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# Record No. 6952

In the
Supreme Court of Appeals of Virginia
at Richmond

## JEANNE PAIGE

v.

## KATHARINE DURANT EDGAR

FROM THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

### RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND

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**Record No. 6952**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 18th day of April, 1968.

JEANNE PAIGE, Plaintiff in error,

*against*

KATHARINE DURANT EDGAR, Defendant in error.

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From the Circuit Court of the City of Alexandria
William G. Plummer, Judge

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Upon the petition of Jeanne Paige a writ of error is awarded her to a judgment rendered by the Circuit Court of the City of Alexandria on the 15th day of November, 1967, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Katharine Durant Edgar and another were defendants; 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 53 } Instruction No. 4

It is the duty of the operator of a motor vehicle to exercise ordinary care:

1. To keep a proper lookout;
2. To operate his vehicle at a reasonable speed under the circumstances and traffic conditions then and there existing regardless of any posted speed limit.

And if you believe from a preponderance of the evidence that the defendant failed to exercise ordinary care in performance of any one or more of the foregoing duties, then she was negligent; and if you further believe from such evidence that any such negligence was a proximate cause of the collision, you shall find your verdict in favor of the plaintiff, Jeanne Paige.

W. G. P.

* * * * *

page 55 } Instruction No. 6

The duty to exercise ordinary care to keep a proper lookout requires not only the physical act of looking with ordinary care, but reasonably prudent action to avoid the danger which a proper lookout would disclose. If a person looks and does not see what an ordinarily prudent person would have seen under the circumstances in time to take the necessary precautions to avoid danger, he is as guilty of negligence as if he failed to maintain any lookout.

The duty to exercise ordinary care to keep a proper lookout involves not only the duty to look when such looking would be effective, but also the duty to see what an ordinarily prudent person exercising ordinary care would have seen under the circumstances then and there existing; and a person who keeps a lookout but fails to take advantage of what it reasonably discloses is as negligent as one who fails to keep a lookout.

W. G. P.

* * * * *

page 61 } INSTRUCTION NO. E

THE COURT INSTRUCTS THE JURY that a RED traffic light indicates that traffic then moving shall stop and remain stopped as long as the red signal is shown, except in the direction indicated by a lighted green arrow. GREEN indicates that traffic shall then move in the direction of the signal and remain in motion as long as the green signal is given.

W. G. P.

* * * * *

page 63 } INSTRUCTION NO. G

THE COURT INSTRUCTS THE JURY that even though you believe from a preponderance of the evidence that ISAIAH GRAY'S motor vehicle was part of a funeral procession, this did not relieve ISAIAH GRAY of the duty of obeying traffic lights while operating his vehicle in such a procession, unless police officers were present at the location in which event signals by such officers would take precedence over such light.

W. G. P.

* * * * *

page 67 } Instruction No. 9

At the time that the incident under consideration occurred, the following regulation was in effect in the City of Alexandria:

"No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while such vehicles are in motion. (Code 1953, § 19-57.)"

This regulation sets out the applicable standard of conduct which of itself fixes the duty of care required by one in the same situation as the defendant. You are instructed, therefore, that the violation of this regulation, if any, by the defendant is negligence as a matter of law.

If the violation of this regulation created a hazard which the regulation was intended to avoid and which does in fact bring about harm to the plaintiff, Jeanne Paige, which the regulation was intended to prevent, the violation is a legal cause of the harm.

You must, therefore, find that the regulation was violated and that this violation was a proximate cause or one of the proximate causes of the injury to the plaintiff, Jeanne Paige.

Refused. W. G. P.

page 68 } Instruction No. 10

The Court instructs you that if the defendant, while driving east on Prince Street, saw or should have seen a funeral procession traveling north on Patrick Street, then the defendant should have yielded the right of way to the funeral procession, even if she had a green light.

Refused. W. G. P.

* * * * *

page 75 } INSTRUCTION NO. F

THE COURT INSTRUCTS THE JURY that a red traffic light indicates that traffic then moving shall stop and remain stopped as long as the red signal is shown, and it is the duty of a driver faced with a red traffic signal to stop before he reaches the pedestrian crosswalk which crosses the street upon which the driver's vehicle is travelling and to remain stopped and not to enter the crosswalk or the intersection as long as the red signal is shown and not to proceed until it is safe to do so in the exercise of ordinary care.

G as amended. W. G. P.

* * * * *

page 79 }

* * * * *

HERETOFORE on the 16th day of October, 1967, came the plaintiff, JEANNE PAIGE, by her counsel, James C. Cacheris, and the defendants, WILLIAM H. EDGAR and KATHERINE DURANT EDGAR, by their counsel, George C. Towner, Jr.

Whereupon, came a panel of thirteen jurors which was sworn on its *voir dire* and found free from exception and from which panel each side struck three.

Thereupon came a panel of seven which was sworn as a jury as the law directs for the trial of this case.

Whereupon, the plaintiff, by counsel, moved the Court to nonsuit her claim against the defendant, WILLIAM H. EDGAR, which motion the Court granted, and

It is accordingly ORDERED that the said WILLIAM H. EDGAR be, and he hereby is, dismissed without prejudice as a party defendant to this action.

Whereupon, counsel for the plaintiff and counsel for the defendant made opening statements to the jury, and counsel for the plaintiff proceeded to introduce her evidence, and at the conclusion thereof, counsel for the defendant moved to strike the evidence of the plaintiff, which said motion was denied by the Court and to which said ruling of the Court said defendant duly excepted.

page 80

Thereupon, counsel for the defendant proceeded to introduce her evidence.

Thereupon, out of the presence of the jury, the instructions were argued by counsel.

Thereupon, the jury returned to the jury box and was instructed by the Court, and after hearing closing arguments for the plaintiff and the defendant, the jury retired to its room to consider its verdict. After a time, the jury returned into Court and presented the following verdict, to wit:

October 16, 1967

"We, the jury, on the issues joined in the case of JEANNE PAIGE versus KATHERINE DURANT EDGAR, find for the defendant, KATHERINE DURANT EDGAR."

Foreman: George Leslie

Thereupon, the jury was discharged.

It is accordingly the judgment of this Court that the plaintiff recover nothing of and from the defendant and that the defendant recover of the plaintiff her costs expended in this action.

AND THIS ORDER IS FINAL.
ENTERED: November 15, 1967.

WILLIAM G. PLUMMER, Judge

SEEN AND EXCEPTED TO:
JAMES C. CACHERIS
Counsel for Plaintiff

SEEN:
GEORGE C. TOWNER, JR.
Counsel for Defendants

* * * * *

page 81 }

* * * * *

## NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

To: Alvin W. Frinks, Clerk of the Circuit Court for the City of Alexandria:

Counsel for Jeanne Paige, the plaintiff in the above-styled case, hereby gives Notice of Appeal from a final judgment entered herein on the 15th day of November, 1967.

The said Jeanne Paige, the plaintiff in the above-styled suit, will apply to the Supreme Court of Appeals of Virginia for a Writ of Error to said judgment, and herewith sets forth her Assignments of Error as follows:

1. The trial court erred in granting Instruction No. G.
2. The trial court erred in refusing to grant Instruction No. 9.
3. The trial court erred in refusing to grant Instruction No. 10.

Dated this 17th day of November, 1967.

JEANNE PAIGE
By Counsel

JAMES C. CACHERIS
Counsel for Plaintiff
201 N. Washington Street
Alexandria, Virginia

Filed Clerk of Courts City of Alexandria Nov. 17, '67 3:16 PM.

ALVIN W. FRINKS, Clerk

BY T. A. BULL, Deputy Clerk

* * * * *

page 2 }

* * * * *

Whereupon

EDWARD L. BASS, JR. a witness, was called for examination by counsel for the Plaintiff, and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Cacheris:

Q. Officer Bass, would you please try to keep your voice up so that members of the jury, His Honor, the defendant and counsel can hear you, please, sir.

Tell us your full name.

A. Edward L. Bass, Jr.

* * * * *

Q. Directing your attention to October 26, 1964, were you employed by the Alexandria Police Department on that day?

page 3 } A. Yes, sir, I was.

Q. Did you have an occasion to meet any cars at the Fairfax City Line?

A. Yes, I met funeral procession on that particular day.

Q. Do you recall approximately what time that was?

A. Approximately shortly after noon I would say, 12:30 or quarter to one, thereabouts I guess.

Q. Now what route did this funeral procession take?

A. I brought the funeral procession north on U.S. No. 1 north on Patrick Street, which is a part of U.S. No. 1 to Queen Street. At that point I made a right turn, went to Washington Street and at that point I made a left turn proceeding north on Washington Street towards the National Airport.

They were going I believe into Washington.

* * * * *

page 5 }

* * * * *

Q. You don't know the names and addresses of any of the people who were involved in that procession?

A. No, sir.

I had no conversation with any of them.

* * * * *

page 6 }

* * * * *

CROSS EXAMINATION

By Mr. Towner:

Q. Officer, you did not investigate the accident which is the subject matter of this lawsuit?

A. No, sir, I did not.

* * * * *

page 7 } Q. Now where was your position with respect to the procession?

A. I was leading the procession. I was the lead vehicle.

Q. Were there any other police officers connected with the procession?

A. No, sir. I was the only one. At that time I was with the Traffic Division of the Alexandria Police Department. I was riding solo motorcycle.

Q. Do you have any ideas as to the approximate number of vehicles in the procession? Could you tell?

A. No, I have no idea. From what I could see when I first picked it up it was quite lengthy.

* * * * *

page 9 }

* * * * *

By Mr. Towner:

Q. Now, Officer, you did receive a report on your radio as

to an accident at the Prince and Patrick Street intersection; is that correct?

A. Yes.

Q. Will you tell us where you were at the time you received that report to the best of your recollection?

A. To the best of my recollection I was on Washington Street and I believe in the vicinity of the Howard Johnson, about the 800 block of North Washington Street.

Q. Would you tell us in terms of the route that you traveled, approximately how many blocks that is from this intersection?

A. Possibly 14 or 15 blocks, thereabouts I would estimate. I haven't ever counted them, just a rough estimate.

Q. Do you have any idea in terms of mileage? Would it be a mile?

A. No, it would be a half a mile.

page 10 } Q. Do you of your own knowledge know whether a car operated by Isaiah Gray was in this funeral procession?

A. No, sir, I do not.

* * * * *

Q. Were there ever occasions—strike that.

When you took or became part of the procession, you took over in the front; isn't that correct?

A. Yes.

Q. Picked it up at the front and remained in the front at all times?

A. Yes, sir, that is correct.

Q. Did you ever have occasion to travel along page 11 } side of the procession?

A. No, sir. When I turned it over to the U.S. Park Police, then I turned and came back, at the intersection of Mount Vernon Boulevard.

* * * * *

page 12 }

* * * * *

Whereupon

CALVIN FERGUSON a witness, was called for examination by counsel for the plaintiff, and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Cacheris:

Q. Mr. Ferguson, would you tell us your full name, please?

A. Calvin Ferguson.

* * * * *

page 13 } Q. Now, Mr. Ferguson, directing your attention to October 26, 1964, were you operating a motor vehicle on that day?

A. Yes, I was.

Q. What type of car were you operating?

A. A 1964 Mercury four-door sedan.

Q. Did you have occasion to see Mr. Gray and Miss Paige on that day?

A. Yes, I did.

Q. In connection with what did you see them?

A. In the funeral.

Q. Who was the funeral for?

A. Roosevelt King.

Q. And did you go to the church?

A. Yes, sir, I did.

Q. Now did you—tell us after church what you did.

A. Well, after the funeral was over we left in a funeral procession and then we came through the county, we came to Alexandria and we were picked up by an officer and he carried us through town.

Q. Was there a car behind you?

A. Yes, there was.

Q. Whose car was it?

page 14 } A. Isaiah Gray.

Q. Did you go north on Patrick Street?

A. Yes, I did.

Q. Did you cross Prince Street?

A. Yes, I did.

Q. Do you recall what color the traffic light was for vehicles going north on Patrick Street when you were crossing?

A. It was green when I went through.

Q. And as you were going across that street did anything unusual happen?

A. As I got across there I heard a noise and I looked back and it was an accident there.

Q. Now before that time that the accident happened did you have occasion to look in your rear-view mirror?

A. Yes, I looked in front of me and behind me.

Q. Did you notice whether or not Mr. Gray's lights were on?

A. Yes, they were.

Q. Can you tell us, if you know, how far behind you Gray's vehicle was when this collision occurred?

A. I would say approximately 10 feet or maybe a little more. I don't know exactly.

* * * * *

page 15 }

* * * * *

## CROSS EXAMINATION

By Mr. Towner:

Q. You don't know how fast you were going, Mr. Ferguson; is that right?

A. No, I don't. I didn't keep a record of the speed. I know we had a certain speed in procession and I didn't notice the specific speed.

page 16 } Q. I'm sorry. You didn't notice—?

A. I didn't notice the speedometer. We were in a line of cars and we only go as fast as the other cars go.

* * * * *

Q. Do you have any recollection as to how many cars from the front of the procession you were when you entered?

A. Five, there were five cars in front of me.

Q. Five cars in front of you?

A. That's right.

*Calvin Ferguson*

Q. Is it your testimony that when the Alexandria
page 17 } police officer took over the leading of the procession that you—that there was a police officer, five cars and then you?

A. That's right.

Q. Is it your recollection, Mr. Gray, as you traveled through Alexandria and up Patrick Street that these cars were close together?

A. Yes.

* * * * *

Q. As you came up Patrick Street in Alexandria how close would you say were these five cars and yourself? What was the spacing between the cars?

A. I'd say approximately maybe five or eight feet at times. It varies.

Q. Would you say it was generally close, they were all quite close together?

A. Yes, at various times, I mean you just can't
page 18 } say a certain five feet. You can't keep five feet all the time.

Q. Would it be fair to say that they were approximately one car length apart generally?

A. No, I wouldn't, less than one car length.

Q. Less than one car length?

A. That's right.

Q. And they stayed that close together?

A. Yes, from time to time. I won't say that distance all the time. I can't say that.

Q. As I understand your testimony—well, let me ask you this—strike that.

At the time you started in the procession was the vehicle operated by Isaiah Gray behind you then?

A. Yes.

Q. This would make him the seventh car in the procession?

A. It would make him the sixth car.

Q. The sixth car?

A. Yes.

Q. Did he remain behind you throughout the entire trip?

A. He did.

Q. Now as you approached the intersection of Patrick and Prince did you have occasion to look at the traffic light?

A. Yes.

page 19 } Q. What color was it?

*Calvin Ferguson*

A. It was green.

* * * * *

Q. Did you go through any red traffic lights?
A. I can't remember.
Q. Now as you came up Patrick Street, how close behind you would you say Mr. Gray's vehicle was?
A. Like I said about 10 feet I would say or maybe a little more.
Q. Did he consistently maintain that approximate distance, not exactly 10, but about 10 as you came up Patrick Street?
A. Yes.
Q. Now as you approached Prince Street did you observe any traffic on Prince Street?
A. Yes, I did. I noticed—I looked on that side
page 20 } and I noticed three cars over there. They were stopped.
Q. Three cars were stopped?
A. Yes. About three cars I would say, approximately three cars I'd say like that.
Q. Do you remember seeing a Volkswagen bus, a red Volkswagen bus?
A. No, I didn't see it.
Q. You didn't see that?
A. No, course I noticed that after the accident.

* * * * *

Q. Did they remain stopped as you continued on into the intersection?
A. Yes, sir.
Q. Now Mr. Gray's car was at this time still approximately 10 feet behind you; is that right?
A. As far as I know.
Q. Did you see the collision?
A. No, I didn't.
page 21 } Q. How did you become aware that a collision had occurred?
A. Because as soon as I got through the intersection I heard this noise and I looked around and there was the accident.

* * * * *

*Calvin Ferguson*

Q. Was this beyond the intersection north?

A. Yes, when I heard the noise the funeral procession was still moving you see, and then it slowed up some and that is when I observed the accident back there.

Q. All right.

Now when you heard this noise where again was your car?

A. Well, I guess it had gotten through the intersection.

Q. I'm sorry.

A. I had just gotten through the intersection. The tailend of my car had just gotten through the intersection.

Q. Had just gotten through the intersection?

page 22 } A. Yes, sir.

