IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-743-2009**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
LEON DALE BODLE,	**:**	
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 issued on June 29, 2010 and docketed on July 6, 2010. The relevant facts follow.

The police began investigating Appellant Leon Dale Bodle when the parents of an eleven year old girl informed them that Appellant, who had been the girl's substitute teacher in the past, began sending her instant messages that the parents believed were inappropriate. No charges were filed against Appellant stemming from his contact with this eleven year old girl; however, the police spoke to other female students and former students of Appellant about his interactions with them. The police also interviewed Appellant and seized two computers that he used. On the computers, the police discovered numerous images of child pornography. As a result of the investigation by the police, the Commonwealth filed an Information charging Appellant with solicitation of involuntary deviate sexual intercourse with a child less than 16 years old, unlawful communication with a minor, two counts of disseminating explicit sexual materials to a minor, twenty seven counts of sexual abuse of children related to possession of child pornography, four counts of

criminal use of communication facility, and six counts of corruption of a minor.

A jury trial was held March 2-4, 2010. The jury found Appellant guilty of all of the charges except two counts of sexual abuse of children (Counts 9 and 18) and one count of corruption of a minor.

On June 29, 2010, the Court held a hearing to determine whether Appellant was a sexually violent predator in accordance with Pennsylvania's Megan's Law, 42 Pa.C.S.A. §9795.1 et seq. Based on the report and testimony of the Commonwealth's expert, C. Townsend Velkoff, the Court found Appellant to be a sexually violent predator as that term of art is defined in Pennsylvania's Megan's Law, 42 Pa.C.S.A. §9792. The Court informed Appellant of his registration requirements under Megan's Law then proceeded to sentence Appellant to an aggregate sentence of 10 to 20 years incarceration in a state correctional institution followed by a consecutive 10 year term of probation.

No post sentence motions were filed, but Appellant filed a timely notice of appeal.

In his first issue, Appellant asserts that the Court erred in denying his suppression motion. The undersigned did not handle any suppression motion in this case. In reviewing the record in this case, it does not appear that Appellant ever filed a motion to suppress in this case. The Court notes that Appellant has two other cases (CR-1997-2008 and CR-2072-2008). A suppression motion was filed in these other cases. Since a motion was never filed in this case, the Court questions whether any suppression issue has been preserved in this case. In the event that the Appellate Courts disagree, the Court would rely on the Opinion and Order issued by the Honorable Nancy L. Butts on September 16, 2009 in

case numbers CR-1997-2008 and CR-2072-2008, a copy of which is attached to the original and one copy of this Opinion for the benefit of the Appellate Courts.

Appellant next asserts that the Court erred in allowing Commonwealth's Exhibit No. 71 to be submitted to the jury where the exhibit was altered by the prosecutor prior to being sent to the jury deliberation room. Unfortunately for Appellant, the record does not support his contention.

The Court has no independent recollection whether this particular exhibit was sent out to the jury or not. Although defense counsel objected to the admission of Exhibit 71 into evidence (see N.T., March 4, 2010, at pp. 29-32), there is nothing in the record to indicate that this exhibit was sent out to the jury or that Appellant's counsel preserved this issue by making a timely objection to Exhibit 71 being sent out to the jury. In fact, the record indicates that the attorney for the Commonwealth did not want Exhibit 71 to go out with the jury and defense counsel objected to Exhibit 70, which was the written statement of witness Devon Bodle, not the diagram listing screen names and email addresses that was marked Exhibit 71. N.T., March 4, 2010, p. 32; N.T., March 4, 2010 (Afternoon session), p. 29. Since no timely objection was made, this issue is waived. Pa.R.App.P. 302(a)("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal'); see also Commonwealth v. Cousar, 593 Pa 204, 928 A.2d 1025, 1043 (2007). In the alternative, this issue lacks merit because the record does not show that this exhibit was sent out with the jury during their deliberations.

Appellant contends that the evidence was insufficient to support the jury's verdicts on the sexual abuse of children charges for possession of child pornography because the Commonwealth failed to show that: (1) Appellant knowingly or intentionally possessed the pictures; (2) the pictures were not altered; and (3) the children were not suffering from delayed puberty. The Court cannot agree.

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, 582 Pa. 52, 868 A.2d 431, 435 (2005); Commonwealth v. Murphy, 577 Pa. 275, 844 A.2d 1228, 1233 (2004). Circumstantial evidence can be as reliable and persuasive as eyewitness testimony and may be of sufficient quantity and quality to establish guilt beyond a reasonable doubt. Commonwealth v. Tedford, 523 Pa. 305, 567 A.2d 610, 618 (1989)(citations omitted).

To convict Appellant of possessing child pornography, the Commonwealth had to prove the following elements beyond a reasonable doubt: (1) that the defendant possessed or controlled a photograph, film, videotape or computer depiction; (2) that the item depicted a child engaging in a prohibited sexual act or the simulation of such an act; (3) the child was at the time under the age of 18; and (4) the defendant did so knowingly. Pa.SSJI (Crim) 15.6312C.[1]

[1] These are the elements from the suggested standard jury instructions applicable to the child pornography prior to the amendments that took effect September 14, 2009.

Appellant's issues challenge the sufficiency of the evidence to establish the third and fourth elements of this offense. Appellant first asserts that the Commonwealth failed to establish that he knowingly possessed child pornography. The Court cannot agree.

For a defendant to have acted knowingly, he must have been aware of what he possessed or controlled, the nature of its contents and that the child involved was under 18. Pa.SSJI (Crim) 15.6312C. The Commonwealth presented evidence from Detective Christopher Kriner that he and Special Agent Kyle of the FBI went to Appellant's residence on July 21, 2008 to speak with him. Detective Kriner testified that Appellant admitted to them that he had searched teen and pre-teen pornographic websites and chatted with people he thought were young children. Appellant further stated there would be pictures on his computer and short movie clips of children ranging in age between 3 and 17 years old. Appellant also asked for the opportunity to help himself out by getting in contact with people who he had spoken to online that he believed were other child predators. N.T., March 3, 2010 (afternoon), at pp. 8-11. On the same date that Appellant spoke to Detective Kriner and Special Agent Kyle, he disconnected his high speed internet service. Id. at p. 55. Based on this evidence the jury could find that Appellant knowingly possessed or controlled the child pornography found on his computers. See Commonwealth v. Diodoro, 601 Pa. 6, 970 A.2d 1100, 1108 (2009)("accessing and viewing child pornography over the internet constitutes control over such pornography under 18 Pa.C.S. §6312(d).").

Appellant also contends the Commonwealth did not establish that the children depicted in the images were under the age of 18 because the pictures could have been altered or the individuals depicted in the images could have been over the age of 18 but suffering

from delayed puberty. The sexual abuse of children statute that criminalizes the possession or control of child pornography expressly states that competent expert testimony is sufficient to establish the age of the alleged child. 18 Pa.C.S.A. §6312(e). The Commonwealth presented competent expert testimony from Dr. Patrick Bruno to show that the images depicted children under the age of 18. See N.T., March 2-3, 2010, at pp. 130-147. Dr. Bruno testified that most of the pictures were of children under the age of 12. Id. at pp. 134-142. He further explained that you can determine the relative age range of children through their physical appearance, including size of genitals, breast development in females, distribution of pubic hair, and overall body features. Id. at 142-143. He further explained that Tanner Stage one in males is represented by no pubic hair, a very pre-adolescent penis and testes, and involves boys less than 11 years of age and in females is represented by no pubic hair and no breast tissue and involves girls less than ten years of age. Id. at p. 143. The age range for boys in Tanner Stage two is 13, plus or minus one and for girls is 11.7 years of age plus or minus one. Tanner Stage three for females is 13.2 years of age plus or minus two. Dr. Bruno explained that only one or two of the images represented females at Tanner Stage three.

When defense counsel asked Dr. Bruno about delayed puberty and diseases that can affect the onset of puberty, Dr. Bruno explained that those diseases and conditions were rare and usually the delay would be within a relative range. Id. at p. 145-146. Furthermore, only one or two of the photographs were Tanner Stage three females, that typically is a female of 13 years old but the relative range would be plus or minus two (or 11 to 15 years of age), which is "still below way below 18 years of age." Id. at 145.

