Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **10th day of May, 2024** are as follows:

BY McCallum, J.:

2023-C-01107 *SCOTT WESLEY EASTMAN, ET UX. VS. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ET AL.* (Parish of Calcasieu)

REVERSED; TRIAL COURT JUDGMENT VACATED; VERDICT OF THE JURY REINSTATED. SEE OPINION.

Hughes, J., dissents and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2023-C-01107

SCOTT WESLEY EASTMAN, ET UX.

VS.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Calcasieu

McCALLUM, J.

While judges are learned in the law, the wisdom of a single expert is often less than the collective wisdom of a diverse and independent group of individuals.[1] Trial by jury is understood as relying, at least in part, on this "wisdom of the crowd." This point, and others, underlies the great deference our Civil law system affords to jury decisions. However, our system also recognizes that juries are not infallible and accordingly provides corrective procedures where appropriate.

We granted certiorari in this case to determine whether the court of appeal properly affirmed the trial court's grant of a motion for judgment notwithstanding the verdict ("JNOV") as to liability and damages. Our jurisprudence has established a rigorous standard for granting a JNOV. *Bombardier v. Clasen*, 2021-0590, p. 6 (La. App. 4 Cir. 10/05/22), 350 So. 3d 1007, 1013. Finding that a reasonable factual basis supported the jury's verdict in this case, we conclude that standard was not met. The trial court erred in granting the motion for JNOV, and the court of appeal erred in affirming that judgment. We therefore reverse the court of appeal, vacate the trial court's judgment granting the motion for JNOV, and reinstate the jury's verdict.

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[1] Francis Galton. 1907. Vox Populi. *Nature* 75: 450-451. The "wisdom of the crowd" was famously demonstrated by Galton at an English county fair. Sir Francis contrived a competition to guess the weight of a dressed ox. The median of 787 guesses, by laypeople, proved to be astonishingly accurate, less than one percent off of the true weight.

FACTS AND PROCEDURAL HISTORY

On November 19, 2015, Roger Burns ("Burns"), Scott Eastman ("Eastman"), and Jillian Peterson ("Peterson") were involved in a three-car consecutive rear-end collision heading eastbound in the far right-hand lane of Interstate 10 where Interstate 10 exits to merge onto Interstate 210 East in Calcasieu Parish. It is undisputed Peterson was driving the tailing, final vehicle of the three cars when, during a period of congested, heavy traffic, she rear-ended the car in front her, driven by Eastman, who then impacted the car in front of him driven by Burns.[2] Eastman was taken to the hospital complaining of neck, head, and back pain and was thereafter treated by numerous medical providers, one of which was Dr. Shane Rider ("Dr. Rider"), a chiropractor.

Eastman and his wife, Mrs. Darnell Eastman (sometimes referred to collectively as "the Eastmans") filed suit for damages naming Peterson and her insurer, State Farm Mutual Automobile Insurance Company ("State Farm") (sometimes referred to collectively as "defendants"), as defendants. The Eastmans alleged Peterson was solely liable for the accident because she negligently rear-ended Eastman's vehicle. Eastman sought damages for past, present, and future medical expenses, loss of enjoyment of life, pain and suffering, and mental anguish, along with future disability, and future loss of earnings and earning capacity. Mrs. Eastman sought damages for loss of consortium.

Peterson and State Farm denied the Eastmans' allegations, contending Eastman was comparatively at fault for the accident because he impacted Burns' vehicle prior to being rear-ended by Peterson. Defendants alleged Eastman's first impact with Burns' car created a sudden emergency or hazard for Peterson,

[2] Eastman testified that at the time of the three-car collision, traffic was heavy, slow, and congested to the point that he called his wife from his vehicle and informed her he would be late arriving home. He testified traffic was a "stop and go type situation." Peterson echoed Eastman's description, testifying traffic was "bottling up" prior to the accident.

impairing her ability to avoid a collision with Eastman's vehicle. Defendants also disputed the severity of Eastman's injuries caused by the accident and argued that a majority of his alleged injuries and damages were due to a pre-existing condition.

A jury trial commenced on July 28, 2021. At trial, the parties presented conflicting testimony as to liability. Eastman testified that when Burns' vehicle abruptly braked in front of him, he was able to react quickly enough to stop his vehicle without hitting Burns' car. He further indicated that through his rearview mirror he saw Peterson's vehicle rapidly approaching without slowing. He testified that he took hold of the steering wheel, braced for impact, and was then hit from behind by Peterson, propelling his vehicle into Burns' car. Eastman was adamant he had stopped prior to hitting Burns' vehicle and that the collision by Peterson was the sole cause of his collision with Burns.