Q. What did you do then?

A. I just kept on going.

Q. You kept on going?

A. Yes, sir.

Q. Did you observe the nature of the impact?

A. By looking back, yes, I saw.

Q. Would you tell us what you saw when you looked back?

A. Well, all I could see was this Volkswagen which was turned upside down.

Q. It was turned upside down?

* * * * *

Q. You just kept on going?

A. That's right.

Q. Did you know at the time who was in the Gray vehicle? Did you know it was the Gray vehicle?

A. Yes.

page 23 } Q. Did you know the Grays?

A. Yes.

Q. How long had you known them?

A. 30 years, 40 years, 30 years I guess.

Q. Could you tell that they were involved in the collision, too, as well as the Volkswagen?

A. Yes.

Q. You could see that; couldn't you?

* * * * *

page 25 }

* * * * *

Q. What was the ultimate destination of the funeral procession? Where were they going?
A. To Arlington National Cemetary.
Q. I'm sorry. Where? Arlington—
A. Arlington National Cemetary.
Q. Arlington National Cemetary.
Did you continue on to Arlington Cemetary?
A. Yes, we had a certain time to get there. That is why nobody stopped.
Q. All right. Thank you.

* * * * *

page 39 }

* * * * *

Whereupon

NELSON E. GREEN a witness, was called for examination by counsel for the plaintiff, and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Cacheris:
Q. Would you tell us your full name, sir?
A. Nelson E. Green.
Q. Where do you live?
A. 814 Franklin Street, Alexandria.
Q. What business are you in, Mr. Green?
A. I operate a funeral home.

* * * * *

page 40 }

* * * * *

Q. Turn to October 26, 1964, did you have a funeral on that day?

*Nelson E. Green*

A. Yes.

Q. Can you look at your book and tell us who it involved?

A. Robert R. King.

Q. Was there any particular arrangements made in regard to transporting people from the church to the cemetary; do you recall?

A. Yes, I made arrangements with the Fairfax Police to bring me from Gum Springs to the Alexandria City Limits and then I made arrangements for the Alexandria City Police to meet me at the Alexandria City Line and carry me to the Alexandria City Line on the northside of town.

page 41 } Q. Were you in the funeral procession on that day?

A. Yes, I was.

Q. Whereabouts were you?

A. I was in the lead car behind the policeman.

Q. What did the other cars do as they proceeded on Patrick Street?

A. What did they do?

Q. Yes, sir. I mean was there any particular—strike the question.

Is there any particular arrangement made with the cars, any particular identification used to show they were in a procession?

A. Well, we turn on our lights.

Q. And did the cars move up Patrick Street?

A. Yes, we came straight up Patrick.

Q. You didn't see the collision that we are talking about in this case; is that true?

A. No, I did not.

* * * * *

page 42 }

* * * * *

Q. Do you know whether or not Miss Paige was in this funeral procession?

A. Yes, she was.

Q. Do you know what car she was in?

A. No, I do not.

* * * * *

*Isaiah J. Gray*

page 43 } CROSS EXAMINATION

By Mr. Towner:

Q. Do you know where with regard to the procession the lead car, for example, the car driven by Isaiah Gray was located?

A. No, I do not.

* * * * *

page 46 } Whereupon

ISAIAH J. GRAY a witness, was called for examination by counsel for the plaintiff, and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Cacheris:

Q. Mr. Gray, would you tell us your full name, please?

A. Isaiah J. Gray.

* * * * *

Q. Are you a relative of Mrs. Paige?

A. Yes, I am Mrs. Paige's brother.

* * * * *

page 47 }

* * * * *

Q. Was your sister in that car?

A. Yes, she was.

Q. What seat did she occupy?

A. She was occupying the front outside seat.

Q. Was anybody else in the front seat with you?

A. Mrs. Ethel Keys.

Q. Was there anyone in the back seat?

A. Mr. Bailey.

* * * * *

*Isaiah J. Gray*

page 48 } Q. And what did you do when you left the church, Mr. Gray?

A. I left the church and we were in the funeral procession. They came by and told us to cut on our lights and we cut our lights on. Then we proceeded on down Crossroads, to Number One Highway. Number One Highway came towards Alexandria.

Q. Did you go up Patrick Street?

A. Yes, we came to Alexandria to Patrick Street, up Patrick Street.

* * * * *

Q. Can you tell us whereabouts in the procession your car was to the front, the middle or the rear?

A. My car was just about the middle of the procession.

Q. Was there a car in front of you?

A. Yes, there was.

Q. Whose car was in front of you?

A. Mr. Calvin Ferguson.

Q. And as you proceeded up Patrick and just before you got to Prince Street how far behind Mr. Ferguson's car was your car?

A. I was approximately 10 to 12 feet, about a car length.

page 49 } Q. And did you go across the intersection at Prince and Patrick?

A. I started through the intersection at Prince and Patrick when the vehicle came through the intersection and I ran into it.

Q. What kind of vehicle did you have the collision with?

A. It was a Volkswagen.

* * * * *

Q. That's Prince Street. This is Patrick Street, north and south.

A. South.

I was driving north on Patrick Street about right here. I came here. I was parked I would say about seven or eight cars back. When I came here I seen about three or four cars had stopped here for the funeral procession. As I started across the intersection a car, truck or bus, truck or whatever it was came in here and right along in here we had a collision.

*Isaiah J. Gray*

* * * * *

page 50 }

Q. What happened to the Volkswagen at the point of impact?

A. Well, at that time it was—I remember hitting it and I think it turned over. I am not sure but it was headed in the other direction after the accident.

Q. Do you know what the speed limit was for vehicles going north on Patrick Street?

page 51 } A. 25 miles an hour.

