

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

THOMAS TYMA

Appellant

No. 1047 WDA 2012

Appeal from the Judgment of Sentence May 24, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0002031-2011
CP-02-CR-0002032-2011
CP-02-CR-0002034-2011
CP-02-CR-0002564-2011
CP-02-CR-0002583-2011
CP-02-CR-0004424-2011
CP-02-CR-0004600-2011
CP-02-CR-0007833-2011
CP-02-CR-0011977-2011

BEFORE: FORD ELLIOTT, P.J.E., OTT, J., and MUSMANNO, J.

MEMORANDUM BY OTT, J.:

FILED DECEMBER 18, 2013

Dr. Thomas Tyma appeals from the judgment of sentence to serve an aggregate term of 60 days incarceration, followed by one year of county intermediate punishment and six years of concurrent probation, imposed on May 24, 2012, in the Allegheny County Court of Common Pleas. The sentence was imposed after the trial court, sitting without a jury, found Dr.

Tyma guilty of 18 counts of indecent assault¹ and 17 counts of harassment² as a result of his inappropriate behavior while performing medical exams on 17 of his former patients. On appeal, he challenges both the sufficiency and weight of the evidence supporting his convictions. For the reasons that follow, we affirm.

Dr. Tyma is a rheumatologist³ who has practiced in Allegheny County since 1993. Between January 11, 2011, and May 24, 2011, the Commonwealth filed nine separate criminal complaints against Dr. Tyma relating to his inappropriate touching of 21 former patients during medical exams. Seventeen of those former patients testified against Dr. Tyma at trial. In almost every case, the complainant testified that during a routine heart exam, Dr. Tyma touched her breast in a manner unrelated to the exam. In every instance, save one, the inappropriate touching occurred when the patient was alone with Dr. Tyma. A review of the testimony is necessary for our disposition of the issues raised on appeal.

¹ 18 Pa.C.S. § 3126(a)(1).

² 18 Pa.C.S. § 2709(a)(1).

³ A rheumatologist treats patients with systemic diseases, such as fibromyalgia, rheumatoid arthritis, lupus, and Sjorgren's disease. N.T., 3/12-19/2012, at 347.

Thirteen of Dr. Tyma's former patients testified during the first day of trial. L.S.⁴ testified that she had only one appointment with Dr. Tyma. After he listened to her heart with his stethoscope, he asked her if she had a breast exam recently, to which she replied, "yes; I just had one." N.T., 3/12-19/2012, at 11. She explained that "at that time his hand was already groping me around each breast, over top of my sweater." **Id.** Although she made another appointment with Dr. Tyma before she left the office, she cancelled the appointment the next day, and never returned.

C.W. saw Dr. Tyma "five or six times." **Id.** at 24. She testified that during most of the exams, she was not alone with Dr. Tyma because a physician's assistant was in the room. However, during the one visit she was alone with Dr. Tyma, he asked her to lie down on the exam table and then "took his right hand inside [her] blouse and covered [her] left breast" over her bra. **Id.** at 27. C.W. testified that she returned for one follow-up appointment, but was not alone with Dr. Tyma during that visit. She never returned again.

R.C. testified that she only met with Dr. Tyma on one occasion. Although she complained of pain in her neck and jaw, she testified that Dr. Tyma "proceeded to touch [her] body, grope both of [her] breasts, put his hand down [her] back side and touch [her] butt." **Id.** at 38. She explained

⁴ We will refer to the victims only by their initials.

that he “literally cupped [her breasts] and rubbed and massaged around them and kept asking if there was any pain and [she] said no.” **Id.** at 39. She testified that, although a female employee was present in the room during the exam, the employee was taking notes and “never picked her head up.” **Id.** at 41. R.C. decided to follow-up with a different rheumatologist.

