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Rule 5:12
FILE COPY
Clerk, Supreme Court of Appeals

Record No. 7307

In the
Supreme Court of Appeals of Virginia
at Richmond

ALLEN EDWARDS,
ADMINISTRATOR, ETC.

v.

GENIE SYRKES

FROM THE CIRCUIT COURT OF LOUISA 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.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7307

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 14th day of October, 1969.

ALLEN EDWARDS, Administrator of the Estate of HERMAN WILLIAMS, deceased, Plaintiff in error,

against

GENIE SYRKES, Defendant in error.

From the Circuit Court of Louisa County
Harold H. Purcell, Judge

Upon the petition of Allen Edwards, administrator of the estate of Herman Williams, deceased, a writ of error is awarded him to a judgment rendered by the Circuit Court of Louisa County on the 1st day of April, 1969, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Genie Syrkes was defendant; no bond being required.

RECORD

* * * * *

page 81 } INSTRUCTION 1F

The Court instructs the jury that a table has been established in Virginia to be considered as evidence, along with other evidence as to the health, constitution and habits to show the life expectancy of any person whose life expectancy needs to be established, and this table shows that a male person, age 8, which was the age of the plaintiff's decedent at the time of his death, has a normal remaining life expectancy of 61 additional years, and while this is not conclusive or binding upon the jury, it is to be received as evidence along with all other evidence as to the health, constitution and habits of the plaintiff's decedent in arriving at the amount of damages, if any.

HHP

* * * * *

page 92 } INSTRUCTION NO. 9

Virginia law recognizes that some accidents are unavoidable and if you believe from a preponderance of the evidence that the accident giving rise to this suit was unavoidable as to the defendant then your verdict must be in favor of the defendant.

HHP

page 93 } INSTRUCTION NO. 10

The mere fact that there has been an accident and that as a result thereof the decedent has been killed, does not of itself entitle the plaintiff to recover. In order to recover against Genie Syrkes the burden is upon the plaintiff to prove by a preponderance of the evidence that Genie Syrkes was negligent and that any such negligence was a proximate cause of the collision.

And if the jury are uncertain as to whether any such negligence has been thus proven by a preponderance of the evidence, or if you believe that it is just as probable that Genie Syrkes was not guilty of any such negligence as it is that he was, then you shall return your verdict in favor of Genie Syrkes.

HHP

page 94 } INSTRUCTION NO. 11

If you believe from the evidence that the decedent rode into the path of the defendant's car at a time and under such circumstances that Genie Syrkes in the exercise of ordinary care could not avoid colliding with him, and that the defendant, Genie Syrkes, was not otherwise negligent, then you shall find your verdict in favor of the defendant, Genie Syrkes.

HHP

page 95 } INSTRUCTION NO. 12

Every operator of a bicycle who intends to turn, or partly turn, from a direct line of travel, shall exercise ordinary care under the circumstances, taking into consideration his age, general intelligence, maturity and experience, to first see that such movement can be made in safety, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal for a distance of at least 100 feet plainly visible to the driver of such other vehicle of his intention to make such movement.

And if you believe from the evidence that the decedent failed to exercise such ordinary care in the performance of the foregoing duty, and was capable of negligence; and if you further believe from the evidence that any such negligence was the sole proximate cause of the collision, or that it proximately contributed to cause it, then you shall find your verdict in favor of the defendant.

page 96 } INSTRUCTION NO. 13

The duty of the operator of a bicycle to exercise ordinary care to keep a proper lookout, is not limited to looking forward, but requires the operator to exercise ordinary care to look in any direction for vehicles, persons or conditions which should affect his driving.

And if you believe from the evidence that the decedent, under all the circumstances existing at the time, including his age, general intelligence, maturity and experience, failed to exercise ordinary care to keep a proper lookout for the conditions existing behind him, and was capable of negligence; and if you further believe from the evidence that any such negligence was the sole proximate cause of the collision, or that it proximately contributed to cause it, then you shall find your verdict in favor of the defendant.

* * * * *

page 102 } INSTRUCTION 1B

The Court instructs the jury that the Court has found as a matter of law that the defendant was guilty of negligence, which was a proximate cause of the plaintiff's decedent's death, and, unless you believe from a preponderance of the evidence that the plaintiff's decedent was guilty of contributory negligence, as outlined in other instructions of the Court, then you shall return your verdict in favor of the plaintiff.

Refused HHP

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ORDER

On March 27, 1969, came the plaintiff, in person and by his attorney, and the defendant, in person and came also the Southern Mutual Insurance Company, by Counsel.

And, thereupon came a jury, Earl E. Walker, Herbert D. Winsett, Ray F. Reeves, Bobby L. Donovan, James T. Bibb, Ellison W. Savage and Benny Earl Sharpe, who were sworn well and truly to try the issue joined in this case, and the presenting of the evidence having been completed on March 27, 1969, the Southern Mutual Insurance Company acting pursuant to section 38.1-381 of the 1950 Code of Virginia, as amended, moved the court to strike the Plaintiff's evidence, and to enter summary judgment for the defendant which motion the court did overrule to which action of the court the Southern Mutual Insurance Company objected and excepted, and the matter was adjourned to March 28, 1969, at which date came the same jury and the trial resumed, and the court did thereupon instruct the jury as to the law and the jury heard argument of counsel and thereupon the jury retired to the jury room to consider of its verdict and after sometime returned to the courtroom and delivered its verdict as follows:

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"We, the jury, on the issues joined, find for the plaintiff and fix his damages at $1000.00."

We apportion the damages as follows:

To Lear Williams Nelson—$500.00.
To Maxine Lee Williams—$500.00.

After the court received and read the verdict, the plaintiff by counsel moved the court to poll the jury, whereupon the Clerk called each juror by name and the court asked each juror if that was his verdict to which question each juror answered in the affirmative.

Thereupon the plaintiff moved the court to set aside the verdict and to award a new trial on the grounds that the amount of the award was inadequate, that the court misinstructed the jury and that the court committed errors during the course of the trial to which objections had been made and exceptions taken; and the court did overrule said motion and entered judgment on the verdict. It is therefore considered of the court that the plaintiff recover of the defendant the sum of $1000.00 plus his reasonable costs herein expended plus interest from March 28, 1969 until paid, and it is further ordered that the plaintiff after deducting proper costs of administration, distributes the balance remaining equally between Lear Williams Nelson and Maxine Lee Williams, and further it is ordered that the plaintiff make an accounting to this court, in accordance with law, of the distribution of the recovery under this judgment; to which action of the court the plaintiff objected and excepted.

page 110 } Enter: 4/1/69

Harold H. Purcell
Judge

Seen:
J. Calvitt Clarke, Jr., pd.

Seen and objected to:
pq.

page 111 } Seen, objected to and exceptions noted on the grounds stated in the body of the foregoing order, and, also, on the further grounds that the order does not properly show the motions made by the plaintiff, by counsel, and the exceptions that the plaintiff desires to reserve, those being that the plaintiff, by counsel, moved the Court to set aside the jury verdict as being contrary to the law and the evidence and grossly inadequate, and to award

the plaintiff a new trial on the issue of damages only, or in the alternative, on all issues, which motions of the plaintiff, the Court overruled, and entered judgment on the verdict, to which the plaintiff, by counsel, notes the following exceptions:

(1) The jury verdict and the Court's ruling was contrary to the law and evidence;

(2) The jury verdict was grossly inadequate, and should have been set aside by the Court;

(3) The Court erred in giving and refusing instructions, adverse to the plaintiff, to which the plaintiff noted his objections and exceptions, as are shown in the record;

(4) The Court erred in admitting and refusing to admit testimony, adverse to the plaintiff, to which the plaintiff objected and excepted, as is shown in the record, particularly, in permitting evidence before the jury that not only the plaintiff's decedent was an illegitimate child, but the plaintiff's decedent's sister was an illegitimate child, but, also, that the plaintiff's decedent's sister had given birth to an illegitimate child, all of which was prejudicial to the plaintiff and improper; and

(5) For all other rulings of the Court adverse to the plaintiff, to which the plaintiff duly noted his objections and exceptions, as is shown in the record.

W. W. Whitlock, p.q.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To: Honorable L. A. Keller, Jr., Clerk of the Circuit Court of Louisa County, Louisa, Virginia.

Notice is hereby given that Allen Edwards, Administrator of the Estate of Herman Williams, Deceased, appeals from a final judgment rendered by this Court on the 1st day of April, 1969, and announces his intention of applying for a Writ of Error to the Supreme Court of Appeals of Virginia.

ASSIGNMENT OF ERROR

1. The Trial Court erred in overruling plaintiff's Motion to Set Aside the Jury Verdict as contrary to the law and the

evidence in the case, because the verdict was grossly inadequate.

2. The Trial Court erred in admitting the following evidence:

(a) That the plaintiff's decedent was an illegitimate child of the plaintiff's decedent's mother, who was a statutory beneficiary; (b) That the plaintiff's decedent's sister, who was a statutory beneficiary, was an illegitimate child of the plaintiff's decedent's mother; and (c) That the plaintiff's decedent's sister had given birth to an illegitimate child prior to her marriage to this child's father.

3. The Trial Court erred in refusing to grant plaintiff's Instruction No. 1F, giving the jury the law on plaintiff's decedent's life expectancy, as shown in the "Table of Life Expectancy" in the Code of Virginia, Section 8-263.1.

4. The Trial Court erred in giving defendant's Instruction No. 9 on Sudden Emergency, where the evidence clearly disclosed negligence on the part of the defendant, and at most, the issue was for the jury to determine the defendant's negligence and the plaintiff's decedent's contributory negligence.

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5. The Trial Court erred in refusing plaintiff's Instruction No. 1B, holding the defendant guilty of negligence as a matter of law, and in giving defendant's Instruction No. 10 and defendant's Instruction No. 11, as the evidence disclosed the defendant guilty of negligence as a matter of law, in that the defendant admitted negligence, and the undisputed evidence showed defendant's negligence.

6. The Trial Court erred in granting defendant's Instruction No. 12 and defendant's Instruction No. 13, which were Finding Instructions, placing duties on the plaintiff's decedent as if he were an adult, and applying improper duties on the eight year old plaintiff's decedent.

Given under my hand this 28th day of May, 1969.

Allen Edwards, Admr., Etc.

By: W. W. Whitlock
His Counsel

W. W. Whitlock
Mineral, Virginia, 23117
Counsel for Plaintiff.

* * * * *

Filed May 29, 1969

Lois C. Hadder, Deputy Clerk

* * * * *

Transcript of all the evidence and certain incidents of trial taken on the trial of the above styled action at law before The Honorable Harold H. Purcell, Judge of the Circuit Court of Louisa County and a seven-man jury, at Louisa, Virginia, March 27, 1969.

APPEARANCES:

W. W. Whitlock, Esquire, counsel
for the plaintiff;

J. Calvitt Clarke, Jr., Esquire,
counsel for the defendant.

S. A. Cunningham, was duly sworn as Court Reporter.

page 2 } Note: Prior to the commencement of the trial the Court and counsel for the respective parties met in chambers; and

Thereupon,

The Court: I understood you had some matter you wished to take up with the Court.

Mr. Whitlock: Yes, your Honor, I wanted to ask you to rule on one of the features of the case.

The Court: All right.

Mr. Whitlock: As you know from the preliminary discussions in this case the plaintiff's decedent is an illegitimate child, and one of the statutory beneficiaries of the illegitimate child being the sister of the plaintiff's decedent. Both of these being children of plaintiff's decedent's mother.

We think that has no probative value in the facts of this case and it should not be commented upon by counsel and that no evidence should be brought into the case as to the child's *illegtimacy*. We don't object to it being pointed out that the child does not have a father, we don't think it would be material, but, if defense counsel thinks it is appropriate to point out that it doesn't have father I don't object to that; but, I do object to bringing into the case the fact that the child is illegitimate; and, particularly that the
page 3 } plaintiff's decedent's sister and statutory beneficiary is illegitimate.

I don't think it has anything to do with the merits of the case or the case in any manner, and we ask you to instruct

Mr. Clarke not to comment on it in any manner before the jury, or ask any question in reference to it.

The Court: Mr. Clarke?

Mr. Clarke: If your Honor please, this is an action, which arose under the old statute where they have the $40,000.00 death limit, and, where you recover for various items which the statute lists. Some of them are, support, care and affection and those sort of things.

The jury will be asked to pass upon those items. I am sure Mr. Whitlock is going to try and show that this was a very homogenous family and all that was lost because this child met his death; that they had a very close family life and that this kid will be missed and that sort of thing.

I think it would be a grave injustice to Genie Syrkes—and let me say this: He is uninsured and stands here by himself in this case. It would be a grave injustice to Genie Syrkes not to be able to show the family relationship, not only between the mother, who is one of the statutory beneficiaries, and your Honor has now ruled that this half-sister, born of another father, and also illegitimate, is one of the page 4 } statutory beneficiaries, and not to be able to show the true family relationship as to the elements of damage would be a grave injustice to this defendant.

We are not trying to *embarass* anybody; we are trying to show that this is not the sort of family where they have the deep, abiding relationship, and where they have feelings for support and that sort of thing that the normal family would have.

The Court: Gentlemen. The plaintiff, if this were a closely knit family, could show it; and, I think the defendant can show that it is not. So, the Court is not going to keep out that evidence. I think that evidence is properly before the jury.

Mr. Whitlock: We respectfully except to the ruling.

Mr. Clarke: I am not sure what this situation is now. As of September, 1968, when discovery depositions were taken, we were told that this half sister was then twenty, which would make her under twenty-one and under some disability. The Court has now ruled over our objection, that she is one of the statutory beneficiaries—

The Court: I don't know what the situation will be. I don't know whether the jury will allow her anything or not.

Mr. Whitlock: She is over twenty-one now.

Mr. Clarke: All right, that takes *car* of it now.

page 5 } Note: Thereupon, the Court and counsel came in open court, where court was formally opened;

Thereupon, both counsel for the plaintiff and counsel for the defendant announced themselves ready for trial; and

Thereupon, the jury was called, sworn and examined upon their *voir dire* and a panel of thirteen, free from objection or exception was obtained; and

Thereupon, the list was handed to counsel for strikes, each side taking three strikes each, alternately beginning with the plaintiff;

Thereupon, the remaining panel of seven was polled;

Thereupon, the jury of seven was duly sworn to well and truly try the issued joined;

* * * * *

page 7 } J. W. CHANEY, the first witness called on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Whitlock:

Q. Your name is Trooper J. W. Chaney, is that correct?

A. Yes, sir.

Q. And I believe you are a member of the Virginia State Police, is that correct?

A. Yes, sir.

Q. How long have you been employed as a Virginia State Police Officer?

A. Approximately five and a half years.

* * * * *

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Q. And I believe you investigated the accident in which the little boy, Herman Williams, was killed, did you not?

A. Yes, sir.

Q. When did the accident happen?

A. The accident occurred on April 14, 1968, on Sunday at 11 A.M., in the morning.

Q. Where did it happen?

A. This accident occurred .8 of a mile south of the Louisa-Spotsylvania County line.

J. W. Chaney

Q. The Louisa-*Spotsylivania* County line is right there where Holladay's Mill is on 719, is it not?

A. Yes, sir, the North Anna River.

Q. Would you tell the jury what you found from a physical standpoint, when you arrived at the accident scene? Describe the facts and circumstances.

Q. When I arrived at the scene of the accident I found a 1960 Chevrolet Convertible, and also I found a bicycle; I found the body of the deceased, there when I arrived. I ascertained the operator of the vehicle, I found the car was operated by Genie Syrkes of Mineral, Virginia; I found that the car belonged to Joe Syrkes of Mineral, Virginia.

Q. Is this Genie Syrkes sitting over here?

page 9 } A. Yes, sir, that is correct.

Q. Did you have any conversation with him upon your arrival?

A. Some. He stated to me that he was driving the car and they were his skid marks on the road.

Q. Would you describe the road as to the width and surface condition and type road it was?

A. The road was a grade—a downgrade, straight. The surface condition was dry; there were no defects to the road, or apparent defects that I could see; there were no traffic controls. It was open country; the weather was clear. The road was a blacktop surface; and, it was daylight at the time. The width of the road was sixteen feet wide.

Q. Did Mr. Syrkes point out to you the brake marks that he told you were his? Or how did he refer to them?

A. There were only one set of skid marks on the road, and he said "these are my skid marks".

Q. Had the car been moved when you arrived?

A. Yes, it had.

Q. Do you know who moved it?

A. No, I don't.

Q. Would you tell the jury the length of these brake marks, or describe the brake marks as best you can?

page 10 } A. The entire length of the brake marks from start to finish were four hundred feet; they started approximately in the left hand lane and veered a little to the center and then back into the left lane and then off on the left shoulder.

Q. Did you examine the area there to determine whether there was anything on the road that might have been a part of either of these vehicles, the bicycle or the car, involved in this accident?

J. W. Chaney

A. Yes, I did. There were paint flakes found; I found paint flakes on the road and some pieces of the parking light lens.

Q. What color were the paint flakes?

A. These were red paint flakes, the same color as the bicycle.

Q. Could you determine, in matching the paint flakes and the *bicylce*, whether or not the paint flakes came off the bicycle?

A. I didn't go that far to match the paint flakes with the bicycle, they were both the same color.

Q. Would you describe the damage done to the automobile driven by Mr. Syrkes?

A. The damage to the automobile was to the left front fender, bumper and parking light, the lens on the parking light.

Q. Would you describe what you found on the bumper?

page 11 } A. The bumper was dented some. The parking light, itself, was hanging out and the lens was broken. There was also a dent on the fender.

Q. Was there any color from either of the vehicles on the other?

A. There was some red paint smeared on the bumper on the left front.

Q. What color was the car?

A. The car was white.

Q. You said you found some glass, I believe, on the road there, did you determine where this glass came from?

A. The glass appeared to be a parking light lens.

Q. And you said that the parking light lens was broken out of the Syrkes car, I believe?

A. Yes, sir, it was.

Q. Where was this debris, or these pieces of paint flakes and the glass, in reference to these brake marks?

A. In reference to the brake marks this paint and debris was forty-feet from where he started to skid when he first—where the brake marks first started to where I found this debris.

Q. During the length of these brake marks did the car ever leave the hard surface of the road?

A. Yes, it did. Right at the very last it went off on the shoulder as it came to a stop; it got off on the shoulder on the left hand side.

page 12 } Q. How many feet of the four hundred feet was any part of the car off the hard surface?

J. W. Chaney

A. It was off the hard surface, I would say, approximately five or six feet.

* * * * *

Q. Would you describe any measurements you made at the scene with reference to the location of the bicycle from the point where you found the paint flakes and the glass?

A. Let's see. It was 123—just a second—123 feet from where I found the paint flakes and debris to where the rear end of the bicycle landed. The bicycle was broken in two.

Q. How far was it to where you found the front end of the bicycle?

A. It was 130 feet from where I found the front of the bicycle.

Q. How far were the two pieces of the bicycle apart?

A. I didn't measure that, Mr. Whitlock; I don't

page 13 } know.

Q. How far was it from the place you found the paint flakes and the glass to where the boy came to rest?

A. It was 100 feet from the point of impact—

Mr. Clarke: If your Honor please, we have not fixed any point of impact. I think he can say 100 feet from where he found certain things, but he cannot state where the point of impact was.

The Court: The jury has to determine where the point of impact was. That is the reason Mr. Whitlock has had to take some little time longer to fix the location of those objects.

The glass was there. Did you measure from that?

A. It was 100 feet from where I found the paint and debris on the road to where the body was laying.

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I hand you a picture that has been previously marked Plaintiff's Exhibit 1, and I ask you to come over here and show it to the jury and describe what it shows.

First, let me ask you if you took these pictures yourself?

A. I did.

Q. Do the pictures fairly depict or show what occurred?

J. W. Chaney

A. Yes, sir.

Mr. Clarke: We have no objection.

Q. All right, Trooper, go ahead and explain the picture.
A. Gentlemen, this is a picture of the scene of the accident, taken by me on the date the accident occurred. Here you have the skid marks on the road looking north, that would be toward the North Anna River on the Louisa County line.
Q. This picture is looking in the direction from which the defendant was driving, is that right? Looking just like he would be looking as he came down the road, is that correct?

page 15 } A. Yes, sir.

Q. And the picture shows some marks. Could you tell the jury whose brake marks they are?
A. These are the brake marks of the defendant's car here.

The Court: That will be received as Plaintiff's Exhibit 1. Is there any objection to Plaintiff's Exhibit 2, Mr. Clarke?
Mr. Clarke: No, sir.
The Court: It will be received as Plaintiff's Exhibit 2. Explain to us what that shows, Trooper?

A. This is the picture of the scene of the accident looking south, taken from the opposite direction to the first picture or that the first picture was taken. This shows the skid marks where he left the edge of the pavement as he came to rest.

The Court: Mr. Clarke, will you look at Plaintiff's Exhibit 3? Is there any objection to that?
Mr. Clarke: No, sir.

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Q. Number 4 is also looking in the direction that the defendant would have been looking as he came down the road, is it not?
A. Yes, it is.

J. W. Chaney

page 17 } Mr. Clarke: We have no objection to 5 and 6.

A. This is—
Q. Which one are you referring to?
A. Both are pretty much the same.

The Court: They will be received as Plaintiff's Exhibits 5 and 6.

A. Number 5 and 6 are both of the vehicle—the defendant's vehicle—they show the damage, show the damage to the left front bumper and to the parking light being out and the damage to the fender.

* * * * *

The Court: This will be received as Plaintiff's Exhibit 8. Go ahead with your questions, Mr. Whitlock.

Q. Tell the jury what Plaintiff's Exhibit 8 shows?
A. It shows the bicycle where it landed. This here is the rear portion of the bicycle and this here is the front portion.
Q. And, of course, that is the road out there,
page 18 } the road you travel on?
A. That is the road you travel on.

* * * * *

The Court: All right, sir.

Q. Trooper, could you describe the distance from the road that the body was laying?
A. It was 16 feet from the left shoulder.

* * * * *

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Q. Did you ask the defendant, when you arrived, anything about his speed prior to this accident?
A. I don't know whether I asked him or whether he told me.
Q. Did he make any statement in reference to his speed?

J. W. Chaney

A. Yes, sir. His speed was thirty-five miles per hour, according to him.

Q. He told you at the scene that his speed was thirty-five miles per hour?

A. Yes, sir.

Q. Did you ask the defendant any further statements or did you ask him to give you a complete statement in reference to the accident?

A. He advised me that he didn't want to make any more statements until an attorney was present.

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CROSS EXAMINATION

By Mr. Clarke:

Q. Mr. Chaney, do you recall testifying before in this case?

A. Yes, sir.

Q. Don't you remember testifying before that when you arrived at the scene that the body had been moved?

A. Yes, sir, I think that I did. I forget who it was but somebody pointed out to me—

Mr. Clarke: I didn't ask you that.

Mr. Whitlock: If your Honor please he is asking him for hearsay evidence and I think he can explain his answer.

Mr. Clarke: Judge, you ruled on this before and ruled that if he didn't see where the body was and was relying on hearsay in making these measurements, and that, therefore, this was proper cross examination.

The Court: Your question is proper. He has testified that as far as he knows the body was moved prior to the time he got there.

Q. So, you don't know of your own knowledge
page 21 } where the body landed after the accident, do you?

A. No, sir.

Q. This 100 feet you have been talking about, you don't know that of your own knowledge, do you?

A. No, sir.

J. W. Chaney

Q. This hill that the defendant was going down was a pretty steep or substantial incline, wasn't it?

A. This hill was—

Q. The hill that Syrkes was coming over.

A. It wasn't what you would call a real steep hill, it wasn't —it wasn't a slight grade it was more of a medium grade.

* * * * *

Q. Trooper, when I asked you when you testified before: Was it a pretty substantial or steep incline?" You said, "yes, sir." Is that correct?

A. I have since gone back and looked at this hill again, Mr. Clarke, and I have changed my mind on the thing. I don't think the hill is steep at all, I would say it would be a medium grade.

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Q. Didn't you say, Trooper Chaney, when you testified in Judge Cunningham's Court: "I would say it was kind of a sharp incline." Didn't you say that? And didn't you say in reply to that question the last time, "Was it a pretty substantial or steep incline?" You answered, "Yes". Those are your answers, aren't they?

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* * * * *

Q. Trooper, on both of those times your testimony was a lot closer to the time when you investigated the accident, weren't they?

A. Yes, sir, they were.

Q. Trooper Chaney, I want to ask you to look at some of these exhibits. Come up in front of the jury, if you will, sir. Let's look for a minute at Plaintiff's Exhibit number 1. Now, you testified this is the direction in which Mr. Syrkes was driving?

A. Yes, sir.

Q. And you testified that the 400 feet of skid marks were all hard brake skid marks?

A. Yes, sir.

Q. Isn't it true that one side started considerably—a con-

siderable distance before the other one? Doesn't that picture show it?

A. Not a considerable distance. You can see it here.

Q. Did you measure it—

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* * * * *

A. There are faint skid marks on the left hand side, as you see here, sir.

Q. Trooper, that is the right hand side.

A. I mean the right hand side. I am sorry.

* * * * *

Q. You have got that track going down the road, with the exception of one little track, which I am pointing at with the pencil, right at the dark right hand skid mark, isn't that right?

A. Yes, sir.

Q. Those two tracks are all there were, there were no other tracks were there?

page 25 } A. You mean here? And this little short one.

Q. And this little short one?

A. Yes, sir.

Q. The car has swerved in there, hasn't it?

A. Yes, sir, the car has swerved.

Q. And in swerving like that, the back wheels don't track the front wheels perfectly, do they?

A. No, sir.

Q. Now, sir, did you measure—I think I asked you this but I was *interupted*—did you measure the difference between the left hand skid marks, where it started dark and where the right hand skid marks started dark?

A. No, sir, I didn't.

Q. You didn't.

Now, sir, I hand you Plaintiff's Exhibit number 2, and this is the photograph that I think you said was looking back up the hill?

A. Yes, sir.

Q. Or in the direction from which Syrkes came?

A. Yes, sir.

Q. Look at the left skid mark. Is this mark from this point here to this point here, what you said was five or six feet?

A. Yes, sir.

Q. That is the five or six foot skid mark here?

page 26 } A. Yes, sir.

Mr. Clarke: Let the record show I am pointing out that part off the hard surface.

Q. Doesn't the picture show that the skid mark on the right is a little different length from the one on the left?

A. Yes, sir, I believe it does.

Q. One thing, so we won't make any mistake about it. On Plaintiff's Exhibit 8, there is an old automobile tire over here, that doesn't have anything to do with your investigation, does it?

A. No, sir, that was just laying there.

Q. That was just laying there?

A. Yes, sir.

Mr. Clarke: All right, I think that is all. You may have your seat.

Q. Did your investigation reveal, Mr. Chaney, that the boy on the bicycle was going in the same direction that Mr. Syrkes had been going?

A. Let's see. The boy on the bicycle was crossing the road.

Q. He was crossing the road?

A. Yes, sir.

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page 27 }

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Q. That little skid mark, that you referred to in one of those photographs, that little short one. You couldn't identify that as having been Mr. Syrkes' skid mark, could you?

A. No, I couldn't.

Mr. Clarke: I think that is all.

REDIRECT EXAMINATION

By Mr. Whitlock:

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page 29 }

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Q. Officer, proceeding in the direction, which the defendant, was, after he came over this hill crest, what was the visibility from that point to the point where you found the paint flakes and glass?
A. Approximate 500 feet to a tenth of a mile.

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page 30 }

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GENIE SYRKES, called as an adverse witness by the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Whitlock:
Q. Your name is Genie Syrkes, is that correct?
A. Yes, sir.

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page 31 }

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Q. You were the driver of this car that struck this little Williams boy on the day we are talking about that this accident occurred, is that correct?
A. Yes, sir.

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page 34 }

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Genie Syrkes

Q. When this accident occurred you had just left your home, is that correct?
A. Yes, sir, that is right.
Q. How far did you go from your home to this accident scene? How far is it from your home to this accident scene?
A. About a half of a mile.
Q. About a half of a mile, and how fast were you going as you approached this accident scene?
A. About fifty-five or sixty.

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page 37 }

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Q. You said the speedometer on your car was broken?
A. Yes.
Q. Was anything else wrong with your car, mechanically?
A. Not as far as I know.
Q. The brakes were working all right, were they not?
A. Yes, sir.
Q. And the tires on the car were good?
A. Yes, sir.
Q. They had good tread on them?
A. Yes.

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page 39 }

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Q. You were entirely familiar with the area? You knew about the conditions that existed in that area, did you not?
A. That is right.
Q. You knew that there were a lot of children
page 40 } who lived in the area and children played in that area, did you not?
A. Yes, sir.
Q. Did you take that into consideration as you were approaching this accident scene?
A. Yes, sir. I know children played along the road.
Q. I say, did you take that into consideration as you approached this accident scene?

Genie Syrkes

A. I seen—

Q. Did you think about the fact that children played in this area and were on the road as you came down the road toward this place?

A. Yes, sir.

Q. You did think about it?

A. Yes, sir.

Q. Did it have any effect on the manner in which you drove?

A. No, sir, it didn't have any effect on me.

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page 41 }

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Q. As you came over the hill at this accident scene I take it that you saw the children on the road on these bicycles, did you not?

A. Yes, sir.

Q. You knew these children, did you not?

A. Yes, sir.

Q. You had known them for years, had you not?

A. Yes, sir.

Q. You knew that Herman Williams was a youngster in the vicinity of eight years old, did you not?

A. Yes, sir, I know it.

Q. You knew that as you approached this accident scene and saw him there, did you not?

A. Yes, I seen him there.

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page 50 }

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Q. In the area where your car came to a stop the road was straight and relatively level, was it not?

A. No, it was not level.

Q. It was a slight upgrade, was it not, where your car came to a stop?

A. Yes, sir.

page 51 } Q. You had started going up grade?

A. Yes, sir.

Q. Where your brake marks first started you were on a slight down grade, were you not?

A. Yes, sir.

Q. And then you went through a level area at the bottom of the hill?

A. It wasn't level—

Q. It was level before you started back up grade, was it not?

A. No.

Q. In other words, you are saying it came down a slight down grade and then immediately started back up grade?

A. A little bit, yes.

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page 53 }

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Q. After you came over this little hill and saw these children on the road how close were you to them when you first saw them?

A. It was about 100 feet, something like that.

Q. About 100 feet?

A. Yes.

Q. There was no other traffic on the road, nothing to block your vision of these children as you approached them, was there?

A. No, it wasn't no other traffic on the road, not as far as I see.

Q. As you approached the *childre* did you slow down any at all?

A. Yes, sir, I slowed down.

Q. You what?

A. Yes, sir, I slowed down.

Q. What did you do? Take your foot off the gas or put your foot on the brake, or what did you do?

A. Bobby Coleman he was just about on the hill, before I got to the hill.

Mr. Clarke: I can't hear a word.

A. Bobby Coleman was nearly on the hill.

Genie Syrkes

page 54 } Q. Bobby Coleman was on the road before you got to the hill?

A. Yes, sir.

Q. He was on the other side of the hill, wasn't he?

A. Yes, sir.

Q. As you came over the hill and approached these children you saw him?

A. I blowed the horn and Bobby Coleman waved at us.

Q. I am talking about as you approached the children.

A. I blowed my horn at Bobby Coleman and got on the left hand side of the road and blowed my horn at the kids.

Q. Bobby Coleman was on the opposite side of the hill from where you saw these children, wasn't he?

A. He wasn't that much on the other side of the hill, he was just about on top.

Q. And as you came over the hill you saw the children, is that correct?

A. Yes, sir.

Q. Had you seen Bobby Coleman before you saw the children?

A. Yes, sir.

Q. Did you wave at Bobby Coleman?

A. No, sir, I didn't wave.

Q. Did you look at him?

A. I saw him, but I didn't turn my head to look at him.

Q. You tooted the horn at him?

page 55 } A. That is right.

Q. And after that you saw the children, is that correct?

A. Yes, sir.

Q. Did you slow up any when you saw Bobby Coleman?

A. A little bit, not much.

Q. Did you slow up when you saw the children?

A. Yes, sir.

Q. What did you do to slow up?

A. Took my foot off the gas and hit the brake.

Q. You hit the brakes when you first saw the children?

A. Yes, sir.

Q. As you approached the children did you continue to brake the car, or did you have your foot on the gas?

A. No, I didn't put my foot back on the gas.

Q. What is that?

A. No, I didn't put my foot back on the gas.

Q. You didn't put your foot on your gas then again before you passed the children?

Genie Syrkes

A. No, sir, I didn't.
Q. Did you blow your horn at these children?
A. Yes, sir, I blowed the horn at them.

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page 57 }

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Q. Mr. Syrkes, did you see this child after you struck it?
A. Yes, sir, I seen him.
Q. You saw him?
A. Yes.
page 58 } Q. Did you see in which direction he went?
A. I aint seen him right after I struck him. I seen him after I backed up.
Q. You saw him after you backed up?
A. I seen him after I backed up.
Q. You didn't see him then after you struck him on the highway before he came to rest?
A. Yes, sir, I seen him.
Q. You did see him?
A. Yes.
Q. Can you tell us what direction he went after you struck him?
A. He went right on over to the left hand side of the road.
Q. Did you see where he came to rest?
A. No.
Q. Did you see anybody move his body after he came to rest and before the police officer got there?
A. No, I aint stayed there. James Talley was there running his mouth and I just left and came on up the road—came on home.

Mr. Whitlock: All right, witness with you.

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page 74 }

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page 75 } GENIE SYRKES, recalled as an adverse witness by the plaintiff, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Whitlock:

Q. Mr. Syrkes, did your car have power brakes or normal brakes on it? Do you know what power brakes are?

A. Yes.

Q. Did your car have power brakes or normal brakes?

A. No, sir.

Q. It didn't have power brakes?

A. No, sir.

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page 76 }

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LINWOOD LEE DAVIS, another witness called on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Whitlock:

Q. Your name is Linwood Lee Davis, is that correct?

A. Yes, sir.

Q. Where do you live?

A. Spotsylvania.

Q. What is your address?

Q. Route 1, Box 89A.

Q. Mineral, Virginia?

page 77 } A. Mineral.

Q. Do you live on Route 719?

A. Yes, sir.

Q. That is the road this accident happened on that this boy was killed, is that correct?

A. Yes, sir.

Linwood Lee Davis

Q. Where were you at the time this accident happened?
A. Where was I?
Q. Yes.
A. In the car with Gene.
Q. How long had you been with the defendant, Genie Syrkes, when the accident happened?
A. About an hour and a half, something like that.
Q. At the time you all came down the road where had you left from?
A. From Genie's house.
Q. Genie's house?
A. Yes, sir.
Q. And Genie was driving?
A. Yes.
Q. Could you tell us how fast he was going as he came over this hill approaching the accident scene?
A. I would say between sixty and sixty-five, something like that.

page 78 }
Q. Do you drive a car?
A. I can drive, but I don't drive.
Q. How long have you known how to drive a car?
A. About a year or so.
Q. As you came over the hill and approached the accident scene was anything said by either of you?
A. Sir?
Q. As you came over this hill and approached these children was anything said by either of you?
A. Yes, sir, I told him to watch them children.
Q. What did Genie say?
A. He didn't say nothing that I can recall.
Q. What did he do in reference to his speed as he approached these children?
A. He lightened up off the gas.
Q. What did he do as he came on closer to them?
A. Well, after he thought he could pass, he—you know—kind of started to speed up.

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page 79 }

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Linwood Lee Davis

Q. Do you know what happened to the little boy that was struck as you all approached? What happened there?
A. What happened?
Q. Yes, as you all approached.
A. Well, when the boy started across—came across the road, Genie put—slammed on brakes.
Q. Do you know what caused the boy to come across the road?
A. No, sir, I don't know exactly what caused him to come across the road.
Q. Did Genie Syrkes blow his horn as he approached this boy?
A. Not to my knowing, I didn't hear any.
Q. Was there anything going on that would have kept you from hearing it?
A. No, sir.

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page 80 }

CROSS EXAMINATION

By Mr. Clarke:
Q. When you all were driving up the road was Genie Syrkes driving on his right hand side of the road?
A. Sir?
Q. Was your car being driven on the right hand side of the road as you came up to this hill?
A. Yes, sir.
Q. When did you first see these boys in relation to the hill?
A. Right as we came over the hill.
Q. About how far were they in front of you?
A. *O*, about five or six car lengths.
Q. And what side of the road were they on?
A. What side?
Q. Yes. Were the boys on the bicycles?
A. On the right.
Q. Were they side by side or was one ahead of the other?
A. They were side by side when we first came over the hill.
Q. Then what happened?
A. When the car came over the hill they went back over to the right side.

Linwood Lee Davis

Q. What was that?

page 81 }

* * * * *

A. Well, they took and went to the right side of the road, and just about the time Genie got just about even with them the boy switched back like that, and that is when Genie slammed on brakes.

Q. Did Genie go on the left side of the road to get ready to pass them?

A. Yes, he switched over to pass them, you know.

Q. When they were side by side did one of them get ahead of the other before the other crossed the road in front of him?

A. Yes, sir.

Q. And the one that crossed over in front of him, did he make a sudden turn?

A. Yes, sir.

Q. Did he get any signal or any warning that he was going to turn? Did he give any signal or any warning that he was going to turn?

page 82 } A. No, sir, I didn't see him give no warning.

Q. How close was Genie Syrkes to him when he made that sudden turn?

A. About from here to that bench back there.

By the Court:

Q. The back seat in the Court Room?

A. Yes, sir.

By Mr. Clarke:

Q. When the boy made the turn in front of him?

A. Yes, sir.

Q. That is when Genie Syrkes put on his brakes?

A. Yes, sir.

Q. Did he put them on hard?

A. Yes, sir.

Q. What part of the car hit the bicycle?

A. The left fender.

Q. And how far—did you see what happened to the boy on the bicycle?

A. Yes, sir.

Q. Did Genie go on down the hill and stop and then back up to where approximately the boy was?

A. Yes, sir.

Linwood Lee Davis

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page 83 }

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REDIRECT EXAMINATION

By Mr. Whitlock:

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Q. Did Genie Syrkes apply brakes at all before this child cut out in the road?

A. Yes, sir, he touched his brakes when he slowed, I reckon he did, you know.

Q. Is that before he speeded up again?

A. Yes, sir.

Q. Did he apply them a second time after he speeded up?

A. Yes, sir.

Mr. Whitlock: That is all.

page 84 } By the Court:

Q. As you approached the hill, as you went over could you see the children as you approached the hill?

A. Yes, sir.

Q. You could see them even before you came over the hill?

A. No, sir, you couldn't see them until you came over the hill.

Q. When you got over the hill how far do you say the children were in front of you?

A. About six or seven car lengths in front of us when we came over.

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page 85 }

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By Mr. Whitlock:

Q. Was your car on the left side of the road or right side of the road when it struck this child?

A. On the left side.

James Talley

Q. And the left side of the car struck him?
A. Yes, sir.
Q. Where was the little boy on the road then when he was struck?
A. Sir?
Q. Where was the little boy on the road when he was struck?
A. He was crossing over to the left side.
Q. At the time he was struck was he on the left side or right side?
A. The left side.

Mr. Whitclock: That is all.

RECROSS EXAMINATION

By Mr. Clarke:
Q. The other bicycle was still on the right side, wasn't it?
A. Yes, sir.
page 86 } Q. He was still riding down the right side?
A. Yes, sir.

Mr. Clarke: All right, that is all.

REDIRECT EXAMINATION

By Mr. Whitlock:
Q. Was he still on the hard surface or on the shoulder?
A. I would say on the hard surface. I didn't exactly see the other boy when this boy came across the road.

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JAMES TALLEY, another witness called on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Whitlock:
Q. Your name is James Talley, is that correct?
A. That is correct.

* * * * *

James Talley

page 87 }

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Q. Do you mean that you drive a tractor-trailer?
A. A tractor-trailer.
Q. Who do you work for?
A. Goodwin Brothers, Mine Run.
Q. How long have you been working for them?
A. Well, I guess about twenty-six or seven years, may be twenty-eight. I disremember.
Q. Do you live near this accident scene where this Syrkes boy had an accident and this little Williams boy was killed?
A. It was right across from me.
Q. Were you at home on the day that this accident happened?
A. I was.
Q. What, if anything, first attracted your attention to this occurrence?
A. Well, I was sitting in the front room and I heard this car coming down the road and the next thing I heard was the wheels sliding and I jumped up and I run to the door and just as I run to the door that is when I heard the crash; that is when I seen the bicycle and little boy, seen
page 88 } it knock him off the side of the road.
Q. What was the car doing when you first heard it?
A. What was it doing?
Q. Yes.
A. Well, just running along, if that is what you mean. What was he doing?
Q. I want to know what you heard. If you could tell us what you heard?
A. I heard the car coming down the road.
Q. How far is your house from where Genie Syrkes lives?
A. I imagine about a quarter of a mile. I imagine just about a quarter of a mile, I reckon.
Q. Did you see Genie Syrkes' car when it came to a stop?
A. Had I seen it?
Q. Did you see any brake marks on the road after his car came to a stop?
A. Yes, I seen the brake marks.
Q. Were those brake marks on the road prior to this accident or before this accident happened?
A. Not to my knowing they *wont.*
Q. Did you see the body of the Williams boy there on the road after the accident happened?
A. Yes, I did.

