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Record No. 6217

In the
Supreme Court of Appeals of Virginia
at Richmond

ALLEN STEWART BRIDGEFORTH

v.

W. D. GIBBS, SR., ADMR., Etc.

CIRCUIT COURT OF NOTTOWAY 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.

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reme Court of Appeals of Virginia

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AT RICHMOND.

Record No. 6217

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 5th day of October, 1965.

ALLEN STEWART BRIDGEFORTH, Plaintiff in error,

against

W. D. GIBBS, SR., ADMINISTRATOR OF THE ESTATE OF WILLIAM D. GIBBS, JR., DECEASED, Defendant in error.

From the Circuit Court of Nottoway County
D. Carleton Mayes, Judge

Upon the petition of Allen Stewart Bridgeforth a writ of error is awarded him to a judgment rendered by the Circuit Court of Nottoway County on the 23rd day of March, 1965, against W. D. Gibbs, Sr., Administrator, etc., in a certain motion for judgment then therein depending wherein W. D. Gibbs, Sr., Administrator, etc., was plaintiff and the petitioner and others were defendants; 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.

Billy Eugene Strickland is not a party to this appeal.

RECORD

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page 1]

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MOTION FOR JUDGMENT

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To Allen Stewart Bridgeforth, Harriet M. Bridgeforth and Billy Eugene Strickland:

You and each of you, jointly and severally, are hereby notified that on the 5th day of May, 1964, at 10:00 A.M., or as soon thereafter as the matter can be heard, the undersigned administrator of the estate of William D. Gibbs, Jr., deceased, duly appointed and qualified as such in the Clerk's Office of this Court on October 24, 1963, as attested by certificate thereof, filed herewith, will move the Circuit Court of Nottoway County, Virginia, at the courthouse thereof, for judgment against you, and each of you, jointly and severally, for the sum of $35,000.00, which sum is due and *oweing* by you, and each of you, jointly and severally, to the undersigned administrator for the damages, wrongs and injuries hereinafter set forth as follows, to-wit:

FIRST COUNT

On the 19th day of October, 1963, at about 11:23 P.M., and at the time of the happening of the *greivances* hereinafter complained of, the defendants Harriet M. Bridgeforth and Allen Stewart Bridgeforth were, respectively, the owner and operator of a 1958 Pontiac automobile, which was then being driven and operated over and along Virginia Route 460, in Nottoway County, at a point approximately one mile west of the corporate limits of Blackstone, Virginia, or approximately .7 of a mile east of the intersection of State Route 699, the operation of said vehicle by Allen Stewart Bridgeforth being along said highway in a westerly direction,

page 2] the operation of which was as the agent of the owner thereof, Harriet M. Bridgeforth; that at the same time and place plaintiff's decedent was the owner and operator of a 1960 Ford automobile, driving the same

over and along the said highway, at the place aforesaid, in an easterly direction, in all respects in a careful, prudent and lawful manner; that it then and there became and was the duty of the said defendants, and each of them, to use all due, reasonable, proper and necessary care and caution in and about the driving and operation of their said owned and operated automobile over, upon and along the said highway, so as not to injure persons and property lawfully thereon, and particularly the person of the plaintiff's decedent; but notwithstanding said duty by the defendants to plaintiff's decedent, and in total and utter disregard thereof, the defendants did then and there fail to use due, ordinary, proper, necessary and reasonable care in and about the use, driving and operation of their said automobile on said highway, and they in fact did, then and there so wrongly, carelessly, negligently and unlawfully cause to be operated their said automobile in that the same was then and there, for the reasons and in the manner and through the wrongful and negligent acts of said defendants, caused to be driven into, upon and against the said automobile which was being lawfully and prudently operated by plaintiff's decedent, with such force and violence as to cause plaintiff's decedent almost instantly to be violently wounded and fatally injured, resulting in his death within two hours;

SECOND COUNT

On the said 19th day of October, 1963, at the hour and place aforesaid, and while the plaintiff's decedent was lawfully and prudently operating his said vehicle in an easterly direction along the said Route 460, at which time and place and under which circumstances the defendant Allen Stewart Bridgeforth negligently caused his said motor vehicle to wrongly and unlawfully crash into plaintiff's decedent's vehicle, the defendant Billy Eugene Strickland was also then and there using the said highway 460 in the operation of a 1957 Pontiac automobile, in that the defendant Strickland was negligently, carelessly and unlawfully pulling his said vehicle from a side road out into the said highway at the time the said Bridgeforth and Gibbs automobiles were meeting each other, or either backing his said vehicle into a side road and off of the Route 460 at the time the said Bridgeforth and Gibbs automobiles were meeting each other, in any of which events the defendant Billy Eugene Strickland did unlawfully, carelessly and negligently operate his said vehicle, which said operation was a proximate

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cause of the said collision between the Bridgeforth and Gibbs automobiles, and, in conjunction with the negligence aforesaid of the defendant Allen Stewart Bridgeforth, did cause or contribute to the cause of the collision between the Bridgeforth and Gibbs automobiles, resulting proximately in the death of plaintiff's decedent.

That the proximate cause of the death of plaintiff's decedent was the said concurrent, improper, careless, wrongful, negligent and unlawful conduct on the part of the defendants, and each of them, as aforesaid, in the use and operation of their said automobiles, as aforesaid; wherefore plaintiff avers that by reason of the matters and things in this motion contained, he has sustained damages in the amount of $35,000.00, for which he brings this action, and likewise to recover his proper costs herein expended.

W. D. GIBBS, SR., Administrator of
the Estate of William D. Gibbs, Jr.,
Deceased
By GEORGE S. CUMMINS
Counsel

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Filed in the Clerk's Office the 28 day of March 1964.

Teste:

HODGES S. BOSWELL, Clerk
GRAYCE D. FITZGERALD, D.C.

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GROUNDS OF DEFENSE

The defendant, Billy Eugene Strickland, an infant 19 years of age, appears by T. Taylor Cralle, his guardian *ad litem,* and for his answer to the Motion for Judgment filed against him, says:

1. That he denies each and every allegation of the first count of the Motion for Judgment.

2. That he denies each and every allegation of the second count of the Motion for Judgment.

3. That he denies any negligence on his part in the alleged accident that happened on October 19, 1963; that he denies he was in any way connected with said accident or contributed to said accident, and he was not involved in said accident in any manner and that he did not cause or contribute to said accident in any manner.

4. That he denies that he is obligated to the plaintiff in any manner or in any amount.

5. That the defendant, Billy Eugene Strickland, alleges and charges that the plaintiff's decedent was guilty of negligence which was the sole and proximate cause of the collision which resulted in death to the decedent.

6. In the alternative, and without admitting any negligence, but specifically denying same, the defendant, Billy Eugene Strickland, alleges and charges that the decedent

page 7] was himself guilty of negligence which efficiently contributed to his death.

BILLY EUGENE STRICKLAND, an infant
under the age of 21 years,
By T. TAYLOR CRALLE
Guardian *ad litem*

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Filed in Clerk's Office April 10, 1964.

HODGES S. BOSWELL, Clerk
By: GRAYCE D. FITZGERALD, D.C.

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GROUNDS OF DEFENSE OF
ALLEN STEWART BRIDGEFORTH

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Comes now Allen Stewart Bridgeforth and states his Grounds of Defense to the Motion for Judgment filed herein as follows:

1. He admits that he operated a 1958 Pontiac automobile on Route 460 at approximately 11:30 P. M. on October 19, 1963, and that the said motor vehicle was in collision with another motor vehicle being operated at the time and place aforesaid on Route 460.

2. He denies each and every allegation contained in the Motion for Judgment alleging that he was guilty of negligent, unlawful or wrongful conduct, and denies that any act of omission of commission on his part was a proximate cause of the collision mentioned in the Motion for Judgment.

3. He denies that he was operating the said motor vehicle as the agent of Harriet M. Bridgeforth at the time aforesaid, and he denies that Harriet M. Bridgeforth is legally responsible for the operation of the said motor vehicle at the time and place aforesaid or that she in law or otherwise operated or controlled the said motor vehicle at the time and place alleged in the Motion for Judgment.

4. He alleges and charges that the plaintiff's decedent was himself guilty of negligence which was the sole proximate cause of the collision, or was an efficiently contributing cause of the said collision.

5. He is not advised of the allegations contained in the Second Count of the Motion for Judgment with respect to negligence on the part of Billy Eugene Strickland, but insofar as the said allegations in Court #2 charge any negligent, wrongful or unlawful conduct on the part of this defendant, he denies all such charges.

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ALLEN STEWART BRIDGEFORTH
By: J. SEGAR GRAVATT
Counsel

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Filed in Clerk's Office April 22, 1964.

HODGES S. BOSWELL, Clerk
By: GRAYCE D. FITZGERALD, D.C.

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GROUNDS OF DEFENSE OF
HARRIET M. BRIDGEFORTH

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Comes now Harriet M. Bridgeforth and states her Grounds

of Defense to the Motion for Judgment filed in this action against her as follows:

1. She admits that she was the owner of a 1958 Pontiac automobile which was in collision with another motor vehicle on Route 460 in Nottoway County on October 19, 1963.

2. She denies each and every other allegation contained in the Motion for Judgment charging her specifically or by implication with negligence for any wrongful or unlawful act whatsoever at the time and place alleged in the Motion for Judgment.

3. She denies that she operated or controlled the motor vehicle at the said time and place alleged in the Motion for Judgment.

4. She denies that the motor vehicle was being operated by her agent, and denies that she is legally responsible in any manner whatsoever for the operation of the said motor vehicle at the time and place alleged in the Motion for Judgment.

5. She alleges and charges that the plaintiff's decedent was himself guilty of negligence which was either the sole proximate cause of the collision or an efficiently contributing cause thereof.

HARRIET M. BRIDGEFORTH
By: J. SEGAR GRAVATT
Counsel

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Filed in Clerk's Office April 22, 1964.

HODGES S. BOSWELL, Clerk
By: GRAYCE D. FITZGERALD, D.C.

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AFFIDAVIT

I, Harriet M. Bridgeforth, being first duly sworn, do make oath that I was the owner of a certain 1958 Pontiac automobile mentioned in the Motion for Judgment in this suit. I deny that

the said motor vehicle was operated or controlled by me at the time of the collision alleged in the Motion for Judgment, and I deny that Allen Stewart Bridgeforth was operating the said motor vehicle upon any business of mine, or that the said Allen Stewart Bridgeforth was operating the said motor vehicle as my agent, or that I am in any wise legally responsible for the operation of the said motor vehicle at the time and place alleged in the Motion for Judgment.

Given under my hand this the 15th day of April, 1964.

HARRIET M. BRIDGEFORTH

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Filed in Clerk's Office April 22, 1964.

HODGES S. BOSWELL, Clerk
By: GRAYCE D. FITZGERALD, D.C.

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AFFIDAVIT

I, Allen Stewart Bridgeforth, being first duly sworn, do make oath that at the time and place alleged in the Motion for Judgment I was not operating the 1958 Pontiac automobile owned by my mother, Harriet M. Bridgeforth, as her agent, and I do further make oath that Harriet M. Bridgeforth was in no way responsible for my operation of the said motor vehicle at the time and place aforesaid.

Given under my hand this the 14th day of April, 1964.

ALLEN STEWART BRIDGEFORTH

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Filed in Clerk's Office April 22, 1964.

HODGES S. BOSWELL, Clerk
By: GRAYCE D. FITZGERALD, D.C.

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ORDER

* * * * *

Comes now this day counsel for the plaintiff, moving the Court to appoint a guardian *ad litem* for Allen Stewart Bridgeforth, one of the defendants in this cause, being an infant of the age of 20 years; wherefore, the Court doth appoint Robert R. Merhige, Jr., Attorney at Law, Richmond, Virginia, guardian *ad litem* for the defendant, Allen Stewart Bridgeforth.

Enter This Order
D. CARLETON MAYES
Judge
September 8, 1964

* * * * *

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W. D. GIBBS, SR., ADMR., etc.

v.

ALLEN STEWART BRIDGEFORTH
HARRIETT M. BRIDGEFORTH
BILLY EUGENE STRICKLAND

* * * * *

On September 8, 1964, came the plaintiff in person and by counsel, and each of the defendants in person and by counsel, and came also a jury, which was drawn and selected according to law, to-wit: Horace H. Ellett, Frank Howard Smith, Dennis G. Garrett, Joseph W. Borum, Stanley W. Worsham, Clarence Ellett, and Joyce Branch; who were sworn on September 8, 1964, the truth of and upon the premises to speak. And the evidence of witnesses and argument of counsel having been fully heard, the jury, after receiving the instructions of the Court, retired to their room to consider their verdict, and after some time returned to the Court with their verdict in the following words, to-wit: "We, the jury, find the defendant, guilty of negligence and in estimating the damages find the sum in the amount of TWENTY FIVE THOUSAND ($25,000.00) DOLLARS. Joyce B. Branch, Foreman." And thereupon the jury was dismissed.

And thereupon counsel for the defendant, Allen Stewart

Bridgeforth, made a motion to the Court to set aside the verdict and enter up judgment for the defendant, Allen Stewart Bridgeforth; or to set aside the verdict as being contrary to the law and the evidence and without evidence to support it, and the Court having taken said motion under advisement, the matter was continued to the 5th day of January, 1965, when came the plaintiff, by counsel, and the defendant, Allen Stewart Bridgeforth, by counsel, and the Court having heard the arguments of the respective counsel aforesaid,

page 44] and considering it proper so to do, doth overrule the defendant, Allen Stewart Bridgeforth's motion by counsel for summary judgment to which action of the Court the said defendant, by counsel, objected and excepted, and the Court considering it proper so to do and having heard the arguments of the respective counsel on September 8, 1964, doth enter summary judgment in this cause in favor of the defendants Harriet M. Bridgeforth and Billy Eugene Strickland, to all of which action by the Court the plaintiff objects and excepts, and to which action of the Court in reference to the entering of summary judgment for the defendant, Billy Eugene Strickland, counsel for the defendant, Allen Stewart Bridgeforth, objects and excepts. And the Court further considering it proper so to do, doth set aside the verdict of the jury rendered in this cause on September 8, 1964 against the defendant, Allen Stewart Bridgeforth, on the grounds that the Court had, by virtue of granting Instruction No. 1 at the request of the plaintiff, erroneously instructed the said jury, to which action the plaintiff, by counsel, objects and excepts.

And the Court upon motion of the plaintiff, by counsel, doth order that this cause be re-tried and doth set March 23, 1965 as the date for the re-trial of this case, to which action of the Court the defendant, Allen Stewart Bridgeforth, objects and excepts.

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ENTER:
D. CARLETON MAYES
March 9, 1965

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NOTICE OF APPEAL

To: Hodges S. Boswell, Clerk, Circuit Court of the County of

Nottoway

The defendant, Allen Stewart Bridgeforth, by counsel and by his Guardian *ad Litem,* hereby gives Notice pursuant to the provisions of Section 4, Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia of his appeal from the final judgment entered in the above styled action on March 9, 1965.

ALLEN STEWART BRIDGEFORTH
By JAMES A. BABER, III
Of Counsel

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ASSIGNMENT OF ERRORS

It is respectfully submitted that the Court erred in its rulings made in the proceeding had in this Action in the following particulars, and that such errors were prejudicial to the defendant, Allen Stewart Bridgeforth, an infant:

1. The Court erred in overruling the defendant's, Allen Stewart Bridgeforth, motions to strike the plaintiff's evidence and in not entering summary judgment in his favor.
2. The Court erred in sustaining the motion of the codefendant, Billy Eugene Strickland, and in entering summary judgment in his favor.
3. The Court erred in appointing Robert R. Merhige, Jr., Guardian *ad Litem* for the defendant, Allen Stewart Bridgeforth, over counsel's objection to said appointment when an obvious conflict of interest in representing the infant was present in fact and in law.

ALLEN STEWART BRIDGEFORTH
By JAMES A. BABER, III
Of Counsel

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Filed in the Clerk's Office of Nottoway County.

March 11, 1965
HODGES S. BOSWELL, Clerk
By: GRAYCE D. FITZGERALD, D.C.

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page 49] 1

The court instructs the jury that at the time and place of the collision involved herein it was the duty of the defendant Bridgeforth to exercise ordinary care:

1. To keep his vehicle under proper control;
2. To keep a proper lookout;
3. To operate his vehicle at a reasonable speed under all the circumstances having due regard to the width, surface and other conditions on the highway then and there existing.

And if the jury believe from the evidence that the defendant Bridgeforth failed to exercise ordinary care in the performance of any one or more of the foregoing duties, then he was guilty of negligence; and if you further believe from the evidence that any such negligence was the sole proximate cause of the collision, then you should find your verdict in favor of the plaintiff.

page 50] 2

The court instructs the jury that ordinary care is the exercise of that care which a reasonably prudent person would have exercised under the same or similar circumstances.

page 51] 3

The court instructs the jury that it was the duty of the defendant Bridgeforth in operating his automobile on the highway to drive the same on the right half of the highway and if you believe from the evidence that at and immediately before the time of the collison the defendant drove his car to the left of the center of the highway then he was guilty of negligence and if you believe from the evidence that this action on the part of the defendant was the sole proximate cause of the collision you will find for the plaintiff.

page 52] 4

If you believe from the evidence that the defendant Bridgeforth was on the wrong side of the road at the time of the collision, this fact raises a *prima facie* presumption that the defendant was negligent. This presumption does not shift the burden resting upon the plaintiff to prove by a preponderance of the evidence that the defendant was negligent, but it does shift to the defendant the burden of producing evidence in reasonable explanation of the presence of his vehicle on the wrong side of the road. Not just any explanation will do. It must be a reasonable one, one which the jury can accept, tending to show that the presence of his vehicle on the wrong side of the road was due to something other than negligence on the part of the defendant. And if upon all the evidence you believe from a preponderance thereof that the defendant Bridgeforth was negligent and that such negligence was the sole proximate cause of the collision, then you shall return your verdict in favor of the plaintiff.

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The court instructs the jury that where the defendant relies upon contributory negligence of the plaintiff as a defense, the burden is upon the defendant to prove by a preponderance of the evidence that the plaintiff was guilty of such negligence and that any such negligence proximately contributed to cause the collision, and unless the defendant thus proves the existence of such negligence or unless any such negligence appears from the plaintiff's own evidence or can fairly be inferred from all the circumstances of the case, then you cannot find the plaintiff guilty of contributory negligence.

And if the jury are uncertain as to whether the plaintiff is guilty of contributory negligence, or if you believe that it is just as probable that the plaintiff was not guilty of any such negligence as it is that he was, then you cannot find the plaintiff guilty of contributory negligence.

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page 60] INSTRUCTION NO. E

The burden is upon the plaintiff not only to prove by a preponderance of the evidence that the defendant, Bridgeforth, was negligent but also to prove by a preponderance

of the evidence that any such negligence was a proximate cause of the occurrence complained of; that is, that the occurrence was a natural and probable consequence of any such negligence. A person is not charged with foreseeing that which could not reasonably be expected to happen, nor for casualties which, though possible, were wholly improbable. Therefore, even though you may believe from a preponderance of the evidence that the defendant, Bridgeforth, was negligent, yet unless you further believe from a preponderance of the evidence that any such negligence was a proximate cause of the occurrence, you must find your verdict in favor of the defendant, Bridgeforth.

Refused
D. C. M.

page 61] INSTRUCTION NO. F

If the jury believe from the evidence that the defendant, Bridgeforth, without negligence on his part, was confronted with a sudden emergency, then he was not required to exercise the same good judgment in such sudden emergency which would have been required of him in the absence of such sudden emergency; and in such a situation the defendant, Bridgeforth, cannot be held liable for any error in judgment on his part in any such sudden emergency if you believe from the evidence that he exercised such judgment as an ordinarily prudent person would have exercised in the same or similar circumstances.

Refused
D. C. M.

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W. D. GIBBS, SR., ADMR., etc.

v.

ALLEN STEWART BRIDGEFORTH

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This day came the Plaintiff by his attorney as well as the defendant by his attorneys and the defendant entered a plea of the general issue to which the plaintiff replied generally, then came the following jury, to-wit:

James W. Gunn
Earl A. Jenkins
T. M. Green
D. A. Hood
Robert E. Shell, Jr.
Marvin Irby
Charles R. Hamlett

who having been elected tried and sworn to try the issues joined and having fully heard the evidence and argument of counsel, and having received their instructions retired to their room to consider of their verdict, and after due deliberations returned into court with the *the* following verdict: "We, the jury, have decided in favor of the plaintiff and set the sum of $20,000.00. Robert E. Shell, Jr. Foreman," "We, the jury apportion the sum of $20,000. as follows. $7,500 to the mother, $7,500 to the father and $2,500 to each of his two sisters. Robert E. Shell, Jr. Foreman." To which the attorneys for the defendant made motion to set aside the verdict of the jury as contrary to the law and the evidence and for reasons previously stated for the record, which motion the court doth overrule.

Therefore it is considered by the Court that the said Defendant pay to the said Plaintiff the sum of $20,000 the sum ascertained by the jury in their verdict, payable as follows:

page 63] $7,500 to the mother, $7,500 to the father and $2,500 to each of his two sisters and the costs by him expended in his behalf.

(March 23)

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* * * * *

AMENDED NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

I. This day came counsel of record for the defendant, Allen Stewart Bridgeforth, in the above styled action, and filed this, an Amended Notice of Appeal and Assignments of Error, hereby giving notice of their intention to appeal from the final order of this Court heretofore entered on March 9, 1965, and assign the following errors:

1. The Court erred in overruling the defendant's motions to strike the plaintiff's evidence and enter summary judgment in his favor.

2. The Court erred in sustaining the motion of the co-defendant, Billy Eugene Strickland, to strike the plaintiff's evidence as to him and in entering summary judgment in his favor.

3. The Court erred in appointing Robert R. Merhige, Jr. guardian *ad litem* for the defendant, Allen Stewart Bridgeforth, over counsel's objection and exception to said appoint-

ment because of an obvious conflict of interests.

II. Counsel of record for the defendant, Allen Stewart Bridgeforth, in the above styled action, hereby give notice of their intention to appeal from the final order of this Court heretofore entered on March 23, 1965, and assign the following errors:

page 65] 1. The Court erred in refusing to set aside the verdict of the jury and enter up judgment for the defendant on the ground that it was contrary to the law and the evidence and without evidence to support it.

2. The Court erred in refusing to grant the defendant's motions to strike the plaintiff's evidence and enter summary judgment in his favor.

3. The Court erred in refusing to permit the defendant to cross-examine the witness, Trooper E. P. Landers, with reference to his notes of investigation for the purpose of impeachment and to show that the plaintiff's decedent had been drinking at the time of the accident.

4. The Court erred in refusing to permit the defendant to introduce Defendant's Exhibit No. 1 through the State Medical Examiner for Nottoway County for the purpose of showing that at the time of the accident the plaintiff's decedent had been drinking and that his blood contained .12 % alcohol by weight.

5. The Court erred in permitting the plaintiff to introduce into evidence Exhibits Nos. 7, 8, 9, 10, 11, 12, 13 and 14.

6. The Court erred in granting instructions Nos. 1, 2, 3, 4, and 6, tendered by the plaintiff.

7. The Court erred in refusing to grant instructions Nos. E. and F. tendered by the defendant, Allen Stewart Bridgeforth.

ALLEN STEWART BRIGEFORTH
By L. P. BYRNE
Of Counsel

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Filed in the Clerk's Office of Nottoway County April 28 1965.

HODGES S. BOSWELL, Clerk
By: GRAYCE D. FITZGERALD, D.C.

page 3] IN CHAMBERS

* * * * *

Mr. Cummins: The defendant, Mr. Merhige's client, is an infant. I think he should have a guardian *ad litem* for him. Mr. Merhige and Mr. Gravatt, who previously represented the defendant, made no effort or overlooked appointing a guardian *ad litem* for him. I would ask Your Honor to appoint Mr. Merhige to represent him as the guardian *ad litem* in the case.

Mr. Merhige: If it please the Court, there would be a conflict of interest if I represented this defendant. As a matter of fact, my employment was precipitated by the insurance company handling this matter under a reservation of right. I think that would put me in a poor position as counsel for the insurance company.

The Court: If you are going to represent him,
page 4] how are you going to do it otherwise? If the insurance company is going to represent him, and if they are in conflict they do not have any business in this.

Mr. Merhige: If it please the Court, the insurance company is not in conflict. I, as attorney, would be in conflict. A conflict of interest might well arise.

The Court: How?

Mr. Merhige: As to the limits. I will not say it as a fact, I do not know. They did not tell me what the limits are, but suppose the limits are under the amount sued for, for one thing.

The Court: They do that in every case.

Mr. Merhige: May I finish? Mr. Cummins comes along, for example, and offers to compromise this case. This puts me in a dual position. If I don't compromise it, if I can get authority to and I don't, I am not doing my duty by this infant defendant who may get an excess judgment rendered against him. I cannot represent an insurance company here and him, too.

The Court: I am going to appoint you. You can all fight it out later on.

page 5] Mr. Merhige: I except to Your Honor's appointing me.

The Court: You except.

Mr. Merhige: I would like to go further, Your Honor.

The Court: Let's get things straightened out.

Mr. Merhige: I refuse the appointment with all due respect.

The Court: All right.

Mr. Cummins: Mr. Gravatt tried it in the lower court. That was his reason for getting out. How about Copeland Adams?

The Court: We can continue the case. If I appoint a man here at the start of the case, how much chance does he have to represent him as a guardian *ad litem* is supposed to do? He can represent the interests of this defendant. (Referring to Mr. Merhige)

Mr. Cummins: Mr. Merhige, it seems to me, is trying to hamstring this trial.

Mr. Merhige: I resent that. I have not done such a thing. I have come down here ready for trial.

Mr. Cummins: You have not done anything about appointing a guardian *ad litem.*

page 6] The Court: I will appoint him then. Go ahead.

Mr. Merhige: Let the record show, sir, I most respectfully refuse the appointment on the grounds it could well result in a conflict of interests, and I could not do my job as required of me as the guardian *ad litem.*

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Mr. Cummins: Your Honor, I am very much concerned —

The Court: About what?

Mr. Cummins: About the objection Mr. Merhige has raised. I am wondering if the Court would allow

page 8] me to try to get an attorney up here that will sit in as guardian *ad litem?*

The Court: I am not going to let one sit today. He has not done any work on it. It would be a waste of time.

Mr. Cummins: The record will show —

The Court: I would set the verdict aside myself for that reason, because he has not done anything, in other words, but just sit here. I could appoint Mr. Boswell over there.

Mr. Cummins: He is not an attorney.

The Court: I know it. I mean if he were. We are not going to make a sick job out of it.

Mr. Cummins: It is just the idea of having counsel with him, to show the guardian was present, I believe that would satisfy the objection.

The Court: I believe you have a most capable man here. I am not worried. He is going to go ahead with it. He preaches

high things in Richmond about helping the indigent and all that.

Mr. Merhige: I do my best. I again refuse the appointment most respectfully, sir.

The Court: I think that is in the record. If you want a continuance I will give you a continuance.

page 9] Mr. Cummins: It strikes me, if Your Honor please, one alternative to a continuance would be to get counsel here to serve as guardian *ad litem.* I think I could secure such counsel in ten minutes.

The Court: I think you could, too. I do not think he would be able to be of service when he doesn't know anything about it, or has not had time to consult with Mr. Merhige. Mr. Merhige can fill in. I don't believe that would put him in the position he claims.

Mr. Cummins: If Your Honor please, I would say —

The Court: Make up your mind. Do you want a continuance or do you want to go on? I am going to let you do one or the other. This case has been on the docket for six months.

Mr. Cummins: That is not my fault, Your Honor. I did not raise the point.

The Court: We have all the jurors standing around out here. Which way do you want to go? Do you want a continuance or do you want to go ahead?

Mr. Cummins: I am being put in the position on inference now that it is my fault. I will go ahead.

page 10] The Court: All right. Let's go. You may make your objection about going ahead if you wish.

Mr. Cummins: I can't.

The Court: If you want to object to what I am doing about your appointing another man, state your reasons. You can put it in the record later to protect yourself.

★ ★ ★ ★ ★

page 18] E. P. LANDERS,

a Virginia State Trooper, upon being called by counsel for the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cummins:

Q. Mr. Landers, would you tell the jury your name, your

place of residence, and your occupation, and how long have you been so employed?

A. E. P. Landers, Trooper, Virginia State Police. I live at 202 Dinwiddie Avenue, Blackstone, Virginia. I have been with the Department of State Police for a little over twenty-eight years.

Q. Did you have occasion on October 19, 1963, sometime close to midnight that night, to investigate an automobile accident approximately one and four-tenths miles west of the corporate limits of Blackstone, Virginia, on Route 460 in Nottoway County?

A. I did.

Q. Would you tell us in your own words how you were alerted as to this accident? What you did upon your alert, and what you discovered upon your subsequent investigation at the scene?

A. I was at Slaw's Restaurant a little before 11:30, between 11:20 and 11:30 on the night of October 19, 1963, and was preparing to leave there. And a motorist stopped

page 19] in and reported a bad accident just west of Slaw's. I proceeded to the scene — which was one and four-tenths miles west of Blackstone in Nottoway County — and I found that three vehicles had been involved in an accident at that location.

One of the vehicles was a 1958 Pontiac Catalina Sedan, which my investigation disclosed had been operated at the time of the accident by Allen Stewart Bridgeforth of Blackstone.

A second vehicle was a 1960 Falcon two door sedan, which my investigation disclosed had been operated at the time of the accident by William Daniel Gibbs, Jr. I have a Richmond address on Mr. Gibbs. 1712 Catalina Drive, Richmond, Virginia.

The third vehicle at the scene was a 1957 Pontiac two door coupe, which my investigation disclosed had been operated at the time of the accident by Billy Eugene Strickland of Blackstone.

Q. At this point, Mr. Landers, would you tell us the nature of the road with respect to its width, the surface and the nature of the weather?

A. The nature of the weather?

Q. The weather.

A. The road was hard surface. There was a curve immediately east of where this accident occurred, a

page 20] slight hill crest. The weather was clear. No falling weather. The pavement was dry.

Q. What was the approximate temperature?

A. I don't recall that. It wasn't uncomfortably cool. It was fall weather.

Q. Was it cool enough to be driving and maybe living in a house with windows up or down?

A. On that occasion, as I recall the temperature, I would be driving with my window open on the car.

Q. All right, sir. Now, proceed if you will with *therest* of your investigation.

A. When I arrived at the scene, which was at about 11:30 p.m., I looked at the three vehicles, and looking into the Falcon which had been operated at the time of the accident by Mr. Gibbs, I found that Mr. Gibbs was still in the car. He was unconscious. He was lying across the back rest of the front seat on the driver's side. His feet and ankles appeared to be caught in the brake or clutch pedals on the car. His head and shoulders were lying almost on the rear seat. He never made any statement at all that I could understand. He was making some noise, but it was more groans than anything else.

Q. Did you notice any physical injuries or damage to his body?

A. I could see that he was bleeding. He had a
page 21] deep laceration on the top of his head.

Q. Did you say where you found his car?

A. I didn't say that. His car was on the south side of Route 460 on the south shoulder. It was facing west.

Q. The south shoulder would be adjacent to the eastbound lane?

A. That is correct.

Q. Which lane of travel was his lane of travel?

Mr. Merhige: Objection, sir. I do not see how the Trooper could say which lane was his travel unless he saw it. It would be a conclusion on his part. It would be hearsay.

The Court: Objection sustained.

Q. You found his car, you say, on the south shoulder adjacent to the eastbound lane?

A. Yes, sir.

Q. In which direction was it facing?

A. Facing west.

Q. Going now to the next automobile that was in the collision, what did your investigation disclose?

A. You are referring to the other Pontiac or the —

Q. Either one or the other. Take your choice. Carry on through your entire investigation.

A. I found the 1958 Pontiac Catalina Sedan, which I learned had been operated by Allen Stewart Bridgeforth, page 22] on the north side of Route 460 on the north shoulder headed east. The distance between the two vehicles was ninety-eight feet, measuring diagonally from the south shoulder where the Falcon was found to the north shoulder where the '58 Pontiac was found.

Q. What did your investigation disclose at that time about the driver of the Pontiac that you mentioned?

A. There was no one in the Pontiac at the time I examined it. The left side of it was badly damaged. I found one shoe in the floor of the car, front, on the driver's side. The driver was not located, or at least I did not talk with him until about 2:30 the following morning.

Q. Did you talk to him at the scene or somewhere else?

A. At Dr. White's office in Blackstone.

Q. What did your investigation disclose with respect to the third automobile?

A. I found the third automobile, a 1957 Pontiac, parked in a private driveway that goes, or did at that time, go from Route 460 into the residence of James Hawthorne. While I didn't measure the distance from the front of the 1957 Pontiac to the edge of the pavement —

Q. Now, the 1957 Pontiac is whose?

A. Strickland's. I did not measure the distance from the front of that vehicle to the edge of the *pavenent.* page 23] It appeared to be about four feet. Billy Eugene Strickland was at the scene, and I talked with him, at the scene.

Q. Did you find any other vehicles involved in this accident?

A. Only those three.

Q. Going back in order to the first vehicle, state if you will, sir, the nature and the extent of the damage to the first vehicle, which would have been the Falcon, as I understand your testimony.

A. I have Vehicle No. 1 listed as the 1958 Pontiac.

Q. Excuse me.

A. I can describe the damage to the Falcon —

Q. Suppose you do since you took them in that order in your testimony.

The Court: In order to save any confusion, along with your number, state the name of the people, too.

A. All right, sir. The first vehicle, the one I have as Vehicle No. 1, was the 1958 Pontiac Catalina Sedan.

Q. Operated by who?

A. Operated by Allen Stewart Bridgeforth. According to my investigation —

Q. All right. That, as I understand you, is the vehicle you found on the north shoulder facing east?

A. That is correct.

page 24] Q. Tell us the nature and extent of that damage.

A. The damage to that vehicle consisted of severe damage to the left front, almost over to the center of the front of the vehicle, down the left side to the extreme rear. Both doors were torn off.

Q. Both doors?

A. Yes.

Q. You mean upon which side?

A. On the left side. They were both torn off. I would say that the principal damage was to the left front and left side of the 1958 Pontiac. The Allen Stewart Bridgeforth vehicle.

Q. Did you find any damage to the right rear portion of that vehicle?

A. Yes. In examining the right rear of the 1958 Pontiac, the Bridgeforth vehicle, I found that it was equipped with double tail lamps. In other words, two tail lamps on each side of the rear. Both of the lenses were broken from the tail lamps on the right rear of the vehicle. There was a slight dent in the chrome housing of the tail lights. There was a small amount of red paint on that particular chrome part of the Bridgeforth vehicle.

Q. Now, sir, if you are finished on that vehicle's damage — is there anything else you would like to add to that vehicle's damage?

page 25] A. Nothing that I can think of.

Q. What did your investigation disclose with respect to the nature and extent of the damage to the Pontiac

automobile — excuse me, to the Gibbs' automobile, which was the Falcon?

A. I have that vehicle listed as Vehicle No. 2. It was a 1960 Falcon two door sedan. I found that it had been operated by William Daniel Gibbs, Jr.

Q. Excuse me, sir. That would be the vehicle, I gather, that was located on the south shoulder of the highway adjacent to the eastbound lane, and came to rest heading west?

A. That is correct.

Q. All right, sir. Go ahead.

A. That vehicle was badly damaged across the front from — it was almost completely across the front. I would say two-thirds of the front from the left, left side as you face the front of the vehicle, about two-thirds of the front going toward the right was damaged, and the entire left side clean back to the rear of the vehicle.

Q. Going now to the third vehicle, which would have been the Pontiac operated by Strickland, which you say you found in the Hawthorne driveway parked with its nose heading toward the highway, approximately four feet off the highway, did you find any damage to that vehicle which occurred in this accident?

page 26] A. The Strickland vehicle, the 1957 Pontiac, was parked in this driveway. I observed that the headlight rim had been in some manner had been removed from around the right headlight; that the seal beam unit was hanging by its wires down in the front of the vehicle and was still burning. The seal beam unit itself was not broken. There was a slight dent on the right bumper guard of the 1957 Pontiac, the Strickland vehicle, and a slight dent immediately below the right headlight and right front fender slightly to the left of the right headlight as you would stand facing the vehicle.

Q. Now, go, if you will, to the disclosures that were made to you by your investigation or any marks, any foreign matter, anything that you found in the roadway along the shoulders, along the bank, anything that you found with regard to those type of things in your investigation.

A. In the eastbound lane of Route 460 a short distance east of the Hawthorne driveway I found a grease stain that started at the center line of the road and continued across the entire eastbound lane and followed the shoulder over to the point where the Falcon automobile, the Gibbs' vehicle was found after the accident. The pavement there was covered with glass

and the usual things that you will find at a severe accident like that, and the glass was scattered all over the road from the Hawthorne driveway on west, completely covering the road from one side to the other.

page 27] I found no heavy parts of any of the vehicles on the pavement.

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page 38]

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BEFORE THE JURY

The Court: All right, Mr. Cummins.

By Mr. Cummins: (Continuing)

Q. Mr. Landers, in the course of scope of your investigation of this accident, did you take any photographs?

A. I did.

Q. Did you take any photographs of the road, of the shoulders of the road, of the automobiles involved?

A. I did.

Q. Did you have any aerial photographs made of the road involved?

A. I did.

Q. Mr. Landers, I hand you a photograph which has been marked Plaintiff's Exhibit 2 on the reverse side, and I ask you, sir, if you will tell the Court and the jury what that picture depicts and what it purports to show?

A. It is a picture of the right front of the 1957 Pontiac which was operated by Billy Eugene Strickland.

page 39] It shows the missing headlight rim from the right headlight. It does not show the rim itself. It shows the absence of the rim. It shows a slight dent immediately below and to the left of the right headlight facing, as you face the vehicle.

Q. During the course and scope of your investigation and relative to any statements made to you by any of the parties involved in this accident, what did your investigation disclose as to the occurrence of that damage that you speak of?

A. Will you repeat the question?

Q. What did your investigation —

Mr. Booth: I object to that, Your Honor. That would call for an engineering expert.

Mr. Cummins: Let me repeat the question.

The Court: Repeat the question.

Q. Mr. Landers, from the course and scope of your investigation of this accident, sir, and in relation to any statements made to you by any of the defendants in this case, did your investigation disclose how that damage on that picture, Plaintiff's Exhibit No. 2, was inflicted?

Mr. Merhige: If it please the Court, I would object to that. I do not know what the answer would be. I object to the Officer answering any statement that might have been made by Strickland not in the presence of Bridgeforth. It could not be used to the detriment of Bridgeforth. And anything that Bridgeforth said I submit would be the same situation, and still result in the Officer's conclusion. We object to it.

page 40]

Mr. Cummins: It is not a conclusion, if Your Honor please.

The Court: It sounds like to me it would be giving an opinion. Objection sustained.

Mr. Cummins: We note an exception to the Court's ruling.

The Court: Yes, sir.

Note: At this point the above identified photograph, Plaintiff's Exhibit No. 2, is passed to the jury.

Q. Mr. Landers, I hand you a photograph marked Plaintiff's Exhibit No. 4 on the reverse side, and I ask you, sir, what that photograph depicts and what it purports to show?

A. This is a photograph of the 1958 Pontiac which had been operated by Bridgeforth. It shows the damaged portions of this vehicle from the left front to the — almost to the extreme rear of the vehicle, including both doors.

By The Court:

Q. Now, wait a minute. Let me straighten out something here. Mr. Landers, is it as the vehicle was that night?

A. With one exception.

Q. State that exception and point it out to the jury.

page 41]

A. The only difference in this picture —

Q. Hold it so they can see it.

A. The only difference in this particular picture, in the way it is now and the way it was that night, the vehicle on the highway that night at the time of the accident, the wheel as you see in the forefront of the picture was not in that position, on the night of the accident.

Q. Tell where the wheel was.

A. I found the wheel on the north shoulder of Route 460 off the pavement, between the Hawthorne driveway and where the Bridgeforth vehicle stopped, about halfway.

The Court: Did you all understand that now? That the wheel was not there; that was put there by somebody else. Is there anybody who does not understand that?

Mr. Merhige: Did he say what wheel it was, Your Honor.

Trooper Landers: Left front.

The Court: Left front wheel. All right. Go ahead.

By Mr. Cummins: (Continuing)

Q. I hand you a photograph marked on the reverse side Plaintiff's Exhibit No. 5, Mr. Landers, and ask you what that picture depicts and what it purports to show?

page 42] A. That is another picture of the Bridgeforth vehicle, the 1958 Pontiac. It is a picture of the left side of this vehicle, and the vehicle appears in the picture as it did on the night of the accident with exception of the wheel, which is shown toward the left side of the photograph. That wheel is the left front wheel from that vehicle. It was found on the night of the accident on the north shoulder of the highway between the Hawthorne driveway and where the Bridgeforth vehicle stopped.

The Court: Does everybody understand that now? Does everybody understand about that wheel? All right.

Note: At this point the above photograph is passed to the jury.

Q. I hand you Plaintiff's Exhibit No. 6 as marked on the back, and ask you, sir, what does that photograph depict, and what does it purport to show?

A. This is a photograph of the Falcon which I found upon my investigation had been operated by Mr. Gibbs. It shows the entire vehicle as you would face it toward the left front, and it shows the vehicle as it was at the scene of the accident

on my arrival. However, the picture was taken at Mr. Novel's storage yard in Blackstone, the garage who towed the car in.

Mr. Cummins: All right, sir.

Note: At this point the above photograph is passed to the jury.

page 43] Q. I hand you a photograph marked Plaintiff's Exhibit No. 7 and ask you, sir, to tell the jury what that photograph depicts and what it purports to show?

A. This is an aerial photograph which was taken a couple of months ago. It shows the highway at the scene. It shows the Hawthorne driveway. It shows the burned remains of the Hawthorne residence about two hundred feet from the — on the north side of Route 460. It also shows my vehicle parked in the driveway. I was there at the time the picture was taken.

Q. If you will hold it just a moment, Mr. Landers, so the jury can see it, what direction would this be down here to the right hand side of the picture?

A. West.

Q. This direction would consequently be east?

A. Yes, sir.

Q. The burned remains of the Hawthorne residence, what do you mean by that?

A. That residence burned after the accident occurred and —

By The Court:

Q. It had nothing to do with the accident?

A. Nothing at all.

The Court: All right.

By Mr. Cummins: (Continuing)

page 44] Q. I hand you, sir, a photograph marked on the reverse side Plaintiff's Exhibit No. 8, and ask you to tell the jury what that photograph depicts and what it purports to show?

A. That is another aerial photograph. It shows the intersection of Route 460 and the Hawthorne driveway, which was roughly the scene of this accident. It shows the Norfolk & Western Railroad tracks on the north side of Route 460. Toward the east or northeast it shows Slaw's Restaurant and

Slaw's Service Station, which was closed and was closed at that time. It also shows the burned remains of the Hawthorne residence north of Route 460.

Q. I ask you, sir, with relation to this photograph, what does this intersection here and this intersection down here, which are some distance east of the Hawthorne intersection, what are they?

A. That is a dirt lane that turns off Route 460 to the north immediately east of the Hawthorne driveway, and it circles in behind a couple of houses and comes out again on the north side of Route 460. I do not have *themeasurements*. I would say possibly five hundred feet.

Q. What is this area back up in the extreme upper right hand corner of the photograph?

A. In the upper right hand corner of the photograph is Slaw's Restaurant, Slaw's Garage and Service Station.

page 45] Note: At this point the above aerial photograph is passed to the jury.

Q. I hand you Plaintiff's Exhibit No. 9 and ask you to tell the jury what that photograph depicts and what it purports to show?

A. This is another aerial photograph. It shows substantially what the two previous pictures showed. It shows the Hawthorne driveway at its intersection with Route 460. It shows the dirt driveway that goes into the houses on the north side of Route 460 immediately east of the Hawthorne driveway. It also shows where this driveway comes back out onto 460, four or five hundred feet east of where it leaves 460. It shows the Norfolk & Western Railroad tracks, and over to the highway on the northside of 460.

Note: At this point the above identified photograph is passed to the jury.

Q. I hand you, sir, Plaintiff's Exhibit No. 13, a photograph marked on the reverse, and ask you what that photograph depicts and purports to show?

A. This photograph shows a grease mark in the eastbound lane of Route 460 extending the entire width of this lane of the road, and extending to the south shoulder of 460.

Q. Did you mention about this darkish substance here? Did you mention about that?

A. That is the grease mark area right there.

page 46] Q. The gease mark of — whose grease mark? What grease mark?

A. That grease mark started where I stated, near the center of the road there and ended at the front of where the Falcon, under the Falcon stopped, the Gibbs' vehicle.

Q. This line here, is that the highway dividing line? Is that the traffic lines, these lines right along here?

A. Where you have your pencil point?

Q. Yes, sir.

A. That is the dividing line.

Q. What is this line along here?

A. That is a — it's a patch, fresh patch has been put on the pavement. It was patched at that point and the gravel is whiter than the rest of the road.

Q. This is still part of the hard surface all up in here?

A. Yes, sir.

Q. That is not shoulder?

A. No.

Q. Where is the shoulder?

A. The shoulder would be —

The Court: Show the jury where they could see it.

A. The shoulder would be between where this white patch stops and where the grass begins.

page 47] Note: At this point the above photograph is passed to the jury.

Q. I hand you Plaintiff's Exhibit No. 14 and ask you what that depicts and what it purports to show?

A. This picture was taken looking west from the scene of the accident. It shows the contour of Route 460 as you would look west. It also shows the grease mark that I previously testified to.

Q. All right.

A. And the patch in the pavement.

Mr. Cummins: All right, sir.

Note: At this point the above photograph is passed to the jury.

Q. I *handyou* Plaintiff's Exhibit No. 10, marked on the reverse side, and ask you what that photograph depicts and what it purports to show, please, sir?

A. This photograph was taken from the scene of the accident facing west. It shows the patches in the road. It shows the grease marks extending across the east lane, eastbound lane, over on to the shoulder of the road, south shoulder. It shows the Hawthorne driveway. It shows my police vehicle parked in the Hawthorne driveway. It shows another police car parked on the southside of the south shoulder of Route 460.

Q. Would you hold the picture so the jury can see it, and show them, point for them the grease mark that

page 48] you refer to?

A. The grease mark is to the left side of the picture facing the jury. Right there across the pavement, extending on to the shoulder.

Q. That would be this marking here that you had your finger on.

A. That is correct.

Q. That was the grease mark leading to the Gibbs' vehicle?

A. That's right.

Q. They were in which lane?

A. In the eastbound or south lane.

Q. I hand you Plaintiff's Exhibit No. 11 and ask you what that depicts and what it purports to show?

A. This picture was taken looking east from a point west — or the point of impact west of the scene of the accident. It shows the contour of Route 460. It shows a curve to the right as you head east on 460. It shows my police vehicle parked in the Hawthorne driveway on the north side of Route 460. It shows another police car parked on the south shoulder. This would be my vehicle on the left side of the picture.

Q. That is a view of the curve, is it, going to the east?

A. That is correct.

page 49] Note: The above photograph is passed to the jury.

Q. I hand you Plaintiff's Exhibit No. 12 and ask you if you will tell us what that exhibit depicts and purports to show?

A. This picture was taken west of the scene of the accident. It shows a view of the road looking east. It shows a part of the Hawthorne driveway. It shows the curve as you proceed

east from the scene of the accident. It shows some whitish-greenish stains that were in the westbound lane of Route 460 west of the approximate point of impact.

Q. West of the approximate point of impact?

A. Yes. The stains I refer to are a white — what shows — you have white on the picture.

Q. Is that grease?

A. It is not.

Mr. Merhige: Excuse me, sir. I would ask Your Honor to instruct the jury to disregard the Trooper's statement in reference to the point of impact. This is the very issue the gentlemen of the jury is attempting to determine. I do not think that Sergeant Landers himself can say where *thepoint* of impact was. I move that it be stricken from the record.

The Court: All right. Strike that. Disregard that.

page 50] Q. Let me ask this qusetion: Were these whitish-stains that you say you found in the westbound lane, were they east or west of the Hawthorne driveway?

A. They were west.

Q. Approximately how far west?

A. Approximately —

Q. Approximately how far west?

A. Let me see the picture. From seventy-five to one hundred feet west of the Hawthorne driveway.

Q. West of the Hawthorne driveway?

A. Yes, sir.

Q. Was there any evidence at all that the Bridgeforth vehicle dropped down anything of a fluid nature at any point before seventy-five feet west of the Hawthorne driveway?

Mr. Merhige: That would be a conclusion, if it please the Court.

Mr. Cummins: He examined the scene.

By The Court:

Q. Could you tell which vehicle, where the stains came from or where anything came from?

A. Yes, sir, I believe so.

The Court: All right, sir.

By Mr. Cummins: (Continuing)

Q. Tell us, Mr. Landers.

A. These greenish-whitish stains appeared to

page 51] have been —

Mr. Merhige: I object to that. That is the Officer's conclusion and opinion as to what it appeared.

Mr. Cummins: He hasn't given it yet, Your Honor.

The Court: Objection overruled. Go ahead.

Mr. Merhige: Exception.

A. I examined these stains very closely, and they had an odor that had an acid smell to it. And in examining the Bridgeforth vehicle, I found that the battery in that vehicle had been completely demolished in the impact. The battery on the Strickland vehicle was not damaged. The battery on the Gibbs' vehicle was not damaged.

Q. When you say the odor from this stain here, you are speaking not of the grease stains in the highway?

A. No. I am speaking of the whitish-greenish stains which appeared to be corrosive.

Q. They appeared to be corrosive, and you state they were approximately seventy-five to one hundred feet west of the Hawthorne driveway?

A. Correct.

Q. You found the grease stain, which you say you found in the eastbound lane, and only in the eastbound

page 52] lane, they were found east of the Hawthorne driveway, were they not?

A. Slightly east of the Hawthorne driveway, yes, sir.

Q. Approximately how far?

A. Well, that would have to be an approximation.

Q. You examined the scene —

A. From twenty to thirty feet.

Q. From twenty to thirty feet?

A. Yes, sir.

Q. It could have been twenty; it could have been thirty?

A. It could have been.

Q. Or anything in between?

A. Yes.

Q. Let me ask you this question. Was there anything from your investigation of these automobiles the location in question, any of the debris, or any of the witnesses that indicated that any of these whitish-greenish stains that you refer to as being seventy-five feet west of the Hawthorne driveway

could have been put there by the Gibbs' vehicle?

A. No, sir.

Q. They could not have been put there by the Gibbs' vehicle?

A. I found nothing in my investigation that would have indicated it.

page 53] Note: At this point the above photograph is passed to the jury.

Q. Mr. Landers, what, if you know, was the length of the Pontiac automobile operated by Allen Stewart Bridgeforth?

A. (Pause)

By The Court:

Q. Did you measure it?

A. No, Your Honor, I did not measure the Bridgeforth vehicle. I can tell them the length of a similar make, model, and type of vehicle.

By Mr. Cummins: (Continuing)

Q. Would that be in the nature of your work as a Police Officer to know such things as that?

A. I thought that this might come up in the case and made it my business to find out.

Mr. Merhige: We have no objection, Your Honor, whatever the length is.

Q. What was the length of the Bridgeforth vehicle, Mr. Landers?

A. The length of a 1958 Pontiac Super Chief Catalina Hardtop four door sedan, which was the type of vehicle that the Bridgeforth vehicle was, is two hundred fifteen and fifty-three one-hundredths inches.

Q. 215.53.

By The Court:

Q. How many feet is that?

page 54] Mr. Merhige: Somebody else will have to do it, not me, Your Honor.

A. It figures 17 and 11/12 feet.

Q. 17 and 11/12 feet? You mean one-twelfth of an inch less — one twelfth of a foot less than eighteen feet?

A. That's right.
Q. Do you happen to know the weight of that vehicle?
A. No, sir.
Q. Do you happen to know the width of that vehicle?
A. No, sir.
Q. Upon your investigation of the scene of the accident, did you discover any markings on the road or any markings along the shoulder of the road west of a point twenty to thirty feet east of the intersection of Hawthorne's driveway and 460, which marks were made by the Bridgeforth automobile?

Mr. Merhige: Let him describe the marks that were made.
Mr. Cummins: If I tried to do it, you are going to say I am leading him.
The Court: Describe the marks that were made.

Q. Describe the marks that were made by the Bridgeforth vehicle, so far as you could determine after the collision.

page 55] Mr. Merhige: I object to that. It is an opinion and conclusion, sir. He can describe the marks that he found that might have led up to the Bridgeforth vehicle.
Mr. Cummins. That is what I am asking him to do.
The Court: All right. Do what Mr. Merhige told you, if you know, and if you don't know, just say you don't know.

A. I would like to hear the question and the objection again.

The Court: He said describe, if you know, describe the marks that led up to the Bridgeforth vehicle.

By Mr. Cummins: (Continuing)
Q. Which would have been made by wheels. I am talking about skid marks and things of that nature.

The Court: I do not know what they were made by, but just describe them. If you know.

A. I found some broad marks on the shoulder, and it was on the north shoulder of Route 460, that went immediately past where I found the front of the Strickland vehicle, when I reached the scene. They were not marks that you would normally make by driving by and leaving a tread mark. They were

wide. Now, which vehicle made these marks, I don't know. But, they were there.

page 56] Q. Where did they go or lead to?

A. They started a very short distance east of the Hawthorne driveway and continued, I'd say, in sort of a looping fashion through the driveway and back out onto Route 460.

Q. In a looping fashion through the driveway?

A. Yes.

Q. How were they looping through the driveway? In other words, how far off the hard surface did they loop by the Hawthorne driveway and then return to the hard surface?

A. The farthest the marks went from the edge of the pavement, as far as in the immediate vicinity of where the front of the Strickland vehicle was when I reached the scene of the accident.

Q. When you reached there —

A. Yes, sir.

Q. That was approximately how far?

A. About four feet.

Q. Did Allen Stewart Bridgeforth make any statements to you relative to this accident during the course of your investigation of the accident?

A. He did.

Q. Tell us, as best you can recollect, what Allen Stewart Bridgeforth had to say to you about the accident.

A. I talked with Allen Stewart Bridgeforth at Dr. White's office in Blackstone about 2:30 a.m. on the morn-

page 57] ing of October 20th.

Q. Had you seen him any up to that point?

A. I had not.

Q. Why had you not?

A. I couldn't find him.

Q. Go ahead.

A. I questioned him about the accident. He was in right much pain at that time. And I didn't take a long statement. I didn't take a written statement from him. He stated that he was headed west on the way to Midway Tavern, which was located about, approximately five miles west of Blackstone on Route 460.

Q. Which would have been how many more miles from the scene of this accident.

A. Three and a half to four miles. And that as he rounded the curve approaching the Hawthorne driveway, he didn't

mention Hawthorne driveway, as he rounded the curve in which we are interested he met a vehicle coming down his side of the road, and the lights blinded him, and that he cut to his right in an attempt to avoid a collision. And he didn't remember anything after that.

Q. He said, he told you that in stating as he was coming around the curve?

A. Yes.

Q. He was traveling west, was he not?

page 58] A. According to his statement to me he was, yes.

Q. I hand you Plaintiff's Exhibit No. 11, which you have testified is a view of the highway from the Hawthorne driveway looking east showing the curve of the road, is that the curve around which Bridgeforth says he was coming when he saw a glare ahead of him?

Mr. Merhige: He said he was coming out of it, as I understood the Officer's statement.

Q. Is that the curve he said he was coming out of, out of which he came?

A. That is the only curve in that immediate vicinity.

Q. Did you find any marks such as skid marks, tire pressure marks, or similar such markings made by car tires at any point in the highway just immediately east of the approximate impact point or just immediately west of the approximate impact point?

Mr. Merhige: I object to that. The impact point has not been established. The Sergeant has been very frank in telling the Court that he did not know where it was.

The Court: Objection sustained.

Q. Did you find any skid marks made by any vehicle prior to the collision?

A. No, sir.

page 59] The Court: Sheriff, you can tell all the people out there they can go eat if they want to.

Q. I do not recall, Mr. Landers —

Mr. Cummins: Your Honor, has it been testified to yet

whether any of the grease marks that were found in the eastbound lane extended over into the westbound lane? Has that been covered?

Q. The grease marks, did they extend only in the eastbound lane or did they extend over into the westbound lane?

A. I didn't find any grease marks in the westbound lane or to the west of the center of the road, or north of the center of the road, I should say.

Q. You detect or define them as being grease marks, do you also include in that oil and such?

A. It was black grease. I don't know what the material is.

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page 62]

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CROSS EXAMINATION

By Mr. Merhige:

Q. Sergeant, I believe you said something about red paint on one of the vehicles, that, I believe, was on the Bridgeforth vehicle, the right rear?

A. Yes. I mentioned that.

Q. What color was the Strickland vehicle?

A. The Strickland vehicle was red.

Q. It was red?

A. Yes, sir.

Q. Did your investigation disclose, Sergeant, that Allen Bridgeforth had been rather seriously injured
page 63] and had been taken to the doctor by some friend, and that is where you spoke with him?

A. I didn't see him for several hours after the accident. And I went to the doctor's office when I learned that he had been taken there, yes.

Q. Did you ascertain that he was subsequently hospitalized?

A. Oh, yes.

Q. And had some serious injuries?

A. Yes, sir.

Q. Did you ascertain the sobriety of the drivers in the car? Could you tell whether anybody had been drinking, and, if so, who?

A. Not that I could tell.

Q. You could not tell whether anybody had been drinking?

A. So far as I could tell no one had been.

Q. Now, Sergeant, referring to Exhibit No. 13, would you mark, please, sir, the center of the road that I believe you said these grease spots or the grease spot extended, could you mark in red where you said it extended from the center of the road, as I understood, and could you make a mark there in red?

A. (Doing so)

Q. Am I quoting you correctly, sir, that they
page 64] extended from the center?

A. Yes, sir.

Q. Now, Sergeant, you traced those grease marks to under the Gibbs' vehicle, is that correct, sir?

A. Yes, sir.

Q. Did you trace it to the rear end or to the front? Was it in the center where the oil pan is located?

A. Under the front of the vehicle.

Q. Under the oil pan in the center of the vehicle?

A. Under the front assembly where the motor would be.

Q. Where the motor would be?

A. Yes, sir.

Q. It would not be to the left side or to the right side, it would be about in the center that you traced these marks to?

A. As near as I could tell, yes.

Q. I believe you said that they extended for twenty to thirty feet, is that correct?

A. What, the grease marks?

Q. Yes, sir.

A. No, sir.

Q. They did not; how far a distance *didthey* extend, Sergeant?

A. The width of the eastbound lane was slightly
page 65] over ten feet, and they extended the width of that lane and to the point on the shoulder, the south shoulder of the road where the Falcon, the Gibbs' vehicle stopped, roughly thirteen feet.

Q. I see, sir. Did you see debris to the east and to the west of that point, that area, that apparently came from the accident?

A. Most of the debris I found at the scene of the accident, including broken glass, so forth and so on, was west of the general vicinity where this accident occurred. Very little east

of there.

Q. But there was some?

A. Well, possibly a little piece of broken glass. Nothing to amount to anything.

Q. Is it not a fact that you saw some white and greenish looking stains that appeared to have come from some acid of some kind?

A. Yes, sir.

Q. You ascertained that the Bridgeforth battery had been demolished?

A. Yes, sir.

Q. Is it not a fact, sir, that those stains were in the road extending from the grease spots westward?

A. Yes, sir.

Q. And they went about seventy-five feet, is that correct?

page 66] A. That is an approximation.

Q. An approximation?

A. Yes, sir.

Q. They did extend from the grease spot westward?

A. Yes, sir.

Q. They were in the westbound lane?

A. Yes, sir.

Q. You traced those, or you ascertained that it was battery acid, that was your conclusion?

A. That is what it appeared to be.

Q. All right, sir. Now, Sergeant, how far east of the Hawthorne driveway were these green and white stains, if they were east?

A. They were not east.

Q. They were not east?

A. No, sir.

Q. Were they about the center of the Hawthorne driveway?

A. Roughly they started there and extended for, at intervals, for about seventy-five feet headed west.

Q. It is a fact that Bridgeforth was in *rightmuch* pain when you talked with him?

A. He appeared to be.

Q. He told you that as he came out of the curve, a car met him, the headlights blinded him, and they were

page 67] on his side of the road, and he pulled to his right and that is all he remembers, is that correct?

A. He stated as he came around the curve —

Q. Around the curve?

A. Yes, sir.

Q. That these lights were on his side of the road?

A. He saw a set of headlights coming down his side of the road, that he cut to his right to avoid the accident.

Q. Is it not a fact, sir, that east of this driveway you found marks about four feet off the hard surface that went right past the driveway to where — or towards where the Bridgeforth's vehicle ultimately came to rest, or at least where it was when you got there?

A. Will you repeat that please, sir?

Q. Did you not find marks approximately four feet off the hard surface, that is on the shoulder, east of the driveway and through the driveway in the direction which the Bridgeforth vehicle was traveling, that is westwardly?

A. That is correct. I did.

Q. They started about twenty or thirty feet east of the Hawthorne driveway, did they?

A. I don't recall the exact distance.

Q. Would that be a fair approximation?

A. I don't know that it would be. Those marks were not very long. I didn't measure them, but it is a loop-
page 68] ing type of mark that ran off the edge of the pavement a short distance east of the Hawthorne driveway, continued through the driveway and back on to the pavement.

Q. Could you estimate how far east of the driveway?

A. Not very far.

Q. Ten feet, fifteen?

A. Not more than ten, I would say.

Q. Ten. Now, did Mr. Strickland tell you that his car had remained in a stationary position from the time he first saw the vehicles until you arrived, that is from the accident?

A. As I recall, Mr. Strickland did not tell me that he saw this accident.

Q. No. I didn't mean that, sir. Did he tell you that his car had not — I understood you to say that he said his car was not in motion at the time that he heard the impact.

A. That is correct, sir.

Q. Did he tell you that he made it remain motionless until you arrived?

A. As I recall, I asked him if it had been moved, and he said that it had not.

Q. I understood you to say that the front of it was four feet up in the driveway?

A. That is correct.

Q. Back from the hard surface?

page 69] A. About four feet, as I understand the question. Yes.

Q. There is not any doubt from the evidence that you found but that the Bridgeforth vehicle and the Strickland vehicle did come in contact?

A. I think they did; yes, sir.

Q. It was the right rear of the Bridgeforth vehicle which apparently came in contact with the right front of the Strickland vehicle, is that correct, sir?

A. Yes, sir.

Q. Those marks that you described as looping in the driveway were four feet off the road, is that correct?

A. The path was immediately in front of the Strickland vehicle. I approximated — my approximation was that it was four feet from the surface; yes, sir.

Q. I believe these vehicles were approximately ninety-eight feet apart when you arrived?

A. The Falcon and the Bridgeforth vehicle were ninety-eight feet apart.

Q. How far was the Falcon from the eastern most portion of the driveway? How far east of the Hawthorne driveway?

A. I didn't make that measurement. It was slightly east.

Q. Slightly?

page 70] A. Possibly between fifteen and thirty feet.

By the Court:

Q. That is which vehicle now?

A. That is the Falcon, the Gibbs' vehicle.

By Mr. Merhige: (Continuing)

Q. The weather was clear, streets were dry?

A. Yes, sir.

Q. Was there not at that point a crest going to the south in that area? That is, the roadway, a very slight crest going in a southerly direction?

A. The shoulder of the road sloped off on each side that way, and the crown of the pavement might have been somewhat—

Q. The crown of the pavement sloped off toward the south?

A. I don't know how much slope there would be, possibly so.

Q. Can you say with any reasonable degree of certainty there was some sloping portion?

A. When it rains the water runs off of it from the center toward each side.

Q. Then there must have been. You have a fair conclusion.

A. Yes, sir.

page 71] Q. Did you ascertain how many people were in the Strickland vehicle at the time of this accident?

A. According to my investigation I found there were three.

Q. Three?

A. Yes, sir.

Mr. Merhige: All right, sir. I do not think I have anything further at this time. Thank you, Sergeant.

Mr. Booth: No questions.

REDIRECT EXAMINATION

By Mr. Cummins:

Q. Mr. Landers, I think I have three questions that have occurred because of your cross examination. With regard to the stains of a greenish white nature that you say looked and smelled corrosive which were found in the westbound lane, do you tell us that those stains started where the grease marks were found in the eastbound lane, or did those greenish-whitish stains start at some point in the westbound lane west of where the grease marks were found?

A. If it was west of where the grease marks were found, it would have been a very short distance west, and it was a skipping type of mark. It wasn't a continuous stain all the way. There would be a splash out of it and another splash.

page 72] Q. I see.

A. Then it started in the vicinity of where this grease mark was, but not on that side of the road.

Q. I see. With regard to the Bridgeforth vehicle and the marks that you say were made as Mr. Merhige was asking you down the shoulder over that four foot wide area and across the driveway, how far east of the Hawthorne driveway did those marks start?

A. I didn't measure that. It was a very short distance.

Q. Approximately?

A. Possibly ten feet.

Q. Ten feet?

A. Yes, sir.

Q. One other question. From the location of the grease and oil marks in the eastbound lane going from that point, how far from that point did the Gibbs' car come to rest and approximately how far from that point did the Bridgeforth's car come to rest?

A. The Gibbs' vehicle stopped on the south shoulder of the road, I would say about three feet south of the south edge of the pavement.

Q. That would be how far from the grease marks?

A. The grease marks continued on to where the Gibbs' vehicle stopped.

page 73] Q. Then he stopped in the area of the grease marks?

A. Yes.

Q. How far from the grease mark did the Bridgeforth vehicle continue before it came to a stop?

A. I made a measurement from the front of the Gibbs' vehicle to the front of the Bridgeforth vehicle diagonally across the pavement, from one to the other, and it was ninety-eight feet. That would be about as close an estimate as I could get.

Q. Then from your investigation it appears that Bridgeforth went diagonally ninety-eight feet after the grease mark started, from the grease marks—

Mr. Merhige: That is not what he said. He said the cars were ninety-eight feet apart.

The Court: He said the cars were ninety-eight feet apart.

Mr. Cummins: Excuse me, sir. He said the Gibbs' vehicle stopped at the grease mark.

By the Court:

Q. What does the ninety-eight feet mean, Sergeant?

A. The ninety-eight feet I referred to would be measuring from the front of the Falcon, the Gibbs' vehicle diagonally across the road and west to the front of the Bridgeforth vehicle where it stopped.

By Mr. Cummins: (Continuing)

page 74] Q. All right. During the course of that trip you say your investigation disclosed that the Bridgeforth vehicle collided with the Strickland vehicle?

A. Yes, sir.

Q. During the course of that trip, did the Bridgeforth vehicle lose any wheel or wheels? When it came to a stop, did it

have all four wheels on it?

A. No, it didn't. No, the left front wheel was missing.

Mr. Cummins: That is all.

By the Court:

Q. Let me ask you one question to clear my mind up. First, I believe you testified that the Strickland car was four feet off the highway?

A. Approximately, yes, sir.

Q. Is that from the edge of the pavement or is that from the edge of the right-of-way?

A. From the edge of the pavement.

Q. Edge of the pavement. All right.

A. Yes, sir.

The Court: Are there any more questions, gentlemen?

Mr. Merhige: I have one I neglected to ask.

page 75] RECROSS EXAMINATION

By Mr. Merhige:

Q. Sergeant, what was the speed limit at that time?

A. Fifty-five miles an hour.

Mr. Merhige: Fifty-five. Thank you, sir.

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page 76] IN CHAMBERS

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Mr. Merhige: Your Honor, while we are in here, once again I would ask the Court to declare a mistrial on the ground there has been no effective guardian *ad litem* in this case and no pleadings filed. There is definitely a conflict between my position as counsel having been retained by the insurance company and any position that I might take as guardian *ad litem.*

page 77] The Court: Even if we have to have a new trial, I am going to appoint you. If you are going to represent the insurance company, I am going to appoint you.

Mr. Merhige: I want, Your Honor, to reiterate for the record that I, as counsel for the insurance company, must respectfully decline any appointment in this case as guardian *ad litem* on the ground that there is definitely a conflict of interest.

The Court: I do not see any conflict of interest in your being appointed guardian *ad litem.* I am appointing you as guardian *ad litem.*

Mr. Merhige: I respectfully decline the appointment.

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BEFORE THE JURY

MAC N. WRAY,

introduced in behalf of the plaintiff, first being
page 78] duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cummins:

Q. Would you please tell me, sir, your name and where you live?

A. Mac N. Wray, Blackstone, Virginia.

Q. Have you, Mr. Wray, had any experience with regard to automobiles, that is to say, the mechanical functioning of automobiles, the motors of automobiles and related parts to automobiles?

A. Yes.

Q. You have had such experience?

A. Yes, sir.

Q. Did you at any time after October 19, 1963, come into possession of a 1960 Falcon automobile formerly owned by W. D. Gibbs, Jr.?

A. Yes.

Q. After you came into possession of that automobile, did you concern yourself in any way, or do anything with, for example, the motor of it?

A. Well, you want me to tell what kind of shape the motor was in?

Q. I asked you if you had anything to do with the motor; did you do anything with the motor?

A. Yes, sir.

page 79] Q. What did you do with the motor?

A. I pulled the motor out of the car and sold it for junk.

Q. Sold what for junk?

A. Sold the motor.

Q. When you took the motor out of the car, did you at that time examine the oil pan of the car?

A. Yes, sir. The oil pan had been ruptured where a tie rod arm came up against it and came up against the crankshaft, and it had two holes in it about the size of a dime where the connecting rod came around and knocked two holes in it.

Q. In the oil pan?

A. In the oil pan.

Q. During the course of your operation there with the motor, did you examine the crankcase housing?

A. You mean the transmission?

Q. Excuse me, sir. Yes, sir. The transmission housing.

A. The transmission was busted all to pieces, and I never pulled it out. It wasn't worth fooling with.

Q. Does the transmission housing of an operatable automobile have any type or kind of fluid in it?

A. An automatic transmission has four quarts of fluid.

Q. What kind of a transmission did this car

page 80] have?

A. Automatic.

Q. When you examined that item of the transmission, did it have any fluid in it?

A. No, sir.

Q. From your investigation, could you tell whether or not that transmission had been so damaged or so ruptured in the collision of this automobile or not?

A. I would say so.

Q. Say that it happened in the collision?

A. I would say so, so far as I know.

Q. How about the oil pan?

A. I would say that happened in the collision.

Q. I hand you a photograph marked Plaintiff's Exhibit No. 6, which purports to show the Gibbs' automobile after the wreck, do you recognize that as being the car we are talking about?

A. Yes, sir.

Q. Assuming that an oil pan has oil in it when the car is being operated, and that the transmission housing has fluid in it as you have indicated, and assuming that they are ruptured, or holes are knocked in them, what happens to the

fluid and the oil that is in them?

Mr. Merhige: Objection, sir. I think the answer speaks for itself. It comes out if there are holes in it. But, if
page 81] Mr. Cummins is going to ask this witness questions along the expert line, then I must insist he qualify him as an expert first. It is obvious that if there is a hole in something and there is fluid in it, it is going to come out.

By The Court:
Q. I reckon that is your answer, isn't it?
A. Yes, sir.

The Court: All right.

By Mr. Cummins: (Continuing)
Q. You mean right now?
A. Right now.
Q. Right then and there?
A. I would say it would come out right then.

By The Court:
Q. If it is liquid, it is going to flow, isn't it?
A. It sure is.

By Mr. Cummins:
Q. You are talking about instantly?
A. Instantly.

Mr. Cummins: That is all.

CROSS EXAMINATION

By Mr. Merhige:
Q. May I have that exhibit, sir? Now, Mr. Wray, are you a mechanic, sir?
page 82] A. No, sir.
Q. Were you a mechanic?
A. Never been a mechanic.
Q. What has been your experience in reference to motor vehicles?
A. I just pick up an automobile, if I can get it at a good buy, and fool around with it to see what I can learn with it.

Q. Would you repair them?

A. Sometimes I would take the parts off of them and never *fixthem* up. So I don't do that any more.

Q. What is the tie rod? I believe you mentioned the tie rod, where does than run from, Mr. Wray?

A. That runs from the steering sector over to the tie rod end.

Q. You mean from the steering sector —

A. Steering sector over —

Q. That would be over —

A. — across under the oil pan.

Q. Under the oil pan? The oil pan is in the middle of the car?

A. Yes, sir.

Q. Were these holes that you referred to, were they on the bottom of the oil pan?

A. An oil pan has an offset in it.

page 83] Q. Yes, sir.

A. Comes down like this. Well, the holes was in the upper part.

Q. Of the oil pan?

A. Yes, sir. It wasn't — the rod came back against it and pulled it up against the crank arm, crankshaft —

Q. Yes, sir.

A. — but when the connecting rod came around, it knocked two holes in it about the size of a dime.

Q. And that would be about approximately the center of the car or the center of the oil pan?

A. No, sir. It was more to the front.

Q. When I say center, I mean the width, not from front to back, but from side to side. The oil pan sits in about the center, does it not?

A. I would say so, yes, sir.

Q. That is what holes were in the oil pan.

A. I have the oil pan in the back end of my car if you want to see it.

Q. It wouldn't mean anything but a greasy thing to me at this time, Mr. Wray.

A. It's no grease on it.

Q. There are holes in it; the oil pan sits between the wheels, is that correct?

A. That is correct.

page 84] Q. And right under the motor itself?

A. Yes.

Q. And the motor is in the center of the car itself?

A. Yes, sir.

Q. It is placed there, *engineeringwise,* it is deliberately in the center, is it not?

A. Yes, sir.

Q. Let me ask you about the transmission, the gear box, is that the transmission?

A. Yes, sir. That is the automatic transmission. Some of them have a push button on a leather chain.

Q. When you talk about the transmission being busted all to pieces, you are talking about —

A. The housing.

Q. — the housing that the gears are contained in?

A. Yes, sir.

Q. Right. And that, too, is approximately in the center of the car insofar as the width of a car is concerned, is that not?

A. Yes, sir.

Q. How far back from the front bumper of the car would the transmission housing be approximately on this particular car?

A. I would say three and a half feet.

page 85] Q. Three and a half feet, and the oil pan would be slightly forward of that, is that correct?

A. Yes, sir.

Q. But even the oil pan, of course, does not jet out from the front of the car, it sits back behind the radiator, does it not, and under the motor?

A. Yes, sir.

Q. This fluid, this transmission fluid, the four quarts, would that have the appearance of grease to a layman, to somebody who was not acquainted in this particular thing?

A. I wouldn't say transmission fluid was grease. It's more of a liquid, thin liquid type. Anybody that's familiar with —

Q. Would it have a greenish-color, greenish and whitish?

A. It would be oily.

Mr. Merhige: All right, sir. Thank you very much. I have no further questions.

REDIRECT EXAMINATION

By Mr. Cummins:

Q. It would not be green in color would it, or would it?

A. Well —

Allen Stewart Bridgeforth

By The Court:

page 86] Q. What would be the color of it?

A. I would say it would be a kind of oilish color.

Q. What color is oilish? Some is black, some are different colors, some companies advertise purple, Gulf does, doesn't it?

A. It is yellowish color.

By Mr. Cummins: (Continuing)

Q. Is it acidic? Is there any acid in it?

A. I don't think so.

Mr. Cummins: All right, Mr. Wray. One other question.

By Mr. Cummins: (Continuing)

Q. From your investigation and examination of this vehicle, the removing of the motor, the examination of the oil pan, and the transmission housing as you have indicated, is there any question in your mind but that this damage came from this accident?

A. I think it came from the accident.

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ALLEN STEWART BRIDGEFORTH,

upon being called by Mr. Cummins as an adverse witness, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cummins:

Q. You are Allen Stewart Bridgeforth?

A. Yes, sir.

Q. You are the defendant in this case? This case being one concerned with an auto accident on the 19th of October of last year just this side of Slaw's Restaurant on 460?

A. Yes.

Q. There has been testimony in this case that you have heard this morning that you made a statement to the Police Officer, Trooper Landers, that as you were coming around

this curve, while you were going west, that you saw a glare in the road. I want you, if you will, to tell us where you were in the curve when you first saw this glare in the road and what you did, if anything, about the operation of
page 88] your car, and what the glare was like, that sort of thing.

Mr. Merhige: Excuse me. If it please the Court, I must interpose an objection because counsel inadvertently, I am sure, is misquoting the Trooper. He said the headlights were in his lane.

The Court: That is right.

Mr. Cummins: The Trooper did not say anything like that. He said the headlights were coming into his lane.

The Court: Objection sustained.

Q. Disregard everything I said about the glare and all the headlights in your lane, and go ahead and answer my question.

A. I was completely out of this curve.

Q. What do you mean you were completely out of it?

A. I had gone around the curve.

Q. You had gone around it?

A. Yes. I was going slightly upgrade, slightly, and it just appeared headlights to my left, it was more to the left center of the car than the right. It wasn't head on. It was more to the left.

Q. More to the left of what?

A. Of the center of the car.

Q. More to the left of the center of the car?

A. Of the car, yes.

page 89] Q. You mean in your lane?

A. In my lane, yes.

Q. In your lane.

A. Yes.

Q. Now then, if Mr. Landers states that you told him as you were going around the curve, then he is mistaken. You are now saying as you were going, that you had passed through the curve, is that correct?

Mr. Merhige: Objection. I object to counsel asking the witness to comment on any other witness's testimony, sir.

The Court: Objection sustained.

Mr. Cummins: Your Honor, it is his own statement to the Police Investigator.

The Court: You can ask him what he said. Ask him what he told him.

Q. What did you tell —

The Court: If he remembers.

Q. — Police Officer Landers on the night of his investigation of the accident about where you were when you saw these lights?

A. He asked me, I believe, to my knowledge what did I know about the accident, and I told him I was coming around this curve and car lights just —

page 90] Q. You told him "I was coming around this curve" and what?

A. I was coming around this curve — I believe I was out of it —

Q. And you believe you were out of it?

A. I was out of the curve, to my knowledge.

Q. You say now that you told Sgt. Landers that?

A. Yes.

Q. That night?

A. Yes.

Q. Do you recall being in this court room on the 6th day of July of this year in connection with other testimony in this case, do you recall that?