E.G. was the first former patient to lodge a criminal complaint against Dr. Tyma. She testified that she had two appointments with Dr. Tyma. During the first appointment, she saw Dr. Tyma only briefly, and he did not perform a physical exam. However, during the second appointment, while Dr. Tyma was listening to her heart, “[h]e had his stethoscope on [her] chest and then he slid his hand inside [her] bra and grabbed [her] left breast and squeezed it.” **Id.** at 54. He then asked her to stand up and bend over, ostensibly so he could check her spine. E.G. testified that he asked her to bend over two or three times, “[a]nd then after [she] stood up, he took his hands and rubbed them down [her] back and on [her] behind.” **Id.** at 55. Although she made a follow-up appointment on her way out, she testified that she never intended to keep it. E.G. reported the incident to the police two days later. **Id.** at 56.

B.S. testified that Dr. Tyma inappropriately touched her on two occasions. During the first visit, he put his left hand under her shirt and grabbed her breast over her bra, while he held his stethoscope in his right hand. **Id.** at 69-70. B.S. further testified that during her second visit with Dr. Tyma, he, once again, grabbed her left breast with his left hand as he

held his stethoscope in his right hand. **Id.** at 73. She did not return to his office again.

R.T. was referred to Dr. Tyma by her brother, who was also his patient. She testified that during her first appointment, a physician's assistant remained in the room the entire time. However, during the follow-up exam, she was alone in the room with Dr. Tyma. R.T. testified that after he listened to her heart and lungs, he asked her to lie down on the table "and he lifted up [her] sweater and he felt both of [her] breasts" over her bra. **Id.** at 85-86. Although she made a follow-up appointment before she left, she never returned to Dr. Tyma's practice.

M.J.S. testified that she was a patient of Dr. Tyma's for "a good ten years." **Id.** at 97. She had appointments with either him or a physician's assistant every three to six months, and never experienced anything inappropriate. However, M.J.S. testified that during her "last three or four visits" with Dr. Tyma, "[w]hen he would listen to [her] heart beat, he would kind of roughly grab the left breast and listen to [her] heart [.]" **Id.** at 100. The incidents occurred over her clothing. She explained why she kept returning to Dr. Tyma after the first incident:

Because I wasn't sure and he was my doctor and I trusted him. And I knew him for all these years. And I wasn't sure. I was very embarrassed.

Id. at 101.

F.F. was referred to Dr. Tyma by her primary care physician. She testified that during her first appointment, Dr. Tyma asked her to lie down

on the exam table, and pull up her sweater so that he could check her heart. When she did, her breast was exposed from her bra. Dr. Tyma then put his left hand on her right shoulder, and his right hand on her left breast. F.F. explained that he then brought his left hand down and “swiped down by [her] pelvic area.” **Id.** at 111. She also testified that while this was occurring, Dr. Tyma “was pressing his groin up against [her] right arm.” **Id.** at 115. Although F.F. returned to Dr. Tyma for two follow-up appointments, she testified that nothing inappropriate occurred during those exams.

J.S. testified that during her initial consultation with Dr. Tyma, he did not perform a physical exam. However, during a follow-up visit, when she was alone with Dr. Tyma in the exam room, “he put his hand inside of [her] bra[, a]nd then he told [her] he didn’t need to see [her] again.” **Id.** at 129. J.S. explained that Dr. Tyma was not performing a physical exam at that time, but that he simply touched her breasts. **Id.** at 133.

The next complainant, L.H., testified that while she was in the hospital, treating for pancreatitis, Dr. Tyma examined her a few times because her doctor requested a rheumatologist consult. During one of his visits, he was leaning over her to examine a skin inflammation near her collarbone. Although there was another patient in the room, L.H. testified that the curtain surrounding her bed was closed. **Id.** at 143. She explained that when Dr. Tyma “went to go stand up, he grabbed [her] left breast” over her hospital gown. **Id.** at 144-145. L.H. testified that she believed his actions

were intentional because “it was a grab” and “there was really no reason for him to grab [her].” **Id.** at 150.

U.G. testified that she was a patient of Dr. Tyma’s for many years. The first time he touched her inappropriately, his whole hand touched her breast while he was listening to her heart with a stethoscope. She dismissed it as an accident. **Id.** at 154. However, the second time it happened, and he put his entire hand over her breast, she realized it was not an accident. **Id.** at 155-157. U.G. testified that after the second incident, she decided not to continue treating with him.

