**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA<br><br>Appellee<br><br>v.<br><br>WALTER DONALD BRADSHAW<br><br>Appellant | IN THE SUPERIOR COURT OF PENNSYLVANIA<br><br><br><br><br><br>No. 936 WDA 2013 |

Appeal from the Judgment of Sentence February 11, 2013
In the Court of Common Pleas of Bedford County
Criminal Division at No(s): CP-05-CR-0000445-2010

BEFORE: GANTMAN, P.J., BENDER, P.J.E., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J.: **FILED DECEMBER 23, 2014**

Walter Donald Bradshaw appeals from his judgment of sentence imposed by the Court of Common Pleas of Bedford County following his convictions for rape of a child[1] and related offenses. Upon review, we affirm.

On November 5, 2010, Trooper Matthew Auker of the Pennsylvania State Police filed a criminal complaint detailing allegations of Bradshaw sexually assaulting H.O., an unrelated, minor female, over a period of approximately two years. H.O. was 10-years-old when the alleged sexual abuse began.

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[1] 18 Pa.C.S. § 3121(c).

Bradshaw, a traveling pastor, met H.O. in 2006 or 2007 at a church revival meeting. After this meeting, H.O.'s mother, G.O., became very close with Bradshaw and his wife. G.O. would arrange for H.O. to spend time with Bradshaw, including overnight visits. One such visit occurred on April 2, 2009 at the Janey Lynn Hotel in Bedford Township.[2] During that visit, H.O. alleges that Bradshaw got undressed and began touching and kissing her. H.O. tried to hide in the bathroom, but Bradshaw brought her back into the bedroom, undressed her and initiated sexual contact despite H.O.'s protests.

On February 14, 2011, Bradshaw pled not guilty to 24 separate charges stemming from the aforementioned overnight at the Janey Lynn Motel. He also waived formal arraignment at that time.

On September 13, 2012, six days prior to trial, Bradshaw's counsel filed a *motion in limine*, seeking to suppress evidence regarding G.O.'s conviction for child endangerment[3] as well as any reference to the charges

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[2] The criminal complaint stated the alleged conduct occurred between Monday, January 1, 2007 and Wednesday, December 31, 2008. As discovery ensued, it became clear that the offensive conduct continued through April 2, 2009. Subsequently, on May 13, 2011, the Commonwealth filed a Bill of Particulars, which indicated that the Janey Lynn Motel incident occurred between September 1, 2008 and June 1, 2009, most likely on April 2, 2009. The Commonwealth never amended the criminal complaint to include the date of the alleged Janey Lynn Motel incident.

[3] G.O. pled guilty, in separate proceedings, to child endangerment, criminal solicitation, and corruption of minors, after making H.O. available to Bradshaw when she allegedly knew that Bradshaw touched H.O. inappropriately on other occasions. Children and Youth Services subsequently removed H.O. from her mother's care.
*(Footnote Continued Next Page)*

against Bradshaw involving H.O. that were pending in North Carolina at the time. The trial judge dismissed the motion as untimely. Following a two-day trial, the jury convicted Bradshaw of 22 of the 24 charged offenses and acquitted him of the remaining two.

A sentencing hearing occurred on December 19, 2012, during which the Commonwealth sought to have Bradshaw designated a sexually violent predator ("SVP"). Herbert E. Hays, a member of the Sexual Offender Assessment Board diagnosed Bradshaw with pedophilia and found his behavior to be predatory in nature. At the conclusion of the hearing, the trial court determined Bradshaw to be an SVP and sentenced him to an aggregate term of 66 years and eight months to 150 years' incarceration.

Bradshaw filed post-sentence motions on December 28, 2012, which the court denied on April 24, 2013. This timely appeal followed.

On appeal, Bradshaw presents the following issues for our review:

1. Whether the trial court erred in denying Bradshaw's post-sentence motion for a new trial where the jury's guilty verdicts were against the weight of the evidence, such that the guilty verdicts would tend to shock one's sense of justice.
2. Whether the trial court erred in denying Bradshaw's post-sentence motion where the Commonwealth failed to present evidence sufficient to support convictions for the crimes with which he was charged.
3. Whether the trial court erred in failing to suppress evidence of G.O.'s plea, conviction, and incarceration.

