

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 03-10,774
:
vs. : CRIMINAL
:
CHRISTINA GEPHART, : Motion in Limine and
Defendant : Request for Additional Discovery

ORDER

AND NOW, this ___ day of September 2004, upon consideration of the defendant's Motion in Limine and Request for Additional Discovery and after argument held on September 17, 2004, it is ORDERED and DIRECTED as follows:

1. The Court DENIES the defendant's Request for Additional Discovery.

The Court reviewed the family file in camera, not the investigative file. Children and Youth Services provided the entire investigative file of which the defendant was the subject to the defense. The Court reviewed the family file in camera and provided any relevant material to the defendant. The Court again finds that the defendant is not entitled to the entire family file.

The defendant also requests the name of the victim's treating psychiatrist as well as other members of the treatment team because the defense may want to call those individuals to testify regarding the victim's competency. The defendant has not made any showing that the victim, who is fourteen years old, is incompetent to testify. Moreover, the Court finds that this information is privileged or confidential. See 42 Pa.C.S.A. §5944.

2. The Court also DENIES the defendant's Motion in Limine. Proffers under the Rape Shield Law must not be vague or conjectural. Commonwealth v. Fink, 791 A.2d 1235, 1241 (Pa.Super. 2002); Commonwealth v. Fernsler, 715 A.2d 435, 439 (Pa. Super.

1998). The defendant's written motion does not allege any specific instances of conduct where the complaining witness has made false allegations of sexual assault. At the argument on the defendant's motion, counsel listed three specific incidents he was seeking to offer at trial: (1) the complaining witness wrote sexually explicit notes to two boys at school in June 2001; (2) the complaining witness told staff at shelter care that while she was talking to her brother on the phone he was getting raped by his father; and (3) the complaining witness claimed a boy pulled her into the boy's bathroom and assaulted her. The Court finds the notes are classic examples of evidence precluded by the Rape Shield Law. At best, the offer of proof shows only that others in addition to the defendant may have had sexual contact with the victim. The offer does not show how the evidence would exonerate the defendant. Therefore, it is inadmissible under the Rape Shield Law. Commonwealth v. Fink, 791 A.2d 1235, 1242-1243 (Pa.Super. 2002); Commonwealth v. Allburn, 721 A.2d 363, 368 (Pa.Super. 1998). Similarly, the Court fails to see the relevance of the victim's phone call with her brother to this case or how it would exonerate the defendant. The Court also finds the allegedly false allegations of sexual assault in the boy's restroom are inadmissible because the defendant has not shown that these allegations were motivated by any bias or hostility toward the defendant or that the victim had a motive to seek retribution. Commonwealth v. Gaddis, 432 Pa.Super. 523, 531-532, 639 A.2d 462-466-467 (Pa.Super. 1997).¹

By The Court,

¹ The Court notes that the Pennsylvania Superior Court has withdrawn its Opinion and granted re-argument in Commonwealth v. Alston, 2003 Pa.Super.LEXIS 4100, 2003 WL 22765225, which the defendant cited at oral argument.

Kenneth D. Brown, P.J.

cc: Jay Stillman, Esquire
Roan Confer, Esquire (ADA)
Charles F. Greevy, III, Esquire (counsel for Children and Youth Services)
Work file
Gary Weber, Esquire (Lycoming Reporter)