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Pandora Cooper and Rev. John Cooper v. Joseph Dunn, Jr.

Appellant's Brief 1976-SC-0437

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APPELLANT'S BRIEF

9/6/16

SUPREME COURT OF KENTUCKY

File No. 76-437

**PANDORA COOPER and
REV. JOHN COOPER** - - - - - **Appellants**

versus

JOSEPH DUNN, JR. - - - - - **Appellee**

APPEAL FROM JEFFERSON CIRCUIT COURT
COMMON PLEAS BRANCH, FIFTH DIVISION
JUDGE RAYMOND C. STEPHENSON, WITH A JURY

BRIEF FOR APPELLANTS

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JUN 7 1976

This is to certify that copies of the within brief have been served on
G. Wm. Clements and the Hon. Raymond C. Stephenson, the trial judge,
pursuant to R.A.P. 11.00. Collins

CLERK
Supreme Court of Kentucky

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STATEMENT OF THE QUESTIONS PRESENTED

1. Whether or not the Defendant, Appellee, Joseph Dunn, Jr., was negligent in bringing about the collision between the automobiles operated by the parties hereto?
2. Did the injuries and damages claimed by the Appellant, Pandora Cooper, result from the collision?
3. Was the Appellant, Pandora Cooper, in fact taking part in a funeral procession at the time of the collision?

SUPREME COURT OF KENTUCKY

File No. 76-437

PANDORA COOPER and
REV. JOHN COOPER - - - - *Appellants*

v.

JOSEPH DUNN, JR. - - - - *Appellee*

APPEAL FROM JEFFERSON CIRCUIT COURT
COMMON PLEAS BRANCH, FIFTH DIVISION
JUDGE RAYMOND C. STEPHENSON, WITH A JURY

BRIEF FOR APPELLANTS

May it please the Court:

STATEMENT OF THE CASE

A. Nature of the Proceedings

Appellant is appealing on the judgment of the Jefferson Circuit Court, Common Pleas Branch, Fifth Division, entered on the 12th day of February, 1976, dismissing the claims of Pandora Cooper, and the Rev. John Cooper, for injuries and damages claimed by them as a result of the collision involving the automobile owned and operated by Pandora Cooper and that operated by Joseph Dunn, Jr., both of Louisville,

Kentucky. The collision took place on or about March 20, 1975, at or about 1:50 p.m., at the intersection of 21st and Maple Streets, in Louisville, Kentucky. The original Complaint sought the sum of Seventy-five Thousand Dollars (\$75,000.00) for Pandora Cooper, and the sum of Ten Thousand Dollars (\$10,000.00) for the Rev. John Cooper.

The case was tried before a jury on February 3, 1976 (see T. E., page 2).

In the original Complaint, the Plaintiffs had alleged that on or about March 20, 1975, while operating her motor vehicle, and taking part in a funeral procession in Louisville, Kentucky, the Plaintiff, Pandora Cooper, had suffered bodily injury, as well as property damage, as a result of the negligent operation of his automobile by Mr. Joseph Dunn, Jr., causing it to collide with the left side of Pandora Cooper's automobile. The Complaint further alleged that due to the negligence of Joseph Dunn, Jr., Pandora Cooper was caused to expend monies in hospital and medical care and treatment, and that she further lost earnings in her occupation as a hair-stylist, in her own shop in Louisville, Kentucky. She further alleged that she had suffered damages in the loss of her automobile.

The Defendant, Joseph Dunn, Jr., answered the Complaint as admitting that an accident occurred on March 20, 1975, but denied each and every other allegation contained in Plaintiff's Complaint.

B. The Facts

On March 20, 1975, Pandora Cooper was operating her automobile while taking part in a funeral procession, when at the intersection of 21st and Maple Streets, in Louisville, Kentucky, as she was passing into the center of the intersection, directly beneath the traffic light, her automobile was struck by that owned and operated by Mr. Joseph Dunn, Jr. The Dunn automobile struck the left side of Pandora Cooper's automobile, causing damage to the left side, and frame of said automobile. Estimates of repair were tendered to the Court in evidence. These estimates indicated that the repair of the automobile would cost in the area of no less than One Thousand Four Hundred and Seventy Dollars and Thirty-four Cents (\$1,470.34), with other estimates as high as Eighteen Hundred Ninety-three Dollars and Ninety-two Cents (\$1,893.92). Shortly after the accident, the police arrived, and Mrs. Cooper was taken to Jewish Hospital, Louisville, Kentucky, for examination and treatment. Two passengers in the Cooper automobile, also taking part in the funeral, were Mrs. Mellinee Radford and Mrs. Mary L. Irby (see T. E., page 25). Neither of these ladies were taken to any hospital at the time of the accident.

Mrs. Cooper was released from the emergency ward at Jewish Hospital, on the same day, after being X-rayed, and given minor treatment. Evidence to this effect was tendered to the Court at the time of the trial.

Evidence was also tendered at the trial of this action, showing medical expenses incurred by Pandora Cooper

in the sum of One Thousand and Nine Dollars and Twenty-seven Cents (\$1,009.27) ; property damage, the lowest estimate being from Louisville Motors, in the sum of One Thousand Four Hundred Seventy Dollars and Thirty-four Cents (\$1,470.34). Mrs. Cooper also tendered evidence as to her lost time from work in the months of April, May, and June of 1975, indicating lost earnings in the sum of One Thousand Six Hundred Seventy-two Dollars and Ninety Cents (\$1,672.90). The total claimed by Mrs. Cooper in special damages was Four Thousand One Hundred Fifty-two Dollars and Fifty-one Cents (\$4,152.51).

THE ARGUMENT

Pandora Cooper, the appellant herein, was in fact operating her automobile in a careful and cautious manner, abiding by the law, and participating in a funeral procession, at the time of the collision between her car and that owned and operated by Joseph Dunn, Jr. This collision was caused by the negligence of Mr. Joseph Dunn, Jr. On March 20, 1975, Pandora Cooper, the Plaintiff, Appellant, was operating her automobile in a careful and cautious manner, while participating in the funeral of one Susie Lee, who had been a friend of the Appellant. This funeral was to have started at or about 2:00 p.m. on that date. The Appellant, and her passengers, along with several other automobiles, were in procession from the home of the decedent's sister, one Addie Chim. This procession was in route to the Zion Baptist Church, located at 22nd Street and Wal-

nut Street, Louisville, Kentucky. The procession was being led by an automobile owned and operated by an agent or employee of the Mason Funeral Home. Each automobile in the procession was equipped with a funeral flag, and each automobile had been instructed to use their headlights while in procession. According to Pandora Cooper's testimony she was located somewhere around the middle of the procession (see T. E., page 13). Mrs. Cooper testified that her lights were on and in good working order, and that her automobile was equipped with a funeral flag. To the best of her recollection all other cars in the funeral were equipped likewise (see T. E., page 15). Approaching the intersection of 21st Street and Maple Street, Mrs. Cooper was traveling at approximately 20 to 25 miles per hour, and at a distance of approximately one car length from the automobile in front of her. All cars were traveling at approximately the same speed, maintaining their respective distance (see T. E., page 16). According to the testimony of Pandora Cooper, Mary Louise Irby (see T. E., page 130), Mellinee Radford (see T. E., page 135), and Addie Hayden (see T. E., page 141); all automobiles taking part in the funeral were traveling at approximately the same speed, and all cars in the procession were equipped with working headlights and funeral flags. Each of these witnesses testified that there was no unusual driving on the part of Pandora Cooper or anyone else in the funeral, and that uniform distance between each and every automobile was maintained throughout the entire distance of the procession, and further that that distance between the automobiles

was disrupted only at the time of the collision between the parties to this action. Another witness, Mr. Howard Jones, who watched the automobiles from the doorway of his business place, testified (see T. E., page 149). Mr. Jones, who was a total stranger to all parties of this action testified that all cars in the funeral were approximately the same distance from each other (see T. E., pages 151-152), and further testified that the traffic light at the intersection was red for the Maple Street traffic (see T. E., page 152). Mr. Jones further testified that he had a conversation with Mr. Dunn immediately following the accident and that Mr. Dunn stated, "I don't know what happened. My brake went out" (see T. E., page 153).

Another witness for the Plaintiff was Mary Louise Irby. Mrs. Irby was a passenger in the automobile of Pandora Cooper, while taking part in the funeral procession on March 20, 1975. Mrs. Irby was seated in the front seat on the passenger side of Pandora Cooper's automobile at the time of the collision. It was her testimony that the operation of the Cooper vehicle, and that of the other automobiles taking part in the procession, was normal (see T. E., page 132). This witness further testified that there had been no delays or separations of the Cooper vehicle from the other vehicles in the funeral (see T. E., page 133).

The testimony of Mrs. Mellinee Radford (see T. E., page 136) was much the same as had been that of Mrs. Irby. Mrs. Radford was a passenger in the Cooper automobile during the funeral procession. She was seated in the back seat of the car, at the time of the

collision. It was her testimony that the speed of the Cooper vehicle was at such a rate so as to hold her place in the procession. She further testified that at no time did Pandora Cooper attempt to pass other vehicles by pulling into the right-hand lane of the street, nor did she at any time increase her speed for any reason (see T. E., page 139).

Mrs. Addie Hayden was called as a witness for Pandora Cooper (see T. E., page 141). Addie Hayden was a participant in the same funeral, and she was operating the car immediately in front of Pandora Cooper during the funeral procession. Mrs. Hayden testified that it was her estimate that the automobiles were traveling between 20 and 25 miles per hour. She testified that she was approximately one car length behind the car in front of her during the procession. Although Mrs. Hayden had paid no attention to the automobile behind her, she did testify that she was close to the Pandora Cooper vehicle, close enough that at the time of the collision she heard a noise (see T. E., page 143). She testified that she automatically looked in her rear-view mirror and saw that Pandora had been struck by the other automobile (see T. E., page 144). Although Mrs. Hayden could not adjudge distance, she was close enough that she heard the crash of the two cars involved in the collision. She testified that she had gone through the intersection, and that she was approximately one car length ahead of Pandora Cooper.

Other evidence was tendered during the trial of this action in the Jefferson Circuit Court. Such evidence included the deposition of Milton C. Young, M.D., who

was the physician treating Pandora Cooper for the injuries received in this accident. Doctor Young had been Mrs. Cooper's personal physician for several years. His deposition indicated she had suffered from a wide variety of physical problems throughout the years, but that the injuries received in this accident were new and distinctly apart from those problems which she had had prior to March 20, 1975. It was his testimony that the care and treatment rendered by him to Pandora Cooper had cost her One Hundred Eighty-nine Dollars (\$189.00). He further testified in his depositions that she was still under his care at the time of the trial of this action (see the deposition of Dr. Milton C. Young, III, M.D.).

The Defendant, Joseph Dunn, Jr., testified that he was in route to his place of employment, at the Philip Morris Tobacco Company at the time of the collision. It was his testimony that he had turned onto Maple at the intersection of 22nd Street and Maple Street and headed east on Maple Street (see T. E., pages 161-162). Note the testimony of the Defendant that there are four lanes, including parking lanes, on Maple Street, between 21st Street and 22nd Street, and that two of those lanes, the outermost lanes, are parking lanes. Maple Street is a two-way street, while 21st Street is one-way, north. Joseph Dunn, Jr., testified that after turning onto Maple Street, he was able to see the traffic light at the corner of 21st Street and Maple Street was red. He testified that he first noticed this at about half-way into the block. He testified that he slowed his car, and at that point of about one-third of the way the light

turned green (see T. E., pages 164-165). Mr. Dunn had already testified that he was one-half the distance between 21st and 22nd Streets when he noticed that the light was red, the next words out of his mouth were that at the point of reaching one-third distance between the two intersections, he noticed the light turning green. This seems to be a contradiction. He testifies further that the light did turn green, he increased his speed, passed into the intersection, and noticed a "long yellow flag out of the corner of his right eye." This man had not seen the automobile of Pandora Cooper. He had not seen any of the other seven or eight automobiles in the funeral procession. He had not even noticed Pandora Cooper's automobile approaching the intersection from the south, until such time as the two automobiles collided in the intersection. By the very facts, as indicated by those witnesses, including the Louisville Police, Pandora Cooper's automobile was more than two-thirds into the intersection, or more specifically completely under the traffic light at the time of the collision, indicating that she had arrived there prior to the Dunn automobile (see T. E., page 167).

The Impact

The Defendant, Mr. Dunn, testified that the traffic light in question changed from red to green without ever turning to the yellow or amber warning light, he did, however, testify that there is an amber light at the intersection (see T. E., page 176). He testifies that it skipped the yellow light without ever reflecting. This seems strange indeed, especially under the circum-

stances that Pandora Cooper had testified that she noticed the light flash from green to amber just as she was entering the intersection, after her car had gone beyond the crosswalk (see T. E., page 24).

Mr. Dunn contends that he saw no cars in a funeral procession. Mr. Joseph Dunn, Jr., testified to the jury that he had driven an entire block between 22nd Street and 21st Street on Maple, without seeing even one automobile pass that intersection. We have seen and heard the testimony of Mr. Howard Jones, who testified that he stood in front of his upholstery shop, and watched the funeral pass by. We further heard the testimony of other witnesses who took part in the funeral procession. According to all the witnesses of the Plaintiff, there were no less than seven, and possibly as many as twelve automobiles taking part in the funeral procession, and yet Mr. Dunn saw not one car.

There were two witnesses for the defense. These were Charles H. Stephens (see T. E., pages 184-203), and Oleda Harriman (see T. E., pages 209-216).

Mr. Charles H. Stephens, who like Joseph Dunn, Jr., is an employee with the Philip Morris Tobacco Company. Mr. Stephens testified that he, and a lady, who turned out to be another witness for the defendant, Mrs. Oleda Harriman, were standing in the parking lot when they saw the funeral pass by heading north on Maple Street. He testified that he saw the funeral procession then two or three minutes later saw two more cars. It was Mr. Stephen's contention that Pandora Cooper was one of these two later vehicles (see T. E., page 185). He further testified that there were 200 to

300 feet separating Pandora Cooper's automobile from the car immediately ahead of her. At this point, we must keep in mind that the witness for the Plaintiff, Addie Hayden, had testified that she was driving the automobile immediately in front of Pandora Cooper, and at the time of the collision she was close enough to Pandora, to look into her rear-view mirror to see what had happened after she had heard the sound of the two automobiles colliding. Addie Hayden also testified that she was somewhat in the vicinity of the large building, which houses the restaurant on the corner of 21st and Maple Streets. This would put her not more than one to one and one-half car lengths ahead of Mrs. Cooper at the instant of the collision.

Another question arises at this point of Mr. Stephen's testimony, and that is would not the cars be further apart than 200 to 300 feet (see T. E., page 196), if the time span of two or three minutes is accurate at all?

