

[J-92-2000]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 254 Capital Appeal Docket
	:	
Appellee	:	Appeal from the order of the Court of
	:	Common Pleas of Lehigh County at No.
	:	1664/1998, entered on January 21, 1999.
v.	:	
	:	
	:	
JOHN PHILLIP OCKENHOUSE, SR.,	:	
	:	
Appellant	:	
	:	
	:	SUBMITTED: March 17, 2000
	:	
	:	

CONCURRING OPINION

MR. JUSTICE ZAPPALA

DECIDED: August 21, 2000

I join in the majority's opinion in all aspects, with the exception of the analysis regarding the aggravating circumstance of torture. I would find that the Commonwealth did not present sufficient evidence to show that Appellant murdered Mrs. Spankowitch by means of torture.

While I agree with the majority's statement of the law regarding the aggravating circumstance of torture, 42 Pa.C.S. § 9711(d)(8), I disagree with the majority's application of that law to the facts of this case.

The majority finds that:

by purposefully jumping on Mrs. Spankowitz's back and fracturing her spine, [Appellant] demonstrated that he was not satisfied with merely killing Mrs. Spankowitz. He evinced the additional intention to cause pain and suffering beyond his desire to merely kill.

Majority opinion at 12. The majority further states that Appellant also twisted Spankowitz's neck simultaneous to incapacitating her by breaking her back. Id. at 11. However, "[o]nly after Mrs. Spankowitz's body moved did [Appellant] realize that he had not killed her by strangulation and that she remained alive." Id. Upon that realization, he fatally stabbed Spankowitz in the neck.

I do not agree that the Commonwealth proved beyond a reasonable doubt that Appellant was not satisfied with the killing alone, Commonwealth v. Caldwell, 532 A.2d 813, 817 (Pa. 1987); or that the Commonwealth proved the "linchpin" of the torture analysis, which is the intent to cause pain and suffering in addition to the intent to kill, Commonwealth v. Edminston, 634 A.2d 1078, 1091 (Pa. 1987). However, I join the majority in finding that the Commonwealth did sufficiently prove that the killing was committed while in perpetration of a felony, 42 Pa.C.S. § 9711(d)(6). Because there was at least one aggravating circumstance and no mitigating circumstances, the judgment of sentence is properly affirmed.