Burns' testimony contradicted Eastman's account of the accident. Burns testified that when he came to an abrupt stop in the heavy traffic, he "felt a hit in the back" of his vehicle. He further stated that he "looked in [his] rearview and just as I looked in the rearview there was another hit as if the car behind me had hit me, then the car behind him was hit, and then he hit me again." When asked a follow-up question as to whether the first impact was from Eastman alone, Burns reiterated his observation that "when I felt the hit, and I looked up in the rearview, I could see him right up under me. Then … you know, a snap of your finger, it was another hit."

Peterson claimed that Eastman's sudden stop and impact with Burns' vehicle created a hazard for her. She contended that had Eastman performed a more controlled, proper stop, she would have had more time to react appropriately to the developing traffic congestion in front of her. She testified that to avoid the slowing traffic, she looked to her left to try and maneuver her vehicle into the faster moving left-hand lane; however, traffic prevented her from safely switching lanes. She then

stated that she looked in her rearview mirror to check her blind spot, and upon returning her sight forward, she was suddenly one car length away from Eastman's car. She indicated that she "just slammed [on her brakes] and hoped for the best that [her vehicle] would stop in time." She admitted that she had some fault in the accident but reaffirmed her belief that she may have avoided the accident with the vehicle in front had it provided more warning, through use of brake lights, or more time to react by a more appropriate, controlled stop in front of her. To that point, she testified that Eastman came to a "sudden" stop in front of her and further stated:

> There were no brake lights before whenever I took a glance to my left and if there would have been a sign of slowing down, everyone hitting their brakes, I would not have chosen to try to switch lanes at that time, and it was enough distance to where if I were going to see those lights and slow down I think that if he came to a sudden stop, regardless, hitting Mr. Burns or not, I think that if he would've been paying attention as well he would've been able to stop sooner and gradually press the brakes instead of that abrupt stop.

Concerning damages, Eastman presented testimony and evidence as to treatment with Dr. Rider, Dr. Clark Gunderson ("Dr. Gunderson"), a local orthopedic doctor, Dr. Howard Cotler ("Dr. Cotler"), an orthopedic surgeon, Dr. Craig Morton ("Dr. Morton"), a specialist in medicine and rehabilitation, Dr. Brian Kelly ("Dr. Kelly"), a neurosurgeon, Dr. Rex Marco, a complex spinal surgery specialist, Dr. Joseph Crookshank ("Dr. Crookshank"), an interventional pain management specialist, and Dr. Jeffery Kozak ("Dr. Kozak"), a spine surgeon.[3] The evidence showed that Eastman had been previously treated by Dr. Rider for neck pain. This treatment ended over a year prior to the car accident. After the November 19, 2015, accident with Burns and Peterson, Eastman sought treatment with Drs. Rider and Gunderson. Eastman ended his treatment on July 27, 2016. Dr. Rider's notes indicated Eastman had reached maximum medical improvement reporting a

[3] This list is not exhaustive of all evidence and testimony introduced and accepted into the record.

pain level rating of 1 out of 10. Defendants argued that such progress indicated that Eastman required no further treatment for injuries caused by the accident.

The evidence showed that Eastman returned to Dr. Rider for treatment on September 13, 2016, but the records from that appointment listed the onset of his complained-of neck pain and symptoms as early as 2009. Defendants asserted this treatment was ultimately determined to be related to a pre-existing condition, Diffuse Idiopathic Skeletal Hyperostosis ("DISH"), with which Eastman was later diagnosed by Dr. Marco.[4] However, Eastman provided opinions from subsequent treating physicians, and experts at trial indicating that, although Eastman's DISH symptoms were not caused by the November 19, 2015, accident, the accident aggravated the condition. Eastman testified that the first time he was told about DISH was in 2019, while being treated by Dr. Marco. Eastman presented the opinion of Dr. Crookshanks who concurred with the diagnosis of DISH but found some of Eastman's pain was not related to DISH. Dr. Crookshanks believed Eastman's mechanical axial pain came from the lower non-DISH cervical levels.

