

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-925-2022
	:	275 MDA 2024
vs.	:	
	:	
MARCUS D. MCDANIEL,	:	
Appellant	:	Appeal

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1133-2022
	:	276 MDA 2024
vs.	:	
	:	
MARCUS D. MCDANIEL,	:	
Appellant	:	Appeal

Date: May 6, 2024

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

Following a jury trial held in his absence on October 25, 2023, and October 26, 2023, due to his failure to appear, Marcus D. McDaniel (“Appellant”) was found guilty of two counts of Rape of a Child; two counts of Involuntary Deviate Sexual Intercourse with a Child; two counts of Unlawful Contact with a Minor; one count of Indecent Assault (under 13 years of age); one count of Endangering Welfare of Children; and one count of Corruption of Minors – Sexual Offenses at Lycoming County Docket Number CR-925-2022. Under Lycoming County Docket Number CR-1133-2022, Appellant was found guilty of four counts of Rape of a Child; four counts of Involuntary

Deviate Sexual Intercourse with a Child; one count of Indecent Assault (under 13 years of age); one count of Criminal Solicitation; and one count of Obstruction in Child Abuse Cases. The victim in both cases was the 6 year old daughter of Appellant's paramour.

February 6, 2024, the Appellant was sentenced under CR-925-2022 to a period of ten (10) to twenty (20) years incarceration in a state correctional institution on Counts 1 and 2, Rape of a Child, to run consecutive to each other. On Counts 3-4, Involuntary Deviate Sexual Intercourse with a Child, and Counts 5-6, Unlawful Contact with a Minor, the Appellant was sentenced to a period of incarceration in a state correctional institution of ten (10) to twenty (20) years. Counts 3, 4, 5, and 6 are to run concurrent to each other, and concurrent to Counts 1 and 2. On Counts 7 and 8, Indecent Assault of a Person Less than 13 years of Age; Count 9, Endangering the Welfare of Children; and Count 10, Corruption of Minors, the Appellant was sentenced to a period of incarceration in a state correctional institution of eighteen (18) to thirty-six (36) months, to run concurrent to all other counts in case number CR-925-2022. Under CR-1133-2022, Appellant was sentenced to a period of ten (10) to twenty (20) years incarceration in a state correctional institution on Counts 1-4, Rape of a Child, each to run consecutive to all other counts. On counts 5-8, Involuntary Deviate Sexual Intercourse with a Child, the Appellant was sentenced to a period of incarceration in a state correctional institution of ten (10) to twenty (20) years, to run concurrent to all other counts. On Count 9, Indecent Assault of a Person Less than 13 Years of Age, and Count 10, Criminal Solicitation Rape of a Child, the Appellant was sentenced to a period of incarceration in a state correctional institution of ten (10) to twenty (20) years, to run concurrent to all other counts. Finally, on Count 11, Obstruction, the Appellant was sentenced to a period of incarceration in a state correctional institution of

fifteen (15) to thirty (30) months, to run consecutive to all other counts. The aggregate sentence of the Appellant was sixty-one (61) years and three (3) months to one hundred twenty-two (122) years and six (6) months incarceration in a state correctional institution. The Appellant was also designated as a sexually violent predator.

On February 23, 2024, the Appellant filed a timely Notice of Appeal and on February 27, 2024, filed a Concise Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. §1925(b). Appellant raises the following issues on appeal under both docket numbers:

1. The Defendant avers that the trial court erred by precluding relevant and exculpatory evidence that the victim named another individual and not the defendant as the perpetrator of abuse when she was initially interviewed.
2. The Defendant avers that the trial court erred in permitting his supervised bail officer to testify at trial because his testimony was unfairly prejudicial, irrelevant, and it improperly provided criminal propensity evidence to the jury.
3. The Defendant avers that the sentencing court abused its discretion and imposed a manifestly excessive and unduly harsh sentence and did so without sufficiently considering the fundamental norms of the sentencing process.

Additionally, under CR-925-2022, Appellant avers that the verdict of guilt with respect to Count 3 was based on insufficient evidence because the Commonwealth failed to establish that there was deviate sexual intercourse associated with this count.

