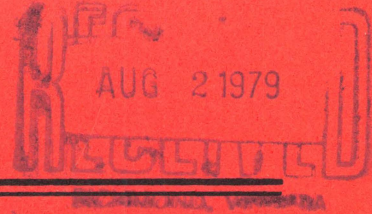


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SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 790438

MOSES M. EVANS

.....APPELLANT

v.

LINWOOD F. BRILEY & JAMES W. HARRIS

.....APPELLEES

JOINT APPENDIX

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

CASE NO. _____

MOSES M. EVANS,

PLAINTIFF,

vs.

JAMES HARRIS
2221 Holly Street
Richmond, Virginia;

and

LINWOOD BRADLEY
3117 4th Avenue
Richmond, Virginia,

DEFENDANTS.

MOTION FOR JUDGMENT

1. On or about January 9, 1978, on 33rd Street at or near its intersection with Q Street, in the City of Richmond, Virginia defendant JAMES HARRIS carelessly, recklessly, and negligently operated a Buick automobile and defendant LINWOOD BRADLEY carelessly, recklessly and negligently operated a Plymouth automobile, in which plaintiff was an occupant, so as to cause the two said vehicles to come into collision with each other.

2. As a result, plaintiff was caused to suffer permanent injuries; has suffered and will suffer in the future pain of body and mind; has incurred and will incur in the future medical and related expenses; and has been deprived of earnings and earning capacity.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally, in the sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00), plus interest and costs.

Trial by jury is demanded.

O R D E R

THIS DAY came the plaintiff and defendants, in person and by counsel, and the defendants having heretofore filed their Grounds of Defense herein, issue is joined.

WHEREUPON, came a jury, to-wit: Kenneth H. Anderson, Mary O. Pulliam, Clarence E. Smith, Jr., Ronald M. Spease, Jean W. Vanderlehr, Sylvester L. Doswell and Michael D. Zitzow, who were sworn to well and truly try the issues joined and a true verdict give according to the evidence and the law.

The evidence of the plaintiff was presented and at the conclusion thereof, defendants, by counsel, moved to strike the evidence of the plaintiff on grounds specifically stated in the record, which motion was granted, and to which ruling of this Court, counsel for the plaintiff excepted.

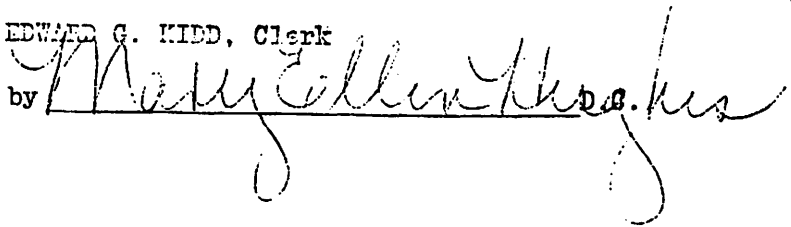
The jury was discharged.

It is therefore ORDERED that the plaintiff take nothing and that judgment be entered in favor of the defendants and that the defendants recover of the plaintiff their costs expended herein, to which action of the Court, the plaintiff, by counsel, duly excepted.

A Copy,

Teste: EDWARD G. KIDD, Clerk

by

 Mary Ellen Hughes

ASSIGNMENT OF ERROR

1. The Court Erred in Striking The Evidence, And in Rendering Summary Judgment In Favor, of Defendant Harris.

EVIDENCE ADDUCED IN BEHALF OF THE PLAINTIFF

ELLIS C. YEAGER was sworn and testified in behalf
of the plaintiff, as follows:

DIRECT EXAMINATION

BY MR. EICHNER:

Q Would you, please, tell the jury your full name
and occupation?

A Officer Ellis C. Yeager, Richmond Bureau of Police,
assigned to the Traffic Division, Richmond, Virginia.

Q How long have you been in the Traffic Division?

A Five years.

Q Officer Yeager, did you, in the course of your
duties, investigate an accident on 33rd and Q Street a year
ago today?

A Yes, sir, I did.

Q What time did you get there?

A At 3:55 p.m.

Q What was that, again?

A 3:55 p.m.

Q Did you determine what the time of the accident
was?

A Approximately 3:50 p.m.

Q Now, when you got there, tell us how many vehicles

1 were involved?

2 A Two automobiles.

3 Q Where did you find them, sir?

4 A I found them -- Mr. Harris' vehicle over on
5 the -- would be the southeast corner, up against the telephone
6 pole, and Mr. Briley's vehicle was on the northern side of
7 the street on 33rd, with the front of his automobile facing
8 north, even with the north curb line -- or the south curb line.

9 Q Now, let's see, have you got a diagram of those,
10 by any chance?

11 A Yes, I do.

12 Q Could we see it?

13 Would you just sketch out here what you saw, on
14 this piece of paper, Officer Yeager? The position of the
15 vehicles, sketch the position of the vehicles, where you found
16 them.

17 Would you indicate north on there? That would
18 facilitate things.

19 MR. EICHNER: I would like to offer this as
20 Plaintiff's Exhibit No. 1, please.

21 THE COURT: All right.

22 MR. DUANE: Wait, may I see it, please?

23 THE COURT: Let him see it. I don't know if
24 that's it or not.

(A sketch was received and marked
PLAINTIFF'S EXHIBIT NO. 1.)

BY MR. EICHNER:

Q Now, Officer Yeager, what, if any, traffic control was present at this intersection?

A There were two YIELD SIGNS; one on the north side of the street, and one on the south side of the street, for 33rd.

Q And were they in place on the day of the accident?

A Yes, sir, before the impact.

Q And what happened to them during the course of the impact?

A Mr. Harris' vehicle knocked over the sign on the north -- or the south curb line, facing north.

Q Was there any obstruction to either one of those signs?

A No, sir.

Q Did you take statements from the drivers at the time?

A Yes, sir, I did.

Q What did Mr. Briley say?

A Mr. Briley's statement, at the time of the accident, was, "I was south on 33rd. I stopped, looked both ways, nothing was coming. I started across and he was coming on my side of

1 the road making a left. Then he made a quick right. I hit
2 him, spinning him counter clockwise."

3 Q How about Mr. Harris?

4 A Stated: "I was east on Q Street. He came
5 through the YIELD SIGN and hit me. I speeded up and spun
6 clockwise, and hit the pole."

7 Q All right, sir. I'm going to ask you if you
8 would indicate the two YIELD SIGNS on this Plaintiff's Exhibit
9 No. 1, Officer Yeager.

