

**[J-20-1999]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 144 M.D. Appeal Docket 1998
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered on May 8, 1998 at No.
	:	2840PHL97, affirming the judgment of
v.	:	sentence imposed on April 5, 1991 of the
	:	Court of Common Pleas of Montgomery
	:	County, Criminal Division, at No. 162-90.
PETER BALODIS,	:	
	:	
Appellant	:	
	:	ARGUED: February 2, 1999

**CONCURRING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: February 24, 2000**

I agree with the dissent that trial counsel's stated strategy of attacking the victim's credibility through the cross-examination of Ms. Sobel may be viewed as opening the door to some explanation on Ms. Sobel's part, and that the trial court issued a series of fairly specific limiting instructions in an attempt to prevent the jurors from improperly substituting Ms. Sobel's judgment for their own. However, I am unable to agree that Ms. Sobel's testimony was not offered to (and did not have the effect of) bolstering the child victim's credibility, or that trial counsel's strategy necessarily required that the Commonwealth be permitted to offer expert opinion to serve as a counterweight. Indeed, to allow testimony of the kind presented here simply because the defense elects to challenge the victim's

credibility through the use of the victim's prior inconsistent statements would vitiate the evidentiary principles embodied in Commonwealth v. Seese and Commonwealth v. Dunkle.

I believe that adult witnesses confronted with delay and inconsistency in reporting by a child victim should be permitted to offer some explanation of the reasons for their own responsive actions or inaction. I also hold the view that the Commonwealth should be allowed to draw reasonable inferences from the evidence and thus suggest to the jury in closing argument that factors such as the child's age in comparison to the defendant's, the child's stage of intellectual and emotional development, and the nature of the relationship between the child and the defendant may have affected the timing and character of the child's statements. Nevertheless, I believe that it simply goes too far to permit the Commonwealth, as it did here, to cloak such explanations and inferences with the authority of an expert opinion.

Accordingly, I join the majority in finding that trial counsel was ineffective in failing to preserve the pertinent issue for appellate review.

Mr. Justice Zappala joins this concurring opinion.