

**Records Nos. 5880, 5881**

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**In the  
Supreme Court of Appeals of Virginia  
at Richmond**

**SHARON G. ALEXANDER,  
AN INFANT, ETC.**

**v.**

**MYREEN MOORE**

**MILDRED ALEXANDER**

**v.**

**MYREEN MOORE**

**FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK**

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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.

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND.

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Record No. 5880

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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 23rd day of April, 1964.

SHARON G. ALEXANDER, AN INFANT,  
WHO SUES BY HER MOTHER AND NEXT  
FRIEND, MILDRED ALEXANDER,

Plaintiff in error,

*against*

MYREEN MOORE,

Defendant in error.

---

From the Circuit Court of the City of Norfolk  
Clyde H. Jacob, Judge

---

Upon the petition of Sharon G. Alexander, an infant, who sues by her mother and next friend, Mildred Alexander, a writ of error and *supersedeas* is awarded her to a judgment rendered by the Circuit Court of the City of Norfolk on the 23rd day of October, 1963, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Myreen Moore was defendant; no bond being required.

IN THE

**Supreme Court of Appeals of Virginia**

AT RICHMOND.

---

Record No. 5881

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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 23rd day of April, 1964.

MILDRED ALEXANDER,

Plaintiff in error,

*against*

MYREEN MOORE,

Defendant in error.

---

From the Circuit Court of the City of Norfolk  
Clyde H. Jacob, Judge

---

Upon the petition of Mildred Alexander a writ of error and *supersedeas* is awarded her to a judgment rendered by the Circuit Court of the City of Norfolk on the 23rd day of October, 1963, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Myreen Moore was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORDS NOS. 5880, 5881

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Filed Dec-11-1963

T. A. W. GRAY, D. C.

NOTICE OF APPEAL

Sharon G. Alexander, infant, suing by Mildred Alexander her mother and next friend hereby gives notice, pursuant to Rule 5.1, Section 4, of the Rules of the Supreme Court of Appeals of Virginia, that she appeals from the final judgment of the Circuit Court of the City of Norfolk, Virginia, entered on the 23rd day of October, 1963, in the above entitled case, and will apply to the Supreme Court of Appeals of Virginia for a writ of error.

ASSIGNMENTS OF ERROR

1. The Court erred in sustaining the defendant's motion to strike the evidence at the conclusion of the plaintiff's case.
2. The Court erred in entering a summary judgment for the defendant.

SHARON G. ALEXANDER, infant suing by  
MILDRED ALEXANDER, her mother and  
next friend.

GEORGE MINOR, JR.  
Of Counsel

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Filed Dec-11-1963

T. A. W. GRAY, D. C.

## NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

## NOTICE OF APPEAL

Mildred Alexander hereby gives notice, pursuant to Rule 5.1, Section 4, of the Rules of the Supreme Court of Appeals of Virginia, that she appeals from the final judgment of the Circuit Court of the City of Norfolk, Virginia, entered on the 23rd day of October, 1963, in the above entitled case, and will apply to the Supreme Court of Appeals of Virginia for a writ of error.

## ASSIGNMENTS OF ERROR

1. The Court erred in sustaining the defendant's motion to strike the evidence at the conclusion of the plaintiff's case.
2. The Court erred in entering a summary judgment for the defendant.

MILDRED ALEXANDER  
 GEORGE MINOR, JR.  
 Of Counsel

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In the Circuit Court of the City of Norfolk, on the 23rd day of October, in the year 1963

This day came the parties, by counsel, and upon agreement of counsel it is ordered that the above two cases be tried together; and thereupon came a jury, to-wit: Ernest S. Haile, F. R. Kollmansperger, Robert D. Dashiell, Sr., Pauline Hubbard, Nathan H. Bundy, Jr., Joseph L. Pickett and Joseph K. Ferris, who were sworn to well and truly try the issues joined, and having fully heard said plaintiff's evidence, upon the motion of said defendant, by counsel, it is ordered that said plaintiff's evidence be stricken out and summary judgment entered thereon. Whereupon it is considered by the Court that said plaintiffs take nothing by their suits herein and that said defendant go hence without day and recover against said plaintiffs her costs about her defenses in this behalf expended, to which action of the Court said plaintiffs, by counsel, duly excepted.

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Mr. Minor: May it please the Court and lady and gentlemen, my name is George Minor. My co-counsel is T. Ione Diggs. We represent the plaintiffs Mildred Alexander and Sharon Alexander. Now that you have become accepted as jurors, of course, you know it's become our privilege to make an opening statement and after which the defendant has that privilege. I assure you that these statements are not evidence. The evidence, of course, will be from the witnesses that take the stand. We merely want to outline what our theory of the case is; what we expect our evidence to show, and I am certain that the defendant will outline what his defense will be or at least he has an opportunity to tell you what he expects his defense to be in this case. We expect to offer evidence to show that the plaintiff, Mrs. Alexander, is thirty-three years of age. She has been separated from her husband. She's the mother of this child,

page 3 ] Sharon Alexander, one of the plaintiffs in the case. And that she resided on Stafford and Liberty Street at the time of the accident in question. This accident was on October 15, 1962. On the morning in question, the plaintiff, Mrs. Alexander, was getting one of her children ready for school. One of her other children, Sharon Alexander, one of the plaintiffs in this case, was there at that time. She had gotten some money from her purse, which the mother took this money from her and made her put it back and she was going about her regular duty getting this child ready for school, when during the course of that, she heard a loud noise, which at first she didn't pay too much attention to it, but she became attracted by people running out on the street. She looked out of the window and she saw her daughter had been involved in an accident, and she — she went out of the house and there a crowd had gathered. The plaintiff, Sharon, we shall call witnesses to show that she was on the North side of Liberty Street and that she ran across to the south side or in the direction of the south side of Liberty Street. We'll have a plat and photographs here to outline these streets to you. Before she could reach the opposite side of Liberty Street, she almost got across, when she was struck by the defendant, Miss Myreen Moore, by the right headlight of the defendant's auto-

page 4 ] mobile. We shall call witnesses to show that the defendant, of course, did not do anything to avoid striking the plaintiff. In fact, we believe the evidence will



show that the defendant did not in fact see the plaintiff until she had struck her. We think the evidence will further show that the plaintiff, Sharon Alexander, was knocked down with great force on the street and that she rolled several times and she then rolled in front of the truck and there she lay with serious wounds in and about her face. She had scars, which will be described to you more fully. She had one very deep laceration over her left forehead and she had a deep laceration in her left nostril, and she had other deep lacerations under her eye and certain minor cuts and abrasions, which will be described to you more fully by her doctor that attended her. After the defendant struck the plaintiff, Sharon Alexander, her car still did not stop immediately. There was no evidence that brakes were applied immediately and the evidence, we believe, will show that the car was not traveling at a fast speed and that it continued to go after the child was struck until it was some fifteen to twenty feet more or less, and it did suddenly come to a very slow speed and even at the time that the defendant got out of the car — there will probably be some evidence — that the car was still going forward to some extent. The plaintiff, Mrs. Alexander, went with her daughter  
page 5 ] to the hospital, which was the Norfolk General Hospital, and she stayed there some two to three hours while she was in the emergency room being treated and the child was transferred to the Childrens' Hospital, Kings' Daughters Hospital, and the mother then went to check her into that hospital. Later she went home. The child was — was there some five days and I think the evidence will show that she was then in great pain during this time. She had swelling about her eyes and her head and that she responded to treatment quite well and that Saturday — the accident was on Monday — she was released from the hospital and told to report back to the clinic that Wednesday. She was under clinical treatment for awhile, about a week or two, which will be more fully explained to you, and then Mrs. Alexander decided to get her own family physician, who is Dr. Steingold, who will be here to describe what he did in this case. We think the evidence will show that Mrs. Alexander, who has joined in this case for the purpose of trying to recover any expenses incurred by her as a result of this accident. We think the evidence will show that she has incurred medical expenses and doctors and hospital bills in the sum of over sixteen hundred dollars, and we think the evidence will further show that she will definitely have a future doctor's bill in the sum of over eight hundred dol-

lars. We think the evidence will fully show that  
page 6 ] she has lost earnings as a result of this  
accident in the amount of over three hundred  
dollars. These things will be more fully related to you and  
we contend that the defendant in the case did not intentionally  
strike the defendant, but we believe she did negligently and  
we believe the evidence will show it and we believe under  
the law, as His Honor will instruct you as to the law here,  
that the plaintiffs are entitled to recover for the damages  
that they have sustained.

