

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

ALBERT CHASE III

Appellant

No. 964 MDA 2012

Appeal from the Judgment of Sentence April 17, 2012
In the Court of Common Pleas of Luzerne County
Criminal Division at No(s): CP-40-CR-0000317-2010

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, J., and ALLEN, J.

MEMORANDUM BY PANELLA, J.

Filed: March 4, 2013

Appellant, Albert Chase III, appeals from the judgment of sentence entered on April 17, 2012, in the Court of Common Pleas of Luzerne County. We affirm.

We assume the parties' familiarity with the facts and procedural history of this appeal. We set forth only so much of the facts and procedural history that is necessary to our analysis.

A jury convicted Chase of several counts stemming from his sexual abuse of a young girl. The sexual abuse occurred over seven years. The trial court sentenced Chase to a term of imprisonment of 15 to 30 years. This timely appeal followed.

In his sole issue presented on appeal, Chase maintains that the verdict is against the weight of the evidence. Our review of the certified record

reveals that Chase did not properly preserve this claim for our review. **See** Pa.R.Crim.P. 607(A).¹ As such, we are constrained to find the issue waived.

Chase did, however, raise this issue in his Rule 1925(b) statement and the trial court did address the issue in its Rule 1925(a) opinion. As such, we briefly explain below why this claim fails even if we would have addressed it on the merits.

Our standard of review for a challenge to the weight of the evidence is well settled. The finder of fact is the exclusive judge of the weight of the evidence as the fact finder is free to believe all, part, or none of the evidence presented and determines the credibility of the witnesses. **See Commonwealth v. Champney**, 574 Pa. 435, 444, 832 A.2d 403, 408 (2003). As an appellate court, we cannot substitute our judgment for that of the finder of fact. **See id.** Therefore, we will reverse a jury's verdict and grant a new trial only where the verdict is so contrary to the evidence as to shock one's sense of justice. **See Commonwealth v. Passmore**, 857 A.2d 697, 708 (Pa. Super. 2004).

A verdict is said to be contrary to the evidence such that it shocks one's sense of justice when "the figure of Justice totters on her pedestal," or when "the jury's verdict, at the time of its rendition, causes the trial judge to

¹ Tellingly, Chase has not provided a citation in his appellate brief to the page in the record where the issue on appeal was preserved for appellate review. **See** Pa.R.A.P. 2119(e).

lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience." ***Commonwealth v. Davidson***, 860 A.2d 575, 581 (Pa. Super. 2004) (citations omitted), ***aff'd***, 595 Pa. 1, 938 A.2d 198 (2007).

Furthermore,

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.

Champney, 574 Pa. at 444, 832 A.2d at 408 (citation omitted).

At trial, the victim testified in detail about the sexual abuse that occurred over the seven-year period. In contrast, Chase testified that he did not sexually abuse the victim. Chase's version of the facts is set forth at length in his brief. ***See*** Appellant's Brief, at 6-31.

The trial court rejected Chases's weight of the evidence claim in its Rule 1925(a) opinion. ***See*** Trial Court Opinion, 7/24/12, at 8-9. Specifically, the trial court stated:

I had an opportunity to consider the Commonwealth's testimony including an ability to assess the witnesses' demeanor, responsiveness, intonation, and inflection and conclude unequivocally it does not shock the judicial conscious of this [c]ourt that the jury returned the verdict they did. ... Even a cursory review of the trial transcript reveals that the ... victim's testimony alone would suffice in this regard. When coupled with the cooperative [sic] and complimentary testimony offered by the additional eighteen witnesses the evidence is both convincing and indeed overwhelming. The verdict returned requires no

involved or sophisticated analysis other than the observation the jury exercised their prerogative with regard to the witnesses' credibility.

Id.

We have reviewed the testimony and the trial court's Rule 1925(a) opinion and had we addressed this claim on the merits we would have found no abuse of discretion with the trial court's conclusion. The verdict here simply does not shock the conscience.

Judgment of sentence affirmed.