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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6322

In the
Supreme Court of Appeals of Virginia
at Richmond

KATHRYN A. COOK

v.

WALTER BASNIGHT

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

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of 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.

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Record No. 6322

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.

KATHRYN A. COOK, Plaintiff in error,

against

WALTER BASNIGHT, Defendant in error.

From the Court of Law and Chancery of the City of Norfolk
Walter A. Page, Judge

Upon the petition of Kathryn A. Cook a writ of error is awarded her to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 2nd day of September, 1965, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Walter Basnight was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said Court of Law and Chancery in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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page 6] 1

The Court instructs the jury that the plaintiff, KATHRYN COOK, is free from negligence, as a matter of law.

Granted
WAP

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page 8] 2a

The Court instructs the jury that a RED traffic light indicates that traffic then moving shall stop and remain stopped as long as the red signal is shown.

AMBER indicates that a change is about to be made in the direction of the moving traffic. When the amber signal is shown, traffic which has not already entered the intersection, including the crosswalks, shall stop.

Granted
WAP

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page 10] 4

The Court instructs the jury that if from the evidence and the other instructions of the Court you find your verdict in favor of the plaintiff, then in assessing the damages to which she is entitled, you may take into consideration any of the following, which you believe from the evidence to have resulted to her from the collision:

1. Any bodily injuries sustained and the extent and duration thereof;
2. Any effect of any such injuries upon her health according to its degree and probable duration
3. Any physical pain and mental anguish suffered by her

in the past, and any which may be reasonably expected to be suffered by her in the future;

4. Any disfigurement or deformity resulting to her and any humiliation or embarrassment associated therewith both past, present and future;

5. Any doctors and hospital, expenses incurred in the past and any that may reasonably be expected to occur in the future;

and from these as proven by the evidence, your verdict should be for such sum as will fully and fairly compensate the plaintiff for the damages sustained by her as a result of the collision.

Granted
WAP

page 11] INSTRUCTION NO. 5

The Court instructs the Jury:

That the basis of this action is that the defendant acted in a negligent manner and that his negligence proximately caused injury to the plaintiff. This cannot be inferred from the mere happening of the accident, but on the contrary the defendant is presumed to have operated the car with due and proper care and without negligence, and this presumption remains with the defendant throughout the trial and applies at every stage thereof, and can be overcome only by a preponderance of the evidence.

Granted
WAP

page 12] INSTRUCTION NO. 6

The Court instructs the Jury:

That in a situation of sudden peril, the law does not require of a person the same degree of care as of one who has had ample opportunity for full exercise of his judgment, and if you believe from the evidence that the brakes of defendant's car failed, without negligence on his part, and that he was otherwise free of negligence, and that the defendant reason-

ably deemed himself to be confronted with a situation of sudden peril, then the defendant was not guilty of negligence if he made such a choice of action as a person of ordinary prudence placed in such a position might have made, even if you believe that his actions were not the wisest course to take or that some other course might have been more judicious.

Granted
WAP

page 13] INSTRUCTION NO. 7

The Court instructs the Jury:

The following Tables of speed and stopping distances, which raise no presumptions, show the results of experiments made with automobiles, unloaded except for the driver, equipped with four-wheel brakes, in good condition, on dry, hard, approximately level stretches of highway free from loose material:

SPEED IN		AVERAGE STOPPING DISTANCES	TOTAL STOPPING DISTANCES	
Miles per Hour	Feet per Second	Auto Brakes (In Feet)	Average Driver Reaction Time (¾ Second) (In Feet)	Autos (In Feet)
10	14.67	5	11	16
15	22.0	12	16	28
20	29.34	21	22	43
25	36.62	32	27	59
30	44.0	47	33	80
35	51.3	63	38	101
40	58.7	82	44	126
45	66.0	104	50	154
50	73.3	128	55	183
55	80.7	155	61	216

60	88.0	185	66	251
65	95.3	217	71	288
70	102.6	252	77	329
75	109.9	289	82	371
80	117.2	328	88	416
90	132.0	425	99	524
100	146.6	514	109	623

Granted
WAP

page 14] P 1

The Court instructs the jury that if you believe from a preponderance of the evidence in this case that the defendant was guilty of negligence in the operation of his motor vehicle, and that such negligence proximately caused the accident, then you shall find your verdict for the plaintiff.

Refused
WAP

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page 18] INSTRUCTION NO. D1

The Court instructs the Jury:

If the jury believe from the evidence that the defendant was negligent and that such negligence was a proximate cause of the collision, and if you further believe from the evidence that the plaintiff was also negligent and that such negligence proximately contributed to cause the collision, then your verdict shall be in favor of the defendant.

The law does not undertake to apportion or balance the negligence of the parties where both are at fault in order to ascertain which one is most at fault, but the plaintiff is barred from recovery if she was guilty of any negligence which proximately contributed to cause the collision.

Refused
WAP

page 19] INSTRUCTION NO. D2

The Court instructs the Jury:

That a green light is not an unqualified command to a motorist to move in the direction indicated under any and all circumstances. It is only a command to do so in the exercise of ordinary care and when the movement indicated is not calculated to cause injury or damage to another. The exercise of ordinary care, in this respect, requires a driver to keep a proper lookout.

And if you believe from the evidence that Kathryn Cook failed to exercise ordinary care in the performance of the foregoing duty, then she was negligent; and if you further believe from the evidence that any such negligence on her part proximately caused the collision, and that the defendant was free from negligence which proximately caused the collision, then your verdict shall be for the defendant.

