

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

TIMOTHY DONNELL ANDERSON,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 767 MDA 2012

Appeal from the Judgment of Sentence of March 1, 2012,
in the Court of Common Pleas of Lancaster County,
Criminal Division at Nos. CP-36-CR-0000378-2010,
CP-36-CR-0000419-2010, CP-36-CR-0005069-2009

BEFORE: PANELLA, SHOGAN and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED MAY 07, 2013

This is an appeal from the judgment of sentence entered following Appellant's convictions of multiple offenses. Appellant raises one claim on appeal: whether there was sufficient evidence to support his conviction at CP-36-CR-0005069-2009, for Unlawful contact with minor. We affirm.

We review sufficiency challenges as follows:

When evaluating a sufficiency claim, our standard is whether, viewing all the evidence and reasonable inferences in the light most favorable to the Commonwealth, the factfinder reasonably could have determined that each element of the crime was established beyond a reasonable doubt. This Court considers all the evidence admitted, without regard to any claim that some of the evidence was wrongly allowed. We do not weigh the evidence or make credibility determinations. Moreover, any

*Retired Senior Judge assigned to the Superior Court.

doubts concerning a defendant's guilt were to be resolved by the factfinder unless the evidence was so weak and inconclusive that no probability of fact could be drawn from that evidence.

Commonwealth v. Kane, 10 A.3d 327, 332 (Pa. Super. 2010) (citation omitted).

The Unlawful contact statute provides, in pertinent part:

§ 6318. Unlawful contact with minor.

(a) *Offense defined.* --A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:

(1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).

18 Pa.C.S.A. § 6318(a)(1).

Appellant's Unlawful contact conviction *sub judice* was based on the offense enumerated in Chapter 31 at 18 Pa.C.S.A. § 3123(a)(7) (Involuntary deviate sexual intercourse) ("IDSI"); that offense constitutes a felony when a 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." Deviate sexual intercourse is: "Sexual intercourse per os or per anus between human beings and any form of sexual intercourse with an animal. The term also includes penetration, however slight, of the genitals or anus of

another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.” 18 Pa.C.S.A. § 3101.

Appellant argues that the evidence admitted at trial failed to prove that his communications with the minor involved, B.B., or the agent posing as B.B., were made for the purpose of engaging in IDSI with her. We disagree.

Evidence was admitted of a message exchange between Appellant and “B.B.” as follows:

6:04 p.m. he states, I want to kiss your neck. 6:05 p.m. she states, yeah? 6:06 p.m. she states, hehe. Yeah. 6:06 p.m. he states, and put my hand on your butt. 6:11 p.m. she states, sweet.

6:11 p.m. [Appellant] states, oh, yeah, smiley face. 6:12 p.m. he states, and more stuff. 6:12 p.m. she states, that you’re not going to tell me? 6:12 p.m. he states, oh, yeah, smiley face.

6:13 p.m. he states, I want to kiss and lick other parts of your body. 6:15 p.m. she states, oh, what parts? 6:16 p.m. he states, all the parts you want me to. 6:18 p.m. she states, whatever you want. Just tell me and I’ll say yeah or no.

6:20 p.m. he states, can I unbutton your pants? 6:21 p.m. she states, yeah. 6:22 p.m. he states, can I take your pants off? 6:22 p.m. she states, yes.

6:23 p.m. he states, can I take your panties off? 6:24 p.m. he states, then we’re going – we’re gonna have a lot of fun.


N.T., 09/09/11, at 340-41.

Viewing, in the light most favorable to the Commonwealth, this evidence together with all reasonable inferences therefrom, we find sufficient

evidence that Appellant contacted B.B. for the purposes of engaging her in sexual intercourse per os; thus, his challenge to the sufficiency of the evidence fails.

Judgment of sentence affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 5/7/2013