

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 144-2005
 :
 LAWRENCE MANSON, :
 :
 Defendant : 1925(a) OPINION

Date: September 28, 2006

**OPINION IN SUPPORT OF THE ORDER OF JUNE 16, 2005 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Lawrence Manson (hereafter “Manson”) has appealed the sentence of June 16, 2005. For the reasons set forth *infra*, the appeal should be denied and the order of June 16, 2005 affirmed.

I. BACKGROUND

A. Procedural History

On November 9, 2004, a criminal complaint was filed charging Manson with committing the following criminal offenses: Count 1 Endangering the Welfare of Children, 18 Pa.C.S.A. § 4304(a); Count 2 Invasion of Privacy, 18 Pa.C.S.A. § 7507.1(a). On May 11, 2005, a jury returned a verdict of guilty as to Count 1 and not guilty as to Count 2. On June 16, 2005, the court sentenced Manson. As to Count 1, Manson was sentenced to thirty months of Intermediate Punishment under the supervision of the Lycoming County Adult Probation office; forty-five days of which were to be restrictive intermediate punishment to be served at the Lycoming County Prison and/or Pre-release Center.

On July 14, 2005, Manson filed a notice of appeal. On July 21, 2005, the court issued an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing Manson to file a concise statement of matters complained of on appeal within fourteen days of the order. On August 29, 2005, the court issued an opinion in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(a) stating the Manson's appeal should be denied and the order of June 16, 2005 affirmed because, per *Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998), Manson had likely waived the issues he wished to raise on appeal by failing to file his statement of matters. On September 9, 2005, the court issued an order granting Manson an extension within which to file his statement of matters. On September 12, 2005, Manson filed his statement of matters. On October 5, 2005, the court issued a supplemental 1925(a) opinion in response to Manson's statement of matters.¹ On March 22, 2006, the Superior Court of Pennsylvania dismissed Manson's appeal for failure to file a brief. On March 29, 2006, the Superior Court issued an order denying reconsideration of the dismissal.

On April 26, 2006, Manson filed a *pro se* Post Conviction Relief Act (hereafter "PCRA") Petition. On May 3, 2006, this court issued an order dismissing without prejudice the PCRA Petition because Manson was not eligible for relief under the PCRA since he was not currently serving a sentence of imprisonment, probation, or parole as he was free on bail. On August 2, 2006, the court issued an order directing that Manson was to report to the Lycoming County Adult Probation Office on August 3, 2006 for processing so that he could begin serving the intermediate punishment sentence imposed on June 16, 2005. The court deferred Manson's

¹ Manson's statement of matters raised challenges to an April 4, 2005 Opinion and Order of the Honorable Nancy L. Butts that denied Manson's Omnibus Pre-trial Motion in which he sought to dismiss Counts 1 and 2. On October 5, 2005, Judge Butts issued a 1925(a) opinion stating that she was relying on her April 4, 2005 Opinion and Order in response to Manson's statement of matters.

report date with regard's to the restrictive intermediate punishment portion of the sentence until September 1, 2006.² On August 4, 2006, Manson filed another PCRA Petition. On August 10, 2006, the court granted Manson's PCRA Petition and reinstated his direct appeal rights.

On August 16, 2006, Manson filed a notice of appeal. On August 25, 2006, the court issued an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing Manson to file a concise statement of matters complained of on appeal within fourteen days of the order. On September 6, 2006, Manson filed his statement of matters.

B. Facts

Brenda King (hereafter "Brenda") has two daughters, Malina and Jodie. Notes of Testimony, 32 (5/10/05). Malina is three years older than Jodie. *Ibid.* Around 2002, when she was fourteen, Jodie was experiencing problems at home. *Id.* at 33. She argued with her parents due to the financial hardships the family was experiencing and because Jodie felt that she could not trust her parents, and Jodie also bickered with her sister. *Id.* at 33, 34, 77, 113, 114. As a result, she expressed a desire to leave her parent's home. *Id.* at 33.