Refused
WAP

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page 21] INSTRUCTION D4

The Court instructs the Jury:

That where the plaintiff calls the defendant as an adverse witness, while he or she is not bound by such of the defendant's testimony as may be in conflict with the evidence introduced on behalf of the plaintiff, the plaintiff is bound by so much of the clear, logical testimony of the defendant as is reasonable and uncontradicted.

Refused
WAP

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page 25] July 12, 1965

Mr. Robert S. Cohen
Amato, Babalas, Breit, Cohen, Rutter & Friedman
Helena Building
Norfolk, Virginia

Mr. Page Preston
Preston and Preston
Royster Building
Norfolk, Virginia

Re: *Cook* v. *Basnight*
At Law No. 7495

Gentlemen:

The instant case stands upon counsel for the plaintiff's motion to set aside the verdict of the jury which was in favor of the defendant and to grant the plaintiff a new trial on the issue of damages only, or, in the alternative, grant the plaintiff a new trial upon the grounds that said verdict is contrary to the law and the evidence.

Where a plaintiff makes out a case of negligence the burden is then on the defendant to produce evidence in explanation thereof. If the jury could reasonably believe from the defendant's evidence that he was confronted with a sudden emergency without negligence on his part, the burden then is on the plaintiff to show by a preponderance of the evidence that there was negligence on the defendant's part which was the proximate cause of the plaintiff's injuries. See *Pickett* v. *Cooper,* 202 Va. 60.

In the instant case the plaintiff made out a case of negligence. The defendant testified he had a sudden brake failure. The court cannot say that this testimony was inherently incredible and, therefore, its credulity and probative value were for the jury and not for the court. See *Rountree* v. *Rountree,* 198 Va. 658 and *Simmons* v. *Adams,* 202 Va. 926.

page 26] The jury having resolved the issues raised by the evidence in favor of the defendant, the court is of the opinion that its verdict should not be disturbed.

An order overruling counsel for the plaintiff's motion and noting his exception thereto and entering final judgment for the defendant may be presented at your convenience.

Sincerely yours,
WALTER A. PAGE
Judge

WAP:meg

page 27]

* * * * *

ORDER.

This day came again the parties, by counsel, on the motion heretofore made by the plaintiff to set aside the verdict of the jury and to grant the plaintiff a new trial on the issue of damages only, or, in the alternative, grant the plaintiff a new trial, upon the grounds that said verdict is contrary to the law and the evidence.

The Court, having fully heard and considered plaintiff's motion, is of the opinion to and doth hereby overrule said motion, to which ruling and action of the Court the plaintiff duly excepts.

It is further ORDERED by the Court that plaintiff take nothing for her Motion for Judgment and that the defendant go hence without *day* and recover of the plaintiff his costs about his defense herein expended.

Enter:
WALTER A. PAGE
Judge

To the Clerk of the Court of Law and Chancery of the City of Norfolk, enter this order in Vacation 9-2-1965

Seen and Exception Noted:
ROBERT A. COHEN
Of Counsel for Plaintiff

R. LARRY LAMBERT
Of Counsel for Defendant

* * * * *

page 30]

* * * * *

NOTICE OF APPEAL
AND ASSIGNMENTS OF ERROR

To: The Honorable Judges of the Aforesaid Court:

KATHRYN A. COOK, by her counsel, hereby gives notice

of her appeal from a judgment entered in the above styled case on the 2nd day of September, 1965, and assigns the following errors:

ASSIGNMENTS OF ERROR

1. The Court erred in refusing to grant Instruction P-1, offered by the plaintiff.
2. The Court erred in granting Instructions D-5, D-6 and D-7, as offered by the Defendant.
3. The Court erred in submitting the issue of the defendant's negligence to the jury, inasmuch as defendant was guilty of actionable negligence as a matter of law.

KATHRYN A. COOK
By ROBERT A. COHEN
Of Counsel

Court of Law and Chancery Filed 9-21-65
By: H. L. SMALL, D. C.

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page 31]

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ASSIGNMENTS OF CROSS-ERROR

Walter Basnight, by counsel, states as his assignments of cross-error:

1. That the Court erred in granting plaintiff Instruction No. 1.
2. That the Court erred in granting plaintiff Instruction No. 2A.
3. That the Court erred in granting plaintiff Instruction No. 4.
4. That the Court erred in refusing to grant defendant Instruction No. D-1.
5. That the Court erred in refusing to grant defendant Instruction No. D-2.

6. That the Court erred in refusing to grant defendant Instruction No. D-4.

WALTER BASNIGHT
By: E. PAGE PRESTON
Of Counsel

Court of Law and Chancery Filed 9-28-65
By: H. L. SMALL, D. C.

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page 22]

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

DIRECT EXAMINATION

By Mr. Cohen:

Q. State your name, please, sir?

A. H. C. Turner.

Q. And your address?

A. 5409 Providence Road, Virginia Beach.

Q. And are you a member of the Norfolk Police Department?

A. Yes, sir, I am.

Q. And are you employed by the traffic division of that department?

A. Yes, sir.

Q. And for how long have you been a traffic officer investigating automobile accidents in the City of Norfolk?

page 23] A. Approximately six years.

Q. And on July 21, 1963, were you working in such a capacity as an investigating officer of traffic accidents?

A. Yes, sir.

Q. Were you called upon to investigate the accident of Sergeant Basnight and *Catherine* Cook?

H. C. Turner

A. Yes, sir.

Q. Where did that accident occur?

A. At the intersection of Granby Street and Bayview Boulevard.

Q. All right. Would you please tell the Court and the jury what your investigation revealed?

A. Approximately 11:40 A. M. I arrived at the scene. I found three automobiles that had been involved in an accident. One was a parked car, one was a '61 Corvair Chevrolet driven by Mrs. *Catherine* Cook.

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page 24] Q. Would you continue on with what your investigation revealed?

A. A 1959 Ford was also involved, which was being operated by Mr. Walter Basnight. The cars had collided at the intersection. Mr. Basnight was proceeding north on Granby Street in the left lane, the inside lane.

Q. Uh-huh.

A. And had struck the left front side of the Corvair, which was westbound on Bayview Boulevard.

Q. You mentioned that he was proceeding in the left lane. Where did you get that information from?

A. Well, from the facts of the evidence at the scene and from Mr. Basnight himself.

Q. All right. And what else did Mr. Basnight tell you with particular reference to the light at the intersection?

A. He stated as he got to the intersection the light changed. He applied his brakes. They didn't seem to hold so he applied his emergency brake and he could not stop in time and struck the car.

Q. Would you — well, you say the light changed. Would you describe the color change for us so we can understand that?

A. My understanding is that it changed to red.

page 25] Q. Changed to red for Sergeant Basnight?

A. Yes, sir.

Q. Did he tell you how far from the intersection he was when it so changed?

A. I understand it — he was right at the intersection when it changed.

H. C. Turner

Q. Did he tell you that or —

A. Yes, sir.

Q. During your investigation, Officer Turner, were some photographs made in your presence?

A. Well, I made the photographs.

Q. You did make them. And do you have them with you today?

A. Yes, sir.

Q. May I see them, please?

(Witness handing photographs to Mr. Cohen.)

(Photographs are shown to opposing counsel for examination.)

Mr. Preston: We have no objections to those.

Mr. Cohen: Thank you.

The Court: Let me mark them, Mr. Cohen, and they will be easier for you to find.

The Court has marked four exhibits for the plaintiff if they are without objection on the part
page 26] of the defendant. They're marked P-4 through 7.

(Photographs are received and marked by the Court as Plaintiff's Exhibits 4 through 7.)

By Mr. Cohen:

Q. I show you the exhibit that the Judge has indicated — marked P-4 and ask you to please describe what it represents at the scene of the accident and on the day of the accident?

(Counsel handing photographs to witness.)

A. This represents the intersection of Bayview and Granby taken from the west side of the intersection looking east.

Q. From the west looking east?

A. Yes, sir, you're looking in an easterly direction.

Q. We would be looking at the path of travel of Mrs. Cook in this picture?

A. From which she was coming.

Q. From which she was coming?

H. C. Turner

The Court: I don't quite follow that explanation.

The Witness: As you're looking —

The Court: What was that, as to the direction
page 27] in which she was proceeding on Bayview Boulevard?

The Witness: She was going west and that picture is facing east.

The Court. All right.

(Mr. Cohen handing photograph to jury.)

By Mr. Cohen:

Q. Officer, what time of the day were these pictures taken?

A. Approximately at noon. Not too long after my arrival.

Q. Uh-huh, and the weather conditions at the time of the accident were what?

A. Clear and dry.

Q. And the speed limit was —

A. Thirty-five on Granby and, I believe, thirty on Bayview Boulevard.

Q. Did Officer Basnight tell you he had no brakes?

A. He said his brakes didn't seem to hold.

Q. Did you go in his automobile and test his brakes?

A. Yes, sir.

Q. Tell this jury what you found when you checked his brakes. Did he have any brakes at all?

page 28] A. The brakes were very low. There was some pedal left, but the emergency brake had been engaged and the brake pedal was low.

Q. All right. Now, I show you picture — the picture identified as P-5 and ask you to tell the jury what it depicts?

(Counsel handing photograph to witness.)

A. This is the direction of travel for Mr. Basnight.

Q. And are there any skid marks in that picture?

A. Yes, sir.

Q. Did you measure those skid marks?

A. Yes, sir.

Q. How long were the skid marks?

A. Approximately forty-four feet.

H. C. Turner

Q. And from which vehicle did those skid marks come according to your investigation?
A. The Ford that Mr. Basnight was operating.

(Mr. Cohen handing photographs to jury.)

By Mr. Cohen:
Q. I show you Exhibit Number P-6 and ask you to describe what it depicts?

(Counsel handing photographs to witness.)

A. This is the Corvair that was being operated
page 29] by Mrs. Cook.
Q. Would you describe the damage to the Cook vehicle and the Basnight vehicle, please?
A. The damage was fairly heavy to both vehicles.
Q. And all of these pictures that I am showing the jury were taken at noon on the day of the accident?
A. Taken at the scene on the day of the accident, approximately noon. I didn't look at my watch.
Q. Approximately noon?
A. We took the pictures after I arrived at the scene. I took these pictures.

(Counsel handing photograph to witness.)

A. This is the car owned and operated by Mr. Basnight.
Q. You are referring now to P-7, the last photograph?
A. Yes, sir.

(Mr. Cohen handing photograph to jury.)

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By Mr. Cohen:
Q. Officer Turner, how long have you known Sergeant Basnight?
page 30] A. Approximately eight years.
Q. How long have you known this lady, the plaintiff?

A. Never seen her before.

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page 32]

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

DIRECT EXAMINATION Adv.

By Mr. Cohen:

Q. State your name, please?

A. Walter Basnight.

page 33] Q. You're a sergeant of the police department?

A. Yes, sir.

Q. You've been there how long?

A. Member of the police department fifteen years, sir.

Q. And on the day of the accident you were on your own private business; is —

A. No, sir, on my way home.

Q. On your way home?

A. Uh-huh.

Q. What time did the accident happen?

A. It was approximately 11:30.

Q. How long had you had the automobile you were driving?

A. '59 Ford, I bought it new. It would have been approximately three or four years.

Q. And when had it last been inspected prior to the accident?

A. I don't remember the day, sir. It had a current inspection sticker on it. I don't remember just how long it had been before it was inspected.

Q. And you are familiar with the intersection of Granby and Bayview Boulevard?

A. Yes, sir, I travel it every day.

Walter Basnight

Q. And you know there is a traffic light at
page 34] that intersection, don't you?
A. Yes, sir.

Q. And you saw that this light was green as you approached; is that correct?

A. Yes, sir.

Q. And you were a hundred and eighty feet; is that right?

A. Approximately that, sir.

Q. When it was green?

A. Yes, sir.

Q. And it was at that time it changed to caution?

A. No, sir, not at that time. I applied my brakes at that time to try to pull in behind the other car and when I looked back it had turned to caution and I could not stop my automobile to pull in behind the other car.

Q. So when you looked back your car was then approximately how far from the intersection?

A. I don't know, sir, how far I traveled.

Q. You don't know?

A. Not at that time, no, sir, because I saw that it was caution and I tried to go through.

Q. Well, you're saying you went through a caution light or a red light?

page 35] A. It was caution at that time, but when I hit the intersection I saw Mrs. Cook's car come out and it must have been a red light for me at that time because all the traffic started moving that way. The other traffic had stopped on Granby Street and I couldn't stop.

Q. Is it your testimony that as your car was ten feet south of the intersection that the light was yellow for you?

A. I couldn't say whether it was ten feet or not, sir. It was a yellow light when I saw it and tried to go through it.

Q. Where was your car when the light was red for it?

A. Right at the intersection. Mrs. Cook's car came across the intersection and the other cars were stopped on Granby Street.

Q. Now, you referred to cars being stopped on Granby Street. Are you speaking of northbound traffic?

A. Northbound traffic, yes, sir.

Q. In the right-hand lane?

A. Yes, sir.

Q. How many cars?

A. I don't know, sir. There was traffic right then at that time. I was trying to get through the intersection
page 36] and try to avoid an accident. I didn't stop to count any cars.

Q. Did you pull in behind — attempt to pull in behind a row of cars?

A. No, sir, there was a break behind this car that I could have pulled in behind.

Q. And that car that you atempted to pull in behind, was it slowing to a stop?

A. I couldn't tell you, sir. I was trying to slow down to get behind it.

Q. And when you put your foot on the brake you had some brake pedal as Officer Turner testified to, didn't you?

A. At that time I didn't, no, sir. It went right to the floor.

Q. You had no brakes there?

A. No, it went right to the floor.

Q. Did you have any traffic lights on your travel from your home prior to Bayview Boulevard?

A. Yes, sir.

Q. How many times did you have to use your brakes before this intersection?

A. I don't think I had to use my brakes, except one time, at the intersection of Wards Corner.

Q. Did you have any trouble stopping?

A. No, sir.

page 37] Q. Did you have full brakes or did you have a partial brake, or did you have to push your pedal down three-quarters of the way to engage brakes?

A. There wasn't a full pedal.

Q. It was not, was it?

A. No.

Q. And you knew that, didn't you?

A. It was plenty of brake to stop me. It stopped me in plenty of time.

Q. You say you only attempted to stop once before this intersection in question, and then you didn't have a full pedal; is that right?

A. About a half a pedal, yes, sir.

Q. All right. From the time that you attempted to stop your vehicle prior to going into the Bayview Boulevard intersection, did you blow your horn?

A. I can't recall whether I did or not, sir. I was a little excited at the time when I saw the car coming out.

Q. Did you swerve?

A. I did turn to the left, yes, sir, attempt to swerve to the left.

Q. Was that before or after you engaged your emergency brake?

A. That was after I engaged it — right at page 38] about the same time.

Q. You saw this picture —

A. Yes, sir.

Q. — as I showed it to your counsel?

A. Yes, sir.

Q. And these are the skid marks from your automobile that Officer Turner testified to, aren't they?

A. Yes, sir.

Q. And they are perfectly straight, aren't they?

A. There's a slight bend towards the median strip.

Q. Well, the slight bend that you can see in this picture, is that the way you swerved your automobile?

A. I was trying to turn to the left, yes, sir.

Q. Did you attempt to swerve to the left prior to the point where those skid marks start?

A. About at the same time, sir.

Q. Did you — how fast was Mrs. Cook proceeding in the intersection as you entered?

A. I couldn't tell, sir. She was coming across the intersection. I couldn't estimate her speed then.

Q. You have no idea?

A. No, sir, I do not.

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page 41]

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JAMES M. CAULK,

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

James M. Caulk

DIRECT EXAMINATION

By Mr. Cohen:

Q. State your name, please?

A. James M. Caulk.

Q. And your address?

A. 1556 Bayview Boulevard, Norfolk.

Q. All right. And, sir, are you engaged in any occupation at the present time?

A. No, sir, I am retired.

Q. How old are you, sir?

A. I will be seventy-one next month.

Q. And you are retired from what service?

A. Coast Guard.

page 42] Q. With what rank did you retire, sir?

A. Commander.

Q. Now, Commander, on July 21, 1963, where were you going at about 11:30 in the morning on that day?

A. I had been up to Wards Corner and I was returning home, and I inteded to make a right turn at Bayview Boulevard, but the light was against me.

Q. All right. Now, as you approached the intersection of Bayview Boulevard and Granby Street, you were traveling, you say, north on Granby Street?

A. North on Granby in the right-hand lane.

Q. Right-hand lane, and what color was the light when you saw it, sir?

A. It turned yellow and then red and I came to a stop.

Q. All right, sir. Now, tell us what you saw happen while you were stopped in the right lane?

A. Well, a car whizzed by me.

Q. You say whizzed by you?

A. Well, I should say doing a pretty good rate, and I thought there was something — I said, my gosh, he is going through a red light, and about that time, almost instantaneously, he struck this car coming, going west coming out from Bayview Boulevard on the green light at a terrific

page 43] blow.

