UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, May 1, 2023:

MINUTE entry before the Honorable Maria Valdez: Defendant City of Chicago's Unopposed Motion for Entry of Agreed Confidentiality Protective Order and Agreed Qualified HIPAA and MHDDCA Protective Order [32] is granted. Mailed notice. (as,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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

SEAN McCLENDON,	)	
	)	
Plaintiff,	)	No. 22 cv 5472
	)	
v.	)	Magistrate Judge Maria Valdez
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

AGREED QUALIFIED HIPAA AND MHDDCA PROTECTIVE ORDER

Pursuant to Fed. R. Civ. P. 26(c), the Health Insurance Portability and Accountability Act of 1996, codified primarily at 18, 26 and 42 U.S.C., 45 C.F.R. §§ 160 & 164, and 740 ILCS 110/1-17, the parties to this action, by and through their respective counsel, have represented the following to the Court, and the Court finds:

A. The following words and terms are defined for purposes of this agreed, qualified protective order:

1. "Parties" shall mean plaintiffs, City of Chicago, the individual defendants, and any additional party that this court may subsequently recognize as subject to this qualified protective order, and their attorneys.

2. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, codified primarily at 18, 26 and 42 U.S.C. (2002).

3. "MHDDCA" shall mean the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1-17.

4. "Privacy Standards" shall mean the Standards for Privacy of Individually Identifiable Health Information. *See* 45 C.F.R. §§ 160 & 164 (2000).

5. "PHI" shall mean protected health information, as that term is used in HIPAA and the Privacy Standards.

6. "Mental Health Communication" shall mean "communication" as that term is defined in MHDDCA.

7. "Mental Health Record" shall mean "record" as that term is defined in MHDDCA.

B. The Parties are familiar with HIPAA, MHDDCA, and the Privacy Standards.

C. The Parties recognize that it may be necessary during the course of this proceeding to produce, disclose, receive, obtain, subpoena, and/or transmit PHI, Mental Health Communication, and/or Mental Health Record of parties, third parties, and non-parties to other parties, third parties and non-parties.

D. The Parties agree to the following terms and conditions:

1. The Parties agree to assist each other in the release of PHI, Mental Health Communication, and/or Mental Health Record by waiving all notice requirements that would otherwise be necessary under HIPAA, MDCCCA, and the Privacy Standards.

2. The Parties agree to the release of PHI, Mental Health Communication, and/or Mental Health Record specifically for, but not limited to, the following persons, from the covered entity or entities identified in interrogatory answers, supplementary disclosures, deposition testimony, or other discovery tools:

a. SEAN MCCLENDON

3. The Parties agree not to use or disclose the PHI, Mental Health Communication, and/or Mental Health Record released in this proceeding for any other purpose or in any other proceeding.

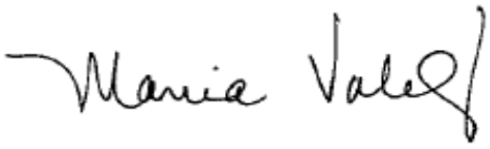
4. The Parties agree to store all PHI, Mental Health Communication, and/or Mental Health Record while it is in their possession according to the Privacy Standards.

5. The Parties agree at the termination of this proceeding to return all PHI, Mental Health Communication, and/or Mental Health Record (including all copies made) obtained during the course of this proceeding to the covered entity, or to destroy the PHI, Mental Health

Communication, and/or Mental Health Record (including all copies made) obtained during the course of this proceeding pursuant to the Privacy Standards.

6. Nothing in this protective order shall be deemed a waiver of the right of any party to object to a request for discovery on the basis of relevance, materiality, privilege, overbreadth, or any other recognized objection to discovery.

SO ORDERED. **ENTERED:**



DATE: May 1, 2023

HON. MARIA VALDEZ
United States Magistrate Judge

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

SEAN McCLENDON,	)	
	)	
Plaintiff,	)	No. 22 cv 5472
	)	
v.	)	Magistrate Judge Maria Valdez
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

AGREED CONFIDENTIALITY PROTECTIVE ORDER

The parties to this Agreed Confidentiality Protective Order have agreed to the terms of this Order; accordingly, it is ORDERED:

1. Scope. All materials produced or adduced in the course of discovery, including initial disclosures, responses to discovery requests, deposition testimony and exhibits, and information derived directly therefrom (hereinafter collectively "documents"), shall be subject to this Order concerning Confidential Information as defined below. This Order is subject to the Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. Confidential Information. As used in this Order, "Confidential Information" means information designated as "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" by the producing party that falls within one or more of the following categories: (a) information protected from disclosure by statute, which the City contends includes the Illinois Freedom of Information Act (FOIA), 5 ILCS 140/1, *et seq*.; (b) information that reveals trade secrets; (c) research, technical, commercial or financial information that the party has maintained as confidential; (d) medical information concerning any individual; (e) personal identity information;

(f) income tax returns (including attached schedules and forms), W-2 forms and 1099 forms; (g) personnel or employment records of a person who is not a party to this case; (h) personnel or employment records of the named defendants; (i) family information of any law enforcement officers or assistant state's attorney; and (j) any information contained within the following file materials that are otherwise prohibited from public disclosure by statute: Any disciplinary actions, files and attachments to such files generated by the investigation of deaths in custody, uses of deadly force, and complaints of misconduct by Chicago police officers (generally referred to as "Log Number" files, "Complaint Register" (CR) files, "Universal" (U) files, or "Extraordinary Occurrence" (EO) files, or "Non-Disciplinary Intervention" (NDI) files) (collectively hereinafter referred to as "Log Files"), or by internal Chicago Police Department "Summary Punishment Action Requests" (SPARs). The parties reserve the right to seek greater protection of information or documents designated as Confidential Information through Court intervention or by agreement of the parties.

Information that is available to the public may not be designated as Confidential Information.

3. Designation.

(a) A party may designate a document as Confidential Information for protection under this Order by placing or affixing the words "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" on the document and on all copies in a manner that will not interfere with the legibility of the document. As used in this Order, "copies" includes electronic images, duplicates, extracts, summaries or descriptions that contain the Confidential Information. The marking "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" shall be applied prior to or at the time the documents are produced or disclosed. Applying the marking "CONFIDENTIAL -

SUBJECT TO PROTECTIVE ORDER" to a document does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order. Any copies that are made of any documents marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" shall also be so marked, except that indices, electronic databases or lists of documents that do not contain substantial portions or images of the text of marked documents and do not otherwise disclose the substance of the Confidential Information are not required to be marked.

(b) The designation of a document as Confidential Information is a certification by an attorney or a party appearing *pro se* that the document contains Confidential Information as defined in this order.

4. Depositions.

Deposition testimony, including exhibits, is protected by this Order only if designated as "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" on the record at the time the testimony is taken. Such designation shall be specific as to the portions that contain Confidential Information. Deposition testimony or exhibits so designated shall be treated as Confidential Information protected by this Order. Within fourteen days after delivery of the transcript, a designating party may serve a Notice of Designation to all parties of record identifying additional specific portions of the transcript or exhibits that are designated Confidential Information, and thereafter those additional portions identified in the Notice of Designation shall also be protected under the terms of this Order. The failure to serve a timely Notice of Designation waives any designation of additional deposition testimony or exhibits as Confidential Information, unless otherwise ordered by the Court.

5. Protection of Confidential Material.

(a) General Protections. Confidential Information shall not be used or disclosed by the parties, counsel for the parties or any other persons identified in subparagraph (b) for any purpose whatsoever other than in this litigation, including any appeal thereof.

(b) Limited Third-Party Disclosures. The parties and counsel for the parties shall not disclose or permit the disclosure of any Confidential Information to any third person or entity except as set-forth in subparagraphs (1)-(10). Subject to these requirements, the following categories of persons may be allowed to review Confidential Information:

(1) **Counsel**. Counsel for the parties and employees of counsel who have responsibility for the preparation and trial of the action;

(2) **Parties**. Individual parties and employees and insurance carriers of a party but only to the extent counsel determines in good faith that the employee's assistance is reasonably necessary to the conduct of the litigation in which the information is disclosed or, in the case of insurance carriers, that the actual or alleged coverage or contract with the insurance carrier(s) pertains, may pertain, or allegedly pertains to the litigation;

(3) **The Court and its personnel**;

(4) **Court Reporters and Recorders**. Court reporters and recorders engaged for depositions;

(5) **Contractors**. Those persons specifically engaged for the limited purpose of making copies of documents or organizing or processing documents, including outside vendors hired to process electronically stored documents;

(6) **Consultants and Experts**. Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation and trial of this action but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;

(7) **Witnesses at depositions**. During their depositions, witnesses in this action to whom disclosure is reasonably necessary. Witnesses shall not retain a copy of documents containing Confidential Information, except witnesses may receive a copy of all exhibits marked at their depositions in connection with review of the transcripts. Pages of transcribed deposition testimony or exhibits to depositions that are designated as Confidential Information pursuant to the process set out in

this Order must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order.

(8) **Author or recipient**. The author or recipient of the document (not including the person who received the document in the course of the litigation);

(9) **Individuals interviewed in the course of litigation.** Individuals interviewed as part of a party's investigation in this litigation for whom disclosure is reasonably necessary for the purpose of that investigation. The only Confidential Information that may be disclosed to these individuals is information that is reasonably necessary to disclose for the purpose of investigation in this litigation and such information may be disclosed only after such persons have completed the certification contained in Attachment B, Acknowledgment of Understanding and Agreement to Be Bound. Such individuals may not retain any copy, including but not limited to electronic or physical duplications, of any documents or other materials containing Confidential Information; and

(10) **Others by Consent**. Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered.

(c) **Control of Documents**. Counsel for the parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Confidential Information. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of three years after the termination of the case.

6. **Redaction of Personal Identifying Information.** Notwithstanding the foregoing provisions, the responding party shall have the right to redact from all documents produced in discovery all references to a current or former individual police officer's confidential information about him/herself and his/her family, including but not limited to, social security number, home address, home and cellular telephone number(s), personal email address(es), the names of family members and the names of insurance beneficiaries.

7. **Inadvertent Failure to Designate**. An inadvertent failure to designate a document as Confidential Information does not, standing alone, waive the right to so designate the document; provided, however, that a failure to serve a timely Notice of Designation of deposition testimony as required by this Order, even if inadvertent, waives any protection for

deposition testimony. If a party designates a document as Confidential Information after it was initially produced, the receiving party, on notification of the designation, must make a reasonable effort to assure that the document is treated in accordance with the provisions of this Order. No party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material has not been designated Confidential Information, even where the failure to so designate was inadvertent and where the material is subsequently designated Confidential Information.

8. Filing of Confidential Information. This Order does not, by itself, authorize the filing of any document under seal. Any party wishing to file a document designated as Confidential Information in connection with a motion, brief or other submission to the Court must comply with Local Rule 26.2.

9. No Greater Protection of Specific Documents. Except on privilege grounds not addressed by this Order, no party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an order providing such special protection.

10. Challenges by a Party to Designation as Confidential Information. The designation of any material or document as Confidential Information is subject to challenge by any party. The following procedure shall apply to any such challenge.

(a) Meet and Confer. A party challenging the designation of Confidential Information must do so in good faith and must begin the process by conferring directly with counsel for the designating party. In conferring, the challenging party must explain the basis for its belief that the confidentiality designation was not proper and must give the designating party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is

offered, to explain the basis for the designation. The designating party must respond to the challenge within five (5) business days.

(b) Judicial Intervention. A party that elects to challenge a confidentiality designation may file and serve a motion that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements of this procedure. The burden of persuasion in any such challenge proceeding shall be on the designating party. Until the Court rules on the challenge, all parties shall continue to treat the materials as Confidential Information under the terms of this Order.

11. Action by the Court. Applications to the Court for an order relating to materials or documents designated Confidential Information shall be by motion. Nothing in this Order or any action or agreement of a party under this Order limits the Court's power to make orders concerning the disclosure of documents produced in discovery or at trial.

12. Use of Confidential Information at Trial. Nothing in this Order shall be construed to affect the admissibility of any document, material, or information at any trial or hearing. A party that intends to present or which anticipates that another party may present Confidential Information at a hearing or trial shall bring that issue to the Court's and parties' attention by motion or in a pretrial memorandum without disclosing the Confidential Information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial.

13. Confidential Information Subpoenaed or Ordered Produced in Other Litigation.

(a) If a receiving party is served with a subpoena or an order issued in other litigation that would compel disclosure of any material or document designated in this action as Confidential

Information, the receiving party must so notify the designating party, in writing, immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

(b) The receiving party also must immediately inform in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is the subject of this Order. In addition, the receiving party must deliver a copy of this Order promptly to the party in the other action that caused the subpoena to issue.

(c) The purpose of imposing these duties is to alert the interested persons to the existence of this Order and to afford the designating party in this case an opportunity to try to protect its Confidential Information in the court from which the subpoena or order issued. The designating party shall bear the burden and the expense of seeking protection in that court of its Confidential Information, and nothing in these provisions should be construed as authorizing a receiving party in this action to disobey a lawful directive from another court. The obligations set forth in this Paragraph remain in effect while the party has in its possession, custody or control Confidential Information by the other party to this case.

14. Challenges by Members of the Public to Sealing Orders. A party or interested member of the public has a right to challenge the sealing of particular documents that have been filed under seal, and the party asserting confidentiality will have the burden of demonstrating the propriety of filing under seal.

15. Obligations on Conclusion of Litigation.

(a) Order Continues in Force. Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

(b) Obligations at Conclusion of Litigation. Within sixty-three days after dismissal or entry of final judgment not subject to further appeal, all Confidential Information and documents marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" shall be returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certifies to the producing party that it has done so.

(c) Retention of Work Product and one set of Filed Documents. Notwithstanding the above requirements to return or destroy documents, counsel may retain (1) attorney work product, including an index that refers or relates to designated Confidential Information so long as that work product does not duplicate verbatim substantial portions of Confidential Information, and (2) one complete set of all documents filed with the Court including those filed under seal. Any retained Confidential Information shall continue to be protected under this Order. An attorney may use his or her work product in subsequent litigation, provided that its use does not disclose or use Confidential Information.

(d) Deletion of Documents filed under Seal from Electronic Case Filing (ECF) System. Filings under seal shall be deleted from the ECF system only upon order of the Court.

16. Order Subject to Modification. This Order shall be subject to modification by the Court on its own initiative or on motion of a party or any other person with standing concerning the subject matter.

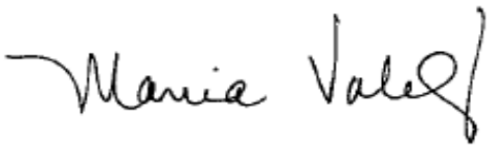
17. No Prior Judicial Determination. This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any document or material

designated Confidential Information by counsel or the parties is entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

18. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms.

SO ORDERED.

ENTERED:



DATE: May 1, 2023

HON. MARIA VALDEZ
United States Magistrate Judge

ATTACHMENT A

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

SEAN McCLENDON,	)	
	)	
Plaintiff,	)	No. 22 cv 5472
	)	
v.	)	Magistrate Judge
	)	Maria Valdez
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Confidentiality Order dated _____ in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the Northern District of Illinois in matters relating to the Confidentiality Order and understands that the terms of the Confidentiality Order obligate him/her to use materials designated as Confidential Information in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information to any other person, firm or concern.

The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

_____

_____

Date: _____ Signature: _____

ATTACHMENT B

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

SEAN McCLENDON,	)	
	)	
Plaintiff,	)	No. 22 cv 5472
	)	
v.	)	Judge Sharon Johnson Coleman
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1. The undersigned hereby acknowledges (a) that the terms of the Confidentiality Order dated _____ in the above-captioned action and attached hereto have been described and explained to him/her, (b) that he/she understands those terms, and (c) that he/she agrees to be bound by its terms.

2. The undersigned understands that the terms of the Confidentiality Order obligate him/her to keep Confidential Information confidential in accordance with the Order solely for the purposes of the above-captioned action.

3. The undersigned understands and agrees to keep Confidential Information in strict confidence. The undersigned understands that he/she is not to disclose or share any Confidential Information to or with any person or entity. The undersigned further understands that he/she is specifically prohibited from disclosing or sharing any Confidential Information to any person or entity in any manner whatsoever, including, but not limited to, orally, in writing, or any other method of communication.

4. The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

Name: _____

Address: _____

_____

Telephone Number: _____

Date: _____ Signature: _____

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, June 30, 2023:

MINUTE entry before the Honorable Maria Valdez: In their status report, the parties advise that Plaintiff may file a motion to quash a subpoena if they are unable to resolve their differences. If a motion is filed, the Court will determine at that time whether to set a briefing schedule or schedule a motion hearing. A further status report on discovery and settlement prospects shall be filed by 9/29/23. Mailed notice(lp,)

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, July 13, 2023:

MINUTE entry before the Honorable Maria Valdez: Hearing on Plaintiff's Motion to Quash [39] is set for 7/25/23 at 10:00 a.m. in Courtroom 1041. Any responses to the motion shall be filed by 7/19/23. Mailed notice(lp,)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SEAN McCLENDON

Plaintiff,

v.

CITY OF CHICAGO, et al.,

Defendants,

Hon. Sharon Coleman

No. 1:22-cv-05472

DEFENDANT CITY OF CHICAGO'S UNOPPOSED MOTION TO RESCHEDULE HEARING ON PLAINTIFF'S MOTION TO QUASH AND TO EXTEND TIME FOR THE CITY TO RESPOND

On July 12th, Plaintiff filed a motion to quash subpoenas for prison call recordings that the City of Chicago intends to serve on third parties. (*See* dkt. 39.) The Court scheduled a hearing on that motion for July 25th at 10:00 a.m. (*See* dkt. 40.) The City's counsel is traveling and unavailable for argument during the week of the 25th. After conferring with Plaintiff's counsel, who has no objection to this motion, the parties are available to argue Plaintiff's motion to quash on August 1st, 8th, or 9th (consistent with the Court's civil motion hearing schedule).[1] Rescheduling to any of these dates will not interfere with any dates set by Judge Coleman.

[1] In the last joint status report (*see* dkt. 37), the City explained that it was having difficulty obtaining unredacted phone call lists and call logs from the Illinois Department of Corrections. Communications are ongoing between the City and an IDOC attorney familiar with the matter regarding obtaining that information. Should the Court select either August 8th or 9th for hearing, it would allow additional time for the City to continue its efforts to obtain and review that information, which could aid the parties – or the Court, should Court intervention still be needed – in resolving the disputed scope of the City's subpoenas.

The City also asks that if the hearing is rescheduled, it be given additional time to respond to Plaintiff's motion: the City's response is currently due on July 19th. If the hearing is rescheduled to August 1st, the City asks that its response be due July 26th. If the hearing is rescheduled to August 8th or 9th, the City asks that its response be due August 2nd.

WHEREFORE, the City asks that the Court (1) reschedule oral argument on Plaintiff's motion to quash to August 2nd, 8th or 9th, and (2) accordingly, extend the City's response deadline to either July 26th or August 2nd.

Respectfully submitted,

Mary B. Richardson-Lowry
Acting Corporation Counsel of the City of Chicago,

/s/ Brian Wilson
Special Assistant Corporation Counsel
NATHAN & KAMIONSKI, LLP
33 W. Monroe, Suite 1830
Chicago, IL, 60603
312-957-6649
bwilson@nklawllp.com

Attorneys for Defendant City of Chicago

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

SEAN McCLENDON,	)	
	)	
Plaintiff,	)	No. 22 cv 5472
	)	
v.	)	Judge Sharon Coleman
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

NOTICE OF UNOPPOSED MOTION

TO: All Counsel of Record

PLEASE TAKE NOTICE that on **July 19, 2023, at 10:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Sharon Coleman** in **Room 1241** of the United States District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn St., Chicago, Illinois, and shall then and there present *DEFENDANT CITY OF CHICAGO'S UNOPPOSED MOTION TO RESCHEDULE HEARING ON PLAINTIFF'S MOTION TO QUASH AND TO EXTEND TIME FOR THE CITY TO RESPOND.*

Dated: July 14, 2023

Respectfully Submitted,

/s/ Brian Wilson
Brian Wilson

Shneur Z. Nathan
Avi T. Kamionski
Brian Wilson
NATHAN & KAMIONSKI, LLP
33 W. Monroe St., Suite 1830
Chicago, IL 60603

Attorneys for Defendant City of Chicago

CERTIFICATE OF SERVICE

I, Brian Wilson, an attorney, hereby certify that on July 14, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent electronic notification of the filing on the same day to all counsel of record.

/s/ Brian Wilson
Brian Wilson

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, July 14, 2023:

MINUTE entry before the Honorable Maria Valdez: Defendant City of Chicago's Unopposed Motion to Reschedule Hearing on Plaintiff's Motion to Quash and to Extend Time for the City to Respond [41] is granted. Hearing date of 7/25/23 on Plaintiff's Motion to Quash [39] is stricken and reset to 8/8/23 at 10:00 a.m. in Courtroom 1041. Defendant's response to the motion is now due by 8/2/23. Mailed notice(lp,)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SEAN McCLENDON

Plaintiff,

v.

CITY OF CHICAGO, et al.,

Defendants,

Hon. Sharon Coleman

No. 1:22-cv-05472

THE CITY OF CHICAGO'S UNOPPOSED MOTION TO EXTEND BRIEFING SCHEDULE AND, IF NEEDED, RESET HEARING ON PLAINTIFF'S MOTION TO QUASH

On July 12th, Plaintiff filed a motion to quash subpoenas for prison call recordings that the City of Chicago intends to serve on third parties. (*See* dkt. 39.) The Court originally ordered the City's response due on July 19th and scheduled a hearing for July 25th at 10:00 a.m. (*See* dkt. 40.) Per the City's unopposed request, the Court extended the City's response date to August 2nd and rescheduled the hearing for August 8th. (*See* dkt. 43.) In the interim, the City has attempted to obtain information from the Illinois Department of Corrections that might help the parties resolve this dispute, but that information has not yet been obtained.

The City now asks the Court to extend its response deadline to August 4th. The parties are still able to attend the August 8th hearing, but if the Court chooses to reschedule the hearing to permit more time to read the parties' briefs, the parties are available on August 14th and 15th for a reset hearing (per the Court's civil motion hearing schedule). Plaintiff has no objection to this Motion.

WHEREFORE, the City respectfully asks that the Court (1) extend the City's response deadline to August 4th, and (2) if needed to read the parties' briefs before the hearing on Plaintiff's Motion, reset the hearing to August 14th or 15th.

Respectfully submitted,

Mary B. Richardson-Lowry
Corporation Counsel of the City of Chicago,

/s/ Brian Wilson
Special Assistant Corporation Counsel
NATHAN & KAMIONSKI, LLP
33 W. Monroe, Suite 1830
Chicago, IL, 60603
312-957-6649
bwilson@nklawllp.com

Attorneys for Defendant City of Chicago

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

SEAN McCLENDON,	)	
	)	
Plaintiff,	)	No. 22 cv 5472
	)	
v.	)	Judge Sharon Coleman
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

NOTICE OF UNOPPOSED MOTION

TO: All Counsel of Record

PLEASE TAKE NOTICE that on **August 8, 2023, at 10:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Sharon Coleman** in **Room 1241** of the United States District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn St., Chicago, Illinois, and shall then and there present *THE CITY OF CHICAGO'S UNOPPOSED MOTION TO EXTEND BRIEFING SCHEDULE AND, IF NEEDED, RESET HEARING ON PLAINTIFF'S MOTION TO QUASH.*

Dated: July 31, 2023

Respectfully Submitted,

/s/ Brian Wilson
Brian Wilson

Shneur Z. Nathan
Avi T. Kamionski
Brian Wilson
NATHAN & KAMIONSKI, LLP
33 W. Monroe St., Suite 1830
Chicago, IL 60603

Attorneys for Defendant City of Chicago

CERTIFICATE OF SERVICE

I, Brian Wilson, an attorney, hereby certify that on July 31, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent electronic notification of the filing on the same day to all counsel of record.

/s/ Brian Wilson
Brian Wilson

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, August 1, 2023:

MINUTE entry before the Honorable Maria Valdez: Defendant City of Chicago's Unopposed Motion to Extend Briefing Schedule [44] is granted. The City's response brief is now due 8/4/23. The hearing set for 8/8/23 to stand. Mailed notice(lp,)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SEAN McCLENDON Plaintiff, v. CITY OF CHICAGO, et al., Defendants,	Judge Sharon Coleman Magistrate Judge Valdez No. 1:22-cv-05472

THE CITY OF CHICAGO'S RESPONSE TO PLAINTIFF'S MOTION TO QUASH

Plaintiff moves to quash the City's subpoenas for his recorded Cook County Jail phone calls and Illinois Department of Corrections prison phone calls, arguing that (1) his privacy interest in the calls and (2) the burden of reviewing those calls both outweigh the calls' relevance. Neither argument warrants foreclosing Defendants from this critical information.

First, whatever privacy interest that exists is minimal and does not warrant barring access to the calls. Plaintiff knew that his calls were recorded and could be listened to by jail/prison personnel at any time. In any event, his privacy concerns are easily allayed because the City is agreeable to treating Plaintiff's calls as confidential under this case's protective order, thus alleviating any concern that the public will hear Plaintiff's non-relevant calls.

Plaintiff also fails to acknowledge that any calls in which he discussed the underlying incident may not only be relevant, but dispositive. This action largely hinges on whether Plaintiff possessed a handgun the night he was arrested. Even the briefest acknowledgment by Plaintiff that he did would end the case. Ultimately, the relevance of any call discussing the underlying incident

– as well as non-dispositive but vital issues such as Plaintiff's conditions of confinement and other elements of damages – overwhelmingly outweighs the privacy intrusion at issue here.

Second, Plaintiff's burden argument likewise does not support granting the relief sought. Plaintiff needn't review anything if he doesn't want to. The rules of discovery ensure that Plaintiff will have advance notice of any calls the City intends to use. Thus, if he chooses, Plaintiff can simply wait and listen to whatever calls the City discloses after its own review.

For these reasons, the Court should deny Plaintiff's Motion outright. However, should the Court agree with Plaintiff, the Court should permit more limited subpoenas to issue as proposed below. In no event should Plaintiff be fully insulated from his own admissions, as such admissions may prove to be – like in other cases – the most important evidence.

ARGUMENT

I. The Relevance of Plaintiff's Recorded Calls Outweighs the Minimal Privacy Intrusion Here.

Plaintiff invites the Court to engage in a balancing test between his privacy interests and the relevance of his phone calls. In doing so, Plaintiff exaggerates the former and pays short shrift to the latter. In reality, Plaintiff's privacy interest in calls that he knew could be listened to by strangers is low, and the relevance of any calls in which Plaintiff discussed the underlying incident, or matters related to his purported damages stemming therefrom, is high.

A. Plaintiff's privacy interest in recorded calls is low, and is protected if such calls are initially treated as confidential under the governing protective order.

Plaintiff knew that his phone calls were recorded and could be listened to by jail/prison personnel, given he was caught making calls with other inmates' PINs because those calls were reviewed and Plaintiff's voice was identified. (*See*, *e.g.*, Grp. Ex. A (IDOC citations).) As such, Plaintiff had no reasonable expectation that anything he said on a phone call would remain between

the call participants. *See U.S. v. Sababu*, 891 F.2d 1308, 1329 (7th Cir. 1989) (holding prisoner had no reasonable expectation that her calls would remain private). In that regard, Plaintiff's privacy interest remains unchanged by the City's subpoenas.

Instead, the privacy concern here is not whether Plaintiff's calls can be heard by non-participants, but *how many* non-participants. There is admittedly a difference between jail/prison personnel listening to Plaintiff's calls and the entire public having access to the calls. But the City's proposed discovery falls closer to the restricted end of that spectrum than the unfettered.

Once received, only defense counsel and their call review consultants will need to listen to Plaintiff's calls.[1] That will increase the sphere of strangers who already could listen to Plaintiff's calls by a relatively small number. To ensure that is the case, the City suggests that this Court adopt the same process as was used in *Coleman v. City of Peoria*, No. 15-cv-1100, 2016 WL 3974005 (N.D. Ill. Jul. 2, 2016). There, the defendants subpoenaed the plaintiff's prison calls for a roughly 19-year period. *Id.* at * 1-2. Plaintiff moved to quash the subpoena, arguing his privacy interest outweighed the subpoena's breadth. *Id.* at *5. The Court ruled that the plaintiff's diminished privacy interest in his calls was not strong enough to invalidate the subpoena. *Id.* at *4. Nevertheless, as a compromise, the calls were initially treated as confidential pursuant to the governing protective order. *Id.* at *5.

[1] Plaintiff's efforts to distract the Court by attacking the integrity of the lawyers in this case is as disheartening as it is meritless. *See* Pl.'s Mot., p. 12. As explained throughout, the information the City seeks is potentially game-changing, and it would be a violation of defense counsel's duty of zealous advocacy to forgo such a potential minefield of important information. If Plaintiff did not make relevant admissions on the calls, he has nothing to be concerned about, but advancing baseless accusations at lawyers in this case way to distract this Court from the salient issues undermines the legitimacy of Plaintiff's entire motion and exposes his motivation to bury the relevant evidence in the calls at all costs.

None of the cases cited by Plaintiff warrant a different approach. As an initial matter, none recognized a strong privacy interest in a plaintiff's jail calls. *See, e.g., Bishop v. White*, No. 16 C 6040, 2020 WL 6149567, *4 (N.D. Ill. Oct. 20, 2020) (referring to plaintiff's privacy interest as "minimal"); *DeLeon-Reyes v. Guevara*, Nos. 1:18-cv-01028 & 1:18-cv-02312, 2020 WL 7059444, *2 (N.D. Ill. Dec. 2, 2020) (addressing the privacy interest of a non-party, which is inapplicable here); *Pursley v. City of Rockford*, No. 18-cv-50040, 2020 WL 1433827, *2-4 (N.D. Ill. Mar. 24, 2020) (quashing subpoena largely due to overbreadth, not a strong privacy interest); *Simon v. Northwestern University*, No. 1:15-CV-1433, 2017 WL 66818, *3-4 (N.D. Ill. 2017) (same).

Additionally, of those cases, only *DeLeon* considered the compromise used in *Coleman*, and rejected it because the phone calls at issue were made by a non-party, which is inapposite here. *See DeLeon-Reyes*, 2020 WL 7059444, *2, n. 4. Not only did the other cases cited by Plaintiff ignore the compromise in *Coleman*, but the *Simon* Court expressly envisioned the plaintiff's phone calls becoming available to the public regardless of relevance, which is not a concern under the *Coleman* approach. *See Simon*, 2017 WL 66818, *2.

Finally, being the party who voluntarily filed this suit, and knowing the Defendants would test the veracity of his allegations, Plaintiff cannot claim surprise that the City is seeking discovery that would undermine his liability and damages claims. On this point, the Court in *Pursley* was incorrect in reasoning that a plaintiff "would not reasonably expect the details of their recorded calls [to] be handed over to civil litigants." 2020 WL 1433827, *2. To the contrary, that is one of the most foreseeable outcomes of filing a suit like this.

In short, Plaintiff's privacy interest in his calls is slight, and the intrusion into his privacy beyond that which already existed is minimal under the *Coleman* approach. Therefore, even

moderate relevance would be enough to outweigh the mild privacy concerns here. As discussed below, such relevance exists.

B. The relevance of any calls discussing the underlying incident or aspects of Plaintiff's damages is high.

Plaintiff essentially claims that he was framed for gun possession. Pl.s' Compl., ¶¶ 4-10. Any admission by Plaintiff that he possessed the gun would undeniably be relevant, and Plaintiff does not argue otherwise. Similarly, when asked to identify his damages in this case, Plaintiff said he is seeking compensation for, *inter alia*, "being taken away from my normal life, and emotional injuries." (*See* Ex. B. (Pl.'s Ans. to the City's Interrogatories).) Any phone calls indicating Plaintiff already had weak relationships with family members or friends, or calls that otherwise indicate what Plaintiff's "normal life" was like before prison, would be relevant to Plaintiff's damages. Further, Plaintiff's calls may shed light on his experiences while in custody and whether they support or contradict his alleged injuries; plainly such information is relevant and discoverable.

Thus, the question is not whether some of Plaintiff's calls may be relevant, but which ones. The City cannot know the answer at this stage.[2] However, logic and other cases provide good reason to believe that such calls do exist, and the cost of missing them could be dire.

First, the unique nature of prison calls greatly increases the likelihood that Plaintiff would discuss the underlying incident that led to his arrest and his daily experiences in prison. As Plaintiff acknowledges, phone calls are the primary means that prisoners speak with those outside of prison. Pl.s' Mot., p.7. That fact, combined with the fact that people outside of prison are often the people a prisoner trusts most (family and friends), means that if a prisoner confides a detail about the cause and nature of his arrest, it will likely be on a phone call as opposed to some other means.

[2] Unlike text messages or emails, there is no feasible way to search Plaintiff's jail calls for relevant keywords.

For these reasons, Plaintiff's answer to the City's interrogatory 16 supports the requested discovery instead of negates it (as Plaintiff argues). Plaintiff alleges that he was framed and fought for years to regain his freedom, all while enduring the trauma of prison as an innocent man. Yet he claims that he "never" discussed his arrest, his prosecution, his conviction, or his effort to vacate that conviction in detail with anyone on the phone. *See* Pl.'s Mot., p. 11. That is facially incredible, especially for someone who was reprimanded for making too many calls. (*See* Ex. C (IDOC reprimand).) The City need not and should not be forced to take Plaintiff's word for it, particularly given the unbelievable claim that he never discussed the very reason he was in prison, the alleged officer misconduct that occurred, or his release efforts on the phone with anyone. Instead, the City is entitled to test the veracity of such denials.[3]

Other cases bear out this logic and show how crucial the discovery of prisoner phone calls can be. For example, in *Harris v. City of Chicago*, No. 20-CV-4521, the plaintiff claimed he was falsely arrested for gun possession. *See Harris v. Chicago*, No. 20-CV-4521, 2020 WL 7059445 (N.D. Ill. Sept. 2, 2020). The City subpoenaed the plaintiff's prison calls and learned he admitted to possessing the gun. *See* Defs.' Sum. J. Mot. in *Harris v. Chicago*, Case 20-CV-4521, 2021 WL 10864282, § 1. After the calls were discovered, the plaintiff's counsel withdrew, *see id.* at n.1, and summary judgment was granted in the City's favor, *see Harris v. Chicago*, 2020 WL 7059945.

In *Teague v. Salgado*, No. 19-CV-04113, the plaintiff claimed he was, *inter alia*, falsely arrested and framed for drug dealing. (*See* Ex. D (excerpts of Def.'s Mot. to Compel in Case 19-CV-04113), p.2.) The City obtained the plaintiff's calls, in which the plaintiff made damning

[3] Plaintiff's use of other inmates' PIN numbers to make phone calls increases this skepticism, as it is logical to presume Plaintiff used other inmates' PINs so the calls would not be traced to him.

admissions about his dealing drugs. (*See id.*) After these calls were discovered, the plaintiff dismissed his case with prejudice. (*See* Ex. E.)

Ironically, in the *Bishop* case cited by Plaintiff, the Court originally quashed the phone call subpoena, but a more narrow subpoena was issued that uncovered the plaintiff was tampering with witnesses and had perjured himself. *See Bishop v. White*, 2023 WL 35157, *6-13. The calls obtained by the subpoena led to the dismissal of the lawsuit as a sanction. *Id.* at *13.

Without the discovery of these calls, these plaintiffs' admissions and fraud may have gone undiscovered.[4] Indeed, this Court has previously acknowledged the relevance of at least some discovery into a plaintiff's jail calls. (*See*, *e.g.*, Ex. F (order denying Motion to Quash in *Morfin v. Cassidy*, No. 1:21-CV- 05525).)

II. The Subpoenas Impose No Cost or Undue Burden on Plaintiff.

Plaintiff claims that allowing the proposed discovery will require him to review thousands of hours of irrelevant personal phone calls. Not so. Plaintiff will not be required to review anything. It is the City that seeks these calls. Applicable discovery rules protect Plaintiff from undue surprise, *see* Fed. R. of Civ. Pro. 26(a) & 26(e), so he need only wait for the City to supplement its discovery with phone calls the City intends to use. And the Court has discretion to fashion other orders to alleviate any burden on Plaintiff, *see* Fed. R. of Civ. Proc. 26(c), such as requiring advance disclosure of phone calls the City intends to play at Plaintiff's deposition (which the City would not oppose).

[4] These are only a few examples of how prison calls can be relevant, if not outright dispositive. There are more: *See*, *e.g.*, *DeWitt v. Ritz*, No. DKC 18-3202, 2021 WL 915146 (D. Md. Mar. 10, 2021) (dismissing case as sanction when plaintiff's jail calls showed evidence fabrication); *Johnson v. Baltimore Police Dep't*, No. ELH-19-0698, 2022 WL 9976525 (D. Md. Oct. 14, 2022) (same).

Tellingly, Plaintiff cites no authority indicating that weighing the burden of a subpoena focuses not on the subpoena recipient – who is truly compelled to act – but a non-recipient whose only burden is whatever it voluntarily chooses to incur. If Plaintiff believes there might be information beneficial to him in some of his calls, he is in the best position to identify those calls and his counsel can review them, but any involved burden does not warrant quashing the subpoena.

Finally, given Plaintiff claims to have been wrongfully incarcerated for years, it is possible that any judgment in Plaintiff's favor would be in the seven figures. Such potential liability justifies the discovery sought, even if Plaintiff were truly subjected to a compelled burden, which he is not.

III. Alternatively, if the Court Agrees with Plaintiff, the City Should Be Permitted to Issue Narrower Subpoenas as Discussed Below.

If the City is forced to tailor its subpoenas based on guessing where relevant calls may exist, it proactively asks the Court to consider the following narrower scope of discovery:

- All Cook County Jail calls involving Plaintiff from October 2014 to December 1, 2016. Per Plaintiff's answer to the City's interrogatory 1, Plaintiff was in the Cook County Jail from October 2014 to May 2015, and from when he was found guilty (July 2016) to when he was shipped to IDOC (around November 2016). (*See* Ex. B.) This time period is close to Plaintiff's arrest and conviction, increasing the chance that Plaintiff would discuss those events during that timeframe.
- All Illinois Department of Corrections jail calls involving Plaintiff from October 1, 2016, to January 31, 2017. As best the City can tell, this timeframe would cover the Plaintiff's first few months in IDOC, which would increase the likelihood of him discussing the reason for his new incarceration.
- All Illinois Department of Correction jail calls involving Plaintiff from December 1, 2018, to March 31, 2019. According to the docket for Plaintiff's underlying

criminal case (*see* Ex. G), Plaintiff prosecuted an unsuccessful post-conviction motion challenging his conviction during this timeframe, increasing the chance he would talk about his underlying arrest and prosecution while that process unfolded.

- All Illinois Department of Correction jail calls involving Plaintiff's documented use of other inmates' PINs. This subpoena already exists, and Plaintiff does not seriously challenge it given its narrow scope in requesting calls on specific dates, except to say that the Court should quash the subpoena to protect the interests of third parties. However, not only does Plaintiff lack standing to assert those interests, *see Coleman*, 2016 WL 3974005, * 5, but those parties presumably chose to give Plaintiff their PINs, and cannot now claim a privacy interest in the timeframe in which they allowed those improper calls to be made.[5]

Conclusion

For the reasons stated above, the Court should deny Plaintiff's Motion to Quash and permit the City to issue its subpoenas, with an order that all discovered calls are initially to be treated as confidential under the operative protective order. In the alternative, the Court should permit subpoenas to be issued in accordance with the scope outlined in Section III above.

Respectfully submitted,

Mary Richardson-Lowry
Corporation Counsel of the City of Chicago,

/s/ Brian Wilson
Avi Kamionski
Shneur Nathan
Special Assistant Corporation Counsel
NATHAN & KAMIONSKI, LLP
33 W. Monroe, Suite 1830

[5] If the Court chooses to allow only this narrower subpoena – or something like it – the City reserves its right to timely seek additional calls if future discovery warrants.

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Attorneys for Defendant City of Chicago

EXHIBIT A

STATE OF ILLINOIS DEPARTMENT OF CORRECTIONS

ADJUSTMENT COMMITTEE
FINAL SUMMARY REPORT

Name: MCCLENDON, SEAN **IDOC Number:** M27978 **Race:** BLK
Hearing Date/Time: 8/12/2019 09:44 AM **Living Unit:** IRI-03-A-21 **Orientation Status:** N/A
Incident Number: 201903801/2 - IRI **Status:** Final

Date	Ticket #	Incident Officer	Location	Time
8/1/2019	201903801/1-IRI	NABER, SETH T	OPERATIONS	06:20 PM

Offense	Violation	Final Result
211	Pos. or Sol. of U/A Personal Information *Comments:Dibenedetto M50626 pin*	Guilty
307	Unauthorized Movement *Comments:out of cell unauthorized*	Not Guilty
310	Abuse Of Privileges *Comments:phone privileges*	Guilty

Witness Type	Witness ID	Witness Name	Witness Status
No Witness Requested			

RECORD OF PROCEEDINGS

Offender identified by state issued ID card was present at hearing with no witnesses requested, and charges read to him. Offender pleads not guilty to 211 and guilty to 310,307 stating that he is guilty for using the phone, but he was given that pin by the other offender (Dibenedetto).

BASIS FOR DECISION

Offender identified by state issued ID card.

The charges of 211-Possession or Solicitation of Unauthorized Personal Information, 307-Unauthorized Movement, and 310-Abuse of Privileges were substantiated by MCCLENDON being observed by INTEL abusing his telephone privileges by placing calls under DIBENEDETTO's PIN number while on C-Grade, by MCCLENDON being heard by INTEL on the monitored phone calls using DIBENEDETTO's SECURUS personal identification number, and by MCCLENDON being observed by INTEL on recorded surveillance footage out of his cell and placing a call from the R2 A-Wing #1 phone outside of his scheduled dayroom time on 8/1/2019 at approx. 6:10PM. Offender MCCLENDON's housing assignment was verified in Offender 360. MCCLENDON was identified by Offender 360. The referenced phone calls are monitored and stored on the secure call platform provided by Securus Technologies.

MHP review Doc0443 was considered and reviewed by the Adjustment Committee. The adjustment committee did not exceed any recommendations for segregation on the Doc0443 for this incident.

/2 = 0443 info scanned in.

DISCIPLINARY ACTION *(Consecutive to any priors)*

RECOMMENDED	FINAL
2 Months C Grade	2 Months C Grade
Other : 0443	Other : 0443
1 Months Day Room Restriction	1 Months Day Room Restriction

Basis for Discipline:nature of offense

Signatures

Hearing Committee

TAYLOR, SAMUEL W - Chair Person	L+T	08/12/19	WHI
	Signature	**Date**	**Race**

Run Date: 8/23/2019 07:40:10

STATE OF ILLINOIS - DEPARTMENT OF CORRECTIONS
ADJUSTMENT COMMITTEE
FINAL SUMMARY REPORT

STA

Name: MCCLENDON, SEAN **IDOC Number:** M27978 **Race:** BLK
Hearing Date/Time: 5/6/2020 09:06 AM **Living Unit:** STA-B-08-01 **Orientation Status:** N/A
Incident Number: 202000993/1 - STA **Status:** Final

Date	Ticket #	Incident Officer	Location	Time
4/27/2020	202000993/1-STA	ROLING, MALTE B	B-HOUSE	12:00 PM

Offense	Violation	Final Result
211	Pos. or Sol. of U/A Personal Information *Comments:used another inmate pin to make call*	Guilty
310	Abuse Of Privileges	Guilty
404	Violation Of Rules *Comments:violated rule f. telephone privileges*	Guilty

Witness Type	Witness ID	Witness Name	Witness Status
No Witness Requested			

Received
MAY 2020
STA
Rec/Off

RECORD OF PROCEEDINGS
Inmate McClendon was identified for the hearing. Inmate admitted to the violations.

BASIS FOR DECISION
Officer Roling monitored a phone call placed by inmate McClendon on 4/27/2020 to the number [redacted]. After reviewing the phone call, Officer Roling verified that inmate McClendon utilized the Pin number of inmate Lewis. McClendon contacted a total of 49 calls using Lewis' Pin number. Officer Roling identified McClendon by voice recognition from interaction with inmate McClendon.

DISCIPLINARY ACTION *(Consecutive to any priors)*

RECOMMENDED	FINAL
Verbal Reprimand	Verbal Reprimand
Basis for Discipline:	

Signatures
Hearing Committee

YOUNG, KEENAN - Chair Person	Signature	05/06/20 Date	BLK Race
HARRIS, CYNTHIA Y	Signature	05/06/20 Date	BLK Race
Recommended Action Approved			

Final Comments: N/A

DAVID J GOMEZ / B-B 5/19/2020
Chief Administrative Officer

Signature 05/19/20 **Date**

The committed person has the right to appeal an adverse decision through the grievance procedure established by Department Rule 504: Subpart F.

Employee Serving Copy to Committed Person

5/22/20 @ 2pm
When Served -- Date and Time

Run Date: 5/20/2020 07:34:29

STATE OF ILLINOIS – DEPARTMENT OF CORRECTIONS
PROGRAM COMMITTEE
FINAL SUMMARY REPORT

Name: MCCLENDON, SEAN **IDOC Number:** M27978 **Race:** BLK
Hearing Date/Time: 10/5/2017 07:00 PM **Living Unit:** IRI-03-D-64 **Orientation Status:** N/A
Incident Number: 201703068/1 - IRI **Status:** Final

Date	Ticket #	Incident Officer	Location	Time
10/3/2017	201703068/1-IRI	JESTER, JASON L	OPERATIONS	12:00 PM

Offense	Violation	Final Result
310	Abuse Of Privileges *Comments:Gave offender his pin # to use*	Guilty
404	Violation Of Rules *Comments:#11*	Guilty

Witness Type	Witness ID	Witness Name	Witness Status
No Witness Requested			

RECORD OF PROCEEDINGS

On the above date and approx. time, offender McClendon, Sean M27978 was present while charges were read. Offender pleads not guilty. States the numbers had been on his list since December. States never admitted to wing anybody number/pin.

BASIS FOR DECISION

At the completion of this investigation INTEL has substantiated the above listed charges on Offender MCCLENDON, SEAN M27978 by the following; While investigating a physical altercation on R3 D-Wing INTEL reviewed all of the telephone calls placed around the time of the physical altercation which occurred at 7:17PM on 10/01. It was found that CHRISTMAS, DESMOND K89858 completed a call at 7:18PM to [redacted] listed as MONEKA CURTIS. While reviewing the call INTEL believed the offender making the call to not be CHRISTMAS as the voice and speech pattern did not match that of CHRISTMAS from other calls. It was found through a PAN Frequency Detail Search that 630-452-4920 is shared by another offender currently at IRCC, MCCLENDON, who has been on C-Grade and unable to make calls since 9/26/2017 according to when is was entered into Offender 360. INTEL searched all of CHRISTMAS' approved numbers and found that he shared (2) additional numbers with MCCLENDON, [redacted] (DIAMOND GLOVER) and [redacted] (SHAUNTRELLE LOCKHART). INTEL reviewed all of CHRISTMAS' completed calls dating back to 01/12/2017 when the (3) above listed numbers were added to his PAN list and he never completed a call to any of the numbers until 9/27/2017 when a call was completed to 630-452-4920, which was a day after MCCLENDON's C-Grade took effect. It was also found that from 9/27-10/02/17 (13) calls were completed by MCCLENDON, identified by voice and speech pattern, and not CHRISTMAS.

MCCLENDON was interviewed and admitted that he had approached CHRISTMAS and asked if he could put his numbers on CHRISTMAS' PAN list and use his PIN number in December of 2016 when he received a major ODR (12/25/2016) however, he never needed to use it then because he only got B-Grade as discipline. MCCLENDON admitted that since receiving another major ODR on 9/18/2017 he knew he would receive C-Grade and began using CHRISTMS' PIN number to complete calls while on C-Grade [redacted] On page 61 of the 20th Edition of the Illinois River CC Offender Handbook Orientation Manual it is written under rule #11 Offender Telephone Services/ Monitored and Recorded, "…offenders in C-Grade will be allowed to make legal phone calls only."
MCCLENDON abused his phone privileges and violated rule #11 on Page 61 of the IRCC Offender Handbook by placing his telephone numbers on CHRISTMAS' PAN list and using his PIN number to complete unapproved telephone calls while on C-Grade. MCCLENDON was identified by state issued ID as well as by voice and speech patterns in his calls.
The above mentioned phone calls are recorded and stored on the Secure Call Platform database provided by Securus technologies.

DISCIPLINARY ACTION *(Consecutive to any priors)*

RECOMMENDED	FINAL
1 Months Commissary Restriction	1 Months Commissary Restriction

Basis for Discipline:nature

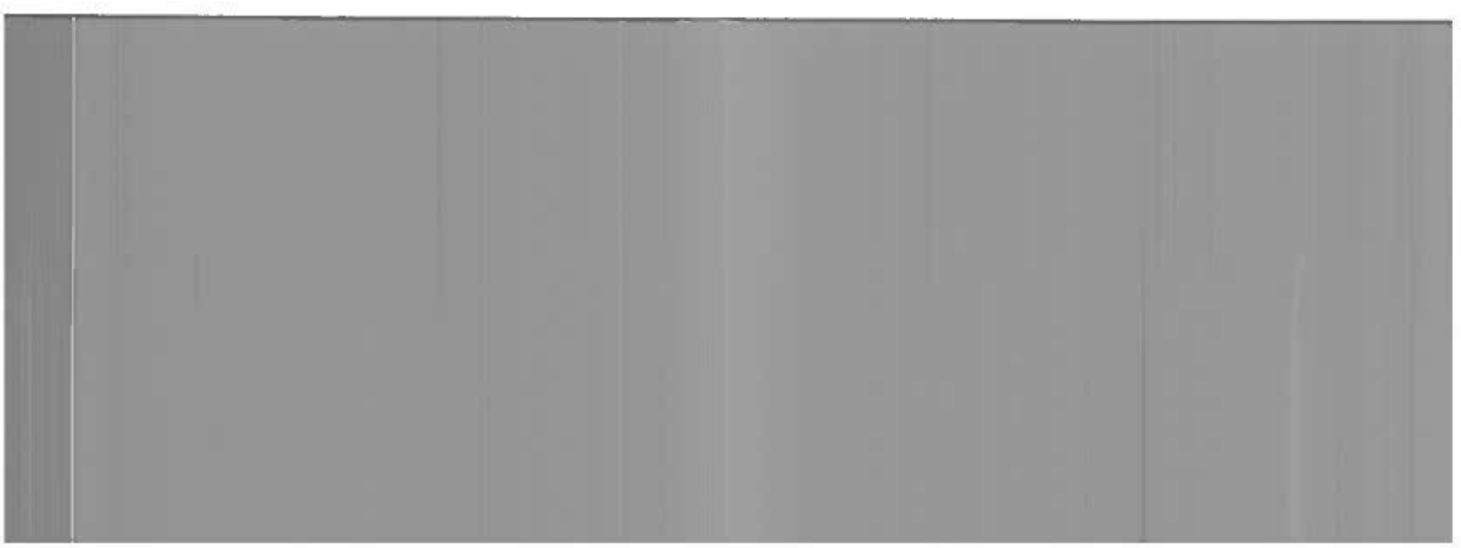

EXHIBIT B

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

Sean McClendon,	)	
	)	
Plaintiff,	)	
	)	No. 22-cv-5472
-vs-	)	
	)	*(Judge Coleman)*
City of Chicago, et al.,	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANT CITY OF CHICAGO'S FIRST INTERROGATORIES

The undersigned, under penalties of perjury, certifies that the following interrogatory answers are true:

1. Provide the name and address of each correctional facility, including jails and prisons, where you have been detained since October 10, 2014, including the dates during which you were detained in each facility.

Response: I was at the Cook County Jail between October 2014 and about May 2015 and from the time I was found guilty until I was shipped to IDOC. Information about the IDOC facilities is in my IDOC records.

2. During your incarceration in any of the correctional facilities referenced in interrogatory 1, were you admitted to any hospital (inpatient or out-patient) or clinic, or treated by any physician, psychiatrist, psychologist, counselor, nurse, therapist, specialist or other health care professional or facility? If so, identify the name of the health care professional, where you were treated, the dates of treatment and describe the nature of treatment you received.

Response: This information is in my medical records.

3. Have you ever been involved as a party in any civil legal action other than this action (including divorce, workmen's compensation or bankruptcy proceedings)? If so, for each such action, please state:

a. The date it was filed;
b. The name of the court(s) in which it was filed;

c. The names of the parties involved;
d. The court file number;
e. A description of the nature of the action, and
f. The disposition of the action

Response: No.

4. Have you ever been arrested outside of Illinois? If so, for each arrest please state (if applicable):

a. The date and location of each arrest;
b. The charge(s) placed against you;
c. The name and location of each court where you were prosecuted;
d. The court file number (i.e. docket number); and,
e. The disposition (plea of guilty, finding of guilty, etc.), including any fines or sentences imposed;

Response: No.

5. Have you ever pleaded guilty to, or have you otherwise been convicted of, a crime punishable as either a misdemeanor or felony? If so, identify:

a. The misdemeanor or felony to which you plead guilty;
b. The date of each guilty plea or conviction;
c. The case number assigned to each prosecution;
d. The judge and location of each Court where the guilty plea or conviction took place;
e. Any and all sentences imposed; and,
f. The date on which each sentence was completed or discharged.

Response: I was found guilty in this case. The conviction was reversed. I was found guilty of UUWF in Cook County Case Number 12-CR-5889-02. I was found guilty of Possession of a Stolen Vehicle in Case Number 10-CR-18681. Records are in the possession of the Cook County Clerk of Court.

6. Identify each person who you believe witnessed, or who you know claims to have witnessed any of your interaction with police at or near the 3000 block of East 78th street in Chicago on October 10, 2014, and describe what you believe that person witnessed (or what he/she claims to have witnessed).

Response: My lawyer has disclosed this information.

7. Are you aware of any photographs, videotapes, or other media taken of your interaction with any police officers on October 10, 2014, that are not already in your possession? If so, describe the media and identify who you believe possesses it.

Response: There was a video from the helicopter.

8. As a result of the incidents alleged in your Complaint, did you file a complaint with any law enforcement agency? If yes, please state:

a. The date on which the complaint was made;
b. The agency receiving the complaint;
c. The nature of the complaint;
d. The nature of any documents received in response to, or documenting the investigation of the complaint; and,
e. The disposition of the complaint.

Response: No.

9. Describe each item of damage you claim you incurred as a result of the incidents described in your Complaint, and for each item:
a. State the amount of compensation you intend to ask the fact-finder in this case, if any;
b. Explain how the amount in sub-part (b) above was calculated; and,
c. Identify anyone who has knowledge of the existence or extent of your damage.

Response: My damages will be determined by a jury. I seek compensation for, among other things: being wrongfully imprisoned for almost six years, dealing with the charges for two years, being taken away from my normal life, and emotional injuries.

10. Regarding paragraph 7 of your Complaint, (i) describe every fabrication that one or more of the individual defendants made to justify your Arrest, (ii) state which individual defendant(s) made each fabrication, (iii) state which individual defendant(s) failed to intervene in the making of the fabrication, and (iv) state every fact or piece of evidence you are aware of that supports the existence of the fabrication.

Response: Objection, this contention interrogatory is premature. The answer to this interrogatory will be developed in discovery. Without waiving this objection, plaintiff answers: The officers falsely stated that I threw the gun behind the couch. They also lied about my statement that it was my gun. I told the officers that it wasn't my gun. I never said, "I need it, there are a lot of motherfuckers after me."

11. State every fact or piece of evidence you are aware of that supports your allegations in paragraph 16 of your Complaint that "defendant City of Chicago has known and encouraged a code of silence among its police officers that required police officers to remain silent about police misconduct. An officer who violated the code of silence would be severely penalized by the Department."

Response: Objection, this contention interrogatory is premature and overly broad.

12. State every fact or piece of evidence you are aware of that supports your allegations in paragraph 18 of your Complaint that

the Chicago Police Department's "code of silence facilitated, encouraged, and enabled the officer defendants to engage in misconduct for many years, knowing that their fellow officers would cover for them and help conceal their wrongdoing."

Response: Objection, this interrogatory is premature. The answer to this interrogatory will be developed in discovery.

13. State every fact or piece of evidence you are aware of that supports your allegations in paragraph 29 of your Complaint that "[t]he code of silence emboldened defendants Cadichon, McDermott, McHale, and Smith to frame plaintiff."

Response: Objection, this interrogatory is premature. The answer to this interrogatory will be developed in discovery.

14. Identify - per the instructions to these interrogatories - (1) "Ken," who you said during your criminal trial opened a door to the porch during your Arrest, and (2) "Josh," who you said during your criminal trial is your friend who you and Emmanuel Poe were going to pick up on October 10,2014.

Response: Ken's last name is Ross. My lawyer should be able to arrange his deposition if requested. I do not know Josh's last name.

15. Have you ever told anyone - orally, in writing, or in any other way - that you possessed a gun on October 10, 2014? If so, identify who you told that to and when that occurred.

Response: No.

16. Identify - per the instructions to these interrogatories - every person you had a phone conversation with while you were incarcerated at any jail or prison since October 10, 2014, about (i)your Arrest, (ii) your subsequent criminal prosecution and conviction, or (iii) your efforts to seek a new trial or have your conviction vacated, overturned or reversed.

Response: I never had a phone conversation while I was incarcerated in which I went into detail about these matters.

Dated: 5/8/23

Sean McClendon

Joel Flaxman
An attorney for plaintiff
For objections only

EXHIBIT C

ILLINOIS DEPARTMENT OF CORRECTIONS

Offender Disciplinary Report

Type of [redacted]
☒ Dis ☐ Investigative

I.R.C.C.
Facility

Date: 9/18/2017

Offender Name: MCCLENDON, SEAN ID #: M27978

Observation Date: 09-18-2017 Approximate Time: 8:00 ☒ a.m. ☐ p.m. Location: OPERATIONS

Offense(s): DR 504: 205- Security Threat Group or Unauthorized Organizational Activity, 211- Possession or Solicitation of Unauthorized Personal Information, 308- Contraband or Unauthorized Property, 310- Abuse of Privileges

Observation: (NOTE: Each offense identified above must be substantiated.) At the conclusion of this investigation INTEL has substantiated the above listed charges on MCCLENDON, SEAN M27978 [redacted] by the following; INTEL received information in the form of (5) anonymous notes from sources on R3 D-Wing which all stated that MCCLENDON was hoarding the phone, would stay on for the entire dayroom time, and would not let other offenders use it. INTEL reviewed the calls completed by MCCLENDON during the month of September 2017. From 9/01/2017 through the above date and time, MCCLENDON had completed (91) telephone calls while routinely and consistently completing calls one right after another for the entire duration of his scheduled dayroom (60 minutes in the morning and 90 minutes in the evening). (310) INTEL reviewed a call MCCLENDON completed (cont.)

Witness(es):

☒ Check if Offender Disciplinary Continuation Page, DOC 0318, is attached to describe additional facts, observations or witnesses.

C/O J. JESTER	6646		09-18-2017	9:00	☒ a.m. ☐ p.m.
Reporting Employee (Print Name)	Badge #	Signature	Date	Time	

Disciplinary Action:

Shift Review: ☐ Temporary Confinement ☐ Investigative Status Reasons:

Printed Name and Badge # | Shift Supervisor's Signature (For Transition Centers, Chief Administrative Officer) | Date

Reviewing Officer's Decision: ☐ Confinement reviewed by Reviewing Officer Comment:

☒ **Major Infraction,** submitted for Hearing Investigator, if necessary and to Adjustment Committee

☐ **Minor Infraction,** submitted to Program Unit

M. Ward #783 | Reviewing Officer's Signature | 9/18/17

Print Reviewing Officer's Name and Badge # | Reviewing Officer's Signature | Date

☒ **Hearing Investigator's Review Required** (Adult Correctional Facility Major Reports Only):

V. Smith 12157 | N Smith | 9-19-17

Print Hearing Investigator's Name and Badge # | Hearing Investigator's Signature | Date

Procedures Applicable to all Hearings on Investigative and Disciplinary Reports

You have the right to appear and present a written or oral statement or explanation concerning the charges. You may present relevant physical material such as records or documents.

Procedures Applicable to Hearings Conducted by the Adjustment Committee on Disciplinary Reports

You may ask that witnesses be interviewed and, if necessary and relevant, they may be called to testify during your hearing. You may ask that witnesses be questioned along lines you suggest. You must indicate in advance of the hearing the witnesses you wish to have interviewed and specify what they could testify to by filling out the appropriate space on this form, tearing it off, and returning it to the Adjustment Committee. You may have staff assistance if you are unable to prepare a defense. You may request a reasonable extension of time to prepare for your hearing.

☒ Check if offender refused to sign

Offender's Signature | ID#

Jenkins | 10190 | Jenkins

Serving Employee (Print Name) | Badge # | Signature

9-19-17 | 12:00 ☐ a.m. ☒ p.m.

Date Served | Time Served

☐ I hereby agree to waive 24-hour notice of charges prior to the disciplinary hearing.

Offender's Signature | ID#

(Detach and Return to the Adjustment Committee or Program Unit Prior to the Hearing)

Date of Disciplinary Report | Print offender's name | ID#

I am requesting that the Adjustment Committee or Program Unit consider calling the following witnesses regarding the Disciplinary Report of the above date:

Print Name of witness | Witness badge or ID# | Assigned Cell (if applicable) | Title (if applicable)

Witness can testify to:

Print Name of witness | Witness badge or ID# | Assigned Cell (if applicable) | Title (if applicable)

Distribution: Master File, Offender, Facility (2)

Printed on Recycled Paper

DOC 0317 (Rev. 2/2007)

EXHIBIT D

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

DAVID TEAGUE,	)	
	)	
Plaintiff,	)	No. 19 C 4113
	)	
vs.	)	Judge Mary Rowland
	)	
DAVID SALGADO, et al.,	)	Magistrate Judge
	)	Heather K. McShain
Defendants.	)	

DEFENDANTS' JOINT RESPONSE
TO PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

Defendant City of Chicago, through its Acting Corporation Counsel Celia Meza, by her Special Assistant Corporation Counsel Nathan & Kamionski, LLP, Individual Defendants Ramirez, Pruger, Theodore, Phillips, Salvage, Cox and Janopoulos, through their Special Assistant Corporation Counsel, Querrey & Harrow, Ltd., and Individual Defendant Salgado, through his Special Assistant Corporation Counsel Borkan & Scahill, Ltd. (herein after "Defendants"), hereby respond to Plaintiff's Motion for Protective Order and state as follows:

INTRODUCTION

Plaintiff David Teague ("Plaintiff") seeks money damages from Defendants claiming that he was unlawfully detained on drug charges following the execution of a search warrant at his apartment, but now refuses to participate in his properly noticed deposition. Plaintiff's baseless protective order motion is a poorly concealed attempt to preempt a motion by the City to compel his testimony for disregarding a specific directive by this Court, and refusing to participate in his deposition. Plaintiff's motion fails to establish "good cause" to justify Plaintiff's refusal to answer questions at his deposition relating to plainly relevant topics. Further, Plaintiff's motion, if granted,

would prejudice Defendants in that it would insulate Plaintiff from examination about recordings of Plaintiff that plainly contradict the core of Plaintiff's claims.

For the reasons set forth herein, the Court should deny Plaintiff's motion for protective order.

BACKGROUND

According to the Complaint, on December 4, 2015, Defendants "acted to deprive Plaintiff of his search and seizure, due process, and liberty rights by manufacturing, fabricating and falsifying evidence, and falsifying police reports." (Dkt. 1 ¶28). Plaintiff also claims that "Defendants manufactured, planted, and fabricated evidence." (Dkt. 1 ¶31). Based on those claims Plaintiff also sues the Individual Defendants for conspiracy and the City for various *Monell* claims. (Dkt. 1 ¶¶21-26, 33-55).

However, at the time of Plaintiff's arrest, Plaintiff and his girlfriend Nicole West were dealing heroin from their home on the west side of Chicago. During the search, police recovered a clear bag containing a white powdery substance and 32 smaller bags, each containing a white powdery substance. The substances were later confirmed by the Illinois State Police to be heroin. The City obtained hundreds of Illinois Department of Corrections ("IDOC") phone calls that Plaintiff made while in custody for his December 5, 2015 arrest that span his time in detention while charges were pending.[1] This is the very time-frame and detention for which Plaintiff seeks to recover damages from Defendants and therefore is appropriate for questioning. *In re Watts Coordinated Pretrial Proc.*, No. 19 C 1717, 2020 WL 7398789, at *5 (N.D. Ill. Dec. 17, 2020). Despite Plaintiff's contention that he "did not possess narcotics at his residence on December 4, 2015," the deluge of incriminating recorded phone calls from IDOC demonstrate that Plaintiff was,

[1] Plaintiff was held at IDOC for the majority of his pre-trial detention.

in fact, running an elaborate heroin manufacturing business from his apartment together with West. (Dkt. 1 ¶11).

Roughly 20% of Plaintiff's IDOC calls involve discussions of drug manufacturing and/or sale activity. (*See* Teague Drug Sale Prison Calls Demonstrative attached hereto as Exhibit 1). Within weeks of being in custody Plaintiff is discussing details relating to his arrest that indicate culpability, and shortly thereafter resumes his heavy involvement in drug dealing via phone. Some highlights from Plaintiff's IDOC phone calls are as follows:

- January 31, 2016, 6:00 – 9:00: Teague to unknown male discussing Nicole West, Plaintiff's girlfriend and co-resident at the premises of issue. West was arrested for heroin from a search warrant. Teague discussed how he thinks that they were watching his building and that is how they caught West. (Ex. 2).[2]

- March 24, 2016, 20:02 – 21:00: Nicole West, Plaintiff about an interaction she had with a customer Gabriel, who recently used some "shit that gave her a hole in her damn arm." Plaintiff responded to West's story about Gabriel "it wasn't us." Plaintiff then instructed West not to allow people to purchase on credit, he says "just give it to them" only one or two, and "don't look for no money back,"…"tell them I'm just going to give it to you." West replies "I know that already." (Ex. 3).

- April 7, 2016: 3:03 – 5:34: West complains that she is having a difficult time "with shit getting done over there on Keeler." Plaintiff tells West that she still needs to find someone "to help you move some shit." (Ex. 4).

- April 28, 2016: 2:31 – 3:22: Plaintiff tells West that when "dealing with that thang" she needs to wear gloves. West responds affirmatively and mentions covering her face. Plaintiff then asks "masks ain't still down there in the cabinet, no more?" (Ex. 5).

- June 13, 2016, 12:31 – 14:20: Plaintiff tells West to "change the color of the bag" "go somewhere and get some bags that only you can get." Plaintiff responds to West's complaints about Terrence, by telling her that one of his old runners tried to "pull that shit" on him in the past as well. (Ex. 6).

- August 13, 2016, 2:50 – 6:00: West complains to Plaintiff that business is not good, "today I have not sold anything." Plaintiff asks how many bags she gets and says she should be

[2] All phone calls, including those excerpted and summarized here, were produced to all counsel of record on September 9, 2020 under Bates number City 002430. These excerpted calls will be filed as an exhibit. Given the recent PACER update regarding digital formats, if there is any issue with accessing these calls on PACER, or difficulty playing the calls, the City will provide copies of exhibits 2 – 11 in mp3 format directly to the Court and any party upon request.

getting 23 bags. Plaintiff then inquires about "white boys" that walk on feet and tells West to sell them $5 bags. Plaintiff and West then discuss how she need to reach out to numbers on Plaintiff's phone. (Ex. 7).

- October 11, 2016, 9:55 – 18:50: West tells Plaintiff that there are too many other dealers in their neighborhood which is making it difficult for her to sell, "as soon as somebody come in the motherfucking alley somebody is always around trying to snatch them up." West then asks Plaintiff "when you was out here how many [men] you knew that was hustling from on Keeler," "that were hustling on Keeler selling dope?" Plaintiff responds "nobody." West states "you come out here now and it's a whole totally different thing." (Ex. 8).

- November 17, 2016, 00:58 – 2:05: West tells Plaintiff "I'm not doing numbers like you was doing David." She then tells Plaintiff that two people called her yesterday and she sold nine bags. West then complains about Carvell and Terrence driving away business, she is "stuck with the nickel and dimers." (Ex. 9).

- January 5, 2017, 15:20 – 18:02: Plaintiff give West business advice for the upcoming "tax season" in which customers will have extra money. Plaintiff tells West that the customers would "rather have something that they like and pay for it" "then to have some bullshit and they don't even want that shit." Plaintiff tells West to "make big motherfucking bags and don't put a lot of mix on it" and "we gonna cash in." Plaintiff pleads with West to follow his advice and sell during "tax season" because "these two months I can't get back." (Ex. 10).

- April 24, 2017, 13:20 – 14:56: West takes a phone call from a customer and arranges a deal. West tells Plaintiff that yesterday she gave a customer 3 for $20. Plaintiff tells West when he is back home he is "going to fuck these people up" "I'm gonna do 2 for $15, 3 for $20, 4 for $25." (Ex. 11).

The above sample of IDOC phone calls in which Plaintiff discussed his drug dealing business clearly demonstrates that: (1) Plaintiff was dealing heroin at the time that Individual Defendants executed the search warrant on his residence that resulted in his detention; (2) Plaintiff continued to be involved in the operation of his drug dealing business through his girlfriend West after he was arrested; and (3) Plaintiff fully intended to return to drug dealing upon his release. Plaintiff's attempt to avoid any questions regarding this information should not be allowed, especially in a case where Plaintiff insists that he was not selling drugs.

That Plaintiff was selling heroin from his apartment is further supported by the testimony of Jacob Hochgraver, the informant on the search warrant of Plaintiff's residence. Hochgraver testified he had purchased heroin from Plaintiff's residence, 1864 South Komensky, on prior occasions. (March 11, 2020 Sentencing Hearing Transcript in 18 CR 286 p. 84:15-25, attached hereto as Exhibit 12). Hochgraver also testified that Plaintiff "was the large-scale guy" and that he "kept the supply" at his residence on Komensky and called him "drug dealer Dave". (Ex. 12 at pp. 109:12-13, 155:2-17). Finally, he stated that after the search at Plaintiff's residence and his subsequent arrest West[3], "David's baby mama" had Plaintiff's dealing business "back and running" after a "few days." (Ex. 12 at p. 114:13-25).

On March 5, 2021, a date agreed to by all parties, Plaintiff appeared for his deposition via Zoom from Atlanta, Georgia. During his deposition, Plaintiff authenticated his voice on every call the City was able to utilize before Plaintiff unilaterally ended and abruptly left the deposition. When Plaintiff was confronted with his statements from the IDOC calls which plainly demonstrate that he was engaged in the drug trade, Plaintiff began to provide bizarre testimony about how he was selling paint instead of drugs consistent with his thinly veiled attempt to cover up his drug selling business in his phone calls. (*See* March 5, 2021 Deposition of David Teague (herein "Teague Dep."), attached hereto as Exhibit 13 at 143-151). As the paint story became progressively more ridiculous each time Plaintiff was confronted with additional calls, counsel for Plaintiff began objecting and instructing Plaintiff not to answer questions on the purported basis of relevance.[4] Even after moving on to a call where Plaintiff and West abandoned the paint code,

[3] West, who is not party in this civil suit, was not arrested on December 4, 2015, but was subject of a later search warrant executed on Plaintiff's residence on January 21, 2016, during which, officers seized 14 clear baggies containing a white powdery substance suspected to be heroin. West was charged with possession of a controlled substance.

[4] For example, Plaintiff's Counsel said "[s]o I'm just going to object. Unless these calls directly relate to what was going on in the house on the day he was arrested, I'm just going to instruct him not to answer." (Ex. 1, 165:1-4).

Plaintiff's counsel still obstructed questioning. (Ex. 13, Teague Dep, at 189-195).[5] Defendant called the court for a ruling on the objections and the parties were told to proceed with the deposition.[6] Nevertheless, after a few more questions, Plaintiff left the deposition and his counsel said, "[W]hat we're going to do is stop the deposition right now. You guys can make whatever motions you think are appropriate." (Ex. 13, Teague Dep. p. 195:15-196:1).

There was no legitimate basis for Plaintiff to cut off deposition inquiry into a core issue in the case and terminate the deposition. Whether Plaintiff was manufacturing and dealing drugs from his home at the time of his arrest and continued during his time in custody are plainly relevant topics for discovery. Additionally, if Plaintiff's motion is granted, he is afforded protection from his own words that go to the heart of this case. If Plaintiff's conduct goes unchecked, it sends an unacceptable message to litigants; that is, if a party does not like the deposition questions, engage in self-help and just leave.

STANDARD OF REVIEW

The party seeking the protective order "bears the burden of demonstrating why the order should be entered." *Stanek v. St. Charles Comm. Unit Sch. Dist. #303,* No. 13 C 3106, 2020 WL 1304828, at *3 (N.D. Ill. Mar. 19, 2020). Notably, to show good cause, the movant must submit "a particular and specific demonstration of fact." *Flores v. Bd. of Trustees of Comm. College Dist.*

After another prison call discussing Plaintiff's girlfriend Nicole West's drug dealing arrest. West was arrested a few weeks after Plaintiff, at the same apartment that Plaintiff was arrested. Plaintiff said "[s]o I'm going to object to this. Because what was in or not in the apartment when Nicole was arrested was – has nothing to do with my client . . . [s]o I'm just gonna object and instruct him not to answer. It's not part of this case. It's not – it doesn't have to do with the claims or defenses of this case." (Ex. 1, 168:11-18).

[5] Loud is a term for drugs, per Plaintiff it is a term for marijuana, however the term frequently refers to heroin as established through records and discovery in this matter. (Ex. 1 at p. 106-107).

[6] Specifically, the Court's courtroom deputy went on the record and said, "I did speak with Judge McShain. She asked that the parties please do most of the deposition as much as possible and then to later please file a motion regarding – along with the transcript pages of the relevant conflict for context." (Ex. 1, 179:20 – 180:2). Plaintiff sat through some additional questioning for approximately 18 minutes, but continued to not answer any drug/phone call related questions until he walked out.

DATED: April 2, 2021

Respectfully submitted,

CELIA MEZA
Acting Corporation Counsel
of the City of Chicago

/s/ Megan Monaghan
Megan Monaghan
Special Assistant Corporation Counsel
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Attorney for Defendant Officers Cox, Janopoulos, Phillips, Pruger, Ramirez, Salvage, and Theodore

/s/ Helen O'Shaughnessy
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Attorney for Defendant City of Chicago

/s/ Andrew Cook
Andrew Cook
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acook@borkanscahill.com

Attorney for Defendant Officer Salgado

EXHIBIT E

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

DAVID TEAGUE,	)	
	)	
Plaintiff,	)	Case No.: 19 CV 04113
	)	
v.	)	Judge Mary M. Rowland
	)	
CITY OF CHICAGO DETECTIVES D. SALGADO, et al.	)	Magistrate Judge Heather McShain
	)	
Defendants.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), it is hereby stipulated by Plaintiff David Teague, with the consent and signatures of all parties, through their undersigned counsel, that the above captioned lawsuit shall be dismissed with prejudice. Each party shall bear its own costs and fees.

Dated: April 7, 2021

Respectfully Submitted,

DAVID TEAGUE

By: */s/ Edward M. Fox*

Edward M. Fox
ED FOX & ASSOCIATES, LTD.
300 W Adams St, Ste 330
Chicago, IL 60606
(312) 345-8877

Attorney for Plaintiff

With the consent of all parties as indicated below:

CELIA MEZA
Acting Corporation Counsel

By: s/ Shneur Nathan
Shneur Nathan, Avi Kamionski

and Helen O'Shaughnessy
Special Asst. Corporation Counsel
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Counsel for Defendant City of Chicago

/s/ Megan Monaghan
Special Assistant Corporation Counsel
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Counsel for Defendant Officers Ramirez, Pruger, Theodore, Phillips, Salvage, Cox, and Janopoulos

/s/ Whitney N. Hutchinson
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(312) 580-1030

Counsel for Defendant David Salgado

CERTIFICATE OF SERVICE

I, the undersigned the attorney for Plaintiff David Teague, hereby certify that on April 7, 2021, I filed the foregoing Stipulation of Dismissal via the Court's CM/ECF system, causing a copy of it to be delivered to all counsel of record via electronic service.

/s/Edward M. Fox

ED FOX & ASSOCIATES, LTD.
300 W Adams St, Ste 330
Chicago, IL 60606
(312) 345-8877

EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Nicholas Morfin

Plaintiff,

v.

Case No.: 1:21−cv−05525
Honorable John F. Kness

Scott Cassidy, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, May 30, 2023:

MINUTE entry before the Honorable Maria Valdez: Motion hearing held on 5/30/23. For the reasons stated in open court, Plaintiffs' Motion to Quash Defendant's Subpoenas for Their Prison Calls [144] is denied; Defendants' Opposed Motion for a Protective Order Establishing Their Priority to Depose Non−Party Witness Bryan O'Shea [148] is granted; and Defendant Scott Cassidy's Opposed Motion for Protective Order to Bar Discovery on an Irrelevant Arrest [152] is denied. Mailed notice(lp,)

EXHIBIT G

Criminal Division

Case Summary

Case No. 14CR1868501

People of the State of Illinois vs. SEAN J MCCLENDON

§ Location
§ **Criminal Division**
§ Judicial Officer
§ **Conversion, Conversion**
§ Filed on
§ **10/23/2014**
§ Appellate Number
§ **AC# 1-19-0886**
§ Central Booking Number/Document Control Number
§ **018991896**
§ SID/IBI
§ **060735220**
§ Record Division Number
§ **HX463109**
§ Related Case Number
§ **14-1129156**
§ FBI Number
§ **820631PC0**
§ IR Number
§ **1841599**
§ Appellate Number
§ **16-3406**

Case Information

Case Type: Felony Information
Case Status: **04/11/2019 Appeal**
Case Flags: **Verify Payment History on Conversion tab**

Offense

Jurisdiction: **Chicago Police Department**

001. ARMED HABITUAL CRIMINAL

Statute	Degree	Offense Date	Filed Date
720-5/24-1.7(A)	FX	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 001

002. FELON POSSESS WEAPON/2ND+

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 002

003. FELON POSSESS WEAPON/2ND+

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 003

004. FELON POSS/USE FIREARM PRIOR

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 004

005. FELON POSS/USE FIREARM PRIOR

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 005

006. FELON POSS/USE FIREARM/PAROLE

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 006

007. FELON POSS/USE FIREARM/PAROLE

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(a)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 007

008. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 008

009. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 009

010. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 010

011. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: ILoCPD000 - Chicago Police Department
DCN: 018991896 Sequence: 011

012. AGG UUW/PERSON/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(2)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: ILoCPD000 - Chicago Police Department
DCN: 018991896 Sequence: 012

013. AGG UUW/PERSON/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(2)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: ILoCPD000 - Chicago Police Department
DCN: 018991896 Sequence: 013

Statistical Closures

07/13/2016 Guilty Jury Trial

Assignment Information

Current Case Assignment

Case Number	14CR1868501
Court	Criminal Division
Date Assigned	10/23/2014
Judicial Officer	Conversion, Conversion

Party Information

Defendant **MCCLENDON, SEAN J**

7751 S. CHRISTIANA A
CHICAGO, IL 60652
Black
Male
Height: 5′ 11″ Weight: 160
DOB: 07/13/1989

Other Agency Number: 060735220 SID/IBI,
1841599 IR Number

Events and Orders of the Court

05/18/2023
Case File Imaged (Judicial Officer: Atcherson, Sophia)

06/16/2022 Order Entered (Judicial Officer: Atcherson, Sophia)
REVERSED; SENTENCE VACATED

06/16/2022
Courtsheet

06/16/2022 **Hearing** (10:00 AM) (Judicial Officer: Atcherson, Sophia)
Resource: Location CR1701 Criminal Division, Courtroom 101
Resource: Location CRFADDR1 2650 South California Avenue, Chicago, IL 60608

06/14/2022
Courtsheet

06/14/2022 Mandate Recalled (Judicial Officer: Joyce, Timothy Joseph)

06/14/2022 **Hearing** (10:00 AM) (Judicial Officer: Joyce, Timothy Joseph)
Resource: Location CR1701 Criminal Division, Courtroom 101
Resource: Location CRFADDR1 2650 South California Avenue, Chicago, IL 60608

06/08/2022
Mandate Filed
16-3406, 19-0886

06/08/2022
Mandate Recalled
16-3406,19-0886 RECALLING MANDATE ISSUED JUNE 8, 2022

06/08/2022
Mandate Filed
16-3406,19-0886 (MISSING PAGES)

03/18/2022
Order Entered

03/18/2022
Defendant Released On I Bond
I 4139808 RELEASEED APPEALED COURT #1-16-3046 AND 1-19-0886

07/23/2020
Mandate Recalled (Judicial Officer: Martin, LeRoy K, Jr.)

07/23/2020 **Hearing** (10:00 AM) (Judicial Officer: Martin, LeRoy K, Jr.)
Resource: Location CR1701 Criminal Division, Courtroom 101
Resource: Location CRFADDR1 2650 South California Avenue, Chicago, IL 60608

06/17/2020
Mandate Recalled
16-3406

08/29/2019 Case Efiled to Appellate Court
ROOM: CLERK'S OFFICE DESC: 19-0886

06/25/2019 Restricted
ROOM: CLERK'S OFFICE DESC: CASE FILE IMAGED

05/01/2019 Appellate Court Number Assigned
ROOM: CLERK'S OFFICE 0000 DESC: AC# 1-19-0886

04/19/2019 **Hearing** (9:00 AM)

04/19/2019
Illinois State Appellate Defender Appointed (Judicial Officer: Martin, LeRoy K, Jr.)
ROOM: 405 JDGE: 1844

04/19/2019
Order Of Court Free Report Of Proceedings Ordered (Judicial Officer: Martin, LeRoy K, Jr.)
ROOM: 405 JDGE: 1844

04/19/2019
Memo Of Orders & Notice Of Appeal Picked-Up (Judicial Officer: Martin, LeRoy K, Jr.)
ROOM: 405 JDGE: 1844

04/17/2019
Notice Of Notice Of Appeal Mailed
ROOM: CLERK'S OFFICE

04/11/2019
Notice Of Appeal Filed, Transferred
ROOM: CLERK'S OFFICE

04/11/2019
Hearing Date Assigned
ROOM: CLERK'S OFFICE CDATE: 04/19/2019 C: 09:00 AM - V ROOM: 405

04/01/2019
Notification Sent To Defendant
ROOM: CLERK'S OFFICE

03/22/2019 **Order of Court** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

03/22/2019
Defendant Not In Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

03/22/2019
Post-Conviction Petition Dismissed (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 DESC: CLERK TO NOTIFY

03/22/2019
Change Priority Status (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: M

03/20/2019 **Order of Court** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

03/20/2019
Defendant Not In Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

03/20/2019
Continuance By Order Of Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 03/22/2019 C: 09:30 AM - 2 ROOM: 602

03/08/2019 **Order of Court** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

03/08/2019
Continuance By Order Of Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 03/20/2019 C: 09:30 AM - 2 ROOM: 602

02/22/2019 **Order of Court** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

02/22/2019 **Order of Court** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

02/22/2019
Defendant Not In Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

02/22/2019

Continuance By Order Of Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 03/08/2019 C: 09:30 AM - 2 ROOM: 602

02/06/2019 **Motion** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

02/06/2019

Defendant Not In Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

02/06/2019

Continuance By Order Of Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 02/22/2019 C: 09:30 AM - 2 ROOM: 602

01/10/2019 **Hearing** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

01/10/2019

Defendant Not In Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

01/10/2019

Continuance By Order Of Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 02/22/2019 C: 09:30 AM - 2 ROOM: 602

12/27/2018

Post-Conviction Filed
ROOM: CLERK'S OFFICE
Party: Defendant MCCLENDON, SEAN J

12/27/2018

Hearing Date Assigned
ROOM: CLERK'S OFFICE CDATE: 01/10/2019 C: 09:30 AM - 2 ROOM: 602

12/21/2018

Notice Of Motion/Filing
ROOM: CLERK'S OFFICE CDATE: 02/06/2019 C: 09:30 AM - 2 ROOM: 602 DESC: FOR LEAVE TO CONDUCT DISCOVERY

02/27/2018 **Amended Vacate Sentence** (Judicial Officer: Atcherson, Sophia) Reason: Judge's Order
001. ARMED HABITUAL CRIMINAL
01/01/1900 (FX) 720-5/24-1.7(A) (0013855)
DCN: 018991896 Sequence: 001

02/27/2018 **Continued to** (9:00 AM)
Resource: Location CR1703 Criminal Division, Courtroom 402

1-50 of 223

Criminal Division

Case Summary

Case No. 14CR1868501

People of the State of Illinois vs. SEAN J MCCLENDON

§ Location
§ **Criminal Division**
§ Judicial Officer
§ **Conversion, Conversion**
§ Filed on
§ **10/23/2014**
§ Appellate Number
§ **AC# 1-19-0886**
§ Central Booking Number/Document Control Number
§ **018991896**
§ SID/IBI
§ **060735220**
§ Record Division Number
§ **HX463109**
§ Related Case Number
§ **14-1129156**
§ FBI Number
§ **820631PC0**
§ IR Number
§ **1841599**
§ Appellate Number
§ **16-3406**

Case Information

Case Type: Felony Information
Case Status: **04/11/2019 Appeal**
Case Flags: **Verify Payment History on Conversion tab**

Offense

Jurisdiction: **Chicago Police Department**

001. ARMED HABITUAL CRIMINAL

Statute	Degree	Offense Date	Filed Date
720-5/24-1.7(A)	FX	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 001

002. FELON POSSESS WEAPON/2ND+

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 002

003. FELON POSSESS WEAPON/2ND+

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 003

004. FELON POSS/USE FIREARM PRIOR

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 004

005. FELON POSS/USE FIREARM PRIOR

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 005

006. FELON POSS/USE FIREARM/PAROLE

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 006

007. FELON POSS/USE FIREARM/PAROLE

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(a)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 007

008. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 008

009. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 009

010. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 010

011. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 011

012. AGG UUW/PERSON/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(2)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 012

013. AGG UUW/PERSON/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(2)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 013

Statistical Closures

07/13/2016 Guilty Jury Trial

Assignment Information

Current Case Assignment

Case Number	14CR1868501
Court	Criminal Division
Date Assigned	10/23/2014
Judicial Officer	Conversion, Conversion

Party Information

Defendant **MCCLENDON, SEAN J**

7751 S. CHRISTIANA A
CHICAGO, IL 60652
Black
Male
Height: 5′ 11″ Weight: 160
DOB: 07/13/1989

Other Agency Number: 060735220 SID/IBI,
1841599 IR Number

Events and Orders of the Court

08/19/2016 **Motion Defendant** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

08/19/2016
Defendant In Custody (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

08/19/2016
Motion Deft - Continuance (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 09/16/2016 C: 09:30 AM - 2 ROOM: 602

08/19/2016
Notice Of Motion/Filing
ROOM: CLERK'S OFFICE CDATE: 09/16/2016 C: 09:30 AM - 2 ROOM: 602

08/10/2016 **Order of Court** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

08/10/2016
Defendant In Custody (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

08/10/2016
Motion Deft - Continuance (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 08/19/2016 C: 09:30 AM - 2 ROOM: 602

07/29/2016
Cash Bond Refund Processed Forwarded Accounting Department
ROOM: CLERK'S OFFICE DESC: D-1182151/ATTORNEY

07/13/2016 **Order of Court** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

07/13/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
001. ARMED HABITUAL CRIMINAL
Verdict of Guilty
DCN: 018991896
Sequence: 001

07/13/2016

Defendant On Bond (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

07/13/2016

Motion Direct Verdict Or Finding - Filed (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 D MODB: 2
Party: Defendant MCCLENDON, SEAN J

07/13/2016

Verdict Of Guilty (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C001

07/13/2016

Bail Revoked (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

07/13/2016

Judgment On Finding/Verdict/Plea (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 V

07/13/2016

Pre-Sentence Investigation Ordered and Continued (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

07/13/2016

Cash Bond Refund To Attorney (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: B001

07/13/2016

Continuance By Order Of Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 08/10/2016 C: 09:30 AM - 2 ROOM: 602

07/12/2016 **Motion Defendant** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
002. FELON POSSESS WEAPON/2ND+
Nolle Prosequi
DCN: 018991896
Sequence: 002

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
003. FELON POSSESS WEAPON/2ND+
Nolle Prosequi
DCN: 018991896
Sequence: 003

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
004. FELON POSS/USE FIREARM PRIOR
Nolle Prosequi
DCN: 018991896
Sequence: 004

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
005. FELON POSS/USE FIREARM PRIOR
Nolle Prosequi
DCN: 018991896
Sequence: 005

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
006. FELON POSS/USE FIREARM/PAROLE
Nolle Prosequi
DCN: 018991896
Sequence: 006

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
007. FELON POSS/USE FIREARM/PAROLE
Nolle Prosequi
DCN: 018991896
Sequence: 007

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
008. AGG UUW/VEH/PREV CONVICTION
Nolle Prosequi
DCN: 018991896
Sequence: 008

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
009. AGG UUW/VEH/PREV CONVICTION
Nolle Prosequi
DCN: 018991896
Sequence: 009

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
010. AGG UUW/VEH/PREV CONVICTION
Nolle Prosequi
DCN: 018991896
Sequence: 010

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
011. AGG UUW/VEH/PREV CONVICTION
Nolle Prosequi
DCN: 018991896
Sequence: 011

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
012. AGG UUW/PERSON/PREV CONVICTION
Nolle Prosequi
DCN: 018991896
Sequence: 012

07/12/2016 **Disposition** (Judicial Officer: Sacks, Stanley J)
013. AGG UUW/PERSON/PREV CONVICTION
Nolle Prosequi
DCN: 018991896
Sequence: 013

07/12/2016

Defendant On Bond (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 DESC: TWELVE(12)JURORS AND TWO(2)ALTERNATES SELECTED, BUT NOT SWORN;

07/12/2016

Motion In Limine - Filed (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 F MODB: 1 DESC: STATE'S MOTION IN LIMINE: GRANTED RE: PARAGRAPHS 1 & 2; COURT DEFERS RULING TO 71316
Party: Defendant MCCLENDON, SEAN J

07/12/2016
Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C002

07/12/2016
Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C003

07/12/2016
Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C004

07/12/2016
Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C005

07/12/2016

Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C006

07/12/2016

Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C007

07/12/2016

Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C008

07/12/2016

Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C009

07/12/2016

Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C010

07/12/2016

Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C011

07/12/2016

Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C012

07/12/2016 Nolle Prosequi (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: C013

07/12/2016
Continuance By Order Of Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 07/13/2016 C: 09:30 AM - 2 ROOM: 602 DESC: WITH FOR JURY TRIAL.

06/13/2016 **By Agreement** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

06/13/2016

Defendant On Bond (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

06/13/2016

Change Priority Status (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 REF: R

06/13/2016

Witnesses Ordered To Appear (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

101-150 of 223

Criminal Division

Case Summary

Case No. 14CR1868501

People of the State of Illinois vs. SEAN J MCCLENDON

§ Location
§ **Criminal Division**
§ Judicial Officer
§ **Conversion, Conversion**
§ Filed on
§ **10/23/2014**
§ Appellate Number
§ **AC# 1-19-0886**
§ Central Booking Number/Document Control Number
§ **018991896**
§ SID/IBI
§ **060735220**
§ Record Division Number
§ **HX463109**
§ Related Case Number
§ **14-1129156**
§ FBI Number
§ **820631PC0**
§ IR Number
§ **1841599**
§ Appellate Number
§ **16-3406**

Case Information

Case Type: Felony Information
Case Status: **04/11/2019 Appeal**
Case Flags: **Verify Payment History on Conversion tab**

Offense

Jurisdiction: **Chicago Police Department**

001. ARMED HABITUAL CRIMINAL

Statute	Degree	Offense Date	Filed Date
720-5/24-1.7(A)	FX	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 001

002. FELON POSSESS WEAPON/2ND+

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 002

003. FELON POSSESS WEAPON/2ND+

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 003

004. FELON POSS/USE FIREARM PRIOR

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 004

005. FELON POSS/USE FIREARM PRIOR

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 005

006. FELON POSS/USE FIREARM/PAROLE

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 006

007. FELON POSS/USE FIREARM/PAROLE

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(a)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 007

008. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 008

009. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 009

010. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 010

011. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: ILoCPD000 - Chicago Police Department
DCN: 018991896 Sequence: 011

012. AGG UUW/PERSON/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(2)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: ILoCPD000 - Chicago Police Department
DCN: 018991896 Sequence: 012

013. AGG UUW/PERSON/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(2)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: ILoCPD000 - Chicago Police Department
DCN: 018991896 Sequence: 013

Statistical Closures

07/13/2016 Guilty Jury Trial

Assignment Information

Current Case Assignment

Case Number	14CR1868501
Court	Criminal Division
Date Assigned	10/23/2014
Judicial Officer	Conversion, Conversion

Party Information

Defendant **MCCLENDON, SEAN J**

7751 S. CHRISTIANA A
CHICAGO, IL 60652
Black
Male
Height: 5′ 11″ Weight: 160
DOB: 07/13/1989

Other Agency Number: 060735220 SID/IBI,
1841599 IR Number

Events and Orders of the Court

06/13/2016
Motion Deft - Continuance (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 07/12/2016 C: 09:30 AM - 2 ROOM: 602

04/18/2016 **By Agreement** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

04/18/2016
Defendant On Bond (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

04/18/2016
Discovery Answer Filed (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 F MODB: 2
Party: Defendant MCCLENDON, SEAN J

04/18/2016
Witnesses Ordered To Appear (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

04/18/2016
Continuance By Agreement (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 06/13/2016 C: 09:30 AM - 2 ROOM: 602

03/04/2016 **Order of Court** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

03/04/2016
Defendant On Bond (Judicial Officer: Lacy, William G)
ROOM: 602 JDGE: 1725

03/04/2016
Continuance By Agreement (Judicial Officer: Lacy, William G)
ROOM: 602 JDGE: 1725 CDATE: 04/18/2016 C: 09:30 AM - 2 ROOM: 602

01/26/2016 **Motion Defendant** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

01/26/2016

Defendant On Bond (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

01/26/2016

Continuance By Order Of Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 03/04/2016 C: 09:30 AM - 2 ROOM: 602

12/28/2015 **By Agreement** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

12/28/2015

Defendant On Bond (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

12/28/2015

Motion Deft - Continuance (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 01/26/2016 C: 09:30 AM - 2 ROOM: 602

11/12/2015 **Order of Court** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

11/12/2015

Defendant On Bond (Judicial Officer: Pietrucha, Edward N)
ROOM: 602 JDGE: 1723

11/12/2015

Motion To Quash Arrest - Filed (Judicial Officer: Pietrucha, Edward N)
ROOM: 602 JDGE: 1723 D MODB: 2 DESC: AND OR SEIZURE
Party: Defendant MCCLENDON, SEAN J

11/12/2015

Continuance By Agreement (Judicial Officer: Pietrucha, Edward N)
ROOM: 602 JDGE: 1723 CDATE: 12/28/2015 C: 09:30 AM - 2 ROOM: 602

11/04/2015 **Motion Defendant** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

11/04/2015

Defendant On Bond (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

11/04/2015

Continuance By Order Of Court (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 11/12/2015 C: 09:30 AM - 2 ROOM: 602

09/25/2015 **By Agreement** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

09/25/2015
Defendant On Bond (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

09/25/2015
Motion Deft - Continuance (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 11/04/2015 C: 09:30 AM - 2 ROOM: 602

08/04/2015 **By Agreement** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

08/04/2015
Defendant On Bond (Judicial Officer: Joyce, Timothy Joseph)
ROOM: 602 JDGE: 1956

08/04/2015
Witnesses Ordered To Appear (Judicial Officer: Joyce, Timothy Joseph)
ROOM: 602 JDGE: 1956

08/04/2015
Continuance By Agreement (Judicial Officer: Joyce, Timothy Joseph)
ROOM: 602 JDGE: 1956 CDATE: 09/25/2015 C: 09:30 AM - 2 ROOM: 602

07/17/2015 **By Agreement** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

07/17/2015
Defendant On Bond (Judicial Officer: Goebel, Steven J)
ROOM: 602 JDGE: 1954

07/17/2015
Continuance By Agreement (Judicial Officer: Goebel, Steven J)
ROOM: 602 JDGE: 1954 CDATE: 08/04/2015 C: 09:30 AM - 2 ROOM: 602

06/10/2015 **Motion Defendant** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

06/10/2015
Defendant On Bond (Judicial Officer: Munari-Petrone, Angela)
ROOM: 602 JDGE: 1963

06/10/2015

Motion To Suppress - Filed (Judicial Officer: Munari-Petrone, Angela)
ROOM: 602 JDGE: 1963 F MODB: 2
Party: Defendant MCCLENDON, SEAN J

06/10/2015

Motion To Quash Arrest - Filed (Judicial Officer: Munari-Petrone, Angela)
ROOM: 602 JDGE: 1963 F MODB: 2
Party: Defendant MCCLENDON, SEAN J

06/10/2015

Admonish As To Trial In Absent (Judicial Officer: Munari-Petrone, Angela)
ROOM: 602 JDGE: 1963

06/10/2015

Continuance By Agreement (Judicial Officer: Munari-Petrone, Angela)
ROOM: 602 JDGE: 1963 CDATE: 07/17/2015 C: 09:30 AM - 2 ROOM: 602

05/28/2015 **Motion Defendant** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

05/28/2015

Defendant In Custody (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

05/28/2015

Motion Deft - Continuance (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 06/10/2015 C: 09:30 AM - 2 ROOM: 602

04/20/2015 **By Agreement** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

04/20/2015

Motion Deft - Continuance (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 05/28/2015 C: 09:30 AM - 2 ROOM: 602

04/02/2015 **Motion Defendant** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

04/02/2015

Defendant In Custody (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

04/02/2015

Admonish Per Supreme Court Rule 402 (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

04/02/2015

Continuance By Agreement (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 04/20/2015 C: 09:30 AM - 2 ROOM: 602

03/10/2015 **By Agreement** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

03/10/2015

Defendant In Custody (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

03/10/2015

Motion Deft - Continuance (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 04/02/2015 C: 09:30 AM - 2 ROOM: 602

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Criminal Division

Case Summary

Case No. 14CR1868501

People of the State of Illinois vs. SEAN J MCCLENDON

§ Location
§ **Criminal Division**
§ Judicial Officer
§ **Conversion, Conversion**
§ Filed on
§ **10/23/2014**
§ Appellate Number
§ **AC# 1-19-0886**
§ Central Booking Number/Document Control Number
§ **018991896**
§ SID/IBI
§ **060735220**
§ Record Division Number
§ **HX463109**
§ Related Case Number
§ **14-1129156**
§ FBI Number
§ **820631PC0**
§ IR Number
§ **1841599**
§ Appellate Number
§ **16-3406**

Case Information

Case Type: Felony Information
Case Status: **04/11/2019 Appeal**
Case Flags: **Verify Payment History on Conversion tab**

Offense

Jurisdiction: **Chicago Police Department**

001. ARMED HABITUAL CRIMINAL

Statute	Degree	Offense Date	Filed Date
720-5/24-1.7(A)	FX	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 001

002. FELON POSSESS WEAPON/2ND+

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 002

003. FELON POSSESS WEAPON/2ND+

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 003

004. FELON POSS/USE FIREARM PRIOR

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 004

005. FELON POSS/USE FIREARM PRIOR

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 005

006. FELON POSS/USE FIREARM/PAROLE

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(A)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 006

007. FELON POSS/USE FIREARM/PAROLE

Statute	Degree	Offense Date	Filed Date
720-5/24-1.1(a)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 007

008. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 008

009. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 009

010. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: IL0CPD000 - Chicago Police Department
DCN: 018991896 Sequence: 010

011. AGG UUW/VEH/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(1)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: ILoCPD000 - Chicago Police Department
DCN: 018991896 Sequence: 011

012. AGG UUW/PERSON/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(2)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: ILoCPD000 - Chicago Police Department
DCN: 018991896 Sequence: 012

013. AGG UUW/PERSON/PREV CONVICTION

Statute	Degree	Offense Date	Filed Date
720-5/24-1.6(a)(2)	F2	01/01/1900	10/23/2014

Arrest
Date: 10/10/2014
Agency: ILoCPD000 - Chicago Police Department
DCN: 018991896 Sequence: 013

Statistical Closures

07/13/2016 Guilty Jury Trial

Assignment Information

Current Case Assignment

Case Number	14CR1868501
Court	Criminal Division
Date Assigned	10/23/2014
Judicial Officer	Conversion, Conversion

Party Information

Defendant **MCCLENDON, SEAN J**

7751 S. CHRISTIANA A
CHICAGO, IL 60652
Black
Male
Height: 5′ 11″ Weight: 160
DOB: 07/13/1989

Other Agency Number: 060735220 SID/IBI,
1841599 IR Number

Events and Orders of the Court

02/26/2015 **Motion Defendant** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

02/26/2015
Defendant In Custody (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

02/26/2015
Continuance By Agreement (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 03/10/2015 C: 09:30 AM - 2 ROOM: 602

12/03/2014 **By Agreement** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

12/03/2014
Defendant In Custody (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

12/03/2014
Bail Amount Set (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 AMOUNT: 90000.00

12/03/2014
Order Of Court Only Release Defendant On D Bond (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 AMOUNT: 90000.00

12/03/2014
Motion Deft - Continuance (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 02/26/2015 C: 09:30 AM - 2 ROOM: 602

10/31/2014 **Continued to** (9:00 AM)
Resource: Location CR1701 Criminal Division, Courtroom 101

10/31/2014 **Continued to** (9:30 AM)
Resource: Location CR1723 Criminal Division, Courtroom 602

10/31/2014 Case Assigned (Judicial Officer: Biebel, Paul)
ROOM: 101 JDGE: 1688 CDATE: 10/31/2014 C: 09:30 AM - 2 ROOM: 602

10/31/2014

Defendant Not In Court (Judicial Officer: Byrne, Thomas J)
ROOM: 101 JDGE: 1997

10/31/2014

Defendant In Custody (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

10/31/2014

Appearance Filed (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

10/31/2014

Defendant Arraigned (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

10/31/2014

Plea Of Not Guilty (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

10/31/2014

Motion For Discovery (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 F MODB: 1
Party: Defendant MCCLENDON, SEAN J

10/31/2014

Discovery Answer Filed (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 MODB: 1
Party: Defendant MCCLENDON, SEAN J

10/31/2014

Admonish As To Trial In Absent (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

10/31/2014

Motion To Suppress - Filed (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 F MODB: 2
Party: Defendant MCCLENDON, SEAN J

10/31/2014

Witnesses Ordered To Appear (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531

10/31/2014

Continuance By Agreement (Judicial Officer: Sacks, Stanley J)
ROOM: 602 JDGE: 1531 CDATE: 12/03/2014 C: 09:30 AM - 2 ROOM: 602

10/22/2014

Indictment/Information-Clerks Office-Presiding Judge

ROOM: CLERK'S OFFICE CDATE: 10/31/2014 C: 09:00 AM - 1 ROOM: 101

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UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, August 8, 2023:

MINUTE entry before the Honorable Maria Valdez: Hearing held on 8/8/23 on Plaintiff's Motion to Quash [39]. For the reasons stated in open court, the motion is granted. Mailed notice (lp,)

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, September 14, 2023:

MINUTE entry before the Honorable Sharon Johnson Coleman: The in−person status hearing set for 9/20/2023 at 9:00 AM is reset to 9:45 AM (NOTE TIME CHANGE ONLY). Mailed notice. (ym)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SEAN McCLENDON Plaintiff, v. CITY OF CHICAGO, et al., Defendants,	Hon. Sharon Coleman Mag. Judge Maria Valdez No. 1:22-cv-05472

DEFENDANTS' UNOPPOSED MOTION TO EXTEND FACT DISCOVERY

Per Judge Coleman's February 24, 2023, order, fact discovery is set to close on October 25, 2023. (*See* dkt. 27.) In referring this matter to the Court, Judge Coleman expressly gave the Court authority to adjust discovery deadlines. (*Id.*)

Defendants now ask that the Court extend fact discovery until November 30, 2023. The City's counsel was set to go to trial in mid-October, and although that matter has settled, pre-trial preparation took a meaningful amount of time away from counsel's other matters, including this case. Additionally, summary judgment briefs are due on October 20th in a complicated reverse conviction case that the City's counsel is defending against, which will require substantial work throughout the end of September and into October.

Similarly, the Officer Defendants' counsel has a trial scheduled in October, which is still proceeding, along with multiple summary judgment briefs due that month.

Finally, a large amount of time was spent attempting to obtain documents from the Illinois Department of Corrections that were originally due per subpoena in May 2023, which slowed

down other discovery that would have proceeded from those documents.[1] (Nevertheless, the parties have been diligently using the time granted them; however, some additional time is needed to complete outstanding discovery.)

This is the first discovery extension sought in this case, and the short extension will not prejudice any party or materially delay resolution of this case. Plaintiff also has no objection to this short extension.

WHEREFORE, the Defendants respectfully ask that the Court extend fact discovery until November 30, 2023.

Respectfully submitted,

Mary Richardson-Lowry
Corporation Counsel of the City of Chicago,

/s/ Brian Wilson
Avi Kamionski
Shneur Nathan
Special Assistant Corporation Counsel
NATHAN & KAMIONSKI, LLP
33 W. Monroe, Suite 1830
Chicago, IL, 60603
312-957-6649
bwilson@nklawllp.com

Attorneys for Defendant City of Chicago

/s/ Lisa McElroy
Brian Gainer
JOHNSON & BELL
33 W. Monroe, Suite 2700
Chicago, IL, 60603
312-984-3422
mcelroyl@jbltd.com

Attorneys for the Individual Defendants

[1] Through meet and confer efforts with IDOC, it seems the requested documents have now been obtained as of September 18th. However, the City reserves its right to seek relief from the Court if needed.

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

SEAN McCLENDON,	)	
	)	
Plaintiff,	)	No. 22 cv 5472
	)	
v.	)	Judge Sharon Coleman
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

NOTICE OF UNOPPOSED MOTION

TO: All Counsel of Record

PLEASE TAKE NOTICE that on **September 26, 2023, at 10:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Sharon Coleman** in **Room 1241** of the United States District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn St., Chicago, Illinois, and shall then and there present *DEFENDANTS' UNOPPOSED MOTION TO EXTEND FACT DISCOVERY.*

Dated: September 19, 2023

Respectfully Submitted,

/s/ Brian Wilson
Brian Wilson

Shneur Z. Nathan
Avi T. Kamionski
Brian Wilson
NATHAN & KAMIONSKI, LLP
33 W. Monroe St., Suite 1830
Chicago, IL 60603

Attorneys for Defendant City of Chicago

CERTIFICATE OF SERVICE

I, Brian Wilson, an attorney, hereby certify that on September 19, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent electronic notification of the filing on the same day to all counsel of record.

/s/ Brian Wilson
Brian Wilson

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, September 20, 2023:

MINUTE entry before the Honorable Maria Valdez: Defendants' Unopposed Motion to Extend Fact Discovery [50] is granted. The discovery deadline is extended 5 weeks to 11/30/23. The status report deadline of 9/28/23 is stricken and reset to 11/3/23. Mailed notice(lp,)

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, September 20, 2023:

MINUTE entry before the Honorable Sharon Johnson Coleman: Status hearing held on 9/20/2023. Defendant City of Chicago filed an unopposed motion to extend the fact discovery deadline [50]. Because this matter is referred to Magistrate Judge Valdez, who has authority to adjust discovery deadlines, the Court will leave the motion to be ruled on by Judge Valdez. Presentment hearing set for 9/26/2023 is stricken. An in−person status hearing is set for 12/12/2023 at 9:00 AM. Mailed notice. (ym)

U.S. District Court for the Northern District Of Illinois
Attorney Appearance Form

Case Title: McClendon v. City of Chicago, et al. Case Number: 22-cv-5472

An appearance is hereby filed by the undersigned as attorney for:
Emmanuel Poe

Attorney name (type or print): Kenneth N. Flaxman

Firm: Kenneth N. Flaxman P.C.

Street address: 200 S Michigan Ave Ste 201

City/State/Zip: Chicago, IL 60604

Bar ID Number: 08830399
(See item 3 in instructions)

Telephone Number: 312-427-3200

Email Address: knf@kenlaw.com

Are you acting as lead counsel in this case? ☑ Yes ☐ No

Are you acting as local counsel in this case? ☐ Yes ☑ No

Are you a member of the court's trial bar? ☑ Yes ☐ No

If this case reaches trial, will you act as the trial attorney? ☑ Yes ☐ No

If this is a criminal case, check your status.

☐ Retained Counsel

☐ Appointed Counsel
If appointed counsel, are you

☐ Federal Defender

☐ CJA Panel Attorney

In order to appear before this Court an attorney must either be a member in good standing of this Court's general bar or be granted leave to appear *pro hac vice* as provided for by local rules 83.12 through 83.14. I declare under penalty of perjury that the foregoing is true and correct. Under 28 U.S.C.§1746, this statement under perjury has the same force and effect as a sworn statement made under oath.

Executed on 10/9/23

Attorney signature: S/ Kenneth N Flaxman
(Use electronic signature if the appearance form is filed electronically.)

Revised 8/1/2015

U.S. District Court for the Northern District Of Illinois
Attorney Appearance Form

Case Title: McClendon v. City of Chicago, et al. Case Number: 22-cv-5472

An appearance is hereby filed by the undersigned as attorney for:
Emmanuel Poe

Attorney name (type or print): Joel A. Flaxman

Firm: Kenneth N. Flaxman P.C.

Street address: 200 S Michigan Ave Ste 201

City/State/Zip: Chicago, IL 60604

Bar ID Number: 6292818 Telephone Number: 312-427-3200
(See item 3 in instructions)

Email Address: jaf@kenlaw.com

Are you acting as lead counsel in this case? ☑ Yes ☐ No

Are you acting as local counsel in this case? ☐ Yes ☑ No

Are you a member of the court's trial bar? ☑ Yes ☐ No

If this case reaches trial, will you act as the trial attorney? ☑ Yes ☐ No

If this is a criminal case, check your status.

☐ Retained Counsel

☐ Appointed Counsel
If appointed counsel, are you

☐ Federal Defender

☐ CJA Panel Attorney

In order to appear before this Court an attorney must either be a member in good standing of this Court's general bar or be granted leave to appear *pro hac vice* as provided for by local rules 83.12 through 83.14. I declare under penalty of perjury that the foregoing is true and correct. Under 28 U.S.C.§1746, this statement under perjury has the same force and effect as a sworn statement made under oath.

Executed on 10/9/23

Attorney signature: S/ Joel A. Flaxman
(Use electronic signature if the appearance form is filed electronically.)

Revised 8/1/2015

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

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

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

Plaintiff and third-party witness Emmanuel Poe, by counsel, respectfully request that the Court quash defendant City of Chicago's subpoenas for prison and jail phone calls and for prison and jail records of Mr. Poe.

The Court granted plaintiff's first motion to quash defendant's subpoena for the recordings of all calls that plaintiff made while incarcerated. (ECF No. 48.) Defendant now seeks recordings of calls that plaintiff made to Mr. Poe. This is another fishing expedition based on "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). The Court should quash the new subpoena.

The Court should also bar defendant's attempt to subpoena prison and jail records of Mr. Poe. That Poe will be a witness is not a sufficient basis to permit defendant "to rummage through confidential and sensitive records

based on nothing but the hope that something relevant will be found." *Arms v. Milwaukee County*, No. 18-CV-1835, 2020 WL 5292146, at *2 (E.D. Wis. Sept. 4, 2020).

I. Background

Plaintiff Sean McClendon alleges that he was wrongfully imprisoned because defendant police officers fabricated evidence against him. Following his arrest on October 2014, plaintiff spent six months at the Cook County Jail before being 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 he had seen plaintiff hide a gun 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 Subpoenas and Local Rule 37.2 Compliance

On September 25, 2023, defendant notified plaintiff of its intent to serve the subpoenas at issue in this motion. The parties exchanged emails about their positions on the subpoenas, and on October 2, 2023 at about 4:00 p.m., Attorney Brian Wilson for defendant City of Chicago and Attorney Joel Flaxman for plaintiff conferred over the Google Meet platform. The parties made good faith attempts to resolve their differences, and they are unable to reach an accord.

Defendant seeks to serve three subpoenas. The first subpoena, attached as Exhibit 1, requests recordings of calls that plaintiff made to Mr. Poe's phone number while plaintiff was in the custody of the Illinois Department of Corrections from 2016 to 2022.

The other two subpoenas request information about Mr. Poe. Exhibit 2 is a subpoena to the Illinois Department of Corrections seeking Poe's (a) disciplinary records, (b) visitor logs/lists, (c) telephone number list requests, and (d) phone call printouts/logs. Exhibit 3 is a subpoena to the Cook County Sheriff seeking Poe's (a) disciplinary history, (b) disciplinary records, (c) visitor logs, (d) telephone call logs, and (e) "any documents indicating the names of individuals associated with any phone number that called Emmanuel Poe, or that

Emmanuel Poe called while in custody, including any approved caller list or similar document."

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

Defendant's request for recordings of every phone call that plaintiff made to Mr. Poe while plaintiff was in prison is a quintessential fishing expedition. Production of the recordings of these intimate conversations will serve no purpose except to invade the privacy rights of plaintiff and Mr. Poe.

Defendant has produced records showing that plaintiff called Mr. Poe 238 times between May of 2019 and March of 2022. Assuming the two spoke with similar frequency between November 2016 and May 2019, defendant's subpoena seeks about 500 phone calls. The hundreds of hours of attorney time required to review these phone calls is not proportional to the needs of the case.

Under Federal Rule of Civil Procedure 26, "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." FED. R. CIV. P. 26(b)(1). The Rule sets out four factors for the Court to consider about proportionality: "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." *Id.*

The relevancy and proportionality standards of Rule 26 apply to subpoenas issued under Rule 45. Advisory Committee Note to 1991 Amendments to

Rule 45 ("The non-party witness is subject to the same scope of discovery under this rule as that person would be as a party to whom a request is addressed pursuant to Rule 34"). When a party objects to a subpoena, the subpoenaing party has the burden to justify the subpoena. *Northwestern Memorial Hospital v. Ashcroft*, 362 F.3d 923, 931 (7th Cir. 2004). Plaintiff shows below that defendant cannot meet this burden.

A. Plaintiff Has Standing to Object to the Subpoena

"A party has standing to move to quash a subpoena addressed to another if the subpoena infringes upon the movant's legitimate interests." See *United States v. Raineri*, 670 F.2d 702, 712 (7th Cir. 1982). In this case, plaintiff and Mr. Poe have standing because of their interests in the privacy of their personal phone calls. This Court recognized standing to quash a subpoena based on a privacy interest in financial records in *Medix Staffing Sols., Inc. v. Connected Care Health Servs., Inc.*, No. 20-cv-2899, 2021 WL 11605607, at *1 (N.D. Ill. Mar. 4, 2021). As the Court explained,

> When a party seeks to quash a third-party subpoena based on the party's privacy interest, "[e]ven a minimal privacy interest has been found sufficient to confer standing." *Bishop v. White*, No. 16-cv-6040, 2020 WL 6149567, at *3 (N.D. Ill. Oct. 20, 2020) (citation omitted).

Id.

In *Bishop*, the case on which this Court relied in *Medix Staffing*, the Court found that a plaintiff seeking to quash a subpoena for calls made while in custody possessed a privacy interest sufficient to confer standing: "[A]lthough

Plaintiff may reasonably have expected prison officials or law enforcement to have access to recordings of his phone calls . . . he may not have anticipated that parties to a civil proceeding would be privy to those conversations." *Bishop v. White*, No. 16 C 6040, 2020 WL 6149567, at *3 (N.D. Ill. Oct. 20, 2020). The ruling in *Simon v. Northwestern University*, No. 15-cv-1433, 2017 WL 66818 (N.D. Ill. Jan. 6, 2017) is in accord:

> The production of every single phone call over the fifteen years Simon was incarcerated undoubtedly will yield details unrelated to the instant litigation. This court doubts, for example, Simon anticipated his remarks to a friend about the weather, slights uttered in a heated lover's quarrel, or any unrelated conversation ranging from the most benign topics (the former) to the most intimate (the later) would find its way as an exhibit in this lawsuit. Accordingly, Simon has standing to move to quash the subpoena.

Id. at *2; *see also DeLeon-Reyes v. Guevara*, No. 18-cv-01028, 2020 WL 7059444, at *2 (N.D. Ill. Dec. 2, 2020); *Pursley v. City of Rockford*, No. 18-cv-50040, 2020 WL 1433827, at *2 (N.D. Ill. Mar. 24, 2020). As the Court found when it granted plaintiff's first motion to quash, plaintiff has standing to challenge defendant's subpoena.

This motion is joined by Emmanuel Poe, who was the other participant on the calls at issue. Mr. Poe also has a privacy interest in the calls that the Court should take into consideration.

B. The Privacy Interests of Plaintiff and Mr. Poe Outweigh Any Possible Relevance of the Material Sought

Plaintiff and Mr. Poe are long-time friends. They recall speaking over the phone about personal matters, but neither recalls any conversations about

the events leading up to plaintiff's arrest. Defendant may argue that the two men must have discussed Poe's testimony, but the calls at issue all take place after plaintiff was convicted and entered the Illinois Department of Corrections. By that time, Mr. Poe had already testified on two separate occasions about the night plaintiff was arrested. Plaintiff had also testified about the arrest. The two men testified consistently.

The Court should follow its ruling on the first motion to quash and the rulings of other courts in this district recognizing that prisoners have a privacy interest in their personal phone calls. *E.g.*, *Bishop v. White*, No. 16-cv-6040, 2020 WL 6149567, at *4 (N.D. Ill. Oct. 20, 2020); *DeLeon-Reyes v. Guevara*, No. 18-cv-01028, 2020 WL 7059444, at *2 (N.D. Ill. Dec. 2, 2020); *Pursley v. City of Rockford*, No. 18-cv-50040, 2020 WL 1433827, at *3 (N.D. Ill. Mar. 24, 2020); *Simon v. Nw. Univ.*, No. 15-cv-1433, 2017 WL 66818, at *2 (N.D. Ill. 2017).

In *Deleon-Reyes*, the Court surveyed these and other cases and concluded that "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*, 2020 WL 7059444, at *5. The Court went on to explain, "there must be evidence already discovered indicating that the recordings would probably document something relevant."

Defendant cannot meet this standard because there is nothing other than speculation about the relevance of plaintiff's calls. This is not a case involving a witness who changed his testimony or one who first came forward until after trial. Importantly, the recordings at issue here were made after plaintiff and Mr. Poe had already testified at trial.

Defendant apparently contends that scouring hundreds of hours of recordings may turn up some offhand comment by plaintiff that calls into question his credibility. But the "bare assertion that the material sought *may* contain relevant information is insufficient to allow an unlimited subpoena." *Bishop v. White*, No. 16 C 6040, 2020 WL 6149567, at *5 (N.D. Ill. Oct. 20, 2020). Indeed, the only non-speculative evidence about the relevance of plaintiff's calls is his answer to defendant's interrogatory:

> Interrogatory 16. Identify – per the instructions to these interrogatories – every person you had a phone conversation with while you were incarcerated at any jail or prison since October 10, 2014, about (i) your Arrest, (ii) your subsequent criminal prosecution and conviction, or (iii) your efforts to seek a new trial or have your conviction vacated, overturned or reversed.
>
> Response: I never had a phone conversation while I was incarcerated in which I went into detail about these matters.

(Exhibit 4 at 4.) Accordingly, "the subpoena at issue is overbroad and does not target evidence that is sufficiently relevant to overcome even Plaintiff's minimal privacy interest here." *Bishop*, 2020 WL 6149567, at *6. As in *Pursley*, plaintiff has specifically asserted that his phone calls are not relevant, and defendant is unable to rebut this assertion. *Pursley*, 2020 WL 1433827, at *4.

Because mere speculation about relevance fails to overcome the privacy interests of plaintiff and of Mr. Poe, the Court should quash the subpoena for recordings.

C. Defendant's Subpoenas Would Impose a Massive Cost and Undue Burden that Is Not Proportional to the Needs of the Case

In addition to invading the privacy rights of plaintiff and Mr. Poe, the fishing expedition that defendant seek to undertake would be a costly and burdensome one. If defendant gains access to hundreds of hours of recorded phone calls, plaintiff's counsel will be required to make a significant investment of time and money to review these hours of irrelevant personal phone calls.

The cost of reviewing the recordings falls differently on the defense side. Defendant City of Chicago is represented by Nathan & Kamionski; the principals of the firm are the owners of a company called "Pointed Discovery," which touts its ability to provide "Expedited Prison Call Review Services." *See* https://www.pointeddiscovery.com/. The firm has been retained by the City of Chicago to "undertake review of prison and jail phone calls received in discovery." (Exhibit 4.) While reviewing hundreds of hours of irrelevant phone calls may fill the coffers of "Pointed Discovery" and its principals, the fishing expedition defendant proposes is antithetical to Federal Rule of Civil Procedure 1's call for the "the just, speedy, and inexpensive determination of every action and proceeding."

Defendant City of Chicago has unlimited resources to burn reviewing prison phone calls. The same, of course, is not true for plaintiff. The imbalance between the parties' resources is one of the factors to consider in assessing proportionality. FED. R. CIV. P. 26(b)(1). Other factors relevant in this case are "the importance of the discovery in resolving the issues" and "whether the burden or expense of the proposed discovery outweighs its likely benefit." *Id.* Plaintiff showed above that each of these factors weigh in his favor. The Court should quash the subpoena.

IV. The Court Should Quash the Subpoenas for Records about Emmanuel Poe

Emmanuel Poe joins this motion to separately object to defendant's subpoenas for records about him held by the Cook County Jail and the Illinois Department of Corrections. Mr. Poe entered the Cook County Jail in June of 2015 on charges unrelated to the charges against plaintiff. In August 2015, he was sentenced in two cases to a total of five years in the Illinois Department of Corrections.

Defendant seeks records about any discipline Poe may have received while in custody and about the people he communicated with while in custody. Illinois law recognizes a former inmate's privacy interest in these materials by statute. Under 730 ILCS 5/3-5-1, the records sought by defendant "shall be confidential and access shall be limited to authorized personnel of the respective Department or by disclosure in accordance with a court order or

subpoena." The Court should quash the subpoena because defendants cannot show sufficient relevance to overcome Mr. Poe's privacy interests.

Defendant has not pointed to any connection between plaintiff's lawsuit and discipline that Mr. Poe received while in custody. Plaintiff is seeking damages for his time in custody and does not dispute that records of *his* discipline may be relevant. But Mr. Poe is not a party seeking damages and nothing about his time in custody is relevant to plaintiff's claim.

Defendant may argue that evidence relevant to credibility may be found in the disciplinary records, but courts routinely reject this argument in employment cases when a defendant employer seeks the plaintiff employee's personnel file from previous employers. *E.g.*, *McPhail v. Trustees of Indiana Univ.*, No. 2:22-CV-137, 2023 WL 416173 (N.D. Ind. Jan. 26, 2023); *Dirickson v. Intuitive Surgical, Inc.*, No. 19 C 7249, 2020 WL 11421622, at *2 (N.D. Ill. Dec. 29, 2020), *aff'd*, No. 19-CV-7149, 2021 WL 4461574 (N.D. Ill. July 2, 2021). The same rule should apply here.

Defendant's request is even less relevant because it seeks information about a non-party. The court considered a similar request in *Arms v. Milwaukee County*, No. 18-CV-1835, 2020 WL 5292146 (E.D. Wis. Sept. 4, 2020), where the plaintiff sought personnel files of potential witnesses. The Court rejected the plaintiff's request because "the fact that someone is a 'potential witness' is not a sufficient basis for permitting Arms to rummage through confidential and

sensitive records based on nothing but the hope that something relevant will be found." *Id.* at *2.

The Court should therefore quash the subpoenas for records about Mr. Poe.

V. Conclusion

For all these reasons, the Court should quash the subpoenas.

Respectfully submitted,

/s/ Joel A. Flaxman
Joel A. Flaxman
ARDC No. 6292818
Kenneth N. Flaxman
200 South Michigan Ave. Ste 201
Chicago, Illinois 60604
(312) 427-3200
Attorneys for Plaintiff
and Emmanuel Poe

Exhibit 1

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

SEAN MCCLENDON
Plaintiff
v.
CITY OF CHICAGO, et al.
Defendant

Civil Action No. 1:22-cv-05472

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Sheridan Correctional Center
4017 E. 2603 Road, Sheridan, IL 60551
(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Recordings of all phone calls between or among Sean McClendon (IDOC #: M27978; D/O/B: 7-13-1989; IR# 1841599) and phone number 331-307-8528.

Place:	Date and Time:
Nathan & Kamionski LLP 33 W. Monroe St., Suite 1830 Chicago, IL 60603	10/19/2023 9:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/05/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Brian Wilson
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant City of Chicago, who issues or requests this subpoena, are:

Brian Wilson, 33 W. Monroe St., Suite 1830, Chicago, IL 60603, bwilson@nklawllp.com, 312-957-6649

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:22-cv-05472

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

Exhibit 2

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

SEAN MCCLENDON
Plaintiff
v.
CITY OF CHICAGO, et al.
Defendant

Civil Action No. 1:22-cv-05472

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Illinois River Correctional Center
1300 W. Locust St., Canton, IL 61520
(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

SEE ATTACHED RIDER

Place:	Date and Time:
Nathan & Kamionski LLP 33 W. Monroe St., Suite 1830 Chicago, IL 60603	10/19/2023 9:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/05/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Brian Wilson
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant City of Chicago, who issues or requests this subpoena, are:

Brian Wilson, 33 W. Monroe St., Suite 1830, Chicago, IL 60603, bwilson@nklawllp.com, 312-957-6649

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:22-cv-05472

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

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

SEAN MCCLENDON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:22-cv-05472
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

SUBPOENA RIDER

Please provide any and all records in your possession, other than medical and mental health records, relating to Emmanual Poe, DOB 07-06-1990, IDOC # M53592, including, but not limited to:

- Disciplinary Records;
- All Visitor logs/lists;
- Telephone number list requests;
- **All phone call printouts/logs of Inmate Poe's calls in your possession and control;**

Production by U.S. Mail to Nathan & Kamionski LLP, 33 W. Monroe St., Suite 1830, Chicago, IL 60603 or email to bwilson@nklawllp.com is sufficient.

Exhibit 3

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

SEAN MCCLENDON
Plaintiff
v.
CITY OF CHICAGO, et al.
Defendant

Civil Action No. 1:22-cv-05472

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Cook County Sheriff's Office
Richard J. Daley Center, 50 W. Washington St., Suite 704, Chicago, IL 60602
(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Records from October 10, 2014 to the present, regarding former detainee Emmanuel Poe, DOB 07/06/1990; Male, Black, 5'07", 170 lbs., Brown eyes, Black hair; IDOC # 53592; IR # 1574487; SID # 52006710; FBI # 511804HC8. SEE ATTACHED RIDER.

Place:	Date and Time:
Nathan & Kamionski LLP 33 W. Monroe St., Suite 1830 Chicago, IL 60603	10/19/2023 9:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/05/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Brian Wilson
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendant City of Chicago, who issues or requests this subpoena, are:

Brian Wilson, 33 W. Monroe St., Suite 1830, Chicago, IL 60603, bwilson@nklawllp.com, 312-957-6649

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:22-cv-05472

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

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

SEAN MCCLENDON,	)	
	)	
Plaintiff,	)	No. 22-cv-05472
	)	
v.	)	Honorable Sharon Johnson Coleman
	)	Magistrate Judge Maria Valdez
CITY OF CHICAGO, MILOT CADICHON, #17711, BRYANT MCDERMOTT, #12659, ROBERT MCHALE, #15902, DONALD SMITH, #10257,	)	
	)	
Defendants.	)	

SUBPOENA RIDER

RECORDS IN THE POSSESSION OF THE COOK COUNTY SHERIFF'S OFFICE COOK COUNTY DEPARTMENT OF CORRECTIONS FOR: Emmanuel Poe, DOB 07/06/1990; Male, Black, 5'07", 170 lbs., Brown eyes, Black hair; IDOC # 53592; IR # 1574487; SID # 52006710; FBI # 511804HC8.

1. *Disciplinary history*
2. *Disciplinary records*
3. *Visitor logs*
4. *Telephone call logs**
5. *Any documents indicating the names of individuals associated with any phone number that called Emmanuel Poe, or that Emmanuel Poe called while in custody, including any approved caller list or similar document*

*This request expressly excludes any communications which have been identified as confidential pursuant to attorney-client privilege.

Production by U.S. Mail to Nathan & Kamionski LLP, 33 W. Monroe St., Suite 1830, Chicago, IL 60603 or email to bwilson@nklawllp.com is sufficient.

Exhibit 4

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

Sean McClendon,	)	
	)	
Plaintiff,	)	
	)	No. 22-cv-5472
-vs-	)	
	)	*(Judge Coleman)*
City of Chicago, et al.,	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANT CITY OF CHICAGO'S FIRST INTERROGATORIES

The undersigned, under penalties of perjury, certifies that the following interrogatory answers are true:

1. Provide the name and address of each correctional facility, including jails and prisons, where you have been detained since October 10, 2014, including the dates during which you were detained in each facility.

Response: I was at the Cook County Jail between October 2014 and about May 2015 and from the time I was found guilty until I was shipped to IDOC. Information about the IDOC facilities is in my IDOC records.

2. During your incarceration in any of the correctional facilities referenced in interrogatory 1, were you admitted to any hospital (inpatient or out-patient) or clinic, or treated by any physician, psychiatrist, psychologist, counselor, nurse, therapist, specialist or other health care professional or facility? If so, identify the name of the health care professional, where you were treated, the dates of treatment and describe the nature of treatment you received.

Response: This information is in my medical records.

3. Have you ever been involved as a party in any civil legal action other than this action (including divorce, workmen's compensation or bankruptcy proceedings)? If so, for each such action, please state:

a. The date it was filed;
b. The name of the court(s) in which it was filed;

c. The names of the parties involved;
d. The court file number;
e. A description of the nature of the action, and
f. The disposition of the action

Response: No.

4. Have you ever been arrested outside of Illinois? If so, for each arrest please state (if applicable):

a. The date and location of each arrest;
b. The charge(s) placed against you;
c. The name and location of each court where you were prosecuted;
d. The court file number (i.e. docket number); and,
e. The disposition (plea of guilty, finding of guilty, etc.), including any fines or sentences imposed;

Response: No.

5. Have you ever pleaded guilty to, or have you otherwise been convicted of, a crime punishable as either a misdemeanor or felony? If so, identify:

a. The misdemeanor or felony to which you plead guilty;
b. The date of each guilty plea or conviction;
c. The case number assigned to each prosecution;
d. The judge and location of each Court where the guilty plea or conviction took place;
e. Any and all sentences imposed; and,
f. The date on which each sentence was completed or discharged.

Response: I was found guilty in this case. The conviction was reversed. I was found guilty of UUWF in Cook County Case Number 12-CR-5889-02. I was found guilty of Possession of a Stolen Vehicle in Case Number 10-CR-18681. Records are in the possession of the Cook County Clerk of Court.

6. Identify each person who you believe witnessed, or who you know claims to have witnessed any of your interaction with police at or near the 3000 block of East 78th street in Chicago on October 10, 2014, and describe what you believe that person witnessed (or what he/she claims to have witnessed).

Response: My lawyer has disclosed this information.

7. Are you aware of any photographs, videotapes, or other media taken of your interaction with any police officers on October 10, 2014, that are not already in your possession? If so, describe the media and identify who you believe possesses it.

Response: There was a video from the helicopter.

8. As a result of the incidents alleged in your Complaint, did you file a complaint with any law enforcement agency? If yes, please state:

a. The date on which the complaint was made;
b. The agency receiving the complaint;
c. The nature of the complaint;
d. The nature of any documents received in response to, or documenting the investigation of the complaint; and,
e. The disposition of the complaint.

Response: No.

9. Describe each item of damage you claim you incurred as a result of the incidents described in your Complaint, and for each item:
a. State the amount of compensation you intend to ask the fact-finder in this case, if any;
b. Explain how the amount in sub-part (b) above was calculated; and,
c. Identify anyone who has knowledge of the existence or extent of your damage.

Response: My damages will be determined by a jury. I seek compensation for, among other things: being wrongfully imprisoned for almost six years, dealing with the charges for two years, being taken away from my normal life, and emotional injuries.

10. Regarding paragraph 7 of your Complaint, (i) describe every fabrication that one or more of the individual defendants made to justify your Arrest, (ii) state which individual defendant(s) made each fabrication, (iii) state which individual defendant(s) failed to intervene in the making of the fabrication, and (iv) state every fact or piece of evidence you are aware of that supports the existence of the fabrication.

Response: Objection, this contention interrogatory is premature. The answer to this interrogatory will be developed in discovery. Without waiving this objection, plaintiff answers: The officers falsely stated that I threw the gun behind the couch. They also lied about my statement that it was my gun. I told the officers that it wasn't my gun. I never said, "I need it, there are a lot of motherfuckers after me."

11. State every fact or piece of evidence you are aware of that supports your allegations in paragraph 16 of your Complaint that "defendant City of Chicago has known and encouraged a code of silence among its police officers that required police officers to remain silent about police misconduct. An officer who violated the code of silence would be severely penalized by the Department."

Response: Objection, this contention interrogatory is premature and overly broad.

12. State every fact or piece of evidence you are aware of that supports your allegations in paragraph 18 of your Complaint that

the Chicago Police Department's "code of silence facilitated, encouraged, and enabled the officer defendants to engage in misconduct for many years, knowing that their fellow officers would cover for them and help conceal their wrongdoing."

Response: Objection, this interrogatory is premature. The answer to this interrogatory will be developed in discovery.

13. State every fact or piece of evidence you are aware of that supports your allegations in paragraph 29 of your Complaint that "[t]he code of silence emboldened defendants Cadichon, McDermott, McHale, and Smith to frame plaintiff."

Response: Objection, this interrogatory is premature. The answer to this interrogatory will be developed in discovery.

14. Identify - per the instructions to these interrogatories - (1) "Ken," who you said during your criminal trial opened a door to the porch during your Arrest, and (2) "Josh," who you said during your criminal trial is your friend who you and Emmanuel Poe were going to pick up on October 10,2014.

Response: Ken's last name is Ross. My lawyer should be able to arrange his deposition if requested. I do not know Josh's last name.

15. Have you ever told anyone - orally, in writing, or in any other way - that you possessed a gun on October 10, 2014? If so, identify who you told that to and when that occurred.

Response: No.

16. Identify - per the instructions to these interrogatories - every person you had a phone conversation with while you were incarcerated at any jail or prison since October 10, 2014, about (i)your Arrest, (ii) your subsequent criminal prosecution and conviction, or (iii) your efforts to seek a new trial or have your conviction vacated, overturned or reversed.

Response: I never had a phone conversation while I was incarcerated in which I went into detail about these matters.

Dated: 5/8/23

Sean McClendon

Joel Flaxman
An attorney for plaintiff
For objections only

Exhibit 5

DEPARTMENT OF LAW

CITY OF CHICAGO

November 3, 2020

Shneur Nathan
Nathan & Kamionski LLP
33 W. Monroe, Suite 1830
Chicago, Illinois 60603

RE: Terms for Engagement of Legal Services
Reviewing prison and jail calls in multiple matters

Dear Mr. Nathan:

Please be advised that your firm has been designated Special Assistant Corporation Counsel to undertake review of prison and jail phone calls received in discovery in multiple matters for the Federal Civil Rights Litigation Division.

This letter will confirm that your firm's retention will be at the hourly rate of $70 for all staff involved in the review of these calls in all matters assigned to you for this review by the Federal Civil Rights Litigation Division.

The firm agrees to comply with the Law Department's Outside Counsel Guidelines, which are attached with this letter. The firm will submit a global budget, as negotiated, for the life of each matter for which you are engaged to undertake review, in addition to entering summarized annual budget year segments into the budget component of the CounselLink application. A City of Chicago global budget template is located in the document component of the CounselLink application.

All invoices are to be submitted through the LexisNexis CounselLink application. William Aguiar, Administrative Deputy, will coordinate matter set-up and electronic billing procedures with your firm. Your firm's acceptance of this engagement through CounselLink constitutes your firm's acceptance of the terms and conditions outlining this engagement.

You should coordinate all legal activities with Jessica Felker at (312) 744-6959. Please feel free to contact me at (312) 744-0220, if you have any questions or concerns relating to this matter.

Sincerely,

Mark A. Flessner
Corporation Counsel

cc: Victoria Benson
Jessica Felker
Caroline Fronczak
William Aguiar
Dana O'Malley

Att.

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, October 10, 2023:

MINUTE entry before the Honorable Maria Valdez: Hearing on Plaintiff and Third−Party Witness Emmanuel Poe's Motion to Quash [56] is set for 10/27/23 at 10:00 a.m. in Courtroom 1041. Mailed notice(lp,)

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, October 10, 2023:

MINUTE entry before the Honorable Maria Valdez: The minute entry dated 10/10/23, docket entry [57] is amended as follows: Hearing on Plaintiff and Third−Party Witness Emmanuel Poe's Motion to Quash [56] is set for 10/17/23 at 10:00 a.m. in Courtroom 1041. Mailed notice(lp,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, October 17, 2023:

MINUTE entry before the Honorable Maria Valdez: Hearing held on Plaintiff and Third−Party Witness Emmanuel Poe's Motion to Quash [56]. For the reasons stated in open court, the motion is denied without prejudice. Mailed notice(lp,)

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, October 17, 2023:

MINUTE entry before the Honorable Maria Valdez: The minute entry dated 10/17/23, docket entry [60] is amended as follows: Hearing held on Plaintiff and Third−Party Witness Emmanuel Poe's Motion to Quash [56]. For the reasons stated in open court, the motion is granted. Mailed notice(lp,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

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

Sean McClendon,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 22-cv-5472
	)	
City of Chicago, Milot Cadichon, #17711, Bryant McDermott, #12659, Robert McHale, #15902, Donald Smith, #10257,	)	*(Judge Coleman)*
	)	
	)	*(Magistrate Judge Valdez)*
	)	
	)	
Defendants.	)	

JOINT STATUS REPORT

The parties, by counsel, submit this report pursuant to the Court's Order of September 20, 2023:

Status of Completed Discovery: The majority of written discovery has been completed, with the only outstanding matters being discrete areas of discovery that involve the parties resolving objections to earlier requests and/or supplemental requests based on information that has been learned throughout the discovery process.

Only the plaintiff's deposition has occurred, but as discussed below, other uncontested depositions have been scheduled or the parties are cooperating to schedule them.

Status of Uncompleted Discovery: As noted above, isolated matters of written discovery remain unfinished. For example, Plaintiff and the City have been discussing objections the City initially raised in response to Plaintiff's document requests in order to coordinate a supplemental production of documents. Additionally, defendants contend that information learned in Plaintiff's deposition has created a renewed need to pursue certain recorded phone calls involving Plaintiff, phone-logs for third-party Emmanuel Poe's prison calls, and likely some of Plaintiff's medical records regarding treatment he received post-release from IDOC. Plaintiff opposes this additional discovery except for production of his medical records.

Regarding oral discovery, the uncontested depositions of defendant McDermott and McHale, and third-parties Emmanuel Poe and Ken Ross, are scheduled for this month. The uncontested depositions of defendants Smith and Cadichon, and third-parties Latoya McClendon, Lori Wesson and Officer Dorian Wright are being scheduled.

Given information learned in Plaintiff's deposition, Defendants intend to depose third-parties Moneka Curtis and Brittney Hill, and are considering deposing Plaintiff's criminal defense attorney. Plaintiff opposes the taking of these depositions based on the age of the case, relevance, and proportionality.

Extension of Time to Complete Discovery: All parties agree that an extension of time to complete discovery is needed.

Plaintiff believes that an extension until December 26, 2023 is sufficient and appropriate. The lengthy discovery period has already been extended once, and the primary reason that more time is needed is that defendants have repeatedly rescheduled their depositions. In plaintiff's view, the parties can and should complete the remaining depositions in November and December.

Defendants believe an extension until January 31, 2024 is necessary for several reasons that the Court will best understand if presented in a short motion instead of summarized in this status report, such as Plaintiff's disclosure in October of a witness who claims to be the owner of the recovered gun at the center of this lawsuit. Defendants will soon file a motion for a discovery extension explaining their basis for an extension to the end of January.

Plaintiff responds that plaintiff's deposition testimony that Ken Ross was the owner of the recovered gun is no basis for an extension. Defendants have known about Mr. Ross's involvement since the inception of this case based on trial testimony that plaintiff was arrested as Mr. Ross's house, and defendants will take Mr. Ross's deposition on November 6, 2023.

Contested Matters: As noted above, the parties agree a discovery extension is needed but disagree on the length of the extension. Defendants anticipate presenting this matter via a motion for the Court's fully-informed ruling.

Also as noted above, Plaintiff opposes Defendants deposing third-parties Moneka Curtis (Plaintiff's ex-wife), Brittney Hill (the mother of Plaintiff's child) and Plaintiff's criminal defense attorney Peter Limperis. Defendants' position is that if the parties are not able to resolve this disagreement, this too will likely be presented to the Court for a ruling. Plaintiff's position is that the Court has enough information to deny defendants' requests to conduct these depositions.

Finally, given information learned in Plaintiff's deposition, Defendants are confident that the relevancy of certain recorded phone calls involving Plaintiff and call-logs regarding third-party Emmanuel Poe has been established, and Defendants wish to review those logs and recordings. Plaintiff maintains that the record contains nothing that warrants Defendants listening to any of Plaintiff's jail or prison calls or obtaining Emmanuel Poe's phone logs. Defendants' position is that this issue will also likely need Court resolution. Plaintiff's position is that the parties can present this dispute in open court for ruling.

Respectfully submitted,

/s/ Joel A. Flaxman
Joel A. Flaxman
ARDC No. 6292818
Kenneth N. Flaxman
200 S Michigan Ave, Ste 201
Chicago, IL 60604
(312) 427-3200
attorneys for plaintiff

/s/ Brian Wilson (by consent)
Brian Wilson
Avi Kamionski
Shneur Nathan
Special Assistant Corporation Counsel
NATHAN & KAMIONSKI, LLP
33 W. Monroe, Suite 1830
Chicago, IL, 60603
312-957-6649
bwilson@nklawllp.com
attorneys for defendant City of Chicago

/s/ Lisa M. McElroy (by consent)
Lisa M. McElroy
Brian P. Gainer
Johnson & Bell, Ltd.
33 West Monroe St., Ste 2700
Chicago, IL 60603
(312) 372-0770
mcelroyl@jbltd.com
attorneys for defendants Cadichon, McDermott, McHale, and Smith

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, November 17, 2023:

MINUTE entry before the Honorable Maria Valdez: Defendants' Second Unopposed Motion to Extend Fact Discovery [63] is granted, and the fact discovery deadline is extended to 1/31/24. There will be no further extensions absent extraordinary circumstances. The parties are reminded that the Court does not consider delays caused by holiday schedules to be extraordinary. A further status report on discovery progress and the prospects of settlement shall be filed no later than 12/29/23. (rbf,)

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, December 11, 2023:

MINUTE entry before the Honorable Sharon Johnson Coleman: The in−person status hearing set for 12/12/2023 at 9:00 AM is reset to 9:45 AM (NOTE TIME CHANGE ONLY). Mailed notice. (ym)

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, December 12, 2023:

MINUTE entry before the Honorable Sharon Johnson Coleman: Status hearing held on 12/12/2023. Counsel for plaintiff reported that Magistrate Judge Valdez extended the fact discovery deadline to January 31, 2024. Counsel for defendants stated on the record that they do not anticipate filing a motion until discovery is completed. An in−person status hearing is set for 3/13/2024 at 9:00 AM. Mailed notice. (ym)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

RE: Local Rule 3.2 Notification of Affiliates

ANNUAL REMINDER: Pursuant to Local Rule 3.2 ("Notification of Affiliates"), any nongovernmental party, other than an individual or sole proprietorship, must file a statement identifying all its affiliates. For any party that has no affiliates, a statement confirming this must be filed. An affiliate is defined as follows: any entity or individual owning 5% or more of a party. Any entity or individual who owns 5% or more of any such affiliate shall also be included within the definition of "affiliate." The statement is to be electronically filed as a PDF in conjunction with entering the affiliates in CM/ECF as prompted. As a reminder to counsel, parties must supplement their statements of affiliates within thirty (30) days of any change in the information previously reported. This minute order is being issued to remind all counsel of record of their obligation to provide updated information as to additional affiliates if any such updating is necessary. If counsel has any questions regarding this process, this LINK will provide additional information.

ENTER:

FOR THE COURT

Hon. Rebecca R. Pallmeyer, Chief Judge

Dated at Chicago, Illinois this 28th day of December 2023

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

Sean McClendon,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 22-cv-5472
	)	
City of Chicago, Milot Cadichon, #17711, Bryant McDermott, #12659, Robert McHale, #15902, Donald Smith, #10257,	)	*(Judge Coleman)*
	)	
	)	*(Magistrate Judge Valdez)*
	)	
Defendants.	)	

JOINT STATUS REPORT

The parties, by counsel, submit this report pursuant to the Court's Order of November 17, 2023:

Discovery Progress: The parties have completed the depositions of plaintiff, defendants McDermott and Smith, and third-party witnesses Emmanuel Poe and Ken Ross. Plaintiff has noticed the depositions of defendants Cadichon (1/26/24) and McHale (1/18/24) and Officer Dorian Wright (1/19/24), an employee of defendant City of Chicago. Defendants have confirmed the date for the deposition of Cadichon. Defendants intend to notice the unopposed depositions of two damages witnesses, Latoya McClendon and Lori Wesson. Defendants also intend to notice the opposed depositions of Brittany Hill and Moneka Curtis, but the parties will confer about that dispute in the hopes of avoiding any necessary intervention by the Court.

The parties are also conferring about the discoverability of recorded jail and prison phone calls, and may seek court assistance on that issue as well.

Prospects of Settlement: The parties will confer about settlement after fact discovery is completed.

Respectfully submitted,

/s/ Joel A. Flaxman
Joel A. Flaxman
ARDC No. 6292818
Kenneth N. Flaxman
200 S Michigan Ave, Ste 201
Chicago, IL 60604
(312) 427-3200
attorneys for plaintiff

/s/ Brian Wilson (by consent)
Brian Wilson
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/s/ Lisa M. McElroy (by consent)
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attorneys for defendants Cadichon, McDermott, McHale, and Smith

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, December 29, 2023:

MINUTE entry before the Honorable Maria Valdez: The parties shall file a further written status report on discovery progress and the prospects of settlement no later than 1/26/24. They are strongly encouraged to resolve any remaining discovery disputes without the need for judicial resolution. Mailed notice(lp,)

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

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

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,

/s/ Joel A. Flaxman
Joel A. Flaxman
ARDC No. 6292818
Kenneth N. Flaxman
200 South Michigan Ave. Ste 201
Chicago, Illinois 60604
(312) 427-3200
Attorneys for Plaintiff and Emmanuel Poe

Exhibit 1

Subject: Phone calls in McClendon
From: Brian Wilson <bwilson@nklawllp.com>
To: Joel Flaxman <jaf@kenlaw.com>
Cc: Kenneth Flaxman <knf@kenlaw.com>, "Lisa M. McElroy" <mcelroyl@jbltd.com>, "Brian P. Gainer" <gainerb@jbltd.com>, Shneur Nathan <snathan@nklawllp.com>
Date Sent: Friday, December 22, 2023 2:13:02 PM GMT-06:00
Date Received: Friday, December 22, 2023 2:13:30 PM GMT-06:00

Joel,

Defendants believe that given information learned in the depositions taken thus far, there is a sufficient basis to obtain and listen to the following phone calls. Most of these are Cook County Jail calls, which as you know Lisa and Brian have recordings of already because they were mistakenly produced by the Sheriff (although they have not been listened to). This email is notice to you that Defendants intend to obtain the calls listed below that we do not already have, and to listen to the calls listed below that we already have.

However, we want to respect your holiday plans and are not putting a deadline by which we will listen to the calls already received or serve subpoenas to obtain calls not yet received. Instead, Defendants will take no such actions until you have had a chance to consider our position and let us know if you intend to file a motion for a protective order. I'll likely contact you sometime next week to see if you've had such an opportunity and to keep the ball moving; but again, no ultimatums are being issued.

SHERIFF/JAIL PHONE CALLS:

1. All calls to Ken Ross
2. Oct 11 call to Plaintiff's mother(number 0750)
3. Oct 12 call to Moneka Curtis (number 9345)
4. Oct. 12 calls to Plaintiff's mother
5. Oct 13 call to Diamond Glover (number 8109)
6. Every phone call that represents the first time McClendon called any number while in Cook County Jail

IDOC MCCLENDON PHONE CALLS:

1. All calls to Ken Ross using the number we have for him.
2. All calls between McClendon and Poe between Oct 21 and Feb 13, 2014.
3. The call reflected in Exhibit 4 to Plaintiff's dep (CITY 1953-54).

POE IDOC PHONE CALLS:

Any calls between McClendon and an attorney from Peter Limperis's firm.

Have a nice holiday and a happy new year if we don't talk before then.

--

Regards,

Brian Wilson

Nathan & Kamionski LLP

33 W. Monroe St., Suite 1830

Chicago, IL 60603

312-957-6649

Exhibit 2

EXHIBIT
4 McClendon 103023

20180146 [illegible] 1023

ILLINOIS DEPARTMENT OF CORRECTIONS
Offender Disciplinary Report
I.R.C.C.
Facility

Date: 5-27-2018

Type of Report: ☒ Disciplinary ☐ Investigative

Offender Name: MCCLENDON, SEAN ID #: M27978

Observation Date: 5-27-2018 Approximate Time: 8:00 ☒ a.m. ☐ p.m. Location: OPERATIONS

Offense(s): DR 504: 205 - Security Threat Group or Unauthorized Organizational Activity, 307- Unauthorized Movement, and 310 - Abuse of Privileges

Observation: (NOTE: Each offense identified above must be substantiated.) On the above date and approximate time R/O was routinely reviewing telephone calls placed on 5/20/2018 at which time it was found that Offender MCCLENDON, SEAN M27978 STG-GANGSTER DISCIPLE (1D23) completed a one minute call on 5/20/18 at 9:09am to [redacted] listed as Moneka Curtis. After the completion of that call MCCLENDON called [redacted] also listed as Moneka Curtis, at 9:10am. During the call MCCLENDON and the female had general converasation. INTEL reviewed the offender dayroom schedule and found that during these calls, cells R1D65-80 were scheduled to have dayroom and MCCLENDON was assigned to R1D23. MCCLENDON's scheduled dayroom was not until 8-9:30pm. (307,310) INTEL reviewed all MCCLENDON's completed calls from 9:00am on 5/20/18 through 5/27/18. It was (cont.)

Witness(es):

☒ Check if Offender Disciplinary Continuation Page, DOC 0318, is attached to describe additional facts, observations or witnesses.

C/O LJESTER	6646		5-27-2018	11:00 ☒ a.m. ☐ p.m.
Reporting Employee (Print Name)	Badge #	Signature	Date	Time

Disciplinary Action:

Shift Review: ☐ Temporary Confinement ☐ Investigative Status Reasons:

Printed Name and Badge # | Shift Supervisor's Signature (For Transition Centers, Chief Administrative Officer) | Date

Reviewing Officer's Decision: ☐ Confinement reviewed by Reviewing Officer Comment:

☒ **Major Infraction,** submitted for Hearing Investigator, if necessary and to Adjustment Committee

☐ **Minor Infraction,** submitted to Program Unit

Print Reviewing Officer's Name and Badge # | Reviewing Officer's Signature | Date: 5/27/18

☒ **Hearing Investigator's Review Required** (Adult Correctional Facility Major Reports Only)

N. Smith 13155 | Hearing Investigator's Signature | Date: 5-28-18

Print Hearing Investigator's Name and Badge #

Procedures Applicable to all Hearings on Investigative and Disciplinary Reports

You have the right to appear and present a written or oral statement or explanation concerning the charges. You may present relevant physical material such as records or documents.

Procedures Applicable to Hearings Conducted by the Adjustment Committee on Disciplinary Reports

You may ask that witnesses be interviewed and, if necessary and relevant, they may be called to testify during your hearing. You may ask that witnesses be questioned along lines you suggest. You must indicate in advance of the hearing the witnesses you wish to have interviewed and specify what they could testify to by filling out the appropriate space on this form, tearing it off, and returning it to the Adjustment Committee. You may have staff assistance if you are unable to prepare a defense. You may request a reasonable extension of time to prepare for your hearing.

☒ Check if offender refused to sign

Offender's Signature ID#

C/O Dicks | 5286 | L. Dicks
Serving Employee (Print Name) | Badge # | Signature

5-28-18 Date Served | 8:14 Time Served ☒ a.m. ☐ p.m.

☐ I hereby agree to waive 24-hour notice of charges prior to the disciplinary hearing.

Offender's Signature ID#

(Detach and Return to the Adjustment Committee or Program Unit Prior to the Hearing)

Date of Disciplinary Report | Print offender's name | ID#

I am requesting that the Adjustment Committee or Program Unit consider calling the following witnesses regarding the Disciplinary Report of the above date:

Print Name of witness | Witness badge or ID# | Assigned Cell (if applicable) | Title (if applicable)

Witness can testify to:

Print Name of witness | Witness badge or ID# | Assigned Cell (if applicable) | Title (if applicable)

Witness can testify to:

Distribution: Master File, Offender, Facility (2)

Printed on Recycled Paper

DOC 0317 (Rev. 2/2007)

CITY 001953

ILLINOIS DEPARTMENT OF CORRECTIONS

Offender Disciplinary Continuation Page

IRCC
Facility

☒ Disciplinary Report ☐ Investigative Report ☐ Disciplinary Summary ☐ Adjustment Committee Summary

Report/Incident Date: 5-27-2018 Incident # (if applicable): _____

Offender Information:

Offender Name: MCCLENDON, SEAN ID #: M27978

Use the space below to provide any additional information.

found that MCCLENDON completed additional calls during his scheduled dayroom at 8:43pm, 8:51pm, and 9:22pm on 5/20. On 5/22 MCCLENDON's scheduled dayroom was 6:30pm-8:00pm however, MCCLENDON completed calls at 8:27am, 9:00am, 1:07pm, and 1:21pm to [redacted] MCCLENDON also completed calls at 12:35pm and 1:25pm to [redacted] listed as Chaen Aiealao, at 1:58pm to [redacted] listed as Kevin Williams. At play point 1:00 MCCLENDON hands the phone off to WIMBERLY, IMIR R72774 (1D70) and told the male to complete a 3-way call for WIMBERLY to [redacted] The male dialed the number and attempted the 3-way communication however there was no answer. WIMBERLY identified himself as "IMIR" and stated that he was not on A-Grade and could not make calls himself. Offender 360 confirmed that WIMBERLY was on B-Grade at the time of the call. (310) On 5/23 MCCLENDON's scheduled dayroom was 12:30-2:15pm however MCCLENDON completed a call at 7:15pm to [redacted] On 5/25 MCCLENDON's scheduled dayroom was from 8-9:30am however, MCLENDON completed calls at 12:33pm, 12:37pm, 12:51pm, 1:16pm, 1:40pm. On 5/26 MCCLENDON's scheduled dayroom was from 6:30-8:00PM however MCCLENDON completed calls at 9:42am, 9:44am, and 1:38PM during other offender's dayroom times. (307,310).

In MCCLENDON's call on 5/25 at 1:16pm to [redacted] listed as Kevin Williams, MCCLENDON speaks with a male about "Big Meachie". MCCLENDON asked the male if "Big Meachie" was still representing "Pocket Town" [redacted] The male confirmed that they were still representing "Pocket Town". MCCLENDON then told the male to complete a 3-way call to "Hot Boi" at 773-[redacted] At play point 4:24 the unauthorized 3-way call was completed where MCCLENDON and the male talk about "Krump" from "Dro City" [redacted] getting shot and killed on 68th & Morgan. MCCLENDON told the male, "Fuck Krump and Dro City. You know what it is". They then continue discussing the shooting and at play point 14:37 MCCLENDON represented his STG affiliation by telling the male, " T&M Pocket Town for life" before ending the call. (205). MCCLENDON is a known [redacted] from the set of Pocket Town in Chicago, IL. R/O spoke with Housing Unit R1 officers J. Stone and J. Dircks who confirmed that they did not authorize MCCLENDON out of his cell to make phone calls on dayrooms he was not scheduled to have.

The charges of 205 - Security Threat Group or Unauthorized Organizational Activity, 307- Unauthorized Movement, and 310 - Abuse of Privileges were substantiated by MCCLENDON being out of his cell unauthorized and routinely completing calls during times in which he was not scheduled to have dayroom, by MCCLENDON completing unauthorized 3-way calls and sharing phone calls with other offenders, and by MCCLENDON representing his STG affiliation and discussing rival STG members in phone calls. MCCLENDON was identified by state issued ID as well as by voice and speech pattern in the calls. The above listed calls are recorded and stored on the Secure Call Platform provided by Securus.

A complete report is on file in the INTEL-I/A office at IRCC. End of Report.

Distribution: Master File, Offender, Facility (2)

Printed on Recycled Paper

DOC 0318 (Eff. 8/2006) (Replaces DC 7212)

CITY 001954

Plaintiff's Exhibit 2 **Page 2**

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

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

PLAINTIFF'S MOTION TO QUASH DEPOSITION SUBPOENAS

To finally bring discovery to a close, plaintiff respectfully requests that the Court quash defendants' forthcoming deposition subpoenas to third-party witnesses Brittany Hill and Moneka Curtis.

The fact discovery deadline is January 31, 2023; the parties intend to complete the remaining depositions of two defendants, a non-party police officer involved in plaintiff's arrest, and two damages witnesses (plaintiff's mother and wife). Adding two additional unnecessary depositions would likely require another extension of the deadline.

Neither Ms. Hill nor Ms. Curtis witnessed any of the events at issue in this lawsuit. Plaintiff will not rely on the testimony of either woman, and defendants have not disclosed either Ms. Hill or Ms. Curtis as having discoverable information that they may use to support their case. Neither

witness will give relevant testimony and their depositions are not be proportional to the needs of the case.

On January 5, 2024, at about 9:30 a.m., Attorney Brian Wilson for defendant City of Chicago and Attorney Joel Flaxman for plaintiff conferred by phone about discovery issues, including defendants' request to depose Ms. Hill and Ms. Curtis. The parties made good faith attempts to resolve their differences, and they are unable to reach an accord.

Ms. Hill is the mother of plaintiff's daughter. Plaintiff spoke to her by phone when he was in custody, and defendants apparently want to ask Ms. Hill about the content of those conversations. As explained in plaintiff's contemporaneously filed motion about recorded jail and prison calls and plaintiff's previous motions on that issues, defendants' belief that these calls contain any relevant information rests only on speculation. Plaintiff will testify that he was injured because his wrongful imprisonment kept him away from the daughter he had with Ms. Hill, but testimony by Ms. Hill on this issue is not relevant or proportional to plaintiff's claim.

The same speculation about the relevance of calls with Ms. Hill also applies to the content of calls that plaintiff had with Ms. Curtis while in custody. Plaintiff and Ms. Curtis were dating at the time of his arrest. They married and divorced while plaintiff was in prison. Plaintiff answered

questions about their relationship at deposition, but there is no reason to pose those questions to Ms. Curtis as well.

"All good things, including discovery, must come to an end." *U.S. ex rel. Taylor v. Hicks*, 513 F.3d 228, 238 (5th Cir. 2008). The Court should quash defendants' forthcoming deposition subpoenas to third-party witnesses Brittany Hill and Moneka Curtis.

Respectfully submitted,

/s/ Joel A. Flaxman
Joel A. Flaxman
ARDC No. 6292818
Kenneth N. Flaxman
200 South Michigan Ave. Ste 201
Chicago, Illinois 60604
(312) 427-3200
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, January 10, 2024:

MINUTE entry before the Honorable Maria Valdez: Hearing on Plaintiff and Third−Party Witness Emmanuel Poe's Motion to Quash [70] and Plaintiff's Motion to Quash Deposition Subpoenas [71] is set for 1/17/24 at 10:00 a.m. in Courtroom 1041. Mailed notice(lp,)

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, January 19, 2024:

MINUTE entry before the Honorable Maria Valdez: Plaintiff and Third−Party Witness Emmanuel Poe's Motion to Quash [70] is granted in part and denied in part, and Plaintiff's Motion to Quash Deposition Subpoenas [71] is denied. The status report date of 1/26/24 is stricken and reset to 2/2/24. Mailed notice(lp,)

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

SEAN McCLENDON,	)	
	)	
Plaintiff,	)	
	)	**No. 22 C 5472**
v.	)	
	)	**Magistrate Judge**
CITY OF CHICAGO; MILOT CADICHON; BRYANT McDERMOTT; ROBERT McHALE; and DONALD SMITH,	)	**Maria Valdez**
	)	
Defendants.	)	

ORDER

This matter is before the Court on Plaintiff and Third-Party Witness Emmanuel Poe's Motion to Quash [Doc. No. 70] and Plaintiff's Motion to Quash Deposition Subpoenas [Doc. No. 71].[1]

BACKGROUND

On October 10, 2014, the defendant officers seized Plaintiff and his friend Emmanuel Poe on a porch near a parking lot where they had parked their vehicle, which the officers had been tailing. Defendant Cadichon claimed that he saw Plaintiff drop an object on the porch, and another officer later found a gun behind a couch located there. Plaintiff was arrested for possession of the gun based on defendant Cadichon's claim and Plaintiff's alleged later admission to defendants

[1] Defendants did not file written responses to the motions, but argument was heard on January 17, 2024.

McHale and McDermitt he did possess the gun because people were after him. Plaintiff asserts that both bases for his arrest were false and concocted by the individual defendants. Plaintiff testified at trial that he did not possess a gun, nor did he ever admit to the officers that he possessed a gun. He was nevertheless convicted and sentenced to a term of eight years in the Illinois Department of Corrections. The sentence was later vacated without remand on March 7, 2022 after the Illinois Appellate Court concluded there was "no reasonable articulable suspicion for the warrantless seizure" of Plaintiff and Poe. *See People v. McClendon*, 2022 IL App (1st) 163406, ¶ 21. Plaintiff subsequently sued the City of Chicago and the arresting officers under 42 U.S.C. § 1983, alleging that his constitutional rights were violated because he was falsely arrested after the individual defendants concocted a false story and fabricated evidence against him.

In previous subpoenas, Defendants sought all of Plaintiff's jail calls[2] as well as a number of calls associated with third parties whose ID numbers Plaintiff was alleged to have used to make calls. On August 8, 2023, this Court granted Plaintiff's motion to quash the subpoenas issued to the Cook County Sheriff's Office and two IDOC facilities, dismissing Defendants' conclusory argument that "common sense" suggests Plaintiff would have discussed topics relating to liability or damages in the calls. Instead of "fishing," The Court advised Defendants they would need to provide

[2] The Court uses the term "jail calls," but some were made from state prison, where he served four months beginning a few days after his October 2014 arrest. After his stint at the Illinois Department of Corrections, he returned to the Cook County Jail until he was bonded out in May 2015. He returned to the CCJ in July 2016 after the guilty finding and then returned to IDOC custody until his conviction was reversed in 2022.

some specific assurance that there is a reasonable likelihood the calls contain relevant information.

Two months later, Plaintiff and third party Poe moved to quash additional subpoenas seeking, among other things, recordings of all calls Plaintiff made to Poe from 2016 to 2022 and logs for calls Poe made to any number. That motion was also granted on the basis of relevance. Plaintiff's and Poe's stories about the events surrounding the arrest were consistent with each other before, during and after the underlying criminal trial, and thus this was not a case where, for example, the conversations would show Plaintiff's efforts to get Poe to recant a prior accusation.

Defendants' next round of subpoenas sought to obtain recordings of Plaintiff's and Poe's calls with each other and with various other individuals. Plaintiff and Poe have again moved to quash, primarily on the basis of relevance.

DISCUSSION

Under Federal Rule of Civil Procedure 45, a court must quash or modify a subpoena if the movant establishes that it "subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3)(iv). The parties do not dispute that Plaintiff and Poe have standing to quash a subpoena directed to third parties based on undue burden where the subpoena implicates their privacy interest in the calls at issue. *See Simon v. Northwestern Univ.*, No. 15 C 1433, 2017 WL 66818, at *2 (N.D. Ill. Jan. 6, 2017). Numerous courts have held that although prisoner calls are recorded and may be monitored by jail or prison officials, the incarcerated individual nevertheless retains at least a minimal privacy interest in those calls, in that "he would not

necessarily have expected that recordings of those calls would be handed over in bulk to an adverse party in a civil case." *See Bishop v. White*, No. 16 C 6040, 2020 WL 6149567, at *3 (N.D. Ill. Oct. 20, 2020); *see also DeLeon-Reyes v. Guevara*, No. 18 C 1028, 2020 WL 7059444, at *2 (N.D. Ill. Dec. 2, 2020); *Pursley v. City of Rockford*, No. 18 C 50040, 2020 WL 1433827, at *2 (N.D. Ill. Mar. 24, 2020).

Undue burden is not the only consideration, however, and the scope of a subpoena is also constrained by the general rules of discovery. Federal Rule of Civil Procedure 26 provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1); *see Pursley*, 2020 WL 1433827, at *2 ("[I]n determining whether to quash a third-party subpoena based upon a party's privacy interests, courts weigh the relevance of the information against the strength of the privacy interest.").

I. Plaintiff and Poe's Motion to Quash [Doc. No. 70]

A. Calls to Ken Ross

Ken Ross testified in his deposition that he owned the gun Plaintiff was alleged to have thrown behind a couch on a porch. Ross stated that he knew the gun for which Plaintiff was arrested belonged to him, and Plaintiff also testified that he

knew as of the night of his arrest that the gun was Ross's. Plaintiff claims he had an in-person conversation with Ross after he was bonded out of jail in 2015, in which he asked Ross to testify on his behalf at the underlying criminal trial. Although Plaintiff asserts that Ross agreed to testify, he did not ultimately do so. When asked during the criminal trial if had seen the gun before, Plaintiff denied recognizing it. Both Plaintiff and Ross testified that they did not speak on the phone while Plaintiff was in jail. However, the phone logs from the CCJ show six calls made from March to May 2015 to a number associated with Ross.[3] Defendants believe that Plaintiff and Ross are lying.

Plaintiff's theory is that the gun recovered from behind the couch was already there before he and Poe went onto the porch. Defendants characterize this as a theory made up for the civil case, and it would have been raised during the criminal trial if it were true. Defendants acknowledge, however, that based on the timing of the calls, they would not directly show collusion between Plaintiff and Ross to concoct a story. Instead, Defendants ask for the calls to either corroborate or contradict the allegation that the gun belonged to Ross. They believe that because at the time the calls were made, Ross knew Plaintiff had been arrested for possessing his gun, and Plaintiff knew the gun belonged to Ross, it is almost a certainty that they would have spoken about the matter. If they did discuss the

[3] Defendants already possess these six calls from Plaintiff to Ross's number, due to the CCJ inadvertently producing those records prematurely. Defendants also want to subpoena any calls Plaintiff made while in IDOC custody prior to that time.

gun's ownership, that would be exculpatory evidence in Plaintiff's favor. If they did not, then according to Defendants, that would be relevant by omission.

Defendants have not explained why the ownership of the gun is relevant to any claims or defenses in the case, specifically the question of whether Plaintiff threw the gun behind the couch or it was already there. However, in an abundance of caution, the Court agrees to listen *in camera* to the recording of first conversation between Plaintiff and Ross, which may have taken place while Plaintiff was in IDOC or CCJ custody. Defendants may obtain the IDOC call logs to determine whether any calls were made to Ross's number, and if so, then they may subpoena the recording of the first call. If there are no IDOC calls, then Defendants shall submit to the Court the first CCJ call they have in their possession.

B. Calls Immediately After Arrest

Defendants want to listen to five calls Plaintiff made to three individuals from October 11, 2014, the day after his arrest, to October 13, 2014. Plaintiff testified that in his initial calls to these three individuals – his mother, his now ex-wife, and a friend – he said he had been framed. Defendants want the calls to corroborate or contradict Plaintiff's testimony as well as to prepare for the anticipated depositions of Plaintiff's mother and his ex-wife.

Defendants have not offered any specific reasons these calls may be relevant, only the general argument that because Plaintiff admits he told the three individuals about his arrest, he may have given them details about the underlying

circumstances. Accordingly, the motion to quash is granted as to these calls, whose slight potential relevance is outweighed by Plaintiff's privacy interest.

C. Disciplinary Report Calls

While in prison in May 2018, Plaintiff made a call that was the subject of a prison disciplinary report characterizing it as a "Security Threat Group or Unauthorized Organizational Activity" because he allegedly made gang-related comments during the call. Defendants argue this is relevant because shortly after his arrest, Plaintiff allegedly told officers he needed a gun because people were after him. Plaintiff has denied making that statement and further denies ever being a member of a gang. Defendants' theory is that if Plaintiff were a gang member, that would lend credibility to the officers' report that Plaintiff told them he needed a gun. But even assuming that gang affiliation is relevant to the claims and defenses in this case, and further assuming that the call at issue proves Plaintiff's prison gang membership in 2018, that would not be at all relevant to whether he was a member at the time of his arrest nearly four years earlier.

D. First Call to Every New Number

Defendants wish to listen to the first call Plaintiff made to every new number appearing on the call log, approximately fifty numbers for the CCJ calls. Their rationale is that if Plaintiff were to discuss the circumstances of his arrest, he would likely do so during the first conversation he had with someone. Defendants also want these calls because Plaintiff testified he believes he had a conversation with

Poe discussing the arrest, but it is unknown what phone number Poe had at the time. Defendants hope that the recordings will allow them to identify that number.

The motion to quash is granted as to this request. The fact that this subpoena seeks far fewer calls than the original one does not make it narrowly tailored or limited in scope. The Court is not persuaded by Defendants' argument that the request is limited to calls in which Plaintiff possibly or even "likely discussed his criminal case," because that is also a "form of 'dart throwing'" rather than a showing of relevance. *See Pursley*, 2020 WL 1433827, at *4. Defendants' arguments are based almost entirely on the supposition that a hypothetical person could be expected to discuss certain events with certain people at certain times, without any particularized basis to conclude that Plaintiff himself may have had those discussions. It could be just as easily presumed that the defendant officers sent texts among themselves and others about the underlying arrest in the hours, days, or weeks afterwards. Defendants would surely agree that such a presumption would not, by itself, justify handing them over to Plaintiff.

This request also fails to meet the proportionality standard. Defendants attempted to minimize the burden of the production of at least fifty calls, going so far as to suggest that Plaintiff would not need to listen to the calls unless Defendants disclose them as ones they will be using in the case. During oral argument, however, it was clear that Plaintiff's counsel understands his obligation to review all discovery materials, which could require not only listening to the calls, but likely also transcribing, abstracting, or otherwise organizing the information.

This burden, while not overwhelming, is more than enough to outweigh the theoretical relevance of the calls.

E. Call from Poe to Plaintiff's Defense Counsel

Defendants want any communication between Poe and Plaintiff's defense counsel while Poe was in IDOC. Defendants want these recordings, which may not exist, in order to test the veracity of Poe's testimony about the conversations. The Court concludes that Defendants have not established relevance outweighing Poe's privacy interests. To the extent there is a whiff of relevance to the communications, Defendants have not explained why they could not have gleaned the substance of the calls through a less intrusive means, *i.e.*, from defense counsel, given Defendants' acknowledgment that the conversations were not privileged.

F. Calls Between Plaintiff and Poe

After the Court quashed Defendants' broad subpoena for all calls between Plaintiff and Poe, Defendants responded with a narrower time frame, between October 20, 2014 and February 13, 2015, while Plaintiff was in IDOC custody. This request again is intended to find the call between Plaintiff and Poe about which Plaintiff testified. Defendants admit their search is unlikely to turn up any results, as they would be looking for calls Plaintiff made to Poe's current phone number, which he was unlikely to have had at the time in question. Defendants may obtain a log identifying any calls between Plaintiff and Poe's number, but the subpoena for the recordings must be limited to only the first conversation.

II. Plaintiff's Motion to Quash Deposition Subpoenas [Doc. No. 71]

Plaintiff seeks to quash the subpoenas of third-party witnesses Brittany Hill and Moneka Curtis. He argues that their testimony will not be relevant because they did not witness the events at issue, and that because discovery is set to close on January 31, 2024, allowing these depositions might require an extension.

Assuming that Plaintiff even has standing to object to these deposition subpoenas, the Court finds that their testimony could be relevant to Plaintiff's claim of damages stemming from his period of incarceration. Curtis was dating plaintiff at the time of the arrest, and married and divorced him while he was in prison. Hill is the mother of Plaintiff's daughter, and she likely could speak to the effect of his arrest and imprisonment on the father/daughter relationship, which is an element of his damages claim.

Finally, the Court is not concerned about the timing of the depositions. They were noticed in plenty of time to be completed by the deadline, even considering all other remaining discovery. If due to the deponents' unavoidable scheduling conflicts, a short extension may be necessary, the parties will not be prejudiced. The motion to quash is denied.

CONCLUSION

For the foregoing reasons, Plaintiff and Third-Party Witness Emmanuel Poe's Motion to Quash [Doc. No. 70] is granted in part and denied in part, and Plaintiff's Motion to Quash Deposition Subpoenas [Doc. No. 71] is denied.

SO ORDERED.

ENTERED:

DATE: **January 19, 2024**

HON. MARIA VALDEZ
United States Magistrate Judge

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

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

AGREED MOTION TO TAKE TWO DEPOSITIONS AFTER DISCOVERY DEADLINE

The parties, by counsel, respectfully request that the Court authorize the parties to take two depositions that the parties have been attempting to schedule since October of 2023 on dates that fall after the current fact discovery deadline of January 31, 2024. (ECF No. 66.)

Grounds for this motion are as follows:

1. **Officer Dorian Wright.** Chicago Police Officer Dorian Wright testified at plaintiff's criminal trial that he recovered the gun with which plaintiff was charged.

2. Plaintiff requested in October of 2023 that counsel for the City of Chicago produce Wright for a deposition, and counsel for the City agreed.

3. On December 22, 2023, plaintiff served a notice for Wright's deposition to proceed on January 19, 2024.

4. Officer Wright was unable to attend his deposition on January 19, 2024, because he was on leave.

5. The parties have agreed to hold the deposition of Officer Wright on February 5, 2024.

6. **Lori Wesson.** Plaintiff's mother Lori Wesson has been disclosed as one of plaintiff's damages witnesses.

7. Defense counsel requested in October of 2023 that plaintiff's counsel arrange for Ms. Wesson to appear for deposition, and plaintiff's counsel agreed.

8. Defense counsel requested to postpone the deposition of Ms. Wesson until after the Court ruled on defendants' request to listen to recorded jail and prison calls, and plaintiff's counsel agreed.

9. The parties are working together to schedule the deposition of Lori Wesson on or before February 16, 2024.

10. Defendants wish to take discovery beyond these depositions and will file their own motion supporting that request. But Defendants do not oppose this motion as these two depositions are among the discovery that Defendants agree should be completed.

ACCORDINGLY, the parties respectfully requests that the Court authorize the parties to take the deposition of Officer Dorian Wright and

Lori Wesson on dates that fall after the current fact discovery deadline of January 31, 2024.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, January 31, 2024:

MINUTE entry before the Honorable Maria Valdez: The parties' Agreed Motion to Take Two Depositions After Discovery Deadline [76] is granted. Mailed notice(lp,)

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

SEAN McCLENDON, Plaintiff, vs. CITY OF CHICAGO, MILOT CADICHON, #17711, BRYANT McDERMOTT, #12659, ROBERT McHALE, #15902, DONALD SMITH, #10257, Defendants.	)	Case No. 22-cv-5472 Honorable Sharon Johnson Coleman Magistrate Maria Valdez

DEFENDANTS' OPPOSED MOTION FOR EXTENSION OF TIME
TO COMPLETE FACT DISCOVERY

Defendants, MILOT CADICHON, BRYANT McDERMOTT, ROBERT McHALE, and DONALD SMITH, by and through their attorneys, JOHNSON & BELL, LTD., and Defendant, CITY OF CHICAGO, by and through its attorneys NATHAN KAMIONSKI, LLP jointly move this Honorable Court, for an extension of time to complete discovery up to and including February 28, 2024. In further support of this motion, Defendants state the following:

1. On October 5, 2022, Plaintiff Sean McClendon filed his complaint in this matter alleging Section 1983 claims and state law claims in connection with his October 10, 2014, arrest for aggravated unauthorized use of a weapon by a convicted felon, and subsequent conviction, and incarceration. [Dkt. #1].

2. Fact Discovery in this case is set to close on January 31, 2024. [Dkt. 64].

3. On January 10, 2024, Plaintiff and third-party witness Emmanuel Poe filed their motion to quash the Defendants' efforts to listen to and/or obtain recorded phone calls and calls logs from the Cook County Sheriff's Office and/or the IDOC. [Dkt. 70].

4. On January 10, 2024, Plaintiff also filed a motion to quash the deposition subpoenas of third-party witnesses Brittany Hill and Moneka Curtis. [Dkt. 71].

5. A hearing on both motions to quash was held before this Honorable Court on January 17, 2024. [Dkt. 72-73].

6. On January 19, 2024, this Honorable Court granted in part and denied in part Plaintiff and third-party witness Emmanuel Poe's motions to quash. [Dkt. 73].

7. This Honorable Court granted Defendants leave to obtain the IDOC call logs identifying any calls between Plaintiff and Poe's number, but the subpoena for the recordings must be limited to only the first conversation. [Dkt. 74].

8. This Honorable Court agreed to listen *in camera* to the recording of the first conversation between Plaintiff and third-party Ken Ross, which may have taken place while Plaintiff was in IDOC or CCJ custody, and granted Defendants leave to obtain the IDOC call logs to determine whether any calls were made to Ross's number. This Honorable Court further granted Defendants leave to subpoena the recording of the first call if the IDOC call logs determine whether any calls were made to Ross's number, and if there are no IDOC calls, then Defendants must submit to this Honorable Court the first CCJ call Defendants has in their possession. [Dkt. 74].

9. This Honorable Court denied Plaintiff's motion to quash the deposition subpoenas of Brittany Hill and Moneka Curtis, finding that their testimony could be relevant to Plaintiff's claim of damages stemming from his period of incarceration. [Dkt. 73-74].

10. This Honorable Court granted Plaintiff's motion to quash the subpoenaing of any phone calls between Plaintiff's criminal defense counsel, Peter Limperis, and Emmanual Poe, reasoning that there are less intrusive ways to obtain that information, such as deposing Mr. Limperis.

11. On January 18, 2024, Defendant Robert McHale was deposed.

12. On January 24, 2024, Plaintiff's wife, LaToya McClendon, was partially deposed, with Plaintiff ending the deposition with the stated intention of seeking a protective order to preclude questioning about Plaintiff's 2023 arrest for gun possession.

13. On January 26, 2024, Defendant Milot Cadichon was deposed.

14. Officer Dorian Wright's deposition is scheduled for February 5, 2024.

15. The parties have not finalized dates for the depositions of Plaintiff's mother Lori Wesson, Brittany Hill, and Moneka Curtis.

16. The parties have been working diligently to complete discovery.

17. The district court has wide discretion in settling disputes, determining the scope of discovery, and otherwise controlling the manner of discovery. See, e.g., *Thermal Design, Inc. v. Am. Soc'y of Heating, Refrigerating & Air-Conditioning Eng'rs, Inc.*, 755 F.3d 832, 839 (7th Cir. 2014) (citation and quotation omitted).

18. A discovery schedule may be modified before the expiration of the prior deadline "only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4); see Fed. R. Civ. P. 6(b)(1).

19. No party would be prejudiced by extending the discovery deadlines. On the other hand, holding the parties to the current discovery schedule would surely result in severe prejudice to Defendants, as they would be denied the amount of time they reasonably need to finish discovery that was the subject of Plaintiff's partially denied motions to quash.

20. This motion is not interposed to cause needless delay, but to afford all parties the opportunity to conduct relevant discovery pertaining to the facts in the case.

21. On January 31, 2024, Defendants corresponded with Plaintiff's counsel regarding the instant motion. Plaintiff opposes Defendants' request for extension of time. Plaintiff advised that he will promptly file a memorandum in opposition.

Defendants, MILOT CADICHON, BRYANT McDERMOTT, ROBERT McHALE, and DONALD SMITH, and THE CITY OF CHICAGO, respectfully request that this Honorable Court enter an order for an extension of time to complete discovery up to and including February 28, 2024 to 1) depose Moneka Curtis, Brittany Hill, and Peter Limperis, and complete the deposition of Latoya McClendon absent a protective order prohibiting such completion, 2) to subpoena the IDOC call logs and telephone calls relevant to this Court's ruling on Plaintiff's motions to quash, and 3) submit the first Ken Ross call and first Emmanuel Poe call (if the latter can be located) to this Honorable Court for *in camera* review.

Dated: January 31, 2024

Respectfully submitted,

JOHNSON & BELL, LTD.

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CERTIFICATE OF SERVICE

I, Lisa M. McElroy, hereby certify that, in accordance with Fed. R. Civ. P. 5 and LR 5.5 and the General Order on Electronic Case Filing (ECF), I served the foregoing, electronically via the ECF-CM system on January 31, 2024.

By: */s/ Lisa M. McElroy*
One of the attorneys on behalf of
Defendants Cadichon, McDermott, McHale, and Smith

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

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

PLAINTIFF'S RESPONSE IN OPPOSITION TO MOTION FOR EXTENSION OF TIME TO COMPLETE FACT DISCOVERY

The Court should deny defendants' request for a third extension of time to complete discovery (ECF No. 78) for the reasons that follow.

1. **Background.** On February 24, 2023, Judge Coleman set a fact discovery deadline of October 24, 2023. (ECF No. 27.) After referral, this Court ordered that, because the "discovery deadline is so generous, there will be no extensions absent extraordinary circumstances." (ECF No. 29.)

2. This Court, in response to extraordinary circumstances, has twice extended the deadline, first to November 30, 2023 (ECF No. 52) and then to January 31, 2024 (ECF No. 66.)

3. Defendants now seek a further extension of time without showing extraordinary circumstances or even good cause.

4. "In the Seventh Circuit, the court's primary inquiry is the diligence of the party seeking the extension." *McCann v. Cullinan*, No. 11 CV

50125, 2015 WL 4254226, at *10 (N.D. Ill. July 14, 2015). This Court has applied that rule in multiple cases. *E.g.*, *Kapila v. Vallera*, No. 20 C 1760, 2022 WL 20652620, at *1 (N.D. Ill. Jan. 14, 2022); *Signal Fin. Holdings LLC v. Looking Glass Fin. LLC*, No. 17 C 8816, 2021 WL 4935979, at *3 (N.D. Ill. Mar. 22, 2021).

5. Plaintiff shows below that defendants have flunked the diligence requirement on each matter raised in their motion:

a. **Phone Call Discovery.** Defendants state they require additional time for the discovery authorized by the Court on January 19, 2024 regarding phone calls, but they do not state what efforts they have made since the Court ruled. Defendants do not appear to have attempted to serve the subpoena authorized by the Court or taken any other action regarding this discovery.

b. **Depositions of Brittany Hill and Moneka Curtis.** The Court's Order of January 19, 2024, stated that the depositions of Brittany Hill and Moneka Curtis "were noticed in plenty of time to be completed by the deadline." (ECF No. 74.) This is incorrect: these depositions have not been noticed and defendants do not appear to have made any efforts to subpoena these witnesses either before or after the Court's ruling on January 19, 2024.

c. **Deposition of Peter Limperis.** The Court's Order of January 19, 2024 noted that defendant *could* have sought to depose Peter Limperis, the defense lawyer at plaintiff's trial (ECF No. 74 at 9), but the Court did not authorize this deposition to take place after the discovery deadline. Defendants

do not claim to have made any attempts to subpoena Mr. Limperis or schedule this deposition before the deadline. Moreover, defendants are unable to explain the purpose of asking attorney Limperis about conversations he may have had in 2015 or 2016 with Emmanuel Poe; Poe testified at two hearings in state court and defendants have deposed Poe in this case.

d. Deposition of Latoya McClendon. Defendants seek to reopen the deposition of Ms. McClendon to question her about plaintiff's pending criminal case. This is a blatant misuse of a civil deposition to obtain discovery for use in a pending criminal case. In addition, it is incorrect for defendants to state plaintiff ended this deposition. (ECF No. 78 ¶ 12.) Plaintiff objected to one line of questioning, defendants agreed to let the Court resolve the objection, then plaintiff's counsel questioned the witness before the deposition was completed.

ACCORDINGLY, the Court should deny defendants' request for a third extension of time to complete discovery.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.7.1.1
Eastern Division

Sean McClendon

Plaintiff,

v.

Case No.: 1:22−cv−05472
Honorable Sharon Johnson Coleman

City Of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, February 1, 2024:

MINUTE entry before the Honorable Maria Valdez: Defendants' Opposed Motion for Extension of Time to Complete Fact Discovery [78] is taken under advisement. No later than 2/5/24, Plaintiff's counsel is ordered to file the pages of the Latoya McClendon deposition from the colloquy referred to in Paragraph 5.d. of the response brief through the end of the deposition. Mailed notice (lp,)

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

Sean McClendon, *Plaintiff*, *-vs-* City of Chicago, Milot Cadichon, #17711, Bryant McDermott, #12659, Robert McHale, #15902, Donald Smith, #10257, *Defendants.*	)	No. 22-cv-5472 *(Judge Coleman)* *(Magistrate Judge Valdez)*

JOINT STATUS REPORT

The parties, by counsel, submit this report pursuant to the Court's Orders of December 29, 2023 and January 19, 2024:

Status of Discovery: On January 31, 2024, the Court granted the parties' motion to take the deposition of Officer Dorian Wright and Lori Wesson after the discovery deadline. (ECF No. 77.) Defendants' motion to extend the fact discovery deadline (ECF No. 78) is pending. The additional discovery sought by defendants is outlined in the motion.

Defendants state further: by way of update, an Illinois Department of Corrections attorney has indicated to the City's counsel that phone call logs relevant to this Court's latest discovery ruling have been requested on "high priority." The City's counsel has also attempted to contact third-party witnesses Brittany Hill and Moneka Curtis to determine deposition availability. Ms. Hill has not yet been reached, but Ms. Curtis has indicated her willingness to contact City's

counsel next week with her soon-to-be released work schedule for the coming weeks in February.

Prospects of Settlement: The parties will confer about the prospects of settlement after fact discovery is completed.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SEAN McCLENDON Plaintiff, v. CITY OF CHICAGO, et al., Defendants,	Hon. Sharon Coleman No. 1:22-cv-05472

DEFENDANTS' RULE 72(a) OBJECTION TO THE MAGISTRATE JUDGE'S ORDER DATED JANUARY 19, 2024

Defendants hereby present the following Federal Rule of Civil Procedure 72(a) objection to the Magistrate Judge's January 19, 2024, order (the "Order"), granting in part and denying in part Plaintiff's motions to quash discovery. In support, Defendants states as follows:

BACKGROUND

Plaintiff alleges that he was framed for gun possession when officers lied about seeing him ditch a gun on the night of his October 10, 2014, arrest, and hearing him admit to possessing the gun shortly thereafter. (Pl.'s Compl., Dkt. 1, ¶ 8.) In discovery, Plaintiff was asked about phone calls that he made from Cook County Jail in the days after his arrest. Specifically:

- When asked about an October 11, 2014, call to his mother, Plaintiff stated: "I called my mom and told her that the police just put a gun on me….I didn't go into too much detail. *I just told her what happened*. Basically of them putting a gun on me…." (Ex. A, Pl.'s Dep., 155:14-156:18 (emphasis added).) Plaintiff then stated that he could not

remember if his mother asked him anything about his arrest, but surmised that "[s]he probably did. She probably did, I don't recall, though." (*Id.* at 157:7-10.)

- When asked about an October 12, 2014, call to his now ex-wife Moneka Curtis, Plaintiff stated that he told Ms. Curtis "[t]he same thing I told my mom," that the police "put a gun on me." (*Id.* at 158:10-159:14.) Plaintiff could not recall if Ms. Curtis asked him questions about his arrest. (*Id.* at 159:15-160:2.)
- When asked about an October 13, 2014, call to one of his friends, Diamond Glover, Plaintiff stated that he told her the same thing that he told his mother. (*Id.* at 162:17-163:14.)

After Plaintiff's deposition, Defendants informed Plaintiff's counsel that they intended to listen to these calls, which were already in Defendants' possession because they were inadvertently produced by the Cook County Sheriff. Plaintiff then filed a motion to quash (the "Motion").

In his Motion, Plaintiff argued that the above calls are not discoverable because even though Plaintiff "likely told these three women that he had been falsely arrested…he did not go into details about the facts of his arrest." (Ex. B (Pl.s' Mot.), p. 5.) Plaintiff called Defendants' desire to listen to the calls "nothing other than speculation." (*Id.*) Plaintiff made no showing of how these calls implicated any sensitive or private information. (*Id.*, *passim*.)

A hearing was held on Plaintiff's Motion on January 17, 2024.[1] At that hearing, the City's counsel explained to the Magistrate Judge that Plaintiff had admitted that he discussed his arrest

[1] The Magistrate Judge's standing order states that "[t]he Court most often will decide most discovery motions after oral argument at the motion call and without briefing. If after argument the Court believes that the motion requires briefing, the Court normally will set an expedited briefing schedule so that the matter can be resolved promptly." (*See* https://www.ilnd.uscourts.gov/judge-info.aspx?7yT+5xuai/U= ("Motion Requirements" tab – last visited Feb 1, 2024.) The Magistrate Judge did not set a briefing schedule before or after oral argument, so Defendants did not file a response brief to Plaintiff's Motion.

on these three calls. (Ex. C (hearing transcript), 14:3-15:6; 16:1-8.) In response to these statements, Plaintiff's counsel rested on Plaintiff's Motion and stated "[n]othing on these calls is directly relevant to the issues in the case." (*Id.* at 7-8.) [2]

The Magistrate Judge took the matter under advisement and issued her written ruling on January 19, 2024. As to the calls that are the subject of this objection, the Court stated:

> Defendants want to listen to five calls Plaintiff made to three individuals from October 11, 2014, the day after his arrest, to October 13, 2014. Plaintiff testified that in his initial calls to these three individuals – his mother, his now ex-wife, and a friend – he said he had been framed. Defendants want the calls to corroborate or contradict Plaintiff's testimony as well as to prepare for the anticipated depositions of Plaintiff's mother and his ex-wife.
>
> Defendants have not offered any specific reasons these calls may be relevant, only the general argument that because Plaintiff admits he told the three individuals about his arrest, he may have given them details about the underlying circumstances. Accordingly, the motion to quash is granted as to these calls, whose slight potential relevance is outweighed by Plaintiff's privacy interest.

(Ex. D (1/19/24 Order), pp. 6-7.)

ARGUMENT

Defendants' argument is simple: when a plaintiff alleges that his arrest was illegal because police framed him for gun possession, phone calls in which the plaintiff talked about what happened during his arrest are very relevant. With all due respect to the Magistrate Judge, the Magistrate committed clear error by ruling that the phone calls involving the gravamen of this case had only "slight potential relevance," and that Plaintiff's privacy interests outweighed the Defendants' right to discover these calls.

---

[2] Plaintiff's counsel had more specific comments as to other discovery that was the subject of his Motion, but not the calls that are the subject of this objection. (*Id.* at 28:9-21.)

I. Legal Standard.

Federal Rule of Civil Procedure 72(a) states that a district judge may review a pretrial, non-dispositive ruling by a magistrate judge and "must…modify or set aside any part of the order that is clearly erroneous or is contrary to law." Under this standard, a district court must have a "definite and firm conviction that a mistake has been made." *Weeks v. Samsung Heavy Indus., Co., Ltd.*, 126 F.3d 926, 943 (7th Cir. 1997). Respectfully, Defendants submit that this standard is met here.

II. The Phone Calls At Issue Are Undeniably And Potentially Very Relevant.

Federal Rule of Civil Procedure 26(b)(1) permits a party to discover information "regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional[3] to the needs of the case." Fed. R. Civ. Proc. 26(b)(1). Caselaw is saturated with the axiom that this standard should be applied broadly and liberally, and that the threshold for relevance is low. *See*, *e.g.*, *Deitchman v. E.R. Squibb & Sons, Inc.*, 740 F.2d 556, 559 (7th Cir. 1984) ("Generally, the Federal Rules of Civil Procedure allow for broad discovery…."); *Murata Mfg. Co., Ltd., v. Bel Fuse, Inc.*, 422 F. Supp. 2d 934, 945 (N.D. Ill. 2006) ("The Federal Rules of Civil Procedure authorize the broadest scope of discovery…and relevance under Rule 26(b)(1) is construed more broadly for discovery than for trial.") (internal citations omitted); *Bouto v. Guevara*, No. 19-cv-2441, 2020 WL 4437669, *2 (N.D. Ill. Aug. 3, 2020) ("The relevance standard [under Rule 26] is extremely broad….") (Ex. E).[4]

[3] The Magistrate Judge did not prohibit discovery of these calls because of any proportionality concerns.

[4] Rule 26(b)(1) has been amended over the years, yet it is widely recognized that the scope of discovery remains as broad as it was under prior versions. *See*, *e.g.*, Christine L. Childers, *Keep on Pleading: The Co-existence of Notice Pleading and the New Scope of Discovery Standard of Federal Rule of Civil Procedure 26(b)(1)*, 36 Val. U.L.Rev. 677, 691 (2002) ("Under the new Rule 26(b)(1), the scope of discovery remains as broad as it was prior to the amendment.").

In *U.S. v. Boros*, 668 F.3d 901, 908, (7th Cir. 2012), the Seventh Circuit discussed the standard for relevance under Federal Rule of Evidence 401, which has a higher threshold than relevance under Federal Rule of Civil Procedure 26(b)(1), *see*, *e.g.*, *Wendt v. Offshore Trust Service, Inc.*, 2010 WL 11712561, *1 (N.D. Ill. Aug. 3, 2010) (internal citation omitted) ("As expansive as the definition of relevancy is under Rule 401, the standard under Rule 26 of the Federal Rules of Civil Procedure is even broader.") (Ex. F.) Even under the more stringent standard of Rule 401, the Seventh Circuit – citing Supreme Court precedent – noted that "[a] party faces a significant obstacle in arguing that evidence should be barred because it is not relevant, given that the Supreme Court has stated that there is a 'low threshold' for establishing that evidence is relevant." *Boros*, 668 F.3d at 908 (7th Cir. 2012) (citing *Tennard v. Dretke*, 542 U.S. 274, 285 (2004)). Indeed, the Seventh Circuit has repeatedly indicated the breadth of relevance in discovery.

For instance, in *E.E.O.C. v. Konica Minolta Bus. Solutions U.S.A., Inc.*, 639 F.3d 366 (7th Cir. 2011), the EEOC sought court enforcement of a records subpoena. In explaining the standard for relevancy, the Seventh Circuit stated that the EEOC need only satisfy a "not particularly onerous" standard to obtain "*virtually any material that might cast light on the allegations against the employer*…." *Id.* at 369 (internal quotations and citation omitted) (emphasis added). The Court analogized this standard to "the standard found in Federal Rule of Civil Procedure 26...." *Id.*; *accord Nat'l Steel Corp. v. Nat'l Labor Relations Bd.*, 324 F.3d 928, 934 (7th Cir. 2003) (noting in the context of the National Labor Relations Act that the Court applies a "*broad 'discovery-type' standard* to determine relevance, and that under this standard, unions should receive a broad range of *potentially useful* information to fulfill these obligations.") (internal citations omitted) (emphasis added). With this clear legal guidance at every precedential level, it is undeniable that the three calls at issue are relevant for discovery purposes.

The Magistrate Judge's description of the calls as having "slight potential relevance," instead of being outright "irrelevant," does not make the Magistrate's ruling any more reasonable. The central disputed issue in this case is very discrete: was Plaintiff seen in possession of a gun the night of his arrest. Plaintiff says no, and claims he was framed. Statements about that issue – whether they refute or confirm Plaintiff's claim – are highly relevant. Fed. R. of Civ. Proc. 26(b)(1) (making no distinction for relevance purposes as to which party's claim or defense discoverable information may support); *see Jackson v. Parker*, No. 08 C 1958, 2008 WL 4844747, *2, n.1 (noting discovery was "obviously relevant" even if it ended up supporting the opposing party's theory) (Ex. O). Indeed, if relevance in this case were a target, phone calls regarding what happened during Plaintiff's arrest would be a bullseye.

It is apparent that the Magistrate Judge accepted Plaintiff's argument that because Plaintiff claimed he did not go into details on these calls, Defendants were speculating that more details might be learned if the calls were heard. (Ex. C, pp 6-7.) But there are several problems with that.

First, Plaintiff is Defendants' adversary. For obvious reasons, Defendants' discovery efforts should not be limited by Plaintiff's assurances that there is nothing more to know than what he chooses to share. *See*, *e.g.*, *accord*, *Marten v. Yellow Freight Sys., Inc.*, No. 96-2013-GTV, 1998 WL 13244, *1 (D. Kan. Jan. 6, 1998) ("A litigant need not accept the opinion of opposing parties [ ] as to the relevancy of a document. He may discover the contents of the document. He may then draw his own conclusion….") (Ex. G); *Sandy Dale Beasley v. Tractor Supply Co.*, No. 23-cv-14131, 2024 WL 319915, *2 (S.D. Fl. Jan. 11, 2024) ("[A]dversaries in litigation need not accept their opponent's view of the underlying facts showing relevance.") (Ex. H).

Second, these calls were a decade ago, and are three of only thousands of calls Plaintiff made while incarcerated. Even if Plaintiff is being forthcoming, it is unreasonable to think that he

would remember every detail of these conversations. Indeed, Plaintiff acknowledged in his deposition he could not recall portions of these calls. (Ex. A, Pl.'s Dep., 157:7-10; 159:15-160:2.)[5]

While it is true that Defendants do not know if Plaintiff said more on these calls than he offered at his deposition, that is exactly what makes discovery proper, not improper. As Magistrate Judge Cole aptly stated (ironically, in the context of recorded prison calls):

> Is it likely that some [calls] were proved to be of no consequence? As in every case that buffets through discovery, the answer is, "of course." Discovery is not a guarantee of success; it is not a matter of mathematics and equations in which certainty and exactness play central roles. It is, by its very nature, an enterprise with uncertain results and no assurance of ultimate success. Thus, because the information that is sought satisfies, in the abstract, the general requirement that the information sought be "relevant" – and proportional – does not ensure that the results of any given inquiry will yield usable information…. The inescapable fact is that litigants often come away "empty handed' from discovery."…But the indisputable reality as common sense dictates is that one can't know which specific items sought will turn out to be significant until they all are produced and reviewed.

Velez v. City of Chicago, No. 18 C 8144, 2021 WL 3231726, *2 (N.D. Ill. 2021) (internal citations omitted) (Ex. I); *accord Nw. Mem. Hosp. v. Ashcroft*, 362 F.3d 923, 931 (7th Cir. 2004) ("[o]ne can't know what one has caught until one fishes."). Because these conversations involve the main dispute in the case, their potential relevance is apparent, and is far from slight.

III. Plaintiff Made No Showing Of Any Privacy Interest That Could Outweigh The Relevance Of These Calls

Federal Rule of Civil Procedure 26(c)(1) allows a party to seek a protective order against discovery in order to guard against "annoyance, embarrassment, oppression, or undue burden or expense…." As the Supreme Court has explained, a party seeking such an order has the burden of presenting "a particular and specific demonstration of fact, as distinguished from stereotyped and

[5] For this reason, it is equally unreasonable to limit Defendants to the call recipients' memories about what was discussed ten years ago.

conclusory statements," as to why such an order should issue. *Gulf Oil v. Bernard*, 452 U.S. 89, 102, n.16 (1981). At most, Plaintiff only presented the latter.

Specifically, the Magistrate Judge ruled that Plaintiff's privacy interests outweigh any potential relevance in the pertinent calls. (Ex. D, pp.6-7.) But Plaintiff made no argument, gave no explanation, and submitted no support in the form of affidavits or otherwise as to how these few calls unduly burden his privacy interests. Indeed, when discussing these calls, Plaintiff did not even mention privacy as a concern. (Ex. B, p.5.) *See Velez*, 2021 WL 3231726 at *4 (denying protective order regarding prison calls when "plaintiff has made no specific showing whatsoever as to what he asserts is the 'intimacy' or 'sensitivity' of the phone calls at issue.") (Ex. I).

In an introductory paragraph, Plaintiff cited one case on the matter of privacy generally, quoting *DeLeon-Reyes v. Guevara*, No. 18-cv-01028, 2020 WL 7059444, *5 (N.D. Ill. Dec. 2, 2020) for the principle that "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." (Ex. B, p.3.) But even this sole authority offered by Plaintiff supports the narrow discovery sought here.

In *DeLeon*, the recorded calls at issue were those of a non-party, altering the privacy analysis from the beginning. *Id.* at *2 (Ex. N). Moreover, the defendants sought many calls because of an assumption that they might house relevant information, when prior discovery had not established that relevant topics were actually discussed. *Id.* at * 5-6. Here, only three calls are at issue, and Plaintiff himself has acknowledged that he talked about his arrest on these calls. Thus, the only unanswered question is not *whether* Plaintiff said anything relevant, but *how much* and *what* he said. This case presents exactly what the Court in *DeLeon* – and other courts that have prohibited such discovery – found lacking. *See Bishop v. White*, No. 16 C 6040, 2020 WL 6149567,

*6 (N.D. Ill. Oct. 20, 2020) (no evidence that relevant communications existed) (Ex. J); *Pursley v. City of Rockford*, No. 18-cv-50040, 2020 WL 1433827, *2-4 (N.D. Ill. Mar. 24, 2020) (quashing an "unlimited subpoena" for calls without indication that "material sought may contain relevant information") (Ex. K).

Defendants are aware of no case in which prison calls that – per the plaintiff's own admission – involved a relevant matter and were still not discoverable. To the contrary, courts have allowed such discovery on less specific bases than here. *See Coleman v. City of Peoria*, No. 15-cv-1100, 2016 WL 3974005 (N.D. Ill. Jul. 2, 2016) (allowing discovery of calls because plaintiff disclosed call recipients as potential witnesses) (Ex. L); *Rodriguez v. Chicago*, 18-cv-7951, 2021 WL 2206164 (N.D. Ill. Jun. 1, 2021) (allowing discovery of calls that were "*likely* to have relevant information," and rejecting plaintiff's effort to "narrow the scope of discovery") (Ex. M).

Defendants are also unaware of any case that has recognized a strong privacy interest in an inmate's recorded phone calls, which is not surprising because inmates know that they are being recorded. *See*, *e.g.*, *Bishop*, 2020 WL 6149567 at *4 (referring to plaintiff's privacy interest in jail calls as "minimal") (Ex. J); *Coleman*, 2016 WL 3974005 at *4 (noting plaintiff's "lessened privacy interests" in recorded calls were not enough to prohibit discovery) (Ex. L). Thus, Plaintiff's failure to establish any concrete privacy concerns cannot be supplemented by a generally recognized concern in case law, as the relevant law has only recognized a weakened privacy interest in jail calls. And even if that were not the case, there is a governing confidentiality order in this case that could have been used to address any privacy concerns while still honoring the discovery principles discussed above. (*See* Dkt. 36.)

Conclusion

Defendants appreciate the time and attention the Magistrate Judge has devoted to monitoring this case throughout discovery. But, respectfully, Defendants disagree with the Magistrate on this issue. Because the potential relevance of these calls is far more than slight, and because Plaintiff made no showing of any privacy interest that would alter the usual framework of broad discovery, Defendants asks this Court to overrule the Magistrate Judge's Order as it relates to the three calls discussed herein and permit Defendants to listen to those calls (whether under the contours of the governing confidentiality order, or otherwise).

Respectfully submitted,

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EXHIBIT A

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

SEAN McCLENDON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 22 C 05472
	)	
CITY OF CHICAGO;	)	Judge Coleman
MILOT CADICHON, #17711;	)	Magistrate Judge Valdez
BRYANT McDERMOTT, #12659;	)	
ROBERT McHALE, #15902;	)	
DONALD SMITH, #10257,	)	
	)	
Defendants.	)	

The video-recorded deposition of SEAN McCLENDON, taken pursuant to the Federal Rules of Civil Procedure, before Donna M. Urlaub, Certified Shorthand Reporter No. 084-000993, at 33 West Monroe Street, Suite 1830, Chicago, Illinois, Illinois, on Monday, October 30, 2023, commencing at 10:08 a.m. pursuant to notice.

APPEARANCES:

KENNETH N. FLAXMAN, PC, by
MR. JOEL A. FLAXMAN
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appeared on behalf of the plaintiff;

A. That's my friend that's a doctor.
Q. Man or woman?
A. A man. A childhood friend.
Q. Then going further down there's a name Peter Limperis?
A. That's my lawyer that I had on my case.
Q. That was your lawyer in -- in your 2016 trial?
A. Yeah, that was my lawyer for the trial that the police put the gun on me, yeah.
Q. And had you ever used him as your lawyer before?
A. No. No, I have, I have. I have used him before but -- for a -- I want to say the case was -- I -- was it a ... a motor vehicle or something like that. But I have used him before. That's my second time using him.
Q. Okay. So you used him some point before?
A. Yes.
Q. And who put you in contact with him, or how did you contact him about this particular case?
A. I used him before for my first case.
Q. So you already knew him.

A. I already knew him, yes. He's actually like attorney for the family.
Q. Has he -- okay. And this -- it looks like the first date he's listed as visiting you is November 3rd, 2016. That's after your trial, right?
A. After my trial, yes. That's after my trial, yes.
Q. You had spoken to him before your trial, right?
A. Yes.
Q. So if he didn't -- before you were bonded out in 2015, did you speak to Mr. Limperis while you were in Cook County Jail?
A. While I was in Cook County Jail? You saying before I bonded out?
Q. Right.
A. Did I talk to him? No, I did not, no.
Q. Did anyone talk to him on your behalf before you bonded out?
A. I think my mom reached out to him and told him we might need his -- his -- his duties. Might need him to fight this case for us. I haven't -- but I didn't talk to Mr. Limperis until I bonded out. But I think my mom did reach out to

him while I was still incarcerated, though.
Q. And when you were still incarcerated and your mom reached out to him, did she ever then get back in touch with you to tell you what he had said?
A. Yes. He's my lawyer.
Q. So your mom was kind of -- is it fair to say while you were incarcerated in Cook County Jail, your mom passed messages between you and Mr. Limperis?
A. I'm not gonna say she passed messages. It was really just making sure that he was coming to the court dates and letting him know that he's hired for the case.
Q. And before you bonded out then, is it fair to say that the way that you and Mr. Limperis spoke was through your mother?
A. No. He was either -- at court. I had talked to him before on the phone, but it wasn't like, you know, probably like once or twice maybe. But, you know, I had court once a month. I was in the County for, what, six months that say? So all our conversations really, We'll meet here. Come talk to me before I even come out.

Q. Going back up to the first page, Plaintiff's 666, looking at the columns for the Contact ID Name, End Visit, Start Date, do you see -- I can even make this a little bigger now. There's only one visit listed in 2014, and that's Lajeria Bailey. Do you see that here?
A. Yeah.
Q. Do you recall only having one visitor in 2014?
A. Yes. I -- yes.
Q. Okay.
A. That's -- that was so long ago, I'm not -- you know, that was a long time, man. I don't know. But if it says it, then I guess.
I'm still tripping on the other case you showed me that say I was locked up for 8 days. I don't even remember that at all, so ...
Q. All right. Let's look at --
A. I feel like, I don't know.
Q. Let's look at I think what we'll have marked as Exhibit 3. And these are documents Bates labeled Officers 754 to 849.
And you can see at the very top of the first page it says, Cook County Illinois Call

Detail Report? Do you see that, Mr. McClendon?
A. Yes, Cook County Call Detail Report, yes.
Q. Okay. And, again, on the first page, which is Bates labeled Officers 754, it's got a number of -- it's like an Excel sheet with a number of rows and columns. Do you see that?
A. Yes.
Q. And there -- in the -- kind of in the center it has a First Name column, and that's Sean, and Last Name, McClendon, which is you; correct?
A. Right.
Q. Okay. And earlier on it's got a column that says, Dialed Number, and then it's got some phone numbers here. Do you see that?
A. Yes.
Q. And I can represent to you this is a list of phone calls made that we received from the Cook County Jail.
A. Okay.
Q. And then also it's got a column for Start Time and End Time for each call. Do you see that?
A. Yes.

Q. Okay. So you were -- the barbecue was the evening of October 10th; correct?
A. Yes.
Q. So you were brought then and processed at Cook County Jail. By the time you were there, it was October 11th; is that right?
A. Yes.
Q. Okay. And so here, looking at the start and end time for the very first call, you can see there was one call made on October 11th and only one, right? The next call was October 12th. Do you see that?
A. Yes.
Q. So the call you made on October 11th was to [redacted]. Do you know whose number that is?
A. That's my mom number.
Q. Okay. So the -- the first and only person your called on October 11th was your mother.
A. Yes.
Q. Okay. And she had not yet been to the police station to actually visit you in person, right?
A. No.

Q. Okay. So was this the first time that you were telling her what was happening to you?
A. Exactly.
Q. Okay. What did you tell her?
A. I called my mom and told her that the police just put a gun on me, and I don't know what's gonna happen at -- at court the next day. And please make sure you talk to Peter Limperis so I could have my attorney at court.
Q. What was your mom's reaction?
A. She was devastated. She was mad. She was hurt.
Q. Did you tell her the circumstances of your actual arrest, how it happened?
A. No, I didn't go into too much detail. I just told her what happened. Basically of them putting that gun on me and just make sure that I have my lawyer at court.
Q. What did she say when you told her that the police were putting a gun on you?
A. She was hurt. She was hurt. She was devastated. She like, Wow, that's crazy.
But, you know, like growing up in my area, that's not really hard to believe or

far-fetched. They did it all the time. They still doing it today.
Q. Do you remember if she asked you any questions about -- about what happened?
A. No, I don't remember. I don't recall. I don't recall.
Q. Other than saying the police had put a gun on you and asking --
A. She probably did. She probably did, I don't recall, though. I just know the main thing I was focused on was making sure that my lawyer was coming to court the next day and let her know that the dirty cop put a gun on me.
Q. Sure. Other than those two things, asking about Mr. Limperis and saying that a cop put a gun on you --
A. Yeah.
Q. -- do you remember anything else you said to her on that call?
A. No, I don't.
Q. Let me blow this up a little bit because I'm just focusing right now on --
A. Please do. I'm over here squinting. Thank you.

Q. Yeah. I'm just focusing on these, like, one -- on these columns, the dialed numbers here. So I can keep going if you need to be able to see the numbers. Does that help?

A. Yeah, that's -- that's perfect.

Q. Okay. So we've already talked about on October 11 you called your mother, and that seems to be the only person you called; correct?

A. Yes.

Q. On October 12th, the first call you made is to a phone number [redacted]. Do you recognize that number?

A. Yes.

Q. Whose number is that?

A. That's Moneka. Moneka Curtis, my ex-wife number.

Q. Who you eventually married, but at this time you weren't married to yet?

A. Yes. That's -- that was the one I married when I was in jail. She was the one I married when I was in jail. I was in prison.

Q. Okay.

A. At this time she was my girlfriend.

Q. Okay. And is this the first time, like

it was with your mother before, is this the first time that you're telling Ms. Curtis what happened to you?

A. Yes, sir.

Q. And what -- what did you tell her?

A. The same thing I told my mom.

Q. So you mentioned that the police had put a gun on you?

A. Yes, sir.

Q. Do you remember anything else you told her on that call?

A. I'm pretty sure I told her, too, to make sure that if my mom need any help financially with a lawyer, to make sure that she helps her.

Q. Anything else you remember talking about with Ms. Curtis on that call?

A. No.

Q. And do you remember what she said to you when you mentioned that the police had put a gun on you?

A. She was -- she was mad. She was hurt too. She was saying that was crazy, just saying it's just -- upset about the whole situation.

Q. Do you remember if she asked you any

questions about what happened?

A. No, I don't remember that.

Q. Returning just earlier to the call you made on the 11th to your mother, do you recall if you told your mother that you knew the gun actually belonged to Ken Ross?

A. No.

Q. No, you don't remember, or no, you didn't say that?

A. No, I didn't say that.

Q. Okay. And when you talked to Ms. Curtis --

A. Neither one.

Q. -- you didn't tell Ms. Curtis that the gun belonged to Ms. Ross either?

A. No, sir.

Q. I'm sorry. Mr. Ross.

Okay. And then later on on the 12th, after speaking to Ms. Curtis, you eventually called, it looks like, your mother's number again?

A. Yes.

Q. And what did you talk about on that call?

A. What date that is again?

Q. Still October 12th.

A. 12th?

Q. The dates are right here, yep.

A. Oh, wow. I guess -- I don't recall. Probably said the same stuff, see what's going on with the lawyer, checking on the status, and seeing how she is holding up.

Q. So is it safe to say, then, as of October 12th, you're still probably talking to your mother about -- about the case?

A. Not on the phone.

Q. Well, you said on this call you talked to her about the same stuff about your lawyer, so you're -- you're talking about the case on this call; is that correct?

A. Meaning, like, make sure I have my lawyer to come to court and see how much he was charging and stuff like that, yes.

Q. Do you remember anything else you spoke about with your mother on this call?

A. No.

Q. All right. Going on to the next page, the same columns, we're still on October 12th, and it looks like there's two more calls to your

mother. Do you see that?
A. Yeah.
Q. And do you remember what you spoke about with your mother on either of those two calls?
A. I don't know. I don't remember.
Q. Okay. That's all the calls for October 12th.
October 13th, this is, what, three days after -- two to three days after you were brought in to jail. There's a call to [redacted]. Do you recognize that number?
A. No.
Q. Do you have any idea who you were calling?
A. No, I don't. I don't even remember that number, who that number is.
Q. And underneath that there's a call to number [redacted]. Do you recognize that number?
A. I think that's Diamond number, Diamond Glover.
Q. Diamond Glover?
A. Yes.
Q. And why would you be calling Diamond Glover from jail?

A. You said why?
Q. Why, yeah.
A. That's a friend.
Q. And this would be the first time then that you and Ms. Glover had spoken since you were arrested, right?
A. Yes.
Q. So is this the first time she's learning about what's happening to you?
A. Yes.
Q. Do you remember what you told her?
A. I told her the same thing told my mom, same thing I told my girl at the time, Moneka, that the police put a gun on me.
Q. By the way, I promise I'm not going to go through every single call on this list.
A. I was finna say, man, it's gonna be a lot of numbers, though.
Q. No, no.
A. Man, I don't --
Q. We're not going to do that. I'm just -- I'm just interested in asking you about the first few days that you were in jail.
A. Of course.

Q. Okay. So this [redacted] number, you're not sure who that was. The [redacted] you think was Diamond Glover; correct?
A. Diamond Glover, yes.
Q. Okay. And then that's -- those are the only two calls you made on October 13th.
On October 14th it looks like the first two calls are to your mother; correct?
A. Yes.
Q. And then the 9345, two more calls. And we've already discussed, I think --
A. That's Moneka.
Q. -- that one is Moneka, right?
A. Yes.
Q. So maybe I can short circuit this a little bit.
So we already talked about how in 2014 you only remember having one visitor, Lajeria Bailey, right?
A. Yes.
Q. Okay. So is it fair to say then for all the phone calls you made in 2014, other than if you talked to Lajeria Bailey, those calls would be the first time that your family and friends you're

speaking to are learning about what happened to you?
A. Yes.
MR. FLAXMAN: Objection; foundation.
BY MR. WILSON:
Q. And do you remember who else besides Ms. Glover, Ms. Curtis, and your mother, who else you told that the police had put a gun on you?
A. No, I don't remember.
Q. You don't remember?
A. No.
Q. Do you remember Ken Ross's number in 2014, the one you used to talk to him?
A. No, I don't. It been so long, I don't remember his number.
Q. Do you remember any phone numbers for him at any point in time?
A. You talking about like offhand?
Q. Yeah.
A. No, I don't.
Q. Do you have a number saved for him in your phone currently?
A. Currently, yes.
Q. And do you have your phone on you?
A. Yes.

EXHIBIT B

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

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

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,

/s/ Joel A. Flaxman
Joel A. Flaxman
ARDC No. 6292818
Kenneth N. Flaxman
200 South Michigan Ave. Ste 201
Chicago, Illinois 60604
(312) 427-3200
Attorneys for Plaintiff
and Emmanuel Poe

Exhibit 1

Subject: Phone calls in McClendon
From: Brian Wilson <bwilson@nklawllp.com>
To: Joel Flaxman <jaf@kenlaw.com>
Cc: Kenneth Flaxman <knf@kenlaw.com>, "Lisa M. McElroy" <mcelroyl@jbltd.com>, "Brian P. Gainer" <gainerb@jbltd.com>, Shneur Nathan <snathan@nklawllp.com>
Date Sent: Friday, December 22, 2023 2:13:02 PM GMT-06:00
Date Received: Friday, December 22, 2023 2:13:30 PM GMT-06:00

Joel,

Defendants believe that given information learned in the depositions taken thus far, there is a sufficient basis to obtain and listen to the following phone calls. Most of these are Cook County Jail calls, which as you know Lisa and Brian have recordings of already because they were mistakenly produced by the Sheriff (although they have not been listened to). This email is notice to you that Defendants intend to obtain the calls listed below that we do not already have, and to listen to the calls listed below that we already have.

However, we want to respect your holiday plans and are not putting a deadline by which we will listen to the calls already received or serve subpoenas to obtain calls not yet received. Instead, Defendants will take no such actions until you have had a chance to consider our position and let us know if you intend to file a motion for a protective order. I'll likely contact you sometime next week to see if you've had such an opportunity and to keep the ball moving; but again, no ultimatums are being issued.

SHERIFF/JAIL PHONE CALLS:

1. All calls to Ken Ross
2. Oct 11 call to Plaintiff's mother(number 0750)
3. Oct 12 call to Moneka Curtis (number 9345)
4. Oct. 12 calls to Plaintiff's mother
5. Oct 13 call to Diamond Glover (number 8109)
6. Every phone call that represents the first time McClendon called any number while in Cook County Jail

IDOC MCCLENDON PHONE CALLS:

1. All calls to Ken Ross using the number we have for him.
2. All calls between McClendon and Poe between Oct 21 and Feb 13, 2014.
3. The call reflected in Exhibit 4 to Plaintiff's dep (CITY 1953-54).

POE IDOC PHONE CALLS:

Any calls between McClendon and an attorney from Peter Limperis's firm.

Have a nice holiday and a happy new year if we don't talk before then.

--

Regards,

Brian Wilson

Nathan & Kamionski LLP

33 W. Monroe St., Suite 1830

Chicago, IL 60603

312-957-6649

Exhibit 2

EXHIBIT
4 McClendon 103023

20180146 [illegible] 1023

ILLINOIS DEPARTMENT OF CORRECTIONS
Offender Disciplinary Report
I.R.C.C.
Facility

Date: 5-27-2018

Type of Report: ☒ Disciplinary ☐ Investigative

Offender Name: MCCLENDON, SEAN ID #: M27978

Observation Date: 5-27-2018 Approximate Time: 8:00 ☒ a.m. ☐ p.m. Location: OPERATIONS

Offense(s): DR 504: 205 - Security Threat Group or Unauthorized Organizational Activity, 307- Unauthorized Movement, and 310 - Abuse of Privileges

Observation: (NOTE: Each offense identified above must be substantiated.) On the above date and approximate time R/O was routinely reviewing telephone calls placed on 5/20/2018 at which time it was found that Offender MCCLENDON, SEAN M27978 STG-GANGSTER DISCIPLE (1D23) completed a one minute call on 5/20/18 at 9:09am to [redacted] listed as Moneka Curtis. After the completion of that call MCCLENDON called [redacted] also listed as Moneka Curtis, at 9:10am. During the call MCCLENDON and the female had general converasation. INTEL reviewed the offender dayroom schedule and found that during these calls, cells R1D65-80 were scheduled to have dayroom and MCCLENDON was assigned to R1D23. MCCLENDON's scheduled dayroom was not until 8-9:30pm. (307,310) INTEL reviewed all MCCLENDON's completed calls from 9:00am on 5/20/18 through 5/27/18. It was (cont.)

Witness(es):

☒ Check if Offender Disciplinary Continuation Page, DOC 0318, is attached to describe additional facts, observations or witnesses.

C/O LJESTER	6646		5-27-2018	11:00 ☒ a.m. ☐ p.m.
Reporting Employee (Print Name)	Badge #	Signature	Date	Time

Disciplinary Action:

Shift Review: ☐ Temporary Confinement ☐ Investigative Status Reasons:

Printed Name and Badge # | Shift Supervisor's Signature (For Transition Centers, Chief Administrative Officer) | Date

Reviewing Officer's Decision: ☐ Confinement reviewed by Reviewing Officer Comment:

☒ **Major Infraction,** submitted for Hearing Investigator, if necessary and to Adjustment Committee

☐ **Minor Infraction,** submitted to Program Unit

Print Reviewing Officer's Name and Badge # | Reviewing Officer's Signature | Date: 5/27/18

☒ **Hearing Investigator's Review Required** (Adult Correctional Facility Major Reports Only)

Print Hearing Investigator's Name and Badge # | Hearing Investigator's Signature | Date: 5-28-18

Procedures Applicable to all Hearings on Investigative and Disciplinary Reports

You have the right to appear and present a written or oral statement or explanation concerning the charges. You may present relevant physical material such as records or documents.

Procedures Applicable to Hearings Conducted by the Adjustment Committee on Disciplinary Reports

You may ask that witnesses be interviewed and, if necessary and relevant, they may be called to testify during your hearing. You may ask that witnesses be questioned along lines you suggest. You must indicate in advance of the hearing the witnesses you wish to have interviewed and specify what they could testify to by filling out the appropriate space on this form, tearing it off, and returning it to the Adjustment Committee. You may have staff assistance if you are unable to prepare a defense. You may request a reasonable extension of time to prepare for your hearing.

☒ Check if offender refused to sign

Offender's Signature ID#

C/O Dicks | 5286 | L. Dicks
Serving Employee (Print Name) | Badge # | Signature

5-28-18 Date Served | 8:14 Time Served ☒ a.m. ☐ p.m.

☐ I hereby agree to waive 24-hour notice of charges prior to the disciplinary hearing.

Offender's Signature ID#

(Detach and Return to the Adjustment Committee or Program Unit Prior to the Hearing)

Date of Disciplinary Report | Print offender's name | ID#

I am requesting that the Adjustment Committee or Program Unit consider calling the following witnesses regarding the Disciplinary Report of the above date:

Print Name of witness | Witness badge or ID# | Assigned Cell (if applicable) | Title (if applicable)

Witness can testify to:

Print Name of witness | Witness badge or ID# | Assigned Cell (if applicable) | Title (if applicable)

Witness can testify to:

Distribution: Master File, Offender, Facility (2)

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DOC 0317 (Rev. 2/2007)

CITY 001953

ILLINOIS DEPARTMENT OF CORRECTIONS

Offender Disciplinary Continuation Page

IRCC
Facility

☒ Disciplinary Report ☐ Investigative Report ☐ Disciplinary Summary ☐ Adjustment Committee Summary

Report/Incident Date: 5-27-2018 Incident # (if applicable): _____

Offender Information:
Offender Name: MCCLENDON, SEAN ID #: M27978

Use the space below to provide any additional information.

found that MCCLENDON completed additional calls during his scheduled dayroom at 8:43pm, 8:51pm, and 9:22pm on 5/20. On 5/22 MCCLENDON's scheduled dayroom was 6:30pm-8:00pm however, MCCLENDON completed calls at 8:27am, 9:00am, 1:07pm, and 1:21pm to [redacted] MCCLENDON also completed calls at 12:35pm and 1:25pm to [redacted] listed as Chaen Aiealao, at 1:58pm to [redacted] listed as Kevin Williams. At play point 1:00 MCCLENDON hands the phone off to WIMBERLY, IMIR R72774 (1D70) and told the male to complete a 3-way call for WIMBERLY to [redacted] The male dialed the number and attempted the 3-way communication however there was no answer. WIMBERLY identified himself as "IMIR" and stated that he was not on A-Grade and could not make calls himself. Offender 360 confirmed that WIMBERLY was on B-Grade at the time of the call. (310) On 5/23 MCCLENDON's scheduled dayroom was 12:30-2:15pm however MCCLENDON completed a call at 7:15pm to [redacted] On 5/25 MCCLENDON's scheduled dayroom was from 8-9:30am however, MCLENDON completed calls at 12:33pm, 12:37pm, 12:51pm, 1:16pm, 1:40pm. On 5/26 MCCLENDON's scheduled dayroom was from 6:30-8:00PM however MCCLENDON completed calls at 9:42am, 9:44am, and 1:38PM during other offender's dayroom times. (307,310).

In MCCLENDON's call on 5/25 at 1:16pm to [redacted] listed as Kevin Williams, MCCLENDON speaks with a male about "Big Meachie". MCCLENDON asked the male if "Big Meachie" was still representing "Pocket Town" [redacted] The male confirmed that they were still representing "Pocket Town". MCCLENDON then told the male to complete a 3-way call to "Hot Boi" at 773-[redacted] At play point 4:24 the unauthorized 3-way call was completed where MCCLENDON and the male talk about "Krump" from "Dro City" [redacted] getting shot and killed on 68th & Morgan. MCCLENDON told the male, "Fuck Krump and Dro City. You know what it is". They then continue discussing the shooting and at play point 14:37 MCCLENDON represented his STG affiliation by telling the male, " T&M Pocket Town for life" before ending the call. (205). MCCLENDON is a known [redacted] from the set of Pocket Town in Chicago, IL. R/O spoke with Housing Unit R1 officers J. Stone and J. Dircks who confirmed that they did not authorize MCCLENDON out of his cell to make phone calls on dayrooms he was not scheduled to have.

The charges of 205 - Security Threat Group or Unauthorized Organizational Activity, 307- Unauthorized Movement, and 310 - Abuse of Privileges were substantiated by MCCLENDON being out of his cell unauthorized and routinely completing calls during times in which he was not scheduled to have dayroom, by MCCLENDON completing unauthorized 3-way calls and sharing phone calls with other offenders, and by MCCLENDON representing his STG affiliation and discussing rival STG members in phone calls. MCCLENDON was identified by state issued ID as well as by voice and speech pattern in the calls. The above listed calls are recorded and stored on the Secure Call Platform provided by Securus.

A complete report is on file in the INTEL-I/A office at IRCC. End of Report.

Distribution: Master File, Offender, Facility (2)

Printed on Recycled Paper

DOC 0318 (Eff. 8/2006) (Replaces DC 7212)

CITY 001954

EXHIBIT C

TRANSCRIBED FROM DIGITAL RECORDING

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:

For the Plaintiff: MR. JOEL A. FLAXMAN
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For Defendant City: MR. BRIAN WILSON
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PLEASE NOTIFY OF INCORRECT SPEAKER IDENTIFICATION
NOTE: FAILURE TO STAND NEAR THE MICROPHONE MAKES PORTIONS UNINTELLIGIBLE AND INAUDIBLE

Transcriber:

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APPEARANCES: (Continued)

For the Individual Defendants: MS. LISA MARIE McELROY
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Suite 2700
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(312) 372-0770
E-mail: Mcelroyl@jbltd.com

(Proceedings heard in open court:)

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

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

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

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

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

THE COURT: All right. Happy new year.

MR. WILSON: You as well.

MR. FLAXMAN: Thank you. Happy new year.

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

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

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

MR. WILSON: Thank you, Judge.

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

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

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

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

MR. WILSON: No, Judge.

THE COURT: Okay.

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

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

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

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

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

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

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

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

from --

THE COURT: Over what period of time?

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

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

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

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

THE COURT: Yes.

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

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

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

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

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

MR. WILSON: He did not.

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

So that's just an irreconcilable --

THE COURT: And what does that go to?

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

THE COURT: So just a general veracity claim?

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

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

the gun belonged to Mr. Ross?

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

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

MR. WILSON: Yes.

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

MR. WILSON: Correct. The plaintiff --

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

MR. WILSON: For the plaintiff, yes.

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

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

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

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

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

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

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

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

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

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

What does that do for you?

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

THE COURT: To what?

MR. WILSON: Relevant to corroborating his claims.

THE COURT: His claims that the gun was --

MR. WILSON: Not his.

THE COURT: -- not his.

MR. WILSON: Correct.

THE COURT: And that --

MR. WILSON: That's a relevant --

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

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

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

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

could contradict it.

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

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

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

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

THE COURT: Okay.

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

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

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

THE COURT: Okay.

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

have complete IDOC phone logs --

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

MR. WILSON: Correct.

THE COURT: We need not delve into that.

MR. WILSON: Right.

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

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

THE COURT: Okay.

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

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

The October 11, 2014 was a phone call from plaintiff

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. WILSON: No.

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

MR. WILSON: No, Judge, we --

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

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

THE COURT: Okay.

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

Next --

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

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

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

MR. WILSON: Thank you.

THE COURT: -- address these.

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

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

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

where it was found.

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

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

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

So that's just one --

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

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

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

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

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

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

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

THE COURT: Hmm.

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

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

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

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

MR. WILSON: Certainly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: So just the testing of it.

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

things, so --

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

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

THE COURT: Oh, okay.

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

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

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

So I know that's a lot.

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

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

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

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

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

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

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

THE COURT: Every first call --

MR. WILSON: -- every first call.

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

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

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

MR. WILSON: In total, probably around there.

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

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

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

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

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

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

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

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

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

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

THE COURT: Right.

MR. WILSON: My point is --

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

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

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

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

MR. WILSON: I understand.

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

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

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

Any rebuttal on this matter?

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

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

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

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

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

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

THE COURT: So both.

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

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

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

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

MR. WILSON: Yes.

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

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

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

MR. WILSON: Yes.

THE COURT: All right.

MR. WILSON: Yes.

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

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

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

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

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

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

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

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

MR. FLAXMAN: Correct.

THE COURT: Okay.

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

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

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

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

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

THE COURT: How close he and his daughter were?

MR. WILSON: Correct.

THE COURT: Okay.

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

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

MR. WILSON: Correct.

THE COURT: -- he wants to quash.

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

MR. FLAXMAN: No.

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

MR. WILSON: Yes.

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

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

MR. WILSON: Yes.

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

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

MR. FLAXMAN: Yes.

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

Thank you very much.

MR. WILSON: Thank you, Judge.

(Which were all the proceedings heard.)

CERTIFICATE

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

/s/Kathleen M. Fennell *January 25, 2024*

Kathleen M. Fennell
Official Court Reporter

Date

EXHIBIT D

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

SEAN McCLENDON,	)	
	)	
Plaintiff,	)	
	)	**No. 22 C 5472**
v.	)	
	)	**Magistrate Judge**
CITY OF CHICAGO; MILOT CADICHON; BRYANT McDERMOTT; ROBERT McHALE; and DONALD SMITH,	)	**Maria Valdez**
	)	
Defendants.	)	

ORDER

This matter is before the Court on Plaintiff and Third-Party Witness Emmanuel Poe's Motion to Quash [Doc. No. 70] and Plaintiff's Motion to Quash Deposition Subpoenas [Doc. No. 71].[1]

BACKGROUND

On October 10, 2014, the defendant officers seized Plaintiff and his friend Emmanuel Poe on a porch near a parking lot where they had parked their vehicle, which the officers had been tailing. Defendant Cadichon claimed that he saw Plaintiff drop an object on the porch, and another officer later found a gun behind a couch located there. Plaintiff was arrested for possession of the gun based on defendant Cadichon's claim and Plaintiff's alleged later admission to defendants

[1] Defendants did not file written responses to the motions, but argument was heard on January 17, 2024.

McHale and McDermitt he did possess the gun because people were after him. Plaintiff asserts that both bases for his arrest were false and concocted by the individual defendants. Plaintiff testified at trial that he did not possess a gun, nor did he ever admit to the officers that he possessed a gun. He was nevertheless convicted and sentenced to a term of eight years in the Illinois Department of Corrections. The sentence was later vacated without remand on March 7, 2022 after the Illinois Appellate Court concluded there was "no reasonable articulable suspicion for the warrantless seizure" of Plaintiff and Poe. *See People v. McClendon*, 2022 IL App (1st) 163406, ¶ 21. Plaintiff subsequently sued the City of Chicago and the arresting officers under 42 U.S.C. § 1983, alleging that his constitutional rights were violated because he was falsely arrested after the individual defendants concocted a false story and fabricated evidence against him.

In previous subpoenas, Defendants sought all of Plaintiff's jail calls[2] as well as a number of calls associated with third parties whose ID numbers Plaintiff was alleged to have used to make calls. On August 8, 2023, this Court granted Plaintiff's motion to quash the subpoenas issued to the Cook County Sheriff's Office and two IDOC facilities, dismissing Defendants' conclusory argument that "common sense" suggests Plaintiff would have discussed topics relating to liability or damages in the calls. Instead of "fishing," The Court advised Defendants they would need to provide

[2] The Court uses the term "jail calls," but some were made from state prison, where he served four months beginning a few days after his October 2014 arrest. After his stint at the Illinois Department of Corrections, he returned to the Cook County Jail until he was bonded out in May 2015. He returned to the CCJ in July 2016 after the guilty finding and then returned to IDOC custody until his conviction was reversed in 2022.

some specific assurance that there is a reasonable likelihood the calls contain relevant information.

Two months later, Plaintiff and third party Poe moved to quash additional subpoenas seeking, among other things, recordings of all calls Plaintiff made to Poe from 2016 to 2022 and logs for calls Poe made to any number. That motion was also granted on the basis of relevance. Plaintiff's and Poe's stories about the events surrounding the arrest were consistent with each other before, during and after the underlying criminal trial, and thus this was not a case where, for example, the conversations would show Plaintiff's efforts to get Poe to recant a prior accusation.

Defendants' next round of subpoenas sought to obtain recordings of Plaintiff's and Poe's calls with each other and with various other individuals. Plaintiff and Poe have again moved to quash, primarily on the basis of relevance.

DISCUSSION

Under Federal Rule of Civil Procedure 45, a court must quash or modify a subpoena if the movant establishes that it "subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3)(iv). The parties do not dispute that Plaintiff and Poe have standing to quash a subpoena directed to third parties based on undue burden where the subpoena implicates their privacy interest in the calls at issue. *See Simon v. Northwestern Univ.*, No. 15 C 1433, 2017 WL 66818, at *2 (N.D. Ill. Jan. 6, 2017). Numerous courts have held that although prisoner calls are recorded and may be monitored by jail or prison officials, the incarcerated individual nevertheless retains at least a minimal privacy interest in those calls, in that "he would not

necessarily have expected that recordings of those calls would be handed over in bulk to an adverse party in a civil case." *See Bishop v. White*, No. 16 C 6040, 2020 WL 6149567, at *3 (N.D. Ill. Oct. 20, 2020); *see also DeLeon-Reyes v. Guevara*, No. 18 C 1028, 2020 WL 7059444, at *2 (N.D. Ill. Dec. 2, 2020); *Pursley v. City of Rockford*, No. 18 C 50040, 2020 WL 1433827, at *2 (N.D. Ill. Mar. 24, 2020).

Undue burden is not the only consideration, however, and the scope of a subpoena is also constrained by the general rules of discovery. Federal Rule of Civil Procedure 26 provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1); *see Pursley*, 2020 WL 1433827, at *2 ("[I]n determining whether to quash a third-party subpoena based upon a party's privacy interests, courts weigh the relevance of the information against the strength of the privacy interest.").

I. Plaintiff and Poe's Motion to Quash [Doc. No. 70]

A. Calls to Ken Ross

Ken Ross testified in his deposition that he owned the gun Plaintiff was alleged to have thrown behind a couch on a porch. Ross stated that he knew the gun for which Plaintiff was arrested belonged to him, and Plaintiff also testified that he

knew as of the night of his arrest that the gun was Ross's. Plaintiff claims he had an in-person conversation with Ross after he was bonded out of jail in 2015, in which he asked Ross to testify on his behalf at the underlying criminal trial. Although Plaintiff asserts that Ross agreed to testify, he did not ultimately do so. When asked during the criminal trial if had seen the gun before, Plaintiff denied recognizing it. Both Plaintiff and Ross testified that they did not speak on the phone while Plaintiff was in jail. However, the phone logs from the CCJ show six calls made from March to May 2015 to a number associated with Ross.[3] Defendants believe that Plaintiff and Ross are lying.

Plaintiff's theory is that the gun recovered from behind the couch was already there before he and Poe went onto the porch. Defendants characterize this as a theory made up for the civil case, and it would have been raised during the criminal trial if it were true. Defendants acknowledge, however, that based on the timing of the calls, they would not directly show collusion between Plaintiff and Ross to concoct a story. Instead, Defendants ask for the calls to either corroborate or contradict the allegation that the gun belonged to Ross. They believe that because at the time the calls were made, Ross knew Plaintiff had been arrested for possessing his gun, and Plaintiff knew the gun belonged to Ross, it is almost a certainty that they would have spoken about the matter. If they did discuss the

[3] Defendants already possess these six calls from Plaintiff to Ross's number, due to the CCJ inadvertently producing those records prematurely. Defendants also want to subpoena any calls Plaintiff made while in IDOC custody prior to that time.

gun's ownership, that would be exculpatory evidence in Plaintiff's favor. If they did not, then according to Defendants, that would be relevant by omission.

Defendants have not explained why the ownership of the gun is relevant to any claims or defenses in the case, specifically the question of whether Plaintiff threw the gun behind the couch or it was already there. However, in an abundance of caution, the Court agrees to listen *in camera* to the recording of first conversation between Plaintiff and Ross, which may have taken place while Plaintiff was in IDOC or CCJ custody. Defendants may obtain the IDOC call logs to determine whether any calls were made to Ross's number, and if so, then they may subpoena the recording of the first call. If there are no IDOC calls, then Defendants shall submit to the Court the first CCJ call they have in their possession.

B. Calls Immediately After Arrest

Defendants want to listen to five calls Plaintiff made to three individuals from October 11, 2014, the day after his arrest, to October 13, 2014. Plaintiff testified that in his initial calls to these three individuals – his mother, his now ex-wife, and a friend – he said he had been framed. Defendants want the calls to corroborate or contradict Plaintiff's testimony as well as to prepare for the anticipated depositions of Plaintiff's mother and his ex-wife.

Defendants have not offered any specific reasons these calls may be relevant, only the general argument that because Plaintiff admits he told the three individuals about his arrest, he may have given them details about the underlying

circumstances. Accordingly, the motion to quash is granted as to these calls, whose slight potential relevance is outweighed by Plaintiff's privacy interest.

C. Disciplinary Report Calls

While in prison in May 2018, Plaintiff made a call that was the subject of a prison disciplinary report characterizing it as a "Security Threat Group or Unauthorized Organizational Activity" because he allegedly made gang-related comments during the call. Defendants argue this is relevant because shortly after his arrest, Plaintiff allegedly told officers he needed a gun because people were after him. Plaintiff has denied making that statement and further denies ever being a member of a gang. Defendants' theory is that if Plaintiff were a gang member, that would lend credibility to the officers' report that Plaintiff told them he needed a gun. But even assuming that gang affiliation is relevant to the claims and defenses in this case, and further assuming that the call at issue proves Plaintiff's prison gang membership in 2018, that would not be at all relevant to whether he was a member at the time of his arrest nearly four years earlier.

D. First Call to Every New Number

Defendants wish to listen to the first call Plaintiff made to every new number appearing on the call log, approximately fifty numbers for the CCJ calls. Their rationale is that if Plaintiff were to discuss the circumstances of his arrest, he would likely do so during the first conversation he had with someone. Defendants also want these calls because Plaintiff testified he believes he had a conversation with

Poe discussing the arrest, but it is unknown what phone number Poe had at the time. Defendants hope that the recordings will allow them to identify that number.

The motion to quash is granted as to this request. The fact that this subpoena seeks far fewer calls than the original one does not make it narrowly tailored or limited in scope. The Court is not persuaded by Defendants' argument that the request is limited to calls in which Plaintiff possibly or even "likely discussed his criminal case," because that is also a "form of 'dart throwing'" rather than a showing of relevance. *See Pursley*, 2020 WL 1433827, at *4. Defendants' arguments are based almost entirely on the supposition that a hypothetical person could be expected to discuss certain events with certain people at certain times, without any particularized basis to conclude that Plaintiff himself may have had those discussions. It could be just as easily presumed that the defendant officers sent texts among themselves and others about the underlying arrest in the hours, days, or weeks afterwards. Defendants would surely agree that such a presumption would not, by itself, justify handing them over to Plaintiff.

This request also fails to meet the proportionality standard. Defendants attempted to minimize the burden of the production of at least fifty calls, going so far as to suggest that Plaintiff would not need to listen to the calls unless Defendants disclose them as ones they will be using in the case. During oral argument, however, it was clear that Plaintiff's counsel understands his obligation to review all discovery materials, which could require not only listening to the calls, but likely also transcribing, abstracting, or otherwise organizing the information.

This burden, while not overwhelming, is more than enough to outweigh the theoretical relevance of the calls.

E. Call from Poe to Plaintiff's Defense Counsel

Defendants want any communication between Poe and Plaintiff's defense counsel while Poe was in IDOC. Defendants want these recordings, which may not exist, in order to test the veracity of Poe's testimony about the conversations. The Court concludes that Defendants have not established relevance outweighing Poe's privacy interests. To the extent there is a whiff of relevance to the communications, Defendants have not explained why they could not have gleaned the substance of the calls through a less intrusive means, *i.e.*, from defense counsel, given Defendants' acknowledgment that the conversations were not privileged.

F. Calls Between Plaintiff and Poe

After the Court quashed Defendants' broad subpoena for all calls between Plaintiff and Poe, Defendants responded with a narrower time frame, between October 20, 2014 and February 13, 2015, while Plaintiff was in IDOC custody. This request again is intended to find the call between Plaintiff and Poe about which Plaintiff testified. Defendants admit their search is unlikely to turn up any results, as they would be looking for calls Plaintiff made to Poe's current phone number, which he was unlikely to have had at the time in question. Defendants may obtain a log identifying any calls between Plaintiff and Poe's number, but the subpoena for the recordings must be limited to only the first conversation.

II. Plaintiff's Motion to Quash Deposition Subpoenas [Doc. No. 71]

Plaintiff seeks to quash the subpoenas of third-party witnesses Brittany Hill and Moneka Curtis. He argues that their testimony will not be relevant because they did not witness the events at issue, and that because discovery is set to close on January 31, 2024, allowing these depositions might require an extension.

Assuming that Plaintiff even has standing to object to these deposition subpoenas, the Court finds that their testimony could be relevant to Plaintiff's claim of damages stemming from his period of incarceration. Curtis was dating plaintiff at the time of the arrest, and married and divorced him while he was in prison. Hill is the mother of Plaintiff's daughter, and she likely could speak to the effect of his arrest and imprisonment on the father/daughter relationship, which is an element of his damages claim.

Finally, the Court is not concerned about the timing of the depositions. They were noticed in plenty of time to be completed by the deadline, even considering all other remaining discovery. If due to the deponents' unavoidable scheduling conflicts, a short extension may be necessary, the parties will not be prejudiced. The motion to quash is denied.

CONCLUSION

For the foregoing reasons, Plaintiff and Third-Party Witness Emmanuel Poe's Motion to Quash [Doc. No. 70] is granted in part and denied in part, and Plaintiff's Motion to Quash Deposition Subpoenas [Doc. No. 71] is denied.

SO ORDERED.

ENTERED:

DATE: **January 19, 2024**

HON. MARIA VALDEZ
United States Magistrate Judge

EXHIBIT E

2020 WL 4437669
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois.

Ricardo BOUTO, Plaintiff,

v.

Reynaldo GUEVARA, et al., Defendants.

Case No: 19-cv-2441
|
Signed 08/03/2020

Attorneys and Law Firms

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David Andrew Brueggen, Jeffrey Robert Kivetz, Josh Michael Engquist, The Sotos Law Firm, P.C., Chicago, IL, for Defendant Ernest Halvorsen.

Carson Welsh Canonie, David Andrew Brueggen, Jeffrey Robert Kivetz, Josh Michael Engquist, The Sotos Law Firm, P.C., Chicago, IL, for Defendants Edward Mingey, Alan Pergande.

James Gus Sotos, David Andrew Brueggen, Jeffrey Robert Kivetz, Carson Welsh Canonie, Josh Michael Engquist, The Sotos Law Firm, P.C., Chicago, IL, for Defendants Kenneth Pang, Richard Maher, L. Marron.

Yulia Nikolaevskaya, Edward M. Brener, Ryan Gillespie, Cook County State's Attorney's Office, Chicago, IL, for Defendants Kevin Hughes, Cook County.

Eileen Ellen Rosen, Austin Gordon Rahe, Catherine MacNeil Barber, Theresa Berousek Carney, Rock Fusco & Connelly, LLC, Josh Michael Engquist, The Sotos Law Firm, P.C., Chicago, IL, for Defendant City of Chicago.

MEMORANDUM OPINION AND ORDER

Susan E. Cox, U.S. Magistrate Judge,

***1** For the reasons discussed below, Defendants Kevin Hughes and Cook County's ("Defendants") Motion to Compel Interrogatory Responses [127] is granted. Plaintiff is ordered to provide an updated response to Defendants' Interrogatories consistent with this opinion on or before August 21, 2020.

Plaintiff Ricardo Bouto brings this case pursuant to 42 U.S.C. § 1983, alleging that several Chicago Police Officers framed him for murder in 1993, leading to his wrongful conviction and incarceration. In addition to claims against the Chicago Police Officers, Plaintiff alleges that Defendant Hughes – a former Assistant State's Attorney – conspired with the Chicago Police Officers to frame Plaintiff "by coercing witnesses and fabricating evidence." (Dkt. 127 at 5.) On November 2, 2019, Defendants served their First Set of Interrogatories; Plaintiff filed a timely response to those interrogatories, but objected on the grounds that the interrogatories were "premature, overbroad, unduly burdensome, vague, and/or seek information that is irrelevant or protected by the attorney-client privilege and work product doctrine." (Dkt. 127 at 2.) The relevant parties then spent approximately six months (December 2019-May 2020) attempting to come to a resolution on the issues raised by Plaintiff's objections to the interrogatories. (Dkt. 127 at 3-4.) With some small variations, the interrogatories in question all follow a similar pattern – Defendants quote a factual allegation in Plaintiff's complaint, and then ask Plaintiff to state all facts he intends to rely upon to support the contention, identify all evidence known to Plaintiff as of the date of filing of his complaint that supports, refutes, or otherwise relates to the allegation, and identify all evidence known to Plaintiff after the filing of his complaint that supports, refutes, or otherwise relates to the allegation. (*See* Dkt. 127-1.)

During the meet and confer process, the parties were able to hone their dispute to whether Plaintiff was required to identify evidence known to Plaintiff as of the date he filed his complaint.[1] (Dkt. 127-6; Dkt. 140 at 6.) Defendants then filed the instant motion to compel Plaintiff's responses to the interrogatories. Plaintiff argues the motion should be denied because: 1) the interrogatories are not relevant because they only seek information relating to Federal Rule of Civil

Procedure 11; 2) Defendants are not "entitled to obtain, by interrogatory, a sworn accounting from Plaintiff identifying the specific subset of evidentiary support that Plaintiff had at the time he filed his Complaint;" and 3) responding to the interrogatories would be unduly burdensome and impinge on the work product of Plaintiff's counsel. (Dkt. 127.) For the reasons discussed herein, the Court rejects those arguments and grants Defendants' motion to compel.

***2** The first argument fails because the evidence Defendants seek is not solely aimed at a Rule 11 motion, and it clearly meets the extremely broad standard for relevance. Although Defendants have mentioned that Rule 11 would require the allegations in Plaintiff's complaint to have evidentiary support, that is not the only purpose for which Defendants might use the information they seek.[2] The relevance standard is extremely broad; Federal Rule of Civil Procedure 26 allows for discovery of "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case," and Federal Rule of Evidence 401(a) states that evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence." It seems undeniable to the Court that evidence known to Plaintiff at the time he filed his complaint that supports or refutes his factual allegations would have a tendency to make those facts more or less probable, and would, therefore, be relevant. In fact, this evidence would be the very basis of those factual claims, and presumably, the animating force that shaped the factual allegations Plaintiff has alleged and now seeks to prove. As such, that evidence is clearly relevant, and Plaintiff's argument to the contrary is rejected.

The Court is perplexed by Plaintiff's argument that Defendants are not "entitled to obtain, by interrogatory, a sworn accounting from Plaintiff identifying the specific subset of evidentiary support that Plaintiff had at the time he filed his Complaint." (Dkt. 127 at 12.) The entire purpose of interrogatories is to get opposing parties to identify a specific subset of evidentiary support for their claims and defenses. Federal Rule of Civil Procedure 33(a)(2) states that "[a]n interrogatory may relate to any matter that may be inquired into under Rule 26(b)." As noted above, the evidence being sought is plainly relevant and within the scope of Rule 26(b). The Court does not understand what alternative mechanism Plaintiff would have Defendants use to obtain this relevant information or why interrogatories would not be an acceptable way to do so. To the extent Plaintiff argues the temporal scope is inappropriate – *i.e.*, evidence known to Plaintiff at the time he filed his complaint is not discoverable – Plaintiff has not presented any argument (and the Court can think of no reason) that the limited time period would make the evidence *per se* irrelevant or outside the scope of Rule 26(b). Because the evidence is relevant, it is discoverable, and may be requested via interrogatory; Plaintiff's argument is rejected.

Finally, the Court rejects Plaintiff's argument that the discovery would be unduly burdensome or necessarily impinge on attorney work product. The Court does not believe the discovery is unduly burdensome, as it seeks evidence from a limited time period. Although Plaintiff is correct that there will be some burden in separating evidence known at the time the complaint was filed from information Plaintiff gathered after the filing, the Court does not view that burden as especially high or in any way undue. The Court also does not find that the interrogatories will require divulging attorney work product. Presumably, Plaintiff will do a privilege review and withhold any information that contains attorney work product. However, that does not mean all of the evidence reviewed will be work product. For example, the deposition of the individual who allegedly implicated Defendants in the claimed conspiracy, which Plaintiff cited in his brief as evidence used to support the allegations in his complaint, would not be work product. Plaintiff has not persuaded the Court that responding to the interrogatories would be unduly burdensome or require disclosing attorney work product, and the Court rejects this argument as well.

***3** For the reasons discussed above, Defendants' Motion to Compel Interrogatory Responses [127] is granted. Plaintiff is ordered to provide an updated response to Defendants' Interrogatories consistent with this opinion on or before August 21, 2020.

All Citations

Not Reported in Fed. Supp., 2020 WL 4437669

Footnotes

1 Although Defendants' motion does not specifically disclaim the other subsections of the interrogatory, Defendants focus their arguments on pre-filing evidence, admitted their post-filing requests were premature contention interrogatories in

the above-cited letter, and did not refute Plaintiff's claims that the pre-filing issues were the only remaining issues to be presented to the Court.

2 The only suggestion that this is Defendants' sole reason for seeking the evidence at issue is a letter from Plaintiff's attorney. (Dkt. 127-5.) The Court need not weigh in on the veracity of this claim, and suspects it was matter of simple miscommunication or misunderstanding. Regardless, the discovery Defendants seek is relevant for purposes beyond Rule 11 and should be produced.

End of Document

EXHIBIT F

2010 WL 11712561
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Dallen and Peggy WENDT, a husband and wife, Plaintiffs,
v.
OFFSHORE TRUST SERVICE, INC., a Florida Corporation; Joshua Crithfield, an individual; Duane Crithfield, an individual; Foster & Dunhill Consulting, Inc., a Florida corporation; Foster & Dunhill Planning Services, LLC, a Florida limited liability company; Stephen Donaldson, an individual Defendants.

No. 08 C 3612
|
Signed 08/03/2010

Attorneys and Law Firms

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Stephanie L. Stewart, Meyer Law Group LLC, Chicago, IL, Stewart M. Cooke, Stewart Marcos Cooke, PA, Coral Gables, FL, for Defendants Foster & Dunhill Consulting, Inc., Foster & Dunhill Planning Services, LLC.

Stephanie L. Stewart, Meyer Law Group LLC, Chicago, IL, for Defendant Stephen P. Donaldson.

MEMORANDUM OPINION AND ORDER

Jeffrey Cole, Magistrate Judge

***1** At the hearing on Mr. King's Motion to Withdraw this morning, there was a discussion about the course of future discovery and some issues that threaten to divide the parties – perhaps needlessly so. In light of that discussion it seemed to me that it might be helpful to discuss generally how future difficulties ought to be approached. First, in responding to and formulating discovery requests it is well to recall the breadth of Rule 26's treatment of the concept of relevance under the Federal Rules of Civil Procedure. That necessitates an awareness of the scope of relevancy under Rule 401 of the Federal Rules of Evidence.

Of course, at trial, all evidence must be relevant or it cannot be admitted. *See* Rule 402. *Tome v. United States*, 513 U.S. 150 (1995) recognized the broad scope to be accorded relevancy under Rule 401 and the liberal and inclusive thrust of the Federal Rules of Evidence generally. Consistent with the Rules' approach, the Seventh Circuit has stressed that the relevancy requirement under Rule 401 is a "minimal" one. *United States v. Murzyn*, 631 F.2d 525, 529 (7th Cir. 1980). Thus, the question at trial is not whether the proffered evidence has great probative weight, but whether it has "any tendency" to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. *New Jersey v. T.L.O.*, 469 U.S. 325(1985); *United States v. Marks*, 816 F.2d 1207, 1211 (7th Cir. 1987); *United States v. Pollard*, 790 F.2d 1309, 1312 (7th Cir. 1986). As Dean McCormick has aptly phrased it, to be relevant evidence need only be a brick, not a wall. *See Thakore v. Universal Mach. Co. of Pottstown, Inc.*, 670 F.Supp.2d 705, 711 (N.D. Ill. 2009).

Even if the proposition for which it is offered still seems improbable after the evidence is considered, the proffered evidence is not necessarily irrelevant. McCormick, Evidence at 543. Doubts as to admissibility are resolved in favor of admissibility, consistent with the overall liberal thrust of the Federal Rules of Evidence. *Richman v. Sheahan*, 415 F.Supp.2d 929, 943-44 (N.D. Ill. 2006). That approach long antedated the Federal Rules of Evidence. *See United States v. Matot*, 146 F.2d 197 (2nd Cir. 1945)(Hand, J.)("It is always hard to say what reasonable people may deem logically material, and all doubts should be resolved in favor of admission, unless some definite rule, like that against hearsay, makes that impossible.").

As expansive as the definition of relevancy is under Rule 401, the standard under Rule 26 of the Federal Rules of Civil Procedure is even broader. *See Jackson v. Parker*, 2008 WL

4844747, 1 (N.D. Ill. 2008). Under Rule 26, the only question is whether the materials requested might lead to admissible evidence even though the information sought would not, itself, be admissible. This is not to say that parties are entitled to boundless discovery. The discovery rules are not a ticket, Judge Moran has wisely observed, to an unlimited, never-ending exploration of every conceivable matter that captures an attorney's interest. *Vakharia v. Swedish Covenant Hosp.*, 1994 WL 75055 at *2 (N.D. Ill. 1994). "Parties are entitled to a reasonable opportunity to investigate the facts-and no more." *Id.* "[D]iscovery, like all matters of procedure, has ultimate and necessary boundaries." *Hickman v. Taylor*, 329 U.S. 495, 507 (1947).

***2** The Supreme Court has cautioned that the requirement of Rule 26(b)(1) that the material sought in discovery be "relevant" should be firmly applied, and the district courts should not neglect their power to restrict discovery where "justice requires [protection for] a party or person from annoyance, embarrassment, oppression, or undue burden or expense....Rule 26(c). With this authority at hand, judges should not hesitate to exercise appropriate control over the discovery process," *Herbert v. Lando*, 441 U.S. 153, 177 (1979). Failure to exercise that control results in enormous costs to the litigants and to the due administration of justice. *Cf. Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); Frank Easterbrook, *Discovery as Abuse*, 69 B.U.L.Rev. 635 (1989). *See Sommerfield v. City of Chicago*, 613 F.Supp.2d 1004, 1016-1017 (N.D. Ill. 2009).

If the party from whom documents or interrogatory answers are requested objects to their production, that party has the burden to show why the request is improper. *See* Rule 34(b); *Gile v. United Airlines, Inc.*, 95 F.3d 492, 495 (7th Cir. 1996); *In re Sulfuric Acid Antitrust Litigation*, 231 F.R.D. at 337. That burden cannot be met by a reflexive invocation of "the same baseless, often abused litany" that the requested discovery is "vague, ambiguous, overly broad, unduly burdensome," or that it is "neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." *Swift v. First USA Bank*, 1999 WL 1212561 (N.D. Ill. 1999). Despite courts' repeated admonitions that these sorts of "boilerplate" objections are ineffectual, their use continues unabated, with the consequent institutional burdens, *Szabo Food Service, Inc. v. Canteen Corp.*, 823 F.2d 1073, 1077 (7th Cir. 1987); *Channell v. Citicorp Nat. Services, Inc.*, 89 F.3d 379, 386 (7th Cir. 1996), and the needless imposition of costs on the opposing party. They are " 'tantamount to not making any objection at all.' " *E.E.O.C. v. Safeway Store, Inc.*, 2002 WL 31947153, *2-3 (N.D. Cal. 2002). *See also In re Aircrash Disaster Near Roselawn, Ind. Oct. 31, 1994*, 172 F.R.D. 295 (N.D. Ill. 1997) (rejecting generic, non-specific, boilerplate objections); *Klein v. AIG Trading Group Inc.*, 228 F.R.D. 418, 424 (D. Conn. 2005) (overruling objections that "the familiar litany that the [requests] are burdensome, oppressive or overly broad"); *American Rock Salt Co., LLC v. Norfolk Southern Corp.*, 228 F.R.D. 426, 432 (W.D.N.Y. 2005) ("generalized objections that discovery requests are vague, overly broad, or unduly burdensome are not acceptable"); *Athridge v. Aetna Casualty and Surety Co.*, 184 F.R.D. 181, 190-91 (D.D.C. 1998) (rejecting general boilerplate objections). *Roesberg v. Johns-Mansville Corp.*, 85 F.R.D. 292, 297 (E.D. Pa. 1980); *Compagnie Francaise d'Assurance Pour le Commerce Exterieur v. Phillips Petroleum Co.*, 105 F.R.D. 16, 42 (S.D.N.Y. 1984); *Klein v. AIG Trading Group Inc.*, 228 F.R.D. 418, 422 (D. Conn. 2005); *Burkybile v. Mitsubishi Motors Corp.*, 2006 WL 2325506, *6-7 (N.D. Ill. 2006); *United Auto Insurance, v. Veluchamy*, 2010 WL 749980, 5 (N.D. Ill. 2010).

Finally, the parties should keep in mind that claims of undue burden must be supported by affirmative and compelling proof. *Ipse dixits* will not suffice. *See Trading Technologies Intern., Inc. v. eSpeed, Inc.*, 2005 WL 1300778, *1 (N.D. Ill. 2005)(Moran, J.); *Semien v. Life Insurance. Co. of North America*, No. 03 C 4795, 2004 WL 1151608, *1 (N.D. Ill. 2004)(Kocoras, J.); *In re Sulfuric Acid Antitrust Litigation*, 231 F.R.D. 351, 360-361 (N.D. Ill. 2005)(collecting cases).

All Citations

Not Reported in Fed. Supp., 2010 WL 11712561

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EXHIBIT G

1998 WL 13244
Only the Westlaw citation is currently available.
United States District Court, D. Kansas.

Dennis MARTEN, Plaintiff,

v.

YELLOW FREIGHT SYSTEM, INC., Defendant.

No. CIV. A. 96–2013–GTV.
|
Jan. 6, 1998.

Attorneys and Law Firms

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Robert W. McKinley, Tedrick Addison Housh, III, Swanson, Midgley, Gangwere, Kitchin & McLarney, LLC, Kansas City, MO, for Yellow Freight System, Inc., defendants.

MEMORANDUM AND ORDER

RUSHFELT, Magistrate J.

***1** Before the court is Plaintiff's Motion to Compel Discovery (doc. 86). Pursuant to Fed.R.Civ.P. 37 and D.Kan. Rule 37.1, plaintiff thereby seeks an order to compel defendant to fully answer Interrogatory 1 of his Third Set of Interrogatories. He also asks that defendant be ordered to produce the following documents: all "personal" files of Gary Bowman, responsive to Request 2 of his Third Request for Production of Documents; and all minutes, responsive to Requests 1, 5, and 6 of his Second Request For Production, of any meeting at which defendant decided to terminate or suspend him or place him on probation. Defendant opposes the motion.

Interrogatory 1 asks defendant to "[l]ist by name of subject employee all 'personal' files maintained by Gary Bowman from January 1994 to the present." Request 2 seeks production of those files. Defendant objects that the information sought is irrelevant. The court overrules the objections. The files appear reasonably calculated to lead to the discovery of admissible evidence. Defendant essentially concedes the point. In opposing the motion it states that "[u]nless other employees engaged in similar behavior or conduct as plaintiff, Bowman's files on these employees would have no bearing on whether Bowman treated plaintiff differently by documenting his behavior and conduct." (Def.'s Resp. In Opp'n To Pl.'s Mot. to Compel Disc., doc. 106, at 5.) It then proclaims that "no evidence" exists that other employees have engaged in conduct similar to that which resulted in the termination of plaintiff. A litigant **need not accept** the **opinion of opposing** parties, however, as to the relevancy of a document. He may discover the contents of the document. He may then draw his own conclusion as to whether Bowman treated plaintiff differently from other employees. The request must only be reasonably calculated to lead to the discovery of admissible evidence.

Defendant also contends that information regarding "personal" files post-dating May 1, 1995, the date it terminated plaintiff, has no bearing on the issues in this case. The court rejects the contention. It finds the information sought by Interrogatory 1 and Request 2 relevant.

Defendant further contends, however, that disclosure of the "personal" files kept by Mr. Bowman on other employees under his supervision would improperly sway their opinions against defendant and undermine the ability of Mr. Bowman to effectively manage such employees. It suggests that "wholesale disclosure" could undermine the morale and productivity of the department headed by Mr. Bowman. It further suggests that plaintiff might use information in the files to antagonize and harass the subject employees, notwithstanding an existing protective order.

Plaintiff does not refute these contentions or suggestions. The court finds good cause, therefore, to limit dissemination of the "personal" files. Such files shall be for use by the attorneys for plaintiff. Plaintiff himself shall have no access to them or their contents, until such time as they may be admitted into evidence in this case; if indeed the court admits them. Subject to this protective order, defendant shall produce all "personal" files responsive to Request 2 and fully answer Interrogatory 1.

***2** Plaintiff also seeks an order to compel defendant to produce for inspection and copying all minutes of the Employee Review Committee (ERC) or of any meeting

at which defendant decided to place him on probation or terminate or suspend him. Requests 1, 5, and 6 ask defendant to produce such minutes. Defendant objects to the production on grounds of attorney-client privilege and work product. It identifies a document titled, "ERC Minutes May 1, 1995," withheld on those grounds. Its former in-house attorney, Ronald Sandhaus, drafted it. Defendant asserts that the attorney-client privilege protects the document from discovery, because it "contains material discussed between and among Yellow employees and Mr. Sandhaus for purposes of rendering legal advice on how to address plaintiff's disciplinary problems." It also suggests that the document is attorney work product, because Mr. Sandhaus prepared it in anticipation of litigation. It claims the document contains communications between counsel and other participants of the ERC meeting. It also claims that the document reflects Mr. Sandhaus' thoughts and mental impressions of the facts and reasons for the discharge of plaintiff.

Plaintiff suggests that whatever legal advice Mr. Sandhaus may have given is merely incidental to business advice rendered. He thus argues that neither the attorney-client privilege nor the work-product doctrine protects the communications from discovery. He further contends that defendant waived any privilege that may have attached to the minutes, when its Vice President of Properties, Nile Glasebrook, testified about the ERC meeting, including the general substance of the discussions.

"Questions of privilege that arise in the course of the adjudication of federal rights are 'governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." ' *United States v. Zolin,* 491 U.S. 554, 562, 109 S.Ct. 2619, 105 L.Ed.2d 469 (1989) (quoting Fed.R.Evid. 501). As indicated by defendant, this court has previously held that federal law provides the rule of decision with respect to privilege in federal actions based upon a federal question, even though joined with pendent state law claims. *See Case v. Unified Sch. Dist. # 233,* No. Civ.A. 94–2100–GTV, 1995 WL 358198, at * 2–3 (D.Kan. June 2, 1995), *clarified on reconsideration,* 1995 WL 477705 (D.Kan. Aug.11, 1995). In *Case* the court noted unanimous agreement among other courts considering the issue. *Id.* at 3. It further noted inherent impracticalities of applying two different rules of privilege to the same evidence. *Id.* The Tenth Circuit Court of Appeals has held, on the other hand, that when a plaintiff asserts both federal and state claims, the court should look to state law in deciding questions of privilege, as to the state causes of action. *Motley v. Marathon Oil Co.,* 71 F.3d 1547, 1551 (10th Cir.1995), *cert. denied,* 517 U.S. 1190, 116 S.Ct. 1678, 134 L.Ed.2d 781 (1996).

***3** After the *Motley* decision, the choice-of-law issue again emerged in the District of Kansas. *See Hinsdale v. City of Liberal,* 961 F.Supp. 1490 (D.Kan.1997). The court first noted that "all of the circuits that have directly addressed this issue have held that the federal law of privilege governs on issues of discoverability and/or admissibility even where the evidence sought might be relevant to a pendant state claim." *Id.* at 1493. It then recognized the apparent implications of *Motley:*

> It thus could be argued that the 10th Circuit has decided not to follow the other circuits when both federal and state causes of action have been asserted in a case.
>
> However, it is not clear that the 10th Circuit directly addressed the issue. The *Motley* opinion does not discuss at all the conflict in the law or any opinion or legal authority concerning what law should apply when both federal and state causes of action are in a case. *Motley* cites language in Fed.R.Evid. 501 which calls for looking at state law when there is a state cause of action However, Rule 501 is silent on what should be done when a case contains both state and federal causes of action....
>
> This court seriously doubts that the 10th Circuit has directly addressed the issue of which privilege law applies when the evidence is relevant to both state and federal claims that are in a case. However, this court is bound by the decisions of the 10th Circuit. Therefore, the court will analyze this motion based on the possibility that the 10th Circuit intended for state law of privilege to apply to the state causes of action in a case wherein both federal and state claims have been asserted.

961 F.Supp. at 1493.

Following *Hinsdale* the Tenth Circuit Court of Appeals unambiguously held that the court should consider both federal and state law of privilege, when both federal claims and pendent state law claims are implicated. *See Sprague v. Thorn Americas, Inc.,* 129 F.3d 1355, ——, No. 96–3021, 129 F.3d 1355, 1997 WL 727571, at *13 (10th Cir. Nov.24, 1997). It specifically held:

> Here, with both federal claims and pendent state law claims implicated, we should consider both bodies of law under *Motley* and Fed.R.Evid. 501. If the privilege is upheld by one body of law, but denied by the other,

> problems have been noted. "In this situation, permitting evidence inadmissible for one purpose to be admitted for another purpose defeats the purpose of a privilege. The moment privileged information is divulged the point of having the privilege is lost." 3 Weinstein's Federal Evidence, § 501.02[3][b] (Matthew Bender 2d ed.) (citing *Perrignon v. Bergen Brunswig Corp.,* 77 F.R.D. 455, 458 (N.D.Cal.1978)). If such a conflict on the privilege exists, then an analytical solution must be worked out to accommodate the conflicting policies embodied in the state and federal privilege law. Here, however, for reasons given below we are convinced that both federal and Kansas law support application of the attorney-client privilege. Therefore we need not articulate an analytical solution here for conflicts in attorney-client privilege rules.

***4** 129 F.3d at ——, 1997 WL 727571, at *13 (footnote omitted).

Following *Sprague,* the court will consider both federal and state law regarding privilege. Plaintiff alleges retaliation and/or sex discrimination under federal law, Title VII, 42 U.S.C. § 2000e *et seq.* (Compl., doc. 1, ¶¶ 57–65.) He also asserts claims of outrage, defamation, false imprisonment, and assault and battery under state law. (*Id.* ¶¶ 66–85.) If state and federal rules of privilege conflict, the court must analyze their application.

The court finds no conflict. Whether it applies federal or Kansas law generally makes no difference in determining whether the attorney-client privilege applies. *See Great Plains Mut. Ins. Co. v. Mutual Reinsurance Bureau,* 150 F.R.D. 193, 196 n. 3 (D.Kan.1993) (citing K.S.A. 60–426; *Wallace, Saunders, Austin, Brown & Enochs, Chartered v. Louisburg Grain Co.,* 250 Kan. 54, 824 P.2d 933 (1992)). "[T]he Kansas statute concerning the attorney-client privilege and its exceptions is typical of the laws of other jurisdictions." *In re A.H. Robins Co.,* 107 F.R.D. 2, 8 (D.Kan.1985). Certain general propositions appear applicable under both federal and Kansas law. Federal law, moreover, governs the applicability of the work product doctrine in federal court. *See Burton v. R.J. Reynolds Tobacco Co.,* 167 F.R.D. 134, 139 (D.Kan.1996).

The attorney-client privilege and the work product doctrine are distinctly different protections, although related somewhat and often invoked together. *Great Plains Mut. Ins. Co.,* 150 F.R.D. at 196. "Despite their differences, courts narrowly construe them both." *National Union Fire Ins. Co. v. Midland Bancor, Inc.,* 159 F.R.D. 562, 567 (D.Kan.1994). "Whatever their origins, these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for the truth." *United States v. Nixon,* 418 U.S. 683, 710, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974) (unanimous decision).

Parties asserting an objection of "work product immunity or attorney-client privilege bear[] the burden of establishing that either or both apply." *Boyer v. Board of County Comm'rs,* 162 F.R.D. 687, 688 (D.Kan.1995). They must make a "clear showing" that the asserted objection applies. *Ali v. Douglas Cable Communications, Ltd. Partnership,* 890 F.Supp. 993, 994 (D.Kan.1995). To carry the burden, they must describe in detail the documents or information to be protected and provide precise reasons for the objection to discovery. *National Union Fire Ins. Co.,* 159 F.R.D. at 567. They must provide sufficient information to enable the court to determine whether each element of the asserted objection is satisfied. *Jones v. Boeing Co.,* 163 F.R.D. 15, 17 (D.Kan.1995). A claim of privilege or work-product protection fails upon a failure of proof as to any element. *Id.* A "blanket claim" as to the applicability of a privilege or the work product doctrine does not satisfy the burden of proof. *See Kelling v. Bridgestone/Firestone, Inc.,* 157 F.R.D. 496, 497 (D.Kan.1994).

***5** "The attorney-client privilege...is to be extended no more broadly than necessary to effectuate its purpose." *Great Plains Mut. Ins. Co.,* 150 F.R.D. at 196. Its purpose

> is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client.

Upjohn Co. v. United States, 449 U.S. 383, 389, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981). "[T]he privilege is triggered only by a client's request for legal, as contrasted with business, advice." *Audiotext Communications Network, Inc. v. U.S. Telecom, Inc.,* No. Civ.A. 94–2395–GTV, 1995 WL 625962, at *8 (D.Kan., Oct.5, 1995) (quoting *Marc Rich & Co. A.G. v. United States (In re Grand Jury Subpoena Duces Tecum Dated Sept. 15, 1983),* 731 F.2d 1032, 1037 (2d Cir.1984)). "[T]he privilege exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice." *Upjohn Co.,* 449 U.S. at 390. "Confidential disclosures by a client to an attorney made in order to obtain legal assistance are privileged....

[The privilege] protects only those disclosures—necessary to obtain informed legal advice—which might not have been made absent the privilege." *Fisher v. United States,* 425 U.S. 391, 403, 96 S.Ct. 1569, 48 L.Ed.2d 39 (1976) (citations omitted). Furthermore, it

> only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney:
>
> > "[T]he protection of the privilege extends only to *communications* and not to facts. A fact is one thing and a communication concerning that fact is an entirely different thing. The client cannot be compelled to answer the question, 'What did you say or write to the attorney?' but may not refuse to disclose any relevant fact within his knowledge merely because he incorporated a statement of such fact into his communication to his attorney."

Upjohn Co., 449 U.S. at 395–96 (citation omitted).

The essential elements of the attorney-client privilege are nearly identical under both Kansas and federal law. Under federal common-law the essential elements are:

> (1) Where legal advice of any kind is sought (2) from a professional legal advisor in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal advisor, (8) except the protection be waived.

Great Plains Mut. Ins. Co., 150 F.R.D. at 196 n. 4 (citation omitted). Under Kansas law, they are:

> (1) Where legal advice is sought (2) from a professional legal advisor in his capacity as such, (3) the communications made in the course of that relationship (4) made in confidence (5) by the client (6) are permanently protected (7) from disclosures by the client, the legal advisor, or any other witness (8) unless the privilege is waived.

***6** *State v. Maxwell,* 10 Kan.App.2d 62, 63, 691 P.2d 1316, 1319 (1984) (citation omitted); *see also,* K.S.A. 60–426. The privilege "protects confidential communications by a client to an attorney made in order to obtain legal assistance from the attorney in his capacity as a legal advisor." *Jones v. Boeing Co.,* 163 F.R.D. 15, 17 (D.Kan.1995); *see also, Burton v. R.J. Reynolds Tobacco Co.,* 170 F.R.D. 481, 484 (D.Kan.1997), *reconsidered in part,* 175 F.R.D. 321, 1997 WL 536084 (D.Kan. Aug.14, 1997); *Maxwell,* 10 Kan.App.2d 62, 691 P.2d 1316; K.S.A. 60–426(a). Under Kansas law, " 'communication' includes advice given by the lawyer in the course of representing the client and includes disclosures of the client to a representative, associate or employee of the lawyer incidental to the professional relationship." K.S.A. 60–426(c)(2). Such definition does not conflict with federal law. *See Upjohn,* 449 U.S. at 390.

The attorney-client privilege protects communications with in-house, as well as outside counsel. *Burton,* 170 F.R.D. at 484. Minutes of meetings attended by attorneys are not, however, automatically privileged. *Id.* at 485. That the document sought in this case comes from former in-house counsel for defendant carries little weight of itself on the scope or applicability of the privilege. "[In-house] status alone does not dilute the privilege." *In re Sealed Case,* 737 F.2d 94, 99 (D.C.Cir.1984). Although such status "does not alter the attorney/client privilege ... when the attorney serves also in another capacity, such as vice president, his advice is privileged 'only upon a clear showing' that it was given in a professional legal capacity." *Pizza Management, Inc. v. Pizza Hut, Inc.,* No. 86–1664–C, 1989 WL 9334, at *4 (D.Kan. Jan.10, 1989); *see also, United States v. Chevron Corp.,* No. C–94–1885 SBA, 1996 WL 264769, at *4 (N.D.Cal. Mar.13, 1996), *amended by,* No. C 94–1885 SBA, 1996 WL 444597 (N.D.Cal. May 30, 1996).

> A basic element of the attorney-client privilege is that the attorney be in the appropriate role during communication with the client. Attorneys in such diverse occupations as professor or baseball manager do not occupy the role of attorney for privilege purposes as they discuss classroom assignments or the hit-and-run play. Communications must be made in the role of an attorney in order to qualify for the attorney-client privilege. Likewise, a full-time practicing attorney does not imbue all confidential communications with the privilege. Such an attorney may have multiple roles in his activities (*e.g.* business advisor, corporate director, labor negotiator) that are not necessarily attorney-related roles for the purpose of the privilege. In the representation of corporate interests, counsel might find themselves performing multiple roles. Frequently the roles are closely related, which makes it virtually impossible to isolate a purely legal role from the nonlegal.

***7** John William Gergacz, *Attorney–Corporate Client Privilege,* ¶ 3.02[2] [a] [[[iv] (2d Ed.1990).

Communications with in-house counsel, "who at the time is acting solely in his capacity as a business advisor, would not be privileged." *Great Plains Mut. Ins. Co.,* 150 F.R.D. at 197. The privilege likewise does not extend to communications

not made in professional confidence. *Pacific Employers Ins. Co. v. P.B. Hoidale Co.,* 142 F.R.D. 171, 173 (D.Kan.1992) (citing *State v. Breazeale,* 11 Kan.App.2d 103, 105, 713 P.2d 973 (1986)). Nor does it extend "to advice and assistance that has not been sought and received in matters pertinent to the profession." *Id.* It "applies only to communications made to an attorney in his capacity as legal advisor." *Wallace, Saunders, Austin, Brown & Enochs, Chartered v. Louisburg Grain Co.,* 250 Kan. 54, 60, 824 P.2d 933, 938 (1992). It applies only "when an attorney is giving advice concerning the legal implications of conduct, whether past or proposed." *Burton,* 170 F.R.D. at 484. A distinction exists "between a lawyer providing business or technical advice rather than legal advice. Legal advice must predominate for the communication to be protected." *Id.* (citations omitted). When the legal advice "is merely incidental to business advice," the privilege does not apply. *Id.* "There is also a distinction between a conference with counsel and a conference at which counsel is present." *Id.*

> [T]he mere attendance of an attorney at a meeting does not render everything done or said at that meeting privileged. For communications at such meetings to be privileged, they must have related to the acquisition or rendition of professional legal services. The mere fact that clients were at a meeting with counsel in which legal advice was being requested and/or received does not mean that everything said at the meeting is privileged. The party seeking to assert the privilege must show that the particular communication was part of a request for advice or part of the advice, and that the communication was intended to be and was kept confidential. To be privileged, the communication must relate to the business or transaction for which the attorney has been retained or consulted.

Hinsdale v. City of Liberal, 961 F.Supp. 1490, 1494 (D.Kan.1997).

Plaintiff seeks minutes of any meeting at which the termination, suspension, or probation of plaintiff was decided by defendant. Ronald Sandhaus, former in-house counsel for defendant, drafted minutes of a meeting of the ERC held May 1, 1995. To determine the applicability of the attorney-client privilege the court must determine the role of Mr. Sandhaus at that meeting. To the extent he was not acting as an attorney providing legal advice, the privilege provides no protection for communications made to or from him.

Defendant contends that the role of Mr. Sandhaus was not to determine whether the discharge of plaintiff was a good business decision, but rather to ensure that the reasons and decision to discharge him were legally sound under the facts of the case. It asserts that Mr. Sandhaus did not deviate from his role as legal advisor. It further asserts that the document in question contains communications from managerial employees which were for the purpose of obtaining legal advice on how to handle the behavioral and conduct problems of plaintiff in light of accusations of discrimination and retaliation. It claims that the participants have maintained the confidentiality of the communications and the documents resulting from the meeting. It suggests it does not routinely convene meetings of the ERC, but only when faced with a decision to discharge an employee. It characterizes the presence and guidance of counsel at such meetings as critical, because of the legal implications associated with the discharge of an employee.

***8** Defendant submits an affidavit of its present in-house counsel, Daniel Hornbeck. He states that the role of counsel at meetings of the ERC "is to render legal advice to managerial and human resources employees based upon the factual situation." (Aff. of Daniel L. Hornbeck, Esq., attached as Ex. A to Def.'s Resp. to Pl.'s Mot. to Compel, doc. 106, ¶ 3.) He avers that defendant has an attorney participate as a voting member "to ensure the Employee Review Committee's decision regarding the discharge of an employee complies with substantive and procedural law." (*Id.*) He also makes averments consistent with the ERC policy of defendant. (*Id.* at ¶ 2.) Plaintiff submits a copy of that policy. It provides in pertinent part:

> The prior approval of the [ERC] is required before a salaried or non-union employee who has at least six months' [sic] service with the company can be discharged or forced to resign. The purpose of this policy is to provide a high-level review prior to each discharge or involuntary resignation.
>
> The ERC is composed of three voting members: the Manager of Employee Relations (or designee), the Division or Department Vice–President (or designee), and a member of the Legal staff. While there may be other participants in the ERC meeting, the authority for decision-making is the ERC members.
>
> ...
>
> It is the responsibility of the members of the ERC, after reviewing the case, to decide whether to terminate, place on probation, etc.

(ERC Prior Approval of Discharges, attached as Ex. F to Pl.'s Mot. to Compel, doc. 86.)

One purpose of the ERC meeting is that of review. Such review may include consideration of legal consequences of a proposed employment action. The primary function of the committee, however, appears to be a decision of what employment action to take against an employee. Notwithstanding the legal implications of such employment action, the business purposes of such a decision predominate the legal issues. In the context of a required meeting to determine possible employment actions, legal advice sought or received during such meeting appears to be incidental to considerations of what is most prudent for the successful operation of the business. A conference between client and counsel does not necessarily equate with a conference attended by counsel. The ERC meeting appears to be the latter. It serves to make a personnel decision. With an attorney present, the meeting nevertheless proceeded to determine whether to terminate the employment of plaintiff. Such a business decision may have legal consequences, as do many decisions of any business. That fact, together with the presence of legal counsel, however, does not convert the meeting into a conference between attorney and client. Nor does it make the attorney-client privilege applicable to whatever is said and done during the meeting.

As a voting member of the ERC, furthermore, Mr. Sandhaus was not acting merely as an attorney rendering legal advice. Officially voting on a proposed action goes beyond the bounds of giving legal advice. It performs an act of the business. Legal considerations may influence his vote or that of any other committee member as well. The attorney-client privilege does not protect the act of voting, the minutes which record it, or all the discussion of the committee relating to its decision.

***9** Defendant asserts that the membership of Mr. Sandhaus on the Employment Review Committee does not mean that he was acting in a non-legal capacity. Mere membership on a committee does not of itself necessitate a finding that counsel was not acting as an attorney. Membership on a committee which decides if an employee should be terminated, however, may lead to an inference that the attorney, at least in part, was acting in a non-legal capacity. When an attorney is a voting member, the indication is even stronger. As the party asserting privilege, defendant has the burden to demonstrate its applicability. This means an adequate showing that, as a voting member of the ERC, Mr. Sandhaus was nevertheless acting as legal counsel.

Defendant explains that it granted counsel voting membership on the committee "to ensure the legal efficacy of the employment decision." That is an admirable goal. Including an attorney on the committee, nevertheless, can create ambiguity as to his or her role. Defendant maintains that the role of counsel on the committee never strayed from rendering legal advice. It submits the affidavit of Mr. Hornbeck as proof. The affidavit sets forth what role counsel generally take at ERC meetings. It provides nothing of substance, however, about what Mr. Sandhaus in fact did at the meeting of May 1, 1995. The court declines to rely upon the generalization to demonstrate the applicability of a privilege. Defendant must show that the primary participation of Mr. Sandhaus at the ERC meeting was as a lawyer giving legal advice. In this respect the facts proffered by defendant fall short. The affidavit of Mr. Hornbeck expresses no personal knowledge of what occurred at the meeting. Defendant provides no affidavit either of Mr. Sandhaus or anyone else at the meeting to suggest he acted primarily as counsel. The affidavit of Mr. Hornbeck indeed fails to confirm that anyone at the meeting of May 1, 1995 either asked for or received any legal advice from Mr. Sandhaus.

When an attorney serves in a non-legal capacity, such as a voting member of a committee required to review proposed employment actions, his advice is privileged only upon a clear showing that he gave it in a professional legal capacity. *See Pizza Management, Inc. v. Pizza Hut, Inc.,* No. 86–1664–C, 1989 WL 9334, at *4 (D.Kan. Jan.10, 1989). The privilege protects only those communications predominated by legal advice. *Burton v. R.J. Reynolds Tobacco Co.,* 170 F.R.D. 481, 484 (D.Kan.1997), *reconsidered in part,* 175 F.R.D. 321, 1997 WL 536084 (D.Kan. Aug.14, 1997). Defendant, as the party with the burden to show the privilege applicable, has not shown such predomination. Legal advice simply incidental to communication which is primarily business advice, however, does not qualify for the privilege.

Defendant suggests *Great Plains Mutual Insurance Company v. Mutual Reinsurance Bureau,* 150 F.R.D. 193 (D.Kan.1993) supports its position that the attorney-client privilege is applicable. The court finds the case distinguishable. In *Great Plains* the information sought "appear[ed] to directly relate to legal advice rendered by [an] attorney in his capacity as legal advisor." *Id.* at 197. No such appearance exists here. From the information before the court, the minutes of the meeting of May 1, 1995, appear to relate to a business meeting at which counsel acted as a voting member. Defendant has not shown

that Mr. Sandhaus was acting primarily as a legal advisor. In *Great Plains,* furthermore, the court was satisfied that the "attorney was acting in his capacity as an attorney during the relevant portions of the board meetings." *Id.* Defendant here has not made an adequate showing that Mr. Sandhaus was acting in a legal capacity during the meeting.

***10** In *Great Plains* the party asserting the privilege also showed that the advice given required the skill and expertise of an attorney. *Id.* The showing here again falls short. In *Great Plains* the court noted the clear "purpose of the conversations during the board meetings was to render legal advice and that both Great Plains and its attorney understood that the purpose of the communications was to review and consider legal issues pertaining to Great Plains' litigation." *Id.* Here the purpose of the ERC meeting was to determine appropriate employment action against plaintiff. Any legal advice, if given, appears incidental to a personnel matter and to what was therefore prudent and expedient for successful operation of the business. Mr. Sandhaus appears to have been acting beyond the role of legal counsel when performing the role of voting member of the ERC.

The court next addresses whether the minutes are protected from discovery as work product. "Within the meaning of Fed.R.Civ.P. 26(b)(3), work product refers to documents and tangible things, prepared in anticipation of litigation or for trial, and prepared by or for a party or by or for a representative of that party." *Mackey v. IBP, Inc.,* 167 F.R.D. 186, 200 (D.Kan.1996).

> The work product standard has two components. The first is what may be called the "causation" requirement. This is the basic requirement of the Rule that the document in question be produced *because of* the anticipation of litigation, *i.e.,* to prepare for litigation or for trial. The second component is what may be termed a "reasonableness" limit on a party's anticipation of litigation. Because litigation can, in a sense, be foreseen from the time of occurrence of almost any incident, courts have interpreted the Rule to require a higher level of anticipation in order to give a reasonable scope to the immunity.

Audiotext Communications Network, Inc., 1995 WL 625962, at *8 (quoting *Harper v. Auto-owners Ins. Co.,* 138 F.R.D. 655, 659 (S.D.Ind.1991)). "The court looks to the primary motivating purpose behind the creation of the document to determine whether it constitutes work product." *EEOC v. GMC,* No. 87–2271–S, 1988 WL 170448, at *2 (D.Kan. Aug.23, 1988). "Materials assembled in the ordinary course of business or for other non-litigation purposes are not protected by the work product doctrine. The inchoate possibility, or even likely chance of litigation, does not give rise to work product." *Ledgin v. Blue Cross & Blue Shield,* 166 F.R.D. 496, 498 (D.Kan.1996) (citations omitted). "To justify work product protection, the threat of litigation must be 'real and imminent." ' *Audiotext Communications Network, Inc.,* 1995 WL 625962, at *9 (quoting *Reliance Ins. Co. v. McNally Inc.,* No. 89–2401–V, unpublished op. at 4 (D.Kan. Feb. 5, 1992)). To determine the applicability of the work product doctrine, the court generally needs more than mere assertions by the party resisting discovery that documents or other tangible items were created in anticipation of litigation. *See Pacific Employers Ins. Co.,* 142 F.R.D. at 174–75.

***11** In this instance defendant suggests that Mr. Sandhaus created the minutes of the ERC meeting in anticipation of litigation. It asserts the anticipated litigation was clearly shown by plaintiff's filing a complaint with the Equal Employment Opportunity Commission (EEOC) and speaking of his "lawsuits" with co-workers. A defendant is generally justified in believing litigation to be imminent, after charges are filed with the EEOC. *EEOC v. GMC,* 1988 WL 170448, at *2. Such justification, however, does not transform every document thereafter prepared by the attorney into work product. The attorney must create the document "because of" the impending litigation. Work product generally does not apply, unless the primary motivating purpose for creating the document is to assist in pending or impending litigation. *Id.* "To invoke the doctrine, a party must show that the document was prepared principally or exclusively to assist in anticipated or ongoing litigation." *Burton v. R.J. Reynolds Tobacco Co.,* 170 F.R.D. 481, 485 (D.Kan.1997), *reconsidered in part,* 175 F.R.D. 321, 1997 WL 536084 (D.Kan. Aug.14, 1997). The fact that defendant anticipated litigation with plaintiff does not make all documents thereafter "generated by or for its attorneys subject to work product immunity. A party claiming work product immunity must still establish the underlying nexus between the preparation of the document and the specific litigation." *Burton v. R.J. Reynolds Tobacco Co.,* —— F. R.D. ——, ——, No. 94–2202–JWL, 175 F.R.D. 321, 1997 WL 536084, at *5 (D.Kan. Aug.14, 1997).

Defendant has not shown the primary motivating purpose behind the creation of the minutes here in question. Mr. Sandhaus titled the document "ERC Minutes May 1, 1995." The title suggests a purpose other than litigation. The term "minutes" commonly means "the official record of the proceedings of a meeting." *Webster's Ninth New Collegiate Dictionary* 757 (9th ed.1988). That definition

appears particulary cogent. Mr. Sandhaus drafted the minutes primarily to record what happened at the ERC meeting. The court has noted the lack of showing that he was acting purely as legal counsel at the meeting. His business role as a voting member of the committee appears to predominate over any role he may have filled as an attorney giving legal advice.

Defendant has not carried its burden to show that Mr. Sandhaus primarily created the minutes in question to assist in pending or impending litigation. Documents created in the ordinary course of business are not protected by the work product doctrine. Meetings of the ERC appear part of the ordinary course of the business of defendant. That it convenes such meetings only when necessary does not prove otherwise. That an attorney created the document in question, furthermore, does not of itself make it work product. *Burton v. R.J. Reynolds Tobacco Co.,* 170 F.R.D. 481, 485 (D.Kan.1997), *reconsidered in part,* 175 F.R.D. 321, 1997 WL 536084 (D.Kan. Aug.14, 1997). The doctrine does not protect summaries of business meetings, even when an attorney creates the summary. *Id.* "A party may not cloak a document with a privilege by simply having business, scientific or public relations matters handled by attorneys, whether in-house or outside counsel." *Id.* at 488.

***12** The court need not address the issue of waiver raised by plaintiff. It has found neither the work product doctrine nor the attorney-client privilege applicable to the minutes in question. Defendant shall produce the minutes of the ERC meeting of May 1, 1995 created by Mr. Sandhaus and all other documents responsive to Requests 1, 5, and 6.

For the foregoing reasons, the court sustains Plaintiff's Motion to Compel Discovery (doc. 86). Defendant shall, on or before January 22, 1998, fully answer Interrogatory 1 and produce all documents responsive to Requests 1, 2, 5, and 6 as set forth herein. Such production shall take place at the offices of counsel for plaintiff located at 1200 Main Street, Suite 1100, Kansas City, Missouri; or any other location agreed upon by the parties. Each party shall be responsible for its own costs and expenses incurred on the motion. Each side took defensible positions on at least part of the motion.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp., 1998 WL 13244

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EXHIBIT H

2024 WL 319915
Only the Westlaw citation is currently available.
United States District Court, S.D. Florida.

SANDY DALE BEASLEY and KANDACE FRANCES HOWE-BEASLEY, Plaintiffs,

v.

TRACTOR SUPPLY COMPANY, Defendant.

Case No. 23-cv-14131-Moore/McCabe
|
Entered on FLSD Docket 01/11/2024

ORDER

RYON M. MCCABE U.S. MAGISTRATE JUDGE

***1** THIS CAUSE comes before the Court on Plaintiffs' Motion to Compel Discovery ("Motion") (DE 22). As set forth below, the Motion is **GRANTED IN PART** and **DENIED IN PART**.

I. Background

A. Complaint

This is a trip-and-fall case originally filed in state court against the corporate owner of a tractor supply store ("Tractor Supply"), as well as the store's manager Todd Thomas, a Florida resident (DE 1-2). The Complaint alleges that one of the Plaintiffs "tripped and fell on what appeared to be a floor mat on the floor of the store" (DE 1-2 ¶ 30).

B. Remand Battle

Tractor Supply removed the case to federal court, despite the apparent lack of complete diversity of citizenship between the parties, arguing that Plaintiffs had fraudulently joined Thomas solely to defeat diversity jurisdiction (DE 1 ¶ 11). A remand battle ensued, during which Tractor Supply sought to show that Plaintiffs had no possible claim against Thomas based on *White v. Wal-Mart Stores, Inc.*, 918 So. 2d 357, 358 (Fla. 1st DCA 2005) and other Florida cases defining the circumstances under which a corporate employee can become personally liable for torts committed on the job (DE 12 at 5-9). Tractor Supply argued that Plaintiffs failed to plead sufficient facts to show that Thomas owed any duty, in his individual capacity, to Plaintiffs, or that he breached any such duty "through personal (as opposed to technical or vicarious) fault" (DE 12 at 5).

As part of the remand battle, Tractor Supply submitted an affidavit signed by Thomas, injecting two new pieces of fact into the dispute:

> (1) On the date of the injury, Thomas was not on duty and, indeed, was not even present in the store.
>
> (2) Tractor Supply did not own the "floor mat in question." Instead, "the floor mat in question was the sole property of Unifirst Corporation" ("Unifirst"), and "all Unifirst mats[ ] were placed, inspected, and replaced when necessary, solely by agents of [Unifirst] and [were] not in any way controlled by [Thomas] or any Team Member of Tractor Supply."

(DE 12-1 ¶¶ 3, 9).

The District Judge ultimately agreed that Plaintiffs had failed to allege facts indicating that Thomas breached a legal duty "through personal (as opposed to technical or vicarious) fault" (DE 14 at 8). As such, the District Judge found that Plaintiffs had no possible claim against Thomas and that they had fraudulently joined him to the suit (DE 14 at 9). The District Judge dismissed all claims against Thomas and denied Plaintiffs' motion to remand the case back to state court (DE 14 at 9).

C. First Request for Production

Following the remand battle, in September 2023, Plaintiffs propounded a First Request for Production ("RFP") on Tractor Supply (DE 22-1). Given Thomas's assertions, by way of his affidavit, that Unifirst owned and controlled the "floor mat in question," Plaintiffs propounded a great number of requests regarding Tractor Supply's relationship with Unifirst and its control over the floor mat (DE 22-1). Tractor Supply objected based on, among other grounds, relevance (DE 22-2, DE 22-3).

***2** A lengthy period of negotiation followed, during which the parties attempted to resolve the objections. During the negotiations, Tractor Supply took the position, as it takes now, that Unifirst played no role whatsoever in connection with the floor mat in question, and that Thomas's previous affidavit was wrong (DE 27 at 1, 3-4). Tractor Supply attributes Thomas's false statement to confusion over the location of the floor mat at the time of the fall. That is to say, while

Unifirst owns and controls floor mats *inside* the store, it does not own or control floor mats *outside* the store, where the fall apparently took place. The Complaint did not specify the exact location of the fall, and Thomas mistakenly assumed it took place inside the four walls of the store itself. Having since learned otherwise, Tractor Supply objected to any Unifirst-related discovery as irrelevant, and Tractor Supply maintained these objections throughout the meet-and-confer efforts. This Motion followed.

II. Discussion

The Motion raises disputes over numerous RFP requests, grouping them together by topic. The Court will address the requests in the same order presented by the Motion.

A. Unifirst-Related Documents: RFP Nos. 1, 2, 3, 4, 10, 15, 18, 23, 24, 25 & 26

RFP Numbers 1, 2, 3, 4, 10, 15, 18, 23, 24, 25 and 26 seek documents relating to the business relationship between Tractor Supply and Unifirst, including contracts with Unifirst, inspection schedules for floor mats, communications with Unifirst relating to floor mats, and the like (DE 22-1). Tractor Supply maintains its relevance objections on the grounds that Unifirst had no ownership, care, custody, or control over the floor mat at issue (DE 27 at 3-4). As such, Tractor Supply argues that Unifirst "has no role in this case whatsoever," and that the requests are "completely irrelevant" (DE 27 at 1, 3-4).

The Court disagrees and overrules Tractor Supply's objections for three reasons. First, Tractor Supply injected the issue of Unifirst into this case by submitting Thomas's affidavit, which claimed that Unifirst owned and controlled the floor mat at issue (DE 12-1 ¶ 9). Having injected this issue into the case, Tractor Supply cannot oppose discovery based on relevance. The issue became relevant because Tractor Supply made it relevant.

Second, the record contains no evidence to support Tractor Supply's new assertion that Unifirst had no control over the floor mat. Tractor Supply failed to submit evidence, by way of affidavit or otherwise, in opposition to this Motion. As such, the only evidence before the Court on this issue consists of Thomas's affidavit, which remains unrebutted (DE 12-1). Although Tractor Supply's counsel maintains that the affidavit is wrong, the Court cannot accept lawyer statements as evidence.

Third and finally, even if Tractor Supply had submitted evidence to support its new assertions, adversaries in litigation need not accept their opponent's view of the underlying facts showing relevance. *See Turner v. Office Depot, Inc.*, No. 2:18-CV-779-ALB-SRW, 2019 WL 11278355, at *2-3 (M.D. Ala. Sept. 25, 2019) (noting that a defendant could not resist discovery based on its "own conclusory say so" as to underlying facts concerning relevance). Here, Plaintiffs need not accept Tractor Supply's assertion that Unifirst "has no role in this case whatsoever" (DE 27 at 1). Rather – and especially given Tractor Supply's past contradictory statements on the issue – Plaintiffs should be allowed to explore the issue in discovery.

The Court has considered, but finds unpersuasive, Tractor Supply's argument that it recently entered into a settlement agreement with Unifirst, which might prohibit it from producing the documents Plaintiffs request (DE 27 at 4). Specifically, Tractor Supply argues that it recently settled a case with Unifirst and that the settlement agreement prohibits Tractor Supply from "taking action against Unifirst on their mats" (DE 27 at 4). Tractor Supply has not provided the Court with a copy of the settlement agreement. Nevertheless, the existence of a settlement agreement from a past case does not normally stand in the way of legitimate discovery in a new, unrelated case. *See*, *e.g.*, *Kadiyala v. Pupke*, Case No. 17-80732-CIV, 2019 WL 3752654, at *4 (S.D. Fla. Aug. 8, 2019) (noting that "[p]arties cannot insulate a document from discovery merely because they decide[d] to label it as confidential" pursuant to a past settlement agreement). To mitigate any concerns on this issue, the Court orders any Unifirst-related documents subject to this Order to be produced as "CONFIDENTIAL" as set forth in Section III.1 below.

B. Walking Surfaces & Floor Mats "at" or "in" the Store: RFP Nos. 5 & 17

***3** RFP Numbers 5 and 17 sought training materials related to the maintenance of walking surfaces and floor mats "at" or "in" Tractor Supply's store:

> 5. Any and all memoranda, manuals, handbooks, training videos or other materials that reflect policies and procedures at the subject TRACTOR SUPPLY COMPANY store related to the maintenance, upkeep, inspection, alteration or condition of walking surfaces, sidewalks, walkways and other means of ingress and egress upon the premises, including but not limited to pedestrian crosswalks upon which mats were regularly maintained.

> 17. Any and all training manuals, correspondence or training videos related to the Defendant's policies and procedures for the placement, maintenance, repair or replacement of mats in the Defendant's store described in the Complaint.

(DE 22-1).

Tractor Supply maintains its relevance objection, arguing these RFPs apply only to walking surfaces and floor mats "in" Tractor Supply's store (DE 27 at 5-6). Since the alleged fall here took place outside the store, Tractor Supply argues it should not be required to produce responsive documents (DE 27 at 5-6). As to RFP 5, Tractor Supply also added the following caveat to its relevance objections: "Subject to and without waiving said objection, on information and belief, Tractor Supply does not have documents responsive to this request in its possession, custody, or control" (DE 22-3).

The Court overrules all objections to these RFPs for three reasons. First, the Court finds the language of the RFPs reasonably covers walking surfaces and floor mats both inside and outside of the four walls of the physical store building itself. This includes outdoor areas open to customers, such as walkways approaching doors to the building.

Second, even if the Court were to restrict the language of the RFPs to their most narrow possible reading, i.e., only covering walking surfaces and floor mats *inside the four walls of the physical building itself*, the documents would nevertheless remain relevant. That is to say, a plaintiff might reasonably argue that a business should be expected to apply the same standards both inside and outside the four walls of the physical store building.

Third, as to RFP 5, Tractor Supply's caveat violates this Court's Order Setting Discovery Procedures (DE 7 at 4). As noted there, "[i]t has become common practice for a party to object ... and then state, 'notwithstanding the above,' the party will respond to the discovery request, subject to or without waiving such objection" (DE 7 at 4). "This type of response leaves the requesting party uncertain as to whether the response has been fully answered or whether only a portion of the response has been answered" (DE 7 at 4). For this reason as well, the Court overrules the objections to RFPs 5 and 17.

C. "On Information and Belief": RFP Nos. 7, 8, 9, 11, 12, 13, 16 & 28

Tractor Supply answered RFP Numbers 7, 8, 9, 11, 12, 13, 16 and 28 with the following response: "On information and belief, Tractor Supply does not have material responsive to this request in its possession, custody, or control" (DE 22-2, DE 22-3). Plaintiffs urge the Court to order Tractor Supply to re-do these responses as the current ones are "improperly equivocal" (DE 22 at 5).

***4** The Court disagrees. Pursuant to Fed. R. Civ. P. 26(g)(1)(A), when an attorney signs a discovery response, he or she certifies that "to the best of the person's knowledge, information, and belief formed after a reasonable inquiry," the response is "complete and correct as of the time it is made." In the Court's view, the attorneys who signed Tractor Supply's responses to RFP Numbers 7, 8, 9, 11, 12, 13, 16 and 28 merely affirmed their compliance with Fed. R. Civ. P. 26(g)(1)(A). The Court denies this portion of the Motion.

D. Store Manager-Related Documents: RFP Nos. 19, 20, 21 & 22

RFP Number 19 sought documents relating to the job duties and description of a Tractor Supply Store Manager (DE 22-1). RFP Numbers 20, 21 and 22 then sought documents relating to the following statement made in Store Manager Thomas's affidavit: "As the Store Manager my duties include supervising all Team Members, enforcing company *regulations*, handling administrative tasks, and maintaining *paperwork*, *logs* and other required documentation" (DE 12-1 ¶ 4) (emphasis added). Specifically, RFP Numbers 20, 21 and 22 sought, respectively, the "regulations," "paperwork," and "logs" referred to in Thomas's affidavit (DE 22-1).

Tractor Supply maintains its relevance objection on the grounds that Thomas has been dismissed as a party in this case (DE 27 at 7-8). As such, Tractor Supply argues, the role of Store Manager is no longer relevant to the case (DE 27 at 7-8).

The Court disagrees. The role of Store Manager remains relevant despite the dismissal of the individual claim against Store Manager Thomas. The District Judge dismissed Thomas based on Plaintiffs' inability to allege a claim of individual – as opposed to vicarious – fault against Thomas (DE 14 at 7). The issue of vicarious fault remains an open issue in the case. Put another way, a jury may hold Tractor Supply vicariously liable for the failure of the Store Manager on duty that day (apparently not Thomas) to perform his or her job properly. Discovery into the job duties and responsibilities of a Store Manager therefore falls squarely within the scope

of relevant discovery. The Court therefore overrules the objection to RFP Number 19 in its entirety.

As to RFP Numbers 20, 21 and 22, the Court reaches a different conclusion and sustains the objections in part. When read literally, these RFPs would require Tractor Supply to produce every "company regulation" that Store Managers enforce, and all "paperwork" and "logs" they maintain. This would exceed the scope of relevance, potentially including everything from ordering new inventory to keeping track of tardy employees. Accordingly, the Court narrows RFP Numbers 20, 21, and 22 by adding the following modifier to each RFP: "related to the maintenance, upkeep, inspection, alteration or condition of walking surfaces, whether inside or outside store, including floor mats."

The Court has considered, but finds unpersuasive, Tractor Supply's argument that Plaintiffs seek this discovery solely as a backdoor means to revive the claim against Thomas and thereby un-do the District Judge's order of remand (DE 27 at 7). The Court disagrees and finds that Plaintiffs have a valid, relevant basis to seek this discovery. The Court doubts, moreover, that Plaintiffs would have any success in reviving an individual claim against a company employee who was not even present on the day of the incident. During the hearing on this matter, Plaintiffs' counsel conceded as much, indicating she has no intent to attempt to revive the claim.

III. Conclusion

***5** For the reasons set forth above, the Motion is **GRANTED IN PART** and **DENIED IN PART**, as follows:

1. The Court overrules the objections to RFP Numbers 1, 2, 3, 4, 10, 15, 18, 23, 24, 25 and 26. As to any Unifirst documents that Tractor Supply believes to be confidential, Tractor Supply may label such documents "CONFIDENTIAL," and Plaintiffs shall make use of such documents only for purposes of this litigations and shall not disclose such documents to any third-parties (absent consent of Tractor Supply), apart from photocopying or other vendors used for litigation purposes. To the extent the parties enter into a confidentiality agreement or order, Tractor Supply may label such documents as "CONFIDENTIAL" for purposes of that agreement or order as well.

2. The Court overrules the objections to RFP Numbers 5 and 17.

3. The Court denies any relief as to RFP Numbers 7, 8, 9, 11, 12, 13, 16 and 28.

4. The Court overrules the objections as to RFP 19.

5. As to RFP Numbers 20, 21 and 22, the Court sustains the objections in part. As to these RFPs, Tractor Supply shall produce responsive documents subject to the following modifier: "related to the maintenance, upkeep, inspection, alteration or condition of walking surfaces, whether inside or outside store, including floor mats."

6. Tractor Supply shall produce all responsive documents subject to this Order within ten (10) days unless otherwise agreed to by the parties.

7. Finally, the Court declines to shift attorneys' fees pursuant to Fed. R. Civ. P. 37, as the Court finds the arguments on these issues were substantially justified.

DONE and ORDERED in Chambers at West Palm Beach in the Southern District of Florida, this 11th day of January 2024.

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EXHIBIT I

2021 WL 3231726
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United States District Court, N.D. Illinois, Eastern Division.

John VELEZ, Plaintiff,

v.

CITY OF CHICAGO, et al., Defendants.

No. 18 C 8144
|
Signed 07/29/2021

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MEMORANDUM OPINION AND ORDER

Jeffrey Cole, UNITED STATES MAGISTRATE JUDGE

***1** This is another of the parties' long simmering discovery disputes that is here for resolution in the last couple of weeks before the discovery deadline. The plaintiff has filed a motion to quash a subpoena to the Illinois Department of Corrections from the defendants for production of 251[1] phone call recordings from the period between March 2013 and March 2014.[2] The calls were between the plaintiff and his wife, daughter, and brother. As a result of the contentious history of this case, the presentations in the briefs are at times exaggerated, or not entirely accurate, or are simply histrionic. As noted, the parties are divided on the question of something so basic as the number of phone calls they are arguing over. As a result, it is a bit difficult to nail down what exactly was requested and when, and what exactly the response was.

Apparently in response to a request from the City, IDOC, in November 2019, produced the log of plaintiff's phone calls while he was in custody. [Dkt. #222-1]. The City claims that "[p]laintiff was unwilling to provide sufficient responses to identify the callers and provided no information regarding the nature or scope of the calls." [Dkt. #222, at 3]. But plaintiff did manage to identify about two-thirds of the phone numbers – although not until two months later on January 13, 2020 [Dkt. #222-2] – so the City's characterization is a bit dramatic. Things continued to move slowly until the City requested recordings of calls between plaintiff and his family in June 2020. [Dkt. #211, at 4].

The City then says it served its first set of interrogatories six months later on plaintiff on July 15, 2020, "in an attempt to determine if plaintiff ever spoke over the phone with any witnesses in this case, and what some of the subject-matter of those discussions with witnesses might have included." [Dkt. #222, at 3]. Actually, the City asked the plaintiff to identify every single interaction he had over the course of 20 years "with any witness that [sic] testified at [his] criminal trial, any individual who provided an affidavit subsequent to [his] conviction for the Hueneca homicide, or any individual who testified at [his] sentencing hearing." [Dkt. #222-3. ¶. 6].[3] Of course, the plaintiff made the usual, ineffectual, "boilerplate" objections, and answered only that he spoke regularly to the mother of his child, and could not "tally up or identify" any others because they were "numerous." [Dkt. #222-3, ¶. 6].

Surely, though, from a roster too numerous to tally, it would have been easy to pick out more than one.

***2** In any event, the stalemate continued, and so here we are.

To quash the subpoena and keep all these phone calls out of the case, the plaintiff makes three somewhat overlapping arguments – at least that is the way plaintiff presents them: any relevance is speculative; the breadth of the request is out of proportion with the needs of the case; and compliance with the request would violate his privacy interests. [Dkt. #211]. First, I do not agree with the relevance argument. The relevance standard is extremely broad as every court in the Nation has emphasized; *Bond v. Utreras*, 585 F.3d 1061, 1075 (7th Cir. 2009). Fed.R.Civ.P. 26 allows for discovery of "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case."

Here, the phone calls with plaintiff's family are relevant. Further discovery by the defendants into phone calls during the period at issue revealed that plaintiff was orchestrating efforts to get other witnesses to swear out – and how to phrase – affidavits in his behalf. Plaintiff's wife at the time – as opposed to the mother of his daughter mentioned earlier – was acting as investigator and go-between for plaintiff and another witness, in this case, Mr. Pelmer. Even plaintiff's daughter spoke with him about the murder. Defendants also learned of another witness, whom plaintiff had not disclosed – who was on many phone calls plaintiff had indicated were to yet another witness. [Dkt. # 222, at 1-4].

Other phone calls certainly bear on the plaintiff's relationships with his wife, the mother of his daughter, and his daughter. They arguably suggest that a number of things were strained rather than uniformly intimate and affectionate as plaintiff has contended. [Dkt. #222, at 1-4]. One such call indicates plaintiff's daughter did not wish to talk to him – he was bothering her. [Dkt. 222, at – and her mother told the plaintiff: "If something ever does happen to me she [daughter] knows the truth and I will make sure my real statement gets in. So last warning, don't f[...] with me." [Dkt. #222-4]. The defendants have made a far more convincing showing on relevance than was made in cases like *Bishop v. White*, 2020 WL 6149567, at *4 (N.D. Ill. 2020)("the sole basis for Defendants' subpoena is what ... an admitted liar who has told at least four stories about matters relevant to this case" has said); and *Pursley v. City of Rockford*, 2020 WL 1433827, at *4 (N.D. Ill. 2020)("Defendants merely allege that ... Plaintiff likely discussed his criminal case and post-conviction proceedings while incarcerated.").

So, clearly, the calls are relevant – not merely speculative – as plaintiff would have it – to the issue of damages and beyond that. Is it likely that some were proved to be of no consequence? As in every case that buffets through discovery, the answer is, "of course." Discovery is not a guarantee of success; it is not a matter of mathematics and equations in which certainty and exactness play central roles. It is, by its very nature, an enterprise with uncertain results and no assurance of ultimate success. Thus, because the information that is sought satisfies, in the abstract, the general requirement that the information sought be "relevant" – and proportional – does not ensure that the results of any given inquiry will yield usable information. *Boy Racer, Inc. v. Does, 1, 2, 3,* 2011 WL 7402999 (N.D. Cal. 2011). The inescapable fact is that litigants often come away " 'empty handed' from discovery." *Pacific Gulf Shipping Co. v. Vigorous Shipping & Trading S.A.*, 992 F.3d 893, 900 (9th Cir. 2021). But the indisputable reality as common sense dictates is that one can't know which specific items sought will turn out to be significant until they all are produced and reviewed. Or, as the Seventh Circuit has phrased it: " 'one can't know what one has caught until one fishes.' " *Nw. Mem'l Hosp.*, 362 F.3d 923, 931 (7th Cir. 2004). *See also Coleman v. City of Peoria*, 2016 WL 3974005, at *4 (C.D. Ill. 2016)("The recorded calls contain the most accurate information available about the content of those calls. The relevant calls cannot be identified without listening to the recordings.").[4] Obviously, plaintiff's legal team would rather do that reviewing, but one doesn't put the fox in charge of inspecting the hens in the henhouse. Indeed, as for plaintiff's offer of allowing the City to select search terms, appropriate search terms would be difficult to come up with prior to any review.

***3** While the request is arguably broad, it is not nearly as broad as the requests in the cases plaintiff relies upon. *See, e.g., Simon v. Northwestern University*, 2017 WL 66818, at *4 (N.D. Ill. 2017) (seeking all calls placed over a fifteen-year period) and *Bishop v. White*, 2020 WL 6149567, at *3 (N.D. Ill. 2020) (subpoena encompassed 8,000 telephone calls over a four-year period); *see also Ezell v. City of Chicago*, 2020 WL 9259071, at *1 (N.D. Ill. 2020)(quashing subpoena for all calls during lengthy incarceration); *Pursley v. City of Rockford*, 2020 WL 4815946, at *1 (N.D. Ill. 2020)(quashing subpoena covering seven years and 3,000 calls). Moreover, the "proportionality" argument rings a bit hollow coming from the plaintiff, who throughout this litigation has stressed

the extreme importance of the issues at stake. But the issues that underlie what is claimed to have occurred are significant to the defendants as well as to the plaintiff, and they have advanced a very different version of events than has plaintiff.

Further, plaintiff has filed a motion complaining that the defendant is late completing compelled production of perhaps 350 to 400 homicide *files,* totaling perhaps 100,000 pages, judging by the City's reported production thus far. [Dkt. #213, # 221]. If the case merits discovery and production of about 100,000 pages of files from the City, surely it is worth discovery relating to some 200 hundred phone calls from the plaintiff. Indeed, the stakes for all the parties in this case could not be of greater significance than those involved here, and discovery is never a one-way street, the outcome of which must favor one or the other of the litigants.[5]

Similarly, there are the plaintiff's protests of intrusion into his privacy. But as case after case holds, the mere invocation of the right of privacy is never the end of analysis, requiring a predetermined outcome in favor of the party asserting the claimed privacy interest. As the plaintiff must concede, he knew (or should have known) his phone calls were being monitored or recorded. So, his claimed privacy interest is not only greatly minimized, *Rodriguez v. City of Chicago*, 2021 WL 2206164, at *2 (N.D. Ill. 2021), but must be assessed in the context in which the claimed right is being assessed. Rights do not exist and cannot be measured in the abstract, and "[g]eneral propositions do not decide concrete cases." *Lochner v. New York*, 198 U.S. 45, 76, 25 S.Ct. 539, 49 L.Ed. 937 (1905)(Holmes, J., dissenting). *See also Daubert v. Merrell Dow*, 509 U.S. 579, 598, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993)(Rehnquist, C.J., concurring in part and dissenting in part)(" 'general observations' " suffer from the common flaw that they are not applied to the specific matter and "therefore they tend to be not only general, but vague and abstract."); *Barnhart v. Thomas,* 540 U.S. 20, 29, 124 S.Ct. 376, 157 L.Ed.2d 333 (2003)("To generalize is to be imprecise. Virtually *every* legal (or other) rule has imperfect applications in particular circumstances.").

***4** Thus, not surprisingly, courts have rejected claims of privilege on the basis that there is no expectation of privacy in prison phone calls. *See, e.g., United States v. Madoch*, 149 F.3d 596, 602 (7th Cir. 1998); *Bishop v. White*, 2020 WL 6149567, at *9 (N.D. Ill. 2020); *Pursley v. City of Rockford*, 2020 WL 1433827, at *5 (N.D. Ill. 2020). But plaintiff makes what some courts have found to be a valid point, and it is somewhat attractive, at least on the surface: "while [plaintiff] knew that his call recordings might be reviewed for a limited correctional purpose, he never could have imagined that every single one of his retained conversations with his minor daughter, wife, and brother would be indiscriminately produced en masse to be combed through by adverse parties in civil litigation." [Dkt. #211, at 9]. But, the few courts that have accepted this premise did not go beyond the plaintiff's bald assertion, and given the circumstances here, accepting that same assertion seems naive. In any event, the worth of a judicial opinion depends on its reasoning, not on its conclusion. *Sandifer v. U.S. Steel Corp.*, 678 F.3d 590 (7th Cir. 2012); *E.E.O.C. v. United Airlines,* 693 F.3d 760, 764-65 (7th Cir. 2012); *United States v. Navarette*, 7 F.3d 238 (7th Cir. 1993); *Kepler v. Chater*, 68 F.3d 387, 391 (10th Cir. 1995).

The plaintiff says he "[n]ever g[ave] up on proving his innocence" and "worked tirelessly to show that he had absolutely nothing to do with this crime." [Dkt. #96, Pars. 5, 73]. His investigation began years ago, paying off, as he says, in 2016. [Dkt. # 96, Pars. 6, 74]. While plaintiff worked without a lawyer early on, he was represented by one of the attorneys representing him here as things developed, and an amended post-conviction petition was filed, which eventually led to the State's decision to vacate his conviction in December 2017. [Dkt. # 96, ¶. 5, 74]; https://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=5250. So, not only is it clear from the content of some of the calls that litigation was in mind in 2013-14, it is likely that it was based on the timeline. Plaintiff may have even been represented by counsel by the time. This is a far cry from cases where the plaintiff was supposedly surprised to be involved in litigation years later.

Moreover, unlike the cases he relies upon, plaintiff has made no specific showing whatsoever as to what he asserts is the "intimacy" or "sensitivity" of the phone calls at issue. For example, in support of his vague claim that these phone calls covered intimate and personal topics that have nothing to do with this case, plaintiff cites *Bishop.* [Dkt. #211, at 10]. But as plaintiff, himself, points out in his brief, the prisoner in *Bishop* showed that his phone calls covered intimate and sensitive subjects, including conversations with his wife about her battle with cancer, conversations with others in regard to his wife's subsequent death, conversations about his son's heart attack and his grandmother's death. *Bishop*, 2020 WL 6149567, at *4. There is nothing remotely like any of that from the plaintiff. And it cannot too often be repeated or too strongly emphasized that "saying so doesn't make it so...." *United States v. 5443 Suffield Terrace, Skokie,*

Ill., 607 F.3d 504, 510 (7th Cir. 2010). *Accord Madlock v. WEC Energy Group, Inc.*, 885 F.3d 465, 473 (7th Cir. 2018); *Illinois Republican Party v. Pritzker*, 973 F.3d 760, 770 (7th Cir. 2020); *Donald J. Trump for President, Inc. v. Secy of Pennsylvania*, 830 F. Appx 377, 381 (3d Cir. 2020)("But calling an election unfair does not make it so. Charges require ... proof. We have neither here."). Even the Solicitor General's unsupported assertions are not enough. *Digital Realty Trust, Inc. v. Somers*, —— U.S. ——, 138 S.Ct. 767, 779, 200 L.Ed.2d 15 (2018).

CONCLUSION

For the foregoing reasons, the plaintiff's motion to quash [Dkt. ##209, 211] is denied.

All Citations

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Footnotes

1 The parties cannot agree on how many calls are involved. Defendants say 251; the plaintiff says 389.

2 The period at issue appears to be dictated by the phone calls IDOC retained, which the parties suggest is limited to a single year – March 2013-14 – of plaintiff's incarceration. [Dkt. #211, at 13; #222, at 3].

3 In light of the nature of certain aspects of the presentations in this case, it is well to emphasize the Seventh Circuit's repeated admonitions to the bar that " '[j]udges are not like pigs, hunting for truffles buried in the record,' " *Bunn v. Fed. Deposit Ins. Corp. for Valley Bank Illinois*, 908 F.3d 290, 297 (7th Cir. 2018). Nor are they obliged "to play archaeologist with the record." *Spitz v. Proven Winners N. Am., LLC*, 759 F.3d 724, 731 (7th Cir. 2014). These concerns, while not new, continue to be ignored. *See, e.g., United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991); *DeSilva v. DiLeonardi*, 181 F.3d 865, 867 (7th Cir. 1999). Here the defendants quote from plaintiff's responses to their interrogatories and cite, not a paragraph – they are numbered after all – nor a page, but the entire 23-page exhibit. [Dkt. #222, at 3]. Not to be outdone, although the plaintiff argues that the phone calls have no real relevance to his particular allegations or damages [Dkt. #211, at 8-9], plaintiff's only reference to those allegation is citation to his entire 32-page Complaint. [Dkt. #211, at 1].

The obvious point is that citations to entire, often lengthy, exhibits are hopelessly ineffective. Judges cannot be expected to scour long records in order to find something to support a point adverted to in a brief. Not only does a busy court not have the time to do the work the lawyers should have done in the first place, but there are other litigants and other cases that need the necessarily limited time that a court has to do its overall judicial work. *United States v. Sineneng-Smith*, —— U.S. ——, 140 S.Ct. 1575, 1579, 206 L.Ed.2d 866 (2020). Also, a skeletal, non-directive presentation can suggest a certain disregard by counsel. But, it can also suggest that the point being argued is not really sustained, or counsel would have taken the time to point the court specifically to the section of the record that supports the point being argued. Beyond this, it must not be forgotten that judges should not do the work of lawyers. Indeed, they are prohibited from doing so as every court in the Nation has held. *See, e.g., Castelino v. Rose-Hulman Inst. of Tech.*, 999 F.3d 1031, 1041–44 (7th Cir. 2021); *Bunn v. FDIC*, 908 F.3d 290, 297 (7th Cir. 2018); *United States v. Gustin*, 642 F.3d 573, 575 (7th Cir. 2011); *Sednay Internat'l Ltd. v. Continental Ins. Co.*, 624 F.3d 834 842 (7th Cir. 2010); *Hartman v. Prudential Ins. Co. of America*, 9 F.3d 1207, 1214 (7th Cir. 1993).

Here, the defendants quote from plaintiff's responses to their interrogatories and cite not a paragraph – they are numbered after all – nor a page, but the entire 23-page exhibit. [Dkt. #222, at 3]. Not to be outdone, although the plaintiff argues that the phone calls have no real relevance to his particular allegations or damages [Dkt. #211, at 8-9], plaintiff's only reference to those allegations is citation to his entire 32-page Complaint. [Dkt. #211, at 1].

4 In *Hickman v. Taylor*, 329 U.S. 495, 507, 67 S.Ct. 385, 91 L.Ed. 451 (1947) the court said: "No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case." *Accord* 8A Wright, Miller & Marcus, Federal Practice and Procedure § 2206 at 380 (2nd ed. 1994). *See generally,* Elizabeth Thornburg, *Just Say "No Fishing": The Lure of Metaphor*, 40 Univ. of Michigan Journal of Law Reform 1 (2006); Jonathan Redgrave, *The Information Age, Part I: Fishing in the Ocean, A Critical Examination of Discovery*, 2 SEDCJ 198, *et seq.* (2001).

This does not mean that so-called limitless, exploratory "fishing expeditions" in discovery are permissible. They are not. *Equal Employment Opportunity Comm'n v. Union Pac. R.R. Co.*, 867 F.3d 843, 852 (7th Cir. 2017); *Higgason v. Hanks*, 54 F. App'x 448, 450 (7th Cir. 2002).

