[J-133-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 26 EAP 2006
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered August 18, 2005 at No.
	:	1568 EDA 2004, affirming the order of the
v.	:	Court of Common Pleas of Philadelphia
	:	County entered April 29, 2004 at No.
	:	0207-0479 1/1.
MAURICE PARKER,	:	
	:	882 A.2d 488 (Pa. Super. 2005)
Appellee	:	
	:	SUBMITTED: September 1, 2006
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COMMONWEALTH OF PENNSYLVANIA,	:	No. 27 EAP 2006
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered August 18, 2005 at No.
	:	1568 EDA 2004, affirming the order of the
v.	:	Court of Common Pleas of Philadelphia
	:	County entered April 29, 2004 at No.
	:	0207-0479 1/1.
MAURICE PARKER,	:	
	:	882 A.2d 488 (Pa. Super. 2005)
Appellant	:	
	:	SUBMITTED: September 1, 2006
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CONCURRING OPINION

MR. JUSTICE CASTILLE **DECIDED: April 18, 2007**

I concur in the result.

I agree with the Majority that the display of the handgun in this case was not harmful, and I expressly join the Majority's finding that the Superior Court panel majority erred in its

assessment that the only "purpose" behind such a display is to inflame and predispose the jury against the accused since, in the panel majority's view, the sight of a gun may create "uneasiness, if not outright repulsion, among the jurors." Majority slip op. at 12. There is no basis for such assumptions, and I for one do not believe that jurors are so innocent, inexperienced, or squeamish that the mere sight of a handgun destroys their ability to reason. If this assertion was an accurate assessment of the impact on the jury, then, *a fortiori*, one could never introduce a firearm at the trial of the matter. It is for this reason, and not the strength of the evidence ultimately produced against Parker at trial, that I believe the display authorized by the trial judge provides no basis to upset the verdict.

Notwithstanding my agreement with the Majority concerning its assessment of the effect of the display in this case, I nevertheless write to express concern respecting the proper place of such displays in opening statements. The purpose of opening statements is limited, as the Majority correctly notes; this part of the trial is intended to apprise the jury of the background of the case, how the case will proceed, and what the parties will attempt to prove. Id. at 10, citing Commonwealth v. Montgomery, 626 A.2d 109, 113 (Pa. 1993). The opening statement is a roadmap, and not a dry-run. It is a chance to outline and describe the prosecution (or defense) case, and not an opportunity to pre-try the matter. Trial courts routinely instruct juries that opening arguments are not to be considered evidence, see, e.g., Commonwealth v. Begley, 780 A.2d 605, 627 (Pa. 2001), but this restraint is diluted by allowing the jury to view the actual instrument of the crime for which the defendant is on trial. In addition to the fact that there is always a risk that the piece of evidence the party would display may ultimately not be admitted at trial, there is the more fundamental administrative concern that the limited role of the opening statement is being abused. Perhaps lawyers feel that our society today has a shorter attention span than previous generations; or, perhaps, lawyers feel a need to entertain as much as to inform.

Or it may be simply that lawyers seek to add drama to their otherwise dry presentations. But the courts need not bow down to such perceived necessities.

The Majority is correct that there is no statute, rule of procedure, or case law, which prohibits such displays. In addition, as I have already noted, I do not believe that such displays are inherently prejudicial. Nevertheless, as a supervisory matter, I believe that this Court should discourage such displays and should remind trial courts to enforce the important, but limited, purpose of the lawyers' opening arguments. See Commonwealth v. DeJesus, 860 A.2d 102, 119 (Pa. 2004) (relying, in part, on this Court's supervisory power over attorneys to fashion a judicial rule that it is impermissible to ask a jury to sentence a defendant in order to "send a message" to society). Thus, I cannot agree with the Majority's assessment that the display here was "wholly proper." Majority slip op. at 11. Whether proper or not, it was not harmful, and for that reason, relief is not due. But, as a supervisory matter, I would disapprove of trial courts authorizing such displays.[1]

Chief Justice Cappy joins this opinion.

[1] I specifically distance myself from the *dicta* concerning prosecutorial misconduct that comprises Footnote 10 of the Majority's opinion. Majority slip op. at 13 n.10.