. The Whitehead boy—his mother and daddy were in there with him—the boy was in terrible shape. He might have said something, but I didn't take anything down because the boy wasn't in condition to talk to him at

page 33 } that time.

Mr. Stant: All right, Mr. Capps, I haven't any other questions.

RE-CROSS EXAMINATION.

By Mr. Wahab:

Q. Mr. Capps, just let me ask you a couple of other questions if I may. I believe you testified that you measured the

distance from here to the bridge, and you say it was one-tenth of a mile?

A. That is roughly, because I measured it with the car.

Q. I see. That would be the west end of the bridge, the end of the bridge closest to the American Legion Club, is that correct?

A. Yes, that's right.

Q. I see. I show you these photographs. Now, does that appear to be a scene of the road looking east toward Virginia Beach?

A. Yes, sir, it does.

Mr. Wahab: All right, I'd like to introduce that.

The Court: This will be Defendant W-1.

page 34 } (Received and marked in evidence by the Court as Defendant's Exhibit W-1.)

By Mr. Wahab:

Q. And these three photographs which I show you now are these pictures of the Dodge automobile which was being driven by the Defendant Lambach?

(Shown to the witness for examination.)

A. They are photographs of the Dodge automobile, yes, sir.

Mr. Wahab: Mark those too, if you will.

The Court: This will be W-2, W-3 and W-4.

(Received and marked in evidence by the Court as Defendant's Exhibits W-2, W-3 and W-4 respectively.)

By Mr. Wahab:

Q. Now, I show you these photographs, Mr. Capps, and will you state for the record, please, where the damage is to that automobile?

A. This is the Lambach car?

Q. That's correct.

page 35 } A. The damage is to the right-side past the door to the top.

Q. And here is another photograph. Where does that reveal the damage to be? Is the damage not to the right

front of the car, the right-front bumper and the right-front fender?

A. Yes, sir.

Mr. Wahab: That's all, Mr. Capps.

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page 39 }

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PAUL HOWARD LAMBACH,

called as an adverse witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION. (Adv.)

By Mr. Stant:

Q. Mr. Lambach, what is your full name, please, sir?

A. Paul Howard Lambach.

Q. Mr. Lambach, prior to the time of this accident what had been your occupation, sir?

A. Airline transport pilot, international.

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

A. 177 Pinewood Road. That is behind the Cavalier about two blocks.

page 40 } Q. All right, sir. Are you married, Mr. Lambach?

A. Yes, sir.

Q. And how long had you lived in this area?

A. Well, I originally located here when I was sent here by the navy around 1943, I think, and actually my home has been steady the last five years.

Q. All right, sir. Now, Mr. Lambach, on the night in question, approximately as best you can remember, approximately what time did you meet this young man?

A. I would say 11:58, somewhere around there, 11:58.

Q. Where did you meet him?

A. At the Jet Lounge.

Q. And is it true that you did not know him prior to that night; did you?

A. No, I didn't.

Q. And you all didn't know each other at all?

A. Nope.

Paul Howard Lambach.

Q. Now, at that time do you remember the other man you met him through?

A. Yes, sir.

Q. What is his name; do you remember that?

A. Mr. Gregory.

Q. And you had not known Mr. Gregory?

page 41 } A. Yes, I have done business with Mr. Gregory before that.

Q. All right, sir. Now, how long after you met this gentleman did you have any conversation with him; did you talk to him?

A. Yes, we were introduced, and in fact we had a short conversation.

Q. Now, when you say "a short conversation," was it a matter of minutes, Mr. Lambach?

A. Yes.

Q. Now, then how was it determined that you and this gentleman, whom you did not know, would go out to the American Legion Club?

A. It was just Mr. Gregory wanted—was the one that brought it up, and he was determined he wanted to take them over, to go out to Oceana to the Officer's Club out there, but they wanted to go over there.

Q. All right, sir. Now, Mr. Lambach, when you left you and this young man left in your automobile, is that correct?

A. That's right.

Q. And Mr. Gregory, what happened to him?

A. Mr. Gregory went to get his truck and move it downtown. He didn't want to leave it downtown. He had valuable stuff in it.

page 42 } Q. And he was taking his truck somewhere then?

A. He was to meet us out there.

Q. He was to meet you out there. Now, will you state to the jury when you left what road did you take or route to go out there, Mr. Lambach?

A. I was parked right—I was parked facing south. That would be southbound on Atlantic Avenue just about in front of the A & P store. I made a U-turn there, proceeded back to 31st Street, turned left on 31st Street and straight out toward the American Legion Club.

Q. All right, sir. Now do you remember what, if anything, you and this young man talked about going out there, or did you have—

A. Yes, I have always been concerned about the different

Paul Howard Lambach.

buildings as it progresses so rapidly. I would go out on trips and I would be gone maybe eight days and come back and something new has gone up. And at that time there was quite a bit of new construction on the route, and each one of those places I would point out to him and remark about it.

Q. Now, Mr. Lambach, did you know where the American Legion Club was?

A. Yes, sir.

Q. As you approached the intersection of the American Legion Club—and I am going to turn this around, page 43 } your Honor.

A. I can see it all right there.

Q. As you approached the American Legion Club, this is east on Virginia Beach Boulevard to the Virginia Beach (indicating), and this, of course, is west from Norfolk. Do you gentlemen object to my removing this now?

Mr. Fine: We don't.

Mr. Taylor: I don't.

By Mr. Stant:

Q. As you approached that intersection tell the jury what, if anything, you did.

A. First I would like to state that maps and everything in front of me, north is always at the top, west to the left, and to the right. I'm a little bit confused.

Q. I'm a little bit confused myself, but for these purposes north is—well, let's turn it, your Honor.

A. May I stand up and point, would that help?

Q. Now, we have stated that the red automobile is the Whitehead *automoble* and the yellow automobile is yours. This is Virginia Beach; this is Norfolk (indicating). Now, would you state to us when if at all you first noticed the Whitehead automobile?

A. When I first noticed the automobile, his automobile I was—well, I was—I was well in my turn when I page 44 } first saw it.

Q. Can you all see it now? Go ahead.

A. I was well in my turn when I first saw that automobile. Do you want me to relate the full events as I was making that turn?

Q. Please, sir.

A. All right. As we were going westbound here traveling along, I could see there was a very sharp turn from the intersection. There is no curve to it or anything (indicating).

Paul Howard Lambach.

I pulled up to it; I slowed down. I know I slowed down to a very slow speed because the automatic transmission kicked down to a lower gear; and I had my turn signal on.

As I pulled around the corner and got into about this point I felt that I was in the middle of the road and these bright lights suddenly flashed on my face and it was too late for me. I couldn't back up and I couldn't put my hands up when that thing flashed bright on me. That was it.

Q. Now, Mr. Lambach, did you have your lights on?

A. Yes.

Q. As you came down the highway did you look south to see if any automobile was proceeding, say, west—I mean west.

Did you look west to see at that time if any auto-
page 45 } mobile was proceeding in your direction?

A. Yes.

Q. And at that point, when you looked, how far would you say you were from this intersection here (indicating)). How far from the intersection down the road?

A. I was constantly aware of the traffic. I was aware of the highway. There was no traffic to speak of. There was a car well down out of my range. I didn't even have to be concerned about it. I was constantly rechecking and traffic was also right in here (indicating).

Q. Now, you state that you saw a car well down the road and you felt it was out of your range?

A. Yes, sir.

Q. What do you mean by you felt that the car was well down the road and was out of your range?

A. Well, I am aware of how long it takes from that distance if I was going to go that far, and I knew it was well out of my range. I couldn't possibly have been concerned with it.

Q. All right, sir. Now, what did you next do after you directed your attention to this car well down the highway; what did you next do?

A. I commenced to—I mean I had to slow down. I had to make a sharp turn there.

Q. All right, sir. Now, as you entered into
page 46 } your turn when were you first aware again of this
car that you say you saw well down the road formerly; when were you next aware of it?

A. The next car that I was aware of was the car that turned on its bright lights in my face.

Q. All right, sir.

A. And that was when I was in—I couldn't avoid it, I mean.

Paul Howard Lambach.

Q. All right, sir. In other words you are saying that the next time you were aware of a car you were in the intersection and shortly thereafter the accident occurred?

Mr. Taylor: He didn't put it down that far, Mr. Stant.
Mr. Stant: Let's put it anywhere you want to.

By Mr. Stant:
Q. Mr. Lambach, where were you. You show this jury the exact position of your automobile when these bright lights suddenly alerted you.
A. (Witness complied) That's it.

Mr. Stant: All right. For the purpose of the record I want to mark this in, if you don't mind.

By Mr. Stant:
page 47 } Q. Now, Mr. Lambach—

Mr. Fine: Excuse me, will you identify that as "L"?
Mr. Stant: "L-1."
Mr. Fine: All right, sir, very well. But I don't want it in the record. Would you let him state the degree of the turn and the position for the purpose of the record. May we do that?
Mr. Stant: I think it's right there. It's about a 90-degree turn, I'd say; a 45 degree turn.
Mr. Fine: That is a fair statement, sir.

By Mr. Stant:
Q. And you stated at that time you were aware of bright lights approaching?
A. Yes, sir.
Q. And you say shortly after the collision occurred?
A. Can I ask a question?
Q. Mr. Lambach, nobody is trying to confuse you.
A. Well, you are making me spot myself directly in a certain spot at a certain instant and things like that, and you want me to be specific on this thing. At an inter-
page 48 } section like that there is nothing I have to go by, and all of a sudden it flashes on me. You realize the point I am trying to make?
A. Yes, I do. This is about the position known as "L-1," about where you became aware of real bright lights rapidly approaching?

Paul Howard Lambach.

A. Yes, sir, approaching very fast. It was so fast there I couldn't back up. I couldn't do anything.

Q. All right, sir. What was your speed at that point when you became aware of these lights coming at you?

A. I would say 15 miles an hour roughly, because the car had an automatic transmission and it had kicked down into that low gear, and it doesn't do that until 15 or 16 miles an hour, something like that.

Q. I understand. At that point did you get a chance to see this oncoming car; did you get a chance to see it?

A. Yes, when the bright lights suddenly flashed on me I saw him; yes.

Q. Now, did you ever actually see the automobile that was in back of these bright lights?

A. At that point I was not concerned with any other proposition anywhere. I was only concerned with that. I wanted to throw my hands in my face.

page 49 } Q. I see. All right. Now, Mr. Lambach, at that point, Mr. Lambach, as you arrived at this intersection going from Virginia Beach out, had you passed many automobiles, not passed them, but passed them coming toward you?

A. You mean what was my traffic on the way out before the accident occurred?

Q. Yes.

Q. I was in a group of five cars as we went up to Bird Neck Point, but they all made right turns or left turns.

Q. All right, sir. Now, did you have occasion—

A. Except there might have been another car farther behind me. But I knew there was traffic around me though.

Q. Did you have occasion at that time as you went out to observe whether or not your lights lighted up any of the cars that you were proceeding with lights on your automobile?

A. Oh, yes.

Q. Pardon?

A. Yes.

Q. No question in your mind about that?

A. No.

page 50 } Q. Now, as you came to this intersection, Mr. Lambach, what is your best recollection as to whether or not you indicated your intention to turn?

A. At what point did I turn on my turn signal?

Q. Yes, sir.

A. It was quite ahead of there.

Paul Howard Lambach.

Q. Quite ahead of this intersection?

A. Where I was going to make the turn, yes; because I am well aware where the point is, but I have never actually made the turn before from that way, and I have driven past it many times. You've got to look for that turn. You just can't drive up and suddenly make it.

Q. All right, sir. Mr. Lambach, one final question. Referring to the car that you had seen some distance down the highway, when you saw that car do you have any idea in your own mind, sir, as to where that car was in relationship with any of the objects along the side of the highway that would identify its approximate distance from you when you first saw it, and if you don't so state.

A. At one point there that I was familiar with was that bridge which is ahead. I know it was past that bridge.

Q. Well, now, when you say past the bridge do you mean he was to the west of the bridge or to the east of the bridge?

A. To the west.

page 51 } Q. To the west of the bridge?

A. That was what I used as my distance.

Q. And that was where you were just prior to the intersection, is that correct?

A. Yes, sir.

Mr. Stant: Your witness, Mr. Wahab.

CROSS EXAMINATION.

By Mr. Fine:

Q. Mr. Lamback, as I understand it, you worked for a period of eight days, then you sort of have a holiday or a little time off to come back home?

A. My route on the international flights takes me four days to make the trip across from New York to Europe and back, and then I'm off. I usually figure on another five days off.

Q. Five days off on each one of your trips, is that correct?

A. If that is the way my schedule reads, yes.

Q. Is that a fair statement?

A. No, because I don't run the same trip every

page 52 } time.

Q. Well, approximately. I am speaking generally.

A. I will say that my time in equals my time out.

Paul Howard Lambach.

Q. All right, sir. And this unfortunate collision occurred on August the 7th of last year?

A. Midnight of the 7th.

Q. And when did you last do your duty in connection with the plane; what date was it?

A. My last trip was—my last flight prior to that was a navy flight, I think, three days prior to that.

Q. So that would put you in August the 4th?

A. Pardon?

Q. August the 4th; is that a fair statement?

A. I have to check to be exact.

Q. Let's say August 5th, within two or three days, is that correct?

A. Yes, sir.

Q. So, you did not have to report back, as I take it, until probably the tenth?

A. (Pause) No, that is not true.

Q. When did you—

Mr. Furniss: Your Honor, I don't see the materiality.

Mr. Fine: I want to show—

page 53 } The Court: This is cross examination. I can't say that it isn't material. I overrule the objection.

By Mr. Fine:

Q. When would you have to report back. You said you had the same time in and you had the same time out; is that correct?

A. Well, here is my chain of events for that day.

Q. No. I am not interested in that day, I am asking you a very simple question and I would like to ask you to answer it, if you please.

A. I was scheduled for a flight the next morning.

Q. On August the 8th?

A. Yes; with the navy.

Q. With the navy here locally?

A. Naval Reserve, I should say.

Q. But not in connection with your duties as an airline pilot?

A. My next duty as an airline pilot would have been a check flight on a Monday.

Q. On a Monday; and this occurred on what day of the week?

Paul Howard Lambach.

A. This occurred on a Friday.
page 54 } Q. On a weekend?
A. That's right.
Q. And you were at this Jet Lounge?
A. Yes, sir.
Q. Did you have your wife with you?
A. No.
Q. You are married?
A. Yes.
Q. What time did you arrive at the Jet Lounge?
A. Shortly after 11:00, 11:15, I'd say.
Q. And where had you been before 11:15?
A. Ingram's Pharmacy.
Q. And when you went to the Jet Lounge you went alone, didn't you?
A. Yes, sir.
Q. And what did you go to the Jet Lounge for; what was your purpose in going there if you went alone?
A. Well, it was necessary for me to see the gentleman that owns the building. He owns that building and the building next door and a few other buildings. Do I have to give his name? I can give his name.
Q. You were going to see a gentleman at 11:15 about a building, you say?
A. No, I was going to see the gentleman about a business affair.
page 55 } Q. About a business affair?
A. That's right.
Q. Did you have an appointment with him?
A. No.
Q. And he wasn't there?
A. He was not, but his car was.
Q. Sir?
A. But his car was. That was the reason I stopped.
Q. Unh-huh. And when you arrived there did you know anyone there besides him?
A. No.
Q. You knew no one else?
A. I knew no one else would be there.
Q. And what time did you leave the drug store?
A. I tried to pin that down with the drug store people. They generally close at 11:15. I sat down at the drug store and had a cup of coffee while I waited for the prescription to be filled.

Paul Howard Lambach.

Q. What kind of prescription, for whom?
A. For my baby.
Q. And what time did you leave your home?
A. I left my home at 10:30.
Q. And when you came to the Jet Lounge did you have anything to drink?
page 56 } A. No.
Q. Had nothing at all?
A. Nope.
Q. Not a thing?
A. Nope.
Q. You do drink?
A. I am not a drinking man.
Q. You don't drink. You are a teetotaler?
A. I wouldn't say that. I am not a drinking man.
Q. Well, now, you can answer. Do you drink?

Mr. Stant: Well, now, if your Honor please, whether he drinks or not—if he drinks a gallon or nothing is not material unless Mr. Fine can adduce that he was drinking on the night in question.

Mr. Fine: We can, if your Honor please. And we represent to the Court that we have two witnesses who will say he was *wreaking* from alcohol, and that is why I am asking him.

Mr. Stant: If that is all you have to say, that brings up another objection, so I want to go ahead—

Mr. Taylor: I have been sitting here—I hate to
page 57 } keep jumping up every time in the trial of the case, but Mr. Fine has been trying cases long enough to know that it makes no difference whether he is a drinking man or not.

The important and material question is what, if anything, he had had to drink on the night of this accident. And that we certainly do object.

Mr. Fine: He is under cross examination, and I asked him if he was a teetotaler. If he is I want him to say so.

By Mr. Fine:
Q. Do you ever take a drink?

Mr. Stant: If your Honor please—
The Court: I sustain the objection.
Mr. Fine: All right, sir.

Paul Howard Lambach.

By Mr. Fine:

Q. All right. Now, the other gentlemen that you met there, were they drinking?

A. I don't know.

Q. Don't know whether they were drinking?

A. They didn't while I was talking to them.

Q. All right.

page 58 } Mr. Stant: Just a second.

A. I didn't meet them where they were sitting. There was a crowd of people at that end where they were, and where I was sitting there was no one. When I met them they came up to me.

By Mr. Fine:

Q. And how long were you at the Jet Lounge?

A. When I came in to look for Mr. Lainfield I didn't see anyone there I knew so I started to leave.

Q. And then what happened?

A. Then I saw Mr. Gregory and he was talking to someone at the end—well, the dining part back in the back. That is where the people were. There was no one up forward. And he said just a moment, I want to talk to you, and just waved to me to that effect. I was just an acquaintance and I hadn't seen him for a long time.

Q. Did you invite Mr. Gregory along with you?

A. Invite Mr. Gregory where?

Q. I am asking you the questions, sir. Did you invite Mr. Gregory?

A. I didn't invite Mr. Gregory to anything.

Q. Well, did I understand you to testify on your direct testimony that you had taken this gentleman who, unfortunately, was hurt in your car and that Mr. Gregory was going to meet you after he moved his truck, didn't
page 59 } you say that? Didn't Mr. Gregory say he was going to meet you a little later?

A. Yes.

Q. Did you invite Mr. Gregory to meet you?

A. No.

Q. Well, how did Mr. Gregory know where you were going?

A. That was determined among the conversation we had there that they finally decided they would like to go to the American Legion Club.

Q. And weren't you going to the American Legion?

Paul Howard Lambach.

A. I thought it was a fine idea. And Mr. Gregory in fact was a member of the club as I recall. I am not a member of the club. I had never been there before.

Q. What did you go to the American Legion Club for, sir?

Mr. Stant: I object to whatever they were going to the American Legion Club for. I do not think it is material. They could have been on their way to rob a bank, it wouldn't be material.

Mr. Fine: May it please the Court—

Mr. Stant: Unless they were hurrying with page 60 } great speed to rob a bank.

The Court: I overrule your objection.

Mr. Stant: Note my exception.

By Mr. Fine:

Q. All right.

A. I wanted to see the club.

Q. Isn't it a fact that you know, sir, that after 11:00 o'clock that beer is not sold at the Jet Lounge?

A. I didn't know that.

Q. Didn't know that?

A. No, I didn't.

Mr. Taylor: I also want to join in this objection.

A. I don't know what liquor—

Mr. Stant: Wait a minute.

Mr. Taylor: Now, wait a minute. Mr. Fine is obviously trying to prove that this man had been drinking. He has told us that he hadn't been drinking, and it doesn't matter if this man had in his mind to go to the American Legion Club and get drunk. That has nothing to do with it.

The test of this thing is what his condition was page 61 } before this accident.

Mr. Fine: We respectfully submit—

Mr. Taylor: And we respectfully object to the line of questioning on that ground.

The Court: I overrule your objection.

Mr. Taylor: We note an exception.

Mr. Fine: This is as to his credibility.

Mr. Stant: Your Honor, now, Mr. Fine—did you hear what he said?

Paul Howard Lambach.

The Court: I heard what Mr. Fine said.

Mr. Taylor: I didn't hear it, what did he say?

Mr. Stant: He said he is asking it for credible purposes.

Mr. Fine: Certainly am.

Mr. Stant: That is just as far afield as I can think. He is asking a man what he is going to a place for to determine his credibility.

The Court: I ruled on the objection.

page 62 } Mr. Stant: All right, sir, you have my exception to the line of questioning.

The Court: Yes, all right.

By Mr. Fine:

Q. So, you were going to the American Legion to look the place over, did you say; and you had never been there before?

A. No.

Q. Is that correct? You said no?

A. I had never been there before.

Q. You had never been there before, and you also were not familiar, as I understand it, with the turn there. You had not negotiated that turn before?

A. Oh, yes.

Q. Is that correct?

A. I have driven up there before.

Q. You had driven to the American Legion before?

A. I know I have made that turn up there. I am trying to recollect what the reason was. But it was a long time ago, and for what reason it's immaterial.

Q. Well, now, I don't want to misquote you, sir. Do I understand you to say then you have been there before but it has been sometime ago?

A. When you speak of the American Legion

page 63 } Club, I mean going in the Club. I have been out there to see the place.

Q. You have been there before. Then there was no novelty then on this particular night?

A. No, no novelty about it there at all.

Q. Why did you want to see it again that night if you had seen it before?

A. I was with a newly met acquaintance and an acquaintance that I had known. I intended to go out and look around. I mean my life is not confined. I have nothing to prevent me from doing that.

