

1952

State of Utah v. Budd Jay Read : Brief of Appellant

Utah Supreme Court

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In the Supreme Court of the State of Utah

FILED
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Utah, Supreme Court, Utah

State of Utah

Plaintiff and Respondent

-vs-

Budd Jay Read,

Defendant and Appellant.

APPELLANT'S

BRIEF

Case No.

883

7792

Appeal from the District Court of Cache County, Utah

Honorable Lewis Jones, District Judge

Attorney for Appellant.

Harvey A. Sjostrom

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(a) There is no evidence to show that the intoxication of the defendant, assuming it to be proved, or the speed of defendant's car, assuming it to be proved, or any other careless or reckless act of defendant, assuming their proof, was the cause of the death of Mr. Allen, and there is no evidence to show the causal connection between any unlawful or negligent act of defendant causing said death 6-13

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Whether your verdict shall be guilty or not guilty is for you to determine, but if, after considering the evidence, you believe beyond a reasonable doubt that the injuries suffered by Ruben Allen were due to grossly negligent, wanton and reckless acts of the defendant in operating his car, your verdict should be guilty. If, however, you believe that the defendant was operating his car while under the influence of liquor, but was then exercising due and proper care and caution, and was therefore, not guilty of grossly negligent, wanton, or reckless acts proximately causing injury to the deceased and his death, your verdict should be not guilty. 14

Point No. 4. The Court erred in refusing to give

defendant's requested instruction No. 10 which reads: You are instructed, gentlemen of the jury, that the defendant had a right to assume that a person upon the highway would exercise ordinary care, and that they would not negligently expose themselves to danger, and that they would exercise ordinary care to ascertain the approach of motor vehicles, and before you hold that the defendant was negligent in this case, you must take into consideration these assumptions which the defendant had right to rely on. 14-15

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Point No. 10. The Court erred in permitting one Ronald Hadfield to give testimony as to the speed of defendant's car or any car at the time of accident or immediately thereafter from length of skid marks for the following reasons and to which defendant duly accepted:

(a) There was no evidence to show defendant made such skid marks.

(b) There was no evidence to show the number of skid marks made.

(c) There was no testimony on voir dire or otherwise to show that said Hadfield was qualified to compute the speed of a car from the skid marks made .. 18-20

Point No. 11. The Court erred in submitting to the jury subparagraphs 3, 4 and 5 of instruction No. 2, which were in the form of questions and to which defendant duly accepted 18-20

(3) At the time of the accident, was the defendant operating his car at a speed of about fifty miles per hour while he was then under the influence of intoxicating liquor and without keeping any lookout as to where he was going, and without having said automobile under control?

(4) Did such acts, if any, on the part of said defendant, constitute criminal negligence?

(5) Was said criminal negligence, if any you find, the proximate cause of the accident and resulting death?

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In the Supreme Court of the State of Utah

State of Utah

Plaintiff and Respondent

-vs-

Budd Jay Read,

Defendant and Appellant.

APPELLANT'S

BRIEF

Case No.

883

STATEMENT OF FACTS

This was an action against the defendant, Budd Jay Read, charging him with the commission of the crime of involuntary manslaughter on the 6th day of September A.D. 1951 in Cache County, State of Utah in words as follows:

That on the 6th day of September, A. D. 1951, at Cache County, State of Utah, the said defendant did then and there unlawfully and without malice kill Ruben F. Allen contrary to the provisions of the Statute of the State aforesaid, in such cases made and provided, and against the peace and dignity of the State of Utah.

Subsequent to the filing of the information, a bill of particulars was supplied upon demand (9).

A preliminary hearing was had before the City Court on the 19th day of September A. D. 1951, and the defendant was bound over to the District Court for trial.

The case was tried before the Court sitting with a jury on the 8th and 9th of October, A. D. 1951. At the conclusion of the trial the defendant requested the Court by written request to instruct the jury to return a verdict of not guilty which was refused by the Court (17). The jury was instructed, arguments made and the defendant found guilty as charged (31).

A motion for a new trial (32) was filed by the defendant and the same was heard and denied on the 18th day of October, A. D. 1951 by the said Court and on the same day defendant was sentenced by the Court (Tr. 227-228). Notice of appeal was then served and filed by the defendant. (Tr. 34).

