

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
LANEER D. FISHER,	:	
	:	
Appellant	:	No. 884 WDA 2012

Appeal from the Judgment of Sentence April 12, 2012,  
Court of Common Pleas, Beaver County,  
Criminal Division at No. CP-04-CR-0002044-2010

BEFORE: BOWES, DONOHUE and MUNDY, JJ.

MEMORANDUM BY DONOHUE, J.: Filed: May 21, 2013

Laneer D. Fisher (“Fisher”) appeals from the judgment of sentence entered by the Court of Common Pleas, Beaver County, on April 12, 2012, following his convictions of indecent assault, unlawful contact with a minor, and corruption of minors.<sup>1</sup> Upon review, we affirm.

The facts relevant to our resolution of the issues raised on appeal are as follows.<sup>2</sup> The charges arose after N.C. reported to police that her son, T.S., disclosed that Fisher, the pastor of their church, had touched him inappropriately on multiple occasions. T.S. was a very active member of the Miracle Church of God in Christ in Aliquippa, at which Fisher was the senior

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<sup>1</sup> 18 Pa.C.S.A. §§ 3126(a)(8), 6318(a)(1), 6301(a)(1)(ii).

<sup>2</sup> The trial court included a comprehensive summary of the testimony presented at trial in its opinion, **see** Trial Court Opinion, 8/24/12, at 3-31, and thus, there is no need for us to do so herein. We therefore include only those facts that are directly relevant to our resolution of this appeal.

pastor. T.S. was present at the church five days per week as a parishioner. In addition, he was a musician for the adult and youth choirs, and the junior usher board president. T.S. spent a lot of time with Fisher, whom he loved and respected as his spiritual leader.

According to T.S., Fisher called him into his office after the New Year's Eve service in 2008, when T.S. was 15 years old, and had him lock the door. T.S. had previously told Fisher that he was upset about not having his father in his life. On that night in his office, Fisher embraced T.S. and told him he could look to Fisher as a father figure, that he loved him, and then kissed him on the forehead and on the lips. T.S. indicated that he was surprised by the kiss, as Fisher had never done that before, but that T.S. did not say anything because he was raised to believe that the pastor could do no wrong.

From that night on, for approximately a year, T.S. stated that the incidents of inappropriate touching increased in frequency and intensity. The encounters usually took place in Fisher's office behind closed, locked doors, and occurred as often as five-to-six times per week. The physical touching no longer just constituted hugging, but involved Fisher reaching under T.S.'s shirt to "caress[]" T.S.'s bare arms, stomach, chest, back, and nipples. N.T., 9/8/11, at 414. At times, Fisher would have T.S. sit on his lap when this occurred. Although T.S. could not tell if this sexually aroused Fisher, he reported to police that during one incident Fisher told T.S. that

"[T.S.] did not know what [T.S.] did to him." **Id.** at 392. T.S. also testified that the kissing progressed as well, referring to it as "continuous kissing," and stating that Fisher tried to kiss him with an open mouth and put his tongue into T.S.'s mouth a few times, but that T.S. successfully resisted his attempts. **Id.** at 417. Fisher told T.S. he was "his favorite" of all of the other boys involved with the church, and told him that "[a]s often as he could." **Id.** at 428.

T.S. recalled one evening when he was home with his stepfather and T.S.'s cellphone rang. Upon seeing on caller ID that it was Fisher calling, he told his stepfather not to answer the phone. Approximately 15-20 minutes later, Fisher came to T.S.'s house and when T.S.'s stepfather told Fisher that T.S. was asleep, Fisher requested that the stepfather wake T.S. to come downstairs. According to T.S., they spoke in Fisher's car. T.S.'s stepfather testified and corroborated this story. While in Fisher's car, T.S. stated that Fisher told him that he was not gay, but "overly affectionate," which T.S. interpreted as Fisher trying to "justify [...] what was going on between us[.]" **Id.** at 432.

On another occasion, T.S. was at a funeral with his father and Fisher was also in attendance. According to T.S., Fisher followed them out to their car, and once T.S.'s father got into the vehicle, Fisher asked T.S. if he told anyone about what had been going on between the two of them, to which

T.S. responded he had not. T.S. testified that Fisher told him he would find a way to get in touch with him.

T.S. reported Fisher's inappropriate touching to N.C. on June 5, 2010. Prior to T.S.'s disclosure, N.C. had concerns about what she perceived to be Fisher's preoccupation with T.S. Fisher treated T.S. very differently from T.S.'s brother who was only two years younger than T.S. and who, like T.S., was very active in the church. N.C. testified to expensive gifts and money given to T.S. by Fisher.

Fisher testified and denied that he ever kissed or touched T.S. in the manners described above. He also denied that he treated T.S. better or any different from the other boys involved in the church. Two of those boys, who considered T.S. to be like a brother to them, testified that they did not believe T.S.'s allegations, and disagreed that T.S. was treated better or differently than they were treated.

After a day-and-a-half of testimony, the jury retired to deliberate. At approximately 8:45 p.m., the jury informed the trial court that it did not think it could reach a unanimous verdict that evening. The trial court instructed the jury as follows:

Let me remind you that if this case is tried again, the evidence will not change. There will be 12 people just like you making the same decision, and you realize that, as I told you, each juror must agree on your verdict and your verdict must be unanimous.

But you have a duty to consult with one another and to deliberate with a view of reaching an agreement, if it can be done without violating your conscious. Each juror must decide the case for himself or herself, but only after impartial consideration of the evidence with your fellow jurors.

In the course of deliberations a juror should not hesitate to re-examine their views and change their opinion if convinced it is erroneous. No juror should surrender their honest conviction as to the weight or affect of the evidence solely because of the opinion of the fellow jurors or for the mere purpose of returning a verdict.

So keeping these instructions in mind, I am going to ask you to return to deliberating and to give further consideration of the evidence. After reasonable time if you haven't reached a verdict and believe that you cannot reach a verdict, inform the tipstaff, and I will do what I have to do.

But I wish you to do the best you can to reach a verdict, because a verdict that is not reached [*sic*] another group of people just like you will hear the same evidence and try to make that determination. Thank you.

N.T., 9/9/11, at 738-39. Neither party objected to this instruction. A little over two hours later, the jury returned a unanimous verdict finding Fisher guilty as charged.

The trial court held a sentencing hearing on April 12, 2012, at which it found Fisher to be a sexually violent predator<sup>3</sup> and sentenced him to six to 23 months of incarceration, followed by 3 years of probation. Fisher filed a

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<sup>3</sup> 42 Pa.C.S.A. § 9792.

timely post-sentence motion, which the trial court denied on May 30, 2012.

Fisher filed his notice of appeal that same day.

On appeal, Fisher raises the following issues for our review:

- I. Whether the trial court's instruction to the deadlocked jury had a coercive effect denying [Fisher] his right to an uncoerced verdict[?]
- II. Whether the Commonwealth presented sufficient evidence to convict [Fisher] of indecent assault?
- III. Whether the Commonwealth presented sufficient evidence to convict [Fisher] of unlawful contact with a minor?
- IV. Whether the Commonwealth presented sufficient evidence to convict [Fisher] of corruption of minors?
- V. Whether the trial court erred by denying [Fisher's] motion for judgment of acquittal in ruling that there [sic] was sufficient evidence to allow the charges to go to the jury?

Fisher's Brief at 6.<sup>4</sup>

As his first issue on appeal, Fisher contests the propriety of the above-quoted jury instruction issued by the trial court when the jury indicated that it could not reach a verdict. Fisher's Brief at 12-14. Specifically, Fisher challenges the first and last part of the instruction, whereby the trial court

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<sup>4</sup> We reordered the issues for ease of disposition. As Fisher recognizes, his final issue relating to the trial court's ruling on his judgment of acquittal is simply another challenge to the sufficiency of the evidence to convict him of the crimes charged. Fisher's Brief at 14, 19; **Commonwealth v. Spotti**, \_\_\_ A.3d \_\_\_, 2013 WL 1490996, \*6 (Pa. Super. Apr. 12, 2013). As such, we do not consider this issue separately from the other sufficiency of the evidence claims.

twice stated that if this jury did not reach a verdict, another jury would have to make a decision based on the same evidence, which Fisher contends is “highly coercive.” *Id.* at 13. As noted above, however, Fisher failed to object to the instruction at the time it was given. **See** N.T., 9/9/11, at 739. Rather, Fisher raised this issue for the first time in his post-sentence motion. **See** Post-Sentence Motion, 4/23/12, at ¶ 7. Our Rules of Criminal Procedure are clear: “No portions of the charge nor omissions from the charge may be assigned as error, unless specific objections are made thereto before the jury retires to deliberate.” Pa.R.Crim.P. 647(B); **see also** *Commonwealth v. Edmondson*, 553 Pa. 160, 164-65, 718 A.2d 751, 753 (1998) (finding waiver of an objection to a jury instruction first raised in a post-sentence motion).<sup>5</sup> As such, we must find this issue waived.

Fisher’s remaining issues challenge the sufficiency of the evidence to support his guilt for the crimes charged. Our standard of review is well settled:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the

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<sup>5</sup> The holding in *Edmondson* was based on Rule 1119(B), which has since been renumbered as Rule 647(B). There were no substantive changes made to the Rule upon renumbering.

Commonwealth need not preclude every possibility of innocence. 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. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

***Commonwealth v. Knox***, 50 A.3d 749, 754 (Pa. Super. 2012).

The crime of indecent assault is defined, in relevant part, as follows:

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:

\* \* \*

(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)(8). "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.

Fisher contends that the Commonwealth failed to put forth sufficient evidence that he had indecent contact with T.S., as the evidence presented

revealed “nothing more than the familial or friendly affection of a pastor reaching out as a father figure to a young man in his congregation.” Fisher’s Brief at 16. He bases this on the fact that “no sexual activity ever took place,” as “[a]n embrace, a kiss, the touching of another’s person’s back, stomach, and chest are all acts as ‘consistent with the overfamiliar friendship as with lust.’” **Id.** (quoting **Commonwealth v. Mumma**, 489 Pa. 547, 553, 414 A.2d 1026, 1029 (1980)). The trial court found the evidence presented to be sufficient to convict Fisher of indecent assault. Trial Court Opinion, 8/24/12, at 36-37.

A conviction of indecent assault can arise from touching places other than a person’s genitals or buttocks. **Commonwealth v. Capo**, 727 A.2d 1126, 1127 (Pa. Super. 1999) (explaining that the legislature’s use of the terms “sexual” in addition to “other intimate parts” necessarily means it intended to refer to more than just a person’s genitalia); **see also Commonwealth v. Fisher**, 47 A.3d 155, 157-58 (Pa. Super. 2012) (relying on the holding in **Capo** to affirm an indecent assault conviction based upon the defendant licking the victim’s legs).

In **Capo**, the 61-year-old defendant was convicted of indecent assault after he forcibly grabbed a 15-year-old girl by the arm, attempted to kiss her on the mouth but only reached her face and neck, and rubbed her shoulders, back and stomach until she was able to free herself. **Capo**, 727 A.2d at 1127. The Court found that “[h]is manhandling the victim as she

struggled was not a display of 'friendly affection' as he alleges, and his inability to achieve more intimate contact than was in fact accomplished does not make the assault equivocal or lessen its indecency." **Id.** at 1128. It further found "the gropings and pawings forcibly imposed on the victim are not consistent with artistic interest or friendship, but speak eloquently of a failed attempt to gratify sexual desire more directly. Indeed, this interpretation is the unavoidable one which the trial court placed upon Appellant's actions." **Id.**

