

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

WARREN DOUGLAS LOCKE

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 114 MDA 2013

Appeal from the Judgment of Sentence September 28, 2012  
In the Court of Common Pleas of Lycoming County  
Criminal Division at No(s): CP-41-CR-0000347-2011

BEFORE: LAZARUS, J., OTT, J., and JENKINS, J.

MEMORANDUM BY LAZARUS, J.

**FILED APRIL 10, 2014**

Warren Douglas Locke appeals from the judgment of sentence imposed by the Court of Common Pleas of Lycoming County following his convictions for three counts of rape of a child,<sup>1</sup> three counts of statutory sexual assault,<sup>2</sup> three counts of involuntary deviate sexual intercourse with a child,<sup>3</sup> four counts of indecent assault with a person less than 13 years of age,<sup>4</sup> four counts of unlawful contact with a minor,<sup>5</sup> four counts of corruption

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<sup>1</sup> 18 Pa.C.S. § 3121(c).

<sup>2</sup> 18 Pa.C.S. § 3122.1.

<sup>3</sup> 18 Pa.C.S. § 3123(b).

<sup>4</sup> 18 Pa.C.S. § 3126(a)(7).

<sup>5</sup> 18 Pa.C.S. § 6318.

of a minor,<sup>6</sup> and one count of endangering the welfare of a child.<sup>7</sup> Upon review, we affirm based on the opinion of the Honorable Marc F. Lovecchio.

Judge Lovecchio ably summarized the facts of this case as follows:

In December 2010 and early January 2011, Locke, who was a church deacon, was mentoring a 12-year-old boy, J.H. While J.H. was visiting relatives in Philadelphia on January 10, 2011, he was caught attempting to sexually molest his three-year-old cousin. When his aunt was disciplining him for his actions directed toward his cousin, J.H. revealed that he had been sexually abused by Locke. The abuse included Locke fondling J.H.'s penis, Locke directing J.H. to place his penis in Locke's anus, and Locke placing his penis in J.H.'s mouth.

On January 26, 2011, Locke was charged with three counts of rape of a child, three counts of statutory sexual assault, three counts of involuntary deviate sexual intercourse with a child, four counts of indecent assault with a person less than 13 years of age, four counts of unlawful contact with a minor, four counts of corruption of a minor, and endangering the welfare of a child.

A jury trial was held April 24-25, 2012. The jury convicted Locke of all the charges.

On September 28, 2012, the court imposed an aggregate sentence of 20-40 years of incarceration in a state correctional institution followed by an additional 10 years of probation.

On October 8, 2012, Locke filed a timely post sentence motion in which he challenged: the sufficiency of the evidence for count 20, unlawful contact with a minor; the court's instruction to the jury regarding prompt complaints; and the court's ruling permitting the Commonwealth to present prior consistent statements by J.H. on redirect examination that, according to Locke, were "outside the scope of cross and direct examination." The court denied Locke's post sentence motion in its opinion and

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<sup>6</sup> 18 Pa.C.S. § 6301.

<sup>7</sup> 18 Pa.C.S. § 4304.

order dated December 11, 2012, and Locke filed a timely notice of appeal.

Trial Court Opinion, 7/1/13, at 1-2. On appeal, Locke presents the following issues for our review:

1. Whether the trial court abused its discretion by permitting the Commonwealth to present prior consistent statements on re-direct examination of the victim, as it was outside the scope of cross and direct examination?
2. Whether the trial court abused its discretion by failing to read Pennsylvania Suggested Standard Criminal Jury Instruction § 4.13A – prompt complaint in its full language and was therefore erroneous?
3. Whether the trial court erroneously denied [Locke’s] motion to dismiss count 20, unlawful contact with a minor, as there was insufficient evidence presented at trial to support a verdict of guilt?

Brief of Appellant, at 4.

Locke first claims that the trial court abused its discretion by permitting the Commonwealth to present prior consistent statements from a preliminary hearing regarding the third and fourth incidents of alleged sexual abuse. When reviewing a trial court’s ruling on the admissibility of evidence, our standard of review is one of deference. Questions concerning the admissibility of evidence are within “the sound discretion of the trial court, and its discretion will not be reversed absent a clear abuse of discretion.” ***Commonwealth v. Selenski***, 18 A.3d 1229, 1232 (Pa. Super. 2011) (citation omitted). In his Pa.R.A.P. 1925(a) opinion, Judge Lovecchio thoroughly explained why the trial court permitted the contested evidence under Pa.R.E. 613(c)(1). Trial Court Opinion, 7/1/13, at 12-14. Judge

Lovecchio also explained why Locke's concern that there was no testimony as to the admitted prior consistent statements on cross-examination is without merit under Pa.R.E. 611(b) and the relevant case law. **See Commonwealth v. Green**, 581 A.2d 544, 559 (Pa. 1990); **see also Commonwealth v. Wilson**, 861 A.2d 919, 930 (Pa. 2004). We discern no abuse of discretion in permitting the prior consistent statements. Accordingly, we cannot grant Locke relief on this claim.

In his second issue, Locke contends that the trial court abused its discretion when it failed to read Pa.SSJI (Crim) § 4.13A - Prompt Complaint in its entirety. In evaluating jury instructions,

we must read the charge as a whole to determine whether it was fair or prejudicial. The trial court has broad discretion in phrasing its instructions, and may choose its own wording so long as the law is clearly, adequately, and accurately presented to the jury for its consideration. For appellant to be entitled to a new trial, the jury instruction must have been fundamentally in error, or misled or confused the jury.

**Commonwealth v. Wright**, 961 A.2d 119, 145 (Pa. 2008) (citations and internal quotation marks omitted). Judge Lovecchio thoroughly addressed Locke's claim and concluded that it lacks merit. Trial Court Opinion, 7/1/13, at 10-11. We agree that the charge adequately stated the law and in no way prejudiced Locke. As Judge Lovecchio astutely acknowledges, if anything, the court gave Locke the benefit of the doubt by including an instruction regarding prompt complaint because there is case law that questions the propriety of giving such an instruction when the victim is a minor who may not appreciate the offensive nature of the conduct. **See**

***Commonwealth v. Snoke***, 580 A.2d 295, 297-99 (Pa. 1990);  
***Commonwealth v. Thomas***, 904 A.2d 964, 970-71 (Pa. Super. 2006).

Discerning no error or prejudice, we cannot say the trial court abused its discretion in stating the instruction as it did. Accordingly, Locke is not entitled to relief on this claim.

Locke next challenges the sufficiency of the evidence supporting his conviction for unlawful contact with a minor. Locke argues that the Commonwealth failed to present evidence at trial that there was any contact or communication to satisfy the requisite “contacts” under 18 Pa.C.S. § 6318(c).<sup>8</sup> Section 6318(c) defines “contacts” for the purposes of this statute as follows:

Direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

***Id.***

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<sup>8</sup> A person commits the offense of unlawful contact with a minor if he intentionally contacts a minor for the purpose of engaging in an activity prohibited under any of the following: (1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses), (2) Open lewdness as defined in section 5901 (relating to open lewdness), (3) Prostitution as defined in section 5902 (relating to prostitution and related offenses), (4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances), (5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children), (6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children). 18 Pa.C.S. § 6318.

A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt . . . . When reviewing a sufficiency claim[,], the court is required to view the evidence in the light most favorable to the verdict winner[,], giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.

***Commonwealth v. Smith***, 853 A.2d 1020, 1027 (Pa. Super. 2004).

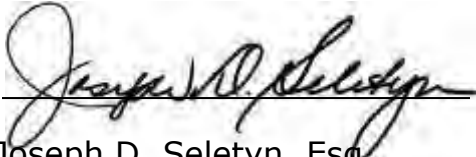
To the extent that Locke challenges the sufficiency of the evidence, we conclude that the claim lacks merit for the reasons set forth in the trial court's opinion. **See** Trial Court Opinion, 7/1/13, at 9-10. Furthermore, we disagree with Locke's contention that the trial court is attempting expand the definition of contact contemplated under section 6318(c) to include any prior interactions or engagements with a victim. Based on all the facts and circumstances of this case, a jury could reasonably conclude that Locke's invitation to go back to his apartment to wrap a gift and watch a movie in his bedroom, when there was a television set in the living room, N.T. Trial, 4/24/12, at 47; 4/25/12, at 74, was motivated by a desire to get J.H. alone and have sexual contact with him.

After careful review of the parties' briefs, the record and the relevant law, we agree with Judge Lovecchio's analysis and affirm on the basis of his opinion. We instruct the parties to attach a copy of Judge Lovecchio's decision in the event of further proceedings.

Judgment of sentence affirmed.

J-S06009-14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/10/2014