

[J-37-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 150 MAP 2004
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered December 3, 2003, at No.
	:	423 MDA 2002, affirming the Order of the
v.	:	Lackawanna County Court of Common
	:	Pleas entered February 12, 2002, at No.
	:	01-CR-260.
MICHAEL SERGE,	:	
	:	
Appellant	:	ARGUED: April 13, 2005

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: April 25, 2006

I concur with the result of the majority. Like Justice Castille, I do not join the majority's discussion regarding finances because I believe it is waived. See Majority Slip Op., at 19. I write separately as I think the court's discussion of this irrelevant area is dangerous.

Admissibility of evidence is not a function of finances of the parties. If one side chooses to develop evidence, of this or any type, its admissibility cannot rest on a determination of the relative resources of the other party. Relevance, not money, is what makes something admissible. Pa.R.E. 402 ("All relevant evidence is admissible, except as otherwise provided by law. Evidence that is not relevant is not admissible."). If a defendant feels the need for unaffordable evidence, such as these animations, an

expert, or testing of any kind, he has but to ask the court, which will determine the entitlement under existing principles. The remedy is not to ignore the rules of evidence or to preclude the other side from introducing relevant evidence. Suggesting that disparate resources can comprise a reason to exclude evidence presages the triumph of social sensitivity over legal reason.

Likewise, the majority's discussion of a motion in limine is unnecessary. See Majority Slip Op., at 3 n.2. Again, the matter has not been raised and we have received no advocacy on it, nor has our Rules Committee considered the ramifications of this area. More to the point, relevance, not timing, remains the key to admissibility. If prejudice or unfair surprise is found, evidence may be excluded, see Pa.R.E. 403; if not, it should not be kept out simply because it was not moved at a certain time. Trials are fluid and ever-changing landscapes; what is planned one moment is of no use the next, and matters never considered gain salience at the most unexpected time. There appears no reason to treat these animations any differently than any other demonstrative tools used to aid understanding.

There are general principles of evidence and its admission that cover these animations as well as any other evidence. Technology advances, and the law must accommodate it, but we need not write a new rule every time a new manifestation of evidence arises. Our existing rules of admissibility, discovery, and motions cover this situation quite adequately. While clearly fancier, in legal concept this animation appears little different from any other drawing or chart--it is a visual aid and nothing more. Time-tested principles will determine its admissibility without a new rule specific only to computer-generated animations or variations, existent or to come. Adding dicta suggesting a special rule because of the form of the visual aid is not warranted or necessary.