STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

[FILED: April 30, 2024]

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. W2-2022-0180A**
	:	
AARON THOMAS	:	

DECISION

THUNBERG, J. Before this Court for decision is Aaron Thomas' (Defendant) Motion to Dismiss the Criminal Information against him pursuant to Rules 9.1 and 12(b)(1)(2) of the Superior Court Rules of Criminal Procedure. As grounds for his motion, the Defendant asserts that no probable cause exists to believe that the offenses charged have been committed or that the Defendant committed said offenses. Additionally, the Defendant avers that Count Two is barred by the statute of limitations. Finally, the Defendant argues that the Criminal Information must be dismissed because it improperly relies on the "pyramiding of inferences."[1]

In Count One, the Defendant is charged with Second-Degree Child Molestation Sexual Assault alleging that the Defendant, between September 1, 2000

[1] This argument was advanced, for the first time, in a supplemental filing submitted by the Defendant on April 1, 2024, subsequent to the parties' oral arguments.

and February 22, 2002, did engage in sexual contact, to wit, hand to inner thigh or groin, with Ben,[2] a person fourteen years of age or under in violation of G.L. 1956 §§ 11-37-8.3 and 11-37-8.4. In Count Two, the Defendant is charged with Second-Degree Sexual Assault alleging that the Defendant, between September 1, 2019 and June 30, 2020, did engage in sexual contact, to wit, hand to inner thigh or groin, with Charles, by force or coercion, and/or did engage in sexual contact to wit, hand to inner thigh or groin, by engaging in the medical treatment or examination of Charles, for the purpose of sexual arousal, gratification, or stimulation in violation of §§ 11-37-4 and 11-37-5. Jurisdiction is pursuant to G.L. 1956 § 8-2-15.

I

Facts and Travel

This action stems from the Defendant's alleged sexual contact with student athletes of North Kingstown High School (NKHS) during his employment there as a teacher and basketball coach. Detective Christopher Mulligan of the North Kingstown Police Department (NKPD) provided a police narrative, by way of a Criminal Information Affidavit, containing various exhibits with the allegations surrounding the Defendant's involvement with student athletes at NKHS. (Mulligan Affidavit, Ex. 1, July 20, 2022.) The investigation commenced when, on February

[2] The Court will use fictitious names for the alleged victims in this case. Ben will refer to the alleged victim in Count One and Charles will refer to the alleged victim in Count Two.

12, 2021, Ben emailed the North Kingstown School Department (NKSD) alleging that "he had been sexually assaulted by his high school basketball coach, Aaron Thomas." (Police Narrative, Ex. 2 at 1.)

On February 22, 2021, NKPD Detectives, Christopher Mulligan and Jesse Jarvis, interviewed the Defendant at the NKPD. *Id*. The Defendant stated that "he began the fat testing program twenty years ago and it continued until the North Kingstown School Department purchased a fat testing machine in 2018." *Id*. He explained to the Detectives that the program "included body measurements, skin fold caliper fat tests, and flexibility assessments." *Id*. With respect to the clothing student athletes were wearing during testing, the Defendant averred "that the students never either got down to their underwear nor took their underwear off for any portion of the test." *Id*. Furthermore, the Defendant "denied having students perform a sit and reach, butterfly, or a toe touching stretch . . . [and] denied asking any student to demonstrate a duck walk or checking any students for a hernia." *Id*. Lastly, the Defendant "explained that the 'shy or not shy' question he asked of students referenced the students taking off their shirt and not their underwear." *Id*.

Detective Mulligan subsequently contacted Ben who provided formal statements on March 12, 2021 and November 10, 2021, concerning the allegations. Ben attended NKHS from 2002-2006, but "was 13 years old and was approached by Aaron Thomas while he was with a group of boys in the gymnasium of the old North

Kingstown High School, inquiring if he wanted to begin getting 'fat tested.'" *Id*. Ben's testing program started in 2001 with "the first test occurring while he was still 13 years old – and continued to be routinely tested until the end of his junior year." *Id*.

