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IN THE

# Supreme Court of Virginia

AT RICHMOND

Record No. 740245

SAMUEL ELWOOD CUBBAGE, Appellant

V.

DELORES RUBY MEADOWS, Appellee

A P P E N D I X

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SUPREME COURT OF VIRGINIA

AT RICHMOND

- - -

Record No. 740245

- - -

SAMUEL ELWOOD CUBBAGE, Appellant

v.

DELORIS RUBY MEADOWS, Appellee

- - -

A P P E N D I X

- - -

MOTION FOR JUDGMENT, filed October 9, 1972:

(1) On the 24th day of April, 1971, plaintiff was operating his automobile in an easterly direction on Spotswood Avenue (Route 623) in the Town of Elkton, Rockingham County, Virginia, in its intersection with Rockingham Street (Route 759), preparing to make a left turn north on Rockingham Street.

(2) At said time and place the defendant, Deloris Ruby Meadows, was negligently operating an automobile in a westerly direction on Spotswood Avenue (Route 623), failed to stop as required by a stop sign, failed to keep a proper lookout, failed to keep her vehicle under proper control, and negligently drove into the intersection of Spotswood

Avenue and Rockingham Street, and collided with plaintiff's automobile.

(3) As a result of the aforesaid negligence, and other acts of negligence of the defendant, the plaintiff, Samuel Elwood Cubbage, sustained numerous bruises and contusions and severe back and nerve injury, and was completely and permanently disabled for many months, and has sustained permanent partial disability, and has suffered and will continue to suffer as a result thereof.

(4) As a further result of defendant's negligence as aforesaid, plaintiff was prevented from following his usual occupation to his great damage and loss in wages, and he has incurred hospital and medical expenses in and about endeavoring to be cured, and will incur expenses in the future for medical attention; and his automobile was damaged to the extent of $513.90.

WHEREFORE, plaintiff moves the Court for judgment against the defendant in the amount of $35,513.90.

* * *

ORDER, entered October 8, 1973:

On September 20, 1973, came all parties in person and by counsel and came a civil venire which was duly sworn, examined and found free from exception. Thereupon, plaintiff and defendant alternatively struck each three persons from the panel and a jury of seven was then duly sworn to well and truly try the issues joined between the parties and a true verdict to render according to the law and the

evidence. After opening statements of counsel had been heard and the plaintiff introduced his evidence and rested, the defendant, by counsel, moved the Court to strike the evidence because it was legally insufficient to show negligence on the part of the defendant and because it showed contributory negligence as a matter of law on the part of the plaintiff. This motion was duly considered by the Court and overruled; the defendant duly objected and excepted. Thereupon, the defendant proceeded to introduce her evidence and during the introduction of that evidence the Court recessed for the night after properly admonishing the jurors.

On September 21, 1973, came again all parties in person and by counsel and likewise came again the jurors sworn to try the issue herein joined pursuant to their adjournment on the day previous. Thereupon, the defendant completed the introduction of her evidence and rested. Plaintiff introduced no rebuttal evidence and likewise rested. Plaintiff moved the Court to strike the defendant's evidence because it was insufficient as a matter of law to show contributory negligence on the part of the plaintiff and that the defendant was guilty of negligence as a matter of law that the only issue remaining between the parties was the quantum of damages due the plaintiff. The defendant at this time moved to strike the plaintiff's evidence because it was legally insufficient to show negligence on the part of the defendant and because it showed contribu-

tory negligence on the part of the plaintiff as a matter of law. These motions were duly considered by the Court and each was overruled;each party duly objected and excepted to the ruling of the Court.

Thereupon, the Court considered the instructions to be granted out of the presence of the jury; the Court after granting some, refusing some, and amending others, each party, by counsel, duly noted in the transcript the objections and exceptions of the parties.

Thereupon, the jury returned to the courtroom; the Court instructed the jury; and counsel made their closing arguments.

The jury then retired to their room, elected one of their number foreman, and considered their verdict. After sometime, the jury returned to the courtroom with the following verdict, to-wit:

We, the jury, "find for the defendant", signed Donald Erickson, Foreman. And the jury, after being asked if this was their verdict by the Clerk and after affirming the foregoing to be their verdict, was discharged.

Thereupon, the plaintiff, by counsel, moved the Court to set side the verdict as contrary to the law and the evidence and moved the Court for leave to file written motions. And thereupon, the defendant, by her counsel, moved the Court to enter judgment upon the verdict.

Of the motion of the defendant herein, the Court takes time to consider. And of the motions of the plaintiff, the

Court does ORDER that the plaintiff is granted leave to file in writing all motions on or before October 1, 1973.

ENTER this 8 day of October, 1973.

* * *

ORDER, entered November 19, 1973:

On the 5th day of November, 1973, came again the parties, by their respective attorneys, to be heard upon plaintiff's written motions previously filed herein to set aside the verdict of the jury and to be heard upon defendant's motion for judgment upon the verdict of the jury. The Court after reviewing the pleadings and papers filed in this case, after hearing argument of counsel, and after maturely considering same along with the evidence presented at the trial of this case, is of the opinion that plaintiff's motion is without merit and that defendant is entitled to judgment upon the verdict of the jury.

Therefore, it is ORDERED, ADJUDGED AND DECREED that plaintiff's motion to set aside the verdict of the jury be and hereby is denied. The plaintiff, by counsel, did make timely objection and exception to this ruling of the Court.

It is further ORDERED, ADJUDGED AND DECREED that defendant be and hereby is granted judgment upon the verdict of the jury and granted judgment for her costs in this behalf expended.

Enter this 19th day of November, 1973.

* * *

NOTICE OF APPEAL, ASSIGNMENTS OF ERROR AND NOTICE OF FILING

OF TRANSCRIPT, filed December 7, 1973:

Notice of Appeal

The plaintiff in the above styled action, Samuel Elwood Cubbage, hereby gives Notice of Appeal from the order entered in this case by the Circuit Court of Rockingham County, Virginia, on the 19th day of November, 1973, and sets forth the following assignments of error.

Assignments of Error

The Court erred in entering judgment affirming the jury's verdict on the following grounds:

(1) The verdict is contrary to the law and evidence;

(2) The Court erred in failing to sustain plaintiff's motion to strike the defendant's evidence;

(3) The defendant was guilty of negligence as a matter of law;

(4) The Court erred in giving Instruction No. 11 which instructed the jury that the plaintiff was required to give a signal for at least 50 feet before turning at the intersection as the evidence conclusively shows it was given, and the instruction is not applicable in this case.

Notice of Filing of Transcript

Notice is hereby given that the transcript of the trial will be hereafter filed.

* * *

INSTRUCTION NO. 11, given on 9/21/73:

The Court instructs the jury that every driver of a motor vehicle who intends to turn, or partly turn, from a

direct line of travel, shall exercise ordinary care under the circumstances 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, not less than 50 feet before turning, partly turning or materially altering his course of travel, plainly visible to the driver of such other vehicle of his intention to make such movement.

Therefore, you the jury are instructed that if you believe from the evidence that the plaintiff failed to exercise ordinary care in the performance of the foregoing duty, then he was negligent; 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, you shall return your verdict in favor of the defendant, Deloris Meadows.

* * *

FROM TRANSCRIPT OF EVIDENCE INTRODUCED AT TRIAL on September 20 and September 21, 1973:

JUANITA CUBBAGE:

Direct: (Mr. Wharton)
(Line 18, page 7 - line 4, page 8)

Q Were you with your husband on April 24, 1971, when he was involved in an accident in Elkton, Virginia on Spottswood Avenue on the Newtown Road?

A Yes, I was.

Q In which direction--was your husband driving?

A That is correct.

Q You were in the front seat?

A Yes.

Q In which direction were you traveling?

A We were traveling east toward the Newtown area.

Cross: (Mr. Timberlake)
(Line 17, page 11 - line 16, page 12)

Q Was the weather clear?

A Yes.

Q Was the road dry?

A Yes, as far as I know.

Q And it was broad daylight?

A Yes, it was light.

Q As I understand it, your husband was driving and you were on the front seat?

A That's right.

Q What kind of car was it?

A A GTO.

Q A General Motors' GTO?

A Right.

Q As you came from the direction of Elkton toward this intersection were you paying attention to how fast the car was going?

A No, I don't know exactly but I do know my husband was going very slow because he had to put on his signal to make the turn.

Q As you came towards the intersection there was nothing to obstruct your view of Spottswood Avenue or Route 623 between where your car was and the stop sign, besides

Cook's Store was there?

A No, I don't think there is. I did not see the car completely.

(Line 13 - line 16, page 14)

Q And the next thing you knew was the collision?

A Yes, where the car came from, I don't know.