Manson was a family friend who Brenda had known for about four years. N.T., 33, 76 (5/10/05). Jodie approached Manson about her coming to stay with him. *Id.* at 33. Subsequently, Brenda discussed the matter with Manson. *Id.* at 33, 34. Manson was in agreement to have Jodie stay with him, but there would be rules. Jodie would not be allowed to drink or have boys over and she would be required to clean up any mess she made and help

² On August 31, 2006, after a hearing on Manson's Motion to Delay Start of Sentence filed August 16, 2006, the court issued an order deferring the restrictive intermediate punishment part of the June 16, 2005 sentence until resolution of Manson's appeal,

keep the house tidy. *Id.* at 35. With these rules in mind, Jodie moved in with Manson in November 2002. *Id.* at 34, 76, 113, 149, 200.

Manson resided at 720 Phillip Street, Williamsport, Pennsylvania. N.T., 78 (5/10/05). It was two blocks down the street from the King residence located at 410 Rural Avenue, Williamsport, Pennsylvania. *Id.* at 49. During the time she stayed at Manson's residence, Jodie kept in close contact with her mother. *Id.* at 49. Jodie would see or talk to her mother on the phone on an almost daily basis. *Ibid.* Even though Jodie was staying with Manson, Brenda still exercised parental control over her. Brenda would sign permission slips for school field trips, sign excuses if Jodie stayed home from school, and was the one who Jodie had to ask for permission if she wanted to go somewhere with her friends or do something out of the ordinary. *Id.* at 50, 115. At no time during Jodie's stay with Manson did Brenda execute formal custody papers transferring her parental rights regarding Jodie to Manson. *Id.* at 49-50, 208. Also, Brenda did not give Manson any money to provide Jodie with shelter, heat, or food. *Id.* at 56, 57.

When Jodie first moved in, she slept on the couch in the living room for about one week. N.T., 79 (5/10/05). Manson was able to convert his computer room into a bedroom, which Jodie used for the duration of her stay. *Id.* at 79, 208. While Jodie was staying with Manson, he imposed a number of rules that he expected her to abide by. Manson required Jodie to maintain her personal possessions and room in a neat fashion. *Id.* at 78. Jodie was also required to perform household chores like washing the dishes, vacuuming, some shopping, and feeding the cats. *Id.* at 56, 111, 121, 240. Manson also required Jodie to keep him abreast of what she was doing. Jodie had to call or leave a note for Manson telling him where she was

going, what she was doing, and how late she would be. *Id.* at 79. Manson also told Jodie that there would be a strict no drugs and no alcohol policy in the household. *Id.* at 205-06. But, Jodie's stay with Manson was not all about rules and regulations. Manson and Jodie would do things together, such as go shopping at a store or to the skating rink. *Id.* at 80. Manson would ask Jodie how her day at school was and help her each night with her homework. *Ibid.* In further regards to her education, Manson tried to impart his knowledge of poetry and languages to Jodie. *Id.* at 207. During her stay at his residence, Manson also shared his food with Jodie. *Id.* at 233.

On July 5, 2004, Jodie moved back in with her parents. N.T. 81-82, 111 (5/10/05). Jodie had not removed all of her belongings from Manson's residence, so she called Manson and told him that she would be down to retrieve them. *Id.* at 82. Jodie went to Manson's and used the key she still had to enter the residence. *Ibid.* While she was there, Manson called Jodie from work. *Ibid.* The two had a brief conversation during which Manson mentioned to Jodie that he was having a hard day at work. *Id.* at 83. After the phone call, Jodie went about gathering her belongings. She went into Manson's bedroom to get a compact disc she believed she had left there when she noticed clothes on the bed. *Id.* at 83-84. Thinking she would do something nice for Manson, Jodie decided to put the clothes away. *Id.* at 84.

Jodie attempted to put the clothes away in a dresser drawer, but they would not fit properly. N.T., 84 (5/10/05). Jodie shuffled things around in the drawer and discovered an envelope. *Ibid.* The envelope was from Wal-Mart one hour photo development and had Manson's name and address listed on the outside. *Id.* at 67, 85. Inside that envelope were two full length photographs of her lying naked on her stomach on the bed in the room where she

had been staying while at Manson's residence. *Id.* at 41, 84, 85, 221. Jodie took the photographs and hid them with some of Manson's winter clothing that was stored in the attic of his residence. *Id.* at 87. After this, Jodie left Manson's residence and went over to Anthony Kerstetter's residence. *Id.* at 88.

