

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 03-10,774  
:   
vs. : CRIMINAL  
:   
CHRISTINA GEPHART, :   
Defendant : Post Sentence Motion

**OPINION AND ORDER**

This matter came before the Court on Defendant's Post-Sentence Motion. The relevant facts follow.

**FACTS**

Defendant was found guilty in a jury trial of two counts of Involuntary Deviate Sexual Intercourse, two counts of Indecent Assault and Corruption of Minors. The victim of Defendant's conduct was a minor, F.M. F.M. was born on December 27, 1987 and she was eleven (11) years old when the events subject of the trial occurred. F.M. resided with her mother and Defendant on Cherry Street in Williamsport, Pennsylvania. Defendant was the girlfriend of F.M.'s mother. At this time, the mother participated in the abuse of her daughter and she has also been convicted for her conduct. Likewise, this victim suffered years of sexual abuse from other family members. The abuse of this child first came to light in 2001, but the Williamsport Police did not file charges because the mother and Defendant were not found.

The matter came to light again in 2003 when a guidance counselor at the Williamsport High School contacted the Williamsport Police. Defendant was arrested on May 14, 2003 for these charges.

The basic testimony at trial came from F.M. and her mother Robbie M. F.M.

was age 16 at the time of her testimony. She testified Defendant sexually molested her in Defendant's bedroom, her mother's bedroom and the bathroom. She claimed Defendant performed oral sex on her and that Defendant put her fingers in the child victim's vagina. She testified Defendant's mouth touched her vagina during the oral sex. She also testified that Defendant would talk to her about having oral sex with guys. Defendant also commented on the child's private parts, stating her private hair was long enough to braid. The victim testified her mother caught F.M. and Defendant having oral sex on one occasion. She also testified that when she was younger that her mother and Defendant sexually molested her. She described her mother sitting on her chest while the Defendant committed oral sex on her. She was age nine (9) at this time.

Robbie M testified to an occasion where she came home from work and F.M. was in a nightgown. Defendant was on a bed with child and Defendant's head was between the legs of the child. Robbie M also testified that Defendant would take the child into the bathroom and lock the door. She described an occasion where Defendant had her hands down the child's sweatpants. Robbie M. was also charged by the Williamsport Police with sexually abusing her daughter.

The child/victim was found to be a dependent child and she has spent years in Children and Youth placements. The child also was subject to abuse by her grandfather and by her natural father. As a result, she has presented problems in her placements because she is sexually aggressive to boys due to years of abuse.

Prior to trial, the Court performed an in-camera review of a voluminous Children and Youth file, which discussed the long family history of the victim's family and detailed the victim's placements in the Children and Youth system. Lycoming County

Children and Youth provided Defendant's counsel with their entire file regarding this child abuse investigation. However, the large family file, which went beyond this case, was the subject of the Court's in-camera review. See Order dated March 26, 2004 in response to the Defendant's Motion to Compel. Lycoming County Children and Youth sent the Court its entire family file concerning the victim, which the Court reviewed in-camera.

In a letter dated April 29, 2004, the Court provided numerous documents to defense counsel from the Children and Youth family file. Basically, the Court provided any documents that in any way spoke to the facts of this case and also documents, which indicated problems Children and Youth was having with the victim because of her sexualized conduct, including instances where the child made sexual accusations regarding other individuals.

Defense counsel subpoenaed a number of individuals from treatment programs that the victim was in and a school the victim was in to attempt to introduce their testimony at trial concerning some of these incidents. This matter was raised in a Motion in Limine filed by the defense and was eventually the subject of an in-camera hearing held by the Court on September 23, 2004, during a recess in the trial.

The Court sentenced Defendant to an aggregate sentence of six and one-half (6 ½) years to thirteen (13) years on February 8, 2005.

Although it is not an issue, the Court notes after a Megan's Law hearing, the Court found the Defendant was not a sexually violent predator. The primary reason for this finding was that the psychologist who testified at the hearing before the Court relied upon evidence, which was not part of the trial record or was not presented at the hearing before the Court.

**THE DEFENDANT'S MOTION FOR ARREST OF  
JUDGMENT AND MOTION FOR NEW TRIAL**

Defendant argues that the court should arrest judgment because Defendant contends the Commonwealth's evidence was insufficient to establish the penetration required for the counts of Involuntary Sexual Deviate Intercourse, 18 Pa.C.S.A. §3123(a)(6) and (7).

In the Court's charge to the jury, the Court appropriately instructed the jury that for IDSI, the jury must find that Defendant with her mouth penetrated at least slightly the vagina of the child/victim. The child testified that Defendant had oral sex with her, which included Defendant's mouth touching her vagina. Clearly, to sustain a conviction for IDSI, the Commonwealth must establish that the Defendant engaged in acts of oral or anal penetration, which involved penetration however slight. See Commonwealth v. Poindexter, 435 Pa. 509, 646 A.2d 1211, 1215 (1994) appeal denied, 540 Pa. 580, 655 A.2d 512 (1995). In order to establish penetration, some oral contact is required to be shown from the evidence. See Commonwealth v. Trimble, 419 Pa.Super. 108, 615 A.2d 48 (1992) (finding actual penetration of the vagina is not necessary, some form of oral contact with the genitals is all that is required). A person can penetrate by use of the mouth or tongue. See In the Interest of J.R., 436 Pa.Super. 416, 648 A.2d 28 (1994), appeal denied, 540 Pa. 584, 655 A.2d 515 (1995).

