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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 74-0819

CHARLOTTE A. BROWN,
Plaintiff in Error,

v.

MAJOR WRIGHT,
Defendant in Error.

JOINT APPENDIX

Michael S. Weisberg
450 Law Building,
Norfolk, Virginia 23510
Counsel for Plaintiff in Error

E.C. Ferguson, Jr.
American National Bank Building
201 North Main Street
Suffolk, Virginia 23434
Counsel for Defendant in Error

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK

CHARLOTTE A. BROWN,	*	
Plaintiff,	*	
vs.	*	MOTION FOR JUDGMENT
MAJOR WRIGHT,	*	
Defendant.	*	

TO: Major Wright
122 S. 10th Street
Suffolk, VA

MOTION is hereby made for judgment and award of execution against you, in the amount of $15,000.00 for damages for personal injuries sustained by the undersigned as a result of your negligence, for this, to-wit:

1. That, heretofore, to wit, on the 14th day of August, 1973, you the defendant, Major Wright, were operating a motor vehicle on Route 337, near or at its intersection with Route 1821 (now or formerly known as Reid Street), Suffolk, Virginia.

2. That at such time and place the undersigned was lawfully and properly operating a motor vehicle on Route 337, near or at its intersection with Route 1821 (now or formerly known as Reid Street), Suffolk, Virginia.

3. That you, the defendant did then and there negligently and carelessly operate your vehicle.

4. That you, the defendant did negligently and carelessly fail to exercise a proper and effective lookout in the operation of your motor vehicle and you did fail to keep your motor vehicle under control.

5. That you, the defendant, Major Wright, did fail to heed the statutes and ordinances of Virginia, in the operation of your vehicle as made and provided to wit: following too close.

6. That you, the defendant, were otherwise negligent and careless in the premises and did cause your vehicle to collide with the vehicle in which the plaintiff was the driver, inflicting serious injuries upon her.

7. That as a direct and proximate result of the aforementioned negligence and carelessness of the defendant, the undersigned did become sick, sore, lame and disabled; she suffered great physical pain and mental anguish and will so suffer for a long time in the future; she was required to expend monies in her endeavors to be healed and cured, and will be so required for a long time in the future; all to her total damage in the amount of $15,000.00.

WHEREFORE, the undersigned moves the Circuit Court of the City of Suffolk, for a judgment and award of execution against you in the amount of FIFTEEN THOUSAND DOLLARS ($15,000.00) and the costs of this proceeding.

CHARLOTTE A. BROWN

By _____ p.q.

Michael S. Weisberg
330 Law Building
Norfolk, VA 23510

VIRGINIA,

IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK:

Charlotte A. Brown — Plaintiff

v.

Major Wright — Defendant

Defendant, for grounds of defense, states:

(1) He admits the allegations of paragraph 1.

(2) He denies the allegations of paragraphs 2, 3, 4, 5, 6 and 7.

(3) Defendant denies being guilty of negligence which proximately caused or contributed to the accident, but, if held to be guilty of negligence, says the plaintiff was guilty of contributory negligence.

MAJOR WRIGHT

By _____
Counsel

E. C. Ferguson, Jr.
American National Bank Building
201 North Main Street
Suffolk, Virginia 23434

Counsel for Defendant

I hereby certify that on the 11th day of March, 1974, the original of the foregoing pleading was mailed to the Clerk of this Honorable Court, and a copy thereof was mailed to Michael S. Weisberg, 330 Law Building, Norfolk, Virginia, 23500, Counsel for Plaintiff.

_____
E. C. Ferguson, Jr.

VIRGINIA:

In the Circuit Court of the City of Suffolk on Wednesday, the 26th day of June in the year of our Lord nineteen hundred seventy-four.

PRESENT: The Honorable George F. Whitley, Jr., Judge.

3-74
e #137

Charlotte A. Brown — Plaintiff

vs

Major Wright — Defendant

This day came the parties in person and by counsel, and came also a jury, to-wit: Luther Watson Milteer, Sr., Lucille Sparrow Dildy, Howard Louis Stephens, David G. Jordan, James Lee Newsome, Phillip Henderson Everett and Dianne P. Alexander, who were sworn to well and truly try the issue joined between the parties and a true deliverence make according to the evidence.

