Case No. 123156

IN THE
SUPREME COURT OF ILLINOIS

WILLIAM KEVIN PEACH,	)	
	)	On Appeal from the
Plaintiff-Appellee,	)	Appellate Court of Illinois,
	)	Fifth District, No. 5-16-0264
v.	)	
	)	On Appeal from the Circuit Court of
	)	Marion County, Illinois, No. 14-L-28
LYNSEY E. McGOVERN,	)	
	)	Honorable Kevin S. Parker,
Defendant-Appellant.	)	Judge Presiding

AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS ON BEHALF OF THE ILLINOIS ASSOCIATION OF DEFENSE TRIAL COUNSEL

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POINTS AND AUTHORITIES

STATEMENT OF INTEREST OF THE AMICUS CURIAE

The Illinois Association of Defense Trial Counsel (IDC) is comprised of Illinois attorneys who devote a substantial portion of their practice to the representation of business, corporate, insurance, professional, governmental, and individual defendants in civil litigation. The IDC has close to 1,000 members drawn from every county in Illinois. For more than 50 years, the IDC has endeavored to ensure civil justice with integrity, civility, and professional competence. The IDC has a substantial interest in maintaining the fair administration of justice in Illinois and preserving the role of the jury to decide disputed factual issues.

The IDC believes that the appellate court deviated from established Illinois Supreme Court precedent by applying the manifest weight of the evidence standard to effectively enter judgment notwithstanding the verdict for plaintiff in a case involving disputed issues of proximate cause and injury. The decision in this case will directly impact the interests of many IDC members and the persons, corporations, and entities whom they represent.

The evidentiary issue addressed concerning admissibility of vehicle photographs impacts those same interests. The Appellate Court has seen fit to declare all post-accident photos of vehicles involved in the underlying negligence case as irrelevant and inadmissible on the issue of plaintiff's injury claim; inadmissible, unless an expert witness correlates the vehicle photos to the injury claimed. The IDC contends the Appellate Court has misinterpreted relevancy principles underlying Illinois Rule of Evidence 401 while rejecting the trial courts' vital discretionary role in the admission of evidence. The decision needlessly complicates the ability of parties, plaintiffs and

defendants, to present their evidence to juries and argue reasonable inferences from such evidence and unnecessarily calls into question the jury's ability to consider and weigh evidence based on simple logic and common experience.

The IDC is respectful of the fact that it is a privilege, not a right, to appear as an *amicus curiae* and respectfully requests permission to appear in this case. The IDC submits that the experience of its members in defending automobile accident and personal injury cases will provide valuable insight as this Court considers the important issues presented.

SUMMARY OF ARGUMENT

The Illinois Supreme Court has steadfastly protected the right to trial by jury and the role of the jury to decide disputed issues of fact. Once again, this Court is called upon to preserve the essential right of civil defendants to allow a jury to decide for defendant in cases where the defendant contests the nature and extent of claimed injuries. If this Court assumes the position of the appellate court, then jurors will no longer be the judges of the credibility of the witnesses in personal injury lawsuits, and plaintiff will be discharged from the burden to prove proximate cause and injury. Instead, mere testimony from plaintiff that an injury followed from an accident will necessitate a verdict for plaintiff in every lawsuit where defendant is found negligent.

This Court is also asked to decide whether the role of the trial court as the gatekeeper of evidence allows a trial judge to admit vehicle photographs showing minimal damage as evidence in an automobile accident personal injury trial. Evidence of vehicle damage, as depicted by photographs, provides unbiased insight for jurors to determine the force of the impact sustained in order to consider the proximate cause and

damages issues in the case. All other things being equal, an occupant is more likely to be injured in an accident involving significant force, as compared to an accident involving minimal force. Therefore, the photos of the vehicles tend to make a proposition in the case more or less probable, so they are relevant under Illinois Rule of Evidence 401. Jurors are readily capable of assigning the appropriate weight to vehicle photograph evidence, alongside all other evidence presented, to consider the extent of the injuries sustained in an accident. To require expert testimony to simply admit relevant post-accident photos of the very vehicles involved in the auto negligence case inhibits the adversarial process. It places an undue burden upon litigants and frustrates the search for the truth. Thus, the trial court should have discretion to admit vehicle photographs deemed relevant.

ARGUMENT

I. The Appellate Court Utilized the Wrong Standard to Enter Judgment in Favor of Plaintiff

Proximate cause and damages were the issues in this vehicular negligence trial. Defendant McGovern's theory was that she was not liable because her negligence did not cause injury to the plaintiff. The jury was instructed on issues of proximate cause and damages. *Peach v. McGovern*, 2017 IL App (5th) 160264, ¶ 9. The jury ruled against the plaintiff and in favor of the defendant, therefore agreeing with defendant's theory at trial that the plaintiff was not injured in this minor automobile accident. *Peach*, 2017 IL App (5th) 160264 ¶ 1. The trial court, who saw and heard the witnesses, entered judgement on the jury's verdict and again affirmed the jury's verdict in denying plaintiff's post-trial motion. *Id.*

Despite the unanimous decision of the jurors and the trial judge's affirmance of that decision, the Appellate Court, Fifth District reweighed the evidence on appeal and found the jury's verdict was against the manifest weight of the evidence. However, instead of remanding the case for new trial on all issues, including causation and actual damages, the Appellate Court has told the trial court a verdict in favor of the plaintiff should have followed and that it would be "unreasonable that any jury, under the circumstances and the evidence presented, would not have at least awarded recovery for Plaintiff's hospital expenses…" *Peach,* 2017 IL App (5th) 160264, ¶ 21. Thus, the Appellate Court has effectively entered judgment as a matter of law on proximate causation and injury with a mandated damages minimum. However, there is no automatic right to hospital expenses simply because one driver's vehicle negligently touches another. Thus, any re-trial would involve impaneling a jury and telling them to award

minimum damages for plaintiff's hospital expenses plus any other damages the jury may see fit to award. [1] By this ruling, the Appellate Court has taken from defendant her defense that this minor vehicular accident caused no injuries whatsoever and entered judgment notwithstanding the jury's verdict that defendant's negligence did not cause plaintiff's injuries. The Appellate Court substituted its judgment for that of the jury and did not apply the proper standard for review in doing so. A directed verdict or a judgment *n.o.v.* is proper only in those cases "in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand." *Pedrick v. Peoria and Eastern Railroad R.R. Co.,* 37 Ill. 2d 494, 510 (1967). However, the Appellate Court did not follow this Court's clear precedent when it ruled that plaintiff was entitled to judgment as a matter of law on proximate causation and ordered a damages minimum, while applying only the manifest weight of the evidence standard, the standard used for determining a right to new trial.

The *Peach* opinion discussed only the manifest weight of the evidence test and spoke of the jury's decision as being "unreasonable." Nowhere in the opinion is the case of *Pedrick v. Peoria and Eastern Railroad Co.* mentioned. Nowhere in the opinion is the operative language of *Pedrick* discussed. The Appellate Court discussed manifest weight and reasonableness of the decision but did not discuss or apply the evidentiary test laid

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[1] The Appellate Court's language apparently requires a subsequent jury to enter a verdict finding at least including plaintiff's hospital expenses. Without specific directions, the trial court must examine the Appellate Court opinion and determine further proceedings consistent with the opinion. *McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 44. Indeed, the trial judge would arguably run afoul of the Appellate Court decision to even permit any trial where a jury would reconsider the proximate cause issue, as the Appellate Court has ruled that a minimum award of hospital expenses is demanded by this evidence.

down in *Pedrick*. Despite the absence of a *Pedrick* analysis, the Appellate Court has reversed the trial court, who saw and heard the evidence, and preempted the jury's verdict. The Appellate Court has substituted its own judgment on the proximate cause and damage issues while applying the wrong standard of review.