Q. How fast was your car going just before this impact?

A. Approximately 20 to 25.

Q. Had your vehicle slowed down before the impact?

A. No, we were in the funeral procession and I had kept my regular speed up.

* * * * *

Q. How far was the vehicle, the Volkswagen in front of you when you first observed it?

A. Well, it was just about—it wasn't in front of me, it was just to my right about a second later that is when—when I applied by brakes I seen the vehicle. It was just a split second.

Q. Which side of you was it?

A. Pardon me?

Q. On which side was it coming from?

A. It was coming from my left.

* * * * *

page 52 } Mr. Gray, do you know what color that light was for traffic going north on Patrick Street when you crossed the intersection?

A. No, I did not notice the light.

* * * * *

## CROSS EXAMINATION

By Mr. Towner:

Q. Is it your testimony, Mr. Gray, that you did not look at the light?

*Isaiah J. Gray*

A. No, I didn't. I may have looked at the light but I didn't know what color it was. He didn't ask me if I looked at it, he asked me did I know the color.

Q. Well, do you know that you did look at it?

A. I am not sure. I can't say that I did or I didn't. I don't know what color it was.

Q. And you say that your own speed was 20 to 25; is that correct?

A. Approximately.

Q. In what lane of Patrick Street were you as you approached the intersection?

A. It was a one-way street and I was approximately—I was just about in the left-hand lane.

page 53 } Q. Was there any police vehicle or policemen in the immediate area at the intersection at the time you were going into it?

A. No, not at the time I entered the intersection, there was not any officer there.

* * * * *

page 54 }

* * * * *

Do you know where your vehicle was then, when you first saw it and started to apply your brakes?

A. Well, the vehicle—when I see the collision that's about the same time—when I seen the vehicle that's about when I had the collision, the same identical time.

* * * * *

page 55 }

* * * * *

Q. When you looked to your left I believe you said that you saw three cars stopped?

A. Several cars. I wouldn't say three, several cars.

Q. Several?

A. In the right-hand lane of Prince Street going east.

* * * * *

*Isaiah J. Gray*

Q. Now at this time, the time of the collision I believe you indicated, Mr. Ferguson was in front of you?

A. Yes.

Q. Mr. Ferguson's car?

A. Correct.

Q. I believe you indicated that he was 10 to 12 feet behind you, I mean in front of you, approximately?

A. Yes.

Q. Do you recall how wide the car, the Volkswagen that you came in contact with, how wide that is?

A. How wide it is?

No, I don't know how wide it is.

page 56 } Q. Where did your vehicle end up, Mr. Gray?

A. It ended up in the right-hand lane of Patrick Street diagonal facing east.

Q. In the right-hand lane of Patrick Street facing east; is that correct?

A. Correct.

Q. Toward the river?

A. Correct. Not directly facing it, it was on an angle, a 45 degree angle I'd say.

Q. Where was the other vehicle?

A. The other vehicle was on the right-hand lane on the opposite side of Prince Street heading west.

Q. Did you observe any passengers in the other vehicle?

A. Yes, I did.

Q. Who were they?

A. I noticed the driver and some children I saw.

* * * * *

page 57 }

* * * * *

Q. Is it your recollection that the front of your car came in contact with the right front of the Volkswagen; is that what you are saying?

A. That's right.

* * * * *

page 58 } Whereupon

ETHEL KEYS a witness, was called for examination by counsel for the plaintiff, and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Cacheris:

Q. Would you please tell us your full name?

A. Ethel F. Keys.

Q. Where do you live?

A. 801 Booker Place, Seat Pleasant, Maryland.

Q. Miss Keys, directing your attention to October 26, 1964, were you a passenger in an automobile on that day?

A. Yes, I was.

Q. In whose car were you riding?

A. Mr. Isaiah Gray's.

Q. Where were you seated?

A. In the middle.

Q. Who else was in the car with you?

A. Mrs. Paige and Mr. Bailey.

* * * * *

page 59 }

* * * * *

Q. Tell us what happened as you approached Prince and Patrick Streets?

A. We were proceeding with the funeral procession and the only thing I can remember was we were following all the other cars and as far as I can remember the light was green and when I looked up this car was coming. It just seemed like it was going approximately 30 miles.

* * * * *

*Ethel Keys*

page 60 }

* * * * *

CROSS EXAMINATION

By Mr. Towner:

* * * * *

Q. Do you have any idea how many cars there were approximately in the procession?
A. No, I cannot.
Q. Were you close enough to the front that you
page 61 } could see the police officer?
A. No, I was not.

* * * * *

Q. Do you recall as you came down Patrick Street, before you got to the intersection with Prince, what side, what lane of travel you were in, the right lane or the left?
A. The left.

* * * * *

page 62 }

* * * * *

Q. Did you see any other vehicles on Prince Street?
A. No, I did not.
Q. Was this the only car coming from the left?
A. As far as I could see.
Q. Were there any cars stopped waiting?
A. No.
Q. Do you recall what kind of car this was that was coming?
A. It was a little stationwagon, gray.
page 63 } Q. A gray stationwagon?
A. (Nodding head.)

* * * * *

*Ethel Keys*

page 65 }

* * * * *

Q. And I want to know if you recall how close it was?
A. I can't recall, sir.
Q. What effect—did you see the collision there?
A. No.
Q. Did you have your hands over your eyes? Did you actually see the impact?
A. No, I did not, because when it was over I was in a daze.

* * * * *

page 66 }

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Q. Do you have any recollection of a police officer being at the intersection as you approached it?
A. No, I don't remember.

