

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
MARCUS ANTHONY GAGOT,	:	
	:	
Appellant	:	Nos. 943, 959 WDA 2013

Appeal from the Judgment of Sentence entered on February 14, 2013  
in the Court of Common Pleas of Beaver County,  
Criminal Division, No. CP-04-CR-0001892-2011

BEFORE: BOWES, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED: April 25, 2014

Marcus Anthony Gagot ("Gagot") appeals from the judgment of sentence imposed following his convictions of four counts each of aggravated indecent assault and indecent assault, two counts of rape, and one count each of statutory sexual assault, sexual assault, and corruption of minors. **See** 18 Pa.C.S.A. §§ 3125(a)(1), (2), (4), (8); 3126(a)(1), (2), (4), (8); 3121(a)(1), (3); 3122.1; 3124.1; 6301(a)(1). We affirm.

The trial court set forth the relevant underlying facts as follows:

[O]n April 7, 2010, Detective Jeff Lansberry of the Beaver Falls Police Department received a call from the Heritage Valley Hospital in Beaver regarding a young female that was the victim of a sexual assault. Detective Lansberry reported to the hospital and spoke with the 13-year-old victim and her mother. The victim told Detective Lansberry that, on the night of April 5, 2010, she was sexually assaulted by her mother's boyfriend, who she identified as [Gagot (d/o/b 7/8/73)]. She stated that, at approximately 11:30 p.m., while her mother was working a night shift, [Gagot] entered her bedroom and asked if she

wanted a back massage. [Gagot] then put his hands under her shirt and proceed to give the victim a back massage. According to the victim, she eventually fell asleep and awoke some time later in her mother's bedroom. Upon waking, she realized that [Gagot] was on top of her with his pants off and that her shorts and underwear had been removed. She told Detective Lansberry that [Gagot] was moving back and forth on top of her and that she could feel [Gagot's] penis inside of her. The victim indicated that she asked [Gagot] to stop but he did not respond. She further stated that, following the assault, [Gagot] told her not to tell anyone about the incident.

On February 3, 2011, Detective Lansberry filed a Criminal Complaint in connection with the incident. [Gagot] was charged with [the above-mentioned crimes.] A preliminary hearing was conducted on October 4, 2011, and, following the preliminary hearing, all of the charges against [Gagot] were held for court. Trial in this matter commenced on November 1, 2012, and on November 5, 2012, the jury returned a verdict of guilty on all of the charges against [Gagot]. On February 14, 2013, [Gagot] was sentenced to undergo imprisonment in a state correctional facility for not less than 15 years nor more than 30 years. On February 25, 2013,<sup>[1]</sup> [Gagot] filed a Post Sentence Motion in which he questioned the sufficiency and the weight of the evidence presented against him at trial. [Gagot] also requested and was granted a 30-day extension to file a supplemental motion, but [Gagot] failed to file a supplemental motion. After reviewing the record and considering [Gagot's] arguments, the [trial c]ourt denied [Gagot's] Post Sentence Motion on May 6, 2013. [Gagot] filed a timely Notice of Appeal on May 28, 2013. [The trial court ordered Gagot to file a Pa.R.A.P. 1925(b) concise statement. Gagot filed a timely Concise Statement.]

Trial Court Opinion, 7/5/13, at 1-2 (footnote added).

On appeal, Gagot raises the following question for our review:

"Whether the guilty verdict as to all counts, rendered by the jury[, ] would

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<sup>1</sup> February 24, 2013, was a Sunday. Thus, Gagot's Post Sentence Motion was timely filed. **See** Pa.R.Crim.P. 720(A).

'shock the conscience' as being against the weight of the evidence[?]" Brief for Appellant at 4.

Our standard of review for weight of the evidence claims is as follows:

The 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 witness. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the lower court's verdict if it is so contrary to the evidence as to shock one's sense of justice. Moreover, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

***Commonwealth v. Collins***, 70 A.3d 1245, 1251 (Pa. Super. 2013) (citation omitted).

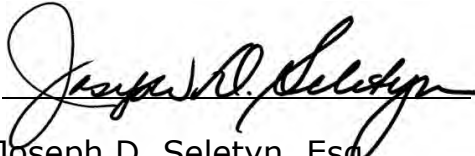
Gagot contends that the verdict was against the weight of the evidence because the Commonwealth's evidence was not believable and therefore shocks the conscience. Brief for Appellant at 8. Gagot argues that while the victim testified that she was raped while she was asleep/unconscious, the testimony only demonstrates that the victim took melatonin, a sleeping aid. ***Id.*** Gagot asserts that the Commonwealth did not present any documentation to establish that the victim actually had melatonin in her system or any evidence demonstrating the effects of melatonin. ***Id.*** at 8-9. Gagot also argues that the emergency room doctor who performed the physical examination on the victim testified that there was no physical trauma to the victim's vaginal area. ***Id.*** at 9. Gagot further

argues that the State Police Laboratory only recovered a “single, solitary” sperm, even though normal ejaculation would produce 100-600 million sperm. **Id.** at 10; **see also id.** at 11 (wherein Gagot contends that cross-contamination may have resulted in the placement of sperm in the underwear). Gagot additionally claims that while the victim states that she was physically restrained, there was no testimony regarding emotional or psychological pressures. **Id.** at 10. Gagot thus asserts that the medical and scientific testimony and evidence was contradictory to the victim’s testimony and that the verdicts cannot stand. **Id.** at 10-11.

Here, the trial court addressed Gagot’s weight of the evidence claim and determined that it is without merit. **See** Trial Court Opinion, 7/5/13, at 12-15; **see also id.** at 5-6, 6-7 (wherein the trial court detailed the victim’s testimony regarding the assault). Contrary to Gagot’s arguments, the jury was free to believe the victim’s testimony, including her version of the assault and whether she was sleeping at the time of the assault. **See Collins**, 70 A.3d at 1251 (stating that the fact-finder is free to believe all, part, or none of the evidence presented). Thus, we agree with the sound reasoning of the trial court and conclude that it did not abuse its discretion in denying Gagot’s weight of the evidence claim. **See** Trial Court Opinion, 7/5/13, at 12-15.

Judgment of sentence affirmed.

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: 4/25/2014

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY  
PENNSYLVANIA  
CRIMINAL DIVISION – LAW

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 vs. : No. 1892 of 2011  
 :  
 MARCUS ANTHONY GAGOT, :  
 :  
 Defendant. :  
 :

OPINION

Tesla, J. July 5, 2013

This Opinion is issued pursuant to Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure in support of this Court’s May 6, 2013 Order denying the Post Sentence Motion filed on behalf of Defendant Marcus Anthony Gagot (hereinafter, “Defendant”).

**Facts and Procedural History**

A brief summary of the facts alleged indicates that, on April 7, 2010, Detective Jeff Lansberry of the Beaver Falls Police Department received a call from the Heritage Valley hospital in Beaver regarding a young female that was the victim of a sexual assault. Detective Lansberry reported to the hospital and spoke with the 13-year-old victim and her mother. The victim told Detective Lansberry that, on the night of April 5, 2010, she was sexually assaulted by her mother’s boyfriend, who she identified as Marcus Anthony Gagot (hereinafter, “Defendant”). She stated that, at approximately 11:30 p.m. while her mother was working a night shift, Defendant entered her bedroom and asked if she wanted a back massage. Defendant then put his hands under her shirt and proceeded to give the victim a back massage. According to the victim, she eventually fell asleep and awoke some time later in her mother’s bedroom. Upon waking, she realized that Defendant was on top of her with his pants off and that her shorts and

underwear had been removed. She told Detective Lansberry that Defendant was moving back and forth on top of her and that she could feel Defendant's penis inside of her. The victim indicated that she asked Defendant to stop but he did not respond. She further stated that, following the assault, Defendant told her not to tell anyone about the incident.

