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Record No. 6760

In the Supreme Court of Appeals of Virginia at Richmond

GRACE HARRIS SAYRE

v.

JOHN H. SHIELDS, INDIVIDUALLY, ETC.

FROM THE CIRCUIT COURT OF THE CITY OF HAMPTON

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. 6760

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 2nd day of October, 1967.

GRACE HARRIS SAYRE, Plaintiff in error,

against

JOHN H. SHIELDS, INDIVIDUALLY AND D.B.A. S & S CAB COMPANY, Defendant in error.

From the Circuit Court of the City of Hampton
Nelson T. Overton, Judge

Upon the petition of Grace Harris Sayre a writ of error is awarded her to a judgment rendered by the Circuit Court of the City of Hampton on the 3rd day of May, 1967, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and John H. Shields, individually, etc., was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $300, with condition as the law directs.

RECORD

* * * * *

page 36 } Circuit Court of the City of Hampton, Virginia on Wednesday, the third day of May, in the year of our Lord one thousand nine hundred and sixty-seven.

* * * * *

This day came the parties by their attorneys and thereupon came a jury, to-wit: John G. B. Chandler, Claude Hunter, Jr., Milton C. Aardema, Elroy Johnson, William M. Knight, Jr., and C. L. Lawson, III, who were sworn well and truly to try the issue joined and the truth of and upon the premises to speak; and having heard the evidence of the plaintiff, the defendant by counsel, in the absence of the jury, moved the Court to strike the evidence and enter up summary judgment on behalf of the defendant on the grounds that the plaintiff was guilty of contributory negligence as a matter of law, and further that there was no negligence on behalf of the defendant which was shown by a preponderance of the evidence, which motion the Court doth over-rule, and to which ruling of the Court the defendant by counsel noted his exception; and having heard the remainder of the evidence, the plaintiff by counsel, in the absence of the jury, moved the Court to strike the defense of contributory negligence offered by the defendant, as there was no evidence to support such defense, which motion the Court doth over-rule, and to which ruling of the Court the plaintiff by counsel noted his exception; and thereupon the defendant by counsel, in the absence of the jury, renewed his motion to strike the evidence on the grounds heretofore assigned, which motion the Court doth over-rule, and to which ruling of the Court the defendant by counsel noted his exception; and having received the instructions of the Court and heard arguments of counsel, the jury retired to their room to consult of a verdict and after some time returned into the Court room having found a verdict which the Court ruled was incomplete; and they were returned to the jury room to further consult of their verdict.

page 37 } Whereupon, the defendant by counsel, in the absence of the jury moved for a mistrial on the

grounds that the jury had rendered an improper verdict and the Court was in error in directing that they further consult of a verdict, which motion the Court doth over-rule, and to which ruling of the Court the defendant by counsel noted his exception; and after some time the jury returned into Court having found the following verdict, to-wit: "We, the Jury in this case, find for the Plaintiff, and fix the amount of damages $2,000.00. (Signed) J. G. B. Chandler, foreman."

Whereupon, the defendant by counsel moved the Court to set aside the verdict and enter up judgment for the defendant on the grounds orally assigned before the Court and made a part of the stenographic record of this case; and further the defendant by counsel moved that in the event the Court overruled the motion to set aside the verdict and enter up summary judgment for the defendant that the Court set aside the verdict and declare a new trial on the grounds orally assigned before the Court and made a part of the stenographic record of this case.

Thereupon, the Court having heard arguments of counsel doth grant the motion for a mistrial and directs that final judgment be entered up for the defendant.

And having heard argument of plaintiff by counsel doth note the exception of the plaintiff by counsel to the ruling of the Court.

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page 38 }

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Plaintiff, Grace Harris Sayre, hereby gives notice of her intention to appeal the judgment rendered herein by the Circuit Court for the City of Hampton, Virginia, on May 23, 1967 to the Supreme Court of Appeals of Virginia, and makes the following assignments of error:

1. That the judgment of the Circuit Court for the City of Hampton entered herein on May 23, 1967, was contrary to the law and the evidence, and was without evidence to support it.

2. That the Circuit Court for the City of Hampton, Vir-

ginia, erred in setting aside the verdict returned by the jury and entering judgment in favor of the defendant.

GRACE HARRIS SAYRE
By W. STEPHEN MOORE
Of Counsel

City of Hampton, Va. Jun 16 1967 9:54 AM.

C. M. GIBSON, Clerk

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page 3 }

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Court:

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page 4 }

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In general, it is alleged by Mrs. Sayre, on or about the 23rd of April, 1966, in the afternoon, about 5:30 p.m., she was operating a motor vehicle in the southerly direction on Victoria Boulevard and that at the same time the Defendant was operating a motor vehicle in a westerly direction on Grace Street, and that as a result of the negligent operation by the Defendant, of his vehicle, the two came into collision and Mrs. Sayre was injured and suffered losses. She's brought this suit asking for monetary compensation for her injuries and losses. The Defendant, on his side, denies that he was negligent or in any way liable for what happened.

* * * * *

page 9 } JOHN HENRY SHIELDS, called as an adverse witness by the Plaintiff, being duly sworn, testified as follows:

John Henry Shields

DIRECT EXAMINATION

By Mr. Moore:

* * * * *

page 14 }

* * * * *

Q. Now, what happened then as you were driving down Grace Street?

A. Well, I run out to Armistead Avenue and I stopped, I looked—both ways.

Q. Now, not Armistead Avenue, is it; Victoria Boulevard is that—

A. Going across Victoria Boulevard.

Q. You came down to Victoria Boulevard?

A. Yes.

Q. Is there a stop sign there?

A. No, it isn't.

Q. Did you know that at the time you drove there, there wasn't any stop sign?

A. Yes, I did.

Q. You did know that?

A. Yes.

Q. So you stopped at that intersection?

A. Yes, sir.

Q. Is that correct?

A. That's right.

Q. What kind of a street is—Grace Street? Is that narrow?

A. Well, I imagine—two or three cars can pass at the same time. I'm not sure about that.

page 15 } Q. All right. Now, was there anything to your right? Any shrubbery or anything like that blocking your view?

A. No, no.

Q. Nothing at all to block your view there?

A. No.

Q. So you stopped and did you look at that time?

A. Did I look?

Q. Yes.

A. Yes, I looked.

Q. Which direction did you look first when you were stopped?

John Henry Shields

A. Looked left.
Q. You looked left first?
A. Looked left first.

* * * * *

Q. You looked left first, was anything coming in that direction?
page 16 } A. No, nothing coming.
Q. Any cars parked there on the side?
A. No cars parked on that side.
Q. Then you looked right?
A. That's right.
Q. And were there any cars parked along there?
A. Now, if I ain't mistaken, one car was parked very near up to the light. I'm not sure about that.
Q. In other words, a good distance down—
A. Yes.
Q. Victoria. When you looked to your right, what did you see?
A. That's where the one car parked over to my right down on Victoria Boulevard.
Q. All right, sir. In other words, when you looked to your right, you did not see Miss Sayre?
A. Yes.
Q. You did see her coming?
A. Yes.
Q. And so—where was her car at that time?
A. Seemed like to me that was coming through the light. I won't be positive about that, but seemed like it was just coming through the light.
Q. All right, sir, so then at that point did you decide you could get on across in front of her?
page 17 } A. That's right.
Q. Which side of yours was she on?
A. She was on the right hand side.

* * * * *

Q. You saw the car on your right and you decided you could get across in front of her, is that right?
A. Yes.
Q. When you saw the car, it wasn't stopped for a light or anything like that. It was coming right on ahead?

A. That's right.

* * * * *

page 18 } Q. All right, sir, then you came on across?

A. No, I started across and I seen the car coming so fast, I stopped before I got to the center of the highway.

Q. When was the second time—was the car going extremely fast when you saw it the first time?

A. I imagine it running the same speed but I see better after I got up in the street there and coming down on me so fast and I stopped.

Q. All right. The first time you saw it to your right, did it seem to be going fast then?

A. No, not as fast until I got up in the street.

Q. You pulled up in the street and then you saw you couldn't make it, is that right?

A. That's right. She would have hit me.

Q. Did you slam on your brakes then?

A. I put on my brakes then.

Q. Did you skid?

A. No.

Q. Didn't put down any skid marks?

A. No.

Q. Then did you hit that car or have a collision with that car?

A. No, that car hit me. That car came across the line and hit me. Come three feet and a half across the

page 19 } line.

Q. Three feet and a half?

A. Across the line.

Q. How do you know it?

A. I measured my bumper, see how far my bumper were from the center line.

Q. All right, sir. Now, as you were stopped there, I guess this was after the accident had occurred?

A. Yes.

Q. You were—you walked around and looked at your car, did you, and how it was situated with respect to this line?

A. That's right.

Q. Did you pace off the distance between the line and the front of your car?

A. And front of my bumper, yes.

John Henry Shields

Q. Did you walk—you walked from your car did you put one foot—

A. One feet ahead.

Q. And put your foot on the line and you knew that was—

A. Yes, sir.

Q. You're sure about that?

A. I'm sure of that.

page 20 } Q. And it was three and a half feet from this white line?

A. That's right.

Q. All right, sir. Now, if we can go back just a little bit, you say that she struck you. You did not hit her? You just came to a stop?

A. That's right.

Q. All right. Now, after the impact, did she lose control of her vehicle or did her vehicle proceed on down the street?

A. I imagine, she must have lost control because she went all the way up very near a block on the left hand side of the street. She lost control, I don't know.

Q. What part of your car hit—or was in collision with her car?

A. Right hand bumper and my grille.

Q. The front of your car, in other words?

A. And my grille, yes.

Q. And did you have an opportunity to look at her car and see what part of her car was damaged?

A. I tell you the truth, I didn't see anything but the left fender and the grate down the side, the piece or molding was gone off on this side. I seen that but what else on there, I couldn't tell.

Q. When you say the left fender, you mean the left rear fender?

page 21 } A. Yes, her left rear fender.

Q. There wasn't any damage at all in front of her front door on her car, was there?

A. No—yes, damage come on right down the car to me.

Q. The chrome strip?

A. Yes, if I ain't mistaken. I won't be sure about that.

Q. Now, after this impact, did you stay in your car?

A. No.

Q. Or did you get out?

A. I got out of my car.

Q. And you stood there beside the car?

A. Yes, after—yes. Stood beside my car.

John Henry Shields

Q. Stood right beside your car and she came back, she backed up to—close to you?

A. No, she didn't back up close to me. She backed on the right hand side when she was backing up, she parked over on the right hand side.

* * * * *

Q. Well, all right. Did she then get out of her car and walk over to you?

page 22 } A. No sir.

Q. She never walked over to you and never asked you any questions?

A. No sir, she did not ask me any questions.

Q. All right, and was it at this time that you paced off the three and a half feet?

A. I done paced, paced them off before the law got there.

Q. And then when the police officer got there, did you tell him that you had paced it off and you were three feet on this side?

A. He did not tell me. He went to give me a ticket for hitting her, I asked him what you going to give me a ticket for, she done hit me. He didn't know that. He could give it to me later if the Judge or someone find out I needed one. I said, well, you always find me at 516 or 710.

Q. All right, in any event, you called this to the officer's attention, did you, that you were three feet on this side of the white line?

A. That's right.

Q. Do you remember telling the officer that you had stopped for the stop sign there at that intersection?

A. Ain't no stop sign to stop for.

Q. There wasn't any stop sign?

A. Ain't no stop sign there.

page 23 } Q. Do you remember one way or the other whether you told this officer and said, "I stopped for the stop sign"?

A. No, I couldn't told him.

Q. You wouldn't have any reason to tell him?

A. No, ain't no stop sign.

Q. Were you nervous about this accident?

A. No, I was not, because I seen her coming.

Q. I mean after it was over, weren't you a little nervous maybe, or concerned about this?

A. No.

John Henry Shields

Q. Didn't bother you?
A. No.
Q. Did you walk over to her and ask her was she hurt?
A. No, I did not.
Q. All right, sir. Then, did you get in the police car with the officer and with—Mrs. Sayre?
A. I got in the car with the policeman but she was gone when—when I got in the car with him.
Q. Were you ever in the car at the same time with Mrs. Sayre?
A. No.
Q. And the police officer?
A. No.
page 24 } Q. You are sure about that, or you just don't remember?
A. No, I do not remember getting in the car with the policeman and her because when I got in the car with the policeman, she was gone.
Q. The police officer did ask you questions?
A. That's right.
Q. And you answered these questions?
A. Yes.
Q. And when he asked you—when he got your answers, was he making notes? Writing a report down?
A. Yes.
Q. Were you in the front seat or back seat?
A. In the front seat.
Q. You were in the front seat with him?
A. Yes.

* * * * *

CROSS EXAMINATION

By Mr. Garner:
Q. Mr. Shields, when the intersection that you are talking about which you stopped at, is the intersection
page 25 } of Grace Street and Victoria Boulevard, is that correct?
A. That's right.
Q. And you were on Grace Street?
A. Yes.

* * * * *

John Henry Shields

Q. What I asked you, would you tell the jury where the front of your car was when you stopped at that intersection?

A. Where the front of my car when I come out Grace Street into Victoria Boulevard?

Q. When you came out—when you stopped, where was the front of your car? You said you stopped before you entered Victoria Boulevard?

page 26 } A. Yes, at the sidewalk, to the sidewalk gone down there, my bumper out from there.

