

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-364-2021
	:	
vs.	:	
	:	CRIMINAL DIVISION
JOHN PAUL TERRY,	:	
Defendant	:	

OPINION

This matter is before the Court on Defendant’s Omnibus Pretrial Motion filed July 2, 2021. For the reasons set forth below, the Motion is granted in part and denied in part.

I. Factual and Procedural Background

On March 26, 2021, the Commonwealth filed its eighty-nine (89) Count Information, charging Defendant with three counts of Rape By Forcible Compulsion, one count of Rape by Threat, seven counts of Involuntary Deviate Sexual Intercourse, thirty-two counts of Rape of a Child, one count of Unlawful Contact with a Minor, thirty-three counts of Sexual Assault, three counts of Aggravated Indecent Assault, one count of Unlawful Restraint by Involuntary Solitude, one count of Strangulation, five counts of Indecent Assault, one count of Indecent Exposure, and one count of Terroristic Threats.

Defendant filed his Omnibus Motion on July 2, 2021¹ containing the following:

1. Motion to Dismiss Legally Insufficient Information;
2. Motion to Dismiss Information Because of Excessive and Prejudicial Delay

¹ Upon a Motion for Extension of Time to File Pretrial Motion, Defendant was given until July 2, 2021 to file said motion.

Between the Alleged Incident and Arrest;

3. Motion to Remand Case to Juvenile Division of Common Pleas Court;
4. Motion to Compel Records of Child Advocacy Center;
5. Motion to Disclose Any CYS Records;
6. Motion for Disclosure of Other Crimes, Wrongs, or Acts Pursuant to Pa.R.Evid. 404(b);
7. Motion to Disclose Existence Of and Substance Of Promises Of Immunity, Leniency or Preferential Treatment and Complete Criminal History from the National Crime Information Center (“NCIC”) and/or the Pennsylvania Justice Network (“JNET”);
8. Motion for Request of Timely Notice of Any Expert Testimony;
9. Motion to Strike Notice of Mandatory Minimum;
10. Motion to Suppress Statements; and
11. Motion to Reserve Right.

A hearing and argument was held November 4, 2021 at which time Taylor Beucler, Esquire appeared on behalf of the Commonwealth and Defendant appeared and was represented by Edward Rymza, Esquire. At the time of the hearing, the parties agreed that all issues raised in Defendant’s Omnibus Motion can be decided on the Briefs or by agreement except the suppression issue set forth in motion number 10. Regarding this issue, Chief Justin Snyder of the Williamsport Police Department testified regarding the following:

On July 16, 2020, after he had already left the office for the day, Chief Snyder² was

² As of July 16, 2020, Chief Snyder was an agent but has since been promoted to Chief.

informed that a person who was later identified as the Defendant appeared at the police department, which is located in City Hall, wanting to confess to a crime. Chief Snyder also learned that the alleged crimes were sexual in nature and that the alleged victim and another unknown third party was present at the police department with the Defendant. At some point, the Defendant was taken into an interview room, which is not a public space and which has only artificial lighting. When he arrived back at the police department to interview the Defendant, Chief Snyder was in plain clothes and armed.

Prior to the interview, Chief Snyder explained to the Defendant that he was not under arrest, but read him his *Miranda* rights anyway, and the Defendant signed a waiver. He also explained to the Defendant that he did not know whether charges would be filed against him and that he was free to leave at any time. Chief Snyder testified that, in his opinion, the Defendant seemed relieved and in an ordinary physical state during the interview.

At the time of argument, the Commonwealth introduced the Defendant's recorded interview with Chief Snyder, at Commonwealth Exhibit 1, which shows the following:

Defendant was brought into an interview by an officer other Chief Snyder. The room contained a desk, at least four (4) chairs, and only artificial lighting. After Defendant was seated, he remained in the room alone waiting for Chief Snyder for about sixteen (16) minutes. During that time, the door to the interview room remained open and unguarded. Defendant was not handcuffed or otherwise restrained from leaving and he appeared relaxed. Defendant acknowledged, when asked, that his date of birth is October 31, 1997.

Upon entering the room, Chief Snyder closed the door and, after an introduction, Defendant stated that he "was contacted by [his] niece about the things [he] did to her when

she was younger.” Chief Snyder then read Defendant the *Miranda* rights, Defendant signed the waiver, and he explained to the Defendant that he was not under arrest and was not in police custody.

Defendant stated that he is currently twenty-two years old and that he was eleven (11) years old when he “molested” and “raped” his four (4) year old niece. The conduct stopped when he was fifteen (15) or sixteen (16) years old. A question and answer interview ensued and Defendant was cooperative and calm throughout the process. He acknowledged that he was not under the influence of any drugs or alcohol, that he has not been diagnosed with depression or any other illness, and that he has no criminal history. Defendant thanked Chief Snyder several times.

Defendant explained that the reason he came to confess was because the victim had contacted him the night before to discuss the incidents. He stated that, “this is kind of stressful but at least I am doing this.” Defendant acknowledged, when asked, that he was never threatened or coerced in any way and that he made the statements to Chief Snyder on his own volition.

Chief Snyder then explained that it was not up to him whether or not charges were filed and that he did not know if Defendant would be arrested or not. Chief Snyder disclosed to the Defendant that he was going to step out of the room to call the District Attorney. During that time, the door to the interview room remained open. Upon his return, Chief Snyder told the Defendant that he was free to go and that he would be in touch regarding what came next. Defendant asked procedural questions and Chief Snyder explained to the Defendant that as long as he remained cooperative with the police, then he would remain

cooperative with the Defendant in the event the Defendant needed to be taken into police custody.

A Preliminary hearing was held on March 9, 2021 at which time the alleged victim testified that she is currently sixteen (16) years old and that the incidents with Defendant began when she was three (3) years old and ended when she was ten (10) years old. *See Commonwealth Exhibit 4 at Page 4, Lines 15-17 and Page 5, Lines 19 to 21.* During some sexual encounters, Defendant was in possession of a BB gun, although she thought it was a real gun, and he threatened to shoot her with it. *See Commonwealth Exhibit 4 at Page 15, Lines 2-13.*

The alleged victim testified that in July of 2020, she asked Defendant to come to her house to talk to her about what he had done to her and that, following their conversation, she and the Defendant, along with her girlfriend and mother, went to the police station together to tell the police. *See Commonwealth Exhibit 4 at Page 16, Lines 18-22; Page 17, Lines 22-25; and Page 18, Lines 11-13.*

The Court directed the parties to submit letter briefs addressing the suppression issue only. They have done so, and this matter is now ripe for decision.

II. Discussion

The Court will discuss each of the above Motions separately.

a. Motion to Dismiss Legally Insufficient Information

Defendant first argues that the Information containing the charges filed against him is legally insufficient because it fails to conform to Pennsylvania Rule of Criminal Procedure 560, which states, in pertinent part, as follows:

(B) The information shall be signed by the attorney for the Commonwealth and shall be valid and sufficient in law if it contains: . . .

(3) . . . if the precise date is not known or if the offense is a continuing one, an allegation that it was committed on or about any date within the period fixed by the statute of limitations shall be sufficient;

(5) a plain and concise statement of the essential elements of the offense substantially the same as or cognate to the offense alleged in the complaint;

Pa.R.Crim.P. 560(B)(3) and (5).

Specifically, Defendant argues that the Information “fails to provide sufficient factual allegations” and “merely tracks and repeats the statutory language in the aforementioned statutes, and fails to specify the date, time or specific place where the alleged crimes took place.” *See Defendant’s Brief in Support at Page 3.*

“The purpose of an Information . . . is to provide the accused with sufficient notice to prepare a defense, and to ensure that he will not be tried twice for the same act.” *Com. v. Alston*, 651 A.2d 1092, 1095–96 (Pa. 1994), *citing Com. v. Ohle*, 470 A.2d 61, 73 (Pa. 1983). When an Information sets forth the elements of the charged offense and enough detail such that the defendant is “apprised of what he must be prepared to meet, and may plead double jeopardy in the future prosecution based on the same set events,” then it is sufficient. *Alston*, 651 A.2d at 1095. “This may be accomplished through use of the words of the statute itself as long as ‘those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished.’” *Id.* at 1095-96 (internal citations omitted).

The Superior Court has held that “when the facts of a particular case indicate an ongoing, or continuing nature . . . the court is justified in finding that . . . an information is

sufficient if the dates stated are within the applicable statute of limitations.”³ *Com. v. Dennis*, 618 A.2d 972, 980 (Pa. Super. 1992). In *Dennis*, the Information stated that the numerous transactions occurred from August of 1985 to November of 1986, and the Court found that this was sufficiently certain. *Id.*

Courts have found that even minimal facts about an alleged crime provides adequate notice for purposes of a challenge to the sufficiency of an Information. *See, i.e., Com. v. Chambers*, 852 A.2d 1197, 1199 (Pa. Super. 2004) (an Information adequately notified the defendant that he was charged with second degree murder when the Information alleged that he “‘unlawfully, intentionally, knowingly, recklessly or negligently’ caused another's death”); *Alston*, 651 A.2d at 1096 (finding that the Information was sufficient where it tracked the statutory language of the crime charged).

The Commonwealth’s eighty-nine (89) Count Information begins by stating that the crimes occurred “‘between Friday, the 1st day of January, 2010 and Sunday, the 31st day of December, 2017” Defendant is correct that the Information does not provide a date or time relating to each count. However, as admitted to by the Defendant himself, these crimes were of a continuing nature over the course of several years. As such, it is sufficient for the Commonwealth to provide a date range for the commission of the crimes as opposed to a date certain for each count.

Each count sets forth the exact statutory language of each offense for which Defendant was charged. For example:

³ Defendant does not argue that the crimes for which Defendant was charged fall outside the statute of limitations.

