

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

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL DIVISION
	:	NO. CR-64-2025
v.	:	
	:	
SHAUN M. CORMIER,	:	Omnibus Motion
Defendant	:	

OPINION AND ORDER

This matter was before the Court on July 28, 2025, on Defendant’s Omnibus Motion, filed on May 7, 2025, by and through counsel, Matthew Welickovitch, Esquire. At the hearing on the Motion, Defendant appeared personally represented by Attorney Welickovitch, and Eric Birth, Esquire, appeared on behalf of the Commonwealth.

Defendant is charged in this matter with the following: Count One—Sexual Assault¹, a felony of the second degree; Count Two—Indecent Assault Without Consent of Other², a misdemeanor of the second degree; and Count Three—Simple Assault³, a misdemeanor of the second degree.

A preliminary hearing was held on January 9, 2025, all counts were bound over for trial. On January 27, 2025, Defendant waived his formal arraignment and was placed on the trial list. On March 3, 2025, the Court approved a stipulated order that provided the Defendant a sixty (60) day extension of time to file his Omnibus Motion. Defendant filed his omnibus motion on April 30, 2025. The Motion is timely.

Background

By way of further background, Agent Kitco of the Williamsport Bureau of Police filed the criminal complaint against the Defendant in this matter on December 30, 2024. The

¹ 18 Pa.C.S. §3124.1.

² 18 Pa.C.S. §3126(a)(1).

³ 18 Pa.C.S. §2701(a)(1).

criminal complaint alleges that on July 10, 2023, the Complainant went to the Defendant's residence at 726 Washington BLVD, Williamsport, Lycoming County, Pennsylvania. After arriving at the Defendant's apartment, the Complainant and the Defendant engaged in consensual, intimate acts leading to consensual sexual intercourse. During intercourse, the Complainant alleges that she told the Defendant that she no longer wished to have sex with him by telling him to stop, however, the Defendant failed to do so. The Complainant also alleges that following sexual intercourse, the Defendant forced her to engage in oral sex. The Complainant walked home that evening, and made several stops along her way.

Five days following the alleged rape, the Complainant went to UPMC Williamsport for examination, at which time, she consented to photographs, but refused the forensic examination by the SANE nurse. The Complainant claimed she received various injuries as a result of the assault five days prior. The injuries included a broken sacrum, broken rib, and dislocated labrum. On this same date, Complainant attempted to report her assault to law enforcement, but she was "turned away." Law enforcement contacted the Complainant on July 19, 2023, and again on August 11, 2023. Following an interview with Officer Huling, Officer Huling contacted ADA Phoebe Yates to discuss the Complainant's case, and initially, the charges were approved. On August 16, 2023, Agent Kitco spoke with the Complainant, and later obtained search warrants for August and September of 2023.

On May 21, 2024, First Assistant DA Martin Wade approved charges in this case. On December 30, 2024, an arrest warrant was issued, and the charges were filed in this case.

The Omnibus Motion contains a Motion to Dismiss for Prejudicial Delay, a Motion to Obtain Further Medical Records of the Complainant, and a Motion for Change of Venue. The parties reached an agreement on the Motion to Obtain Further Medical Records of the

Complainant, and the Court issued a separate Order⁴ directing UPMC to provide digital copies of all medical records of the complainant from July 12, 2022, through July 12, 2024, to the Lycoming County District Attorney's Office to provide to Defense counsel.

At the time of the hearing on the Motion, the Commonwealth presented as witnesses Officer Jacob Huling and Agent Laura Kitco. The Defendant presented as witnesses Officer Joseph Ananea, Katie Pratt, and Rachel Gething. Generally, Officer Huling and Agent Kitco testified about the investigation and filing of charges in this matter and Officer Ananea testified to procedures within the Williamsport Bureau of Police relating to the retention of evidence and the delivery of evidence for ongoing investigations. Katie Pratt was previously employed as a Lycoming County Probation Officer supervising Defendant, and she testified to events within her scope of employment relating to the pre-investigatory and investigatory phases of this matter. Rachel Gething, investigator for the Lycoming County Public Defender's Office testified regarding her investigation into the acquisition of certain discovery items and the pretrial publicity at issue in Defendant's Motion.

Defendant submitted the following exhibits that were admitted to the record: Defense Exhibit No. 1⁵, Officer Huling Body Camera Footage, 08/12/2023, Defense Exhibit No. 2⁶, Email Correspondence, 02/14/2025-02/20/2025, Defense Exhibit No. 3⁷, NorthCentralPA Social Media Post "Child Rapist Accused of Sexual Assault wants Lighter Bail Conditions," 04/11/2025, Defense Exhibit No. 4⁸, NorthCentralPA Social Media Post, "Community

⁴ See Order from July 28, 2025.

⁵ No objection from the Commonwealth.

⁶ No objection from the Commonwealth.

⁷ Commonwealth objected on hearsay grounds to the comments attached to the article and that there is no offer from Defense the commenters are residents within this venue, the Court admitted the Exhibit over the objection of the Commonwealth.

⁸ Commonwealth objected on hearsay grounds to the comments attached to the article and that there is no offer from Defense the commenters are residents within this venue, the Court admitted the Exhibit over the objection of the Commonwealth.

Rallies Against Bail Conditions,” 03/14/2025, Defense Exhibit No. 5⁹, NorthCentralPA Social Media Post, “Bail Given to Child Rapist Accused of Sexual Assault,” 02/14/2025, Defense Exhibit No. 6¹⁰, WILQ Backyard Broadcasting Local News, 01/16/2025, Defense Exhibit No. 7¹¹, NorthCentralPA Social Media Post, “Child Rapist Accused of Another Sexual Assault Headed to Trial, 01/14/2025, and Defense Exhibit No. 8, Certified Transcript of Bail Hearing held on 02/10/2025.

Argument and Analysis

I. Defendant’s Motion to Dismiss due to Prejudicial Delay in the Filing of Charges

Defendant seeks dismissal of all charges as a result of prejudicial delay in the filing of the charges in such a way as to be in violation of the Defendant’s rights under the constitutions of the United States and Pennsylvania. Defendant’s claim arises from the fourteenth (14) month delay from when the alleged incident occurred in mid-July of 2023 to Defendant’s arrest in late-December of 2024. Defendant further asserts that neither the complaint nor the testimony provided at the hearing on the Motion further explain the delay. Defendant argues that the substantial delay is unjustifiably prejudicial, and has caused actual prejudice which has irreparably impaired his ability to defend against the allegations in the instant matter.

The Commonwealth argued the record demonstrates that Defendant suffered no actual prejudice and the investigative timeline was the product of a reasonable and ongoing investigation—not prosecutorial misconduct or bad faith.

⁹ Commonwealth objected on hearsay grounds to the comments attached to the article and that there is no offer from Defense the commenters are residents within this venue, the Court admitted the Exhibit over the objection of the Commonwealth.

¹⁰ No objection from the Commonwealth.

¹¹ Commonwealth objected on hearsay grounds to the comments attached to the article and that there is no offer from Defense the commenters are residents within this venue, the Court admitted the Exhibit over the objection of the Commonwealth.

A. Standard of Review

United States v. Marion, 404 U.S. 307 (1971) was the formative case to confront whether a defendant's federal constitutional rights are violated by extensive delay between a criminal act and the indictment or arrest of a defendant for the criminal act. *Commonwealth v. Scher*, 569 Pa. 284, 303 (2002). In *Marion*, the United States Supreme Court held that the Sixth Amendment's speedy trial guarantee does not apply until the defendant becomes an "accused," that is, arrested, charged, or otherwise subjected to formal restraint prior to the arrest. *United States v. Marion*, 404 U.S. 307, 325 (1971). Rather, the Court opined that:

...the Due Process Clause of the Fifth Amendment would require dismissal of the indictment if it were shown at trial that the pre-indictment delay...caused substantial prejudice to appellees' rights to a fair trial and that the delay was an intentional device to gain a tactical advantage.

