

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-1029-2020**
 :
 v. :
 :
 :
 SAMUEL EDWARD PAGE, :
 Defendant :

OPINION AND ORDER

On August 5, 2021, the Commonwealth filed a Motion to Admit Testimony pursuant to 42 Pa. C.S.A. § 5985.1. The Commonwealth is requesting the Court to grant permission to present statements of the complainant, A.P., a now seven (7) year old girl through the testimony of her maternal grandfather and grandmother and a Children and Youth caseworker, Jordan McGill, alleging that the statements made by A.P. were made under the circumstances outlined under the law. In addition, the Commonwealth would also ask that the testimony of A.P. from the preliminary hearing on August 19, 2020 before Magisterial District Judge William Solomon be admitted for use at trial.

Factual Background

Samuel Page (Defendant) is charged with two counts of Involuntary Deviate Sexual Intercourse,¹ Aggravated Indecent Assault², two counts of Indecent Assault³, Indecent Exposure⁴, Unlawful Contact with a Minor⁵, Endangering the Welfare of a Child⁶, and Corruption of a Minor⁷ for allegedly having sexual intercourse with his daughter, A.P., a minor, between January 1, 2018 to July 13, 2020. The hearing on the Commonwealth's

¹ 18 Pa. C.S.A. § 3123(B).
² 18 Pa. C.S.A. § 3125(a)(7).
³ 18 Pa. C.S.A. § 3126(a)(7).
⁴ 18 Pa.C.S.A. § 3127(a).
⁵ 18 Pa. C.S.A. § 6318(a)(1).
⁶ 18 Pa. C.S.A. § 4304(a)(1).
⁷ 18 Pa. C.S.A. § 6301(a)(1)(ii).

petition was first held on August 23, 2021. At that hearing, the Commonwealth presented the testimony of Samuel and Norma Harrison, grandparents of the child. Because the other witness was on vacation at the time of the August hearing, Children and Youth caseworker Jordan McGill's testimony was presented on September 13, 2021.

Norma Harrison

Norma Harrison (Grandmother) testified that on July 13, 2020, A.P. and her minor brother are the grandchildren of the witness and were spending the night and getting ready for a bath after playing outside. Notes of Testimony, 8/23/2021, at 5. While the child was in the bath, Grandmother testified that she noticed a rash on her granddaughter's upper thigh. *Id.* After the bath, she and the child went to her bedroom to get some cream for the rash. *Id.* As Grandmother watched her place the cream on her leg, the child stated that, "her daddy plays with her there." *Id.* at 6. The child added, "her daddy sticks his finger there and sometimes he sticks his tongue there." *Id.* She then told Grandmother that, "he sometimes gets his thing out and he has me do this to him" wherein Grandmother demonstrated a masturbating motion, as though her hands "were on either side of a penis." *Id.* Grandmother testified that she did not know what to do so when her husband came into the room she had A.P. tell him as well. *Id.* Grandmother testified that she asked A.P. to tell her grandfather what she just told her. The child repeated everything that she told her, and Grandmother added that A.P. described that Defendant "sometimes puts a cap on it." *Id.* at 7. Grandmother testified that she heard her husband ask, "does it look like a balloon" and her granddaughter said "yes." *Id.* She testified that the last thing her granddaughter told her grandfather was that Defendant showed her so that "she will know how" and that it happened at bedtime. *Id.*

Samuel Harrison

Samuel Harrison (Grandfather) testified about the events of that evening as well. Grandfather testified that it had been a while since the grandchildren had stayed overnight with them because, at one time, they had lice and fleas. N.T. 8/23/21, at 12. He testified that on this day the children were coming in to take a bath after playing on the slip and slide. *Id.* at 11. When he went in to get a towel for his grandson to take a bath, he entered the bedroom after A.P. was fully clothed and Grandmother was with her. *Id.* at 10. He observed Grandmother and the child sitting on the bed with Grandmother showing Grandfather a rash on the upper inside of A.P.'s thigh. *Id.* He further testified that Grandmother asked A.P., "can you tell Papa what you told me" and she began to speak. *Id.* Grandfather testified that the child said, "daddy plays with me there" and observed her point directly at her vaginal area. *Id.* Grandfather further testified that A.P. said, "sometimes he puts his tongue there" and "daddy says he does it now so that I will know how." *Id.* Grandfather did not ask any further questions but the child voluntarily told him, "sometimes he takes his thing out and he'll make me do this" and she demonstrated what he did with her hands making a circle, which grandfather described as a motion that "a male would do when he's masturbating" *Id.* at 11. Grandfather then asked her what she meant when she said that he puts "something on his thing". *Id.* When asked what it looked like she said a "cap." *Id.* Grandfather testified that he asked the child whether it was like a balloon and she said "yes and he makes me suck on it." *Id.* Because he and his wife had some training at church to address situations like this from a program called Safe Sanctuary, Grandfather thought that they should probably call the crisis hotline. *Id.* At around 9:00 o'clock that evening they called the crisis hotline and explained what happened. *Id.* Someone called back to say that Child Protective Services would be calling them the next morning. *Id.* Grandfather also testified that he never heard A.P. talk about male genitalia before. *Id.* at 12.