Fisher attempts to differentiate his acts with the acts of the defendant in **Capo** in two respects. First, he contends the nature of the relationship he had with the victim differs, as he was a "father figure" to T.S., whereas the defendant in **Capo** was a stranger. Fisher's Brief at 17. Second, the manner in which the touchings occurred differed from the events in **Capo**, as unlike the defendant in **Capo**, who forcibly grabbed a young girl and tried to kiss her, "the testimony presented by [T.S.] can be easily viewed as acts meant to express the love of a father would show to a son." **Id.** Fisher states that the length of time of the alleged conduct and T.S.'s testimony that he could not say no to Fisher leads to the conclusion that if Fisher had wanted to engage T.S. in a sexual relationship, he could have, and because there was no advancement of a sexual relationship, he was not touching T.S. in a sexual manner. **Id.**

We have reviewed the testimony presented and do not see behaviors indicative of a father/son relationship. Rather, viewing the facts in the light most favorable to the Commonwealth as our standard of review compels, the record reflects that Fisher took 15-year-old T.S. into his office, had him lock the doors, kissed him “continuous[ly]” and attempted to put his tongue in T.S.’s mouth several times, and reached under T.S.’s shirt to caress his stomach and rub his nipples, while, on at least one occasion, telling T.S. “that he did not know what [he] did to him.” N.T., 9/8/11, at 392, 414, 417. This is sufficient evidence for a jury to find that Fisher touched T.S. on intimate parts of his body for the purpose of arousing sexual desire. **Cf. Commonwealth v. Evans**, 901 A.2d 528, 533 (Pa. Super. 2006) (stating that the defendant’s embrace of the victim and putting his tongue in her mouth “does not occur outside of the context of a sexual or intimate situation,” and that “the fact-finder was free to infer that [the defendant’s] comments, that the victim was sexy and he would like to do some things to her, further revealed that his intimate touching of the victim was done for the purpose of arousing or gratifying his sexual desire”).

Turning to his conviction of unlawful contact with a minor, the relevant portion of the statute defines the prohibited conduct as follows:

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). As the statute makes clear, a conviction of unlawful contact with a minor is established when a defendant is convicted of a sexual offense under Chapter 31, *e.g.*, indecent assault. Based upon our conclusion that the evidence was sufficient to convict Fisher of indecent assault, the evidence is necessarily sufficient to convict him of unlawful contact with a minor. Thus, no relief on this issue is due.

Lastly, corruption of minors is defined, in relevant part, as follows:

Whoever, being of the age of 18 years and upwards, by any course of conduct in violation of Chapter 31 (relating to sexual offenses) 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 an offense under Chapter 31 commits a felony of the third degree.

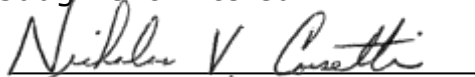
18 Pa.C.S.A. § 6301(a)(1)(ii).

Fisher's argument with respect to the sufficiency of the evidence to sustain this conviction is woefully inadequate. Without citation to authority, Fisher baldly claims that his acts of kissing, embracing, and touching T.S.'s back, chest, and stomach are not "acts that would tend to corrupt the morals of a minor," and because Fisher "never verbalized any request for a sexual relationship," or "engaged in sexual activity" with T.S., the evidence

was insufficient to convict him of corruption of minors. Fisher's Brief at 18. Our case law and Rules of Appellate Procedure make clear that the failure to provide citation to relevant authority results in waiver of an argument raised on appeal. Pa.R.A.P. 2119(a), (b); **Commonwealth v. Thompson**, 939 A.2d 371, 376 (Pa. Super. 2007). As we have previously stated, "[t]his Court is neither obliged, nor even particularly equipped, to develop an argument for a party. To do so places the Court in the conflicting roles of advocate and neutral arbiter." **Commonwealth v. B.D.G.**, 959 A.2d 362, 371-72 (Pa. Super. 2008) (*en banc*) (internal citations omitted). Thus, the issue is waived.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatta", is written over a horizontal line.

Deputy Prothonotary

Date: May 21, 2013