*(Footnote Continued)* ———————————

4. Whether the trial court abused its discretion in denying Bradshaw's request that trial be adjourned for the evening at 10:30 p.m., and [sic] instead of sending the jury out for deliberation.

5. Whether the trial court erred in holding Bradshaw was a sexually violent predator where the Commonwealth failed to present sufficient evidence to prove by clear and convincing evidence that Bradshaw has a mental abnormality and that he is likely to reoffend.

6. Whether the trial abused its discretion in sentencing Bradshaw to serve an aggregate sentence of 66 years and eight months to 150 years of incarceration, where the aggregate sentence and the imposition of consecutive sentences was so excessive as to raise a substantial question and violate the fundamental norms and underlying sentencing process.

7. Whether the trial court erred in refusing to provide the requested jury instruction where Bradshaw was prejudiced as a result, to wit

   a) A prompt complaint instruction; or

   b) A false in one, false in all instruction.

8. Whether the trial court erred in instructing the jury that they could find Bradshaw guilty if they found that Bradshaw "committed the crimes charged in or around or about the dates charged in the complaint even though you're not satisfied that he committed it on the particular date alleged in the complaint," or if they found that one or more offenses occurred on or about April 2, 2009."

Brief of Appellant, at 19-20.

In his first issue, Bradshaw argues that the verdict was against the weight of the evidence. When a defendant challenges the weight of the evidence, relief in the form of a new trial may be granted only where the verdict shocks one's sense of justice. ***Commonwealth v. Murray***, 597 A.2d 111, 113 (Pa. Super. 1991). Further,

> An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court.
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> A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion[.]
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> Appellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence.

***Commonwealth v. Brown***, 48 A.3d 426, 432 (Pa. Super. 2012), quoting ***Commonwealth v. Widmer***, 744 A.2d 745, 751-52 (2000).

In his challenge to the weight of the evidence, Bradshaw argues that the Commonwealth relied on the testimony of H.O., who admitted that she does not always tell the truth, to sustain his convictions. Therefore, Bradshaw believes H.O.'s testimony was unbelievable and his convictions must be against the weight of the evidence.

The jury, which passed upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part, or none of the evidence. ***Commonwelath v. Zingarelli***, 839 A.2d 1064, 1069 (Pa. Super. 2003). Here, the jury accepted H.O.'s testimony and found Bradshaw guilty. In ruling on Bradshaw's post-sentence motions, the trial court concluded that, despite conflicting testimony, Bradshaw failed to establish that the verdict was against the weight of the evidence. Trial Court Opinion, 4/24/13, at 5. ***See Brown***, ***supra***. Upon our review of the record, we

discern no abuse of discretion in the trial court's refusal to disturb the jury's credibility determinations.

In his second issue, Bradshaw argues that the Commonwealth failed to present sufficient evidence to support his convictions. This Court reviews the sufficiency of the evidence according to the following standard:

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [this] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

***Commonwealth v. Chine***, 40 A.3d 1239, 1242 (Pa. Super. 2012) (citations omitted).

Here, the evidence was not circumstantial, but direct testimony from the victim. While H.O.'s testimony focused on what transpired at the Janey Lynn Motel, the date of which was beyond the scope of the criminal complaint, the jury was still free to believe all, part or none of the evidence. ***Id.*** The jury, having passed upon the credibility of the witnesses and the

weight of the evidence produced, believed H.O.'s testimony that Bradshaw raped her, or attempted to rape her, on more than one occasion. ***Id.***

In his challenge to the sufficiency of the evidence, Bradshaw argues that the Commonwealth's failure to present evidence that a crime occurred within the dates included in the criminal complaint constitutes grounds to arrest a guilty verdict due to insufficiency of the evidence. ***See Commonwealth v. Karkaria***, 625 A.2d 1167 (Pa. 1993). He further argues that a Bill of Particulars cannot amend or otherwise cure the information contained in the criminal complaint. ***See Commonwealth v. March***, 551 A.2d 232 (Pa. Super. 1988).