10 A (Indicating)

11 MR. EICHNER: Okay, thank you.

12 I have no further questions. Thank you.

13 THE COURT: Mrs. Kramer?

14 CROSS-EXAMINATION

15 BY MRS. KRAMER:

16 Q The weather conditions were clear, and did you
17 take --

18 A The streets --

19 Q Excuse me.

20 A The streets were dry.

21 Q Officer Yeager, did you take measurements of the
22 street width?

23 A The only street measurements I have is Q Street
24 is about 33 feet wide from the north to the south curb line.

1 MR. EICHNER: Excuse me? Thirty-five?

2 THE WITNESS: Approximately 35. Thirty-third,
3 the same.

4 JUROR ANDERSON: Can we raise a question,
5 Your Honor?

6 THE COURT: What's that?

7 JUROR ANDERSON: Do we know which cars belong
8 to whom, say 1 and 2?

9 THE COURT: Tell them, Officer.

10 THE WITNESS: Vehicle No. 1 would be Briley's
11 vehicle. That was south on 33rd. Vehicle No. 2
12 belongs to James Harris.

13 BY MRS. KRAMER:

14 Q Officer, what type of vehicle was Mr. Harris
15 driving?

16 A Mr. Harris was operating a 1975 Buick two-door
17 hardtop.

18 Q And what type of vehicle was Mr. Briley
19 operating?

20 A He was operating a 1972 Plymouth two-door hardtop.

21 MRS. KRAMER: Your Honor, may I approach the
22 witness?

23 THE COURT: Yes.
24

1 BY MRS. KRAMER:

2 Q Officer, I'm going to show you two pictures.

3 A All right, this is Harris' vehicle, left side
4 damage (indicating).

5 Q Is this the damage that you observed on the
6 Harris vehicle --

7 A Yes, ma'am.

8 Q -- as a result of this accident?

9 A Yes, ma'am.

10 MRS. KRAMER: Your Honor, I'd like to have these
11 marked as Defendant Harris' 1 and 2.

12 THE COURT: All right.

13 (Two photographs were received and
14 marked DEFENDANT HARRIS' EXHIBITS
15 NOS. 1 and 2.)

16 BY MRS. KRAMER:

17 Q Officer, where was the damage on Mr. Briley's
18 vehicle?

19 A In the -- full-front damage.

20 Q And where was the damage on Mr. Harris' vehicle?

21 A It was to the left rear, left side and left front.

22 Q Was there any damage to his grill?

23 A I didn't notice any damage at that time.

24 Q Any damage to the right side of Mr. Harris' vehicle?

1 A I didn't notice any.

2 MRS. KRAMER: If Your Honor please, I would
3 like to show them to the jury.

4 THE COURT: All right.

5 MRS. KRAMER: Thank you.

6 THE COURT: Any further questions of the officer?

7 MRS. KRAMER: No, Your Honor. Thank you.

8 MR. DUANE: Sir, I have just a couple.

9 CROSS-EXAMINATION

10 BY MR. DUANE:

11 Q Officer, there were some swerve marks left by
12 the Harris vehicle, weren't there, sir?

13 MRS. KRAMER: I'm going to object to that. That's
14 a conclusion, Your Honor.

15 THE COURT: All right, he can testify as to what
16 he saw.

17 BY MR. DUANE:

18 Q Did you find any marks in the road, sir, of any
19 type?

20 A Yes, sir, I did.

21 Q And where did the marks lead from and to what?

22 A They lead from the center of the street to the
23 rear of Mr. Harris' vehicle, which is at the southeast corner
24 of the intersection.

1 Q All right, sir. And did you ask Mr. Evans, at
2 the scene, his version of what this accident was?

3 A Yes, sir. He stated the same thing that
4 Mr. Briley stated in reference to the car coming on his side
5 of the street, causing them to --

6 Q Did Mr. Evans also tell you, at the scene, that
7 the Harris vehicle was on 33rd?

8 A Yes, sir.

9 Q Started to make a left turn and then swerved
10 back?

11 A Yes, sir, to the right.

12 Q All right, sir.

13 MR. DUANE: That's all I have.

14 REDIRECT EXAMINATION

15 BY MR. EICHNER:

16 Q Officer Yeager, what is the difference between
17 swerve marks and skid marks?

18 A Skid marks are a direct line, more so than swerve
19 marks which usually come from the side skid, in an arch. These
20 were in a clockwise motion.

21 Q I hand you a couple of photographs and ask if
22 you can tell me what they are, Officer Yeager?

23 A This is the full front of the Briley vehicle,
24 Vehicle No. 1 (indicating).

1 This is a side view of the same vehicle
2 (indicating).

3 MR. EICHNER: I'd like to offer those as
4 Plaintiff's Exhibits Nos. 2 and 3, Your Honor.

5 I haven't any more questions of the witness.

6 Thank you, Officer Yeager.

7 THE COURT: Received as 2 and 3.

8 (Two photographs were received and
9 marked PLAINTIFF'S EXHIBITS NOS. 2 and
10 3.)

11 THE COURT: You may be excused, Officer.

12 Thank you.

13 All right, next witness, Mr. Eichner?

14 MR. EICHNER: Dr. Silver, please.

15 (Witness stood aside.)

16
17 (Medical testimony omitted.)

18
19 (Dr. Sam Silver testified in behalf of the
20 plaintiff, during which time a photograph
21 was received and marked PLAINTIFF'S
22 EXHIBIT NO. 4.)

23 MR. EICHNER: I would like to call Mr. Harris as
24 an adverse witness, please.

1 THE COURT: All right, Mr. Harris as an adverse
2 witness.

3
4 JAMES W. HARRIS: co-defendant, called as an
5 adverse witness by the plaintiff, was sworn, and testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. EICHNER:

9 Q Would you, please, tell the jury your full name
10 and address?

11 A James W. Harris, I live at 2221 Holly Street.

12 Q Where do you work, Mr. Harris?

13 A American Tobacco Company, Assistant Foreman.

14 Q Now, you were the driver of a vehicle involved
15 in an accident on January 9th of last year; were you not?

16 A Yes, sir.

17 Q What time was that?

18 A Approximately 3:50. Between 3:50 and 3:55.

19 Q And that was at 33rd and Q, was it not?

20 A Yes.

21 Q You were heading north on 33rd Street, were you
22 not?

23 A No, sir.

24 Q You were not? What car were you in collision with,

1 whose car?

