

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
LARRY BURNS	:	No. 1113 MDA 2025

Appeal from the Order Entered August 11, 2025
In the Court of Common Pleas of Cumberland County Criminal Division at
No(s): CP-21-CR-0001227-2022

BEFORE: BOWES, J., OLSON, J., and BENDER, P.J.E.

MEMORANDUM BY BOWES, J.:

FILED: SEPTEMBER 15, 2026

The Commonwealth appeals from the August 11, 2025 order prohibiting it from publishing to the jury certain photographic and video evidence in prosecuting Larry Burns for, *inter alia*, two counts of murder, and one count each of arson, tampering with evidence, and abuse of corpse.¹ We affirm in part and vacate in part.

The trial court summarized the relevant facts and procedural history as follows:

¹ Pursuant to Pa.R.A.P. 311(d), the Commonwealth certified that the order substantially handicapped the prosecution. We reject Burns's invitation to disregard binding authority that permits the Commonwealth to pursue an interlocutory appeal from a pretrial ruling on a motion *in limine* where it certifies that the order will terminate or substantially handicap the prosecution. **See Commonwealth v. Dixon**, 907 A. 2d 468, 471 n.8, (Pa. 2006); **Commonwealth v. Bidwell**, 195 A.3d 610, 615 n.1 (Pa.Super. 2018) (Commonwealth's appeal from motion *in limine* order precluding evidence falls within Pa.R.A.P. 311(d)).

[Burns] and his co-defendant Cordaryl Burns are accused of killing Eddie Shaw and Frankie Thomas[in a dispute over a woman's affections and starting a house fire to destroy evidence of their crimes.] . . . [T]he Commonwealth seeks the death penalty for both defendants. At issue is purely an evidentiary determination as it pertains to the Commonwealth's case against [Burns]. The court gleans the following allegations from the criminal complaint.

On February 23, 2022, Pennsylvania State Police (PSP) responded to a fire at a residence in Shippensburg, Pennsylvania. At the scene, authorities discovered two deceased individuals, later identified as . . . Shaw and . . . Thomas. Shaw's body was located inside the home and had significant burns as well as a bullet wound to the head. Thomas was found slumped over the steering wheel of a Lincoln Zephyr sedan that was parked in the driveway. He had been shot twice in the neck.

. . . .

Evidence collected throughout the investigation, including items from the crime scene, cell phones, search warrants, and lab results, coupled with [Burns's] actions following the morning of the fire, led police to arrest [Burns]. He was charged with, *inter alia*, two counts of first-degree murder, arson, tampering with evidence, and abuse of a corpse.

The matter was scheduled for trial, prior to which the court held a hearing [to resolve the dueling motions *in limine* filed by Burns and the Commonwealth concerning] the admissibility of autopsy and crime scene photographs.

Trial Court Opinion, 10/13/25, at 1-2.

During the hearing, the Commonwealth proffered fourteen enumerated pretrial exhibits ("PE") and three drone videos (DJI-0769, DJI-0771, and DJI-0773), all which the trial court sealed and admitted for the purpose of the hearing. The Commonwealth explained that the drone was necessary because crime scene investigators could not physically enter the still smoldering ruins

to examine the fire-gutted home in detail. Burns stipulated to the admissibility of DJI-0773, which shows the seared remains of the second floor of the residence, and PE Nos. 1, 4, 5, and 6. Significant to this appeal, PE 1 is a photograph of the first floor of the burned-out structure. Viewing the interior of the home from just inside the dwelling's threshold, the image shows the extensive damage caused by the conflagration. Among the incinerated furniture, charred walls, and blackened ceiling beams, Shaw's partially burned body, facing away from the door, is visible lying on the remains of a couch. The other unopposed photographs, PE Nos. 4, 5, and 6, all show Thomas's body slumped over the middle console of the vehicle outside of the home.

Following the hearing, the trial court determined that the remaining ten photographs depicting the crime scene and the respective autopsies were inadmissible.² In addition, in relation to DJI-0769, the court excluded two segments (approximately one minute) of drone video footage from the first-floor crime scene because it displayed Shaw's severely burned body between time markers 2:16-2:53 and 3:13-3:28. We examined all the exhibits and for ease of review, we chart the exhibits relevant to this appeal and note the reasons the trial court provided for excluding each:³

² The court permitted the Commonwealth to use pretrial exhibits 2, 3 and 7, to assist in witness testimony but none of these could be published to the jury.

³ As the Commonwealth abandoned its challenge to the inadmissibility of PE 3, PE 11, PE12, and PE 13, we do not include those exhibits in the chart.

Pretrial Exhibit	Description	Trial Court's reason for exclusion
PE 2	Crime scene photograph depicting Shaw's severely burned body lying on a scorched couch.	Duplicative of PE 1
PE 7	Autopsy photograph of exit wound on the right side of Thomas's head and a second projectile resting under the skin of his right shoulder	Too inflammatory; wounds can be described by pathologist with diagrams
PE 8	Autopsy photograph of the bullet that was retrieved from Thomas's shoulder, which is shown in the background along with his face.	Inflammatory and irrelevant. Thomas' face was incidental to the bullet retrieval and did not need to be shown. The Commonwealth may produce the bullet itself
PE 9	Autopsy photograph depicting two entry wounds around Thomas's left upper neck and lower skull.	Too inflammatory; wounds can be described by pathologist with diagrams.
PE 10	Autopsy photograph of the upper half of Thomas's body, chest cavity splayed open because of the autopsy procedure. Two ballistic dowels through Thomas's head and his neck, depicting the respective flight paths of projectiles.	Too inflammatory; can illustrate bullets' trajectory using a diagram or mannequin
PE 10A	Cropped version of PE 10 revealing less chest cavity but enlarging the image of Thomas's face, neck, and upper shoulders.	Too inflammatory; can illustrate bullets' trajectory using a diagram or mannequin.
Commonwealth's Exhibit #1	Drone video of crime scene, marked DJI-0769. Court excluded footage where the drone hovered over Shaw's body	Unclear whether video needed to identify use of accelerant or the origin of the fire in relation to Shaw's

		body. Court may reconsider allowing drone footage to support the arson expert's opinion."
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See Commonwealth's Pretrial exhibits 2-13; Commonwealth's Exhibit #1 from February 27, 2025; Trial Court Order, 8/11/25, 1-3.

The Commonwealth timely appealed and complied with the trial court's directive to file a concise statement pursuant to Pa.R.A.P. 1925(b). On appeal, it reiterates those issues thusly:

I. Whether the trial court erred as a matter of law and abused its discretion by excluding autopsy photographs of Frankie Thomas, that are necessary for the Commonwealth to prove first degree murder and aggravating circumstances?

II. Whether the trial court erred as a matter of law and committed an abuse of discretion when it denied the Commonwealth's request to admit the complete drone footage of the crime scene and a photograph of Eddie Shaw, which are necessary for the testimony of the Commonwealth's arson expert and to meet the burden of proof?

Commonwealth brief at 1 (unnecessary capitalization omitted).

The Commonwealth's arguments implicate the trial court's decision to exclude potentially inflammatory video and photographic evidence. We review the court's evidentiary determinations for an abuse of discretion.

Commonwealth v. Walter, 119 A.3d 255, 227 (Pa. 2015). It is well stated that

[a]n abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied or the judgment exercised is manifestly unreasonable, or the result of

partiality, prejudice, bias, or ill will, as shown by the evidence or the record, discretion is abused.

Commonwealth v. Bainey, 332 A.3d 66, 72 (Pa.Super. 2025) (cleaned up).

As we reiterated in ***Commonwealth v. Kline***, 344 A.3d 831, 835 (Pa.Super. 2025),

In determining whether to admit a photograph of a homicide victim, the court must engage in [a] two-part inquiry:

First, the trial court must examine whether the particular photograph is inflammatory. If the photograph is not inflammatory, it may be admitted if it is relevant and can serve to assist the jury in understanding the facts of the case. [However, i]f the photograph is inflammatory, the trial court must determine whether the photograph is of such essential evidentiary value that its need clearly outweighs the likelihood of inflaming the minds and passions of the jurors.

Commonwealth v. Woodard, 129 A.3d 480, 494 (Pa. 2015). A trial court may abuse its discretion where it “improperly weighed the probative value of evidence admitted against its potential for prejudicing the defendant.” ***Commonwealth v. Antidormi***, 84 A.3d 736, 750 (Pa.Super. 2014) (cleaned up).

Kline, 344 A.3d 835.

Instantly, the Commonwealth argues that the trial court misapplied the law in failing to apply the requisite two-part analysis before excluding the challenged evidence. It asserts that the trial court simply excluded the proffered photographs and segments of the drone video after finding that was too inflammatory and in so doing, the court neglected to weigh the potential prejudice to Burns in considering the photographs evidentiary necessity. Commonwealth brief at 19, 18-27.

As we agree that the court was bound to determine whether the probative value of the exhibits outweighed the likelihood of prejudicing the jury, our review of the trial court's analysis is informed by the following principles.

Pursuant to Pennsylvania Rules of Evidence, evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action." Pa.R.E. 401. Nevertheless, even relevant evidence is excluded if its probative value is outweighed by "unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Pa.R.E. 403. Critically, however, "all relevant Commonwealth evidence is meant to prejudice a defendant[,]" thus "exclusion is limited to evidence so prejudicial that it would inflame the jury to make a decision based upon something other than the legal propositions relevant to the case." ***Commonwealth v. Gonzalez***, 112 A.3d 1232, 1238 n.6 (Pa.Super. 2015) (cleaned up).

Although photographic evidence of a murder might show gruesome imagery, "a trial court must not merely exclude [it] based on those qualities[.]" ***Commonwealth v. Lyons***, 79 A.3d 1053, 1069 (Pa. 2013). As our High Court explained:

While recognizing that photographs of a homicide victim can be unpleasant, disturbing, and brutal, . . . there is no need to so overextend an attempt to sanitize the evidence of the condition of the body as to deprive the Commonwealth of opportunities of

proof in support of the onerous burden of proof beyond a reasonable doubt.

Commonwealth v. Watkins, 108 A.3d 692, 724 (Pa. 2014) (cleaned up). If a trial court were to exclude photos based only upon their disturbing nature, it “would result in exclusion of all photographs of the homicide victim, and would defeat one of the essential functions of a criminal trial, inquiry into the intent of the actor.” ***Commonwealth v. Walter***, 119 A.3d 255, 286 (Pa. 2015) (cleaned up).

Even where a witness can describe the nature and extent of a victim’s injuries, our High Court has held that “the availability of alternate testimonial evidence does not preclude the admission of allegedly inflammatory evidence.” ***Commonwealth v. Ballard***, 80 A.3d 380, 393 (Pa. 2013) (cleaned up). This is because “the condition of the victim’s body provides evidence of the assailant’s intent, . . . even where the body’s condition can be described through testimony from a medical examiner[.]” ***Commonwealth v. Wright***, 961 A.2d 119, 138 (Pa. 2008).

In assessing the inflammatory nature of the evidence, a trial court may take precautionary measures to decrease the likelihood that a photograph would prejudice jurors, including issuing curative instructions, editing the colors to black and white, and prohibiting the photographs from entering deliberations. ***See Commonwealth v. Johnson***, 42 A.3d 1017, 1034 (Pa. 2012); ***Commonwealth v. Ballard***, 80 A.3d 380, 393-94 (Pa. 2013). Nevertheless, “[i]t is a fundamental precept of our criminal jurisprudence that

the Commonwealth is entitled to prove its case by relevant evidence of its choosing.” ***Commonwealth v. Hicks***, 91 A.3d 47, 55 (Pa. 2014).

