

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-363-2022
	:	
vs.	:	
	:	CRIMINAL DIVISION
PATRICK C. NELLIS,	:	
Defendant	:	

OPINION

This matter is before the Court on Defendant’s Omnibus Pretrial Motion filed on April 26, 2022. For the reasons set forth below, the Motion is denied.

I. Factual and Procedural Background

On January 14, 2022, Officer Justin Segura of the Tiadaghton Valley Regional Police Department filed a Criminal Complaint charging the Defendant, Patrick C. Nellis, with the following offenses: (1) involuntary deviate sexual intercourse with a child¹; (2) statutory sexual assault²; (3) rape of a child³; (4) unlawful contact with a minor⁴; (5) corruption of minors⁵; (6) indecent assault (under 13 years of age)⁶; and (7) indecent assault⁷. These allegations involve the sexual assault of a minor, A.G., at 43 Second Street, Waterville, Lycoming County, “on or about Wed – 7/1/2009 to Tue – 12/1/2009.” On March 25, 2022, the Commonwealth filed a Criminal Information formally charging the

1 18 Pa.C.S.A. §3123(b) (F1)
2 18 Pa.C.S.A. §3122.1 (F2)
3 18 Pa.C.S.A. §3121(c) (F1)
4 18 Pa.C.S.A. §6318(a)(1) (F1)
5 18 Pa.C.S.A. §6301(a)(1) (F3)
6 18 Pa.C.S.A. §3126(a)(7) (M1)
7 18 Pa.C.S.A. §3126(a)(8) (M2)

Defendant with the above-listed offenses. The Information states that each of the alleged crimes that Defendant is accused of occurred “on or about the 25th day of September, 2018.”

On March 30, 2022, Defendant filed a Request for a Bill of Particulars, seeking the exact time and date in which the Commonwealth claims each of the seven (7) criminal acts occurred. Defendant cited the necessity of the exact date in which the alleged crimes occurred in order to prepare a defense, including, but not limited to, investigating potential alibi defenses, avoiding unfair surprises at trial, and protecting against double jeopardy issues. Also on March 30, 2022, the Defendant served the Commonwealth with an Informal Discovery Request, to which the Commonwealth provided discovery material on or about April 1, 2022. On April 4, the Commonwealth filed a Response to Defendant’s Request for Bill of Particulars, indicating that responses sufficient to allow Defendant to prepare a defense, avoid surprise, and raise pleas of double jeopardy and the statute of limitations were contained in the Affidavit of Probable Cause, the Criminal Information, the police report, and discovery materials which was provided to the Defendant.

Defendant filed his Omnibus Motion on April 26, 2022, containing the following:

1. Motion to Compel Bill of Particulars;
2. Motion in Reserve.

On May 13, 2022, the Commonwealth filed an Answer to the Request for a Bill of Particulars. The Commonwealth indicated that the exact time of each offense could not be ascertained, as the victim was unable to give precise dates and times, in light of her age and the significant amount of time that had passed. The Commonwealth further indicated that all of the offenses occurred before the victim’s thirteenth birthday and that the Affidavit of

Probable cause described the specific criminal conduct alleged.

An argument was held on June 17, 2022, at which time Taylor Beucler, Esquire appeared on behalf of the Commonwealth and Defendant appeared and was represented by Marc A. Decker, Esquire. At the time of the argument, with respect to the Motion in Reserve, the Commonwealth did not take a position but Attorney Beucler indicated that she did not anticipate any late motions being filed based upon the discovery that had been provided. However, this is a standard request from Defendants and to the extent it becomes applicable, the Motion in Reserve is **GRANTED**. Therefore, the Court shall address only the Motion to Compel Bill of Particulars at this time.

II. Discussion

Despite the Commonwealth having filed an Answer to the Defendant's Request for a Bill of Particulars, counsel for the Defendant took the position that it did not satisfy the request or Due Process concerns. The Defendant cites the fact that there are potential alibi defenses to some or all of the charges pursuant to 18 Pa.C.S. §567 that cannot be explored in the absence of a full response to the Request for Bill of Particulars and specificity from the Commonwealth with regard to the date of the charged offenses, which allegedly occurred over a decade ago. (Omnibus Pre-Trial Motion, ¶15). The Commonwealth has taken the position that it should be granted extreme leeway when dealing with child victims in sex cases, and that sufficient information was provided to the Defendant through the discovery process to enable him to prepare a defense, including any available alibi defenses, as well as avoid unfair surprises at the time of trial.

Counsel for the Defendant points to the fact that the dates the alleged offenses

occurred vary significantly between the range contained on the Criminal Complaint and the date provided on the Amended Information. The alleged crime occurred when the victim was approximately 5 years old, and at the time of argument, the Commonwealth indicated that the date on the Amended Information (“before the 26th day of September 2018”) was the date on which the alleged victim turned 13 years of age. The Commonwealth elaborated that this date was selected because the victim being under the age of 13 when the alleged crimes occurred is an element of some of the crimes charged. With that explanation in mind, the Court will focus on whether the five month range within which the crimes were alleged to have occurred which was provided in the Criminal Complaint is too broad to permit the Defendant to prepare a meaningful defense or avoid unfair surprise at trial.

In both his Omnibus Motion and at the time of the argument, counsel for the Defendant argued that Commonwealth v. Devlin, 333 A.2d 888 (Pa. Super. 2006) is controlling. In Devlin, the Supreme Court found that proof that defendant committed the crime on some date within a 14 month period was insufficient to fix the date of the crime with certainty required by due process. The victim in Devlin was a 22 year old man who had the mental ability of a first or second grade child. On April 14, 1972, the victim approached two police officers and told them of the criminal acts perpetrated upon him by Devlin, who had been appointed to help the victim manage his financial affairs. The information charged Devlin with acts of sodomy on or about the evening of April 16, 1972. At trial, the victim testified that “the acts took place in the bedroom of the home of the appellant on an occasion when the victim had gone there to procure meal money and that ‘it was real dark outside.’” Id. at 889. “However, the victim could not give any indication as to the time of year, the

month, day, or date when the crime occurred.” Id. Other witnesses for the Commonwealth gave testimony that Devlin had been managing the victim’s money from February 1971 to April 1972 when the crime was reported. Id. The trial judge ruled that the showing of the commission of the crime within the fourteen-month period, which period was within the five-year statute of limitations period for sodomy, was sufficient. Id. at 890. In reversing the conviction, the Supreme Court held that the fourteen-month span of time was “such an egregious encroachment upon the appellant’s ability to defend himself” that they had to reverse the conviction. Id. at 892. In the present case, the Defendant argues that due process requires that the Commonwealth affix tighter timelines to the date that these offenses allegedly occurred, as it was a single incident that gave rise to the charges and not an ongoing course of conduct.

The Commonwealth counters by arguing “[a]lthough the Commonwealth must fix the date when an alleged offense occurred with reasonable certainty[,] the Commonwealth does not always need to prove a single specific date of an alleged crime.” Commonwealth v. Renninger, 269 A.3d 548, 558 (Pa. Super. 2022) citing Commonwealth v. Einhorn, 911 A.2d 960, 977-978 (Pa. Super. 2006). The Commonwealth has indicated that the supplemental reports that the Defendant received by means of discovery include all information necessary to enable the Defendant to prepare his defense and avoid any unfair surprises at the time of trial. At the time of the argument, the Commonwealth indicated the documents contained a very specific address where the incident allegedly occurred, and outlined who lived in the house at that time.

The pattern of due process is picked out in the facts and circumstances of each case.

Commonwealth v. Devlin, 333 A.2d at 892. Due process is not reducible to a mathematical formula, and therefore the Supreme Court has indicated that it “cannot enunciate the exact degree of specificity in the proof of the date of a crime which will be required or the amount of latitude which will be acceptable.” Id. Certainly, “the Commonwealth need not always prove a single specific date of the crime.” Id. “Any leeway permissible would vary with the nature of the crime and the age and condition of the victim, balanced against the rights of the accused.” Id.

The Court finds that the present case is distinguishable from Devlin. In Devlin, the victim reported a crime, which was determined to have occurred sometime in the 14 months immediately preceding the crime being reported. However, the victim could not provide any specifics about when or where the crime occurred. In the present case, the victim was 5 years old at the time the alleged incident occurred, but it was not reported until over a decade later. Here, however, the Criminal Complaint provides the address where the alleged crime occurred, and the Commonwealth has averred that additional information has been provided through discovery including who was living in the house at the time, and the approximate dates in which they resided there. Given the age of the victim, the length of time since the alleged incident, and the information contained in the criminal complaint and supplemental reports provided through discovery, this Court finds that a range of five months is within the permissible leeway contemplated by the Court in Devlin, balanced against the right of the Defendant to be able to adequately prepare a defense and avoid unfair surprise at trial.

III. Conclusion

In summary, for the reasons set forth above, the Court finds that the range of five months provided by the Commonwealth in which the crimes allegedly occurred is not overly broad and does not violate the Defendant's due process rights.

ORDER

AND NOW, this 18th day of **July, 2022**, upon consideration of Defendant's Omnibus Pre-Trial Motion and for the reasons set forth above, the Defendant's Motion to Compel Bill of Particulars is **DENIED**. The Court finds that the five-month window provided in the Criminal Complaint, coupled with the information provided to the Defendant through discovery, is not overly broad and is sufficient to enable the Defendant to prepare a defense and avoid unfair surprises at trial. Defendant's Motion in Reserve is **GRANTED**.

By the Court,

Ryan M. Tira, Judge

RMT/jel

CC: DA (TB)

Marc A. Decker, Esq – 233 Easterly Parkway, Suite #103, State College, PA 16801

Gary Weber, Esq.

Jennifer E. Linn, Esq.