

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA,** :  
 :  
 v. : **CR-1450-2008**  
 : **CRIMINAL DIVISION**  
**ADAM WOODRING,** :  
 **Defendant** :

**OPINION AND ORDER**

On September 8, 2009, a Tender Years Hearing under 42 Pa.C.S. § 5985.1 was held before this Court. At the time of the hearing, the Court took testimony from the child’s father’s girlfriend, Justine Felix, Joshua Eck and Steven Rice of Behavior Specialists, Inc., Ann Fegley from Children and Youth, and Detective William Weber formally of the Williamsport Bureau of Police. The child spoke to each of the witnesses about the alleged abuse.

For a statement to be admitted under the Tender Years Act, the statement “must possess sufficient indicia of reliability, as determined from the time, content, and circumstances of its making.” Commonwealth v. Garces, 82 Pa. D. & C. 178, 184 (Monroe Co., 2006) (quoting Commonwealth v. Fink, 791 A.2d 1235, 1248 (Pa. Super. Ct. 2001)). In determining reliability for purposes of the Tender Years Act, the Court should consider the following factors: “the spontaneity and consistent repetition of the statement(s); the mental state of the declarant; the use of terminology unexpected of a child of similar age; and the lack of a motive to fabricate.” Commonwealth v. Garces, 82 Pa. D. & C. at 184 (quoting Fidler v. Cunningham-Small, 871 A.2d 231, 235 (Pa. Super. Ct. 2005).

The Court finds the statements made by the child possess sufficient indicia of reliability. When relating the alleged abuse, the child made the same account of the abuse to each of the

witnesses. From the testimony of the witnesses the child's testimony appeared to be spontaneous rather than coerced. Further, the witnesses testified that the child used terminology that the Defendant used when abusing the child. Therefore, the Court finds the testimony of each of the witnesses possesses a sufficient indicia or reliability as required under the Tender Years Act.

Pennsylvania Law also states that statements otherwise admissible under the Tender Years Act are not admissible when the interview was carried out under the direction of the police and for purposes of investigation and potential prosecution. See In the Interest of S.R., 920 A.2d 1262 (Pa. Super. Ct. 2007). At the hearing, Fegley testified that she went to the child's home as part of an ongoing assessment where the child is the perpetrator. Following her interview with the child, Fegley referred the case to Weber. Weber testified that he spoke with the child on two occasions while preparing to charge the Defendant.

The Court finds that Fegley's testimony is not for the purpose of investigation and potential prosecution as she was interviewing the child as part of an ongoing assessment. However, while the Court finds Weber's testimony reliable, his testimony is not admissible as being carried out under the direction of the police and for purposes of investigation and potential prosecution.

**ORDER**

**AND NOW**, this 14<sup>th</sup> day of September 2009, upon consideration of the Commonwealth's Motion to Admit Certain Statements and after hearing, argument, and review of the applicable case law and statute, the Motion is GRANTED in part and DENIED in part. It is ORDERED and DIRECTED that the following statements made by the child to Justine Felix, Joshua Eck, Steven Rice, and Ann Fegley are admissible under the 42 Pa.C.S. § 5985.1. It is further ORDERED and DIRECTED that the statements made to Detective William Weber are not admissible under the Act.

By the Court,

Nancy L. Butts, Judge

xc: DA (MK)  
PD (RC)  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber, Esq. (LLA)