

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>: No. 98-11,710</b>
	:
	:
<b>vs.</b>	<b>: CRIMINAL</b>
	:
<b>CARL GEARHART,</b>	<b>: Omnibus Pre-Trial Motion</b>
<b>Defendant</b>	:

**OPINION AND ORDER**

This matter came before the Court on the defendant's Omnibus Pre-Trial Motion. The Court notes that there are only two (2) portions of the defendant's Omnibus Pre-Trial Motion still outstanding: (1) the request for Habeas Corpus relief with respect to Count 3, indecent exposure; and (2) the Motion to Dismiss for Violation of Due Process.

The Court will deny the request for Habeas Corpus relief. The Court agrees with the Commonwealth's position that it does not need to prove actual affront or alarm to obtain a conviction for indecent exposure. Rather, it only needs to prove that the exposure occurred under circumstances in which the actor knew his conduct was likely to cause affront or alarm. Here, the defendant allegedly exposed his genitals to a fifteen (15) year old female. Since this case involves sexual contact with a minor, the Court believes the jury could infer that the conduct was likely to cause affront or alarm, but they would not be required to do so.

The Court also will the defendant's Motion to Dismiss for Violation of Due Process. The Court finds that the Commonwealth has provided the defendant with adequate information regarding the time frame of the charges given the facts and

circumstances of this case. The defendant is charged with offenses involving vaginal sexual intercourse, oral sex, digital penetration with a minor as providing alcoholic beverages to a minor. In her preliminary hearing testimony, the minor victim stated that the sexual acts began sometime after her fifteenth birthday (April 7, 1998) and continued until early June 1998. N.T. at pp. 10-11, 16. The acts occurred when her mother was at work and no one else was present in the house, usually on a Sunday, Monday, Tuesday, or Wednesday, and not on the weekends. See N.T. at p.17. She further testified that the defendant engaged in sexual intercourse with her approximately 50 times (N.T. at p.3), oral sex five (5) or six (6) times (N.T. at pp.3-4), digital penetration approximately 50 times (N.T. at pp. 4-5) and supplied alcoholic beverages 25-30 times (N.T. at p. 5). There was one instance of sexual intercourse at a river lot sometime in May 1998, probably about half way through the month. N.T. at pp. 14-15.

In a situation such as this where the crimes are continuing over a period of time and the victim is a child, the Courts have give the Commonwealth a reasonable measure of flexibility in ascertaining the dates of the offenses and have not required the Commonwealth to establish the specific dates of each occurrence. The Court finds the Commonwealth has provided as much specificity as it can and the information is sufficient for the defendant to prepare a defense. Thus, the Court finds that the defendant's Due Process rights have not been violated. See Commonwealth v. Luktisch, 680 A.2d 877, 879-80 (Pa.Super. 1996); Commonwealth v. Szarko, 420 Pa.Super. 153, 616 A.2d 23 (1991); Commonwealth v. Fanelli, 377 Pa.Super. 555, 547 A.2d 1201 (1989)(en banc), alloc. denied, 523 Pa. 642, 565 A.2d 1165 (1989); Commonwealth v. Niemetz, 282

Pa.Super. 431, 422 A.2d 1369 (1980).

**ORDER**

AND NOW, this \_\_\_\_ day of April, 1999, the Court DENIES the defendant's request for Habeas Corpus relief and Motion to Dismiss for Violation of Due Process contained in the defendant's Omnibus Pre-Trial Motion.

By The Court,

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Kenneth D. Brown, J.

cc: Ronald Travis, Esquire  
District Attorney(LR)  
Work file  
Gary Weber, Esquire (Lycoming Reporter)