IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-1801-2005**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
D. P.,	**:**	
Appellant	**:**	**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 dated March 1, 2007 and amended sentencing order docketed March 21, 2007.

On November 1, 2006, a Lycoming County jury found Appellant guilty of count 1, indecent assault; count 2, endangering the welfare of a child; and count 3, corruption of a minor.[1]

On March 1, 2007, the Court sentenced Appellant to serve a term of incarceration for indecent assault of 7-23 months in the Lycoming County Prison. The Court imposed a concurrent sentence of 7-23 months for endangering the welfare of a child and a consecutive probationary term of three years for corruption of a minor. At the time of sentencing, the victim's family reported the child was receiving counseling, but they had not yet incurred any out of pocket expenses. The Court included in the sentencing order a provision that Appellant should pay any restitution incurred by the victim in future for out of pocket counseling expenses.

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1 Due to the indecent assault conviction, Appellant underwent an assessment by the Sexual Offenders Assessment Board, but he was not found to be a sexually violent predator under Megan's Law.

Appellant filed a motion to file post verdict motions nunc pro tunc. The Court granted Appellant leave to file his post verdict motions, but ultimately denied the issues presented in his post verdict motions in an Order docketed April 2, 2007.

On April 16, 2007, Appellant filed a notice of appeal. In his statement of matters on appeal, Appellant raised the following issues: (1) whether the evidence was sufficient to support the verdict; (2) whether the verdict was against the weight of the evidence; and (3) whether the court's provision in the sentencing order pertaining to restitution for out of pocket counseling expenses was an illegal sentence. Since the issues primarily revolve around the sufficiency and weight of the evidence, the Court will recount the trial testimony in some detail.

The offenses occurred on Saturday July 23 and Sunday, July 23, 2005. The victim, M.P was age 11 at the time. She attended the Keystone Christian School and was a friend of Appellant's step-daughter, H.W. M.P. had visited at Appellant's home in the past with H.W. She also spent some overnights previously at the Appellant's residence.

On July 23, 2005, Appellant's wife G.P. went over to the victim's with her daughter H.W., because the victim's family was having a yard sale. G.P. asked if the victim could sleep over at her house that night with H.W.

The victim then left with G.P. and H.W. to spend the day. They initially went to a river lot owned by Appellant's family to go swimming. The victim wore a bathing suit. Appellant was present and he was playing with the girls in the water by throwing them around. In doing this, Appellant touched M.P.'s crotch area. N.T. at 18. The parties stayed at the river lot until about 9:00 p.m.

They then went back to Appellant's home for the evening. The girls watched a movie, had some hot chocolate, and got ready for bed. M.P., H.W., H.W.'s younger sister E.W., and Appellant watched the movie. The children were then going to sleep in the living room. H.W. slept on the couch and E.W. and M.P. slept nearby on the floor. Appellant went upstairs when the girls went to bed.

At a later time during the night, Appellant came downstairs. He got on the floor next to the victim. He lay down in a position directly behind the victim. Appellant then asked the victim if she wanted to do it and he said that he wanted to do it. N.T. at 21. The victim recognized his voice. The victim realized Appellant was asking her to have sex with him. N.T., at 21. The victim didn't respond to his overture. Appellant then pushed her "crotch" towards him and held her neck away. Thus, her body was pushed towards Appellant. Appellant then touched her in the crotch area with his hand. N.T. at 22. Appellant tried to pull the victim's pajama pants down. His body was held against the victim's body and his hand touched her crotch area on the outside of her pajamas. The victim testified this went on for about 10-15 minutes. While doing this, Appellant was not saying anything to her. The victim felt Appellant's hand and his private "right on my crotch." N.T. at 23.

Appellant then stopped and went to the kitchen to get a drink of water. He then went back upstairs. The other children did not awake during the incident. E.W. was about five inches in front of the victim.

The victim slept through the rest of the night. The next morning they went to church. They then went back to Appellant's house. Around 1:00 p.m., the victim's mother came to the house to pick up her daughter.

The victim acknowledged that the living room was cluttered because Appellant and his family were getting ready to have a yard sale. The victim described the Defendant's private as being against her "vaginal area." N.T. 38. M.P. admitted while the incident was happening that she did not call out to the other girls who were sleeping nearby. The victim explained that she did not know what to do because this kind of thing never happened to her before. N.T. 37.

The victim testified that after she got home on Sunday she was extremely mean to her sister. Her mother was concerned something was bothering her and she asked if something happened at H.W.'s house. N.T. 26. The victim shook her head yes and told her mother what had happened. The next day the victim was interviewed by Children & Youth caseworker Rhonda McDonald. Subsequently, she also was interviewed by Ms. McDonald and Williamsport Police Officer, William Weber, the prosecutor in this case.

On cross-examination M.P. admitted that Appellant had talked about her babysitting his dog when he went on vacation but that he told her she could not do this because the victim's younger sister was not good with animals. N.T. 31.

The victim, on cross-examination, acknowledged that she did not include in her testimony at the preliminary hearing that Appellant, while tossing her in the water at the river lot had touched her crotch. N.T. 33. She first told this to Agent Weber after the preliminary hearing. N.T. 33.

The victim's mother (hereinafter Mother) testified for the Commonwealth. Her daughter had a friendship with H.W. They both attended the Cogan Station Christian School. They were good friends. Mother agreed to allow her daughter to sleep over at Appellant's residence with H.W. on July 23, 2005. She brought her daughter home the next

day. Mother noticed her daughter was unusually argumentative with her sister. She asked her daughter if something happened at H.W.'s house. M.P. answered yes. M.P. then revealed to Mother that Appellant had touched her inappropriately. N.T. 56. M.P. told Mother that they had hot chocolate and watched a movie and they went to sleep. Then Appellant came downstairs sometime during the night and laid down beside her and whispered in her ear that he wanted to do it, asking her if she did. He then touched her in the vaginal area with his hand. His hand was on the outside of her clothing. This went on for 10-15 minutes. Appellant then got up and went upstairs. N.T. 47-48.

Mother asked M.P. if she wanted to talk to someone about this. M.P. indicated she wanted to talk to a counselor she had seen in the past. Mother then left her alone for about an hour and then asked her what she wanted to do. Mother mentioned some people they could possibly call on a Sunday, including their pastor. M.P. indicated she was willing to talk to her pastor. They then called their pastor and he came over to their house to talk to M.P.

M.P. talked with her pastor about what happened the night before. After talking with M.P. the pastor told Mother that he was obligated to report this incident to the authorities since the child reported it to him. Mother requested the pastor give her a chance to speak with her husband before reporting the matter.

The pastor agreed and returned after M.P.'s father came home. The pastor told the family he would give them 30 minutes to think about the situation and that he would then have to make the call. The family agreed the pastor could make the call to the authorities. N.T. 51. Mother received a call about 11:00 p.m. that evening from the child protective hotline and they made arrangements for a local C&Y caseworker to interview

M.P. the next day. Mother acknowledged on cross-examination that earlier that summer she had M.P. meet with a counselor. M.P. apparently had a crush on one of her male teachers at the school. N.T., 60. However, Mother testified that the primary reason M.P. went to the counselor was that she was adopted when she was five years old and sometimes underwent depression near holiday periods because she had not seen her birth mother for a long period of time. N.T. 101.

The next day Rhonda McDonald of Children & Youth Services interviewed M.P. alone and then with Mother. Ms. McDonald then arranged for a further interview with M.P. with Agent William Weber of the Williamsport Police.

Ms. McDonald testified as a witness for the Commonwealth at trial. Ms. McDonald has been investigating child abuse cases for the past 12 years. N.T. 68. The report of the sexual abuse in this case came to her on July 24, 2005 and she scheduled an office interview with M.P. for July 25, 2005. She initially talked to M.P. alone. She asked M.P. to tell her what had happened. M.P. indicated she was sleeping on a blanket on the floor in the living room. Appellant came in and lay down behind her, put his arm around her, placed his hand on her private area and asked her if she wanted to do it. N.T. 72. She indicated she thought Appellant was asking to have sex with her. She indicated she did not answer him. She reported Appellant said to her that he wanted to do it. N.T. 73. Appellant placed one hand on her vaginal area and the other hand on her neck. She felt the Appellant's private part up against her back. N.T. 86. She did not see his penis. The incident lasted 10-15 minutes. She did not see a clock but estimated the time. N.T. 74. She told Ms. McDonald that while Appellant did this she laid there and prayed to God it would stop. N.T. 74. E.W. was lying on the floor next to her but they were not using the same blanket.

