

# *The Legal Intelligencer*

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## **Videotaped Child Testimony Statute Upheld**

By **Amaris Elliott-Engel** ([aelliott-engel@alm.com](mailto:aelliott-engel@alm.com))

In an apparent case of first impression, a unanimous Superior Court panel ruled against a convicted murderer's constitutional challenge to Pennsylvania's 2005 law laying out the rules for child trial-testimony via videotape.

Appellant Candice Geiger was convicted in Philadelphia Common Pleas Court in 2005 of third-degree murder and criminal conspiracy regarding the death of her 3-year-old niece.

Geiger argued her constitutional right to confrontation was denied when Common Pleas Judge Renee Cardwell Hughes allowed the 3-year-old's sisters to testify via videotape and closed-circuit television.

The Superior Court panel included Judges John T. Bender, Richard B. Klein and Zoran Popovich.

Popovich, writing in an opinion issued Tuesday in *Commonwealth v. Geiger*, said the case is the first time the constitutionality of Section 5984.1 of Pennsylvania's criminal statutes has been challenged since the General Assembly passed it into law July 15, 2005, after the Confrontation Clause in Article I, Section 9, of the Pennsylvania Constitution was amended in 2003. The Pennsylvania Commonwealth Court upheld those amendments in 2004.

"Receiving the testimony of the child witnesses by way of videotape under Section 5984.1 did not violate the Confrontation Clause of either the state or federal constitutions, especially where the trial court made findings that testifying in court in the presence of appellant would cause the child witnesses 'severe emotional distress' that would impair their ability to communicate truthfully and accurately, which is *sine qua non* to allowing videotape questioning of child witnesses," Popovich said.

The U.S. Supreme Court found in its 1990 *Maryland v. Craig* decision that a defendant's right to a face-to-face confrontation is not an absolute right and that the state may infringe upon this right because of the compelling state interest in protecting children from suffering emotional distress and trauma from being confronted with an alleged abuser, Popovich said.

In the instant case, Popovich wrote that Hughes faithfully followed the elements of Section 5984.1 that require testimony to be obtained under oath; that the defendant is allowed to observe the child witnesses' testimony and to communicate with her attorney about the testimony, including for purposes of cross-examination; that the children can't see or hear the defendant; and that only court advocates and personnel were present during the children's testimony.

When the trial court faithfully followed the elements of Section 5984.1, there was no violation of the Confrontation Clause in Article I, Section 9, of the Pennsylvania Constitution or of the Sixth Amendment of the U.S. Constitution, Popovich said.

The ancestor statute of Section 5984.1 was ruled unconstitutional by the Pennsylvania Supreme Court in the 1994 *Commonwealth v. Louden* case because of the court's conclusion that videotaped testimony on a closed-circuit television "failed to protect a defendant's state constitutional right to a face-to-face confrontation with his accuser," even though it was a laudable goal to protect children witnesses, Popovich wrote.

However, since the *Louden* decision, the state constitution was changed from requiring that defendants have access to confront their accusers face-to-face to requiring a preference to facilitate defendants' access to confront their accusers face-to-face, Popovich said.

The Commonwealth Court concluded that the challenges to the constitutional amendments during the 2004 *Bergdoll v. Commonwealth* case were not sustainable because removing the "face to face" language of the Confrontation Clause did not infringe upon the federally protected right of a criminal defendant to confront witnesses.

The Superior Court said changing the Pennsylvania Constitution in 2003 from requiring the right to "meet the witnesses face to face" to the right to "be confronted with the witnesses against him" took the new statute outside of the reach of the *Louden* decision and does not limit the legal use of videotaped testimony via closed-circuit television.

"After the constitutional amendment, it now requires confrontation, not face to face confrontation," said Hugh J. Burns Jr. with the Philadelphia District Attorney's Office. "That essentially means cross-examination. The procedure outlined in the statute certainly provides for that. It's under the supervision of a judge. The accused can also raise particular points with his attorney during the process. In essence, the defendant gets just about every protection you can conceive of, except for the feature of face to face confrontation."

The Superior Court also rejected Geiger's argument that she was deprived of her due process rights.

Geiger's attorney, David Rudenstein, was unavailable for comment yesterday because of an ongoing trial.

Geiger and her codefendant, Jerry Chambers, lived with Geiger's sister's four daughters during 2002 in a squalid apartment, Popovich said. The 10-year-old, 6-year-old, 4-year-old and 3-year-old were physically and sexually abused by the codefendants, including beatings with a broomstick, belt buckle, extension cord and a metal pole, according to the opinion.

The 3-year-old was killed when Geiger told Chambers to throw her against the wall after the child would not stop watching them having sex; Chambers threw her by her feet across the room and the toddler's head struck a radiator, according to the opinion.

The child died from a combination of blunt trauma consisting of 30 to 40 bruises on her body, asphyxia from being jammed between a bed frame and a radiator for a few hours and being weakened because of severe neglect, according to the opinion.

Geiger also argued that the evidence presented at trial was insufficient to sustain her convictions. Geiger said she did not take an active part in the murder of the 3-year-old and couldn't be held accountable for the child's killing, but Popovich concluded testimony by the decedent's sister indicated the sister had heard Geiger tell Chambers to throw the toddler.

"Viewing the facts in a light most favorable to the verdict-winner, and drawing all reasonable inferences therefrom, we find that the evidence was sufficient in quantity and quality to sustain appellant's convictions for third degree murder and criminal conspiracy, which manifested itself in the hardness of heart, cruelty, and recklessness of consequences associated with the manner and method of [the child's] death," Popovich said.

*(Copies of the 21-page opinion in Commonwealth v. Geiger, PICS No. 08-0309, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order or for information. Some cases are not available until 1 p.m.)*

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