The evidence shows by the plaintiff's own witnesses, who saw the accident, that at about the hour of 5 P.M. on September 6th, A. D. 1951, as the defendant was proceeding in a northerly direction between 5th and 6th North, on Main Street, Logan, Utah and on the east side of the said street, Rueben F. Allen came across said Main Street on a bicycle and intercepted the defendant's vehicle on the east side of said street and in about the middle of the block (Tr. 45-46) according to Ingrid Bjorkman, the State's first eye witness. That

Allen appeared to look to neither right nor left as he came across the street from the west but was looking straight ahead (Tr. 185) which would be in a easterly direction. According to the State's second eye witness to the fatal accident, a one Mr. Clark, who was standing on the east side of said street and within a few feet from place of accident, Mr. Allen started from the west side of the road and came across in a southeasterly direction on his wheel (154, 155, 159), and said Allen appeared to be looking in the direction he was going. That it further appears from said Clark's testimony that he observed both defendant and deceased about the same time and which placed Allen near curb on west side of street and defendant about $\frac{1}{2}$ block south of the place of accident. It should be further mentioned in regards to the State's first witness, Mrs. Bjorkman, that she was coming out of a driveway in her car just north of a Safeway store, which is situated in about the middle of block running between 5th and 6th North on Main Street and on east side thereof and observing defendant coming about $\frac{1}{2}$ block to her south, stopped her car at the curb line to await defendant's passing (Tr. 43, 44, 45). That she, as well as Mr. Clark, was on the east side of said street when she stopped her car (Tr. 43). That the body was carried on fender of defendant's car and rolled off in front of her car (Tr. 46).

The Court permitted a map to be introduced which

purported to show part of the street block in question and which further purported to show skid marks over the objection of defendant (Tr. 42) until a proper foundation had been laid and as showing they were skid marks made by defendant's car (Tr. 15, 17, 18, 19, 20, 25) and that only two skid marks were shown (Tr. 20). The defense further objected to State's witness Tolman testifying as to measurements of purported skid marks from a memorandum taken from an original memorandum at scene of accident and not from his recollection the original not being in Court but was overruled (Tr. 28). That we further objected to testimony of Mrs. Bjorkman as to skid marks, no foundation having been laid but were overruled (Tr. 48) and she couldn't say skid marks were those of defendant's car (Tr. 62). We further objected to Captain Hadfield testifying as to skid marks as no proper foundation had been laid as showing they were defendant's but were overruled by the Court (Tr. 122, 123, 126, 127). We further objected to the Court allowing said officer Hadfield to testify as to the speed of defendant's car from the skid marks purportedly made by his car right after the accident because said Hadfield could not say as to whether there were 1, 2, 3 or 4 skid marks made and of course not being able to say no proper foundation was laid as it is conceded by said Hadfield that the less skid marks the longer they will be under the same speed and conditions (Tr. 137, 141, 142, 143, 145, 147) nor that said Hadfield

had shown himself to be an expert in computing speed from length of skid marks (Tr. 149).

There was evidence submitted by one witness, that in his opinion the defendant was intoxicated. (Tr. 79). The defendant testified that he had had a bottle of beer and a glass of beer. (Tr. 190). The defendant testified as to the accident thus: "A, well, when I got to Safeways I see a car coming out of the parking lot, and it was not coming fast, but it was still moving. and I watched to see if that was going to continue coming. I had my foot over the brake at the time, and when the car came to a stop I continued on, and at that time was about when accident hapened, I just looked straight ahead again, and I couldn't avoid missing bicycle (Tr. 191)." Deceased was at that time about 6 feet in front of defendant (191) and that before he saw Mrs. Bjorkman coming out of driveway to north of Safeway store he was looking to right as there were two driveways south of said Safeway store (210). There was absolutely no testimony to the contrary to Mr. Reid's as to what he was doing just prior to the accident. Further that he was not going over 25 miles an hour (Tr. 191) which was the same speed as testified to by Mrs. Bjorkman, the State's witness (Tr. 60) she would not say under oath that defendant was going faster than 25 miles per hour.

POINTS OF ERROR

Appellant relies upon the points of error stated in "Index of Points in Argument" and will not there-

fore repeat them here, but proceed with argument in support of said points.

