

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>:</b>	<b>No. 99-10,359</b>
	<b>:</b>	
<b>vs.</b>	<b>:</b>	<b>CRIMINAL DIVISION</b>
	<b>:</b>	
<b>JOE VINCE SWEENEY,</b>	<b>:</b>	
<b>Defendant</b>	<b>:</b>	<b>1925(a) Opinion</b>

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

This opinion is written in support of this Court's Judgment of Sentence dated October 28, 1999 and docketed November 3, 1999.

The relevant facts are as follows. On February 16, 1999, the defendant was charged with statutory sexual assault, involuntary deviate sexual intercourse, two counts of aggravated indecent assault, endangering the welfare of a child and corruption of the morals of a minor arising out of allegations that he sexually molested his fifteen year old stepdaughter, J.P. A jury trial was held on September 14 and 15, 1999. The Commonwealth presented evidence that the defendant engaged in oral sex and sexual intercourse with his fifteen year old stepdaughter. The Commonwealth's primary witness was the victim, J.P. The defendant testified that he never touched J.P. in a sexual manner. The defense also presented evidence the J.P. simply wanted the defendant out of the house because he was too strict of a disciplinarian. The jury found the defendant guilty of statutory sexual assault, involuntary deviate sexual intercourse, endangering the welfare of

a child and corruption of a minor.<sup>1</sup>

On October 28, 1999, the Court sentenced the defendant to incarceration in a state correctional institution for 5-10 years on the involuntary deviate sexual intercourse conviction, a consecutive 1-2 years on the statutory sexual assault conviction, a concurrent 6 months - 1 year for corruption and 2 years consecutive probation for endangering the welfare of a child. The defendant filed a timely appeal.

The first issue the defendant raises on appeal is the evidence was insufficient to establish that the defendant engaged in deviate sexual intercourse with the complainant, J.P.; specifically, the evidence was insufficient to establish penetration or that the defendant engaged in sexual acts with J.P. This Court cannot agree. Deviate sexual intercourse is defined as sexual intercourse per os or per anus between human beings who are not husband and wife. J.P., the defendant's step-daughter, testified that the defendant pulled off her underwear and engaged in oral sex with her and she did not want that type of contact to occur. N.T. at pp. 24-25. This testimony is sufficient to establish the defendant engaged in involuntary deviate sexual intercourse with J.P. Commonwealth v. Bishop, 742 A.2d 178, 189 (Pa.Super. 1999)(evidence that appellant licked his five year old granddaughter's vagina during the course of a secret game was sufficient to support his conviction for involuntary deviate sexual intercourse); see also Commonwealth v. Davis, 650 A.2d 452, 455 (Pa.Super. 1994)(uncorroborated testimony of sexual assault victim, if believed by finder of fact, is sufficient to convict, despite contrary evidence for defense

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<sup>1</sup>The parties agreed not to submit the aggravated indecent assault charges to the jury as these charges would merge with the remaining charges under the facts of this case.

witnesses).

The defendant next asserts that the evidence was insufficient to establish that he engaged in sexual intercourse with the complainant. Again, the Court cannot agree. J.P. testified that after the defendant engaged in oral sex on her, he asked if he could “stick it in” her. Although J.P. didn’t reply, the defendant had intercourse with her, pulled out and ejaculated on her stomach. N.T., at p.26. This testimony is sufficient to establish penetration and that the defendant engaged in sexual acts with the complainant.

In addition to engaging in sexual intercourse and oral sex with J.P., the defendant fondled her breasts, asked her to examine a pimple right below his erect penis and came into the bathroom while she was in the bathtub. N.T., pp. 25-26, 30-32, 39-40. Based on this testimony, the Court also rejects the defendant’s contentions that there was insufficient evidence to establish the defendant engaged in sexual acts with the complainant to support his convictions for endangering the welfare of a child and corrupting the morals of a child.

The defendant next asserts the Court erred in sustaining an objection to the defendant’s witness’s opinion that the defendant did not commit the acts complained of. The defense called the defendant’s sister, Susan Lewis, as a witness. The defense asked Ms. Lewis whether she thought the defendant committed the acts testified to by J.P. The prosecutor objected and the Court sustained the objection. N.T. at p.123. The defense attorney tried to ask the witness if she would be willing to leave her children alone with the defendant. Again, the prosecutor objected and the Court sustained the objection. N.T. at p. 124. The prosecutor then requested a side bar to argue that this whole line of

questioning was not relevant. Each side was given an opportunity to express their position and the Court ruled such evidence was not admissible. N.T. at pp. 124-125. Basically, the defense sought to elicit testimony that the witness didn't believe the defendant would or could do such a thing. However, this type of evidence is character evidence which can only be introduced through reputation in the community; it cannot be introduced through opinion evidence. Pa.R.E. 405; Commonwealth v. Neely, 522 Pa. 236, 561 A.2d 1 (1989).

The defendant's final allegation is the Court erred in failing to allow the defendant to present evidence as to prior bad acts of the complainant for the purpose of establishing that she had a motive to lie about the defendant's actions. The Court held a conference in chambers which apparently was not on the record regarding references in the complainant's diary to drinking alcohol and smoking marijuana. The Court's recollection of this conference is as follows. The defense sought to admit the references to drinking and smoking. The Commonwealth objected. The Court told the attorneys that if the defense could connect the drinking and smoking to disciplinary actions of the defendant, this evidence could be admissible, but the references would not be admissible simply to show the complainant was engaging in illegal acts. After this conference, the defense never made an attempt to introduce this evidence. Since the defense did not

show how the smoking and drinking gave the complainant a motive to lie, the evidence was properly excluded.

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

By The Court,

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Kenneth D. Brown, J.

cc: Daniel E. Holmes, Esquire (ADA)  
Wendy S. Tripoli, Esquire  
Law Clerk  
Superior Court (original & 1)  
Gary Weber, Esquire (Lycoming Reporter)