NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ANTHONY QUARLES	:	
Appellant	:	No. 2780 EDA 2025

Appeal from the Judgment of Sentence Entered October 20, 2025
In the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0003236-2024

BEFORE: LAZARUS, P.J., PANELLA, P.J.E., and STEVENS, P.J.E.*

MEMORANDUM BY LAZARUS, P.J.: **FILED NOVEMBER 25, 2026**

Anthony Quarles appeals from the judgment of sentence, entered in the Court of Common Pleas of Montgomery County, following his convictions of one count each of indecent assault—lack of consent,[1] indecent assault—complainant less than 13 years of age,[2] and corruption of minors.[3] After careful review, we affirm on the basis of the well-written opinion authored by the Honorable Wendy G. Rothstein. ***See*** Trial Court Opinion, 3/17/26, at 1-16.

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* Former Justice specially assigned to the Superior Court.

[1] 18 Pa.C.S.A. § 3126(a)(1).

[2] ***Id.*** at § 3126(a)(7).

[3] ***Id.*** at § 6301(a)(1)(i).

We adopt the trial court's factual summary set forth in its opinion, ***see id.*** at 1-2, but provide a truncated version here. On August 23, 2023, Quarles and his co-worker smoked PCP and consumed alcohol together. Quarles then spent the night at his co-worker's home. In the early morning hours of August 24, 2023, Quarles, wearing only his underwear, entered the bedroom of his co-worker's nine-year-old daughter and began kissing her on her waist. Ultimately, the minor victim was able to escape and alert her parents, who removed Quarles from the house. Quarles was charged with the above-mentioned offenses.

On January 9, 2025, the Commonwealth filed a motion in limine to introduce the victim's out of court statements pursuant to the Tender Years Act.[4] On April 30, 2025, the trial court conducted a hearing, and, on May 1, 2025, it granted the Commonwealth's motion.

On July 11, 2025, the trial court conducted a jury trial, at which Quarles failed to appear. The trial court afforded Quarles' trial counsel multiple opportunities to contact Quarles. At first, Quarles informed counsel that he would arrive late as he was traveling from Philadelphia. However, Quarles eventually stopped responding to counsel and, by 10:45 a.m., had not appeared for trial. The trial court concluded that Quarles was aware of the trial date, had communicated with counsel the evening prior to trial and the morning of trial, and, thus, had willfully failed to appear, resulting in a waiver

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[4] 42 Pa.C.S.A. § 5985.1.

of his appearance for trial. ***See*** N.T. Jury Trial, 7/11/25, at 4, 6-8, 11, 21-22, 25-28. The trial court conducted the jury trial with Quarles *in absentia* and issued a bench warrant.[5] At the conclusion of trial, the jury convicted Quarles of the above-mentioned offenses.

The trial court deferred sentencing, ordered the preparation of a pre-sentence investigation report, and directed that Quarles undergo an assessment conducted by the Sexual Offenders Assessment Board (SOAB). Ultimately, SOAB completed its report and concluded that Quarles was not a sexually violent predator (SVP). As a result, the Commonwealth did not seek an SVP designation.

On October 20, 2025, the trial court conducted a sentencing hearing at which it imposed an aggregate sentence of 11½ to 23 months' incarceration followed by 3 years' probation. The court also ordered Quarles to register as a Tier III offender under Subchapter H of the Sex Offender Registration and Notification Act (SORNA). ***See*** 42 Pa.C.S.A. § 9799.14.

Quarles filed a timely notice of appeal and a court-ordered Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Quarles now raises the following claims for our review:

> 1. Did the trial court err in sustaining the verdict on the charges of indecent assault where the Commonwealth failed to prove that [] Quarles had indecent contact with [the victim] for the purpose of sexual gratification?

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[5] Quarles was arrested on July 16, 2025, and held on bail. ***See*** Bail Order, 7/16/25, at 1-2.

> 2. Did the trial court err in sustaining the verdict on the charge of corruption of minors where the Commonwealth failed to present sufficient evidence that [Quarles] corrupted or tended to corrupt the morals of [the victim]?
>
> 3. Did the trial court err in overruling [Quarles'] objection and proceeding without [him] present [for trial] without a hearing and without sufficient evidence that [his] absence was without cause, in violation of Pa.R.Cr[im].P. 602(a)?
>
> 4. Did the trial court err in granting the Commonwealth's [Tender Years motion] and allowing [Allen] to testify to [the victim's] statements, where those statements were tainted by [Allen's] own statements and not reliable?

Brief for Appellant, at 8-9.

In his first two claims, Quarles challenges the sufficiency of the evidence for his convictions. ***See id.*** at 20-27. In particular, Quarles argues that the waist is not a sexual or intimate area as contemplated by sections 3126 or 3101. ***See id.*** at 20-25. Additionally, Quarles asserts that the Commonwealth failed to demonstrate that his kissing of the child victim's waist was for the purpose of arousing or gratifying any sexual desire. ***See id.*** at 23-25. Regarding his conviction of corruption of minors, Quarles contends that the Commonwealth failed to prove that Quarles' actions offended "community sense and morality" and failed to demonstrate that Quarles knowingly, intentionally, or recklessly intended to corrupt the morals of the minor. ***See id.*** at 25-27.

We adhere to the following standard of review:

> The standard we apply in reviewing the sufficiency of the evidence is whether[,] 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 [re-]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 [trier] of fact[,] while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part[,] or none of the evidence.

Commonwealth v. Smith, 97 A.3d 782, 790 (Pa. Super. 2014) (citation omitted).

For purposes of indecent assault, "sexual or other intimate parts" includes "a body part that is personal and private, and which the person ordinarily allows to be touched only by people with whom the person has a close personal relationship, and on which is commonly associated with sexual relations or intimacy." ***Commonwealth v. Gamby***, 283 A.3d 298, 313-14 (Pa. 2022).

Instantly, as set forth by the trial court, the Commonwealth presented sufficient evidence to demonstrate the elements of both of the indecent assault convictions and the corruption of minors conviction. ***See*** Trial Court Opinion, 3/17/26, at 4-7. Specifically, the child victim testified that she woke, in the middle of the night, to Quarles over top of her, wearing only his underwear, and kissing her waist. ***See id.*** The trial court did not err in finding

Quarrels' actions would offend the common sense of the community. ***See Gamby***, ***supra***; ***Commonwealth v. Pankraz***, 554 A.2d 974, 977 (Pa. Super. 1989) (this Court explaining an action constituting corruption of minors includes "[actions that] would offend the common sense of the community and the sense of decency, propriety[,] and morality, which most people entertain"). Furthermore, there is no requirement that a defendant's actions actually corrupt the morals of the minor. ***See Commonwealth v. Aguilar***, 340 A.3d 311, 322 (Pa. Super. 2025) (Commonwealth not required to prove defendant actually corrupted the minor's morals; the act or course of conduct need merely "tend[] to corrupt the morals of any minor").

In his third claim, Quarles argues that the trial court erred by trying him *in absentia*. ***See*** Brief for Appellant, at 27-31. Quarles' primary contention is that the trial court did not truly ascertain that his failure to appear was "without cause." ***See id.*** at 28-29. Quarles points out that he had contact with his defense attorney the evening before trial and several times on the morning of trial, during which he informed his counsel, who in turn informed the court, that Quarles was running late. ***See id.*** Quarles posits that the trial court was, thus, required to conduct a hearing as to whether his absence was willful or the result of an unfortunate traffic accident. ***See id.*** Upon review, we disagree.

Generally, a defendant has a constitutional and rule-based right to be present at his trial. ***See Commonwealth v. Wilson***, 712 A.2d 735 (Pa. 1998); ***see also*** Pa.R.Crim.P. 602(A). This right, however, is not absolute

and can be waived by a defendant's actions either expressly or implicitly. ***See Wilson***, ***supra***. Additionally, a defendant's rights under Rule 602 can be waived: "The defendant's absence without cause at the time scheduled for the start of trial or during trial **shall not** preclude proceeding with the trial, including the return of the verdict and the imposition of sentence." ***Id.***; ***see also id.*** cmt.

Here, as the trial court thoroughly sets out in its opinion, Quarles' counsel informed the trial court that Quarles was aware of the trial date and was in contact with counsel. ***See*** Trial Court Opinion, 3/17/26, at 8-12. Additionally, Quarles informed counsel on the morning of trial that he was on his way but was running late as he was traveling from Philadelphia. ***See id.*** Quarles informed counsel that he would arrive between 9:30 and 10:00 a.m. ***See id.*** at 9. By 10:45, after further delays, Quarles had stopped responding to his counsel and had not appeared for trial. ***See id.*** As a result of Quarles' actions, the trial court was well within its discretion to proceed with the trial *in absentia* after having concluded that Quarles waived his right to be present for trial. ***See id.***; ***see also*** Pa.R.Crim.P. 602(a), cmt.; ***Wilson***, ***supra***.

In his fourth claim, Quarles argues that the trial court erred in granting the Commonwealth's tender years motion. ***See*** Brief for Appellant, at 31-36. In particular, Quarles asserts that the victim's mother tainted the victim's testimony and, as a result, the victim's testimony should not have been admitted under the Tender Years Act. ***See id.***

> The standard of review employed when faced with a challenge to the trial court's decision as to whether or not to admit evidence is well[-]settled. Questions concerning the admissibility of evidence lie within the sound discretion of the trial court, and a reviewing court will not reverse the trial court's decision absent a clear abuse of discretion. Abuse of discretion is not merely an error of judgment, but rather whether the judgment is manifestly unreasonable or where the law is not applied or whether the record shows that the action is a result or partiality, prejudice, bias[,] or ill will.

Commonwealth v. Young, 989 A.2d 920, 924 (Pa. Super. 2010) (citations omitted).

"Generally, an out-of-court statement is inadmissible at trial unless it falls into one of the exceptions to the hearsay rule." ***Commonwealth v. Hunzer***, 868 A.2d 498, 510 (Pa. Super. 2005); ***see also*** Pa.R.E. 801(c) (defining "hearsay" as statement that "(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement"); Pa.R.E. 802 ("Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute.").

The Tender Years Act provides as follows:

> (1) An out-of-court statement made by a child victim or witness, who at the time the statement was made was 16 years of age or younger, describing any of the offenses enumerated[], not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if:
>
> > (i) the court finds, in an in[-]camera hearing, that the evidence is relevant and that the time, content[,] and circumstances of the statement provide sufficient indicia of reliability; and
> >
> > (ii) the child either:

(A) testifies at the proceeding; or

(B) is unavailable as a witness.