Although Dr. Rider's notes indicated Eastman reached maximum medical improvement, Eastman felt he did not receive full relief, and therefore sought treatment with Dr. Cotler. Dr. Cotler recommended Eastman undergo surgery, but Eastman was unable to have surgery because he was on blood thinners stemming from a heart attack he suffered in 2016. With surgery not a possibility, Eastman sought treatment with Dr. Morton who performed several cervical injections, trigger point and facet injections, and ordered physical therapy which lasted throughout 2018. Dr. Morton also referred Eastman to Dr. Kelly for further evaluation. Dr. Kelly, too, recommended surgery, however, surgery was cancelled because Eastman

[4] The medical testimony described DISH as most commonly appearing in men over the age of 50 with diabetes. Both of those risk factors applied to Eastman. Other possible risks included genetics and environmental factors. DISH was shown to produce ossification, via calcium deposits, primarily in the bones and soft tissue structures of the spinal column, reducing the mobility of the affected areas, and primarily causing stiffness and pain.

had an anatomical problem that prevented him from being intubated during surgery. With surgery again not possible, Dr. Kelly referred Eastman to Dr. Crookshanks, who performed a medical branch block procedure on Eastman in September of 2019.

Eastman then saw Dr. Kozak in November of 2019. Unlike Eastman's prior treating physicians, Dr. Kozak did not recommend surgery, but instead, counseled Eastman on activity modification, home exercises, and the correct use of body mechanics. Thereafter, Eastman returned to Dr. Crookshanks who performed additional procedures. Eastman asserted that he will be a lifetime patient of Dr. Crookshanks, necessitating future medical expenses.

Defendants pointed to Dr. Rider's treatments as proof that Eastman reached maximum medical improvement shortly after being treated by Dr. Rider and that most, if not all, of the subsequent treatment sought by Eastman related to pre-existing conditions that Dr. Rider noted as early as 2009. They pointed out that Dr. Rider's medical records reflect Eastman had as many as twenty-four chiropractic visits with Dr. Rider from May 29, 2014, to August 24, 2014, all preceding the accident. The defendants alleged Eastman's pre-accident treatment with Dr. Rider dealt with the same symptoms and conditions for which Eastman sought treatment post-accident. The defendants also introduced evidence of CT scans performed on Eastman after the accident reflecting chronic findings of DISH were already present, with ossification of the posterior longitudinal ligament.

Additionally, the defendants argued that Eastman's credibility was questionable. They cited Eastman's deposition where he alleged he had never seen a chiropractor prior to the accident although it was clear he had numerous visits with Dr. Rider over a year prior to the accident. The defendants further attempted to place Eastman's credibility in question by showing Eastman was not completely candid with his subsequent treating physicians. The defendants presented Dr. Morton's notes from Eastman's first visit, for example, where Eastman denied having any

neck pain prior to the accident even though the records from Dr. Rider, as early as 2014, showed otherwise.

After the close of trial, the jury returned a verdict finding both Peterson and Eastman comparatively liable for the accident, assigning fifty-percent fault to each. The jury further found that Eastman had been injured in the accident and awarded $19,732.14 in past and present medical expenses, $16,000.00 in past and present loss of enjoyment of life, $50,000.00 in past and present pain and suffering, and $5,000.00 in past and present mental anguish. The jury did not award damages for past and present disability, or for future medical expenses, future loss of earnings and earning capacity, future loss of enjoyment of life, future pain and suffering, future mental anguish, or future disability. The jury further awarded Mrs. Eastman $20,000.00 for loss of consortium.

Eastman then filed a motion for JNOV, or in the alternative, a motion for new trial. He argued the jury erred as the evidence strongly and overwhelmingly favored a finding of sole liability on the part of Peterson. The motion further sought increased damages, including future damages.

After a hearing on Eastman's motion, the trial judge granted the JNOV on the basis that "the findings by the jury were clearly erroneous and factually and legally unsupported in several of their determinations." The trial court found Peterson solely liable for the accident, increased the past medical expenses award to $138,419.06, awarded future medical expenses in the amount of $625,875.00, awarded future loss of enjoyment of life, future pain and suffering, and future mental anguish in the amount of $150,000.00, and awarded future loss of earnings capacity in the amount of $130,000.00. The trial court maintained all other awards by the jury and signed a judgment in accordance with its JNOV ruling. In total, the trial court increased the award from $110,732.14 to $1,115,294.06.