G.J.S. was another longtime patient of Dr. Tyma’s. During one of her last visits, however, Dr. Tyma had difficulty putting his stethoscope under her bra because it was very snug. She testified that once it was in place, several fingers of his hand, that was holding the stethoscope, “were going up and down in a caressing manner on the inner portion of [her] breast.” **Id.** at 169. Then, Dr. Tyma “cupped” her breast with his other hand and “was squeezing [the] breast in an abnormal manner.” **Id.** G.J.S. testified that she had to return to Dr. Tyma for one more appointment so that she could obtain a refill for a prescription. She explained that “[t]here was not inappropriate touching during that visit[,]” but it was “awkward.” **Id.** at 173. G.J.S. also explained that she was hesitant to report the encounter because she was in pharmaceutical sales, and knew Dr. Tyma on a professional level, as well as being his patient. **Id.** at 179.

D.M. was the final complainant to testify on the first day of trial. D.M. was originally a patient of another doctor in the practice, but was transferred to Dr. Tyma after her former doctor left. She testified that during her initial visit with Dr. Tyma, Dr. Tyma was listening to the right side of her chest with a stethoscope, when he touched her left breast under her bra with his other hand. **Id.** at 187. During the same appointment, she required an injection in her left hip. Dr. Tyma proceeded to rub the area for five to ten minutes, ostensibly to rub the medication into the muscle. **Id.** at 189-190. While he was doing so, Dr. Tyma said to her, "you do trust me," to which she replied, "yes; you are my doctor." **Id.** at 190. D.M. testified that his comment "didn't feel right to [her]" and that she "made up her mind in that room that day [she] was not going to follow up with him again." **Id.**

The remaining four complainants testified on the second day of trial. T.J. testified that she had only one consultation appointment with Dr. Tyma. After she had some lab work done, she met with Dr. Tyma in an exam room. T.J. testified that while Dr. Tyma was questioning her as she laid on the table, he "just grabbed [her] breast and just kind of massaged it and then stopped and turned his back to [her] and just left [her] there." **Id.** at 207. She never returned to his practice.

J.M. testified that she first met Dr. Tyma when he consulted with her while she was in the hospital for an unrelated issue. She then visited his office for a follow-up exam. J.M. testified that Dr. Tyma acted inappropriately during three visits. The first time, after he listened to her

heart with a stethoscope, he placed the instrument around his neck "and proceeded to lift [her] shirt and ... bra and started to rub [her] breast." **Id.** at 221. Later during the same exam, while Dr. Tyma was checking her spine, J.M. testified that he "had [her] bend over and he took his hand and ran it down [her] spine and proceeded to lower her pants a few inches and rubbed [her] tail bone and proceeded to rub [her] buttocks." **Id.** at 222. Although she had no intention of returning to Dr. Tyma's office, she made another appointment with him about a year later because she was still in pain, and it would have taken three to four months to get an appointment with another rheumatologist. **Id.** at 223-224. Nothing inappropriate occurred during the exam. However, as J.M. was leaving, Dr. Tyma asked her if she was sexually active and if she was on birth control. He also suggested she tell her partner "to take it easy with [her] ... or he could injure [her] joints." **Id.** at 227. Six months later, J.M. had a third appointment with Dr. Tyma. After he used his stethoscope to check her heartbeat, he, once again, placed the instrument around his neck, and proceeded "to put his hand up [her] shirt and put a couple of fingers down [her] bra and caressed [her] nipple." **Id.** at 228. J.M. never went to see Dr. Tyma again.

A.M. testified that she had about a dozen appointments with Dr. Tyma beginning in the summer of 2009. During the exams when she was alone with Dr. Tyma, A.M testified that he would lift her shirt to listen to her heartbeat with a stethoscope, and then "would go on both breasts touching [her bare] nipples." **Id.** at 241. She indicated that "[t]he only time it didn't

happen is when the physician assistant was in the room.” **Id.** A.M. also testified that on one or two occasions after the “heart, breast exam, whatever you want to call it,” he examined her stomach and “put his fingers ...down ... where [her] pubic hair is.” **Id.** at 243. She explained that although she “definitely questioned” what he was doing, she “trusted him as [her] doctor.” **Id.** at 248. She also testified that she continued to treat with Dr. Tyma because “everyone claimed he was a good doctor ... [a]nd he was.” **Id.** at 249.

