

EXHIBIT C

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

SEAN McCLENDON,

Plaintiff,

-vs-

CITY OF CHICAGO, et al.,

Defendants.

Case No. 22-cv-05472

Chicago, Illinois

January 17, 2024

10:01 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARIA VALDEZ, MAGISTRATE JUDGE

APPEARANCES:

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****PLEASE NOTIFY OF INCORRECT SPEAKER IDENTIFICATION****
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APPEARANCES: (Continued)

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Defendants:

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1 (Proceedings heard in open court:)

2 THE CLERK: We're calling case 22-cv-5472, McClendon
3 versus City of Chicago, et al., motion hearing.

4 THE COURT: Good morning. Let's get appearances of
5 counsel, please.

6 MR. FLAXMAN: Good morning. Joel Flaxman for the
7 plaintiff.

8 MR. WILSON: Good morning, Judge. Brian Wilson for
9 the City of Chicago.

10 MS. McELROY: Good morning, your Honor. Lisa McElroy
11 on behalf of all individual defendants.

12 THE COURT: All right. Happy new year.

13 MR. WILSON: You as well.

14 MR. FLAXMAN: Thank you. Happy new year.

15 THE COURT: New year, new us, right? We'll start all
16 over again.

17 All right. We're here on two motions that the
18 plaintiff has filed. First plaintiff's motion to quash jail
19 and prison calls and plaintiff's motion to quash deposition
20 subpoenas.

21 Let's deal with the first one and if the defense
22 wants to address this.

23 MR. WILSON: Thank you, Judge.

24 So the motion to quash the prison calls has various
25 subparts in them. I was just going to, unless your Honor

1 suggests otherwise, go down each subpart in the order that I
2 deem the most important, the first one being the phone calls
3 from the plaintiff and third-party witness Ken Ross.

4 So just to clarify and set the stage of what we are
5 seeking to do, we are seeking to listen to all of the recorded
6 jail calls between the plaintiff and Mr. Ross, which are
7 already in defense possession because the jail inadvertently
8 produced them pursuant to subpoena. So we already have them.
9 We just haven't listened to them.

10 THE COURT: Did the previous motions deal with the
11 Ken Ross calls?

12 MR. WILSON: No, Judge.

13 THE COURT: Okay.

14 MR. WILSON: And then in addition to listening to the
15 jail calls between plaintiff and Ken Ross that we already
16 have, we would like to subpoena any recorded calls, if there
17 are any, at IDOC between plaintiff and Mr. Ross using the
18 number that we have for Mr. Ross.

19 Plaintiff's objection is to relevance and the City's
20 response is that we have learned now in a more developed
21 record that plaintiff claimed at his deposition that the gun
22 that he was arrested for and charged with possessing actually
23 belonged to his friend Ken Ross, and he clarified that he knew
24 as of the night of his arrest that the gun belonged to
25 Mr. Ross, that he was shown the gun in an evidence bag in an

1 interrogation room at the police station, that he recognized
2 it as Mr. Ross's gun.

3 He did not tell the police that. He testified in his
4 own defense at his trial. He never mentioned the gun belonged
5 to Mr. Ross. Plaintiff claims that he had an in-person
6 conversation with Mr. Ross when he was bonded out of jail in
7 which he asked Mr. Ross to testify on his behalf that the gun
8 was Mr. Ross's and according to plaintiff, Mr. Ross said yes.
9 Mr. Ross never testified in the underlying trial.

10 Conversely, Mr. Ross testified in his deposition that
11 he also knew as of about a day or two after plaintiff's arrest
12 that plaintiff was arrested for possessing Mr. Ross's gun.

13 So as of October 10, October 11, 2014 when plaintiff
14 was arrested, both Mr. McClendon and Mr. Ross have said in
15 their depositions in this case that as of that date, they knew
16 that plaintiff had been arrested for possessing Mr. Ross's
17 gun.

18 Mr. McClendon said he did not believe he had any jail
19 calls with Mr. Ross. Mr. Ross also said in his deposition
20 that he did not -- he does not accept collect calls, and that
21 he did not have any calls from Mr. McClendon while
22 Mr. McClendon was in jail.

23 Using the number that we have for Mr. Ross, we looked
24 through the jail records, the phone logs, and we've identified
25 six phone calls from Mr. McClendon to Mr. Ross. They range

1 from --

2 THE COURT: Over what period of time?

3 MR. WILSON: The first is March 27, 2015, and then
4 the last is May 14, 2015. I should add that while plaintiff
5 was arrested in October of 2014, from October 20, 2014 to
6 about February 13, 2015, he was moved from Cook County Jail to
7 IDOC and then put back again.

8 So that at least accounts for partially why the first
9 phone call we have for Mr. Ross is in March because plaintiff
10 was actually in IDOC for most of the time before then, March
11 of 2015, and also why we are looking to subpoena IDOC calls to
12 Mr. Ross because --

13 THE COURT: Let me try to understand the nexus you're
14 raising is that there's been consistent statements from Mr. --
15 from the plaintiff and Mr. Ross that the gun belonged to
16 Mr. Ross?

17 MR. WILSON: Well, consistent in their depositions in
18 this case.

19 THE COURT: Yes.

20 MR. WILSON: Inconsistent with what was stated in the
21 underlying criminal case.

22 THE COURT: And what was testified to in the
23 underlying criminal case by either the plaintiff or Mr. Ross?

24 MR. WILSON: In the underlying criminal case,
25 Mr. McClendon took the stand in his own defense and was asked

1 by his lawyer if he recognized the gun that was recovered, and
2 he said no.

3 THE COURT: Okay. So that is -- oh, he said he
4 didn't recognize it.

5 MR. WILSON: He did not.

6 THE COURT: What was the specific question? Because
7 I was a trial lawyer. It depends on what the specific
8 question was. Do you recognize this as yours would be no and
9 would be arguably consistent, so I'm trying to figure out
10 what's the -- what was the question?

11 MR. WILSON: I can't give you the exact quote, but I
12 can be very close to it. The question was: Have you ever
13 seen this gun before, and he said no.

14 THE COURT: Okay. So the inconsistency is that
15 Mr. McClendon later said the gun belonged to Mr. Ross, and
16 Mr. Ross later said or only said the gun belonged to me.

17 MR. WILSON: And not just that, but --

18 THE COURT: So how's -- I'm trying to figure out how
19 that deals with your defenses.

20 MR. WILSON: Well, I'll tie it all up, your Honor.

21 THE COURT: Okay.

22 MR. WILSON: So our position at this point is that
23 Mr. Ross and Mr. McClendon are lying.

24 THE COURT: And what is the basis of that position?
25 That's what I'm looking for. I'm not looking for temporal

1 scope yet. I'm looking for you get to say that and that might
2 be your hope and what you're trying to seek, but what is your
3 nexus there? What is the little seed that you are going to
4 give me to indicate that it's probably going -- some evidence
5 may be found in the phone calls?

6 MR. WILSON: Well, the biggest one is that
7 Mr. McClendon testified in his own defense and not only did he
8 never say in the trial court or on appeal that he knew the
9 gun -- that he knew who actually owned the gun, which, of
10 course, would be exculpatory evidence, but he took the stand
11 under oath and said he'd never seen it before, and now he's
12 saying he actually had seen it many months prior to his
13 arrest. Every time he was over at Mr. Ross's house for a
14 party, he'd seen the gun.

15 So that's just an irreconcilable --

16 THE COURT: And what does that go to?

17 MR. WILSON: Well, that goes to the veracity of his
18 claim today --

19 THE COURT: So just a general veracity claim?

20 MR. WILSON: Well, no, your Honor. It goes to
21 pointing out that he's lying about the gun not being his when
22 he says it was Mr. Ross's and he had recognized it as of the
23 night of his arrest, but he said inconsistent statements at
24 trial. Those do not -- those -- those cannot both be true.

25 THE COURT: And it's important for you to prove that

1 the gun belonged to Mr. Ross?

2 MR. WILSON: It's important for us to disprove.

3 THE COURT: All right, right, so that's --

4 MR. WILSON: Yes.

5 THE COURT: -- he goes on the stand, arguably doesn't
6 tell the truth when he says I don't recognize the gun, and
7 then the evidence is from -- that you know at this time that
8 the gun, according to later statements by plaintiff and
9 Mr. Ross's only statement, belonged to Mr. Ross --

10 MR. WILSON: Correct. The plaintiff --

11 THE COURT: -- which is exculpatory for the
12 plaintiff.

13 MR. WILSON: For the plaintiff, yes.

14 The plaintiff's theory here is not that the officers
15 planted the gun. The plaintiff's theory is that the gun was
16 there, but it was placed there by Mr. Ross, and we are
17 attempting to show that that is a made-up theory for this
18 civil case that was never raised when it would have been
19 raised --

20 THE COURT: What evidence do you have that the
21 plaintiff and Mr. Ross are engaging in some collusion to make
22 some falsehoods?

23 MR. WILSON: Well, Judge, the phone calls would not
24 be used for that because of the timing. The phone calls would
25 instead be used to either corroborate what Mr. McClendon is

1 saying or contradict it, because if Mr. -- during the date of
2 all these phone calls, Mr. McClendon and Mr. Ross claim that
3 they both knew when these calls occurred that Mr. McClendon
4 was being charged for possessing a gun that wasn't his, that
5 was Mr. Ross's in fact.

6 Now, there is no scenario, given that they both
7 admitted to having knowledge of that fact prior to these
8 calls, no scenario that these calls could not be relevant
9 because if they do discuss that matter, that's relevant
10 because they're discussing the relevant issue.

11 THE COURT: Yes, and if they do discuss that they
12 murdered somebody in the middle of the street, that's relevant
13 for -- in general, but, again, you know, I'm looking for
14 something that makes this, you know, not even a more likely
15 than not, just like a seed of germination, instead of just an
16 argument.

17 So what you have before me is Mr. McClendon may have
18 lied under oath about not recognizing the gun and then
19 consistent statement from Mr. Ross in terms of that was my
20 gun, and then you want to find out if they somehow talked
21 about that they formulated this let's distract and lie under
22 oath?

23 MR. WILSON: No, Judge. The relevance of the calls
24 is this: If, in fact, Mr. McClendon knew that he had been
25 arrested for a gun that belonged to Mr. Ross, that would

1 have -- that would come up on these calls. That is an
2 enormous elephant in the room. There's no way they could talk
3 to each other while Mr. McClendon is in jail and Mr. McClendon
4 knows the gun is Mr. Ross's and Mr. Ross knows --

5 THE COURT: Let's say Mr. McClendon in these phone
6 calls says to Mr. Ross, you know, I knew it was yours. I
7 lied. I didn't want to get you in trouble. I was the one in
8 trouble. I didn't want to get anybody else in trouble.

9 What does that do for you?

10 MR. WILSON: That's relevant. It corroborates --

11 THE COURT: To what?

12 MR. WILSON: Relevant to corroborating his claims.

13 THE COURT: His claims that the gun was --

14 MR. WILSON: Not his.

15 THE COURT: -- not his.

16 MR. WILSON: Correct.

17 THE COURT: And that --

18 MR. WILSON: That's a relevant --

19 THE COURT: -- that helps you in what way?

20 MR. WILSON: Well, relevance and helpfulness are
21 different, your Honor.

22 THE COURT: Okay. So you're fishing also for
23 exculpatory evidence.

24 MR. WILSON: It could be. We'd like to know either
25 way. It could end up that it supports his statements. It

1 could contradict it.

2 THE COURT: Well, I mean, I'm a little skeptical that
3 you really are concerned with exculpatory information here.

4 MR. WILSON: Well, we just want to know. I mean, we
5 want to know what they said, and if they didn't talk about
6 it --

7 THE COURT: Well, of course, you want to know what
8 they said. Of course, you'd want to know what he said to
9 everybody, but -- anyway, go ahead. Go ahead.

10 MR. WILSON: So the touchstone is simply, you know,
11 relevance, whether it supports a claim or defense. It could
12 be the plaintiff's claim. It could be our defense. But as
13 long as it falls within that definition, then it's
14 discoverable under 26(b)(1).

15 THE COURT: Okay.

16 MR. WILSON: If he said something that supports his
17 statement, it's relevant. If he says something that supports
18 our theory, it's relevant. And if they don't talk about the
19 issue at all, that's relevant by omission.

20 THE COURT: How many phone calls do you say you
21 already have that you haven't been able to look at?

22 MR. WILSON: Between Mr. Ross and Mr. McClendon, we
23 have six.

24 THE COURT: Okay.

25 MR. WILSON: As for his time in IDOC because we don't

1 have complete IDOC phone logs --

2 THE COURT: My guess is the same argument you're
3 making of what could be in the IDOC phone calls is the basis,
4 you're using the same argument.

5 MR. WILSON: Correct.

6 THE COURT: We need not delve into that.

7 MR. WILSON: Right.

8 THE COURT: I understand, you know, if I give you
9 this, you want the IDOC phone calls.

10 MR. WILSON: Correct, especially because given he was
11 in IDOC from about mid-October to mid-February -- of 2014 to
12 mid-February of 2015, it's actually possible that his first
13 phone calls to Mr. Ross were in IDOC in that period instead of
14 the ones we have in the jail. So we just want to button that
15 up and make sure we're not missing calls between the two of
16 them, especially the original calls between them.

17 THE COURT: Okay.

18 MR. WILSON: Let me just make sure I've ticked off
19 all the points on that before I move on.

20 Yes. So the next issue I'll address, your Honor, are
21 specific phone calls between plaintiff and three individuals
22 that range from October 11th, 2014, that's the day after his
23 arrest, to October 13th, 2014. I'll just go through them
24 individually.

25 The October 11, 2014 was a phone call from plaintiff

1 to his mother and she was disclosed as a witness knowledgeable
2 about plaintiff's damages in this case.

3 Plaintiff said in his deposition that this phone call
4 with his mom on October 11th was the first chance he had to
5 speak to his mother since his arrest and that he told her
6 about the underlying incident and explained, as he says it in
7 his deposition, he told her that the police put a gun on him.

8 So we want to get that phone call to either
9 corroborate what he's saying, contradict it, or maybe learn
10 more about what he said beyond the description he gave. It's
11 also going to be relevant to her upcoming deposition as well.
12 We are planning to depose her, but we wanted to get a ruling
13 on this issue beforehand because we'd like to listen to this
14 phone call before we ask her questions about her conversations
15 with the plaintiff.

16 So our position here is now that plaintiff has
17 identified this call as one in which he discussed the
18 underlying incident, we should be able to listen to it.

19 The October 12th calls, one of them is with a woman
20 named Moneka Curtis. She is plaintiff's ex-wife, and the
21 basis of this is the same.

22 When asked about this call in plaintiff's deposition,
23 he stated that this is the first time he had a chance to talk
24 to her after his arrest and that he -- he said the same thing
25 that he said to his mother and described the underlying

1 incident what happened, told her the police put a gun on him.

2 Now that he's identified this phone call as one in
3 which he discussed his underlying arrest with someone else,
4 Ms. Curtis is also set to be deposed in this case, we'd like
5 to listen to that phone call to corroborate plaintiff's
6 statement or not and also as an aid to deposing Ms. Curtis.

7 On October 12th, there are also I believe two phone
8 calls again to plaintiff's mother in which the plaintiff said
9 he couldn't remember the details, but he remembers talking to
10 her about getting a lawyer for his prosecution, and given that
11 he's talking about his prosecution and can't remember what --

12 THE COURT: Would all the phone calls to the mother
13 then arguably be relevant in your analysis?

14 MR. WILSON: No, Judge. These are just the calls we
15 asked him about. So we're not going that far. We actually
16 went through these particular calls in his deposition and
17 highlighted --

18 THE COURT: So you had a call log, and you were then
19 asking him off of the log who did you speak to? What was the
20 subject? That kind of thing.

21 MR. WILSON: Correct, to a point. At some point,
22 that got laborious, and I'll get into that on a later issue,
23 but for these initial calls, these being the very first calls
24 to anyone upon him being arrested, we did go through them one
25 at a time, and this is how we described them.

1 And then on October 13th, there was a call to a
2 friend of the plaintiff's named Diamond Glover. This was also
3 the first time he spoke to Ms. Glover since his arrest, and he
4 described it the same way, that he said he told her the same
5 thing he told his mom, that the police had put a gun on him in
6 the underlying arrest, and that again is a call that he's
7 identified as discussing the underlying incident and one we
8 would like to listen to also.

9 THE COURT: So you have not deposed Ms. Glover?

10 MR. WILSON: No.

11 THE COURT: So let me -- the individuals you are
12 telling me about, you've deposed at least one, right?

13 MR. WILSON: No, Judge, we --

14 THE COURT: Okay. So you have no information whether
15 they're going to agree to what Mr. McClendon said that the
16 conversation was or not. You don't have that --

17 MR. WILSON: Correct, correct. And putting our
18 depositions off until we have a ruling from the Court was
19 intentional.

20 THE COURT: Okay.

21 MR. WILSON: So those are the first two issues, the
22 phone calls with Mr. Ross, both the jail calls we do have and
23 the IDOC calls we'd like to get if they exist, and then these
24 specific October 11th to October 13th phone calls with these
25 individuals.

1 Next --

2 THE COURT: Is there something with respect to a
3 Mr. Poe that you wanted?

4 MR. WILSON: Yes, Judge. I'm getting there, but I
5 can get there now if you like.

6 THE COURT: No, no, go ahead. You can use your own
7 outline to --

8 MR. WILSON: Thank you.

9 THE COURT: -- address these.

10 MR. WILSON: Next is one particular phone call. It's
11 a May 25th, 2018 IDOC call, and I believe this was -- the
12 disciplinary report related to it was attached as exhibit --
13 as Exhibit 2 to plaintiff's motion to quash.

14 That disciplinary report actually references several
15 calls, but the one at issue here is the May 25th, 2018 call
16 where plaintiff was disciplined for making gang-related
17 comments on the call, and we don't have the call, of course,
18 but there are quotations in the disciplinary report about the
19 statements plaintiff made. We asked plaintiff about that call
20 in his deposition, and he denied making at least one of those
21 statements.

22 The objection here is relevance, and the response is
23 there were two pieces of evidence really that were used
24 against Mr. McClendon in his underlying trial. One was
25 eyewitness testimony from an officer who saw him place the gun

1 where it was found.

2 The other is testimony from different officers who
3 processed the plaintiff at the police station and heard
4 plaintiff say that he essentially acknowledged he had the gun
5 on him because, and I'll soften the language a bit, because
6 people were after him. And plaintiff denies making that
7 statement in this case.

8 And our theory that we would like to pursue is that
9 plaintiff has -- we did ask him in his deposition and he's
10 denied being ever a member of a gang.

11 Our theory is that if he was in fact a gang member,
12 that would lend credibility to his statements that he had to
13 have a gun on him because people were after him, the idea
14 being that gang rivalries often create that kind of a tension,
15 and we would like to get this phone call to either establish
16 that maybe Mr. McClendon is telling the truth and he never
17 made these statements, or instead show that he's lying and he
18 is, in fact, a gang member, and that would lend credibility to
19 his statement that he denies making to the police.

20 So that's just one --

21 THE COURT: You're the first defense counsel who's
22 ever asked for discovery for exculpatory information. I've
23 never, ever had that as a basis for seeking any discovery.

24 MR. WILSON: Well, I'm not convinced it will be
25 exculpatory.

1 THE COURT: But you're using it, right? You're
2 arguing it to me. You're saying that one of the reasons it
3 might be relevant is because it might be exculpatory.

4 MR. WILSON: And I do that, your Honor, just to
5 highlight how broad the relevance standard is, is that --

6 THE COURT: I'm well aware of the broadness of the
7 relevance standard. I'm well aware that I'm the gatekeeper to
8 determine whether or not information, you know, should be
9 allowed when there may or may not be a sufficient basis.
10 There's always the hope and the pray -- the prayer that
11 something will lead to helpful information for you, but that's
12 not the standard, as you know.

13 Okay. The gang-related issue, so your argument would
14 be that one of the issues you would be raising in a merit
15 determination is to assert that he maybe had gang
16 affiliations, and as a result, the statement that he made to
17 the officer may or may not be true.

18 MR. WILSON: Makes more sense in that scenario, yes.

19 THE COURT: Hmm.

20 MR. WILSON: And that's probably the most discrete
21 issue. That, again, is -- that's just one phone call that we
22 would be seeking from IDOC. So that's the third issue in the
23 motion to quash the phone calls.

24 The next would be the broadest of all the issues, and
25 this is our request or our intention, of course, if the motion

1 is not granted, to listen to the -- how do I describe this --
2 the first time that Mr. McClendon calls any phone number on --
3 as indicated on the Cook County Jail logs, and this, while
4 it's the broadest of all the issues, does represent a
5 concerted effort on our part to try and be narrow here.

6 THE COURT: Again, we don't get to the narrowness
7 until we get past relevancy.

8 MR. WILSON: Certainly.

9 So as to relevance, your Honor, the -- as I said, we
10 have these phone logs, and we went through them initially one
11 call at a time, the plaintiff, but at a certain point in time
12 early on, that just was not feasible to do every single call
13 on there.

14 So instead I tried to do something useful but more
15 general, and I asked the plaintiff whether he remembered who
16 else he spoke to on the phone in which he discussed the
17 underlying incident, and he said he couldn't recall who else
18 he told that to.

19 But because he was in jail or in prison between his
20 arrest date and then when he was bonded out I believe in,
21 like, the fall of 2015 after the logs end, the most reasonable
22 place to look for the statements that plaintiff may have made
23 to other people while he was in jail about the underlying
24 arrest is the first chance he had to talk to them.

25 So we are looking for -- we are intending to listen

1 to the phone calls that only represent the first time he spoke
2 to everyone for two reasons. One, the one I've already
3 explained. Plaintiff himself can't remember who he did or
4 didn't speak to about the underlying incident, and that is
5 most likely to occur on his first conversation with them.

6 And, secondly, this is when we kind of get into
7 Mr. Poe, plaintiff believes that he did have one phone
8 conversation with Mr. Emmanuel Poe while he was in jail in
9 which they discussed the underlying incident. Mr. Poe, again,
10 was the person with Mr. McClendon during the arrest.

11 So he believes that there was a phone call with
12 Mr. Poe, but the number that we have for Mr. Poe does not show
13 up in any of these call logs, and Mr. Poe said that he
14 believed around this time frame he had a different cell phone
15 number, but he couldn't remember it. Neither could plaintiff.

16 So we know, at least according to the plaintiff, that
17 there is a phone call out there where he discussed the
18 underlying incident with the only other person who was with
19 him. We just don't have the phone number that it's associated
20 with.

21 So not only would listening to the first calls with
22 each individual on these logs likely reveal anyone else he
23 spoke to about the incident, but that's also a way we could
24 discover not only what Mr. Poe's phone number was in the
25 underlying -- in this time frame, but also this one phone call

1 Mr. McClendon mentioned where he talked about the underlying
2 incident with Mr. Poe that we would like to listen to. We
3 just don't know where it is.

4 So, let's see. That leaves -- yeah, that leaves just
5 two more matters, your Honor, involving Mr. Poe. One is we
6 would like to, and we don't -- well, I don't want to get ahead
7 of myself.

8 We would like to subpoena any phone calls if they
9 exist between Mr. Poe, who spent his own time in IDOC leading
10 up to plaintiff's trial, any phone calls between Mr. Poe and
11 Mr. McClendon's criminal defense attorney. Mr. Poe did
12 testify at Mr. McClendon's criminal trial, and Mr. Poe recalls
13 that it was actually Mr. McClendon's defense attorney, not
14 Mr. McClendon, who reached out to him to set that up, and that
15 would not be a privileged conversation because this attorney
16 did not represent Mr. Poe.

17 So we would like to hear what they discussed, hear
18 what Mr. Poe told this attorney what happened or how they
19 prepared or any information that was shared between Mr. Poe --

20 THE COURT: Again, this theory being that you want to
21 test what Mr. Poe has already testified to?

22 MR. WILSON: I think that's fair to say.

23 THE COURT: So just the testing of it.

24 MR. WILSON: To test it with an independent record
25 that can't be dishonest, that can't be biased and can't forget

1 things, so --

2 THE COURT: A phone call can't be dishonest, can't be
3 biased?

4 MR. WILSON: Well, it can't lie about what was said.

5 THE COURT: Oh, okay.

6 MR. WILSON: So, yes, that's the idea between those
7 phone calls, your Honor.

8 And then the final issue, this actually relates back
9 to what I mentioned earlier, that Mr. McClendon identified or
10 believes he had a phone call with Mr. Poe, one call in which
11 he did discuss the underlying arrest, but we don't know where
12 it is, and so we just want to -- we want to use the current
13 number we have for Mr. Poe to subpoena any calls between
14 Mr. McClendon and Mr. Poe in that short window in which he was
15 in IDOC before he got put back into Cook County Jail.

16 It's unlikely we're going to yield anything because
17 Mr. Poe is saying that he has a different number. We just
18 want to make sure that we chase this down because we're
19 looking for that one call Mr. McClendon identified that's
20 tough to pinpoint, and we do have a number for Mr. Poe, so
21 we'd like to at least try to see if any calls were made to
22 that number in this October 2014 to February 2015 time frame.

23 So I know that's a lot.

24 THE COURT: I thought you'd address some
25 proportionality for me.

1 How much work do you think it's going to take once
2 you -- if you receive all of the information you're requesting
3 to go through the information?

4 MR. WILSON: As to the Ken Ross, very little. We
5 only have six calls that we know of. And I can't speak as to
6 whether we're going to find out there were any more, but
7 because it's just one individual, I don't think that's going
8 to be unwieldy at all.

9 As to the calls between plaintiff and his mother,
10 ex-wife, and friend Diamond Glover between October 11th and
11 October 13th, that's, I think, five calls, also can be done
12 very quickly.

13 The gang-related jail call is one call, so that would
14 be very easy to review.

15 The calls between Mr. Poe and Mr. McClendon's defense
16 attorney, if there even are any, would be very few, I imagine.
17 I can't -- I don't expect that they would have had repeated
18 phone calls and if they did, probably just a handful.

19 The phone calls between Mr. McClendon and Mr. Poe
20 during his short stint in IDOC prior to being put back into
21 jail using the number we have for Mr. Poe, I expect will yield
22 zero, but if it does happen to yield some, it's such a short
23 time frame that there wouldn't be many. The largest one would
24 be the --

25 THE COURT: Every first call --

1 MR. WILSON: -- every first call.

2 THE COURT: -- would be about at least 50 in your
3 view?

4 MR. WILSON: I didn't count but probably a relatively
5 small number, your Honor. That would be done -- I mean, that
6 could be listened to within about --

7 THE COURT: Well, we've got, with what you've already
8 indicated, what, 60 to 75 calls?

9 MR. WILSON: In total, probably around there.

10 THE COURT: We don't know the length of these calls;
11 is that right?

12 MR. WILSON: Only Mr. Ross's -- well, I could tell
13 you, your Honor, I don't have it written down the length of
14 the calls between October 11th and October 13th to his mother
15 and his ex-wife and his friend, but, again, those are only
16 five calls. The ones to Mr. Ross, they range from about
17 roughly one minute to eight minutes.

18 THE COURT: So these are calls that you would have to
19 review and obviously plaintiff's counsel would have to review.

20 MR. WILSON: I think plaintiff's counsel would only
21 have to review them if we disclose them. We can't use them if
22 they're not disclosed.

23 THE COURT: If you're going to get them, plaintiff's
24 counsel gets them.

25 MR. WILSON: Oh, yes. He can review them.

1 THE COURT: It's his obligation -- he's got an
2 obligation to review them. It's not -- oh, if he gets
3 discovery and he doesn't review that discovery, his client has
4 a claim against him.

5 MR. WILSON: Well, my point, your Honor, was that
6 when it gets into -- and I don't think we're at this point
7 here, but when we're dealing with a huge number of phone calls
8 that becomes truly burdensome for an attorney to have to
9 listen to compulsorily, then it would be reasonable in that
10 situation for non-requesting attorney to just wait for the
11 other attorney to do the review and then have to honor its
12 disclosure obligations and then listen to the calls only that
13 have been identified as relevant. That's -- that's really not
14 relevant here because we're dealing with --

15 THE COURT: Well, wait a minute. So if you issue a
16 subpoena to AT&T to get a bunch of phone calls, you don't
17 think that Mr. Flaxman would be entitled to that production?

18 MR. WILSON: Definitely entitled to it, your Honor.

19 THE COURT: Right.

20 MR. WILSON: My point is --

21 THE COURT: And then as entitled to that production
22 as a lawyer, when you get information, you can choose to say,
23 oh, I'll let the other side tell me what is relevant, or you
24 have an obligation to review all the discovery. That's the
25 way it works.

1 MR. WILSON: My point is let's say we're dealing with
2 something like 5,000 calls. My position, and I could be wrong
3 on this, Judge, but my position is in that instance, it would
4 be reasonable for an attorney to say, okay, you wanted these
5 calls. You listen, you spend the time and money listening to
6 5,000 calls, and then you've got to tell me which ones you
7 find to be relevant. And if you don't disclose -- if you
8 disclose them, I'll listen. If you don't, you can't use them.
9 You can't hurt my client with them, so you tell me, but --

10 THE COURT: What if there's little grain of
11 exculpatory information in the ones that you choose not to
12 identify? That's the dilemma.

13 The plaintiff's attorney, as you would, if the
14 plaintiff were to subpoena information, there's an obligation
15 to go through all of it. I always tell that to especially
16 plaintiffs when they ask for the moon and the stars and the
17 sun, I say if I give you this truckload, you have an
18 obligation to go through the whole truckload because if you
19 don't, then your client has a complaint to be lodged against
20 you.

21 MR. WILSON: I understand.

22 THE COURT: So that's what I'm -- so whatever you
23 get, I'm going to assume that Mr. Flaxman would have to
24 undertake a review of all of that.

25 I think we've concluded this. I'll hear any

1 rebuttal, and then we'll go on to the other motion.

2 Any rebuttal on this matter?

3 MR. FLAXMAN: Our position is in the filing, that
4 these are all issues collateral to what this case is about,
5 that all of the witnesses are going to testify. There's
6 recordings of police radio. There's a video from the
7 helicopter following the chase. Nothing on these calls is
8 directly relevant to the issues in the case.

9 And I mean especially this issue about gang
10 affiliation. I mean, what he said on a call four years later
11 that has nothing to do with the issues in the case I think is
12 quintessentially a collateral issue that just has nothing to
13 do with the litigation.

14 One other point, you know, to the extent these first
15 calls at the jail, they're not -- they're not all going to be
16 first calls because he had this -- the actual timeline is that
17 he was in the jail for a few days. Then he was in prison for
18 about four months on a parole violation, and then back at the
19 jail. So I just don't know the answer, but I think a lot of
20 those numbers could very well be somebody who he had already
21 spoken to.

22 THE COURT: So is October 20th -- strike that.

23 Let me ask what is the time scope of the first calls
24 that you're asking for, for the first time he was in the Cook
25 County Jail or the second time after the IDOC?

1 MR. WILSON: Well, our intention was to listen to the
2 first time a number shows up in either window. If that's --

3 THE COURT: So both.

4 MR. WILSON: Both. But, you know, of course, if
5 that's --

6 THE COURT: So that's not the first time. It would
7 be --

8 MR. WILSON: That's a fair point. We're working the
9 best information we have, Judge, because we just don't have
10 the IDOC logs, so that's really as far as we can take it.

11 THE COURT: No, I'm asking in terms of Cook County.
12 You know, your request is the first -- every first phone call
13 while in Cook County.

14 MR. WILSON: Yes.

15 THE COURT: So is it -- so that would be the first
16 time he was in Cook County before he was in IDOC but not the
17 second time?

18 MR. WILSON: Well, we'd like to listen to the first
19 calls on both because to Mr. Flaxman's point, we just don't
20 know --

21 THE COURT: I just want to make sure I understand the
22 request.

23 MR. WILSON: Yes.

24 THE COURT: All right.

25 MR. WILSON: Yes.

1 THE COURT: Mr. Flaxman, anything else on this?

2 MR. FLAXMAN: Just the only final point is about
3 Mr. Ross's testimony that the gun was his and the fact that
4 that wasn't presented at Mr. McClendon's trial doesn't
5 contradict the testimony today that it's Mr. Ross's, and I
6 think it's that kind of alibi evidence from your friend is
7 very reasonable evidence for a defense lawyer not to present
8 as part of a criminal defendant's case.

9 THE COURT: All right. Just put a fine point.

10 Mr. McClendon at his criminal trial -- underline
11 criminal trial -- testified he did not recognize the gun, is
12 that --

13 MR. FLAXMAN: I would like to look at the actual
14 testimony before I agree to that, but I don't have any reason
15 to dispute what's been said about that testimony.

16 THE COURT: All right. And subsequently, he then
17 makes statements that it was Mr. Ross's gun.

18 MR. FLAXMAN: That -- that I'm confident in, yes.
19 That's what he testified at his deposition. I just haven't
20 reviewed the trial transcript today.

21 THE COURT: And Mr. Ross in deposition testified that
22 it was his gun.

23 MR. FLAXMAN: Correct.

24 THE COURT: Okay.

25 All right. Let's go on to the second motion.

1 MR. WILSON: This is a motion to quash the -- our
2 intended subpoenas, they have not been issued, to depose two
3 third-party witnesses. One is Brittany Hill, she is the
4 mother of Mr. McClendon's child, and Moneka Curtis, who we
5 have mentioned briefly before in the phone calls who is now
6 plaintiff's ex-wife.