Defendants appealed and the court of appeal affirmed the trial court's judgment. We granted certiorari to review the lower courts' judgments. *Eastman v. State Farm Mut. Auto. Ins. Co.*, 2023-01107 (La. 11/21/23), 373 So. 3d 435.

LAW AND DISCUSSION

This Court recently expounded on the important role of juries. We noted that "[c]onfidence in juries, and their ability to handle and decide difficult, factual questions, is reflected in the legislature's recent amendment[s]" to the Louisiana Code of Civil Procedure. *CD v. SC*, 2022-00961, p. 4, n.5 (La. 06/01/23), 366 So. 3d 1245, 1249. "When there is a jury, the jury is the trier of fact." *Scott v. Hospital Service Dist. No. 1 of St. Charles Parish*, 496 So. 2d 270, 273 (La. 1986). "We hold juries in high regard and accord them great deference in their decisions." *CD*, 2022-00961, p. 5, n.5, 366 So. 3d at 1249. This deference recognizes that the right to a jury is statutorily protected. *See* La. C.C.P. art. 1731 A; *See also* La. C.C.P. art. 1736.[5] Thus, overturning a jury's verdict that is reasonably supported by the record is, in essence, the denial of the parties' right to be heard and judged by the jury.

Louisiana Code of Civil Procedure Article 1811 provides the rules which govern a JNOV. Although Article 1811 does not prescribe the specific standard for a trial court to follow in deciding whether to grant or deny a JNOV, this Court has provided direction:

> [A] JNOV is warranted when the facts and inferences point so strongly and overwhelmingly in favor of one party that the trial court believes that reasonable persons could not arrive at a contrary verdict. The motion should be granted only when the evidence points so strongly in

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[5] Louisiana Code of Civil Procedure Article 1731 A provides:

> Except as limited by Article 1732, the right of trial by jury is recognized.

Louisiana Code of Civil Procedure Article 1736 provides:

> The trial of all issues for which a jury trial has been requested shall be by jury, unless the parties stipulate that the jury trial shall be as to certain issues only or unless the right to trial by jury as to certain issues does not exist; however, except as otherwise provided under the provisions of Article 1562, there shall be but one trial.

> favor of the moving party that reasonable persons could not reach different conclusions, not merely when there is a preponderance of evidence for the mover. The motion should be denied if there is evidence opposed to the motion which is of such quality and weight that reasonable and fair-minded persons in the exercise of impartial judgment might reach different conclusions.

Joseph v. Broussard Rice Mill, Inc., 2000-00628, pp. 4-5 (La. 10/30/00), 772 So. 2d 94, 99 (citing *Scott*, 496 So. 2d at 273-74).

The courts of appeal have likewise uniformly discussed the standard for granting a JNOV. "A motion for JNOV raises the question of whether the jury verdict is supported by any legitimate or substantial evidence. … [T]he trial court does not have the discretion to weigh evidence, evaluate the credibility of witnesses, or to substitute its judgment for that of the jury." *Hogue v. Sussmane-Stubbs*, 34,340, p. 2 (La. App. 2 Cir. 02/28/01), 780 So. 2d 1203, 1205.[6] A "[t]rial court's authority to grant a JNOV under [La. C.C.P. art. 1811] is limited by the jurisprudence to those cases where the jury's verdict is absolutely unsupported by any competent evidence." *Bombardier*, 2021-0590, p. 6, 350 So. 3d at 1013 (Further finding that "[u]nder this standard, '[n]either the trial court, nor this court can substitute its evaluation of the evidence for that of the jury unless the jury's conclusions totally offend reasonable inferences from the evidence.'"). "When contemplating a JNOV, … [t]he trial court is not authorized to interfere with the verdict simply because it believes another result would be correct." *Gutierrez v. Louisiana Dep't of Transp. & Dev.*, 2011-1774, p. 13 (La. App. 1 Cir. 03/23/12), 92 So. 3d 380, 387-88. A trial court deciding a JNOV "is constrained from making credibility evaluations of witnesses, and all reasonable factual questions and reasonable inferences are construed in favor of the non-moving party." *Pike v. Calcasieu Par. Sch. Bd.*, 2018-

[6] *See also*, *Stamps v. Dunham*, 2007-0095, pp. 7-8 (La. App. 4 Cir. 09/19/07), 968 So. 2d 739, 744-45; *McBride v. H. Brown Mach. Shop*, 1998-1271, p. 3 (La. App. 3 Cir. 03/31/99), 732 So. 2d 650, 652; *Kistner v. King*, 1998-641, p. 3 (La. App. 5 Cir. 12/16/98), 726 So. 2d 68; *Engolia v. Allain*, 625 So. 2d 723, 728 (La. App. 1 Cir. 1993).

