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Richmond, Va.

207 VA 815

Record No. 6368

In the
Supreme Court of Appeals of Virginia
at Richmond

W. S. COOK, SHERIFF, ETC., ADMR., ETC.

v.

VIRGINIA HOLSUM BAKERIES, INCORPORATED

FROM THE CIRCUIT COURT OF ALBEMARLE 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. 6368

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 2nd day of March, 1966.

W. S. COOK, SHERIFF, ETC., ADMR., ETC.,
Plaintiff in error,

against

VIRGINIA HOLSUM BAKERIES, INCORPORATED,
Defendant in error.

From the Circuit Court of Albemarle County
Lyttelton Waddell, Judge

Upon the petition of W. S. Cook, Sheriff of Albemarle County and Administrator of the estate of Marvin Charles Lucas, deceased, a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Albemarle County on the 23rd day of August, 1965, in a certain motion for judgment then therein depending wherein Virginia Holsum Bakeries, Inc., was plaintiff and the petitioner was defendant; no bond being required.

RECORD

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* * * * *

ORDER

On the 26th day of July, 1965, came the Plaintiff, Virginia Holsum Bakeries, Inc., by its attorney, and likewise came W. S. Cook, Sheriff of Albemarle County, Admr. of the estate of Marvin Charles Lucas, deceased, in person and by his attorney, and grounds of defense and stipulations as to damages having been filed, the parties are at issue.

The Sheriff of this County having returned the *venire facias* issued for the trial of all cases this term, under Section 8-187 and 19.1-106 drawn on June 1st, 1965, together with the name of thirty-six veniremen summoned by him from a list furnished by the Clerk of this Court and drawn by her in the presence of the Judge thereof, upon examination of those summoned therefrom, thirteen qualified jurors free from all exceptions were found by the Court to be in attendance.

And the attorney for the Plaintiff and Defendant having alternately stricken from said panel three each, the following seven constituted the Jury for the trial of the case at Bar, namely: Thomas D. Blue, Hugh B. Napier, Cecil Eheart, William N. Waldon, Jr., Cleveland Deane, Clarence C. Davis and Conrad L. Hall, against whom no objections or exceptions were made or taken.

page 8] The jurors having been duly sworn, counsel for both parties made opening statements, and evidence was adduced in behalf of the Plaintiff and Defendant.

At the conclusion of the Defendant's evidence the Plaintiff moved the Court to strike the Defendant's evidence and enter summary judgment for the Plaintiff in the sum of $5,982.31, the agreed amount of damages, on the grounds that the Plaintiff had proven its cause of action by a preponderance of the evidence and the Defendant had not rebutted the Plaintiff's evidence or proven a defense.

The Court was of the opinion that the motion was well

taken and that a verdict for the defendant should be set aside but that it was preferable that the case be submitted to the Jury in order that the case should be fully tried, the Court doth overrule the motion of the Plaintiff to which the Plaintiff excepted for the reasons stated.

The Jury, having received the instructions of the Court, and heard arguments of counsel, retired to their room to consider of their verdict and after some time returned into Court with the following verdict to-wit:

"WE, THE JURY FIND IN FAVOR OF THE DEFENDANT, CHARLES MARVIN LUCAS ESTATE,
THOMAS D. BLUE, FOREMAN"

and the Jury was discharged.

Counsel for the Plaintiff moved the Court to set aside the verdict upon the following grounds:

1. that it was contrary to the law and the evidence.
2. that the Plaintiff had proven a cause of action by a preponderance of the evidence and the Defendant had failed to prove a defense to the cause of action.

page 9] The Court being of the opinion that the motion was well taken doth ORDER that the verdict of the Jury be set aside and that judgment be entered on behalf of *Virginia Holsum Bakeries, Inc.* against *W. S. Cook, Administrator of Marvin Charles Lucas* in the sum of $5,982.31 with interest at six (6) per cent per annum from July 26, 1965, until paid together with its costs herein incurred.

To which action the Defendant excepted on the following grounds:

1. that the Plaintiff had failed to prove its case by a preponderance of the evidence.
2. that the Defendant had proven a defense to the cause of action.
3. that the action of the Court in setting aside the verdict of the Jury and entering up judgment for the Plaintiff was contrary to the law and evidence.

By LYTTELTON WADDELL
Aug. 23, 1965

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Filed this 21 day of Oct. 1965
EVA W. MAUPIN, Clerk

INCIDENTS OF TRIAL AND TESTIMONY OF WITNESSES
(Before being corrected)

STIPULATION AS TO DAMAGES

The parties agreed and stipulated that the property damage suffered by Plaintiff amounted to $5,982.31.

First Witness:

MARVIN D. PUCKETT, JR.
(Direct examination)

Marvin D. Puckett, Jr. testified that he resided at 2612 Hanover Street, Staunton, Virginia, that he was 25 years old and that he had been driving for Virginia Holsum Bakeries, Inc. for 3 years before the accident in question.

Puckett testified that on the night in question, 18 October 1963, he left the plaintiff's plant in Verona, Virginia, at 9:50 p.m., drove to the Do-Nut Diner in Waynesboro, Virginia, and there had coffee with a couple of boys. He then left Waynesboro and drove east to Charlottesville, Virginia on U. S. Route 250 and thence north on U. S. Route 29 to the scene of the accident. He stated that he was enroute to Fredericksburg, Virginia with a load of bread.

Puckett testified that the accident happened at about 11:30 p.m., that the weather was clear and dry and that he, Puckett, at the time of the accident, was driving in a northerly direction in U. S. Route 29 at about 41 miles per hour in the northbound lane.

page 12]

Puckett testified that he saw a car coming south

and that everything was normal but that when the car approaching him, later determined to be the Lucas vehicle, came to within 3 or 4 car lengths of the Holsum truck the Lucas vehicle, heading south in the southbound lane, suddenly veered sharply over into the northbound lane. Puckett testified that he did not have time to apply brakes and that he had no control over his vehicle after the collision.