Ms. McDonald testified she explained to M.P. that in incidents such as this she was mandated to contact law enforcement and that M.P. would need to meet with her and Agent Weber.

The interview with Agent Weber occurred on July 28, 2005. Ms. McDonald testified that what M.P. told Agent Weber was consistent with what she had said earlier. N.T. 76.

Ms. McDonald and Agent Weber contacted Appellant offering him a chance to be interviewed about the investigation. Appellant came to the C&Y office on August 11, 2005. N.T. 77. He was interviewed by Ms. McDonald and Agent Weber. Appellant was advised of the nature of the allegations against him. He was upset and nervous, but willing to talk about the matter. N.T. 78. He confirmed that M.P. slept over at his home on July 23-24, 2005. They had spent the day at the river lot. When they returned home in the evening the girls watched a movie. He went to bed around midnight. Around 1:00 a.m. he heard the gate in their yard rattle and he got up to check it out. He was concerned because there had recently been some robberies in the neighborhood. Appellant then, because of his concern, sat on the porch between the hours of 1:00 a.m. to 5:00 a.m. He then went into the living room. He saw M.P. roll over in her sleep on top of E.W. He then went over and moved M.P. off of his daughter. He told Ms. McDonald and Agent Weber that he took M.P. by the shoulders and pushed her back, rolling her over. N.T. 80.

He then went upstairs, woke his wife up and told her nothing had happened outside. N.T. 80.

Appellant stated that when he initially went to bed around midnight his neighbor Bob was at the home working on the computer with his wife. When he came back downstairs around 1:00 a.m., Bob was gone and his wife was upstairs.

Toward the end of the interview Appellant felt Ms. McDonald and Agent Weber were being accusatory and he indicated he no longer wanted to speak with them. N.T. 82.

Ms. McDonald testified that after Appellant was interviewed, Appellant's wife called her and contended that M.P. had made false allegations against one of her teachers and that she was doing this against her husband as well. N.T. 88. Ms. McDonald acknowledged this matter with the teacher led M.P. to go to a counselor, however, M.P. had not made sexual allegations in regard to the teacher. N.T. 88, 93. See also, N.T. 135 (Agent Weber).

Agent William Weber, the police prosecutor, testified to his substantial training and experience in the child abuse area. N.T. 105-110. He has participated in over 100 investigations with Rhonda McDonald of C&Y. N.T. 110. He was present for the interview of M.P. on July 28, 2005. Agent Weber was also present for the interview of Appellant on August 11, 2005. N.T. 115. After Agent Weber asked some questions of him, Appellant accused Agent Weber of asking him leading questions. Appellant then asked if he could leave and he abruptly got up and left the interview. N.T. 116. Before leaving Appellant told him that when he went back upstairs to his bedroom at 5:00 a.m. he woke his wife up and told her nothing was wrong and that they then made love for 45 minutes to an hour and that he then went back to bed. N.T. 117.

Defense Testimony

The defense first called H.W., then age 12, the Defendant's stepdaughter as a witness. She testified that earlier in the day of July 23, 2005 there had been a discussion with her, her stepfather and M.P. about M.P. dog sitting for them when they went on vacation. N.T. 139. However, they decided to not let M.P. watch their dog because M.P.'s younger sister was mean to dogs. M.P. was mad at Appellant over this matter. N.T. 140. H.W. denied Appellant touched M.P. in her intimate body parts while they were playing in the water. N.T. 141.

She also testified that while playing in the water M.P. referred to Appellant as "Daddy, Daddy." H.W. then told M.P. her stepfather was not her daddy. N.T. 141. H.W. and M.P. then had an argument over this where M.P. said Appellant was not really H.W.'s daddy. N.T. 142. On cross-examination H.W. was not sure the conversation about the dog occurred on July 23 or before that date. She also acknowledged that later in the day when M.P. got permission to sleep over at her house M.P. did not appear to be upset or angry. N.T. 143-144. They were getting along fine that night. N.T. 144.

The defense called Lisa Cox, the emergency C&Y crisis worker who received the child line report concerning M.P. on July 24, 2005. Ms. Cox went to Appellant's home that night to assure the safety of Appellant's step-children. She talked with H.W. She noted Appellant's home was cluttered, but they explained they were getting ready for a yard sale. She explained to Appellant and his wife the nature of the allegations. N.T. 152. Appellant voiced denial of the allegations.

