

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2015-CA-001465-MR

SAMUEL BALTAZAR

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE JOHN R. GRISE, JUDGE  
ACTION NO. 15-CR-00200

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JOHNSON, JONES, AND THOMPSON, JUDGES.

JONES, JUDGE: Samuel Baltazar appeals from a Warren Circuit Court judgment imposing a sentence of one year after a jury found him guilty of one count of first-degree sexual abuse. Baltazar argues that he was entitled to a directed verdict because the victim, his stepdaughter, recanted some of her earlier statements.

After reviewing the record in conjunction with the applicable legal authorities, we AFFIRM.

### **I. BACKGROUND**

The events leading up to Baltazar's conviction began on or about December 8, 2014. On that evening, Baltazar and his family were at a local church in Bowling Green, Kentucky. As it was getting quite late, Baltazar's wife, Judith, asked him to take the three children home so that they could get some rest. He did so.

Once they arrived at the home, the three children went to sleep in their parents' room. Baltazar retired to the sofa in the living room. Sally, Baltazar's stepdaughter, was fifteen at this time.<sup>1</sup> Sally testified that her two sisters fell asleep, but she did not. According to Sally, she heard noises in the bedroom so she pretended to be asleep. She then felt something go underneath the covers and move toward her. The following day, Sally told Judith, her mother, that Baltazar touched her breasts and her vagina during this encounter. Judith immediately moved out of the home and took the children to St. Louis, Missouri.

After arriving in St. Louis, Sally went to the Children's Advocacy Center where she reported that Baltazar had touched her breasts and vagina while she lay in bed. She circled the areas where she had been touched on an anatomical diagram. The police in St. Louis forwarded the complaint to the Warren County

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<sup>1</sup> The victim's real name is not "Sally." The parties adopted the name "Sally" to protect her identity.

Sheriff's office, and Detective Jonathan Angel contacted the family and spoke with Baltazar. During their initial conversations, Baltazar told Detective Angel that he had "done something bad." Detective Angel met Baltazar at his home for an interview. After receiving the *Miranda* warning in English, which was his second language, Baltazar requested to be informed of his rights in Spanish. Detective Angel used a form he downloaded with the *Miranda* rights in Spanish and had Baltazar read the form out loud. Thereafter, Baltazar gave a taped statement in which he admitted that he had touched Sally's vagina.

On March 18, 2015, the Warren County grand jury indicted Baltazar on one count of sexual abuse in the first degree. Baltazar's case was tried before a jury on July 9-10, 2015. At trial, Sally backed off her prior statements to some degree. She testified that as she lay in the bed, she felt something go underneath the covers and move toward her. She stated that Baltazar put his hand beneath her pajamas and rubbed along the top of her panties, but that he never touched her vagina. She testified that he only touched her skin "a little." Sally also admitted that she lied in an earlier statement when she said that Baltazar had done similar things to her when she was younger, and that she had written to the trial court informing it that she regretted initiating the charges. She further testified that she lied to the authorities in Missouri when she told them Baltazar had touched her beneath her underwear. She explained that she lied because she did not want to move back to Kentucky. On cross-examination, she reaffirmed that she had lied

about the vaginal touching, stating that Baltazar was touching close to her vagina, but not directly touching it. Defense counsel asked whether she was stating that Baltazar's hand did not have direct contact with her vagina, and she replied yes. On re-direct examination, she testified that she felt a hand rubbing on her, but not going into her vagina. She testified that Baltazar touched her over her underwear, but not all the way under the bottom part of the panties. She explained that he "would touch skin sometimes" as the clothing moved around during the rubbing. Sally acknowledged that she had told the prosecutor on the morning of trial that Baltazar had directly touched her vagina.

Jonathan Angel, the detective who interviewed Baltazar, testified that Baltazar told him that he "had done something bad," and that when they spoke at his house he became emotional and announced that he had made a big mistake. A recording of the interview was played for the jury, in which Baltazar admitted that he had made a mistake, that he touched Sally, and that his hand was underneath her clothes and her panties. When the detective asked him whether he touched her vagina, he replied "yes."