Mr. Stephens advised that he remembered the light being red for the 21st Street traffic, he also testified that he was at a position in the parking lot, approximately thirty feet from Maple Street and approximately one hundred from 21st Street (see T. E., page 190). Mr. Stephens further testified that he was not in this automobile, but at the automobile of Oleda Harriman. He was examining her automobile because she had just purchased it, and that her automobile was facing the south, or as he put it, "away from Maple Street" (see T. E., page 192). He testified that he was standing on the driver's side of the automobile, which would have

been the eastern side, and from that position he could have looked across the top of the car toward 21st Street. He testified that he did see the general procession go past the parking lot on 21st Street, and that each automobile was equipped with a flag on the right-hand front bumper (see T. E., page 195). This man testified that approximately two or three minutes passed from the time the funeral procession had gone by, to the time when Pandora Cooper and another car following her arrived at the intersection. According to the witness of Mr. Stephens, Pandora Cooper was traveling at approximately forty-five to fifty miles per hour as she approached the intersection, and that when he first saw her she was approximately fifty feet south of the intersection. He further testified that there was another automobile behind her, possibly twenty to thirty feet.

Once again, it must be clearly recognized that Mr. Stephens testified that he was standing in the parking lot, approximately one hundred feet from 21st Street, and approximately thirty feet from Maple Street. He testified that he saw the traffic light, and was able to see that the traffic light was red, however, when questioned by the attorney for the Plaintiff, and when it was shown by diagram that from the angle at the positions thirty feet from Maple Street and one hundred feet from 21st Street the man would have indeed been viewing the Maple Street side of the traffic light. Mr. Stephens was not able to recall which side of the light he did actually see. He was only able to state, "I was just looking. I didn't pay that much attention. I was just looking at the stop light." When asked once again

about the angle from which he viewed the light, his answer was, "I was just looking at the light itself" (see T. E., page 202).

Oleda Harriman was called as a witness for the Defendant. Mrs. Harriman took the side that at the time of the accident she was in the parking lot, and verified the fact that she was visiting with Mr. Stephens in the lot, waiting for work to begin. She testified that she was parked, facing north towards Maple Street at the time of the accident and that Mr. Stephens was there at her car. She testified that she had heard a horn honk, which drew her attention to the 21st Street traffic, at that time she saw a lady run the red light (see T. E., page 212). Mrs. Harriman also testified that she had seen a funeral procession pass by earlier on that date, and that the procession had gone past approximately two or three minutes before Pandora Cooper arrived. Upon cross-examination of Oleda Harriman, she testified that her car was facing north, towards Maple Street at the time of the accident, and that she was approximately three parking spaces from the Maple Street side, and that she was in the third parking space from 21st Street. According to this testimony she would have been thirty to forty feet from Maple Street and from 21st Street (see T. E., pages 217-219).

Oleda Harriman testified that she did see a flag on Pandora Cooper's car, but that that flag was on the left front corner of the Plaintiff's car. She further testified that she did not even see that flag until Pandora Cooper was going into the intersection. She would, if that is true, have seen the flag from an angle, looking

over from the right rear fender, to the left front fender. An angle at which it would have been very difficult to see the funeral flag, considering the fact that it was no more than two feet high. Also, we must recall that Mr. Stephens, who was standing there with Oleda Harriman testified that the flag was on the right front fender of Pandora Cooper's automobile.

Mrs. Harriman testified that while she and Mr. Stephens were visiting, right at the time of the accident, he was to the rear of her automobile, and on the driver's side. This would have been fine for her, since she would have been facing 21st Street in order to talk with this man, but we must remember that he testified that Mrs. Harriman's car was facing south, and that he was on the driver's side, which would have had him facing 21st Street. One of these people did not even see the accident. We have no way of telling whether it was Mr. Stephens or Mrs. Harriman, but we know by their testimony that one of these two people had his, or her, back to the accident, and that that person did not see the red light, a green light, or anything else, but is merely relying upon the say-so of the other person. We know, from their testimony, that they were in the parking lot, but we do not know whether they were thirty feet from Maple Street and thirty feet from 21st Street, or thirty feet from Maple Street and one hundred feet from 21st Street. The angle from which the collision or the traffic light would have been viewed would vary greatly from those two locations given by the two "reliable" witnesses for the defense.

Mrs. Harriman testified that there had been at least two minutes elapse from the time that the funeral procession passed, to the time that Pandora Cooper arrived at the intersection. She further testified that she, from her position, could see approximately one block north on 21st Street, and that the cars were at least one block away from the intersection in question at the time of the collision (see T. E., page 225). We must now recall that Mr. Stephens had testified also that there had been two to three minutes elapsed from the time of the funeral procession to the time that Pandora Cooper arrived on the scene, but his estimate of distance was two to three hundred feet from Pandora's car to the car immediately in front of her (see T. E., page 186).

Once again, when considering all of the discrepancies in the testimony of the two witnesses for the defense, it must be realized that one of these people has relied entirely upon the story of the other, in order to give us a version of the facts. There are simply too many discrepancies as to time, distance, and speed to believe that both of these people saw the same automobile accident.

The attorney for the Defendant, would have liked to raise the question that there was not even a funeral procession taking place, however we have the testimony of the Plaintiff, and no less than three or four other witnesses who testified that there was indeed a funeral procession, and that it did involve no less than seven, and possibly as many as twelve automobiles. We also have testimony from these witnesses that it is common in the black community that a funeral procession will

often begin at the home of the decedent, or a member of the decedent's family, and proceed from that point to the church. In this case the funeral procession had begun at the home of a sister of the decedent and was proceeding to the Zion Baptist Church, in Louisville, Kentucky. If there is any question as to the legality of this funeral procession, it is set forth as follows in the Ordinance No. 331.25 of Louisville, Kentucky. The Ordinances states:

331.25 FUNERAL PROCESSIONS.

(a) All funeral processions shall move upon and through the public streets of the City as expeditiously as possible, with due regard to custom and traffic conditions and shall be led or piloted by the undertaker or by his duly authorized agent or representative; and upon all vehicles in the funeral procession furnished by the funeral director in charge, there shall be displayed in a conspicuous manner a purple flag or pennant furnished by the director in charge of such funeral, at least eight inches wide by twenty inches long, with the word "FUNERAL" running lengthwise in the center thereof in letters at least three inches in height, and which letters shall be in black.

(b) When a traffic signal changes to "Red" while a funeral procession is passing same, the procession shall continue moving and cross-traffic shall stop until the entire procession has passed such signal.

(c) No driver of a vehicle or bus shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as required in this section. (1958 G.O. Sec. 18-4b.)

There was a funeral procession taking place at the time of the accident, and if we will consider at all the testimony of the persons involved in the funeral, we will know that Pandora Cooper was in fact taking part in that funeral, and that she was no more than a car length in distance from the automobile of Addie Hayden. We further will realize that Mr. Joseph Dunn, Jr., was totally disregarding the traffic as it traveled north on 21st Street, and that he did in fact drive his automobile between vehicles comprising the funeral, thereby causing the collision between his automobile and that of Pandora Cooper.

In considering all the facts and circumstances involved herein, and the testimony and evidence rendered to the jury, it must be determined that the jury completely overlooked or totally ignored the testimony of the Plaintiff. That they further overlooked or ignored the discrepancies in the testimony of the witnesses for the defense, is very clear. This was a collision between a co-worker of the witnesses Stephens and Harriman, and a black, west-end female. We have a jury made up of eleven white people and one black person. We have a trial shortly after the uproar which was created in Louisville as a result of busing. We have a jury, most of which are from the south-west corner of Jefferson County. We have a jury which completely disregarded the testimony of three elderly ladies, who testified that they had been involved in the funeral.


CONCLUSION

At the time of the collision of the automobiles of the parties hereto, on March 20, 1975, the Appellant, Pandora Cooper, was in fact participating in a funeral procession, and was conducting herself in a reasonable and safe manner under the circumstances.

That the collision involving the automobiles of the parties was caused by the negligence of Joseph Dunn, Jr., and by or through no fault of the Appellant, Pandora Cooper. That the damages claimed by the Appellant, Pandora Cooper, were true and accurate.

That the judgment of the Jefferson Circuit Court be reversed, and that the case be remanded to the Jefferson Circuit Court for re-trial.

Respectfully submitted,


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