Q. How long had you been stopped for this red light that you were stopped for?

A. Only a few seconds.

James M. Caulk

Q. A few seconds?
A. Yes.

* * * * *

page 44] Q. Now, when you saw Mr. Basnight at that time right after the accident, when he came to you what did he say? What did you say and what did he say?

A. No, I said, "Mister, you went through a red light." He said, "I know I did, but my brakes failed." That's what he told me.

Q. Uh-huh. From the time you saw — first of all — strike that, please. Do you know the speed limit at this intersection?

A. It is thirty-five miles down there, thirty-five miles per hour.

Q. Is that for Granby Street traffic?

A. On Granby, yes, sir, after you pass the bridge until you get down near Ocean View.

Q. Could you estimate the speed of Mr. Basnight's vehicle as you saw it go by you?

A. I should say he was going at least the speed limit or perhaps more.

Q. All right, sir.

A. That's just my judgment is all.

Q. You were driving — you have been driving an automobile for how long?

A. Since 1928.

Q. I see. Now, tell us if you would what type of impact you saw happen? Describe this impact?

page 45] A. It was so sudden. It was a terrific impact and I saw several people thrown out of the car, I can't say. It was more than one.

* * * * *

page 46] A. Later on the investigating officer came and took my name and address.

Q. At whose request?

A. The preacher. I guess he was a preacher. He had a Bible in his hand and he said, "I want you to take this man's name." He took my name and address and I never heard any more from the police after that.

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By Mr. Preston:

Q. Mr. Caulk, you had just come to a stop just before this happened and you were the first car in line, were you not?

A. Yes, sir. There was no other cars that I saw there.

Q. You were in the right-hand lane?

A. Right-hand lane.

Q. I take it that you saw Mrs. Cook's car before this accident also?

A. It was almost instantaneous that I saw Mrs. Cook's car coming out very slowly. I thought — it was almost instantaneous.

Q. Well, can you tell the jury, sir, where her
page 47] car was when you first saw it?

A. I should say it had entered the intersection.

Q. You say entering the intersection or all the way in?

A. Just entering the intersection, just entering the intersection when I first saw it, as far as I can remember.

Q. I see. And you say it was going very slowly, but that is not a very definitive phrase. Actually, can you estimate her speed?

A. No, I can't estimate.

Q. You can't estimate her speed?

A. No, I cannot.

Q. Would you estimate it to be any more than ten miles an hour?

A. I can't say that. As I say, I was — I had my eye on Sergeant Basnight's car more than I did the other one. I just happened to see her come out. It was almost instantaneous.

Q. All you know is she was going very slowly; is that correct?

A. I think so.

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CATHERINE A. COOK,
the plaintiff, called as a witness on her own behalf, having been first duly sworn, was examined and testified as follows:

page 49] DIRECT EXAMINATION

By Mr. Parker:

Q. Will you state your name for the Court and the gentlemen of the jury, please?

A. *Catherine* Cook.

Q. And where do you reside, Mrs. Cook?

A. 8260 Fernwood Drive.

Q. Are you married?

A. Yes, I am.

Q. And what is your husband's name?

A. David L. Cook.

Q. What is his occupation?

A. Right now he is a maintenance mechanic at Century Brewery.

Q. Is he employed at the Century Brewery?

A. That's correct.

Q. And where do you reside?

A. At 8260 Fernwood Drive.

Q. Do you have any children?

A. I have a little girl that was a year last Friday, a year old last Friday.

Q. Now, prior to your husband's occupation at this time, was he in the Military Service?

A. Yes, he was in the Navy.

page 50]

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Q. Now, what kind of a car were you driving?

A. A 1961 Corvair.

Q. Is that a compact car?

A. Yes, uh-huh.

Catherine A. Cook

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Q. Now, on what street were you traveling? What direction were you going?

A. I was going west on Bayview Boulevard.

Q. And as you approached the intersection of Granby Street in which lane were you traveling?

A. I had gotten into the lane to make a left-hand turn in the left-hand turn lane. I was going across to get to the other side of Granby.

Q. So you would be in the left-hand lane or inside lane of Granby?

A. That's correct.

Q. Now, what was the condition of the traffic at that particular intersection?

A. Well, there wasn't very much traffic, very little at that time.

Q. And as you approached the intersection of Granby Street, did you observe an electric traffic control signal?

A. Yes, I did.

Q. And what was the condition of the traffic signal for your lane of travel?

A. It was green.

Q. Now, do you recall how fast you were traveling as you were approaching the intersection?

page 52] A. About twenty miles per hour.

Q. By the way, have you been in a courtroom before?

A. No.

Q. You appear to be nervous. We are not going to try to upset you, but bear with us. As you approached the intersection and you had a green light — is that your testimony?

A. Yes.

Q. And you stated that your speed was approximately twenty miles per hour?

A. Approximately.

Q. Now, will you describe what took place at the time that we have brought you to and the accident?

A. Well, as I approached the intersection I looked in all of the directions, everything was clear at that time, and I started out into the road and I was just entering the left-hand lane when I noticed this black car coming at about, I would estimate, forty miles per hour, and he didn't make any attempts to stop, so I applied my brakes.

Q. Which lane do you refer to when you entered? You said — you stated you entered into which lane?

A. The right-hand lane of Granby.

page 53] Q. Of Granby?

A. Uh-huh.

Q. And at this point how far away was the black car that you described traveling after you entered the intersection?

A. Approximately three car lengths, two or three car lengths away behind the car that was waiting.

Q. Was the car that was waiting in the left-hand lane — in the left-hand lane or the right-hand lane?

A. No, it was in the right-hand lane.

Q. So the black car was to the left of the waiting car?

A. That's right.

Q. Now, describe further what took place at the intersection at this point?

A. Well, as I said, he didn't appear that he was going to stop, so I applied my brakes and attempted to turn the car, and the next thing I know there was an awfully loud crash and after that I blacked out. And then the next thing I remembered was I must have been thrown on the pavement because I remember getting up on the pavement and crawling back to the car and I heard the children screaming and crying and there were a lot of people around.

* * * * *

page 55]

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Q. Prior to the collision between the black Ford and your own car, did you hear any sounds such as a horn?

A. No, but I heard brakes, the screeching of brakes.

Q. And this was prior to the impact?

A. Prior to the impact, yes.

Catherine A. Cook

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CROSS-EXAMINATION

By Mr. Preston:

Q. Mrs. Cook, you say that as you approached
page 63] the intersection you were driving in the left-hand
lane on Bayview Avenue at a speed you would estimate to have been twenty miles per hour; is that correct?

A. Approximately twenty.

Q. And you say you had the green light. Now, where were you on Bayview Avenue in relation to Granby Street when you first looked at the light to determine what color it was?

A. Approximately a hundred feet.

Q. A hundred feet from the intersection?

A. That's right.

Q. And at that time what color was the light?

A. Green.

Q. The light was green when you were one hundred feet from the intersection?

A. That's right, uh-huh.

Q. Now, at that time at what speed would you estimate that you were driving?

A. As I neared the intersection I slowed down, I know. I was probably going — you mean at the intersection?

Q. Let's say when you arrived at the intersection? Let's arrive at that.

A. I would say about ten miles per hour.

Q. About ten miles per hour when you arrived
page 64] at the intersection?

A. That's right.

Q. And you slowed down I take it gradually from twenty miles an hour when you first looked at the light to about ten when you arrived at the intersection; is that correct?

A. That is right.

Q. There was nothing to block your vision, was there, looking to your left down Granby Street?

A. You mean to my left?

Catherine A. Cook

Q. To your left, yes.

A. There was a car waiting for the light there and the house on the corner has a hedge and a lot of trees around it.

Q. Yes. Now, was that hedge blocking your vision when you first attempted to look to your left as you approached this intersection?

A. As I neared the intersection, as I say, there is this hedge and trees and you can't see all the way down the road, but there was this car waiting for the light.

Q. Well, how far would you say that you could see down the road when you were a hundred feet back where you looked at — did you look at that time to your left?

page 65] A. Well, I glanced in all directions generally when I was a hundred feet away.

Q. You glanced in all directions?

A. You can't see down that road very well a hundred feet away.

Q. You cannot?

A. No, because there is — there is that house and trees and hedges there.

Q. Was that the purpose for your slowing down, so you could see?

A. Yes, and I travel that road a good bit and I always slowed down at that intersection.

Q. Well, now, did you look again after you were a hundred feet away, after you passed the point where you were a hundred feet away and you looked at the light and then you started slowing down, did you look to your left again?

A. As I said, I looked around in the general direction, yes.

Q. Did you look down the street again to your left?

A. No, there was a car in the right-hand lane.

Q. A car in the right-hand lane?

A. Waiting, uh-huh.

page 66] Q. As far as the hedge and the house on the corner were concerned, it was not blocking your vision at that time; is that correct?

A. At that time, no, it would have been the car blocking it.

Q. Just the car?

A. Uh-huh.

Q. When you took that look to your left, approximately where were you with relation to the intersection?

Catherine A. Cook

A. Well, it would have been about, I guess, a car length.
Q. About a car length from the intersection?
A. Possibly.
Q. In other words, what you recall now is that you did — when you were approximately a hundred feet away from the intersection, you looked and you saw the light was green you say?
A. That's right.
Q. And you glanced to the left, but your vision was obstructed to some extent at that time by the —
A. That's correct.
Q. By the hedge and the house on the corner?
A. That's correct.
page 67] Q. And that you slowed down for the intersection from twenty to ten miles per hour as you approached the intersection?
A. Approximately, yes.
Q. And when you were about one car length from the intersection that was the next time that you attempted to look to the left to see if cars were coming; is that correct?
A. That's right, I checked in all directions.
Q. And when you looked to the left when you were one car length away, what did you see?
A. Just this parked car.
Q. You didn't see any other car?
A. I couldn't see down the road a bit, no.
Q. Why couldn't you see down the road, Mrs. Cook?
A. Because this car was waiting there.
Q. One parked car was there, only one parked car?
A. Yes.
Q. This one parked car prevented your seeing down the Granby Street to your left?
A. When I was a car length away I couldn't see.
page 68] Q. So you never saw this car then prior to the time that you entered the intersection, did you?
A. I saw him just as I started out into the intersection in the left lane. I was just entering the left-hand lane and I saw him coming.
Q. Now, you say you were just entering the left-hand lane. That is not quite clear to me.

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

DIRECT EXAMINATION

By Mr. Parker:
Q. State your name, please?
A. James Henry Dodson, Jr.
Q. Where do you reside, sir?
A. 106 Lembla Street, Norfolk, Virginia.
Q. What is your occupation?
A. I am a minister, pastor.
Q. And what church are you the pastor of?
A. First Church of God.
Q. Where is the church located, Pastor?
A. The corner of Granby Street and Bayview Boulevard.

* * * * *

page 79] By Mr. Parker:
Q. Would you describe for the benefit of the Court and the jury what you heard that called your attention to this accident?