7 As to Ms. Hill, there are a couple bases on which we
8 want to depose her. She appears numerous times in
9 Mr. McClendon's visitor logs and phone logs. We are not
10 seeking to listen to every phone call for which her number
11 shows up, but we do want to ask her if she talked about the
12 underlying incident and the criminal matter with Mr. McClendon
13 and if she remembers him making any admissions.

14 Also, we are curious about what she may know about
15 Mr. McClendon's damages, his time in prison and how he fared
16 in prison, given that she would seem to be in constant contact
17 with him. And on a more finer point as to damages, plaintiff
18 even states in his motion that a component of his damages is
19 that his incarceration separated him and hurt -- from his
20 daughter that he had with Ms. Hill and hurt that relationship,
21 and he seeks compensation for that.

22 And if that's going to be a part of his damages, your
23 Honor, we would like to talk to Ms. Hill about how close they
24 really were, as opposed to just taking plaintiff's word for
25 it.

1 THE COURT: How close he and his daughter were?

2 MR. WILSON: Correct.

3 THE COURT: Okay.

4 MR. WILSON: As to Ms. Curtis, we already are seeking
5 -- very similar. She appears on numerous times on the phone
6 logs and the visitor logs. We, again, are not seeking every
7 phone call with Ms. Curtis. We are, as we talked about,
8 trying to seek first phone call where Mr. McClendon admits
9 that he spoke about the incident with her.

10 THE COURT: Yes, but this is the depositions you want
11 to quash --

12 MR. WILSON: Correct.

13 THE COURT: -- he wants to quash.

14 MR. WILSON: Yes. And we'd like to -- whether we get
15 the phone call or not, I hope we do, we would like to use that
16 to aid in the deposition of Ms. Curtis, but even without it,
17 we want to ask her those same questions about conversations
18 that she had with Mr. McClendon and whether he made any
19 admissions to her.

20 I want to point out, Judge, that other than kind of
21 the rhetorical quote about discovery coming to the end at the
22 end of the motion, plaintiff cites no cases, no rules, no
23 legal authority in his motion to support his request that your
24 Honor preclude us from talking to these -- or deposing these
25 third-party witnesses.

1 The absence of any legal authority as the movant, I
2 think, says a lot about the tenuous grounds by which plaintiff
3 is seeking to stop us from taking what I characterize as
4 relatively routine discovery. We have a squaring contest
5 here, and --

6 THE COURT: Can I just ask, because you said from
7 preventing you from talking to them, but the motion is dealing
8 with the deposition of them.

9 MR. WILSON: And that's why I corrected myself, yes,
10 not just talking, preventing us from deposing, yes.

11 THE COURT: Okay.

12 MR. WILSON: And this is -- these are common sense
13 people to speak to, given how much they appear in the records
14 of plaintiff's communications.

15 We want to just hear what they have to say, if they
16 remember anything, and if we're, you know, able to get the
17 phone call from Ms. Curtis, anything that might yield even
18 more depositions -- depositions, but our position is there's nothing
19 controversial about deposing these witnesses.

20 Plaintiff has not met his burden as the movant to
21 prevent us from doing so.

22 THE COURT: All right. You want to address anything
23 else?

24 MR. FLAXMAN: I don't think the Court needs legal
25 citation to know that it's the one who's in charge of how

1 discovery goes, and we have a pretty tight timeline to finish
2 fact discovery, and our position is that there's no basis to
3 depose these extra witnesses on what are really collateral
4 issues.

5 THE COURT: Give me an update on what is left; apart
6 from the issues raised in the two motions, is all other fact
7 discovery done?

8 MR. FLAXMAN: No.

9 There's two other defendant officers who are going to
10 be deposed, one tomorrow and one next week. There's an
11 officer who's not a defendant but who was a witness who I
12 think we're going to schedule.

13 MR. WILSON: Yes.

14 He's been on medical leave, Judge, but I have reached
15 out to him, and I now have contact with him. So I'm working
16 with Mr. Flaxman to get him deposed.

17 MR. FLAXMAN: And then there are two damages
18 witnesses, Mr. McClendon's current wife and his mother. I
19 think we have a date for Mr. McClendon's wife.

20 MR. WILSON: Yes.

21 MR. FLAXMAN: And for the mother we're going to
22 schedule.

23 THE COURT: All right. So you'll be busy until the
24 end of the month.

25 MR. FLAXMAN: Yes.

1 THE COURT: All right. I'm going to take these
2 matters under advisement. I'll issue a ruling very quickly
3 because I do know that time is of the essence.

4 Thank you very much.

5 MR. WILSON: Thank you, Judge.

6 (Which were all the proceedings heard.)

7 CERTIFICATE

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

12 /s/Kathleen M. Fennell

January 25, 2024

13 _____
14 Kathleen M. Fennell
Official Court Reporter

Date