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# Record No. 5404

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**ROBERT O. FRYE**

**v.**

**WARD ALFORD, t/a Al's Cab**

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FROM THE CIRCUIT COURT OF THE CITY OF WAYNESBORO

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## **RULE 5:12—BRIEFS.**

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

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

**HOWARD G. TURNER, Clerk.**

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

### NOTICE TO COUNSEL

This case probably will be called at the session of court to be held. **JAN 1962**

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

Howard G. Turner, Clerk

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### **Record No. 5404**

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#### **VIRGINIA:**

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 5th day of October, 1961.

**ROBERT O. FRYE,**

**Plaintiff in Error,**

*against*

**WARD ALFORD, T/A AL'S CAB,**

**Defendant in Error.**

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**From the Circuit Court of the City of Waynesboro**

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Upon the petition of Robert O. Frye a writ of error is awarded him to a judgment rendered by the Circuit Court of the City of Waynesboro on the 27th day of February, 1961, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Ward Alford, t/a Al's Cab, was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

## RECORD

\* \* \* \* \*

Filed in the Clerk's Office of the Circuit Court of Waynesboro City, May 18, 1960.

Teste:

DORIS L. WOODS, Dep. Clerk.

## MOTION FOR JUDGMENT.

The plaintiff, Robert O. Frye, hereby moves the Circuit Court of the City of Waynesboro, Virginia for judgment against the defendant, Ward Alford, trading as Al's Cab, in the sum of Seventy-five Thousand Dollars (\$75,000.00), for the damages, wrongs and injuries hereinafter set forth, to-wit:

That on the 26th day of September, 1959, at or about 3:30 P. M., the plaintiff was operating a certain motor vehicle owned by his employer, Macke Automatic Machine Corporation, in a southerly direction on Laurel Avenue in the City of Waynesboro, in a careful and lawful manner, and upon reaching the intersection of Laurel Avenue with Mulberry Street, looked in each direction on Mulberry Street and seeing no approaching vehicle at or near said intersection, proceeded to cross said intersection;

That, at said time and place, the defendant, through his agent, servant and employee, Gale R. Pitsch, was operating a taxi-cab east on Mulberry Street and it then and there became and was the duty of the defendant to use reasonable care to see that his said taxi-cab was driven by a prudent, safe

and careful driver, to maintain a proper lookout  
page 2 } for other vehicles lawfully using the streets of the  
City of Waynesboro, to drive said taxi-cab at a lawful and reasonable speed under the circumstances then prevailing, to travel on the right half of the traveled portion of Mulberry Street, to keep said taxi-cab under proper control, to yield the right-of-way to any vehicle on Laurel Avenue that had previously entered the intersection of said Laurel Avenue and Mulberry Street and to avoid any act or acts of negligence that would endanger the life or safety of others;

That, in violation of said duties, the defendant was negligently permitting his said taxi-cab, at said time and place, to be operated by a notoriously reckless and unsafe driver,



Gale R. Pitsch, was negligently operating said taxi-cab without maintaining a proper lookout for other vehicles lawfully using said streets and at an unlawful, reckless and negligent speed, negligently failed to operate said taxi-cab on the right half of the traveled portion of Mulberry Street, negligently failed to keep said taxi-cab under proper control, and negligently failed to yield the right-of-way to plaintiff's vehicle, when it was lawfully in the intersection of said Laurel Avenue and Mulberry Street, and, as a proximate result of said acts of negligence on the part of said defendant or someone or more of them, collided with the vehicle operated by the plaintiff, striking it with terrific force and overturning it, after which said taxi-cab traveled some ninety-five feet east on Mulberry Street; and

That, as a direct and proximate result of said collision, the plaintiff was seriously and permanently injured, was caused to undergo great pain and suffering, which will continue in the future, was compelled to expend large sums of money for medical and hospital care and treatment, lost salary and income because of his incapacity to work and suffered and will continue to suffer inconvenience, discomfort and anguish; his injuries consisted of a fracture of the skull and face, concussion of the brain with resulting cerebral damage, maceration of the left arm and various lacerations and contusions, from which injuries he has largely lost the vision of his right eye and has completely lost the hearing of his right ear and partially of the left ear.

For all of which the plaintiff asks judgment against the defendant in the sum of Seventy-five Thousand Dollars (\$75,000.00).

Respectfully submitted,

**ROBERT O. FRYE**  
By Counsel.

**TIMBERLAKE AND SMITH**  
By **W. B. TIMBERLAKE, JR.**  
Industrial Loan Building,  
Staunton, Virginia.

Filed in the Clerk's Office of the Circuit Court of Waynesboro City, June 3, 1960.