United States v. Marion, 404 U.S. 307, 324 (1971)

The Court emphasized that "the statute of limitations...is the primary guarantee against bringing overly stale charges," *id* at 322-24, and that the due process clause "has only a limited role to play" where the prosecution is brought within that statutory period. *Id*.

The Supreme Court revisited the question of pre-arrest delay and reaffirmed its holding in *Marion* in *United States v. Lovasco*, 431 U.S. 783, 796 (1977), holding that prosecuting a defendant following an investigative delay "does not deprive him of due process, even if his defense might have been somewhat prejudiced by the lapse in time." The Court explained that investigative delay is "fundamentally unlike delay undertaken by the Government solely 'to gain a tactical advantage over the accused' because a prosecutor abides by the principles of fair play and decency if he refuses to accuse a defendant until the prosecutor is satisfied that he should prosecute and will be able to promptly establish his burden of proof at trial. *Id* at 796. The Court cautioned against penalizing prosecutors who

defer to actions for investigative purposes because such action by a court would cheapen the goal of “orderly expedition” to that of “mere speed” by dismissing cases due to a pre-arrest delay. *Id.* at 795, citing *Smith v. United States*, 360 U.S. 1, 10 (1959). In *Marion*, the Court conceded that it “...could not...determine when and in what circumstances actual prejudice resulting from pre-accusation delay requires the dismissal of the prosecution.” *United States v. Marion*, 404 U.S. 307, 324 (1971). The Court reiterated that statement, and explained their position remained the same in *Lovasco*, leaving to the lower courts “the task of applying the settled principles of due process that [it has] discussed to the particular circumstances of individual cases.” *U.S. v. Lovasco*, 431 U.S. 783, 797 (1977).

Thus, Pennsylvania courts adopted the *Marion/Lovasco* test through *Commonwealth v. Snyder*, 552 Pa. 44, 713 A.2d 596 (1998) and its progeny. The Pennsylvania Supreme Court interpreted the *Marion/Lovasco* standard in *Snyder* “as requiring an evaluation of: (1) whether the pre-arrest delay resulted in actual prejudice to the appellant, and (2) whether the Commonwealth’s reasons for postponing the appellant’s arrest were proper.” *Commonwealth v. Snyder*, 713 A.2d 596, 605 (Pa. 1998).

Following *Snyder* and *Commonwealth v. Scher*, 569 Pa. 284 (2002), the Pennsylvania Superior Court reviewed the issue of the burden of establishing the propriety of a pre-arrest delay in *Commonwealth v. Wright*, 865 A.2d 894 (Pa. Super. 2004). In *Wright*, the Superior Court evaluated the majority’s opinions, noting that there was not a consensus on the issue of burden of proof. In Madame Justice Newman’s lead opinion, in quoting *United States v. Crouch*, 84 F.3d 1497 (5th Cir.1996), she suggested that the prevailing federal standard is that the defendant bear the burden of proving both requirements under the *Marion/Lovasco* test as adopted in *Snyder*. In a footnote, the Court explained that the “logic of *Crouch* [and related cases cited] was circumscribed by the following condition: [w]e recognize that neither *U.S. v.*

