

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
	:	<b>CR-1145-2022</b>
<b>vs.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>RONALD PAUL WERT, JR.,</b>	:	
<b>Defendant</b>	:	

**OPINION**

This matter is before the Court on Defendant’s Omnibus Pretrial Motion filed October 10, 2022. For the reasons set forth below, the Motion is Granted in part and Denied in part.

**I. Factual and Procedural Background**

Ronald Paul Wert, Jr. (“Defendant”) was charged with two counts of Attempt to Commit Aggravated Indecent Assault; two counts of Solicitation to Commit Aggravated Indecent Assault; one count of Endangering the Welfare of a Child; one count of Unlawful Contact with a Minor; two counts of Corruption of Minors; four counts of Indecent Assault; and one count of Invasion of Privacy. A preliminary hearing was held on August 26, 2022, and all charges were bound for trial. On October 10, 2022, the Defendant timely filed his Omnibus Pretrial Motion, which contained a Motion for Habeas Corpus and a Motion to Reserve Right.

An argument was held on November 28, 2022, at which time Kirsten Gardner, Esquire, appeared on behalf of the Commonwealth and Defendant appeared and was represented by Robert Hoffa, Esquire. The Commonwealth introduced the transcript from the preliminary hearing and indicated its intent to rely on that for purposes of the Motion for

Habeas Corpus. Counsel for the Defendant did not object. Also on November 28, 2022, counsel for the Defendant raised an issue with the charges on the information. By separate Order, the Information was amended to reflect that Counts 3 and 4 were changed to Solicitation under 18 Pa.C.S. §902.

## **II. Discussion**

The Court will discuss each of the above Motions separately.

### **Petition for Writ of Habeas Corpus**

The Defendant's Petition for Writ of Habeas Corpus alleges that the Commonwealth failed to establish a *prima facie* case for each of the 12 counts contained in the Information. Where a defendant seeks to challenge the sufficiency of the evidence presented by the Commonwealth, he may do so by the filing of a writ of *habeas corpus*. *Commonwealth v. Landis*, 48 A.3d 432, 444 (Pa. Super. 2012) (en banc). At a *habeas corpus* hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a *prima facie* against the defendant. *See Commonwealth v. Hilliard*, 172 A.3d 3, 10 (Pa. Super. 2017)

The definition of *prima facie* is not precise or without difficulty. On the one hand, it has been described as evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime. *Commonwealth v. Packard*, 767 A.2d 1068, 1070 (Pa. Super. 2001), *abrogated on other grounds by Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 n.5 (Pa. Super 2016).

On the other hand, it has been defined as evidence, which if accepted as true, would warrant submission of the case to a jury. *Packard, id.*; *Commonwealth v. Karetny*, 880 A.2d

505, 514 (Pa. 2005); *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2001).

The weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person has committed the offense. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2011). The evidence must be read in a light most favorable to the Commonwealth and inferences reasonably drawn from the evidence of record which would support a verdict of guilty, must be given effect. *Id.*

### **1. Criminal Attempt Aggravated Indecent Assault**

Defendant's petition alleges in order for the Commonwealth to establish a *prima facie* case of Criminal Attempt Aggravated Indecent Assault, the Commonwealth must establish that the Defendant took a substantial step towards the commission of that crime. Defendant further alleges the Commonwealth failed to present any evidence that there was an attempt to commit aggravated indecent assault as there was no evidence of a substantial step towards the commission of that crime.

"A person commits attempt when, with an intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime." 18 Pa.C.S. §910(a). In this case, the Defendant is alleged to have attempted to commit aggravated indecent assault, which is defined as "a person who engages in penetration, however slight, of the genitals or anus of the complainant with a part of the person's body for any purpose other than good faith medical, hygienic, or law enforcement procedures." 18 Pa.C.S. §3125. Under Count 1, Defendant is charged with Criminal Attempt Aggravated Indecent Assault Without Consent and under Count 2, Defendant is charged with Criminal

Attempt Aggravated Indecent Assault Complainant less than 16 years of age.

The criminal complaint alleges on March 8, 2022, the Defendant “did sexually touch a known 15 year old juvenile victim on her bare skinned buttocks, thighs, and vaginal area for sexual pleasure without the victim’s consent. R. WERT pushed the victim’s pajama pants from her ankles to her vagina. While R. WERT was sexually touching the victim near her vagina, R. WERT said to her, “I could tickle right there if you want me to?” R. WERT went on to say “it would feel good with no clothes on, but the lights would have to be off. You won’t be able to tell anyone because I would go away.”

