

COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF:
C.O.,
A Minor

:
 : **No. JV-245-2024**
 :
 :
 : **Pre-Evidentiary Hearing**
 : **Motions**

ORDER

AND NOW, this **9th** day of **May, 2025**, before the Court are the Commonwealth's Motion to Permit Testimony by a Contemporaneous Alternative Method and Motion to Admit Out of Court Statements filed on March 28, 2025, by Eric Birth, Esquire. A hearing was held on May 1, 2025 at which time Eric Birth, Esquire, appeared on behalf of the Commonwealth and Michael Dinges, Esquire appeared on behalf of the Juvenile.

At the hearing on May 1, 2025, Counsel for the Juvenile indicated that the party is not opposed to the Commonwealth's Motion to Permit Testimony by a Contemporaneous Alternative Method. Accordingly, the Motion was **GRANTED**.

Background

The alleged facts which led to the filing of the Motions are as follows. The Juvenile in this matter is charged with Indecent Assault Person less than 13 Year of Age. The child victim is currently nine years old. At a time prior to the filing of these charges, the child victim disclosed to his grandmother, Kelly Blasé (hereinafter “Grandmother”), that the Juvenile, C.O., made the child victim perform sexual acts on the Juvenile. The child victim also disclosed that C.O. was physically aggressive.

An interview was conducted by Trooper Tyler Diggan and Trooper Reiner with the child victim. In the interview, the child victim stated that he told his grandmother about the events leading to charges against C.O. in this matter. The child victim disclosed that C.O.

“made him do something bad.” (Commonwealth’s Motion to Admit Out of Court Statements, 03/28/2025). The child victim further disclosed that C.O. put his penis in the child victim’s mouth on numerous occasions, and that it was cold outside when the series of events occurred.

At the hearing on the Motion, the Commonwealth stated that it withdraws the portion of its motion requesting that the troopers be permitted to testify to the statements made during the interview with the child victim because the interview is not recorded. Accordingly, the Court must only determine whether Grandmother’s testimony regarding the child victim’s statements about C.O. may be submitted under the Tender Years Statute.

Argument and Testimony

In support of the Commonwealth’s Motion to Admit Out of Court Statements, the Commonwealth presented the child victim’s grandmother to provide testimony regarding the child’s characteristics and the statements he made to her about the events. The Commonwealth argued that Grandmother is the first person to whom the child victim made the statements, and under the law, the testimony is permitted as an exception to the rules against hearsay. The Commonwealth further argued that the testimony provided by Grandmother at the hearing on the Motion provided the indicia of reliability required to support the admissibility of these out-of-court statements at the evidentiary hearing.

Grandmother testified that the child victim is her paramour’s grandson, and she sees him daily as she has full custody of the child. Grandmother further stated that she and her husband were awarded full custody of the child victim in or around December of 2023. Grandmother then stated that in or around January or February of 2024 the child victim confided in Grandmother that C.O. made the child victim watch porn and perform oral sex on C.O. at a time when the child victim and his mother were living with C.O. and his father.

More specifically, Grandmother testified that she and the child victim have a “safe space” where he can openly discuss topics with her and ask her questions that he is uncomfortable discussing in other areas or in front of others.

In or around January or February of 2024, the child victim came home from school and requested to talk about something in their “safe space.” Once they had gone to their “safe space” the child victim told her that at school another child called him “gay.” In follow up to the child victim’s statement, Grandmother stated that he then disclosed the incidents involving C.O. When asked, Grandmother stated that the child victim used the words “oral sex” in describing the events.

Grandmother stated that she approximates the age of the Juvenile to be about fourteen or fifteen years of age when this occurred because the child victim would have been around six or seven years old at the time when he resided with C.O. Grandmother estimated that the events likely occurred within 2023, but before she was awarded custody in December of 2023. However, Grandmother was unable to state exactly when because the child victim did not reside with Grandmother at the time. Additionally, Grandmother stated that she has never met C.O., and only knew of him because she knew that the child victim and his mother were living with C.O. and his father prior to her obtaining custody of the child victim.

After the child victim disclosed the incidents, Grandmother asked him if he wanted to speak about this further with his grandfather. The child victim chose to tell his grandfather about the incidents. Grandmother testified that the child victim told grandfather the same things he told her and nothing changed in his description of the incidents. Subsequently, Grandmother made a report through Lycoming County Children and Youth Services (hereinafter “CYS”). At that point, CYS referred the child victim and his family to a counselor, whereupon he made the disclosures he had made to Grandmother.

Grandmother further testified that the child victim has spoken more about the incidents involving C.O., and that the timeline and events have not deviated from what he originally told Grandmother.

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.

The Commonwealth indicated that the child victim will testify in this matter. Thus, the second prong has been satisfied, and the Court will focus the analysis on the first prong.

To be constitutionally valid under 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,” *id* at 438, 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.*

First, the Court finds that the child victim made unsolicited statements to Grandmother in their private space regarding what he experienced with C.O. Second, the child victim’s disclosure followed an unrelated incident at school when another child called him “gay.” Based on that incident, the child victim disclosed that C.O. forced him to watch porn and perform oral sex on C.O. Consequently, the Court finds that the nature of the statements made to Grandmother by child victim are unusual for a nine-year-old to be knowledgeable about without the prior exposure to language and content of a sexual nature. Moreover, Grandmother testified that the child victim uses other terms and vocabulary that are of a nature unnatural and uncomfortable for a child his age to be discussing, let alone know what the statements he makes entail behaviorally. Third, Grandmother testified that the child victim recanted his memory of the abuse on several occasions, and that his retelling is unprompted and identical to his initial disclosure to Grandmother. Finally, Grandmother testified that she has never met C.O. thus, she has no motive to blame the Juvenile nor does she have a motive to fabricate or plant the allegations because she already has full custody of the child victim.

Despite the facts that Grandmother is unable to recall the specific timeframe of when the allegations occurred and that there is no written statement or recorded interview to compare the allegations to the testimony, the Court concludes that the totality of the circumstances provide sufficient indicia of reliability in the out-of-court statements.

More specifically, Grandmother was the first person to know of the allegations made by the child victim regarding C.O. The statements support that the victim knew about sexual

conduct, and disclosed that he has been exposed to indecent sexual conduct for a child his age. Moreover, there are no indications that he intended to cause ramifications against C.O. Additionally, the Court concludes that the child victim's disclosure is not founded in seeking attention because he requested to speak to his Grandmother in private and in a "safe space". Furthermore, the Court concludes that the child victim has no motive to extort this information to receive anything of value from anyone in return as he was already removed from living with the alleged offender.

Accordingly, the Commonwealth's Motion to Admit Out of Court Statements is **GRANTED.**

By the Court,

Ryan M. Tira, Judge

RMT/asw

CC: DA(EB)
Michael Dinges, Esq.
JPO(3)
Gary Weber, Esquire-Lycoming Reporter