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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6769

In the Supreme Court of Appeals of Virginia at Richmond

VIRGINIA STAGE LINES, INC., ET AL.

v.

BROCKMAN CHEVROLET, INC.

FROM THE CIRCUIT COURT OF AMHERST 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. 6769

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 4th day of October, 1967.

VIRGINIA STAGE LINES, INC., AND
EMMETT WESLEY ROBERTSON, Plaintiffs in error,

against

BROCKMAN CHEVROLET, INC., Defendant in error.

From the Circuit Court of Amherst County
C. G. Quesenbery, Judge

Upon the petition of Virginia Stage Lines, Inc., and Emmett Wesley Robertson a writ of error is awarded them to a judgment rendered by the Circuit Court of Amherst County on the 17th day of July, 1967, in a certain action at law then therein depending, wherein Brockman Chevrolet, Inc., was plaintiff and the petitioners were defendants; upon the petitioners, or some one for them, 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 19 } We the jury find our verdict for the Plaintiff and fix his damages at $422.00.

B. Smith Campbell
Foreman

We the jury find our verdict for the Defendant.

.....
Foreman

page 20 }

* * * * *

At a Circuit Court of the County of Amherst, continued and held at the Court House thereof on Wednesday, the 29th day of March, in the year of our Lord nineteen hundred and sixty-seven.

* * * * *

This day again came the parties, by their attorneys, and the Defendants for plea say that they are not guilty in the manner and form as the Plaintiff in its notice of motion for judgment hath alleged, and of this they put themselves upon the country and the Plaintiff likewise. And C. R. McCarthy, Court Reporter, was duly sworn to make a true and correct transcript of the record in this case. And thereupon, came a jury, to-wit: Henry Gouyer, Henry C. Franklin, Jr., W. Henley Richeson, Jr., John E. Leeson, W. Myers Hudson, B. Smith Campbell, and John P. Pettyjohn III, who having been selected, tried and empaneled in the manner directed by law, from the veniremen regularly and duly summoned to this term for the trial of criminal cases, were duly sworn well and truly to try the issue joined, and a true verdict to render according to the law and the evidence, and having fully heard the evidence and argument of counsel, were sent to their room to consider of their verdict, and after some time spent therein, returned into Court and rendered the following verdict, to-wit: "We the jury find our verdict for the Plaintiff and fix his damages at $422.00 (Signed B. Smith Campbell, Foreman".

page 21 } WHEREUPON, the Defendants by their attorney, moved the Court to set aside the verdict of the jury and grant a new trial as the said verdict is contrary to the law and the evidence.

And the said motion having been argued by counsel, the Court doth take same under advisement until some future date.

* * * * *

page 22 }

* * * * *

TWENTY-NINTH JUDICIAL CIRCUIT
CORPORATION COURT
Waynesboro, Virginia

June 5, 1967

Mr. J. B. Wyckoff
Attorney at Law
Amherst, Virginia

In re: Brockman Chevrolet, Inc.
v.
The Virginia Stage Lines

Gentlemen:

I have considered your motions and argument in the above case and have concluded that the question upon which this case turns was one of fact. And as the Jury has resolved it in favor of the plaintiff, I can find no ground on which to set it aside.

Accordingly, the Jury's verdict will be affirmed.

Very cordially yours,
C. G. Quesenbery

CGQ/mq
cc: Mr. E. M. Frost
Attorney at Law
Lynchburg, Virginia

page 23 }

* * * * *

IN THE CIRCUIT COURT OF AMHERST COUNTY

July 17, 1967

* * * * *

This day came the parties, by counsel, and the Court having materially considered the motion of the defendants to set aside the verdict for the plaintiff heretofore rendered in this action and now being of opinion that it is proper in all respects so to do, the Court doth overrule the motion and it is considered by the Court that the plaintiff recover of the defendants the sum of FOUR HUNDRED TWENTY TWO AND NO/100 DOLLARS ($422.00), with interest thereon from March 29, 1967, and its costs in this behalf expended, and the defendants, by their attorneys, duly objects and accepts to the action of the Court for the reasons heretofore stated in its motion to set aside the verdict.

At the instance of the defendants, by their attorneys, who intimated its intention to apply for a writ of error and *supersedeas,* the Court doth order that the execution of the aforesaid judgment be suspended for NINETY DAYS (90 days) from this date upon condition that the said defendants or someone for them go a proper suspending bond in the penalty of FIVE HUNDRED AND NO/100 DOLLARS ($500.00), condition according to law with surety approved by the Clerk of this Court.

page 24 }

Enter: C. G. Q.

* * * * *

page 26 }

* * * * *

NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

Notice is hereby given, pursuant to Rule 5:1, Section 4, of the Rules of the Supreme Court of Appeals of Virginia, that Virginia Stage Lines, Inc., and Emmett Wesley Robertson, the defendants in the above action, hereby appeal to the

Supreme Court of Appeals of Virginia from the final judgment entered in this action on July 17, 1967.

Pursuant to the aforesaid Rule, the aforesaid defendants make this their assignments of error and allege that the Court erred as follows:

1. The Court erred in refusing to strike the evidence of the plaintiff and enter judgment for the defendants, on the grounds that the plaintiff failed to prove negligence on the part of the defendants, and if there were such negligence, the negligence of the defendants was not a proximate cause of the accident.

2. The Court erred in refusing to set aside the verdict of the jury and enter final judgment for the defendants on the grounds that there was no negligence proven against the defendants, and the negligence, if any, was not the page 27 } proximate cause of the accident.

JOHN R. ALFORD
E. MARSHALL FROST
Attorneys for the Defendants

* * * * *

Filed in Clerk's Office Amherst Circuit Court Aug. 22, 1967.

WM. E. SANDIDGE, Clerk

* * * * *

page 3 } C. E. BAYLISS, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Wyckoff:

Q. You are C. E. Bayliss of the Virginia State Police?

A. That is right.

Q. In your official capacity, Mr. Bayliss, were you called to investigate an accident on Route 29 south of the Town of Amherst on June 11th, 1966?

A. I was.

Q. What did you find in the course of your investigation as to this accident, Mr. Bayliss?

A. At approximately 12:25 A.M. on June 11th, 1966 I received a call to an accident which had occurred south of the

Town of Amherst near the high school. I arrived there at approximately 12:30. I found a 1964 Mercury four-door sedan operated by Bernard Wayne Smith of 2031 Maiden Street, Washington, Pennsylvania and the vehicle was also owned by Mr. Smith. I found a 1959 Buick owned by Brockman Chevrolet, Incorporated and operated by Daniel John Bateman. The third vehicle was a 1964 Silver Eagle bus owned by Virginia Stage Lines of Charlottesville and operated by Mr. Emmett Wesley Robertson.

Q. What were the positions of those vehicles as you found them? Maybe we can use Mr. Frost's little cars and
page 4 } things if you would like to show them on this diagram.

A. There were two buses at the accident scene when I arrived there. One bus was in approximately this location across from this intersection. The high school is up in this area. This bus was sitting there with its left wheels about three feet out on the pavement. This bus had been stopped by an Amherst Town Police car. The Town Police car was stopped behind the bus in approximately this position. There was another bus stopped one hundred forty-five feet north of this intersection and approximately in this location and the left wheels of that bus were three feet into the northbound lane. Another car that was not involved in the accident and owned by James R. McFadden of Gladstone was stopped in approximately this location and his wheels were four feet on the pavement. The Brockman car was stopped in just about this position behind the bus. This is the car operated by Mr. Bateman. The other car operated by Mr. Smith from Pennsylvania came and stopped, as well as I can recall, in front of this bus. I am not positive of exactly the location of this car where it stopped after the impact.

From the investigation at the scene the impact was—

By The Court:

Q. Just state where you found them and do not tell us where the impact occurred. You can tell about any marks or tracks or debris you found but don't tell where you
page 5 } think it occurred.

A. From the debris and the Smith markings and the scraping from this car and this car, some pieces of chrome and mud I tried to determine where the accident occurred.

By Mr. Wyckoff:

Q. Where were they located?

A. Located in this center lane, about the center of the center lane.

Q. And the distance from this point of the intersection to this bus was how far?

A. One hundred and forty-five feet.

Q. A hundred and forty-five feet. Now, how far was it from the rear end of the southbound bus to the rear end of the northbound bus?

A. Approximately twenty feet.

Q. And how far was it that this bus was into this lane?

A. Three feet.

Q. And how wide a lane of traffic is that?

A. Ten foot lanes.

Q. And that is a single lane for northbound traffic like it is designated?

A. Yes, sir.

Q. Now then, this bus was then approximately at the intersection or close to the intersection?

A. Just a little bit north of the intersection.

page 6 } Q. What is the topography as you approached this intersection?

A. You come from here and you come on a slight curve to the hillcrest which is right here at the intersection and then you start downgrade.

Q. You know the visibility distance from that intersection down?

Mr. Frost: If your Honor please, I want to know whether he has actually been out there and measured the visibility or made any checks to see about the visibility.

The Court: He can testify as to whether he measured it either by stepping it off or whether it is an estimate.

By Mr. Frost:

Q. Is this an estimate?

A. The only check I made, and this was made sitting in my police car, as you come around the curve a vehicle stopped in this location is not visible until you get approximately to the intersection.

By Mr. Wyckoff:

Q. Which would mean what distance?

A. One hundred forty-five feet.

Q. What were the weather conditions at the time of this investigation?

page 7 } A. Cloudy and the road surface was dry.

Q. Was it dark or light?

A. Dark. It was fifteen minutes after midnight.

Q. Were there any lights to aid in visibility at this point?

A. No, sir, no other lights than from the vehicles.

Q. Now, what part of the Brockman vehicle was damaged according to your investigation?

A. The front and both sides were damaged.

Q. Both sides?

A. Yes, sir. It was a crushing damage coming from the front back.

Q. In your investigation did you talk to the drivers involved in this accident?

A. Yes, sir, I did.

Q. Were they all present together at the same time?

A. Yes, sir.

By Mr. Frost:

Q. Was Mr. Bateman with them?

A. Yes, sir.

By The Court:

Q. Was Mr. Robertson, the bus driver, present?

A. Yes, sir.

By Mr. Wyckoff:

Q. What statements were made to you by the page 8 } drivers involved in this accident, Mr. Bayliss?

A. No. 1 was the automobile from Pennsylvania. Do you want his statement?

By Mr. Frost:

Q. Were all of them together?

A. Yes, sir.

By The Court:

Q. Go ahead.

A. The Mercury from Pennsylvania and he stated: "I was coming down the road and swung out to pass the car on the shoulder and the other car hit me." That was the extent of his statement.

Vehicle No. 2 was Mr. Brockman's car driven by Mr. Bateman and he stated: "The ambulance came through and I was in a line of traffic and the other car stopped in front of me and then I met the other car and tried to miss him but I couldn't."

C. E. Bayliss

By The Court:

Q. What did he mean by the other car stopped in front of him?

A. He was referring to this car stopped behind the bus on the east shoulder.

Q. The yellow car that you have there on the diagram?

A. Yes, sir, the yellow car.

page 9 } By Mr. Frost:

Q. Read what he said again.

A. He said "The ambulance came through and I was in a line of traffic and the other car stopped in front of me."

Q. You are talking about the yellow car?

A. Talking about the yellow car.

Q. Then what?

A. "Then I met the other car", and he is referring to the car from Pennsylvania, "and I tried to miss him but I couldn't."

