

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001205-2022
:
vs. :
:
ROGER WEAVER FREED, :
Defendant :

OPINION AND ORDER

This matter came before the court on October 24, 2023 for a hearing and argument on the Motion in Limine (“Motion”) filed on behalf of Roger Weaver Freed (“Freed”). By order dated October 24, 2023, the defense withdrew Count IV of the Motion and the Commonwealth conceded that the written and PSP interview of the alleged victim, J.T., which were the subject of Counts V and VI of the Motion, would be admissible at trial. Therefore, this Opinion and Order will only address Counts I, II and III of the Motion.

By way of background, on June 20, 2022 Freed was charged with 30 counts of Institutional Sexual Assault -Sexual Contact with a Student, 18 Pa. C.S.A. §3124.2(a.2)(1), felonies of the third degree; one count of Corruption of Minors, 18 Pa. C.S.A. §6301(a)(1)(ii), a felony of the third degree; three counts of Furnishing Alcohol to a Minor, 18 Pa. C.S. 6310.1(a), misdemeanors of the third degree; one count of Sexual Assault, 18 Pa. C.S.A. §3124.1, a felony of the second degree; and one count of Aggravated Indecent Assault Without Consent, 18 Pa. C.S.A. §3125(a)(1), a felony of the second degree.

The alleged victim of these offenses is J.T. Freed was an administrator/principal while J.T. was in high school. J.T. graduated in June 2018. The conduct forming the basis of these charges allegedly occurred between September 1, 2015 and April 15, 2022, although the majority of the charges had to occur prior to June 2018, as J.T. ceased being a high

school student in the Williamsport Area School District in June of 2018. The Furnishing Alcohol charges were subsequently dismissed as they were filed beyond the applicable statute of limitations.

I. J.T.'s criminal charges

Count 1 of the Motion is a request to admit J.T.'s pending criminal charges. On April 25, 2022, J.T. was charged with Unlawful Contact (Sex Offense) with a Minor, 18 Pa. C.S.A. 6318(a), a felony of the first degree; Rape of a Child, 18 Pa. C.S.A. §3121(c), a felony of the first degree; Involuntary Deviate Sexual Intercourse with a Child, 18 Pa. C.S.A. §3123(b), a felony of the first degree; Sexual Assault, 18 Pa. C.S.A. §3124.1, a felony of the second degree; Indecent Assault of a Complainant Less than 13 years of Age, 18 Pa. C.S.A. §3126(a)(7), a misdemeanor of the first degree; Indecent Exposure, 18 Pa. C.S.A. §3127(a), a misdemeanor of the first degree; and Indecent Assault Without Consent, 18 Pa. C.S.A. §3126(a)(1), a misdemeanor of the second degree. The conduct upon which these offenses are based allegedly occurred between January 2018 and January 2020. J.T. did not disclose Freed's alleged conduct until after J.T. was charged.

The defense wishes to introduce this evidence to show that J.T. is biased in favor of the Commonwealth and that J.T. made his allegations against Freed to improve his case. The Commonwealth was opposed to the jury being informed of the names of J.T.'s charges. The Commonwealth contended that such information was unduly prejudicial. The Commonwealth wanted the jury to only be informed either that J.T. was charged with serious felonies or a felony of the first degree with a maximum possible sentence of 40 years.

The scope of cross-examination is generally within the discretion of the trial court and its rulings will not be overturned absent a clear abuse of discretion or an error of law.

Commonwealth v. Mullins, 665 A.2d 1275, 1277 (Pa. Super. 1995). “An abuse of discretion is more than merely an error of judgment but is rather the result of an error of law or is manifestly unreasonable or the result of partiality, prejudice, bias, or ill-will.”

Commonwealth v. Perrin, 291 A.3d 337, 342 (Pa. 2023).

The court finds that the defense should be permitted to cross-examine J.T. regarding his pending charges. For decades, the law in Pennsylvania has permitted a defendant to cross-examine a Commonwealth witness regarding his or her pending criminal charges because such is relevant and admissible to the witness’s credibility, more specifically a bias or expectation of leniency that if the witness testified favorably for the Commonwealth the witness could receive some benefit on his or her own pending charges. *See Commonwealth v. Hill*, 523 Pa. 270, 566 A.2d 252, 253 (1989); *Commonwealth v. Evans*, 511 Pa. 214, 512 A.2d 626-627 (1986); *Commonwealth v. Hyland*, 875 A.2d 1175, 1186-1187 (Pa. Super. 2005)(“Failure to allow cross-examination of this nature is error and will require a new trial unless the error can be shown to have no impact on the outcome of the case.”), quoting *Commonwealth v. Buksa*, 665 A.2d 576, 579-580 (Pa. Super. 1995), *appeal denied*, 664 A.3d 972 (Pa. 1995); *Commonwealth v. Davis*, 652 A.2d 885 (Pa. Super. 1994).

[W]henver a prosecution witness may be biased in favor of the prosecution because of outstanding criminal charges or because of any non-final criminal disposition against him within the same jurisdiction, that possible bias, in fairness, must be made known to the jury. Even if the prosecutor has made no promises, either on the present case or on other pending criminal matters, the witness may hope for favorable treatment from the prosecutor if the witness presently testifies in a way that is helpful to the prosecution. And if that possibility exists, the jury should know about it.

Evans, 512 A.2d at 631-632. The *Evans* Court noted that while this rule was new (in 1986),

it evolved from principles in existence since 1908.

It is always the right of a party against whom a witness is called to show by cross-examination that he has an interest direct or collateral in the result of the trial.... The right is not to be denied or abridged because incidentally facts may be developed that are irrelevant to the issue and prejudicial to the other party.

Evans, 512 A.2d at 632, citing *Commonwealth v. Cheatham*, 239 A.2d 293, 296 (Pa. 1968)(quoting from *Lenahan v. Pittston Coal Min. Co.*, 70 A. 884, 885 (Pa. 1908)).

In *Hill*, a case that originated in Lycoming County, the Pennsylvania Supreme Court extended *Evans* to situations where the Commonwealth's victim/witness had entered a guilty plea on his charges but was awaiting sentencing. 566 A.2d 252 (Pa. 1989). The Court held that the trial court and Superior Court erred in precluding Hill from cross-examining the victim/witness about his guilty plea prior to the imposition of sentence. *Id.* at 273. In so holding, the Court stated:

The jury may choose to believe the witness even after it learns of actual promises made or possible promises of leniency which may be made in the future, but *the defendant, under the right guaranteed in the Pennsylvania Constitution to confront witnesses against him, must have the opportunity at least to raise a doubt in the mind of the jury as to whether the prosecution witness is biased.* It is not for the court to determine whether the cross-examination for bias would affect the jury's determination of the case.

Id. (emphasis added)(quoting *Evans*, 512 A.2d at 632).

For further support for the fact that the individual is the victim does not preclude such cross-examination, the court would rely on *Commonwealth v. Borders*, 560 A.2d 758 (1989). In *Borders*, the Court held that it was reversible error to preclude the defense from cross-examining the victim/accuser regarding his pending juvenile matters even though the

acts giving rise to them occurred subsequent to the criminal act and identification of the appellant by the victim/accuser. The Court explained:

Indeed, the victim, as accuser, must be subject to the utmost scrutiny if his accusations are to fairly form the basis of the criminal prosecution at hand. The strength or weakness derived from an attempt to show that the victim has some ulterior motive for continuing his role as an accuser due to subsequent acts, bringing him into the sphere of influence of the prosecutor, must rightly be determined by the jury, which, after hearing all the evidence in the matter before them, will be most able to ferret out the presence or absence of improper motive on the part of the victim.

Id. at 760. Here, J.T. did not disclose the alleged misconduct of Defendant until after he was charged, which makes this case even stronger than *Borders*.

While the court has been unable to find any case which specifically delineates the scope of such cross-examination with respect to pending charges to show bias, this court has generally taken the same approach as with *crimen falsi* convictions, that is, the court permits the party to introduce the name, time and place of the crime and the potential punishment which could be received. See *Commonwealth v. Creary*, 201 A.3d 749, 754 (Pa. Super. 2018), citing *Commonwealth v. Oglesby*, 418 A.2d 561, 564 (Pa. Super. 1980).

The Commonwealth contends that the defense should be precluded from mentioning the names of the J.T.'s crimes because it is unduly prejudicial. The court cannot agree. J.T. reported the offenses filed against Defendant years after they occurred and shortly after J.T. was charged. The defense argued that the sexual nature of the charges against J.T. and the timing of the filing of the charges and the progression of Defendant's case as compared to J.T.'s case was information that was relevant and admissible to bring out bias of J.T. in favor of the Commonwealth in the form of hope for or expectation of leniency on his pending charges, to support a potential defense that the charges were fabricated to aid J.T. in the

disposition of his charges, as well as to question J.T.'s credibility generally. The court agrees.

The name of the crime and the potential penalties that could be imposed are what shows the extent of the potential bias that the witness has in favor of the Commonwealth. Furthermore, under the facts and circumstances of this case, the fact that J.T. is charged with serious sexual offenses is not unduly prejudicial because Freed is also charged with sexual offenses. The charges against each are similarly distasteful in the eyes of the community.

The court also notes that to only state that J.T. is charged with serious felonies or that he is charged with a felony of the first degree punishable by up to 40 years in prison is not entirely accurate and does not fully explain J.T.'s potential exposure. If J.T. were convicted of all the offenses he is charged with, his exposure is greater than 40 years. J.T. is charged with multiple felonies and misdemeanors. Rape of a Child is punishable by up to 40 years' incarceration. However, that is not J.T.'s full exposure. Each other felony of the first degree is punishable by up to 20 years' incarceration; each felony of the second degree is punishable by up to 10 years' incarceration; each misdemeanor of the first degree is punishable by up to five years' incarceration; and each misdemeanor of the second degree is punishable by up to two years' incarceration. J.T.'s full exposure is more like 102 years' incarceration, provided none of the offenses merge. The Commonwealth's proposal minimizes J.T.'s alleged conduct and his potential criminal penalties for that conduct and improperly restricts a defendant such as Freed's constitutional rights to confront and cross-examine his accuser. This is particularly so in a case involving sexual conduct because in most of these cases, the alleged victim is the only witness the crimes.

The court would also rely on the recent case of *Commonwealth v. Pulizzi*, 770 MDA

2023, 2024 WL 1553814 (Pa. Super. Apr. 10, 2024), for its persuasive value. *Pulizzi* affirmed this court’s ruling that J.T. was subject to cross-examination regarding his criminal charges in a case against another teacher.

II. J.T.’s Jail Communications

The admissibility of evidence is within the sound discretion of the trial court, which will not be overturned absent a showing of an abuse of discretion. *Commonwealth v. Johnson*, 289 A.3d 959, 1009 (Pa. 2023). An abuse of discretion occurs when the law is over-ridden or misapplied, or the judgment exercised was either manifestly unreasonable or the product of partiality, prejudice, bias, or ill will. *See id.*

“All relevant evidence is admissible, except as otherwise provided by law.” Pa. R. E. 402. Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action. Pa. R. E. 401. Relevant evidence may be excluded if its probative value is outweighed by any of the following: “unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Pa. R. E. 403. “‘Unfair prejudice’ means a tendency to suggest decision on an improper basis or to divert the jury’s attention away from its duty of weighing the evidence impartially.” Pa. R.E. 403, cmt. Evidence is not admissible to merely smear an individual’s character or to show action in conformity with prior bad acts or wrongs. *See* Pa. R.E. 403, 404(a). However, evidence is admissible for other purposes such as proving “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident” provided the probative value of the evidence outweighs its potential for unfair prejudice. *See* Pa. R. E. 404(b)(2).

Statutes may also limit the admissibility of evidence. One such statute is the Rape

Shield Law (RSL). The RSL states:

(a) General rule.--Evidence of specific instances of the alleged victim's past sexual conduct, past sexual victimization, allegations of past sexual victimization, opinion evidence of the alleged victim's past sexual conduct, and reputation evidence of the alleged victim's past sexual conduct shall not be admissible in prosecutions of any offense listed in subsection (c) except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence.

18 Pa. C.S. §3104(a). Corruption of Minors and all offenses under Chapter 31 of the Crimes Code, which includes Institutional Sexual Assault, Sexual Assault, and Aggravated Indecent Assault, are set forth in subsection (c). 18 Pa. C.S. §3104(c). Therefore, the RSL applies to the prosecution of the offenses filed against Freed. The purpose of the RSL is to “prevent a trial from shifting its focus from the culpability of the accused towards the virtue and chastity of the victim.” *Commonwealth v. Rogers*, 250 A.3d 1209, 1216 (Pa. 2021). However, the RSL may not be applied in a manner that violates a defendant’s constitutional rights to a fair trial and to confront the witnesses against him. *See id.* The *Rogers* Court explained the interplay between the RSL and the defendant’s constitutional rights as follows:

At the same time, the confrontation right is not absolute. It guarantees “an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” *United States v. Owens*, 484 U.S. 554, 559, 108 S. Ct. 838, 842, 98 L.Ed.2d 951 (1988) (internal quotation marks and emphasis omitted). Thus, trial courts “retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S. Ct. 1431, 1435, 89 L.Ed.2d 674 (1986). In terms of the present controversy, our intermediate court has noted that “Rape Shield laws, if rigidly construed, could impermissibly encroach upon a defendant's right to confront and cross-examine witnesses which is secured under the United States and Pennsylvania Constitutions.”

Commonwealth v. Nieves, 399 Pa. Super. 277, 287, 582 A.2d 341, 346 (1990). As a consequence, Pennsylvania courts have sought to balance the defendant's fundamental right to a fair trial, including his right to confront his accuser, against the state's interests embodied in the statute (as outlined above) and in the rules of evidence. *Accord Commonwealth v. Quartman*, 312 Pa. Super. 349, 353, 458 A.2d 994, 996 (1983). Thus, courts have found the law unconstitutional as applied in circumstances where the defendant seeks to introduce evidence for reasons unrelated to impugning the complainant's character, and the probative value of that evidence outweighs the danger of unfair prejudice.

Id. at 1216-1217.

A. *Allegheny County Jail Phone Calls*

The defense wants to introduce a number of phone calls that J.T. made to his mother, B.C., and S.B. while he was incarcerated in the Allegheny County Jail awaiting transport to Lycoming County after he was arrested on his criminal charges. The defense seeks to introduce calls 1, 2, 4, 5, 7, 15, 21, 25, 26, 36, 37, 42, and 44. The defense asserts that these calls are admissible to attack J.T.'s credibility. The Commonwealth opposes the admission of these phone calls.

1. Call 1

Freed describes this call as follows:

This is a [12:28] call between [J.T] and his mother. It shows that [J.T] was not honest with his mother about the nature of his criminal charges. [6:27-9:00]. It also shows that he was worried about his reputation and asked his mother to lie to his track coach about why he could not return his uniform. [10:00-10:15].

The court disagrees with Freed's description of this call. It is not apparent to the court how J.T. was "not honest with his mother about the nature of his criminal charges." Much of the conversation is about how J.T. is doing, when he might be brought to Lycoming County, and arrangements being made to obtain a lawyer for J.T. There does seem to be

some mention of what the alleged **victim** may or may not have said to J.T.'s mother but it is very vague and it is not apparent to the court that **J.T.** was dishonest to his mother about his charges.¹ The court does not see how this portion of the phone call is relevant. The court is inclined to preclude this portion of the call. This ruling is without prejudice to the defense to make a more detailed proffer at the time of trial.

In this call, J.T. also has a conversation with his mother about turning in his track uniform. J.T. was scheduled to turn in his track uniform on Monday and he asks his mother to contact the coach and tell the coach that J.T. will not be able to be there on Monday. His mother asks what she should tell the coach and specifically asks if she should tell him that J.T. is incarcerated. J.T. asked her to tell the coach that he cannot be there due to a family emergency. Although the court questions whether this amounts to J.T. asking his mother to lie since J.T.'s charges involve family members hence it could be considered a "family emergency", the court would permit the defense to play only this small portion of Call 1 because the defense theory is that J.T. would say or do anything to avoid the embarrassment of his charges including make false accusations against Freed.