Whereupon, the jury proceeded to hear the evidence, and at the conclusion of the plaintiff's evidence the defendant, by Counsel, moved the court to strike the plaintiff's evidence on the ground that the plaintiff, by her own testimony, was guilty of negligence as a matter of law by failing to look in her rear view mirror before bringing her vehicle to a stop, which motion was overruled and to which ruling of the court, counsel for the defendant excepted.

Thereupon, the evidence of the defendant was presented and at the conclusion of all of the evidence, the defendant by counsel renewed his motion to strike the plaintiff's evidence, on the same ground, which motion the court sustained, and the jury was discharged.

A TRUE COPY, TESTE:
JAMES L. McLEMORE, III, CLERK
By [signature] D. C.

It is therefore adjudged and ordered that the defendant, Major Wright, have judgment against the plaintiff, Charlotte A. Brown, that the said plaintiff take nothing by her suit herein, and that the defendant recover against said plaintiff his costs about his defense in this behalf expended, to all of which the plaintiff, by counsel, duly excepted.

ENTER: June 26, 1974

[signature]

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK

CHARLOTTE A. BROWN,	*	
Plaintiff,	*	
vs.	*	DOCKET NO. L-43-74
MAJOR WRIGHT,	*	
Defendant.	*	

NOTICE OF APPEAL AND
ASSIGNMENT OF ERRORS

1. Pursuant to the Rules of the Supreme Court of Appeals of Virginia, petitioner, Charlotte A. Brown, files notice of her intention to appeal from a final judgment entered by this Court on June 26, 1974 striking the plaintiff's evidence and entering judgment against the plaintiff and assigns the following as error:

a. The Court erred in finding the plaintiff guilty of negligence as a matter of law by failing to look in her rear-view mirror before bringing her vehicle to a stop.

b. The Court erred in sustaining the defendant's motion to strike the plaintiff's evidence based upon its finding of negligence on the part of the plaintiff without any finding that such negligence was a proximate or contributing cause of the accident.

2. A transcript of the trial along with the full record on appeal shall be hereafter filed.

CHARLOTTE A. BROWN

By_____
Of Counsel

I certify that I mailed a true copy of the foregoing to E. C. Ferguson, Jr., attorney for the defendant, this 25th day of July, 1974.

_____
Michael S. Weisberg

Michael S. Weisberg
330 Law Building
Norfolk VA 23510

* * *

1 Q. And at the time of this accident -- when did
2 this accident occur?
3 A. It was August 14.
4 Q. Last year?
5 A. Yes.
6 Q. Seventy-three?
7 A. Seventy-three.
8 THE COURT: Can the jury hear her all right?
9 Can you hear her on the far end? All right.
10
11 BY MR. WEISBERG:
12 Q. Now when this accident occurred were you
13 driving alone?
14 A. Yes.
15 Q. Were you in your mother's car?
16 A. Yes.
17 Q. Will you tell the Court in your own words -
18 let's get into this - what time of day was it?
19 A. About maybe twenty after four or four-thirty.
20 Q. Was it light?
21 A. Yes.
22 Q. Was it dry?
23 A. Yes, it was dry.
24 Q. It was a nice day?
25 A. Nice day.

1 Q. And where had you been coming from?

2 A. I was at a friend's house.

3 Q. All right.

4 Where was it?

5 A. It was Pierce Park on Cross Terrace. I had
6 come out of Cross Terrace going back home and before I got
7 home --

8 Q. How far was that from your home?

9 A. About three minutes.

10 Q. All right.

11 And whose house was it, a girl friend?

12 A. A girl friend. And I proceeded to go back
13 home and before I got there I put on my left-hand signal
14 light and waited because there were work buses on the
15 opposite side. And shortly after that --