Q. Where was your front bumper with relation to the curb line on Victoria Boulevard?

A. On Victoria Boulevard, that's right, the curb line on Victoria Boulevard, that's where my car was when I stopped and looked both ways.

Q. Where was the front bumper? That's what I am talking about, with relation to the curb line of Victoria Boulevard?

A. Down by the side of Victoria Boulevard. Out on Victoria Boulevard for to go across. I stopped there.

Q. With your front end beside the curb line on Victoria Boulevard?

A. That's right.

Q. What did you do after you stopped?

A. After I seen no cars coming to my left, this one so far away from me, I started across.

Q. Where was she?

A. On Grace. I was on Grace Street.

Q. Where was she when you first saw her?

A. Seemed like she was by the light there. I couldn't say there for sure. Seemed like she was coming through the light.

* * * * *

page 27 }

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Q. How far is the light from where you are?

A. Oh, that's a block from Grace Street; the light—a block from Grace Street. How many feet it is, I don't know.

Q. Then you said you pulled out into Victoria Boulevard, is that correct?

A. That's right.

Q. All right. Then what did you do?

A. Well, after I seen she was coming down so fast, I stopped in Victoria Boulevard.

Officer J. E. Jordan

Q. Where was she when you saw her the second time? How far from the intersection?

A. She weren't no—I reckon she about three cars length, I imagine. I couldn't tell you for sure.

Q. And where were you at that time?

A. I was up in the street then; up in Victoria Boulevard going to go across.

Q. She still hadn't entered the intersection, is that correct?

page 28 } A. That's right. She hadn't got to the intersection when I stopped. I standing perfect still when she hit me.

* * * * *

OFFICER J. E. JORDAN, called as a witness by the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Moore:

* * * * *

page 29 }

Q. On April the 23rd of 1966, did you have occasion to investigate an accident between Mrs. Grace Sayre and Mr. John Shield?

A. Yes sir, I did.

Q. Would you tell the jury and the Court what your investigation of that accident revealed?

A. Yes sir. I arrived at the scene of this accident approximately 5:36 p.m. This accident occurred on Victoria Boulevard at its intersection with Grace Street. Particular point it happened, the alignment was straight and level; it was dry at the time; no defects; traffic lanes are marked on Victoria Boulevard.

There is a single safety line going down the middle. Residential district; daylight at the time of the accident; clear day; surface black topped.

I found two vehicle to be involved. Vehicle number one was a 1964 Chevrolet four door sedan. This vehicle driven by Mrs. Grace H. Sayre. I found the damage to this vehicle to be the—the left front and rear door, complete rear fender.

Officer J. E. Jordan

Q. Let me stop you there, if I may. Was there any damage to her car in front of the front door? The
page 30 } front door on the left hand side?

A. I could—find none.

Q. All right, sir.

A. The vehicle number two is a 1960 Ford, four door sedan. This vehicle was owned and operated by Mr. John H. Shields. Damage to this vehicle was the right front section, all of the hood and paint on the complete bumper.

Q. Was this on the complete bumper? Is that my understanding, all the way across?

A. Yes sir, all the way across the bumper.

Q. And the front section was damaged all the way across the front?

A. Yes sir, all the hood and—

Q. You say there is a traffic line or a traffic mark—marking down Victoria Boulevard?

A. Yes sir, a single.

* * * * *

page 31 }

* * * * *

Q. All right, sir, is this the center line that you have drawn down Victoria Boulevard? Is that a true representation of it? Does the center line continue all the way down, or is there, in fact, a break at this point?

A. No sir, there is a single white safety line dividing the north and southbound lane which is broken, the width of Grace Street, at Grace Street.

* * * * *

page 32 }

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Q. If you don't know, say you don't know. Was the cab stopped, left in the same position it was in at the time you arrived?

A. Yes sir. When I arrived the car was—on
page 33 } Grace Street — on Victoria Boulevard, sitting across it.

Mr. Moore: All right.

Mr. Millner: Does the Officer know whether this is where it was when the accident occurred?

A. From the statements given at the scene of the accident, and from—physical evidence.

Court: All right, I'll allow him to testify where he found it when he got there.

Mr. Millner: All right.

Court: You can go into the question whether it was moved after that.

By Mr. Moore:

* * * * *

Q. Did you, at the time, measure any distances, for example, from this white line to the cab or from the front of the cab back to this line?

A. No sir, I did not.

Q. When you were making your diagram, did you ascertain this point as correctly as you could from measure-
page 34 } ments and observation?

A. I—approximately, yes sir.

* * * * *

Q. Now, sir, I ask you with regard to Grace Street on this side, is there any shrubbery along this side of Grace Street? Is there anything which would obstruct an automobile's view that was back in this area?

A. Yes sir, there is a—approximately a two and a half foot strip between the curb line and the sidewalk and back this side of the sidewalk there is shrubbery leading up to the sidewalk.

Q. And does the shrubbery continue on back in this direction, on back up Grace Street?

Mr. Millner: If it please the Court, the Plaintiff's counsel is leading this witness.

Court: I'll have to agree with you, Mr. Millner.

By Mr. Moore:

Q. Is this where the shrubbery is, as you recall it?

A. Yes sir.

Q. Is there any shrubbery between the sidewalk

page 35 } and this is the sidewalk that you have drawn here?
A. Yes sir.
Q. And Victoria Boulevard?
A. No sir, not in the strip here.
Q. All right, sir. Have you ever measured the distance from this sidewalk out to the center line?
A. Yes sir.
Q. And what is the distance there?
A. Approximately 36 feet.

* * * * *

Q. Have you ever measured the width of Victoria Boulevard?
A. Yes sir.
Q. What is the width?
A. Approximately 50 feet.

* * * * *

Q. Have you ever measured the width of Grace Street?
A. Yes sir.
page 36 } Q. What is the width of Grace Street?
A. Approximately 24 feet.

* * * * *

Q. Now, does this represent the shrubbery you have drawn?
A. Yes sir.
Q. And is this right adjacent to the shrubbery, the sidewalk which runs along that side of it?
A. Yes sir.

* * * * *

Q. Officer, do you recall at the time whether there were any automobiles parked along Victoria Boulevard in this area?
A. It would be purely recollection on my part.
Q. You're not sure, in other words?
A. No sir.
Q. All right, sir. Now, after you arrived on the
page 37 } scene, did you have occasion to question Mrs. Sayre and the Defendant, Mr. Shields?
A. Yes sir, I did.

Officer J. E. Jordan

* * * * *

Mr. Moore: I'd like to introduce this at this time, Plaintiff's Exhibit.

Court: All right, the diagram prepared by Officer Jordan has been offered in evidence. Is there any objection of this on the part of the Defendant?

Mr. Garner: No objection.

Court: Then I will mark it Plaintiff's Exhibit Number one.

(The diagram was received and marked Plaintiff's Exhibit Number One.)

* * * * *

Q. Do you recall, were both parties in the car at the same time or how did the parties get into the car?

page 38 } A. After having moved their cars out of the roadway, I asked for the drivers to have a seat in my car, the police vehicle.

Q. Did both parties then sit in the car at the same time?

A. Yes sir.

Q. Who did you question first?

A. Mrs. Sayre.

Q. Did she give you a statement?

A. Yes sir.

Q. What did she say?

A. She stated all she knew she was going down the Boulevard when she was struck in the side and temporarily lost control of her car.

Q. All right, sir. Did you receive a statement from the Defendant, Mr. Shields?

A. Yes sir.

Q. What did he say?

A. Mr. Shields stated he stopped for the stop sign, started across Victoria Boulevard after looking both ways. When approximately midway, he saw vehicle number one coming; could not get out of the way.

Q. Now, with regard to the stop sign, is there a stop sign at the intersection of Grace Street and Victoria Boulevard?

page 39 } A. No sir.

Q. Did you write this man's statement down at the time he gave it to you?

Officer J. E. Jordan

A. Yes sir.

* * * * *

Q. What is the speed limit along Victoria Boulevard at this point?
A. 35 miles an hour zone.
Q. And is this intersection in the City of Hampton, Virginia?
A. Yes sir.

* * * * *

CROSS EXAMINATION

page 40 } By Mr. Garner:
Q. Let's see, Officer, you drew this car in. Was that where the Sayre car was when you arrived (indicating)?
Q. It was somewhere down the street.
Q. Well, this is not drawn to scale, is it?
A. No sir.
Q. Approximately how far down the street was the Sayre car when you got there?
A. I would approximate one hundred feet.
Q. About one hundred feet?
A. Yes sir.
Q. Down the street from the intersection?
A. Yes sir.
Q. Now, do you know whether or not Mrs. Sayre had moved her car prior to your arrival?
A. No sir.
Q. You don't know that?
A. No sir.
Q. Was her car out in the middle of the street like this when you got there? Do you recall where it was with reference to the center line or whether it was over next to the curb or next to the center line?
A. No sir.
Q. You do not?
page 41 } A. No.
Q. You cannot be sure that this is the position that her car was in when you got there?
A. No sir.

* * * * *

Officer J. E. Jordan

Court: Then the jury would take the position of the Sayre car on that diagram as being only an approximation as to how far from the intersection the car was. No information is to be developed from this as to whether it was in the middle of the street, right side, or left side, if I understand what's been testified.

* * * * *

Court: I think the jury understands but if you give it to me, I'll make a notation by the vehicle which
page 42 } apparently is supposed to be the Sayre car. I'm going to write on here "Not exact position".

* * * * *

By Mr. Garner:

Q. Now, would you mark on this diagram the approximate one hundred feet that you said that the Sayre car was from the intersection so the jury would have the benefit of this also? I wonder—could you draw it so it would go back to the intersection? Put the arrow on there like you did the other measurements.

(The witness complied with the request of counsel.)

By Mr. Garner:

Q. All right, sir. As I understand you don't know whether she moved the car or not; needless to say, you don't know where her car stopped after the impact or which lane it was in, is that not correct?

A. Yes sir.

Q. The only thing you're saying, is that it was approximately in this position, whether it was next to the center line or curb when you got there?

page 43 } A. Yes.

Q. Now, Officer, do you know how far it is from the intersection of Victoria Boulevard and Grace Street back to Armistead Avenue?

A. Yes sir, it's approximately 432 feet.

Q. I wonder if you would mark this on the diagram, please?

(The witness complied with the request of counsel.)

Officer J. E. Jordan

By Mr. Garner:

Q. And then, sir, do you know how far it is from the intersection of Grace Street and Victoria Boulevard to Wriothsley Avenue, which is down in the direction of the Hampton Yacht Club?

A. Yes sir, that's approximately 386 feet.

Q. I wonder if you be kind enough to draw that in, please?

(The witness complied with the request of counsel.)

By Mr. Garner:

Q. Now, you have indicated on the diagram that Victoria Boulevard is 50 feet wide, is that correct, sir?

A. Yes sir.

page 44 } Q. So that would mean that from—from the curb line of Victoria Boulevard to the center of the street, this center line would be 25 feet, is that correct, sir?

A. Yes sir.

* * * * *

page 45 }

* * * * *

Q. You marked this to show it's 25 feet from this curb line of Victoria Boulevard to the center of the street?

A. Right, sir.

page 46 } Q. Now, Officer, did you find any skid marks at all at the scene?

A. No sir.

Q. Did you find any debris at all?

A. Not that I recall, sir.

Q. And you didn't see this accident happen? You came up sometime after it had happened?

A. Yes sir.

Q. And there's no way that you can tell from your investigation as to where the point of impact occurred. Is that not true?

A. Not exactly, no sir.

Q. So you don't know whether the impact was in this lane over here or whether it occurred in this lane (indicating), is that not correct?

A. Yes sir.

Officer J. E. Jordan

Q. From what you know, you just couldn't tell where the impact occurred, is that correct, from the physical evidence that you found at the scene?
A. Yes sir.
Q. That is correct?
A. Yes sir.
Q. You could not tell?
A. Yes sir.
Q. All right, sir. Now, I believe you said there are no stop signs at this intersection?
page 47 } A. Right, sir.
Q. And you said that Mr. Shields told you that he stopped and that he looked, is that correct?
A. He stopped for a stop sign.
Q. Yes sir but he said he stopped?
A. Yes sir.
Q. Right. Do you have your field notes there with you, Officer?
A. Yes sir.
Q. I wonder if I could see them for a minute?

(At this time the notes were handed to Mr. Garner by the witness.)

By Mr. Garner:
Q. I ask you to look at your field notes and tell me whether or not—this is the diagram that you drew. Did you draw this?
A. Yes sir.
Q. How long after the accident was it when you drew it?
A. Probably in the neighborhood of 30, 35 minutes after talking to the drivers.
Q. So this diagram is apt to be more correct than the diagram you drew in Court, if there are any dis-
page 48 } crepancies. Is that not correct?
A. Well this is an approximation.
Q. The point I'm getting at, on this diagram here, you can see that you have got the front of the taxi just about even with that center line, maybe just a little teeny bit across it, whereas, on this diagram it looks like it's further across it. Can you pick that up?
A. I don't—exactly know what you are getting at.
Q. On this diagram you got the front of this car further across this center line than you do on that one. On that one you got it just about even with that center line; maybe just a hair or fraction across it. Can you see that?