996, p. 9 (La. App. 3 Cir. 05/15/19), 272 So. 3d 943, 951, *writ denied*, 2019-01196 (La. 10/15/19), 280 So. 3d 611.

> In reviewing a JNOV, the appellate court must first determine if the trial judge erred in granting the JNOV. This is done by using the aforementioned criteria just as the trial judge does in deciding whether to grant the motion or not, i.e. do the facts and inferences point so strongly and overwhelmingly in favor of the moving party that reasonable persons could not arrive at a contrary verdict? If the answer to that question is in the affirmative, then the trial judge was correct in granting the motion. If, however, reasonable persons in the exercise of impartial judgment might reach a different conclusion, then it was error to grant the motion and the jury verdict should be reinstated.

Joseph, 2000-00628 p. 5, 772 So. 2d at 99 (citing *Anderson v. New Orleans Pub. Serv., Inc.*, 583 So.2d 829, 832 (La. 1991)).

> The party against whom a motion for judgment notwithstanding the verdict is made must be given the benefit of every legitimate and reasonable inference that can be drawn from the evidence by the jury. However, the court is not bound by inferences which are unreasonable.... There is no bright line which enables the court to distinguish between the reasonable, legitimate inference and the unreasonable, illegitimate inference. There is no precise rule to follow. The court can only test the reasonableness of the inferences drawn by the jury from the evidence in terms of probability. An inference is legitimate only where the evidence offered makes the existence of the fact to be inferred more probable than not. Any lesser test would allow the jury to rest a verdict on speculation or conjecture.

Joseph, 2000-00628 p. 5, 772 So. 2d at 101 (citing *Rougeau v. Commercial Union Ins. Co.*, 432 So. 2d 1162, 1167 (La. App. 3 Cir. 1983)).

Liability

Louisiana Revised Statute 32:81 A provides that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway." "Louisiana courts have uniformily (sic) held that a following motorist in a rear-end collision is presumed to have breached the standard of conduct prescribed in La.Rev.Stat.Ann. 32:81 and hence is presumed negligent." *Mart v. Hill*, 505 So. 2d 1120, 1123 (La. 1987).

The presumption of fault, however, may be rebutted. "A following motorist may rebut the presumption of negligence that arises when a rear-end collision occurs by proving that he had his vehicle under control, closely observed the preceding vehicle, and followed at a safe distance under the circumstances; the following motorist may also avoid liability by proving that the driver of the lead vehicle negligently created a hazard that he could not reasonably avoid." *Hooper v. Lopez*, 2021-1442, p. 6 (La. App. 1 Cir. 06/22/22), 344 So. 3d 656, 662, *as clarified on reh'g* (Sept. 1, 2022), *writ denied*, 2022-01421 (La. 11/22/22), 350 So. 3d 501, *reconsideration not considered*, 2022-01421 (La. 02/07/23), 354 So. 3d 663. "[T]he presumption [may be rebutted] by establishing the unpredictable driving of the preceding motorist created a sudden emergency that the following motorist could not have reasonably anticipated." *Bloxham v. HDI-Gerling Am. Ins. Co.*, 52,177, p. 6 (La. App. 2 Cir. 06/27/18), 251 So. 3d 601, 605.

The presumption of negligence does not preclude the consideration of comparative fault. "[N]otwithstanding the presumption of negligence, a favored motorist can still be assessed with comparative fault if his or her substandard conduct contributed to the cause of the accident." *Leblanc v. Bouzon*, 2014-1041, p. 4 (La. App. 3 Cir. 03/04/15), 159 So. 3d 1144, 1147 (citing *Graffia v. Louisiana Farm Bureau Casualty Insurance Co.*, 2008-1480, p. 7 (La. App. 1 Cir. 02/13/09), 6 So. 3d 270, 274). "[O]nce the presumption of negligence attaches to the defendant, the ordinary rules of comparative negligence apply and, thus, a plaintiff's damage award may be reduced by the degree that he was comparatively at fault." *Matherne v. Lorraine*, 2003-2369, p. 3 (La. App. 1 Cir. 09/17/04), 888 So. 2d 244, 246.

