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Record No. 6140

In the
Supreme Court of Appeals of Virginia
at Richmond

MAY SPEED SEXTON

v.

WILLIAM A. STROMAN

FROM THE CIRCUIT COURT OF MADISON COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 6140

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 11th day of May, 1965.

MAY SPEED SEXTON, Plaintiff in Error,

against

WILLIAM A. STROMAN, Defendant in Error.

From the Circuit Court of Madison County
Lyttelton Waddell, Judge

Upon the petition of May Speed Sexton a writ of error was awarded her by one of the Justices of the Supreme Court of Appeals on May 10, 1965, to a judgment rendered by the Circuit Court of Madison County on the 7th day of December, 1964, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and William A. Stroman was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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ORDER.

On June 26, 1964 came the parties both plaintiff and defendant, as well as counsel for both plaintiff and defendant, and the issues in the case being joined, and the parties by counsel having announced that they were ready for trial, came a jury, a panel of thirteen (13), being duly selected by lot from the regular jury summoned for this term of Court, who were examined by the Court and counsel for the plaintiff and found to be free from all legal objections or exceptions, and qualified to serve as jurors in this case; and thereupon counsel for the parties, beginning with counsel for the plaintiff, alternately struck off one (1) from the thirteen (13) so chosen and qualified until the number was reduced to the following seven (7) jurors, to-wit: Randolph Dixon, Mayo C. Berry, Wharton Aylor, R. S. Graves, Jr., Rixey Carpenter, W. Stewart Miller and Culton Goodall, against whom no legal objection was made or found, and who were duly sworn to well and truly try the issues joined and a true verdict render according to the law and the evidence.

Thereupon, the jury heard the evidence for the plaintiff and the evidence for the defendant, and the Court and counsel met to consider the instructions of law to be given page 35 } to the jury, out of the presence of the jury; and after consideration of the instructions the Court approved certain instructions to be given to the jury and refused a number of instructions offered on behalf of the defendant, to which action of the Court counsel for the defendant duly excepted; and after consideration and approval of instructions by the Court the plaintiff by counsel moved the Court to direct a verdict in favor of the plaintiff on the question of liability, which motion the Court refused to grant, and the plaintiff by counsel excepted to the ruling of the Court. And it being late in the day, the case was adjourned until Saturday, June 27, 1964, which was the following day, at 9:30 A. M.

And on June 27, 1964, at 9:30 A. M., again came the parties, both plaintiff and defendant, as well as counsel for the plaintiff and defendant, and came also the jury sworn on June 26, 1964, to try the issues in this case, and thereupon the jury heard the instructions of the Court and argument of counsel and retired to their jury room to consider of their verdict. And after a time the jury returned into open Court and rendered their verdict in the following words:

"We, the jury, find in favor of the defendant.

"Signed: MAYO C. BERRY, Foreman"

And upon being questioned by the Court the jury indicated that so said they all as to said verdict, and there being no objection to the form of the verdict, the Court ordered that the verdict be recorded and the jury was thereupon discharged.

Whereupon, the plaintiff by counsel moved the Court to set aside the verdict on the ground that it was
page 36 } contrary to the law and the evidence, and further moved the Court to order a new trial of the case.

The Court thereupon granted a period of twenty (20) days to counsel for the plaintiff for obtaining the transcript of the record and for filing the grounds for their motion.

And the Court having been subsequently advised that the Court Reporter could not have the transcript available within twenty (20) days, the Court doth now continue this case pending receipt of the transcript, plaintiff's grounds for his motion and any memoranda which counsel wish to submit and pending further oral argument on plaintiff's motion.

And this case is further continued pending further action of this Court.

Entered this 31st day of August, 1964.

LYTTELTON WADDELL, Judge.

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ORDER.

This case came on this day to be heard again upon the motion of the plaintiff to set aside the verdict of the jury in this case as being contrary to the law and the evidence, and the motion of the plaintiff for a new trial of this case; and upon the written memoranda of authorities and argument filed with the Court by both the plaintiff and the defendant; and upon oral argument before the Court by counsel for the plaintiff and the defendant on October 12, 1964, and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court, after having examined the transcript of the record of the testimony in the case, and after having read and considered the written memoranda of counsel, and after hearing the oral argument of counsel on October 12, 1964, is of the opinion on the grounds stated orally after arguments of counsel on the motion that the verdict of the jury in this case should not be disturbed or set aside, and the Court doth accordingly ORDER and DIRECT that the motion of the plaintiff to set aside the verdict of the jury as contrary to the law and the evidence, and the plaintiff's motion for a new trial, be, and they are hereby, over-ruled, to which ruling of the Court the plaintiff notes his objection and exception on:

1. the grounds stated in his motion to set aside verdict;
2. the grounds stated in his memorandum in support of the said motion
3. the grounds stated in the argument on the said motion
4. the grounds that the Court did not apply the proper test to the verdict on the motion. The jury verdict can

page 60 } not stand before the Court's finding that the verdict was an injustice to the plaintiff because this implies that fair-minded men on a consideration of all the evidence should have come to one conclusion. On the other hand, the Court having said that there was evidence on which the jury could have found as it did, could not then have also found that the verdict was unjust to the plaintiff. One concept can not co-exist with the other.

The Court doth further ORDER and DIRECT that final judgment on the verdict of the jury is hereby rendered in favor of the defendant, William A. Stroman, and the plaintiff, May Speed Sexton shall take nothing of the defendant, William A. Stroman.

The defendant having prevailed in this case, the plaintiff, May Speed Sexton, shall bear the costs of this action.

Enter.

LYTTELTON WADDELL

Date: Dec. 7, 1964.

We ask for this:

SOMERVILLE, MOORE &
JOYNER
Attorneys at Law
Orange, Virginia, and
HUGH R. ROSS
Attorney at Law
Madison, Virginia
Counsel for defendant
By WALTER MOORE

Seen and excepted to:

ALPHONSE J. AUDET, JR.
Attorney at Law
386 Maple Avenue, East
Vienna, Virginia and
JOHN P. ARNESS
Attorney at Law
800 Colorado Building
Washington, D. C.
Counsel for plaintiff
By ALPHONSE J. AUDET, JR.

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Filed in the Clerk's Office the 25th day of January, 1965.

Teste:

CHARLES J. ROSS, Clerk.

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To Charles J. Ross, Clerk, Circuit Court for the County of Madison, Virginia:

Counsel for the Plaintiff in the above styled case hereby gives Notice of an Appeal from a final judgment entered herein on December 7, 1964.

The said Plaintiff in the above styled suit will apply to the Supreme Court of Appeals of Virginia for a Writ of Error to said judgment, and herewith sets forth his Assignments of Error as follows:

1. The Trial Court erred in overruling the motion of the Plaintiff, May Speed Sexton, to direct a verdict on the question of liability.

2. The Trial Court erred in overruling the motion of the Plaintiff to set aside the verdict as contrary to the law and evidence and for a new trial.

3. The Trial Court erred in failing to set aside the verdict and grant a new trial on the grounds that the jury verdict was contrary to the evidence and without evidence to support it.

4. The Trial Court erred in failing to set aside the verdict of the jury on the grounds that the verdict of the jury is a plain and clear, miscarriage of and deviation from right and justice.

page 62 } 5. The Trial Court erred in failing to set aside the jury verdict when it was of the opinion that the jury verdict was unjust to the Plaintiff.

Dated this 22nd day of January, 1965.

MAY SPEED SEXTON
By Counsel.

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A NARRATIVE OF CERTAIN INCIDENTS OF TRIAL.

COMES now the Plaintiff by counsel and because there was no Court Reporter present to record the proceedings of June 27, 1964, submits to the Court this Narrative of Certain Incidents of Trial in addition and supplementary to those set

forth in prior orders of this Court for the purpose of completing the trial record.

On Saturday, June 27, 1964, at 9:30 A. M., Court reconvened, the jury was impanelled and instructed by the Court. Plaintiff made argument to the jury. Mr. Somerville made part of the closing argument for the Defendant but gave way to Mr. Ross, who closed for the Defendant, arguing the question of liability to the jury.

