

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
MICHAEL EDWARD NEUMANN,	:	
	:	
Appellant	:	No. 990 MDA 2012

Appeal from the Judgment of Sentence entered September 8, 2011,  
Court of Common Pleas, Cumberland County,  
Criminal Division at No. CP-21-CR-0001479-2010

BEFORE: DONOHUE, ALLEN and OTT, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: March 12, 2013

Michael Edward Neumann (“Neumann”) appeals from the judgment of sentence entered following his convictions of rape of a child, incest, involuntary deviate sexual intercourse – child over 12 under 16, involuntary deviate sexual intercourse with a child, aggravated indecent assault – lack of consent, aggravated indecent assault of a child, aggravated indecent assault of a child under 16, indecent assault – lack of consent, indecent assault of a child under 16, indecent assault of a child, statutory sexual assault, sexual assault, and corruption of minors.<sup>1</sup> We affirm.

The trial court summarized the factual and procedural histories underlying this appeal as follows:

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<sup>1</sup> 18 Pa.C.S.A. §§ 3121(c), 4302, 3123(a)(7), 3123(b), 3125(a)(7), 3125(b), 3125(a)(8), 3126(a)(1), 3126(a)(8), 3126(a)(7), 3122.1, 3124.1, 6301(a)(1).

[Neumann] began more than a decade of abuse when he started inappropriately touching [his daughter] K.N.'s breasts and vagina and forcing her to stroke his penis when she was between the ages of five and seven. This escalated to his forcing her to perform oral sex on him when she was seven years old. By the time she was ten, [Neumann] had begun inserting dildos into K.N.'s vagina and anus. During this time he also frequently displayed pornography to K.N. in an attempt to entice her to engage in sexual activity. At age [12], he began having vaginal intercourse with K.N. Soon after, he began having anal sex with K.N. He would also have K.N. insert her fingers into his anus for the purpose of deriving sexual pleasure. Everything that occurred was non-consensual, frequent, and physically painful for K.N. While it was going on, K.N. never informed anyone about the abuse due to her fear of [Neumann] as he had been violently abusive with her and other members of the household. The first time K.N. discussed the abuse was when her step-sister, S.W., opened up to her about suffering very similar abuse at [Neumann's] hand.

K.N.'s step-sister, S.W., suffered a parallel pattern of abuse during her time in [Neumann's] household. S.W. is the daughter of [Neumann's] [third] wife and is unrelated to him biologically. [Neumann] began engaging in vaginal intercourse with S.W. when she was around [13] years old. This occurred two to three times a month until S.W. left the house five years later. He would also frequently digitally penetrate her vagina while showing her pornography, beginning when she was [14] years old. When she was [14] or [15], [Neumann] engaged in anal intercourse with S.W. This happened again when she was between the ages of [15] and [17]. As with K.N., all of this activity was non-consensual and often physically painful for S.W. S.W. never refused [Neumann's] advances out of fear of physical violence. She did not report the abuse until much later for the same reason.

Ultimately, however, S.W. did report the abuse following an incident that occurred when she was [18] years old. Just after her high school graduation, [Neumann] ordered her upstairs to his bedroom where he had vaginal intercourse with her. He did not wear a condom and ejaculated inside [of] her, telling her 'I want you to have my kids.' As with all the other abuse, this encounter was non-consensual and S.W. complied with [Neumann's] demands out of fear.

Immediately following this final incident of abuse, S.W. informed a friend of what happened. The friend then informed her mother, who contacted the police. After retrieving items of clothing from her home, S.W. was transported to a hospital and a rape kit was performed. [Neumann's] DNA was found on S.W.'s underwear. A subsequent search of [Neumann's] home revealed pornography and a dildo that S.W. was able to identify as the object with which [Neumann] had penetrated her twice when she was [15].

At trial, [Neumann] testified on his own behalf and categorically denied touching K.N. in a sexually inappropriate manner. He made a similar denial regarding S.W. He did, however, admit to one instance of sexual intercourse with S.W. Specifically, he admitted to the incident of intercourse that resulted in the discovery of D.N.A. on S.W.'s underwear. ... Ultimately, the jury found [Neumann] not credible and returned verdicts of guilty on all counts. The court sentenced him to an aggregate term of 23 to 46 years [of] imprisonment and declared [Neumann] a [s]exually [v]iolent [p]redator.

Trial Court Opinion, 8/31/12, at 2-5 (citations to notes of testimony omitted).

Neumann filed a post-sentence motion raising multiple grounds for relief, including a claim that he was entitled to a new trial because the verdicts were against the weight of the evidence. Post-Sentence Motion, 11/22/11, at 1-2. The trial court denied Neumann's post-sentence motion and this timely appeal followed. Neumann presents only one issue for our review:

Was the verdict in the present case so contrary to the weight of the evidence as to shock one's conscience in that the complaining witnesses, K.N. and S.W., each offered vague and self-conflicting testimony which was inconsistent with each other's accounts of the alleged events, and which conflicted with defense witness testimony, and was unsupported by physical evidence of sex with a minor?

Appellant's Brief at 8.

Neumann is challenging the trial court's denial of his claim that the verdicts are against the weight of the evidence. The Pennsylvania Supreme Court has recently detailed the nature of the nuanced appellate review of such a claim:

An appellate court's standard of review when presented with a weight of the evidence claim is distinct from the standard of review applied by the trial court:

*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.

**Widmer**, 560 Pa. at 321–22, 744 A.2d at 753 (emphasis added) (internal citations omitted).

This does not mean that the exercise of discretion by the trial court in granting or denying a motion for a new trial based on a challenge to the weight of the evidence is unfettered. In describing the limits of a trial court's discretion, we have explained:

The term 'discretion' imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion within the framework of the law, and is not exercised for the purpose of giving effect to the will of the judge. Discretion must be exercised on the foundation of reason, as opposed to prejudice, personal motivations, caprice or arbitrary actions. Discretion is abused where the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill-will.

**Widmer**, 560 A.2d at 322, 744 A.2d at 753 (quoting **Coker v. S .M. Flickinger Co.**, 533 Pa. 441, 447, 625 A.2d 1181, 1184–85 (1993)).

***Commonwealth v. Clay***, 2013 WL 474441 at \*5-6 (Pa. Feb. 8, 2013).

Accordingly, we are mindful that as we review Neumann's claim, we are not passing on the underlying question of whether the verdicts were against the weight of the evidence, but rather we are considering whether the trial court abused its discretion in denying Neumann's motion for a new trial based upon his claim that the verdict was against the weight of the evidence. We are focused, therefore, on evidence that the trial court's ruling is "manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill-will." ***Id.*** at \*5.

Neumann fails to appreciate the standard and scope of our review. He frames his argument in terms of the ***jury's*** failure to make certain findings, and does not present any argument as to how he believes the trial court abused its discretion in denying his post-sentence motion. Neumann only points to what he calls a lack of physical evidence and what he perceives to be contradictions in the testimony of K.N. and S.W, and argues that the ***jury*** should not have ignored these shortcomings in the Commonwealth's case. Appellant's Brief at 14-15. He further argues that the jury should have found his witnesses more credible. ***Id.*** at 16. Neumann's entire argument is expressly directed to the underlying question of whether his convictions are against the weight of the evidence. As stated above, this is not the question before us for review.

Neumann has failed to provide us with relevant argument relative to our standard of review, and this Court will not develop an argument on his behalf. ***See Commonwealth v. Gould***, 912 A.2d 869, 873 (Pa. Super. 2006). In addition, however, our independent review of the record provides us with ample support for the conclusion that the trial court did not abuse its discretion in deciding that the verdicts in this case were not against the weight of the evidence.

Judgment of sentence affirmed.