(Line 20, page 14 - line 1, page 15)

Q That was while your husband was in the act of making a turn?

A Yes, he had started, he had not made the turn.

Q He was starting into the turn?

A He had not got into the turn, he had just started.

SAMUEL CUBBAGE:

Direct: Mr. Wharton
(Line 25, page 21 - line 17, page 23)

Q When you approached this intersection, about how fast were you traveling?

A Around 20 or 25.

Q Which way did you intend to go?

A I was going home, up the New Town road.

Q Did you slow down any as you entered the intersection?

A Yes sir.

Q Approximately what speed were you making then?

A I slowed down real slow because at that time there were holes in the road, I slowed down to about five miles.

Q Had you given any signal of any kind?

A Yes sir.

Q Did you give that signal before you entered the intersection?

A Yes, a left hand turn signal.

Q How far back from the intersection did you give that signal?

A I turned my signal light on at the road going into the cemetery, that is when I turned my light on.

Q Is that this road over here?

A Coming up this way, just as I got here I turned the signal light on.

COURT: Is that the one designated as a private driveway?

MR. WHARTON: He said at the cemetery.

MR. TIMBERLAKE: Will you put an "X" mark where you judge you turned your signal light on.

A Here. You have to be in here somewhere before you can see back there.

MR. TIMBERLAKE: Is this the place you marked where you turned your signal on?

A It was in this area.

Q How far would you say that was back from the intersection that you turned your signal light on?

A Maybe 60 or 70 or 80 yards.

(Line 7 - line 13, page 24)

Q How far into the intersection did you go before you started your turn?

A I was in the middle of it.

Q Did you see this car that you struck or that struck you just as you started your turn?

A I got a glimpse of it after I had done started the turn.

Cross: (Mr. Timberlake)
(Line 17, page 29 - line 4, page 31)

Q As I understand, as you were proceeding from Elkton on Route 623 or Spottswood Road with the intention of making a left turn at New Town, you were traveling at what you estimate as 20 to 25 mph?

A Yes sir.

Q And as you approached the intersection and when you reached a point in the general vicinity of where you put an "X" on Defendant's Exhibit 1, the map, you saw a car on the parking lot in motion?

A Going into the parking lot.

Q Headed in from the highway?

A Yes sir.

Q Did you see any other vehicles at that time in the vicinity of the intersection?

A Shortly after that I looked to the left and this other car was coming into the intersection.

Q As I understand it, that was after you had turned your signal on?

A I saw the car before I turned my signal on. Do you mean after I turned the signal on --

Q Was it after you had turned your signal on that you saw a car coming down the New Town road?

A Yes sir.

Q And it was just before you turned your signal on that you saw a car headed from the highway into the parking lot?

A I think I was turning my signal on about the time I saw a car going into the parking lot.

Q Were you giving that signal at that time to give notice to the car driving into the parking lot that you were making a left turn?

A No.

Q Did you give it for the purpose of alerting any particular vehicle?

A No sir.

Q As I understand, you proceeded at a gradually slowing speed toward the intersection?

A Yes sir.

(Line 20, page 31 - line 12, page 32)

Q You did not see any car between the time you noticed a car approaching on New Town road and the time the accident happened?

A Not other than this same car when I got around where I could see ---

Q Are you talking about the car on the New Town road?

A Yes sir.

Q Did you see the car that you had earlier seen going into the parking lot in front of Cook's at any time before the collision?

A Not unless it was Mrs. Meadows' car I picked up out of the corner of my eye.

Q That was the same car -- when did you next see it after you saw it going into the parking lot?

A When it was too close to do anything. I was making a turn and something comes into a corner of view.

(Line 10, page 33 - line 10, page 34)

Q Would it be fair to say it was as close you from you to Mr. Wharton?

A Yes sir.

Q That would be about eight to ten feet?

A Yes sir.

Q If the car you saw going into the parking lot was the Meadows car that was involved in this collision, you didn't see it from the time you noticed it heading into the parking lot until just an instant before the collision, is that correct?

A Yes sir.

Q When it was somewhere within eight to ten feet of you?

A This is correct.

Q Between the time that you saw a car going into the parking lot and turned on your turn signal up until the time you saw this car that was involved in the collision when it was right on you, you did not see any other cars except the one on the New Town road, right?

A Repeat the question.

Q You did not see any motor vehicles or automobiles besides this car that was stopping at the New Town road intersection, between the time you saw a car headed into the parking lot and the time you got a flash of the car just before the collision?

