

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JEFF L. McELYEA

PLAINTIFF

VS.

NO. 4:08CV04204 JMM

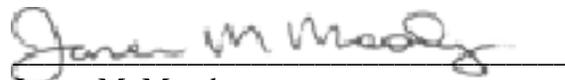
SHANE L. MCKEE, AS AGENT/EMPLOYEE
OF FITZGERALD'S TRUCKING, LLC,
AND FITZGERALD'S TRUCKING, LLC

DEFENDANTS

ORDER

Pending is Plaintiff's motion in limine. (Docket # 7). Defendants have responded. Plaintiff seeks to exclude testimony that he had a strong odor of alcohol about his person at the time of the accident and did not have his headlights on. The Federal Rules of Evidence, applicable to this diversity case, allows for the introduction of the evidence at issue. In *Spencer v. Young*, 495 F. 3d 945 (8th Cir. 2007), the Eighth Circuit Court of Appeals held: "Unlike the Arkansas rule which may limit admission of alcohol consumption short of intoxication . . . evidence of alcohol consumption may be relevant under the federal rules to the question of whether a driver contributed to a collision." *Id.* at 950. In *Spencer*, the Court found that "[t]he jury could have inferred from this evidence that [the plaintiff's] alcohol consumption contributed to his headlights being off and to inattentiveness to oncoming traffic." *Id.* The Court finds that the testimony that Plaintiff had a strong odor of alcohol about his person at the time of the accident and did not have his headlights on relevant to the issue of comparative fault. Accordingly, Plaintiff's motion in limine is DENIED.

IT IS SO ORDERED this 26th day of October, 2009.



James M. Moody
United States District Judge