ARGUMENT

Point No. 1

We are of the opinion that the Court below erred when it refused defendant's request to instruct the jury to bring in a verdict of not guilty (pp. 17) for the reasons that there is a complete lack of evidence to show a causal connection between the alleged purported act or acts of the defendant and the death of Mr. Allen. In the bill of particulars filed in response to demand by defendant it sets forth the following: "That at said time and place, the defendant was driving said automobile while under the influence of intoxicating liquor, in a careless, reckless, and unlawful manner, and without due caution and circumspection." And that he drove "his automobile into and against a bicycle upon which Reuben F. Allen, deceased, was then and there riding and operating across said Main Street from west side to the east side thereof" and that said collision occurred in the east portion of said highway, and that — said Reuben F. Allen, deceased, was thrown from his bicycle onto said highway causing almost, if not, instantaneous death." The judge submitted the cause to the jury on these charges of criminal negligence. A discussion of the question of causal connecting between the death of Mr. Allen and any alleged act or a lawful

act done in a criminal manner by defendant is therefore necessary.

Have we in this cause such criminal negligence and proximate cause as is required by law for a conviction of manslaughter? We believe not. We believe this court is too familiar with the cases of *State v. Lingman*, 97 Utah 180, 91 Pac. 2nd 457 (1939) as also the case of *State v. Busby* 102 Utah 416, 131 Pac (2) 510 (1942) together with the case of *State v. Capps* 176 P. (2) 873 and the opinions written in connection therewith to want any extended discussion on proximate cause in these cases. Under the opinion in *State vs. Olsen*, Utah, 160 Pac. (2) 427 (1945) Mr. Justice Wolfe stated at page 429: Under the holding of *State v. Lingman*, 97 Ut. 180, 91 Pac. 2d 457, the State is required in a case such as this to prove that the defendant was driving in marked disregard for safety of others. A mere showing that the driver of an automobile went to sleep at the wheel will not by itself show a marked disregard.

In *State v. Thatcher*, Utah 157 P. (2) 258 (1945) it seems that in that matter Thatcher was driving at an excessive rate of speed in Oren City, when he ran into some people walking along the shoulder of the highway on the west side. Two of the walkers were killed. Commenting on that cause the Court said at page 261:

“Although the evidence may not have been sufficient to have proven that defendant was tra-

veling as fast as 60 miles per hour as testified to by the patrolman, nevertheless, after a careful examination of the record, we conclude, that the jury could have found from their testimony that defendant was exceeding the speed limit and that said speeding was a proximate cause of the accident. Had defendant been traveling within the speed limit he would have seen the pedestrians within range of the car's headlights for a longer period of time, and this fact would have given him a better opportunity to have seen the pedestrians and then turn slightly to the left, thereby avoiding the collision.

The fact that there was a group of five people, three girls wearing light clothing, and two soldiers in summer uniforms walking on the shoulder of the road but near the west edge of the cement portion of the highway in the same direction as the defendant's car was traveling and that this group maintained the same relative position on the shoulder of the highway as defendant approached and that he veered to the right and drove directly into them, would, in our opinion, be sufficient evidence to justify the jury in finding that defendant failed to keep a sufficient lookout to discover their presence in time to avoid a collision with them."

In the instant case as this Court will have observed, Mr. Allen was coming from west in a southeasterly direction, in the middle of the block, and, intercepted the defendant who was on his side of the street and watching for any traffic that might issue from any of the four (4) lanes on the east side of Main Street near the Safeway store. That he did see Mrs. Bjorkman com-

ing in a westerly direction out of a lane on north side of said store and saw her stop her vehicle at the curb and being satisfied that she would proceed no further looked ahead and it was not until then that he saw Mr. Allen a few feet in front of his car which gave him neither time nor space to do anything about it. That Mr. Allen was in a place of danger is manifest. But it is also conclusive that Mr. Read had no reason to believe or assume that anyone would be cutting in front of him in the middle of the block and that being the case we cannot see that any negligence on his part could be said to be the proximate cause. And, too, even if he had seen Allen coming across the street in a southeasterly direction he nor anyone else would reasonably think that Allen would not stop or turn directly south on the west side of the street and not endanger himself by trying to cut in front of defendant. Again, let us assume that instead of keeping an eye to the right for traffic that might be coming out of said lanes or for cars that might be backing up from the curb on the east side of said Main Street, that he had kept watch as to Mr. Allen anticipating that he might do what he actually did do and Mrs. Bjorkman or someone else would have come out of one of said lanes and a collision had taken place causing death. Would the prosecution hold him for manslaughter?