* * * * *

page 67 }

* * * * *

IN CHAMBERS

The Court: As far as the ordinance is concerned—
Mr. Cacheris: I have 22-58 which is a traffic—I don't know whether you want me to formally read to the jury or have Your Honor take judicial notice.
The Court: As I understand the authenticity of the ordinance, the fact that it was in effect at the time of this accident is stipulated and agreed, however, there is some argument as to whether or not it is a valid ordinance.
Mr. Cacheris: Under the facts in this case—
The Court: Well, why don't we proceed as follows.
The ordinance will be received subject to later argument at the time of instructions.
Mr. Cacheris: Very well.
page 68 } The Court: It will be received for the purposes of a proffer at this time and I will rule on it at the

time we consider instructions as to whether or not it can be basis of an instruction.

Mr. Cacheris: Does Your Honor want it marked or anything?

The Court: I will mark it.

Mr. Cacheris: It doesn't make any difference to me.

The Court: It will not go to the jury as such.

Mr. Cacheris: Well, just let it in as evidence as 22-58, the Alexandria City's code.

The Court: I will put marks around it.

Mr. Towner: Do you want to put that in too?

Mr. Cacheris: That is up to you. You can put it in.

The Court: I will put my initials on it just to show that it has been offered today and when we come to the time of the argument of the law of the case we can argue whether or not it is properly considered in this case.

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page 75 }

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The Court:

* * * * *

The following is a section of the Alexandria Motor Vehicle Code which has been agreed to be authentic, Section 22-58, driving through processions.

No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized processions while such vehicles are in motion.

There appears after that in parentheses, Code 1953, Section 19-57.

* * * * *

page 77 }

* * * * *

Whereupon

JEANNE PAIGE the plaintiff, was called for examination by counsel for the plaintiff, and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Cacheris:

Q. Mrs. Paige, try to keep your voice up so we can all hear you and tell us your full name, please.

A. Jeanne Paige.

* * * * *

page 80 }

* * * * *

Q. Following attending church in Gum Spring, did you then get into an automobile?

A. Yes, I did.

Q. Whose car did you get into?

A. Isaiah Gray's.

Q. What relation is Mr. Gray to you?

A. My brother.

Q. Just tell us what happened when you got into his car.

A. After the funeral was over, I got into his car and I was sitting on the right-hand side. We went down Fortune Road and into Richmond Highway and into Alexandria to Patrick and Prince Street.

Q. What happened at Patrick and Prince Street?

A. We had an accident.

Q. Did you see the other car involved in this
page 81 } accident before the collision occurred?

A. No.

* * * * *

page 95 }

* * * * *

Q. Do you recall at the time that you left and as you

proceeded into Alexandria, where in the procession the car in which you were traveling was located?

What number car from the front?

A. I don't remember the number. I would say about in the middle.

Q. In the middle?

* * * * *

Q. Do you have any idea of how many cars were in the procession?

A. No, I don't.

* * * * *

page 96 }

* * * * *

Q. Well, now as you came to the intersection of Patrick and Prince was there a police officer in sight anywhere.

A. I didn't see one.

Q. In what lane was the car that you were in traveling on Patrick Street, the left side or the right side?

A. I don't remember.

Q. You don't remember.

Do you recall how fast it was going?

page 97 } A. No, I don't remember.

Q. Now as you approached Prince Street did you have occasion to look at the traffic light?

A. No.

Q. So that you don't recall then what color the light was?

A. No, I don't.

Q. Did you have occasion to look to your left on Prince Street?

A. No, I didn't.

Q. Did there come a time when you finally saw the vehicle that your car was later involved in the collision?

A. Yes.

Q. Where was your car when you first saw this other car and where was it, as best you can recall?

A. I would say that the car that I was in was entering the intersection.

Q. Was any portion of the car in the intersection?

A. Yes.

Q. Where was the other car?

*Jeanne Paige*

A. When I noticed it it was coming right in front of our car.

Q. I see.

page 98 } Were there any other cars in the procession in front of you?

A. Yes.

Q. Do you recall where they were?

A. One had just gotten through the intersection.

Q. Had just gotten through the intersection?

A. Yes.

Q. Do you recall the space between the two vehicles?

A. No, I don't.

Q. But you would recall that you were just entering the intersection and it was just leaving the intersection; is that the way you—

A. Yes.

Q. Do you have any idea how close it was to the car in front of it in front of the procession?

A. No, I don't.

Q. Do you have any idea as to the speed of this car that came in front of you?

A. No, I don't.

Q. Do you recall what kind of car it was?

A. It was a Volkswagen.

Q. Do you recall what happened to it after the collision?

A. I don't remember.

page 99 } Q. As I understand it, after the collision you got out of the car and then you fainted?

A. Yes.

* * * * *

By Mr. Towner:

Q. Do you recall whether—maybe you said you didn't look, but as you came up Patrick Street, do you recall looking over toward this way on Prince Street or seeing any cars over here?

A. No.

Q. Well, one, did you look or is it you looked and didn't see?

A. I didn't look.

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page 100 }

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Mr. Towner: I have a motion.

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page 101 }

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The Court:

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page 102 }

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I think there is sufficient evidence for a jury to determine it at this point that the defendant was guilty of negligence which approximately contributed in causing this accident.

I am not going to decide the case on this ordinance yet. I don't think it is necessary to.

Mr. Towner: Fine.

I would like to note an exception to your ruling for grounds stated.

