NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
TAMIR SMITH	:	
Appellant	:	No. 3325 EDA 2025

Appeal from the Judgment of Sentence Entered November 21, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0004878-2024

BEFORE: McLAUGHLIN, J., KING, J., and BECK, J.

MEMORANDUM BY BECK, J.: **FILED NOVEMBER 13, 2026**

Tamir Smith ("Smith") appeals from the judgment of sentence entered by the Philadelphia County Court of Common Pleas ("trial court") after a jury convicted him of rape of a child and corruption of minors.[1] On appeal, Smith argues that the trial court erred in determining that A.S.R., the victim, was competent to testify as a witness at trial. Because we discern no abuse of discretion in the trial court's determination that A.S.R. was competent to testify, we affirm.

The trial court aptly summarized the facts and procedural history of this case as follows:

> Between the ages of five to six years old, minor victim A.S.R. was vaginally raped and sexually touched by [Smith], her maternal uncle. A.S.R. described an overnight stay at her

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[1] 18 Pa.C.S. §§ 3121(c), 6301(a)(1)(ii).

> grandmother's house where [Smith] offered her one dollar if he could pull her pants down. A.S.R., who was lying in the hallway on her stomach, was vaginally penetrated by [Smith], causing her physical pain. On other occasions, [Smith] would touch A.S.R. on her vagina and buttocks, both areas of her body she was able to identify on an anatomical drawing. A.S.R. also described an incident when she was in a bedroom, lying on the bed with [Smith], and he was showing her pornography on his phone.
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> Less than a year after the last incident of abuse, A.S.R. disclosed [the abuse] to her parents and identified [Smith] as her abuser. A.S.R.'s mother reported [Smith] to the police, and A.S.R. was taken to Philadelphia Children's Alliance. Samantha Kujolic, a forensic interviewer, confirmed that prior to being interviewed regarding the abuse, A.S.R. demonstrated she understood the difference between telling a truth and a lie, acknowledged the negative consequences of lying and agreed to tell the truth.
>
> On January 4, 2024, [Smith] was arrested and charged with numerous offenses regarding the sexual abuse of A.S.R. At trial, the Commonwealth presented not only the in-court testimony from minor victim A.S.R., but also the video of her forensic interview conducted by the Philadelphia Children's Alliance, which the jury watched in its entirety.
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> On June 4, 2025, the jury found [Smith] guilty of rape of a child and corruption of minors. On November 21, 2025, the trial court sentenced [Smith] to an aggregate, standard range sentence of ten (10) to twenty (20) years of incarceration, followed by three (3) years [of] reporting probation to be supervised by the Sex Offender Unit.
>
> On December 31, 2025, [Smith] filed [a] notice of appeal. On January 23, 2026, in response to the trial court's 1925(b) order, [Smith] filed his statement of errors complained of on appeal[.]

Trial Court Opinion, 2/9/2026, at 1-3 (formatting modified, record citations omitted).

Smith presents the following issue for review: "Did the trial court err in finding the seven-year-old complainant competent following a competency hearing, where the witness did not sufficiently understand the duty to tell the truth?" Smith's Brief at 2.

In his sole issue on appeal, Smith challenges the trial court's determination that A.S.R. was competent to testify at his trial. ***See id.*** at 9-15.

Our standard of review for a trial court's ruling on witness competency is for an abuse of discretion. ***Commonwealth v. Delbridge***, 855 A.2d 27, 39 (Pa. 2003). "An abuse of discretion is not merely an error in judgment," but "is shown when a court's decision is based upon bias, partiality, prejudice, ill-will, manifest unreasonableness, or a misapplication of the law." ***Commonwealth v. Bettis***, 347 A.3d 779, 793 (Pa. Super. 2025). This Court has emphasized that "our standard of review of rulings on the competency of witnesses is very limited indeed." ***Commonwealth v. Judd***, 897 A.2d 1224, 1228 (Pa. Super. 2006) (citation omitted).

"The general rule is that every person is presumed to be a competent witness." ***Commonwealth v. Saez***, 225 A.3d 169, 174 (Pa. Super. 2019) (citing Pa.R.E. 601(a)). "In general, the testimony of any person, regardless of [their] mental condition, is competent evidence, unless it contributes nothing at all because the victim is wholly untrustworthy." ***Commonwealth v. Boich***, 982 A.2d 102, 109 (Pa. Super. 2009) (citation omitted). "The

capacity to remember and the ability to testify truthfully about the matter remembered are components of testimonial competency." ***Id.*** at 110 (citation omitted).

