2015 IL App (2d) 141237-U
No. 2-14-1237
Order filed October 21, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JEREMY K. SMITH,	)	Appeal from the Circuit Court
	)	of McHenry County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08-LA-15
	)	
STAN J. LATOS,	)	
	)	
Defendant-Appellee	)	Honorable
	)	Maureen P. McIntyre,
(Autoserve, Inc., Defendant).	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in admitting expert accident-reconstruction testimony, as the eyewitness testimony, to the extent that it existed at all, was inconclusive as to plaintiff's speed, defendant's location, and how the accident occurred, such that the expert testimony enabled the jury to find the facts.

¶ 2 On September 18, 2005, which was a clear day, plaintiff, Jeremy K. Smith, was injured when the motorcycle he was riding on a curvy highway in Wisconsin collided with a Ford F150 truck driven by defendant, Stan J. Latos. Plaintiff sued defendant for damages sustained in the

accident,[1] and, before trial, plaintiff moved to bar defendant's accident-reconstruction expert, Robert Krenz, from testifying. The trial court denied that motion, and the cause proceeded with a jury trial. After the jury found for defendant, plaintiff filed a motion for a new trial, arguing that the court erred in allowing Krenz to testify. The trial court denied the motion, and this timely appeal followed.[2] At issue is whether the trial court abused its discretion in allowing Krenz to testify. We determine that it did not. Accordingly, we affirm.

¶ 3 Before trial, plaintiff filed a motion *in limine* to bar Krenz from testifying at trial. Plaintiff claimed that Krenz's testimony was not needed, as Krenz was hired several years after the accident, eyewitnesses to the accident were going to testify, and Krenz's expected testimony did not involve any issue beyond the knowledge of the average juror. At the initial hearing, the court ruled that, if the expert's opinion was based more on physical evidence than on what witnesses stated during depositions, it would be admitted. Later, after defense counsel advised the court that Krenz relied on the physical evidence collected at the scene and not on the

[1] Plaintiff originally filed this action against defendant and Autoserve, Inc. By agreement, Autoserve was voluntarily dismissed without prejudice.

[2] The trial court denied plaintiff's posttrial motion on November 13, 2014, and plaintiff filed his notice of appeal on December 15, 2014, 32 days later. Because December 15, 2014, was a Monday, plaintiff's notice of appeal was timely. See Ill. S. Ct. R. 303(a) (eff. May 30, 2008) (notice of appeal must be filed within 30 days after final judgment); 5 ILCS 70/1.11 (West 2012) (providing how to compute time within which to file notice of appeal when, among other things, the final day is a Saturday, Sunday, or holiday); *In re Estate of Malloy*, 96 Ill. App. 3d 1020, 1025 (1981) (notice of appeal filed 32 days after final judgment was timely, as preceding days were Sunday and a holiday).

deposition testimony of the witnesses, the court denied the motion, noting that on what the expert relied went to the weight, not the admissibility, of his testimony.

¶ 4 At trial, the following people, in addition to plaintiff and defendant, testified: two motorcyclists who were riding with plaintiff on the day of the accident, the three passengers in defendant's truck, a police officer who arrived at the scene, and Krenz. Jason Ludwig, one of the motorcyclists and plaintiff's friend, testified that he was driving east on a long sweeping curve of County Trunk Highway B (Highway B) going 40 to 60 miles per hour[3] and was 30 to 50 feet behind plaintiff, who was going 50 to 60 miles per hour, when, "[t]o the best [that Ludwig could tell]," he saw defendant, who was parked on the shoulder of the road, pull into the road to make a U-turn. At that point, plaintiff's motorcycle hit the back of defendant's truck, and plaintiff was thrown from his motorcycle. Ludwig stopped his motorcycle and went to plaintiff's aid. Plaintiff testified that, as he was driving the speed limit, which he believed was 55 miles per hour, he was ahead of all the other riders and did not know where they were behind him when the accident happened. Plaintiff remembered seeing defendant's truck parked on the side of the road or slowly moving from that position, but he did not remember seeing the truck pull out in front of him or make a U-turn. Rather, plaintiff remembered seeing only a red flash and then waking up in the hospital.

¶ 5 Defendant and his three passengers testified that defendant, who was driving east on Highway B, missed his turn off of the highway, slowed down to turn into a driveway on the

[3] On direct examination, Ludwig stated that he was traveling 50 to 55 miles per hour. On cross-examination, Ludwig first testified that he was driving 40 to 55 miles per hour when he saw defendant's truck, but then he asserted that he was driving 50 to 60 miles per hour in the curve.

opposite side of the road, and was turning slowly when plaintiff's motorcycle collided with defendant's truck. Neither defendant nor any of his passengers heard a motorcycle approaching before the accident happened. Defendant testified that he looked in his rearview mirror before turning and did not see plaintiff or anyone else on the road, and defendant and the front-seat passenger indicated that defendant turned on his left-turn signal before he began to turn into the driveway. Defendant and his three passengers denied that defendant was parked on the side of the road, that he was making a U-turn, and that Ludwig or any other motorcyclists were at the scene of the accident right after it happened. Rather, defendant and his three passengers testified that Ludwig and other motorcyclists arrived several minutes later, a contention that the testimony of the third motorcyclist and the police officer supported.[4]

