

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-1762-2015**
 :
 v. :
 :
 :
 DONALD JAMES STONE, : **CRIMINAL DIVISION**
 Defendant :

OPINION AND ORDER

On November 12, 2015, the Defendant filed a two-count Omnibus Pretrial Motion. Hearing and argument on the motion was scheduled for December 21, 2015. At the time scheduled for the hearing, neither the Defendant nor the Commonwealth presented testimony. The Commonwealth introduced the transcript of the Defendant’s preliminary hearing, which occurred on October 16, 2015.

I. Background

The Defendant has been charged with Institutional Sexual Assault,¹ Indecent Assault,² Harassment,³ and Official Oppression.⁴ The alleged victim was an inmate in Muncy State Correctional Institution, where the Defendant was a physician. During the preliminary hearing, the inmate’s infirmary cellmate testified that, while the inmate was heavily sedated after surgery, the Defendant touched the inmate’s breasts and “rubbed his hand down across her vagina” for a couple of minutes. N.T., 10/16/15, at 7, 19, 21. The cellmate testified that the Defendant’s conduct occurred on “the day [the inmate] came back [to the infirmary] from her surgery.” *Id.* at 16-17, 22.

¹ 18 Pa.C.S. § 3124.2(a).

² 18 Pa.C.S. § 3126(a)(4).

³ 18 Pa.C.S. § 2709(a)(1).

⁴ 18 Pa.C.S. § 5301(1).

In the first count of the omnibus motion, the Defendant argues that the Commonwealth did not establish a *prima facie* case of the charged crimes because “[t]he testimony in question contains no specificity to times or dates as to when the alleged crimes occurred.” He argues that he “cannot defend himself without specificity as to the day of the week, date and times when the alleged crimes are to have occurred.” To counter the Defendant’s arguments, the Commonwealth relies on the transcript from the preliminary hearing.

II. Discussion

“At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove the defendant’s guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense.” Commonwealth v. Karetny, 880 A.2d 505, 513-14 (Pa. 2005) (internal citation omitted).

The Court does not believe that the date, day of the week, and time of the alleged offenses are material elements of the offenses. The Defendant’s notice of the date and time of the alleged offenses is really a constitutional due process issue rather than a *prima facie* issue. See generally Commonwealth v. Devlin, 333 A.2d 888, 892 (Pa. 1975) (holding that due process requires that a defendant have some “degree of specificity in the proof of the date of a crime”); Commonwealth v. Lyons, 568 A.2d 1266, 1268 (Pa. Super. 1989) (stating “[t]here is no constitutional right to a preliminary hearing”). But even if the date and time are material elements, there was testimony about when the alleged offenses occurred. The cellmate testified that the alleged offenses occurred on “the day [the inmate] came back [to the infirmary] from her surgery.” N.T., 10/16/15, at 16-17, 22. Because the Defendant was a physician at the institution,

he is in as strong of a position as the cellmate to determine the date and day of the week when the inmate “came back [to the infirmary] from her surgery.” In any event, the Information charges that the Defendant committed the crimes “on or about Friday, the 29th day of May, 2015.”

III. Conclusion

The Defendant’s argument fails because the date, day of the week, and time of the alleged offenses are not material elements of the offense. But even if they are material elements, the Defendant’s argument fails because there was sufficient testimony about when the alleged offenses occurred.

ORDER

AND NOW, this _____ day of February, 2016, it is ORDERED and DIRECTED that Count 1 of the Defendant’s Omnibus Pretrial Motion, which was filed on November 12, 2015, is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge