

36 A.D.2d 554, 317 N.Y.S.2d 226
(Cite as: 36 A.D.2d 554, 317 N.Y.S.2d 226)

FIND Request: 36 A.D.2d 554

Supreme Court, Appellate Division, Third Department, New York.

Evelyn LEE et al., Respondents,

v.

Evelyn DECARR et al., Appellants.

Jan. 14, 1971.

Action arising from automobile accident. The Supreme Court, Franklin County, entered judgments on verdict in favor of plaintiffs, and defendants appealed. The Supreme Court, Appellate Division, held that diagram made by officer who investigated automobile accident was admissible where the diagram was based on officer's actual observations of the position of the automobiles and the pattern of skidmarks at the scene of the accident.

Affirmed.

West Headnotes

[1] Evidence 157 ↪ 358

157 Evidence

157X Documentary Evidence

157X(C) Private Writings and Publications

157k358 k. Maps, Plats, and Diagrams.

Most Cited Cases

In action arising from automobile collision, diagram made by officer who investigated automobile accident was admissible where the diagram was based on officer's factual observations of the position of the automobiles and pattern of skidmarks at the scene of the accident. CPLR 4518.

[2] Evidence 157 ↪ 380

157 Evidence

157X Documentary Evidence

157X(D) Production, Authentication, and

Effect

157k369 Preliminary Evidence for Authentication

157k380 k. Photographs and Other Pictures; Sound Records and Pictures. Most Cited Cases

Where party did not lay proper foundation to authenticate complete photograph of vehicle taken at garage sometime after accident and refused to accept picture into evidence with controversial piece of chrome blocked out, the photograph was properly refused admission.

**227 *554 Poissant & Twiss, Malone (Joseph M. Poissant, Malone, of counsel), for respondents.

Herron, Lawler & Fischer, Malone (Henry A. Fischer, Malone, of counsel), for appellants.

Before REYNOLDS, J. P., and STALEY, GREEN-BLOTT, COOKE and SWEENEY, JJ.

MEMORANDUM DECISION.

Appeal from judgments of the Supreme Court, Franklin County, entered upon a jury verdict in favor of the respondents.

[1] On September 30, 1966 the litigants were involved in an automobile accident with conflicting versions as to who was responsible. The only witnesses present at the time of the actual collision were the parties and certain relatives riding with them in the cars. At the trial a diagram of the accident made by trooper Robert Benjamin of the State Police who investigated the accident was received into evidence. Appellants assert that this diagram was not properly admitted into evidence under CPLR 4518 because it was conclusory, was not based on personal observation and was instead based on hearsay information supplied by one of the parties (Toll v. State of New York, 32 A.D.2d 47, 299 N.Y.S.2d 589). Concededly trooper Benjamin did not witness the collision but at the time he arrived the cars had not been moved and an examination of his testimony clearly indicates that the diagram was based not on statements made by the parties involved but rather primarily on his own factual observation at the accident scene. Nor is the diagram conclusory as appellants contend. The position

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of the vehicles, which had not been moved, was clearly a factual observation, and the arrows indicating the paths traversed by the vehicles reflects the officer's observation of the pattern of skid marks present at the scene. Accordingly, the diagram was properly admitted into evidence.

****228 [2]** Appellants also urge that the Trial Judge erred in refusing to admit into evidence a photograph of their vehicle taken at a garage sometime after the accident. However, appellants did not lay a proper foundation to authenticate the complete photograph and refused to accept the picture into evidence with a controversial piece of chrome blocked out. Accordingly, we find no error upon which to predicate a reversal.

Judgment affirmed, with costs.

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