

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

ROBERT PHILLIP GREINER,

Appellant

No. 1316 MDA 2017

Appeal from the Judgment of Sentence February 21, 2017
in the Court of Common Pleas of York County,
Criminal Division at No(s): CP-67-CR-0005334-2015

BEFORE: OLSON, J., KUNSELMAN, J., and MUSMANNO, J.

MEMORANDUM BY MUSMANNO, J.:

FILED JUNE 15, 2018

Robert Phillip Greiner (“Greiner”) appeals from the judgment of sentence imposed after a jury convicted him of two counts each of endangering the welfare of children and corruption of minors, and one count each of involuntary deviate sexual intercourse with a child (“IDSI”), aggravated indecent assault, rape of a child, solicitation – rape of a child, solicitation – aggravated indecent assault, indecent assault, and incest of a minor.¹ We affirm.

The trial court concisely summarized the relevant factual history in its Opinion, which we incorporate as though fully set forth herein. **See** Trial Court Opinion, 10/17/17, at 3-5. As an addendum, concerning the trial court’s reference to Nicole Kelly (“Kelly”) on page 5 of its Opinion, Kelly is the

¹ **See** 18 Pa.C.S.A. §§ 4304(a)(1), 6301(a)(1)(ii), 3123(b), 3125(b), 3121(c), 902(a), 3126(a)(7), 4302(b)(1).

biological mother of the two minor victims in this case. As part of his defense at trial, Greiner asserted that his co-defendant and wife, Holly Greiner (“Holly”), and Kelly had conspired to fabricate the charges against him.

Following Greiner’s arrest, the Commonwealth charged him with the above-mentioned offenses. The matter proceeded to a jury trial. At the close of trial, the jury found Greiner guilty of all counts.

On February 21, 2017, the trial court sentenced Greiner to an aggregate term of 64½ to 129 years in prison. Greiner thereafter filed post-sentence Motions, challenging the weight and sufficiency of the evidence supporting his convictions. Following the trial court’s denial of the post-sentence Motions, Greiner timely filed a Notice of Appeal. In response, the trial court ordered him to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal, and Greiner timely complied.

Greiner now presents the following challenges for our review:

- I. The evidence was insufficient to support the jury’s verdict as to [IDSI, aggravated indecent assault, rape of a child, and solicitation – rape of a child] on the following grounds: The Commonwealth’s evidence was contradictory in and of itself. Specifically, the testimony of Holly [] was inconsistent with the testimony of Commonwealth witness[es] D.C. and H.R. as to what alleged acts [Greiner] and Holly [] were to have performed on D.C. and H.R.; the jury verdict was therefore based upon mere assumption, conjecture and speculation.
- II. The jury’s verdict as to [IDSI, aggravated indecent assault, rape of a child, and solicitation – rape of a child] was against the greater weight of the evidence in that[] [t]he Commonwealth’s evidence was contradictory in and of itself. Specifically, the testimony of Holly [] was inconsistent with the testimony of Commonwealth

witness[es] D.C. and H.R. as to what alleged acts [Greiner] and Holly [] were to have performed on D.C. and H.R.; the jury verdict was therefore based upon mere assumption, conjecture and speculation.

- III. The Trial Court erred in overruling defense counsel's objection to the competency of H.R. in that she did not exhibit that she comprehended the difference between a truth and a lie.
- IV. The Trial Court erred in not permitting the testimony of Gary Greiner [("Gary")] regarding [] Kelly and her previous accusations of sexual abuse involving a custody issue, which was relevant to [Greiner's] assertion that Holly [] had conspired with [] Kelly to fabricate charges against [Greiner].
- V. The Trial Court erred in sustaining the objection to questions regarding Holly [] cheating on [Greiner,] which was relevant as to her credibility and motivation to be dishonest.

Brief for Appellant at 4 (issues renumbered).

In his first issue, Greiner alleges that the evidence was insufficient to support his convictions of rape of a child, IDSI, aggravated indecent assault, and solicitation – rape of a child. *Id.* at 16-20.

Concerning rape of a child, Greiner argues that the Commonwealth failed to carry its burden to prove the element of this offense that he had penetrated H.R.'s vagina. *Id.* at 16-17 (citing ***Commonwealth v. Wall***, 953 A.2d 581, 584 (Pa. Super. 2008) (holding that, for purposes of establishing a rape conviction, "[p]enetration, however slight, with the penis is necessary to establish the element of sexual intercourse.") (citation and quotation marks omitted)). Greiner contends that

[t]he Commonwealth's testimony was contradictory by and between [its] own witnesses. While H.R. testified that [Greiner] had sexual intercourse with her, [Emily Huggins ("Huggins"),] the [] nurse [at York Hospital] who did a thorough [forensic] investigation of H.R., did not observe any trauma or injury to H.R. If intercourse would have occurred, given the victim's age, there should have been trauma noted to H.R.'s vaginal region. Coupled with the testimony of [the expert witness that the defense presented to rebut Huggins's findings,] Dr. [Suzanne] Rotolo[,], that trauma most likely would have been present, and [Greiner's] credible denial that he did not have sexual intercourse with H.R., the jury verdict as to [rape of a child] was not supported by sufficient evidence.

Brief for Appellant at 18 (some capitalization omitted).

Concerning the IDSI conviction, Greiner argues that the Commonwealth failed to prove the element that he had orally penetrated H.R.'s genitalia. ***Id.*** at 19 (citing ***Commonwealth v. Wilson***, 825 A.2d 710, 714 (Pa. Super. 2003) (stating that "in order to sustain a conviction for [IDSI], the Commonwealth must establish the perpetrator engaged in acts of oral or anal intercourse, which involved penetration however slight.")). In support of this claim, Greiner points out that the Commonwealth's chief witness, Holly, did not specifically testify that she saw Greiner orally penetrate H.R. Brief for Appellant at 19.²

² In his brief, Greiner additionally contends that his IDSI conviction cannot be upheld because the Commonwealth failed to prove that "the date of commission of the crime [was] fixed with some reasonable certainty." Brief for Appellant at 19 (citing ***Wilson***, 825 A.2d at 715). However, Greiner waived this claim by failing to raise it in his court-ordered Rule 1925(b) Concise Statement. ***See*** Pa.R.A.P. 1925(b)(4)(vii) (providing that "[i]ssues not included in the Statement ... are waived."); ***accord Commonwealth v. Lord***, 719 A.2d 306, 309 (Pa. 1998).

