IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. 600-2008**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
WAYNE SHOWERS,	**:**	
Defendant	**:**	**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 the judgment of sentence dated August 11, 2009. Through a Post Conviction Relief Act (PCRA) petition, the Court reinstated Appellant's direct appeal rights nunc pro tunc on April 13, 2013. The relevant facts follow.

On or about April 1, 2008, Appellant was arrested and charged with rape of a child, involuntary deviate sexual intercourse, two counts of aggravated indecent assault of a child, two counts of statutory sexual assault, one count of unlawful contact with a minor, two counts of indecent assault with a child less than 13 years of age, two counts of corruption of minors, and two counts of indecent assault of a complainant less than 16 years of age, arising out of acts Appellant allegedly committed against K.T., A.T, and B.P.

Following a jury trial held May 5-6, 2009, Appellant was convicted of aggravated indecent assault of a child and indecent assault of a child under 13 with respect to A.T., as well as statutory sexual assault, aggravated indecent assault, and indecent assault with respect to B.P.

On August 11, 2009, Appellant was sentenced to an aggregate term of 52

months to 180 months of incarceration in a state correctional institution, consisting of 36 to 120 months for aggravated indecent assault of A.T. and 16 to 60 months for statutory sexual assault of B.P.

Appellant filed a timely notice of appeal, but all of the issues he wanted to litigate on appeal were waived due to the ineffective assistance of appeal counsel. Through a PCRA petition, the Court reinstated Appellant's appeal rights nunc pro tunc. In this appeal, Appellant raises four issues related to the sufficiency of the evidence to sustain his convictions related to A.T.

In reviewing the sufficiency of the evidence, the court considers whether the evidence and all reasonable inferences that may be drawn from that evidence, viewed in the light most favorable to the Commonwealth as the verdict winner, would permit the jury to have found every element of the crime beyond a reasonable doubt. ***Commonwealth v. Davido***, 582 Pa. 52, 868 A.2d 431, 435 (2005); ***Commonwealth v. Murphy***, 577 Pa. 275, 844 A.2d 1228, 1233 (2004).

Appellant first asserts that the evidence was insufficient to sustain his conviction for aggravated indecent assault of a child because there was no evidence that he engaged in the penetration of A.T.'s genitals. The Court cannot agree. During direct examination and on cross-examination, A.T. testified that Appellant inserted his fingers in her vagina. N.T., May 5, 2009, at 40, 47. On cross examination, A.T. admitted that she did not know what the term "penetrated" meant. Defense counsel, however, then asked if Appellant actually went into her vagina or rubbed around the edge of her vagina, and A.T. replied, 'No, he actually went inside of my vagina." Id. at 48. Therefore, this assertion

simply is not supported by the record.

Appellant also challenges the sufficiency of the evidence for his conviction for indecent assault of A.T. Appellant claims that the evidence was insufficient to sustain his conviction for indecent assault because there was no evidence that Appellant engaged in indecent contact with A.T. Again, the Court cannot agree. The Crimes Code defines "indecent contact" as "[a]ny touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person." 18 Pa.C.S. §3101. A.T. testified that she, her brother and Appellant were in a field making a fort. When her brother left to go get some tools, Appellant moved his fingers up her shorts and then he stuck his fingers in her vagina. Appellant stopped when her brother came back. N.T., May 5, 2009, at 39-40. From this conduct, a jury could infer that Appellant's actions were for the purpose of either arousing sexual desire in A.T. or gratifying his own sexual desire.

Appellant also contends that the evidence was insufficient to sustain his convictions for aggravated indecent assault of a child and indecent assault of a complainant less than 13 year of age[1] due to the fact that A.T. failed to remember her age at the time of the incident. Although A.T. could not remember how old she was when the incident occurred, she testified that the incident occurred in the summer when she was little.[2] A.T. also initially did not remember what grade she was in when the incident occurred. When the prosecutor asked her if she remembered telling Sergeant Detective Kriner that the incident occurred between fourth and fifth grade, A.T. said "Yeah." She further stated that she was

[1] In both his third and fourth issues, Appellant asserts that the evidence was insufficient for the jury to find him guilty of aggravated indecent assault beyond a reasonable doubt where the victim failed to remember her age at the time of the incident. The Court is assuming that Appellant intended that his fourth issue would relate to his conviction for indecent assault.

not sure if that was the exact time, but it was around there. N.T., May 5, 2009, at 43. On cross examination A.T. admitted that she would not have been seven years old between fourth and fifth grade. Defense counsel then asked if she would have been about ten years old between fourth and fifth grade, and she said, "Somewhere around there, yeah." Id. at 47.

Sergeant Detective Kriner testified that he conducted a taped interview of Appellant regarding these allegations. During his interview, Appellant admitted that he had a sexual relationship with A.T. when she was younger. Appellant stated that when A.T. was 7, and he was around 14, 15, 16, he "fingered" or put his fingers into A.T.'s vagina. N.T., May 5, 2009, at 88. The tape recording of the interview was also played for the jury.

The combination of A.T.'s testimony and Appellant's statements to Sergeant Detective Kriner were sufficient to establish beyond a reasonable doubt that A.T. was less than 13 years old when the incident occurred.

DATE: 10-18-2013

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Julian Allatt, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)

[2] A.T. was 16 years old when she testified at trial.