[4] Jack Rusin, the other motorcyclist who testified at trial, indicated that he did not see the accident happen, and he testified on direct examination that plaintiff passed a vehicle on the road while the other riders, including Ludwig, remained behind plaintiff and this vehicle. However, Rusin testified on cross-examination that it was possible that Ludwig was riding with plaintiff when the accident occurred. The police officer asserted that, when he arrived at the scene, he asked the motorcyclists standing around plaintiff if they had witnessed the accident, and none of them said that they had. Moreover, no motorcyclist contacted the officer after the accident to give him details about what, if anything, they saw. The officer, who confirmed defendant's version of what occurred and tried unsuccessfully to contact plaintiff to learn what he knew, testified that he would have written in his report the names of any motorcyclists who had witnessed the accident. On cross-examination, the officer stated that it was possible that he missed some witnesses at the scene.

¶ 6 Krenz testified that he is a licensed professional engineer in Wisconsin, that he owns his own engineering consulting firm, and that his business uses engineering to analyze and answer questions about motor-vehicle accidents. Krenz indicated that he was retained by defendant six years after the accident, which is not unusual. In this case, Krenz looked at police investigative materials; photographs taken at the scene, including pictures of the condition and location of the truck and the motorcycle after the accident and the truck's tire marks on the road; measurements others had taken at the scene; measurements Krenz took at the location of the accident; video taken from the investigating officer's squad car; and transcripts of witnesses' depositions. With regard to the depositions, Krenz clarified that he used the depositions only as a comparison to the conclusions he reached after examining the physical evidence. That is, rather than relying on what witnesses said, Krenz relied on the physical evidence.

¶ 7 From the evidence, Krenz determined that plaintiff's motorcycle was traveling 57 to 60 miles per hour, at a minimum, when it struck defendant's truck. Krenz reached this conclusion after examining the distance that the motorcycle and plaintiff traveled after the collision. Or, to put it another way, Krenz considered the energy absorbed or dissipated by the motorcycle following impact. Krenz also determined that defendant was turning into the driveway and not making a U-turn when plaintiff's motorcycle hit defendant's truck. In reaching that conclusion, Krenz looked at where the truck was found after impact and examined the tire marks left by the truck. Krenz noted that the fact that the truck continued to turn into the driveway after the collision indicated that defendant was turning into the driveway and not making a U-turn, which would have required a tighter turn. Nevertheless, Krenz stated that, based on the evidence, it is possible that defendant was turning into the driveway from the shoulder of the road as opposed to the eastbound lane of Highway B. Concerning the speed of the truck, although Krenz could

not give a definite range, he theorized that defendant was driving slowly, which would be consistent with the truck making a left turn. Krenz reached that conclusion based on the fact that the truck did not travel a great distance into the driveway after it was hit.

¶ 8 The jury found in favor of defendant. Plaintiff moved for a new trial, arguing that the trial court erred in allowing Krenz to testify. The trial court denied the motion, and plaintiff appealed.

¶ 9 On appeal, plaintiff takes issue with the fact that Krenz was allowed to give his opinion on the speed that plaintiff's motorcycle was traveling when he hit the back of defendant's truck and on whether defendant was turning left into the driveway or making a U-turn. Plaintiff claims that, because Krenz did not offer any "science" to back up his opinions, his opinions were not beyond the knowledge of the average juror, and, thus, Krenz's testimony should not have been allowed.

¶ 10 "Generally, the opinion testimony of an expert is admissible if the expert is qualified by knowledge, skill, experience, training, or education in a field that has 'at least a modicum of reliability' and the testimony would assist the jury in understanding the evidence." *Turner v. Williams*, 326 Ill. App. 3d 541, 552 (2001) (quoting *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 799 (1999)). See also Illinois Rule of Evidence 702 (Ill. R. Evid. 702 (eff. Jan. 1, 2011)). "However, an expert's opinion is only as valid as the reasons for the opinion." *Turner*, 326 Ill. App. 3d at 552-53. "Thus, the party calling an expert witness must lay a foundation sufficient to establish that the information upon which the expert bases his opinion is reliable." *Id.* at 553.

