

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-10,559

VS :

JEREMY MICHAEL BALL :

OPINION AND ORDER

Before the Court is Defendant's Motion for Writ of Habeas Corpus. The Defendant has been charged with statutory sexual assault, indecent assault, and corruption of minors as a result of an incident that occurred on September 10, 1999. A preliminary hearing was held on March 9, 2000 before District Magistrate, C. Roger McRae, after which, all charges were bound over. Defendant now argues that the Commonwealth's evidence was insufficient to establish a prima facie case of the charges. The parties agreed to submit the motion on the transcript of the preliminary hearing. The Court has reviewed the preliminary hearing transcript and finds the following facts relevant to the motion.

Kristen Munns, testified that on September 10, 1999 she was at a party at the home of Josh Moss. She testified that she was 15 years of age at the time. (N.T. 3/9/00, p. 3) She had been drinking at the party. She recalls having contact with the Defendant that evening, and recalls that they had been in a field and were kissing and touching. She specifically recalled the Defendant touching her chest. (Id., p. 7) At some point in time, Ms. Munns remembers being placed in her brother's van. (Id., p. 5) Ms. Munns testified that once in the van, she passed out. The next morning, she discovered that her pants and underwear were removed. (Id., p. 6) She testified that she felt pain in her vaginal area, and later discovered blood on her underwear. She

testified that she experienced a small amount of bleeding for approximately a day. (Id., p. 4) She testified that she had never had sexual intercourse before. (Ibid.) When she looked out the window of the van, she observed the Defendant and another individual walking away from the van. (Ibid.)

Corporal Todd Harman testified that he ran into the Defendant as he was leaving the barracks one morning. He testified that he knew the Defendant, and asked him why he was there. The Defendant told him that he was going to talk to Trooper Holmes because he and a buddy had “gang banged” a girl. Harman testified that he had said to the Defendant that it wasn’t a crime as long as she was willing. The Defendant had replied “yea, she’s only 15 and uh, it was rape.” (Id., p. 9)

Trooper William Holmes testified that he interviewed the Defendant about this incident, and prepared a statement which the Defendant reviewed and signed. In the statement, the Defendant related that he was in a conversation with Eddie Green when Ms. Munns approached. He stated that she apologized for things that she had said about him, the two of them talked, and then she kissed him. He related that Ms. Munns told him that she and Green were going to have sex, and asked him to come along. He stated that while Ms. Munns engaged in oral sex with Green, she reached behind and touched his genitals. He related that he then asked her if she still wanted to have sex, and she said “yes.” He stated that she helped him to get her pants down and she got down on her hands and knees. The Defendant stated that Ms. Munns continued to engage in oral sex with Green as she continued to touch his genitals.¹ He related that

¹ On cross-examination Holmes admitted that the Defendant never admitted that he engaged in sexual intercourse with Ms. Munns. He testified that, although not expressly stated, there was an inference that the Defendant engaged in sexual intercourse with Ms. Munns as she engaged in oral sex with Green. (Id., p. 13)

after they finished, they all returned to the party and Ms. Munns seemed fine. (Id., p. 11) He stated that he did not see Ms. Munns drinking any alcoholic beverages.

The defense argues that the Commonwealth failed to prove a corpus delicti of the crimes, and that accordingly his confession should not have been admitted into evidence. Without the confession, the Defense argues that the Commonwealth has not established a prima facie case of the charges against the Defendant. The rule, attempted to be invoked by Defendant is that an extra-judicial admission or confession of one accused of crime cannot be received in evidence unless and until the corpus delicti of the crime has first been established by independent proof. The grounds on which the rule rests are the hasty and unguarded character which is often attached to confessions and admissions and the consequent danger of a conviction where no crime has in fact been committed. Commonwealth v Rhoads, 225 Pa.Super.208, 310 A.2d 406 (1973) *citing* Commonwelth v. Turza, 340 Pa. 128, 133, 16 A.2d 401, 404 (1940).

There are two elements to a corpus delicti: the occurrence of an injury or loss; and somebody's criminality as the source of the injury or loss. Rhoads, supra, at 213, *citing* Turza, supra, and Commonwealth v. May, 451 Pa. 31, 301 A.2d 368 (1973). The corpus delicti may be proved by circumstantial evidence, but that evidence must be "sufficient to convince the jury beyond a reasonable doubt that the crime charged was committed by someone." Commonwealth v. Lettrich, 346 Pa. 497, 31 A.2d 155 (1943). The identity of the party responsible for the act is not part of the corpus delicti. Commonwealth v. Tessel, 347 Pa.Super. 37, 500 A.2d 144 (1985). The crucial determination in applying the corpus delicti rule is whether, at the close of the case, the

proof of the corpus delicti was sufficient to permit the fact finder to consider defendant's admission or confession.

Importantly, before introducing an extra-judicial admission, the Commonwealth is not required to prove *the existence of a crime* beyond a reasonable doubt.

Commonwealth v. Persichini, 444 Pa.S. 110, 663 A.2d 699 (1995), (emphasis added) *citing* [Commonwealth v. Edwards](#), 521 Pa. 134, 144, 555 A.2d 818, 823 (1989).

Citations omitted. Rather, it is enough for the Commonwealth to prove beyond a reasonable doubt that *the injury or loss is consistent with the crime having been committed*. Persichini, supra, (emphasis added) *citing* Commonwealth v. Hogans, 400 Pa.Super. 606, 584 A.2d 347.

The corpus delicti for statutory rape consists of two elements: a victim under the age of 16; and penetration. The chastity of the victim, consent, and the age of the accused, although relevant on the issue of guilt, are not relevant to the corpus delicti as such because they are not necessary to show that an injury occurred in a manner consistent with criminality. Rhoads, supra, at 215. The victim here was under the age of 16 at the time of this incident. There is also evidence of penetration. The victim testified that she awoke with her pants and underwear removed. The victim also testified that she felt pain in her vaginal area, accompanied by bleeding which lasted a short time. The evidence is consistent with an object having been placed in the victim's vagina, and is more consistent with criminal activity than with non-criminal conduct. Under these circumstances, the Court would find that the corpus delicti of statutory rape has been established, and the Defendant's confession may be admitted.

The Court would further find that the confession may be admitted as to the other charges since the relationship between the crimes is sufficiently close that the introduction of the statement will not violate the purpose underlying the corpus delicti rule. See Commonwealth v. McMullen, 545 Pa.361, 681 A.2d 717 (1996).

Having found the evidence properly admitted, this Court finds the Commonwealth has presented sufficient evidence that the crimes were committed, and the probability that the Defendant could be connected with the crimes. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). The Court therefore denies the Defendant's Motion to Dismiss.

ORDER

AND NOW, this _____ day of March, 2002, it is ORDERED and DIRECTED that the Defendant's Motion is DENIED.

By The Court,

Nancy L. Butts, Judge

xc: Robert Ferrell, Esquire, ADA
Donald Martino, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire