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Tort Law

A Picture Is Worth a Thousand Words

By Arlo Walsman

The Illinois Supreme Court clarifies the law regarding the admissibility of photographs of vehicles after accidents in personal injury cases.

TAKEAWAYS »

- After the Illinois Supreme Court's ruling in *Peach v. McGovern*, the admissibility of accident photos depends on whether jurors can relate the vehicular damage depicted in the photos to the injury without expert opinion.
- Accident reconstruction testimony can be admitted when eyewitness accounts are contradictory or confusing, or when jurors may not understand the circumstances of an accident without expert opinion.
- Experts trained in physics or biomechanics may be best equipped to give opinions about photographs of vehicular damage and their correlation to claimed injuries, in contrast to medical-expert opinion, which will not be accepted.

In *Peach v. McGovern*, the Illinois Supreme Court recently held that in personal injury cases, expert testimony is not required to admit postaccident photographs of vehicles involved in a collision.[1]

Every personal injury lawyer has handled a motor-vehicle case. When photographs exist showing damage (or the lack thereof) to the vehicles involved in a collision, the parties will invariably try to admit the photos into evidence to support their theory of

the case. If the photos show substantial damage, the plaintiff will seek to admit them to argue that the impact between the vehicles was significant, and that the force of the impact caused more serious injuries. Conversely, if the photos show little or no damage, the defendant will seek to admit the photos to suggest that the impact was minimal, and that the plaintiff was therefore not likely injured to the extent claimed.

Prior to the Court's ruling in *Peach v. McGovern*, Illinois courts had reached different conclusions about whether postaccident vehicle photographs were admissible without expert testimony to explain their relevance, and this issue was frequently addressed in cases where the photos showed little or no damage. For example, in *DiCosola v. Bowman*[2] and *Baraniak v. Kurby*,[3] the First District Appellate Court held that it was not an abuse of discretion for a trial court to bar the admission of such photos in the absence of expert testimony to explain to the jury whether a correlation existed between the amount of damage to a vehicle and the extent of a plaintiff's injuries. However, in *Ferro v. Griffiths*[4] and *Ford v. Grizzle*[5] the Third and Fifth District Appellate courts held that the trial court did not abuse its discretion in admitting postaccident photos without expert testimony. Finally, in *Fronabarger v. Burns*[6] and *Jackson v. Seib*,[7] the Fifth District held that photos were properly admitted when qualified medical experts used the photos in reaching medical opinions about the nature and extent of the plaintiffs' injuries.

Peach v. McGovern

In *Peach v. McGovern*, the Court held that expert testimony is not required to admit postaccident vehicle photographs and settled this conflict in the law.[8] In so holding, the Court expressly overturned *DiCosola* and *Baraniak* and held that the proper analysis had been expressed in *Ford*, *Fronabarger*, *Jackson*, and *Ferro*.[9]

First, the Court ruled that the question of whether the photographs at issue were admissible depended on whether they were relevant, and that relevancy is tested in light of logic, experience, and accepted assumptions about human behavior.[10] Second, the Court ruled that photographic evidence is generally admissible if it has a tendency to prove or disprove a material fact at issue in a case.[11] Given these rules, the Court held that the "essential question" in deciding the admissibility of the photos was "whether the jury [could] properly relate the vehicular damage depicted in the photos to the injury without the aid of an expert."[12]

On this score, the Court held that the photographs at issue were admissible without expert testimony, because: 1) the photos were relevant to the issues of proximate cause and injury; 2) the photos did not need to prove or disprove a particular medical condition, but instead only needed to show a single link in the chain of proof or that a fact is slightly more true than not true; and 3) jurors, without the aid of expert testimony, could rely on logic, common sense, and their everyday experience to conclude that photos depicting little damage to a vehicle suggest a lower-impact collision, and that a lower-impact collision could mean that a plaintiff's injuries would be less severe than those from a high-impact collision.[13] The Court also expressed concern that requiring an expert to testify as a prerequisite to admitting photographic evidence would impose a financial burden on litigants in what is already an "expensive discovery and trial process."[14]

After *Peach v. McGovern*

As a result of the Court's decision in *Peach v. McGovern*, plaintiffs' attorneys should consider retaining an accident reconstruction expert or another qualified expert to explain that the existence of photographs showing little or no damage to the vehicles does not mean that the impact was slight. When possible, plaintiffs' attorneys may also want to have an expert offer an opinion about the speed of the vehicles prior to the impact or the force of the impact.

