

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**MAY 29, 1996**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-2505-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**FRED J. COLLIER, JR.,**

**Defendant-Appellant.**

APPEAL from a judgment and an order of the circuit court for Eau Claire County: THOMAS H. BARLAND, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Fred Collier appeals his conviction for homicide by negligent operation of a motor vehicle, after a trial by jury. Collier's semitrailer truck struck a state trooper's patrol car on Interstate 94. The trooper died as a result of the collision. The trooper had parked his patrol car in the right traffic lane, about 100 yards in front of various vehicles that were attending to a burning motor vehicle. He parked there for the purpose of

diverting traffic around the burning vehicle into another lane. Collier suffered from amnesia during the trial that resulted from the accident, which prevented him from recalling what occurred immediately before the collision. Collier argues that his amnesia prevented him from providing exculpatory evidence of his actions in the seconds before the collision, which had the effect of denying him a fair trial. Collier also argues that the trial court improperly accepted his counsel's stipulation on an issue of fact without Collier's personal ratification of the stipulation. We reject these arguments and affirm Collier's conviction.

According to Collier, his amnesia prevented him from providing exculpatory testimony on how he may have applied the brakes and tried to change lanes seconds before the collision. Courts may grant an amnesia sufferer a new trial if the illness deprived him of a fair trial. *State v. McIntosh*, 137 Wis.2d 339, 348-49, 404 N.W.2d 557, 361-62 (Ct. App. 1987). The amnesia's importance depends on various factors related to the illness's effect on the trial. See *State v. King*, 187 Wis.2d 548, 558-59, 523 N.W.2d 159, 161-62 (Ct. App. 1994). Here, Collier's amnesia had no significant effect on the trial's outcome. Even if we assume *arguendo* that, absent amnesia, Collier would have testified to last second attempts of braking the truck and changing lanes, this had no reasonable possibility of altering the jury's finding of criminal negligence. Collier's last second evasive actions would not have mitigated his high degree of negligence in failing to act on clear signs of danger well in advance of the collision. The trial produced substantial evidence that Collier should have been able to see the accident scene and avoid the collision long before his last second evasive tactics; he should have discovered the dangerous situation in time to have avoided futile, last second evasive tactics. His attempt to avoid a collision came too late to absolve him of criminal negligence.

Collier's counsel did not wrongfully stipulate to the fact that the state trooper died as a result of the injuries he suffered in the collision. According to Collier, this effectively stipulated to the fact that Collier caused the trooper's death, thereby depriving Collier of his right to a jury trial on the element of causation. Collier never personally ratified the stipulation. In *State v. Villarreal*, 153 Wis.2d 323, 326-30, 450 N.W.2d 519, 521-22 (Ct. App. 1989), we held that counsel could not authorize a judge, rather than a jury, to make the finding of guilt or innocence on one of the elements of a crime unless the defendant personally affirmed the authorization on the record. The stipulation by Collier's counsel is not an analogous matter. The trial court instructed the jury on the element of causation, and the jury determined that Collier caused

the trooper's death. This was the question of ultimate fact on the issue of causation. Collier's counsel merely stipulated to an intermediate evidentiary fact. *Villarreal* does not bar counsel from stipulating to intermediate evidentiary facts that neither counsel nor his client can reasonably dispute. In sum, counsel's stipulation did not deprive Collier of his right to a jury trial.

*By the Court.* – Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.