

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1977 - 2014
:
vs. :
:
JEG, :
Defendant : CRIMINAL DIVISION

OPINION IN SUPPORT OF ORDER OF JANUARY 20, 2016,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

After a jury trial on October 19 and 20, 2015, Defendant was convicted of rape of a child, statutory sexual assault, aggravated indecent assault, unlawful restraint of a minor, incest of a minor, endangering welfare of a child, corruption of a minor and indecent assault of a child based on evidence that Defendant had sexual intercourse with his seven-year-old daughter on at least two occasions in 2013 and 2014 and engaged in conduct of a sexual nature with her on at least two other occasions in that time frame. On January 13, 2016 he was sentenced to an aggregate term of incarceration of eighteen to forty years. In the instant appeal, Defendant challenges the sufficiency of the evidence with respect to the charges of rape of a child, statutory sexual assault, aggravated indecent assault, unlawful restraint of a minor, endangering welfare of a child and corruption of a minor; challenges the sufficiency of the evidence with respect to the classification as a sexually violent predator; and alleges trial court error in denying his motion for mistrial and in admitting certain evidence. Each of these issues will be addressed in turn.

With respect to the charges of rape of a child, statutory sexual assault and aggravated indecent assault, the court believes there was sufficient evidence to

support the jury's verdict based on the following testimony of the victim:

A. He would tell me to get undressed. He was getting undressed, and he told me to get undressed. He told me to lay down on my back, so I did. Then he would lay down on me, and his man-bug would go into my lady-bug.”

...

Q. Okay. What would he do when he would be on top of you like that?

A. He would move up and down.

Q. And you said his man-bug was in your lady-bug?

A. Yes.

Q. And do you remember was it actually inside of you?

A. Yes.

Q. And you said he would move up and down.

A. Yes.

Q. And your lady-bug, where on you is your lady-bug?

A. My front private.

Q. And what about you said man-bug, where is a man-bug?

A. On a man's front private.

N.T., October 19, 2015, at 42, 45. A person commits rape of a child when the person engages in sexual intercourse with a complainant who is less than 13 years of age. 18 Pa.C.S. Section 3121(c). The above-quoted testimony establishes that Defendant engaged in sexual intercourse with a child less than 13 years of age. ¹

A person commits statutory sexual assault (as charged here) when the person, being eleven or more years older than the complainant engages in sexual intercourse with a complainant under the age of sixteen, and the complainant and the person are not married to each other. 18 Pa.C.S. 3122.1(b). The above-quoted testimony establishes that Defendant engaged in sexual intercourse with a child under the age of sixteen and there was no dispute that he was more than eleven years older than she.

A person commits aggravated indecent assault of a child (as charged here) when that person violates Section 3125(a)(1), (2), (3), (4), (5) or (6) and the complainant is less than 13 years of age. 18 Pa.C.S. Section 3125(b). Section 3125(a)(1), (2), (3), (4), (5) and (6) state as follows:

a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if:

- (1) the person does so without the complainant's consent;
- (2) the person does so by forcible compulsion;
- (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;
- (5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6) the complainant suffers from a mental disability which renders him or her incapable of consent... .

18 Pa.C.S. Section 3125. The above-quoted testimony establishes that Defendant engaged in penetration of the genitals of a complainant with a part of his body for a purpose other than good faith medical, hygienic or law enforcement procedures and the following testimony shows that he did so by forcible compulsion:

- A. He would have my mouth covered, so I couldn't scream out loud.
Q. With what?
A. His hand.
Q. Did you want to scream out loud?
A. Yes. I was trying to.

N.T., October 19, 2015 at 44. The child also testified that "I couldn't scream or

1 It was not in dispute that the complainant was 8 years old at the time of the trial.

anything like that when he was on top of me because he was so heavy, and he was going like this on my mouth. And I could barely breathe”, and that Defendant “would get on top of me and do this, like cover my nose so I can’t scream or breathe or anything, then I pass out, and when he did this a little bit later I wake up from him doing this”. N.T., March 23, 2015 at p. 56-58. She also stated in an interview, a videotape of which was shown to the jury, that she couldn’t breathe because her father was hurting her, and she couldn’t scream because she couldn’t breathe. All of this shows forcible compulsion.

With respect to the charges of unlawful restraint of a minor, endangering welfare of a child and corruption of a minor, Defendant had also challenged these convictions in his post-sentence motion, by asserting they were against the weight of the evidence. The court will therefore simply rely on the discussion contained in its opinion in support of the order denying that motion, as it believes the issue of sufficiency is adequately addressed therein even though the issue was that of weight.

As far as the finding that Defendant is a sexually violent predator, such was based on evidence offered by the Commonwealth at a hearing on January 13, 2016, specifically the expert opinion of C. Townsend Velkoff, a licensed psychologist who was qualified by the court as an expert in this area. Of special significance to Mr. Velkoff’s opinion were the facts that the victim was seven years old, which supported his conclusion that there was a high risk of re-offense, and that the offenses took place over a period of more than six months, which supported a finding of pedophilic disorder, a mental abnormality. He also considered that Defendant had a prior conviction involving a sexual offense, and that he displayed predatory and manipulative behavior. The court found his

opinion to be supported by the evidence and sees no error in accepting it in making the court's finding.

Finally, with respect to the allegations of trial court error in denying Defendant's motion for mistrial and in admitting the recorded interview of the child, the court will simply rely on its opinion issued in support of the order denying Defendant's post-sentence motion, as those issues were adequately addressed therein.

Dated: March 17, 2016

Respectfully submitted,

Dudley N. Anderson, Judge

cc: District Attorney
Donald Martino, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson