IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	NO. 1038 CR 2020
	:	
GEORGE KARAGIANNIS, Defendant	:	

Angela L. Raver, Esquire Sr. Deputy Attorney General	Counsel for Commonwealth
Mary Connors, Esquire	Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. – June 30, 2023

Defendant, George Karagiannis, appeals from the judgment of sentence imposed after a jury convicted him of two counts of aggravated indecent assault,[1] two counts of corruption of minors,[2] four counts of unlawful contact with a minor related to sexual offenses,[3] unlawful contact with a minor related to sexual abuse of children,[4] sexual abuse of children related to causing lewd or sexually provocative photographs or images of a child,[5] and criminal use of a communication facility.[6] Defendant challenges the sufficiency of the evidence respecting two of his convictions for unlawful contact with a minor, one

[1] 18 Pa.C.S. §3125(a)(7), (8).
[2] 18 Pa.C.S.A. §6301(a)(1)(ii).
[3] 18 Pa.C.S. §6318(a)(1).
[4] 18 Pa.C.S. §6318(a)(5).
[5] 18 Pa.C.S.A. §6312(b)(1).
[6] 18 Pa.C.S. §7512(a).

relating to contact for purposes of rape of a child (Count 7 of the Information) and the other relating to contact for purposes of statutory sexual assault (Count 8 of the Information).

FACTUAL AND PROCEDURAL BACKGROUND

C.S. and K.C. are half-sisters, sharing the same mother. In May 2020, while at their mother's home, C.S. and K.C. were on a social media site known as Omegle messaging with a stranger identified as "John M," now known to be the Defendant. (N.T., 11/8/22, p. 87).[7] At some point, the three switched to Snapchat, with Defendant using the username "Blankman5590." (N.T., p. 127).

At the time the three were communicating with one another, C.S. was 12 years old and K.C. 13 years old. Defendant pretended to be 17 years old but, in reality, was 27 years of age. (N.T., p. 150). Defendant sent C.S. and K.C. a picture of the top portion of his face, from his nose up. (N.T., p. 90).

At Defendant's request, C.S. and K.C. sent Defendant pictures of their face, breasts, backside and genitals. (N.T., pp. 90-91, 118, 128-132, 150-151). Defendant sent C.S. and K.C. a picture of his penis. (N.T., pp. 132-134).

During the foregoing communication, the three planned to meet that night and Defendant asked that they wear dresses. (N.T., pp. 91, 94). They also talked about what they would do when they met. (N.T., pp. 92, 134-135). This included having sexual

---

[7] Unless otherwise indicated, all references to the notes of testimony relate to the date of November 8, 2022.

relations, including intercourse. (N.T., p. 151). Because Defendant would be traveling some distance to meet with C.S. and K.C. – Defendant lives in Honesdale, Pennsylvania – he stated that he expected "two or nothing," ostensibly referring to both girls, and as acknowledged by C.S., K.C. knew what they were meeting for and wanted to do it. (N.T., pp. 92-93; Com. Ex. 4, Child Advocacy Center (CAC) interview with C.S. dated 7/29/20).

The meeting place agreed upon was at a gazebo in Ludlow Park in the Borough of Summit Hill. (N.T., p. 95). C.S. and K.C. left their home around midnight and were at the park when Defendant arrived in his truck. (Com. Ex. 4). Defendant approached C.S. and K.C., who by then were sitting on a bench, and requested each to touch his genitals on top of his clothing. (N.T., p. 101). This request appears to have been made because Defendant wanted to make sure no one was watching and that the girls were not cooperating with the police to entrap him. (Com. Ex. 4).

C.S. and K.C. then walked with Defendant to his truck, entered, and Defendant drove all three to a secluded, dark location where he parked near some trees and a quad trail. (N.T., pp. 105, 139-140). The three were in the front seat: Defendant in the driver's seat, K.C. in the middle, and C.S. by the window.

