

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : **NO. CR- 875-2007**
:
vs. :
:
:
WILLIAM J. REYNOLDS, : **Decision re Defendant’s**
Defendant : **Post Sentence Motion**

OPINION AND ORDER

The Defendant was found guilty by a jury of Rape of a Child,¹ Statutory Sexual Assault,² Aggravated Indecent Assault³ (victim less than 13) and Indecent Assault⁴ (victim less than 13). All of these charges pertained to one incident.

The Defendant was also found guilty of Involuntary Deviate Sexual Intercourse with a child⁵ and Indecent Assault (victim less than 13)⁶ that concerned a second incident. The victim in both sets of charges was a child, T.M., age 11, at the time of the occurrences.

The Defendant, age 52, was a friend of T.M.’s family. T.M. lived with her mother and father and four older siblings in Peterman’s Trailer Court in the Hughesville area.

In or around September or October 2006 the Defendant came to the victim’s home to set a sink in the kitchen. Her parents left the house to run an errand and she was alone in the home with the Defendant. The victim was in her

1 18 Pa. C.S.A. §3121(c).
2 18 Pa. C.S.A. §3124.1.
3 18 Pa. C.S.A. §3125(a)(7).
4 18 Pa. C.S.A. §3126(a)(7).
5 18 Pa.C.S.A. §3123(b).

bedroom. The Defendant came into the bedroom. He was wearing shorts and a shirt. The victim was on her bed.

The victim testified that she was wearing shorts and a t-shirt and that the Defendant came to her bed whereupon he touched her private area under her clothes, touching her vagina. He was using his hand to touch her. She asked him to stop but he did not stop. The Defendant was half standing and half sitting. He unzipped his shorts and he unzipped her shorts. He then stuck his penis in the victim's vagina. She was lying down at the time. He moved it "in and out," 5 or 6 times. His penis was hard.

The victim testified he stopped when he heard one of his children outside near the open window in the bedroom. Shortly after this the victim's parents returned home. The Defendant returned to the kitchen and worked on the sink. The victim testified she did not initially tell her parents about it because she was scared.

A second incident occurred shortly after the first incident. This incident happened at the Defendant's home. In this incident, the Defendant put his penis in the victim's mouth. When he did this, the Defendant held his hands on the back of the victim's head.

The young victim testified that in these sexual encounters with the Defendant she noticed that he had a long scar down in his crotch area.

The victim's Father, K.M., testified that there was an occasion where the Defendant was at their home putting a new sink in the kitchen. K.M.

confirmed that he and his wife left the home to go to the market and T.M. was alone in the house with the Defendant. They were gone about 20 minutes. When he left, the Defendant was in the kitchen and T.M. was in the living room playing a video game. When he came back the Defendant was in the kitchen and T.M. was in the living room. T.M. appeared normal at the time. The Defendant finished his work and left the home.

The Commonwealth next called Trooper Marsha Barnhart to testify. Trooper Barnhart had previously interviewed T.M., who named the Defendant as the party involved in the sexual incident.⁷

On or about March 5, 2007, Trooper Barnhart contacted the Defendant by telephone about these allegations and the Defendant agreed to come to the Hughesville police Station to talk with the Trooper. She talked to the Defendant in a small conference room. Rhonda McDonald, a C&Y caseworker was present with her to interview the Defendant.

Trooper Barnhart advised the Defendant he was not under arrest and was free to leave at any time. The Defendant indicated he understood and agreed to talk to the Trooper. The Defendant's wife had accompanied him to the station but waited outside.

Trooper Barnhart depicted the Defendant as being very cooperative. She did not advise the Defendant of his Miranda rights, as she was in an early

⁷ The Commonwealth at trial did not offer evidence about how or why T.M. initially made the Complaint about this matter. On cross-examination the Trooper testified that the case was referred to her by the Children & Youth Agency of Lycoming County at the end of February 2007. On February 28, 2007, she interviewed T.M. and her parents.

investigative stage in the case and the Defendant was not placed into custody. She discussed the allegations made by T.M. against the Defendant. The interview started at 3:25 p.m. and ended at 4:57 p.m.

The Defendant initially denied any sexual contact with the victim.⁸ Trooper Barnhart and the Defendant took a break from the interview, and they both went outside the police station and smoked a cigarette. They then returned to the conference room to resume the interview. The Defendant made admissions of having sexual contact with T.M. in the fall of 2006. The Trooper then wrote out questions for the Defendant on a piece of paper and the Defendant wrote a short yes or no answer and initialed each answer. *See Commonwealth Ex. 1.* The Defendant wrote yes and placed his initials to questions such as whether in the fall of 2006 he let T.M. give him oral sex and that he put his penis in her mouth. He claimed in his written answer that T.M. wanted to give him “head.” He claimed it was her idea to have oral sex. He admitted his penis penetrated her vagina. When asked why he had sexual contact with T.M. he wrote, “cause she wanted to.” When asked if his erect penis slid in between T.M.’s vaginal lips, he answered, “Yes.” *See Com. Ex. 1.*

The Defendant also affirmed on the last page of the statement, by checking a box that said “Yes,” that the statement was given of his own free will, without any promises or threats, and that the information in the statement was

⁸ Initially, the Defendant told the Trooper he was never alone with T.M. Then he admitted he was briefly in T.M.’s bedroom, after her parents left the house, to see a stereo she had received as a gift. He only admitted to slapping T.M.’s “butt” once. He indicated he once “inadvertently” touched her in a sexual way. He said he would drive her around in his van, where she would sit on his lap and he would get an erection. He subsequently admitted to additional sexual contact in his written statement. He tended to blame T.M. as the aggressor in the

true and correct. *See Com. Ex. 1.*

Trooper Barnhart allowed the Defendant to leave the police station after his admissions and did not arrest the Defendant until March 19, two weeks later.⁹

Subsequent to the Defendant's admissions, Trooper Barnhart had T.M. medically examined by Dr. Pat Bruno, a pediatrician with an expertise in child sexual abuse. Dr. Bruno examined T.M. on March 14, 2007. The doctor did not find any present physical evidence of sexual abuse. The doctor noted this was not unusual. In her experience, 80% of the time there is no physical evidence found on children under age 13, because children this young do not disclose abuse until several months after it occurs and by then the injured tissues have healed. Here approximately 6-7 months had elapsed from the time of the alleged sexual abuse. The doctor noted that she saw no change in the child's hymen.

The final Commonwealth evidence came from Trooper Mark Rider. Based on T.M.'s description of a scar near the Defendant's penis, Trooper Rider obtained a search warrant to allow him to photograph the Defendant's body. On March 19, 2007, Trooper Rider photographed the Defendant's genital area pursuant to the warrant. The photograph (*Com. Ex. 2*), and Trooper Rider's observations

contacts.

⁹ At the end of the interview Trooper Barnhart asked the Defendant if he wanted her to help him tell his wife he had made admissions. The Defendant agreed to this and the Defendant and the Trooper talked to the Defendant's wife in the conference room. The Defendant and his wife then left.

were that the Defendant had a small thin white line scar at the base of his penis and scrotum which ran in a vertical direction. This tended to corroborate the testimony of T.M. at trial that the Defendant had a noticeable scar near his penis.

At trial, the Defendant testified in his own defense. He knew the victim's family for 20 years. He visited their home and they visited his home. He did handiwork for T.M.'s family.

He acknowledged he came to T.M.'s home in August of 2006 to put a sink in the kitchen. He was on his back working under the sink and T.M. came into the kitchen. He claimed T.M. put her feet between his legs and she started "rubbing his balls." He asked her to get him the pliers and she did. He ran into some problems with the job so he came back on Sunday to finish.

The Defendant acknowledged T.M.'s parents had to go out and left the house. He claimed T.M. called him to come into her room and when he came in T.M. pulled her pants down and said she wanted to have sex with him. He simply told her to put her pants up. T.M.'s parents then came back home and he did not say anything to them about what had happened. The Defendant denied touching T.M.

When asked why T.M. would make up this allegation, the Defendant testified that he felt she wanted to "get even" with him. He claimed a week after the purported incident she invited him to take her for a car ride and he did not take her. He claimed T.M. told him she'd get even.

When confronted with his statement to Trooper Barnhart, the Defendant claimed she read him his rights. He claimed when he denied

committing crime, Trooper Barnhart said he was lying. He testified she backed him into a corner and kept on questioning him. He told her he was not going down for something he did not do.

He testified Trooper Barnhart eventually put a paper in front of him. He said he was “scared out of his mind.” He then just signed off on the paper to “get out of there.” He told her whatever you said, I did.

The Defendant claimed he had never been alone at any time with T.M. and that he never touched T.M. He testified Trooper Barnhart asked him to take a polygraph test and he agreed, but that she did not give him a test.

The Court notes the Defendant filed a suppression motion. The Defendant averred in his motion that he asked for an attorney at the police interview but Trooper Barnhart did not provide one. He also claimed his written statement was given under duress.

The Court heard the suppression motion on April 25, 2008. Trooper Barnhart denied that the Defendant ever requested counsel during the statement. She described the Defendant’s demeanor as cooperative. She testified she called the Defendant on the phone to set up the interview and she arranged to meet with him at the Hughesville Police Station. She advised the Defendant of the allegations against him. She noted the Defendant was never handcuffed and was not in custody and was told he was free to leave. She denied that she told the Defendant that if he confessed all he would get was ARD. She mentioned possible use of polygraph, but she did not pursue this because the Defendant confessed to the crimes. The Defendant only admitted to one sexual contact with

T.M. in his statement. He initially denied any crime and the written statement came in the last half hour of the interview process.

In his testimony before the suppression Court, the Defendant claimed Trooper Barnhart told him she'd tell him what he did. He testified he told her he did not commit this crime. The Defendant testified the Trooper told him if he confessed he would only get ARD. The Defendant testified he was scared, so he started to admit to the Trooper what she wanted to hear. He also claimed about halfway through the process he told the Trooper he guessed he was going to have to get a lawyer. The Trooper kept questioning him and he was "scared out of his mind."

After listening to the testimony, the Court made findings of fact on the record and denied the Motion to Suppress. The Order was entered right after the hearing on April 25, 2008.

While the Court does not have a transcript of the suppression hearing with findings at this time, the Court recalls that Trooper Barnhart's testimony was believable and found the Defendant's testimony to be unbelievable. There was no evidence of prolonged questioning or pressure which would make a 52-year old man falsely confess to a crime of sexually touching an 11-year old girl. The Court did not find the Defendant's denial to be credible. The fact that the Defendant signed specific answers to questions in *Com. Ex. 1* made the Defendant's testimony not credible. The Defendant's effort to blame the child victim and portray her as the aggressor is a phenomenon the Court has seen in other cases with older men and young female victims.

Although the Court denied the Defendant's suppression motion, the Court thoroughly instructed the jury that they needed to determine if the Defendant's statement was voluntarily made to Trooper Barnhart. The jury, like the Court, did not seem to find the Defendant's denial credible as reflected in their guilty verdict.

After trial, on or about August 1, 2008, counsel for the Defendant filed a motion styled "Motion for New Trial." In the motion, defense counsel alleged he had obtained after discovered evidence of statements made by the child victim, T.M., which tended to exonerate the Defendant from commission of the acts she testified to at trial. Defense counsel named three young witnesses who T.M. allegedly made these statements to. After a conference with the Court, defense counsel submitted to the Court and Commonwealth three typed sworn statements the witnesses gave to defense counsel in his law office on Monday, September 30, 2008.

On December 4, 2008, the Court held a hearing on Defendant's request for a new trial based on after-discovered evidence.

Witness, Natasha Richardson, age 13, was called by the defense. Natasha is a great niece of the Defendant. She has known T.M. for five years. She talked with T.M. after the trial on January 23, 2008 at a recreational facility called Trout Pond Park. The event was an all-night roller skating party. Her sister, Elizabeth, went with her.

At some point in the evening T.M. approached her. T.M. told her it wasn't Natasha's uncle that raped her, but rather it was her boyfriend Preston.

T.M. blamed the matter on Natasha's Uncle Bill so Preston would not get in trouble. Natasha claimed T.M. was crying when she told her this, but she then became calm as she talked. Natasha told her parents about this conversation the next morning. Her parents contacted defense counsel.

Elizabeth Cheyene Hauck, age 13, step-sister of Natasha, also testified about this conversation with T.M. Elizabeth has known T.M. a couple of years and used to be friends with her. The conversation occurred during the all-night skate event.

Elizabeth testified that T.M. approached her and said she needed to talk with her. T.M. told her the Defendant was innocent of the criminal charges. She said her ex-boyfriend Preston had raped her. She said she pointed the finger at the Defendant to cover up for her boyfriend. She testified T.M. would bring up this subject throughout the evening. T.M. asked Elizabeth to keep this a secret and she said she would send the Defendant to jail as an innocent man. T.M. said she didn't like the Defendant. Elizabeth's sister, Natasha, was present for some of this conversation. Elizabeth said this information "sunked in" and she had to tell her mom. Elizabeth testified she was trying to get information out of T.M.

Elizabeth testified she did nothing to threaten T.M., and that T.M.'s boyfriend, Preston, was actually with her that night at the skating party.

The third defense witness was Cortney Winder, age 17. The Defendant is her mom's father's brother. She knows T.M. She had a conversation with T.M. at a friend, Krisa Robinson's house. Krisa's trailer is in the trailer park where the Defendant, T.M., and the witnesses live.

T.M. walked into this trailer unexpectedly. Courtney testified T.M. started talking. Courtney testified T.M. was not supposed to be in the same location as her, because of the difficulties between the respective families after the trial.

Courtney testified that T.M. said she wanted to be pregnant by age 15. T.M. said she liked to have sex with older men. She said she framed an innocent man in this case. Courtney then made T.M. leave the trailer.

Courtney testified that T.M. is related to Krisa's husband. The witness denied threatening T.M., but told her to leave. Courtney said she was not allowed to talk with T.M. after the trial. Krisa is age 19. Courtney, after talking with T.M., told her mother about the conversation.

The Commonwealth at the hearing of December 4, 2008, called T.M. to respond to the defense testimony. T.M. was age 14 at this time.

T.M. affirmed that her trial testimony about the Defendant's sexual actions was truthful. She affirmed she was raped by the Defendant.

She acknowledged that there was a time in the summer after the trial where she talked with Natasha and Elizabeth at the skating part. She was not sure who initiated the conversation. She testified that Natasha and Elizabeth were making statements that it was T.M.'s fault that the Defendant would be going to jail. T.M. claimed she was afraid of Natasha and Elizabeth.

She testified that after Elizabeth made statements about the situation being the fault of T.M., she (T.M.) then told Natasha and Elizabeth that she had lied at the trial and that the Defendant was not guilty. She told them someone

else did this to her. T.M. testified she said this because she was afraid of Natasha and Elizabeth.

T.M. testified she knows Courtney Winder and had talked to her when she ran into Courtney at Krisa's house. Krisa is the wife of T.M.'s cousin. On the day in question, T.M. went to visit Krisa and Courtney happened to be present at the home. Courtney told T.M. to leave the residence. T.M. told Courtney that it was not Courtney's house. T.M. acknowledged that she may have made a statement to Courtney at that time that the Defendant was innocent.

T.M. explained these statements in her testimony by stating she was afraid of the other girls. T.M. testified that threats have been made against her at school since the trial and that Courtney threatened to kill her if she didn't stop talking about Bill (the Defendant). T.M. testified that at Trout Pond Park she and Liz got into it. She claimed she is called names by other girls in school and that she had to be removed from the school because of these problems. T.M. explained that she made the statements to Natasha and Elizabeth about the Defendant being not guilty because they kept picking on her about her role at trial. T.M. felt she would be beaten up by other girls if she did not say these things.

T.M. reiterated in her testimony at the hearing on December 4, 2008, that she had testified truthfully at trial and that the Defendant in fact had committed the crimes as prior testified.

On January 23, 2009, the Court sentenced the Defendant to 7 ½ to 15 years for Rape of a Child. The Sentence for Involuntary Deviate Sexual

Intercourse also was 7 ½ to 15 years. These sentences were to be served consecutively for an aggregate term of 15 to 30 years. All other counts merged or were concurrent.

The Defendant was not found to be a sexually violent predator under Megan’s Law, but the Defendant was advised of his lifetime registration requirements under the Act.

The Defendant filed his Post-Sentence Motion on February 2, 2009.

DISCUSSION

WEIGHT AND SUFFICIENCY OF EVIDENCE

The Defendant does not raise the issues of weight or sufficiency of the evidence in his post-sentence motion. However, in his supporting letter brief of February 26, 2009 the Defendant, under Number I states, “The verdict did not conform to the evidence or weight of evidence.” In his one paragraph argument on this issue the Defendant alludes to his argument that the Defendant’s confession should not have been heard by the jury.

To the extent the Defendant is raising issues of weight and sufficiency of evidence, it is clear these issues are of no merit. The testimony of the young victim, if believed, would be sufficient to convict the Defendant, in and of itself. *See* 18 Pa. C.S.A. §3106. The victim’s testimony, the circumstantial evidence of her describing the long scar near the Defendant’s penis, and the Defendant’s confession to Trooper Barnhart clearly supports the verdict of the jury.

The Defendant’s Confession

The Defendant in his written motion to suppress the confession claims he “intimated” the need of an attorney when Trooper Barnhart questioned him. The Defendant claims, despite this, the Trooper continued to question him. Further, the Defendant claims his

statement to the Trooper was not voluntary, as he claims the statement was given “under severe duress.”

Trooper Barnhart testified that the Defendant did not ask for counsel at any time during his statement and she described him as being cooperative. This was a credibility issue to be made by the Court at the suppression hearing and the Court credited the testimony of Trooper Barnhart.

Further, the Defendant’s claim that the evidence shows that his statement was involuntarily made is not borne out by the evidence. The Defendant was not under arrest and he was free to leave. He voluntarily traveled to the interview with his wife. The entire duration of the questioning was from 3:25 p.m. to 4:57 p.m. The Defendant took a smoke break with Trooper Barnhart at one point during the encounter. At the end of the interview, the Defendant left and was not arrested until weeks later after the Trooper finished her investigation.

The only facts testified to by the Defendant in claiming duress or involuntary confession was the Defendant’s testimony that he was told by Trooper Barnhart that all he would get is ARD if he confessed to the crimes. He also testified that he was scared of Trooper Barnhart and that he scares easily. The Court believed Trooper Barnhart’s testimony that she did not make the statement that all the Defendant would get is ARD. Further, there is nothing in the testimony of the Defendant which would explain why a man in his fifties would confess to sexual contacts with an 11-year old child if this did not occur. The Defendant’s efforts in his written confession to blame the young victim as the sexual aggressor also would belie the Defendant’s claim that he told the Trooper only what she wanted to hear. *See also, Com. Ex. 1* which was signed by the Defendant and indicates the Defendant received no threats or promises.

The Court can see no legal error in denying the Defendant’s suppression motion and

submitting the issue of the voluntariness of the Defendant's statements to the jury.

The After-Discovered Evidence Issue

The most serious issue raised is the after-discovered evidence information that was the subject of the evidentiary hearing held on December 4, 2008.