42 Pa.C.S.A. § 5985.1(a)

> The admissibility of this type of hearsay is determined by assessing the particularized guarantees of trustworthiness surrounding the circumstances under which the statements were uttered to the person who is testifying. To determine whether a child's out-of-court statements are admissible under the [Act], a trial court must assess the relevancy of the statements and their reliability in accordance with the test enunciated in [***Idaho v. Wright***, 497 U.S. 805 (1990)]. Although the test is not exclusive, the most obvious factors to be considered include the spontaneity of the statements, consistency in repetition, the mental state of the declarant, use of terms unexpected in children of that age[,] and the lack of a motive to fabricate.

Commonwealth v. Walter, 93 A.3d 442, 451 (Pa. 2014) (formatting altered, quotation marks and citations omitted).

Here, the trial court conducted a hearing on the Commonwealth's Tender Years motion, after which it concluded that the victim's statements and text messages to her mother were admissible under the Tender Years Act. ***See*** Trial Court Opinion, 3/17/26, at 12-16. In reaching this conclusion, the trial court thoroughly considered all relevant factors. ***See id.*** at 14-16 (trial court explaining victim's statements had multiple indicia of reliability: victim made statements as event was occurring via text or immediately afterwards; victim demonstrated clear and coherent mental state; victim did not embellish; victim had no obvious motive to fabricate or lie, was able to describe incident without prompting or suggestive questioning). Finally, we observe that the victim testified at the Tender Years hearing **and** at Quarles'

trial, where she was available for cross-examination. Accordingly, we discern no abuse of discretion.

Mindful of the record, the applicable standards of review, the relevant case law, and parties' briefs, we affirm on the basis of the trial court's thorough and well-reasoned opinion. ***See*** Trial Court Opinion, 3/17/26, at 1-16. Consequently, we afford Quarles no relief on his claims. The parties are directed to attach a copy of the trial court's opinion in the event of further proceedings.

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/25/2026

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IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	Common Pleas Court No.:
	:	CP-46-CR-0003236-2024
v.	:	
	:	
	:	Superior Court No.:
ANTHONY QUARLES	:	2780 EDA 2025

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OPINION

ROTHSTEIN, J. **March 17, 2026**

Appellant, Anthony Quarles, ("Defendant") appeals his judgment of sentence imposed on October 20, 2025, following a jury trial in which the jury found Defendant guilty of one (1) count each of indecent assault – lack of consent,[1] indecent assault of a child[2] and corruption of minors.[3] For the reasons that follow, the judgment of sentence is proper and should be affirmed.

FACTS AND PROCEDURAL HISTORY

On August 23, 2023, Defendant and his co-worker, Donald White, went out together in Philadelphia after work and smoked PCP in addition to consuming alcoholic beverages. Mr. White invited Defendant to stay at his house and both men eventually made their way to Mr. White's home in Bridgeport, Pa at approximately 1 a.m. While inside the residence, Mr. White informed Defendant he was welcome to sleep on the living room couch and instructed him that the bathroom was located on the second floor. Mr. White's wife, Charlita Allen, was awake when Defendant and Mr. White arrived and she subsequently sent a text message to her nine (9) year old daughter (the "victim") with instructions to lock her bedroom door due to Defendant's presence in the home.

SCAN 9 18/03/2026

[1] 18 Pa.C.S.A. § 3126(a)(1).

[2] 18 Pa.C.S.A. § 3126(a)(7).

[3] 18 Pa.C.S.A. § 6301(a)(1)(i).

Sometime during the evening, the victim used the bathroom but forgot to lock the door to her bedroom when she returned. At approximately 2:30 a.m., Defendant entered the victim's room in his underwear while she was sleeping, climbed into her bed and kissed her directly on her skin along her middle waist. The victim instructed Defendant to get off her, but he did not comply. The victim texted distress messages to Ms. Allen, but she was asleep and did not respond. The victim was eventually able to exit her bedroom and ran to her parents' bedroom where she informed them that there was a man in her bed. Mr. White ran into the victim's bedroom and discovered Defendant shirtless in the victim's bed. When confronted, Defendant exclaimed he was sorry. Mr. White and Ms. Allen subsequently escorted Defendant out of the residence. Later that day, Ms. Allen and the victim reported the incident to authorities.

On January 9, 2025, the Commonwealth filed a Motion in Limine to introduce the victim's Out of Court Statements (the "Tender Years Motion") which included, *inter alia*, the statements she made to her mother immediately following the incident. On May 1, 2025, following a hearing, the court granted the Tender Years Motion. On July 11, 2025, the court held a jury trial in which the jury found Defendant guilty of the charges referenced above. Defendant failed to appear and the court conducted the trial with Defendant in absentia.

On October 20, 2025, the court imposed an aggregate sentence of eleven and one-half (11½) to twenty-three (23) months of imprisonment and three (3) years of probation to run consecutive to the expiration of parole.[4] The court also ordered Defendant to register as a Tier III offender under 42 Pa.C.S.A. § 9799.14 of Subchapter H of the Sex Offender Registration and Notification Act ("SORNA"). Pursuant to 42 Pa.C.S.A. § 9799.15 of SORNA, Defendant's classification as a Tier III offender required him to register as a sex offender for life and to comply with all of the requirements associated with this registration. Defendant did not file any post-sentence motions. On October 24, 2025, Defendant filed a timely notice of

[4] The sentence of three (3) years of probation consecutive to the expiration of parole is mandated by 42 Pa.C.S.A. § 9718.5.