Marion, 404 U.S. 307 (1971) nor *U.S. v. Lovasco*, 431 U.S. 783 (1977) is crystal clear on this issue [of burden of proof], and each opinion contains some language that give comfort to either view. However, we believe that the better reading of these opinions is that the Supreme Court, *in instances where the statute of limitations has not run*, has refused to recognize a claim of preindictment delay absent some bad faith or improper purpose on the part of the prosecution.” *Wright, supra*, 865 A.2d 894, n.18 (2004) citing *Commonwealth v. Scher*, 569 Pa. 284 (2002) quoting *Crouch, supra*, 84 F.3d 1497 (5th Cir.1996)(emphasis in original)(parallel citations omitted). The Court further explained that:

the rationale [in *Crouch*] was founded upon the legislative fixing of a period in which to bring a prosecution, which carries with it an imprimatur of due process. In such situations, it is jurisprudentially sound to place the burden on the defendant to overcome such presumptive legitimacy. Where, however, as in the case of homicide, the legislature has opted to place ‘no limitation’ on the ability of the Commonwealth to bring a prosecution, there is no defined period which can be presumed to satisfy due process.

Wright, supra, 865 A.2d 894, n.18 (2004) citing 42 Pa.C.S. Section 5551.

Where the accusation occurs within the relevant statute of limitations period, however, a defendant may still seek dismissal of the charges when he can establish that the delay between the commission of the offense and the accusation denied him due process of law. *Wright* and *Snyder* were both homicide cases, as well as *Scher*, and therefore not subject to a statute of limitations analysis. Thus, in *Wright*, the Superior Court determined from the procedure set forth in *Snyder*, there should be a shifting burden where the initial burden is upon the accused to establish that the pre-arrest delay caused actual prejudice, and the burden of establishing that the delay in prosecution had a reasonable basis be on the Commonwealth since “substantially all of the evidence is in the hands of the Commonwealth.”

Commonwealth v. Wright, 865 A.2d 894, 902 (Pa. Super. 2004) quoting *Commonwealth v. Snyder*, 713 A.2d 596, 586 (Pa. 1998).

Understandably, the parties disagree about the applicable standard and the issue of the burden of proof, here. However, Defendant's charges were brought well within the applicable statute of limitations. Accordingly, under the rationale as set forth in above, it stands that the burden of proof for both prongs falls on the Defendant. If the Defendant fails to establish actual prejudice, the inquiry ends. *Commonwealth v. Loudon*, 803 A.2d 1181, 1187 (Pa. Super. 2002)(holding four-year delay not unconstitutional where defendant could not show exculpatory evidence lost).

B. Actual Prejudice

Presently, Defendant argued that he was actually prejudiced as a result of the fourteen-month pre-arrest delay because evidence material to his ability to defend himself against the charges is lost. The lost evidence includes: (1) the formal recording of the formal interview conducted by Officer Huling with the Complainant and (2) video footage from the locations and times consistent with the allegations and in accordance with the testimony given by the Complainant of the events on the date in question. Defendant takes further issue with the evidence that remains, including (1) an incomplete SANE report; (2) Officer Huling's report after the interview was conducted; and (3) additional recorded law enforcement interactions with the Complainant.

Regarding the lost police interview, Defendant argues that his circumstances are unique to those in the catalog of case law touching on a 5th Amendment Due Process violation. In *Snyder*—a prosecution for a homicide in Luzerne County, charges for which were not filed against the defendant until eleven years after the event—the defendant appealed, in part, on the basis that the delay in filing caused him prejudice because several witnesses were unavailable who were beneficial to his defense, and the trial court ruled that he was not prejudiced. The Pennsylvania Supreme Court reversed on a determination that the

defendant suffered actual prejudice as prescribed under *Marion/Lovasco*. The Court found that the jury was presented with two opposite theories of the victim's mental state, and that key witnesses were unavailable or passed away. Moreover, witnesses who had testified at trial suffered obvious memory issues. The *Snyder* case was remanded for the trial court to decide on the second prong. Defendant asserts that his case differs because his case will not be evaluated with witnesses' fading memories, but rather the non-existence of an extremely important piece of evidence. Defendant further asserts that the lost evidence has substantially advantaged the Commonwealth because the witness will, potentially, not be subjected to impeachment by prior inconsistent statement in such a way that the prior statements can be used as substantive evidence¹².

