

**[J-73-2009]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

DAWN A. PYERITZ, ADMINISTRATRIX : No. 9 WAP 2009  
OF THE ESTATE OF DANIEL E. :  
PYERITZ, DECEASED, AND DAWN A. : Appeal from the Order of the  
PYERITZ, PARENT AND NATURAL : Commonwealth Court entered September  
GUARDIAN OF NICOLE L. PYERITZ, A : 15, 2008 at No. 1592 CD 2007, affirming  
MINOR, AND CHRISTOPHER E. : the Order of the Fayette County Court of  
PYERITZ, A MINOR, AND DAWN A. : Common Pleas entered July 20, 2007 at  
PYERITZ, AN INDIVIDUAL, IN HER : No. GD 541 of 2005.  
OWN RIGHT, :

Appellants

v.

COMMONWEALTH OF :  
PENNSYLVANIA, STATE POLICE :  
DEPARTMENT OF THE :  
COMMONWEALTH OF :  
PENNSYLVANIA, COL. JEFFREY B. :  
MILLER, COMMISSIONER, :  
PENNSYLVANIA STATE POLICE, :  
PENNSYLVANIA STATE POLICE :  
TROOPERS JAMES CUSTER AND :  
DANIEL EKIS, PENNSYLVANIA STATE :  
POLICE CORPORALS JAMES :  
CACCIMELIO AND ANDRE STEVENS :  
AND PENNSYLVANIA STATE POLICE :  
LIEUTENANT CHARLES DEPP, :

Appellees

: ARGUED: September 15, 2009

**CONCURRING OPINION**

**MADAME JUSTICE TODD**

**DECIDED: NOVEMBER 23, 2011**

I join the Majority Opinion with one exception. I disagree with the majority's suggestion that Appellants' counsel, in relying on the state trooper's agreement to retain the evidence at the state police barracks, somehow lacked due care. See Majority Opinion at 8-9. Indeed, I believe counsel can and should be able to reasonably rely on the assurances of law enforcement personnel. Nonetheless, I agree, for purposes of this question in tort, the state trooper's assurances do not control the issue of the Commonwealth's liability.