IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

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| JEFFREY SHOCKLEY, | : | |
| | : | C.A. No. K13C-03-026 TBD |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| FRENA LEWIS, | : | |
| | : | |
| Defendant. | : | |

Submitted: March 8, 2015
Decided: March 10, 2015

**ORDER**

Upon Defendant's Motion for Reargument
on Photograph Admissibility.
*Denied.*

Benjamin A. Schwartz, Esquire of Schwartz & Schwartz, Dover, Delaware; attorney for Plaintiff.

Jeffrey A. Young, Esquire of Young & McNelis, Dover, Delaware; attorney for Defendant.

WITHAM, R.J.

This Motion for Reargument was filed after the Trial Calendar Conference and Motion *in Limine* hearing for the parties in anticipation of trial. This motion was made solely to argue the admissibility of photograph(s) of Frena Lewis's (hereinafter "Defendant") vehicle after an auto collision with Jeffrey Shockley (hereinafter "Plaintiff"). Personal damages and liability are contested in this case.

## FACTS AND PROCEDURE

The Plaintiff alleges that the Defendant was negligent and negligent *per se* based on: following too closely (21 *Del. C.* § 4123), careless driving (21 *Del. C.* § 4176(a)), inattentive driving (21 *Del. C.* § 4176(b)), and using an electronic communication device (21 *Del. C.* § 4176C).

On February 17, 2015, the Plaintiff filed his motion *in limine* to exclude photograph(s) of the Defendant's vehicle after the motor vehicle accident. The Court ruled that the photograph(s) were inadmissible pursuant to *Davis v. Maute.*[1] Before delving deeper into the decision of the Court, a correction must be made. During the Trial Calendar Conference and Motion *in Limine* hearing conducted in Chambers, the Court stated the following:

> "Davis holds 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.'"

[1] *Davis v. Maute*, 770 A.2d 36 (Del. 2001).

The correction to this is that the Supreme Court of Delaware held in *Eskin* that:

> *"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 damages to the vehicles shown in the accident and how that damage may relate to an issue in the case."[2]

This correction does not change what the Court's intention was at the time of meeting. The Court intended to exclude any photograph(s) of the Defendant's vehicle because it felt that the jury would infer from the photograph(s) that Plaintiff's injuries correlate to the damage to the vehicle, which is explicitly prohibited by *Davis.*

The Defendant filed its motion for reargument on March 8, 2015, two days before trial, arguing that this Court misinterpreted *Davis* because it held that photograph(s) that demonstrate the extent of damages to vehicles in an accident are inadmissible in the absence of an expert. The Defense also argues that no precedent exists in Delaware case law that excludes the introduction of photographs of a vehicle as evidence to show damages. This is incorrect. The Delaware Superior Court has previously ruled that photographs of a vehicle after an auto accident are inadmissible due to their prejudicial value, in keeping with *Davis.* In *Drejka,* the Plaintiff wanted to show photographs of the vehicle in order to show "how the accident occurred, to identify the points of impact, and to explain the movement of her body inside the car

[2] *Eskin v. Carden*, 842 A.2d 1222, 1233 (Del. 2004).

during the accident."[3] However, as in the present case, the parties were not contesting that an accident actually occurred; instead, the party's negligence and injuries were at issue. The Court ruled that admission of the photographs would have been "dubious"[4] and that the photographs could not aid a trier of fact in corroborating the Plaintiff's damages because the photos could not "depict the sequence of events during the accident or the movements of Plaintiff's body."[5]

As in *Drejka*, to allow photographs of the damaged vehicle, without an expert, would be violating the precedent set by *Davis.* Although the Defense argues that use of the photographs would speak to the Plaintiff's credibility, it is extremely likely that a jury will evaluate the photographs in precisely the manner *Davis* sought to avoid. Defense Counsel has failed to provide this Court with a proper purpose for admissibility.

## STANDARD OF REVIEW

A motion for reargument filed pursuant to Superior Court Civil Rule 59(e) will only be granted if "the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have

[3] *Drejka v. Hitchens Tire Serv., Inc.*, 2009 WL 1813761, at *2 (Del. Super. June 24, 2009), as amended (July 13, 2009).

[4] *Id.*

[5] *Id.*

changed the outcome of the underlying decision."[6] Motions for reargument should not be used to rehash arguments already decided by the Court, or to present new arguments that were not previously raised.[7] Using a motion for reargument for either of these improper purposes "frustrate[s] the efficient use of judicial resources, place[s] the opposing party in an unfair position, and stymie[s] 'the orderly process of reaching closure on the issues."[8] In order for the motion to be granted, the movant must "demonstrate newly discovered evidence, a change in the law, or manifest injustice."[9]

## DISCUSSION

The Defendant's motion is based solely on the admissibility of photograph(s). The Defendant would have this Court allow the photograph(s) to be admissible on the basis of using them to determine the parties' credibility. The Defendant has not provided this Court with any "manifest injustice" or "newly discovered evidence."[10] Instead, the Defense requests that this Court re-evaluate its previous ruling.

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[6] *Kennedy v. Invacare, Inc.*, 2006 WL 488590, at *1 (Del. Super. Jan. 31, 2006) (citing *Bd. of Managers of the Del. Criminal Justice Info. Sys. v. Gannett Co.*, 2003 WL 1579170, at *1 (Del. Super. Ct. Jan. 17, 2003)).

[7] *Tilghman v. Del. State Univ.*, 2012 WL 5551233, at *1 (Del. Super. Oct. 16, 2012) (citations omitted).

[8] *Id.* (citing *Plummer v. Sherman*, 2004 WL 63414, at *2 (Del. Super. Jan. 14, 2004)).

[9] *Brenner v. Village Green, Inc.*, 2000 WL 972649, at *1 (Del. Super. Ct. May 23, 2000) (citing *E.I. duPont de Nemours Co. v. Admiral Ins. Co.,* 711 A.2d 45, 55 (Del. Super. Ct. 1995)).

[10] *Id.*

The Court fails to see how these photograph(s) will *not* have an impact on the jury in the manner specifically prohibited by *Davis*. The Defendant would have this Court allow the photograph(s) in so the jury may make a determination of the Plaintiff's credibility at trial.[11] However, the Court does not find this line of reasoning so probative as to outweigh the prejudicial effect the photo(s) will have on the jury. That is, that the Plaintiff's injuries correlate to the damage to the vehicle.

In its original motion *in limine*, the Defense cited two cases as further proof that Delaware has moved past a strong adherence to *Davis*. *State Farm Mutual Automobile Insurance Company v. Enrique*, 2010 WL 3448534 (Del. 2010) and *Clark v.State*, 894 A.2d 406 (Del. 2006) are both distinguishable from the case at bar. In *State Farm*, the Supreme Court of Delaware determined that while *Davis* does not hold that all photographs are inadmissible without an expert opinion[12], they are only admissible when a jury will "not consider the photographs for an improper purpose."[13] *State Farm* held that photographs of an accident may be admissible when the Plaintiff is attempting to prove a specific injury that was caused by the vehicle itself. In *State Farm*, it involved Plaintiff's knees hitting the dashboard.

In *Clark*, video of the motor vehicle collision was admitted "to rebut Claimant's

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[11] Based on the argument in Chambers on Monday March 9, the Court believes that the Defendant proposes to introduce one photograph of the front of Defendant's car, yet this decision will apply to all photos of the vehicle.

[12] *State Farm Mut. Auto. Ins. Co. v. Enrique*, 3 A.3d 1099 at*2 (Del. 2010).

[13] *Id.* at*3.

testimony about a jerking sensation and to show that an industrial accident did not occur."[14] The issue specifically in *Clark* was whether or not an accident occurred, and at the initial Board hearing, it was found that the Claimant "did not meet his burden of proving that he was involved in a compensable industrial accident."[15] The Supreme Court of Delaware held that the photographs were admissible for the purpose of proving that a collision occurred.[16]

Neither the facts in *State Farm* nor *Clark* are comparable to the case at bar. Neither the Plaintiff nor the Defendant are contesting that an accident occurred. Further, the Defense is arguing, as its sole line of reasoning for the photograph(s) to be admitted into evidence, that they are necessary for a jury to evaluate the Plaintiff's credibility. The Court finds that this is not a proper purpose for admissibility per the reasoning in *Davis* and its progeny.

The Court believes there is a fine distinction between the admissibility or inadmissibility of photographs without expert testimony. The Court further notes that the inadmissibility of Defendant's photograph(s) is subject to change should circumstances arise during trial that would render the photograph(s) being used for a proper purpose proscribed by *Davis v. Maute.*[17]

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[14] *Clark v. State*, 894 A.2d 406 at *2 (Del. 2006).

[15] *Id.*

[16] *Id.*

[17] The Court suggests that the parties examine *Habbart v. Liberty Mut. Fire Ins. Co.*, 2003 WL 367833 (Del. Super. Feb. 20, 2003) aff'd, 832 A.2d 1251 (Del. 2003).

## CONCLUSION

The Court does not find that it has overlooked controlling precedent nor overlooked the pertinent facts in the present case, as would be required to grant the motion for reargument pursuant to Delaware Superior Court Rule 59(e). For this reason, the motion is **DENIED.**

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh