

# **EXHIBIT C**

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

4 SEAN McCLENDON, }  
5 Plaintiff, } Case No. 22-cv-05472  
6 -vs- }  
7 CITY OF CHICAGO, et al., } Chicago, Illinois  
8 Defendants. } January 17, 2024  
10:01 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MARIA VALDEZ, MAGISTRATE JUDGE

## APPEARANCES:

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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 deps -- 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.)

## 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

Kathleen M. Fennell  
Official Court Reporter

Date

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