At the Preliminary Hearing on August 26, 2022, the alleged victim testified that in March of 2022, the Defendant told her “lie down so he could rub my back better, “ and when asked where the Defendant would have touched her she indicated “[h]e would have touched my butt; and he rubbed – well, he rubbed my butt.” (Transcript of Proceedings, 8/26/22, pg. 8). The alleged victim further testified that the Defendant pulled her pant legs up to her butt and rubbed down her legs and “[h]e put his hand underneath my underwear and my pants and rubbed my butt.” (T.P. 8/26/22, pg. 9). The alleged victim testified that as she was lying on her bed, the Defendant “had his hand near my crotch area and said that he could tickle down there if he wanted – if I wanted.” (T.P. 8/26/22, pg. 10). The alleged victim further testified that as the Defendant sat on her bed “he was telling me that it feels better naked and that the lights would have to be off and that I couldn’t tell anyone because he’d go away.” (Id.). When asked to describe what the area of the crotch is on her body, the alleged victim answered “my vagina,” and when asked what part of his body touched her there she responded “[h]is hand.” (T.P. 8/26/22, pg. 16). When asked how it made her feel

when the Defendant was touching her there, the alleged victim replied “[u]ncomfortable and not – it wasn’t right.” (Id.).

In considering the totality of the circumstances and viewing the evidence in the light most favorable to the Commonwealth as is required, this Court finds that the Commonwealth established a *prima facie* case that the Defendant attempted to commit aggravated indecent assault. The Defendant’s actions with regard to rubbing the alleged victim’s buttocks and touching her in the crotch area constituted a substantial step towards penetration of her genitals or anus for a purpose other than good faith medical, hygienic, or law enforcement procedures.

## **2. Criminal Solicitation Aggravated Indecent Assault**

In Count 3, Defendant is charged with Criminal Solicitation Aggravated Indecent Assault Without Consent and under Count 4, Defendant is charged with Criminal Solicitation Aggravated Indecent Assault Complainant less than 16 years of age. “A person is guilty of solicitation to commit a crime if with the intent of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish his complicity in its commission or attempted commission.” 18 Pa.C.S. §902.

“The purpose of the solicitation statute is to hold accountable those who would command, encourage, or request the commission of crimes by others.” *Commonwealth v. Hacker*, 15 A.3d 333, 336 (Pa. 2011). Regarding the element of intent, there must be an “intent to accomplish the acts which comprise the crime, not necessarily with intent specific

to all the elements of that crime.” *Id.* Encouragement and intent to accomplish the acts is sufficient evidence to sustain a solicitation conviction.

Here, the Defendant suggested that “it feels better naked and that the lights would have to be off and that I couldn’t tell anyone because he’d go away” while rubbing the alleged victim’s buttocks and placing his hand in her crotch area, saying “I could tickle down there if [you] wanted.” (N.T. 8/26/22, pg. 10). When viewed in the light most favorable to the Commonwealth, the testimony at the preliminary hearing shows the Defendant’s encouragement of, and intent to, engage in aggravated indecent assault with his fifteen year old daughter. This Court finds that the Commonwealth has met its burden of establishing a *prima facie* case for solicitation of aggravated indecent assault.

### **3. Endangering Welfare of Children**

In Count 5, the Defendant is charged with Endangering Welfare of Children. The Defendant argues that the Commonwealth failed to produce any evidence to make a *prima facie* case of Endangering Welfare of Children as they failed to produce evidence that the alleged victim was sexually touched at any time. “A parent, guardian, or other person supervising the welfare of a child under 18 years of age . . . commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection, or support.” 18 Pa.C.S. §4304(a)(1). The Superior Court has previously determined “evidence is sufficient to prove the intent element of the offense of endangering the welfare of a child, 18 Pa.C.S.A. § 4304, when the accused is aware of his or her duty to protect the child; is aware that the child is in circumstances that threaten the child's physical or psychological welfare; and has either failed to act or has taken actions so lame or meager that such actions

cannot reasonably be expected to be effective to protect the child's physical or psychological welfare.” *Commonwealth v. Cardwell*, 515 A.2d 311, 315 (Pa. Super. 1996).

At the time of the preliminary hearing, the alleged victim testified that she was fifteen years old and the Defendant was her adopted father. (N.T. 8/26/22, pg. 4). On the night of the alleged incident, the Defendant was at the home while the alleged victim’s mother was at work. (Id. at 6). As a parent of the fifteen year old, the Defendant had a duty of care, protection, or support to the alleged victim, and would have been aware of such duty. The alleged victim testified that the Defendant “put his hand underneath my underwear and my pants and rubbed my butt” and “he said that it feels better naked and the lights would have to be off and that I couldn’t tell anyone because he’d go away.” (Id. at 9). At this stage of the proceeding, the Court finds the Commonwealth has established a *prima facie* case of endangering the welfare of children, as the Defendant’s actions of put the fifteen year old alleged victim, to whom he owed a duty of care, in circumstances that threatened her physical or psychological welfare. Additionally, the Defendant’s insinuation that the alleged victim would have to keep his actions a secret cannot reasonably be expected to be effective to protect the child’s physical or psychological welfare. To the contrary, such statements reflect the emotional trauma that would be caused by the Defendant’s proposed actions.

#### **4. Unlawful Contact with a Minor**

In Count 6, the Defendant is charged with Unlawful Contact with a Minor. A person commits the offense of 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 (relating to sexual offenses), and either the person initiating the contact or the person being contacted is within the Commonwealth. 18 Pa.C.S. §6318(a)(1). The Defendant reiterates his argument that the Commonwealth failed to produce any evidence that there was any sexual touching of the juvenile or any violation of Chapter 31 relating to sexual offenses.

As noted above, the alleged victim testified at the time of the preliminary hearing that the Defendant entered her room and asked her to walk on his back. (N.T. 8/26/22, pg. 8). Afterwards, the Defendant told the victim that it was her turn to have her back rubbed. The alleged victim testified then, under the guise of giving her a massage, the Defendant “put his hand underneath her underwear and rubbed my butt.” (Id. at. 9). She further testified that the Defendant turned off her lamp, sat back down on her bed and told her “it feels better naked and that the lights would have to be off and that I couldn’t tell anyone because he’d go away.” (Id. at 10). The Defendant “stuck his hand over my butt and was -- he had his hand near my crotch area and said that he could tickle down there if he wanted – if I wanted.” (Id.) She further testified that the Defendant touched the area of her crotch, meaning her vagina, with his hand and it made her feel uncomfortable. (Id. at 16).

The Court finds that the Commonwealth has met its burden of establishing a *prima facie* case of unlawful contact with a minor. The Defendant had direct contact with the alleged victim, whom he knew to be a minor, and his comments and actions are sufficient at this point to show his intent to engage in in a prohibited sexual activity, and knowledge of the potential criminal consequences thereof. The Court disagrees with the Defendant’s argument that the Commonwealth failed to produce evidence of sexual touching. However,



even if the Defendant's argument would prove successful, once a defendant contacts or communicates with the minor for the purpose of engaging in the prohibited activity, the crime of unlawful contact with a minor has been completed. *Commonwealth v. Morgan*, 913 A.2d 906, 911 (Pa. Super. 2006). Actual sexual touching with a complainant under the age of eighteen years is not an element of the crime contemplated in 18 Pa.C.S. § 6318. Therefore, the actor need not be successful in completing the purpose of his contact or communication with the minor. *Id.*

## **5. Corruption of Minors**

In Count 7, the Defendant is charged with Corruption of Minors, a felony of the third degree, as a result of "multiple instances of indecent contact with a juvenile as well as a solicitation to engage in additional indecent contact; invasion of privacy." This offense is defined as "[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." 18 Pa.C.S. §6301(a)(1)(ii). In Count 8, the Defendant is charged with Corruption of Minors, a misdemeanor of the first degree. This offense is defined in pertinent part as whoever, being of the age of 18 years and upwards, by any act 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 any crime, or who knowingly assists or encourages such minor in violating his or her parole or any order of court, commits a misdemeanor of the first degree. 18 Pa.C.S. §6301(a)(1)(i).

The alleged victim's testimony at the preliminary hearing, already quoted several times in this opinion, was that she was fifteen years of age when the forty-one year old Defendant offered to give her a massage but instead rubbed her butt and placed his hands around her vaginal area. While doing so, the Defendant told her it would feel better naked and offered to tickle her, but the lights would have to be off and she could not tell anyone because he'd go away. The alleged victim further testified that on a prior occasion, in November of 2021, while at a barn the Defendant "tickled the bottom of my butt cheek." (N.T. 8/26/22, pg. 16).