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The jury retired to the jury room. Sometime later it returned to inquire of the Court whether they could find the Plaintiff negligent upon being advised by the Court that they could not, they again retired to the jury room but returned to announce they could not agree.

The Court then inquired whether there might be a possibility of agreement on further deliberation. Upon the foreman's representation that they might be able to do so, they again retired to the jury room but shortly returned to inquire of the Court whether either party had been charged by the State Trooper.

After being advised by the Court this was not a proper question, that they must consider only the evidence before them, the jury then again retired to the jury room and shortly thereafter returned with their verdict.

The form of the verdict, discharge of the jury and motions of the Plaintiff are more particularly set forth in the prior order of the Court continuing the case for argument on the motions of the Plaintiff.

* * * * *

MAY SPEED SEXTON
By Counsel.

We tender this:

ALPHONSE J. AUDET, JR., and
HOGAN & HARTSON
By JOHN P. ARNESS
Counsel for the Defendant.

Tendered and signed this 3rd day of February 1965.

LYTTELTON WADDELL.

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Filed in the Clerk's Office the 5th day of February, 1965.

Teste:

CHARLES J. ROSS, Clerk.

ASSIGNMENTS OF CROSS-ERROR BY THE DEFENDANT, WILLIAM A. STROMAN.

To the Honorable Lyttelton Waddell, Judge of the Circuit Court of Madison County, Virginia:

The plaintiff in the above styled suit having given notice of an appeal from a final judgment in the above styled case, and having assigned certain errors along with her notice of appeal, the defendant, William A. Stroman, respectfully sets forth his assignments of cross-error, as follows:

1. The trial Court erred in refusing to give certain instructions offered by the defendant, William A. Stroman, to the jury in this case, and the trial Court erred specifically in refusing to give instructions numbered 11, 11 A, 12, 14, 15 and an instruction not numbered by the Court but marked "Refused" by the Court, dealing with the requirements imposed upon the plaintiff driver by Sections 46.1-216, 217, 218 and 220 of the Code of Virginia.

2. The trial Court erred in refusing to instruct the jury as to any contributory negligence on the part of the plaintiff, and in specifically instructing and telling the jury that the plaintiff was not guilty of contributory negligence page 75 } and that they could not find her guilty of any contributory negligence, the Court having taken away from the jury the issue of contributory negligence completely.

3. The trial Court erred in granting instruction numbered 5 offered by the plaintiff over the objection and exception of the defendant, William A. Stroman, on the grounds that there was no evidence in the case to support a finding of excessive speed on the part of the defendant, William A. Stroman.

4. The trial Court erred in giving to the jury instruction

numbered 7 over the objection and exception of the defendant, William A. Stroman, on the grounds that there was no evidence in the case to support the instruction.

Respectfully submitted this 4th day of February, 1965.

WILLIAM A. STROMAN
Defendant.
By WALTER MOORE
Of Counsel.

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

DIRECT EXAMINATION.

By Mr. Audet:

Q. I imagine most of these gentlemen know you, but will you state for the record your name and occupation?

A. Trooper J. T. Oliver, Jr., I am with the Virginia State Police.

Q. Trooper Oliver, were you stationed in this area in 1961?

A. Yes, sir, I was.

Q. Did you have occasion to investigate an accident, which occurred on November 21, 1961, in the vicinity of Brightwood in Madison County?

A. Yes, sir, I did.

page 3 } Q. When you arrived at the scene, Officer, what did you find?

A. When I arrived at the scene, approximately .2 of a mile north of the limits of Brightwood, on Route 29, I observed two vehicles, one a 1962 Ford Sedan, and the other a 1961 Cadilac, with both vehicles parked on the east side of Route 29. A distance behind these vehicles I found some skid marks in the north bound lane of Route 29, and also some glass at the north end of these skid marks.

Q. Well now Trooper, were these skid marks on sort of the Brightwood side of the debris that you found in the road?

J. T. Oliver, Jr.

A. Yes, sir.

Q. They were on the Brightwood side, is that right?

A. Yes, sir.

Q. What were the weather conditions and the condition of the road at that time?

A. The road was straight and I would say level, almost level; the road was dry at the time; there were no defects; the weather was clear, and I arrived there during daylight hours.

Q. Did you determine approximately what time the accident occurred?

A. I arrived at the scene at approximately 4:30; as well as I could determine the accident had occurred at

page 4 } about 3:50 P.M.

Q. Well now, as you travel north from Brightwood what is the visibility to the scene of the accident? Say a driver was driving from Brightwood north on 29 to the scene of the accident, are there any obstructions regarding visibility at all?

A. You come over a slight hill crest coming out of Brightwood and then the road levels off and there is nothing to obstruct visibility to the north.

Q. What is the distance from the crest of that hill to the scene of the accident, approximately?

A. I would say .2 of a mile or slightly more.

Q. Two-tenths of a mile straight clear road with no visibility problem, is that right?

A. Yes, sir.

Q. Did you check any of the equipment in the vehicles?

A. I don't recall checking the equipment right offhand. I normally check it. I have got in my accident pad that neither vehicle had equipment defects.

Q. As a matter of routine investigation do you normally check, as part of your investigation, the brake pedals in these vehicles?

A. Yes, sir, normally I do.

Q. And you reported no defects, is that right?

A. That is correct.

page 5 } Q. Now let's return to the scene of the accident and talk about what you found on the road. You say you found some skid marks, is that correct?

A. Yes, sir.

Q. Was there any rubber actually left on the pavement or was it just an abrasion?

J. T. Oliver, Jr.

A. I guess there probably was some rubber on the road.

Mr. Somerville: I object to the probably unless he knows.
The Court: Just tell what you know.

Q. If you remember.
A. No, sir, there were marks in the road, I couldn't say what they were.
Q. You cannot say what they were?
A. No, sir.
Q. Were they made by tires?
A. I would say yes.
Q. And you have had long experience in looking at what you call skid marks, I presume?
A. Yes, sir.
Q. These were no different from what you usually find, is that correct?
A. That is correct.
Q. How long were these skid marks?
A. There were four different marks, two long
page 6 } ones and two short ones. The two long marks were approximately fifty-four feet in length, and the two short marks were approximately twenty-four feet.
Q. Were they on the north side of the highway—the north bound lane?
A. They were all in the north bound lane, yes, sir.
Q. Was this debris you found—What was the debris incidentally?
A. Glass.
Q. Mostly glass?
A. Yes, sir.
Q. Was there any dirt?
A. I don't recall.
Q. Did you examine the vehicles involved in this collision?
A. I did, sir.
Q. Was there any glass broken in the collision?
A. Yes, sir, there was a headlight—right headlight—broken from the 1961 Cadilac, owned and operated by Mr. Stroman.
Q. Was this headlight clear glass?
A. Yes, sir.
Q. Was that the same type of glass you found just ahead of these skid marks?
A. Yes, sir.
page 7 } Q. What other damage was done to Mr. Stroman's vehicle?

J. T. Oliver, Jr.

A. The front bumper was damaged and the right front headlight.

Q. Is that one of these big, heavy Cadilac bumpers?

A. Yes, sir, it is a '61 Cadilac.

Q. Four door?

A. I don't recall, I have sedan.

Q. So the bumper was damaged, right?

A. Yes, sir.

Q. And the headlight was damaged?

A. Yes, sir.

Q. And was there anything else that you recall?

A. That is all I have, sir.

Q. Did you make an estimate or appraisal of the damage as part of your routine investigation?

A. I estimated the damage to be approximately $100.00.

Q. Was there any damage to the other vehicle involved?

A. The other vehicle was damaged or received damage to the trunk, deck and rear bumper. I estimate that also at approximately $100.00.

Q. So, on one vehicle, this Ford, there was damage to the rear, is that right?

A. Yes, sir.

Q. Did it extend across the rear, if you recall?

A. I believe so. I don't know, there could have
page 8 } been more damage to one side than to the other, I don't recall.

Q. There was damage essentially across the rear of that car, is that correct?

A. Yes, sir.

Q. Did you determine who the driver of that car was?

A. Yes, sir, I found the driver of the 1962 Ford was Mrs. May Speed Sexton.

Q. Would you recognize her now after all this time?

A. Yes, sir, I think so.

Q. Is that this lady here? (Indicating plaintiff)

A. Yes, sir.

Q. Did you determine who the driver of the white Cadilac was?

A. Yes, sir, Mr. William Stroman.

Q. Where was he from?

A. Texas.

Q. Was he from Texas?

A. Yes, sir.

Q. Did he indicate where he had come from that day?

A. Not that I recall.

Q. Did Mrs. Sexton tell you how the accident occurred, if you recall?

A. Mrs. Sexton made a statement, yes.

Mr. Somerville: May I *interupt* to inquire if that was in the presence of the defendant?

page 9 } Q. Would you answer?

A. Yes, sir. I have a statement from each in the presence of each other.

Q. Were these statements taken in the presence of each other? Did they go in your car?

A. Not in my car but on the road.

Q. They were both there with you, is that right?

A. Yes, sir.

Q. And they could hear what each other said?

A. I suppose they could, yes, sir.

Q. What did Mrs. Speed tell you about how the accident occurred?

A. Mrs. Speed told me that the car in front of her was making a left turn and that this car in front of her stopped on the highway; she stated that she stopped and was standing still when something hit her car in the rear.

Q. Did you talk to Mr. Stroman about how the accident occurred?

A. I did.

Q. What did he tell you?

A. Mr. Stroman stated that the Ford, or the other car had passed him and had gotten back into the lane in front of him when the traffic in front of her stopped and that she stopped suddenly and he hit her in the rear.

Q. Did he, or do you recall, tell you that he had
page 10 } seen her brake lights?

A. I don't recall, sir.

Q. Did he tell you how far before the accident scene she had passed him?

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

Q. Do you recall helping Mr. Stroman pull his bumper away from the front of his car so he could move? Do you recall that?

A. No, sir, I could have, I don't recall it though and I didn't make any notes on it.

Q. There wasn't anything wrong with Mr. Stroman's brakes, was there?

J. T. Oliver, Jr.

A. No, sir, not that I can recall.
Q. Your notes don't show any defect with his brakes?
A. No, sir.

The Court: You have been over that once. Let's don't repeat.

Q. Is there anything else about the accident that you recall that will be helpful in determining anything here, Trooper?
A. No, sir, that is about all the information I have on it.

Mr. Audet: Thank you, sir. Your witness.

CROSS EXAMINATION.

By Mr. Somerville:

page 11 } Q. Trooper, do you have the notes you made regarding the accident?
A. Yes, sir.
Q. May I have them a minute?
A. Yes, sir.
Q. Trooper, I believe it has been pretty well established that the accident happened in the vicinity of the Aylor and Blankenbaker homes. Are you familiar with those homes?
A. Yes, sir.
Q. Are you able to tell us with any degree of accuracy how far south, or on the Brightwood side of the entrance of those two homes this accident actually occurred?
A. No, sir, I couldn't say exactly, I didn't make any measurements at all.
Q. You say the vehicles were parked on the east side of the highway when you arrived?
A. Yes, sir.
Q. Was Mrs. Speed in her automobile at the time?
A. As well as I remember Mrs. Speed was sitting in her automobile.
Q. Was Mr. Stroman in or out of his automobile?
A. I believe he was in his automobile but he got out.
Q. Did you see Mrs. Stroman also?
A. Yes, sir.
Q. Did you talk to her?
page 12 } A. Yes, sir.
Q. Was she sitting in the automobile or outside when you arrived?

J. T. Oliver, Jr.

A. As well as I remember she was sitting in the automobile when I arrived.

Q. Now, did you talk with any other witnesses or any other parties regarding this accident?

A. No, sir.

Q. Mrs. Sexton told you that an automobile had been in front of her making a left turn. Where was the left turn being made to?

A. Into the private driveway there going into a residence.

Q. You didn't talk with any of the parties who live there?

A. I may have at the time, I didn't make any notes of it, though and I think if I did discuss it and they had any pertinent information I would have it here.

Q. No-one was there and volunteered any information?

A. No, sir.

Q. With reference to the marks, which you say were on the road, I think the term has been used skid marks?

A. Yes, sir.

Q. I don't want to argue the term, but is it not correct to say skid marks or tire marks? In other words, are
page 13 } you saying—What you mean by skid marks, as you called this, something caused from the application of brakes and the wheels locking and laying down rubber on the road?

A. I would think so, yes, sir.

Q. You aren't indicating that any vehicle was out of control when you say skid marks?

A. No, sir.

Q. You mentioned four marks, two long ones about fifty-four feet, and two short ones of some twenty-feet?

A. Yes, sir.

Q. Can you tell us a little more specifically about where those marks were in the road with reference to one another?

A. The marks, all four were approximately the width of the wheels on an automobile; the two long ones, as well as I remember, were almost straight up the north bound lane of Route 29.

Q. Could you determine where the two long ones ended? Were you able to follow them? Of course you weren't, because the vehicles had been moved?

A. That is right. The two short marks led off from the long ones, I believe to the right. I didn't make any measurement as to how far from the edge of the pavement they were or from the center of the road.

J. T. Oliver, Jr.

Q. Well, which marks, as we go north from
page 14 } Brightwood toward Culpeper, which marks began
first, the long ones or short ones?

A. The long ones, I believe, began—I am sure the long ones began first.

Q. Now, we have then the set of long marks, fifty-four feet, beginning first. Let's take what would have been the left hand wheel closer to the center line, which left hand wheel was closer to the center line, the one laying down the long marks or the one laying down the short marks?

A. I don't recall, sir.

Q. Trooper, were you able to connect these marks with any one or both of the vehicles involved in the accident?

A. No, sir.

Q. Was one of the short marks between the two longer ones?

A. Yes, sir.

Q. Trooper, I don't know that you made a test of this or can you tell us with any degree of certainty how far those marks were on the Brightwood side of Mrs. Blankenbaker's entrance?

A. No, sir, I didn't make a note of that and I didn't measure it and I couldn't say.

Q. Did you leave there, Trooper, before these vehicles left or after they left?

A. No, sir, I do not recall that either, it has
page 15 } been so long ago.

Q. As a matter of fact it has been what? Two and a half years?

A. Yes, sir.

Q. And I suppose you have investigated some other accidents since then?

A. Yes, sir, right many.

Mr. Somerville: That is all.

RE-DIRECT EXAMINATION.

By Mr. Audet:

Q. Trooper, just so it is clear. All these skid marks were on the Brightwood side of the glass you found, is that correct?

A. Yes, sir.

Q. Was there any other accident that occurred at this scene on that day?

May Speed Sexton.

A. Not that I know about, no, sir.

Mr. Audet: I believe that is all.

* * * * *

MRS. MAY SPEED SEXTON,
a witness in her own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Audet:

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Q. Mrs. Sexton, I want to call your attention to November 21, 1961, and ask if you were involved in a collision on that day?
A. I was.
Q. Where were you coming from at that time?
A. I was coming from my home in Charlottesville, I have a home there, too.
Q. Were you born and raised there?
A. I was not born there, I was raised in Charlottesville.
Q. That is where your family lives?
A. That is my home, what I consider my real home.
Q. On this day, on November 21. '61, you tell us you were involved in a collision. Do you recall where that was?
A. Well, it was somewhere near Brightwood, Virginia.
Q. And did you later locate approximately where it was?
A. Yes, I went back with a camera and located it exactly.
Q. And where was it in relation to any residences there?
A. It was just south of the Aylor residence and the Blankenbaker residence; it was just slightly south of where the little dirt road goes up to the two houses.
page 17 } Q. Will you tell these gentlemen here what occurred from the time that you came to Brightwood —got to Brightwood, what occurred after that time?
A. Well, there had been quite a line of cars, I imagine for about five miles before that, and were following some sort of

farm combine at the head of this line; I don't know how many cars there were frankly, I imagine seven or eight, and we had been going quite slowly, thirty to thirty-five miles an hour, the only reason I remember this that I remember it was quite a slow trip. When we got to the Aylor driveway, it was quite a cold day and all of us had our windows up, but this person in front of me put their hand out to make a turn, and in a line of cars like that I never get too close—

Mr. Somerville: I object.
The Court: Just tell what occurred, Mrs. Sexton.

