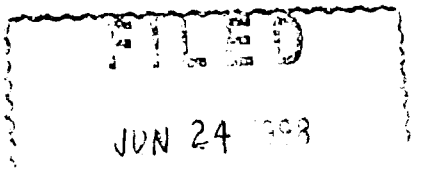
**IN THE COURT OF APPEALS OF IOWA**

No. 8-132 / 96-2265

**LOUIS G. SCHULTES and SHIRLEY SCHULTES,**

Appellants,




**vs.**

**JOHN KITT, JR., RAYMOND KITT, and JAMES KITT,**

Appellees.

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Appeal from the Iowa District Court for Carroll County, Joel E. Swanson, Judge.

Plaintiffs appeal from the judgment entered on a jury verdict in defendants' favor in an action for personal injuries arising out of a motor vehicle accident. **AFFIRMED.**

Dee Ann Wunschel and Russell S. Wunschel of Wunschel Law Firm, P.C., Carroll, for appellants.

William G. Enke, Fort Dodge, for appellees.

Heard by Cady, C.J., and Huitink, and Vogel, JJ.

**CADY, C.J.**

Louis and Shirley Schultes appeal from an adverse jury verdict on their negligence claim for injuries sustained in a motor vehicle accident. They claim the trial court erred by submitting a jury instruction on sudden emergency and by admitting a letter into evidence indicating they were represented by counsel at a specific time after the accident.

The facts giving rise to this cause of action developed from a collision between a truck driven by John Kitt and a tractor and wagon driven by Louis Schultes. Kitt was driving down a hill in a truck loaded with grain when he approached the tractor driven by Schultes. Schultes was pulling 28,000 pounds of beans in a wagon and was traveling in the same direction as Kitt. Kitt was traveling at approximately thirty-five miles per hour when he first observed Schultes' wagon approximately 600-1000 feet in front of him. Schultes was traveling at a slower rate of speed. Kitt applied his brakes in anticipation of approaching Schultes. On the third application of his brakes, however, they failed. Kitt testified he was about 100 to 150 feet away from the wagon when his brakes failed to respond. He downshifted before twice hitting Schultes' wagon. Kitt did not sound his horn before the collision. Schultes suffered an injury to a cervical disk as a result of the crash.

The Schultes filed a negligence action against Kitt. Following a jury trial, the jury returned a verdict in favor of Kitt. On appeal the Schultes maintain: (1) the sudden emergency doctrine should be abolished; (2) the evidence did not support a

sudden emergency instruction; (3) the trial court erroneously submitted the sudden emergency instruction; and (4) the trial court erred by admitting a letter indicating they were represented by counsel.

## I. Sudden Emergency

We review objections to jury instructions for errors at law. *See Grefe & Sidney v. Watters*, 525 N.W.2d 821, 824 (Iowa 1994); Iowa R.App.P. 4. It is our function to review a trial court's consideration of arguments raised before it and not arguments counsel chooses to raise for the first time in this forum. *Id.* Accordingly, we will not consider matters not raised in the trial court on appeal. *See Donald Newby Farms, Inc. v. Stoll*, 543 N.W.2d 289, 292 (Iowa App. 1995).

Objections to the court's instructions must specify the subject of the objection and the grounds of the objection. Iowa R. Civ. P. 196; *see Morgan v. Perlowski*, 508 N.W.2d 724, 729 (Iowa 1993). Further, the objection must be sufficiently specific to alert the trial court to the basis for the complaint so that if error does exist the court may correct it before placing the case in the hands of the jury. *See Grefe & Sidney*, 525 N.W.2d at 824. Failure to timely object to an instruction not only waives the right to assert error on appeal, but also causes the instruction, right or wrong, to become the law of the case. *See Spencer v. Spencer*, 479 N.W.2d 293, 297 (Iowa 1991).

In this case, the record reveals Schultes' trial counsel only objected generally to the jury instructions concerning sudden emergency, and indicated the trial court

should be careful when applying the sudden emergency doctrine. Without a more, specific objection, the trial court did not have the opportunity to consider the arguments Schultes now makes on appeal. We therefore are not required to address the merits of whether the district court erred in submitting the jury instructions.

Nevertheless, even if error was preserved, we decline to abolish the sudden emergency doctrine. *See Mosell v. Estate of Marks*, 526 N.W.2d 179, 181 n.1 (Iowa App. 1994). Further, although the presence of the slow moving wagon in this case would not fit within sudden emergency doctrine, brake failure would. *See Bangs v. Keifer*, 174 N.W.2d 372, 373 (Iowa 1970) (sudden emergency defense recognized as a proper defense for failing to stop at an intersection according to statutory requirements due to nonnegligent brake failure). Viewing the evidence in a light most favorable to Kitt, the doctrine was properly submitted to the jury.

**II. Admissibility of Letter**

We review evidentiary rulings for an abuse of discretion. *Williams v. Hedican*, 561 N.W.2d 817, 822 (Iowa 1997). A trial court is generally granted a broad range of discretion in determining the admissibility of evidence. *Smith v. Air Feeds, Inc.*, 556 N.W.2d 160, 166 (Iowa App. 1996). We reverse for an abuse of discretion only when such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *McHose v. Physician & Clinic Services, Inc.*, 548 N.W.2d 158, 161 (Iowa App. 1996).

At trial Schultes' counsel objected to the admission of a letter into evidence indicating they were represented by legal counsel. Schultes maintains the introduction of the letter into evidence prejudiced him and confused the jury because the portion of the exhibit indicating Kitt was represented by an insurance company was excised.

The record reveals the objection made by Schultes' counsel was the letter was hearsay. Schultes' counsel stated: " I object to it, because it certainly is hearsay at this point unless we know it has something to do with this particular incident." Schultes does not argue a hearsay objection on appeal. Instead, he claims the letter was confusing to the jury and any probative value is outweighed by the risk of prejudice. The objection made at trial does not sufficiently preserve the arguments Schultes now makes on appeal. Even if Schultes had preserved error on this issue, the record does not indicate the trial court abused its discretion on this ruling.

We have considered all of Schultes' claims on appeal and affirm the district court.

**AFFIRMED.**