* * * * *

page 103 } Whereupon

CHARLES S. ADAMS a witness, was called for examination by counsel for the defendant, and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Towner:

Q. Would you state your name, please?

A. Charles S. Adams.

* * * * *

*Charles S. Adams*

Q. Mr. Adams, where do you presently reside?
A. Atlanta, Georgia.
Q. And in October of 1964 where did you reside?
A. Alexandria, Virginia.

* * * * *

page 104 }

* * * * *

Q. Directing your attention to the 26th day of October 1964, did you have occasion to observe a motor vehicle accident at the intersection of Prince Street and Patrick Street in the City of Alexandria?

A. Yes, I did.

Q. Now would you tell us briefly the circumstances leading up to that incident as far as you can recall?

A. My wife and I had been home to lunch that day and we were returning to town coming up US 1. As we started across the bridge out on the expressway we were passed by this funeral procession as we came on into town, and to the first stoplight the funeral procession started to drag out, space out between the cars.

As we continued on down my wife and I both made comments about the—

Q. Well, you can only speak for yourself.

A. I was commenting—okay. Well, we were commenting on the way that the cars kept going through the stop-
page 105 } lights and through the stop signs and in and out of traffic, although the funeral procession by this time was way ahead.

As we came on up the block prior to the accident the light had changed, I had started to stop and had almost stopped when the claimant passed us. I would say his speed at this time was in excess of 35 miles an hour.

This is about halfway down the block. The light was on red. There was a car in front of me and we were coming almost to a complete stop and at this time the claimant's car applied brakes and skidded into the back of defendant's bus, turning the bus around.

Just short seconds after this the light changed and the car in front of me moved. I pulled around the corner, stopped, jumped out of the car and started to assist in getting the

children out of the car because we saw that the children flipped all around in the car and the bus as it turned around and we knew that there was someone hurt.

I got back and took them out and everything else was left up to the police.

Q. As you came down Patrick Street, what lane of travel were you in?

A. In the right lane.

Q. Was Patrick Street — is it two way or one way?

page 106 } A. One way north.

* * * * *

Q. Where was it you recall first seeing the automobile that was on Patrick Street that was involved in the collision?

A. The defendant's, the claimant's?

Q. Well, the car that was on Patrick Street.

A. The same street that I was on? It has been a long time now and I am not familiar with the streets.

Q. Yes, sir.

A. He passed me as I was stopped.

Q. Where would this be?

A. It was about midway up the block.

Q. Where was that with relation to the intersection where the accident occurred?

A. In relation to—I'd say midway the block, halfway down the block.

Q. Immediately prior to the intersection?

A. Right.

Q. And you were in what lane of travel then?

A. The right lane.

* * * * *

page 107 } Q. At this time did you have occasion to observe whether or not that car had any lights on?

A. No, it didn't.

Q. It did not.

A. The funeral procession to my knowledge at the time had already passed approximately six blocks ahead of this and we noticed other bunches running through time and time again and as this guy passed me, well, we saw him pass at a high rate of speed and at the time we didn't really realize that he was a part of the funeral procession.

* * * * *

*Charles S. Adams*

page 108 }

* * * * *

Q. Now at the time that this car passed you, could you see the light at Prince and Patrick?

A. Yes.

Q. What color was it then?

A. Red.

Q. Did it, prior to the collision, change color?

A. Prior to the collision. It changed when I was, oh, at least before the midpoint of the block because I had almost stopped for the red light.

Q. No, I mean did it change back from red to green?

A. No, it was still on red.

page 109 } Q. Well, what color was the light when the car on Patrick Street entered the intersection?

A. Red.

Q. Now had there been any traffic in front of you which had continued through the intersection?

A. No.

* * * * *

page 110 }

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Q. Where in the intersection would you say the collision occurred?

A. I would say right, just about the center of the intersection.

* * * * *

What portion of each vehicle struck the other, came in contact with the other?

A. The complete front of the Ford struck the Volkswagen approximately on the right-rear tire and the right-rear quarter panel.

* * * * *

*Charles S. Adams*

CROSS EXAMINATION

By Mr. Cacheris:

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page 114 }

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Q. And you couldn't tell us the number of vehicles you saw in the funeral procession; is that true?

A. I have no idea. This thing was strung out so far. It could have been 25, it could have been 50. They were six to eight blocks apart.

page 115 } Q. You are talking about—would you say it was a car length or so between some of the cars?

A. I would say there was up to a block or a block and a half between some of the cars.

Q. They were spread out?

A. Right.

Q. And you couldn't tell which was part of it?

A. In no way possible.

* * * * *

Q. And the funeral procession was in the left-hand lane; true?

A. Right.

* * * * *

page 117 }

* * * * *

Q. It is also true that the funeral procession went through some red lights that you saw them go through?

A. Yes, sir.

Q. And you saw traffic stop for them; didn't you?

A. I saw some traffic stop and some had to stop.

* * * * *

page 118 }

* * * * *

Whereupon

*KATHRAINE* EDGAR a defendant, was called for examination by counsel for the defendants, and, after having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Towner:

Q. You are the defendant, *Kathraine* Edgar?

A. Yes, I am.

* * * * *

Q. And on October 26, 1964 where did you reside?

A. 216 North Fairfax Street, here in Alexandria.

Q. Were you on that date involved in an automobile collison?

A. Yes, I was.

Q. Would you tell us the circumstances immediately proceeding the collision?

A. Yes.

I drove my daughter and three other children page 119 } in a carpool home for lunch and I drove Nichole, the first child—it is kind of confusing. It is on Prince Street and this was not in the block immediately adjacent to Patrick Street but two blocks back where Henry Street, before Henry Street crosses.