In 99 A.L.R. 772 in an annotation on homicidal assault in regard with the negligent driving of a car or its

use for unlawful purpose or violation of law, it is thus stated:

“In order that a person may be guilty of a criminal homicide arising from the negligent operation of an automobile or its use for an unlawful purpose or in violation of law, it is uniformly held that it must be shown that such negligent operation, or use for an unlawful purpose or in violation of law, was the direct and proximate cause of the death; that is, that there was present a casual connection between the act and the death.”

In *Jackson vs. State*, 101 Ohio 152, 127 NE 870, (1920) the Ohio Supreme Court said:

“It will be observed that the charge above quoted warranted the jury in finding the plaintiff in error, *Van Jackson*, guilty of manslaughter, if they should find that he, while operating his automobile at a greater rate of speed than 15 miles per hour, struck and killed the decedent irrespective of whether the rate of speed was the proximate cause of the killing; and, since this proposition of law was in no way modified by the general charge, the square question is raised here as to whether an accidental, unintentional killing of a person by another engaged in an unlawful act makes that person guilty of manslaughter under the statute, irrespective of any connection between the unlawful act and the unintentional killing, and it seems to this court that an analysis of the illogical and absurd results which would necessarily follow the recognition of such a rule will answer the query.”

In *Chandler vs. State*, Oklahoma, 146 Pac. 2nd 598

(1944) the court stated at page 603:

“We are aware of the well recognized rule of law in civil cases that the question of proximate cause is generally a question for the jury. This rule of law also has application in criminal cases. But there must be evidence of its application. In criminal cases, it has been universally held that speed alone, even though it be in contravention of a statute, may not cause one to be guilty of a crime.

It has been universally held that a person may be found guilty of criminal homicide arising from negligent operation of an automobile or its use for an unlawful purpose, or in violation of law, but it is uniformly held that it must be shown that such negligent operation, or use for an unlawful purpose or in violation of law, was the direct and proximate cause of the death; that is, that there was a causal connection between the act and the death.” (citations)

In O’Mally vs. Eagan, 43 Wyoming 233, 2 Pac. 2nd 1063, 1066, the court stated:

“In the case at bar there is no direct testimony; if defendant’s negligence was in fact the proximate cause of the injury, it must be gathered from the circumstances shown herein. Now speed or any other alleged negligent act of the defendant cannot, of course, be said to have been the proximate cause, unless the accident could have been avoided in the absence thereof. And counsel for the plaintiff ought to be able to point out, by analyzing the circumstances shown by the evidence, how the defendant would have been able to avoid the collision, had he been in the exercise of reasonable care. But counsel have wholly

failed to do so, though they have repeatedly asserted that the jury might have rightly found that the defendant's negligence contributed to the injury in this case."

In *People vs. Young*, California, 129 Pac. 2nd, 353 (1942) the court stated at page 356:

"The driver of a vehicle overtaking a street car, stopped or about to stop for the purpose of discharging passengers where there is no safety zone is required to stop vehicle at the rear of the street car and there remain until any persons alighting have reached a place of safety. Vehicle Code, 571. Assuming defendant violated that rule, the mere violation thereof under the circumstances did not constitute wilful misconduct or reckless disregard of, or wilful indifference to the safety of others. She testified that she did not see the decedent until he stepped from the street car onto her fender. The people's witnesses stated that deceased had stepped down and commenced to take the next step forward when he was struck. This is not a case where defendant had an opportunity to see the deceased for some distance, but still continued on her course thus showing an element of intent to cause injury or a high degree of probability thereof. The judgment is reversed."

In *People vs. Townsend*, Mich. 183 NW 177, (1921) 179, the court stated:

"It is gross inculpable negligence for a drunken man to guide and operate an automobile upon a public highway, and one doing so and occasioning injuries to another, causing death, is guilty of manslaughter. It was unlawful for the plaintiff to operate his automobile upon the pub-

lic highway while he was intoxicated; made unlawful by statute, and wrong in and of itself, manslaughter provided the death of Agnes Thorne was a proximate result of his unlawful act.”