5 Proportionality is invoked by the plaintiff. But proportionality is anything but a simple concept with easy, formulaic answers. Proportionality is dependent upon a careful assessment of the facts unique to each case. *See* the informative discussions in Linda Simard, *Seeking Proportional Discovery: The Beginning of the End of Procedural Uniformity in Civil Rules*, 71 Vanderbilt L.Rev. 1919 (2018); Matthew T. Ciulla, *A Disproportionate Response? The 2015 Proportionality Amendments to Federal Rules of Civil Procedure 26(B),* 92 Notre Dame L.Rev. 1395 (2016); Bernadette B. Genetin, *"Just a Bit Outside!": Proportionality and Federal Discovery and the Institutional Capacity of the Federal Courts*, 34 Review of Litigation 655 (2015). In this case, the interests that are at stake on both sides could not be more critical, and it would lead to inexact analysis to give preference to the interests only of the plaintiff and disregard the interests of the defendants – to say nothing of the public's overriding interest in the truthful and accurate outcome of the trial that is to come. *See Kansas v. Cheever*, 571 U.S. 87, 94, 134 S.Ct. 596, 187 L.Ed.2d 519 (2013); *Darden v. Wainwright*, 477 U.S. 168, 194, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986)("The 'solemn purpose of endeavoring to ascertain the truth ... is the *sine qua non* of a fair trial.' ").

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EXHIBIT J

2020 WL 6149567
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Thomas BISHOP, Plaintiff,

v.

Joseph WHITE, et. al., Defendants.

No. 16 C 6040
|
Signed 10/20/2020

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MEMORANDUM OPINION AND ORDER

Jeffrey T. Gilbert, United States Magistrate Judge

***1** This case comes before the Court on Plaintiff's Motion to Quash the Detective Defendants' Subpoena Seeking Plaintiff's Recorded Phone Calls [ECF No. 250]. For the reasons discussed below, Plaintiff's Motion is granted without prejudice to Defendants potentially proposing a narrower inquiry into Plaintiff's recorded phone calls from Cook County Jail than is portended by the broad subpoena currently before the Court.

BACKGROUND

On the night of October 23, 2014, four people were shot in the 7900 block of South Justine Street in Chicago, Illinois: Tepete Davis ("Davis"), Antwon Lee ("Lee"), Isaiah Watkins ("Watkins"), and Plaintiff. Shortly before midnight, Davis, Lee, and Watkins were shot multiple times during the course of a robbery. Davis died from his wounds, while Lee, who was shot six times in the leg, arm, and head, and Watkins, who was shot once, were both taken to the hospital and survived. These are the only facts about which Plaintiff and Defendants agree regarding the events of October 23rd.

Plaintiff's recollection of the night of October 23rd is that he was walking home from his grandmother's house on 76th Street around the time of the shooting when he came upon Chicago Police Officers, including some of the named Defendants, in an alley. Unarmed and frightened at being approached by police officers, he turned his back to them, at which time, Plaintiff claims, Defendant White shot him in the neck and back of the head without provocation. He was taken to the hospital, and although he survived, Plaintiff contends that his medical care was inadequate both on scene and at the hospital as Defendants scrambled to justify the shooting. Defendants, according to Plaintiff, decided to frame Plaintiff for the Davis murder in order to validate their wrongful use of force after-the-fact. As part of this scheme, Plaintiff alleges that Defendants not only fabricated evidence and falsified reports, but they coerced Lee, a central, surviving witness to the shooting, to identify Plaintiff as the shooter both in a photo array and before a grand jury.

Defendants describe the events that unfolded on October 23, 2014 quite differently. As they responded to the sound of gunfire near South Justine Street, Defendants assert that they saw Plaintiff discharging a firearm in an alley near where Davis was murdered and Lee and Watkins were shot. When they approached, Defendants told Plaintiff to stop and not move, but he refused. According to Defendants, Plaintiff turned and began to run away from the officers, gun in hand. Defendant White then discharged his weapon twice and struck Plaintiff in the upper body, after which Plaintiff was taken to the hospital and treated for two gunshot wounds. No weapon was recovered on scene, but as Defendants continued their investigation of the shooting, Defendants claim they recovered evidence giving rise to probable cause that Plaintiff shot Davis and Lee. Importantly, Defendants assert that when they interviewed Lee from his hospital bed,

Lee confidently and voluntarily identified Plaintiff as the shooter: an identification that he repeated during multiple interviews and a photo array. Lee also testified before a grand jury regarding the same. Plaintiff was subsequently charged with one count of first-degree murder and two counts of attempted murder related to shooting Davis and Lee.

***2** Almost two years after the shooting and while Plaintiff was still in custody awaiting trial, Lee recanted his identification of Plaintiff as the shooter in a sworn affidavit dated September 20, 2016. Although Lee's affidavit is dated and notarized as of September 20, 2016, by all accounts, it materialized for the first time during Plaintiff's criminal trial in 2018. In the affidavit, Lee states that Plaintiff was not the man who shot him and explains that he was in such fear of going to jail or being accused of a crime himself that he "merely did as the police officers told" him when he wrongly identified Plaintiff as the shooter. [ECF No. 237-1] at 2. Lee also testified consistent with his recantation affidavit at trial and reiterated that although he saw the shooter, he was sure it was not Plaintiff. At the close of the evidence, Plaintiff was found not guilty of all criminal charges.

Unsurprisingly, the parties' perspectives of the events leading up to and following Lee's recantation are also at odds. Plaintiff asserts that Lee, "motivated by a simple desire to tell the truth and do the right thing," voluntarily recanted his false identification and the grand jury testimony he was coerced into providing. [ECF No. 258] at 3. Defendants, however, maintain they have evidence that Plaintiff "obtained the recantation by intimidating Lee and promising to pay him thousands of dollars" to change his testimony. [ECF No. 254] at 6. According to Defendants, Plaintiff, while still in pretrial custody, directed others to communicate with Lee and arrange for him to be paid $10,000 to sign an affidavit recanting his identification. [ECF No. 254] at 4-6.

This civil action was filed in 2016 but stayed during the proceedings in Plaintiff's state criminal case. After the jury found Plaintiff not guilty at his criminal trial in 2018, the District Judge presiding in this case allowed this civil suit to proceed. [ECF Nos. 61, 63]. The circumstances and substance of Lee's initial identification and subsequent recantation have developed into crucial evidence for both parties in this litigation. [ECF Nos. 237, 244, 247]. As part of ongoing fact discovery, Defendants issued a Rule 45 subpoena to non-party Cook County Department of Corrections ("CCDOC") on July 30, 2020 seeking "any and all phone call records/logs and recordings of inmate calls in your possession and control relating to Thomas D. Bishop (IR 945595; DOB [redacted]) for the time period 10-23-14 through 11-28-18." [ECF No. 250-1] at 2. Defendants believe evidence of Plaintiff's alleged effort to convince Lee to recant his identification of Plaintiff as the shooter will be found in Plaintiff's recorded telephone calls while he was in pretrial custody in Cook County Jail. [ECF No. 254], at 2-6. CCDOC did not move to quash the subpoena, and in fact, has already produced some responsive materials in the form of a log of Plaintiff's phone calls between October 26, 2014 and June 13, 2019. [ECF No. 254-7] at 1.

Plaintiff filed the instant Motion asking the Court to quash Defendants' subpoena to the CCDOC on two grounds. First, as a matter of procedure, Plaintiff submits that Defendants did not properly meet and confer under Local Rule 37.2 and attempt to resolve this dispute without court intervention. The subpoena, Plaintiff reasons, should be held in abeyance until the meet and confer process takes place. On the merits, Plaintiff argues that the Court should quash the subpoena pursuant to Rule 45(d) because Defendants' broad subpoena for all of his telephone calls while in the custody of CCDOC is an unjustified fishing expedition, and his privacy interest in the phone calls sought outweighs any benefit of production of those recordings on such a wholesale basis, particularly where the phone calls may include privileged attorney-client communications. The Court addresses each argument below in turn.

DISCUSSION

I. Local Rule 37.2 and the Meet & Confer Process

***3** As an initial matter, the Court declines to grant Plaintiff's Motion based on perceived inadequacies of the meet and confer process. The purpose of Local Rule 37.2, and the meet and confer process as a whole, is to "curtail undue delay and expense in the administration of justice.' " *Autotech Techs. Ltd. P'ship v. Automationdirect.com, Inc.*, 2007 WL 2736681, at *2 (N.D. Ill. 2007) (quoting L.R. 37.2); *see also* Fed.r.civ.p. 1 ("These rules…should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."). Defendants have made it clear in their brief that they are not amenable to Plaintiff's proposal that Defendants "narrow the list of possibly relevant and non-privileged calls using the call log, [so that] Plaintiff's counsel can review those calls, produce those that are indeed discoverable, and prepare a privilege log for those that are not." [ECF No. 250] at 10. Simply put, Defendants believe the law entitles

them to all of Plaintiff's recorded calls, and Plaintiff firmly disagrees. Neither position seems likely to change absent court intervention. Indeed, based on the briefs filed by both sides, it does not seem there are any issues raised that could have been, or still could be, avoided by a proper meet and confer. Granting Plaintiff's Motion for failure to comply with Rule 37 and Local Rule 37.2 would therefore result in nothing more than the parties engaging in a futile meet and confer process and filing additional briefs that would be the same, or at least substantially similar, to what they already have filed. That does not seem to be a good use of anyone's time.

The Court agrees with Plaintiff that the Local Rule 37.2 process generally is a prerequisite to the type of motion Defendants have filed. In this instance, though, the Court will not require strict compliance with Local Rule 37.2 for the reasons discussed above. Further, to the extent the Court is granting Plaintiff's Motion without prejudice to Defendants potentially proposing a narrower inquiry into Plaintiff's telephone calls from Cook County Jail, it may be that this Memorandum Opinion and Order will be of some help to the parties should a meet and confer process be necessary in the future. The Court, therefore, turns to the merits of Plaintiff's Motion.

II. Plaintiff's Standing and Privacy Interests in the Recordings Sought

A district court must quash or modify a subpoena that "(1) fails to allow a reasonable time for compliance, (2) requires a nonparty to travel more than 100 miles, (3) 'requires disclosure of privileged or other protected matter, if no exception or waiver applies,' or (4) 'subjects a person to undue burden.' " *TCYK, LLC v. Doe,* 2013 WL 5567772 (N.D. Ill. 2013) (quoting FED.R.CIV.P. 45(c)(3)(A)). Yet before the court may exercise its authority under Rule 45(c), a party must have standing to move to quash the subpoena in question. As a general rule, in order for a party to have standing to quash a subpoena issued to a nonparty, the subpoena must implicate that person's "legitimate interests." *See United States v. Raineri,* 670 F.2d 702, 712 (7th Cir. 1982). The movant must have either a claim of privilege, or privacy interests upon which the subpoena will impinge, in order to have standing. *Simon v. Nw. Univ.,* 2017 WL 66818, at *2 (N.D. Ill. 2017); *Hard Drive Prods. v. Doe*, 2012 WL 2196038 (N.D. Ill. 2012) ("Generally, a party lacks standing to quash a subpoena issued to a nonparty unless the party has a claim of privilege attached to the information sought or unless it implicates a party's privacy interest."). Even a minimal privacy interest has been found sufficient to confer standing. *HTG Capital Partners, LLC v. Doe,* 2015 WL 5611333 (N.D. Ill. 2015); *Sunlust Pictures, LLC v. Does 1-75*, 2012 WL 3717768, at *2 (N.D. Ill. 2012).

Although Defendants do not appear to contest it, Plaintiff nevertheless must establish that he has standing to move to quash Defendants' subpoena to third-party CCDOC. *See generally, Wauchop v. Domino's Pizza, Inc.,* 138 F.R.D. 539, 543 (N.D. Ind. 1991) ("The burden of persuasion in a motion to quash a subpoena…is borne by the movant."). Plaintiff need only show a minimal privacy interest to demonstrate standing, as Plaintiff must only establish enough of a privacy interest to invoke the Court's discretionary authority to control discovery in a civil case.

Plaintiff has established at least a minimal privacy interest in the telephone recordings Defendants seek. Plaintiff was incarcerated at CCDOC for over four years before he was ultimately acquitted at trial, and during that time, Plaintiff made almost 8,000 recorded phone calls to "attorneys, friends, family members, and loved ones." [ECF Nos. 250, 254-7]. As courts in this district have recognized, although Plaintiff may reasonably have expected prison officials or law enforcement to have access to recordings of his phone calls from Cook County Jail because of security concerns inherent in managing prisons and prisoners, he may not have anticipated that parties to a civil proceeding would be privy to those conversations. *Pursley v. City of Rockford,* 2020 WL 1433827, at *2 (N.D. Ill. 2020); *Simon* at *2; *Coleman v. City of Peoria,* 2016 WL 3974005, at *3 (C.D. Ill. 2016). That distinction also animates the Court's recognition of Plaintiff's privacy interest in the telephone calls at issue in this case. Even if Plaintiff could have expected that his telephone calls would be monitored by prison officials, he would not necessarily have expected that recordings of those calls would be handed over in bulk to an adverse party in a civil case. *Id.*; *see also* [ECF No. 250] at 5-6. Therefore, Plaintiff has standing to challenge Defendants' subpoena to the CCDOC because he has the minimum privacy interest the law requires for him to raise the arguments he now is raising before the Court.

III. The Relevance of the Information Sought and the Court's Balancing Test Under Rule 45

***4** Having established Plaintiff has standing to bring this Motion under Rule 45, the Court must next consider whether Defendants' subpoena imposes an undue burden; namely, "whether the burden of compliance with [the subpoena] would exceed the benefit of production of the material

sought." *Nw. Mem'l Hosp. v. Ashcroft,* 362 F.3d 923, 927 (7th Cir. 2004). Where the subpoena is directed to a third-party but implicates a different individual's privacy interests, courts weigh the relevance of the information sought against the strength of that privacy interest rather than conduct the familiar assessment of how burdensome production would be on the third party recipient of the subpoena in terms of time and volume of information. *See, e.g., Simon,* 2017 WL 66818, at *2; *Coleman,* 2016 WL 3974005, at *3. "The scope of material that may be secured by Subpoena is as broad as that permitted under the discovery rules," *Coleman* at *3 (citing *Graham v. Casey's General Stores,* 206 F.R.D. 251, 253-54 (S.D. Ind. 2002)), and consists of evidence that is relevant to any party's claim or defense and proportional to the needs of the case. FED.R.CIV.P. 26(b)(1). As with most discovery matters, the decision about whether to quash a subpoena rests squarely within the Court's discretion. *TCYK, LLC*, 2014 WL 273806, at *2 (citing *Griffin v. Foley*, 542 F.3d 209, 223 (7th Cir. 2008)).

In weighing the interests at stake here, the Court must first evaluate the nature and strength of Plaintiff's privacy interests. Plaintiff was a pretrial detainee at Cook County Jail between 2014 and 2018 and placed almost 8,000 telephone calls during that time period. [ECF No. 254-7]. At the time he placed the recorded phone calls at issue, Plaintiff was aware that his telephone conversations were being recorded. [ECF No. 250] at 5-6 ("Moreover, although Plaintiff was aware that his calls at the Cook County Jail might be monitored for security purposes, he never imagined those calls would be heard by anyone other than security personnel. Plaintiff knew he was not doing anything on those calls constituting a security threat; anyone at the Jail who heard his calls would move on to more serious matters. Weighing that low risk against the value of maintaining personal connections, including with his minor children, Plaintiff decided to make phone calls anyway."); [ECF No. 254-8] at 26 ("Telephone calls may be monitored unless prior special arrangements have been made (court ordered) to make confidential telephone calls to your attorney."). And were this a criminal case, the privacy analysis might end here, as an individual who knows his communications are being monitored, recorded, and preserved cannot be said to have a reasonable expectation of privacy in those communications for Fourth Amendment purposes. *Coleman,* 016 WL 3974005, at *3.

But this is a civil, not a criminal, case. Although Plaintiff's privacy interest may be minimal – or at least less than that of a private citizen making calls from home without any sense the calls are being monitored by third parties – it is not nonexistent. *See, e.g., Pursley,* 020 WL 1433827, at *3. During the thousands of recorded phone calls at issue, Plaintiff engaged in conversations with family members about intimate and sensitive subjects, including conversations with his wife while she was battling cancer, subsequently grieving his wife's death with family and friends, and also discussing his son's heart attack. He had personal conversations with his minor children, dealt with his grandmother's death, and spoke about countless matters that likely have nothing to do with the subject matters that would be relevant to the claims or defenses in this case. Plaintiff is entitled to some degree of privacy in the personal content of those conversations, even though he knew others could listen to, and record, those conversations because he was in jail. *Id*.

Turning now to the relevance of the information sought, it is possible that relevant information may be contained somewhere within Plaintiff's 8,000 recorded phone calls – but only if Lee is to be believed, and then only to a point. As it stands, the sole basis for Defendants' subpoena is what Lee has said over the years in that Defendants' belief that relevant information is contained in Bishop's telephone calls comes either from Lee's own recorded jail phone calls or Lee's deposition testimony in this case. Yet Lee is an admitted liar who has told at least four stories about matters relevant to this case. Lee first said Plaintiff was the shooter, and then recanted that story saying he was forced by the police to tell it and Plaintiff, in fact, was not the shooter. Lee also was recorded on telephone calls while he was in the custody of the Illinois Department of Corrections ("IDOC") saying Plaintiff was reaching out to him through third party intermediaries and offering to pay him $10,000 to say Plaintiff was not the shooter. Then, in his recent depositions in this case, Lee says that it was he who was trying to extort Plaintiff to pay him $10,000 to change his story, and he denied that it was Plaintiff who was trying to bribe him.

***5** Defendants would say that whether Plaintiff was trying to bribe Lee to change his story or Lee was trying to extort Plaintiff to the same effect, evidence related to either scheme could be contained in Plaintiff's recorded calls, and such evidence would be relevant to the claims or defenses in this case. Yet at least one of those stories most likely is a lie, and the bare assertion that the material sought *may* Contain relevant information is insufficient to allow an unlimited subpoena, especially when that assertion is based on the kind of shaky and potentially unreliable evidence that Defendants

are relying upon here. *See, e.g., Wilson v. O'Brien,* 2009 WL 763785, at *8 (N.D. Ill. 2009).

Further, even were the Court to accept only the portions of Lee's various stories that support Defendants' position as true – namely, that Plaintiff was trying to bribe Lee to change his initial, truthful identification of Plaintiff as the shooter – there still is no solid evidence before the Court that Plaintiff ever used the *telephone* to communicate directly or indirectly with Lee or any of his intermediaries to accomplish that purported goal. The only method of communication between Lee and Bishop reflected of record in this case so far is by letter.[1] To gain access to Plaintiff's recorded phone calls, there must be *some* credible evidence that the potentially relevant information will be found where it is being sought.

To that point, Defendants urge the Court to conclude this case falls more within the orbit of *Coleman*, where the court allowed a subpoena for recorded prison calls, than recent decisions in *Pursely* and *Simon*, two cases in which courts rejected similar subpoenas for an inmate's recorded phone calls as overly broad. As this Court highlighted during the hearing in this case on September 8, 2020, [ECF No. 261], the evidence in *Coleman* established that the civil plaintiff whose recorded IDOC calls were sought had, in fact, used the telephone to communicate with seven individuals who were his co-defendants and witnesses in a criminal case about relevant subject matters. *Coleman*, 2016 WL 3974005, at *2 ("Deposition testimony taken during discovery indicates that Coleman had telephone conversations with Nixon, James Coats, Roberson, McKay, Brooks, Robert Coats, and Deondre Coleman while Coleman was in the custody of the Illinois Department of Corrections (IDOC). Coleman made some of these calls through his sister, Kim Coleman, and others. Coleman called his sister or others, and they would set up a three-way call with Coleman, who was in custody, and one of the witnesses listed above. Other times, Coleman made the call to Kim Coleman while one of these disclosed witnesses was with Kim Coleman, and the witness spoke to Coleman."). No such direct evidence exists in this case. In the Court's view, therefore, Defendants' subpoena falls more within the broad fishing expeditions described and rejected in *Pursley* and *Simon* than the documented, proportional effort allowed in *Coleman.*

***6** Notwithstanding the lack of direct evidence that Plaintiff communicated with Lee or his intermediaries by telephone, Defendants say it is reasonable to assume Plaintiff was doing so because telephone is the most ubiquitous of the three forms of communication – phone calls, in-person visitation, and letters – available to inmates at Cook County Jail. Defendants argue, therefore, that it is almost a foregone conclusion that Plaintiff used the telephone in furtherance of his purported scheme to influence Lee's testimony. As of now, though, this is nothing more than speculation unsupported by any hard evidence. It may be that Plaintiff, in an effort to avoid placing phone calls he knew were being recorded, communicated with Lee's intermediaries by other means. Plaintiff, for example, could have corresponded with Lee's intermediaries by letter, as Lee intimated Plaintiff did in one of his recorded telephone calls from IDOC, *see* footnote 1, *supra*, citing [ECF No. 254-2] at 2-3, or through intermediaries of his own. This speculation by the Court, presented here only to make a point, also is of no consequence without any evidence.

The bottom line is that neither the Court nor Defendants have enough evidence that convincingly supports any theory as to how Plaintiff may have communicated with Lee's people if such communications, in fact, occurred at all. There must be some basis, beyond mere supposition, that Plaintiff used the telephone to communicate directly or indirectly with Lee or his intermediaries before Defendants can be given license to rummage through Plaintiff's 8,000 personal telephone calls. The mere possibility that relevant information may be found in Plaintiff's recorded phone calls, which is all Defendants have at this juncture, is insufficient to overcome Plaintiff's privacy interest, especially given the breadth of Defendants' subpoena encompassing 8,000 telephone calls over a four-year period. *Wilson,* 2009 WL 763785, at *8 (the "meager" assertion that "the material sought may contain relevant information" is insufficient to allow an unlimited subpoena).

It often is said that "pretrial discovery is a fishing expedition and one can't know what one has caught until one fishes." *Nw. Mem'l Hosp. v. Ashcroft,* 362 F.3d 923, 931 (7th Cir. 2004). "But Fed.R.Civ.P. 45(c) allows the fish to object, and when they do so the fisherman has to come up with more" than Defendants have been able to do in this case. *Id.* If some of what Lee says is to be believed, then there may at least have been some indirect communication between Lee and Plaintiff relating to Lee's anticipated testimony at Plaintiff's criminal trial. But Defendants have not yet established to the Court's satisfaction that this evidence will be found in Plaintiff's recorded phone calls such that Defendant should be given free rein to listen to every call Plaintiff made over a four-year time period. Until Defendants make this connection, the subpoena at issue is overbroad and does not target evidence that is sufficiently relevant to overcome even Plaintiff's minimal

privacy interest here. Nor is searching 8,000 phone calls, without any limitation, proportional to the needs of the case.

There is still a significant amount of discovery to be done in this case. Plaintiff is scheduled to be deposed in the very near future, as are other individuals who may have first-hand knowledge of the October 2014 shooting itself or Plaintiff's purported scheme to coerce the testimony of Lee and other witnesses. [ECF Nos. 262, 275]. The deposition of Isaiah Watkins, one of the October 2014 shooting victims, was scheduled for October 8, 2020 – though Watkins did not appear for that deposition and a motion for a rule to show cause is currently pending [ECF No. 269] – and Plaintiff's deposition is scheduled for November 19, 2020. [ECF No. 275]. Since the filing of this Motion, the parties have deposed Karin Campbell, with whom Lee communicated about supposed contacts between Plaintiff and Lee's purported intermediaries, identified by Lee only as Dover and Solo.[2] It may be that further discovery will allow Defendants to uncover the identities of Dover and Solo as well as a third purported intermediary Lee identified only as Beebo. *See* footnote 1, *supra*. Further investigation and discovery also may shed light on how or when these intermediaries communicated with Plaintiff, as well as when and how Lee's recantation affidavit came into Plaintiff's possession. The parties have identified literally dozens of potential witnesses, both parties and third parties, who may be interviewed or deposed in this case and whose testimony or statements may prove to be important in establishing the relevance of Plaintiff's recorded jail calls. [ECF Nos. 130, 262, 275].

***7** It may be that the subpoena to CCDOC comes too early in the discovery process. To be sure, allowing Defendants access to Plaintiff's telephone calls now would open up for them a large window into much of Plaintiff's life during the four years he spent in pretrial detention, which, in turn, might make it easier for Defendants to find evidence of what they are looking for, if it exists. But the easier path is not always the right path, particularly when a person's privacy interests are at stake. Allowing Defendants the kind of unlimited access to Plaintiff's recorded telephone calls they now seek comes at a cost to even the minimal privacy interests the law recognizes for a pretrial detainee in Plaintiff's position. In the Court's view, Defendants need to present a more convincing argument that relevant evidence will be found in Plaintiff's jailhouse calls before they will be allowed to "go fishing" in that particular pond. Further, depending upon what Defendants come up with, it may be that they will be able to justify fishing in only parts of that pond.

The Court notes that Plaintiff does not appear to object to CCDOC already having produced to Defendants a log of Plaintiff's phone calls during his pretrial detention at Cook County Jail in response to the subpoena at issue. Therefore, this Court's order today otherwise quashing Defendants' subpoena for Plaintiff's telephone calls does not preclude production of that call log by CCDOC without apparent objection by Plaintiff. Perhaps some information contained within that log, which includes every phone number Plaintiff called while incarcerated, can be used, along with other evidence that Plaintiff can provide or Defendants may discover along the way, to narrow the scope of the subpoena and better target relevant, proportional, and thus discoverable evidence. Until that time, however, the Court is not convinced that the subpoena here is any more narrowly tailored than the broad fishing expeditions rejected by the courts in *Pursley, Simon,* and *Ezell.* The Court similarly rejects Defendants' overbroad subpoena here.

On a final note, Defendants assert that the information contained in the telephone recordings is independently relevant to the issue of Plaintiff's damages. The subpoena, as currently framed, seeks four years of Plaintiff's calls without limitation. That is to say, the subpoena is not in any way targeted at calls likely to contain information relevant to facts supporting or undermining Plaintiff's claimed physical injuries or the pain and suffering or emotional distress he says he suffered. Instead, Defendants are trying to cast a wide net over all of Plaintiff's recorded phone calls to uncover whatever evidence they can that Plaintiff's asserted damages are overstated or unsupported by the evidence. Using such a wide net, the Court has little doubt that Defendants would catch at least a few recordings they would say might be useful for their cross-examination of Plaintiff at trial, or to challenging Plaintiff's claimed damages from four long years of pretrial detention. But the question is not only whether a broad search of Plaintiff's calls would possibly uncover relevant information, but also whether such a search is proportional to the needs of the case. Weighing Plaintiff's privacy interest in four years of recorded calls against the possible relevance of some of those calls to Plaintiff's asserted damages and Defendants' defense against the same, the Court cannot say relevance carries the day here to justify such a broad-based search.

The Court is not saying, as it pertains to Plaintiff's recorded calls, that some targeted discovery into Plaintiff's emotional or physical state during the time he was incarcerated might not be sufficiently relevant to overcome Plaintiff's privacy interest described above. But Defendant's blunderbuss approach to this issue in seeking to listen to all 8,000 telephone calls Plaintiff made from Cook County Jail so they can try to undercut his claim that he was injured as a result of serving four years of pretrial detention before his criminal trial, which ended in a not guilty verdict, is not proportional to the needs of the case and unreasonably tramples on Plaintiff's even minimal privacy interests. *See, e.g., Ezell v. City of Chicago*, No. 1:18-CV-01049, ECF No. 230 (N.D. Ill. 2020) ("In other words, in the years of recorded conversations, some bit of evidence about plaintiffs' state mind might possibly be revealed. But the subpoenas are so broad and all−encompassing that they are the very definition of a fishing expedition or of throwing darts in the dark.").

***8** Finally, as should be evident from the discussion above, the issue of whether Defendants' subpoena should be allowed or not is presented to the Court on an all or nothing basis at this point. Defendants say their subpoena is completely proper. Plaintiff says it is overbroad and his counsel should be allowed to review the CCDOC call log, meet and confer with defense counsel, and propose a more limited number of calls for Defendants to review for potentially relevant information. Defendants reject that approach as a non-starter; they want all the calls. Neither side has presented as of now a reasonable alternative either to ordering full production of the recorded telephone calls sought by the subpoena to CCDOC or shutting the process down so the parties can think about and possibly discuss a narrower approach. Faced with this choice, the Court opts for shutting the process down, at least for now.

IV. The Attorney-Client Privilege and Plaintiff's Recorded Jail Calls

Finally, Plaintiff asks the Court to quash Defendants' subpoena because disclosure of his recorded jail calls may reveal conversations protected by the attorney-client privilege. Although the Court is quashing Defendants' subpoena for other reasons, the Court will address the attorney-client privilege issue on the merits because it may be relevant if the Court's ruling is appealed and/or if Defendants present a more narrowly tailored subpoena in the future.

Although the Court must quash or modify a subpoena if it requires the disclosure of privileged information, FED.R.CIV.P. 45(d)(3), the Court disagrees that Plaintiff's attorney-client communications over recorded prison telephone lines are privileged. As the Seventh Circuit has repeatedly explained, the attorney-client privilege protects communications in which legal advice of any kind is sought from a professional legal adviser in his capacity as such, so long as the communication is related to that purpose and "made in confidence…by the client." *Sandra T.E. v. S. Berwyn Sch. Dist. 100*, 600 F.3d 612, 618 (7th Cir. 2010) (citing *United States v. Evans,* 113 F.3d 1457, 1461 (7th Cir.1997)). Although the Seventh Circuit has not yet tackled the issue of whether the attorney-client privilege protects recorded prison telephone calls, several courts in this circuit have held that such communications are not privileged because the inmates in question knew their conversations were being recorded and had no reasonable expectation of confidentiality.[3] *Pursley*, 2020 WL 1433827, at *4; *Simon*, 2017 WL 66818, at *5; *United States v. Thompson,* 2007 WL 2700016, at *2 (C.D. Ill. 2007). Other courts nationwide are in accord. *United States v. Mejia,* 655 F.3d 126, 133 (2d Cir. 2011) ("[W]here an inmate is aware that his or her calls are being recorded, those calls are not protected by a privilege."); *United States v. Hatcher,* 323 F.3d 666, 674 (8th Cir. 2003) ("The presence of the prison recording device destroyed the attorney-client privilege. Because the inmates and their lawyers were aware that their conversations were being recorded, they could not reasonably expect that their conversations would remain private.").

Plaintiff asserts that he "had, at best, no procedure by which he could access or request an unrecorded call with his attorneys except through court order in special circumstances, and Plaintiff understood as a practical matter that he did not have access to unrecorded calls with his attorneys." [ECF No 258] at 9. Yet the fact that an unrecorded, confidential conversation was more difficult for Plaintiff to arrange does not mean he lacked access to such a call, or that he faced an insurmountable "impediment," as contemplated by *Pursely* and *Simon.* Nor does Plaintiff's contention address the fact that in-person, confidential visits with his attorney were readily available upon request, did not require court authorization, and could occur with only a day's notice. [ECF No. 254-8] at 29 ("Lawyers, clergyman, foreign consulate, or a representative of the foreign consulate may visit an inmate any day of the week, but they must call the division in which the inmate is housed, twenty-four (24) hours in advance of their visit to reserve space for a private visit.").

***9** In the Court's view, the attorney-client privilege does not protect Plaintiff's choice to speak to his attorneys on

the telephone knowing that the calls were being recorded simply because it was more convenient than adhering to the "process for scheduling an unrecorded private attorney call." *Pursley,* 2020 WL 1433827 at *5. Indeed, Plaintiff's argument that he did not have access to unrecorded phone calls as a "practical matter" says nothing of whether he had access to them as an "actual" matter. [ECF No 258] at 9. The CCDOC Inmate Handbook[4] not only provides that each inmate has "the right to speak to [their] attorney by telephone or in person" and "the right to send letters and receive letters from [their] attorney," but it also emphasizes that "[c]onversations with your attorney, letters to and from your attorney are all private and privileged communication between you and your attorney." [ECF No. 254-8] at 8. The Handbook goes on to outline the process by which an inmate can secure a private and privileged communication with his or her attorney; namely, by making special arrangements, by court-order, to make a confidential call to said attorney. [ECF No. 254-8] at 26.

Plaintiff, therefore, clearly had the ability to communicate in confidence either in person or by telephone with his attorneys and preserve his attorney-client privilege but chose not to do so. And because he does not dispute that he knew the calls with his attorneys were being recorded, he has waived any claim of privilege by knowingly proceeding with those conversations on, essentially, an open and recorded line. *See generally, United States v. Evans,* 113 F.3d 1457, 1462 (7th Cir. 1997) ("the attorney-client privilege will not shield from disclosure statements made by a client to his or her attorney in the presence of a third party who is not an agent of either the client or attorney."). Accordingly, if Defendants are given access to at least some of Plaintiff's telephone calls from jail in the future, the attorney client privilege does not, by itself, prevent Defendants from listening to calls between Plaintiff and his various attorneys; assuming, of course, that Defendants can establish relevant information likely will be found in those calls and allowing Defendants to access those calls is proportional to the needs of the case.

V. Conclusion

For the reasons discussed above, Plaintiff's Motion to Quash the Detective Defendants' Subpoena Seeking Plaintiff's Recorded Phone Calls [ECF No. 250] is granted without prejudice to Defendants proposing a narrower inquiry into Plaintiff's recorded phone calls than the broad subpoena currently before the Court.

It is so ordered.

All Citations

Not Reported in Fed. Supp., 2020 WL 6149567

Footnotes

1 "Q: Uh-huh. And so was this letter or these letters that you sent out, were those addressed to Mr. Bishop?

MS. LEFF: Objection. Asked and answered.

A: No, sir.

Q: Who was it addressed to?

MS. LEFF: Objection. Asked and answered.

A: They was addressed -- they was address to Beebo. Q: Uh-huh. And did the letter itself refer to Mr. Bishop? Did it start, "Dear Mr. Bishop," or "Dear Thomas," or "Dear Tommy Gun"? Do you know how -- how did -- how -- how did he know it was about that?

A. Never once said his real name in them. From the situation I was in, it's a street lingo, we use the word "dude." From the situation, dude know what he did or do, we'll use the terminology like that, you know what I'm saying? It'll go from there. We'll know, you know? We just don't write letters and just explain everything on them 'cause they could be intercepted, they could be read leaving or anything, so you -- you -- you -- you speak with lingo, so I don't know what type of letter you want or words you want out of it."

[ECF No. 254-1] at 16-17.

"MR. LEE: I forgot to check -- Guess who the fuck wrote a letter to me though? UNIDENTIFIED SPEAKER: Who?

MR. LEE: Now, you know, Dover know the nigger that shot me, right? UNIDENTIFIED SPEAKER: Uh-huh.

MR. LEE: Why this nigger then reach out to Dover to send me a letter to ask me would I help him get out of jail, he made a mistake, and he's sorry and all this? Is you serious?"

[ECF No. 254-2] at 2-3.

2 "MR. LEE: Oh. But I know for sure it ain't from no way like that because a mother fucker trying to reach out to me. A mother fucker trying to pay me $10,000 to do whatever. You know what I'm sayin'? UNIDENTIFIED SPEAKER [since identified as Karin Campbell]: If you do that -- They don't have to pay you $10,000 now Antwon because they could just kidnap your mother fucking kids for you not to do it. MR. LEE: And who would do that?

UNIDENTIFIED SPEAKER: Are you fucking serious? MR. LEE: The mother fucker not that's crazy, man. And I know where they wife live, where they kids live. …

MR. LEE: His name is Thomas Bishop.

UNIDENTIFIED SPEAKER: All right.

MR. LEE: They live [redacted]. That's where they house is at. UNIDENTIFIED SPEAKER: Okay.

MR. LEE: His wife has a shop around [redacted]. Her name is [redacted]. UNIDENTIFIED SPEAKER: Okay.

MR. LEE: He has four sons. One of them name is Snub, one of them name is TomTom, one of them name is Fat Man, and one of them name is Little T. Now, TomTom is locked up for a double murder. Little T is young. He hang around [redacted]. Really is nothing. Snub that used to hang with Gino that came on our block, Snub is like 33 or 32. He's out there floating a trunk, X pills. He hanging out there. Every time you see Elamack that mean he runs. Every time you see them. His other son hangs around -- they call that shit on a low end like around [redacted]. All up like through there is nothing. You know what I'm sayin'? Fool them that down there who I fuck with, they see him. So that's like shit that I keep tabs around with him. You know what I'm sayin'? Now my man Dover and Solo talks to him. And these are guys I grew up with. That's who communicate with me for him. You know what I'm sayin'? They trying to bag me to get Eichy not to come to court on him.

UNIDENTIFIED SPEAKER: Mm-hmm.

MR. LEE: I'm not touching that shit, Karen. I said it is what it is. I'm not going to court on him, so I'm not a problem, Karen. I don't have no stake in this thing. I'm not going to court to testify on this man. That shit been established when I caught my case in jail. That's why the state got mad at me and gave me all this time because I wouldn't cooperate with that shit, Karen. Now you see what I'm sayin'? I'm not the problem. I ain't got to apologize or a sorry, we made a mistake, he acted out of anger, he was drunk. I'm not the problem, Karen. That man shot me." [ECF No. 254-6] at 9, 10-12.

3 Analogizing the attorney-client privilege to the marital communications privilege, these courts noted that the Seventh Circuit has spoken on whether martial communications ordinarily shielded by martial privilege, but recorded by a correctional institution from an inmate, are confidential and protected from disclosure. Because of "the well-known need for correctional institutions to monitor inmate conversation," as well as the indisputable fact that the parties involved knew their conversation was being recorded, the Seventh Circuit concluded that these conversations were no longer protected by the marital privilege. *United States v. Madoch,* 149 F.3d 596, 602 (7th Cir. 1998).

4 Plaintiff's suggestion that the Court should be wary of the information contained in the Cook County Jail Handbook provided by Defendants because it is "undated" appears to be unwarranted. Copies of the CCDOC Inmate Handbook filed in other cases in this district show that confidential attorney phone calls were available with "prior special arrangements" between 2013 and 2018, which is during the time Plaintiff was held in pretrial detention at Cook County Jail. *See Camacho v. Dart,* 15 CV 3396 [ECF No. 32-2]; *Elizarri v. Sheriff of Cook County,* 17 CV 8120 [ECF No. 92-1].

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EXHIBIT K

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Patrick PURSLEY, Plaintiff,

v.

CITY OF ROCKFORD, et al., Defendants.

Case No. 18 CV 50040
|
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MEMORANDUM OPINION AND ORDER

Lisa A. Jensen, U.S. Magistrate Judge

***1** Pursuant to Federal Rule of Civil Procedure 45(d), Plaintiff Patrick Pursley moves to quash the Illinois State Police (ISP) Defendants' subpoena for all phone call recordings made while Plaintiff was incarcerated at the Illinois Department of Corrections (IDOC) from 2013 to 2019. Plaintiff argues that the subpoena seeks information protected by the attorney-client privilege and that it infringes on his privacy interests by seeking to review private phone calls that have no relevance to this case. The ISP Defendants disagree. They contest Plaintiff's standing to attack the relevance of the information requested, argue that, in any event, the phone call recordings are relevant and outweigh Plaintiff's minimal privacy interests, and finally argue that the recorded phone calls are not protected by the attorney-client privilege.

I. BACKGROUND

Plaintiff's underlying complaint alleges that he spent twenty-three years in prison for a murder he did not commit. Specifically, Plaintiff alleges that various Rockford police officers obtained a false statement implicating Plaintiff in a murder and that ISP crime lab forensic scientists fabricated evidence that linked Plaintiff's handgun to the murder. In April 1994, Plaintiff was found guilty of first-degree murder by a jury and sentenced to natural life without parole. Plaintiff was incarcerated for the next twenty-three years. After an independent ballistics test concluded that neither the bullets nor the casings recovered at the crime scene matched Plaintiff's handgun, Plaintiff's motion for a new trial was granted. Plaintiff was released from prison on April 13, 2017. At his second trial for murder, Plaintiff was acquitted of all charges. Thereafter, Plaintiff brought this civil action alleging various constitutional rights violations and state law claims. Dkt. 100.

On January 16, 2020, the ISP Defendants issued a subpoena to IDOC seeking "[a]ll recorded telephone calls made or received by Patrick Pursley (#N60565) from 2013 – 2019."[1] Dkt. 166, Ex. B. According to Plaintiff, IDOC has already produced over 3,000 calls, a call log listing phone numbers associated with each call, and a list of names associated with each phone number. Dkt. 166 at 2. On February 7, 2020, Plaintiff moved to quash the ISP Defendants' subpoena. Dkt. 166. Counsel for the ISP Defendants have represented that they will not review any calls until this motion is resolved.

II. DISCUSSION

A. Standing

A party has standing to move to quash a subpoena issued to a third party where the movant has a claim of privilege in the information sought[2] or the subpoena impinges on the movant's privacy interests. *See Simon v. Nw. Univ.*, No. 1:15-CV-1433, 2017 WL 66818, at *2 (N.D. Ill. Jan. 6, 2017) (collecting cases). Courts have conferred standing even where the movant's privacy interest is "minimal at best." *Sunlust Pictures, LLC v. Does 1-75*, No. 12 C 1546, 2012 WL 3717768, at *2 (N.D. Ill. Aug. 27, 2012).

***2** The Court finds that Plaintiff has the minimal privacy interest necessary for standing. The ISP Defendants are seeking all recorded phone calls made or received by Plaintiff while he was incarcerated. *See* Dkt. 166, Ex. B. While inmates would reasonably expect that their phone calls could be accessed by prison officials, they would not reasonably expect that the details of their recorded phone calls would be handed over to civil litigants. *See, e.g.*, *Simon*, 2017 WL 66818, at *2; *Coleman v. City of Peoria*, No. 15-CV-1100, 2016 WL 3974005, at *3 (C.D. Ill. July 22, 2016). Thus, Plaintiff has demonstrated the minimal privacy interests necessary for standing.

The ISP Defendants concede that Plaintiff has minimal privacy interests in these phone calls. *See* Dkt. 175 at 5. They argue, however, that Plaintiff does not have standing to contest the subpoena on the grounds of relevance or burden. However, here, unlike the cases cited by the ISP Defendants, Plaintiff is objecting to the third-party subpoena based upon his privacy interests. In an effort to show that Plaintiff's privacy interests are paramount, he argues that the material sought is not relevant and thus cannot outweigh this interest. As set forth below, in determining whether to quash a third-party subpoena based upon a party's privacy interests, courts weigh the relevance of the information against the strength of the privacy interest. *See, e.g.*, *Simon*, 2017 WL 66818, at *2; *Coleman*, 2016 WL 3974005, at *3. Moreover, the Court must always consider the relevance of the subpoenaed material when determining if a subpoena should be quashed. *See Third Degree Films, Inc. v. Does 1-2010*, No. 4:11 MC 2, 2011 WL 4759283, at *1 (N.D. Ind. Oct. 6, 2011) ("However, implicit in the rule is the requirement that a subpoena seek relevant information."); *Stock v. Integrated Health Plan, Inc.*, 241 F.R.D. 618, 621 (S.D. Ill. 2007) ("Although the Seventh Circuit Court of Appeals has not explicitly ruled that district courts may quash or modify a subpoena for seeking information irrelevant to the merits of a case, it has long recognized that the courts have 'wide discretion' in limiting the scope of discovery to topics of ultimate relevance.") (collecting cases). Thus, this Court finds that Plaintiff has standing to move to quash the subpoena based on his privacy interests and that he may raise relevance as a basis supporting his privacy argument.[3]

B. Privacy Interests

In order to determine whether the IDOC subpoena should be quashed pursuant to Federal Rule of Civil Procedure 45(d) based on Plaintiff's privacy interests, the Court must balance the burden of compliance on Plaintiff's privacy interests against the benefit of production of the material sought. *See Simon*, 2017 WL 66818, at *3. And, as set forth above, implicit in any subpoena issued pursuant to Rule 45 is the requirement that a subpoena seek relevant information. Plaintiff argues that because the subpoena seeks information that is not relevant, his privacy interests outweigh any benefit associated with production of the recorded calls. Both Plaintiff and the ISP Defendants rely on two analogous cases that involve a motion to quash a subpoena seeking recorded prison telephone conversations.

***3** In *Coleman*, the plaintiff sued Peoria police officers and detectives for violations of his constitutional rights after he was wrongfully incarcerated. *Coleman*, 2016 WL 3974005, at *2. The defendants issued subpoenas to IDOC correctional facilities seeking recordings of Coleman's and his cellmate's telephone calls with individuals who were arrested at the scene of the underlying crime or were potential witnesses in previous trial proceedings. *Id.* Coleman and his cellmate moved to quash the subpoena based on their privacy rights. *Id.* at *3. The Central District of Illinois held that while Coleman and his cellmate had the minimal privacy interests required for standing, they "failed to demonstrate that the burden on them from the disclosure of personal, otherwise private information is sufficient to warrant quashing the subpoenas for the calls that they made." *Id.* at *4. The court reasoned that Coleman called these possible witnesses while he was in prison and that the defendants were entitled to discover the contents of those calls. *Id.* Coleman's and his cellmate's privacy interests were less than a private citizen making calls at home because they knew that their calls were recorded. *Id.* In light of the relevance of those calls, their lessened privacy interests were insufficient to quash the subpoena. *Id.*

In *Simon*, the Northern District of Illinois distinguished *Coleman* in ruling that a subpoena seeking all of an inmate's calls over a fifteen-year period was too broad. *Simon*, 2017 WL 66818, at *4. There, the plaintiff had sued Northwestern University and Ciolino, an adjunct professor of its investigative journalism class, for malicious prosecution among other causes of action based on Simon's incarceration for a double murder he alleged that he did not commit. *Id.* at *1. Ciolino issued a subpoena to IDOC requesting all non-privileged recorded phone calls between Simon and non-incarcerated individuals while he was in prison. *Id.* at *2. Simon moved to quash the subpoena because the release of these phone calls would violate his right to privacy and some of these phone calls were subject to the attorney-client privilege. The court held that Ciolino "failed to provide sufficient facts for the court to ascertain how all calls placed over the fifteen-year period of Simon's incarceration would either be relevant to this litigation or necessary to defend the claims against him." *Id.* at *4. Ciolino did not provide any particular facts such as specific names, dates, times, or any evidence supporting that the calls were relevant to the litigation. *Id.* The court contrasted this "broad fishing expedition" with the "more focused and narrowed request" in *Coleman*. *Id.* While the *Coleman* subpoena listed specific people who were key witnesses and had recorded phone calls with the plaintiff, Ciolino did not provide any specific names or dates and left the court to wonder if Simon's calls contained relevant information. *Id.* "By throwing darts in the dark, Defendant has failed to tip the balance in his favor." *Id.* Thus, the court held that the subpoena was too broad to be enforced. *Id.*

Here, the ISP Defendants' subpoena seeking "[a]ll recorded telephone calls made or received by Patrick Pursley (#N60565) from 2013 – 2019."[4] is more like the "broad fishing expedition" in *Simon* than the "more focused and narrowed request" in *Coleman*. *Id.* And as in *Simon*, Plaintiff here argues that because the subpoena seeks irrelevant information, it cannot outweigh his privacy interests in those calls.

The ISP Defendants argue that because Plaintiff's allegations in his second amended complaint place his personal and familial relationships at issue, their subpoena request is relevant. They cite to Plaintiff's allegations that his wrongful conviction deprived him of innumerable life experiences and opportunities, including the chance to watch his young children grow up as well as his allegation that he suffered tremendous damage due to his separation from his family for twenty-three years. This argument fails initially because the subpoena is not narrowed to only those calls with family members. Rather, it seeks *all* recorded phone calls made or received by Plaintiff while he was incarcerated. Even if it were limited to calls with family members, however, the ISP Defendants do not explain how telephone conversations with family members could rebut the allegation that Plaintiff was deprived of watching his young children grow up or that he was separated from his family during his incarceration. These allegations are facts that no conversation could rebut. The ISP Defendants have failed to provide sufficient facts for this Court to determine that their subpoena seeks information relevant to this litigation.[5]

***4** The ISP Defendants also allege, in support of their wide-ranging subpoena, that "Plaintiff likely discussed his criminal case and post-conviction proceedings while incarcerated." Dkt. 175 at 6. This is the exact form of "dart throwing" that the court declined to endorse in *Simon. Simon*, 2017 WL 66818, at *4. Moreover, an assertion that "the material sought may contain relevant information" is insufficient to allow an unlimited subpoena. *Wilson v. O'Brien*, No. 07 C 3994, 2009 WL 763785, at *8 (N.D. Ill. Mar. 20, 2009) (quoting *Patterson v Burge*, No. 03 C 4433, 2005 WL 43240, at *2 (N.D. Ill. Jan. 6, 2005)).

Finally, the ISP Defendants argue that they cannot provide evidence that the telephone calls contain relevant information because requiring them to do so is "the epitome of turning the discovery process inside out." Dkt. 175 at 7. However, as set forth above, Plaintiff has specifically asserted that Plaintiff's over 3,000 telephone calls are irrelevant to his factual allegations that his incarceration kept him from watching his children grow up and kept him separated from his family members. In light of that assertion, it is incumbent on the ISP Defendants to put forth some argument supporting the relevance of those conversations. While this Court is not requiring the ISP Defendants to identify specific recordings or dates, it does require some explanation as to how conversations with family members could rebut the seemingly irrebuttable factual assertion that twenty-three years of incarceration kept Plaintiff physically separated from his family. This Court is not persuaded that the ISP Defendants have done so.

C. Attorney-client privilege

Plaintiff also moved to quash the subpoena because it would reveal information protected by the attorney-client

privilege. The Court must quash or modify a subpoena if it requires the disclosure of privileged information. Fed. R. Civ. P. 45(d)(3). The parties dispute whether the attorney-client privilege protects recorded prison phone conversations between Plaintiff and his attorneys.

The Seventh Circuit has long-embraced the following general principles of the attorney-client privilege:

> (1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived.

United States v. White, 970 F.2d 328, 334 (7th Cir. 1992). However, "the attorney-client privilege will not shield from disclosure statements made by a client to his or her attorney in the presence of a third party who is not an agent of either the client or attorney." *United States v. Evans*, 113 F.3d 1457, 1462 (7th Cir. 1997).

The Seventh Circuit has not addressed the issue of whether the attorney-client privilege protects recorded prison telephone calls. However, it has held that the marital communications privilege does not apply to recorded prison telephone calls between spouses. *United States v. Madoch*, 149 F.3d 596, 602 (7th Cir. 1998). The court reasoned that the spousal communications were not made in confidence because of "the well-known need for correctional institutions to monitor inmate conversations[.]" *Id.* At least two district courts in this circuit have extended *Madoch*'s reasoning to the attorney-client privilege context and ruled that attorney-client communications over recorded prison telephone lines are not privileged. *Simon*, 2017 WL 66818, at *5; *United States v. Thompson*, No. 07-30010, 2007 WL 2700016, at *2 (C.D. Ill. Aug. 9, 2007). In both cases, the court ruled that because the inmate knew that his conversations with his attorney were being recorded, no expectation of privacy existed and thus the attorney-client privilege was waived. Similarly, the Second and Eighth Circuits have held that prison telephone calls are not covered by the attorney-client privilege because there is no reasonable expectation of confidentiality. *United States v. Mejia*, 655 F.3d 126, 133 (2d Cir. 2011) ("[W]here an inmate is aware that his or her calls are being recorded, those calls are not protected by a privilege."); *United States v. Hatcher*, 323 F.3d 666, 674 (8th Cir. 2003) ("The presence of the prison recording device destroyed the attorney-client privilege. Because the inmates and their lawyers were aware that their conversations were being recorded, they could not reasonably expect that their conversations would remain private.").

***5** Applying the reasoning of the above cases, it is clear that Plaintiff could not reasonably expect that his conversations with his attorneys on recorded prison telephone lines would be confidential. The Offender Orientation Manual explicitly states that calls made from Stateville Correctional Center are subject to monitoring and recording. Dkt. 175, Ex. A at 12, Ex. B at 12. When accepting a call, inmates are reminded each time that calls are "subject to being monitored and recorded." *Id.* The manual also provides the option of scheduling an unmonitored communication line between the inmate and the attorney. Dkt. 175, Ex. A at 13–14, Ex. B at 13–14. IDOC's website unequivocally states that an offender call is subject to monitoring or recording unless it is a private unmonitored attorney call. *See* Dkt. 175 at 3. It cannot be that Plaintiff intended his attorney phone calls to be confidential if he knew his phone calls were recorded and still communicated with his attorneys via phone. In fact, Plaintiff concedes that he knew that some of his phone calls with his attorneys were recorded. *See* Dkt. 166 at 5. Thus, Plaintiff waived his attorney-client privilege by knowingly communicating with his attorneys on a recorded line.

Plaintiff argues that he did not waive the privilege because he only communicated with his attorneys over a recorded line because he believed unrecorded calls must be initiated by his attorneys. He cites *Simon* where the court suggested, in *dicta*, that an "impediment to his access to unrecorded calls" might preserve his attorney-client privilege.[6] *See Simon*, 2017 WL 66818, at *5. No such "impediment" exists here. The Offender Orientation Manual outlines the process for scheduling an unrecorded private attorney call. Dkt. 175, Ex. A at 13–14, Ex. B at 13–14. Plaintiff could have telephoned his attorneys on the recorded line and simply asked his attorneys to arrange for an unrecorded telephone call to discuss confidential matters. Plaintiff admits that he knew that his attorneys could arrange such a confidential call but declined to follow this process because he wanted to initiate the phone call. By proceeding to have discussions on a telephone line he knew was being recorded, Plaintiff has waived the attorney-client privilege.

III. CONCLUSION

The Court grants Plaintiff's motion to quash the IDOC subpoena [166] in part. The ISP Defendants must return all

recorded phone calls back to IDOC and destroy any copies already made. The ISP Defendants may retain the call log and the list of names associated with each phone number on the log. The ISP Defendants may file a motion for leave from this Court to serve a more particularized subpoena consistent with this opinion.

All Citations

Not Reported in Fed. Supp., 2020 WL 1433827

Footnotes

1 While the subpoena requests all recorded phone calls from 2013 to 2019, Plaintiff was released from prison on April 13, 2017. Thus, the recorded phone calls in question are from 2013 to 2017.

2 The ISP Defendants do not contend that Plaintiff lacks standing to raise the attorney-client privilege.

3 The ISP Defendants also cite *Glacier Films (USA), Inc. v. Does 1-29*, No. 15-CV-4016, 2015 WL 8989217, at *2 (N.D. Ill. Dec. 15, 2015) arguing that Plaintiff cannot claim undue burden of production on behalf of IDOC. However, Plaintiff does not make such an argument on behalf of IDOC. Instead, he argues, on his own behalf, that the subpoena must be quashed because it seeks information protected by the attorney-client privilege and infringes on his privacy interests by seeking irrelevant information.