I dropped Nichole on the left side of the road. It is a one-way street and he lives on the left side, so I stopped and dropped the child with his mother and then I had to stop at a red light at Henry Street and when the light at Henry Street changed to green I proceeded down Prince Street to drop the rest of the children in the carpool.

Q. All right.

Now as you approached the intersection of Patrick and Prince Street, did you have occasion to observe the traffic light?

A. Yes.

Q. What color was it?

*Kathraine Edgar*

A. It was green.

Q. All right.

Then what did you do then?

A. I observed that the light was green and I checked to the left and the right. When you are driving in a carpool you check everything and proceeded to continue toward the green light and entered the intersection.

page 120 } Q. Then what occurred?

A. And then I sensed that there was something coming very fast at me and I tried—it was about to hit me and I tried to speed up but there wasn't any time to and it hit us.

Q. Then what happened?

A. And the bus rolled—I don't know—bounced on the roof and then came down and at this point I tried to get back to the children who were screaming very loudly and then the bus still was moving and it swung around so it was sort of going back in the same direction that it had been going and that is what happened.

Q. And where did the bus end up as you recall?

A. It was facing, facing northwest. It was rather confusing. The children were very upset.

* * * * *

Q. Do you recall your speed as you approached the intersection?

A. It was a safe speed below the—it was between 15 and 25 miles an hour that I was driving in the carpool.

Q. Did you have occasion to look to your right

page 121 } to observe whether any traffic was coming from Patrick Street?

A. Midway as I was coming down Prince Street I saw that there was a green light and I checked to the left for traffic and saw nothing and continued to check whether the light would stay green as I continued to approach.

Q. Did you see any indication of traffic about to enter the intersection?

A. I didn't see any other car.

Q. Had you seen any as you went down Patrick Street—I mean Prince Street and while the light was green had you seen any other vehicles go through the intersection?

A. No, I hadn't seen anything.

* * * * *

*Kathraine Edgar*

page 122 }

* * * * *

Q. Did you know that Prince Street was one-way going east?

A. Yes.

Q. And you were in a Volkswagen bus; correct?

A. Yes.

Q. Then when you first saw the Ford it was into the intersection; correct?

A. Yes.

Q. And your car was entering the intersection at that point?

A. I was in the intersection.

Q. You weren't in the intersection?

A. When I saw him first.

Q. You saw the Ford and the Ford was entering the intersection; correct?

page 123 } A. He was about to hit me.

Q. And you hadn't gone into the intersection?

A. I was in the intersection.

Q. And you were in the intersection; correct?

A. Yes.

Q. And then when impact occurred you had your foot on the gas; isn't that so?

A. No, I am not sure about that because I remember thinking I certainly couldn't try to stop. I don't know whether I had time between sensing he was going to hit me and the time he hit me. It was very quick.

* * * * *

Q. Well, let me ask you this question. Do you recall answering some interrogatories or questions that were submitted to you, and I asked you whether this interrogatory was submitted to you:

Describe exactly in detail what you did from the time you first observed the other automobile involved in this accident at the time of impact including your course of travel and your answer was: "Question 36, I tried to avoid

page 124 } being hit by Mr. Gray's vehicle by continuing forward."

A. I did continue forward. I didn't brake.

*Kathraine Edgar*

Q. That is a true answer; is that correct?
A. Yes, it is a true answer.

* * * * *

Q. And you didn't observe any of the cars in the funeral procession; correct?
A. I saw no cars.
Q. You didn't see Mr. Ferguson's car go through the intersection before the Gray vehicle?
A. No.
page 125 } Q. You didn't see any of the cars that were stopped in these two lanes here for traffic going east on Prince Street; correct?
A. I don't recall.
Q. You don't recall if there were any cars stopped?

* * * * *

page 126 }

* * * * *

IN CHAMBERS

The Court: All right, number one.
For the record Instructions 1, 2 and 3 are granted without objections. Instruction No. 4 is refused as originally offered but granted as amended by the elimination of the second numbered line regarding proper control with excep-
page 127 } tion noted by the plaintiff.
Five is granted as is six without objection. Seven was refused as there being no evidence of the speed limit in regard to Prince Street. Eight is refused.
Mr. Cacheris: On seven and eight note my exception, please, Your Honor.
The Court: Nine and ten are refused on the basis that the court is of the opinion that the City Ordinance is inconsistent with the general laws set forth in the Statutes of Virginia.
Mr. Cacheris: Exception noted for those two, Your Honor.
Mr. Towner: How about exception to eight? Is there an exception to eight?
The Court: He has excepted eight, nine and ten.

Number 11 is granted as amended without objection. 12 is granted without objection. 13 is refused.

Mr. Cacheris: Exception.

The Court: Exception noted.

A is granted as offered without objection. B was withdrawn. C, D, E are granted without objection. F is granted as amended by striking the last two and half lines, the defendant noting his exception.

page 128 } Mr. Towner: Could I put my grounds on the record?

The Court: Sure.

Mr. Towner: I would except to the refusal of the Court to grant Instruction F as originally offered on the grounds that it was proper for the jury to be instructed as to whether or not Isaiah Gray was in fact negligent for violating a red light.

The Court: The Court is refusing it because the Court feels the issue of Isaiah Gray's negligence is not an issue in the case, that the issue regarding negligence is that with reference to the defendant and that will be granted as amended with the defendant's exception noted.

G is granted and exception noted by the plaintiff. H is refused as originally offered. The amended H is granted without objection. I and J are refused for the same reason stated that being that Mr. Gray's negligence is not an issue in the case.

Mr. Towner: I would note for the record exception on the same grounds for the granting of Instructions I and J as given for Instruction F.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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