In *Dunvill vs. State, Ind.*, 123 NE, (1919) the court stated at page 689:

“It is also true that, if he is acting in violation of a positive statute under circumstances that show a reckless disregard for the life and limb of others, and this violation is the proximate cause of the death, the law then implies an intent to do the injury and makes him guilty of involuntary manslaughter. Whether the unlawful act committed is the one which we have first above indicated, or the second one pointed out, it is always necessary that the evidence shows that the unlawful act is the proximate cause of the death”.

ARGUMENT

Point No. 2

In connection with the subject of proximate cause but as also forming a separate point of error (assignment of error No. 2) complained of, the defendant requested the court to charge: “If you find that Mr. Allen was negligent in crossing the highway so that he could not cross with reasonable safety in front of defendant’s automobile, then his acts were the sole proximate cause of his death and defendant must be acquitted.” (pp. 23) This request was refused. We believe this request states this court view as expressed in *Ceder-*

loff vs. Whited 169 P (2nd) 777. In the instant case Mr. Allen placed himself in a hazardous part of the street and where ordinarily a driver would not look for a person. If Mr. Allen had been crossing at a marked cross-walk either in the middle of the block or at an intersection then Mr. Read might be charged with being the proximate cause of his death but not so in the middle of the block where there was no cross-walk and where Mr. Read was looking to his right where he might expect either cars backing up from the east curb or cars issuing from one or all said four (4) lanes near Safeway store.

ARGUMENT

Point No. 3

We respectfully urge that the court below erred in failing to give defendant's requested instruction No. 4 in the form requested. (pp. 19) We shall not repeat the requested instruction but refer this Court to our index where it is fully stated. And we further urge that this requested instruction states the law correctly and is well bottomed. See State vs. Hamberg 143 A. 47, 99 A.L.R. 841 which case in our opinion approves of said instruction in the form requested. We believe further that this refusal constitutes prejudicial error.

ARGUMENT

Point No. 4

We also respectfully urge that the court below was

in error in refusing to give defendant's requested instruction No 10 (pp. 22) which reads: You are instructed gentlemen of the jury that the defendant had a right to assume that a person upon the highway would exercise ordinary care, and that they would not negligently expose themselves to danger, and that they would exercise ordinary care to ascertain the approach of motor vehicles, and before you hold the defendant was negligent in this case, you must take into consideration these assumptions which defendant had a right to rely on.

The Court below makes a notation on the requested instruction that it was given in substance but we fail to find it sufficiently covered in any instruction given by the Court. We believe the failure to give said requested instruction is prejudicial error for the same has been held to be a most proper one in *Hay vs. Fornich* 250 P. 565. We can see no good reason why the defendant should not have had the benefit of this instruction as pointed out such instruction was held to be a proper one in the case cited. In refusing said instruction the jury presumably assumed that it was criminal negligence for said defendants to assume that Mr. Allen would act as a reasonable prudent person would under the circumstances.

ARGUMENT

Point No. 5

The Court gave the following instruction, instruc-

tion No. 10 pp. 26 which we will repeat: If you find that Mr. Allen was negligent in crossing the highway so that he could not cross with reasonable safety in front of defendant's automobile, and that Mr. Reed was not negligent in any way, then Mr. Allen's negligence becomes the sole proximate cause of his death and the defendant should be acquitted, and to which instruction defendant duly excepted (tr. 225).

In this instruction the Court below says in effect that though Mr. Allen was negligent in crossing in front of defendant's car and he could not do so with reasonable safety, said Allen would be the proximate cause of his death, provided, however, that Mr. Read was not negligent in any way. In other words if Read was negligent in any way, though such negligence was not the proximate cause of or contributed to the cause of Allen's death he was still guilty of manslaughter. We do not believe such is the law, there must of necessity be a proximate cause emanating from said negligence and which we have discussed in point No. 1 and will therefore not repeat.

ARGUMENT

Point No. 6

The Court erred in denying defendant's motion for arrest of judgment. (Tr. 223). In this motion, made in open court and after motion for a new trial was denied, we held then and do now that there was no offense

proved in the cause against Mr. Read. This contention of course is based upon the fact that there was no causal connection between the death of Mr. Allen and any recklessness or negligence of Mr. Read. In other words Mr. Read's negligence or recklessness, if any, was not the proximate cause of Mr. Allen's death as urged in our argument in point 1.

ARGUMENT

Point No. 7

We believe the Court below erred in not giving defendant's requested instruction in full denominated by the figures 11½ pp. 16. We will not here repeat the instruction as it is stated in the index under point 7. That part which the court refused to give reads as follows: "You are instructed in this connection, however, that the mere fact that you may believe from the evidence beyond a reasonable doubt that the defendant committed an unlawful act not amounting to a felony, and while committing such unlawful act, the defendant caused the death of a human being, such is not sufficient to sustain a charge of manslaughter. There must be in addition, a causal connection between the commission of the unlawful act and death."

If this part of the instructions had been given it seemingly would have caused the jury to pause and consider what "causal connection" really means and that such is not to be assumed because death resulted while

defendant was in the commission of an unlawful act. The whole instruction is taken from *People vs. Black*, 295 P. 87, and in our opinion is a most proper instruction.

ARGUMENT

Point No. 8

The Court was further requested not to submit the cause to the jury at the close of the evidence on the ground that there was no evidence to show that the collision caused the death of Mr. Allen. (tr 224) This Court will search the record in vain for any testimony that said Allen died from any injuries he received from said collision. If we are right on this matter it would seem to follow that the Court should have dismissed the cause. In *Abbott on Facts*, Fifth Edition at page 360 the text reads: "Likewise, where death is instantaneous, the plaintiff must show that it resulted from the application of the force in question." In support of the text it cites *Fonzone vs. Lehigh Valley Transit Co.* 318 Pa. 514, 178 A 671 — the note reads: "One suing for the death of a person struck by a street car must prove that death resulted from the contact of the street car with the deceased body, as there is no presumption that the deceased was alive just before being struck." This seemingly being the law the cause should never have been submittd.

ARGUMENT

Points No. 9, 10, 11

Was the Court in error when it permitted testimony and exhibit "A" showing skid marks, (Tr. 15, 17, 18, 19, 20, 25, 122, 123, 126, 127) and 2, in permitting one Ronald Hadfield to testify as an expert in computing speed of car from length of skid marks and particularly when said Hadfield or any other witness could not say the number of skid marks such computation was taken from (tr. 137, 141, 142, 143, 145, 147)

In our statement of facts we have referred to the testimony on these matters and wherein in the transcript it may be found but repeat it here although perhaps unnecessary. We believe there was no testimony to show that the skid marks in question were made by defendant for it must be noted that Mrs. Bjorkman, an eye witness for the plaintiff, could not say that the skid marks were the defendant's (tr. 62) nor is there any evidence which showed by tread of tires or otherwise that said marks were made by any tires on defendant's automobile. Nor is there any testimony which shows how many skid marks were made. If we are correct in these statements or any of the statements of course it must be conceded the said testimony as to all or any of these matters was inadmissible for the purpose they were or any of them were received and therefore prejudicial error. And the testimony of said Hadfield was erroneously admitted. So much for points 9 and 10.

In regard to point No. 11, we took exception to the

questions put to the jury by the Court as to sub-paragraph 3, 4 and 5 of said instruction No. 2. We are of the opinion that there was no proper evidence introduced showing or tending to show that defendant was operating his car at or anywhere near 50 miles per hour. Nor was there any evidence to show that he was not keeping a proper lookout nor having his car under proper control. To substantiate these statements this Court may merely reflect on our statement of facts and consult the references in the transcript as to this and therefore we will not repeat.

In regards to submitting question No. 5 under instruction No. 2 as to whether certain facts as to purported criminal negligence being "the proximate cause of the accident and resulting death." We believe this is sufficiently discussed under point No. 1 and will not repeat.

ARGUMENT

Point No. 12

Point No. 12 concerns itself with the refusal of the Court below in granting a new trial. In this we believe the Court erred for the reasons stated heretofore in support of errors No. 1 to 11 inclusive. We are of the opinion that the Court should have set the verdict aside and passed no judgment on the defendant on the ground that there were no facts showing that whatever defendant may have been guilty of did not constitute the prox-

imate cause of said collision and death. In fact the Court should have instructed the jury as we requested to bring in a verdict of not guilty. The Courts failure to do so alone and by itself constitutes reversible error. We therefore submit that the judgment should be reversed, and the action dismissed, or at any event, a new trial be granted.

Respectfully submitted,

Harvey A. Sjostrom

Attorney for Appellant.