1. Counts 1 and 2, Rape by Forcible Compulsion,⁴ states that the “Actor engaged in sexual intercourse with another person by forcible compulsion.”
2. Counts 5 through 9, Involuntary Deviate Sexual Intercourse with a Child,⁵ states that a “person commits involuntary deviate sexual intercourse with a child when the person engages in deviate sexual intercourse with a complainant who is less than [sic] 13 years of age.”
3. Counts 43 through 75, Sexual Assault,⁶ states that, “Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainants consent.”
4. Count 80, Strangulation – Applying Pressure to Throat/Neck,⁷ states that “Defendant knowingly or intentionally impedes the breathing or circulation of the blood of another person, by applying pressure to throat or neck.”

⁴ “A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant: (1) By forcible compulsion.” 18 Pa.C.S.A. § 3121(a)(1).

⁵ “A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.” 18 Pa.C.S.A. § 3123(b).

⁶ “Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.” 18 Pa.C.S.A. § 3124.1.

⁷ “A person commits the offense of strangulation if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by: (1) applying pressure to the throat or neck . . .” 18 Pa.C.S.A. § 2718(a)(1).

In addition, the Commonwealth has provided specific details of the alleged actions taken by the Defendant. Some are specific to that particular count and some are repeated actions. For example:

1. Count 2, Rape by Forcible Compulsion, alleges that Defendant “did force victim I.H. to perform oral sex on him by pushing her down prior to penetrating her mouth with his penis.”
2. Counts 6 through 9, Involuntary Deviate Sexual Intercourse with a Child, all allege that Defendant “did place his penis inside the mouth of victim I.H. during a time when victim was less than 13 years of age and Defendant was in high school.”
3. Counts 10 through 41, Rape of a Child, all allege that Defendant either “penetrate[d] the female genital organ of victim I.H. with his penis” or “place[d] his penis inside the mouth of victim I.H. during a time when victim was less than 13 years of age and Defendant was in high school.”
4. Count 78, Aggravated Indecent Assault with Threat of Force, alleges that Defendant “did penetrate the female genital organ of victim I.H. with his finger or fingers after threatening to harm victim’s family members or dog if she did not comply.”
5. Count 82, Indecent Assault, alleges that Defendant “caused victim I.H. to come into contact with seminal fluid while he forcibly, vaginally raped the victim.”

The Commonwealth provides a date range pursuant to the timeframes as provided by

both the Defendant and the victim. Additionally, each count contained in the Information tracks the statutory language word-for-word and provides even additional detail, providing the Defendant with the exact act that he is alleged to have done. For these reasons, the Court finds that the Commonwealth's Information sufficiently provides Defendant notice of the crimes for which he is charged and therefore, Defendant's Motion to Dismiss the Information is denied.

b. Motion to Dismiss Information Because of Excessive and Prejudicial Delay Between the Alleged Incident and Arrest

Defendant next argues that the Information containing the charges against him should be dismissed because of the "lengthy delay between the alleged criminal offenses and [Defendant's] arrest." *See Defendant's Motion at Paragraph 15*. He states that the delay is prejudicial to him because he could have been prosecuted as a juvenile rather than an adult and because he is now unable to particularize the details of the alleged sexual assaults and other incidents.

The following facts are undisputed:

1. Defendant confessed to committing the crimes on July 16, 2020;
2. A minimal facts interview of the alleged victim was conducted by Agent Alexander on July 17, 2020;
3. The Child Advocacy Center interview with the alleged victim was conducted on July 30, 2020;
4. Two supplemental reports were received by the District Attorney on December 30, 2020;

5. The law enforcement agency requested a meeting with the District Attorney on February 4, 2021;
6. Charges were approved on February 19, 2021 and the Commonwealth reached out to schedule a meeting with the alleged victim and her family;
7. Charges were filed on March 1, 2021.

Defendant, during his confession interview, stated that the incidents with the alleged victim occurred began when he was 11 years old and continued until he was 15 or 16 years old. Defendant's date of birth is October 31, 1997. This means that the alleged incidents would have occurred approximately between 2008 and 2013 – about eight (8) years between the last incident and the time the charges were filed. Defendant argues that this delay is “unjustified” and causes him great prejudice.

In order to prevail on a due process claim based on pre-arrest delay, the initial burden is on the defendant to show that the delay caused him actual prejudice. *Com. v. Scher*, 803 A.2d 1204, 1221 (Pa. 2002). “Actual prejudice” is when the delay “substantially impaired [the defendant’s] ability to defend against the charges . . . to such an extent that the disposition of the criminal proceedings was likely affected.” *Id.* at 1221-22. The Court is also required to take into consideration the totality of the circumstances including: “the deference that courts must afford to the prosecutor's conclusions that a case is not ripe for prosecution; the limited resources available to law enforcement agencies when conducting a criminal investigation; the prosecutor's motives in delaying indictment, and; **the degree to which the defendant's own actions contributed to the delay.**” *Id.* at 1221 (emphasis added). A violation of due process will only be found when the delay was the product of

intentional, bad faith, or reckless conduct by the Commonwealth. *Id.* at 1221-22.