To begin, we note that, "the Commonwealth must be allowed a reasonable measure of flexibility when faced with the special difficulties involved in ascertaining the date of an assault upon a young child." ***Commonwealth v. Luktisch***, 680 A.2d 877, 880 (Pa. Super. 1996), quoting ***Commonwealth v. Groff***, 548 A.2d 1237, 1242 (1988). We also recognize that it is the duty of prosecutors to "fix the date when an alleged offense occurred with reasonable certainty," ***Commonwealth v. Jette***, 818 A.2d 533 (Pa. Super. 2003); however, "indictments must be read in a common sense manner and are not be construed in overly technical sense." ***Commonwealth v. Einhorn***, 911 A.2d 960 (Pa. Super. 2006). Addtionally, "the function of a Bill of Particulars is to give notice to the accused of the offenses charged in order to permit him to prepare a defense, avoid surprise, and be placed on notice as to any restrictions upon the

Commonwealth's proof." ***Commonwealth v. March***, 551 A.2d 232, 235-36 (Pa. Super. 1988).

Here, the Commonwealth's Bill of Particulars clearly stated that the offenses charged were those that allegedly occurred at the Janey Lynn Motel on April 2, 2009. The Bill of Particulars filed by the Commonwealth at Bradshaw's request was not intended to amend the criminal complaint, but rather, to apprise Bradshaw of what offenses the Commonwealth would attempt to prove at trial. The testimony provided by witnesses at trial supported each of the charges filed by the Commonwealth and did not differ from the Bill of Particulars. Although the Commonwealth failed to amend the criminal complaint, Bradshaw understood, as did the court and the jury, that he was going to be tried for charges stemming from the Janey Lynn Motel incident. Because Bradshaw had sufficient information to prepare for trial and all parties involved understood the Janey Lynn Motel incident was at the heart of the matter, we decline to construe the criminal complaint in an overly technical sense. ***Einhorn***, ***supra***. Accordingly, we will not disturb the trial court's determination that there was sufficient evidence to support Bradshaw's convictions.

In his third issue, Bradshaw contends the trial court erred when it failed to suppress evidence of G.O.'s plea, conviction, and incarceration. Our standard of review for the denial of a suppression motion is as follows:

> [W]e are limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. We may consider the

> evidence of the witnesses offered by the prosecution, as verdict winner, and only so much of the defense evidence that remains uncontradicted when read in the context of the record as a whole. We are bound by facts supported by the record and may reverse only if the legal conclusions reached by the court below were erroneous.

***Commonwealth v. McAliley***, 919 A.2d 272, 275-76 (Pa. Super. 2007) (citation omitted). Additionally, Pennsylvania Rule of Criminal Procedure Rule 579 provides, "the omnibus pretrial motion for relief shall be filed and served within 30 days after arraignment, unless opportunity therefor did not exist or the defendant . . . was not aware of the grounds for the motion[.]" Pa.R.Crim.P. 579.[4]

Bradshaw waived arraignment on February 14, 2011. Approximately one year and seven months later, on September 13, 2012, he filed a *motion in limine* as part of his omnibus pretrial motion. The trial court denied Bradshaw's *motion in limine* as untimely because Bradshaw was aware of the issue for some time, a jury had been picked, and trial was scheduled to start in six days. Trial Court Opinion, 4/24/13, at 6. Presently, Bradshaw does not argue that the opportunity to file did not exist or that he was unaware of the grounds for the motion. Additionally, Bradshaw did not lose

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[4] Relief in the form of a request for suppression of evidence is appropriate for the omnibus pretrial motion. ***See*** Pa.R.Crim.P. 578. Here, in his *motion in limine,* which was part of this omnibus pretrial motion, Bradshaw specifically requested the evidence of G.O.'s plea, conviction, and incarceration be suppressed. Although Rule 578 is not intended to apply to motions *in limine*, the comment of the rule suggests the earliest feasible submissions on such motions are encouraged. ***Id.***

the ability to raise the issues included in his *motion in limine* at trial. Rather, when evidence of G.O.'s plea was admitted at trial, Bradshaw objected and the court ruled on it. Accordingly, we discern no abuse of discretion by the trial court in concluding that Bradshaw's *motion in limine* was untimely.

