

The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

June 2009

Statewide Jury Verdict Coverage

10 IJVR 6

Unbiased and Independently Researched Jury Verdict Results

In This Issue

Marion County

Auto Negligence - Defense verdict	p. 1
Hospital Negligence - Defense verdict	p. 4
Auto Negligence - Defense verdict	p. 5
Auto Negligence - Zero	p. 6

Lake County

Security Negligence - \$508,100	p. 1
Auto Negligence - \$36,000	p. 3
Premises Liability - Defense verdict	p. 4
Auto Negligence - \$6,152	p. 6
Premises Liability - \$70,000	p. 10

Floyd County

Power Tool Neg. - Defense verdict	p. 2
-----------------------------------	------

Clark County

Tree Trimming Neg. - Defense verdict	p. 5
--------------------------------------	------

Elkhart County

Premises Liability - Defense verdict	p. 6
--------------------------------------	------

Tippecanoe County

Medical Negligence - Defense verdict	p. 7
--------------------------------------	------

St. Joseph County

Auto Negligence - \$298,732	p. 8
-----------------------------	------

Harrison County

Premises Liability - Defense verdict	p. 9
--------------------------------------	------

Porter County

Auto Negligence - Defense verdict	p. 10
-----------------------------------	-------

Boone County

Auto Negligence - \$16,500	p. 10
----------------------------	-------

Hamilton County

Auto Negligence - Zero	p. 11
------------------------	-------

Security Negligence - While leaving a tavern, plaintiff was shot and seriously injured by a fellow patron; plaintiff claimed the attack was foreseeable, and he blamed the tavern for failing to protect him

Freyre v. Midtown Station, Inc.,

45D05-0602-CT-25

Plaintiff: Andrew A. Crosmer, *Rubino Ruman Crosmer Smith Sersic & Polen*,
Dyer

Defense: Christopher W. Johnson and Michael P. Blaize, *State Farm Litigation Counsel*, Crown Point
Verdict: \$508,100 for plaintiff less 35% comparative fault

County: **Lake**, Superior

Court: J. Davis, 4-17-08

On 12-3-05, twenty-seven year-old Armando Freyre and his friend, Juan Cavillo, age 29, visited the Midtown Station tavern at 1928 New York Avenue in Whiting for an evening of drinking and socializing. They soon learned that one of the other patrons in the tavern that night was Paul Quiroz.

Quiroz and Cavillo apparently knew each other some years previously. Although the record does not reveal the nature of their relationship, subsequent events would suggest it was not a friendly one.

At some point during the evening, Cavillo and Freyre noticed that Quiroz was looking at them. The two men apparently did not appreciate the scrutiny, and they approached Quiroz about it to inquire into his intentions.

That conversation ended peacefully. After Cavillo and Freyre had been in the tavern a total of approximately three and a half hours, however, they noticed that Quiroz was again looking at them. They confronted him a second time and made their displeasure known.

Following this second discussion with Quiroz, Cavillo and Freyre turned

to leave the tavern. For some reason, Quiroz followed along behind Cavillo while continuing to express his apologies.

As the men walked toward the door, Quiroz suddenly pulled out a gun and shot Cavillo. Freyre immediately responded by throwing a drink at Quiroz. That ploy failed to work, and Quiroz quickly shot Freyre as well.

Both Cavillo and Freyre survived the incident, but they were badly injured. Cavillo was treated for gun shot wounds to his abdomen and legs. He also suffered a shattered left femur. His medical expenses came to \$94,007. Freyre was treated for gun shot wounds to his colon and his left arm. His medicals totaled \$119,990.

Quiroz faced criminal charges for his role in the attack. At the time the IJVR reviewed the record, he was still incarcerated and awaiting trial. Interestingly, the Midtown Station tavern was shut down in December of 2005 – i.e., the same month as the shooting. The record does not reveal the reason for the shut down, but it may have been due to the fact that the tavern was not licensed.

Cavillo and Freyre filed suit against Midtown Station, Inc., the owner and operator of the tavern, and blamed the company for failing to protect them from the foreseeable attack by Quiroz. Plaintiffs' identified experts included Raymond Myszak, Security, Hammond. It was Myszak's opinion that the attack was indeed foreseeable.

Midtown Station defended the case and denied the shooting was foreseeable. Defendant also sought to place the blame for the incident on both Quiroz and plaintiffs.

Specifically, defendant blamed Quiroz for doing the actual shooting.

Civil Jury Verdicts

Timely coverage of civil jury verdicts in Indiana including court, division, presiding judge, parties, cause number, attorneys and results.

Cavillo and Freyre were blamed for contributing to the situation by confronting Quiroz and for failing to leave the establishment or call the police when they felt threatened.

The case was tried for four days in Hammond. Cavillo dismissed his claims for unknown reasons on the first day of trial. The case continued solely on Freyre's claims. The jury ultimately returned a verdict in which Quiroz was assigned 30% of the fault, plaintiffs Freyre was assigned 5%, and the remaining 65% was assigned to Midtown Station.

The jury set Freyre's raw damages at \$508,100. After reduction for comparative fault, his final award came to \$330,265. The court entered a judgment for that amount, and it has been satisfied.

Auto Negligence - Plaintiff claimed defendant changed lanes on the interstate and crashed into the tractor-trailer in which plaintiff was riding as a passenger; defendant claimed it was the tractor-trailer that crashed into her

Dixon v. Hutson, 49C01-0408-CT-2840
Plaintiff: Marc S. Sedwick, *The Law Office of Marc S. Sedwick, P.C.*, Indianapolis

Defense: Christie A. Seifert, *Goodin Abernathy, LLP.*, Indianapolis
Verdict: Defense verdict on comparative fault

County: **Marion**, Circuit
Court: J. Rosenberg, 3-12-09

In the evening of 8-28-02, Julie Dixon, age 44 and a truck driver employed by R&R Trucking, was riding as a passenger in a tractor-trailer being driven by Erritt Dixon. The two were traveling north on I-465 in Indianapolis.

At a point near mile marker 14, Jamie Hutson, a paralegal, entered the interstate at 55 m.p.h. from Exit 13B in a 1997 Chevrolet Cavalier that she had owned for less than five hours. From this point onward, the parties offer differing accounts of what happened.

According to Dixon, the tractor-trailer in which she was riding was in the middle lane. As Hutson came onto the interstate from the on-ramp, she was

distracted by talking on a cell phone. In the next instant, Hutson encroached on Dixon's lane and ran into the tractor-trailer.

The impact caused Hutson's car to spin around and hit a concrete retaining wall. For her part, Dixon was apparently tossed around inside the cab of the tractor-trailer.

Dixon's resulting injuries included left rotator cuff tendinitis, left-sided upper extremity radiculopathy, cervical disc herniations, and vertebral malalignment. Dixon also complained of tension headaches and decreased range of motion in her cervical spine and left shoulder. Her incurred medical expenses came to \$32,527.

Dixon filed suit against Hutson and blamed her for crashing into the truck. Hutson defended the case and offered her own account of what happened. According to her, she was solidly within her own lane when the tractor-trailer started to change lanes and crashed into her.

Based on that account, Hutson named Erritt Dixon, the driver of the tractor-trailer, as a non-party and blamed the crash on him. Hutson's identified accident reconstructionist was Nicolas Tumbas of Bloomington.

Dixon responded to Hutson's defense by pointing out that Hutson had changed the details of her story at least five times regarding whether Hutson was trying to pass the truck or vice versa. In the end, according to Dixon, Hutson admitted in her deposition that she simply doesn't remember how the crash happened.

An Indianapolis jury heard the evidence and returned a verdict in which 100% of the fault was assigned to non-party Erritt Dixon. The court followed with a consistent defense judgment.

Prior to trial, Hutson made a Qualified Settlement Offer of \$5,000. Post-trial, Hutson filed a motion for attorney fees of \$1,000 based on Dixon's rejection of the offer. The court granted the motion.

Dixon filed a post-trial motion to correct error on the ground that the jury's verdict was against the weight of

the evidence. At the time the IJVR reviewed the record, the motion was still pending.

Power Tool Negligence - Plaintiff enlisted the help of his stepfather in building a dog pen; during the construction, the stepfather wielded a miter saw that cut off plaintiff's ring finger and severely damaged his middle finger

VanRiper v. Sharpe,
22C01-0610-CT-669

Plaintiff: Nicholas F. Stein and Amy R. Wheatley, *Law Office of Nicholas Stein*, New Albany

Defense: Rodney Scott and Sandra L. Heeke, *Waters Tyler Scott Hoffman & Doane*, New Albany

Verdict: Defense verdict on comparative fault

County: **Floyd**, Circuit

Court: J. Cody, 12-10-08

On 7-23-05, Raymond VanRiper, then age 38, was planning to build a dog pen in the yard of his residence at 129 Olive Avenue in New Albany. Although VanRiper had invited over a number of friends to help with the construction, the only one who showed up on the appointed day was his stepfather, Anthony Sharpe.

After having determined the general layout of the prospective pen, VanRiper decided that one of the first steps in the construction would be to drive wooden stakes into the ground to mark out the corners. In order to facilitate that process, the ends of the stakes needed to be cut at an angle.

VanRiper thought he had just the tool for the job. He went into his garage and emerged a moment later with a miter saw. VanRiper placed the miter saw on the ground but then decided the wood, which was already on the ground, needed to be moved closer to the saw. The parties offer differing accounts of what happened next.

According to VanRiper, he was moving the wood closer to the saw when Sharpe walked up and asked where the saw's power switch was located. While VanRiper continued to move the wood, he explained that the power switch was on the handle.