

and performed oral sex on JMG. On a third occasion, Defendant and JMG were the only people inside the house at the time of a family gathering. JMG was watching videos on Youtube when Defendant entered the room, touched JMG's penis until erect and then gradually positioned JMG on the floor. Defendant's pants were off and he placed JMG's penis into his anus. Defendant then performed oral and manual manipulation on JMG until he climaxed.

JMG testified to an incident in the bathroom while on the toilet where Defendant had his pants down but he could not fully remember what occurred. JMG thought that Defendant was in his twenties at the time of these incidents, but was not certain of Defendant's age. JMG reported four (4) incidents to the police. JMG did not notify his family initially of the assaults but eventually told his brother and his cousin parts of what happened. JMG testified that he waited to tell his family because he did not think people would believe him and that he did not want to hurt anyone. Prior to these incidents, JMG testified that he and Defendant were very close. JMG testified that he is not able to put the assaults in chronological order. JMG also testified that he never consented to any of the conduct in these instances.

Detective Raymond Kontz, III (Kontz) for the Muncy Borough Police Department also testified at the preliminary hearing on behalf of the Commonwealth. Kontz testified he filed the charges against Defendant and took Defendant into custody. Kontz stated that he obtained biographical information about Defendant at the time of his arrest. Based on that information, Kontz noted that Defendant was twenty-one (21) years older than the purported victim at the time the assaults occurred because Defendant was thirty-four (34) years of age at the time of the incident. Kontz testified that he had a conversation about the assaults with JMG at his home, another conversation at the Children Advocacy Center, and a third, short conversation

containing less detail with JMG. Kontz also noted that JMG handwrote an account of the events to this best of his memory.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. Id. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003).

Defendant challenges the sufficiency of the evidence on the entirety of the Commonwealth's case against him. However, the Pennsylvania Superior Court "has made clear that even the uncorroborated testimony of a complaining witness, such as Victim, is alone sufficient to convict a defendant of a sexual offense." Commonwealth v. Riebel, 262 A.3d 556 (Pa. Super. 2021); *See also* Commonwealth v. Bishop, 742 A.2d 178, 189 (Pa. Super. 1999). Defendant's argument that the victim's testimony in this case is unsupported by additional testimony, physical evidence, or other corroboration three (3) years after the abuse allegedly occurred is not meritorious. Since it is well established by the courts in this Commonwealth that the testimony of a victim is sufficient on its own to convict, it is certainly abundant evidence to support the *prima facie* burden placed on the government at the preliminary hearing.

To address this with more specificity, the charges brought against Defendant for the alleged incident wherein Defendant assaulted JMG during a family gathering are Rape by Forcible Compulsion, Statutory Sexual Assault, Involuntary Deviate Sexual Intercourse Forcible Compulsion, Involuntary Deviate Sexual Intercourse of Person Less than 16 Years, and Indecent Assault of Person Less than 16 Years. All of these counts require Defendant to have had sexual intercourse with another, either deviate or otherwise, without the consent of the other individual. JMG testified at the preliminary hearing that Defendant touched his penis with Defendant's hands and mouth before removing Defendant's pants and inserting the victim's penis into Defendant's own anus. JMG further testified that he did not consent to this contact and that he was fourteen (14) years old at the time of the incident. Detective Kontz also stated that Defendant was thirty-four (34) years old at the time of the assault, which made Defendant twenty-one (21) years older than JMG. Therefore, Defendant's argument on Counts One

through Six is unsupported by the record of the preliminary hearing and those counts shall not be dismissed.

As for the incident on the couch, Defendant is charged with Rape by Forcible Compulsion, Statutory Sexual Assault, Involuntary Deviate Sexual Intercourse, Indecent Assault, Involuntary Deviate Sexual Intercourse, and Statutory Sexual Assault. Once again, these crimes require the sexual intercourse, deviate or otherwise, between a defendant and another without consent. JMG's testimony of this encounter detailed that, despite the presence of another family member sleeping on the couch next to JMG, Defendant touched JMG's penis with his hands and mouth. It is already established that JMG testified that he did not consent to this contact and there was a significant age gap in between Defendant and JMG. Therefore, Counts Seven through Ten and Counts Sixteen and Seventeen shall not be dismissed.

Furthermore, for the incident in the spare bedroom, Defendant is also charged with Involuntary Deviate Sexual Intercourse, Statutory Sexual Assault, and Indecent Assault. JMG provided testimony to support these charges in that he testified that Defendant entered the bedroom where JMG was taking a nap and touched his penis with Defendant's hands and mouth. Defendant is also charged with Indecent Assault, Corruption of Minors. These counts are charged as Defendant having multiple sexual contacts with JMG. JMG testified about approximately four (4) separate encounters between him and Defendant wherein Defendant either touched JMG's penis with his hands or mouth or inserted his penis into Defendant's body. Therefore, the Commonwealth has established a sufficient *prima facie* case for Counts Eleven through Fifteen and they shall not be dismissed.

JMG did testify about a separate incident in the bathroom that he could not fully remember. The testimony about the bathroom encounter appears not to have resulted in any

charges filed. Therefore, no *prima facie* analysis can be made by the Court has no charges to examine based on those facts.

Conclusion

The Court finds that the Commonwealth presented adequate evidence at the preliminary hearing to establish a *prima facie* case for all counts listed against Defendant. Therefore, Defendant's Motion to Dismiss is denied.

ORDER

AND NOW, this 23rd day of December, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Motion to Dismiss in his Omnibus Pretrial Motion is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Paul J. Petcavage, Esq.
Law Clerk (JMH)