By Mr. Wyckoff:

Q. Did you talk to the driver of the yellow car?

A. Mr. McFadden, yes, sir.

Q. Did he make any statement which you recorded?

A. No, sir.

Q. What did the bus driver say?

By Mr. Frost:

Q. Which bus driver are you talking about?

A. I am talking about the only one involved in this accident which was the one stopped on the east side driven by Mr. Robertson. He said "I seen the bus sitting there and thought he was broke down and stopped. I got out of the bus and started over and heard the tires skidding and I seen him swerve." That was the extent of his statement.

page 10 } By Mr. Wyckoff:

Q. He said he thought he was broke down and stopped?

A. Yes, sir.

Mr. Wyckoff: I think that is all I have to ask him.

CROSS EXAMINATION

By Mr. Frost:

Q. Come over here a second, Mr. Bayliss. Do I understand

that at the time of the accident there was a Pennsylvania car and the McFadden car and two buses and the Bateman car?

A. And the Amherst Police car.

Q. That was at the time of the accident. In other words, from your investigation you found this car here, the McFadden car, before the accident happened. I mean the car was there before the accident happened and you found that to be true in your investigation?

A. That is correct.

Q. Was that car there when you got there?

A. Yes, sir.

Q. And did he have his lights on?

A. Yes, sir.

Q. Have his taillights on?

A. Yes, sir.

Q. Did you see any lights on the bus?

page 11 } A. Yes, sir.

Q. They were burning, weren't they?

A. Yes.

Q. And had these flashing lights on, didn't he?

A. I don't recall if he did.

Q. If the driver says he had his flashing lights on you won't deny it?

A. No, sir.

Q. They have a lot of lights on those buses, don't they?

A. Yes, sir.

Q. And the same way about this one?

A. Yes, sir.

Q. Where was the McFadden car sitting as far as the hard surface is concerned?

A. The McFadden car had stopped behind the bus.

Q. Where was it with reference to the hard surface?

A. Sitting four feet out on the pavement.

Q. So when you got there the Pennsylvania car obviously had been moved?

A. After the impact it had rolled to here.

Q. At the place of the accident where you placed this bus you didn't measure these distances at all for this bus—I will call it the Campbell bus.

A. No, sir.

Q. And did you step off this other distance?

page 12 } A. This distance was measured by tape from this intersection.

Q. You mean from here down?

A. Yes, sir.

C. E. Bayliss

Q. And that was one hundred forty-five feet?
A. Yes, sir.

By The Court:
Q. Did you measure it from the north side of the intersection or the center?
A. We measured from the center of the intersection going north. There is a pole over the stop sign right there in that island.

By Mr. Frost:
Q. Then, as I take it, the McFadden car, this car, was closer to the northbound traffic than the bus was immediately before the accident as far as your investigation showed?
A. That is correct.
Q. And he was sitting four feet in the highway?
A. Yes, sir.
Q. And how far would you say the bus was from him? Did you measure that distance he was from the intersection?
A. You mean from here to here?
Q. Yes.
A. No, I didn't measure that.
Q. Was that wide enough for a car to get in?
page 13 } A. It was eighteen feet.
Q. You say this bus was one hundred and forty-five feet from the intersection?
A. Yes, sir.
Q. Then taking eighteen feet off of that it would be one hundred twenty-seven feet. I take it then the front of the McFadden car would be one hundred twenty-seven feet from this stop sign pole in the middle of the intersection.
A. That is right.
Q. And this, of course, is an estimate, these on this other side.
A. The only exact measurement there is I know how far the wheels were on the pavement.
Q. Other than that anything on this side you didn't measure. You measured this one and measured the distance between these and was this car sitting into the bus when you got there?
A. Yes, sir.
Q. You know the width of a car? Is it approximately six feet?
A. Approximately, yes, sir.
Q. And this car was sitting up four feet and the bus was sitting up three feet on the hard surface?

A. Yes, sir.

Q. Now, there wasn't any ambulance involved in it, that had gone on through and cleared before anything happened?

page 14

A. Yes, sir.

Q. And the Pennsylvania man said he swayed out to pass the car. Is that what he said?

A. Yes, sir.

Q. Where was the Town Officer's car sitting?

A. He was sitting right on the shoulder.

Q. So this Pennsylvania man swerved out to pass these cars and did he say what lane he was in?

A. He was over in the center lane.

Q. And while he did that then the Bateman car came and sideswiped him while he was in the center lane. Is that right?

A. Yes, sir, that is right.

Q. And the Bateman car apparently bounced off and went over there and struck the bus?

A. Yes, sir.

Q. And this man drove his car down here and stopped?

A. Yes, sir.

Q. Now, Bateman says, as I understand it "The ambulance and I were in a line of traffic."

A. No, sir.

Q. Let me see what you have got there.

A. He said "The ambulance came through and I was in a line of traffic."

Q. Meaning that he realized traffic was ahead of him?

page 15

A. Yes, sir.

Q. And the other car—I can't read my own writing—did what?

A. "The other car stopped in front of me." Bateman was following this McFadden car.

Q. And McFadden's car stopped in front of him?

A. "I met the other car, the Pennsylvania car, and tried to miss him and couldn't."

Q. The reason Bateman pulled out here, according to his explanation, was because this man, McFadden, stopped in front of him. Is that right?

A. Yes, sir.

Q. He said this man stopped in front of him is the reason he pulled out to get in this other lane and had the wreck with the Pennsylvania car. Is that right?

