

Atlanta Attorneys Rely on Google Earth, YouTube for Evidence in \$6M Faulty Guardrail Settlement

When a mother fatally fell over a guardrail at an Atlanta train station in February 2020, an initial police report was used as a basis to charge her boyfriend with murder for purportedly pushing her off an overpass. However, attorneys representing the woman's daughter knew there was more to the story.

Gabe Banks and Sam Weaver of personal injury law firm Banks Weaver in Atlanta rolled up their sleeves to dig into evidence to show that Yolanda Jackson's death was the result of a faulty guardrail at the Lakewood Metropolitan Atlanta Rapid Transit Authority (MARTA) station in Atlanta. The railing broke after deteriorating for years, but key evidence was not disclosed during the discovery process of a complex wrongful-death case against the public transportation operator. Jackson's daughter, Jaqkia Dixon, pursued claims against MARTA.

After Jackson's death, MARTA allegedly made repairs to its railings. However, pieces of the railings and "shoes" weren't preserved for the welding work to be examined by experts. The plaintiffs attorneys sought other avenues to build their case against the transport operator by sorting through a maze of open records, sanctions motions, third-party defendants, images and a video.

On the eve of a Fulton County Superior Court trial on Dec. 12, the parties agreed to a \$6 million settlement.

"This was a case about a faulty rail, and it was on MARTA's property, and it shouldn't have been in that condition," Banks said. "That would apply to any business; if you owned the property, if you're the one maintaining the land, doing the things, you have independent contractors coming on and doing projects and other various things to keep the place up, ultimately the duty comes back to you."

In February 2020, Jackson and her boyfriend Adonis Heard walked toward a MARTA train to head home. Surveillance video showed Heard shove Jackson to the ground at the bottom of a staircase. However, it did not show the couple falling over a railing far above the ground floor several minutes later, the plaintiffs attorneys said.

A report by MARTA's police department stated that Jackson was pushed over the railing. That report was used as the basis for the murder charge against Heard, while a supplemental report stated that no environmental circumstances contributed to the fall. MARTA claimed that no repairs had been completed on the railing since 2009.

"Had we just read the initial police report, we may have declined accepting this case from the inception based upon the fact that the police report reflected that he pushed her over the railing," Banks told the Daily Report. "Had we simply stopped with that investigation and

gotten the police report, the reality is that we might not have brought suit or accepted the case for prosecution."

Cooper & Co. General Contractors, which performed repair work on the railing in 2009, argued the railing's weld was in poor shape, referring to it as a "bubble gum weld" that would not pass an inspection. The general contractor, represented by Conyers-based attorney Derek A. Mendicino, argued it didn't leave the job in that condition and located a YouTube video and historical Google Earth images to uncover the deterioration of the railing.

A "sister rail" revealed a poor welding job covered in paint to bind the "shoes" and the vertical post but MARTA did not disclose this evidence, according to Banks and Weaver.

Putting some of the puzzle pieces together, Chip George and Will Owens, of Conley Griggs Partin in Atlanta, submitted an open records request to track down a rewelding work order, showing work had been done on the railing in 2016, dispelling MARTA's claims that it was last completed in 2009.

Collectively, the attorneys determined that the guardrail in Jackson's case had two inches of exposed metal, revealing that its base had been rewelded and that the railing failed due to an improperly fused weld at the connecting point of the base and its vertical post, the plaintiffs attorneys argued.

The plaintiff requested sanctions against the transportation entity.

"Without the sister rail and without the base of our rail, we really couldn't defend some of those claims," Weaver said. "We would've been able to use evidence from testing our base and from testing that sister rail to actually rebut some of their primary defenses, so it was an appropriate remedy when you're talking about spoliation."

In its pretrial briefs, MARTA claimed it was "unequivocally clear" that it did not intentionally withhold evidence.

"It goes without saying all of MARTA's actions to rectify its inadvertently incorrect discovery responses and replacement of the shoes and sister railing have all timely occurred during the discovery stage," the opposition motion said.

In March, Special Master Judge Randy Rich of the Fulton County Superior Court granted the sanctions order, finding that although MARTA's failure to disclose the rewelding was inadvertent, it caused the plaintiffs to pursue discovery by other means and triggered unnecessary attorney fees.

"Some of the most important things that we would've shown at trial really were things that didn't come from production by the other side, via the actual discovery process," Weaver said. "That's the takeaway: use your Google Earth, use your images, your social media, open records requests, if they're subject to anything else they have to do like public reporting, use those tools because it could be a critical finding in a case."

"When you're litigating against entities that are subject to open records requests, you need to take advantage of that both presuit and during litigation, because you never know what you will discover," Banks added. "Trust your instincts. If at some point during the discovery process your instincts tell you that there's more out there, you should strategically use the Open Records Request Act in an effort to leave no stone unturned.

"In this case it turned out that when we fully investigated it and didn't take it at face value, we were able to get the clients justice and it was a meaningful result that changed their lives," he said.

Banks Weaver was joined by co-counsel Anna Cross and Meredith Kincaid of Cross Kincaid in Decatur, Georgia. Heard's criminal defense attorney, Bruce Harvey, also joined in collaborating on the civil case.

Scott Masterson, managing partner of Lewis Brisbois Bisgaard & Smith in Atlanta, represented MARTA and did not respond for comment.