

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

: No. CR-1792-2011

:

:

vs.

: CRIMINAL DIVISION

:

:

SAMANTHA MATHERS,
Defendant

:

:

OPINION AND VERDICT

Defendant was charged by Information filed on January 27, 2012 with one count of Criminal Conspiracy to Commit Involuntary Deviate Sexual Intercourse of a Child, one count of Criminal Conspiracy to Commit Aggravated Indecent Assault, one count of Sexual Exploitation of Children, one count of Endangering the Welfare of Children as a Parent and one count of Corruption of Minors.

The charges arise out of an alleged incident that occurred between April 2, 2011 and April 29, 2011 when Richard Lafayette, with Defendant's consent and assistance, sexually molested Defendant's three-year-old daughter.

On April 26, 2012, Defendant waived her right to proceed to a jury trial. The non-jury trial was immediately held before this Court.

The vast majority of the evidence presented during the non-jury trial was by way of stipulation.

Prior to August 20, 2010, Defendant developed a relationship with Mr. Lafayette. Defendant and Mr. Lafayette frequently corresponded with each other through what is known as Yahoo Chat. Yahoo Chat works by allowing Yahoo users to be able to talk to each other over their computer screen by logging onto the Internet and then entering into a chat

room with other users and talking at the same time by typing text on the keyboard. Users can chat privately.

Defendant and Mr. Lafayette chatted on August 20, 2010; August 31, 2010; September 9, 2010; September 14, 2010; September 19, 2010; September 24, 2010; September 26, 2010; and October 11, 2010. The chats were primarily sexual in nature and extremely explicit.

A vast majority of the chats involved intended sexual abuse of Plaintiff's minor daughter. Mr. Lafayette expressly informed the Defendant that he wanted to have "sex with kids." He admitted masturbating "to the thought of little kids." Defendant admitted that she would not mind if Mr. Lafayette "did oral with someone" about "four or five" but that she would "worry about getting caught."

Defendant consented to having Mr. Lafayette "lick" her daughter "as long as she was comfortable with it." Defendant expressed that Mr. Lafayette could "lick" her daughter depending upon "what kind of child she is."

Disturbingly, Defendant noted that kids were a "big turn on" for her and that "deep penetration at a very young age, very much" excited her. She further noted that it was exciting to "basically" raise "a sex slave." She further noted that "a sex slave" would include her daughter "in thought."

Defendant agreed that she and Mr. Lafayette could have intercourse in front of her daughter because "that way" her daughter could "be comfortable with sex."

In what appears to be a never ending discourse on sexually abusing the three-year-old daughter of Defendant, Defendant conceded that “eventually” she would be “up for” Mr. Lafayette having intercourse with Defendant while Defendant was “licking” her daughter.

Eventually in September of 2010 during one chat, Mr. Lafayette noted as follows: “So then it is settled whenever I fuck her either at three or 13 or whenever, I will wear a rubber.” To which the Defendant responded “K.”

In October of 2010 during a chat, Mr. Lafayette again brought up the possibility of having intercourse with the minor child when he “got home.” Defendant responded that she would not let Mr. Lafayette have intercourse with her but that he could “mess with her.” More specifically, Defendant agreed to allow Mr. Lafayette to “lick” her minor child’s vagina and to “maybe” insert a finger “a bit but not all the way.”

Mr. Lafayette visited the Defendant in Williamsport while he was on military leave. This visit occurred between April 2, 2011 and April 29, 2011.

During one of the nights, the Defendant and Mr. Lafayette were in her bedroom “having sex in the bed.” The minor child got up out of bed and walked into the bedroom and climbed into bed with both the Defendant and Mr. Lafayette.

The minor child laid her head across Defendant’s chest area with the rest of her body lying on the bed. Mr. Lafayette removed the diaper from the minor child and then placed a small “bullet” vibrator onto the minor child’s vagina. Defendant did not believe the vibrator penetrated the child’s vagina, but stated she was not paying attention so there could have been penetration. Defendant stroked the minor child’s head and hair while Mr. Lafayette “played with” the vibrator on the minor child’s vagina.

The minor child had her legs spread apart during this time and Mr. Lafayette had his face, including his mouth, near the minor child's vagina. The Defendant wasn't paying that much attention but believed Mr. Lafayette did not place his mouth or tongue onto the minor child's vagina. Defendant acknowledged however that there was the possibility that Mr. Lafayette could have conducted oral sex on the minor child without Defendant's knowledge.

Defendant eventually told Mr. Lafayette to stop what he was doing and she carried the minor child back into the minor child's bedroom. Defendant did not allow Mr. Lafayette to do anything else to the minor child during the rest of the time Mr. Lafayette was in Williamsport.