At the close of the Commonwealth's case, Baltazar moved for a directed verdict. The trial court denied the motion. The defense offered no evidence and the case proceeded to closing arguments. Thereafter, the trial court instructed the jury on the applicable law. After deliberating, the jury returned a

guilty verdict on the sexual abuse charge. The trial court then sentenced Baltazar to serve one year in the penitentiary.

This appeal followed.

## II. STANDARD OF REVIEW

“On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.” *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky.1991). The evidence presented by the prosecution must be more than a mere scintilla. *Id.* at 188.

A motion for a directed verdict of acquittal should only be made (or granted) when the defendant is entitled to a complete acquittal[,] i.e., when, looking at the evidence as a whole, it would be clearly unreasonable for a jury to find the defendant guilty, under any possible theory, of any of the crimes charged in the indictment or of any lesser included offenses.

*Acosta v. Commonwealth*, 391 S.W.3d 809, 817 (Ky. 2013) (quoting *Campbell v. Commonwealth*, 564 S.W.2d 528, 530 (Ky. 1978)).

## III. ANALYSIS

Baltazar was found guilty under the following subsections of KRS<sup>2</sup> 510.110(1), which provide that “[a] person is guilty of sexual abuse in the first degree when . . . [b]eing twenty-one (21) years old or more, he . . . [s]ubjects

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<sup>2</sup> Kentucky Revised Statutes.

another person who is less than sixteen (16) years old to sexual contact[.] KRS 510.110(1)(c)(1). “Sexual contact” is defined for purposes of the statute as “any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party[.]” KRS 510.010(7).

Baltazar contends that there must be an actual touching of the sexual or other intimate parts of the body to meet the statutory definition of “sexual contact.” He argues that Sally’s testimony describing the incident was insufficient evidence to meet the definition because she stated that he had not touched her vagina under her underwear, but rather that he had touched her “on top” of her underwear, and on cross-examination stated that this touching was not even of her vagina.

The Kentucky Supreme Court has provided the following discussion of the definition of “sexual contact”:

We find the commentary to Section 7 useful in understanding the term “sexual contact” as any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying the sexual desire of either party. An actual touching is required, but the contact need not be directly with the body. For example, touching another person’s sex organs through clothing would be within the purview of this definition. The touching must be done for the purpose of sexual gratification. Clearly, the definition does not include inadvertent or accidental touching of the intimate parts of another person. It was within the province of the jury to determine by method of reasonable inference whether the situation described here amounted to sexual contact.

It is not necessary for the victim/witness to completely articulate what sexual or other intimate parts of her body were touched by the aggressor.

*Bills v. Commonwealth*, 851 S.W.2d 466, 471 (Ky. 1993). In evaluating whether the body part at issue is “intimate” it is necessary to consider: the area of the body where the touching occurred; the manner of touching; and the circumstances in which the touching occurred. *Id.* at 472.

The events described by Sally, even in her trial testimony, qualify as sexual abuse. Baltazar touched and rubbed an unquestionably intimate area of the victim’s body – the area around, and to some extent under, her panties. “The Kentucky statutory definition of sexual contact when the term ‘other intimate parts’ is used encompasses parts of the body of the victim other than sexual organs alone.” *Id.* Sally described the touching as “rubbing” of the area on and around her underwear. This is certainly suggestive of touching of a sexual nature. Finally, the circumstances under which the touching occurred, late at night, in the bedroom, while Baltazar’s wife was away and the victim appeared to be asleep, were such that the jury could easily infer it was performed deliberately for sexual gratification, and did not occur by mistake or accident.

The jury was made fully aware that the victim had altered her testimony from what she had stated previously, and was also fully aware of her alleged motivation for doing so – that she did not want to move back to Kentucky

because she enjoyed her freedom in Missouri. It was entirely within the purview of the jury to determine what significance to assign to these changes in arriving at its verdict. “[J]udgment as to the credibility of witnesses and the weight of the evidence are left exclusively to the jury.” *Fairrow v. Commonwealth*, 175 S.W.3d 601, 609 (Ky. 2005). Sally’s testimony in conjunction with Baltazar’s taped confession was sufficient to support the jury’s verdict. Accordingly, we no find no error.

#### IV. CONCLUSION

For these reasons, we affirm the judgment of the Warren Circuit Court.

ALL CONCUR.

#### BRIEFS FOR APPELLANT:

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#### BRIEF FOR APPELLEE:

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