Paul Howard Lambach.

Q. I take it then there was no immediate necessity for having that prescription filled and return it to a member of your family since you were going to go to the American Legion to look it over?

A. What prescription; what are you driving at? What do you want to—?

Q. I thought you said you had a prescription that you were going to fill.

A. That was my reason for going there.

Q. But there was no immediate necessity to return it to the home, was it, that evening?

A. (Pause) No, I can't think of any.

Q. All right, sir.

A. My reason was to get down there before it
page 64 } closed was all.

Q. And did I understand you to say on your direct testimony that you had to look for the turn, you were not familiar with it? I think I wrote it down here, these words: "Had to look for the turn." Did you say that, or not?

A. (Pause) Did I make that statement?

Q. I think you did, sir. I vouch for the record that you did. Then were you familiar with it or not?

A. (Pause) Am I familiar with the spot that I turned in?

Q. Yes, sir.

A. Yes.

Q. Did you have to look for the turn?

A. Certainly you have to look out to see where it is, I mean driving up to the turn. I didn't want to—

Q. And before you had to look for the turn did you say that you saw the lights down the highway at the west end of the bridge?

A. That would be very good, that point or beyond that those lights—I mean you can't determine exactly.

Q. Now, the west end of the bridge, which I will hand you, which is Plaintiff's Exhibit 8, is how many feet from that turn?

A. Well, I figured these things out by driving out there myself.

page 65 } Q. Well, look at that plat. That has the accurate number of feet—it has been so stipulated.

A. (Examined by witness) It says here from west end of the bridge—

Q. West end of the bridge?

Paul Howard Lambach.

A. From the west end of the bridge 725 feet.
Q. All right, sir.
A. To what point that is, I don't know.
Q. That is from the intersection. Read it all.
A. "From west end of bridge barricade to driveway pole * * *" Now, I don't know what you want.
Q. Well, that says, doesn't it: "To the west end of the bridge down to the driveway to the American Legion," doesn't it?
A. Where?
Q. See there, barricade runs all the way down there, 725 feet?
A. All right. And this arrow indicates what?
Q. The arrow indicates right up to the west end of the driveway—not up to the west end of the driveway, to the west end of the driveway would be an additional 250 feet?
A. What's this part right in here?

Mr. Stant: If it please your Honor, I have an
page 66 } objection to Mr. Fine asking this man distances.
I don't want him to take them off of here to answer the question. I want his best estimate of the distances. That is the proper way of introducing it.
Mr. Fine: May it please the Court, this gentleman has—
The Court: I overrule the objection.
Mr. Stant: *Not* my exception to it.

By Mr. Fine:
Q. Now, when you saw those lights at the west end of the bridge that was the first time you saw the lights of the oncoming car, is that correct?
A. That is the first point that I made note of them. I didn't say that is the first point I saw them. That is the first point I made note of them in my mind and registered them.
Q. Did you see them before that?
A. I probably did.
Q. You probably did. Well, now, would you give us how much distance further down the road you saw them?
A. I couldn't state that because I didn't know.
Q. Would it be a fair statement for you to say that you definitely saw the car even before the west end of the bridge?
A. (Pause) What kind—I mean what kind of
page 67 } an answer do you want there?
Q. I just want the truth of it, sir. Would it be

Paul Howard Lambach.

a fair statement for me to say that you saw those headlights on the other side of the west end of that bridge?

A. (Pause What—yes, sir. I just stated that I saw those headlights on the other side, on the west end of the bridge, so that is the statement I made.

Q. Well, now, is that the first time you saw it?

A. (Pause) I don't know.

Q. Well, was the next time you saw it—we begin with the proposition you certainly saw it at the west end of the bridge, no question about that; is that true?

A. I would say in the vicinity of the west end of the bridge.

Q. All right, sir. Then the next time, as I understand it, you saw those lights when it suddenly lighted up?

A. When it suddenly lighted up in my face.

Q. Is that correct?

A. Yes.

Q. That is the next time you saw it. Now, let me ask you, if you please. When you saw the car at approximately, you say, the west end of the bridge how far away—not how far away, but how fast were you traveling at that

page 68 } time?

A. We are back to this statement again. I am constantly slowing down at that point. I am making the turn there and *contantly* registering that car coming at me.

Q. Excuse me. My question is this—now, I am not trying to confuse you. I asked you when you saw the car, I mean physically. You say that you saw the car for the first time approximately on the west side of the bridge; is that right? Now, my next question is when you saw the car at that point approximately tell us how fast you were traveling. Now, that is what I am asking you.

A. 35 miles an hour.

Q. All right, sir. And when you started to make your turn into the left, making a left-hand, did you reduce your speed from 35 miles per hour?

A. Certainly.

Q. You did. And from what speed did you reduce your car to at that point?

A. I reduced my speed from 35 miles per hour.

Q. And what speed were you making when you started to make your turn?

A. My car had automatic transmission. And it kicked into low gear, which, I believe, is 18 miles per hour, or 16 miles

Paul Howard Lambach.

an hour, or something. It plunges down there, so it was less than that.

page 69 } Q. I thought you said 15; but you said between 16 and 18 is what you were turning into, is that right?

Mr. Taylor: And he said, Mr. Fine, that it was less than that.

By Mr. Fine:

Q. And maybe less than that?

A. I didn't say "maybe."

Q. Sir?

A. I didn't say "maybe less than 16.

Q. How much is it. That is what I am trying to get at. I don't want to misquote you.

A. (Pause).

Q. 15, 14, 10?

A. I don't know.

Q. Don't know how fast you were going?

A. I do know I was going less than 16.

Q. Less than 16. All right, sir. And when you started to find out you had to start looking for your turn? As I understand it you had to look for the turn . Did you put on your signal to make a left-hand turn?

A. (Pause) Well, well back from the turn.

Q. Well back; how far back, 50 feet, 25 feet?

A. Oh, I would say a good 150 feet.

Q. 150 feet; and is that an estimate?

A. No, I'm trying to picture in my mind just

page 70 } exactly how far it would be. I don't turn on my traffic signal at a given point. I turn it on to allow plenty of time in case anybody wants to see it.

Q. Well, can you say that you did affirmatively and reasonably certainly 150 feet or 50 feet or 25 feet, or don't you know exactly?

A. I don't know exactly.

Q. Don't know exactly?

A. I was traveling very slow, so I couldn't—

Q. And you had to look for the turn because you were not familiar with it, that is true, isn't it?

A. Yes, I had to look ahead to see where I was going to turn. There is no signs or anything there to show there was a turn there or anything.

Paul Howard Lambach.

Q. And your automobile, if you were going less than 16 miles an hour and putting it at 15 miles an hour within what distance could you stop your car going 15 miles an hour; how many feet?

A. That would be governed by the amount of time it would take to raise my foot from the accelerator and hit the brake.

Q. Well, of course it would, we understand that, sir. But assume your brain got the message effectively, and assume your brain was working as an ordinary person in bright, clear, dry weather as has been described here how

page 71 } feet could you stop your car in?

A. I don't know.

Q. Sir?

A. I don't know.

Q. Have you ever tried it?

A. At that speed, no.

Q. Wouldn't it be fair to say that you could stop your car within 15 feet?

Mr. Taylor: Your Honor, the witness testified unequivocally he doesn't know.

The Court: I sustain the objection.

Mr. Fine: We will ask the Court to take judicial notice, if your Honor please, as provided by the statute.

By Mr. Fine:

Q. Now, could you stop your car within 87 feet?

A. I don't know.

Q. Don't know whether you can do that. You don't know how soon you can stop your car or what distance as I understand it. Did you have good brakes?

A. Yes, sir.

Q. And what model car did you have?

A. 1957 Dodge.

page 72 } Q. And did you have your lights on your car at all that night?

A. Yes, sir.

Q. What lights did you have on?

A. My headlights were on.

Q. Were they dim or bright?

A. (Pause) I don't recall.

Q. Why wasn't it that you couldn't see this automobile coming down the highway. It's a straight line, isn't it, between the first time you saw it at the west end of the bridge and the next time when you made a turn and the next time

Paul Howard Lambach.

you saw it; why couldn't you have seen the car coming down the highway. Was anything to block you there?

A. There was nothing in there to hinder your view.

Q. Why didn't you see it?

A. The tremendous rate of speed, I guess, I don't know.

Q. Do you remember discussing this matter with the officer, Officer Capps, who investigated this matter?

A. We didn't discuss the accident at all.

Q. I ask you if you remember telling Officer Capps upon his interrogation of you that you don't remember how it happened?

A. No, I recall—it has been sometime ago—

page 73 } I recall my statement to Officer Capps was not given to him because I was afraid of making a statement that later may be proved not true, and I told him I rather not make a statement for that reason.

Q. Do you deny making the statement to Officer Capps that you did not remember how this occurred?

A. I don't recall making a statement like that.

Q. You don't deny it?

A. I don't recall making the statement.

Q. Don't recall making the statement. Now, Officer Capps had nothing against you. I mean there is no bias or any differences—

Mr. Stant: If it please your Honor, obviously there is no bias.

Mr. Fine: I want to find out—

Mr. Stant: I don't think it is germaine at all. I think Mr. Fine is putting in a lot of innuedos.

Mr. Fine: I object to that, if your Honor please.

Mr. Stant: I want to show it in the record.

The Court: I overrule the objection.

Mr. Stant: Note my exception.

page 74 } By Mr. Fine:

Q. I ask you again, sir, when you spoke to Officer Capps, and you said you don't recall, but I ask you if it wasn't from two weeks to a month later after the collision occurred that you told him that you don't remember how it happened?

A. I believe Officer Capps came up to see me.

Q. Excuse me—

A. I was at the Norfolk General Hospital.

Paul Howard Lambach.

Q. I don't mean to interrupt you, but I am asking you specifically if you remember that it wasn't about two weeks to a month—

Mr. Taylor: He has a right to answer—

Mr. Fine: He has a right to answer but I don't want to know where or when.

By Mr. Fine:

Q. I just want to know if you remember it was from two weeks to a month later.

A. You asked me when. I am trying to establish when for you.

Q. Go ahead, sir.

A. Officer Capps came up to see me when I was up in the Norfolk General Hospital, and I believe it was
page 75 } shortly before I left up there in September, the accident occurred around the first of August, so it was approximately a month and a half after the accident when he came up to see me and he had his accident form to fill out. And he asked me if I had any statement to put on that form, I believe is the question. I don't recall the exact question he asked me at that time right now or how he brought it to me.

When he showed me he had a form to fill out I told him I rather not say anything at that point because anything I'd say might be wrong. I might testify, in other words, and he would put that down as a true statement, and I didn't want him to.

Q. All right, sir, one more question and then I am through, sir. Can you tell us what was the purpose of Mr. Gregory and this gentleman who is the plaintiff in this case, Mr. Bailey, and you meeting at the American Legion, you three?

A. What was the purpose of us meeting there?

Q. Yes, sir.

A. A social purpose.

Q. And what were you going to do there?

A. (Pause) We never determined that.

Mr. Fine: That is all.

* * * * *

page 80 }

* * * * *

DAVID DUDLEY WHITEHEAD, III,
a defendant, called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (Adv.).

page 81 } By Mr. Stant:

Q. State your full name.

A. David Duley Whitehead the third.

Q. And David, how old are you at this time?

A. 16.

Q. On August 7 or the early morning of August 8, this year, how old were you?

A. 15.

Q. 15 years of age. Now, approximately where do you live?

A. I live at 514 Warren Crescent.

Q. Warren Crescent in the City of Norfolk?

A. (Witness nodded head affirmatively.)

Q. And you and the other young men who were with you are from the City of Norfolk, is that correct?

A. That's right.

Q. Young man, in the night of this accident, this was in the summer time, was it not?

A. Yes, sir, it was.

Q. All right. On the night of this accident approximately what time did you leave Ocean View to drive to Virginia Beach?

A. I didn't leave Ocean View.

Q. Excuse me. That is the way I used to leave from. What time did you leave the City of Norfolk to

page 82 } drive to Virginia Beach?

A. It was a little after eleven.

Q. All right. Now, as you came toward Virginia Beach, young man, where were the other men sitting in your automobile?

A. Bill Bobbitt was sitting directly behind me. Frank Slaughter was sitting in the right-rear seat, and Ray McLaughlin was sitting up in front with me.

Q. Now, do you remember passing a car shortly before this accident occurred?

A. Yes, sir, I did.

Q. You have heard the depositions of the driver, Tommy Howard, and the other man stating that their car was proceeding at 55 miles an hour and you passed them, have you not?

A. Yes, sir, I heard that.

David Dudley Whitehead, III.

Q. What would you estimate your speed to be at the time you passed that automobile?

A. My speed was not in excess of 55 miles an hour.

Q. Do you remember pulling away from the other automobile, young man?

A. I didn't watch the other car when we left. I was looking ahead.

Q. Now, as you passed that car and left it, and page 83 } you were looking ahead, did you or did you not have your headlights on?

A. Yes, sir, I did have my headlights on.

Q. Now, would you care to state to the jury whether or not it was your high beam or low beam?

A. I don't know whether they were on high beam or low beam.

Q. Well, what would you say how far down the highway would your lights reasonably light the highway?

A. I don't know.

Q. On the night in question it was a clear night and a fair night, was it not?

A. Yes, sir, it was.

Q. On that night in question do you remember whether or not there was a moon?

A. No, sir, I don't remember.

Q. Now, young man, you have seen the pictures. This is a white highway, a white concrete highway, is it not?

A. Yes, sir, I believe it is.

Q. You can see that is very white, correct?

A. (Examining photograph) Yes, sir, it is.

Q. Now, your lights naturally reflected from it and illuminated down the highway, correct?

A. That is right.

Q. Now, can you give us—and I might have page 84 } asked this question before—can you give us an estimate of how far down the highway your lights illuminated the highway as you came down the highway?

A. I don't know.

Q. You have no idea?

A. No, sir, I don't.

Q. Young man, as you approached the American Legion Club, did you know where it was?

A. Yes, sir, I had been by there quite a number of times.

Q. And now, there was traffic in and out of there, do you know that?

David Dudley Whitehead, III.

A. I have never seen anybody turn in or come out of there while I was passing; but I knew people did go in and out of there.

Q. You knew they go in and out, and this was rather late at night, you knew that you might have some traffic along there coming out into the highway or cutting across the highway, did you not?

A. Yes, sir, I did.

Q. Now, with that in mind did you slow your speed down any as you came across the bridge coming onto what is fairly a heavily populated area?

A. Yes, sir, I did slow down when I came across the bridge, but not for that reason. I slowed down because page 85 } I knew I was approaching Virginia Beach, and I knew there would be a lot of traffic along there.

Q. All right, sir. Now, you have heard the other boy state that your car just pulled away from them and was a considerable distance ahead of them; didn't you hear that in the depositions?

A. Yes, sir.

Q. Yet you tell the jury that you slowed down?

A. Yes, sir.

Q. Now, if you slowed down, young man, as you came across that bridge, how far is the bridge from the entrance to the American Legion Club to your knowledge?

A. I think someone today said it was about seven hundred and some feet.

Q. Feet?

A. Feet.

Q. So, that is a pretty good golf shot of about 230 yards, or something like that, a little more or less, isn't that correct?

A. Unh-huh.

Q. Now, young man, as you entered the bridge that is approximately 700 feet from the entrance to the American Legion Club did you have occasion to look in front of you?

A. Yes, sir, I did.

Q. Did you notice any cars coming in the oppo- page 86 } site direction?

A. Yes, sir. When I was crossing the bridge a group of about four to five cars passed going in the opposite direction.

Q. Now, you have heard Mr. Lambach testify that there was no cars with him at that time?

A. No, sir, I don't—

David Dudley Whitehead, III.

Mr. Taylor: I don't believe he said that.

Mr. Stant: He said that the cars were with him but they made—

Mr. Taylor: He said that the cars were with him but they made left or right turns.

Mr. Stant: He said the cars were with him prior to getting there.

By Mr. Stant:

Q. Now, young man, if you saw all these cars coming in the opposite direction the road was well lighted then, was it not?

A. As I said they passed me when I was about to the bridge.

Q. Well, now, you mean you were back here? This is out of context. This is 545 feet. That would be back here (indicating)). But you were 700 feet from the

page 87 } entrance into here (indicating) when cars passed you down here; is that what you are saying?

A. Yes, sir.

Q. Then down here where you would be looking, not here where the cars are passing you but down this road, did you see any other cars?

A. No, sir, I did not.

Q. Were you looking, son?

A. Yes, sir, I was.

Q. Now, you had your headlights on, did you not?

A. Yes, sir.

Q. And it is a cement road?

A. That's right.

Q. Right. Now, when did you as you came on down here (indicating), when did you first notice the Lambach automobile?

A. I first noticed him when I was about a hundred to a hundred fifty feet coming up to the intersection. I was about a hundred to a hundred and fifty feet away.

Q. You say you were 100 to 150 feet away?

A. From the intersection.

Q. From the intersection. Now, would you care to state in which lane you were driving?

A. I was driving in the lane all the way to the

page 88 } right.

Q. Now, when you say "all the way to the right," do you mean in here (pointing on chart)?

A. Yes, sir.

David Dudley Whitehead, III.

Q. Well, now, you are then telling the members of the jury and his Honor that this car, Mr. Lambach's car, had traversed all the way across the intersection when the accident occurred; is that what you are saying?

A. No, sir, I am saying that he came part of the way across the intersection.

Q. Well, now, you state you were driving in this right lane, correct?

A. That's right.

Q. Now, would you care to tell us where the accident occurred? I will ask you to take the marker and mark that place.

A. (Witness complied) About here.

Q. All right, sir, you have marked it with a red "X." Now, would you put the red marker—

Mr. Taylor: What does that represent?

Mr. Stant: That represents the point young Mr. Whitehead says that the accident occurred.

By Mr. Stant:

page 89 } Q. Now, you state you first noticed Mr. Lambach's car when you were a hundred and fifty feet from the intersection, is that correct?

A. That's right.

Q. Would you tell the members of the jury, and this is his car (indicating), would you place its approximate position at that time? He—

A. (Witness complied) He was along in here. I can't tell exactly.

Q. Just do the best you can.

A. I guess he was about like this.

Q. You were 150 feet back from the intersection?

A. From the intersection.

Q. And you placed Mr. Lambach's car how many feet—step back, young man so these gentlemen can see. How many feet do you place Mr. Lambach's car from the intersection?

A. I don't know, because he didn't have his lights on. And also, it was very dark. I couldn't exactly tell how far he was away from the intersection.

Q. Well, now, you saw a car proceeding then 150 feet with no lights, correct?

A. That is correct. I had lights.

David Dudley Whitehead, III.

Q. I understand. And you saw him?
page 90 } A. That's right.
Q. At that point what, if anything, did you do?

A. I was slowing down, as I said, when I crossed that bridge. I didn't think the man was going to turn because he was in a straight path then, and there was no signal.

Q. Well, now, young man, did you blink your lights or anything at that point?

A. No, sir, I did not.

Q. You did not. In other words you just proceeded down the highway?

A. Yes, sir, I was going down the highway, as I said, and 150 feet isn't very far.

Q. 150 feet is 50 yards. Now, young man, step back up there.

(Witness resumed witness stand.)

Q. You state you saw a car how many feet from the east island, the end of the east island of Laskin Road?

A. I don't know how many feet he was from it.

Q. Well, now, can you give us an estimate in car lengths?

A. No, sir, I can't. As I said it was very dark and I couldn't tell.

Q. But this man was completely illuminated insofar as you have stated, correct?
page 91 } A. What do you mean "completely illuminated?"

Q. His lights—your lights illuminated him so you could see him?

A. Yes, sir, I just barely could see him.

Q. Now, young man, didn't you tell Mrs. Dudley in De Paul Hospital that you never saw any automobile and did not know what you hit and never saw the automobile?

A. No, sir, I never made that statement.

Q. Well, I am putting you on your notice that her testimony will be that you told her that you had never seen the automobile.

A. I still say that I have never made that statement.

Q. Now, you also—do you deny telling the young man whose depositions have been read at the scene of the accident, asking him what you hit?

A. To tell you the truth I don't remember talking to any-

David Dudley Whitehead, III.

body after the accident. I don't remember anything except people putting me into the ambulance.

Q. I see. Now, you saw this automobile some distance away from the intersection, you state, and you were 150 feet away from the intersection?

A. That's right.

Q. Correct? Now—and you had the automobile in your headlights; correct?

page 92 } A. Yes, sir, I just barely could see him.

Q. Now, tell us at that point how fast were you going?

A. I don't know exactly yet how fast I was going. I was slowing down though. I guess I was going 50 to, I guess between 55 and say 48 or 49, somewhere along there.

Q. Now, when you saw this automobile and you were slowing down, I assume when you say you were "slowing down," you had your foot off of the accelerator?

A. No, sir, not completely.

Q. You had your foot on the accelerator but you just had taken off all the gas, is that it?

A. No, sir, you can relieve the gas from shooting into the engine by letting up just a little bit and slow down.

Q. I see. Now, when you saw this automobile with no lights on did you then put your foot on your brakes?

A. No, sir, I didn't. As I said he gave no indication of turning.

Q. All right. If you saw an automobile with no light on, young man—did you then take and watch that automobile carefully?

A. Yes, sir, I was.

Q. You watched him carefully?

A. Yes, sir.

page 93 } Q. All right, sir. When were you first aware that he was making a turn?

A. When he made his turn.

Q. Well, how far were you then from the intersection?

A. I don't know exactly. It was closer than I was when I first saw him. I saw him, he was heading straight when I first saw him, then he made his turn just a second or so after that. He made a very sharp quick turn almost crazy like, like a crazy man.