Mr. Green: If it please the Court, my name is Berryman  
Green and I represent the defendant sitting over here, Myreen  
Moore, who was the operator of an automobile that struck  
this young child on October 15, 1962, over in Berkley. The  
evidence will show you that this accident occurred at the  
intersection of Liberty Street, Stafford Street and Fauqueer  
Street, over in Berkley. I think the evidence will show you  
that Stafford and Fauqueer, come together in more-less a  
triangle at the intersection with Liberty Street, and that the  
*southside* of Fauqueer Street is offset to the west from the  
north side of Fauqueer Street. I think we'll have plats here  
too at the proper time to give you that layout. I know it's  
confusing to try to consider those things without some plat  
or without some visual evidence of it, but the  
page 7 ] evidence will show you on October 15, 1962, Miss  
Moore was a school teacher, teaching at the  
Truitt Junior High School in South Norfolk, Virginia. She  
lived in Norfolk and she went daily back and forth from  
Norfolk to South Norfolk to teach school. I think the evidence  
will show you that on this particular morning she was driving  
a 1950 Chevrolet automobile, which was owned by her mother.  
And that she had driven this car on a regular basis for a  
number of years. She was proceeding to the high school on  
Liberty Street, going in an easterly direction, when she came  
up to this intersection of Fauqueer, Stafford and Liberty  
Street, at which time there was a pickup truck parked on the  
southwest corner of Liberty and Fauqueer Street. This truck  
would have been to her right as she went east. This truck  
was to her immediate right. She was proceeding along at a  
speed of approximately twenty miles per hour when all of a  
sudden a child, which later developed to be Sharon Alexander,  
came from behind the parked truck and ran into the side of  
her automobile at the headlight. The child was on a run at  
the time and apparently did not see Miss Moore's automobile



and ran out in a sufficient — only in sufficient time for her to get in front of the right headlight of that automobile. Miss Moore did everything that she could possibly do at the time. I think the evidence will show that the thing happened instantaneously. That the child ran out at the point

page 8 ] when her car was approximately even with the front of the truck. That the truck had completely obscured her view of the child as it ran into the street attempting to cross the street. And that by reason of that, she had no opportunity to do anything other than — I mean before the accident happened — absolutely no opportunity whatsoever, but immediately after the accident stopped her automobile within a distance of approximately fifteen or twenty feet. There was no sliding of brakes on the automobile, as she will explain to you, I think, when she testifies, because the child had run out and had been hit prior to the time that she had had any opportunity whatsoever to put on brakes. I think that the evidence will show you and I know in saying this, lady and gentlemen of the jury, that Mr. Minor apparently will attempt to convince you at this trial that this child was running from the north side of Liberty Street to the south side. I think that the evidence will show you that this child's injuries were occasioned by the right front headlight of Miss Moore's automobile, which was the only damage to the car. The headlight was broken out, and that the injuries to the child were on the left side of her face, her forehead, her cheek and her nose. I think that we will be able to show you beyond any question that at the time this accident occurred, as unfortunate as it was, that there was

page 9 ] no negligence on the part of Myreen Moore. The Court at the proper time will explain to you what negligence is; what the burden of proof is in this case and other factors which will be involved in your determination of it. But before this plaintiff can recover, either of these plaintiffs can recover in this case from the defendant, they must bear the burden of proving negligence and, of course, as you all probably know from prior jury duty, the negligence is the failure to exercise ordinary care. And we believe that at the proper time after you hear the evidence in the case, you will be able to reach a fair and impartial verdict in this case. You will be in a position to determine what the facts are and what they are not. And that you will be able to reach a verdict without too much difficulty. Thank you.

*Mrs. Mildred Alexander*

MRS. MILDRED ALEXANDER,  
a plaintiff, after having been first duly sworn,  
page 10 ] took the witness stand and testified as follows:

Examined By Mr. Minor:

Q. Would you state your name, please?

A. Mrs. Mildred Alexander.

Q. Where do you now reside?

A. 512 South Main Street, Norfolk, Virginia.

Q. How long have you resided there?

A. I've been there about ten months.

Q. Where were you living on October 15, 1962?

A. 732 Stafford Street, Norfolk, Virginia.

Q. Was that house on the corner of Stafford and Liberty Street?

A. Yes, sir.

Q. Will you start at the beginning and tell us if anything unusual happened on October 15, 1962?

A. On October 15, 1962, which was on a Monday morning, and that morning we — I got up about seven o'clock. I had one child in school at that time. So, I had given them all breakfast and I was getting my one daughter ready for school. I guess — well, it was around about —  
page 11 ] it was school time, about ten after eight. I'm sure it was — it was about ten after eight. All my children was right around me, Sharon, Christinia, Walter and Teresa. First Sharon showed me a quarter. She said, "Mother, I have a quarter; I'm going to the store to get some berets for my hair." So, I spanked her and put the quarter back into my pocketbook. It won't very long, a few seconds, about two or three seconds, I heard a real loud noise. Sharon, which I did not know, she had taken the soda bottle, which was in the next room, and went downstairs and she was trying — I don't know — I did not see it really what happened. I did not see it. So, I don't know what happened, but I didn't see her get hit. Anyways, I heard a real loud noise. First I didn't pay too much attention and then I saw the people gathering, everybody was running and I went to my front window, which faces Liberty Street, and I was so excited, so upset. So, I came downstairs out of the house, around where she was

*Mrs. Mildred Alexander*

hit. There I saw her laying in the street. Blood was running from her nose, from her wounds and I was so excited. I didn't know what to do.

Q. May I interrupt you a minute now. You saw her laying there in the street?

A. Yes, sir.

Q. Now, what injuries did you observe at page 12 ] that time, would you tell us specifically?

The Court: Let's get the location, where she was lying in the street, was she on the far side of the street from your house or on the near side of the street from your house?

A. I don't understand.

Mr. Minor: He wants to know where she was located.

The Court: Did you see her in the gutter or in the street or where?

A. Well, when I saw her, she was laying — her face — I mean, in other words, her face was turned.

Mr. Minor: He wants to know the location, physically where was she in the street?

The Court: Middle of the street, gutter of the street, on the left side or right side?

A. To tell you the truth, I was so excited I really don't know. I believe she was laying sorta — well page 13 ] it wasn't exactly in the middle, but was almost.

The Court: Across the street from your house or on the same side?

A. It was mostly on my side.

Examination By Mr. Minor Continued:

Q. In other words, are you saying that she had crossed the street at this time or not?

A. Well, I don't know whether she had or not.

The Court: You can tell where the body was, was it on the far side or close side?

A. It was more close to my side of the street.

*Mrs. Mildred Alexander*

Examination By Mr. Minor Continued:

Q. Did you see anything on the street that day — did you see any people there?

page 14 ] A. Yes, sir.

Q. What side of the street were the people on?

A. Well, the people were gathered on the north side and south side.

Q. Where were most of the people?

A. Most of the people were on the north side.

Q. Is that the opposite side of the street, you're saying from you, or your side of the street?

A. The north side.

Q. All right. Now, did you go to the hospital — tell us what happened after that. Wait a second. Were there any vehicles on the scene there at that place, were there any vehicles on the scene?

A. Well, I tell you the truth, I was so excited I really don't know. I really don't know, because I was so excited, but it was cars continuing, going east up the street.

Q. Were there any other vehicles except hers on the street?

A. Miss Moore's car was on the street.

Q. Anything else?

A. My daughter was lying in the street.

page 15 ] Q. Anything else in the street there?

A. It was blood on the ground.

Q. All right. Will you tell us what happened there after you got out there on the scene?

A. Well, when I first arrived to the scene, my little girl was unconscious and she was bleeding from the nose. She had wounds, one was on top of the eye, under the eye and the nose. It was completely open. Those wounds were open and I could see the gristle and I got so excited and the two men wouldn't let me pick her up. They told me to leave her alone. I couldn't touch her, and then two policemen arrived and they put her into the ambulance and they taken her to the hospital, Norfolk General.

Q. Let me interrupt you a minute. Have you seen this photograph before?

Mr. Green: I have no objection to the introduction of photographs provided it's stated when these pictures were taken. State when they were taken.

Mr. Minor: The day after the accident.

*Mrs. Mildred Alexander*

Examination By Mr. Minor Continued:

page 16 ] Q. Have you seen that photograph before?

A. No, I haven't.

Q. You haven't seen that photograph before?

A. No, I haven't — yes, sir, I have seen this before.

Q. Have you seen that scene before there?

A. Yes, sir, I have seen the scene before.

Q. Is that a fair representation of the scene there?

A. Yes, sir.

Q. Now, can you from looking at that photograph, can you tell His Honor and this lady and gentlemen of the jury where on that photograph that your daughter was when you saw her on that morning of the accident?

The Court: Push a pencil through there.

Examination By Mr. Minor Continued:

Q. Show us that.

A. She was laying — she was lying —

The Court: Put a hole right through the picture where you saw her.

page 17 ] A. I saw her —

The Court: Push down, all the way through.

A. She was lying like, say, about right here like that. She was laying further this way.

The Court: Is the automobile that's shown in that picture there —

A. Yes, this truck was there that morning when the accident happened.

Mr. Green: She punched three holes in there; I think we better put a ring around the proper one.

A. The last one I punched is really where she was laying.

Mr. Green: Put a circle around that.

The Court: Let me mark it. This is Plaintiffs' Exhibit

*Mrs. Mildred Alexander*

1.  
page 18 ] Mr. Minor: Thank you, Your Honor.

Examination By Mr. Minor Continued:

Q. May I show this to the jury, Your Honor?

The Court: Yes. Pass it around and go ahead with the examination.

Examination By Mr. Minor Continued:

Q. Did you incur any expenses in this case, Mrs. Alexander, as a result of this accident?

A. I didn't understand you.

Q. Did you incur any expenses as a result of the accident?

The Witness made no reply.

The Court: Have to spend any money for doctors or medicine or —

A. Yes, sir.

page 19 ] Examination By Mr. Minor Continued:

Q. You did?

A. Yes, sir.

Q. Do you have a list of any expenses in this case?

A. Yes, sir.

Q. Okay. Will you state what those expenses are so that His Honor and the lady and the gentlemen of the jury can hear you?

A. The first bill, King's Daughters Hospital, one hundred three dollars twenty-five cents. The second bill —

Q. Wait a second. Now, what was the first one you have there?

A. King's Daughters Hospital, one hundred three dollars twenty-five cents.

Q. All right.

A. The second bill, King's Daughters Hospital, one hundred thirty dollars twenty-five cents. Dr. Steingold \$55.00. Dr. Charles Horton \$845.00. DePaul Hospital, \$150.00. Dr. Holley, \$335.00. Transportation \$36.80. Medicine \$7.00. Total of \$1,662.30. Future bill —

*Mrs. Mildred Alexander*

page 20 ] Mr. Green: She's not qualified to testify to that.