After talking for approximately twenty minutes, Defendant began kissing C.S. and K.C. (Com. Ex. 4). He also took turns placing his hands on their breasts over their clothing and digitally penetrated their genitals. (N.T., pp. 105-108, 143-144). Defendant set the front seat of his truck in a reclining position and after each girl's underpants had been removed, took turns attempting to have intercourse with each, although it appears he was

unsuccessful in fully inserting himself. (N.T., pp. 108-111, 144-147; Com. Ex. 4). Both girls complained of pain as Defendant attempted intercourse. (N.T., pp. 109, 111-112). Additionally, Defendant placed his hands behind each girl's head moving them toward his genitals, but both said no, and Defendant stopped. (N.T., pp. 112-113).

After the above had occurred, Defendant returned to the park with C.S. and K.C. and dropped them off. Afterwards, later that day, Defendant Snapchatted C.S. and K.C. that he was sorry. In response, C.S. unfriended and blocked Defendant from access within the app. (Com. Ex. 10, CAC interview with K.C. dated 7/29/20).

A four-day jury trial was held between November 7 and November 10, 2022. Defendant did not testify at trial or present any evidence on his own behalf. At the conclusion of the evidence, the jury found Defendant guilty of those offenses previously referenced in the first paragraph of this Opinion and acquitted him of the charges of rape of a child with respect to C.S.[8] and statutory sexual assault with respect to K.C.[9] Defendant was sentenced to an aggregate sentence of 14 to 31 years in a state correctional institution on March 3, 2023, followed by three years of consecutive probation.

Defendant filed a Post-Sentence Motion on March 13, 2023, challenging the weight and sufficiency of the evidence with respect to the two counts of unlawful contact with a minor at issue in this appeal, Counts 7 and 8 of the Information. At trial, the jury was

---

[8] 18 Pa.C.S.A. §3121(c).
[9] 18 Pa.C.S.A. §3122.1(b).

specifically instructed that to find Defendant guilty of unlawful contact with a minor in Count 7, the jury needed to find that the contact was for the purpose of engaging in rape of a child, and to find the Defendant guilty of unlawful contact with a minor in Count 8, the jury must specifically find that the contact was for the purpose of engaging in statutory sexual assault. (N.T. 11/10/22, pp. 163-165). This Motion was voluntarily withdrawn by Defendant on April 24, 2023, followed by the instant appeal taken on May 19, 2023. On June 13, 2023, Defendant filed a timely Concise Statement of Matters Complained of on Appeal in response to our Rule 1925(b) Order dated May 23, 2023, directing Defendant to file no later than 21 days from the entry of the order a concise statement of the errors complained of on appeal.

DISCUSSION

The crime of unlawful contact with a minor is defined, in relevant part, as follows:

> **(a) Offense defined.** — A person commits an offense if he is intentionally in contact with a minor... for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:
>
> > (1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).
> >
> > * * *

18 Pa.C.S.A. §6318(a)(1). Furthermore, a minor is "[a]n individual under 18 years of age," and "Contacts" is defined as follows:

> 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.A. §6318(c).

A person is guilty of unlawful contact with a minor if he is intentionally in contact with a minor for the purpose of engaging in a prohibited Chapter 31 sexual offense. The crime of unlawful contact does not criminalize all contact between a complainant and a perpetrator, but only the contact or communications whose goal is to engage in a prohibited offense. The conduct prohibited by this crime "focuses on communication, *verbal or non-verbal*, and does not depend upon the timing of the communication." Commonwealth v. Davis, 225 A.3d 582, 587 (Pa.Super. 2019) (emphasis in original), appeal denied, 282 A.3d 369 (Pa. 2022). "[I]t matters not whether the communication occurred at the outset of or contemporaneously with the [actual sexual] contact; once the communicative message is relayed to a minor, the crime of unlawful contact is complete." Id. Consequently, "the statute is best understood as [making it a crime to engage in] unlawful *communication* with a minor, for by its plain terms, it prohibits communication with a minor for the purpose of carrying out certain sex acts." Id. (emphasis in original) (quotation marks and citation omitted).

The conduct necessary to commit the underlying substantive offense, or an attempt to commit the underlying offense, is not the same as that necessary to convict for unlawful contact with a minor, as each crime contains at least one element that the other doesn't, namely, in the case of unlawful contact, the element of unlawful communication for the purpose of engaging in the prohibited activity. As a consequence, a conviction for

unlawful contact with a minor for purpose of engaging in a prohibited Chapter 31 sexual offense does not merge with a conviction of the underlying sexual offense. See Commonwealth v. Evans, 901 A.2d 528, 536-37 (Pa.Super. 2006), appeal denied, 909 A.2d 303 (Pa. 2006).

"Section 6318 does not require that a defendant even be charged with, let alone convicted of, any underlying substantive offense for which he contacted the minor." Commonwealth v. Aikens, 168 A.3d 137, 141 (Pa. 2017). Moreover, "a defendant need not be successful in completing the purpose of his communication with a minor in order to be convicted of unlawful contact with the minor." Id. The underlying sexual offense is not a predicate offense (*i.e.*, an essential statutory element) of the crime of unlawful contact with a minor required to be proven beyond a reasonable doubt to sustain a conviction under Section 6318. Commonwealth v. Reed, 9 A.3d 1138, 1146 (Pa. 2010).

In the present case and in accordance with our jury instructions, the elements of this crime consist of intentionally, either directly or indirectly, contacting or communicating with a minor for the purpose of rape of a child with respect to C.S. and for the purpose of statutory sexual assault with respect to K.C. (N.T. 11/10/22, pp. 163-165). In his Concise Statement, Defendant claims that the evidence was insufficient to establish that Defendant intentionally contacted the minors, C.S. and K.C., for the purpose of engaging in sexual intercourse.

A challenge to the sufficiency of the evidence presents a question of law and is reviewed under the following standard:

> We must determine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as verdict winner, support the conviction beyond a reasonable doubt. Where there is sufficient evidence to enable the trier of fact to find every element of the crime has been established beyond a reasonable doubt, the sufficiency of the evidence claim must fail.
>
> The evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented. It is not within the province of this Court to re-weigh the evidence and substitute our judgment for that of the fact-finder. The Commonwealth's burden may be met by wholly circumstantial evidence and any doubt about the defendant's guilt is to be resolved by the fact-finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

Commonwealth v. Velez, 51 A.3d 260, 263-64 (Pa.Super. 2012) (quoting Commonwealth v. Mobley, 14 A.3d 887, 889-890 (Pa.Super. 2011)). Moreover, in applying the above test, the entire record must be evaluated and all the evidence actually received must be considered. Commonwealth v. Pappas, 845 A.2d 829, 835-836 (Pa.Super. 2004), appeal denied, 862 A.2d 1254 (Pa. 2004).

Expounding further on the scope and standard of a sufficiency review, the Pennsylvania Superior Court in Commonwealth v. Rodriguez, 2023 WL 3167488 (Pa.Super. 2023) (Non-Precedential Decision), stated:

> Challenges to witness credibility pertain to the weight, not sufficiency, of the evidence. Commonwealth v. Melvin, 103 A.3d 1, 43 (Pa.Super. 2014). Moreover, inconsistencies are for the fact-finder "to resolve and do not dictate a finding the evidence was not sufficient for conviction." Commonwealth v. Juray, 275 A.3d 1037, 1046 (Pa.Super. 2022). Our sufficiency analysis must therefore accept the credibility and reliability of all evidence that supports the verdict. Commonwealth v. Breakiron, 571 A.2d 1035, 1042 (Pa. 1990).