Q. Had anybody moved the body before the
page 89 } officer got there or the State Police?
A. No, sir, they hadn't.

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page 90 }

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Q. What did you see after you heard the tires cry in reference to the child?
A. I heard the crash and then I seen the bicycle and little boy when it knocked them off the side of the road.
Q. Can you describe what you saw?
A. All I see, I seen this little boy rolling—it
page 91 } knocked him off the side of the road, if that is what you mean. That is all I saw.

Mr. Whitlock: Witness with you.

CROSS EXAMINATION

By Mr. Clarke:
Q. Did you have your front door open?
A. Yes, sir, it was warm.
Q. There wasn't anything unusual about the sound of Mr. Syrkes' car coming down the road, was there?
A. No, I wouldn't say it was nothing unusual.

Mr. Clarke: That is all.

A. I wouldn't say it was nothing unusual.

Mr. Clarke: That is all I have.

REDIRECT EXAMINATION

By Mr. Whitlock:
Q. Are you describing the entire time you heard it as being nothing unusual, Mr. Talley?
A. I don't understand.
Q. Are you saying the entire time you heard the car coming that there was nothing unusual?

A. The tire time?
Q. The entire time. The whole time.
A. I mean nothing but the car left off, I heard it coming down the road.
Q. What do you mean left off? You heard it
page 92 } left off?
A. Well I heard the car when it taken off and come down the road. I don't see nothing unusual about that.

Mr. Whitlock: That is all I want to ask.

RECROSS EXAMINATION

By Mr. Clarke:
Q. Are you saying it left off fast by using that word left off? Or that you just heard it coming down the road?
A. I mean I don't know how fast he took off or nothing like that.

* * * * *

Q. You aren't claiming that there was anything about the sound of his automobile that indicated he was
page 93 } going fast, are you?
A. Reckless driving or nothing like that, I aint saying that.

* * * * *

Q. You aren't claiming from anything you heard that he was driving fast, are you?
A. No, sir.

Mr. Clarke: That is all.

The Witness Stood Aside.

ALLEN EDWARDS, a witness in his own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Whitlock:
Q. Your name is Allen Edwards, is that correct?
A. Yes, sir.

Allen Edwards

Q. How old are you, Mr. Edwards?
A. Sixty.
Q. Where do you live now?
A. Meadow, Georgia.
Q. Where were you living at the time this acci-
page 94 } dent occurred?
A. I was here on 719, Route 1, Box 76.
Q. Was Herman Williams living with you?
A. Yes, he was.
Q. How old was Herman at the time this accident occurred?
A. He was a little over eight, just a few weeks.
Q. Did Herman go to school?
A. Yes, sir.
Q. How did he get along in school?
A. Well he was recommended very high in his class from what his teacher give me the information.
Q. What grade was he in?
A. He was in the second. When he come six, he come six right after school opened and he lost a term.

* * * * *

Q. How long had Herman lived with you, Mr. Edwards?
A. Well, he was three months old when I taken him.
Q. How come him to live with you?
A. Well, his mother went off working and she didn't have anybody to take care of him but me, I married her sister and
I took him and took care of him.
page 95 } Q. Whose sister did you marry?
A. His mother's.
Q. You married his mother's sister?
A. Yes, sir.
Q. How long had you been living in this location in Louisa County?
A. I believe I come down here in '64, It was—I will not be exact, I have actually forgot my dates.
Q. Approximately how long had you been living there?
A. About six years, I reckon something like that; approximately six.
Q. Had Herman Williams lived with you during that entire time there?
A. Yes, sir.
Q. Did Herman have any brother or sister?
A. He had one half-sister.

Allen Edwards

Q. What is her name?
A. Leah May Williams.
Q. Did she live with you?
A. Most of the time, except a few years; she started living with me when she was five.
Q. Let's say from the time that Herman was born?
A. Oh, from the time he was born she did.
Q. She lived with you?
A. Yes, sir, until she got married.
page 96 } Q. She is married now?
A. Yes, sir.
Q. At the time this accident occurred where was she living?
A. She was living up about a couple—about a mile and a half this side of me. She had got married.
Q. How long had she been married?
A. I imagine—. To tell you the truth I don't know.
Q. Could you describe the relationship between Herman and his sister, Leah?
A. I found them very close because they got along good. She visited very often. She liked him and he liked her.
Q. What was their relationship when she lived in your home?
A. It was fine. She would take him out and see to him having fun; it looked like she enjoyed it.
Q. Did Herman know how to ride a bicycle?
A. You say he done which?
Q. Did Herman know how to ride a bicycle.
A. Well, her and I took and told him.
Q. How long had he been riding a bicycle?
A. He had been riding two years, I imagine, when he got killed.
Q. Do you know where he was going on the bicycle the day he got killed?
A. I sure don't, because—
page 97 } Q. Do you know where he was going?
A. No, sir, I don't.
Q. Where were you when this accident happened?
A. I was in the back, I believe I was cleaning up the car, at least I was when I found out about it. I had just walked out the back, I probably was in the house at that time, but at the time I got the message I was out in the back.
Q. Could you describe this neighborhood as to the number of people or houses where this accident happened?

Allen Edwards

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page 97A }

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A. It was, I would say, seven or eight house right in that area, and all the people has got right smart childrens.
Q. Did you qualify as Administrator on this estate?
A. Yes, sir, I did.
Q. And you are acting as Administrator of this estate in this case, are you not?
A. Yes, sir.

Mr. Whitlock: That is all.

CROSS EXAMINATION

By Mr. Clarke:
Q. Do I understand that the mother of the boy that got killed is your wife's sister, is that right?
A. Yes, sir.
page 98 } Q. Then, you are no blood relation at all, that is correct, isn't it?
A. Yes, sir.
Q. What is your wife's sister's name, the mother of this child that got killed?
A. Maxie Lee Williams.

* * * * *

Q. How many children did Maxie Lee Williams have?
A. Two.
Q. What is the name of the oldest child?
A. Leah May Williams Nelson, now.
Q. Where was she born?
A. Meadow, Georgia.
Q. Was she illegitimate?
A. Was not married, you mean?
Q. Yes, sir.
A. Yes, sir.
Q. Do you know who her father was?
A. I have seen him, yes, sir.
Q. How old is she?
A. She is a little over twenty-one.

Allen Edwards

Q. A little over twenty-one now?
A. Yes.
Q. How old was she when she got married?
page 99 } A. Seventeen.
Q. So, she had been married for four years, is that right?
A. Something like that.
Q. Did she move away from your home after she got married?
A. Yes, sir.
Q. So, at the time this little boy had this accident she had been away from your home for over three years? She had been away from your house?
A. Not quite three years, no, sir, I wouldn't think so.
Q. The accident happened a year ago, didn't it? It happened a little less than a year ago, it happened in April '68, didn't it?
A. Well, yes, it did.
Q. She was married when she was seventeen, that is four years difference in her age. She has been married four years, hasn't she?
A. It must be, because her age—she was seventeen. I haven't been keeping up with it.
Q. They hadn't been living in the same house together for four years, had they?
A. Not since she married, no.
Q. You supported the boy, did you not?
A. I did so, no more than they come and give
page 100 } him presents and things.
Q. I think you said once before that you supported him ninety-nine per cent, is that correct?
A. I would say something like that.
Q. Do you know who the father of Herman was, the boy that got killed?
A. Well, I know who it was say to me. I couldn't say, I can only go by what she said.
q. Didn't you say before that Maxie Lee Williams told you two different names?
A. I don't think so. She haven't told me but one because I told you I didn't know him, who he was.
Q. On page 4, Line 15, of your deposition, tell me if these questions weren't asked you and your answers then, when we took your deposition last September?
You were asked: "Who was the father of Herman Williams?" Your answer: "That is the $64.00 question." The

next question: "You don't know?" Your answer: "I know who she said at one time and then she changed." Isn't that your answer?

A. She hasn't never changed it.

Q. Do you deny that you said so when we took your discovery deposition up here in Court on September 24, 1968?

A. She aint never changed. If I said it I made a mistake there myself.

page 101 } Q. Do you deny you said that?

A. I don't say I did and I don't say I didn't.

Mr. Clarke: Can we agree without putting the reporter on?

Mr. Whitlock: We agree he might have said it. He agreed that he might have said it, but if he did say it, he said he was in error..

Mr. Clarke: I take it that you agree that is in the record.

Mr. Whitlock: I told you I would agree that is what the record shows.

Q. Leah and Herman had different *father's* didn't they?

A. Yes, sir.

Mr. Whitlock: We reserve the point on all these questions according to our previous position.

Q. Can you tell us how old Herman was when he came to live with you?

A. Three months.

Q. And he lived with you constantly since that time?

A. Yes, sir.

Q. And the only contact his mother has had with him have been occasional visits, isn't that right?

A. She stayed with me herself about a year

page 102 } before I came to this part of the country.

Q. Where was that?

A. Up in Arlington, Virginia.

Q. I didn't catch awhile ago where you live now.

A. Meadow, Georgia.

Q. When you left Arlington she didn't live with you?

A. That is right.

Q. But you left with the boy?

A. Yes.

Q. How old was Leah when she came to live with you?

A. She come when she was five; she lived with me until she

was about eight, I imagine, or nine, approximately. Then, she went back to the home of her Uncle and lived with him until she was ten or twelve, I disremember to be exact, and then come back with me and lived the rest of the time until she got married.

Q. She lived with you from the time she was ten to twelve until she was seventeen?

A. Yes, sir.

Q. That would be somewhere between seven and five years?

A. Right.

Q. And this boy was eight years old when he died?

A. Yes, sir.

Q. So, he must have been five when she moved
page 103 } out of your house?

A. Now, I wouldn't say for sure just exactly the age.

Q. But it is about that age?

A. Somewhere along there.

Q. Now, during this time that she was living with you, before she got married, isn't it true that Leah didn't live with you for awhile? Didn't she go and live with Syrkes?

A. She stayed with him a week or two.

Q. Didn't you kick her out of the house because she got pregnant?

A. No, I didn't. She was not pregnant, and she went out to stay with her mother a week or two and when she came back—in other words, she came backwards and forwards.

Q. Do you mean—

A. Sometimes she spent a week or two up there and then she would come back.

Q. You are denying that you wouldn't let her in your house?

A. I never did.

Q. You deny you kicked her out?

A. Yes, sir.

Mr. Whitlock: I object to this.

The Court: Overruled.

Mr. Whitlock: I note an exception.

Q. You are denying she had to go to live with Syrkes?

A. She went and lived there, but she didn't
page 104 } have to.

Q. You deny she had to call her mother up to take her up there with her?

A. I don't know nothing about that.

Mr. Whitlock: I object to Mr. Clarke's inference, when there is no testimony to that effect.

The Court: The objection is overruled.

Mr. Whitlock: I note an exception.

Q. This boy, Herman, was a good bicycle rider, wasn't he?

A. I guess he was.

Q. You observed him, you were retired, weren't you?

A. I wasn't retired then.

Q. Sir?

A. I wasn't retired then.

Q. This is the second two-wheeler he had had, wasn't it?

A. Yes.

Q. And with specific regard to riding a bicycle you told him how to ride a bicycle and obey the traffic laws, didn't you?

A. I tried to.

Q. You taught him to ride on the right hand side of the road, didn't you?

A. Yes, sir.

page 105 Q. You taught him to make signals when he was going to turn, didn't you?

A. When they get scared you can't tell what they are going to do.

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page 106

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Q. You don't know anything about the circumstances other than what you have been told?

A. No more than the car passed my house.

Q. You don't know anything about how the accident happened, do you?

A. No, sir.

Q. I asked you whether you didn't tell him or teach him to make a signal when he intended to turn left?

A. I did.

Q. You did. All right. I believe that you—. Let me ask you this: This young fellow had driven your tractor some, had he not?

A. Yes.

Allen Edwards

Q. And he had driven it up to the store and places like that, hadn't he?
A. Yes, sir.
Q. And so you taught him all about that, about driving a tractor, as well as bicycle, didn't you?
A. Yes, sir.
Q. Now, did Leah ever contribute any support to the boy?
A. Not no support; if she had something to give him she give it to him.

page 107 } Q. She had children of her own, didn't she?
A. Yes, sir.

Q. How many children did she have?
A. Right now she has got three.
Q. Does she work?
A. No, sir.
Q. How old is her oldest child?
A. I don't know.
Q. Pardon me.
A. I don't know, I couldn't give you an answer on that. I remember when the child was born, but I don't know how old it is, actually.
Q. How about giving us an estimate?

Mr. Whitlock: If your Honor please, we submit that this is not material.
The Court: I don't see the materiality. It may be. Who is Leah?
Mr. Clarke: That is the half sister of the deceased.
The Court: The objection is overruled. Go ahead.

Q. How old is the oldest child?
A. I don't know.
Q. You are a close knit family, you say, and the child lived with you and all these things—

page 108 } Mr. Whitlock: If your Honor please, I think Mr. Clarke ought to ask the question and not argue with the witness.
The Court: The objection is overruled. This is cross examination.
Mr. Whitlock: I note an exception.

Q. This relationship you described to the jury, you don't know how old Leah's oldest child is?
A. That is right, I haven't been keeping up with it.

Henry A. Kennon

Q. I don't like to do this, but you say she got married when she was seventeen. Is the child older than the marriage or younger than the marriage?

Mr. Whitlock: I object, if Your Honor please, as being wholly immaterial.
The Court: The objection is overruled.
Mr. Whitlock: I note an exception.
A. Repeat that.
Mr. Clarke: Will you read him the question.

Note: Thereupon, the reporter read the last question to the witness.

A. The child is older than the marriage.
Q. How much older?
A. I don't know that. Six or eight months or five or six months.
Q. How old are the other two children?
page 109 } A. I don't know.
Q. Were they born after the marriage?
A. One was born after I left and one before I left; they were born after the marriage.
Q. This boy was only eight years old at the time he got killed?
A. Yes, sir.
Q. He was a student?
A. Yes, sir.
Q. And he didn't work?
A. No, sir.
Q. And hadn't contributed any money to the support of his mother and sister?
A. No, sir.

Mr. Clarke: That is all.

The Witness Stood Aside.