Appellant's first issue alleges that the trial court erred by precluding relevant and exculpatory evidence that the victim named another individual and not the defendant as the perpetrator of abuse when she was initially interviewed. "It is well settled that evidentiary rulings are within the sound discretion of trial courts." *See, e.g., Commonwealth v. Laird*, 988 A.2d 618, 636 (Pa. 2010) (explaining that "the decision to admit or exclude evidence is committed to the trial court's sound discretion"). Accordingly, when a party adverse to a

trial court's evidentiary ruling seeks appellate review of that determination, that party carries a heavy burden to demonstrate that the trial court abused its discretion.

Commonwealth v. Norton, 201 A.3d 112, 120 (Pa. 2019). "An appellant cannot meet this burden by simply persuading an appellate court that it may have reached a different conclusion than that reached by the trial court; rather, to overcome this heavy burden, the appellant must demonstrate that the trial court actually abused its discretionary power." *Id.*

At the time of the trial, Martin Wade, Esquire, made a motion on behalf of the Commonwealth to preclude any presentation of witnesses by the defense, any questions by the defense of Commonwealth witnesses that are made in an attempt to prove some type of sexual abuse allegations against the child victim's father who lived in a different county. (Transcript of Criminal Jury Trial, 10/25/23, pg. 20). Attorney Wade conceded that the defense could question the victim whether she was sure that it was not her father who was the perpetrator of the crimes for which the Defendant was being tried, but argued that any separate allegations against the victim's father were irrelevant as to whether the Defendant committed the acts in question. *Id.* Defendant's counsel argued that the information was *Brady* material, was relevant, and precluding it would deny her client a fair trial. Attorney Longo argued her client's defense is that the child's father was the perpetrator of abuse but she loved him and did not want to say he committed the acts and so she blamed the Defendant because she disliked him. *Id.* at 22-24.

Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Pa. R. E. 401. "All relevant evidence is admissible, except as otherwise provided by law." Pa. R. E. 402. Relevant evidence may be excluded if its probative value is

outweighed by any of the following: “unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Pa. R. E. 403. After hearing the argument of counsel, the Court granted the Commonwealth’s motion to preclude the testimony regarding accusations against the victim’s father that were outside of those that were against the Defendant in this particular case. Trial Transcript, 10/25/23 at 30. The Defendant’s counsel was given permission to cross examine witnesses regarding the identity of the perpetrator for the allegations the victim may have made against her father which were substantially similar to the allegations made against the Defendant. The Court found that any other allegations the victim may or may not have lodged against her father would not tend to prove or disprove whether the Defendant committed the crimes against the victim for which he was being tried. Additionally, even if the Court were to have concluded that such evidence was relevant, the prejudice would outweigh the probative value as the likelihood of confusion to the jury or the speculation that just because the victim’s father may have committed a separate crime the Defendant might not have committed this separate act. *See Commonwealth v. Delbridge*, 771 A.2d 1, 10-11 (Pa. Super. 2001) (remanded for other reasons). Accordingly, the Court submits that it committed no abuse of discretion in limiting the scope of the Defendant’s questioning of witnesses and introduction of evidence regarding allegations of sexual abuse the victim made against her father.

Appellant next argues that this Court erred in permitting his supervised bail officer to testify at trial, averring that his testimony was unfairly prejudicial, irrelevant, and it improperly provided criminal propensity evidence to the jury. At the time of the trial, the Court overruled Defendant’s counsel’s objection to the bail officer’s testimony and allowed

the Commonwealth to present the bail release officer for the purpose of providing factual statements regarding conversations and texts he had with the Defendant in the days leading up to the trial. The Court precluded the Commonwealth from requesting an opinion of the bail release officer regarding the Defendant's actions. (Transcript of Criminal Jury Trial, 10/26/23, pg. 56).