While Defendant does not expressly state it, his argument appears to be that the pre-arrest delay was due to the alleged victim failing to come forward. However, Defendant cites to no case law in support of this argument. On this point, in a case where the Commonwealth did not uncover evidence implicating the defendant, by no fault of its own, until twelve (12) years after the crime, the Superior Court held that there was not a due process violation when the Commonwealth lacked adequate cause for bringing a criminal charge before that time. *Com. v. Akers*, 572 A.2d 746, 753 (Pa. Super. 1990). *See also, Com. v. Berry*, 513 A.2d 410, 414 (Pa. Super. 1986) (holding that there was no due process violation where pre-indictment delay was solely attributable to a victim's reluctance to report the crimes).

Further, the case law to which Defendant does cite is factually distinguishable from the instant case because they are cases where the Commonwealth had actual knowledge that a crime was committed but, for whatever reason, failed to bring charges in a timely matter. *See U.S. v. Benjamin*, 816 F.Supp. 373, 376 (D.V.I. 1993) (reports of witness tampering was reported, but the Defendant and the target witnesses were not interviewed until 7 and 18 months later, respectively, and the issue was not presented to the Grand Jury until over three (3) years later); *Com. v. Snyder*, 713 A.2d 596, 597 (Pa. 1998) (Defendant was charged with murder 11 years after a fire occurred in his home, killing his wife and child); *Com. v. De Rose*, 307 A.2d 425, 426 (Pa. Super. 1973) (police officer was bribed to "do nothing" and reported the incident to his superiors but Defendant was not arrested until almost two (2) years after the incident was reported).

The Court recognizes that a significant amount of time has passed between the alleged incidents and the time the charges were filed. However, the Court finds here that Defendant has not proven that he has been prejudiced by this delay, and therefore, no due process violation has occurred. First, the Court notes that the only reason the Commonwealth became aware of these crimes was because Defendant confessed to committing them. In this regard, Defendant's actions contributed to the delay because he failed to come forward sooner. Additionally, pursuant to the case law that is available, the victim's failure to come forward is not a basis for finding a due process violation and this Court will not hold otherwise.

The Defendant would have this Court set a precedent that would essentially require the Commonwealth to seek out crimes at random to ensure that a person would be prosecuted within a reasonable, non-prejudicial period. This is an impossible standard and entirely against public policy. The Commonwealth cannot file charges against a person when it has no evidence of guilt and cannot investigate a potential crime when it has no evidence even suggesting that a crime may have been committed. By nature, sexual violence crimes are done in secret and the Commonwealth would have no reason to suspect that a crime was occurring unless or until someone came forward, as the Defendant did here. Additionally, holding to the contrary would discourage sexual violence victims from coming forward after a significant amount of time had passed.

Turning to the period between when the Defendant confessed to the crimes and when the charges were filed, the Court initially notes that the Commonwealth is not required to file charges as soon as it obtains evidence of a defendant's guilt and may delay filing charges

for a reasonable time until it conducts further investigation. *Akers*, 572 A.2d at 753. Such is the case here. The time between Defendant's confession, which is the first the Commonwealth became aware of the crimes, and the filing of the charges is approximately eight (8) months. During that time, the Commonwealth took reasonable steps to conduct its investigation including interviewing the minor victim, consulting with the applicable law enforcement agencies, and having other professionals conduct interviews with the minor victim. In fact, the District Attorney's interview with the victim occurred the day after Defendant's confession and the CAC interview occurred only two (2) weeks after. There is no indication that the Commonwealth intentionally, recklessly, or in bad faith delayed the filing of these charges.

For the reasons set forth above, the Court finds that the delay between the alleged incidents and Defendant's arrest is not prejudicial to the Defendant and in fact, was in part caused by the Defendant himself. Therefore, Defendant's Motion to Dismiss due to excessive delay is denied.

c. Motion to Remand Case to Juvenile Division of Common Pleas Court

Defendant next argues that this case should be transferred to Juvenile Court for a hearing and disposition pursuant to the Juvenile Act. Specifically, Defendant argues that, because he was a minor when the incidents occurred, he should be prosecuted as a juvenile regardless of the fact that he was an adult at the time the charges were filed. Defendant reasons that, for purposes of determining whether he will be treated as a juvenile, it is nonsensical to use as a controlling factor Defendant's age when he was charged versus his age when the crimes were committed. Such a reading of the Juvenile Act would provide law

enforcement and the Commonwealth with an incentive to wait to file charges against a defendant until he is no longer considered a “child” under the Act.

The Juvenile Act [hereinafter “Act”] applies exclusively to “proceedings in which a child is alleged to be delinquent or dependent.” 42 Pa.C.S.A. § 6303(a)(1). A “child” is defined by the Act as a person who is:

(1) is under the age of 18 years;

(2) is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years; or

(3) is under the age of 21 years and was adjudicated dependent before reaching the age of 18 years, who has requested the court to retain jurisdiction and who remains under the jurisdiction of the court as a dependent child because the court has determined that the child is

42 Pa.C.S.A. § 6302.

Additionally, the Act defines a “delinquent act” as “an act designated a crime under the law of this Commonwealth” 42 Pa.C.S.A. § 6302. The term does not include the acts of involuntary deviate sexual intercourse or aggravated indecent assault when the child was fifteen (15) years of age or older at the time of the conduct and a deadly weapon⁸ was used during the commission of the offense. 42 Pa.C.S.A. § 6302.

