NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JOHN ODUWOLE	:	
Appellant	:	No. 2728 EDA 2022

Appeal from the Judgment of Sentence Entered October 3, 2022
In the Court of Common Pleas of Philadelphia County
Criminal Division at No: CP-51-CR-0005459-2021

BEFORE: BOWES, J., STABILE, J., and DUBOW, J.

MEMORANDUM BY STABILE, J.: **FILED JANUARY 22, 2024**

Appellant, John Oduwole, appeals from the judgment of sentence entered on October 3, 2022 in the Court of Common Pleas of Philadelphia County following his conviction of indecent assault and corruption of minors, 18 Pa.C.S.A. §§ 3126(a)(1) and 6301(a)(1), respectively. Appellant asserts that the evidence was insufficient to support his convictions. Upon review, we affirm.

Appellant's convictions stem from events that occurred in October 2019 when Appellant was 62 years old. The complainant, J.M., was a friend of Appellant's daughter and was 17 years old at the time. Following his arrest, Appellant proceeded to a bench trial on August 3, 2022 before the Honorable Kai N. Scott. The Commonwealth presented the testimony of J.M. who described the events that occurred on a day in October 2019 when Appellant

drove his daughter, Sarah, along with J.M. and two others to and from a shopping mall. Appellant's sole witness was a character witness who testified as to Appellant's good reputation. During the proceedings, the trial court granted Appellant's motion for acquittal on charges of endangering the welfare of children. At the conclusion of the proceedings, the court found Appellant guilty of indecent assault and corruption of the morals of a minor, but not guilty of unlawful contact. Notes of Testimony ("N.T."), Trial, 8/3/22, at 67. The trial court ordered a pre-sentence investigative report and subsequently conducted a sentencing hearing on October 3, 2022. At that time, the court imposed a sentence of three years' reporting probation on the corruption conviction and a concurrent term of two years' reporting probation on the indecent assault conviction. N.T., Sentencing, 10/3/22, at 38.

Appellant filed a post-sentence motion, which the trial court denied on October 14, 2022. This timely appeal followed. On February 7, 2023, Appellant filed his Rule 1925(b) statement of errors in accordance with the extension granted for doing so, pending availability of the notes of testimony. However, prior to Appellant's filing of his Rule 1925(b) statement, Judge Scott resigned from the Philadelphia Court of Common Pleas upon confirmation of her nomination to serve as a United States District Court Judge for the Eastern District of Pennsylvania. By letter dated January 17, 2023, Judge Scott advised this Court of her resignation and appointment, identified her main factual findings from Appellant's trial, and requested that we remand the case

to a different judge for preparation of a Rule 1925(a) opinion if her rulings and reasoning regarding Appellant's asserted errors were not apparent from the record. Based on our review of the record, we find a remand unnecessary.

In this appeal, Appellant presents two issues for our consideration:

> 1. In light of character evidence presented for Appellant and the ambivalence of Appellant's conduct in terms of his intent, and considering inferences adverse to Appellant stated by the trial court which were not supported by the testimony of record, did not the evidence fail to prove Appellant's guilt beyond a reasonable doubt of the crime of indecent assault in that the evidence failed to prove that Appellant had indecent contact with the complainant for the purpose of arousing sexual desire?
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> 2. Was not the evidence insufficient to prove Appellant guilty beyond a reasonable doubt of the crime of corruption of minors in that the evidence failed to prove that Appellant by any act corrupted or tended to corrupt the morals of the complainant because of the ambiguity of Appellant's actions, but also where the nature of an act that corrupts or tends to corrupt is determined by community standards rather than a codified standard of conduct?

Appellant's Brief at 3.

When reviewing a challenge to the sufficiency of evidence, which presents a question of law, we are guided by the following well-settled 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 weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and

> inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the finder of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.
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> This standard is equally applicable to cases where the evidence is circumstantial rather than direct so long as the combination of the evidence links the accused to the crime beyond a reasonable doubt. Although a conviction must be based on more than mere suspicion or conjecture, the Commonwealth need not establish guilt to a mathematical certainty.

Commonwealth v. Brockman, 167 A.3d 29, 38 (Pa. Super. 2017) (quoting ***Commonwealth v. Antidormi***, 84 A.3d 736, 756 (Pa. Super. 2014) (quotations and citations omitted)). Further, as the Commonwealth correctly observes, "It is well settled that the uncorroborated testimony of the complaining witness is sufficient to convict a defendant of sexual offenses." Commonwealth Brief at 6 (citing 18 Pa.C.S.A. § 3106). ***See also Commonwealth v. Lyons***, 833 A.2d 245, 258 (Pa. Super. 2003) (same).

In his first issue, Appellant argues that the evidence was insufficient to prove him guilty of indecent assault in light of the character evidence presented and the lack of evidence demonstrating that his contact with J.M. was for the purpose of arousing sexual desire. As defined in 18 Pa.C.S.A. § 3126, and relevant to this case, "A person is guilty of indecent assault if the person has indecent contact with the complainant . . . for the purpose of

arousing sexual desire in the person [and] the person does so without the complainant's consent[.]" 18 Pa.C.S.A. § 3126(a)(1).

Ignoring the directive that evidence admitted at trial is to be viewed in the light most favorable to the Commonwealth as verdict winner, Appellant instead asks us to accept a sanitized interpretation of the evidence, offering alternate theories of Appellant's intent in hugging J.M. with his hands touching her lower back; placing his hand on top of hers, which was on her thigh, while moving his fingers between hers; and kissing her on the cheek, after she turned her head to avoid being kissed on the lips. He suggests that "other evidence showed that Appellant was an elderly man, the father of the complainant's schoolmate who had a penchant for ministering and giving advice, overly effusive and overly demonstrative in his show of affection, but not necessarily with bad intent." Appellant's Brief at 10-11.

The evidence indicates otherwise. In her testimony, J.M. explained that she was at her friend Sarah's home, *i.e.*, Appellant's home, prior to going to the mall. She stated that "someone was at the door, so I opened it, and it was [Appellant] and he just said, I love you." N.T., Trial, 8/3/22, at 27-28. Appellant hugged J.M., touching her lower back, "towards my butt," making her "uncomfortable." ***Id.*** at 28.

In the car, on the way back from the mall, it was only Appellant and J.M. in the car after they dropped off another friend. J.M. had been in the backseat but Appellant asked her to move to the front. She explained that

Appellant pulled the car over near a school, about five minutes from her home. ***Id.*** at 20, 23. He then "proceeded to kiss me and he was rubbing on my thigh." ***Id.*** at 21. She explained that his hand "was on top of my hand, which was on my thigh, but he was using his fingers to rub in between the spaces of my fingers." ***Id.*** Regarding the kiss, she testified that Appellant "said, Let me kiss you. And at that point, I was facing forward. Once he grabbed my face, I turned my neck so that if he really did kiss me, like, he wouldn't kiss me on my lips, so it just landed on my cheek." ***Id.*** at 22.

J.M. confirmed that she did not want Appellant to touch her "in any of those ways." ***Id.*** at 23. Because she was uncomfortable and because the friend who was dropped off asked what was going on, J.M. recorded two exchanges with Appellant on her cell phone. ***Id.*** at 23, 43. Those exchanges were played for the court, ***id.*** at 23-27; however, the audio was not transcribed for the record. It was confirmed that the voices on the audio were those of J.M. and Appellant and that the video was basically black or showed the street. ***Id.*** at 25.[1]

J.M. also testified that she told her mother and her sister about what happened, although the first persons to whom she reported the events was

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[1] Appellant does not include any mention of the audiotapes in his brief, suggesting there was not anything of an exculpatory nature recorded in those conversations.

the friend who had been dropped off and that friend's mother, by text and by Face Time. ***Id.*** at 31-32.

Appellant's sole witness, Cherrillann Bango, offered character testimony on Appellant's behalf. She testified that she had known Appellant for more than 25 years, having met him through association and affiliation with churches from the time he first arrived in Philadelphia from Liberia. She indicated that he had a reputation in the community as someone who had high regard for the law and was known to be "a man of God." ***Id.*** at 52-54.

After the close of evidence and following argument, the trial court stated:

> [I] find that complainant was credible in stating exactly what happened to her. And she felt, even if [Appellant] did not feel that, he was creepy to some extent. Creepy, I guess, is a colloquial term that I am using only because [Appellant's counsel] used it. . . . The behavior was unacceptable. It really was. He is 64. I am not sure what the heck he was thinking. I understand [counsel is] saying [Appellant] thought, perhaps, of these individuals as his own daughters, but they are not. They are not his children; and therefore, there is no reason he should have had his hands on her lap nor should he be kissing or attempting to kiss[] her on the mouth. I don't know of any reason why a 64-year-old grown man would be engaging in kiss[ing] with a 17-year-old if not for purpose of sexual gratification. There is just no other reason. It is not to me something that is unwelcomed but not criminal. . . . I do believe that the indecent assault was made out with testimony. I find her testimony to be credible in that respect as an M2.

Notes of Testimony, Trial, 8/3/22, at 66-67.[2]

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[2] As provided in the statute, "[a]n offense under Section 3126(a)(1) is a misdemeanor of the second degree." 18 Pa.C.S.A. § 3126(b)(1).

It is true, as Appellant suggests, that evidence of good character may create reasonable doubt sufficient to produce an acquittal. Appellant's Brief at 11 (citing ***Hanney v. Commonwealth***, 9 A. 339, 340 (Pa. 1887) and ***Commonwealth v. Neely***, 561 A.2d 1 (Pa. 1989)). The trial court took that character evidence into consideration, stating:

> I understand your argument as it relates to character testimony, but because the person has character doesn't mean that what could otherwise be criminal, you know, it doesn't mean it is not criminal anymore. I understand how character evidence, obviously, can be used and that in [and] of itself can create a reasonable doubt. It doesn't necessarily outweigh all the other evidence in the case though.

