

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWEALTH OF
PENNSYLVANIA

vs.

TROY HENNIGAN

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NO: 215-CR-2006

OPINION
Issued Pursuant to Pa.R.A.P. 1925(a)

The Commonwealth charged the Defendant with various offenses for digitally penetrating a 13-year-old child and purchasing cigarettes for her. Following a bench trial, the trial court found the Defendant guilty of aggravated indecent assault, indecent assault, and corruption of minors. On August 31, 2006, the trial court sentenced the Defendant to 5 to 10 years imprisonment for the aggravated indecent assault conviction, 1 to 2 years imprisonment for the indecent assault conviction, and 3 years probation for the corruption of minors conviction. The trial court imposed these sentences consecutively. Defendant filed a post-sentence motion, which the trial court denied as untimely and Defendant did not file a direct appeal.

On May 24, 2007 the Defendant filed a *pro se* PCRA petition. The PCRA court appointed counsel, and an amended PCRA petition was filed on March 5, 2008. In this petition, the Defendant asserted that the trial court imposed an illegal sentence because his indecent assault conviction should have merged with the aggravated indecent assault conviction. The Defendant also claimed that trial counsel was ineffective for failing to file a timely post-sentence motion and failing to file a

requested direct appeal. On April 21, 2008, the PCRA court entered an order requiring the parties to file briefs regarding the merger issue. The Commonwealth and the PCRA court later agreed with the Defendant's contention that his indecent assault conviction should have merged with the aggravated assault conviction.

Consequently, the PCRA court vacated its August 31, 2006 judgment of sentence and resentenced the Defendant on July 16, 2008. On that date, the PCRA court sentenced the Defendant to 5 to 10 years imprisonment for the aggravated indecent assault conviction, a consecutive term of 1 to 2 years imprisonment for the corruption of minors conviction, to be followed by 3 years probation. In addition, the PCRA court ordered the Defendant to comply with lifetime registration requirements under Megan's Law. The PCRA court did not, however, rule on the Defendant's ineffective assistance of counsel claims.

On October 22, 2008 the Defendant filed a post-sentence motion, challenging the PCRA court's discretion in resentencing him. Defendant also asserted a claim that his convictions were against the weight and sufficiency of the evidence, which was denied. Following his appeal, the Commonwealth Court affirmed the judgment of sentence, but remanded for the PCRA court to address the Defendant's claims of ineffective assistance of counsel.

Following a PCRA conference, this Court entered an order on April 13, 2010, reinstating the Defendant's appeal rights. The Defendant now raises the following issues for review:

1. Whether the Defendant's conviction for Indecent Assault was supported by legally sufficient evidence where there was no evidence presented regarding consent?

2. Whether the Defendant's conviction for Corruption of Minors was supported by legally sufficient evidence?

3. Whether the verdict was against the weight of the evidence on all counts?

The Defendant's first issue relates to whether sufficient evidence existed to support Defendant's conviction for Indecent Assault. The Defendant was charged with Aggravated Indecent Assault (18 Pa.C.S.A. § 3125(8)), Indecent Assault (18 Pa.C.S.A. §3126(a)(1)) and Corruption of Minors (18 Pa.C.S.A. § 6301(a)(1)). The Defendant contends that there was insufficient evidence to support the conviction for Indecent Assault under 18 Pa.C.S.A. § 3126(a)(1) because the complainant testified that she consented to the act of digital penetration by the Defendant. Although this Court would agree that the complainant did consent, the Defendant's sentence reflects no time for Indecent Assault as this Court's July 16, 2008 Order merged that charge. Even assuming the indecent assault conviction was erroneous, it is harmless and played no role in the sentence. Of more importance, the Defendant does not contend that insufficient evidence existed on the issue of Aggravated Indecent Assault. Moreover the record clearly and unequivocally reflects that the Plaintiff was thirteen at the time of the alleged incident while the Defendant was approaching 40. 18 Pa. 3125(a)(8) provides:

(a) Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), 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 procedure commits aggravated indecent assault it:

(8) 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 person are not married to each other.