A. I was in this court room in July. I don't recall the date. It might have been the 6th day, but I don't recall.

Q. Do you recall testifying on that day in the witness stand there about this accident?

A. Yes.

Q. Do you recall the following testimony:

The Court: By whom?

Mr. Cummins: By Allen Stewart Bridgeforth, by the defendant.

Q. — Question: Getting back to my other question, tell the Judge just how you were traveling, and so forth, before this accident. This is Page 77. Tell the Judge just how you were traveling, and so forth, before this accident. Ans-

page 91] wer: Well, I was traveling down 460 at a normal speed. I think it was approximately fifty or maybe fifty-five. And as I was going around this curve, about one

mile west of Blackstone, it seems like I saw a glare in the road and before I could get up to it, to make out what it was, well, before I got up to — And then you were interrupted. Do you remember using those words?

A. Yes.

Q. Now you are stating that you remember using those words on July the 6th, but now you state that you were completely out of the curve. Is that correct?

A. What you are quoting, what you are quoting is what I told.

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page 92]

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Q. How fast were you driving?

A. Fifty or fifty-five.

Q. Do you recall the impact of this accident?

A. No.

Q. Why don't you remember the impact?

A. It just happened so fast. I just saw headlights and (Shaking head) that was it.

page 93] Q. You saw headlights?

A. Just the headlights, and everything was over.

Q. How long did you see them before the collision?

A. About a split second. Long enough for me to find out they were headlights.

Q. A split second, long enough for you to know that they were headlights?

A. Yes.

Q. Where had you been that day before this accident? Where had you been spending the day?

A. In Petersburg.

Q. Doing what?

A. I was on campus.

Q. On campus?

A. Yes.

Q. Tell me what you do on campus?

A. I have a job. I work after school in the evenings and on Saturdays.

Q. All right. This was on Saturday that this accident hap-

pened, wasn't it?

A. Yes.

Q. What time did you get off from Petersburg?

A. Well, *Ididn't* work but about three or four hours that day. It's a part time job.

Q. All right. What time did you get off?

page 94] A. About 4:00. Got off before dinner.

Q. What did you do when you got off?

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A. Did I return home?

Q. Yes.

A. From Petersburg?

Q. Yes.

A. I left Petersburg, yes.

Q. And home is in Blackstone?

A. Yes.

Q. Where were you going this night when you had this accident? Where was your destination?

A. Well, it wasn't a special destination, but I was headed toward a dance at Midway Tavern.

Q. Were you going —

A. Because I figured most of my friends were there.

Q. Were you going to the dance or not?

page 95] A. Yes, I was going to the dance.

Q. The dance is at Midway Tavern?

A. Yes.

Q. What time do the dances stop at Midway Tavern on Saturday night?

A. Well, if it's a dance I think it will stop at 12:00.

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page 96]

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Q. Do you remember the actual crash or what you did after the crash?

A. No.

Q. Do you remember putting on any brakes?

A. No.

Q. Do you remember anything at all about the accident?

Allen Stewart Bridgeforth

A. No.

Q. Other than coming around and you say you had gotten out of the curve, is that the last thing you remember? What is the last thing you remember?

A. Lights.

Q. Lights?

A. Lights.

Q. Do you know whose lights they were?

A. No, I don't know whether they were coming from a truck, a car, or what. Just two headlights.

Q. Could you tell for an absolute fact where the lights were coming from?

A. Where they were coming from?

Q. Yes.

A. In which direction, you mean?

page 97] Q. Where they were coming from.

A. They were facing me. What they were coming from I don't know.

Q. As you were coming up to the top of this rise, could they have been facing you coming up directly to you over the rise, could they have been facing you coming at an angle to you from off to the side of the road?

A. I don't think at an angle.

Q. You do not think they were. I ask you could they have been.

A. No.

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Q. How far would you estimate that you were from the top of that little hill, you know the little top of the

page 98] hill as you are going west after you come out of the curve and go up there is the top of a little hill there at Hawthorne's driveway, are you familiar with that?

A. Yes.

Q. How far east of the top of that rise would you estimate that you were when you saw these headlights, as you now say?

A. State that again, please?

Q. How far from the top of this little rise were you east of it when you say now that you saw these headlights in your lane?

A. How far east of the rise?

Q. Yes.

The Court: That would be back toward Blackstone, I reckon, would it not?

Mr. Cummins: Yes.

The Court: Toward Blackstone, if you know.

A. It's hard to estimate. It's hard to estimate. The rise didn't have a peak at the top, just a slant.

Q. You are telling me a hill does not have a top?

A. I am telling you that one did have a top.

Q. What?

A. It did have a top.

page 99] Q. Let's go about it this way. I hand you Plaintiff's Exhibit No. 10, which is a photograph showing the highway in question, it is taken viewing towards the west as you were approaching. It shows a car parked on the right side of the road at the Hawthorne driveway, and it shows how the road sort of rolls over as if at the top of a hill. I want you to hold that in your hand a minute. Here is another photograph marked Plaintiff's Exhibit No. 14, which shows —

Mr. Merhige: Your Honor, I interpose an objection. Counsel is stating what it shows. What it shows is for the jury to determine. It is an exhibit. They can see it as well as Mr. Cummins. He may have a different interpretation than the jury.

Mr. Cummins: I am helping the boy. He has not seen the pictures.

The Court: Let's see if he can identify the pictures.

Q. Can you identify these pictures?

A. Yes, I can.

Q. What does it show?

A. It shows Route 460, shows two police cars, one parked in the driveway —

Q. Which way is the photograph looking? Toward which direction?

A. It's faced west.

page 100] Q. Is that the direction you were coming from?

A. The direction I was going.

Q. The direction you were going?

A. Yes.

Allen Stewart Bridgeforth

Q. This is Plaintiff's Exhibit No. 14, can you identify that?
A. Yes.
Q. What is it?
A. It's a photograph of Route 460. There is one police car on the — it's facing in the same direction.
Q. I hand you Plaintiff's Exhibit No. 11, can you identify that?
A. Yes. Route 460. There are two police cars on it, and the direction, I am facing east.
Q. Yes. Now, can you take those pictures that you have in your hand and tell what you mean by this little rise or the little hill?
A. My location?
Q. How is that?
A. You want to know my location?
Q. No, sir. I want to know if you can identify the hill — You stopped me a moment ago and said you did not know what I was talking about when I said you hit a hill. It is sort of a slope. Do you recognize what I mean by this little hill there?
A. Yes.
page 101] Q. Now, my question was this: How far were you, as you were going west, from the top of that hill in about the area of the Hawthorne driveway when you first saw these lights glaring in your eyes? How far were you from that point?

Mr. Merhige: If he knows.

Q. If he knows, yes.

By The Court:
Q. Do you know?
A. I couldn't say.

By Mr. Cummins: (Continuing)
Q. You do not know how far you were?
A. No.
Q. All right.

Note: At this point the above referred to photographs are passed to the jury.

Q. If you pulled your car wheels to the right at the last

moment as you say these lights popped into your eyes, had you not been in the left lane? Weren't you in the left lane if you pulled to your right?

A. No.

Q. What were you pulling to your right for?

A. I saw some lights in front of me. I was trying to get away from them.

Q. If you were pulling to your right, wouldn't

page 102] you have been pulling off the road?

A. I would have been pulling to the right off the road, yes.

Q. If you see lights coming at you, do you always pull off the road?

Mr. Merhige: Just a minute. I object. It is immaterial what he always does. It is what he did at this time that is material, sir.

The Court: Objection sustained.

Q. What caused you to pull your car off the road?

A. To keep from hitting these lights in front of me.

Q. How do you explain the fact that all the oil marks and everything from the Gibbs car was in his lane?

Mr. Merhige: I object to that, sir. The witness is not called upon to explain any other testimony. I submit it is improper.

The Court: Objection sustained.

Q. Do you remember your car striking any car other than the Gibbs' car?

A. No.

Q. You do not recollect that?

A. (Shaking head indicating no.)

Q. Do you remember what your car did or where it went after the collision with Gibbs?

A. No.

page 103] Q. Speaking of coming around the curve, and that you had come out of the curve and sort of started up this little hill, as you now say you had done when you first saw these lights glare in your lane, are you certain that you can not give us any approximation of distance, Allen, as to where you were from the top of the hill?

A. No.

Q. You cannot give us any approximation at all?

Allen Stewart Bridgeforth

A. No.

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Q. How long have you been driving a car, Allen?
A. Five years.
Q. How much experience have you had at night driving?
A. I have had quite a bit, I would say, sir. I have had several jobs operating vehicles.
Q. Have you had any trouble with lights like that before?
A. No.
Q. If you say you do not remember the impact and that the last thing you remember was lights glaring in
page 104] your eyes, how can you be certain that you were in your lane of traffic?
A. How — State that again, please?

The Court: He said how could you be certain that you were in your lane of traffic at the time you saw the lights, if that is the last thing you remember?

Q. If you didn't remember the impact.

The Court: If you did not remember the impact.

A. I don't know that I was in my lane.
Q. I beg your pardon? I did not hear your answer.
A. I knew I was in my right lane because the white line was to my left.
Q. How can you be certain, how could you see a white line if lights were glaring in your eyes?
A. Before I saw these lights, my car was centered in my lane.

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Q. Are you able to say that there were any particular number of cars on that hill as you went up that hill, one car, two cars, three cars, are you able to say?
page 105] A. I couldn't say any cars. Only headlights.
Q. Only headlights. And do I take it that you are telling us now that this accident happened in the westbound lane on the top of the hill? I just want to know what you are trying to tell us.

A. To my knowledge.
Q. To your knowledge?
A. Yes.
Q. What does to your knowledge mean? Can't you say yes or no?
A. Yes.
Q. Yes. You are telling us that the accident happened in your lane?
A. Yes.
Q. If you were in your lane, Allen, were you in the center of the westbound lane?

The Court: He has answered that. He testified that that is where he was driving.

Q. You do not know what happened to your car after the impact with the Gibbs' car?
A. No.
Q. What happened to you after the accident? Where did you go?
A. (Shaking head indicating no.) I don't know.

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BILLY EUGENE STRICKLAND,
upon being called by Mr. Cummins as an adverse witness, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cummins:
Q. You are Billy Eugene Strickland?
A. Yes.
Q. One of the defendants in this case?
A. Yes.
Q. Do you recall on the night of October the 19th of last year proceeding in an easterly direction along Route 460 about a mile and a half west of Blackstone, at
page 107] which time your vehicle and another eastbound vehicle collided slightly?

A. Yes, sir.

Q. Would you tell us, Mr. Strickland, what happened that night with regard to that accident?

A. Well, I was headed east from Crewe to Blackstone. I guess I was running along about fifty-five. As I came over the hill — I hadn't been following another car very close or anything. In fact, I wasn't following any when all of a sudden there was one sitting there.

Mr. Merhige: Speak louder if you will.

A. (Continuing) I was headed from Crewe to Blackstone, and just as I came over that — just as I came over the hill at Hawthorne's Lane, there was a 1951 Ford sitting in the road, and it was just sitting there. Didn't have any signal lights on. The lights he had were real dim. And I didn't have time to stop after I saw it. And so I went — I had to pass him. I didn't have time to stop. It wasn't room to pass to *theright,* so I swerved to the left to pass. Just as I decided to pass it, it took a left hand turn into — I don't know whose driveway it was. It just took a left hand turn.

Q. Why didn't you have time to stop?

A. I didn't see it. You can't — It's a blind hill. You can't see a thing.

Q. It is a blind hill?

A. You can't see. You can't see anything on the page 108] other side.

Q. Billy, which hill is that?

A. That is the one that the — that the Hawthorne driveway was on.

Q. Is that the hill up which the defendant Bridgeforth said he was coming?

A. That's the hill which he was coming up, yes, sir.

Q. You say that is a blind hill?

A. Yes, sir.

Q. All right. Now, you went over the hill as I gather from your testimony, and as you came down it you saw this car down there and could not stop?

A. Yes, sir.

Q. Where was the car, how far down there was the car?

A. It was almost to the bottom of the hill. It was right in front of that — it was right in front of the next driveway from the Hawthorne's going east.

Q. Right in front of the next driveway?

A. Yes, sir.

Q. After this little impact between your car and his car, what did you do?

A. I went to the first place I could turn around it was on the right hand side.

Q. L. W. Erver's turn?

page 109] A. I don't know whose house it was.

Q. Before you get to Slaw's?

A. Yes, sir.

Q. The first one on the right before you get to Slaw's?

A. Yes, sir.

Q. All right.

A. I turned around and came back. I saw, saw this car sitting behind that — it was a white house. I saw the car sitting behind the house.

Q. You saw which car sitting there?

A. This Ford.

Q. The one you just hit?

A. The '51 Ford, yes, sir. I saw it sitting behind the house. I pulled over to the side of the road before you get to Hawthorne's turn, pulled off to the side of the road. Got out and struck — one of the boys with me struck a cigarette lighter to see the damage. We thought we might have just scraped bumpers or something.

Q. Where on the road did you stop?

A. Just about half way between the driveway where the '51 Ford turned in and Hawthorne's drive which is on the right hand side.

Q. You are telling us —

A. We were going east. I mean west, to Crewe.

page 110] Q. You stopped east of the Hawthorne driveway?

A. Yes, sir.

Q. When you first stopped?

A. Yes, sir.

Q. Now go ahead, tell us what you did.

A. We got out, saw that we had scratched, just scratched *thepaint* off the front fender on down the door a little ways to the door. So I went up, pulled past the Hawthorne driveway, backed —

Q. How far past it did you pull?

A. Just far enough so I could pull back into it.

Billy Eugene Strickland

Q. When you backed up, how many passes did you make, two passes, three passes, one pass, how many?

A. One. I pulled up and backed in.

Q. You made only one pass in backing in?

A. Yes.

Q. You did not back up but one time?

A. Yes, sir.

Q. Do you have a back up light on your car?

A. No, sir.

Q. When you made your stop on the highway and then began to back up into the Hawthorne lane, did you stop on the hard surface and begin backing up or did you stop on the shoulder and begin backing up?

A. I think it was on the hard surface. I couldn't
page 111] say for sure. I'm pretty sure it was.

Q. You think you backed up into Hawthorne's driveway from the hard surface?

A. Yes, sir.

Q. With no back up lights on your car?

A. No, sir.

Q. How did you see to get back there?

A. Probably by the brake lights when I put my foot on the brakes.

Q. How could you back up with your brakes on?

A. When I put my foot on the brakes the lights come on.

Q. Can you drive a car backwards with your brakes on?

A. It's just enough to where the lights can come on. So you can see.

Q. I see. Now, how long were you in the driveway parked, as you say you made one sweep back with no further trouble but that, how long were you in there before anything else occurred out on the road?

A. I don't know exactly. It was just a matter of seconds. It wasn't — wasn't very long.

Q. Two seconds? Have you said two seconds?

A. It was longer than two seconds.

Q. It was?

page 112] A. How much longer than two seconds I don't know, how much longer, but it was a few seconds longer.

Q. How much?

A. Just a few seconds longer than that. I don't know how long it was.

Q. You do not know how long it was?

A. No.

Q. Do you remember testifying in this court room in a companion case to this case on July 6th of 1964?

A. Yes, sir.

Q. Do you remember the following question asked of you and the following answer given by you: Question: How long had your vehicle been stationary before the Bridgeforth and Gibbs' vehicles came into contact? Answer: I couldn't say. It was just for a brief while. Just a couple of seconds. Do you recall making that statement in this court room?

A. Yes, sir. I just —

Q. After you had gotten back in there and there was this collision out in front of you, did any other car touch your car as a result of this collision out in the highway?

A. Yes, sir.

Q. What happened then?

A. What do you mean? Where do you want me to start?

Q. Tell me about how your car was touched.

A. I didn't see the accident. I didn't see the
page 113] impact. Just as I — I must have heard the crash
or something. When I looked, there was this '58 Pontiac of Allen's, the right rear tail light, it had spun around. I saw the right rear tail light strike my front headlight.

Q. When you say you saw it spin around —

A. Yes, sir.

Q. How did it spin? Describe the spin, whether it went one hundred eighty degrees, three hundred sixty degrees to the right, to the left, tell us about it?

A. It turned in the opposite direction as —

Q. How many times did it turn?

A. One. Just a half turn.

Q. Half turn?

A. Yes.

Q. So instead of *its'* front heading west, it turned enough for *its'* rear to head west?

A. Yes, sir.

Q. All right. Was it turning in a skidding fashion?

A. Yes, sir. It had to skid.

Q. As if to be skidding up the road as it was turning?

A. Looks like it made a real quick turn. Yes.

Q. Would it have any broad skid marks along the shoulders
and then along the path of the entrance of your
page 114] driveway, where you were sitting?

Mr. Merhige: Not would it, did it?

Q. Did It?
A. Yes, sir.
Q. You were looking at it, did it?
A. I guess it did. I didn't look to see if there were any skid marks.
Q. Did you see yours hit?
A. Yes, sir.
Q. How far over to your left and out in front of you there, how far off the highway were you?
A. About four feet.
Q. When you were four feet off the highway, how far out there in front of you in this roadway did this collision take place between Gibbs and Bridgeforth?
A. I didn't see the collision. I just saw — I just saw the car strike me. I just looked up. I don't know where I was looking. I don't know whether I had my head turned to keep the lights from getting in my eyes or what. I don't know whether I was talking, changing gears, or what I was doing. I don't know.
Q. When you first made your sweep back into the Hawthorne driveway and stopped four feet from the surface of the road, did you see the Bridgeforth car approaching you?
A. I don't remember. I guess — I guess I was
page 115] waiting for them to come by. I don't know whose car I was waiting on.
Q. You saw a car approaching you?
A. Yes, sir. I saw lights coming. I was waiting for them to come past so I could pull on out.
Q. Were the lights coming from the east, which was down to your left?
A. I don't know which way the lights were coming from, whether they were coming from the east, west, or whether I was looking at both sets of lights. I knew there were lights coming and that I had to wait for them to come by before I could pull out.
Q. It is rather important to know which way they were coming from. Were they coming from the east, which was to your left, or was the set of lights coming from the west, which was to your right, or were they coming from both directions?
A. They were coming from both ways.

Billy Eugene Strickland

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page 119]

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By Mr. Cummins: (Continuing)

Q. Did the Bridgeforth vehicle when it struck your vehicle move your vehicle?

A. No, sir. It might have jarred it. It didn't move it. It didn't hit it hard enough to move it.

Q. It might have jarred it?

A. Yes, sir.

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page 120]

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Q. This is Plaintiff's Exhibit No. 2, Mr. Strickland, do you recognize that?

A. Yes, sir.

Q. Is that the damage done to your car?

A. Yes, sir.

Q. When it was hit?

A. Yes, sir.

Q. Which portion of the Bridgeforth car hit your car?

A. The right rear tail end.

Q. You say that it turned on about one hundred eighty degrees?

A. Yes, sir.

Q. When it did so, what did the Bridgeforth car then continue to do? What happened after it touched your car?

A. It just skidded just kind of — it was more straight going straight back down the road, and I saw the parts falling off and the fire flying, sparks flying. It just came to rest in the ditch down there, and it was headed east.

Q. On your side of the road?

A. Yes, sir.

Q. Did you go down to the scene of the Bridgeforth car?

A. Yes, sir.

page 121] Q. Did you find anybody there?

A. Yes, sir.

Q. What did you find?
A. Allen was in the car.
Q. Did he appear to you to be all right at that time?
A. He didn't appear to be bleeding or anything. He was mumbling something, more out of his head. I opened the door, the right hand front door. He didn't appear to be bleeding or broken up or anything.
Q. Was he conscious?
A. I don't know if he was conscious or not.

The Court: Talk louder.

A. (Continuing) He was mumbling something. It didn't make sense. I don't —
Q. Did you hear any tires crying or skidding or making any noise at all just before the impact of the two cars out in the highway in front of you?
A. No, sir, I didn't.
Q. Do I understand that you did not actually see the impact in front of you?
A. Yes, sir. That's right.
Q. Did you hear it?
A. I don't remember. It shocked me so bad I don't remember whether I heard it or not. I remember I looked
page 122] up — I guess I must have heard it. I looked up just as Allen's vehicle was striking my car. I couldn't be positive about it.
Q. Did it make a lot of noise?
A. I don't remember it making a lot of noise, no, sir.
Q. What shocked you about it?
A. I don't know. I just remember looking up as the tail light was striking my car.
Q. Isn't it true, Mr. Strickland, that the thing that shocked you about it was that it happened so quickly after you had just swung back into that lane?
A. I don't think so.
Q. What shocked you about it?
A. I don't know. I just — just shocked me seeing the thing happen.
Q. Had your vehicle been moved after the collision out in the road and before the Police Officer arrived?
A. No, sir.
Q. The exhaust that you have on your automobile involved in this accident, does that exhaust make a loud noise if you

gun the motor or race the motor?

A. It doesn't make too loud a noise. It makes a little racket.

Q. *Itmakes* a little racket?

A. Yes, sir.

page 123] Q. In other words, if you race your motor right good you get some popping noise out of the exhaust?

A. It doesn't pop.

Q. What does it sound like?

A. It just makes, has a deep tone. That's all.

Q. A deep tone?

A. Yes, sir.

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AGNES HAWTHORNE,

introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cummins:

Q. Agnes, where were you living on October the 19th of last year?

A. Highway 460 in Blackstone.

Q. On highway 460 in Blackstone?

A. Yes, sir.

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page 127]

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Q. With permission, Agnes, you *livedin* what was known as the Hawthorne house on top of a hill just before you get to the curve leading towards Slaw's Restaurant, isn't that where you lived last year?

A. Yes, sir.

Agnes Hawthorne

By The Court:
Q. Your house is the one that burned down?
A. Yes.

The Court: All right. Go ahead.

By Mr. Cummins: (Continuing)
Q. You house burned down. Were you in the house that night about 11:23?
A. Yes, sir.
Q. While you were in the house that night at about that hour, tell us what, if anything, you heard in the way of noises or disturbances or anything like that out in the end of your driveway?

By The Court:
Q. Did you hear anything?
A. Yes, sir.
page 128] Q. Tell us about it then. Talk louder so the juror on the backrow can hear you.
A. I was in the living room and I was about to go into the kitchen and cook my little brother something to eat, and about the time I got in the kitchen and got the pan, I hears some funny noise. It sounded like a car pulling out. So I ran to the window. When I got to the window I saw two red lights, and at that time everything happened all together.
Q. Everything happened all together? What do you mean by that, Agnes?
A. I meant it happened all at one *time*.
Q. What happened all at one time?
A. The crash all together. Crash of the two cars.
Q. You say two cars had a crash out there?
A. Yes, sir.
Q. Well now, going back a minute to the — you say something sounded like it was backing up and pulling out, how did you say it? Tell me. Are you sure that the noise you heard sounded like a car pulling out? Is that what it sounded like, as you say, pulling out of your driveway?
A. I say it sounded like it was backing up and pulling out.

Mr. Merhige: He is leading now, Your Honor, on the pulling out part.

Q. Tell us just exactly what you heard?

page 129] A. I don't know what I heard. All I know it sounded like a car was backing out, backing up and pulling out, backing up and pulling out.

Q. How many times did it sound like he was doing that?

A. I don't know, but it could have been about three times.

Q. Backing up and pulling out?

A. Yes, sir.

Q. How soon after you heard that backing up and pulling out did it sound like you heard another crash noise?

Mr. Merhige: If she heard any other.

Q. If you heard any other, of course. That naturally follows.

A. When I heard that noise, and then when I — then I heard the crash of the two cars.

Q. Were they very close together, the noise and the crash, and the noise of the backing up and pulling out and the crash, was that very close together or not, in time?

A. Yes, sir.

Q. How close?

A. I don't know. It was close.

Q. Was it a second, two seconds, three seconds, four seconds, how long do you think it was? How close was it?

A. I reckon about a second.

page 130] Q. About a second?

A. Yes, sir.

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CROSS EXAMINATION

By Mr. Booth:

Q. You do not know what car — did you look out the window?

A. Yes, sir.

Q. Do you know what car you have reference to? Whose car, or who was driving the car?

A. Who was driving what car?

Q. The one that you were talking about.

A. It was Strickland's car, Strickland's car in our turn.

Q. You say what?

A. It was Strickland's car in our turn.

Q. It was Strickland's car in your turn?

A. Yes, sir.

Q. How far is your house from the road? How far?
A. I don't know.
Q. Can you point in the court room how far it would be?

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By Mr. Booth: (Continuing)
Q. Would it be the length of the courtroom, or from here out to the road?
A. I don't know.

By The Court:
Q. Don't you know how far it is from your house to where the highway was, where the car you saw, the car in the lane?
A. No, I don't know. I didn't measure it.

By Mr. Booth: (Continuing)
Q. How *couldyou* see what car it was from where your window is out to the road, and you do not know how far it is?
A. I saw the car. The car was in the turn was Strickland's car, but I didn't measure it.

The Court: All right.

page 132] Mr. Cummins: If Your Honor please, maybe if I could just make this observation, we might save some time. Mr. Strickland has testified from the stand that he backed up into the place and it was about two seconds before he heard the crash. I think when the defendant's own testimony states that, I do not see any point in trying to confuse this little girl here about something that is already admitted.

Mr. Booth: I am not trying to confuse her, Your Honor. We want the jury to know what occurred.

Mr. Cummins: Who else's car could it have been?

Mr. Booth: I have no idea.

The Court: Are there any more questions?

By The Court:
Q. Let me ask you this question: You said you saw what sounded like a car backing up and moving out.
A. (Nodding head indicating yes)
Q. When you went to the window and looked, what did you

see?

A. I saw the car in the turn, and I saw the two brake lights on the car.

Q. Was it moving when you saw it?

A. I don't know. It could have been.

The Court: You do not know.

REDIRECT EXAMINATION

page 133] By Mr. Cummins:

Q. You say it could have been?

A. Yes, sir.

Q. What was the color of the lights that you saw, Agnes?

A. Red.

Q. Did you see any white lights?

A. No, sir.

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JAMES HAWTHORNE,

introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

Mr. Cummins: Do we have the same stipulation on this witness as far as his residence is concerned?

Mr. Merhige: Yes, sir.

