

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR 1581-2024
	:	
vs.	:	CRIMINAL DIVISION
	:	
JOSHUA KUTZA,	:	
Defendant	:	

OPINION and ORDER

Joshua Kutza (Defendant) was charged with Corruption of Minors – Defendant Age 18 or Above¹, Unlawful Contact with Minor – Sexual Offenses², and Indecent Exposure³. The charges arise from incidents that occurred between 2019 and 2021. As a result, the Defendant was charged on October 7th, 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 each count and requests 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 transcript of the preliminary hearing to the Court and providing argument rather than adding any additional testimony. At the time of testimony, the minor victim testified that he and his mother had been living with the Defendant in 2020.⁴ During the time the victim and his mother were living with the Defendant, the Defendant would exit the shower and chase the minor victim around naked with his penis exposed. Ms. Bergstrom would later testify

¹ 18 Pa. C.S.A. § 6301(a)(1)(ii)

² 18 Pa. C.S.A. § 6318 (a)(1)

³ 18 Pa. C.S.A. § 3127 (a)

⁴ The victim’s mother Brenda Bergstrom later testified that they had been living with the Defendant from 2019 to February 2021.

that the Defendant had done this on at least two maybe three different occasion over the course of time they had been living together. Ms. Bergstrom also testified that while the Defendant was chasing the alleged minor victim she would feel uncomfortable and ask him to stop. She also stated that the Defendant would get close enough to try and hit the alleged victim with his penis. The juvenile testified that the Defendant would hit him with his penis.

Discussion

Defendant argues that for each count the Commonwealth had failed to meet its prima facie burden. Specifically, he alleges that, for count one, the Commonwealth did not establish a course of conduct necessary to corrupt the morals of a minor. Regarding count two, Defendant argues that the Commonwealth failed to establish that the Defendant had contact with a minor for the purposes of engaging in an activity prohibited under the Sexual Offense Chapter of the Crimes Code. Lastly, as to count three the Defendant argues that the Commonwealth failed to present evidence that the Defendant exposed his genitals in a public place or place where others were present knowing that the exposure would in fact offend, affront or alarm the other individual.

At a preliminary hearing the Commonwealth “bears the burden of establishing at least a prima facie case that the crime was committed”.⁵ 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 committed the offense”.⁶ The evidence presented at the preliminary hearing must be considered in the light most favorable to the Commonwealth.⁷

⁵ *Commonwealth v. McBride*, 528 Pa. 153, 591 (Pa. Super. 1991)

⁶ *Id.*

⁷ *Commonwealth v. Hilliard*, 172 A. 3d 5, 10 (Pa. Super. 2017)

The Court will address count three first as a violation of a Chapter 31 offense is an element of each other the other counts. 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.⁸

When looking at the testimony presented in a light most favorable to the Commonwealth the Court finds that that the Commonwealth has satisfied its prima facie burden. At the time the incidents occurred, the alleged victim and his mother were present in the Defendant's home. While in his home he allegedly exposed himself to the minor child as well as the child's mother. The child's mother testified that she was uncomfortable with the actions of the Defendant and that the alleged victim would run away in fear of the Defendant. The Defendant clearly should have known that his conduct would likely offend not only the juvenile, but also his mother.

As to count two, a person is guilty of Corruption of Minors a felony in the third degree when:

(ii) Whoever, 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.

Specifically, "actions that tend to corrupt the morals of a minor are those that "would offend the common sense of the community and the sense of decency, propriety and morality which most people entertain"⁹. Further, the Superior Court has held that, "the use of the phrase "course of conduct" in the first provision of subsection (a)(1)(ii) imposes a requirement of multiple acts

⁸ 18 Pa. C.S.A. § 3127 (a)

⁹ *Commonwealth v. Snyder*, 870 A.2d 336 (Pa. Super. 2005)

over time, in the same manner in which the term is used in the harassment, stalking and EWOC statutes”.¹⁰

Here, the Commonwealth has satisfied its prima facie burden for Corruption of Minors. During the testimony of mother, she clearly indicates that the actions of the defendant, and specifically, chasing he alleged victim naked, happened on more than one occasion and up to three times. The testimony of the alleged victim and mother are sufficient at this stage to show that the Defendant’s actions would offend the common sense of the community and the sense of decency, propriety, and morality for which most people maintain.

Lastly, the Court finds that the Commonwealth has presented evidence that the Defendant possessed the requisite contacts with respect to his challenge of the unlawful contact with a minor to meet its burden at this stage in the proceedings.

A person is guilty of Unlawful Contact with a Minor – Sexual Offenses when:

(a) Offense defined.--A person commits an offense if the person is intentionally in contact with a minor, or a law enforcement officer acting in the performance of duties who has assumed the identity of a minor or of another individual having direct contact with children, as defined under 23 Pa.C.S. § 6303(a) (relating to definitions), for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:

(1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).¹¹

Contact is further defined as:

[d]irect or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communications common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.¹²

¹⁰ *Commonwealth v. Kelly*, 102 A.3d 1025 (Pa. Super. 2024)

¹¹ 18 Pa. C.S.A. § 6318 (a)(1)

¹² 18 Pa. C.S.A. § 6318 (c)

The Superior Court explains that unlawful contact with a minor is best understood as “unlawful communication with a minor and that the statute prohibits the act of communication with a minor for an enumerated sexual purpose.”¹³ The alleged victim testified to not only physical contact, but also communication while the Defendant was chasing him around the house with his genitals exposed. Specifically, the Defendant would make jokes while chasing the minor, as well as, hit the minor with his penis. The physical contact and more importantly the verbal communication that were testified to by both the juvenile and his mother fall squarely within the definition of contacts, thus leading to the conclusion that the Commonwealth has satisfied its prima facie burden with respect to unlawful contact with a minor when he was engaging in a Chapter 31 listed offense, specifically here, indecent exposure.

ORDER

AND NOW, this ____ day of **June, 2025**, for the reasons stated above the Court
DENIES Defendant’s Petition for Habeas Corpus.

BY THE COURT

Ryan C. Gardner, Judge

RCG/kbc

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

¹³ *Commonwealth v Rose*, 960 A.2d 149 (Pa. Super. 2008)