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Criminal Conviction on the Basis of a Photograph

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CRIMINAL CONVICTION ON THE BASIS OF A PHOTOGRAPH

Defendants' apartment was searched for photographs. One of the photographs found showed defendants in the act of violating section 288a of the California Penal Code. Expert testimony to the effect that the photographs were not composites or fakes and were undoubtedly taken by one of the parties to the act was given. Defendants were identified as the persons portrayed in the photographs although no one could testify that they were fair representations of what actually took place when the photographs were taken. Photographs subsequently taken by police officers of the interior of the apartment established the identity of physical objects in the apartment as they appeared in photographs portraying the crime upon which conviction was based. Defendants appealed upon the ground that insufficient foundation had been laid for the admittance of the photographs into evidence. *Held*, that sufficient foundation had been laid. The judgment was affirmed. *People v. Doggett*, 188 P. (2d) 792 (Cal. App. 1948).

The court in the instant case stated the generally accepted rule that photographs are admissible when it is proved that they are correct reproductions of what they purport to show and cited American Jurisprudence as stating that, "the question of the sufficiency of preliminary proofs offered to identify the photograph or to show it is a fair and accurate representation of the objects which it purports to portray is a matter within the discretion of the trial court."¹ It is well settled that the admission of photographs into evidence lies within the discretion of the trial court.² Of course, should the trial court abuse its discretion in admitting or excluding a photograph from evidence there is ground for reversal by an appellate court.³ It is established by the weight of authority that photographs may be authenticated by any witness who, from personal observation, is familiar with that which the picture purports to represent, and thus any requirement that the photographer testify is removed.⁴

Conviction based solely upon a photograph is rare, although photographs are frequently used to impeach or sustain the testimony of a witness.⁵ However, it

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1. *People v. Doggett*, 188 P. (2d) 792, 794 (Cal. App. 1948).
 2. *Diller v. Northern Calif. Power Co.*, 162 Cal. 531, 123 Pac. 359 (1912); *Pond v. Jantzen Knitting Mills*, 190 P. (2d) 141 (Ore. 1948); *DeWitt v. Sandy Market, Inc.*, 167 Ore. 226, 115 P. (2d) 184 (1941); *West v. Morgan*, 345 Pa. 61, 27 A. (2d) 46 (1942); *Trexler Lumber Co. v. Allemannia Fire Ins. Co.*, 289 Pa. 13, 136 Atl. 856 (1927); *Kellerher v. Porter*, 189 P. (2d) 223 (Wash. 1948).
 3. *Colley v. Standard Oil Co. of N. J.*, 157 F. (2d) 1007 (C. C. A. 4th 1946) (reversed for abuse of discretion); *Hayes v. Emerson*, 110 Cal. App. 470, 294 Pac. 765 (1930); *Diller v. Northern Calif. Power Co.*, supra note 2; *Pond v. Jantzen Knitting Mills*, supra note 2; *De Witt v. Sandy Market Inc.*, supra note 2; *Commonwealth v. White*, 160 Pa. Super. 522, 52 A. (2d) 360 (1947) (a photograph was excluded solely upon the ground that there was no proof of who took it; reversed for abuse of discretion).
 4. *Brownlie v. Brownlie*, 357 Ill. 117, 191 N. E. 268 (1934); *Commonwealth v. White*, supra note 3; *Adameczuk v. Holloway*, 338 Pa. 263, 13 A. (2d) 2 (1940); *Timlin v. City of Scranton*, 87 Pa. Super. 260, 12 A. (2d) 501 (1940).
 5. *People v. Magsaysay*, 210 Cal. 301, 291 Pac. 582 (1930) (A photograph of the deceased was admitted to refute a self-defense plea); *People v. Arnold*, 199 Cal. 47, 250 Pac. 168 (1926) (A photograph of a deceased murderer was admitted in prosecution of those who aided him); *Commonwealth v. White*, supra note 4; *Commonwealth v. Brletic*, 113 Pa. Super. 508, 173 Atl. 686 (1934) (Newspaper photograph of defendant admitted to affect

should be noted that in the instant case the photographs established the crime and without them no conviction could have been had, indicating that the court was adopting an unusually liberal view as to their admittance. Liberal use of photographs as substantive evidence rather than mere illustrative evidence has been urged by textwriters⁶ and law review authors.⁷ Those in favor of liberal use of photographs in evidence point out that here is the perfect witness—"an eye-witness who cannot forget and whose memory cannot be distorted."⁸ They also point out that protection against "trick" photography lies not in rigid exclusory rules but rather in careful qualification in preliminary examinations. According to these authors two questions are to be met: (1) competency and (2) materiality and relevancy. If the photograph is not an accurate, honest representation of the true facts it is not competent and should be excluded. If the photograph is competent then the question is whether it is a genuine aid to the jury in determining the facts; i. e., is it material or relevant? If these two tests are met it then becomes the most admissible type of evidence, entitled to the highest degree of credibility because it is free of the usual and very human causes of testimonial error.⁹

These arguments have a strong appeal, but there are pitfalls to consider. Looking at the instant case it is seen that no one vouched for the authenticity of the photographs and this fact in itself would cast doubt upon their worth. The venue and time of the crime was established by the photographs of the interior of the apartment; however, most metropolitan apartments are notoriously similar in appearances and furnishings. These photographs could easily have represented the interior of another apartment in another state at another time.

With the traditional safeguards and strong precedent in mind the majority of the courts have been more restrictive than the instant case in admitting photographs into evidence. It is submitted that this case offers an argument for both points of view as to the admission of photographs into evidence:—To those who advocate liberality it represents a healthy trend:—To those who favor the traditional safeguards it points up the dangers of being too liberal. As is generally true in such situations, the better view lies somewhere between the two extremes.

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LEGAL ADVICE BY ACCOUNTANTS

Defendant, an accountant, was consulted by the Croft Co. as to whether certain tax obligations to the state of New York attributable to business done in

the credibility of defendant.); Scott, *Photographic Evidence*, pp. 208-211 (1942) (Points out the possibility of catching criminals in the act by use of photographs and refers to *Commonwealth v. Brletic*, supra note 5, as an illustration of this point. The author also mentions "planned pictures" which are made by setting up automatic cameras to operate in connection with burglar alarms to catch the criminal in the act. But no cases are cited to cover such a situation since the criminal who is confronted with such evidence would undoubtedly confess immediately).

6. 3 Wigmore, *Evidence* Sec. 792a (Pocket Supplement, Rucker Ed. 1947); Scott, *Photographic Evidence*, sec. 601 (1942).
7. Gardner, *The Camera Goes to Court*, 24 N. C. L. Rev. 233 (1946); 7 N. C. L. Rev. 443 (1929).
8. 24 N. C. L. Rev. 233, 235 (1946).
9. Gardner, *The Camera Goes to Court*, 24 N. C. L. Rev. 233, 235, 236 (1946).