IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-0774-2003**
	:	**(03-10,774)**
vs.	**:**	
	:	
	:	
CHRISTINA GEPHART,	**:**	
Defendant	**:**	**1925(a) Opinion**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this Court's judgment of sentence docketed February 10, 2005 and the Court's Opinion and Order docketed April 18, 2005, which denied Appellant's post sentence motions. The relevant facts follow.

Appellant was arrested and charged with two counts of involuntary deviate sexual intercourse (IDSI), two counts of indecent assault and corruption of the morals of a minor. These charges arose from Appellant's conduct with F.M., the daughter of her paramour, Robbie M.

At the time of the incidents, F.M. resided with her mother (Robbie M.) and Appellant on Cherry Street in Williamsport, Pennsylvania. F.M. testified that when she was eleven years old Appellant sexually molester her in Appellant's bedroom and in the bathroom. F.M. stated Appellant performed oral sex on her and Appellant put her fingers in F.M.'s vagina. She testified Appellant's mouth touched her vagina during the oral sex. Appellant also would talk to F.M. about having oral sex with guys, and Appellant commented that F.M.'s pubic hair was long enough to braid. F.M. stated her mother caught

Appellant performing oral sex on F.M. on one occasion. Robbie M.'s testimony corroborated F.M.'s testimony about the oral sex incident, as well as an occasion where Appellant had her hands down F.M.'s pants.

A jury trial was held September 23-24, 2004. The jury convicted Appellant of all charges. On or about February 8, 2005, the Court sentenced Appellant to an aggregate sentence of 6 ½ - 13 years incarceration in a state correctional institution.

Appellant filed post sentence motions, which the Court denied in an Opinion and Order docketed April 18, 2005.

Appellant filed a notice of appeal on May 5, 2005. Appellant raises six issues on appeal.

Appellant first asserts the trial court erred in denying Appellant's request to disclose all records pertaining to the CPS investigation in this matter. This allegation is not completely accurate. Appellant's counsel was provided the entire Children and Youth Services (CYS) investigative file that pertained to Appellant's abuse of F.M. Unfortunately, F.M. was molested by several other individuals as well, including her mother and her step-grandfather. CYS had a family file, which discussed the long family history with the victim's family and detailed the victim's placements in the Children and Youth system. The Court conducted an in camera review of the family file and provided any arguably relevant material to defense counsel. Defense counsel argued he was entitled to all the files and records regarding F.M. without in camera review pursuant to Commonwealth v. Kennedy, 604 A.2d 1036 (Pa. Super. 1992). See N.T., September 14, 2004, at 1-18. In Kennedy, the Superior Court found that the appellant was entitled to the entire investigative file of which he was the subject of the report and the trial court's review of the investigative file was too

restrictive. Here, Appellant's counsel was given the entire investigative file of which Appellant was the subject without in camera review by the Court. The Court only conducted an in camera review of the CYS records and documents that were not part of the investigative file in this case, but were part of the family file.[1]

Appellant next asserts the trial court erred in denying Appellant's motion for an arrest of judgment as to the charges of involuntary deviate sexual intercourse (IDSI). The Court's reasons for denying this motion can be found on pages 4-5 of the Opinion and Order docketed April 18, 2005.

Appellant claims the trial court also erred in denying Appellant's motion in limine seeking to introduce into evidence false sexual abuse allegations made by the complaining witness. The Court's reasons for denying Appellant's motion in limine cam be found on pages 5-10 of the Opinion and Order docketed April 18, 2005 and pages 154-158 of the trial transcript (September 23-23, 2004).

Appellant also contends the trial court erred in allowing testimony to be introduced regarding the propensity for victims of sexual abuse to lie. The Court is not sure to what Appellant is referring and does not believe any such testimony was admitted into evidence. The only testimony the Court could find that dealt with victims of sexual assault generally was during the cross-examination of Nicole Rutter, who was employed by Evergreen Youth Services. The following exchange took place between the prosecutor and Ms. Rutter:

Q Ma'am what is Evergreen?
A It's a residential group home

1 The Court also notes that Appellant was not the subject of the investigations of other abuse; therefore, Appellant would not be entitled to those files under Kennedy.

Q What does Evergreen do?
A Basically we work with at risk youth that have behavioral problems. It's a six month program in which a child works up a level system. And the level system is based on behaviors that are identified within the home that need to be worked on.
Q So it's fair to say that the children that are at Evergreen have troubles or psychological troubles?
A Oh absolutely.
Q And are some of those troubles, do they spring or can they spring from sexual assaults?
A Absolutely.

N.T., September 23 and 24, 2004, at 88-89. The Court does not believe this testimony was improper. Even if it were, however, defense counsel never objected during this cross-examination; therefore, this issue is waived. Pa.R.App.P. 302(a)("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."); Commonwealth v. Dougherty, 580 PA. 183, 193-94, 860 A.2d 31, 37 (Pa. 2004)(failure to object results in appellate waiver).

Appellant next asserts the trial court erred in permitting the Commonwealth in closing argument to link the propensity for sexual abuse victims to lie with being an impediment to bringing sexual offenders to justice. Again, the Court cannot agree. The prosecutor noted that in most sexual assault cases the only witnesses are the victim and the perpetrator and it is usual for the victim to say something happened and the perpetrator to say it didn't. N.T., September 24, 2004, at 12. He went on to indicate that the court would instruct the jury that the testimony of the victim alone can be enough otherwise in most case you could never get a conviction. Id. at 12-13. The prosecutor also argued the victim was credible and, although an eyewitness or corroborating evidence was not necessary, the victim's mother was an eyewitness and corroborated the victim's testimony that Appellant performed oral sex on the victim. Defense counsel objected. Id. at 13. The Court overruled

the objection, finding that the prosecutor was just explaining one of the instructions that would be included in the jury charge.[2] Id. at 14-16.

Finally, Appellant asserts the trial court erred in not permitting Appellant to introduce into evidence her statement to the authorities in which she denied the allegations in this matter. The court could not find any such ruling in the record. It is the responsibility of the appellant to offer a complete record for review, and where an appellant fails to do so, her claim is considered waived. Commonwealth v. Proetto, 771 A.2d 823, 834 (Pa. Super. 2001); Commonwealth v. Lassen, 442 Pa. Super. 298, 315, 659 A.2d 999, 1008 (Pa. Super. 1995); Commonwealth v. Muntz, 428 Pa.Super. 99, 107, 630 A.2d 51, 55 (1993).

DATE: _____ By The Court,

_____
Kenneth D. Brown, P. J.

cc: District Attorney
Jay Stillman, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)

2 The instruction to which the court and counsel were referring was Pennsylvania Suggested Standard Criminal Jury Instruction 4.13B.