It is Defendant's position that the Commonwealth's delay in bringing the charges against Defendant has actually prejudiced his ability to defend against the charges because key evidence is lost from the record and the evidence that is left tactically advantages the Commonwealth.

The Commonwealth argues that the Defendant has not demonstrated actual prejudice or improper motive. The Commonwealth argued that what would have been part of the "missing record" (the police interview and additional recordings) is duplicative because substantial contemporaneous documentation of the Complainant's report was produced, including medical records, the SANE findings, and additional recorded interviews with the Complainant. The Commonwealth asserted that the "missing record" was preserved through written reports and corroborating testimony. Additionally, the Commonwealth argued that

¹² Defendant argues *Commonwealth v. Lively*, 610 A.2d 7, 10 (Pa. 1992), wherein the Pennsylvania Supreme Court held that "prior inconsistent statements may be used as substantive evidence only when the statement is given under oath at a formal legal proceeding; or a statement that is a contemporaneous verbatim recording of the witness's statements." (Defendant's Brief at 8).

the fourteen-month-long pre-arrest delay was for the purpose of investigation, not to gain a tactical advantage in the prosecution of this case.

The Commonwealth further argued that Officer Huling testimony established that he immediately prepared a written narrative report summarizing the lost interview, which was provided to and reviewed by Agent Kitco and the District Attorney's Office. (Commonwealth's Brief at 5). Moreover, it is the Commonwealth's position that Officer Huling's report captured the substance of the victim's statement and was consistent with her subsequent SANE findings which were also confirmed by Agent Kitco's review of Officer Huling's written report. The Commonwealth avers that the preservation of the interview through contemporaneous documentation does not render Defendant actually prejudiced because of the absence of the recorded interview.

Regarding Defendant's claim that the delay caused the loss of video footage from the locations and times consistent with the allegations and in accordance with the testimony given by the Complainant of the events on the date in question that harms Defendant's ability to defend himself, the Commonwealth argued that the claim is speculative. More specifically, the Commonwealth argued that there is no evidence such footage ever existed citing to *Commonwealth v. Tedesco*, 2017 WL 1181226 (Pa. Super. Mar. 20, 2017) where the Court found that "the unavailability of potential witnesses or collateral material, without proof that such evidence would have benefited the defense, is not actual prejudice." (Commonwealth's Brief at 5).

"In order for a defendant to show actual prejudice, he or she must show that he or she was meaningfully impaired in his or her ability to defend against the state's charges to such an extent that the disposition of the criminal proceeding was likely to be affected."

Commonwealth v. Loudon, 803 A.2d 1184, 1187 (Pa. Super. 2002) quoting *Commonwealth v.*

Scher, 569 Pa. 284, 803 A.2d 1204, 1222 (2002) citing *Jones v. Angelone*, 94 F.3d 900, 907 (4th Cir.1996). Examples of meaningful impairment have included: the loss of documentary evidence or the unavailability of a key witness. *Id* (internal citations omitted). Speculative or conclusory claims of possible prejudice as a result of delay are not sufficient to establish actual prejudice. *Id*. Additionally, the defendant bears the burden of demonstrating that the lost testimony or information is not available through other means. *Id*. To prevail on a due process claim, with respect to the loss or destruction of evidence in establishing prejudice, a defendant must show that the such loss or destruction was related to the delay in the filing of charges. *Commonwealth v. Scher*, 569 Pa. 284, 315 (2002).

After a review of the parties' arguments contained in their briefs and the testimony presented at the hearing on the motion, the Court finds the following. It is established that the recorded comprehensive, initial police interview conducted with the Complainant on August 13, 2023, is lost. The testimony is clear that operator error¹³ and/or the internal retention policies of the Williamsport Bureau of Police resulted in such a loss because recordings that were not properly saved were retained for sixty (60) days in 2023. Additionally, Officer Ananea did not receive a request for the interview until February 2025, which was at least a month after the Defendant's arrest. (N.T. at 74:1-2). Defendant has established that a key piece of evidence is missing. Nonetheless, the Commonwealth asserted that supplemental reports exist with regard to the interview, and can be used at trial.

