

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 233 – 2005
	:	
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, the matter having been remanded from Superior Court after the Commonwealth successfully appealed this Court’s grant of the motion. A second hearing was held May 9, 2007.

In granting Defendant’s motion on November 15, 2005, this Court found a compelling need for the evaluation based on a psychologist’s conclusion that the alleged victim could be suffering from an illness which could affect her mental capacity to observe and remember. This Court likened such to the concept of “taint” recognized in Commonwealth v. Delbridge, 855 A.2d 27 (Pa. 2003), wherein it was concluded that highly suggestive interrogation techniques might distort a child’s recollection of events, thereby undermining the reliability of the statements, and that such distortion was relevant to the second prong of competency.¹ In remanding to this Court, the Superior Court directed this Court to “conduct a competency examination of [the alleged victim] and then make a determination as to whether there is a compelling need for a psychiatric/psychological examination,” apparently determining that the basis relied upon by this Court, the concerns of the psychologist, was insufficient.

The Superior Court has offered the following guidelines:

The appropriate competency investigation should determine whether the witness (1) has the capacity to observe or perceive the occurrence with substantial degree of accuracy; (2) has the ability to remember the event which was observed or perceived; (3) has the ability to understand questions

¹ 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).

and to communicate intelligent answers about the occurrence, and; (4) has the consciousness of the duty to speak the truth.

Commonwealth v. Fultz, 462 A.2d 1340 (Pa. Super. 1983). With those guidelines in mind, the Court thoroughly questioned the alleged victim in this case, and, as far as this Court can tell, and as was explained to counsel on the record at the end of the hearing, she appears to be a competent witness.

Defense counsel urges this Court to nevertheless affirm its previous ruling, on the grounds that nothing in this Court's examination of the alleged victim changes the Court's earlier findings respecting the psychologist's conclusion that the alleged victim could be suffering from an illness which could affect her mental capacity to observe and remember. While the Court agrees with counsel in this regard, it is mindful of the Superior Court's adverse determination that such did not constitute a compelling reason for an evaluation. Defendant's motion will therefore be denied.²

ORDER

AND NOW, this 14th day of May 2007, for the foregoing reasons, the Motion to Require Complainant to Undergo Psychiatric/Psychological Evaluation is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

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

² Defense counsel requested this Court certify the matter for immediate appeal in the event the motion was denied. The Court cannot, however, find that its ruling involves a controlling question of law as to which there is substantial ground for difference of opinion, considering the Superior Court has already rendered its opinion that the psychologist's concerns are an insufficient basis on which to order the evaluation.