

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARLENE KELLY,  
Appellant,  
vs.  
MAISHA NICOLE HENDERSON AND  
ANNIE HENDERSON,  
Respondents.

No. 45463

**FILED**

SEP 28 2007

ORDER OF AFFIRMANCE

JANEATE M. BLOOM  
CLERK OF SUPREME COURT  
BY J. Wasado  
DEPUTY CLERK

This is an appeal from a district court judgment on a jury verdict in a personal injury action. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

Appellant, Darlene Kelly contends that the district court abused its discretion by allowing photographs of the two vehicles involved in the accident to be admitted into evidence. According to Kelly, the court inappropriately allowed respondent Maisha Nicole Henderson to use the photographs to argue, without supporting expert witness testimony, that there was not sufficient impact to cause physical injury to Kelly. Kelly also maintains that the court's instructions to the jury were improper because they did not include a limiting instruction.

Photographic evidence

Kelly argues that the district court abused its discretion in admitting the photographs and allowing Henderson to argue without expert opinion that the lack of damage to both vehicles demonstrated that the accident was low impact. NRS 48.015 states that relevant evidence is evidence, "... having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.035 allows the district court to exclude evidence if its probative value is substantially outweighed

by the danger that it will confuse the issues or mislead the jury. Appellant claims that respondent should have put on an expert to avoid inappropriate juror speculation. The court explained to the parties that the common practice in Nevada is to present the photographs, and to allow the jurors to use their common sense. We agree. The district court has wide discretion in determining whether evidence is relevant or otherwise admissible.<sup>1</sup> Here we conclude that the district court did not abuse its discretion by admitting the photographic evidence.

### Jury Instructions

Kelly asserts that the district court abused its discretion by refusing to issue a limiting jury instruction to prevent speculation as to whether the vehicle damage depicted in the photographs suggested the accident was low impact and thus sufficient to cause injury to Kelly. Kelly proposed the following instruction, which was refused by the trial court: “[t]he defendant has presented no evidence of the correlation between the damage shown in the photographs of the motor vehicles and the severity of the plaintiff’s personal injuries. Therefore, you should not speculate on this issue.” Kelly argues that respondent improperly argued that the minor damage to cars in the photograph equals low impact and, therefore, no injury. Although Kelly relies on Levine v. Remolif,<sup>2</sup> and Jeep Corp. v. Murray<sup>3</sup> to support her appellate arguments, neither case prohibits the introduction of photos of the vehicles involved in a personal injury suit.

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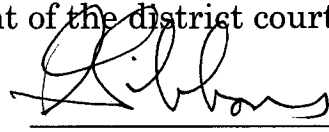
<sup>1</sup>See Prabhu v. Levine, 112 Nev. 1538, 1548, 930 P.2d 103, 110 (1996).

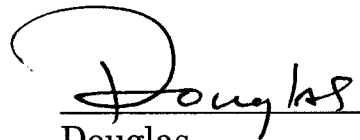
<sup>2</sup>80 Nev. 168, 390 P.2d 718 (1964).

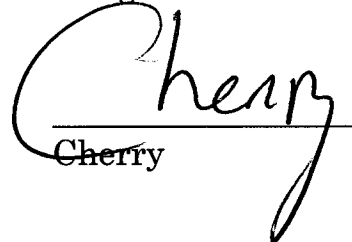
<sup>3</sup>101 Nev. 640, 708 P.2d 297 (1985).

Further, neither case requires a limiting instruction as to what evidential weight the jury should assign to the photos when the defense does not present expert testimony. Levine indicated that an expert cannot speculate about speed of the impact from examining pictures of the vehicles.<sup>4</sup> Jeep concluded that expert opinion was properly supported by photographs and other reliable facts.<sup>5</sup> Kelly's proposed instruction implied that Henderson must disprove a causative link between the accident and Kelly's personal injury claims. This burden on the defense is not present in Nevada law. Accordingly, we conclude that the district court did not abuse its discretion by refusing to give Kelly's proposed jury instructions.<sup>6</sup> Accordingly we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

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<sup>4</sup>80 Nev. 168, 170, 390 P.2d 718, 719 (1964).

<sup>5</sup>101 Nev. 640, 643-44, 708 P.2d 297, 299-300 (1985).

<sup>6</sup>We have considered all the arguments put forth on appeal and we conclude that they lack merit.

cc: Eighth Judicial District Court Dept. 18, District Judge  
Thomas F. Christensen, Settlement Judge  
Victor Lee Miller  
Gentile & Howard  
Eighth District Court Clerk