**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

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| **COMMONWEALTH OF PENNSYLVANIA** | : | |
| | : | **CP-41-CR-1671-2021** |
| **v.** | : | |
| | : | |
| **ERICK JOHNSON,** | : | **OMNIBUS MOTION** |
| **Defendant** | : | |

**OPINION AND ORDER**

Erick Johnson (Defendant) was charged with ten (10) counts of Sexual Assault[1] and ten (10) counts of Rape of Person Less than 13 Years[2]. The charges arise from two (2) women reporting to police repeated sexual abuse perpetrated by Defendant against them when they were young children over the span of several years in the 1990s. Defendant filed this Omnibus Pretrial Motion on January 31, 2022. This Court held a hearing on the motion on April 11, 2022. In his Omnibus motion, Defendant argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing for the ten (10) counts of Sexual Assault and the charges should be dismissed for this failure and lack of jurisdiction.

**Preliminary Hearing**

At the preliminary hearing, Mindy Bolden (Bolden) testified on behalf of the Commonwealth. Bolden testified that Defendant is her cousin and she has known him her whole life. N.T. 12/28/2021, at 4-5. Bolden stated she has a sister named Nichole. Id. at 5. Bolden indicated that Defendant used to babysit her and Nichole from the time Bolden was five (5) until she was approximately ten (10) years old. Id. Bolden testified that Defendant is older than she is, but could not remember exactly how much older, other than it felt like "a

[1] 18 Pa.C.S. § 3124.1.
[2] 18 Pa.C.S. § 3121(6).

significant amount of an age difference." Id. at 6. The babysitting occurred on Lloyd Street in the city of Williamsport where Defendant lived with his mother. Id. Bolden's parents were young and wanted to "go to the bar and party" when Bolden was a child, so they would leave Bolden and her siblings with Defendant so they could get "drunk and high". Id. at 6, 12. When Bolden was four (4) or five (5), Defendant asked her if she wanted to learn how to have sex. Id. at 7. Bolden did not know what that was, but "did know that from watching TV and stuff they always tell you when you're a kid that you're supposed to learn or that you're to want to learn new things…at first I said no." Id. Bolden changed her mind and told Defendant yes because she was "supposed to learn stuff…but I didn't know what I was learning." Id. Defendant made Bolden sit on a chair and watch pornographic films where women were having sex with men. Id. Bolden could recall that many of the films Defendant showed her often portrayed women "bent over" and the men would have vaginal sex first and then switch to anal sex. Id. Defendant used VCR tapes to show Bolden the pornographic films in his bedroom. Id. at 8. Bolden testified that it was always only her and Defendant in the bedroom. Id.

After watching the videos, Defendant would "put his hands down my pants." Id. Bolden further testified that "[o]nce he finally did have sex with me, the fingering me and the touching me down there completely stopped. So I think that was his way of trying to get my small, tiny, little vagina ready for his body." Id. at 8-9. Bolden stated that this happened more than once. Id. at 9. Eventually, Defendant also began performing anal sex on Bolden when she turned seven (7) or eight (8). Id. at 9, 18. Defendant would place Bolden on her side and penetrate her anally. Id. at 19. At one point, Bolden recalls bleeding from her anus while using the toilet as a result of Defendant having anal sex with her. Id. at 19. Bolden said that Defendant would babysit her and Nichole every weekend and any time there was a break from school. Id. at 9. Specifically,

she said, "[w]e would stay the whole entire Christmas break, all the way to New Year's. We wouldn't go home. We would stay at his mom's house the whole entire time." Id. Bolden testified that Defendant would have sex with her very frequently, "like he was a sexoholic." Id. The abuse happened mostly in Defendant's bedroom but sometimes occurred in the attic of Defendant's home. Id. at 20. Bolden also stated that Defendant would not always show pornographic videos, but would sometimes "make me play sex games where he would make me get naked, and he would chase me down in the room and then have sex with me. And he would force me to watch him have sex with me in his mirror that was attached to his bed frame." Id. at 9. When asked how she could remember these events from when she was so young, Bolden responded, "it's kind of hard to forget a trauma like this, and it's affecting me now very deeply. I don't eat. I don't sleep. I lost well over 70-some pounds. And I just want to be a good mom to my kids, and I can't because I'm so depressed." Id.