2. Call 2

This is a [13:15] call between [J.T.] and his boyfriend, [B.C.] It makes clear that [J.T.] made admissions to [B.C.] about molesting his accuser because [B.C.] only thought two of [J.T.'s] charges were not true. [10:25-11:30]. It also shows that [B.C.] and [J.T.] were trying to use [J.T.'s] mother to learn what statements [J.T.'s accuser] made to the police. [11:30-12:30].

¹The victim in J.T.'s case is a family member who is a minor. During the call, J.T.'s mother says something to the effect that the alleged victim "said she didn't say that." There does not appear to be any specific statement **by J.T.** to his mother about his charges or what the alleged victim said.

The court does not see how this call is relevant to Freed's charges or his defense. The court also finds that this call would be hearsay. The defense cannot simply play this call while cross-examining J.T., because J.T. cannot be impeached with statements made by B.C. B.C.'s statements would also be hearsay, as Freed is trying to show that the statements are true, i.e., that J.T. molested his accuser. This trial is not about whether J.T. committed his crimes; it is about whether Freed committed crimes against J.T. While J.T.'s charges are relevant to show bias, that does not mean that the court will permit a trial within a trial about J.T.'s charges. Even if this evidence is marginally relevant, any relevance is outweighed by the danger of confusing the issues, misleading the jury, and diverting the jury's attention away from its duty of weighing the evidence impartially. Therefore, the court will not permit this call to be played.

3. Call 4

This is a (16:29) call between [J.T.] and his girlfriend, [S.B.]. In this call, [J.T.] learns that "the cat is out of the bag" after [J.T.]'s mother told [B.C.] that [J.T.] was living with [S.B.]. [B.C.] was paying [J.T.]'s rent and was unaware that [J.T.] had a girlfriend or that he had a roommate. (9:10-end). This call shows that [J.T.] used his sexuality and dishonesty to scam [B.C.] for his rent money. It also shows that [J.T.] is concerned that [B.C.] will end their relationship.

J.T.'s past sexual conduct is not relevant to this case. The court finds that evidence regarding J.T.'s sexuality and his past sexual relationships is not admissible due to the RSL. Furthermore, Rule 404(b)(1) of the Pennsylvania Rules of Evidence generally precludes the admissibility of prior bad acts, wrongs, or acts. This seems to be precisely the type of evidence that Rule 404(b)(1) was designed to preclude. Even if this evidence is marginally relevant, any relevance is outweighed by the danger of confusing the issues, misleading the

jury, and diverting the jury's attention away from its duty of weighing the evidence impartially. The issues in this case are not J.T.'s chastity or promiscuity, or his alleged moral failings for not informing his sexual partners about his relationships with other partners. The issues are whether Freed engaged in sexual conduct with J.T. and whether that conduct occurred while J.T. was a student at the middle and high schools where Freed was an administrator. Freed also has other means of attacking J.T.'s credibility than delving into the details of his sexual relationships with B.C., S.B. or others. Such other means includes but is not limited to J.T.'s bias in favor of the Commonwealth due to his own criminal charges, J.T.'s failure to report Freed's alleged conduct at the time it was occurring instead of waiting until after he was charged with sexual offenses, and J.T.'s allegedly inconsistent prior statements regarding the allegations against Freed, including a recorded interview and written statement. *See Commonwealth v. Jerdon*, 229 A.3d 278 (Pa. Super. 2019)(when determining the admissibility of evidence that the RSL may bar, the court conducts a balancing test consisting of the following factors: whether the proposed evidence is relevant to show bias or motive or to attack credibility; whether the probative value of the evidence outweighs its prejudicial effect; and whether there are alternative means of proving bias, or motive or to attack credibility). Therefore, the court will preclude the defense from using this call.

4. Call 5

This is a [16:31] call between [J.T.] and his mother. [J.T.] asked his mother about telling [B.C.] that he lives with [S.B.]. [J.T.]'s mother encourages him to give up on all his lies and confronts him about lying to his partners and about his sexual relationships. This call shows that [J.T.] lies about sexual relationships and cannot keep his

lies straight. [B.C.] was unaware that [J.T.] vacationed with and lived with [S.B.]. [S.B.] was unaware that [J.T.] had a sexual relationship with [B.C.]. It shows that [B.C.] even paid other people to do [J.T.]’s school work. [J.T.]’s mother encourages him to find answers and to consider what was done to him. It also shows that [J.T.] lied to his mother when discussing his sister’s allegations.

The court would preclude the defense from utilizing this call for the same reasons that it precluded Calls 1 and 4.

5. Call 7

This is a [15:50] call between [J.T.] and [B.C.]. [J.T.] admits to being deceptive. [6:00-7:30]. [J.T.] also tells [B.C.] that he is searching for a reason to explain his transgressions. [7:30].

The court precludes the defense from utilizing this call for the same reasons that it precluded Call 4.

6. Call 15

This is a [16:22] call between [J.T.] and [S.B.]. [J.T.] asks [S.B.] what she told his friends about the reason for his incarceration. [13:15]. [J.T.] directs [S.B.] to lie about why he is away. [14:27-14:40]. This shows [J.T.]’s interest in protecting his reputation and his willingness to lie to do it.

Most of this call is small talk between J.T. and S.B. about their cats and what S.B. has been doing. There is a very small portion of this call where J.T. indicates that he told a person named Doug about what was going on, but not anyone else. S.B. inquires what she should tell people if they ask her. J.T. says, “Family issues, I guess.” J.T. never explicitly asks S.B. to lie and never uses the term “lie.” Although the court questions whether this amounts to J.T. directing S.B. to lie since J.T.’s charges involve family members hence it could be considered a “family emergency”, the court would permit the defense to play this small portion of Call 15, provided Freed only refers to S.B. by name or as J.T.’s roommate or

friend, because the defense theory is that J.T. would say or do anything to avoid the embarrassment and publicity of his charges including make false accusations against Freed. The court would not permit Freed to introduce any evidence regarding J.T.'s alleged sexual relationship with S.B.