Mr. Minor: Do not testify —

The Court: Let the doctor testify to that.

Mr. Minor: Do not testify to any *furture* bill.

Examination By Mr. Minor Continued:

Q. Have you lost — have you lost any wages due to the accident?

Mr. Green: I don't think those are provable, any loss of wages which she may have sustained.

The Court: It's a question very much as to whether a parent can recover wages in such an action. How much were the wages?

A. Three hundred fifteen dollars.

The Court: She cannot in an action brought by her daughter put those in.

page 21 ] Examination By Mr. Minor Continued:

Q. All right. Where was your daughter taken after this accident occurred?

A. She was taken to Norfolk General Hospital.

Q. Can you tell us what happened there?

A. First, when the policemen and my daughter and myself, when we first arrived, we rushed — they rushed her to the emergency room and she was bleeding terrible and I don't know what the doctors and the nurses were doing, but they were — I couldn't tell you that, but it looked like to me they were trying to dry up the blood, which she was hollering and crying and I stayed there. I really don't know, but I believe approximately about two hours in the emergency room. Then they taken her in this dark room.

Q. Okay. Now, answer this for me. Where, if anywhere — did she remain at the Norfolk General Hospital?

A. No, she did not remain at Norfolk General Hospital.

Q. Where did she go?

A. After she spent about, I'd say three hours and a half in there, I went down to the admitting office  
page 22 ] and I got her admitting slip to the King's Daughters Hospital; she was taken there. And that same day, which was Monday, October 15, and she stayed in there approximately about a week.



*Mrs. Mildred Alexander*

Mr. Minor: All right, thank you. Answer Mr. Green.

The Court: How old was your daughter at the time of this accident?

A. Five years old.

The Court: Answer Mr. Green.

Mr. Minor: Wait just a second, I'm sorry.

Mr. Green: I have no objection.

Examination By Mr. Minor Continued:

Q. I want you to look at this and see if you can tell what it is.

Mr. Green: I'm prepared to state that's the page 23 ] birth certificate of the child.

The Court: Marked by the Court, Plaintiff Exhibit 2.

Mr. Minor: Answer Mr. Green.

**CROSS EXAMINATION**

Examined By Mr. Green:

Q. How many children do you have?

A. I have four.

Q. Four children?

A. Yes.

Q. How old are they?

A. Sharon is six years old. Christina is eight. Walter Thomas, Jr. is three and my baby is two years old, Teresa.

Q. When was Sharon's birthday?

A. Her birthday — her last birthday was last December.

page 24 ] Q. In December?

A. Yes.

Q. When this accident happened, she was —

A. Five years old.

Q. Well, she was almost six, is that correct?

A. That's right.

Q. Was she in school at the time?

A. No.

Q. She had not started school?

*Mrs. Mildred Alexander*

A. No, sir.

Q. Has she started to school now?

A. Yes.

Q. She was a perfectly normal child; I mean she didn't have any difficulty prior to this accident?

A. I don't understand.

Q. She never had any difficulty, she was a perfectly normal child?

A. Yes, she was a perfectly normal child.

Q. Had you explained to her about crossing the street and the dangers involved in that?

A. Yes, sir, I always talked to my kids; I always told them, because that's a very busy street and I didn't  
page 25 ] want them going across the street.

Q. Very busy street and you had told them not to cross the street?

A. Yes, sir, that's right.

Q. You knew the children from time to time went across the street to the store?

A. They didn't go unless I taken them.

Q. Did I understand you correctly to say that prior to the time of this accident that your daughter had taken twenty-five cents from your pocketbook and was going to the store?

A. Well, she taken twenty-five cents out of my bag, which I was getting all the children ready and I had taken the quarter from her and I spanked her. She told me she was going to get the berets that day and I spanked her and taken the quarter from her and put it back in my pocketbook.

Q. Now, you testified that after you took that twenty-five cents from her, that it was two or three seconds until you heard this crash outside, is that your correct testimony?

A. Yes, sir — what you say; I didn't understand.

Q. You testified, as I understood you, on direct examination and you can correct me if I'm wrong, that  
page 26 ] you testified that after you took this twenty-five cents from her, that two or three seconds later you heard this crash out on the street?

A. Yes, sir.

Q. So it was only two or three seconds after that that you heard the crash?

A. It was about three seconds, I guess, I'm sure of that.

Q. You sure that it was two or three seconds?

A. I can't exactly say, but it wasn't very long; it was about three seconds.

*Mrs. Mildred Alexander*

Q. Do you remember testifying in the case previously on September 12, 1963, when I questioned you?

A. Yes, sir. You don't mean this case?

Q. Yes, I do, in the depositions. Do you remember testifying that she had not been gone very long, "I guess it was about fifteen minutes or about seventeen minutes after eight," do you remember so testifying on September 12, 1963?

A. I remember testifying, but I tell you, I was very upset that morning — that evening that I was talking to you. I was upset, I mean, because really, like I say, I did not see the accident. I did not see it and I'm going to tell the page 27 ] truth.

Q. That's what I want; that's what I'm asking, if you didn't testify on September 12, in answer to my questions about this, that you didn't remember when she left the house and that she had been gone about fifteen minutes at the time you heard the crash?

A. Like I say, that day I was very upset, I could have said that.

Q. Is it correct that you don't know how long it was when she left the house and when she was hit, it that a fair statement?

Mr. Minor: I object, in fact he's misquoting her.

Examination By Mr. Green Continued:

Q. I asked you before this accident happened, at what time did she leave the house, you remember my asking you that question?

A. I remember you asking me that.

Q. Your answer was, "She had not been gone very long; I guess it was about fifteen minutes or seventeen minutes after eight."

A. I remember you asking me that question in September, but like I said, I was upset that day. I was very page 28 ] upset, really I was, because I did not see the accident.

Q. You actually don't know, do you, how long that child had been gone from your house prior to the time this accident occurred?

A. Yes, I know how long she had been gone from the house.

Q. How long had she been gone?

A. About two or three seconds, like I said.

*Mrs. Mildred Alexander*

Q. So your testimony under oath on September 12, 1963, when I asked you the same question was wrong?

A. Well, like I said, it was wrong, because I was upset that day, I really was.

Q. You were upset that day, but you're not upset today?

A. No, but the way you was — I wasn't thinking, really, I wouldn't tell a lie.

Q. So that statement that you made then is incorrect and your statement today —

The Court: She so stated.

Examination By Mr. Green Continued:

Q. — is that it was three or four seconds?  
page 29 ] A. It was really about three or four seconds.

Q. Did you actually see her leave the house?

A. No, I didn't actually see her leave the house. No, I did not.

Q. Do you know — you didn't see her leave the house?

A. No, sir, I didn't actually see her leave the house.

Q. So how do you set the time at three or four seconds?

A. Well, the reason why I say that is because all the children was right around me and at the time I heard the noise. Now, I heard the noise and I thought it was two automobiles went together; that's why I know it was about that time.

Q. Now, you have seen this photograph that has been introduced in evidence —

A Juror: Could I have the directions on that?

Mr. Green: We will explain that at this time.

A Juror: Okay.

page 30 ] Examination By Mr. Green Continued:

Q. Come over here, if you will, maybe we can clear this up for the jury right now. Are you familiar with this plat?

A. Yes, sir.

Q. You have reviewed it with Mr. Minor, have you not?

A. Yes, sir.

Q. You live right here, do you not?

A. That's right, yes, sir, right in this triangle. I live right here.

Q. You live here in this house that sits in the triangle?

A. Yes, sir.

*Mrs. Mildred Alexander*

Q. Where was this truck parked, you have identified that truck as being parked there on the day that the accident happened.

A. I believe the truck — let's see. Now, it was parked on this side right in here, I believe.

Q. Well, this street here is Fauqueer Street, is it not?

A. Yes, sir.

Q. And the truck is parked here on Liberty  
page 31 ] Street?

A. Yes, sir.

Q. Right here in front of this building here?

A. Yes, sir.

Q. So the truck was stopped right here on this particular corner?

A. Well, it was on the corner, it was right in here, yes, sir.

Mr. Green: Do you mind if I put a mark on there where the truck was?

Mr. Minor: No, we understand that's an approximation.

Mr. Green: Yes, sir.

**Examination By Mr. Green Continued:**

Q. So that's the position the truck was parked in on that particular morning, is that correct?

A. Yes, sir.

Q. Where was your child lying, on this plat,  
page 32 ] you have shown it on the photograph.

A. She was laying — I don't know — it was right — I guess about in here. I guess it was about in here like this, because the truck was parked here, see, and she wasn't in the front of the truck, so she was laying sort of with her face to the drain, her face was laying to the drain.

Mr. Minor: What drain?

A. The water — I mean — I can't say exactly.

**Examination By Mr. Green Continued:**

Q. Put a place on there that you can approximate.

A. Right here.

Mr. Green: Let the record show that the blocked in space with ink represents the truck and the round place in the

*Mrs. Mildred Alexander*

middle denotes the spot that she has pointed out where the child was lying.

page 33 ] A. I was so excited.

Mr. Green: I'd like to introduce this plat, if I may, as Defendant's Exhibit 1.

The Court: Defendant's Exhibit 1.

Examination By Mr. Green Continued:

Q. Now, I wonder if you would come down here one further step. In order to get from this corner to your house, a person would have to cross in a cater-corner manner, would they not?

