

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	<b>CR-595-2022</b>
	:	<b>CR-391-2022</b>
<b>v.</b>	:	<b>CR-390-2022</b>
	:	
<b>JAMES LAKES,</b>	:	<b>OMNIBUS MOTION</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

James Lakes (Defendant) was charged under docket #390-2022 with two counts of Aggravated Indecent Assault (F1), one count of Corruption of Minors, and two counts of Aggravated Indecent Assault w/o Consent (F2). The alleged victim in this case is the Defendant's stepdaughter, T.P., and the acts were alleged to have occurred twice while she was swimming at a home in Montoursville Borough in the summer of 2016 while she was approximately 12 years old.

Under docket #391-2022, the Defendant was charged with Corruption of Minors, Aggravated Indecent Assault w/o Consent, 10 counts of Aggravated Indecent Assault – Complainant Less than 13 years old (F2), Endangering the Welfare of Children, and 10 counts of Aggravated Indecent Assault (F1). The alleged victim in this case is the Defendant's stepdaughter, K.P., and the acts were alleged to have occurred in Plunketts Creek Township for a period of approximately two years starting when she was 10 years old.

Under docket #595-2022, the Defendant was charged with Corruption of Minors, Unlawful Contact with a Minor, and two counts of Indecent Assault. The alleged victim in this case is the Defendant's daughter, E.L., and the acts were alleged to have occurred in the spring of 2021 while the victim was approximately 16 or 17 years old and living at the Defendant's home in or around Jersey Shore, Pennsylvania.

The preliminary hearings for #390-2022 and #391-2022 were held together on March 14, 2022. The preliminary hearing for #595-2022, originally scheduled for January 26, 2022, was continued by the defense and held on April 20, 2022. The Defendant filed his Omnibus Pretrial Motion under all three docket numbers on September 8, 2022. A hearing was held on February 28, 2023, after which counsel for the Commonwealth and the Defendant requested the opportunity to submit briefs in support of their respective positions. Defendant's brief was filed on May 5, 2023, and the Commonwealth's brief was filed on June 23, 2023.

The Commonwealth filed a Motion to Consolidate these two matters and argument was held on April 18, 2023. By Order dated July 28, 2023, the Commonwealth's Motion to Consolidate was granted in part and denied in part. Docket #s CR-390-2022 and CR-391-2022 were consolidated and shall be tried together. Docket # CR-595-2022 shall be tried separately. However, as the Omnibus Motion was filed under all 3 dockets it shall be decided collectively and each separate motion contained therein will be addressed individually below.

## **I. MOTION TO SUPPRESS STATEMENTS**

Defendant alleges that he was requested by Officer Justin Segura of the Tiadaghton Valley Regional Police Department, now known as the Lycoming Regional Police Department, to come to the department for an "interview" to discuss allegations made by Defendant's daughter, E.L. Defendant alleges he was not informed by Officer Segura that he was a suspect in a sexual assault investigation and, upon arrival at the station, was escorted to a windowless interrogation room that had jail cells located within the room and located outside of the public access. At the beginning of the interview, at which both Officer Segura and Lycoming County Children & Youth Services ("CYS") caseworker Brittany Spangler were present, Officer Segura read the Defendant his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966).

However, Defendant alleges that Officer Segura assured him he had to read the warnings and only wanted to hear the Defendant's side of the story. According to Defendant's Motion, during the interrogation he admitted to having a playful relationship with his daughter but denied doing anything inappropriate. Defendant was additionally questioned about similar touching allegations by other young females prior to the interview concluding. Those other young females were T.P. and K.P., the stepdaughters of the Defendant, who had reported allegations of inappropriate contact with the Defendant to law enforcement approximately eight years prior but at the time no charges were filed.

Defendant argues that all the statements he provided on that date were obtained in violation of his Fourth, Fifth, Sixth, and Fourteenth Amendment rights of the United States Constitution and Article I, Sections Eight and Nine of the Pennsylvania Constitution and must be suppressed. He alleges that he did not knowingly, willingly, or voluntarily waive his *Miranda* rights when he made the statements and they were made from improper physical and psychological pressure and were not the result of free will. He further argues that at no time was the Defendant advised that his statements were being recorded and no consent to record his interview was requested or obtained by law enforcement. Defendant urges the Court to find that these events violated his state and federal rights to be free from illegal searches. Defendant requests the Court grant his Motion to Suppress and preclude the introduction of them at trial.