16 Q. Did you come to a stop?

17 A. Yes, a complete stop.

18 Q. That was on what road?

19 A. Old Norfolk Road.

20 Q. What direction were you headed, towards
21 Portsmouth?

22 A. Yes.

23 Q. Tell the Court now when you put on your
24 blinker how far before you got -- was it Reid Street?

25 A. Right.

1 Q. How far before you got to there did you put
2 it on?
3 A. About ninety feet.
4 Q. And you said you came to a stop, right?
5 A. Right.
6 Q. Was your blinker on the whole time you were
7 stopped?
8 A. Yes.
9 Q. Are you sure?
10 A. Yes.
11 Q. How do you know?
12 A. I'm positive.
13 Q. How do you know?
14 A. Because I can see it.
15 Q. You mean in the car?
16 A. Yes.
17 Q. And it was blinking in the car?
18 A. Blinking in the car.
19 Q. Now how long were you stopped there?
20 A. Between ten and fifteen seconds.
21 Q. And you were stopped waiting for buses to go
22 by the opposite side?
23 A. Yes.
24 Q. It's a two-lane highway, isn't it?
25 A. Yes, it is.

* * *

* * *

1 Q. Now at the time right after the accident didn't
2 a police officer come and investigate?
3 A. Yes.
4 Q. Any statements made to you at the time of the
5 accident by Major Wright?
6 A. By who?
7 Q. By Major Wright, by the man that hit you --
8 this is the man that hit you?
9 A. Right.
10 Q. Did he make any statement? Did he say
11 anything at the scene of the accident to you?
12 A. While the police officer was there?
13 Q. Before and after.
14 A. Before the police officer got there he told
15 me he was sorry he had hit me, that he had seen my signal
16 light but he couldn't stop. He also made the same
17 statement when the police officer got there.
18 Q. Did he make any statement about his attention?
19 A. He did mention that he looked to the right
20 and when he got his vision back on the highway it was too
21 late to stop.
22 Q. And he apologized to you?
23 A. Yes.
24 Q. Did you tell him you were not hurt, you thought
25 you were all right?

* * *

* * *

1 MR. WEISBERG: Excuse me just one moment --

2

3 BY MR. WEISBERG:

4 Q. All right.

5 Now would you tell the Court what your present

6 physical status is relative to the accident?

7 A. Right now I don't have that much trouble, like

8 I said. My back feels better, so do my knees and my head,

9 but I do have a pain in the middle portion of my back

10 sometimes.

11 MR. WEISBERG: That's all the questions I have

12 of her. Answer the questions of the Court and

13 Mr. Ferguson, please.

14

15 CROSS-EXAMINATION

16

17 BY MR. FERGUSON:

18 Q. On the day of this accident you first saw the

19 defendant when you came out from Cross Terrace, didn't you?

20 A. Yes.

21 Q. And he got behind you at Cross Terrace which

22 is several blocks from where this accident occurred, is it

23 not?

24 A. I don't know how many blocks it is.

25 Q. It's a good distance, several blocks in length?

1 A. I don't know how many blocks it is.

2 Q. All right.

3 Now when he came out he got behind you at that

4 point, did he not?

5 A. Yes.

6 Q. Whatever distance that is, that's when he got

7 behind you?

8 A. Yes.

9 Q. And he followed you down the road at a distance

10 of about eighty feet behind your car is what you testified

11 before; isn't that right?

12 A. Yes.

13 Q. And that he followed you from the time you

14 left down at Cross Terrace when he got behind you, about

15 eighty feet behind you right up to the time this accident

16 occurred; is that right?

17 A. I don't exactly remember. If that is what I

18 said, yes.

19 Q. But you knew he was right behind you, eighty

20 feet behind you? So before you got ready to make a

21 left-hand turn or stop or anything, since you knew this car

22 was eighty feet behind you you looked, didn't you?

23 A. Yes.

24 Q. And he was about eighty feet behind you then,

25 wasn't he?

A. I don't know for sure.

Q. If he was eighty feet behind you in the beginning and he followed you all the way to the point of the accident you mean you don't know where he was when you started to make your turn?