A That was all.

WALLACE BRADLEY:

Direct: (Mr. Welsh)
(Line 20, page 35 - line 9, page 36)

Q State your name and address please.

A Wallace Bradley, Elkton.

Q What is your occupation?

A I am employed at Space.

Q Was that your occupation on April 24, 1971?

A No sir, I was with the Elkton Police Department then.

Q Did you have occasion in your capacity -- what were your duties?

A Everything, I was a patrolman.

Q Did you have occasion to investigate an accident that occurred on April 24, 1971 at the intersection of New Town road and Spottswood Avenue?

A Yes.

(Line 18, page 36 - line 9, page 40)

Q When you arrived at the scene -- do you know who the drivers of the cars were?

A Mrs. Meadows was driving a red Ford convertible

and Mr. Cubbage was driving a GTO.

Q Is it possible the Meadows car was a hard top and not a convertible?

A It could have been.

Q Where were the vehicles located at the time you arrived, had they been moved?

A They said they had not. Mrs. Meadows' car was sitting with the front end on the edge of the grass just off the pavement, and his was sitting in the street.

Q Do you know where her vehicle was at the edge of the road?

A It was a manhole right beside of it.

Q Beside the right or left front wheels?

A The manhole was on the right side of the vehicle.

Q Do you know what portion of Mr. Cubbage's -- do you know who the driver of the other car was?

A Mr. Cubbage.

Q The Plaintiff?

A Yes.

Q And Mrs. Meadows is the Defendant?

A Yes sir.

Q At the time you arrived were you able to ascertain which part of the Cubbage vehicle impacted with the Meadows' car?

A When I arrived the cars was sitting four feet apart, there was no trouble getting between them. There was damage to the left front fender of the Cubbage car and

the left side of the Meadows car.

Q When you say the left side, was there any particular place along the side where it was hit?

A As I recall it was the back portion of the fender and the door.

Q I show you Defendant's Exhibit 8 and ask if you recognize the scene?

A Yes sir.

Q Does that show the vehicle approximately as it was at the time you arrived?

A Yes sir.

Q The location of these vehicles at the time, you have indicated where the Meadows' car was and you have indicated the Cubbage vehicle was about four feet away from it. In relationship to the intersection can you tell the Jury where the Plaintiff's car was and in what direction it was facing?

A It was bearing slightly toward the New Town road, the front wheels--there are no lines in the road and the front end was across the line and the hind wheels were in his lane of travel.

COURT: You said there was no line in the road and then you said the front wheels were across the line.

A The center of the road, where the line would have been.

COURT: Do you mean they were across where you

thought the middle of the road would be?

A Yes sir.

Q Come over here and look at Defendant's Exhibit No. 1. See if you recognize the scene on this certified land surveyor's plat. It is your recollection this would be North Street and not Spottswood Avenue?

A Yes, they run into here.

Q I believe that you indicated this is marked Spottswood Avenue, you call it N. Street but it's still Route 623 which comes in and goes on toward the bridge, is that correct?

A Yes.

Q You indicated that Mr. Cubbage's vehicle--the front of it was across the center of the road and the back wheels were in his lane?

A Yes.

Q Point out to the Jury approximately where his vehicle was when you arrived.

A Approximately at this point.

Q I will ask you to mark that with an "X" and to put a circle around it to indicate where you found the Plaintiff's vehicle.

A (Marked by Officer)

Q What was the road condition? Was it wet or dry?

A Dry.

Q Was it daylight or dark?

A Daylight.

Q Were there any problems of visibility?

A No sir.

TOMMY MORRIS:

Direct: (Mr. Welsh)
(Line 9 - line 10, page 41)

Q State your name?

A Tommy Morris.

(Line 23, page 41 - line 16, page 42)

Q Let me recall your attention to April 24, 1971, and ask if you had occasion to be in the car that day with Deloris Meadows?

A Yes sir.

Q Were you with her in the car during the afternoon?

A Yes.

Q Were you in the car at the time the accident occurred at the intersection of Routes 623 and 759, the New Town Road and Spottswood Avenue?

A Yes sir.

Q Where were you sitting in the car?

A In the back seat.

Q Who else was in the car?

A My wife.

Q Where was she sitting?

A In the back seat.

Q Where in the back seat?

A Next to me.

(Line 1 - line 7, page 43)

Q Do you know which side of the vehicle was struck?

A Yes.

