
NO. 35474

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

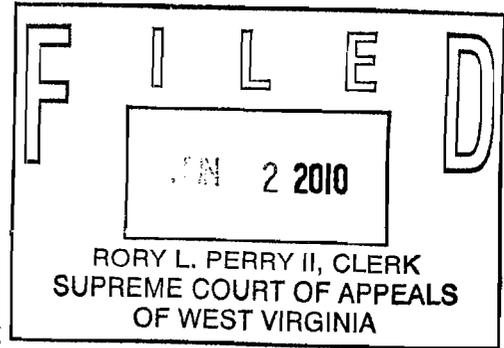
STATE OF WEST VIRGINIA,

Appellee,

v.

TIMOTHY C. EDMONDS,

Appellant.



BRIEF OF APPELLEE STATE OF WEST VIRGINIA

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I.

**KIND OF PROCEEDING AND
NATURE OF RULINGS BELOW**

This matter is before the Court pursuant to Timothy Edmonds' ("Appellant") appeal from his conviction in the Circuit Court of Kanawha County of three counts of sexual abuse by a parent, guardian, custodian or person in a position of trust to a child for the purpose of gratifying his sexual desire. On appeal, Appellant claims that there is insufficient evidence in the record to have allowed the jury to find, beyond a reasonable doubt, that he was in a position of trust to the victim in this case or that the victim was under his care, custody or control at the time of the offenses. The State disagrees.

II.

STATEMENT OF FACTS

At the time that the offenses giving rise to this case occurred, March 2006, the victim, Angel Green, was 16 years old and Appellant was in his 30s. Tr. 219, 240, 340, 412. Angel was living

with her adoptive parents, Mike and Debra Green, at the time.¹ Tr. 155, 195. Angel has, for the most part, qualified for and received special education services in school. Tr. 155, 156, 157, 195, 196.² Angel is also very vulnerable to suggestion, as she will do “[a]nything to make friends.” Tr. 157. For example, at her previous school, Riverside High School, Angel “would just willingly give [away her personal belongings]” and “swallow coins in class”, when asked to do so by her fellow students. Because of this type of behavior, her mother decided to take her out of public school and put her in a private Christian school. Tr. 157, 158.

In August 2005, Angel began school as a tenth grader at the Upper Kanawha Valley Christian School (“School”) in Chesapeake, West Virginia. Tr. 158, 159, 197. The School is a separate ministry of and adjoined/attached to the Chesapeake Apostolic Church (“Church”), also located in Chesapeake. Tr. 158, 161, 363, 382. Angel attended the Church on Wednesday nights. Tr. 161, 200. The School is very small, consisting of one classroom with approximately 12 students. Tr. 160, 198, 335.

Appellant’s father-in-law, Philip Priddy, is the Pastor of the Church. Tr. 200, 363, 421. Pastor Priddy also helps keep the School going by doing its maintenance work. Tr. 364. Appellant’s mother-in-law, Patricia Priddy, is the Principal of the School. Tr. 342, 343. Appellant’s wife, Karen Edmonds, works at the School as a volunteer teacher/administrator.³ Tr. 343, 400, 412-413.

¹ Angel was adopted by the Greens when she was six years old. Tr. 155, 195.

² Angel was a special education student at Marmet Elementary School, East Bank Middle School, and Riverside High School. *Id.*

³ Debora Whittington and Sarah Huffman also work at the School as volunteer teachers/administrators. Tr. 333, 334, 335, 344.

The Church posts bulletins, which “listed every job” “that everybody did at the [C]hurch.” Tr. 358. On at least two of these bulletins, Appellant was listed as an “Associate Youth Minister.” Tr. 356, 357, 358, 386. Appellant, on occasion, usually Wednesday nights, led prayer services at the Church. Tr. 162, 201, 354, 364, 386, 421. Appellant also helps his father-in-law, Pastor Priddy, with maintenance work at the Church and School. Tr. 199, 346, 367-358, 401, 422, 434.

