

SUPREME COURT OF LOUISIANA

No. 96-C-1690
Consolidated with
No. 96-C-1720

Mr. & Mrs. Michael Shephard, On Behalf of Their
Deceased Minor Child, Matthew E. Shephard

Versus

Alfred L. Scheeler, et. al.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
Fourth CIRCUIT, PARISH OF St. Bernard, STATE OF LOUISIANA

JOHNSON, Justice, Dissenting

In my opinion, the evidence established that weather conditions and speed were the substantial factors in this accident.

The location of the parish maintenance yard and the position of the dump truck on the shoulder of the roadway were not substantial factors in causing this accident.

La. R. S. 32:296 specifically provides for the temporary stoppage of public utility vehicles off roadways. Therefore, the St. Bernard Parish dump truck was legally stopped at the time of the accident. The maintenance yard was also not the cause of the accident. A fence located 30 feet from the paved portion of the highway does not create an unreasonable risk of harm. To say that the occupation of the shoulder denied Scheeler the opportunity to regain control of his vehicle is pure speculation.

It was pouring rain when the accident occurred. Scheeler testified that a puddle

1-2 inches deep caused his car to spin out of control. Other testimony does not substantiate that a puddle that deep existed. The photographs taken at the scene of the accident by State Trooper Berry do not reveal water on the roadway in the quantity described by Scheeler. Cheryl Urbeso, an eyewitness, testified that the roads were wet but there was no standing water on the road. Although it was raining, other drivers were able to safely navigate this highway. Wallace Couture, the driver of the St. Bernard Parish dump truck, testified that there were puddles all over the highway. Yet, he was able to negotiate the highway in question.

James Major, an eyewitness to the accident, testified that Scheeler “came flying past” him and was going faster than 65 miles per hour. This driver was also able to travel safely along this highway. At 45 miles per hour, Cheryl Urbeso was able to navigate safely upon this highway. Scheeler admittedly was going at least 50 miles per hour. State Trooper Berry’s report attributed the accident to the inexperience of the driver and his excessive speed. A more experienced driver would have reduced his speed under these driving conditions.

From all the evidence, the Scheeler vehicle was already out of control prior to hitting the Parish dump truck. I would hold the driver 100% liable for this accident.