IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
Plaintiff	:	**CRIMINAL DIVISION**
	:	
vs.	:	**NO. 215-CR-2006**
	:	
TROY HENNIGAN,	:	
Defendant	:	

OPINION

Before this Court is Defendant's Post Sentence Motion filed on October 22, 2008. Argument on Defendant's motion was held on October 29, 2008. Defendant raises the following issues with this motion: (1) Whether the court abused its discretion in imposing consecutive sentences where all of the charges alleged arose from a single criminal act; (2) Whether the court abused its discretion in imposing an identical sentence after defendant successfully challenged his original sentence; (3) Whether the evidence was insufficient to support the convictions for indecent assault and corruption; and (4) Whether the verdict on all counts was against the weight of the evidence. Accordingly, the Defendant requests a new trial should be awarded.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

On June 2, 2006, after a bench trial, Mr. Hennigan was convicted of Aggravated Indecent Assault, Indecent Assault, and Corruption of Minors. On August 31, 2006, Mr. Hennigan was sentenced as follows: 5 to 10 years on Aggravated Indecent Assault, 1 to 2 years on Indecent Assault, and three years of probation on Corruption of Minors. All of the sentences were to run consecutively.

A pro-se PCRA was filed on May 24, 2007. Counsel was appointed on September 4, 2007. An amended PCRA was filed on March 5, 2008. Mr. Hennigan raised, among other things, that the Court imposed an illegal sentence where the charges of Aggravated Indecent Assault and Indecent Assault should have merged.

Ultimately, both the Commonwealth and the Court agreed and Mr. Hennigan was re-sentenced on July 16, 2008. On that date, Mr. Hennigan was re-sentenced to 5 to 10 years on the Aggravated Indecent Assault, and 1 to 2 years on the Corruption of Minors charge with three years consecutive probation. The aggregate sentence imposed was once again 6 to 12 years with three years consecutive probation consistent with the Court's original sentence. In addition, the Court imposed an additional sanction of a lifetime registration requirement under Megan's Law as required by statute.

DISCUSSION

Defendant asserts that the court abused its discretion in imposing consecutive sentences where all of the charges alleged arose from a single criminal act. At a non-jury trial on June 2, 2006, Brandy Little, the alleged victim, testified that at the time she met the Defendant she was 13 years old. (Trial Transcript, Testimony of Brandy Little, p. 5, lines1-5). Ms. Little then testified that at the time the met the Defendant she was smoking. (Id. at p. 7, lines 7-8). She further testified that she could not legally buy cigarettes and the Defendant would buy cigarettes for her. (Id. at lines 19-23). Ms. Little's friend, Christina Ledsome, testified that she saw the Defendant give Ms. Little a pack of cigarettes. (Trial Transcript, Testimony of Christina Ledsome, p. 53, lines 17-23). Ms. Little further testified that her and the Defendant had physical contact. She

testified that on the night in question, at around 8 or 9 at night, behind an apartment building, the Defendant put his hands down her pants and digitally penetrated her vagina. (Little testimony at p. 7, lines 2-24). Ms. Ledsome testified that Mr. Little told her that she and the Defendant "messed around". (Ledsome testimony at p. 54, lines 6-10). The court found the testimony of Brandy Little and Christina Ledsome to be credible.

This Court found that the act of purchasing cigarettes for Ms. Little was sufficient to satisfy the elements of a charge of Corruption of Minors. The Court then found the Defendant's act of digitally penetrating Ms. Little was sufficient to satisfy the elements of a charge for Aggravated Indecent Assault. This Court concluded that the charges of Corruption of Minors and Aggravated Indecent Assault arose from two separate acts by the Defendant.

