



Injured moped driver entitled to new trial

Jennifer Nelson December 31, 2015

The Indiana Court of Appeals reversed a jury ruling in favor of a motorcyclist who collided with a moped driver trying to seek shelter before a rainstorm and ordered a new trial.

Carl Summerhill was riding his moped when he said he saw storm clouds and decided to turn left into a parking lot and take shelter. As he turned, his moped collided with Craig Klauer's motorcycle, who was trying to pass Summerhill on the left. The impact caused Summerhill to end up on the ground, severely injuring his hip.

Summerhill sued Klauer in 2012, alleging that he had failed to maintain reasonable care and control in operating his motorcycle, he was following too closely and had driven at an unsafe speed. Summerhill's accident reconstructionist was not allowed to testify after Klauer objected, but Klauer's accident reconstructionist was allowed to testify. Klauer maintained Summerhill turned suddenly and had his right turn signal on. The jury returned a verdict in favor of Klauer.

The Court of Appeals reversed in *Carl Summerhill v. Craig Klauer*, 64A03-1503-CT-98, finding the trial court erred in granting Klauer's motion to exclude the testimony of Summerhill's accident reconstructionist, Timothy Spencer.

"Contrary to Klauer's assertion, Rule 702 does not dictate that an expert's opinion must be excluded in any case where there is evidence in the record that tends to contradict that opinion. Opposing parties can be expected to present conflicting expert testimony when advocating their respective positions and Rule 702 contains no general even-handedness requirement. Accident reconstruction commonly relies on witness statements and Klauer was free to make the jury aware of this and probe the accuracy of Spencer's conclusions insofar as they relied on those statements on cross-examination. Furthermore, all of the evidence Spencer relied on in reaching his conclusions was before the jury," Judge John Baker wrote. "Simply put, Spencer was qualified to reconstruct the accident and give his opinion as to its cause, his opinion would have been helpful to the jury, and the exclusion of his testimony undoubtedly prejudiced Summerhill's case."

The Court of Appeals also decided that at the retrial, the court should reconsider whether to admit Summerhill's evidence of 20-year-old past convictions of Klauer's to show his character for truthfulness; and that the trial court erred in excluding testimony of a doctor who would have testified as to Summerhill's likelihood of developing post-traumatic arthritis.