Defense counsel also asked Dr. Bruno if someone doctored the photographs to reduce the size of the breasts or reduce or remove pubic hair whether that would affect his opinion about the age of the individual depicted in the photograph. Dr. Bruno explained that his opinion was based not only on the genitalia, but also the general body musculature and habitus. Id. at 147. Furthermore, for most of these photographs, the jury could look at them and tell that the child was less than 18 years of age. Id.

Based on all the evidence presented, including the photographs, the testimony of Detective Kriner and the testimony of Dr. Bruno, the Court finds the evidence was sufficient to show that the individuals depicted in the images were children under the age of 18 and Appellant knowingly possessed or controlled the photographs.

In his third and fifth issues, Appellant contends the verdicts of guilty on the charges of sexual abuse of children were against the weight of the evidence. In order to preserve any claim that a verdict is against the weight of the evidence, an appellant must raise it "with the trial judge in a motion for a new trial: (1) orally, on the record, at any time before sentencing; (2) in a written motion at any time before sentencing; or (3) in a post-sentence motion." Pa.R.Cr.P. 607 (A); see also Commonwealth v. Holley, 945 A.2d 241, 245-46 (Pa.Super. 2008), appeal denied, 959 A.2d 928 (Pa. 2008); Commonwealth v. Robinson, 817 A.2d 1153, 1162 (Pa.Super. 2003). Since Appellant never raised these weight issues before the trial judge, these issues are waived.

In the alternative, the Court finds the verdicts were not 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 (citation omitted). The evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court. Id.

The jury's verdict did not shock the Court's conscience. Appellant made statements to the police that he visited teen and pre-teen websites and that images of children ranging from age 3 to 17 would be found on his computers. For each image that the jury found Appellant guilty of possessing or controlling, Dr. Bruno testified that the individual depicted therein was a child under the age of 18 years old. In fact, Detective Kriner testified he selected the pictures that were most obviously child pornography. This testimony was supported by the images that were introduced into evidence and by Dr. Bruno's testimony that most of the images depicted children less than 12 years old. The jury was free to accept all, part or none of the evidence presented. Commonwealth v. Spotz, 552 Pa. 499, 510, 716 A.2d 580, 585 (1998); Commonwealth v. Gibson, 553 Pa. 648, 664, 720 A.2d 473, 480 (1998). The jury accepted the Commonwealth's evidence, which was their prerogative.

Appellant next asserts that the prosecutor committed prosecutorial misconduct in her opening remarks when she referred to Appellant as a child predator, thereby giving a personal belief as to the guilt of the defendant. While it is true that the prosecutor referred to Appellant as a child predator in her opening remarks, defense counsel never objected. N.T., March 2, 2010 (opening statements of counsel), p. 2. Since no timely objection was made, this issue is waived. Pa.R.App.P. 302(a)("Issues not raised in the lower court are waived and

cannot be raised for the first time on appeal'); see also Commonwealth v. Cousar, 593 Pa 204, 928 A.2d 1025, 1043 (2007).

Appellant acknowledges in his statement of errors on appeal that counsel failed to preserve this issue and claims his counsel was ineffective for failing to object to the prosecutor's remarks. This claim of ineffectiveness cannot be raised for the first time on appeal, but rather must wait to be properly litigated in a proceeding under the Post Conviction Relief Act (PCRA). Commonwealth v. Grant, 572 Pa. 48, 813 A.2d 726, 738 (2002)(a defendant "should wait to raise claims of ineffective assistance of trial counsel until collateral review").

Appellant contends the Court erred in denying his request for a mistrial "where the jury saw the First Assistant District Attorney in the courtroom where that person had been called for jury duty and had been in the Juror's Lounge with the jurors."

During the course of the trial in this case, there were various spectators in the courtroom. One of the spectators was the First Assistant District Attorney, Kenneth Osokow. N.T., March 4, 2010, at pp. 13-14. Mr. Osokow did not consult with or even speak to the prosecuting attorney in the presence of the jury. Id. at 14. On the third day of trial, Mr. Osokow was in the Jury Lounge as a juror in a civil case before another judge. Id. at 14. All the jurors initially report to the Jury Lounge before being taken to the courtroom where their case will be tried.[2] It was the Court's understanding that Mr. Osokow did not speak to any of the jurors in this case, but just sat at the back of the Jury Lounge. Id. at 20. The Court also

[2] This allows court staff to ensure that all the jurors are present and gives the jurors an opportunity have a cup of coffee or tea.

noted that the civil jury selection involving Mr. Osokow occurred on the first day of jury selections and the jury selection in this case occurred on the third day of jury selections. Id. at 23.