Appellant came to the School on Tuesdays to do his homework⁴ and sometimes help with the children’s work.⁵ Tr. 345, 350, 401, 422, 434. Appellant also, on occasion, helped Angel Green with her school work and monitored her as well as the other students at the School. Tr. 200, 223.

Sometime in March 2006, Appellant took Angel to the children’s Sunday school room⁶ in the basement of the Church. Tr. 201. Once inside this room, Appellant shut the door, laid Angel down on the floor on her back, got on top of her, and began rubbing his male sex organ on her female sex organ. Tr. 202. Thereafter, Appellant told Angel not to tell anybody because he might get in trouble and would not be able to preach anymore at the Church. Tr. 202, 203.

On a second occasion in March 2006, Appellant told Angel to meet him in the storage room,⁷ which is located in the basement of the Church. Tr. 203, 204. Once they were in this room, Appellant again laid Angel down on her back and began rubbing his male sex organ on her female

⁴ At that time, Appellant was a student at West Virginia State College. Tr. 419.

⁵ The School uses the “Paces” method for teaching its students. This teaching method is a self paced program whereby the students are required to complete 25 pages in five different subject areas. Thereafter, the student’s pages are counted and graded in order to make sure that they are keeping up with the requirements of the program. Tr. 198, 350.

⁶ This Sunday school room is also referred to as the “little kids room” and “nursery room.” Tr. 201.

⁷ This storage room is also referred to as the “letter room.” Tr. 351.

sex organ. Tr. 204. Appellant then told Angel to rollover on her stomach, which she did, and Appellant began rubbing his male sex organ on her buttocks. Tr. 205. Afterward, Appellant again asked Angel not to tell anybody what had occurred. Tr. 206.

On a third occasion in March 2006, Angel, along with her friend Michael, walked over to Appellant's house.⁸ Tr. 206. Once Angel and Michael arrived at the house, Appellant invited the two of them inside. *Id.* Thereafter, and before anything occurred, Michael left the house. *Id.* Once Angel was inside, Appellant took her into one of the rooms of the house and, while she was in a standing position, he began rubbing his male sex organ on her buttocks. Tr. 206-207. The room where this occurred contained a rocking chair. Tr. 207, 208. Appellant then asked Angel to sit in this rocking chair, during which time Appellant retrieved a camera and took pictures of Angel's legs. Tr. 208. Appellant then told Angel about a "contest" for "the prettiest legs" and that she "would definitely win, because . . . [she had] the prettiest legs." *Id.*

Appellant then went into the living room of the house and retrieved some cushions off of a couch and returned to the room that he left Angel. *Id.* Once back, Appellant placed the cushions on the floor and told Angel to lay down on them. *Id.* While laying on her back, Appellant got on top of Angel and proceeded to rub his male sex organ on her female sex organ. *Id.* Appellant then told Angel to rollover on her stomach at which time he began rubbing his male sex organ on her buttocks. Tr. 209. Afterward, Appellant told Angel not to tell anyone what had occurred. *Id.*

On a fourth occasion in March 2006, Angel and her friend Michael were walking to Appellant's house when Appellant picked them up in his van and drove them to his house. Tr. 210.

⁸ At the time, the house was actually owned by Appellant's mother-in-law, Patricia Priddy. Appellant was remodeling the house and, at a later date, he and his wife took over the house.

