

A plaintiff has brought a products liability action against a defendant, the manufacturer of a sport-utility vehicle that the plaintiff's decedent was driving when she was fatally injured in a rollover accident.

The plaintiff claims that a design defect in the vehicle caused it to roll over. The defendant claims that the cause of the accident was the decedent's driving at excessive speed during an ice storm. Eyewitnesses to the accident have given contradictory estimates about the vehicle's speed just before the rollover. It is also disputed whether the decedent was killed instantly.

Which of the following items of offered evidence is the court most likely to admit?

- A. A videotape offered by the defendant of a test conducted by the defendant showing that a sport-utility vehicle of the same model the decedent was driving did not roll over when driven by a professional driver on a dry test track at the top speed testified to by the eyewitnesses.
- B. A videotape offered by the plaintiff of a television news program about sport-utility vehicles that includes footage of accident scenes in which the vehicles had rolled over.
- C. Evidence offered by the defendant that the decedent had received two citations for speeding in the previous three years.
- D. Photographs taken at the accident scene and during the autopsy that would help the plaintiff's medical expert explain to the jury why she concluded that the decedent did not die instantly.

Explanation:

Dangers to weigh against probative value

(FRE 403 balancing test)

Unfair prejudice	Evidence tends to encourage jury to decide case on improper grounds
Confusing the issues	Evidence leads jury to focus on nonmaterial matter
Misleading the jury	Evidence creates misconceptions in jurors' minds
Undue delay/wasting time	Presenting evidence will cause unnecessary delay or waste time
Needless cumulation	Similar evidence on same issue has already been admitted

FRE = Federal Rule of Evidence.

Demonstrative evidence includes videos, photographs, models, and other devices used to explain a fact at issue in a case. The **admissibility** of such evidence is governed by the **balancing test** set forth in Federal Rule of Evidence 403. Under this rule, a demonstration is **inadmissible** if its **probative value** is **substantially outweighed** by the danger of unfair prejudice, confusion, misleading the jury, undue delay, wasting time, or needless cumulation.

Whether the decedent was killed instantly in the accident is a material fact in dispute, so photographs that would help a medical expert explain why she concluded that the decedent did not die instantly would be highly probative. The photographs may unfairly prejudice the defendant since they were taken at the accident scene and autopsy, but not enough to substantially outweigh their high probative value. Therefore, the court is mostly likely to admit this evidence.

(Choice A) Demonstrative evidence is admissible to prove how an accident happened if the test conditions were substantially similar to the incident at issue. But a test conducted on a dry track with a professional driver *differs* from the icy conditions the decedent faced.

(Choice B) A videotape of sport-utility vehicles with scenes of rollover accidents has little probative value because there is no indication that those vehicles and accidents are similar to the case at hand. Therefore, it is likely that the videotape's probative value is substantially outweighed by its danger of unfair prejudice and confusion.

(Choice C) In civil cases, evidence of a person's character (eg, speeding citations) is inadmissible to prove that the person acted in accordance with that character on the occasion at issue *unless* character is an **essential element** of a claim or defense. But safe driving is not an essential element of this products liability claim.

Educational objective:

Demonstrative evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, misleading the jury, undue delay, wasting time, or needless cumulation of evidence.

References

Fed. R. Evid. 401 (test for relevant evidence).

Fed. R. Evid. 403 (excluding relevant evidence for certain dangers).

Copyright © 2013 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.