

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
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v. :
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PAUL LOWMILLER, :
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Appellant :
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CR-413-2018

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

Appellant appeals this Court’s Opinion and Order dated August 13, 2020, which denied his Post Sentence Motion. This Court requested a Concise Statement of Matters Complained of on Appeal on July 24, 2019. Appellant complied by filing his Statement of Matters Complained of on Appeal on September 24, 2020. In his Statement of Matters Complained of on Appeal, Appellant raises the following five issues:

- 1) Whether this Court erred when it permitted the introduction of a prior Statutory Sexual assault conviction pursuant to rule 404(b) in the event the Appellant presented a defense of mistake of age;
- 2) Whether the Court erred in denying the Appellant’s motion to enforce the plea agreement;
- 3) Whether the evidence presented by the Commonwealth at trial to establish Statutory Sexual Assault and Involuntary Deviate Sexual Intercourse;
- 4) Whether the sentence of the Court was overly harsh and excessive; and,
- 5) Whether the Court erred in applying the mandatory sentence in Section 9718.2 of the Sentencing Code.

For the purposes of this Opinion, on the first issue the court will rely upon its order dated February 10, 2020. On the second issue the Court will rely on the Opinion issued by the Honorable Mark F. Lovecchio on November 5, 2020. As to the fourth and fifth issues, this Court will rely on its Opinion and Order dated August 13, 2020, which disposed of these two

issues. On the remaining issue, Appellant asserts that insufficient evidence was presented by the Commonwealth at trial to establish the charges of Statutory Sexual Assault and Involuntary Deviate Sexual Intercourse beyond a reasonable doubt. After review of the evidence, the Court finds that there was sufficient evidence for the jury to have found the Appellant guilty.

At trial, the Commonwealth presented testimony from the victim M.M. She described that she met the Appellant through Facebook to arrange a meetup near the K-Mart in Loyalsock Township, Lycoming County. N.T. 3/10/2020, p. 28. M.M. testified that her age would have been displayed on her Facebook page, and she would have told the Appellant that she was fourteen. *Id.* at 18, 26. After meeting at K-Mart, Appellant and M.M first walked to an area near the Loyalsock Fire Department where Appellant removed his penis from his pants and asked the victim to rub it and she did. *Id.* at 32. Appellant also began to rub M.M's vagina through her clothing. *Id.* Both appellant and M.M. then walked from there to a wooded area near St Ann's Catholic Church where they laid down together. *Id.* at 30. While there the Appellant inserted his fingers into M.M.'s vagina and performed oral sex on her and also rubbed his penis on her vagina. *Id.* at 31. M.M. then performed oral sex on him until he ejaculated. *Id.* M.M. also testified that some of the Appellant's semen got onto her sweatshirt. *Id.* at 32. M.M. also related that at multiple times during their time together that Appellant asked the victim her age and she told him her current age. *Id.* at 37.

The evidence is deemed to be sufficient where there is testimony offered to establish each material element of the crime charged and to prove commission of the offense by the accused beyond a reasonable doubt. *Commonwealth v. Diamond*, 83 A.3d 119 (Pa. 2013). The question of credibility is left to the jury and the verdict will not be disturbed if the jury determines the evidence is worthy of belief. *Commonwealth v. Karkaria*, 625 A.2d 1167, 1170

(Pa. Super. 1993). When reviewing a sufficiency claim, the court is required to view the evidence in the light most favorable to the Commonwealth which may be drawn from the evidence. *Commonwealth v. Watley*, 81 A.3d 108, 113 (Pa. Super. 2013). It is well-established that “the uncorroborated testimony of the complaining witness is sufficient to convict a defendant of sexual offenses”. *Commonwealth v. Bishop*, 742 A.2d 178, 189 (Pa. Super. 1999), *appeal denied*, 758 A.2d 1194 (2000); *See also Commonwealth v. Trimble*, 615 A.2d 48, 50 (Pa. Super. 1992) (testimony of child victim alone sufficient to support conviction for sex offenses).

A person is guilty of statutory sexual assault if that person engages in sexual intercourse with a complainant and the complainant is under 16 years of age; the appellant is four or more years older than the complainant; and, the complainant and the appellant are not married to each other. 18 Pa. C.S.A. § 3122.1. It is clear that Appellant’s conviction for statutory sexual assault pursuant to 18 Pa. C.S.A. § 3122.1 should be sustained because the jury accepted the testimony of M.M. that he was 27, he knew she was 14 and that he engaged in sexual intercourse with her.

In order to affirm Appellant’s conviction for involuntary deviate sexual intercourse, the evidence presented at trial had to establish that Appellant, who at the time of the offense was more than four years older than the victim, engaged in deviate sexual intercourse with M.M. who was less than 16 years of age at the time of the offenses, and that the two were not married to each other. 18 Pa.C.S.A. § 3123(a)(7). Deviate sexual intercourse is defined as “sexual intercourse per os or per anus between human beings ...”. 18 Pa.Cons.Stat.Ann. § 3101; *see also Commonwealth v. Wilson*, 825 A.2d 710, 714 (Pa. Super. 2003). Therefore, in order to sustain Appellant’s conviction for involuntary deviate sexual intercourse, the evidence

presented by the Commonwealth had to establish that he engaged in acts of oral or anal intercourse, which involved penetration however slight. *Commonwealth v. Poindexter*, 646 A.2d 1211, 1215 (Pa. Super. 1994), *appeal denied*, 655 A.2d 512 (Pa. 1995). The uncontradicted evidence presented at trial and accepted by the jury, shows that M.M. engaged in oral intercourse with Appellant when she was 14 years of age and he was 27. Viewed in the light most favorable to the Commonwealth, the Court finds there was sufficient evidence for the jury to find the Appellant guilty of those offenses.

Conclusion

As none of the Appellant's contentions appear to have merit, it is respectfully suggested that the Appellant's conviction and sentence be affirmed.

BY THE COURT,

Nancy L. Butts, President Judge

cc: DA (MW)
Helen Stolinas, Esq.

NLB/nlb