"Whether to grant the extreme remedy of a mistrial is a matter falling into the discretion of the trial court. 'A trial court need only grant a mistrial where the alleged prejudicial event may reasonably be said to deprive the defendant of a fair and impartial trial.'" Commonwealth v. Boczkowski, 577 Pa. 421, 846 A.2d 75, 94 (2004), quoting Commonwealth v. Jones, 542 Pa. 464, 688 A.2d 491, 503 (1995).

The Court denied the defense request for a mistrial because the Court did not believe that Appellant was deprived a fair and impartial trial by the presence of Mr. Osokow in the courtroom or in the Jury Lounge. There was no evidence that Mr. Osokow spoke to any of the jurors in this case or that the jurors in this case even knew that Mr. Osokow was associated with the District Attorney's office. The Court offered to permit defense counsel to voir dire the jury or any of the tipstaves on this issue, but defense counsel declined because he did not want to highlight it. N.T., March 4, 2010, at pp. 16-17, 21. Under all the circumstances of this case, the Court found a mistrial was not warranted.

Appellant next alleges that the evidence at trial was insufficient to sustain the verdict of guilty on Count 41 corruption of minors, where the evidence showed he talked about pets and other harmless topics with the victim.

Count 41 related to Appellant's contacts with C.P., a thirteen year old girl in his class at Sugar Valley Charter School. A transcript of instant messages sent between Appellant, whose screen name was RiverDale535, and C.P., whose screen name was

DoubleTrouble383, was introduced into evidence as Commonwealth Exhibit 42. The transcript and C.P.'s testimony regarding this conversation show that Appellant spoke to her about more than just pets and other harmless topics. Appellant told C.P that he thought the teacher who was replacing him while he was suspended was a lesbian and the school principal was bisexual. He used inappropriate language in his instant messages, such as bullshit, pissed, screwed and shit. When he said he hoped she didn't mind him swearing, C.P. indicated it seemed odd to have her teacher talk to her that way. Appellant also told her she could call him Dale, but she said, "No Mr. Bodle to me." C.P. further testified that Appellant was always putting his hands on her shoulders in class and it made her uncomfortable. Appellant also told her the following joke in school: "What do you call 99 rednecks having a family reunion? An orgy."

The offense of corruption of minors is defined in relevant part as follows: "Whoever, being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age …commits a misdemeanor of the first degree." 18 Pa.C.S.A. §6301. The Pennsylvania appellate courts have defined acts that corrupt or tend to corrupt in various manners. In the past, the courts held that tending to corrupt the morals of a minor contemplated "conduct toward a child which tends to produce, encourage or continue delinquent conduct of the child." Commonwealth v. Rodriguez, 296 Pa. Super. 349, 442 A.2d 803, 806 (1982). More recently, the Pennsylvania Superior Court stated: "Actions that tend to corrupt the morals of a minor are those that 'would offend the common sense of the community and the sense of decency, propriety and morality which most people entertain.'" Commonwealth v. Snyder, 870 A.2d 336, 351 (Pa. Super. 2005),

quoting Commonwealth v. Dewalt, 752 A.2d 915, 918 (Pa. Super. 2000). The "gravamen of the statute is those actions that would threaten the welfare and security of minors." PaSSJI (Crim) 15.6301 Advisory Committee Note, citing Commonwealth v. Decker, 698 A.2d 99 (Pa. Super. 1997).

The Court has searched for cases sustaining a conviction for corruption of the morals of a minor where the underlying conduct related to off-color language and jokes that did not involve the F-word, but has found none. While the Court certainly does not condone a teacher speaking to a child about the sexual orientation of other school personnel, telling off-color jokes or utilizing words that some people might consider swear words, the Court does not know that the comments in question rise to the level of criminal conduct.

In this case there is no evidence that C.P. was actually corrupted by Appellant's words. If the standard for conduct tending to corrupt a child is that which tends to produce, or encourage, or continue delinquent conduct as set forth in Rodriguez, supra, there is no evidence Appellant encouraged C.P. to engage in delinquent conduct or that C.P. ever engaged in delinquent conduct.

The Court also questions whether the conduct would offend the sense of decency, propriety and morality that most people entertain. Although the Court can remember a time when children would get their mouths washed out with soap for uttering "swear" words, it seems that in the last several decades, society has become more accepting of coarse, and even foul-mouthed, language. Even when children were being reprimanded for the use of "swear" words, the adults from whom they learned these words were not being charged with corruption of the child's morals to this Court's knowledge. If off-color

language is sufficient to constitute corruption of minors, how many adults at children's sporting events would be subject to prosecution for things said to referees, umpires, coaches and the like?

In searching for cases on this issue, the Court came across a case where the appellate court found the evidence was insufficient to support a conviction for corruption, where the conduct arguably could be considered more egregious than Appellant's conduct in this case. In Rodriguez, supra., a seven-year-old girl testified that while she was seated in an alley near her home, she saw the defendant enter the alley, face the wall of a building, take his penis out of his pants, shake it, then turn his head toward the girl and put his finger vertically over his mouth as if to suggest silence or request the child to say nothing. The Commonwealth charged the defendant with indecent exposure and corruption of the morals of a minor, and the defendant was found guilty of both charges. On appeal, the Pennsylvania Superior Court found the evidence was insufficient to sustain either conviction. The Court noted the evidence was as consistent with urination as with a sexual act.

If exposing one's genitals for purposes of urinating in public in a place where a small child is visibly present is insufficient to sustain a conviction for corruption of a minor, the Court questions whether Appellant's conduct in relation to count 41 is sufficient. One would think urinating in public in the presence of a child, especially a young child of the opposite sex, is more offensive to the sense of decency, propriety and morality of most people than Appellant's off-color language and jokes. If Appellant had filed a post sentence motion, the Court probably would have granted him relief and vacated the sentence of two years consecutive probation on Count 41.

Appellant also contends the verdict on Count 41 corruption of minors was against the weight of the evidence. In order to preserve any claim that a verdict is against the weight of the evidence, an appellant must raise it with the trial judge in a motion for a new trial: either orally, on the record, prior to sentencing; in a written motion prior to sentencing; or in a post-sentence motion. Pa.R.Cr.P. 607 (A); see also Commonwealth v. Holley, 945 A.2d 241, 245-46 (Pa. Super. 2008), appeal denied, 959 A.2d 928 (Pa. 2008); Commonwealth v. Robinson, 817 A.2d 1153, 1162 (Pa. Super. 2003). Since Appellant never raised this issue before the trial judge, it is waived.

Appellant next asserts the Court erred in allowing the Commonwealth to play a portion of Appellant's taped statement when a witness, Devin Bodle, was testifying. The Court cannot agree.

In his taped statement, Appellant indicated that he was concerned about his nephew Devin. Appellant told the police that Devin used his computer a lot. Appellant further stated that Devin was good at hacking computers and he can send stuff to his friends' computers and make it look like it came from another computer all together. He also said Devin told him he got warned by the FBI once about it. Appellant also initially claimed he did not download pornography on his computer; he deleted some files but he did not know how they got on his computer. The implication or inference from these statements was that Devin could have been responsible for the images that were found on Appellant's computers. The Commonwealth called Devin Bodle as a witness and played the portion of Appellant's statement that related to Devin using his computer and being warned by the FBI. The Commonwealth then asked the witness questions about the accuracy of Appellant's

statements.

The Court does not believe it was error for it to permit the Commonwealth to play that portion of the tape. The witness was not present in the courtroom when the Commonwealth played the entire tape for the jury. In order to question the witness about Appellant's statements, the Commonwealth had to make the witness aware of what Appellant said. If the Commonwealth had simply asked the witness questions without playing the tape or shown the witness the transcript of the tape, the defense could have argued that the transcript or Commonwealth's paraphrasing of what was contained in the statement was inaccurate. What better way to ensure there was no error in what Appellant said to the police about the witness than to let the witness hear the tape for himself?

Appellant also was not prejudiced by the jury hearing this portion of the tape. Since the jury already heard the entire tape, the jury was aware of the context in which Appellant's statements were made. Furthermore, Appellant's defense at trial and in this appeal is that he did not knowingly possess the images of child pornography found on his computer. The portion of the taped statement played for the jury was consistent with this defense. The jury twice got to hear Appellant say that other people used his computers as a possible explanation for the pornography found thereon without having to take the witness stand and be cross-examined.

Appellant asserts the Court erred in finding that he was a sexually violent predator, because there was no evidence that he was violent or had any violent propensities or engaged in any violent behavior toward any of the victims. Appellant also contends the statue is unconstitutional to the extent it allows the Court to find a person to be a sexually

violent predator based solely on the charges against him and to the extent it allows the Court to find a person to be a sexually violent predator without finding that the person suffers from a mental abnormality that is recognized in the mental health paradigm. The Court cannot agree.

"Sexually violent predator" is a term of art defined by statute as a person "who has been convicted of a sexually violent offense as set forth in section 9795.1 (relating to registration) and who is determined to be a sexually violent predator under section 9795.4 (relating to assessments) due to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses." 42 Pa.C.S.A. §9792. This definition does not require that a person be violent or display violent tendencies. It requires that the individual be convicted of a "**sexually violent offense"** and suffer a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

A "sexually violent offense" is any criminal offense specified in section 9795.1. 42 Pa.C.S.A.§9792. Appellant was convicted of soliciting involuntary deviate sexual intercourse, unlawful contact or communication with a minor and twenty-seven counts of sexual abuse of children related to the possession of child pornography, all of which are offenses listed in 42 Pa.C.S.A. §9795.1.

The Court also did not find Appellant to be a sexually violent predator based solely on the charges against him. Pennsylvania's Megan's Law provides a procedure for determining whether an offender is a sexually violent predator. Once an offender is convicted of a sexually violent offense, the Court orders the offender to be assessed by a

member of the Sexual Offender Assessment Board (SOAB), who examines numerous factors. C. Townsend Velkoff was the SOAB member who assessed Appellant. The Commonwealth presented testimony from Dr. Velkoff and admitted his report into evidence as Commonwealth's Exhibit 1 at the Megan's Law hearing held on June 29, 2010. In his report, Dr. Velkoff examined all the statutory factors and reached a conclusion to a reasonable degree of professional certainty that Appellant met the criteria to be classified as a sexually violent predator. Contrary to Appellant's assertions, he was not found to be a sexually violent predator solely due to his conviction of a sexually violent offense. Dr. Velkoff testified that Appellant suffered from the mental abnormality Paraphilia Not Otherwise Specified (NOS), a condition described in the text revision of the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) published by the American Psychiatric Association. See N.T., June 29, 2010, at pp. 7-9; Commonwealth (Megan's Law Hearing) Exhibit 1, pp. 7-8. Due to this mental abnormality, Appellant "has a significant likelihood of reoffending." Commonwealth (Megan's Law Hearing) Exhibit 1, p.8. Dr. Velkoff also noted some of the facts in this case that showed Appellant's predatory behavior. Id. at pp. 8-9. Thus, it is clear from the record in this case that Appellant was found to be a sexually violent predator not only because he was found guilty of a sexually violent offense, but also because he suffers from a mental abnormality that makes him likely to engage in predatory sexually violent offenses.

Appellant's final argument that the statute is unconstitutional because it does not required a diagnosis recognized in the mental health paradigm also lacks merit. The Pennsylvania Supreme Court has found that the sexually violent predator assessment need

not meet clinical diagnostic norms. See Commonwealth v. Lee, 594 Pa. 266, 935 A.2d 865, 884-885 (Pa. 2007)("our ruling in Dengler in many respects can be read to have blessed as sufficient the 'exhaustive list of factors' Megan's Law II sets forth to guide an SOAB assessor's determination as to whether an offender is an SVP"); Commonwealth v. Dengler, 586 Pa. 54, 890 A.2d 372, 383 (Pa. 2005)("The statute does not require proof of a standard of diagnosis that is commonly found and/or accepted in a mental health diagnostic paradigm").

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: Mary Kilgus, Esquire
James Protasio, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)