Justin Segura, Investigator with the Lycoming Regional Police Department, testified at the Omnibus hearing that he was assigned a child abuse case involving the Defendant and had contact with the CYS caseworker and A.L. in September of 2021. CYS contacted Detective Segura to arrange an interview with the Defendant, and the caseworker also attended the interview so they could both get the same information at the same time. Detective Segura

testified that the interview was conducted at the police station and the Defendant voluntarily drove himself there for the pre-arranged meeting. The room where the interview was conducted had the ability to audio and visually record, and there were visible signs informing occupants of the room of such. (Ex. Com 2, 3). The sign indicated that anything said “can be used against you” as opposed to “will.” Detective Segura testified that although the Defendant was not under arrest at the time of the interview, he was aware of past allegations of a similar nature made against the Defendant and opted to read him his *Miranda* rights to protect them both. He further testified that the Defendant agreed to speak with him after the *Miranda* warning was read and never indicated that he was uncomfortable with the questions and never stated that he wanted a lawyer. Although he was never specifically informed that he was free to leave, the Defendant was not handcuffed and the door to the interrogation room was neither locked nor guarded. A review of the interview shows that the Defendant was calm and relaxed. (Ex. Com. 1). The Court finds that the totality of the circumstances points to the fact that the Defendant’s statements were made knowingly, intelligently, and voluntarily and he understood his rights under *Miranda* and chose to waive them.

Similarly, the Court finds that there was no violation of the Pennsylvania Wiretap Act, which occurs “when the oral communication of another is intercepted, in violation of a justifiable expectation of privacy.” Agnew v. Dupler, 717 A.2d 519, 522 (1998). Despite Defendant’s argument that the failure of Detective Segura to advise him that their communications were being recorded amounted to a violation of the Wiretap Act, the Court finds that there was no reasonable expectation of privacy in a room in a police station where members of multiple investigating bodies were present, along with highly visible camera equipment and signage advising occupants that they were being recorded. As the Court found

the Defendant voluntarily made statements and knowingly waived his *Miranda* rights, he could have opted to remain silent had he not consented to having his statements recorded.

Accordingly, the Defendant's Motion to Suppress is **DENIED**.

## **II. MOTION TO DISMISS INFORMATION BECAUSE OF EXCESSIVE AND PREJUDICIAL DELAY BETWEEN THE ALLEGED INCIDENT AND ARREST**

The Defendant moves to dismiss all counts of the Information under docket CR-391-2022, alleging that the purported incidents were first brought to the attention of law enforcement in January of 2014 but no charges were filed at that time. Defendant alleges that from 2014-2022, law enforcement was aware of the allegations against him, he resided in Lycoming County, he was available for arrest and prosecution and that there is no justification whatsoever for the lengthy delay between the alleged criminal offenses and the Defendant's arrest on the charges. The Defendant alleges he is "grossly and irreparably prejudiced" by the delay including, among other things, being unable to particularize where he was at the time of the purported incidents, any details of the alleged conduct and availability of possible witnesses. The Defendant asserts a violation of the federal constitutional right to due process because of the unreasonable delay in his arrest and filing of charges. *See United States v. Marion*, 404 U.S. 307, 324-325 (1971); *United States v. Lovasco*, 431 U.S. 783 (1971). Additionally, he asserts a violation of the Due Process Clause under Article I, Section 9 of the Pennsylvania Constitution, which requires dismissal where there exists prejudicial delay in arrest or prosecution.

The *Marion* and *Lovasco* decisions "stand for the proposition that to establish a due process violation for a delay in prosecution, a defendant must show that the passing of time caused actual prejudice and that the prosecution lacked sufficient and proper reasons for

postponing the prosecution.” Commonwealth v. Snyder, 713 A.2d 596, 601 (Pa. 1998).