Based on the testimony of Natasha Richardson, Elizabeth Hauck, Courtney Winder and T.M., it is clear that at some point after the trial in this case, T.M. made some statements which were inconsistent with her trial testimony.

T.M., however, offered explanation for her inconsistent statements. The essence of her explanation is that she resides in close proximity to the Defendant's family and she has been ostracized and subject to pressure and criticism both in her neighborhood and school. Things have become so bad that her parents apparently have removed her from the local school, and she now attends school elsewhere. In trying to relieve some of this pressure she made statements to friends and family members of the Defendant tending to exonerate the Defendant. This predicament is unfortunate, but understandable. It is believable to the Court that a youngster such as T.M. would feel some need to deflate the pressure on her as she did here.

Some of the anger directed towards T.M. was illustrated by Courtney Winder's testimony. When T.M. walked over to her cousin's house for a social visit, she was told by Courtney Winder, a relative of the Defendant, to leave her cousin's house.

To obtain relief based on after-discovered evidence, the Defendant must demonstrate that the evidence:

- 1) has been discovered after trial and could not have been obtained at or prior to the conclusion of trial by the exercise of due diligence;

- 2) is not merely corroborative or cumulative;
- 3) will not be used solely to impeach the creditability of a witness, and
- 4) is of such a nature and character that a different verdict will likely result if a new trial is granted.

Commonwealth v. Pagan, 597 Pa. 69, 106, 950 a.2d 270, 292, (Pa. 2008); *Commonwealth v. Randolph*, 582 Pa. 576, 587, 873 A.2d 1277, 1283 (Pa. 1005); *Commonwealth v. Mason*, 559 Pa. 500, 517, 741 A.2d 708, 717 (Pa. 1999); *Commonwealth v. McCracken*, 540 Pa. 541, 549, 659 a.2d 541, 545 (Pa. 1995); *Commonwealth v. Wilson*, 538 Pa. 485, 511, 649 A.2d 435, 448 (Pa. 1994); *cert. denied*, 516 US 850, 116 S. Ct. 145, 133 L.Ed 2d 91 (1995).

While prongs 1 and 2 of the aforementioned test would be met by the proposed defense testimony, prongs 3 and 4 of the test are not met. The testimony of the three proposed defense witnesses would solely be offered to attack the credibility of T.M.'s trial testimony. More importantly, the Court cannot say that the proposed after-discovered evidence is of such a nature and character that a different verdict will likely result if a new trial is granted. If T.M. were the only witness tying the Defendant to the crimes, a closer question would be presented. However, here there is a highly incriminating statement by the Defendant to Trooper Barnhart. The oral statement of the Defendant is backed up by *Com. Ex. I*, where the Defendant in his own writing answers yes to detailed accusations of his actions in regard to T.M. There is no evidence, but for the Defendant's bald assertion that the statement was made under duress, that would tend to lessen the impact of the testimony and evidence of his confession. Further, there is important circumstantial evidence of the Defendant's guilt apart from his admissions to the Trooper. The victim described a scar on the Defendant's scrotum which she would only have seen if the

Defendant exposed himself to her. The evidence at trial offers no other explanation for the victim's knowledge of the scar. The photograph of this scar, *Com. Ex. 2*, is persuasive corroboration of these allegations against the Defendant. In light of this evidence the Court cannot find that a different verdict would likely result if the after-discovered evidence were presented to a jury at a new trial.

In light of these facts, the Defendant's Post-Sentence Motion and Request for Dismissal or Grant of a New Trial must be denied.

Accordingly, the following is entered:

ORDER

AND NOW, this _____ day of April 2009, the Defendant's Post Sentence Motion, including a request for new trial based on after-discovered evidence is hereby DENIED.

By the Court,

Kenneth D. Brown, P. J.

cc: Melissa Kalas, Esquire
Anthony D. Miele, Esquire
Gary L. Weber, Esquire
Work file