IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MICHELLE NIXON,	)	
	)	
Plaintiff,	)	
	)	
5.	)	C.A. No. 99C-07-241-JRJ
	)	
LIBERTY MUTUAL FIRE INSURANCE COMPANY,	)	
	)	
	)	
Defendant.	)	

O R D E R

Submitted: August 22, 2001
Decided: August 31, 2001

Upon Defendant's Motion for a New Trial: **GRANTED**

Glenn C. Ward, Esquire, Ramunno & Ramunno, P.A., 903 North French Street, Wilmington, Delaware 19801, for Plaintiff.

Nancy Chrissinger Cobb, Esquire, Chrissinger & Baumberger, Three Mill Road, Suite 301, Wilmington, Delaware 19806, for Defendant.

JURDEN, Judge

Before the Court is Defendant's Motion for a New Trial.

1. Plaintiff Michelle Nixon ("Nixon") was injured in a one car accident on May 25, 1998 when the car in which she was a passenger, a 1985 Ford station wagon, collided with several parked cars in the 700 block of East 23rd street in Wilmington. The car in which Nixon was a passenger was driven by Chakebra Williams ("Williams") and owned by Eldridge Goldsborough ("Goldsborough"). Goldsborough insured the car through defendant Liberty Mutual Fire Insurance Company ("Liberty Mutual"). Following the accident, Nixon made a claim against Goldsborough's Liberty Mutual policy for Personal Injury Protection (PIP) coverage for her medical expenses. Liberty Mutual denied coverage, claiming that Nixon knew or should have known that at the time of the accident Williams did not have Goldsborough's express or implied consent to drive the car.

2. This case was tried before a jury on July 25, 2001. At the close of plaintiff's case, and again at the close defendant's case, defendant moved for Judgment as a Matter of Law. The Court deferred ruling. After short deliberations, the jury returned a verdict for Plaintiff. Defendant has moved for a new trial.[1] In support of its new trial motion, defendant argues that the jury verdict is "so against the weight of the evidence that it must have been based on passion, prejudice, partiality or a misunderstanding of the instructions and the verdict questionnaire."

3. The evidence presented at trial was as follows: Nixon was present on May 25, 1998

[1] In addition to its new trial motion, Defendant also filed a Motion for Judgment as a Matter of Law and a Motion for Relief from Judgment.

when Williams asked a Dwyane Brown ("Brown") if Williams could use the car in question later that day. Nixon knew that neither Williams nor Brown owned the car. Nixon did not know Goldsborough. Nixon believed Brown got the car from a mechanic. Nixon did not know the mechanic's name. Nixon assumed that this mechanic was the owner of the car. Nixon knew Williams did not have a driver's license although she had seen Williams driving other vehicles before the accident.

At about 11:00 p.m. on Monday, May 25, 1998, Williams, driving the Ford station wagon in question, picked Nixon up at Nixon's house. There were at least 3 other girls in the car when Nixon got in. Nixon noticed that the car was being driven by use of a screwdriver in the ignition, instead of a key. She claimed that she assumed the mechanic was fixing the ignition and that is why the car had to be started with a screwdriver. At about midnight, Williams lost control of the car and hit three parked cars in the 700 block of East 23rd Street. The car flipped.

Nixon testified that after the accident an unknown man assisted her out of the car. Rather than ask this gentleman to assist her further, and rather than waiting for the police and medical assistance at the scene, Nixon chose to walk several blocks on a broken ankle to the home of Turleisha Stovall ("Stovall"). Williams also went to Stovall's house. There she called her mother. Rather than wait for her mother to pick her up and take her to the hospital, Nixon chose to have Stovall drive her to the Wilmington Hospital. Williams went along with them.

The police arrived at the accident scene within five minutes of the accident. They were advised that the occupants of the car had fled the scene. The police radioed dispatch to issue an alert for any individuals seeking medical assistance because they were reasonably sure someone had been injured in the accident. The police learned that Nixon and Williams were at

Wilmington Hospital. When interviewed by the police at the hospital, Nixon and Williams reported that an individual named "Tim" was driving the car. Eventually Williams confessed that she was the driver. Nixon testified that she later corrected her statement and told the police that Williams was driving, but the police officer testified to the contrary.

4. Goldsborough testified that he never gave permission to anyone other than an individual named "Stefon" to drive his car. Stefon was an acquaintance of Goldsborough's daughter and had performed repair work on the car for Goldsborough on another occasion before this accident. In mid-May, 1998, Goldsborough gave his keys and car to Stefon so that Stefon could repair a broken window, replace the muffler and repair a fluid leak. Mr. Goldsborough testified that there was nothing wrong with the ignition when he gave the car to Stefon.

5. In the Pretrial Stipulation and at the Pretrial Conference, the parties stipulated that the sole issue for the jury to decide was:

> Whether Michelle Nixon knew or should have known that the 1985 Ford was operated without the owner's permission.