A. I don't know approximately how far he was behind me.

Q. But you do know at least two blocks he followed you at least eighty feet behind you, don't you?

A. Repeat that.

Q. That he followed you from up at that Terrace a distance of about eighty feet? That's what you testified to on April 9th of this year, didn't you?

A. Yes.

Q. Now you don't know that he ever got any further distance behind you than the eighty feet, do you?

A. No, I do not.

Q. And you know he stayed behind you right up to the time of the accident, didn't he?

A. As I can remember, yes.

Q. Now you state that you stopped and you stayed stopped - now how fast were you all going?

A. About forty.

Q. About forty miles an hour? Both cars traveling down the road about forty miles an hour?

* * *

* * *

1 A. I testified I saw him behind me, yes.

2 Q. And he did follow you right up to the time of

3 the accident --

4 A. Yes.

5 Q. -- from that street which is the distance of

6 at least two blocks, isn't it?

7 A. I'm not for sure, but I guess it's two blocks.

8 Q. But you claim now that you stayed stopped for

9 ten to twelve seconds with your signal light on; is that

10 what you claim?

11 A. Yes.

12 Q. All right.

13 Now after the accident you said there was some

14 trucks coming from the other direction; is that right?

15 A. Buses.

16 Q. So there was no way he could pass you at that

17 point, was there?

18 A. No, there wasn't.

19 Q. Because there were trucks coming from the

20 other direction, so the only way he could go was straight

21 ahead? All right.

22 Now when you got ready to make your left-hand

23 turn did you look in your rear-view mirror?

24 A. I can't exactly remember right now.

25 Q. You remembered on April the 9th. I want to

1 refresh your memory.

2 "QUESTION: Well, now when you got ready to
3 make your left-hand turn did you look in your
4 rear-view mirror?"

5 "ANSWER: No."

6 "QUESTION: You didn't look in your rear-view
7 mirror at all?"

8 "ANSWER: No."

9 Isn't that what you just testified to in
10 April of this year?

11 A. If that's what it says. That is the best of
12 my remembrance.

13 Q. When was the last time that you saw his
14 vehicle behind you - the last time that you saw him that you
15 remember - the last time you looked in your mirror to see
16 where he was?

17 A. I really don't remember.

18 Q. You just don't know?

19 A. I just don't know.

20 Q. But you know you didn't look in your mirror
21 before you made your turn?

22 A. Would you repeat that?

23 Q. You did not look in your rear-view mirror
24 before you made your turn, your left-hand turn?

25 A. I told you I don't remember that.

1 Q. You said what you said on April the 9th was
2 correct. Is it still correct, you just don't remember now,
3 but you remembered on April the 9th?
4 A. I don't remember now.
5 Q. After the accident occurred did you talk to
6 Major Wright?
7 A. Yes.
8 Q. All right.
9 Major Wright asked you if you were hurt at all?
10 A. Yes, he did.
11 Q. And you said you weren't hurt at all?
12 A. Yes.
13 Q. Now did he tell you then that he would take
14 the blame if you were not hurt at all?
15 A. No, he did not.
16 Q. He did not tell you that?
17 A. No.
18 Q. What did he say to you at that time?
19 A. When I got out of the car he told me that he
20 was sorry that he had hit me and ~~that~~ he had seen my signal
21 light but he just couldn't stop.
22 Q. I see.
23 When did you have your signal light checked?
24 A. I don't remember.
25 Q. You don't remember?

1 A. No.

2 Q. You don't know whether it was ever checked or

3 not?

4 A. We checked it -- do you mean the individual or

5 checking it?

6 Q. I'm talking about when did you have it checked--

7 when did you check it?

8 A. That morning.

9 Q. Did you check your signal lights every day?

10 A. Yes.

11 Q. Always check all the lights on your car?

12 A. Right.

13 Q. Did you check it after the accident?

14 A. No.

15 Q. Didn't you testify on April the 9th you did

16 check it after the accident and it wasn't working?

17 A. I don't remember. That was quite a while ago.

18 Q. Well, April hasn't been so long ago, April the

19 9th of this year. It's just been two months ago, hasn't it?

20 A. I don't remember.

21 Q. You don't remember anything about it? You

22 don't deny this is what you said in your sworn testimony?

23 A. No, I don't deny that.

24 Q. You just don't remember?

25 A. I just don't remember.

* * *

* * *

1 damage to the rear I estimated to be approximately $100.

2 I found the vehicle sitting - this is a

3 two-lane road, 337. I found the vehicle sitting in the

4 eastbound lane of 337 near the intersection of Reid Street.

5 Miss Brown's vehicle was to the front, the other, Mr. Wright's

6 vehicle - excuse me - was to the rear. I found the

7 vehicles to be twenty-two feet from each other. I also

8 found skid marks leading up to Mr. Wright's vehicle, about

9 forty-seven feet two inches.

10 Q. Officer, did you talk with the two people?

11 A. Yes, sir, I did.

12 Q. And was any statement made to you?

13 A. Yes, sir, I took statements from both parties

14 in the presence of each other.

15 Q. Would you tell us what they said?

16 A. Yes, sir. Miss Brown stated, "I was turning

17 left, gave a signal, had stopped waiting on traffic."

18 Mr. Wright stated, "It was my fault, I didn't

19 realize she was turning."

20 Q. Did you issue a summons?

21 A. Yes, sir, I did. I charged Mr. Wright with

22 following too close.

23 MR. FERGUSON: I object. That's purely

24 improper but I have no objection under the

25 circumstances. Put it right in.

* * *

* * *

1 showing on the scale what he found when he got there.
2 I object to anything else as being shown on the
3 diagram as being incorrect.
4 MR. WEISBERG: That's all I have asked him to
5 do.
6 THE COURT: That's all he is doing.
7 MR. FERGUSON: He can show the location of
8 the vehicles at the time he arrived.
9
10 BY MR. WEISBERG:
11 Q. All right. If you could hold it like that
12 and explain the diagram to the jury.
13 MR. FERGUSON: Is this where he found them
14 when he arrived?
15 THE WITNESS: Yes, sir. This is the Brown
16 vehicle and the Wright vehicle.
17 Can everyone see this? This is Route 337 and
18 this is Reid Street, turns off to the left. This
19 is Miss Brown's vehicle and Mr. Wright's vehicle was
20 here. And I have indicated the skid marks leading
21 up to Mr. Wright's vehicle, forty-seven feet two inches,
22 twenty-two feet between Mr. Wright and Miss Brown's
23 vehicle.
24
25

* * *

* * *

1 didn't ask that, how far behind he was at the time she
2 stopped?
3 A. No, sir. He just told me he didn't realize
4 she was turning.
5 Q. He told you he didn't realize she was turning
6 until too late; is that correct?
7 A. Yes, sir.
8 MR. FERGUSON: All right, sir. I have no
9 further questions -- let me ask that one question --
10
11 BY MR. FERGUSON:
12 Q. What is the speed limit there?
13 A. Forty-five.
14 Q. Forty-five miles an hour?
15 A. Yes, sir.
16 Q. Did you ask them what speed they were
17 traveling?
18 A. Yes, sir, I did.
19 Q. What was the speed given?
20 A. She was stopped. He indicated he was driving
21 between thirty and thirty-five miles an hour, something in
22 that neighborhood.
23 MR. FERGUSON: No further questions.
24 MR. WEISBERG: I don't have any. You may be
25 excused, Officer.

* * *

* * *

1 A. Toyota pickup.

2 Q. And when you first saw the plaintiff's

3 vehicle where did you first see her?

4 A. Coming across the lane out from Cross Terrace.

5 Q. Out from Cross?

6 A. Out from Cross.

7 Q. And how far did you follow her from Cross

8 Avenue to the scene of the accident?

9 A. I followed her all the way from the time I

10 entered from Cross Lane to the accident.

11 Q. And how far did you stay behind her during

12 that period?