HENRY A. KENNON, another witness called on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Henry A. Kennon

DIRECT EXAMINATION

By Mr. Whitlock:

Q. Your name is Henry Kennon?

A. Yes, it is.

Q. You are Sheriff of Louisa County, isn't that correct?

A. Yes, sir.

page 110 } Q. How old are you Sheriff?

A. I am forty-six.

Q. Where do you live?

A. Mineral, Virginia.

Q. How long have you been Sheriff of Louisa County?

A. Approximately five and a half years.

Q. Did you go to the scene of this accident that is involved in this case when the little Williams boy was killed?

A. Yes, sir, I did.

Q. Did you see his body there?

A. Yes, sir, I did.

Q. Did anybody move it while you were there until it was finally moved—did anybody move it before the State Police Officer got there?

A. No, sir, not to my knowing.

Q. Did you talk with the defendant, Genie Syrkes, at the scene?

A. I was present, but I didn't talk to him.

Q. What was the condition of the road that day? Can you describe the condition of the road?

A. It was a long black brake marks, I helped measure them.

Q. Describe first the surface of the road, the condition you found when you arrived?

page 111 } A. It is an *asphault*-gravel make up, what we call a hard surface *asphault* road. It has a slight decline, I would say, from the crest of the hill to the bottom, which would probably be 650 feet and not over a ten foot drop in the entire distance.

Q. I hand you a picture, marked Plaintiff's Exhibit 1, and ask you if you recognize that as being the scene where this accident occurred, and, if so, would you say what you noticed as to that?

A. Yes, sir, this is a scene of the general scene right here.

Q. Are the brake marks shown in that picture the beginning of the brake marks or the end of the brake marks in the direction that the defendant, Syrkes, was travelling?

A. Of course, 719 runs generally south to north going toward Holladay's Mill, and looking at this picture here is looking north.

Henry A. Kennon

Q. That is the direction in which Syrkes was travelling, was it not?
A. The vehicle stopped apparently along on this hill from south to north.
Q. Was the road wet or dry that day?
A. The road was dry.
Q. What was the condition of the weather?
page 112 } A. It was a real spring day, sunny and warm. I would say the temperature would be around eighty degrees.
Q. Was there any defects in the road, loose material or debris, or anything of that kind?
A. There was certainly some when I got there, which apparently was from the accident; not any otherwise.
Q. Do you know the distance of these marks?
A. I helped to measure them, but I didn't make any note of it.
Q. You did help measure them?
A. I helped Trooper Chaney to measure them.
Q. Did you, at my request, go to this accident scene at a later date for the purpose of making any check or test?
A. Yes, sir, I did, on November 5, 1968.
Q. What kind of car was the defendant, Syrkes driving at the time this accident occurred?
A. He was driving a 1960 Chevrolet Impala Convertible.
Q. When you went to the scene of the accident to make this test, did you take an automobile with you?
A. Yes, sir, I did.
Q. What car did you take?
A. I took my personal car, a 1966 Ford.
Q. Did you determine the weight of the 1960 Chevrolet convertible like Syrkes was driving?

Mr. Clarke: For the record, we object to anything except the weight of Mr. Syrkes' automobile.
page 113 } The Court: The objection is overruled.
Mr. Clarke: Note the exception.
A. Yes, sir, I did. The weight of the vehicle was 3780 pounds.

Q. Three thousand—
A. 3780 pounds.
Q. What is the weight of your car?
A. My car weights 3692 pounds.
Q. What is the difference in those two weights?

Henry A. Kennon

A. I believe you have got a difference of eighty-eight pounds.

Q. Which one is the heaviest?

A. The Syrkes vehicle.

Q. Was there anything unusual about the Syrkes car that would have affected the weight at all, that you know of? Was there any difference in the Syrkes car from any other 1960 Chevrolet Impala convertible?

A. No, sir, I don't think so, except there may have been one or two passengers in his vehicle at the time of this accident.

Q. On the day that you went to the accident scene, at my request, could you describe the road condition, the weather, and what you found there at the scene in reference to the physical conditions?

page 114 } A. I found basically the same weather, except may be the weather was about ten degrees colder; I would approximate the temperature at about seventy.

Q. Is that the only difference you can describe in the surface conditions of the road and the weather and the atmospheric conditions?

A. That is the only difference I could determine.

Q. Did you make a test there that day with your automobile?

A. Yes, sir, I did.

Q. Would you tell the jury what test you made and what you determined from that test?

Mr. Clarke: Your Honor, we object on the grounds previously stated.

The Court: The same ruling, the objection is overruled.

Mr. Clarke: Note my exception.

A. Deputy Sheriff Johnson and I went to the scene and at the point of the brake marks I put Deputy Sheriff Johnson there and I went back over the crest of the hill and came back and maintained a fifty-five mile an hour speed and continued to accelerate the car to maintain this speed, and as I arrived at the point where Deputy Sheriff Johnson was standing alongside to the road, I applied my brakes and from that point my reflex to apply the brakes, I stopped in

page 115 } a distance of 207 feet, leaving light brake marks for a distance of 29 feet of that 207 feet. That is the total distance from the time I passed Mr. Johnson on the road until I came to a stop.

Henry A. Kennon

Q. Could you see Mr. Johnson before you came over this hill crest?
A. No, sir, I couldn't.
Q. When did you first apply your brakes in reference to where Mr. Johnson was standing?
A. I can't exactly determine that because from the time I stopped accelerating the car at the point I reached where Mr. Johnson was standing along side the road, and from there it was a total distance of reflex and stopping distance, a total distance of 207 feet.
Q. You say that 207 feet was the total stopping distance?
A. Right.
Q. What part of that was brake marks layed down?
A. A distance of 29 feet of light brake marks.
Q. Were the tires on your car good?
A. Yes, sir, they were.
Q. Were the brakes on your car good?
A. Yes, sir.
Q. Had your car been inspected for State Inspection?

page 116 } Mr. Clarke: If your Honor please, we object to that in addition to the general objection we have to this line of evidence, on the ground that it is not material.
The Court: The objection is overruled.

A. Yes, sir.
Q. Had Mr. Syrkes' car been inspected for State inspection?
A. Yes, sir.
Q. Do you know how long before this accident it had been inspected?

Mr. Clarke: I object, if your Honor please, first on the ground that it doesn't have any materiality, and second, the Sheriff hasn't given any reason for knowing.
The Court: I am going to overrule that objection.
Mr. Clarke: Note the exception, please.

Q. Had Mr. Syrkes' car been inspected prior to the accident to your knowledge?
A. Yes, sir, it had.
Q. How long prior had it been inspected?
A. On April 6, 1968.
Q. How many days was that before the accident?

Henry A. Kennon

A. It would be some eight days.

Q. How do you know that?

page 117 } A. I have the inspection certificate they give with the sticker.

Q. Where did you get that?

A. Mr. Syrkes gave it to me.

Q. What kind of brakes did your car have on it, with reference to mechanical or power brakes?

A. I had mechanical brakes on my automobile.

Q. Did you have power brakes?

A. No, sir.

Mr. Whitlock: Witness with you.

CROSS EXAMINATION

By Mr. Clarke:

Q. Sheriff, what kind of car did you say you had?

A. I have a 1966 Ford.

Q. What kind of car was his?

A. His was a 1960 Chevrolet Impala convertible.

Q. There were six years difference in the cars, is that right?

A. Yes, sir, it is.

Q. And one of them is a Chevrolet and the other is a Ford?

A. Yes, sir, it is.

Q. Do you know anything about the engineering on the brakes for either one of those cars?

A. I am afraid I don't.

page 118 } Q. Do you know anything about the square inches of the surface of the brake shoe on either car?

A. No, sir, I do not.

Q. Do you know anything about the square inches of surface on the brake drum on either car?

A. No, sir, I don't.

Q. Do you know anything about the construction of the master cylinder on either of those cars?

A. No, sir, I do not.

Q. Yoy don't know then on either car how long after the foot is put upon the pedal that it takes for the brakes to react on either car?

A. No, sir, I do not.

Q. Did you make any test of the defendant's car about how much brake pedal it had?

A. No, sir, I didn't.
Q. When did you get the inspection certificate?
A. He gave it to me this past Sunday.

* * * * *

Q. Sheriff, did you inspect the tires on the Syrkes car?
A. No, sir, I didn't.
Q. Do you know what make they were?
page 119 } A. Do I know what?
Q. What kind they were?
A. No, sir, I do not.
Q. Do you know what tread design they were?
A. Yes, sir.
Q. Can you tell us of your own knowledge?
A. No, sir. I can tell you what make they are, but not what kind they are.
Q. Can you tell us how many pounds of air Mr. Syrkes had in his tires when he put his brakes on?
A. No, sir, I cannot.
Q. Do you know how many pounds of air you had in your tires?
A. Approximately thirty.
Q. That is what you like to keep in them, isn't it?
A. Yes, sir.
Q. Were you alone in your car when you made the test?
A. Yes, sir, I was.
Q. Do you know how many people were in Mr. Syrkes' car?
A. It was two and probably three in Mr. Syrkes' car.
Q. Do you know the weight of those two people besides Mr. Syrkes or one person besides Mr. Syrkes?
A. One would *weight* approximately 250 pounds; I would say the other approximately 175 pounds.
Q. You say there is a possibility of there being
page 120 } three people in all in Mr. Syrkes' car?
A. I am including Mr. Syrkes as one, and he is not in this figure I just gave you.
Q. So we have about 425 pounds of extra-passenger weight in that car?
A. Approximately that.

Mr. Clarke: I will let the jury size you up.

Q. Now, sir, when you went down in November of '68, how did you find these brake marks? Did both of them start at the same time, the heavy brake marks?

Henry A. Kennon

A. That is what I determined.
Q. That is what you remember?
A. Yes, sir.
Q. That is shown up a little different on that Plaintiff's Exhibit, isn't it?
A. Yes, sir, it does.
Q. So, where you made your test in November, it showed the skid marks different from what this picture shows them, taken on the day of the accident?
A. Yes, sir, somewhat different.
Q. You put your Deputy Sheriff where the skid marks, as you saw them months after the accident, you put him where they started?
A. Yes, sir.
page 121 } Q. That is where you determined you were going to take your foot off the gas and put it on the brake?
A. Yes, sir.
Q. Isn't it obvious, Sheriff, if Mr. Syrkes' car had started skid marks at that point, that he must have determined sometime before that point to take his foot off the accelerator and put it upon the brake pedal?
A. Yes, sir.
Q. You had to have a reflex or reaction time?
A. Yes, sir.
Q. You are not claiming or saying that you tried to stop your car at the same point Mr. Syrkes had to have been trying to stop his car, are you?
A. Within the bounds of the road that he had applied brakes and before he ended the distance he travelled, it was on this hill going down. No, I don't contend I started at the same place he did.
Q. This place was going down hill, was it not?
A. Yes, sir.
Q. Where you started to stop?
A. Yes, sir, this is down grade.
Q. At the time you went out there, you were going out for the specific purpose of making the test, were you not?
A. Yes, sir, I was asked to make the test.
Q. You got your Deputy and put him in this
page 122 } place and told him to stay there?
A. Yes, sir.
Q. The whole time that you left him and came down the highway, you knew the whole time you were going to hit your brakes when you got there, is that right?
A. Yes, sir.

Henry A. Kennon

Q. You aren't claiming that Mr. Syrkes had that advance knowledge that he was going to put on his brakes, are you?
A. No, sir, I don't know what he was expecting to do.
Q. You aren't claiming that he was expecting to put on his brakes when he got to that point, are you?
A. No, sir.
Q. Do you know whether you had the same kind of transmission in your car that Mr. Syrkes had?
A. No, I don't.
Q. You don't know what part the engine back-drag had in making one car stop quicker than the other, do you?
A. No, sir.
Q. Do I understand you to say that you only left brake marks, and they were only light ones, for—
A. For 29 feet.
Q. —for 29 feet?
A. Yes, sir.
Q. Of this whole two hundred and some—
A. 207 feet.
page 123 } Q. At one time didn't you testify that the day you made this test it was cloudy, but the day the accident happened it was sunny?
A. No, sir, I can't remember testifying, this is my first time to testify to this.
Q. You didn't get this far the last time?
A. Right.
Q. I believe you testified it was 650 feet approximately from the crest of the hill to the bottom?
A. I kind of work on tenths, I put one and one half tenths of a mile to the impact, and another tenth of a mile to the bottom of the hill, the base of the hill.
Q. Are you saying it is two tenths of a mile from the top of the hill to the bottom?
A. Approximately that.
Q. How many feet would that be?
A. Fourteen hundred and twenty.
Q. And two-tenths of a mile would be twice that?
A. I am talking about to the point of impact.
Q. You are talking about from the point of impact to the bottom?
A. Yes, sir.
Q. I will ask you one more question, and that is this: When you stationed Mr. Johnson there by the side of the road, I take it that you put him on the side
page 124 } of the road and not in the middle?

Henry A. Kennon

A. No, sir, I put him to the side.

Q. You knew he was there and told him to stay there?

A. Yes, sir.

Q. And you went back up the road and came back and until you got to the top of that hill you couldn't see him?

A. Right. I had to get to the crest of the hill.

Mr. Clarke: That is all.

REDIRECT EXAMINATION

By Mr. Whitlock:

Q. Do you know who was in the Syrkes' car when the accident happened?

A. It was my determination that it was Mr. Syrkes and Mr. Davis and Bobby Neal Coleman were the three passengers. I may be wrong because I didn't investigate it, but that was my understanding at the scene.

Q. I believe there has been some testimony that Bobby Coleman was walking up the road at the time of the accident. Do you know anything about that?

A. I can't state it as a fact or not, but it is my understanding that he was in the car.

Q. Bobby Coleman is now dead, is he not?

A. He is deceased, yes, sir.

Q. The brake marks or stopping distance that you had from the time you first attempted to apply your
page 125 } brakes until you stopped and the point that you stopped, did you ever get to the point where the Syrkes car stopped?

A. No, sir, it doesn't begin to.

* * * * *

Q. Did you attempt to apply your brakes at any point before the point where the Syrkes car's brake marks started?

A. No, sir. My main point, before I reached the point Mr. Johnson was standing on the side of the road, was to maintain fifty-five miles an hour speed until I got to the point he was standing.

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Leah Williams Nelson

page 126 }

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Mr. Whitlock: Mr. Clarke, I understand that you stipulate that the death was caused by this accident, and we don't have to call the doctor.

I do want to introduce the death certificate and birth certificate of this child.

The Court: All right, you stipulate that the death resulted from the accident. What difference does the death certificate make?

Mr. Whitlock: I want it in the record.

Mr. Clarke: We stipulate the death. I don't see any reason for the birth certificate.

The Court: Do you object to the death certificate?

Mr. Clarke: I have no objection to the death certificate?

The Court: That will be received as Plaintiff's
page 127 } Exhibit 10.

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page 131 }

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LEAH WILLIAMS NELSON, another witness called on behalf of the plaintiff, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Whitlock:

Q. Your name is Leah Williams Nelson, is that correct?

A. Yes, sir.

Q. And I believe you are the sister of Herman Williams, the little boy that was killed, is that correct?

A. Yes, sir.

page 132 } Q. How old are you now, Leah?

A. Twenty-one.

Q. Twenty-one. Where do you live now?

A. I live in *Spotsylvanie* County.

Q. Where were you living at the time this accident occurred?

A. I *will* living in Louisa.

Q. In Louisa County?

Leah Williams Nelson

A. Yes, sir.

Q. How far did you live from where this accident occurred?

A. I was staying on 522, I don't know how far it was from the accident.

Q. Do you know how far it was from where Mr. Edwards and Herman lived?

A. No, I don't.

Q. Do you know anything about the miles, or approximate distance?

A. No, sir.

Q. How long had it been since you had lived with your brother, Herman Williams, and Mr. Edwards?

A. It had been about two—I guess about a year.

Q. You were married when the accident happened, is that correct?

A. Yes, sir.

page 133 } Q. Did you live with Mr. Edwards any after you were married?

A. Yes, I lived with him some after I was married.

Q. When did you first start living with Mr. Edwards and your brother, Herman Williams?

A. When I was about—I think I was about eight years old.

Q. When you were eight years old was your brother, Herman Williams, living?

A. Yes, he was.

Q. How old was he when you first came to live with Mr. Edwards?

A. When he came to live with my Aunt.

Q. Were you living with Mr. Edwards when your brother, Herman, came to live there? Or was he there when you came to live with Mr. Edwards? Which came first?

A. I came first, then I went back home and then he came up here.

Q. How long did you all live continuously together with Mr. Edwards?

A. We stayed there with my Uncle, I guess—I guess about two years ago.

Q. Had you lived anywhere together before that time?

A. No, not with Herman.

page 134 } Q. I am not certain I understand as to when you first started living with Herman. Can you tell us the date or the age of Herman, or anything of that kind?

Leah Williams Nelson

A. Herman was about six months—about six weeks old when my mother brought him to live with my Aunt in Georgia, he lived there, then about three years ago now my Uncle took him up here.

Q. Were you living with the same Aunt Herman came to live with?

A. No.

Q. After that time, at what age did you and Herman start living together? What age was Herman then?

A. Herman was about six weeks old when my mother brought him to live with us.

Q. And how long did you all live together then?

A. My mother stayed there, she didn't stay no longer than a month at my Uncle's and then my Uncle sent for my mother and Herman.

Q. May be it would be less confusing if you would refer to them by name. What was your Uncle's name that you lived with first?

A. U. L. Dukes.

Q. How long did you live with this Uncle?

A. I stayed with them about three years.

Q. Where was Herman living then?

page 135 } A. Herman was living in—I don't know now where he was living. He was with my mother then.

Q. Where was she living?

A. I don't know the place she was living.

Q. Do you know what State it was?

A. It was in Georgia when she was with him.

Q. Then, where did Herman go to live after that? Or where did your mother go to live after that?

A. Herman and my mother came and lived with my Uncle U. L. Dukes, and lived there about a month, and then my Uncle Allen sent for them.

Q. Is that Mr. Edwards?

A. Yes, sir.

Q. He sent for them?

A. He sent for my mother to come in Alexandria to live.

Q. Where were you then?

A. I was still staying with my Uncle, U. L. Dukes.

Q. In Georgia?

A. Yes, sir.

Q. Did you later move?

A. My mother came and got me and got me to live with my Uncle, Allen.

Leah Williams Nelson

Q. How old was Herman then?

A. Herman, I think he was a year old. I am not sure about that. I think he was a year old.

Q. Who all lived in the house then?

page 136 } A. My mother, my Uncle, Allen, and my Aunt Susie and Herman.

Q. Did you live there?

A. And I lived there.

Q. How long did you live together in Alexandria that way?

A. We stayed that way, I guess it was about two years, then I went back home.

Q. Back home where?

A. I went back to Georgia and stayed about a year then, and then I came back to Alexandria and lived with my Uncle Allen some more, and then I went back home again—back to Georgia again.

Q. How long did you stay in Georgia when you went back this time?

A. I stayed about a month—about a year that time.

Q. Then when you came back where did you go?

A. Then when I came back I stayed with my mother in Alexandria, my Uncle had moved down here then.

Q. How long did you stay with your mother in Alexandria?

A. I stayed with her about two months and then I came to live with my Uncle Allen.

Q. Where was Herman at that time?

A. Herman was with my Uncle Allen down here.

Q. Did you all move anywhere after that?

page 137 } A. No, sir.

Q. How old was Herman when you came to Louisa County to live with Mr. Edwards?

A. Herman, I think he was six years old then, when I came to live with my Uncle.

Q. How old were you then?

A. I think I was about seventeen, when I got married I was eighteen.

Q. How long had you been living here with Herman and Mr. Edwards when you got married?

A. I hadn't been there quite two months before I got married.

Q. When you were here did you live anywhere else at any time?

A. I lived with Genie Syrkes' wife.

Q. What is her name?

Leah Williams Nelson

A. Brenda.
Q. Brenda. Where does she live?
A. she lived—I think it is three or four houses from my Uncle's home,—my Uncle Allen.
Q. While you were living there where was Herman Williams living?
A. Herman was living with my Uncle Allen.
Q. Did Herman have any other brother or sister, other than you?
A. No, sir.
page 138 } Q. Why did you go—did you say it was Brenda Syrkes' house?
A. Yes, sir.
Q. Why did you go up there to stay?
A. I went because I was pregnant and my Uncle didn't like it when I was pregnant.
Q. Did he tell you that you had to leave?
A. No, he didn't, I just left.
Q. Did you ever come back to Mr. Edward's house to live?
A. Yes, before my oldest child was born I came back there to live.
Q. Why did you come back?
A. I just went back.
Q. Then, how long did you live there before you got married, or, were you married when you went back there?
A. No, I wasn't married when I went back there.
Q. Do you know low long, approximately, it was after you went back that you got married?
A. No.
Q. Do you know how old you were when you got married?
A. Eighteen.
Q. Did you have any children when you got married?
A. Yes, my oldest child.
Q. Your oldest child had already been born
page 139 } when you got married?
A. Yes.
Q. Who is the father of this oldest child?
A. Albert Alphonzo Nelson.
Q. Is that your husband?
A. Yes.
Q. I hand you a picture and ask you if you can tell me who that is?
A. This is my brother, Herman Williams.
Q. Where did I get this picture, do you know?
A. You got it from my Uncle.

Leah Williams Nelson

Q. Where did he get it? Whose picture is it?
A. It is mine.
Q. Whose picture is it?
A. It belongs to me.

Mr. Whitlock: We want to introduce this as an Exhibit, your Honor.
The Court: Is there any objection, Mr. Clarke?
Mr. Clarke: I don't have any objection.
The Court: It will be received as Plaintiff's Exhibit 11.

Q. Do you know how long before Herman's death this picture was taken?
A. I don't really know how long ago it was.
page 140 } Q. Do you know where the picture was taken?
A. It was taken in school.
Q. Where did Herman go to school?
A. At Z. C. Morton.
Q. Z. C. Morton, where is that?
A. It is in Louisa, I guess.
Q. Would you describe the relationship you had with your brother? How you all got along with each other?
A. We used to go to the movies whenever we got a chance. We used to play ball. We would argue sometimes and then we would make up. I think we had a good relationship, sister and brother.
Q. Would you tell the jury the attitude you had toward your brother?
A. I loved my brother because he was the only brother I had.
Q. What was his attitude toward you?
A. As far as I could see—he have always said he loved me.
Q. Did you all go anywhere together other than the movies?
A. We used to go to church.
Q. Where did you go to church?
A. When we was living in Alexandria we went to church in Alexandria. Since we have been down here
page 141 } we went to church also.
Q. Was the church close by?
A. It wasn't far, it was up the road from my Uncle's house on 522.
Q. Do you know how your brother got along in school?
A. No more than what my Uncle said.
Q. You cannot say what somebody else said. What was the condition of your brother's health?

A. He was in good health, I guess, as far as I know.

Q. Can you describe the manner in which he worked or played? Was he active? Just describe the general nature of what he would do?

A. He loved to play. He did do his work, I think he did his work good, as far as I know.

Q. Do you know whether he had any household chores to do around the home?

A. He used to have to get in wood.

Q. Did he do that?

A. Yes.

Q. How did he get along with other children?

A. As far as I know he played good with other children.

Q. Do you know the relationship between your brother and his mother? How they felt toward each other?

A. They seemed to be real close together, as page 142 } far as I know.

Q. Do you know why your mother didn't live with him during his entire life?

A. No, I don't.

Q. Where were you when he was killed?

A. At home on 522, at my husband's home.

Q. Did you go to the accident scene?

A. After my Uncle came up and got me.

Q. Was your brother still there then?

A. Yes.

Mr. Whitlock: Witness with you.

Mr. Clarke: I have no questions.

The Witness Stood Aside.

MAXIE LEE WILLIAMS, another witness called on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Whitlock:

Q. Your name is Maxine or Maxie Lee Williams?

* * * * *

A. Maxine Lee Williams.

Q. Where are you living now?

Maxie Lee Williams

page 143 } A. I am living in Brooklyn, New York.

Q. How long have you been living there?

A. I have been there three years—three months,—I mean three years now.

Q. Where did you live before you went to live in New York?

A. I was living—let me see. We left from here and went to New York.

Q. Who was living in the home when you left here?

A. I was in Mr. Allen's home.

Q. Mr. Allen Edwards?

A. Yes. I left from his home and went to New York.

Q. Who was living in that home?

A. It was me, Mr. Edwards and my sister and my son.

Q. Your sister is Mr. Edwards' wife, is that right?

A. That is right. Twin sister.

Q. Your son, what was your son's name?

A. Herman.

Q. Herman Williams, is that the little boy that got killed in this accident?

A. That is right.

Q. Where was Leah living then?

A. She was married then, I believe. Yes, she was married then when I left for New York.

Q. Where was she living, do you know?

page 144 } A. She was with her mother in law, with her husband's mother.

Q. How far was that from where this accident occurred?

A. It was just up—what can I say? It was just walking distance.

* * * * *

Q. Were there any visits that occurred between your house, where you living or at Leah's house? Did you visit each other?

A. Yes.

Q. Can you describe that? Tell what you did.

A. Well, I would go to see her and she would come to see me. We would go to town together and she would come down to my brother in law's house and spend the night.

Q. Describe the relationship between Leah, your daughter, and Herman, your son? Will you describe how they got along?

A. As far as I am concerned they got along wonderful; they didn't—they would argue for a few minutes

page 145 } sometimes, but it wouldn't be too long, it was like all the rest.

Q. Could you describe their attitude toward each other?
A. Well, that was normal; it wasn't nothing bad.
Q. Could you describe your relationship with your son, Herman?
A. Well, I tried to be like any mother should felt by him. I would tell him to do something I wanted him to do and he would do it for me, and then, if he didn't want him to do it, I would do it myself, or, if he acted like he didn't want to do it, if I would tell him to do it he would go on and do it.
Q. What was your attitude toward him?
A. Well, my attitude to him, it was just like the daughter. I loved him. I did anything I could do for him, that wasn't too much, but it was from my heart what I done for him. I still wish I could do something for him now.
Q. What was his attitude toward you?
A. He loved me, just as he loved his sister.
Q. Why did you go to New York?
A. Well, that is the onliest wasy I could make some money to try to help him.
Q. What kind of work did you do in New York? Did you work in New York?
A. Yes.
Q. What kind of work did you do?
page 146 } A. I was doing house work.
Q. Did you ever try to do any other type of work?
A. I have worked in old folk's homes taking care of the old folks.
Q. Where did you do that?
A. Well at that time—
Q. I say, where did you do it?
A. That was out in Long Island where I was working at.
Q. Was that since you have gone to New York?
A. That is right.
Q. Did you and Herman ever have any activities together? Did you go anywhere or do anything together?
A. Yes, sir. I tried when I come down to see him, I would try to carry him where he wanted to go. I would carry him to church if I went to church. If I went to town I would try to take him with me and, if not, I would bring him back something from town.
Q. Would you tell us what kind of things he enjoyed doing?
A. He enjoyed—in fact he enjoyed anything I bought him. If I bought him a ball he liked it; he like anything I gave him.

Maxie Lee Williams

Q. How often did you come down from New York to visit Herman?

A. Well, I was here just as often as I could
page 147 } get here to see him.

Q. Could you give us an average in a year's time?

A. Mostly I come on Christmas, like if I could get off through the Christmas Holidays I would come, but, if not, it would be right after Christmas, and I would stay for a couple of days and then I went back.

Q. Is that the only time you came, around Christmas?

A. That was the only time I would come down to see him. And, if I couldn't come most of the time I would write and tell him I would have to stay on the job, or send something, if I couldn't come.

Mr. Whitlock: Witness with you.