Former counsel for Appellant, Jeffrey Yates, Esquire, was called as a defense witness. Mr. Yates represented Appellant at the preliminary hearing. At the time for the first scheduled hearing the young victim did not want to testify and the hearing was continued.

At the subsequent time for the hearing the victim did testify. Mr. Yates testified that M.P. at the preliminary hearing testified that the sexual incident occurred around 11:00-11:15 p.m. and that she had looked at a clock when this occurred. N.T. 158. Mr. Yates testified that the victim at the preliminary hearing claimed Appellant touched her upper body, her breasts, not the lower area. N.T. 159. The victim, at the preliminary hearing did not testify that Appellant tried to pull down an article of her clothing. Attorney Yates acknowledged on cross-examination that he made no tape recording of the hearing and that he was relying upon his memory of a hearing which occurred over a year ago. N.T. 160.

G.P., Appellant's wife, also testified. She noted on July 23, 2005 her house was a mess because of an upcoming yard sale and that the children were sleeping downstairs because it was really hot upstairs.

G.P. testified that she was on the home computer in the dining room from 10:00 p.m. until 1:00 a.m. N.T. 171. A neighbor had come over to help her try and fix the computer. The neighbor was B.H. N.T. 172. B.H. was unavailable as a witness at the time of trial, because he was in the hospital.

G.P. testified that there is no clock in the living room. There was not a clock on the piano bench as claimed by the victim at the preliminary hearing. N.T. 175. The yard sale was scheduled for August 5 & 6. N.T. 176. The computer chair she sat on was about eight feet from the piano bench in the living room. The girls were sleeping in the living room in a small clear space in front of the television. The girls could barely fit in the space. N.T. 177. H.W. slept on the couch. E.W. and M.P. were on the floor next to her. The two girls on the floor took up most of the space between the piano bench and the piles of sale items. N.T. 178. The family was planning on going away on a vacation the following week.

G.P. asked Mother on July 23rd if they might be willing to take care of Appellant's puppy when they went on vacation. However, when Appellant heard about this he said absolutely not because M.P.'s younger sister was aggressive with animals. N.T. 180.

G.P. also testified that a bike was stolen out of their yard in June of 2005. N.T. 183. She reported this to the Williamsport Police. G.P. testified that Appellant never acted in any way inappropriate to her two daughters. N.T. 188.

G.P. agreed that her husband had come up to bed and around 1:00 a.m., when he heard a gate rattling outside, he went outside to check it. He was gone from 1:00 a.m. to 5:00 a.m. N.T. 192. She believed he stayed downstairs to protect their property. Neither she nor her husband reported a prowler that evening. N.T. 193. When he returned at 5:00 a.m. he told his wife he rolled M.P. off E.W. N.T. 194. M.P. seemed happy that evening before she went to bed. N.T. 196.

The defense called Nicole Simpson as a witness. Ms. Simpson is a high school teacher. She has known Appellant for twenty years. She testified that Appellant has a reputation in the community for honesty and truthfulness. She testified that he has a reputation for being a moral man. N.T. 207. Similar character testimony was presented by Pastor Donald Baker. N.T. 210-213.

The final defense witness was Appellant. Appellant denied that he was guilty of the crime with which he was charged. He testified the family was planning to go on vacation shortly after the weekend of July 23, 24, 2005. His wife made plans for M.P.'s family to watch his puppy. N.T. 215. He had a problem with this plan because M.P.'s younger sister mistreated animals. Appellant explained his decision to M.P. on July 23rd. M.P. seemed like she was going to cry. N.T. 216.

Appellant was never charged before with any assault or morals' charges. N.T. 220.

While playing in the water at the river lot, H.W. tugged on one of the Appellant's arms while M.P. tugged at the other arm. M.P. grabbed Appellant's arm and said "daddy, daddy." H.W. grabbed the other arm and said "no, my daddy." N.T. 221. Appellant told M.P. he was not her daddy but was H.W.'s daddy. M.P. said he was not H.W.'s daddy either. He then told M.P. he was more H.W.'s daddy than M.P.'s daddy. N.T. 221. Appellant denied that he in any way touched M.P. inappropriately at the river lot. N.T. 223.

After leaving the river lot around 9:00 p.m. they returned to Appellant's home and M.P. wanted to sleep over. N.T. 225.