The Court gave the following instruction, agreed upon by the parties, to the jury:

> The sole issue for you to decide is whether Miss Nixon knew or should have known that the car in which she was a passenger was being operated without the owner's express or implied permission. If you find that the answer to this question is "NO," then Plaintiff is entitled to recover payment of her medical expenses by Defendant Liberty Mutual Fire Insurance Company in the amount of the policy limit of $15,000.00. However, if you find that the answer to the question is "YES," then Defendant Liberty Mutual does not have to pay Miss. Nixon's medical bills in connection with this accident.

The jury answered "NO" to the issue as framed by the parties, thus finding in favor of plaintiff.

6. The granting of a new trial is a remedial device designed to present injustice.[2] A court's power to grant a new trial must be wielded cautiously, with great deference to the findings of the jury.[3] However, a trial judge has the authority to set aside a jury verdict when it is "at least against the great weight of the evidence."[4] When, based on a review of all the evidence, "the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached that result," the trial judge may aside the result.[5]

7. Nixon's conduct strongly suggests that she knew Williams did not have Goldsborough's permission to drive the car. Nixon admitted that she knew the car was not owned by the person who gave Williams permission to use the car. She knew Williams did not have keys to the car because she saw the car being operated by use of a screwdriver. After the accident, despite sustaining a broken ankle, Nixon did not remain at the scene and await the police or emergency medical assistance for her injuries. Instead, she and all the other occupants of the car fled the scene. When the police arrived within minutes of the accident, they were advised the occupants

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[2] *Smith v. Calvarese*, Del. Supr., No. 436, 1994, Holland J. (July 21, 1995) (Order).

[3] *Maier v. Santucci*, Del. Supr., 697 A.2d 747, 749 (1997).

[4] *Story v. Camper*, Del. Supr. 410 A.2d 458, 465 (1997).

[5] *Id.*

had fled. Nixon walked several blocks with a broken ankle, called her mother and then had a friend drive her and Williams to the hospital. The only reason the police located Nixon was because they put out an alert for individuals seeking medical attention. When interviewed by the police at the hospital, Nixon actively concealed the fact that Williams was driving and intentionally mislead the police by identifying an individual named "Tim" as the driver. Nixon claims that she later told the police officer the truth about who was driving, but the police officer's recollection is to the contrary. Not only did Nixon mislead the police about the driver's identity, she also declined to identify the other occupants of the car except for a woman named "Kia" (last name unknown). In fact, defendant learned for the first time at trial (despite discovery requests which should have elicited this information long before trial) that, in addition to Williams and Kia, there were two or three other women in the car at the time of the accident.

8. In opposition to defendant's new trial motion, Nixon makes much of the fact that Nixon was a minor at the time of the collision. She argues that because of her youth, she had less reason to know the car was being operated without the owner's permission. This argument is unavailing. First, Nixon was seventeen at the time of the accident, only one year shy of majority. Second, the fact that Williams did not have a key to the car and had to use a screwdriver to operate it should have raised a suspicion, even in a younger teenager, that the owner may not have authorized Williams to use his car. Nixon's claim that she thought the ignition was broken rings hollow in light of her conduct post-accident.

9. Given these facts, the great weight of the evidence strongly suggests that Nixon knew that the car was being driven without the owner's permission. Indeed, Nixon's conduct suggests that she knew or should have known that the car was perhaps stolen. Consequently, the Court

finds that the jury's verdict is against the weight of the evidence. For these reasons, the Court believes a new trial is warranted.

10. A new trial is warranted on other grounds as well. Although the Court followed the parties' stipulation with respect to the sole issue to be presented to the jury, and submitted the charge and special verdict form agreed upon by the parties setting forth this issue, the Court concludes after reviewing the evidence that the issue presented in the verdict form and the accompanying charge were erroneous. The sole issue presented to the jury should have been:

> Do you find that Chakebra Williams had the express or implied consent of Eldridge Goldsborough to operate his car on May 25, 1998?

11. Under the Liberty Mutual policy in question, the sole issue for the jury's consideration is not Nixon's actual knowledge or duty to know whether Williams had Goldsborough's permission to drive the car, but rather, *whether Williams had the express or implied consent of Goldsborough to drive the car*.

12. Because the instructions and special verdict form submitted to the jury contained an erroneous recitation of the issue it was to decide, and further because the Court finds upon further reflection that the instructions and verdict form were potentially misleading and confusing to the jury, the Court concludes a new trial is mandated.

13. For the reasons set forth above, Defendant's Motion for a New Trial is **GRANTED**. In light of this decision, Defendant's Motion for Relief from Judgment and Motion for Judgment as a Matter of Law filed simultaneously with its new trial motion are moot and the Court will not address the contentions contained therein.

IT IS SO ORDERED.

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Jan R. Jurden, Judge