

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DARIN JONES,	:	
	:	
Appellant	:	No. 1202 EDA 2013

Appeal from the Judgment of Sentence Entered February 14, 2013,
In the Court of Common Pleas of Philadelphia County,
Criminal Division, at No. CP-51-CR-0006373-2011.

BEFORE: FORD ELLIOTT, P.J.E., BOWES and SHOGAN, JJ.

MEMORANDUM BY SHOGAN, J.:

FILED JULY 28, 2014

Appellant, Darin Jones, appeals from the judgment of sentence entered following a waiver trial at which the trial judge found him guilty of rape (forcible compulsion), sexual assault, incest, unlawful restraint, and indecent assault. We affirm.

The trial court summarized the facts of this case as follows:

At trial, the Commonwealth presented the testimony of [the victim], [the victim's ex-boyfriend], and Police Officer Jarek Krzywicki. The Defense presented the testimony of Appellant, Darin Jones. Both parties also stipulated to what was contained in the medical reports from Mercy Fitzgerald Hospital.

On the evening of April 11th into the 12th, 2011, [the victim] was living with her biological uncle, Appellant . . . in the City and County of Philadelphia. (Notes of Testimony at Page 27) [The victim] went to bed in her room of the apartment at approximately 8 p.m. on April 11th. (N.T. at 29) At approximately 4 a.m. on April 12th, [the victim] woke to Appellant in her room and on her bed. (N.T. at 30) Appellant

was rubbing her legs and thighs. (N.T. at 31) [The victim] stated, "what in the world?", causing Appellant to stop what he was doing and apologize. (N.T. at 30) [The victim] then left her room and went to sleep in Appellant's room since he had remained in her bed. (N.T. at 33)

At 8 a.m. Appellant entered the room where [the victim] was sleeping and began rubbing her legs and thighs. (N.T. at 35) Appellant then began touching [the victim's] chest and vagina under her clothes. (N.T. at 36) [The victim] was lying chest down on the bed with Appellant on top of her back. (N.T. at 35) Appellant then removed [the victim's] clothes and began penetrating her vagina with his penis. (N.T. at 37) Appellant forced [the victim's] legs apart in order to do this. (N.T. at 92) [The victim] tried to think of ways to get away, but was unable to come up with a way to fight off Appellant since he was on top of her and outweighed her. [The victim] laid on the bed until Appellant had finished. (N.T. at 39 and 41) Appellant then cleaned [the victim] with a rag and went to the bathroom to clean himself. [The victim] testified that she did not leave the home at this point because she was terrified and Appellant had previously told her he owned a gun. (N.T. at 40) After some time, Appellant returned to the bedroom and again penetrated [the victim's] vagina with his penis. (N.T. at 41)

Appellant then left the apartment and [the victim] got up, took a shower and called her ex-boyfriend, Eusebio Molina, to pick her up[.] (N.T. at 42) Mr. Molina picked up [the victim] at her home. (N.T. at 45) Mr. Molina testified that [the victim] seemed like she was in shock and he could tell something was wrong with her. (N.T. at 101) [The victim] then borrowed Mr. Molina's phone to research the terms "rape" and "molestation" to get a better understanding of what had happened to her. (N.T. at 48) Mr. Molina then brought [the victim] to her mother's house where she broke down. (N.T. at 45) [The victim] then went back to her home to retrieve her belongings with her father and Mr. Molina. [The victim] testified that she brought her father with her because she was frightened of what Appellant might do if she returned alone. (N.T. at 47) After returning to her mother's house, [the victim] informed Mr. Molina and her mother what had happened and was taken to the hospital where a rape kit was performed. (N.T. at 50) [The victim] then gave a

statement to police, leading to the arrest of Appellant. (N.T. at 119)

Trial Court Opinion, 10/17/13, at 2-3.

Following his conviction of the above listed crimes, Appellant was sentenced to incarceration for an aggregate term of twenty-five to fifty years. Appellant filed a post-sentence motion, which included a challenge to the weight of the evidence. Following a hearing on March 28, 2013, the trial court denied Appellant's motion. N.T., 3/28/13, at 12; Order of Court, 3/28/13. This appeal followed. Appellant and the trial court complied with Pa.R.A.P. 1925.

Appellant presents the following two issues for our review:

1. Whether there was insufficient evidence presented at trial to support Appellant's conviction for Rape by Forcible Compulsion, **18 Pa.C.S.A. Section 3121(a)(1)**, where victim testified that Appellant did not threaten, punch, hit, kick, push, grab, restrain, or otherwise assault her in any way, during alleged sexual assault?