Puckett testified that the Lucas vehicle struck the left front frame horn of the tractor and locked the left front wheel back against the saddle tank thereby causing him to lose control. Puckett stated that after the collision his tractor trailer truck went across the southbound lane, down an embankment and turned over on its right side.

Puckett testified that the tractor had two headlights and two lights at the back of the tractor. Also lights all over the trailer — front, sides, and rear.

Puckett testified that the Lucas vehicle turned up on its top and *slide* down the southbound lane and shoulder on the west side of the road. He testified that the Lucas car threw Mr. Tedder out and then burned. He added that he did not know at that time that Lucas was in the car.

Puckett testified that he received a small cut on the back of his head for which he went to the University of Virginia Hospital and was, shortly thereafter released. Puckett testified that he left the hospital with State Trooper Wood and later went to the State Police Substation, adding that he was with Trooper Wood when Wood learned that Lucas had been in the southbound car.

STIPULATION RE EXHIBITS

At this point, counsel for both parties conferred and counsel for the plaintiff advised the court that the parties had agreed to admit all pictures and exhibits used in a former trial relative to this accident.

page 13] PUCKETT (cross-examination)

Mr. Puckett testified that it took him a half an hour to drive from the plaintiff's plant in Verona to the Do-Nut Diner in Waynesboro.

Puckett testified that he had one quarter of a mile visibility when he first saw Lucas and that he followed the Lucas vehicle in his sight for the entire distance.

Puckett denied stating to Trooper Wood, on the night of the accident, that he hadn't seen the Lucas vehicle until at the point of impact.

Puckett denied saying to State Trooper Wood that he didn't know where the accident happened on the road surface.

Puckett testified that he told Trooper Wood of the veering of the Lucas vehicle when Trooper Wood saw him at his, Puckett's home, in Staunton following the accident.

Puckett reiterated that the Lucas vehicle veered into the northbound lane 3 to 4 car lengths — 50 feet or more — in front of him and admitted that formerly he had said in Albemarle County Court, that he had said that the Lucas vehicle was 15 to 20 feet away from him when it crossed into the northbound lane.

Puckett testified that he did not know where his eyes were focused when the Lucas vehicle veered over into him, adding that he could not say he saw the white line as the vehicles closed.

Puckett stated that the length of his unit was 48 feet and that he guessed that the brakes were on at the time of collision.

PUCKETT (re-direct examination)

Puckett testified that Trooper Wood asked him to take a lie detector test but that Wood never called him about it thereafter.

Witness:

KENNETH CAREY
(direct examination)

page 14] Witness Carey testified that he was 29 years old and that he had been the mechanics' supervisor for Virginia Holsum Bakeries, Inc. at the time of the accident.

Kenneth Carey

Carey testified that he got a call in regard to the accident at about 12:20 a.m. on 19 October 1963 and that he and one Curtis Smith immediately left Verona and went to the scene of the accident.

Witness Carey explained the tachograph admitted in evidence saying that it indicated that there was only one stop for 10 or 15 minutes between the time the vehicle left the plant at Verona and the time of the accident. Carey further explained that the changing of gears can cause the reading of the tachograph to jump as high as 95 miles per hour. Also Carey testified that, at the time of the collision, the unit was travelling at the rate of 41 miles per hour. Carey testified that the solid line shown on the tachograph indicated that the motor was running.

Carey testified that when he arrived at the scene of the accident he saw no flares and that he put some flares on the west side of the highway.

Carey testified that he arrived at the scene of the accident at 2:00 a.m. on 19 October 1963 and that he found the tractor trailer assembly on its right side heading north on the west side of the highway approximately 6 to 7 feet from the hard surface. He stated that the Lucas vehicle had already been removed. Carey testified that he stayed at the scene until approximately 11:30 a.m. on 19 October 1963.

Carey stated that, at the scene, he observed that tire marks were left by the tractor trailer rig but that none were left by the Lucas vehicle and that those left by the tractor trailer rig began approximately 8 to 12 inches on the east side of the centerline and veered to the west He identified the tire marks which he had described as those appearing in exhibit no. D-3 and stated that these marks led up to the rear end of the trailer adding that they were definitely the tire marks of the tractor trailer.

page 15] Carey testified that the tractor was damaged on the left front end, that the left front wheel locked and that there could not have been any control over the tractor after the wheel had locked.

Carey stated that the gross weight of the tractor trailer unit was thirty five to forty thousand pounds.

Carey testified that the tractor trailer unit belonging to plaintiff had full air brakes on all wheels and that all wheels locked instantly and automatically by the functioning of a Bendix safety system installed in the vehicle, whenever damage was done to any part of the system.

Carey testified that the left front wheel of the tractor was approximately one to two inches from the outside of the left front fender of the tractor before the accident.

Carey testified that at the scene of the accident the traffic was such that he could not see any debris in the road when daylight came.

Carey identified the gouge marks in the hard surface of the highway and the bumper tip on the shoulder as shown on exhibit no. D-4.

CAREY
(cross examination)

Mr. Carey testified that the point of impact was 12 to 18 inches from the left hand side of the front of the tractor toward the center of the tractor.

Carey stated that he could testify that something hit the left front wheel of the tractor and knocked it back and that at the time of impact all wheels on the entire tractor trailer assembly locked.

Carey testified that the left front wheel was knocked loose from the steering at the time of impact.