Q. How far were you from this car?
A. I started to stop about seventy-five feet behind the car and I came to a stop twenty feet behind it.
Q. What did you do at that time?
A. I carry this all the time (holding up a handbag) and this was open beside me, and I had a bottle of Orange Crush in this case. The first thing I did when I stopped, I looked in the rear view mirror and I saw a car, I thought it was two city blocks away, and I remember I reached over page 18 } to pick up my bottle of Orange Crush and got it to my mouth and that was it, I was hit.
Q. What was the next thing you recall?
A. The next thing I remember my hair was all down over my face.
Q. How do you wear your hair?
A. My hair was in an up-sweep and it had three lock-barrettes; I had a wool hat on that was secured by a wire hairpin, and when I came to my hair was down in my face and my hat was down in the floor and my barrettes were somewhere, I don't think I ever did find them, and there was Orange Crush all over the car.

* * * * *

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* * * * *

A. Afterwards we moved the cars at his suggestion because they were in the line of traffic and there are page 21 } just two lanes there, and I pulled my car just slightly off to the side because it is a ditch there and I pulled it off on the shoulder of the road.

May Speed Sexton.

Q. Did you at any time get out and look at the damage?

A. Yes, I believe Mr. Utz was there when I did. I know that Mr. Utz said, "See if you can stand on your feet—"

Q. The simple point is that you did get out of your car and look at the damage?

A. That is right.

Q. What was the damage to your vehicle?

A. There was a broken light and something was done to the rear hood—the trunk part—and it bent the fender up, if my memory is right.

Q. Do you recall the amount of property damage to your vehicle?

A. I think it was $112.00, if I remember right.

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page 22 }

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Q. You talked to the Trooper, I presume?

A. I did.

Q. Did you point out to him approximately where the accident occurred?

A. Yes, I told him where the broken glass was, and I asked him to please go back and measure the position of the car there where we had been. I also asked him to check my brake lights because Mr. Stroman said to me "You stopped like that and you had no brake lights."

Q. Did he do that?

A. He did and said they were all right.

Q. Do you recall ever passing this white Cadilac?

A. I do not, I may have, I certainly hadn't passed him in the last four or five miles because I had been in this very slow line of cars and he was not in front of me.

Q. I beg your pardon.

A. I had been in this long line of cars going down the road and this big, white Cadilac was not in front of me.

Q. Did you attempt to pass any of these cars ahead of you?

A. No, when I came to the hill the lines were intermediate, I wanted to pass and pulled to the left and looked to see if there was any chance of passing but there was not. These gentlemen probably know but I don't think there is a chance to pass for miles before you get to that point.

page 23 }

May Speed Sexton.

Q. Do you recall what the center line was at that point?
A. Just a line down the middle.
Q. Is that a solid line?
A. I think it is a white line down there.

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page 46 }

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CROSS EXAMINATION.

By Mr. Somerville:

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page 58 }

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Q. Now, if I *amy* come to the circumstances surrounding the accident here in Madison County. Were you travelling by yourself at this time?

page 59 } A. I was.

Q. And you were driving a 1962 Ford Automobile?
A. Right.
Q. Did you have any parcels in the automobile with you?
A. I had my luggage and this in the front seat and a bottle of Orange Crush.

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page 61 }

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Q. Going back to your testimony as to the manner in which proceeded north on Route 29, I believe you stated that you had been in a line of traffic following some vehicles. Did I understand you to say you had pulled to the center of the road on several occasions to see if the way were clear for you to go by?

May Speed Sexton.

A. I had pulled only to the center of the road, I had not pulled across the center line, because to the best of my knowledge and ability, and I am sure these men will know better than I, the road for four or five miles is hilly, uphill and down hill and curves, and there was some kind of farm combine, the size of which I can't say, but that was in the way and going very, very slowly.

Q. You don't recall whether or not you had passed Mr. Stroman?

page 62 } A. I do not, if I had it had been sometime.

Q. You just don't recall?

A. I said, if I had passed Mr. Stroman it had to be sometime before the accident. We don't often see white Cadilacs.

Q. You don't often see white Cadilacs?

A. No, I don't. I think I would have a memory of it, if I had, anything that big.

Q. Was this Cadilac any bigger than normal?

A. No, sir, it was a white Cadilac. May I say something about a Cadilac?

Q. You have my permission.

A. Mr. Stroman said, "Look what you have done to my Cadilac." I said, "Look what you have done to my car, and it has only been two or three thousand miles.

Q. As you go north just beyond the Aylor and Blankenbaker homes the road begins to go down, doesn't it?

A. I think there is a slight upgrade just before you come to the Aylor and Blankenbaker homes going north.

Q. Beyond there is there not a dip in the road?

A. I think there is, but I don't it is a big one.

Q. There is a dip there, is there not? And then you begin to go upgrade going to Culpeper?

A. I don't know these roads, I know there is a grade going up to the scene of the accident. I didn't go

page 63 } passed, but I think there is a slight dip and then another one beyond the Aylor's going north.

Q. Is the speed limit in that vicinity fifty-five?

A. I think it is fifty there; it is fifty-five as a rule, but I think it is fifty there; I am not sure, may be it is fifty-five. We were not approaching that speed.

Q. You were about seventy-five feet behind this car in front of you when you observed this stop—

A. And I started to stop, yes.

Q. And you started to stop?

What indications or signs did you give to the traffic behind you?

May Speed Sexton.

A. About stopping?
Q. Yes.
A. When I put my foot on the brake pedal my brake comes on.
Q. Did you do anything else?
A. Do you mean did I hold my hand out?
Q. Anything.
A. My brake light.
Q. Did you look in your rear view mirror?
A. Yes, of course, I looked in my rear view mirror.
Q. I am asking you about what you did on this occasion.
A. Yes, I looked in my rear view mirror.
Q. At what time? When you began to stop?
page 64 } A. Yes, because when the car stopped up front that would start all the cars to telescope.
Q. When you looked in your mirror what did you see?
A. I saw a car about two blocks behind me.
Q. What kind of car?
A. I don't know. I don't know a Chevrolet from a Ford unless I am right at them.
Q. About how far back was this car at that time?
A. About two blocks.
Q. Can you give us an estimate of the distance it was behind you?
A. Yes, I say about two hundred feet.
Q. About two hundred feet back?
A. A hundred and fifty to two hundred feet back; it was a good distance back of me. When you see something in your rear view mirror, I don't know that you can judge the distance accurately.
Q. Mrs. Sexton, you have used two City blocks and two hundred feet as the distance this was behind you, which is correct?
A. Do you mean I am supposed to know how far a city block is.
Q. I want to know if you understand.
A. Do you see the top of that house over there?
Q. Yes.
page 65 } A. I would judge that is about one hundred and seventy-five feet. This is something you learn selling real estate. Am I correct?

The Court: Don't ask counsel questions.

May Speed Sexton.

A. It was a little bit further behind me than that. This is the only thing I can say, it was, I would say, another twenty-five to thirty feet behind me further than that.

Q. Mrs. Sexton, the vehicle that was in front of you when you say it at that point, back seventy-five feet, you thought it was going to make a left turn?

A. As a matter of fact a couple of people held out their left hands, I didn't know who was going to make the turn, but I knew a left turn was going to be made; there were one or two hands out in front of me, and the whole line of traffic slowed and brake lights went on in front of me. I don't know whether this was because this woman held out her hand or because may be I saw somebody else hold out their hand first. This I don't know.

Q. You say there was a whole line of traffic?

A. I told you we were following in a whole line of traffic, I told you there were six or seven cars and a combine in that line of traffic, and naturally when I woke up all were gone.

Q. Which one of these vehicles turned in front of you?

page 66 } A. I don't know whether the people were holding out their hands because it looked like the combine was turning or stopping, but I know there was a vehicle in front making a turn.

Q. That wouldn't affect the cars ahead of the car making the turn, would it?

A. No.

Q. You assumed that the car was going to turn to the left?

A. I assumed it was going to turn to the left.

Q. And it didn't?

A. What do you mean?

Q. Wasn't there approaching traffic coming, which blocked its turn?

A. You mean immediately?

Q. Yes.

A. Yes, there was approaching traffic.

Q. So that car had to stop?

A. Yes.

Q. Then it became apparent to you that you had to stop?

A. That is right, and I started stopping about seventy-five feet back.

Q. Can you give us an estimate of how far this side of that point you first saw the left turn signal given?

A. About seventy-five feet I suppose.

May Speed Sexton.

