

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

vs.

GERALD A. SANDUSKY

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Nos. CP-14-CR-2421-2011 &
CP-14-CR-2422-2011

Commonwealth Attorneys:

Defense Attorney:

Joseph McGettigan, Esquire
Jonelle H. Eshbach, Esquire
Joseph L. Amendola, Esquire

COMMONWEALTH'S ANSWER TO
DEFENDANT'S OMNIBUS PRETRIAL MOTION

Respondent, the Commonwealth of Pennsylvania, represented by Attorney General Linda L. Kelly, by and through the undersigned counsel, respectfully submits this response to the Defendant's Omnibus Pretrial Motions, and in furtherance thereof, respectfully answers and avers as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted in part and denied in part. It is admitted that this Court entered an Order on February 13, 2012 regarding Defendant's Motion to Compel Pretrial Discovery. It is also admitted that the Commonwealth has provided the defense with discovery at various dates. Any inference that the Commonwealth fulfilled its discovery obligations only as a result of

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compulsion by a court order is denied. The Commonwealth has fulfilled its discovery and *Brady* obligations and will continue to do so as relevant and pertinent evidence is uncovered.

7. Denied as stated. This Court's Order of February 13, 2012 is a matter of record that speaks for itself.
8. Denied as stated. The Commonwealth's Bill of Particulars and response to the Order of Court directing pretrial discovery are matters of record that speak for themselves.
9. Denied as stated. The Commonwealth's response of February 13, 2012 is a matter of record that speaks for itself.
10. Admitted in part and denied in part. It is admitted that the Commonwealth continues to provide evidence and information to the defense pursuant to its well defined discovery and *Brady* obligations. Additional relevant and pertinent information is being provided as it is discovered and authenticated through the Commonwealth's ongoing investigation. The Commonwealth specifically denies any averment or implication that the Commonwealth has withheld discoverable materials from the defense.
11. Admitted.
12. Denied as stated. This Court's Order of March 15, 2012 is a matter of record that speaks for itself.
13. Admitted in part and denied in part. It is admitted that on or about March 6, 2012, the Defendant filed a response to the Commonwealth's response to the Court's Order directing pretrial discovery. The remaining characterizations of

this Court's Order are denied as stated since that court order is a matter of record that speaks for itself.

14. Admitted.

15. The Commonwealth incorporates its answers to paragraphs 1 through 14 above as if fully set forth herein.

16. Admitted.

17. Admitted.

18. Admitted in part, Denied in part. It is admitted Defendant made the request, Application, and Motion he lists in this paragraph. The Commonwealth is without knowledge of, and therefore denies, his account of the rationale for so doing.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Denied. The Commonwealth specifically denies that the "allegations set forth in Criminal Information No. CP-14-CR-2421-2011 relating to Counts 1 through 12 and dealing with . . . Victims 9 and 10 are so general and non-specific that the Defendant cannot adequately prepare a defense to those charges." By way of further response, Pennsylvania Rule of Criminal Procedure 560(B) provides that criminal information "*shall be valid and sufficient in law if it contains*" the elements set out in that rule. Id.(emphasis added). The Commonwealth submits each of the necessary criteria are met by

the instant Information. Further, Defendant waived his Preliminary Hearing in this matter, thus conceding the existence of a prima facie case supporting each count listed in the instant Information. The Commonwealth submits he cannot now be heard to complain the Information is insufficient, having conceded the ability of the Commonwealth to prove each count if submitted to a fact-finder.¹

24. Denied. The Commonwealth specifically denies that the “allegations set forth in Criminal Information No. CP-14-CR-2422-2011 relating to counts 1 through 6 inclusive [sic] dealing with . . . Victim 1, Counts 12 through 15 dealing with . . . Victim 3, Counts 16 through 23 dealing with . . . Victim 4, Counts 24 through 27 dealing with . . . Victim 5, and Counts 32 through 35 dealing with . . . Victim 7 are so general and non-specific that the Defendant cannot adequately prepare a defense to those charges.” By way of further response, Pennsylvania Rule of Criminal Procedure 560(B) provides that criminal information “*shall be valid and sufficient in law if it contains*” the elements set out in that rule. *Id.*(emphasis added). The Commonwealth submits each of the necessary criteria are met by the instant Information. Further, Defendant waived his Preliminary Hearing in this matter, thus conceding the existence of a prima facie case supporting each count listed in the instant Information. The Commonwealth submits he cannot now be heard to complain the Information is insufficient, having conceded the ability of the Commonwealth to prove each count if submitted to a fact-finder.

¹ Additionally the Commonwealth notes Defendant does not include the Courts of which he complains in this section in his Petition for Writ of *Habeas Corpus*.

25. Denied. As stated above, the Information is sufficient in law under Pa.R.Crim.P. 560(B). By way of further response, this court, in its Order of March 13, 2012, denied Defendant's Application for a More Specific Bill of Particulars.
26. Denied. By way of further response, it is specifically denied that the Commonwealth has "violated fundamental notions of fairness embedded in our legal process." Defendant's hyperbolic posturing is belied by the language of our Rules of Criminal Procedure and our jurisprudence. As our Superior Court has held "the Commonwealth must be afforded broad latitude when attempting to fix the date of offenses which involve a continuous course of criminal conduct. This is especially true when the case involves sexual offenses against a child victim." *Commonwealth v. Brooks*, 7 A.3d 852, 858 (Pa.Super. 2010)(internal citations omitted). Defendant cannot exploit the appalling breadth of his own criminal conduct by claiming it encompasses so long a period as to hamper his defense.
27. Denied. It is specifically denied Defendant's "due process rights . . . will be violated if he is forced to proceed to trial." By way of further response, Defendant does not point to a specific manner in which he believes his due process rights would be infringed upon, other than to complain the Information is insufficiently specific. As our Superior Court has held "[d]ue process is not reducible to a mathematical formula and the Commonwealth does not always need to prove a specific date of an alleged crime. Additionally, indictments must be read in a common sense manner and are not

to be construed in an overly technical sense.” *Id.* at 7 A.3d 852, 858 (internal citations and quotations omitted). The Commonwealth submits Defendant’s interposition of this objection to the Information is an empty tactical maneuver, bereft of a basis in law.

28. Denied. By way of further response, the only alleged infirmity in the Information identified by the Defendant in this section is his dissatisfaction with the date range provided. As our Superior Court has written “[w]e do not believe that it would serve the ends of justice to permit a person to rape and otherwise sexually abuse [a] child with impunity simply because the child has failed to record in a daily diary the unfortunate details of [his or her] childhood”. *Commonwealth v. Niemetz*, 422 A.2d 1369, 1373 (Pa.Super. 1980).

WHEREFORE, the Commonwealth respectfully submits Defendant’s Motion to Dismiss should be DENIED.

29. The Commonwealth incorporates its answers to paragraphs 1-28 above as if fully set forth herein.
30. Admitted.
31. Admitted.
32. The averments of this paragraph are denied as improper conclusions of fact, law and legal argument, requiring no response. By way of further response, it must be noted that the defendant asserts an improper basis for habeas relief throughout paragraphs 30-40. A pretrial claim that “the Commonwealth cannot sustain sufficient evidence at his trial to warrant presenting certain

charges to the jury” is without legal authority. A pre-trial petition for writ of habeas corpus is similar in purpose to a preliminary hearing. Commonwealth v. Scott, 578 A.2d 933 (Pa. Super. 1990), *appeal denied*, 598 A.2d 283 (Pa.1991). The focus of a pre-trial habeas corpus petition is on whether the Commonwealth possesses sufficient evidence to require a defendant to be held in government custody until he may be brought to trial. *Id.* at 347, 578 A.2d at 937. A petition for writ of habeas corpus “is the proper means for testing the finding that the Commonwealth has sufficient evidence to establish a *prima facie* case.” *Commonwealth v. Morman*, 541 A.2d 356, 357 (Pa. Super. 1988). Proof of a *prima facie* case consists of the following: “the Commonwealth is required to present evidence with regard to each of the material elements of the charge and to establish sufficient probable cause to warrant the belief that the accused committed the offense.” *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). *Accord Commonwealth v. Neckerauer*, 617 A.2d 1281 (Pa. Super. 1992). In this case, the defendant expressly waived his right to test whether the Commonwealth possessed *prima facie* evidence at a preliminary hearing. The defendant cannot now subvert that waiver by demanding what would be the equivalent of a second opportunity to have a preliminary hearing. The defendant has waived that privilege. *Commonwealth v. Druce*, 796 A.2d 321, 325 n. 2 (Pa. Super. 2002).

33. Admitted in part and denied in part. The recitation of charges related to alleged Victim 2 is admitted. The remaining characterizations of the Defendant are denied as improper conclusions of fact, law and legal argument.