Teste:

DORIS L. WOODS, Dep. Clerk.

### GROUND OF DEFENSE.

The Grounds of Defense of the defendant, Ward Alford, t/a Al's Cab, to a Motion for Judgment filed against him in the Circuit Court for the City of Waynesboro by Robert O. Frye.

1. The defendant denies that he is liable to the plaintiff for the amount sued for or for any amount whatsoever;

2. The defendant denies that the plaintiff, Robert O. Frye, was operating the motor vehicle involved at the time of the accident complained of in a careful and lawful manner at the intersection of Mulberry Street and Laural Avenue in the City of Waynesboro, Virginia, or that he looked in both directions as he approached the intersection;

3. The defendant says that Gale R. Pitsch, his employee, was a safe and careful driver and was operating the defendant's taxicab at the time and place of the accident in a proper and lawful manner in all respects;

4. The defendant denies each and every averment of negligence on the part of his taxicab driver contained in unnumbered paragraph four of the plaintiff's notice of motion for judgment;

5. The defendant denies that the plaintiff was injured as a direct and sole proximate cause of the negligence of the operator of the defendant's motor vehicle or that he sustained the injuries complained of in said notice;

page 7 } 6. The defendant avers and charges that the collision involved was solely due to the negligence of the plaintiff in that he failed to keep a proper look-out for other vehicles lawfully using Mulberry Street and Laurel Avenue, he negligently failed to keep his vehicle under proper control, he was driving at an excessive rate of speed, he negligently failed to yield the right of way to the defendant's vehicle entering the intersection from the right, he was negligently operating his vehicle at a speed and in a manner so as to endanger the defendant's motor vehicle and the driver thereof, and he was otherwise guilty of careless, negligent and reckless driving, and as a consequence thereof, drove into and

collided with the taxicab of the defendant as it was lawfully entering and passing through the said intersection; and

7. The defendant says if the defendant's driver was guilty of any negligence which proximately caused the accident involved, which is accordingly expressly denied, the plaintiff was guilty of contributory negligence which proximately contributed to cause the accident involved and bars the plaintiff's right to recover in this action.

WARD ALFORD, T/A AL'S CAB  
By Counsel.

G. H. BRANAMAN  
HUMES J. FRANKLIN  
Attorneys for the defendant,  
Waynesboro, Virginia.

\* \* \* \* \*

page 12 }

\* \* \* \* \*

In the Circuit Court of the City of Waynesboro, this 27th day of February, in the Year of Our Lord, Nineteen Hundred, Sixty-one.

\* \* \* \* \*

This day came again the parties and their counsel to the bar of the Court, ready for the trial of this matter. Whereupon a jury was called and thirteen members of the panel qualified. And the plaintiff and the defendant, striking alternately, each *struck* three members from the panel, leaving a jury of seven, without exception, as follows: Robert E. Kirby, Jr., A. E. Keiffert, Mrs. S. P. Olinger, Vincent Binion, M. V. Worley, V. R. Tarry and E. A. Carter, who were sworn to well and truly try the issues between the plaintiff and the defendant. The court reporter was also sworn.

During the introduction of the evidence numerous objections and exceptions were taken, the Court ruling on each as is shown in the stenographic record. At the conclusion of the plaintiff's evidence, the defendant moved to strike the evidence on the ground that it was insufficient to support a verdict, which motion was overruled by the Court, and exceptions noted by the defendant as shown in the stenographic record of the case. At the conclusion of all the evidence the

*Sgt. Robert L. Stover.*

defendant renewed his motion to strike the evidence on the grounds previously stated, which motion is allowed by the Court, the plaintiff objecting and excepting to the Court's ruling as shown in the stenographic record.

Whereupon it is ordered by the Court that the motion for judgment and the counterclaim are dismissed and this case is ordered stricken from the docket of this Court.

It is ordered that the large exhibit plat introduced in evidence in this case may be withdrawn by the defendant after the expiration of the appeal period.

C. S. Q., Judge.

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page 2 }

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SGT. ROBERT L. STOVER,  
being duly sworn, testified:

DIRECT EXAMINATION.

By Mr. Timberlake:

Q. Will you please state to the Court and Jury your full name?

A. Robert L. Stover.

Q. And Mr. Stover, are you a sergeant on the Waynesboro City Police Force?

A. That is right.

Q. Were you so employed on September 25, 1959?

A. Yes, Sir.

Q. Sgt. Stover, did you have occasion on September 26, 1959, which was a Saturday, I believe, to go to the scene of an accident at the intersection of Laurel and Mulberry in the City of Waynesboro?

