

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-592-2021
v.	:	
	:	
LESTER GREEVY, JR.,	:	OMNIBUS MOTION
Defendant	:	

OPINION AND ORDER

Lester Greevy, Jr. (Defendant) was charged with two (2) counts of Indecent Assault¹ for the purported assault of a woman on March 13, 2020. Defendant filed this Omnibus Pretrial Motion on July 28, 2021. The Court held a hearing on the motion on November 19, 2021. In his Omnibus motion, Defendant argues that the Commonwealth provided insufficient evidence at the preliminary hearing and therefore, the case against Defendant should be dismissed.

Preliminary Hearing

The Commonwealth submitted a transcript of the preliminary hearing, marked as Commonwealth's Exhibit 1. At the preliminary hearing held on May 5, 2021, the alleged victim, Jennifer Yocum (Yocum) testified on behalf of the Commonwealth. Yocum testified that on March 13, 2020, she was at a friend's house who shared a residence with Defendant. N.T. 5/5/2021, at 5. Yocum stated that she was familiar with Defendant for approximately two (2) years at that time and had seen him at work and while around his family. *Id.* On the morning of March 13th at approximately seven (7) o'clock in the morning, Yocum said that she was asleep in the spare bedroom of Defendant's home and was in there alone. *Id.* at 6. Yocum indicated that she was woken up by Defendant who "was sitting on the edge of the bed like holding himself up, and he shook me a little bit. And as I woke up I looked over at the clock; and as I did that...he began to put his hands and head under my shirt." *Id.* Yocum testified that

¹ 18 Pa.C.S. § 3126(a)(1).

she was wearing jeans and a shirt but did not have a brassiere on at the time because she had been sleeping. Id. at 6-7. Yocum said that Defendant touched her breast with his mouth and she did not give Defendant permission to do so. Id. at 7. Yocum pushed herself away from Defendant and told Defendant that she needed to leave. Id. Yocum and Defendant both stood up off the bed and Defendant kissed Yocum on the mouth. Id. Yocum pushed Defendant away again and said she needed to get dressed. Id. Yocum stated that Defendant asked her if she needed anything from the kitchen and she replied no. Id.

When Yocum was putting her clothes back on, Defendant reentered the room and grabbed Yocum around the waist. Id. Once again, Yocum broke away from Defendant and said she needed to go home. Id. At that time, Yocum sent a text message to her friend, Aubrey, indicating she believed “something inappropriate just happened” and she needed her friend to keep her phone nearby just in case Yocum needed to contact her. Id. at 8. Defendant took Yocum home in his vehicle based on an agreement from the day before. Id. While en route to Yocum’s house on the bridge into Williamsport, Yocum testified that Defendant had his hand on her left thigh through a rip in her jeans. Id. Yocum made a phone call to Aubrey and pretended that Aubrey was waiting for her at Yocum’s home and made plans for the rest of the day with her “to make it seem like I had people there and they were awake and aware.” Id. Defendant asked if Yocum had friends over and she replied yes, to which Defendant asked if that meant he would not get an invitation to come inside. Id. at 9. Yocum told Defendant he was not going to be invited inside her house. Id.

When Yocum attempted to leave Defendant’s vehicle, Defendant kissed her again on the mouth. Id. Yocum mentioned Defendant’s wife to him, and he said that he “doesn’t get to do these things with his wife.” Id. Yocum responded, “that doesn’t make it okay” and left the

car, went inside her home, and locked the door. Id. Shortly thereafter, Yocum told her friends what had occurred and then reported the incident to police. Id. at 9-10. A few days later, Yocum stated that Defendant contacted her through several Facebook messages, asserting that he was sorry, that he was not the friend he should have been, and asked Yocum not to ruin his life. Id. at 10.

Yocum further testified that on the night before the incident, she had been at Morrone's Café for dinner and consumed two (2) glasses of wine and a shot of alcohol. Id. at 13. Following dinner, Yocum went to a bar and consumed additional alcoholic beverages, namely a glass and a half of double vodka with water. Id. at 14. Once Yocum arrived at Defendant's home, she drank a glass and a half of whiskey. Id. Yocum admitted to drinking with Defendant and some of her friends the night before the purported assault. Id. at 18. Yocum stated she went to bed around three (3) o'clock in the morning after Defendant and his family went upstairs. Id. Yocum said that no "amorous activity" such as hugging or kissing occurred between her and Defendant aside from Defendant kissing her cheek at Morrone's Café and possibly a hug goodnight before she went to bed. Id. Yocum also testified that she went to a SANE nurse to have a toxicology screen performed because she wanted to know if anything besides alcohol was in her system. Id. at 32. Yocum stated that she slept all day and never felt like that before after having a few drinks, was able to remember the night, but wanted to ensure she had not been drugged. Id.

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. An individual commits indecent assault if they have “indecent contact with the complainant” or if they cause the “complainant to have indecent contact with the person...and the person does so without the complainant’s consent.” 18 Pa.C.S. § 3126(a)(1). Defendant asserts that he did not engage in the prohibited conduct enumerated in the statute. Defendant argues that he did kiss Yocum on the mouth and breast,

but stopped once she asked him to stop. The Commonwealth relies on the preliminary hearing transcript and contends that Defendant made multiple attempts at inappropriate touching at least three (3) separate times after Yocum told him to stop touching her.

Defendant is charged with two (2) counts of Indecent Assault. The first count is for the contact while at Defendant's residence. It is clear that the Commonwealth has established a *prima facie* case for Count 1. Testimony at the preliminary hearing demonstrated that Defendant came into the room Yocum was sleeping in, woke her up and then almost immediately after waking her up, put his head under Yocum's shirt and touched her breast with his mouth. Yocum testified that Defendant did not have her consent to touch her in this manner. After pushing herself away from him, Yocum also testified that Defendant kissed her on the mouth without consent and she told Defendant to leave the room. Testimony also showed that Defendant came back into the room while Yocum was in a state of undress and grabbed her from behind around the waist. Yocum's testimony is abundantly clear that she did not want Defendant to touch her, told him repeatedly to stop, and yet, Defendant persisted. Therefore, the Commonwealth has established a *prima facie* case for Count 1 and it shall not be dismissed.

The second count is for the contact in Defendant's vehicle. The testimony given at the preliminary hearing also shows additional contact between Defendant and Yocum despite her attempts to prevent Defendant from touching her. The testimony indicated that Defendant was touching Yocum's upper thigh through a hole in her pants without permission to do so and then kissed Yocum again when she tried to exit Defendant's vehicle. Despite Yocum's drinking the night before, she testified that she remembered the events of the night and she did not give Defendant consent to touch her at any time. Defendant decided to continue to touch and kiss Yocum after she had rejected his physical advances multiple times throughout the morning and

had not given him consent to touch her in these ways. As such, the Commonwealth has also established a *prima facie* case for Count 2 and it shall not be dismissed.

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 1st day of February, 2022, 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 (KG)
Elisabeth K. H. Pasqualini, Esq.
Law Clerk (JMH)