

Starcher, J., dissenting:

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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The facts in this case can be summed up quite simply: the defendant was driving her car in a careless, negligent fashion. The plaintiff, a passenger in the car, didn't vociferously object to the defendant's carelessness. More specifically, she didn't demand that the defendant immediately stop the car so she could get out.¹ Based upon this, the circuit judge let the jury decide if they thought the plaintiff was negligent. The jury decided the plaintiff was 49% negligent.

This is absurd. A person driving a car has a duty of due care to drive in a way that does not cause injury to passengers in the vehicle. A passenger does not -- repeat, does not -- have a duty to play "backseat driver" and demand that the driver operate the car in a particular way, or jump out of the car if the driver does something that looks dangerous.

If a driver is speeding and is pulled over by a police officer, could his defense be that "my passenger didn't tell me to slow down, so give her a ticket too?" The majority seems to indicate that the passenger should receive a speeding ticket -- using the majority's logic, the passenger is just as culpable,

¹Under normal circumstances, a passenger in an automobile should never be held to be a contributor to the negligence of a driver. Admittedly, one can conjure up scenarios that might demand a different result. For example, if a passenger engaged in "horseplay" that included grabbing the steering wheel while the automobile was in operation -- that passenger might be said to have contributed to a resulting accident.

simply because the passenger didn't get out of the car the instant she saw that the driver might exceed the speed limit.

I cannot accept the circuit court's actions in this case. The jury should never have been given a comparative negligence or assumption of the risk instruction.

Unfortunately, the majority opinion never reached this legal argument by the plaintiff. Instead, the majority opinion looked solely to the facts, and decided that the facts could support a finding by the jury of comparative negligence -- and therefore, the jury's verdict should stand. I disagree -- the problem is, the jury should never have been instructed on comparative negligence to start with. The majority opinion should have addressed that legal argument instead, and then reversed the verdict to allow a retrial without any type of comparative negligence instruction.

I therefore dissent.