NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. KEVIN W. (WHITE) WILLIAMS Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1374 WDA 2012

Appeal from the Judgment of Sentence April 26, 2012
In the Court of Common Pleas of Crawford County
Criminal Division at No(s): CP-20-CR-0000481-2011

BEFORE: DONOHUE, J., MUNDY, J., and PLATT, J.*

MEMORANDUM BY MUNDY, J.: Filed: March 11, 2013

Appellant, Kevin W. (White) Williams, appeals[1] from the April 26, 2012 aggregate judgment of sentence of 10 to 20 years' imprisonment, with 357 days' credit for time-served, imposed after a jury found him guilty of rape, statutory sexual assault, sexual assault, unlawful contact with a minor, corruption of minors, and two counts each of indecent assault and

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* Retired Senior Judge assigned to the Superior Court.

[1] We note that although Appellant purports to appeal from the August 21, 2012 order denying his post-sentence motion, a direct appeal in a criminal case is properly taken from a judgment of sentence. ***Commonwealth v. Yancoskie***, 915 A.2d 111, 112 n.1 (Pa. Super. 2006), *appeal denied*, 927 A.2d 625 (Pa. 2007). We have adjusted the caption accordingly.

involuntary deviate sexual intercourse.[2] After careful review, we affirm the judgment of sentence.

The relevant facts and procedural history of this case, as gleaned from the certified record, are as follows. On May 4, 2011, Appellant was arrested and charged with the aforementioned offenses in connection with the rape of a thirteen-year-old boy, D.J., which occurred in an abandoned building in the early morning hours of April 28, 2011. N.T., 1/24/12 - Morning Session, at 39-62; ***see also*** Criminal Complaint/Affidavit of Probable Cause, 5/4/11. The record reflects that Appellant was also charged with an additional count of corruption of minors for allegedly providing marijuana to D.J. ***Id.*** Appellant proceeded to a jury trial on January 24, 2012, and following a three-day trial, was found guilty of all charges except one count of corruption of minors. As noted, on April 26, 2012, the trial court sentenced Appellant to an aggregate term of 10 to 20 years' imprisonment, with 357 days' credit for time-served. On April 30, 2012, Appellant filed a timely post-sentence motion, arguing that the verdict was against the weight of the evidence. ***See*** Post-Sentence Motion, 4/30/12, at ¶¶ 9-16. The trial court

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[2] 18 Pa.C.S.A. §§ 3121, 3122.1, 3124.1, 6318, 6301, 3126(a)(2) and (8), and 3123(a)(1) and (7), respectively.

denied Appellant's post-sentence motion on August 21, 2012. This timely appeal followed.[3]

On appeal, Appellant raises the following issue for our review.

> Whether the trial court erred when it denied [Appellant's] post-sentence motion pursuant to Pa.R.Crim.Pro. 720(B)(1)(a)(ii) by concluding that the jury's guilty verdicts were not against the weight of the evidence?

Appellant's Brief at 8.

Pennsylvania Rule of Criminal Procedure 607 provides, in pertinent part, that a claim that the verdict was against the weight of the evidence "shall be raised with the trial judge in a motion for a new trial: (1) orally, on the record, at any time before sentencing; (2) by written motion at any time before sentencing; or (3) in a post-sentence motion." Pa.R.Crim.P. 607(A). "The purpose of this rule is to make it clear that a challenge to the weight of the evidence must be raised with the trial judge or it will be waived." ***Commonwealth v. McCall***, 911 A.2d 992, 997 (Pa. Super. 2006).

Herein, Appellant has properly preserved his weight of the evidence claim by raising it in his August 21, 2012 post-sentence motion. We now turn to the merits of said claim.

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[3] The record reflects that Appellant filed a "Concise Statement of Matters Complained of on Appeal," pursuant to Pa.R.A.P. 1925(b), on August 22, 2012. In lieu of filing a formal Rule 1925(a) opinion, the trial court adopted its prior opinion and order dated August 21, 2012. ***See*** Trial Court Opinion Sur Pa.R.A.P. 1925(a), 8/23/12; Trial Court Opinion and Order, 8/21/12, at 1-5.

This Court has long recognized that "[a] true weight of the evidence challenge concedes that sufficient evidence exists to sustain the verdict but questions which evidence is to be believed." ***Commonwealth v. Lewis***, 911 A.2d 558, 566 (Pa. Super. 2006) (citation omitted). Where the trial court has ruled on a weight claim, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, "[our] review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim." ***Commonwealth v. Tharp***, 830 A.2d 519, 528 (Pa. 2003), *cert. denied*, ***Tharp v. Pennsylvania***, 541 U.S. 1045 (2004).

In the instant matter, Appellant does not dispute that he had sexual contact with D.J. on the day in question, but denies he inserted his penis inside D.J.'s anus. Appellant avers that the jury's verdict was against the weight of the evidence because D.J. was not credible in that he had been adjudicated delinquent for theft on two prior occasions, and that there were numerous inconsistencies in his testimony. Appellant's Brief at 19-20. Moreover, Appellant contends that the evidence at trial demonstrated that he reasonably believed D.J. was 17 years old and that D.J., in fact, consented to and initiated the sexual contact that occurred. ***Id.*** at 20-21. For the reasons that follow, we conclude that Appellant's claim must fail.

The jury, sitting as fact-finder, found the testimony of D.J. and the other witnesses presented by the Commonwealth credible, and elected not

to believe Appellant's version of the events. The trial court, in turn, rejected Appellant's contention that the jury's verdict was a "shock [to] one's sense of justice." Trial Court Opinion and Order, 8/21/12, at 3. As the trial court noted in its opinion,

> [a]t trial, [D.J.] readily admitted that on the night of the incident, he snuck out of his house without permission and in violation of the terms of his probation. [D.J.] testified that he met [Appellant] at a Country Fair that night, that [Appellant] bought him a cigar, and that he and [Appellant] purchased marijuana together shortly thereafter. Importantly, [D.J.] also testified that [Appellant] never asked how old he was, nor did [D.J.] tell [Appellant] his age.
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> [D.J.] also testified that the two returned to his house and smoked the marijuana with his sister. [D.J.] then testified that [Appellant] went with him to a nearby abandoned house.
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> Once inside, and after some conversation, [D.J.] testified that [Appellant] began touching his leg and asked him to remove his pants, which he did because he was scared. [D.J.] said he then laid down and [Appellant] got on top of him and began rubbing his penis on [D.J.'s] butt. [D.J.] testified that he told [Appellant] to stop, but [Appellant] continued and inserted his penis inside [D.J.'s] anus.
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> Also, Dr. [Stephanie] Russo also testified that the injury to [D.J.'s] anus was due to blunt force trauma, and although it could have been caused by something other than a penis, was consistent with [D.J.'s] testimony that he had been raped.

Id. at 4-5 (citations to notes of testimony omitted).

It is well established that this Court is precluded from reweighing the evidence and substituting our credibility determination for that of the fact-

finder. ***See Commonwealth v. Champney***, 832 A.2d 403, 408 (Pa. 2003) (citations omitted) (stating, "[t]he weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses[]"), *cert. denied*, ***Champney v. Pennsylvania***, 542 U.S. 939 (2004). Additionally, "the evidence at trial need not preclude every possibility of innocence, and the fact-finder is free to resolve any doubts regarding a defendant's guilt unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances." ***Commonwealth v. Emler***, 903 A.2d 1273, 1276 (Pa. Super. 2006).

Based on the foregoing, we discern no error on the part of the trial court in rejecting Appellant's weight of the evidence claim. Accordingly, we affirm the April 26, 2012 judgment of sentence.

Judgment of sentence affirmed.