2. Whether Appellant's conviction for Rape, Sexual Assault, Incest, and Indecent Assault, was against the weight of the evidence, because the Court of Common Pleas verdict was so contrary to the evidence as to shock one's sense of justice, which makes it imperative for a new trial, where despite DNA testing of alleged rape scene, there was no DNA evidence presented at trial consistent with sexual intercourse between Appellant and alleged rape victim, rape kit performed on victim was negative for sperm, bruising, lacerations, or other physical evidence supporting sexual assault and/or sexual intercourse, victim's version at trial differed from her account to hospital intake viewer on day of alleged incident, and Appellant's testimony denying rape or sexual assault was substantially more credible than victim's inconsistent and highly incredible account?

Appellant's Brief at 14 (reordered for ease of disposition).

Appellant challenges the sufficiency of the evidence supporting his conviction of rape by forcible compulsion. In reviewing the sufficiency of the evidence, we must determine whether the evidence admitted at trial and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, was sufficient to prove every element of the offense beyond a reasonable doubt. ***Commonwealth v. Rivera***, 983 A.2d 1211 (Pa. 2009); ***Commonwealth v. James***, 46 A.3d 776 (Pa. Super. 2012). It is within the province of the fact-finder to determine the weight to be accorded to each witness's testimony and to believe all, part, or none of the evidence. ***Commonwealth v. Cousar***, 928 A.2d 1025 (Pa. 2007); ***Commonwealth v. Moreno***, 14 A.3d 133 (Pa. Super. 2011). The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. ***Commonwealth v. Hansley***, 24 A.3d 410 (Pa. Super. 2011). Moreover, as an appellate court, we may not re-weigh the evidence and substitute our judgment for that of the fact-finder. ***Commonwealth v. Ratsamy***, 934 A.2d 1233 (Pa. 2007); ***Commonwealth v. Brown***, 23 A.3d 544 (Pa. Super. 2011). Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is

so inconclusive that as a matter of law no probability of fact may be drawn from the circumstances. **Moreno**, 14 A.3d at 133.

“Over the past thirty years, our Legislature has endeavored to modernize Pennsylvania’s sexual offenses statute.” **Boykai v. Young**, 83 A.3d 1043, 1046 (Pa. Super. 2014) (citing DAN M. KAHAN, *Culture, Cognition, and Consent: Who Perceives What, and Why, in Acquaintance–Rape Cases*, 158 U. Pa. L.Rev. 729, 742–44 (2010) (discussing developments in the modernization of rape laws in Pennsylvania)). Specifically, the Pennsylvania Legislature amended the definition of the “forcible compulsion” element of rape. **Id.**

While the crime previously required a showing of physical force, today, intellectual, moral, emotional, or psychological force all suffice to establish ‘forcible compulsion.’ Additionally, the Legislature codified a new offense, the crime of ‘sexual assault,’ which assigns culpability for sexual intercourse that occurs without the victim’s consent, thereby precluding any need for a showing of force to establish that offense.

Id.

Currently, section 3103 of the Pennsylvania Crimes Code provides the following definition of forcible compulsion:

“Forcible compulsion.” Compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person’s death, whether the death occurred before, during or after sexual intercourse.

18 Pa.C.S.A. § 3103. Notably, the definition does not limit force to physical violence. **See also** 18 Pa.C.S.A. 3107 (“The alleged victim need not resist the actor in prosecutions under this chapter[.]”).

Moreover, this Court has explained forcible compulsion as follows:

[I]n order to prove the “forcible compulsion” component, the Commonwealth must establish, beyond a reasonable doubt, that the defendant “used either physical force, a threat of physical force, or psychological coercion, since the mere showing of a lack of consent does not support a conviction for rape ... by forcible compulsion.” **Commonwealth v. Brown**, 556 Pa. 131, 136, 727 A.2d 541, 544 (1999). In **Commonwealth v. Rhodes**, 510 Pa. 537, 510 A.2d 1217 (1986), our Supreme Court stated that forcible compulsion includes “not only physical force or violence, but also moral, psychological or intellectual force used to compel a person to engage in sexual intercourse against that person’s will.” **Rhodes**, 510 Pa. at 555, 510 A.2d at 1226. Further, the degree of force required to constitute rape is relative and depends on the facts and particular circumstances of a given case. **Commonwealth v. Ruppert**, 397 Pa.Super. 132, 579 A.2d 966, 968 (1990), *appeal denied*, 527 Pa. 593, 588 A.2d 914 (1991). **See** PENNSYLVANIA BENCHBOOK ON CRIMES OF SEXUAL VIOLENCE, Ch. 2, pg. 27 (2d Edition 2009).

