

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-661-2019**
 v. :
 :
 MARCUS DEGARMO, : **MOTION IN LIMINE**
 Defendant :
 :
 OPINION AND ORDER

The following is a result of Defendant’s Motion in Limine filed on August 21, 2020. Due to the limited time leading up to trial, argument on the motion was held on August 24, 2020.¹ Based on this Opinion Defendant’s motion is denied.

Background

Defendant filed this motion claiming that pursuant to Pa. R. Evid. 106 the Commonwealth should be precluded from presenting voice messages sent from Defendant to the alleged victim through Facebook Kids Messenger Application on March 2, 2019 and March 4, 2019. Defendant claims that since the only voice messages recovered from the phones were from Defendant and not the alleged victim, it does not convey a full and accurate portrayal of the conversation. It is clear there were voice messages from the alleged victim sent to Defendant, but they were not recovered due to investigators being “timed out” of the application. The Commonwealth offered at the time of hearing to allow Defendant to sit down with counsel and investigators to get into his Facebook to recover the messages.

Discussion

Although the Commonwealth provided the messages that were recovered and briefing on the issue of relevance of the content of the messages, this Court does not believe it is necessary to discuss the contents of the messages. The Pennsylvania Rules of Evidence state

¹ The Commonwealth’s Motion to Amend Information was also granted by a separate order at that hearing.

that “[i]f a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part--or any other writing or recorded statement--that in fairness ought to be considered at the same time.” Pa. R. Evid. 106. The purpose of the rule “is to give the adverse party an opportunity to correct a misleading impression that may be created by the use of a part of a writing or recorded statement that may be taken out of context.” Pa. R. Evid. 106 cmt. “[W]here a party introduces a portion of a writing or recorded statement, Rule 106 permits the adverse party to introduce the remainder so that the fact finder can consider the evidence in context.” *Commonwealth v. Bond*, 190 A.3d 664, 673-74 (Pa. Super. 2018). “Rule 106 is not an exclusionary rule, but, rather, it merely permits the adverse party to introduce related writings so that the documents originally introduced are not read out of context.” *Commonwealth v. Passmore*, 857 A.2d 697, 712 (Pa. 2004).

Neither the Court nor the Commonwealth disagrees with Defendant that the voice recordings of the alleged victim would be relevant. Although Defendant claims that he can no longer access the information through Facebook because he forgets his login on information, this Court does not accept that representation. Even if that were true, there are steps Defendant could take in the presence of counsel and officers to retrieve that information. As stated above, Rule 106 is not an exclusionary rule and only allows Defendant to present the voice messages from the alleged victim. Additionally Defendant’s argument that Rule 403, relating to prejudice, also fails. The information is only available to Defendant in these circumstances. Defendant cannot claim prejudice due to an incomplete record, yet be the only party who can access said missing information. Therefore Defendant’s Motion in Limine is denied.

ORDER

AND NOW, this 25th day of August, 2020, based upon the foregoing Opinion,
Defendant's Motion in Limine is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Matthew Welickovitch, Esquire

NLB/kp