A. Yes, sir.

Q. Now, Mr. Bayliss, when did you make your test about seeing there? I don't want to testify myself but I just left over there. I understood you to say the crest was right here at the intersection.

A. The crest is just before you get to the intersection and the test that I made that night was sitting down in the front seat of my police car as you come northbound.

Q. Were you moving at the time?

A. Moving at the time.

page 16 } Q. At what speed were you moving?

A. Moving at fifty-five miles an hour.

Q. Actually from the end of this intersection here you can see the surface of the road all the way down, can't you?

A. Standing up you can but sitting down in an automobile you are much lower.

Q. Aren't your eyes when you are sitting down in an automobile about the same height as a man standing up?

A. Mine are not. I don't know about most people but mine are a whole lot lower.

Q. The crest is some two hundred feet back up here and you can still see the tops of cars there?

A. Possibly.

Q. I am talking about two hundred feet south of that intersection. The crest of the hill actually is up here just before you get to the curve.

A. The crest of the hill is just about where that intersection is.

Q. About two hundred feet beyond that you mean to say you couldn't see—

The Court: Two hundred feet beyond what?

By Mr. Frost:

Q. Two hundred feet south of this intersection couldn't you see the flashing lights on the buses?

A. Possibly you could have seen the top lights

page 17 } on this bus which were visible.

Q. The McFadden car was not visible but the flashing lights on the bus were visible some two hundred feet back?

A. No, sir, not two hundred feet back. They were visible just about from the crest. I didn't check back two hundred feet and they might have been visible. The only check I made was from there on.

Q. Are you on duty now?

A. No, sir.
Q. I want you to go there and sit in your car—

Mr. Wyckoff: This is daytime.

By Mr. Frost:
Q. I would like for you to go back there and take your car two hundred feet back and watch—

The Court: Don't argue, Mr. Frost.
Mr. Frost: I am not arguing. I want him to go back and make that test for us.
The Court: All right, he can do that.

By Mr. Frost:
Q. When you made measurements of the buses being on the hard surface were either of the drivers with you at the time?
A. I don't recall. I believe the driver of the northbound bus was. Now, the Amherst County officer helped me measure the distances of the bus.
Q. But the driver there was not with you?
page 18 } A. I don't recall if he was. It was a whole lot of people milling around there and I don't recall the exact location of each of them.

Mr. Frost: That is all.
The Court: Suppose you go down there and measure the thing.
Mr. Wyckoff: It couldn't be the same thing as far as visibility is concerned if he is going to come in and testify to that.
The Court: You can't have the same sort of situation in the daytime that you would have at night but he can testify to what he can see from two hundred feet. You go and take a look and then come back.

* * * * *

page 27 }

* * * * *

Mr. Wyckoff: We rest.

(IN CHAMBERS)

John Campbell

Mr. Frost: If your Honor please, the defendant, by counsel, moves the Court to strike the evidence of the plaintiff on the following grounds:

First, according to the lineup of all these cars at the time of this accident, the McFadden car was one hundred and eighteen feet from the intersection according to the measurements—a hundred and twenty-seven feet actually from the intersection. Now, apparently the car that triggered the accident was the McFadden car because Bateman stated the ambulance came through and said "I was in a line of traffic." He said "The other car stopped"—the other car, according to Mr. Bayliss, was the yellow car or the McFadden car—

page 28 } "Stopped in front of me and then I met the other car, the Pennsylvania car, and tried to miss him but I couldn't." Now, I say the proximate cause of this accident, if you look at the proximate cause would have to of necessity been the car closest to the Bateman car. The testimony was he was four feet on the hard surface.

The Court: Why wasn't McFadden made a party?

Mr. Frost: I don't know why. I say he is suing the wrong man, No. 1, and No. 2, as far as the testimony of Mr. Brockman, it looks to me like it is part of his business to lend cars to people who have their car either under repair or buying a new car and it would seem to me the contributory negligence of Bateman would be imputed to Mr. Brockman because this is part of the business deal, and on either score the Court should strike the evidence.

NOTE: Argument of Counsel in support of and in opposition to the foregoing motion is here omitted.

The Court: I am rather of the opinion that probably you have gotten the wrong people here but I won't strike the evidence. I will go on and hear the rest of it and you can renew your motion at the end of all the evidence.

Mr. Frost: We note an exception.

page 29 } EVIDENCE FOR THE DEFENSE—JURY PRESENT

JOHN CAMPBELL, having been first duly sworn, testifies as follows:

John Campbell

DIRECT EXAMINATION

By Mr. Frost:

Q. Will you state your name and residence?

A. John Campbell, Charlottesville, Virginia.

Q. What is your occupation?

A. Trailways Bus Driver.

Q. Could you go over there to the board and explain this accident? Which bus were you the driver of?

A. I was southbound.

Q. You were the driver of the southbound bus. Do you understand that diagram?

A. Yes, sir.

Q. Now, which was your bus?

A. This bus was mine right here.

Q. What was the occasion of you stopping there?

A. The town policeman followed me and stopped me. He told me I was speeding but after he checked my tachometer on the bus he never did charge me.

Mr. Wyckoff: That is irrelevant.

The Court: That has nothing to do with it.

page 30 } By Mr. Frost:

Q. Anyway, he stopped you. I asked you this morning if you could place the bus there where you had it stopped that night and do you know where you stopped it that night?

A. Yes, sir.

Q. Now, I asked you this morning to go over there and step off the distance south of this bus that you could see the surface of the road. What is your height, do you know?

A. Five foot ten inches.

Q. How far back could you go to see the surface of the road south of where that bus was?

A. I stepped ninety-five steps from back here which would be probably three hundred feet south of my bus back here to straight across from where my bus was stopped.

Q. You mean you walked down the east side of the highway to a point opposite where your bus was stopped?

A. Yes, sir.

Q. And that was ninety-five steps?

A. Yes.

Q. What kind of steps did you take?

A. Approximately three foot per step.

John Campbell

Q. Was it just one car there?
A. The town policeman's car.
Q. Then what happened? When he stopped you what did you do? Did you get out of your bus?
page 31 } A. Yes, sir. I was out of my bus and I showed him the tachometer and then we heard the ambulance.
Q. Did an ambulance go through there?
A. Yes, sir.
Q. Which way did that go?
A. It was going south.
Q. Did that get out of the picture completely?
A. That was completely out of the picture.
Q. What is the next thing you remember about the accident?
A. Well, the town policeman had me to the right side of my bus talking to me down on this side of my bus at the passenger door and we were talking about the speed over there and all of a sudden we heard the ambulance going south and then about a minute after the ambulance came through I heard these tires skidding.
Q. Did you see any impact between any of the cars?
A. No, sir.
Q. This bus hid your view?
A. Yes, sir.
Q. Did you go around to see what had happened?
A. Yes, sir.
Q. What did you find then?
A. I saw the northbound bus had stopped approximately down in this area down here and this other southbound car, the Pennsylvania car, was heading south approxi-
page 32 } mately here and the Bateman car had come through here.
Q. You didn't see that. I want you to tell what you saw.
A. This was the positions the cars were in when I came out in front of my bus.
Q. Would you say the Pennsylvania car was in the southbound lane?
A. He was in the southbound lane.
Q. I understand both of these are southbound lanes. Which lane are you talking about, the middle lane or the west lane?
A. I would say it was approximately just like this.
Q. Where was the Brockman car?
A. When I saw it it was into the northbound bus.
Q. Do you know where the northbound bus stopped?
A. This is approximately the position of the northbound bus.

John Campbell

Mr. Wyckoff: Did he measure this position or is this just guesswork?

Mr. Frost: He was there and you can cross examine him after I finish.

Q. Could you place the northbound bus where it was? I know this is not drawn to scale but actually on the highway do you know where it stopped?

A. It was approximately forty feet more or less

page 33 } in between the back of the northbound bus and the back of my bus.

Q. Do you mean forty feet or forty steps?

A. Forty steps.

Q. If you go back behind this intersection or south of the intersection did you make any check this morning as to whether you could see the tops of cars or automobiles?

A. I stepped it off from here and I could very well see the top of an automobile parked here.

By A Juror:

Q. Were you sitting in a car or standing up?

A. I was standing. I stepped it off just south of the entrance of the Amherst High School approximately ninety steps and I could see directly across from my bus.

By Mr. Frost:

Q. Did you measure how far the McFadden car was back?

A. No, sir, I did not.

Q. Did you talk to Mr. Bateman?

A. Yes, sir. We asked Mr. Bateman for his operator's license which the company requires us to get.

Q. Did you have occasion to smell his breath when you talked to him?

A. Yes, sir.

Q. And what, if anything, did you detect?

A. I would say he had been drinking.

Q. Did you notice it in his talk?

page 34 } A. Yes, sir.

Q. Did his talk seem to be affected in any way?

A. Yes, sir. He used a lot of profane language.

Q. Did you notice any walking he did?

A. I did not notice his walking.

Q. Now, explain about the lights in front of your bus or the lights on your bus that were burning that night.

A. I had my headlights on and also my marker lights.

Q. How many headlights?
A. Two headlights and we have five marker lights across the top and also an emergency I.C.C. flashers.
Q. What are they exactly?
A. That is when all four of your signal lights flash off and on.
Q. Where are they located?
A. They are located just under the windshield of the bus on each side.
Q. And five marker lights across the top?
A. Yes, sir.
Q. Then the flashing lights, how many on the front?
A. Two on the front and two on the rear.

By The Court:
Q. Were they flashing?
A. Yes, sir, flashing on and off.
Q. How about the other bus?
page 35 } A. The other bus had its lights flashing too.
Q. Did he have his lights on?
A. Yes, sir.
Q. Did he have any lights on the rear?
A. Yes, sir.
Q. How many?
A. You have five across the top and you have three down each side of the rear of the bus and also you have your emergency flashers which you have two on each side of the bus, two in the front and two in the rear.
Q. In other words, you were lit up?
A. Yes, sir.

By Mr. Frost:
Q. Did the Pennsylvania car have its headlights burning?
A. The Pennsylvania car when I first saw it its left headlight was flashing off and on. It shorted out from the impact.
Q. You mean you saw it after the wreck?
A. Yes, sir. The right headlight was burning and the left headlight was just flashing on and off.
Q. The car behind the bus, the northbound bus, did you notice the lights on that car?
A. No, sir, I did not because when I heard the impact I got out my fusee from my bus and ran south to put out some warnings that there was an accident. I did
page 36 } not notice to see just exactly how many automobiles were there.

John Campbell

Q. You know how wide the bus is?
A. Eight feet.
Q. Did you notice the shoulder on the road there on the east side, the shoulder on your right as you travel north?
A. Yes, sir.
Q. Could you estimate the width of that shoulder?
A. I would say approximately he could have gotten off three and a half to four foot.
Q. What is at the edge of the shoulder?
A. A big ditch about two or two and a half foot deep.
Q. Were you there when they measured how far your bus was on or off the hard surface?
A. Yes, sir.
Q. How far were you on the hard surface?
A. I would say my bus was approximately a foot to a foot and a half on the hard surface.
Q. Did you notice the northbound bus as to whether that was on the hard surface or not?
A. Yes, sir.
Q. How much, if any, was on it?
A. I would say approximately two to two and a half foot.

Mr. Frost: All right.

page 37 } CROSS EXAMINATION

By Mr. Wyckoff:
Q. Mr. Campbell, we are talking about the size of these buses. You say the bus is eight feet wide?
A. Right.
Q. You say he could have gotten over on the shoulder three and a half to four feet. That was your testimony, wasn't it?
A. I would say three and a half feet at the most.
Q. So three and a half from eight would leave four and a half, wouldn't it?
A. Yes.
Q. Then how do you account for the fact that only two and a half feet of the width of the bus was on that road if he could have gotten off only three and a half to four feet? It was bound to have been four feet left over.
A. Yes, sir.
Q. So he was hanging out in the road four feet?
A. I would say roughly estimating, yes.
Q. So the two and a half feet you said was probably wrong?
A. Yes, sir.

John Campbell

Q. Now, you have been talking about measurements. How far do you say that the northbound bus, Mr. Robertson's bus, was from the intersection?

page 38 } A. You mean from the intersection of Amherst High School?

Q. Yes.

A. I would say approximately four hundred or four hundred and fifty feet.

Q. Four hundred and fifty feet?

A. Right.

Q. Did you measure it?

A. No, sir.

Q. Did you see it stepped off that night?

A. No, sir.

Q. Did you watch Mr. Bayliss measure it?

A. No, sir.

Q. Do you know if he did measure it?

A. I did not see him measure it.

Q. If Mr. Bayliss said he put a tape line on it and it was one hundred and forty-five feet would you dispute it?

A. Yes, sir.

Q. So you say Mr. Bayliss didn't measure it right?

A. I don't know if Mr. Bayliss measured it or not.

Q. You are putting it at four hundred and fifty feet down that hill?

A. Right.

Q. Did you step off the distance between the rear of your bus and the rear of Mr. Robertson's bus?

A. I didn't at the scene of the accident.

page 39 } Q. So you guessed at that too?

A. Yes, sir.

Q. You didn't actually make a measurement?

A. No, sir.

Q. So if Mr. Bayliss stated he positively made a measurement from the rear of the Robertson bus to the rear of yours would you say he is wrong or right? He put it at about twenty feet between the two. Would that be too far?

A. I would say he was wrong. It was too short.

Q. You didn't measure it and you can't say he was wrong from your own investigation and examination, can you?

A. No, sir.

Q. Were you present at the time when Mr. Bayliss was talking to all the operators involved in this accident? Were you there?

A. Yes, sir, I was there.

John Campbell

Q. You are making a statement that Mr. Bateman had been drinking. Did Mr. Bayliss have to call Mr. Bateman down for being under the influence?

A. I didn't hear him call him down and, in fact, Mr. Bayliss never talked to Mr. Bateman the time we were there.

Q. Did you know before you heard the impact that this northbound bus had stopped?

A. No, I didn't.

Q. Is it customary for Trailways buses to stop—

page 40 } The Court: It is not what the custom is but what happened on this occasion. Custom has nothing to do with it.

By Mr. Wyckoff:

Q. Do your instructions tell you you can stop a bus on the highway and obstruct a lane of traffic when you are driving these buses?

A. Repeat that question again.

Q. Do your instructions from the company tell you it is permissible to stop a bus and block a lane of traffic with that bus on the highway?

A. No, sir, they do not say that it is and do not say that it is not. It is entirely up to the operator where he wishes to stop.

Q. Do they tell you to obey the law?

A. Yes, sir.

Q. And the law says—

Mr. Frost: Let the Court tell the jury what the law is.

The Court: Don't go into that.

Mr. Wyckoff: That is all.

RE-DIRECT EXAMINATION

By Mr. Frost:

page 41 } Q. Let me ask you one question. I will ask you whether or not while you were at the scene and looked at the northbound bus was that off of the highway as far as it could reasonably get without getting into the ditch?

A. Yes, sir, it definitely was.

Mr. Frost: All right.

The witness stands aside.

Emmett W. Robertson

EMMETT W. ROBERTSON, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Frost:

Q. You are Mr. Emmett W. Robertson?

A. Yes, sir.

Q. Did you hear the testimony of Mr. Campbell about the location of the cars and so forth?

A. Yes, sir.

Q. Is your testimony different in any way? I don't want to go into this again. Was the southbound bus stopped on that side of the road?

A. Yes, sir.

Q. Why did you stop your bus?

page 42 } A. Well, it appeared to be a breakdown.

Q. Did you measure how far your bus was north of the southbound bus?

A. Yes, sir.

Q. How far did you measure?

A. Forty steps.

Q. And that was approximately a hundred and twenty feet?

A. Yes, sir.

Q. When you stopped your bus did you see an ambulance go by or not?

A. Yes, sir. Just after I stopped the ambulance went through.

Q. Then what did you do?

A. Well, I got out of my bus and proceeded to cross the road to see what was wrong with the other bus and then I heard the tires squealing and I started to running to get out of the road.

Q. Could you locate which car was making the noise?

A. Yes, sir, the '59 Buick.

Q. The Bateman car?

A. Yes, sir.

Q. Could you see actually the impact on any of the cars or vehicles involved?

A. I seen him headed toward the Mercury automobile and that is the time I was getting out of the way.

page 43 } Q. You mean by the Mercury automobile the Pennsylvania car?

