

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CP-41-CR-1321-2020</b>
<b>v.</b>	:	
	:	
<b>ROBERT MEDLAR,</b>	:	<b>MOTION FOR</b>
<b>Defendant</b>	:	<b>PROTECTIVE ORDER</b>

**OPINION AND ORDER**

Robert Medlar (Defendant) filed a Motion to Compel Discovery on November 17, 2020, requesting a data extraction on the alleged victim’s cellular phone. This Court held a hearing on this motion on February 18, 2021. Following the hearing, the Commonwealth informed the Court of its intent to conduct a data extraction on the cell phone as requested. A Lycoming County Detective conducted this extraction on February 26, 2021. Over the next several weeks, the attorney for the Commonwealth reviewed the data pulled from the cell phone. On April 30, 2021, the Commonwealth sent a disc with the cell phone data to defense counsel, which included text messages, videos, and photographs. However, on May 25, 2021, the Commonwealth submitted the motion before the Court. This Court held a hearing on the motion on August 3, 2021. In its motion, the Commonwealth requests the majority of the extracted data be withheld from defense counsel, asserting that said data is not relevant to the conduct that lead to the criminal charges.

**Analysis**

The Commonwealth asserts this motion for a protective order pursuant to Pennsylvania Rule of Criminal Procedure 573(F). This rule states,

Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court in camera. If the court enters an order granting

relief following a showing in camera, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.

Pa.R.Crim.P. 573(F). Specifically, the Commonwealth believes that to allow the Defendant to view the contents of the alleged victim's phone would be a violation of her privacy, particularly because the Commonwealth has deemed a majority of the data pulled from her phone as irrelevant to Defendant's criminal charges. To support its argument, the Commonwealth asserts that the data provided to defense counsel consists of videos and photographs as well as hundreds of pages of text messages related to the criminal allegations. The attorney for the Commonwealth also argues that he made significant efforts to disclose any exculpatory content discoverable under Brady<sup>1</sup>. The Commonwealth provided a disc containing the evidence given to defense counsel, marked as Commonwealth's Exhibit 1. The Commonwealth also provided the Court with the entire data extraction, marked as Commonwealth's Exhibit 2. The Commonwealth argues that the vast majority of the material is not relevant and is not subject to compulsive discovery. The Commonwealth indicated at the hearing on this motion that the woman the Defendant is purported to have sexually assaulted expressed her concerns about the Defendant having possession of her information that includes photographs of her in a bathing suit, text messages with addresses, and other personal information.

Defense counsel argues that Defendant has the right pursuant to Article 1, Section 9 of the Pennsylvania Constitution to review all the data extracted from the phone in this case. Defendant cites to Commonwealth v. Lloyd, 567 A.2d 1357 (Pa. 1989) to support his argument. In the Lloyd case, the defendant was convicted of rape charges and related offenses

---

<sup>1</sup> Brady v. Maryland, 371 U.S. 812 (1962).

against a six-year-old victim. Id. at 1357. As part of his defense at trial, defendant alleged that the victim was delusional and/or hallucinatory. Id. To support this assertion, defendant subpoenaed the victim's treatment records from the Psychiatric Institute of the Medical College of Eastern Pennsylvania. Id. After reviewing the records, the trial court found that defendant's contention was unfounded. Id. at 1358. Lloyd's issue on appeal was that "the trial court's refusal to grant defense counsel unlimited access to these records violated his rights to confrontation and compulsory process as guaranteed by Article 1, Section 9 of the Pennsylvania Constitution." Id. The Pennsylvania Supreme court held that, under the confrontation clause of the Pennsylvania Constitution, Lloyd's rights were denied when he was prevented from inspecting the treatment records. Id. at 1359. The Court also held that the compulsory process clause of the Pennsylvania Constitution mandated the defendant's inspection of the records. Id. The Court permitted defendant's counsel to examine the hospital records *in camera* to maintain the records' confidentiality. Id. at 1360. Defense counsel in the case *sub judice* agreed to forego any data pulled from the phone prior to May of 2020, but seeks all material from the phone from that point onward regardless of the Commonwealth's assertion of relevancy. Defendant contends that he should be able to make a relevancy determination for himself and see what may be helpful to his defense.

At the hearing on this motion, defense counsel consented to pursue only the data extracted from May 2020 to the date of extraction on February 26, 2021. The Court limited the *in camera* review of the complete data extraction to that timeframe as found in Commonwealth's Exhibit 2 and compared the information provided to Defendant on Commonwealth's Exhibit 1. This review was to certify defense counsel received all relevant data as determined by an unbiased source. The assault is purported to have occurred on July 4,

2020 in the city of Williamsport. As such, this Court's *in camera* review was limited to May 2020 through July 2020.

This Court agrees with the Commonwealth on this particular issue. The case at hand differs in a significant aspect from the Lloyd case. In Lloyd, the defendant sought only medical records associated with the treatment of the victim's psychiatric afflictions. All information contained in those records was relevant to Lloyd's purported defense that the victim hallucinated the assault. However, in this case, Defendant is not asking for treatment records related to sexual assault counseling, but instead asks for all data extracted from the alleged victim's cell phone. Following this Court's review of the extraction, the majority of the data is devoid of litigation value to Defendant because it bears no relevancy to the charges against Defendant. The material of the data is not subject to mandatory disclosure under Pa.R.Crim.P. 573(B)(1) and Defendant has no right to the information contained on the phone that was not already given to defense counsel.

This phone includes but is not limited to addresses and contact information for minor females, photographs and details of the same young girls that the victim coaches and mentors, medical information about the victim and her family members, and other information that Defendant does not need to aid in his case and would be inappropriate for him to view. If the entirety of the data extraction were to be given to Defendant, he would not merely receive information related to his defense, but an unparalleled look into this woman's life. Even if the information were limited to the time period consented to by defense counsel, such information would include immensely personal information about the phone's user as well as details about the people with whom she converses. The prevalence of cell phone usage has turned phones into major databases of information that include schedules, photographs, locations, personal

account information, and much more. Defendant has already received the relevant information from the Commonwealth to aid in his defense and, as a result, no additional information from the data extraction shall be turned over to defense counsel.

### **Conclusion**

The Court finds that the Commonwealth provided all relevant information to defense counsel from the data extraction of the victim's phone that would aid Defendant in his defense against all charges brought against him. Therefore, the Court shall not require the Commonwealth to provide Defendant any further data from the phone extraction.

### **ORDER**

**AND NOW**, this 2nd day of November, 2021, based upon the foregoing Opinion, Commonwealth's Motion for Protective Order is **GRANTED**. It is **ORDERED** and **DIRECTED** that the Court will not order the Commonwealth to provide any additional information from the phone extraction as the Court believes the additional information is not probative or relevant.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)  
Richard Bobbe, Esq.  
Law Clerk (JMH)