Witness:

CURTIS SMITH
(direct)

Curtis Smith testified that he was 42 years old, lived in Verona, Virginia and that he was the sales manager for Virginia Holsum Bakeries, Inc.

page 16] Smith testified that he found the tractor trailer unit when he and Carey arrived at the accident scene in Albemarle County and that they put out flares and transferred the merchandise from the wrecked vehicle to

another vehicle and sent it on to Fredericksburg.

Smith testified that he saw the tire marks from the tractor trailer unit and that they began 6 or 7 inches east of the centerline of U. S. Route 29 and led off to the northwest at a 45 degree angle up to the back of the trailer lying in the field.

Smith testified that a headlight rim and a license plate which he believed to belong to the Lucas vehicle was lying on the east shoulder of U. S. Route 29 near the scene of the accident.

Witness:

DR. WILLIAM ZUK
(direct examination)

Dr. Zuk testified that he resided at 2622 Jefferson Park Circle, Charlottesville, Virginia and that he was a professor in architecture. He stated that before becoming a professor in the School of Architecture at the University of Virginia he was a professor in the School of Engineering at the University of Virginia. He stated that he obtained his Bachelor of Science degree from Cornell and thereafter obtained a PHD in Engineering. Professor Zuk testified that his specialty was structural engineering including the study of the stress and strain of metals and that this had been his major interest for the past 20 years.

Professor Zuk testified that he visited the scene of the accident and that he had seen the Lucas vehicle twice at Cosner's Body Shop in the City of Charlottesville. He stated that the Lucas vehicle was 6 feet 8 inches in width.

Professor Zuk testified that he did not see the tractor trailer unit but that he was familiar with the photographs of it which were in evidence.

page 17] Professor Zuk testified that when the left front wheel of plaintiff's tractor locked the vehicle would tend to swerve and that plaintiff's tractor trailer unit was caused by centrifugal force to fall on its right side as it came to rest after the accident.

Professor Zuk testified that there was a strong likelihood

Trooper T. E. Wood

that the gouge marks shown in exhibit D-4 were made by the Chevrolet vehicle belonging to Lucas. Professor Zuk stated that, in his opinion when the left front portion of the plaintiff's tractor trailer met the left front portion of the Lucas Chevrolet vehicle the Lucas Chevrolet was caused to ride up on the left front fender of the tractor trailer unit turning over on its right side in the highway and thence onto its top. Professor Zuk stated that the gouge marks which he felt may have been made by the Lucas vehicle were five feet three inches west of the centerline of the highway.

DR. ZUK
(cross examination)

Professor Zuk testified that certain projections on the Lucas vehicle could have made the gouge marks and that one gouge mark was five feet five inches west of the centerline and that the next one was 6 feet 3 inches west of the centerline.

Professor Zuk stated that any debris found in the highway after the collision would have come from the Lucas vehicle as it was much lighter than the truck. He stated that he did not know where the glass from the broken windshield of the tractor would have been located.

Professor Zuk testified that he did not visit the scene of the accident until approximately one year after its occurrence, and that when he visited the scene he could not tell from the physical evidence present where the Lucas and the Holsum Bakery vehicles had come to rest nor could he state that the gouge marks about which he had previously testified were, with certainty, related to the accident in question.

page 18] At this point the plaintiff rested its case.

First witness for defense:

TROOPER T. E. WOOD
(direct examination)

Trooper Wood stated that he was a Virginia State Trooper and that he was the investigating officer in the Lucas-Holsum Bakeries vehicular collision.

Trooper T. E. Wood

Trooper Wood stated that the accident occurred on 18 October 1963 at approximately 11:30 p.m. He stated that the accident took place on U. S. Route 29 approximately 1300 feet from its intersection with State Route 621 which is Burnley Road. He added that this location was in Albemarle County, Virginia.

Trooper Wood stated that the tractor trailer truck involved was operated by Marvin D. Puckett of Staunton, an employee of Virginia Holsum Bakeries of Roanoke and that the tractor trailer was at the time of the accident going north on U. S. Route 29. He testified that the other vehicle was operated by Marvin Charles Lucas of Hyattsville, Maryland and that he was operating a 1961 Chevrolet going south on 29.

Trooper Wood testified that when he arrived at the scene of the accident at approximately 11:45 p.m. on 18 October 1963, he found a large quantity of debris including glass and dirt from the underside of the vehicles involved lying in the center of the southbound lane of U. S. Route 29 which was a 2 lane road at the point in question.

Trooper Wood testified that he found no debris east of the center point of the Southbound lane of U. S. Route 29 and that he found a great deal of debris west of the center point of the southbound lane of U. S. Route 29 at the point of collision.

Trooper Wood testified that at the scene of the accident he found the tractor trailer unit belonging to plaintiff on the west side of the highway just off the pavement headed north and lying on its right side approximately 27 yards from where the skid marks of the tractor trailer unit started and that these skid marks began at approximately the center line of U. S. Route 29 and extended approximately 30 feet to the edge of the pavement and thereafter continued a total length of 27 yards to the rear of the trailer.

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Trooper Wood testified that the Lucas vehicle came to rest lying on its top and headed in a southerly direction on the west shoulder of U. S. Route 29 and that it was approximately 36 yards south of the rear of the Holsum tractor-trailer unit.

Trooper T. E. Wood

Trooper Wood testified that the Lucas vehicle was damaged on the left front and that since the vehicle had burned after the collision it was a total loss.

Trooper Wood testified that visibility to the north from the point of the collision was approximately 1600 feet and that visibility to the south from the point of the collision was approximately three to four hundred feet. Trooper Wood added that there was a solid center line governing traffic southbound and that there was a broken centerline indicating passing was permissible for northbound traffic and that this stretch of road was straight and level.