CROSS EXAMINATION

By Mr. Clarke:

Q. I didn't understand how long ago it was that you moved to Brooklyn?

A. I have been in Brooklyn now three years.

Q. Two or three years?

A. Three years.

Q. Before that you lived at a number of other places, you lived in Long Island?

A. No, I didn't live in Long Island.

Q. You lived in North Carolina?

A. I have lived in other places before I went
page 148 } to New York, yes.

Q. And actually the fact is that you turned Herman over to Mr. Edwards when he was about three months old and since that time you have come to visit him when you could, isn't that right?

A. That is when Mr. Edwards came down here, I was living in Alexandria, that is when he came down here, he was three months old then and that is when he took him.

Q. From that time on until the boy died, you visited him from time to time, is that right?

A. That is right.

* * * * *

Maxie Lee Williams

Mr. Whitlock: If your Honor please, we want to introduce the Mortality Table, and I would like to get the statute.

Mr. Clarke: Has your Honor given any thought as to whether it is admissible in a case like this?

The Court: The statute says it shall be received in evidence.

Mr. Whitlock: The cases do too.

The Court: I don't think there is any question about that, Mr. Clarke.

Mr. Clarke: I object and except to it.

page 149 } The Court: All right, sir.

Mr. Clarke: I think, Judge, that it is something—I really think I ought to address the question, because I don't want the Court to be misled.

The Court: All right. Come in chambers, gentlemen.

Note: Thereupon, the Court and counsel retired to chambers;

Thereupon,

Mr. Clarke: Judge, we would object to the introduction of the Mortality Table or life expectantcy of this child in this case. because, of course, there are no benefits to go to the child because of any disability, which is only way you would get it in evidence. There is no loss of affection or companionship, or support of this child.

Therefore, that being true it wouldn't be the child's life expectantcy, it would be the life expectantcy of the mother or sister.

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The Court: You want to tell the jury that according to the Mortality Table the life expectantcy of this child at age eight years would be how may years?

Mr. Whitlock: Sixty-one years for a male. The evidence is that this girl is twenty-one years old and if Mr. Clarke wants to introduce her life expectantcy, we would have no objection.

Mr. Clarke: I don't want to introduce anything. You are putting in the life expectantcy of this boy.

The Court: The Court will permit it.

Mr. Clarke: Note our exception, please.

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page 154 }

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Note: Thereupon, the Court and counsel returned in open court, the jury being present;

Thereupon,

Mr. Whitlock: May it please your Honor, we would like to introduce in evidence the statute in Virginia Code showing that the life expectantcy of a child age eight, the Code establishes that a male child that age would have
page 155 } sixty-one additional years of life expectantcy.

The Court: All right, sir.

Mr. Whitlock: And we ask that that be received in evidence.

The Court: It is received, and the exception of counsel for the defendant is noted.

Mr. Whitlock: The plaintiff rests, your Honor.

GENIE SYRKES, recalled as a witness in his own behalf, being previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Clarke:

Q. You *haave* testified previously, I believe, that there was a person walking along the side of the road before you got to the top of the hill that you blew your horn at or did something. Who was he?

A. Bobby Coleman.

Q. Bobby who? Coleman?

A. Yes, sir.

Q. Has he died since this accident?

A. Yes, sir.

Q. There was another man with him, wasn't
page 156 } there? Wasn't there another person with Bobby Coleman at the time?

A. I don't know.

Q. You don't know. That is all right.

When you came over the hill and you saw these boys were they on their side of the road? On the right side of the road?

A. Yes, sir.

Genie Syrkes

Q. Were they going in the same direction you were going?
A. Yes, sir.
Q. When you first saw them how were they in the road? Side by side, or, one behind the other?
A. Yes, sir, side by side.
Q. At the time just before Herman turned in front of you were they still side by side or one in front of the other?
A. No, after I came over the hill one got behind the other one.
Q. Which one was in front then when they got one in front of the other? Which boy was in front?
A. The boy where got hit he fell back in back, the other one passed him.
Q. When they got one in front of the other, were they still on the right hand side of the road going north, the way you were going?
A. Yes, sir.

page 157 } Q. How far were you from Herman Williams when he made a left turn in front of you?
A. About a car length, something like that.

Q. Was there some relationship to this room? Or, did you testify to that? I am mixed up.
A. Yes, it was some relationship to this room.
Q. What did you do as soon as you saw him start?
A. I just mashed on the brake as hard as I could then.
Q. Had you already had your foot on your brake?
A. Yes, I already had my foot on the brake.

* * * * *

Q. How fast were you going at the time Herman Williams started to turn left in front of you?
A. I was going about fifty miles an hour then.
Q. What is the speed limit on that road?
A. I think about fifty-five or sixty, something like that. I don't know what the speed limit was.
Q. Where were you in the road in relation to your right or left side when Herman Williams started to turn in front of you?

page 158 } A. I was on the left hand side of the road when he came across.

Q. Why were you on the left side of the road?
A. I was on the left side of the road in case so I wouldn't hit him or nothing.

Genie Syrkes

The Court: I couldn't hear you.
Why did you get on the left side of the road, in case of what?

A. In case he would come across I would miss him, that is why I got on the other side of the road to pass him.

The Court: You got on the other side of the road to pass him?

A. Yes, sir.
Q. I think awhile ago you said that you left the scene of the accident. Why did you, after you stopped and came back up the highway, go on home, or whereever you went?
A. I just came on back to see for sure did I hit the boy.
Q. I understand that. After you came back and after you got out of your car, why did you leave your car and go home?
A. Why did I leave the car?
Q. Yes. Why did you go home?
A. Well, James Talley, he said something to me, arguing, so I went home.
page 159 } Q. Did anybody threaten you there at the scene?
A. Yes.
Q. Who?
A. James Talley.
Q. Is that the reason you left?
A. Yes, sir.
Q. You waited up the road for the State Trooper, is that right?
A. Yes.
Q. What did you do when the State Trooper's car came along?
A. I stopped him and got in the car with him and told him what happened.

* * * * *

Q. Mr. Syrkes, did Leah Williams ever live with you and your wife?
A. Yes, sir, she lived with my wife.
Q. That is Leah Williams Nelson. Can you tell us when she came to live with you and how long she lived with you?
A. She came one night time about two o'clock. She stayed about six months, or five months.

Genie Syrkes

Q. Did she make any statement to you about why she was there?

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Q. Did she make any statement about why she was there?
A. She told my wife.
Q. I want what you heard, not what your wife told you. It is all right as long as you heard Leah Nelson tell your wife.
A. Yes, I heard that.
Q. All right.
A. She said she called Alexandria and she was coming by to stay or something like that, because old man Allen put her out.
Q. How long did she stay with you?
A. About six months or five months.
Q. Did she say anything about any call to Alexandria?
A. Yes, she said she had called her mother that night.
Q. And what happened, did she tell you any more about her conversation with her mother?
A. I don't know for sure what she said, because she was telling my wife and I was in the bed and I was
page 161 } listening at her.
Q. And what you have told the Judge is what you learned?
A. Yes, sir.
Q. Has your wife been sitting here in the Court Room most of the day—all the day?
A. Yes, sir.

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The Court: Now this next instruction will be marked 1.
Was there any evidence that the defendant was guilty of negligence—waht do you base that on, Mr. Whitlock?
Mr. Whitlock: The defendant's admission that he was

driving 55 to 60 miles an hour; the brake marks, they are conclusive that he was travelling at an excessive rate of speed. The evidence of all the witnesses is that he was travelling at an excessive rate of speed. The other boy in the car said he was travelling from 60 to 65. There is no evidence that he was travelling within the speed limit; and, of course, he is bound by his own statement.

Mr. Clarke: Does your Honor want to hear me?

The Court: Yes.

Mr. Clarke: It is not a question of what he did before he got there, it is a question of what he did when

page 176 } he got to the scene. His testimony is that he was going 50 at the time the boy cut in front of him. What he did back up the road, you cannot penalize him for being honest with the Court, it is not what he did back up the road, it was what he did at the time the boy cut in front of him.

Under your Honor's ruling in refusing to strike the evidence, your Honor ruled that the jury might say he was going too fast for the conditions.

The Court: It looks like to me that would be a jury question, gentlemen.

Mr. Whitlock: The testimony is that after he saw the conditions there he started speeding up again.

Mr. Clarke: My man said he didn't.

The Court: I am going to refuse this and submit it to the jury as a jury question.

Mr. Whitlock: I not an exception on the grounds stated.

The Court: This will be 1B refused.

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The Court: All right, Mr. Clarke, the next instruction, do you have any objection to that?

Mr. Clarke: Your Honor has already let him

page 180 } put that in evidence and he is not entitled to an instruction, too.

Mr. Whitlock: You couldn't get an instruction unless it was based on evidence. That is the reason we have to put it in evidence, if we hadn't put it in evidence you would have argued there wasn't any evidence to support it.

Mr. Clarke: The objection to this instruction is that he is giving the life expectantcy of this child when the two people entitled to receive any benefits from his death are

both older than he was and reasonably cannot have the same life expectancy he has. So, it is improper to say how much you can allow for the loss of support of this child based on a life expectancy of 61 years when the beneficiaries are not going to live that long.

The Court: Mr. Whitlock, you have that in evidence and can comment on it in the argument. I am not going to single out one item of evidence. That will be 1F refused.

Mr. Whitlock: We note an exception on the ground that we couldn't offer the instruction unless it was in evidence.

* * * * *

page 182 } The Court: All right. Instruction 9.

Mr. Whitlock: There is nothing unavoidable about this accident. Either Mr. Clarke's client was negligent or mine was negligent.

Mr. Clarke: Suppose the jury determines he was incapable of negligence?

Mr. Whitlock: I don't think that is an unavoidable accident. If mine was negligent, then I think it was chargable to him if that was the only negligence in the case.

The Court: I have read the Holbert versus Evans case in 209 Va 210.

I presume, Mr. Whitlock, that you object to his instruction.

Mr. Whitlock: Yes, sir. I have not read the case, but I don't think there is any evidence in this case to support such an instruction. It looks like to me that is getting to an act of God. There is no evidence in this case of anything or any cause except the negligence of somebody. We think the defendant has admitted negligence in that he admits exceeding the speed limit. Other witnesses have testified he exceeded the speed limit. The brake marks indicate he is bound to have been travelling at a tremendous speed, according to the charts in the statute to be in the vicinity of 90 miles an hour; according to the test made page 183 } by the Sheriff, that is undisputed, it is bound to have been considerably in excess of fifty-five miles per hour.

While defendant and his counsel had known this test would be offered as early as last November they haven't offered any evidence in rebuttal of it; they haven't offered any test made with the defendant's car, which was perfectly available to them, but, the defendant has relied on that test as being conclusive evidence on this subject.

Also, this argument is in support of our first instruction, in which we told the jury that the defendant was guilty of negligence as a matter of law.

We think there is nothing in this case that is the cause of this accident except the negligence of the defendant; but, certainly some negligence caused it.

Mr. Clarke: Judge, I think the Holbert case is just one hundred per cent in line. The idea is that where you have an infant in the case the jury might feel that an infant was incapable of negligence because of his age, and, certainly that is what the plaintiff is urging in this case, and yet think that what that infant did was the sole cause of the accident, and that case says that in that situation this instruction is proper.

The Court: In that case the child ran in front
page 184 } of the car.

Mr. Clarke: And in this case the bicycle turned into the front of the car.

The Court: According to your theory.

Mr. Clarke: Yes, sir. I have the right to have the jury believe that theory.

Mr. Whitlock: How old was the child in that case?

The Court: In the case in 209 Va, there was no evidence of any speed on the part of the driver.

Mr. Clarke: That is right. My client said he was going under 55 miles per hour after he came over the crest of the hill.

Mr. Whitlock: This child was 4 years old.

The Court: That is right. There is another case where the child was thirteen.

Mr. Clarke: It seems to me that this case and the Holbert case are very close and that this instruction is proper if the jury wants to believe my man's version and I certainly sincerely hope they do.

Mr. Whitlock: Was this instruction given in the Holbert case?

Mr. Clarke: Go ahead and read it.

Mr. Whitlock: Here is what the Court says:

"In between the two extremes lies the area where the instruction may be warranted. If, in a case otherpage 185 } wise proper for jury decision, there is a reasonable theory of the evidence under which the parites involved may be held to have exercised due care notwithstanding that the accident occurred, the question of whether injury was the result of negligence or of unavoidable accident should be covered by appropriate instructions and submitted to the jury."

We submit that that doesn't exist in this case. If there was no evidence of negligence—

The Court: So, under your theory, Mr. Clarke, the accident was unavoidable in that the child turned directly in front of him. Is that what you are saying in this instruction?

Mr. Clarke: I am saying that if the jury believes the child was incapable of negligence, due to his age, then, the jury has the right to find that this accident was unavoidable and was not caused by the negligence of either party. That is what I understood the Holbert case to say, if you have one party, who is not capable of negligence, and he is at fault.

The Court: Provided there was a theory in which it could have happened that way?

Mr. Clarke: That is right. Of course, we feel we have the right to have the jury accept our version.

The Court: I am going to give it.

Mr. Whitlock: We except to the giving of that instruction on the ground that there is no evidence to sup-
page 186 } port that instruction that neither of the parties was guilty of negligence. The Court has already instructed the jury that if the child was over seven that they could hold him responsible for his negligence. In this Holbert case the child was under seven and per se could not be guilty of negligence.

The Court: What you are saying is that you think this is a case of negligence and contributory negligence?

Mr. Whitlock: If my client is responsible for this accident then the instruction you have given saying they can rebut the presumption is sufficient, and we respectfully save the point.

The Court: All right, sir.

Instruction number 10 is on burden of proof—

Mr. Whitlock: Well, again, your Honor, we say that the evidence shows he was negligent as a matter of law. He admitted that he was exceeding the speed limit. This should not be submitted to the jury.

The Court: All right, I am going to submit it.

Mr. Whitlock: We except for the reasons assigned.

The Court: Instruction 11. How is that in any way dif-
ference from number 9? Isn't that exactly your
page 187 } theory for number 9?

Mr. Clarke: No, sir. This is a statement of no negligence on the part of Genie Syrkes, not a statement of unavoidable accident.

Mr. Whitlock: What is the difference?

