CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Shiver v Laramee 7/11/18

Sudden Emergency Doctrine; CACI 452; Motion for Summary Judgment

Plaintiff and Appellant Joshua Shiver brought a negligence action against defendants/respondents Charles Edward Laramee and John Shapka Trucking, Ltd. Shiver was injured when his car was rear-ended by respondents' tractor-trailer.

The subject traffic collision occurred in September 2014 at approximately 6:00 p.m. on the southbound US 101 freeway in Santa Maria. Defendant Charles Edward Laramee was driving a fully-loaded tractor-trailer in the far-right lane (the #3 lane). Defendant John Shapka Trucking, Ltd., was Laramee's employer and the owner of the tractor-trailer.

Three cars used a southbound on-ramp to enter the freeway in front of Laramee's tractor-trailer. The first was a black car with an unknown driver. The second car was driven by Michelle Adams. The third car was driven by plaintiff/appellant Shiver. According to the California Highway Patrol Traffic Collision Report, Adams "related that the black car was tailgating her and driving recklessly behind her as she approached the on-ramp . . . . As she entered the on-ramp, the black car moved out of the on-ramp lane into the #3

lane . . . and passed Adams while giving her an obscene gesture. Adams merged from the on-ramp into the #3 lane . . . directly to the rear of the black car." The black car suddenly braked "causing Adams to apply the brakes. Shiver had to apply his brakes directly to the front of Laramee in order to avoid a collision with Adams. Laramee noticed that the vehicles ahead of him were stopping, but he was unable to stop or take evasive action before the front of his tractor-trailer struck the rear of appellant's car. This impact caused appellant's car to move forward to where the front of his car struck the rear of Adams's car."

Adams did not hit the black car in front of her. She would have hit it if she had not braked. The black car did not stop and continued southbound on the freeway.

Plaintiff/Appellant Shiver first saw Laramee's tractor-trailer when it "was just behind an overpass" about three-tenths of a mile away from the location of the collision. The tractor-trailer "was going with the flow of traffic" and was traveling "at least 55 to 60" miles per hour. "The cars entering the freeway were going 35-40 miles per hour on the on-ramp."

Shiver testified: "I was looking back and forth between Mr. Laramee's truck and Ms. Adams' vehicle . . . trying to judge" whether I would "be able to safely merge" into the #3 lane in front of Laramee. Laramee slowed down "by 15 to 20 percent." "If Laramee would have been closer to appellant's vehicle I would have just . . . let him go by and fall in behind him, but because Adams seemed like she was starting to pick speed up at the bottom of the ramp, I looked one more time before I turned my blinker on to commit, and . . . as we merged Adams hit her brakes and went from 40 miles per hour to pretty much a dead stop." "I was . . . halfway maybe a quarter into" the #3 lane and Adams was "all the way into" that lane. Laramee "was pretty much on top of me, all I saw through the rear-view mirror was the tractor- trailer's brush guard i.e., front

metal bumper. I couldn't see the cab of the truck." Shiver estimated that his maximum speed was 45 miles per hour.

Defendant Laramee testified: He was going 45 miles per hour when he saw three cars ahead traveling along the on-ramp to the freeway. The black car "just was on this lady Adams constantly. . . . Then . . . the lady braked. The other fellow behind her braked. I broke. . . and collided with the fellow in front of me." When the black car passed Adams before braking in front of her, Laramee "slowed down." When appellant started to merge into the #3 lane, Laramee was two-car lengths behind him.

It is undisputed that, "although he . . . was able to brake and sound his horn, Laramee was not able to stop his fully loaded truck and trailer before contacting the rear of Shiver's car." When empty, Laramee's tractor-trailer "probably" weighed 32,000 pounds.

The trial court ruled: "The sudden braking by the unidentified black vehicle, for no apparent reason, followed by the immediate braking by Ms. Adams and appellant Shiver, created a sudden and unexpected emergency . . . . The actions of the three vehicles ahead of Mr. Laramee presented an unanticipated situation since vehicles merging onto a freeway normally increase their speed of travel with the flow of traffic instead of stopping suddenly. . . . The emergency was **solely the result of the black vehicle's sudden and unexpected decision to slam on its brakes**, in an act of apparent road rage . . . . Mr. Laramee, by sounding his horn and forcefully applying his brakes, acted as a reasonably careful person would have acted under similar circumstances."

Accordingly, the trial court concluded that appellant's claim against respondents "is barred by the sudden emergency doctrine."

On appeal, the Second District Court of Appeal began by noting the affirmative defense of the **sudden emergency doctrine**, also referred to as the imminent peril doctrine, is set forth in **CACI No. 452**: "Laramee claims that he was not negligent because he acted with reasonable care in an emergency situation. Laramee was not negligent if he **proves all of the following: 1. That there was a sudden and unexpected emergency situation in which someone was in actual or apparent danger of immediate injury; 2. That Laramee did not cause the emergency; and 3. That Laramee acted as a reasonably careful person would have acted in similar circumstances, even if it appears later that a different course of action would have been safer."**

"**The doctrine of imminent peril is properly applied only in cases where an unexpected physical danger is presented so suddenly as to deprive the driver of his power of using reasonable judgment. A party will be denied the benefit of the doctrine of imminent peril where that party's negligence causes or contributes to the creation of the perilous situation.**" (*Pittman v. Boiven* (1967) 249 Cal.App.2d 207, 216; see also *Leo v. Dunham* (1953) 41 Cal.2d 712, 714; *Schultz v. Mathias* (1970) 3 Cal.App.3d 904, 912-913, "'The test is whether the actor took one of the courses of action which a standard man in that emergency might have taken, and such a course is not negligent even though it led to an injury which might have been prevented by adopting an alternative course of action'".)

First Element: Sudden and Unexpected Emergency

Plaintiff Shiver contends that there is a triable issue of material fact "whether the emergency situation was sudden and unexpected." Plaintiff/Appellant argues that "a jury could determine that the emergency situation was not sudden and unexpected because Mr. Laramee observed the emergency situation unfolding from three-tenths of a mile away" and because "there is a material issue of fact as to how long Mr. Laramee had to react to the sudden braking."

There are no triable issues of material fact whether the emergency was sudden and unexpected. The emergency arose because the black car suddenly braked in front of Adams's car. Plaintiff/Appellant testified that Adams "hit her brakes and went from 40 miles per hour to pretty much a dead stop." As the trial court noted, this "presented an unanticipated situation since vehicles merging onto a freeway normally increase their speed of travel with the flow of traffic instead of stopping suddenly."

Second Element: Laramee Did Not Cause the Emergency

"A cause in fact is something that is a substantial factor in bringing about the injury or other matter at issue." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 969.) There are no triable issues of material fact whether Laramee's conduct was a substantial factor in bringing about the emergency. The sole cause of the emergency was the sudden and unexpected braking of the black car. But for its braking, an emergency would not have arisen and appellant would have safely merged in front of Defendant Laramee's truck.

Third Element: Laramee's Conduct was Reasonable

The third element of the sudden emergency doctrine is that Defendant Laramee "acted as a reasonably careful person would have acted in similar circumstances." (CACI No. 452.) Appellant claims that "a jury could easily conclude that Mr. Laramee was negligent in the critical moments preceding the emergency situation." Appellant Shiver argues that "Laramee's failure to slow down after witnessing the road rage incident fell below the industry standard of care." But in his deposition Shiver testified that Laramee had slowed down "by 15 to 20 percent." Before merging into the #3 lane, appellant looked back and "could see that Laramee wasn't coming up near as quick as he was when I first saw him." Appellant Shiver is bound by his deposition testimony. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21-22; *Archdale v. American International Specialty Lines Ins. Co.* (2007) 154 Cal.App.4th 449, 473)

Defendant Laramee confirmed that he had slowed down: "The black car was trying to get away from behind Adams's car." "The black car took off. I slowed down. Then those cars Adams's and appellant's cars were still coming up onto the freeway." Laramee's statement, "The black car took off," referred to the black car's act of entering the #3 lane and passing Adams while she was driving in the on-ramp lane.

Shiver claims that a reasonable jury could conclude that Laramee "was negligent in failing to . . . leave a proper space cushion between his truck and appellant's vehicle." The evidence does not support such a finding of negligence. Laramee was under no duty to leave "a proper space cushion." Vehicle Code section 21703 provides, "The 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 roadway." Laramee was not following appellant Shiver. Laramee was driving in the #3 lane of the freeway, and appellant was driving in the adjacent on-ramp lane. Appellant was required to "yield the right-of-way to all traffic . . . approaching on the highway close enough to constitute an immediate hazard, and to continue to yield the right-of-way to that traffic until he . . . can proceed with reasonable safety." (Veh. Code, § 21804, subd. (a).) Thus, based on the Vehicle Code, a reasonable person in Laramee's position could expect that appellant would follow the law and yield to Laramee's tractor-trailer: "'The general rule is that every person has a right to presume that every other person will perform his duty and obey the law, and in the absence of reasonable ground to think otherwise it is not negligence to assume that he is not exposed to danger which comes to him only from violation of law or duty by such other person.' " (*Leo v. Dunham*, at p. 715.)