Bolden noted that this abuse from Defendant lasted approximately five (5) years. Id. at 10. Bolden said that Defendant had sex with her a lot, certainly well over ten (10) times, and only stopped when she was about ten (10) years old. Bolden had no doubt that Defendant had sex with her more than ten (10) times. Id. at 24. Bolden also testified to this abuse occurring in Jersey Shore at her cousin Suzanne's home for two (2) to three (3) months when she was ten (10). Id. at 10. Bolden recalled an instance where she snuck up to Defendant's attic and saw Defendant having sex with her sister, Nichole, who was crying, very upset, and kept saying "no." Id. at 21.

Nichole Hill (Hill) also testified on behalf of the Commonwealth. Hill testified that Defendant is her cousin on her father's side. Id. at 26. Hill said that Defendant is eight (8) years older than her. Id. at 30. Hill recalled Defendant babysitting her when she was a child about

two (2) to three (3) times a week. Id. at 26. Hill stated that Defendant had intense sexual contact with her beginning when she was five (5) and lasting until she was twelve (12) years old. Id. at 27. Hill testified that Defendant had vaginal, oral, and anal sex with her and forced her to watch pornographic VCR videos. Id. Hill further testified that Defendant would have her get fully undressed, Defendant would also get undressed, and then he started with penetration and "forced me to suck his dick. He also fingered me. He had anal sex with me. He had sex with me like with his penis in my vagina." Id. at 28. This abuse happened at multiple addresses, namely a Federal Avenue address in Williamsport Village, Hill's grandmother's house in Linden, Hill's own home, and Defendant's house on Lloyd Street. Id.

Hill stated that Defendant stopped having sex with her when she turned twelve (12) and got her period. Id. Hill also testified that Defendant threatened to kill her multiple times if she ever told anyone about the abuse. Id. at 29. Hill testified to the first time she remembered Defendant playing a pornographic video and said, "he just turned the TV on, and he pressed play. And he had already had me undressed. And he said that we were gonna – we were gonna do what they did in the video. And he explained to me to hold my chest together and that he would put his penis in between my breasts." Id. at 31. Hill stated that Defendant had sex with her over fifty (50) times throughout the years. Id. at 33. Hill could remember times when Defendant would use Saran wrap as a type of condom for use during vaginal and anal sex and other times when Defendant would force Hill to perform oral sex on Defendant. Id. 34-36.

Agent Benjamin Hitesman (Hitesman) of the Williamsport Bureau of Police also testified on behalf of the Commonwealth. Hitesman became involved in an investigation into Defendant after Bolden called the watch commander and reported that her cousin, Defendant, had raped her. Id. at 40. Hitesman scheduled an interview with Bolden where she conveyed to

him that Defendant had raped her at least one hundred (100) times, both anally and vaginally, in Williamsport and Jersey Shore from 1992 through 1998. Id. at 40-41. Hitesman testified that at the time of these allegations are alleged to have occurred, Defendant would have been thirteen (13) or fourteen (14) and ended when he was between eighteen (18) and twenty (20). Id. at 42. Hitesman spoke to both victims and confirmed the familial connection between them and Defendant. Id. Hitesman conducted an interview with each victim as well as an interview with Defendant's wife. Id. at 44.

**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 Commonwealth's evidence on the ten (10) counts of Sexual Assault brought against him. Defendant argues that, although the victims testified generally to multiple incidents, they were only able to articulate six (6) or seven (7) specific allegations and believes that the charges should match accordingly. Defendant also contends that the charges were brought in front of an improper Magisterial District Judge and believes jurisdiction is lacking for at least four (4) charges. Defendant asserts that these charges do not show a common episode and raises a Rule 110[3] issue. Defendant did not offer specific prejudice faced as a result but proffered a policy argument for disallowing the Commonwealth to file charges wherever they please.