This Court further concludes that even if the petitioner were correct, that both charges actually arose from the single act of digital penetration, a conviction on both crimes is appropriate. Our Supreme Court, in Commonwealth v. Gatling, set forth the standard for determining when convictions should merge for the purposes of sentencing:

> The preliminary consideration is whether the facts on which both offenses are charged constitute one solitary criminal act. If the offenses stem from two different criminal acts, merger analysis is not required. If, however, the event constitutes a single criminal act, a court must then determine whether or not the two convictions should merge. In order for two convictions to merge: (1) the crimes must be greater and lesser-included offenses; and (2) the crimes charged must be based on the same facts. If the crimes are greater and lesser-included offenses and are based on the same facts, the court should merge the convictions for sentencing; if either prong is not met, however, merger is inappropriate. Commonwealth v. Miller, 835 A.2d 377 (Pa. Super. 2003) *Citing to* Commwealth v. Gatling, 570 Pa. 34, 48, 807 A.2d 890, 899 (2002)

The crime of Aggravated Indecent Assault is defined as: A person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other. 18 Pa.C.S. 3125(A)(8). The crime of Corruption of Minors is defined as: 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. 18 Pa.C.S. 6301(A)(1).

It is clear to this court that the above mentioned offenses do not include common elements and neither are lesser included offenses of the other. The offenses are not subject to merger.

Furthermore, even if Defendant is correct that the two charges arose from a single act, there were two separate Commonwealth interests involved. The Court in Sayko held that when a single act involves two separate Commonwealth interest a Defendant may be convicted of both. Commonwealth v. Sayko, 511 Pa. 610, 616 (1986). In the case at bar, the Commonwealth interests of protecting minors from moral corruption and protecting all individuals from unlawful sexual contact were at stake. Therefore, in the case before this Court, convictions for Corruption of Minors as well as Indecent Sexual Assault were

appropriate even if they arose from a single act. In consideration of the above mentioned reasons, the Court finds Defendant's argument to be without merit.

Defendant next argues that the court abused its discretion in imposing an identical sentence after defendant successfully challenged his original sentence.

Defendant asserts that his original sentence of three years probation for the Corruption of Minors charge was sufficient and the court should not have increased it. The Courts of this commonwealth hold however that upon re-sentencing, so long as the aggregate sentence imposed does not exceed the original sentence, double jeopardy is not invoked. The case of Commonwealth v. Baily, 250 Pa.Super. 402, 378 A.2d 998 (1977) is particularly instructive. In Baily, the trial court found the defendant guilty of two counts of theft by unlawful disposition and two counts of theft by receiving stolen property. It sentenced the defendant only on the former two counts, however, because it concluded that the offenses merged. On appeal, the court held that there was no merger. It was also determined that the evidence was insufficient to support the convictions for unlawful disposition, but sufficient for receiving stolen property, and remanded for resentencing on the latter offense. The court reasoned that by permitting the trial court to correct its previous mistake of law regarding merger, it would not increase the punishment but merely modify the sentence so as to base it on a valid conviction, and that as long as the aggregate sentence did not exceed that initially imposed, there was no violation of the Double Jeopardy Clause. Id. at 1003.

In this Court's order dated August 31, 2006, the Defendant was found guilty of Aggravated Indecent Assault and given a sentence of 5 to 10 years, Indecent Assault and

given a sentence of 1 to 2 years and Corruption of Minors and given a sentence of three years supervised probation. **All sentences were to run consecutively, totaling 6 to 12 years plus three years supervised probation.** In its resentencing order dated July 16, 2008, this Court sentenced defendant to 5 to 10 years for the Aggravated Indecent Assault charge, merged the Indecent Assault charge with the Aggravated Indecent Assault charge and sentenced Defendant to 1 to 2 years plus three years supervised probation for the Corruption of Minors charge. **All sentences were to run consecutively, totaling 6 to 12 years plus three years supervised probation.** It is clear that the aggregate sentence imposed on the defendant upon resentencing did not increase from defendant's original sentence. Furthermore, the sentences for all the offenses charged fall within the sentencing guidelines. Therefore the Court finds Defendant's argument to be without merit.