Concerning his conviction of aggravated indecent assault, Greiner contends that the Commonwealth failed to prove the element that he had digitally penetrated H.R.'s genitalia. **See** Brief for Appellant at 19-20 (citing **Commonwealth v. Castelhun**, 889 A.2d 1228, 1233 (Pa. Super. 2005) (stating that "digital penetration of the genitals or anus is sufficient to satisfy the crime of aggravated indecent assault.")). Greiner challenges this element as follows:

H.R. testified [that Greiner] put his fingers inside her vagina. ... While Holly was [alleged] to be present when [Greiner] put his fingers inside [H.R.], Holly testified that she did not see [Greiner] put his fingers inside [H.R.] While Holly then changed her story and said she did see [Greiner] do it, she had also given prior testimony that she had never seen [Greiner] do anything with his fingers. Further, as indicated above, there was no trauma noted to [H.R.'s] vaginal area[,] and [Greiner] denied ever performing such an act.

Brief for Appellant at 20 (citation to record omitted).

Finally, concerning his conviction of solicitation – rape of a child, Greiner argues that the evidence was insufficient to support the conviction due to the contradictory nature of Holly and D.C.'s testimony concerning the alleged act establishing this crime. **See id.** (pointing out that "D.C. testified [that], upon the urging of [Greiner], [D.C.] had sexual intercourse with Holly []. Holly [] testified she did not have sexual intercourse with D.C.").

We apply the following standard of review when considering a challenge to the sufficiency of the evidence:

[W]hether[,] 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 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 finder of fact[,] while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, or part or none of the evidence.

Commonwealth v. Melvin, 103 A.3d 1, 39-40 (Pa. Super. 2014) (citation omitted).

In its Opinion, the trial court defined each of the relevant offenses Greiner contests, cogently and thoroughly addressed his sufficiency challenges, and concluded that the Commonwealth established all of the requisite elements of these offenses beyond a reasonable doubt. **See** Trial Court Opinion, 10/17/17, at 7-9, 10-13. We agree with the sound reasoning and determination of the trial court, as set forth in its Opinion, and therefore affirm on this basis with regard to Greiner's sufficiency of the evidence claim. **See id.**

In his second issue, Greiner argues that his convictions of IDSI, aggravated indecent assault, rape of a child, and solicitation – rape of a child were against the weight of the evidence and shock one's conscience. **See** Brief for Appellant at 11-16; **see also id.** at 16 (asserting that "[t]he jury's verdict was against the weight of the evidence due the contradictory nature

of the Commonwealth's own witnesses."). In connection with his weight challenge to each of these four convictions, Greiner presents identical arguments as we set forth above concerning his sufficiency challenge to these convictions. **See id.** at 13-16. Accordingly, we will not restate the arguments.

Relief on a weight of the evidence claim is reserved for extraordinary circumstances, when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail. On appeal, [an appellate] Court cannot substitute its judgment for that of the jury on issues of credibility, or that of the trial judge respecting weight. Our review is limited to determining whether the trial court abused its discretion[.]

Commonwealth v. Sanchez, 36 A.3d 24, 27 (Pa. 2011) (citations and quotation marks omitted). Moreover, in reviewing a weight claim, we are cognizant that "any inconsistencies in the evidence are a matter for the trier of fact to resolve, and we will not disturb the verdict on that basis." **Commonwealth v. Lillock**, 740 A.2d 237, 242 (Pa. Super. 1999); **see also Commonwealth v. Hall**, 830 A.2d 537, 542 (Pa. 2003).

In its Opinion, the trial court urged that it had properly rejected Greiner's weight challenge, stating, *inter alia*, that

- (1) "there is no reasonable argument that the jury mis-weighed the evidence[,]" Trial Court Opinion, 10/17/17, at 19;
- (2) to the extent there were inconsistencies, or vagueness, in the testimony of the witnesses at trial, this was solely for the jury to resolve, **see id.** at 19-20 (citing **Lillock, supra**);
- (3) it was within the sole purview of the jury to assess the credibility of the witnesses, **see** Trial Court Opinion, 10/17/17, at 2; **see also Sanchez, supra**.

Based upon our review, we conclude that the trial court did not abuse its discretion in denying Greiner's weight of the evidence claim, nor does the jury's verdict on these heinous crimes shock our collective conscience. Accordingly, Greiner's second issue entitles him to no relief.

In his third issue, Greiner argues that the trial court erred when it overruled his trial counsel's objection concerning the competency of H.R. to testify. **See** Brief for Appellant at 21-25. Specifically, Greiner contends that H.R., who was seven years old at the time of trial, "could not observe and remember relevant events, and appreciate the duty to tell the truth." **Id.** at 21; **see also id.** at 25 (asserting that H.R. "did not demonstrate the ability to distinguish between a truth or lie.").

In its Opinion, the trial court adeptly discussed the law concerning challenges to a child witness's competency, and the competency inquiry concerning H.R., and determined that it properly overruled defense counsel's objection. **See** Trial Court Opinion, 10/17/17, at 20-23. In sum, the trial court found that "it was clear that H.R. was capable of perceiving accurately, did not have an impaired memory and sufficiently understood her duty to tell the truth." **Id.** at 23. We agree with the trial court's determination and rationale, which is supported by the record. Therefore, as we discern no abuse of discretion, we affirm on the basis of the trial court's Opinion regarding this issue. **See id.** at 20-23; **see also Commonwealth v. D.J.A.**, 800 A.2d 965, 972, 975 (Pa. Super. 2002) (*en banc*) (where the child sexual assault victim was five years old at the time of the crimes, and seven years old at the time

of the competency hearing, holding that the trial court abused its discretion in finding the victim incompetent to testify since the record disclosed that the victim was capable of perceiving the crimes accurately and differentiating between the truth and a lie).

