

PHILIP GODLEWSKI,
Plaintiff

v.

CHRIS KELLY, TIMES SHAMROCK
COMMUNICATIONS, THE SCRANTON
TIMES-TRIBUNE, LARRY HOLEVA
Defendants.

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

CIVIL DIVISION

JURY TRIAL DEMAND

No.: 2021-CV-2195

MAURICE J. REELEY
CLERK OF JUDICIAL
DIVISION

2022 AUG -3 A 11:06

RECORDED
CIVIL DIVISION

**BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL
SUBPOENAED MATERIALS FROM THE
LACKAWANNA COUNTY DISTRICT ATTORNEY**

Defendants, Chris Kelly, Times Shamrock Communications, The Scranton Times-Tribune and Larry Holeva (hereinafter referred to collectively as "Defendants"), by and through their attorneys, Haggerty Hinton & Cosgrove LLP, file this Brief.

I. BACKGROUND

Plaintiff, Phillip Godlewski, filed this defamation case on May 24, 2021. He alleges the Times-Tribune defamed him in an article published on February 14, 2021 and he seeks \$5 Million in damages. By virtue of him being a patriot reporter and social media influencer with over 75,000 followers, Plaintiff claims he is a public figure.

The article in question discusses Plaintiff's criminal history and states "Lackawanna County detectives said Godlewski had sex with the [minor] girl in cars and homes he had access to as a real estate agent." Further, the article noted he pled guilty to corruption of a minor and admitted to having a sexual relationship with a 15-year-old girl. "Godlewski, 28 at the time, was sentenced to three to 23 months, with the first three months to be served under house arrest and the balance as probation." Plaintiff now claims in this lawsuit he never had sex with the fifteen-year-old girl and Defendants defamed him by stating such.

II. STATEMENT OF THE QUESTIONS INVOLVED

Whether the District Attorney of Lackawanna County shall be ordered to comply with a subpoena by producing to Defendants the records it obtained from Verizon Wireless pursuant to a Search Warrant?

Suggested Answer: Yes.

III. ARGUMENT

Pa.R.C.P. 4003.1 permits discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Commonwealth v. Kauffman, 605 A.2d 1243, 1246 (Pa. Super. 1992). “Discovery itself is designed to promote free sharing of information so as to narrow the issues and limit unfair surprise. It is a tool which serves each litigant and promotes judicial economy.” Id. at 1245. Disclosure of criminal history record information is controlled by the Criminal History Record Information Act, 18 Pa. C.S. § 2101, *et seq* (“CHRIA”). In keeping with the tendency towards open discovery, CHRIA recognizes that documents and records prepared, maintained by or filed in any court of the Commonwealth of Pennsylvania are presumed to be part of the public record, and are generally discoverable. 18 Pa.C.S. § 9104(a)(2). CHRIA specifically provides that

investigative information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties[.]

18 Pa.C.S. § 9106(c)(4) (emphasis added). “Investigative information” is defined as “[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing[.]” 18 Pa.C.S. § 9102. Neither the Pennsylvania Supreme nor Superior Courts have issued any binding precedent on the application of CHRIA to subpoenas issued in civil cases. The Commonwealth Court has acknowledged that “[t]he mere fact that a record has some connection to a criminal proceeding does not

automatically exempt it under ... CHRIA.” Grove, 119 A.3d at 1108 (citing Coley, 77 A.3d at 697–98).

The Commonwealth Court further explained that,

“The types of records that we have held protected ... [under] CHRIA as investigative are records created to report on a criminal investigation or set forth or document evidence in a criminal investigation or steps carried out in a criminal investigation.

The type of information that is sought in this case does not implicate the privacy concerns that underlie CHRIA. The purpose of CHRIA is to protect ongoing criminal investigations, an interest clearly not at play here where the target of the criminal investigation, Phillip Godlewski, has already pled guilty and been sentenced for corrupting the morals of a minor.

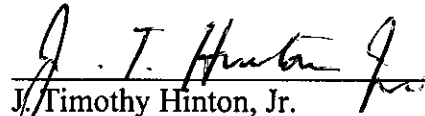
As our Supreme Court has directed, each claim that a record is exempt as relating to an investigation must be decided on its unique facts. Pennsylvania State Police v. Michelle Grove, 161 A.3d 877, at 894, 640 Pa. 1 (2017). The mere fact that a record has some connection to an investigation does not automatically exempt it. Grove, 161 A.3d at 894. It is well established that “the exceptions to disclosure of public records must be narrowly construed.” Office of Governor v. Davis, 122 A.3d 185, 1191 (Pa. Cmwlth. 2015).

IV. CONCLUSION

Plaintiff has opened the door to discovery by filing this lawsuit. The public already has access to his criminal court file from 2010 including some of the text messages he sent the minor victim which were cited to in the Affidavit of Probable Cause. The purposes behind CHRIA do not apply here and further, Defendants are not seeking the investigative records prepared by the LCDAO. Defendants are merely seeking Verizon’s records. As such, the District Attorney

should be compelled to produce the phone records that his office obtained from Verizon Wireless.

Date: 8-2-2022



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CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ J. Timothy Hinton, Jr., Esq.
J. TIMOTHY HINTON, JR., ESQUIRE
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CERTIFICATE OF SERVICE

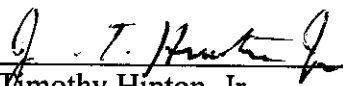
I hereby certify that on this 3rd day of August 2022, I caused to be served by First-Class mail, postage prepaid, a true and correct copy of the foregoing Brief in Support of Defendants' Motion to Compel upon the following:

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Respectfully submitted:

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