

Spring, 2025

AEI CLAIMS LAW QUIZ

CAN A POLICE OFFICER'S TRIAL TESTIMONY INCLUDE STATEMENTS MADE TO HIM BY SOMEONE AT THE ACCIDENT SCENE?

[Ref. Law of Evidence, Para. 4.01]

FACTS: Gonzalez filed a lawsuit against Wricks and her insurer, State Farm, seeking damages caused by a motor vehicle accident. At trial, prior to any testimony, Gonzalez's certified medical records and a bill from Louisiana Primary Care Consultants were admitted in evidence without objection. The parties stipulated that Gonzalez's damages did not exceed \$50,000 and State Farm had issued an insurance policy covering Wricks at the time of the accident. Gonzalez decided to proceed directly against Wricks' insurer, State Farm, which was permitted by Louisiana's Direct Action Statute. Wricks did not testify at trial.

Gonzalez testified at trial via a Spanish interpreter and made the following statements:

- On the night of the accident, I was driving my pickup truck on Brooklyn Avenue in Harvey, Louisiana, and was stopped at a red light at the intersection of Brooklyn Avenue and Lapalco Boulevard for about five to six seconds.
- When the light turned green, I waited two or three seconds and then slowly proceeded to cross the Lapalco lanes of travel.
- A car driven by Wricks ran a red light and collided with my vehicle.
- I swerved to the left and braked, but Wricks' car was coming very fast and I was unable to avoid the collision.
- A police officer and an ambulance arrived at the scene shortly after the accident occurred.

- The police officer spoke to me in English, although my native language is Spanish and I don't speak English fluently.
- I explained to the police officer that I started to cross the intersection when the light was green, but the officer found the accident was my fault and gave me traffic citations.

On cross-examination, Gonzalez identified photographs of his truck taken after the accident and made the following statements:

- The front of my truck struck the rear driver-side door of Wricks' car.
- I didn't have a driver's license at the time of the accident.
- I was familiar with the intersection where the accident happened.
- I noticed Wricks' vehicle in my peripheral vision when I was halfway through the intersection.
- I received traffic citations for driving without a license; running a red light; and careless driving.

On redirect, Gonzalez testified that he had been driving since he was fifteen years old and he did have a driver's license from Guatemala.

The only other person to testify at trial was Officer Rivere, the patrol deputy who investigated the accident on the night it occurred. Officer Rivere identified photographs of the intersection, Gonzalez's truck, Wricks' car, and then made the following statements:

- I am a patrol deputy for the Jefferson Parish Sheriff's Office and I responded to the accident shortly after it occurred.
- When I arrived at the scene of the accident, Gonzalez's truck was parked in a nearby parking lot and Wricks' car was positioned against a U-Haul storage building next to the intersection.
- I looked at the traffic lights that controlled the intersection to determine if they were functioning properly and found that they were.
- I first spoke to Wricks, who said she was driving westbound on Lapalco, when she reached the intersection at Brooklyn the light was green, she proceeded into the intersection and was then struck by another vehicle. Gonzalez's attorney objected to this testimony as hearsay, but the trial court overruled the objection and allowed it in evidence.
- Wricks told me the collision caused her to lose control of her car and then strike a storage unit in front of the U-Haul building.

- I then spoke with Gonzalez and asked him what happened. Gonzalez said that he was traveling north on Brooklyn and had a green light to cross Lapalco, but when he proceeded into the intersection, he was struck by another vehicle.
- Since the drivers had conflicting stories, I decided to question them again. When I asked Wricks again, what happened, she provided me with the same information as before. But when I asked Gonzalez to tell me again what happened, he provided me with a different sequence of events than he had before.
- Wricks' car had damage to the driver's side front and rear and Gonzalez had damage only to the front of his truck.
- I issued citations to Gonzalez for disregarding a red light, no driver's license, and careless driving.
- I determined that Gonzalez was at fault for the accident because of his conflicting statements and the damage to the vehicles indicated that Wricks had control of the intersection.

On cross-examination, Officer Rivere made the following statements:

- An interpreter could have been called to the scene of the accident, but Gonzalez did not request one.
- Although Gonzalez had an accent, he spoke English fluently.
- Although I believed that Gonzalez's story about the accident had changed at the accident scene when I spoke to him a second time, I don't recall specifically what changed nor did I write what changed in my report.
- I did not take measurements at the accident scene and I have not been trained in accident reconstruction.

At the conclusion of the trial, the court found, based on the evidence and "taking into account the conflict as to who had the green light," that Gonzalez was at fault, dismissed his claim with prejudice, and ruled in favor of State Farm. Gonzalez appealed.

Gonzalez argued, among other things, that the trial court erred when the judge overruled his hearsay objection and allowed Officer Rivere to testify that Wricks told him at the accident scene that she had the green light. Gonzalez claimed that his testimony that he had the green light was uncontested and should have been accepted as true since neither Wricks nor any other eyewitnesses testified at trial. In response, however, State Farm argued that the trial court correctly allowed Officer Rivere's testimony about Wricks' statements at the accident scene. According to State Farm, the officer's testimony was not hearsay because the statements were not offered "for the truth of the matter asserted," but rather to

explain the course of the officer's investigation.

QUESTION: Did the trial court err by allowing impermissible hearsay evidence when the officer testified that on the night of the accident, Wricks told him she had the green light at the intersection?

ANSWER: Yes, according to the Court of Appeals of Louisiana in *Gonzalez v. Wricks*, 389 So3d 218 (La. App. 2024).

The court began its analysis with a brief review of the law regarding hearsay evidence.

Hearsay is a statement other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted. Hearsay is inadmissible except as otherwise provided by this Code or other legislation. The Louisiana Supreme Court has stated that hearsay is excluded because the value of the statement rests on the credibility of the out-of-court asserter who is not subject to cross-examination and other safeguards of reliability. However, when an out-of-court statement is offered for a purpose other than to establish the truth of the assertion, its evidentiary value is not dependent upon the credibility of the out-of-court asserter and the statement falls outside the scope of the hearsay exclusionary rule.

In support of its position that Wricks' statements to Officer Rivere were not hearsay, State Farm cited *State v. Davis*, 947 So2d 48 (La. App. 5 Cir. 2006), in which the court found that a police officer's testimony may include statements provided by another person without constituting hearsay, if the statements are offered to explain the course of the police officer's investigation, rather than to prove the truth of the statements. The *Gonzalez* court acknowledged that some out-of-court statements may be admissible to prove a relevant issue at trial, if that issue is something other than the truth of the out-of-court statements. But that, according to the court, was not the purpose of Officer Rivere's testimony. The court said:

Wricks did not testify at trial. Officer Rivere's testimony that Wricks said she had the green light was an out-of-court statement that was not subject to cross-examination. Despite State Farm's assertions to the contrary, Officer Rivere's testimony that Wricks told him she had the green light was clearly offered for the truth of the matter asserted. Officer Rivere testified as to the substance of Wricks' statement, not merely what he did in response to her assertions. This testimony influenced the trial court's decision, as the substance of Wricks' statement formed the basis for the dispute as to who had the green light, and the trial court considered this dispute in rendering its decision.

We find that the trial court erred by overruling Gonzalez's objection and allowing Officer Rivere to present hearsay testimony that Wricks said she had the green light. Without this testimony, Gonzalez's testimony that he had the green light was undisputed. Gonzalez's objection to this testimony

should have been sustained and the testimony excluded as inadmissible hearsay.

The appellate court, in proceeding with its review of the case made the following findings of fact and law.

La. R. S. 32:232 governs the duty of motorists facing traffic control signals. A motorist with a green light has the right-of-way and may generally assume that motorists traveling on intersecting streets will obey the traffic signal and respect his right-of-way. However, a motorist cannot depend exclusively on a favorable green light. A motorist has a duty to watch for vehicles already in the intersection when the light changes. This duty does not extend to watching for traffic that has not yet entered the intersection.

Gonzalez argues that he was entitled to assume that traffic approaching the intersection would comply with the traffic signals. He further contends that Wricks was clearly at fault for the accident, because she failed to exercise ordinary care by disregarding a red light. Uncontroverted evidence should be taken as true to establish a fact for which it is offered absent any circumstances in the record casting suspicion as to the reliability of this evidence and sound reasons for its rejection.

The record does not show there were circumstances casting suspicion on the reliability of Gonzalez's unrefuted testimony that he: 1) had the green light; 2) proceeded with caution by waiting two to three seconds before slowly entering the intersection; 3) was halfway through the intersection when he saw Wricks' vehicle in his peripheral vision; and 4) was unable to avoid the collision. Although Officer Rivere testified he found Gonzalez to be at fault due to his conflicting statements, he could not recall what statements were conflicting or inconsistent. Officer Rivere also testified the damage to the vehicles showed that Wricks had control of the intersection. Although the photographs show that the front of Gonzalez's vehicle struck the side of Wricks' vehicle, this fact alone does not establish that Wricks entered the intersection before Gonzalez. Officer Revere testified that he did not take measurements at the scene and was not trained in accident reconstruction. Further, there was no evidence of Wricks' speed other than Gonzalez's testimony that her vehicle was coming very fast.

Based on our independent *de novo* review of the record, and considering Gonzalez's unrefuted testimony that he had the green light and did not see Wricks' vehicle when he entered the intersection, we find that Gonzalez proved by a preponderance of the evidence that the accident was solely caused by the negligence and/or fault of Wricks. Accordingly, we find that State Farm is liable for the damages Gonzalez sustained in this accident.

CONCLUSION: Hearsay is a statement, other than one made by the declarant while testifying at the present trial. In *Gonzalez*, for instance, officer Rivere was the declarant testifying at trial, but he repeated what Wricks told him on the night of the accident, namely, that she had the green light. Wricks' statement about

having the green light was an out-of-court statement which was being offered in evidence to prove the truth of that statement. That is classic hearsay which is usually inadmissible because it is considered untrustworthy. When the person who made the out-of-court statement is unavailable to testify in court about what they said, but someone in court repeats that statement, the party against whom the hearsay is admitted is deprived of the opportunity to cross-examine the out-of-court declarant. And that the law considers unjust and prejudicial to the adverse party.

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