

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>:</b>	<b>NO. CR 1150-2025</b>
	<b>:</b>	
<b>vs.</b>	<b>:</b>	<b>CRIMINAL DIVISION</b>
	<b>:</b>	
<b>DWAYNE ALLEN KOONS,</b>	<b>:</b>	
<b>Defendant</b>	<b>:</b>	

**OPINON AND ORDER**

**AND NOW**, this 13<sup>th</sup> day of February, 2026, at the time scheduled for a hearing on a Petition for Writ of Habeas Corpus filed by Defendant October 24, 2025, counsel for Defendant as well as the Commonwealth appeared personally. The Court was provided with a copy of the preliminary hearing transcript held before MDJ Gary Whiteman September 2, 2025. The Commonwealth represented during the Habeas hearing that it was relying solely on the September 2 transcript. Defense counsel agreed. Per the Information filed in this matter, Defendant was charged with one count of Indecent Assault of a Person Less than 13 years of Age pursuant to 18 Pa. C.S. § 3126(A)(7). The allegation stems from incidents that occurred on or about January 1, 2024 through February 12, 2025.

**Background**

During the preliminary hearing, the alleged victim, MK, testified that she was 10 years of age. MK further testified that she previously spoke to a woman in Sunbury (presumably at the CAC) and told that woman “when I went to my gram’s house to visit my dad, he would pat my butt. And I told him no, and he didn’t stop. And sometime he would tickle me. And I told him not to, and he kept doing it and he didn’t stop. So, I really – I didn’t really like going to my gram’s house.” (NT pg. 4). When further questioned by the Commonwealth, MK said she told

Defendant to stop because she did not like it and it did not make her feel happy. She further testified that this happened more than once at her grammy's house. Defendant would use his hand to pat or sometimes pinch MK's butt. MK did have her clothes on when Defendant was patting her butt. (NT pgs. 5 & 7). MK stated that Defendant would tickle her pits, tummy and feet. (NT pgs. 5-6). Sometimes MK would pat her dad/Defendant's butt and she considered this to playful. (NT pg. 7). Also, at times after Defendant would tickle MK, she would then tickle Defendant. (NT pg. 9). Defendant is the Father of MK. (NT pg. 4).

Additionally, MK testified that she would take bubble baths at her grammy's house and that she was naked while taking baths. Defendant helped MK wash her hair but she was able to wash it on her own and preferred to wash it on her own. (NT pgs. 5 & 8).

## **Discussion**

Defendant argues that the Commonwealth failed to meet its prima facie burden during the preliminary hearing and more specifically, did not establish that any indecent contact occurred between the Defendant and the minor child, and/or that the contact was for the purpose of arousing a sexual desire.

At a preliminary hearing the Commonwealth "bears the burden of establishing at least a prima facie case that the crime was committed." *Commonwealth v. McBride*, 528 Pa. 153, 591 (Pa. Super. 1991). 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." *Id.* While 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 charged has committed the offense, the absence of evidence as to the existence of a material element is fatal.

*Commonwealth v. Ripley*, 833 A.2d 155, 159-60 (Pa. Super. 2003). The evidence presented at the preliminary hearing must be considered in the light most favorable to the Commonwealth.

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

The Crimes Code indicates that “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 a sexual desire in the person or the complainant and the complainant is less than 13 years of age.” 18 Pa. C. S. § 3126(A)(7). Also, the Supreme Court has previously stated that “in addition to the lack of consent, this crime requires proof of two elements; ‘first, the touching of a sexual or other intimate part of the person, and second, such touching being for the purpose of arousing or gratifying sexual desire.’” *Commonwealth v. Gamby*, 283 A.3d 298 (Pa. Super. 2022). In a non-precedential decision authored by our Superior Court, it was stated that “[t]he fact of contact with an intimate body part, without more, simply does not itself include the same level of contextual clues, even when it is genitals that were touched. An inference of a sexual intent unquestionably could be inferred by certain methods of such touching, such as stroking, massaging, or fondling, and in certain circumstances, such as when one or both of the parties is nude, sexually suggestive comments are made, or there was a history of sexual contact or abuse between the parties.” *In the INTEREST OF: K.A.W.*, 309 A.3d 1047 (Pa. Super. 2023).

Here, following careful review of the transcript, viewed in the light most favorable to the Commonwealth, the undersigned is constrained to agree with Defendant that proof of his intent was insufficient. Certainly, the Court can draw inferences. However, the record is devoid of any reference that can be drawn evidencing Defendant’s sexual intent. Specifically, the acts of

Defendant patting his child's butt over her clothes, tickling her or washing her hair, even when considered in their totality or as ongoing acts, do not equate to sexual intent. This is especially true in light of MK expressing that she has considered the acts of getting patted on the butt and patting her Dad's butt as playful and that she too engages in tickling her Dad. Further, simply because a child prefers to wash her own hair, sexual desire cannot be inferred by sheer virtue of the child's Dad choosing instead to wash his child's hair. It is not beyond the realm of possibility that the child does not adequately rinse all of the product from her hair and that is why Defendant washes her hair.

Simply put, based solely on the evidence presented by the Commonwealth as outlined in the preliminary hearing transcript, the Court is unable to infer that any of the acts described constitute sexual arousal, sexual desire or sexual intent and as a result, the Commonwealth failed to meet its prima facie burden.

WHEREFORE, the Court finds that the Commonwealth failed to meet their burden and the Defendant's Petition for Habeas Corpus is hereby GRANTED and Count one of the information is DISMISSED.

BY THE COURT

Ryan C. Gardner, Judge

RCG/kbc

cc: DA  
Matthew Diemer, Esq.  
Gary Weber, Esq.