

****TRANSCRIPTION OF DIGITAL RECORDING****

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SEAN McCLENDON,)	Case No. 22-CV-5472
)	
Plaintiff,)	
)	MOTION HEARING
vs.)	
)	
CITY OF CHICAGO, et al,)	Chicago, Illinois
)	Date: August 8, 2023
Defendants.)	Time: 10:28 a.m.

AUDIO TRANSCRIPTION OF RECORDED MOTION HEARING
HELD BEFORE
THE HONORABLE MAGISTRATE JUDGE MARIA VALDEZ
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

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For Defendant City of Chicago:	Brian Wilson, Esq. Nathan Kamionski, LLP 33 West Monroe, Suite 1830 Chicago, Illinois 60603 312-957-6649

(Appearances continued on the next page.)

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1 APPEARANCES: (Cont'd)

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11 Proceedings recorded by Liberty digital-recording system;
12 transcript produced by audio transcription.

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1 (Proceedings commenced at 10:28 a.m., in open court, and are
2 transcribed from a Liberty audio recording, to wit:)

3 THE COURTROOM DEPUTY: We are calling case
4 22-CV-5472, *McClendon v. City of Chicago, et al.*

5 Motion hearing.

6 THE COURT: Let's get appearances, please.

7 MR. FLAXMAN: Good morning.

8 Joel Flaxman for the plaintiff.

9 MR. WILSON: Good morning, Your Honor.

10 Brian Wilson on behalf of the City.

11 MR. GAINER: Good morning, Your Honor.

12 Brian Gainer on behalf of the individual officers.

13 THE COURT: Good morning to you all.

14 We are here on the plaintiff's motion to quash, and
15 the Court has reviewed the motion, and the City's response to
16 the motion has also been reviewed.

17 Mr. Flaxman, any reply?

18 MR. FLAXMAN: Yes, Your Honor.

19 The issue is really relevance, and that all the City
20 puts forward in their response is a very speculative argument
21 that there must be something in these recordings that's
22 relevant. And without more, we have the kind of fishing
23 expedition that other judges in this district have quashed
24 when defendants seek an unlimited amount of prison phone
25 calls.

1 THE COURT: Defendants point to some cases in this
2 district where discovery had been allowed to go forward, and
3 some information had been gleaned as a result.

4 You want to deal with those cases at all?

5 MR. FLAXMAN: Well, I think the response to those
6 cases is we don't know the sample size. I mean, there's two
7 cases where, you know, a fishing expedition caught a fish. We
8 don't know if there are a hundred more or a thousand more
9 where all it turned up were irrelevant and -- irrelevant phone
10 calls that went against what courts have recognized as a
11 limited privacy interest, from the plaintiff.

12 THE COURT: From the Court's perspective, I'm not
13 dealing with the issues of cost or burden, but relevancy. And
14 I want to focus on the issue of relevancy.

15 So the information that the City is requesting, why
16 is that information relevant as opposed to all of the calls
17 that might have occurred?

18 MR. WILSON: So, Judge, to clarify on what we're
19 really looking for, we are trying to find admissions from the
20 plaintiff as to, A, the underlying incident that happened, his
21 arrest, what he did, what he saw, what he saw the officers do
22 or not do, who might have been present, which would go towards
23 liability, and, also, B, conversations that would go towards
24 damages, which can span any number of topics, such as his
25 daily life in prison, experiences that he had, whether he felt

1 safe or unsafe, events he was missing outside of prison,
2 relationships that he claims were strained because of being in
3 prison. Those are the kinds of -- and that would again go
4 toward damages, not as dispositive as perhaps the liability
5 calls, but still undeniably relevant. So those calls, they
6 would be relevant, and they would constitute admissions that
7 do not change based on the passage of time, they are not
8 dependent on the strength or weakness of anyone's memory, and
9 they are completely immune to bias. They can't lie.

10 THE COURT: I certainly do understand that. My --
11 and I should have been clear for you.

12 My issue about relevance is why do you believe
13 that -- what toehold do you have to give me to find that there
14 might be admissions in these recordings, or issues relating to
15 damages? Other than to say those two things are relevant,
16 yes, I mean, could say that in any case and get everybody's,
17 you know, phone records then. You can get anything.

18 So what about -- like what toehold evidence do you
19 have that you believe that you will find evidence of
20 admissions or evidence that relates to damages in the
21 recordings?

22 MR. WILSON: So there's two things really supporting
23 our belief that there is a likelihood of finding calls that
24 touch on one of those subjects, liability or damages. First,
25 Your Honor, is it comes down to logic and common sense. The

1 nature of being in prison and prison calls is very different
2 from the way people otherwise communicate because of the
3 isolation involved and the lack of other options to
4 communicate.

5 THE COURT: Generalizations won't get me there. You
6 need to -- the times I have allowed this have to do with, you
7 know, evidence of recantations that have occurred. You know,
8 there's something apart from just the general nature of
9 admissions might be made because you are in a close setting
10 and there could be -- you know, you are making -- you are in a
11 very precarious emotional state, you might make an admission
12 to somebody on the phone. I need some evidence that this is
13 not a fishing expedition because what you're describing is a
14 fishing expedition.