2 A Mr. Briley's.

3 Q And which direction was he going?

4 A He was going south on 33rd. I was going east on

5 Q.

6 Q Was anybody in the car with you?

7 A With me?

8 Q Yes.

9 A No, sir.

10 Q Did you notice before this accident happened
11 what kind of traffic control, if any, was at that intersection?

12 A Yes, sir, I have been traveling that route for
13 five or six years.

14 Q What was five or six years?

15 A I traveled the same route five or six years.

16 Q What traffic control devices are at that inter-
17 section?

18 A YIELD SIGN on the north and the south.

19 Q North and south for traffic on 33rd Street,
20 correct?

21 A Yes.

22 Q Was there any traffic control for traffic on
23 Q Street?

24 A No, sir.

1 Q Did you see Mr. Briley's car before the collision?

2 A No.

3 Q You never saw it?

4 A No.

5 MR. EICHNER: That's all.

6 THE COURT: Any questions?

7 MRS. KRAMER: Your Honor, I'd like to reserve
8 my opportunity to examine Mr. Harris.

9 THE COURT: All right, you may have your seat
10 in the back.

11 (Witness stood aside.)

12
13 MR. EICHNER: I'd like to call Mr. Briley.

14 THE COURT: Mr. Briley.

15
16 LINWOOD F. BRILEY was sworn and testified in

17 behalf of the plaintiff, as follows:

18 DIRECT EXAMINATION

19 BY MR. EICHNER:

20 Q Would you state your name and address, please?

21 A Linwood F. Briley, 3117 Fourth Avenue.

22 Q You were the driver of a vehicle that collided
23 with a car driven by Mr. Harris, one year ago, were you not?

24 A Yes, sir.

1 Q You were going south on 33rd Street?

2 A Yes, sir.

3 Q You were faced with a YIELD SIGN, of course,
4 correct?

5 A Yes, sir.

6 Q Did you ever see his car before the collision?

7 A Yes, sir.

8 Q Where was it?

9 A It was about -- when I first saw it, it was about
10 a block or a block and a half away.

11 Q On what street?

12 A It was coming -- I was going south. He was
13 coming north on 33rd Street.

14 Q When is the next time you looked at his car?

15 A Well, when I pulled up to the YIELD SIGN, I
16 looked both -- I looked straight ahead, I saw him coming. I
17 looked to the left and I looked to the right. I proceeded
18 across the street. When I got in the intersection, he was
19 about -- when I started off, he was about half a car length or
20 maybe a car length away when I got into the intersection.

21 His car was coming into my lane, and I thought
22 maybe he was going to keep straight, because his signal wasn't
23 on. Next thing I know, Moses says, "What's this man doing?"
24 You know, he hit.

1 Q Did he ever make a left turn?

2 A Sir?

3 Q Did Mr. Harris ever make a left turn?

4 A Did he ever make one?

5 Q Yes.

6 A Yeah, into my car.

7 Q Where was he when you started out from behind
8 the YIELD SIGN? Where was Harris?

9 A That's what I mean, when I first started from the
10 YIELD SIGN --

11 Q Yes.

12 A -- he was about half a car length away.

13 Q Which direction was he going?

14 A I was going south on 33rd Street.

15 Q When he was half a car length away, where was
16 he, Harris?

17 A Repeat that?

18 Q Did you say that when you started into the inter-
19 section, Mr. Harris' car was half a car length away? Is that
20 what you said?

21 A Uh-huh, right.

22 Q Which lane was it in?

23 A I was in my right lane. He was coming -- seemed
24 like he was in my lane, too.

1 Q And then he turned left after that; is that it?

2 A He didn't ever turn --

3 Q He never turned?

4 A -- didn't have a signal to turn left. He turned
5 left into me.

6 Q Well, he did turn left, correct?

7 A Into my car, right.

8 Q Okay. And what part of your car was damaged?

9 A Well, a little bit of the front, and I think it
10 was the left side.

11 Q What I've got here, Defendant's Exhibits -- I
12 guess it is 1 and 2.

13 MRS. KRAMER: 1 and 2.

14 BY MR. EICHNER:

15 Q Defendant's Exhibits 1 and 2. I ask you what
16 those show.

17 A You are asking me what those show?

18 Q Yeah.

19 A That's his car, right? Do you know?

20 Q That's what the evidence is, yes, sir.

21 MR. DUANE: What is the question?

22 THE COURT: Whose car is it?

23 MR. EICHNER: Whose car?

24 MR. DUANE: Are you asking whose car it is?

1 MR. EICHNER: I'm asking what it shows.

2 MR. DUANE: Well, it shows what it shows. It
3 speaks for itself.

4 BY MR. EICHNER:

5 Q You don't know what car it is; is that correct?

6 A Well, I couldn't identify the car if I saw it,
7 no.

8 Q How about Plaintiff's Exhibits 2 and 3, and tell
9 me what they show.

10 MR. DUANE: I object to him telling you what
11 he understands it shows. The photograph speaks for
12 itself.

13 THE COURT: I think what he wants to do is
14 identify the car.

15 MR. DUANE: Well, then, it's already been
16 identified.

17 THE WITNESS: This is my car.

18 BY MR. EICHNER:

19 Q What caused the damage that appears in the photos?
20 What caused the damage that appears in Plaintiff's Exhibits
21 2 and 3, those photos that you have in front of you?

22 A The left of my car.

23 Q What caused that damage?

24 A My car?

1 Q Yes?

2 A Uh-huh.

3 Q What caused the damage to your car?

4 A What caused the damage?

5 Q Yes.

6 A When he ran into it.

7 THE COURT: Let me see which one is his car.

8 All right.

9 BY MR. EICHNER:

10 Q Do you have any idea how much speed Mr. Harris'
11 car had when it entered the intersection?

12 A Well, I assume he was running about -- between
13 35 and 40, you know, I'd say, because you could tell he was
14 running that, hitting the brakes, because the car was going up
15 and down. The way he was moving, I could tell he was hitting
16 the brakes.

17 Q And how far away from you was he when that
18 happened?

19 A Well, he was -- that was when I seen him --
20 stopped at the YIELD SIGN. I was sitting at the YIELD SIGN.

21 Q Yes?

22 A Uh-huh.

23 Q And how far away from you, from you, was his car
24 when you say you thought it was going 35 to 45 miles an hour?

1 A About a block, or half a block.

2 Q Now, you never looked to your right before you
3 went out into the intersection?

4 A I looked right and left.

5 Q Mr. Briley, you did?

6 A Yes.

7 Q Which did you do first?

8 A I looked straight ahead first, then I looked
9 left, then I looked right.

10 Q Then you started right off? Did you look to your
11 right again after that?

12 A Well, when I looked, by the time I looked, I
13 took off, because I knew everything was clear, you know. That's
14 when I proceeded on across, because he had no signal on to
15 turn, you know. I figured he was going straight.