A. Yes, Sir.

Q. Approximately what time did you arrive at the scene?

A. 3:30 P. M.

Q. Did you go in response to a call?

A. Yes, Sir.

Q. And where were you, if you recall, when you received that call?

*Sgt. Robert L. Stover.*

page 3 } A. I couldn't tell you. I was there driving a patrol car, and when I got the call, I went right on out there.

Q. Mr. Stover, how many vehicles were involved in this accident?

A. Two.

Q. What types of vehicles were they?

A. One was a '55 Ford sedan owned by the cab company, and the other was a truck operated by Robert Frye.

Q. Who was operating the cab?

A. Dale Pitsch. I mean Gale Pitsch, Gale R. Pitsch.

Q. Do you happen to have the make and model of the truck operated by Mr. Frye?

A. Chevrolet Boyertown, '54 model.

Q. So far as your investigation was able to develop, were the two vehicles in the position at which they came to rest following the accident, when you arrived there?

A. Yes, Sir.

Q. Sgt. Stover, do you know the width or approximate width of Laurel Avenue at the location of this accident?

A. Laurel Avenue is 32 feet wide and Mulberry is 32 feet wide, from curb to curb.

Q. They are of equal width?

A. Yes, Sir.

Q. And I believe it is correct, is it not, that Laurel runs north and south?

A. Yes, Sir.

Q. And Mulberry, east and west?

A. Yes, Sir, east and west.

page 4 } Q. What kind of surface is there on these two streets?

A. Both have a hillcrest.

Q. What I had reference to is whether the two streets are paved.

A. Yes, Sir, blacktop.

Q. What is the grade, if any, on Mulberry as you approach this intersection with Laurel?

A. I would say Mulberry is a little bit more grade than Laurel.

Q. Would that be a downgrade leading to the intersection?

A. Yes, Sir, not too much more, a little more.

Judge Quesenberry:

Q. A downgrade from the west?



*Sgt. Robert L. Stover.*

A. Coming east on Mulberry and a downgrade coming south on Laurel.

Mr. Timberlake:

Q. And you say it is not a heavy grade in either instance and that the grade on Mulberry Street is somewhat greater than on Laurel Street?

A. It might be just a little steeper, not too much.

Q. Sgt. Stover, what property lies in the north-west corner of this intersection?

A. The Freed property.

Q. Across the street, on Mulberry, in the south-west corner, what property is it?

page 5 } A. Property I used to own, myself. I sold it.

Q. I am speaking of southwest, directly across the street from Freed's.

A. That is the apartment house there.

Q. What is the name of the apartment house?

A. I don't know what it goes by there. It used to be Martin's Apartments.

Q. I see. Across Laurel Avenue from the Freed's, that would be in the northeast corner of the intersection, you say that is property you used to occupy?

A. Yes, Sir.

Q. Were you living there at the time of the accident?

A. No, Sir.

Q. Do you know who the property owner or resident is there?

A. I know. I can't think of the man's name right off, now.

Q. I see. What about the other corner of the intersection? That would be the southeast corner.

A. Baber. Mr. Baber owns that.

Q. Is there any object at or near the center of the intersection in the pavement?

A. Yes, Sir, it is a marker, a little plate, right in the center of the street.

Q. And where did you find this Chevrolet truck, operated by Robert Frye, when you arrived at the scene of the accident?

page 6 } A. It was down on the corner, turned over, right there next to Baber's home.

Q. Where was the taxicab?

A. On down the street up in the yard. The back end was up in the Baber's yard.

Q. How far was the point where the taxicab was sitting from the intersection?

*Sgt. Robert L. Stover.*

A. From the middle of the intersection where the plate was, the truck was laying about 30 feet from where we think the impact—

Q. I am not asking you to express an opinion.

A. 30 feet, and the cab, around 95 feet.

Q. On what side was the truck lying?

A. It was laying over on the right side.

Q. Opposite the driver's side?

A. Yes, Sir.

Q. Was the driver in the truck when you got there?

A. He was pinned in the truck.

Q. Could you determine whether or not he was conscious or unconscious?

A. I wouldn't like to say because the First Aid crew was working on him, trying to get him out of there, and I was working on the accident, but I wouldn't like to say whether he was conscious or not.

Q. Was the taxicab turned over or on its wheels?

A. It was on its wheels.

Q. Was the driver of the taxicab in the cab when you arrived there?

page 7 } A. No, Sir, he was out.

Q. What, if any, debris or markings did you find in the street?

A. A little mark right in the center of the street where that plate was.

Q. How long was that?

A. I'd say a couple of feet long.

Q. Did it go in a diagonal direction or a straight direction?

A. It went in sort of diagonal direction, not right straight. It started about a foot above the plate in the middle of the street and come right straight across the plate.

Q. And you say it was two or three feet long?

A. Something like that.

Q. I don't have reference to debris; is that the only marking in the street?

A. That was the only mark in the street.

Q. What debris, if any, did you see in the street?

A. Well, a little dirt knocked off right there—not too much—right there at the center where the plate was. Most was down next to the truck.

Q. Were you able to tell whether or not the truck was loaded or unloaded?

A. It was loaded.

Q. Had the contents of the truck gone out on the street?

*Sgt. Robert L. Stover.*

A. I couldn't recall whether it was or not. Cap-  
page 8 } tain Whitlock was taking care of that, and there  
was some money in the truck in bags, and he taken  
care of that.

Q. Did your investigation reveal whether or not there were  
any persons in either of these vehicles other than the drivers?

A. My investigation, it wasn't but just the drivers.

Q. All right.

Mr. Timberlake: Your Honor, there were certain photo-  
graphs introduced at the last hearing of this case.

Judge Quesenbery: I don't know where they are.

Mr. Franklin: You gave back to respective counsel photo-  
graphs that were introduced. You gave us back ours, and we  
have them. It may be the officer took them.

Mr. Timberlake: That's right, Sir, I have them.

Q. Sgt. Stover, I hand you a photograph which purports  
to show a vehicle, a truck, over on its right side, and I will  
ask you if that appears to be an accurate picture of the  
truck driven by Mr. Frye as you found it following the acci-  
dent.

A. Yes, Sir, that is exactly where the truck was at.

Judge Quesenbery: What is that?

Mr. Timberlake: That is designated No. 1. I was going to  
reintroduce it.

Q. That was the position and condition you found the truck  
when you got there?  
page 9 } A. Yes, Sir.

Q. As far as your investigation showed, that is  
where it came to rest following the accident?

A. Yes, Sir.

Q. In which direction is this photograph looking?

A. Looking east.

Q. The street, as you look east towards the background, is  
Mulberry. Is that correct?

A. Yes, Sir.

Q. Is the round object in the surface of the street near the  
center of the photograph—is that the center marker to which  
you referred?

A. Yes, Sir, in the center of the street.

*Sgt. Robert L. Stover.*

Q. Does the mark that you described as being two to three feet long in the vicinity of this center marker appear in this photograph?

A. Yes, Sir.

Q. In this photograph, can you see the taxicab?

A. No, Sir.

Q. I don't think you can.

A. No, Sir.

Q. That appears to be a wrecker down Mulberry Street there.

A. Yes, Sir, a wrecker is down there. It hadn't picked the car up yet. It was there to pick the car up.

Q. Would the taxicab be on beyond where the wrecker appears in this photograph?

A. No, it's back up this way, back up toward the page 10 } truck.

Mr. Timberlake: I would like to introduce this as Plaintiff's Exhibit 1. Shall I just hand it to the Jury?

Judge Quesenbery: Yes.

Mr. Timberlake:

Q. Sgt. Stover, I hand you a photograph marked No. 2 and ask you if that is a photograph showing the same objects that appear in Photograph No. 1, only taken from farther west on Mulberry Street.

A. Yes, Sir, it looks like it was taken farther west.

Q. That shows the center marker in the intersection and the truck in the position in which you found it?

A. Yes, Sir.

Q. You just can see the wrecker on down Mulberry?

A. That's right.

Mr. Timberlake: I would like to offer this, also, as Plaintiff's Exhibit No. 2. (Handed to the Jury.)

Q. Now, Sgt. Stover, I hand you a photograph, marked No. 3, and ask you if that shows the truck in the position in which you found it following the accident. Is that correct, Sir?

A. Yes, Sir.

Q. Does that photograph appear to be looking west on Mulberry?

*Sgt. Robert L. Stover.*

A. Yes, Sir, that's right.  
page 11 } Q. And the various people standing over in the  
yard of this property on the righthand side of the  
photograph—is that in the Freed yard?

A. That is in the Freed yard.

Q. Do you know how many, if any, of the automobiles that  
are on the—what side would this be?

A. It would be the north side.

Q. On the north side of Mulberry Street were there at the  
time of the accident?

A. I couldn't say what was there at the time of the accident.  
There were some there when I arrived. I don't know what  
was there before.

Mr. Timberlake: I would like to offer this as Plaintiff's  
Exhibit No. 3, please, Sir. (Handed to the Jury.)

Q. I hand you a photograph, marked No. 4, Mr. Stover, and  
ask you if that shows the taxicab in the position in which you  
found it when you arrived to make your investigation.

A. Yes, Sir, that is where—the way I found it.

Q. This object or cover in the street is not the center marker  
you have reference to in the intersection?

A. No, Sir. No, Sir.

Q. And, I believe you testified that the cab, in the position  
in which it appears in this photograph, No. 4, is 95 feet from  
the center of the intersection?

A. Yes, Sir. The cab went up in the yard.

page 12 } Q. You weren't there, of course.

Judge Quesenbery: Just testify as to where you saw it when  
you got there. You said it was partly up—

Q. The sod and all show where it come out of the yard.

By Mr. Timberlake:

Q. This photograph is looking east on Mulberry?

A. Yes, Sir.

Q. Will you state whether or not the photograph shows  
the trees and foliage in that area?

A. Yes, Sir.

By Judge Quesenbery:

Q. Sergeant, let me go back to Photograph No. 1; that iron  
thing is the center of the intersection?



*Sgt. Robert L. Stover.*

A. Yes, Sir.

Q. Where was the debris? You said there was a small amount of debris near the center; where was it with reference to the center mark?

A. Right almost at the plate. It was not too much, just a little dust or something.

Q. Almost on that thing, on that marker?

A. Yes, Sir, but the biggest is down next to the truck.

Q. Where it turned over?

A. That's right.

By Mr. Timberlake:

Q. Mr. Stover, what portion or portions of the taxicab were damaged when you examined it at the scene of the page 13 } accident?

A. The left front, back, almost back to the corner of the door and up all the way to the front of it was damaged and the left rear fender and taillight was damaged down—the doors on the taxicab was not damaged.

Q. The doors on the taxicab were not damaged?

A. No, Sir.

Q. How far across the front of the taxicab would you say the damage extended?

A. The damage extended—in other words, it buckled the hood up all the way across here.

Q. You are pointing to a photograph to illustrate the damage to the cab?

A. Yes, Sir.

Q. Is that the same photograph I have in my hand?

A. Yes, Sir. That was taken away from where the accident took place. It was taken at the Freed yard where we put the wreck.

Q. Does that show the damage as you found it at the scene of the accident?

A. Yes, Sir.

Mr. Timberlake: I would like to offer this as Plaintiffs Exhibit No. 4. No. 5, I mean.

Q. Do you have a photograph such as I hold in my hand here?

A. That is the only one I have.

Q. Let me see if I have one here. Now, does the page 14 } photograph I hold in my hand fairly show the

*Sgt. Robert L. Stover.*

damage as you found it to the Macke truck when you arrived at the scene of the accident?

A. Yes, Sir.

Q. That shows—let me see. I don't believe that is exactly the same picture.

A. No, it is not. This picture was taken at the Macke headquarters where the truck was pulled.

Q. Does the picture I hold appear to show the truck after it was damaged as far as the physical damage to it was concerned? I believe it is the same as you have right here.

A. Not too much. You have more truck here than I have.

Q. The one you hold in your hand, your left hand, doesn't show the left headlight. It doesn't show the left headlight, but this one does show it. Do you see any significant difference between the photograph you hold and the one I hold except that mine is darker in color and shows a little more to the rear of the truck?

A. That shows about the same damage that was done to the truck.

Mr. Timberlake: We would like to offer this as Plaintiff's Exhibit No. 6.

Mr. Branaman: Who took it?

Mr. Timberlake: I don't know.

Mr. Branaman: Let's find out.

page 15 } Mr. Timberlake: The witness has testified that it is—he has one like it.

Mr. Branaman: Who took the photographs?

A. Chief Benson, I think, and these—

Mr. Timberlake: You haven't seen these.

A. These that I have—

Q. One was developed darker than the other.

Judge Quesenbery: What number have you assigned to this cab picture?

Mr. Timberlake: 5, Sir. We would like to offer this as Plaintiff's Exhibit No. 6.

Judge Quesenbery: Was that the truck?

Mr. Timberlake: Yes, Sir. I believe that's all I want to ask Sgt. Stover.

*Robert O. Frye.*

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ROBERT O. FRYE.

being duly sworn, testified:

DIRECT EXAMINATION.

By Mr. Timberlake:

Q. Which is your good ear and which is your bad ear?

A. My left is good and right is bad.

Q. What is your full name?

A. Robert O. Frye.

page 19 } Q. And how old are you, Mr. Frye?