Burns has been charged with first-degree homicide, arson, and abuse of a corpse. To prove that Burns committed murder in the first degree, the Commonwealth must demonstrate beyond a reasonable doubt that he intentionally killed the victim. ***See*** 18 Pa.C.S. § 2502. “A jury may infer the specific intent to kill based upon the defendant’s use of a deadly weapon on a vital part of the victim’s body.” ***Commonwealth v. Anderson***, 323 A.3d 744, 753 (Pa. 2024). Likewise, a person commits arson endangering persons “if he intentionally starts a fire . . . or if he aids, counsels, pays or agrees to pay another to cause a fire or explosion . . . with the purpose of destroying or damaging an inhabited building or occupied structure of another.” 18 Pa.C.S. § 3301(a)(ii). Finally, to prove that Burns abused the victim’s corpse, the Commonwealth must demonstrate that he “treat[ed] a corpse in such a way that he kn[ew] would outrage ordinary family sensibilities[.]” 18 Pa.C.S. § 5510.

Considering the aforementioned principles, we turn to the trial court’s analysis of the second prong of the inflammatory-photograph, beginning with its discussion of PE 8 and PE 10, both of which we can discern no abuse of discretion in the court’s decision to exclude. ***See*** Trial Court Opinion, 10/13/25, at 4-6, 12.

PE 8 depicts the bullet removed from Thomas's shoulder with Thomas's face prominent in the background. The Commonwealth proffered PE 8 to show the bullet so that it can be linked to a firearm discovered near the crime scene and ammunition recovered from the codefendant's home. **See** Commonwealth brief at 20. The trial court excluded PE 8 on relevance grounds, finding that the Commonwealth failed to adequately explain the connection between the photograph of the bullet and the image of Thomas's bloodied face. In excluding the proposed exhibit, the court accurately noted that the Commonwealth could produce the bullet itself or a cropped image photograph that omits Thomas's face. We find no abuse of discretion. Thomas's visage is incidental to the bullet's retrieval and the shoulder wound and is unconnected to the Commonwealth's stated reasons for offering the image, *i.e.* as an aid to the ballistic expert's testimony. **Id.** Hence, the portion of the photo depicting Thomas's face serves no independent evidentiary purpose and does not need to be shown. Accordingly, we find no abuse of discretion in the court's determination that PE 8 was not of such essential evidentiary value that its need clearly outweighed the likelihood of inflaming the minds and passions of the jurors.

Similarly, we can discern no abuse of discretion in the trial court's decision to exclude PE 10, which unnecessarily shows Thomas's open chest and abdominal cavities. While the Commonwealth presented the exhibit for the portion of the image that illustrated the trajectories of the respective

bullets through Thomas's head and neck, these injuries have no connection with the open body cavity that predominates the image in the exhibit. Unlike the Commonwealth's position with PE 8, it offered to present a cropped version of the image, marked as 10A, that rotates the perspective, eliminates the entirety of the exposed abdominal cavity, removes all but a portion of the upper chest cavity, and focuses on ballistic dowels depicting the bullets' trajectories. As we discuss *infra*, PE 10A is admissible because its essential evidentiary value outweighs its potential inflammatory nature. Accordingly, we uphold the court's decision to exclude PE 10 because it is duplicative of PE 10A and the principal image of the open body cavities serve no evidentiary purpose.

Having found no error or abuse of discretion in the trial court's decision to exclude PE 8 and PE 10, we turn to the remaining exhibits at issue in this appeal and find that the trial court abused its discretion by excluding them.

We begin with PE 7 and PE 9, photographs of the entrance and exit wounds on left and right side of Thomas's neck and face, respectively, and the bullet lodged in his right shoulder. The trial court found these photographs inflammatory and lacking sufficient evidentiary value because other methods existed for the Commonwealth to prove its case. Namely, the trial court highlighted that PE 6, which was admitted by stipulation, shows "the entrance wounds in a less gruesome manner." Trial Court Opinion, 10/13/25, at 10. The court reasoned, "The forensic pathologist can demonstrate the bullet's

trajectory using [PE] 6, making [PE] 7 and [PE] 9 lacking in additional evidentiary value.” **Id.** In reaching this determination, the court interpreted our holding in **Kline, supra** as concluding that photographs of “ghastly wounds” are **only** admissible where they are necessary to describe injuries, probative of specific intent, and relevant to disprove defenses. The court concluded that the absence of any anticipated self-defense claim in the case *sub judice* made **Kline** inapt. **Id.** at 11 (The third factor is not present in the current case. The Commonwealth has not asserted that it reasonably anticipates a defense of self-defense[.]”). For the following reasons, the court’s rationale is unsupported by law or fact.

First, the trial court misapprehends our holding in **Kline**. While we stressed in that case the importance of the defendant’s anticipated self-defense claim on the Commonwealth’s ability to adduce evidence to defeat it, our conclusion did not turn on that factor, nor did we suggest that it was dispositive. Rather, we reiterated unequivocally,

our High Court has held that the availability of alternate testimonial evidence does not preclude the admission of allegedly inflammatory evidence. This is because the condition of the victim’s body provides evidence of the assailant’s intent, even where the body’s condition can be described through testimony from a medical examiner.

Kline, 344 A.3d at 836 (cleaned up). We continued, “[o]ur High Court has also highlighted that it is a fundamental precept of our criminal jurisprudence that the Commonwealth is entitled to prove its case by relevant evidence of its choosing.” **Id.** (cleaned up). Accordingly, we find that the trial court

committed legal error in concluding that Commonwealth was required to assert an anticipated defense for it to present potentially inflammatory evidence of the so-called “ghastly” bullet wounds to Thomas’s neck.

Moreover, PE 6 is an inadequate alternative for demonstrating the entrance wounds because Thomas was wearing a hooded jacket when he was twice shot on the left side of his neck. Thus, while bullet holes can be seen on the left side of that garment, PE 6 fails to reveal the location of the entry wounds on Thomas’s neck, as demonstrated by PE9, and provides no information concerning the right-side exit wounds or the bullet lodged in Thomas’s right shoulder, as illustrated by PE 7. Stated plainly, even bolstered by expert testimony and additional props such as a mannequin and ballistic dowels, PE 6 is a patently deficient substitute for the proffered exhibits.

We find that the trial court similarly abused its discretion in excluding PE 10A, the cropped/rotated version of PE 10 discussed above. As noted *supra*, PE 10A omits the superfluous imagery of Thomas’s open abdominal cavity and reduced the view of his chest cavity to exposed muscle tissue. The Commonwealth presented the photograph to show the bullets’ trajectories from the frontal perspective. In excluding the cropped version of the photograph, the trial court again relied primarily on its inaccurate understanding of our holding in **Kline** as requiring a reasonable anticipation of having to overcome a claim of self-defense. Trial Court Opinion, 10/13/25

at 12. Once more, it reasons that the Commonwealth's forensic pathologist can use other means to illustrate the flight path of the bullets. ***Id.***

Our well ensconced precedent will not sustain the court's perspective. As we stated in ***Kline***, the brutality of an image alone cannot justify exclusion; the ability to describe injuries through other means is not a valid basis for exclusion; and, most importantly, the Commonwealth is entitled to prove its case by relevant evidence of its choosing. ***Kline***, 344 A.3d at 836, 838. Here, the trial court misapplied the law in determining that the image was inadmissible for each of these reasons.