Trooper Wood testified that in the course of his investigation he talked to Puckett, the driver of the Holsum Bakeries truck, several times, the first time being at the University Hospital right after Puckett was admitted and released. Trooper Wood testified that Puckett told him on that occasion that he, Puckett, didn't remember what happened.

Wood testified that several days later he, Wood, talked to Puckett at Puckett's home in Staunton, and that at that time he asked Puckett if he had been sleepy and had gone to sleep and Puckett answered that he wasn't sleepy any more than normal. Trooper Wood stated that during this latter conversation with Puckett in Staunton, Puckett still stated that he didn't know what happened and allowed that he, Puckett, could have been over in the southbound lane but that he didn't know for sure. Trooper Wood stated further that Puckett had told him during this Staunton visit that he didn't see the Lucas vehicle coming and that when the accident happened it happened so quickly that he did not know what happened and that he, Puckett, never saw the car until the collision.

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Trooper Wood testified that his investigation revealed that a Clyde Tedder from Lynchburg, Virginia was a passenger in the Lucas car and that Tedder was admitted to the University of Virginia Hospital after the accident and examined briefly.

Trooper Wood added that Mr. Lucas, the driver of the Chevrolet automobile, died as a result of the accident.

Trooper Wood stated that, at the time he went to the scene of the accident he was not aware that Lucas was in

the Chevrolet vehicle which was on fire when he arrived and that he was not aware of his presence until after the Lucas vehicle had been towed away and the man at Cosner Brother's Body Shop called the police and advised that there was a body in the Lucas vehicle.

TROOPER WOOD
(cross-examination)

Trooper Wood stated that he could not state with certainty what the weights of the vehicles involved were, and that the Lucas vehicle had three carburetors, which could nor could not have come with the vehicle when originally purchased.

Trooper Wood admitted that when he testified in a former hearing involving Puckett, the driver of the Holsum truck, in the County Court of Albemarle on 20 December 1963, that he had stated that the Holsum Bakery tractor trailer unit was found lying on its left side. Trooper Wood admitted that, in fact, he had been in error and that the tractor trailer unit was lying on its right side.

page 21] Trooper Wood testified that he had arranged for Puckett to take a lie detector test at State Police Headquarters at Appomattox, Virginia and that he so notified Puckett's employer on two occasions but that he did not notify Puckett directly.

Trooper Wood testified that he did not observe that the left front spring and spring hangers of the tractor were broken but that he did notice that the left front wheel was showing considerable damage.

Trooper Wood stated that he was not aware that a license *place* and headlight rim were found on the east shoulder of the road at the scene.

Witness:

CLYDE JUNIOR TEDDER
(direct examination)

Clyde Tedder testified that he was years old and lived at 2356 Aragon Street in Lynchburg, Virginia.

Mr. Tedder stated that he was a passenger in the Lucas vehicle at the time of the accident and that Lucas had picked him up where he was hitchhiking in the Fairfax, Virginia area. Mr. Tedder stated that he was trying to get to his home in Lynchburg, Virginia and that Lucas told him that he was going to visit his, Lucas's, parents in southern Virginia.

Mr. Tedder stated that he noticed nothing unusual about Lucas' driving during the course of the trip from the Fairfax area to the scene of the accident except that Lucas made a stop approximately a half an hour before the accident at a truck stop on U. S. Route 29 where Lucas had a tire changed on his vehicle and the two of them had coffee.

Tedder testified that immediately prior to the accident he was sitting in the front seat of the Lucas vehicle looking at and attempting to get something on the radio.

Tedder stated that immediately prior to the accident he noticed nothing unusual about Lucas' driving and that he did not notice or feel any sudden swerving or lurching of the Lucas vehicle.

page 22] Mr. Tedder testified that Lucas was travelling at a normal rate of speed which he believed was about 55 miles per hour.

TEDDER
(cross examination)

Mr. Tedder stated that he did not remember whether or not he had told either of the state troopers, at the scene of the accident, that he was the only person in the 1961 Chevrolet automobile at the time of the accident.

Witness:

W. L. BOWMAN
(direct examination)

Trooper Bowman testified that he arrived at the scene of the accident a few moments before Trooper Wood arrived and that his first act was to attempt to give aid to the accident victims. He stated that he spoke briefly with Puckett but

only in regard to his physical condition and that thereafter he spoke to Clyde Tedder, later determined to be a passenger in the Lucas vehicle, and that although he could not recall specifically what Tedder said to him, he, Bowman, drew the inference that Tedder had been driving the Lucas vehicle and had been its sole occupant.

Trooper Bowman testified that as soon as Trooper Wood arrived he, Bowman, undertook to direct traffic which was piling up at the scene of the accident. Trooper Bowman testified that as he approached the scene prior to his arrival, he could see that the entire sky was lit up and when he arrived he saw that the Lucas vehicle was burning very brightly and that one could not get within 50 feet of the fire because of the intense heat.

TROOPER BOWMAN
(cross examination)

Trooper Bowman stated that he had not taken note of the location of the debris left on the highway as a result of the accident and that he could not testify as to its location.

Trooper Bowman also testified that he was incapable of describing the location and nature of the skid marks left by the Holsum Bakery truck but did say that no skid marks were left by the Lucas vehicle.

This concludes the Incidents of Trial and Testimony of Witnesses.

Tendered to me this 20th day of October, 1965. Objection stated by counsel for plaintiff & correction ordered.

By LYTTELTON WADDELL

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INCIDENTS OF TRIAL
AND
TESTIMONY OF WITNESSES
(After being corrected)

STIPULATION AS TO DAMAGES

The parties agreed and stipulated that the property damage suffered by plaintiff amounted to $5,982.31.