13 A. Approximately eighty feet.

14 Q. That is the distance that she has estimated.

15 Is that about correct?

16 A. Right.

17 Q. And during that time were both of you

18 traveling about the same speed?

19 A. Yes, sir.

20 Q. She said that the speed was about forty miles

21 an hour. Is that speed correct or not or somewhere close

22 to that?

23 A. Somewhere close, yes, sir.

24 Q. Now would you just turn to the jury there and

25 tell what happened at the time you got up to where this

* * *

* * *

1 Go ahead and tell the jury exactly what she
2 said and what you said.
3 A. I asked her was she hurt and she said no. I
4 asked her did she want to go to the hospital and be checked
5 out and she said no. She said, "I'm just sorry that it
6 happened."
7 And there was no further conversation between
8 her and me.
9 Q. After the accident?
10 A. Right.
11 Q. Then after that did the officer come up?
12 A. Yes.
13 Q. And the officer said you told him that it was
14 your fault or words to that effect. Just tell the jury
15 exactly what you said.
16 A. I told him it was my fault after I asked her
17 was she hurt and did she want to be checked out and she said
18 no. I figured everything was all right, there would be no
19 more hereafter. I told him whatever is the charges I would
20 take the blame for it.
21 Q. All right, sir.
22 Now Mr. Wright, if she had given you a signal
23 light of any kind any reasonable distance could you have
24 stopped the car?
25 A. Yes, sir.

1 Q. Was the stop that she made short and abrupt or
2 a slow stop?
3 A. Short.
4 Q. Did you have time to veer off to the right or
5 to the left?
6 A. No, sir.
7 MR. FERGUSON: Your witness.
8
9 CROSS-EXAMINATION
10
11 BY MR. WEISBERG:
12 Q. Mr. Wright, that was your truck you were
13 driving, wasn't it?
14 A. True.
15 Q. And it was a considerable amount of money
16 damage done to that truck?
17 A. It was.
18 Q. About $600?
19 A. That's true.
20 MR. FERGUSON: I object to that. That has
21 no applicability to an accident case. I can go out
22 and if I'm driving a Cadillac and get the grill
23 damaged --
24 MR. WEISBERG: I'm not trying to show the
25 accident, the impact, damage to Mr. Wright. I am

* * *

* * *

1 A. Right.

2 Q. And all of a sudden you saw this young lady,

3 slammed on the brakes, no signal lights, causing you to run

4 your vehicle up in the back of hers?

5 A. True.

6 Q. And doing $600 damage to your truck; right?

7 A. Right.

8 MR. FERGUSON: I object to that again.

9 MR. WEISBERG: He's on cross-examination.

10 THE COURT: The amount of the damage doesn't -

11 but if you have some other reason --

12

13 BY MR. WEISBERG:

14 Q. Now let's start over again.

15 You were going down the road and this lady is

16 driving in front of you. It wasn't a question of her just

17 pulling on the road, you know she's there?

18 A. True.

19 Q. And both driving around forty or forty-five,

20 somewhere in that neighborhood?

21 A. True.

22 Q. You say she slammed on brakes?

23 A. (Witness nodding affirmatively.)

24 Q. You had no signal at all, no brake lights or

25 taillight and this causes you to smash into her rear end?

* * *

1 Q. After you smashed into her and you do $600
2 damage to your truck; right?
3 A. That's right.
4 Q. And you jump out of the truck and ask her if
5 she's all right; right?
6 A. Right.
7 Q. And then you say, "It was all my fault, I'll
8 take the blame;" right?
9 A. After we had the conversation, right.
10 Q. What was the conversation?
11 A. When I asked her was she hurt, did she want
12 to go get checked out.
13 Q. She said she wasn't hurt?
14 A. Right.
15 Q. And because she wasn't hurt you felt like a
16 sport, right?
17 A. True.
18 Q. So you decided to not be the least bit angry
19 with her for causing you to do $600 damage to your truck; is
20 that right?
21 A. That's true.
22 Q. And you weren't mad at her at all; is that
23 right?
24 A. I wasn't.
25 Q. Major Wright, isn't it just possible you looked