Appellant Shiver asserts, "Mr. Laramee's failure to yield to the cars merging in front of him and . . . to maintain a safe space cushion . . . fell below the industry standard of care." In support of his assertion, appellant cites page

249 of the Clerk's transcript. This page is part of the declaration of V. Paul Herbert, appellant's expert on commercial motor vehicle safety. Herbert declared: "Mr. Laramee's driving as he approached the subject collision site fell below the industry standards of care . . . . Had he been adequately taught and routinely practicing such safe driving principles involving the 'Seeing Habits' and 'Space Cushion Driving', it would have been very improbable that such a conflict situation could have developed." "Mr. Laramee failed to comply with these critical industry standards of care by his choice to not reduce his speed or to change lanes to the left as he approached the subject on-ramp. In so choosing not to yield to multiple merging vehicles, Laramee chose to not allow unhindered access to the freeway."

"In considering whether Herbert's opinions were sufficient to raise triable issues of fact, we must take into account that his declaration was submitted by plaintiff/appellant in opposition to respondents' motion for summary judgment. In these circumstances, the expert's declaration is to be liberally construed. We must resolve 'any doubts as to the propriety of granting the motion in favor of appellant. The requisite of a detailed, reasoned explanation for expert opinions applies to 'expert declarations in *support* of summary judgment,' not to expert declarations in *opposition* to summary judgment. " (*Jennifer C. v. Los Angeles Unified School Dist.* (2008) 168 Cal.App.4th 1320, 1332.)

Applying this standard of liberal construction to Herbert's declaration, the Justices conclude that it is <u>insufficient to raise a triable issue of fact</u> whether, as claimed by appellant, "Laramee's failure to yield to the cars merging in front of him and . . . to maintain a safe space cushion . . . fell below the industry standard of care." Herbert's opinion was based on Laramee's alleged "failure to reduce his speed in the face of the merging traffic, and his failure to safely move into the left travel lane." As previously discussed, appellant Shiver is bound by his deposition testimony that Laramee reduced his speed by 15 to 20 percent. In addition, appellant testified that a car in the #2 lane was to the left of Laramee's

truck "directly behind his cab." Thus, Laramee could not have "safely moved into the left travel lane." "An expert opinion is only as good as the facts and reasons on which it is based. " (*Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 763.)

Moreover, the evidence does not support Herbert's statement that, by "choosing not to yield to multiple merging vehicles, Laramee chose to not allow unhindered access to the freeway." Appellant's deposition testimony indicates that Laramee yielded to appellant. Appellant Shiver testified: "Up until the moment when Ms. Adams slammed on her brakes, . . . I thought I could safely merge in front of Mr. Laramee . . . even at the 40-mile per hour speed." "If Laramee would have been closer to appellant's vehicle, I would have just . . . let him go by and fall in behind him." Before moving into the #3 lane, "I looked back, it seemed like Laramee has slowed down." "I could see that he wasn't coming up near as quick as he was when I first saw him." "With the distance Laramee had, I felt that was ample time to stop." Appellant was aware that "with trucks it takes them a while to stop." Years earlier, he had been a passenger in a fully-loaded tractor-trailer that was going 65 miles per hour when it had to make an emergency stop. Appellant testified, "It took the driver . . . probably close to half a mile to get that truck stopped."

Appellant maintains that "Laramee's actions were not those of a prudent driver" because he was "likely distracted by a cell phone conversation." During Laramee's deposition, appellant's counsel asked, "When you got onto the southbound 101, were you on your cell phone?" Laramee replied that he was not on his cell phone. He had a wireless Bluetooth "hands-free" phone in his cab. (Vehicle Code section 23123, subdivision (a) permits the use of a hands-free wireless phone while driving.) Appellant's counsel asked, "Where are you talking" on the "hands-free?" Laramee replied, "Yeah, I was talking." Respondents' counsel interrupted, "Were you actually actively in a call when

you got on the freeway, or do you remember?" Laramee replied that he did not remember.

Laramee's testimony does not raise a triable issue of material fact whether a hands-free phone conversation so distracted him that he did not act "as a reasonably careful person would have acted in similar circumstances." (CACI No. 452.) Laramee could not remember whether he had been talking on the phone when he got on the freeway. He was not asked whether he had been on the phone when the black car braked. Even if he had been on the phone at this time, it is speculative whether the distraction from the phone conversation interfered with his ability to safely drive the tractor-trailer. The record contains no evidence of such interference.

The judgment is affirmed. Defendants/Respondents are awarded their costs on appeal.

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