

SUPREME COURT OF LOUISIANA

No. 96-CC-0313

DAVID MCNEASE

Versus

MURPHY CONSTRUCTION COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIFTH CIRCUIT, PARISH OF JEFFERSON

Lemmon, J., Dissenting

A defendant usually obtains a surveillance video as a basis for impeachment if the plaintiff's deposition or trial testimony as to the extent of his or her injuries varies from the depictions on the video. On the other hand, a plaintiff's usual basis for discovering a surveillance video is the need to determine whether the photography is misleading. Denying the defendant the opportunity to "pin down" the plaintiff's version of the injuries by taking the plaintiff's deposition before producing such surveillance videos will frequently prejudice the defendant's right to preserve any impeachment value in the video.

In order to balance the competing interests, the general rule should be that the deposition precede the production of the surveillance video, absent a showing by the plaintiff of special circumstances. By authorizing the trial court's exercise of discretion as to the timing of production of surveillance videos, the decision in Moak v. Illinois Cent. R.R., 93-783 (La. 1/14/94); 631 So. 2d 401, implicitly recognized that the plaintiff must provide the trial court with some reason why production should precede the taking of the plaintiff's deposition. Absent a showing of special circumstances, the general rule should apply. See Snead v. American Export-Isbrandtsen Lines, Inc., 59

F. R. D. 148, 151 (E.D. Pa. 1973).

When these principles are applied to the instant case, the plaintiff did not make the necessary showing. Hence, the trial court abused its discretion in ordering production of the surveillance video.