IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWEALTH OF PENNSYLVANIA	:	NO: CR-1997-2008; 2072-2008
vs.	:	
LEON BODLE	:	

O R D E R
Issued Pursuant to Pa.R.A.P. 1925(b)

On December 5 and 6, 2011 a jury case was held for the above-captioned docket numbers. Following trial, the jury entered a verdict finding the Defendant guilty of two counts each of Criminal Solicitation, Obscene and Other Sexual Materials, Unlawful Contact or Communication With Minor, Indecent Exposure, and Corruption of Minors. The Defendant was sentenced on April 6, 2011 to an aggregate sentence, the minimum of which was 242 months and the maximum 484 months. No post-sentence motions were filed.

On May 5, 2011 the Defendant filed a Notice of Appeal with the Superior Court, appealing only the judgment of sentence entered on April 6, 2011. In his Statement of Matters Complained of on Appeal the Defendant contends that the trial court erred in seven (7) respects. These are as follows:

1. The Court erred in granting the oral Motion to Amend the Information to change the date of the alleged crimes without a hearing on the matter denying the Due Process rights of the Defendant.

2. The Court erred in denying the defense Motion to Dismiss made at the end of the Commonwealth's case based on the failure to show that the crimes were committed during the time frame set forth in the Information, as amended.

3. The Court erred in allowing the Commonwealth to introduce evidence from an inmate concerning alleged statements made by the Defendant concerning a sex club where the Commonwealth failed to give proper notice and the statements were not relevant and the prejudice outweighed the probative value.

4. The Court erred in allowing the Commonwealth to introduce evidence at trial that the Defendant's computer contained pornographic images.

5. The verdicts of guilty on the charges were against the weight of the evidence in that the Commonwealth failed to show that the crimes were committed during the time frame set forth in the Information, as amended.

6. The evidence at trial was insufficient to sustain the verdicts of guilty on the charges in that the Commonwealth failed to show that the crimes were committed during the time frame set forth in the Information, as amended.

7. The Court erred in finding that the Defendant was a sexually violent predator.

The Defendant's first claim relates to this Court permitting the Commonwealth to amend the Information at the time of trial, by changing the dates of the alleged crimes. Pa.R.Crim.P. 564 provides as follows:

> The court may allow an information to be amended when there is some defect in form, the description of the offense(s), the description of any person or any property, or the date charged, provided the information as amended does not charge an additional or different offense. Upon amendment, the court may grant such postponement of trial or other relief as is necessary in the interests of justice.

As the rules of criminal procedure clearly permit the actions taken by this Court, this Court did not err in granting the Commonwealth's Information at the time of trial.

The Defendant's third claim involve this Court's rulings which permitted the Commonwealth to introduce evidence at trial. The admission or exclusion of evidence "is a matter squarely within the discretion of the trial court." Commonwealth v. Schwartz, 615 A.2d 350, 359 (Pa.Super. 1992). A trial court's

ruling on admissibility will not be overturned absent an abuse of discretion. Id. In determining admissibility, the trial court is to decide whether evidence is relevant, and if so, whether its probative value is outweighed by its prejudicial impact. Id. The Defendant first asserts that this Court erred by allowing the Commonwealth to introduce evidence from an inmate concerning alleged statements made by the Defendant concerning a "sex club".

On November 23, 2010 the Commonwealth filed a Motion to Preclude Evidence. On November 24, 2010 the Commonwealth filed a Notice pursuant to Pa.R.E. 404(b). On November 30, 2010 the Commonwealth filed a Motion to Admit Bad Acts. Argument was held on all outstanding issues raised on December 3, 2010. Following argument, this Court entered an Order disposing of all of the issues presented. Specifically with regard to statements made by the Defendant regarding a "sex club" this Court held:

> Statements made by the Defendant to inmate 3, however, that he had a "sex club" when he lived on New Lawn and that the kids in the neighborhood were always at his house, will be admitted at trial. As one or more of the alleged victims in the present action have indicated that the Defendant asked them to join his "sex club" the probative value of such evidence outweighs any prejudicial effect. These admissions clearly reflect Defendant's state of mind, plan or intent. Accordingly, the evidence set forth in Number 4 of the Commonwealth's Notice will be admitted at trial. (Order, Dec. 3, 2010, p. 4).

As this Court clearly weighed the probative value of the proferred evidence with the prejudicial impact of the admission of such testimony, this Court did not abuse its discretion.

The Defendant's final issue raised relates to this Court's finding that the Defendant is a sexually violent predator. On March 15, 2011 this Court entered an Order re-scheduling the Defendant's sentencing, as well as the Megan's Law hearing related to that sentencing for April 6, 2011. As set forth in this Court's Order dated March 15, 2011 the parties agreed at that time that Mr. Velkoff was a qualified expert and that his report should be admitted. The parties further agreed that due to the similarity of a previous Megan's Law hearing at Criminal Docket No. 743-2009, which included cross-examination by Defendant's counsel, James Protasio, the transcript from the previous Megan's Law hearing would be admitted into evidence, with opportunity for either the Commonwealth or the Defense to present additional Megan's Law testimony on April 6, 2011.

Megan's Law II provides that the trial court "shall determine whether the Commonwealth has proved by clear and convincing evidence that the individual is a sexually violent predator." 42 Pa.C.S.A. § 9795.4(e)(3). To deem an individual a sexually violent predator, the Commonwealth must first show that he "has been convicted of a sexually violent offense as set forth in section 9795.1. 42 Pa.C.S.A. § 9792. In the case at bar, the Defendant was found guilty of two counts each of Obscene and Other Sexual Materials and Unlawful Communication with a Minor. The Defendant was convicted under Docket No. CR-2072-2008 for Criminal Solicitation for soliciting sexual abuse of children under 18 Pa.C.S.A. §6312A Sexual Abuse of Children and under Docket No. CR-1997-2008 for Criminal Solicitation for soliciting Involuntary Deviate Sexual Intercourse under 18 Pa.C.S.A. § 3123. Thus, this element was clearly satisfied. Secondly, the Commonwealth must show that the

individual has "a mental abnormality or personality disorder that makes [him] likely to engage in predatory sexually violent offenses." 42 Pa.C.S.A. § 9792. Factors to be considered in making the assessment include facts involving the current offense, any prior offense history, characteristics of the Defendant, and factors that are supported in a sexual offender assessment field as criteria reasonably related to the risk of re-offense. 42 Pa.C.S.A. § 9795.4(b).

As set forth above, the parties agreed that Mr. Townsend Velkoff was a qualified expert. Mr. Velkoff's assessment report included a detailed review of information regarding the current offenses, the Defendant's history of sexual offenses, characteristics of the Defendant, and factors that are supported in a sexual offender reassessment field as criteria reasonably related to the risk of re-offense. Following a review of all the requisite criteria, Mr. Townsend concluded that the Defendant displayed several factors that are related to a re-offense, specifically the fact that he victimized multiple prepubescent children, and that he had male victims, which is associated with a higher risk of re-offense. Mr. Townsend concluded that the Defendant had a congenital or acquired 'condition' which is the impetus of sexual offending, specifically Paraphilia NOS, a lifetime condition. The predatory nature of the Defendant's actions was also reviewed, which included his cultivation of relationships with children in his neighborhood, using games to get them to expose themselves, and telling them he had a "sex club" in order to coerce his victims into wanting to be included in a special group. Mr. Townsend concluded within a reasonable degree of professional certainty that the Defendant met the criteria to be classified as a Sexually Violent Predator under the Act.

Following a hearing and a review of the transcript from the previous Megan's Law hearing, this Court entered an Order on April 6, 2011 finding Mr. Bodle to be a sexually violent predator. In reaching this conclusion, this Court held as follows:

> The Court finds the testimony and report of Mr. Velkoff to be credible and believes that such report does constitute clear and convincing evidence of the predatory nature behavior and the risk of reoffending presented by Mr. Velkoff.

As the testimony presented clearly supported this Court's findings, this Court respectfully requests affirmance of its judgment of sentence of April 6, 2011.

The final four matters raised by the Defendant in his Statement of Matters Complained of on Appeal – Items 2, 4, 5 & 6 relate to issues that cannot be addressed without a trial transcript.

Pa.R.A.P. 905(c) provides:

> **Fees**. The appellant upon filing the notice of appeal shall pay any fees therefore (including docketing fees in the appellate court) prescribed by Chapter 27 (fees and costs in appellate courts and on appeal).

Pa.R.A.P. 2743(a)(2) states:

> **General Rule**. Except as otherwise provided by law, taxable costs on appeal shall include:
>
> (2) In cases in which an evidentiary record is made before the appellate court, other than by the filing of a stipulation of facts, the costs of the original transcript as determined in the same manner as the costs of transcripts in the courts of common pleas are determined.

As the Defendant failed to pay the transcript costs as required, no transcript was produced, and this Court is unable to provide its opinion as to all issues raised by the Defendant. This Court would accordingly respectfully request dismissal of these claims and affirmance of its Order dated April 6, 2011.

BY THE COURT,

Date:_____ _____

Richard A. Gray, J.

cc: James Protastio, Esquire
District Attorney
Gary Weber, Esquire