The Appellate Court erred in a similar fashion in *Maple v. Gustafson*, 151 Ill. 2d 445 (1992). In *Maple*, the plaintiff appealed after a jury verdict in Defendant's favor and argued that the jury's verdict was against the manifest weight of the evidence and requested a new trial. *Maple*, 151 Ill. 2d at 449. As here, the *Maple* trial court had affirmed the jury's decision. *Id.* The Appellate Court, Fifth District there reversed, found for the plaintiff and remanded the case for a trial solely to determine the amount of damages to be awarded. *Id.* The Appellate Court here has committed the same error by stating that any verdict not finding minimum damages of hospital expenses is "unreasonable." In so doing, the Appellate Court usurped the jury's role to determine causation and injury utilizing only the manifest weight standard.

Unless this court rectifies this decision, the distinction between the evidentiary situation requiring a new trial as compared to that justifying direction of a verdict or judgment *n.o.v.* will be jeopardized.

> "The standards relating to the direction of verdicts and to the granting of new trials are of course different. In *Pedrick* this Court declared: 'We have rather carefully preserved the distinction between the evidentiary situation which will require a new trial and that justifying direction of a verdict or a judgment N.O.V. There is, in our judgment, excellent reason for so differentiating to be found in the radically different results of allowance of the two motions, and we believe a more nearly conclusive evidentiary situation ought to be required before a verdict is directed than is necessary to justify a new trial.' " *Mizowek v. DeFranco,* 64 Ill. 2d 303, 310 (1976) (citing *Pedrick,* 37 Ill. 2d at 509-10).

The same analysis applies here, and damages should only be decided as a matter of law under the "more nearly conclusive evidentiary situation." Litigants can now reference this opinion and argue that when they lose before a jury they should obtain thereafter not just a new trial, but judgment *n.o.v.* with a minimum of hospital expenses, because the verdict was against the manifest weight of the evidence. This decision conflicts with Supreme Court authority and threatens the integrity of our jury system.

The jury is the tribunal in our legal system which decides contested issues of fact. *Ney v. Yellow Cab Company*, 2 Ill. 2d 74, 80 (1954). Because our system of laws defers to the jury as factfinder, this Court has developed strict tests that must be applied and met before an Appellate Court alters a jury's factual conclusions or deprives a defendant to the right to jury trial on a particular factual issue. The *Pedrick* standard is an important test, essential to maintaining the integrity of the jury as factfinder in our system of jurisprudence. Nevertheless, the Appellate Court has effectively entered a judgment *n.o.v.* without so much a passing reference to *Pedrick*. This Court should reverse the Appellate Court and clarify the serious procedural error committed.

II. In Order to Serve as the Trier of Fact, a Jury Must be Allowed to Return a Verdict for Defendant on the Issues of Proximate Cause and Injury in an Automobile Accident Personal Injury Matter, and the Trial Court's Discretion to Uphold that Verdict Should Not be Disturbed Where Evidence Supports the Jury Verdict.

For many years, this Court has recognized the universal rule that the jury is the finder of fact tasked with weighing the evidence, judging the credibility of witnesses, and drawing ultimate conclusions from the facts. *Bonnier v. Chicago, B. & Q. R. Co.*, 2 Ill. 2d 606, 613-14 (1954) quoting *Tennant v. Peoria & P. U. Ry. Co.*, 321 U.S. 29, 35 (1944). For that reason, judicial review of a jury verdict focuses on whether a particular inference

or conclusion is reasonable, and the court should not take a case away from the jury where reasonable inferences from the evidence support the jury verdict. *Bonnier*, 2 Ill. 2d at 614.

The issue of whether an automobile accident has proximately caused any injury is uniquely a question of fact for the jury to decide. *Holton v. Memorial Hosp.*, 176 Ill. 2d 95, 107 (1997). This rule applies even more forcefully in automobile accident personal injury matters, where the issues of proximate cause and injury often rely heavily upon subjective reports of pain. In such cases, jurors, through their own common sense and life experience, are well-equipped to weigh the evidence and reach a conclusion that an automobile accident either did or did not cause an injury. According to the Illinois Department of Transportation, 79% of motor vehicle accidents in Illinois in 2015 – or 247,572 out of 313,316 – involved no injury. Illinois Department of Transportation, *Motor Vehicle Crash Information*, http://www.idot.illinois.gov/transportation-system/safety/Illinois-Roadway-Crash-Data (under Facts and Statistics tab and Crash Facts sub-tab, follow 2015 Crash Facts link. Data is included in report on pp. 8, 13) (last visited May 18, 2018). Since the majority of automobile accidents involve no injury, it would be illogical for Illinois courts to adopt a rule requiring a jury to conclude that an injury occurred based solely upon subjective complaints.

Additionally, the trial court must be permitted discretion to deny a motion for judgment notwithstanding the verdict or a new trial where the jury returns a verdict for defendant on the issue of proximate cause and damages. This is particularly necessary where plaintiff's injury claim relies upon subjective complaints following a minor automobile accident. Where the trial court, after presiding over a jury trial and having the

opportunity to observe the trial witnesses, concludes that the jury verdict was reasonable, that discretion should be upheld absent a clear abuse. And where the evidence presented by defendant demonstrates that the impact was minimal, it is reasonable for the jury to conclude that the case fell into one of the majority of automobile accidents where no injuries were sustained.

Yet, in recent years, the Appellate Court, Fifth District has repeatedly taken away defense verdicts in personal injury automobile accident matters where plaintiff claimed injuries based largely upon subjective complaints of pain while other direct and circumstantial evidence admitted at trial suggested no injury. In *Wiggins v. Bonsack*, 2014 IL App (5th) 130123, ¶¶ 25-27, the Appellate Court, Fifth District ordered a new trial on damages after a defense verdict in an automobile accident personal injury matter where plaintiff sought no treatment for 87 days after an accident. Next, in *Claro v. Delong*, 2016 IL App (5th) 150557, ¶¶ 5, 21, 26, the Appellate Court, Fifth District ordered a new trial on damages after a defense verdict in an automobile accident personal injury matter where defendant testified that she rolled two or three feet into plaintiff's vehicle, everyone was okay after the impact, and both drivers drove away from the scene. And again, in *Peach*, 2017 IL App (5th) 160264, ¶¶ 20-21, following a verdict for defendant where defendant testified that her vehicle simply rolled at idle speed into plaintiff's vehicle, the Appellate Court, Fifth District used the manifest weight of the evidence standard to mandate a new trial that must result in a verdict in favor of plaintiff.

These opinions mistakenly decided disputed factual issues as questions of law and ignored the role of the jury as the trier of fact. This Court should not agree with the Appellate Court, Fifth District, nor should this Court hold that a plaintiff conclusively

proved an injury proximately caused by an accident based upon plaintiff's subjective complaints and the testimony of a treating physician based upon those subjective complaints.

A. This Court Should Adhere to *Maple v. Gustafson* and Preserve the Ability of the Jury to Find for Defendant on the Issues of Proximate Cause and Injury.

In *Maple*, this Court cautioned that "the appellate court should not usurp the function of the jury and substitute its judgment on questions of fact fairly submitted, tried, and determined from the evidence which did not greatly preponderate either way." *Maple*, 151 Ill. 2d at 452-53 (citations omitted). The two plaintiffs in that case were traveling at 35 miles per hour when defendant's vehicle pulled out from a side street and an accident occurred. *Id.* at 450. Following a jury trial, the trial court decided negligence for plaintiffs as a matter of law, but instructed the jury on proximate cause and damages, and the jury returned verdicts for defendant. *Id.* at 449. In holding that the trial court properly denied plaintiffs' motion for a new trial, this Court pointed to "considerable direct and circumstantial evidence that plaintiffs suffered no injuries as a result of the accident." *Id.* at 460. This evidence included the small amount of vehicle damage, lack of visible injury, statements by plaintiffs at the scene that they were uninjured, and a two-week delay before plaintiffs sought any treatment. *Id.* at 458. Similar evidence was elicited in *Peach*, supporting the trial court's denial of new trial. The only moving vehicle made contact at mere idle speed, the vehicles had minimal damage, plaintiff received no medical treatment at the scene of the accident, and plaintiff drove his vehicle from the scene of the accident. As in *Maple*, credibility was especially significant. Plaintiff's trial

testimony was simply inconsistent with the probable result of a minor motor vehicle accident. *Peach*, 2017 IL App (5th) 160264, ¶¶ 2,3,5.

Even in those cases where a verdict for plaintiff would seem likely, the jury is still permitted to hold plaintiff to the burden of proving every element. Consistent with this rule, in *Redmond v. Socha*, 216 Ill. 2d 622, 646 (2005), this Court upheld verdicts in favor of both the defendant and counter-defendant in an automobile negligence action despite the fact that the evidence suggested that the accident was caused by the negligence of one or both of those parties. In refusing to grant a new trial, this Court evaluated the issue in light of the "substantial deference" given to the jury. *Id.* at 642. This deference allows the jury to decline to award claimed medical expenses, including emergency room expenses on the day of the accident, where disputed issues of fact existed, plaintiff's credibility was called into question, and reasonable inferences from the evidence supported the jury verdict. *Moran v. Erickson*, 297 Ill. App. 3d 342, 357 n.1 (1st Dist. 1998).

As in *Moran*, the jury in *Peach* could have properly concluded that plaintiff was not believable or that he contrived his injuries from the accident. The possibility of a jury verdict for defendant must be preserved, as a guaranteed verdict for every plaintiff who visits the emergency room in uncontested liability cases would increase the risk of fraud and incentivize exaggerated or fabricated injury claims. If plaintiffs are automatically guaranteed to recover emergency room expenses with no possibility of a defense verdict, then defendants would be left without any protection from dubious claims. The burden of proof and role of jury as trier of fact protects civil defendants from improper claims.

This Court has highlighted the "distinction between subjective complaints of injury and objective symptoms." *Snover v. McGraw*, 172 Ill. 2d 438, 449 (1996). If a claimed injury is primarily subjective in nature, then "the jury may choose to disbelieve plaintiff's testimony" on the issue. *Snover*, 172 Ill. 2d at 449. The jury in *Peach* properly exercised its role as trier of fact and reached a reasonable verdict supported by the evidence when he jurors discounted plaintiff's subjective complaints. "Unquestionably, it is the province of the jury to resolve conflicts in evidence, to pass upon the credibility of witnesses and to decide what weight should be given to the witnesses' testimony." *Maple*, 151 Ill. 2d at 452 (citations omitted).

B. The Jury is Not Required to Accept Treating Physician Testimony Regarding Proximate Cause and Injury.

As the Appellate Court has observed, "the medical professional's determination of the patient's credibility and acceptance of the patient's history and subjective expressions of pain, for purposes of making a medical diagnosis and rendering medical treatment, is not binding on a jury." *Moran*, 297 Ill. App. 3d at 354. This is so because "[t]he jury, which is empowered to make credibility determinations, must make its own assessment of the patient's veracity, not merely with respect to that person's in-court testimony but also with respect to that person's general credibility ***." *Id.* at 354 (citations omitted). In *Moran*, the Appellate Court affirmed a verdict for defendant in an automobile accident case, *id.* at 354, 362, relying upon this Court's decision that a jury can decide the weight, if any, to be given to an expert opinion that is based upon plaintiff's subjective complaints where plaintiff has reason to exaggerate those complaints. See *Melecosky v. McCarthy Brothers Co.*, 115 Ill. 2d 209, 216-17 (1986).

The jury must have the authority to accept or reject medical expert testimony, especially in back injury cases. In an often-cited medical study of patients without symptoms of back pain, 64 percent of the people tested were found to have disc abnormalities, and the researchers concluded that "the discovery of a bulge or protrusion on an MRI scan in a patient with low back pain may frequently be coincidental." Jensen MC, Brant-Zawadzki MN, Obuchowski N, Modic MT, Malkasian D, Ross JS, *Magnetic resonance imaging of the lumbar spine in people without back pain*, N Engl J Med 1994; 331:69-73. Along with the fact that diagnostic findings could be asymptomatic, MRI and CT films are subject to conflicting interpretations by different providers, and medical providers typically cannot establish the onset of spinal disc pathology based upon the films themselves.

While severe, objective injuries such as an open fracture can clearly be attributed to a recent trauma, the same does not hold true for injuries that rely heavily on subjective reports of pain, such as the claimed injury here. As the plaintiff's own subjective complaints do not bind the jury, likewise medical expert's opinions based on those complaints should not bind the jury.

C. The Role of the Trial Court to Exercise Discretion to Uphold Reasonable Jury Verdicts Must be Preserved.

Deciding the issues of proximate cause and injury as a matter of law "should be undertaken with extreme caution and should be subject to exacting scrutiny on review due to the nature of damages evidence." *Baker v. Hutson*, 333 Ill. App. 3d 486, 495 (5th Dist. 2002) (citation omitted). In *Baker*, an automobile accident case, the Appellate Court reversed a directed verdict for plaintiff on the issues of injury causation, reasonableness, and necessity of medical treatment. *Baker*, 333 Ill. App. 3d at 494, 500.

The Appellate Court, Fifth District observed that direct testimony may be "contradicted and discredited by adverse testimony, circumstantial evidence, discrepancies, omissions, or the inherent improbability of the testimony itself." *Id.* at 493 (citations omitted). Where plaintiff's credibility has been called into question for multiple reasons, as in *Peach*, it is undoubtedly the role of the jury to reject or accept discredited testimony. It is the function of the trial court to ensure that reasonable jury verdicts are upheld. Alongside the rule that courts should be very cautious before deciding injury for plaintiff as a matter of law, a "court's ruling on a motion for a new trial will not be reversed except in those instances where it is affirmatively shown that it clearly abused its discretion." *Maple*, 151 Ill. 2d at 456 (citations omitted).

According to an article by the Editor of the Cook County Jury Verdict Reporter, the historic average of defense verdicts in traffic accident cases is between 27.2% and 37.2%. Kirkton, John L., *Where Have the Plaintiffs' Verdicts Gone?,* http://www.juryverdictreporters.com/home/research-papers/research-papers/2011/08aug/where-have-the-plaintiffs-verdicts-gone (last visited May 18, 2018). While this number surely includes cases where defendant was found not negligent or plaintiff's contributory negligence was found to be greater than 50% of the total proximate cause of the accident, it is equally certain that a considerable percentage of verdicts were returned for defendant on the issues of proximate cause and damages. Circuit Court Judges preside over these trials and should be permitted to use their expertise and experience to exercise discretion over whether a verdict for defendant is against the manifest weight of the evidence.

Expert testimony is not required for the jury to disbelieve plaintiff and plaintiff's treating physicians. As in *Moran*, 297 Ill. App. 3d at 353, "a defendant is not required to present medical testimony to discredit the testimony of the plaintiff's witnesses." Thus, "[i]f the jury finds the patient to be incredible, it can correspondingly disregard the opinions of the medical professionals which are based upon information supplied to them by the patient." *Id.* at 353-54.

Gaines v. Townsend, 244 Ill. App. 3d 569 (4th Dist. 1993), is also instructive. In *Gaines*, the Appellate Court held that a jury could reasonably infer that "plaintiff did not actually suffer any injury" from an automobile accident where the impact was light, no damage resulted, and "it did not appear that either party was injured." *Gaines*, 244 Ill. App. 3d at 575 (citation omitted) (concluding that "[w]hom to believe and the weight to be given all of the evidence are matters for the trier of fact ***."). Moreover, the appellate court in *Gaines* observed that a jury is not required to accept the testimony by plaintiff's medical expert where this testimony conflicts with defendant's testimony as to the nature of the impact and plaintiff's condition at the scene. *Id.*

In *Peach*, the jury heard evidence that defendant's vehicle simply rolled at idle speed into the rear of plaintiff's vehicle, plaintiff's vehicle was drivable after the accident, and plaintiff drove his own vehicle to his girlfriend's house immediately after the accident. *Peach*, 2017 IL App (5th) 160264, ¶¶ 2,3. This evidence is sufficient for a jury to conclude that plaintiff sustained no injury in the accident. Additionally, as in *Maple*, *supra*, the vehicle photographs here provided independent evidence that discredited plaintiff's version of events and corroborated defendant's testimony that the minor impact caused no injury to plaintiff. *Peach*, 2017 IL App (5th) 160264, ¶ 11. For

the same reason, this Court should reverse the Appellate Court and hold that the trial court properly exercised its discretion to deny plaintiff's motion for a new trial since the jury reasonably concluded that plaintiff failed to prove the issues of proximate cause and damages. Because there was sufficient evidence to support the jury's verdict, it would have been an abuse of discretion for the trial court to rule otherwise.

III. The Trial Court has Discretion to Admit Vehicle Photographs Without Expert Testimony.

Post-accident vehicle photos in an automobile negligence case are admissible under Illinois Rule of Evidence 401. The photos typically suggest the severity of the collision, and this evidence is probative of injury or non-injury to drivers and occupants. The general admissibility determination for such photographs under the Rules of Evidence should be left to the trial court's discretion.

However, the Appellate Court, Fifth District has now reversed itself from prior decisions and held that expert testimony is always required for the admission of post-accident vehicle photographs in simple auto negligence bodily injury cases. The Appellate Court now states that post-accident photos of vehicles are simply irrelevant unless a party offering the photographs presents expert testimony to explain them and their role or non-role in plaintiff's disputed injury claim. The Appellate Court adopted this rule without engaging in a meaningful Rule 401 relevancy analysis. The Appellate Court abandoned its prior approach deferring to the trial court's discretion and has chosen to not just adopt, but go beyond the cases that first articulated a vehicle photograph suppression rule, *DiCosola v. Bowman*, 342 Ill. App. 3d 530 (1st Dist. 2003), and *Baraniak v. Kurby*, 371 Ill. App. 3d 310 (1st Dist. 2007). This rule, automatically barring vehicle photographs as evidence in the vehicle negligence case at issue, runs contrary to a

long line of precedent holding that juries are competent to consider and weigh this evidence and that photographic evidence does tend to suggest injury or non-injury based upon vehicle impacts depicted in the photographs. Jurors are familiar with vehicles and vehicle accidents and are competent to weigh photographic evidence. Expert translation is not necessary for a jury's understanding of this basic issue. The Appellate Court, Fifth District has now unwisely adopted a rule that will cause parties to needlessly retain experts to try to reconstruct vehicle accidents on a subject which is within the common experience of jurors. The Appellate Court holding misinterprets the concept of relevancy at a basic level, belittles the jury's capabilities, and inhibits a party's right to simply present relevant evidence and obtain a fair trial.

A. Vehicle Speed and Impact Data Have Generally Been Relevant in Vehicular Negligence Personal Injury Cases.

For many years, Illinois Courts have held that vehicle speed and the nature of impact are facts plainly relevant to the issue of claimed injuries in vehicle negligence cases. See *Maple*, 151 Ill. 2d at 460 (where this Court implicitly recognized photos showing minor contact, lack of speed and lack of vehicle damage suggested minimal injury); *Drews v. Global Freight Lines, Inc.*, 144 Ill. 2d 84, 101 (1991) (where this Court held post-accident photos depicting the vehicles were relevant to the victims pain and suffering and counsel's arguments about them were fair comments); *Cancio v. White*, 297 Ill. App. 3d 422, 433 (1st Dist. 1998) (wherein the Appellate Court held photographs of vehicles were directly related to the nature and extent of the injuries). In *Phillips v. Lawrence*, 87 Ill. App. 2d 60 (5th Dist. 1967), the Appellate Court considered whether the trial court committed reversible error in excluding plaintiff's evidence of vehicle speed in a personal injury case when liability was admitted, but the extent of plaintiff's

injury was still at issue in the case. *Phillips*, 87 Ill. App. 2d at 62. The Appellate Court reversed and found that evidence of physical impact was admissible as relevant to the probable extent of personal injuries. *Id.* at 62.

> "Both logic and experience indicate that a person in a stopped car, struck by another car going at a speed in excess of 65 miles per hour, is more likely to receive more serious injuries then one similarly situated who was struck by a car going at a much slower speed. Under the circumstances, we believe the evidence of the speed of Defendant's car was admissible as having some bearing on the extent of the injuries suffered by Plaintiff and that it was error of the trial Court to exclude this evidence." *Id.*

Similarly, in *Khatib v. McDonald*, 87 Ill. App. 3d 1087, 1099 (1st Dist. 1980), evidence of vehicle speed and the nature of the impacts was deemed relevant to the extent of injury even where negligence was not at issue. These well-reasoned appellate court opinions have remained undisturbed for decades.

Further, the First District Appellate Court in *Cancio,* 297 Ill. App. 3d at 422, found that even when negligence was not an issue in the case, the relevancy and admissibility of vehicle photographic evidence was obvious.

> "In the instant case, the photos of plaintiff's vehicle were relevant to the nature and extent of plaintiff's damages. They were relevant because they showed little or no damage, which is something the jury could consider in determining what, if any, injuries plaintiff sustained as a result of the accident." *Cancio*, 297 Ill. App. 3d at 433.

Until the current case, the Appellate Court, Fifth District remained consistent with this approach to vehicle photograph admissibility, finding that photos were admissible on the subjects of proximate cause and injury to the plaintiff and leaving the decision on admissibility to the discretion of the trial court.

With the current decision, the Appellate Court, Fifth District is now in conflict with its prior decisions and the approach of the Appellate Court, Third District. For

example, in *Jackson v. Sieb*, 372 Ill. App. 3d 1061, 1064 (5th Dist. 2007), plaintiff was rear ended while stopped in heavy traffic on an interstate. He claimed the defendant was traveling 50 miles an hour when he was hit, but the defendant argued otherwise, using the photographs demonstrating little or no impact. *Id.* at 1071. The plaintiff appealed a jury verdict in defendant's favor, but the Appellate Court approved the admission of the vehicle photographs without expert testimony required for admissibility, holding:

> "[I]t is clear from the photographs that there was not a 50-mile-per-hour-impact as the plaintiff suggested in the emergency room. . . A review of the photographs reveals that it was clear that the plaintiff was not rear-ended at anywhere near the speed he suggested. Under these facts, the Circuit Court could properly have found that the pictures *by themselves* were relevant to prove that the matter at issue was 'more or less probable.' " *Id.* at 1071.

The "matter in issue" in *Jackson* was whether the accident proximately caused any injury to plaintiff. Thus, the Appellate Court recognized the photographs were relevant to the proximate cause issue and admissible without use of experts.

Again, in *Fronabarger v. Burns*, 385 Ill. App. 3d 560 (5th Dist. 2008), the Appellate Court affirmed the trial court's discretionary role in admitting photographs and honored the jury's ability to take into account their own experiences in life to assess the credibility of the witnesses in relation to those photographs. The Appellate Court stated in *Fronabarger* that it would not accept a "rigid rule" that expert testimony was always necessary for vehicle photographs to be admissible. *Id.* at 560. It held the trial court could properly admit photos on the relationship of the accident to the claimed injury without a requirement of expert interpretation. *Id.* at 565. Both the *Jackson* and *Fronabarger* decisions recognized the importance of vehicle accident photographs, which illustrate the impact involved, to corroborate and impeach testimony and educate the jury about the claimed injuries. Plaintiffs and defendants in vehicular accidents may overdramatize or

minimize events for obvious reasons. Photographs of the impact damage from the very accident giving rise to the trial permits a jury to consider the event and the credibility of witnesses describing the event. Unlike witnesses, photographs are not subject to the biases and inaccuracies that can influence memory and testimony. Thus, photographs provide a clearer picture than witness testimony. Underscoring both these Appellate Court decisions is the view that jurors are capable of weighing photographic evidence themselves, without experts, applying their common sense and experience to the evidence.