34. The averments in this paragraph are denied as conclusions of law and/or legal argument.
35. It is admitted only that a copy of Michael McQueary's testimony of December 16, 2011 is attached to the Defendant's Pretrial Motions as Exhibit A. The remaining averments of this paragraph are denied as conclusions of law and/or legal argument. By way of further response, the defense appears to argue that an eyewitness who sees an adult man having sex with a child cannot provide sufficient evidence of the conduct of crimes. It is noteworthy that the defense provides no legal support for such a specious assertion. It is well established through Pennsylvania Law that circumstantial evidence alone can sustain the Commonwealth's burden of proof. *Commonwealth v. Leatherbury*, 469A2d.263,266 (Pa. Super. 1983). It is likewise well established that a sole eyewitness can provide sufficient evidence to support a conviction. *Id.*; *In re: Commonwealth v. Gonzales*, 405A2d 529,530 (Pa. Super. 1979). It should also be noted that the Defendant had the opportunity to test whether the Commonwealth could establish prima facie evidence at a preliminary hearing but choose to waive that right. In so doing, the Defendant has waived his ability to seek habeas relief for an alleged failure to establish sufficient prima facie evidence. *Commonwealth v. Druce*, 796 A.2d 321, 325 n. 2 (Pa. Super. 2002).
36. The recitation of charges relating to alleged Victim 6 is admitted. The remaining characterizations of this paragraph are denied as conclusions of law and/or legal argument. By way of further response, again the Defendant

attempts to make an anticipatory sufficiency of evidence argument despite having specifically waived his right to test the Commonwealth's evidence at a preliminary hearing.

37. The recitation of charges relating to alleged Victim 8 is admitted. The remaining averment of this paragraph is denied as a conclusion of law and/or legal argument.

38. The averments in this paragraph are denied as a conclusion of law and/or legal argument. By way of further response, the statements of the eyewitness to the assault on Victim 8 constitute allowable hearsay pursuant to a specific exception to Pennsylvania's hearsay rule. *See*, Pennsylvania Rule of Evidence 803(2).

39. The averments in this paragraph are denied as a conclusion of law and/or legal argument. By way of further response, the statements of the eyewitness to the assault on Victim 8 constitutes allowable hearsay pursuant to a specific exception to Pennsylvania's hearsay rule. *See*. Pennsylvania Rule of Evidence 803(2).

40. Denied as improper conclusions of fact, law and/or legal argument.

WHEREFORE, the Commonwealth respectfully requests this Court to dismiss Defendant's Motion for Habeas Corpus relief.

41. The Commonwealth incorporates its answers to paragraphs 1-40 above as if set forth fully herein.

42. Admitted.

43. Denied. It is specifically denied that the "statute of limitations should have

run [sic] prior to the Defendant's arrest on November 5, 2011." By way of further response, Defendant's Motion evinces an unawareness of 42 Pa.C.S.A. § 5552(c)(3), which provides, in relevant part:

(C) Exceptions.--If the period prescribed in subsection (a), (b) or (b.1) [major sexual offenses] has expired, a prosecution may nevertheless be commenced for:

3) Any sexual offense committed against a minor who is less than 18 years of age any time up to the later of the period of limitation provided by law after the minor has reached 18 years of age or the date the minor reaches 50 years of age. As used in this paragraph, the term "sexual offense" means a crime under the following provisions of Title 18 (relating to crimes and offenses):

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 4304 (relating to endangering welfare of children).

Section 6301 (relating to corruption of minors).

Section 6312(b) (relating to sexual abuse of children).

Section 6320 (relating to sexual exploitation of children).

Id.(emphasis added.) The General Assembly included this exception to address the circumstances peculiar to prosecution of sexual crimes against children.² Accordingly, the Commonwealth wishes to emphasize the various limitations periods applicable to major sexual offenses against adults under current § 5552(b.1) and its predecessor are irrelevant. The only relevant limitations period is the one governing major sexual crimes against *minors*, and that period is set out in the above cited exception. The Commonwealth respectfully submits all the Victims in this matter fall under the ambit of this exception.

By way of further response, the prior version of 42 Pa.C.S.A §5552, to which Defendant wishes to appeal, itself contains an exception for sexual crimes against minors. That exception is identical to the current provision, save for the addition of the alternative period of tolling up to the minor's fiftieth birthday; that additional language was added in 2006.³ Let us assume, *arguendo*, that the prior five-year limitation period applicable to the lead counts of Involuntary Deviate Sexual Intercourse was in effect during the charged period for the Victims listed by the Defendant in his Motion. Even under the prior law, the then-existing exception provides the limitation period is tolled until the minor's eighteenth birthday. Therefore, the Commonwealth has five years from the oldest victim's eighteenth birthday to commence prosecution, according to Defendant's argument. The oldest Victim in this matter turned eighteen on September 9, 2001. Section 5552 was amended, as

² See e.g., *Commonwealth v. Loudon*, 803 A.2d 1181, 1185 (Pa. 2002).

³ See P.L. 1581, No. 179, § 7.

Defendant points out, in August of 2002 to provide for a twelve year statute of limitation for major sexual offenses. It is well settled law that “[w]here the legislature amends a statute of limitations to provide a longer limitations period ... before the prior limitations period has expired, in the absence of language in the statute to the contrary, the amendments will be construed so as to extend the period within which the prosecution is to be commenced.” *Commonwealth v. Morrow*, 682 A.2d 347, 349 (Pa.Super. 1996). Therefore, even under Defendant’s specious argument, the Commonwealth need only show that an action could lawfully have been maintained against him at the time the new, enlarged, limitation period took effect. Because less than one year had elapsed from the oldest Victim’s eighteenth birthday at the time the new twelve year period took effect, it is that twelve year period which applies, even under Defendant’s argument.

Therefore, under either the law presently in effect, or the prior law to which Defendant seeks to appeal, Defendant’s argument must fail.

44. Denied. As stated above, Defendant presents no argument on the relevant limitations period, namely that provided by 42 Pa.C.S.A. § 5552(c)(3).

WHEREFORE, the Commonwealth respectfully submits Defendant’s Motion to Dismiss should be DENIED.

45. The Commonwealth incorporates its answers to paragraphs 1-44 above as if fully set forth herein.
46. Admitted.
47. Denied. The Commonwealth has fully complied with its discovery and *Brady*

obligations. As previously stated, the Commonwealth will continue to meet its obligations and disclose all relevant and pertinent information as it is uncovered in its ongoing investigation. The Commonwealth also specifically notes that the mere request by the Defendant for information does not make that information disclosable under Pennsylvania Law. Information that does not exist, is not in the Commonwealth's possession, is otherwise privileged, or limited from disclosure by law (i.e. Grand Jury materials) circumscribes the Commonwealth's ability to respond to the defense's requests. The defendant's mere memorialization of a request in a letter does not mean that the information exists or is disclosable.

WHEREFORE, the Commonwealth respectfully requests that this Court dismiss the Defendant's Motion for Relief of under Rules 573 and 579.

48. Commonwealth incorporates its answers to paragraphs 1-47 above as if fully set forth herein.
49. Denied. The Commonwealth, to date, has fully met its discovery and *Brady* allegations in this matter.
50. Denied as stated. The Commonwealth specifically denies any averment that it has withheld discoverable material from the defense. However, as previously stated, the Commonwealth anticipates the disclosure of additional information as a result of its ongoing investigation of this matter.
51. Denied as stated. The Commonwealth specifically denies any averment that it has withheld discoverable material from the defense. However, as previously stated, the Commonwealth anticipates the disclosure of additional information

as a result of its ongoing investigation of this matter.

WHEREFORE, the Commonwealth respectfully requests that this Court enter an order allowing the Defendant leave to file an amended Omnibus Pretrial Motion Nunc Pro Tunc within fourteen (14) days after receipt of additional discovery materials from the Commonwealth.

52. The Commonwealth incorporates its answers to paragraphs 1-51 above as if fully set forth herein.

53. This paragraph recites facts that the Commonwealth can neither verify nor refute. As such, no response is required.

54. Admitted.

55.-59. This paragraph recites facts that the Commonwealth can neither verify nor refute. As such, no response is required.

60. Admitted.

61.-64. This paragraph recites facts that the Commonwealth can neither verify nor refute. As such, no response is required.

65. Denied. It is specifically denied that the testimony of Timothy Curley and Gary Schultz could be utilized as truthful impeachment evidence against witness Michael McQueary. These two individuals have been charged with perjury as a result of their allegedly false testimony before a Grand Jury about what Michael McQueary told them about defendant's criminal actions.

66. Denied. It is specifically denied that the testimony of Timothy Curley and Gary Schultz could be utilized as truthful impeachment evidence against witness Michael McQueary. These two individuals have been charged with perjury as a result of their allegedly false testimony before a Grand Jury about

what Michael McQueary told them about defendant's criminal actions.

