NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. JOHN R. MAJOR, JR. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 486 WDA 2013

Appeal from the Judgment of Sentence June 11, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0005251-2011

BEFORE: GANTMAN, P.J., DONOHUE, J., and FITZGERALD, J.*

MEMORANDUM BY GANTMAN, P.J.: FILED: April 23, 2014

Appellant, John R. Major, Jr., appeals from the judgment of sentence entered in the Allegheny County Court of Common Pleas following his jury trial convictions for involuntary deviate sexual intercourse, incest, aggravated indecent assault, statutory sexual assault, resisting arrest or other law enforcement, simple assault, recklessly endangering another person, and related offenses.[1] We affirm.

In its opinion, the trial court fully and correctly set forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

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[1] 18 Pa.C.S.A. §§ 3123, 4302, 3125, 3122.1, 5104, 2701, 2705, respectively.

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* Former Justice specially assigned to the Superior Court.

Appellant now raises two issues for our review:

> WHETHER THE TRIAL COURT ERRED IN DETERMINING THAT THE COMMONWEALTH ADMITTED SUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION AS TO COUNT 3, RESISTING ARREST, WHEN THE COMMONWEALTH DID NOT ESTABLISH EACH ELEMENT OF THE OFFENSE BEYOND A REASONABLE DOUBT?
>
> WHETHER THE TRIAL COURT ABUSED ITS DISCRETION AT SENTENCING AFTER IT CITED INACCURATE AND UNSUBSTANTIATED INFORMATION IN JUSTIFICATION OF THE PENALTIES IMPOSED AT COUNT 3 AND COUNT 14 THAT WERE ABOVE THE SENTENCING GUIDELINES?

(Appellant's Brief at 5).[2]

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Jill E. Rangos, we conclude Appellant's issues merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (***See*** Trial Court Opinion, filed July 15, 2013, at 8-18) (finding: **1)** SWAT team surrounded Appellant's home for 8 hours while Appellant

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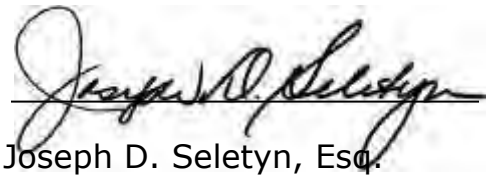
[2] In his second issue, Appellant challenges the sentences imposed for his incest and simple assault convictions. Appellant, however, failed to challenge the simple assault sentence at the sentencing hearing, in his post-sentence motions, or in his concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b). Thus, Appellant's argument regarding the simple assault sentence is waived. ***See Commonwealth v. Mann***, 820 A.2d 788 (Pa.Super. 2003), *appeal denied*, 574 Pa. 759, 831 A.2d 599 (2003) (stating objections to discretionary aspects of sentence are generally waived if they are not raised at sentencing hearing or in post-sentence motions); ***Commonwealth v. Garland***, 63 A.3d 339 (Pa.Super. 2013) (reiterating claims not raised in court-ordered Rule 1925(b) statement are waived).

barricaded himself and young son inside; Appellant was not free to leave scene; detective had telephone conversations with Appellant and told him to come outside; jury could reasonably conclude Appellant knew during standoff that police were trying to arrest him; detective testified that Appellant threatened to harm anyone who came near home; Appellant threatened to kill himself and his son; Appellant created substantial risk of bodily injury to public servants and to others, and police had to use substantial force to overcome Appellant's actions; **2)** court provided on-the-record statement of reasons for sentencing Appellant outside guidelines for incest conviction; court's reference to multiple victims was not basis for incest sentence; instead, reference to multiple victims constituted reason for imposing certain sentences consecutively; regarding incest sentence, court considered that sexual abuse occurred on regular basis over extended period; Appellant's actions had extraordinary emotional impact on victim; court determined Appellant was poor candidate for rehabilitation, because he blamed others for his conduct and maintained that incestuous relationship with minor victim was consensual). Accordingly, we affirm on the basis of the trial court opinion.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/23/2014

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

JOHN R. MAJOR

Appeal of:

JOHN R. MAJOR,

Appellant

CRIMINAL DIVISION

CC No. 201105251

OPINION

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA — CRIMINAL DIVISION

v. — **CC No. 201105251**

JOHN R. MAJOR

Appeal of:

