NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. T.L. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1835 WDA 2013

Appeal from the Dispositional Order entered December 20, 2013
In the Court of Common Pleas of Clearfield County
Criminal Division at No: CP-17-JV-0000080-2013

BEFORE: GANTMAN, P.J., ALLEN, and STABILE, JJ.

MEMORANDUM BY STABILE, J.: **FILED JULY 14, 2014**

Appellant T.L. appeals from the dispositional order entered by the Clearfield County Court of Common Pleas following Appellant's adjudication of delinquency based on charges of involuntary deviate sexual intercourse and indecent assault.[1] Appellant challenges the sufficiency and the weight of the evidence supporting his adjudication. Upon review, we affirm.

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[1] Appellant seems to ignore "the appealable order is not the adjudication of delinquency (the equivalent of a finding of guilt in criminal matters), but rather is the dispositional order (the equivalent of the judgment of sentence in criminal matters)." ***In re J.D.***, 798 A.2d 210, 211 n.1 (Pa. Super. 2002) (citation omitted). We have corrected the caption accordingly.

There is, however, another problem with this appeal. Appellant appealed on November 18, 2013, from the adjudication order entered October 22, 2013. The dispositional order was entered December 20, 2013. Thus,

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Appellant's adjudication of delinquency arises from an incident that occurred in DuBois, Pennsylvania, in August 2012, and that involved B.R. At the time of the incident, Appellant was 16 whereas B.R. was 12. On that day, Appellant went to B.R.'s residence to hang out with other friends. Later at night, while the others were sleeping, Appellant and B.R. engaged in a conversation, which eventually turned to discussing their sexual experiences. Appellant asked B.R. whether he would like him to perform oral sex on him. Eventually, B.R. accepted the offer. Appellant approached B.R. and performed oral sex on him while he sat in the chair. Appellant then asked B.R. whether he would perform oral sex on him. B.R. refused and they both went to bed.

B.R. told his sister and other friends in school about the incident. After receiving a report from a school resource officer, the police started an

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> [f]acially, the order from which this appeal is taken is interlocutory and unreviewable. However, following the filing of [T.L.]'s appeal, an order of disposition was entered. Our rules provide that if appeal is prematurely filed from an interlocutory order, the appeal is perfected when a final, appealable order is subsequently entered. ***See*** Pa.R.A.P. 905(a)(5) ("A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof."); ***Commonwealth v. Hamaker***, [] 541 A.2d 1141, 1142 n.4 (Pa Super. 1988). Therefore, although [T.L.] improperly filed this appeal from the order of adjudication, appellate jurisdiction has been perfected, and so we may proceed to review this matter.

In re N.W., 6 A.3d 1020, 1021 n.1 (Pa. Super. 2010).

investigation into the matter. The investigation included also an interview with Appellant, who denied the incident.

At the adjudication hearing, Appellant, Appellant's mother, Appellant's aunt, and two other individuals testified Appellant was in Butler, Pennsylvania, not in DuBois, most of the summer of 2012, and when he returned to DuBois (second half of August 2012), he was grounded and unable to leave his residence. Appellant denied knowing B.R. and denied any wrongdoing. The Commonwealth presented the testimony of B.R., B.R.'s sister, and the investigating police officer, who testified to the facts as summarized above. At the conclusion of the hearing, the trial court adjudicated Appellant delinquent on the charges of involuntary deviate sexual intercourse and indecent assault. Following a dispositional hearing, the trial court ordered, *inter alia*, Appellant be placed on probation for a period of two years, for each delinquent act, to run concurrently.

Appellant raises the following issues for our review:

> The Commonwealth failed to present sufficient evidence at the Appellant's [j]uvenile hearing to establish proof beyond a reasonable doubt that [] Appellant committed any of the alleged crimes, and the adjudication of [] Appellant was therefore against the weight and sufficiency of the evidence presented at the [j]uvenile hearing and an abuse of discretion by the presiding judge.

Appellant's Brief at 6.[2]

In addressing a challenge to the sufficiency of the evidence supporting an adjudication of delinquency, our standard of review is as follows:

> When a juvenile is charged with an act that would constitute a crime if committed by an adult, the Commonwealth must establish the elements of the crime by proof beyond a reasonable doubt. When considering a challenge to the sufficiency of the evidence following an adjudication of delinquency, we must review the entire record and view the evidence in the light most favorable to the Commonwealth.
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> In determining whether the Commonwealth presented sufficient evidence to meet its burden of proof, the test to be applied is whether, viewing the evidence in the light most favorable to the Commonwealth, and drawing all reasonable inferences therefrom, there is sufficient evidence to find every element of the crime charged. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by wholly circumstantial evidence.
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> The facts and circumstances established by the Commonwealth need not be absolutely incompatible with a defendant's innocence. Questions of doubt are for the hearing judge, unless

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[2] We note Appellant generally alleged there was insufficient evidence to support the adjudication, without even attempting to set separate arguments for the two charges or clarify what element of the crimes were not met. This practice is troublesome. ***See Commonwealth v. Gibbs***, 981 A.2d 274, 281 (Pa. Super. 2009), *appeal denied,* 3 A.3d 670 (Pa. 2010) ("In order to preserve a challenge to the sufficiency of the evidence on appeal, an appellant's Rule 1925(b) statement must state with specificity the element or elements upon which the appellant alleges that the evidence was insufficient."). Additionally, we note Appellant did not comply with Pa.R.A.P. 2111(a) by failing to attach "a copy of the statement of errors complained of on appeal, filed with the trial court pursuant to Rule 1925(b), and by failing "to append to the brief a copy of any opinions delivered by any court . . . below relating to the order or other determination under review[.]". Specifically, Appellant failed to append the trial court's Rule 1925(a) opinion. Pa.R.A.P. 2111(a), (b).

> the evidence is so weak that, as a matter of law, no probability of fact can be drawn from the combined circumstances established by the Commonwealth.

In re A.V., 48 A.3d 1251, 1252-53 (Pa. Super. 2012) (citation omitted).

The Crimes Code defines the crime of involuntary deviate sexual intercourse as follows:

> A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant . . . who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

18 Pa.C.S.A. § 3123(a)(7).

Additionally, "A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age." 18 Pa.C.S.A. § 3123(b). In relevant part, Section 3101 defines "Deviate sexual intercourse" as follows: "Sexual intercourse per os or per anus between human beings and any form of sexual intercourse with an animal." 18 Pa.C.S.A. § 3101.

As noted above, the trial court found Appellant's conduct constituted involuntary deviate sexual intercourse, explaining its finding as follows:

> The court heard credible testimony from B.R. and his sister that established that T.L. performed oral sex on B.R. At the time of the incident B.R. was less than thirteen years of age, in fact he was twelve. *See* 18 Pa.C.S.A. § 3123(b). Moreover, B.R. was less than sixteen years of age and T.L. was four or more years older than B.R. 18 Pa.C.S.A. § 3123(a)(7). Additionally, B.R. and T.L. were obviously not married to each other at the time. *Id.* The [c]ourt therefore believes that its decision, in

> adjudicating T.L. delinquent, was supported by sufficient evidence and T.L. clearly violated the statute on multiple grounds.

Trial Court Opinion, 1/7/14, at 4.

We agree with the trial court's analysis and conclusions. Viewing the evidence in the light most favorable to the Commonwealth, and drawing all reasonable inferences therefrom, we conclude there is sufficient evidence to find every element of the crime charged.

Next, Appellant argues there was insufficient evidence to support his adjudication for violating 18 Pa.C.S.A. § 3126(a)(7) (indecent assault). Specifically, Appellant argues the Commonwealth's case rested on "the non-descript testimony of B.R." whereas Appellant "unequivocally denied any inappropriate contact with B.R." Appellant's Brief at 13.

In relevant part, Section 3126 provides:

> 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:
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> . . .
>
> (7) the complainant is less than 13 years of age[.]

18 Pa.C.S.A. § 3126(a)(7). 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 any person." 18 Pa.C.S.A. § 3101.

The trial court noted: "[The] evidence established that the victim was twelve years old and T.L. performed oral sex on him to the point of ejaculation. This type of activity clearly falls within the definition of indecent contact." Trial Court Opinion, 1/7/14, at 4-5. We agree with trial court's analysis and conclusions. We conclude, therefore, there is sufficient evidence to find every element of the crime charged.

To the extent Appellant argues B.R.'s testimony was not as assertive or convincing as his own testimony, Appellant fails to recognize questions of credibility are left to the trial court, not to this Court. ***See***, ***e.g.***, ***In re J.M.***, 89 A.3d 688, 691 (Pa. Super. 2014). Additionally, he fails to recognize a review of the sufficiency of the evidence does not include an assessment of the credibility of testimony; such a claim goes to the weight of the evidence. ***See, e.g., Commonwealth v. Wilson,*** 825 A.2d 710, 713–14 (Pa. Super. 2003). Finally, it is well-established that "the uncorroborated testimony of the complaining witness is sufficient to convict a defendant of sexual offenses." ***Commonwealth v. Castelhun,*** 889 A.2d 1228, 1232 (Pa. Super. 2005).

Finally, Appellant generally argues the adjudication was against the weight of the evidence "to the point where it does shock one's sense of

justice." Appellant's Brief at 15.[3] Appellant then engages in an extensive review of the testimony Appellant offered at the proceeding, articulated in the most favorable light to Appellant, and eventually asks us to reweigh it in his favor. This is exactly what the Superior Court cannot do. Appellate courts merely review whether the trial court abused its discretion in denying a weight of the evidence challenge.[4] Our review shows the trial court did not

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[3] In his 1925(b) statement, Appellant merely alleges the adjudication was against the weight of the evidence "and therefore an abuse of discretion." Appellant Concise Statement on Matters [sic] Complained of on Appeal, 3/12/13. Given the paucity of claim, not surprisingly, the trial court did not address it. ***See Commonwealth v. Reeves***, 907 A.2d 1, 2 (Pa. Super. 2006) ("If a Rule 1925(b) statement is too vague, the trial judge may find waiver and disregard any argument.") citing, *inter alia*, ***Commonwealth v. Lemon****,* 804 A.2d 34, 37 (Pa. Super. 2002) (statements in Rule 1925(b) that "the verdict of the jury was against the evidence," "the verdict of the jury was against the weight of the evidence," and "the verdict was against the law" were too vague to permit adequate review); and ***Commonwealth v. Seibert****,* 799 A.2d 54, 62 (Pa. Super. 2002) (Rule 1925(b) statement that "the verdict of the jury was against the weight of the credible evidence as to all of the charges" was too vague to permit appellate review).

[4] In ***Commonwealth v. Widmer***, 744 A.2d 745 (Pa. 2000), the Supreme Court stated the standard as follows:

> 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.

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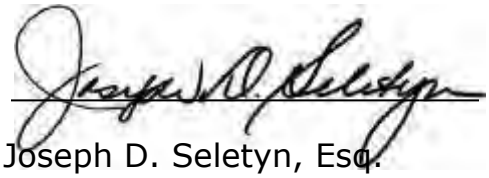
abuse its discretion in denying Appellant's weight of the evidence claim. Accordingly, the claim is without merit.

Dispositional order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/14/2014

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Id. at 753 (emphasis in original) (citations omitted).