In addition to definitions, the Act also clearly states its purpose:

(1) To preserve the unity of the family whenever possible

⁸“Deadly weapon” is defined as “[a]ny firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.” 18 Pa.C.S.A. § 2301.

(1.1) To provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter.

(2) Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.

(3) To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety

42 Pa.C.S.A. § 6301(b)(1) – (3).

The Court notes initially that the “right to be treated as a juvenile offender is statutory rather than constitutional.” *Com. v. Monaco*, 869 A.2d 1026, 1029 (Pa. Super. 2005), *citing Com. v. Cotto*, 753 A.2d 217 (Pa. 2000). The Superior Court has found that a defendant who was twenty-two at the time he was arrested and charged did not satisfy the statutory definition of a “child.” *Id.* It is a defendant’s current age to which the Court looks in determining whether a defendant is a “child” under the Act. *Com. v. Anderson*, 630 A.2d 47, 49-50 (Pa. Super. 1993) (holding that, where a defendant was twenty-two at the time of his arrest for a crime committed when he was sixteen, his “current age places him outside of the Juvenile Act's definition of a child. Therefore, the Juvenile Act does not apply to him... [and] he should be tried as an adult in the Trial Division.”).

Here, it is clear that the Defendant cannot be considered a “child” for purposes of the Juvenile Act. According to the Defendant, the incidents with the victim began when he was eleven (11) years old and stopped when he was fifteen (15) or sixteen (16) years old. At the time the charges were filed against him, Defendant was twenty-three (23) years old. Because the Court looks to Defendant’s *current* age rather than the age he was at the time the acts were committed, and because Defendant is over twenty-one (21) years of age, he does not meet the Juvenile Act’s definition of a “child.”

Additionally, it is conceivable that at least some of Defendant’s acts would not fall under the definition of a “delinquent act.” Defendant was charged with seven (7) counts of involuntary deviate sexual intercourse and three (3) counts of aggravated indecent assault. Defendant was fifteen (15) or sixteen (16) years of age when the last of the incidents occurred and, according to the victim, Defendant used a BB gun during the commission of the incidents on at least one occasion and threatened to shoot her with it. The Court is not ruling one way or another regarding whether a BB gun is a deadly weapon. However, the Superior Court has affirmed rulings allowing an expert testimony regarding whether or not a BB gun is a deadly weapon. *See, i.e., Com. v. Ramos*, 920 A.2d 1253, 1257 (Pa. Super. 2007) (holding that there was “ample and relevant evidence to support” the expert’s opinion that a BB gun was capable of causing death or serious bodily injury). Additionally, the victim testified that she did not know that the BB gun was not a real gun.

Finally, while not necessarily the case here, Defendant argues generally that allowing defendants to be prosecuted as an adult when he committed crimes as a child encourages the Commonwealth to “sit on a case” until a Defendant turns twenty-one (21) years old.

However, the Juvenile Act's purposes are clear – to keep a family together whenever possible, to allow the child to continue to developing in a rehabilitative setting, and to encourage the child to become a productive member of society while also holding him accountable for his actions. After a Defendant becomes an adult, those purposes become essentially moot.

As the Defendant does not meet the definition of “child” for purposes of the Juvenile Act, and for the additional reasons set forth above, Defendant's Motion to Remand the case to Juvenile Court is denied.

d. Motion to Compel Records of Child Advocacy Center (“CAC”)

Defendant requests that all records maintained by the CAC including pre- and post-interview notes and records of the alleged minor victim in this case be disclosed to him in order to prepare his case. When such records are received by the Commonwealth, the Commonwealth shall provide them to the Court for an in camera review. Thereafter, a conference will be scheduled to determine next steps.

e. Motion to Disclose Any CYS Records

Similar to the CAC records, Defendant requests that all reports and information contained in CYS's files relative to the alleged minor victim in this case be disclosed to him in order to prepare his case. When such records are received by the Commonwealth, the Commonwealth shall provide them to the Court for an in camera review. Thereafter, a conference will be scheduled to determine next steps.

f. Motion for Disclosure of Other Crimes, Wrongs, or Acts Pursuant to Pa.R.Evid. 404(b)

Defendant requests that the Commonwealth be ordered to disclose to him any evidence which may be admissible pursuant to Pennsylvania Rule of Evidence 404(b). The Commonwealth asserts that all 404(b) evidence in its possession thus far has been supplied to Defendant. The Commonwealth shall provide additional 404(b) evidence to Defendant if and when it becomes available.

g. Motion to Disclose Existence Of and Substance Of Promises Of Immunity, Leniency or Preferential Treatment and Complete Criminal History from the National Crime Information Center (“NCIC”) and/or the Pennsylvania Justice Network (“JNET”)

Defendant requests the disclosure of the identity of any person who has been offered immunity, favorable consideration, leniency, or favorable treatment as well as the criminal history of any person the Commonwealth intends to call as a witness at trial. If any exist, the Commonwealth shall promptly disclose this information to the Defendant.

