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DEFENSE VERDICT



DAWN L. JENNINGS

A green light is not an unfettered right to ignore what is going on around you. That was the lesson Jerrold Walsh hopefully learned. In the late afternoon of November 29, 2005, Walsh was driving his Ford Mustang convertible home after picking up his daughter, Tiffany and her friend, Stephanie, from high school basketball practice. The girls were seated in the back seat of the convertible. Also with them was Walsh's son, Jerry Walsh, age 14, who was seated in the front passenger seat of the Mustang. It was dark and raining. Walsh was stopped on County Line Road, at its intersection with Easton Road, in Horsham, PA. The

intersection was controlled by a traffic signal which was red for Walsh's direction of travel. The intersecting roads each had a left turn, with a left turn arrow. On the opposite side of the intersection, in the left turn lane, behind a dump truck, sat Jimmy Brunson, driving a tractor trailer for Werner Enterprises, Inc. The left turn signal as well as the headlights and running lights on the Brunson tractor trailer were activated. When the left turn arrow turned green, Brunson followed the dump truck into the intersection. While in the intersection and as he began to negotiate the turn, the left turn arrow turned red and the thru light turned green. Walsh then proceeded forward into the intersection and the left rear side of his vehicle was struck by the tractor trailer as it turned left. The force of the impact caused Walsh's Mustang to spin 90 degrees before it came to rest with the front end of the vehicle under the middle of Brunson's tractor trailer.

Walsh, along with Tiffany Walsh, Jerry Walsh, Jr. and Stephanie Parton filed a lawsuit against Brunson and Werner Enterprises, alleging negligent operation of a motor vehicle against Brunson and vicarious liability against Werner Enterprises. Stephanie Walsh, Walsh's wife, claimed a loss of consortium. In turn, Werner Enterprises joined Walsh as a defendant alleging his negligence caused the collision. This litigation was removed to the U.S. District Court for the Eastern District of Pennsylvania. The parties agreed to try this case before U.S. Magistrate Judge David Strawbridge.

As a result of the accident, Walsh claimed to have sustained herniated discs at C3-4, C5-6 and C6-7 with radiculopathy as well as an aggravation of lumbar herniations with radiculopathy to the legs. Walsh also claimed depression and erectile dysfunction as a result of the accident. Tiffany Walsh claimed to have sustained a traumatic brain injury as well as soft tissue injuries to the neck and back. Likewise, Stephanie Parton and Jerry Walsh, Jr., claimed soft tissue injuries to the neck and back.

At trial, we were able to show that Jerrold Walsh's story made no sense. He testified that he proceeded through the intersection before the Brunson tractor trailer. He also conceded that the accident occurred about twenty feet from where he entered the intersection. Walsh's accident reconstruction expert, discounted Walsh's version, but found that it took 9.5 seconds for the Brunson tractor trailer to have traveled the distance to the point of the accident. Based on that calculation, he determined that the tractor trailer had the time, distance and opportunity to have avoided the collision.

We retained accident reconstructionist, Steven Rickard, who testified that applying the 9.5 seconds calculation of plaintiff's accident reconstruction expert, revealed that Brunson would have traveled well past the mid-point of the intersection. Accordingly, Brunson had control of the intersection. Rickard testified that Walsh was responsible for the accident, because he should have allowed Brunson to complete the left turn before proceeding through the intersection, as required under Pennsylvania law.

We also called an independent witness, who was an off duty dispatcher for the Horsham Police Department. He confirmed that the left turn light was green when Brunson's tractor trailer entered the intersection and that the lights of the tractor trailer, including the left turn signal were activated. Additionally, he con-

firmed that the Brunson tractor trailer was over halfway through the intersection when the accident occurred.

To support his claim for damages, Walsh called his chiropractor and family physician. They testified that Walsh was unable to perform his activities of daily living, including working as an IT Analyst for SEPTA. Walsh sought between \$1,074,000 and \$1,133,000 in past and future wage loss damages.

We were also able to show through our cross examination of Walsh and his physicians, as well as through the defense neurosurgeon, that Walsh was already treating for multiple herniated lumbar disc injuries with pain medication, including Oxycontin, when he was involved in the collision with Brunson. Moreover, we argued that Walsh had no permanent impairment as a result of this accident. In fact, he had sustained a work-related injury about one-and-a-half years before the collision and had returned to his computer technician position, in a sedentary capacity with accommodations. Accordingly, we argued that there was no reason that Walsh could not return to his pre-injury activities which already included accommodations while he recovered from any injuries sustained from the collision with Brunson. Thus, we argued that Walsh had no future loss of earning capacity.

Ultimately, after seven days of trial and seventeen witnesses, the jury deliberated

for about four hours, and unanimously found in favor of the defense. Prior to trial, Walsh had demanded \$5,000,000.

As learned above, although this case involved a left turn, the other vehicle does not have an unfettered right to enter an intersection.

Dawn L. Jennings, Counsel to the Firm in Rawle & Henderson's Philadelphia office, has successfully defended trucking, bus companies and their insurers in the state and federal courts.

Dawn graduated from Widener University School of Law in 1993 and earned a B.A. degree from Rutgers University in 1990.

Dawn is admitted to practice in the state courts of Pennsylvania and New Jersey as well as the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania, U.S. District Court for the District of New Jersey, and the U.S. Court of Appeals for the Third Circuit.

Dawn is a member of the Trucking Industry Defense Association (TIDA), the American Bar Association (ABA), the New Jersey Bar Association and Women In Trucking (WIT).

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