16 ~~MR. EICHNER: Okay, that's all I have. Thank you.~~

17 ~~CROSS-EXAMINATION~~

18 ~~BY MRS. KRAMER:~~

19 Q Mr. Briley, let me see if I've got it straight.
20 You say Mr. Harris was going north on 33rd --

21 A He was going north.

22 Q -- is that right? Is that what you say?

23 A Yeah.

24 Q All right. Now, you'd come to a stop at the

1 YIELD SIGN on 33rd?

2 A Right.

3 Q All right. And you saw Mr. Harris coming; he
4 was about half a block away --

5 A Right.

6 Q -- is that right? While you were stopped?

7 A Uh-huh.

8 Q All right, was he in his lane of travel at that
9 time?

10 A Well, not exactly. He was fading over to my
11 lane, you know.

12 Q All right. Now, had he crossed the middle of
13 the road?

14 A Had I crossed the middle?

15 Q Had he, Mr. Harris?

16 A Crossed the middle of the intersection?

17 Q No. Was there a line going up the middle of 33rd?

18 A No.

19 Q All right. Imagine if there had been a line,
20 an imaginary line on 33rd. Had he crossed over that imaginary
21 line when you first saw him?

22 A Not exactly, no.

23 Q All right. Did there come a point in time when
24 he did?

1 A He never did. Like I say, if there was a line,
2 he never did come across the whole line. I'd say he was right
3 about the middle of the line. The line was about in the
4 middle of his car.

5 Q All right, sir. Were you still at the STOP SIGN
6 when you saw this?

7 A Uh-huh.

8 Q All right, sir. And then you started up, didn't
9 you?

10 A Yes.

11 Q All right. And you were going to go straight?

12 A That's the way I planned to go, straight.

13 Q Even though you saw that Mr. Harris was coming
14 across the center of the road?

15 A Well, I couldn't go any place else. I couldn't
16 go up on the corner. I couldn't go anywhere else. I couldn't
17 avoid it.

18 Q Aren't you saying you saw him as much as a block to
19 half a block away --

20 A Uh-huh.

21 Q -- and he started moving into the left lane?

22 A Yes.

23 Q And you are still stopped at the YIELD SIGN?

24 A Like I say, I was sitting. I took it that maybe

1 he was talking to somebody, just got on the wrong side and
2 was going to get back over, you know.

3 Q Did you see anybody in his car?

4 A No, I didn't see nobody.

5 Q All right. Did you keep him in your vision the
6 whole time?

7 A Well, not exactly, no.

8 Q All right. When was the last time you saw him?

9 A Well, Moses said, "What is this man doing?"
10 That's when I looked up and he was in my car.

11 Q All right, sir. Did you see the damage to
12 Mr. Harris' car after the accident?

13 A Uh-huh.

14 Q All right. Where was the damage?

15 A I think on the left side.

16 Q Any damage to the front?

17 A I think so. I don't know for sure.

18 Q All right. Mr. Briley, do you recall when we
19 took your deposition a while back?

20 A Uh-huh.

21 Q All right, and at that time you were asked a
22 question about where the damage was to your car -- excuse me,
23 to Mr. Harris' car?

24 A Uh-huh.

1 he was talking to somebody, just got on the wrong side and
2 was going to get back over, you know.

3 Q Did you see anybody in his car?

4 A No, I didn't see nobody.

5 Q All right. Did you keep him in your vision the
6 whole time?

7 A Well, not exactly, no.

8 Q All right. When was the last time you saw him?

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10 That's when I looked up and he was in my car.

11 Q All right, sir. Did you see the damage to
12 Mr. Harris' car after the accident?

13 A Uh-huh.

14 Q All right. Where was the damage?

15 A I think on the left side.

16 Q Any damage to the front?

17 A I think so. I don't know for sure.

18 Q All right. Mr. Briley, do you recall when we
19 took your deposition a while back?

20 A Uh-huh.

21 Q All right, and at that time you were asked a
22 question about where the damage was to your car -- excuse me,
23 to Mr. Harris' car?

24 A Uh-huh.

1 Q And in your testimony you stated, "all across
2 the grill."

3 MR. EICHNER: Excuse me, what page, Mrs. Kramer?

4 MRS. KRAMER: Seventy-six.

5 BY MRS. KRAMER:

6 Q Do you remember that, Mr. Briley?

7 A Yes, a small part of the front, and the left side.

8 Q And do you recall at that time you were asked
9 if it was by the driver's door?

10 A Uh-huh.

11 Q And you replied, "Not by the door, but the panel
12 before you get to the door. The section before the door."?

13 A Right, as you open the door, the little section
14 right in there.

15 Q All right. And what you are saying today as
16 far as where the damage was, do you agree with that?

17 A Well, the car was just messed up. I don't really
18 know where all the damage was at. It was just messed up, you
19 know.

20 Q Isn't it a fact, Mr. Briley, that you testified
21 as to where the damage was on Mr. Harris' car before you saw
22 a picture of Mr. Harris' car?

23 A Ask the question again.

24 Q I said, isn't it a fact that you were testifying

1 about where the damage was to Mr. Harris' car before you saw
2 the picture today --

3 A Yes.

4 Q -- as to where the damage actually was?

5 A Right.

6 Q And at that time you explained the damage to
7 his car was in the front?

8 A Uh-huh.

9 MRS. KRAMER: I have no further questions for
10 him, Your Honor.

11 THE COURT: All right.

12 MR. EICHNER: I have none.

13 MR. DUANE: No questions.

14 THE COURT: Please step down.

15 (Witness stood aside.)

16
17 THE COURT: Next witness?

18 MR. EICHNER: Your Honor, I'd like to ask
19 Officer Yeager one question: what is the speed limit?
20 I think I omitted that in direct examination.

21 THE COURT: All right, Officer Yeager?

22 OFFICER YEAGER: Twenty-five miles an hour.

23 THE COURT: You-all understand the speed limit
24 there is 25.

1 MR. EICHNER: Any objections on that?

2 MR. DUANE: No, sir, no objection.

3 THE COURT: Wait a minute, let's swear the
4 witness.

5 (The witness was sworn.)

6 THE COURT: All right, before you begin, I'm
7 going to ask the officer what traffic controls there
8 are other than the YIELD SIGNS.

9 OFFICER YEAGER: There are no traffic controls
10 other than the YIELD SIGNS. They are both two-way
11 streets, east and west, south and north.

12 THE COURT: Did that answer your question?

13 JUROR VANDERLEHR: Yes.

14
15 MOSES M. EVANS, plaintiff, having been sworn
16 testified in behalf of the plaintiff, as follows:

17 DIRECT EXAMINATION

18 BY MR. EICHNER:

19 Q You are Moses Evans, the plaintiff in this case,
20 are you not?

21 A Yes, sir.

22 Q How old are you?

23 A Twenty-three.

24 Q Where do you live?

1 this accident?