On May 3, 2011, following Mr. Lafayette's visit to Williamsport, the Defendant and Mr. Lafayette again chatted. Defendant admitted that "none" of what they did with the minor child "bothered" her. Mr. Lafayette directed Defendant to "start putting fingers in" the minor child so "she gets used to it." Mr. Lafayette also further acknowledged that he "saw how much" the minor child liked "the vibrator on her." Defendant agreed to start digitally penetrating her daughter and also agreed that Mr. Lafayette could penetrate the minor child's vaginal or anal areas depending upon what he wanted. Defendant acknowledged in Mr. Lafayette's words that "it would be family fun time" when Defendant held the child down while Mr. Lafayette "moved up and inserted."

Defendant briefly testified on her own behalf. She denied that she allowed the abuse to happen just for financial security. Instead, she asserted that she loved Mr. Lafayette and at first just wanted to make him happy.

Defendant concedes that she is guilty of Count 3, Sexual Exploitation of Children; Count 4, Endangering Welfare of Children; and Count 5, Corruption of Minors. The Court does not disagree. Without any doubt, the Defendant made the minor child available to Mr. Lafayette and herself for actual sexual activity for the purpose of sexual stimulation and gratification of at the very least Mr. Lafayette and most likely the Defendant. Moreover, such conduct endangered the welfare of the child by violating a duty of care, protection and support owed by Defendant and tended to corrupt the morals of the minor child.

On the other hand, Defendant argues that she should not be found guilty of criminal conspiracy because there was no agreement to perform the objective criminal acts and no overt act in pursuant of any agreement. Alternatively, Defendant argues that if there was initially a conspiracy, Defendant renounced such by thwarting the success of the conspiracy under circumstances manifesting a complete and voluntary renunciation of her criminal intent.

“To sustain a conviction for criminal conspiracy, the Commonwealth must establish that the Defendant: (1) entered into an agreement to commit or aid in an unlawful act with another person or persons; (2) with a shared criminal intent; and (3) an overt act was done in furtherance of the conspiracy.” Commonwealth v. Devine, 26 A.3d 1139, 1147 (Pa. Super. 2011) citing Commonwealth v. Jones, 874 A.2d 108, 121 (Pa. Super. 2005); Commonwealth v. Weimer, 602 Pa. 33, 977 A.2d 1103, 1105-06 (2009).

Proving an agreement between two parties can seldom be done through explicit language. Accordingly, and consistent with proof of other matters, it can be done circumstantially.

“An agreement sufficient to establish a conspiracy can be inferred from a variety of circumstances including, but not limited to, the relation between the parties, knowledge of and participation in the crime, and the circumstances and conduct of the parties surrounding the criminal episode.” Commonwealth v. Saunders, 946 A.2d 776, 781 (Pa. Super. 2008), quoting Commonwealth v. Geiger, 944 A.2d 85, 90 (Pa. Super. 2008). “Given the surreptitious nature of conspiracy, the existence of a formal agreement is often proven circumstantially, such as by the relations, conduct, or circumstances of the parties or overt acts on the part of co-conspirators.” Commonwealth v. Jacobs, 2012 Pa. Lexis 356 (February 21, 2012).

Involuntary Deviate Sexual Intercourse is sexual intercourse per os (by mouth) or per anus. 18 Pa. C.S.A. § 3123. Aggravated Indecent Assault is the penetration, however slight, of the genitals or anus of a complainant with a part of another person’s body for any purpose other than a good faith medical, hygienic or law enforcement procedure with the victim being less than 13 years of age. 18 Pa. C.S.A. § 3125.

Clearly, the parties agreed that Mr. Lafayette, the Defendant or either one of them would have sexual intercourse by mouth or by anus with the three-year-old child as well as digitally penetrate the genitals or anus of the three-year-old child. This agreement was manifested through the words and conduct of the Defendant. Defendant agreed that Mr. Lafayette could do something “oral” with her child. Defendant agreed that Mr. Lafayette could “lick” the child. Defendant agreed that the child could “lick” Mr. Lafayette. Defendant agreed that it would be okay for Mr. Lafayette to “fuck any kid with penetration” at age three (3) and that it would include the minor child.

Indeed, the chat messages are replete with abundant evidence concerning the agreement between Defendant and Mr. Lafayette. Moreover, the chat messages following the incident confirm that the Defendant and Mr. Lafayette knew what they were doing.

The agreement was crystal clear. In order that Defendant could please Mr. Lafayette who she so dearly “loves,” she would permit him sexual access for whatever purpose he so desired as long as her daughter was not physically injured. The agreement was such that the parties would essentially groom the minor child through a series of sexual assaults until the minor child became “comfortable” with the sexual acts and eventually grew into a “sex slave” for both Mr. Lafayette and the Defendant.

The agreement also manifested itself in the conduct of the parties under which Defendant comforted her three-year-old while Mr. Lafayette removed her diaper, possibly had oral sex on her but most assuredly “played” with her vagina by using a vibrator and possibly inserting it.

The shared criminal intent is also abundantly obvious. The words and conduct of the Defendant and Mr. Lafayette do not lie.

Finally, there clearly was an overt act done in furtherance of the conspiracy. Defendant erroneously argues that the overt act must be an element of the object of the conspiracy. To the contrary, the overt act can be criminal or non-criminal in itself, as long as it is designed to put the conspiratorial agreement into effect. Pa. SSJI (Crim) 12.903 A (5).

The overt act in this particular case consisted of Mr. Lafayette sexually abusing the minor child and the Defendant not only permitting Mr. Lafayette to do so but partaking in the abuse by comforting the minor child while Mr. Lafayette sexually abused her. Clearly, the

agreement between the parties as aforesaid reached the action stage. The molesting of the three-year-old child by, at the very least, contacting her vagina with a vibrator is certainly not a small or preliminary act insufficient to satisfy the overt act requirement.

Defendant further argues however, that she changed her mind and prevented the conspiracy from succeeding with its criminal objectives. This is known as the renunciation defense. 18 Pa. C.S. § 903 (f); Pa. SSJI (Crim) 12. 903 D.

The Commonwealth has the burden of disproving the defense of renunciation. Pa. SSJI (Crim) 12.903 (D).

The elements of the renunciation defense include the Defendant preventing the conspiracy from succeeding with its intended goal and doing so under circumstances manifesting a voluntary and complete giving up of the Defendant's criminal intent. Pa. SSJI (Crim) 12.903 (D).

Clearly, the Commonwealth has disproved beyond a reasonable doubt the defense of renunciation. Indeed, the Court finds no evidence whatsoever that the Defendant completely gave up her criminal intent. The evidence is to the contrary. The agreement entered into involved a gradual process by which the Defendant and Mr. Lafayette would groom the minor child until full-fledged oral, vaginal and anal intercourse was taking place. At no time did the Defendant prevent the conspiracy from succeeding with its intended goal or give up her criminal intent. See, for example Commonwealth v. Hubert, 294 Pa. Super. 606, 440 A.2d 630 (1982); Commonwealth v. Terebieniec, 268 Pa. Super. 511, 408 A.2d 1120 (1979); Commonwealth v. Brown, 262 Pa. Super. 9, 396 A.2d 457 (1978).

In light of the Defendant's post-incident dialogue with Mr. Lafayette, as well as Defendant's express admission that there was "the possibility" that Mr. Lafayette could have both penetrated the minor child with the vibrator and conducted oral sex on her, the Court finds any testimony of the Defendant or implication that she attempted to stop the conspiracy and renounce it to be entirely not credible.

Accordingly, the Court will find the Defendant guilty on both Count 1, Criminal Conspiracy to Commit Involuntary Deviate Sexual Intercourse of a Child as well as Count 2, Criminal Conspiracy to Commit Aggravated Indecent Assault, both felony 1 offenses.

One final issue, however, must be discussed prior to sentencing in that it was raised at the conclusion of the non-jury trial. More specifically, the issue concerns whether both conspiracies should merge for sentencing purposes as they arguably constituted only one conspiracy.

Under all of the circumstances, the Court finds that the conspiracies will merge. The evidence proved beyond a reasonable doubt a single conspiracy with multiple objectives. "If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple objectives are the object of the same agreement or continuous conspiratorial relationship." Commonwealth v. Andrews, 564 Pa. 321, 768 A.2d 309 (2001).

VERDICT

AND NOW, this 27th day of April 2012, following a non-jury trial the Court adjudicates the Defendant **GUILTY** on Count 1, Criminal Conspiracy to Commit Involuntary Deviate Sexual Intercourse of a Child, a felony 1 offense; Count 2, Criminal Conspiracy to Commit Aggravated Indecent Assault, a felony 1 offense; Count 3, Sexual Exploitation of Children, a felony 2 offense; Count 4, Endangering Welfare of Children as a Parent, a misdemeanor 1 offense; and Count 5, Corruption of Minors, a felony 3 offense.

The Pennsylvania Board of Probation and Parole is directed to prepare a Presentence Report. Defendant's sentencing is scheduled for **July 3, 2012 at 11:00 a.m. in Courtroom No. 4** of the Lycoming County Courthouse. The Pennsylvania Sexual Offenders Assessment Board is directed to prepare an assessment of the Defendant to determine if she is a sexually violent predator. Defendant is directed to participate in said assessment to the extent advised by her counsel.

Defendant's bail, if any, is revoked.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: CA
Aaron Biichle, ADA
Todd Leta, Esquire
Pa Board of Probation & Parole
Sexual Offender Assessment Board
1101 South Front Street, Ste. 5700
Harrisburg, PA 17104
Prison
Sheriff
Gary Weber, Esquire (Lycoming Reporter)
Work File