

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :  
 :  
 vs. : No. CR-971-2020  
 :  
 CECIL THOMPSON, :  
 :  
 Defendant : Omnibus Pretrial Motion

**OPINION AND ORDER**

By Opinion and Order of Court dated September 20, 2021, the court deferred a decision on the defendant's motion to permit Xbox records to be admissible.

In a previously filed Omnibus Pretrial Motion, the defendant requested that the court admit the Xbox records pursuant to Rule 803(6) of the Pennsylvania Rules of Evidence.

In the court's Order referenced above, the court noted that it could not decide Defendant's motion to admit records unless it had an opportunity to review the records along with the Certification of Authenticity.

The defendant recently provided to the court and counsel the applicable records and certification.

Prior to addressing whether Rule 803(6) permits the introduction of the records without further proof, the court must address relevancy. Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Pa. R. E. 401.

One of the issues that the jury must decide in this case is whether the

defendant was the alleged perpetrator. The defendant is alleged to have illegally entered and robbed the residence of 951 High Street on May 18, 2020 at approximately 1:30 p.m.<sup>1</sup>

The proposed evidence arguably supports the defendant's position that he was not the individual because he was playing a video game at or near the time of the incident. The records indicate that Defendant's "gamertag" was OFP2400BRICKZ. The records also show the Xbox IP activity for this "gamertag" on the date of the incident. The records, however, are listed in UTC or Coordinated Universal Time, not EDT or Eastern Daylight Time.<sup>2</sup> According to the records, OFP2400BRICKZ was online playing a multiplayer version of Final Fantasy 15 from 17:33:50 to 18:21:33 UTC (or from 1:33:50 p.m. to 2:21:33 p.m. EDT).<sup>3</sup>

Rule 803(6) of the Pennsylvania Rules of Evidence permits a record of an act, event or condition to be admissible if certain conditions have been established. Rule 803(6)(D) allows these conditions to be shown by certification of the custodian or other qualified witness pursuant to Rule 902(11) or (12). The certification attached to the records satisfies the conditions precedent.

Accordingly, the court will grant the defendant's request to permit the introduction of the records based on the certification. This is an established exception to the hearsay rule.

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<sup>1</sup> The affidavit of probable cause indicates that at 1336 hours (or 1:36 p.m.) the police were dispatched to the residence.

<sup>2</sup> Williamsport, Pennsylvania is in the Eastern Time Zone. May 18 is during daylight savings time, which is observed from the second Sunday in March until the first Sunday in November in most of the United States, including Williamsport, Pennsylvania.

<sup>3</sup> EDT=UTC-4:00:00. In other words, four hours are subtracted from UTC to determine EDT. 17:33:50-

However, the court notes that it cannot grant the defendant's request that Ms. Rosenbloom, the custodian of the records, testify via remote technology. This decision will need to be left to the trial judge as well as the parties if they can agree to such. Furthermore, while the court finds the records to be relevant, the weight of such will need to be determined by the jury depending upon what other testimony is admitted, if any.

**ORDER**

**AND NOW**, this \_\_\_\_ September 2021, for the reasons set forth above, the court GRANTS the defendant's Motion to Permit the Introduction of the Xbox Records based on the Certification of the Records Custodian.

By The Court,

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Marc F. Lovecchio, Judge

cc: Mike Sullivan, Esquire (ADA)  
Nicole Spring, Esquire (PD)  
Judge Marc F. Lovecchio  
Gary Weber, Esquire