Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

207 VA 584

Record No. 6320

In the

Supreme Court of Appeals of Virginia

at Richmond

LINDA W. LAUGHORN, AN INFANT, ETC.

v.

ANGELA DENISE EANES, AN INFANT, ETC.

FROM THE CIRCUIT COURT OF HALIFAX COUNTY

RULE 5:12 BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6320

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 12th day of January, 1966.

LINDA W. LAUGHORN, AN INFANT, ETC.,
Plaintiff in error,

against

ANGELA DENISE EANES, AN INFANT, ETC.,
Defendant in error.

From the Circuit Court of Halifax County
Gus E. Mitchell, Jr., Judge

Upon the petition of Linda W. Laughorn, an infant, by Frank D. Harris, her attorney and guardian *ad litem,* a writ of error and *supersedeas* is awarded her to a judgment rendered by the Circuit Court of Halifax County on the 21st day of August, 1965, in a certain motion for judgment then therein depending wherein Angela Denise Eanes, an infant, etc., was plaintiff and the petitioner was defendant; no bond being required.

RECORD

★ ★ ★ ★ ★

page 32] INSTRUCTION NO. P 4

At the time and place of the collision involved herein, it was the duty of the defendant to exercise slight care to perform or comply with each and all of the following duties:

1. To keep the vehicle she was driving under proper control;
2. To keep a proper lookout;
3. To operate the vehicle she was driving at a reasonable speed under all the circumstances then and there existing, and in no event to exceed the speed limit of 25 miles per hour.

And if the jury believes from a preponderance of the evidence that the defendant failed to perform any one or more of her aforesaid duties and that any such failure under the circumstances then and there existing showed an utter disregard of prudence amounting to complete neglect of the safety of the plaintiff, then the defendant was guilty of gross negligence; and if you further believe from such evidence that any such gross negligence was the proximate cause of the collision, you shall return your verdict in favor of the plaintiff.

Granted
G.E.M., JR.

★ ★ ★ ★ ★

page 42]

★ ★ ★ ★ ★

JUDGMENT ORDER

On March 12, 1965, the parties hereto came by counsel, i.e., Angela Denise Eanes, an infant four weeks of age, who sues by her father and next friend, Kenneth Ray Eanes, the plaintiff, by Tuck, Bagwell, Dillard & Mapp, her attorneys; and Linda W. Laughorn, the defendant, by Frank D. Harris, of the law firm of Hodges and Harris, her attorney; and it appearing to the court that all of the pleadings were duly filed, the parties hereto announced that they were ready for trial. Whereupon, a jury, to-wit: Ira Wilkerson, Robert Boyd, E. L. Solomon, Edward Bauldwin, R. B. Nichols, H. F. Palmer, and L. R. Walden, who have been duly selected as required by law, were sworn to try the issues joined between the plaintiff and the defendant.

And the jury having heard the evidence of witnesses and the argument of counsel and having observed the exhibits introduced, retired to their room to consult a verdict, and after some time returned to the court on March 13, 1965, and rendered the following verdict, to-wit:

"We the jury on the issues joined find a verdict for the plaintiff, Angela Denise Eanes, and fix her damages in the amount of $10,000.00."

(s) E. L. Solomon, Foreman"

Whereupon, the defendant, by counsel, moved the court to set aside the verdict of the jury and that a judgment page 43] be entered for the defendant on the grounds that the verdict of the jury was contrary to the law and evidence and without evidence to support it, and in the event the court should overrule that motion, upon the alternate motion that the court should set aside the verdict of the jury and grant a new trial on all the issues on the grounds of errors committed by the court during the course of the trial.

The court having taken under advisement the above motions made by counsel for the defendant, set the case for hearing on said motions on July 19, 1965. After having heard arguments thereon and after having maturely considered the same and being of the opinion that both of said motions should be overruled, doth so decide, and the court doth hereby overrule said motions made by the defendant to which action the said defendant, by counsel, excepted.

And the court proceeding to enter judgment doth adjudge and order that Angela Denise Eanes recover of Linda W. Laughorn the sum of $10,000.00 with interest thereon from March 13, 1965, the date of said verdict, and that she further recover of said defendant her court costs herein.

And said judgment shall be docketed according to law.

And it being intimated that a petition for an appeal from the adverse judgment against the defendant will be filed by her in the Supreme Court of Appeals, it is further ordered and directed that execution on said judgment should be suspended for a period of sixty days from the date of this order upon proper bond being given by the defendant or someone for her with adequate surety in the amount of $12,500.00, to be executed before the Clerk of this Court within twenty days from the date hereof and conditioned according to law.

Enter: 8/21/65

G. E. MITCHELL, JR., Judge

★ ★ ★ ★ ★

page 44]

★ ★ ★ ★ ★

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Comes now, Linda W. Laughorn, an infant, by her counsel, and pursuant to the Rules of Procedure so made and provided, she hereby files with the Clerk of the Court in this case her Notice of Appeal from the judgment entered in this action on the 21st day of August, 1965, and as a basis for the appeal she sets forth the following Assignments of Error:

(1) The Court was in error in overruling the motions made by the defendant at the conclusion of the plaintiff's evidence and renewed again at the conclusion of the whole case to strike the evidence of the plaintiff and enter judgment for the defendant as a matter of law.

(2) The Court was in error in refusing to set aside the verdict of the jury and enter judgment on behalf of the defendant on the ground that the verdict of the jury was contrary to the law and evidence in the case and was without credible evidence to support the verdict.

(3) The Court was in error in granting Instruction No. P-4 for the plaintiff over the exception and objection of the defendant on the ground that this instruction was misleading and prejudicial to the defendant since the instruction told the jury that it was the duty of the defendant, Laughorn, to exercise slight care as to three enumerated duties, and that if the defendant failed to perform any one or more of said duties she was grossly negligent; and upon the further ground that said instruction did not fully define for the jury the difference between gross and simple negligence.

Dated at South Hill, Virginia,
on this 19th day of October, 1965.

LINDA W. LAUGHORN, infant defendant
By FRANK D. HARRIS
Her Counsel

★ ★ ★ ★ ★

page 46]

★ ★ ★ ★ ★

PLAINTIFF'S ASSIGNMENT OF CROSS ERROR

Comes now Angela Denise Eanes, an infant who sues by her father and next friend, Kenneth Ray Eanes, by her counsel, and pursuant to the rules of procedure so made and provided she hereby files with the Clerk of this Court the following Assignment of Cross Error:

The court was in error in granting all of the instructions of the defendant that dealt with the theory of gross negligence upon the grounds that gross negligence was not applicable in this case since the plaintiff contends she was only required to prove simple negligence; also, the court erred in refusing to grant Instruction No. One (1) offered on behalf of the plaintiff, defining the duty of the defendant in this case to be one of exercising reasonable care. In view of the fact that the infant plaintiff was only four weeks of age at the time of the accident in question, plaintiff contends the taking of this child into the automobile by the defendant did not bring the plaintiff within the purview of what is called the Guest Act in Virginia, and did not place upon her the burden of proving gross negligence as the basis for recovery against the defendant. The correct rule that should apply to this case is that the so-called Guest Statute is inapplicable and that the plaintiff was required to prove only failure to exercise reasonable care.

ANGELA DENISE EANES, an infant, four weeks of age, who sues by her father and next friend, Kenneth Ray Eanes, Plaintiff
By LESTER L. DILLARD, Her Counsel

★ ★ ★ ★ ★

page 3]

★ ★ ★ ★ ★

JOHN V. SIMMONS,
introduced in behalf of the plaintiff, first being duly sworn, testifies as follows:

John V. Simmons

DIRECT EXAMINATION

By Mr. Dillard:

Q. You are Sergeant Simmons, I believe, of the Police Department of the City of South Boston?

A. Yes, sir.

Q. Sergeant Simmons, were you called to make an investigation of this accident which happened on Jeffress Street on April 24, 1964?

A. I was.

Q. Please state how long after the accident did you arrive on the scene?

A. Approximately five minutes from the time I
page 4] received the call until I arrived.

Q. What time did this accident occur?

A. Approximately 4:15 P.M.

Q. Officer Simmons, I would like to offer in evidence certain pictures that were made of this scene.

The Court: Let's number them for the record.

Mr. Dillard: I have, Your Honor.

Q. I hand you plaintiff's Exhibit No. 1 and ask you to tell the jury whether or not first that is the scene of this accident or the corner of this accident, and just what it shows there? Hold it up so they can see it.

A. This is the intersection of Fenton and Jeffress Street.

Q. Where is Fenton Street?

A. Fenton is this street here.

Q. Where is Jeffress Street?

A. Jeffress Street is this street going west.

Mr. Harris: Could the Officer take a pen and mark F and J?

The Court: Yes.

Q. Take a pen and put F and J on there. Put it right there.

A. (Doing so)

Q. That is F, that shows Fention Street?
page 5] A. Yes, sir.

Q. Jeffress Street is J?

A. Yes, sir.

Q. Now, looking at that picture, Officer, where did you find this automobile when you arrived at the accident?

A. Against this pole on Jeffress Street.

Q. From the statements that were made to you by the defendant, where was the defendant coming from immediately prior to the accident?

A. She had come down Fenton. She lived up Fenton Street. She had come down Fenton, made a left turn into Jeffress.

Q. This pole, would you mind putting a mark there to indicate the pole?

Mr. Harris: Let the record show the witness placed an X mark for the pole.

Q. You have put an X mark there to indicate the pole where the accident took place.

A. Yes, sir.

NOTE: Plaintiff's Exhibit No. 1 is now passed to the jury.

Q. Now, Officer Simmons, I hand you another picture marked Plaintiff's Exhibit No. 2 and ask you to tell the jury what that shows?

A. This shows the same intersection but mostly
page 6] the street, Jeffress Street.

Q. Where is Jeffress Street? Put a J on there for the jury to show where Jeffress Street is, and also put an X for the post that the car hit.

A. (Doing so)

Q. Where would Fenton Street be there on that picture?

A. (Marking F on photograph)

Q. This shows the same view as the other picture except it is a closer up and shows a better view of Jeffress Street, is that not correct, Officer?

A. Yes, sir.

Q. Officer, did you make a measurement from this telephone pole, from this intersection up to this pole where the accident occurred?

A. Yes, sir. I measured from the intersection.

Q. What was the distance from the intersection west on Jeffress Street to the pole that was struck by the Laughorn automobile?

A. Approximately one hundred seventy-seven feet.

Q. One hundred seventy-seven feet.

John V. Simmons

NOTE: Plaintiff's Exhibit No. 2 is passed to the jury.

Q. Please state whether or not there is a stop sign that required traffic going from Fenton Street into
page 7] Jeffress Street to come to a stop before entering?
A. There is a stop sign there now, yes sir.
Q. Was there one at the time of this accident?
A. No, sir.

By Mr. Harris:
Q. There was not a stop sign there at the time of this accident?
A. No, sir.

By Mr. Dillard: (Continuing)
Q. I hand you now a picture marked Plaintiff's Exhibit No. 3 and ask you to show the jury or tell the jury what that shows?
A. This shows Jeffress Street, and it shows the pole that the car hit.
Q. Which way is this looking on Jeffress Street?
A. Looking west.
Q. Please state whether or not that is the direction the Laughorn vehicle was going at the time of the accident?
A. Yes, sir, it is.
Q. Would you mind marking X for the pole that was struck?
A. (Doing so)
Q. Have you made a measurement from this sign, which is located on the south side of Jeffress Street, have
page 8] you made a measurement from this sign to the pole, or do you have any idea as to that measurement?
A. Approximately eighty feet. Twenty-seven steps.
Q. Twenty-seven steps from this pole up there to the—you mean from this steel pole?
A. The No Parking sign.
Q. The No Parking sign; put NP there for the No Parking sign so there won't be any question about it.
A. (Doing so)
Q. You say there were how many steps now?
A. Twenty-seven.
Q. From there up to the pole that was involved in the collision?
A. Yes, sir.

NOTE: Plaintiff's Exhibit No. 3 is now passed to the jury.

John V. Simmons

Q. Officer, did you take two polaroid pictures at the scene in your investigation?
A. I did not.
Q. Were there two taken there in your presence at the investigation?
A. Yes, sir.
Q. Do you have them with your papers?
A. Yes, sir.
Q. Would you mind producing them so they can
page 9] be introduced in evidence?
A. (Doing so)
Q. I hand you picture marked Plaintiff's Exhibit No. 4, and tell the jury what that shows?
A. This shows the pole and the automobile involved in the accident, Jeffress Street and the sidewalk.
Q. Was this pole broken in this accident?
A. Yes, sir.
Q. What did you estimate the damage to be to the automobile?
A. About four hundred dollars.
Q. I hand you picture marked Plaintiff's Exhibit No. 5; would you tell the jury what that shows?
A. It shows the same accident, the side view of the automobile.
Q. Now, Officer, you did not, of course, see this accident yourself.
A. No, sir.
Q. Were there any eye witnesses to this accident?
A. Yes, sir.
Q. Who was the eyewitness?
A. Miss Betsy Reaves told me she was sitting on her porch—

By Mr. Harris:
Q. Miss who?
page 10] A. Miss Betsy Reaves.

By Mr. Dillard: (Continuing)
Q. Would you show the jury on plaintiff's Exhibit No. 3 the porch of Miss Betsy Reaves? If you know where she lives.
A. It's one of these two houses.
Q. One of these two; you do not know. I can later show that by Miss Reaves. Please state, Officer, what you found when you arrived at the scene.

John V. Simmons

A. I found a 1955 Chevrolet, two door, driven by Mrs. Linda Faye Laughorn. She had a valid operator's license. She gave her driver's experience at approximately one month.

Q. Driver's experience one month?

A. Approximately one month.

Q. What else did you find?

A. She estimated her speed at approximately 30 miles-per-hour. She said she did not know exactly what she was going, but it was a little over that.

Q. You say she estimated her speed at the time of this accident at 30 miles-an-hour?

A. Yes, sir.

Q. Officer, do you know the speed limit on this street?

A. 25 miles-per-hour.

Q. Officer, what else, if anything, did Mrs. Laug-
page 11] horn tell you about this accident?

A. She stated that she made a left turn into Jeffress Street from Fenton, and after she made the turn she saw the sun was in the baby's eyes that she had laying on the seat beside of her. She turned to put something over the eyes of the baby, and when she looked back the car was over on the sidewalk.

Q. I want to get this straight. She said she turned, is that correct?

A. She said she turned her head to—

Q. She said she put something over the baby's eyes?

A. She turned to put something over. She didn't say whether she put it over or not.

Q. What was the next thing did she say that happened?

A. She said when she looked back she was off the street on the sidewalk.

Q. She was off the street on the sidewalk?

A. Yes, sir.

Q. Please state whether or not she told you there when you first interviewed her at this accident that she increased her speed, that her foot slipped off the brake, or anything like that.

Mr. Harris: Don't lead, Mr. Dillard. I object
page 12] to the leading question. Ask him what his investigation shows.

The Court: Of course he can testify to what his investigation shows, but that is about the only way to make it definite and bring it out. I think that is all right in this case.

A. She did not tell me that at the scene.
Q. She did not make that statement at the scene?
A. No, sir.
Q. When did you first hear that statement?
A. In court.
Q. In court?
A. Yes, sir.
Q. How long was that after the accident?
A. I don't—I don't recall. It was some time ago. Mrs. Laughorn stayed in the hospital for some time. I don't have—
Q. How long after the accident did you first talk to her?
A. I talked to her at the accident and then at the hospital.
Q. And at that time she told you she turned and saw the sun was in the baby's eyes and she turned to put something over the baby's eyes?
A. Yes, sir.
page 13] Q. That was the only explanation she gave you?
A. Yes, sir.
Q. Were there any marks there to indicate to you where this vehicle ran up on the sidewalk?
A. There was dirt on the street. You could track the vehicle up on the sidewalk.
Q. You could track it up on the sidewalk; how far did the car travel after it got up on the sidewalk before it hit the pole?
A. Probably thirty-six feet.
Q. Did you measure that?
A. I stepped it.
Q. You stepped it?
A. Yes, sir.
Q. After it got up on the sidewalk it went thirty-six feet along the sidewalk before it hit the pole?
A. Yes, sir.
Q. Was there anything there to indicate to you that any brakes were applied? Were there any brake marks or any marks to indicate any brakes were applied from the point the car went up on the sidewalk to the point it hit the pole?
A. No, sir.
Q. Were there any marks there to indicate that the car was cut either sharply to the left or the right to avoid the pole?
page 14] A. There were no marks at all.
Q. Which way did the car appear to travel from

your investigation from the time it got up on the sidewalk until it hit the pole?

A. Went straight on up the sidewalk.

Q. Straight on up the sidewalk?

A. Yes, sir.

Q. What part of the car hit what part of the pole?

A. The pole hit direct in the center of it. Front of the car.

Q. Directly in the center of the car hit the pole?

A. Yes, sir.

Q. Was there any other automobile involved in this accident in any way?

A. No, sir.

Q. Have you measured the width of Jeffress Street there?

A. Yes, sir.

Q. What is the width of that street?

A. Thirty-four feet.

Mr. Dillard: That is all. Thank you. Officer.

CROSS EXAMINATION

By Mr. Harris:

Q. Just a minute, Officer, please. I just want to clear up one or two points in my mind. You testified, I believe at the time of this collision, from your investigation, this page 15] lady was coming down Fenton Street and making a left turn to go into Jeffress Street, is that correct?

A. Yes, sir.

Q. Prior to the collision and at the time of the collision there was no stop sign to require her to stop before turning into Jeffress Street?

A. (Shaking head indicating no) No.

Q. From your investigation did you ascertain whether or not she did stop here at this intersection?

A. I did not.

Q. You did not?

A. No.

Q. Because she was not required to stop?

A. (Shaking head indicating no)

Q. On Plaintiff's Exhibit No. 2 it appears that there is parking on the right hand side of Jeffress Street as we are looking at this photograph, and no parking on the left; was that true at the time of the collision?

A. Yes, sir.

Q. Do you know whether or not there were cars parked over here on the right at the time of the collision?

A. They were there when I arrived, but I don't know about the collision.

Q. You got there, you say, within about five minutes after it happened?

page 16] A. Yes, sir.

Q. The street that you measured here was thirty-four feet from curb to curb?

A. That's right.

Q. And with cars parked on the right, if they were, of course, would take up six or eight feet of that?

A. Yes, sir.

Q. Where did you step your distance to arrive at one hundred seventy-seven feet up to this telephone pole?

A. From the curbing, curb line of Fenton Street, here. From the curb line of Fenton Street up to the pole.

Q. From the curb line of Fenton where it intersects with Jeffress Street up to the pole was one hundred seventy-seven feet.

A. Yes, sir.

Q. When you arrived at the scene, Officer Simmons, did you find both Mrs. Laughorn and the child still there?

A. Yes, sir.

Q. Had Mrs. Laughorn been injured in any way?

A. Yes, sir.

Q. Do you know what injuries she received?

A. Abrasion of the forehead and broken left arm. That's what I found out that day.

Q. What was her appearance? Was she upset and excited, so forth?

page 17] A. Very much, yes, sir.

Q. Very much so. It was either there or at the hospital, you say, you discussed this with her and got these facts that you have in your report?

A. That's right.

Q. I thought I understood you to say that she told you she would estimate her speed at about 30 miles per hour although she did not know for sure?

A. That's right.

Q. What was the weather that day, to clear up that point?

A. Clear.

Q. Was the sun shining as you recall it?

A. It was daylight. I don't recall.

Q. It was clear, according to your report.

A. Yes, sir.

Q. In what direction would Mrs. Laughorn have been travelling as she went up Jeffress Street?

A. West.

Q. West?

A. Yes, sir.

Q. What time did this happen?

A. Approximately 4:15 P.M.

Q. 4:15 in the afternoon, and she was traveling west at that time.

page 18] A. Yes, sir.

Q. On the 24th day of April.

A. Yes, sir.

Q. You say you measured a distance of thirty-six feet, or stepped it off, from dirt that you saw there on the curb and sidewalk; could you trace that to this automobile?

A. There was dirt on the street and as the automobile crossed the sidewalk you could track in the dirt right on up where it went, you could tell where it left Jeffress Street and got on the walk.

Q. Could you track the wheel of this particular car up to the pole?

A. Yes, sir.

Q. You feel that the dirt was definitely left by this car?

A. Yes, sir.

Q. That was only thirty-six feet from the pole?

A. That is all.

Mr. Harris: That is all. Thank you.

REDIRECT EXAMINATION

By Mr. Dillard:

Q. Officer, did Mrs. Laughorn, when you talked to her right after the accident at the hospital, did she make any statement to you that she stopped there at that intersection?

page 19] A. No, sir.

Mr. Dillard: I see.

Betsy Reaves

RECROSS EXAMINATION

By Mr. Harris:

Q. You did not ask her, did you?

A. No, sir.

Mr. Harris: Thank you.

★ ★ ★ ★ ★

BETSY REAVES

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

DIRECT EXAMINATION

By Mr. Dillard:

Q. I believe you are Betsy Reaves, is that correct? You are employed by Newberry's in South Boston?

A. That's right.

Q. And you live with your father at 1342 Jeffress Street?

page 20] A. Yes, sir.