Anthony Kerstetter is another family friend of the Kings. N.T., 37 (5/10/05). Brenda had known him about five years. *Ibid.* Kerstetter is a truck driver with Nancy Bear Trucking. *Id.* at 38, 136. Jodie wanted some time to think about what had happened, so she asked Kerstetter if she could go with him on one of his trips. *Id.* at 88, 135. Jodie and Kerstetter talked it over with Brenda, and she gave Jodie permission to go with Kerstetter. *Id.* at 38, 88, 136.

Jodie and Kerstetter left in the morning of July 9, 2004. N.T., 88 (5/10/05). At one point during the trip, Jodie began to cry and Kerstetter asked her what was wrong. *Id.* at 90. It was at this point that Jodie told him that she had discovered the photographs of herself in Manson's dresser drawer. *Id.* at 90, 138. Kerstetter told Jodie that she should wait until they got back to Williamsport to tell her mother what had happened. *Ibid.*

When Kerstetter and Jodie returned to his residence, Kerstetter called Brenda and told her that she needed to come over and talk to Jodie. N.T., 39 (5/10/05). Brenda went over, and Kerstetter told her what he and Jodie discussed during the trip. *Ibid.* Brenda then talked to Jodie. Jodie told her mother that she found pictures that were taken of her in Manson's residence. *Id.* at 40, 91. Jodie was very upset and crying as she told her mother this. *Id.* at 40. Brenda wanted to see these pictures, so she took Jodie over to Manson's residence that very night. *Id.* at 39, 40, 91.

When they got to Manson's residence, Jodie went inside while Brenda waited outside. N.T., 40, 55 (5/10/05). Jodie went to the attic to retrieve the photographs, but she could not find them where she had left them. *Id.* at 91. Jodie then remembered that Manson had previously mentioned that he had been filing some paperwork, so she decided to look in a filing cabinet. *Ibid.* Jodie found the envelope with the photographs in the filing cabinet. *Ibid.* She took the envelope with the photographs and went outside to her mother. *Ibid.* Jodie handed the envelope to her mother. *Id.* at 41, 91. Brenda looked at the photographs inside, and then left with Jodie to go back to Kerstetter's residence to call the police. *Id.* at 41, 42, 92.

C. Manson's Arguments

Manson does not contest that he took the photograph of Jodie, as he admitted such at trial. N.T., 212, 221 (5/10/05). However, Manson's contends on appeal that he should not have been convicted of violating the Endangering the Welfare of a Minor (hereafter "EWM") statute. He advances four arguments in support of that contention. First, Manson argues that he was not a person, as defined by the EWM statute, who owed a duty of care to Jodie. Manson contends that an individual who does not have custody or legal authority over a minor and provides a temporary place to stay for that minor is not "a parent, guardian or other person supervising the welfare of a child under 18 years of age," and, therefore, cannot be convicted of violating the EWM statute.

Second, Manson argues that even if a person who provided a temporary place to stay for a minor despite not having custody or legal authority over that minor meets the statutory definition of a person who would owe a duty of care to said minor, the evidence presented at trial failed to establish beyond a reasonable doubt that he was supervising Jodie's welfare

during the period of time she was staying with him. Third, Manson argues that, as a matter of law, he did not violate a duty of care with regard to Jodie and thereby endanger her welfare by taking the photograph of her as the photograph did not display her as naked or nude, as defined by law, and he never intended for the photograph to become public. Fourth, Manson argues that the evidence presented at trial failed to establish beyond a reasonable doubt that he knowingly endangered Jodie's welfare by taking the photograph of her.

II. ISSUES

Manson's arguments raise four main issues that may be summarized as follows:

- (1) Whether as a matter of law, an individual who does not have a grant of formal custody or legal authority over a minor and provides that minor a place to stay by allowing her to reside with him is a "parent, guardian or other person supervising the welfare of a child under 18 years of age"?
- (2) Whether, as a matter of law, photographing a fourteen year old female who is lying naked in a bed is conduct capable of breaching a duty of care to that child?
- (3) Whether the evidence presented at trial was sufficient to prove beyond a reasonable doubt that Manson was supervising the welfare of Jodie while she was staying at his residence?
- (4) Whether the evidence presented at trial was sufficient to establish beyond a reasonable doubt that Manson knowingly endangered the welfare of Jodie?