A. I don't — I don't think — what you say, ask that question again.

Q. I say to get from this corner — from the corner of Fauqueer Street and Liberty Street, from the south side to the north side, to the area where you lived, you would have to cross diagonally on the street, would you not?

A. No, not necessarily.

Q. Well, how would you cross?

A. Now, the truck was here. She could probably crossed — I really don't know, but like I said, I did not  
page 34 ] see the accident, so I don't know where she crossed the street.

Q. One further thing, the entrance to your house is on Stafford Street, at the extreme southern end of the house — northern end of the house?

A. Yes.

Q. There's no entrance to this house that opens onto the intersection or opens on Fauqueer Street?

A. Yes, sir, it's a entrance to Fauqueer Street, it's another apartment house.

Q. Will you draw on this plat, if you will, where the entrance to your house is?

A. Let's see, this is my house all in here. I really don't know, but I'll do the best I can.

Q. This is your house, this outline here.

A. Oh, right here, I see. This is my door right around in there.

Q. Right there?

A. Yes, sir.

Mr. Green: Let the record show that the indentation made by pencil or pen mark over the "88" feet denotes the entrance

*Percell McClenny*

to the house. Does that clear it up?  
page 35 ] A Juror: Which way was the car going?  
Mr. Minor: Where did she finally mark it?  
Mr. Green: I think we can stipulate that the car was going east on Liberty Street.

The Juror: Here's the direction of the child; apparently she crossed in front of the truck.

Mr. Green: That's what we contend; they contend otherwise.

Examination By Mr. Green Continued:

Q. Now, you came out right after the accident, did you not?

A. Well, I won't say — first when I heard the noise, I did not know what it was first and when I came out, I went to my window, because I wanted to know why all these people were gathering around. So then I came out of my door and I was so excited that I just ran downstairs and out into the street.

Q. You got out there and you saw Miss Moore's  
page 36 ] automobile?

A. As I say, I was excited, but I saw her car, but I was so excited I really don't know. I did see the car.

Q. Her car was up here across Fauqueer Street, isn't that correct, when you saw it?

A. Well, I tell you the truth, I was so excited and everything; I was just trying to get my child in the hospital, but her car was out in the street some place, I can't definitely say.

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page 39 ]

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PERCELL McCLENNY,

a witness for the plaintiffs, after having been first duly sworn,  
took the witness stand and testified as follows:

Examined By Mr. Minor:

Q. Will you state your name, please?

page 40 ] A. Percell McClenny.

Q. Where do you reside?

A. I live in Hertford, North Carolina.

Q. How long have you been in Hertford, North Carolina?



*Percell McClenny*

A. I don't know exactly how long I been in Hertford.

Q. Where were you living before then?

A. I was living on East Liberty Street.

Q. What was the number of the house, do you remember that?

A. 308.

Q. What's your age — that's Norfolk, Virginia?

A. Yes, sir.

Q. What's your age?

A. I'm fourteen years old.

Q. You know the difference between truth and false?

A. Yes, sir.

Q. Are you going to tell us the truth today?

A. Yes, sir.

Q. Now, were — are you in school?

page 41 ] A. Sir?

Q. Are you in school?

A. Yes, sir.

Q. What grade are you in?

A. Fourth.

Q. All right. Can you tell us whether on October 15, 1962, you observed anything unusual and start from the beginning, assume we know nothing about it, and tell us just what happened.

A. Well, I was up — I got up kinda late, me and my brother. So, we got ready, it was about — it was about seven-thirty when we got ready and I was going on to the school. So, I could be the first one there. So, I stood — I was standing outside there while my brother was getting ready. So, I started to go ahead on to the school, but then I stopped to wait for my brother, so I could go along with him. So, while I was waiting for him, I called up the stairs to him and he told me he would be down in a minute and then I looked and I saw Sharon, she came from around the corner of the house and she started across the street and she looked back and then she started on across, didn't look neither way, started on across the street. When she got almost across, she looked back again and then the car hit her and she rolled about four times, in front of the truck and she was  
page 42 ] laying kinda on her side.

Q. Where was she laying, where was she laying in relation to the truck that you just mentioned, wait just a second.

*Percell McClenny*

Mr. Green: I have no objection to the photograph, with the understanding that the vehicle here is not involved in any way.

Mr. Minor: I so stipulate.

Examination By Mr. Minor Continued:

Q. Have you seen the photograph before?

A. Yes, sir.

Q. Now, is this a fair representation of that truck and the scene of that accident on that day?

A. Yes, sir.

Q. Can you take this photograph and show us just where she was lying on that day, on October 15, when you observed her?

A. Yes, sir, she was laying right about up in here.

Q. Right up in there?

page 43 ] A. Yes, sir.

Examination By The Court:

Q. Get over there and show it to the jury. Just a minute, did you see her cross the street, did she come this way?

A. No, sir, she came from across this way.

Q. Did you see her all the time?

A. Yes, sir.

Q. How close did she get to the curb on this side before she was struck?

A. She got closer to the truck.

Q. Was the truck moving?

A. No, sir, it was sitting like it is now.

Q. Parked?

A. Yes, sir.

Examination By Mr. Minor Continued:

Q. Show the lady and gentlemen of the jury just where she was lying.

A. She was lying right up in there when the car hit her.

page 44 ] Q. Where — which way was her head turned?

A. It was turned this way.

Q. Are you certain about that?

A. Yes, sir.

Q. Which way was she going?

A. She was coming across the street this way.

*Percell McClenmy*

Q. Use this plat, you're familiar with that house there where they lived at the time, are you not, did you know where they lived at the time?

A. Yes, sir.

Q. Was the building anything shaped like that?

A. Yes, sir.

Q. Would you recognized this as Stafford Street and this as Liberty Street, you recognize that?

A. Yes, sir.

Q. And this is the truck here?

A. Yes, sir.

Q. All right, now show us — just point out to the jury, just follow her direction, how she came out the house and the way she ran; look down there and show us what you saw.

A. I was down Liberty Street —

page 45 ] Q. Were you in this direction?

A. I was this direction, and she came out.

Q. Well, you don't know where she came from?

A. No, sir.

Q. Show us what you saw.

A. She came from on the side of her house and went across the street this way, and she was laying facing this way. When the car hit her, she was lying this way, her head was turned this way.

Q. The car hit her, what position in relation to the truck, was it behind the truck, in front of the truck, center of the truck, just what relation, show that to us, just about.

A. The car hit her right about in the middle of the car, almost, not quite in the middle, but near about at the front.

Q. Okay. Then what happened? Now, when you saw her, how did she get down there?

A. See, when the car hit her, she rolled.

Q. How did she roll?

A. The car hit her and see when the car hit her, she was almost across. The car hit her and she kinda spinned like and she fell and rolled over.

Q. Where did she end up?

page 46 ] A. Right here.

Q. She rolled this direction and then rolled like that, is that what you're saying?

A. The car hit her —

Q. She rolled this way and —

Mr. Green: I object to Mr. Minor testifying; the man can

*Percell McClenney*

testify as to his own.

Mr. Minor: I told him —

Mr. Green: He can take care of himself, he's fourteen.

Mr. Minor: Take the stand there again. I'd like to introduce this as Plaintiff's Exhibit 2, Your Honor.

Q. Punch a hole in here, the place that — punch a hole where you saw her lying. Take your time now, make sure you got it accurately as you can get it. Now, that's about where you saw her?

A. Yes, sir.

page 47 ] The Court: that's Plaintiff's Exhibit 3. This will be marked Plaintiff's Exhibit 3.

Mr. Minor: Thank you, Your Honor.

Examination By Mr. Minor Continued:

Q. Tell us what you saw then after — did you see the car before it struck Sharon that morning?

A. Yes, sir.

Q. Where was that car when you first saw it?

A. It was coming down Liberty Street and it was almost in — the car was almost in front of Stafford Street, but it wasn't quite there.

Q. All right, show us on this map just about where the car was when you first observed it. Just about as best you can remember, show us, this is Liberty Street.

A. It was right about up in here.

Q. When you first saw it?

A. Yes, sir.

Q. Where was she?

A. Sharon, she was coming out from the side; about the time she got here, the car was up in here.

page 48 ] Q. Where?

A. Time she got halfway across the street, the car was right about up in here.

Q. Then what happened?

A. She almost got across, but — I thought she was going to make it, but the car hit her before she got in front of the truck almost.

Q. Well, what way was her head turned when the car hit her?

A. When the car —

Q. Point to your head.

A. When the car hit her, she was coming cross Liberty

*Percell McClenmy*

Street and the car was coming this way and then she looked like, back like this way.

Q. Faced like she was facing — stand up, turn your back to His Honor and assume you're going in the direction she was going, which way did she look?

A. She looked back that way.

Q. How many times did she look back from the time you saw her until the time she was struck?

A. She looked back two times. When she got to the edge of the sidewalk, she looked back and then went cross the street and when she got almost across, she looked back page 49 ] again.

Q. Okay. Now, did the car — can you tell us whether or not the car slowed up or anything before the impact?

A. No, sir, it didn't look like it slowed up to me; not until it hit her. When it hit her, it kinda slowed up, it just coasted.

Q. What did the driver of the automobile do then, as far as you know?

A. She laid up on the steering wheel and the car was still moving. Then she laid down on the seat of the car; it was still moving. She opened the door and she got out and it was still moving just a little and then it stopped its own self.

Q. Then what did she do then, as far as you know?

A. She got out and a lot of people were around there then and she went — I think — I ain't too sure, she said something to Mrs. Alexander about the girl.

Q. What was the child doing at this time?

A. She was laying down there. At first when the car hit her, I thought she was dead, but she was just laying there; she won't doing nothing. Then she moved her right arm.

