

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 99-11,081

V :

MICHAEL L. YOUNG :

OPINION AND ORDER

Before the Court is the Defendant's Petition for Habeas Corpus. The Defendant has been charged with Involuntary Deviate Sexual Intercourse, Indecent Assault, Corruption of Minors, and Endangering the Welfare of Children as a result of alleged incidents with his seven year old step-daughter, Melanie Sheppard. At the time of the preliminary hearing, the Commonwealth agreed that the facts in this case do not support the charge of Involuntary Deviate Sexual Intercourse, and they withdrew that charge. At the close of the preliminary hearing before District Justice C. Roger McRae, the remaining three charges were bound over for trial. The Defendant now argues that the remaining charges should be dismissed, as the Commonwealth did not present a prima facie case with regard to these charges.

To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). 18 Pa.C.S.A. § 3126 defines indecent assault as indecent contact with the complainant or causing the complainant to have indecent contact with the person under a number of circumstances. One of the circumstances is when the complainant is less than 13 years of age. Indecent contact is defined in 18 Pa.C.S.A. § 3101 as any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.

Instantly, after a thorough review of the transcript of the preliminary hearing, the Court finds that the Commonwealth did not present sufficient evidence that the crime of indecent assault was committed in this case, and would therefore grant the Defendant's Motion to Dismiss this charge. The Commonwealth presented only the testimony of seven year old Melanie Sheppard at the preliminary hearing. Melanie was equivocal in her testimony, testifying at different points that she was not sure the events that she had relayed really happened, or whether she had remembered the events from a dream. The Court finds that since she could not state with certainty, and was unsure whether the alleged acts had occurred, her testimony fails to meet the burden of establishing a prima facie case that the crime had been committed in this case.

18 Pa C.S.A. § 6301 defines corruption of minors as an actor who, 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. . . . Instantly, the Court finds that the Commonwealth did not present a prima facie case of corruption of minors, when the alleged victim was unsure whether the acts that would constitute this offense actually occurred, or were something that she had dreamed. The Court therefore grants the Defendant's Motion to dismiss this charge.

18 Pa. C.S.A. § 4304 defines endangering welfare of children as 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. The Court similarly finds that the Commonwealth did not establish a prima facie case of this offense when the acts that the Commonwealth

alleges constitute this offense have not been sufficiently established. The Court therefore grants the Defendant's motion to dismiss this charge as well.

ORDER

AND NOW, this _____day of December, 1999, based on the foregoing opinion, it is ORDERED AND DIRECTED that the Defendant's Habeas Corpus Motion to Dismiss is GRANTED and the charges of Indecent Assault, Corruption of Minors, and Endangering the Welfare of Children are DISMISSED.

By The Court,

Nancy L. Butts, Judge

cc: CA
William Miele, Esquire
Diane Turner, Esquire
Nancy L. Butts, Judge
Judges
Law Clerk
Gary Weber, Esquire