A. Yes sir.

Q. I wonder if you could put on this diagram the position of this car as it is shown on this diagram (indicating)? Because you said this diagram is apt to be more correct than this one since you did it within a half hour after the accident.

A. No sir, I said both of them were approximations.

Q. Right, sir. Well, at any rate could you draw a line there to show where you had the front end of your Shield car on your field notes that you completed within page 49 } a half hour after the accident? I wonder, sir, if you would put an arrow to that line and mark it as being the front end of the car as it was shown on your field notes?

(The witness complied with the request of counsel.)

By Mr. Garner:

Q. All right, sir. I wonder if you would be kind enough to step up here and show the jury what you have done?

A. I've just marked the front end back some closer to the southward line.

Q. This is the front end as was shown on the diagram you sketched out here?

A. Right.

Q. This line here (indicating), that would be the furtherest front line and this line right here (indicating), is the—where you had it shown on your field notes?

A. Yes sir.

Mr. Garner: Is it clear to you gentlemen of the jury?

By Mr. Garner:

Q. Now, Officer, I would like to ask you first, when you were asked if there were any parked cars there, you indicated that you did not remember any being there and page 50 } that—any question on that you'd have to be guessing, is that correct?

A. That would be a recollection, yes sir.

Q. You did not show any parked cars as being there on your diagram, is that correct, sir?

A. Right, sir.

Q. And chances are if there were a parked car which was up close to the intersection, you would have shown it on your diagram, if it were there when you arrived, is that not correct, sir?

A. I don't know, sir.

Q. You don't know?

A. I assume I would.

Q. This was actually one of the first accidents that you had investigated on the Hampton Police Force?

A. I was fairly new, right sir.

Q. And, I believe, you had been on the Force but it was—one of the first traffic accidents that you had investigated?

A. Yes sir.

Q. How long had you been on the Force when this happened? I mean how long had you been investigating traffic accidents when this happened, if you recall?

page 51 } A. It was some short time. I don't recall exactly how long.

Q. All right, sir. Well, then let me ask you this. You got a bush which is drawn back here which would be approximately 11 feet from the curb line of Victoria Boulevard, is that not correct?

A. Somewhere in the neighborhood.

Q. Going on the basis that from here to here is 36 feet and from here to here is 25 feet (indicating)—

A. Right.

Q. That would mean from the bush to the curb line of Victoria Boulevard would be 11 feet?

A. Right.

Q. Correct, sir?

A. Right, sir.

Q. And—when a car is pulled up here and stopped with its front end at the curb line of Victoria Boulevard, if there are no cars parked along here (indicating), is it not true that you can see that car for a good ways back on Victoria Boulevard?

A. Yes sir.

Q. How far back could you see a stopped car which was stopped in that position with its front end at the curb line of Victoria Boulevard with the car being stopped on Grace Street?

page 52 } A. Well past Armistead Avenue.

Q. Well past Armistead Avenue?

A. Yes.

Q. Again you said it was how far down to Armistead Avenue?

A. Approximately 432 feet.

Q. Approximately 432 feet?

A. Yes sir.

Officer J. E. Jordan

Q. All right, sir. Now, from this diagram it would indicate that the Shields taxi had proceeded at least 25 feet into the intersection to the position where you found it when you arrived, is that correct?

A. Right, sir.

Q. Would you say the front end was approximately 25 feet into the intersection when you arrived?

A. At least 25 feet.

Q. At least 25 feet, and you said that Grace Street was only 24 feet wide, is that correct?

A. Right, sir.

Q. So that would—would mean if the Sayre car was in the intersection when this accident happened, that the Shields car, if it happened at or near the center line, would have gone further into the intersection than the Sayre car, is that not correct?

A. Repeat that again.

Q. I'm asking you if the impact occurred in ap-
page 53 } proximately the position where you found the taxi stopped, that that would have meant the taxi, assuming that it stopped right at the point of impact, would have gone further into the intersection than the Sayre car?

A. Right, sir.

Q. And why would that be true?

A. Well, Grace Street is only 24 feet wide.

Q. Would you tell the jury, speak to the jury if you would.

A. Grace Street is only some 24 feet wide where Victoria is 50. Therefore.

Q. It would just have to follow?

A. Right.

Q. And I believe Mrs. Sayre made the statement to you that all she knew was that she was going down the Boulevard when she was struck in the side and that she temporarily lost control of her car?