Finally, we review the trial court's decision to exclude PE 2 and approximately one minute of drone footage from the crime scene. The court found inadmissible the close-up photograph of Shaw's burned body and a portion of drone footage on two combined grounds: they were both inflammatory and duplicative. It reasoned that the burn lines the arson expert would need to discuss were already visible in the stipulated wide-angle photograph marked PE 1, making the close-up image merely a more graphic version of already-admitted evidence. Relying on ***Commonwealth v. Legares***, 709 A.2d 922 (Pa.Super. 1998), the court emphasized that cumulative inflammatory evidence lacks essential evidentiary value. It also noted that the defense indicated it did not contest the arson theory, which the court opined further diminished the necessity of the additional footage.

In reviewing the trial court's perspective, we first observe that both PE 2 and the excluded video evidence were not needlessly cumulative of PE 1. In fact, both exhibits add a perspective of the crime scene not available in PE 1. Recall the PE 1 presents a broad perspective of the first floor from just inside the front door. The image shows the fire damage generally, including, *inter alia*, Shaw's partially burned back lying on the remains of a couch. PE 2 is a bigger, closer version of the image focusing specifically on Shaw and the remnants of the couch. It provides more detail of the pattern of charring on the wooden couch frame, upholstery, padding, and Shaw's body. Plainly, the enhanced image is relevant not only to the arson charge but also, abuse of corpse, and tampering with evidence. As the level of detail between the two images would benefit the Commonwealth's expert substantially more than simply relying on PE 1, the trial court abused its discretion in finding PE 2 needlessly cumulative.

The trial court acknowledges this view but concludes that the increased detail "also makes the graphic nature of the body more apparent, thereby more inflammatory." Trial Court Opinion, 10/13/25, at 8. We disagree with the court's implication that the enhanced image is either duplicative of PE1 or that the images probative value does not outweigh its prejudice. The court failed to address whether omitting the evidence would substantially handicap the prosecution in this manner. Rather, it insisted that the Commonwealth could prove its case through other means, which goes against the well-settled

precept that the Commonwealth has the right to prosecute its case with relevant evidence as it deems fit. **See Hicks**, 91 A.3d at 55. In so ruling, the court abused its discretion.

The court also abused its discretion in barring the video evidence because the inadmissible portions of the drone video are not at all duplicative of PE 1. Indeed, the video includes evidence that is not visible in PE 1. Unlike PE 1, which only shows the top half of Shaw's body, the video also reveals the burn patterns on his posterior and the extensive fire-related injuries to his right arm and leg. This is additional evidence relevant to the Commonwealth's burden of proving abuse of corpse and tampering with evidence. Hence, no reasonable basis exists to characterize the video as cumulative.⁴

In sum, we affirmed the trial court's exclusion of PE 8 and PE 10 because the inflammatory nature of those two exhibits overwhelmed any probative value that they might provide to the fact finder. However, we find that the trial court abused its discretion when it misapplied **Kline** in conducting the two-part balancing test. The court repeatedly emphasized that alternative means of proof were available to the Commonwealth: the admitted

⁴ We observe that while the trial court treats the two excluded segments of video collectively in its Rule 1925 Opinion, the portion of the video between 3:13-3:28 provides an entirely different perspective of Shaw and the fire-damaged couch than PE 1. However, because those images are, in fact, duplicative of the video the court found admissible in DJI-0771, we do not disturb the order finding the portion of DJI-0769 marked 3:13-3:28 inadmissible.

photographs, the physical bullet, a mannequin with dowels, or diagrams. As we determined in ***Kline***, the trial court failed to adequately weigh the Commonwealth's right to fully prosecute its case, utilizing all relevant evidence against the potential prejudice to Burns. As highlighted *supra*, the court's rulings regarding PE Nos. 2, 7, 9, and 10A, effectively limited the jury to diagrams and mannequins rather than actual evidence.

Order affirmed in part and vacated in part. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/15/2026