

VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 21-CV-03712

Margaret Murray v. City of Barre

ENTRY REGARDING MOTION

Title: Motion for New Trial (Motion: 14)
Filer: Andrew B. Delaney
Filed Date: May 29, 2026

The motion is DENIED.

Plaintiff Margaret Murray has filed a motion for a new trial based on two issues. First, Ms. Murray claims that the Court erred in not instructing the jury on negligence per se against Defendants for backing the plow truck into the road prior to the incident. Second, Ms. Murray has submitted a post-trial video taken on May 20, 2026 that she contends undercuts the testimony of the Defendant's expert witness and "shows a geometry inconsistent with that testimony and consistent with the conclusion that the sander caused the dent to the passenger door."

Neither of Plaintiff's arguments are sufficient grounds to grant a new trial on a procedural or substantive basis. For these reasons, the Motion for a New Trial is **Denied**.

Standard of Review

Plaintiff has a high bar to establish grounds for a new trial. *Watrous v. Porter Med. Ctr.*, 2025 VT 47, ¶ 7. "The law favors upholding jury verdict." *Shahi v. Madden*, 2008 VT 25, ¶ 14. Such a motion is vested in the broad discretion of the trial court, which should give "all possible presumptive support . . . to the jury verdict." *Jones v. Hart*, 2021 VT 61, ¶ 21 (quoting *Smedberg v. Detlef's Custodial Serv. Inc.*, 2007 VT 99, ¶ 5). Evidence is to be viewed "in the light most favorable to the nonmoving party and disregarding the effect of modifying evidence." *Madden*, 2008 VT 25, at ¶ 14. A trial court should set aside a jury verdict, if and only if, the verdict appears to be "clearly wrong and unjust because the jury disregarded the reasonable and substantial evidence, or found against it, because of passion, prejudice, or some misconception of the matter." *Pirdair v. Med. Ctr. Hosp. of Vt.*, 173 Vt. 411, 416 (2002); see also *Watrous*, 2025 VT 47, at ¶ 7; *Jones*, 2021 VT 61, at ¶ 21.

Legal Analysis: Jury Instruction

There are two problems with Plaintiff's motion for a new trial on the issue of jury instruction. First, Plaintiff did not object to the jury instruction as given to the jury. While Plaintiff did originally request a jury instruction of negligence per se, the Court did not include it any draft given to the parties. While there was some discussion about the proper phrasing of Defendant's duty, there was no objection to the omission of the negligence per se instruction. This failure to preserve is fatal to Plaintiff's claim. *Pcolar v. Casella Waste Sys., Inc.*, 2012 VT 58, ¶ 29 (holding that a failure to preserve a challenge to a proposed jury instruction prevented objections or appellate review after the trial); see also *Jones*, 2021 VT 61, at ¶ 25; *Bazzano v. Killington Country Village, Inc.*, 2003 VT 46, ¶ 10. In this case, Plaintiff never specifically objected to the omission of the proposed negligence per se language or sought its inclusion at the various charge conferences held on the final instructions or even after the instructions were read and before the jury began deliberations. For this reason alone, Plaintiff's motion for a new trial on this issue of the negligence per se jury instruction is **denied**.

Even if Plaintiff had preserved this issue, there is a substantive problem with the instruction as outlined in detail in Defendant's brief concerning the so-called shifting or bursting presumption under V.R.E. 301. Put plainly, the state of the evidence at the close of trial indicated a dispute in whether Scott Morris was backing out of the driveway at the time of the incident, and if he was, whether he was backing out unsafely in violation of the statute. As a result of these factual issues, Plaintiff was not entitled to a negligence per se instruction since the existence of the breach was a duly disputed fact with affirmative evidence on both sides.

In looking at the instruction, the Court began with the undisputed principle that Mr. Morris, to the extent that he was backing out onto to the road, had an obligation not to back out "unless such movement can be made with safety and without interfering with other traffic." 23 V.S.A. § 1113(a). It is also undisputed that proof of a violation of a safety statute creates a prima facie case of negligence. *Bacon v. Lascelles*, 165 Vt. 214, 222 (1996). It is also not disputed that Section 1113 is directly concerned with the safety of a person, who like Plaintiff, was driving on a public road at the time Defendant was backing out of the driveway. *Dalmer v. State*, 174 Vt. 157, 164 (2002).

As Defendant notes, however, the presumption can be rebutted, and once it is rebutted, the presumption goes away. *Bacon*, 165 Vt. at 222–23; see also *Cooper v. Burnor*, 170 Vt. 583,

585 (1999) (mem.). Once it goes away, it falls to the jury to make the finding based upon the evidence and no instruction on the presumption should be included. *Cooper*, 170 Vt. at 585.

In the present case, the evidence as put forward was mixed. Plaintiff put forward evidence during her case in chief, primarily from her accident reconstruction witness, indicating that it was likely that Mr. Morris was backing into the road at the time of the accident. Mr. Morris denied that he was backing up at the time of the accident. He testified that he had completed his backing up prior to the accident and was pulling forward on the shoulder of the road at the time he was struck. During Defendant's case in chief, the City's accident reconstruction witness testified that it was likely that Mr. Morris had stopped backing up at the time of the accident and had begun pulling forward. This disputed evidence meant that the jury had to resolve a question of fact: Was Mr. Morris backing up at the time of the accident?

This issue was only compounded by the fact that Ms. Murray and the driver behind her could not definitively testify about the location or movements of Mr. Morris' plow truck. Just before the accident, Ms. Murray, and her witness, Mr. Weiss, who was operating the car behind her, were momentarily blinded by the sun. As result, not only could they not testify about whether Mr. Morris was backing out of the driveway at the time of the accident, they could not testify as to whether he was doing it in an unsafe manner.

At the end of the evidence and given the testimony from both sides, the presumption and any negligence per se instruction effectively disappeared, and it was left to the jury to make the necessary findings based on the negligence instruction provided. *Favreau v. Miller*, 156 Vt. 222, 233, (1991) (holding that when a defendant meets its production burden, the court must not instruct the jury on the presumption of negligence) (citing V.R.E. 301(c)(3)).

For this reason, in addition to the procedural issue, Plaintiff's motion for a new trial on the negligence per se jury instruction issue is **denied**.

Legal Analysis: New Evidence

Plaintiff's second ground for a new trial concerns a video that Plaintiff alleges shows damage to her car that was inconsistent with Defendant's expert's testimony. The standard for a new trial based on new evidence requires the evidence to "probably change the result" if a new trial is granted; proof that it has been discovered since the trial; and that the evidence could not have been discovered before the trial through due diligence. *Bonfanti v. Ayers*, 134 Vt. 421, 423 (1976).

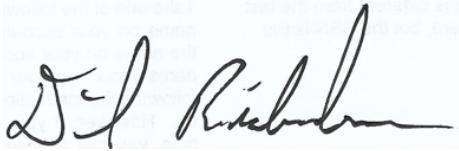
From the start, Plaintiff admits that the evidence offered could have been discovered before trial. For this reason alone, it cannot give rise to a new trial. 11 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2808 (noting that a party seeking admission of new evidence as a basis for a new trial must show that they were excusably ignorant of the facts despite due diligence). Plaintiff attempts to elide this issue by claiming not to have fully understood the nature of Defendant's expert's opinion regarding the point of impact. There is no support for this premise. Plaintiff has not brought forward any support for this argument. There is no citation to deposition or expert reports to show that the expert changed or altered his opinion from discovery. There is no evidence or information to show that the opinion offered was new and unexpected such that it would have prevented Plaintiff from realizing the importance of the evidence. Given that the point of impact was a key issue, the Court cannot conclude that this issue was unexpected.

Substantively, the evidence is neither a smoking gun nor a holy grail. At best, it complicates Defendant's expert's testimony and would have been good material for cross examination. This, however, is not the standard. Merely affecting weight and credibility is ordinarily insufficient for a motion for a new trial. *Id.* As such, the Court finds no basis for a new trial in this belated piece of evidence. Plaintiff's motion on the issue of new evidence is **Denied.**

ORDER

Based on the foregoing, Plaintiff's Motion for New Trial pursuant to V.R.C.P. 59 is **Denied.**

Electronically signed on 6/29/2026 7:59 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background.

Daniel Richardson
Superior Court Judge