

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **No. 02-11901**
:
:
vs. : **CRIMINAL**
:
STEVEN ALLEN SMITH, :
Defendant : **Motion in Limine**

O R D E R

AND NOW, this ___ day of February 2004, after review of the Commonwealth's Motion in Limine file February 25, 2004, the motion is hereby **DENIED**.

The Commonwealth seeks to have the Court rule that certain photographs, letters and correspondence sent to the Defendant by Debra Klopp, the alleged victim in this case, should not be admissible at trial. The Commonwealth contends that such evidence where the alleged victim professes love for the Defendant and refers to him as "My Steven", My Husband" is irrelevant and that any relevance of the information is outweighed by the prejudicial value of the evidence.

The Court cannot agree with the contention of the Commonwealth. The Defendant is charged with a violent victimization of Ms. Klopp on October 4, 2002, including forcible rape and other sexual offense, aggravated assault, unlawful restraint etc. The Commonwealth contends Ms. Klopp was urinated on by the Defendant and was physically beat. The defense in this case is that the acts between Ms. Klopp and the Defendant on October 4, 2002 were consensual.

It is the Court's understanding that the documents

objected to by the Commonwealth were sent to the Defendant by Ms. Klopp after the crimes alleged in the information. If this is true, the documents in question would be highly relevant evidence because the documents make no mention of the alleged violent conduct of the Defendant on October 4, 2002, but rather, speak of the alleged victim's love of the Defendant. This evidence would be glaringly inconsistent with the allegation filed in this matter.

Thus, the Court believe the disputed evidence is clearly relevant to the consent defense, which will be offered as to the charges against the Defendant. The Court also sees little unfair prejudice in these documents if they were authored by the alleged victim.

Accordingly, the Commonwealth's request to exclude this evidence must be denied.

By The Court,

Kenneth D. Brown, P.J.

cc: William Kolvalcik, Esquire
Charles R. Hardway, Esq. (AD)
Work file
Gary Weber, Esquire (Lycoming Reporter)