

Summary of SC89610, *Shonnie Newton, et al., Michael Nolte and Barbie Nolte v. Ford Motor Company*

Appeal from the Jackson County circuit court, Judge Charles E. Atwell

Attorneys: Newton and the Noltes were represented by Edward D. Robertson, Mary D. Winter and Anthony L. DeWitt of Bartimus, Frickleton, Robertson & Gorny PC in Jefferson City, (573) 659-4454; J. Kent Emison and Brett A. Emison of Langdon & Emison in Lexington, (660) 259-6175; and Grant L. Davis, Scott S. Bethune and Timothy L. Brake of Davis, Bethune & Jones LLC in Kansas City, (816) 421-1600. Ford was represented by Ann K. Covington of Bryan Cave LLP in Jefferson City, (573) 556-6620; Peter W. Herzog of Bryan Cave LLP in St. Louis, (314) 259-2353; James P. Feeney, Clay A. Guise and Brittany M. Schultz of Dykema Gossett PLLC in Bloomfield Hills, Mich., (248) 203-0700; and Paul A. Williams of Shook, Hardy & Bacon LLC in Kansas City, (816) 474-6550.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A trooper pulled over a driver for a traffic violation. The trooper was killed and the man was injured seriously when the patrol car in which they were sitting exploded when hit from behind by another vehicle. The man, his wife and the trooper's widow sued the patrol car's manufacturer for design defects they alleged caused the explosion. The plaintiffs appeal the trial court's ruling prohibiting them from discussing, during closing argument, evidence of certain other accidents the automobile manufacturer inadvertently introduced into evidence. In a unanimous per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri reverses the judgment in favor of the automobile manufacturer and remands (sends back) the case for a new trial. The trial court clearly erred in prohibiting this argument once the manufacturer injected the accidents into evidence. This error placed the plaintiffs at an unfair advantage and materially affected the merits of the action. In a concurring opinion, Judge Michael A. Wolff notes that, on remand, the trial court will need to decide whether the jury's award of damages to the plaintiffs in a judgment against a separate defendant will preclude the plaintiffs from collecting damages against the automobile manufacturer as well and whether there is sufficient evidence for the plaintiffs to submit to the jury their claims for punitive damages and aggravating circumstance damages against the manufacturer.

Facts: In May 2003, state Trooper Michael Newton stopped driver Michael Nolte on Interstate 70 for a minor traffic violation. Both vehicles pulled onto the highway's shoulder, and Newton had Nolte sit with him in the patrol car while Newton wrote up a warning for the traffic violation. At the same time, Trade Winds Distributing Inc. employee Paul Daniel was driving a Trade Winds pickup truck pulling a trailer along

Interstate 70. Newton veered onto the shoulder and rear-ended the patrol car in which Newton and Nolte were sitting. The patrol car burst into flames on impact, killing Newton and causing Nolte to sustain very serious burns. Because neither man broke any bones in the collision, evidence indicated the injuries would not have been as serious had the fire not occurred. Nolte, his wife and the trooper's widow, Shonnie Newton, sued Trade Winds for Daniel's negligence and Ford Motor Company, which had manufactured the patrol car, a Ford Crown Victoria Police Interceptor, for negligence and strict products liability. They argued the explosion that killed the trooper and injured Nolte was caused by the unsafe placement of the fuel tank behind the patrol car's rear axle and a defective anti-spill valve on the tube that fills the fuel tank.

At trial, both sides presented evidence concerning a "shield upgrade kit" that Ford developed in 2002 for use with its Crown Victoria Police Interceptor patrol cars. Trooper Newton's patrol car had been equipped with the kit, which was designed to cover components of the rear axle to prevent punctures to the fuel tank during rear-end collisions. Before trial, Newton and the Noltes expressed their intention to introduce evidence that there had been 11 rear-impact collisions – including the one involving Newton's patrol car – in which fuel leaks from Crown Victoria Police Interceptors equipped with the shield upgrade kit had resulted in fires. Of these 11 "post-upgrade accidents, four preceded the collision with Newton's patrol car, and six occurred after it. Following a pretrial hearing on the issue, the trial court ruled that evidence of the four accidents that occurred before the collision with Newton's patrol car was admissible to show Ford's notice of danger caused by fuel leakage in patrol cars equipped with shield upgrade kits. During trial, however, the fact that there had been a total of 11 post-upgrade accidents involving fuel leakage was presented twice – first when Ford presented the deposition testimony of its vice president for safety and again during the plaintiffs' cross-examination of one of Ford's experts. After presenting the deposition testimony, Ford's counsel advised the court he inadvertently had allowed testimony about the post-upgrade accidents that occurred after the collision with Newton's patrol car, but he did not ask the court to strike the testimony. Later, during cross-examination of Ford's expert, Ford did not object when the plaintiffs' counsel referenced the 11 accidents. When the plaintiffs' attorney attempted to discuss the 11 post-upgrade accidents with fuel leakage during closing arguments, however, Ford objected, and the trial court sustained the objection.

Ultimately, the jury awarded \$4 million in damages to Newton on her claim against Trade Winds and \$4.5 million to the Noltes on their claim against Trade Winds, but on the plaintiffs' claims against Ford, the jury found the patrol car manufacturer was not liable for the injuries sustained as a result of the collision. At a subsequent hearing on the plaintiffs' motion for a new trial, the trial court acknowledged it had erred in prohibiting them from referencing all 11 accidents because Ford had injected the issue of the six post-Newton accidents into the case, but the court concluded this error was not prejudicial and overruled the plaintiffs' motion. Newton and the Noltes appeal.

REVERSED AND REMANDED.

Court en banc holds: The trial court's error in excluding argument as to the evidence of the other explosions denied Newton and the Noltes a fair trial against Ford. Once Ford's counsel injected evidence of all 11 accidents into the case, Newton and the Noltes were entitled to discuss all 11 accidents despite the trial court's previous ruling that only the four "pre-Newton" accidents would be admissible. The trial court clearly erred in barring discussion of any of the 11 accidents during closing arguments. In *Tune v. Synergy Gas Corp.*, 883 S.W.2d 10, 22 (Mo. banc 1994), this Court held that trial court error in denying counsel the opportunity to discuss evidence in a case during closing argument is presumed prejudicial. Ford fails to prove the error here was not prejudicial. The record demonstrates that, throughout the trial, Ford argued the shield upgrade kit addressed the only defect in the patrol car's fuel tank that could have resulted in fuel leakage. To counter this argument, the plaintiffs wished to argue during closing that evidence of the 11 post-upgrade accidents involving fuel leakage supported the contrary conclusion that the shield upgrade kit did not address the patrol car's underlying defect as Ford claimed and that the post-upgrade accidents indicated the existence of a continuing defect. As Ford's emphasis on the issue during closing indicates, the effectiveness of the shield upgrade kit – despite not being an element of the plaintiffs' case – seemed important to the jury's determination of liability. Allowing Ford to argue during closing that the upgrade kit cured any defect in the patrol car's fuel tank while preventing the plaintiffs from arguing their theory that the existence of 11 post-upgrade accidents shows the kit did not cure the defect placed the plaintiffs at an unfair disadvantage and materially affected the merits of the action. As such, the trial court abused its discretion in overruling Newton and the Noltes' motion for a new trial.

Concurring opinion by Judge Wolff: The author writes separately to explore the prospect that the doctrine of issue preclusion – traditionally known as "collateral estoppel" – will apply in the case on remand. The final judgment against Trade Winds stands for the proposition that Newton suffered \$4 million in damages for the death of her husband and that the Noltes suffered \$4.5 million in damages for personal injuries. As such, the issue of damages appears to have been litigated fully and fairly by the plaintiffs in their suit against Trade Winds, and the doctrine of issue preclusion makes the jury's calculation of actual damages binding on the plaintiffs. Accordingly, although on remand the trial court will have to consider whether the doctrine applies, there is nothing in the record to suggest that the judgment between the plaintiffs and Trade Winds should not preclude Newton and the Noltes from obtaining a judgment for damages that exceeds the amounts determined by the original jury. On remand, the trial court also will be able to determine whether Newton and the Noltes have sufficient evidence to submit to the jury their claims against Ford for punitive damages and aggravating circumstance damages.