To establish a due process violation with respect to lost or destroyed evidence, the Defendant must also show that such action was related to the delay in the filing of charges. The testimony establishes that the evidence was lost because of operator error and retention

¹³ Officer Huling testified that he saved the video as an "interview" within their system and in accordance with the procedure at the time in 2023. (N.T. at 28:19-24). Officer Ananea's testimony as the evidence custodian revealed that if a recording was properly saved as an "interview" in 2023, the recording would have been saved indefinitely. (N.T. at 72:1-11).

periods. Moreover, it is the testimony of Officer Ananea that no request was made for the recording until after the Defendant was arrested. Additionally, Officer Ananea testified that he had no requests for recovery of the recording, (N.T. at 76:19-21), or a directive to contact the department's information technology services to determine if ever there was a recording even made on August 13, 2023. (N.T. at 75:16-22). Therefore, it appears that the lost evidence was not related to the delay, but rather inaction on the case resulted in the loss of evidence. Such a loss has, historically, not been persuasive in pre-arrest due process claims.

Regarding Defendant's assertion that the loss of the recording creates a substantial advantage for the Commonwealth in its prosecution of this case, it is unclear how the Commonwealth is advantaged. The record has established that the Commonwealth does not have access to the recording either. Agent Kitco did not necessarily recall watching the interview. (N.T. at 46:12-15). Also, when the recording was requested by the Public Defender's Office in February of 2025, the recording did not exist in records' retention. Accordingly, it is unclear how the prosecution would be substantially advantaged without having reviewed the recording, either.

Despite Defendant's claim that the remaining record is prejudicial to the Defendant, Defendant has not established, at this time, that he will be barred completely from an effective cross-examination of the witness due to the lost interview recording. In *Commonwealth v. Lively*, 610 A.2d 7, 10 (Pa. 1992), the Pennsylvania Supreme Court held that "prior inconsistent statements may be used as substantive evidence only when the statement is given under oath at a formal legal proceeding; or a statement that is a contemporaneous verbatim recording of the witness's statements." The Complainant testified at the preliminary hearing. In his brief, the Defendant argues that the victim could potentially

not be subjected to impeachment by prior inconsistent statement in any material manner. (Defendant's Brief at 8).

The loss of the video footage from the locations and times consistent with the allegations and in accordance with the testimony given by the Complainant of the events on the date in question is a collateral loss that the Defendant has not established the existence thereof or that the evidence would have been beneficial to his defense.

Accordingly, because the Defendant has not established that the lost interview was related to the delay nor that the Commonwealth will be substantially advantaged as a result at trial, the Defendant has not established actual prejudice. Defendant has the opportunity to address the missing record through curative jury instructions and appropriate objections at trial. The charges were brought well within the applicable statute of limitations. Because the Defendant has not established actual prejudice, the Court need not move forward with an analysis of the Commonwealth's reasons for the 14-month delay in the filing of charges in this matter. Accordingly, the Defendant's Motion to Dismiss for Prejudicial Delay is **DENIED.**

II. Defendant's Motion for Change of Venue due to Prejudicial Pre-Trial Publicity

Defendant filed his Motion for Change of Venue arguing that the case against him has received extensive local media coverage, most notably through NorthCentralPA.com. Defendant provided four articles, written on January 14, 2025, February 14, 2025, March 14, 2025, and April 11, 2025, referencing Defendant as "Child Rapist," (Defense Ex. Nos. 3, 5, 7), relating back to a 2007 conviction of Defendant. Defendant submitted additional articles that refer to him as a "child rapist," including an article about a community protest against bail for "pedophiles" that used a current photograph and Defendant's name. The article detailed the protest that was organized within Lycoming County following a ruling on bail

modification in this matter. Moreover, the article used a current photograph of Defendant and his name in the article. Defendant further argues that the reference to a past conviction with the chosen phrase “child rapist” is inherently prejudicial and has had a prejudicial effect on Defendant’s opportunity to an impartial jury.