In his fourth issue, Greiner contends that the trial court erred in ruling that the proposed defense testimony of Gary, Greiner's brother, to impeach Holly's credibility, was irrelevant and inadmissible. **See** Brief for Appellant at 25-28; **see also id.** at 26 (asserting that Gary's proposed impeachment testimony³ would have showed that Holly "may have had some motivation to exaggerate her testimony or not be truthful."). Greiner contends that Gary's testimony was relevant to "show collusion between Holly [] and [] Kelly as it related to [Greiner] because of custody issues." **Id.** at 28.

Our standard of review concerning a challenge to the admissibility of evidence is as follows:

[I]n reviewing a challenge to the admissibility of evidence, we will only reverse a ruling by the trial court upon a showing that it abused its discretion or committed an error of law. To constitute reversible error, an evidentiary ruling must not only be erroneous, but also harmful or prejudicial to the complaining party.

³ Specifically, the defense proffered that Gary would offer testimony that (1) the mother of Gary's children had previously accused *Gary* of child sexual abuse in connection with a custody dispute involving their children; and (2) the mother of Gary's children had briefly resided with Kelly, the mother of the victims in the instant case. **See** Brief for Appellant at 27 (referencing N.T., 10/31/2016-11/03/2016, at 282-83).

Commonwealth v. Schley, 136 A.3d 511, 515 (Pa. Super. 2016) (citation and ellipses omitted).

Pennsylvania Rule of Evidence 401 defines relevant evidence as “evidence having any tendency to make the existence of a fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Pa.R.E. 401. Rule of Evidence 402 provides that “[e]vidence that is not relevant is not admissible.” Pa.R.E. 402. It is well settled that “the rule that irrelevant evidence is not admissible is categorical.” ***Commonwealth v. Briggs***, 12 A.3d 291, 340 (Pa. 2011).

In its Opinion, the trial court set forth the relevant portions of the trial transcript concerning Gary’s proposed testimony, addressed Greiner’s claim, and opined that it correctly ruled that such testimony, which pertained to persons unrelated to Greiner’s crimes, was not relevant. **See** Trial Court Opinion, 10/17/17, at 25-27. As we discern no abuse of discretion and agree with the trial court’s reasoning, we affirm on this basis as to Greiner’s fourth issue. **See id.**⁴

In his fifth and final issue, Greiner argues that the trial court erred in sustaining the prosecutor’s objection, on relevance grounds, to defense counsel’s questioning Holly about her purported infidelity to Greiner during

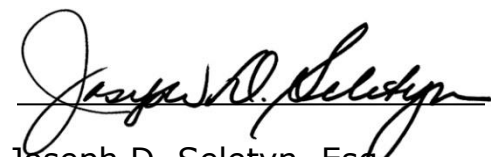
⁴ As an addendum, we observe that during Greiner’s trial testimony, he presented the theory that the defense had sought to establish via Gary’s proposed testimony, *i.e.*, that Holly and Kelly had colluded to fabricate the charges against Greiner. **See** N.T., 10/31/2016-11/03/2016, at 405-06.

their marriage. **See** Brief for Appellant at 28-29. According to Greiner, this matter was relevant and “the evidence of Holly [] seeing other men while in a relationship and being married to [Greiner] was being offered to attack the credibility of the witness and show she has a motivation to exaggerate or be untruthful.” **Id.** at 28.

The trial court concisely addressed this claim in its Opinion, set forth the relevant portion of Holly’s testimony, and opined that the court properly ruled that this matter was not relevant. **See** Trial Court Opinion, 10/17/17, at 28-29. Moreover, the trial court correctly pointed out that it did permit defense counsel to cross-examine Holly as to whether she had a boyfriend while married to Greiner, and whether she was angry at Greiner. **See id.** at 29; **see also** N.T., 10/31/2016-11/03/2016, at 307-08. We conclude that the trial court properly exercised its discretion in precluding this irrelevant evidence, and affirm on the basis of its Opinion as to Greiner’s final issue. **See** Trial Court Opinion, 10/17/17, at 28-29.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line underneath it.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 06/15/2018

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**IN THE COURT OF COMMON PLEAS OF YORK COUNTY,
PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	NO. CP-67-CR-5334-2015
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	:	
v.	:	
	:	
ROBERT GREINER,	:	
Defendant	:	

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OPINION IN SUPPORT OF ORDER PURSUANT TO Pa.R.A.P. 1925(a)

Appellant, Robert Greiner, by and through his counsel Richard Robinson, Esq., appeals to the Superior Court of Pennsylvania. The Appellant filed the Statement of Errors Complained of on Appeal on September 14, 2017.¹ This Court now issues this 1925(a) Opinion.

PROCEDURAL HISTORY

On November 3, 2016, a jury found Appellant guilty of Involuntary Deviate Sexual Intercourse, Aggravated Indecent Assault, Endangering Welfare of Children, Rape of a Child, Solicitation – Rape of a Child, Indecent Assault, Corruption of Minors, Incest, and Solicitation – Aggravated Indecent Assault.

¹ Appellant requested for extension of time, which was granted.

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MATTERS COMPLAINED OF ON APPEAL

Appellant asserts five main grounds for the appeal, with Appellant’s reasoning for the first two grounds included within each main argument. The main grounds are as follows:

1. “The jury’s verdict as to all charges was against the greater weight of the evidence[.]”²
2. “The evidence was insufficient to support the jury’s verdict[.]”³
3. “The Trial Court erred in overruling defense counsel’s objection to the competency of H.R. in that she did not exhibit that she comprehended the difference between a truth and a lie.”⁴
4. “The Trial Court erred in not permitting the testimony of Gary Greiner regarding Nicole Kelly and her previous accusations of sexual abuse involving a custody issue, which was relevant to the Defendant’s assertion that Holly Greiner had conspired with Nicole Kelly to fabricate charges against the Defendant.”⁵
5. “The Trial Court erred in sustaining the objection to questions regarding Holly Greiner cheating on the Defendant which was relevant as to her credibility and motivation to be dishonest.”⁶