A. Yes, sir. We were having our morning worship, and this is the reason I speak of the time. I was already preaching. In fact, I had been preaching, and was pretty close to being finished with the sermon, and the ministers have a reputation for being long-winded. It was probably a good quarter to twelve when this occurred. And I heard the first squealing or skidding, however you would say it, and then the loud bang, crash, and soon there were people screaming, and this was so obvious that the people who were in church could not keep their attention to anything I was saying or doing. It was warm enough to where the windows of the church building were open, and there was a crack perhaps an inch and a half wide, just so the people could bob their head like this and they could see out, and several of them were doing that. And I immediately realized that we had a responsibility to what sounded like a good sized wreck, collision, and so I stopped preaching and asked if some of our men, maybe if there were any qualified ladies there, who

would feel that they would like to go out and give assistance together. And so — we had several that left the
page 80] service and went out. Then we stopped and had special prayer for the people who might have been involved. And soon, a few minutes, I finished the sermon and we sang a hymn and had the benediction and the people were released and gathered out at the corner.

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By Mr. Parker:

Q. Reverend, I will ask you if a photograph which is identified as Exhibit Number P-7 showing a motor vehicle was familiar to you?

page 81] (Counsel showing photograph to witness.)

A. Yes, sir, I saw that car when it was still in that position.

Q. And could you —

A. Over to this side across the street on the corner was the other car.

Q. Now, where was this location — was this car in the position that it is in? Can you identify it with respect to the intersection itself and the church property?

A. This is Bayview Boulevard going across. This is Granby Street going up to Wards Corner, and this car is approximately against the telephone pole, apparently two or three feet from it, in the parkway between the north and south streets on Granby, on the north side of Bayview Boulevard.

Q. Now, Reverend, I show you a photograph marked P-6 for identification and ask you if you recognize that motor vehicle?

(Counsel handing photograph to witness.)

A. Yes, sir, I do. This is the one that was parked against — it was up against — it was not parked. Apparently it was pushed over against the curb there on the — it would be the northeast corner, which is adjacent to our prop-
page 82] erty, the church's property, and I might add that there was a car missing, which was hit by this car, which belonged to a couple who came to our church.

Q. Now, Pastor, here is photograph P-5, and I will ask

you to identify the automobiles that were involved in the accident?

(Counsel handing photograph to witness.)

A. Well, when I went out the skid marks that were apparent, and which are visible in this photograph, were there, and obviously trailed to the car which you showed me first when I — you called Exhibit P-7.

Q. Did you observe the skid marks yourself?

A. Yes, sir, I did.

Q. Behind which automobile were the skid marks? Were they behind the black car or were they behind the little compact car?

A. Behind the black car.

Q. Did you measure those skid marks or —

A. No, sir, I did not measure them, but I did observe them and I also observed the policeman with a camera apparently taking photographs of the skid marks.

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CROSS-EXAMINATION

By Mr. Preston:

Q. You observed the skid marks left by the black automobile, did you not?

A. Yes, sir.

Q. And I show you that same photograph and there are no skid marks left by the white automobile leading up to these other skid marks where the accident occurred, are there?

(Witness examining photographs.)

A. They do not show in that photograph.

Q. Well, did you see any skid marks?

A. Not of this type, no, sir. The skid marks that I see here are skid marks that are parallel, the skid marks that were

Reverend James Henry Dodson

made. I also take note that I see hardly any skid marks from where these begin to occur trailing into where the car is.

Q. There is a curve?

A. There is a curve.

page 85] Q. At the ones which do show on here?

A. Yes, sir.

Q. The other marks you are referring to were the tire marks of that white car when it turned after the impact occurred. Did you observe any skid marks?

A. This — I would have to be vague on any terms of skid marks.

Q. I'm talking about tire marks after —

A. Tire marks. I saw tire marks where there apparently had been a point of impact.

Q. Right. That's where you saw — that's all you saw, plus these?

A. Plus these, yes, sir.

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OBJECTIONS AND EXCEPTIONS TO INSTRUCTIONS

Mr. Preston: The defendant excepts to the granting of any instruction to the plaintiff on the ground that the defendant's motion to strike the plaintiff's evidence and enter up summary judgment for the defendant should have been granted.

The defendant takes exception to the ruling of the Court in granting instruction number 1 on the ground that there is ample evidence from which the jury should be entitled to determine whether or not Catherine Cook was guilty of contributory negligence, and there is ample evidence from which they could have properly concluded that she was guilty of contributory negligence with reference to the speeds of the vehicles and the issue of the keeping of a proper

page 91] lookout on her part and the locations of the vehicles, et cetera.

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page 92]

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The defendant takes exception to the Court's granting of instruction number 2-A over defendant's objection on the ground that there was no mention of reasonable care in this instruction and that the instruction was prejudicious to the defendant because of the likelihood that the jury would consider this instruction alone and it indicates to the jury that all traffic, which would include Mr. Basnight, the defendant, would have the absolute duty to stop on the red signal as shown on the traffic light and does not take into consideration the sudden emergency as evidence in the case.

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page 93] The defendant takes exception to the ruling of the Court in failing to grant instruction D-1 on the ground that there was evidence to support a finding by the jury that the plaintiff was guilty of contributory negligence and that she should have been instructed on contributory negligence, and this is a fair and proper instruction on the law of contributory negligence.

The defendant takes exception to the ruling of the Court in failing to grant instruction number D-2 on the grounds that the jury should have been presented with the question of whether or not the plaintiff was guilty of contributory negligence, and in instruction D-2 it properly states the law in relation to the evidence in this case concerning her duties at the intersection in question with relation to the green light and her activities in the driving of her car.

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I want to go back up to instruction number 1.

