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Admissibility of Testimony of Skidmarks Seen After the Accident - Williams v. Graff

ADMISSIBILITY OF TESTIMONY OF SKIDMARKS SEEN AFTER THE ACCIDENT

Williams v. Graff[1]

Suit was entered in the Circuit Court for Baltimore County by the Plaintiff-Appellant Williams to recover for personal injuries which he sustained when he was knocked down by a taxicab owned by Defendant-Appellee Graff and operated by his employee. Appellant was a garbage collector who had just come out from behind his truck, parked on the south side of the road, and started to cross the road with a can, when he was struck and thrown for a considerable distance by the taxicab which was traveling westerly. According to the Appellant's version, the taxicab was traveling on the south side of the white line in the middle of the road, but the Defendant's driver testified that he was driving on the north side of the road (which was the right hand side). The Appellant's case rested on the theory that the cab was being driven on the wrong side of the center line, thus raising an inference of negligence. A police officer who arrived on the scene very shortly after the accident occurred, but after the taxicab had left the scene, testified that he saw skid marks on the north side of the road. The garbage truck was still standing in the same spot across the road from the skid marks and the policeman testified that there was a pool of blood sixteen feet to the west of the skid marks, and on the south side of the road. Appellant objected to the admissibility of this testimony, claiming that the skid marks were not sufficiently identified as the tire marks of the taxicab. The objection was overruled, and judgment for defendant was appealed to the Court of Appeals. *Held:* affirmed. The decision affirmed other Maryland cases preceding this one.

In both civil and criminal cases, the general rule is stated to be that testimony or evidence as to skid marks is admissible, that is, to the extent of allowing the witness to describe the marks and the circumstances under which he observed them.[2] Of course it is necessary to lay down certain minimum requirements or tests for the testimony before it can be admitted.

In the Court of Appeals and the lower court, the case revolved around the question of whether the skid marks

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[1] 194 Md. 516, 71 A. 2d 450, 23 A. L. R. 2d 106 (1950).
[2] 23 A. L. R. 115.

which were seen after the accident and after the vehicle had left the scene, could be admitted into evidence as sufficient identification as to the path taken by the taxicab. The basis of the entire argument of the Appellant rests on the premise that a late identification (one which is not made at the exact moment of the accident) could not be positive proof that the skid marks on the road were the ones actually made by the car, and therefore should not be allowed.

The problem of allowing testimony of tire or skid marks into evidence is a rather recent one (raised by the advent of the automobile which is the basic cause of the marks). There is a rather sketchy discussion of the subject in Wigmore's very thorough treatise on evidence, even in the latest edition.[3]

There have been at least eleven cases in the Court of Appeals on the subject and many of them have arisen in the past twenty years.[4] This is probably more law than exists in most of the other states, as evidenced by the comparative scarcity of cases on the point. The Court of Appeals first considered the problem in *Opecello v. Meads*,[5] where testimony as to skid marks of an automobile which were seen a half hour after pedestrian's injury, was admitted.

All of the jurisdictions which have ruled on this point of law have agreed that the test for admissibility depends on the time of the observation after the marks were made, and on the relative location of the marks, and on other convincing factors showing that the marks had actually been made by the car.[6]

In other cases under various circumstances, evidence of tire marks has been held admissible where the period of time elapsing between the accident and the time the tire marks were observed by the witness varies from a few minutes up to, in an unusual case, almost a month after the accident.[7] The time, of course, must be reasonable and

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[3] WIGMORE, EVIDENCE (3rd Ed., 1940), Sec. 417b.

[4] Opecello v. Meads, 152 Md. 29, 135 A. 488, 50 A. L. R. 1385 (1926); Transit Company v. Metz, 158 Md. 424, 149 A. 4, reh. den. 158 Md. 455, 149 A. 565 (1930), app. dis. 282 U. S. 801 (1930); Lange v. Affleck, 160 Md. 695, 155 A. 150 (1931); Marine v. Stewart, 165 Md. 698, 168 A. 891 (1933); Kirsch v. Ford, 170 Md. 90, 183 A. 240 (1936); Sheer v. Rathje, 174 Md. 79, 197 A. 613 (1938); Gloyd v. Wills, 180 Md. 161, 23 A. 2d 665 (1942); Finney v. Frevel, 183 Md. 355, 37 A. 2d 923 (1944); State v. Belle Isle Cab Co., 194 Md. 550, 71 A. 2d 435, noted in 13 Md. L. Rev. 63, 65 (1953), on another point; Williams v. Graff, *supra*, n. 1; Miller v. Graff, 196 Md. 609, 78 A. 2d 220 (1951).

[5] *Ibid*, 38.

[6] See A. L. R. note, *supra*, n. 2, at 116, and Maryland cases cited, 117.