h. Motion for Request of Timely Notice of Any Expert Testimony

Defendant requests that all information relating to any expert witnesses which the Commonwealth intends to call at trial be disclosed to him. The Commonwealth disclosed that, at this time, it has no expert witnesses and none are anticipated to be called at trial. Should this change, the Commonwealth shall disclose the requested expert information to Defendant at least thirty (30) days in advance of the date of trial.

i. Motion to Strike Notice of Mandatory Minimum

Defendant next argues that Section 9718, as relied upon by the Commonwealth in its notice of intent to seek the mandatory minimum, is unconstitutional pursuant to *Alleyne v. United States*, 570 U.S. 99 (2013) and *Commonwealth v. Wolfe*, 140 A.3d 651 (Pa. 2016).

The Commonwealth filed a Notice of Applicability of Mandatory Minimum on June 10, 2021 and an Amended Notice of Applicability of Mandatory Minimum on August 31, 2021. The Amended Notice states that, pursuant to 42 Pa.C.S.A. §§9718(a)(1) and 9718(a)(3),⁹ Counts 1, 2, 3, and 88 carry a mandatory minimum prison sentence of ten (10) years; Counts 4 through 9 and 89 carry a mandatory minimum prison sentence of ten (10) years; Counts 10 through 41 carry a mandatory minimum prison sentence of ten (10) years; and Counts 76 through 78 carry a mandatory minimum prison sentence of five (5) years.

Section 9718 states, in relevant part, as follows:

(1) A person convicted of the following offenses when the victim is less than 16 years of age shall be sentenced to a mandatory term of imprisonment as follows:

18 Pa.C.S. § 3121(a)(1), (2), (3), (4) and (5) (relating to rape)--not less than ten years.

18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse)--not less than ten years.

18 Pa.C.S. § 3125(a)(1) through (6) (relating to aggravated indecent assault)--not less than five years.

⁹ In its initial Notice, the Commonwealth cited to subsections (a)(1) and (a)(2) but recognized this as a typographical error in its Brief in Opposition.

(3) A person convicted of the following offenses shall be sentenced to a mandatory term of imprisonment as follows:

18 Pa.C.S. § 3121(c) and (d)--not less than ten years.

42 Pa.C.S.A. § 97189(a)(1) and (3).

Defendant is correct that in 2016, the Pennsylvania Supreme Court held that Section 9718 was unconstitutional due to its provisions in subsection (c). *Wolfe*, 140 A.3d at 663. At the time of the *Wolfe* decision, Section 9718(c) stated as follows: “The provisions of this section shall not be an element of the crime The applicability of this section shall be determined at sentencing. The court shall consider any evidence presented at trial and shall afford the Commonwealth and the defendant an opportunity to present any necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.” 42 Pa.C.S.A. § 9718(c).¹⁰ The *Wolfe* Court, relying on the United States Supreme Court’s *Alleyne*¹¹ decision, held that Section 9718(c) “plainly and explicitly require[s] judicial fact-finding in its subsection (c)” and for that reason, found that “Section 9718 is irremediably unconstitutional on its face, non-severable, and void.” *Wolfe*, 140 A.3d at 660 and 663.

However, effective December 18, 2019, the statute was amended to remove the language held to be unconstitutional and now states as follows:

With the exception of prior convictions, any provision of this section that requires imposition of a mandatory minimum sentence shall constitute an element enhancing the underlying offense. Any enhancing element must be

¹⁰ The *Wolfe* Court also discusses the unconstitutionality of the notice provision in 9718(c). However, that is not at issue here, as the Commonwealth has clearly provided notice.

¹¹ *Alleyne* held that “any fact that, by law, increased the penalty for a crime must be treated as an element of the offense, submitted to a jury rather than a judge, and found beyond a reasonable doubt.” *Wolfe*, 140 A.3d at 653, citing *Alleyne*, 570 U.S. at 103.

proven beyond a reasonable doubt at trial on the underlying offense and must be submitted to the fact-finder for deliberation together with the underlying offense. If the fact-finder finds the defendant guilty of the underlying offense, the fact-finder shall also decide whether any enhancing element has been proven.

42 Pa.C.S.A. § 9718(c).

This version of the statute has not been rendered unconstitutional. Because the most current version of Section 9718 remains valid, the Commonwealth's Amended Notice is valid, and Defendant's Motion to Strike is denied.

j. Motion to Suppress Statements

Lastly, Defendant argues that all statements that he made to Chief Snyder on July 16, 2020 should be suppressed because they were made involuntarily. Specifically, Defendant argues that, when analyzing the totality of the circumstances, the following facts show that Defendant's statements were in fact involuntary:

1. Defendant has no prior criminal record and therefore, no prior experience with law enforcement;
2. Defendant was brought to the police station by the victim after being encouraged to confess to the crimes by the victim and her mother;
3. Defendant was placed in a private room with no windows;
4. Defendant was interviewed by a visibly armed officer;
5. Defendant was read his *Miranda* warnings "which naturally presumes he was in custody;"
6. Chief Snyder testified that in his fourteen (14) years as a law enforcement officer, he has never experienced a person coming into the police station on his own asking to confess to a crime. The fact that Defendant did this

casts doubt on his “psychological clarity”;

7. Chief Snyder told Defendant that he was unsure of whether he would be charged or not; and
8. Chief Snyder’s statement that Defendant’s cooperation would help him inappropriately implied leniency.

Both the United States and Pennsylvania Constitutions protect a person against self-incrimination. U.S. Const. amend. V; Pa. Const. art. I, § 9. When a Defendant makes a confession, it is the Commonwealth’s burden to prove, by a preponderance of the evidence, that the confession was voluntary. *Com. v. Nester*, 709 A.2d 879, 882 (Pa. 1998). “When deciding a motion to suppress a confession, the touchstone inquiry is whether the confession was voluntary . . . Voluntariness is determined from the totality of the circumstances surrounding the confession.” *Id.* (internal citations omitted). Factors to be considered include the duration and means of interrogation, the physical and psychological state of the accused, the conditions of the detention, the attitude of the interrogator, and any other factors that “could drain a person’s ability to withstand suggestion and coercion.” *Id.*

The question, when determining voluntariness, “is not whether the defendant would have confessed without interrogation, but whether the interrogation was so manipulative or coercive that it deprived the defendant of his ability to make a free and unconstrained decision to confess.” *Id.* If a defendant’s will was overborne at the time of his confession, then the statements should be suppressed. *Miller v. Fenton*, 796 F.2d 598, 604 (3d Cir. 1986). “By the same token, the law does not require the coddling of those accused of crime.

One such need not be protected against his own innate desire to unburden himself.” *Com. v. Graham*, 182 A.2d 727, 730–31 (Pa. 1962).

The facts here are comparable to those in the *Templin* case. In *Templin*, law enforcement became aware of an alleged sexual assault of a six-year-old child and an investigation ensued. *Com. v. Templin*, 795 A.2d 959, 961-62 (Pa. 2002). The investigating officer, Officer Richard, went to the home of the suspect to request a polygraph and, at this point, the suspect was already aware of the allegations, as he had given a statement to a Children and Youth Services caseworker prior to speaking with Officer Richard. *Id.* at 962. Upon Officer Richard’s request, the suspect accompanied him to the police station to discuss the allegations at which point the suspect was not handcuffed or otherwise restrained and was not under the influence of any substance. *Id.*

The discussion took place in an interview room where the door remained open and unguarded and Officer Richard told the suspect he was free to leave at any time. *Id.* Officer Richard offered the suspect something to drink and was very polite. *Id.* Although he was not formally restrained, Officer Richard read to the suspect his *Miranda* rights and, after approximately an hour and a half of discussion, Officer Richard told the suspect that if he would admit to his actions, he would recommend that the suspect be released on his own recognizance in exchange for his cooperation, but that it would ultimately be the district justice who would decide his bail. *Id.* at 962-63. The suspect then gave a written statement admitting to the sexual assault. *Id.* at 964.

Initially, the Supreme Court notes that, “[o]f primary importance in this case is the fact that the suspect was fully apprised of, and expressly waived, his *Miranda* rights,

including the right to counsel and the right to remain silent, *before* any substantive questioning began, and well before the alleged inducement to confess.” *Id.* at 966. This fact is important because it tends to show that the police were aware of the suspect’s rights and prepared to honor them and that the defendant was aware that he was not required to speak with the police. *Id.*

The primary contention in the *Templin* case was that Officer Richard made an offer of leniency when he promised to recommend release conditions after the *Miranda* warnings were waived. *Id.* at 963. The Court ultimately held that, “[c]onsidered in its totality, the credited evidence here overwhelmingly demonstrates that [the suspect’s] confession was voluntary.” *Id.* at 967. The facts that the Court found of importance in the determination of voluntariness were: the suspect voluntarily accompanied the officer to the police station; the interview was conducted by a single police officer and lasted at most an hour and a half, not an excessive period of time; there was no physical coercion or intimidation in that the suspect was never handcuffed; the door to the interview room was left open and the suspect was informed that he was free to leave at any time; the suspect was not impaired by drugs or alcohol; the officer was polite, and even offered him something to drink; and the subject of the interview was not sprung upon appellant by surprise. *Id.* at 966-67. “In short, there was no special element of coercion, over and beyond that which is inherent in any non-custodial stationhouse interview, to overbear [the suspect’s] will. In addition, any coercive factors inherent in the stationhouse setting were more than offset by the *Miranda* warnings and waiver.” *Id.* at 967.

Regarding Officer Richard's promise to recommend release, the Court found that it cannot be considered a promise of leniency in the actual prosecution itself or a promise that no charges would be filed. *Id.* Additionally, the Court found it significant that Officer Richard's statement regarding release was not misstated or overstated. *Id.*

Here, it is undisputed that Chief Snyder, prior to questioning Defendant at all, read him his *Miranda* rights and Defendant subsequently signed the waiver. Similar to *Templin*, the facts in this case, when viewed in their totality, clearly establish that Defendant's statements to Chief Snyder were given voluntarily.