A neighbor, B.H. came over to Appellant's house to help his wife with her computer. B.H. and G.P. worked on the computer until 1:00 a.m. N.T. 228. The girls were watching a movie and fell asleep. Appellant then went to sleep upstairs. At 1:00 a.m. he came downstairs and B.H. was leaving the house to go home. Appellant and his wife went upstairs to bed and he heard a gate rattling out front. N.T. 229. Appellant had a hunch that someone was trying to steal something because a bicycle was stolen from the house sometime earlier. Appellant believed these people were coming back to steal. N.T. 229. The neighborhood had been the subject of recent theft crimes. Thus, Appellant went downstairs and stayed on the porch of the home until 5:00 a.m. to protect the home. N.T. 231.

When Appellant came into the house at 5:00 a.m. he heard a little bit of thrashing around and he looked over and saw M.P. had rolled over on top of E.W. N.T. 232.

He went over to M.P. and took her by the shoulder and rolled her off E.W. N.T. 232. Appellant denied touching M.P. in any other part of her body. M.P. was wearing white jeans and a light blue shirt. N.T. 233.

Appellant acknowledged that he was interviewed by Agent Weber and Rhonda McDonald of Children & Youth. Appellant felt Agent Weber's questions to him could not be answered without incriminating himself. N.T. 237. He felt Agent Weber's questions were very accusatory. N.T. 238. Appellant was told he was free to go. Shortly after this he left the interview.

Appellant acknowledged in cross-examination that prior to this matter M.P. had never expressed any personal hostility to him. N.T. 242.

Although Appellant stayed on the porch until 5:00 a.m. he did not see anyone in the yard. N.T. 248. Nothing was missing that night. N.T. 248.

DISCUSSION

The first issue raised by Appellant on appeal is that the evidence was insufficient to support his convictions for indecent assault, endangering the welfare of a child and corruption of minors. In reviewing the sufficiency of the evidence, the court considers whether the evidence and all reasonable inferences that may be drawn from that evidence, viewed in the light most favorable to the Commonwealth as the verdict winner, would permit the jury to have found every element of the crime beyond a reasonable doubt. Commonwealth v. Davido, 868 A.2d 431, 435 (Pa. 2005); Commonwealth v. Murphy, 577 Pa. 275, 284, 844 A.2d 1228, 1233 (Pa. 2004); Commonwealth v. Ockenhouse, 562 Pa. 481,

490, 756 A.2d 1130, 1135 (Pa. 2000); Commonwealth v. May, 540 Pa. 237, 246-247, 656 A.2d 1335, 1340 (Pa. 1995). The appellate courts of this Commonwealth have long-recognized "that the uncorroborated testimony of a sexual assault victim, if believed by the trier of fact, is sufficient to convict a defendant, despite contrary evidence from defense witnesses." Commonwealth v. Davis, 437 Pa. Super. 471, 650 A.2d 452, 455 (Pa.Super. 1994). "If the factfinder reasonably could have determined from the evidence adduced that all of the necessary elements of the crime were established, then that evidence will be deemed sufficient to support the verdict." Commonwealth v. Hopkins, 747 A.2d 910, 914 (Pa.Super. 2000) (citation omitted).

The Crimes Code defines the relevant portions of indecent assault as follows:

> A person is guilty of indecent assault if the person has indecent contact with the complainant and:
> (1) the person does so without the complainant's consent; …[or]
> (7) the complainant is less than 13 years of age.

18 Pa.C.S. §3126. Indecent contact is any "touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire in either person." 18 Pa.C.S. §3101. The victim testified that Appellant laid down behind her, touched her crotch through her pajamas, pushed her body into his so that his penis was pressed up against her, and said to her 'do you want to do it, I do.' She did not respond to Appellant's question, and throughout the ordeal she prayed to God that he would stop. She also testified that she was 11 years old at the time of the incident. This testimony was sufficient to Appellant had indecent contact with a complainant under 13 years of age and without her consent. The jury obviously found the victim's testimony credible and chose not to believe appellant's version

of the events. It was within the province of the jury as fact-finder to resolve all issues of credibility, resolve conflicts in evidence, make reasonable inferences from the evidence, believe all, none, or some of the evidence, and ultimately adjudge appellant guilty. Commonwealth v. Gooding, 818 A.2d 546 (Pa.Super. 2003).

An individual is guilty of endangering the welfare of a child if he or she, as a parent, guardian, or other person supervising the child's welfare, "knowingly endangers the welfare of the child by violating a duty of care, protection, or support." 18 Pa. C.S.A. § 4304. In Commonwealth v. Retkofsky, 860 A.2d 1098, 1099-1100 (Pa.Super. 2004), the Pennsylvania Superior Court noted the following, in addressing a sufficiency of the evidence claim for a conviction for endangering the welfare of a child:

> Our Supreme Court has stated that statutes pertaining to juveniles such as this one are "basically protective in nature" and thus are necessarily drawn "to cover a broad range of conduct in order to safeguard the welfare and security of our children." Commonwealth v. Mack, 467 Pa. 613, 617, 359 A.2d 770, 772 (1976) (quoting Commonwealth v. Marlin, 452 Pa. 380, 386, 305 A.2d 14, 18 (1973)). Whether particular conduct falls within the purview of the statute is to be determined within the context of the "common sense of the community." Id. at 618, 359 A.2d at 772.

The victim was staying overnight with her friend H.W. at Appellant's house on the night in question. Appellant was clearly in a position of supervising the victim's welfare. He violated a duty of care, protection and support by touching her crotch, pushing her body back against his and making sexual overtures to her. As with the indecent assault conviction, the victim's testimony was believed by the jury and sufficient to sustain Appellant's conviction for endangering the welfare of a child.

A person corrupts a minor if he is 18 years of age or older and does any act that corrupts or tends to corrupt the morals of any minor less than 18 years of age. 18

Pa.C.S. §6301. Ms. Sampson testified that she knew Appellant for twenty years. From this testimony and its own observation of Appellant, the jury could infer beyond a reasonable doubt that Appellant was over the age of 18. The victim testified she was 11 years old at the time of this incident. Appellant corrupted or tended to corrupt the morals of the victim by touching her crotch, pushing her body back against his and making sexual overtures to her. Since the evidence established each element of corruption of a minor, the evidence was sufficient to sustain Appellant's conviction for this offense.

The second issue raised by Appellant is that the verdict was against the weight of the evidence. An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. Commonwealth v. Sullivan, 820 A.2d 795, 805-806 (Pa.Super. 2003). A new trial is awarded only when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail. Id. at 806. The evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court. Id. Unlike a sufficiency claim, the trial court is under no obligation to view the evidence in the light most favorable to the Commonwealth. Similarly, the issue is not whether there was evidence to support the verdict, but rather whether, notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or give them equal weight with all the facts is to deny justice. Id. The jury's verdict in this case did not shock the court's sense of justice. The victim and her mother were good witnesses for the Commonwealth and were believable. Appellant's claim that he spent the hours between 1:00 a.m. and 5:00 a.m. outside looking for a prowler just didn't seem to ring true.

The final issue raised by Appellant is that the Court imposed an illegal

sentence by ordering restitution for counseling when the need for counseling is speculative and unsupported by the record. The Court felt it was between a rock and a hard place on the issue of restitution. Although the Court does not have a copy of the sentencing transcript at this time,[2] the Court believes the record at the sentencing hearing indicated that the victim was undergoing some counseling related to this incident, but her family had not incurred any out of pocket expenses as of the date of sentencing. The law requires the Court to order restitution at the time of sentencing. 18 Pa.C.S. §1106(a) and (c)(2); Commonwealth v. Mariani, 869 A.2d 484 (Pa.Super. 2005). If the Court did not order restitution at the time of sentencing or within thirty days thereafter, it could not lawfully amend the sentence at a later date to impose restitution. Commonwealth v. Rohrer, 719 A.2d 1078 (Pa.Super. 1998). If, however, restitution is ordered, it could be amended or altered at a later date under section 1106(c)(3). The Court acknowledges the sentence of restitution in this case could be considered illegal, because the Court did not expressly state the amount of restitution at the time of sentencing. See Mariani, supra. At the time of sentencing, however, the amount was zero.

DATE: _____ By The Court,

_____
Kenneth D. Brown, P. J.

2 The Court has a copy of the trial transcript, which shows the victim wanted to talk to someone about the incident the day she returned home. However, because it was a Sunday, she spoke to her pastor instead of a counselor she had seen in the past for other issues. The Court does not have a copy of the sentencing transcript and has some concern that defense counsel may not have requested it.

cc: Robert Ferrell, Esquire (ADA)
Public Defender
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)