Q. He made a very sharp turn almost like a crazy man; and you were on the ball, were you not, to avoid just such actions?

A. What do you mean by "on the ball?"

David Dudley Whitehead, III.

Q. Well, you were alerted to the fact that here was an automobile that you claim had no lights on?

A. That's right.

Q. Now, how far were you from the west side of this intersection when you saw the other automobile begin to turn?

A. I don't know when I saw him begin to turn. There was just nothing I could do.

Q. Young man, you gave me a statement—you stated you were 150 feet back here (indicating)?

A. Yes, sir.

page 94 } Q. You can judge that, can't you?

A. Yes, sir.

Q. Now, each 50 feet you go cuts it in a third so it would be 150. You state you don't know how far back this automobile was. I am asking you as the automobile started to turn, and it had to start to turn somewhere after it left the east side, as it started to turn the first time you noticed it turning how far back were you in feet?

A. I don't know exactly. I'd say maybe, say about 65, maybe more, maybe less. I don't know exactly.

Q. Can you tell us in car lengths?

A. No, sir, I can't.

Q. Well, now, you say you were 65 feet back from the west side of the intersection; is that correct?

A. No, sir, I say I don't know. I think it was about that, I'm not sure. It could have been more or less.

Q. You are positive you first saw him when you were 150 feet—

A. I said between 100 to 150 feet, I think around that.

Q. I didn't understand 100 to 150. I understand you to say 150, now you say it was 100 to 150 you think?

A. No, sir, I said it was between 100 or 150 feet.

page 95 } Mr. Wahab: Your Honor, my recollection is like he said, 100 to 150 feet. The record will show that.

Mr. Stant: All right.

By Mr. Stant:

Q. Now, young man, you state it was between 100 to 150 feet back when you first saw this automobile?

A. Yes, sir.

Q. And then you can't tell us how far you were away when he started his turn?

A. No, sir, I can't.

David Dudley Whitehead, III.

Q. Now, as it started his turn did you put on your brakes?

A. No, there just wasn't time. He came to me too fast. He made a very sharp quick turn in front of me.

Q. You noticed this automobile starting its turn but from the position you were in you never had an opportunity to put on your brakes, is that what you are saying?

A. I could have hit the brakes, I don't know. I couldn't say truthfully that I did and I can't truthfully say that I didn't.

Q. As you saw the automobile starting to turn in front of you, young man—and you have placed the point of collision in the right-hand lane, I imagine somewhere in here (indicating) what, if anything, did you do to avoid the accident?

page 96 } A. There was nothing I could do.

Q. Well, young man, if you saw a man turning across right in front of you 65 feet away—

A. I said about that; it could have been more or less.

Q. I'll tell you what you do for us. Tell us in this courtroom. You just point out anything in here that will fix how far away this car was when you were going at rate of 50 miles an hour or 48, as you say you were slowing down to, when you first saw him making the turn.

A. I would say that it would be about the length of this courtroom. That is about 60 feet.

Q. The length of this courtroom away?

A. It was around that.

Q. When you saw him make that turn, young man, and you were the length of this courtroom away, you knew that as he started that turn that that was very dangerous, did you not?

A. Yes, sir, I did.

Q. Well, young man, why didn't you just turn to your left or go over or turn to your right and go on the feeder road?

A. Because, as I said, there wasn't enough time. He didn't give any indication of turning. All he did was

page 97 } make a very fast sharp turn in front of me.

Q. Young man, you said, and see if I'm wrong, that you saw him turning into you and you were aware it was a dangerous situation; you said that, did you not?

A. Yes, sir.

Q. Now, you say at that point, at that point, this courtroom distance away—

A. I'm not sure, it can be less.

Q. The truth of the matter is you never applied your brakes. There was absolutely no skid marks, and you ran

directly straight into the automobile, isn't that what happened?

A. I don't know. I said I could have applied my brakes or I may not have, I don't know.

Q. Have you looked at the pictures, young man, of what happened?

A. Yes, sir, I have.

Q. What?

A. Yes, sir.

Q. You were driving, were you not, a fairly new automobile?

A. That's right.

Q. Pardon?

A. That's right.

page 98 } Q. Now, you will see that the damage that occurred to Mr. Lambach's car is from the side, is it not? It's knocked?

A. (Examining photograph) That's right.

Q. And you went straight into him with the front of your automobile, didn't you?

A. That's right.

Q. So you never turned in either direction to avoid the accident, did you?

A. I remember trying to turn to the right but there wasn't any time.

Q. I see. And you don't remember anything else then until you got to the hospital?

A. I remember waking up in the car, and I remember them putting me into the ambulance, that's all.

Q. You don't remember stating to anybody that you never saw the object you hit?

A. No, sir, I never made that statement.

Q. I see.

Mr. Stant: I haven't any other questions.

CROSS EXAMINATION.

By Mr. Furniss:

page 99 } Q. Mr. Whitehead, where in Norfolk did you leave from?

A. (Pause).

Q. When you headed for the beach.

A. Do you mean the last place we stopped?

Q. Yes.

David Dudley Whitehead, III.

Q. It was at a place, I'm not sure of the right name, but it's right off of what's that—it's right around, right off Olney Road about a block from Colonial.

Q. Right off Olney Road. What kind of place was it?

A. It was a beer place or something.

Q. A beer place?

A. Yes, sir.

Q. How long had you been in the beer place?

A. I had not been in the beer place. We had sat there for maybe two or three minutes.

Q. Just sitting in your car you mean?

A. No, sir, Ray McLaughlin went into the thing for Frank Slaughter.

Q. Ray McLaughlin went into the beer place for Frank Slaughter?

A. That's right.

Q. These are the two of the boys that were in the car with you?

page 100 } A. That's right.

Q. Why didn't Frank Slaughter go in?

A. I don't know.

Q. How old are you?

A. I'm 16 right now.

Q. Were all these boys teen-age boys?

A. Yes, sir.

Q. And you say that you left Norfolk a little bit after eleven?

A. That's about right.

Q. Say 11:15; is that what you mean?

A. No, not that late.

Q. Five after?

A. It could have been around there.

Q. Where were you going on the beach?

A. We were going down to a party.

Q. To a party?

A. Yes, sir, that was down there.

Q. Where was the party?

A. The party was around 73rd Street.

Q. Around 73rd Street?

A. I didn't know exactly where. See, Ray McLaughlin told us about the party that night.

Q. Ray McLaughlin knew about the party?

A. Yes, sir.

page 101 } Q. And you say you are familiar with this area generally?

David Dudley Whitehead, III.

A. Sir?

Q. You testified that you are familiar with this area generally?

A. You mean the area where the accident happened?

Q. Yes.

A. Yes, sir.

Q. You go down to the beach rather frequently?

A. Yes, sir.

Q. And then you also said that you started slowing up because you knew you were arriving at the beach, is that correct?

A. Yes, sir, we were coming into the beach. We weren't more than a mile or so from it.

Q. Well, you were well over a mile from the beach actually.

A. That is about right.

Q. Was it going to take you something over a mile to slow up to get to 25 miles an hour?

A. No, sir, I just thought I would start slowing down a little bit because I knew there is a lot of traffic around there much of the time.

Q. In other words you weren't getting to the beach but slowing down because there is a lot of traffic once you get past the school, is that the idea?

page 102

A. Not necessarily past the school, but I knew a little further on down the road there was a lot of traffic, yes, sir.

Q. And you started slowing up just as you got to the bridge, is that correct?

A. Around in there, yes, sir.

Q. Well, I am quoting—I mean could it have been on the Virginia Beach side of the bridge that you started slowing up?

A. No, sir, it was before that.

Q. It was before you got to it?

A. It was on the bridge or just before.

Q. Or before you got to the bridge, either on or before you got there?

A. That's right.

Q. And what did you do, just lift your foot off the gas pedal?

A. That's right, I just pulled my foot off just a little bit. I was still feeding as to the car but—

David Dudley Whitehead, III.

Q. There was still some gas going into the car?
A. Yes, sir, there was.
Q. The car that you were driving, had you driven it rather frequently before?
A. Yes, sir, I had driven it.
page 103 } Q. *Now* long had your folks had it?
A. I'm not sure about that. I'd say from six to eight months.
Q. How long have you been driving cars?
A. About a year or so.
Q. About a year or so?
A. That's right.
Q. And you say you are 16 now?
A. That's right.
Q. You had been driving cars about a year from the time of the accident?
A. No, sir, about a year—yes, sir, because we had been getting these learner's permits to drive around in there.
Q. To drive around in where?
A. In the Princess Anne County area or any—I think—

Mr. Wahab: Your Honor, this has nothing to do—
Mr. Taylor: He brought it out.
Mr. Wahab: This last question has—
Mr. Taylor: Mr. Stant brought it out on his direct.
Mr. Wahab: I object to it, your Honor. It
page 104 } has nothing to do with the accident, about his driving permit.
Mr. Stant: I would like for you to hear Mr. Taylor, your Honor.
Mr. Taylor: Your Honor, we take the position if he has a learner's permit—it is true he is not being tried for driving a car without a permit. If that were being done that would be different; but I say that the jury can take that in consideration in determining what kind of driving this boy was doing, and I think that it is material as to whether or not he had a regular permit or a learner's permit, not for the purpose of letting them consider all of that in—
The Court: I think it is a matter of experience that he had in driving and it is proper to go before the jury. I overrule the objection.
Mr. Wahab: Note my exception, Mr. Jaime.

David Dudley Whitehead, III.

By Mr. Furniss:

Q. You hadn't driven the car within the Norfolk City limits then?

page 105 } A. Sir?

Q. You hadn't driven the car within the city limits of Norfolk; is that correct?

A. Yes, sir, I had.

Q. Yes, you had?

A. I had.

Q. Then you had been doing the driving all the way?

A. No, sir, I had not. Let's see. Ray McLaughlin was driving from Burrough's to the place that we had stopped, then I told you about then from there.

Q. From there on out you drove?

A. Yes, sir.

Q. And you intended to drive within the city limtis of the beach too?

A. Sir?

Q. And you were intending to drive within the city limits when you got within the city limits of the beach?

A. Yes, sir, that is permissible.

Q. How long had you had a learner's permit?

A. I had two or three others before this one.

Q. This is something that you have to renew every sixty days?

page 106 } Mr. Wahab: Your Honor, I would like to renew my objection. This is highly immaterial whether the boy had a driver's permit or a learner's permit. If he is able to drive it has nothing to do whatever with this case. This is a civil action.

Mr. Furniss: It has to do with this man's testimony and the weight to be given his testimony and his estimates of the various speeds of the car, his estimates of the handling of the car, and so forth that he has already testified to.

The Court: I overrule the objection.

Mr. Wahab: Note my exception, Mr. Jaime.

By Mr. Furniss:

Q. Now, you had this permit, you say, two or three times before?

A. That's right.

David Dudley Whitehead, III.

Q. And these are sixty-day permits?
A. Ninety-day permits.
Q. Ninety-day?
A. Ninety-day.
Q. So that would make it six to nine months?
A. That's about right.
page 107 } Q. How old were you at the time of the accident?
A. 15.
Q. 15?
A. 15.
Q. Were there power brakes on your car?
A. Yes, sir, there were.
Q. Now, you say as you came headed east and before you arrived at the intersection you saw other traffic headed in the same direction?
A. In the same direction I was going?
Q. Unh-huh?
A. There was no one in front of me, no, sir.
Q. There was no one in front of you?
A. No, sir, not that I can remember.
Q. Was there anyone behind you?
A. The car with the boys.
Q. The car with the boys?
A. The car with the boys which—
Q. Had you noticed the car with the boys before the accident happened?
A. I had passed the car. I didn't know the boys were in it but I had passed that car. I knew that there was a car.
Q. At the time you passed it you did not notice that young fellows were in that car, you say?
page 108 } A. No, sir, I didn't.
Q. About how far were they behind you when you got to the bridge?
A. I don't know.
Q. Well, you said you had noticed traffic behind you?
A. I said I noticed them when I passed them. I knew that they were back there. I don't know where.
Q. I see. And at the time you passed them is it your testimony that you were going 55 miles an hour?
A. That's right.
Q. Could you have been going 50 miles an hour?
A. No, sir, it was not in excess of 55 miles an hour. It was around 55. I mean it was exactly 55 or less.

David Dudley Whitehead, III.

Q. It could have been less. Did you notice any others cars on the road other than the one the boys were in?
A. Any other cars?
Q. Unh-huh?
A. Not going in the same direction.
Q. Do you know that the car that you passed is the one that the boys were in?
A. I don't know for sure that it was.
Q. Do you know what kind of a car it was?
A. No, sir, I didn't stop to look.
Q. And you don't recall passing any other car
page 109 } either just after or before you passed that car the boys were in?
A. No, sir, I don't
Q. Now, when you got to the point of the bridge you say there are four other cars or so headed towards Norfolk?
A. Towards Norfolk, yes, sir.
Q. And they went on by?
A. Yes, sir.
Q. In which lane of traffic were they in?
A. Which lane of traffic?
Q. Were they in the outside westbound lane or inside?
A. They were mixed.
Q. Some of them in both lanes?
A. That's right.
Q. And after those four cars passed did you see any other cars on the roadway with headlights on?
A. No, sir, I didn't.
Q. There was nothing for the whole stretch all the way down there once they got by?
A. That's right.
Q. And now it is your testimony that you got well past the bridge, about one-third the distance of the bridge to the intersection, at least that far when you saw Mr. Lambach's car headed west with no lights on?
page 110 } A. That's right.
Q. And you don't know just how far he was from that island, but you know he was not at the end of the island?
A. No, sir, he was not at the end.
Q. And did you keep your eye on that car from then on right up to the time the accident occurred?
A. Yes, sir, I was watching it.
Q. You were watching it pretty closely, weren't you?
A. I was watching, I don't exactly know how closely, but

David Dudley Whitehead, III.

I knew he was there and I was watching his movements because he didn't have no lights on.

Q. Now, can you tell me, give me an explanation of how there could have been debris from an impact up at this point here (indicating)?

A. The debris probably went all over the street because there was a pretty bad collision there.

Q. And you are absolutely certain that this is not the point of impact (pointing)?

A. Yes, sir, I was in the right-hand lane.

Q. You were in the right lane?

A. Yes, sir.

Q. You didn't make any effort to turn to the left?

page 111 } A. No effort to turn to the left but I did make an effort to turn to the right and there was no time.

Q. As a result of this accident your car was damaged beyond repair, was it not?

A. That's right.

Q. Now, it is your testimony here today that you have known all along right from the time of the accident had happened right up till now that you knew you hit an automobile?

A. That's right.

Q. You knew that that was the automobile that was coming up there and it made that turn and that is the car you struck?

A. That's right.

Q. You were hurt in the accident, weren't you?

A. Yes, sir, I was.

Q. Did you have your teeth hurt?

A. Yes, sir, I did.

Q. Did you say anything to anyone after the accident about your teeth being hurt?

A. On the way back in the ambulance there was someone riding with me. I asked them to see about my teeth, to see if they were hurt.

Q. Well, didn't you ask the boy there at the scene of the accident that helped you from your car about your teeth?

page 112 } A. As I said before I don't remember coming out of the car at all. I remember waking up in the car and seeing the flames and then I must have passed out again or something, but the next thing I remember was somebody putting me in the stretcher and putting me into the ambulance.

Q. You remember seeing the flames?

A. Yes, sir, I did.

David Dudley Whitehead, III.

Q. Where were the flames?
A. They were coming out of the motor.
Q. And where were you at that time?
A. I was sitting behind the steering wheel.
Q. The car was on its side?
A. I don't know. I tried to slide up the seat but I couldn't move because my leg felt like it was struck. I was knocked out and it could have been that I just couldn't move that leg. It felt like it was on a slant but it must have been upright at the time because nobody else was in the car that I could see.
Q. Now, you watched the Lambach car from some point up here right around at some point here (indicating)?
A. Yes, sir.
Q. And actually the front end of his car would be a little bit further through than where you placed the point?
A. No, it was about where the point of impact is, the front of his car.
page 113 } Q. The front of his car. You didn't strike the right side of his car?
A. I did strike the right side of his car. Can I show you on the thing—?
Q. Yes.
A. His car came down here like this and I caught him about like that (illustrating).
Q. How fast was Mr. Lambach going?
A. I couldn't tell because it was dark; he had his lights off and I just couldn't tell.
Q. Well, you watched him drive his car for some distance?
A. As I said I—he made a very sharp turn, a fast turn, but I can't tell exactly how fast he was going.
Q. You are of the belief he was making a fast turn but you are not willing to say how fast?
A. Certainly. I couldn't estimate it. It was just fast.
Q. By "fast turn" you mean in excess of 55 miles an hour?
A. No, sir, less than 55 miles an hour. He never could have made that turn at 55 miles an hour.

Mr. Wahab: If it please your Honor, Mr. Furniss is belaboring the same questions that Mr. Stant asked. I have tried not to interpose an objection, but I think
page 114 } young Whitehead has answered the questions as best he could, and he is just running over the same thing over again.

David Dudley Whitehead, III.

Mr. Furniss: I haven't asked the same questions.

Mr. Wahab: He was asked if he could testify how fast the car cut in front of him.

Mr. Furniss: I have the right to question him, I believe, your Honor, on behalf of this defendant.

Mr. Wahab: But not to the point of being repetitious.

Mr. Furniss: I might say that this is the first question I have asked about the speed of the Lambach car.

Mr. Wahab: And he answered it, as I recall.

The Court: Go ahead.

By Mr. Furniss:

Q. Had you looked at your speedometer back there or how did you determined your speed?

A. Yes, sir, I looked at my speedometer just before I crossed the bridge.

page 115 } Q. And that is when you were going 55 miles an hour?

A. Yes, sir, I said between 50 and 55.

Q. Between 50 and 55?

A. Yes, sir.

Q. What caused you to look at your speedometer?

A. What caused me to look? I knew I was getting near to Virginia Beach.

Mr. Furniss: That is all, thank you.

Mr. Wahab: That's all.

Mr. Stant: I would like to call Mr. McLaughlin. Just a second, young man, I want you to stop right there where you are.

RE-DIRECT EXAMINATION.

By Mr. Stant:

Q. I want you to look at the diagram. You have on this two automobiles and the place where the collision occurred, and I ask you to consider it carefully in relationship to the center line of the highway in relationship to the intersection. Is that the exact point that your car was in

page 116 } and the exact point that the other car was in at the moment of impact?

A. No, sir, it was a bit further down. I was riding about like that, and I tried to turn to the right.

Q. Now, will you then take and put back and show us with this pencil—you made a diagram—now you show us where the

David Dudley Whitehead, III.

debris is. The debris is now moved from where you say it is?

A. No, sir, as I said there was a lot of debris.

Q. Well, this was the front of your car, is it not?

A. That's right.

Q. And that shows damage to your car to the light all the way across the front, does it not?

A. (Examining photograph) That's right.

Q. Well, now, when you show it here you show your car, only half your car striking the Lambach car?

A. That's right, it hit like that; his car was a little further down.

Q. But he made that turn so fast, you said. What you want to do, young man, is put it—you put the Lambach car where you say it was now at the moment of collision.

A. At the moment of—

Q. The exact second that it hit.

A. It would be about like that.

page 117 } Q. Now, actually you have—and I have drawn this in pencil. I want to put these two cars in there. Isn't that about right now?

A. That is about like so.

Q. I have got them around each one.

A. I think it was a little bit further over, sir, like about that.

Q. Are you satisfied with them now, sir?

A. That's right.

Q. You now show the Lambach car coming all the way out through the intersection and being in the right lane where you state you were traveling, correct?

A. Yes, sir—would you repeat that?

Q. You now show the Lambach car being in the right lane where you were traveling and not in the left lane, partially in the left lane where you had previously placed it?

Mr. Wahab: Mr. Stant, that is not correct, only the front of the car is in the right lane; the position they are in now the whole back half of the car is in the left lane.

By Mr. Stant:

Q. Let's say you have got the Lambach car partially in the left lane and partially in the right lane, is that

page 118 } correct?

A. That's about right.

Q. And you've got your car fully in the right lane?

A. That's right.

Q. Now, you then, did you, not turn your car at all at the time to get over here into this clear area to avoid the accident (indicating)?

A. As I said I was trying to turn but he made such a fast sharp left turn that I couldn't.

Q. I see. And you have stated to us that as you came down you have no idea how far your headlights show out in front of you?

A. No, sir, I don't.

Mr. Stant: That's all I have. Stand down.

RAY McLAUGHLIN,

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

DIRECT EXAMINATION.

page 119 } By Mr. Stant:

Q. What is your name, please, sir.

A. Ray McLaughlin.

Q. What is your age?

A. 19.

Q. Mr. McLaughlin, on the night in question how did you happen to meet these other young men?

A. I met them at Burrough's Restaurant.

Q. And when you all left Burrough's Restaurant to what tavern did you go and park in front of?

A. Frosty Glass.

Q. *Forsty Glass?*

A. Yes, sir.

Q. And who went in the Frosty Glass?

A. I did.

Q. For what purpose?

A. To buy beer.

Q. To buy beer. Now, you bought that beer and you brought it out to the car, is that correct?

A. Yes, sir.

Q. And that is because, I believe, people under 21 are not supposed to be able to buy beer, is that correct?

A. Yes, sir.

Q. Now, Mr. McLaughlin, you all then left Norfolk and this young man here was driving?

page 120 } A. Yes, sir.

Q. Right?

Ray McLaughlin.

