NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. KEITH Q. CORLEY, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2168 EDA 2012

Appeal from the Judgment of Sentence of June 22, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0012082-2011

BEFORE: GANTMAN, DONOHUE AND OLSON, JJ.

MEMORANDUM BY OLSON, J.: **FILED DECEMBER 20, 2013**

Appellant, Keith Q. Corley, appeals from the judgment of sentence entered on June 22, 2012, as made final by the denial of Appellant's post-sentence motion on June 29, 2012. We affirm.

The trial court has provided us with a thorough and well-written summary of the underlying facts in this case. As the trial court explained:

> At approximately 1:30 a.m. on August 11, 2011, complainant [K.B.] left her brother's house, picked up some take-out food, and walked to the intersection of 52nd and Market Streets in the City of Philadelphia. She arrived at the 52nd and Market Streets bus stop at approximately 2:15 a.m. After waiting for the shuttle bus for approximately one hour, [K.B.] was approached by another woman in the vicinity. They discussed the bus's delay. When they saw a marked police vehicle coming down the street, they flagged it down to get more information. [Appellant], who was the on-duty, uniformed police officer operating the vehicle, informed [K.B.] that due to construction, she would have to catch the shuttle bus at Chestnut or Walnut Street. He

offered [K.B.] a ride to the terminal at 69th and Market Streets, which she accepted.

When [K.B.] opened the rear passenger side door to get into the patrol car, [Appellant] told her [that] she could sit in the front passenger seat, which she did. [K.B.] testified that after she moved to the police vehicle's front passenger seat, [Appellant] began to drive at a slow pace. In the car, while [K.B.] was using Facebook on her cell phone, [Appellant] told her that she owed him a "favor." [K.B.] asked him what he meant, and he responded that he had done [K.B.] a "favor" and now she owed him one. [K.B.] testified that she believed [Appellant] was alluding to a sexual favor.

[Appellant] drove [K.B.] up Market Street to 63rd Street, turned onto Cobbs Creek Parkway, and, without saying a word, drove into a parking lot adjacent to a skating rink and playground, and in the vicinity of some area houses. [K.B.] testified that there were no other cars in the lot, and the area was unlit. While in the parking lot, [Appellant] again said that he wanted [K.B.] to do him a favor. He exited the police vehicle, walked around the front of the car, opened the front passenger side door, and stood in front of [K.B.] with his pants unfastened. [Appellant] told [K.B.] that he wanted her to perform oral sex on him. Still standing in front of [K.B.], and his gun still on his hip, [Appellant] unzipped his pants and pulled his penis out through his zipper. He was standing approximately one foot in front of [K.B.], such that he was blocking her ability to get out of the passenger[-]side door.

[K.B.] testified that she did not want [Appellant] to put his penis inside her mouth, nor did she give him permission to do so. She was frightened that if she did not do as [Appellant] said, she "could have been left for dead" in the parking lot. Though [Appellant] never made any gestures or references to the gun on his hip, it was visible as he stood in front of [K.B.] telling her she owed him a favor. In the midst of the described circumstances, [Appellant's] penis was inserted into [K.B.'s] mouth, where he then ejaculated. Afterward, [Appellant] asked [K.B.] to hand him some napkins from the glove compartment, which he used

to wipe off his penis. [Appellant] then handed a napkin to [K.B.], which she used to clean her mouth.

[Appellant] got back into the car and without any conversation drove [K.B.] to the 69th Street terminal. When they arrived, [K.B.] got out of the car, and [Appellant] drove away. [K.B.] noted the number on the patrol car and entered it in her phone. She immediately approached [SEPTA] Transit Police Officer Dwayne Morrison . . . who was at the terminal. She told him that she had been sexually assaulted by a Philadelphia police officer. [K.B.] then called 911 along with Officer Morrison. After speaking with the 911 operator, Officer Morrison drove [K.B.] back to the 63rd and Cobbs Creek Parkway, where she met with members of the Philadelphia Police Department at the scene of the incident. From the parking lot, [K.B.] was taken to the Special Victims' Unit[,] where she gave a statement and identified [Appellant] from a photo array.

[Appellant], testifying on his own behalf, did not dispute that he drove [K.B.] to the parking lot, exposed himself to her, and received oral sex from her. He, however, testified that this was at the insistence of [K.B.]. According to [Appellant], as soon as [K.B.] got into the police vehicle, she began telling [Appellant] she owed him a favor. [Appellant] told her that she did not have to give him any money. Then, as they drove westbound on Market Street, [K.B.] offered to stop in a store to buy a condom. [Appellant] told her, "No, that's okay." Soon after, [K.B.] pointed out a Rite Aid and again offered to get a condom. [Appellant] again said, "No, that's okay." [K.B.] offered to get a condom a third time as they passed a gas station. [Appellant] continued driving, and [K.B.] suggested, "Just find a spot and I'll do something else for you." [Appellant] drove into a parking lot, parked the police car, stepped outside the vehicle and walked over to the passenger side, and opened the passenger-side door. When [Appellant] opened the door, [K.B.] turned toward [Appellant]. He unzipped his pants, took his penis out of his pants, and [K.B.] performed oral sex on him. [Appellant] conceded that the rest of their encounter occurred as [K.B.] had testified.

. . .

> [Appellant] was charged with involuntary deviate sexual intercourse, sexual assault, indecent exposure, and official oppression. On March 16, 2012, after a jury trial, [Appellant] was found guilty of indecent exposure and official oppression.[1, 2] On June 22, 2012, [Appellant] was sentenced to three to six months of incarceration, followed by two years [of] probation. On June 25, 2012, [Appellant's] counsel filed post-sentence motions [and claimed: that the verdict was against the weight of the evidence; that, at sentencing, the trial court failed to consider all of the mitigating factors; and, that Appellant was entitled to bail while his direct appeal was pending.] After a June 29, 2012 hearing, the [trial] court denied [Appellant's motion for a new trial and Appellant's motion for reconsideration of sentence[3]], but granted the bail motion, conditioned upon [Appellant] being placed on house arrest.

Trial Court Opinion, 3/20/13, at 1-5 (internal citations and footnotes omitted).

On July 24, 2012, Appellant filed a timely notice of appeal and Appellant now raises the following claims to this Court:[4]

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[1] The jury found Appellant not guilty of involuntary deviate sexual intercourse and sexual assault.

[2] 18 Pa.C.S.A §§ 3127 and 5301, respectively.

[3] The trial court denied Appellant's motion for a new trial and Appellant's motion for reconsideration of sentence on the record at the June 29, 2012 hearing. ***See*** N.T. Hearing, 6/29/12, at 5 and 8.

[4] The trial court ordered Appellant to file and serve a concise statement of errors complained of on appeal, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Appellant complied and listed the four claims he currently raises on appeal.

> 1. Whether the evidence was insufficient to convict [Appellant] of indecent exposure since [Appellant's] defense was consent and [Appellant] was found not guilty of the underlying sexual act?
>
> 2. Whether the evidence was insufficient to convict [Appellant] of official oppression since [Appellant] thought he [was] engaging in a legal consensual sex act and [Appellant] was found not guilty of the underlying sexual act?
>
> 3. Whether the evidence was against the weight of the evidence for both indecent exposure and official oppression since [Appellant] was found not guilty of the underlying sexual act and his actions were consistent with consent?
>
> 4. Whether [the trial court] committed reversible error when it denied [Appellant's] request for a jury instruction on mistake of fact as to indecent exposure and official oppression since [Appellant] had testified that he thought his actions were legal?

Appellant's Brief at 4.[5]

We have reviewed the briefs of the parties, the relevant law, the certified record, and the opinion of the able trial judge, the Honorable Donna Woelpper. We conclude that there has been no error in this case and that the trial court's opinion, filed March 20, 2013, meticulously and accurately disposes of Appellant's claims on appeal. Therefore, we affirm on the basis of the trial court's opinion and adopt it as our own. In any future filings with this or any other court addressing this ruling, the filing party shall attach a

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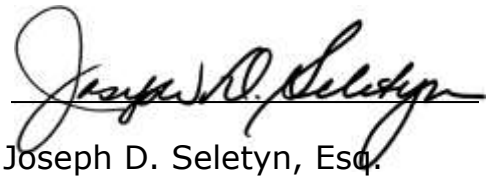
[5] Within the argument section of Appellant's brief, Appellant abandoned the final two claims that are listed in his statement of questions involved on appeal. ***See*** Appellant's Brief at 17.

copy of the trial court's opinion with the name of the victim redacted. Instead, the victim's initials shall be used.

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/20/2013

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	CR-51-CR-0012082-2011
v.	:	
KEITH CORLEY	:	SUPERIOR COURT NO. 2186 EDA 2012

OPINION

WOELPPER, DONNA, J. MARCH 20, 2013

I. OVERVIEW AND PROCEDURAL HISTORY

On August 31, 2011, Defendant, Keith Q. Corley ("Defendant") was charged with involuntary deviate sexual intercourse,[1] sexual assault,[2] indecent exposure,[3] and official oppression.[4] On March 16, 2012, after a jury trial, Defendant was found guilty of indecent exposure and official oppression. On June 22, 2012, Defendant was sentenced to three to six months of incarceration, followed by two years probation.[5] On June 25, 2012, defense counsel filed post-sentence motions for judgment of acquittal, reconsideration of sentence, and bail while on direct appeal. After a June 29, 2012 hearing, the court denied Defendant's motions for acquittal and reconsideration, but granted the bail motion, conditioned upon Defendant being placed on house arrest.[6]

[1] 18 Pa.C.S. § 3123.
[2] 18 Pa.C.S. § 3124.1.
[3] 18 Pa.C.S. § 3127.
[4] 18 Pa.C.S. § 5301.
[5] Defendant's probation was ordered to be supervised by the Sex Offender's Unit. He was also ordered to undergo an evaluation by the John J. Peters Institute and follow any resulting recommendations.
[6] Ultimately, Defendant did not pursue house arrest. He was granted parole on September 28, 2012.

Defendant's counsel filed a timely notice of appeal. Defendant alleges that the evidence was insufficient to sustain the convictions, that the verdict was against the weight of the evidence, and that the trial court erred in refusing to instruct the jury on "mistake of fact." *See* "Statement of Matters Complained Upon [sic] On Appeal" ("Statement of Errors").

II. FACTS

At approximately 1:30 a.m. on August 11, 2011, complainant K.B. , left her brother's house, picked up some take-out food, and walked to the intersection of 52nd and Market Streets in the City of Philadelphia. Notes of Testimony ("N.T."), Mar. 14, 2012 at 4. She arrived at the 52nd and Market Streets bus stop at approximately 2:15 a.m. *Id.* at 42. After waiting for the shuttle bus for approximately one hour, K.B. was approached by another woman in the vicinity. *Id.* at 8. They discussed the bus's delay. When they saw a marked police vehicle coming down the street, they flagged it down to get more information. *Id.* at 9. Defendant, who was the on-duty, uniformed police officer operating the vehicle, informed K.B. that due to construction, she would have to catch the shuttle bus at Chestnut or Walnut Street. *Id.* at 14-15. He offered K.B. a ride to the terminal at 69th and Market Streets, which she accepted. *Id.* at 15.[7]

When K.B. opened the rear passenger side door to get into the patrol car, Defendant told her she could sit in the front passenger seat, which she did. *Id.* K.B. testified that after she moved to the police vehicle's front passenger seat, Defendant began to drive at a slow pace. *Id.* at 18. In the car, while K.B. was using Facebook on her cell phone, Defendant told her she owed him a "favor." *Id.* at 19. K.B. asked him what he meant, and he responded that

[7] At this point, the woman who had joined K.B. at the bus stop had left. N.T., Mar. 14, 2012 at 15-16.

he had done K.B. a "favor" and now she owed him one. *Id.* at 22. K.B. testified that she believed Defendant was alluding to a sexual favor. *Id.*

Defendant drove K.B. up Market Street to 63rd Street, turned onto Cobbs Creek Parkway, and, without saying a word, drove into a parking lot adjacent to a skating rink and playground, and in the vicinity of some area houses. *Id.* at 22-23, 35. K.B. testified that there were no other cars in the lot, and the area was unlit. *Id.* at 23. While in the parking lot, Defendant again said that he wanted K.B. to do him a favor. *Id.* at 24. He exited the police vehicle, walked around the front of the car, opened the front passenger side door, and stood in front of K.B. with his pants unfastened. *Id.* Defendant told K.B. that he wanted her to perform oral sex on him. *Id.* Still standing in front of K.B., and his gun still on his hip, Defendant unzipped his pants and pulled his penis out through his zipper. *Id.* at 25. He was standing approximately one foot in front of K.B., such that he was blocking her ability to get out of the passenger side door. *Id.* at 26-27.

K.B. testified that she did not want Defendant to put his penis inside her mouth, nor did she give him permission to do so. *Id.* at 28. She was frightened that if she did not do as Defendant said, she "could have been left for dead" in the parking lot. *Id.* at 29. Though Defendant never made any gestures or references to the gun on his hip, it was visible as he stood in front of K.B. telling her she owed him a favor. *Id.* In the midst of the described circumstances, Defendant's penis was inserted into K.B.'s mouth, where he then ejaculated. *Id.* at 28, 30. Afterward, Defendant asked K.B. to hand him some napkins from the glove compartment, which he used to wipe off his penis. *Id.* at 30-31. Defendant then handed a napkin to K.B., which she used to clean her mouth. *Id.*

Defendant got back into the car and without any conversation drove K.B. to the 69th Street terminal. *Id.* at 31-32. When they arrived, K.B. got out of the car, and Defendant drove away. *Id.* at 32. K.B. noted the number on the patrol car and entered it in her phone. *Id.* at 43. She immediately approached Septa Transit Police Officer Dwayne Morrison ("Officer Morrison"), who was at the terminal. She told him that she had been sexually assaulted by a Philadelphia police officer. *Id.* at 36, 100. K.B. then called 911 along with Officer Morrison. *Id.* at 37. After speaking with the 911 operator, Officer Morrison drove K.B. back to 63rd and Cobbs Creek Parkway, where she met with members of the Philadelphia Police Department at the scene of the incident. *Id.* at 39. From the parking lot, K.B. was taken to the Special Victims' Unit where she gave a statement and identified Defendant from a photo array. *Id.* at 39, 47.

Defendant, testifying on his own behalf, did not dispute that he drove K.B. to the parking lot, exposed himself to her, and received oral sex from her. He, however, testified that this was at the insistence of K.B. According to Defendant, as soon as K.B. got into the police vehicle, she began telling Defendant she owed him a favor. N.T., Mar. 15, 2012 at 59. Defendant told her that she did not have to give him any money. *Id.* Then, as they drove westbound on Market Street, K.B. offered to stop in a store to buy a condom. *Id.* Defendant told her, "No, that's okay." *Id.* at 60. Soon after, K.B. pointed out a Rite Aid and again offered to get a condom. *Id.* Defendant again said, "No, that's okay." *Id.* K.B. offered to get a condom a third time as they passed a gas station. *Id.* at 61. Defendant continued driving, and K.B. suggested, "Just find a spot and I'll do something else for you." *Id.* Defendant drove into a parking lot, parked the police car, stepped outside the vehicle and walked over to the passenger side, and opened the passenger-side door. *Id.* at 62-64. When Defendant

opened the door, K.B. turned toward Defendant. *Id.* at 64. He unzipped his pants, took his penis out of his pants, and K.B. performed oral sex on him. *Id.* Defendant conceded that the rest of their encounter occurred as K.B. had testified. *Id.* at 65.

III. DISCUSSION

A. Sufficiency of the Evidence

Defendant's Statement of Errors alleges that the evidence was insufficient to convict him of indecent exposure because his "defense was consent and [he] was found not guilty of the underlying sexual act." *See* Statement of Errors at ¶ 1. Defendant also argues that the evidence was insufficient to sustain the conviction for official oppression because he thought his sexual conduct was "a legal consensual sex act," and he was acquitted of the "underlying sexual act." *See* Statement at ¶ 2.[8]

The standard of reviewing this challenge is to consider the evidence in the light most favorable to the Commonwealth, "giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence." *See Commonwealth v. Santiago,* 980 A.2d 659, 662 (Pa. Super. Ct. 2009). A verdict is supported if the evidence establishes, beyond a reasonable doubt, that the accused committed every element of the charged crime. *Id.* If the record supports the verdict, the reviewing court "may not substitute its judgment for that of the fact finder." *Id.*

1. Indecent Exposure

There was sufficient evidence at trial to sustain the jury's guilty verdict on the indecent exposure charge. An individual "commits indecent exposure if that person exposes his or her

[8] As a preliminary matter, to the extent that Defendant asserts that he could not be found guilty of official oppression and/or indecent exposure because he was found not guilty of involuntary deviate sexual intercourse and sexual assault, this argument should fail. Inconsistent verdicts are permissible as long as they are supported by sufficient evidence. *See Commonwealth v. Miller*, 35 A.3d 1206, 1208 (Pa. Super. Ct. 2012). For the reasons below, the evidence on record was sufficient to support the jury's findings on both the official oppression and indecent exposure charges.

genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm." 18 Pa.C.S. § 3127. Defendant exposed his penis in a parking lot adjacent to a skating rink and playground, with houses surrounding the area. Moreover, Defendant testified that at the time he exposed himself, he and K.B. were located where they could be seen by others:

> Q: (by ADA Lim) And you took [K.B.] to a place that you knew because you'd been there before, right?
>
> A: (by Defendant) Yes, sir.
>
> Q: If you described this location, you would say it was completely black, right?
>
> A: No, sir.
>
> Q: No? What's there?
>
> A: Street lights.
>
> Q: So people can see the parking lot?
>
> A: They can come down there, yes, sir.
>
> Q: You took a girl that was going to give you oral sex, while you're in uniform, in a patrol car, to a place people could see you?
>
> A: Yes, sir.

N.T., Mar. 15, 2012 at 92-93.

The evidence presented at trial was sufficient for the jury to determine Defendant was guilty of indecent exposure, having exposed his genitals in a public place.

2. Official Oppression

The Defendant's sufficiency of the evidence claim as to official oppression is also without merit. Official oppression is defined as follows: a person "acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a

misdemeanor of the second degree if, knowing that his conduct is illegal, he subjects another to...mistreatment. 18 Pa.C.S. § 5301.

Defendant mistreated K.B. while acting in his official capacity as a Philadelphia police officer. K.B. testified that while Defendant was on duty, dressed in full uniform, and operating a marked police vehicle, he offered to drive K.B. to her bus stop. Shortly after making this gesture, however, Defendant told K.B. she owed him a "favor," exposed his genitals to her, and solicited oral sex from her. By soliciting a sexual "favor" in return for transport by a marked police vehicle, Defendant mistreated K.B. while "taking advantage" of his authority as a Philadelphia police officer. *See Commonwealth v. Checca*, 491 A.2d 1358, 1367 (Pa. Super. Ct. 1985) (district judge acting in the course of his duties as such "mistreated" complainant by requesting and/or accepting sexual favor from said complainant). Furthermore, to violate the statute, an officer need not be performing an "official act" at the time of the mistreatment; the officer's title and position alone are generally sufficient to find that any mistreatment was done while "taking advantage" of his or her official capacity:

> A policeman wearing his badge of office, his uniform, pistol and nightstick carries with him at all times two unstated veiled threats, two capabilities: one is the use of force, the other is the power to arrest. These capabilities...engender an attitude of circumspection and deference...The powers of a police officer to use force and to arrest are formidable. The implicit recognition of these powers by the public in dealing with a police officer is both usual and desirable. Therefore, while exceptions are conceivable, we hold as a general rule that a police officer in uniform is cloaked with the authority of his office; and that actions taken by him which constitute mistreatment of another may fairly be said, within the terms of the statute, to be "taking advantage" of that authority.

See Commonwealth v. Stumpo, 452 A.2d 809, 814 (Pa. Super. Ct. 1982).

Here, K.B. testified that she did not believe she could refuse Defendant's proposition as he stood exposing himself to her. Sufficient evidence supported the reasonableness of this belief: in addition to having driven K.B. to the parking lot, the

uniform that Defendant was donning and the firearm he was carrying were visual reminders that he was an authority figure.[9]

Finally, sufficient evidence supported the jury's finding that Defendant knew his conduct was illegal. Philadelphia Police Officer Matthew Zagursky (who later became involved in the investigation of K.B.'s complaint) testified that officers are trained to maintain detailed records of their activity while on duty, including all civilian transports. N.T., Mar. 14, 2012 at 121-122. Defendant confirmed that he generally marked his patrol log at the time he picked up an individual and again at the time he dropped him or her off. N.T., Mar. 15, 2012 at 57. On this occasion, however, Defendant made no record of having picked up K.B., despite his familiarity with record-keeping protocol. *Id.* at 69, 80. Furthermore, the Commonwealth presented evidence that Defendant called Officer Zagursky multiple times to confirm the status of K.B.'s investigation, while at no time reporting that he (Defendant) was the officer who had driven her to the terminal. N.T., Mar. 14, 2012 at 115-116. Defendant testified that he did not record the ride he gave K.B. or otherwise report himself when he learned of the investigation because he knew that he had violated police procedure when he accepted oral sex from K.B. N.T., Mar. 15, 2012 at 69, 71. Defendant testified that he did not know, however, that his conduct that evening was criminal. *Id.* at 77.