Jordan McGill

On September 13, 2021, Jordan McGill (McGill) testified to complete the Commonwealth's evidence. McGill, a Children and Youth caseworker in the assessment section, testified that she made an unannounced visit to the grandparents' house on July 28, 2020. McGill met with A.P. along with her grandparents. County Detective Weber accompanied McGill on the visit but stayed with A.P.'s brother when McGill interviewed A.P. McGill testified at the hearing from her case notes, which the Commonwealth admitted into evidence as Commonwealth's Exhibit 2. McGill testified as to where A.P. told her that Defendant touched her and what he had her do, which replicated what she told her grandparents. McGill also noted in her case notes that when A.P. was asked about touching her father's privates she volunteered, "he likes it when I do that." Commonwealth's Exhibit 2, at 1.

Preliminary Hearing Testimony

A.P. testified at the preliminary hearing on August 19, 2020. She testified that she was six (6) years old. Recording of Preliminary Hearing 8/19/2020. Unfortunately, there were times where tapping and crunching of paper made it difficult to hear the child's testimony. After a series of questions to establish her ability to understand the difference between the truth and a lie, First Assistant District Attorney Martin Wade began to ask her about the incident by first using a boy doll. *Id.* A.P. stated that boys and girls have different parts by removing the pants and pointing to the private parts. *Id.* She said that she has seen and touched her father's private part with both her hand and mouth. *Id.* She testified that Defendant put something on his privates that had a strawberry flavor to it. *Id.* A.P. explained that she saw Defendant's private parts when she was inside the house. *Id.* When asked about girl privates, A.P. used the doll to point to the vaginal area and butt. *Id.* She said that her dad touched her

privates with his fingers and his tongue more than one time. *Id.* On cross-examination, she testified that when she played she touched her daddy. She remembered it happening with her daddy at night and it was in “mom’s and dad’s bedroom” and occurred right before bed. *Id.* A.P. stated that Defendant was not getting her ready for bed. *Id.* She described a number of other things including her brother giving her a bruise. *Id.* A.P. admitted, when referring to her father’s privates, that she had a bad feeling about it and what was inside of it. *Id.*

Analysis

The Tender Years Hearsay Act (TYHA) permits the admission of out-of-court or hearsay statements of children victims or witnesses relating to certain statutorily enumerated offenses, including the sexual offenses at issue in this case. 42 Pa.C.S. § 5985.1(a); *Commonwealth v. Perez*, 241 A.3d 454 (Pa. Super. 2020). The Act permits an out-of-court statement by an alleged child victim who, at the time the statement was made, was sixteen (16) years of age or younger describing a criminal sexual offense to be admissible into evidence in any criminal proceeding. 42 Pa.C.S. § 5985.1(a). However, the Court must find that the evidence is relevant and that the time, content and circumstances of the statements provides sufficient indicia of reliability. 42 Pa.C.S. § 5985.1(a)(1)(i). Additionally, the child must testify at the proceedings or be unavailable as a witness. *Id.*

A statement otherwise admissible under subsection (a) shall not be received into evidence unless the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

42 Pa.C.S. § 5985.1(b).

The Commonwealth asserts and defense does not dispute that all of the statements the Commonwealth wishes to admit have been provided in discovery. Just as A.P. testified at the preliminary hearing, she will also testify at trial. Therefore, the Court must decide if the evidence is relevant and imbued with “sufficient indicia of reliability”.

Evidence is “relevant” if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact; evidence, even if relevant, may be excluded if its probative value is outweighed by the potential prejudice.

Pa. R.E. 403; *See also Smith v. Morrison*, 47 A.3d 131 (Pa. Super. 2012).

Clearly, the evidence presented in this case is relevant to the trial because it would tend to support the allegations made by the child against her father. “The most obvious factors to be considered [in determining reliability] include the spontaneity of the statements, consistency in repetition, the mental state of the declarant, use of terms unexpected in children of that age and the lack of a motive to fabricate.” *Commonwealth v. Walter*, 93 A.3d 442, 451 (Pa. 2014). The statements A.P. made to her grandparents appear to be spontaneous and consistent in repetition between the two sets of witnesses as they occurred on two separate dates. Even A.P.’s testimony at the preliminary hearing on yet a third date approximately one month after the initial Childline call remained consistent to the spontaneous statements made to her grandparents on July 13, 2020. Defense cannot point to any motive for the child or her grandparents to fabricate the various methods of abuse. In particular, A.P.’s mother testified at the preliminary hearing that she and the Defendant were on good terms when the incidents were alleged to have occurred. P.H. 8/19/2020. Finally, the actions of the child in describing the hand movements used by her perpetrator when the offenses took place are not typically within the knowledge of a six-year-old girl. A.P. could only have learned the behavior she demonstrated from observing an adult male with an erect penis attempting to climax or been

shown how to manipulate male genitalia with her hands by an adult male engaged in those behaviors, neither of which are appropriate for a six-year-old child to witness, let alone perform. Therefore, the Court finds that all of the statements reviewed here qualify under the TYHA exception to the hearsay rule and are admissible at Defendant's trial.

ORDER

AND NOW, this 14th day of September after hearing, the Commonwealth's Motion to Admit Out of Court Statements pursuant to the Tender Years Hearsay Act is hereby **GRANTED**. It is **ORDERED** and **DIRECTED** that the statements of A.P. from the preliminary hearing on August 19, 2020 as well as the statements she made to her grandparents and the assigned Children and Youth caseworker on the dates and times as testified at the hearing on the Motion are admissible at trial.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
PD (EB)

NLB/n