Q. How long was that before she moved her page 50 ] right arm?

A. About two minutes or something like that.

Q. Then what happened?

A. Then when she came to, her mother and all the people was around her then and the lady that hit her, she was out, I think — I ain't too sure.

Q. You're not too sure whether she was out of the car?

A. About the time — I ain't too sure.

Q. What was the weather condition on that day, was it clear or cloudy or what?

A. It was clear.

Q. Sun shining?

*Percell McClenny*

A. Yes. See, it was early — it was early morning, the sun had not come up too good, but it was shining.

Q. What time in the morning was it —

A. About seven-thirty or little over.

Q. Do you know?

A. Yes, sir. See, because we got up kinda late, me and my brother and —

Q. What time you usually get up?

A. Seven o'clock, but when we got up that  
page 51 ] day, it was fifteen after seven.

Q. Do you have a watch?

A. No, sir, but we had a electric clock.

Q. In the house?

A. Yes, sir.

Q. What time did you get to school —

A. When I got to school, I was late, because I was standing there, I was watching the accident and it was late when I got to school. It was about — we suppose to get to school at eight and it was about fifteen minutes after eight when I got there, I guess.

Q. Could you see all the way down the street?

A. Yes, sir.

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CROSS EXAMINATION

Examined by Mr. Green:

Q. Percell, you say you're fourteen?

A. Yes, sir.

page 52 ] Q. Where are you in school now, North Carolina?

A. Yes, sir.

Q. You are in the fourth grade?

A. Yes, sir.

Q. Have you just gone into fourth grade?

A. Yes, sir.

Q. You say you were living at 308 Liberty Street, when the accident happened?

A. Yes, sir.

Q. How far is that from the intersection of Stafford Street and Fauqueer Street?

A. I don't quite know how far it is from there.

*Percell McClenney*

Q. You don't know how far it is?

A. No, sir, not quite.

Q. Is it a block, two blocks?

A. No, sir.

Q. Not a block?

A. Block —

Q. How many houses away is it from the intersection?

A. It's apartment houses, you know, two houses  
page 53 ] made up to one.

Q. Well, do you know how far you lived from  
that corner?

A. I lived two houses from it — no, I lived three houses  
from that corner. They have them apartment houses.

Q. Which side of the street did you live on?

A. I lived on the right side. If I was facing — if I was facing  
this way, my house was on the left side.

Q. Did you live on the other side of the street from where  
Sharon lived?

A. I lived on the same side she lived on.

Q. Come over here to the plat, if you will, and show the  
jury, if you will, where you lived.

A. I lived right down in this part, down that way.

Q. You lived down this way?

A. On this side down here, yes, sir.

Q. Which way do you go to school?

A. I just — when we got to school, I just go right straight  
on down.

Q. Now, this is where the accident happened?

page 54 ] A. Yes, sir.

Q. And you lived down this way?

A. Yes, sir.

Q. Now, where were you standing when you saw all this  
happen?

A. I was standing in front of my door, two big trees there  
and I was standing right in between them two trees, but, see,  
the two trees is beside the sidewalk; they are sitting together.

Q. You say you were in a hurry to get to school this morning?

A. Yes, sir.

Q. And you would have been going toward South Norfolk  
to go to school, is that right?

A. No, sir, I wouldn't have been going that way, I would  
have been going this way and then I come across and turn  
in that street.



*Percell McClenny*

Q. But you would have been heading up this way, away from the accident, to go to school?

A. Yes, sir.

Q. This shows the grocery store here on this page 55 ] corner.

A. Yes, sir.

Q. Where did you live, can you show the jury here where you lived with respect to that store?

Mr. Minor: I've got a picture of that. Is this Plaintiff Exhibit 4?

The Court: It has not been marked.

Mr. Minor: No, sir.

The Court: P-4.

Examination By Mr. Green Continued:

Q. Now, where did you live on this photograph?

A. I lived right here.

Q. So, you lived up here on this same side of the street?

A. Yes, sir.

Mr. Minor: You don't mean up there?

page 56 ] A. No, sir, I lived down this side of the street, but I was —

Examination By Mr. Green Continued:

Q. In other words, you would live up this street here?

A. Yes, sir.

Q. Some houses from the corner?

A. Yes, sir.

Q. How many houses from the corner did you live?

A. I lived two houses from the corner. See, it's a apartment door on this side and a door right here; I lived in this door right there.

Q. Which way did you go along the street to go to school?

A. Well, I went down — I went — I was waiting for my brother. I went down this way and then I would come across and go like this.

Q. You went away from the scene of the accident?

A. Yes, sir.

page 57 ] Q. Where was Sharon Alexander when you first saw her, can you show us on that plat where she was when you first saw her?

A. When I looked and I first saw her, she was coming from

*Percell McClenney*

the side of her house.

Q. Right here?

A. Yes, sir, coming from the side and I watched her and she went on and she got to the edge of the sidewalk and she looked back and then she ran on across the street and got almost across and then she looked back again and then the car hit her.

Q. Now, why were you watching her on that morning, if you were late to school and you said you were in a hurry to go the opposite direction to go to school?

A. I was waiting for my brother to come out and while I was waiting for him, I was looking at Sharon when she was coming across the street.

Q. Did you know the Alexanders?

A. Yes, sir.

Q. You knew them pretty good?

A. Yes, sir.

Q. They were friends of yours, good friends of your family?

A. Yes, sir.

Q. Go back on the witness stand.

page 58 ]

A. Yes, sir.

Q. Any relation to you?

A. No, sir.

Q. How well did you know them?

A. Well, I knowed them good myself and my mama, she knowed them better than I did.

Q. Do you remember talking to Mrs. Alexander after the accident, right after it happened, shortly after it happened, about the way it happened?

A. Yes, sir.

Q. Do you remember telling her that Sharon was coming from the store at the time the accident happened?

A. No, sir.

Q. You deny that you told her that?

A. That's right.

Q. You knew that store was across the street?

A. Yes, sir.

Q. Are you absolutely sure now that you didn't tell her that Sharon was coming back from the store at the time the accident happened?

A. No, sir.

Q. Now, have you talked about this case with Mr. Minor?

*Percell McClenny*

A. Yes, sir, we talked it over.

page 59 ] Q. Has he told you about what has to be shown  
in order for there to be a recovery in this case?

A. I ain't — what do you mean by that?

Q. When is the last time you talked to him?

A. I talked to him yesterday.

Q. Have you talked with him before that?

A. Yes, sir.

Q. How many times?

A. I think I talked to him three times. The first time it happened and she got the lawyer; I talked to him about it and he talked it over with me.

Q. You talked to him then?

A. Yes, sir.

Q. Then when did you talk to him next?

A. And then he came to our house and I talked to him.

Q. When was that?

A. It was last — I don't — I forgot which day it was, but I think it was last Sunday.

Q. Last Sunday he came to Hertford?

A. Yes, sir.

Q. Then you talked with him again on yesterday?

A. Yes, sir.

page 60 ] Q. You say Sharon never looked when she  
crossed the street?

A. She looked two times. When she first came to the edge of the sidewalk, she looked back and when she got almost across, she looked back.

Q. Did she stop when she looked?

A. No, sir.

Q. Kept right on going?

A. Yes, sir. I started to call her; I was scared if I had called her that she might would have turned around and got hit, but she looked back and ran and she got hit anyway.

Q. Now, you say that she was lying right here in front of the truck —

A. Yes, sir.

Q. — after the accident happened?

A. Yes, sir.

Q. Now, did you at any time — I'm referring to Plaintiff's Exhibit 1, did you at any time see Sharon lying here in this position in the middle of the street?

*Percell McClenmy*

A. No, sir.

Q. Never at any time?

A. No, sir.

page 61 ] Q. How long was it after this accident occurred  
that the police officers got there?

A. They came about a half hour from then.

Q. Were you still there?

A. Yes, sir.

Q. Do you remember Mr. Joyce asking around if there were  
any witnesses to the accident?

A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. Were you there during the whole time he was making  
the investigation?

A. Yes, sir.

Q. Did you ever go up and tell him that this child was  
running from one side of the street to the other?

A. No, sir, he didn't have time; he was taking Sharon to  
the hospital.

Q. You never talked with him?

A. No, sir.

Mr. Green: I think that's all for right now.

page 62 ] RE-DIRECT EXAMINATION

Examined By Mr. Minor:

Q. Now, you testified that you are friendly with the Alex-  
anders and you know them and your mother knows them?

A. Yes, sir.

Q. Think about the question, would you let the friendship  
with the Alexanders influence you in any way to tell a lie  
under oath in this case?

A. No, sir.

Mr. Minor: That's all.

The Court: Stand down.

RE-CROSS EXAMINATION

Examined by Mr. Green:

page 63 ] Q. In addition to talking to Mr. Minor about  
this case on three separate occasions, how many  
times you talked with Mrs. Alexander about it?

A. I haven't talked to her but just that one time.

*Joyce Holley*

Q. You talked to her right after the accident?

A. Yes, sir.

Mr. Green: That's all.

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page 66 ] JOYCE HOLLEY,  
a witness for the plaintiffs, after having been  
first duly sworn, took the witness stand and testified as  
follows:

Examined By Mr. Minor:

Q. Would you state your name, please?

A. My name is Joyce Holley.

Q. And where do you reside?

A. I live at 909 Fauqueer Street.

Q. Where is that, Norfolk, Virginia?

A. Yes, sir.

Q. Now, how old are you?

A. Sixteen.

Q. And were you in school at the time of the accident that's  
complained of today?

A. I was going to school.

Q. What school is that?

A. Booker T. Washington High School.

Q. Did anything unusual occur on October 15, 1962?

A. Yes, sir, it did.

Q. Take your time and tell us just what, as best you can  
remember — well, tell us what happened.

page 67 ] A. I was on my way to school, me and my  
friends, we were on our way to school.