² Appellant’s Statement of Matters Complained of Pursuant to Rule 1925 of the Pennsylvania Rules of Appellate Procedure. (“Statement of Matters”).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

FACTUAL BACKGROUND

The victims in this case were D.C., who is male and H.R, who is female. First, D.C. testified. D.C. was twelve years old when he testified, but he did not recall how old he was when the events in question occurred.⁷ D.C. testified⁸ that Appellant would make D.C. engage in vaginal intercourse with Holly Greiner, who is the children's step-mother and Appellant's wife.⁹ This occurred multiple times.¹⁰ D.C. also testified that Holly Greiner would put her hand on his penis and would perform oral sex on D.C.¹¹ These acts occurred more than once, while Appellant was there and occurred because Appellant told them to do so.¹² D.C. also testified that while he was present, Appellant engaged multiple times in vaginal intercourse with H.R.¹³ He eventually told his biological mother about the events.¹⁴

⁷ N.T. Jury Trial, October 31, 2016 – November 3, 2016 at pg. 146.

⁸ The forensic interviewer, who met D.C., also testified, and the forensic interview was played for the jury. *Id.* at 207-208.

⁹ N.T. Jury Trial, October 31, 2016 – November 3, 2016 at pg. 135.

¹⁰ *Id.* at 139.

¹¹ *Id.* at 139.

¹² *Id.* at 140-141.

¹³ *Id.* at 142-143.

¹⁴ *Id.* at 146.

Then, H.R. testified.¹⁵ At the time of trial, she was seven years old. During her testimony, H.R. testified that Appellant would have vaginal intercourse with her more than once.¹⁶ She also testified that “Holly licked [her] private” without her clothes on.¹⁷

Later, Holly Greiner¹⁸ testified. She testified that when she and Appellant were having intercourse, Appellant had H.R. touch his penis.¹⁹ At another time, Appellant had H.R. touch Holly Greiner’s vagina.²⁰ She also testified that Appellant had H.R. perform oral sex on D.C., and Appellant had Holly Greiner perform oral sex on D.C. and H.R.²¹ Appellant tried to have D.C. and Holly Greiner have vaginal intercourse, but just prior to, she stopped him though their genitals touched. She also testified that Appellant had H.R. performed oral sex on Appellant.²²

¹⁵ The forensic interviewer, who met H.R., also testified, and the forensic interview was played for the jury. *Id.* at 209-210.

¹⁶ *Id.* at 180-181.

¹⁷ *Id.* at 181.

¹⁸ Holly Greiner was also facing charges of rape of a child, Involuntary Deviate Sexual intercourse with a child and aggravated indecent Assault at the time she testified.

¹⁹ N.T. Jury Trial, October 31, 2016 – November 3, 2016 at pg. 226.

²⁰ *Id.* at 227.

²¹ *Id.* at 228-229.

²² *Id.* at 233.

Telephone calls between Appellant and Holly Greiner were played for the jury. During the call, they discussed, Nicole Kelly. While Appellant argued Holly and Nicole Kelly made the events up, Holly Greiner testified that she never had such a discussion with Nicole Kelly.²³ She also testified about letters she received from Appellant, where Appellant stated that they never did anything and that it was just show and tell. In the letters, Appellant also stated that Holly Greiner was influencing the children and that she and Nicole Kelly were setting him up.²⁴

DISCUSSION

Appellant makes five main arguments. The first two arguments concern sufficiency of the evidence and weight of the evidence. Under these first two main arguments, Appellant makes the same eight arguments. Specifically, paragraphs 1, 2, 7, and 8 were general arguments and paragraphs 3, 4, 5, and 6 were count specific. This Court will first address the sufficiency of the evidence argument and go count by count as to why the evidence was sufficient, noting paragraphs 3,4,5, and 6 when the relevant count is addressed. Then, the Court

²³ *Id.* at 250.

²⁴ *Id.* at 264, 267, 274, 276-277.

will address Paragraphs 1, 2, 7, and 8. After this, the Court will address the weight of the evidence argument. Lastly, the remaining three issues concerning whether this Court erred will be addressed.

I. *The evidence was sufficient for the jury to find the Appellant guilty of all counts.*

A question about the sufficiency of evidence is a question of law, and, therefore, the scope of review is plenary, with a de novo standard of review.²⁵ Accordingly, the critical inquiry when reviewing sufficiency of the evidence for a criminal conviction is not whether the court believes the trial evidence established guilt beyond a reasonable doubt.²⁶ Rather, the question is “whether the evidence believed by the fact-finder was sufficient to support the verdict.”²⁷

When reviewing a sufficiency of the evidence ground for an appeal, “an appellate court must determine whether the evidence, and all reasonable inferences deducible from that, viewed in the light most favorable to the Commonwealth as verdict winner, are sufficient to establish all of the elements

²⁵ *Commonwealth v. Ratsamy*, 934 A.2d 1233, 1235–36 (Pa. 2007).

²⁶ *Id.*

²⁷ *Id.*

of the offense beyond a reasonable doubt.”²⁸ When the appellate court applies that standard,

“the reviewing court must bear in mind that: the Commonwealth may sustain its burden by means of wholly circumstantial evidence; the entire trial record should be evaluated and all evidence received considered, whether or not the trial court’s ruling thereon were correct; and the trier of fact, while passing upon the credibility of witnesses and the weight of the proof, is free to believe all, part, or none of the evidence.”²⁹

First, the jury found Appellant guilty of Involuntary Deviate Sexual Intercourse with a Child. This crime occurs when “the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.”

³⁰ This count pertained to H.R. “Deviate sexual intercourse is “[s]exual intercourse per os or per anus between human beings .”³¹ The courts have viewed the phrase “intercourse per os or per anus” as describing oral and anal sex.”³² In Appellant’s Statement of Matters, Appellant argues that “[a]s to Count 2 of the criminal information, involuntary deviate sexual intercourse,

²⁸ *Id.* at 1237.

²⁹ *Id.*

³⁰ 18 Pa.C.S. § 3123.

³¹ *Commonwealth v. Kelley*, 801 A.2d 551, 554 (Pa. 2002).

³² *Id.* at 555.