According to Ben and numerous other individuals interviewed by Detective Mulligan, the fat testing program "was well known among student athletes." *Id*. Furthermore, it was widely understood that Coach Thomas "would ask the students if they were 'shy or not shy'" and that those students who indicated they "were not shy were asked to remove all their clothing and the 'fat test' would be performed naked." *Id*. With respect to the purpose of nude testing, the Defendant "never explained why he was asking the students to disrobe completely for the tests." *Id*. Despite participation in the testing program being voluntary, "many student athletes felt pressured to participate, and to be naked during the test, believing that failure to do so would result in little or no playing time." *Id*.

Ben, describing his first experience fat testing with the Defendant to Detective Mulligan, "recalled Coach Thomas escorted him to a small closet-sized room" . . . wherein the Defendant "proceeded to ask [Ben] if he was shy or not, which led to [Ben] getting naked." *Id*. Thereafter, the Defendant performed "numerous 'skin fold' assessments, whereby Coach Thomas would pinch a fold of skin on various parts of the student's body[.]" *Id*. at 2. Ben specified that the test "always included Coach

Thomas pinching the inside of the upper thigh, near the groin." *Id*. Ben also "recalled Coach Thomas instructing him to hold his own genitalia to the side at which time Thomas grabbed the area of the skin adjacent to [Ben's] testicle with his hand[.]" The testing was consistent with this process "up through his junior year at the North Kingstown High School." *Id*. Specifically, Ben stated that he "was always naked when 'fat tested' by Coach Thomas and the testing occurred when he was alone[,]" while the "door was always shut" and "Thomas monitored activity outside the office via a surveillance system monitor located on his office desk." *Id*.

Ben averred that on one occasion during his junior year "he was given a 'hernia test'" by the Defendant prior to the start of a basketball game "despite neither complaining of, nor showing any signs of an injury." *Id*. For that hernia test, the Defendant "escorted [Ben] to a closed closet adjacent to the gymnasium prior to the start of game and instructed him to take down his pants and underwear." *Id*. The Defendant then "proceeded to feel around [Ben's] perineum, or the area of skin between the anus and testicles, for several moments." *Id*. After the test was complete, Defendant "never followed up with [Ben] or offered any recommendations based upon the invasive test." *Id*.

Ben stated to Detective Mulligan "that a number of his friends, teammates, and associates were 'fat tested' in a similar manner by Coach Thomas while they were students[.]" *Id*. Detective Mulligan subsequently interviewed over thirty

former NKHS students "who recounted having a similar experience with Thomas." *Id*. These experiences included "student athletes, all of whom were 14 or older when their 'testing' encounters with Thomas began, reported being 'fat tested' by Thomas on various parts of their body, including near the testicles, while inside a small, closed office." *Id*. The interviews left Detective Mulligan with the impression that the facts and circumstances surrounding the testing program with other students were "substantially similar, if not identical, to that of [Ben.]" *Id*.

On December 12, 2021, Detective Mulligan interviewed Charles, the complainant in Count Two, who provided a formal statement. *Id*. Charles attended NKHS from 2017-2020 and played basketball during his freshman and sophomore years. During his freshman year at NKHS, Charles "was approached by Coach Thomas who suggested that [Charles] participate in his 'fat testing' program to improve his workouts." *Id*. at 3. Charles stated that the testing took place in the Defendant's "office, located off his communications classroom, on the other side of the high school from the gymnasium." *Id*. Charles averred that prior to the start of the tests, he would "undress down to his underwear" and the Defendant would begin testing various parts of his body with skin calipers including the "upper thigh near the groin." *Id*. During the tests, the Defendant "would ask [Charles] if he was 'shy or not shy' at which point he would respond that he was not, and remove his underwear, remaining naked for the remainder of the test." *Id*.

In addition to fat testing, Charles "reported that Coach Thomas would also perform a 'puberty test' during each testing session." *Id*. For this test, Charles "would be completely naked and standing against a wall in Thomas' office." *Id*. At that point, Charles "recalled that Thomas would instruct him to move his testicles to the side and press firmly in and around his groin area, instructing [Charles] to tell him 'when it hurt.'" *Id*. According to Charles, the only explanation that the Defendant provided for the "puberty test" was "that at some point, it would no longer hurt when Thomas pressed on his groin region, and [Charles] would be able to run faster and jump higher." *Id*.