Q. Your father is Mr. Oscar Reaves?

A. That's right.

Q. Miss Reaves, please state to the jury, and speak loud enough so they can hear you, whether or not you were on your porch the afternoon of last April 24, 1964 when this accident occurred there in which Linda Faye Laughorn, Mrs. Laughorn, ran into the telephone or utility pole? Were you there?

A. I was.

Q. Were you on your porch?

A. Yes, I was.

Q. Please state whether or not you had a clear view of the scene of this accident? I hand you, Miss Reaves, Plaintiff's Exhibit No. 3, and show the jury exactly where you were sitting, or where your home is there and where you were sitting.

A. Right there.

Q. Would you mind making a mark there to show on that photograph where you were?

A. (Making mark on photograph)

Q. You were sitting on the porch of this house, which is

the second house up from the right as you go west in this picture?

A. Yes.

page 21] Q. I believe that is almost diagonally across from the pole, the utility pole that was struck. Miss Reaves, what first attracted your attention?

A. I saw the car turn out of the street, turning out of the street.

Q. You saw the car turn out of the street. When it went out of the street, where did it go?

A. On into the pole.

Q. On into the pole?

A. (Shaking head indicating yes)

The Court: Talk a little louder, please ma'am, so the gentleman there taking this down can hear you.

Q. Please state whether or not it went up on the sidewalk for any distance prior to hitting the pole?

A. I'm not sure about that. I couldn't see that. I couldn't see the sidewalk or anything. But it was up on the sidewalk after it hit the pole. I don't know how far it went on the sidewalk.

Q. Why were you attracted to this car before it hit the pole?

A. I just happened to be looking out that way.

Q. Why did it attract your attention more than any other car?

A. Just because it was turning out of the street.

page 22] I wondered what had happened.

Q. Did you see any other car coming from either direction to cause it to go in that manner?

A. No.

Q. Was there any other car coming from either direction?

A. No.

Q. As the car proceeded along there, you say it was headed toward this pole?

A. Yes.

Q. Did it at any time increase or decrease its speed before it hit the pole?

A. Not that I could tell.

Q. Did it ever appear that the brakes were applied to *his* vehicle?

A. It didn't seem to be.

Betsy Reaves

Q. Did it appear that the car speeded up any?

A. Didn't seem to, no.

Q. As far as you could determine then the car continued at the same speed, neither decreasing or increasing, and hit the pole head on?

A. Yes.

Q. Did you see the driver or did you see the car veer either way to the right or to the left to try to avoid this pole?

A. No.

page 23] Q. Did it appear then to continue in a straight line?

A. After it turned out of the street.

Q. Was there much of an impact, Miss Reaves? Did it make much noise, or—

A. Right much.

Q. Do these pictures, I hand you Plaintiff's Exhibit No. 4 and 5, show the position of the car and the way it was immediately after the accident? Is that the way you saw it after the accident?

A. Yes.

Q. They accurately show the position of the car and the pole?

A. Yes.

Q. Miss Reaves, did you go there to the scene at the car after this accident occurred?

A. Yes. For a few minutes after it happened.

Q. Was the defendant, Mrs. Laughorn, there?

A. Yes. She was still in the car.

Q. Did she make any statement in your presence as to how this accident occurred?

A. She just said that she turned to attend the baby, and when she looked back it was going out of the street.

Q. It was going out of the street. Did she make any statement about trying to apply the brakes and hitting

page 24] the accelerator?

A. No.

Q. Where was the baby when you arrived at the scene?

A. On the foot of the car.

Q. How long did the baby stay there?

A. Until the ambulance arrived.

Q. Was the baby crying?

A. No.

Q. Is this all you know about this accident?

A. Yes, sir.

Mr. Dillard: I see. Thank you

CROSS EXAMINATION

By Mr. Harris:

Q. Let me ask you just a few questions, please, ma'am. You have marked this house; you were seated on your porch?

A. Yes.

Q. That would be almost directly across from the telephone pole, is that right?

A. Yes, sir.

Q. Miss Reaves, as you were seated there on your porch, did you see this car stop back up at the intersection of Fenton and Jeffress Street.

page 25] A. No, I didn't see that.

Q. Did you see the car at that point?

A. No.

Q. I want to ask you, as you were sitting there on your porch and the car was coming on up Jeffress Street, was there anything about the operation of the car to attract your attention to it until you saw it going over toward the other side of the street?

A. No, sir.

Q. Would you say it was being operated at a proper and normal rate of speed?

A. Yes.

Q. It wasn't making any noise or anything to attract your attention?

A. No.

Q. Do you drive a car?

A. No.

Q. You observe traffic going up and down the street there?

A. Yes.

Q. The car did not appear to be running fast to you?

A. No.

Q. You noticed it for the first time when it was veering over to the left?

page 26] A. Yes.

Q. Could you see the operator of the car, what she might have been doing, at that time?

A. No.

Q. Did you see the car when it went up on the sidewalk?

A. I saw it as it hit the pole and turned out of the street and as it hit the pole.

Betsy Reaves

Q. Officer Simmons testified that it was his—or from his investigation he determined that the car was up on the sidewalk about thirty-six feet before it hit the pole, could you say—

A. I couldn't say, because I didn't see it like that. I didn't see that low down. I didn't see that low down from where I was sitting.

Q. From where you were sitting, Miss Reaves, do you think it would have been possible that the car could have speeded up slightly or decreased its speed slightly and you not have noticed it?

A. Well, I couldn't say about that. It didn't seem to.

Q. It did not seem to?

A. No.

Q. You do not say that it is impossible that it could not have happened?

page 27] A. No.

Mr. Harris: That is all.

REDIRECT EXAMINATION

By Mr. Dillard:

Q. Miss Reaves, did you notice any difference in the sound of motor there prior to this wreck? In other words, did the motor sound like it may have been increasing or decreasing its speed?

A. No.

Q. The motor sounded constant?

A. Yes.

Q. You, of course, do not drive and you have difficulty judging actual speed, do you not?

A. No, I don't drive.

Q. Can you tell how fast a car is going by miles per hour?

A. No. I know it wasn't going overly fast, but I don't know just how fast.

Q. It did not decrease or increase its speed, and it ran right into the pole.

A. (Nodding head indicating yes)

RECROSS EXAMINATION

By Mr. Harris:

page 28] Q. You say it appeared to be operating at the normal rate of speed, so far as you could tell?

A. (Nodding head indicating yes)

★ ★ ★ ★ ★

FAYE L. EANES,
introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bagwell:

★ ★ ★ ★ ★

page 42]

★ ★ ★ ★ ★

By Mr. Bagwell:

Q. Mrs. Eanes, after this accident please state whether or not the defendant in this case, who was driving the automobile at the time of the accident, made any statement to you as to how the accident happened?

A. Well, after the accident I saw her, and she told me how the accident had happened.

Q. Now let's get it straight, first, where was this?

A. She was in the hospital.

Q. What hospital?

A. South Boston.

Q. Approximately how long after the accident was it?

A. Well, it was right after the accident once she told about it, and then it was several days later after the accident she mentioned it again.

Q. Again?

A. (Nodding head indicating yes)

Q. The first time that she talked about it in your presence, just tell the jury what she had to say about how the accident happened.

A. She said that—that she was riding along the
page 43] road, that she looked down and she saw the sun in the baby's eyes, and she reached down and pulled the shawl up over the baby's eyes. And when she did, when she looked up, she was headed toward the telephone pole. And she said she didn't know what happened then. She just don't know what happened.

Q. Did anyone put any question to her as to her trying to

apply the brakes or hitting the gas at that time?

A. No.

Q. She just said—

A. But later they did.

Q. But at this occasion she just said that she looked around at the child and found she was going toward the pole, and she didn't know what happened?

A. (Nodding head indicating yes)

Q. That is the only explanation she made of it at that time?

A. Yes, sir.

Q. How much later was it that you talked to her again?

A. Well, I'm not sure, but it was, I imagine it was about—it was after the baby had been down in Durham for three or four days. And I had come back to see her. And I think it was my mother that was with me. Whoever it was she asked her, said, well, do you think that you could have put your—when you had, you know, was driving that you could page 44] have put your foot on the gas for the brake? She said, I don't know, I just don't know what happened.

Q. That was during the period of time your child was in the hospital in Duke?

A. Yes, sir.

★ ★ ★ ★ ★

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	page
Writ of Error and *Supersedeas* Awarded	1
Record	2
Instruction	2
Judgment — August 21, 1965	2
Notice of Appeal and Assignments of Error	4
Plaintiff's Assignment of Cross Error	5
Witnesses:	
John V. Simmons	5
Betsy Reaves	20
Faye L. Eanes	20