

ANA D. MAJANO,	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
MILES ANTHONY DIXON, III,	*	ANNE ARUNDEL COUNTY
Defendant	*	CASE NO.: 02-C-2004-97448 MT
* * * * *	*	* * * * *

**MOTION FOR JUDGMENT NOTWITHSTANDING
THE VERDICT OR, IN THE ALTERNATIVE, FOR A NEW TRIAL**

Miles Anthony Dixon, III, Defendant, by his undersigned counsel, hereby moves, pursuant to MD Rules 2-532 and 2-533, for judgment notwithstanding the verdict, or in the alternative, for a new trial in this matter, and as grounds therefore, states:

BACKGROUND

This case arises from an automobile accident that occurred on December 15, 2003 between vehicles being operated by Ms. Majano and Mr. Dixon. Ms. Majano filed the present action against Mr. Dixon for alleged personal injuries sustained in the accident. In her Complaint, Ms. Majano contended that she entered the intersection from Thelma Avenue on a green light and that Mr. Dixon entered the intersection from Quarterfield Road against a red light. Ms. Majano later changed her testimony in this regard.

Mr. Dixon then filed a similar Complaint against Ms. Majano, and the two matters were consolidated. The trial for this matter was held on November 3 – 4, 2005. At trial, Mr. Dixon and Ms. Majano both contended that they were traveling eastbound on Quarterfield Road and that the other was traveling northbound on Thelma Road. Mr. Dixon’s plaintiff’s case settled after trial began. The jury returned a verdict for Ms. Majano finding that Mr. Dixon was negligent.

The principal issue regarding liability was which vehicle was traveling on Quarterfield Road and which was on Thelma Road. The parties stipulated that the vehicle traveling on Quarterfield Road had a green light and the vehicle traveling on Thelma Road had a red light.

STANDARD OF REVIEW

At any time within ten days after the entry of judgment, a party may file a motion for new trial, setting forth all grounds upon which the Motion is based. MD Rule 2-533(a) & (b). As a general rule, the decision to grant or deny a motion for new trial is within the sound discretion of the trial court. *Brinand v. Denzik*, 226 Md. 287, 292, 173 A.2d 203 (1961) (citing, *Cong. School v. Roads Commission*, 218 Md. 236, 146 A.2d 558 (1958)). The trial judge's discretion extends to matters concerning juror misconduct or other such irregularity which may affect the jury. *Walker v. Hall*, 34 Md.App. 571, 591, 369 A.2d 105 (1977). The court may grant a new trial as to all or part of an action. MD Rule 2-533(c).

ARGUMENT

There are multiple bases for the Court to grant judgment in favor of Mr. Dixon. Even assuming arguendo that the Court were not to be inclined to grant judgment, a new trial is certainly warranted under the circumstances. As will be discussed in more detail below, after trial certain information became available that casts grave doubt on the integrity of the jury's verdict. This information amounts to juror misconduct that mandates that Defendant be entitled to judgment, but certainly a new trial in the very least. Each of these reasons will be discussed more fully below.

1. Juror Misconduct

After trial, Mr. Dixon's Plaintiff's counsel, Ms. Patricia Cleaveland interviewed the jurors to garner an understanding regarding their verdict. Plaintiff's counsel was also present at

this time. During this discussion, Juror Number 2, Ms. Leta L. Longo indicated that she had been an office manager of a law firm for twenty years. Juror Number 2 apparently felt that this information was sufficiently important that she shared it with counsel following trial. This information was not disclosed during voir dire.

During voir dire, each juror was sworn to fully and fairly answer the Court's questions regarding their qualifications to serve. As part of the Court's voir dire, the following question was posed to the jury:

Is any member of the panel or any immediate family member an attorney, paralegal, legal secretary, court employee or otherwise connected, by either employment or profession, with the legal or judicial system?

Juror Number 2 never responded to this question. In contrast, Juror Number 3, Walter J. Sylva, Jr., indicated that his wife was a government attorney employed by the Customs Department and Border Protection.

Juror Number 2 engaged in misconduct when she failed to disclose her employment history during voir dire. Had she identified this employment, counsel would have been in a position to further question her regarding whether this employment would make her biased in any way for any party. Clearly, Juror number 2 should have disclosed her affiliation with the firm such that counsel would have been permitted to question whether she was employed by either a Plaintiff or Defendant's personal injury law firm. It is also questionable whether this juror would have been properly qualified to serve if she would have knowledge of open cases in Anne Arundel County from this firm, such that she may have had a particular bias towards certain judges on the bench or certain types of practices, *i.e.* defense attorneys. Because she failed to identify herself during Voir Dire, Defendant was precluded from asking Juror Number 2 these questions.