When considering whether to retain an accident reconstruction expert, practitioners should be aware of the rules governing the admissibility of such testimony. First, where there are eyewitnesses to an accident, courts can be reluctant to admit expert testimony concerning the speed of the vehicles involved.[15] This is because speed has traditionally been viewed as a concept not beyond the ken of the average juror.[16] However, the existence of eyewitnesses is only one relevant factor; courts also consider whether expert testimony is needed to "explain scientific principles to a jury and enable it to make factual determinations."[17]

Within this framework, courts have held that accident reconstruction testimony can be admitted when eyewitness accounts of an accident are contradictory or confusing.[18] Further, courts have admitted accident reconstruction opinions when the testimony touches on conclusions that jurors may not be able to reach on their own when viewing photos of an accident, such as: whether a party's vehicle rolled off the road, veered sharply, or broke;[19] the angle and force of impact necessary to propel a van into a car and the impact necessary to force the van's trailer hitch into the position it was in following the accident;[20] the relevance of skid marks to a vehicle's speed;[21] whether a vehicle that was rear-ended was moving prior to being struck by a trailing vehicle and the speeds of the respective vehicles after the impact;[22] and in what lane an impact between two vehicles may have occurred.[23]

Courts have excluded accident reconstruction testimony when the testimony discussed only speed and when eyewitness testimony regarding the speed of the vehicles was available.[24] Further, courts have excluded such testimony when it did not touch on matters outside the ordinary understanding of jurors.[25] For example, in *Levin v. Walsh*, the First District ruled that matters such as the points of contact between two vehicles and the reaction time of a driver in perceiving danger and removing his foot from the accelerator were not beyond the understanding of the average juror, and therefore held that the trial court did not abuse its discretion in barring accident reconstruction testimony on these topics.[26]

Defense attorneys can now rest easy, knowing that postaccident photographs showing little or no damage will almost always be admitted. However, defense attorneys may also want to take the additional step of giving the photos to medical-expert witnesses so that the experts may form opinions and offer testimony about the nature of the impact and its correlation to the plaintiff's claimed injuries. *Fronabarger* and *Jackson* provide good examples of this approach.

In *Fronabarger*, the plaintiff claimed that she suffered a back injury after being rear-ended.[27] However, the defendant's medical-expert witness testified that in a rear-end accident, people are more likely to injure their neck than their back, because the back is restrained with a lap belt and shoulder harness and that "a great impact would be needed between the vehicles to injure the lower back."[28] Finally, the expert testified that she had reviewed photographs of the plaintiff's vehicle, and that given the photos showed no damage it was not likely that the plaintiff sustained a significant impact. Similarly, in *Jackson*, where the plaintiff alleged that he had been rear-ended at a speed of 50 miles per hour, one of the defendant's medical experts who was trained in physics and biomechanics testified that from his review of the photos of the plaintiff's vehicle there was no way that the defendant's vehicle had been going 50 miles per hour at the time of the impact.[29] And, the expert testified that this fact was relevant to his opinions on the cause of the plaintiff's injuries.[30]

Although many medical experts will not be qualified to give opinions about photographs of vehicular damage and their correlation to a plaintiff's claimed injuries, *Fronabarger* and *Jackson* hold that experts may be qualified if they are trained in physics and biomechanics.[31]

Conclusion

As a result of the Illinois Supreme Court's decision in *Peach v. McGovern*, postaccident vehicle photographs are now admissible without expert testimony to explain their relevance. However, attorneys should still consider retaining expert witnesses, such as accident-reconstruction experts or medical experts, to review the photographs and offer opinions that may support their client's case.

