

1981

# Matthew C. Harris and Gary S. Harris v. Utah Transit Authority and Lester Lorenzo Loosemore : Reply Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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MATTHEW C. HARRIS  
and GARY S. HARRIS,

Plaintiffs-Appellants,

vs.

No. 17042

THE UTAH TRANSIT AUTHORITY  
and LESTER LORENZO LOOSEMORE,

Defendants-Respondents.

---

REPLY BRIEF OF APPELLANTS

---

APPEAL FROM JUDGMENT OF THE SECOND JUDICIAL  
DISTRICT COURT OF WEBER COUNTY  
HONORABLE RONALD O. HYDE

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REPLY BRIEF OF APPELLANTS

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INTRODUCTION

The nature of the case, disposition by the lower court, relief sought on appeal, and facts have been thoroughly and accurately discussed in appellants' initial brief, and will not be repeated here, except as discussed in the following arguments.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN HOLDING THE JEEP  
DRIVER NEGLIGENT AS A MATTER OF LAW.

I. The facts in evidence presented a jury question on the  
issue of jeep driver Talbot's negligence.

Reasonable minds could differ on the issue of the jeep driver's (Talbot's) negligence. Substantial evidence in the record, viewed in the light most favorable to Talbot demonstrates:

1. There were no tail lights or signals operating on the rear of the bus immediately prior to the accident (Record cited at Appellants' Brief, p. 4) in violation of Utah law. §41-6-121.10, Utah Code Ann. (1953); Instruction No. 12 (R. 251).

2. The bus driver (Loosemore) could have safely pulled the bus completely off the highway in order to pick up his passenger (Record cited at Appellants' Brief, pp. 2; 7, n. 5). That Loosemore stopped where he did was a violation of Utah law. §41-6-101, Utah Code Ann. (1953); Instruction No. 11 (R. 249-50). Loosemore himself testified that there was nothing that would have prevented him from pulling off the highway another ten feet. (R. 625). In fact the bus pulled gradually over to the right over the course of 300 feet of travel to where its right rear wheel was only four inches off the pavement (R. 514; Plaintiffs' Exhibits No. 21 and No. 5).

3. The highway was straight and posted at 50 m.p.h., with no semaphores or stop signs for several miles (R. 529). Prior to the accident, jeep driver Talbot was traveling with

the flow of traffic, within the posted speed limit at between 40 and 50 m.p.h. (R. 521, 549, 567, 577, 591, 728).

4. Bus driver Loosemore checked his rear view mirrors 300 feet from the waiting passenger, and did not look at his mirrors again before the collision (R. 620). The only car he saw was a light colored station wagon and he made his stopping maneuver in the manner he did under the impression that the light colored station wagon was the only affected vehicle. (R. 618). In fact, Talbot's jeep was closer to the bus than the light colored station wagon; it was the first vehicle affected by the stopping bus. (R. 576, 592).

5. At the instant of collision the bus was still stopping or had just stopped. (R. 561).

6. Jeep driver Talbot did not recall seeing the bus before the instant he perceived the dangerous situation and then reacted by swerving in an attempt to avoid colliding with the bus. He may have seen the bus before that instant, but it did not "register" with him before that instant (R. 558). Similarly, Helen Hollingshead, driver of the light colored station wagon immediately behind the jeep, also had no conscious memory of seeing the bus until "suddenly the space between the jeep and the bus, and myself and the jeep was getting narrow" (R. 579-80). In order to herself avoid a collision, she swerved across three traffic lanes, including



two oncoming traffic lanes and stopped on the opposite side of the road (R. 579, 593).

7. Emmet Quinn, an expert in the field of accident reconstruction, testified that it was entirely reasonable under these circumstances that jeep driver Talbot did not perceive that the bus was stopping until Talbot was relatively close to the bus. Based on the location of Talbot's skid marks, and a one and one-half second "perception - reaction" time, Quinn testified that Talbot was 150 feet from the point of impact when Talbot first became aware the bus was stopping (R. 729). He testified that, absent stop signal lights, the only way Talbot would perceive that the bus was stopping was the increasing size of the bus, i.e., the increasing portion of Talbot's "cone of perception" taken by the bus (738). Quinn testified that until Talbot was relatively close to the bus, it would not appear to him to be stopping (738, 750). At the point Talbot perceived that the bus was stopping it had suddenly become three times larger in his "cone of perception" (737). Quinn testified that the very purpose of tail lights is to warn a person in the rear of a slowing or stopping maneuver (738). Without such lights, a slowing or stopping maneuver is very difficult to perceive until the driver in the rear is relatively close to the stopping vehicle (738, 750). In fact, Quinn testified that from the point



where Talbot perceived the bus and reacted, he made the best possible effort to avoid the accident (740-41). Quinn illustrated his testimony with a chart admitted as plaintiffs' Exhibit 44.

The foregoing facts are sufficient to preclude a directed finding of negligence against jeep driver Talbot and the trial court erred in taking that issue from the jury.

Respondents argue that the jeep driver's negligence is clear based upon his failure "to see a stopped bus which was 10 feet wide and 12 feet high on a clear dry morning with no obstacles in front of the jeep and with a two mile straight-away preceding the location of the bus." (Respondents' Brief, p. 13). That argument fails to take into account the evidence discussed in the preceding paragraphs numbered one through seven. Particularly it fails to recognize that the bus had no stop or signal lights, that it stopped in the travel lane in a 50 m.p.h. stretch of highway, that the bus had been progressing in the flow of traffic down the highway creating the expectation to following cars that absent a signal or brake light on the bus or at least a significant movement to the right off the highway, it would continue to move down the highway with the flow of traffic. Plaintiffs have never contended that the bus was not visible to following traffic; rather plaintiffs contend that under the circum-

stances drivers following the bus reasonably did not perceive that the bus had created a dangerous situation; they reasonably did not perceive it as stopping until it had nearly stopped.

That jeep driver Talbot and Helen Hollingshead in the light colored station wagon were caught by surprise by the stopping bus is discussed above. Two cars back from Hollingshead was Gloria Myers who observed the situation, including the jeep and the station wagon swerving to avoid collision. Myers testified on cross-examination as follows:

Q. Did you see the bus as it was slowing down?

A. Sir, I didn't realize the bus was slowing down or stopping. We didn't have any indication it was stopping.

(R. 597)

To accept respondents' argument that the bus was large and visible is to conclude that large vehicles are excused from the law requiring brake and turn signal lights. That is untenable. Respondents have not even addressed the testimony of expert witness Quinn discussed above in paragraph number 7, regarding the difficulty in perceiving a stopping maneuver absent stop or turn signal lights, nor have they addressed the actual difficulty which Hollingshead and Myers, in addition to Talbot, had in perceiving that the bus was stopping.

## II Respondents' cases.

Respondent relies on two cases in support of the trial court's finding of Talbot's negligence as a matter of law: Velasquez v. Greyhound Lines, Inc., 12 Utah 2d 379, 366 P.2d 989 (1961), and Anderson v. Parson Red-E-Mix Paving Co., 24 Utah 2d 128, 467 P.2d 45 (1970). Both cases are factually distinguishable and therefore not useful.

In Velasquez a collision occurred between an Interstate Motor Lines truck, which was stopped partially in a travel lane, and a moving Greyhound bus. "The truck's clearance lights, stop lights, and blinkers were turned on before the driver alighted, and they remained on." 366 P.2d at 990. That fact alone distinguishes Velasquez, but there is more:

The Greyhound bus driver, by his own admission saw the Interstate truck as he approached. He said he first observed it from about three-fourths mile away and that he realized that both the truck and the Buckley car were stopped while he was still one-half mile away. 366 P.2d at 990 (emphasis added).

In that context, the Velasquez court stated that "if there had been flares out, or even if the truck had been aflame, it could have given him no more information." Id. The court continued:

[The bus driver] said he intended to stop behind the truck to render assistance and to add the benefit of his lights to the scene. . . .The evidence is without dispute that as the Greyhound bus approached this scene a very strange thing happened: the bus driver momentarily lost consciousness by either falling asleep or blacking out from some other

cause. He was roused to consciousness just before the impact by the warning cry of a woman passenger: "Don't hit it." He swerved the bus to the left but not in time to avoid hitting the left rear corner of the truck. 366 P.2d at 991.

Thus, in addition to undisputed evidence of operating clearance lights, stop lights and blinkers, the approaching bus driver in Velasquez correctly perceived the stopped vehicles while he was a half-mile away. Nevertheless he collided with it. On those facts a directed finding of negligence may be appropriate, but those facts are far different from the facts in the instant case. Velasquez, therefore, does not support the directed negligence finding against Talbot herein.

