

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

In Re: : **No. JV-10-2025**
:
C.H., :
:
a minor :

AMENDED OPINION and ORDER

AND NOW, this **21st** day of **May, 2025** this Court's Order dated May 19th, 2025 is hereby **AMENDED** to include language following the final paragraph of the Opinion and Order: following a hearing held May 15, 2025 on the Commonwealth's Motion to Admit Out of Court Statements where the juvenile and his attorney, Michael Dinges, Esquire appeared personally and the Commonwealth was represented by Eric Birth, Esquire, the Motion is **DENIED**.

Background and Testimony

The facts that give rise to the three counts charged in this matter (two counts of Indecent Assault and one count of Indecent Exposure) are contained in the Affidavit of Probable Cause dated December 12, 2024. Those factual allegations will not be reproduced here.

At the time of the hearing, the Commonwealth presented three witnesses, each of whom testified as to the alleged statements made by the four (4) year old child victim (VC). The Commonwealth also entered into evidence two Exhibits, one of which was a copy of the CAC interview.

Sherry Moroz (Moroz), a qualified Forensic Interviewer at the CAC, testified that she interviewed the VC on July 8, 2024. During the interview, the VC stated to Moroz that the accused put his hand between the VC's leg, swiped up and wiggled his fingers. The VC also gestured (up and down motion) how the accused had her touch his penis. Moroz stated the VC acted appropriately for a four-year child, understood and answered the questions. Moroz further

stated that she did not recall the VC using language that is more advanced for her age. Following conclusion of the hearing, this Court did review the CAC interview entered into evidence by the Commonwealth. During the VC's CAC interview, she disclosed that "she walked over to [the accused's] room", her clothes [were] on when [the accused] wiggled on my skin" and that the accused got to her skin by "using his finger." As the VC was making the above statements she was pointing to her groin area. When Moroz asked her what she called her private area, the VC stated her "private." When Moroz asked the VC what she calls a boys private part, the VC stated a "cooch." The VC went on to say that she did tell her mom and "Grandzy", that the accused told her not to tell and that what she described happened "a lot of times." On cross-examination, Moroz acknowledged that the VC's mother and grandmother brought her to the CAC interview.

The Commonwealth next called Michele Brown (Brown), the VC's maternal grandmother. Brown testified that following a custody exchange and after she returned to her home with the VC, the VC stated to her "Gram I have to tell you something. [The accused] was kissing my pee bug." Brown further testified that the VC stated that this happened in the accused's bedroom while everyone was sleeping. Brown then told the VC's mother, Summer Dietrich (Dietrich). Brown and Dietrich then notified law enforcement and the contact with law enforcement then led to the CAC interview. During the cross-examination of Brown, Brown indicated that there currently is custody litigation involving the VC. Brown also stated on cross that she did not discuss the events described by the VC with her prior to taking the child to the police station or the CAC.

The final witness called by the Commonwealth was Dietrich. Dietrich testified that on June 20, 2024 Brown called her and said to come to Brown's house. After Dietrich's arrival,

Brown had Dietrich ask the VC questions. Dietrich testified that the VC was crying and upset and that while at her Father's home, the accused woke her up and made her do things "unacceptable things she didn't want to do." Specifically, the VC stated to Dietrich that she "had to lick [the accused] and [the accused] made her return the favor." Dietrich also testified that the VC described the up and down hand motion that the accused made the VC perform on him. Dietrich further stated that the VC was told by the accused "not to tell", that the VC was "scared to tell" and that the VC said it happened both a million times and one time. Dietrich testified to additional statements made by the VC to her to include "[the accused] licked my bug, made me lick him, made me do [up and down hand motion] on him, [and that the accused] was small and shriveled up." On cross-examination, Dietrich stated that although the current custody order calls for 50/50, she is not allowing the VC to go to her Father's home out of concern for the VC but that Father may visit with the VC at Dietrich's home. Dietrich continued by stating that she intends to file for full custody, Father has not paid child support and that Father has displayed a lack of involvement in the life of the VC.

Defense counsel called the mother of the juvenile, Eva Forba, to testify. Forba testified that she had a conversation with Dietrich after Forba received the charges filed against her son. During that conversation, Dietrich stated to her that "I know nothing happened but Julius (Father of the VC) is going to get in trouble and not [the accused juvenile] and that will take care of the custody."