67. Denied. It is specifically denied that the testimony of Timothy Curley and Gary Schultz could be utilized as truthful impeachment evidence against witness Michael McQueary. These two individuals have been charged with perjury as a result of their allegedly false testimony before a Grand Jury about what Michael McQueary told them about defendant's criminal actions.

68. Denied. The averments in this paragraph are denied as conclusions of law and/or legal argument.

69. It is specifically denied that the alleged unavailability of defendants Curley and Schultz could establish the basis for a continuance in this matter.⁴

WHEREFORE, the Commonwealth requests this Honorable Court enter an order granting a modest continuance in this case.

70. The Commonwealth incorporates its answers to paragraphs 1-69 above as if set forth herein.

71. Denied as stated. The Commonwealth's Response is a matter of record that speaks for itself.

72. Denied. The Commonwealth is specifically bound by its legal obligations created by the Investigating Grand Jury Act and the court orders of the Supervising Judge of the pertinent Statewide Investigating Grand Jury. Such a legal obligation and compliance therewith does not constitute a refusal "to advise the defendant of any additional alleged misconduct in his possession."

The Defendant is not entitled to any relief because of the Commonwealth's

⁴ However, the Commonwealth does believe that, for reasons other than those asserted by defendant herein, a sufficient basis does exist for a modest and reasonable continuance of the trial date in this matter.

compliance with its legal obligations. The Grand Jury evidence and testimony in question is being specifically reviewed by the Supervising Judge of the Statewide Investigating Grand Jury and appropriate disclosures will be made pursuant to that Court's rulings. By way of further response, the Commonwealth notes that Pennsylvania Rule of Criminal Procedure 230 (which constitutes a specific exemption to Pennsylvania Rule of Criminal Procedure 573) clearly defines one of the limits on disclosure created as a result of a grand jury investigation.

73. The averments in this paragraph are conclusions of law and/or legal argument. WHEREFORE, the Commonwealth respectfully requests that this Court enter an Order dismissing Defendant's Motion to Compel the Commonwealth to provide the Defendant with a written statement of uncharged misconduct evidence.

74. The Commonwealth incorporates its answers to paragraphs 1-73 above as if set forth herein.

74.-84. The Commonwealth concurs with defense requests for individual voir dire of prospective jurors. The Commonwealth suggests that the procedures for individual voir dire in this case be determined as a result of consultations between the Commonwealth and the defense and the Court.

WHEREFORE, the Commonwealth respectfully requests this Court authorize individual voir dire in this case.

85. The Commonwealth incorporates its answers to paragraphs 1-84 above as if set forth herein.

86.-93. The Commonwealth concurs with the defense of Motion for Sequestration of the Trial Jurors under Pennsylvania Rule of Criminal Procedure 642.

WHEREFORE, the Commonwealth respectfully requests this Court order Sequestration of the Jurors in this matter pursuant to Pennsylvania Rule of Criminal Procedure 642.

94. The Commonwealth incorporates its answers to paragraphs 1-93 above as if set forth herein.

95. Admitted.

96. The averments in this paragraph are denied as conclusions of law and/or legal argument. At the outset, it is important to note that defendant's assertions of error are essentially in a vacuum. He does not provide, with any specificity, what deficiency exists within the four corners of the warrant. This is a serious problem because all he presents are conclusory pronouncements of illegality. By way of further response, the four corners of the warrant executed on Defendant's home on June 21, 2011, contain sufficient probable cause and specific particularity for the seizure of evidence within Defendant's home.⁵

97. Denied. The warrant in question was legally executed on Defendant's residence.

98. The averments in this paragraph are denied as conclusions of law and/or legal argument.

99. The averments in this paragraph are denied as conclusions of law and/or legal argument.

⁵ The simple introduction of the warrant and affidavit may well defeat, under PA law, defendant's claim of bald illegality. Cite *Com. v. Iacavazzi*, 443 A.2d 795 (Pa.Super. 1981). ("When a defendant files a motion to suppress evidence Commonwealth bears burden of going forward to establish that the allegedly suppressible evidence was not obtained in violation of defendant's rights; merely introducing the warrant and affidavits may be sufficient to meet a "bald statement" that Commonwealth failed to show probable cause . . .")

WHEREFORE, the Commonwealth respectfully requests that this Court dismiss the Defendant's motion to suppress evidence seized pursuant to the search warrant executed on June 21, 2011.