2 A No.

3 Q What was the reason for that?

4 A Well, I had called in. I had a little business.
5 I had to pay some bills downtown. I had to call in and take
6 off that day.

7 Q When did you meet up that day with Mr. Briley?

8 A That was that morning, January the 9th, the time
9 of the accident. It was earlier that morning.

10 Q Early the morning of the accident. Where were
11 you going at the time this accident happened?

12 A We was headed over to Church Hill. We were
13 going to a record shop and to see about this other job over
14 there, Recreation and Parks.

15 Q Who was looking for another job?

16 A He was.

17 Q Okay. How far from the record shop were you
18 when the accident happened?

19 A I imagine it was about five blocks. No more
20 than four or five blocks.

21 Q As you got to the intersection of Q Street, going
22 south on Q, tell us what Mr. Briley did.

23 A Well, as he approached the YIELD SIGN, he slowed
24 up and he looked, and then he started to just proceed on out,

1 and that's when the accident occurred.

2 Q Did you see the vehicle driven by Mr. Harris
3 before the accident?

4 A Yes, I seen it as it was approaching.

5 Q Do you know which way it was approaching?

6 A It was approaching, coming north. He was the
7 opposite direction of us. We were going south.

8 Q Tell us what you remember about how the 'accident
9 happened?

10 A Well, we was going south, right across 33rd
11 and Q Street, and the driver, Mr. Briley, stopped at the
12 YIELD SIGN, and started approaching. And that's when the
13 accident happened.

14 Well, the other driver, he tried to turn, but
15 I seen he couldn't turn. That's when the side of his car
16 caught the front of the driver I was in, and that's when they
17 hit and they swerved around.

18 Q The other car tried to turn in which direction?

19 A He was trying to turn left.

20 Q You say he did not turn left?

21 A He was trying. The way it hit, it's like he
22 was trying to turn. It happened there.

23 Q What happened to the car you were in after this
24 impact, Mr. Evans?

1 A Well, after it hit, the car was spun around
2 over near the other STOP SIGN, too.

3 Q What happened to your body when the two cars
4 came together?

5 A Well, it happened right quick, and see, when
6 he hit, I jerked my -- I twisted my neck and it jerked me, and
7 I hit the sun visor, and I got a knot right up here (indicating),
8 where it hit, and it was a knot. I wanted to get out of the
9 car --

10 Q What, the sun visor, which sun visor are you
11 talking about?

12 A On my side. The sun visor with a mirror that
13 you can look through.

14 Q What happened to that mirror?

15 A Well, I broke the mirror. It was glass over
16 my head, but it wasn't no cut or anything. It was just a knot.

17 Q Do you know where the cars were after they came
18 to a stop?

19 A After they came to a stop?

20 Q Yes.

21 A The driver of the other car, his was right up
22 next to the -- it was a pole, I believe. And the car was there,
23 spun around, facing the other direction we was going.

24 Q So, after it came to a stop, what was the next

1 Q All right, sir. Mr. Evans, tell me where this
2 record store that you were going to was.

3 A It was located over on East End. I believe it
4 was on 33rd Street.

5 Q All right, sir. Do you know the name of it?

6 A No.

7 Q You don't know the name of the record shop
8 you were going to?

9 A I don't remember now.

10 Q You know it is 33rd Street?

11 A Yes, I believe it was.

12 Q And I take it your testimony is that Mr. Briley
13 approached the intersection at the YIELD SIGN, and he slowed
14 up, but he didn't come to a stop?

15 A Well, I can't remember whether he came to a
16 complete stop but, you know, he slowed up and looked and
17 proceeded. But I can't remember definitely whether he came
18 to a complete stop or not.

19 Q And you saw him look?

20 A Yes.

21 Q And then you saw Mr. Harris' car coming north
22 bound, you were telling us?

23 A Right.

24 Q Is that right?

1 A Yes, it was.

2 Q And did you see Mr. Harris' car start coming
3 over into the left lane?

4 A When I seen his car, it was approaching. It
5 was less than a car length when it approached, and hit, and
6 that's when I seen it.

7 Q That's when you first saw it, and at that point
8 in time, it was coming over into the left lane?

9 A No, he didn't really get into, way into, the
10 left lane until he got closer up. See, he was still over in
11 the opposite lane, but he didn't really approach the left
12 lane until he got closer to the car we were driving.

13 Q And did you see him have a signal on?

14 A No, I don't remember a signal.

15 Q Did you keep your eyes on Mr. Harris' car the
16 whole time?

17 A Well, when we approached, that's when I really
18 kept my eyes on. But during that time, you know, I looked
19 both ways, but didn't keep my eyes on it until he got closer
20 up.

21 Q All right. What did you do at that time?

22 A Well, it happened so quick. It approached --
23 he just -- well, he hit and the car that we was in just swerved.
24 His car swerved around, and then the car I was in swerved

1 around.

2 Q All right. So you are coming down this way
3 (indicating), all right?

4 A Yes.

5 Q And he's going up this way (indicating)?

6 A Yes.

7 Q And he starts going over into your car?

8 A Yes.

9 Q So he hit your car, Mr. Briley's car, full front?

10 A It was, it was sort of like in an angle, because
11 when he hit, he hit the side of the car, too, and connected on
12 the -- and that's when we swerved around.

13 Q All right. Well, you saw him starting to angle
14 over to the left?

15 A Did you say did I see him when he started angling
16 left?

17 Q Yes.

18 A When he got that close, that's when it happened.

19 Q So he hadn't been angling before that?

20 A No, not until he got real close up to --

21 Q Got really close?

22 A Uh-huh.

23 Q And then he started to turn left into you?

24 A Yes.

1 Q So there would have been damage to the front of
2 his car, wouldn't there?

3 A No, it sort of side -- hit from his left side
4 to the rear end. That's where the damage was.

5 Q Left side to his rear end?

6 A Uh-huh.

7 JUROR ANDERSON: May I ask a question,
8 Your Honor?

9 THE COURT: Wait until the lawyers get through.
10 BY MRS. KRAMER:

11 Q Let me ask you this, Mr. Evans, while I'm looking
12 through here: how long did you say your neck was swollen?

13 A It was swollen for -- it was about -- I guess it
14 was a couple months.

15 Q Couple months?

16 A Uh-huh, it was just tender. I couldn't turn it,
17 you know.

18 Q Couldn't turn at all?

19 A Huh-uh.

20 Q All right, Mr. Evans, do you remember when we
21 took your deposition back in October of this year?

22 A Yes.

23 Q All right. At that time, do you recall a
24 question being asked you what part of Mr. Harris' car was

1 damaged?

2 MR. EICHNER: What page?

3 MRS. KRAMER: Forty-one.

4 BY MRS. KRAMER:

5 Q At that time you said, "the left front end."

6 Do you remember saying that at that time?

7 A Yes, the left front end.

8 Q All right. At that time you were asked if
9 there was any damage in the back. "No." Do you recall telling
10 us that at that time?

11 A Well, I didn't really recall all the damage to
12 it, but I just remember when it collided like that and hit,
13 but I couldn't, like, tell the whole damage to it, like what
14 happened.

15 Q Mr. Evans, isn't it a fact that you didn't know
16 where the damage was on Mr. Harris' car until after you were
17 shown the photographs?

18 A No, I knew where the damage was, but I couldn't
19 recall all the damage.

20 Q Well, do you recall us asking you at that point,
21 "What part of the car was damaged?"

22 And you said, "The left front end."

23 A Yes, I did.

24 Q You didn't tell us at that point in time that

1 you couldn't remember all the damage.

2 A But during that time I just said yes, because,
3 you know, I just recalled the damage. But like I said, I
4 couldn't recall all the damage that was done to it.

5 Q Mr. Evans, how long did you have these headaches?

6 A I had headaches frequently for -- over the
7 period of time that Dr. Silver was treating me for.

8 Q But you didn't have them every day?

9 A Yes, they would come like when I be doing
10 something. Standing up, I have the dizziness, more headaches
11 than I would have sitting down.

12 Q What part of day? Any particular part of day
13 where you would have them any more than the other?

14 A I would have them at night and the day, you know.
15 I couldn't pinpoint just when they were coming.

16 MR. EICHNER: Excuse me, please, Dr. Butterworth
17 is here. I expect if we went past 1:00 o'clock that
18 it would be all right with him, but he is anxious to
19 get on his way.

20 THE COURT: I don't like to break a witness's
21 testimony for doctors, so we'll try to get right to him.

22 BY MRS. KRAMER:

23 Q Did you tell Dr. Butterworth about these head-
24 aches?

1 A Yes. Dr. Butterworth, he's a specialist. He's
2 a bone specialist, I believe.

3 Q Yes. I assume you told him all your complaints?

4 A Yes.

5 MRS. KRAMER: All right, sir.

6 That's all for him.

7 THE COURT: Mr. Duane?

8 MR. DUANE: Sir, I just have a couple questions.

9 CROSS-EXAMINATION

10 BY MR. DUANE:

11 Q Now, Mr. Evans, you were seated in the right
12 seat of the vehicle operated by my client, Mr. Briley; were
13 you not, sir?

14 A Yes, I was.

15 Q And you were in a position to see everything that
16 happened in that accident; were you not, sir?

17 A Yes.

18 Q And it's your testimony today, under oath, that
19 Mr. Briley was going south on 33rd Street and stopped at the
20 YIELD SIGN that was facing him; is that correct, sir?

21 A Yes.

22 Q And it is, further, your testimony that Mr. Harris
23 was coming north on 33rd Street; is that correct, sir?

24 A Yes.

1 Q And you saw him approximately half a block from
2 you the first time; is that correct?

3 A Yes.

4 Q And you followed him with your eyes all the way
5 down until this collision occurred, and then at no time did
6 you ever see a signal on this car, did you, sir?

7 A No.

8 Q All right, sir. Then Mr. Briley was in that
9 intersection before Mr. Harris even made that left turn; is
10 that correct, sir?

11 A Yes. He couldn't have made the left turn,
12 because the car just collided when he tried to make it, but --

13 Q But Mr. Briley had stopped at the YIELD SIGN,
14 looked both ways, and proceeded out in a normal fashion; is
15 that correct, sir?

16 A Right.

17 Q And without a warning, Mr. Briley -- Mr. Harris'
18 car made a left turn, cut in front of him --

19 A Yes.

20 Q -- swerved; is that correct, sir?

21 A Yes.

22 Q And Mr. Briley was already into the intersection
23 before Mr. Harris even started that left turn; is that correct,
24 sir?

1 A Yes, he was.

2 Q And you had no idea whatsoever that Mr. Harris
3 was going to make that left turn before it happened, did you?

4 A No.

5 Q And Mr. Briley was on his correct, right, proper
6 side of the road at the time of the accident; is that correct?

7 A Yes.

8 Q And was there anything in the world Mr. Briley
9 could have done to avoid --

10 MR. EICHNER: I object to that. It's a legal
11 question.

12 THE COURT: Objection sustained, that is a legal
13 conclusion.

14 BY MR. DUANE:

15 Q All right, sir, and as you stated before, you
16 followed the Harris vehicle all the way down the street from
17 where you first saw it?

18 A Yes.

19 Q And there was never any indication whatsoever
20 that he was going to make a left turn and come over into
21 Mr. Briley's lane?

22 A No.

23 MR. DUANE: All right, sir, that's all I have.

24 MR. EICHNER: I have no questions.

1 I'd like to call --

2 THE COURT: One of the jurors had a question.

3 JUROR ANDERSON: It's not relevant.

4 THE COURT: Not relevant.

5 All right, I have a question. When you said
6 "left turn," do you mean like an ordinary left turn?
7 Like you make a left turn like that (indicating)?

8 THE WITNESS: The other driver?

9 THE COURT: Yes.

10 THE WITNESS: He tried to make a left turn.

11 THE COURT: Left turn, all right.

12 Thank you, you may step down, please.

13 (Witness stood aside.)

14
15 THE COURT: Dr. Butterworth?

16 (Medical testimony omitted.)

17 MR. EICHNER: I think I have one more doctor,
18 Dr. Velo. If he's going to testify, he will be here
19 at 2:00, I think. He's got a real complicated operation
20 going.

21 THE COURT: I have a complicated day every day,
22 Mr. Eichner.

23 Ladies and gentlemen of the jury, it's 1:00
24 o'clock, so I'm going to excuse you for lunch.

1 Don't discuss the case with anyone or allow
2 anyone to discuss it with you, and don't even discuss
3 it among yourselves at this time.

4 I suggest that when you come back from lunch
5 you come back to your jury room so no one will be
6 tempted to talk to you.

7 (The jury retired for its luncheon recess.)

8 MR. DUANE: Judge, if Mr. Eichner has completed
9 the liability portion of his evidence -- have you done
10 that, sir?

11 MR. EICHNER: Yes, sir.

12 MR. DUANE: Then I would like to go ahead, if
13 it's all right with the Court, would you consider my
14 motion to strike?

15 THE COURT: It might save time.

16 MR. DUANE: Sir?

17 THE COURT: It might save time.

18 MR. DUANE: All right, sir. Your Honor,
19 Mr. Moses Evans, the plaintiff in this case, has
20 testified, and the first thing he testified to was that
21 he was in a position to observe, with a clear vision,
22 exactly what happened in this accident. And it is his
23 unequivocal testimony that Mr. Briley brought his
24 vehicle to a stop at the YIELD SIGN, looked both ways

1 and proceeded normally into the intersection.

2 His further testimony is that Mr. Harris
3 was on 33rd Street, and he caught a glimpse of
4 Mr. Harris --

5 THE COURT: I don't believe a reasonable man
6 could believe that. You don't believe that reasonable
7 men could believe that, do you?

8 MR. DUANE: I've got a case that is on all fours.
9 I would like to --

10 THE COURT: If you've got a case that is on all
11 fours on this, I would certainly like to see it, because
12 the evidence is in such a confusing state.

13 MR. DUANE: Well, I may be able to --

14 THE COURT: The only damage was on the left-hand
15 side of the Harris vehicle. The front is not even
16 damaged.

17 MR. DUANE: Judge, if I may continue --

18 THE COURT: Go on. Excuse me.

19 The only rule I have now is that reasonable men
20 will not differ as to the facts.

21 MR. DUANE: I understand that now, but the
22 unequivocal testimony of Mr. Evans, the plaintiff, the
23 man who is seeking money against both of these defendants,
24 is that Mr. Briley stopped his vehicle at this YIELD SIGN,

1 MRS. KRAMER: Well, it also came from Mr. Briley's
2 testimony. Mr. Briley proceeded out into the inter-
3 section when he saw that Mr. --

4 THE COURT: What are you supposed to do, take
5 on that man and start -- I'm sorry, if a car starts
6 running into him, what are you supposed to do?

7 MRS. KRAMER: Mr. Briley's testimony was that
8 he started coming over half a block away.

9 THE COURT: He also said half a car length away.
10 All right, is that all you have, Mrs. Kramer?

11 MRS. KRAMER: Yes, I rely on the Richmond
12 Coca-Cola case.

13 THE COURT: In other words, you make no motion
14 to strike the plaintiff's case for your client?

15 MRS. KRAMER: Well, I want to deal with that
16 motion later.

17 THE COURT: Let's deal with them all at once.

18 MR. EICHNER: Does the Court want to hear from
19 me?

20 THE COURT: Are you making a motion to strike,
21 or what are you doing?

22 MRS. KRAMER: Yes, sir.

23 THE COURT: Why are you making your motion to strike?

24 MRS. KRAMER: Your Honor, the plaintiff has not

1 made out a case against the co-defendant Harris.

2 THE COURT: All right.

3 All right, Mr. Eichner?

4 MR. EICHNER: Of course, the evidence of the
5 plaintiff as well of his driver, Mr. Briley, is that
6 Mr. Harris was coming north and made a left turn coming
7 over into the lane on which the plaintiff and the
8 Briley car were in. There have been estimates, I
9 believe, that the Harris vehicle was going 35. This is
10 evidence, my notes indicate, from Mr. Briley.

11 THE COURT: Well, there is nothing in the law
12 that says the Court has to accept oral testimony when
13 all the physical testimony is exactly contrary.

14 MR. EICHNER: I don't know about the physical
15 testimony. I don't know whether --

16 THE COURT: The one thing that is bothering me,
17 the left side of this car is damaged, and under your
18 theory, your plaintiff's theory of the case was that
19 Harris was making a left-hand turn. Now, how in the
20 world did the left-hand side of the Harris car get
21 damaged?

22 MR. EICHNER: It is very difficult.

23 THE COURT: Reasonable men could not differ on
24 how it happened, could they?

1 MR. EICHNER: I would suggest to Your Honor,
2 there is nothing unequivocal about the plaintiff's
3 testimony in this regard. One time he said he stopped
4 at the YIELD SIGN, another time he said he slowed down
5 at it. The estimates of -- I submit that the estimates
6 of being half a car length here and there, of course,
7 are incredible, but people are bad estimators.

8 THE COURT: That doesn't bother me too much.
9 What's bothering me, and I'll be frank on this point,
10 your client has said, and this is his theory of the
11 case, he was going south on 33rd with Mr. Briley,
12 the other car was going north on 33rd and he came on
13 up and suddenly made a left-hand turn.

14 Now there is evidence, which is not oral
15 testimony, but uncontradicted evidence, and that is the
16 physical damage done to the automobiles. How could
17 that have possibly been done?

18 MR. EICHNER: That is what they said, turned
19 back to the right, that is, the Harris car.

20 THE COURT: He did state, and I asked him the
21 specific question, "Was he making a normal left turn?"
22 He said, "Yes."

23 Now, we can sit here and theorize all day, but
24 lawsuits are tried on facts, and that which bothers me

1 is uncontradicted, the left-hand thing. And then,
2 assuming that's uncontradicted by the factual situation,
3 that's the reason I wanted to see what Mrs. Kramer
4 was referring to.

5 MRS. KRAMER: I agree.

6 THE COURT: Don't agree with me, yet. Just a
7 minute.

8 And that is his theory, and the evidence does
9 not support that theory. Does that release the other
10 gentleman, because --

11 MR. EICHNER: Well, Your Honor, we haven't said
12 anything about lookout, yet. Now, both parties,
13 regardless of who stopped at the YIELD SIGN, who was
14 favored by the YIELD SIGN, each of these drivers had
15 an obligation to look and to look and take advantage of
16 what a proper lookout would provide.

17 THE COURT: Was there any evidence about what a
18 lookout would permit you to see? There was evidence
19 from the policeman on this. The policeman told us there
20 was no obstruction of vision at that intersection there
21 at Q Street.

22 What is the vision there? I don't know -- I do
23 know, but I can't tell you that.

24 MR. EICHNER: There is submitting the question

1 to the jury on the lookout of both drivers. Each of
2 them had the same duty, one of them had the right of
3 way, I assume, if his version is taken, but this was
4 certainly not an unavoidable accident.

5 THE COURT: I don't think it was an unavoidable
6 accident. I think there is a burden of proof on this
7 plaintiff at this time, and with all reasonable in-
8 ferences from his testimony and the factual situation,
9 the physical facts in the accident totally contradict
10 what he's testified to. It is very confused testimony --

11 MR. EICHNER: And they are very confused by the
12 depositions.

13 THE COURT: The issue before the Court isn't
14 the confused testimony. How can the factual testimony,
15 the physical damage to the cars, be applied in any
16 way at all to this thing? Of course, somebody,
17 apparently, has gotten confused. In the deposition he
18 says one thing, and here he says something else, and
19 I think where he testified to two contrary places, he
20 confounded that two different ways. He explained that.
21 He didn't know that exactly.

