

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-724-2015
 :
 PHILIP A. SAILOR, :
 Defendant :

OPINION AND ORDER

This matter came before the court on March 2, 2016 for a hearing and argument on Defendant's motion in limine, which was filed on February 12, 2016.

By way of background, Defendant is charged with aggravated assault by vehicle while driving under the influence, aggravated assault by vehicle, possession of a small amount of marijuana, possession of drug paraphernalia, driving under the influence of a controlled substance and summary traffic offenses arising out of an incident on November 21, 2014, in which a 16 year old female, who was crossing Northway Road, was struck by the vehicle that Defendant was driving and suffered serious bodily injuries.

In his motion in limine, Defendant seeks to preclude the Commonwealth from mentioning the injuries that the victim suffered because Defendant is willing to stipulate to the injuries suffered by the juvenile female, they are not relevant to any of the exceptions listed in Rule 404(b) of the Pennsylvania Rules of Evidence,¹ and any probative value is completely obviated by the prejudicial effect of admission.

Defendant's motion lacks merit. To prove that Defendant committed the

¹ During the argument on this matter, defense counsel indicated that he was relying on Rule 403, not Rule 404(b).

offenses of aggravated assault by vehicle while DUI and aggravated assault by vehicle, the Commonwealth must prove beyond a reasonable doubt that Defendant recklessly or negligently caused serious bodily injury to another person.

Evidence of the victim's injuries is clearly relevant in this case. The fact that Defendant is willing to stipulate to those injuries does not negate their relevance. "[T]he Commonwealth may use any proper evidence to prove its case, and *does not have to accept* the accused's stipulations." *Commonwealth v. Jemison*, 626 Pa. 489, 98 A.2de 1254, 1260- (2014)(emphasis original)(quoting *Commonwealth v. Stanley*, 498 Pa. 326, 446 A.2d 583, 588 (1982)); see also *Commonwealth v. Evans*, 465 Pa. 12, 348 A.2d 92, 94-95 (1975)("The Commonwealth has the burden of proving the guilt of the defendant beyond a reasonable doubt; it must be permitted to do that by whatever material evidence it can muster.").

Accordingly, the following order is entered:

ORDER

AND NOW, this ___ day of March 2016, the court DENIES Defendant's motion in limine. The law clearly prohibits the court from precluding the Commonwealth from presenting evidence regarding an element of the crime. This ruling is without prejudice to the defense raising a specific objection to a particular photograph, item of evidence or testimony on the basis that it is inflammatory or unduly prejudicial.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
William Miele, Esquire (PD)/Joshua Bower, Esquire (APD)
Work file