Q. You and your friends?

A. Yes, sir, and we had got up to the corner and there was  
a green truck sitting at the corner. We had started across  
the street.

Q. Have you seen this picture?

A. No, sir.

Q. Now, so that you can explain what corner, and so forth,  
would you use this to explain what you're talking about to  
His Honor and the jury, stand up a second.

The Court: Take it over there before the jury.

*Joyce Holley*

Examination By Mr. Minor Continued:

Q. Put your glasses down here just a second, take your time.

A. Every morning we always come to this corner. We had went around here. So, we was here and before we got across the street, we heard this noise and we stopped and the little girl, she rolled and in front of us. So, we stopped to see what had happened and all the people started gathering and we was going around this way, but we stopped and we saw a little shoe; the little girl lost her shoe there  
page 68 ] at the tail end of the truck, and that's all I saw.

Q. All right now, take the stand a second. Where were you coming from on this particular morning, were you coming from home?

A. No, sir.

Q. Have you seen this picture before?

A. Yes, I have.

Mr. Green: When was that taken?

Mr. Minor: That was taken on Monday, a week ago, not this Monday, but a week before that.

Mr. Green: Monday, a week ago?

Mr. Minor: Yes, sir.

Mr. Green: I have no objection to it.

Examination By Mr. Minor Continued:

Q. Is this a fair representation of the street there where you live?

A. Yes, sir.

page 69 ] Q. Can you take this photograph here and show His Honor and the members of the jury just which direction you traveled from your house to the corner that you have just related to us?

A. In this picture you can't see my house, but you can see the house she came out of.

Q. Tell us where you came from, point out to His Honor and the jury on this picture.

The Court: Show it to the jury.

A. My *girlfriend*, Carolyn, she lives here and Arnetta, she lives here. So, we go by and get Carolyn first and then we go by and get Arnetta. We cross the street here and comes here.

*Joyce Holley*

Q. Crosses where?

A. Here.

Q. Come where then?

A. Here.

Q. Is that the way that you came that morning?

A. No, we came from Carolyn's house that morning. So, we came down this street.

Q. Did you come over here?

page 70 ] A. We came from here to here.

Q. You came across somewhere down there?

A. Yes, sir.

Q. You walked all the way up that street?

A. Yes, sir.

Mr. Minor: May I have this introduced, Your Honor?

The Court: Plaintiff's Exhibit 5.

Examination By Mr. Minor Continued:

Q. Now, can you tell us whether you saw — do you know the plaintiff, Sharon Alexander?

A. No.

Q. Have you seen her before?

A. No, I haven't.

Q. Ever seen her before today?

A. Yes, sir.

Q. You've seen her before today?

A. Yes, sir.

Q. Did you see her on that day in question here?

A. No, I didn't.

page 71 ] The Court: She's already testified that she told the jury everything she knew about it.

Mr. Minor: I wanted to get it clear whether — you didn't see her anywhere, is that what you're testifying to?

A. Yes, sir. I didn't see her before the accident occurred.

Q. You're testifying that you were in front — you're testifying that you were in front of the truck?

A. Yes, sir, I was in front of the truck, crossing the street.

*Joyce Holley*

★ ★ ★ ★ ★

### CROSS EXAMINATION

page 72 ] Examined By Mr. Green:

Q. Let me understand you correctly. Now, you had come from about a half a block up on Fauqueer Street,

A. Yes.

Q. Coming up to the corner?

A. Yes, sir.

Q. And you had come up — come down here, if you will. Are you *faimiliar* with this plat?

A. I have seen it.

Q. Who showed it to you?

A. Mr. Minor.

Q. Now, this is where the truck was parked?

A. Yes, sir.

Q. Where did you come from, point out to the jury where you came from. This is Liberty Street, this is Fauqueer Street.

A. I don't see 80 —

Q. It would be across the street here. What address did you come from?

A. 820.

Q. 820?

A. Yes, sir.

page 73 ] Q. It would be about halfway in between the two blocks, is that right, on Fauqueer?

A. Yes, sir.

Q. Then, how did you cross the street?

A. We walked up here; we walked to 808 and then we crossed the street.

Q. You walked to 808 and then you crossed the street at 808 about halfway between Ervin and Liberty Street, is that correct?

A. Yes, sir.

Q. Then you walked up to the corner on the west side of Fauqueer Street, is that correct?

A. Yes.

Q. Now, where were you when you heard the impact?

A. In front of the truck.

Q. In front of the truck?

A. Yes.

Q. You sure you're not back here on this corner some-



*Joyce Holley*

where?

A. No, because we was crossing the street.

Q. You were actually crossing the street?

A. We was getting ready to cross the street.

Q. Who was with you?

page 74 ] A. Carolyn and Arnetta.

Q. You never saw the child before the accident

happened?

A. No, sir.

Q. What were you all doing at the time?

A. Talking.

Q. Just back and forth?

A. Yes, sir.

Q. Walking to school?

A. Yes, sir.

Q. Go back on the witness stand. At the time you first discussed this case with anyone, Mrs. Alexander came to your house?

A. Yes, sir.

Q. And told you her brother was out in the car, isn't that correct?

The witness made no reply.

Q. Did Mrs. Alexander tell you that her brother was out in the car and wanted to talk to you?

A. No.

Q. Did you go out to the car to talk with any-  
page 75 ] one?

A. No.

Q. Who did you talk with?

A. Do you want me to tell you how it was?

Q. Yes.

A. I was home with my mother; we was in the kitchen and Carolyn Saunders, she brought Mrs. Alexander and Mr. Minor to my house and told me that Mrs. Alexander wanted to know how her daughter got hurt, and so I told her all I know and he showed me the photographs.

Q. You told her that you didn't see it?

A. I told him that I saw the child after she had got hit.

Q. Where did the child stop after she got hit?

A. In the — in front of — in front of the drain pipe of the street.

*Joyce Holley*

Q. Step over here and show the jury, if you will, where the child landed after the accident.

A. Here.

Q. Right there?

A. Yes.

Q. Where, right over here?

A. Yes.

Q. In front of the truck?

page 76 ] A. Yes, sir, she was in front of the truck.

Q. Where were you standing?

A. Right there.

Q. So the child landed right at your feet?

A. No, I was on the so called curb.

Q. I see. So, you weren't in the street, you were on the curb?

A. Yes.

Q. How far was the child from you when you first saw the child?

A. I really don't know.

Q. You don't know where the child came from?

A. No, I don't.

Mr. Green: That's all, thank you very much.

**RE-DIRECT EXAMINATION**

Examined By Mr. Minor:

Q. Come here —

page 77 ] The Court: It would be well to leave all exhibits that are put in evidence on that table.

Mr. Minor: Yes, sir, these are the ones here.

Examination By Mr. Minor Continued:

Q. Come here just a minute, I want to get something clear here. I think you can show a little better on this picture. I just want you to point out the exact position in relation to the drain that you saw the child in.

A. Right here.

Q. She was right there?

A. Yes, sir.

Q. Which way was her head turned?

A. It was all sorts of ways; I really don't know.

Q. Do you remember which way her feet were?

*Joyce Holley*

A. No, sir.

Q. You don't recall right now?

A. No, sir.

Q. Are you sure whether you were back here or up here?

page 78 ] A. See, when we heard the crash, all of us was hollering.

Q. Where were you?

A. Along in here.

Q. Right there?

A. Yes, sir.

Q. Right there?

A. Yes, sir.

Mr. Green: Let's put another point on that picture where you were.

A. Right along in here.

Mr. Minor: Could you see in front of the truck?

A. Yes.

Mr. Green: Punch a hole through where you were. Mark that on the back "X" for the purpose of the record.

Examination By Mr. Minor Continued:

Q. What did you start to say?

page 79 ] A. And after we heard the crash and when the car stopped, all the people was coming across the street looking and we was going to school. We was going to catch the bus. So, I left after I saw the little girl hit. I left and went on to school.

Mr. Minor: I see. All right, you have any further questions?

Mr. Green: Yes, sir.

## RE-CROSS EXAMINATION

Examined By Mr. Green:

Q. Did you stay there until the investigating police officer came there?

*Carolyn Saunders*

A. No, sir.

Q. You kept going?

A. After the accident occurred, I stayed a little while and then I caught the eight-thirty bus.

Q. Did you see Miss Moore's automobile before the accident happened?

A. Yes, sir.

Q. How far did you see it away?

A. I was coming — it was down there by this lady's house; I don't know what her name is. I was down there by her house, I saw it.

Q. How far away was it?

A. I don't know the distance.

Q. Did you see anybody else around the corner besides you and your two *girlfriends*?

A. No.

Q. Did you see Percell McClenny?

A. No, I didn't.

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page 81 ]

CAROLYN SAUNDERS,

a witness for the plaintiffs, after having been first duly sworn, took the witness stand and testified as follows:

Examined By Mr. Minor:

Q. Would you state your name, please?

A. My name is Carolyn Saunders.

Q. Where do you reside?

A. I live at 820 Fauqueer Street.

Q. What's your age?

A. Fifteen years of age.

Q. Where did you reside on October 15, 1962?

A. I was living at the address of 820 Fauqueer Street.

Q. Would you tell us what happened on October 15, 1962, start from the beginning and tell us as best you can recall just what happened.