Analysis

Under 42 Pa.C.S.A. Section 5985.1(a):

- (1) An out-of-court statement made by a child victim or witness, who at the time the statement was made was 16 years of age or younger, describing any of the offenses enumerated in paragraph (2), [Chapter 31(relating to sexual offenses)], not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if:

- (i) the court finds, in an in camera hearing, that the evidence is relevant and that the time, content and circumstances of the statement provide sufficient indicia of reliability; and
- (ii) the child either;
 - (A) testifies at the proceeding; or
 - (B) is unavailable as a witness.

Although the Commonwealth did not specifically state that the VC will testify, it is inferred that the VC will testify because the Commonwealth also filed a Motion to Permit Testimony by Contemporaneous Alternative Method and that Motion is unopposed.

To be constitutionally valid under the Confrontation Clause, “the evidence admitted under section 5985.1 must possess ‘particularized guarantees of trustworthiness’ as adduced from the totality of the circumstances surrounding the out-of-court statement made by the child victim.” *Commonwealth v. Hanawalt*, 615 A.2d 432, 435 (Pa. Super. 1992). The United States Supreme Court has not endorsed a mechanical test for determining when hearsay statements made by a child victim of sexual abuse “possess particularized guarantees of trustworthiness,” under the Confrontation Clause. *Id* at 438. However, the Supreme Court did provide that the “main consideration in making such a determination is whether the child declarant was particularly likely to be telling the truth when the statement was made.” *Id*. The Supreme Court further “identified a non-inclusive list of factors to consider when making such a determination,” *Id*, to include: “(1) the spontaneity and consistent repetition of the statement(s); (2) the mental state of the declarant; (3) the use of terminology unexpected of a child of similar age; and (4) the lack of motive to fabricate.” *Id*.

Arguably, the VC’s statements to Brown were spontaneous. However, it is difficult to ascertain the degree of spontaneity of the VC’s statements to Dietrich. Brown testified that she

advised Dietrich to come to her house and question the VC regarding the statements the VC made to Brown. Already armed with the information possessed by Brown by the time Dietrich arrived at Brown's home, Dietrich then proceeded to question the VC.

Moreover, although Dietrich provided significantly more detail regarding the statements made to her by the VC, the VC's statements to both Brown and Dietrich differ significantly from the statements later made by the VC to Moroz. Not once during the VC's interview with Moroz did the VC make any statements regarding bug, pee bug or the act of licking. The only common denominators between the statements made by the VC to Brown, Dietrich and Moroz is the location of the alleged conduct committed by the accused, the up and down hand gesture made by the VC (Brown did not testify that the VC described the up and down hand motion), and finally, that the VC was not to tell anyone. In short, although the VC's initial statements to Brown can be considered spontaneous, the subsequent statements made by the VC lack spontaneity and consistency.

Outside of Moroz stating that the VC acted like a four-year-old and understood and answered the questions, there was no testimony received relative to the mental state of the VC or the VC's use of terminology unexpected of a child of similar age. The lack of testimony relative to these factors is neither a detriment nor a benefit to the Commonwealth or Defense.

Finally, assuming for the sake of argument that the VC's statements were both spontaneous and consistent, the testimony of both Brown and Dietrich is highly suggestive of a motive to blame the accused juvenile. Specifically, Brown testified that she is aware of custody litigation between Dietrich and the VC's Father. Dietrich testified very specifically to her discontent with the VC's Father as it relates to child support, physical custody and the Father's lack of involvement in the VC's life. In fact, most of the testimony offered by Dietrich regarding

her discontent of Father was unsolicited. Additionally, the testimony offered by Forba supports the Court's suspicion regarding Brown and Dietrich's motivation to blame the accused juvenile.

In sum, although it is not lost on the Court that the VC's initial statement to Brown is arguably spontaneous, there is a lack of consistency of repetition relative to the VC's subsequent statements. Moreover, coupled with the strong possibility that Brown and Dietrich possess a motive to blame the accused juvenile, it is concluded that based on the totality of circumstances, the statements made by the VC to Brown, Dietrich and Moroz do not possess the particularized guarantees of trustworthiness that the VC was telling the truth when the statements were made.

Accordingly, the Commonwealth's Motion to Admit Out of Court Statements is **DENIED** and no out of court statements shall be admitted. However, because the accused juvenile does not oppose the Commonwealth's request for testimony by contemporaneous alternative method, that Motion is **GRANTED**.

Because this decision materially effects the Commonwealth's case, this matter should be stayed pending the pursuit of an interlocutory appeal by the Commonwealth.

By The Court,

Ryan C. Gardner, Judge

RCG/kbc

cc: DA(E.B.)
Michael Dinges, Esq.
APO
Gary Weber, Esq.