N.T., Trial, 8/3/22, at 59.

Based on our review of the record, and considering the evidence in the light most favorable to the Commonwealth as verdict winner, we find that the evidence was sufficient to find that Appellant had indecent contact with J.M. for the purpose of arousing sexual desire in Appellant and did so without J.M.'s consent. Appellant's sufficiency argument related to his indecent assault conviction fails.

In his second issue, Appellant argues that the evidence was insufficient to prove he was guilty of corruption of minors. He contends that in light of what he considers "a non-criminal interpretation for Appellant's contacts with [J.W.] – that Appellant was merely demonstrating affection without carnal intent," the evidence "cannot be sufficient to prove guilt beyond a reasonable doubt." Appellant's Brief at 17.

Relevant to this case, as defined in 18 Pa.C.S.A. § 6301, "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, . . . commits a misdemeanor of the first degree." 18 Pa.C.S.A. § 6301(a)(1)(i). Further, as the Commonwealth recognizes, "[e]vidence that a defendant engages in 'physical, sexual, and emotional abuse' of the victim 'is sufficient to sustain [a] conviction for corruption of a minor." Commonwealth Brief at 8-9 (quoting ***Commonwealth v. Leatherby***, 116 A.3d 73, 82 (Pa. Super. 2015)). "The actions themselves need not be illegal to rise to the level of tending to corrupt the morals of a minor." ***Id.*** at 9 (citing ***Commonwealth v. Decker***, 698 A.2d 99, 102 (Pa. Super. 1997)).

Appellant suggests that his conviction of indecent assault cannot be considered with respect to the corruption of minors charge and that the trial court, and this Court on appeal, must "put[] aside the criminal nature of the conduct for which Appellant [was convicted], and determine whether Appellant's conduct otherwise corrupted or tended to corrupt [J.M.]" Appellant's Brief at 18-19. We disagree. In ***Commonwealth v. Fisher***, 787 A.2d 992 (Pa. Super. 2001), this Court explained:

> An individual is guilty of corruption of minors if the individual, *inter alia,* performs **any act** that corrupts or tends to corrupt the morals of any child under the age of 18. 18 Pa.C.S.A. § 6301(a)(1). A corruption of minors charges, therefore, encompasses any such act, "the consequence of which transcends any specific sex act and is separately punishable." ***Commonwealth v. Hitchcock***, 523 Pa. 248, 565 A.2d 1159, 1162 (1989).

Id. at 995 (emphasis added). In other words, Section 6301(a)(1) looks to "any act," rather than a "course of conduct" that "violat[es] Chapter 31 (relating to sexual offenses)," as required under Section 6301(a)(2).

As this Court stated in ***Decker***,

> In deciding what conduct can be said to corrupt the morals of a minor, "[t]he 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."

Id., 698 A.2d at 101 (quoting ***Commonwealth v. Pankraz***, 554 A.2d 974, 977 (1989) (additional citations omitted)). Moreover,

> [c]orruption 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 be protected.

Id. (quoting ***Commonwealth v. Todd***, 502 A.2d 631, 635 n. 2 (Pa. Super. 1985), in turn quoting ***Commonwealth v. Burak***, 335 A.2d 820, 822 (Pa. 1975)).

We conclude that the evidence, viewed in the light most favorable to the Commonwealth, was sufficient to find Appellant guilty of corruption of the morals of a minor. Borrowing from this Court's analysis in ***Decker***, 698 A.2d at 101, it is likewise reasonable in this case to conclude that "the common sense of the community and the sense of decency, propriety, and the morality

most people entertain" would be offended by the actions of a then 62-year old man who told a 17-year old girl that he loved her, pulled a vehicle over to the side of the road five minutes from her house, put and moved his hand around on hers—which was on her thigh, and then said, "Let me kiss you," as he grabbed her face and did kiss her, albeit on the cheek—but only because she turned her head. Considering the evidence in the light most favorable to the Commonwealth, we find that the evidence was sufficient to find Appellant guilty beyond a reasonable doubt of corruption of the morals of a minor.[3] Appellant's second issue fails.

Judgment of sentence affirmed.

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[3] Appellant suggests that application of "amorphous standards" such as those quoted from ***Decker*** is "intrinsically indefinite" and should be abandoned. Appellant's Brief at 25. As recognized by the Commonwealth, Appellant did not preserve a constitutional challenge of vagueness to the statute. Commonwealth Brief at 10. Therefore, it is waived, as Appellant concedes. Appellant's Brief at 22. However, even if not waived, we note that the opinion cited in support of his argument is a concurring opinion from a case that involved a charge of endangering the welfare of children, 18 Pa.C.S.A. § 4304(a), rather than corruption of minors. ***Commonwealth v. Howard***, 257 A.3d 1217, 1233 (Wecht, J., concurring). Moreover, in the Opinion Announcing the Judgment of the Court, the Court found those so-called "amorphous standards" applicable to its analysis.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/22/2024