Defendant claims that he satisfied the actual prejudice requirement in that he is a disabled combat veteran whose condition of mental and physical suffering was exacerbated, as he believed baseless old accusations had long been put to rest. Additionally, the Defendant argues that because of the delay potential witnesses who may have knowledge of the alleged events or who could have substantiated the Defendant’s whereabouts were gone and the delay has made it virtually impossible for the Defendant to recall with any specificity any details necessary to assist in the preparation of his defense against the claims. The Court notes that the record is devoid of facts substantiating many of the allegations of prejudice suffered by the Defendant, and while the unavailability of witnesses and the fading of Defendant’s memories regarding the circumstances surrounding the complainant’s accusations are inherently possible due to the passage of time, the Defendant fails to identify specific potential witnesses who are now unavailable or proffering what those witnesses would have testified to and whether it would have been relevant and admissible.

The Court finds that the Defendant has failed to prove at this stage of the proceeding that the delay in the Defendant’s arrest and prosecution caused him actual prejudice. The Commonwealth contends that, even if the Defendant was successful in proving that the passing of time caused actual prejudice, the Defendant would be unable to show that the prosecution lacked sufficient and proper reasons for postponing the prosecution as is required in Snyder, *supra*. The Commonwealth notes that at the time of K.P.’s initial report to law enforcement in 2014, she was 12 years old and reluctant to talk about the allegations because she was told by her mother not to speak of them. (Ex. D2, pg. 16). The case was not prosecuted in 2014 and K.P. was essentially left in the dark about its status, due to her young age and lack of available

resources for her to follow up with. In 2022, K.P., now an adult with more support and confidence, came forward with additional details about her previous allegations and made herself available to law enforcement for interviews in conjunction with more recent allegations against the Defendant. As a result, her case was reignited and charges were approved for the Defendant's alleged actions in 2012.

In analyzing the applicable caselaw with the facts of the present case at CR-391-2022, the Court finds that the Defendant's motion is premature, in that he has not established actual prejudice due to the delay in the filing of charges. Accordingly, the Motion to Dismiss the Information under CR-391-2022 is **DENIED** without prejudice to the Defendant's right to raise the issue at the time of trial if he identifies specific witnesses who are not available to testify due to the Commonwealth's delay in bringing the charges.

### **III. MOTION TO DISCLOSE ANY CYS RECORDS**

Defendant's Motion avers that upon information and belief, all the complainants have met with representatives of Lycoming County Children & Youth Services ("CYS"). Defendant requested copies of any and all reports and information contained in CYS's files relative to any allegation of abuse. Defendant avers that any statements made by all three complainants must be examined to determine if said statements are consistent with other statements and to determine the presence of any prejudice, bias, or motive. In his motion, Defendant requested the Court conduct an *in camera* review of all pertinent CYS records and, if exculpatory material is found, that it be released to him. At the time of the hearing on the Omnibus Motion, the Commonwealth indicated that it would turn over any CYS records in its possession to the Defendant, as it had specific reports which go with Officer Segura's reports. Accordingly, the Defendant's motion is **GRANTED** and the Commonwealth shall promptly provide any CYS

records in its possession at the time of the hearing to the Defendant's counsel. Furthermore, at the time of the hearing the Court granted Defendant's counsel leave to inquire with CYS within thirty (30) days to see if any additional records exist and file additional motion if necessary to obtain said records. As no additional motions were filed with regard to CYS records, the Court will take no further action on the matter.

#### **IV. MOTION TO PRECLUDE REFERENCE TO THE COMPLAINANTS AS A "VICTIM"**

The Defendant's motion requests that the Court bar the Commonwealth and its witnesses from referring to any of the complainants as "victims," alleging that he is cloaked with the presumption of innocence and labeling the complainants as "victims" would be for the sole purpose of invoking sympathy from the jury, thus creating a bias against him and preventing him from obtaining a fair trial. Defendant argues that allowing the Commonwealth to call a complainant a "victim" presupposes the conclusion when it is the Commonwealth's burden to present facts at the trial to convince the jury that the complainant is in fact a victim. Counsel for the Defendant cites numerous cases in his brief in support of his position. Notably, however, none of them which specifically prohibit or find error in the prosecution's use of the word "victim" are Pennsylvania cases.

The Commonwealth, in its brief, points out that Defendant's counsel raised and litigated this very issue in the Lycoming County Courts under an unrelated docket number and that motion was denied. The Commonwealth argues that deference must be awarded to counsel to make their opening and closing statements in a light most favorable to the party they represent and that a cautionary instruction would be more appropriate than precluding the term "victim" altogether.



After careful consideration, the Court finds that there is nothing in the Pennsylvania caselaw which precludes the use of the term “victim” by the Commonwealth or its witnesses. Therefore, the motion is **DENIED**.