Q Which side was it?

A The driver's side.

Q That would be the left side?

A Yes.

(Line 15, page 43 - line 4, page 44)

Q Who was driving?

A Deloris Meadows.

Q Was there anyone in the front seat with her?

A Her husband.

Q What is his name?

A James Meadows.

Q What is your wife's name?

A Ruth Ann.

Q Was there anyone else in the car?

A Yes.

Q Who else?

A Garnett Samuels.

Q Where was he sitting?

A I guess he was in the front.

(Line 17 - line 20, page 45)

Q Do you know when Mrs. Meadows turned around in the parking lot, what did she do next?

A She pulled on the highway to the sign and stopped.

Tommy Morris

(Line 16, page 48 - line 25, page 50)

Q Do you know the location of Mrs. Meadows' vehicle after the accident occurred?

A Yes sir.

Q Do you know the location of the Cubbage vehicle after the accident occurred?

A Yes.

Q Tell the Jury where Mrs. Meadows' car was at the time she was struck?

A She was past the New Town Road a couple of feet and his car struck her right in the front door and back fender.

Q Did Mrs. Meadows' vehicle travel any after the impact?

A No sir.

Q Do you know where Mr. Cubbage's vehicle was at the time of the impact in relationship to the road?

A Yes sir, he cut over into the side and when they hit he bounced back aways.

Q Did you have an opportunity to see whether the Meadows' vehicle spun around in any way?

A It was not spun around.

Q He bounced back, were the vehicles moved after that?

A No sir, her car stopped and his hit it.

Q Did it stay at that location where it bounced back?

A Yes sir.

Q Do you know how fast Mrs. Meadows was driving at the

time she was struck?

A No sir, it was not very fast, she had just got out from the stop sign.

Q Are you able to estimate the speed?

A I could estimate, no more than 20 or 25.

Q 20 or 25 mph at the most?

A Yes.

Q Did you ever see the Cubbage car before the collision?

A Yes sir.

Q When did you see it?

A Just before we hit.

Q How far from you was it when you first saw it?

A Maybe ten feet at the most.

Q Were you able to see whether it had any turn signals on?

A No sir, I was not paying that much attention.

Q When you saw it, had it reached the New Town Road at the intersection the first time you saw it?

A No sir, he never did make it that far.

Q When you first saw this vehicle, was it on its own side of the road?

A Yes.

Q Was it traveling straight or in some other direction?

A It come straight toward the store.

Cross: (Mr. Wharton)
(Line 15 - line 17, page 57)

Q I'm asking you did the accident occur before the Cubbage car got to the intersection?

A Yes sir.

GARNETT SAMUELS:

Direct: (Mr. Welsh)
(Line 19, page 62 - line 1, page 63)

Q State your name please.

A Garnett Samuels.

Q Where is your home?

A Elkton, Virginia, Route 1, Box 148-C.

Q Calling your attention to April 24 of 1971, were you present in a car driven by Delores Meadows at the time her car was struck?

A Yes sir.

(Line 5 - line 22, page 64)

Q Just tell the jury what happened.

A When we come to the intersection she stopped and pulled across to a parking lot and we set and talked and decided to go on down-town and she come to the stop sign and stopped and a car was coming down the road further and she come on across and there was nothing there and just as we got across to the water thing the other car hit her in the side. She was past the road and if he had gone on up ten feet and made the curve there would not have been no wreck.

Q What part of the defendant's car was hit?

A The left front door. It throwed glass on her and everything.

Q What direction did the defendant's car travel after it was struck?

A The impact pushed it back toward the intersection about a foot or two maybe.

(Line 7 - line 16, page 65)

Q Were you present when the police officer arrived?

A Yes.

Q Had the vehicles been moved?

A No they had not.

Q Come and take a look at this map. Here is a white house and this is Cook's store and this is the parking lot. This chevron marking is a sign. Does that orient you as to what it looks like?

A I know what it looks like.

(Line 4 - line 14, page 67)

Q Can you show the jury where it was that the accident occurred?

A Right on this corner, in this section right here. There was a man hole here and the man hole was right beside the trunk of the car.

Q Where were you sitting in the car?

A On the right hand side in front.

Q Were the weather conditions or anything impairing your ability to see these events?

A It was clear and everything, it was nothing wrong

with the weather.

Cross: (Mr. Wharton)
(Line 21 - line 23, page 73)

Q Did the car have a signal light on?

