

SUPREME COURT OF LOUISIANA

No. 99-C-3247

DIANA N. DEVILLE

Versus

CITY OF VILLE PLATTE, AND STATE OF LOUISIANA, THROUGH
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

Consolidated with

SCOTT A. MANUEL ET UX

Versus

DIANA N. DEVILLE ET AL.

LEMMON, J., Dissenting

In Lochbaum v. Bowman, 353 So. 2d 379 (La.App. 4th Cir. 1977), I wrote a decision exonerating the Department of Transportation and Development under factual circumstances similar to those in the present case. Because the plaintiff in that case knew the traffic light was malfunctioning and failed to exercise reasonable care under the circumstances, his contributory negligence barred his recovery.

In the present case, the advent of comparative fault dictates a different result under an appropriate duty-risk analysis, and I agree with the lower courts that DOTD bears some degree of overall fault.

I disagree, however, with recalling the grant of certiorari rather than examining the overall allocation of fault.

Each driver knew the light was malfunctioning and should have entered the essentially uncontrolled intersection by stopping and proceeding with caution. Under these circumstances, the degree of fault of each driver was much more than ten percent and was at least equal to the fault of DOTD. Despite the smallness of the amount of damages, I would reallocate a percentage of fault to DOTD at much less

than sixty percent.