SCAN 9 18/03/2026

appeal. On October 23, 2025,[5] the court issued an Order directing Defendant to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b) (the "Concise Statement") within twenty-one (21) days. On October 31, 2025, Defendant filed a timely Concise Statement. In his Concise Statement, Defendant raises the following five (5) issues:

> DID THE TRIAL COURT ERR IN SUSTAINING THE VERDICT ON THE CHARGE OF INDECENT ASSAULT WITHOUT CONSENT OF OTHER (18 PA.C.S. § 3126(A)(1)) WHERE THE COMMONWEALTH FAILED TO PRESENT SUFFICIENT EVIDENCE THAT THE DEFENDANT HAD INDECENT CONTACT WITH Z.A. OR CAUSED Z.A. TO HAVE INDECENT CONTACT WITH HIM?
>
> DID THE TRIAL COURT ERR IN SUSTAINING THE VERDICT ON THE CHARGE OF INDECENT ASSAULT – PERSON LESS THAN 13 YEARS OF AGE (18 PA.C.S. § 3126(A)(7)) WHERE THE COMMONWEALTH FAILED TO PRESENT SUFFICIENT EVIDENCE THAT THE DEFENDANT HAD INDECENT CONTACT WITH Z.A. OR CAUSED Z.A. TO HAVE INDECENT CONTACT WITH HIM?
>
> DID THE TRIAL COURT ERR IN SUSTAINING THE VERDICT ON THE CHARGE OF CORRUPTION OF MINORS (18 PA.C.S. § 6301(A)(1)(I)) WHERE THE COMMONWEALTH FAILED TO PRESENT SUFFICIENT EVIDENCE THAT THE DEFENDANT CORRUPTED OR TENDED TO CORRUPT THE MORALS OF Z.A.?[6]
>
> DID THE TRIAL COURT ERR IN OVERRULING DEFENDANT'S OBJECTION AND PROCEEDING WITHOUT THE DEFENDANT PRESENT WITHOUT A HEARING AND WITHOUT SUFFICIENT EVIDENCE THAT DEFENDANT'S ABSENCE WAS WITHOUT CAUSE, IN VIOLATION OF PA.R.CR.P. 602(A)?
>
> DID THE TRIAL COURT ERR IN GRANTING THE COMMONWEALTH'S MOTION FOR OUT OF COURT TESTIMONY AND ALLOWING Z.A.'S MOTHER TO TESTIFY TO Z.A.'S STATEMENTS, WHERE THOSE STATEMENTS WERE TAINTED BY Z.A.'S MOTHER'S OWN STATEMENTS AND NOT RELIABLE?

(Defendant's Concise Statement).

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[5] The court received a copy of Defendant's notice of appeal on October 23, 2025 and issued the Order directing Defendant to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b) on that same date. The court later learned that notice of appeal was not properly filed until October 24, 2025.

[6] For ease of disposition, this court will address Defendant's first through third issues together.

DISCUSSION

I. THROUGH III. SUFFICIENCY OF THE EVIDENCE

In his first through third issues combined, Defendant claims the evidence presented at trial was insufficient to prove that he was guilty of the applicable offenses.

"The standard of review for a challenge to sufficiency of the evidence is to determine whether, when viewed in a light most favorable to the verdict winner, the evidence at trial and all reasonable inferences therefrom is sufficient for the trier of fact to find that each element of the crimes charged is established beyond a reasonable doubt." ***Commonwealth v. Vogelsong***, 90 A.3d 717, 718 (Pa.Super. 2014) *appeal denied*, 628 Pa. 622, 102 A.3d 985 (2014). "The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. ...[T]he trier of fact while passing upon the credibility of witnesses and weight of the evidence produced, is free to believe all, part or none of the evidence." ***Commonwealth v. Hansley***, 24 A.3d 410, 416 (Pa.Super. 2011) *appeal denied*, 613 Pa. 642, 32 A.3d 1275 (2011) (internal quotation marks omitted). Reasonable doubt necessarily entails that a conviction "must be based on more than mere suspicion or conjecture", however, "the Commonwealth need not establish guilt to a mathematical certainty." ***Commonwealth v. Stokes***, 78 A.3d 644, 649 (Pa.Super. 2013) *appeal denied*, 625 Pa. 636, 89 A.3d 661 (2014) (internal quotation marks omitted). Further, "when reviewing the sufficiency of the evidence, [the Superior Court] may not substitute its judgment for that of the fact-finder; if the record contains support for the convictions, they may not be disturbed." ***Id.***

"The uncorroborated testimony of the complaining witness is sufficient to convict a defendant of sexual offenses." ***Commonwealth v. Castelhun***, 889 A.2d 1228, 1232 (Pa.Super. 2005) (internal citation omitted). This includes testimony where the complaining witness is a minor. ***See Commonwealth v. Juray***, 275 A.3d 1037, 1046 (Pa.Super. 2022) (holding minor victim's testimony alone was sufficient to support guilty verdict for indecent assault and corruption of minors).