With the foregoing principles in mind, we reviewed the record to determine whether the trial court erred in finding that the jury verdict was absolutely factually unsupported; that is, whether the evidence pointed so strongly and overwhelmingly

in favor of the Eastmans that reasonable jurors could not reach different conclusions. We find the trial court erred in granting Eastman's JNOV.

Conflicting, credible testimony was given as to whether Eastman collided with the vehicle ahead of him prior to being impacted from behind by Peterson. Peterson testified Eastman's vehicle stopped suddenly, and that she did not observe any timely warning from the brake lights as to a sudden stop. She stated that had Eastman applied his brakes, giving a brake light warning attendant to a more controlled stop, then she would not have averted her attention to check her blind spot or check the left-hand lane. She indicated that Eastman's negligence in not coming to a controlled stop decreased her ability to maintain what she felt was an initial, appropriate following distance. More importantly, Burns testified that Eastman first collided with him prior to being rear-ended by Peterson. Faced with plausible, competing versions of the accident in question, the jury could have reasonably concluded Eastman did, in fact, impact Burns prior to being impacted from behind by Peterson, and that his negligence in colliding with Burns created a hazard contributing to Peterson's inability to avoid the accident.

The court of appeal, in affirming the trial court's judgment, and the Eastmans cited to *Mandible v. Jan Raley & Allstate Ins. Co.*, 2013-461 (La. App. 5 Cir. 12/12/13), 131 So. 3d 247, a case factually similar to the instant matter. *Mandible* involved a four-car, consecutive rear-end collision with conflicting testimony as to whether the third vehicle first hit the second vehicle before being impacted by the fourth vehicle causing a second collision. The court of appeal stated "[t]he [*Mandible* court] noted that whether the plaintiff hit the car in front of her prior to being rear-ended did not rebut defendant's presumption of fault." However, *Mandible* does not suggest that a following driver cannot meet his burden of overcoming the presumption of fault by showing the preceding driver also

negligently caused a hazard by rear-ending the driver ahead. Instead, *Mandible* confirms the deference owed to the trier of fact when there is conflicting testimony:

> While conflicting testimony existed as to whether plaintiff first struck Ms. Abunser prior to defendant striking plaintiff, the trial court apparently accepted plaintiff's version, which we do not find unreasonable upon review of the record. … we find the trial court was not manifestly erroneous or clearly wrong in finding defendant was 100% at fault for the collision with plaintiff and in awarding damages against defendants.

Id., 2013-461, p. 6, 131 So. 3d at 250.

We further note *Mandible* involved a bench trial, rather than a motion for JNOV, where the trial court judge's factual findings were reviewed under a manifest error standard of review. In considering whether to grant a JNOV following a jury trial, a trial court must first find that "the evidence points so strongly and overwhelmingly in favor of the moving party that reasonable men could not reach different conclusions, not merely when there is a preponderance of evidence for the mover." *Scott*, 496 So. 2d at 273-74.

There was considerable, but conflicting testimony that required much weighing of evidence. This alone means that triers of fact could have reached a different, but still reasonable conclusion. The lower courts improperly reweighed the evidence, made credibility determinations as to the witness testimony, and ultimately substituted their judgment for that of the jury. Finding the evidence did not so strongly and overwhelmingly favor the Eastmans that reasonable jurors could not reach different conclusions, we find the trial court erred in granting the JNOV as to liability.[7]

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[7] The Eastmans also argued that Peterson admitted she could have reasonably avoided the accident. They therefore contend Peterson may not exculpate herself from the presumption of negligence because she cannot prove "that the driver of the lead vehicle negligently created a hazard which the following vehicle could not reasonably avoid," citing *LeBlanc v. St. Landry Police Jury*, 1994-501, p. 7 (La. App. 3 Cir. 12/07/94), 647 So. 2d 614, 617. However, Peterson made no such admission. The testimony Eastman cites actually concerned Peterson's opinion that had Eastman had a more controlled stop, rather than a sudden stop, and had he given more warning to following vehicles by use of his brake lights, she would have been able to avoid a collision. Eastman's assertion also belies Peterson's testimony that she considered moving her vehicle to the right, toward the shoulder, but that a guardrail prevented the evasive action.

Damages

We now turn to the trial court's grant of Eastman's JNOV as to damages. The trial court made an observation that the jury's award of damages reflected a finding that Eastman's treatment attributable to the accident ended as early as July 27, 2016. The trial court reasoned:

> [The] [f]inding by the jury of past and present medical expenses in the amounts awarded is totally unfounded and would seem to correlate with expenses up to the "release" by Dr. Rider. …
>
> The plethora of physicians who testified, including defendant's own physician, concur that at least a portion of Eastman's continuing neck issues, are related to this accident. … A jury cannot reasonably disregard all this unrefuted evidence without any counter testimony[.]

As to future medicals, the trial court found:

> As with this Court's ruling regarding the error of the jury as to past and present medical expenses, the determination by the jury that there would be no award for the future medical expenses is profoundly inappropriate and in total disregard of undisputed testimony regarding same. … There was no testimony or evidence presented by defendants upon which any jury could have relied on countervailing, contradicting or conflicting with Dr. Crookshank's testimony as to medical need for future care by Eastman.

Finally, as to general damages, the trial court ruled:

> … unlike the previous issues addressed by this Court defendant did present evidence that addressed these issues.
>
> While it is determined that Eastman has continuing medical issues as related to both this accident and preexisting issues, evidence was present[ed] to the jury showing his continued active outdoor lifestyle. Video was presented of several activities by Eastman that one could believe reflect an otherwise normal return to activities based on the medical treatment to accommodate and provide a relative normal life. Eastman acknowledged that he continues his active lifestyle after the accident though in pain. This court agrees that the awards for past and present loss of enjoyment of life, past and present pain and suffering, and past and present mental anguish are inordinately miniscule when compared to or aligned with the adjusted medical evidence.
>
> … [T]he awards by the jury as they relate to past and present damage, totaling $71,000.00, are left as rendered. However, future loss of enjoyment of life, future pain and suffering and future mental anguish are herein set at $150,000.00.

Like the issue of liability, conflicting evidence was introduced at trial as to the severity and causes of Eastman's injuries. In light of this, we find the trial court erred in granting Eastman's JNOV. The jury could have reasonably concluded that Eastman reached maximum medical improvement from accident-related injuries, as Dr. Rider's records reflect, shortly after the accident, and that all, or a significant portion, of his injuries thereafter were attributable to a pre-existing condition. Again, Dr. Rider's medical records indicate that as early as June 27, 2016, Eastman reached maximum medical improvement, reporting a pain level of 1 out of 10. Dr. Rider's notes further showed Eastman returned for treatment on September 13, 2016, but that treatment was for a pre-existing condition that was observed as early as 2009. Dr. Rider's medical notes and records were the only evidence showing direct knowledge by a physician of Eastman's pre-accident condition. Although records and testimony relating to subsequent physician visits provided a basis for finding that some of Eastman's complaints of pain were caused or aggravated by the accident, they also included opinions that the condition pre-existed the accident. Dr. Kelly and Dr. Stephen Esses, the defendant's expert, noted Eastman would have had restricted range of motion prior to the accident because of his DISH condition. The jury further heard evidence that DISH progressively worsens over time, regardless of any alleged aggravating accidents.

The evidence before the jury also provided a basis for concluding that Eastman suffered from a pre-existing condition, which worsened over time. It was thus reasonable for the jury to further conclude that a significant portion of Eastman's post-accident treatment was likely attributable to that condition. Undoubtedly, the evidence adduced at trial conflicted as to what medical treatment and medical expenses were associated with the injuries caused by the accident, the determination of which is clearly within the province of the jury. The record, thus, does not substantiate a finding that the evidence was so strongly and overwhelmingly

in favor of Eastman that a JNOV was warranted. Only by first reweighing the evidence and making credibility decisions as to which medical records and providers were more reliable could the trial court have reached its decision to grant the JNOV. However, as discussed *supra*, such considerations are improper when considering whether to grant a motion for JNOV.

At the least, Dr. Rider's medical findings provided a basis for the jury to have reasonably concluded Eastman's medical treatment for accident-related injuries was complete as of July 27, 2016, and, therefore, the claims for future medical expenses and future damages were unfounded. The jury could also have reasonably found that a pre-existing condition, DISH, was the cause of a significant percentage or all of Eastman's complaints for which he later sought medical treatment. In light of the conflicting evidence and accounts of Eastman's medical treatment, we find the trial court erred in ruling the evidence was so strongly and overwhelmingly in favor of Eastman that reasonable jurors could not reach different conclusions.