Lastly, L.R. testified that she began treating with Dr. Tyma in the early 2000’s after her former rheumatologist left the practice. She saw him about three times each year. She explained that during every exam, Dr. Tyma performed a breast exam, including “skin-to-skin contact ... just like a gynecologist would do ... rotating around the breast, each breast.” **Id.** at 262. Although Dr. Tyma never explained why he felt it necessary to perform a breast exam, L.R. thought it was “a little wellness perk to his treatment.” **Id.** at 263. However, after she learned about Dr. Tyma’s arrest, and her subsequent appointments with rheumatologists did not include breast exams, she “realized [she] might be one of the women who had been touched inappropriately.” **Id.** at 267-268.

All of the complainants, except R.C., testified that the inappropriate touching occurred **only** when they were alone with Dr. Tyma. In fact, several witnesses testified that Dr. Tyma never touched their breasts when a physician’s assistant was in the room. In almost every case, the

complainant testified the inappropriate touching occurred for about five to ten seconds. Moreover, the complainants, all of whom suffered from multiple maladies, indicated that none of their other doctors had ever touched their breasts during a heart exam. Further, all of the complainants, with the exception of E.G, first reported the incident to the police after they learned of Dr. Tyma's arrest.

During his case-in-chief, Dr. Tyma presented the testimony of two expert witnesses. Dr. Emilio Gonzalez, Chief of the Rheumatology Division at the University of Texas, testified that Dr. Tyma was one of his students at Emory University from 1991 until 1993. He testified that after reviewing all of the patients' testimony, as well as Dr. Tyma's medical notes and records, he concluded that, in every instance, Dr. Tyma "performed an appropriate physical exam that would be expected of a rheumatologist." *Id.* at 286. He elaborated that rheumatologists routinely perform heart examinations on their patients and that "it is impossible to examine a patient's heart without touching the breast." *Id.* at 287. He explained:

You have to lift it, push it or maneuver the breast so that you can place the membrane of the stethoscope in the right place in a number of different places. You can't do that short of touching briefly the patient's breast.

Id. Dr. Gonzalez also opined that Dr. Tyma's manipulation of the thighs and buttocks of several of the patients was medically appropriate, as was his act of massaging the area of an injection. *Id.* at 287-288. During cross-examination, Dr. Gonzalez described appropriate touching as "lifting the

breast or holding the breast when you are placing the stethoscope.” **Id.** at 292. He concluded that the patients’ descriptions of Dr. Tyma’s grabbing of their breasts was simply “different people’s perceptions.” **Id.** at 293.

Dr. Chester Oddis, Professor of Medicine in the Division of Rheumatology at the University of Pittsburgh Medical Center, also testified on Dr. Tyma’s behalf. Dr. Oddis reiterated that a heart exam is an important component of a rheumatologist’s physical examination. He stated that based upon his review of Dr. Tyma’s clinical notes, he “didn’t see anything that was inappropriate.” **Id.** at 306. However, Dr. Oddis acknowledged that the exams as described in Dr. Tyma’s notes differed from the patients’ testimony, and that the touching as reported by the patients would be “medically inappropriate.” **Id.** at 310. He also agreed that had Dr. Tyma touched a patient’s breast while he was not utilizing a stethoscope to examine her heart, that touching would be medically inappropriate. **Id.** at 311.

Dr. Tyma also presented the testimony of ten character witnesses, seven of whom were former patients, and all of whom agreed that his reputation for honesty, integrity, and chasteness was excellent.