JOHN R. MAJOR,

Appellant

OPINION

RANGOS, J. **July 15, 2013**

On March 6, 2012, a jury convicted John R. Major of one count each of Involuntary Deviant Sexual Intercourse (IDSI), Person less than 16 years of age,[1] Incest,[2] Aggravated Indecent Assault,[3] Statutory Sexual Assault,[4] Corruption of Minors,[5] Indecent Exposure,[6] Terroristic Threats,[7] Indecent Assault,[8] Resisting Arrest,[9] Simple Assault,[10] Reckless

[1] 18 Pa.C.S.A. § 3123.

[2] 18 Pa.C.S.A. § 4302.

[3] 18 Pa.C.S.A. § 3125.

[4] 18 Pa.C.S.A. § 3122.1.

[5] 18 Pa.C.S.A. § 6301.

[6] 18 Pa.C.S.A. § 3127.

[7] 18 Pa.C.S.A. § 2706.

[8] 18 Pa.C.S.A. § 3126.

Endangerment of Another Person (REAP),[11] and Disorderly Conduct.[12] (TT 196-97) Appellant was also convicted on two counts of Endangering the Welfare of Children.[13] This Court sentenced Appellant on June 11, 2012 to a period of confinement of 26 to 52 years in the aggregate (TT 58-59) and denied Appellant's Post-Sentence Motion on February 15, 2013. Appellant filed a Notice of Appeal on March 15, 2013 and a Statement of Errors Complained of on Appeal on April 15, 2013.

MATTERS COMPLAINED OF ON APPEAL

Appellant alleges that the Commonwealth failed to produce sufficient evidence to convict Appellant of Resisting Arrest and REAP regarding the victim, Taylor Major. (Statement of Errors Complained of on Appeal, p. 3-4). Appellant alleges that the verdicts of guilty for Resisting Arrest and Endangering the Welfare of Children as to Jacob Major, Recklessly Endangering Another Person as to Rebecca Major and Taylor Major, Involuntary Deviate Sexual Intercourse, Incest, Aggravated Indecent Assault, and Statutory Sexual Assault are against the weight of the evidence. *Id.* at 4-5. Additionally, Appellant asserts that the Commonwealth failed to turn over discovery to Appellant in advance of trial. *Id.* at 5. Lastly, Appellant asserts that this Court abused its discretion by issuing an excessive sentence: sentencing outside of the guidelines as to Incest, failing to give proper weight to mitigating circumstances advanced by

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[9] 18 Pa.C.S.A. § 5104.

[10] 18 Pa.C.S.A. § 2701.

[11] 18 Pa.C.S.A. § 2705.

[12] 18 Pa.C.S.A. § 5503.

[13] 18 Pa.C.S.A. § 4304.

Appellant and articulated in the Pre-Sentence Report, and imposing consecutive sentences as to IDSI, Incest, Aggravated Assault, and Statutory Sexual Assault. *Id.* at 6.

SUMMARY OF TESTIMONY

Appellant's adopted daughter, Taylor Major, testified that when she was approximately 14 years old, she injured her back and required assistance in applying a steroid cream to the area. (TT 22) Appellant would help her apply the cream, which would usually take place in his bedroom and after she disrobed from the waist up. (TT 23) Initially, nothing unusual took place, but eventually Appellant placed his hands on her breasts. (TT 24) At the first instance, Taylor asked Appellant what he was doing and Appellant told her to lay still. *Id.* She said that she did so because she was afraid that she would get in "pretty big trouble" if she did not. *Id.* After about a week of Appellant rubbing her breasts, he then began to touch her inner thighs, and when she tried to move away, Appellant told her to trust him. (TT 25-26)

Taylor testified that this behavior continued for a few weeks. One day Appellant called her into the basement and asked her to help him do laundry. (TT 26) When she arrived, Appellant picked her up and put her on the laundry table and took off her shirt and bra. *Id.* Appellant then pushed her chest so that she was lying on her back, held her down with one hand and removed her pants and underwear with his other hand. (TT 28) She did not say anything, because she was scared. *Id.* Appellant then put his penis inside her vagina and had intercourse with her. (TT 30) Appellant also placed his fingers inside her vagina. *Id.* Appellant told her to be quiet whenever she made noises. (TT 31) Later, Appellant ejaculated in her mouth and told her to swallow it. *Id.* Appellant then got dressed, told her that "she was a woman now," and left

her in the basement. (TT 32) Taylor did not tell her mother, because she was scared of her father. *Id.*

Taylor testified that Appellant began having sex with her regularly, "almost every day." (TT 33) It would usually occur early in the morning before she started her cyber-school day. (TT 36) Each time that Appellant had sex with Taylor, he would put his penis in her mouth and ejaculate. (TT 37) Taylor testified that she told her best friend what was happening shortly after it started happening, and eventually she told a couple of her friends what was happening on an online chat for their cyber school. *Id.* She told her mother, but Appellant punished her for saying that he had abused her by taking away her computer and television and by giving her extra chores. (TT 38) Eventually, the Office of Children, Youth and Families (CYF) received a phone call regarding Appellant's abuse of Taylor. (TT 39) A caseworker came to interview her but, because her family was around at the time, Taylor told CYF that the allegations were false. *Id.* On March 25, 2011, Heather Schmuck, Taylor's aunt, asked Taylor if the allegations were true, and Taylor affirmed. (TT 40) The next morning, Ms. Schmuck took Taylor to Children's Hospital of Pittsburgh ("CHP"), where she admitted to social workers that her father was abusing her. [14] (TT 41)

Rebecca Major, Appellant's wife and Taylor's mother, testified that she married Appellant in 2004 and that Appellant adopted Taylor. (TT 88) Rebecca testified that on March 26, 2011, after receiving a call that Taylor was at CHP, Appellant drove her to CHP and dropped her off. (TT 93) After speaking with a social worker regarding Taylor's abuse allegations, Rebecca went back to her home with two CYF workers to remove her son, Jacob, who is the biological son of Appellant. (TT 94) Rebecca went inside the house at approximately 11 p.m.

[14]Schmuck testified that she discussed the allegations one day before taking Taylor to CHP. (TT 41) Rebecca Major testified that the CHP visit occurred on March 26, 2011. (TT 90)

and started to pack when Appellant pulled out a semiautomatic handgun. (TT 95-97) Jacob, an autistic boy who was 7 years old at the time, was asleep in his bedroom. (TT 96) Rebecca heard Appellant tell the two CYF workers to get out of the house and then heard a door slam. (TT 98) Appellant put the gun to his head and said that he was not going to jail. (TT 97) Rebecca told Appellant, "Just let me get Jake out. Just let me get my son, and you can do whatever you want after I get him out." *Id.* Appellant, approximately 15 feet away, pointed the gun at Rebecca's chest and told her that she was not taking his son. (TT 98-99) At that point Appellant aimed the gun at his own head. *Id.* The family dog was agitated so Rebecca went to the door to get the dog out. When she opened the door, Appellant pushed her outside and slammed the door behind her. (TT 100) Rebecca heard Appellant move the couch in front of the door, blocking her return. *Id.*

The police arrived at the residence shortly thereafter. During an eight-hour standoff with police, Rebecca received a voicemail from Appellant, in which he referred to a "blood bath" ensuing if police entered the residence. (Ex. 2) At 8 a.m., the police brought Jacob, who was still asleep, to Rebecca and informed her that Appellant had surrendered. (TT 103)

Detective Jeffrey Hoffman testified that on March 27, 2011, he was a member of the North Hills Special Response Team and that his team was summoned to Appellant's home. (TT 119) Det. Hoffman, as the negotiator that night, had an "approximately eight-hour long telephone conversation" with Appellant. (TT 120) During that conversation, Det. Hoffman told Appellant to come outside, and Appellant replied, "You know what I did; I know what I did; and you know what they do to people like me in prison." (TT 121) Appellant told Det. Hoffman that he was not coming out of the house alive, and that if anyone got close to the home, he would hurt them, as well as Jacob. (TT 122)

Dennis Kozlowski, a detective with the Allegheny County Police, testified that he first became involved in Appellant's case when he conducted a forensic interview with Taylor at CHP. (TT 124) Taylor, who was upset, told Det. Kozlowski that her father would give her massages and these massages eventually led to sexual activity, including sexual intercourse and oral sex. (TT 125) During the interview, Det. Kozlowski became aware of Appellant's stand-off with police, and he responded to that scene. *Id.* Det. Kozlowski obtained phone records, including a voicemail left on Rebecca's cell phone by Appellant while he was barricaded inside the family home. (Ex. 2) In the voicemail, Appellant stated, "Anybody tries to come in this house, okay, until I'm ready, or until I kill myself, there's going to be a lot of bloodshed. So please tell them to back off. I've already seen the SWAT guys, okay, and they need to back off." (TT 128) Det. Kozlowski also testified that, during a pretrial meeting in the courthouse, Appellant admitted that he had engaged in sexual intercourse with his daughter. (TT 134) The Commonwealth introduced Exhibit 4, a photograph of weapons, ammunition and pornography recovered from Appellant's house during the execution of a search warrant. (TT 133) Det. Kozlowski confirmed that the items in the photograph, including a .233 caliber assault rifle, a 9 millimeter semiautomatic pistol and a .12 gauge pump shotgun, as well as corresponding ammunition, were found within Appellant's residence. (TT 133)

DISCUSSION

Appellant challenges the sufficiency of the evidence as it relates to his conviction for Resisting Arrest and REAP. The test for reviewing the sufficiency of the evidence is:

> [W]hether, viewing the evidence in the light most favorable to the Commonwealth as verdict winner and drawing all proper inferences favorable to the Commonwealth, the jury could reasonably have determined all elements of the crime to have been established beyond a reasonable doubt ... This standard is

> equally applicable to cases where the evidence is circumstantial rather than direct so long as the combination of the evidence links the accused to the crime beyond a reasonable doubt. *Commonwealth v. Hardcastle*, 546 A.2d 1101, 1105 (Pa. 1988) (citations omitted)

Commonwealth. v. Torres, 617 A.2d 812, 236-237 (Pa.Super.1992).

Appellant alleges that the evidence was insufficient regarding Resisting Arrest. The elements for Resisting Arrest are met if:

> with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

18 Pa.C.S.A. § 5104.

Appellant claims that the evidence was insufficient for this Count, because the Commonwealth provided no evidence to indicate that Appellant was ever informed that he was under arrest, or was ever actually taken into custody and therefore could not have acted with the intent of preventing his arrest. However, "an arrest may be effectuated without a formal statement of arrest." *Commonwealth v. Butler*, 512 A.2d 667, 673 (Pa. Super. 1986). Whenever a suspect is deprived of his freedom to leave, he is considered under arrest. *Id.* In *Butler*, the Court held that it was reasonable to infer that appellant was under arrest whenever a uniformed officer cornered him and told him not to move. *Id.*

Here, a SWAT team surrounded Appellant's home for eight hours while Appellant barricaded himself inside. Appellant was not free to leave the scene and go about his business. By virtue of the SWAT team surrounding the house, Appellant was, in fact, cornered. During that time, Det. Hoffman had telephone conversations with Appellant and told him to come outside. Appellant responded, "You know what I did; I know what I did; and you know what they do to people like me in prison." It was reasonable for the jury to conclude, based on the

totality of the circumstances, that Appellant knew during the standoff that police were trying to arrest him. The verdict is not "so contrary to the evidence as to make the award of a new trial imperative." *Taylor*, 471 A.2d at 1230.

Appellant also claims that the Commonwealth provided no evidence to show that substantial force was needed or justified to overcome any act taken by Appellant prior to his arrest, and that the Commonwealth provided no evidence to demonstrate how Appellant was taken into custody. Resisting Arrest does not require a showing that substantial force was needed to overcome the Appellant's actions if the Appellant created a substantial risk of bodily injury to a public servant. 18 Pa.C.S.A. § 5104. Further, Resisting Arrest does not require a showing of how Appellant was taken into custody. *Id.*; *Commonwealth v. Lumpkins*, 471 A.2d 96, 99 (Pa. Super. 1984). Det. Hoffman testified that Appellant threatened to harm anyone who came near his home during the eight-hour stand-off, specifically using the language "a lot of bloodshed." Appellant also threatened to kill himself and his young son, who he had barricaded inside the house with him. In addition, weapons and ammunition found inside the home support the conclusion that this threat was not an idle one. The Commonwealth provided evidence to show that Appellant created a substantial risk of bodily injury to public servants and to others and that substantial force was needed to overcome the Appellant's actions. Viewed in the light most favorable to the Commonwealth, the jury reasonably could have determined that all elements of this offense have been met beyond a reasonable doubt.

Next, Appellant alleges that the evidence was insufficient regarding the REAP charge as it relates to Taylor Major, in that the Commonwealth failed to introduce evidence that Appellant had placed Taylor in danger of death or serious bodily injury. This issue is moot as the charge of REAP as to Taylor was withdrawn by the Commonwealth before trial.

Next, Appellant alleges that some of the verdicts were against the weight of the evidence. The standard for a "weight of the evidence" claim is as follows:

> Whether a new trial should be granted on grounds that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial judge, and his decision will not be reversed on appeal unless there has been an abuse of discretion. ... The test is not whether the court would have decided the case in the same way but whether the verdict is so contrary to the evidence as to make the award of a new trial imperative so that right may be given another opportunity to prevail.

Commonwealth v. Taylor, 471 A.2d 1228, 1230 (Pa.Super. 1984). *See also, Commonwealth. v. Marks*, 704 A.2d 1095, 1098 (Pa.Super. 1997) (citing *Commonwealth v. Simmons,* 662 A.2d 621, 630 (Pa. 1995)).

Specifically, Appellant claims that the verdict of guilty as to Resisting Arrest was against the weight of the evidence, because no evidence was presented to demonstrate that he was under arrest or that substantial force was required to overcome his resistance. As stated above, "an arrest may be effectuated without a formal statement of arrest," and an arrest is established whenever an individual is deprived of his freedom to leave. *Butler*, 512 A.2d at 673. Because Appellant's home was surrounded by a SWAT team, Appellant was deprived of his freedom to leave. Thus, an arrest was established. Further, Detective Hoffman's testimony that Appellant told Mr. Hoffman that Appellant was not coming out of the house alive, and that if anyone got close to the home, he would hurt them, as well as Jacob, is evidence that substantial force was needed to overcome his resistance.

Appellant next claims that the verdict of guilty as to Endangering the Welfare of Children as it relates to Jacob Major is against the weight of the evidence, because the Commonwealth presented evidence at trial that Jacob Major was asleep in the house at the time Appellant barricaded himself inside, slept through the entire incident, and suffered no

documented harm. Under 18 Pa.C.S.A. § 4304, a parent of a child under 18 years old "commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support." Appellant refused to let Rebecca take their then seven-year-old autistic son away from the home. Instead, Appellant pointed a loaded gun at himself and also at Rebecca. Det. Hoffman testified that, during the eight hour standoff, Appellant told him that he was not coming out of the house alive, and that if anyone got close to the home, he would hurt them, as well as Jacob. This evidence supports the jury's conclusion that Appellant violated a duty of care, protection or support regarding his son, Jacob. Therefore, the verdict is not "so contrary to the evidence as to make the award of a new trial imperative." *Taylor*, 471 A.2d at 1230.

Appellant alleges that the verdict of guilty regarding REAP as it relates to Rebecca Major was against the weight of the evidence in that, although Appellant pointed a gun at Rebecca Major, her reactions were inconsistent with actions taken by an individual who was in danger of death or serious bodily injury. Under 18 Pa.C.S.A. § 2705, a person commits REAP "if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury."

In *Commonwealth v. Smith,* 437 A.2d 757, 759 (Pa. Super. 1981), the Court held that a REAP conviction requires "a showing of actual present ability to inflict injury," and because "the assault consisted of threatening to shoot a gun . . . the Commonwealth was obligated to show that the revolver was loaded." *Id.* In this case, given the totality of the evidence, viewed in the light most favorable to the Commonwealth as the verdict winner, "the evidence was sufficient to permit a finding that the victims were in 'actual' danger, not merely 'apparent' danger." *Commonwealth v. Rivera,* 503 A.2d 11, 13 (Pa.Super. 1985) (*en banc*). Appellant

pointed a gun at Rebecca Major's chest from approximately 15 feet away. Rebecca recognized the gun, a semi-automatic, as one of the three guns owned by Appellant. (TT 96-97) The Commonwealth established at trial that Appellant possessed ammunition for that gun and two other guns at the time of the incident. (TT 133) Police officers recovered those three guns and the corresponding ammunition from the home and photographed them. That photo was admitted into evidence at trial. (Ex. 4) Appellant specifically threatened Rebecca's life and additionally his own, while pointing the gun first at her chest and then at his own head. In this context, "[i]t was not necessary to show by direct evidence that a projectile was in the chamber of the gun." *Id.*

Although Appellant argues that the actions taken by Rebecca in response to Appellant pointing a gun at her, specifically letting the family dog outside, were inconsistent with actions taken by an individual who considered herself in danger of death or serious bodily injury, the Commonwealth need only establish that Appellant created an "actual present ability to inflict injury." It is not necessary that the potential victim demonstrate fear. *Commonwealth v. Weigle,* 949 A.2d 899, 907 (Pa.Super. 2008). Likewise, one might infer that, in attempting to let the dog out, Rebecca was trying to reduce the tension and chaos of the situation and/or protect the dog. The Commonwealth produced evidence that Appellant created an "actual present ability to inflict injury" on Rebecca. Having done so, the verdict is not "so contrary to the evidence as to make the award of a new trial imperative." *Id.*; *Taylor*, 471 A.2d at 1230.

Appellant alleges that the verdict of guilty regarding REAP as to Taylor Major is against the weight of the evidence in that the Commonwealth failed to introduce evidence that Appellant placed Taylor Major in danger of death or serious bodily injury. However, the charge

of REAP as to Taylor Major was withdrawn by the Commonwealth before trial, making the allegation moot

Appellant alleges that his convictions as to IDSI, Incest, Aggravated Indecent Assault and Statutory Sexual Assault were against the weight of the evidence, because the only direct evidence was the testimony of Taylor Major and the Commonwealth could not provide corroborating evidence in the form of medical reports, CYF reports, or testimony from medical professionals or CYF caseworkers who had investigated the case. However, "it is well-established that even the uncorroborated testimony of the complaining witness is sufficient to convict a defendant of sexual offenses." *Commonwealth v. Bishop*, 742 A.2d 178, 189 (Pa. Super. 1999). Furthermore, both Detective Hoffman and Detective Kozlowski testified that Appellant admitted to having a sexual relationship with his daughter. The verdicts as to IDSI, Incest, Aggravated Indecent Assault and Statutory Sexual Assault are not "so contrary to the evidence as to make the award of a new trial imperative." *Taylor*, 471 A.2d at 1230.

Next, Appellant alleges that the Commonwealth failed to turn over discovery to him in advance of trial. Appellant claims that he did not receive tape recordings of the conversations that occurred between him and police officers during the standoff on March 27, 2010. Det. Hoffman in his testimony referenced several statements made by Appellant during these telephone conversations, and Appellant now claims that tapes of these conversations would contain exculpatory information regarding REAP and Endangering the Welfare of Children as to Jacob Major.

Under Rule 306 of the Pennsylvania Rules of Criminal Procedure, all pretrial motions must be in writing and presented in one omnibus pretrial motion, and failure to state a ground for relief in the motion "shall constitute a waiver thereof." *Commonwealth v. Gemelli*, 474 A.2d

294, 299 (1984). Here, the record lacks a motion to compel discovery. Further, Appellant never established that tape recordings of the phone conversation between Appellant and Mr. Hoffman exist, or that the Commonwealth was ever in possession of them. Thus, this issue must be deemed waived.[15]

Appellant in his Concise Statement next alleges that this Court abused its discretion in sentencing him to a period of confinement of 26 to 52 years in the aggregate. First, Appellant alleges that this Court imposed an excessive sentence by running consecutively ten of the thirteen sentences. Before addressing the reasonableness of the Court's sentence, Appellant must raise a substantial question that his sentence is not appropriate under the Sentencing Code. 42 Pa.C.S.A. § 9781(b); *Commonwealth v. Urrutia*, 653 A.2d 706, 710 (Pa. Super. 1995). Appellant claims that this sentence may have the effect of a life sentence, given that he was 45 years old at the time of sentencing. However, a bald claim of excessiveness is not a substantial question. *Commonwealth v. Titus*, 816 A.2d 251, 255-56 (Pa. Super. 2003).

