NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ZAMIRE J. COTTRELL	:	
Appellant	:	No. 3298 EDA 2024

Appeal from the Judgment of Sentence Entered July 15, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0005494-2023

BEFORE: KUNSELMAN, J., NICHOLS, J., and SULLIVAN, J.

DISSENTING MEMORANDUM BY KUNSELMAN, J.:

FILED NOVEMBER 10, 2026

I respectfully dissent, as I would conclude the evidence at trial was insufficient to establish that Appellant was "intentionally in contact with" the Victim, which is required to sustain his conviction for unlawful contact with a minor. 18 Pa.C.S. § 6318(a)(1.2). Although Appellant's behavior was unquestionably inappropriate, the testimony and video introduced at trial do not support finding him guilty of this offense.

The statutory definition of "contact" is expansive but not unlimited: "Direct or indirect contact or communication by any means, including contact or communication in person . . . ." 18 Pa.C.S. § 6318(c) (definitions). While Appellant's post-sentence motions were pending, the Supreme Court of Pennsylvania clarified that for this crime, "contact" means communication. ***Commonwealth v. Strunk***, 325 A.3d 530, 542–43 (Pa. 2024). I agree with

the Majority that our sufficiency review incorporates this authority but disagree with the conclusion that the evidence from Appellant's trial supports any reasonable inference that Appellant communicated with the Victim at any time.

The Commonwealth advances four theories how a jury could have found that Appellant communicated with the Victim. I find none persuasive.

For its first theory, the Commonwealth submits that Appellant's closing and locking the bedroom door was a form of nonverbal communication, where Appellant directed the Victim to stay in the bedroom with him. Commonwealth's Brief at 12–13. The Majority (like the trial court) takes this theory further: Appellant's actions "communicated to the Victim that she was not free to leave the room." Majority Memorandum at 11–12 & n.7.

As applied here, I would reason that Appellant's physical actions of closing and locking the bedroom door was not the type of "non-verbal communicative effort[]" that Section 6318 requires. ***Strunk***, 325 A.3d at 543. The Victim's own understanding of the situation rebuts the inference that Appellant closing the door was intended to convey a message to her. Even though the Victim remembered that Appellant closed the door, she denied that he had any contact with her before the sexual incident.

> Q. . . . So you said the last thing that you remember seeing is the door closing. Did you have any contact between you and the defendant before you felt your tampon being pushed up?
>
> A. Not that I remember.
>
> Q. What about physical contact between you guys?

A. No.

Q. No. Okay.

Do you remember the defendant kissing you?

A. I don't remember it.

N.T., 3/13/24, at 48. Because all communication is a form of contact, the Victim's denial that there was any contact should make us pause before holding the evidence sufficient for a jury to find communication.

Conceivably, locking a door could communicate with the people **outside** of the door that they should not enter. Here, however, Appellant and the Victim were both **inside** the bedroom. ***See id.*** at 72 (agreeing on cross-examination that Appellant was not blocking her from the door). If Appellant thought that the Victim was aware of her surroundings, his action of closing and locking the door from the inside would not communicate that she could not leave. She could just open the door. Alternatively, if Appellant thought that the Victim was incapacitated and not aware of her surroundings, he would have had no reason to communicate any message to her. Thus, any inference that Appellant intended to communicate with her by locking the door from the inside is tenuous. It "would be rank speculation" to infer that Appellant communicated anything to the Victim when he closed and locked the door. ***Strunk***, 325 A.3d at 543. Therefore, this action is an insufficient basis to sustain Appellant's Section 6318 conviction.

For its second and third theories, the Commonwealth argues that by taking off the Victim's pants and repositioning her body on the bed, Appellant

communicated "that he was going to engage in sexual conduct with her." Commonwealth's Brief at 13–16. The Majority does not reach these theories. I would reject them.

Although the evidence viewed in a light most favorable to the verdict winner supports factual findings that Appellant pushed the Victim onto the bed and pulled down her pants and underwear, no direct or circumstantial evidence supports a reasonable inference that these actions were intended to communicate a message to the Victim. As noted above, the Victim denied that Appellant had any contact with her before his sexual contact. N.T., 3/13/24, at 48.

But even if the Victim did interpret Appellant's actions as a silent signal of his sexual plan, this would not prove nonverbal communication for Section 6318. The most natural inference from Appellant's wordless manipulation of the Victim's body is that he was indifferent to her understanding of the situation. This falls short of the statutory prohibition on being "intentionally in contact with" the Victim.

Finally, for its fourth theory, the Commonwealth argues that Appellant's oral statement, "No, it's fine, it's fine," was communication with the Victim. Commonwealth's Brief at 16–18. The evidence at trial supports a finding that Appellant made this oral statement when he was in the bedroom with the Victim. However, the statement and its context would not support a finding beyond a reasonable doubt that Appellant directed his statement to the Victim.

The evidence showed that a group of the Victim's friends tried to enter the locked door, and Appellant responded to them. One of the friends testified that when the group tried to enter the bedroom, Appellant yelled, "One moment, one moment." N.T., 3/14/24, at 42. Additionally, the recording from Sergeant Anthony DiPietro's body-worn camera was introduced into evidence; in the video, the Victim told the officer what Appellant said:

> The Victim: Like, I don't remember what happened between me and getting on the bed, I just remember I was going in to check on [S.P.] to make sure she was breathing, because I was worried she was going to choke on her vomit. So I was going [in] after her, and then, and then I don't know what happened between me trying to check on her and me getting bent over, but he just—I don't know. I didn't take any of my own clothing off. I didn't.
>
> Sergeant DiPietro: Okay, I—I understand that part. Did he take your clothes off?
>
> The Victim: I don't, *I* didn't. I don't, I feel bad bl—I don't know. I didn't. I never pulled my pants down.
>
> Sergeant DiPietro: Well, that's what I'm asking you. Did he?
>
> The Victim: Yes.
>
> Sergeant DiPietro: Okay. And then what happened?
>
> The Victim: And then he just wouldn't stop, and then people tr—kept trying to get in the door, and it was locked, and he said, "No." I don't um—I don't remember what exactly what he said if I'm being honest with you, but he just trying to—he just kept trying to say, like, "Don't come in. Don't come in." **And when—the door was locked, so nobody was coming in, but they were trying to get in, and he just kept saying, "No, it's fine. It's fine."** And then I couldn't see because I was looking at the window.

Exhibit C-41, at 6:45–7:49 (bold emphasis added).

The relevant inquiry is whether the jury could find that Appellant was in contact with the Victim when he said, "No, it's fine. It's fine." In the body-worn camera footage, the Victim did not expressly tell Sergeant DiPietro that Appellant was talking to her. Notably, the Victim reported that Appellant made this statement when the people were trying to enter the bedroom. Indeed, Appellant's other statements, "No," and "Don't come in, don't come in," were unambiguously directed outside the door. The words, "It's fine, it's fine" just as plausibly assuage the concerned group as they console the crying Victim. I would conclude that these words at best equally support a finding that Appellant directed them outside the room, which is not sufficient to sustain his conviction for an offense that requires proof he was intentionally in contact with the Victim who was in the room with him. ***See In Interest of J.B.***, 189 A.3d 390, 409 (Pa. 2018) (citing ***Commonwealth v. Woong Knee New***, 47 A.2d 450 (Pa. 1946)).

In short, the offense of unlawful contact with a minor requires proof beyond a reasonable doubt that Appellant communicated with the Victim. Here, that proof is missing. Indeed, Appellant's lack of communication with the minor Victim before, during, and after his sexual encounter is one reason that his actions were so egregious. I do not condone Appellant's behavior with the Victim. However, because Appellant's actions do not meet the elements of the crime of "unlawful contact with a minor," I would reverse his conviction for this crime and not reach his remaining issues on appeal. Therefore, I respectfully dissent.