Commonwealth Witness Holly Grei[ner] did not see Defendant lick the vagina of H.R. contradicting her testimony.”³³

While Holly Greiner did not see Appellant perform oral sex on H.R., she did see his head down by H.R.’s genitals, though she could not see what he was doing.³⁴ However, Holly Greiner had testified that she had observed Appellant make H.R. perform oral intercourse on him, who was well under the age of 13 years old at the time and testified when she was only seven years old.

Therefore, when viewed in the light most favorable to the Commonwealth as verdict winner, there was sufficient evidence for the jury to find Appellant guilty of IDSI.

Second, the jury found Appellant guilty of Aggravated Indecent Assault. “A person commits aggravated indecent assault of a child when the person violates subsection (a)(1), (2), (3), (4), (5) or (6) and the complainant is less than 13 years of age.”³⁵ In the Concise Statement, Appellant argues that “As to Count 3 of the criminal information, aggravated indecent assault, Holly Greiner previously testified the Defendant did not insert his finger into the vagina of

³³ Statement of Matters.

³⁴ N.T. Jury Trial, October 31, 2016 – November 3, 2016 at pg. 230-231.

³⁵ 18 Pa.C.S. § 3125.

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H.R., contradicting her testimony.”³⁶ This count pertains to H.R. Subsections (a)(1) through (a)(5) are as follows:

“a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if:

- (1) the person does so without the complainant's consent;
- (2) the person does so by forcible compulsion;
- (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;
- (5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.”³⁷

H.R. was less than thirteen years old when Appellant and she engaged in numerous sexual acts in violation of 18 Pa.C.S. §3125. Therefore, when viewed in the light most favorable to the Commonwealth as verdict winner, there was sufficient evidence to convict Appellant of Aggravated Indecent Assault.

³⁶ Statement of Matters.

³⁷ 18 Pa.C.S. § 3125.

Third, the jury found Appellant guilty of two counts of Endangering the Welfare of a Child. One count pertained to D.C., and the other pertained to H.R.

Endangering the welfare of a child occurs when

“[a] parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.”³⁸

When viewed in the light most favorable to the Commonwealth as verdict winner, there was sufficient evidence that Appellant endangered the welfare of both H.R. and D.C., based on the evidence and testimony discussed above.

Fourth, the jury found Appellant guilty of Rape of a Child. This offense occurs “when the person engages in sexual intercourse with a complainant who is less than 13 years of age.”³⁹ In the Statement of Matters, Appellant argues that “despite being allegedly raped, there was no trauma noted to the vaginal region of H.R. . . . which if there had been penetration there would be an increased likelihood of injury.”⁴⁰ This count pertained to H.R.

³⁸ 18 Pa.C.S. § 4304.

³⁹ 18 Pa.C.S. § 3121.

⁴⁰ Statement of Matters.

During the trial, two forensic nurses testify, one for the Commonwealth and one for the Defense. The Commonwealth's nurse testified that it was normal to not have any signs of trauma or injury, even if there was sexual abuse, since the tissue in that area tends to heal quickly and not leave any lasting signs of injury.⁴¹ Further, the nurse presented by the defense argued that while many of the studies relied on by the Commonwealth did not involve children, it was still possible for there to be no signs of injury, if the sexual was not reported within a certain time frame.⁴²

As the nurses indicated in their testimony, a lack of physical evidence is not prove a lack of abuse. Here, D.C. and H.R. testified about vaginal intercourse between the Appellant and H.R. Therefore, there was sufficient evidence for the jury to find Appellant guilty of Rape of a Child, when viewed in the light most favorable to the Commonwealth as verdict winner.

Fifth, the jury found Appellant guilty of Criminal Solicitation of Rape of a Child.

“A person is guilty of solicitation to commit a crime if with the intent of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would

⁴¹ See, e.g., N.T. Jury Trial, October 31, 2016 – November 3, 2016 at 329-330.

⁴² *Id.* at 369-374, 380.

constitute such crime or an attempt to commit such crime or which would establish his complicity in its commission or attempted commission.”⁴³

As stated before, Rape of a child occurs “when the person engages in sexual intercourse with a complainant who is less than 13 years of age.”⁴⁴ In the Statement of Matters, Appellant argued that “Holly Greiner testified that D.C. never had sex with her, which contradicted his testimony.”⁴⁵ This offense pertained to D.C. Here, D.C. testified that he had vaginal intercourse with Holly Greiner, because Appellant made them do it. In fact, the testimony from Holly, H.R. and D.C. all indicate that the acts of sexual abuse all stemmed from Appellant having them do so.

During the trial, the court found D.C. to be a very well-spoken and credible witness. D.C. was twelve years old when he testified and would have been less than 13 years of age when the abuse occurred. As Holly Greiner was also charged with many of the sexual assault crimes⁴⁶ stemming from this offense, it is plausible that she would mitigate the extent to which she

⁴³ 18 Pa.C.S. § 902.

⁴⁴ 18 Pa.C.S. § 3121.

⁴⁵ Statement of Matters.

⁴⁶ As of the trial, Holly Greiner was not sentenced. She pled and was sentenced months after the trial.

participated in the abuse. Further, during her testimony, Holly Greiner stated that their genitals touched but there was no penetration.⁴⁷ “Any inconsistencies in the evidence are a matter for the trier of fact to resolve.”⁴⁸ Holly Greiner had also testified that this occurred because Appellant told her to.⁴⁹

Based on the evidence and testimony from D.C., there was sufficient evidence for the jury to find Appellant guilty of Criminal Solicitation of Rape of a Child, when viewed in the light most favorable to the Commonwealth as verdict winner.

Sixth, the Appellant was found guilty of Indecent Assault. A person is guilty of this offense “if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person . . . and . . . the complainant is less than 13 years of age.”⁵⁰ This Count pertained to H.R. Here, there were multiple sexual acts constituting Indecent Assault including when Appellant made H.R. touch his genitals. Therefore, when viewed in the light most favorable to the Commonwealth as verdict winner , there is sufficient evidence to find Appellant guilty of Indecent Assault beyond a reasonable

⁴⁷ N.T. Jury Trial, October 31, 2016 – November 3, 2016 at pg. 299.

⁴⁸ *Commonwealth v. Lilloock*, 740 A.2d 237, 242 (1999).

⁴⁹ N.T. Jury Trial, October 31, 2016 – November 3, 2016 at pg. 318.

⁵⁰ 18 Pa.C.S. § 3126.

doubt, when viewed in the light most favorable to the Commonwealth as verdict winner.

Seventh, the Appellant was found guilty of two counts of corruption, with one pertaining to H.R. and the other to D.C. A person is guilty of this offense when they are 18 years old or older and “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.”⁵¹ Based on the evidence and testimony discussed above, there is sufficient evidence to convict appellant of Corruption of Minors for both H.R. and D.C., when viewed in the light most favorable to the Commonwealth as verdict winner.

Eighth, Appellant was found guilty of Incest of a Minor. “A person is guilty of incest of a minor, . . . if that person knowingly . . . has sexual intercourse with a complainant who is [a] . . . descendant . . . of the whole or half blood . . . and . . . is under the age of 13 years.”⁵² This count pertained to H.R. Here, H.R. was Appellant’s biological daughter. Based on all the evidence

⁵¹ 18 Pa.C.S. § 6301.

⁵² 18 Pa.C.S. § 4302.

and testimony about the sexual intercourse with H.R., there was sufficient evidence for the jury to find Appellant guilty of Incest of a Minor, when viewed in the light most favorable to the Commonwealth as verdict winner.

Lastly, the jury found Appellant guilty of Criminal Solicitation of Aggravated Indecent Assault of a Child.

“A person is guilty of solicitation to commit a crime if with the intent of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish his complicity in its commission or attempted commission.”⁵³

D.C. was less than thirteen years old when D.C. and Holly Greiner engaged in numerous sexual acts in violation of 18 Pa.C.S. § 3125. These acts were done at Appellant’s request according to both D.C. and Holly Greiner. Therefore, there was sufficient evidence to convict Appellant of Criminal Solicitation of Aggravated Indecent Assault.

Now, this Court will address the sub-arguments raised in paragraphs 1, 2, 7 and 8 under the Appellant sufficiency of the evidence and weight of the evidence arguments.

⁵³ 18 Pa.C.S. § 902.

In paragraphs 1 and 2, Appellant argues that the evidence was contradictory and inconsistent. In *Commonwealth v. Lilliock*, the Appellant appealed on the grounds that one of the witness's testimonies was contradictory and inconsistent with the Commonwealth's other evidence. The Superior Court concluded that: "We reiterate that any inconsistencies in the evidence are a matter for the trier of fact to resolve, and we will not disturb the verdict on that basis."⁵⁴ Here, in the instant case, it was for the jury to resolve any inconsistencies or contradictory evidence.

In paragraph 7, Appellant argues that the verdict was based on "mere assumption, conjecture and speculation."⁵⁵ In *Commonwealth v. Gruff*, the defendant was convicted of aggravated assault. However, in the *Gruff* case there was only a threat, rather than an overt step to have defendant injured. The Court stated that

"Importantly, however, as in *Mayo*, there was no overt step taken to actually injure [the victim]. Moreover, like *Mayo*, Appellant seemingly had ample opportunity to inflict harm had he truly intended to do so. That he did not follow through on his threatening words and acts cannot be overlooked. In short, Appellant's conviction for aggravated assault rests upon

⁵⁴ *Commonwealth v. Lilliock*, 740 A.2d 237, 242 (1999).

⁵⁵ Statement of Matters.

assumption, conjecture and speculation, not proof beyond reasonable doubt.”⁵⁶

Here, overt acts in the form of child sex abuse occurred. The jury did not have to speculate when the witnesses themselves told the jury what happened. The verdict was not based on assumption, conjecture and speculation as the acts were blatantly testified to by the Commonwealth’s witnesses.

In paragraph 8, Appellant argues that “[t]he testimony of D.C. and H.R. was vague and not certain as to when events had occurred and where they were to have occurred.”⁵⁷ In closing arguments, both the Commonwealth and Defense addressed D.C. and H.R. being uncertain about exactly when the events occurred. H.R. and D.C. were seven and twelve years old respectively when they testified. However, vagueness and uncertainty are an issue for a weight of the evidence argument. As stated in *Commonwealth v. Stalter*,

“Once again [the defendant] focuses on the inconsistencies and vagueness of the details provided by the Commonwealth’s witnesses. This argument is not an attack on the sufficiency of the evidence, but rather an allegation regarding the weight the victim’s testimony should have been afforded.”⁵⁸

⁵⁶ *Commonwealth v. Gruff*, 822 A.2d 773, 789 (Pa. Super. 2003).

⁵⁷ Statement of Matters.

⁵⁸ *Commonwealth v. Stalter*, No. 807 MDA 2014, 2015 WL 6165985, at *2 (Pa. Super. Ct. Apr. 24, 2015).

Because this is a weight of the evidence argument, this argument will be addressed in the following section. However, it should be noted that “any inconsistencies in the evidence are a matter for the trier of fact to resolve.”⁵⁹

II. The verdict as to all charges was not against the greater weight of the evidence.

Appellant contends that the jury verdict was against the weight of the evidence. A challenge to the weight of the evidence is distinct from a challenge to the sufficiency of the evidence.⁶⁰ The standard for weight of the evidence challenges is as follows:

A motion for new trial on the grounds that the verdict is contrary to the weight of the evidence, concedes that there is sufficient evidence to sustain the verdict. Thus, the trial court is under no obligation to view the evidence in the light most favorable to the verdict winner. An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. A trial judge must do more than reassess the credibility of the witnesses and allege that he would

⁵⁹ *Commonwealth v. Lilliock*, 740 A.2d at 242.