The Court finds that the Commonwealth presented sufficient evidence that the Defendant's course of conduct was in violation of Chapter 31 (relating to sexual offenses) and would corrupt the morals of a minor less than 18 years of age and therefore has met its burden of establishing a prima facie case of corruption of minors under both Count 7 and Count 8.

#### **6. Indecent Assault**

In Counts 9 and 11, the Defendant is charged with Indecent Assault – Without Complainant's Consent. In Counts 10 and 12, the Defendant is charged with Indecent Assault – Complainant Less than 16. 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 the person does so without the complainant's consent and/or the complainant is less than 16 years of age and the person is four or more years older than the complainant and the

complainant and the person are not married to each other.” 18 Pa.C.S. §3126(a)(1), (8).

Indecent contact is defined as “[a]ny touching of the sexual or intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person.” 18 Pa.C.S. §3101.

Counts 9 and 10 arise from the incident on March 8, 2022, wherein the Defendant rubbed the alleged victim’s butt and placed his hand in her crotch area while in her bedroom at their home. Counts 11 and 12 arise from an incident alleged to have occurred at a barn on or about November of 2021. The alleged victim testified at the preliminary hearing that in that incident the Defendant touched her “in my butt” with “his hand” and when asked how he touched her she responded “he tickled the bottom of my butt cheek.” (N.T. 8/26/22, pg. 15-16). As the buttocks is clearly an intimate part of a person, the alleged victim was fifteen years old and incapable of consenting to any sort of sexual activity with someone more than four years older than her, and the Defendant was approximately forty one years old at the time of the incidents, the Court finds that the Commonwealth has established a prima facie case of indecent assault for each of Counts 9-12.

## **7. Invasion of Privacy**

In Count 13, the Defendant is charged with Invasion of Privacy. A person commits the offense of invasion of privacy if he, “for the purpose of arousing or gratifying the sexual desire of any person, knowingly views, photographs, videotapes, electronically depicts, films or otherwise records another person without that person's knowledge and consent while that person is in a state of full or partial nudity and is in a place where that person would have a reasonable expectation of privacy.” 18 Pa.C.S. §7507.1(a)(1). At the preliminary hearing, the alleged victim testified about an incident when she was in the

shower and the Defendant came into the bathroom, indicating “[o]ne time I was facing the shower head; and he stuck his – he came into the bathroom and stuck his hand in the shower and said tickle, tickle. And I turned around and saw his hand in the shower – inside the shower curtain.” (N.T. 8/26/22, pg. 13). While the bathroom and, more specifically, the shower is a place where a person would be in a state of full nudity and have a reasonable expectation of privacy, the alleged victim testified only that she saw the Defendant’s hand in the shower. There was no testimony that the alleged victim observed the Defendant viewing her in a state of nudity. Therefore, the Commonwealth has failed to establish a *prima facie* case of Invasion of Privacy under Count 13 and the Count is dismissed.

### **Motion to Reserve Right**

Defendant moves to reserve the right to make any additional pre-trial motions pursuant to Pennsylvania Rule of Criminal Procedure 579. This motion is **GRANTED**, but only to the extent that any motion is based on information or discovery provided by the Commonwealth after November 28, 2022, the date of the last argument on Defendant’s Omnibus Pre-Trial Motion.

### **III. Conclusion**

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, and the consistent testimony presented by the alleged victim, this Court finds that, when viewing the evidence presented in the light most favorable to the Commonwealth, the Commonwealth has established their *prima facie* burden on all counts against Defendant, with the exception of Count 13. Therefore, Defendant’s argument with regard to Counts 1-

12 is without merit and those charges against him shall not be dismissed. Count 13 shall be dismissed as the Commonwealth failed to establish a *prima facie* case of invasion of privacy.

Accordingly, the Court will enter the following Order.

**ORDER**

**AND NOW**, this 6<sup>th</sup> day of **June, 2023**, upon consideration of Defendant's Omnibus Pre-Trial Motions, the argument of counsel on October 3, 2022, and November 28, 2022, and for the reasons set forth above, the Petition for Writ of Habeas Corpus is **DENIED** with regard to Counts 1-12. The Petition for Writ of Habeas Corpus is **GRANTED** with respect to Count 13 and said Count is dismissed. The Motion to Reserve Right is hereby **GRANTED**, subject to the limitations set forth above.

By the Court,

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Ryan M. Tira, Judge

RMT/jel

CC: DA – Kirsten Gardner, Esq.  
Robert Hoffa, Esq.  
Gary Weber, Esquire  
Jennifer Linn, Esquire