

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1381-2011
:
vs. :
:
AARON L. MEIXEL, : Order regarding Defendant's
: Motion in Limine
Defendant :

OPINION AND ORDER

AND NOW, this ___ day of October 2012, upon consideration of Defendant's written motion, the oral amendments made thereto on October 12, 2012, and the arguments made by the parties at the hearing held on October 15, 2012, it is ORDERED and DIRECTED as follows:

1. With respect to M.T.'s testimony at the preliminary hearing that Defendant gave her a "purple nurple," the Commonwealth has indicated that it does not intend to elicit this testimony at trial. Thus, this aspect of the motion in limine is moot. Furthermore, the Commonwealth has agreed to discuss this matter with M.T. to try to keep the child from inadvertently blurting out such a statement.
2. With respect to statements that Defendant allegedly made to K.B. to the effect that he rapes children and if K.B. told anyone he would do it to her too, the parties agree that the Commonwealth will not elicit this testimony from either of the alleged victims in this case. Therefore, this issue also is moot.
3. The sole contested issue is whether M.T. should be permitted to testify regarding statements that her friend and Defendant's daughter, E.M., made to M.T. During an interview with the police on or about September 20, 2011, M.T. indicated that the reason

why she kept going to Defendant's residence was because E.M. told her that Defendant would come into the bathroom when E.M. was taking a bath and carry her while she was still naked, and place her into bed. E.M. further told M.T. that Defendant would pull out his "private area" and show it to E.M. when she was alone with her father. M.T. thought that as long as she was visiting E.M. that Defendant wouldn't do anything or harm E.M.

In a subsequent police interview on or about September 30, 2011, M.T. stated that E.M. told her that Defendant would be naked when he picked E.M. up from the bath and he would then carry her into her bedroom.

The Commonwealth seeks to introduce these statements not for the truth of the matter asserted, but rather to explain the reason why M.T. went back to Defendant's house after Defendant had indecent contact with her. Defendant seeks to preclude these statements on the basis that this evidence is unduly prejudicial.

The Court believes that the defense in this case is that the events never occurred and the children are making up stories. Therefore, the credibility of the children will be a significant issue in this case. The jury is permitted to use its common sense when making credibility determinations. It would only be human nature for jurors to wonder why M.T. would ever go back to Defendant's residence after he allegedly had indecent contact with her. Under the facts and circumstances of this case, the Court finds the evidence is highly relevant. Furthermore, while an adult may be sophisticated enough to be able to sanitize her testimony by testifying generally about her concerns for E.M. without testifying about E.M.'s specific statements to her, such cannot be said for an eleven or twelve year old

child.

The Court also will give the jury a strong cautionary instruction that: Defendant is not charged in this case with any incidents involving E.M.; it does not matter whether E.M.'s statements to M.T. were true or false; and the only purpose for which the jury can consider this testimony is to determine whether they believe M.T.'s explanation that the reason why she continued to go to Defendant's residence even after Defendant allegedly had indecent contact with her was due to her concern for E.M. The jury is presumed to follow the Court's instructions. Commonwealth v. Miller, 572 Pa. 623, 819 A.2d 504, 513 (2002). With the jury being given an appropriate cautionary instruction, the Court finds that the relevancy of the evidence outweighs any potential for undue prejudice.

Accordingly, the Court DENIES Defendant's motion in limine with respect to the statements E.M. made to M.T.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Nicole Ippolito, Esquire (APD)
Work file