

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
 :
 vs. : No. CR-1594-2020
 :
 JOSHUA MOREHART, : Motion to Preserve Evidence
 Defendant : For Forensic Examination

OPINION AND ORDER

By Information filed on December 3, 2020, Defendant is charged with rape, involuntary deviate sexual intercourse, sexual assault and related charges. The charges relate to an incident that allegedly occurred on October 28, 2020 outside of the victim’s apartment at 225 North Main Street in Jersey Shore, PA.

On December 9, 2020, Defendant filed a Motion to Preserve Evidence. Defendant asserts that the charges stem from three separate incidents alleged to have occurred in mid-September of 2020, October 8, 2020 and on October 28, 2020. Defendant further asserts that when the victim testified at the preliminary hearing, she stated that Defendant would message her on “Facebook Messenger.” Defendant apparently relayed to his counsel that he communicated with the alleged victim “on her cell phone.”

In support of Defendant’s Motion to Preserve Evidence, counsel argues that the communications between the alleged victim and Defendant can be retrieved from the alleged victim’s cell phone and further, that Defendant may retain an expert to examine and retrieve data from said cell phone. Defendant requests that the cell phone and all information on it “be preserved.”

An argument was held before the court on December 21, 2020. Following the

argument, the court provided Defendant fifteen (15) days to submit any written argument or legal authority in support of his position. The court gave the Commonwealth fifteen (15) days thereafter to submit its written argument and/or any cases in support of its opposition to the motion.

As of January 21, 2021, the motion would be ripe for a decision.

Defendant argues that he is entitled to the evidence pursuant to Rule 573 of the Pennsylvania Rules of Criminal Procedure. Specifically, Defendant has identified evidence that he wishes to be preserved and disclosed. Defendant argues that its preservation and disclosure would be in the interest of justice. Rule 573(B)(2)(iv).

The allegations against Defendant relate to him allegedly using force to sexually assault the victim. Any evidence related to the relationship of the parties, potential consent and any admissions or denials after the fact would be highly probative and relevant. This court interprets the interest of justice as meaning promoting fair play in light of the circumstances of the case including, but not limited to, the gravity of the alleged crime, fair proceedings, the interests of any alleged victim and generally an equal playing field. Certainly, it is a subjective standard.

In considering these factors, the court concludes that the interest of justice require that the cell phone and the information on it be preserved. However, the court cannot ignore the privacy interests of the victim. Thus, the court will not allow a carte blanche examination of the cell phone.

ORDER

AND NOW, this ___ day of January 2021, the alleged victim in this matter, H.H., is **DIRECTED** to preserve her cell phone and any and all information contained in it including but not limited to, text messages, Facebook Messages and call logs. The Commonwealth and defense counsel shall meet to confer how to best obtain the retrieval of evidence from the phone so that disclosure is limited to items pertaining only to the relationship/interactions between Defendant and the alleged victim. If it is possible, the court will review the information *in camera* and decide what can be released. However, there would need to be a phone dump reduced to writing and/or documents. Any information would need to be limited to six months prior to the first alleged incident and all time after the alleged incidents. If the parties cannot agree on a method to obtain said information, one of them may contact the Court Administrator to schedule a conference with the court.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
Matthew Welickovitch, Esquire, APD
Gary Weber, Esquire
Work File