III. DISCUSSION

The opinion will be divided into two main parts. The first part will address Manson's issues raising questions of law. The second part will address Manson's issues raising challenges to the sufficiency of the evidence.

A. Manson's Questions of Law

1. Manson is within the Scope of the EWM Statute's "Person Supervising the Welfare of a Child" Term

As a matter of law, Manson is within the scope of the EWM statute's "person supervising the welfare of a child" term. Section 4303 of the Pennsylvania Crimes Code defines the offense of endangering the welfare of a minor. It provides as follows:

A parent, guardian, or other person supervising the welfare of a child under 18 years of age commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.

18 Pa.C.S.A. § 4304(a). The EWM statute is basically protective in nature. *Commonwealth v. Retkofsky*, 860 A.2d 1098, 1099 (Pa. Super. 2004). The EWM statute was broadly drawn to cover a wide range of conduct in order to safeguard the welfare and security of children. *Commonwealth v. Ogin*, 540 A.2d 553 (Pa. Super. 1988), *app. denied*, 557 A.2d 343 (Pa. 1989); *Commonwealth v. Taylor*, 471 A.2d 1228, 1231 (Pa. Super. 1984). The EWM is to be interpreted and given meaning "... by reference to the common sense of the community and the broad protective purposes for which it was enacted." *Ogin*, 540 A.2d at 553; *Taylor*; 471 A.2d at 1231.

In *Commonwealth v. Brown*, the defendant had invited his female friend and her infant son to move into his apartment with him. 721 A.2d 1105, 1106 (Pa. Super. 1998). The mother abused the child and inflicted serious and painful injuries, which resulted in the child's death. The defendant noticed that the child was injured and needed medical treatment, but failed to act. *Ibid*. Because of this, the defendant was charged and convicted of endangering the welfare of a child.

On appeal, the defendant asserted that, as a matter of law, he was not a “person supervising the welfare of a child” within the meaning of the EWM statute. *Brown*, 721 A.2d at 1106. The Superior Court of Pennsylvania held that he was. It stated, “[W]e find that adult persons who voluntarily reside with a minor child and “violate a duty of care, protection or support” are contemplated within the scope of the endangering statute.” *Id.* at 1107-08.

The Superior Court went on to say:

Deciding that adults who share a residence with a child not in their legal custody are not responsible for the welfare of that child would undermine both the language and application of the endangering statute. Under such a limited reading, stepparents, grandparents, adult siblings, adult roommates, life partners, and others *could not* be prosecuted for endangering the welfare of a child. Our courts should not and have not limited the scope of the statute to exclude this broad and diverse category of persons.

Brown, 721 A.2d at 1107. (emphasis in original).

In support of its conclusion, the Superior Court stated:

In an age when nontraditional living arrangements are commonplace, it is hard to imagine that the common sense of the community would serve to eliminate adult persons residing with a non-custodial child from the scope of a statute protecting the physical and moral welfare of children. (citation omitted). Accepting appellant’s argument would be to accept the idea that this statute is limited to only those persons with permanent, temporary, or other quasi-legal custody of children. The commonsense interpretation of the language of the statute and this Court’s recent case law do not support such a narrow reading.

Brown, 721 A.2d at 1107.

As was the defendant in *Brown*, Manson is a person contemplated by the EWM statute as a “person supervising the welfare of a child.” *Brown* established that the term “person supervising the welfare of a child” encompasses an adult who resides with a non-custodial

child. *Brown* established that the application of the EWM statute is not limited to adults who have formal custody or legal authority over a child. Manson voluntarily permitted Jodie to move into his home and reside with him for one and a half years despite not having formal custody or legal authority over her. Stated another way, Manson was an adult who resided with a non-custodial child for one and a half years, during which he assumed the supervision of that child. As established by *Brown*, the term “person supervising the welfare of a child” encompasses Manson; therefore, as a matter of law, Manson is within the scope of the EWM statute and may be convicted of violating it.