7. Call 21

This is a [16:32] call between [J.T.] and his mother. This call shows that [B.C.] refused to pay [J.T.]'s rent. Without financial support from [B.C.], [J.T.] could not pay rent or maintain his standard of living.

The court will preclude the defense from utilizing this call. There has been no assertion by the defense that J.T. made his allegations against Freed for financial reasons. J.T.'s alleged sexual and financial relationship with B.C. is not relevant to these proceedings. This is just an attempt to smear J.T.'s character.

8. Call 25

This is a [6:11] call between [J.T.] and his mother. His mother tells him he needs to play up his anxiety and ADHD to help his case. [5:20].

Most of this call is irrelevant. There is a very small portion where J.T.'s mother tells him to "play up" his anxiety and ADHD. It appears that this conversation occurred prior to J.T. making any allegations against Freed. The court would permit the defense only to play this small snippet of the call; the court would preclude the remainder of the call.

9. Call 26

This is a [16:37] call between [J.T.] and his mother. She confronts him about failing academically and at track. [J.T.] states that he is looking for a reason to blame for his failures. [14:45].

The court would preclude the defense from utilizing this call. It does not appear to be relevant to Freed's charges. J.T.'s mother says that J.T. took a vacation from school and track. J.T. talks about trying to recover from an illness or injury, pressures he feels from B.C. and S.B., not being able to see his professors as an independent student and being a people-pleaser. His mother talks to him about being more focused and organized, as well as setting boundaries. There is no indication that J.T. is blaming his failures at school and track on Freed or the alleged sexual abuse by Freed.

10. Call 36

This is a [8:48] call between [J.T.] and [B.C.] discussing the status of their relationship. [B.C.] confronts [J.T.] about the extent of the lies he told him. [1:10-4:25]. [B.C.] tells [J.T.] he considered whether [J.T.] had a relationship with him as a "money setup." [4:35-5:00]. He confronts [J.T.] about [S.B.] paying half the rent even though [B.C.] paid the rent in full. [5:02-5:20]. [B.C.] references suicide. [6:34]. [J.T.] admits to constantly lying to [B.C.]. The recording then continues without sound.

The court precludes the defense from utilizing this call for the same reasons that it precluded Call 4.

11. Call 37

This is a [16:14] call between [J.T.] and [B.C.] discussing the status of their relationship. [J.T.] apologizes for the deception, the lying and the "pain" he caused [B.C.]. [2:40-3:20]. [B.C.] questions [J.T.] about his sexual relationships with other men while they have been a couple. [10:35]. [J.T.] tells him that there was just one other man before he and [B.C.] were serious. [11:05]. [J.T.] denies seeing other

men when they were a couple. [11:50-12:30].

The court precludes the defense from utilizing this call for the same reasons that it precluded Call 4.

12. Call 42

This is a [16:20] call between [J.T.] and his mother. They are concerned about [J.T.]’s reputation and public perception. [14:30-end].

J.T.’s mother is making the statements regarding her concerns when news of J.T.’s charges get out and are in the paper and what she will say to people. J.T. responded, “Wow, I didn’t know that.” If J.T.’s mother is called as a witness, the defense can request to utilize this call to impeach her, but the defense will need to make a detailed proffer of how it intends to use this information. If Freed can establish that this call occurred after J.T.’s text message with S.B. on May 3, 2022 about how serious his case was and how his name was going to be blasted in Williamsport, the court would permit Freed to use this call to show that J.T. was not being truthful when he responded to his mother’s concerns. Otherwise, the court would preclude the defense from utilizing this call to impeach J.T.

13. Call 44

This is a [15:49] call between [J.T.] and [S.B.]. [J.T.] admits to lying to her in their relationship. [9:40].

The court precludes the defense from utilizing this call for the same reasons that it precluded Call 4.

B. J.T.’s Text Messages from the Allegheny County Jail

Freed also seeks to introduce text messages that J.T. sent to B.C., S.B. and S.P. from

the Allegheny County Jail.

1. Text Messages with B.C.

With respect to the text messages to B.C., Freed argues:

When [J.T.] learns that he is being transferred to LCP, the only person that he messaged is [B.C.]. He continued to have a relationship with [B.C.] after apologizing to [S.B.] for cheating on her with him. In fact, within minutes of texting [B.C.] about missing his touch, [J.T.] texts [S.B.] about missing their “cuddles.” (Freed Brief, at 9).

Contrary to Freed’s arguments, B.C. was not the only person that J.T. messaged about being transferred from Allegheny County Jail to the Lycoming County prison. Right after J.T. messaged B.C., he messaged his father. Right after J.T. messaged B.C. at 08:14:35 on May 4, he messaged his father at 08:15:16. Immediately after that, he sent another text to his father asking him to text that information to his mother. Unfortunately, it looks like his father never read either of the messages that J.T. sent on May 4.

In any event, the court finds that none of the texts between J.T. and B.C. are relevant. It is merely an effort to smear J.T.’s character with his promiscuity in contravention of the RSL. Even if there was any relevance to this information, the court would preclude it due to its potential for unfair prejudice. J.T. should not be disbelieved simply because he may have had multiple sexual partners and not revealed the extent of each relationship to the other partners or because he may be attracted to both men and women. The only effect this type of evidence would have is to inflame the jury against J.T. and divert them from weighing the evidence impartially. Therefore, the court will prohibit the defense from utilizing the text messages between J.T. and B.C.

2. Text messages with S.B.

[J.T.] admits to lying throughout their relationship. He expresses his innocence. He also expresses worry about his reputation. He continues to have a relationship with [S.B.] after apologizing to [B.C.] for cheating on him with her. In fact, within 10 minutes of texting [S.B.] about missing their “cuddles” he texts [B.C.] about missing his touch. (Freed Brief, at 9).

On May 3, 2022, J.T. texted S.B. that he wasn’t sure she realized how serious this [his case] was and that his name was going to be blasted in Williamsport about his case. This is the only portion of the text messages that is relevant. The court would permit the defense to utilize this text.

The rest of the text messages are about J.T.’s and S.B.’s relationship and their finances. The court finds that those texts are not relevant, any relevance would be outweighed by the potential for unfair prejudice and would be precluded by the RSL. Therefore, the court would preclude the defense from utilizing the remaining texts between J.T. and S.B.

3. Text messages with S.P.

According to Freed, “these messages show that [J.T.] continued to pursue a sexual relationship with [S.P.] after apologizing to [S.B.] and [B.C.] for cheating on them.

The court finds that these texts are not relevant, any relevance would be outweighed by the potential for unfair prejudice and would be precluded by the RSL. Therefore, the court will preclude the defense from using these texts.

C. J.T.’s Calls from Lycoming County Prison

1. Call 1 – May 5, 2022 at 20:01

This is a call between J.T. and B.C. The court would permit the defense to utilize the portion of the call where B.C. encourages J.T. to “give it to his lawyer straight, all of it.” As

that seems to be trying to J.T. to make allegations against Freed. The court would also permit the defense to introduce J.T.'s statements that J.T. is "too pretty for prison" and "how heavy [his] case is" as these statements could be considered motive for J.T. to fabricate charges against Freed to extricate himself from his own charges and incarceration due to being unable to post bail at that time. The court would not permit the defense to introduce the conversations about J.T.'s transportation from Allegheny County to Lycoming County, and how J.T.'s meeting with his lawyer went because this evidence would not be relevant to Freed's case.

2. Call 2- May 5, 2022 at 20:17

This is another call between J.T. and B.C. continuing their conversation on May 5. The court would permit the defense to utilize the portion of the phone call where J.T indicates that he has to tell B.C. something in person about the principal. This conversation is around 14:33 minutes into the phone call to the end. The court would not permit the defense to introduce the portions related to how much B.C. paid to hire a lawyer or statements about J.T.'s mother.

3. Call 3 – May 5, 2022 at 20:35

This is a call between J.T. and B.C. continuing their conversation. Most, if not all, of his call is about Freed. During this call, J.T. makes statements that there is something he wants to discuss with B.C. when he gets out of jail but he doesn't want to talk about it "on this platform," that Freed has dirt on him-the very truth, and that Freed would bring him down. The court would permit the defense to use the parts of the call that relate to Freed. The court would preclude the defense from utilizing any portions of the call that do not relate to Freed.

4. Call 4 – May 6, 2022 at 09:50

This is another call between J.T. and B.C. The court would permit the defense to utilize most of this call. Most of the call is about J.T.'s interactions with Freed and when they occurred. There is a brief portion about a teacher, which the court would not permit, as it does not appear relevant to Freed's case.

5. Call 5 - May 6, 2022 at 10:06

This is a call between J.T. and B.C. Most of the call appears to be about sexual conduct/abuse perpetrated by minor relatives of J.T. against J.T. when he was a young child. There is a small portion of the call that begins about ten minutes into it where J.T. talks about Freed. The court would permit the defense to utilize the portion of the call about Freed. The remainder of the call does not appear to be relevant to Freed's case.

6. Call 6- May 6, 2022 at 10:22

This is a continuation of the previous call between J.T. and B.C. The court would permit the defense to introduce the portions of the call about Freed, B.C.'s statements about "all the stuff we talked about" and "makes the puzzle pieces come together," and J.T.'s statements that it is "nerve wracking" and he "needs to win." The court would not permit J.T.'s statements that begin with "I know as an adult what I like" and then mentions liking men and women. Those statements are not relevant and any arguable relevance is outweighed by the potential for undue prejudice.

7. Call 7 – May 8, 2022 at 1547

This is a call between J.T. and B.C. During a latter portion of the call, J.T. talks about his March sexual encounter with Freed at his apartment and B.C. encourages J.T. to make allegations against Freed to mitigate his charges. The court will permit the defense to utilize

this portion of the call. The court will not permit the defense to utilize the remainder of the call which talks about J.T.'s plans, J.T.'s hatred of Williamsport and comments about his cellmate as it is not relevant to this case.

8. Call 8 – May 9, 2022 at 1051

This is a call between J.T. and B.C. In the call, J.T. talks about how he is feeling and his relationship with his family, particularly his mother. The court did not hear any discussion of J.T. not wanting to struggle financially. Near the end of the call, B.C. asks J.T. what he thinks about “moving out here” when this is all over, but there are problems with the phone and the time expires so that the court did not hear an answer from J.T. The court will not permit the defense to utilize this call. There does not appear to be anything relevant to this case in this call.