The defendant further objects to instruction — or takes exception to the granting of instruction number 1 on the ground that an instruction stating that the plaintiff is free

of negligence in the form and manner of this instruction is misleading in that the jury could very well interpret this instruction to mean that the Court was instructing them that the plaintiff was entitled to recover in the case.

The defendant takes exception to the ruling of the Court in failing to grant instruction D-4 on the ground that the plaintiff put the defendant on the stand as an adverse witness and they subsequently argued in closing argument contrary to the uncontradicted testimony which was elicited from him by plaintiff as an adverse witness, and that the page 95] jury should have been instructed in relation to the law of the plaintiff being bound to such testimony as is reasonable and uncontradicted to where the plaintiff puts the defendant on as an adverse witness.

Mr. Cohen: Plaintiff objects and excepts to the Court's refusal to grant instruction P-1 as it is a correct statement of the law and a proper finding instruction and completely applicable to the case.

Plaintiff objects and excepts to the Court's refusal to grant instruction P-2 for the reason that it is a correct statement of the law and the statute involved and is applicable to the case in question and based on evidence of the plaintiff's witnesses of excessive speed on the part of the defendant, and should have been embodied in an instruction as granted rather than saddled with the requirement of reasonable care.

Plaintiff objects to the Court's refusal to grant instruction P-3 for the reason that the Court should have ruled that the defendant was negligent as a matter of law, he having testified of faulty brakes. And, therefore, he should not have the availability of a sudden emergency defense and page 96] this damage instruction — rather, the instruction granted by the Court should have been presented to the jury.

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The Venire: Your Honor, we wonder if it would be possible for the court reporter to read us the testimony of Officer Basnight in connection with his stopping at Wards Corner?

The Court: I'll take it up with counsel.

(Whereupon, the Court and counsel conferred in chambers. Upon their return the following took place:)

The Court: Gentlemen, of course you are the triers of the facts. You have heard the evidence and you have to rely upon your recollection of the evidence in this matter, and the Court cannot allow the reading of a portion of the testimony, and in some instances actually it wouldn't be possible anyway when we don't always have a court reporter, but it would not be proper to do so in this instance. So you will have to rely on your memory.

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Mr. Cohen: Plaintiff objects to the Court's refusal to grant instruction P-4 as offered by the plaintiff, as it instructs what is perfectly proper in form and critically applicable to the facts in the case, and inasmuch as the defendant was claiming a sudden emergency brake failure and never put on any witness of any nature, brake experts or otherwise, to substantiate such defense or any other witness to prove that he had any knowledge of such defect prior to the accident.

Plaintiff objects to the Court's changing of instruction 2 as offered by the plaintiff, inasmuch as it originally stated — strike out inasmuch as originally stated. Plaintiff objects to the granting — correction. Plaintiff objects to the Court's changing of instruction P-2 as offered by the plaintiff —

page 100] The plaintiff objects to the Court's granting of instruction number 5 inasmuch as the defendant has alleged as his defense an unavoidable accident in the form of a sudden emergency brake failure and he has the duty of proving that he was without fault in creating this sudden emergency and has failed to do so, and is therefore not entitled to this instruction.

Plaintiff objects to the Court's granting of instruction number 6 as offered by the plaintiff for the same reason stated in instruction number 5.

Plaintiff objects to instruction number 7 as offered for the same reason as set forth in objections to instruction number 5 and for the further reason that the instruction speaks of brakes being in good condition, and the only evidence in this case is that the brakes were not in good condition.

That is it.

page 101] JUDGE'S CERTIFICATE

I, Walter A. Page, Judge of the Court of Law and Chancery of the City of Norfolk, State of Virginia, who presided over the trial of the case of *Catherine A. Cook,* plaintiff v *Walter Basnight,* defendant, on April 8, 1965, do hereby certify that the foregoing is a true and correct transcript of the trial of said cause, including all of the evidence adduced, the exhibits offered in evidence and refused, as well as all of the objections to the evidence or any part thereof offered, admitted, rejected or stricken out, together with all motions and objections of the parties, all rulings of the court thereon, and all exceptions of the parties thereto, together with all other incidents of the trial of the said cause.

As to the original exhibits introduced in the evidence as shown by the foregoing report, to-wit: Plaintiff's Exhibits 1, 2, 3, 4, 5, 6 and 7, which have been initialed by me for the purpose of identification, it is agreed between the attorneys for the plaintiff and the attorneys for the defendant that they shall be transmitted to the Supreme Court of Appeals of Virginia as a part of the record in this case in lieu of certifying to the said court copies of said exhibits.

page 102] I further certify that this certificate has been tendered to and signed by me within the time prescribed by Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, and that reasonable notice in writing has been given to the attorneys for the defendant of the time and place at which said certificate has been tendered.

This record was tendered to me on the 26th day of October, 1965.

Given under my hand this 26th day of October, 1965.

WALTER A. PAGE
Judge of the Court of Law and Chancery of the City of Norfolk, Virginia

page 103] CLERK'S CERTIFICATE

I, W. L. Prieur, Jr., Clerk of the Court of Law and Chancery of the City of Norfolk, State of Virginia, do hereby certify that the foregoing is a true and correct copy of all the testimony, exhibits and other incidents of the trial of the case of *Catherine A. Cook,* plaintiff, v *Walter Basnight,* de-

fendant, together with the original exhibits therein referred to, duly initialed and authenticated by the Judge who presided over the trial of the said cause, were lodged and filed with me as Clerk of said court on the 26 day of October, 1965.

W. L. PRIEUR, JR.
Clerk of the Court of Law and Chancery of the City of Norfolk, Virginia

By L. M. CALVERT
Deputy

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A Copy—Teste:

H. G. TURNER, Clerk

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