A. Yes, sir.

Q. As you came down Virginia Beach Boulevard did you all have your headlights on?

A. Yes, sir.

Q. And how far did the beams extend out in front of you, have you any idea?

A. I have no idea.

Q. No idea. Mr. McLaughlin, where were you taking these young boys?

A. I wasn't driving.

Q. Well, where were you taking them to?

A. (Pause) I wasn't driving.

Q. It has just been testified that you had invited them to go somewhere. Where had you invited these young men to go to?

A. (Pause).

Q. Had you invited them to go anywhere with you or were you all just riding?

A. We were just riding as far as my knowledge.

Q. Then you didn't have a party planned, to go to a party where there was a party?

A. No, sir.

Q. Well, you men all live in the City of Nor-
page 121 } folk?

A. Yes, sir.

Q. And you had bought some beer and you were just going to take a ride?

A. That's what I thought, yes, sir.

Q. And you rode to Virginia Beach at 12:00 o'clock at night?

A. Yes, sir.

Q. Now, where were you sitting in Mr. Whitehead's automobile?

A. In the right-hand front seat.

Q. In the right-hand front seat?

A. Yes, sir.

Q. Were you paying any attention to the speedometer, looking at it or anything like that?

A. No, sir.

Q. Do you know of your own knowledge how fast this automobile was going, of your own knowledge?

A. No, sir.

Q. When did you first know that there was an accident?

A. When I woke up in the hospital.

Q. Did you have occasion to talk to the young man, Mr. Whitehead?

Ray McLaughlin.

A. Sir?

Q. Did you talk to him about what happened?

page 122 } A. (Pause) Well, not until we got out of the hospital.

Q. And what, if anything, was said by him then as concerns the accident?

A. Well, I don't recall.

Q. Did he tell you at all times he knew that there was an automobile that had been involved in the accident?

A. Well, he did, yes, sir.

Q. What?

A. Yes, sir.

Q. And how long was that after you got out of the hospital?

A. I'm not sure.

Q. Just prior to this accident had this young man at any time put on brakes to your knowledge?

A. No, he stopped at the stoplights whenever we came to them.

Q. I am talking about just prior to the accident, prior to you all hitting this car; were your brakes applied at any time?

A. No, sir.

Q. Never?

A. Not that I know of.

Q. Was the car turned hard in any direction to

page 123 } avoid the accident so it would throw you in your seat?

A. No, sir.

Q. Did this young man slow up his speed abruptly at any time?

A. No, sir.

Q. You all were continuing at a normal rate of speed at the rate you were going right down the highway, is that correct?

A. Yes, sir.

Q. There was never any appreciable change in your speed, was there?

A. Not that I recall, sir.

Q. Do you recall passing a car somewhere around Linkhorn Park or in that area of Linkhorn Park School?

A. I don't, sir.

Q. You don't. Do you know which lane you were traveling in?

A. I don't.

Q. You don't know which lane you were in?

A. No, sir.

Mr. Stant: I haven't any other questions.
Mr. Taylor: We have no questions.
Mr. Wahab: I will go ahead and examine him now, your Honor.

page 124 } CROSS EXAMINATION.

By Mr. Wahab:
Q. Mr. McLaughlin, first of all when Mr. Stant started with his direct examination you said you stopped at a place called the Forsty Glass, is that correct?
A. Yes, sir.
Q. And as I understand it you were the only one who went in?
A. Yes, sir.
Q. And you went in to buy some beer, is that correct?
A. Yes, sir.
Q. And for whom was that beer purchased?
A. For the fellow sitting in the back seat.
Q. And what might his name be?
A. Frank Slaughter.
Q. I see. Now, to your knowledge did he drink any of that beer, that beer which you bought?
A. No, sir, he did not.
Q. He definitely did not drink any of it?
A. No, sir, that's right.
Q. Did he drink anything that night to your knowledge?
A. No, sir.
page 125 } Q. Now, do you recall mentioning to him that there was some kind of an affair or a party, a house party or beach party or something taking place on 73rd Street at the beach?
A. No, sir.
Q. You don't recall that at all?
A. No, sir.
Q. Where did you all meet that night, Ray?
A. At Burrough's Restaurant.
Q. And all four of you were talking out there before you decided to drive down the beach?
A. It wasn't four of us.
Q. How many of you was it at that time?
A. It was—well, I got in the car with Sonny and—
Q. Sonny is Dudley Whitehead, is that correct?
A. Yes, sir. And I'm not sure if one of the others were

Ray McLaughlin.

in it. I'm not sure. But then we went to meet William Bobbitt.

Q. Just the two of you at Burrough's together?

A. I'm not sure whether there was anybody else in the car or not.

Q. Let me ask you this: These events which you don't seem to know too much about the accident, do you attribute that to the injuries you sustained in the accident?

page 126 } A. Sir?

Q. I say the fact that you haven't been able to answer too many of the questions Mr. Stant asked you or the questions I asked you, do you attribute that to the injuries you received in the accident?

A. Yes, sir.

Q. In other words how long were you unconscious after the accident?

A. I'm not really sure, sir, I don't know.

Q. What is the last sequence of events you might recall before the accident occurred as to where you were on the Virginia Beach Boulevard?

A. (Pause) I think it was around Princess Anne High School.

Q. Which would be roughly midway between Virginia Beach and Norfolk. And you recall nothing after passing Princess Anne High School?

A. That's right.

Mr. Wahab: That is all.

Mr. Taylor: I have just one question.

CROSS EXAMINATION.

page 127 } By Mr. Taylor:

Q. As long as this beer question has come up, how many cans of beer did you buy?

A. (Pause) I think it was either five or six, I'm not sure.

Q. And you bought all of that for this other boy?

A. Yes, sir.

Mr. Taylor: All right.

Mr. Stant: I haven't any other questions, your Honor.

The Court: All right, you can step down.

Mr. Stant: I would like to call Frank Slaughter.

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

DIRECT EXAMINATION.

page 128 } By Mr. Stant:

Q. State your full name?

A. Frank Thomas Slaughter.

Q. How old are you?

A. 18.

Q. On the night in question you boys met at Burrough's, on the night of the accident?

A. Yes, sir.

Q. And after you left Burrough's where did you go?

A. To the other Burrough's at Wards Corner.

Q. And after you got there where did you go?

A. Back to the Burrough's on Granby Street across from the Venice Italian Restaurant.

Q. From there where did you go?

A. Towards the beach.

Q. Did you stop anywhere, son?

A. Yes, sir.

Q. Where did you stop?

A. I don't know the name of the place.

Q. Was it a beer establishment?

A. They had an A. B. C. license.

Q. There was some beer purchased?

A. Yes, sir.

Q. Now, after you got that beer you all then
page 129 } decided to take a drive?

A. They decided to take a drive when we had returned to the Burrough's on Granby.

Q. You then decided to take a drive to Virginia Beach?

A. Yes, sir.

Q. And who wanted to do that?

A. I can't remember.

Q. What were you all doing, just going to take a ride and look things over?

A. I was—well, I can't hardly remember; I was just along more or less, just one of them.

Q. I see. Now, where were you sitting in the car?

A. In the rear on the right.

Q. And as you all came down Laskin Road did you get a chance to look at the speedometer?

A. No, sir.

Frank Thomas Slaughter.

Q. Do you remember passing a car right about the Linkhorn Park School?
A. No, sir, I was paying no attention to the road.

Mr. Taylor: You were doing what?
The Witness: I wasn't paying no attention to
page 130 } the road.
Mr. Taylor: I see.

By Mr. Stant:
Q. Now, were you directing your attention forward looking down the highway?
A. No, sir, I was talking to Mr. Bobbitt.
Q. Let me ask you this, son. This highway is a straight highway without any appreciable curves, is it not, at the point where the accident happened?
A. Yes, sir.
Q. Just prior to the accident did you see any automobile?
A. No, sir, I was paying no attention to the road.
Q. None whatsoever?
A. None whatsoever.
Q. Now, after the accident was over did you talk to any of the people there?
A. The next day.
Q. Who did you talk to the next day?
A. Raymond McLaughlin.
Q. Did you have a chance to talk to Sonny, David Whitehead?
A. Not for about five days.
Q. At that time where did you all talk?
page 131 } A. In his room.
Q. In his room. At that time did you know or did he know what type of car you all had been in the accident with?
A. No, sir.
Q. At that time had it even been determined that Mr. Whitehead or you, either one, heard what type of car it was?
A. No, sir.
Q. At that time did young Whitehead tell you how far he was away from the intersection when he first saw this automobile, this other automobile?
A. No, sir.
Q. Did he say he had ever seen it?

Frank Thomas Slaughter.

A. No, he said he saw it and that was all. He saw it and hit. He said it was more or less a split second. He didn't have a chance to even think or—

Q. He just saw it and hit it?

A. Saw it and hit it.

Q. And he never saw it just before that split second, right?

A. It was probably, you know, he just saw it and hit it. That was probably what—

Q. And he told you that five days later in the hospital, right?

page 132 } A. Yes, sir.

Q. He didn't tell you at that time that he had been way down the highway when he saw the car or anything like that, did he?

A. No, sir.

Q. I have never talked to you in my life, have I?

A. No, sir.

Q. In fact you don't know me, do you?

A. No, sir.

Q. And you have told this jury today exactly what happened in the hospital, haven't you?

A. As far as I can recollect.

Mr. Stant: I haven't any other questions.

CROSS EXAMINATION.

By Mr. Wahab:

Q. You are Frank Slaughter, is that correct?

A. Yes, sir.

Q. Now, this beer which was purchased, who drank that beer?

A. I did.

page 133 } Q. Did David Whitehead drink any of it?

A. No, sir.

Q. You're positive of that?

A. I am absolutely positive.

Q. All right. Now, you have testified when Mr. Stant asked you if you had a conversation with David in the hospital some days after the accident as to when he first saw the car, and I believe you said that he saw it and then hit it, is that right?

A. The impression I got is that he saw it as he hit it. It was more or less just that split instant as he hit it.

Frank Thomas Slaughter.

Q. Was any other explanation made concerning that?
A. No, sir, he didn't; no.
Q. Did you have any further discussion?
A. No, sir.
Q. I see. Now, can you tell us, if you know or can estimate, the speed of David's car shortly after the accident?
A. No, sir.
Q. Can you account for why you don't know?
A. I wasn't paying any attention to the road. I was sitting in the back talking to Mr. Bobbitt.

page 134 } Q. Has his driving or speed made you apprehensive in any way on the trip to the beach?
A. It didn't seem—I felt no irregularities about it.

Q. Did he appear to be driving normally?

Mr. Taylor: We object to that.

A. Yes, sir.

Mr. Taylor: It is a matter of opinion whether he was driving normally or not. He can tell him how he was driving. I think that is a matter of opinion clearly.
The Court: Well, I don't think so.
Mr. Taylor: He said he wasn't paying any attention to it.
The Court: I overrule your objection.
Mr. Taylor: Sir?
The Court: I regard that as a description, not as a matter of opinion. I overrule your objection.

page 135 } Mr. Taylor: Note our exception, your Honor, and I would like to state that the Supreme Court have said that "normally" is not a descriptive word in the context of how a person is driving.

By Mr. Wahab:
Q. Now, Mr. Slaughter, you recall having any discussion out at Burrough's before you started coming down to the beach as to where you were going at the beach or when you arrived there?
A. There was some discussion but I wasn't paying hardly any attention to it. I was talking to Mr. Bobbitt at the time. There was something said that they wanted to go to the beach.

William E. Bobbitt.

Q. Do you recall any discussion about an affair or party up on 73rd Street?

A. There was something said about there was a party or a get-together or something. It was a dance, I think. I can't remember correctly.

Q. Is that where you all were headed at the time?

A. As far as I know.

Q. You weren't just aimlessly riding but had a destination?

A. No, we had a destination.

Mr. Wahab: That's all.

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page 136 }

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WILLIAM E. BOBBITT,

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

DIRECT EXAMINATION.

By Mr. Stant:

Q. What is your full name?

A. William E. Bobbitt.

Q. Mr. Bobbitt, what do you do; where do you

page 137 } go to school?

A. Maury High School.

Q. On the night of the accident where did you meet the other young fellows?

A. (Pause) I'm not sure of the two streets. I knew it was on Colonial Avenue at the circle.

Q. They picked you up there?

A. Yes, sir.

Q. After you left there where did you go?

A. We went on down to the beach.

Q. Well, did you stop anywhere before you went to the beach?

A. Yes, sir.

Q. Where did you stop?

A. At a store, I don't know the name.

Q. Was it a tavern type of operation?

A. Yes, sir.

William E. Bobbitt.

Q. And you bought a few cans of beer, right, somebody did?

A. Yes, sir.

Q. After you got the beer did you all go right to the beach then or did you go back to Burrough?

A. We went to the beach.

Q. All right. Young man, where were you riding in your automobile?

A. Right behind the driver.

page 138 } Q. In the back seat?

A. Yes, sir.

Q. All right. You weren't watching the speedometer on this thing?

A. No, sir.

Q. All right. Did you at any time see, just prior to the accident, the other automobile?

A. No, sir.

Q. Did you have occasion to talk to young Mr. Whitehead right after the accident concerning the accident?

A. I talked to him about two weeks later.

Q. I guess you were interested in finding out what happened like everybody else, right?

A. Yes, sir.

Q. What, if anything, did he state to you, young man?

A. (Pause) That—well, I'm not sure exactly, but that we were driving along and then all of a sudden he saw the car and didn't have time to stop.

Q. Did he tell you that it was just a split second before you struck the car that he saw it, or words to that effect? I know you can't give me the identical words.

A. Yes, sir.

Q. Did he ever tell you that some yards back a long time, or any distance he saw a car on the other side of

page 139 } the highway that that was the car that he got in the accident with?

A. No, sir.

Q. At any time did he ever explain any situation like that to you?

A. No.

Q. Do you have any interest at all in this case, young man?

A. Yes, sir.

Q. I mean you are a friend of his, aren't you?

A. Yes, sir.

William E. Bobbitt.

Q. And you want to state exactly what was told, right?
A. Yes, sir.
Q. And he told you in your own words that he just saw the car for a split second and the accident occurred?
Q. Never explained anything else outside of that, did he?
A. Not that I know of.

Mr. Stant: I haven't any other questions.

CROSS EXAMINATION.

page 140 } By Mr. Wahab:
Q. This beer that was purchased, did Sonny drink any of it?
A. No, sir.
Q. Are you quite certain of that?
A. Yes, sir.
Q. Do you recall previously testifying in another trial arising out of this automobile accident?
A. Yes, sir.
Q. That was in the City of Norfolk, is that correct?
A. Yes, sir.
Q. Do you recall at that time a certain Mr. Sacks asked you if you had any discussion with David after the accident?
A. Yes, sir.
Q. And you told him that you did?
A. I told him I had.

Mr. Stant: What did you say?
The Witness: I told him that I had had a conversation with Sonny.

By Mr. Wahab:
Q. Did Mr. Sacks ask you: "Tell us what he said?" And you answered: "Sonny said his lights reflected on the car and he didn't have time to stop?"
page 141 } A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. Mr. Sacks asked you: "Did he say anything about applying brakes?" You answer was that "He didn't have time to apply them?"
A. Yes, sir.

William E. Bobbitt.

Q. Isn't that what David or Sonny told you a couple of weeks after the accident?

A. Yes, sir.

Q. Did he say anything about the speed of the car in which you were riding before the accident occurred?

A. I don't know how fast he was going.

Q. Did he appear to be traveling in excess of the speed limit?

Mr. Stant: If it please the Court, he said "I don't know how fast he was going," period.

Now, at that point anything else is surmise or conjecture.

The Court: I overrule the objection.

Mr. Stant: Pardon?

The Court: I overrule the objection. Go ahead.

By Mr. Wahab:

page 142 } Q. Did he appear to be traveling—

Mr. Stant: Note my exception on that, please, sir.

Mr. Taylor: I also join in that exception, your Honor.

By Mr. Wahab:

Q. Mr. Bobbitt, did the car in which you were riding and which Mr. David Whitehead was driving, did it appear to be driving in excess of 55 miles an hour?

A. I don't know because I don't remember anything for sometime before the accident.

Q. But you had ridden in the automobile with him driving all the way from Norfolk?

A. Yes, sir.

Q. During any of that course of time did you realize anything—

Mr. Taylor: I object to that question. The criterion is what happened immediately before this accident.

The Court: I sustain the objection.

By Mr. Wahab:

Q. What is the last thing you remember prior to the accident; how far back down the highway were you?

A. The last thing I remember was driving along Princess Anne Road.

page 143 } Q. Would that still be in the city of Norfolk?

A. Yes, sir.

William E. Bobbitt.

Q. And you have no recollection of from the time you left there until this accident happened?
A. No, sir.
Q. Is it not true that you were also severely injured in this accident?
A. I was severely injured.

Mr. Wahab: All right, answer Mr. Taylor.
Mr. Taylor: We have no questions, your Honor.
Mr. Furniss: Yes.
Mr. Taylor: No, wait a minute, Mr. Furniss has one.

CROSS EXAMINATION.

By Mr. Furniss:
Q. Mr. Bobbitt, I want again to take you back. Mr. Wahab asked you about the trial that took place in Norfolk when Mr. Sacks was asking some questions, and he has asked you if you don't recall certain questions and whether or not you recall certain answers that you gave to Mr. Sacks, page 144 } and you said you did.

Now, you will also recall that when Mr. Sacks first asked you whether you had talked to Sonny Whitehead about the accident you told him, yes, you had; is that correct?
A. Yes, sir.
Q. And then you were asked what Sonny Whitehead told you about it. Didn't you say at that time he does not know too much about it himself?
A. Yes, sir.
Q. And that is what Sonny told you, that he himself didn't know too much about it?
A. No, that is what I had concluded; that was the conclusion which I had reached.
Q. That was what you had testified to?
A. That is what I thought, that he didn't know much about it. I didn't know.
Q. And you got that impression from talking to him about it?
A. Yes, sir.

Mr. Furniss: That's all.
Mr. Wahab: Stay there just a minute, Mr. Bobbitt, if you will.

William E. Bobbitt.

RE-CROSS EXAMINATION.

page 145 } By Mr. Wahab:

Q. Right after Mr. Sacks asked you what Sonny Whitehead told you about the accident, how it happened, you said, "Yes, sir, I talked to him about it." Then Mr. Sacks asked you what Sonny Whitehead told you about it, and your answer was "He doesn't know too much about it himself." Mr. Sacks asked you and that is what you told him. Your answer was: "I remember him saying he thinks he saw the car." Isn't that what he told you when you were talking with Whitehead?

A. Yes, sir.

Q. And he told you that he saw the car cut in front of him but he didn't—

Mr. Stant: Just a second. What are you reading?

Mr. Wahab: I'm reading from Mr. Sacks' question, Mr. Stant.

Mr. Stant: I object to what Mr. Sacks asked him, your Honor, and it is not admissible here at all. Both sides are reading out of a transcript of another case wherein this young man might have been the plaintiff, I don't know. I object to Mr. Sacks' questions because he was on cross

page 146 } examination, and I can't see how it can be used, unless they want to contradict that young man.

Now, if they are contradicting him it might come in then, and I would like for it to be heard. But I object to this strenuously.

Mr. Wahab: That is precisely what I am doing. Mr. Stant asked him what he said. He said he didn't see the car, and I was contradicting him and showing him what he previously testified to in another matter as to what Mr. Whitehead had previously told him: that he didn't see the automobile before the impact.

The Court: I think your question ought to be rephrased and to be made clear as to what you are doing.

I think the objection to the form of the question is well taken. In fact it happens to be a leading question on cross examination.

Mr. Stant: From another man.

The Court: I don't think that makes any

page 147 } difference at all.

Mr. Stant: From another man. Mr. Sacks was doing this cross examination.

William E. Bobbitt.

The Court: That's all right. The sum total of the questions and answers was what the witness testified to.

Mr. Stant: That's all right if it goes to contradict this young man.

The Court: That's what I say.

Mr. Stant: Well—?

The Court: But I think the proper foundation ought to be made for contradiction.

Mr. Wahab: Your Honor, I think if I recall just a few moments ago I asked if he recalled the testimony in the previous case arising out of this accident in Norfolk, and he said that he did. I asked him if he was a witness in that case and if he testified in that case. He said that he did, and I asked him if he recalled what Mr. Sacks, who was the attorney in that case, asked him.

The Court: But I think that you ought to point out some statement that he has made here on the stand to-
page 148 } day rather than just cover the whole subject of his testimony somewhere else.

Mr. Wahab: All right, sir.

By Mr. Wahab:

Q. Mr. Bobbitt, you have testified or answered to one of Mr. Stant's questions as to whether or not you had any conversation with David Whitehead after the accident; and I recall your answer was that you talked to him a couple of weeks afterwards, and essentially Mr. Stant asked you "Did he tell you whether or not he saw the automobile before the impact," and you answered: "He said that he didn't, or only immediately before" whatever it was the record will show that.

Now, I ask you if you testified in a case within the last month or two in the City of Norfolk arising out of this accident.

A. Yes, sir.

Q. And at that time did you during the course of your testimony in that case refer to the conversation you had with David Whitehead after the accident about two weeks later?

A. Yes, sir.

Q. And at that time did you not answer that "Sonny said his lights reflected on the car," that "He didn't have time to stop?"

page 149 } A. Yes, sir.

Q. Then you were asked what did he say about

applying brakes, and Mr. Whitehead's answer was he didn't have time to apply them. Was that not your testimony previously?

A. Yes, sir.

Mr. Wahab: That's all, thank you.

RE-DIRECT EXAMINATION.