In Anderson, supra, a Red-E-Mix cement truck driver had parked his truck against the curb about 150 feet from an intersection in Brigham City. He was engaged in washing out his truck when it was struck by plaintiff's host's vehicle. The driver of that vehicle was 15 years old and had taken the automobile without leave. Plaintiff and another boy, both also age 15, were passengers. The driver stopped his car at the intersection and waited for oncoming traffic to clear so he could turn left. He started to make his left turn when he over-accelerated causing the car to slide. The court stated plaintiff's version of the facts, in the light most favorable to him, as follows:

While he was thus proceeding west with the read end in a sideways slide and approximately 50 feet west

of the curb line, he first noticed the defendant's truck parked on the roadway. The driver at that point had sufficiently regained control and he thought he could avoid collision by proceeding to the southwest and around the left side of the truck, but he failed to observe the steel chute extending to the rear and collided with the extended chute . . . 467 P.2d at 46 (emphasis original).

The Supreme Court affirmed the Anderson trial court's granting of a motion to dismiss following trial, reasoning that the driver had acknowledged observing the cement truck which was "standing there as big as life and twice as natural." Having regained control of his sliding vehicle, he "had about 100 feet in which to brake and/or turn aside and avoid the collision with this large truck which stood there in plain sight." 467 P.2d at 47.

Again, those facts are not our facts. Both Velasquez and Anderson are cases in which the following driver observed a static situation ahead and negligently failed to avoid it. The Supreme Court carefully analyzed both those cases as fitting the "first situation" discussed in Hillyard v. Utah By-Products Co., 1 Utah 2d 143, 263 P.2d 287 (1953)

Hillyard's "first situation" deals with static situations where the dangerous condition, i.e., a vehicle stopped within the travel lane of following vehicles, has been in place for a period of time and under circumstances which legally and reasonably impose upon all arriving drivers' knowledge of its presence and appreciation of the danger. In such cases the

approaching driver's negligence becomes an intervening and thus sole proximate cause, and that negligence and proximate cause may exist as a matter of law.

Hillyard's "second situation" deals with dynamic situations where the first driver's conduct and the following driver's conduct are concurrent, or so nearly so, that the following driver's conduct cannot be held to be negligence or proximate cause as a matter of law. In such cases, both the issues of negligence and proximate cause are for the jury.

For example, in Stapley v. Salt Lake City Lines, 18 Utah 2d 1, 414 P.2d 88 (1966) (discussed in more detail in appellants brief, p. 8), involving nearly identical facts to the instant case, the Court approved the submission of the approaching driver's negligence to the jury, stating that the jury is properly the

arbiter of the facts, negligence, contributory negligence, cause of the injury, and the like . . . .  
414 P.2d at 89.

Watters v. Query, 588 P.2d 702 (Utah 1978), hereinafter "Watters I"; Jensen v. Mountain States Tel. and Tel. Co., 611 P.2d 363 (Utah 1980); and Watters v. Query, 626 P.2d 455 (Utah 1981), hereinafter "Watters II", are all recent Utah cases involving Hillyard's "second situation." In each case the jury was allowed to consider the issue of the approaching driver's negligence. In Watters I and II, this was true even



though the approaching driver was admittedly momentarily inattentive, which is the worst that can be said of jeep driver Talbot herein.

The present case is one in which the facts giving rise to the accident were dynamic, and within Hillyard's "second situation" discussed above. Therefore all issues of negligence and proximate cause should have been submitted to the jury.

## POINT II

### INSTRUCTION NO. 14 IMPROPERLY STATES THE LAW AND IN EFFECT DIRECTS JUDGMENT AGAINST THE PLAINTIFF

Instruction No. 14 (R. 253) is quoted in appellants' and respondents' briefs. In that instruction the trial court:

1. Directs negligence against jeep driver Talbot;
2. In effect directs a finding that Talbot's negligence was the sole proximate cause, using Hillyard's "first situation" language; and
3. Improperly instructs on the Hillyard "second situation."

The error in directing negligence against Talbot has already been discussed at length. Compounding that error is the manner in which that directed negligence is tied to proximate cause in Instruction No. 14:

To be an independent intervening cause that would relieve another's negligence from being a



proximate cause, it must be negligence that was not foreseeable.

In that regard, you are instructed that the driver of the Jeep, Rodney Talbot, was negligent as a matter of law, and if you find that he observed the bus stopped upon the highway, or, under the circumstances should have observed the bus, but because of his negligence failed to do so in time to avoid the accident, then you are instructed that the negligence on his part was the sole proximate cause of the collision. (Emphasis added).