**V. MOTION FOR DISCLOSURE OF OTHER CRIMES, WRONGS, OR ACTS PURSUANT TO PR.R.E. 404(b)**

The Defendant’s Omnibus Pretrial Motion requests that the Court issue an order requiring the Commonwealth to disclose to him any evidence which may be admissible at trial pursuant to Pa.R.E. 404(b). At the time of the hearing on the motion, the Commonwealth and counsel for the Defendant indicated that this motion was not in dispute. The Court takes judicial notice that the Commonwealth has not yet filed notice of intent to introduce any 404(b) evidence. Pa.R.E. §404(b) requires only “reasonable notice in advance of the trial.” This Court finds that twenty (20) days is more than “reasonable” for providing advance notice of the intent to introduce other crimes, wrongs, or acts, and would provide sufficient time for the Court to address any motions in limine filed by the Defendant in response thereto. Accordingly, the Defendant’s Motion is **GRANTED** to the extent that the Commonwealth shall disclose any evidence which has not been disclosed to the defendant which may be admissible at trial pursuant to Pa.R.E. §404(b), and to provide a notice of intent to introduce any such evidence at trial at least twenty (20) days prior to trial.

**VI. 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’s Motion requests that he be provided with the names and addresses of and substance of all persons who have been offered immunity, favorable consideration, leniency, or favorable treatment, if any, in this case. Further, Defendant seeks the criminal history of Commonwealth witnesses from NCIC and/or JNET. The Defendant avers that disclosure of any such preferential treatment of any kind, as well as the criminal history of Commonwealth witnesses, is essential to his defense and to effective cross-examination to establish motive or bias of the Commonwealth witness(es).

This matter was neither further addressed by the Defendant nor objected to by the Commonwealth at the hearing on the Omnibus Motion and was not included in either party’s brief. Therefore, the Motion is **GRANTED**. To the extent the Commonwealth intends to call any witnesses who have been offered any favorable treatment of any type in exchange for their testimony, the Commonwealth shall provide Defendant’s counsel with the names and addresses of said witnesses and shall provide the criminal history of each witness from either NCIC or JNET at least thirty (30) days prior to trial.

**VII. MOTION FOR REQUEST OF TIMELY NOTICE OF ANY EXPERT TESTIMONY**

At the conclusion of the hearing on the Defendant’s Omnibus Pretrial Motion, counsel for the Defendant and the Commonwealth indicated that this item was not in dispute. The Commonwealth indicated that they had not identified any expert witness they intended to call at the time of trial, but would share all the information requested in Defendant’s Motion as soon as one was acquired. Accordingly, the Defendant’s Motion is **GRANTED**. If the

Commonwealth intends to rely on any expert testimony at trial, it must timely disclose to the Defendant's counsel the identity of the proposed expert and all information requested in the Defendant's motion that is discoverable pursuant to Pa.R.Crim.P. 573(B).

### **VIII. PETITION FOR WRIT OF HABEAS CORPUS**

The Defendant argues that the Commonwealth's evidence at the preliminary hearing(s) was insufficient as a matter of law to establish a *prima facie* case on all the counts in the case involving E.L. (CR-595-2022) and various counts in the cases involving K.P. (CR-391-2022) and T.P. (CR-390-2022). Where a defendant seeks to challenge the sufficiency of the evidence presented by the Commonwealth, he may do so by the filing of a writ of *habeas corpus*.

*Commonwealth v. Landis*, 48 A.3d 432, 444 (Pa. Super. 2012) (en banc). At a *habeas corpus* hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a *prima facie* against the defendant. See Commonwealth v. Hilliard, 172 A.3d 3, 10 (Pa. Super. 2017)

The definition of *prima facie* is not precise or without difficulty. On the one hand, it has been described as evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime. Commonwealth v. Packard, 767 A.2d 1068, 1070 (Pa. Super. 2001), *abrogated on other grounds by* Commonwealth v. Dantzler, 135 A.3d 1109, 1112 n.5 (Pa. Super 2016).

On the other hand, it has been defined as evidence, which if accepted as true, would warrant submission of the case to a jury. Packard, *id.*; Commonwealth v. Karetny, 880 A.2d 505, 514 (Pa. 2005); Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2001).

The weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person has committed the offense. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2011). The evidence must be read in a light most favorable to the Commonwealth and inferences reasonably drawn from the evidence of record which would support a verdict of guilty, must be given effect. Id.

The Court will address each case separately.

**a. E. L. (CR-595-2022)**

In this case the Defendant was charged with Corruption of Minors, Unlawful Contact with a Minor, and two counts of Indecent Assault. Defendant argues that the evidence was insufficient to establish a *prima facie* case on all three charges.

The offense of corruption of minors is defined as “[w]hoever, being of the age of 18 years and upwards, by any course of conduct in violation of Chapter 31 (relating to sexual offenses) corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of an offense under Chapter 31 commits a felony of the third degree.” 18 Pa.C.S. §6301(a)(1)(ii). A person commits the offense of unlawful contact with a minor if he is intentionally in contact with a minor for the purpose of engaging in an activity prohibited under any of the offenses enumerated in Chapter 31 (relating to sexual offenses), and either the person initiating the contact or the person being contacted is within the Commonwealth. 18 Pa.C.S. §6318(a)(1). A central element of each of these charges is the requirement of conduct violating Chapter 31, relating to sexual offenses.

The Defendant argues that the Commonwealth failed to produce any evidence that there was any sexual touching of E.L. or any violation of Chapter 31 relating to sexual offenses,

alleges that slapping a child's buttocks over clothing, unhooking a bra from the back over clothing, and placing a hand on the top of a child's waist-buttocks area, without more, is not sexual in nature, let alone a "sexual offense."

A person is guilty of indecent assault "if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person . . ." 18 Pa.C.S. §3126. Indecent contact is defined as "[a]ny touching of the sexual or intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person." 18 Pa.C.S. §3101. Intimate parts are not limited to the genitals and areas of the chest and buttocks are commonly reserved for sexual arousal.

Touching of an intimate part of the victim's body by *any* part of the defendant's body, without consent, for sexual arousal, constitutes indecent contact. *See, Commonwealth v. Grayson*, 549 A.2d 593, 596 (Pa. Super. 1988). The Court finds it important to note that E.L. testified that the conduct the Defendant displayed with her (unhooking her bra, slapping her buttocks, etc.) was conduct he also displayed with his wife, but not with any of the males in the home. Viewing the evidence in the light most favorable to the Commonwealth and drawing all reasonable inferences therefrom, the Court finds that the Commonwealth met its burden of establishing a *prima facie* case with regard to Indecent Assault. As such, the Commonwealth has also met the requirement of conduct violating Chapter 31, relating to sexual offenses, which is necessary to sustain the charges of Corruption of Minors and Unlawful Contact with a Minor at this stage of the proceeding and the Court will deny the Defendant's request to dismiss the Information as it pertains to E.L.'s docket number.

**b. T. P. (CR-390-2022)**

The Defendant was charged under docket #390-2022 with two counts of Aggravated Indecent Assault (F1), one count of Corruption of Minors, and two counts of Aggravated Indecent Assault w/o Consent (F2). The basis for T.P.'s allegations are during a family event at a relative's pool in 2016 when she was approximately 10 years old, the Defendant would pick her up by her hips and place his hands under her buttocks and lift her up over his head to throw her. (Prelim. Hrg. 3/14/22, pg. 20). On one or two occasions on that particular date while doing this, his thumbs touched her vagina under her bathing suit. Id. She testified that her thumbs never went inside her vagina but that it was not an accident because he moved her bathing suit to make sure his fingers were touching her vagina. Id. at 20, 26. T. P. did not tell anyone at the time due to the situation with her sister K.P. and nothing ever coming of it. She testified that "I didn't think it mattered really." Id. at 27.

Defendant argues that both counts of Aggravated Indecent Assault and the Corruption of Minors charge should be dismissed. He argues that the Commonwealth did not provide sufficient evidence to meet the essential element of penetration to sustain the Aggravated Indecent Assault charges. Aggravated indecent assault is defined as "a person who engages in penetration, however slight, of the genitals or anus of the complainant with a part of the person's body for any purpose other than good faith medical, hygienic, or law enforcement procedures." 18 Pa.C.S. §3125. As the Commonwealth correctly points out in its brief, penetration is not limited to actual insertion into the vaginal opening; rather, crossing from the inner thigh into the labia establishes penetration under the law. Commonwealth v. Hawkins, 614 A.2d 1198, 1200 (Pa. Super. 1992).

