

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-308-2012
vs. :
DENNIS R. STEELE, :
Appellant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's sentence of December, 12, 2017, which became final when this Court denied Appellant, Dennis Steele's Post-Sentence motion by order on March 13, 2018.

Back on February 21, 2012, Appellant was arrested by the Pennsylvania State Police for the offenses of Involuntary Deviate Sexual Intercourse-forcible compulsion¹ (IDSI), Sexual Assault², Aggravated Indecent Assault³ and Indecent Assault⁴. Defendant was alleged to have had sexual intercourse with his granddaughter, AW.

A jury trial was held on September 14, 2017 and Appellant was found guilty of all the offenses charged. On December 12, 2017, this Court sentenced Defendant to a total of sixty-nine (69) months to twelve (12) years to be served in a state correctional facility.

1 18 Pa.C.S.A. Section 3123(a)
2 18 Pa.C.S.A. Section 3124.1
3 18 Pa.C.S.A. Section 3125(a)1
4 18 Pa.C.S.A. Section 3126(a)1

Appellant filed a timely post-sentence motion on December 21, 2017. In his motion, he challenges the sufficiency of the evidence on the charge of IDSI. The Court denied Appellant's post-sentence motion by Order on March 13, 2018.

Appellant filed a timely notice of appeal. On April 23, 2018, the Court directed Appellant to file a concise statement of errors complained of on appeal. A statement has been filed which lists two issues for the Court: whether the evidence was sufficient to sustain the jury's verdict on the charge of IDSI in that the evidence did not show that Appellant exercised forcible compulsion which caused her to have sex with him; and, that the Court erred when it denied Appellant's Motion to Suppress statements made to the State Police. On the last issue, the Court would rely on its Opinion and Order entered on January 27, 2017 on the Motion to Suppress.

Appellant alleges that the evidence was not sufficient to sustain the jury's guilty verdict on the charge of IDSI in that the evidence was insufficient to show that Appellant exercised forcible compulsion which caused the Complainant to have sexual intercourse with him. Appellant cites the case of *Commonwealth v. Berkowitz*, 537 Pa. 143, 641 A.2d.1161 (1994) and *Commonwealth v. Brown*, 556 Pa.131, 727 A.2d 541(1999) in support of his position. Appellant argues that the evidence presented by the Commonwealth during trial was devoid of any testimony that Appellant used force or the threat of force to compel her to have intercourse with him.

The Court notes that although the Appellant has perfected his appeal to the Superior Court he has failed to arrange for the preparation of the transcripts of

the trial and suppression hearing. The Court has no information from the trial to review to determine if the Appellant's argument has merit.

Generally, to determine the legal sufficiency of evidence supporting a jury's verdict of guilty, this Court must: view the evidence in the light most favorable to the Commonwealth, which has won the verdict, and draw all reasonable inferences in its favor. We then determine whether the evidence is sufficient to permit a jury to determine that each and every element of the crimes charged has been established beyond a reasonable doubt. See: *Commonwealth v. Aulisio*, 514 Pa. 84, 91, 522 A.2d 1075, 1079 (1987). See also: *Commonwealth v. Smith*, 523 Pa. 577, 581, 568 A.2d 600, 602 (1989); *Commonwealth v. Hardcastle*, 519 Pa. 236, 246, 546 A.2d 1101, 1105 (1988), cert. denied, 493 U.S. 1093, 110 S.Ct. 1169, 107 L.Ed.2d 1072 (1990). It is the function of the jury to pass upon the credibility of the witnesses and to determine the weight to be accorded the evidence produced. The jury is free to believe all, part or none of the evidence introduced at trial. See: *Commonwealth v. Guest*, 500 Pa. 393, 396, 456 A.2d 1345, 1347 (1983). See also: *Commonwealth v. Rose*, 463 Pa. 264, 268, 344 A.2d 824, 826 (1975); *Commonwealth v. Verdekal*, 351 Pa.Super. 412, 419-420, 506 A.2d 415, 419 (1986). The facts and circumstances established by the Commonwealth "need not be absolutely incompatible with [the] defendant's innocence, but the question of any doubt is for the jury unless the evidence 'be so weak and inconclusive that as a matter of law no probability of fact can be drawn from the combined circumstances.'" *Commonwealth v. Sullivan*, 472 Pa. 129, 150, 371 A.2d 468, 478 (1977), quoting *Commonwealth v. Libonati*, 346 Pa. 504, 508, 31 A.2d 95, 97 (1943). See also:

Commonwealth v. Kravitz, 400 Pa. 198, 215, 161 A.2d 861, 869 (1960), cert. denied, 365 U.S. 846, 81 S.Ct. 807, 5 L.Ed.2d 811 (1961).

Since the Appellant has not made arrangements to have the transcript prepared for the Court to review, it must rely on the decision of the jury. The jury is free to believe all, part or none of the victim's testimony to establish the charge.⁵ See also *Commonwealth v. Staton*, 614 Pa. 487, 38 A.3d 785, 795 (2012), *Commonwealth v. Scott*, 146 A.3d 775, 777 (Pa. Super. 2016). The jury found Appellant used force in committing the IDSI. Therefore, this Court respectfully requests that the judgment of sentence be affirmed.

DATE:

By the Court,

Nancy L. Butts, President Judge

cc: District Attorney
Peter T. Campana, Esq.

⁵ Pa.SSJI (Crim) §4.17