

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: No. 98-11,648
	:
	:
vs.	: CRIMINAL
	:
ELIZABETH FORESMAN,	:
Defendant	:

ORDER

AND NOW, this day of September, 1999, upon consideration of the Commonwealth's Notice of Intention to Introduce Hearsay Testimony and after hearings held August 26, 1999 and September 15, 1999, the Court will admit the child's statements to the following individuals pursuant to 42 Pa.C.S.A. §5985.1:

(1) The child's statements to Nancy Pepperman approximately one week prior to the child's birthday - The Court finds these statements have particularized guarantees of trustworthiness given their close proximity to the alleged last sexual contact between the child and the defendant, the spontaneity of the statement, and the like.

(2) The child's statements made to Dawn Harer, a Children and Youth Services caseworker, on or about June 18, 1998 and June 25, 1998 - These statements were made in the same time frame as the initial complaint to Ms. Pepperman, were consistent with the statements made to Ms. Pepperman, and were taken in a narrative form as opposed to leading or suggestive questions. The June 18 statements also were the first reporting to any type of authority.

(3) The child's statements to Dr. Collins on or about June 29, 1998 - The

child was taken to Dr. Collins to ascertain whether there were physical findings consistent with the child's allegations. The child's statements to Dr. Collins were generally consistent with her statements to Ms. Pepperman and Dawn Harer. Given the time and circumstances surrounding the statements and their general consistency, the Court would permit the Commonwealth to introduce these statements to the extent Dr. Collins has a recollection of them.¹ The Court would not allow Dr. Collins to simply read his report nor would we admit his report as a business record because he testified he normally would not write such a report. However, statements in his charts/records may be admissible under the Business Records hearsay exception.

The Court would not allow the July 9 statements to Dawn Harer and Agent Gilson, the July 28 statements to Agent Gilson, or the August 13 statements to Dawn Harer. These statements are arguably somewhat inconsistent, are further removed in time from the last occurrence, and the child has underwent several interviews by this time.²

The Court also would not allow the September 21, 1998 statements to Dr. Lewis. These statements were made after the defendant was charged and the child had testified at the preliminary hearing. Also, the child was sent to Dr. Lewis by the District

¹At the in camera hearing, Dr. Collins could only remember some parts of her statements to him. Although he was shown a letter report he had submitted to Children and Youth, he only recalled that the allegations were against the child's mother and the child claimed there was digital penetration of her vaginal area.

²This decision is not based on the defense argument that the interviews should have been audiotaped or videotaped. While the Court would encourage taping the child's interviews/statements to ensure their accuracy, we would not preclude this evidence simply because it was not subject to recording. The defense, of course, would be permitted to attack the credibility and accuracy of any statement by pointing out such has not been recorded.

Attorney's office in preparation for litigation in this matter.

Nothing in this Order shall be construed to prohibit the use of any statement as a prior consistent statement for purposes of rehabilitation.

By The Court,

Kenneth D. Brown, J.

cc: William Miele, Esquire
Daniel Holmes, Esquire (ADA)
Work file