DIRECT EXAMINATION

By Mr. Cummins:

page 134] Q. James, you live in the —

By The Court:

Q. What is your name, first.

A. James Hawthorne.

The Court: All right. James Hawthorne. Go ahead.

By Mr. Cummins: (Continuing)

Q. You live in the house that burned down just about — just this side of Slaw's Restaurant on Route 460, just after you come out of that curve?

A. Yes, sir.

James Hawthorne

Q. You live on sort of a top of a little hill there?
A. That's right.
Q. That house burned down last December after this wreck — You know the wreck we are talking about last October 19th?
A. Yes.
Q. Tell the Court and the jury what you heard that night with regard to any automobile motors or engines or exhausts or tires or just tell the Judge and the jury what you heard that night concerning this accident.
A. Well, that Saturday night about, I'd say 11:20, twenty minutes after 11:00, I reckon, maybe 11:30, I don't know, I won't looking at a clock, I was sitting in the room. And I were doing some stamp books. And I heard this
page 135] loud exhaust, and it sounded like it was turning around, or backing in, or something. Made a great noise. And all of a sudden I heard this rumble, this crash. I say, somebody, I believe, has backed into the light post. I'm going out to see right now. I'm going out to see if anybody's gotten hurt. And one of the children said—

Mr. Merhige: Objection.
The Court: Do not tell what anyone said.

A. (Continuing) — there was a wreck out there.

The Court: Didn't you hear what I told you? I told you not to say what the children said. Do not say what anybody told you.

By Mr. Cummins: (Continuing)
Q. Just tell us what you know. Tell us what you saw and know of your own knowledge.
A. I'm going out there. And I decided to go out there. When I went out there, I see this wreck, sure enough.
Q. Whose car was parked, if any, in your driveway? Or was there a car parked?
A. It was a red Pontiac parked.
Q. Did you see any other cars out in the highway that had been wrecked?
A. Yes.
Q. You did?
A. Yes, sir.
page 136] Q. Now about the exhausting noise that you say you heard, could you tell us a little more,

James Hawthorne

James, about what you mean by exhausting noise? Could you explain it a little more carefully so we can understand it a little better?

A. Yah. I'm trying to say is this car was racing the motor, sounded like they were in a hurry, turning around, backing out, so forth so on.

Mr. Booth: Your Honor, I object to that until he tells what car made that noise. I do not think he said — he said he heard a noise. He has not seen anything.

By The Court:

Q. Do you know which car it was that was making the noise?

A. I think it was the one was backed in the turn on my land. I didn't see — I went out —

Mr. Merhige: He thinks.

Q. You are not sure?

A. I didn't see it. I won't out there.

The Court: All right.

By Mr. Cummins: (Continuing)

Q. Let me ask you this way: Did you hear any noise that sounded like a back up noise or a pull out noise?

A. Oh yes. Yes, sir.

Q. If you heard such a noise, did you hear it
page 137] any time near about the time that you heard any loud crash noise out there?

Mr. Booth: Your Honor, I am going to object to that until he explains what the difference between a back up noise and a pull up noise is.

The Court: Objection sustained.

Q. James, will you explain the difference between a back up and a pull out noise?

A. Well, I didn't see the car.

By The Court:

Q. You did not see the car?

A. I wasn't out there.

James Hawthorne

The Court: All right.

A. You can tell sometimes the car is moving. It sounded like it was backing into the turn on my land. I wasn't looking. I wasn't out there. I didn't see it.

The Court: All right.

By Mr. Cummins: (Continuing)

Q. How many times did it sound like he might have been moving, whether he was going which way — I don't care for this question — how many times did it sound like he was moving up and down in your drive?

A. I wasn't out there, but it was more than one time. It sounded like it was —

Q. I know you weren't out there. How many
page 138] times did it sound like he was moving up and
down in your drive?

A. Two or three times?

Q. It sounded like he was moving that many times?

A. Yes.

Q. Then when you heard the crash—

A. The crash came along right close all at once.

Mr. Booth: If Your Honor please, I object. He has not said which car made the noise. All three cars have exhausts on them. He does not know whether it came from the ones from the highway or the one in the lane.

By The Court:

Q. Could you say whether it was the car in your driveway that was making that noise or the cars that collided, that had the wreck?

A. I wasn't out there.

Q. Could you say which car it was?

A. I didn't see it.

Q. What I am referring to —

A. It sounded like to me the car that was backing in my lane, what I thought it was. I don't know.

The Court: That is all I want to know.

A. It sounded like —

Q. You referred to a pole.

A. Yes.

page 139] Q. You mentioned a minute ago something about a light pole.

A. Yes, sir.

Q. What light pole are you referring to?

A. The pole right in front of my land.

Q. Had anybody hit the pole?

A. No, sir. Nobody had not hit the pole.

Q. When you got out there, you say you saw a car parked in your lane?

A. Uh huh.

Q. How was it parked in your lane?

A. Backed in.

Q. How was he sitting in your lane?

A. The car kind of on the side of my —

Q. Kind of on the side of your what?

A. The car was kind of on the side of my lane. Wasn't exactly in there, wasn't in the middle of the lane, kind of on the side a little bit.

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E. P. LANDERS,

upon being recalled by Mr. Cummins, having previously been duly sworn, testified further as follows:

DIRECT EXAMINATION

By Mr. Cummins:

Q. Mr. Landers, since October 19, 1963, has there been any work done on the highway between Slaw's service station and west of Slaw's service station on past the scene of this accident?

A. Yes, sir.

Q. What was the nature of the work done on the road?

A. It has been resurfaced. About *threeinches* of blacktop has been added, and the shoulders have been built up, widened some.

Q. The shoulders have been widened some?

A. Yes.

Q. What were the shoulders at the time of this accident once again, sir?

page 141] A. The width of the shoulder on the north side of the road in that immediate vicinity was eight feet six inches. The one on the south side would have been possibly not quite that wide.

Q. Has any change been made in the width of the hard surface?

A. As far as I know, no. Twenty-one feet six inches, and it still appears to be the same width.

Q. Has any change been made in the grade of the road? That is to say, the elevation of any hills or anything like that, other than the addition of three inches of hardtop?

A. None that I can detect. The new blacktop surface put on from Blackstone to Nottoway is uniform.

Q. Has there been any change made in the curves out there?

A. No. The curve is the same.

Q. The degrees of the curve or anything like that?

A. It hasn't changed.

Q. So that the entire situation out there with regard to the road, being any different than it was in October, except for the addition of three inches of hardtop, blacktop, and the building up of the shoulders, is that the only difference?

A. Yes, sir.

Q. One other question: The defendant Bridge-

page 142] forth has stated that he recollects telling you after or during your investigation of this accident something different from what you say he told you —

Mr. Merhige: Objection, sir. That is characterizing a witness's testimony as being different. It is for the jury to determine whether he said anything different. I object to it and move that it be stricken.

Mr. Cummins: He denied saying it.

Mr. Merhige: He did not.

Mr. Cummins: I asked him if he said that to Officer Landers, he said no.

The Court: Read the question, Mr. Crane.

Note: At this point the preceding question is read by the Court Reporter.

The Court: All right.

A. I can remember what he told me that night.

Q. Would you tell us once again, sir?

A. He stated as he came around the curve that he met a car coming down his side of the road with bright lights, and that he cut to his right and tried to get out of the way, and that is the last he remembered.

Mr. Cummins: That is all, sir.

CROSS EXAMINATION

By Mr. Merhige:

page 143] Q. Sergeant, let me ask you this, sir. Would you say that your memory in reference to this matter was better in July of 1964 than it is today, time doing what it does to our memory?

A. I wouldn't say it would be a lot of difference.

Q. Would you recall, sir, your testimony in connection with an allied matter in reference to this accident on July the 6th when you were asked the following question, I will read it, if I may, and ask you did you take any statement from Bridgeforth as to the speed he was going or how the accident happened and recording his words to you, do you recall that question?

A. I don't deny that the question was asked.

Q. And Answer: I am referring to my notes that I took at the time, if I may. I have shown here speed before accident on part of the Bridgeforth vehicle fifty miles an hour, speed limit fifty-five, safe speed fifty-five. I would gather that I got that information from Bridgeforth.

A. Yes, sir.

Q. I talked to him very briefly at Dr. White's Office in Blackstone, do you recall saying that?

A. That is correct.

Q. Do you recall saying at that time he was in considerable pain?

A. Yes.

page 144] Q. Do you recall that, sir?

A. Yes, sir.

Q. He was not able to see me very much, do you recall saying that?

A. That is true.

Q. Do you recall making this statement: He did tell me he met a vehicle coming down his side of the road with bright

lights, that he cut to his right in an effort to avoid a collision, do you recall that, sir?

A. I remember that.

Q. Now, would it be fair, Sergeant, or does your memory — can you recall that there was no discussion of swerve marks or any such thing in regard to any statement made by Bridgeforth to you in the testimony of July 6, 1964, but the only statement in reference to Bridgeforth said was the statement I have just read to you, is that correct, sir, to the best of your recollection?

A. The statement that you read is correct, as far as my testimony on the 6th of July.

Q. That is correct, sir, I understand.

A. Yes.

Q. Now, Sergeant, let me ask you if I may, sir: The markings in the road at the time that this unfortunate accident occurred, and specifically on the Hawthorne driveway in a westwardly direction from that driveway west, is

page 145] it not a fact that it was a broken white line for vehicles traveling west, and a solid line for vehicles traveling east? That is up to that driveway.

A. I beg your pardon?

Q. Up to the driveway. I may be able to —

A. I would like for you to repeat that question.

Q. All right, sir. I will ask you if you recall that at the date of this accident that the markings in the road, and I will confine myself for this moment from the Hawthorne driveway in a westerly direction, that it was a broken white line for vehicles traveling in a westerly direction, the direction Bridgeforth was allegedly going, and a solid line for vehicles traveling in an easterly direction, is that correct, sir?

A. That is correct.

Q. Is it not also true that there was a broken line eastwardly from the Hawthorne driveway back towards town for westbound traffic to the end of the curve where it was then solid for both east and west, is that correct?

A. As I recall the marking there, I know how it's marked, and I agree with what you say. It is broken for westbound traffic from the Hawthorne driveway for a short distance west until you get into a little hill crest there, but as you go back east from the Hawthorne driveway, as I recall, it is a double solid line around that curve.

page 146] Q. The pictures show, may I show you Exhibit, Plaintiff's Exhibit 10, sir, and ask you if it does

not show a broken line just east of that driveway for westbound traffic?

A. Yes. What I thought — what I thought you asked me was that there was broken lines east of the, east of the Hawthorne driveway so that eastbound traffic could pass.

Q. No.

A. You did not ask me that?

Q. I did not intend to. I may have. I can goof them up, too.

A. The line breaks near the Hawthorne driveway, possibly a little east of it.

Q. Then when it gets down, if you are going in an easterly direction as you enter the curve, it is then double for both — it is a double line for both east and west, is it not?

A. No passing line, that is correct.

Q. Coming back, as you come out of the curve, it becomes broken up to that point in the curve that the double line, is that correct, as you approach the little hill crest it breaks and you can pass?

A. That is correct.

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JOSEPH W. BLACKBURN,

introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cummins:

Q. You are Mr. J. W. Blackburn from Kenbridge?

A. That's right.

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Q. How long have you been a civil engineer, Mr. Blackburn?

A. I am not a civil engineer.

Joseph W. Blackburn

Q. What are you then? Tell us.
A. I am a surveyor.
Q. How long have you been a surveyor?
A. About twenty-five years.
Q. Are you familiar with making surveys in Nottoway County?
A. Yes, sir.
Q. Did you study surveying?
A. Yes, sir.
Q. Is that your profession?
A. Yes, sir.

Mr. Merhige: We withdraw our stipulation, it was in error, and stipulate the gentleman is a surveyor, qualified surveyor.

Q. You are a licensed surveyor?
A. Yes, sir.
Q. Mr. Blackburn, did you have any occasion since October the 19th of 1963 to make a survey sketch of the
page 149] highway 460 at a point approximately one and four-tenths miles west of Blackstone, Virginia, and for several hundred feet on each side of that point?
A. Yes, sir.
Q. Do you have such a survey plat with you?
A. Yes.
Q. Would you produce it, sir, and lay it up here on this blackboard in such a fashion that we can examine it?
A. Yes, sir.
Q. Mr. Blackburn, orient us on the survey sketch there as to east, west, north and south.
A. East is this way towards Blackstone. West is this way toward Crewe. South up, north down, which is backwards.
Q. On the margin of the white paper border would you put a B and C, Blackstone and Crewe, to represent east and west?
A. I have Blackstone and Crewe on there.

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Q. Going to the profile map down below where you have

the waffly profile line, what is the distance along the highway hard surface from the farthest profile point to the east that you show? What is the distance from that farthest profile point up to the center of the Hawthorne lane?

A. It is —

Q. Out in the highway.

A. Seven hundred feet.

page 152] Q. What point do you designate that as from an engineering standpoint or from a map standpoint? Do you call it station or something?

A. Well, I use stations in locating these, but they are simply another method of arriving at distances.

Q. For reference here so we *cammove* along, what point would you call that?

A. I call the Hawthorne entrance station eight.

Q. Station eight? What point do you call your extreme eastbound point where you started?

A. Station fifteen. They are one hundred feet. Eight from fifteen leaves seven.

Q. Now, you are showing a continuation of the curve beyond station fifteen to the east, are you not?

A. Yes, sir.

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By Mr. Cummins: (Continuing)

Q. Mr. Blackburn, disregard that question. What is the farthest station to the west of the high point in the road at the mouth of the Hawthorne driveway? What is the farthest station? I cannot read it from here.

A. That would be station where I started, naught naught, eight hundred feet.

Q. From where?

A. West of the high point entrance.

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page 159] JURY OUT

Mr. Cummins: For the purpose of continuing with the

witness Blackburn, it apparently has become necessary to show the height of the light of the Ford Falcon 1960 model automobile.

The Court: Yes, sir.

Mr. Cummins: I would like to present to the Court the master mechanic at Hammock-Rand Motor Co. who is intimately familiar with that type of automobile. He has inspected the lights on them for the State of Virginia inspections. He knows the height, the maximum height that such a light on such a car could possibly be. We take the position at this time, if Your Honor please, that obviously under the position with this profile map and this witness we need to be able to establish the maximum height of the lights to proceed further with this witness. I would for that purpose momentarily relieve this witness and replace him with Mr. Rice Brooks, the master mechanic of Hammock-Rand Motor Company of Blackstone.

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The Court: I do not see the relevancy of this.

Mr. Cummins: Let me explain the relevancy. It is at this point in this case the jury questioned as to where along this roadway the defendant Bridgeforth was at the time he saw the plaintiff Gibbs' lights, and the reason it is a jury question is this: Bridgeforth now states to the jury that he saw Gibbs' lights, or some lights head on in his lane after he had gone around the curve and as he was going up the hill. That is what he says today. But, on July the 6th, he stated, and the jury has it before them, that he was coming around the

page 163] curve and on October the 20th, when the Police Officer interrogated him he stated, as I was going around the curve. We take the position, if Your Honor please, that it is now a jury question as to where Bridgeforth was when he first saw the lights of Gibbs' car. Now that is the principle question we have to be able to show, where and whether Gibbs' lights could have possibly have been going through — at this level here, for example, could have possibly have been going through this area to blind him, or whether he was going up hill to blind him, all of which tend abso-

lutely to show where Gibbs was when his lights could have possibly first blinded Bridgeforth at any of the three places Bridgeforth has said he was, because he has stated he was at three different places. That is a jury question.

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page 165] BRYCE BROOKS,

introduced in behalf of the plaintiff first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cummins:

Q. Please state your name and your residence and your occupation, please, sir.

A. Bryce Brooks. I am in the Service Department with Hammock-Rand, in Blackstone, an automobile agency.

Q. What is your position there?

A. Service Manager.

Q. You are in charge of the entire shop?

A. The service, yes, sir.

Q. How long have you been working with this company and doing this type of work?

A. More than eighteen years.

Q. Mr. Brooks, are you familiar with the headlights on a 1960 Falcon automobile?

A. I am familiar enough to know that they have two, and so forth.

Q. Have you ever had occasion to concern yourself with the inspection of automobiles for lights to pass the Virginia State Inspection Laws?

A. Yes, sir.

Q. Can you tell us, from your knowledge of such lights, what would be the average height of the beam

page 166] of light coming from a 1960 Ford Falcon automobile?

Mr. Merhige: We would object to that, sir. That is not the issue. That is not the issue as to the average height of a 1960 Falcon automobile. I understood if it is material at all I submit it would not, it would have to be this vehicle.

Mr. Cummins: We covered that a minute ago, Your Honor.

The Court: No, we didn't.

Bryce Brooks

By The Court:

Q. Are you familiar with this particular vehicle?

A. I am not familiar enough to testify as far as the height of this particular car is concerned.

By Mr. Cummins: (Continuing)

Q. What would be the maximum height of this particular car, the maximum possible height of those beams?

A. Thirty inches from the ground up.

Q. Thirty inches off the ground the beam would be at its maximum?

A. From the car.

Mr. Cummins: If Your Honor please, if he says that is as high as they could possibly be, he does not have to be familiar with the car. They could not be any higher than that. That, of course, is favorable to Mr. Merhige.

page 167] The Court: Nobody objected.

Mr. Merhige: I object to it, sir. It is the same thing, the same objection.

Mr. Cummins: He stated that would be the maximum. It couldn't, certainly wouldn't be any higher than any car, any 1960 Falcon.

Mr. Booth: The witness admits he doesn't know anything about this car.

The Court: He says he does not know anything about it. I have to sustain your objection. He admits he does not know anything about it.

Mr. Cummins: About this particular automobile.

The Court: Yes. He says he does not know anything about it. I imagine if you were asking him about a Valiant he could go to town on that, but a Falcon, he says he doesn't know anything about it.

Mr. Cummins: He was talking about Falcons in general.

A. (Continuing) Falcons, in general, have lights lower than the average car.

By The Court:

Q. You do not know what it is, though.

A. Well, I know that it is not beyond thirty inches.

Mr. Cummins: He knows that.

page 168] A. In height. That is the maximum.

The Court: All right. All right if that is all you want to ask.

By Mr. Cummins: (Continuing)

Q. Mr. Brooks, for the record, you are familiar, as I understand it, with 1960 Falcon automobiles in general?

A. In general, yes, sir.

Q. What is the maximum height of the beam of light off of the ground of a 1960 Falcon automobile?

Mr. Merhige: Same objection, sir, that we made before.

Mr. Cummins: We save his objection, Your Honor, all the way through.

Mr. Merhige: Note my exception.

A. At the point of the headlight or right at the beginning of the headlight I can say the beam is produced from the headlight will not go higher than thirty inches. It depends, of course, how is sets where the beam will go.

Q. Right at the headlight it will be thirty inches from the ground?

A. That's right. It will not go beyond thirty inches.

Q. Off the beam, the direct piercing beam, that is what you are *talkingabout*?

A. That's right. At the headlight.

page 169] By The Court:

Q. What I am trying to find out now, do you know what it was on this particular car?

A. No, sir.

Mr. Cummins: He said he didn't know that, Your Honor.

By The Court:

Q. The jury understands when they inspect them that they fix it at thirty inches, is that right?

A. No, sir. That is taking it at the highest point. If the front end is raised or something of that. The average headlight *ina* Falcon is low.

By Mr. Cummins: (Continuing)

Q. But the maximum would be how high off the ground?

A. It couldn't go beyond thirty inches.

Bryce Brooks

Mr. Cummins: Mr. Merhige.

CROSS EXAMINATION

By Mr. Merhige:

Q. Would it make any difference what kind of tires it had on it, for example, how high the beam would be?

A. You couldn't put — you wouldn't put — it would be practically wise to use certain size tires on a small car.

Q. Could you put tires on there that would in-
page 170] crease the height of the beam, or —

A. You could, but —

Q. I understand that, but you could?

A. It wouldn't — it wouldn't go beyond thirty inches.

Q. The condition of the springs, would that have anything to do with how high the lights might be.

A. It couldn't change more than five inches.

Q. It could change it?

A. It could change it five inches.

Q. If there were no springs, it would be at the bottom, it would be lower, is that correct?

A. That is correct.

Q. How low could it possibly be?

A. As a general rule it is about a five inch travel. That is the limit. Either up or down.

Q. That is on the average car?

A. That is on a Falcon.

Q. On an average Falcon?

A. Yes, sir.

Q. Of course you cannot say what the condition would be if the springs were either weak or strong, or the tires were either over inflated or under inflated, or over sized tires, or any of a half a dozen factors, is that correct, sir? You cannot
say under any particular Falcon what the beam
page 171] was unless you saw it?

A. That's right.

Q. You never saw the 1960 two door Falcon Sedan allegedly driven by William Daniel Gibbs, Jr., at the time of this unfortunate accident, did you, sir?

A. No, sir.

Mr. Merhige: I have no further questions, sir. Thank you, sir. I move the Court to strike all of the evidence.

The Court: *Letssee* what else he is going to do here.

Joe Sandifer, Jr.

REDIRECT EXAMINATION

By Mr. Cummins:

Q. I hand you, Mr. Brooks, Plaintiff's Exhibit No. 6, and ask you to look at it and see if you recognize that for what it purports to be?

A. It would just be a Falcon car.

Q. Yes, sir. Do you recognize the wheel or the tire on it?

A. Yes, sir.

Q. Does it look standard or not?

A. They do from the picture, in proportion to the picture.

Q. That happens to be photograph No. 6, the page 172] Gibbs' car that you are holding, as introduced formerly in this case; the tire looks standard?

A. Yes, sir.

Q. Look at this picture. I have one other question. Assuming that the damage that you see inflicted here ruptured or broke the oil pan of this automobile and the transmission housing, and that the fluid in those instruments was not in there after the accident, and fell on the ground, does that fluid in those instruments if they are ruptured at an impact go out of there right away?

Mr. Merhige: I object. I do not think this witness can testify unless he has been qualified as an expert in the science of physics.

Mr. Cummins: He is an expert —

Mr. Merhige: He may be a mechanical expert —

The Court: I am going to let you answer that. In other words, if you dropped a whole can of window fluid and punctured a hole in it, it would start coming out and start coming out right now, wouldn't it?

A. Right now, yes, sir.

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page 176] JOE SANDIFER, JR.,

introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cummins:

Q. Will you please state your name, occupation, and resi-

dence?

A. Joe Sandifer, Jr. I am the minister of the Presbyterian Church in Blackstone.

Q. You live in Blackstone?

A. That is correct.

Q. Have you ever had occasion to become familiar with the 1960 Falcon automobile owned by William D. Gibbs?

A. Yes, I have.

Q. Would you explain that briefly?

A. I was the owner of that car previous to trading it with Hammock-Rand, when I purchased another car.

Q. Did it have standard tires on it?

A. Standard tires.

Q. How many headlights did it have on it?

A. Two.

Q. One on each fender?

A. Yes.

Q. Was the automobile in all respects, so far as you know, a standard automobile as a normal Falcon automobile?

A. Yes, it was.

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JOSEPH W. BLACKBURN,

upon being recalled by counsel for the plaintiff, having previously been duly sworn, testified further as follows:

DIRECT EXAMINATION

By Mr. Cummins: (Continuing)

Q. Mr. Blackburn, if you will, sir, starting at station zero zero, which is the farthest station west of the Hawthorne driveway on your map.

A. Yes, sir.

page 178] Q. — tell us, if you will, if a set of headlights facing east were located at station zero zero and those headlights were thirty inches off of the ground headed east — taking a distance thirty inches off the ground — Are you operating now to scale as you measure that?

A. Yes, sir.

Q. Can you tell me from that station whether or not the lights so situated could have shown in the eyes of a westbound

automobile traveling on that highway?

Mr. Merhige: I object on several grounds. One, sir, I assume Mr. Cummins means the eyes of an operator of a westbound vehicle. I submit that hypothetical question is not based on any evidence upon which this witness could draw a conclusion.

The Court: Objection sustained.

Mr. Cummins: If Your Honor please, we think perhaps if Mr. Merhige is going to continue objecting that perhaps the Court and counsel ought to first determine for the record what is the nature of the engineer's testimony. He has not yet been able to show the Court the nature of his testimony so that the Court could derive the admissibility of it.

The Court: Let me ask you a question: Didn't you ask where the light of the Gibbs' car would be in relation to the Bridgeforth car —

page 179] Mr. Cummins: No, sir. We were not bothering about Bridgeforth at this point.

The Court: What are you all asking at this point?

Mr. Cummins: If a set of headlights on a standard Falcon were thirty inches off the ground facing east at station zero zero, could they shine into the lights of an oncoming automobile which was to the east or on this side of the Hawthorne driveway, where Bridgeforth obviously was by all of his different statements, in each instance he was east of that point. That is the sole purpose of the question. If counsel will permit the engineer to answer the question, I think we can all readily see that it is a physical impossibility, that it is really not —

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The Court: I am not going to let him testify where he could see the beam. You can put the map in, and you can testify that the average light at the maximum height is thirty inches from the ground. It is for the jury to decide whether they think it was a thirty inch beam or not.

Mr. Cummins: You will let me do what, Your Honor, about the beam? You will let me put it where?

The Court: It is up to the jury to decide whether they think it was a thirty inch beam or not. I will let his testimony go

in that the maximum height of an average car is thirty inches from the ground.

Mr. Cummins: Mr. Brooks' testimony?

The Court: Mr. Brooks' testimony. As far as demonstrating what it would show here on the map, that is inadmissible.

Mr. Cummins: Your Honor, if you just let Mr. Brooks' testimony stand alone, his testimony won't be too significant unless we show his beam is blocked by that hill.

The Court: They can see that, I think.

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page 186] By Mr. Cummins: (Continuing)

Q. What is the high point in the road, Mr. Blackburn, if you will show us, with regard to your farthest station down here to the east, to your farthest station to your west, show us the high point in the road.

A. The high point in the road is at station fifteen.

Q. Which would be back at the curve?

A. (Nodding head indicating yes)

Q. What is the next high point?

A. Right at the Hawthorne entrance.

Q. At the Hawthorne entrance?

A. It is practically level there from the Hawthorne entrance about forty feet west.

Q. *Forpurposes* of understanding this profile, this is a side view, as I understood you, of the highway there, as if you cut a cross section, is that correct?