On the last day of trial, Dr. Tyma took the stand in his own defense. He testified that he performs a “complete and thorough examination of every patient” which includes a heart exam. **Id.** at 347. He also acknowledged that he might briefly touch a patient’s breast during a heart exam. However, despite the fact that some of the patients had testified the

touching occurred over their clothing, Dr. Tyma explained that “rarely would [he] attempt to listen [to a patient’s heart] over clothing.” *Id.* at 355. Dr. Tyma methodically reviewed the allegations of each patient, and while he admitted that he may have touched each patient’s breasts during the heart exam, he denied ever touching their nipples, putting a hand inside their bras on their bare breasts, using his whole hand to cup their breasts either under or over clothing, randomly grabbing or groping their breasts, placing his fingers by their pubic area, and rubbing his groin against their arms. *Id.* at 358, 362, 371, 375, 380, 383, 387. Further, Dr. Tyma stated that each time he touched a patient’s breast he would have been using his stethoscope and the contact would have occurred over the patient’s bra. *Id.* at 393.

On March 19, 2012, the trial court entered a verdict of guilty on all charges. Dr. Tyma was sentenced on May 24, 2012, to a term of 60 days incarceration, followed by one year of county intermediate punishment and six years of concurrent probation.⁵ He filed a post sentence motion

⁵ On Criminal Docket No. 201102034, the trial court imposed a sentence of 60 days imprisonment and one year of county intermediate punishment on count one (indecent assault). On counts two through four (indecent assault), he imposed three consecutive probationary sentences of two years each. The trial court then imposed a concurrent sentence of two years’ probation for one count of indecent assault on each of the remaining eight criminal complaints. No further penalty was imposed on the remaining 23 convictions.

challenging both the sufficiency and weight of the evidence, which the trial court denied on June 26, 2012. This timely appeal followed.⁶

In his first issue, Dr. Tyma challenges the sufficiency of the evidence supporting his convictions. Specifically, he argues while “it is not disputed that contact may have occurred ... [t]he issue is whether the complainants consented to the touching and more specifically whether the touching was for a legitimate medical purpose.” Tyma’s Brief at 41. Dr. Tyma further contends that the trial court mischaracterized the record, and that the evidence demonstrated that all the touchings were “consented to by the complainants as part of medically necessary physical examinations.” *Id.* at 45.

Our well-settled standard of review of a challenge to the sufficiency of the evidence is as follows:

As a general matter, our standard of review of sufficiency claims requires that we evaluate the record “in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.” ***Commonwealth v. Widmer***, 560 Pa. 308, 744 A.2d 745, 751 (2000). “Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt.” ***Commonwealth v. Brewer***, 876 A.2d 1029, 1032 (Pa.Super. 2005). Nevertheless, “the Commonwealth need not establish guilt to a mathematical

⁶ On September 12, 2012, the trial court directed Dr. Tyma to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Dr. Tyma complied with the trial court’s directive and filed a concise statement on September 27, 2012.

certainty.” ***Id.***; ***see also Commonwealth v. Aguado***, 760 A.2d 1181, 1185 (Pa.Super. 2000) (“[T]he facts and circumstances established by the Commonwealth need not be absolutely incompatible with the defendant's innocence”). Any doubt about the defendant’s guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances. ***See Commonwealth v. DiStefano***, 782 A.2d 574, 582 (Pa.Super. 2001).

Commonwealth v. Pedota, 64 A.3d 634, 636 (Pa. Super. 2013) (citation omitted), *appeal denied*, 377 MAL 2013 (Pa. Aug. 29, 2013).

Dr. Tyma was convicted of indecent assault and harassment. The crime of “indecent assault is defined as follows.

A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:

(1) the person does so without the complainant's consent[.]

18 Pa.C.S. § 3126(a)(1). The Crimes Code defines “indecent contact” as “[a]ny touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.” 18 Pa.C.S. § 3101.

Furthermore, a person is guilty of “harassment” when “with intent to harass, annoy or alarm another, the person[,],” *inter alia*, “strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same[.]” 18 Pa.C.S. 2709(a)(1).

Here, 17 complainants testified that Dr. Tyma unnecessarily and inappropriately touched their breasts, and in some cases their pubic area and buttocks, while conducting a physical exam. In all instances, but one, the inappropriate touching occurred when no one else was in the exam room. In the one instance in which the complainant was not alone, she testified that the other employee present “never picked her head up.” N.T. 3/12-19/2012, at 41. Significantly, all of the complainants testified that this type of touching had never occurred during examinations with other doctors, including other rheumatologists.

