

THE EXTRAPOLATING EXPERT

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In my January 1992 column, "Not Everyone Is An Expert," I discussed how one may qualify to be an expert witness to testify in court regarding such matters as the condition or valuation of a collector car. But qualifying as an expert is only half the battle; the expert when testifying must also follow certain rules and procedures. Although an expert is granted greater latitude than ordinary witnesses (such as being allowed to give opinions), nevertheless, like all witnesses, he or she may not testify based simply on mere speculation or conjecture.

In *Carolyn Bradley v. Triangle Amoco, Inc. and William Downs*, decided by the Court of Appeals of Tennessee at Nashville on March 17, 1993, the court found that an expert crossed that line.

According to the court, Bradley owned a 1968 Ford Galaxie. One day, after she parked it at an Amoco station, it refused to start. Downs, an employee of the station, attempted to help her. After some preliminary efforts, he put the transmission in neutral and was successful in getting it to start. He reportedly returned the shift lever to the Park position, got out of the car with the engine running, went to the front of the Galaxie and did some work under the hood. Unfortunately, at that point, the car suddenly and unexpectedly moved in reverse. It struck Bradley, who was standing behind the car, knocking her down and injuring her. Downs ran after the vehicle, got in, applied the brakes, put the transmission in Drive and drove it back to the station.

Bradley sued the station and the attendant for negligence. The defendants argued that there had been a defect in

the Galaxie which caused it to jump into reverse, and that Downs had not negligently left the car in neutral or otherwise caused it to back over Bradley.

(There was no evidence of any problems with the Galaxie's transmission or gear shift while it was driven during the more than twenty years before and nearly two years after the accident.)

At trial, a jury ruled for the defendants. Bradley appealed. The court of appeals reversed the lower court and sent the case back down for a new trial.

The appellate court noted that since the defendants' defense was based on their claim that there was a defect in the internal transmission linkage of the Galaxie, they had the burden of proving the existence of such a defect. At the first trial, the defendants attempted to establish that fact through the testimony of an expert.

The expert had examined the Galaxie in January 1992, two years after Bradley's injury and after the car had been "totaled" in an unrelated head-on collision in August 1991. However, although the expert examined the vehicle's external transmission linkage, he did not inspect its *internal* transmission linkage. Instead, he had testified that there was no reason to inspect the transmission because (1) the Galaxie contained a Ford C-6 transmission and (2) *all* Ford C-6 transmissions manufactured prior to 1980 allegedly had a manufacturing defect that would cause a car to "jump" into reverse from neutral. Bradley's lawyer had objected to this testimony at the trial, but the court had allowed it.

Bradley argued on appeal that the trial court had erred in admitting such testi-

mony because it was based upon conjecture and speculation, as opposed to an actual physical examination of the internal transmission linkage, which she claimed could have been performed. The appellate court agreed.

The court of appeals ruled that there was no evidence to support the expert's bald assertion, and that it constituted mere speculation and conjecture. The court conceded that an expert's opinion need not be based entirely upon observation; indeed, an expert may testify based upon facts presented in a hypothetical question. However, here the expert had made no effort to inspect the transmission involved for defects. The expert himself admitted that he had no personal knowledge to establish the existence of the defect in Bradley's vehicle which he claimed existed. The court thus ruled that the trial court erred in admitting the expert's testimony, and that the testimony, standing alone, was insufficient to carry the defendants' burden of proving a manufacturing defect in the Galaxie.

The defendants asked the Tennessee Supreme Court for permission to appeal the ruling, which that court denied on July 6, 1993. However, before the case could be tried again, Ms. Bradley unfortunately died, and it was settled out of court.

Lawrence Savell is an attorney and writer in New York City. This column provides general information and cannot substitute for consultation with a lawyer.