

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

: No. CR-499-2022

:

vs.

:

: OMNIBUS PRETRIAL MOTION

JONATHAN L. SWALES,

:

Defendant

:

:

OPINION AND ORDER

AND NOW, this 3rd day of **October, 2023**, a hearing was held on September 25, 2023, regarding the Omnibus Pretrial Motion filed by Defendant on October 18, 2022.

Edward J. Rymysza, Esquire, appeared on behalf of the Defendant and Martin Wade, Esquire, appeared on behalf of the Commonwealth. The Court previously disposed of a portion of the matters raised in the Defendant's Omnibus Pretrial Motion by Order dated June 2, 2023.

Those matters will be reiterated herein and the remaining matters will be addressed individually below. For the following reasons, the Defendant's Omnibus Pretrial Motion is **GRANTED** in part and **DENIED** in part:

I. MOTION TO SUPPRESS PRISON PHONE CALLS

Defendant's Omnibus Motion indicated that the Commonwealth obtained numerous recorded phone calls made by the Defendant to friends and family while he was incarcerated at the Lycoming County Prison. The Defendant argues that he had a reasonable expectation of privacy and, while the prison does provide notice to the inmates that the phone calls are subject to electronic recording and/or monitoring pursuant to prison policy, there is no notice that the recordings can or will be provided to the District Attorney or that they will be used in any court proceedings against the inmate. The Defendant further argues that the Commonwealth's unfettered access to his prison calls impairs his ability to prepare an unhampered defense which "skews the fairness of the entire system." Barker v. Wingo, 407

U.S. 514, 532 (1972). The Defendant, in his Omnibus Motion, requests that the Court suppress any prison calls and preclude the introduction of the statements and any evidence derived from it at trial and preclude any further disclosure of any future prison calls to the District Attorney.

Counsel for the Defendant did not advance any further argument on this matter at the time of the hearing on September 25, 2023, and it is unknown to the Court whether he is abandoning this issue or resting on the argument set forth in the motion. To the extent the Defendant intends to proceed based upon what was set forth in the motion, the Motion to Suppress Prison Phone Calls is **DENIED**. The Court finds that the recorded warnings played prior to each phone call is sufficient to place the Defendant on notice that his calls are subject to recording and, further, that there is no reasonable expectation of privacy in a prison setting.

II. PETITION FOR WRIT OF HABEAS CORPUS OR ALTERNATIVELY TO REMAND FOR A NEW PRELIMINARY HEARING

With regard to the Defendant's request for a Petition for Writ of Habeas Corpus or Alternatively to Remand for a New Preliminary Hearing, the Commonwealth and Defendant's counsel previously agreed to a new preliminary hearing being held. The Commonwealth requested that the alleged victim be permitted to testify by contemporaneous alternative method pursuant to 42 Pa.C.S.A. §5985. Counsel for the Defendant did not object, and therefore the Defendant's Motions are **GRANTED**. At the preliminary hearing on September 25, 2023, counsel for the Defendant was physically present in the room where the child testified, but the child was unable to see the Defendant. A more detailed opinion is being issued under separate Order, but following the preliminary

hearing, this Court found that the testimony was sufficient to bind over all of the charges. However, only one Corruption of Minors charge, Count 17, will be held for court as the four charges resulted from the same course of conduct. Accordingly, Counts 18, 19, and 20 were dismissed.

III. MOTION TO PRECLUDE REFERENCE TO THE COMPLAINANT AS A “VICTIM”

The Commonwealth previously indicated its concurrence with the Motion to Preclude Reference to the Complainant as a “Victim” raised in the Defendant’s Omnibus Pretrial Motion. Accordingly, the Defendant’s Motion is **GRANTED**. By Order dated June 2, 2023, Counsel was directed to file a written stipulation with the Court indicating the precise language the Court and counsel shall use throughout the proceedings when referring to the alleged victim. As of the date of this Order, the Court has not been provided with a written stipulation. Accordingly, counsel and the Court shall refer to the Complainant as the “alleged victim” unless and until a written stipulation is received agreeing to refer to the Complainant by a different designation.

IV. MOTION FOR DISCLOSURE OF OTHER CRIMES, WRONGS, OR ACTS PURSUANT TO PA.R.EVID. 404(b)

The Defendant requests that the Commonwealth be ordered to disclose to him any evidence which may be admissible pursuant to Pennsylvania Rule of Evidence 404(b). At the time of the hearing, this was not discussed but the Court takes judicial notice that the Commonwealth had not yet filed notice of intent to introduce any 404(b) evidence. Pa.R.E. §404(b) requires only “reasonable notice in advance of the trial.” This Court finds that thirty (30) days is “reasonable” for providing advance notice of the intent to introduce other crimes, wrongs, or acts, and would provide sufficient time for the Court to address any

motions in limine filed by the Defendant in response thereto. Accordingly, the Defendant's Motion is **GRANTED** to the extent that the Commonwealth shall disclose any evidence which has not been disclosed to the defendant which may be admissible at trial pursuant to Pa.R.E. §404(b), and to provide a notice of intent to introduce any such evidence at trial at least thirty (30) days prior to trial.

