

Motor Vehicle Sudden Acceleration: Trial Court as Gatekeeper of Expert Evidence

(*Watson v. Ford Motor Co.*, No. 26786, --- S.E.2d ---,
2010 WL 916109 (S.C. Mar. 15, 2010))

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On March 15, 2010, the South Carolina Supreme Court reversed an \$18 million jury verdict against the Ford Motor Company, finding that the trial court erred in admitting the testimony of two of the plaintiffs' experts and admitting evidence of prior sudden acceleration accidents. *Watson v. Ford Motor Co.*, No. 26786, --- S.E.2d ---, 2010 WL 916109 (S.C. Mar. 15, 2010). This decision is instructive on the duties of the trial court as a gatekeeper of the admission of evidence and vividly illustrates how plaintiffs may not simply rest on the mere fact that an accident happened to hold a defendant liable.

A. Background

The case involved the sudden acceleration of a vehicle -- a timely topic with the current influx of recalls of Toyota vehicles. On December 11, 1999, Sonya L. Watson was driving her 1995 Ford Explorer with Patricia Carter and two other passengers in the vehicle when she lost control, veered off the interstate, and rolled over four times. Carter did not survive the accident and Watson was rendered a quadriplegic. Watson and Carter filed a products liability action against Ford, claiming that the accident occurred because the cruise control system was defective, and that their injuries were enhanced because the seat belts were defective.

At trial in Greenville County, the plaintiffs presented and the trial court allowed three types of evidence that became the subject of Ford's appeal. First, the plaintiffs presented testimony of Dr. Antony Anderson, an electrical engineer from the United Kingdom. He opined that electromagnetic interference ("EMI") took hold of the vehicle's cruise control system, causing it to suddenly accelerate. Dr. Anderson further testified that Ford could have prevented the accident through an alternative design. Second, the plaintiffs presented the testimony of Bill Williams, a purported automotive industry veteran, as an expert on cruise control diagnosis. Finally, the plaintiffs offered evidence of similar accidents involving sudden acceleration in Ford Explorers.

The jury determined that Ford was liable to the plaintiffs on their claim that the Explorer's cruise control was defective and awarded Watson \$15 million in compensatory damages and Carter's Estate \$3 million in compensatory damages. Thereafter, Ford appealed, asserting the trial court erred in "... qualifying Bill Williams as an expert in cruise control systems[,] allowing Dr. Anderson's testimony regarding EMI and alternative feasible design[, and] allowing evidence of other incidents of sudden acceleration in Explorers." *Watson*, 2010 WL 916109, at *2.

On those grounds, the South Carolina Supreme Court heard Ford's appeal. In an opinion authored by Chief Justice Jean Toal, the Supreme Court agreed with Ford, finding that the trial court committed prejudicial error in allowing evidence at trial that did not meet the threshold admissibility requirements in South Carolina. South Carolina has not adopted the Daubert test and instead follows its own test set forth in *State v. Council*, 515 S.E.2d 508, 518 (S.C. 1999) and its progeny. Under that test, South Carolina courts have generally been fairly liberal in qualifying experts to testify at trial, and motions to exclude brought under *State v. Council* are not often granted.

B. Trial Court Gatekeeper Findings

As a preliminary matter, the *Watson* court set forth the three findings that all trial courts must make in South Carolina before a jury may consider expert testimony: (1) the subject matter is beyond the ordinary knowledge of the jury, (2) the expert has the requisite knowledge and skill to qualify as an expert in the particular subject matter, and (3) the substance of the testimony is reliable. See *State v. Douglas*, 671 S.E.2d 606 (S.C. 2009); *Gooding v. St. Francis Xavier Hosp.*, 487 S.E.2d 596, 598 (S.C. 1997); *Council*, 515 S.E.2d at 518.

C. South Carolina Supreme Court Findings

The Court first found that there was “no evidence to support the trial court’s qualification of [Bill] Williams as a expert in cruise control systems” because Williams had no professional experience working on cruise control systems prior to litigation, had not conducted any comparison of the Explorer’s cruise control system to any other system, and had not taught or published papers on cruise control systems. *Watson*, 2010 WL 916109, at *4.

Next, the Court found that the “trial court erred in admitting Dr. Anderson’s testimony as to both an alternative feasible design and his EMI theory.” *Id.* at *6. In so doing, the Court stated that Dr. Anderson was not qualified to testify on that subject matter because “[h]e had no experience in the automobile industry, never studied a cruise control system, and never designed any component of a cruise control system.” *Id.* Further, the Court found his testimony unreliable because he provided no support for his conclusion that an alternative design would have cured the alleged defect. With respect to Dr. Anderson’s EMI theory, the Court rejected his testimony because his theory had not been peer reviewed, his theory had not been tested, and Dr. Anderson stated he could not replicate the alleged EMI or tell where it originated or what parts it affected. *Id.*

Finally, the Court found that the plaintiffs had failed to show that the incidents of sudden acceleration presented were similar to the incident at issue: the Explorers were made in different years and were different models. Further, the Court found that the plaintiffs failed to “show a similarity of causation between the malfunction in this case and the malfunction in the other incidents.” *Id.* at *8.

Since the only evidence that the plaintiffs presented to prove that the Explorer was defective was Dr. Anderson’s testimony, the Court ruled that the trial court committed prejudicial error by admitting his testimony. Further, the Court found it highly prejudicial that the plaintiffs were allowed to present evidence of other incidents when they had not established a factual foundation to show substantial similarity. As a result, the Court reversed the jury’s verdict against Ford.

D. Concurrence by Justice Pleicones

Justice Costa M. Pleicones concurred in the result only, agreeing with many of the points made by the

majority but suggesting that he would have reached the same result by a different route. Specifically, he disagreed “with the majority’s analysis of the expert witness issue involving Dr. Anderson, or its analysis of the admissibility of the evidence of other acceleration incidents.” *Id.* at *9. Interestingly, Justice Pleicones disagreed with the majority’s delineation of the trial judge’s gatekeeper role and stated that it was their framework that was incorrect when the expert testimony was scientific. He stated that the proper gatekeeper role is provided in *State v. Council* as follows:

1. Is the underlying science reliable?
2. Is the expert witness qualified ?
3. Would the evidence assist the trier of fact to understand the evidence or to determine a fact in issue?

Id.

Contrary to the findings of the majority, Justice Pleicones found that Dr. Anderson was qualified as an expert on the subject and that the underlying science involving the impact of EMI was reliable. *Id.* The basis upon which he found that the trial court erred in admitting Dr. Anderson’s testimony was that it would not assist a jury as a result of Dr. Anderson’s failure to support his opinions.

On the issue of the majority’s determination on admissibility of the evidence of other acceleration incidents, Justice Pleicones stated that he did not see an issue with the fact that the “other incidents” involved Explorers manufactured in different years or were different models. *Id.* at * 10. He, on the other hand, found this evidence inadmissible because the causal link between those accelerations and the one in *Watson* hinged on Dr. Anderson’s EMI theory, which should not have been admitted. *Id.*

E. Conclusion

While both the majority and Justice Pleicones, concurring, came to the same result, the variation in their analyses was quite different. Perhaps this discrepancy shows that our courts may not be firm on the test to be employed when scientific evidence is at issue? While the varying analyses may not make a difference in all cases, it could have some effect. Thus, practitioners should be mindful of the analyses on the issue of admissibility of expert evidence in *Council*, as well as the majority and concurrence in *Watson*, making certain all bases are covered.