

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1710-2015
 :
 DUSTAN PAULHAMUS, :
 Defendant : Motion for Jury to View Scene

OPINION AND ORDER

Before the Court is Defendant’s Motion for the Jury to View the Scene of the alleged crime.

The jury was selected on January 24, 2017. Trial is scheduled from March 6, 2017 to March 8, 2017.

Pursuant to Rule 643 of the Pennsylvania Rules of Criminal Procedure, a trial judge may, in the Judge’s discretion, order a view by the jury. The decision whether to grant a jury view is within the discretion of the trial judge. Absent an abuse of discretion, the denial will not be overturned. *Commonwealth v. Pierce*, 645 A.2d 189, 197 (Pa. 1994).

Defendant contends that a view is necessary in order that the jury can better understand and appreciate the small size of the room in which the shooting took place and thus better understand Defendant’s subjective thinking in shooting his gun and whether Defendant’s belief that he needed to shoot his gun in self-defense was objectively reasonable.

Among the different items of evidence that the Commonwealth intends to utilize to depict the crime scene are a diagram created by Officer Ananea of the Williamsport Bureau of Police which includes distances between certain items, a video from a cell phone depicting some of the incident “showing human bodies filling up the space in the apartment, the size of the furniture, etc.” and numerous photographs of the alleged crime scene.

Unfortunately, the apartment at issue is not available to view. Another “similar” apartment may be available to view but either will have different furniture in it or be empty.

The Court agrees with Defendant that there are compelling reasons for the jury to view the scene of the crime. The logistics would not at all be difficult. There is no issue with respect to lighting or other variables. The physical configuration of the room is essential if not determinative and the other items of evidence do not and cannot substitute for the “real thing.”

In order not to confuse the jury, however, the Court will only allow a site view by the jury of an unoccupied apartment or with furniture in the same configuration as the crime scene. No testimony or comments will be allowed. The Court will attend the site view, and instruct the jury accordingly and then return for further testimony or deliberations.

ORDER

AND NOW, this 31st day of January 2017, following a hearing and argument, the Court **GRANTS** Defendant’s Motion for a Site View under the circumstances as set forth above.

By The Court,

Marc F. Lovecchio, Judge

cc: Ken Osokow, Esquire/Martin Wade, Esquire
William Miele, Esquire/Nicole Spring, Esquire
Work File