Q. That was the first indication you had?

page 67 } A. It is very hard to remember these things in reverse.

Q. I know. I don't want to belabor the point, but let me see if I understand you. and correct me if I am wrong. Your estimate is that you saw the signal about seventy-five feet this side, or the Madison side, of which the impact occurred?

A. I didn't understand your question.

Q. I said that your estimate is that you saw the signal about seventy-five feet this side, or on the Madison side, of where the impact occurred?

A. I don't know how far the left signal was given. I thought you wanted to know how far behind the car in front of me I was when I saw the signal. I don't know how far I was in back of the place where the accident took place. Is that what you mean?

Q. Yes.

A. That I can't tell you.

Q. Mrs. Sexton, I am just about through. You came to a stop in the north bound lane of Route 29 at the point we have described?

A. Yes, sir.

Q. And you then proceeded to take a drink of Orange Crush?

A. Yes.

Q. And while you were sitting there in the high-

page 68 } way—

A. This was beside me and I reached over, I looked in the rear view mirror and I saw this car quite a ways behind me; I do not think there is anything unusual about looking in the mirror, I do it all the time, and it just never occurred to me that he wouldn't stop; I reached over to pick up my bottle and I got it about to my mouth and wham. I was hit. So, it must have been a period of four or five seconds that I was stopped here because I had time to look in the mirror, reach over and pick up my drink and get it to my mouth before I was hit. May be this substantiates, may be it doesn't, the fact that the car was that far behind me because Mr. Stroman said he was travelling fifty miles an hour.

Q. He told you he was going fifty miles an hour?

A. No, I believe his statement to the police was he was going fifty-five—fifty miles an hour.

Q. You don't contradict him, do you?

A. How could I? I wasn't with him.

Martha Blankenbaker.

Q. When you stopped there and drank the Orange Crush—
A. I didn't drink it.
Q. Or begun to drink it. Where was the car in front of you?
A. The car in front of me was waiting to make the left turn.
Q. It was also stopped?
A. It was stopped, too.
page 69 } Q. And there was traffic going south, coming this way?
A. That is right. Mr. Somerville—

The Court: Just a minute, Mrs. Sexton. Just answer the questions.

Q. I will be very happy for you to say anything you wish, Mrs. Sexton.
A. I wasn't counting cars going south, the woman in front of me was not going south; I was only concerned with cars going north and my movement to the north.

Mr. Somerville: We have no further questions.

RE-DIRECT EXAMINATION.

By Mr Audet:
Q. Just one question, Mrs. Sexton. Were you far enough away from the car in front of you so that you had no trouble stopping in a proper manner?
A. I had no trouble stopping, I imagine I was fifteen to twenty feet from the car in front of me when I stopped.

Mr. Audet: That is all.

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MRS. MARTHA BLANKENBARKER,
another witness called on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

page 70 } By Mr. Audet:
Q. Mrs. Blankenbaker, I know you probably

Martha Blankenbaker.

know most of these people or they know you, but for the record would you state your name and address, please?

A. Martha Blankenbaker, Brightwood, Virginia.

Q. Mrs. Blankenbaker, you are a little nervous, are you?

A. Just a little bit.

Q. I don't think there is very much to be nervous about. I want to call your attention to November 21, 1961, to the accident here. Were you on Route 29 returning from school at approximately three thirty or four o'clock in the afternoon?

A. Yes, I was.

Q. Would you tell this jury exactly, in your own words, what you recall? Was there an accident that occurred at approximately that time?

A. Yes.

Q. Will you tell the jury what occurred, in your own words?

A. I had come through Brightwood and as I approached my drive, I say about three or four hundred feet beyond my drive entrance I turned on my signal light indicating a turn, and there was approaching traffic from the north and I couldn't make my turn, so I stopped to wait for the traffic to go by.

Q. At that point did you look in your mirror at all?

A. And after I had come to a stop I noticed

page 71 } that there was a car behind me.

Q. Do you recall what that car was? What kind of car it was?

A. No, I don't know.

Q. What happened to that car, if you know?

A. The car had come to a stop behind me.

Q. Now, what occurred after that?

A. While I was waiting for the approaching traffic to pass so I could make my turn and enter the driveway I heard a collision in the back of me and heard the tinkling of glass and I looked in my mirror and saw that a car had struck the one back of me.

Q. What did you do after that?

A. I waited to see my way clear, that the traffic was clear both ways, then I pulled into my driveway.

Q. Did you see the cars involved in the accident?

A. I saw that there were two cars back of me and they evidently had been the ones involved. No cars struck mine.

Q. Do you recall what there vehicles looked like?

Martha Blankenbaker.

A. No.

Q. Do you recall whether it was a man or a woman in the first car immediately behind you?

A. There was a man—after I pulled into my driveway and parked I got out of the car and looked to see what page 72 } it was that was going on and there was a man out of the car—the second car.

Q. Was the man in the second car?

A. Yes.

Q. Do you know who was in the first car?

A. It was a lady in the first car; she hadn't gotten out of the car.

Q. She hadn't gotten out of the car. Did you ever see her get out of the car?

A. Yes, I think she got out of the car later.

Q. Did the man get out of the car immediately? Was he out of the car when you saw it?

A. After I had parked and had gotten out of the car he did get out of the car and look at his car, the front of it.

Q. Then what happened?

A. Later I saw them talking and he was—he seemed to be talking in a loud voice and using his hands making motions.

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Q. You pulled up to a stop to make your left turn?

A. Yes.

Q. You looked in your mirror and saw a car behind you that was stopped, is that correct?

A. Yes.

Q. At that point can you give us any estimate of how much time elapsed between then and when you heard the crash, if you can—if you remember?

A. I say ten or fifteen seconds.

Q. Was there—or do you know how much time it was before the Trooper got there?

A. It was quite sometime.

Mr. Audet: I believe that is all for me.

Martha Blankenbaker.

CROSS EXAMINATION.

By Mr. Somerville:

Q. Mrs. Blankerbaker, we were talking awhile ago, when Mrs. Sexton was on the stand, about the terrain there. May be you can help us. As you go north from Brightwood you go down a little hill and the road levels out, does it not?

A. Just as you come out of Brightwood there is a little hill and then there is a straight stretch for about six or eight hundred feet, I guess.

page 74 } Q. Then on beyond that what is the terrain?

A. And after you go from my driveway there is a dip down and a little stretch and another, and unless you are watching carefully, you have to be careful and come to a stop because you cannot see into the hollow to see whether there is a car coming.

Q. You cannot see it until it gets right up there?

A. Yes, you have to stop to see if there is a car coming.

Q. Was there a car coming when you got there that day?

A. Yes, there were vehicles coming.

Q. Can you tell us approximately how many there were?

A. No, it was more than one, I am sure.

Q. And these vehicles were coming south in the direction of Madison?

A. Yes.

Q. Had you seen these vehicles before you got up to that point?

A. I have made that turn so often I always watch when I come out that long stretch; if I look across on that other hill and see traffic coming I know they will get there about the same time I get to the driveway.

Q. You knew you were going to have to stop there?

A. I figured that I would.

page 75 } Q. Do you recall whether there were any markings there in the center of the road? Whether the line was solid or broken?

A. There is no passing on that road at that spot.

Q. How far back toward Madison is that true?

A. Well, there is passing on that long straight stretch but it is no passing—oh—I don't know—two or three hundred feet back before the lane.

Q. It may not be fair but was that the case on the day of this accident?

A. The markings have not been changed.

Martha Blankenbaker.

Q. The markings are the same as they were at the time?
A. Yes.
Q. Now, let me ask you this, Mrs. Blankenbaker: If you will think back real carefully and can you tell us approximately what speed were you travelling north, shall we say from Brightwood on up to your drive? About what speed?
A. Oh, I would say forty-five or fifty, and I naturally slowed when I knew I was going to have to stop.
Q. You were driving at your normal speed?
A. Yes.
Q. And you weren't trailing a long line of traffic?
A. I don't recall.
Q. You don't recall any long line of traffic in front of you?
A. No, I just don't remember whether there was or not.

page 76 } Q. Try to remember, that may be important, Mrs. Blankenbaker. Do you have any recollection of being behind a line of traffic?

A. No. At that time I was more concerned about what was in front of me than what was in the back.
Q. You don't recall seeing anybody in front of you giving a signal?
A. No.
Q. What vehicles were behind you that you were able to see?
A. Just as I looked in my mirror and I saw just the one car at that time. and there may have been another approaching.
Q. When did you see that?
A. After I had stopped.
Q. That was the first time you had seen that car?
A. Yes.
Q. You don't recall any farm equipment in front of you?
A. I don't remember.
Q. And the signal you gave was a left turn signal?
A. Yes.
Q. Was that the only signal you gave?
A. Yes, and then when I put on my brakes, of course.

page 77 } Q. Now, I believe you were still in the north bound lane when you heard the collision behind you?

A. Yes, that is right.
Q. And then you turned on into the driveway?
A. Yes, after I looked to see if my way was clear.
Q. When you heard the collision did you look back in your mirror?

William A. Stroman.

A. Yes, nothing hit me, and so I looked back and saw the third car had hit the second car.

Q. Could you see the car behind you?

A. Yes.

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page 78 }

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Q. It appeared to you, did it not Mrs. Blankerbaker, that it was a very minor thing?

A. I just heard the crash and heard the glass rattle and it sounded like what it was.

Q. Did it appear to be a very minor thing?

A. Yes.

Q. And you went on in the house?

A. Yes, after I called to them and asked if I could help and I got no response.

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WILLIAM A. STROMAN,

a witness in his own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Somerville:

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Q. After this accident occurred, did you drive on to Washington, D. C.?

A. I did, after I stopped in Culpeper and got a light bulb,

William A. Stroman.

I didn't want to drive with one headlight, there was one headlight broken.

Q. There was one headlight broken?

A. One headlight broken on the right.

Q. The general locality of the accident has been described here today, I believe you heard the testimony?

A. Yes.

Q. Did the accident occur in the locality described by the investigating officer?

A. That is correct, right at that place.

Q. Who called the officer?

A. I did.

Q. That was by phone?

A. That is I called the Sheriff of Culpeper from the house across the road, that was the only place I knew where to call, there was a car there and I went to that house and the lady was alone.

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page 83 }

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Q. Let's come back down Route 29 a ways to the time, shall we say a few miles before you got to this point. Do you recall anything about Mrs. Sexton's vehicle before the accident occurred?

A. I do.

Q. State what you recall.

A. Well, this car came by me with this young
page 84 } lady in it it came by me, that is got in ahead of me
and cut in directly in front of me and followed the car immediately in front of me. She she seemed to be very much in a hurry because she was trying to pass that car, she would pull out to the left, as though she was going to pass, and then flash her brake light and then pull back in; she did that several times.

Q. That is on this side, the Madison side of the point where the collision occurred?

A. It was on the east side of the highway going into Culpeper, in a northerly direction. I don't know what you mean.

Q. What I mean is that this type of driving occurred before you got up to the place where the accident occurred?

William A. Stroman.

A. Yes, sir.

Q. Please state to the Court and jury your speed as best you can recall it after you went through Brightwood?

A. I know I got under fifty-five because the speed limit said fifty-five and I checked my speed to get more distance between her car and my car, and my estimate is I was going about fifty miles an hour along there.

Q. What happened, if anything, in front of you?

A. Well, I don't know how long after that, but it was a short time that I observed this car—

Q. Which car?

A. Mrs. Sexton's car, I didn't know whose it was at that time, but the same car that had come around me. page 85 } It was stopped and so I knew I was in a predicament; so, I put all my attention to getting that car stopped and I mean stopped without skidding. I have had lots of experience driving a car and I knew what happens—

The Court: Just a moment, Mr. Stroman. Just answer the question. You know what is relevant testimony and what is not, if you are a lawyer.

A. Excuse me, your Honor.

Q. Did you stop your car?

A. Yes, sir, I got it stopped.

Q. Were you able to bring it to a stop before there was a collision between the front of your car and the rear of hers?

A. Not quite.

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page 86 }

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Q. Now, going back to the time prior to the time that she stopped in the highway. Did she give a left turn signal?

A. No, sir.

Mr. Audet: I believe he is leading the witness.

Mr. Somerville: I am sorry, I beg your pardon.

Q. Did she give any type of signal?

A. She didn't.

William A. Stroman.

Q. Did she give you any warning of what she was going to do before she did it?
A. No, sir.

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page 87 }

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CROSS EXAMINATION.

By Mr. Audet:
Q. Mr. Stroman, I will have a very few questions, sir.
You testified on direct examination that you saw her brake lights, is that correct?
A. I sure did.
Q. Before the accident, is that correct?
A. I did.
Q. And you saw her brake lights when she was trying to pull out a little before the accident?
A. That is what I am talking about.
Q. Some distance back from where the accident occurred, is that right?
A. Yes, sir.
Q. Then, you lengthened the distance between your car and hers, is that correct?
A. That is correct.
Q. Did she get out of sight when you lengthened this distance?
A. No, sir.
Q. You could still see it from the distance?
page 88 } A. That is right.
Q. Do you have any idea how long that distance was at this time?
A. I couldn't tell you for sure.
Q. Then, I believe, it was your testimony that the next thing you knew she was stopped, is that right?
A. You just read that back. Like I said, all at once I noticed the car was stopped.
Q. Tell us what happened. Isn't that what you said a moment later?
A. Will you repeat your question?

William A. Stroman.

Q. The next thing that you knew was that you saw her car stopped in the road?

A. The next thing after what?

Q. After you lengthened the distance between the two cars?

A. The next thing I noticed anything about her car it was stopped.

Q. And you hadn't seen any brake lights or anything, is that correct?

A. Not at that time, no.

Q. So there was a distance between the two of you, you were going approximately fifty miles per hour, is that correct?

A. Yes, sir.

page 89 } Q. And you had seen her brake lights before?

A. Yes.

Q. And then the first thing you knew she was already stopped?

A. That is correct.

Q. Was there another car ahead of you, do you recall that?

A. Well, there had been; there had been a car or two ahead of her, that is correct.

Q. Did you see a car there when you started to apply your brakes—did you see a car ahead of hers when you started to apply your brakes?

A. I don't recollect that.

Q. Did you see her start to stop her car?

A. I beg your pardon.

Q. Did you see her start to stop her car?

A. I didn't.

Q. You didn't?

A. No, sir.

Q. Did you see her slowing down?

A. No, I couldn't see anything to indicate that.

Q. The first thing you knew she was stopped?

A. All of a sudden I saw her stopped.

Q. The road is straight at this point, isn't it?

A. I think fairly straight.

page 90 } Q. Were there any brake lights on at that time?

A. I didn't see any.

Q. So, she was stopped, you didn't see any brake lights, you didn't see her slow down, she was at a stand still and that is when you applied your brakes?

A. That is right.

Q. And then you collided with the rear of her vehicle?

William A. Stroman.

A. Slightly, yes.

Mr. Audet: I believe that is all the questions I have.

RE-DIRECT EXAMINATION.

By Mr. Somerville:

Q. A few more questions, Mr. Stroman. State to the Court and jury, if you can. approximately how her car was stopped before you struck it?

Mr. Audet: Your Honor, I am going to object to that question.

A. I can't tell you, it was dead still when I saw it was stopped.

Mr. Audet: I will let the answer go, I have no objection.

Q. As you drove along Route 29 behind her car in which direction were you looking?

A. I was looking right down the road, watching the traffic.

Q. You were driving a white Cadilac?

page 91 } A. Yes, it was an off-white.

Mr. Somerville: I believe that is all.

By the Court:

Q. How far were you from her when you saw her stopped?

A. Well, I would judge around a hundred to a hundred and fifty feet; that is just a guess, it purely guess work, but I got busy just as quick as I saw what shape I was in. I cannot say for sure how far it was because I don't know, I just have to guess at it, but I had lengthened the distance between her car and mine before that.

Q. Can you give us any estimate of the distance of how far you were away from her the last time you saw her before she stopped?

A. I cannot hear.

Q. Can you give us any estimate of the distance you were from her the last time you saw her before she stopped?

A. I don't believe I can.

The Court: All right, stand aside.

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The Court: Number 5.

Mr. Moore: We object to the instruction on speed, there is no evidence to support that part of the instruction.

Mr. Audet: May it please the Court he has got to operate his vehicle at a reasonable speed under all the circustances and the mere fact that he was below the speed limit doesn't have any bearing on the problem.

The Court: I don't know what there is in the Plaintiff's testimony to indicate any speed. She testified they were in a line of traffic moving very slowly.

page 93 } Mr. Audet: Mr. Stroman testified he was going fifty miles per hour, which could be a speed held by the jury to be unreasonable.

The Court: I think there is some evidence on which excessive speed may be inferred. The fact that he wasn't able to stop was not because he didn't try but because he was going too fast.

Mr. Moore: We except to the ruling of the Court.

Mr. Ross: May it please the Court, wouldn't there have to be something in the situation to change it from the speed limit to less than the speed limit?

The Court: Her testimony was that they were driving along in a line of traffic and if that is true fifty miles an hour may very well have been too fast. I think there is evidence from which the jury might infer excessive speed under all the circumstances.

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Number 7, we object to, Judge, because we don't think the evidence supports it.

The Court: No, the evidence of the plaintiff, herself, indicates there was no evidence of any emergency on her part.

Mr. Audet: Judge, we will withdraw that in-
page 94 } struction.

The Court: The part about 100 feet back when the car in front of you puts on its stop light and slows up, you have to slow up right then, you don't have time to give a signal. I think that instruction may have some pertinence, it is certainly good law. I think the evidence in the case is

that the car slowed up and had to start slowing up then without giving a signal.

Mr. Moore: The evidence of the Plaintiff's witness, Mrs. Blankenbaker is that she gave a signal for a left turn, but Mrs. Sexton gave no signal to the vehicle behind her.

The Court: She didn't have to give a signal.

Mr. Moore: You are required to give a signal to slow down or stop.

The Court: You are not required to give a signal to slow down because the evidence is that the brake lights came on.

Mr. Moore: I disagree with the Court.

The Court: I am going to give the instruction, it is good law. It is just a question of whether it is pertinent to the case.

Mr. Moore: We except to the ruling of the Court, while it is a correct statement of the law, it is not a correct instruction in this cause because the evidence doesn't support the instruction.

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The Court: All right, the defendant's instruction. I will number them in order.

Mr. Audet: I object to instruction number—

The Court: This will be 11.

Mr. Audet: This states the rule—. First of all there is no evidence Mrs. Sexton didn't give a signal, so I think the instruction is not warranted by the evidence. Secondly, I don't believe it is a correct statement of the law because it says the signal required by means of the hand and arm, when the law says it can be given by an electrical or mechanical device.

The Court: Doesn't the law say that?

Mr. Moore: The statute says, "or by some electrical or mechanical device approved by the Superintendent." That is some kind of stop signal. The statute says that if you slow down or stop you must give the signal. Obviously a brake light wouldn't be sufficient because you have already started slowing before the brake light comes on. The statute also says you must do it 100 feet before starting to do it. This car was not equipped with any such device to warn that it was going to slow down.

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Mr. Audet: May it please the Court, I think the defendant, himself, stated that when he looked up she was already stopped.

Mr. Moore: Your client said he was 200 feet back there and the statute says that whenever the operation of another vehicle will be affected by the movement she must give the signal 100 feet back.

Mr. Audet: First of all the statute says that is for the left turn and that signal may given by an electrically operated device. I don't think there is any contention those aren't legal, and the brake light is the same thing. The evidence in this case is that the defendant said that when he looked up she was already stopped; he said he didn't see any brake light; he didn't see any signal, but he didn't see her stop.

The Court: She testified she didn't give a hand signal.

Mr. Audet: He didn't see her. It is mentioned in two sections, 46.1-217 and 298.

Mr. Somerville: Judge, there is a case on this point, it is in 173 Va 253, that may be helpful.

The Court: I would like to see it.

page 98 } Mr. Somerville: That was a case of a bus that had redlights on the rear and they came on when the brake lights came on.

Mr. Audet: May it please the Court, I don't think there is any question but that everybody knows that when the brake lights go on that the car is slowing down or stopping. In this case for the Court to hold the brake light is not a sufficient signal then the Court must hold that the electrical turn signal is not proper.

Mr. Somerville: There is no evidence in this case a brake light was put on. What is the evidence in this case?

Mr. Audet: There was no evidence the brake lights were not on.

The Court: There is very strong evidence from which the jury might infer they were on. The plaintiff testified the brake lights were working and the officer testified they were working afterwards.

Mr. Audet: The burden is on them to prove they were not, because the burden is on them to prove contributory negligence.

The Court: I will refuse the instruction because it is not in accordance with the statute. The statute doesn't have slow down in it.

Mr. Somerville: You can strike that out, if that page 99 } is your objection.

The Court: Your argument that she couldn't have given the signal 100 feet back doesn't apply except to

slow down and the statute has been amended so that slow down is no longer included.

Mr. Somerville: I wasn't aware of that. Is that a recent amendment?

The Court: 1960.

Mr. Somerville: If you strike out slow down does that cure the problem?

The Court: No, sir, because your argument is based on the theory that she couldn't give a mechanical signal 100 feet back, she could have given it 100 feet back by putting her foot on the brake.

Mr. Somerville: We will offer it in the language of the statute.

The Court: All right.

Mr. Audet: If I understand the Court's ruling they can have the instruction that she can give the signal with the brake light?

The Court: Let's get the instruction offered and we will consider the objection at that time. I am inclined to think that I will hold that there is no evidence she didn't give the signal. Nobody says at all there was no signal
page 100 } given.

Mr. Moore: She says she didn't.

The Court: I mean with the brake light, I don't mean arm signal, but the brake light signal apparently was given. Where it was given there is no testimony.

Mr. Somerville: I offer the case on that.

The Court: I don't know what the case holds. What is the date of the case? 1939. The statute was amended since then.

Mr. Somerville: We will fix the instruction and offer it.

Mr. Audet: We would object to the next instruction which has to do with the issue of contributory negligence. We submit to the Court it is not proper in this case, because there is no evidence of contributory negligence on the part of Mrs. Sexton.

The Court: I don't think that instruction has any application in this case. That is number 12, and it is refused.

Mr. Moore: Judge, she stopped her vehicle on the highway.

The Court: Mr. Moore, What was her duty? Was it her duty to run off the highway?

Mr. Moore: She stopped on the highway and got a bottle of Orange Crush out of the seat beside her and took a drink.

page 101 } The Court: The instruction is refused.

Mr. Moore: We except to the Court's ruling.

The Court: All right, number 13. Is there any objection to that?

Mr. Audet: No, sir.

The Court: 14 is the joint negligence instruction.

Mr. Audet: That would not be proper in this case, sir.

The Court: Joint negligence of the plaintiff and defendant.

Mr. Audet: There is no evidence that the plaintiff was negligent, there is no contributory negligence.

The Court: That depends on whether I give the instruction about the signal or not.

Mr. Audet: This instruction also mixes up the question of the credibility of witnesses.

The Court: 14 is if you find they were both negligent.

Mr. Audet: All right, sir, I have it.

The Court: Do you have any objection to 14?

Mr. Audet: Yes, sir, we do, on the grounds we page 102 } just stated.

The Court: I will put that aside for the moment.

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Mr. Moore: I want to apologize about this section of the Code when you spoke about the amendment I was not aware of the amendment, but the amendment doesn't page 105 } change the section except it inserts in the sixth line "back".

The Court: Doesn't it leave out slow down?

Mr. Moore: The Section, 46.1-217, which deals with slowing down or stopping, and that has not been changed.

The Court: Let me see it.

Mr. Somerville: We are trying to give the instruction in the language the Legislature used.

The Court: I am mistaken about that. Section 46.1-216 doesn't require any signal for slowing down.

Mr. Somerville: But read 217.