Defendant came into the police station asking to speak with an officer. While Defendant was brought to the station by the victim, her mother, and her girlfriend, there is no evidence to suggest that he was forced into confessing. In fact, at the conclusion of the interview, Defendant acknowledged that he was under no threat or coercion to give the statements that he did. Chief Snyder testified that he knew nothing about the Defendant or the allegations, other than that they were sexual in nature, prior to speaking with the Defendant. The Defendant clearly had more knowledge of the allegations than anyone else did. Defendant was questioned only by Chief Snyder and, while Chief Snyder was visibly armed, he remained calm and polite the entire interview and never reached for his firearm.

Defendant was never placed in handcuffs or otherwise restrained and, in fact, was free to leave even after confessing to these crimes. Prior to Chief Snyder entering the room, Defendant sat in the interview room alone for fifteen (15) minutes with the door open and unguarded. Chief Snyder, after advising him of his *Miranda* rights, explained to Defendant that he was not under arrest, was free to leave, and was not required to speak to him. Despite

his assertions, Defendant appeared calm and cooperative for the entire interview. He was not fidgeting or emotional and, in fact, thanked Chief Snyder several times following the interview.

After Defendant made his confession statements, he asked Chief Snyder what would happen next. Chief Snyder answered truthfully that he was unsure of whether charges would be filed but that, in the event they were, that he would be cooperative with Defendant in his arrest if Defendant remained cooperative with him. These statements were made *after* Defendant's confessions. Even so, a promise to cooperate with the Defendant in the event of his arrest cannot be equated with a promise of leniency.

Defendant clearly felt a need to unburden himself and Chief Snyder acted appropriately and even went a step further in protecting Defendant's rights by reading him his *Miranda* rights. For these reasons, the Court finds that the totality of the circumstances demonstrates that Defendant gave his confessions to Chief Snyder voluntarily and therefore, Defendant's Motion to Suppress is denied.

k. Motion to Reserve Right

Defendant moves to reserve the right to make any additional pre-trial motions pursuant to Pennsylvania Rule of Criminal Procedure 579. This is a standard request and is granted.

III. Conclusion

In summary, for the reasons set forth above, the Court finds that: the Information is legally sufficient in that it contains enough detail to apprise the Defendant of the charges against him; the Commonwealth played no part in the delay between the time of the alleged

incidents and the time the charges were filed and the delay between Defendant's confession and the time the charges were filed was reasonable under the circumstances and Defendant is not prejudiced; the Defendant is not entitled to have this case transferred to the Juvenile Court because he does not meet the definition of "child" under the Juvenile Act; the Commonwealth's Notice of Mandatory Minimum is valid; and Defendant's statements to Chief Snyder on July 16, 2020 were given voluntarily.

Therefore, Defendant's Motion to Dismiss Legally Insufficient Information, Motion to Dismiss Information Because of Excessive and Prejudicial Delay Between the Alleged Incident and Arrest, Motion to Remand Case to Juvenile Division of Common Pleas Court, Motion to Strike Notice of Mandatory Minimum, and Motion to Suppress Statements are denied.

ORDER

AND NOW, this 22nd day of **December, 2021**, upon consideration of Defendant's Omnibus Pre-Trial Motions and for the reasons set forth above, the Court hereby enters the following Order:

1. The following Motions are **DENIED**: Motion to Dismiss Legally Insufficient Information; Motion to Dismiss Information Because of Excessive and Prejudicial Delay Between the Alleged Incident and Arrest; Motion to Remand Case to Juvenile Division of Common Pleas Court; Motion to Strike Notice of Mandatory Minimum; Motion to Suppress Statements.
2. A decision on the Motions to Compel Records of Child Advocacy Center and Disclose CYS Records is deferred pending an in camera review. Upon receipt of the report, documents, information, or records, the Commonwealth shall provide them to the Court at which point a conference will be scheduled.
3. Defendant's Motion for Disclosure of Other Crimes, Wrongs, or Acts Pursuant to Pa.R.Evid. 404(b) is **GRANTED** to the extent the Commonwealth has not already provided such evidence. Any additional 404(b) evidence shall be promptly provided to the Defendant as it becomes available.
4. Defendant's Motion to Disclose Existence Of and Substance Of Promises Of Immunity, Leniency or Preferential Treatment and Complete Criminal History from the National Crime Information Center ("NCIC") and/or the Pennsylvania Justice Network ("JNET") is **GRANTED** to the extent that, if any such information exists, the Commonwealth shall promptly disclose this information

to the Defendant.

5. Defendant's Motion for Request of Timely Notice of Any Expert Testimony is **GRANTED** to the extent that the Commonwealth has any expert witnesses. The Commonwealth shall disclose the requested expert information to the Defendant within (30) days of the date of trial should it decide to call expert witnesses.
6. Defendant's Motion to Reserve Right is **GRANTED**.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: DA (TB)
Edward J. Rymysza, Esq.
Gary Weber, Esq.
Alexandra Sholley – Judge Tira's Office