

# Chicago Daily Law Bulletin

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## Lawyers, teachers alike hear a plethora of excuses

By Jeffrey J. Kroll

I recently attended curriculum night for my third-grade son. His teacher explained what she expected of her students this school year. She admonished us that she would not tolerate lame excuses for the half-pints' neglected homework. She forewarned us: "Trust me; I've heard every excuse in the book." Yikes, this sounded eerily familiar to my grade school days. I squirmed in my chair as thoughts of Sister Arlene came to mind. Lucky for Jack, "ruler-slapping" has become a lost art.

I always considered my son's ability to create far-fetched excuses as a source of entertainment — one of the unexpected perks of being a dad. My son has recycled some old standbys, like "Mom said I didn't have to do it" or "I accidently left it at school," and introduced a few modern excuses, like "Just five more minutes of DS; it *is* educational." Of course, I don't blame him for trying. We've all been there.

Yet, what recently occurred in a Daley Center elevator left me feeling a sense of responsibility to write this article. Descending to the ground level, the elevator opened on 17 and two "newbies" entered. Both hung their heads low, commiserating over a disappointing settlement and a recent loss. For one fledgling attorney, her opponent contended that his client was "blinded by the sun," and she settled for the cost of defense. The other explained how the opponent claimed he was traveling below the speed limit, making it impossible for him to be responsible for the accident. My "sigh" was audible. Those were invalid and pathetic defenses.

If you handle collision cases with any degree of regularity, you often hear feeble reasons why drivers believe they are exempt from liability for a collision. This article addresses some of the common excuses that must fail in a court of law.

"I couldn't see anything. The sun was in my eyes." Exasperating! It is a driver's duty to avoid inflicting injury on anyone who might be using the street while an operator is unable to see. *Hartigan v. Robertson*, 87 Ill.App.3d 732, 736 (1st Dist. 1980). The fact that this excuse is still around is actually unnerving. Drivers should use their visors or at least invest in some decent sunglasses. Heck, put some eye black on if need be. Courts have consistently found that the failure to see because the sun blinded the driver does not absolve the driver of negligence. See *Duffy v. Cortesi*, 2 Ill.2d 511 (1954) (finding negligence as a matter of law where evidence showed that as defendant turned left at the intersection, the sun blinded him, but he proceeded to turn anyways, hitting two pedestrians); *Barth v. Reichert*, 34 Ill.App.2d 472 (1st Dist. 1962) (finding negligence in law where defendant testified, "... the sun was like hitting me in the eyes. For a minute I couldn't see anything.").

"I looked, but did not see anyone." Another old standby excuse. However, the law in Illinois is clear: "One cannot look with [an] unseeing eye and not see the danger which he could have seen by the proper exercise of his sight." *Pantlen v. Gottschalk*, 21 Ill.App.2d 163, 170 (3d Dist. 1959). How's that for legal mumbo-jumbo? More simply put, a party will not be absolved of negligence by claiming he

looked, but failed to see the car before a crash. See also, *Grass v. Hill*, 94 Ill.App.3d 709 (2d Dist. 1981) (finding defendant's failure to maintain a proper lookout while engaged in a dangerous passing maneuver as the sole proximate cause of the collision).

"I looked behind me before I backed up, and there was no one there." Once again, this is a common contention. I know, it gets tiring — is humanity really this predictable? The law dictates: When drivers back up their vehicles, due care mandates that they ascertain what is behind them to avoid a collision with any person or automobile. See, *Grimm v. Carallis*, 99 Ill.App.2d 404 (1st Dist. 1968) (finding defendant ceased acting reasonably when, without looking, he backed into plaintiff's automobile).

"I never even imagined he would have stopped his car there." The classic, sudden-stop defense. Whether or not the driver could have stopped his car in time is typically a factual question for the jury, but here is some help nonetheless when confronted with this excuse — I mean, defense. A driver approaching another from the rear (or an adjacent lane) must always anticipate a sudden stop. *Ferguson v. Zeman*, 109 Ill.App.2d 417(1st Dist. 1969) (finding the trial court improperly directed a verdict for the defendants where the evidence showed that defendants were negligently following too closely). A rear-approaching driver has a duty to keep a safe lookout, using every reasonable precaution to avoid a collision with the car ahead. *Id.* See also *Polkey v. Phillips*, 86 Ill.App.3d 677 (1st Dist. 1980); *Apato v. Be Mac Transport Co.*, 7 Ill.App.3d 1099 (1st Dist. 1972) (a driver has an obligation to take into consideration the condition of his brakes, the weight of his vehicle and the decline in the ramp as he approaches another).

"I was driving under the speed limit, how could I have caused the accident?" This should be no surprise — one can be driving under the speed limit and still be travelling too fast for conditions. 625 ILCS 5/11-601. Again, this may be a factual issue, but one can be prepared for it. Darkness, rain, school zones, even ice cream trucks can create special circumstances requiring drivers to slow down or proceed under the speed limit. See *Williams v. Garmane*, 226 Ill. App. 3d 1021 (5th Dist. 1992) (there must be evidence that because of darkness, rain or grade of hill, an automobile was going too fast for conditions); *Figarelli v. Ihde*, 39 Ill.App.3d 1023 (1st Dist. 1976) (drivers must consider special circumstances, like the presence of ice cream trucks). See also, 625 ILCS 5/11-605 (speed limit in school zone when children are present).

"I wasn't injured. I don't see how the other person could have been hurt." Typically, whether or not the other driver or passengers sustained injuries in the crash is irrelevant. *Keil v. McCormick*, 5 Ill.App.3d 523 (2d Dist. 1972); *Vujovich v. Chicago Transit Authority*, 6 Ill.App.2d 115 (1st Dist. 1955) ("[I]f defendant was allowed to dispute the injuries claimed by the other passengers, it would result in trying collateral issues, involving other passengers and virtually trying a number of cases. ...").

Although it seems like no one in their right mind would ever make such sorry and uncreative excuses, I think we all know that people do. Unlike the experienced educator who claims that she has heard it all, I am confident that despite my 20-year relationship with the law, I have yet to hear every excuse in the book. At this point, very little surprises me. From afar, it may seem that dealing with such pathetic defenses would make litigating vehicle collision cases boring, but, believe me, at times, the entertainment value of deposing a defendant driver keeps me amused. By the way, did you hear the one about ... ?

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