

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-10.760
	:
vs.	: CRIMINAL DIVISION
	: Pre-Trial Motion
DARRICK LEWIS DIXON	:
Defendant	:

OPINION AND ORDER

Before the Court is Defendant's Omnibus Pre-Trial motion, filed July 2, 2001. Argument on the Motion was heard July 25, 2001.

Defendant has been charged with statutory sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, indecent assault, endangering the welfare of children, and corruption of minors, in connection with an incident alleged to have occurred on or about February 10, 2001, involving a fourteen year old girl. In his pre-trial motion, Defendant seeks dismissal of counts 3 and 5. Count 3 charges Defendant with aggravated indecent assault and Defendant argues that in order to support this charge, the Commonwealth had to, at the preliminary hearing, present evidence of digital penetration and did not do so. The Court agrees, after reviewing an audio tape of the preliminary hearing. This Count will therefore be dismissed.

With respect to Count 5, endangering the welfare of a child, Defendant contends the statute prohibiting such conduct does not apply to him as he is not "a parent, guardian, or other person supervising the welfare of a child". 18 Pa. C.S. Section 4304 defines endangering the welfare of a child as "a parent, guardian, or other person supervising the welfare of a child under 18 years of age commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support." While the Court agrees that Defendant is obviously not a parent and that the Commonwealth has incorrectly referred to him as such in the Information filed June 14, 2001, the

Court does not agree with Defendant's contention the statute does not apply to him.

The Appellate Courts have indicated that in interpreting "other persons supervising the welfare of a child" the Court must "remember that the statute attempts to prohibit a 'broad range of conduct in order to safe guard the welfare and security of our children.'" Commonwealth v Brown, 21 A.2d 1105 (Pa. Super. 1998)(quoting Commonwealth v Mack, 359 A.2d 770, 773 (Pa. 1976). Further, the common sense of the community should be considered when interpreting the language of the statute. Id. In such a light, the Court considers Defendant, a basketball coach of the victim, to have been in a position of supervising the welfare of a child. His role as coach put him in the position to develop a relationship with the victim, removing him from the general public in that regard. The Court is aware that a child's coach may often times hold a position of higher regard with that child. Whether Defendant actually violated a duty of care, protection or support is a matter for trial. The charge is properly brought, however.

ORDER

AND NOW, this day of August, 2001, for the foregoing reasons, Count 3 of the information is hereby dismissed but with respect to Count 5, Defendant's Motion is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
 Ron Travis, Esq.
 Gary Weber, Esq.
 Hon. Dudley N. Anderson