

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION THREE

BILLY R. RICHEY,)	No. ED101584
)	
Appellant,)	Appeal from the Circuit Court
)	of the City of St. Louis
vs.)	1122-CC10729
)	
STATE FARM MUTUAL AUTOMOBILE)	Honorable Michael F. Stelzer
INSURANCE COMPANY,)	
)	
Respondent.)	Filed: February 2, 2016

Billy R. Richey (“Appellant”) appeals the judgment entered upon a jury verdict in favor of State Farm Mutual Automobile Insurance Company (“Respondent”) on Appellant’s claim for uninsured motorist benefits under a policy issued by Respondent.

REVERSED AND REMANDED.

Division Three holds:

- (1) The trial court abused its discretion in excluding testimony from Tracy Hyatt and Mark Richey regarding statements made by Appellant to them and others that he was run off the road by another vehicle, because the testimony was admissible to refute charges Respondent made in its opening statement that Appellant fabricated his story about the other vehicle after retaining an attorney. The exclusion had a material effect on the trial, as it would have functioned as a substantial affirmation of Appellant’s version of events.
- (2) The trial court abused its discretion in admitting opinion testimony from Corporal Hadlock of the Missouri Highway Patrol that Appellant caused the accident by himself through his own inattentiveness, because Corporal Hadlock’s testimony was not fact testimony of his personal observations at the scene of the accident, and the jury was capable of reaching its own conclusions with regard to fault and degree of fault in a case of this type. The testimony materially affected the outcome of the trial, as the case law recognizes an officer’s opinion testimony on fault in an accident will likely be given undue weight and significantly influence the jury’s resolution on the issue of liability. *Khan v. Gutsgell*, 55 S.W.3d 440, 443 (Mo. App. E.D. 2001); *Stucker v. Chitwood*, 841 S.W.2d 816, 820 (Mo. App. S.D. 1992)

Opinion by: Robert M. Clayton III, P.J.
Lawrence E. Mooney, J., and James M. Dowd, J., concur.

Attorney for Appellant: S Lee Patton, Newton G. McCoy

Attorney for Respondent: Scott C. Harper, Aaron I. Mandel

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.