100. Admitted.

101. Admitted.

102. Admitted.

103. Admitted.

104. Denied as a conclusion of fact to which no response is required.

105. a. It is denied that the interceptions were in any way illegal or improper. It is absolutely admitted that the defendant "was unaware of and did not consent to the interceptions."

b. Denied. The recordings in question were consensual recordings made with the full and voluntary consent of the assault victims who participated.

c. Denied. The appropriate approvals were all obtained for the consensual intercepts.

d. Denied. The Commonwealth fully complied with its obligations under the Wiretapping and Electronic Surveillance Control Act. 18 Pa.C.S.A. § 5704.

e. Denied. The consensual intercepts in question were properly maintained.

f. Denied as an improper conclusion of law. A consensual intercept in Pennsylvania does not require a search warrant. *Commonwealth v. Taylor*, 622 A.2d 329, 333 (Pa. Super. 1993).

106. The averments of this paragraph are denied as conclusions of law and/or legal argument.

WHEREFORE, the Commonwealth respectfully requests that this Court enter an order dismissing the Defendant's Motion to Suppress a recorded oral communications.

107. The Commonwealth incorporates its answers to paragraphs 1-107 above as if set forth herein.

108. Denied. The averments of these paragraphs present conclusions of fact, law, and legal argument to which no response by the Commonwealth is required. By way of further response, the Commonwealth does not dispute the Defendant's right to pursue an alibi defense so as long as it complies with Pennsylvania Rule of Procedure 305 and any other pertinent legal standards. *See generally, Commonwealth v. Poindexter*, 646 A.2d 1211 (Pa.Super 1994). The Commonwealth further notes that Defendant must provide sufficient notice and specificity regarding any alibi defense to insure the Commonwealth adequate time to investigate its veracity.

109.-114. Denied. See answer to paragraph 108.

115. The Commonwealth incorporates its answers to paragraphs 1-114 above as if set forth herein.

116. Admitted.

117. The Commonwealth fully intends to comply with its obligations to disclose criminal records and certain juvenile adjudications pursuant to Pennsylvania Rule of Evidence 609.

118. The Commonwealth fully intends to comply with its obligations to disclose

criminal records and certain juvenile adjudications pursuant to Pennsylvania Rule of Evidence 609.

WHEREFORE, the Commonwealth respectfully avers that it is not necessary for this Court to compel the Commonwealth to meet its obligation in this regard.

119. The Commonwealth incorporates its answers to paragraphs 1-118 above as if set forth herein.

120. Admitted.

121. Admitted.

119-128. Denied as stated. At the time the Defendant was interviewed by Investigator Schreffler, the Defendant was not in custody and had no reason to believe that any custodial relationship existed between himself and the police. Under the circumstances of the interview, the police had no obligation to advise Sandusky of his Miranda Rights. *See Generally, Commonwealth v. Perry*, 710 A.2d 1183, 1186 (Pa. Super. 1998).

129. The averments of this paragraph are denied as conclusions of law and/or legal argument.

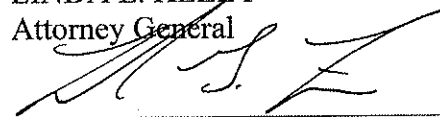
WHEREFORE, the Commonwealth requests that this Court enter an order dismissing Defendant's Motion to Suppress Statements.

Respectfully submitted,

LINDA L. KELLY
Attorney General

Dated: March 29, 2012

By:


Frank G. Fina
Chief Deputy Attorney General
Criminal Prosecutions Section

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. CP-14-CR-2421-2011;
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: :
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DEBRA C. IMEL
PROTHONOTARY
CENTRE COUNTY, PA

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CERTIFICATE OF SERVICE

I, Frank G. Fina, Chief Deputy Attorney General, Attorney for the Commonwealth, at Attorney General's Office, 16th Floor, Strawberry Square, Harrisburg, Pennsylvania, 17120, hereby certify that I served a true and correct copy of the Commonwealth's Answer to Defendant's Pretrial Omnibus Motion on:

Joseph L. Amendola, Esquire
110 Regent Court
Suite 202
State College, PA 16801-7966

by email and first class mail, postage prepaid at Harrisburg, Pennsylvania on the date noted below.

I certify under penalty of perjury that the foregoing is true and correct.

Date: March 29, 2012

BY:



FRANK G. FINA
Chief Deputy Attorney General
Criminal Prosecutions Section
Attorney for the Commonwealth