The rule of law in this Commonwealth is that “[w]hen a person commits a crime, knows that he is wanted therefor, and flees or conceals himself, such conduct is evidence of consciousness of guilt, and may form the basis in connection with other proof from which guilt may be inferred.” *Commonwealth v. Coyle*, 203 A.2d 782, 789 (Pa. 1964). However, “a failure to appear on the day set for trial does not have the same connotation as pre-arrest flight or concealment and cannot be said to point unerringly to consciousness of guilt.” *Commonwealth v. Babbs*, 499 A.2d 1111, 1113 (Pa. Super. 1985). In this case, however, the Commonwealth called Adam Welteroth, who had supervised the Defendant since August 2, 2022. (Trial Transcript, 10/26/23, pg. 57). Bail Release Officer Welteroth testified that the Defendant has been required to wear a GPS ankle monitor and keep it charged as part of his bail conditions, and if the monitor runs out of power the Defendant is required to disclose his location upon request. *Id.* at 58. Mr. Welteroth further testified that he was last able to track the Defendant's GPS monitor on October 19, 2023, but that he had text message communications with the Defendant in the days leading up to the trial. *Id.* at 59-60. These text messages were admitted as Commonwealth's Exhibit 7, and show the Defendant stating at 8:36 a.m. on October 24, 2023, “Adam I will be checking into the Super 8 in Danville later today for trial tomorrow. I just want to keep you informed.” *Id.* at 61. When Mr. Welteroth later requested that the Defendant share his location with him, the

Defendant responded “to be honest with you Adam, I cannot do that. I had already been advised not to come to the courthouse until trial, and be dressed for it. I understand and respect you have a job to do.” Id. at 62. Mr. Welteroth then asked the Defendant to confirm his understanding of what time he needed to be at the courthouse the next day for trial, to which the Defendant responded “[t]hey would like me there as early as possible. I was going to try to be there at 8:30. It’s been explained to me that I will be taken into custody immediately. I am fully aware of it, and the need for you to do your job.” Id. Bail Release Officer Welteroth testified that he had no communication with the Defendant after that text.

The testimony of the Defendant’s Bail Release Officer was relevant to substantiating the consciousness of guilt instruction that the Commonwealth requested due to the Defendant’s failure to appear for trial, as it gave the jury an opportunity to determine whether the Defendant made deliberate efforts to avoid trial and engage in deceptive behaviors to conceal his whereabouts. Given the fact that the Court did not allow the bail release officer to render his own opinion regarding what he believed the Defendant’s intentions were, the Court believes there was no prejudice to the Defendant and that there was no error of law or abuse of discretion in allowing the bail release officer to testify.

With regard to the Appellant’s third issue, he alleges this Court abused its discretion when it imposed an aggregate sentence of sixty-one (61) years and three (3) months to one hundred twenty-two (122) years and six (6) months of incarceration in a state correctional institution. The Court notes that the Commonwealth filed a Notice of Applicability of Mandatory Sentences for several of the crimes for which the Appellant was convicted. The Court arrived at the minimum sentence of sixty-one (61) years and three (3) months by imposing a ten (10) to twenty (20) year sentence on each of the six counts of Rape of a

Child¹ and a fifteen (15) to thirty (30) months sentence on Count 11 under CR-1133-2022, Obstruction, to run consecutive to each other. All other sentences imposed by the Court are to run concurrent to each other and concurrent to the sentences listed above.

“Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion.”

Commonwealth v. Hess, 745 A.2d 29, 31 (Pa. Super. 2000). “An abuse of discretion is more than just an error in judgment and, on appeal, the trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will.” *Id.* The trial court is afforded broad discretion in sentencing criminal defendants “because of the perception that the trial court is in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it.” *Commonwealth v. Mouzon*, 571 Pa. 419, 812 A.2d 617, 620 (Pa.2002) (quoting *Commonwealth v. Ward*, 524 Pa. 48, 568 A.2d 1242, 1243 (1990)). Furthermore, under 42 Pa.C.S.A. § 9721, the court has discretion to impose sentences consecutively or concurrently and, ordinarily, a challenge to this exercise of discretion does not raise a substantial question.

