

A woman sued a delivery driver for injuries sustained during a car collision. The woman called her treating physician to testify as to the nature and extent of her injuries. The woman now seeks to introduce several color printouts of photographs taken on a smartphone at the accident scene by a witness. The photographs depict the gruesome nature of the woman's injuries.

What is the strongest basis for an objection to the admission of the photographs?

- A. The photographs are not relevant in light of the physician's testimony.
- B. The photographs' probative value is substantially outweighed by the danger of unfair prejudice.
- C. The photographs violate the best evidence rule.
- D. The woman did not take the photographs and therefore cannot authenticate them.

## Explanation:

Evidence is relevant if it has *any* tendency to make a material fact more or less probable than it would be without that evidence. Relevant evidence is admissible unless otherwise excluded by law or other rules. For example, Federal Rule of Evidence 403 excludes relevant evidence if its **probative value** is **substantially outweighed** by any of the following **dangers**:

**unfair prejudice** – evidence tends to encourage the jury to decide the case on improper grounds

confusing the issues – evidence leads the jury to focus on a nonmaterial matter

misleading the jury – evidence creates misconceptions in the jurors' minds

undue delay or wasting time – presenting the evidence will cause unnecessary delay or waste time

needless cumulation – similar evidence on the same issue has already been admitted

Here, the photographs taken at the accident scene are relevant to this car-accident lawsuit because they help prove the extent of the woman's injuries. But the probative value of the photographs is diminished by the physician's testimony regarding the same issue (**Choice A**). And their gruesomeness poses a danger of unfair prejudice that may substantially outweigh their probative value. As a result, this is the strongest basis for an objection.

**(Choice C)** Under the [best evidence rule](#), the production of an original writing, recording, or photograph (or reliable duplicate) is generally required to prove the item's contents. An original photograph includes the negative and any print made from it, so the color printouts of the accident photographs do not violate this rule.

**(Choice D)** The photographs, like all tangible evidence, must be authenticated before they can be admitted at trial. This can be done by presenting testimony from *any* witness with personal knowledge of the accident scene—not just the person who took the photographs—to confirm that the photographs fairly and accurately depict that scene.

## Educational objective:

A court may exclude relevant evidence when its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needless cumulation of evidence.

## References

Fed. R. Evid. 403 (excluding relevant evidence).

**Excluding relevant evidence  
(FRE 403)**