At the house,⁹ Appellant gave Angel some pantyhose and told her to put them on, which she did. Tr. 210, 211. At this point, Appellant walked outside of the house and when he returned he shut and locked the door. Tr. 211. With Angel still wearing the pantyhose, Appellant laid her down on her back and began rubbing his male sex organ on her female sex organ. Tr. 212. Appellant then told Angel to rollover on her stomach and, when she did, Appellant got on top of her and started rubbing his male sex organ on her buttocks.¹⁰ *Id.*

On April 20, 2006, Angel's mother, Debra Green, found a letter in Angel's bedroom¹¹ that Angel had written to Appellant.¹² Tr. 163, 164, 213, 214. The letter described "intimate kissing" and, out of concern for her daughter, Ms. Green questioned Angel and found out that she had written this letter to Appellant. Tr. 164, 165, 187. Angel further informed her mother about the incidents that occurred between her and Appellant at the Church/School and Appellant's house. Tr. 188.

After finding the letter and speaking with Angel, Ms. Green, along with her husband, Mike Green, made contact with the police.¹³ The police came to the Greens' home and spoke with Angel as well as her parents. Following this interview, the pantyhose that Appellant had given to Angel were turned over and collected by the police as evidence. *See generally* Tr. 165-170, 217, 235, 239-

⁹ Michael remained outside of the house. Tr. 211.

¹⁰ Following this incident, Angel went home, took the pantyhose off, and placed them in a drawer in her bedroom. Tr. 213.

¹¹ The letter was actually found in one of Angel's pillow cases. Tr. 163.

¹² The letter did not identify Appellant by his last name, but only by his first name -- "Tim." Tr. 164.

¹³ The Greens actually made contact with Trooper Larry O'Bryan of the West Virginia State Police, who acted as the investigating officer in the case. Trooper Boyles of the West Virginia State Police was also active in investigating the case.

240, 244-245.¹⁴

The pantyhose were then submitted to the West Virginia State Police laboratory for examination. Semen was found on the pantyhose. The DNA from the semen was then compared to the DNA of Appellant's saliva, which was obtained through a search warrant. This comparative analysis confirmed that the DNA from the semen found on the pantyhose and the DNA of Appellant's saliva matched.¹⁵ *See generally* Tr. 246-248, 275-280, 290-293.

On November 14, 2008, the Grand Jury for Kanawha County indicted Appellant on seven counts of sexual abuse by a parent, guardian, custodian or person in a position of trust to a child for the purpose of gratifying his sexual desire. *See* R. at 1-1C.

Appellant's trial began on January 26, 2009, and ended on January 28, 2009, with the jury convicting him of three counts of sexual abuse by a parent, guardian, custodian or person in a position of trust to a child for the purpose of gratifying his sexual desire. *See* Tr. 518-519. *See also* R. at 95-96.¹⁶

By Order of April 16, 2009, the Circuit Court sentenced Appellant to 10 to 20 years in the penitentiary. *See* R. at 123-123A. Thereafter, Appellant brought the current appeal.

¹⁴ The letter that Angel had written to Appellant, as well as the cushions from Appellant's house, were also turned over and collected by the police.

¹⁵ A statistical analysis revealed that only "1 in 818 trillion" people would have the same DNA profile. In other words, if every person on the planet were sampled, the DNA profile found in the samples of the pantyhose and Appellant's saliva would never be found, unless Appellant had an identical twin, which he does not. *See generally* Tr. 293-294.

¹⁶ The jury acquitted Appellant on counts 1 through 4 of the indictment and found him guilty on counts 5 through 7 of the indictment. *See Id.* Counts 1 through 4 related to incidents that took place at the Church/School, and counts 5 through 7 related to incidents that took place at Appellant's house.

III.

ASSIGNMENTS OF ERROR

On appeal, Appellant makes the following assignment of error:

There is insufficient evidence in the record to allow the jury to find beyond a reasonable doubt that Edmonds was a person in a “position of trust in relation to” Green, and that Green was under his “care, custody or control” at the time of the alleged offenses. Edmonds was not a “person in a position of trust in relation to” Green, nor was Green “under his care, custody, or control” at the time of the crimes of conviction, therefore no rational trier of fact could find Edmonds guilty of sexual abuse by a person in a position of trust. W. Va. Code § 61-8D-1 (12); see W. Va. Code § 61-8D-5.

Appellant’s Brief at 3 (footnote omitted).

IV.

STANDARD OF REVIEW

“Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.” Syl. pt. 1, *State v. Cecil*, 221 W. Va. 495, 655 S.E.2d 517 (2007) (per curiam) (internal quotations and citations omitted).

The function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.

Syl. pt. 1, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

A criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden. An appellate court must review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and

must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution. The evidence need not be inconsistent with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt. Credibility determinations are for a jury and not an appellate court. Finally, a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt. To the extent that our prior cases are inconsistent, they are expressly overruled.

Syl. pt. 3, *Id.*

“[A] defendant must meet a heavy burden to gain reversal because a jury verdict will not be overturned lightly.” *State v. Guthrie*, 194 W. Va. 667-668, 461 S.E.2d 173-174. “[I]t does not matter how we might have interpreted or weighed the evidence.” *Id.*, 194 W. Va. 668, 461 S.E.2d 174. “[A]ppellate review is not a device for this Court to replace a jury’s finding with our own conclusion. On review, we will not weigh evidence or determine credibility. Credibility determinations are for a jury and not an appellate court.” *Id.*, 194 W. Va. 669, 461 S.E.2d 175 (footnote omitted).

V.

ARGUMENT

A. APPELLANT WAS IN POSITION OF TRUST IN RELATION TO ANGEL GREEN WHEN SHE WAS IN HIS HOME.

Appellant stands convicted of three counts of sexual abuse by a parent, guardian, custodian or person in a position of trust to a child for the purpose of gratifying his sexual desire in violation of W. Va. Code § 61-8D-5(a). Section 61-8D-5(a) provides, in relevant part, as follows:

If any parent, guardian or custodian of or other person in a position of trust in relation to a child under his . . . care, custody or control, shall engage in . . . sexual contact with . . . a child under his . . . care, custody or control, notwithstanding the fact that the child may have willingly participated in such conduct, or the fact that the child may

have consented to such conduct . . . , *then such* parent, guardian, custodian or *person in a position of trust shall be guilty of a felony* and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty years

(Emphasis added.)

There is no doubt in this case that Appellant made sexual contact with Angel Green. This sexual contact occurred at Appellant's house on two separate occasions in March 2006. On the first occasion, Angel went over to Appellant's house and was invited in by Appellant. Once she was inside, Appellant, while Angel was in a standing position, began rubbing his male sex organ on her buttocks. Appellant then retrieved some couch cushions, placed the cushions on the floor and told Angel to lay down on them. While laying on her back, Appellant got on top of Angel and proceeded to rub his male sex organ on her female sex organ. Appellant then told Angel to rollover on her stomach, at which time, Appellant began rubbing his male sex organ on her buttocks.

On the second occasion, Appellant picked up Angel in his van and drove her to his house. At the house, Appellant gave Angel some pantyhose and told her to put them on, which she did. Thereafter, Appellant laid Angel down on her back and began rubbing his male sex organ on her female sex organ. Appellant then told Angel to rollover on her stomach and, when she did, Appellant got on top of her and started rubbing his male sex organ on her buttocks. Needless to say, Appellant's actions qualify as "sexual contact," which is defined in the code as "*any intentional touching, either directly or through clothing, of the . . . buttocks . . . or any part of the sex organs of another person, or intentional touching of any part of another person's body by the actor's sex organs, . . . and the touching is done for the purpose of gratifying the sexual desire of either party.*" W. Va. Code § 61-8B-1(6) (emphasis added). It is also needless to say that Appellant's actions were done for the purpose of gratifying his sexual desire. In and of themselves, Appellant's actions show

this to be the case. If this were not enough, Appellant's semen was found on the pantyhose that he gave Angel to wear when he made sexual contact with her.

On appeal, Appellant asserts that there was insufficient evidence presented to the jury that would allow them to find, beyond a reasonable doubt, that he was a "person in a position of trust" in relation to Angel Green when she was in his home, as required by the statute under which he was convicted, W. Va. Code § 61-8D-5(a). *See generally* Appellant's Brief at 3-12.

For purposes of W. Va. Code § 61-8D-5(a), a

"person in a position of trust in relation to a child" refers to any person who is acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities concerning a child or someone responsible for the general supervision of a child's welfare, or any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of the child.

W. Va. Code § 61-8D-1(12) (emphasis added).¹⁷

The totality of the evidence presented to the jury in this case shows that Appellant meets this definition of a "person in a position of trust in relation to a child." This evidence, as presented to the jury, is as follows:

1. When the offenses giving rise to this case occurred, March 2006,

¹⁷ "Parent" means the biological father or mother of a child, or the adoptive mother or father of the child." W. Va. Code § 61-8D-1(7). "Guardian" means a person who has care and custody of a child as the result of any contract, agreement or legal proceeding." W. Va. Code § 61-8D-1(5). "Custodian" means a person over the age of fourteen years who has or shares actual physical possession or care and custody of a child on a full-time or temporary basis, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian or custodian, or a person cohabitating with a parent, guardian or custodian in the relationship of husband and wife, where such spouse or other person shares actual physical possession or care and custody of a child with the parent, guardian or custodian." W. Va. Code § 61-8D-1(4). "Child" means any person under eighteen years of age not otherwise emancipated by law." W. Va. Code § 61-8D-1(2).

- Angel Green was 16 years old; Appellant was in his 30s at the time.
2. Angel has been a special education student throughout most of her school years.¹⁸ She is also very vulnerable to suggestion and will do anything to make friends.
 3. The School (Upper Kanawha Valley Christian School) that Angel was attending when the offenses occurred is adjoined/attached to the Church (Chesapeake Apostolic Church).
 4. Appellant's father-in-law, Philip Priddy, is the Pastor of the Church; his mother-in-law, Patricia Priddy, is the Principal of the School; and his wife, Karen Edmonds, works at the School as a volunteer teacher/administrator.
 5. The Church posts bulletins, which lists every job that everybody does at the Church. On at least two of these bulletins, Appellant was listed as an Associate Youth Minister.
 6. Appellant, on Wednesday nights, sometimes led prayer services at the Church. Angel attended the Church on Wednesday nights.
 7. The School is very small, consisting of one classroom with approximately 12 students.
 8. Appellant came to the School on Tuesdays to do his homework and sometimes help with the children's work. Appellant also helped with the maintenance work at the School/Church.

¹⁸ Angel was not receiving special education services at the School, Upper Kanawha Valley Christian School, as this School did not have a special education program. Tr. 274.

9. Appellant sometimes helped Angel with her school work and monitored her as well as the other students at the School.
10. On one occasion in March 2006, Angel walked over to Appellant's house and was invited in by him. Thereafter, Appellant made sexual contact with Angel.
11. On a separate occasion in March 2006, Appellant picked Angel up in his van and drove her to his house. Once inside the house, Appellant again made sexual contact with Angel.

Based on the entirety of this evidence, the jury properly found, beyond a reasonable doubt, that Appellant was in a "position of trust" in relation to Angel Green when she was in his home. Naturally, the children at the School/Church would look up to Appellant. He is in an authoritative figure at the School/Church; his father-in-law, mother-in-law, and wife have official positions and worked at the School/Church, he was an adult in his 30s, he led prayer services at the Church, and he provided help to the students in completing their assignments. This is especially true of Angel – a 16-year-old girl who is vulnerable to suggestion. Furthermore, it is not as if Appellant "blew" in the door of the School/Church one day and turned around and left, never to return. Appellant maintained a presence in the School/Church on a regular basis; at least two days a week he was at the School/Church. Additionally, not only did Appellant invite Angel into his home on one occasion, but he picked her up in his van and drove her to his house on a separate occasion. Given these circumstances, any adult who was similarly situated to Appellant, including defendants who are being honest, would agree that he is in a "position of trust" in relation to Angel. This is particularly true where, as here, the child was in their home on two separate occasions, one of which

the child was picked up and driven there. *See State v. Cecil*, 221 W. Va. 495, 502, 655 S.E.2d 517, 524 (2007) (Defendant testified that he believed that, when a child was in his home, he was supposed to look after that child.).

On appeal, Appellant insists that he was not in a “position of trust” in relation to Angel, as he did not have any “official position” at the School/Church and was not “charged,” meaning “instructed or commanded,” with any “duty or responsibility” in relation to Angel’s welfare. *See generally* Appellant’s Brief at 2, 5, 6, 7, 8, 12. On the contrary, Appellant was constructively charged with the duty and responsibility of safeguarding Angel’s welfare. This is especially true given the fact that Angel is extremely suggestible and that Appellant took her into his own home on two separate occasions, and, on one of these occasions, Appellant actually picked Angel up in his van and drove her to his house. These factors are completely ignored by Appellant on appeal. Never does Appellant mention that Angel is vulnerable to suggestion and he misstates that she “twice *walked* to . . . [his] home” when, in fact, he picked her up and drove her to his home on one of these two occasions. Appellant’s Brief at 2(emphasis added).

Despite his contention to the contrary, Appellant also has a position, as discussed above, in the School/Church, albeit an unofficial one. It should be noted that the statute, W. Va. Code § 61-8D-1(12), which defines a “person in a position of trust in relation to a child,” does not require that the person’s position be official. Rather, this provision requires only that “by virtue of their occupation or *position* [the person] is charged with any duty or responsibility for the health, education, welfare, or supervision of the child.” (Emphasis added.) Interestingly, Appellant maintains that he did not have a position at the School/Church, but he instructed Angel not to tell anyone what had occurred between themselves because he might not be able to continue preaching

at the Church. Obviously, Appellant's insistence that this matter be kept secret was to maintain the status quo of his position at the School/Church.

B. ANGEL GREEN WAS UNDER APPELLANT'S CARE, CUSTODY AND CONTROL WHILE SHE WAS AT HIS HOME.

On appeal, Appellant also asserts that there was insufficient evidence presented to the jury that would allow them to find, beyond a reasonable doubt, that Angel Green was under his care, custody or control while she was at his home, as required by the statute under which he was convicted, W. Va. Code § 61-8D-5(a). *See generally* Appellant's Brief at 12-13. The terms "care, custody and control" are not defined by the statute. *See generally* W. Va. Code § 61-8D-1. However, dictionary definitions of these terms are instructive. The term "care" is defined as "1. Serious attention; heed." Black's Law Dictionary, Seventh Edition (1999). "Custody" is defined as "1. The care and *control* of a thing or *person* for inspection, preservation, or security." *Id.* (emphasis added). "Control" has the following definition: "1. *To exercise power or influence over.*" *Id.* (emphasis added). Appellant's position, coupled with his actions, in this case certainly satisfies these definitions.

There was compelling evidence presented to the jury showing that Angel was under Appellant's "care, custody and control" while she was at his house. First, we are not dealing with a normal teenager. Rather, Angel is more susceptible to being influenced by an adult in Appellant's position. In fact, the reason that her mother put her in the School was because of her inability to tell people "no." For example, Angel would do anything to make friends at her previous school, Riverside High School, including giving away her personal belongings and swallowing coins in class, when asked to do so by her fellow students.