Although Dr. Tyma recounts several factual mischaracterizations by the trial court, these mischaracterizations pale in comparison to the detailed, compelling testimony of the complainants. Further, while Dr. Tyma and his expert witnesses opined that some touching of a woman’s breast is necessary during a heart exam, both Dr. Oddis and Dr. Tyma acknowledged that the touching, as described by the complainants, would be medically inappropriate.⁷ *Id.* at 310, 394.

Dr. Tyma also challenges the finding of the trial court that all of the complainants “knew immediately that the touchings were not medically appropriate.” Trial Court Opinion, 1/15/2013, at 3. He contends that only

⁷ Dr. Gonzalez dismissed the discrepancies between the complainants’ testimony and Dr. Tyma’s medical notes as “the patient’s perception of what is being done.” N.T., 3/12-19/2012, at 297.

one complainant reported the incident to the police shortly after it occurred, and the others came forward only after learning of Dr. Tyma's arrest. Further, he argues that several of the complainants testified that they initially believed the touching was either accidental, or part of a routine exam.

Our review of the record reveals most of the complainants testified that, immediately after the inappropriate touching, they were uncomfortable, embarrassed, ashamed, or in shock. N.T., 3/12-19/2012, at 30, 87, 101, 114, 146, 161, 200, 209, 222, 242. Indeed, seven of the complainants never returned to Dr. Tyma's practice after he inappropriately touched them. *Id.* at 13, 42, 56, 88, 157, 190, 204. Several testified that they did not immediately report the behavior because they did not know where to go and felt that no one would believe them over the word of a respected doctor. *Id.* at 18, 30, 135, 159, 178, 229. Moreover, M.J.S. and A.M. stated that although they questioned his behavior and believed something was not right, they trusted him as a doctor. *Id.* at 104, 242. Therefore, the record supports the trial court's finding that all of the complainants "knew immediately that the touchings were not medically appropriate,"⁸ despite the fact that most of them did not report the incidences to the police until after Dr. Tyma's arrest.

⁸ Trial Court Opinion, 1/15/2013, at 3.

Viewing the evidence presented in a light most favorable to the Commonwealth, as verdict winner, we conclude that there was sufficient evidence for the trial court to find that the touchings, as detailed by the complainants, were not “consented to by the complainants as part of medically necessary physical examinations.” Tyma’s Brief at 45. Moreover, the trial court could reasonably infer, from the evidence presented, that Dr. Tyma had “indecent contact” with his patients “for the purpose of arousing” his own sexual desire.⁹ 18 Pa.C.S. § 3126(a)(1). Accordingly, Dr. Tyma’s first issue fails.¹⁰

Next, Dr. Tyma challenges the weight of the evidence supporting his convictions. He argues that although the complainants may have perceived the touching to be inappropriate particularly after they learned of his arrest, “what they described was in line with the appropriate medical procedure

⁹ We note that Dr. Tyma does not challenge the trial court’s conclusion that a fact finder may infer the element of sexual gratification from the location of the touching, *i.e.*, breast and pubic area, and the absence of a medical reason for the touching. **See** Trial Court Opinion, 1/15/2013, at 4. He simply argues that the touchings were medically appropriate, a contention with which the trial court disagrees.

¹⁰ While Dr. Tyma also ostensibly challenges his convictions for harassment, he does not specifically contest any of the elements of that crime in his brief. Rather, he clearly states that “[t]he issue is whether the complainants consented to the touching and more specifically whether the touching was for a legitimate medical purpose.” Tyma’s Brief at 41. Nevertheless, we conclude the evidence was sufficient to demonstrate Dr. Tyma had “physical contact” with the complainants, with the intent to “harass, annoy or alarm” them. 18 Pa.C.S. § 2709(a)(1).

described by each of the doctors who testified.” Tyma’s Brief at 48. Furthermore, Dr. Tyma contends the “similarities between the exam described by the patients and the exam described by the experts, are of greater weight than the perceived inappropriateness of the touching after hearing that Dr. Tyma was arrested and that other women described the touching as inappropriate.” **Id.** at 49.