In his fourth issue, Bradshaw argues that the trial court abused its discretion when it denied his request to adjourn trial for the evening at 10:30 p.m., instead sending the jury out for deliberation, which lasted until approximately 12:30 a.m. We note that,

> [t]he length of time that a jury will be allowed to deliberate is within the discretion of the trial judge. Abuse of that discretion occurs only when it is evident that the ultimate verdict of the jury was the product of coercion, or results from the jury being overworked or fatigued.

***Commonwealth v. Cook***, 557 A.2d 421, 425 (Pa. Super. 1989), quoting ***Commonwealth v. Gartner***, 381 A.2d 114 (Pa. 1977).

Our review of the record reveals that the jury was not overworked, fatigued or coerced. ***Cook***, ***supra***. As the trial court explained,

> The charge to the jury was completed at 10:30 p.m. The jury was sent out to deliberate and during the course of the deliberations the jurors asked two questions. During this time the jurors were brought out to have the questions answered on the record. No juror ever indicated they wished to go home. At one point, a question was raised concerning the charge. In addressing this question, the foreperson asked for written copies of the various offenses. The [c]ourt sent the jury back while it determined how to do that. After about 30 minutes the [c]ourt returned and assembled the jurors and began to explain that we could recess to the next day to prepare written instructions. At that point, the jury foreperson indicated they were making good

> progress and no longer felt they needed the written instruction. Again, no juror indicated they wished to adjourn for the evening.

Trial Court Opinion, 4/24/13, at 11. Accordingly, we perceive no error on the part of the lower court.

Bradshaw next challenges the sufficiency of the evidence supporting the trial court's determination that he is an SVP. "Questions of evidentiary sufficiency present questions of law; thus, our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Bishop***, 936 A.2d 1136, 1141 (Pa. Super. 2007) (quotation and citation omitted). In reviewing such a claim, we consider the evidence in the light most favorable to the Commonwealth, which prevailed upon the issue at trial. ***Id.***

An SVP is defined as:

> A person who has been convicted of a sexually violent offense set forth in Section 9795.1 (relating to registration) and who is determined to be a sexually violent predator under 9795.4 (relating to assessments) due to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. In order to show that the offender suffers from a mental abnormality or personality disorder, the evidence must show that the defendant suffers from a congenital or acquired condition . . . that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons. Moreover, there must be a showing that the defendant's conduct was predatory. Predatory conduct is defined as an act directed at a stranger or at a person with whom a relationship has been instituted, established, maintained, or promoted, in whole or in part, in order to facilitate or support victimization. Furthermore, in reaching a determination, we must examine the driving force behind the commission of these acts, as well as looking at the offender's propensity to re-offend, an opinion about which the Commonwealth's expert is required to opine. However, the risk

> of re-offending is but one factor to be considered when making an assessment; it is not an "independent element."
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> At the SVP hearing, the Commonwealth has the burden of proving by clear and convincing evidence that the person meets the criteria to be designated as an SVP. This burden of proof has been described as an intermediate test, falling below the highest level of proof, beyond a reasonable doubt, but above the preponderance of the evidence standard. Evidence will meet this level of proof if it is so clear, direct, weighty, and convincing as to enable the [trier of fact] to come to a clear conviction, without hesitancy, of the truth of the precise facts at issue.

***Commonwealth v. Stephens***, 74 A.3d 1034, 1038-39 (Pa. Super. 2013) (citations and quotations omitted).

Bradshaw's SVP hearing occurred on December 19, 2012, before the Honorable Thomas S. Ling. The court accepted the Commonwealth's witness, Herbert E. Hays, as an expert in the field of assessment, treatment, and management of sexual offenders. In preparation of his report, Hays reviewed the following complaint: police reports, affidavit of probable cause, information from the District Attorney's Office, telephone transcripts, handwritten notes and letters from Bradshaw to H.O., the transcript from the preliminary hearing for G.O., the trial transcript, and an interview of Bradshaw by Hays. Based on his review of the matter, Hays determined that Bradshaw met the statutory criteria for the mental abnormality of Pedophilia and, given the repetition of his behavior over the course of several years, he was likely to reoffend. N.T. SVP Hearing, 12/19/12, at 27.

In his challenge to the sufficiency of the Commonwealth's evidence, Bradshaw argues that Hays' reliance upon statements made by H.O. regarding alleged conduct beyond the scope of the case *sub judice* was

improper and contrary to the law. Bradshaw specifically contests testimony relating to instances of touching and kissing that occurred on school grounds and at the Bradshaws' home in North Carolina. When defense counsel questioned Hays about his reliance on these allegations, the following exchange took place:

> Hays: I didn't necessarily rely on the one of the kissing and the touching at the school. My opinion is based upon the fact of what happened at the Janey Lynn Motel and what happened in North Carolina over time. This was an on-going process.
>
> Counsel: And what proof do you have that anything happened in North Carolina, when [H.O.] denied it under oath and before Judge Ling?
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> Hays: What proof I have [as] an expert is this: the victim was credible to the jury and in my opinion she was credible in what she told the State Police.

N.T. SVP Hearing, 12/19/12, at 48. Following this exchange, the court acknowledged that Hays "mentioned conduct for which Bradshaw was acquitted, but indicated he did not rely on this. And the [c]ourt agrees with that assessment." ***Id.*** at 55.

When viewed in the light most favorable to the Commonwealth, the record at trial provided significant information regarding the nature and length of the relationship between Bradshaw and H.O. Although this included allegations for which Bradshaw was acquitted or never tried, we find no reason to believe that H.O. lied in her statements to police. Further, the facts of Bradshaw's crimes, combined with Hays' diagnosis of pedophilia, provide clear and convincing evidence that Bradshaw suffers from a mental

abnormality that makes him likely to engage in predatory, sexually violent behavior. ***Stephens***, ***supra***. Therefore, the trial court's conclusion that the evidence was sufficient to classify Bradshaw as an SVP was proper.

In his sixth issue, Bradshaw challenges the discretionary aspects of his sentence, arguing that the imposition of consecutive sentences rendered his sentence excessive.

> Challenges to the discretionary aspects of sentencing do not entitle an appellant to review as of right. An appellant challenging the discretionary aspects of his sentence must invoke this Court's jurisdiction by satisfying a four-part test:
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> > We conduct a four-part analysis to determine: (1) whether appellant has filed a timely notice of appeal, ***see*** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, ***see*** Pa.R.Crim.P. 720; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b).
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> Objections to the discretionary aspects of a sentence are generally waived if they are not raised at the sentencing hearing or in a motion to modify the sentence imposed.
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> The determination of what constitutes a substantial question must be evaluated on a case-by-case basis. A substantial question exists only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process.

***Commonwealth v. Griffin***, 65 A.3d 932, 935-36 (Pa. Super. 2013) (citations and quotations omitted).

Bradshaw has met the first three requirements of the four-part test; however, he has failed to demonstrate that a substantial question exists concerning the propriety of his sentence.

> When a sentence is within the statutory limits, this Court must review each excessiveness claim on a case-by-case basis. In order for an appellant raising such a claim to state a substantial question, he must sufficiently articulate[] the manner in which the sentence violates either a specific provision of the sentencing scheme set forth in the Sentencing Code or a particular fundamental norm underlying the sentencing process. An appellant's contention that the trial court did not adequately consider a mitigating circumstance when imposing sentence does not raise a substantial question sufficient to justify appellate review of the merits of such claim.

***Commonwealth v. Ladamus,*** 896 A.2d 592, 595 (Pa. Super. 2006).

Here, Bradshaw's minimum sentence was within the standard range of the guidelines and his maximum sentence was below the statutory maximum. Despite his standard-range sentence, Bradshaw argues that the sentence imposed by the trial court violates 42 Pa.C.S. § 9721(b), which provides:

> The appellate court shall vacate the sentence and remand the case to the sentencing court with instructions if finds . . . [that] the sentencing court sentenced within the sentencing guidelines but the case involves circumstances where the application of the guidelines would be clearly unreasonable.

42 Pa.C.S. § 9721(b). Bradshaw believes this application of the guidelines is clearly unreasonable because all of his convictions stem from the same incident and the consecutive sentences amount to a life sentence.