Commonwealth v. Pass, 914 A.2d 442, 446–47 (Pa.Super.2006). The imposition of consecutive, rather than concurrent, sentences may raise a substantial question in only the most extreme circumstances, such as where the aggregate sentence is unduly harsh, considering the nature of the crimes and the length of imprisonment. *Id.*

The Court submits that it considered several factors when fashioning the Appellant’s sentence and choosing to run certain counts consecutive to each other and the

¹ Counts 1-2 under CR-925-2022 and Counts 1-4 under CR-1133-2022.

remaining counts concurrent to each other, including the mandatory minimum sentence required for certain counts, and the need to protect the public given the Defendant's propensity for sexually abusing children, the age of the victim, the intrusive nature of the sexual contact with the victim, and the Sexual Offender Assessment Board member's finding that the Defendant displayed characteristics associated with pedophilic disorder which is a lifetime condition and significantly increases his likelihood for sexual re-offense. Additionally, this Court considered the Defendant's attempt to avoid all responsibility by deliberately misleading his counsel and the Court regarding his intention to appear for jury selection and trial yet failed to appear for either proceeding and was ultimately taken into custody in the State of New Hampshire and returned to Pennsylvania. Finally, and perhaps most significantly, the Court considered the Defendant's apparent lack of remorse, and noted its belief that the Defendant did not want his own family present at the sentencing because he did not want them to hear the things that were said about him. This Court is of the opinion that it was not an abuse of discretion to impose the sentence it did upon the Defendant given the individual circumstances of the matter.

Finally, appellant contends that under CR-925-2022, the verdict of guilt with respect to Count 3 was based on insufficient evidence because the Commonwealth failed to establish that there was deviate sexual intercourse associated with this count. A person is guilty of Involuntary Deviate Sexual Intercourse with a Child, a felony of the first degree, when the he person engages in deviate sexual intercourse with a complainant who is less than 13 years of age. 18 Pa.C.S. §3123(b). "Deviate sexual intercourse" is defined as "[s]exual intercourse per os or per anus between human beings and any form of sexual intercourse with an animal. The term also includes penetration, however slight, of the

genitals or anus of another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.” 18 Pa.C.S. §3101.

The testimony of both the victim and the victim’s mother supports the finding of guilt for Count 3. First, the victim testified:

Q: What – what other part of your body touched Marcus’ private?

A: My – my mouth.

Q: What was that like? Did you like that?

A: No.

Q: Did he touch the outside of your mouth or did it go in your mouth?

A: In.

Q: Went in?

A: (Nods head.)

Q: Did that happen once or more than once?

A: More than once.

...

Q: All right. Has anyone ever touched the private part inside your underwear?

A: Yes.

Q: Who touched it?

A: Marcus.

Q: How did he touch it? What did he touch it with?

A: His hand.

Q: Okay. Did he touch your private with any other part of his body other than his hand?

A: Yes.

Q: What?

A: His tongue.

Q: His tongue?

A: (Nods head.)

Q: Okay. Did that happen once or more than once?

A: More than once.

Trial Transcript, 10/25/23, pgs. 44, 46.

Additionally, the victim's mother, who was present in the room during the Defendant's sexual abuse of the child, testified as follows:

Q: Can you tell us what you observed, what you witnessed during that time period?

A: We were laying in bed and he told me to stay where I was. He got out of our bed, he went into my daughter's room, and he brought her into our room. He undressed himself, he undressed her, he laid her on the bed and performed oral sex on her. He then placed her on the floor on her knees and had her perform oral sex on him. He placed her on the bed on her stomach and he pulled her hips up towards him and rubbed his stuff against her until he ejaculated on her back.

Q: All right, so when he was - you said he was rubbing his stuff against her. Can you be a little more descriptive?

A: He was rubbing his penis against her anus.

Trial Transcript, 10/26/23, pg. 13. Mother further testified that these type of acts occurred more than five times, and that she could not actually put an exact number on the times that it happened. *Id.* at 15.

“In reviewing a sufficiency of the evidence claim, [an appellate court] must determine whether the evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to

support all elements of the offense.” *Commonwealth v. Vela-Garrett*, 251 A.3d 811, 815 (Pa. Super. 2021). Here, the Court finds that the testimony of both the victim and her mother sufficiently established each element of involuntary deviate sexual intercourse with a child under Count 3 of CR-925-2022.

For all of the foregoing reasons, this Court respectfully requests that the Appellant’s appeal be dismissed and his judgment of sentence dated February 6, 2024, be affirmed.

BY THE COURT,

Ryan M. Tira, Judge

RMT/jel

cc: Superior Court (Original +1)
DA (Martin Wade, Esquire)
PD (Jeana Longo, Esquire)
Gary Weber, Esquire
Jennifer Linn, Esquire