

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1324-2022
v.	:	
ILEMPSE SANCHEZ-GARCIA	:	HABEAS MOTION
Defendant	:	

**OPINION AND ORDER**

Before this Court is Ilempsi Llevian Sanchez-Garcia (Defendant) Omnibus Pretrial Motion. Defendant's Omnibus incorporates a writ of Habeas Corpus, motion for additional discovery and to reserve the right to file any additional pretrial motions in the event that additional discovery is provided at a later time. On the discovery issue, the parties discussed the availability of medical records for the alleged victim in the case<sup>1</sup>. For the reasons set forth below the Court finds that sufficient evidence has been presented and shall deny the Defendant's Habeas Corpus motion.

**Background and Preliminary Hearing**

Petitioner was charged on October 24, 2022 with Indecent Assault of a person less than 13 years of age<sup>2</sup> for an incident that occurred sometime during 2016 on Grace Street in the City of Williamsport. The alleged victim, F.L. testified at the preliminary hearing on October 11, 2020 before MDJ Frey. F.L. testified that she thought of Defendant as like a stepfather. N.T., 10/11/2020, p.2. About five years prior, F.L. was living with Defendant as F.L.'s mother had been dating him for about a year. *Id.* F.L. described that while living with Defendant here in Williamsport she was uncomfortable because he "was overly affectionate...and forceful with

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<sup>1</sup> After an extensive discussion about the availability of the records and that they would have to be reviewed by the court before being distributed, the outcome of this issue was that the Commonwealth's attorney was going to get a release signed and forward the documents to the court. No order from the Court was requested. No records have been provided as of this date.

<sup>2</sup> 18 Pa. C.S. Section 3126 (a)(7)

affection sometimes.” *Id.* F.L would be sitting in Defendant’s lap, facing away with Defendant’s “arms wrapped around me”. *Id.* at p.5. F.L. described another way that he was overly affectionate was the way he would “often touch or rub me, like my shoulders, my chest stomach and thighs.” *Id.* F.L. described that he would rub his hand up and down along her thigh over her clothing, rub her stomach over or under her clothing and when under he would “get really close to [my] chest.” *Id.* at 7. She also described that he would touch her chest over her clothing. *Id.* During these times, they would have been upstairs in her mother’s bedroom when her mother may have been in the home or out running errands. *Id.* at 23. She described on one occasion that he was rubbing her stomach and he went underneath her yoga pants and his fingers touched her underwear. *Id.* at 11. She felt that his middle finger and ring finger went over her crotch area on top of her underwear, specifically describing the area as over her vulva. *Id.* She then described that his pinky went underneath her waistband of her underwear very close to her genitalia. *Id.* When she told him where his hand was, he “kind of panicked.” *Id.* She would have been lying down on her side when this incident happened. *Id.* at 11. He then told her mother that the YouTube videos they were watching were inappropriate and he took her Chromebook and told her mother about what happened. *Id.* She thought that this one incident happened when she was in third grade, sometime during 2014. *Id.* at 16. She said that between 2014 and 2022 she would have only told her friends about what happened. *Id.* She was worried that if she told her mother she might harm Defendant. *Id.* at 17.

## **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 complainant is less than 13 years of age” 18 Pa.C.S. § 3126(a)(7). Defendant alleges in his motion that the Commonwealth failed to present any credible evidence of indecent contact against the Defendant. The Commonwealth relies on the transcript of the preliminary hearing.

Indecent contact is defined as “any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.” 18 Pa.C.S.A. § 3101. The Commonwealth need not establish “skin to skin” contact to sustain a conviction of indecent assault. *Commonwealth v. Riccio*, 437 Pa.Super. 629, 650 A.2d 1084, 1086 (1994). It is clear from the testimony of F.L. that the Commonwealth has established *prima facie* on the single count of Indecent Assault. F.L. would have been 8 or 9 years old at the time of the alleged incident. She would have described how the Defendant touched her genitals over her underwear and reached down with a finger to the same area underneath her underwear. Accordingly, the Defendant’s motion fails.

### **Conclusion**

The Court finds that the Commonwealth presented adequate evidence at the preliminary hearing to establish a *prima facie* case for the charge of indecent assault against Defendant. Therefore, Defendant’s Motion for Habeas Corpus is denied.

### **ORDER**

**AND NOW**, this 12<sup>th</sup> day of June, 2023, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant’s Omnibus Pretrial motion in the nature of a Habeas Corpus motion is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

NLB

cc: DA (TB)  
Robert Hoffa, Esq.  
Laurel Fox, Esq.  
Gary Weber, Esquire  
Jerri Rook