Similarly, the Third District in the case *Ferro v. Griffiths*, 361 Ill. App. 3d 738 (3d Dist. 2005) held that photographs were admissible to demonstrate a low speed contact and unlikely injury. The Appellate Court agreed that the trial court was correct in admitting the photographs, as the photos could suggest an impact that could make the plaintiff's injury more or less probable. *Id.* at 742. The Appellate Court understood that the trial court could undertake the relevancy analysis and determine admissibility, which it did correctly in that case, allowing the photographs on the injury issue. *Id.*

B. Post-Accident Vehicle Photographs From The Very Accident At Issue Are Relevant to Suggest Injury or Non-Injury to Occupants. They Tend to Make the Existence of Such a Fact More or Less Probable.

Illinois Rule of Evidence 401 states the definition of relevant evidence.

> "Relevant evidence means evidence having 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." Ill. R. Evid. 401.

Illinois Rule of Evidence 402 states: "All relevant evidence is admissible except as otherwise provided by law." Ill. R. Evid. 402.

In a vehicle negligence case, the plaintiff claims that the accident at issue occurred because of driver negligence and that the impact was sufficient to cause plaintiff injury. The basic force that plaintiff claims is sufficient to cause injury is obviously a fact of consequence in every vehicle negligence case. The post-accident photographs demonstrate the very contact between the vehicles that plaintiff claims resulted in injury. Thus, in combination with eyewitness testimony, they are essential to an understanding of what happened in the accident. They suggest the conduct of the drivers, the speed of the vehicles, and the impact forces imparted to the vehicle occupants. Jurors are experienced with vehicles, driving, and contact forces as part of ordinary experience. A massive collision is simply more likely to precipitate injury than a mere low speed tapping of bumpers. Expert interpretation is not needed to draw this simple inference.

Pursuant to Rule 401, an item of evidence need merely have a tendency to make a fact of consequence more or less probable. See also *People v. Galloway*, 28 Ill. 2d 355, 360 (1963). What is probable is viewed in the light of logic, experience, and accepted assumptions about human behavior. *Marut v. Costello*, 34 Ill. 2d 125, 128 (1965). Ordinary logic, ordinary experience, and accepted assumptions about reality suggest that the more or less significant an impact, the more or less likely injury will result. *Phillips*, 87 Ill. App. 2d at 62. Indeed, if a vehicle crosses a centerline and hits another vehicle head on pushing the vehicle engine forward into the front seat driver's compartment, it is wholly appropriate to infer that some injury would more likely result from a photograph depicting that damage. It defies reason to suggest that an expert would be necessary to explain the photograph to a jury in order to make it relevant and thus admissible. Common logic and ordinary experience suggest the fair inference. By the same token, a

post-accident vehicle photograph demonstrating no contact damage whatsoever, or contact damage so minimal as to be barely visible, suggests little or no force transferred to the occupant. Such a photograph has a tendency to show no proximate causation between the touching of the vehicles and the plaintiff's claimed injury. These are matters of logic, common experience, and accepted assumptions about the world we live in.

Injury, and non-injury, tend to be probable from photographic evidence of this type. Similarly, testimony from involved witnesses permit the same fair inferences. Other inferences may be possible either way, and other evidence may be brought to bear on the subject. But these types of arguments go to the weight of the evidence, not admissibility. The photograph need not be dispositive on the issue of injury but merely relevant.

Vehicle photos corroborating and illustrating testimony and suggesting reasonable inferences are tested by the trial court's discretion in the first instance. But such photographs are generally relevant and admissible under Rules 401 and 402, just as with testimonial evidence, and the jury is quite capable to decide the weight to be given such evidence. Nevertheless, the Appellate Court would keep from a jury authenticated photos showing the actual vehicle contact unless some type of expert, who did not experience the event himself, correlates the vehicle photos to plaintiff's medical diagnosis. Thus, the Appellate Court forces experts into the picture when common sense will do.

The Appellate Court also suggests that when <u>any</u> contact at all occurs between vehicles then only one inference should be allowed: that the plaintiff's subjective statements that he was injured in the accident ought to be accepted despite any relevant, common sense evidence to the contrary. However, both parties in a vehicle negligence case should be permitted to present relevant evidence of the event experienced and argue

those reasonable inferences from the photographs and testimony, especially when the evidence runs counter to one or the other party's description of the event.

The Appellate Court confuses the relevancy issue by conflating medical diagnosis with a simple inference about impact forces that can be made from the vehicle accident photographs applicable to the case at issue. A defendant or plaintiff offering photographs from a vehicular accident does not present them for a particular medical diagnosis. The photographs are relevant simply to suggest the impact involved and whether, based on common experience and logic, they suggest the likelihood of injury or non-injury to occupants. Post-accident photographs, just like the testimony of witnesses describing an accident, are relevant to the subject. And neither the photo nor the witness testimony need necessarily prove or disprove a particular medical condition to be admissible. Complete certainty is not required for admissibility.

> "An item of evidence being but a single link in a chain of proof, need not prove conclusively the proposition for which it is offered. It need not ever make that proposition appear more probable than not. Whether the entire body of one party's evidence is sufficient to go to the jury is one question. Whether a particular item of evidence is relevant to his case is quite another. It is enough that the item could reasonably show that a fact is slightly more probable than it would appear without that evidence. Even after the probative force of the evidence is spent, the proposition for which it is offered still can seem quite improbable. Thus, the common objection that the inference for which the fact is offered does not necessarily follow is untenable. It poses a standard of conclusiveness that very few single items of circumstantial evidence ever could meet. A brick is not a wall." J. Strong, *McCormick on Evidence*, § 185 at 776, 777 (4th Ed. 1992).

This Appellate Court decision does more than simply declare irrelevant and suppress the very vehicle photos demonstrating the impact in the accident at issue. The Appellate Court says that without experts to filter photographs for a jury that trial courts must suppress any argument concerning any reasonable injury or non-injury inference

that might be drawn from the photograph at issue. The Appellate Court position is incongruous on its face. A photo is merely witness testimony in illustrated form. *Wigmore on Evidence* § 793 (3d Ed. 1940). Party witnesses, who are presenting or defending vehicular negligence cases, have always been allowed to testify to the nature of the contact, the speed of a vehicle, and the accident circumstances. *McGrath v. Rohde*, 53 Ill. 2d 56, 61 (1972); *Cancio*, 297 Ill. App. 3d at 423; *Phillips*, 87 Ill. App. 2d at 63. As a jury is allowed to consider relevant testimony about vehicle speed and impact forces, it is incongruous to prevent the jury from seeing photographs that depict the same matter. Similarly, arguments about inferences from a party's testimony concerning the nature of impact are equally and appropriately made from the photographs.

C. The Appellate Court Here Relied Upon The *DiCosola* and *Baraniak* decisions, which Misunderstand the Concept of Relevant Evidence.

Although plaintiff's injury was in dispute, the trial judge in *DiCosola* barred all photographic evidence of the vehicles post-accident pursuant to an limine motion. *Dicosola*, 342 Ill. App. 3d 530 at 533-34. The defense wished to use the photographs to argue that the impact was not sufficient to have caused the injury. *Id.* at 534. The Appellate Court upheld the bar over the strong dissent of Justice Frossard, who cautioned that a bright-line rule barring photographs would follow and reasoned that ordinary relevance principles allow parties to argue the correlation between vehicle photographs and the extent of plaintiff's injuries. *Id.* at 541 (Frossard, J., dissenting) The Appellate Court majority rejected its approach set forth in the prior *Cancio v. White* case despite the fact that such photos have "historically been regarded as relevant to the nature and extent of plaintiff's damages absent expert testimony." *Id.* at 543 (Frossard, J., dissenting). Indeed, the court did not engage in a rigorous relevancy analysis as to whether the

photograph made a fact in dispute more probably true or not, but rather endorsed a trial court's broad discretion to classify the evidence as irrelevant and then went on to condition photo admissibility on expert testimony to explain how the vehicle damage related to claimed injury. *Id.* at 534-35.

The *DiCosola* court essentially asserted a similarity between vehicle photos and evidence about plaintiff's prior medical conditions like that considered by this court in *Voykin v. Estate of DeBoer*. However, the analogy is inappropriate.

In the *Voykin* case, this court rejected the same part of the body rule. *Voykin v. Estate of DeBoer*, 192 Ill. 2d 49, 56 (2000). Up until then, a defendant was permitted to challenge a plaintiff in an injury case on causation if the plaintiff had a prior injury or condition involving the same bodily area involved in the lawsuit. In rejecting that approach, this Court analogized the prior medical condition to medical malpractice cases, where expert testimony is required. *Id.* at 58-59. Often these previous medical conditions have existed years prior to the claimed traumatically caused physical condition at issue in the case. Thus, this Court held that an expert would be needed to explain the relevancy of those prior, remote medical conditions to establish admissibility. *Id.* at 60; see also *Marut*, 34 Ill. 2d at 127-28 (improper cross-examination concerning plaintiff's accident ten years earlier, because it involved the plaintiff's neck, not the low back; thus it did not involve an "element of this [the present] cause of action").

However, vehicle photos in automobile negligence cases do not involve remote medical conditions. Post-accident vehicle photos illustrate the very event at issue which plaintiff claims caused his injury. The *Voykin* decision was misapplied in *DiCosola*. This Court's *Voykin* ruling does not require that jurors be suddenly declared incompetent to

draw logical, common experience conclusions from the photographs of the vehicle involved in the actual automobile accident the jury is sworn to decide. The photographs showing the impact at issue, supposedly causing injury, do not constitute prior, possibly complex unrelated medical conditions in need of medical expert explanation. In a vehicle negligence case, plaintiff, who has the burden of proof, is claiming that the auto accident caused his injury. The vehicle photos are evidence of that event. Jurors are drivers. They are familiar with vehicles and vehicular accidents. *McGrath*, 53 Ill. 2d at 61. Based on the 2010 census, the adult population of Illinois is 9,701,453 people. United States Census Bureau, *2010 Demographic Profile Illinois*, 2010 Population Finder, https://www.census.gov/popfinder/?fl=17. The number of persons with driver's license is 8,373,969. U.S. Dept. of Transportation Federal Highway Administration, *Licensed Drivers by Sex and Ratio to Population-2010*, Highway Statistics Series (Dec. 2011). The idea that jurors as a group are incompetent to properly evaluate a vehicle photograph is untenable and patronizing.

Just so, this court has often held that expert assistance is unwanted and generally not needed for juries to reach decisions in vehicle accident cases. *McGrath*, 53 Ill. 2d at 61; *Plank v. Holman*, 46 Ill. 2d 465, 470-71 (1970); see also, *Payne v. Noles*, 5 Ill. App. 3d 433, 438-39 (2d Dist. 1972) (holding that expert testimony has no place if the facts are otherwise established by credible physical or eyewitness evidence). In *Plank*, this court held that the trial court properly barred plaintiff's expert reconstruction witness from testifying because reconstruction testimony could not be used as a substitute for the eyewitness testimony where it was available. *Plank*, 46 Ill. 2d at 470. Witnesses in vehicular accident cases have always been allowed to describe driving conduct, actions

and events, and the photographs inform in a similar fashion. These subjects are traditionally within the ken of jurors, and experts have not been needed to supplement witness descriptions of events. *McGrath*, 53 Ill. 2d at 61-62; *Peterson v. Lou Bachrodt Chevrolet Co.*, 76 Ill. 2d 353, 359 (1979) (overruled on other grounds by *Wills v. Foster*, 229 Ill. 2d 393 (2008)). Similarly, jurors are capable of considering testimony and photographic evidence suggestive of slight or significant impact and weighing the evidence accordingly.

In the Illinois Pattern Jury Instructions, the jurors are told to examine the evidence within the context of the juror's own life experiences. Illinois Pattern Jury Instructions, Civil, No. 1.01 (2012). Further, they are told that they are the sole judges of the credibility of witnesses *Id.* Illinois courts have long recognized the jury's proper role in evaluating vehicle accident cases and the credibility of witnesses based on facts testified to and demonstrated by photographs. Demanding an expert to interpret vehicle photos for juries needlessly complicates a vehicular negligence case and forecloses otherwise relevant evidence.

D. An Expert Creates Unnecessary Expense.

Requiring an expert physician or engineer to describe an already well-understood relationship between vehicular damage and claimed injuries imposes financial burdens on an already expensive discovery and trial process. Such additional financial burdens should not be heaped upon the most prevalent type of civil negligence cases in the country. A 20-state study in 2018 revealed that over 50% of all civil cases in America involve civil vehicular liability. National Center for State Courts, *State Court Caseload Digest 2016 Data,* *6 (2018). Such cases involve plaintiffs and defendants from all

walks of life and socioeconomic backgrounds. An expert rule forces parties to the task of finding and employing experts instead of simply permitting the jury to apply their common sense and experience to evidence relevant to the causation issue in the case. *Pro se* parties, plaintiff and defendant, may find it impossible to effectively proceed given the new financial burdens involved with expert retention.

Such a requirement could preclude trials for a significant number of motor vehicle cases. Most minor personal injury cases feature claims that do not justify the expense of a retained expert. Given the dwindling number of jury trials occurring across the country, imposing significant expert fees merely to admit commonly understood vehicle photographs will deter even more trials. See Paula Hannaford-Agor, Robert C. LaFountain, & Shauna Strickland, *Trial Trends and Implications for the Civil Justice System*, 11 CASELOAD HIGHLIGHTS (2005); National Center for State Courts, *State Court Caseload Digest 2016 Data*, *4 (2018); *The "Vanishing Trial:" The College, The Profession, The Civil Justice System*, 226 F.R. D. 414 (2005).

E. Imposing an Expert Requirement for the Admissibility of Otherwise Relevant Evidence Can Create Speculation and Cause Other Relevant Evidence To Be Suppressed When Taken To Its Logical, or Illogical, Conclusion.

The Appellate Court confused the issue when asserting that a simple photograph demonstrating little or no impact was outside the ken of the ordinary juror. A vehicle photograph is not presented to be probative of a particular medical diagnosis like an x-ray or MRI scan. Post-accident vehicle photos are simply relevant to the basic issue of whether the impact was sufficient to cause traumatic injury, and on that issue, the photographs are admissible under Rule 401. An exclusionary rule like this, where basic, reasonable inferences are to be suppressed unless proven or supplemented with medical

testimony, can have deleterious effects at the trial court level in situations where other evidence is considered.

For example, a defendant might testify in a vehicle automobile negligence case that the plaintiff reported no injury at the scene, or that he observed plaintiff walking around and speaking as if not injured. Neither of those items of evidence foreclose the existence of injury, but one could similarly argue that medical testimony would be necessary to explain why such facts matter. However, just as the vehicle photograph demonstrating very little or a lot of damage can suggest little or no injury, these other items of evidence can do the same. Medical testimony to interpret and explain these items is certainly not necessary for the jury to perfectly understand their import. Moreover, parties are properly allowed to argue inferences from such evidence.

However, by "logical" extension of the "expert rule", parties could be barred from testifying about speed, force of impact, or simple post-accident observations, and the party's attorney barred from arguing any reasonable inference of no injury from such items of evidence. This could occur even when issues of proximate cause and damages are still primary issues in the case. Just so, the Appellate Court in this case has ordered defense counsel not to argue any inference of non-injury from the photographs. It is a small step for a court to similarly bar any argument of inference from a defendant's testimony that the impact was quite minor, thus resulting in no injury. Thus, besides misinterpreting the concept of relevancy, and forcing experts into simple auto cases, the expert rule posited here can be used to suppress other relevant evidence. Needlessly removing evidence and fair argument of this nature in vehicle negligence cases is not going to reduce jury speculation, but create it.

Further suppression of otherwise admissible evidence may be the result if this ill-advised decision is allowed to stand. This is especially troubling in relation to cross-examination. An essential aspect in the trial of vehicle injury cases is cross-examination of the parties about causation, contact forces, and movements of the vehicles and occupants at the time of the accident. These are key issues in almost every auto negligence case even where negligence is not at issue, because injury is still at issue in the case. To this end, both parties should be permitted to thoroughly cross-examine witnesses and test the credibility of those witnesses, plaintiff or defendant[2]. Any denial of the party's ability to cross-examine and later argue to the jury basic common sense inferences concerning the nature of the evidence could seriously jeopardize the right to a fair jury trial.

F. Comparison with Other States.

With this recent opinion, Illinois is only the second state in the union to adopt a rule that expert testimony is required before vehicle photos can be admitted into evidence. The vast majority of courts, federal and state, have refused to impose this requirement because the photographs are relevant to the force of the impact and any resulting personal injury. However, the Appellate Court now has reversed itself and has joined this state with a tiny minority of jurisdictions who require expert witness testimony to introduce vehicle photos in vehicular negligence cases. For the sound reasons enunciated by many sister states, below, this Court should likewise reach the

[2] The expert rule adopted by the Appellate Court here has not just been employed to foreclose use of photographs to the misfortune of defendants, e.g. *Baraniak v. Kurby*, but also has prevented plaintiff from entering evidence and cross examining witnesses about the impact involved in the case. *Williams v. City of Evanston*, 378 Ill. App. 3d 590 (1st Dist. 2007); *Kayman v. Rasheed*, 2015 IL App. (1st) 132631.

conclusion that vehicle photographs are relevant to the issues of proximate cause and injury without expert translation.

Federal Court Cases

- *Nakajima v. General Motors Corp.,* 894 F. Supp. 18 (D.C. 1995) (the court found photographs of the injuries of the plaintiff and the scene of the accident to be relevant to the case and thus admissible).
- *Perryman v. H & R Trucking, Inc.*, 135 Fed. Appx. 538 (3d Cir. 2005) ("Surely photographs demonstrating that the vehicles involved in the accident sustained no physical damage are highly probative in a case in which, as here, the parties dispute the extent and cause of alleged personal injuries. Nor is it clear how Perryman was prejudiced by their introduction unless he is erroneously asserting some right to keep from the jury details of the very accident that spawned his suit. Far from finding an abuse of discretion by the District Court, we wonder if the Court could have defensibly ruled otherwise.")

Alaska

- "We are unaware of any other jurisdiction [outside of Delaware] which has adopted a rule that collision evidence is *per se* inadmissible without expert testimony, and we decline to do so. The trial court properly has the discretion to weigh the prejudicial and probative value of photographs and other evidence of the severity of an accident. Evidence showing Marron's vehicle was undamaged can be probative of the force with which the accident occurred, and the likelihood that it caused serious harm to Marron. Thus, the court did not abuse its discretion in admitting this evidence." *Marron v. Stromstad,* 123 P.3d 992, 1009 (Alaska 2005).
- "Just as photographic evidence and testimony about the lack of serious damage to Luther's and Lander's vehicles was relevant as potentially reflecting the severity of the accident, so too is the amount of medical payments. It is then for the jury to determine the weight to be given that evidence." *Luther v. Lander,* 373 P.3d 495, 502 (Alaska 2016).

California

- "[E]ven where, as in this case, liability for an auto accident is admitted, evidence on how the accident happened is probative to show the force of the collision, which is an indicator of injury or lack thereof to passengers in the autos." *Christ v. Schwartz,* 205 Cal.Rptr.3d 858, 867 (Ct. App. 2016).
- "Photographs of the accident scene and testimony of eyewitnesses were items of evidence reasonably related to the force, degree, and nature of the injury-causing impact, and as such, were properly admitted. Likewise, this evidence bore directly upon Benjamin's claim under Dillon v. Legg, supra, for damages related to emotional distress." *Krouse v. Graham,* 562 P.2d 1022, 1032 (Cal.

1977).

- *Martin v. Miqueu,* 98 P.2d 816, 818 (Cal. Dist. Ct. 1940) (in assessing the extent of injuries, it was appropriate to introduce evidence of how the accident occurred to show force of the impact).
- *Johnson v. McRee,* 152 P.2d 526, 527-28 (Cal. Dist. Ct. 1944) (even in a case where liability is admitted, evidence of the accident, such as the degree of violence associated with the impact, is still relevant).

Colorado

- *Gourdin v. Waller,* 495 P.2d 1142, 1143 (Colo. App. 1972) (photographs of damaged vehicle were relevant to issue of probable extent of injuries sustained, even where liability was admitted).

Delaware

- *Davis v. Maute,* 770 A.2d 36, 40 (Del. 2001) (absent expert testimony, there is no relationship between extent of property damage and nature of injuries suffered).
- "*Davis* does not hold that photographs of the vehicles involved in an accident may never be admitted without expert testimony about the significance of the damage to the vehicles shown in the accident and how that damage may relate to an issue in the case. *Davis* has been misinterpreted as a bar to the admission of photographs without expert testimony. . . . *Davis* should not be construed broadly to require expert testimony in every case in order for jurors to be permitted to view photographs of vehicles involved in an accident." *Eskin v. Carden,* 842 A.2d 1222, 1233 (Del. 2004).
- *Eskin v. Carden,* 842 A.2d 1222, 1225-26 (Del. 2004) (biomechanical expert opinion on relationship of accident to injury was not admissible); accord *Mason v. Rizzi,* 89 A.3d 32 (Del. 2004).
- *Potter v. Blackburn,* 850 A.2d 294, 299 (Del. 2004) (medical doctor's expertise was limited to medicine, and he was not qualified to opine on sufficiency of forces during accident and impact on plaintiff s injuries based upon vehicle estimate).

Florida

- *Traud v. Waller,* 272 So.2d 19 (Fla. Dist. Ct. App. 1973) (reversible error to bar testimony of photographs and nature of impact, noting that Florida Supreme Court found differently in one case).
- *Wall v. Alvarez,* 742 So.2d 440 (Fla. Dist. Ct. App. 1999) (harmless error to bar photographs, but the photographs should have been admitted).
- *Allstate Ins. Co. v. Kidwell,* 746 So. 2d 1129 (Fla. Dist. Ct. App. 1999) (evidence of lack of vehicle damage was relevant to whether accident caused knee injury).

Georgia

- *Lindsey v. Turner,* 631 S.E.2d 789, 791 (Ga. Ct. App. 2006) (where vehicle photographs showed minimal damage, this evidence along with other evidence could lead jury to conclude that plaintiff did not suffer any injuries in accident).

Idaho

- *Kinney v. Smith,* 508 P.2d 1234, 1236 (Idaho 1973) (vehicle photographs were relevant to show the probable extent of injuries sustained, even though liability was admitted).

Indiana

- *Flores v. Gutierrez,* 951 N.E.2d 632, 638-39 (Ind. Ct. App. 2011) (photograph showing minimal property damage was relevant, absent expert testimony, to show relationship between damage and alleged injury).

Iowa

- *Waits v. United Fire & Cas. Co.*, 572 N.W.2d 565, 574 (Iowa 1997) (extent of damage to vehicle is probative to show whether accident caused any injuries to plaintiff).
- *Gamerdinger v. Schaefer,* 603 N.W.2d 590, 595 (Iowa 1999) (photos showing damage sustained by motorized food cart in collision with forklift would have been relevant for jury's assessment of injuries from accident).

Kansas

- *Howard v. Stoughton,* 433 P.2d 567, 570 (Kan. 1967) (photographs of vehicles after accident illustrating damage were relevant to show magnitude of collision in personal injury action).

Louisiana

- *Hunt v. Long,* 33, 95 (La. App. 2 Cir. 6/21/00); 763 So.2d 811, 819 (admission of photos was proper where trial court instructed jury that force of impact is not relevant in determining extent of damages).
- *Merrells v. State Farm Mut. Auto. Ins. Co.,* 33, 404 (La.App. 2 Cir. 6/21/100); 764 So. 2d 1182, 1185 (vehicle photographs entered into evidence corroborated lay opinion that accident was very minor, and force of impact

testimony was relevant in determining causation or extent of injuries).