First Witness:

MARVIN D. PUCKETT, JR.
(direct examination)

Marvin D. Puckett, Jr. testified that he resided at 2612 Hanover Street, Staunton, Virginia, that he was 25 years old and that he had been driving for Virginia Holsum Bakeries, Inc. for 3 years before the accident in question.

Puckett testified that on the night in question, 18 October 1963, he left the plaintiff's plant in Verona, Virginia, at 9:50 p.m., drove to the Do-Nut Diner in Waynesboro, Virginia, and there had coffee with a couple of boys. He then left Waynesboro and drove east to Charlottesville, Virginia on U. S. Route 250 and thence north on U. S. Route 29 to the scene of the accident. He stated that he was enroute to Fredericksburg, Virginia with a load of bread.

Filed this 21 day of Oct. 1965
EVA W. MAUPIN, Clerk

page 24] Puckett stated that he had had 8 hours sleep before leaving the plant in Verona, Virginia and that his vehicle was operating properly.

Puckett testified that the accident happened at about 11:30 p.m., that the weather was clear and dry and that he, Puckett, at the time of the accident, was driving in a northerly direction on U. S. Route 29 at about 41 miles per hour in the northbound lane.

Puckett testified that he saw a car coming south and that everything was normal but that when the car approaching him, later determined to be the Lucas vehicle, came to within 3 or 4 car lengths of the Holsum truck the Lucas vehicle, heading south in the southbound lane, suddenly veered sharply over into the northbound lane. Puckett testified that his unit was in line at the time of the collision and that he

did not have time to apply brakes and that he had no control over his vehicle after the collision.

Puckett testified that the Lucas vehicle struck the left front frame horn of the tractor and locked the left front wheel back against the saddle tank thereby causing him to lose control. Puckett stated that after the collision his tractor trailer truck went across the southbound lane, down an embankment and turned over on its right side.

Puckett testified that the tractor had 2 headlights, 2 tail lights, and 5 marker lights on the top front of the cab. He further stated that the trailer had 2 clearance lights on the front corners, 2 lights on each side of the front corners, 2 lights at the middle of the side of the trailer, 2 lights on the rear of the trailer, 5 lights across the top of the rear of the trailer, 2 tail lights and stop, signal and license lights and reflectors.

page 25] Puckett testified that the Lucas vehicle slid down the southbound lane and shoulder and came to rest on its top on the west side of the road. He testified that the Lucas car threw Mr. Tedder out and then burned. He added that he did not know at that time that Lucas was in the car.

Puckett testified that he received a small cut on the back of his head for which he went to the University of Virginia Hospital and was, shortly thereafter, released. Puckett testified that he left the hospital with State Trooper Wood and later went to the Holsum Bakery substation in Charlottesville adding that he was with Trooper Wood when Wood learned that Lucas had been in the southbound car.

STIPULATION RE EXHIBITS

At this point, counsel for both parties conferred and counsel for the plaintiff advised the court that the parties had agreed to admit all pictures and exhibits used in a former trial relative to this accident.

PUCKETT
(cross examination)

Mr. Puckett testified that it took him a half an hour to drive from the plaintiff's plant in Verona to the Do-Nut

Diner in Waynesboro.

Puckett testified that he had one quarter of a mile visibility when he first saw Lucas and that he followed the Lucas vehicle in his sight for the entire distance.

Puckett denied stating to Trooper Wood, on the night of the accident, that he hadn't seen the Lucas vehicle until at the point of impact.

Puckett denied saying to State Trooper Wood that he didn't know where the accident happened on the road surface.

page 26] Puckett testified that he told Trooper Wood of the veering of the Lucas vehicle when Trooper Wood saw him at his, Puckett's home, in Staunton, following the accident.

Puckett reiterated that the Lucas vehicle veered into the northbound lane 3 to 4 car lengths — 50 feet or more — in front of him and admitted that formerly he had said in Albemarle County Court, that he had said that the Lucas vehicle was 15 to 20 feet away from him when it crossed into the northbound lane.

Puckett testified that he did not know where his eyes were focused when the Lucas vehicle veered over into him but that prior to the accident he knew he was on his side of the road and could see the white line but that he could not say that he saw the white line as the vehicles closed.

Puckett stated that the length of his unit was 48 feet and that he guessed that the brakes were on at the time of collision.

PUCKETT
(re-direct examination)

Puckett testified that Trooper Wood asked him to take a lie detector test but that Wood never called him about it thereafter.

Witness:

KENNETH CAREY
(direct examination)

Witness Carey testified that he was 29 years old and that he had been the mechanics' supervisor, maintenance, heavy

Kenneth Carey

equipment and shop foreman for Virginia Holsum Bakeries at the time of the accident and for several years prior thereto.

Carey testified that he got a call in regard to the accident at about 12:20 a.m. on 19 October 1963 and that he and one Curtis Smith immediately left Verona and went to the scene of the accident.

page 27] Witness Carey explained the tachograph admitted in evidence saying that it indicated that there was only one stop for 10 or 15 minutes between the time the vehicle left the plant at Verona and the time of the accident. Carey further explained that the changing of gears can cause the reading of the tachograph to jump as high as 95 miles per hour. Also Carey testified that, at the time of the collision, the unit was travelling at the rate of 41 miles per hour. Carey testified that the solid line shown on the tachograph indicated that the motor was running.

Carey testified that when he arrived at the scene of the accident he saw no flares and that he put some flares on the west side of the highway.

Carey testified that he arrived at the scene of the accident at 2:00 a.m. on 19 October 1963 and that he found the tractor trailer assembly on its right side heading north on the west side of the highway approximately 6 to 7 feet from the hard surface. He stated that the Lucas vehicle had already been removed. Carey testified that he stayed at the scene until approximately 11:30 a.m. on 19 October 1963.

Carey testified that his companion, Mr. Smith, found a license plate and a headlight rim belonging to the Holsum vehicle on the east shoulder of the road near the scene of the accident.

Carey stated that, at the scene, he observed that tire marks were left by the tractor trailer rig but that none were left by the Lucas vehicle and that those left by the tractor trailer rig began approximately 8 to 12 inches on the east side of the centerline and veered to the west. He identified the tire marks which he had described as those appearing in exhibit no. D-3 and stated that these marks led up to the

page 28] rear end of the trailer, adding that they were definitely the tire marks of the tractor trailer.

Kenneth Carey

Carey testified that the tractor was damaged on the left front end, that the left front wheel locked and that there could not have been any control over the tractor after the wheel had locked and that the locking of the left front wheel would have caused the unit to veer to its left. Carey also stated that the left front wheel was knocked back into the saddle tank and that the left front frame horn, spring and spring hanger were damaged. Carey stated that the cab was demolished and that the frame and tie rod were twisted and bent.

Carey stated that the gross weight of the tractor trailer unit was thirty five to forty thousand pounds.

Carey testified that the tractor trailer unit belonging to plaintiff had full air brakes on all wheels and that all wheels locked instantly and automatically by the functioning of a Bendix safety system installed in the vehicle, whenever damage was done to any part of the system.

Carey testified that the left front wheel of the tractor was approximately one to two inches from the outside of the left front fender of the tractor before the accident.

Carey testified that at the scene of the accident the traffic was such that he could not see any debris in the road when daylight came.

Carey identified the gouge marks in the hard surface of the highway and the bumper tip on the shoulder as shown on exhibit no. D-4.

page 29] CAREY
(cross examination)

Mr. Carey testified that the point of impact was 12 to 18 inches from the left hand side of the front of the tractor toward the center of the tractor.

Carey also testified that the impact on the Lucas Chevrolet automobile was at its left front headlight.

Carey stated that he could testify that something hit the left front wheel of the tractor and knocked it back and that at the time of impact all wheels on the entire tractor trailer assembly locked.

Carey testified that the left front wheel was knocked loose

from the steering at the time of impact.

Carey stated that the tractor portion of the Holsum Bakeries unit had 2 front wheels and 4 rear wheels. He stated that the trailer had 4 front wheels and 4 rear wheels, making a total of 14 wheels altogether on the tractor trailer unit.

Witness:

CURTIS SMITH
(direct examination)

Curtis Smith testified that he was 42 years old, lived in Verona, Virginia and that he was the sales manager for Virginia Holsum Bakeries, Inc.

Smith testified that he found the tractor trailer unit when he and Carey arrived at the accident scene in Albemarle County and that they put out flares and transferred the merchandise from the wrecked vehicle to another vehicle and sent it on to Fredericksburg.

page 30] Smith testified that he saw the tire marks from the tractor trailer unit and that they began 6 to 7 inches east of the centerline of U. S. Route 29 and led off to the northwest at a 45 degree angle up to the back of the trailer lying in the field.

Smith testified that a headlight rim and a license plate which belonged to the Holsum vehicle was lying on the east shoulder of U. S. Route 29 near the scene of the accident.

Witness:

DR. WILLIAM ZUK
(direct examination)

Dr. Zuk testified that he resided at 2622 Jefferson Park Circle, Charlottesville, Virginia, and that he was a professor in architecture. He stated that before becoming a professor in the School of Architecture at the University of Virginia he was a professor in the School of Engineering at the University of Virginia. He stated that he obtained his Bachelor of Science degree from Cornell and thereafter obtained at

Dr. William Zuk

that institution a PHD in Engineering. Professor Zuk testified that his specialty was structural engineering including the study of the stress and strain of materials and that this had been his major interest for the past 20 years. Professor Zuk added that he was a professor of civil engineering and that he had taken a course in dynamics, studied motions and skidding, and had had crash experience. He added that he was a consultant to the Virginia Department of Highways Division of Research and that he had published 40 papers on structural mechanics.

Professor Zuk testified that he visited the scene of the accident and that he had seen the Lucas vehicle
page 31] twice at Cosner's Body Shop in the City of Charlottesville. He stated that the Lucas vehicle was 6 feet 8 inches in width.

Professor Zuk testified that he did not see the tractor trailer unit but that he was familiar with the photographs of it which were in evidence.

Professor Zuk testified that when the left front wheel of plaintiff's tractor locked the vehicle would tend to swerve and that plaintiff's tractor trailer unit was caused by centrifugal force to fall on its right side as it came to rest after the accident.

Professor Zuk testified that there was a strong likelihood that the gouge marks shown in exhibit D-4 were made by the Chevrolet vehicle belonging to Lucas and that he had noted pieces of metal on the Lucas vehicle which were rusted and had traces of asphalt on them which he felt probably made the gouge marks.

Professor Zuk stated that, in his opinion, when the left front portion of the plaintiff's tractor trailer met the left front portion of the Lucas Chevrolet vehicle the Lucas Chevrolet was caused to ride up on the left front fender of the tractor trailer unit turning over on its right side in the highway and thence onto its top. Professor Zuk stated that the gouge marks which he felt may have been made by the Lucas vehicle were five feet three inches west of the centerline of the highway.

Trooper T. E. Wood

DR. ZUK
(cross examination)

Professor Zuk testified that certain projections on the Lucas vehicle could have made the gouge marks and that one gouge mark was five feet five inches west of the
page 32] centerline and that the next one was 6 feet 3 inches west of the centerline.

Professor Zuk stated that any debris found in the highway after the collision would have come from the Lucas vehicle as it was much lighter than the truck. He stated that he did not know where the glass from the broken windshield of the tractor would have been located.