⁶⁰ *Commonwealth v. Widmer*, 744 A.2d at 751 (stating that “[a] claim challenging the sufficiency of the evidence, if granted, would preclude retrial under the double jeopardy provisions of the Fifth Amendment to the United States Constitution, and Article I, § 10 of the Pennsylvania Constitution, whereas a claim challenging the weight of the evidence if granted would permit a second trial.”) (internal citations omitted).

not have assented to the verdict if he were a juror. Trial judges, in reviewing a claim that the verdict is against the weight of the evidence do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.⁶¹

The court should not grant a new trial unless the verdict is “so contrary to the evidence as to shock one’s sense of justice.”⁶² The weight of the evidence is exclusively for the finder of fact who, after seeing the witnesses testify firsthand, is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses.”⁶³

The Appellant raised the same eight reasons to support this ground for the appeal as it did for the sufficiency evidence ground for the appeal. This Court hereby incorporates the reasoning for those eight sub-arguments into this section. As described above, the evidence was sufficient to support the convictions, and there is no reasonable argument that the jury mis-weighed the evidence. “Any inconsistencies in the evidence are a matter for the trier of fact

⁶¹ *Widmer*, 744 A.2d at 751-52 (internal citations and quotations omitted).

⁶² *Commonwealth v. Davidson*, 860 A.2d 575, 582 (Pa. Super. Ct. 2004).

⁶³ *Commonwealth v. Champney*, 832 A.2d 403, 408 (Pa. 2003) (citing *Commonwealth v. Johnson*, 668 A.2d 97, 101 (Pa. 1995), cert. denied, 519 U.S. 827 (1996)).

to resolve.”⁶⁴ Here, any vagueness or uncertainty was for the trier of fact to resolve. It was within the jury’s discretion whether to find the testimony of the witnesses credible. Therefore, this Court will not disturb the jury’s verdict.

III. The Trial Court did not err when it overruled defense counsel’s objection to H.R.’s competency

In the Statement of Matters, Appellant argues that “[t]he Trial Court erred in overruling defense counsel’s objection to the competency of H.R. in that she did not exhibit that she comprehended the difference between a truth and a lie.”⁶⁵

When H.R. testified, she was seven years old.⁶⁶ Prior to her testimony, her competency was assessed. During this inquiry, H.R. told the Court that the truth is good, and a lie is bad and that if you tell a lie, you could get in trouble, among other things.⁶⁷ The following testimony is the cross-examination portion the competence inquiry, which contains the relevant portion that Defense Counsel objected to:

⁶⁴ *Commonwealth v. Lilloock*, 740 A.2d 237, 242 (1999).

⁶⁵ *Id.*

⁶⁶ The forensic interview who met H.R. also testified, and the forensic interview was played for the jury. N.T. Jury Trial, October 31, 2016 - November 3, 2016 at 209-210.

⁶⁷ *Id.* at 170-171.

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“Q. Sometimes when we tell lies, we actually don’t get in trouble?”

A. Yes.

Q. Alright. Is it – is it bad to tell lies just so we don’t get in trouble?”

A. No.

Q. So is it always bad to tell a lie?”

A. No.

Q. Is it sometimes okay to tell a lie?”

A. No.”⁶⁸

Defense counsel argued that he did not believe she was competent, stating:

“we don’t believe she’s competent to testify regarding lies. She gets the questions right eventually. This is a pattern with her. In pre-trial hearings, we had issues regarding statements. . . . I think the totality of the circumstances demonstrate she doesn’t quite comprehend the concept.”

This Court disagreed, responding:

“THE COURT: Actually, I thought she comprehended the concept very well. You gave her an abstract principle. She thought it out. I

⁶⁸ *Id.* at 173.

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guess you're right, you don't always get in trouble if you tell a lie because nothing happened with you.

[DEFENSE COUNSEL]: Then she followed up with saying –

THE COURT: Not always bad to tell. You don't always get in trouble. That's the reality of life."⁶⁹

The general rule is that every person is competent as a witness unless

“because of a mental condition or immaturity the person: (1) is, or was, at any relevant time, incapable of perceiving accurately; (2) is unable to express himself or herself so as to be understood either directly or through an interpreter; (3) has an impaired memory; or (4) does not sufficiently understand the duty to tell the truth.”⁷⁰

The court should use the following principles when ruling on a witness's competency:

“When ruling on the competency of a witness, the following principles should guide the court: [C]ompetency of a witness is presumed, and the burden falls on the objecting party to demonstrate incompetency. When the witness is under fourteen years of age, there must be a searching judicial inquiry as to mental capacity, but discretion nonetheless resides in the trial judge to make the ultimate decision as to competency.’

In making its determination, the court must inquire whether the child possesses:

‘(1) such capacity to communicate, including as it does both an ability to understand questions and to frame and express intelligent

⁶⁹ *Id.* at 174-175.

⁷⁰ Pa.R.E. 601.

answers, (2) mental capacity to observe the occurrence itself and the capacity of remembering what it is that she is called to testify about and (3) a consciousness of the duty to speak the truth.”⁷¹

It was in this Court’s discretion to make the ultimate decision on her competency. Here, it was clear that H.R. was capable of perceiving accurately, did not have an impaired memory and sufficiently understood her duty to tell the truth. This Court thought H.R. had a great ability to understand the questions during the competency inquiry and expressed intelligent answers. This is especially apparent in light of her response to counsel’s question on whether or not you always get in trouble for not telling the truth. She thought about the question, said “no,” and this Court agreed with her, since you do not *always* get in trouble for lying. She more than adequately answered the Commonwealth’s questions on understanding the difference between telling the truth and a lie and what happens when you tell a lie. She still agreed that it was not okay to lie. Therefore, this Court respectfully requests that the Superior Court find that this Court did not err when it overruled Defense Counsel’s objection to H.R.’s competency.

⁷¹ *Commonwealth v. D.J.A.*, 800 A.2d 965, 969 (Pa. Super. 2002) (Internal citations omitted).

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IV. *The Trial Court did not err when it did not permit Gary Greiner's testimony regarding Nicole Kelly.*

In the Statement of Matters, Appellant argues that “The Trial Court erred in not permitting the testimony of Gary Greiner regarding Nicole Kelly and her previous accusations of sexual abuse involving a custody issue, which was relevant to the Defendant’s assertion that Holly Greiner had conspired with Nicole Kelly to fabricate charges against the Defendant.”⁷²

“Questions concerning the admissibility of evidence lie within the sound discretion of the trial court, and a reviewing court will not reverse the court's decision on such a question absent a clear abuse of discretion.” “An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record.”⁷³

Here the testimony was excluded on relevance grounds.

“Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”⁷⁴ “Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at

⁷² Statement of Matters.

⁷³ *Commonwealth v. Hyland*, 875 A.2d 1175, 1185–86 (Pa. Super. 2005) (internal citations omitted).

⁷⁴ Pa.R.E. 401.

issue more or less probable or supports a reasonable inference or presumption regarding a material fact.”⁷⁵

Gary Greiner is the Appellant’s brother.⁷⁶ Defense Counsel wanted to call Gary Greiner to testify, but the Commonwealth asked for an offer as to his testimony. Defense counsel stated:

“Your Honor, I believe Mr. Gary Greiner will be testifying that . . . [Gary Greiner] was in a custody battle with the mother of his children. They separated. . . . The mother of Gary’s child moved in with Nichole Kelly. . . . Shortly thereafter, she accused Gary Greiner . . . of sexual abuse of their children, and as it related to the custody battle, he will testify that those charges - - no charges were filed and ultimately found unfound, and he obtained custody of his children. Obviously, Your Honor probably knows the defense at this point is that Holly Greiner and Nichole Kelly concocted this story to get - - so Kelly could have custody of D.C.”⁷⁷

The Court then asked whether there was a custody battle between Holly Greiner and Defendant, and Defense counsel stated, “No, [Nicole] Kelly.”⁷⁸ Defense counsel then said “So the argument is that this was an attempt- - [Kelly’s] attempt to get custody of [D.C.], so I understand there’s obviously a question of weight to it, but I do believe it has a logical bearing on his defense

⁷⁵ *Commonwealth v. Fransen*, 42 A.3d 1100, 1106 (Pa. Super. 2012).

⁷⁶ N.T. Jury Trial, October 31, 2016 – November 3, 2016 at pg. 280.

⁷⁷ *Id.* at 282-283.

⁷⁸ *Id.* at 283.

and why they might have made this up in an attempt to get custody.”⁷⁹ The Commonwealth objected to this based on relevance, stating “this is the brother of the Defendant. The mother of [Gary Greiner’s] children . . . has nothing to do with this case whatsoever, just happened to live with one of the parties.”⁸⁰ The Court responded “[Nicole Kelly] lived with one of the persons with whom [Gary Greiner] had a custody battle with. Yeah I’m sorry. I don’t get the connection. I don’t think it’s relevant. The nexus isn’t there.”⁸¹

Here, the evidence was offered for Holly Greiner having a motive. Here, Gary Greiner’s ex lived with Nicole Kelly for a short period of time. Based on the statutory law and case law, the Appellant’s brother’s ex’s actions, who lived with Nicole Kelly, is not relevant. Frankly, the defense argued that Holly Greiner had the motive to lie based on Nichole Kelly, and the jury did not agree.

Disallowing Gary Greiner’s testimony was not an abuse of discretion and was not manifestly unreasonable or the result of bias, prejudice, ill-will or

⁷⁹ *Id.* at 283-284.

⁸⁰ *Id.* at 284.

⁸¹ *Id.*

partiality. Therefore, the Court respectfully requests that the Superior Court find the trial court did not err when it did not permit Gary Greiner's testimony.

V. The Trial Court did not err when it sustained the objection to questions regarding Holly Greiner cheating on the Defendant.

In the Statement of Matters, Appellant argues that "The Trial Court erred in sustaining the objection to questions regarding Holly Greiner cheating on the Defendant which was relevant as to her credibility and motivation to be dishonest."⁸²

"Questions concerning the admissibility of evidence lie within the sound discretion of the trial court, and a reviewing court will not reverse the court's decision on such a question absent a clear abuse of discretion." "An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record."⁸³

Here the testimony was excluded on relevance grounds.

"Evidence is relevant if (a)it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."⁸⁴ "Evidence is

⁸² *Id.*

⁸³ *Commonwealth v. Hyland*, 875 A.2d at pg. 1185–86 (internal citations omitted).

⁸⁴ Pa.R.E. 401.

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relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact.”⁸⁵

During cross examination of Holly Greiner, the following exchange occurred between Defense Counsel and Holly Greiner:

“ Q. You testified that you were still together with Mr. Greiner at the time that you spoke to police; however, you were not in a (sic) extreme disagreement with him regarding events that occurred immediately - - in the spring of 2015?

A. I don't understand what you're trying to say.

Q. Were you mad at him for anything during that period of time?

A. We were in an argument, yes.

Q. And a lot of this is the fact that you had a boyfriend during that time that upset him?

A. I did not have a boyfriend, no.

Q. **You were not cheating on him during that time?”**⁸⁶

Then, the Commonwealth objected to relevance, and Defense Counsel argued that it was her motive.⁸⁷ Then the Court inquired: “Her motive to say this is

⁸⁵ *Commonwealth v. Fransen*, 42 A.3d 1100, 1106 (Pa. Super. 2012).

⁸⁶ N.T. Jury Trial, October 31, 2016 – November 3, 2016 at pg. 308 (emphasis added).

⁸⁷ *Id.*

because she had a boyfriend.”⁸⁸ Defense Counsel clarified “He was going to leave her, Your Honor.”⁸⁹ This Court responded “Well, having a boyfriend and leaving her husband aren’t always the same,” and sustained the objection.⁹⁰

Here, the evidence was again offered for Holly Greiner’s motive. Based on the statutory law and case law, whether Holly Greiner was cheating on Appellant is not relevant. Other questions asked whether she was angry with Appellant, and whether she had a boyfriend.

Sustaining the objection was not an abuse of discretion and was not manifestly unreasonable or the result of bias, prejudice, ill-will or partiality. Therefore, this Court respectfully requests that the Superior Court find the trial court did not err when it did not permit Gary Greiner’s testimony.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

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CONCLUSION

Therefore, for all the reasons listed above, this Court respectfully requests that the Pennsylvania Superior Court find the grounds raised on appeal meritless.

BY THE COURT,



HARRY M. NESS, JUDGE

DATE: 10/16/17