A. Yes, sir.

Emmett W. Robertson

Q. When you got out of the way of course your head was away from the accident, you were running away from it.
A. Yes, sir.
Q. And you did not see any more of it?
A. No, sir.
By The Court:
Q. At the time you got out of the bus was this yellow car already there?
A. He was just coming into view. He had stopped and then this Bateman automobile came in between us. After he sideswiped he came in between us.
Q. I am trying to establish at what point did the McFadden car arrive there. Had you already stopped?
A. Yes, sir, I had already stopped and he stopped behind me.
Q. He stopped behind you before you got out of the bus or after you got out of the bus?
A. Apparently after I got out of the bus because there wasn't any traffic behind me at the time I pulled over.
Q. Did you see him before the accident occurred?
A. Yes, sir, I seen his lights.

page 44 } By Mr. Frost:
Q. Was he standing still when you heard the tires skid?
A. Yes, sir.
Q. I am talking about the McFadden car that was located behind your car, was it behind your car when you heard the tires squeal from the Bateman car?
A. Yes, sir.
Q. Did you have an occasion to talk to Mr. Bateman?
A. Yes, sir.
Q. Did you have occasion to smell his breath?
A. Yes, sir.
Q. What was the nature of it?
A. It is the company's policy to get the driver's license number and everything.
Q. I mean what was the condition of his breath?
A. It smelled of alcohol.
Q. Did you talk with him?
A. Yes, sir.
Q. What was the nature of his talk?
A. Well, he was using profanity and his speech was slurred.
Q. Did you notice whether he staggered or not?

Emmett W. Robertson

A. No, sir. He stood beside his car all the time.

Q. Now, what lights did you have on your bus as far as the rear of the bus was concerned? We have heard
page 45 } about the front lights from Mr. Campbell but what about the lights on the rear of your bus?

A. I had my running lights and the I.C.C. flashers.

Q. Tell me how many running lights you had.

A. Five across the top and three in a row on each side and two big ones, actually thirteen lights on the back of the vehicle.

Q. Were the lights flashing?

A. Yes, sir, one on each side in the front and one on each side in the back, actually four.

Q. Do these lights flash like directional signals?

A. Yes, sir.

Q. Is it a red light?

A. Yes, sir.

Q. And it flashes on and off?

A. Yes, sir.

Q. Do you know how far your bus was on the hard surface?

A. Well, the way the diagram was drawn it was the width of the tandem wheels on the bus. The tandem wheels were sitting on the hard surface.

Q. Do you have any idea how wide the tandem wheels are?

A. I would say two and a half or three feet wide.

Q. You mean the front wheels?

A. The back wheels.

Q. Do you have any tandem wheels in front?
page 46 } A. No, sir.

Q. The tandem wheels are in the rear but you were lined up parallel with the edge of the road?

A. Right.

Q. I will ask you whether or not you were over as far as you could get?

A. Yes, sir.

Q. Do you know what was on your right there if you had gone any further?

A. It was a ditch.

Q. Do you remember seeing the ambulance pass by?

A. Yes, sir.

Q. That was out of sight before anything else happened, wasn't it?

A. Yes, sir. He went through before I got out of the bus.

Q. Do you remember seeing the Pennsylvania car, the car we call the Pennsylvania car?

A. He was coming up as I was going across the road.
Q. How many town officers were there, do you remember?
A. There were two.

Mr. Frost: You can take the witness.

page 47 } CROSS EXAMINATION

By Mr. Wyckoff:
Q. Mr. Robertson, how high are those flashing lights you are talking about on the rear of that thing?
A. Are you speaking about the ones across the top?
Q. Yes, sir.
A. I think the bus measures eleven foot, two inches. That is the first five across the top.
Q. How about the flashing ones, where are they? You are talking about what we call the marker lights across the top.
A. Across the top. The flashing lights are about middle way on the bus.

By The Court:
Q. About five and a half feet?
A. Yes, sir.

By Mr. Wyckoff:
Q. Now, you say today you went out to this scene and you measured the distance between these two buses?
A. That is right.
Q. This happened last June. Was there anything on the ground today to show you where those buses were at the time of the accident?
A. The only thing is an apple tree on the left and I remember the tree because I was running toward it. It was on the left from where I parked.
page 48 } Q. But there is nothing to show where the buses were that night?
A. No markings, no, sir.
Q. So you are purely speculating as to the positions of those buses that night. They have all been moved and everything is different.
A. I couldn't be exact on it, no.
Q. Do you agree with Mr. Campbell that your bus is eight feet wide?
A. Yes, sir.
Q. And how wide do you think that shoulder was?

A. Well, I don't know exactly. I didn't measure it. I didn't step it off or nothing.

Q. When you got out did you step in the ditch or on the shoulder?

A. I stepped on the side of the ditch. The ditch has a slope.

Q. But your wheels were they right at the edge of that slope?

A. Yes, sir.

Q. Did you know that it was only a single lane for northbound traffic where you stopped?

A. Yes, sir.

Q. Did you think that you were probably blocking that lane?

page 49 } A. Well, it is a three lane road there and I didn't think I would be impeding traffic in any way.

Q. You mean you thought that a man could break the law and pass in the center lane?

The Court: Don't argue with the witness. Mr. Robertson, you don't need to answer that question.

Mr. Wyckoff: That is all.

The witness stands aside.

Mr. Frost: We rest.

The Court: Mr. Wyckoff, did you want Mr. Bayliss called back?

Mr. Wyckoff: Yes, sir.

page 50 } C. E. BAYLISS, recalled in rebuttal, testifies as follows:

DIRECT EXAMINATION

By Mr. Wyckoff:

Q. Mr. Bayliss, you talked to Mr. Bateman after this accident?

A. Yes, sir, I did.

Q. Was his speech blurred by alcohol in your opinion?

A. No, sir.

Mr. Frost: That is a conclusion.

The Court: That is a conclusion. He can state what he observed.

C. E. Bayliss

The Witness: From my observations I didn't consider him to be under the influence.