¶ 11 "For reconstruction testimony to be admissible, there must be sufficient data about the accident in evidence to provide a reasonable basis for the expert's opinion." *Id.* "The existence

of eyewitness testimony is not a conclusive factor in determining whether accident reconstruction testimony is admissible." *Id.* Rather, "the court must determine whether, in addition to eyewitness testimony, an expert's reconstruction testimony would assist the jury in understanding scientific principles and enable it to make factual determinations." *Id.*

¶ 12 "The admission of an expert's testimony lies with the sound discretion of the trial court." *Id.* "The trial court's ruling regarding the admissibility of an expert's opinion will be reversed when the error was prejudicial or the result of the trial was materially affected." *Id.*

¶ 13 Here, we conclude that the trial court did not abuse its discretion when it allowed Krenz to testify at trial. First, the evidence revealed that there might very well have been no one who witnessed the accident. That is, although Ludwig testified that he saw it, no other evidence confirmed this. Indeed, there was ample evidence contradicting such a contention. Not only did all of defendant's witnesses indicate that neither Ludwig nor any other motorcyclist was traveling close to plaintiff, but the inference to draw from the testimony of both Rusin and the police officer is that Ludwig did not witness what happened. In such a case, testimony from an expert reconstructionist is more valuable. See *Coffey v. Hancock*, 122 Ill. App. 3d 442, 449 (1984) ("[A] stronger case is presented for the admission of [the] reconstruction expert's testimony" when the defendant was the only eyewitness to what happened).

¶ 14 Second, assuming that Ludwig saw the accident, he could not affirmatively confirm what speed plaintiff was going. While he did testify that plaintiff was going 50 to 60 miles per hour, and plaintiff testified that he was traveling 55 miles per hour, Ludwig also testified that, when he was traveling with plaintiff, he was going anywhere from 40 to 60 miles per hour. Although defendant and his passengers provided no testimony indicating what speed plaintiff was going when he collided with defendant's truck, they testified that they did not see or hear plaintiff or

any other motorcycle before the collision, which suggests that plaintiff might have been going much faster than 55 miles per hour or so. Expert testimony is not needed in cases where multiple eyewitnesses, some of whom have no interest in the outcome of the case, testify to a range within which a party was driving. See, *e.g.*, *Watkins v. Schmitt*, 172 Ill. 2d 193, 195, 207 (1996) (expert testimony regarding the speed of the defendant's cement truck was properly excluded, where three witnesses, two of whom were disinterested eyewitnesses, testified that the defendant was traveling 20 to 35 miles per hour). This is not one of those cases.

¶ 15 Third, while plaintiff testified that he saw defendant's truck on the side of the road, he was unsure of whether the truck was parked on the side of the road or was slowly moving, and he was unable to confirm whether defendant pulled out in front of him. While Ludwig confirmed plaintiff's testimony that defendant's truck was on the side of the road, he was unsure about whether defendant was making a U-turn or a left turn. In contrast, defendant and all of his passengers testified that he was not making a U-turn but was making a left turn into a nearby driveway. Given this conflicting testimony on both plaintiff's speed and how defendant turned his truck, we cannot conclude that the trial court abused its discretion when it allowed Krenz to testify at trial. See, *e.g.*, *Turner*, 326 Ill. App. 3d at 553 (expert testimony regarding speed of vehicles involved in crash not an abuse of discretion where conflicting testimony of witnesses was that the defendant was going 45 miles per hour, 40 miles per hour, 35 to 40 miles per hour, or " 'pretty fast' "); *Morrison v. Reckamp*, 294 Ill. App. 3d 1015, 1020-21 (1998) (expert testimony properly admitted where evidence was conflicting on how tractor-trailer turned off of roadway).

¶ 16 Moreover, Krenz's testimony "assist[ed] the jury in understanding scientific principles and enable[d] it to make factual determinations." *Turner*, 326 Ill. App. 3d at 553. Although

Krenz did not go into detail about the precise mathematical formulas he used to deduce plaintiff's speed or the way that defendant turned, the evidence was clear that he relied on engineering principles in formulating his opinions. That is, Krenz testified that he considered how energy is absorbed and dissipated when objects collide. We believe that how energy affects objects in motion is beyond the knowledge of the average juror. Given this and the conflicting testimony regarding whether anyone witnessed the accident, the speed of plaintiff's motorcycle at the time of the accident, the location of defendant's truck prior to the accident, and how the accident happened, the trial court did not abuse its discretion in allowing Krenz to testify, as the conclusions he reached after analyzing the physical evidence shed light on what transpired.

¶ 17 Relying on *Misch v. Meadows Mennonite Home*, 114 Ill. App. 3d 792 (1983), plaintiff claims that Krenz's testimony should have been excluded. We believe that plaintiff's reliance on *Misch* is misplaced. There, there was no conflicting eyewitness testimony regarding how the accident happened. *Id.* at 799-800. In light of that, the court in *Misch* noted that "[r]econstruction testimony cannot be used solely to contradict the testimony of eyewitnesses and the physical evidence." *Id.* at 800. Here, unlike in *Misch*, Krenz's testimony did not contradict nonconflicting eyewitness testimony. Rather, his testimony helped resolve the conflicts in the witnesses' testimony so that the jury could make factual determinations, which is proper. See *Turner*, 326 Ill. App. 3d at 553.

¶ 18 Given the above, the judgment of the circuit court of McHenry County is affirmed.

¶ 19 Affirmed.