By Mr. Stant:

Q. So, he never told you that he never saw any car on the other side of the roadway, did he?

A. No, sir.

Q. He never told you he saw a car a considerable distance away from him, did he?

A. No, sir.

Q. He only told you that just before the accident he had a flashing glimpse of a car and he had the accident, right?

A. Yes, sir.

RE-CROSS EXAMINATION.

page 150 } By Mr. Taylor:

Q. He didn't tell you that he saw a car coming across the road without any lights on either, did he?

A. No, I don't think so.

Mr. Taylor: All right.

Mr. Stant: Come on down, young man.

Mr. Taylor: Just one other question.

By Mr. Taylor:

Q. Mr. Whitehead is a friend of yours, is he not?

A. Yes, sir.

Mr. Taylor: All right.

By Mr. Taylor:

Q. You had no falling out with him?

A. No, sir.

Mr. Wahab: Let me ask him one more question.

John Bailey.

RE-CROSS EXAMINATION.

By Mr. Wahab:

Q. This case we had reference to that was heard in Norfolk a month or two ago, you were the only witness in that case, is that right?

page 151 } A. Yes, sir.

Q. You were not the plaintiff?

A. No.

Mr. Wahab: All right.

Mr. Stant: Mr. Bailey.

JOHN BAILEY,

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

DIRECT EXAMINATION.

By Mr. Stant:

Q. What is your full name?

A. John Bailey.

Q. And how long have you been in this area?

A. Since May, '56.

Q. Now, where did you live prior to that time?

A. Lexington, North Carolina.

Q. All right, sir. And how long were you in

page 152 } Lexington, North Carolina?

A. I was born and reared there.

Q. And were you in the service?

A. Yes, sir.

Q. For how long?

A. 33 months.

Q. And you came up here in what month and what year, do you remember? If you don't so state.

A. I don't remember.

Q. All right. Now, young man, on the night in question what time did you get off from work?

A. Seven o'clock.

Q. And where did you go when you got off from work?

A. Oceana, then home.

Q. And where is "home" at that time?

A. Bird Neck Point Road.

Q. And with whom were you living?

A. Mr. James Gregory.

John Bailey.

Q. Now, where are you living today?
A. With my brother-in-law.
Q. And your sister and brother-in-law live here?
A. Yes, sir.

Q. Now, how long approximately had you
page 153 } worked for Camp Furniture Company?

A. Approximately three and a half years.

Q. Now, on the night of the accident you say you went home. About approximately what time did you get to your house?
A. Eight o'clock.
Q. And how long did you stay there?
A. I'd say two and a half or three hours or better.
Q. All right, sir. Now, where did you go then?
A. I went down to 26th and Atlantic.
Q. And where did you go down there?
A. The Jet Lounge.
Q. How did you get from your place where you were living to the Jet Lounge?
A. With Mr. Gregory.
Q. And what was he driving, what type of transportation did you all use?
A. A truck, a laundry man's truck.
Q. Whose laundry truck was that; who did it belong to?
A. Atlantic Cleaners.
Q. All right, sir. When you got to the Jet Lounge what, if anything, did you do?
page 154 } A. We had something to eat.

Q. Now, can you tell us how long you were there, the approximate time you arrived there and how long you were there?

A. (Pause) Well, we arrived, I'd say something around eleven o'clock. We left maybe an hour or so later around midnight.

Q. All right. What, if anything, did you have to eat?
A. We had a roast beef sandwich.
Q. All right, what, if anything, did you have to drink?
A. I had a draft beer.
Q. Now, prior to going there had you been drinking at all?
A. No, sir.
Q. After you had this roast beef sandwich and the glass of draft beer—did you have three or four glasses of draft beer, or how many did you have?
A. No, sir; one, sir.

John Bailey.

Q. Now, after you had that how did you become acquainted with Mr. Lambach?

A. I was introduced to him by my friend James Gregory.

Q. All right. Had you ever seen him before?

page 155 } A. No, sir.

Q. How was it that you and he left to go out to the American Legion?

A. Someone suggested that we go out there, and I went with them.

Q. All right, sir. Why didn't Mr. Gregory go with you?

A. He wasn't ready to leave then at that particular moment.

Q. All right, sir. Now, when you all went out and got into Mr. Lambach's car, and prior to that, how much had you talked to Mr. Lambach?

A. I don't recall. It wasn't very much.

Q. Had he insofar as you were able to notice been drinking?

A. No, sir.

Q. Now, when you went out and got into your automobile can you recollect anything that happened. What did Mr. Lambach do when he got to the automobile?

A. When he got in he cranked the motor up and turned the lights on.

Q. How do you know that the lights were turned on?

A. Well, he pulled the switch and it shined on the building in front of us.

page 156 } Q. All right, sir. Now, what time of night was this?

A. I'd say shortly after midnight or around midnight.

Q. All right. Now, after you left and started down Laskin Road, young man, can you tell the jury anything concerning the accident or what happened?

A. No, sir.

Q. Why can't you do that?

A. I can't remember because I was hit on the head.

Q. How long do you remember when it was that you first regained consciousness so you could recognize people and things after the accident? About how many days or period of time?

A. (Pause) Five or six days, I guess.

Q. All right. Now, have you tried to recollect what happened to you that night; have you tried to remember it?

A. I have tried to but I can't.

Q. Have you been able to?

A. No, sir.

John Bailey.

Q. Were you or were you not attended by Dr. Thomson, the neurosurgeion, the brain surgeon?

A. Yes, sir.

page 157 } Q. And do you know what his bill is?

A. No, sir.

Q. I will give it to you. I ask you to read what that is for, Mr. Bailey. "Mr. John Bailey," it says here, and how much is the charge?

A. "Mr. John Bailey, $50.00."

Mr. Stant: I would like to introduce that, your Honor.

The Court: Plaintiff's Exhibit Number 11.

(Received and marked in evidence by the Court as Plaintiff's Exhibit Number 11.)

By Mr. Stant:

Q. At the time of the accident how long had you worked for Mr. Camp, young man?

A. Three and a half years.

Q. And did you like the job?

A. Very much.

Q. And were you happy there?

A. Yes, sir.

Q. Now, is that about the only work you have been able to do, Mr. Bailey?

A. Yes, sir.

Q. And were you there every day and did your

page 158 } job?

A. Yes, sir.

Q. Now, will you tell this jury how much you were making a week at the time that the accident occurred?

A. $62.50 a week.

Q. You were to get a raise January the 1st, is that correct?

A. Yes, sir.

Q. Now, have you been able to do anything since the day of the accident?

A. No, sir.

Q. And are you able to do anything now?

A. No, sir.

Q. Now, will you tell the jury what you have done; what have you done to try to get in shape so you can make a living?

A. I started school.

John Bailey.

Q. What type of school are you going to?

A. Rehabilitation. I am going to Keyes Coastal Business College in Norfolk.

Q. Are they directing your activities as to vocational rehabilitation?

A. Yes, sir.

Q. And who has to pay for this course and everything at Keyes?

page 159 } A. They do.

Q. Who reimburses them, do you know?

A. I do.

Q. And you signed a letter, did you not, through me through the Vocational Rehabilitation School?

A. Yes, sir.

Q. Now, young man, will you tell the jury the first week you were in the hospital there, how did you feel; what was your sensation and everything?

A. I was all pains, severe pain, in my head, my leg and my chest.

Q. Would you tell what has been the course of the pain in your leg and in your hip?

A. Well, it is still paining me every now and then, but it has been severe at times.

Q. All right. On rainy days and days like today are you still troubled with a great deal of pain?

A. Yes, sir.

Q. And do you still—you still have the nail in your hip?

A. Yes, sir.

Q. Now, is your leg considerably smaller, your left leg, than your right leg and your ankle there where you can see it?

A. This one is larger because it's swollen.

page 160 } Q. And it is still swollen, is it not?

A. Yes, sir.

Q. Now, when the wire was drilled through your leg and the weights were applied, did that cause you any inconvenience and suffering?

A. It increased it a lot more. I stayed under sedatives all the time.

Q. And did you finally—what did you ask them to do because of the sedatives in the hospital?

A. (Pause).

Q. Did you ask them to discontinue it?

A. I wanted them to discontinue it.

Q. Now, would you state to this jury during the time these

weights were pulling on your leg, how did your leg feel constantly?

A. Well, it was unbearable. Just about the only way I could bear it was to stay knocked out just about all the time.

Q. Now, today and each day is this leg still giving you a considerable amount of trouble?

A. Yes, sir.

Q. Now, have you been able since you had this leg to participate in the sports that you like to participate in?

A. No, sir.

page 161 } Q. And will that considerably cut down on your activity?

A. Yes, sir.

Q. Do you have anything that you like to do a great deal that requires the use of your leg that you know you can no longer do?

A. (Pause) Other than playing ball or something ilke that.

Q. Well, you know you can't play any more ball, can you?

A. No, sir.

Q. How much did your crutches cost you, young man?

A. $11.00.

Q. Have you tried to get around without these crutches to the best of your ability to see if you could move without them?

A. Yes, sir.

Q. And have you been able to do it?

A. Very little, a short distance, like say across the room or something like that.

Mr. Stant: Your witness, Mr. Wahab.

CROSS EXAMINATION.

page 162 } By Mr. Wahab:

Q. Mr. Bailey, I believe you testified you got off work about seven o'clock that night, is that right?

A. Yes, sir.

Q. And you say you went to Oceana then went home?

A. Yes, sir.

Q. What did you do in Oceana, did you have some business there?

A. I went to get a haircut.

Q. Then you went home, is that correct?

A. Yes, sir.

John Bailey.

Q. About what time did you say it was when you arrived at the Jet Lounge?
A. Approximately around eleven.
Q. Around eleven o'clock?
A. Yes, sir.
Q. And that is a beer tavern and restaurant of some sort, is that correct?
A. Yes, sir.
Q. And what time did you run up with Mr. Lambach; how long after that would you say you met Mr. Lambach?
A. I'd say about thirty minutes, something like that.
Q. You had been there about thirty minutes then. And you say it was twelve o'clock when you all left?
page 162
A. Yes, sir.
Q. And at that time your destination was to go to the American Legion Club?
A. Yes, sir.
Q. And I believe you testified on direct examination to Mr. Stant's question that while you were there you ate a roast beef sandwich and drank one beer?
A. Yes.
Q. Did it take you an hour to drink one glass of beer and to eat?
A. No, sir. See, when we first sat we ordered the roast beef sandwich.
Q. Who is "we?"
A. Mr. James Grogory, the guy I lived with.
Q. I see. You went there and sat down for a while before you ordered?
A. It takes time to prepare it.
Q. When you all got ready to leave wasn't there some talk about going to the Officer's Club at Oceana rather than go to the American Legion Club?
A. I don't recall.
Q. But at any rate you all decided to go to the American Legion Club?
A. Yes, sir.
page 163
Q. Had you ever been there before?
A. Once or twice.
Q. And as I understand it it is a private club, is that correct?
A. Yes, sir.
Q. For what purpose were you going out there?
A. I was going to see who was there.

John Bailey.

Q. No other purpose than to see who was there?
A. Not necessarily.
Q. Did you all say something about having something to drink when you were riding—?

Mr. Furniss: For the record we object to this line. We know the Court has ruled on it earlier, but we want to note our exception.

A. No, sir.

By Mr. Wahab:
Q. You say the only thing you had to drink was one draft beer?
A. Yes, sir.
Q. How long were you talking with Mr. Paul Lambach before you left the Jet Lounge to go up to the American Legion?
A. A matter of minutes.
page 164 } Q. Just a matter of a few minutes. And you testified to Mr. Stant's question that he did not appear that he had been drinking?
A. 25 or 30 minutes, something like that; but in that period he didn't appear to have been drinking at all.
Q. You hadn't even known who he was before this, did you?
A. No, sir.
Q. That was the first time you had seen him, that evening?
A. Yes, sir.
Q. And you say at that time he did not appear to have been drinking?
A. Yes, sir.
Q. Did he drink anything while you were there at the Jet Lounge?
A. No, sir.
Q. Did you have occasion to be talking with and observing or engage in conversation with him during the entire time he was there?
A. No, sir.
Q. You did not. Were you in the presence of each other during the entire time?
A. Yes, sir.
Q. And you did not see him drink anything
page 165 } during that time?
A. No, sir.

John Bailey.

Q. But you don't know where he might have been before he arrived at the Jet Lounge?
A. No, sir.
Q. You say after you left there and you were riding toward the American Legion Club that was the last recollection you have?
A. Yes, sir.
Q. You had no idea how the accident occurred?
A. No, sir.
Q. So you couldn't state one way or the other immediately before the accident whether or not Paul Lambach had his headlights on?
A. (Pause).
Q. I am talking about right before the accident, you don't know whether or not he did have his headlights on, do you?
A. No, sir.
Q. You can't state whether or not he did because you have no memory of that?
A. No, sir.
Q. However, you state to us now that you recall all the events in detail that happened at the Jet Lounge which must not have been five or ten minutes before the acci-
page 166 } dent occurred, is that correct?
A. Yes, sir.
Q. You remember everything that went on there but once you started up the highway you can't remember everything that happened?
A. Correct.

Mr. Wahab: All right. Answer Mr. Furniss.

CROSS EXAMINATION.

By Mr. Furniss:
Q. Mr. Bailey, as I understand it your memory fails you as you were driving down Laskin Road just before the accident, is that correct?
A. Yes, sir.
Q. That is, you recall getting in the car?
A. Yes, sir.
Q. You recall starting up Laskin Road?
A. Yes, sir.
Q. You recall Mr. Lambach driving towards Norfolk on Laskin Road?

John Bailey.

A. Yes, sir.

page 167 } Q. And I believe you also recall being at or passing through the intersection back at Bird Neck Point, do you not?

A. That is the last, yes, sir.

Q. And it was right after that, after you went through that intersection, from then on you don't know or recall what happened?

A. No, sir.

Q. Well, at that time the lights were still on Mr. Lambach's car, were they not?

A. Yes, sir.

Q. And at that time Mr. Lambach was driving carefully, was he not?

A. Yes, sir.

Q. How old are you, Mr. Bailey?

A. 28.

Q. And you went to work for Camp when you were about 24 or something like that?

A. Yes, sir.

Q. Had you worked before that?

A. Yes, sir.

Q. Where had you worked before that?

A. A furniture company in Lexington, North Carolina.

Q. In the same kind of business?

page 168 } A. Yes, sir.

Q. About how long had you worked there?

A. I don't recall.

Q. I mean was it more than a year's time?

A. Yes, sir, it was more than a year.

Q. And you say you were going down to Keyes Business school now?

A. Yes, sir.

Q. And I believe you testified that you are going to have to reimburse the folks that are footing the bill right now, is that correct?

A. Yes, sir.

Q. What are you learning, what kind of course?

A. Junior accounting.

Q. You are learning bookkeeping and accounting and that sort of thing?

A. Yes, sir.

Q. And do you know what they charge for schooling per year?

John Bailey.

A. (Pause) No, sir.
Q. I see.

Mr. Furniss: That is all.

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page 169 }

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DIRECT EXAMINATION.

By Mr. Stant:
page 170 } Q. Mr. Bailey, I would like for you just to lean forward and show these folks the difference in the length of your leg where you stand, and show them where the hole in the leg is.
A. That is where they put the pin through my leg.
Q. What is that long scar?
A. That is where it was busted.
Q. The scar runs all the way from here. That shows a distance of about eight to ten inches. And can you feel the pin that is still in your leg?
A. Yes, sir, at times back here.

Mr. Stant: All right.
Mr. Furniss: Can I ask him one question while he is there?

CROSS EXAMINATION.

By Mr. Furniss:
Q. Mr. Bailey, at the time of the accident you were thrown from the car, were you not?
A. I don't know, sir.
Q. You don't know.

Mr. Furniss: All right. That is all I wanted,
page 171 } your Honor.
Mr. Wahab: Your Honor, I would like to call Mrs. Robert Reynolds to the stand.

MRS. ROBERT REYNOLDS,

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

DIRECT EXAMINATION.

By Mr. Wahab:

Q. State your name?

A. Shirley Reynolds.

Q. And where do you live, Mrs. Reynolds?

A. Rundale Lane in Thalia Manor.

Q. On or about August the 17th of last year did you have occasion to come up on the scene of an automobile

page 172 } accident on Laskin Road?

A. Yes, sir.

Q. Would you tell us, please, where on Laskin Road the accident had occurred?

A. Near the American Legion Club.

Q. That would be on Route 58 right in front of the American Legion Club?

A. Yes, sir.

Q. Now, had the accident occurred when you got up there, Mrs. Reynolds?

A. Yes.

Q. Where had you been?

A. To a play at Virginia Beach.

Q. Was anyone with you in your car?

A. Yes.

Q. Who might that have been?

A. Mrs. Pate.

Q. I see. Now, when you got up to the scene of the accident what did you do, Mrs. Reynolds?

A. We pulled off to the side of the road and sat there wondering what to do. Mrs. Pate was a nurse, so we got out.

Q. You had been to the beach traveling back toward Norfolk?

A. Yes, sir.

page 173 } Q. So, that would have put you over on the north side of the road, is that correct?

A. Yes, sir.

Q. I wonder if you would step down here, if you would, please, Mrs. Reynolds. You haven't heard this testimony because you have been out of the courtroom.

This depicts Laskin Road; this is the dividing strip; these are the eastbound lanes going towards Virginia Beach. These are the westbound lanes going toward Norfolk. This is the

Mrs. Robert Reynolds.

American Legion hall over here, and there is the cross-over or cut-through (indicating).

Now, I wonder—and there is the feeder road headed towards Norfolk—I wonder if you would tell us where you pulled your car over. As I said this is the American Legion hall, this is the cut-through, these are the eastbound lanes going towards Virginia Beach and these are the westbound lanes coming to Norfolk.

A. I saw the fire up here (pointing) and I pulled over and went real slow and stopped about right in here (indicating).

Q. And did you get out of your car at that time?

A. No, we sat there for a couple of seconds wondering what we ought to do, then we got right out.

Q. How many automobiles did you see?

page 174 } A. I only saw this one, this one back here.

Q. The Chrysler was the only—

A. The one that was on fire.

Q. Could you place on the diagram where that automobile might have been at that time. Take that automobile and place it, if you will, please—

Mr. Taylor: Show where the intersection is.

By Mr. Wahab:

Q. This would be the westbound lanes.

A. It was right into here.

Q. What kind of automobile was that?

A. A Chrysler.

Q. Did you have occasion when you got out of the car to see another automobile?

A. No, I didn't see that one at first.

Q. Did you later see it?

A. Later I saw one up further, up here (pointing).

Q. Would you take that other automobile—

Mr. Stant: I'll hand it to you.

By Mr. Wahab:

Q. —Now, and place that one. This is the grass divider in here and these are the eastbound lanes.

A. (Witness complied.)

page 175 } Q. Do you have those placed essentially like they were?

A. Yes.

Mrs. Robert Reynolds.

Q. Which would be the feeder lane going into the American Legion? This is the left eastbound lane.
A. That would be over here (pointing).
Q. And is this car placed properly?
A. As far as I can tell it was right in there.
Q. Did you have occasion to go to either of the automobiles?
A. I went over to the Chrysler first and talked to the boys and tried to hold the man; then I walked to the other car.
Q. And at either automobiles did you get very close to the people in the cars?
A. Well, one man in the other car was over in the ditch.
Q. Which car do you have?
A. The Dodge.
Q. Would that be this automobile (indicating)?
A. That one up there.
Q. You say there was one man out of the automobile?
A. One man was out over in the ditch.
Q. And one in the automobile?
page 176 } A. One man was in the automobile.
Q. Did you get near the man in the automobile?
A. I just stuck my head in.
Q. Did you notice anything about him?
A. I smelled alcohol—

Mr. Furniss: Objection, your Honor. Could we discuss this in chambers?
The Court: All right.

(Court and counsel for both sides retired in chambers where the following occurred:)

Mr. Taylor: We want to ask for a mistrial. The mere odor of alcohol is not even negligence, let alone gross negligence. She has said she smelled alcohol, and our Supreme Court has held that that in and of itself is not evidence of negligence and certainly not gross negligence.
And I had a case a very short time ago—I know your Honor is not bound by what they did in another court—but in the opening statement it was mentioned that they expected to prove that the man had been drinking, and the
page 177 } judge ordered a mistrial on it.
Mr. Stant: I don't think it is that serious, your Honor. I am only interested in not having a mistrial

and not having any reversable error; but the mere statement that there is alcohol on the breath—

Mr. Taylor: She hadn't even said it was on his breath.

Mr. Stant: Well, she said she smelled alcohol. I would request the Court to instruct the jury, and I think the Court will do it properly, as to the weight to be given that statement, and I think that that would cure anything that would be wrong at this point, your Honor.

Mr. Taylor: But they will get the impression that this man was drinking when he said positively that he was not drinking.

Mr. Wahab: That is exactly the point, Mr. Taylor. If he is lying about that he is lying about the whole thing.

Mr. Furniss: If there is other evidence of
page 178 } drinking in this case other than this woman here.

Mr. Wahab: I am going to have another witness to follow her right to the stand who came upon the defendant Lambach at the scene of the accident. Mr. Lambach has testified that he did not have one drink. I've got two witnesses who came upon the scene of the accident, the flames from one of the automobiles hadn't even been put out, and they went over to the car and got within two feet of Mr. Lambach, and they will testify that he had a strong odor of alcohol on his breath.

Mr. Taylor: She didn't say on his breath.

Mr. Wahab: It certainly goes to the credibility of Lambach's testimony that he didn't have anything to drink.

Mr. Taylor: But she hadn't said that it came from Lambach.

Mr. Furniss: She can't testify he was under the influence
and that it affected his driving or anything.
page 179 } Mr. Wahab: She—

The Court: I am cognizant of that case in the advance sheet, but I don't know how in the world anybody is going to apply the rule as stated in that case without knowing what the subsequent testimony is going to bring out.

Mr. Wahab: Precisely.

The Court: And I have admitted evidence of alcohol when it has been offered in the matter that has been testified here for whatever it might be worth before the jury. I don't think there are grounds for a mistrial and I don't see how in the world the Court can judge ahead of all the testimony being admitted whether that testimony would tend to prove intoxication or whether it would tend to prove something else that affected the man's driving. I have no way in the world of

judging ahead of time, and I am going to overrule the objection to it and let it come in.

I am not going to instruct the jury or anything
page 180 } about it.

Mr. Taylor: We note an exception, your Honor.

(The Court and counsel for both sides returned into the courtroom and the trial proceeded as follows:)

By Mr. Wahab:

Q. Go ahead and answer my last question.

Mr. Wahab: (To the reporter) Would you read it back, please?

(The reporter read the last question back to the witness.)

By Mr. Wahab:

Q. When you went over to the automobile you pointed it out there to be the yellow automobile; there was one person in it, is that correct?

A. Yes, sir.

Q. Did you get near that automobile?

A. Yes, sir.

Q. And did you notice anything unusual about the occupant of the car?

A. I smelled alcohol near the car.

Q. Can you state whether or not it was a faint odor or a strong odor?

page 181 } A. A strong odor.

Q. I see. Was there anybody on the highway who apparently had been in the accident? You have testified there was just one person in the car?

A. There was a man laying over in the side of the road.

Q. On the side of the road?

A. In the grass.

Q. Can you identify the person now who was in the automobile when you walked up there?

A. (Pause).

Q. When you walked up to the automobile—you pointed to the yellow automobile—can you identify the person who was in there?

A. In the car, yes, sir, I know now.

Mrs. Robert Reynolds.

Q. What was his name?
A. Lambach.

Mr. Wahab: All right, answer Mr. Stant.

CROSS EXAMINATION.

By Mr. Stant:

Q. Young lady—
page 182 } A. Yes, sir?
Q. —you state you smelled this strong odor of alcohol, correct?
A. Yes, sir.
Q. Well, now, is that coming from the radiator that had been busted?
A. No, sir.
Q. Did you put your face right up against the man's face?
A. No, sir.
Q. Well, now, in all fairness can you say that smell of alcohol that you might have smelled could not have been from a bottle that had been broken in the car, if there had been one in there?
A. It could have been but I know alcohol when I smell it.
Q. I see. But if a bottle broke in the car or a can of beer had broken in the car, wouldn't that be the smell of alcohol, young lady?
A. Yes.
Q. Now, in all fairness can you say that the alcohol you smelled was coming from a man's mouth?
A. (Pause).
Q. I mean, it is a very difficult thing, isn't it,
page 183 } young lady?
A. No.
Q. It isn't. If two people are standing side by side and one has been drinking and the other one has not, do you feel that standing some distance away you can tell from which mouth the alcoholic fumes is coming from?
A. If it's strong enough I do.
Q. Did you talk to this man in the car?
A. No.
Q. Did you go over to where these boys were?
A. Yes.
Q. Did you smell any alcohol in that car?

Mrs. Robert Reynolds.

A. No.

Q. Well, do you know that there was some beer cans in that car; did you look in the car?

A. I didn't look in the car, I looked at the boys on the side of the road.

Q. Well, did you smell them?

A. Two of them.

Q. Did they have any alcohol?

A. No, sir.

Q. Well, do you know one of them states that he drank some beer?

A. I didn't even see him.

Q. How did you first come into the case; who first came to see you concerning it?

page 184 } A. (Pause) I got into it on my own. I called and inquired as to how the boys were.

Q. I see. And did you get in touch with Mr. Louis Fine, who was here earlier this morning?

A. No.

Q. Well, didn't he or some member of his office eventually get in touch with you?

A. (Pause) Yes, sir.

Q. And that is how you got in this case, through Mr. Fine's office, isn't it?

A. Not through his office. I called to ask his mother how the boys were.

Q. And you are here today because Mr. Fine asked you to come, did he not?

A. I'm here because I was subpoenaed.

Q. I understand.

Mr. Stant: Thank you.

CROSS EXAMINATION.

By Mr. Furniss:

Q. When you went over to this car was the man in the car conscious?

A. No, sir.

page 185 } Q. The man out on the road was unconscious too, wasn't he?

A. Yes, sir.

Q. They didn't say anything?

A. No, sir.

Q. Did you open the door to the car?

Mrs. Robert Reynolds.

A. No, it was open.
Q. It was open?
A. Yes, sir.
Q. Well, you didn't get any closer than four or five feet to that man, did you?
A. Three feet, I'd say.
Q. Three feet. You mean three feet from the car or—
A. No, sir, three feet from the man, I'd say. I was right up next to the car.
Q. Well, your testimony is as you went up to the car you smelled alcohol in the car, right?
A. Yes.

Mr. Furniss: Thank you.

RE-DIRECT EXAMINATION.

By Mr. Wahab:
page 186 } Q. Mrs. Reynolds, have you ever laid eyes on me before this morning?
A. No, sir.
Q. Have you ever talked with Mr. Fine before this morning?
A. No, sir.
Q. After this accident happened, isn't it true some attorney came to see you to try to get you to change your story?
A. An attorney came.
Q. That attorney was not Mr. Fine and myself?
A. No, sir.

Mr. Stant: Let's name who he was.
The Witness: I've forgotten his name.

By Mr. Wahab:
Q. But it was not Mr. Fine or myself, was it?
A. No, sir.

Mr. Stant: I object to this. It is very improper. There are three attorneys here, four, five with Mr. Fine. If any of them ever talked to this young lady or interrogated her that is germaine to this issue. What the other ten
page 187 } attorneys did who were in this case at one time or another, I object to it most strenuously.
I think it is most improper.
Mr. Wahab: I think Mr. Stant tried to imply through

innuendo either Mr. Fine or myself have. She said she never saw either of us until this morning. I am willing to leave—

Mr. Stant: I think it ought to be stricken unless the lady wants to tell who the attorney is that went to see her. That is a fit and proper subject for the Bar Association to investigate, and I would like to know who he was.

Mr. Taylor: Ask her if it was any attorney in the courtroom.

The Court: I think Mr. Furniss asked that question. I am not going to strike the answer because I think you opened the subject.

Mr. Stant: I note my exception to that, your Honor.

By Mr. Stant:

Q. Young lady, who from Mr. Fine's office
page 188 } talked to you?

A. It was no one from Mr. Fine's office. I don't recall his name, but he is not in this courtroom.

Q. You said that you contacted Mr. Fine's office or he contacted you, did you not?

A. I contacted Mr. Fine's office after I got my first subpoena to find out if I had to come.

Q. You talked to someone there?

A. His secretary, I presume, that answered the 'phone.

Q. Who have you talked to from his office?

A. No one except to call to see if I had to come down here.

Q. You never appeared in this case before?

A. I was subpoenaed once but I had never had to testify.

Q. Did you go to the case that day?

A. Yes, sir.

Q. And was that the attorney who talked to you?

A. No.

Mr. Stant: I haven't any other questions, your Honor.

Mr. Wahab: That's all, Mrs. Reynolds, step down.

Mr. Taylor: We want to make a motion to
page 189 } strike the testimony of this witness, because all in the world she has testified to is that she got up to within three feet of the car of the man and that she smelled alcohol in the car.

Now, the plaintiff has already testified that he had been drinking, or at least had drunk at least two beers, and it could well be that the odor she smelled in the car was from Mr. Bailey. That is all in the world she has done is to testify

that she smelled alcohol in the car, and we submit that she was put on by the plaintiff for the purpose of prejudicing the minds of the jury, and I move that her evidence be stricken and the jury told to disregard the testimony.

Mr. Wahab: If it please the Court, I will answer that by my next witness.

The Court: I am going to overrule it because in the first place I don't know whether it would be connected up or not, and in the second place the weight to be given it, I think, is a proper matter for the jury and not for the Court.

page 190 } Mr. Taylor: Note an exception, your Honor.

* * * * *

MARY ANN PATE,

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

DIRECT EXAMINATION.

By Mr. Wahab:

Q. Will you please state your name?

A. Mary Ann Pate.

Q. And where do you live, Mrs. Pate?

A. 8833 Rundale Lane, Lynnhaven, Virginia.

Q. Lynnhaven, Virginia. Now, on the night of

page 191 } August the 7th, 8th or 9th of last year, did you have occasion to be in the company of Mrs. Reynolds?

A. Yes, sir.

Q. And where had you been with Mrs. Reynolds?

A. At a play at the Beach.

Q. I see. Now, about midnight on one of those nights did you happen to come upon the scene of an accident that occurred on Laskin Road?

A. Yes, sir.

Q. And you were riding as a passenger in the car with Mrs. Reynolds at that time?

A. Yes, sir.

Q. And I ask you if that accident occurred on Route 58, which is also known as Laskin Road?

A. Yes, sir.

Q. You are familiar with that area?

Mary Ann Pate.

A. I don't drive so I am as familiar as any passenger would be.

Q. But I mean you recall where the accident occurred, is that right?

A. Yes.

Q. And is there not an American Legion Club right along where this accident occurred?

A. Yes, sir.

Q. So you would be traveling then in a westerly
page 192 } direction from the Virginia Beach headed back to your home at Lynnhaven, is that correct?

A. That's right.

Q. Now, what happened when you and Mrs. Reynolds got up to the scene where this accident had occurred; what did Mrs. Reynolds do, if anything?

A. Well, we considered whether to stop or whether not to stop. There were no other cars there, no people that we could see.

Q. Did you in fact stop?

A. We did stop. We got out—

Q. Where did you stop her automobile?

A. She pulled over on the shoulder as far as she could get and stopped.

Q. Which would be on your right-hand side?

A. Yes, sir. We got—

Q. Would you step down just a moment, please, Mrs. Pate?

A. (Witness complied).

Q. This is generally the scene where the accident occurred. Of course, you haven't seen this before, I don't believe, because you have been locked up in the witness room. Now, this is the American Legion Club; this is the bridge; these are the eastbound lanes going towards Virginia Beach. These
are the westbound lanes going from Virginia
page 193 } Beach to Norfolk. And this is the cut-through or the three-foot grass island strip dividing the east and westbound lanes. And as I understand it you were proceeding in a westerly direction going back towards Lynnhaven, is that correct; and you pulled over somewhere in this vicinity and stopped (indicating)?

A. Oh, yes, sir.

Q. Did you have occasion to get out of the automobile after that?

Mary Ann Pate.

A. Yes, sir, we got out.

Q. And what did you do?

A. Well, we came over—

Q. Let me give you this red automobile. And how many automobiles did you observe that had been involved in the accident?

A. Well, at first I suppose just the car that was burning.

Q. Now, can you place that automobile on here where that car—

Mr. Taylor: Show her where the intersection is.

By Mr. Wahab:

Q. This is the cut-through; these are the two westbound lanes going to Norfolk; these are the eastbound lanes going toward Virginia Beach; and this is the cut-through. And the feeder road going up to the American Legion Club. And you say that Mrs. Reynolds had pulled over here?

page 194

A. Along here.

Q. This is the middle of the highway right here. This would be the middle of the highway with a three-foot grass strip?

A. Yes, sir. Just generally, the car that was burning was overturned here along there somewhere.

Q. Where was the other car?

A. The other car was back here.

Q. These are the two lanes where the accident occurred; these are the two lanes going towards Virginia Beach, do you get the picture? This the entire highway right in here.

A. Yes. Well, it's been so long it's very hard—

Q. Were the automobiles in these lanes going towards Virginia Beach or going towards Norfolk?

A. I guess they were in the lanes going toward Virginia Beach then. Well, then this one must have been here; it's very hard to remember.

Q. Was that the automobile which was on fire?

A. Yes.

Q. Now, did you have occasion to see another automobile which had been involved in the accident?

page 195

A. Well, the other car was in there somewhere.

Q. Would you take this automobile and place that generally where the other automobile was?

Mary Ann Pate.

A. I don't know how far, but it was generally down this way someplace.

Q. All right. Now, did you have occasion to go over to either of those automobiles?

A. I didn't go up close to the car that was burning. The other boys who had come up turned this car over and got the boys up and placed them on the grass down there somewhere. I didn't go over to this car (pointing). I was aware it was there but I didn't go over there.

Q. Did you see anybody in this automobile?

A. I could see that there was a person in there, yes.

Q. Did you see any people who might have been involved in the accident out on the scene?

A. Yes, sir, there was a man laying over on the grass, here (indicating).

Q. Could you tell which automobile he came from?

A. Well, I assumed he came from this one. At the time I didn't really think about it.

Q. Have you learned since the accident which automobile he came from?

page 196 } A. He was from this one (pointing).

Q. Did you happen to go over and get near him?

A. Yes, sir, I stood down and bent over him, but I never touched him.

Q. Did you notice anything unusual about him?

A. Well, he was very very—I mean he was injured quite a bit, I could tell that, but—

Q. Was there—

A. —I couldn't see his face.

Q. Was there anything you could notice about him?

A. (Pause) Well, do you want—?

Q. Could you smell any alcohol on his breath?

A. Yes, I could.

Mr. Stant: Your Honor—

A. Very strong.

By Mr. Wahab:

Q. How close did you get to him?

A. I stooped down and bent over him.

Q. How close would you say your face got to his face?

A. Well, he couldn't have been more than a foot and a half or two feet at the most, because as I said he was face down.

Mary Ann Pate.

Q. Then you say that you did smell a strong
page 197 } odor of alcohol?
A. Yes, sir, I did.

Mr. Wahab: I see. Answer Mr. Stant.

CROSS EXAMINATION.

By Mr. Stant:
Q. Mrs. Pate, do you drink?
A. On occasion.
Q. Well, now, when you say you have a "strong odor of alcohol," if I take one drink of whiskey or one bottle of beer and you smell it within a short time after is that a strong odor of alcohol?
A. No, I wouldn't think so.
Q. Well, now, you tell me, Mrs. Pate, if I drink four beers do I smell any stronger than drinking one beer?
A. I couldn't say.
Q. If I take four drinks of whiskey one after another do I smell any stronger from that than I smell from one drink of whiskey, young lady?
A. I don't know.
Q. Well, then you explain to me what a "strong odor of alcohol" is.
page 198 } A. You want my personal opinion?
Q. No, Ma'am, I want to know what a "strong odor of alcohol" is.
A. Well, to me a strong odor of alcohol is from someone who has drunk continuously, maybe not be drunk at the time, but who drinks not just occasionally but quite frequently. To me there is a difference.
Q. That is a strong odor of alcohol?
A. Yes, sir, there is a difference between—
Q. You are a nurse, are you not?
A. Yes, sir.
Q. Did you roll this man over?
A. No, I never touched him.
Q. Obviously he was terribly injured?
A. Yes; I never touched the man at all.
Q. His face was down in the ground and you bent down?
A. It was, and I bent over him.
Q. And you say from that you could smell alcohol and it was strong, is that it?
A. That is correct.

Mary Ann Pate.

Q. Would it surprise you to know that this man, and I guess you would be very surprised, to know that this man had one glass of beer?

A. I would be.

page 199 } Q. Unh-huh. Do you have any way to deny that, young lady?

A. Would I deny it?

Q. Do you have any way?

A. No, I don't deny that I didn't smell it.

Q. Did you go over and smell all the boys that were in the other car, young lady?

A. I was only aware that there were two boys in the other car. I think there was the Whitehead boy that I saw and the McLaughlin boy.

Q. Did the Whitehead boy tell you what happened, young lady?

A. I didn't talk to him. He was very much in shock. My sole concern at the time was to keep the two boys flat. I was in their face, in other words.

Q. Did you look into the back of this Chrysler that was turned over after it was righted?

A. I did not, no. I didn't look in there. I didn't even go close to the car.

Q. You didn't see the other two boys, Slaughter or Mr. McLaughlin?

A. No, I didn't.

Q. You didn't smell them?

A. I didn't even know they were in there.

Q. I see. Did you look into their Dodge auto-

page 200 } mobile?

A. No.

Q. You looked in one car and the other lady looked in the other car. You just looked at the one man, is that correct?

A. That is correct.

Q. You are a nurse, are you not?

A. Yes, sir.

Q. This other man, Mr. Lambach, if he had been bleeding badly you would have wanted to put a tourniquet on his arm or something, wouldn't you?

A. Under the circumstances I have always been told it is best to just leave them alone until an ambulance gets there.

Q. It is best—you are a nurse—if a man is bleeding from an artery to leave him alone?

Mary Ann Pate.

Mr. Wahab: I think Mr. Stant is getting far afield, your Honor—as to why she did not render any nursing service.

Mr. Stant: I just want to know why she didn't go to see this other man.

By Mr. Stant:

Q. Let me ask you this. Did you go over to look at Mr. Lambach?

A. The man in the car?

page 201 } Q. Yes?

A. No, I did not.

Mr. Stant: That is all I have.

Mr. Taylor: We have no questions, your Honor.

Mr. Wahab: Just a couple of questions, Mrs. Pate.

RE-DIRECT EXAMINATION.

By Mr. Wahab:

Q. Mr. Stant asked you if you were not a nurse, and you said that you were, is that correct?

A. That is correct. I might also add that I am a nurse but I have had no experience since graduation.

Q. All right. But you went to nursing school where you prepared to be a nurse?

A. Yes.

Q. Frequently you all would have occasion to use alcohol in sterilizing instruments and thermometers and so forth, would you not?

A. No. That is—

Q. What do you use to sterilize those instru-

page 202 } ments with?

A. The instruments are boiled in hot oil or either in water.

Q. But you do know the smell of alcohol when you smell it?

A. I think so.

Q. Let me ask you, please, Mrs. Pate. When you looked over—when you people first got there, you and Mrs. Reynolds, this automobile was still on fire, was it not?

A. That is true.

Q. Is that correct?

A. This automobile.

Q. This automobile was essentially in the position in which you have placed it?

Mary Ann Pate.

A. It was not straight, it was this way; yes, sir.

Q. Can you tell us one way or the other—did this automobile have any lights on when you saw it?

A. No.

Q. It did not have headlights on?

A. No.

Mr. Wahab: That is all.

RECROSS EXAMINATION.

page 203 } By Mr. Stant:

Q. Did the other one have any on?

A. Yes.

Q. Now, please, this red car had headlights on that were burning?

A. As far as I can recall, yes.

Q. Young lady, I want you to look at these pictures and tell me if—show me the headlights on that that could have possibly been burning?

A. (Examining photographs) Well, as I said this has been a long time ago.

Q. Just look at it, lady, and tell me the headlights that could have been burning, that is all I asked you to do.

A. From this picture, no.

Q. Well, then you could have conceivably been mistaken that this car had headlights on and this one did not, couldn't you?

A. Well, under the circumstances with the car burning I think there is a question of confusion there.

Q. I see. So, you could be confused?

A. But the other car wasn't burning.

Q. I understand that, young lady, but you are here and you made a statement. I assume you want to be fair?

A. Yes.

page 204 } Q. You made a statement that this car had its headlights burning and when you saw the pictures you see how clearly wrong you must have been, don't you?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Taylor:

Q. By the same token you are not sure that the headlights on this car right here were burning or not, do you?

Mary Ann Pate.

A. No, I'm sure of that.
Q. That they were not burning?
A. As sure as anybody can be, I think.
Q. What was the occasion for you looking down to see whether or not those headlights were burning?
A. I didn't look down there.
Q. How do you know they weren't burning?
A. It seems to me if they had been burning we would have crossed through them, don't you think?
Q. I am asking you. Is this the exact position in which that car was sitting?
A. I can't say it's exact.
Q. I see. Now, this one here is the picture of this yellow car there. I want you to look at the right side
page 205 } of that car and see if you think there are headlights there to burn.
A. (Examining photograph) Now, which car is this?
Q. This is the one that is right here, not the one that is on fire; the Dodge. Is there any headlights on the front of that car on the right-side to be burning?
A. There is a headlight there.
Q. But do you know—do you think it is in such condition that it would have been burning?
A. I couldn't say.
Q. Well, look at it and see if you can.
A. The headlight is there.
Q. Yes?
A. As far as I am concerned, as I recall it was not burning.
Q. But you're not sure?
A. I'm as sure as I could possibly be. That's all I can say.
Q. Where is the headlight that was burning; show it to the jury.
A. I say it wasn't burning on this car that was not on fire.
Q. All right. But I say is there a headlight there that you think it could have been burning?
page 205 } A. I don't have the same picture.
Q. Here.

(Photograph handed to the witness for examination.)

A. The headlight is there but I say it wasn't burning.
Q. Why were you interested in looking—
A. I wasn't. This is your question now.
Q. I am asking the question why, when a lot of people

had been apparently hurt in this accident, were you interested in looking down there to see whether or not the headlights on that car were burning?

A. I wasn't at the time. You are asking me to recall, and as best I recall the lights were not burning.

Q. All right. But you're not sure of it?

A. As sure as I can possibly be.

Q. Why did you say the "best you can recall?"

A. What else would I say?

Q. I'm asking you.

A. Well, I'm telling you.

Q. Naturally you don't know whether the headlights were burning prior to the accident?

A. Well, how could I know that?

Q. Yes. And, of course, you don't know whether or not the taillights were burning on the car because they

page 207 } were headed away from you; that is correct, isn't it?

A. That is correct.

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

Mr. Wahab: One last question, Mrs. Pate.

RE-DIRECT EXAMINATION.

By Mr. Wahab:

Q. Have you ever laid eyes on me before ten o'clock this morning?

A. No.

Q. Have you ever talked with me before?

A. No.

Mr. Wahab: That is all.

* * * * *

page 208 }

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MARY DUDLEY,

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

Mary Dudley.

