

Supreme Court of Appeals of West Virginia
April 21, 2015, Argument Docket
LAWS Program
Mason County Courthouse, Point Pleasant, WV

For a full description of the facts and legal arguments raised on appeal, please review the briefs filed by the parties.

2. AARON BROWNING V. DAVID HICKMAN, No. 13-1116

Procedural and Factual Background:

This appeal arises from an automobile accident that occurred on October 24, 2011, at an intersection in Logan, West Virginia. The plaintiff, Aaron Browning, seeks to recover damages for injuries arising from the accident. The details of the accident are contested by the parties. Both parties claimed to have the right-of-way. Immediately after the accident, a call was made to 911 in which the caller described the accident, stating, “It was the red truck, it pulled out in front of the vehicle.” The “red truck” was driven by the plaintiff and the “vehicle” was driven by the defendant. Both parties filed pre-trial motions regarding the admissibility of the 911 call at trial. The court ruled prior to trial that the 911 call was inadmissible because it was not probative on the issue of which driver had the green light at the time of the accident. At the close of the plaintiff’s case-in-chief, counsel for the defendant renewed his motion to admit the 911 call under several exceptions to the hearsay rule.

The court modified its prior ruling and allowed the recorded 911 call to be played. The court stated in its order that its prior ruling was based on a limited view of the issues at trial, that evidence taken during trial made clear that proximity to the intersection was an issue, the credibility of witnesses was an issue, and the 911 call was probative on those issues and should be admitted.

During the trial, the defendant filed a motion to preclude Deputy Jacob Miller, the police officer who investigated this accident, from offering expert opinion testimony regarding who had the right-of-way. The court granted the defendant’s motion and ruled that the officer could not offer expert opinion regarding who had the right-of-way. After a two-day trial, the jury returned a verdict in favor the defendant. The plaintiff’s motion for a new trial was denied. The plaintiff requests that the Court reverse and vacate the circuit court’s order denying his motion for a new trial.

Supreme Court of Appeals of West Virginia
April 21, 2015, Argument Docket
LAWS Program
Mason County Courthouse, Point Pleasant, WV

Hearsay:

Hearsay refers to an out-of-court statement used to prove the truth of a matter asserted. Such testimony is generally inadmissible under the West Virginia Rules of Evidence, but there are numerous exceptions to the hearsay rule. The exceptions to the hearsay rule are set forth in the West Virginia Rules of Evidence.

Plaintiff Browning's Argument:

The plaintiff raises two assignments of error. First, the plaintiff asserts that the circuit court erred in reversing its prior decision to exclude the 911 call from evidence. The plaintiff states that the circuit court misapplied the West Virginia Rules of Evidence regarding this issue. The plaintiff states that the 911 call should have been excluded under the Rules of Evidence because its probative value was substantially outweighed by the danger of unfair prejudice. The plaintiff asserts that the 911 recording, which suggests that the plaintiff's vehicle struck the defendant's vehicle, was more prejudicial than probative. Further, the plaintiff states that the 911 call should be excluded because it is inadmissible hearsay and because the caller lacked the competency to testify concerning the accident. The plaintiff asserts that the call does not demonstrate that the caller had personal knowledge of the accident. The plaintiff states that it is unclear from the 911 call whether the caller has personal knowledge of the accident by actually witnessing it happen or if she merely saw the placement of the vehicles after the accident occurred.

Second, the plaintiff asserts that the circuit court erred by excluding Deputy Miller's opinion on fault. The plaintiff states that Deputy Miller was qualified to provide an expert opinion as to the fault of the accident. Deputy Miller would have testified that the defendant failed to yield at the right-of-way and that this failure was the proximate cause of the accident. The plaintiff states that the testimony of Deputy Miller should have been admitted because Deputy Miller has specialized knowledge that would have assisted the jury. Further, the police report should have been admitted in its original state without any redactions regarding which party failed to yield.

Supreme Court of Appeals of West Virginia
April 21, 2015, Argument Docket
LAWS Program
Mason County Courthouse, Point Pleasant, WV

Defendant Hickman's Argument:

The defendant asserts that the recording of the 911 call was properly admitted into evidence under the "present sense impression" exception to the hearsay rule. The "present sense impression" exception provides that: 1) the statement was made at the time of the accident or shortly after, 2) the statement describes the event, and 3) the event giving rise to the statement was within the declarant's personal knowledge. The defendant states that the 911 call should be admitted because 1) it was made shortly after the accident; 2) it describes the two-vehicle accident, both drivers, and how the accident happened; and 3) the caller had personal knowledge of the accident, which is clear from the content of the call. The defendant further asserts that the 911 call was relevant and probative on the proximity of the parties at the time of the accident, which the plaintiff made a contested issue during the trial. The defendant states that the circuit court acted within its discretion in modifying its decision and admitting the 911 call as it became clear at the trial that it was relevant and probative for the jury.

Also, the defendant asserts that the circuit court did not abuse its discretion in excluding Deputy Miller's opinion on fault. The defendant states that Deputy Miller admitted that he did not know who had the right-of-way and was not present when the accident occurred. The defendant states that Deputy Miller is not an expert on accident reconstruction. Therefore, the defendant states that the circuit court was within its discretion to decide that even if the police officer was an expert, he had no basis for offering his opinion on fault.