



This email has been sent from [VerdictSearch.com](http://VerdictSearch.com).

---

## Motor Vehicle

---

### Motorist claimed bicyclist ignored warning to move

**Verdict:** Defense

**Case Type:** Bicycle, Affirmative Defenses - Assumption of Risk

**Case:** John Macias v. Joseph Bell, III, and Marc Krawiec, No. 1895/05

**Venue:** Putnam Supreme, NY

**Judge:** Andrew P. O'Rourke

**Date:** 12-01-2008

### PLAINTIFF(S)

#### Attorney:

- Stuart W. Mosbacher; Of counsel, Law Firm of Stuart Sears; Wappingers Falls, NY, for John Macias

#### Expert:

- None

### DEFENDANT(S)

#### Attorney:

- None reported; null, null, for Marc Krawiec
- Richard G. Corde; Boeggeman, George & Corde PC; White Plains, NY, for Joseph Belle III

#### Expert:

- None

### Facts:

On April 19, 2003, plaintiff John Macias, 15, visited a fast-food restaurant that was located in Mahopac. Macias and a group of teens became involved in an altercation with an elderly patron of the restaurant. Another patron, Chuck Hognell, interceded in the elderly patron's behalf. Hognell contended that Macias and the other teens eventually left the premises in a vehicle, but not before throwing a milkshake and delivering an obscene gesture. Hognell claimed that he entered his vehicle and pursued the teens, following closely, in an attempt to intimidate them. He eventually relented and returned to his place of business, but the teens arrived and applied a lock to one of the windows of Hognell's vehicle. Hognell's employer, Joseph Belle III, telephoned the police, but, after waiting some 45 minutes, Belle and Hognell entered a vehicle and began to search for the teens. Belle was driving.

The men eventually came upon a vehicle that was being driven by two girls who had been involved in the altercation at the restaurant. The girls apparently telephoned other members of the group, and, by the time the vehicles arrived at the intersection of Brooke Road and Myrtle Avenues, they were greeted by some 25 teens who had gathered on the street. The girls stopped their vehicle, and Belle stopped alongside them, to block them from leaving. The teens surrounded Belle's vehicle. Belle telephoned the police department, and a police vehicle soon cruised past the area, causing the teens to disperse. However, the teens circled Belle's vehicle after the police vehicle left, and Belle and Hognell claimed that the teens threatened them with bats and sticks. Belle drove away from the scene, striking Macias, who was sitting on a bicycle. Macias claimed that he sustained injuries of his knees.

Macias sued Belle. Macias alleged that Belle was negligent in the operation of his vehicle.

Belle impleaded a teen who was alleged to have organized the gang that threatened him and Hognell, Marc Krawiec. Belle alleged that Krawiec negligently organized and instigated the teens who surrounded his vehicle.

Krawiec defaulted. The matter proceeded to a trial against Belle.

Macias claimed that he was not acting in a threatening manner and that he was merely an innocent bystander.

Plaintiff's counsel claimed that Belle negligently drove through the group of teens. He contended that Belle violated New York State Vehicle and Traffic Law ? 1146, which specifies that motorists must exercise due care to avoid bicyclists, pedestrians and domestic animals, and New York State Vehicle and Traffic Law ? 1162, which specifies that motorists must not accelerate from a stopped position without ensuring that it is safe to do so. Plaintiff's counsel also contended that Belle was driving on the wrong side of the road.

Belle contended that he telephoned the police as soon as his vehicle was surrounded by the teens. He also contended that Macias intentionally positioned his bicycle in front of his vehicle, to prevent him from fleeing. He claimed that he sounded his vehicle's horn and warned that he would drive into the crowd. Thus, Belle's counsel argued that Macias assumed the risk of blocking the vehicle's path.

Belle's counsel also moved for application of New York Pattern Jury Instruction 2:27, which addresses justifiable noncompliance with New York State Vehicle and Traffic Law. He argued that Belle believed that his welfare was endangered and responded reasonably to the situation.

#### **Injury:**

Macias claimed that he sustained a tear of each knee's medial meniscus. The injuries were repaired via arthroscopic surgery. Macias temporarily required the use of crutches, and he underwent about 18 months of physical therapy.

Macias sought recovery of about \$7,000 for his hospital expenses, about \$2,000 for his doctors' fees, and damages for his pain and suffering.

**Verdict Information** The jury rendered a defense verdict. It found that Macias assumed the risk of blocking Belle's vehicle.

**Editor's Comments** This report is based on information that was provided by plaintiff's counsel and Belle's counsel. Krawiec's counsel was not asked to contribute.