

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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

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

This supplemental 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.

Appellant has now completed the requirements to have the record prepared and a transcript became available to the Court on June 19, 2018. This Court relies upon the previous 1925 (a) opinion for procedural and factual history<sup>1</sup>. This opinion focuses solely on the Appellant's challenge to the sufficiency of the evidence on the charge of IDSI. Specifically, Appellant challenges the evidence was insufficient to sustain the jury's verdict on the charge of IDSI since it did not show that Appellant exercised forcible compulsion which caused her to have sex with him.

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

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<sup>1</sup> Although for clarity, the Court will restate portions of the previous 1925(a) opinion where appropriate.

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).

In order to prove forcible compulsion, the Commonwealth is required to establish beyond a reasonable doubt that appellant used either physical force, a threat of physical force, or psychological coercion. *Commonwealth v. Berkowitz*, 641

A.2d 1161, 1164 (1994). An allegation of Complainant's verbal resistance to a sexual encounter is relevant to the issue of consent but not to the issue of force. *Com. v. Berkowitz*, 641 A.2d 1161, 1164 (Pa. 1994).

In *Berkowitz*, the Complainant testified that she repeatedly told the defendant "no" during the encounter but did not physically resist the defendant and the defendant did not attempt to restrain her. Therefore, the court in *Berkowitz* found that the defendant was not guilty of the charge of rape against him; however the court affirmed that the defendant was guilty of indecent assault, which does not require forcible compulsion.

In this case, Complainant testified that she repeatedly told Appellant "no" and was crying during the entire encounter. When Appellant attempted to pull her shirt up, she pushed it down and asking Appellant not to do it. She also testified that she pulled her knees up to her chest and Appellant had to pull them down to straighten her body when he decided to perform oral sex on her. Complainant further testified that Appellant repeatedly told her "don't fight it." She tried to keep her pants up but Appellant overpowered her and pulled them down. Complainant testified that when Appellant finally stopped performing oral sex, she curled up and turned away from him, but he grabbed her hand and pulled it to his penis. She pulled it away and Appellant grabbed it again and pulled it back. Each of these acts indicates that Appellant indeed used physical force.

Complainant also testified that she froze out of shock did not physically fight at one point. However, this fact does not negate the force that Appellant used on Complainant throughout the assault. This Court believes that Commonwealth

sufficiently showed that Appellant used physical force against Complainant during the assault.

The jury found the testimony of the Complainant to be credible and found that 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.