

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
<b>v.</b>	:	<b>No. 517-2008</b>
	:	<b>CRIMINAL DIVISION</b>
<b>PATRICK HAUGHT,</b>	:	<b>APPEAL</b>
<b>Defendant</b>	:	

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

The Defendant appeals this Court's Order of February 10, 2011, which denied his Post-Sentence Motion by operation of law pursuant to Pa. R. Crim. P. 720(B)(3)(a). The Defendant filed a Notice of Appeal on February 18, 2011, and on February 28, 2011, this Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty days a concise statement of matters complained of on appeal. The Defendant filed his concise statement on March 23, 2011.

The Defendant raises one issue on appeal: 1) the Court erred in denying his post-sentence motion to dismiss the charge of Unlawful Contact with a Minor, as there was insufficient evidence presented to sustain a verdict of guilty.

***Procedural Background***

The Defendant filed his Post-Sentence Motion to dismiss the charge of Unlawful Contact with a Minor on August 20, 2010. Due to a delay in receiving the trial transcript in this case, the Court dismissed the Post-Sentence Motion by operation of law pursuant to Pa. R. Crim. P. 720(B)(3)(a). However, the Defendant also raised his Motion to Dismiss the charge of Unlawful

Contact with a Minor during trial, at which time the Court denied his Motion. N.T., 3/16/09, p. 102-103, 124-125.

***Factual Background***

In the fall of 2007, Patrick Haught (Defendant) was residing with at 1516 Mt.Carmel Street with the then seven (7) year old victim in this case, J.T., and J.T.'s family including her mother, father and brother, E.T. At trial, J.T. testified that one evening in November of 2007 the Defendant came into her bedroom, removed her pants and underwear, and touched her private parts. J.T. testified that the Defendant put two fingers inside her private parts about one inch and that it felt like he was "tickling" her. J.T. told the Defendant to stop two to three times, but he did not stop. J.T. told her mother about the incident a day after it happened. J.T. subsequently told several other adults about the incident, including Joel Lewis (Lewis), Agent William Weber (Weber), and Rhonda McDonald (McDonald).

Lewis was an intern with the County with children's mental health in the fall of 2007 and was assigned as a co-caseworker to various clients including E.T. As his caseworker, Lewis would go to E.T.'s house and meet with his family about twice a week to make sure that services were in place, etc. Lewis was aware that the Defendant moved into the family's residence sometime in the fall of 2007. During the first week of December of 2007, Lewis went to E.T.'s residence to say goodbye to the family since his internship was ending, and during the course of conversation with the family, Lewis learned that the Defendant would be leaving the house soon. Lewis asked J.T. how she felt about the Defendant leaving, and J.T. responded that she did not like how the Defendant touched her. Lewis asked J.T. what she meant, and J.T. responded that she "did not like how the Defendant grabs her by the ankles because he pulls my pants down and

touches me in the private.” Lewis then asked J.T. what was the private, and J.T. responded “where I pee.” Lewis then spoke with J.T.’s mother about J.T.’s statements, reported the incident to the caseworker assigned with him to E.T.’s case, and notified his field instructor supervisor at mental health, who gave him the Child Line number to call. Lewis reported the incident to the Child Line operator and then informed J.T.’s mother that the Defendant could no longer be in the house.

McDonald of the Lycoming County Children and Youth Agency testified that the Agency’s crisis unit initially received the report of the incident involving J.T. on December 5, 2007, and that a crisis worker met with J.T. and her mother to make certain that the Defendant was not having contact with J.T. McDonald and Weber then interviewed J.T. at her school on December 18, 2007. In response to questioning, J.T. explained a good touch versus a bad touch, and stated that “Pat” had given her a bad touch. J.T. stated to McDonald and Weber that the Defendant was living with her family and that he had come into her bedroom while she was getting ready for bed, lifted up her legs, pulled down her pants and underwear, and proceed to rub her vagina with his hand. J.T. stated that it felt as if the Defendant was “poking” her, which McDonald took to mean penetration. On January 31, 2008, McDonald again met with J.T. in response to an allegation that the Defendant was having contact with J.T. At this second interview McDonald reviewed with J.T. some of the statements J.T. made at the December 18, 2007 interview, and J.T. again reiterated that she was in her room when the Defendant came in, picked up her legs, pulled down her pants, and touched her private area with his hand.

On December 9, 2007 McDonald and Weber met with the Defendant where he stated he was already aware of the allegations against him as he had been confronted by a family member. The Defendant stated that he had been in J.T.’s bedroom to check on her and that while he was in

there J.T.'s pants came down accidentally. On January 3, 2008, the Defendant came unannounced to McDonald's office and again discussed the allegations against him; however, he again denied the allegations and left. On February 26, 2009, the Defendant came to McDonald's office for a third time and indicated there was a possibility that he had touched J.T. The Defendant then provided a written statement to McDonald in response to written questions McDonald provided. The Defendant indicated that J.T. was his eight (8) or nine (9) year old niece, that he resided with J.T. and her family beginning November 5, 2007, and that he did in fact have sexual contact with J.T. The Defendant stated "I was told to go upstairs and check on my niece and when I did she was messing around and she ran to her room and I went to tell her to stay in bed and when I was in front of her bed she jumped on me and her pants came down. I touched her private area when I set her down and she pulled up her pants and I left the room." Thereafter, the Defendant provided a video-taped statement to Weber where he again admitted to his conduct, and at trial the Defendant testified that he did have sexual contact with J.T. as he had rubbed her vaginal area.

A Jury Trial was held in this case on March 16-17, 2009, and the Defendant was found guilty of Aggravated Indecent Assault (under age 13), Attempted Aggravated Indecent Assault (under age 13), Aggravated Indecent Assault (without consent), Indecent Assault (under age 13), Indecent Assault (without consent), and Unlawful Contact or Communication with a Minor.

### ***Discussion***

The Defendant contends that the trial court erred by denying his Post-Sentence Motion to dismiss the charge of Unlawful Contact with a Child as there was insufficient evidence presented to sustain a verdict of guilt. The standard to apply in determining the sufficiency of the evidence

is whether, “[v]iewing the evidence in the light most favorable to the Commonwealth as verdict winner and drawing all proper inferences favorable to the Commonwealth, the trier of fact could have reasonably determined that all of the elements of a crime have been established beyond a reasonable doubt.” Commonwealth v. Keblitis, 456 A.2d 149 (Pa.1983).

A person commits the offense of Unlawful Contact with a Minor if he is intentionally in contact with a minor, for the purpose of engaging in a prohibited activity, such as aggravated indecent assault, and either the person initiating the contact or the person being contacted is within this Commonwealth. 18 Pa.C.S. §6318(a). At the time of trial and in his Post-Sentence Motion, the Defendant moved to dismiss the Count of Unlawful Contact with a Minor. In his Post-Sentence Motion, the Defendant alleged that 18 Pa.C.S. §6318 was initially enacted to manage crimes involving contact through electronic media, such as the internet, and that the statute focused on a communication between the defendant and the victim, as opposed to the underlying prohibited act. To support his claim, the Defendant pointed out that “contact” is defined as:

direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

18 Pa.C.S. §6318. The Defendant alleged that in this case, no evidence was presented establishing that the Defendant communicated with the victim by any means, method, or device defined under the statute for the purpose of engaging in an act prohibited by 18 Pa.C.S. §6318.

At the time of trial in this case, the Court denied the Defendant’s Motion to Dismiss the charge of Unlawful Contact with a Minor. In support of its decision, the Court relied on the reasoning of the Superior Court in Commonwealth v. Oliver, 946 A.2d 1111 (Pa. Super. 2008),

where the facts established that appellant “[n]udged T.C. in the back with his foot, pulled the covers down below his bellybutton, pointed toward his penis, arched his eyebrow and winked at T.C.” and “appellant informed T.C. that she could have made \$40.00 ‘if [she] would have did [sic] for [him],’” adding “[o]r am I too big for you?” Id. at 1114. The Oliver Court sustained appellant’s conviction for Unlawful Contact with a Minor based on the appellant’s words and gestures to the minor indicating that he wanted the minor to have oral sex with him. Id.

Applying the reasoning of the Oliver Court to the facts of this case, the Court finds that its decision to deny the Defendant’s Motion to Dismiss the Charge of Unlawful Contact with a Minor was appropriate. The Court finds that the Defendant’s actions in going into the J.T.’s bedroom, lifting up her legs, pulling down her pants and underwear, and touching her vaginal area with his hand and fingers constituted “contact” within the meaning of 18 Pa.C.S. §6318.

***Conclusion***

As the Defendant’s contentions do not appear to have merit, it is respectfully suggested that the Court’s decision to deny the Motion to Dismiss the charge of Unlawful Contact with a Minor be affirmed.

DATE: \_\_\_\_\_

By the Court,

Nancy L. Butts, President Judge

xc: DA  
William J. Miele, Esq.  
Gary L. Weber (LLA)