The only negligence claimed against Talbot was his negligent failure to observe the bus in time to avoid it. That negligence is what the court directed. Thus, under this instruction the conclusion that Talbot's negligence was the sole proximate cause is inescapable.

With Talbot thus having been found negligent and the sole proximate cause of the accident, how could the jury find other than "no negligence" on the part of bus driver and bus company? In effect the court excused any negligent conduct (improper stopping, no tail lights, improper lookout, etc.) on the part of the defendants by finding Talbot negligent and in effect, the sole proximate cause.

Respondents argue that this instruction correctly covers the situation of "whether Talbot had sufficient time to observe the bus but failed to do so and, consequently, was the sole proximate cause of the accident." (Respondents' Brief p. 24). However, the correct test is more than just "time" -- it is perception and appreciation of the danger,

yet negligence in avoiding that danger. That perception and appreciation was not present here due to Loosemore's stopping where he did, without lights, etc, as discussed above.

Respondents further claim that this portion of Instruction No. 14 is proper because it closely resembles that given in McMurdie v. Underwood, 9 Utah 2d 400, 346 P.2d 711 (1959). That it closely resembles the McMurdie instruction is reason enough to conclude its inappropriateness here. McMurdie, like Velasquez and Anderson, supra, also relied upon by respondents, is a Hillyard "first situation" case. In McMurdie, at about 1:45 a.m. a driver named Whittaker stopped for several large trailer-trucks, some of which had blocked Whittaker's lane of travel. Whittaker waited for oncoming traffic to clear before attempting to pass the trailer-trucks. The court stated:

While parked in this position Whittaker noticed in his rear view mirror the approach of a speeding pickup truck. He pressed his brakes hard to light the bright red rear lights of his car and he also turned on his turn signal light. The pickup truck continued coming until it crashed into the rear of [Whittaker's] automobile. 346 P.2d at 712 (Emphasis added).

The occupants of Whittaker's car were severely injured. On those facts, at the pretrial conference, the court held the pickup truck driver negligent as a matter of law. The pickup driver then settled all claims against her. The case then proceeded to trial with Whittaker and his occupants

seeking to recover against the drivers of the large trailer-trucks who had blocked Whittaker's travel lane. The court instructed the jury as follows:

You are instructed that the driver of the pick-up truck was negligent as a matter of law, and if you find that she observed the hazards, if any, of the stopped vehicles upon the highway or under the circumstances should have observed said vehicles, but because of her negligence failed to do so in time to avoid said accident, then you are instructed that the negligence on her part was the sole proximate cause of the collision, and your verdict must be in favor of the defendants and against the plaintiffs, no cause of action.

Several obvious factual distinctions make that same instruction erroneous in the instant case. It was undisputed in McMurdie that the brake lights and turn signals were operating on the stopped vehicle, and there was therefore not the "perception of stopping" problem testified to by Emmmett Quinn in the instant case. McMurdie is thus clearly a Hillyard "first situation" case.

McMurdie also involved a speeding approaching vehicle which was further evidence of that driver's negligence. There are no such facts of negligence against jeep driver Talbot.

Justice Wade dissented in McMurdie, agreeing with appellants' contention there that the instruction directed a verdict against them:

This instruction in effect directs a verdict against plaintiffs. It declares the pickup truck

driver negligent as a matter of law. Then it directs a finding that such driver's negligence was the sole proximate cause of the accident and a verdict against plaintiffs if the jury finds her negligent on either one of the only two grounds of negligence chargeable against her. I think this instruction was erroneous. 346 P.2d at 714.

After analyzing Hillyard and related cases, Justice Wade concluded:

[T]he second driver must not only see the parked truck but appreciate the danger in order to exonerate the original tort-feasor. This, I think, is the correct rule and requires extraordinary negligence on the part of the second tort-feasor to relieve the first from liability. 346 P.2d at 717 (emphasis added).

That extraordinary negligence takes the form of Hillyard's "first situation", where the approaching vehicle saw, or could not have failed to have seen the dangerous situation, yet negligently failed to avoid it. That was the case in Velasquez (bus driver saw stopped truck and recognized situation one-half mile away); Anderson (car driver had control of own vehicle, saw stopped cement truck but negligently failed to miss it); and McMurdie (stopped vehicle had stop lights and turn signals operating -- approaching speeding car observed but failed to avoid collision). That extraordinary negligence is not present in the instant case, nor was it present in Watters I or II, even though the approaching driver there was admittedly inattentive. It was not present in Stapley v. S. L. C. Lines, which has facts nearly identical

to the instant case, nor was it present in Hillyard's "second situation", where the approaching driver failed to see the dangerous situation until too late to avoid it. All of those cases, similar to the instant case, submitted the negligence and proximate cause issues to the jury.

The concluding paragraph of Instruction No. 14 in the instant case further compounds its error. That portion states:

If you find Talbot did not observe the bus in time to avoid it, and it could reasonably be anticipated that circumstances may arise wherein one may not observe such a dangerous condition until too late to escape (i.e., reasonably anticipated that an emergency might arise), then his negligence would not be the sole proximate cause. (R. 253).

Respondents argue that the above instruction correctly covers the situation of "whether Talbot was put into an emergency situation in which he had no time to observe the bus. . . ." They argue that "the evidence showed no emergency situation." (Respondents' brief, pp. 24, 27). Their narrow reliance on emergency situations limits Hillyard's "second situation" too far. In Jensen v. Mountain States Tel. and Tel. Co., 611 P.2d 363, 366 (Utah 1980), this Court recently put the "emergency" limitation to rest:

Mountain Bell maintains that the language in Hillyard, discussing emergency situations indicates that it is only in such situations that the negligence of the first actor can remain active so as to constitute a concurring proximate cause together with the negligence of the later actor. However, a



close reading of Hillyard as well as the treatment of the Hillyard rule in later cases leads us to the conclusion that the true basis of the rule rests on the concept of the legal foreseeability of the subsequent negligence. The reference to emergency situations is based more on the factual setting presented in Hillyard than on limiting application of the rule only to emergency situations. This conclusion is strengthened by this Court's latest treatment of the Hillyard rule found in Watters v. Querry. Although Watters involved a situation where the driver of a car stopped abruptly, the words "emergency situation" are nowhere mentioned.

Thus Instruction No. 14 is further fatally flawed by its erroneous emphasis on the necessity of an emergency situation.

### POINT III

THE TRIAL COURT SHOULD HAVE RULED BUS  
DRIVER LOOSEMORE NEGLIGENT AS A MATTER OF  
LAW

Respondents seek to excuse bus driver Loosemore's actions; a brief response is appropriate.

#### 1. Improper lookout.

Loosemore testified that he looked in his mirrors 300 feet from the waiting passenger. He only recalled seeing a light colored station wagon on the road behind him. He recalled no others specifically, except perhaps "back down the road farther" than the light colored station wagon. (R. 617-18). In any event the light colored station wagon was the only vehicle that he felt he "would have to look out for and keep safe." (R. 617).

Respondents argue that "it was disputed whether the jeep would even have been in the immediate range of the mirror when the stop was made," as they claim the jeep was further back than the light colored station wagon. (Respondents' Brief, pp. 22-23).

In fact every witness to the accident places the jeep immediately behind the bus, with the light colored station wagon behind the jeep. (See, eg, Hollingshead, R. 576-78; Myers, R. 591-93). Thus, Loosemore failed to see the vehicle first affected by his stop, and never looked again at his mirrors until he heard the screech of the jeep's brakes. (R. 629-630).

## 2. Stopping on the highway.

Respondents concede that §41-6-101, Utah Code Ann. (1953) sets the standard of care in this case as to the location of Loosemore's stop, and that violation of that statute is negligence absent reasonable justification or excuse. (Respondents' Brief, pp 18-19). That statute provides, in relevant part:

[N]o person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled part of the highway when it is practical to stop, park, or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of 200 feet in each direction upon such highway.



A. Unobstructed width of highway; 200 feet of clear view.

Under that statute "a driver must always park off the highway when practical to do; the other requirements of clear view and sufficient passing space are not pertinent unless and until it is shown that it is impractical to park off the highway at the particular place in question." Horrocks v. Rounds, 370 P.2d 799 (N.M. 1962); McElhaney v. Rouse, 415 P.2d 241 (Kan. 1966).

Therefore, respondents' arguments of visibility and unobstructed adjacent highway (Respondents' Brief, pp. 3, 17) are without merit unless it was impractical for Loosemore to have pulled off the highway.

B. "Impractical."

Many reported cases deal with statutes of other states which are identical in wording with §41-6-101, Utah Code Ann. (1953). For example, Chard v. Bowen, 427 P.2d 568, (Idaho 1967), discusses those factors which might excuse compliance with the statute, stating:

To prove that a violation of a statute was excusable or justifiable so as to overcome the presumption of negligence, the evidence must support a finding that the violation resulted from causes or things that made compliance with the statute impossible, something over which the person charged with the violation had no control which placed his vehicle in a position violative of the statute, or an emergency not of such person's own making by reason of which he fails to obey the statute, and that the person who violated the statute did what might reasonably be expected of a person of ordinary prudence

who desired to comply with the law, acting under similar circumstances. Id. at 574 (emphasis added).

C. Evidence.

Loosemore's "justification" for stopping where he did must be reasonable; it cannot be frivolous. If he presented no evidence of reasonable justification a directed negligence finding against him is appropriate. As justification, he claims the following:

1. "He felt unsafe . . . because of a large ditch which adjoined the shoulder of the road." (Repondents' brief, p. 17, citing Loosemore's testimony at R. 623-24.) Yet on the very next transcript page, p. 625, Loosemore qualified his statement after being shown photographs of the accident scene. He then stated there was, in fact, nothing that would have prevented him from pulling off another ten feet. (R. 625).

2. His main concern was passenger convenience. (R. 622-23, 644). Even assuming that it was more convenient for the passenger that Loosemore stop where he did, that concern is frivolous in view of the clear language of the statute and Loosemore's admission that he could have pulled off the traveled portion of the highway. The cited portion of Chard v. Bowen, supra, uses terms impossible, or emergency--not convenience.

Even if passenger convenience were a possible justification, Loosemore testified that he stopped 3-4 feet from the passenger (R. 627). His own expert, Rudolph Limpert, testified that, had Loosemore pulled off even two additional feet, there would have been no collision (R. 802).

In General Ins. Co. of America v. Lewis, 121 Utah 440, 243 P.2d 433 (1952), this Court stated that the statute applied to those "cases where the driver stops his car on the highway from his own choice and has an opportunity to select the place and conditions of his stop." 243 P.2d at 434. This is just such a case, and Loosemore's lame "justifications" do not merit submission to the jury.

### CONCLUSION

The trial court erred in holding jeep driver Talbot negligent as a matter of law as the facts in evidence presented a jury question on that issue. Utah case law supports the proposition that in "dynamic" fact situations, such as this case, all issues of negligence and proximate cause are for the jury.

The trial court erred in its Instruction No. 14 and in effect thereby directed judgment against the plaintiffs herein. The instruction improperly stated the tests laid down by

this Court in Hillyard, Watters and Jensen v. Mountain States Telephone.

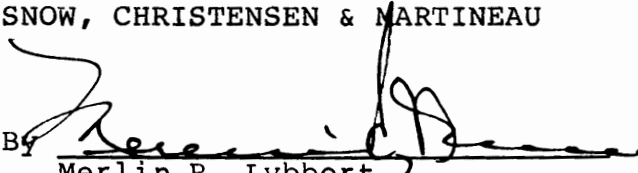
Having held Talbot negligent as a matter of law, the trial court should have also held defendant Loosemore negligent as a matter of law for his failure to exercise proper lookout and for his unexcused illegal stop on the traveled portion of the highway, where he admitted there was no reason he could not have pulled completely off said highway as required by §41-6-1, Utah Code Ann. (1953).

For the foregoing reasons the judgment herein should be reversed and vacated and remanded for a new trial on the issues which remain.

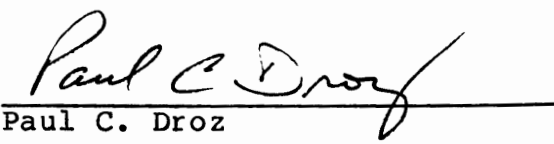
Respectfully submitted this 11th day of December, 1981.

SNOW, CHRISTENSEN & MARTINEAU

By

  
Merlin R. Lybbert

By

  
Paul C. Droz

CERTIFICATE OF SERVICE

I hereby certify that I served two copies of the foregoing Reply Brief of Appellants upon Respondents by hand delivering the same, to Timothy R. Hanson, Hanson, Russon, Hanson & Dunn, 650 Clark Leaming Office Center, 175 South West Temple, Salt Lake City, Utah 84101.

DATED this 11th day of December, 1981.

Patricia L. White