A. 28.

Q. Where do you live?

A. 517 N. Augusta.

Q. In Waynesboro?

A. Yes.

Q. Where were you living on September 26, 1959?

A. 1456 N. Commerce, Waynesboro, Virginia.

Q. And by whom are you employed?

A. By the Macke Automatic Merchandise, of Washington,

D. C.

Q. What is the nature of your employer's business in this area?

A. Industrial feeding and vending machines, coin operated vending machines.

Q. How long have you been employed by the Macke Company?

A. Now, close to five years.

Q. I take it you were in the employ of the Macke Company on September 26, 1959?

A. Yes, Sir.

Q. Were you the operator of one of the vehicles involved in this accident?

A. Yes, Sir.

Q. What kind of vehicle were you driving?

A. 1954 Chevrolet Boyertown.

*Robert O. Frye.*

Q. Do you know the dimensions of that truck?  
page 20 } A. Yes, Sir, I have got the length of it. 16½  
feet, and the width is 6 feet, 4 inches, and the  
weight, 5500 pounds.

Q. That is empty?

A. That is the gross weight. Empty, it's 5000 pounds.

Q. On this particular day, was the truck loaded or unloaded?

A. It was loaded.

Q. What was it loaded with?

A. Cigarettes, candy, coffee, soups, and other things of that nature.

Q. Where had you been immediately before this accident occurred?

A. In Staunton and our warehouse in Fishersville.

Q. Was that an incident to your employment?

A. Yes, Sir.

Q. What kind of weather was it, the afternoon this accident happened?

A. It was clear.

Q. The streets were dry?

A. Yes, Sir.

Q. Now, do I take it that you went from Fishersville to Waynesboro?

A. Yes, Sir.

Q. And what was your destination going from Fishersville to Waynesboro?

page 21 } A. I was—the first stop was to let a fellow employee, Mr. Morris Hudson, out at his home.

Q. Then where did you intend going?

A. Home.

Q. Your home was over on Commerce at that time?

A. Yes, Sir.

Q. Now, I take it then, Mr. Hudson accompanied you from Fishersville to a point not too far distant from where this accident occurred. Is that correct?

A. Yes.

Q. Where did you let Mr. Hudson out?

A. On the corner of Randolph and Madison Street.

Q. How far is that from where the accident occurred?

A. Madison is two blocks from Mulberry. I come down one block on Madison and turned up two blocks on Laurel.

Q. All right, after you turned onto Laurel, as I understand from your testimony, when you entered Laurel, you entered

*Robert O. Frye.*

it two Blocks from Mulberry where the accident happened. Is that correct?

A. Yes, Sir.

Q. Tell the Jury, please, how you travelled from the point where you entered Laurel Avenue down to the intersection where the collision occurred.

A. I was headed—when I turned, I was going south on Laurel, I come to the first intersection, which would have been Ohio Street, I stopped for moving traffic already in the intersection, and proceeded south on Laurel on into Mulberry.

Q. As I understand, you came to a stop a block page 22 } before you reached Mulberry, the Mulberry intersection?

A. Yes, Sir.

Q. Was that a complete stop or just a slowing down?

A. A complete stop.

Q. After the traffic had cleared on Ohio, what did you do?

A. Proceeded south on Laurel.

Q. Tell the Court and Jury, please, the approximate speed at which you were travelling when you went from Ohio to Mulberry or the Laurel and Mulberry intersection.

A. Approximately 15 to around 20 miles per hour.

Q. Do you recall in what gear you were travelling?

A. When I approached Mulberry Street, I still had it in second gear with my foot on the clutch, still gearing down all the time.

Q. What did you do as you approached the intersection of Mulberry Street with Laurel Avenue?

A. I looked to the right and I looked to the left and then I looked straight ahead and proceeded on into the intersection.

Q. How far from the intersection were you when you looked to the right?

A. About 20 feet.

Q. And in looking to the right, in which direction would you look on Mulberry Street, in looking to the right?

A. South—I mean west on Mulberry Street.

page 23 } Q. Do I understand that is the direction you looked first as you got within 20 feet of the intersection?

A. Yes, Sir, I looked to the right, first.

Q. About how far up Mulberry Street could you see from that point when you looked to your right?

A. It was around, I would say, 125 feet clear vision.

Q. What, if anything, prevented your seeing farther?

A. A tree in the yard and parked vehicles.



*Robert O. Frye.*

Q. Where were the parked vehicles?

A. They would be on the right, let me see, the right side of Mulberry Street. That would be east. That would be north and west of Mulberry.

Q. On what side of Mulberry?

A. On the north side of Mulberry.

Q. Would that be the same side of Mulberry that the Freed home is?

A. Yes.

Q. Do you know how many vehicles were parked along there?

A. No, Sir, I don't.

Q. Do you know how far those parked vehicles were parked up the hill as you go west on Mulberry?

A. No, Sir, I don't.

Q. Is there any landmark on Mulberry Street that you have been able to fix, from checking the scene of the accident, subsequent to its happening, that marks this point page 24 } where you could see first on Mulberry?