A. That is correct.

Q. This would be as the road rolls, is that correct?

A. That is correct.

Q. You have marked down here one point seven percent at station — just east of station naught naught, what is that?

A. That means it is a one and seven percent grade that for every one hundred feet the road measures horizontally, it raises or goes up one and seven tenths feet. Say that it was a five percent grade, it would be five feet.

page 187] Q. You have here four point four, for example; does that mean the same thing?

A. Yes, sir.

Q. And you have down here two point two percent, that means the same thing?

A. Two point two feet per hundred.

Q. That it raises two point two feet per hundred feet?

A. Yes, sir.

Q. The elevation is that much?

A. It raises or declines, it depends from which way you are going.

Q. This map here you have drawn up at the top, I understood you to say was a flat projection as if you were looking down on it?

A. That is correct.

Q. What is the difference between the western most driveway of this horseshoe driveway and the Hawthorne lane?

A. Two hundred sixty-seven feet.

Q. What would be the distance from the Hawthorne lane to the eastern most end of the driveway? The horseshoe driveway?

A. Six hundred fifty-seven, from the Hawthorne lane to here.

Q. Yes, sir.

page 188] A. Six hundred — that is correct. Six hundred fifty-seven.

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REDIRECT EXAMINATION

By Mr. Cummins:

Q. Did you give us the distance east — you gave us the distance, did you give us this distance from this point down to the mouth of the intersection? You had better give us that.

A. Six hundred, one more hundred feet — seven hundred seventy-five feet.

Q. How far is this, Mr. Blackburn, from this station to this station?

A. Eight from sixteen is eight hundred feet.

Q. Eight hundred feet. At each station, would

page 197] you write down, if you will, you can do it rather quickly, on here how many feet it would be under these stations to this intersection, to the center, if you would.

A. George, this is the entrance. I call it station — actually it is seven plus ninety-nine. One foot is not significant, is it?

Q. No, I don't believe so.

A. There is one hundred feet between each one of these.

Q. One hundred feet between each one?

A. One hundred feet between each one. It is one hundred feet all the way across. This would be seven hundred. Up and down, this is two and a half feet. A whole inch is five feet.

Q. Two and a half feet, and an inch is five feet?

A. That's right.

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page 4]

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E. P. LANDERS,

a Virginia State Trooper, upon being called by counsel for the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cummins:

Q. Mr. Landers, would you tell the jury your name and your residence and your occupation?

A. I am Trooper E. P. Landers. I work for the Virginia State Police. I live at 202 Dinwiddie Avenue, Blackstone, Virginia.

Q. Would you tell us how long have you been a police officer?

A. Since July 16, 1936.

Q. How long have you been investigating accidents and performing your functions as a police officer in Nottoway County, Virginia?

A. For the better part of eighteen years.

Q. Did you have an occasion on October 19 of 1963 sometime around eleven thirty that night to investigate an automobile accident approximately one and a half miles west of the corporate limits of Blackstone on Route 460 in Nottoway County?

page 5] A. I did.

Q. Would you tell us how you became alerted and what you did in response to your alert?

A. I was at Slaw's Restaurant on *thatnight* about that time, and a passing motorist came in and reported that there had been a serious accident just west of Slaw's on Route 460. That was at 11:28 P.M. on October 19, 1963 and here, with the per-

mission of the Court, I would like to refer to the report that I made at the time.

The Court: You may do so.

A. I proceeded to the scene, arrived there a couple minutes after I had been notified of the accident, at about 11:30 P.M.

The accident occurred exactly one and four-tenths miles west of the west corporate limits of Blackstone on Route 460. At that time the weather was clear. The road was dry.

Q. Could you describe the road with regard to its surface composition, its width, and its markings, if any?

A. The width of the highway at the location where this crash occurred was twenty-one feet six inches. That would be the paved portion of *thehighway*.

Q. How many lanes?

A. Two lanes.

Q. One east and one west?

page 6] A. Yes, sir.

Q. And a total width of both lanes was twenty-one feet six inches?

A. Correct.

Q. Were there any shoulders?

A. Yes. Shoulder on the north and south side of the road.

Q. Would you describe the width of the shoulders, please?

A. The width of the shoulders varied somewhat in the vicinity of the scene of the accident.

Q. Just approximately?

A. I have a notation here.

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Q. All right, Mr. Landers.

A. The north shoulder of 460 at that vicinity was four feet six inches.

page 7] Q. The north shoulder?

A. Yes, sir. The south shoulder was not measured. It varied somewhat from one point to another there. However, there was room on the south shoulder for a vehicle to park.

Q. Speaking of the north shoulder and the south shoulder, I understand this highway at this point runs east and west?

A. It does.

Q. The north shoulder then would be on your left as you

were going to Blackstone or on your right as you are coming from Blackstone?

A. That is correct.

Q. The south shoulder would be on your right as you are going to Blackstone or on your left as you are going toward Crewe?

A. That is correct.

Q. When you arrived at the scene of the accident, Mr. Landers, tell us from that point on what you discovered with regard to any automobiles present, any people concerned with the automobiles, such as drivers and so forth, and what you discovered with regard to damage to the automobiles.

A. Upon my arrival I found three automobiles at the scene. I mean by that, that I found three automobiles which had been involved in this particular accident.

Q. Fully describe them, where you found them,
page 8] the direction that they were heading, and that sort of thing.

A. The first automobile was a 1958 Pontiac Catalina Sedan, '63 Virginia license 803-824. In checking the registration on this vehicle, I found that it was registered to Harriett M. Bridgeforth of Blackstone.

Q. Who had been driving that vehicle, if you know?

A. I didn't learn at that particular time. I learned —

Q. Do you know who was driving it?

A. Yes, sir, I do.

Q. As a result of your investigation?

A. Yes, sir.

Q. Who was the driver?

Mr. Byrne: How did he find it out, if Your Honor please?

Mr. Cummins: He said he found it out as a result of his investigation.

Mr. Byrne: I want to know as a result of the investigation how he found it out. Someone else could have told him and then it would be hearsay.

Mr. Cummins: I think the defendant told him.

Mr. Byrne: Mr. Cummins, I don't want to start so early objecting, but if you are going to testify —

page 9] The Court: Hold it up a minute here.

By The Court:

Q. You were told, I reckon, by someone. Someone told you. Did you find out that to be true?

A. I was told by the driver of the Pontiac that he, Allen Stewart Bridgeforth, was the driver at the time of the accident.

Q. You found that was true?

A. That is correct, sir.

The Court: All right. Proceed. As long as you found out that was true.

By Mr. Cummins: (Continuing)

Q. That is for the '58 Pontiac?

A. That is correct.

Q. Do you want to continue with that car now, sir, so we won't get confused on cars. Tell us further with reference to damage, where it was located, and so forth.

A. This car was damaged from the front all the way back, the full length of the car down the left side of the automobile. Driver's side. And it was parked, when I reached the scene, clear of the pavement on the north shoulder of Route 460 headed in the direction of Blackstone. Headed east. It was badly wrecked. And at that time there was no one in the automobile.

Q. You say it was on the north shoulder headed
page 10] toward Blackstone?

A. Yes, sir.

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Q. All right, Mr. Landers. If you will, sir, go ahead now to the next automobile.

A. The next one that I examined was a 1960 Falcon, 2-door Sedan, '63 Virginia License 804-473. Registration on this vehicle indicated that it was registered to William Daniel Gibbs, Jr. of 1712 Catalina Drive, Richmond, Virginia.

William Daniel Gibbs, Jr. was in the automobile when I arrived at the scene. Was in the Falcon.

Q. Did you approach him and speak to him?

A. He was unconscious.

Q. *Howwas* he in the automobile? Was he sitting up, laying down, just describe that for us, if you will.

A. His feet were entangled in the clutch and
page 11] brake pedal and the different parts of the automobile in the vicinity where your feet would be, normally be when you are driving a car. He was lying across

the left back rest of the front seat. The small of his back was resting on the top of this left back rest, with his head and shoulders were resting on the rear seat of the automobile on *theleft* side.

Q. Did Mr. Gibbs say anything to you?

A. No, sir. Nothing whatever.

Q. From your observation was Mr. Gibbs apparently injured or not?

A. Oh, yes.

Q. Where was his car located and what was the direction that it was pointing in?

A. The Gibbs' vehicle, the Falcon, was sitting on the south shoulder of Route 460 headed west.

By The Court:

Q. South shoulder would be on this side of the road, right hand side —

A. On the left headed west.

Q. On the right going toward Blackstone?

A. On the right going toward Blackstone, yes, sir.

The Court: I believe if we follow all the way through going toward Crewe we refer to the right and going toward Blackstone we refer to the left it would be better understood.

page 12] By Mr. Cummins: (Continuing)

Q. What was the extent of the damages to the Gibbs vehicle?

A. It was practically demolished from the front all the way back, the entire left side, or the driver's side of the vehicle to the rear.

Q. Did you find any other vehicles at the scene of the accident?

A. Yes.

Q. If you will, tell us, sir, what it was, who was involved in that operation, and what, if any, damage you found to that vehicle.

A. I found another Pontiac, a 1957 Pontiac, 2 Door Coupe, Virginia license 804-486, '63 Virginia license.

Q. That was what model car, sir?

A. '57 Pontiac, 2 Door Coupe.

Q. Where did you discover this automobile? Who was its operator and was it damaged in this accident?

A. I discovered this automobile parked in the Hawthorne

driveway, which is right on the point of a curve in Route 460 at that point.

Q. When you say on the point of a curve, is the Hawthorne driveway at that area anywhere near the top of the hill or anything?

A. I would say just about on the top of the hill-
page 13] crest and the curve ends at that point.

Q. *Thatis* where you found the '57 Pontiac?

A. Yes.

Q. Who was its operator? What was its condition when you found it?

A. During my investigation I talked with Billy Eugene Strickland at the scene of the accident. He identified himself as having been the driver of the '57 Pontiac at the time the crash occurred. The '57 Pontiac was damaged very slightly on the right front. The right front bumper guard had a dent in it. *Therewas* a dent in *theimmediate* vicinity of the right headlamp. The seal beam unit of the right headlamp was hanging out of the fender by the wires but it was still burning. It was not broken.

Q. This was on the Strickland Pontiac?

A. Yes.

Q. How far off the road was the Strickland Pontiac?

A. I didn't measure with a tape. I didn't measure with a tape the distance the front of the Pontiac was from the pavement. I would approximate it to be about four feet.

Q. Off of the paved portion of the highway?

A. Yes.

Q. And its front end pointing where?

A. Pointing toward Route 460, or pointing south.

Q. Going back just a moment to the Bridge-
page 14] forth Pontiac, you explained the damage to it.

Can you tell us whether or not anything on the rear end of the Bridgeforth Pontiac had been damaged or scratched upon your investigation?

A. The right rear tail lamps on the Bridgeforth Pontiac were broken, and there was a dent on the tail lamp housing. Also a slight dent on the right rear bumper of the Bridgeforth Pontiac. It was very slightly damaged on the right rear.

Q. Did you find any evidence or tracings, so to speak, of paint smear or paint smudge or paint scraping type material on either the right front end of the Strickland vehicle or the right rear end of the Bridgeforth vehicle?

A. Yes.

Q. Explain that.

A. I found a slight amount of red paint smeared on the right rear lamp housing of the Bridgeforth Pontiac. And I also found a small amount of red paint smeared on the chrome part of the Strickland Pontiac on the right front. Incidentally, both the vehicles, the Bridgeforth vehicle and the Strickland vehicle, were painted red, about the same shade.

Q. During the course of your investigation there at the scene, Mr. Landers, did you discuss the accident at that time with the defendant Bridgeforth?

A. At the scene?

page 15] Q. Yes, sir.

A. I did not.

Q. Did you approach his automobile?

A. I did.

Q. Did you find him?

A. No, sir.

Q. Could you find him anywhere at the scene?

A. No, sir.

Q. Did you find Strickland at the scene?

A. I did.

Q. You say you found Gibbs there?

A. I did.

Q. Did you at any time subsequent to your investigation at that scene get in touch with Allen Stewart Bridgeforth?

A. Not at the scene of the accident.

Q. I mean anytime after you left the scene, I mean.

A. Yes. After I left the scene I did.

Q. When and where?

A. Several hours later. Perhaps as late as 2:00 or 2:30 the following morning at the office of Dr. White in Blackstone. Some people had brought Allen Stewart Bridgeforth to Dr. White's office. I talked to Allen Stewart Bridgeforth at that time and at that place.

page 16] Q. In your discussion with Allen Stewart Bridgeforth, can you tell us what Allen Stewart Bridgeforth had to say to you about this accident?

A. I talked to him briefly. He was in considerable pain at the time. And his statement at that time was that he was driving west on 460 about 50-55 miles an hour.

Q. Incidentally, what is the speed limit here?

A. 55.

Q. Go ahead, sir.

A. That when he approached a point, the point where the crash occurred, that he met a vehicle coming down his side of the road with bright lights, and he swung to his right and attempted to get out of the way. And he didn't remember anything else about it. He didn't even remember where he had been from the time the accident occurred until I talked to him.

Q. What did Mr. Bridgeforth say to you, if anything, about his actions or his memory as he approached the point of the top of this hill? In other words, what did he tell you about, for example, where he had come from, where he was going, and when he first was alerted to any trouble, what did he tell you, for example, about those sort of things or with relation to any curve in the road?

A. At that particular time he didn't tell me anything. I talked to him after he had been released from the page 17] hospital, sometime after the accident occurred, and he stated that he was headed from his home on the Hungary Town Road to Midway Tavern at the time the accident occurred.

Q. That is where he said he was going to and from?

A. Yes, sir.

Q. At any time in your discussion with Bridgeforth — I take it that you talked to him three or four times?

A. I did. A number of times.

Q. What did he say about his approach to the scene with regard to the curve down there in the road?

A. The only thing I recall that he said was that he was on his side of the road as he approached the scene there, and that he met a vehicle with bright lights coming down his side of the road, and he veered to his right in an attempt to avoid the crash.

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Q. Let me state it to you this way: Mr. Landers, did the witness state anything to you that would incline to characterize the road there? Did he use any words that you page 18] can recall characterizing the road with relation to words that we normally use when we speak of a road?

A. It's possible that he might have mentioned the curve,

because there was a curve there, and he is bound to have come around that curve.

Q. Going to that point, did he say or did he not say anything to you in relation to a curve and any lights, any bright lights?

A. He did.

Mr. Byrne: If Your Honor please, we are back to the point of leading the witness.

Mr. Cummins: I am not leading on that.

The Court: Your objection is sustained. You just tell everything that he said to you and that will take care of it, I believe, sir.

A. Your Honor, as far as I can recollect and from my notes here I have already testified to everything Bridgeforth told me.

The Court: All right. That does it, gentlemen.

Q. During the course of your investigation, Mr. Landers, did you take any photographs?

A. I did.

page 18-B] Mr. Byrne: It is understood for the record that I have made certain objections and exceptions to these photographs and rather than take the time of the Court at this time, it is understood that I will read those objections and exceptions into the record at a later time this date.

The Court: Yes, sir. While we eat you can work.

Mr. Byrne: All right, sir.

Note: The following objections and exceptions were dictated later during the trial but are here inserted for better continuity.

Mr. Byrne: The defendant objects and excepts to the introduction of plaintiff's Exhibits 4 and 5 on the grounds that they add nothing to the case as to how the accident occurred, but simply are being used to inflame the jury. It leaves the door open to the jury to engage in speculation and conjecture and surmise, plus the fact that it is obvious that this is not the exact condition that the vehicles were found in
page 19] by the Trooper by virtue of the fact that the left front tire is piled about both Exhibits 4 and 5.

It appears that they were thrown there by whoever towed the car in. My primary objection is that it does not add anything so the jury can reach a conclusion as to how the accident happened.

We object and except to Plaintiff's Exhibit 13 which purports, as we understand it, to show the grease spot that Trooper Landers has already testified to, on the ground this does not depict the scene as described by Trooper Landers in his testimony, in that he stated that the grease spot went to the center line of the road, and said from the center line of the road over the east bound lane over to the shoulder where the plaintiff's vehicle was at rest when he arrived at the scene. We submit it is not a true picture for that reason and should not be submitted to the jury because it enables them to engage in speculation.

Further, we object and except to the introduction of Plaintiff's Exhibits Nos. 10, 11, and 12. We would object
page 20] to all of these exhibits on the ground they show vehicles which appear to have been deliberately placed in position therein and do not depict the scene as it was at the time of the accident.

Further we object and except to the introduction of Plaintiff's Exhibits Nos. 7, 8 and 9, known as aerial photos, because there is no evidence as to when they were taken, and it is assumed that they were taken sometime after the accident and after certain improvements had been made with reference to the road, and as a result they do not accurately depict the scene at the time of the accident.

Further we object and except to the introduction of Plaintiff's Exhibits Nos. 12 and No. 14 on the ground that they show portions of a vehicle on the north side of the highway some distance from the paved surface which were not found by Trooper Landers until a day or two after the accident. The only purpose of such pictures would be to try to create an inference that the defendant's vehicle may have
page 21] been on the wrong side of the road, while we submit on behalf of the defendant that the evidence is uncontradicted that he was on his proper side of the road at the time the accident occurred.

The Court: Mr. Landers, I think we have one or two in there that had a wheel or something laid up on the bank. If you will point that out to the jury and explain that.

Gentlemen of the jury, in these photographs I want you to notice we have some of them that look like they may have had some rough handling or something. They have a few marks on them. Disregard them. Like that one right there. All of those marks mean nothing as far as you are concerned. Just disregard it all together, any of the white specks on it.

All right, gentlemen.

Mr. Cummins: You mean the tear marks, do you not, Your Honor, where the paper has been torn? I will try to get to it on each one as I come to it.

The Court: All right.

By Mr. Cummins: (Continuing)

Q. Mr. Landers, I hand you a photograph marked Plaintiff's Exhibit 2 and ask you to tell us — you say you took these. Tell us what it depicts, what it shows?

page 22] A. Yes, I took this picture.

Q. Tell us what it depicts.

A. The right front of the Pontiac, which was operated by Billy Eugene Strickland. And it shows a missing headlight lens. It shows where a rim had been installed on the right front and where it is no longer there. It shows a slight dent immediately under the right headlamp of the vehicle.

Q. Perhaps if you twist a little bit they can be glancing at it while you are talking.

A. It shows the right front of the Strickland vehicle, the Pontiac, and it shows a slight dent in the right front fender immediately below the right front head lamp of the Strickland vehicle.

Q. I hand you Plaintiff's Exhibit No. 4 and ask — and I might say to you, gentlemen, in connection with what the Court has indicated, these are tear paper marks. Do not have anything to do with the picture or the accident, simply where the paper tore taking the picture. Explain to the jury what that picture depicts, sir.

Mr. Byrne: If Your Honor please, I think before it is shown to the jury it is incumbent upon the Court to take care of the wheel situation.

The Court: I told him about that.

page 23] Mr. Cummins: Gentlemen, this wheel lying here was not found there that way. That wheel was picked up someplace and just laid there in the junk yard. This picture was taken in the junk yard, not at the scene of the accident, and the wheel was simply placed there for con-

venience, is that correct?

By The Court:

Q. The rest of the picture, Mr. Landers, is as it was at the scene with the exception of that wheel?

A. Yes, sir, it is.

The Court: All right.

By Mr. Cummins: (Continuing)

Q. Turn so they can look. Tell us what that shows, sir.

A. I took this picture at Mr. Norvell's garage, their storage lot, at Blackstone. The wheel that you see there at the scene was placed there before *thepicture* was taken, because it had been torn completely from the car. When it was found at the scene of the accident, it was found on the north shoulder of Route 460 between where the two vehicles stopped.

Q. Whose car is it?

A. It is the Bridgeforth vehicle. Bridgeforth's car. It shows the damage to the front, from the front to the rear. The white mark there is where the picture —

Q. I have explained that.

page 24] A. — stuck to the dryer.

Q. I hand you Exhibit No. 5 and ask you to hold it and tell them what that depicts?

A. This is another picture of the Bridgeforth Pontiac. It was taken at the same location, Novell's Garage lot there in Blackstone, and it was taken a little further back from the car so that — to show *theentire* automobile. And it shows a little different angle. It was taken broadside rather than at an angle so as to show *theentire* left side picture of the Pontiac.

Q. This is Plaintiff's Exhibit No. 6, if you will, sir, tell them what that depicts?

A. That is a picture of the Falcon which had been operated by William Daniel Gibbs, Jr. That also was taken at Novell's Garage lot in Blackstone, and it shows the damaged portion of the Falcon. *Itwas* taken on a slight angle so as to show the left hand side and the front of the Gibbs' Falcon.

Q. This is Plaintiff's Exhibit No. 7. Would you please tell them what that is?

A. That is an aerial photograph that was taken in the immediate vicinity of where this crash occurred, and it shows the burned remains of what had been James Hawthorne's

residence. The residence burned. It also shows the driveway leading into Route 460, and Route 460 at that point.

page 25]

Q. The burned residence has nothing to do with this case?

A. Nothing at all.

Q. I hand you Plaintiff's Exhibit No. 8, sir, and ask you to show what that depicts?

A. That is another aerial photograph and was taken from a greater height so as to show more of the country around the surrounding scene where the accident occurred. It also shows the Hawthorne driveway and the remains of the Hawthorne residence.

Q. On Plaintiff's Exhibit No. 8, if you will continue to hold it there, I place my finger for the record in the upper right hand corner of that picture and ask you what direction is that?

A. East.

Q. And I place my pencil in the lower left hand corner of the photograph, what direction is that?

A. West.

Q. I hand you Plaintiff's Exhibit No. 9 and ask, sir, if you will tell them what that picture depicts?

A. This is another aerial photograph. It shows the Hawthorne driveway. It shows a section of Route 460 approaching the Hawthorne driveway from both directions, east and west, and some woods on both sides of the road there.

page 26]

Q. I am placing my pencil, for the record, approximately in the exact center of that exhibit, and ask you, sir, what that is at that point?

A. That is my police car. I was present when the picture was taken and was standing in front of my car at the time.

Q. This is the Hawthorne driveway?

A. It is.

Q. In relation to this Hawthorne driveway, how far from the Hawthorne driveway did you find the major debris and oil and that sort of thing that may have come from an impact?

Mr. Byrne: I think he has to ask him what he found.

Q. In relation to the driveway, Mr. Landers, what did you find to indicate that an accident had happened?

A. I found debris in the highway.

Q. In the nature of what, in what type of debris?

A. Different things. Metal fragments, glass —
Q. Did you find any oil?
A. Yes.
Q. Did you find any grease type material?

Mr. Byrne: If Your Honor please, we are almost getting ready to drive Mr. Landers right down the road rather than lead him.

The Court: Objection sustained.

page 27] Q. Then you say you found what, Mr. Landers? I won't ask you. You just tell me.

A. I found a grease mark in the highway.

Q. Now, just asking you at this point — pardon me, sir, Mr. Byrne, I am just asking at this point — what you found in relation to the driveway? That is, whether you found it directly in front of the driveway, whether you found it just east of the driveway, whether you found it just west of the driveway, I am trying to orient the debris, where you found it in relation to the driveway. That is all I am trying to do at this point.

A. I found a grease mark that was black grease, looked something like transmission grease, extending from the center of the highway to the extreme south side or toward the left side of the highway as you head from Blackstone toward Crewe. This grease spot was slightly east of the intersection of the Hawthorne driveway and Route 460. It was entirely in the eastbound lane of Route 460.

Q. Well now, when you say slightly east, could you give us an approximation of what you mean by slightly, in terms of feet, approximately?

A. Possibly eighteen to twenty feet.

Q. East of the driveway?

A. East of the driveway. And it ended, the grease mark ended at the point where the Falcon automobile
page 28] was sitting at the time I made my investigation at the scene. From that point on west on Route 460 the debris consisted — the debris that I found in the highway consisted mostly of glass particles and small metal fragments which were scattered from one side of the road to the other, but mostly west of the Hawthorne driveway.

Q. West of the driveway?

A. Yes, sir.

Q. They are the things you say you found other than the

grease?

A. Yes, sir. On the south or left hand shoulder as you head west I found —

Q. West or east?

A. As you head west.

The Court: South, so that is still over here.

Mr. Cummins: South, that lies next to the eastbound lane.

The Court: Yes. He is heading west. South is still over here.

Q. Go ahead, sir.

A. Heading west on the left hand shoulder I found the end of a bumper —

page 29] Mr. Byrne: If Your Honor please, at this point I have to object until we establish when this was found. Was it found the night of the accident, two days later, three days later —

By The Court:

Q. All right. Tell when you found it, Mr. Landers.

A. It was not in the highway the night of the accident. I did not observe it until the following day, and it was left at the place it was observed and it was photographed possibly two days after the accident occurred.

By Mr. Cummins: (Continuing)

Q. All right, sir. What was it?

A. It was heavy metal or chrome metal parts of an automobile. It was the left end of the bumper which had the parking light in the bumper guard. *Thatparticular* part was missing from the Bridgeforth vehicle. It was torn off in the wreck.

Q. When you say that was on the — on the left shoulder as you go toward Crewe —

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Q. Did you find anything else on the right shoulder over there as you go toward Blackstone, or on the left shoulder as you go toward Crewe, anything with relation to its wheel,

anything like that?
A. I found a Pontiac hubcap.
Q. From which car?
A. It was from a —

Mr. Byrne: He cannot say which car it was from.

By The Court:
Q. Do you know which car it was from, Trooper?
A. It wasn't from the Falcon, Your Honor, and it wasn't from Billy Eugene Strickland's Pontiac. No hubcaps were missing from the Strickland vehicle. At least I didn't get any report of any being missing.

By Mr. Cummins: (Continuing)
Q. So that —
A. The Falcon —

By The Court:
Q. Were any missing from the other vehicle?

By Mr. Cummins: (Continuing)
Q. From the Bridgeforth vehicle?
A. Yes, sir.
page 31] Q. Which one?
A. Left front.
Q. Now, I hand you, Mr. Landers, Plaintiff's Exhibit No. 13, and before we do this I want to caution the jury at the behest of counsel and the Court this white mark, this white mark here which looks like a waffly type small thing less than the size of a dime has nothing to do with the accident. That was a mark made by mistake with an erasure and it just has nothing to do with the accident. It is a torn piece of paper. Please disregard that mark, white mark. All other parts in the photograph are normal.
If you will, sir, look at Plaintiff's Exhibit No. 13 and tell us what that depicts?
A. I took that photograph, and I was standing — I was standing on the edge in the westbound lane of Route 460 near the edge of the pavement at the time it was taken.
Q. Before we go any further with Plaintiff's Exhibit No. 13, I am touching with my pencil the upper left hand corner of the picture, in the upper left hand corner of the picture, and I ask you what direction is that?

A. Southeast.

Q. I am pointing to the right side of the picture, what direction would that be?

A. Northwest.

Q. I am pointing to the upper grassy woody por-
page 32] tion of this photograph, what shoulder or bank would that be?

A. That would be the left hand shoulder as you head west on 460. That would be on the south side of Route 460.

Q. This lane of travel which is immediately adjacent to it would be going in which direction, east or west?

A. Eastbound lane.

Q. All right, sir. Now you may continue.

A. As Mr. Cummins stated, the white mark you see there doesn't have anything to do with it, because that white mark was not there at the time the picture was taken. The blemish has occurred since the picture was made. The dark spot that you will see, where I am pointing, and in the upper left hand corner of the picture is the grease mark that I referred to in my previous testimony which extends from the center line of the road to the extreme, extreme edge of the pavement toward the south side of the road, or the right hand side headed east.

Q. Can you tell us in relation to this picture where you found the Gibbs Falcon?

A. Yes. The Gibbs Falcon was parked off the pavement, clear of the pavement at the end of this grease mark which extended over onto the shoulder for a short dis-
page 33] tance.

Q. Did any of this grease mark extend in the westbound lane?

A. It did not.

Q. What is this darkish substance here?

A. That is a patch, where the pavement has been patched up.

Q. Does that have anything to do with the photograph or the accident scene?

A. No, sir. That was that way before the accident occurred.

Q. What is this, sir?

A. That's the part of the bumper that I referred to that I found on the shoulder, the shoulder of the road.

Q. I hand you Plaintiff's Exhibit No. 14, Mr. Landers, and ask if you will tell us what that depicts. It does not appear to have any blemishes on it from torn paper.

A. That photograph is taken from the immediate scene of the accident looking west, and it shows Route 460 as you look west from the point where the accident occurred.

Q. What is that automobile that is parked there?

A. That is a police car, blue and gray car. Trooper Freed was with me at the time.

Q. It appears to be parked on sort of the top of a hill there, is that correct?

A. Slight hillcrest, yes, sir.

page 34] Q. I hand you Plaintiff's Exhibit No. 10 and ask you what that depicts, sir?

A. That is also a photograph taken from a point just east of the Hawthorne driveway looking west on Route 460. It shows the same police car that was in the previous picture.

Q. And then I hand you Plaintiff's Exhibit No. 11 and ask you what that shows?

A. This photograph was taken looking east from a point just west of the Hawthorne driveway. It *showstwo* cars, one a blue and gray police car on the right of the picture. The other is a black police car, which was parked in the Hawthorne driveway, and that is my police car, the one that I was using at that time.

Q. Would photograph 11, which you are holding in your hand, be the reverse course of photograph 10 which has just been admitted?

A. Yes.

Q. Looking at the same roadway, both east and west?

A. That is correct.

Q. And, sir, I have one more photograph. I might point out in the beginning that this photograph has two blemishes on it which constitutes tear in the paper. Has nothing to do with the accident here. The blemishes are up in the

page 35] trees.

This is Plaintiff's Exhibit No. 12, and I ask you, sir, to tell us what that is. First, orient us as to the direction of the photograph, and then what it shows.

A. This photograph was taken looking east from a point west of the Hawthorne driveway. It shows Route 460. It shows the curve immediately east of where this crash occurred. It shows some white stains in the highway there in the westbound lane mostly. It also shows the end of the bumper that I referred to previously near two trees on the right hand side looking east.

Q. How far up is that bumper from the hard surface here,

Mr. Landers, if you can tell us?

A. You mean the distance it was from the edge of the pavement?

Q. Yes, sir.

A. I didn't measure that. I approximate it to be —

Mr. Byrne: We do not want his opinion, if Your Honor please.

Mr. Cummins: He can give an approximation.

The Court: Does the picture there show it?

The Witness: Yes, sir.

page 36] The Court: I am going to let the jury guess at it the same as you do.

The Witness: All right.

The Court: All right.

By Mr. Cummins: (Continuing)

Q. Speaking of a whitish stain that you were speaking of, this is it here?

A. Yes. That's part of it.

Q. What is this whitish stain, if you can tell us, from your investigation? Did it have a color? Did it have an odor?

A. It did.

Q. Will you go ahead and explain about the whitish stain?

A. It had an acid odor to it. And where it was on the pavement it had a little bit of a greenish cast on the pavement and gravel in the pavement there where the stain was had a little bit of a greenish cast there to it. It had the odor of battery acid.

Q. Is any of that acid or any of that whitish stain in the eastbound lane, the Gibbs' lane of travel?

A. None that I can detect in this picture.

Q. Did you notice any at the scene?

A. I don't recall that there was.

Q. Where in relation to the Hawthorne driveway did you find the battery acid? That is to say, on which side

page 37] of the Hawthorne driveway was it?

A. The stains were on the west side of the Hawthorne driveway.

Q. The west side?

A. West side.

Q. How far did you find the stains that you speak of as being acidic, how far did you find those stains from the grease stains that you say you found in the eastbound lane? What is

the distance between the two sets of stains?

A. That would vary. The whitish acid stains that I referred to started a short distance west of where these grease stains were and they were visible at intervals along the road, so it would be a little hard to say exactly the distance between the whitish stains and grease stains because there were more than one white spot on the road there.

Q. Did the whitish stains lead up to the Bridgeforth vehicle when it came to a rest?

A. They did.

Q. Which direction did you say the Bridgeforth vehicle was pointed when it came to a rest?

A. It was pointed east toward Blackstone.

Q. On what shoulder?

A. On the north shoulder or the left hand side of the road heading east.

Q. Was the battery in the Bridgeforth vehicle

page 38] damaged?

A. Completely demolished.

Q. Was the battery in the Gibbs' vehicle damaged?

A. It was not.

Q. Was the battery in the *Strickland'* vehicle damaged?

A. Not to my knowledge.

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By Mr. Cummins: (Continuing)

Q. Mr. Landers, at your investigation at the scene of the accident I want you to tell us what you found with regard to any markings in the road. I am talking now about tire, slew markings or tire pressure markings that you found on any shoulder of the road that would have led up to the Bridgeforth vehicle when it became stationary.

Mr. Byrne: If Your Honor please, that is just about as much leading as it can be.

The Court: Objection sustained.

Mr. Cummins: He is not allowed to answer any—

The Court: He can tell what he saw. Tell what you saw, Mr. Landers.

A. At the junction of the Hawthorne driveway and Route 460 there was a wide swerve mark made on the shoulder of the road, the right hand shoulder as you head west. This swerve mark continued in a sort of a loop as though it swung off the pavement on to the shoulder. It looked as page 40] though an automobile was sliding somewhat sideways there at the time, and it made sort of a loop, crossing the end of the Hawthorne driveway, and back on to Route 460. There were no tire marks after that. This was visible on the right hand or north shoulder of Route 460. It extended for about four feet from the edge of the pavement. The marks extended for a distance of about four feet from the right hand or north edge of Route 460 on the shoulder.

Q. Taking Plaintiff's Exhibit No. 13, Mr. Landers, I rehand that to you. *Thatis* the photograph showing what you say were grease stains on the right lane going toward Blackstone, the south lane, and extending down to the shoulder at which you found the Gibbs' vehicle.

Mr. Byrne: If Your Honor please —

Mr. Cummins: That is what he previously stated.

Mr. Byrne: I do not want you to tell what was previously stated, Mr. Cummins. That is leading him. The jury is capable of looking at the photograph and also capable of hearing the testimony.

The Court: Objection sustained.

By Mr. Cummins: (Continuing)

Q. Now I will ask him the question: How far did the Bridegforth vehicle end up from this area of Plaintiff's Exhibit 13? In other words, how far apart were the page 41] cars when they finally wound up?

A. I have a measurement on that. I will give it to you in a minute. The distance from the Gibbs' Falcon to the Bridgeforth vehicle after impact was ninety-eight feet. Measuring diagonally from one side of the road to the other, from one vehicle to the other.

Q. Do you know, Mr. Landers, the length of a 1958 Pontiac Super Chief Catalina automobile?

A. Yes, sir.

Q. How long is it?

A. Two hundred fifteen point fifty-three inches.

By The Court:

Q. For us dumb folks, how many feet is that?
A. About, roughly nineteen feet.

Mr. Cummins: I think we figured it before, Your Honor, and it is seventeen and eleven-twelfths feet. That would be approximately eighteen feet.
The Witness: Yes, sir.

By Mr. Cummins: (Continuing)
Q. That is the vehicle that who was driving?
A. That is the length of a 1958 Pontiac Catalina.
Q. Similar to whose automobile in this accident?
A. Allen Stewart Bridgeforth.

Mr. Cummins: All right, Mr. Byrne.

page 42] CROSS EXAMINATION

By Mr. Byrne:
Q. Now, Trooper Landers, you have testified that this 1958 Pontiac operated by Mr. Bridgeforth when you got there no one was in the vehicle?
A. That is correct, sir.
Q. You do not know where Mr. Bridgeforth may have been at that time or how badly he was hurt at that time, do you?
A. No, sir.
Q. Isn't it true that he was —

Mr. Cummins: I object to Mr. Byrne testifying that the man was hurt, if Your Honor please. I think the man ought to testify to that.
The Court: Objection sustained. He can ask him if he was hurt.
Mr. Cummins: He did not ask him that.
The Court: I say he can. I am telling you what he can do.
Mr. Byrne: I think he already testified on direct examination that he saw him in the doctor's office and he was in considerable pain.
The Court: Go ahead.

page 43] Q. Isn't it true, Mr. Landers, that your investigation revealed that he was found wandering off the road and taken to Dr. White's office by some friends?

A. *Thatis* correct, sir.

Q. And that he was in somewhat of a dazed condition?

A. He was at the time I talked with him.

Q. All right, sir. Now, you say this 1957 Pontiac — the Strickland vehicle, was parked in the Hawthorne driveway, and I believe you said right on the point of the curve at the top of the hillcrest that the curve ends at that point?

A. That is about as well as I can describe it, yes, sir.

Q. Isn't it true that you come out of a curve and have some straight away before you get to that point?

A. Mighty little bit.

Q. It is about a three degree curve there, is it not?

A. I wouldn't know.

Q. It is a very slight curve, it is not sharp?

A. The curve is marked with a double solid line. No one can pass.

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Q. Now you say this wheel that had been torn from the Bridgeforth vehicle was found on the north shoulder between the two cars?

A. It was —

Q. The north shoulder would be the shoulder on your right as you are headed west?

A. Yes, sir.

Q. And that was the direction in which the vehicle operated by Bridgeforth was traveling?

A. Had been headed at that time, yes, sir.

page 45] Q. Had been traveling.

A. Yes, sir.

Q. This heavy chrome metal part of the left end of a bumper was found, if I understood you correctly, was found the day after the accident?

A. I observed it on Sunday when I went back to the scene; yes, sir.

Q. You do not know how it got there?

A. No, sir.

Q. You do not know whether someone kicked it over there or threw it over there in cleaning up the road or anything?

A. The only thing I can say is that it was not in the highway at the time I reached the scene shortly after the accident.

Q. You did not see it the night of the accident?

A. No, sir, I did not.

Q. And the same thing with reference to this hubcap, you do not know how that got over on the south shoulder, either, do you?

A. No, sir.

Q. Now, you testified with reference to the whitish stain that had an acid odor to it and a greenish cast, would you say it had a greenish-yellowish cast?

A. I would call it a pale green.

page 46] Q. Which would mean it would have some yellow in it as far as the spectrum of vision is concerned?

A. It may have somewhere along the line. It appeared to me to be pale green or white.

Q. You found this all in the westbound lane?

A. I beg your pardon?

Q. You found this all in the westbound lane?

A. To the best of my recollection the bulk of it was in the westbound lane over — from the center of the road on over to the right.

Q. You say it began just a short distance west of the grease mark in the eastbound lane which you previously testified to?

A. Yes, sir.

Q. Would you tell us approximately how far it was between the grease mark which you said began in the center of the road and where you found the first indication of what you have termed a whitish stain?

A. I would say eight to ten feet.

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page 51] Q. I might have asked you this previously, Trooper Landers, this whitish stain that you referred to as being acid in odor, was that all in the westbound lane?

A. As I recall the bulk of it was in the westbound lane from the center to the extreme right hand edge traveling west.

Q. You say it was eight to ten feet beyond where the grease mark was?

A. Eight to ten feet west of where the grease mark started.

Q. I believe you testified previously that the grease mark

began eighteen to twenty feet east of the Hawthorne driveway?

A. That is an approximation. I don't know exactly.

Q. Let me ask you this, Trooper Landers: Did your investigation reveal whether anyone was drinking in this accident?

A. I couldn't detect it if anyone was drinking.

Q. Would you have that fact in your notes?

A. I can testify to this: I talked wtih Billy Eugene Strickland, who was the driver of the '57 Pontiac, and if he had anything to drink I could not detect it on his breath. I was close to William Daniel Gibbs, Jr., because I picked him up from the top of the seat rest and laid him down on the seat, and at that time I couldn't detect the odor of

page 52] any alcohol on him.

Two and a half hours or three hours after the crash occurred I saw Bridgeforth at Dr. White's office, and he was speaking very softly when I talked to him, and I had to get close to him. I could not detect the odor of alcohol on him.

Q. Do not your notes have a place *thatyou* would check it if either driver had been drinking for the purposes of making your report?

A. Your Honor, before I answer that question I would like to say that in order to answer it from my notes I would have to testify from hearsay information.

The Court: Don't testify then.

Mr. Cummins: We don't want that.

Mr. Byrne: I would think, if Your Honor please —

Mr. Cummins: If Your Honor please, may I say at this point I don't know just — Mr. Byrne is playing around here with something I am not aware of. I would like for the Court to dismiss the jury at this point.

The Court: Gentlemen *ofthe* jury, walk in there for just a minute. We will see what he has on his mind.

page 53] Note: At this point the jury retire to the jury room. Thereupon the hearing continues, in the absence of the jury, viz:

JURY OUT

The Court: All right, Mr. Byrne, what do you have on your

mind?

Mr. Byrne: If Your Honor please, what I have on my mind, I have a report from the Office of the Chief Medical Examiner which is all a part of this investigation made by the police showing that the blood alcohol content of William Gibbs, Jr. on 10/21/63 was 12% by weight. .12. The Judge knows what I am talking about .12%

The Court: That would not be his report though.

Mr. Cummins: Mr. Landers knows nothing about that.

The Court: He can ask the doctor that when he comes in. I will be glad to read the case if you have a case which says that it is admissible.

Mr. Byrne: If Your Honor please, I think this, that if this is where this Trooper obtained his information that
page 54] it is admissible under the Shop Book Rule. It is all part of his investigation.

The Court: You read that case in which, one of the Virginia cases in which it says you cannot admit it.

Mr. Cummins: The Trooper said he couldn't smell anything on him.

Mr. Byrne: One moment. Trooper Landers filed an SR-300 in this case, and in that he has checked on that SR-300, according to my information —

The Court: Let me ask you this: Can you present the SR-300? You cannot show that in court.

Mr. Byrne: I think I can, sir, for the purpose of impeachment.

The Court: It is hearsay evidence.

Mr. Byrne: Under a case recently decided by the Federal Court —

The Court: I do not pay any attention to that. No, sir. I wouldn't give that the time of day.

Mr. Byrne: It is our own District Court, the Fourth Circuit.

The Court: I don't pay any attention to them. They are as wild as March hares. They were just overruled in a case, too, by our Supreme Court. If you show me a state
page 55] case, I will go by it. I do not follow the Federal cases.

Mr. Byrne: All right, sir. I think while the jury is out we are entitled to obtain from this witness where he obtained his hearsay evidence to determine —

The Court: Whether it is actually hearsay. Yes, sir.

The Witness: I requested Dr. Epps Harris, the Nottoway County Medical Examiner, to get a blood alcohol specimen

from William Daniel Gibbs for the purpose of determining whether or not he had been drinking at the time the accident occurred. Dr. Harris took this specimen and sent it to the Office of the Chief Medical Examiner in Richmond where it was analyzed. He got the report back. I never saw the report myself. I have never seen it. I asked Dr. Harris what the result was on the test. Dr. Harris told me it was .12 of one percent alcohol. For this reason when I filed my accident report I did check that driver of the Gibbs' vehicle had been drinking, not known whether driving affected.

Mr. Byrne: If Your Honor please, I think that comes under the rule of part of his investigation to determine

page 56] that.

The Court: No, sir. I am going to overrule you.

Mr. Byrne: We respectfully note an exception.

The Court: All right. Bring the jury in.

Note: At this point the jury return to the courtroom, and the hearing continues, in the presence of the jury, viz:

BEFORE THE JURY

The Court: Go ahead, gentlemen.

Mr. Byrne: May I have your indulgence for about thirty seconds?

By Mr. Byrne: (Continuing)

Q. Mr. Landers, isn't it a fact from your investigation you are unable to establish the exact point of impact between these vehicles?

A. No. I couldn't determine the exact point of impact.

Q. And all of this whitish acid stain you have referred to is in the westbound lane which Bridgeforth was traveling?

A. As well as I can recollect.

page 57] Q. The grease mark which you have referred to began at the center line of the road and extended across *theeastbound* lane in which the Gibbs' vehicle was traveling?

A. Yes, sir.

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REDIRECT EXAMINATION

By Mr. Cummins:

Q. Going to Plaintiff's Exhibit 13 then with regard to Mr. Byrne's point, you found no grease in the west-bound lane?
A. None.
Q. No grease marks?
A. None.

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IN CHAMBERS

Mr. Byrne: The defendant subpoenaed Dr. Epps Harris, State Medical Examiner for Nottoway County for the purpose of showing that on the night of the accident Dr. Harris withdrew from the body of William Gibbs, Jr., the deceased, blood for the purpose of determining the alcohol by weight therein. The purpose being to show that at the time the accident occurred the deceased had been drinking. The Court refused to let Dr. Harris testify, to which the defendant objects and excepts on the ground that it is admissible as a part of the doctor's usual work as a Medical Examiner to make such a test and submit it and to have it returned from the Chief Medical Examiner's Office, or the certificate returned from the Chief Medical Examiner's Office showing the percentage of alcohol by weight. Further, the defendant would offer through Dr. Harris the certificate of the Office of the Chief Medical Examiner dated October 23, 1963 as Defendant's Exhibit No. 1, showing the blood alcohol content

page 59] by weight of William Gibbs, Jr. to be .12 percent by weight, which the Court refused and which counsel for the defendant objects and excepts to the refusal of the Court to allow the exhibit to be introduced in evidence through Dr. Harris.

Further, the defendant would show by this evidence of Dr. Harris and the certificate of the Chief Medical Examiner, that the fact that he was drinking on the night of the accident would go to the character of the individual. The jury would be entitled to know this in considering damages in the case.

Based on that, counsel would note an objection and exception to the Court's ruling.

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By Mr. Cummins: (Continuing)

Q. Tell what you know about the skid marks anywhere with regard to the scene of this accident, Mr. Landers.

A. The only skid marks that I could attribute to the Bridgeforth vehicle was the wide swerve looping mark on the shoulder of the road which extended through the Hawthorne driveway. None of that mark was on the pavement either before it started on the shoulder or after it ended on the shoulder.

Q. Mr. Landers, did the defendant Bridgeforth tell you, when you were talking with him, personally where he was when he first saw these lights coming down the road?

A. I was about to say — I referred to my notes. I have no written statement here from Bridgeforth.

Q. That is all right. You can tell us whatever you can recollect.

A. I would have to depend on my memory. As I recall he stated that as he was coming around the curve he was doing about —

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The Witness: The night that I talked to the boy at the doctor's office I briefed it. He was in right much pain. I think he was in shock and he talked in a very low voice and I had to get close to him to hear what he was saying. And to the best of my recollection he said that he had left home and was on the way over to the Midway Tavern. He lives over on what is called the Hungary Town Road. It is a shortcut to Crewe.

The Court: That is what you testified to this morning.

The Witness: Yes, sir.

The Court: And Midway Tavern, of course, is just *eastof* Nottoway Court House a short distance, and *thathe* was doing about fifty miles an hour as he came around the curve and

as he did he met bright lights coming down his
page 65] side of the road and took evasive action. At least
he tried to get out of the way. He already testified
to that this morning.

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page 70] ALLEN STEWART BRIDGEFORTH,
upon being called by counsel for the plaintiff as an adverse witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cummins:

Q. You are Allen Stewart Bridgeforth, the defendant in this case?

A. Yes.

Q. How old are you, Allen?

A. Twenty-one.

Q. Where do you live?

A. Blackstone on Hungary Town Road, Route 1.

Q. On the night of October 19, 1963 were you operating your mother's Pontiac automobile?

A. Yes.

Q. Where were you coming from and where were you going?

A. I was leaving home. I was going to a dance at Midway Tavern.

Q. What time did you leave home?

A. I didn't look at the clock before I left, but I would say it was between — about — it was between 10:00 and 12:00.

Q. You cannot figure it any closer?

A. I didn't look at the clock. It was close to
page 71] midnight.

Q. It was close to midnight when you left home?

A. Yes.

Q. Where were you going?

A. Midway.

Q. What was the purpose in going to Midway?

A. Going to a dance.

Q. What time do the dances stop at Midway?

A. About 12:00.

Q. Were you alone in your car?

A. Yes.

Q. Tell us if you will what you recollect of this accident from the time *thatyou* left your home until you had this accident, if you had an accident. Did you have an accident that night?

A. I did.

Q. Tell us, on this highway between — at about a mile and a half west of Slaw's station?

A. Yes.

Q. Near the Hawthorne driveway?

A. Yes, sir.

Q. All right. Tell us, if you will, what you recollect of this accident after you left home.

A. I had passed Slaw's and I was going out of this curve and saw a set of headlights. At first it seemed like
page 72] a glare. Then all of a sudden it appeared headlights coming down my side of the road. It was more to my left center than full head on, and I tried to turn to the right to avoid it and it was all over.

Q. You say as you went out of the curve you saw the headlights?

A. Yes.

Q. Where were the headlights, Allen?

A. They were —

Q. Were they up directly in front or off to your right?

A. Off to the left center of my car.

Q. Off to the left center of your car?

A. Yes. Left of the, you know, little peculiar guide on the hood.

Q. How fast were you driving?

A. About fifty or fifty-five. It was normal speed right at it.

Q. Do you remember the crashing of the two cars?

A. No.

Q. Do you remember anything that your car did after the crash?

A. No.

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page 73]

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Q. Do you remember anything that you did after the

crash?

A. No.

Q. The lights that you say you saw as you were coming out of the curve, did you say they were a glare, like a glare of lights?

A. Yes.

Q. Were they in your eyes very long before you had this impact?

A. No.

Q. Do you know whose lights they were?

A. No.

Q. Do you know where they came from?

A. They came from the bottom. They just came up and — came up out of the bottom. Just rose up, you know. I didn't know where it came from. You know. It just rose up. I saw it for a few seconds and then was the accident.

Q. If you were coming out of the curve — do you remember what the road is like down there?

A. I do, yes.

page 74] Q. I hand you Plaintiff's Exhibit 12 and ask if you will to look at that for a moment. Looking at Plaintiff's Exhibit 12, I am pointing to the extremest point of the road that we can see in the distance on this photograph. What direction would this be back there?

A. That would be going east.

Q. Toward Blackstone?

A. Yes.

Q. So that this would be —

A. West.

Q. Yes. So that you were coming from that direction?

A. Yes.

Q. Now, as you were coming around this curve that you just mentioned a moment ago, that curve is down there in a bottom, is it not?

A. Yes.

Q. Can you see the bottom that that dips down?

A. No.

Q. You cannot see it on this picture?

A. Can't *seethe* bottom.

Q. No. Can you see how the road rolls down to the bottom?

A. I can see that, yes.

Q. If you were down in that bottom when you saw these lights —

page 75] A. I didn't say I was in that bottom.

Allen Stewart Bridgeforth

Q. Excuse me. You said as you were coming out of the curve.

A. Coming out of the curve.

Q. This is the curve down here that you were coming out of?

A. Yes.

Q. You see the curve of the road?

A. Yes.

Q. Do you see how it goes down to a bottom there? Would this picture be any clearer? This is Plaintiff's Exhibit No. 11. Would you look at that a minute? That might be a little clearer. Do you see the road curving?

A. I can see the road.

Q. Do you see how the road goes down to a bottom?

A. Yes.

Q. My question is this: If you did not see these lights but a moment, is that how long you say you saw them?

A. Yes. A few seconds.

Q. A few seconds. If you did not see these lights but a few seconds and if you were coming around the curve, which is obviously, from the photograph, down in the area of the bottom *thatis* in the picture, if you were coming around that area where is the bottom out of which you say the headlights came up at you? You were already in a bottom. Where is this other bottom that you say they came up out of a bottom at?

page 76]

Mr. Byrne: If Your Honor please, we are getting to the *samepoint* of putting words in the witnesses mouth about coming around this curve. Obviously he had to come around the curve to go west. If he wants to ask where he was in relation to something with reference to that picture when he saw the lights, I think it is admissible.

Mr. Cummins: That is what I am asking, Mr. Byrne.

The Court: All right.

By The Court:

Q. Where were you in relation to that picture when you saw the lights, if you can spot it out there?

A. I can't point it out definitely.

The Court: All right. If you cannot point it out definitely, don't take a guess.

Allen Stewart Bridgeforth

By Mr. Cummins: (Continuing)

Q. Do you remember putting on any brakes, Allen?

A. No.

Q. How long have you been driving an automobile?

A. I got my driver's license when I was fifteen.

Q. So you had had it about five years?

A. Yes.

page 77] Q. Have you had any trouble in meeting cars before at night?