The Defendant next argues that the Commonwealth failed to establish the required *mens rea*, in that he acted intentionally, knowingly, or recklessly to support the Aggravated Indecent Assault charge. While the Defendant characterizes the Defendant's conduct as "a non-sexual accidental grazing of a body part that occurred during a fast-paced, good-natured horseplay in a slippery environment with adolescents," T.P.'s testimony at the preliminary hearing, when viewed in the light most favorable to the Commonwealth and drawing all reasonable inferences therefrom, is sufficient at this stage of the proceeding to establish that the Defendant acted intentionally, knowingly, or recklessly. Whether T.P. is credible is a matter for the jury to determine but at this point the Court finds that the Commonwealth has established a *prima facie* case with regard to Aggravated Indecent Assault. As such, the Aggravated Indecent Assault charges satisfy the underlying sexual offense requirements necessary to sustain the Corruption of Minors charge at this stage of the proceeding and the Court will deny the motion to dismiss with regard to the counts requested by the Defendant in CR-390-2022.

**c. K. P. (CR-391-2022)**

Under docket #391-2022, the Defendant was charged with Corruption of Minors, Aggravated Indecent Assault w/o Consent, 10 counts of Aggravated Indecent Assault – Complainant Less than 13 years old (F2), Endangering the Welfare of Children, and 10 counts of Aggravated Indecent Assault (F1). These charges stem from an occasion when she was approximately 10 years old around the summer of 2012 and the Defendant "forced me to touch his penis" while she was in her bed and he as wearing a bathrobe. ((Prelim. Hrg. 3/14/22, pg. 4-7). She further testified that on another occasion she sat on the Defendant's lap while she was fully clothed and he was wearing a bathrobe and he "slid his hands underneath my underwear onto my vagina and touched me." *Id.* at 7. K.P. testified this type of incident occurred more

than once, and he exhibited a pattern where he would “pretty much just rubbed my vagina, like he would move his hand around.” *Id.* at 9. The Defendant argues that the Commonwealth both failed to establish Aggravated Indecent Assault and overcharged the number of counts regarding that allegation.

As discussed above, aggravated indecent assault is defined as “a person who engages in penetration, however slight, of the genitals or anus of the complainant with a part of the person’s body for any purpose other than good faith medical, hygienic, or law enforcement procedures.” 18 Pa.C.S. §3125. Here, as in T.P.’s case, the Commonwealth need not prove actual insertion into the vaginal opening in order to establish a *prima facie* case. Again, when viewing the evidence in the light most favorable to the Commonwealth, the Court finds that it has met its burden. The credibility of the witness will be a matter for a jury to determine, and the Commonwealth will bear the burden of proving beyond a reasonable doubt the number of counts charged at the time of trial. For purposes of the Defendant’s *habeas corpus* motion, however, the Court will deny the Defendant’s request.

#### **IX. 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 motion is **GRANTED**, but only to the extent that any motion is based on information or discovery provided by the Commonwealth after February 28, 2023, the date of the argument on Defendant’s Omnibus Pre-Trial Motion.

#### **ORDER**

**AND NOW**, this 28<sup>th</sup> day of **December, 2023**, upon consideration of Defendant’s Omnibus Pre-Trial Motions, the argument of counsel, and for the reasons set forth above, the following are **GRANTED**, subject to any limitations contained herein:



1. Motion to Disclose CYS Records;
2. Motion for Disclosure of Other Crimes, Wrongs, or Acts Pursuant to Pa.R.E. 404(b)
3. 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”)
4. Motion for Request of Timely Notice of Any Expert Testimony

Upon consideration of Defendant’s Omnibus Pre-Trial Motions, the argument of counsel, and for the reasons set forth above, the following are **DENIED**:

1. Motion to Suppress Statements
2. Motion to Preclude Reference to the Complainants as a “Victim”
3. Motion to Dismiss Information Because of Excessive and Prejudicial Delay  
Between the Alleged Incident and Arrest
4. Petition for Writ of Habeas Corpus

By the Court,

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Ryan M. Tira, Judge

RMT/jel

cc: DA  
Edward J. Rymsza, Esquire  
Gary Weber, Esquire  
Jennifer Linn, Esquire