The Pennsylvania Supreme Court recently reiterated the appellate standard of review for a weight of the evidence challenge:

An appellate court’s standard of review when presented with a weight of the evidence claim is distinct from the standard of review applied by the trial court:

Appellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court’s determination that the verdict is against the weight of the evidence. One of the least assailable reasons for granting or denying a new trial is the lower court’s conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice.

[**Commonwealth v. Widmer**, 560 Pa. [308,] at 321-22, 744 A.2d at [745,] 753 [(Pa. 2000)] (emphasis added).

Commonwealth v. Clay, 64 A.3d 1049, 1055 (Pa. 2013). Accordingly, we focus on whether the trial court’s ruling is “manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill-will.” **Id.**

The trial court addressed Dr. Tyma's weight of the evidence claim as follows:

[Dr. Tyma's] challenge to the weight of the evidence is based solely on his expert witnesses. Essentially he argues that because the experts testified that touching of a breast is necessary during a heart exam, his fondling of the women was appropriate. [T]his argument represents a disconnect from the actual testimony presented at trial.

It is true that Drs. Emilio Gonzale[z] and Chester Oddis testified that touching a patient's (left) breast is necessary during a heart examination. However, they also opined that the touching described by the women here – touching of a caressing, fondling and grabbing nature – is different than the kind of touching necessitated by listening to a patient's heart and is medically inappropriate. [N.T., 3/12-19/2012, at 296-297, 310-312.]

As this Court stated at the conclusion of the trial:

THE COURT: Doctor, I am going to kind of go backwards a little bit. Dr. Oddis did testify as to the proper way to do a heart examination, and he based his opinion of your behavior solely on your notes. I would point out that I would guess that assuming you had touched these women inappropriately, you would not have made that a part of your hospital records and said, and then I was done, I grabbed her left breast. I don't know this would have been a part of your notes. So, his opinion, although good and valid, was only based on your notes.

Dr. Gonzale[z] also testified to the proper way to do this examination. And I have some things that I think about that. For instance, all of the people that testified had multiple illnesses and had gone to multiple doctors, including other doctors in your practice. And I wondered why Dr. Stupi and Dr. Mathie, none of the other doctors that these women had visited had touched them in the same way you had.

There is a difference between moving a breast to get a heartbeat and there is a difference between grabbing and touching. There was a different examination that you

performed in almost every case where a third party was not present. The one woman said that when Allison was there, she kept her head down and didn't look up. [Defense counsel] and I have a difference of opinion as to how many times this happened, but I said I will at least give him two.

Interestingly, none of these women said you had a stethoscope on them when you were [touching] them.^[11] It was either around your neck or in your other hand. Sometimes you touched them on top of the clothing and sometimes underneath the clothing but over the bra. And sometimes under the bra.

[N.T., 3/12-19, 2012, at 409-410].

Trial Court Opinion, 1/15/2013, at 6-7.

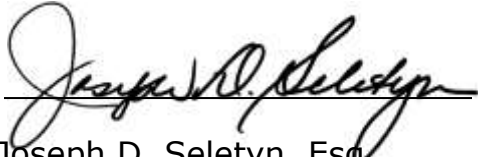
The trial court, sitting as fact finder, concluded that the testimony of Dr. Tyma and his experts did not denigrate the testimony of the complainants, particularly since the defense witnesses agreed that if the touching occurred as described by the complainants, it would have been medically unnecessary. Therefore, we detect no abuse of discretion on the part of the trial court in concluding that the verdicts were not against the weight of the evidence, and, accordingly, did not shock the conscience of the court. Hence, Dr. Tyma's second claim fails.

Judgment of sentence affirmed.

¹¹ One complainant did testify that Dr. Tyma had a stethoscope in his hand when he touched her. Indeed, U.G. testified that on two occasions, while Dr. Tyma was listening to her heart through his stethoscope, he had his whole hand covering her breast. N.T. 3/12-19/2012, at 154, 156-157.

J-A20016-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/18/2013