Here, the child/victim testified that Defendant performed oral sex on her, and that she put her fingers in the vagina of the child/victim and that her mouth touched her vagina.

The child/victim's mother, Robbie M., testified that she came home from work one night and found her daughter on Defendant's bed with Defendant's head between

the legs of her daughter.

Penetration, however slight, can be proven by circumstantial evidence. See Commonwealth v. Ziegler, 550 A.2d 567 (Pa.Super. 1988). Furthermore, in assessing a motion in arrest of judgment, the court must view the evidence in the light most favorable to the Commonwealth as the verdict winner. A twelve (12) year old victim's testimony that a Defendant licked her vagina has been held to be sufficient evidence of penetration to support a conviction for IDSI. See Commonwealth v. Ziegler, supra. In light of the heinous nature of the conduct that Defendant was engaging in with the young child/victim, the court believes the jury was entitled to conclude that there was some penetration, however slight, of the child/victim's vagina by Defendant's mouth when the child/victim testified that the Defendant's mouth "touched" her vagina. See also Commonwealth Ortiz, 311 Pa.Super. 190, 457 A.2d 559 (1983), (finding of some penetration, however slight, does not require a finding of penetration of the vagina; entrance in the labia is sufficient).

The second issue raised in Defendant's post-sentence motion is a motion for new trial predicated on alleged error by the court in denying Defendant's motion in limine seeking to introduce into evidence "other false allegations of sexual abuse made by the child/victim" against other parties. However, in making this argument Defendant primarily relies upon a Superior Court decision in Commonwealth v. Alston, 2003 Pa.Super. Lexis 4100, 2003 WL 22765225, which has been withdrawn by the Pennsylvania Superior Court. See the court's order dated September 21, 2004 denying the Defendant's motion in limine at p. 2, n. 1.

After denying Defendant's motion in limine, in its Order dated September 21, 2004 finding the proffers of evidence to be vague or conjectural, the court still gave

Defendant a further opportunity to present evidence to the court in an in-camera hearing, which was held on September 23, 2004.

At the in-camera hearing, Defendant called three witnesses.<sup>1</sup> Greg Kahn, managing director for Susquehanna House, was called as a witness. The victim, F.M. was in their foster care and day treatment program. F.M. came to their program on July 17, 2003 and was discharged on October 2, 2003. Mr. Kahn testified that F.M. had a reputation among staff members for not always being truthful. When Mr. Kahn was asked to give specific instances of this problem, he noted an incident, which occurred at the Loyalsock High School, where F.M. claimed she was forced to go into a bathroom with a boy and she engaged in oral sex with the boy. Mr. Kahn believed F.M. later admitted she was not forced to do this. He testified F.M. first said it happened and then she said it didn't happen.

Mr. Kahn believed the sexual contact F.M. had with the involved boy was mutual or consensual. He acknowledged he didn't know what actually happened between F.M. and the boy in the school restroom.

Next, the defense called Matthew Reitz, the assistant principal for Loyalsock High School at the in-camera hearing. He acknowledged he called Susquehanna House concerning an October 2003 incident at the school. Mr. Reitz testified F.M. told him that a boy pulled her into a school bathroom and asked her to do inappropriate things. He investigated her claim and talked to several students. Mr. Reitz' investigation revealed F.M. was being sexually aggressive with boys at school. She would come on to boys in the

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<sup>1</sup> Defendant's information concerning these witnesses came from the Court's providing Children and Youth records to Defendant after an in-camera review of Children and Youth records about the child/victim and her family. Unfortunately, this young child/victim was subject to sexual abuse by Defendant, the child's mother, the child's natural father and a grandparent. The abuse occurred over a number of years. Ultimately, the young child/victim was found by the Lycoming Court to be a dependent child and she was initially placed in foster

hallway. She wasn't getting along with the boy she accused. The subject of F.M.'s complaint admitted pulling F.M. into the bathroom and messing around, but he denied engaging in inappropriate sexual acts with F.M. in the bathroom. After interviewing F.M., Mr. Reitz felt she was more the aggressor than the boy.

Mr. Reitz contacted F.M.'s Children and Youth caseworker and they spoke to F.M. for three (3) hours. He testified after lengthy questioning she admitted nothing occurred in the restroom at school, but that she said they "screwed" around in the restroom and the boy did take her into the entranceway of the restroom.

Mr. Reitz testified F.M. only stayed in Loyalsock School for twenty-five (25) days, because she made complaints of being followed by a man in a car and she accused people of trying to look at her. Mr. Reitz decided she was too troubled to remain in a public school and she was placed elsewhere after October 13, 2003. He opined that she made allegations as an attention-seeking device and that she was an abused child.

The final in-camera witness was Jane Beck of the Lycoming County Shelter Care program. Shelter care is a Lycoming County program to house dependent or delinquent children for thirty (30) days or less at a given time.

Ms. Beck testified that another staff member wrote a note on F.M.'s chart on December 8, 2003, which talked about a phone call F.M. purportedly had with her younger brother. This note allegedly indicated F.M. reported her younger brother was being raped by his father and that he had twenty (20) stitches for injuries suffered.

The defense also obtained some notes written by F.M., apparently to boys in school. The notes basically are offers by F.M. to have oral sex with boys. For example, in

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care and then was placed in other programs or institutions.

one note she purportedly writes to a boy: “Do you want me to suck your dick? If not why?”

The court denied the defense the right to call any of the above witnesses to testify to specific instances of sexual conduct of the victim or alleged false sexual complaints by the victim against other third parties. However, the court ruled that the defense could call Mr. Kahn and Mr. Reitz to provide reputation evidence of the young child/victim for being untruthful.

The court felt the incident at Loyalsock School was less than clear as it seemed both F.M. and the boy said that they were “screwing” around in the bathroom, although oral sex was denied. The court felt this incident could become confusing to the jury since the testimony would simply go to statements made by participants in the questioned events to third parties (Mr. Kahn and Mr. Reitz). Admissibility of this incident could have become a trial within a trial with the need to call additional witnesses to get to the bottom of exactly what happened. The incident would have been a laborious undertaking concerning an incident occurring in 2003. The court further felt this evidence would have been contrary to Pennsylvania Rules of Criminal Evidence, 404(a), which does not permit evidence of a person’s character trait for proving action in conformity therewith on a particular occasion, and 405(b)(2) for the reasons as outlined above. In announcing its ruling, the court noted the evidence had no bearing or relationship to the incidents between Defendant and the child/victim, and the court believed this evidence would be more confusing than enlightening and more prejudicial than probative. However, the court indicated in its ruling that Defendant could call Mr. Kahn and Mr. Reitz to testify to the poor reputation for truthfulness of the child/victim from their contact with her.

In fact, Defendant availed herself of this opportunity by calling Matthew Reitz



and Greg Kahn to testify before the jury. Both men testified to their association with F.M. and both testified that within their community F.M. had a reputation for being dishonest or untruthful.

The Court previously allowed the defense to call witness Nicole Rutter from the Evergreen Program, the residential group home where the young victim was placed in the year 2004. F.M. was on Ms. Rutter's caseload from January 7 through February 26, 2004. Other staff members reported to Ms. Rutter about F.M.'s behavior. Ms. Rutter testified F.M. had a reputation for being dishonest with the staff.

In conclusion, the court found the sexual notes written by the victim to boys inadmissible under the Rape Shield Law. The court denied any testimony about the victim's phone conversation with her younger brother where she claimed her younger brother was being raped because this evidence was only a conversation of what a third party was allegedly saying to the victim. It has no relevance to this case. Finally, the proffered testimony from Mr. Reitz and Mr. Kahn about the incident in the restroom in the Loyalsock High school was not found to be sufficiently probative or clear enough to warrant its admission into evidence in this trial since these facts had no relationship to Defendant or the incidents in this case. See Commonwealth v. Gaddis, 432 Pa.Super. 522, 531-532, 639 A.2d 462-467 (Pa.Super. 1997) (Upholding the trial court's ruling refusing to allow defendant to attack the credibility of the child/victim in sexual assault case by questioning her about alleged false allegations she made against third parties sexual assaulting her). The Superior Court in Gaddis noted there was no connection between this event and the accused. The Superior Court credited the trial court's findings, after an in-camera hearing, that the probative value of such evidence would be de minimis compared to the prejudice to the

victim and would create a need for a trial within the trial: See also Commonwealth v. Allen, 715 A.2d 435 (Pa.Super 1998) (consideration of whether evidence offered by accused is more probative than prejudicial).<sup>2</sup>

The final issue raised in Defendant's post-sentence motion is a motion to modify the sentence, because the 6 ½ - 13 year sentence imposed by the court was allegedly too harsh. Since defense counsel did not argue this motion at the hearings on Defendant's post-sentence motion, the court deems this issue waived.

### **ORDER**

For the foregoing reasons, the court will **DENY** Defendant's post-sentence motion.

By The Court,

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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)

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<sup>2</sup>The court believes Defendant in the instant case is trying to take advantage of the young victim's sexual aggression and confusion, which has been caused by the years of sexual abuse perpetrated against her by Defendant and by the victim's own family members. The victim is the way she is because of her tragic exposure to inappropriate sexual conduct and abuse. Should this now be used against her at trial? This court didn't think that would be fair or appropriate.