2. Photographing a Fourteen Year Old Female While She is Lying in Bed Naked Constitutes a Breach of a Duty of Care Owed to a Minor child

Photographing a fourteen year old female while she is lying naked in a bed is conduct that, as a matter of law, constitutes a breach of a duty of care owed to a minor child. Determining what conduct constitutes a breach of a duty of care owed to a child is to be done on a case by case basis. *Taylor*, 471 A.2d at 1231. “Whether particular conduct falls within the purview of the statute is to be determined within the context of the “common sense of the community.”” *Retkofsky*, 860 A.2d at 1099. The common sense of the community encompasses the sense of decency, propriety, and morality that most people entertain. *See, Taylor*, 471 A.2d at 1231.

The court may confidently state that the decency and morals of any community would find that an adult engaging in sexual activity with a minor child is immoral and extremely offensive. Along the same lines, any community would find an adult placing a minor child in a sexual situation to be immoral and offensive. Manson did just that by taking the photograph of Jodie in this case.

The photograph at issue is rife with sexual connotations. The photograph depicts Jodie lying naked on a bed. She is positioned on her stomach with her left leg bent at the knee and raised toward her stomach. Jodie's positioning is such that her breasts/nipples and genital region are not visible. However, there is not one stitch of clothing covering Jodie's body. This coupled with her positioning exposes Jodie's left hip/buttock region to view. Also, Jodie's hair is swept up and away from her body, almost in an attempt to prevent anything from covering her naked body. The photograph, taken as a whole, depicts Jodie as a sexual object. Thus, by photographing Jodie in such a manner, Manson placed Jodie in a sexual situation. This would be contrary to the decency and morals of any community. Accordingly, as a matter of law, Manson's act of photographing Jodie while she was lying in bed constitutes conduct that breached a duty of care owed her and thereby endangered her welfare.

B. Manson's Sufficiency of the Evidence Challenges

1. Standard of Review

A claim challenging the sufficiency of the evidence is a question of law. *Commonwealth v. Sullivan*, 820 A.2d 795, 805 (Pa. Super. 2003), *app. denied*, 833 A.2d 143 (Pa. 2003). When reviewing a challenge to the sufficiency of the evidence, the following standard of review is employed:

'The standard we apply when reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so

weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced is free to believe all, part or none of the evidence.'

Commonwealth v. Gray, 867 A.2d 560, 567 (Pa. Super. 2005), *app. denied*, 879 A.2d 781 (Pa. 2005) (quoting *Commonwealth v. Nahavandian*, 849 A.2d 1221, 1229-30 (Pa. Super. 2004)). Direct and circumstantial evidence receive equal weight when assessing the sufficiency of the evidence. *Commonwealth v. Grekis*, 601 A.2d 1275, 1280 (Pa. Super. 1992). Whether it is direct, circumstantial, or a combination of both, what is required of the evidence is that it, taken as a whole, links the accused to the crime beyond a reasonable doubt. *Commonwealth v. Robinson*, 864 A.2d 460, 478 (Pa. 2004), *cert. denied*, 126 S. Ct. 559 (2005).

2. The Evidence was Sufficient to Establish that Manson was a Person Supervising Jodie

The evidence presented at trial was sufficient to establish beyond a reasonable doubt that Manson supervised Jodie's welfare while she resided with him. The determination of whether a person is supervising the welfare of a child is a factual one. *Brown*, 721 A.2d at 1108, n.6. In order to prove that a person is supervising the welfare of a child, the evidence must show that the adult was involved with the child. *Ibid*.

The evidence presented at trial established that Manson was involved with Jodie's care. Manson provided Jodie with a place to stay for one and a half years, even converting his computer room to a bedroom for her. Manson provided Jodie with food during her stay with

him. Manson helped Jodie with her homework almost everyday. He also shared his knowledge of poetry and languages with her. Manson and Jodie did activities together, like going to the skating rink. Manson supervised Jodie's activities by requiring her to tell him where she was going, who she was going to be with, and what time she would be home. During the one and a half years that Jodie stayed with him, Manson looked after her physical needs, her education, her recreation, and her safety. This is sufficient to demonstrate that Manson actively participated in Jodie's care while she resided with him.

Accordingly, the evidence presented at trial was sufficient to establish that Manson was supervising Jodie's welfare during the one and a half years that she resided with him.

2. The Evidence was Sufficient to Establish that Manson Knowingly Endangered Jodie's Welfare

The evidence presented at trial was sufficient to establish beyond a reasonable doubt that Manson knowingly endangered Jodie's welfare. Endangering the welfare of a minor is a specific intent offense. *Commonwealth v. Foster*, 764 A.2d 1076, 1082 (Pa. Super. 2000), *app. denied*, 782 A.2d 542 (Pa. 2001); *Commonwealth v. Fewell*, 654 A.2d 1109, 1117 (Pa. Super. 1995). "To be convicted under this statute, the Commonwealth must prove 'a knowing violation of a duty of care.'" *Foster*, 764 A.2d at 1082 (quoting *Commonwealth v. Cardwell*, 515 A.2d 311, 313 (Pa. Super. 1986)). A three-pronged standard is used to determine whether the Commonwealth's evidence is sufficient to prove the intent element of the EWM statute:

- (1) the accused must be aware of his or her duty to protect the child;
- (2) the accused must be aware that the child is in circumstances that threaten the child's physical or psychological welfare; and

- (3) the accused either must have failed to act or must have taken actions so lame or meager that such actions cannot reasonably be expected to protect that child's welfare.

Retkofsky, 860 A.2d at 1100; *Commonwealth v. Pahel*, 689 A.2d 963, 964 (Pa. Super. 1997).

If the Commonwealth fails to prove any of these elements, then there is insufficient evidence to sustain a conviction under the EWM statute. *Fewell*, 654 A.2d at 1118.

The evidence presented at trial was sufficient to establish all three elements. The evidence presented at trial sufficiently established that Manson was aware of his duty to protect Jodie's welfare. Generally, a person supervising the welfare of a child "... is charged with the duty of care and control, subsistence and education necessary for the child's physical, mental and emotional health and morals." *Fewell*, 654 A.2d at 1118 (quoting *Commonwealth v. Barnhart*, 497 A.2d 616, 620-21 (Pa. Super. 1985)). Manson's actions during the one and a half years that Jodie resided with him sufficiently demonstrated that he was aware of his duty to protect Jodie's welfare and, for the most part, acted accordingly. Manson provided Jodie with shelter and food during her stay with him. Manson imposed rules upon Jodie, like the strict no drugs and no alcohol policy, which were intended to promote her health and safety. Manson took steps to promote Jodie's education, be it by helping her with her homework or imparting his knowledge of poetry and languages to her.

The evidence presented at trial was sufficient to establish that Manson knowingly placed Jodie in a situation that threatened her psychological welfare. Manson photographed Jodie, who was fourteen years old at the time, while she was lying naked in bed. During the one and a half years that Jodie resided with him, Manson had taken numerous steps and done many things to promote Jodie's welfare. As a result, Jodie had come to rely upon and trust

Manson. The photograph destroyed that trust. By photographing Jodie in the manner in which he did, Manson placed Jodie in a vulnerable position. The photograph exposed Jodie literally and in the sense that the sexual suggestiveness of the photograph invaded and placed on display a very private and personal matter. This invasion and breach of trust impacted Jodie's psychological welfare by leaving her feeling betrayed and afraid of Manson. N.T., 86, 129, 131-32 (5/10/05).

The fact that Manson kept the photograph hidden in his residence so as to prevent it from being made public cannot be considered an action reasonably designed to protect Jodie's welfare. It was the act of photographing Jodie while she was laying naked in bed that caused the harm to her. The act of secreting the photograph affects who knows what was done, but not what was done. While limiting the dissemination of the photograph likely controls any further embarrassment, it does not diminish the impact the photograph has already had on Jodie's psychological welfare.

Accordingly, the evidence presented at trial was sufficient to establish beyond a reasonable doubt that Manson knowingly endangered Jodie's welfare by breaching a duty of care he owed her when he photographed her while she was lying naked in bed.

IV. CONCLUSION

The order of June 16, 2005 should be affirmed and Manson's appeal denied.

BY THE COURT,

William S. Kieser, Judge

cc: Paul Petcavage, Esquire
DA
Judges
Christian Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)