[7] 23 A. L. R. 120-125; Langhan v. Talbott, 211 S. W. 2d 987, 991 (Tex. Civ. App., 1948).

what determines a "reasonable time" depends on the particular circumstances of each case.

In a Washington case[8] the skid marks were seen by the witness on the morning following the accident. The witness had noticed the zigzag skid tracks leading to the immediate scene of the accident. During the time between the accident and the viewing of the tracks there had been a slight rain and a settling of the dust. It was held by the court that the evidence was admissible notwithstanding the Defendant's contention that other cars might have passed in the meantime and that the weather conditions had changed.

Each case must be determined on the particular facts surrounding the witnessing of the marks. If more than a reasonable amount of time has elapsed, the presumption will be that the marks may have been erased or obliterated by the other automobiles on the road or by the weather. In such cases, the presumption would have to be rebutted by positive proof of no traffic and no change in the weather in order to be admissible.

Testimony as to skid marks seen three days after the accident has been excluded from evidence, unless it could be proved that conditions had not changed and that no other automobiles had driven over the road during the three day period.[9] In the case of *Kirsch v. Ford*,[10] it was held that a police officer's testimony as to skid marks seen an hour and a half after the accident was not admissible because too much traffic had passed over the highway during that interval of time.

In the California case of *Flach v. Fikes*,[11] the presumption was rebutted. A witness observed skid marks on a business street five hours after the accident occurred. The objecting party claimed that considerable time had elapsed since the accident and it should be presumed that because of the location of the street, many cars would have passed over the marks obliterating them. However the witness overcame the presumption by showing that there had not been a great amount of travel over the street and the testimony was admitted.

It appears that Maryland, along with the other states, has been very liberal in allowing this type of testimony.[12]

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[8] McCreedy v. Fournier, 113 Wash. 351, 194 P. 398 (1920), cited in BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE, Vol. 9, Part 2, Sec. 6179 (1941).

[9] Marine v. Stewart, *supra*, n. 4.

[10] *Supra*, n. 4.

[11] 204 Cal. 329, 267 P. 1079 (1928).

[12] *Supra*, ns. 1, 8, 11.

There have been no conflicts on the problem in any of the Maryland cases, and the Maryland cases are in line with the rest of the states which all generally follow the same rule.[13]

The only Maryland case decided on point since the principal case was the 1951 case of *Miller v. Graff*,[14] which is a prime example of Maryland liberality on this point. The same Graff was again Defendant, but this time the objecting party. The witness for the Plaintiff arrived at the scene of the accident ten minutes after the accident had occurred and after the taxicab had driven away (similarly to the facts in the principal case). Witness found skid marks seven or eight feet from the curb and he also saw blood spots along side the skid marks. When asked by the judge, the witness said that he had no way to tell what car made the skid marks. In view of this remark the judge in the lower court ordered the testimony as to the skid marks stricken out because they had not been sufficiently identified to show that they had been made by the taxicab. This decision was overruled by the Court of Appeals citing *Williams v. Graff* and stating:

> "The testimony of a witness as to tire marks is not rendered inadmissible by the fact that the automobile which had made them had been moved before the witness arrived. In view of the fact that the witness arrived shortly after the accident and saw the skid marks where it happened, and also in view of the close proximity of blood spots to the skid marks, indicating where the child had been wounded, there is reasonable ground for the inference that the skid marks had been made by the taxicab."[15]

The reason for this is that the witness generally does not state his opinion as to what instrumentality made the marks, for that is for the jury to decide. He must only testify to the existence of the marks being on the road.

The rule as set forth by the Court in the instant case[16] that, "testimony as to tire marks made by a car on a roadway should not be admitted unless it can be reasonably inferred from the time of the observation, or from the rela-

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[13] *Supra*, n. 4, and also: Grossnickle v. Avery, 96 Ind. App. 479, 152 N. E. 288 (1926), reh. den. 154 N. E. 395 (1926); Still v. Swanson, 175 Wash. 553, 27 P. 2d 704 (1933); Williams v. Graff, *supra*, n. 1; Miller v. Graff, *infra*, n. 14.

[14] 196 Md. 609, 78 A. 2d 220 (1951), cited in 23 A. L. R. 2d 117.

[15] *Ibid*, 615.

[16] *Supra*, n. 1, 524.

tive locations of the marks and the car, or from other convincing facts, that the marks had actually been made by the car" in question, has been referred to as authoritative in subsequent cases,[17] and also in American Jurisprudence.[18]

[17] Miller v. Graff, *supra*, n. 14, and McKee v. Chase, 73 Ida. 491, 253 P. 2d 787, at 792 (1953).

[18] Vol. 5, Automobiles, Sec. 633, 1953 Cum. Supp., p. 201.