A I can't tell you how fast or anything, it was coming toward me.

JAMES HERMAN MEADOWS:

Direct: (Mr. Welsh)
(Line 25, page 74 - line 24, page 75)

Q State your name please.

A James Herman Meadown.

Q Where is your home?

A Elkton.

Q Are you married?

A Yes.

Q What is your wife's name?

A Delores Meadown.

Q Delores is the defendant in this case?

A Yes sir.

Q I call your attention to April 24 of 1971. Were you in the car being driven by Delores at the time she was involved in an accident?

A Yes sir.

Q Where did this accident occur?

A At Cook's corner in Elkton.

Q Did she strike a car or was she struck?

A She was struck by another car.

Q Do you know who the driver of the other car was?

A Yes sir.

Q Who was it?

A Sam Cubbage.

Q The plaintiff in this case?

A Yes sir.

(Line 13, page 78 - line 4, page 80)

A We turned around in the parking lot and come back out at the stop sign.

Q Did you stop or not stop?

A We stopped.

Q At that time did you see any other cars in the vicinity?

A Yes.

Q Where?

A About 200 or 250 feet down the road.

Q Down which road?

A Straight in line, in front of the cemetery.

Q Which way was this car going?

A It was going toward New Town.

Q After she stopped, what happened next?

A We went on.

Q How far did you go, or do you know?

A Somewhere around fifty-five feet until we got hit.

Q Can you locate where it was that you got hit? Was it in the intersection, out of the intersection?

A It was out of the intersection, we was out of the intersection.

Q Do you know which lane your wife's car was in?

A It was in the right lane.

Q When you saw this other vehicle, what lane was it in?

A In the middle of the road coming over and in the right lane until we hit.

Q When you came on through there would you just tell the jury exactly what happened as you crossed this intersection?

A We went through the intersection and by the time we got past the intersection in the right hand lane I seen Cubbage coming and he was in the middle of the road bearing into the left lane in that curve and he hit us right out of the intersection.

Q Did the car you were in move at all?

A I don't think it moved at all.

Q What about the other vehicle?

A I don't think that moved either.

(Line 4 - line 6, page 81)

Q Let me show you Defendant's Exhibit 1 and orient you to this. Please just show the jury on here exactly what happened and where this accident occurred.

(Line 19, page 81 - line 10, page 82)

A She come out here and stopped at the stop sign.

Q When you say "here", where it the point where she came out?

A Right here and she stopped at this stop sign and

we saw the car coming down this way.

Q About how far away was it?

A Two hundred or two hundred and fifty feet, somewhere around there.

Q You stopped here, and then what did you do?

A We continued on across here and we got hit right here where that manhole is.

Q Do you know where that manhole was in relation to your car?

A I would say right around the back end of it.

Cross: (Mr. Stone)
(Line 14 - line 25, page 94)

Q You think it was two hundred yards? When you said two hundred and fifty feet today, you meant yards?

A Something like that.

Q You think it was two hundred and fifty yards?

A Somewhere around there.

Q Since you were in the front seat - you said you looked, did you keep your eye on that car?

A Yes sir.

Q You watched it continuously?

A I watched it.

(Line 1 - line 9, page 95)

Q Did it have a signal on?

A I never noticed whether it had a signal on or not.

Q You watched him but you did not see a signal?

A I was watching just like everybody does.

Q And you don't recall seeing whether there was a

signal on?

A No.

DELORES MEADOWS:

Direct: (Mr. Welsh)
(Line 13 - line 19, page 100)

Q Please state your name.

A Delores Meadows.

Q Where do you live?

A Elkton.

Q On April 24, 1971, were you driving an automobile that day?

A Yes sir.

(Line 1 - line 3, page 101)

Q Was your automobile struck by another car that day?

A Yes.

(Line 8, page 102 - line 10, page 105)

Q What did you do after you pulled out?

A I went in the parking lot and turned and come back to the road and pulled up to the stop sign and stopped and looked all three ways and saw Mr. Cubbage coming about two hundred or two hundred and fifty feet down the road so I just pulled on out.

Q Did you notice any signals on his car?

A No sir. He might have give it but I didn't pay no attention. I saw the car coming but I had no idea what was going to happen.

Q After you stopped at the stop sign, did you do anything else before you crossed the intersection?

A I looked to see if anything was coming out the New Town road. I slowed down when I come out after I stopped because the store hides that road.

Q After you pulled out and looked up the New Town road what did you do?

