

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CR-1056-2012</b>
v.	:	
	:	
<b>CHAD WILCOX,</b>	:	<b>1925(a) Opinion</b>
<b>Defendant</b>	:	

**OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)  
OF THE RULES OF APPELLATE PROCEDURE**

Chad Wilcox (Defendant) was charged with Statutory Sexual Assault<sup>1</sup>, Aggravated Indecent Assault<sup>2</sup>, Involuntary Deviate Sexual Intercourse with a Child<sup>3</sup>, Indecent Assault (under 13 years of age)<sup>4</sup>; Corruption of Minors (sexual offenses)<sup>5</sup>; Rape of a Child<sup>6</sup>; Indecent Exposure<sup>7</sup>; and Unlawful Contact with a Minor<sup>8</sup>. Defendant was tried by jury on January 21, 2016, with the jury returning a verdict of guilty on all counts.

The Court sentenced the Defendant to an aggregate sentence of 21 to 70 years, to be served consecutively to a 40 to 80 year sentence for murder out of Montgomery County, Pennsylvania. For Count 6 Rape of Child, the Court imposed a minimum sentence of 10 years and a maximum sentence of 40 years. For Count 8 Unlawful Contact with a Minor, the Court imposed a minimum sentence of 10 years, the maximum of 20 years. The sentences in both those counts were ordered to run consecutive to one another. For Count 1 Statutory Sexual Assault, the Court sentenced Defendant to a minimum of one (1), maximum of 10 years in a state correctional institution, also to run consecutive to sentences in Count 6 and Count 8.

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<sup>1</sup> 18 Pa.C.S. § 3122.1

<sup>2</sup> 18 Pa.C.S. § 3125

<sup>3</sup> 18 Pa.C.S. § 3123(B)

<sup>4</sup> 18 Pa.C.S. § 3126 (A)(7)

<sup>5</sup> 18 Pa.C.S. § 6301(a)(1)(ii)

<sup>6</sup> 18 Pa.C.S. § 3121(c)

<sup>7</sup> 18 Pa.C.S. § 3127(A)

<sup>8</sup> 18 Pa.C.S. § 6318(a)(1)

Private defense counsel withdrew his appearance at the close of the trial and the Public Defender entered his appearance on January 27, 2016. The Defendant, having met with trial counsel, mailed, *pro se*, a post sentence motion to the Court, which was received on January 28th, 2016. The Court treated the post sentence motion filed by the Public Defender on February 16, 2016, as an addendum to Defendant's timely filed *pro se motion*. Defendant's Post Sentence Motion was denied by operation of law and Defendant took this timely appeal to the Superior Court.

The Defendant raises seven (7) issues that the Court will address *seriatim*:

***1. Defendant submits the evidence was insufficient to prove that the Defendant actually committed any sexual abuse of the alleged victim.***

Defendant avers that the evidence presented at trial failed to establish beyond a reasonable doubt that he was guilty of any wrong doing with the child and notes that the minor victim did not testify at trial. The Court has reviewed the trial transcript and finds that there was sufficient evidence presented at trial for the jury to find to find the Defendant guilty. At trial, the Commonwealth presented testimony from Kyle Mowery (Mowery), the victim's first grade teacher; though such testimony was specifically disallowed by Judge Lovecchio's March 28, 2013, Opinion and Order (for explanation of this issue see **Issue 7**. below). It also presented testimony from LuAnn Ziegler (Ziegler), Guidance Counselor, Megan Wheeland (Wheeland), of the Lycoming County Children and Youth Services, and Sherry Moroz (Moroz), forensic interviewer, from the Child Advocacy Center. Though Judge Lovecchio had originally ordered that Moroz was not to testify, he later changed that ruling in an Opinion and Order filed May 2, 2014.

Mowery's testimony laid the foundation for how the investigation in this sex abuse began. The six year old victim reported to her teacher that she had a secret. He became

concerned referring the matter to the school guidance counselor, Zeigler, who after talking with child referred the case to Children and Youth Services. In speaking with the child, the school guidance counsel was able to ascertain that, yes, the child did have a secret with her stepfather and it involved touching private parts and her mouth. Trial Transcript, 1/21/16, p. 53. As a mandated reporter, Ziegler was obligated to report the conversation to ChildLine. Id. p. 54. Wheeland, the C&Y Worker, testified that she has done hundreds of investigations into child abuse. Id. pg. 62. She testified that the victim told her

She had a secret and that it was top secret and she wasn't allowed to tell anybody...that she took all of her clothes off and she told me Chad took his clothes off. And I asked her what clothes and she told me it was his pants and his underwear, and they did the secret. She really didn't clarify what the secret was. She said that they would do until they were done. And I said to her, I said well how did you know you were done, and she told me that Chad would tell me when they were done. Id. p.64-65.

Wheeland went on to testify that the victim was able to identify the parts used in the secret in an anatomical drawing (male and female genitalia and mouth) and at that point she contacted law enforcement as well as arranged an interview for the child at the Child Advocacy Center. Id. p. 68.

Commonwealth's Exhibit 1 was the video recording of the interview of the victim by Sherry Moroz, Forensic Interviewer for the Child Advocacy Center. Moroz interviewed the victim on March 5, 2012. Moroz testified that she had forensic interview training at Corner House, a training facility in Minnesota. Trial Transcript, 1/21/16, p. 79. Additionally, she has conducted over 3,000 forensic interviews of children. Id.

During the video and audio recorded interview, the victim stated that she and her stepfather, Chad, "did it". She stated it was "top secret". She was able to identify the appropriate anatomy on drawings on a white board. She stated that when they did the secret

Chad had her take off her clothes and he took off his pants and underwear. When asked what body parts are involved, she pointed to the male and female genital regions. She said “Chad touched mine and I touched his”. She said his mouth touched her “lady part”. When asked what it felt like she said “it did not feel comfortable”. She said that she would lie down on the bed and that Chad was sitting in the middle of the bed. She said that the first time it happened it was in her room and the second time it was in his room when her mother was sleeping downstairs.

Defendant did testify at his trial. He attempted to present alibi testimony in that he was worked a 17 hour shift on the date in question. *Id.* p. 117. He also testified that the victim has behavioral issues such “hitting or biting our [Defendant and victim’s mother’s] son to crazy things like she thought my wife was not her—was not Dean’s [son] real mother.” *Id.* p. 119. He testified that he never touched his stepdaughter in a sexual manner, “never smacked or anything.” *Id.* p. 125.

The Defendant is able to make a challenge to the sufficiency of the evidence on appeal. Pa.R.Crim.P. 606 (A)(7). As sufficiency of the evidence is a question of law rather than a question of fact, the appellate court’s standard of review is *de novo* and its scope of review is plenary. When the appellate court reviews whether there was sufficient evidence to find Defendant guilty beyond a reasonable doubt, it

“must determine whether the evidence admitted at trial, an all reasonable inferences drawn from that evidence, when viewed in the light most favorable to the Commonwealth as verdict winner, was sufficient to enable the fact finders to conclude that the Commonwealth established all of the elements of the offense beyond a reasonable doubt”. Commonwealth v. Woodward, 129 A.3d 480 (Pa. 2015) quoting Commonwealth v. Fears, 575 Pa. 281, 836 A.2d 52, 58-59 (2003).

Accordingly, to sustain Defendant's conviction the above listed charges, the appellate court must conclude that the evidence established beyond a reasonable doubt the elements of each charged crime. The testimony of Zeigler, Wheeland and Moroz, coupled with the video recording that corroborated the statements the testifiers said that the victim made to them, was sufficient to find that Defendant engaged in oral sexual intercourse with a six year old girl when the Defendant was 26 years old. A jury evaluating the elements of each crime charged, coupled with its belief beyond a reasonable doubt that the act did occur, properly found the Defendant guilty of all charges. The Court did recognize for sentencing purposes some of the charges merged. Defendant was sentenced on Statutory Sexual Assault, Rape of a Child and Unlawful Contact with a Minor only.

- 2. *The trial court erred by finding that the alleged victim was unavailable for purposes of the Tender Years doctrine and admitting hearsay evidence from Lou Ann Zeigler, Melissa Wheeland, and Sherry Moroz.***
  - a. *The alleged victim had been questioned previously at least four times, had testified at the preliminary hearing, and made recantations of the alleged incident to Mr. Wilcox's prior counsel.***

The decision complained of in **Issue 2** was made by The Honorable Marc F. Lovecchio, Opinion and Order, 3/28/2014, and this Court will not and cannot overrule a ruling by another Common Pleas Judge, absent some new evidence. It is improper for a trial judge to overrule an interlocutory order by another judge of the same court in the same case as "there must be some degree of finality to determinations of all pre-trial applications so that judicial economy and efficiency can be maintained." Commonwealth v. Brown, 485 Pa. 368, 370 (Pa. 1979).

**3. *The defendant's right to confrontation, as guaranteed by the Pennsylvania and United States Constitutions was violated by the alleged victim's failure to testify.***

The motion to admit hearsay statements was heard by the Honorable Marc F. Lovecchio and an Order granting that motion in part and denying that motion in part was entered by Judge Lovecchio on March 28, 2014. Initially, Judge Lovecchio admitted the hearsay statements of Zeigler and Dangle [Wheeland] but not Mowry or Moroz. Upon reconsideration, in an order filed May 2, 2014, Judge Lovecchio admitted the testimony of Moroz but not Mowry. For the purpose of this Opinion, the Court will rely on the opinions and orders of Judge Lovecchio as it did at Trial.

**4. *The trial court erred by failing to discharge the entire jury panel when, during selection, juror #1 stated in open court that the D.A. was a good man who hires good people; the Court agreed, ordered Juror #1 be stricken for cause but refused to discharge the entire panel.***

The decision described in **Issue 4** was one made by The Honorable Richard A. Gray, Jury Selection, 1/16/2016, p. 23, and this Court would not and could not overrule a ruling by another Common Pleas Judge. *Id.*

**5. *The court erred by denying the defendant's motion to dismiss based upon Sgt. Taylor's unlawful obtaining of his discovery notes, notes, and documents containing his and counsel's trial strategy.***

For **Issue 5** the Court relies on its Opinion and Order filed January 19, 2016.

**6. *The lower court erred by denying the defendant's request for continuance of the trial.***

Defendant's counsel requested a continuance so Defendant could acquire a file in order to prepare himself for testifying. It is the view of this Court that as Defendant had known for two years that he did not his file and did not make any request to his attorney that this file be provided it would not have been appropriate to stop the trial from proceeding for an issue that

could have been resolved and would have been resolved much earlier if brought to the Court's attention. Trial Transcript, 1/21/16, pg. 4 lines 3-4, p. 6 lines 17-25.

**7. *The lower court erred by permitting the testimony of Mr. Mowery during trial concerning the alleged victim had told him a secret; the defendant avers that the Tender Years ruling excluded such testimony.***

This Court overruled the Defense's objection to the testimony of Mowery because what he testified to was duplicative of what the jury would hear when the video of the interview at the Child Advocacy Center was played to the jury. The Commonwealth's error in calling Mowery to the stand was harmless. The statement "But I just told Mr. Mowery we had a secret" was made in the video that was played for the jury. *Id.* pg. 40, lines 22-23. It is very unlikely that had Mowery not testified that the outcome in the trial would have been different. Stating victim told me she had a secret does not establish any of the elements of the crimes for which Defendant was convicted and as victim referred to the secret repeatedly in the video that was admissible into evidence by Judge Lovecchio's order the Defendant was not harmed by its improper admission. Commonwealth v. Sanchez, 595 A.2d 617 (Pa. Super. 1991) (petition for allowance of appeal denied).

For all the reasons stated above, the Court respectfully suggests that the Order of Sentence be affirmed.

BY THE COURT,

DATE: \_\_\_\_\_

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Nancy L. Butts, President Judge

cc: PD  
DA  
Gary Weber, Lycoming Law Reporter