Professor Zuk testified that he did not visit the scene of the accident until approximately one year after its occurrence, and that when he visited the scene he could not tell from the physical evidence present where the Lucas and the Holsum Bakery vehicles had come to rest nor could he state that the gouge marks about which he had previously testified were, with certainty, related to the accident in question. Dr. Zuk stated that he was paid by Holsum to investigate and testify in regard to the accident in issue.

At this point the plaintiff rested its case.

First witness for defense:

TROOPER T. E. WOOD
(direct examination)

Trooper Wood stated that he was a Virginia State Trooper and that he was the investigating officer in the Lucas-Holsum Bakeries vehicular collision.

Trooper Wood stated that the accident occurred on 18 October 1963 at appproximately 11:30 p.m. He stated, that the accident took place on U. S. Route 29 approximately 1300 feet from its intersection with State Route 621 which is Burnley Road. He added that this location was in Albemarle County, Virginia.

page 33] Trooper Wood stated that the tractor trailer truck involved was operated by Marvin D. Puckett

of Staunton, an employee of Virginia Holsum Bakeries of Roanoke and that the tractor trailer was at the time of the accident going north on U. S. Route 29. He testified that the other vehicle was operated by Marvin Charles Lucas of Hyattsville, Maryland and that he was operating a 1961 Chevrolet going south on 29.

Trooper Wood testified that when he arrived at the scene of the accident at approximately 11:45 p.m. on 18 October 1963, he found a large quantity of debris including glass and dirt from the vehicles involved lying in the center of the southbound lane of U. S. Route 29 which was a 2 lane road at the point in question.

Trooper Wood testified that he found no debris east of the center point of the southbound lane of U. S. Route 29 and that he found a great deal of debris west of the center point of the southbound lane of U. S. Route 29 at the point of the collision.

Trooper Wood testified that at the scene of the accident he found the tractor trailer unit belonging to plaintiff on the west side of the highway just off the pavement headed north and lying on its right side approximately 27 yards from where the skid marks of the tractor trailer unit started and that these skid marks began at approximately the center line of U. S. Route 29 and extended approximately 30 feet to the edge of the pavement and thereafter continued a total length of 27 yards to the rear of the trailer.

Trooper Wood testified that the Lucas vehicle came to rest lying on its top and headed in a southerly direction on the west shoulder of U. S. Route 29 and that it was approximtely 36 yards south of the rear of the Holsum tractor trailer unit.

page 34] Trooper Wood testified that the Lucas vehicle was damaged on the left front and that since the vehicle had burned after the collision it was a total loss.

Trooper Wood testified that visibility to the north from the point of the collision was approximately 1600 feet and that visibility to the south from the point of the collision was approximately three to four hundred feet. Trooper Wood added that there was a solid center line governing traffic southbound and that there was a broken centerline indicating passing was permissible for northbound traffic and that this stretch of road was straight and level.

Trooper Wood testified that in the course of his investiga-

tion he talked to Puckett, the driver of the Holsum Bakeries truck, several times, the first time being at the University Hospital right after Puckett was admitted and released. Trooper Wood testified that Puckett told him on that occasion that he, Puckett, didn't remember what happened.

Wood testified that several days later he, Wood, talked to Puckett at Puckett's home in Staunton, and that at that time he asked Puckett if he had been sleepy and had gone to sleep and Puckett answered that he wasn't sleepy any more than normal. Trooper Wood stated that during this latter conversation with Puckett in Staunton, Puckett still stated that he didn't know what happened and allowed that he, Puckett, could have been over in the southbound lane but that he didn't know for sure. Trooper Wood stated further that Puckett had told him during this Staunton visit that he didn't see the Lucas vehicle coming and that when the accident happened it happened so quickly that he did not know what happened and that he, Puckett, never saw the car until the collision.

page 35] Trooper Wood testified that his investigation revealed that a Clyde Tedder from Lynchburg, Virginia was a passenger in the Lucas car and that Tedder was admitted to the University of Virginia Hospital after the accident and examined briefly.

Trooper Wood added that Mr. Lucas, the driver of the Chevrolet automobile, died as a result of the accident.

Trooper Wood stated that, at the time he went to the scene of the accident he was not aware that Lucas was in the Chevrolet vehicle which was on fire when he arrived and that he was not aware of his presence until after the Lucas vehicle had been towed away and the man at Cosner Brother's Body Shop called the police and advised that there was a body in the Lucas vehicle.

TROOPER WOOD
(cross examination)

Trooper Wood stated that he could not state with certainty what the weights of the vehicles involved were, and that the Lucas vehicle had three carburetors, which could or could not have come with the vehicle when originally purchased.

Trooper Wood admitted that when he testified in a former hearing involving Puckett, the driver of the Holsum truck,

in the County Court of Albemarle on 20 December 1963, that he had stated that the Holsum Bakery tractor trailer unit was found lying on its left side. Trooper Wood admitted that, in fact, he had been in error and that the tractor trailer unit was lying on its right side.

Trooper Wood testified that he had arranged for Puckett to take a lie detector test at State Police Headquarters at Appomattox, Virginia and that he so notified Puckett's employer on two occasions but that he did not notify Puckett directly.

page 36] Trooper Wood testified that he did not observe that the left front spring and spring hangers of the tractor were broken but that he did notice that the left front wheel was showing considerable damage.

Trooper Wood stated that he was not aware that a license plate and headlight rim were found on the east shoulder of the road at the scene.

Witness:

CLYDE JUNIOR TEDDER
(direct examination)

Clyde Tedder testified that he was 26 years old and lived at 2356 Aragon Street in Lynchburg, Virginia.

Mr. Tedder stated that he was a passenger in the Lucas vehicle at the time of the accident and that Lucas had picked him up where he was hitchhiking in the Fairfax, Virginia area. Mr. Tedder stated that he was trying to get to his home in Lynchburg, Virginia and that Lucas told him that he was going to visit his, Lucas's, parents in southern Virginia.

Mr. Tedder stated that he noticed nothing usual about Lucas' driving during the course of the trip from the Fairfax area to the scene of the accident except that Lucas made a stop approximately a half an hour before the accident at a truck stop on U. S. Route 29 where Lucas had a tire changed on his vehicle and the two of them had coffee.

Tedder testified that immediately prior to the accident he was sitting in the front seat of the Lucas vehicle looking at and attempting to get something on the radio.

Tedder stated that immediately prior to the accident he noticed nothing unusual about Lucas' driving and that he did not notice or feel any sudden swerving or lurching of the Lucas vehicle.

Mr. Tedder testified that Lucas was travelling at a normal rate of speed which he believed was about 55 miles per hour.

page 37]

TEDDER
(cross examination)

Mr. Tedder testified that he was talking to Lucas and trying to get something on the car radio when he looked up and saw something red. He stated that the next thing he knew was when he woke up in the hospital.

Mr. Tedder stated that he did not remember whether or not he had told either of the state troopers, at the scene of the accident, that he was the only person in the 1961 Chevrolet automobile at the time of the accident.

Witness:

W. L. BOWMAN
(direct examination)

Trooper Bowman testified that he arrived at the scene of the accident a few moments before Trooper Wood arrived and that his first act was to attempt to give aid to the accident victims. He stated that he spoke briefly with Puckett but only in regard to his physical condition and that thereafter he spoke to Clyde Tedder, later determined to be a passenger in the Lucas vehicle, and that although he could not recall specifically what Tedder said to him, he Bowman, drew the inference that Tedder had been driving the Lucas vehicle and had been its sole occupant.

Trooper Bowman testified that as soon as Trooper Wood arrived he, Bowman, undertook to direct traffic which was piling up at the scene of the accident. Trooper Bowman testified that as he approached the scene prior to his arrival, he could see that the entire sky was lit up and when he arrived he saw that the Lucas vehicle was burning very brightly and that one could not get within 50 feet of the fire because of the intense heat.

Trooper Bowman testified that the Holsum tractor trailer unit was painted red.

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deceased
By Counsel

Filed this 21st day of Oct., 1965.
EVA W. MAUPIN, Clerk

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page 38] TROOPER BOWMAN
(cross examination)

Trooper Bowman stated that he had not taken note of the location of the debris left on the highway as a result of

page 41] OBJECTION TO NOTICE AND TENDERING OF STATEMENT

Filed this 21 day of Oct. 1965
EVA W. MAUPIN, Clerk

At the tendering of the statement of the incidents of trial to Judge *Lyttleton* Waddell in his chambers on October 20 at 3:00 P.M. counsel for the plaintiff objected to the time of the notice of tendering of the statement as unreasonable and that he had not been given a reasonable opportunity to examine the statement as required by Rule 5:1, Section 3(f) of the Rules of Court. The facts on which counsel based his objection are as follows:

The final order in this case was entered on August 23, 1965. On October 15 at 2:30 p.m. Robert P. Boyle of the firm of Michael and Dent counsel for defendant, personally delivered a letter to Robert E. Taylor, counsel for the plaintiff, notifying him that a transcript of the evidence and incidents of trial would be tendered to Judge *Lyttleton* Waddell on October 20 at 3:00 p.m. On Oct. 19, 1965 counsel for the plaintiff suggested to counsel for the defendant that he give him a copy of the proposed statement so that he could review it for the 2:30 conference that afternoon.

A copy of the proposed statement of the incidents of trial was delivered to the office of counsel for the plaintiff by Robert P. Boyle on October 19, 1965 at approximately 12:50 p.m. Robert E. Taylor was on his lunch hour and due to a misdirection by Mr. Boyle due to a misunderstanding he did not receive the copy until 2:15 p.m. Messrs. Boyle and Taylor met by prior agreement at 2:30 on the afternoon of October 19, the time being selected by Mr. Taylor. Mr. Boyle was informed that counsel for the plaintiff had not had an opportunity to study the proposed statement and did not think the timing and schedule was reasonable. At that time Messrs. Boyle and Taylor went over the statement and agreed on certain corrections and additions with the understanding that further corrections and additions may be made by counsel for the plaintiff.

page 42] Counsel for the plaintiff did further review the statement by rearranging his schedule and un-

der pressure of the timing. Mr. Taylor was unavailable for a Wednesday morning conference as tentatively planned.

At the hearing before Judge Waddell on October 20 the objection to the non-compliance with the above rule was stated. Judge Waddell said he wanted to hear objections to the statement and these were stated at the time without waiving objection to the non-compliance with the rule. Judge Waddell then noted that the proposed statement had been filed with him and he ordered numerous changes and additions in the statement as suggested by Mr. Taylor and to which no objection was raised by Mr. Boyle. Thereupon the changes and additions were made and the revised statements tendered to the Judge on October 21.

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Filed this 25 day of Oct. 1965
EVA W. MAUPIN, Clerk

ASSIGNMENT OF CROSS-ERROR

Virginia Holsum Bakeries, Inc. assigns as cross-error the following:

That the trial court erred in failing to sustain the motion of the Plaintiff to strike the evidence of the Defendant and enter summary judgment for the Plaintiff and in permitting the case to go to the jury because the Plaintiff had proved by a preponderance of the evidence that it was entitled to recover and the Defendant had failed to contradict or rebut the evidence and had failed to prove a defense.

VIRGINIA HOLSUM BAKERIES, INC.
By Counsel

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A Copy — Teste:

H. G. TURNER, Clerk.

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