

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. 05-10,233
	:	
vs.	:	CRIMINAL DIVISION
	:	
MARK SMITH,	:	
Defendant	:	Motion for Psychological Exam

**OPINION AND ORDER**

Before the Court is Defendant's Motion to Require Complainant to Undergo Psychiatric/Psychological Evaluation, filed October 26, 2005. A hearing on the motion was held November 4, 2005.

Defendant has been charged with Statutory Sexual Assault and related offenses alleged to have been perpetrated against his daughter, D.S. In support of his motion to require D.S. to undergo a psychiatric/psychological examination, Defendant presented the testimony of Robert Meacham, a licensed psychologist, who evaluated the family in 1999 in connection with a custody proceeding. Mr. Meacham indicated he had at that time diagnosed D.S.'s mother with Munchausen Syndrome by Proxy and that, based on a variety of factors, there is a reasonable possibility that D.S. suffers from Munchausen Syndrome. Mr. Meacham described this syndrome as a psychological illness in which the affected person engages in behaviors directed at and designed to draw attention to him or her self.<sup>1</sup>

A psychiatric examination of a Commonwealth witness regarding competency may be ordered if a compelling need for the examination is demonstrated. Commonwealth v. Alston, 864 A.2d 539 (Pa. Super. 2004). Competency involves (1) the capacity to communicate, (2) the mental capacity to observe an occurrence and the capacity of remembering what it is that the witness is called to testify about, and (3) a consciousness of the duty to speak the truth. Commonwealth v. Delbridge, 855 A.2d 27 (Pa. 2003). The Court believes Munchausen Syndrome could affect the second factor, the mental capacity to observe and remember.

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<sup>1</sup> Similarly, Munchausen Syndrome by Proxy leads the affected person to engage in behaviors directed at another person, but designed to draw attention to him or her own self.

In the instant case, D.S. made allegations of sexual abuse against Defendant in 1998, at which time she was 8 years old. Based on inconsistencies in the allegations and concerns they were being made as a result of the suggestion by another, the allegations were determined at that time by Children and Youth to be “unfounded”. Mr. Meacham thereafter conducted a psychological evaluation of the entire family in connection with a conflicted custody proceeding. As part of that evaluation, he diagnosed D.S.’s mother with Munchausen Syndrome by Proxy based on her admitted abuse of D.S., specifically that she had either over or under medicated her, to the point D.S. suffered seizures, in order to draw attention to herself. He went on to indicate the family was extremely dysfunctional and that dysfunction, combined with the trend of the illness to appear within families, raised a concern in his mind that D.S. could be suffering from either Munchausen Syndrome herself or, as she continues to reside with her mother, could still be suffering as the victim of her mother’s illness. Based on Mr. Meacham’s description of the illness, it appears that in either case, D.S.’s mental capacity to observe and remember could be affected to the point where the reliability of her statements might reasonably be questioned.

In Delbridge, the Court recognized the concept of “taint”, that is, that the use of coercive or highly suggestive interrogation techniques can create a significant risk that the interrogation itself will distort the child’s recollection of events, thereby undermining the reliability of the statements and subsequent testimony, and went on to find “taint” relevant to the second prong of competency. Id. Similarly, the Court believes a diagnosis of Munchausen Syndrome would be relevant to a determination of competency if it is found that the afflicted person is affected to the degree that his or her recollection is distorted. Therefore, the Court finds that Defendant has demonstrated a compelling need for the examination.

Further, this decision appears to be supported by the language in Alston, supra at 550, whereby the Court indicated an examination ordered in that case was premature “in the absence of some affirmative indication that L.B. does indeed have a problem distinguishing fantasy

from reality”. The Court believes Mr. Meacham’s testimony provides such an “affirmative indication”.<sup>2</sup>

**ORDER**

AND NOW, this 15<sup>th</sup> day of November 2005, for the foregoing reasons, Defendant’s Motion is hereby GRANTED. The Commonwealth is directed to make D.S. available for examination by a licensed psychiatrist/psychologist, upon reasonable arrangements having been made by the defense, at the defense’s expense.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA  
Peter Campana, Esquire  
Gary Weber, Esquire  
Hon. Dudley Anderson

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<sup>2</sup> The Court notes the Commonwealth’s argument that Mr. Meacham “indicated he has no reason to believe the child could not observe, recall or remember, nor did he have any reason to believe the child lacked the ability to tell the truth.” This statement takes the testimony out of context: Mr. Meacham’s lack of a reason to believe such things comes from his unfamiliarity with the child, having seen her last in 1999. It appears from his testimony that he also would have no reason to believe she *could* observe, recall or remember, or that she *had* the ability to tell the truth.