The Court: 217 says for slowing down or stopping the arm shall be extended, but 217 refers to 216 and no signal was required for slowing down by 216.

Mr. Somerville: It has always been my understanding that the two sections have to be read together.

'The Court: I think they do too, and 217 says the signal required by 216, it means the signal for starting, turning or partially turning. There is no provision in 216 for giving a signal for slowing down.

Mr. Somerville: We would like to prepare an instruction in the language of 216 and 217 and offer it.

The Court: I will consider it. Of course, it cannot contain the language of slowing down.

Mr. Somerville: We would quote the lan-
page 106 } guage with 216.

The Court: I would not permit it.

Mr. Somerville: You will have to refuse to give it as we intend to offer it in that form.

The Court: I will if that is the only way you are going to offer it.

Mr. Somerville: That is the only way we can, sir.

The Court: You can omit slow down for a stop.

Mr. Somerville: Judge, it is quite apparent the Court doesn't agree with us and we will prepare the instruction and the Court can refuse it.

The Court: I refuse this instruction. You can submit anything you want.

Note: Thereupon, counsel for the defendant prepared and submitted an instruction based upon the statute.

The Court: I will give the instruction in this form.

Is there any other possible negligence of the plaintiff?

Mr. Audet: May I take my exception?

The Court: Yes, sir.

Mr. Audet: First of all, at the bottom of the
page 107 } instruction about the hand signal, there is no evi-
dence of a hand signal, that is not a proper instruction.

The Court: There is evidence no hand signal was given. She was required to do one or the other.

Mr. Audet: If she is required to do one or the other she is not required to give a hand signal. The question is whether she used a mechanical or electrical device, that is the only issue. She had an operating electrical device on her car to signal she was going to stop, that was her brake light. It was operating, by the defendant's own testimony, prior to the accident; it was operating after the accident by the Trooper's testimony; she testified she came to a controlled stop twenty feet from the rear of Mrs. Blankenbaker's car; Mrs. Blankenbaker testified she stayed there ten to fifteen seconds before

she heard the crash. If you take the evidence of all three people in this case, Mrs. Sexton, Mrs. Blankenbaker and Mr. Stroman, himself, and there is no evidence of any lack of signal, which was a proximate cause of this accident. He never saw any signal, he couldn't have seen it, because he wasn't looking; he never saw her start to slow up, he saw her after she was stopped and she had to stop, and he didn't know how long she had been stopped at that point.

There is no question about the condition of that road, it is straight and level for a distance of .2 of a mile.

page 108 } There is no evidence that this woman was negligent in any fashion or that she didn't give a signal, in fact all the evidence points to the fact that she did give a signal.

The Court: I was hoping you wouldn't argue so hard. I am inclined to agree. If you insist on it that is what I am going to do, I don't think there is any credible evidence of contributory negligence in this case and I am not going to give any instruction on contributory negligence.

Mr. Somerville: There is one important piece of evidence, your Honor. The Trooper arrived at this accident and found two sets of tire marks on the road, indicating brakes had been applied hard enough to leave an imprint on the hard surface of the road. There is, therefore, a strong inference of a sudden stopping on the highway, we think it is a strong inference, although the Trooper cannot say who put the marks there, that Mrs. Sexton did stop quickly and did lay down a set of these marks on the road.

Mr. Audet: In rebuttal, I would like to say that there is no evidence Mrs. Sexton came to an uncontrolled stop or panic stop. Mrs. Blankenbaker said she came to a stop slowly and that the car was stopped behind her when she looked. They even asked the officer which tire made which

page 109 } mark—

The Court: Of course, he couldn't tell.

Mr. Audet: They were interested in finding out and they found out Mr. Stroman's car did that.

Mr. Somerville: I beg counsel's pardon I didn't ask that question.

Mr. Audet: Be that as it may, I don't want to quibble with what the testimony is, because the record is clear on that point. All of the evidence is that the only person who came to a sudden stop is Mr. Stroman.

The Court: The burden of proof is on the defendant to prove contributory negligence, and I cannot find any contributory negligence in this case.

Mr. Audet: I want to move further that your Honor direct a verdict on the question of liability. The defendant, Stroman, convicted himself of negligence in his own testimony.

The Court: I am not going to make that ruling.

Mr. Audet: Note my exception.

The Court: I am going to rule that there is insufficient evidence to submit the question of contributory negligence to the jury. I was hoping I wouldn't have to do that because I could be wrong on that.

The evidence of the defendant convinces me that he was not looking at the car for some little time before it
page 110 } stopped. There is further evidence in the case that if a signal was not given it is perfectly plain that wasn't the cause of the accident. The defendant testified when he first saw the car it was in the location it was when it was stopped.

I am going to rule that there is no contributory negligence in the case.

Mr. Somerville: We respectfully note the following exception to the ruling of the Court. Number one to refusing to grant the instructions offered by the defendant, which instructions have been marked refused by the Court. We except to the action of the Court in taking from the jury the question of whether or not the plaintiff was contributorily negligent.

With respect to these points counsel makes these objections: The evidence in the case is highly conflicting. (2) There is very credible evidence from the Investigating Officer that the plaintiff's vehicle was brought to a very sudden stop, rather than in the manner related by her. (3) The statute requires that one slowing down or stopping shall give a signal in the manner prescribed by Sections 46.1-216 and 46.1-217, and whether or not a brake light showed on the rear of the plaintiff's vehicle is not material with respect to these two sections of the Code.

Counsel for the defendant further except to
page 111 } the Court's ruling on the issue of contributory negligence on the ground that the plaintiff, herself, stated on the witness stand that the Stroman vehicle was approximately 200 feet behind her, and pointed out to the jury a building close by the Court House, well known to the jury, which might appear to the jury to have been closer than 200 feet; that on the basis of her testimony the operator of this vehicle, the defendant William A. Stroman, would clearly be affected by any change in course of her vehicle, and that on her own testimony she gave no signal whatsoever, either that she was stopping or had stopped on the highway.

This was true even though she had looked in her rear view mirror and had seen the Stroman vehicle coming along behind her.

Counsel for the defendant take it that an operator of a motor vehicle cannot stop his vehicle on the highway without giving a signal, if the operator of some other vehicle is to be affected by this stopping.

Counsel would further except on the ground that the language of the statute makes it clear that the signal must be given before the actual stopping or slowing down to meet the obvious intention of the statute; the brake lights do not flash on until the stopping is already under way, and in the case of a sudden stop this is no warning at all to the driver proceeding behind as to the intention of the operator of that vehicle as to whether he is slowing down temporarily or page 112 } intending to stop, the mere flashing of brake lights can mean any number of things to another motorist who sees it and it doesn't necessarily mean that the vehicle is going to stop or even slow down appreciably.

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MOTION.

Before: The Honorable Lyttelton Waddell, Judge, October 12, 1964.

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10/12/64
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The Court: Gentlemen, I have considered this case very carefully. I have considered this on the motions that were made in the previous trial and I have considered it on this record.

And, while I am convinced that there—I feel there has been a miscarriage of justice; I also feel that, taking all the evidence of Mr. Stroman as they have to construe it 10/12/64 with emphasis in the most favorable light to sus- page 32 } tain a verdict there is evidence on which the Jury might have said, "This man didn't do anything that a reasonable man wouldn't have done.

I don't think it's right, but I just can't—I don't feel that

I ought to set the verdict aside. Maybe the Court of Appeals will.

I'll have to sustain the verdict. There are conflicts in the evidence, of course. Mr. Stroman's testimony is entirely inconsistent with Mrs. Blankenbaker's testimony. Some of it has got to be inconsistent, because after all the estimates of the distance he was behind her, and her estimates vary somewhat, and not expecting the car to stop on the highway—there was no reason for it to stop, and all of a sudden—not that there was no real sudden emergency; but it does stop; whether he failed to exercise such care as a reasonable and prudent person, the question seems to me for the Jury under all the evidence.

It's a very close case and I'd like to feel that I could set it aside, but I don't.

I'll sustain the verdict and overrule the motion.

10/12/64 page 33 } Mr. Audet: We note an exception, Your Honor.
The Court: All right.

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A Copy—Teste:

H. G. TURNER, Clerk.

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