The Commonwealth disputes that the articles posted are inherently prejudicial, and thus, change of venue is not required out of necessity. More specifically, the Commonwealth argued that, “Defendant’s generalized assertions of pretrial publicity and ‘community bias’ in Lycoming County are wholly unsupported by evidence,” because he did not cite media coverage that was sensational, inflammatory, or slanted toward conviction and he does not identify any juror exposure or fixed community sentiment that would impede an impartial jury. (Commonwealth’s Brief at 9). The Commonwealth categorized the articles as “brief procedural updates following [Defendant’s] arraignment.” (Commonwealth’s Brief at 10). Moreover, the Commonwealth argued that “the record lacks any evidence of community hostility, public demonstrations, or widespread dissemination of prejudicial content.” (Commonwealth’s Brief at 10).

Pennsylvania Rules of Criminal Procedure, Rule 584, governs a motion for change of venue or venire and authorizes such relief only “when it is determined after hearing that a fair and impartial trial cannot otherwise be had in the county where the case is currently pending.” A trial court tasked with determining whether a venue is appropriate must exercise sound discretion. *Commonwealth v. Cohen*, 489 Pa. 167, 178 (1980). The Pennsylvania Supreme Court has consistently held that venue change is not a matter of right, but only of necessity. Venue change is only required when pretrial publicity or community sentiment is so pervasive that it renders the empaneling of a fair and impartial jury impossible. *See*:

Commonwealth v. Stevens, 670 A.2d 623 (Pa. 1996); *Commonwealth v. Hawkins*, 701 A.2d 492 (Pa. 1997); *Commonwealth v. Beasley*, 678 A.2d 773 (Pa. 1996).

Because there are “instances where the pre-trial publicity is so pervasive and inflammatory as to be inherently prejudicial, the requirement that a defendant demonstrate actual juror prejudice is obviated.” *Commonwealth v. Daugherty*, 493 Pa. 273, 277 (1981) citing *Commonwealth v. Rigler*, 448 Pa. 441, (1980). In assessing whether pretrial publication is inherently prejudicial, the court looks to whether the articles meet any of the following factors: “sensational, inflammatory and slanted toward conviction, rather than factual and objective; revealed the accused has a criminal record; referred to confessions, admissions or reenactments of the crime by the accused; or derived from reports from police and prosecuting officers.” *Commonwealth v. Daugherty*, 493 Pa. 273, 277 (1981) quoting *Commonwealth v. Kivlin*, 406 A.2d 799, 803 (Pa. Super. 1979). If even one of the aforementioned elements exists, “a change of venue is required only if the publicity has been so extensive, sustained and pervasive, without sufficient time between publication and trial for the prejudice to dissipate, that the ‘community must be deemed to have been saturated with it.’” *Id.* “[W]here pre-trial publicity, even though objective, contains information such as prior unrelated criminal conduct, a defendant may be prejudiced thereby. This is especially so if the publicity is widespread and continues to a point proximate to trial.” *Commonwealth v. Daugherty*, 493 Pa. 273, 278 (1981).

On its face, the pretrial publicity is inherently prejudicial. First, the articles specifically state “Child Rapist Accused of Sexual Assault Wants Lighter Bail Conditions” (Defense Exhibit No. 5) and “Bail Given to Child Rapist Accused of Sexual Assault” (Defendant Exhibit No. 3). Defense Exhibit No. 5 not only refers back to a prior conviction, but uses the phrase “child rapist” in the title, opens the article with details of his prior

conviction, and closes the article with details of his prior conviction. The article purports to report on the bail modification ordered in the subject matter, but insofar as bail is concerned, the reporter states: "...A ruling this week to modify bail freed him once again. The 38-year-old Cormier's \$100,000 monetary bail—set in January of by Judge Kirsten Gardner—was wiped away by President Judge Nancy Butts, who changed it to unsecured on February 12[, 2025,] Cormier posted the same day and was released." There is nothing more regarding the bail hearing that occurred before the Honorable Nancy Butts. The reporter continues to write about the alleged details of the subject incident. The phrasing the reporter uses, including "freed again" and "wiped away" are not indicative of objective, factual reporting.