A. Well, as I was coming — every morning about eight or either something after eight, we come out  
page 82 ] to go to school and that morning I was coming out to the corner of Fauqueer and Liberty Street and as I approached the corner, we was waiting for approaching cars to come pass and then all of a sudden we heard a

*Carolyn Saunders*

loud noise and heard a crash and glass and the little girl rolled in front of us in front of the drain.

Q. Come up here and show the jury just where you were standing, as best you can recall, that morning. Do you remember where you were?

A. Yes.

Q. Point out where you were standing to the jury.

A. First we came right here and then we heard the crash and noise and went back up here.

Q. You went back there?

A. Yes, sir.

Q. What did you see there?

A. I saw the little girl roll from around up in here by the drain and blood was running in the drain.

Q. She rolled up that way?

A. Yes.

Q. Now, were you looking — which way were you looking before the accident happened?

A. We was looking straight across Liberty  
page 83 ] Street.

Q. Did you see the little girl at all?

A. No.

Q. Do you know whether or not she was in front of the truck?

A. She was not in front of the truck, because we was in front of the truck.

★ ★ ★ ★ ★

CROSS EXAMINATION

Examined By Mr. Green:

Q. Will you take this photograph, if you will and punch on here where you were standing.

A. You mean when we first came to the corner?

Q. Yes.

A. We was standing right about in here.

Q. Where were you when you heard the impact?

page 84 ] A. We was right about up in here, and then the  
little girl rolled up in front of us. We got back  
up here.

Q. You say you were watching traffic as it approached?

A. Yes, sir.

*Carolyn Saunders*

Q. Were you getting ready to cross the street?

A. Yes, sir.

Q. Were you looking to the left?

A. First we was standing and looking to my left to see the cars coming. We was waiting for the cars to come and after they started to come, that's when the loud crash came.

Q. Were you looking to your left, did you see Miss Moore's car?

A. I don't recall.

Q. You don't recall?

A. No.

Q. You were standing there looking to your left to see traffic coming from your left so you could cross the street?

A. Yes, sir.

Q. You all had stopped there, is that right?  
page 85 ] A. Yes, sir.

Q. Now, you did not see the child come from your right?

A. No.

Q. You never saw where the child came from at all?

A. No.

Q. And you testified that you were standing here — come down here, if you will. Are you familiar with this plat?

A. Yes.

Q. Where was the school bus?

A. The school bus comes right over here, right up this corner.

Q. And you say you were looking toward Stafford Street?

A. Yes, sir.

Q. So from the point that you were standing here, you all were looking in this direction both for traffic, coming this way and traffic on Stafford Street, is that right?

A. Right.

Q. So if this child had come from this corner here, she would have been in your direct line of vision,  
page 86 ] would she not?

A. Yes, sir.

Q. You did not see her?

A. No.

Q. So you were in a position of looking from this corner straight across the street here and did not see that child cross from the north side of the street to the south side?

A. No.

Q. If she had crossed from the north side of the street to

*Annetta Holley*

the south side, you and your friends standing there would have been in a position to see —

Mr. Minor: I object, conclusion.

The Court: Objection sustained, what she or her friends —

Examination By Mr. Green Continued:

Q. You had a clear view across this intersection?

A. Yes.

Q. You never saw the child prior to the im-  
page 87 ] pact?

A. No.

★ ★ ★ ★ ★

ANNETTA HOLLEY,

a witness for the plaintiffs, after having been first duly sworn, took the witness stand and testified as follows:

page 88 ] Examined By Mr. Minor:

Q. Take your time, don't get excited, just answer the question. What's your name?

A. Annetta Holley.

Q. Where do you live?

A. 808 Fauqueer Street.

Q. Where were you living on October 15, 1962?

A. Repeat that question.

Q. Where were you living on October 15, 1962?

A. 808 Fauqueer Street.

Q. Can you tell us whether anything unusual happened on that day?

A. Yes, it was an accident.

Q. You start from the beginning, assume we know nothing about it, tell us as best you can what you observed.

A. Well, I was coming towards the corner and when we got to the corner —

Q. Can you come up here a second, so you can explain this to the jury. So we can see where you were coming from.

See, maybe this photograph here will aid you a  
page 89 ] little better. Have you seen the photograph before?

A. Yes, sir.

Q. Is that a fair representation of Fauqueer Street there where you live?

*Annetta Holley*

A. Yes, sir.

Q. Point out to the jury where you were coming from as best you can recall, were you with someone?

A. Yes, I was with Carolyn.

Q. Tell them — we don't know anything about it, tell us, as best you can, point out in the picture just what happened, explain to the jury.

A. I was coming — this is my house. I was coming towards the corner and when I got to the corner, I heard —

Q. Wait, where do you live on that picture, do you know where your house is?

A. Right there.

Q. You live right here?

A. Yes.

Q. Where — do you know what point the accident occurred at?

A. Yes, this corner.

Q. Where were you coming from?

A. I was coming towards the corner.

page 90 ] Q. This corner here?

A. Yes, sir.

Q. Okay, get it straight in your mind, take your time; tell us what happened.

A. I was coming towards the corner and as I got there, I heard a bump and glass splattered on the street and a little girl rolled in front of the truck and her head started bleeding.

A Juror: Which side of the street were you coming down?

A. I was coming —

A Juror: You had crossed from your house?

A. Yes, sir.

Mr. Minor: Take the stand — just a second there, which way were you looking, where were you looking that particular morning, do you recall which way you were looking?

A. Could you explain?

Q. Which direction, if you remember, did — if you don't remember, tell us you don't remember; if you  
page 91 ] remember, we want to know where you were looking.

A. I don't remember.

Q. Do you remember where you were standing when you heard the noise?

A. On the corner.



*Annetta Holley*

Q. Do you know where on the corner you were standing?

A. What do you mean?

Q. Could you in all fairness tell us approximately the position you were standing on the corner that particular morning when you heard the noise?

A. I was just standing on the corner.

Q. Could you show us the spot?

A. Yes, sir.

Q. Point out the spot to us where you were standing.

A. I was standing right there. I was standing right there.

Mr. Green: Referring, for the purpose of the record, to Plaintiffs' Exhibit 3.

Examination By Mr. Minor Continued:

page 92 ] Q. Standing where?

A. Right there.

Mr. Green: Pointing to the spot that was marked "X" on the back.

Examination By Mr. Minor Continued:

Q. Did you see the child before you heard the noise?

A. No.

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CROSS EXAMINATION

Examined By Mr. Green:

Q. Let me ask you this, now, you were with Carolyn Saunders and Joyce Holley?

A. I was with Carolyn. Yes, I was with her on the corner.

page 93 ] Q. Where was Joyce Holley?

A. I don't remember.

Q. She wasn't with you?

A. I don't remember. I was just with Carolyn.

Q. Do you remember — you remember being with Carolyn, but you don't remember being with Joyce Holley?

A. No.

Q. You all had walked up the west side of Fauqueer Street, to the southwest intersection of Liberty Street and

*Hazel Lancaster*

Fauqueer Street, is that correct?

A. Yes, sir.

Q. You had been on the west side of Fauqueer Street here?

A. Yes.

Q. Is that correct?

A. Right there.

Q. Now, you came up to the intersection, were you planning on crossing the street?

A. Yes, sir, I was planning on crossing the street.

Q. Where were you going to go from there?

A. I was going straight down the street and catch the school bus.

Q. That would come up Stafford Street, is page 94 ] that right?

A. Yes, sir.

Q. When you got to this corner, were you still walking or had you stopped?

A. When — let's see, I don't remember. All I heard was a bump and Carolyn started hollering; we grabbed each other.

Q. Now, had you looked up Liberty Street to see if any traffic was coming, looked to your left?

A. I don't remember.

Q. Had you looked on Stafford Street to see if the school bus was coming?

A. You can't see it — see, it pass, but it's a long way, you know, to where you catch the school bus.

Q. Had you looked over on Stafford Street to see if the school bus was coming?

A. I don't remember.

Q. You don't — had you looked to your right or left?

A. I don't remember.

Q. So you don't know where it — know where the child came from at all?

A. No, I didn't see her.

page 95 ] Q. You don't know whether she came from behind you or from your right or from across the street or anything like that?

A. No, sir.

★ ★ ★ ★ ★

HAZEL LANCASTER,

a witness for the plaintiffs, after having been first duly sworn, took the witness stand and testified as follows:

*Hazel Lancaster*

page 96 ] Examined By Mr. Minor:

Q. Will you state your name, please?

A. Mrs. Hazel Lancaster.

Q. Where do you reside?

A. 312 East Liberty Street.

Q. Is that Norfolk, Virginia?

A. It's in Berkley, but still in Norfolk.

Q. Where were you living on October 15, 1962?

A. Same place.

Q. Can you tell us whether anything unusual occurred on October 15, 1962?

A. Well, I had been on Liberty Street to the Goodwill Store and I was on my way back home and as I was coming back, I heard a noise, sounded like some bump, so I happened to look up and I saw a lot of school children and people standing on the corner. So, I said I was going down there to see what it was. So, I walked on down there on the corner. As I walked to the corner, I saw this child, she was rolling kinda out in the street; rolled toward the curb stone in front of this truck that was sitting there, and this lady here, her car, she had laid her head down on the steering wheel and the car was still rolling, and a man was coming  
page 97 ] out of Fauqueer Street, and he stopped. Her car was rolling toward him and he cursed at her and asked her why didn't she stop.

Q. Don't discuss the statement, just tell what you saw.

A. Well, she had her head laying down on the steering wheel and the car was still rolling. So, she — I guess she stopped it sometime or another.

