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RECENT DEVELOPMENT

MASON v. LYNCH: PHOTOGRAPHS ILLUSTRATING MINIMAL DAMAGE TO VEHICLES IN A COLLISION MAY BE ADMITTED IN THE DISCRETION OF THE COURT ABSENT EXPERT TESTIMONY

By: Alice Arcieri

The Court of Appeals of Maryland held that photographs may be admitted into evidence to show damage to vehicles involved in a collision absent expert testimony. *Mason v. Lynch*, 388 Md. 37, 878 A.2d 588 (2005). In addition, the Court of Appeals held that counsel may argue that a correlation exists between the damage and personal injury alleged. *Id.*

Three vehicles collided on the Woodrow Wilson Bridge. Cathy Mason (“Mason”) was driving the front automobile, which was stopped at the time of the accident. Warren Goldman (“Goldman”) was driving directly behind Mason’s vehicle and was also stopped. Chauncey Lynch (“Lynch”) was in an adjacent lane on the bridge. Lynch changed lanes and moved behind Goldman’s vehicle. At this time, Lynch hit the rear of Goldman’s vehicle. This collision caused Goldman’s automobile to strike the rear of Mason’s vehicle and move it forward. Goldman tried to control his vehicle but struck the rear of Mason’s car again.

Mason filed suit in the Circuit Court for Prince George’s County alleging she suffered personal injuries resulting from Lynch’s negligence. Before trial, both parties agreed not to utilize any expert witness testimony, depositions or discovery. Instead, reports from Mason’s doctor and a report from an independent medical evaluation of Mason on behalf of Lynch would be submitted. The circuit court denied Mason’s motion *in limine* to preclude Lynch’s attorney from admitting photographs of Mason’s vehicle in order to prove minimal damage occurred. The court allowed Lynch’s attorney to argue before the jury that the automobile’s minimal damage showed the impact of the accident did not cause the alleged injuries. Judgment was entered on behalf of Mason; however, the jury did not award any damages.

Mason filed a motion for a new trial based on two arguments. First, the parties did not dispute that Mason had suffered personal injuries from the accident costing \$1,983.60 in medical bills. Thus, as a matter of law, Mason should have been given damages in this amount. Second, the trial court erred in admitting photographs of Mason's vehicle and allowing defense counsel to argue that a correlation existed between personal injuries sustained and damage to the vehicle without expert testimony to corroborate this finding. The trial court denied Mason's motion for a new trial.

Mason appealed to the Court of Special Appeals of Maryland, which affirmed the judgment. The Court of Appeals of Maryland granted Mason's petition for a writ of certiorari based solely on the issues of admittance of photographs depicting the damage and the argument that a correlation existed between the personal injuries sustained and the damage to the vehicle without expert testimony to corroborate this finding.

The Court of Appeals found persuasive and chose to reiterate the reasons set forth by the Court of Special Appeals when affirming the trial court's judgment. *Id.* at 47-48, 878 A.2d at 595. Distinguishable from *Davis v. Maute*, Lynch never admitted that he was liable for Mason's personal injuries. *Id.* (citing *Davis*, 770 A.2d 36, 40-42 (Del. 2001)) (holding liability admitted, photographs showing minimal damage to a vehicle are inadmissible without expert testimony to infer that only minimal injuries would have occurred). Although the Court of Appeals has never addressed Mason's argument that follows *Davis*, the majority of courts have disregarded this argument. *Id.* at 53, 878 A.2d at 598.

