

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

Sean McClendon,)	
)	No. 22-cv-5472
<i>Plaintiff,</i>)	
)	<i>(Judge Coleman)</i>
-vs-)	
)	<i>(Magistrate Judge Valdez)</i>
City of Chicago, et al.)	
)	
<i>Defendants.</i>)	

**PLAINTIFF AND THIRD-PARTY WITNESS
EMMANUEL POE'S MOTION TO QUASH**

The Court has twice considered and rejected defendants' request to listen to the recordings of phone calls made by plaintiff while he was in custody. Defendants again seek to discover plaintiff's calls and those of third-party witness Emmanuel Poe. Plaintiff and Mr. Poe, by counsel, respectfully request that the Court once again deny this request.

I. Background

Plaintiff Sean McClendon alleges that he was wrongfully imprisoned because defendant police officers fabricated evidence against him. Following his arrest on October 10, 2014, plaintiff spent six months in custody: About four months in the Illinois Department of Corrections on a parole violation and the remainder at the Cook County Jail. On May 29, 2015, plaintiff was released on bond. He returned to the Jail on July 13, 2016, on a finding of guilty and was transferred to the Illinois Department of Corrections on November 10, 2016.

Plaintiff was released from IDOC on June 13, 2022, when his conviction was vacated.

The evidence against plaintiff was the statement of defendant Cadichon that saw plaintiff hide a gun behind a couch on the porch where officers arrested plaintiff and the statement of defendant McHale that plaintiff acknowledged possessing a gun. Plaintiff testified at his criminal trial on July 13, 2016, and denied both contentions.

Plaintiff was with his friend Emmanuel Poe at the time of arrest. Mr. Poe testified at trial; his testimony was consistent with plaintiff's trial testimony. Poe also testified to his version of events at a suppression hearing held on November 4, 2015.

A jury found plaintiff guilty, but the Appellate Court reversed, holding that the gun should have been suppressed because it was found as the result of an illegal seizure. Plaintiff filed this lawsuit after his conviction was overturned, contending that the defendants fabricated the evidence that was used to prosecute him.

II. Defendant's Requests and Local Rule 37.2 Compliance

On December 22, 2023, defendant notified plaintiff of its intent to obtain numerous recordings of phone calls. (Exhibit 1.¹) Some of the recordings would

¹ Defense counsel later corrected two typos in the email: The correct date range for calls defendants' seek between plaintiff and Mr. Poe is October 20, 2014 and February 13, 2015, and the final category of calls listed should be those between Mr. Poe and an attorney from Peter Limperis's firm.

be obtained by subpoena to the Illinois Department of Corrections. Other recordings are held by the Cook County Jail. The Jail inadvertently produced recordings of phone calls to defendants, and defendants have not listened to those recordings pending resolution of this motion.

On January 5, 2024, at about 9:30 a.m., Attorney Brian Wilson for defendant City of Chicago and Attorney Joel Flaxman for plaintiff and Mr. Poe conferred by phone. The parties made good faith attempts to resolve their differences, and they are unable to reach an accord.

III. The Court Should Quash the Subpoenas for Plaintiff's Calls

The Court has twice rejected defendants' request to listen to the recordings of phone calls made by plaintiff while he was in custody. (ECF No. 48, 61.) Each time, the Court ruled that defendants had failed to show sufficient relevance in the requested phone calls to overcome plaintiff's interest in the privacy of his communications. As another court has explained, "in order to overcome a prisoner's privacy interest in the recordings of her telephone calls, the subpoenaing party must offer more than mere speculation that the recordings could house relevant evidence." *DeLeon-Reyes v. Guevara*, No. 18-cv-01028, 2020 WL 7059444, at *5 (N.D. Ill. Dec. 2, 2020).

Defendants' latest request for recordings of calls is no different from the earlier requests. Plaintiff addresses each category of calls in the latest request below.

Calls to Ken Ross. Defendants seek all calls that plaintiff made from the Jail or from the Illinois Department of Corrections to Ken Ross. Mr. Ross testified at deposition that he was the owner of the gun the defendant officers claimed they saw plaintiff throw behind a couch. Mr. Ross contradicted the police story that plaintiff threw the gun behind the couch, testifying that he had hidden the gun behind the couch. Mr. Ross did not testify at plaintiff's criminal trial, and there is no reason to think that he ever spoke to plaintiff about anything relevant to these proceedings on recorded prison or jails calls. The overly broad request for every call to Mr. Ross is no different from the requests the Court has rejected in the past.

Four Months of Calls Between Plaintiff and Mr. Poe. Next, defendants seek all calls between plaintiff and Mr. Poe between October 20, 2014 and February 13, 2015. The Court previously rejected a broader request for calls between plaintiff and Poe. Defendants have narrowed the timeframe for their request for these calls, but there is nothing about this narrower timeframe that suggests that anything of relevance will be contained in these calls.

Calls Discussed in a Prison Disciplinary Report. Defendants also seek the recordings of calls that were the subject of a prison disciplinary report, attached as Exhibit 2. The report alleges that on May 27, 2018, plaintiff made several calls at times when he was not permitted to make calls and that one of the calls involved what the report characterizes as "Security Threat Group or

Unauthorized Organizational Activity.” Defendants will be unable to explain the relevance of these calls to plaintiff’s allegations that the defendant officers framed him in 2014.

Calls Made Shortly After Arrest. Defendants next seek calls plaintiff made to his mother and to two female friends during the first three days he was at the jail. Plaintiff testified at deposition that he likely told these three women that he had been falsely arrested, but that he did not go into details about the facts of his arrest. There is nothing other than speculation to support a contention that these calls contain relevant evidence.

Every First Phone Call. The final category of calls that defendants seek covers “[e]very phone call that represents the first time McClendon called any number while in Cook County Jail.” Plaintiff made over 1,000 calls while at the Cook County Jail, and he appears to have made a first call to more than 50 different phone numbers. The Court should not accept defendants’ unsupported belief that every time plaintiff called a number for the first time, he told the recipient of the call something relevant to this lawsuit.

Call From Mr. Poe to Plaintiff’s Defense Lawyer. Defendants also seek recording of calls that Mr. Poe had with lawyers from the office that defended plaintiff’s criminal case. At the time of the calls, Mr. Poe was in prison on an unrelated case. Mr. Poe objects to this request as the type of fishing expedition the Court has already rejected. Mr. Poe is a third-party witness whose privacy

rights deserve stronger protection than those of parties. In any event, whether any such recordings exist is doubtful; Mr. Poe testified at deposition that he recalls speaking to plaintiff's lawyer on a prison legal call that was not recorded.

IV. Conclusion

For all these reasons, the Court should grant this motion and deny defendant's request to listen to recorded jail and prison phone calls.

Respectfully submitted,

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