Even if this court assumed that Appellant raised a substantial question that his sentence is not appropriate, Appellant would not be entitled to relief. The standard of review with respect to sentencing is whether the sentencing court abused its discretion. *Commonwealth v. Smith*, 673 A.2d 893, 895 (Pa. 1996). A court will not have abused its discretion unless "the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will." *Id.* It is not an abuse of discretion if the appellate court may have reached a different conclusion. *Grady v. Frito-Lay, Inc.*, 613 A.2d 1038, 1046 (Pa. 2003).

[15] To the extent that this issue has not been waived, given the trial testimony, it is hard to conceive of anything else Appellant could have said to police that would form a defense to the REAP and Endangering charges involving the 7 year old autistic child held by Appellant during the stand-off. Any discovery error on this issue would be harmless. Commonwealth v. Atkinson, 987 A.2d 743, 751–52 (Pa.Super. 2009).

The sentencing court is given such broad discretion because it alone can observe the defendant's conduct and behavior. "Simply stated, the sentencing court sentences flesh-and-blood defendants and the nuances of sentencing decisions are difficult to gauge from the cold transcript used upon appellate review." *Commonwealth v. Walls,* 926 A.2d 957, 963 (Pa. 2007). While the transcript here certainly paints a disturbing picture, the record does not adequately convey Appellant's temperament or demeanor, or his defiant attitude at sentencing even given his admission to the ongoing sexual assault of his daughter or his profession of love for the victim as the basis for that sexual relationship.

"Unreasonable" is not defined by statute and is apparently intentionally vague in its meaning. "[T]he General Assembly has intended the concept of unreasonableness to be a fluid one. . . a circumstance-dependent concept that is flexible in understanding and lacking precise definition." *Walls,* 926 A.2d at 963. Despite the lack of a precise definition in statute or case law, this Court is not without guidance as to the meaning of unreasonableness. The factors listed in 42 Pa.C.S.A. §9721(b), including the protection of the public, the gravity of the offense in relation to the impact on the victim and the community and the rehabilitative needs of the defendant, inform appellate review for unreasonableness. 42 Pa.C.S.A. § 9721(b).

This Court reviewed the presentence report and the sentencing guidelines prior to imposing a sentence. (Sentencing Transcript of June 11, 2012, hereinafter ST 57) The Pennsylvania Supreme Court has held:

> Where pre-sentence reports exist, we shall continue to presume that the sentencing judge was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors. . . . Having been informed by the pre-sentence report, the sentencing court's discretion should not be disturbed.

Commonwealth v. Devers, 546 A.2d 12, 18 (Pa.Super. 1988).

In imposing its sentence on Appellant, this Court considered that Appellant had multiple victims and potential victims given the armed standoff, his criminal behavior spanned a long period of time, involved a vulnerable victim over whom he held a position of trust, and his conduct impacted that particular victim extraordinarily. (ST 57) This Court also considered that Appellant used a seven-year-old autistic child as a negotiating tool. Further, this Court considered Appellant's lack of remorse, minimization of his responsibility, attitude and demeanor throughout the proceedings and distorted view of his sexual relationship with his daughter. (ST 58) For these reasons, the Court found Appellant to be a poor candidate for rehabilitation, as well as a danger to society, despite Appellant's lack of a prior record score, his work history and his military service. *Id.* Therefore, the Court's sentence was appropriate, and no error exists.

Appellant further alleges that this Court abused its discretion by sentencing outside of the guidelines as to Incest, and that this Court's reasons for sentencing outside of the guidelines were insufficient. According to the sentencing guidelines, the standard range for Incest is 12 to 24 months, the aggravated range is 36 months, and the statutory maximum is 60 to 120 months. This court sentenced Appellant to 60 to 120 months on this count.

Sentencing is a matter of the judge's discretion and will not be disturbed on appeal unless there is a manifest abuse of discretion. *Commonwealth v. Johnson*, 666 A.2d 690, 693 (Pa. Super. 1995). Whenever a court sentences outside of the guidelines,

> the court shall provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines. Failure to comply shall be grounds for vacating the sentence and resentencing the defendant.