CONCLUSION

We find the trial court erred in granting Eastman's JNOV, as did the court of appeal in affirming the trial court's judgment. We reverse the court of appeal, vacate the judgment of the trial court, and reinstate the jury's verdict.

REVERSED; TRIAL COURT JUDGMENT VACATED; VERDICT OF THE JURY REINSTATED.

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On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Calcasieu

HUGHES, J., dissenting.

The jury in this case rendered a stupendously bad verdict. The Defendant, a seventeen-year-old cheerleader on the way to a party, rear-ended the Plaintiff on the Interstate as they were traveling in the right-hand lane, totaling both cars. The Plaintiff was taken to the hospital in an ambulance. The Defendant testified that she was attempting to get into the left-hand lane because she realized the traffic ahead of her was "bottling" up, but was unable to do so. After checking her "blind spot" to see if she could get over, she returned her attention to the Plaintiff in front of her to discover she was only *one car length* away from plaintiff's car. Defendant testified at that point she just slammed on her brakes and "hoped for the best."

It has been argued that the possibility the Plaintiff made minimal contact with the car ahead of him before he was plowed into by the Defendant created a "sudden emergency" and the jury was able to consider this "conflicting evidence" or "competing version" of the accident; thus there was a "reasonable basis" for the jury's verdict.

This argument ignores the law, and common sense.

Every driver knows that if you rear-end someone, you're liable. The law provides a presumption to that effect, and the burden of proof is on the following

motorist to overcome it. This may be done by showing the driver ahead created a sudden emergency. But no driver in the history of Louisiana has been tagged with a sudden emergency when they stayed in their own lane and stopped because the traffic ahead of them was stopped.

Rather, sudden emergencies have been found in cases where the rear-ended driver was stopped on a bridge at night without proper lighting; or stopped partially in the road way without appropriate warning lights or signals; or stopped, not due to traffic conditions, but rather because the driver saw someone he knew in the oncoming lane and wanted to turn around; or passed several cars but then had to pull back into his lane without adequate space; or was travelling at dusk in the fast lane at a very slow speed with no lights; or had stalled out partially in the roadway at night without lights.

The key fact in the instant case is that the lead driver in front of the Plaintiff was stopped. He testified, "So, I stopped abruptly and I mean very close to the car in front of me… ." The argument by Defendant that Plaintiff should have executed "a more controlled, proper stop" is ridiculous: if Plaintiff had stopped slower and sooner, short of the vehicle ahead of him, Defendant would have had *less* than one car length to come to a stop. Plaintiff could not go through the stopped car in front of him and continue down the road in a "controlled" manner, he had to stop. Maximum space for the Defendant to stop would have been with Plaintiff touching the stopped car ahead of him. Defendant's argument is thus inimical to her cause, not favorable, as recognized by the Court of Appeal and previously by the Louisiana Supreme Court.

In **Billiot v. Noble Drilling Corp**., 236 La. 793, 797-98, 109 So.2d 96, 98 (1959), the supreme court found that, in this three car accident, the second car rear-ended the first car but no damages were sustained, until a few seconds later when the third car rear-ended the second car and caused person and property damages to

both; this court held any negligence of the second driver "caused no damage and affected only the [first] automobile and its passengers and not the [third] car driven…, to whom plaintiff owed not duty 'except to use the road in the usual way in keeping with the laws of the road, and until he has been made aware of the presence of such rear car by signal or otherwise… In other words, [the second driver]'s negligence, if any, in following the [first] car too closely, has **no casual connection** with the collision [caused by the third car] and does not absolve the operator of the [third] car from liability for failing to perform his duty owed to [the second car] in violating the rule that 'the driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicle and the traffic upon and condition of the highway.'" (emphasis added).

"Competing versions" of the accident is thus a false analysis; Defendant is competing only with herself. The "version" espoused by the Defendant makes her more liable, not less, and in any event, as recognized by **Billiot**, there is no casual connection that would relieve Defendant from liability. Defendant admitted she was traveling on the Interstate, knew the traffic ahead was "bottling" up, diverted her attention in order to check her "blind spot" in an attempt to change lanes, and when she looked up was *one car length* away from a serious accident that totaled two cars and sent the Plaintiff to the hospital in an ambulance. Defendant was clearly in a rush and not paying attention.

I respectfully dissent and would affirm the ruling of the trial court and the Opinion of the Court of Appeal.