

**EDWARD CHARLES
WASHINGTON AND TRAVIS
PARKER**

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NO. 2004-CA-0135

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**AETNA LIFE INSURANCE
COMPANY, D/B/A ONE
CANAL PLACE, OTIS
ELEVATOR COMPANY, ABC
INSURANCE COMPANY, THE
UNKNOWN INSURER OF
OTIS ELEVATOR COMPANY,
SCHINDLER ELEVATOR
CORPORATION, (AND/OR
SCHINDLER HAUGHTON
ELEVATOR CORPORATON),
ET AL.**

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STATE OF LOUISIANA

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GORBATY, J. DISSENTS IN PART AND CONCURS IN PART.

I respectfully dissent. The trial judge's role here was not to resolve conflicting evidence, but rather to decide admissibility. In *Barriere Constr. Co., Inc., v. Sys. Contractors, Corp.*, 99-2869, p.6 (La. App. 4 Cir. 5/29/96), 764 So.2d 127, 130-131, this court stated, "[T]he test for admissibility is whether or not there are indicia of genuineness sufficient to support a finding that the item in question is what it purports to be." In the instant case, the testimony at trial, particularly from John Baker Potts, II, was sufficient to support the finding that the tape was that which it was purported to be and was probative. Thus, it should have been up to the jury to "ultimately determine... whether the evidence [was] genuine," according to *Cross v. Cutler Biological Div. Of Miles, Inc.*, 94-1477, p.11 (La. App. 4 Cir. 5/29/96), 676 So.2d 131, 140. Accordingly, for these reasons, I would reverse the judgment of the trial court and remand this matter for a new trial on liability and damages, allowing the jury to see the videotape in question. Alternatively, I concur in the portion of the majority's opinion reducing the damages awarded.