

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
TIMOTHY TARVER	:	
	:	
Appellant	:	No. 3242 EDA 2024

Appeal from the Judgment of Sentence Entered September 23, 2024
In the Court of Common Pleas of Delaware County Criminal Division at
No(s): CP-23-CR-0002724-2021

BEFORE: STABILE, J., NICHOLS, J., and SULLIVAN, J.

OPINION BY NICHOLS, J.:

FILED OCTOBER 7, 2026

Appellant Timothy Tarver appeals from the judgment of sentence imposed after a jury convicted him of indecent assault of a person less than 13 years of age.¹ On appeal, Appellant challenges the sufficiency of the evidence and raises an evidentiary claim. We affirm.

On September 2, 2020, the Commonwealth filed a criminal complaint against Appellant, then aged twenty, alleging that Appellant had sexually abused A.H., an eleven-year old girl (Victim). **See** Criminal Compl., 9/2/20, at 5. Appellant was tried by a jury from May 21, 2024 to May 23, 2024 for indecent assault of a person less than 13 years of age, corruption of a minor, and rape of a child. At trial, the Commonwealth presented the testimony of, *inter alia*, the Victim; D.H., the Victim's father; and Officer Robert Graves of

¹ **See** 18 Pa.C.S. § 3126(a)(7)

the Chester Police Department. **See** N.T., 5/21/24, at 98-129, 153-63, 178-201. Appellant did not call any witnesses, nor did he testify in his own defense.

The Victim was first interviewed about the incidents involving Appellant when she was eleven years old; by the time of trial, the Victim was fifteen years old. **See** N.T., 5/21/24, at 99, 135. In her testimony, the Victim recounted three incidents in which Appellant had forced unwanted sexual contact on her, the first of which occurred when she was either seven or eight years old. **See id.** at 102-03, 115-16, 121, 125. The Victim testified that in the first incident Appellant “forced himself onto [her],” pulled her pants down, and penetrated her vagina with his penis. **See id.** at 104-109. The Victim also testified that, during the same incident, Appellant rubbed her genitals with his hand and rubbed his penis on her buttocks. **See id.** at 108-11. The jury also viewed a video of a forensic interview of the Victim at age eleven; the video depicted Victim recounting the incidents. **See** N.T., 5/22/24, at 74-79, Ex. C-10.

Officer Graves testified that in April of 2020 he began conducting an investigation of the Victim’s allegations against Appellant. **See id.** at 181-84. In the course of his investigation, Officer Graves interviewed D.H. and J.H., the Victim’s father and stepmother, and observed the Victim’s forensic interview live as it was conducted. **See id.** at 188, 191. On cross-examination, Appellant’s trial counsel attempted to question Officer Graves about his interview of J.H. **See id.** at 195-96. The Commonwealth objected

on the basis of hearsay and the trial court sustained the objection. **See id.** at 195-96; **see also** Trial Ct. Op., 3/26/25, at 2-3.²

On May 23, 2024, the jury returned a verdict of guilty on the charge of indecent assault of a child.³ **See** Verdict, 5/23/24. The trial court sentenced Appellant to one to four years of incarceration, followed by three years of probation. **See** Sentencing Order, 9/23/24. Appellant filed post-sentence motions, which the trial court denied on November 18, 2024. Appellant filed a timely notice of appeal and both Appellant and the trial court complied with Pa.R.A.P. 1925.⁴

On appeal, Appellant raises the following questions:

1. [Appellant] was convicted of one count of indecent assault on a person less than thirteen years of age in violation of 18 Pa.C.S. [§] 3126(a)(7). Did the [] trial court commit error when it failed to sustain a post-sentence motion challenging the sufficiency of the evidence to sustain the verdict?

² The notes of testimony of May 21, 2024 reflect that the Commonwealth's objection was discussed during a sidebar that was not transcribed or otherwise recorded by the court reporter. The trial court explained in its opinion that the Commonwealth objected on the basis of hearsay. **See** Trial Ct. Op., 3/26/25, at 2-3. No parties dispute this explanation.

³ The Commonwealth withdrew the corruption of a minor charge. **See** N.T., 5/22/24, at 64-65. Appellant was acquitted of rape of a child. **See** Verdict, 5/23/24.

⁴ On December 6, 2024, the trial court directed Appellant to file a Rule 1925(b) concise statement within 21 days. Appellant filed his concise statement on February 26, 2024. The trial court, however, had granted Appellant extensions of time to file to March 3, 2025. **See** Trial Ct. Order, 1/30/25. Accordingly, Appellant's concise statement was timely filed.

2. Did the [] trial court err in sustaining the Commonwealth's objection to cross examination of Officer Graves []?

Appellant's Brief at 3.

Appellant's first claim is that the evidence was insufficient to support his conviction. **See id.** at 16. Specifically, Appellant argues that the verdict was based solely on the Victim's testimony, uncorroborated by other testimony or forensic evidence. **Id.** at 18-23. Appellant contends that the Victim's testimony was inconsistent with her prior statements, including how many incidents occurred and Appellant's exact conduct in each incident, characterizing the Victim's testimony as "so weak and inconclusive" that "no probability of fact may be drawn from the combined circumstances" and the testimony was, therefore, not credible. **Id.**

Before we reach the merits of Appellant's sufficiency claim, we note that when an appellant states a sufficiency claim but the arguments in support of that claim "go[] to the weight of the evidence," our Supreme Court has held that the "challenge to the sufficiency of the evidence must fail." **Commonwealth v. Small**, 741 A.2d 666, 672 (Pa. 1999); **see also Commonwealth v. Myers**, 195 EDA 2021, 2023 WL 3019162, at *3-4 (Pa. Super. filed Apr. 20, 2023) (unpublished mem.) (holding that, where the appellant raised a sufficiency claim but proffered a weight argument that the victim was not credible, the sufficiency claim "must fail" (citations omitted)).⁵

⁵ We may cite to unpublished memorandum decisions of the Superior Court filed after May 1, 2019, for their persuasive value. **See** Pa.R.A.P. 126(b).

Here, Appellant argues that the Victim's testimony was uncorroborated and inconsistent with her prior statements and, further, that the testimony was so weak and inconsistent that the jury should not have credited it. **See** Appellant's Brief at 16-22. Appellant asks this Court to discard the jury's fact-findings based on the Victim's testimony and, instead, adopt Appellant's findings. We decline the invitation and conclude that Appellant's sufficiency claim must fail because it presents weight claim arguments. **See *Small***, 741 A.2d at 672; **see also *Myers***, 2023 WL 3019162 at *3.

In the event that Appellant's sufficiency claim is not disposed of as explained above, we would review this claim as a question of law. ***Commonwealth v. James***, 297 A.3d 755, 764 (Pa. Super. 2023) (citations omitted and formatting altered), *appeal denied*, 309 A.3d 691 (Pa. 2023). "Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt." ***Id.***

Specifically, we must determine whether,

viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for [that of] the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. . . . [T]he trier of fact while passing upon the credibility of witnesses and the weight

of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Graham, 81 A.3d 137, 142 (Pa. Super. 2013) (citation omitted); ***see also Commonwealth v. Segida***, 985 A.2d 871, 880 (Pa. 2009).

To secure a conviction for indecent assault of a person less than 13 years of age, the Commonwealth must establish that the accused person had

indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and . . . the complainant is less than 13 years of age.

18 Pa.C.S. § 3126(a)(7). The Sexual Offenses chapter of 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 any person.” 18 Pa.C.S. § 3101. This Court has held that “sexual or other intimate parts of the person” means “any ‘body part that is personal and private, and which the person ordinarily allows to be touched only by people with whom the person has a close personal relationship, and one which is commonly associated with sexual relations or intimacy.’” ***See Commonwealth v. Reyes-Acosta***, 469 MDA 2022, 2023 WL 4760745, at *3 (Pa. Super. filed July 26, 2023) (unpublished mem.) (citing ***Commonwealth v. Gamby***, 283 A.3d 298, 313-14 (Pa. 2022).

Relevantly, Chapter 31 of the Crimes Code expressly provides that “the testimony of a complainant need not be corroborated in prosecutions” for

sexual offenses. 18 Pa.C.S. § 3106. “Testimony from a single witness is sufficient to sustain a conviction if it addresses every element of the crime charged.” **Reyes-Acosta**, 2023 WL 4760745 at *3 (citing **Commonwealth v. Johnson**, 180 A.3d 474, 481 (Pa. Super 2018)).

Here, after our review of the record, we would conclude that the Victim’s testimony was legally sufficient for the jury to find that Appellant had committed the offense of indecent assault of a person less than 13 years of age. The Victim’s testimony conveyed that, when she was seven or eight years old, Appellant intentionally forced unwanted sexual contact on her; specifically, he forced contact between the sexual parts of her body with the sexual parts of his body. **See** N.T., 5/21/24, at 102-03, 109. The Commonwealth was not required to proffer corroborating evidence, in addition to the Victim’s testimony, to establish the elements of this sexual offense and, further, the jury was permitted by statute to rely solely on the Victim’s testimony and to credit all, none, or part of the Victim’s testimony to conclude that Appellant had committed the offense. **See** 18 Pa.C.S. § 3106; **see Graham**, 81 A.3d at 142; **Reyes-Acosta**, 2023 WL 4760745, at *3. Viewed in the light most favorable to the Commonwealth as the verdict winner, we find no support in the record for Appellant’s claim that the evidence was “so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.” **Graham**, 81 A.3d at 142. Accordingly, we conclude that Appellant’s sufficiency claim has no merit. **See James**, 297 A.3d at 764.

In his second claim, Appellant argues that the trial court erred in sustaining the Commonwealth's hearsay objection when Appellant sought to introduce the Victim's prior inconsistent statements to her stepmother, J.H., which J.H. had repeated to Officer Graves in an interview. **See** Appellant's Brief at 23-24. Appellant argues that the statements made by the Victim to her stepmother, which J.H. then relayed to Officer Graves, were not offered for the truth of the matter asserted but, rather, to impeach the Victim's testimony. **See id.** at 24. Appellant contends that the specific testimony he sought to elicit from Officer Graves was admissible pursuant to Pa.R.E. 613(b) as "extrinsic evidence of a prior inconsistent statement by a witness." **Id.** at 25, 27.

The Commonwealth responds that J.H.'s statements were inadmissible hearsay because Appellant's trial counsel failed to lay the foundation required by Pa.R.E. 613(b). **See** Appellee's Brief at 14. Specifically, the Commonwealth contends that Appellant failed to address the fact that the statements were inadmissible "double hearsay" because the statements were the Victim's "out-of-court statement[s] repeated to J.H., then repeated by J.H. to Officer Graves[,] and Rule 613(b) does not permit impeachment through such indirect, layered hearsay." **Id.** at 17. The Commonwealth argues that the trial court properly sustained its objection because Appellant's trial counsel failed to call J.H. as a witness. **See id.**

It is well settled that the "admission of evidence is committed to the sound discretion of a trial court and will not be reversed absent an abuse of

discretion.” ***Commonwealth v. Chamberlain***, 731 A.2d 593, 595 (Pa. 1999) (citation omitted).

The inadmissibility of hearsay statements is a tenet of the fact-finding function of our trial system because hearsay evidence “lacks guarantees of trustworthiness fundamental to the Anglo-American system of jurisprudence.” ***Id.*** (citation omitted). Hearsay is “a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” Pa.R.E. 801(c). “Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute.” Pa.R.E. 802.

Pennsylvania Rule of Evidence 613(b) provides, in relevant part:

(b) Extrinsic Evidence of a Witness's Prior Inconsistent Statement. Unless the interests of justice otherwise require, extrinsic evidence of a witness's prior inconsistent statement is admissible only if, during the examination of the witness,

- (1) the statement, if written, is shown to, or if not written, its contents are disclosed to, the witness;
- (2) the witness is given an opportunity to explain or deny the making of the statement; and
- (3) an adverse party is given an opportunity to question the witness.

Pa.R.E. 613(b). statement

Here, the statements that Appellant sought to elicit from Officer Graves consisted of two levels of out-of-court statements. **See** N.T., 5/21/24, at 195-96; Trial Ct. Op., 3/26/25, at 2-3. The first level of statement was the Victim’s

statements to J.H. regarding Appellant's conduct. The second level of statement occurred when J.H. repeated the Victim's statements to Officer Graves during an interview. While Appellant contends that the Victim's statements to J.H. were admissible as a prior inconsistent statement under Rule 613(b), Appellant has not explained how J.H.'s statements relaying the Victim's statements to Officer Graves were admissible, either under Rule 613(b) or as an exception to the rule against hearsay. **See** Appellant's Brief at 24-29.

Because Appellant fails to explain how J.H.'s statement to Officer Graves was admissible at trial, we find no merit to Appellant's evidentiary claim. Appellant failed to qualify J.H.'s statements under Rule 613(b) because Appellant did not call J.H. as a witness at trial. **See** Pa.R.E. 613(b). On appeal, Appellant contends that he sought to admit J.H.'s statements to establish that the Victim made prior statements inconsistent with the Victim's trial testimony at trial. **See** Appellant's Brief at 24-29. Based on Appellant's characterization of J.H.'s statements, we conclude that Appellant sought to elicit hearsay because the purpose of admitting J.H.'s statements was to establish the truth of the matter: that the **Victim had informed J.H.** about Appellant's conduct, regardless of whether the content of the Victim's statement was in fact true. **See** Pa.R.E. 801(c), 802. In other words, if J.H.'s statements were not true, *i.e.*, the Victim had not informed J.H. about Appellant's conduct, then the statements would be irrelevant to Appellant's trial and, consequently, inadmissible. **See** Pa.R.E. 402 (stating that

“[e]vidence that is not relevant is not admissible”). The trial court therefore did not abuse its discretion in ruling that J.H.’s out-of-court statements were inadmissible hearsay. **See** Pa.R.E., 402, 613(b), 801(c), 802; **see Chamberlain**, 731 A.2d at 595.

Even if the trial court erred or abused its discretion in sustaining the objection, we would conclude that this was harmless error because at trial Appellant’s counsel cross-examined the Victim directly about the alleged prior inconsistent statements to J.H. and had the opportunity to cross-examine D.H., the Victim’s father, about the same alleged prior inconsistent statements, as D.H. was present when the Victim made the alleged statements. **See** N.T., 5/21/24, at 149-50, 167-72; **see Commonwealth v. Hairston**, 84 A.3d 657, 671-72 (Pa. 2014) (holding, in relevant part, that an error is harmless if it “did not prejudice the defendant or the prejudice was *de minimis*, or . . . the properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict” (citation omitted)).

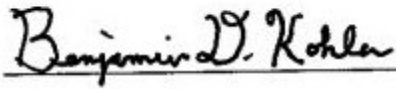
For the foregoing reasons, we affirm Appellant’s judgment of sentence.

Judgment of sentence affirmed. Jurisdiction relinquished.

Judge Sullivan joins the opinion.

Judge Stabile concurs in the result.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/7/2026