Section 3126 of the Crimes Code provides in pertinent part:

> **§ 3126. Indecent assault**
>
> **(a) Offense defined.** – A person is guilt of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:
>
> (1) the person does so without the complainant's consent;
>
> *.....*.....*
>
> (7) the complainant is less than 13 years of age
>
> *.....*.....*

18 Pa.C.S.A. § 3126(a)(1), (7). Indecent contact is defined as "[a]ny touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person." 18 Pa.C.S.A. § 3101.

For purposes of indecent assault, sexual or other intimate parts is not limited to only sexual body parts, but includes "a body part that is personal and private, and which the person ordinarily allows to be touched only by people with whom the person has a close personal relationship, and on which is commonly associated with sexual relations or intimacy." ***Commonwealth v. Gamby***, 283 A.3d 298, 313-14 (Pa. 2022). The element of arousal or sexual gratification may be proved solely through circumstantial evidence. ***Commonwealth v. Bowens***, 265 A.3d 730, 740 (Pa.Super. 2021) (***en banc***).

Section 6301 of the Crimes Code provides in pertinent part:

> **§6301. Corruption of minors**
>
> **(a) Offense defined. –**
>
> (1)(i) Except as provided in subparagraph (ii), whoever, being of the age of 18 years and upwards, by any act 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 any crime, or who knowingly assists or encourages such minor in violating his or her parole or any order of court, commits a misdemeanor of the first degree.
>
> *.....*.....*

SCAN 9 18/03/2026

18 Pa.C.S.A. § 6301(a)(1)(i).

> In deciding what conduct can be said to corrupt the morals of a minor, the common sense of the community, as well as the sense of decency, propriety and the morality which most people entertain is sufficient to apply the statute to each particular case and to individuate what particular conduct is rendered criminal by it. Furthermore, corruption of a minor can involve conduct towards a child in an unlimited number of ways. The purpose of such statutes is basically protective in nature. These statutes are designed to cover a broad range of conduct in order to safeguard the welfare and security of our children. Because of the diverse types of conduct that must be proscribed, such statutes must be drawn broadly. It would be impossible to enumerate every particular act against which our children need to be protected.

Commonwealth v. Decker, 698 A.2d 99, 101 (Pa.Super. 1997) (internal citations and quotation marks omitted).

Instantly, on August 23, 2023, Donald White and Defendant left work at approximately 6 p.m. and decided to go out together in Philadelphia. (N.T. Trial by Jury, 7/11/25, at 85, 87). Mr. White and Defendant smoked PCP and consumed alcoholic beverages while in Philadelphia. (***Id.*** at 88-89). Eventually, Mr. White decided to head back to his home in Bridgeport, Pa and invited Defendant to stay at the residence so they could both get up early in the morning and go to work together. (***Id.*** at 87-88). Mr. White's wife, Charlita Allen, approved his plan and ordered an Uber to transport both men from Philadelphia to Bridgeport. (***Id.*** at 89-90). Defendant and Mr. White arrived at the Bridgeport residence at approximately 1 a.m. (***Id.*** at 90, 103). Upon their arrival, Ms. Allen sent the nine (9) year old victim a text message which instructed her to lock her bedroom door due to Defendant's presence in the residence. (***Id.*** at 103). Mr. White informed Defendant that he was welcome to sleep on the living room couch and instructed him that the bathroom was located on the second floor. (***Id.*** at 90, 103-04).

Sometime during the evening, the victim used the bathroom but forgot to lock the door to her bedroom when she returned. (***Id.*** at 66). At approximately 2:30 a.m., Defendant entered the victim's room in his underwear while she was sleeping, climbed into her bed and kissed her directly on her skin along her middle waist. (***Id.*** at 66-68, Commonwealth Exhibits C-6 and C-8). The victim instructed Defendant to get off her, but he did not comply. (***Id.*** at 69, Commonwealth Exhibit C-8). The victim texted distress messages to Ms. Allen, but she was asleep and did not respond. (***Id.*** at 72, 106-07, Commonwealth Exhibits

C-6 and C-8). The victim was eventually able to exit her bedroom and ran to her parents' bedroom where she informed them that there was a man in her bed. (***Id.*** at 69, 72, Commonwealth Exhibit C-8).

Mr. White subsequently entered the victim's bedroom and discovered Defendant shirtless in the victim's bed. (***Id.*** at 91). When confronted, Defendant continually exclaimed that he was sorry. (***Id.*** at 107). Mr. White instructed Defendant to vacate the residence and Defendant responded "please don't kill me." (***Id.*** at 91-92). Mr. White and Ms. Allen subsequently escorted Defendant out of the residence. (***Id.*** at 107-08). The following morning, Defendant sent a text message to Ms. Allen in which he apologized for his actions. (***Id.*** at 110-11, Commonwealth Exhibit C-7).

Viewing this evidence in a light most favorable to the Commonwealth, the totality of the circumstances demonstrates Defendant engaged in indecent contact with the nine (9) year old victim for the purpose of arousing or gratifying his own sexual desire. Defendant entered the victim's bedroom while she was sleeping and engaged in the act of kissing her directly on the skin in the middle of her waist. The victim's testimony also established Defendant was in his underwear when he committed this act. The victim's waist constitutes a personal and private body part which the victim would not allow to be touched by a complete stranger. ***See Gamby, supra***. Additionally, Defendant had to manipulate the victim's clothing in order to kiss this particular portion of her body. ***See Commonwealth v. Vosburg***, 574 A.2d 679, 682 (Pa.Super. 1990), *appeal denied*, 529 Pa. 648, 602 A.2d 859 (1991) (holding minor victim's testimony that she felt someone pulling down her underwear while she had been sleeping in bed was sufficient to prove indecent assault). Accordingly, the evidence was sufficient to support Defendant's indecent assault convictions. ***See Vogelsong, supra***. Additionally, the evidence was sufficient to establish Defendant's conduct was plainly offensive to any common sense of decency, propriety and morality. ***See Decker, supra***. Accordingly, the evidence was also sufficient to support Defendant's corruption of minors conviction and Defendant's first through third issues merit no relief.

SCAN 9 18/03/2026

IV. TRIAL IN ABSENTIA

In his fourth issue, Defendant avers the court abused its discretion in conducting a trial *in absentia.* Defendant emphasizes the court did not conduct a hearing on the cause of Defendant's failure to appear for trial and insists there was a lack of sufficient evidence which demonstrated Defendant's absence was voluntary.

"A defendant has an absolute right to be present at his trial. It is a right, however, which may be waived. It may be waived expressly, or waiver may be implied by a defendant's actions." ***Commonwealth v. Sullens***, 533 Pa. 99, 102, 619 A.2d 1349, 1351 (1992). "[W]hen a defendant is absent without cause at the time his trial is scheduled to begin, he may be tried *in absentia.*" ***Id.*** at 104, 619 A.2d at 1352. ***See also*** Pa.R.Crim.P. 602(A) (stating "[t]he defendant's absence without cause at the time scheduled for the start of trial or during trial shall not preclude proceeding with the trial, including the return of the verdict and the imposition of sentence").

"Unless the defendant is prevented from attending the proceedings for reasons beyond his or her control, then the defendant is expected to be present at all stages of the trial. A defendant owes the court an affirmative duty to advise it if he or she will be absent. If a defendant has a valid reason for failing to appear, for example, if he or she has a medical emergency or is called to leave because of a family emergency, then the defendant can alert the court personally or through counsel of the problem." ***Commonwealth v. Wilson***, 551 Pa. 593, 600, 712 A.2d 735, 738 (1998) (internal citations omitted). Where a defendant voluntarily refuses to remain in contact with his counsel, there is a presumption that he "knowingly sought to avoid being tried." ***Commonwealth v. Kelly***, 78 A.3d 1136, 1143 (Pa.Super. 2013), *appeal denied*, 625 Pa. 648, 91 A.3d 161 (2014).

Instantly, Defendant's trial was scheduled to commence on July 11, 2025 at 8:30 a.m. On the day of trial at 8:30 a.m., defense counsel informed the court that Defendant was in Philadelphia. (N.T. Trial by Jury, 7/11/25, at 4). Despite Defendant's absence, the court instructed the parties to begin evaluation of the juror questionnaires in light of the fact that this was not an essential part of the trial in which Defendant was

required to be present. (***Id.*** at 4-5). Defense counsel objected to Defendant's absence and the court overruled the objection. (***Id.***). Defense counsel indicated that he had spoken with Defendant "at length" the previous day about the Commonwealth's plea offer. (***Id.*** at 5).

At 8:59 a.m., Defendant still had not appeared and the following exchange occurred:

THE COURT:	All right. I wanted to add a few things on the record. I guess it was – [defense counsel], **was your client aware of the trial**?
[DEFENSE COUNSEL]:	**He was, Your Honor**.
THE COURT:	All right. And you spoke to him last night?
[DEFENSE COUNSEL]:	I spoke to him last night and spoke to him this morning, Your Honor.
THE COURT:	And at some point this morning, you received a call from your client?
[DEFENSE COUNSEL]:	I spoke to him – I called him, yeah.
THE COURT:	Okay. And at that point at 8:30 a.m., where was he?
[DEFENSE COUNSEL]:	Somewhere in Philadelphia on his way here. He reported to me he'd be here between 9:30 and ten.
	..........*
	I spoke to [Defendant]. He's aware we're starting without him.
THE COURT:	Okay.
[DEFENSE COUNSEL]:	I also instructed him to come to our office,[7] not to the courtroom, so he doesn't walk in, in the middle, and I was going to have him stay down there until we're done picking and bring him up after that.

[7] Defense counsel works for the Montgomery County Public Defender's Office, whose office is located within the courthouse.

(***Id.*** at 6-8) (emphasis added). At 9:35 a.m., Defendant still had not appeared and the court began voir dire. (***Id.*** at 11). At 10:22 a.m., following the conclusion of voir dire, Defendant still had not appeared and defense counsel indicated he had just texted the Public Defender's Office and there was no sign of Defendant. (***Id.*** at 21-22).

At 10:45 a.m., immediately after the jury had been sworn, the court asked defense counsel about Defendant's whereabouts:

THE COURT:	All right. [Defense counsel], it's now 10:45. Is the defendant here?
[DEFENSE COUNSEL]:	Let me check my phone, Your Honor. Judge, last word from my office ten minutes ago, no sign of him yet.
THE COURT:	All right. Let's pass this out.
[DEFENSE COUNSEL]:	Judge, [my colleague] is here. Let me just make sure.
THE COURT:	Based on information that was shared, the defendant knew of this date. Defense counsel had communications with him last night and this morning. At this point, I make a determination he's made a conscious decision not to appear and waived his right to be present. We will proceed in absentia.