Long-standing precedent recognizes that Section 9721 of the Sentencing Code affords the sentencing court discretion to impose its sentence concurrently with or consecutively to other sentences being imposed at the same time or already imposed. ***Commonwealth v. McHale***, 924 A.2d 664 (Pa. Super. 2007); ***Commonwealth v. Pass***, 914 A.2d 442 (Pa. Super. 2006); ***Commonwealth v. Marts***, 889 A.2d 608 (Pa. Super. 2005) citing ***Commonwealth v. Graham***, 661 A.2d 1367 (Pa. 1995). Any challenge to the exercise of this discretion ordinarily does not raise a substantial question. ***Commonwealth v. Johnson***, 873 A.2d 704, 709 n. 2 (Pa. Super. 2005).

Bradshaw does not raise a substantial question with his challenge to the discretionary aspects of his sentence. Even if he did raise a substantial question, we do not find that the sentencing court abused its discretion in imposing consecutive sentences. The court explained its reasons for imposing consecutive sentences as follows.

> [T]he law says I should not sentence a man for something he wasn't convicted of. And I must consider all relevant factors imposing sentence. So the sentence I'm going to impose in this cases [sic] are going to be consecutive sentences, because I believe under the law, as it's stated in the Robertson case, there's no justification discounting volume offenses. However, they will overwhelmingly be on what I call or what I believe to be the standard range in each case because that gives credit to Mr. Bradshaw's prior good record. So, I think the sentence in this case will probably not be pleasing to either side, but I think it accounts for his prior good behavior in the community and the very serious nature of the crimes that the jury convicted him of.

N.T. Sentencing, 12/19/12, at 99.

Pursuant to Section 9721 of the Sentencing Code, the sentencing court took into consideration the gravity of Bradshaw's offenses as well as his good behavior and reputation in the community. The court also had the opportunity to review a presentence investigation report. The jury found Bradshaw guilty of 22 separate offenses. While Bradshaw may feel his sentence is unfair, the law is clear that he is not entitled to a "volume discount" for his crimes. ***Commonwealth v. Hoag***, 665 A.2d 1212, 1214 (Pa. Super. 1995). Accordingly, the sentencing court did not abuse its discretion when it imposed consecutive sentences for his convictions.

Next, Bradshaw challenges the trial court's refusal to provide the jury with certain instructions. The following principles guide our review.

> In reviewing a challenge to the trial court's refusal to give a specific jury instruction, it is the function of this Court to determine whether the record supports the trial court's decision. In examining the propriety of the instructions a trial court presents to a jury, our scope of review is to determine whether the trial court committed a clear abuse of discretion or an error of law which controlled the outcome of the case. A jury charge will be deemed erroneous only if the charge as a whole is inadequate, not clear or has a tendency to mislead or confuse, rather than clarify, a material issue. A charge is considered adequate unless the jury was palpably misled by what the trial judge said or there is an omission, which is tantamount to fundamental error. Consequently, the trial court has wide discretion in fashioning jury instructions. The trial court is not required to give every charge that is requested by the parties and its refusal to give a requested charge does not require reversal unless the Appellant was prejudiced by that refusal.

***Commonwealth v. Sandusky***, 77 A.3d 663, 667 (Pa. Super. 2013) (quotation omitted).

Bradshaw first argues that the trial court erred when it failed to give his requested "prompt complaint" instruction, that is, an instruction that the jury may draw a negative inference from the fact that the victim failed to make a prompt complaint of the alleged sexual abuse. The foundation for a prompt complaint instruction is codified at 18 Pa.C.S. § 3105, which provides, that while the "[p]rompt reporting" of a sexual assault is not required, a defendant may "introduc[e] evidence of the complainant's failure to promptly report the crime if such evidence would be admissible pursuant to the rules of evidence." 18 Pa.C.S. § 3105. Indeed,

> [t]he premise for the prompt complaint instruction is that a victim of a sexual assault would reveal at the first available opportunity that an assault occurred. The instruction permits a jury to call into question a complainant's credibility when he or she did not complain at the first available opportunity. However, there is no policy in our jurisprudence that the instruction be given in every case.
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> The propriety of a prompt complaint instruction is determined on a case-by-case basis pursuant to a subjective standard based upon the age and condition of the victim. For instance, where an assault is of such a nature that the minor victim may not have appreciated the offensive nature of the conduct, the lack of a prompt complaint would not necessarily justify an inference of fabrication.

***Sandusky***, 77 A.3d at 667 (quotations and citations omitted).

The trial court gave the following explanation for its decision to not instruct the jury about prompt complaints.