Additionally, the majority of courts leave admission of photographs to the discretion of the trial court. *Id.* at 48, 878 A.2d 595. The Court of Appeals agreed with this second reason. Despite the admission of liability, the Court held that admittance of photographs depicting property damage was left to the discretion of the trial court. *Id.*

The Court of Appeals examined the history of admittance of photographs in both civil and criminal cases. *Id.* The Court held that generally photographic evidence was admitted based on relevance to illustrate the nature of the incident to the jury. *Id.* at 48-51, 878 A.2d at 595-96 (citing *Johnson v. State*, 303 Md. 487, 502, 495 A.2d 1, 8 (1985)). However, the Court of Appeals explained that the trial court has discretion and must weigh the degree of relevance against any unfair prejudice to determine whether to admit evidence. *Id.* at 48,

878 A.2d at 595 (citing MD. R. EVID. 5-403). The Court stated that there are few cases where a trial court's ruling to admit or exclude evidence was determined to be reversible error on appeal. *Id.* at 51-52, 878 A.2d at 597. Reversible error may occur when the photographs are not an accurate depiction of the incident or are not properly verified. *Id.* at 52, 878 A.2d at 597 (citing *Pearson v. State*, 182 Md. 1, 9-12, 31 A.2d 624, 627-629 (1943); *Wimpling v. State*, 171 Md. 362, 373-374, 189 A.2d 248, 254 (1937); *Snibbe v. Robinson*, 151 Md. 658, 663, 135 A. 838, 839 (1927)).

In the present case, the Court of Appeals noted that Mason testified the photographs accurately depicted her vehicle's damage sustained from the collision. *Id.* at 52, 878 A.2d at 597-98. The Court found no basis for precluding the photographs as they illustrated the descriptions of the scene obtained through testimony. *Id.* at 52, 878 A.2d at 598. The Court also found no basis for precluding the testimony to which plaintiff's counsel did not object. *Id.* at 53, 878 A.2d at 598. Witnesses testified that, at the time of the accident, there was no assertion of personal injury at the scene, all three cars drove away from the collision, and there was little damage to either Goldman's or Lynch's vehicle. *Id.*

Although the Court of Appeals has not addressed the decision presented by the Supreme Court of Delaware in *Davis*, the majority of courts have rejected its decision. *Id.* Generally, photographs and testimony regarding vehicular damage are both relevant and subject to the trial court's discretion. *Id.* at 53-56, 878 A.2d at 598-600 (citing *Berndston v. Annino*, 411 A.2d 36, 39 (Conn. 1979); *Gambrell v. Zengel*, 265 A.2d 823, 824-25 (N.J. Super. Ct. App. Div. 1970); *Murray v. Mossman*, 329 P.2d 1089, 1091 (Wash. 1958)).

The Court of Appeals addressed the test for relevance and distinguished it from Mason's theory. *Id.* at 57, 878 A.2d at 600. Mason argued that the correlation between car damage and personal injury does not exist. *Id.* Relevant evidence is "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.* at 58, 878 A.2d at 601 (citing MD. R. EVID. 5-401). Therefore, the Court concluded that it is proper to admit the photographs into evidence and allow counsel to argue that a correlation could exist between the degree of damage to a vehicle in an accident and the degree of personal injury sustained. *Id.* In addition, Mason testified that this was a common belief among laypersons and

the majority of courts agree that this correlation exists. *Mason*, at 58, 878 A.2d at 601.

In the dissenting opinion, Judges Bell and Raker argued that the correlation between vehicular damage and personal injury has been challenged by scientific research. *Id.* at 59, 878 A.2d at 601-02. The jury may be misled by this argument without expert testimony to validate that this correlation exists. *Id.* at 59, 878 A.2d at 602 (dissenting opinion). In addition, there is further research showing an inverse correlation exists. *Id.* at 62, 878 A.2d at 603 (dissenting opinion).

In this holding, the Court of Appeals of Maryland effectively explains that the decision to admit photographic evidence will continue to be subject to the trial court's discretion. Personal injury victims will have to overcome the correlation between vehicular damage and personal injury by proving that the injuries alleged were sustained from the accident, even though minimal damage was caused to the vehicles involved. In order to persuade the jury, the trial court will allow counsel to argue that there is a correlation between vehicular damage and personal injury. This creates an incentive for attorneys to use photographs instead of paying high costs for expert testimony.