

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

vs.

MATTHEW WILSON,
Defendant

: No. CR-835-2025

:

: Order Denying Commonwealth's

: Request to Deny Bail and

: Scheduling Hearing to Set Bail

: For December 22, 2025 @ 3:00 p.m.

OPINION AND ORDER

In response to Defendant's motion to set bail, the Commonwealth opposed the motion and asked the court to deny bail.

Bail may only be denied in extremely limited circumstances. Article 1, §14 of the Pennsylvania Constitution states:

All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

Pa. Const. Art. 1, §14 (emphasis added). The Pennsylvania Supreme Court has held that this constitutional provision gives criminal defendants a constitutional right to bail which may only be overcome (and bail denied) when the Commonwealth presents evidence and proves "that it is substantially more likely than not that the accused: (1) committed a capital offense; (2) committed an offense that carries a maximum sentence of life imprisonment, or (3) presents a danger to any person and the community, which cannot be abated using any available bail conditions."

Commonwealth v. Talley, 265 A.3d 485, 438 (Pa. 2021). "[T]his high evidentiary standard only applies when the only when the Commonwealth seeks to take the

extreme step of denying the accused his or her state constitutional right to bail altogether.” *Id.*

The only capital offenses are first-degree murder and murder of a law enforcement officer of the first-degree. 18 Pa. C.S.A. §1102(a)(1)(i). The offenses for which the maximum sentence is life imprisonment are first-degree murder, first-degree murder of a law enforcement officer, first-degree murder of an unborn child, second-degree murder, second-degree murder of a law enforcement officer, and second-degree murder of an unborn child. 18 Pa. C.S.A. §1102(a)(1), (2).

Defendant is not charged with any of these offenses. Instead, Defendant is charged with possessing **artificially generated** child sexual abuse material in violation of 18 Pa. C.S.A. §6312(d). Therefore, the Commonwealth was required that it is “**substantially more likely than not** that (1) the accused will harm someone if he is released and that (2) there is no condition of bail within the court's power that reasonably can prevent the defendant from inflicting that harm.” *Talley*, 265 A.3d at 737 (emphasis original). A non-exhaustive list of factors for the court to consider include: “the defendant's character, relevant behavioral history, or past patterns of conduct; the gravity of the charged offense; the conditions of bail reasonably available to the court; and any evidence that tends to show that those conditions would be inadequate to ensure the protection of any person or the community.” *Id.*

The Commonwealth acknowledged that the images were artificially generated. In other words, the images in this case are not real. The **only** evidence submitted by the Commonwealth was a disc containing excerpts of 5 videos. The Commonwealth argued that the images contained on the disc were very graphic and

very realistic. It argued concern for the children in Defendant's home, who allegedly are an eight-year old and a one-year old. It also argued concern that due to Defendant's viewing of the images, he would be willing to replicate what is occurring in the image in real life.

Defense counsel argued that concern is not enough; the Commonwealth was required to present evidence to show not only that Defendant was a danger, but that any danger could not be abated by conditions of bail. He argued that the Commonwealth did not present any such evidence in this case. He argued that the court could place Defendant on house arrest at his mother's residence, that Defendant would be willing to get rid of his electronic devices and that his mother was willing to enforce any bail rules or condition imposed by the court. Defense counsel also noted that he had filed a motion to challenge the constitutionality of the statute.

The court finds that the Commonwealth has not satisfied its burden of proof in this case. It is well-settled that arguments of counsel are not evidence. *Commonwealth v. Puksar*, 951 A.2d 267, 280 (2008). The Commonwealth's concerns were based solely on arguments and assumptions, not evidence. The United States Supreme Court found that the Child Pornography Prevention Act, 18 U.S.C. §2251, et seq, which also prohibited the possession of virtual images, was unconstitutional. *See Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 122 S.Ct. 1389, 152 L.Ed.2d. 403 (2002). The Government raised similar concerns as the Commonwealth did in this case that possession of such images could lead to the abuse of actual children. The United States Supreme Court rejected them, saying:

The Government submits further that virtual child pornography whets the appetites of pedophiles and encourages them to engage in illegal conduct. This rationale cannot sustain the provision in question. The mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it. The government “cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts.” *Stanley v. Georgia*, 394 U.S. 557, 566, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969). First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.

To preserve these freedoms, and to protect speech for its own sake, the Court's First Amendment cases draw vital distinctions between words and deeds, between ideas and conduct. See *Kingsley Int'l Pictures Corp.*, 360 U.S., at 689, 79 S.Ct. 1362; see also *Bartnicki v. Vopper*, 532 U.S. 514, 529, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001) (“The normal method of deterring unlawful conduct is to impose an appropriate punishment on the person who engages in it”). The government may not prohibit speech because it increases the chance an unlawful act will be committed “at some indefinite future time.” *Hess v. Indiana*, 414 U.S. 105, 108, 94 S.Ct. 326, 38 L.Ed.2d 303 (1973) (per curiam). The government may suppress speech for advocating the use of force or a violation of law only if “such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444, 447, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) (per curiam). There is here no attempt, incitement, solicitation, or conspiracy. **The Government has shown no more than a remote connection between speech that might encourage thoughts or impulses and any resulting child abuse. Without a significantly stronger, more direct connection, the Government may not prohibit speech on the ground that it may encourage pedophiles to engage in illegal conduct.**

Id. at 253-254, 122 S.Ct. at 1403 (emphasis added). Here, the Commonwealth similarly has not presented **evidence** to show a connection between Defendant's possession of virtual images and the likelihood that such would result in Defendant engaging in illegal conduct with real children or that such a danger could not be abated by the conditions of bail. It has not satisfied its burden of proof to show that Defendant presents a danger and that the danger could not be abated using any

available bail conditions.

The court is not in any way approving or condoning the possession of these materials nor is it making or suggesting any ruling on the constitutionality of Pennsylvania's statute regarding Child Sexual Abuse Materials. It is merely following the Pennsylvania Constitution and the appellate court decisions with respect to the right to bail.

The parties only argued Defendant's eligibility for bail; they did not present testimony or arguments regarding the bail factors set forth in Pennsylvania Rules of Criminal Procedure 523. Therefore, the court is scheduling a hearing for December 22, 2025 at 3:00 p.m. in Courtroom #1 to set bail in this case.

ORDER

AND NOW, this 10th day of December 2025, the court DENIES the Commonwealth's request to deny bail in this case. However, as the argument was focused on eligibility for bail and not the bail factors set forth in Rule 523, the court is scheduling a hearing for **December 22, 2025 at 3:00 p.m. in Courtroom #1** to set bail in this case.

By The Court,

Nancy L. Butts, President Judge

cc: Korrin Moon, Esquire (ADA)
 Peter Lovecchio, Esquire
 Court Scheduling
 Gary Weber
 Jerri Rook