Further, Juror Number 2 indicated that she used her experience as an office manager of a law firm during deliberations. She informed the jurors during deliberation that Complaints consisted of boilerplate language where Ms. Majano would not have known what was in the Complaint and to therefore disregard the language in the Complaint. *See Exhibit - Affidavit from Patricia Cleveland, Esquire*. Juror Number 2 also instructed the jury that Answers to Interrogatories are not significant because the attorney typically instructs the Plaintiff to sign the Answers without review. *Id.*

“The relevant test is: whether there is a probability of prejudice from the juror misconduct.” *Harford Sands, Inc. v. Groft*, 320 Md. 136, 143 (1990). When ruling on a motion for a new trial in relation to juror misconduct, it is the function of the trial judge to evaluate the degree of probable prejudice and whether it justifies a new trial. *Wernsing v. General Motors Corporation et. al.*, 298 Md. 406,420 (1984). In this case, Juror Number two’s misconduct certainly prejudiced Mr. Dixon.

Juror Number 2 was able to hold herself out as an apparent authority based on her years of experience as an office manager when she stated that certain vital pieces of evidence should be ignored. In a case such as this, the jury was to consider the credibility of the parties, including whether to consider whether the witness’ testimony was consistent. The jury was presented with vital impeachment evidence, from Ms. Majano’s Complaint and her Answers to Interrogatories, that she was driving on Thelma Road in direct contrast to her trial testimony. In telling the jury that Plaintiff should not be held to her sworn statements in her discovery responses or to the facts that were pled in her Complaint, Juror Number 2 impeded the process by instructing the jury to ignore impeachment evidence. Clearly, this action prejudiced Mr. Dixon’s case.

2. **Plaintiff failed to meet her burden of proof in her case-in-chief.**¹

Plaintiff presented evidence during her case in chief that supports two contradictory and conflicting conclusions. During Plaintiff's case, Plaintiff testified that she was driving on Quarterfield Road crossing the intersection on a green light, when Mr. Dixon ran the red light intersecting with Thelma Road and hit her vehicle. Plaintiff then proceeded to call Mr. Dixon who testified that he was driving on Quarterfield Road crossing the intersection on a green light when Ms. Majano ran the red light intersecting with Thelma Road and hit his vehicle. Plaintiff also presented testimony from Mr. Mitchell, which indicated that Plaintiff entered the intersection from Thelma Avenue when Quarterfield Road had a green light. Essentially, Plaintiff's case-in-chief presented conflicting evidence as to the existence of negligence for each party. Taken together, either version was equally likely to have occurred. Under the circumstances, Plaintiff failed to prove that one version was more likely so than another, thus failing to meet her burden of proof. As such, Plaintiff failed to meet her burden.

Plaintiff's burden was to establish both negligence and its causal relationship to the accident. *See Dennard v. Green*, 335 Md. 305, 321 (1994). In *Dennard*, the Plaintiff was a passenger in a vehicle that was involved in an automobile accident who sued both drivers. During trial, she presented evidence in her case-in-chief that both drivers could have been responsible for the accident. The jury determined that Plaintiff failed to meet her burden in establishing the proximate cause of the accident. *Dennard v. Green* 335 Md. 305, 322 (1994) (citing *Grue et. al. v. Collins*, 237 Md. 150,160 (1964); *State v. Brandau*, 176 Md. 584, 589 (1939)).

¹ At the conclusion of Plaintiff's case in chief, counsel moved for judgment as a matter of law based on this conflicting evidence and Plaintiff's failure to meet her burden of proof. After allowing Plaintiff to re-open her case in chief, the Motion was made yet again. The Court held that Plaintiff had met her burden, however slight the evidence. Defendant made the Motion for Judgment again at the conclusion of the case. At this point, it was clear

In her case in chief, she presented evidence that both parties were entitled to a verdict in their favor. Under either version of the accident, there was only one conclusion: whichever driver was on Quarterfield Road was not responsible. Having presented evidence of two equally likely scenarios, Plaintiff failed to meet her burden of proof.

3. Jury verdict was clearly erroneous.²

Taken in a light most favorable to the Plaintiff, there was only one witness, Cynthia Herrick, that actually supported that Defendant was responsible for the accident.³ Ms. Herrick testified that she was traveling behind the Plaintiff when the accident happened and that the other vehicle came from their right through the intersection with Thelma Avenue.⁴ She testified that she witnessed the vehicle from Thelma Avenue strike the Plaintiff's vehicle on the passenger side. Notwithstanding her testimony, there is no dispute that there was no damage to the Plaintiff's vehicle on the passenger side that is consistent with her description of the accident. Joint Exhibits 15 through 19 clearly and accurately depict the damage to the Plaintiff's vehicle, which was damaged on the driver's side in the impact with Mr. Dixon's vehicle. When reviewing the photographs, there is only one conclusion that can be reached: the Plaintiff entered the intersection from the direction of Thelma Avenue, thereby causing the accident. The Court cannot ignore this obvious, clear and unambiguous physical evidence that was admitted as a Joint Exhibit into evidence.

that the only witness that supported that the Plaintiff was entitled to judgment was Ms. Herrick. It was equally clear, based on the physical evidence in the Joint Exhibits, that Ms. Herrick was incorrect in her version of the accident.

² As stated above, Defendant made Motions for Judgment at the conclusion of Plaintiff's case in chief as well as at the conclusion of the case. Both Motions were erroneously denied.

