

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

**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-1364-2009**  
:   
**WILLIAM HAYDUK,** :   
**Defendant** :

**OPINION AND ORDER**

Before the Court is the Motion to Admit Certain Statements filed by the Commonwealth on July 9, 2010.

Defendant is charged with indecent assault, endangering the welfare of a child and corruption of the morals of a minor, related to allegedly sexually assaulting his four year old daughter, M.H.

Two hearings were held in connection with the Commonwealth's Motion. The first hearing was held on September 27, 2010 and the second hearing was held on December 8, 2010.

Melissa Hummel testified first on behalf of the Commonwealth. She is employed by the Child's Advocacy Center as a forensic interviewer. On August 18, 2009, she interviewed the child. The interview was video recorded and the video was marked as a Commonwealth Exhibit and viewed by the Court. Ms. Hummel testified that in interviewing the child, she utilized forensic techniques in order to ensure reliability.

The videotape interview depicted the child meeting with Ms. Hummel in an interview room. In response to open-ended questions, the child indicated to Ms. Hummel that the Defendant touched her "butt" with his hand. She indicated it felt "very bad." She demonstrated to Ms. Hummel where the Defendant allegedly touched her. Utilizing an anatomically correct doll, the child illustrated where she was touched by the Defendant.

Jennifer Burr testified on behalf of the Commonwealth on December 8, 2010. She is employed by Lycoming County Children and Youth Services in its assessment unit. On August 12, 2009, she met with the child for the purpose of assessing the child's safety. She conducted a forensic interview with the child.

The interview was very brief. She met with the child along with another Children and Youth worker at the child's home. She explained to the child who she was. She asked the child if the child knew why they were at her home at which time the child explained that the Defendant had touched her. When Ms. Burr asked about the touch, the child lifted her skirt and rubbed her vaginal area indicating that it made her feel bad and she did not like it. She further indicated that Defendant told her not to tell her mom. The child then indicated she wanted to go and play at which time the interview ended. According to Ms. Burr, the child did not say anything that appeared to be inconsistent with how a child her age would speak.

The Commonwealth seeks to introduce the child's statements to Ms. Hummel and Ms. Burr under 42 Pa. C.S.A. § 5985.1. This statute states that:

An out-of-court statement by a child victim or witness, who at the time of the statement was 12 years of age or younger, describing any of the offenses enumerated in 18 Pa. C.S. Ch. 25 (relating to criminal homicide), 27 (relating to assault), 29 (relating to kidnapping), 31 (relating to sexual offenses), 35 (relating to burglary and other criminal intrusions) and 37 (relating to robbery), not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if: (1) the court finds, in an in camera hearing, that the evidence is relevant and that the time, content and circumstances of the statement provide sufficient indicia of reliability; and (2) the child either: (i) testifies at the proceedings, or (ii) is unavailable as a witness.

42 Pa. C.S.A. § 5985.1 (a).

Factors the Court should consider in determining the reliability of the statement should include, but are not limited to: the spontaneity of the statement, the consistent repetition

of the statement, the mental state of the declarant, the use of terminology unexpected of a child of similar age, the lack of motive to fabricate, and the use of non-leading questions by the individual questioning or speaking with the declarant. See Commonwealth v. Hunter, 868 A.2d 498, 510 (Pa. Super. 2005) (discussing all of the above factors except the use of non-leading questions); Commonwealth v. Lukowich, 875 A.2d 1169, 1173 (Pa. Super. 2005) (noting the detective avoided leading questions and deliberately limited his exposure to sources of information from other individuals, such as OCY caseworkers and physicians, who had contact with the child prior to his interviewing her).

The Court finds the child's statements to the witnesses are admissible under the Tender Years Act, provided the child testifies at trial. The child is under 12 years of age and was so at the time the statements were made. The statements describe indecent assault, which is a crime under Ch. 31 of the Crimes Code. The statements are relevant and the time, content and circumstances provide sufficient indicia of reliability for several reasons. The information from third parties that the interviewers had prior to speaking with the child was limited. The interviewers asked open-ended, general questions and avoided leading the child. The child's statements were consistent with each other. There is nothing in the record to indicate the child had a motive to fabricate any allegations against the Defendant. The child did not use terminology unexpected of a child of a similar age. There is nothing to indicate that the mental state of the child was somehow impacted such that she was unable to provide reliable statements. Finally, the circumstances of the interview, the demeanor of the child, the demeanor of the interviewers and the content of the question and answer exchange are all indicative of reliability.

**ORDER**

AND NOW, this \_\_\_\_ day of December 2010, the Court **GRANTS** the Commonwealth's Motion with respect to the statements the child made to Melissa Hummel and Jennifer Burr. The statements of the child made to the aforementioned witnessed are ruled admissible as substantive evidence under 42 Pa. C.S. 5985.1 assuming the child testifies at the trial, or is unavailable as a witness.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: District Attorney (KO)  
Public Defender (WM)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File