

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

MAURICE KELLY
LACKAWANNA COUNTY
2021 SEP 26 P 3:48
CLERK OF JUDICIAL
RECORDS DIVISION

PHILIP GODLEWSKI,

Plaintiff

vs.

CHRIS KELLY, et al.

Defendants

No.: 2021-CV-2195

DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR
RECONSIDERATION

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DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION

Defendants, Chris Kelly (hereinafter ("Kelly")) and The Scranton Times, L.P. (hereinafter "Scranton Times"), (collectively referred to herein as "Defendants"), by and through their counsel, J. Timothy Hinton, Jr., Esq., hereby file this Brief in Opposition to Plaintiff's Motion for Reconsideration and state as follows:

I. PROCEDURAL HISTORY

The Court (Nealon, J.) filed a Memorandum supporting his Order granting Defendants' Motion for Summary Judgment on August 30, 2024. Plaintiff filed a Motion for Reconsideration of the Order granting summary judgment to Defendants on September 3, 2024. Defendants filed an Answer to Plaintiff's Motion for Reconsideration on September 16, 2024. The Court entered an Order on September 16, 2024 setting deadlines for the filing of an answer to Plaintiff's motion for reconsideration and briefs by all parties. Plaintiff's brief in support of his motion was filed on September 24, 2024.

Defendants now file this brief in opposition to Plaintiff's motion for reconsideration.

II. BACKGROUND

The Court's Memorandum granting summary judgment, which was filed on August 30, 2024, states:

Kelly and The Scranton Times note that "[n]o liability can attach for true statements," and emphasize that Godlewski pled guilty to corruption of a minor for his "inappropriate text messages and contact" with DuBorgel as memorialized in his 2010 text messages to her as quoted in the Affidavit of Probable Cause supporting the Criminal Information.¹⁵ (Docket Entry No. 103 at pp. 10-12). Citing Godlewski's deposition testimony, they assert that Godlewski "concedes his corruption charge was for having sex with a minor child," and that per his guilty plea colloquy, "he admits to doing the things he was 'charged with'" in the Criminal Information. (*Id.* at pp. 16-17) (citing Godlewski Depo. at pp. 228, 240). Referencing the deposition testimony and affidavits that they have attached as exhibits, Kelly and The Scranton Times submit that "there is substantial evidence proving Godlewski was in a sexual relationship with Ms. DuBorgel when she

was a minor.”¹⁶ (*Id.* at pp. 17-20, 24-25) (citing Docket Entry No. 101, Exhibit 14; Docket Entry No. 102, Exhibits 20, 21, 22, 31). (Court’s Memorandum filed on August 30, 2024, pp. 23-24.)

The Court’s Memorandum further declares:

As noted above, the only text messages quoted in the Affidavit of Probable Cause in Godlewski I are those in which Godlewski acknowledged and described oral sex with Ms. DuBorgel, the presence of her hair in his “crotch area,” and his sexual activity with her in 2010 when she was 15 years of age. Godlewski I, *supra*, Docket Entry No. 2 at p. 15. Those text messages served as the factual predicate for the single count of Corruption of Minors, 18 Pa. C.S. § 6301(a)(1), contained in the Criminal Information charging that Godlewski “did repeatedly have inappropriate text [m]essages and contact with a minor” in 2010. *Id.*, Docket Entry No. 6. Indeed, Godlewski’s counsel conceded at the time of oral argument that “[t]he corruption of minors count in the complaint was consistent with the information in the affidavit.” (T.P. 8/19/24 at p. 47). (Memorandum filed on August 30, 2024, p. 34.)

The Court reviewed the relevant caselaw and explained:

It is “well settled that a guilty plea constitutes an admission to all of the facts averred in the indictment,” and that a trial court may grant summary judgment based upon such an admission. *Com., Department of Transportation v. Mitchell*, 517 Pa. 203,212,535 A.2d 581, 585 (1987). Accord. *Kedra v. Schroeter*, 876 F.3d 424,443 n.14 (3d Cir. 2017); *Linnen v. Armainis*, 991 F.2d 1102, 1105 (3d Cir. 1993). A guilty plea is equivalent to and has the same force as a conviction at trial under Pennsylvania law. *McGriff v. Vidovich*, 699 A.2d 797, 800 n.6 (Pa. Cmwlth. 1997), app. denied, 553 Pa. 693,717 A.2d 1030 (1998); *Lynch v. DuCasse*, 2020 WL 3547375, at *3 (M.D. Pa. 2020); *Basile v. Township of Smith*, 752 F.Supp.2d 643, 662 n.20 (W.D. Pa. 2010); *DiJoseph v. Vuotto*, 968 F.Supp. 244, 247 (E.D. Pa. 1997). Because a “guilty plea is an admission of facts averred in the complaint,” it “is conclusive proof of the wrongdoing for which [s]he was charged.” *Hawkins v. Unemployment Compensation Board of Review*, 695 A.2d 963, 966 (Pa. Cmwlth. 1997), app. denied, 553 Pa. 701, 718 A.2d 786 (1998). For that reason, “[a] person determined to be guilty of a crime following ... a plea of guilty cannot be heard to deny in a civil action that which was established in his prior determination of guilt without proof that his guilt was procured by fraud, perjury, or some manner of error sufficient to set aside his determination of guilt.” *Department of Navy v. Unemployment Compensation Board of Review*, 158 Pa. Cmwlth. 605,623 n.13, 632 A.2d 622, 631 n.13 (1993). See also, *Lynch, supra*, at *4 (facts admitted in a guilty plea are conclusive admissions in subsequent civil litigation, and the individual who pled guilty is collaterally estopped from denying those admitted facts as uncontroverted for purposes of summary judgment); *Moyer v. Allstate Insurance Company*, 2010 WL 3328035, at *6 (M.D. Pa. 2010) (person who pled guilty was collaterally estopped from denying his criminal acts that he acknowledged committing); *Domitrovich v. Monaca*, 2010 WL 3489137, at *5 (W.D. Pa. 2010) (same).

Godlewski claims that Kelly falsely reported that he “pleaded guilty to corruption of minors and admitted to having a sexual relationship with a 15-year-old girl.” Based upon the content of Godlewski’s text messages which served as the factual basis for the corruption of a minor charge set forth in the Criminal Information, and Godlewski’s sworn plea to that specific crime in a court of law, both of the foregoing statements made by Kelly in his article are true. As a result of Godlewski’s guilty plea to “inappropriate text [m]essages” and “contact” with Ms. DuBorgel, as set forth in the Affidavit of Probable Cause quoting the offending text messages admitting and memorializing a sexual relationship with a 15-year-old minor, Godlewski is collaterally estopped from denying his participation in a sexual relationship with Ms. DuBorgel in 2010.21 *Mitchell*, 517 Pa. at 212,535 A.2d at 585; *Hawkins*, 695 A.2d at 966; *Lynch, supra*, at *3-4. Thus, Godlewski has failed to come forward with sufficient evidence creating a genuine issue of material fact concerning the claimed falsity of Kelly’s statement that Godlewski “pleaded guilty to corruption of minors and admitted to having a sexual relationship with a 15-year-old girl.” (Memorandum filed on August 30, 2024, p. 35-37.)

Plaintiff’s motion for reconsideration claims the Court committed an error by ruling Godlewski is collaterally estopped from denying his involvement in a sexual relationship with the minor victim in light of his guilty plea to the corruption of morals offense as charged. Plaintiff also claims he has adduced sufficient evidence of actual malice to defeat Defendants’ motion for summary judgment and proceed to trial. The Court’s Memorandum, pages 45-50, addresses Plaintiff’s lack of sufficient evidence of actual malice to proceed with his claim to trial.

III. STATEMENT OF THE QUESTIONS PRESENTED

(1) Did the Court commit an error of law in ruling Plaintiff had a sexual relationship with the minor victim as evidenced by his guilty plea on a corruption of morals charge based on the predicate acts stated in the Criminal Complaint and the attached Affidavit of Probable Cause?

Suggested Answer: No.

(2) Has Plaintiff presented sufficient evidence that Defendants published false statements in the article about Plaintiff with actual malice to defeat Defendants’ motion for summary judgment?

Suggested Answer: No.

IV. ARGUMENT

A. The Court committed no error of law in determining Plaintiff had a sexual relationship with the minor victim based on his guilty plea in his previous criminal case. As such, it was proper for the Court to dismiss all of Plaintiff's claims due to Plaintiff's failure to sustain his burden of proving falsity.

In *Lynch v. Ducasse*, No. 3:18-2044, 2020 U.S. Dist. LEXIS 114643, (M.D. Pa. June 30, 2020), the Court held:

Under Pennsylvania law, where the criminal proceeding took place relating to this action, “a conviction from a guilty plea is equivalent to a conviction from a trial-by-jury.” *DiJoseph v. Vuotto*, 968 F.Supp. 244, 247 (E.D.Pa. 1997) (citing *Commonwealth v. Mitchell*, 517 Pa. 203, 535 A.2d 581, 585 (Pa. 1987)). Moreover, “[o]perative facts necessary for criminal convictions are admissible as conclusive facts in civil suits arising [*8] from the same events and circumstances.” *DiJoseph v. Vuotto*, 968 F.Supp. 244, 247 (E.D.Pa. 1997) (citing *Folino v. Young*, 523 Pa. 532, 568 A.2d 171, 172 (Pa. 1990)); *Mitchell*, 535 A.2d at 585 (citing *Commonwealth ex. rel. Walls v. Rundle*, 414 Pa. 53, 198 A.2d 528 (Pa. 1964)). A defendant may not subsequently “deny that which was established by his criminal conviction, without proof that his conviction was procured by fraud, perjury or some manner of error now sufficient to upset the conviction itself.” *Mitchell*, 535 A.2d at 585 (quoting *Hurt v. Stirone*, 416 Pa. 493, 206 A.2d 624, 626 (Pa. 1965)). See also *Shaffer v. Smith*, 543 Pa. 526, 673 A.2d 872, 874 (Pa. 1996) (In Pennsylvania, “it is well established that a criminal conviction collaterally estops a defendant from denying his acts in a subsequent civil trial.”). There is nothing on the record before this court that would suggest defendant’s guilty plea was procured by fraud, perjury or other improper manner. Therefore, the facts underlying defendant’s guilty plea may be used to establish the operative facts in this civil case. *Mitchell*, 535 A.2d at 584-85. See also *Domitrovich v. Borough of Monaca*, 2010 U.S. Dist. LEXIS 90645, 2010 WL 3489137, at *4-5 (W.D.Pa. Sept.1, 2010) (citing *M.B. ex rel. T.B. v. City of Philadelphia*, 128 Fed. App’x 217, 226 (3d Cir. 2005) (“Furthermore, in Pennsylvania, ‘criminal convictions are admissible in civil actions arising from the same operative facts and circumstances [and] these convictions are conclusive evidence of the criminal acts.’”) (other citations omitted)). See *Doe v. Allegheny County*, 2013 U.S. Dist. LEXIS 43096, 2013 WL 1290686, at *7 (W.D. Pa. Mar. 27, 2013) (emphasis added).

In *Hawkins v. Unemployment Comp. Bd. of Review*, 695 A.2d 963, 966 (Pa. Commw. Ct. 1997) (emphasis added), the Court declared:

A guilty plea is an admission of the facts averred in the complaint. See *Mitchell*. Because the conviction is conclusive proof of the wrongdoing for which he was

charged, Claimant cannot now challenge the conviction by attempting to explain the circumstances surrounding his plea in an attempt to prove his innocence. *Department of Navy, Naval Air Warfare Center, Aircraft Division Warminster v. Unemployment Compensation Board of Review*, 158 Pa. Commw. 605, 632 A.2d 622 (Pa. Cmwlth. 1993). As a consequence, the Court is compelled to conclude that Employer has satisfied the first prong of the *Derk* test. Accordingly, the Court rejects any argument by Claimant that the referee erred in failing to make findings of fact concerning Claimant's credibility or his testimony regarding the guilty plea since the conviction conclusively established his conduct. *Department of Navy*.

Most importantly, the Pennsylvania Supreme Court ruled in *Commonwealth v. Mitchell*, 535 A.2d 581, 584 (Pa. 1987) that:

The first issue is whether summary judgment may be granted based upon a guilty plea in a criminal case, the operative facts of which are identical to those which would be litigated in the civil case, and which, if proved, would establish civil liability. (*Id.*)

The *Mitchell* Court also declared:

In the present case, the fact that Shultz pled guilty to one count of the indictment does not produce a different result than if he had been convicted after a jury trial, for it is well settled that a **guilty plea constitutes an admission to all of the facts averred in the indictment**. *Commonwealth ex rel. Walls v. Rundle*, 414 Pa. 53, 198 A.2d 528 (1964). Additionally, as noted above, Shultz admitted at the guilty plea hearing that all of the facts alleged in the indictment were true. *See* footnote 1, *supra*.

Since Shultz's criminal conviction may be used to establish the operative facts in a subsequent civil case based on those same facts, *Hurt*, *supra*, and since Shultz's guilty plea constitutes an admission to all the facts averred **in the indictment**, *Commonwealth ex rel. Walls v. Rundle*, *supra*, which Shultz admitted in any event, the lower court in this case was correct in **granting summary judgment** as to Shultz's liability to the department on the contract. (*Id. at 585.*)

This Court has found that Plaintiff is collaterally estopped, like in *Lynch*, from denying he was in a sexual relationship with the minor victim given his sworn guilty plea and the content of Godlewski's text messages which served as a factual basis for the corruption charge. These criminal case documents amounted to "conclusive proof" of the wrongdoing for which Godlewski was charged.

Plaintiff's Memorandum in support of his reconsideration motion states: "[A]sserting the

defense of truth entitles a defendant to present evidence which, if believed by a jury, would counter a plaintiff's evidence of falsehood." (Plaintiff's Memorandum in Support of Plaintiff's Motion for Reconsideration, p. 4.) Plaintiff basically claims "truth" cannot be determined as a matter of law. Plaintiff has offered no citations in support of this proposition and the Court should reject it since the Court is permitted to take judicial notice of Plaintiff's guilty plea and its effect on Plaintiff's denial of a sexual relationship with the minor in this civil case.

Plaintiff's corruption charge was based solely on Godlewski's sexual intercourse with the minor victim. (**Exhibit "12"**.) The Affidavit of Probable Cause stated Detective Mancuso met the minor victim at the Child Advocacy Center on March 19, 2010 and the victim told the detective she had been involved in a sexual relationship with Godlewski starting in 2008. (**Exhibit "12"**, See ST 620) The victim told to the detective she and Godlewski engaged in oral and vaginal intercourse. An additional page of the Affidavit of Probable Cause included various communications Godlewski had with the victim when she was 15 and 16 years of age. (**Exhibit "12"**, see ST 622.) The Affidavit of Probable Cause stated:

On 02/25/2010 at 2235 GMT (time Phillip GODLEWSKI 570-780-4567 stated to victim [REDACTED] "I just want you to see that I really care about you, and not your body or our sex. Maybe that's the only way I can"

On 02/26/2010 at 2238 GMT GODKLEWSKI states "I need you [REDACTED], I need you more than anything in my life. I'm going to do everything I can to be with you as soon as I possibly can" and "you're my drug and I'm addicted." "To quote a dear friend. Sigh."

On 02/28/2010 at 1922 GMT GODLEWSKI states "The only way we'd ever be sexually satisfied is if we did it like 4-5 times a day"

On 03/06/2010 at 2208 GMT, GODLEWSKI "I hate my penis, ldk why the fuck that happens. You looked so good and were giving incredible head than BOOM, gone. Like wif."

GODLEWSKI typed a 2 page day log with times and entries. GODLEWSKI then gave this log to the victim. The day log includes a detailed account of his activities and thoughts throughout the day. The following are excerpts from the log:

10:14 realized that you're only 15, but quickly stopped caring

10:34 got sad bcuz we can't officially "go out". I just want everyone to know that I love you<3

11:39 I just pulled [REDACTED] hair from my crotch are. hahahahalll

2:56 should we get a Jacuzzi suite? Hmm

3:56 why can't you be 21

5:28 why are we so compatible? I'm 10 years older than you . hmm

(Exhibit "12", see ST 622.)

After the Criminal Complaint was filed and before the Information was filed, Godlewski waived his right to have a preliminary hearing on the corruption charge in Central Court (Magisterial District Judge John Pesota). (A true and correct copy of the Waiver of Preliminary Hearing dated September 27, 2010 is included in the *Exhibit List* and marked as **Exhibit "16"**.) The passage of this juncture (preliminary hearing) in a criminal case typically signifies that the prosecutor has proven to a magisterial district court judge or to defendant's counsel, if there is waiver, that the prosecutor has prima facie evidence defendant committed the crime he is charged with. Judge Geroulo then conducted a pre-trial conference on November 12, 2010. (See Case Summary and Guilty Plea Colloquy is included in the *Exhibit List* and marked as **Exhibit "17"**.) Despite defense counsel's search for a transcript of this conference, he has been unable to obtain it. At or around the time of that conference, Godlewski and the prosecutor agreed to a plea bargain whereby Godlewski would plead guilty to the corruption charge, all his other charges would be dismissed and he would receive a negotiated sentence of 3 months home confinement and 2 years probation. (**Exhibit "17"**, See ST 3798, ¶13; **Exhibit "2"**, pp. 240-241.)

Godlewski's Guilty Plea Colloquy signed on November 12, 2010 states:

11. Do you understand that by pleading guilty you are admitting **that you did things you are charged with** and that if you plead not guilty, the Commonwealth cannot force you to take the stand and either admit or deny that you did the things you are charged with? Yes. (**Exhibit "17"**.)

The District Attorney then filed the Information on the corruption charge on November 16, 2010, which was after Plaintiff signed the Guilty Plea Colloquy. (Compare **Exhibit "17"** and **"18"**, See time-stamp on **Exhibit "18"**.)

On February 14, 2011, Godlewski's attorney filed a Motion to Withdraw Guilty Plea since the Court (Judge Geroulo) advised the parties on February 7, 2011 he was not accepting the

conditional plea (3-month period of home confinement followed by a two-year period of parole). (See Motion to Withdraw Guilty Plea filed February 14, 2011, Case No. 2010-CR-2613.) Plaintiff admits Judge Geroulo advised the parties the negotiated sentencing was “too light” and Godlewski would be getting off to easy for the magnitude of his crimes. (**Exhibit “2”**, pp. 257 and 265.) The Court granted the Motion to Withdraw Guilty Plea on or about March 14, 2011 (see fax tag on the Order) since Plaintiff’s guilty plea in November 2010 was entered on a “conditional basis.” Judge Geroulo remanded the case back to Central Court for a preliminary hearing to be scheduled. (See Order filed with a time-stamp of March 2, 2012 to Case No. 2010-CR-2613 versus the docket (**Exhibit “19”**) showing the Order being filed on 3/2/2011.) Given this Order, all eight (8) of the original charges in the Criminal Complaint were re-activated against Godlewski and were subject to a future preliminary hearing. As such, the Information filed November 16, 2010 has questionable effect after 3/2/2011 since the corruption charge in the Criminal Complaint still needed to be tested at a preliminary hearing. Post March 2, 2011, the Criminal Complaint served as the charging document for all the charges. When Godlewski stood before Judge Geroulo on July 11, 2011 he plead guilty to the corruption charge set forth in the Criminal Complaint. All of the other seven (7) charges were nolle-prossed on July 11, 2011. (See **Exhibit “19”**.)

The preliminary hearing commenced sometime in late June or early July 2011. At this preliminary hearing the parties took a break during the victim’s testimony and reactivated their plea bargain discussions. Plaintiff testified about this day on pp. 253-258 of his deposition. (**Exhibit “2”**) The same plea deal from November 2010 was brought back to Judge Geroulo. Judge Geroulo accepted the negotiated sentence this time. (**Exhibit “2”**, pp. 265.) While hearing Godlewski’s guilty plea, the Court was obligated to determine there was a factual basis for the

guilty plea and that Godlewski understood and voluntarily accepted the terms of the plea agreement. Pa. Crim. P. 590. There is no evidence Judge Geroulo failed to satisfy these obligations. Plaintiff testified Judge Geroulo told him at the July 2011 hearing that when Godlewski came before him in November 2010 during the proceeding he didn't sense any sort of remorse for his actions. (Exhibit "2", pp. 263-265.) Certainly, Judge Geroulo reviewed Plaintiff's Guilty Plea Colloquy from November 2010 in July 2011 and had Plaintiff affirm on the record his admission to the acts constituting a crime and his knowing admission of guilt to the crime. The next day the headline in the newspaper read "Ex-baseball coach sentenced for sex with a girl, 15." (Exhibit "3".)

Plaintiff has not provided the Court with any cases to support the proposition that the Criminal Complaint with attached Affidavit of Probable Cause should be treated differently than an indictment for judicial notice purposes. (See *Mitchell*, supra.) Plaintiff waived a preliminary hearing on the corruption charge before signing the guilty plea colloquy and then terminated the preliminary hearing in 2011 before entering into a second identical plea bargain based on the same guilty plea colloquy from November 2010.

Godlewski admits he did the "things" he was "charged with." (Exhibit "2", pp. 235-241, specifically p. 240.) **Godlewski admits he was charged with corruption of a minor for having sexual intercourse with the minor victim.** (Exhibit "2", p. 228) Godlewski provided no statements in response to No. 13 of the Guilty Plea Colloquy evidencing an agreement with the DA's office that his guilty plea was for a non-sexual act. (See Exhibit "17".) Godlewski and the DA could have agreed to amend the corruption charge to be based on non-sexual acts had that really occurred. Godlewski admitted he knew exactly what he was charged with and what he pled guilty to. (Exhibit "2", p. 238.) The Guilty Plea Colloquy was signed by Godlewski and his

attorney. (**Exhibit “17”** and **Exhibit “2”**, p. 235.)

The facts upon which Godlewski was “charged” are set forth in the Criminal Complaint and the attached Affidavit of Probable Cause. In Section 18 of the Colloquy, Godlewski admitted he did “the above stated act.” That act is left blank in the colloquy. That blank space does not give Plaintiff license to invent his own predicate act for the charge. Judge Geroulo was surely aware that the “act” was sex with the minor victim as charged. An Information was filed by the District Attorney charging Godlewski with corruption of a minor for “repeatedly [having] inappropriate text messages and contact with a minor.” (**Exhibit “18”**.) The Date of Offense on the Pennsylvania Commission of Sentencing Guideline Sentence Form for the sentencing on July 11, 2011 states a “Date of Offense of 1/1/2008” which matches the start date of the offense in the Criminal Complaint and the Information. The Sentence Sheet directs Godlewski to have no contact with minors and no contact with the victim. This judicial direction matches up with a corruption conviction based on Godlewski having sexual contact with a minor.

Godlewski testified he no longer has his text messages with the victim from the time-period before he pled guilty but claims there was nothing “inappropriate” in his text messages with the minor during this time period. (**Exhibit “2”**, p. 67.) Godlewski testified he never had any texts or conversations with the victim about sex other than he asked her if she reported to the police they were having sex. (**Exhibit “2”**, pp. 84-88.) Godlewski presented no evidence to challenge the authenticity of the text messages cited in the Criminal Complaint during his criminal case. Godlewski admits he did in fact corrupt the morals of the minor victim. (**Exhibit “2”**, p. 108.) When asked how he corrupted the victim, Godlewski testified he did so by having “counselor-type” conversations with her since he was not qualified to talk with her about matters like the suicide of her boyfriend. (**Exhibit “2”**, pp. 108-109) This is a figment of Godlewski’s

imagination.

The *Hawkins* case makes it clear that a criminal conviction is conclusive proof of the wrongdoing for which the defendant was charged. The only wrongdoing Godlewski was charged with was his sexual relationship with a minor who was more than ten years younger than him. Godlewski wants the Court to accept his recent explanation that he pled guilty to having inappropriate “counseling-type” conversations with the victim he was not qualified to have and that that is why the Information includes the words “inappropriate text messages and contact with a minor.” The simple truth is he pled guilty to the corruption charge because he had a sexual relationship with the minor.

Defendants have maintained the truth of the article, including the statement Godlewski had sex with the minor, in their answer and new matter, in Chris Kelly’s deposition and in Defendants’ motion for summary judgment and brief. Defendants specifically asserted a truth defense in their New Matter. (See paragraphs 8 and 18 of Defendants’ New Matter filed on July 6, 2021.) Defendants specifically argued in their brief in support of summary judgment that Plaintiff’s guilty plea colloquy states Plaintiff admitted doing the things he is charged with (See Defendants’ Brief in Support of Motion for Summary Judgment, pp. 22-24) and they offered his guilty plea colloquy as evidence. Defendants did not waive this defense.

Pa.R.E. 201(c) provides the Court may take judicial notice, whether requested not. Further, judicial notice may be taken at any stage of the proceeding. Pa.R.E. 201(f). The Court has now given Plaintiff an opportunity to be heard as to the propriety of taking judicial notice of the facts in question in compliance with Pa.R.E. 201(e) by addressing his motion for reconsideration. Plaintiff claims it was an error for the Court to take judicial notice of facts set forth in the Affidavit of Probable Cause which contains the predicate acts for the corruption

charge. (Plaintiff's Memorandum in Support of Motion for Reconsideration, p. 5, N.1.) Plaintiff claims the court cannot take judicial notice of these facts because "Godlewski has denied them." *Id.* Godlewski waived his preliminary hearing prior to signing the guilty plea colloquy. He did not deny these facts until ten years after his guilty plea. His denial now after the conclusion of his criminal case is of no relevance here.

In the case of *In re Am. Biomaterials Corp.*, 954 F.2d 919, 922 (3d Cir. 1992), the Court held:

[W]e take judicial notice of their guilty pleas in affirming the district court's finding that MacKay and Russell were embezzling from American. *See* Fed.R.App.P. 10(e); *In re: Capital Cities/ABC, Inc.'s Application for Access to Sealed Transcripts*, 913 F.2d 89, 97 (3d Cir.1990); *Castle v. Cohen*, 840 F.2d 173, 180 n. 12 (3d Cir.1988.)

Unlike some cases involving judicial notice of a guilty plea from a prior criminal case to establish a fact in a subsequent civil case against the same defendant, the criminal defendant is the plaintiff here in the subsequent civil action. He waited ten (10) years after the conclusion of his criminal case to file civil action seeking monetary damages. He failed to file any defamation case based on the 2011 news article which stated he had sex with a minor. Due to his delay, certain court transcripts of his guilty plea and sentencing hearings are no longer available and Defendants should not face prejudice due to Godlewski's delay.

Justice compels the Court to take judicial notice of the fact that Godlewski had a sexual relationship with the minor victim in his 2010 criminal case since he pled guilty to corruption charge based entirely on a sexual relationship with the minor.

B. Plaintiff failed to provide sufficient evidence that any statements in the article were made by Defendants with actual malice and therefore all claims were properly dismissed.

"The requirement that the plaintiff be able to show actual malice by clear and convincing evidence is initially a matter of law." *Tucker*, 848 A.2d at 128 (citing *Milkovich v. Lorain*

Journal Co., 497 U.S. 1, 17 (1990). “The burden of proof imposed is substantial, as the actual malice standard goes so far as to forbid imposition of liability even in those instances where the defendant negligently publishes false, defamatory statements about a public figure or public official.” *Blackwell v. Eskin*, 916 A.2d 1123, 1125 (Pa. Super. 2007) (quoting in part *Norton v. Glenn*, 860 A.2d 48, 56 (Pa. 2004)). The “failure to check sources, or negligence alone, is simply insufficient to maintain a cause of action for defamation ... Recklessness generally and in the context of actual malice is not easily shown.” *Id.* (quotations omitted). Rather, to establish that a defendant acted with reckless disregard for the truth, “[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.” *Norton*, 860 A.2d at 55. “Moreover, establishment of a defamation claim requires clear and convincing evidence, the highest level of proof for civil claims.” *Blackwell*, 916 A.2d at 1125. This standard requires evidence “so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy of the trust or truth of the precise facts in issue.” *Bartlett*, 885 A.2d at 566.

Plaintiff contends Defendants acted with “reckless disregard” by deviating from acceptable journalistic standards to a degree demonstrating reckless conduct. (Plaintiff’s Brief, p. 25.) Plaintiff recorded the deposition of the Times-Tribune’s Executive Editor Larry Holeva. Mr. Holeva had no involvement in investigating the facts for the article, writing the article or editing the article. (See Exhibit “1” from Plaintiff’s Brief, pp. 10, 25-37, 38-39.) Mr. Holeva had nothing to do with the article. Plaintiff’s counsel did not depose any of the editors who were actually involved in editing the article. Plaintiff has produced no evidence that the *Scranton Times* or *Kelly* knew the statements at issue – Plaintiff had sex with a 15-year-old minor and he admitted to it as part of his guilty plea.

Plaintiff testified he has no idea as to Kelly's state of mind when he wrote these statements. (**Exhibit "2"**, pp. 297 and 300.) According to Plaintiff, if Kelly didn't know what he was writing was false, "he should have." (**Exhibit "2"**, p. 298.) He describes Kelly's statements as "gross negligence." (**Exhibit "2"**, p. 298.) According to Plaintiff, Kelly didn't "investigate good enough" and "I think he [Kelly] relied upon his own Scranton Times article "[the 2011 article by Denis O'Malley **Exhibit "3"**] and "he stopped right there, I think." (**Exhibit "2"**, p. 301.) Contrary to the applicable law in this case and understanding his burden of proof as a public figure, Godlewski testified in his deposition: "I don't have to prove anything." (**Exhibit "2"**, p. 252.)

Kelly's investigation into whether Godlewski had a sexual relationship with a 15-year-old girl included his review of archived news articles at the Times-Tribune and court documents from the criminal case. (**Exhibit "44"**, p. 42-43.) (A true and correct copy of the archived articles on Godlewski's 2010-11 criminal case are included in the *Exhibit List* and marked as **Exhibit "45"** and **Exhibit "3"**.) Kelly specifically reviewed the 2011 article by Denis O'Malley under the headline: "Ex-baseball coach sentenced for sex with girl, 15." (**Exhibit "44"**, p. 45.) He thinks he also reviewed the criminal court case affidavit and Godlewski's guilty plea colloquy. (**Exhibit "44"**, pp. 45-46 and 53.)

Kelly testified he relied upon criminal court records and the archived news articles from the Times-Tribune reporter who covered Godlewski's guilty plea hearing and he spoke to people in law enforcement who corroborated the information in the article. (See **Exhibit "44"**, from Defendants' Brief, page 60-63.) There is no evidence, let alone clear and convincing evidence, that Defendants subjectively entertained serious doubts that Godlewski had sex with a minor or that his sexual contact caused him to plead guilty. Despite Plaintiff's counsels' claim in his brief

that Godlewski advised Kelly he never had sex with the minor, there is no such evidence of a denial from Godlewski prior to publication of the article.

Kelly further testified:

Q. So you relied exclusively on articles that said he admitted that?

A. Not exclusively. I had those articles. I had the court documents, the affidavit, and I talked to other people. Corroborated the things that were in those stories with other people.

Q. When you read the guilty plea colloquy and saw no mention of sex, did you think maybe you should look further?

A. No. I believed absolutely that the charges is that he had sex with this young girl, and everything I learned since supports that.

Q. Well, you weren't there, right?

A. I was not there. You mean in the bedroom? No, I was not.

Q. And you've only talked with a friend?

A. No. That's one of the people I spoke with.

Q. And two others that --

A. Two others.

Q. That spoke with you on condition of anonymity?

A. Yes.

Q. Are either of them an eyewitness?

A. Again, I don't know whether they ever had sex in front of other people, but these are people who were in a position to know.

(Exhibit "44", pp. 57-58.)

Kelly testified:

Q. Did you attempt to ascertain more carefully the nature of the facts to which Mr. Godlewski pleaded?

A. Yes. I spoke to -- and including one of the people I spoke to who was in a position to know to reinforce my belief that his plea to corruption of minors was based on his guilt in the sex charges. And that turns out to be true. And I had that -- again, I went to background sources and got these things confirmed, someone who was there, someone who understands what happened in the process. And the fact is that they got -- he got the victim not to testify, and that is how he got this sweetheart deal.

(Exhibit "44", p. 62.)

Kelly also talked to people in law enforcement who corroborated the statements he made in the article. **(Exhibit "44", pp. 62-63.)** There is no evidence in this case that Kelly subjectively entertained serious doubts about the truth or falsity of his statements in the article.

Plaintiff falls far short of meeting his burden to prove the article's alleged false statements were made by Defendants when they subjectively knew them to be false or entertained serious doubts about the truth of them. Plaintiff does not even understand the subjective nature of the proof he is required to present here. Plaintiff's counsel wrote in paragraph 38 of Plaintiff's Response to Defendants' Motion for Summary Judgment filed on February 15, 2024: "Kelly's beliefs do not tend to prove or disprove any element of any claim or offense." Kelly's beliefs have to be the core of Plaintiff's claim in order for Plaintiff to prevail.

V. CONCLUSION

For the reasons stated herein, Plaintiff's Motion for Reconsideration should be denied.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the **Public Access Policy** of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ J. Timothy Hinton, Jr., Esq.
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MAURICE KELLY
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2024 SEP 26 10:48
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RECORDS SECTION

PHILIP GODLEWSKI,
Plaintiff

v.

CHRIS KELLY, et al.
Defendants.

: IN THE COURT OF COMMON PLEAS
: OF LACKAWANNA COUNTY
:
: CIVIL DIVISION
:
: JURY TRIAL DEMANDED
:
: No.: 2021-CV-2195

CHRIS KELLY
LACKAWANNA COUNTY
2024 SEP 26 P 3:48
CLERK OF JUDICIAL
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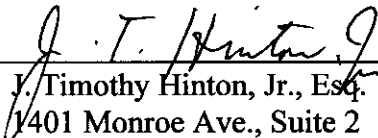
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September 2024, I caused to be served by electronic mail, a true and correct copy of the foregoing Defendants' Brief in Opposition to Plaintiff's Motion for Reconsideration upon all parties:

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