A. I could see the west front of the first apartment house.

Q. And do you know approximately how far that is from the intersection?

A. Approximately 125 feet.

Q. Did you see any moving traffic in that area of 125 feet before you?

A. No, Sir, I didn't.

Q. What did you next do?

A. After I looked right, I looked left, then straight ahead, and proceeded into the intersection.

Q. When you looked left, that would be east on Mulberry?

A. That's right.

Q. Was there any moving traffic approaching this intersection from the east?

A. No, Sir.

Q. What did you see when you looked straight ahead?

A. There was nothing straight ahead.

Q. There was no traffic approaching the intersection on Laurel?

A. No, Sir.

Q. During that time, had you continued in motion?

A. Yes, Sir, I was slowing down all the time, going into the intersection.

*Robert O. Frye.*

By Judge Quesenbery:

Q. What speed did you say you were travelling?

A. It was about 20 miles an hour, maybe 18,  
page 25 } maybe 22. Around 20 miles an hour.

By Mr. Timberlake:

Q. Did you maintain that speed when you got into the intersection?

A. I had it in second gear with my foot off the gas. It was gearing down all the time when I was entering the intersection.

Q. Where were you when you first saw any moving traffic approaching that intersection from any other direction?

A. It was about two-thirds of my truck in the intersection when I first noticed the taxicab.

Q. Where did you see the taxicab and how did you happen to see it?

A. When I looked back to the right—I looked straight ahead and I looked back to the right as I entered the intersection, and that is when I seen the cab.

Q. Where was your truck then, when you looked back to the right?

A. Two-thirds in the intersection.

Q. Where was the cab at that time?

A. Approximately 40 feet back from the intersection.

Q. How have you been able to fix the approximate distance the cab was at that time?

A. Since then I have gone out there and figured where the cab was and marked it off and it come out about 40 feet.

Q. Could you make any observation about how  
page 26 } the cab was travelling from the standpoint of  
speed?

A. Yes, it was travelling at a high rate of speed.

Q. Did you have time to form any estimate of the rate of speed?

A. I would say he was doing—when I glanced up and seen him—

Mr. Franklin: That is an opinion, your Honor.

Judge Quesenbery: He can estimate the speed.

A. I would say at least 45 miles per hour.

By Mr. Timberlake:

Q. What did you do, Mr. Frye, after discovering this taxi-

*Robert O. Frye.*

cab approaching the intersection in the manner you have stated?

A. I didn't have a chance to do anything, but I must have hit my brakes from all indications because they said the brake lights were on, and that is all I remembered.

Q. Did you lose consciousness in the accident?

A. Yes, Sir.

Q. Where were you when you next regained your consciousness?

A. In the Waynesboro Community Hospital.

Q. Do you know what time of day or night it was when you regained consciousness?

A. The next day. I don't know what time it was because it was just for a few minutes.

page 27 } Q. How long were you in the Waynesboro hospital?

A. Eleven days.

Q. I am not asking you for any medical description of your injuries, but what portions of your body suffered injuries in this accident?

A. Head, face, and arm, left arm.

Q. After spending eleven days in the hospital, where did you go?

A. At home.

Q. How long did you remain at home before resuming your duties with your employer?

A. Well, it was about—after I left the hospital, it was around eight and a half weeks—nine and a half weeks. I was off from work eleven weeks.

Q. You were off from work eleven weeks in all as a result of this accident?

A. Yes.

Q. Since then, have you been back at work for your employer?

A. Yes, Sir.

Q. Mr. Frye, going back to the scene of the accident just a moment, do you know or have you made any measurements as to the width of either Laurel Avenue or Mulberry Street, the exact width?

A. No, Sir.

Q. Have you made any measurements or stepped off the distance from Mulberry Street to Ohio Street on Laurel Avenue?

page 28 } A. Yes.

Q. How far is that?

*Dr. Albert R. Gillespie.*

A. It is approximately 300 feet.

Q. I see. What is the grade, if any, on Laurel Avenue as you approach and enter the intersection with Mulberry?

A. Coming down Laurel?

Q. As you approach the Mulberry Street intersection.

A. It is a very slight grade.

Q. Up or down, as you approach Mulberry?

A. Down as you approach the intersection.

Q. Now, what is the nature of the grade, if any, on Mulberry as you approach Laurel, the Laurel Street intersection?

A. It is very much steeper coming down to the intersection than the other grade is.

Q. I see. Mr. Frye, were there any traffic controls at this intersection in the way of stoplights or stop signs?

A. No, Sir.

Q. Yield right-of-way signs or anything of that nature?

A. No, Sir, no signs at all.

Q. Do you know what happened to your truck or how it travelled, if any, after the impact?

A. No, Sir, I do not know.

Q. Does the same thing apply to this taxicab?

A. No, Sir, I do not know which way it went.

\* \* \* \* \*

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\* \* \* \* \*

**DR. ALBERT R. GILLESPIE.**

being duly sworn, testified:

### **DIRECT EXAMINATION.**

By Mr. Timberlake:

Q. Will you please state to the Court and Jury your full name, age, residence, and profession?

A. I am Dr. Albert R. Gillespie, age 48, Staunton, Virginia. I do eye, ear, nose, and throat work in Staunton.

Q. Doctor, I gather, then, you are an eye, ear, nose, and throat specialist?

A. That's right.

Q. How long have you been practicing your specialty?

A. Since 1945.

*F. P. Floyd, III.*

Judge Quesenbery: Do you all concede the Doctor's qualifications?

Mr. Franklin: Yes, Sir.

Mr. Timberlake: Have you had occasion to examine and prescribe for Mr. Robert O. Frye for injuries received *an* an automobile accident on September 26, 1959?

A. Yes.

Q. Do you recall when you first examined him?

A. Yes, I have a record of his visits he made to my office. I first saw him on April 6, 1960.

page 69 } Q. What finding did you make at that time?

A. I at that time found he had a complete loss of hearing in his right ear and marked reduction of vision in his right eye.

Q. To what did you attribute that?

A. I attributed that to the fact he had an automobile accident on September 26, 1959, and had sustained a fracture of his skull, the extent of which undoubtedly involved the nerve of hearing on the right side and severed that nerve and has left him in that condition in that particular ear. Of course, it was not too difficult to determine, also, the right eye was injured in the same accident, from his history of complete closure of that eye following the accident, and damage to the face through the orbit, this area of the face, and a scar on his cornea, and now he has about eighty percent hearing, eighty percent loss of vision in the right eye, and no hearing in his right ear.

\* \* \* \* \*

page 115 }

**F. P. FLOYD, III,**

being duly sworn, testified:

**DIRECT EXAMINATION.**

**By Mr. Branaman:**

\* \* \* \* \*

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\* \* \* \* \*



*F. P. Floyd, III.*

Q. Point out the Freed house on it.

A. The Freed house sits in what would be approximately the northwest corner of the intersection, at this point.

Q. How far back from the street?

A. 32.87 feet.

\* \* \* \*

page 133 }

\* \* \* \*

In Chambers:

\* \* \* \*

page 135 }

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Judge Quesenbery: Here is the trouble about page 136 } this thing. Take this intersection, and the impact obviously happened on the west side of the center point, almost in the center of the road. Now, the taxicab was, of course, on Mr. Frye's right, and if they arrived there at approximately the same time, and "approximately" is impossible—I mean the exact moment—to prove they arrived at exactly the same time is impossible, and I think "approximately" allows for a variation of five or ten feet, depending on the fact that no two cars are going at exactly the same speed; and it looks to me like the evidence, even your client's own evidence, he should have seen this car before he did if he used ordinary care, but the independent evidence of Mrs. Freed and Mrs. Gerni—I think if a verdict were returned, I would have to set it aside. I don't see how I can do anything but strike the evidence. I am sorry because this boy had severe injuries. That is just the reason I can't let it go to the Jury. I found out recently when you do, on the injuries alone the jury will say, "Well, this is a taxi company, and they have insurance, let them pay for it."

Mr. Timberlake: Your Honor, is it your feeling this man, by looking to the right, if he had an unobstructed view of 125 feet and that taxicab wasn't in his range of vision at that time, and after he had gotten—after two-thirds of his truck had gotten into the intersection, the taxicab was still thirty-

seven or forty feet from the intersection, he is bound to have seen it if he had looked?

Judge Quesenbery: You have to do more than just look.

Mr. Timberlake: He had to look to his left  
page 137 } after looking to the right, and I mean his sole  
duty was not to keep his attention . . .

Judge Quesenbery: Not in one direction—you have to use reasonable care out in that country, particularly. You have to keep a more effective lookout than he did. I don't see why in the world he didn't see it. If he had looked the way he should have looked he would have seen it. The physical facts, leaving out the evidence of everybody, unless this taxicab was going a hundred miles an hour, which it couldn't have been, or an exceedingly fast speed, if the cab was where Frye claims it was, clear out of his vision, he would have been across the intersection. It just couldn't have happened the way he thought it did. He maybe is telling what he believes. I think he missed seeing this car.

Mr. Timberlake: We except to the ruling of the Court.

\* \* \* \* \*

A Copy—Teste:

H. G. TURNER, Clerk.

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