42 Pa.C.S.A. § 9721(b); *Johnson*, 666 A.2d at 693.

> Having done so, the sentencing court may deviate from the guidelines, if necessary, to fashion a sentence which takes into account the protection of the

> public, the rehabilitative needs of the defendant, and the gravity of the particular offense as it relates to the impact on the life of the victim and the community. . . .

Johnson, 666 A.2d at 693.

Here, the Court placed on the record its intention to sentence outside the guidelines on certain counts. *Id.* at 694. The Court also provided its reasons for sentencing outside of the guidelines, *inter alia,*

> However, to the extent that one or more counts may be a departure from the guidelines, the fact that defendant had multiple victims [and] over a long period of time, his conduct impacted one particular victim extraordinarily. He did use a seven-year-old autistic child as a negotiating tool, hostage. He appears to have no remorse. He blames everything and everyone for his behavior. He appears to me to be a poor candidate for rehabilitation. A danger to society. He's been disruptive at various stages of the proceedings, displaying a tendency to be easily agitated.

(ST 57-58) Because the Court took into account "the protection of the public, the rehabilitative needs of the defendant, and the gravity of the particular offense as it relates to the impact on the life of the victim and the community," factors for sentencing outside of the guidelines listed in 42 Pa.C.S.A. § 9721(b), it did not abuse its discretion in deviating from the sentencing guidelines. *Johnson*, 666 A.2d at 694; 42 Pa.C.S.A. § 9721(b).

Appellant further avers that this Court erred by claiming that Appellant had multiple victims as an additional reason for sentencing outside of the guidelines as Appellant had one victim only as to Incest. Here Appellant attempts to twist the language used by the Court generally when providing its reasons for sentencing. Clearly the reference to multiple victims was meant as a reason for the imposition of consecutive sentences and not as a basis for a sentence outside the guidelines on the Incest count. As to Incest, this Court considered that Appellant had sexual intercourse regularly with his daughter over a long period of time and that his crime caused an extraordinary emotional impact on this victim, his minor daughter. (ST 57-

58) Furthermore, while Appellant never actually denied his sexual relationship with his daughter, he insisted throughout that he never forced her, that their sexual relationship was consensual and that the mother was to blame for this sexual relationship. From his warped perspective, he attempted to fashion the incestual relationship as both loving and voluntary, with himself as the victim's protector. On the contrary, the evidence at trial and Appellant's demeanor paint the clear picture of an aggressive bully who took advantage of a petite, fragile girl. Given this evidence, this Court found Appellant to be a poor candidate for rehabilitation. This Court did not abuse its discretion in sentencing outside the guidelines on the Incest count.

Next, Appellant claims that this Court did not properly consider his complete lack of criminal history, his work history, his military service, his standing in the community and his mental duress. However, "an allegation that the sentencing court failed to consider certain mitigating factors generally does not necessarily raise a substantial question." *Commonwealth v. Moury*, 992 A.2d 162, 171 (Pa. Super. 2010). Thus, Appellant's claim on this issue is waived.[16]

Lastly, Appellant claims that this Court abused its discretion by imposing consecutive sentences regarding Involuntary Deviant Sexual Intercourse, Incest, Aggravated Indecent Assault and Statutory Sexual Assault, in that Appellant was neither charged with nor convicted of crimes that are categorized as violent or forceful in nature. However, "the court has discretion to impose sentences consecutively or concurrently, and, ordinarily, a challenge to this exercise of discretion does not raise a substantial question." *Id.* Thus, Appellant's claim on this issue is waived.

[16] This Court notes that the factors enumerated by Appellant were contained in the Pre-Sentence Report which this Court reviewed.

CONCLUSION

For all of the above reasons, no reversible error occurred and the findings and rulings of this Court should be AFFIRMED.

BY THE COURT:

Jill E. Rangos J.

JILL E. RANGOS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this OPINION was mailed to the following individuals by first class mail, postage prepaid on the 15th day of July 2013.

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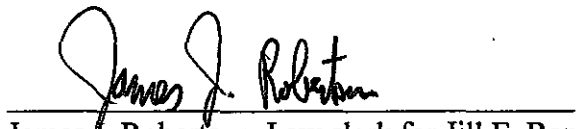

James J. Robertson, Law clerk for Jill E. Rangos