The testimony at trial also established that the parties were not married. As the record supports the Defendant's conviction for Aggravated Indecent Assault, and the Defendant didn't receive any time for the charge of Indecent Assault, because they merged, this Court respectfully requests affirmance.¹

The Defendant next argues that Defendant's conviction for Corruption of Minors was not supported by legally sufficient evidence.

18 Pa.C.S.A. 6301(a)(1) provides:

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.

Actions that "tend to corrupt the morals" of a minor are those that "would offend the common sense of the community and the sense of decency, propriety and morality which most people entertain." Commonwealth v. Snyder, 870 A.2d 336 (Pa.Super. 2005) citing Commonwealth v. DeWitt, 752 A.2d 915, 918 (Pa.Super. 2000). The test used to determine the sufficiency of 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. 2005), citing Commonwealth v. Lawson,

¹ The Defendant was originally sentenced on August 31, 2006. Although the Defendant's Notice of Appeal seeks appeal from judgment and sentence entered August 31, 2006, the Defendant was later resentenced on July 16, 2008, and the Defendant contends in a footnote in his Statement of Matters Complained of On Appeal that the appeal reflects judgment of sentence on both dates.

759 A.2d 1 (Pa.Super. 2000). “[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), citing Commonwealth v. Harper, 403 A.2d 536, 538-39 (Pa. 1979).

This Court found credible the testimony of the complainant 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. As these actions certainly tend to corrupt the morals of a minor, and the evidence of record clearly establishes these facts, sufficient evidence existed to support the Defendant’s conviction under 18 Pa.C.S.A. § 6301(a)(1).

The Defendant alternatively argues that he cannot be guilty of corruption of a minor whose morals were already corrupt. In Commonwealth v. Meszaros, 168 A.2d 781 (Pa.Super. 1960), the Superior Court repudiated this argument stating:

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.

Moreover, it is this Court’s opinion that adult males should not have sexual contact with 13-year-old children under any circumstances. Accordingly, this Court respectfully requests affirmance of its sentencing Order.

The Defendant’s final issue relates to whether the verdict on all counts was against the weight of the evidence. The Defendant asserts that the verdict was against the weight of the evidence on all counts because the primary evidence came from the Complainant. The Defendant contends that the Complainant’s testimony was

inconsistent, filled with bias and lacking of meaningful details. Following a bench trial, and prior to issuance of the verdict, this Court held as follows:

The Court preliminarily wanted to make a specific finding on the record. The Court finds the testimony of B.L.² to be credible....(N.T. 9/15/06, p. 114).

18 Pa.C.S.A. § 3106 provides as follows:

The credibility of a complainant of an offense under this chapter shall be determined by the same standard as is the credibility of a complainant of any other crime. The testimony of a complainant need not be corroborated in prosecutions under this chapter.

Pennsylvania courts have held that the uncorroborated testimony of a complaining witness is sufficient to convict a defendant of sexual offenses. Commonwealth v. Lyons, 833 A.2d 245 (Pa.Super. 2003). Accordingly, the testimony of the complainant, by itself, was sufficient to support the Defendant's conviction. The complainant's testimony was additionally corroborated by her friend, C.L. C.L. testified that the Defendant purchased cigarettes for B.L. and that B.L. told her that she and the Defendant had "messed around." C.L. testified that the Defendant gave her a letter to deliver to B.L. after B.L. was sent to the Meadows. B.L.'s mother, Leslie Butts, testified that she had seen her daughter and the Defendant together, and that based upon her concerns, she confronted the Defendant and told him that her daughter was only thirteen and to stay away from her, which was verified by B.L.'s testimony. As this Court relied upon the testimony of the complainant, which this Court found credible, and witnesses corroborating the testimony of the complainant, the verdict was clearly not contrary to the evidence presented. Accordingly, this Court respectfully urges affirmance of its sentencing Order.

² The Complainant

BY THE COURT,

Richard A. Gray, J.

cc: District Attorney
Edward J. Rymza, Esquire
Gary Weber, Esquire