4 The time period requested here is less than the fifteen years' worth of recorded phone calls in *Simon. Simon*, 2017 WL 66818, at *4. However, this merely reflects the time that Plaintiff was incarcerated. This difference does not make *Simon* distinguishable from this case.

5 To the extent that the ISP Defendants wish to argue that those damages were lessened by the number of times he was able to talk to his family by phone, that can be established by obtaining the call logs which identify the number of calls he had with his family members. This Court is allowing those call logs to be produced pursuant to the present subpoena.

6 Plaintiff also cites a minute entry order from *Prince v. Kato*, asserting that the court quashed a subpoena as to a prisoner's phone calls with his attorney and psychotherapist. *See Prince v. Kato*, No. 18-CV-02952 (N.D. Ill. Oct. 10, 2019), ECF 156. Plaintiff misreads this order. The court did not rule on the issue of privilege and did not quash the subpoena as to the prisoner's phone calls with his attorney and psychotherapist. Rather, the court urged the parties to meet and confer regarding issues such as "whether IDOC mistakenly recorded these phone calls, whether the IDOC takes action to not record attorney or psychotherapists calls, or whether the calls were intentionally recorded" because these issues may determine whether the privilege was waived. Here, unlike in *Prince*, those issues have already been addressed for this Court.

End of Document

EXHIBIT L

2016 WL 3974005
Only the Westlaw citation is currently available.
United States District Court, C.D. Illinois,
Springfield Division.

Christopher COLEMAN, Plaintiff,

v.

CITY OF PEORIA, et al., Defendants.

No. 15-cv-1100
|
Signed July 22, 2016

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OPINION

TOM SCHANZLE-HASKINS, U.S. MAGISTRATE JUDGE

***1** This matter comes before the Court on Plaintiff's Motion to Quash Defendants' Subpoena to IDOC and for a Protective Order (d/e 66) (Motion 66), and Third Party Dana Holland's Motion to Quash Defendants' Subpoena to the Illinois Department of Corrections for Audio Recordings of Dana Holland's Telephone Calls (d/e 70) (Motion 70) (collectively Motions). For the reasons set forth below, the Motions are ALLOWED IN PART. The requests to quash the subpoenas are denied; however, the material produced pursuant to the subpoenas shall be Confidential Information subject to the terms of the Confidential Matter Protective Order entered August 17, 2015 (d/e 30) (Protective Order).

BACKGROUND

In 1995, Plaintiff Christopher Coleman was convicted of home invasion and sexual assault that occurred in 1994 in Peoria, Illinois ("1994 Home Invasion" or "Crime"). A group of men committed the 1994 Home Invasion. James Coats and Robert Nixon were arrested at the scene and were convicted for their participation in the Crime. Coleman was arrested and tried. Two of the victims identified Coleman as one of the perpetrators. A thirteen year old boy, Anthony Brooks, testified that he participated in the Crime as a look out. One of the victims testified that a boy acted as look out. Brooks testified on direct examination that Coleman participated in the Crime, but testified on cross examination that Coleman was not involved. Brooks testified on cross examination that City of Peoria (Peoria) Police Detective Patrick Rabe (Detective Rabe) threatened Brooks that he would not see his family again unless he identified Coleman as one of the perpetrators. Detective Rabe testified that he did not threaten Brooks, and that Brooks identified Coleman as a perpetrator. People v. Coleman, 2013 IL 113307 ¶¶ 4-34, 996 N.E.2d 617, 620-26 (Ill. 2013).

Nixon testified at trial that he, James Coats, Robert McKay, Lamont Lee, and a man named Drey committed the 1994 Home Invasion. Nixon testified that Coleman was not involved in the Crime. James Coats did not testify. Coleman presented alibi witnesses, and he testified that he did not participate in the Crime. The jury found Coleman guilty of home invasion, aggravated criminal sexual assault, armed robbery, and residential burglary. Id., at 620-27, ¶¶ 35-43.

At a hearing on Coleman's post-trial motions, James Coats testified that he, Nixon, Robert McKay, Lamont Lee and a man named Drey committed the 1994 Home Invasion. Coats testified that Coleman was not involved. The trial court credited the trial testimony rather than the testimony of Nixon and James Coats. The trial court denied the post-trial motions and sentenced Coleman to 30 years. Id., at 628, ¶¶ 44-46.

At the 2010 post-conviction hearing, James Coats, Lamont Lee, Robert McKay, and Coats's brother, Robert Coats, testified that they participated in the 1994 Home Invasion and Coleman was not involved. Deondre Coleman, a/k/a Drey testified that he went with the group to the house where the Crime was committed, but stayed outside and did not participate in the Crime. Deondre Coleman testified that Coleman was not involved. Brooks testified in 2010 that he did not participate in the 1994 Home Invasion. Brooks testified that Detective Rabe threatened him and forced him to testify that he participated in the Crime and that Coleman

also was a perpetrator. Another suspect, Robert Nickerson, was arrested for the Crime, but the charges were dropped. Nickerson testified that while in custody in 1994, Coats told him that Coleman was not involved in the Crime. Another suspect named Mark Roberson testified that he was arrested and released when he had an alibi. Detective Rabe testified that he did not threaten Brooks. Detective Rabe testified that Brooks stated that Coleman was a perpetrator in the Crime. Detective Rabe testified that Coats and Nixon denied any involvement in the Crime when they were interviewed during the investigation. The trial court denied post-conviction relief, and the Appellate Court affirmed. Id., at 628-33, ¶¶ 47-78.

***2** On March 13, 2014, the Illinois Supreme Court reversed Coleman's conviction and granted Coleman a new trial based on Illinois law. The Court found that under Illinois law a new trial was required because the 2010 post-conviction testimony of James Coats, Robert McKay, Lamont Lee, Robert Coats, and Deondre Coleman constituted new evidence and were "conclusive enough that another trier of fact would probably reach a different conclusion." People v. Coleman, 2013 IL 113307, ¶¶ 102, 113-16, 996 N.E.2d 617, 639, 641-42 (Ill. 2013). Coleman was released from prison.

On March 13, 2014, the Peoria County State's Attorney dropped the charges against Coleman. On March 5, 2015, the Peoria County, Illinois, Circuit Court issued Coleman a certificate of innocence. Amended Complaint (d/e 51), ¶¶ 48-52.

On March 11, 2015, Coleman brought this action against Peoria; Detective Rabe; and Peoria Police Officers Terry Pratt, Timothy Anderson, and Michael Ford for violation of his constitutional rights during the investigation and prosecution of the 1994 home invasion (1994 Investigation). Coleman also brought claims against Peoria for violation of his constitutional rights under the principles set forth in Monell v. Department of Social Services of City of New York, 436 U.S. 658, 694-95 (1978) (Monell Claims). Amended Complaint, Counts I-IV. Coleman also alleged supplemental state law claims based on the investigation and prosecution. Amended Complaint, Counts V-X. Detective Rabe died during the pendency of this case. Michael Rabe, as executor of Detective Rabe's estate, has been substituted in as a defendant. Text Order entered February 29, 2016.

Coleman disclosed Nixon, James Coats, Roberson, McKay, Brooks, Robert Coats, and Deondre Coleman as possible witnesses in this case. Deposition testimony taken during discovery indicates that Coleman had telephone conversations with Nixon, James Coats, Roberson, McKay, Brooks, Robert Coats, and Deondre Coleman while Coleman was in the custody of the Illinois Department of Corrections (IDOC). Coleman made some of these calls through his sister, Kim Coleman, and others. Coleman called his sister or others, and they would set up a three-way call with Coleman, who was in custody, and one of the witnesses listed above. Other times, Coleman made the call to Kim Coleman while one of these disclosed witnesses was with Kim Coleman, and the witness spoke to Coleman. See Defendants' Response to Motions to Quash Defendants' Subpoenas to IDOC and Plaintiff's Motion for Protective Order (d/e 74) (Response), at 4-5, Exhibits D-H, Discovery Deposition Excerpts; Exhibit I, Center for Wrongful Conviction Memorandum dated March 4, 2014; Exhibit J, Excerpt of Testimony at Certificate of Innocence Hearing on September 19, 2014.

On May 25, 2016, Defendants issued subpoenas to correctional facilities operated by the IDOC to produce recordings of telephone calls relating to Coleman, McKay, Nixon, Brooks, Roberson, Robert Coats, and James Coats while they were incarcerated in those facilities from 1994 to the present; and telephone calls relating to Dana Holland while he was incarcerated from January 1, 2002, through June 3, 2003. Motion 66, Exhibit A, Subpoenas. Holland was Coleman's cell mate from January 1, 2002, to June 3, 2003. Holland allowed Coleman to make calls under his phone account during this time period. See Response, at 15. The IDOC recorded all telephone calls made by inmates. Coleman does not dispute that he and other inmates knew that their telephone calls were recorded.

***3** Coleman and Holland have moved to quash the subpoenas. The IDOC has not filed a motion to quash, and none of the other individuals named in the subpoenas have filed motions to quash. Coleman and Holland move to quash the subpoenas on the grounds that the subpoenas are overly broad and interfere with their rights to privacy. The Defendants respond that Coleman and Holland have no standing because the subpoenas are directed at the IDOC, not them, and they had no expectation of privacy in the content of calls that they knew were being recorded by the IDOC.

The Defendants argue that they are entitled to discover the substance of Coleman's conversations with these potential witnesses during his incarceration. The Defendants state further that they have no way to narrow the subpoenas to calls made to specific recipients because Coleman made some

of these calls through third parties, such as his sister Kim Coleman. Response, at 12.

ANALYSIS

The Defendants challenge Coleman and Holland's standing to move to quash a subpoena directed to a third party. Generally, a party lacks standing to move to quash a subpoena directed at a third party unless the party has a claim of privilege attached to the information sought or unless the production of the information sought implicates a party's privacy interests. See Jump v. Montgomery County, Illinois, 2015 WL 6558851, at *1 (C.D. Ill. October 29, 2015); Malibu Media, LLC v. John Does 1-14, 287 F.R.D. 513, 516 (N.D. Ind. 2012). A person needs only a minimal privacy interest to establish standing to move to quash a subpoena. Malibu Media, 287 F.R.D. at 516. The Court finds that Coleman and Holland would have reasonably expected prison and other public officials would have access to recordings of their phone calls, but would not have expected that other parties would have access such as parties in a civil proceeding. The Court finds that they have standing to move to quash the subpoena for the calls that they made.

The Defendants argue that Coleman and Holland have no standing because, as prisoners, they had no expectation of privacy in those calls for purposes of the Fourth Amendment. The Fourth Amendment does not apply to determining standing to challenge a subpoena in a civil proceeding. See Syposs v. United States, 181 F.R.D. 224, 227 (W.D. N.Y. 1998). Coleman and Holland must only show enough of a privacy interest to invoke the Court's discretionary authority to control discovery in a civil case. Prisoners would reasonably expect the access to recordings of their telephone calls to be limited to prison officials, law enforcement officials, and other public officers with a bona fide need for such access. Prisoners would reasonably expect that their conversations would not be handed over to civil litigants. Coleman and Holland have demonstrated the minimal interest necessary to establish standing to challenge the subpoenas for recordings of calls that they made. See Malibu Media, 287 F.R.D. at 517.

Coleman and Holland move to quash the subpoenas because they are overly broad and impose an undue burden. The scope of material that may be secured by Subpoena is as broad as that permitted under the discovery rules. See Graham v. Casey's General Stores, 206 F.R.D. 251, 253-54 (S.D. Ind. 2002). Relevant information under the discovery rules consists of admissible evidence or information that is reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1). Coleman and Holland have the burden of proof on this Motion. See Malibu Media, LLC, 287 F.R.D. at 516.

***4** Coleman and Holland argue that the production of all of their calls interferes with their rights to privacy because many of the calls produced have no relationship to this case. A production of all of their calls, therefore, will result in the disclosure of irrelevant personal information.[1] The Defendants counter that they have no way to identify the relevant and irrelevant calls without listening to each recording.

The Court, in its discretion, determines that Coleman and Holland have failed to demonstrate that the burden on them from the disclosure of personal, otherwise private information is sufficient to warrant quashing the subpoenas for the calls that they made. The discovery shows that Coleman called his possible witnesses while he was in prison. Coleman made the calls directly and indirectly through third parties. The Defendants are entitled to discover the content of those calls.

The recorded calls contain the most accurate information available about the content of those calls. The relevant calls cannot be identified without listening to the recordings. The impact on their privacy interests is less than a private citizen making phone calls at home because Coleman and Holland knew that the calls were recorded and could be heard by some other individuals. In light of the relevance of the calls sought by the Defendants, and the difficulty in identifying the relevant calls, Coleman and Holland's lessened privacy interests is insufficient to quash the subpoenas. Coleman and Holland's privacy interests can be protected by making the recordings Confidential Information subject to the terms of the Protective Order. The Protective Order prohibits disclosure of the content of the calls, except to the limited extent that disclosure of relevant calls will be necessary to litigate this case.

Coleman relies on the opinion in Jump to argue that the production would be unduly burdensome. The Jump opinion does not apply to this circumstance. The subpoena in Jump sought the home phone records of the Jump plaintiff's mother from her phone company to discover whether a specific phone call between plaintiff and daughter occurred. The mother testified about the call in her deposition. The defendants did

not know the date of the call, and so, the records were not likely to prove or disprove whether the call occurred. Jump, 2015 WL 655881, at *2-3. Further, the phone records sought in Jump did not contain information on the content of a call. The recordings here contain the actual content of the calls. The recordings are far more likely to lead to discoverable evidence than the call records in Jump.

Coleman also relies on the opinion in Special Markets Ins. Consultants, Inc. v. Lynch, 2012 WL 1565348 (N.D. Ill. May 2, 2012). The Special Markets case also does not apply to this circumstance. The plaintiff in Special Markets subpoenaed all of the defendants' emails from their email service providers Yahoo and Verizon to discover a limited number of relevant emails. The Special Markets court quashed the subpoenas because the plaintiff could secure the emails directly from the defendants. In this case, the Defendants cannot secure the relevant recorded conversations from Coleman because he has no recordings. The Defendants can only get the recordings from the IDOC. The Defendants could not narrow the subpoena by limiting the calls to certain call recipients because Coleman made calls through third parties using three-way calling. The relevant recordings cannot be identified without listening to them. The Special Markets opinion does not apply.

***5** Coleman and Holland suggest that Coleman's counsel should listen to the calls, make a log of all calls, and identify the relevant calls that would be produced to the Defendants. Coleman's proposal will only result in additional discovery litigation and delay. The review by Coleman's counsel will take time. The Defendants will invariably dispute whether additional calls should be produced. The protective order will protect Coleman and Holland's privacy interests and speed the resolution of this matter.

Coleman lacks standing to challenge the subpoenas directed at the calls made by McKay, Coats, Nixon, Brooks, Roberson, and Robert Coats. Coleman and Holland have no privacy interests in those telephone calls. The Court, however, will make those calls subject to the Protective Order in order to avoid improper disclosure of personal information. The documents produced shall be considered Confidential Information as designated in paragraph two of the Protective Order, even if the documents are not so designated by the producing party. Any copies of the documents produced shall be designated as Confidential Information pursuant to paragraph three of the Protective Order.

THEREFORE, Plaintiff's Motion to Quash Defendants' Subpoena to IDOC and for a Protective Order (d/e 66), and Third Party Dana Holland's Motion to Quash Defendants' Subpoena to the Illinois Department of Corrections for Audio Recordings of Dana Holland's Telephone Calls (d/e 70) are ALLOWED IN PART. The requests to quash the subpoenas are denied; however, the material produced pursuant to the subpoenas shall be Confidential Information subject to the terms of the Confidential Matter Protective Order entered August 17, 2015 (d/e 30).

All Citations

Not Reported in Fed. Supp., 2016 WL 3974005

Footnotes

1 Coleman and Holland present no evidence that the production of the calls presents a significant burden on IDOC. The IDOC has not challenged the subpoenas.

EXHIBIT M

2021 WL 2206164
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Ricardo RODRIGUEZ, Plaintiff,

v.

The CITY OF CHICAGO, et al., Defendants.

Case No: 18-cv-7951
|
Signed 06/01/2021

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MEMORANDUM OPINION AND ORDER

Susan E. Cox, U.S. Magistrate Judge

***1** For the reasons discussed below, Plaintiff's Motion for Protective Order [141] is granted as to Lenny Soto and denied as to the remainder of the motion.

BACKGROUND

Plaintiff Ricardo Rodriguez brought this case pursuant to 42 U.S.C. § 1983, alleging that several Chicago Police Officers framed him for murder and attempted murder in 1995, leading to Plaintiff's arrest, prosecution, conviction, and incarceration. Plaintiff contends that the officers fabricated purported eyewitness testimony and suppressed exculpatory evidence in order to procure Plaintiff's arrest and conviction.

On April 28, 2020, Defendants served a subpoena for Plaintiff's Illinois Department of Corrections ("IDOC") records; in responding to the Defendants' subpoena, IDOC produced 401 of Plaintiff's phone calls with 13 different individuals. Plaintiff had not objected to the subpoena,[1] but the parties engaged in a meet and confer process that was ultimately unsuccessful. In the last round of discussions, Defendants narrowed their requests down to calls with Plaintiff's mother; sister Maria; sister Theresa; and his friend, Lenny Soto. Plaintiff rejected that offer, and filed the instant motion seeking a protective order limiting review of Plaintiff's calls to those calls with his sister Ramona Soberanis and a journalist, Melissa Segura, because all other calls were irrelevant to the claims and defenses in this case. With the exception of the phone call with Lenny Soto, the Court finds that the calls Defendants seek to review are relevant to this matter and proportional to the needs of the case, and denies Plaintiff's motion. The Court grants the motion as to the phone call with Ms. Soto.

DISCUSSION

Federal Rule of Civil Procedure 26 allows for discovery of "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case," and Federal Rule of Evidence 401(a) states that evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence." "The scope of relevance for discovery purposes is far broader than for evidentiary purposes." *Bailey v. Meister Brau, Inc.*, 55 F.R.D. 211, 214 (N.D. Ill. 1972). When determining whether to enforce or quash a subpoena, the Court must balance the privacy interests of the person seeking to quash the subpoena against the relevance and benefit of the information sought.[2] *Pursley v. City of Rockford*, 2020 WL 1433827, *2 (N.D. Ill. Mar. 24, 2020). Several cases in this district have examined the relevance and burden for parties seeking to review the recorded telephone conversations of incarcerated individuals. The court in a related case, *DeLeon-Reyes v. Guevara*, No. 18-cv-1028, 2020 WL 705944 (N.D. Ill. Dec. 2, 2020), summarized the state of the case law as follows:

***2** Taken together, *Coleman, Simon, and Bishop* teach that 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. Put another way, there must be evidence already discovered indicating that the recordings would probably document something relevant. **What separates the permissible subpoena for telephone call recordings in *Coleman* from the overbroad subpoenas in *Simon* and *Bishop* is the previously discovered evidence supporting the *Coleman* subpoena, as well as the narrow tailoring of the subpoena to reflect that discovered evidence.**

Id. at *5 (emphasis added).

Although the subpoena was originally written broadly, Defendants have narrowed the universe of calls down to between 265 and 332 phone calls to only four individuals.[3] This is significantly different than the subpoenas that were rejected in *Simon v. Northwestern University*, 2017 WL 66818, at *4 (N.D. Ill. Jan. 6, 2017) (seeking all calls placed over a fifteen-year period) and *Bishop v. White*, 2020 WL 6149567, at *3 (N.D. Ill. Oct. 20, 2020) ("The mere possibility that relevant information may be found in Plaintiff's recorded phone calls, which is all Defendants have at this juncture, is insufficient to overcome Plaintiff's privacy interest, especially given the breadth of Defendants' subpoena encompassing 8,000 telephone calls over a four-year period"). Instead, this case is more similar to *Coleman v. City of Peoria*, 2016 WL 3974005, at *2-4 (C.D. Ill. July 22, 2016), where the subpoena was tailored to requests calls between the plaintiff and individuals he had disclosed as possible witnesses during discovery.

In this case, the privacy burden is relatively light – incarcerated individuals are aware their calls may be recorded and do not have the same privacy expectations in their phone recordings as they would outside a jail setting. As for the relevance, the Court finds that Lenny Soto is not likely to have any relevant information. Ms. Soto was not listed as a witness by Plaintiff and Defendants' only reason for listing her as a potential witness in their initial disclosure is her submission of an affidavit attesting to Plaintiff's character in an unrelated immigration proceeding. The Court can see no reason why Ms. Soto's views about Plaintiff's character in an immigration case would have any bearing on the facts of the instant suit, and grants Plaintiff's motion as to his one phone call with Ms. Soto.

However, the Court finds Defendants have adequately targeted their review to calls with family members that are likely to contain relevant information. Plaintiff listed his mother and sisters as potential witnesses in his initial disclosures, stating they had knowledge of "his damages and the impact his wrongful prosecution and conviction had on Mr. Rodriguez and his family, as well as knowledge of his criminal proceedings." [Dkt. 146-5 at 4-5.] Plaintiff himself has listed these individuals as people with information is relevant to his case, which qualifies as an indication that the recordings would probably contain relevant information. Defendants have also limited their review to these individuals, which differentiates this case from the blanket review of all phone calls that were rejected in *Simon* and *Bishop*. As such, Defendants are entitled to seek discovery regarding these individuals, including Plaintiff's recorded phone calls while he was incarcerated.

***3** Plaintiff's arguments to the contrary improperly narrow the scope of discovery. In his motion, Plaintiff contends the only calls Defendants are entitled to listen to must involve three individuals who identified Plaintiff as the shooter (or stated Plaintiff was not the shooter) in the underlying case, "another fact witness, or someone who has direct personal knowledge of these individuals' involvement in the underlying case or Plaintiff's exoneration." [Dkt. 141 at 9.] That misstates the law in this district; the courts in *Bishop* and *Simon* did not quash the subpoenas in those cases because they sought telephone calls from outside the narrow category of people listed above, but because they sought *all* telephone calls with no limitations. As noted above, the criteria for a permissible subpoena in this district require that it be narrowly tailored and there be previous evidence supporting the subpoena. Here, both conditions are met; Defendants tailored the review to individuals named as potential witnesses in Plaintiff's own discovery disclosures. Additionally, Plaintiff misrepresents these individuals as only damages witness, but a review of Plaintiff's disclosure demonstrates they are also listed as having "knowledge of his criminal proceedings." By Plaintiff's own disclosures, his mother and sisters qualify as "another fact witness" that would satisfy even Plaintiff's own narrow definition. Therefore, the Court denies Plaintiff's motion as to Plaintiff's mother and sisters Theresa and Maria.

CONCLUSION

Plaintiff's Motion for Protective Order [141] is granted as to Lenny Soto and denied as to the remainder of the motion.

All Citations

Not Reported in Fed. Supp., 2021 WL 2206164

Footnotes

1 The parties have argued whether Plaintiff's failure to object constitutes waiver over his subsequent objections. The Court does not reach that issue here, as Defendants have agreed to review a limited subsection of the calls that were produced.

2 As an initial matter, the Court finds Plaintiff has standing to bring this motion. *See* *Bishop v. White*, 2020 WL 6149567, at *3 (N.D. Ill. Oct. 20, 2020).

3 The telephone log contains 67 calls from an unnamed sister. [Dkt. 146-2 at 9.] Defendant is allowed to review those calls as well. Plaintiff listed three sisters in his initial disclosures, Theresa, Maria, and Ramona. Plaintiff has agreed to allow Defendant to review calls with Ramona, and the Court has ruled that calls with Theresa and Maria are reviewable. Therefore, these calls with an unnamed sister fall into category of calls that the Court believes is permissible for review.

End of Document

EXHIBIT N

2020 WL 7059444
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Arturo DELEON-REYES, Plaintiff,

v.

Reynaldo GUEVARA, et al., Defendants.

Gabriel Solache, Plaintiff,

v.

City of Chicago, et al., Defendants.

Case No. 1:18-cv-01028, Case No. 1:18-cv-02312
|
Signed 12/02/2020

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MEMORANDUM OPINION AND ORDER

Sunil R. Harjani, United States Magistrate Judge

***1** Third-party Marilyn Mulero has brought a motion to quash the subpoena issued by the individual defendant officers to the Illinois Department of Corrections (IDOC). [*DeLeon-Reyes* 371; *Solache* 261].[1] For the reasons stated below, the Court grants the motion.

Background

In these separate lawsuits, consolidated for purposes of discovery, *see* Doc. [49], Plaintiffs Arturo DeLeon-Reyes and Gabriel Solache claim that they were wrongfully convicted and that they served almost 20 years in prison for the 1998 double murder of Mariano and Jacinta Soto. *Solache* Doc. [171] at 4. Plaintiffs assert that their convictions were the result of constitutional violations committed by Chicago police officers during the investigation of the Soto homicide. *Id.* Specifically, Plaintiffs bring claims under 42 U.S.C. § 1983 for coerced confession, fabrication of false witness statements, deprivation of liberty without probable cause, violations of due process, failure to intervene, and conspiracy. *Id.* Plaintiff DeLeon-Reyes additionally asserts 42 U.S.C. § 1983 claims against certain state prosecutors for coerced confession and fabrication of false witness statements. *Id.* Both Plaintiffs allege *Monell* policy and practice claims, as well as state law claims for malicious prosecution, intentional

infliction of emotional distress, civil conspiracy, *respondeat superior*, and indemnification. *Id.*

Defendants deny Plaintiffs were wrongfully convicted, deny the claims against them, and assert various affirmative defenses, such as qualified immunity, absolute immunity, a bar under *Heck v. Humphrey*, estoppel, statute of limitations, Illinois Tort Immunity Act, and failure to mitigate damages. *Solache* Doc. [171] at 4.

Discussion

On October 22, 2019, counsel for Plaintiffs and Defendants traveled to Logan Correctional Center to depose Adriana Mejia, who is currently serving time for her involvement in the Soto homicides. Doc. [354] at 3-4. In 2001, she pled guilty to two counts of first-degree murder, two counts of aggravated kidnapping, and one count of home invasion in exchange for life-imprisonment without possibility of parole. Doc. [354-1] at 22-23. According to her confession at the time of arrest, Mejia wanted to have a baby so desperately, that she faked a pregnancy and worked with Plaintiffs to murder Mr. and Mrs. Soto and kidnap the couple's two children. *Id.* at 42-44. At her October 22, 2019 deposition, Mejia repeatedly invoked the Fifth Amendment and refused to answer the majority of questions posed to her. *See, e.g.*, Doc. [354-1] at 88, 89. However, Mejia did testify about some of the circumstances surrounding her confession. *See id.* at 80-83. Mejia additionally testified to knowing Mulero, a fellow inmate, and stated that she talked to Mulero a little bit about Defendant Guevara. Doc. [381-2] at 3.

Nearly a year later, on August 31, 2020, the individual officer defendants served a subpoena on the IDOC Intel Center for "[a]ny and all telephone calls for Marilyn Mulero, Inmate No. B21346, from January 2019 to present." Doc. [371-2] at 1. The subpoena clarified that the individual defendant officers were not seeking any calls designated as attorney-client communications. *Id.* In the present motion, Mulero has moved to quash the subpoena. Doc. [371]. Mulero argues that Defendants[2] are pursuing a "broad fishing expedition," for which they have not provided a sufficient relevancy basis to warrant the invasion of her privacy.[3] *Id.* at 10-15. Defendants counter that they have a clear and directly relevant interest in seeking Mulero's phone calls for the fifteen months that Mulero and Mejia were housed together at Logan Correctional Center—which outweighs Mulero's privacy interests—in light of their close friendship, Mejia's new invocation of the Fifth Amendment and accompanying claim that she is pursuing postconviction relief, and Mulero's postconviction litigation efforts. Doc. [381].

***2** Upon a timely motion, Rule 45(d) mandates that the court quash or modify a subpoena if the subpoena "subjects a person to undue burden" or "requires disclosure of privileged or other protected matter, if no exception or waiver applies." Fed. R. Civ. P. 45(d)(3)(A)(iii-iv). Rule 45(d) likewise permits a court to quash or modify a subpoena that requires "disclosing a trade secret or other confidential research, development, or commercial information[.]" Fed. R. Civ. P. 45(d)(3)(B)(i).

It is up to the moving party to establish the impropriety of the subpoena, *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 993 (7th Cir. 2002); *Simon v. Nw. Univ.*, No. 1:15-CV-1433, 2017 WL 66818, at *2 (N.D. Ill. Jan. 6, 2017); *Hard Drive Prods. v. Does 1-48*, No. 11 CV 9062, 2012 WL 2196038, at *6 (N.D. Ill. June 14, 2012), and magistrate judges "enjoy extremely broad discretion in controlling discovery." *Jones v. City of Elkhart*, 737 F.3d 1107, 1115 (7th Cir. 2013).

I. Standing

Because Mulero is moving to quash the subpoena directed to IDOC, and not Mulero, the Court first addresses the threshold issue of standing. Ordinarily, a non-recipient movant does not have standing to quash a subpoena unless "the subpoena infringes upon the movant's legitimate interests." *United States v. Raineri*, 670 F.2d 702, 712 (7th Cir. 1982) (citation omitted); *see also Kessel v. Cook County*, No. 00 C 3980, 2002 WL 398506, at *2 (N.D. Ill. Mar. 14, 2002). Examples of such legitimate interests have included the assertion of privilege, interference with business relationships, and the production of private information. *Allstate Ins. Co. v. Electrolux Home Prod., Inc.*, No. 16-CV-4161, 2017 WL 5478297, at *3 (N.D. Ill. Nov. 15, 2017) (citation omitted). A movant only needs to show a minimal privacy interest to establish standing for a motion to quash. *Malibu Media, LLC v. John Does 1-14*, 287 F.R.D. 513, 516-17 (N.D. Ind. 2012). In the prisoner phone call context, courts in this Circuit have held that an incarcerated individual possesses a sufficient privacy interest in the recordings of her phone calls, such that she has standing to quash a subpoena for those recordings. *See Bishop v. White*, No. 16 C 6040, 2020 WL 6149567, at *3 (N.D. Ill. Oct. 20, 2020); *Simon*, 2017 WL 66818, at *2; *Coleman v. City of Peoria*, No. 15-CV-1100, 2016 WL 3974005, at *3 (C.D. Ill. July 22, 2016); *Pursley v. City of Rockford*, No. 18 CV 50040, 2020 WL 1433827, at *2 (N.D. Ill. Mar. 24, 2020), *opinion*

adopted, No. 18 CV 50040, 2020 WL 4815946 (N.D. Ill. Aug. 19, 2020).

Applying those principles here, Mulero has established standing to quash the IDOC subpoena for recordings of her phone calls. That is, she has at least a minimal privacy interest in the recordings of phone calls she made to friends, family members, and others while incarcerated. True, Mulero's phone calls to non-attorneys are recorded by the prison. It logically follows then that Mulero's expectation of privacy in those phone calls would be lesser than a person whose phone calls are not recorded. *See* Doc. [381] at 11. Yet, that does not mean her privacy interest in the phone calls is zero. As courts have acknowledged, an incarcerated individual may know that certain prison employees will have access to recordings of her telephone calls and still expect that those recordings will not fall into the hands of civil litigants. *See Pursley v. City of Rockford*, 2020 WL 1433827, at *2 (N.D. Ill. 2020); *Simon*, 2017 WL 66818, at *2; *Coleman*, 2016 WL 3974005, at *3. Those holdings ring particularly true here, where Mulero is not a party, or even a witness, in the case.[4]

***3** Having found that Mulero has standing to quash the IDOC subpoena, the Court turns next to weighing the relevance of the information sought against the strength of Mulero's privacy interest. *See Pursley*, 2020 WL 1433827, at *2 (collecting cases).

II. Relevancy

Defendants assert that the subpoena seeks relevant information that surmounts Mulero's privilege and privacy interest assertions, while Mulero contends that Defendants have not shown a relevancy basis meriting the discovery of more than a year of her phone calls. Under Rule 401 of the Federal Rules of Evidence, evidence is relevant if it "has any tendency" to make a fact of consequence "more or less probable than it would be without the evidence." Fed. R. Evid. 401(a)-(b). In determining the scope of discovery under Rule 26, relevance is construed broadly and is "not limited to issues raised by the pleadings[.]" *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). Even so, the discovering party must offer more than speculation to trump an incarcerated person's privacy right in recordings of her telephone calls. *See Simon*, 2017 WL 66818, at *4; *Pursley*, 2020 WL 1433827, at *4.

Three cases from this Circuit are instructional in assessing the relevancy of the IDOC subpoena for recordings of Mulero's phone calls. The first is *Coleman*. In *Coleman*, a wrongful conviction case against the City of Peoria and other named law enforcement individuals, the defendants served subpoenas to IDOC facilities to produce recordings of telephone calls relating to the plaintiff and a handful of individuals that the plaintiff named as witnesses in the civil litigation. 2016 WL 3974005, at *2. The subpoenas also sought phone calls relating to the plaintiff's cell mate during the time they were incarcerated together. *Id.* Plaintiff and his cell mate moved to quash the subpoenas. *Id.* at *3. However, because prior discovery showed that the plaintiff had called the named witnesses while incarcerated and had used his cell mate's phone account while they were housed together, the *Coleman* Court determined that the privacy interest in the phone calls did not outweigh the relevance of the calls. *Id.* at *2, *4. In weighing the relevance of the phone call recordings against the privacy interest, the court considered both the lesser privacy expectation for an incarcerated individual who knows his calls are being recorded, as well as the difficulty in identifying which phone calls were relevant without listening to the recordings.[5] *Id.* at *4. In sum, the *Coleman* Court found that "[i]n light of the relevance of the calls sought by the Defendants, and the difficulty in identifying the relevant calls, Coleman and Holland's lessened privacy interests is insufficient to quash the subpoenas." *Id.* The *Coleman* Court also found that the plaintiff's privacy interests could be protected by making the recordings subject to the protective order in the case. *Id.* The Court accordingly denied the motion to quash.

***4** Conversely in *Simon*, the second helpful case, the court held that the broad discovery request did not outweigh the incarcerated individual's privacy interest in phone call recordings. There, a defendant in a wrongful conviction case served a subpoena to IDOC for all non-privileged audio tapes of recorded phone calls between the plaintiff and non-incarcerated individuals during the time the plaintiff was incarcerated, a span of around fifteen years. 2017 WL 66818, at *2. The court characterized the subpoena as allowing a "broad fishing expedition," and contrasted it with the "more focused and narrowed request that the *Coleman* court faced." *Id.* at *4. In particular, the *Simon* Court highlighted the *Coleman* subpoena's pursuit of conversations relating to "key witnesses and individuals specifically named in deposition testimony as persons who had phone conversations with the plaintiff while he was incarcerated," which the court found starkly different from the subpoena at hand that was based only on the defendant's "broad generalization that Simon's calls to his 'family members, friends, and other third parties

contain relevant information on the question of whether he is, in fact, innocent as he claims.' " *Id.* (citation omitted). In short, the defendant's justification for the subpoena in *Simon* was "supported by zero evidence developed to date in [the] litigation," and the court had no "non-conjectured factual basis that the calls in fact contain relevant information." *Id.* As a result, the court found in *Simon* that the breadth of the subpoena was too broad to be enforced. *Id.*[6]

In the third applicable case, *Bishop*, the defendants in yet another wrongful conviction case issued a subpoena for recorded prisoner phone calls. 2020 WL 6149567, at *2. The plaintiff in *Bishop* had been charged with first-degree murder and attempted murder in connection with the October 2014 shooting of Tepete Davis, Isaiah Watkins, and Antwon Lee. *Id.* A key piece of evidence against the plaintiff had been the eyewitness testimony of Lee, who had survived the shooting and identified the plaintiff as the shooter to law enforcement. *Id.* Two years after the shooting, when the plaintiff was awaiting trial, Lee recanted his identification of the plaintiff as the shooter. *Id.* Defendants believed that the plaintiff convinced Lee to change his story, and that there would be evidence of that coercion in the plaintiff's recorded telephone calls from his time in pretrial custody in Cook County Jail. *Id.* More specifically, Defendants aver, based on the discovered telephone call recordings of Lee, that the plaintiff, while in pretrial custody, directed others to communicate with Lee and offer Lee a payment of $10,000 to sign an affidavit recanting his identification of the plaintiff as shooter. *Id.* Defendants accordingly subpoenaed the Cook County Department of Corrections for phone call records, logs, and recordings of inmate calls relating to the plaintiff for a 4-year period. *Id.* In weighing the relevance of the subpoena's request, the *Bishop* Court acknowledged that it was "possible that relevant information may be contained somewhere within Plaintiff's 8,000 recorded phone calls," but reasoned that there was "still [ ] no solid evidence before the Court that Plaintiff ever used the *telephone* to communicate directly or indirectly with Lee or any of his intermediaries to accomplish that purported goal." *Id.* at *4, *5 (emphasis in original). The "bottom line" for the *Bishop* Court was that there was not enough evidence that "convincingly supports any theory as to how Plaintiff may have communicated with Lee's people if such communications, in fact, occurred at all." *Id.* at *6. According to the Court, "[t]here must be some basis, beyond mere supposition, that Plaintiff used the telephone to communicate directly or indirectly with Lee or his intermediaries before Defendants can be given license to rummage through Plaintiff's 8,000 personal telephone calls." *Id.* The *Bishop* Court accordingly granted the plaintiff's motion to quash. *Id.* at *9.

***5** Taken together, *Coleman*, *Simon*, and *Bishop* teach that 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. Put another way, there must be evidence already discovered indicating that the recordings would probably document something relevant. What separates the permissible subpoena for telephone call recordings in *Coleman* from the overbroad subpoenas in *Simon* and *Bishop* is the previously discovered evidence supporting the *Coleman* subpoena, as well as the narrow tailoring of the subpoena to reflect that discovered evidence. In *Coleman*, prior discovery showed that the plaintiff had used his telephone account and his cell mate's while incarcerated to contact individuals, sometimes through third parties via three-way calls, that he later named as witnesses in his wrongful conviction litigation; the subpoena was limited to phone calls related to the plaintiff, his cell mate, and those named witnesses. 2016 WL 3974005, at *2. By contrast, in *Simon* and *Bishop*, there was no evidence that the plaintiffs used their telephones while incarcerated for a relevant purpose. *Simon*, 2017 WL 66818, at *4; *Bishop*, 2020 WL 6149567, at *4, *5. Instead, the subpoenaing parties merely guessed that they would have used their phones for potentially relevant reasons and issued subpoenas not sufficiently limited in time or scope. *Id.*

Here, Defendants' subpoena is more akin to the rejected subpoenas in *Simon* and *Bishop*. Defendants subpoenaed IDOC for the telephone call recordings of Mulero, a non-party, for the months that Mulero was incarcerated in the same prison as Mejia, a witness in the case. Defendants substantiate the subpoena based on a slim showing. According to Defendants, Mejia is a key witness in this litigation who initially confessed to working with the plaintiffs to commit the Soto homicides. Then, after years of not proclaiming innocence or pursuing postconviction relief, Mejia invoked the Fifth Amendment repeatedly throughout her October 2019 deposition and stated she is working on being released from prison. From this, Defendants infer that Mejia has changed course, meaning that her story about the Soto homicides has changed, and that she is going to pursue postconviction litigation like the Plaintiffs. At the October 2019 deposition, Mejia further admitted to knowing Mulero in the following limited exchange:

> Q. Do you know an inmate named Marilyn Milaro (phonetic)?
>
> A. Yes.
>
> Q. Have you ever talked to her about Detective Guevara?
>
> A. Very little.
>
> Q. Did she tell you that Detective [Guevara] mistreated her too?
>
> A. Seems like it. I don't remember.

Doc. [381-2] at 3. Defendants also direct the Court's attention to a letter that Mejia wrote on behalf of Mulero, "presumably for use in Mulero's post-conviction proceeding," in which Mejia described respecting and caring for Mulero. Doc. [381] at 8. The Defendants are further aware that Mulero has been actively pursuing postconviction remedies for years, and that Mulero testified at a clemency hearing just two weeks before Mejia's October 2019 deposition. *Id.* Finally, Mulero and Plaintiff Reyes are represented by counsel from the same office space, as one third of Mulero's litigation team is made up of lawyers from the Illinois Innocence Project, who share office space with Loevy & Loevy. Doc. [381] at 9; Doc. [383] at 3.

From these facts, Defendants make mountains out of molehills. Essentially, Defendants speculate that because of Mejia and Mulero's close relationship, their shared connection to Defendant Guevara, the timing of Mejia's deposition, and the fact that Mulero is represented by counsel from the same office space as Plaintiff Reyes, that "Mejia likely shared details with Mulero about this case and her desire to obtain relief." Doc. [381] at 9. Defendants further surmise that Mulero could have pressured Mejia to invoke the Fifth Amendment at her deposition because that deposition testimony was "tremendously beneficial to a client of Mulero's attorneys (Plaintiff Reyes)." *Id.* Ultimately, Defendants suppose that Mulero could have spoken to others "about incentivizing Mejia" to refuse to answer deposition questions and claim that they have a "clear and directly relevant interest" in finding out whether she did so. *Id.*

***6** However, Defendants' confusing conspiracy theory, like the speculative bases provided in *Simon* and *Bishop*, is insufficient to overcome Mulero's privacy interest in the recordings of her telephone calls, even though that interest is lessened by Mulero's knowledge that her calls were being recorded. *See* *Simon*, 2017 WL 66818, at *3-*4; *Bishop*, 2020 WL 6149567, at *3, *6.

First, Defendants' argument on timing falls flat. Defendants emphasize that although Mejia was not deposed until October 2019, her deposition was "percolating," as of June 2019, the original date of her deposition, which coincides with a time that "Mulero was actively involved in making her case against defendant Guevara to the governor[.]" Doc. [381] at 8. Yet, there is a much simpler and more reasonable explanation for Mejia's invocation of the Fifth Amendment as of October 2019: Mejia was appointed counsel in October 2019, and counsel may have advised Mejia to invoke the Fifth Amendment. Defendants do not acknowledge this possibility.

Second, the crux of the problem for Defendants here is that there is no evidence that Mulero talked to others on the phone about Mejia, let alone talked to others on the phone about a plot to pressure Mejia into changing her story about the Soto homicides. What's more is that there is no credible evidence at this point that Mejia's decision to invoke the Fifth Amendment is connected to Mulero in any way at all. Significantly, as Mulero points out, this lack of evidence exists after ample discovery opportunities, including Mejia's October 2019 deposition and Defendants' having listened to Mejia's recorded telephone calls. Doc. [383] at 6. In addition, Defendants had previously issued a broad document subpoena to the Exoneration Project, Mulero's counsel, seeking materials related to Plaintiffs' cases, including correspondence with Mejia, to which the Exoneration Project had no responsive documents (excluding public pleadings and transcripts) other than a single generic letter from Mejia attesting to Mulero's character. Doc. [371] at 4. Defendants will, moreover, have another opportunity to depose Mejia, at which time Mejia will not be allowed to invoke the Fifth Amendment.[7] Perhaps Mejia will offer testimony in that deposition indicating that Mulero talked to others on the phone about Mejia in a way relevant to this case. Until then, Defendants are "throwing darts in the dark," and have not provided the Court with a "non-conjectured factual basis that the calls in fact contain relevant information." *Simon*, 2017 WL 66818, at *4. The Court therefore finds that the subpoena is unenforceable at this time.

Conclusion

For the reasons discussed above, the Court grants Mulero's Motion to Quash Subpoena to the Illinois Department of

Corrections Intel Center for IDOC Telephone Calls Of Third-Party Marilyn Mulero, [*DeLeon-Reyes* 371; *Solache* 261].

All Citations

Slip Copy, 2020 WL 7059444

SO ORDERED.

Footnotes

1 The remainder of this Memorandum Opinion and Order cites to documents from the *DeLeon-Reyes* docket, Case No. 1:18-cv-01028, unless otherwise noted.

2 Only Defendants Rutherford, Dickinson, Trevino, Mingey, Biebel, Harvey, Stankus, and the estates of Halvorsen, Karalow, and Cappitelli participated in the briefing for the present motion. For the sake of simplicity, this Memorandum Opinion and Order hereinafter refers to those parties as "Defendants."

3 Defendants' brief indicates that Mulero's motion to quash is based in part on a claim of attorney-client privilege. *See* Doc. [381] at 10. However, Mulero appears to have dropped that argument after the parties' Rule 37.2 conference, *see* Docs. [371, 383], so the Court does not address attorney-client privilege in this Memorandum Opinion and Order.

4 For this reason, the Defendants' contention that this case's Protective Order "would have alleviated any concern that Mulero would have concerning the privacy of these telephone calls and their availability to parties outside of this litigation" falls short. *See* Doc. [381] at 11. Mulero is not a party to the case and reasonably could have expected her phone calls to remain private, excepting the review done by prison officials. Furthermore, Fed. R. Civ. P. 45(d) empowers—and under some circumstances requires—a court to quash a subpoena that infringes on protected or confidential matters, regardless of whether there is a protective order in place. So while the Court acknowledges the *Coleman* Court's discussion of the protective order in that case, *see* 2016 WL 3974005, at *4, this Court does not find that the protective order impacts the Rule 45(d) analysis here.

5 Defendants highlight this discussion from *Coleman* to indicate that, as a general rule, relevant calls cannot be identified without listening to the recordings. Doc. [381] at 9. Yet, the *Coleman* case did not espouse such a broad proposition. In *Coleman*, there was a particular difficulty in identifying the relevant phone calls without listening to the recordings because discovery showed that the plaintiff communicated with others via third parties. For instance, the plaintiff was known to call his sister, who would set up a three-way call with the plaintiff and another individual. 2016 WL 3974005, at *2, *4. As a result, simply looking at the call recipients listed in the prison's phone logs would not illuminate whether the plaintiff was calling the individuals he later named as witnesses in his wrongful conviction litigation. *Id.* In a normal case, there are many ways to maximize the chance for getting relevant phone calls, including filtering by call recipient or by limiting time frames.

6 The *Simon* Court ultimately modified the subpoena to require the limited production of calls on IDOC recorded lines between the plaintiff and his counsel and plaintiff and the plaintiff's investigators on a waiver basis. 2017 WL 66818, at *6. The court found that because the plaintiff knew phone calls on the recorded lines were monitored, he waived his privilege with respect to any conversations he had with his investigators and counsel on those recorded lines. *Id.* Because the pursuit of Simon's recorded calls with counsel and investigators "[did] not suffer from the broad, non-particularized nature" of the subpoena, the court found that "a more narrowed request limited to Simon's counsel and the Investigators [was] appropriate, considering Simon's lack of privacy interest in these calls and the likely relevance and potential highly probative value of these calls." *Id.* The Court nevertheless maintained its position that the defendant lacked factual support to justify the production of other calls, *see id.*, so *Simon* still stands for the proposition that a subpoena needs a non-conjectured factual basis" to justify the invasion of an incarcerated individual's privacy rights. *Id.* at *4.

7 On September 29, 2020, the Court held that the Fifth Amendment no longer applies to Mejia's testimony about the crimes she pled guilty to and ordered that Mejia answer questions and testify about the crimes she was convicted of nearly twenty years ago. Docs. [369, 370].

End of Document

EXHIBIT O

2008 WL 4844747
Only the Westlaw citation is currently available.
United States District Court,
N.D. Illinois,
Eastern Division.

Wayne JACKSON, Plaintiff,

v.

Joe PARKER, Defendant.

No. 08 C 1958.
|
Nov. 7, 2008.

Attorneys and Law Firms

Gregory E. Kulis, David Steven Lipschultz, Kathleen Coyne Ropka, Ronak D. Patel, Shehnaz I. Mansuri, Gregory E. Kulis and Associates, Ltd., Chicago, IL, for Plaintiff.

Matthew Raymond Hader, Chicago, IL, for Defendant.

MEMORANDUM OPINION AND ORDER

JEFFREY COLE, United States Magistrate Judge.

***1** The Plaintiff has moved to "Quash Defendant Parker's Subpoenas to Michael Levinsohn, Marc Gottreich, Garth Services Corp., F.H. Paschen, The Walsh Group, Pepper Construction, and Best Homes, Inc." [30]. The Motion is granted in part and denied in part. The subpoena to Mr. Parker's former attorneys, Messrs. Levinsohn and Gottreich, is overbroad as drafted since it calls for documents within the attorney/client privilege. Indeed, the subpoena could not be more broadly drafted since it literally calls for all documents and records relating to the representation of Mr. Parker in an unrelated case. The defendant is granted leave to re-serve a properly drafted subpoena in accordance with the discussion in court today. Counsel for the plaintiff has represented that he has no objection to such a subpoena. The motion to quash is, however, denied as it pertains to the plaintiff's former employers.

The Supreme Court has cautioned that the requirement of Rule 26(b)(1) that the material sought in discovery be "relevant" should be firmly applied, and the district courts should not neglect their power to restrict discovery where "justice requires [protection for] a party or person from annoyance, embarrassment, oppression, or undue burden or expense.... Rule 26(c). With this authority at hand, judges should not hesitate to exercise appropriate control over the discovery process." *Herbert v. Lando,* 441 U.S. 153, 177, 99 S.Ct. 1635, 60 L.Ed.2d 115 (1979). Thus, a subpoena should not be enforced to the extent, *inter alia,* it seeks irrelevant information. *Mosely v. City of Chicago,* 252 F.R.D. 421, 430 (N.D.Ill.2008). While there is a legitimate privacy interest in one's personnel files, that interest is not absolute, and does not inevitably trump other legitimate, competing interests in the case. It is important to distinguish between a broad-based request for the personnel files of third parties-which routinely occurs in employment discrimination cases, *Balderston v. Fairbanks Morse Engine Div. of Coltec Industries,* 328 F.3d 309 (7th Cir.2003)-and a specific request for the personnel files of a party to the litigation. The latter is not as intrusive as the former, and the privacy interests implicated take on a different dimension. In the last analysis, a party cannot draw a conjurer's circle around his own personnel file, for the permissibility of the subpoena is determined, not by the label affixed to the information, but by whether the informatiou sought is relevant within the expansive meaning of Rule 26, Federal Rules of Civil Procedure. With personnel files, as with other kinds of information, these are matters committed to the exceedingly broad discretion invested in the district court to supervise discovery. *See Gehring v. Case Corp.,* 43 F.3d 340, 342 (7th Cir.1994).

Contrary to the common law's sporting theory of justice, 6 Wigmore, Discovery § 1845 at 490 (3rd Ed.1940), the Federal Rules of Civil Procedure provide for liberal discovery. *Swierkiewicz v. Sorema N.A.,* 534 U.S. 506, 512, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002). Under Rule 26(b)(1), "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party...." As expansive as the definition of relevancy is under Rule 401 of the Federal Rules of Evidence, *United States v. Murzyn,* 631 F.2d 525, 529 (7th Cir.1980); *United States v. Marks,* 816 F.2d 1207, 1211 (7th Cir.1987), the standard under the discovery provisions of the Federal Rules of Civil Procedure is even broader. *Hofer v. Mack Trucks,* 981 F.2d 377 (8th Cir.1992). *See also Tome v. United States,* 513 U.S. 150, 115 S.Ct. 696, 130 L.Ed.2d 574 (1995); *United States v. Pollard,* 790 F.2d 1309, 1312 (7th Cir.1986).

***2** The information sought by the subpoena to the plaintiff's former employers is relevant. The claim in this case, in part, is that Mr. Jackson's encounter has left him emotionally

scarred. Mr. Jackson's emotional behavior prior to the incident that is the subject of the present case could scarcely be more pertinent, and his personnel files at his prior employers are reasonably likely to lead to the discovery of admissible evidence. *See e.g., Hodgdon v. Northwestern University,* 245 F.R.D. 337 (N.D.Ill.2007).[1] Moreover, the files could contain information that bears upon Mr. Jackson's credibility. *See* Rule 608(a) and (b), Federal Rules of Evidence. It is no answer to say that the subpoenas constitute a "fishing expedition," *for Northwestern Memorial Hosp. v. Ashcroft,* 362 F.3d 923, 931 (7th Cir.2004) (Posner, J.) teaches that "pretrial discovery is a fishing expedition and one can't know what one has caught until one fishes."

The defendant has agreed to an "attorney's eyes only" protective order for the personnel files. Counsel for the defendant shall prepare such an order, submit it to the plaintiff's counsel for approval as to form, and promptly provide it to the court for entry. Counsel for the defendant shall also provide to the plaintiff's counsel a copy of the letter he referred to in court from Cook County informing him that the files relating to the plaintiff cannot be found. Finally, counsel for the plaintiff shall provide to the defendant within 14 days, or sooner if possible, all documents which refer, reflect or relate to the plaintiff's economic damages as discussed in open court. Counsel are reminded of their disclosure obligations under Rule 26 and of their obligations to supplement discovery in a timely way.

All Citations

Not Reported in F.Supp.2d, 2008 WL 4844747

Footnotes

1 The personnel Files might well contain evidence that supports the plaintiff's theory. Either way, the evidence, if it exists, is obviously relevant, and one cannot know whether the information does exist in the personnel files until they are examined.

End of Document

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

SEAN McCLENDON	)	
	)	
Plaintiff,	)	Case No. 1:22-cv-05472
	)	
v.	)	Hon. Sharon Johnson Coleman
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that I have this day filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division a motion styled DEFENDANTS' RULE 72(a) OBJECTION TO THE MAGISTRATE JUDGE'S ORDER DATED JANUARY 19, 2024 (Doc. No. 82), a copy of which is attached hereto and herewith served upon you.

PLEASE TAKE FURTHER NOTICE that I shall appear before the Honorable Sharon Johnson Coleman, or any judge sitting in his or her stead in Courtroom 1241, on February 7, 2024, at 10:00 a.m., or as soon thereafter as counsel may be heard and present the attached motion.

DATED: February 2, 2024

Respectfully submitted,

/s/ Brian Wilson
Counsel for Defendant
City of Chicago

Shneur Nathan
Avi Kamionski
Brian Wilson
Nathan & Kamionski, LLP
33 West Monroe, Suite 1830
Chicago, IL 60603

CERTIFICATE OF SERVICE

I, Brian Wilson, an attorney, on February 2, 2024, filed the foregoing Notice, via CM/ECF, causing a copy of it to be delivered to all counsel of record via electronic service.

/s/ Brian Wilson