..........*

[DEFENSE COUNSEL]:	Judge, I guess I would request that I be able to touch base with him one last time just to make sure he didn't get waylaid or some kind of hit by a car or whatever while he was getting here this morning.
THE COURT:	If you want to make that call. Otherwise, we're proceeding at this point. So go do that immediately.
[DEFENSE COUNSEL]:	Thank you.

..........*

THE COURT:	All right. Back on the record. It's now 10:55. This trial was noticed for 8:30 a.m. this morning. [Defense counsel], have you been able to get in touch with your client?
[DEFENSE COUNSEL]:	Good morning again, Your Honor. I did call him while we were on the recess. I was not able to reach him, which I had been able to reach him earlier this morning. He did not answer the phone. I would object to an absentia hearing only because he was available and now he's not, and I have no way of knowing whether he was hit by a car, you know, disappeared somewhere, whatever. I have no idea what could have happened to him. Given that he was in communication and now is not, I would object to the in absentia since I don't know what his status is.
THE COURT:	All right. The Court is still going to proceed in absentia. He had notice of the trial. You spoke to him last night and he knew about it. This morning you had to call him at 8:30, and at 8:30, he advised you that he was in Philadelphia and he said he'd be here within the hour. That would have been 9:30. That has not occurred, so in the Court's opinion, defendant has made a conscious decision not to appear at trial and we will proceed in absentia.

(*Id.* at 25-28).

Defense counsel admitted that Defendant had notice of the trial and could not provide any legitimate reason for Defendant's absence besides baseless claims that Defendant could have been the victim of an unforeseen event such as a car accident. Notably, however, there is no dispute that Defendant was in contact with defense counsel on the morning the trial was scheduled to commence and was supposedly at a location in Philadelphia rather than the Montgomery County Courthouse. Defendant subsequently cut off all

communication with defense counsel. Considering Defendant already had no stated justification for failing to appear at the scheduled start time of 8:30 a.m., his later failures to communicate his status to his attorney created the presumption that Defendant was knowingly attempting to avoid being tried. ***See Kelly, supra.***[8] Additionally, during his sentencing hearing, Defendant stated "I just want to apologize to the Court for the events that took place. I want to apologize for missing the trial." (N.T. Sentencing Hearing, 10/20/25, at 13-14). In this statement, Defendant failed to give any justification for missing the trial and appeared to accept full responsibility for his absence. ***See Sullens, supra*** at 105-05, 612 A.2d 1352-53 (holding reviewing court is permitted to review evidence from subsequent hearings which demonstrates that a defendant's absence was without cause); ***see also Commonwealth v. Johnson***, 734 A.2d 864-866-67 (Pa.Super. 1999) (stating a defendant's admission at sentencing that he received notice of his trial date was a relevant factor in the analysis of whether his absence was without cause). To date, Defendant has not provided any type of explanation with respect to his absence at trial.

Therefore, Defendant was absent from the trial without cause and he voluntarily waived his right to be present. ***See Wilson, supra***; ***Sullens, supra***. Accordingly, Defendant's fourth issue merits no relief.

V. TENDER YEARS EXCEPTION

In his fifth issue, Defendant argues the victim's out of court statements to her mother around the time of the incident, which included text messages and verbal statements, were tainted by her mother's own statements and therefore constituted inadmissible hearsay which did not meet the reliability threshold under the Tender Years Hearsay Act.

The Tender Years Hearsay Act (the "Tender Years Act") creates an exception to the general rule against hearsay for young victims and witnesses. Specifically, the Tender Years Act provides in pertinent part:

[8] The Montgomery County Sheriff's Office Incident Report dated July 15, 2025 indicates that following the court's issuance of a bench warrant on July 11, 2025, authorities took Defendant into custody at one of his workplaces in Philadelphia.

SCAN 9 18/03/2026

§5985.1. Admissibility of certain statements

(a) General rule. –

(1) An out-of-court statement made by a child victim or witness, who at the time the statement was made was 12 years of age or younger, describing any of the offenses enumerated in paragraph (2) [includes criminal homicide], not otherwise admissible by statute or rule of evidence is admissible in evidence in any criminal or civil proceeding if:

(i) the court finds, in an in camera hearing, that the evidence is relevant and that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(ii) the child either

a. testifies at the proceeding; or

b. is unavailable as a witness

..........*

(a.1) Emotional Distress. – In order to make a finding under subsection (a)(1)(ii)(B) that the child is unavailable as a witness, the court must determine, based on evidence presented to it, that testimony by the child as a witness will result in the child suffering serious emotional distress that would substantially impair the child's ability to reasonably communicate. In making this determination, the court may do all of the following:

(1) Observe and question the child, either inside or outside the courtroom.

(2) Hear testimony of a parent or custodian or any other person, such as a person who has dealt with the child in a medical or therapeutic setting.

..........*

42 Pa.C.S.A. § 5985.1. The standard of review with respect to the admission of a child's out-of-court statement under the Tender Years Act is abuse of discretion. ***Commonwealth v. Curley***, 910 A.2d 692 (Pa.Super. 2006), *appeal denied*, 592 Pa. 785, 927 A.2d 622 (2007).

When making a determination as to whether the child's out-of-court statements provide sufficient indicia of reliability under the Tender Years Act, the court must focus on the trustworthiness of the statements, which is evaluated by considering (1) the spontaneity of the statements, (2) the consistency in repetition, (3) the use of terms unexpected in children of that age, and (4) the lack of a motive to fabricate.

Commonwealth v. Walter, 625 Pa. 522, 539, 93 A.3d 442, 451 (2014) (internal citations omitted). The main consideration is whether the child declarant was likely to be telling the truth at the time the statements were made, and towards that end, whether the statements contain "particularized guarantees of trustworthiness." ***Id.***

Instantly, the court held a hearing on the Tender Years exception. During the hearing, testimony revealed that, upon learning that Defendant would be staying on the first floor of the residence, Ms. Allen sent her then nine (9) year old daughter a text message which instructed her to lock her door. (N.T. Habeas Hearing/Tender Years Hearing, 4/30/25, at 25-26). Ms. Allen described what happened later in the evening:

[PROSECUTOR]:	At some point that night, did you wake up?
[MS. ALLEN]:	Yes.
[PROSECUTOR]:	Tell me what happened when you woke up.
[MS. ALLEN]:	I woke up to a knock on my bedroom door. … I told [the victim] to come in. When she came in, she said, "Mom, come here." She was sitting at the foot of my bed, and Donald, my husband, and I were laying in the bed, and I said, "What's wrong?" And she said, "Mom, come here." And I said, "What's wrong?" And then she said, "There's a man in my bed."
[PROSECUTOR]:	What was her demeanor at this time?
[MS. ALLEN]:	She was confused. She was scared. She was shaken up a lot.
[PROSECUTOR]:	Did she say anything else at that point?
[MS. ALLEN]:	At that point, no. I wanted to ask some questions.
[PROSECUTOR]:	Okay. Can you tell us what questions you asked her?

[MS. ALLEN]:	Yes. I asked her did he touch her. Do you want me to provide you with the answers?
[PROSECUTOR]:	Yes.
[MS. ALLEN]:	I asked her if he touched her in any way. She said yes. I asked her where. She said he put his hand up her shirt and he was kissing her on her back, and that was the end of the conversation at that moment.

(***Id.*** at 20-21). When Ms. Allen asked the victim if Defendant did anything else, the victim replied that he did not. (***Id.*** at 30). Immediately prior to leaving her room and walking to her parents' bedroom, the victim sent her mother text messages stating, "Mom come here," and "Mom...Help." (***Id.*** at 22-24, Commonwealth Exhibit C-1). Ms. Allen confirmed that she was asleep and did not see these messages at the time the victim sent them to her. (***Id.*** at 24). Ms. Allen also indicated that the victim had never met Defendant prior to the night of the incident. (***Id.***).

The victim's verbal statements and text messages to her mother were admissible under the Tender Years Act. The victim was nine (9) years old at the time of these declarations and her statements related to an indecent assault, which is one of the enumerated offenses set forth under Section 5985.1. The statements were relevant to establish the details of the incident and the elements of the offenses charged. The content and circumstances of the victim's statements also provided sufficient indicia of reliability. The victim made her statements as the event was occurring or immediately afterwards and although she was scared and "shaken up" when describing the incident, the victim demonstrated a clear and coherent mental state. ***See Walter, supra***. The victim also did not embellish Defendant's actions and responded "no" when her mother asked if Defendant had done anything beyond what she had already described.

The victim had no apparent or obvious motive to fabricate considering she had never met Defendant in the past. ***See id.*** The victim also was able to describe the incident without any prompting or suggestive questioning by her mother. Although her mother first asked "did he touch you" in response to the victim's statement that a man was in her bed, this question was a reasonable inquiry based upon the circumstances.

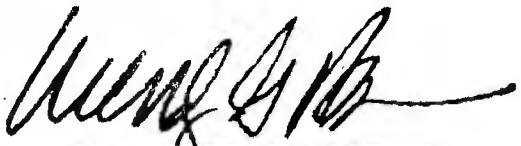
Additionally, other indicators such as the victim's frightened demeanor and the existence of text messages in which the victim asked her mother for assistance demonstrated that something nefarious had occurred beyond Defendant simply lying in the victim's bed. Ms. Allen's next question regarding where Defendant touched the victim was also reasonable and open-ended and did not serve to taint the victim's recollection of the incident in any way. Lastly, the victim testified at the Tender Years Act hearing and at trial and was available for cross examination. Therefore, the victim's description of the incident contained a particularized degree of trustworthiness and her out of court statements to her mother were admissible under the Tender Years Exception to the rule against hearsay. ***See id.***

Accordingly, Defendant's fifth issue merits no relief.

CONCLUSION

For the reasons set forth above, the judgment of sentence is proper and should be affirmed.

BY THE COURT:



WENDY G. ROTHSTEIN, J.

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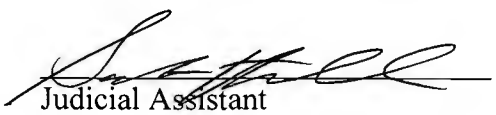

Judicial Assistant