Here, on one occasion, Angel walked to Appellant's house and was invited in by him and, thereafter, Appellant made sexual contact with her. On a separate occasion, Appellant picked Angel in his van and drove her to his house and, thereafter, Appellant again made sexual contact with her.¹⁹ While at his house, Angel did whatever Appellant asked of her. When Appellant told her to sit in a rocking chair so he could take photographs of her legs – she did so. When Appellant told her to put on a pair of pantyhose – she did so. When Appellant told her to lay down on her back – she did so. When Appellant told her to roll over on her stomach – she did so. When asked why she did these things, Angel stated “[b]ecause he told me to.” Tr. 211, 212. When Appellant told her to remain silent about what had occurred between themselves – she did so. See Tr. at 209. When asked why she did not tell anyone about what had happened between her and Appellant, Angel stated “[b]ecause he told not to.” Tr. 209. In short, it was Appellant's agenda and he controlled it and Angel “every step of the way.”²⁰

On appeal, citing W. Va. Code § 61-8B-9(a),²¹ Appellant argues that this case represents nothing more than legal, consensual sex between an adult male and a 16-year-old female. *See generally* Appellant's Brief at 12, 13. To begin with, obtaining consent from a 16-year-old who is highly suggestible is, at a minimum, concerning. Furthermore, the statute that Appellant was

¹⁹ Thus, Angel was not, as Appellant suggests, merely visiting his home – she was taken to his home on at least one occasion. *See generally* Appellant's Brief at 3, 9, 11, 12. Likewise, the relationship between Appellant and Angel went well beyond Appellant's characterization of the same as a mere friendship or acquaintance. *See generally* Appellant's Brief at 9, 10. To characterize this relationship as a friendship brings to mind the old saying -- “With friends like him, the girl doesn't need any enemies.”

²⁰ It was not, as Appellant would have the Court believe, simply “assent” on the part of Angel. *See generally* Appellant's Brief at 13.

²¹ Section 61-8B-9(a) sets the age of consent at 16 years, for purposes of third degree sexual abuse.

convicted under, W. Va. Code § 61-8D-5(a) applies “*notwithstanding the fact that the child may have willingly participated in such conduct, or the fact that the child may have consented to such conduct . . .*” (Emphasis added.) Thus, Angel’s consent, whether freely given or not, to the sexual contact by Appellant is not an issue in this case.

Finally, Appellant insinuates that Angel concocted or made up the allegations of sexual contact in this case by stating that one of the witnesses at trial “cast Green’s reputation for truthfulness into doubt.” Appellant’s Brief at 5. It is one thing for a child to lie about not having any homework or tests when they actually do; Angel’s mother readily admits that her daughter does not tell the truth in such situations. Tr. 180. However, it is a whole different matter for a child to lie about sexual contact between themselves and an adult, such as occurred in this case. Importantly, at Appellant’s request, Angel was hiding the episodes of sexual contact between Appellant and herself. It was not until her mother discovered the letter that she had written to Appellant that these episodes became known. Had her mother not found this letter, then these episodes very well may have remained “under raps” to this day.

Equally important, Appellant’s semen was found on the pantyhose that he gave to Angel. She sure did not make this up, as it was proven that it was Appellant’s semen by DNA analysis. Simply put, Angel did not make this whole “mess” up! Finally, the credibility of Angel was for the jury to decide. “Assuming that it otherwise meets the requirements of admissibility, the reliability of a child’s testimony is properly a matter for assessment by the trier of fact who is charged with making determinations regarding the weight and credibility of such testimony.” Syl. pt. 3, *State v. Smith*, 2010 WL 1838382, No. 35133 (W. Va. May 6, 2010).

VI.

CONCLUSION

Appellant's conviction should be affirmed.

Respectfully submitted,

STATE OF WEST VIRGINIA,

Appellee,

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NO. 35474

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Appellee,

v.

TIMOTHY C. EDMONDS,

Appellant.

CERTIFICATE OF SERVICE

The undersigned counsel for Appellee hereby certifies that a true and correct copy of the foregoing *Brief of Appellee State of West Virginia* was mailed to counsel for the Appellant by depositing it in the United States mail, first-class postage prepaid, on this 2nd day of June, 2010, addressed as follows:

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