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Your name is Mary Dudley, and I believe your profession is trained nurse?

A. Yes, sir.

Q. And at present you are working at De Paul Hospital?

A. Yes, I am.

Q. And you were there last August, were you not?

A. Yes, sir, I was.

page 209 } Q. And Mrs. Dudley, is it Miss or Mrs?

A. Miss.

Q. While you were working in that capacity at the De Paul Hospital, do you recall having attended or nursed and waited upon this young Whitehead boy sitting there?

A. Yes, I did.

Q. Well, now, following this accident do you recall of having a conversation with him about this accident and if so what, if anything, did he tell you about having seen the other car involved in this accident?

A. He said that he did not see the other car, and the only thing he contributed to it was that he didn't have lights on.

Q. Did he say he didn't see it?

A. Till right before he hit it.

Q. I see. And how did he account for not seeing it?

A. He apparently didn't have his lights on.

Q. All right. You have no interest, of course, in this case?

A. No, I don't.

Q. You never had any difficulty with Mr. Whitehead?

A. No, I haven't.

Q. And Mr. Bailey here or Mr. Lambach have

page 210 } never done anything insofar as to obligate you to them?

A. No, they haven't.

Mr. Taylor: Answer these folks.

By Mr. Taylor:

Q. Just one other question. Do you recall about how long after the accident before Mr. Whitehead told you that?

A. I don't know. It was at least a week or more.

Q. I see.

A. It was quite a while ago.

Mary Dudley.

Q. And what was his general mental condition at that time?
A. I'm sure he was clear at that time.
Q. And he talked intelligently about other things?
A. Yes, he did.

Mr. Taylor: Answer Mr. Wahab or Mr. Stant.
Mr. Wahab: Let me ask you—

CROSS EXAMINATION.

By Mr. Wahab:
Q. I wrote this as you were answering Mr. Taylor. I want to make certain I've got it right.
page 211 }
When he asked you what David Whitehead said to you while you were nursing him regarding the accident as to what he might have seen, is this your correct statement: "That he did not see the other car because he didn't have his lights on?"
A. No, he said he—the only thing he contributed it to is the fact he didn't have lights on.
Q. That who didn't?
A. The other man.
Q. The other car didn't have?

Mr. Taylor: That he did not have them.

A. He said he apparently did not.

By Mr. Wahab:
Q. Your answer when Mr. Taylor asked you was what you were quoting Mr. Whitehead?
A. Yes, sir, it was.
Q. He said what he contributed it to was the other car didn't have lights on?
A. He apparently did not have his lights on.

Mr. Wahab: All right.
Mr. Taylor: Thank you very much. And unless you folks want her we will let her go. Do you have any questions?
Mr. Stant: They are ignoring me. No, thank you.
page 212 }
Mr. Taylor: All right.

John Baillio.

By Mr. Wahab:

Q. Let me ask you one question, Miss Dudley. The word "apparently" would be rather difficult to say with your front teeth knocked out, would it not?

A. Yss, it probably would, I don't know.

The Court: All right, we will adjourn till tomorrow morning at 9:30.

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page 214 } JOHN BAILLIO,

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

DIRECT EXAMINATION.

By Mr. Wahab:

Q. Will you state your name?

A. John Baillio.

Q. And where do you live, John?

A. 403-53rd Street, Virginia Beach.

Q. That is in Virginia Beach?

A. Yes, sir.

Q. Now, John, on the night that this accident happened on August 7th or 8th, did you have occasion to be riding in an automobile on Laskin Road?

A. Yes, sir.

Q. And with whom were you riding in the automobile?

A. Tommy Howard and John K. Fife.

Q. What kind of automobile was that you were riding in?

A. A 1957 Oldsmobile convertible.

Q. Where were you seated?

page 215 } A. In the middle front seat.

Q. And that is the automobile which Tommy Howard was driving?

A. Yes, sir.

Q. And John Fife was seated in the front seat to your right, is that correct?

A. Yes, sir.

Q. And you were in the middle. Now, as you were driving along Laskin Road in which direction were you riding?

John Baillio.

A. We were going to Virginia Beach.
Q. To Virginia Beach?
A. Yes, sir.
Q. Where had you been?
A. To the all star football game.
Q. That was in Norfolk, was it not?
A. Yes, sir.
Q. Now, while you were traveling east on Laskin Road did you have occasion to observe a 1959 Chrysler automobile?
A. Yes, sir.
Q. And where was that that you noticed the '59 Chrysler?
A. It was somewhere between Linkhorn Park School by the playground and the Thunderbird Bowling Alley; page 216 } somewhere in between there.
Q. Somewhere in between there?
A. Yes, sir.
Q. I see. Now, at the time you noticed this 1959 Chrysler, how fast was the car going in which you were riding, if you know?
A. 55 miles an hour or close to it, 50 or 55.
Q. It was going 50 to 55?
A. Yes, sir.
Q. Now, did you take notice of this Chrysler as it passed the car in which you were riding?
A. Yes, I had looked over at it.
Q. Can you tell us the speed as it passed?
A. It was going about five miles an hour faster than we were.
Q. And you were going about 50 to 55?
A. Yes, sir.
Q. And after this automobile passed you, John, did you continue to observe it?
A. Well, I could notice the headlights as they were going up the road. I really wasn't paying much attention to it.
Q. The car in which you were riding proceeded to follow the car up the road?
A. Yes, sir.
page 217 } Q. And did the taillights on that car ever get out of your vision?
A. No, sir, I don't think they did.
Q. In other words the entire time you could see the taillights which was traveling ahead of you?
A. Yes, sir.
Q. All right. Now, as you approached the bridge there on Laskin Road tell us what happened; what you saw.

John Baillio.

A. Well, I'm not sure whether we were approaching the bridge or on the bridge, or just getting ready to come off of the bridge, but it was somewhere around there. I was really wasn't paying much attention. The taillights were ahead just as they were.

Q. And what did you see them do?

A. They just seemed to just veer for a fraction of a second, sort of twist, and my impression was I thought the car had skidded into the ditch, and then the boy driving said something that it was on fire just a split second after.

Q. The boy driving your car?

A. Yes, sir.

Q. At that instant did you see any other automobile on the road?

A. No, sir, I did not.

Q. You didn't notice any automobile which
page 218 } might have been traveling toward Norfolk at that time?

A. No, sir.

Q. And at that time you were at the bridge?

A. Yes.

Q. Was the road straight at that point?

A. Yes, sir.

Q. Could you see a good distance ahead?

A. I think so.

Q. And you didn't see any other automobile?

A. No, sir.

CROSS EXAMINATION.

By Mr. Stant:

Q. Young man, you state this other car passed you, and you said you were doing about 55 miles an hour, and then you said at least between 50 and 55; is that correct?

A. Yes, sir.

Q. Now, first off let me ask you this. This is your signature, is it not, John?

(Document shown to the witness for examination.)

A. Yes, sir.

Q. Now, you have previously made a statement
page 219 } that the car passed you at approximately the basketball court at Linkhorn Park School, is that correct?

John Baillio.

A. Yes, sir.

Q. Now, the basketball court is right here at Linkhorn—this is Linkhorn Park School, and at that point, young man, you say this other car passed you and began to pull away from you?

A. Yes, sir.

Q. Now, how far ahead of you did this other car—you were going 50 to 55 miles an hour and this car passed you and pulled away from you—how far ahead of you did this car get by the time you got to the bridge; you know where the bridge is?

A. Yes, sir. It got to the American Legion place, but I couldn't tell the distance in feet or in yards.

Q. In other words it pulled away from you to a point before you got to the bridge to the American Legion Club, is that correct?

A. I said before the bridge or on the bridge or just coming off the bridge, because I'm not sure.

Q. Well, now, young man, where were you when you saw the fire in the car?

A. I was sitting in the middle front seat.

Q. No, where were you in relationship to the road, if you remember; and I know it's hard—

page 220 } A. To the road?

Q. —to remember.

A. Well, like I said, my first impression was that the car had just slid into the ditch or something like that, and I didn't really notice the fire right off. And then this boy riding, the boy driving yelled something that "I think that car is on fire."

Q. Now, young man, were there four or five cars that passed you on this side of the street as you came from the basketball court down toward the bridge?

A. What was that?

Q. Were there four or five cars going in the opposite direction going toward Norfolk as you came in the direction toward the bridge?

A. I haven't any idea whether there were or not.

Q. You really wasn't paying too much attention?

A. No, sir, I wasn't paying too much attention.

Q. But you know this car passed you, pulled on away, and the taillights got dimmer and dimmer, did they not?

A. They went away. I mean they got farther away.

Q. In other words the taillights from the Chrysler that was

in the accident after he passed you, that taillight pulled further and further away?

page 221 } A. Yes, sir.

Q. And then as it pulled away from you, as you came to the bridge the accident occurred up at the American Legion Club, isn't that about correct, son?

A. Yes, sir.

Mr. Stant: I haven't any other questions.

By Mr. Stant:

Q. Well, just one other question. Did you have occasion to talk to any of the boys in the accident?

A. Yes, sir, I did.

Q. Did you talk to Mr. Whitehead?

A. Yes, sir, I did.

Q. And did you talk to the other boys?

A. I think a couple of them said a few words. I remember Mr. Whitehead said, he asked me to call his mother.

Mr. Stant: All right, I have no further questions.

Mr. Furniss: No questions, your Honor.

RE-DIRECT EXAMINATION.

By Mr. Wahab:

page 222 } Q. John, how many subpoenas did you receive to appear here today?

A. Three.

Q. One from Mr. Stant, one from Mr. Taylor and one from me?

A. Yes, sir.

Mr. Wahab: That's all, come down here.

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page 224 }

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DAVID DUDLEY WHITEHEAD, III,

a defendant, called as a witness on his own behalf, having been previously sworn, was examined and testified as follows:

David Dudley Whitehead, III.

DIRECT EXAMINATION.

By Mr. Wahab:

Q. David, prior to the time this accident occurred in August of last year, tell us something, if you can, about what experience you might have had driving an automobile prior to the time this accident occurred.

page 225 } A. I had driver's training in Blair Junior High School. I had a valid learner's permit at the time I was driving that night, and also had just finished a trip up to New York with my father where I had driven around New York and also back from New York.

Q. And during that time you drove in New York City itself?

A. That's right.

Q. And how much of the driving did you do on that trip to New York?

A. I did, I guess, about 70 miles up, and all the way back.

Q. All the way back. Did you drive through New York City and Norfolk?

A. We came through Baltimore, came through Washington and also Richmond.

Q. And you drove the car the entire time?

A. That's right.

Mr. Wahab: That is all.

CROSS EXAMINATION.

By Mr. Taylor:

Q. Your father was with you at that time, was page 226 } he not?

A. That's right.

Mr. Taylor: All right.

CROSS EXAMINATION.

By Mr. Stant:

Q. Young man, you said you had a valid learner's permit?

A. That's right.

Q. That learner's permit does not allow you to drive in the City of Norfolk, does it, without your parents?

Paul Howard Lambach.

Mr. Wahab: I object to that. Anyone who is a licensed driver who is with him in the car, he can drive the car.

Mr. Stant: He can answer that. I don't know. I have a boy 16 that don't drive. I don't let him. But that is up to the parents. I want to know.

The Court: I sustain his objection to that.

Mr. Stant: All right.

By Mr. Stant:

Q. Now, David, you heard all these folks testify that in the first weeks after the accident the only thing you page 227 } told them is that you saw the car, the Lambach car a split second before the accident, and to none of them did you make the statement that you knew that there was a car without lights. When did you first make up your mind that there was a car without lights on the road?

A. I knew there was a car with no lights on the road that I had hit. I knew that all the time.

Q. Isn't it the truth of the matter that you never saw the automobile until a second before the collision and that you have now tried to change that a little bit to put yourself in a favorable light?

A. No, sir, that is not right.

Q. It is not correct?

A. That is not correct.

Q. And all these people, these young boys who state that you told them only that you saw the car a split second, are your friends, are they not?

A. They are all my friends, yes, sir.

Mr. Stant: I haven't any other questions.

Mr. Wahab: That is all, come down.

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page 228 }

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PAUL HOWARD LAMBACH,

a defendant, called as a witness on his own behalf, having been previously sworn, was examined and testified as follows:

Paul Howard Lambach.

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Mr. Lambach, how did you happen to go down to this Jet Club on the night of this accident?

A. I was returning from the pharmacy, the drug store. On the way home I saw a car which belonged to a man I wanted to talk to who owned the building, that one and several others, and I went in there to talk to him.

page 229 } Q. And who did you see in there that you knew?

A. I saw Mr. Gregory.

Q. And where is Mr. Gregory now, this morning, do you know; or do you know whether or not he has been summons to be here?

A. Yes, he has been summons to be here.

Q. Do you expect him here?

A. Yes.

Q. And between the time that you last saw Mr. Gregory at the Jet Club and the time of the accident how much time elapsed?

A. How much time was I in the Jet Lounge?

Q. Yes, how much time was it between the last time you saw Mr. Gregory and the time of the accident?

A. Oh, a matter of twenty minutes.

Q. Now, I believe you testified to this yesterday; but I will ask you again: Had you had anything whatever of an alcoholic nature to drink on the evening of this accident?

A. No, sir.

Q. You are positive of that?

A. I am positive of that.

Q. Do you remember this lady coming up to your car yesterday, I mean who testified yesterday?

A. I didn't see anyone up there, sir.

page 230 } Q. Beg your pardon?

A. I didn't see any lady at the accident.

Q. Were you conscious or unconscious?

A. Unconscious.

Q. Now, tell me this. What damage was done to your car, was it repairable or not?

A. I didn't see the car, but I understand it was a total loss.

Q. I see. Now, why did you happen to go to the Legion, and if you hadn't gone to the Legion where had you intended to go?

Paul Howard Lambach.

A. I was on my way back home.
Q. Yes. And why did you happen to go to the Legion?
A. Well, I wanted to go with Mr. John and Mr. Gregory.
Q. Who suggested it?
A. I believe Mr. Gregory brought it up in our conversation.
Q. Now, Mr. Lambach, at the time—you testified yesterday that as you approached this intersection you saw the car which turned out to be the Whitehead car coming from the west towards the intersection. Where were you at the time you first saw that car with reference to the Virginia Beach end of that island?

page 231 } A. That would be about five or six car lengths I would place it.

Q. Away from the end of the island?
A. Yes.
Q. I see.

Mr. Stant: Just for the record, your Honor, might we say that is the east end of the island, is that correct?
Mr. Taylor: That's what I asked.
Mr. Stant: It is the east end of the intersection. That would be the west—
Mr. Wahab: The east end of the Virginia Beach Boulevard.
Mr. Taylor: It is the end of the island nearest Virginia Beach.

A. I know what you mean.

By Mr. Taylor:
Q. And then I believe the next time you noticed him you said you were in your turn?
A. Yes.
Q. And after you saw the car approaching you, or lights approaching you from the west, why did you continue on your way to make the turn?

Mr. Stant: Excuse me, your Honor. If this is

page 232 } a witness I want him out of here. I don't know whether he is or not.

Mr. Furniss: He is not in this case, Judge.
Mr. Taylor: Mr. Jaime, would you read that question, please?

Paul Howard Lambach.

(The reporter read the last question.)

By Mr. Taylor:

Q. All right, answer that, please?

A. I saw the lights. I determined that they were well out of my range. I was going into my turn then. I assured myself I had plenty of room to make the turn to go across.

Q. Why—how do you account for not getting across and completing your turn before you were hit? I mean how do you account for being hit before you completed your turn—and I wish to strike out that other question.

A. Because of the tremendous rate of speed this car was coming at me.

Q. Was there anything when you saw the headlights approaching you to indicate to you that that car was traveling at an abnormal speed?

Mr. Stant: If it please your Honor, I hate to
page 233 } object but these are leading questions. All this gentleman has to say is yes or no.

Mr. Taylor: I withdraw the question.

Mr. Stant: He is Mr. Taylor's witness.

By Mr. Taylor:

Q. When you saw this car coming towards you at that distance up the road there were you able to determine its speed?

A. No.

Q. What is your answer to that?

A. No.

Q. All right. You see the court reporter here. You shake your head. Now, there has been some testimony here that your lights were not on. Were they or were they not on?

A. My lights were on.

Q. When did you turn them on?

A. I turned them on when I left downtown with Mr. Bailey.

Q. At the time the plaintiff got in your car?

A. Yes.

Q. In what mechanical condition was your car?

A. My car was in perfect mechanical condition.

page 234 } Q. What model car was it?

A. A '57 Dodge.

Q. A Dodge. And what, if any, signals did you give in-

Paul Howard Lambach.

dicating that you were going to make a left turn?

A. My turn signal.

Q. And how far back were you, do you think, when you put them on?

A. The same distance I saw this car, I'd say.

Q. Well, that doesn't answer the question. I asked you about how far back from the intersection were you when you put your signals on?

A. At least six car lengths.

Q. I see. Now, after you got up there to the intersection and having seen these other cars approaching to what was your attention directed after you started to make your turn?

A. Where I was going.

Q. Well, where were you going?

A. I was going up into the Legion, up to the road into the Legion.

Q. Is that a wide or narrow opening there?

A. It is a narrow sharp turn, a very sharp turn.

Q. Were you particularly familiar with that turn going in there?

A. No.

page 235 } Q. All right, just one minute. Do you know about how far this line here is from the scene of the accident?

A. Yes.

Q. How far?

A. About two-tenths of a mile.

Q. How far is Bird Neck Point from the scene of the accident?

A. That is about four-tenths of a mile back of me, behind me, behind my line of travel, four or five-tenths of a mile.

Q. Now, Mr. Lambach, from the time that you started from Virginia Beach until the time you got up to the accident what, if any, protest did Mr. Bailey make to your manner of driving?

A. None.

Mr. Stant: There is no evidence that there was any necessity for any protest.

Mr. Taylor: I'm just asking that for the record. It's proper.

The Court: I think it is proper.

Mr. Taylor: That's all, thank you.

Paul Howard Lambach.

page 236 } CROSS EXAMINATION.

By Mr. Stant:

Q. Mr. Lambach, you are a pilot, and when we fly we estimate the rate of closure between various aircraft when you are going into a landing pattern and things like that, do you not?

A. Yes, sir.

Q. And at night also, as you come into a landing pattern you have occasion to see the lights on aircraft and you attempt to measure the distance that your aircraft is behind another aircraft on landing and things like that, do you not?

A. Yes, sir.

Q. Now, you said about four or five car lengths from this intersection here (indicating) you saw a car down here (indicating) some distance with lights on, correct?

A. Yes.

Q. Now, as you approached, as you came—and this car proceeded, there is a rate of closure there that is very much like the closure that would occur between aircrafts coming to a collision course, is it not?

A. Yes.

Q. Now, why then can't you estimate the speed with which you and this other automobile were closing the
page 237 } gap between you?

A. Well, it was night.

Q. Pardon?

A. It was at night.

Q. Well, let—

A. I can't judge the speed of light traveling at you at night.

Q. I see. Now, Mr. Lambach, let me ask you this. The bridge, however, has railings, does it not? You can distinguish this bridge as you look down and see a car closing on that bridge; you can at least distinguish the rate of closure there, can you not?

A. If those railings are close to where the car is passing; but they are a considerable distance out and the car lights wouldn't light up those railings of the bridge, I'm sure. It's not a high bridge or anything, it is just—

Q. You have been driving how many years?

A. I have been driving now twenty years.

Q. And from the point where you first saw this automobile

Paul Howard Lambach.

to the point of the accident can you give us an estimate of the speed of that automobile in closing that distance?

A. No.

Q. And yet in spite of the fact that you saw this car and in spite of the fact that you were in a place of safety and regardless of the speed that he was coming down this road you attempted to make this turn across here and to go into the American Legion; is that correct?

page 238

A. Yes.

Mr. Stant: I haven't any other questions.

RE-DIRECT EXAMINATION.

By Mr. Taylor:

Q. Why did you try to make the turn at that time?

A. Because I had enough room to make the turn; there was nothing to bother my turn at all. The car was well down the road from me, well out of my range.

Q. And I believe you explained the reason why you did not complete the turn. Now, do you know the approximate length of a car?

A. Yes, sir.

Q. How much?

A. 12 feet, I'd say.

Q. 12 feet. Well, is that from the front wheels to the rear wheels or from the front bumper to the rear bumper?

page 239

A. From the front bumper to the rear bumper.

Q. Well, now, get down there and step off 12 feet, please?

A. (Witness complied).

Q. Now, your car is about that length, you think?

A. Yes, sir.

Q. What is it, a four-door?

A. A two-door sedan.

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

CROSS EXAMINATION.

By Mr. Wahab:

Q. Your automobile is a '57 Dodge, is that correct?

A. Yes, sir.

Paul Howard Lambach.

Q. It is an average size car, it is not one of those small compact cars?

A. No.

Q. A car would be more like 17 or 18 feet long, wouldn't it?

A. You want me to get a pencil and figure it

page 240 } out?

Q. No, I don't think that is necessary. You testified that you were down at the Jet Lounge yesterday and there was some conversation as to whether the two of you or the three of you would go to the American Legion Club or go out to the club at Oceana, is that correct?

A. That is correct.

Q. What was your purpose of going to one of the two places?

A. My purpose of going out to the Oceana Club was because I would like to have gone out there.

Q. For what purpose? You testified yesterday you just wanted to go to look it over.

A. If I had met some friends and I would like to take them someplace, I want to take them to a nice place.

Q. What were you going to do when you got there?

Mr. Stant: Now, your Honor, this is a continuing objection on my part.

Mr. Furniss: We wish to object.

The Court: All right.

The Witness: Has this been objected to?

The Court: No, go ahead.

A. The only reason I wanted to go out there was a social contact.

page 241 } By Mr. Wahab:

Q. I am looking at my notes of yesterday, and one of the first questions Mr. Stant asked you when you were called as an adverse witness yesterday, he asked when you first saw the Whitehead car, and your answer was, if I am stating it correctly, you said that you were well into your turn when you first saw the car. Isn't that what the first question was asked you?

A. I don't recall.

Q. Can you recall answering in that manner, that you were well in your turn when you first saw the car?

A. (Pause) No, the first time I saw a car was down on the other side of the bridge.

Quentin Owens.

Q. You don't recall making that statement yesterday; is that right?
A. No.

Mr. Wahab: All right, that's all.
Mr. Taylor: Let me ask you one more question.

RE-DIRECT EXAMINATION.

By Mr. Taylor:
Q. Did you receive any head injury in this
page 242 } accident?
A. Yes, sir.
Q. How long were you unconscious?
A. Two weeks.
Q. Have you actively flown a plane since the accident at the controls?
A. No.

Mr. Taylor: All right, thank you.

RE-CROSS EXAMINATION.

By Mr. Wahab:
Q. Have you driven an automobile since the accident?
A. Yes, sir.

Mr. Wahab: That's all.

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page 244 }

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

DIRECT EXAMINATION.

By Mr. Furniss:
Q. Mr. Owens, I want to direct your attention to the even-

Quentin Owens.

ing of August 7th, 1959, sir. Did you have occasion on that evening to talk to Paul Lambach?

A. Yes, sir, I did.

Q. Where did that conversation take place?

page 245 } A. This occurred on the corner of 26th and Atlantic Avenue in Virginia Beach.

Q. And what time of the evening was it?

A. I would say between 11:45 and midnight.

Q. And for approximately how long for a period of time did you talk to him?

A. (Pause) I would say from about three to five minutes, sir.

Q. During that conversation you observed Mr. Lambach?

A. Yes, sir, I did. He talked to me and my wife.

Q. And did you notice the odor of alcohol on his breath?

A. No, sir, none whatsoever.

Q. Did he otherwise conduct himself and speak in an abnormal fashion at all?

A. No, sir, there was nothing abnormal about his manner at all. He talked to my wife, oh, two minutes or so and was very congenial and in no way did he act in any manner out of place.

Q. From your impression of speaking to him that evening could you say whether in your opinion he had been drinking or was sober?

page 246 } Mr. Stant: I want to note my exception, and I'm caught between two people. I want to object to this gentleman giving an opinion. Number one, I don't think it is proper; and number two, if it please your Honor, there has been no evidence of any intoxication at all, and I don't think it enters into this case, and that is my objection to it, your Honor. And I want it noted.

The Court: I overrule your objection.

By Mr. Furniss:

Q. Would you answer the question?

A. Would you mind repeating that?

Q. From your overall observation and discussion with him, could you tell us whether it appeared to you that he had had anything to drink or was he sober?

A. I would say Paul was definitely sober.

Mr. Furniss: That is all.

Quentin Owens.

By Mr. Furniss:

Q. In your discussion with him, that is, as you were talking with him that evening were you close enough to have been able to tell whether he had been drinking?

A. I would say, yes, sir.

Mr. Furniss: That is all.

page 247 } CROSS EXAMINATION.

By Mr. Wahab:

Q. Mr. Owens, you say it was about a quarter to twelve or twelve o'clock when you talked to Mr. Lambach, is that correct?

A. Yes, sir.

Q. And you say you were at 24th and Atlantic?

A. No, sir, I didn't.

Q. Where did you say?

A. 26th and Atlantic.

Q. 26th and Atlantic. Were you in a place of business or on the sidewalk?

A. I was on the street, sir.

Q. On the street talking with him?

A. Yes, sir.

Q. What was the occasion of your being there talking with him?

A. My occasion for being there was I met friends at that corner who had previously returned to my shop which we were going to trim the window at the Esquire Shop. I don't know Paul's occasion for being there, but he came across the street and talked to me.

Q. Do you know where he came from?

A. (Pause) Approximately I would say that page 248 } he came from the direction of the Jet Lounge. It could have been from the parking lot or it could have been from the Jet Lounge.

Q. He came from the direction of the Jet Lounge, is that correct?

A. Yes, sir, that is true.

Mr. Wahab: That's all.

CROSS EXAMINATION.

By Mr. Stant:

Q. What is your occupation?

James K. Gregory.

A. Owner and manager of the Esquire Men's Shop at Atlantic and 25th Street, Virginia Beach.

Q. And how long have you known Mr. Lambach?

A. Sir, that goes back to cadet days in 1944, when we were in the service and ran into each other at that time. You must take into consideration that we have been separated, oh, from about 1946 to 1954, and which Paul and I have been back together seeing each other occasionally when his job allows him to be in the city of Virginia Beach.

Mr. Stant: Thank you, sir, I have no other questions.

* * * * *

page 249 }

* * * * *

JAMES K. GREGORY,

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

DIRECT EXAMINATION.

By Mr. Furniss:

Q. Will you please state your name and address?

A. James K. Gregory.

Q. Where do you live, sir?

page 250 } A. Virginia Beach.

Q. Do you know John Bailey here?

A. Yes, I do.

Q. Have you known him for some time?

A. Johnny, yes.

Q. And are you acquainted with Mr. Lambach over there?

A. I am, yes.

Q. I want to call your attention specifically to the evening of August the 7th, 1959. On that evening did you have occasion to see Mr. Bailey?

A. Yes, he was living with me at that time.

Q. And on that evening did there come a time when you and he went out to have something to eat?

A. That's right.

Q. And about what time was that?

A. Around 11:30.

James K. Gregory.

Q. Where were you then?
A. Where did we eat?
Q. Yes.
A. At the Jet Lounge.
Q. About how long would you say you were at the Jet Lounge with Mr. Bailey?
A. Thirty, maybe thirty minutes or forty-five
page 251 } minutes.
Q. And on that evening at that same place did there come a time when you saw Mr. Lambach?
A. Yes, he came in while we were eating.
Q. And about how long would you say you were there with Mr. Lambach and Mr. Bailey before you left?
A. Well, I didn't leave with them. He came in about a quarter to twelve while we were having something to eat.
Q. About how long would you say he was there before he left?
A. Well, at twelve o'clock or shortly before or close to it, right around twelve.
Q. Were you with Mr. Bailey and Mr. Lambach during that period of time while Mr. Lambach was there in the Jet Lounge?
A. Yes, sir, he joined us while we were sitting down and he was standing.
Q. During that time did Mr. Lambach have anything to drink?
A. Not to my knowledge; no.
Q. Well, was he in your presence all the time that he was there?
A. Yes.
Q. And you say they left there about midnight?
A. About twelve o'clock.
page 252 } Q. Do you know where they were going?
A. Maybe to the American Legion or to the Officer's Club at Oceana. I wasn't sure.
Q. Were you going to meet them anywhere later on?
A. Well, I thought maybe they would come by the house and pick me up. I was driving a company truck; but they didn't do it. I went home.
Q. And at the time you saw Mr. Lambach in the restaurant did you have a conversation with him; did you talk to him?
A. Paul? Yes, sir, I did. I believe he said he had been to the drug store and bought some medicine and was going home.

James K. Gregory.

Q. And was there any odor of alcohol on his breath at that time?

A. No, not that I could smell.

Q. Was there anything about his actions, the way he talked or walked or did anything that was unusual?

A. No, he talked normal.

Q. From your observation of him at that time did he appear to have been drinking or was he sober?

A. I would say sober.

Mr. Furniss: That is all. Answer one of these gentlemen.

page 253 } CROSS EXAMINATION.

By Mr. Wahab:

Q. Mr. Gregory, you said it was about 11:30 when you arrived at the Jet Lounge, is that correct?

A. That is correct, yes, sir.

Q. And Mr. Bailey and Mr. Lambach were already in the Jet Lounge?

A. No, Johnny and I went down there together.

Q. You went there together?

A. Yes. And this Paul Lambach came in while we were there.

Q. He was already there in the Jet Lounge?

A. Paul? No, no, sir, he came in while we were there.

Q. He came in while you all were there?

A. That's right.

Q. And did you know him before that time?

A. Oh, yes, for some time.

Q. And you all became engaged in conversation then, is that right?

A. That's right, he came up to us and talked. I introduced him to Johnny and—

Q. And you all had some conversation about where you would go after you left the Jet Lounge?

page 254 } A. Well, we were talking and we mentioned the clubs and so forth.

Q. And they stopped selling beer at the Jet Lounge at that time?

A. At twelve o'clock they had.

Q. And then you left?

A. We left, yes.

Q. You left when they stopped selling beer?

James K. Gregory.

A. Well, we were eating, not necessarily on account of that.

Q. Did you all have anything to drink?

A. I had a beer before I ate; I believe Johnny did too.

Q. Where were you supposed to meet them later?

A. Well, I wasn't going to meet them. I went home and I thought they would pick me up there. I was driving a company truck of Atlantic Cleaners.

Q. While the three of you were together at the Jet Lounge there was a discussion about leaving and meeting somewhere else, was there not?

A. Well, no, now, not definitely.

Q. Didn't I understand you to say there was a conversation about going to the American Legion Club or Officer's Club?

A. While we were eating we were talking about
page 255 } the different clubs and so forth.

Q. What was your purpose in going to one of these clubs?

A. Well, just to carry on a conversation.

Mr. Furniss: For the record we want to show an objection to that question.

The Court : All right, sir.

A. You see, we were in company, us three together, and we were talking and we just decided that maybe we might want to talk somewhere some more.

By Mr. Wahab:

Q. The only purpose of going was to catch up on your conversation?

A. That's right.

Mr. Wahab: Thank you, Mr. Gregory.

Mr. Furniss: No further questions, your Honor.

* * * * *

page 258 }

* * * * *

Mr. Taylor: Counsel for the defendant Lambach excepts to the action of the Court in denying our motion that counsel for Whitehead be precluded from arguing to the jury any-

thing about drinking on the part of Lambach on the ground that there is no evidence of a probative value that Lambach was drinking. The only evidence from the defendant Whitehead to the effect that Lambach was drinking was from one of Whitehead's witnesses who testified that she got within three feet of Lambach while he was in the car page 259 } and at that time smelled the odor of alcohol. She could not say that that odor of alcohol came from the breath of Lambach or whether it came from the breath of Bailey, the plaintiff, who had previously been in the car and had just been thrown out of the car. And even if there were evidence of probative value to the effect that Lambach had been drinking there is no evidence at all to the effect that he was drinking to the extent that it in anyway affected his faculties or in anyway proximately contributed to the accident.

Mr. Stant: Counsel for the plaintiff also joins in that exception.

Mr. Taylor: Both counsel for the plaintiff and counsel for the defendant Lambach except to the Court's action in this respect in allowing Mr. Wahab to make any reference whatever to his arguing drinking on the part of Lambach for the reasons stated above, and we reiterate our exception to the ruling of the Court in not declaring a mistrial.

Mr. Stant: I don't want a mistrial.

page 260 } Mr. Taylor: And counsel for the defendant Lambach reiterates his exception to the ruling of the Court in not declaring a mistrial after the evidence was in simply to the effect that Whitehead's witness smelled alcohol in the car, and also the Court should have declared a mistrial after any mention was made of Lambach drinking, alleged drinking.

Counsel for the defendant Lambach excepts to the ruling of the Court in refusing to grant Instruction II on the ground that there is plenty of evidence to show that defendant Whitehead was exceeding the speed limit, and I think the place where this accident happened would be considered as an intersection, because there is a paved road leading from the American Legion Club into the Virginia Beach Boulevard where this accident happened. And the law is quite clear that anyone who exceeds a lawful speed limit forfeits the right of way.

Counsel for the defendant Lambach excepts to the action of the Court in refusing his Instruction IX on the page 261 } ground that had the defendant Whitehead been keeping a proper lookout he could easily have discovered the peril of defendant Lambach or certainly by the

exercise of reasonable care Whitehead could have discovered the peril of Lambach, and the question as to whether or not Whitehead had an opportunity to have avoided the accident after he should have discovered Lambach's peril should have been submitted to the jury.

This is all the more true because the defendant Lambach was in an obvious position of peril from which he could not extricate himself, and the test is, under the last clear chance doctrine, not whether or not Whitehead saw the defendant in time to avoid the accident, but whether or not he should have seen defendant Lambach in time to have reasonably avoided the accident, because Lambach was in a position of peril from which he could not extricate himself.

The recent Virginia case of ..... v. *Greer* is authority for the position of counsel for Lambach.

page 262 } Counsel for the defendant Lambach excepts to the action of the Court in refusing to grant Lambach's Instruction X on the ground that the law is well settled that where a person comes up to an intersection or a turning point and sees traffic that is of sufficient distance away as to lead a person of ordinary prudence to believe that he could make the turn in safety, he has the right to proceed with his turn.

The case of *Umberger against Coop,* decided by the Supreme Court of Appeals of Virginia is authority for this proposition of law.

Counsel for the defendant Lambach excepts to the action of the Court in not granting its Instruction XI on the ground that it properly and correctly sets forth the law and is applicable to the facts in this case, and its instruction is based on Virginia law. The exact citation of the case on which this instruction is based is not available to counsel at this time.

page 263 } Counsel for the defendant Lambach excepts to the action of the Court in refusing to grant Instruction XII on the ground that it properly sets forth the law applicable to the case.

Lambach testified that as he approached this intersection he saw lights on automobiles approaching him from the west and at a sufficient distance as to lead him to believe that he could cross or make the turn in safety. He stated that at the distance these lights were from him he could not judge the speed of the car but he thought that they were of sufficient distance away to allow him to make the turn in reasonable safety, and due to the unexpected and excessive speed of defendant Whitehead he was unable to complete the turn before being struck.

The position of counsel for Lambach in this connection is that if Lambach were guilty of any negligence at all it consisted only of misjudging the speed of the approaching car of the defendant Whitehead or misjudging the distance. The Whitehead car was away from him at the time he observed it, and certainly the law did not require Lambach to keep a continuous lookout for this approaching page 264 } vehicle after he had determined in his own mind that the car was far enough away for him to make the turn in reasonable safety.

Counsel for the defendant Lambach excepts to the action of the Court in refusing its Instruction XIII on the ground that the instruction properly sets forth the law; and counsel for defendant Lambach adopts the language used in excepting to the action of the Court in refusing Lambach's Instruction XII insofar as the same is applicable to this instruction.

Counsel for defendant Lambach excepts to the action of the Court in refusing Lambach's Instruction XIVA on the ground that the Supreme Court of Appeals of Virginia has said time and time again that mere inadvertance, lack of attention or failure to skillfully operate an automobile does not constitute gross negligence, and if the Defendant Lambach were guilty of any acts of omission or commission it simply consisted of his failure to operate his car skillfully or to inadvertance or lack of attention.

I want to except to the action of the Court in page 265 } refusing Instruction XIV in view of the fact that there was evidence by the defendant Whitehead to the effect that the defendant Lambach made a sharp or short left-turn and the jury in the absence of that instruction could easily conclude that Lambach was making an improper turn.

(The Court and counsel whereupon returned into the Court room; the Court read the instructions to the jury; counsel for the respective sides made their arguments to the jury after which the jury retired into the jury room to consider their verdict and returned with the following:) "We, the jury, find for the plaintiff against both defendants Whitehead and Lamback as charged; ordinary negligence in the case of Whitehead and gross negligence in the case of Lamback, and set the damages at the sum of twenty-seven thousand, five hundred dollars ($27,500.00).

(Signed) JUSTUS P. WHITE,
Foreman."

* * * * *

STIPULATION #3.

Bailey *v.* Whitehead.

3/16/60.

H. W. M.

My name is Thomas W. Howard. I am 17 years old and live at 104 Holladay Rd.—Virginia Beach. On Friday, August 7 at about midnight I was driving East on Laskin Rd. (Rt 58). In the car with me was Jay Fyfe—Ralph Love—Ray Colony and Bruddy Bailloe, 53rd St Va Beach. When I was about up to Linkhorn Park School I was driving about 55 mph in the right or outside lane. I passed a white Rambler around the bowling alley. Then when opposite the school a Chrysler passed me on my left. I think the Chrysler was going 60 or 65 mph. I maintained a speed of about 55 and the taillights of the Chrysler were going away from me and were getting dimmer. When I got to the bridge I saw the tail lights on the Chrysler go out and an instant later I saw the underside of the Chrysler that had passed me. I slowed down and stopped my car. All of us got out. The Chrysler was lying on its left side. —Jay—Bruddy—myself and some man who spoke with an Italian accent set the Chrysler on it's wheels. When the Chrysler lay on its side it lay at approximately a 60° angle to the curb and next to a triangle. I did not see the headlights of the Dodge involved in this collision and did not see the Dodge at all before impact. I did not hear the crash. Stanley "Sandy" Cunningham, who was with Luida Snow arrived on the scene very quickly after we got there. After that a number of people arrived at the scene.

STIPULATION #4.

Bailey *v.* Whitehead.

3/16/60.

H. W. M.

Virginia Beach, Virginia
August 20, 1959
9:20 A. M.

I am THOMAS W. HOWARD, III, age 17, white male, single, and reside at 104 Holladay Road in Virginia Beach, Virginia. On August 7th, 1959, at about 12:00 midnight, or slightly before, I was driving my father's 1957 Oldsmobile East on Laskin Road in Virginia Beach, or rather about one mile West of Virginia Beach City limits. We had attended a football game that evening and were on the way home. Seated beside me was Buddy Bailloe of 403 53rd Street, and beside him on the front seat was Jay Fyfe who lives on Roft Lane in Bay Colony. As we neared the American Legion Club, and were perhaps one mile West of it, I was passed by a 1959 Chrysler. At that time I was traveling at a speed of approximately fifty-five miles an hour. I would estimate that the Chrysler was traveling about sixty or sixty-five miles an hour when he passed. I maintained my speed at fifty-five miles an hour after the Chrysler had passed my car, but the Chrysler was still pulling away, easily traveling in excess of the posted speed limit. I watched the tail lights of the Chrysler gradually growing dimmer as the distance between us widened. Finally, I lost sight of the tail lights. I continued Eastward, and after a short duration of time, I noticed a light ahead, on the road. Upon approaching closer I saw that it was an overturned car, on fire. The car was lying on its left side, facing Southeast, in the outside Eastbound lane of Laskin Road. The front third of the vehicle was up upon the curb which extends along the South side of the road. I stopped my car, and we got out and ran over to the Chrysler. There were four boys in the Chrysler. I noticed another man come up about that time. I do not know his identity, but he helped us turn the Chrysler upright and extract the four boys. We laid the four boys down on the grass along the side of the road. James Cunningham, of 210 Oriole Road, had also stopped when he saw the scene,and had helped us upright the Chrysler. I noticed the other vehicle, a Dodge sedan, upright, facing Northwest in the inside Eastbound lane of Laskin Road, about one hundred feet East of the where the Chrysler had come to rest. I went over to the Dodge later, and found one man inside. I understand there had been another person in the Dodge, but someone must have gotten him out before I went over to the vehicle. We stayed there until the police and emergency rescue squad arrived. The police asked me for my name and address, but did not question me. I did not look to see if the Chrysler had left any skid marks. I did not detect the odor of alcohol on any of the occupants in the Chrysler, although I was close to them and even attempted to see if anyone had the odor of alcohol upon their person. Actually I cannot estimate the speed of

the Chrysler when the collision took place, nor relate the actions of the two drivers, for I was not upon the scene until the accident had already occurred.

STIPULATION #5.

Bailey *v.* Whitehead.

3/16/60.

H. W. M.

8-12-59.

I am Thomas W. Howard, age 17, of 104 Holladay Rd., Virginia Beach, Va. On Aug 7, 1959 at about 11:45 P. M. I was driving my fathers car east on Laskin Rd. I do not remember whether I stopped for the light at Hilltop. When I was about at the playground on the west side of the Linkhorn Park School I was in the right hand lane going about 55 M. P. M. when a Chrysler passed me in the left lane. I had passed a Nash rambler about at the bowling alleys & there was no other traffic, other than these three cars, headed east. At the time the Chrysler passed me he was doing about 60 or 65 M. P. H. When he passed, I did not notice which lane he drove in afterwards. It must have been foggy for the taillights of the Chrysler pulled away & then disappeared. As I approached the bridge, I saw the bottom chasis of a car & saw flames coming from it. I stopped, went to it, and found the Chrysler that had passed me, turned on its left side. It was on the curb to the right hand side of the road. I did not see the collision & I did not hear it. The other car in the accident was down the road, east of the Chrysler, in the left lane of eastbound traffic & touching the island. It was facing north with its front touching the island. I did not hear anyone say anything about what had happened. They were all complaining of injuries. I did not see the Dodge or its headlights before the accident. I tried to smell alcohol on Lambeck & on one of the fellows in the back seat of the Chrysler, but I did not smell any alcohol.

Refused to sign.

Wit: R. M. Furniss

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Instructions	2, 146
Order—March 17, 1960	12
Order—March 30, 1960	12
Notice of Appeal and Assignment of Errors	13
Witnesses:	
John K. Fyfe, Jr.	15
Leonard Capps	23
Paul Howard Lambach	36, 131
David Dudley Whitehead, III	56, 129
Ray McLaughlin	76
Frank Thomas Slaughter	81
William E. Bobbitt	85
John Bailey	93
Mrs. Robert Reynolds	104
Mary Ann Pate	113
Mary Dudley	122
John Baillio	125
Quentin Owens	139
James K. Gregory	142
Proceedings	106, 112, 145, 148
Stipulations	149