

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

**COMMONWEALTH OF PA**

**: No. CR-499-2022**

**:**

**vs.**

**:**

**: PRELIMINARY HEARING**

**JONATHAN L. SWALES,**

**:**

**Defendant**

**:**

**:**

**OPINION**

A preliminary hearing was held on September 25, 2023, pursuant to the agreement of the Commonwealth and Defendant following a request contained in the Defendant's Omnibus Pretrial Motion filed on October 19, 2022. The Commonwealth requested that the alleged victim be permitted to testify by contemporaneous alternative method pursuant to 42 Pa.C.S.A. §5985. Counsel for the Defendant did not object. Counsel for the Defendant was physically present in the room where the alleged victim testified, but the alleged victim was unable to see the Defendant, who remained in the Courtroom and viewed the testimony by video.

Contained in Defendant's Omnibus Motion was a Motion to Determine Competence of Complainant and for a Taint Hearing. By separate Order also docketed on today's date, this Court denied Defendant's request to find the alleged victim's testimony tainted following multiple CAC interviews. At the time of the preliminary hearing, the Court conducted a brief *voir dire* of the alleged victim to determine his ability to distinguish the truth from a lie and his understanding of the potential consequences of failing to tell the truth. Subsequently, counsel for the Defendant was given the opportunity to conduct a more extensive *voir dire* of the alleged victim, after which the Court is satisfied that the alleged victim is competent to testify and that he understands and appreciates the need to testify truthfully.

The Defendant is charged with four counts each of the following charges: Rape of a Child<sup>1</sup> (Counts 1-4); Involuntary Deviate Sexual Intercourse with a Child<sup>2</sup> (Counts 5-8); Indecent Assault Under 13 Years of Age<sup>3</sup> (Counts 9-12); Unlawful Contact with a Minor<sup>4</sup> (Counts 13-16); Corruption of Minors<sup>5</sup> (Counts 17-20); and Indecent Exposure<sup>6</sup> (Counts 21-24). The alleged victim is the biological son of the Defendant who was seven years old at the time the crimes were alleged to have been committed.

With regard to Counts 1-4, “a person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.” 18 Pa.C.S. §3121(c). In addition to its ordinary meaning, “sexual intercourse includes per os or per anus, with some penetration, however slight; emission is not required.” 18 Pa.C.S. §3101.

With regard to Counts 5-8, “a person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.” 18 Pa.C.S. §3123(b). “Deviate sexual intercourse” is defined as “sexual intercourse per os or per anus between human beings and any form of sexual intercourse with an animal. . .” 18 Pa.C.S. §3101.

With regard to Counts 9-12, “[a] person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and

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<sup>1</sup> 18 Pa.C.S. §3121(c)

<sup>2</sup> 18 Pa.C.S. §3123(b)

<sup>3</sup> 18 Pa.C.S. §3126(a)(7)

<sup>4</sup> 18 Pa.C.S. §6318(a)(1)

<sup>5</sup> 18 Pa.C.S. §6301(a)(1)(ii)

<sup>6</sup> 18 Pa.C.S. §3127(a)

the complainant is less than 13 years of age.” 18 Pa.C.S. §3126(a)(7). “Indecent contact” is defined as “[a]ny touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person.” 18 Pa.C.S. §3101.

With regard to Counts 13-16, “[a] person has unlawful contact with a minor if he is intentionally in contact with a minor . . . for the purpose of engaging in an activity prohibited under any of the offenses enumerated in Chapter 31 (related to sexual offenses), and either the person initiating the contact or the person being contacted is within this Commonwealth.” 18 Pa.C.S. §6318(a)(1).

With regard to Counts 17-20, “[w]hoever, being of the age of 18 years and upwards, by any course of conduct in violation of Chapter 31 (relating to sexual offenses) corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of an offense under Chapter 31 commits a felony of the third degree.”

And finally, with regard to Counts 21-24, “[a] person commits indecent exposure if that person exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm.”

At a preliminary hearing the Commonwealth bears the burden of proving the *prima facie* case, which is met when it “produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the crime.” *Commonwealth v. Wroten*, 257 A.3d 734, 742 (Pa. Super. 2021). The alleged victim testified at the preliminary hearing that his date of birth was [redacted], making him 10 years old and that his “real dad” is “John.” He testified that he no longer

goes to John's house because of "the incident that happened," which he described as "he made me suck his thing" in the living room and the bathroom shower. The alleged victim further testified that a "thing" is a body part that just boys have, and the "thing went in my mouth" and he did not ask John to do that. He testified that he did not like it, told John to stop, and that it happened on more than two occasions in both the living room and the shower.

On cross examination, the alleged victim testified that the incidents occurred at the Defendant's trailer and described the Defendant's couch and his truck. When asked what he referred to his "thing" by, the alleged victim responded "wiener." He denied referring to it as a "lollipop" but testified that was what the Defendant called it. He testified that the Defendant told him he wanted the alleged victim's sister to come over because he wanted to see her naked.

"The evidence supporting a *prima facie* case need not establish the defendant's guilt beyond a reasonable doubt, but must only demonstrate that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to proceed to jury."

*Montgomery*, 234 A.3d at 533. The Court finds that the testimony of the alleged victim at the preliminary hearing was sufficient to enable the Commonwealth to meet its burden to establish a *prima facie* case for all charges. Accordingly, the Court will enter the following Order:

### **ORDER**

**AND NOW**, this 3<sup>rd</sup> day of **October, 2023**, following a preliminary hearing held on September 25, 2023, the Commonwealth has met its burden of establishing a *prima facie* case with respect to all charges. However, with respect to Counts 17-20, Corruption of

Minors, the Court will bind over only Count 17 as the charges all arise from the same course of conduct. Therefore Counts 1-17 and 21-24 are **BOUND OVER** to the Court of Common Pleas. Counts 18-20 are **DISMISSED**.

BY THE COURT,

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Ryan M. Tira, Judge

RMT/jel

cc: Martin Wade, Esquire  
Edward J. Rymsha, Esquire  
Gary Weber, Esquire  
Jennifer Linn, Esquire