The Commonwealth is of the position that these charges relate to the same criminal episode of ongoing sexual abuse of these sisters. The Commonwealth cited to Pennsylvania Rule of Criminal Procedure 130 and argued the charges were properly filed because the conduct occurred in multiple Magisterial Districts and all within Lycoming County. *See* Pa.R.Crim.P. 130(a)(2). The Commonwealth stated that the testimony elicited from each victim revealed over fifty (50) instances of sexual abuse. The District Attorney chose the number of counts listed because of the seriousness of these offenses. The Commonwealth also argued that every specific detail is not required at a preliminary hearing and believes their burden has been

[3] 18 Pa.C.S. § 110.

established by stating information on or about the date in the information, listed between January 1992 and January 1996.

Additionally, the Commonwealth cited two (2) cases to support their argument. First, the Commonwealth cited Commonwealth v. Niemetz, stating, "[m]oreover, we do not believe that it would serve the ends of justice to permit a person to rape and otherwise sexually abuse his child with impunity simply because the child has failed to record in a daily diary the unfortunate details of her childhood." Commonwealth v. Niemetz, 422 A.2d 1369, 1373 (Pa. Super. 1980). The Commonwealth also quoted Commonwealth v. Riggle when the Superior Court wrote, "'due process is not reducible to a mathematical formula,' and the Commonwealth does not always need to prove a specific date of an alleged crime." Commonwealth v. Riggle, 119 A.3d 1058, 1069 (Pa. Super. 2015). "Case law has further established that the Commonwealth must be afforded broad latitude when attempting to fix the date of offenses which involve a continuous course of criminal conduct. This is especially true when the case involves sexual offenses against a child victim." Id.

This Court agrees with the Commonwealth on these issues in the case *sub judice*. Both women were unequivocal in their testimony that Defendant sexually assaulted them in excess of fifty (50) or even (100) times, including vaginal and anal penetration and coerced oral sex. Testimony revealed that Bolden and Hill would be babysat by Defendant at least two (2) or three (3) times per week, stayed at his home on weekends, and throughout breaks from school and he forced them to have sex with him at each visit. This lasted from 1992 until approximately 1998. Even if the Court only aggregated the visits during the week at two (2) times per week, the total assaults would be well beyond one hundred (100) assaults. The detail that Bolden and Hill testified to, despite the abuse occurring when they were as young as four

(4) or five (5) years old, is deeply concerning and shows a repeated pattern of abuse lasting several years. Although Bolden and Hill recalled six (6) or seven (7) distinct instances of sexual abuse, they were both unmistakably clear that Defendant subjected them to these assaults frequently, to the point where Bolden called Defendant a "sexoholic." The Commonwealth brought these charges in front of the Magisterial District Judge in which the majority of the offenses occurred pursuant to Pennsylvania Rule of Criminal Procedure 130(a)(2) and the remaining charges occurred within Lycoming County. This Court does not believe that 18 Pa.C.S. § 110 is implicated in this motion or the issues presented with jurisdiction or establishing *prima facie*.

Given the lower burden at this stage of the proceedings, the leeway the Commonwealth is afforded when dealing with dates of offenses perpetuated against child victims of sexual assault, and the consistent testimony presented by both women, this Court finds that the Commonwealth has established their *prima facie* burden on all counts against Defendant. Therefore, Defendant's argument is without merit and the charges against him shall not be dismissed.

**Conclusion**

The Court finds that the Commonwealth presented enough evidence at the preliminary hearing to establish a *prima facie* case for all counts against Defendant. Therefore, Defendant's Petition for Writ of Habeas Corpus is denied.

**ORDER**

**AND NOW**, this 29th day of April, 2022, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus in his Omnibus Pretrial Motion is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
PD (JL)
Law Clerk (JMH)