Defendant also testified, however, that he failed, even initially, to record that he was picking up a civilian. *Id.* at 88-90. In other words, Defendant's decision to disregard reporting protocol was not made *after* K.B. allegedly propositioned him, but rather from the time he decided to offer her a ride. Examining the record in the light most favorable to the Commonwealth, the jury could reasonably have viewed this sequence of events as evidence that

[9] As K.B. testified, "[Defendant] was a cop for one," and "he had a gun on his hip" as he stood before her, exposing himself and telling her she owed him a "favor." N.T., Mar. 14, 2012 at 28-29.

Defendant knew he was engaging – or about to engage – in unlawful conduct at the time he first drove away with K.B. . Therefore, the evidence was sufficient to sustain Defendant's conviction for official oppression.

B. Weight of the Evidence

Defendant's argument that the verdict was against the weight of the evidence should also fail. *See* Statement of Errors at ¶ 3. In considering a weight of the evidence claim, the appellate court reviews the trial court's exercise of discretion. *See Commonwealth v. Widmer*, 744 A.2d 745, 753 (Pa. 2000), *citing Commonwealth v. Brown,* 648 A.2d 1177 (Pa. 1994). A new trial is granted only if the trial court determines that "the verdict was so contrary to the evidence as to shock one's sense of justice..." *Commonwealth v. Rossetti*, 863 A.2d 1185, 1191 (Pa. Super Ct. 2004). Credibility determinations are left solely to the fact-finder, and "an appellate court may not reweigh the evidence and substitute its judgment for that of the finder of fact." *Commonwealth v. Hanible*, 30 A.3d 426, 443 n. 11 (Pa. 2011). Whether or not the trial court erred in refusing to find that the verdict was against the weight of the evidence, "appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim." *Commonwealth v. Champney*, 832 A.2d 403, 408 (Pa. 2003), *cert denied*, 542 U.S. 939 (2004).

The evidence presented establishes that Defendant was guilty of both indecent exposure and official oppression. This court did not abuse its discretion when it denied Defendant's motion based on the weight of the evidence.[10]

[10] Although Defendant raised his weight of the evidence claim in a motion for judgment of acquittal, this court has analyzed his claim for purposes of this opinion as though it were raised in a motion for new trial. *See* Pa. R. Crim. P. Rule 607.

C. Jury Instruction on Mistake of Fact

Defendant's final argument is that the court committed reversible error by denying his request for a jury instruction on mistake of fact as to indecent exposure and official oppression. *See* Statement of Errors at ¶ 4. Namely, Defendant contends that because K.B. allegedly initiated the sexual conduct, he reasonably believed the conduct was consensual.

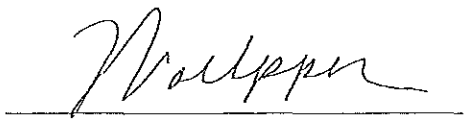
The trial court may not refuse to instruct the jury on a defense if the record supports the defense. *See Commonwealth v. Hamilton*, 766 A.2d 874, 880 (Pa. Super. Ct. 2001). It is then for the jury to determine the merit of the defense. *Id.* at 880-881. Here, however, because consent is not a defense to either indecent exposure or official oppression, Defendant's claim should fail. First, Defendant's alleged mistake of fact was no defense to the indecent exposure charge. The crime of indecent exposure can be committed either in a "public place" or in "any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm." *See* 18 Pa.C.S. § 3127. Here, Defendant testified that while in a parking lot, which he admitted was accessible to the public, he exposed his genitals. Whether K.B. consented to that exposure is irrelevant, and therefore Defendant was not entitled to the "mistake of fact" charge.

Second, whether Defendant mistakenly believed K.B. consented to Defendant's conduct was also immaterial to the official oppression charge, as consent is no defense. *See Checca*, *supra*, 491 A.2d at 1366 ("[W]here a public official, under the color of his office, solicits or accepts a sexual favor in the course of discharging a duty of his office, the assent of the victim is not a defense to a charge of official oppression."). Therefore, Defendant was also not entitled to the "mistake of fact" charge on the official oppression offense.

CONCLUSION

For the aforementioned reasons, the verdict imposed by this court should be affirmed.

BY THE COURT



WOELPPER, DONNA J.