Commonwealth v. Eckrote, 12 A.3d 383, 387 (Pa. Super. 2010).

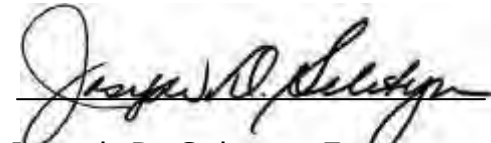
Appellant also challenges the weight of the evidence supporting his convictions. The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. **Commonwealth v. Orr**, 38 A.3d 868, 873 (Pa. Super. 2011) (citation and quotation marks omitted). This Court cannot substitute its judgment for that of the finder of fact and, therefore, we may

reverse the verdict only if it is so contrary to the evidence as to shock one's sense of justice. ***Id.***

Here, we have thoroughly reviewed the certified record, including the notes of testimony, the appellate briefs, and the trial court's Rule 1925(a) opinion. We conclude that the trial court adequately and accurately disposed of Appellant's sufficiency and weight challenges. Accordingly, we adopt the trial court's well-reasoned analysis as our own, and we affirm Appellant's judgment of sentence on the basis of the trial court's October 17, 2013 opinion. We direct the parties to attach a copy of that opinion to this Memorandum in the event of further proceedings.

Judgment of sentence affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/28/2014

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF
PENNSYLVANIA

CP-51-CR-0006373-2011

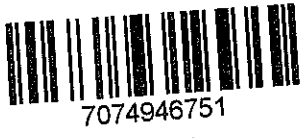
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CP-51-CR-0006373-2011 Comm. v. Jones, Darin
Opinion

v.

OCT 17 2013

Darin Jones



Criminal Appeals Unit
First Judicial District of PA

OPINION

Coleman, R.

October 16, 2013

I. PROCEDURAL HISTORY

On October 24, 2012, this court found Defendant/Appellant, Darin Jones, guilty of Rape by Forcible Compulsion, Sexual Assault, Incest, Unlawful Restraint, and Indecent Assault. On February 14, 2013, Appellant was sentenced on all charges to 25-50 years of incarceration. On May 17, 2013, Appellant filed a timely appeal by and through his attorney, Earl D. Raynor.

II. ISSUES PRESENTED BY APPELLANT

In his 1925(b) statement, Mr. Jones alleges verbatim that;

1. Whether there was insufficient evidence presented at trial to support Appellant's conviction for Rape by Forcible Compulsion, 18 Pa.C.S.A. Section 3121(a)(1), where victim testified that Appellant did not threaten, punch, hit, kick, push, grab, restrain, or otherwise assault in her any way [sic], during alleged sexual assault?
2. Whether Appellant's conviction for Rape, Sexual Assault, Incest, and Indecent Assault, was against the weight of the evidence, because the Court of Common Pleas verdict was so contrary to the evidence as to shock one's sense of justice, which makes it imperative for a new trial, where despite DNA testing of alleged rape scene, there was no DNA evidence presented at trial consistent with sexual intercourse between Appellant and alleged rape victim, rape kit performed on victim was negative for sperm, bruising, lacerations, or other physical evidence supporting sexual assault and/or sexual intercourse, victim's version at trial differed from her account to hospital intake viewer on day of alleged incident, and Appellant's testimony denying rape or sexual assault was substantially more credible that [sic] victim's inconsistent and highly incredible account?

III. FACTS

At trial, the Commonwealth presented the testimony of complainant, L [REDACTED] Eusebio Molina, and Police Officer Jared Krzywicki. The Defense presented the testimony of Appellant, Darin Jones. Both parties also stipulated to what was contained in the medical reports from Mercy Fitzgerald Hospital.

On the evening of April 11th into the 12th, 2011, complainant L [REDACTED] was living with her biological uncle, Appellant, at 746 South 53rd Street in the City and County of Philadelphia. (Notes of Testimony at Page 27) Ms. [REDACTED] went to bed in her room of the apartment at approximately 8 p.m. on April 11th. (N.T. at 29) At approximately 4 a.m. on April 12th, Ms. [REDACTED] awoke to Appellant in her room and on her bed. (N.T. at 30) Appellant was rubbing her legs and thighs. (N.T. at 31) Ms. [REDACTED] stated, "What in the world?", causing Appellant to stop what he was doing and apologize. (N.T. at 30) Ms. [REDACTED] then left her room and went to sleep in Appellant's room since he had remained in her bed. (N.T. at 33)

At 8 a.m. Appellant entered the room where Ms. [REDACTED] was sleeping and began rubbing her legs and thighs. (N.T. at 35) Appellant then began touching Ms. [REDACTED]' chest and vagina under her clothes. (N.T. at 36) Ms. [REDACTED] was lying chest down on the bed with Appellant on top of her back. (N.T. at 35) Appellant then removed Ms. [REDACTED] clothes and began penetrating her vagina with his penis. (N.T. at 37) Appellant forced Ms. [REDACTED]' legs apart in order to do this. (N.T. at 92) Ms. [REDACTED] tried to think of ways to get away, but was unable to come up with a way to fight off Appellant since he was on top of her and outweighed her. Ms. [REDACTED] laid on the bed until Appellant had finished. (N.T. at 39 and 41) Appellant then cleaned Ms. [REDACTED] with a rag and went to the bathroom to clean himself. Ms. [REDACTED] testified that she did not leave the home at this point because she was terrified and Appellant had previously told her he owned a gun. (N.T.

at 40) After some time, Appellant returned to the bedroom and again penetrated Ms. [REDACTED]'s vagina with his penis. (N.T. at 41)

Appellant then left the apartment and Ms. [REDACTED] got up, took a shower and called her ex-boyfriend, Eusebio Molina, to pick her up (N.T. at 42) Mr. Molina picked up Ms. [REDACTED] at her home. (N.T. at 45) Mr. Molina testified that Ms. [REDACTED] seemed like she was in shock and he could tell something was wrong with her. (N.T. at 101) Ms. [REDACTED] then borrowed Mr. Molina's phone to research the terms "rape" and "molestation" to get a better understanding of what had happened to her. (N.T. at 48) Mr. Molina then brought Ms. [REDACTED] to her mother's house where she broke down. (N.T. at 45) Ms. [REDACTED] then went back to her home to retrieve her belongings with her father and Mr. Molina. Ms. [REDACTED] testified that she brought her father with her because she was frightened of what Appellant might do if she returned alone. (N.T. at 47) After returning to her mother's house, Ms. [REDACTED] informed Mr. Molina and her mother what had happened and was taken to the hospital where a rape kit was performed. (N.T. at 50) Ms. [REDACTED] then gave a statement to police, leading to the arrest of Appellant. (N.T. at 119)

IV. LEGAL ANALYSIS

1. Evidence Presented at Trial was Sufficient to Support Appellant's

Conviction for Rape by Forcible Compulsion.

Mr. Jones is guilty of Rape by Forcible Compulsion under Pennsylvania case law because of the nature of his relationship with Ms. [REDACTED] and because he positioned himself on top of her and forced her legs apart during the rape.

In his 1925(b) statement, Appellant argues that there was, "insufficient evidence presented at trial to support Appellant's conviction for Rape by Forcible Compulsion, 18

Pa.C.S.A. Section 3121(a)(1), where victim testified that Appellant did not threaten, punch, hit, kick, push, grab, restrain, or otherwise assault in her any way [sic], during alleged sexual assault.” However, this is a misstatement of the Pennsylvania law regarding what constitutes forcible compulsion. Under Pennsylvania rape law, the perpetrator need not physically abuse the victim, and the victim need not resist.¹ The Pennsylvania Supreme Court has previously stated that, “The force necessary to support a conviction of rape ... need only be such as to establish lack of consent and *to induce the [victim] to submit without additional resistance*... The degree of force required to constitute rape is relative and depends on the facts and particular circumstance of the case.”² In order to prove the forcible compulsion aspect of a rape, “the Commonwealth must establish, beyond a reasonable doubt, that the defendant used either physical force, a threat of physical force, or psychological coercion, since the mere showing of a lack of consent does not support a conviction for rape ... by forcible compulsion. Our Supreme Court [has] stated that forcible compulsion *includes not only physical force or violence*, but also moral, psychological or intellectual force used to compel a person to engage in sexual intercourse against that person's will. Further, *the degree of force required to constitute rape is relative and depends on the facts and particular circumstances of a given case.*”³ The Pennsylvania Superior Court has provided a non-exhaustive list of factors to consider when determining if forcible compulsion existed in a given case. Those include; “the respective ages of the victim and the accused, the respective mental and physical conditions of the victim and the accused, the atmosphere and physical setting in which the incident was alleged to have taken place, *the extent to which the accused may have been in a position of authority, domination or*

¹ 18 Pa.C.S.A 3107

² Commonwealth v. Berkowitz, 641 A2d 1161, 1163 (1994)(citation omitted)(emphasis added).