15 MR. WILSON: The most concrete piece of evidence in
16 the record to date, Your Honor, would be the answer that
17 plaintiff gave us to our interrogatory, asking if he discussed
18 his arrest, his prosecution, or his release efforts with
19 anybody while in prison. And his verified answer is he spoke
20 about those topics with nobody, ever, at any point, despite
21 the number --

22 THE COURT: So what's the absence of evidence?

23 MR. WILSON: Your Honor, it is --

24 THE COURT: That I'm supposed to not believe? Is
25 that what --

1 MR. WILSON: Well, yes. Our argument is that the
2 facially credible nature of that warrants our ability to test
3 it by actually going to the objective evidence instead of
4 relying on plaintiff's incredible denial that these topics
5 would never have come up on any of his phone calls. Beyond
6 that, there is no way to know the substance of a call before
7 listening to it.

8 THE COURT: There's no way to know anything before
9 looking at it. That doesn't mean you get it in discovery.

10 MR. WILSON: Well, Judge, when it comes to things
11 like e-mail communications or text messages or even
12 transcribed calls, parties often confer about search terms,
13 they cull the substance of the documents before anyone
14 actually looks over it, by pulling out things that are more
15 likely to be relevant than others.

16 Were there a way for us to do that with prison calls,
17 we would have done that. If we could have issued a subpoena
18 saying any phone call --

19 THE COURT: But you don't get there until you
20 demonstrate that the information is, you know, not a fishing
21 expedition, that there is a toehold of information to give me,
22 so that I can assure myself that there is a reasonable
23 likelihood that there's go to be discoverable information.
24 Making generalized arguments does not do that for me. And I
25 understand what you're saying, common sense and all of that.

1 But common sense is also maybe somebody doesn't talk about,
2 you know, a crime that they are accused of to anyone else.
3 You know, it's common sense -- it's a lack of common sense,
4 why are they talking about it?

5 But I understand what you're saying. I need
6 evidence. I need even a thin little lead of something, as in
7 the case that I have done it before, where there's been
8 evidence of recantations that have occurred and so maybe
9 there's a discussion of recantations.

10 MR. GAINER: Can I add something, Judge, on behalf of
11 the individual officers?

12 THE COURT: Yes. Since you represent a separate
13 party.

14 MR. GAINER: I do.

15 THE COURT: As you know, I complained to the
16 Morrisseys prior --

17 MR. GAINER: I was paying attention earlier. Yes.

18 THE COURT: Yes.

19 MR. GAINER: A thought on that absence of evidence
20 argument.

21 I understand it is not terribly compelling to the
22 Court, based on your comments. However, in this specific
23 case, I represent an individual, Milot Cadichon, who was
24 convicted in federal court of a crime and sent to federal
25 prison, which is a significant development and would be a very

1 significant development for someone who had been in prison and
2 was in prison when something like that happened.

3 So I understand that this is just an extension of the
4 argument indicating, well, it's kind of hard to believe that
5 Mr. McClendon would not have spoken on the phone about these
6 issues. But that specific fact, and how significant that fact
7 would be to Mr. McClendon while he's in prison trying to
8 overturn his conviction I think supports the argument.

9 THE COURT: Would you get that if he wasn't in
10 prison? Would you get all of his phone messaging, all of his
11 Twitter, all of his Facebook?

12 MR. GAINER: Well, I think we certainly in other
13 cases sought information.

14 THE COURT: I am asking what you would get from
15 and --

16 MR. GAINER: Well, I --

17 THE COURT: -- discover --

18 MR. GAINER: -- concede the idea that we would get it
19 all is -- we would not. That's true. But some portion of it?

20 THE COURT: Just on the basis of an argument that you
21 made, that somebody would have said something, at some time?

22 MR. GAINER: No, no. No. I'm not indicating that I
23 think that we would get all phone records or even some phone
24 records from some person out on the street, going about their
25 business, to try to prove or disprove some fact in the

1 lawsuit.

2 I do think the idea that every single person who's in
3 prison is told over and over again about the fact their phone
4 calls are recorded, the idea of prejudice, of getting these
5 phone calls, I think is a little bit of a stretch.

6 THE COURT: Again, I'm not talking about that. I'm
7 talking about is it relevant for purposes of discovery beyond
8 a fishing expedition. And the Court requires some level of
9 information before I engage in this. And I think most all of
10 the courts, except for the few that you have found recently,
11 have required that kind of toehold of information.

12 So based on the motion, I am going to be granting the
13 motion to quash. I don't think that there's enough of a basis
14 to go on this expedition with respect to the phones.

15 All right.

16 MR. WILSON: Your Honor, does that include the
17 motions as to the specific phone calls that he made on other
18 inmates' numbers as well, all subpoenas? Just to clarify.

19 THE COURT: Yes. There's nothing that I have before
20 me that makes me -- has any level of comfort that you
21 demonstrated at least a toehold of information here.

22 Thank you very much.

23 MR. WILSON: Thank you, Judge.

24 MR. FLAXMAN: Thank you, Judge.

25 MR. GAINER: Thank you, Judge.

1 THE COURTROOM DEPUTY: All rise.

2 (Proceedings concluded at 10:38 a.m.)

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REPORTER'S CERTIFICATE

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I, ANNETTE M. MONTALVO, certify that the foregoing is
a correct transcript from the digital recording of proceedings
in the above-entitled matter to the best of my ability, given
the limitations of using a digital-recording system.

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Dated this 27th day of September, 2023.

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/s/Annette M. Montalvo
Annette M. Montalvo, CSR, RDR, CRR
Official Court Reporter

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