A I went on down toward town.

Q Then what happened?

A As I got to the intersection ---

Q To or through?

A Through the intersection, Mr. Cubbage's car was on his side of the road and he swerved into me.

Q Which lane of travel were you in?

A The right hand side.

Q Where was your car struck?

A On the left hand side, at the door.

Q What happened after that?

A His car come into me and pushed all the glass in my face and I just passed out and when I come to my sister-in-law was slapping me and dragging me across the seat to get me out the other side of the car and the glass was all on the seat and it cut my legs and some lady brought some smelling salts out.

Q When you came to where was your car?

A I guess the same place as when it happened.

Q Do you know whether it moved any distance?

A I don't know.

Q What about the car that hit you?

A I don't know that either, he just come into me and I passed out.

Q Where was his car when you came to?

A Right next to -- you could walk between us.

Q I show you Defendant's Exhibit 8 and ask if you recognize the scene?

A Yes sir, that's my car.

Q Does that accurately show the damage to your car?

A Yes sir.

Q The damage is from what occurrence?

A That's where he ran into the side of it.

Q Let me show you Defendant's Exhibit 2, do you recognize the scene?

A Yes sir.

Q What does it show?

A It shows where I stopped at the sign at the New Town road and where I turned in Cook's parking lot and come back out.

Q I show you Defendant's Exhibit 5 and ask if you recognize that scene?

A Yes sir, right along here is where the wreck happened.

Q Would you come over and show that to the jury and point to the place where it occurred?

A Right along here.

Q Would you put a mark on there to indicate where it occurred?

A (Marked by defendant)

Q That would be where what part of your vehicle was located?

A The back end.

MR. WELSH: She has drawn a little blue ink circle on Exhibit 5.

(Line 18 - line 20, page 106)

Q If you would be kind enough to look at Defendant's Exhibit 1. Would you please go through and show the jury on this map exactly what happened?

(Line 5, page 107 - line 4, page 108)

Q When you came out of this parking lot and stopped at this sign, were you cross-ways or square in the highway?

A I was straight.

Q In relation to what?

A On the right hand side of the road.

A In which lane?

A The lane towards the store.

Q When you stopped at this stop sign, you indicated you saw a car coming down Spottswood?

A Yes sir.

Q Are you able to estimate where on this map you think that ---

A I would say it was coming right along here.

MR. WELSH: The witness pointed to an area about where the letter "E" is in the word "ROUTE".

Q Would you please show the jury exactly where you

think your car was at the time it was struck?

A Right along here.

Q Do you know about how fast you were driving at the time your car was struck?

A I had just stopped - I would say about ten miles an hour.

Cross: (Mr. Wharton)
(Line 1, page 113 - line 3, page 119)

Q You stopped there and then went on to the stop sign?

A Yes.

Q You went to the stop sign. You stopped back at the stop sign and then drove on up to where you could see up the New Town road, right?

A Yes sir.

Q So that had to put you with the front of your car on out beyond the grovery store, right? Look at Defendant's Exhibit 5. In order for you to see -- you stopped back here and then stopped again up here, right?

A I didn't stop, I slowed down.

Q You had to come out far enough to look up that road didn't you?

A No. I stopped at the sign and pulled out and slowed to look and went on.

Q You just slowed down here? You did not stop there were you could see?

A Right here on this road, I stopped at the stop sign.

Q Where were you when you saw the Cubbage car?

A Just pulling out into the intersection.

Q When you saw the Cubbage car you were getting ready to cross---

A I saw it coming way down the road.

Q As you were pulling out you saw the Cubbage car way down the road?

A No, I saw that as I stopped at the stop sign.

Q Where was the car then?

A Coming up the road like I showed you on the map.

Q Then you pulled on up here?

A I didn't stop there, I pulled out from the stop sign and glanced up that way.

Q You did not stop or slow down?

A I slowed down to make sure nothing was coming.

Q And then you went on?

A Yes.

Q Do you recall being at my office with your attorneys when we took discovery depositions in this case on November 30, 1972, about ten months ago and I asked these questions and you gave these answers: "Q. Was he a car length from you or two cars lengths from you? A. I don't know, I just knew I had time. Q. I am walking to the door, was it as far as we are apart now? A. No sir, he was coming, I don't know, I just saw the car." Do you remember that?

A I guess I said it if it's wrote down, it's been ten months ago.

Q Would you like to read a copy of it?

A No sir.

Q You did tell us you did not know how far away the car was?

A I knew it was a good ways down the road.

Q When you saw this car coming, would you say it was as far as from here to the Rockingham Bank?

A The only bank I know is Virginia National, I'm not familiar with the banks around here.

Q Would you say it was as far as it was possible to see a car coming?

A I don't know.

Q What speed was it making?

A I don't have no idea, probably about twenty-five.

Q Was it giving a signal?

A I don't know whether it was or not.

Q It was apparent that both of you were going to get to the intersection at about the same time, right?

A I was through the intersection.

Q Wasn't it apparent when you started out that you were going to meet in the intersection or at the edge of it?

A No sir, I was through the intersection.

Q Were you following him all the way with your eyes?

A I saw the car coming and it was a good ways down the road so I pulled on out and by the time I got through the intersection he went into me.

Q You did not look at him any more?

A When he come into my side I did, but I hadn't until then.

Q You did not notice him because you thought you had plenty of time?

A Yes sir.

Q You are telling us you thought he was going to come straight through?

A He could have gone through.

Q If he had gone through there would not have been an accident?

A If he had kept on his side of the road there wouldn't either.

Q But if he had gone straight through there would not have been?

A No.

Q And that is what you were counting on, right?

A No. What I was counting on, if he had made a proper turn he would not have swerved into me.

Q That is what you were counting on when you started across, right?

A That's the way everybody is supposed to drive.

Q Are you telling us you knew you were going to meet about where the accident occurred?

A I guess I would have knowed we was going to meet somewhere, I had not thought right at that minute.

Q And you did not determine whether he had a signal

light on?

A No. He was coming down the road and I pulled out and he rode into me.

Q And you did not notice him from the time you saw his some distance back up the road until he hit you? You forgot about him?

A Yes.

Q Did you see him again before he hit you?

A Just at the instant he hit I saw him out of the corner of my eye as he ran into me.

Q And you did not have time to do anything?

A No sir.

Q No one warned you?

A As far as I know they didn't.

Q You didn't have time to put on your brakes?

A No sir.

Q As far as that mark you put on the map, do you have any idea what distance that was from where the accident occurred?

A No sir. I put the mark on a paper, I didn't put none on that map.

Q Where you pointed out on the map, do you have any idea how far that was from the intersection?

A I don't have no idea but I would say about seventy-five feet from the stop sign.

Q Where you pointed on the map was about how far from the stop sign?

A I would say about seventy-five feet but I'm not very good on distance.

Q You would say about seventy-five feet, right?

A Yes.

D. MEADOWS - ReDIRECT

By Mr. Welsh:

Q When you answered that last question, are you speaking of -- which spot are you talking about being seventy-five feet from the stop sign?

A To where the wreck happened.

MOTION
(Page 120 - page 121)

MR. WHARTON: If Your Honor please, I move the Court to charge the jury that the defendant in this case is guilty of negligence as a matter of law and that the only issue for the jury is whether there was any contributory negligence on the part of Cubbage. The defendant can't rise any higher than her own testimony, which is this: She came to this stop sign and stopped, she saw a vehicle down the road and it is questionable as to where she fixed the distance, but giving her the benefit of the doubt, she said about two hundred feet;she proceeded slowly from where she had stopped out to the edge of the building, she looked to her right, she proceeded into the intersection; she did not see this vehicle again until practically at the moment of impact. That is her uncontradicted testimony. Here is one whose duty it is to stop, she stopped at the stop sign and saw

a car approaching at a distance of two hundred feet, she stopped and proceeded on and she did not regard that car again, she is not only guilty of negligence but I think it might be a jury issue as to gross negligence, but certainly she is guilty of negligence as a matter of law. I don't believe reasonable people could reach but one conclusion and that is that she qas guilty of negligence in this when it was her duty not only to stop at the stop sign, but not to proceed until she could determine it could be done with reasonable safety. She set aside all regard for the safety of herself or anybody else and according to her own testimony never glanced at the car another time.

COURT: Mr. Wharton, your motion is over-ruled.

MR. WHARTON: Note my exception.

* * *

OBJECTION TO INSTRUCTION NO. 11: (Page 122)

MR. WHARTON: I have no objection to that except the first part has no application at an intersection with stop signs.

COURT: It will be given as tendered.

MR. WHARTON: We object on the grounds stated.

MR. WELSH: May we amend it to put the fifty foot requirement in?

COURT: It will be given as tendered.

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