

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
Plaintiffs,	:	
vs.	:	NO. CR - 1183-2015
	:	OTN: L953660-1
	:	
GARY COLEMAN,	:	CRIMINAL DIVISION
Defendant	:	MOTION IN LIMINE

**OPINION AND ORDER**

Before the Court is the Defendant’s motion in limine seeking to preclude or limit the admissibility of photographs of the victim and the crime scene on the grounds that they are unfairly prejudicial and potentially misleading. Upon review of the photographs and arguments of Counsel held this date, the Court denies the motion, with the exception that the Court limits the admissibility of cumulative photographs as more fully explained below.

**FACTUAL BACKGROUND**

By information filed August 7, 2015, the Commonwealth charged the defendant Gary Coleman with two felony counts of aggravated assault, two misdemeanor counts of simple assault, one misdemeanor count of possessing instruments of a crime and one misdemeanor count of disorderly conduct – engage in fighting. The charges stem from activity on July 4, 2015 at Ann’s Tavern. A jury trial is scheduled for October 27, 2016.

**DISCUSSION**

The admission and exclusion of evidence is within the sound discretion of the trial court. Jacobs v. Chatwani, 922 A.2d 950, 960 (Pa.Super. 2007). Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Pa. R.E. 401. “All relevant evidence is admissible, except as otherwise provided by law. Evidence that is not relevant is not admissible.” Pa. R.E. 402. “The court may exclude relevant evidence if its probative value is outweighed by a danger of ... unfair prejudice, confusing the issues,..[or]

misleading the jury[.]” Pa. R.E. 403. Unfair prejudice results when the evidence suggests decision on an improper basis or diverts the jury's attention away from its duty of weighing the evidence impartially. Pa.R.E. 403 (comment); see, Commonwealth v. Hitcho, 123 A.3d 731, 767 (Pa. 2015).

As to photographs of the victim, the court essentially must engage in a two part test, which first involves determining whether the photograph is inflammatory. Commonwealth v. Patterson, 625 Pa. 104, 91 A.3d 55, 67 (Pa. 2014). If not inflammatory and relevant, the photograph may be admitted. Id. If inflammatory, the court must determine whether “the essential evidentiary value of the photograph outweighs the likelihood that the photograph will improperly inflame the minds and passions of the jury.” Id. (citations omitted). As to crime scene photographs, “the trial judge is normally accorded discretion in permitting photographs of the crime scene to be shown the jury.” Commonwealth v. Miller, 268 Pa. Super. 123, 407 A.2d 860 (Pa. Super. 1979), *citing*, Commonwealth v. Novak, 395 Pa. 199, 150 A.2d 102 (1959); Commonwealth v. Allen, 239 Pa. Super. 83, 361 A.2d 393 (1976). If the court deems the photographs not to be inflammatory, then they are admissible as any evidentiary items, subject, of course, to the qualification of relevance. Miller, *supra*, (citations omitted).

The Defendant filed a motion in limine to exclude photographs marked as 6396, 6407, 6410, 6413, 6418, 6419, 6440, 6435 and 6436 of the victim’s injuries and the crime scene on the grounds that the evidence is unfairly prejudicial and/or potentially misleading. In the present case, the Court concludes that none of the photographs are inflammatory and all of the photographs are relevant and not misleading. Specifically photographs marked 6410 and 6413 are not inflammatory and potentially show the instrument of the crime. Photographs 6418 and 6419 are not inflammatory and show a pool stick used during the crime. Photographs 6435 and 6436 are not inflammatory and are relevant to show disfigurement and intent.

Even if they were inflammatory, the Court concludes that the essential evidentiary value outweigh the likelihood of prejudicial or misleading the jury. However, the Court concludes that there are three sets of duplicative photographs (described in the Order below). Therefore, the Court limits the Commonwealth to selecting one photograph from each of those three sets. The remaining photographs that are not within those three sets are admissible.

Accordingly, the Court enters the following Order.

**ORDER**

AND NOW, this 26<sup>th</sup> day of October, 2016, for the foregoing reasons, it is ORDERED and DIRECTED as follows.

1. Photographs marked 6396, 6407, 6440 are admissible.
2. Although none of the photographs are inflammatory, the court hereby limits the admissibility of some of the photographs as cumulative as follows.
  - a. Photographs marked 6410 and 6413 are cumulative to each other, and therefore the Commonwealth is limited to submitting one of those two but not both.
  - b. Photographs 6418 and 6419 are cumulative to each other and therefore the Commonwealth is limited to submitting one of those two but not both.
  - c. Photographs 6435 and 6436 are cumulative to each other and the Commonwealth is limited to submitting one of those two but not both.

BY THE COURT,

October 26, 2016  
Date

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Richard A. Gray, J.

cc: DA (NI)  
Jeffrey A. Rowe, Esq.