D. Supplement re Phone Calls from LCP and the interview of J.T. by Agent Kitko that were not initially disclosed by the Commonwealth

1. Call 8 of 27 – May 6, 2022 at 09:32

This is a call between J.T. and B.C. B.C tells J.T. that all the puzzle pieces came together and J.T. needs to tell his lawyer about all of the sexual abuse that happened to him because he is a victim, not a predator. He needs to tell his lawyer who the real monster is. J.T. then tells B.C. that he will tell the lawyer about the principal (Freed) and the teacher. The court will permit the defense to utilize this phone call. This call is about Freed and is highly relevant to this case.

2. Call 12 of 27 – May 6, 2022 at 10:39

This is a call between J.T. and B.C. In this call, J.T. talks about the track coach and the teacher. The court will not permit the defense to utilize this call. J.T.'s statements about

the track coach and the teacher are not relevant to this case. The court will not permit this trial to devolve into a trial within a trial about J.T.'s contacts or relationships with other individuals.

3. Call 14 of 27 – May 7, 2022 at 10:12

This is a call between J.T. and B.C. In this call, J.T. expresses frustration about being incarcerated and feeling like he is in the dark with respect to his case. He indicates that he has been writing things down. He talks about being sexually assaulted in a changing room during a photo shoot and he quit modeling as a result. He told the photographer and the alleged perpetrator “bashed him” through email. The court does not see how this is relevant to Freed’s case. Therefore, the court will preclude the defense from utilizing this call at trial.

4. Call 15 of 27 – May 7, 2022 at 10:27

This is a call between J.T. and B.C. J.T. reads his timeline to B.C. about his schedule during his senior year of high school and his time at college up until COVID. It appears that J.T. was writing his schedule down to give to his lawyer. It appears that J.T. was trying to recreate where he was during that time to defend against his own charges, not in relation to his allegations against Freed. Absent further development by the defense, the court would preclude the defense from utilizing this call. As an example of what the court means by further development, if the defense can show that one of the times J.T. alleges Freed engaged in sexual relations with him, J.T.’s timeline shows that he was somewhere else, the court would permit the defense to use the call for such a purpose.

5. Call 16 of 27 – May 7, 2022 at 10:43

This is a call between J.T. and B.C. J.T. continues with his timeline. The only part of the call that even mentions Freed is in the middle of the recording J.T indicates that when the

allegations came out against him on May 19. His mother called him and told him. J.T. then went to Freed's house, told Freed about it, and was "freaking out." The court would permit the defense to utilize this portion of the call but would preclude the remainder.

6. Call 18 of 27 – May 8, 2022 at 1514

In this call, J.T. discusses his conversations with his lawyer, the interview of the alleged victim related to his own charges, his innocence of the charges and his refusal to go to prison for something he didn't do. There is a small portion of the call where J.T. tells B.C. that he needs to promise J.T. that he will get out of prison on Tuesday (the day of his preliminary hearing). B.C. says he cannot make those promises. B.C. then tells J.T. that J.T.'s therapist should be brought in to his case. The court would only permit the defense to use the small portion of the call regarding J.T. getting out of prison. The court notes that the Commonwealth agreed at the preliminary hearing to change J.T.'s bail from \$225,000 monetary bail to \$225,000 unsecured bail. This arguably was a benefit that J.T. received for making allegations about Freed and other school officials.

7. Call 19 of 27 – May 8, 2022 at 1531

In this call, J.T. proclaims his innocence to B.C. and then talks about being suspended from college and talks about S.B. J.T. also talks about bail, getting it lowered, and getting out of jail on Tuesday. J.T. talks about wanting his clothes, his cat and the rest of his belongings that are in Pittsburgh. Again, the court would limit the use of this call to matters regarding bail and J.T. getting out of jail.

8. J.T.'s June 17, 2021 Zoom Interview with Agent Kitko

This is the police interview of J.T. regarding his charges. The court is unsure how the defense wishes to utilize this interview. This interview was not initially disclosed by the

Commonwealth so it was not specifically included in Freed's motion in limine. It was added at the end of the day on October 20, 2023, which was the Friday before the oral argument on Monday. Therefore, the court cannot rule definitively at this time. However, consistent with the other rulings in this Opinion, the court does not intend to have a trial within a trial regarding J.T.'s charges. The court questions how J.T.'s interview regarding his charges is relevant to Freed's charges. Absent further development by the defense, the court would preclude the defense from utilizing this call. As an example of what the court means by further development, if the defense can show that one of the times J.T. alleges Freed engaged in sexual relations with him, J.T.'s interview shows that he was somewhere else or with someone else, the court would permit the defense to use the interview to impeach J.T.

III. Motion to Preclude Evidence of Furnishing Alcohol to Minors

The furnishing alcohol to minors charges were dismissed because they were filed beyond the applicable statute of limitations. The defense filed a motion to preclude the Commonwealth from presenting any evidence that Freed furnished alcohol to J.T. on the basis that such information was irrelevant and more prejudicial than probative. At the argument, the Commonwealth contended that Freed furnishing alcohol to J.T. was part and parcel of the sexual encounter and was relevant to the ongoing course of conduct for the Institutional Sexual Assault charges. The argument was somewhat boilerplate, but the attorney at the argument was not the attorney assigned to the case.

The court was unsure what the evidence was going to be or how the Commonwealth intended to utilize it at trial. The day after the argument, court sent an email to the parties directing the Commonwealth to indicate what the evidence

would be by a certain date or the court would consider the issue to be resolved in favor of the defense. The court sent the email to the attorney for the Commonwealth present for the argument, the attorney for the Commonwealth assigned to the case, and defense counsel. The court never heard from the Commonwealth. On this basis alone, the court would grant the defense motion to preclude this evidence.

There are many more counts in the Information of Institutional Sexual Assault (30 counts) than there are Furnishing Alcohol to Minors (2 counts). According to the affidavit of probable cause, the sexual conduct with Freed began during the spring of J.T.'s junior year of high school. The instances of furnishing alcohol occurred in the Fall of 2017 during a visit to Duquesne (which would have been during the early part of J.T.'s senior year of high school), toward the end of J.T.'s senior year of high school (Spring of 2018), and in March of 2021. The court notes that J.T. was born in the summer of 1999. Therefore, he would have been 21 years old in March of 2021. Even if the Commonwealth had responded to the court's email, the court would be hard-pressed to find the relevance of "furnishing alcohol" to J.T. when he was no longer a minor or how any relevance would be outweighed by the potential for prejudice.

This also does not appear to be an instance of gradually getting J.T. to engage in sexual activities by providing him with alcohol or by getting J.T. so drunk that he did not know what was occurring. According to the affidavit of probable cause, Freed allegedly began engaging in sexual activity with J.T. in the spring/summer of 2017 and it then occurred four to five times per week during 2017 and 2018. In other words, Freed engaged in sexual activity with J.T. for months

prior to offering him alcohol. Although Freed is charged with Corruption of Minors, that charge is based on a course of conduct in violation of Chapter 31 (relating to sexual offenses), not the provision of alcohol. Furthermore, any lack of consent for Counts 34, Sexual Assault and Count 35, Aggravated Indecent Assault Without Consent relates to Freed using “his power to influence and pressure the victim into sexual intercourse over the victim’s high school tenure (2015-2018).” Therefore, it does not appear that the alcohol was part of the natural development of the facts of the case or relevant to any claims of lack of consent. Moreover, under the facts and circumstances of this case, the court believes that any relevance of this evidence would be outweighed by the potential for prejudice against Freed. He is no longer charged with the offenses of Furnishing Alcohol to Minors because the charges were filed beyond the statute of limitations. The introduction of this evidence has the potential to confuse the issues, mislead the jury, and inflame the passions of the jury, which likely would not understand why they were not deciding whether Freed was guilty of such a charge. See Pa. R. E. 403 (“The court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”).

Therefore, the court will grant the defense motion in limine to preclude the Commonwealth from introducing evidence regarding furnishing alcohol to J.T.

Conclusion

As set forth in this Opinion, the court is permitting the defense to utilize J.T.’s communications specifically regarding the administrator/principal (Freed), as well as calls

discussing J.T. saying and doing things to mitigate his own charges, conversation regarding bail and/or getting out of jail, and statements by J.T. about the seriousness of his charges and his name being blasted in Williamsport. The court is precluding the defense from utilizing calls and texts regarding J.T.'s sexual relationships with individuals other Freed. The court is precluding the Commonwealth from introducing evidence regarding Freed furnishing alcohol to J.T.

ORDER

AND NOW, this 7th day of June 2024, as set forth in the foregoing Opinion, the court GRANTS IN PART and DENIES IN PART the Motion in Limine filed on behalf of Defendant, Roger Freed.

A. Allegheny Calls

1. The court precludes the defense from using the following calls from the Allegheny County prison – Calls 2, 4, 5, 7, 21, 26, 36, 37, and 44.
2. The court permits the defense to utilize portions of Calls 1, 15, and 25 as explained in the Opinion accompanying this Order.
3. The court precludes the defense from utilizing portions of Call 1 and all of Call 42 absent further development by the defense as explained in the Opinion accompanying this order.

B. Texts

1. The court precludes the texts with B.C. and S.P.
2. The court permits the defense to utilize the text between J.T. and S.B. about the seriousness of his case and his name will be blasted in

Williamsport. The court precludes the defense from utilizing the remaining texts with S.B.

C. Lycoming County Calls

1. The court permits the defense to utilize the portions of Call 1 about B.C. encouraging J.T. to tell his lawyer everything, J.T. being “too pretty for prison,” and how “heavy” J.T.’s case is. The court precludes the defense from using the remainder of Call 1.
2. The court permits the defense to utilize the portions of Calls 2, 3, 4, 5, and 7 that relate to Freed, but precludes the defense from using the other portions of these calls.
3. The court permits the defense to utilize the portions of Call 6 regarding Freed, “all the stuff” that B.C. and J.T. talked about, the “puzzle pieces coming together”, J.T.’s statement that this is “nerve wracking” and he “needs to win.” The court precludes the defense from using the remainder of Call 6.
4. The court precludes the defense from using Call 8.

D. Supplemental Lycoming County Calls and Kitko Interview

1. The court permits the defense to use Call 8 of 27.
2. The court precludes the defense from using Call 12 of 27 and Call 14 of 27.
3. The court would permit the defense to use portions of the following calls:
 - a. Call 16 of 27 – the portion related to Freed.

- b. Call 18 of 27 – the portion regarding J.T. getting out of prison.
- c. Call 19 of 27 – the portions regarding bail and J.T. getting out of prison.

Other than these portions, the court precludes the defense from using the remainder of Calls 16, 18 and 19.

- d. The court precludes the defense from using Call 15 of 27 absent further development as explained in the Opinion accompanying this Order.

- 4. The court precludes the defense from utilizing Agent Kitko’s interview of J.T. regarding J.T.’s charges absent further development as explained in the Opinion accompanying this Order.

E. Furnishing Alcohol

- 1. The court precludes the Commonwealth from presenting evidence that Freed furnished alcohol to J.T.

By The Court,

Nancy L. Butts, President Judge

cc: Matthew Welickovitch, Esquire (ADA)
David Lampman, Esquire
Jerri Rook

NLB/laf