> In this case, the assault which involved force occurred in April of 2009, and the complaint was not filed until November of 2010. As noted, the child was 11 at the time of the alleged assault. The child at the time was in the care of her mother. [Bradshaw] and [G.O.] had a very close relationship. [H.O.] testified her

> mother said it was okay for her to sleep with [Bradshaw]. After the assault, [G.O.] continued to maintain a close relationship with [Bradshaw], and continued to place the child in circumstances where she was alone with [Bradshaw]. These circumstances did not end until the [c]ourt's order in the custody case limited contact. The child, however, remained with her mother. In her testimony, [G.O.], conceded that [H.O.] had disclosed certain information about assaultive contact by [Bradshaw]. Under these circumstances the [c]ourt determined that it would be unjustified to give the failure to make a prompt complaint charge.

Trial Court Opinion, 4/24/13, at 11.

Our review of the record supports the trial court's decision not to instruct the jury regarding prompt complaints. Furthermore, we discern no prejudice to Bradshaw as a result because the jury was aware of the delay between the Janey Lynn Motel incident and when H.O. ultimately spoke with police. Accordingly, the trial court did not abuse its discretion when it decided not to instruct the jury regarding prompt complaints.

Bradshaw also finds fault with the trial court's failure to give a "false in one, false in all instruction." The false in one, false in all instruction informs the jury that if it finds any part of a witness' testimony to be incredible, then it may reject all of that witness' testimony. ***See Commonwealth v. Vicens-Rodriguez***, 911 A.2d 116 (Pa. Super. 2006). In ***Vicens-Rodriguez***, this Court reviewed the history of the instruction, including the fact that legal scholars and this Court have repeatedly questioned its wisdom and value. ***Id.*** at 117-19. This Court concluded:

> If the other aspects of credibility are thoroughly discussed, it is not reversible error to fail to give the 'false in one, false in all' charge. It is true that the 'false in one, false in all' charge is a

> proper statement of the law, and there is no harm if that charge is given. However, we do hold that when a full and complete charge is given on credibility, as was done in this case, there is no error in failing to give the specific charge.

***Id.*** at 120. After reviewing the instructions, we conclude that the trial court thoroughly informed the jury on the proper factors for gauging credibility. Thus, the trial court did not err in failing to give the "false in one, false in all" instruction.

In his final claim, Bradshaw challenges the specific instruction provided by the trial court regarding the date of the offenses in this case. The trial court provided the following instruction to the jury:

> The complaint in this case alleges that the crimes were committed on or about between January 1, 2007 and Wednesday, December 31, 2008. You're not bound by the date in the complaint. It is not an essential element of the crime charged. You may find Mr. Bradshaw guilty if you are satisfied upon a reasonable doubt that he committed the crime charged in or around or about the date charged in the complaint even though you're not satisfied that he committed it on the particular date alleged in the complaint. In this case we may convict, you may convict if you find that one or more of the offenses occurred on or about April 2, 2009.

N.T. Trial, 9/20/12, at 396-97.

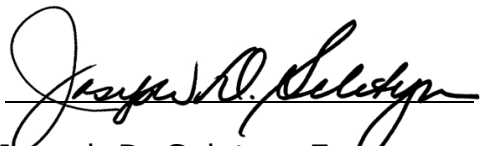
Bradshaw's argument here is a continuation of his belief that the Commonwealth breached its duty to amend the criminal complaint to reflect the date of the Janey Lynn Motel incident. Bradshaw claims the variance in dates was so substantial that it resulted in prejudice. We disagree.

The instruction in question was wholly consistent with Standard Jury Instruction 3.19 (Relating to Date of Crime: Proof of Date Alleged Not

Essential). Additionally, Bradshaw was on notice of the date of the offense after he received a Bill of Particulars, which he requested. When considering issues related to the amendment of a criminal complaint, the courts do so with an eye toward its underlying purposes and a commitment to do justice rather than be bound by a literal or narrow reading of the procedural rules. ***See Commonwealth v. Roser***, 914 A.2d 447 (Pa. Super. 2006). The Commonwealth concedes that no formal motion was filed to amend the complaint; however, we do not see how Bradshaw suffered any prejudice, especially in light of the accurate Bill of Particulars.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2014