Defendant next argues that the evidence was insufficient to support the convictions for Indecent Assault and Corruption of Minors. The test used to determine the sufficiency of the evidence in a criminal matter is "whether the evidence, and all reasonable inferences taken from the evidence, viewed in the light most favorable to the Commonwealth, as verdict-winner, were sufficient to establish all the elements of the offense beyond a reasonable doubt." Commonwealth v. Maloney, 876 A.2d 1002, 1007 (Pa. Super. Ct. 2005) citing Commonwealth v. Lawson, 759 A.2d 1 (Pa. Super. Ct. 2000). When applying "the above test, the entire record must be evaluated and all evidence actually received must be considered." Commonwealth v. Lambert, 795 A.2d 1010, 1015 (Pa. Super. Ct. 2002). "[T]he trier of fact, while passing upon the credibility of witnesses and the weight to be afforded the evidence produced, is free to believe all, part or none of

the evidence." Commonwealth v. Griscavage, 517 A.2d 1256, 1257 (1986).

This Court found credible the testimony of Brandy Little which stated, in part, that the Defendant willfully and intentionally purchased cigarettes for her. She further testified that the Defendant willfully and intentionally digitally penetrated her on at least one occasion. The Court finds the above mentioned facts sufficient to support a conviction for Indecent Assault and Corruption of Minors.

In the alternative, Defendant argues that he cannot be guilty of corruption of a minor whose morals were already corrupt. This Court finds Defendant's argument unpersuasive and directs Defendant to the Court's decision in Commonwealth v. Meszaros, 168 A.2d 781, 194 Pa. Super. 462 (1960). In repudiating the Defendant's argument that he could not be found guilty of corrupting the morals of a child whose morals were already corrupt, the court stated, "Even if a child had a bad reputation for chastity, this would not excuse the defendant on a charge of 'tending to corrupt the morals of a child.' There is always a chance that such a child might have reformed but for the defendant's conduct continuing the child's delinquency." Id. at 782. It is this Court's opinion that adult males should not have sexual contact with 13 year old children under any circumstances.

Finally the Defendant argues that the verdict on all counts was against the weight of the evidence. "The question of weight of the evidence is one reserved exclusively for the trier of fact who is free to believe all, part, or none of the evidence and free to determine the credibility of witnesses." Commonwealth v. Solano, 906 A.2d 1180, 1186 (Pa. 2006) (citing Commonwealth v. Champney, 832 A.2d 403, 408 (Pa. 2003)). The Pennsylvania Courts have held that "the decision whether to grant a new trial on weight

of the evidence grounds rests within the discretion of the trial court and that decision will not be disturbed absent an abuse of discretion." Dolan v. Carrier Corporation, 424 Pa. Super. 615, 623 A.2d 850, 853 (Pa. Super. 1993) (citing Commonwealth v. Murray, 408 Pa. Super. 435, 597 A.2d 111 (Pa. Super. 1991) (en banc)). Furthermore, a new trial based upon a weight of the evidence claim should be granted to a party only where the verdict is so contrary to the evidence as to shock one's sense of justice [and not] where the evidence is conflicting [or] where the trial judge would have reached a different conclusion on the same facts. Commonwealth v. Edwards, 903 A.2d 1139, 1148 (Pa. 2006).

As this Court has already stated, it finds the alleged victim, Brandy Little and her friend, Christina Ledsome to be credible witnesses. Ms. Little and Ms. Ledsome testified that the Defendant purchased cigarettes for Ms. Little. Further, Ms. Little testified that the Defendant digitally penetrated her and Ms. Ledsome testified that Ms. Little told her the two had “messed around”. This Court finds that the verdict was not contrary to the evidence and therefore finds Defendant’s argument unpersuasive.

ORDER

AND NOW, this 5th day of November 2008, based on the foregoing Opinion, it is hereby ORDERED AND DIRECTED that Defendant's Post Sentence Motion is DENIED.

Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4)(a), the Defendant is hereby notified of that he has the right to appeal this Order within thirty days (30) of the date of this Order to the Pennsylvania Superior Court. Furthermore, he has the right to assistance of counsel in the preparation of the appeal.

By The Court,

_____
Judge Richard A. Gray

Cc: District Attorney
Edward Rymsza, Esquire
Gary Weber, Esquire