NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 0199

TAMMY CHAUVIN, ET AL.

VERSUS

STATE OF LOUISIANA THROUGH
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

Judgment Rendered: OCT 2 8 2016

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APPEALED FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF WEST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 40,034
DIVISION "D"

HONORABLE WILLIAM C. DUPONT, JUDGE

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BEFORE: PETTIGREW, McDONALD, and DRAKE, JJ.

McDONALD, J.

This matter arises from a December 2011 automobile accident at the intersection of Louisiana Highway 1 and Sugar Plantation Parkway in Addis, Louisiana, which resulted in the deaths of Elsie Bizette "Jean" Boudreaux and her mother, Thelma Bizette, as well as injuries to Mrs. Boudreaux's husband, Albert. Tammy Chauvin, Mr. and Mrs. Boudreaux's daughter; Jeannette Kline, Mrs. Bizette's daughter; and, Cecil Bizette, Mrs. Bizette's son, filed this suit asserting wrongful death and/or survival actions against the State of Louisiana, through the Department of Transportation and Development (DOTD). After a trial, the jury returned a verdict finding Mrs. Boudreaux 60% at fault for the accident and finding DOTD 40% at fault. The jury also awarded each plaintiff monetary damages. On July 29, 2015, the trial court signed a judgment conforming to the jury's verdict.

DOTD appeals from the adverse judgment, contending: (1) the trial court legally erred in partially denying DOTD's motion in limine to exclude evidence of how it collected crash reports for the subject intersection prior to the accident; and (2) the jury manifestly erred in allocating any fault to DOTD for causing the accident.

Partial Denial of DOTD's Motion in Limine

DOTD argues that evidence of how it collected crash reports for the subject intersection prior to the accident is irrelevant to how the accident occurred. Further, DOTD argues that it was unduly prejudiced by the trial court's introduction of such evidence, because the "jury clearly deemed the evidence of inaccurate or incomplete collection of crash reports as evidence of DOTD's fault" in causing the accident.

Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. LSA-C.E. art. 401. Although relevant, evidence may be excluded if, inter alia, its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. LSA-C.E. art. 403. Error may not be predicated upon a ruling excluding evidence unless a substantial right of the objecting party is affected. LSA-C.E. art. 103(A). Further, the trial court has great discretion when considering evidentiary matters such as motions in limine and

in determining whether evidence is relevant. *Schexnayder v. Bridges*, 15-0786 (La. App. 1 Cir. 2/26/16), 190 So.3d 764, 770. Upon review, the appellate court must first consider whether the challenged ruling was wrong; if so, the determination is then whether the error, when compared to the record in its totality, had a substantial effect on the outcome of the case. *Maddox v. Bailey*, 13-0564 (La. App. 1 Cir. 5/19/14), 146 So.3d 590, 594.

When prior accidents occur at substantially the same place, under substantially the same conditions, and are caused by the same or a similar danger as the accident at issue, such evidence is relevant to show the dangerous nature of the place and the defendant's knowledge of the dangerous condition or his failure to take precautionary measures. *Lee v. K-Mart Corp.*, 483 So.2d 609, 612-13 (La App. 1 Cir. 1985), *writ denied*, 484 So.2d 661 (La. 1986); *Ketcher v. Illinois Central Gulf R. Co.*, 440 So.2d 805, 810 (La. App. 1 Cir. 1983), *writs denied*, 444 So.2d 1220, 1222 (La. 1984). Thus, evidence of similar prior accidents at the La. Hwy. 1/Sugar Plantation Parkway intersection was relevant to show that the intersection was dangerous and that DOTD knew of such and failed to take the appropriate action to correct it before the December 2011 accident occurred.

