

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 a Motion to Admit Certain Statements filed by the Commonwealth on December 20, 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.

The hearing in this matter was held on January 7, 2011. At the hearing, the Commonwealth first presented the testimony of Hetty Mattice, mother of the alleged victim. The Commonwealth then presented the testimony of April Taylor, a caseworker employed by Lycoming County Children & Youth Services.

Both witnesses testified as to out-of-court statements by the child alleged victim relating to sexual offenses allegedly committed by the Defendant. Testimony was presented regarding the time, content and circumstances of the child's statements.

Following the hearing, defense counsel conceded that the out-of-court statements would be admissible under 42 Pa. C.S.A. § 5985.1, specifically noting as follows:

“Quite candidly you’re going to allow them, I would just like
Transcripts of today’s and previous hearings.”

An out-of-court statement by an alleged child victim who at the time the

statement was 12 years of age or younger, describing a criminal sexual offense is admissible in evidence in any criminal proceeding if the Court finds that the evidence is relevant and that the time, content and circumstances of the statements provides sufficient indicia of reliability. 42 Pa. C.S.A. § 5985.1. Additionally, the child must either testify at the proceedings or be unavailable as a witness. 42 Pa. C.S.A. § 5985.1.

Given Defendant's concession, the Court will grant the Commonwealth's Motion with respect to the statements the child made to Hetty Mattice and April Taylor.

ORDER

AND NOW, this ____ day of January 2011, the Court **GRANTS** the Commonwealth's Motion with respect to the statements the child made to Hetty Mattice and April Taylor. The statements of the child made to the aforementioned witnesses 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. The Court Reporter is directed to prepare transcripts of the hearings held in this matter on September 27, 2010, December 8, 2010 and January 7, 2011 and to provide copies of said transcripts to both the Commonwealth and Defendant.

Additionally, to the extent Defendant asserts that there is an outstanding issue regarding the child's competency which would impact on the admissibility of the child's out-of-court statements ruled admissible under 42 Pa. C.S. § 5985.1, Defendant is directed to file an appropriate Motion in Limine prior to the pretrial conference scheduled in this matter.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: District Attorney (MK)
Public Defender (WM)
Court Reporter, Ann Diggan
Gary Weber, Esquire (Lycoming Reporter)
Work File