"In 2018, following a complaint from a former student regarding Coach Thomas' 'fat testing' program, the North Kingstown Athletic Department purchased an In-Body 270 body composition scale/testing machine, thereby eliminating the need for Coach Thomas to perform any manual testing on students." *Id*. While Charles stated he used this machine for the remainder of his "fat testing," Thomas still performed the aforementioned 'puberty tests' on [Charles] through his junior year." *Id*. During one "puberty test," the Defendant allegedly asked Charles to "again disrobe for an additional test." *Id*. "At the time, Thomas instructed a naked [Charles] to sit on the floor against a wall in Thomas' office and to spread his legs out, completely exposing his penis and testicles to Thomas." *Id*. Furthermore, while Charles was in this exposed position, "Thomas began pressing his finger into

[Charles'] inner thigh and scrotum area, causing [Charles] to become erect." *Id*. At the end of this test as Charles was putting his clothes back on, "he noticed Thomas sitting in his chair, legs fully spread, with an apparent erection." *Id*. at 4.

On May 31, 2022, following the interviews with student athletes of NKHS, Detective Mulligan received a report from Dr. Brett Slingsby, a board-certified general pediatrician and a child abuse pediatrician at Hasbro Hospital's Aubin Child Protection Center. *Id*. In that report, Dr. Slingsby opined "that the 'puberty test' performed by Aaron Thomas as described by [Charles] is not a recognized method of pubertal assessment." *Id*. Additionally, Dr. Laurie Milliken, an Associate Professor of Exercise and Health Sciences with a Ph.D. in Physiological Sciences at the University of Massachusetts, Boston, "reviewed reports and witness statements" with respect to the Defendant's body composition testing procedures. *Id*. Dr. Milliken "determined that Mr. Thomas' testing program was conducted using tests that were not valid or accurate and his measurement protocols and procedures were inappropriate and unethical." *Id*. "Dr. Milliken was particularly troubled by Aaron Thomas' repeated inclusion of non-standard testing locations (and tests) that required student athletes to remove their clothing." *Id*.

An information[3] was subsequently filed with this Court on July 21, 2022. The Defendant filed the instant motion to dismiss on September 8, 2022. Subsequently, the Defendant filed a memorandum of law in support of his motion to dismiss on October 16, 2023. (Def.'s Mem.) On January 18, 2024, the Attorney General (State) filed an objection and memorandum to the Defendant's motion to dismiss. (State's Mem.) On March 4, 2024, the parties were heard for oral argument. Thereafter, on March 22, 2024, the State filed a supplemental memorandum in support of its objection (State's Suppl. Mem.) Finally, on April 1, 2024, the Defendant filed a supplemental memorandum in support of his motion to dismiss. (Def.'s Suppl. Mem.)

II

Standard of Review

Rule 9.1 of the Superior Court Rules of Criminal Procedure provides in pertinent part that,

> "A defendant who has been charged by information may, within thirty (30) days after the defendant has been served with a copy of the information, or at such later time as the court may permit, move to dismiss on the ground that the information and exhibits appended thereto do not demonstrate the existence of probable cause to believe that the offense charged has been committed or that the defendant committed it." Super. R. Crim. P. 9.1.

[3] The information package contains in excess of 1000 pages of material, including forty-two exhibits.

Rule 12(b)(1)(2) of the Superior Court Rules of Criminal Procedure provides that prior to trial, a Defendant may raise by motion any defense or objection based on defects in the institution of the prosecution or in the information that are capable of determination without trial. Super. R. Crim. P. 12(b)(1)(2).

"'When addressing a motion to dismiss a criminal information, a [Superior Court] justice is required to examine the information and any attached exhibits to determine whether the state has satisfied its burden to establish probable cause to believe that the offense charged was committed and that the defendant committed it.'" *State v. Martini*, 860 A.2d 689, 691 (R.I. 2004) (quoting *State v. Fritz*, 801 A.2d 679, 682 (R.I. 2002)). Additionally, "[i]t is well settled that the probable-cause standard applied to a Rule 9.1 motion to dismiss is identical to the traditional probable-cause standard to support an arrest." *State v. Peters*, 172 A.3d 156, 158-59 (R.I. 2017).

Thus, "[p]robable cause to arrest a suspect exists when 'the facts and circumstances within * * * [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that an offense has been or is being committed' and that the suspect is the perpetrator." *State v. Burgess*, 138 A.3d 195, 199 (R.I. 2016) (quoting *State v. Chum*, 54 A.3d 455, 462 (R.I. 2012)). In determining whether probable cause exists, "the trial justice should grant the state

'the benefit of every reasonable inference' in favor of a finding of probable cause." *State v. Young*, 941 A.2d 124, 128 (R.I. 2008) (quoting *State v. Jenison*, 442 A.2d 866, 875-76 (R.I. 1982)). "Because 'probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules,' [a trial justice] must carefully examine the totality of the circumstances in determining whether probable cause exists." *Burgess*, 138 A.3d at 200 (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983)).

III

Analysis

A

Statute of Limitations

The Defendant argues that Count Two for Second-Degree Sexual Assault is outside the three-year statute of limitations and therefore must be dismissed. (Def.'s Mem. 9.) Specifically, the Defendant argues that one incident that is alleged by Charles is outside the statute of limitations because the incident occurred during the time frame of 2018 to 2019. *Id*.

The State argues that Count Two is within the range of the statute of limitations. (State's Mem. 15.) The State further argues that Charles attended NKHS from 2017 to 2020 and therefore, the "fat tests" and "puberty tests" Charles

references occurred during his junior year fall within the statute of limitations. (State's Suppl. Mem. 1.)

Count Two of the Criminal Information charges the Defendant with sexual contact of the thigh or groin by force or coercion and/or sexual contact with the thigh or groin by engaging in the medical treatment or examination of Charles for the purpose of sexual arousal, gratification, or stimulation in violation of §§ 11-37-4 and 11-37-5. The time period alleged in Count Two is "on a day and date between September 1, 2019 and June 30, 2020." (Criminal Information.)

The charge of Second-Degree Sexual Assault pursuant to § 11-37-4 carries a three-year statute of limitations period pursuant to G.L. 1956 § 12-12-17. Within § 12-12-17, there are numerous offenses for which there is no statute of limitations listed in subsection (a). Other offenses listed in subsection (b) have a ten-year statute of limitations. However, Second-Degree Sexual Assault is not listed in the aforementioned subsections. Thus, "[t]he statute of limitations for any other criminal offense shall be three (3) years, unless a longer statute of limitations is otherwise provided for in the general laws." Section 12-12-17(c).

The Criminal Information was filed on July 21, 2022. The conduct violating §§ 11-37-4 and 11-37-5 allegedly occurred between September 1, 2019 and June 30, 2020. Therefore, Count Two is within the statute of limitations.

Thus, the Defendant's motion to dismiss Count Two of the Criminal Information based on the statute of limitations is denied.

B

Probable Cause

1

Count One

The Defendant argues that the interactions with Ben do not constitute child molestation because the Defendant's contact with Ben does not meet the definition of sexual contact. (Def.'s Mem. 5.) Specifically, the Defendant argues that there is no evidence of sexual arousal, gratification, or assault, and that this case is similar to *State v. Brown*, 586 A.2d 1085 (R.I. 1991), in that there is no sexual talk, no hint of sexual arousal, and no hand movements in a sexual manner. (Def.'s Mem. 7.)

The State argues there is sufficient probable cause to establish that the Defendant committed Second-Degree Child Molestation of Ben (State's Mem. 9.) Specifically, the State argues that the Defendant ignores the circumstances surrounding his actions and that the Defendant lied to police with respect to students being naked and the true nature of the Defendant's "shy or not shy" question. *Id*. at 9-10.

Pursuant to § 11-37-8.3, "[a] person is guilty of a second-degree child molestation sexual assault if he or she engages in sexual contact with another person

fourteen (14) years of age or under." For purposes of the aforementioned statute, sexual contact "means the intentional touching of the victim's or accused's intimate parts, clothed or unclothed, if that intentional touching can be reasonably construed as intended by the accused to be for the purpose of sexual arousal, gratification, or assault." Section 11-37-1(7). Finally, "intimate parts" includes the genital areas, groin, or inner thigh. Section 11-37-1(3).

The Court must consider whether there is probable cause sufficient in Count One to withstand a motion to dismiss. This includes examining the totality of the circumstances to determine whether probable cause exists. *See Burgess,* 138 A.3d at 200. In doing so, the Court must grant the State the benefit of every reasonable inference. *See Young*, 941 A.2d at 128.

Here, the Defendant stated to police that he would hand the students "a form" that "required a parent to sign." (Ex. 16, Interview 1, at 24:11-17, Nov. 14, 2021.) When asked by Detective Mulligan whether the Defendant asked students to "take their shorts off and conduct some of the tests with – without their clothes[,]" the Defendant responded "[n]o." *Id*. at 35:21-24. Moreover, when Detective Mulligan asked the Defendant if he ever "did measurements when – when they were naked[,]" the Defendant responded "[n]o. [n]o." (Ex. 16, Interview 2, at 2:14-16, Nov. 14, 2021.) Additionally, the Defendant responded with "[n]o" when asked if students ever did a "sit and reach" or "butterfly stretch." *Id*. at 2:17-23. The Defendant further

stated to Detective Mulligan that he did not "remember asking them shy or not shy." *Id*. at 22:22.

During the interviews of the complainants, the police were presented with information which contradicted the information they received from the Defendant. Ben averred that he started fat testing at "age 13" when the Defendant "approached a group of us in the gym, next to the weight room" and asked Ben "[w]ould you like to begin getting fat tested." (Ben's Witness Statement, Ex. 4 at 2, Mar. 12, 2021.) Ben's first test "occurred in a room off of the old gym" and he remembered "the fear when he asked me if I was shy not shy." *Id*. Ben had information prior to the test that this question meant he "was going to have to get naked." *Id*. Ben "went along with it" because he thought it was going to put him in the "coach's good graces[.]" *Id*.

During this testing, the Defendant would use "his finger to pinch the inside of [Ben's] leg, right next to [his] scrotum." *Id*. Ben averred that most of the exams were similar and that he "would follow [Defendant] down the hallway into his office and he would shut the door." *Id*. at 3. Ben further stated that there "was monitor on his desk with a couple CCTVs on it" and that the Defendant "would be watching it for people outside of his office." *Id*. Ben stated that during the exams, the Defendant "would get to my underwear and without failure he would say are you shy or not shy, and I always took my underwear off." *Id*.

The testing included "sit and reaches, sometimes with underwear on." *Id*. However, as time went on, the Defendant would have Ben do the reaches "without any underwear" and Ben stated the Defendant "was pushing boundaries." *Id*. While "fat testing" the area near Ben's scrotum, the Defendant allegedly hovered "right over" Ben's face and was "breathing heavily." *Id*. at 4. Ben denied that either he or his parents ever signed a consent form. *Id*.; *but see* Ex. 11 at 3, Ben's Weight Testing Agreement, Feb. 2, 2005.

Finally, police interviewed over thirty former NKHS students who recounted similar experiences as that of Ben. (Ex. 2 at 2.) The students reported testing on body parts "near the testicles, while inside a small, closed office." *Id*. The circumstances surrounding the fat testing of the former students led Detective Mulligan to conclude that the testing experiences were "substantially similar, if not identical" to Ben's and "are therefore legally relevant to this investigation[.]" *Id*.

Thereafter, Detective Mulligan received reports from doctors specializing in relevant disciplines. Dr. Brett Slingsby, opined "that a chaperone should always be offered when examining the genital area of an adolescent." (Ex. 14.) Dr. Laurie Milliken reviewed reports and witness statements describing the Defendant's testing procedures. (Exs. 2, 15.) Dr. Milliken opined that such procedures should include "[m]aking sure the client knows what is being done and why[,] [m]aking sure the client is properly prepared and that their body is respected[,]" that testers should be

"[u]sing methods that are standardized and reproducible[,]" and "[m]aking sure that results are being used in scientifically sound ways." (Ex. 15 at 1.) Dr. Milliken determined that the Defendant's testing program "contained a mixture of both valid efforts as well as practices that are not recommended." *Id*. at 7. Dr. Milliken opined that the consent form lacked "several important pieces of information" and that the program "did not follow recommended protocols" with respect to the "frequency of tests." *Id*. Dr. Milliken indicated that "[s]kinfold thickness testing does not require the client to be unclothed" and that "[n]o test of flexibility should be performed while a person is in their underwear or naked." *Id*. at 7, 9. Dr. Milliken concluded that the majority of the Defendant's testing program "was conducted using tests that were not valid or accurate and his measurement protocols and procedures were inappropriate and unethical." *Id*. at 11.

The totality of the circumstances demonstrates sufficient probable cause to believe a crime has been committed by the Defendant. The Defendant was in a position of trust and authority conducting testing on adolescents. Ben was thirteen years old when testing began. Such testing involved youngsters undressing to their underwear and upon prompting, removing their underwear if they were "not shy." The testing also involved contact with the inner thigh and groin area of the student athletes. Ben spoke of the "fear" he felt upon being asked if he was "shy or not shy." Ben thought going along with the testing would put him in the good graces of his

coach. Moreover, the testing allegedly occurred in a closed room whose surroundings were monitored by cameras. Finally, the Defendant made contradictory statements to police.

The Defendant asserts that the facts in this case are no different than those in *Brown*, 586 A.2d 1085, because there was no sexual talk or tone, no hint of sexual arousal, and the Defendant did not move his hands or fingers in a sexual manner. That case is distinguishable. Here, there are multiple incidents of touching that allegedly occurred to a naked student or students in a closed office by a person in a position of trust and authority. The touching was neither momentary nor isolated. The *Brown* decision also occurred in the context of the trial justice's ruling on the defendant's motion for judgment of acquittal at the close of evidence. Moreover, § 11-37-1(7) is not "so narrowly [construed] as to include a requirement of physical arousal." *In re David G.*, 741 A.2d 863, 866 (R.I. 1999). Finally, sustained touching in the context of the circumstances described during the first "fat test" of Ben is less likely to be innocent or inadvertent touching. *See Brown v. State*, 841 A.2d 1116, 1122 (R.I. 2004).

For the foregoing reasons, when taking into consideration the totality of the circumstances and giving the State the benefit of every reasonable inference, the Court determines that there is probable cause for Count One of the Criminal Information.

Therefore, the Defendant's motion to dismiss Count One of the Criminal Information for lack of probable cause is denied.

2

Count Two

The Defendant argues that Count Two for Second-Degree Sexual Assault should be dismissed for a lack of probable cause. (Def.'s Mem. 7.) Specifically, the Defendant argues that the interactions with Charles do not constitute sexual contact for the purposes of arousal, gratification, or assault. *Id*. Finally, the Defendant further argues that his interactions with Charles were not sexual contact because there is no evidence of sexual talk, sexual overtones, or any sexual hand or finger movement. *Id*. at 9.

The State argues that there is sufficient probable cause for the Criminal Information and the Defendant's intent can be inferred from the facts and circumstances surrounding his actions. (State's Mem. 12.) The State argues the circumstances include a secluded office wherein the Defendant would subject a nude Charles to "fat tests" and "puberty tests" that did not serve any legitimate purpose. *Id*. at 13. Finally, the State argues that Dr. Slingsby, in his report, concluded that the "puberty tests" were not a recognized method of pubertal assessment. *Id*. at 14.

"A person is guilty of a second-degree sexual assault if he or she engages in sexual contact with another person and . . . [t]he accused uses force, element of

surprise, or coercion . . . [or] [t]he accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation." § 11-37-4(2)(3).

Detective Mulligan interviewed Charles on December 21, 2021 at the NKPD. (Ex. 28 at 1:1-4, Dec. 21, 2021.) Charles attended NKHS from "2017 to 2021." *Id*. at 2:7. The Defendant's first "fat test" with Charles occurred during the first "few weeks" of Charles' "freshman year" at NKHS. *Id*. at 6:1-5. The first fat test started in the "TV studio" where "basic like routine, flexibility stuff took place." *Id*. at 8:6-9. The Defendant and Charles then would move into "his back office that was completely covered." *Id*. at 10:10-11. Charles stated that "you would take your pants off and your [shirt] off, and so you were dressed in your underwear[.]" *Id*. at 10:12-13. At some point in time, the Defendant started to test "for puberty" with Charles wherein Charles would be "completely naked." *Id*. at 12:16-25. Charles stated that the Defendant asked "[a]re you shy? [a]re you not shy?" at the first test and thereafter would ask Charles "[c]an you take your" underwear off? *Id*. at 13:5-13. During the "puberty test," the Defendant would "press firmly" on Charles' "inner thigh" at the point where the "leg would meet" his "balls." *Id*. at 13:20-25. The Defendant would "press in that area" while "increasingly pressuring" until it hurt. *Id*. at 32:5-12. While pressing on Charles' inner thigh, the Defendant asked Charles to tell him "when it

hurts" and told Charles that when it stopped "hurting" he would "noticeably be quicker, uh, faster, jump higher." *Id*. at 14:1-12.

Charles stated to Detective Mulligan that the reason he undressed for the tests was because he "just felt powerless." *Id*. at 15:20-16:1. The Defendant allegedly never explained to Charles why he needed to be in his underwear for the tests or the purpose of the "puberty test." *Id*. at 17:2-6, 34:20-35:3. The testing occurred every "three to four months" for "30 to 45 minutes" during all three years of Charles' time at NKHS. *Id*. at 19:7-18, 32:14-16. By 2019, the school had purchased an electric scale for the "fat tests" but Charles was "still getting naked in his office for the puberty test." *Id*. at 33:18-34:17.

Detective Mulligan received a report From Dr. Brett Slingsby with respect to the Defendant's "puberty tests." (Ex. 14.) Dr. Slingsby was asked to review the statements Charles made with respect to the "puberty tests" conducted by the Defendant. *Id*. Dr. Slingsby opined that "wearing gloves" during ano-genital examinations is a "standard of care" and that "a chaperone should always be offered when examining the genital area of an adolescent." *Id*. With respect to the Defendant's actions in pressing on Charles' inner thigh, Dr. Slingsby opined that "[p]alpation of the inner thigh is not a recognized or known method of assessing pubertal status in children or adolescents." *Id*. at 2. Moreover, the "amount of pain

elicited with palpation of the inner thigh is not associated with pubertal development." *Id*.

In considering the totality of the circumstances while affording the State the benefit of every reasonable inference, the Court finds there is sufficient probable cause to withstand the Defendant's motion to dismiss Count Two. Charles was still participating in nude "puberty tests" during his junior year; tests which involved flexibility tests and the Defendant touching the inner thigh and groin area of Charles. Furthermore, the Defendant made contradictory statements to the investigating officers.

A showing of sexual arousal, gratification, or assault for purposes of sexual contact as that term is defined by § 11-37-1(7) does not require a showing of physical arousal. *See In re David G.*, 741 A.2d at 866. Moreover, the Defendant's "puberty tests" lasted for thirty to forty-five minutes while the Defendant allegedly used his fingers to press on the inner thigh and groin of Charles. Thus, these alleged facts, unlike the facts in *Brown*, involve more than the singular brief momentary touch on top of a child's clothing with no movement of hands or fingers and no words spoken, "[emphasizing] the utter lack of evidence that suggests that the touch was for the purpose of sexual arousal or gratification." *Brown*, 586 A.2d at 1089.

Therefore, for the foregoing reasons, the Defendant's motion to dismiss Count Two of the Criminal Information for lack of probable cause is denied.

C

The Testing Program's Validity

The Defendant argues that the overall legitimacy and effectiveness of a body composition program is not in dispute, specifying that Dr. Milliken's "issues with the testing program appear to be more with issues of location, frequency, and form." (Def.'s Mem. 10.) The Defendant further asserts that a review of over twenty of the interviews of former NKHS athletes who participated in the testing program contained in the Criminal Information reveals the testing program was effective and devoid of anything sexual in nature. *Id*.

The State argues that this issue is irrelevant to whether there is probable cause to determine that the Defendant committed the crimes charged in the Criminal Information. (State's Mem. 15.) The State further argues that the Defendant fails to cite to any legal authority for its position and that the reports of Dr. Milliken and Dr. Slingsby establish that the tests were not "medically valid." *Id*. at 16.

The Defendant's argument is unavailing. Dr. Slingsby concluded that the Defendant's "puberty test" was "not a recognized method of pubertal assessment." (Ex. 14 at 2.) Moreover, Dr. Milliken concluded that the Defendant's tests "were not valid or accurate and his measurement protocols and procedures were inappropriate and unethical." (Ex. 15 at 11.) Finally, according to Ben, the Defendant "[n]ever"

explained the purpose for Ben's being naked during "fat testing." (Ex. 4 at 4.) Thus, contrary to the Defendant's assertions, *this* body composition program is in dispute.

Therefore, the Defendant's motion to dismiss the Criminal Information is denied to the extent the Defendant seeks to dismiss the Information on the grounds that the Defendant's body composition testing program was medically valid and effective.

D

A Pyramid of Inferences

The Defendant argues that Counts One and Two should be dismissed because the State fails to meet its burden to sufficiently allege facts indicative of criminal behavior as the State's case relies on improperly pyramiding inferences in order to establish that charged criminal activity took place. (Def.'s Suppl. Mem. 1.) Specifically, the Defendant argues that the first inference for both counts stems from ambiguous facts which give rise to other reasonable inferences and a second inference is impermissible. *Id*. at 3. Additionally, the Defendant argues there is no evidence of conversations, behavioral descriptions, or demeanor that prove sexual gratification and that it is reasonable to infer there were non-criminal reasons for the Defendant's conduct. *Id*. at 4-5.

The State does not advance an argument with respect to the "pyramiding of inferences." However, the Defendant's argument is unpersuasive. The pyramiding

of inferences in criminal cases is an evidence issue and provides that if the "inferences and underlying evidence are strong enough to permit a rational factfinder to find guilt *beyond a reasonable doubt*, a conviction may properly be based on 'pyramiding inferences.'" *State v. Robat*, 49 A.3d 58, 74 n.16 (R.I. 2012) (emphasis added) (quoting Clifford S. Fishman, *Jones on Evidence Civil and Criminal* § 5:17 at 450-51 (7th ed. 1992)). A motion to dismiss does not implicate a beyond a reasonable doubt standard. "We have often stated that probable cause need not reach the standard of proof beyond a reasonable doubt or even proof that might establish a prima facie case sufficient to be submitted to a jury." *State v. Rios*, 702 A.2d 889, 890 (R.I. 1997); *see Henshaw v. Doherty*, 881 A.2d 909, 916 (R.I. 2005) ("[P]robable cause can and often does rest upon evidence that would not by itself be sufficient to prove guilt in a criminal trial.").

Therefore, for the foregoing reasons, the Defendant's motion to dismiss the Criminal Information on the grounds that the State has improperly engaged in the pyramiding of inferences is denied.

IV

Conclusion

For the foregoing reasons, the Defendant's Motion to Dismiss the Criminal Information is denied. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Aaron Thomas**
CASE NO:	**W2-2022-0180A**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**April 30, 2024**
JUSTICE/MAGISTRATE:	**Thunberg, J.**

ATTORNEYS:

For Plaintiff:	**Stephen G. Dambruch, Esq.; Timothy G. Healy, Esq.; Meagan L. Thomson, Esq.**
For Defendant:	**John E. MacDonald, Esq.**