

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	: NO. 02-11,308
	:
	:
vs.	:
	:
KAREEM I. SMITH,	:
Defendant	:

OPINION IN SUPPORT OF ORDER OF
MAY 20, 2003 IN
COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

After a trial on February 7, 2003, Defendant was found guilty by a jury of aggravated assault, aggravated assault with a deadly weapon and simple assault, and by the Court of harassment. On May 20, 2003, Defendant was sentenced to incarceration for 5 ½ to 11 years for aggravated assault. It was determined that the remaining charges merged with the count of aggravated assault for sentencing purposes. Defendant has appealed from this Court’s Order of May 20, 2003 and in his Statement of Matters Complained of on Appeal indicates a single issue: whether the Court erred in allowing into evidence the photographs of the victim of the assault. Defendant contends the prejudicial nature of the photographs outweighed any probative value and that their admission was not harmless error.

The general rule that evidence is admissible where it is relevant and competent applies to the admission of photographs as well as other types of demonstrative evidence. Commonwealth v Schroth, 388 A.2d 1034 (Pa. 1978). Where a photograph of a victim’s injuries are offered in evidence the Court must first decide whether the photograph is inflammatory in nature and then, if it is determined to be inflammatory in nature, whether the photo is of such evidentiary value that the need for the photograph clearly outweighs the likelihood of inflaming the minds and passions of the jurors. Commonwealth v Dennis, 460

A.2d 255 (Pa. Super. 1983). In the instant case, the photographs introduced by the Commonwealth, exhibits 6 through 14, of the victim's injuries, to her skull, shoulder and arm, and leg, the result of a beating with pool cues, which were actually broken during the beating, are unquestionably inflammatory, particularly the photographs of the victim's skull injuries. Defendant challenged the seriousness of the victim's injuries, however, an element of the aggravated assault. The Court determined that the other evidence presented regarding the seriousness of the injuries would be supplemented by the evidence contained in the photographs. The photographs were therefore not cumulative evidence and their need outweighed, in the Court's mind, the likelihood of inflaming the minds and passions of the jurors. The Court thus considers the photographs to have been properly admitted, and believes the judgment of sentence should be affirmed.

Dated: September 24, 2003

By The Court,

Dudley N. Anderson, Judge

cc: DA
PD
Gary L. Weber, Esq.
Hon. Dudley N. Anderson