Q. Do you know what direction she was coming from?

A. Well, the direction, I thought she was going — I found out that I was wrong. I would say she was coming toward Norfolk.

Q. But you were wrong in that?

A. Yes, sir.

Q. You don't know that?

A. No.

Q. You were confused as to that?

A. Yes, sir.

Mr. Minor: All right, answer Mr. Green.

*Hazel Lancaster*

## CROSS EXAMINATION

page 98 ] Examined By Mr. Green:

Q. Where were you coming from?

A. From the Goodwill Store on Liberty Street.

Q. How far were you from the intersection of Stafford Street and Fauquier Street to Liberty Street at the time you heard the accident?

A. I was at the corner of Grason Street and Liberty Street.

Q. Grason Street and Liberty Street?

A. Yes, sir.

Q. Grason Street would be the next block east of Fauquier Street, is that right?

A. Before you get there, yes.

Q. So, you were a block away at the time this accident happened?

A. Yes.

Q. Full block away?

A. I was on the corner.

Mr. Minor: We have another plat. That's how they run in.

Examination By Mr. Green Continued:

page 99 ] Q. Come on down here now, if you will, this is the intersection of Fauquier, Stafford and Liberty Street here, this is Grason Street here.

A. Yes.

Q. Where were you when this accident happened?

A. I was on the corner of Grason Street and Liberty Street.

Q. Which corner were you on?

A. I was on Grason Street.

Q. I mean point out here which corner you were on?

A. Where's that?

Q. Were you on the north or south side?

A. Here, Grason Street runs this way.

Mr. Minor: Use the map.

A. Grason Street runs this way.

Examination By Mr. Green Continued:

Q. Now, this is Liberty Street.

page 100 ] A. Grason runs cross Liberty Street, and Liberty Street runs this way. Grason goes across it and I was standing right on the corner of Grason and

*Hazel Lancaster*

Liberty Street.

Q. Four corners, which one were you standing on?

A. I was standing on the first corner; I was on Grason Street. That was on the east end, because I was coming from the east.

Q. You were walking toward Fauqueer Street?

A. Yes, sir.

Q. You had not crossed Grason Street yet?

A. I had crossed it, but I was on the corner of Grason and Liberty.

Q. Which side of the street were you on?

A. I was on the right-hand side of the street coming.

Q. Right-hand side of the street?

A. Yes, sir.

Q. All right. Now, so, at the time this accident happened, you were a full block away, is that right?

A. Yes, sir.

Q. So, you then went on up to where the accident happened?

A. Yes.

page 101 ] Q. There were a whole lot of school children and other people around here where the accident happened?

A. Yes.

Q. And you had to walk from — strike that. Let me ask you this. You didn't actually see the accident happen?

A. No.

Q. You didn't see where the child came from?

A. No, sir.

Q. You didn't see the automobile driven by her?

A. No, sir.

Q. Until after it happened?

A. No, sir.

Q. After the accident happened, where was Miss Moore's automobile?

A. It — she was in the middle of the street and it was still rolling.

Q. Middle of Liberty Street?

A. Yes.

*Mrs. Maggie Spruill*

Q. It had come up to and had crossed Fauqueer Street, had it not?

A. I think she had crossed Fauqueer Street.

Q. But that's all you know about it?

page 102 ] A. Yes, sir.

Q. You actually didn't see it happen, you don't know anything about it?

A. No, sir.

Q. You don't know any of the particulars?

A. No, sir.

★   ★   ★   ★   ★

page 103 ] MRS. MAGGIE SPRUILL,

a witness for the plaintiffs, after having been first duly sworn, took the witness stand and testified as follows:

Examined By Mr. Minor:

Q. Would you state your name, please?

A. Mrs. Maggie Spruill.

Q. Where do you reside?

A. 303 East Liberty Street, Berkley.

Q. That's in Norfolk, Virginia?

A. Yes, sir.

Q. Do you operate a store there?

A. Yes, we do.

Q. Where were you living October 15, 1962?

A. 309.

Q. Same place you live now?

A. No, we moved back home, 303.

Q. Now, where were you then on that date, October 15. do you recall where you were on that date, October 15, 1962, when the accident happened?

A. In the store.

Q. I show you this picture here, I guess you haven't seen it, is this a fair representation of your store?

page 104 ] A. Yes, this is my home and this is my store.

Q. Could you show this to the jury?

A. Yes.

The Court: Has it been introduced or not?

Mr. Minor: Yes, sir.

*James A. Whitehead*

Examination By Mr. Minor Continued:

Q. You were in that store on this morning?

A. Yes, sir.

Q. Explain, as near as you know, what happened, as best you know, just what you know.

A. I don't know — I don't know anything.

Q. Did you see her that morning?

A. No, I did not.

Q. Had she been in the store that morning?

A. Not that I know of.

Q. Did you come to the door after this accident?

A. After I got my order up and the salesman  
page 105 ] walked to the door and looked, yes, at the store  
door.

Q. Did you see Sharon?

A. No.

Q. You just saw a crowd?

A. I just saw the crowd.

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page 106 ]

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JAMES A. WHITEHEAD,  
a witness for the plaintiffs, after having been first duly  
sworn, took the witness stand and testified as follows:

Examined By Mr. Minor:

page 107 ] Q. State your name, sir.

A. James Whitehead.

Q. Where do you reside?

A. 2808 Glasgow, Portsmouth, Virginia.

Q. Are you familiar with the street at the intersection of  
Fauqueer and Liberty Street?

A. Yes, I been there, sir.

Q. Did you have occasion to measure the width of that  
street?

A. Yes, sir.

Q. Do you recall when that time was?

A. It was Monday of this week.

Q. Can you tell His Honor and the jury what the width

*James A. Whitehead*

of that street is from the intersection of — come over here to the jury — from the intersection of — let's get where the jury can see — of Liberty Street over here and Fauquier to over this side of the street, do you know what that is?

A. I think it was measured thirty-three and eight inches.

Q. Thirty-three feet and eight inches?

A. Yes, sir.

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page 110 ]

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At this time the jury withdrew from the courtroom.

Mr. Green: At this time I would like to move to page 111 ] strike the plaintiff's evidence in the case — in both cases upon grounds that there has been no showing of primary negligence on the part of the defendant, Myreen Moore: You are familiar with a line of Virginia Cases; I've got four or five here, originally which began with a Clark Case, that came out of this court, I believe, in 1946, in which

The Court: The 38th Street Case, the Naval Officer Case?

Mr. Green: No, sir, that was the Ball Case in 1959.

The Court: Sixty thousand dollar verdict?

Mr. Green: Yes, sir. These cases have consistently held that the mere occurrence of an accident involving a child in a street is not evidence of negligence and is not sufficient upon which to predicate a *prima facie* case of negligence against the defendant. There has to be some showing by evidence adduced on trial that there was evidence of improper speed, improper lookout, the circumstances under which the child came into the street, that the person driving the automobile had opportunity to see the child, relative dis-  
page 112 ] tances and that type of thing. The sole evidence in the case upon which any hope could be laid for making a *prima facie* case is the testimony of Percell McClenny, a fourteen year old boy, he's the only one that testified as to the facts and circumstances of the accident itself. These other witnesses, there were three of them. They were standing on the corner and they testified that they



had never seen the child. Testified that they didn't see the automobile operated by Miss Moore until after the accident. The other witnesses were a block away and could add nothing to it. They saw — didn't see the accident. Didn't see the automobile until after the accident occurred. The testimony of Percell McClenny is that he saw this child run from the curb of the street to the other curb. There is no evidence in this case in any way shape or form about where the automobile was at that point, what the speed of the automobile was, of any negligence in any way shape or form on the part of Miss Moore. The only evidence is that the child ran into the street. There is no evidence to show that this lady ever had an opportunity to apply the brakes. That she ever had an opportunity to avoid the accident. There's absolutely no showing of speed on this automobile, of how far away it was from the child when the child first came into view. There is no evidence that this lady ever had any opportunity in any

page 113 ] way shape or form to see the child or to avoid it. The evidence at the very best shows that a child ran into the street and that an automobile hit it and the Court of Appeals has consistently held in these cases that's not sufficient. There must be a showing by evidence adduced by the plaintiff that the defendant had the opportunity and the means to avoid the accident. In other words, that the defendant was guilty of negligence. There has been no showing in any way shape or form in this case that this lady was guilty of any negligence in any particular. There's no evidence in any way shape or form about speed. There's no evidence in any way shape or form —

The Court: No one seems to have seen the defendant.

Mr. Green: That's correct.

After lengthy arguments by counsel for both sides, the Court made its ruling.

The Court: The Court sustains the motion.

Mr. Minor: We note an exception.

Mr. Green: And enter up summary judgment  
page 114 ] for the defendant in both cases.

The Court: The bond will just be a cost bond.

The Court: Bring the jury in.

At this time the jury entered the courtroom and took its place in the jury box.

The Court: Lady and gentlemen of the jury, during your absence from the courtroom, counsel for the defendant moved the court to strike out the plaintiffs' — plaintiff's having rested, counsel for the defendant moved the court to strike out the plaintiffs' evidence as not being sufficient in law to submit to you jurors to bring in a verdict. Court has sustained that motion on the ground that no one has testified of any act of negligence committed by this defendant. No one said anything about speed and no one said anything about the distance the car traveled after the impact. Although a child under seven is not capable of committing or being guilty of any negligence so far as recovery, yet under the Virginia Law there can be no recovery against anyone who has not been guilty of negligence. So, the Court has sustained that motion. You are discharged from  
page 115 ] further consideration of this case, and the Court will enter summary judgment on motion.

A Copy—Teste:

H. G. TURNER, Clerk.

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