³ Plaintiff's other witnesses were herself (no recollection of the direction from which Mr. Dixon's vehicle entered the intersection), Mr. Lesbi Cruz (did not witness the accident), Mr. Mitchell (Plaintiff's vehicle entered the intersection from Thelma Avenue through a red light), and Mr. Dixon (Plaintiff's vehicle entered the intersection from Thelma Avenue through a red light). As Joint Exhibits, all of the photographs were admitted into evidence. Plaintiff did not offer any other exhibits or witnesses in support of her Complaint.

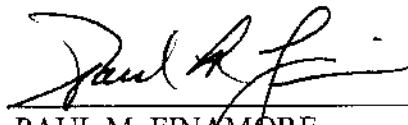
⁴ Other than having the vehicles reversed, all of the details that Ms. Herrick recalled from the accident were consistent with Mr. Dixon's version of how the accident happened, including that they had been stopped at the

The jury verdict was clearly erroneous. The physical evidence presented provides only one conclusion. Plaintiff's vehicle sustained clear damage to the driver's side, while Mr. Dixon's vehicle sustained damage from the passenger side across the front. This evidence is only consistent with Ms. Majano entering the intersection from Mr. Dixon's right in the direction of Thelma Avenue. It is undisputed that whoever was driving on Quarterfield Road had the green light. As such, the verdict was clearly erroneous, and judgment should be entered in Mr. Dixon's favor as a matter of law.

CONCLUSION

For all of the aforementioned reasons, Defendant is entitled to judgment as a matter of law. Plaintiff failed to meet her burden in her case-in chief and the physical evidence presented by Defendant provided only one logical conclusion for the facts in dispute, that Plaintiff was responsible for this accident. Assuming arguendo that the Court were not inclined to grant Mr. Dixon judgment as a matter of law, the existence of juror misconduct greatly prejudiced Defendant's case and certainly entitled him to a new trial before a fair and impartial jury.

WHEREFORE, Defendant Miles Dixon, III requests that this Honorable Court set aside the jury's verdict in favor of the Plaintiff and/or grant Defendant a new trial, and grant such other relief as the Court may deem appropriate.



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traffic light immediately preceding the intersection where the accident happened. This was a fact that Ms. Majano denied throughout this matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November, 2005, copies of Defendant's Motion For Judgment Notwithstanding The Verdict Or, In The Alternative, For A New Trial and proposed Order were mailed, first-class, postage pre-paid, to:

J. Matthew Bodman, Esquire
Miller & Zois LLC
7310 Ritchie Highway
Glen Burnie, MD 21061

Paul M. Finamore
PAUL M. FINAMORE

ANA D. MAJANO,

* IN THE

Plaintiff

* CIRCUIT COURT

v.

* FOR

MILES ANTHONY DIXON, III,

* ANNE ARUNDEL COUNTY

Defendant

* CASE NO.: 02-C-2004-97448 MT

* * * * *

AFFIDAVIT OF PATRICIA A. CLEVELAND

I, Patricia A. Cleaveland, Esquire, am competent to testify as a witness in this matter, am over the age of 18 years, and have personal knowledge of the facts as follows:

1. I am a member of the Maryland Bar and employed with Alperstein & Diener, PA located at 200 E. Lexington Street, Suite 605-610, Baltimore, MD 21202.

2. I was present at the trial for this matter held on November 3-4, 2005.

3. After the trial, I talked to Juror Number Two about her impression of the trial and the evidence presented. Plaintiff's counsel was also present during this discussion.

4. Juror Number Two stated that she was an office manager at a law firm for twenty years.

5. Juror Number Two stated that she knew that Pleadings are generated and filed quickly.

6. Juror Number Two stated that Interrogatories were paperwork that was handed to the Plaintiff to sign without review.

7. Juror Number Two stated that Latinos are persons who live in the same neighborhoods.

8. Juror Number Two stated that she shared all of this information with the other

EXHIBIT
1

Jurors during deliberation.

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY AND UPON
PERSONAL KNOWLEDGE THAT THE FACTS CONTAINED HEREIN ARE TRUE.

Nov. 16, 2005
Date

Patricia A. Cleaveland
Patricia A. Cleaveland, Esquire

ANA D. MAJANO,

Plaintiff

v.

MILES ANTHONY DIXON, III,

Defendant

* IN THE
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* FOR
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* CASE NO.: 02-C-2004-97448 MT

* * * * *

ORDER

UPON CONSIDERATION of Defendant's Motion For Judgment Notwithstanding The Verdict Or, In The Alternative, For A New Trial, and any opposition thereto filed, it is on this _____ day of _____, 2005, by the Circuit Court for Anne Arundel County

ORDERED, that the Motion be and is hereby GRANTED, and it is further

ORDERED, the jury verdict entered on November 4, 2005 in favor of the Plaintiff be and is hereby VACATED, and it is further

ORDERED, that judgment be entered in favor of Miles Anthony Dixon, III.

JUDGE,
Circuit Court for Anne Arundel County