Mr. Clarke: What we are saying is that if the plaintiff did certain things in this case, whether he was capable of negligence or not, the defendant is home free.

Number 9 has to do with whether it was brought about by the fact that the plaintiff is contending his decedent was incapable of negligence.

Mr. Whitlock: This instruction Mr. Clarke has offered is taken from a case where a child runs out from between parked cars and the defendant didn't see him. This is not the case in our case.

The Court: It is awful hard for me to see the difference between this and unavoidable accident. The only way I can see it is the sudden darting of the bicycle.

Mr. Whitlock: Even under those circumstances he has to be free from negligence before he can rely on that.

The Court: Yes, but he says he was on the left side of the highway and this bicycle made a sudden dart in front of him.

page 188 } Mr. Whitlock: If he was negligent, and we have shown he was, he has no right to request such an instruction. You have instructed on negligence and contributory negligence. This is talking about a man, who doesn't have a chance to see the child.

The Court: All right, I will give you this any way.

Mr. Whitlock: We not an exception, it is repetitious if you are going to give both of these.

The Court: Instruction number 12.

Mr. Whitlock: They are taling about vehicles in the statute.

Mr. Clarke: No, they are talking about a person riding a bicycle or animal. You do propel yourself on a bicycle and you are in the same shape as a car as to other people.

The Court: Provided, you find that the plaintiff was capable of negligence.

Mr. Whitlock: You have got to have in there his maturity, experience, etc.

The Court: I think that is absolutely true, Mr. Whitlock.

Mr. Clarke: I brought this up with Mr. Whitlock when we were outside, and here is what I would suggest:

page 189 } Go to the second paragraph and I would suggest that we insert: If you believe from the evidence that the plaintiff's decedent, taking into consideration his age, general *inteligence,* maturity and experience, failed to exercise ordinary case in the performance of the foregoing duties.

I have lifted those words right out of Instruction 5.

The Court: How does that sound to you, Mr. Whitlock?

Mr. Whitlock: I think if the instruction is going to be given at all that should be in there, but, I don't think the instruction should be given at all.

The Court: I want to see the statute that you have to give the signal for 100 feet.

Mr. Whitlock: I think that is right.

Section 46.1-217 says that whenever the speed limit is more than thirty-five miles per hour the signal shall be given continuously for at least 100 feet, and in all other cases for at least fifty feet.

I don't know what the speed limit for a bicycle is.

Mr. Clarke: That statute is applicable, Section 46.1-171 says that the same things apply to a bicycle.

Judge, it is logical. As a matter of fact the reason for bicycles doing it is because a bicycle does not
page 190 } have signal lights, brake lights and those sort of things and is smaller.

Mr. Whitlock: I don't know what Mr. Clarke is going to offer.

Mr. Clarke: What I suggested is the interlineation of that language. I agree that this is not complete.

Mr. Whitlock: How about the first paragraph where you say "ordinary care under the circumstances". You have to put in there the age, general *inteligence,* maturity and experience.

Mr. Clarke: All right. Exercise ordinary care under the circumstances, taking into consideration his age, general *inteligence,* maturity and experience. How is that?

Mr. Whitlock: I certainly agree that has got to go in, but I don't think the instruction is proper any way.

Mr. Clarke: Subject to your disagreement with the instruction at all, does that language meet with your approval?

Mr. Whitlock: I am going to object to the instruction. I don't know anything you can put in it that will make it a good instruction.

I think, too, Judge, that this instruction is tak-
page 191 } ing away the presumption that he is not capable of negligence, and saying that if you consider those things that they can find that he is negligent and the presumption is not given to the child as he is entitled to.

Mr. Clarke: Of course, he has got an instruction which says that.

Mr. Whitlock: This is a finding instruction and you have got to put everything in it that the child is entitled to.

Mr. Clarke: What do you suggest?

Mr. Whitlock: I suggest that you throw the instruction out the window.

Mr. Clarke: We certainly have a right to the theory of it. Assuming we have a right to the theory of it, what language would you suggest?

Mr. Whitlock: I am not going to suggest any language because I don't think the instruction is applicable or proper under any circumstances, but, I think, if you are going to give the child the presumption he is entitled to you have to put everything in the instruction that he is entitled to, you can't just put in a part of it.

The instruction goes on to say that the law *presums* a child between seven and fourteen years of age is incapable of negligence.

The Court: I think I covered that in a pre-
page 192 } vious case by simply saying "and you find that the child was capable of contributory negligence.

Mr. Whitlock: I don't think that cures it.

The Court: Just say, "the plaintiff's decedent failed to exercise ordinary care in the performance of the foregoing duties and was capable of contributory negligence".

Mr. Whitlock: Does that give him the benefit of the presumption?

The Court: Yes. If he gets the presumption he is not capable.

Mr. Clarke: I will accept that, Judge.

The Court: I think in this instruction you have to tell them that if they find the plaintiff's decedent failed to exercise ordinary care in the performance of those duties and was capable of negligence.

Mr. Whitlock: We submit that that is still not giving him the presumption he is entitled to.

The Court: Yes, the other instruction gives him the presumption.

Mr. Whitlock: This is a finding instruction.

The Court: Leave the top part in the language you have there, taking into consideration his age, etc; and in the second paragraph, "If you find that the plaintiff's decedent failed to exercise such ordinary care in the per-
page 193 } formance of the foregoing duties and was capable of negligence. Then, if you further believe that such negligence was the sole proximate cause of the collision you find for the defendant.

Mr. Clarke: All right.

Mr. Whitlock: Judge, we strongly think that the principles of law still are not applicable, and that you are taking the presumption away from the child.

I am calling your attention to that because in trying to help Mr. Clarke straighten the instruction out you ought not to overlook that.

The Court: If your presumption is good then the child is not capable of negligence.

Mr. Whitlock: This instruction doesn't give him that.

The Court: Yes, it does. If he was capable of negligence. It takes into consideration the presumption.

Mr. Whitlock: I don't see how the defendant can get a verdict, and if he does I suppose I ought to have reversible error in the case.

The Court: I don't know that that 100 feet has any business in there. Let me see that statute again.

The speed limit on this road was fifty-five.

page 194 } Mr. Whitlock: It wouldn't make any difference whether he gave a signal or not, the defendant didn't see him until he was thirty feet from him. So, what difference would it make?

The Court: I don't know but what you may have a point there, too.

Mr. Whitlock: The defendant doesn't complain because he didn't give him a signal.

The Court: He says the child darted in front of him.

Mr. Clarke: If he had come over the hill and the boy was making a signal of his intention to turn he could have well seen it at that time.

Mr. Whitlock: We have the evidence that the man said that he didn't see him until he was 30 feet in front of him.

Mr. Clarke: No, that is not so. He said that the child turned in front of him when he was 30 feet from him.

Mr. Whitlock: The point I was trying to make is that this man struck this child when the child was on the left side of the road with the left front of his car, after the child had passed from the right side of the road, a distance of from ten to sixteen feet and he didn't see him until he got within 30 feet of the child. This man was driving from fifty to sixty miles an hour and the child apparently crossed

page 195 } the road, according to the defendant's statement of what he saw, although he didn't see much and didn't know that he struck the child because the child was driving so fast, he said.

The Court: All right, I will give you this instruction.

Mr. Whitlock: We respectfully note an exception in that the instruction is misleading. It does not state a correct principle of law. It takes away from the child the presumption that he is entitled to that he was not negligent, or not capable of being guilty of contributory negligence, and that it is repetitious.

The Court: All right. Instruction 13.

What evidence are you basing that on? Look out behind.

Mr. Clarke: Judge, he has to keep a look-out. This child was turning across the highway. If he hadn't turned he would have been safe.

The Court: Mr. Clarke, where is your statement in this one that this child was capable of contributory negligence?

Mr. Clarke: I have to correct that.

Mr. Whitlock: This accident didn't occur because of this child's backing over somebody behind him, or anything of that kind. There is absolutely no evidence to

page 196 } support this instruction. This is a backing instruction when you back into something behind you. You have given a signal instruction that hasn't any merit at all applicable to this case; but, certainly the child didn't back up over this fellow or do anything to cause this accident by improperly backing up.

The Court: There is no backing up. The only thing is keeping a proper look-out when he saw the car coming over the hill he should have gotten to the far right hand side of the road.

Mr. Whitlock: That is not the situation, the only evidence was that the boy got scared.

Mr. Clarke: There is absolutely no evidence of that. Not one iota.

Mr. Whitlock: That is what Mr. Edwards said.

The Court: That is pure speculation.

Mr. Whitlock: There is evidence. You asked Mr. Edwards what he had taught him to do and he said he had taught him to do these things, but he didn't teach him to do it if he was scared.

The instruction is repetitious of the previous one, too, Judge. This instruction is not based on any statute that I know and the only way we have got a bicycle involved in this law is by reference to this statute.

page 197 } The Court: Does a person riding a bicycle have a duty to keep a proper look-out?

Let's assume it was an adult, if he doesn't keep a proper look-out riding a bicycle, isn't he negligent?

Mr. Whitlock: If he has a duty to keep a look-out I don't see where looking behind him had anything to do with this accident. Perhaps, he had a duty to give a signal if he was going to turn. What other duty do you mean? If he had looked and seen a car—

The Court: Coming right behind him.

Mr. Whitlock: If you give a signal you have a right to turn, you don't stop. If you are meeting one you have a duty to stop and let him go by, but one coming behind you, you don't have any duty. If you are making the same provisions of law applicable to him, as you do a motorist, he is supposed to give a signal and go on and make his turn.

Mr. Clarke: Judge, may I suggest these things? I would

leave the first paragraph like it is, because we are talking about the general duties of an operator of a bicycle.

I have got in the second paragraph: If you believe under the evidence that the decedent, under all the circumstances existing at the time, including his age, general

page 198 } *inteligence,* maturity and experience, failed to keep a proper look-out and he was capable of negligence; and if you further believe that any such negligence was the sole proximate cause, etc.

I think I am going overboard trying to put these in two places.

Mr. Whitlock: If you leave it out in the first paragraph without putting in any qualification you are again taking away his presumption.

The Court: I will give that as Instruction number 13.

Mr. Whitlock: We note an exception, your Honor, in that there is no duty on the bicycle operator to do anything with reference to vehicles behind him. You have already given an instruction that he had a duty to give a signal and make his turn as the operator of a motor vehicle would do and the vehicle behind him has to bring his vehicle under control and permit him to make his turn.

It is putting a burden on this infant child that is not even required of an adult, and this instruction takes away from the child the presumption that he is not capable of negligence. It is a finding instruction and all of the requirements due this child should be included in the instruction.

We, therefore, respectfully note an exception

page 199 } to the granting of this instruction.

The Court: All right, the next instruction.

Mr. Whitlock: If your Honor please, we think this is the instruction that should have been given in place of all these others you have given. This does set forth the duty of an infant, and also gives him the benefit of the presumption he is entitled to.

Again, it is repetitious. We think this instruction should be given and not the three preceding ones. This is the instruction approved by the Supreme Court of Appeals and these other instructions you have given are something Mr. Clarke has devised.

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page 200 }

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The Court: This instruction will be given as Instruction 5A.

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page 220 }

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Thereupon, the case was submitted to the jury and the jury retired at 12:18 P.M., and at 1:25 P.M., the jury returned in open court;

Thereupon,

The Court: Mr. Foreman, has your jury agreed upon a verdict?

The Foreman: We have, sir.

page 221 } The Court: Hand it to the Sheriff, please.

The verdict reads as follows:

We, the jury, on the issue joined find in favor of the plaintiff and assess his damages at $1,000.00. We direct that the damages be distributed as follows: Leah Williams Nelson $500.00, Maxine Lee Williams, $500.00. Signed Herbert D. Winsett, Foreman, 3/29/69.

Do you wish the jury polled?

Mr. Whitlock: We do ask that the jury be polled.

Note: Thereupon, the name of each individual juror was called by the Clerk, after which the Court asked: "Is this your verdict?" to which each individual juror responded in the affirmative.

The Court: They all indicate that it is their verdict.

Note: Thereupon, the jury was discharged.

Thereupon,

The Court: All right, Mr. Whitlock. Mr. Clarke.

Mr. Whitlock: If your Honor please. We move that the verdict be set aside as to damages, as being grossly inadequate and to award a new trial on damages alone. Or, in the alternative that a new trial be granted on all issues,

page 222 } for errors committed during the trial of the case; the Court's admitting evidence adverse to the plaintiff, objected to and excepted to by the plaintiff; for

the granting and refusing of instructions adverse to the plaintiff, to which plaintiff objected to as the record shows; and, for all other errors assigned during the course of the trial adverse to the plaintiff as shown in the record, and objected to and excepted to by counsel for the plaintiff.

The Court: Mr. Clarke.

Mr. Clarke: I don't believe I have any motion except that the case follow the usual course and that judgment be entered on the verdict.

The Court: Gentlemen, your first motion that the verdict is inadequate raises some question in the Court's mind. But, the Supreme Court of Appeals has ruled that whether a verdict is excessive or inadequate that the jury's decision is to be given great weight and that the only way it can be set aside as being gross, one way or the other, that it has to shock the conscience of the Court. In every case in recent history that the Circuit Court has set it aside as being excessive or inadequate the Supreme Court has reversed the lower court and reinstated the verdict and have shown that it is the purpose of the Court that jury verdicts as to damages be maintained.

So, I am inclined to overrule your motion as to page 223 } the verdict being inadequate.

As to the motion for errors assigned in the record or failure to give or in the giving of certain instructions. I think this jury was adequately instructed. I think that the only criticism of this Court would be in overly instructing this jury; some seventeen instructions were involved.

So, I have to overrule your motion, Mr. Whitlock. I don't believe that further filing of briefs or pointing out other factors to the Court would be of any assistance to me.

So, I will overrule your motion and direct Mr. Clarke to prepare the order, and, of course, you will want to note your exceptions.

Mr. Whitlock: We respectfully note the exception. I want to set forth my assignments of error in the order.

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A Copy—Teste:

Howard G. Turner, Clerk.

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