COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
WILLIAM CLEGG	:	
Appellant	:	No. 2292 EDA 2022

Appeal from the Judgment of Sentence Entered August 15, 2022
In the Court of Common Pleas of Philadelphia County
Criminal Division at No: CP-51-CR-0008964-2018

BEFORE: STABILE, J. and McLAUGHLIN, J., and COLINS, J.*

OPINION BY STABILE, J.: **FILED JULY 18, 2025**

This matter returns to us upon remand from the Supreme Court of Pennsylvania. On April 7, 2025, the Supreme Court granted the petition for allowance of appeal filed by Appellant William Clegg, vacated in part this Court's September 13, 2024, order affirming Appellant's judgment of sentence, and remanded this case to us to consider Appellant's challenge to the sufficiency of the evidence for his unlawful contact with minor conviction[1] in light of ***Commonwealth v. Strunk***, 325 A.3d 530 (Pa. 2024). We have done so and affirm the conviction.

The facts relevant to this remand are as follows: In 2018, the victim, L.L., was living in Philadelphia with her father (Appellant), mother, two

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* Senior Judge previously assigned to the Superior Court and author of this Court's prior memorandum, did not participate in this remand decision due to his retirement.

[1] 18 Pa.C.S.A. § 6318.

brothers, and an uncle. N.T. Trial Day 1, 10/21/21, at 74-75. Appellant was not in L.L.'s life until he reunited with his family in 2016. ***Id.*** at 75. On the weekend of October 5-7, 2018, L.L. was staying at a campground in Chester County with Appellant, her mother, her brothers, her aunt, her aunt's boyfriend, and her cousin. ***Id.*** at 79-80. They were all staying in a two-bedroom camper which consisted of a master bedroom in the front, bunk beds in the back bedroom and a pull-out couch. ***Id.*** at 201-02. The plan was for Appellant, L.L.'s mother and baby brother to stay in the master bedroom; her aunt and her aunt's boyfriend in the back bedroom; and L.L., her brother and her cousin to stay in the living room area. ***Id.*** at 81-82.

Sometime on Saturday evening, L.L.'s parents got into a fight and her mother drove off. ***Id.*** at 82. L.L. was at a neighbor's campsite because of her parents fighting. ***Id.*** After her mother drove off, Appellant "scream[ed]" at L.L. to come inside the trailer. ***Id.*** Once inside, Appellant directed L.L. to sleep in the master bedroom with him and her baby brother. ***Id.*** L.L. laid down in the bed with Appellant and her baby brother in between them. ***Id.*** at 82, 206. After falling asleep, L.L. awoke to someone touching her vagina. ***Id.*** at 83. L.L. laid on her back in shock with her eyes closed until the touching stopped. ***Id.*** at 84. When she opened her eyes, Appellant was there. ***Id.*** at 85.

Initially, L.L. did not tell anyone about what happened to her and "thought maybe it was like a bad dream." ***Id.*** However, when "[i]t happened several times after that" in their home in Philadelphia, L.L. knew that it was

not a bad dream. ***Id.*** at 85-86. L.L. recalled one such incident in her Philadelphia home where she was awoken by Appellant touching her vagina, pretended she was asleep and rolled around "to maybe get it to stop." ***Id.*** at 86. L.L. then rolled into a "planking position" with her stomach and chest on the bed and her elbows tucked under her chest. ***Id.*** at 88. While in this position, L.L. felt a penis being pressed and rubbed against her vagina. ***Id.*** at 89. Appellant was in a planking position above her and tried to separate her legs with his foot. N.T. Trial Day 2, 10/22/21, at 18, 37.

The jury found Appellant guilty, and he was sentenced to an aggregate imprisonment term of 14 to 28 years, followed by five years of probation. On appeal, Appellant challenged, among other claims, the sufficiency of the evidence to support his conviction of unlawful contact with a minor, 18 Pa.C.S.A. § 6318, which reads, in pertinent part:

> (a) **Offense defined.** –A person commits an offense if the person is intentionally **in contact** with a minor . . . for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within the Commonwealth:
>
> (1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).
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> * * * *
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> (b) **Definitions.** –As used in this section, the following words and phrases shall have the meanings given to them in this subsection:
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> * * * *

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

18 Pa.C.S.A. § 6318(a)(1), (c) (emphasis added). A panel of this Court, relying on ***Commonwealth v. Velez***, 51 A.3d 260 (Pa. Super. 2012), affirmed Appellant's judgment of sentence on September 13, 2024. In ***Velez***, we addressed the type of communication or contact necessary to sustain an unlawful contact conviction. There, a woman found the defendant molesting her daughter, who was "lying on the bed, nude from the waist down, with her knees up and defendant's head between her legs." ***Velez***, 51 A.3d at 262. Velez argued that there was no contact and that his physical touching of the victim, by itself, was not the type of contact contemplated by the unlawful contact statute. We found the evidence sufficient by concluding that, despite the lack of evidence of overt verbal communication, it was reasonable to infer that the defendant communicated with the victim, either nonverbally or verbally, to assume the position in which she was found by her mother. ***Id.***

We relied upon ***Velez*** in concluding that there was sufficient evidence for indecent contact in this case:

> Appellant initiated the sexual abuse at times when L.L. had been asleep. During the incidents at the victim's home, she recalled that, when she woke to Appellant touching her vagina, her bottoms and underwear clothing had been removed off her. L.L. also remembered a moment during the abuse when Appellant separated her legs with his foot. The separation and repositioning of her legs was clearly meant to facilitate Appellant's sexual

> activity with L.L. Viewing the repositioning of L.L.'s legs and the removal of her clothing in the light most favorable to the Commonwealth, **it was reasonable to infer here that Appellant communicated with the victim, through nonverbal contact, for the purpose of exposing her** and placing her in a position for Appellant to assault her. ***See Velez***, 51 A.3d at 262.

Commonwealth v. Clegg, 2024 WL 4182606 at *9, unpublished memorandum (Pa. Super. filed Sept. 13, 2024) (some citations omitted) (emphasis added). Thereafter, Appellant filed a petition for allowance of appeal to our Supreme Court.

While Appellant's petition was pending, the Supreme Court granted allowance of appeal in ***Strunk*** on the question of whether being "in contact with," as set forth in Section 6318, includes conduct that is not communicative in nature. There, the minor victim testified to two instances in which she feigned sleep while Strunk fondled her breast and eventually removed her pants and inserted his penis into her vagina. During one of these incidents, Strunk whispered "something" into the minor victim's ear, although she did not remember what he said and did not believe it was a threat.

The minor victim testified to a third incident in which she was lying on the couch recovering from oral surgery and was under the influence of painkillers. Strunk fondled the minor victim's breasts and digitally penetrated her vagina while she feigned sleep. This time, the assault was interrupted by the victim's mother.

On appeal to this Court, Strunk challenged, among other things, the sufficiency of the evidence, arguing that he did not verbally communicate with

the victim. A panel of this Court acknowledged there was no evidence of verbal communication with, or nonverbal signals given to, the victim to facilitate the assaults. However, we found the element of communication was satisfied by evidence that Strunk "engaged in physical contact with [the victim] beyond the assaults themselves to facilitate his sexual contact with [the victim.]" ***Strunk***, 325 A.3d at 533.

On allowance of appeal, our Supreme Court began by reviewing prior decisions of this Court addressing sufficiency challenges to convictions under Section 6318, in which we "consistently confirmed that the statute is fundamentally concerned with communication." ***Id.*** at 537. Following a review of the textual history of Section 6318, as well as dictionary definitions of the word "contact" and the idiom "come in contact with," the Court concluded that "the plain text does not resolve the issue of whether the legislature used 'contact' to refer solely to communication, or whether it intended to also use the alternative definition of a physical touching." ***Id.*** at 539. Thus, the Court turned to the legislative history of the statute, concluding that:

> the Superior Court has been consistently correct in recognizing the communicative focus of Section 6318. Section 6318 does not criminalize inappropriate touching of minors; other statutes accomplish that goal. Section 6318 is perhaps best described as an anti-grooming statute. But even that description is imperfect. **Any communication that is intended to further the commission of one of the crimes listed in Section 6318(a)**, whether it fits the definition of grooming or not, **falls within the prohibition.**

Id. at 542 (emphasis added).

The Court ultimately determined that, in affirming Strunk's conviction for unlawful contact with a minor, this Court had

> conflated verbal, written, and other forms of non-verbal communicative efforts to mean any form of physical contact. That is not the purpose or intent of Section 6318. Rather, Section 6318 is **intended to criminalize and punish communication designed to induce or otherwise further the sexual exploitation of children**.

Id. at 543 (emphasis added).

While the majority in ***Strunk*** found that the propriety of ***Velez*'s** explicit reasoning was beyond the scope of that appeal, two Justices questioned the continued propriety of its holding explaining:

> Our decision today does not foreclose the possibility that a non-verbal action can suffice as proof of the communication necessary for unlawful contact with a minor. For instance, a nod of the head or pointing a finger can clearly convey a message. What today's ruling does foreclose is the finding that a 'contact' automatically occurs whenever an adult engages in a sexual encounter with a minor. The Commonwealth must prove some form of communication between the adult and the minor and that the adult's communication was made for the purpose of facilitating a sexual encounter. ***Velez*** demands no such thing. Instead, it allows juries and courts to infer automatically that a communication occurred upon no other proof than the fact that the defendant was engaged in a sexual act with a minor. But, no crime can be inferred by the commission of another. Unlawful contact with a minor is not a strict liability offense. It is a separate, substantive offense, with an express *mens rea*, and all of its elements must be proven beyond a reasonable doubt. I would overrule ***Velez*** here and now, as it relieves the Commonwealth of its burden to prove an essential element of unlawful contact with a minor.

Id. at 549 (Wecht and Donohue, J.J., concurring).

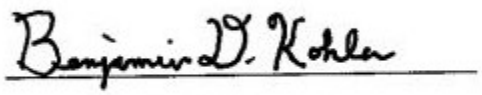
Applying ***Strunk*** to the facts of this case, we conclude that there was sufficient evidence to support Appellant's conviction of unlawful contact with a minor. L.L. testified that before the first assault, her parents got into a fight and left the campground. Appellant then screamed at L.L. to come inside the trailer and directed her to sleep in the front bedroom with him. She laid down in bed with Appellant and her little brother in between them. L.L. fell asleep and was awoken by Appellant touching her vagina.

Appellant communicated to L.L. when he screamed at her to come inside the trailer and directed her to sleep in bed with him in the front bedroom. L.L. did what Appellant told her to do. She was then sexually assaulted. Appellant's oral communication induced L.L. to sleep in a different location than she planned and was intended to further the commission of a crime, *i.e.*, rape of a minor. Thus, under the statutory definitions provided in section 6318(a), and in accordance with our Supreme Court's holding in ***Strunk***, Appellant's conviction of unlawful contact with a minor must be upheld.

Judgment of sentence affirmed.

Judge Colins did not participate in the consideration or decision of this case.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 7/18/2025