On February 3, 2011, Detective Lansberry filed a Criminal Complaint in connection with this incident. Defendant was charged with two counts of rape (18 Pa.C.S.A. § 3121(1), (3)), four counts of aggravated indecent assault (18 Pa.C.S.A. § 3125(a)(1), (2), (4), (8)), one count of statutory sexual assault (18 Pa.C.S.A. § 3122.1), one count of sexual assault (18 Pa.C.S.A. § 3124.1), four counts of indecent assault (18 Pa.C.S.A. § 3126(a)(1), (2), (4), (8)), and one count of corruption of minors (18 Pa.C.S.A. § 6301(a)(1)). A preliminary hearing was conducted on October 4, 2011, and, following the preliminary hearing, all of the charges against Defendant were held for court. Trial in this matter commenced on November 1, 2012, and, on November 5, 2012, the jury returned a verdict of guilty on all of the charges against Defendant. On February 14, 2013, Defendant was sentenced to undergo imprisonment in a state correctional facility for not less than 15 years nor more than 30 years. On February 25, 2013, Defendant filed a Post Sentence Motion in which he questioned the sufficiency and the weight of the evidence presented against him at trial. Defendant also requested and was granted a 30-day extension to file a supplemental motion, but Defendant failed to file a supplemental motion. After reviewing the record and considering Defendant's arguments, the Court denied Defendant's Post Sentence Motion on May 6, 2013. Defendant filed a timely Notice of Appeal on May 28, 2013.

In his Concise Statement of Matters Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b), Defendant again claims that the evidence presented by the Commonwealth was insufficient to support the convictions on the charges against him and that the guilty verdict was

against the weight of the evidence presented at trial. The Court offers the following explanation to clarify its reasons for denying Defendant's Post Sentence Motion and to address the issues Defendant raises on appeal.

### **Analysis**

In his first issue, Defendant argues that the Court erred in not granting his Motion for Judgment of Acquittal at the close of the Commonwealth's case as the Commonwealth failed to establish beyond a reasonable doubt that Defendant was guilty of all the crimes charged. "A motion for judgment of acquittal challenges the sufficiency of the evidence to sustain a conviction on a particular charge, and is granted only in cases in which the Commonwealth has failed to carry its burden regarding that charge." Commonwealth v. Foster, 2011 Pa. Super. 195, 33 A.3d 632, 634-35 (2011) (citing Commonwealth v. Hutchinson, 947 A.2d 800, 805-06 (Pa. Super. 2008)). When reviewing a sufficiency of the evidence claim, the standard to be applied is whether the evidence, when viewed in the light most favorable to the verdict winner, is sufficient to enable the fact-finder to find that all of the elements of the crimes were established beyond a reasonable doubt. Commonwealth v. Hartzell, 2009 Pa. Super. 237, 988 A.2d 141, 143 (2009). The Court is also required to give the Commonwealth the benefit of all reasonable inferences to be drawn from the evidence. Commonwealth v. Kendricks, 2011 Pa. Super. 218, 30 A.3d 499, 508 (2011). In applying this standard, the entire record and all evidence should be evaluated and considered. Commonwealth v. Hairston, 603 Pa. 660, 668, 985 A.2d 804, 809 (2009) (citing Commonwealth v. Kennedy, 598 Pa. 621, 959 A.2d 916, 920 (2008)). Inconsistencies in the testimony of a witness do not alone render evidence insufficient to support a verdict. Commonwealth v. Lyons, 2003 Pa. Super. 360, 833 A.2d 245, 258 (2003). "Further, 'the uncorroborated testimony of the complaining witness is sufficient to convict a defendant of



sexual offenses.” Id. (citing Commonwealth v. Bishop, 1999 Pa. Super. 292, 742 A.2d 178, 186 (1999)). “Any doubts regarding a defendant’s guilt may be resolved by the fact-finder 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. Brown, 2011 Pa. Super. 67, 23 A.3d 544, 559 (2011).

Defendant first challenges the sufficiency of the evidence presented at trial to sustain his rape conviction under 18 Pa.C.S.A. § 3121(a)(1). During the argument over his Motion for Judgment of Acquittal, Defendant stated that he was entitled to dismissal of this charge of rape because the Commonwealth did not present any evidence of forcible compulsion. N.T., 11/2/12, at 508. He reiterates in his 1925(b) statement that no testimony from the Commonwealth’s witnesses demonstrated any “forceful relationship with the victim.”

A person commits the offense of rape “when the person engages in sexual intercourse with a complainant: (1) By forcible compulsion.” 18 Pa.C.S.A. § 3121(a)(1). With respect to the definition of “sexual intercourse” as used in the statutes relating to sexual offenses, the Crimes Code states: “In addition to its ordinary meaning, includes intercourse per os or per anus, with some penetration however slight; emission is not required.” 18 Pa.C.S.A. § 3101. “[I]n order to prove the ‘forcible compulsion’ component, the Commonwealth must establish, beyond a reasonable doubt, that the defendant ‘used either physical force, a threat of physical force, or psychological coercion, since the mere showing of a lack of consent does not support a conviction for rape ... by forcible compulsion.’” Commonwealth v. Eckrote, 2010 Pa. Super. 198, 12 A.3d 383, 387 (2010) (citing Commonwealth v. Brown, 556 Pa. 131, 136, 727 A.2d 541, 544 (1999)). “The force necessary to support a conviction of rape...need only be such as to establish lack of consent and to induce the [victim] to submit without additional resistance....”

Commonwealth v. Farmer, 2000 Pa. Super. 202, 758 A.2d 173, 181 (2000) (citing Commonwealth v. Rhodes, 510 Pa. 537, 510 A.2d 1217 (1986)). “The degree of force required to constitute rape is relative and depends on the facts and particular circumstance of the case.” Id. “Significant factors to be weighed in that determination would include the respective ages of the victim and the accused, the respective mental and physical conditions of the victim and the accused, the atmosphere and physical setting in which the incident was alleged to have taken place, the extent to which the accused may have been in a position of authority, domination or custodial control over the victim, and whether the victim was under duress.” Commonwealth v. Smolko, 446 Pa. Super. 156, 666 A.2d 672 (1995) (citing Rhodes, 510 Pa. at 555-56, 510 A.2d at 1226-27).

Initially, the Court finds that there was substantial evidence indicating that the victim did not consent to sexual intercourse with Defendant. Testimony at trial revealed that, during the evening of April 5, 2010, Defendant entered the victim’s bedroom and began giving the victim a back massage while she was laying on her stomach in her bed. N.T., 11/2/12, at 354-55. As Defendant rubbed the victim’s back, the victim fell asleep. Id. at 355. The victim testified that she later awoke in her mother’s bedroom, not knowing how she got there. Id. at 355-56. The victim further testified that she discovered Defendant was on top of her, that her shorts and underwear had been removed, and that Defendant was engaged in sexual intercourse with her. Id. at 356. The victim indicated that this caused her pain, that she did not want Defendant to do it, and that she twice asked Defendant to stop. Id. at 356, 358. After the victim’s second request, Defendant stopped and got off of her. Id. at 356. The victim testified that she felt wetness on her thighs when this occurred. Id. at 357. According to the victim, she then went to the bathroom to take a shower, and, after she was finished, Defendant told her not to tell her mother

about the incident. Id. at 357-58. The victim testified that she then went to sleep and showered again in the morning because she felt “dirty.” Id. at 359. Based on this testimony, it is apparent that the victim did not consent to sexual intercourse with the victim.

In addition to the evidence of an absence of consent, the Court’s consideration of some of the other factors listed above support a finding of forcible compulsion. Evidence and testimony regarding the respective ages of the victim and the accused revealed a significant gap between their ages. The victim testified that she was 13 years old and the parties stipulated that Defendant was 36 years old at the time of the incident. Id. at 350, 506. There was also testimony relating to the mental and physical condition of the victim that suggested her ability to resist Defendant was diminished. The victim testified that, on the night of the incident, she had taken sleeping pills<sup>1</sup> which made her feel “really tired.” Id. at 353, 387. There was also testimony demonstrating Defendant’s authority and custodial control over the victim. The victim testified that she resided with Defendant, who was her mother’s boyfriend and her sister’s father. Id. at 349, 350. She stated that she knew Defendant since she was two years old. Id. at 352. She further testified that, on the night of the incident, Defendant was the only adult at the residence, since T. B., the victim’s mother, was working. Id. at 351-52. T. B.’s testimony was consistent with the victim’s testimony. Id. at 392-94. Although the victim never testified that Defendant had authority or custodial control over her, the jury could infer from this testimony that Defendant, as the only adult present at the residence on the night of April 5, 2010, had authority over the victim. Finally, testimony indicated that the victim was under duress. The victim testified that, after falling asleep while Defendant was giving her a massage, she awoke with Defendant on top of her and already engaged in sexual intercourse with her, which she described as painful. Id. at 355-56, 358. The victim also testified that Defendant told her not to

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<sup>1</sup> Later testimony clarified that the sleeping pills the victim ingested were melatonin tablets. Id. at 419, 439.

tell her mother about the incident. Id. at 358. The jury could infer from this testimony that the 13-year-old victim felt compelled to submit to Defendant's assault with little resistance because Defendant, a 36-year-old male and arguable authority figure, was on top of her. The jury could also infer that the victim was under duress because Defendant pressured her to not tell her mother about the attack. Considering the testimony listed above and the facts and circumstances of this particular case, the Court concludes that sufficient evidence of forcible compulsion was presented to support a conviction for rape by forcible compulsion.

Defendant next challenges the sufficiency of the evidence presented at trial to sustain his rape conviction under 18 Pa.C.S.A. § 3121(a)(3). He states that there was no medical evidence that the victim was unconscious by any means employed by Defendant or the victim. Defendant also argues that testimony regarding the victim's ingestion of melatonin did not provide a basis for submitting the charge of rape of an unconscious victim to the jury.

A person commits the offense of rape "when the person engages in sexual intercourse with a complainant:...(3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring." 18 Pa.C.S.A. § 3121(a)(3). "Under the rape statute, a victim who was sleeping when sexual intercourse was initiated is considered 'unconscious.'" Commonwealth v. Wall, 2008 Pa. Super. 151, 953 A.2d 581, 584 (2008) (citing Commonwealth v. Price, 420 Pa. Super. 256, 616 A.2d 681, 683 (1992)).

The victim consistently stated that she was asleep when the sexual intercourse was initiated by Defendant. She testified that she fell asleep in her bedroom and awoke in her mother's bedroom with Defendant on top of her. N.T., 11/2/12, at 355-56. She also testified that she was awakened by the pain caused by Defendant having sexual intercourse with her. Id. at 358. Megan Merriman, the registered nurse at Heritage Valley hospital in Beaver that treated the

victim, testified that the victim also told her that she was asleep and awoke to find Defendant on top of her. Id. at 417-18. Detective Lansberry testified that the victim provided him with the same version of the events. Id. at 449. Based on this testimony, the Court concludes that the Commonwealth presented sufficient evidence that the victim was asleep when Defendant initiated sexual intercourse. Such evidence is sufficient to support a conviction of rape of an unconscious victim. Wall, 953 A.2d at 584. Therefore, the Commonwealth was not required, as Defendant claims, to present medical evidence that the victim was somehow drugged or otherwise rendered unconscious by means employed by Defendant or the victim.

Defendant next challenges the sufficiency of the evidence presented at trial to sustain his convictions for aggravated indecent assault under 18 Pa.C.S.A. § 3125(a)(1), (2), (4), and (8). Section 3125 of the Crimes Code states, in part:

[A] person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if:

(1) the person does so without the complainant's consent;

(2) the person does so by forcible compulsion;

...

(4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;

...

(8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

18 Pa.C.S.A. § 3125(a)(1), (2), (4), (8). The Commonwealth presented sufficient evidence of each element to support the convictions of aggravated indecent assault. The victim testified that

Defendant engaged in vaginal intercourse with her. N.T., 11/2/12, at 356. This testimony is sufficient to satisfy the element of penetration. Commonwealth v. Castlehun, 2005 Pa. Super. 415, 889 A.2d 1228, 1233 (2005); Commonwealth v. Corley, 2003 Pa. Super. 34, 816 A.2d 1109, 1113 (2003). As stated above, evidence and testimony at trial demonstrated that Defendant penetrated the victim's vagina without her consent by forcible compulsion and while she was unconscious. Through this evidence and testimony, the Commonwealth satisfied its burden with respect to the counts of aggravated indecent assault under subsections (a)(1), (a)(2), and (a)(4). Finally, the victim testified that she was 13 years old and the parties stipulated that Defendant was 36 years old at the time of the incident. N.T., 11/2/12, at 350, 506. The victim also testified about how Defendant was her mother's boyfriend in April of 2010. Id. at 350. As a result, the Commonwealth demonstrated that the victim was less than 16 years of age, that Defendant was four or more years older than her, and that they were not married, thereby satisfying its burden with respect to the count of aggravated indecent assault under subsection (a)(8).

Defendant next challenges the sufficiency of the evidence presented at trial to sustain his conviction for statutory sexual assault under 18 Pa.C.S.A. § 3122.1. “[A] person commits [statutory sexual assault] when that person engages in sexual intercourse with a complainant to whom the person is not married who is under the age of 16 years and that person is either: (1) four years older but less than eight years older than the complainant; or (2) eight years older but less than 11 years older than the complainant.” 18 Pa.C.S.A. § 3122.1(a). As stated above, the victim testified that Defendant had sexual intercourse with her. N.T., 11/2/12, at 356. She also testified that she was 13 years old and the parties stipulated that Defendant was 36 years old at the time of the incident. Id. at 350, 506. She further testified about their relationship, stating that

she lived with Defendant and that Defendant was her mother's boyfriend in April of 2010. *Id.* at 350. Based on this testimony, the Commonwealth presented sufficient evidence to support the conviction for statutory sexual assault.

Defendant next challenges the sufficiency of the evidence presented at trial to sustain the conviction for sexual assault under 18 Pa.C.S.A. § 3124.1. “[A] person commits [sexual assault] when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant’s consent.” 18 Pa.C.S.A. § 3124.1. As stated above, the victim testified that Defendant had sexual intercourse with her without her consent. *N.T.*, 11/2/12, at 356. This evidence is sufficient to support Defendant’s conviction for sexual assault.

Defendant next challenges the sufficiency of the evidence presented at trial to sustain the convictions for indecent assault under 18 Pa.C.S.A. § 3126(a)(1), (2), (4), and (8).

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;
- (2) the person does so by forcible compulsion;
- ...
- (4) the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring;
- ...
- (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

18 Pa.C.S.A. 3126(a)(2). “Indecent contact” is defined 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.A. § 3101. As stated above, the victim testified at trial that Defendant had sexual intercourse with her despite the fact that she asked Defendant to stop. N.T., 11/2/12, at 358. Furthermore, the evidence and testimony indicated that Defendant penetrated the victim’s vagina by forcible compulsion and while she was unconscious. In addition, there was testimony describing the respective ages of the victim and Defendant as well as the relationship between them. Through this evidence and testimony, the Commonwealth satisfied its burden with respect to the counts of indecent assault under subsections (a)(1), (a)(2), (a)(4), and (a)(8).

Defendant also challenges the sufficiency of the evidence presented at trial to sustain the conviction for corruption of minors under 18 Pa.C.S.A. § 6301(a)(1). The offense of corruption of minors under this subsection is defined as follows: “Except as provided in subparagraph (ii), whoever, being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of any crime, or who knowingly assists or encourages such minor in violating his or her parole or any order of court, commits a misdemeanor of the first degree.” 18 Pa.C.S.A. § 6301(a)(1). Courts have concluded that sexual intercourse with a minor constitutes the offense of corruption of minors. Commonwealth v. Decker, 698 A.2d 99, 101 (Pa. Super. 1997); Commonwealth v. Berry, 355 Pa. Super. 243, 249, 513 A.2d 410, 413 (1986). As stated above, the victim testified that Defendant had sexual intercourse with her and that she was a minor at the time of the incident. N.T., 11/2/12, at 350, 358. Based on this testimony, the Commonwealth presented sufficient evidence to support Defendant’s conviction for corruption of minors.

In addition to challenging the sufficiency of the evidence, Defendant alleges that the jury verdict was against the weight of the evidence. The weight of the evidence is for the finder of



fact, who is to determine the credibility of witnesses and is free to believe all, part, or none of the evidence. Commonwealth v. Devine, 2011 Pa. Super. 163, 26 A.3d 1139, 1146 (2011) (citing Commonwealth v. Small, 559 Pa. 423, 435, 741 A.2d 666, 672-73 (1999)). A verdict is only against the weight of the evidence if it so contrary to the evidence and testimony presented that it shocks one's sense of justice. Commonwealth v. Rakowski, 2010 Pa. Super. 3, 987 A.2d 1215, 1219 (2010). An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the Court. Commonwealth v. Houser, 18 A.3d 1128, 1135 (Pa. 2011). Appellate review is limited to whether the Court's discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion. Commonwealth v. Smith, 604 Pa. 126, 146, 985 A.2d 886, 897 (2009) (citing Commonwealth v. Diggs, 597 Pa. 28, 39, 949 A.2d 873, 879 (2008)).

During trial, the victim provided a consistent and detailed account of how Defendant had sexual intercourse with her without her consent. Her account was supported by additional evidence presented by the Commonwealth. Consistent with the victim's testimony, <sup>T. B.</sup> [REDACTED] testified that the victim told her about the incident during the evening of April 6, 2010. N.T., 11/2/12, at 361, 395-96. Both the victim and <sup>T. B.</sup> [REDACTED] testified that, upon hearing about the rape, <sup>T. B.</sup> [REDACTED] took the victim and her other daughter to her brother's house and then to the hospital. Id. at 362-63, 397-98. Both witnesses also testified that, although Defendant was in the house upstairs when the victim told <sup>T. B.</sup> [REDACTED] about the incident, Defendant was gone when they returned from <sup>T. B.'s</sup> [REDACTED] brother's house and the hospital. Id. at 361, 398-99. Both witnesses further testified that, when Defendant left their residence, he did not take any of his belongings with him and he never returned to the residence. Id. at 365, 398-99.

T. B. testified that, before leaving for the hospital, she and the victim gathered the clothing that the victim was wearing on the night of April 5, 2010 and took it with them. Id. at 406. Ms. Merriman testified that she performed a rape kit on the victim at the hospital at 4:23 a.m. on April 7, 2010. Id. at 421. She stated that she sent the kit, including the clothing brought by the victim, to the crime laboratory for testing. Id. at 425, 434. Detective Lansberry testified that he collected Defendant's bed sheets as well as a buccal DNA swab from Defendant as evidence in this matter and submitted the swab to the laboratory. Id. at 451-53. Ashlee Mangan, forensic scientist for the Pennsylvania State Police Bureau of Forensic Services, testified that she received the rape kit from the hospital and obtained a sperm sample from the victim's underwear. Id. at 468, 472. Dr. Hai Sheng Li, forensic scientist for the Pennsylvania State Police DNA Laboratory, testified that, based on the tests she performed, the sperm sample from the victim's underwear matched the DNA profile obtained from Defendant's buccal swab. Id. at 499-500.

In response to the evidence presented by the Commonwealth, Defendant presented the testimony of Dr. Gail Shumway, the emergency physician who examined the victim on the morning of April 7, 2010. Id. at 515, 517. Dr. Shumway testified that, in examining the victim's vagina, she found no signs of trauma or injury. Id. at 518. Dr. Shumway also testified that, under certain circumstances, she would expect to discover signs of trauma. Id. at 518-19. On cross-examination, however, Dr. Shumway testified that, given the elasticity of the vagina and the length of time between the assault and her examination, the lack of trauma or injury to the victim does not preclude the possibility that the rape occurred. Id. at 522-23.

Defendant also attempted to call into question some of the evidence presented by the Commonwealth. Through cross-examination of T. B., Defendant attempted to suggest that T. B. accused him of raping her daughter because she was jealous that Defendant had

another girlfriend. Id. at 407-08. A review of <sup>T.B.'s</sup> [REDACTED] testimony provides little indication that her allegations were fabricated because of Defendant's other alleged relationship. Id. For example, <sup>T.B.</sup> [REDACTED] testified that she did not know whether Defendant was in a relationship with another woman at the time of this incident. Id. at 408. Defendant also attempted to discredit <sup>T.B.</sup> [REDACTED] by questioning her about how she chose which articles of the victim's clothing to take to the hospital. Id. at 406-07. In response to these questions, <sup>T.B.</sup> [REDACTED] provided the reasonable explanation that she "packed all of the clothes that [the victim] had said she had on." Id. at 406. Defendant also emphasized the fact that Ms. Mangan obtained only one spermatozoon from the piece of fabric she cut from the victim's underwear. Id. at 480-82. During direct examination, however, Ms. Mangan testified that it was possible that there was other sperm located on the underwear but further searching was not done because it would have been redundant to obtain additional sperm samples from the underwear after finding the initial spermatozoon. Id. at 475-76. As a result, it was unnecessary for the Commonwealth to present evidence of additional sperm found in the victim's underwear. Defendant also highlighted Ms. Mangan's testimony that it was possible for cross contamination to occur between two articles of clothing thrown into a basket. Id. at 485. On redirect examination, Ms. Mangan reiterated that this was only a possibility. Id. at 489. Furthermore, no evidence was presented at trial indicating that the sperm sample from the victim's underwear was due to contact with another article of clothing in a hamper.

In finding Defendant guilty on all of the counts against him, the jury clearly resolved issues of credibility in favor of the victim and the rest of the Commonwealth's witnesses. It is also likely that the jury found the Commonwealth's DNA evidence and the evidence of Defendant's alleged flight to be persuasive. As stated above, the jury is free to determine the

credibility of witnesses and, therefore, was free to believe the Commonwealth case over that of the Defendant's. The jury's decision to do so and the resulting verdict were not so contrary to the evidence and testimony presented at trial to shock one's sense of justice. Therefore, the Court concludes that the jury's verdict was not against the weight of the evidence.

For the above stated reasons, the Court's decision denying Defendant's Post Sentence Motion should be affirmed.

BY THE COURT,



Kim Tesla, J.

BY THE COURT

2013 JUL -5 A 11: 12

KIM TESLA  
JUDGE

JUDY R ENSLEN  
CLERK OF COURTS  
BEAVER CO. PENNSYLVANIA

2013 JUL -5 A 11: 5b