Maryland

- *Mason v. Lynch,* 878 A.2d 588 (Md. 2005) (trial court properly admitted photographs showing minimal damage, absent expert testimony, as photographs supported inference that accident could not have caused serious injury and were relevant to issue of plaintiffs claimed injuries).
    - "Courts, almost uniformly, have taken the position that there is in motor vehicle accident cases, as a matter of probability, a correlation between the nature of the vehicular impact and the severity of the personal injuries." *Mason v. Lynch,* 878 A.2d 588, 601 (Md. 2005).

Massachusetts

- *Com. v. Liptak,* 951 N.E.2d 731, 738-39 (Mass. App. Ct. 2011) (in criminal case, photographs admissible to show theory of how automobile accident forces acted on body of victim).

Mississippi

- *Loyacono v. Travelers Ins. Co.,* 163 So. 3d 932, 936 (Miss. 2014) (photographs showing accident produced minimal impact such that only property damage was scratched paint, coupled with other facts, provided sufficient reasons for jury to conclude that plaintiff suffered no injury as a result of the accident).

Nebraska

- *Springer v. Smith,* 153 N.W.2d 300, 303 (Neb. 1967) (vehicle photographs were relevant to show force of impact, which would help jury in resolving nature and extent of plaintiff's injuries).
- *Patras v. Waldbaum,* 101 N.W.2d 465, 470 (Neb. 1960) (vehicle photographs had no probative value as to damages in personal injury matter).
- *Vredeveld v. Clark,* 504 N.W.2d 292, 299 (Neb. 1993) (photographs allowed in based upon expert testimony).

New Jersey

- "In the main, the fundamental relationship between the force of impact in an automobile accident and the existence or extent of any resulting injuries does not necessarily require 'scientific, technical, or other specialized knowledge' in order to 'assist the trier of fact to understand the evidence or to determine a fact in issue[.]' [Citation]." *Brenman v. Demello,* 921 A.2d 1110, 1120 (N.J. 2007).
- *Gambrell v. Zengel,* 265 A.2d 823, 825 (N.J. Super. Ct. App. Div. 1970)

(photographs showing damage were relevant to severity of claimed injuries).

New York

- *O'Brien v. Barretta,* 843 N.Y.S.2d 399, 401 (N.Y. App. Div. 2007) (photographs of bicycle and vehicle following accident were relevant to show force of impact and determine nature and extent of injuries).

North Carolina

- *Horne v. Vassey,* 579 S.E.2d 924, 928 (N.C. Ct. App. 2003 (trial court properly admitted vehicle photographs in personal injury matter).

Oklahoma

- *Booth Tank Co. v. Symes,* 394 P.2d 493, 497 (Okla. 1964) (vehicle photographs showing damage were admissible for purpose of showing force of impact of collision that resulted in injuries).

Oregon

- "The extent of injury to persons in a vehicle, as the extent of damage to the vehicle itself, usually, but not necessarily, bears a relationship to the force of the impact. The extent of such injury, therefore, is relevant testimony on the question of triviality." *Grubb v. Boston Old Colony Ins. Co.*, 477 P.2d 901, 903 (Or. 1970).

Rhode Island

- "Photographs depicting no damage to the vehicles indeed are relevant when determining the force of the impact during the collision. As the trial justice explained, these photographs 'were part of the story' and they 'complemented and supplemented the testimony' by supporting defendant's contention that this was a low-impact collision. In fact, photographs showing no damage to the parties' vehicles can be used to challenge plaintiffs' credibility on the issue of whether the collision caused their alleged injuries." *Accetta v. Provencal,* 962 A.2d 56, 61 (R.I. 2009).
- *Boscia v. Sharples,* 860 A.2d 674, 678 (R.I. 2004) (even without expert testimony, photographs of the collision were relevant evidence in support of plaintiff's theory of the case).

Tennessee

- *Allen v. Albea,* 476 S.W.3d 366, 377-78 (Tenn. Ct. App. 2015) (vehicle photographs showing minimal damage were relevant even absent expert testimony).

Texas

- *Roberson v. Collins,* 221 S.W.3d 239, 243 (Tex. Ct. App. 2006) (trial court had discretion to admit photographs of vehicles, which related to force of impact).

Utah

- "In most cases, there is a relationship between the severity of an accident and the resultant injury. See, *e.g., Robinson v. All-Star Delivery, Inc.,* 1999 UT 109, ¶27, 992 P.2d 969 ('All things being equal, the severity of an accident often correlates with the extent of damages.' (footnote omitted)). Here, the photographs introduced at trial depict very little visible damage to either party's vehicle. Certainly, photographs depicting such minimal damage to the vehicles are relevant when determining the force of the impact during the collision, and thus whether the collision caused the alleged injuries. And while the minimal damage to the parties' vehicles did not directly disprove that Schreib's injuries resulted from the accident, it did have a 'tendency to make [that] fact ... less probable than it would be without the evidence.' See Utah R. Evid. 401." *Schreib v. Whitmer,* 2016 UT App 61 ¶ 24, 370 P.3d 955, 960.

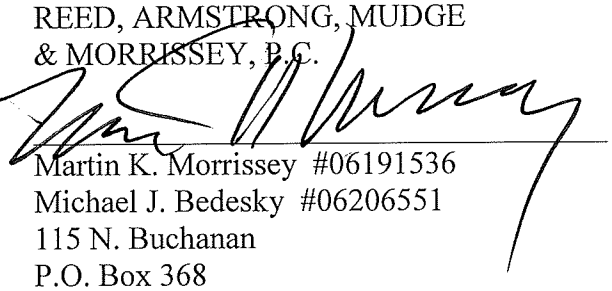
Washington

- *Murray v. Mossman,* 329 P.2d 1089, 1091 (Wash. 1958) (vehicle photographs admitted for purpose of showing force of impact in personal injury matter).

CONCLUSION

For the reasons stated above, this Court should adhere to the sound precedent that requires the proper standard of review of jury verdicts and recognizes the substantial deference afforded to jury verdicts. Where, as here, the jury reasonably resolved the issues of proximate causation and injury in favor of defendant based upon credibility questions and evidence contradicting plaintiff's claims, the jury verdict should be upheld, and the trial court should be permitted discretion to deny a motion for a new trial. Additionally, in order to assist the jury to reach a reasonable and informed decision, the trial court should be allowed to admit post-accident vehicle photographs as relevant evidence without the need for expert testimony. Because the trial court here properly exercised its discretion and presided over a fair trial with a just verdict, this Court should reverse the Appellate Court's decision, affirm the trial court's rulings, and uphold the jury verdict in favor of defendant.

REED, ARMSTRONG, MUDGE
& MORRISSEY, P.C.

By: 

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Case No. 123156

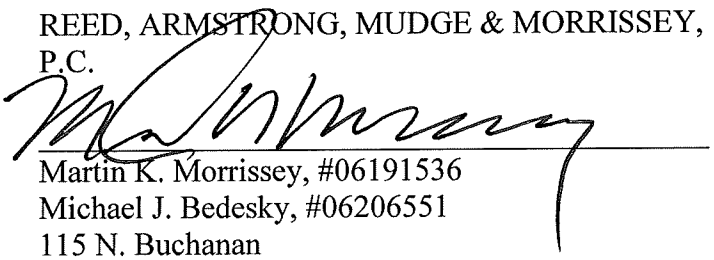
IN THE
SUPREME COURT OF ILLINOIS

WILLIAM KEVIN PEACH,	)	
	)	On appeal from the
Plaintiff-Appellee,	)	Appellate Court of Illinois,
	)	Fifth District, No. 5-16-0264
v.	)	
	)	On Appeal from the Circuit Court of
	)	Marion County, Illinois, No. 14-L-28
LYNSEY E. McGOVERN,	)	
	)	Honorable Kevin S. Parker,
Defendant-Appellant.	)	Judge Presiding

CERTIFICATE OF COMPLIANCE WITH RULE 341(A) and (B)

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is thirty-eight (38) pages.

REED, ARMSTRONG, MUDGE & MORRISSEY, P.C.

By: 

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