Litigants also should be aware that because the Peach decision focuses on relevance, photographs might still be inadmissible if it can be shown that they are substantially more prejudicial than probative.[32]

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ISBA RESOURCES >>

- The Bar News, **Quick Takes on Illinois Supreme Court Opinions**, *Peach v. McGovern* (Jan. 25, 2019).
- Ed Finkel, ***Gear Up: Tips From a Personal Injury Attorney Who Wheels His Own Trial Presentation Technology Into Court***, 107 Ill. B.J. 20 (Jan. 2019).
- John M. Spesia & Jacob E. Gancarczyk, ***Demonstrative vs. Substantive Evidence: Know the Important Difference***, 106 Ill. B.J. 26 (Jan. 2018).

1. *Peach v. McGovern*, 2019 IL 123156, ¶
2. *DiCosola v. Bowman*, ***342 Ill. App. 3d 530***, 538 (1st Dist. 2003).
3. *Baraniak v. Kurby*, ***371 Ill. App. 3d 310***, 317–18 (1st Dist. 2007).
4. *Ferro v. Griffiths*, ***361 Ill. App. 3d 738***, 743 (3d Dist. 2005).
5. *Ford v. Grizzle*, ***398 Ill. App. 3d 639***, 648 (5th Dist. 2010); see also *Cancio v. White*, ***297 Ill. App. 3d 422***, 433 (1st Dist. 1998) (holding that photographs of the plaintiff's vehicle were properly admitted, even without expert testimony, because they were relevant to the nature and extent of the plaintiff's claimed injuries).
6. *Fronabarger v. Burns*, ***385 Ill. App. 3d 560***, 565 (5th Dist. 2008).
7. *Jackson v. Seib,* ***372 Ill. App. 3d 1061***, 1071 (5th Dist. 2007).
8. *Peach v. McGovern*, 2019 IL 123156, ¶ .
9. *Id.* ¶¶ 31–34.
10. *Id.* ¶ ٢٦ (citing *Voykin v. Estate of DeBoer*, ***192 Ill. 2d 49***, 57 (2000)).
11. *Id.* ¶ ٢٧.

12. *Id.* ¶ 35.
13. *Id.* ¶¶ 38–39.
14. *Id.* ¶ .
15. *Peterson v. Lou Bachrodt Chevrolet Co.*, ***76 Ill. 2d 353***, 359–60 (1979) (holding that the trial court erred in admitting accident reconstruction testimony regarding the speed of a vehicle where the opinion contradicted eyewitness testimony on the same subject). *Peterson* was overruled on other grounds by *Wills v. Foster*, ***229 Ill. 2d 393***, 414–15 (2008).
16. *Peterson*, 76 Ill. 2d at 359.
17. *Watkins v. Schmitt*, ***172 Ill. 2d 193***, 206 (1996).
18. See, *e.g.*, *Turner v. Williams*, ***326 Ill. App. 3d 541***, 553 (2d Dist. 2001).
19. *Morrison v. Reckamp*, ***294 Ill. App. 3d 1015***, 1021 (1st Dist. 1998).
20. *Ketchum v. Dura-Bond Concrete, Inc.*, ***179 Ill. App. 3d 820***, 830 (2d Dist. 1989).
21. *Coffey v. Hancock*, ***122 Ill. App. 3d 442***, 450 (3d Dist. 1984).
22. *Pace v. McClow*, ***119 Ill. App. 3d 419***, 422–23 (2d Dist. 1983).
23. *Presswood v. Morris*, ***70 Ill. App. 3d 513***, 515–16 (5th Dist. 1979).
24. *Peterson v. Lou Bachrodt Chevrolet Co.*, ***76 Ill. 2d 353***, 359 (1979).
25. *Levin v. Welsh Bros. Motor Service, Inc.*, ***164 Ill. App. 3d 640***, 649 (1st Dist. 1987).
26. *Id.*
27. *Fronabarger v. Burns*, ***385 Ill. App. 3d 560***, 562 (5th Dist. 2008).
28. *Id.* at 564.
29. *Jackson v. Seib*, ***372 Ill. App. 3d 1061***, 1071 (5th Dist. 2007).
30. *Id.*
31. *Fronabarger*, 385 Ill. App. 3d at 564; *Jackson*, 372 Ill. App. 3d at 1071.
32. *Peach v. McGovern*, 2019 IL 123156, ¶ 27; see also Ill. R. Evid. 403.