Mr. Frost: Your Honor, I move that that be stricken.

The Court: You can only state what you saw.

By Mr. Wyckoff:

Q. Did you smell alcohol on him?

A. Yes, sir.

Q. You observed no slurring of his speech?

A. No, sir.

Q. And no staggering?

A. No, sir.

page 51 } Q. Did he use a lot of profanity?

A. No, sir, if he had, I certainly would have arrested him.

Mr. Wyckoff: That is all.

CROSS EXAMINATION

By Mr. Frost:

Q. You went back for me this morning. Did you check two hundred feet back for the top of any automobiles, whether you could see sitting in your car two hundred feet back south of the intersection?

A. Two hundred feet back south you cannot see the location.

Q. I am talking about the tops of automobiles.

A. There wasn't any automobiles down there for me to judge by. I couldn't tell you whether you could see any portion of the top or not but you could not see the location.

Q. In other words, you can't see the surface of the highway?

A. No, sir, or the shoulder.

Q. You didn't check it by any cars?

A. No, sir, I didn't have any cars to check by.

By The Court:

Q. You were sitting in your car?

A. Sitting in my car.

page 52 } Q. You didn't step outside to see what you could see standing there?

A. No, sir. Standing I checked from the intersection. If you are standing up at the intersection you can see the surface of the road but sitting down in the car you can't see it.

C. E. Bayliss

By A Juror:

Q. Was there room enough for Bateman's car to go north between the yellow car and the Pennsylvania car?

A. Will you restate your question?

Q. I will show you on the diagram. Was there enough room for this car to go through here with this car in the road and this one coming down there?

A. Not with both cars there at the same time.

Q. It was not enough room?

A. No, sir.

By Mr. Frost:

Q. Let me see, Mr. Bayliss. You stated that this car here was four feet on the hard surface. Is that correct?

A. That is correct.

Q. You stated the lanes were ten feet wide.

A. Yes, sir.

Q. So that leaves six feet and you say a car is approximately six feet wide. Then it depends on where the Pennsylvania car was, isn't that right?

page 53 } A. Yes, sir.

Q. And unless the Pennsylvania car was over in the middle lane it would have enough room to pass, wouldn't it?

A. I was judging from the debris there where the impact occurred.

Q. But there is six feet remaining in this lane.

A. Yes, sir.

Q. And whatever portion of this lane?

A. Yes, sir.

Q. So it would have been possible to go through there?

A. Yes, sir.

By A Juror:

Q. Did you measure the distance between the northbound bus and the southbound bus?

A. No, sir. The only measurement was this bus was sitting almost up to the intersection and this bus was one hundred and forty-five feet north.

By A Juror:

Q. Trooper Bayliss, according to your investigation the debris was it in the southbound lane, the northbound lane or in the center lane?

C. E. Bayliss

A. According to my investigation the debris was in the center lane.

Q. In the center lane?

A. In the center lane.

page 54 } By The Court:

Q. In the center of the center lane?

A. Yes, sir.

The witness stands aside.

Mr. Frost: We rest.

(IN CHAMBERS)

Mr. Frost: If your Honor please, the defendant, by counsel, wants to renew his motion to strike the evidence in view of the testimony not only taken by the plaintiff but developed at the time of the defendant's testimony, the fact that the bus was already stopped and the McFadden car came along and stopped, apparently was not confused by any signal and stopped four feet off the highway; further, in view of the fact that this man Bateman had six feet apparently or approximately of the northbound lane and the debris was in the center of the middle lane which would be approximately four or five feet anyway, and apparently from his statement, which I don't see how we can get around, he gives an explanation and he doesn't blame the bus driver one bit.

The Court: He said he was in a line of traffic

page 55 } and cars stopped in front of him.

Mr. Frost: That cars stopped and if it is anybody's fault it would be McFadden's. I don't see how in the world you can put a car in front, regardless of whether it is eighteen feet or twenty feet or what it was.

The Court: The only possible evidence of negligence here is whether the jury would believe that the bus stopping triggered this thing.

Mr. Frost: I don't think there is any question about the bus stopping triggering it. That couldn't possibly be the proximate cause and at best it would be a remote cause, assuming he was on the highway all the way in the whole lane and stopped. Here comes a car behind him and stops. As I see it it couldn't possibly be the proximate cause the bus stopping up there with this other man insulating him between the Bateman car and the bus. It would only be a

remote cause. I think it did trigger it but it is a question between remote and proximate cause and when this man says he was in a line of traffic and the car in front stopped and said "Then I met the other car and I tried to miss it." he doesn't say at any time at all that he applied his brakes or did anything to avoid the accident. What he page 56 } was doing was continuing to run right on through with no evidence of any skid marks or any action on the part of Bateman to prevent this accident. He was going through there and he is bound to have seen the whole situation because McFadden saw it.

The Court: I see what you mean by remote cause and I am almost on your side, Mr. Frost, but I think I will let the jury pass on it.

Mr. Frost: We note an exception to your Honor's ruling.

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page 61 }

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Mr. Frost: If your Honor please, the defendants, by counsel, move the Court to set aside the verdict on the ground it is contrary to the law and the evidence and for the errors committed during the trial. I would like to elaborate on one point and that is that under the evidence in this case a proximate cause of the accident could not under any circumstances have been the bus parking three feet on the page 62 } highway in view of the other circumstances of the accident, the McFadden car, and Bateman's actions, and I ask that this verdict be set aside.

The Court: I am somewhat of the opinion that probably your negligence was remote. You have mentioned some Roanoke case. I wish you would send me the citation of that case and any other cases you wish and send Mr. Wyckoff a copy of your letter.

(Motion taken under advisement)

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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