V. MOTION TO DISCLOSE EXISTENCE OF AND SUBSTANCE OF PROMISES OF IMMUNITY, LENIENCY OR PREFERENTIAL TREATMENT AND COMPLETE CRIMINAL HISTORY FROM THE NATIONAL CRIME INFORMATION CENTER ("NCIC") AND/OR THE PENNSYLVANIA JUSTICE NETWORK ("JNET")

Defendant's Motion requests that he be provided with the names and addresses of and substance of all persons who have been offered immunity, favorable consideration, leniency, or favorable treatment, if any, in this case. Further, Defendant seeks the criminal history of Commonwealth witnesses from NCIC and/or JNET. Again, this matter was neither further addressed by the Defendant nor objected to by the Commonwealth at the hearing. To that extent, the Motion is **GRANTED**. The Commonwealth shall provide Defendant's counsel with the names and addresses of any witnesses who have been offered any favorable treatment of any type in exchange for their testimony and shall provide the criminal history of each witness from either NCIC or JNET at least thirty (30) days prior to trial.

VI. MOTION FOR REQUEST OF TIMELY NOTICE OF ANY EXPERT TESTIMONY

The Defendant's Motion requests that, to the extent the Commonwealth will be relying on any expert testimony during trial, notice and disclosure of each expert witness consulted be provided to the Defendant. As this Motion was not addressed at the hearing on September 25, 2023, and the Commonwealth did not indicate an objection, the Defendant's

motion is **GRANTED**. To the extent the Commonwealth intends to rely on expert testimony during trial, it shall provide copies of all information requested by the Defendant in the motion within seven (7) days of that date said information is in the possession of the prosecution.

VII. MOTION TO COMPEL RECORDS OF CHILD ADVOCACY CENTER

The Defendant's Omnibus Pretrial Motion contained a Motion to Compel Records of Child Advocacy Center ("CAC"). Two videotaped interviews have been provided through discovery. However, during one interview, the alleged victim was nonverbal and relied almost exclusively on writing his responses on drawing pictures on paper in the room. These writings/drawings were not provided to the District Attorney's Office, and the Commonwealth concurs with the Defendant's request. Accordingly, the Motion was **GRANTED**. The Children's Advocacy Center was ordered and directed to preserve any writings and/or drawings made by the alleged victim during interviews on December 1, 2021, and March 3, 2022, and to provide copies of such documents to the District Attorney's Office within thirty (30) days of June 2, 2023, and the District Attorney's Office was provide copies of all information received from the CAC to counsel for the Defendant within seven (7) days of receipt. As this issue was not further addressed at the hearing on September 25, 2023, the Court will consider the matter resolved.

VIII. MOTION TO DISCLOSE CYS RECORDS

The Defendant's Omnibus Pretrial Motion included a Motion to Disclose any CYS records, as it was believed that the complainant and/or his family members communicated with representatives of the Columbia County Children and Youth Services and/or Lycoming County Children and Youth Services agencies "(collectively, "CYS"). The Defendant

requested copies of all reports and information contained in CYS files relative to any allegations of abuse. At the hearing on June 2, 2023, the Commonwealth indicated it was unopposed to the records being provided to the Court for an in-camera review. Accordingly, the Defendant's Motion was **GRANTED** and the Columbia County Children and Youth Services and Lycoming County Children and Youth Services agencies were ordered and directed to provide to the Court copies of all information regarding reports of suspected child abuse involving this Defendant and this alleged victim within thirty (30) days of June 2, 2023. Lycoming County CYS complied with the Court's Order and this Court conducted an in-camera review of the records. On September 11, 2023, the Court provided the Lycoming County CYS records to the Commonwealth and Defendant's Counsel.

It is noted that Columbia County Children and Youth Services provided no records for an in-camera review, nor did they respond to this Court's Order of June 2, 2023, in any way. To the extent either the Commonwealth or Defendant's counsel believes records exist which are necessary for the presentation of its case, they shall request this Court to issue a Rule upon Columbia County Children and Youth Services to Show Cause as to why it should not be held in contempt for failure to follow an Order of Court.

IX. MOTION TO DETERMINE COMPETENCE OF COMPLAINANT AND FOR A TAINT HEARING

On June 2, 2023, the Commonwealth indicated that it was unopposed to the Defendant's Motion for a Taint Hearing. On that date, the Court granted the Defendant's Motion for a Taint Hearing, for his witnesses to be present to testify regarding whether the reliability of the recollection of the complainant had been damaged by the interviews and other circumstances of this case. At the time of the hearing on September 25, 2023, the Defendant called Alexis Smith and Joshua Haney, both forensic interviewers for the

Children's Advocacy Center, to testify. Each witness testified about the protocols for the interview, including asking nonleading/nonsuggestive questions and the prohibition of family members of the alleged victim observing the interview. Additionally, each interviewer testified that in no way does he or she see himself or herself as an advocate for the child. At the conclusion of the hearing, counsel for the Defendant conceded that he did not satisfy the burden that the complainant was so unduly influenced by the techniques employed by the interviewers that it impaired his ability to testify reliably and truthfully. Therefore, the Defendant's request that the Court find the alleged victim's testimony tainted is **DENIED**.

BY THE COURT,

Ryan M. Tira, Judge

RMT/jel

cc: Martin Wade, Esquire
Edward J. Rymsza, Esquire
Gary Weber, Esquire
Jennifer Linn, Esquire