³ Commonwealth v. Eckrote, 12 A 3d 383, 387 (2010)(citations omitted).

custodial control over the victim, and whether the victim was under duress.”⁴ Furthermore, “The complainant's testimony is unquestionably sufficient to prove beyond a reasonable doubt the element of forcible compulsion or the threat of forcible compulsion.”⁵

This court heard the testimony of Ms. ██████ and Appellant. Ms. ██████’ version of events was found to be completely credible and believable. Mr. Jones entered her room and began touching her, forcing her to get up and leave. Later that same evening, Appellant, a much larger individual, positioned himself on top of Ms. ██████ and began raping her. Ms. ██████ testified that in order to penetrate her, Appellant had to force her legs apart. It is clear to this court that Appellant used the force necessary to cause Ms. ██████ to consent. Furthermore, Appellant was Ms. ██████’ trusted uncle and her de-facto landlord. This put him in a position of authority over Ms. ██████, meaning that he was able to use psychological force in order to get Ms. ██████ to act as he wanted. Ms. ██████ testified several times that during the entire rape she was trying to think of ways to get away from Appellant, but was unable to do so because he was bigger than her and on top of her. Furthermore, Ms. ██████ testified that Appellant had, on prior occasions, told her he had a gun, putting her in fear for her life if she were to fight back. This court found that Appellant used forcible compulsion to carry out this rape. Viewed in the light most favorable to the Commonwealth, there is absolutely nothing in the record to disturb this finding and Appellant’s conviction should be upheld.

2. Appellant’s Convictions were not Against the Weight of the Evidence

**because Ms. ██████’ Testimony was Credible and Compelling and Mr. Jones’
Testimony was Not Believable and Incredible.**

⁴ Commonwealth v. Smolko, 666 A2d 672, 675 (1995)(citation omitted) (emphasis added).

⁵ Commonwealth v. Stambaugh, 512 A2d 1216, 1218 (1986)(citation omitted).

In considering a challenge to the sufficiency of the evidence, the Court must decide whether the evidence adduced at trial, viewed in the light most favorable to the Commonwealth, together with all reasonable inferences therefrom, could enable the fact-finder to find every element of the crimes charged beyond a reasonable doubt.⁶ In making this assessment, a reviewing court may not weigh the evidence and substitute its own judgment for that of the fact-finder, who is free to believe all, part, or none of the evidence.⁷ “[A] mere conflict in the testimony of the witnesses does not render the evidence insufficient.”⁸ The Commonwealth may satisfy its burden of proof entirely by circumstantial evidence, and “if the record contains support for the verdict, it may not be disturbed.”⁹ The facts and circumstances need not preclude every possibility of innocence. The fact finder may resolve any doubts concerning the defendant’s guilt, 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.¹⁰

In this matter, this court was called on to make a determination of credibility of multiple witnesses. Essentially a determination had to be made as to whether to believe Ms. ██████’ version of events or Appellant’s. This court found Ms. ██████ to be a very credible and believable witness. Her version of events did not waver, even under a lengthy cross-examination and she gave a believable and descriptive account of events. Viewing the facts of this case in the light most favorable to the Commonwealth, the conviction should be upheld. This court made a determination of fact and there is nothing in the record to warrant overturning that determination. During a waiver trial, it is the responsibility of the trial court to determine the credibility of

⁶ Commonwealth v. Little, 879 A.2d 293, 297 (Pa. Super. 2005), *appeal denied*, 890 A.2d 1057 (Pa. 2005).

⁷ Commonwealth v. Adams, 882 A.2d 496, 498-99 (Pa. Super. 2005).

⁸ Commonwealth v. Montini, 712 A.2d 761, 767-68 (Pa. Super. 1998) *quoting* Commonwealth v. Moore, 648 A.2d 331, 333 (Pa. Super. 1994), *appeal denied*, 655 A.2d 512 (Pa. 1995)).

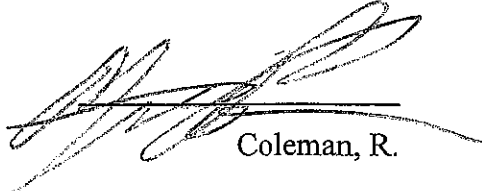
⁹ Commonwealth v. Adams, 882 A.2d at 499 (quoting Commonwealth v. Burns, 765 A.2d 1144, 1148 (Pa. Super. 2000), *appeal denied*, 782 A.2d 542 (Pa. 2001)).

¹⁰ Commonwealth v. Cassidy, 668 A.2d 1143, 1144 Pa. Super. 1995.

witnesses presented. This court found beyond a reasonable doubt that Appellant committed the crimes he was accused of. There is nothing in the record that would shock the conscience and this court's ruling should not be disturbed.

V. CONCLUSION

For the above stated reasons the judgment and sentence of this Court should be upheld and Appellant's claims should be denied.



Coleman, R.