A. Right, sir.

Q. That's all she knew about the accident?

A. That's all she said.

Q. That's all she told you?

A. Yes.

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RE-DIRECT EXAMINATION

By Mr. Moore:

* * * * *

Q. All right, sir. Now, you stated you were new with the Force at this time. You had—had you been trained to investigate accidents?

A. I had ridden with another officer for a couple
page 55 } of days.

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page 56 }

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Court: If you know, where was the front of the vehicle?

A. At the time I arrived, the front of the vehicle was over the single safety line.

By Mr. Moore:

Q. All right, sir. Did the Defendant, at any time, make a statement to you that he had paced off the distance between the front of his car and the center line?

A. Not that I recall, sir.

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page 78 }

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GRACE SAYRE, called as a witness in her own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Moore:

* * * * *

Grace Sayre

page 79 }

* * * * *

Q. Calling your attention to April 23, 1966, would you tell the Judge and the jury just what happened on that particular day?

A. Well, I was coming down Victoria Boulevard, coming home actually from the Wythe Cleaners, and had stopped at the stop light at Armistead and Victoria, and had pulled off and going straight down Victoria and—this car hit me. I didn't see it. Just—just came from Grace Street side and struck me on the side, right on my left side.

Q. What happened to you then?

A. I lost control and I went down the street for several feet before I could gain control. As soon as—but I was going straight down Victoria on my side of the street, and when I gained control, I backed back to the scene and pulled it off to the side and got out of the car and Mr. Shields was out of his cab and I asked him what in the world
page 80 } he was thinking about and he said, "Lady, I didn't see you".

Q. Then what happened?

A. Well, it wasn't long before the Officer came.

Q. I see, and when the Police Officer came, what did you do then?

A. We got in his car. I got on the front seat and Mr. Shields got in the back seat. Of course, he questioned me about the accident.

Q. All right. Let me ask you this. When you got out of your car, did you see where the taxi cab was stopped and if you did see this, would you tell the jury where the taxi cab was?

A. Yes sir, the cab was stopped over on my side of Victoria Boulevard.

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page 95 }

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Court: I would take it that those two objections apply in general, or at least to the giving of any instructions. We'll

assume you raise these objections to each and every one of the Plaintiff's instructions and the record will so show.

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page 125 }

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Court: Let the record show there are seven in the jury box. All right.

(At this time the verdict of the jury was read as follows.)

"We the jury in this case find for the Plaintiff, and fix the amount of damage $2000.00.

/s/ John B. Chandler,
Foreman."

* * * * *

page 126 } Mr. Garner: If Your Honor please, I would like to make a motion to set aside the verdict and ask the Court to enter final judgment for the Defendant on the grounds one, that the verdict is contrary to the law and evidence, and two, the verdict is without evidence to support it and three, the Court erred in failing to strike the Plaintiff's evidence and enter judgment for the defendant at the conclusion of the Plaintiff's evidence, and also when the motion was renewed after the Defendant had rested, and the reasons, again, that we assign as to why the Court
page 127 } should have struck the Plaintiff's evidence is that it showed that she was guilty of contributory negligence as a matter of law, from her own evidence and that of the witnesses which she called and also we ask to have the Court enter final judgment and set the verdict aside. * * *

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page 128 }

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Court: All right. All right, gentlemen, the Court would comment briefly. The portion of the motion just made as to

the damages being excessive, I do not agree with counsel on that particular point. If the verdict was otherwise proper, I do not think the damages are excessive. However, in consideration of the evidence which has been presented, it is the feeling of the Court that the motion to set aside the verdict of the jury and enter final judgment should be granted notwithstanding the verdict, should be granted and that is the action which the Court is going to take—verdict set aside as contrary to the evidence and final judgment will be entered in favor of the Defendant. The record will, of course, show the exception of Plaintiff to this action and if counsel for the Plaintiff wish to state any specific comments or statements in the record at this time, they are at liberty to do so. I think that the evidence adduced amounted to contributory negligence as a matter of law.

page 129 } Mr. Richardson: Well, if your Honor please, we note an exception.

Court: Yes sir.

Mr. Richardson: On the basis that if that be true, previous action should have been taken by the Court and it shouldn't have been submitted to the jury. Once it is submitted to the jury, adequately submitted to the jury, instructions properly covered it and the jury decided the Plaintiff should have a verdict and we submit it is improper for the Court to set it aside at this time.

Court: Yes sir, the Court has come to the conclusion its prior action was not proper. All right, gentlemen, anything further? All right.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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