Pennsylvania Rule of Evidence 601(b) sets forth the circumstances in which a witness may be incompetent to testify:

> **(b) Disqualification for Specific Defects.** A person is incompetent to testify if the court finds that because of a mental condition or immaturity the person:
>
> > (1) is, or was, at any relevant time, incapable of perceiving accurately;
> >
> > (2) is unable to express himself or herself so as to be understood either directly or through an interpreter;
> >
> > (3) has an impaired memory; or
> >
> > (4) does not sufficiently understand the duty to tell the truth.

Pa.R.E. 601(b).

Because all witnesses are presumed to be competent, the burden is on "the party challenging the testimony to establish incompetence." ***Boich***, 982 A.2d at 109 (citation omitted). "The party alleging a witness is incompetent to testify must prove that contention by clear and convincing evidence." ***Id.*** at 110.

Smith argues that the trial court abused its discretion in concluding that A.S.R. was competent to testify because she did not sufficiently understand the duty to tell the truth. Smith's Brief at 12; ***see also*** Pa.R.E. 601(b)(4). He contends that because A.S.R. stated during the competency hearing that

she had never lied to anybody, she was not credible. Smith's Brief at 12. Smith further asserts that the competency hearing demonstrated A.S.R. did not understand the difference between a mistake and a lie and that she did not understand the consequences of telling a lie. ***Id.*** at 13.

In rejecting this claim, the trial court found that during the competency hearing A.S.R. "demonstrated she understood the difference between telling the truth and a lie" and that when the court asked her to distinguish between statements that were truthful or a lie, she was able to do so correctly. Trial Court Opinion, 2/9/2026, at 4-5. The court further found A.S.R. demonstrated that she understood there are negative consequences for failing to tell the truth and the punishments she could receive for lying. ***Id.*** at 5. The trial court concluded that A.S.R. established "she understood the difference between telling a truth and a lie, acknowledged the negative consequences of lying[, and] agreed to tell the truth," thus demonstrating "she had consciousness of her duty to speak the truth." ***Id.*** at 6.

Our review of the record supports the trial court's findings. It reflects that during the competency hearing, A.S.R., who was seven years old at the time, demonstrated that she understood lying was wrong and that there were negative consequences associated with failing to tell the truth:

> THE COURT: … If you don't tell a truth, let's say you lied, what happens?
>
> [A.S.R.]: You get in trouble.

> THE COURT: You get in trouble. All right. Is lying a good thing or a bad thing?
>
> [A.S.R.]: A bad thing.

N.T., 6/3/2025, at 9.

Additionally, when the trial court sought to determine whether A.S.R. could identify the difference between a true statement and a lie, she was able to do so:

> THE COURT: Okay. Now, let me ask you this. I'm showing you this, this is my eyeglass case, and if I told you this is orange, is that a truth or is that a lie?
>
> [A.S.R.]: A lie.
>
> THE COURT: A lie because it's red. Now, if I pointed to your suit and I said you're wearing a dress, is that a truth or a lie?
>
> [A.S.R.]: A lie.
>
> THE COURT: So you understand that you're here to tell a truth about what happened; correct?
>
> [A.S.R.]: Yeah.

Id. at 9-10.

Furthermore, when the trial court asked A.S.R. why she did not lie, she responded that she would "get in trouble." ***Id.*** at 12-13. When the court asked her what happened when she got in trouble at school, she was able to articulate that she could receive a verbal reprimand (i.e., the teacher "yells") or her teacher might contact her parents. ***Id.*** at 14-15.

The crux of Smith's argument is that A.S.R. did not sufficiently understand the duty to tell the truth because she claimed to have never told

a lie, which Smith asserts was not credible. ***See*** Smith's Brief at 12-13. As our Supreme Court has explained, however,

> [a] competency hearing concerns itself with the minimal capacity of the witness to communicate, to observe an event and accurately recall that observation, and to understand the necessity to speak the truth. A competency hearing is not concerned with credibility. Credibility involves an assessment of whether or not what the witness says is true; this is a question for the fact finder.

Delbridge, 855 A.2d at 40 (citation omitted). As Smith's argument implicates A.S.R.'s credibility as a witness, it does not impact any finding regarding her competency to testify. ***See id.***

As the trial court determined, and our review confirms, A.S.R.'s testimony established that she understood the difference between the truth and a lie, acknowledged it was wrong to lie, and that she was aware of the negative consequences of lying. None of the testimony Smith cites in support of his argument satisfies the high burden required to prove that A.S.R. was not a competent witness. ***See Boich***, 982 A.2d at 110. We therefore conclude the trial court did not abuse its discretion in determining that A.S.R. sufficiently understood the duty to tell the truth and that she was competent to testify as a witness. ***Delbridge***, 855 A.2d at 39.

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/13/2026