DOTD's method of collecting crash reports, as well as the accuracy of that method, directly bore on its knowledge of prior accidents similar to the December 2011 accident. That is, a glitch in DOTD's crash report collection method, which resulted in DOTD knowing of far less than the actual number of crashes at the La. Hwy. 1/Sugar Plantation Parkway intersection, was relevant to show that DOTD lacked knowledge of danger at the intersection; whereas, had there been no glitch in DOTD's crash report collection method, DOTD would have known of multiple crashes at the intersection, which indeed would have been relevant to show DOTD's knowledge of danger at the intersection. Consequently, we conclude the trial court did not abuse its discretion in partially denying DOTD's motion in limine and in finding that DOTD's method of collecting crash reports was relevant to a determination of DOTD's liability in this case. And, after a complete review of the evidence, we further conclude that, under the balancing test of LSA-C.E. art. 403, the probative value of DOTD's flawed crash report

collection method was not substantially outweighed by the danger of unfair prejudice to DOTD, confusion of the issues, or that admission of this evidence at trial misled the jury to wrongly allocate fault to DOTD. Thus, the trial court did not err in admitting this evidence at trial.

Allocation of Fault

DOTD next argues that the jury manifestly erred in allocating any fault to it for causing the accident. DOTD argues that the trial evidence clearly showed that the La. Hwy. 1/Sugar Plantation Parkway intersection complied with the Manual on Uniform Traffic Control Devices (MUTCD), with DOTD's own engineering standards, and that a traffic signal was not warranted. Further, DOTD contends Mrs. Boudreaux violated her statutory duty to yield to oncoming traffic and should have been found 100% at fault in causing the accident.

In an action for damages where a person suffers injury, death, or loss, the percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined. LSA-C.C. art. 2323. In allocating fault between the parties, the trier of fact is bound to consider the nature of each party's wrongful conduct and the extent of the causal relationship between that conduct and the damages claimed. *Watson v. State Farm Fire and Cas. Ins. Co.,* 469 So.2d 967, 974 (La. 1985). In assessing the nature of the parties' conduct, factors that may influence the degree of fault allocated include: (1) whether the conduct resulted from inadvertence or involved an awareness of the danger; (2) how great a risk was created by the conduct; (3) the significance of what was sought by the conduct; (4) the capacities of the actor, whether superior or inferior; and (5) any extenuating circumstances that might require the actor to proceed in haste, without proper thought. *Id.*; *Browne v. State ex rel. DOTD*, 15-0667 (La. App. 1 Cir. 2/4/16), 2016 WL 455938 (unpublished), *writ denied*, 16-0442 (La. 4/22/16), 191 So.3d 1044.

A jury's allocation of fault is a factual determination, and an appellate court reviews such a finding under the manifest error-clearly wrong standard of review. *Schexnayder*, 190 So.3d at 773. In this case, the jury heard several lay witnesses testify as to how the accident occurred and heard two traffic engineering experts testify

as to the adequacy of the traffic controls at the intersection. The jury then determined that, on the date of the accident, the intersection had a defect that created an unreasonable risk of harm and that DOTD had actual or constructive notice of the defect and failed to timely correct it. We have reviewed the entire record and, having considered the factors outlined in *Watson*, we conclude the jury's allocation of 40% fault to DOTD was not manifestly erroneous or clearly wrong.

DOTD presented evidence showing that, after it accurately ascertained a number of crashes at the La. Hwy. 1/Sugar Plantation Parkway intersection, DOTD appropriately considered multiple options to increase the safety of the intersection and ultimately chose to proceed with the installation of a J-turn. However, the plaintiffs presented evidence showing that, notwithstanding MUTCD requirements and DOTD standards, the intersection was unreasonably dangerous and that a traffic signal was less costly, would have taken less time to implement, and was a better option than the J-turn. After weighing and evaluating the evidence, a jury is free to accept or reject lay or expert opinion, and, where there is a difference in opinion on factual matters, the jury as the trier of fact has discretion to favor one opinion over another. *See Guidroz v. State ex rel. DOTD*, 94-0253 (La. App. 1 Cir. 12/22/94), 648 So.2d 1361, 1365. Further, where there are alternative permissible views of the evidence, a jury's choice between them cannot be considered manifestly erroneous or clearly wrong. *Stobart v. State ex rel. DOTD*, 617 So.2d 880, 883 (La. 1993). For these reasons, we find no error in the jury's allocation of 40% fault to DOTD.

For reasons stated here, we affirm the trial court's July 29, 2015 judgment. Costs of this appeal in the amount of $8,047.00 are assessed to the State, through the Department of Transportation and Development. We issue this memorandum opinion in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.1.B.

AFFIRMED.