A. No.

Q. Have you done night driving?

A. Yes.

Q. Has anything like this, confusion of lights, ever confronted you before?

A. No.

Q. Have you driven on this road many times before?

A. Yes.

Q. Do you remember your car striking another car parked over on the right hand side of the highway?

A. No.

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Q. Were you on your side of the road when your car collided with the other car, Allen?

page 78] A. Yes.

Q. How do you know that?

A. Because by checking the white line.

Q. Checking the white line?

A. I was checking, I could tell by the white line. I was normally driving down the center of the road.

Q. Do you say that you were on your proper side of the road as a definite fact or, do you say I think I was on my side of the road? Which is it? Which are you saying? That you were definitely on your side or that you just think you were on your side?

A. Well, if I was driving I would be on my side of the road.

Q. I would rather that you answer my question.

A. Would you repeat it again?

The Court: He wants to know do you definitely know at the time of the impact you were on your side of the road or if that is where you thought you were?

A. I would say I was on my side of the road.

Allen Stewart Bridgeforth

Q. You are saying that definitely and not saying that you think you were?
A. Yes.

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page 79]

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Q. Do you recollect, Bridgeforth, testifying in the County Court of Nottoway County, Virginia, on July 6, 1964, in a companion matter relating to this accident?
A. Yes.
Q. Do you remember being here testifying then under oath?
A. Yes.
Q. Do you remember the following question —

Mr. Byrne: What page are you on, Mr. Cummins?
Mr. Cummins: Page 84 of the transcript.

Q. Do you remember the following questions being asked you and the following answers given by you: Question: You said you don't remember the impact? Answer: *Itjust* happened, you know. Question: I understand it just happened, but don't you know which side of the road you were on? Do you? Answer: I think I was on the right side of the road. Question: Well then, if you were on the right side of the road you ought to know what caused the glare in the road. Answer: I could say but I couldn't be actually certain about it. Do you remember those questions and those answers?
A. I do.

page 80]

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Q. Do you recollect seeing any cars *thatnight* with regard to this accident?
page 81] A. No cars.
Q. Do you know what caused the glaring lights that you saw?
A. I don't understand your question.
Q. Do you know what caused the glaring lights that you

saw, what they came from? Do you know that?
A. Yes.
Q. What did they come from?
A. Car lights. They were car lights.
Q. They were car lights?
A. Yes.
Q. Car lights of what car?
A. I can't be cetrain. I know it was a car directly in front of me.

Mr. Cummins: I think that is all just now. Thank you. Mr. Byrne may want to ask you some questions.

CROSS EXAMINATION

By Mr. Byrne:
Q. Allen, where were these lights in relation to your side of the road when you first saw them?
A. Repeat that.
Q. Where were *theselights* in relation to your side of the road when you first saw them?
page 82] A. As I said before they were off to the left center of my car.
Q. Were they on your side of the road as you saw them?
A. Yes.
Q. All right, sir. And you say they were car lights from a car directly in front of you?
A. Yes.
Q. Was this the car that struck you?
A. I don't know.
Q. Was this the car that you collided with?

Mr. Cummins: He says he doesn't know.

A. I don't know.
Q. That is the only car —
A. It would seem that it was the car, but I couldn't say, point out that being the car because I don't remember.
Q. Were not they the only car lights that you saw prior to the impact?
A. Yes.
Q. Now, you are a student in college, are you not?
A. I am.
Q. You were a student at the time of this accident, were

you not?

A. Yes, sir.

page 83] Q. Were you injured as a result of this accident?

A. Yes.

Q. How long were you in the hospital?

A. To my knowledge I think it was thirteen or fourteen days.

Q. Do you recall being in Dr. White's office that night?

A. Yes.

Q. Were you in much pain when you were talking to Trooper Landers?

A. I would say yes.

Q. Do you recall how you got there?

A. After the accident or after I came out of the hospital?

Q. Do you recall how you got there to Dr. White's office?

A. I was told that I was brought there.

Q. By some of your friends?

A. Yes.

Q. Do you know where they found you?

A. They found me — it was a wooded area where the accident happened. They just said they found me in the wooded area. Didn't point out no specific place.

Q. Do you remember being in any wooded area?

A. No.

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page 103]

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BRYCE BROOKS,

introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cummins:

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

A. Bryce Brooks. I live in Blackstone. I am Service Manager for Hammock-Rand Automobile Agency.

page 104] Q. What agency?

A. Hammock-Rand in Blackstone.

Bryce Brooks

Q. Have you ever had any occasion to be familiar with or work with a 1960 Ford Falcon automobile?

A. Yes, sir.

Q. Does your agency do any work with regard to inspecting headlights or checking out headlights on such automobiles?

A. Yes, sir.

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page 106]

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Mr. Byrne: Wait just a minute. I do not want to get in an argument, Mr. Cummins at this point. I want to know if if this witness saw the automobile that was involved in this accident.

A. We sold the car, sir.

By Mr. Byrne:

Q. Did you see it before the accident or at the time of the accident?

A. Prior to the accident, just before the accident.

Q. How far prior?

A. A week. Within a week or ten days.

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page 107] The Court: I will let you answer how far on a normal car the lights are, the headlights are from the ground. How far it is from the ground to the headlights.

A. Well, it can not exceed, regardless of the tires expansion raised, it cannot exceed thirty inches in the average height. That is the above average Falcon.

By Mr. Cummins: (Continuing)

Q. *Whatis theaverage* Falcon?

A. Twenty-five inches.

Q. So that the range is a low of twenty-five inches off the road and height of thirty inches off the road?

A. The suspension or oversized tires could raise it as high as thirty inches.

Bryce Brooks

By The Court:

Q. What kind of tires did this car have on it?

Mr. Cummins: We have a stipulation on that, if Your Honor please.

Mr. Byrne: Wait a minute.

Mr. Cummins: Mr. Byrne and I did.

A. We have stock average tires.

Mr. Byrne: It is the average stocked tire.

A. It wasn't anything unusual about the car.

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page 108]

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By Mr. Cummins: (Continuing)

Q. Do you know, Mr. Brooks, anything about the transmission housing of a 1960 Falcon automobile?

A. Yes, sir. I am fairly familiar with it.

Q. Are you familiar with such things as the oil pan and things of that nature?

A. Yes, sir.

Q. Can you tell us if an oil pan is damaged on an automobile, ruptured, or a *whole* knocked in it in an

page 109] accident, where does the contents go?

A. Down, immediately.

Q. On to the ground?

A. Yes, sir.

Q. How would you describe the contents as to their look and as to their feel?

A. It's an oily substance. It would have an oily base look.

Mr. Cummins: That is all just now. Any questions, Mr. Byrne?

Mr. Byrne: Yes, sir. I have one question.

CROSS EXAMINATION

By Mr. Byrne:

Q. Mr. Brooks, from your experience, where is an oil pan on a Falcon located with reference to the two sides of the automobile, not front and back but the sides?

A. The Falcon is about five and a half feet wide and it

would be in the center of it.

Q. You are saying it would be in the center of the car?

A. That's right. Yes, sir.

Q. An equal distance from each side?

A. That's right.

Q. Would the transmission housing be similar page 110] in location?

A. Yes, sir.

Mr. Byrne: That is all I have, sir.

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Mr. Cummins: We agree, if Your Honor please, that this Falcon automobile was previously owned by Rev. Joseph Sandifer of Blackstone, that it was a standard Falcon Ford 1960 automobile with standard tires on it at the time he traded the car in, and that the car that he traded in, which is the car that was wrecked here, was taken by Mr. W. D. Gibbs.

The Court: Did you all get that, gentlemen?

Note: The jury reply in the affirmative.

The Court: All right, Next witness.

page 111] JOSEPH BLACKBURN,

upon being recalled by Mr. Cummins, having previously been duly sworn, testified further as follows:

DIRECT EXAMINATION

By Mr. Cummins:

Q. Let me ask you, I had qualified you, I believe?

The Court: You got him qualified, I think.

Q. I think I had asked you if you had had a chance or any occasion to run any measurements of this road in question; have you, sir?

A. Yes, sir.

Q. Did you have occasion to run any measurements in a direction west of the Hawthorne driveway and in a direction east of the Hawthorne driveway?

A. Yes.

Joseph Blackburn

Q. I hand you, Mr. Blackburn, Plaintiff's Exhibit No. 8 and ask, sir, if you will first get yourself oriented with it, and ask you if you will take a pencil or some ruler, something that would be fine to point with, sort of a pointer, hold it so the jury can see the picture, and tell them if you will which direction is east, toward Blackstone?

A. East is back in this direction. West is this way.

page 112] Mr. Byrne: Can you have the record show that the witness pointed east toward the curve towards Blackstone, and west in *theopposite* direction?

A. That is correct.

Q. The western direction is at the bottom of the photograph?

A. That is correct.

Q. Can you point with your pencil the Hawthorne driveway?

A. This is the Hawthorne driveway right here.

Q. Can you point with your pencil to the east and see two more driveway entrances there?

A. Here is one here and one here.

Q. What type of driveway is that?

A. It's more or less a farm road entrance.

Q. Can you go in all the way through and out, or what? Is it a circular drive?

A. Yes.

Q. It is a circular drive?

A. Yes, sir.

Q. All right, sir.

A. Otherwise, you can go in here and come out here. That is, in good weather.

Q. According to the exhibit, it appears that this end of the driveway, which is the easternmost end, is ap-
page 113] proximately somewhere in this curve; am I correct on that?

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Q. Where is the westernmost point of that driveway we are speaking of?

A. The westernmost point?

Q. I can't show you.

A. You mean the western end?

Q. Yes. The western end.

A. There it is right there.

Q. Where is the east end of that driveway?

A. Right there.

Q. Would you tell us, Mr. Blackburn, from the east end of that driveway to the Hawthorne driveway how far is that?

A. From the east end?

Q. From the —

A. East leg?

Q. East leg of that circular drive going west how far is it to the Hawthorne driveway?

page 114] A. Six hundred fifty-seven feet.

Q. The roadway in question there —

A. From the roadway in question there from this driveway, Hawthorne driveway.

Q. The Hawthorne driveway in an easterly direction, going this way past the driveways on toward Blackstone, can you describe that road from the standpoint of this nature? That is, whether or not it is upgrade, downgrade, level, or what? Can you give us a description of the road east of the Hawthorne driveway?

A. Proceeding from the Hawthorne driveway towards Blackstone there is a downgrade. And a little ways past there is the beginning of the curve. *Wouldyou* like to have that distance?

Q. First, before you get that, I hand you Plaintiff's Exhibit 12. Would that help you to explain to the jury what you are trying to tell them?

Mr. Byrne: What is it?

Mr. Cummins: Plaintiff's Exhibit 12.

A. I can't see the driveway on here.

Q. We are looking — I am particularly trying to show you, I am not talking about the driveway on there. Do you see any decline? Do you see any curve? Do you see any eastern point, any eastern direction?

A. Yes. You can, the jury can see it, the road

page 115] curves around down in that bottom until it starts back up again.

Q. Now, sir, I handed you that to help you with what you wanted to tell. You wanted to tell us —

Mr. Byrne: You let him tell what he wanted to tell. Don't you tell.

Joseph Blackburn

Q. Characterize the road as to whether it is upgrade, downgrade, or level at a point west of the Hawthorne driveway.

A. If I can find my notes here. At a point one hundred fifty-nine feet, approximately, east of the Hawthorne driveway we have the beginning of a curve.

Q. *Thatis* where it begins?

A. Yes. As you proceed toward Blackstone. The curve, that's a horizontal curve. You are going down as concerns elevation. And that curve continues, oh about as far as we can see on this picture.

Q. *Doesit* by any chance continue further than you can see on that picture? If you can't answer —

The Court: We can see all the way to Slaw's.

Q. You are looking at another picture now — The one just handed to you is Plaintiff's Exhibit No. 8.

Mr. Cummins: Let me examine the witness, Mr. Byrne, if you will.

Mr. Byrne: Yes, sir.

page 116] Q. You are now looking at Plaintiff's Exhibit No. 8. You can see further on that, or can you?

A. That's right.

Q. Plaintiff's Exhibit No. 12, can you see as far as you can on No. 8 in an easterly direction?

A. No, sir. This is an aerial photograph.

Q. Yes, sir. I realize that. Now, have you given me the measurement, Mr. Blackburn, on Plaintiff's Exhibit No. 8, have you given me the measurement in distance from the Hawthorne driveway to the east leg of this circular drive? Did you give me that?

Mr. Byrne: Yes.

A. Yes, sir. Six hundred fifty-seven, wasn't it?

Q. Yes, sir. Yes, sir. Now, what I want from you, Mr. Blackburn, taking this Plaintiff's Exhibit No. 12, which you have indicated shows the decline in the highway there and the beginning of the curve, what is the low point in the road at that bottom to the east? What is the low point in relation to the Hawthorne driveway? Is it below the Hawthorne driveway or is it higher than the Hawthorne driveway at the

lowest most point in that road?

A. Proceeding eastward?

Q. Proceeding eastward.

A. In that photograph —

Q. East from the Hawthorne driveway.

page 117] A. The low point is three hundred seventy-five feet east of the Hawthorne driveway, and it is seven feet lower.

Q. It is seven feet below the Hawthorne driveway?

A. The surface of the road.

Q. Is lower than the Hawthorne driveway by seven feet?

A. Is lower than the road at the Hawthorne driveway.

Q. By how much, sir?

A. Seven feet.

Q. I hand you, Mr. Blackburn, Plaintiff's Exhibit No. 14 and ask you what that shows?

A. You mean for me to identify —

Q. Yes, sir. It has previously been introduced.

Mr. Cummins: I think to orient the witness we ought to tell him which direction the thing pointed.

A. I know what it is. I was *justlooking* at it. It is just a section of road.

Q. Yes, sir.

Mr. Cummins: We can reidentify it from the record if the reporter can find it.

The Court: What question do you want to ask?

Mr. Cummins: I am asking him if he knows

page 118] what that photograph shows. He says under his present knowledge it just shows, he knows what is shown, just a piece of road.

Q. Let me go at it this way: Looking at that photograph, can you tell me how far to the west of the Hawthorne driveway is the bottom of the hill shown in that photograph?

Mr. Byrne: I object, if Your Honor please.

The Court: *Whatis* your objection?

Mr. Byrne: He has not established any foundation that this witness identifies this as any piece of the roadway in connection with this accident.

Mr. Cummins: Because you won't let me.

A. I can't answer the question.

Joseph Blackburn

Q. Let me go about the question a different way. Does the Hawthorne driveway sit higher than the road two hundred feet east of it?

Mr. Byrne: Your Honor —

Mr. Cummins: That is a fair question, Mr. Byrne.

Mr. Byrne: He already testified, I believe that — you can correct me if I'm wrong — three hundred seventy-five feet east of the Hawthorne driveway that the roadway is seven feet lower at that point than it is at the driveway.

page 119] Q. Now I am giving you the foundation you wanted. Give me a point three hundred seventy-five feet west of the Hawthorne driveway. Is that road surface lower than the road surface at the Hawthorne driveway?

A. Yes, sir.

Q. How much lower?

A. At —

The Court: Three hundred seventy-five feet.

Q. Three hundred seventy-five feet.

A. Now, we got that to the east. I haven't got to the west. I can get it out of my notes here.

Q. Take your time. And, if you run into any others, I am going to ask you for the other figures, too.

A. Thirteen feet.

Q. Thirteen feet at three hundred seventy-five?

A. Yes, sir.

Q. This is the one I was looking for, Mr. Blackburn. This, Mr. Blackburn, is Plaintiff's Exhibit No. 10. Can you point out on that exhibit for the jury anything about a hill to the west of the Hawthorne driveway?

A. This map shows the top of the hill with an automobile parked in the entrance, and the hill begins to go down very soon after you leave the Hawthorne entrance going toward Crewe or toward Nottoway.

page 120] Q. So that, Mr. Blackburn, from your testimony and from your figures is it fair to state that if someone was three hundred seventy-five feet east of the Hawthorne driveway he would be seven feet below the surface of the road in front of the road in front of the Hawthorne driveway, and if he was three hundred seventy-five feet west of the Hawthorne driveway he would be thirteen

feet lower than the entrance of the Hawthorne driveway?

Mr. Byrne: If Your Honor please, I have to ask what the purpose of that is.

Mr. Cummins: To make sure we understand the fact that there is a hill there.

Mr. Byrne: The witness has already testified that there is a hill there. He has testified that three hundred seventy-five feet west of the Hawthorne driveway you are seven feet lower than you are at the Hawthorne driveway, and three hundred seventy-five feet he said, didn't he?

Mr. Cummins: Three hundred seventy-five.

Mr. Byrne: Both were three hundred seventy-five. Three hundred seventy-five feet west of the Hawthorne driveway you are thirteen feet lower than the driveway.

Mr. Cummins: I wanted to make sure we understood, Mr. Byrne. I think now we do.

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page 122]

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By Mr. Cummins (Continuing)

Q. Taking a point, Mr. Blackburn, one hundred feet west of the Hawthorne driveway, how much at that point is the road surface below the road surface in front of the Hawthorne driveway, at a point one hundred feet west of the Hawthorne driveway?

A. Approximately six inches. It is practically level at that particular stretch.

Q. At a point *onehundred* feet west of the Hawthorne driveway, would the projection, if you know the elevation of the road there, would the projection of a light beam from that point, which beam is coming from thirty inches off the ground, would that projections be horizontal, would it be downward, or would it be level?

page 123] Mr. Byrne: I object, if Your Honor please, unless this witness has made a test with a similar automobile under similar conditions with a person who would be the size of this boy and who would be in a '58 Pontiac exactly like his.

Q. How hard did the Pontiac hit your car?

page 128] A. Not too hard. It hit hard enough to knock the headlight rim off and to knock — the headlight was just hanging out by its wires. It didn't seem like it jarred the car much. It might have just scared us so we didn't notice.

Q. Did it move your car?

A. I don't think so.

Q. When you say the Bridgeforth car turned around, in what direction did it turn? In what direction did the back end turn, if the back end was turning?

A. As he was headed west, the back end swung around, the front end turned around to the east and the back end started to the west again.

Q. In other words, it turned counter-clockwise?

A. Yes, sir.

Q. Opposite from the way a clock hand will go?

A. Yes, sir.

Q. How many times did it turn?

A. Just once. It made a half turn.

Q. One-half turn?

A. Yes, sir.

Q. Then what did it do after striking you?

A. It went down the road, kind of just straight backwards and stopped and came to rest in the ditch.

Q. Did you see the car coming from the west?

page 129] A. I don't remember, remember which one, which one — I saw cars coming. I was waiting for them to pass. I wasn't paying any attention to them.

Q. Were you aware that there was a car coming in each direction?

A. I think so.

Q. Did you see the car coming from the west going east? Did you see that car out of its proper lane of travel?

A. No, I didn't.

Mr. Cummins: He is with you, Mr. Byrne.

Mr. Byrne: Will you read the last question *andanswer* of the witness, please?

Note: The preceding question and answer are read by the court reporter.

Billy Eugene Strickland

CROSS EXAMINATION

By Mr. Byrne:

Q. Now, isn't it true, Billy, that you were sitting there waiting for these cars to go by so that you could pull out of the road, and you didn't see anything other than the fact that you were aware that cars were coming?

A. Yes, sir. That's true.

Q. You *didnot* see whether either car was on its proper side of the road?

A. No. I wasn't — I wasn't looking to see. I
page 130] wasn't expecting anything to happen or I wouldn't have been there, I guess.

Q. You do not know where the two cars came together or anything in relation to the road?

A. Just — it seems a little bit to my left that the impact was.

Q. You did not see them come together?

A. No, sir.

Q. And the first time you saw the '58 Pontiac was when it struck your headlight with its tail light, was it not?

A. Yes, sir.

Q. So as far as you are concerned you cannot say whether either car was out of its *properlane*?

A. No, sir, I can't.

Mr. Byrne: That is all.

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IN CHAMBERS

page 143] Mr. Byrne: Let the record show the defendant rests.

At this point, if Your Honor please, the defendant would move to strike the evidence of the plaintiff and enter summary judgment for the defendant on the grounds that the burden of proof, as the Court knows, is on the plaintiff to show by a preponderance of the evidence that the defendant was guilty

of negligence which caused the accident in question and the resulting injury thereof.

We submit that taking the plaintiff's evidence in its best light that there is no evidence as to where the point of impact occurred. There is absolutely no evidence as to the defendant's negligence or any causation of the accident, and we submit that the mere happening of an accident does not give sufficient credence or sufficient evidence to take the matter to the jury.

The Court will recall that the defendant was called as an adverse witness by the plaintiff. We submit that *theplaintiff* is bound by his testimony that is uncontradicted and is worthy of belief.

The evidence so far as we are concerned only shows that an accident occurred on Route 460 at a point somewhere in the vicinity of a driveway known as Hawthorne's page 144] and that the defendant was going west and the plaintiff was going east, and that the defendant stated the night of the accident that the accident occurred on his side of the road. That has not been contradicted in any manner by any evidence that has been submitted by the plaintiff up to this point.

Based upon that we would submit that we are entitled to a motion to strike the plaintiff's evidence at this time, and enter judgment for the defendant.

The Court: Motion overruled.

Mr. Byrne: Exception noted.

HERE BEGIN THE OBJECTIONS AND EXCEPTIONS TO ALL INSTRUCTIONS.

INSTRUCTION NO. 1 (Granted)

Mr. Byrne: the defendant Bridgeforth objects and excepts to the Court's granting of *Instruction No. 1* on the ground that there is no evidence in the case as to the failure of the defendant Bridegforth to keep his vehicle under proper control, or to keep a proper lookout, or to operate his vehicle at a reasonable speed. The evidence is that he was driving fifty to fifty-five miles per hour, which is uncontradicted. The evidence is further that the speed limit in this area page 145] is fifty-five miles per hour. The primary objection to this instruction is that it does not negate any contributory negligence on the part of the plaintiff's decedent; further, it is a finding instruction and it presents only one theory of the case, and under the law it is submitted that the theory of contributory negligence should be in there, and

further that if a jury believes from the evidence that the plaintiff was guilty of any negligence himself which contributed to or caused the accident, then they would have to find for the defendant. Under the law of the State of Virginia a finding instruction has to present both theories of the case.

INSTRUCTION NO. 2 (Granted)

Mr. Byrne: The defendant Bridgeforth objects and excepts to the Court's granting *Instruction No. 2* tendered by the plaintiff on the ground that it is not a correct definition of ordinary care and that it is not complete. We cite to *theCourt* Virginia Jury Instructions 11.03, case *Turner* v. *Chappell,* 198 Va. 861 at 864.

INSTRUCTION NO. 3 (Granted)

page 146] Mr. Byrne: The defendant objects and excepts to the Court's granting *Instruction No. 3* on the ground that it is not a correct statement of the law. Further, there is no evidence to support the instruction that the defendant Bridgeforth was operating his vehicle on other than his proper side of the road. We would cite the Court to 202 Va. 535 and Va. Jury Instructions 26.03 at page 190 and the cases cited therein. Further objection is made upon the ground that it is a finding instruction and it does not embrace the defense of contributory negligence.

INSTRUCTION NO. 4 (Granted)

Mr. Byrne: The defendant objects and excepts to the granting of *Instruction 4* on the ground it suggests to the jury that the Court feels that the defendant was on the wrong side of the road and he should make an explanation. The point of explanation does not come in unless the man attempts to make an explanation. Bridgeforth's defense is that he was not on the wrong side of the road, therefore he does not have to give any explanation. There is no evidence in this case to support the instruction that Bridgeforth was on the wrong side of the road. It goes to the rebuttable presumption that the vehicle was on the wrong side of the road, and it is mis-
page 147] leading to the jury. It tells them that not just any explanation will do, but it must be a reasonable one. The point of explanation is not a factor in this case. This defendant denies he was on the wrong side of the road. Further, in addition thereto, the burden is on the plaintiff to

show by a preponderance of the evidence that he was on the wrong side of the road. There is no evidence to support this, and the defendant's evidence is uncontradicted at this point in the case. The proximate *causeof* this accident was whether or not the defendant Bridgeforth's vehicle was on the wrong side of the road, or the plaintiff's vehicle was on the wrong side of the road, or whether each was so close to the center that each were contributorily negligent. Further, this is a finding instruction and does not embrace the defense of contributory negligence.

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INSTRUCTION NO. 6 (Given as amended)

Mr. Byrne: The defendant objects and excepts to *Instruction No. 6*, given as amended, and to all of the instructions given because there is no evidence to support them and no evidence to go to the jury, to present an issue to go to the jury in this case.

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INSTRUCTION NO. F (Refused)

Mr. Byrne: The defendant objects and excepts to the Court's refusal to grant *Instruction No. F* tendered by the defendant on the doctrine of sudden emergency, because under the evidence in this case it is uncontradicted that the defendant was on his proper side of the road and just for a couple of seconds he was faced with headlights coming toward him which he said were on his side of the road, to the left of the center line of the road facing east, and that he pulled his car to the right. There is no evidence to contradict this. We submit that the defendant was faced with a sudden emergency without negligence on his part, and the instruction as submitted was proper.

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page 150] INSTRUCTION NO. E (Refused)

Mr. Byrne: The defendant objects and excepts to the failure of the Court to grant *Instruction No. E* as tendered on the grounds that the instruction is supported by the evidence and

the law in this case in that it is uncontradicted because the defendant Bridgeforth testified that as he came out of the curve up a slight grade he was faced with oncoming lights of a vehicle which were to the left of the center of the road, on his side of the highway for just a couple of seconds, and that he pulled to the right when the impact occurred. We submit that the instruction is a proper definition of the burden of proof with reference to preponderance of the evidence of proximate cause of the occurrence complained of, and *that it* should have been granted by the Court and followed by Instruction F dealing with sudden emergency.

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The Court: Mr. Byrne, while the jury is out do you want to make your usual motion?

Mr. Byrne: Yes, sir. I would move to set the jury verdict aside and enter judgment for the defendant on the ground that it is contrary to the law and the evidence and there is no evidence to support it. The issue should not have been submitted to the jury; and further to the instructions which were granted by the Court, which objections and exceptions I have already taken and are part of the record and I will not repeat at this time.

The Court: Motion overruled. You may note

page 156] your exception.

Mr. Byrne: We note our exception.

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A Copy—Teste:

H. G. TURNER, Clerk.

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