Id. at *3

Given the totality of the evidence presented at trial, it was reasonable for the jury to infer that Defendant had both verbal and non-verbal contact with the victims beyond that required to support a conviction for rape of a child and statutory sexual assault. Both C.S. and K.C. testified that when they communicated with Defendant through Omegle and Snapchat prior to their meeting, they talked about what they were going to do when they met up. They exchanged explicit photographs of their genitals. Both testified to what occurred in Defendant's truck that evening, including that their underpants were removed, that Defendant lowered the front seat of his truck to a reclining position before climbing on top of them, and that Defendant penetrated each of them with his penis and it hurt. Finally, K.C. confirmed that what actually occurred when they met is what they had discussed would happen within hours of when it happened. (N.T., pp. 134-135, 151).

In Velez, the nine-year-old victim's mother observed her daughter "lying on the bed, nude from the waist down, with her knees up and defendant's head between her legs." 51 A.3d at 262. In finding that this was sufficient to convict defendant of unlawful contact with the minor and evidenced contact with the victim beyond the physical act necessary to commit the offense of aggravated indecent assault, the Court stated the following:

> The victim would not have had her pants removed and her legs in that position absent previous contact by Appellant, either verbal or physical. In order to engage in the assault, it is reasonable to infer that Appellant directed the victim, either verbally or non-verbally, to unclothe below the waist and to assume that pose.

Id. at 267. (holding that the contact element of unlawful contact with a minor was satisfied with reasonable inference that defendant directed nine-year-old victim, either verbally or non-verbally, to undress and to position herself in a sexual way). Here, although neither C.S. or K.C. could recall how their underpants were removed when they were in Defendant's truck, whether Defendant removed them or they removed them, clearly some communication occurred in anticipation of Defendant engaging in sexual intercourse with each and in reclining the truck's front seat to place the minor victims in the position they were in at the time of the assault.

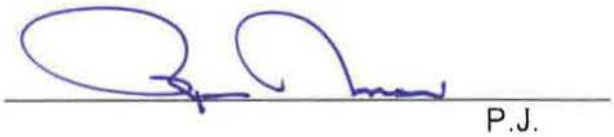
CONCLUSION

Critical to Defendant's convictions of unlawful contact with a minor in Counts 7 and 8 of the Information is that the jury was specifically instructed that Defendant could be found guilty of those offenses only if it found that the unlawful contact with the victims was for the purpose of engaging in rape of a child with respect to C.S. and statutory sexual assault with respect to K.C., respectively; that this required the jury to make a specific finding of purpose in order to convict; and, thus, as jurors are presumed to follow the court's instructions, that the jury necessarily found as a fact that Defendant contacted the minor victims for the specific purpose of engaging in rape of a child as to C.S. and statutory sexual assault as to K.C. notwithstanding that Defendant was acquitted of actually engaging in rape of a child and statutory sexual assault. Cf. Aikens, 168 A.3d at 143. Nor are these verdicts logically or legally inconsistent; rather, the verdicts merely

indicate the jury's conclusion that Defendant did not actually commit the crimes of rape of a child and statutory sexual assault, but did unlawfully contact the minor victims for purposes of engaging in these offenses. Aikens, 168 A.3d at 144.

The fact that Defendant was not convicted of the underlying substantive offenses while not to be ignored does not lessen the significance of the jury's verdicts in Counts 7 and 8 and the sufficiency of the evidence to support those convictions. That Defendant was acquitted of rape of a child and statutory sexual assault "should not be interpreted as specific factual findings arising from the evidence; rather, an acquittal may merely show lenity on the jury's behalf, or that the verdict may have been the result of compromise, or of a mistake on the part of the jury." Commonwealth v. Baker-Myers, 255 A.3d 223, 231 (Pa. 2021) (citing and quoting from Commonwealth v. Moore, 103 A.3d 1240, 1246 (Pa. 2014) and Dunn v. United States, 284 U.S. 390, 394, 52 S.Ct. 189, 76 L.Ed. 356 (1932); quotation marks omitted). Simply put, "factual findings may not be inferred from a jury's acquittal." Baker-Myers, 255 A.3d at 231.

BY THE COURT:



P.J.