22 MR. EICHNER: Well, I think you certainly
23 shouldn't grant a directed verdict against -- in favor
24 of Mr. Briley. At the same time, you ought not grant

1 a directed verdict against Mr. Harris. It was not
2 an unavoidable accident.

3 THE COURT: In order to do that, there is some
4 burden of proof. The mere happening of an accident
5 is not proof of negligence.

6 MR. EICHNER: Well, I agree on that, and each
7 driver has proofed that which would support a finding
8 of negligence on behalf of the other driver. There
9 is no question about that.

10 THE COURT: The only thing that really worries
11 me is the fact that his theory, the plaintiff's theory
12 of the case, if everything is contrary to his theory
13 of the case, will the law allow him to recover?

14 MR. EICHNER: I haven't been aware of any case
15 at all similar to this one that would apply such a
16 finding.

17 THE COURT: I make a lot of law, Mr. Eichner,
18 some good and some bad.

19 MR. EICHNER: I'd like to have an opportunity to --

20 THE COURT: I mean when I say I make a lot of
21 law, Mr. Eichner, I get appealed a lot.

22 MR. EICHNER: I would suggest, and I agree with
23 Mrs. Kramer, that we certainly ought to complete the
24 evidence by what these two men say.

1 MRS. KRAMER: No, I didn't say that.

2 MR. DUANE: That's too much of this complete
3 the evidence business.

4 MRS. KRAMER: I was arguing or addressing this
5 one particular argument, but I'd like to renew my
6 motion to strike the plaintiff's evidence. The
7 plaintiff has not made out a case against Mr. Harris,
8 and, in a way, I know the Court could, conceivably,
9 strike as to both defendants. But, arguing in behalf
10 of Mr. Harris, I feel, as Your Honor does, that the
11 physical facts certainly belie the testimony of the
12 plaintiff, and, once again, we would rely in the same
13 case, in the Holland v. Holland case there is Baines
14 v. Parker, 217 Va. 100. That is a case where a passenger
15 couldn't recover because he couldn't make out a case
16 against the defendant.

17 It is inconceivable that the accident happened
18 as the plaintiff said it did, therefore, we would urge
19 the Court that reasonable men could not differ on the
20 basis of the physical evidence, and ask the Court to
21 strike the evidence as to defendant Harris and enter
22 a summary judgement on his behalf.

23 THE COURT: All right, well, I'll see you-all
24 back at 2:00 o'clock.

1 (A luncheon recess was taken.)

2 THE COURT: Ladies and gentlemen, have you-all
3 any more enlighting evidence or law you would like to
4 give the Court?

5 MR. EICHNER: I've gone over and read the 217
6 case, Judge, and I think it is pretty distinguishable --

7 THE COURT: The only difference I see, Mr. Eichner,
8 is that that was a jury verdict.

9 MR. EICHNER: Not at all. The woman was
10 unequivocally saying he "didn't do anything wrong," and
11 so on. What she did say didn't go against the plaintiff --

12 THE COURT: She put all the blame on the other
13 man?

14 MR. EICHNER: Yes, sir.

15 THE COURT: And the jury found against her. She
16 said that he "didn't do anything wrong." He "wasn't
17 driving poorly," and the point is strictly they didn't
18 go on the woman's testimony, but, rather, on the
19 language.

20 We are accustomed to unequivocable and unambiguous
21 testimony. Now, the language is unambiguous. It is not
22 the least bit ambiguous, but there is right much
23 confusion as to where the car was.

24 MR. EICHNER: Assume that Harris was going north

1 on 33rd. If that were the case, wouldn't that bar
2 the Court --

3 THE COURT: No, but you can't assume that.
4 He's bound by his own testimony.

5 MR. EICHNER: But he didn't testify unambiguously,
6 and for that reason I don't think that case would hold.

7 THE COURT: I'm not saying his testimony was
8 unambiguous, I'm saying the physical facts, the physical
9 facts in evidence, show clearly, it is impossible for
10 the accident to have happened as he said it happened.

11 MR. EICHNER: I think the physical facts --
12 of course, one factor Your Honor can't decide in the
13 case is based upon one factor that is consistent with
14 Mr. Harris' story, of course, that there was damage on
15 that side, and there is also his story that was given
16 at the scene, apparently.

17 If the Court takes a look at -- well, there is
18 the front -- the Briley car photos show a full front.
19 I would say Mr. Harris probably had the best of it, but
20 I would say this gentleman didn't testify in an
21 unequivocal manner, such as you have in the Holland case.

22 THE COURT: But I don't see the damage. Reasonable
23 men could not differ as to the fact that the accident
24 did not happen the way the plaintiff said it happened.

1 There is no possible way. And I know it doesn't have
2 to be corroborated in any way, but at the same time,
3 when the facts show clearly to the contrary what the
4 plaintiff has shown --

5 MR. EICHNER: If that's the case, if Your Honor
6 please, his testimony is not in conflict with
7 Mr. Briley's in any relevant material, and --

8 THE COURT: I said that was in the Holland case.
9 Mrs. Holland's testimony was not in conflict with
10 Mr. Holland's testimony.

11 The police officer's testimony was that the front
12 of the Harris vehicle was not damaged in any way, and
13 so this Court is of the opinion, and I'm going to
14 grant the motion to strike for both defendants under
15 Holland v. Holland.

16 Is the jury back, Sheriff? Bring them in so I
17 can explain it to them.

18 MR. EICHNER: Of course, plaintiff objects on
19 the grounds just stated.

20 THE COURT: Okay, I was going to put that in,
21 Mr. Eichner.

22 (The jury was dismissed.)

23 THE COURT: All right, Mr. Eichner, any exceptions
24 or objections or reasons you want to put in the record,

you may now put in.

MR. EICHNER: Plaintiff objects to the action of the Court as to defendants on the grounds stated during our oral argument, and on the ground that there is not unambiguous testimony by the plaintiff that would bring him within the framework of the Holland or Massie case.

THE COURT: All right, sir.

I don't guess you-all have any motions?

MR. DUANE: No, I don't.

THE COURT: All right, ladies and gentlemen,
if there is nothing further, I enjoyed being with you.
Thank you, have a good day.

I, George Martin Halasz, do hereby certify that the foregoing is a true and correct transcript of my shorthand notes taken in the Circuit Court of the City of Richmond, Division I, January 8, 1979.

Given under my hand at Richmond, Virginia,
this 8th day of February, 1979.

(Original signed:)
George Martin Halasz

George Martin Halasz
Shorthand Reporter