

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR 1580-2024
	:	
vs.	:	CRIMINAL DIVISION
	:	
JOSHUA KUTZA,	:	
Defendant	:	

### **OPINION and ORDER**

Joshua Kutza (Defendant) was charged with nineteen different sexual offenses against a child. Specifically, he was charged with count twelve, Endangering Welfare of Children<sup>1</sup> and count thirteen, Indecent Exposure<sup>2</sup>. The charges arise from incidents that occurred in the summer of 2022. As a result, the Defendant was charged on October 7<sup>th</sup>, 2024. Defendant, following his preliminary hearing filed an Omnibus Pretrial Motion that included a Petition for Writ of Habeas Corpus. Defendant argues that the Commonwealth failed to meet their burden of proof at the preliminary hearing for counts twelve and thirteen and asks that each count be dismissed.

#### **Background**

At the time of the hearing on Defendant's Omnibus Pre-Trial motion the parties stipulated to submitting the preliminary hearing transcript to the Court and providing argument, rather than adding any additional testimony. On May 9<sup>th</sup>, 2024 a ChildLine report was made by the alleged victim's school counselor that indicated the alleged juvenile victim was sexual assaulted by the Defendant when she was twelve years of age.

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<sup>1</sup> 18 Pa.C.S.A § 4304(a)(1)

<sup>2</sup> 18 Pa. C.S.A. § 3127 (a)

The juvenile was then interviewed at the Children's Advocacy Center in Sunbury, PA on May 14<sup>th</sup>, 2024. During that interview the juvenile described two different incidents. The first, which took place in the summer of 2022 the juvenile stated that the Defendant and herself were at the Defendant's residence when the Defendant threw her into the pool. After she got out of the pool she tried to go home when the Defendant stopped her and forced her to perform an oral sex act.

The second incident also took place in the summer of 2022. At the time the juvenile and Defendant were once again at the Defendant's residence outside sitting around his fire pit. The juvenile testified that, that night she told the Defendant that she was getting tired, but the Defendant wouldn't let her leave the fire. She then dozed off and was awoken with the Defendant on top of her touching her chest and vagina while also covering her mouth.

## **Discussion**

Defendant first argues that count twelve of the information Endangering the Welfare of Children should be dismissed because the Commonwealth failed to present evidence to the elements of the crime. His second argument is that the Commonwealth also failed to present evidence to meet the elements of Indecent Exposure.

At a preliminary hearing the Commonwealth "bears the burden of establishing at least a prima facie case that the crime was committed".<sup>3</sup> Further, to prove its burden at this hearing, "the Commonwealth is required to present evidence with regard to each of the material elements of the charge and to establish sufficient probable cause to warrant the belief that the accused

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<sup>3</sup> *Commonwealth v. McBride*, 528 Pa. 153, 591 (Pa. Super. 1991)

committed the offense”.<sup>4</sup> The evidence presented at the preliminary hearing must be considered in the light most favorable to the Commonwealth.<sup>5</sup>

A person is guilty of Endangering the Welfare of Children (EWOC) when:

(a)(1) A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.<sup>6</sup>

Additionally, a three-part test must be satisfied to prove EWOC, first, the accused was aware of his/her duty to protect the child; second, the accused was aware that the child was in circumstances that could threaten the child’s physical or psychological welfare; and third, the accused was either failed to act or has taken action so lame or meager that such actions cannot reasonably be expected to protect the child’s welfare.<sup>7</sup> Further, Pennsylvania courts have extended the duty of care in Endangering cases to non-relatives who exercise time supervisory role over the child.<sup>8</sup>

Here, when viewing the evidence in the light most favorable to the Commonwealth, the Court finds that they have met their prima facie burden. The juvenile testified that the Defendant and her mother were in a relationship at the time and during the time of the incident it was only the Defendant and juvenile at the Defendant’s residence. Additionally, the Defendant exercised some control over the juvenile when he did not let her leave the residence on both occasions. Furthermore, the Defendant was aware that the sexual assault at issue would threaten the child’s

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<sup>4</sup> *Id.*

<sup>5</sup> *Commonwealth v. Hilliard*, 172 A. 3d 5, 10 (Pa. Super. 2017)

<sup>6</sup> 18 Pa.C.S.A § 4304(a)(1)

<sup>7</sup> *Com. v. Bryant.*, 57 A.3d 191 (Pa. Super 2012)

<sup>8</sup> *Id.*

physical or psychological welfare and Defendant's actions were such that could not reasonable be expected to protect the child's welfare.

The Defendant next argues that the Commonwealth failed to present evidence to meet their burden regarding Count thirteen Indecent Exposure. A person is guilty of Indecent Exposure when:

(a)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.<sup>9</sup>

The juvenile testified that on a separate occasion the Defendant had exposed himself for the purposes of engaging in oral sex with the juvenile. This incident allegedly occurred at the same residence that the above incident took place. When looking at the evidence most favorable for the Commonwealth the Court finds that they met their prima facie burden. The Defendant exposed himself in a place, specifically, his residence, while the juvenile was present, and he should have known that his conduct was likely to offend the juvenile.

### **ORDER**

**AND NOW**, this \_\_\_\_ day of **May, 2025**, the Court **DENIES** Defendant's Petition for Habeas Corpus.

BY THE COURT

Ryan C. Gardner, Judge

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<sup>9</sup> 18 Pa. C.S.A. § 3127 (a)

RCG/kbc

cc: DA (Lindsay Sweeley, Esq)  
Robert Hoffa, Esq.  
Gary Weber, Esq.