The Court further disagrees with the Commonwealth that there was no effect on the community or widespread dissemination. NorthCentralPA is a digital news source that reports on events and criminal activity in the northern region of the Commonwealth, and controls a Facebook page that provides links to the specific articles. The news source is based in the city of Williamsport, Lycoming County, Pennsylvania, which makes it an especially popular resource for residents within this venue. The digital formatting of the Facebook posts provides for a public comment section that manifests as an open forum wherein individuals and groups can post comments to the articles. Accordingly, the Court disagrees with the Commonwealth's assertion related to "community bias" because Exhibit No. 3, "Child Rapist Accused of Sexual Assault Wants Lighter Bail Conditions," opens again with details of Defendant's prior conviction and subsequent period of incarceration and new allegations. Contained throughout the article are links to articles related to the current, including a link to Exhibit No. 4, "Community Rallies Against Bail at Courthouse." Exhibit No. 4 refers to Defendant's bail, the current allegations, and the prior conviction and uses a current booking photograph while reporting on the community protests centering on abolishing bail.

While the Court concludes that the pretrial publicity is “sensational, inflammatory and slanted toward conviction,” *Daugherty, supra*, the Court must also determine whether “the publicity has been so extensive, sustained and pervasive, without sufficient time between publication and trial for the prejudice to dissipate, that the ‘community must be deemed to have been saturated with it.’” *Id.* “In determining whether pretrial publicity entitled [defendant] to a change of venue, we must examine the nature and the extent of the publicity, as well as the presence or absence of a cooling-off period.” *Commonwealth v. Chambers*, 546 Pa. 370, 385 (1996). “[e]ven if there has been inherently prejudicial publicity which has saturated the community, no change of venue is warranted if the passage of time has significantly dissipated the prejudicial effects of the publicity.” *Id.* citing *Commonwealth v. Gorby*, 588 A.2d 902, 906 (Pa. 1991) and *Commonwealth v. Breakiron*, 571 A.2d 1035, 1037 (1990).

The Commonwealth argued that a sufficient “cooling off” period has occurred, plus, *voir dire* and other judicial safeguards can be implemented to provide adequate protection to Defendant against potential juror bias. (Commonwealth’s Brief at 10). The Commonwealth argues the proper remedy for potential juror bias is individualized *voir dire*, not wholesale displacement of venue. (*Id.* citing *Commonwealth v. Weiss*, 7776 A.2d 958 (Pa. 2001); *Commonwealth v. Marinelli*, 690 A.2d 203 (Pa. 1997).

Here, the articles admitted to the record at the time of the hearing on the Motion were between three and six months old, respectively. Additionally, there is no date certain for Defendant’s trial in this matter. Thus, the Court can determine that a lapse of such time is a sufficient cooling off period between the pretrial publicity and any potential for a scheduled trial date. Moreover, the Court agrees with the Commonwealth that individual *voir dire* and other judicial safeguards can be implemented to manage jury selection and excuse any

potential juror with preconceived opinions or exposure to prejudicial publicity. In consideration of the forgoing, at this time, the Defendant's Motion for Change of Venue is **DENIED** without prejudice to renew again based on any additional facts developed during *voir dire*.

By the Court,

Ryan M. Tira, Judge

RMT/asw

CC: DA (MW); CA; PD(MW)

Gary Weber, Esq.—Lycoming Reporter