

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BETHANNE EARLY-McCLURE,	: NO. 13 – 20,492
Plaintiff	:
	: CIVIL ACTION - LAW
vs.	: PROTECTION FROM ABUSE
	:
WILLIAM HALL,	: Motion to Quash Subpoena Duces
Defendant	: Tecum in Part

OPINION AND ORDER

Before the court is a motion to quash, in part, the subpoena duces tecum served on the Commissioner/Custodian of Records of the Pennsylvania State Police and Trooper Jeffrey Vilello, filed May 13, 2013. Argument on the motion was heard June 10, 2013.

Plaintiff filed a Petition for Protection From Abuse on April 17, 2013, and a temporary order was entered that date. A final hearing is scheduled for July 11, 2013, and in anticipation of that hearing, Plaintiff served the subpoena in question, seeking, inter alia, the contents of intercepted communications recorded during the course of trooper Vilello’s investigation into an alleged assault against Plaintiff. The State Police seek to quash that portion of the subpoena, arguing that such communications are protected by the Wiretap Act. 18 Pa.C.S. Section 5701 et. seq. After a review of the relevant statutes and case law, the court believes the communications may be disclosed without violating the Act.

As asserted by the State Police, the Act does indicate that. “...no person shall disclose the contents of any wire, electronic, or oral communication, or evidence derived therefrom, in any proceeding in any court, board or agency of this Commonwealth.” 18 Pa.C.S. Section 5721.1(a)(1). That directive is preceded by the words, “[e]xcept as provided in paragraph (2)”, however. Paragraph (2) states, in relevant part:

(2) Any person who has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, which is properly subject to disclosure under Section 5717 (relating to investigative disclosure or use of contents of wire, electronic or oral communications or derivative evidence), may also disclose such contents or evidence in any matter relating to any criminal, quasi-criminal, forfeiture , administrative enforcement or professional disciplinary proceedings in any court, board or agency of this Commonwealth... .

18 Pa.C.S. Section 5721.1(a)(2). Section 5717 provides, in relevant part:

(b) Evidence.—Any person who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may disclose such contents or evidence to an investigative or law enforcement officer and may disclose such contents or evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of this Commonwealth... .

18 Pa.C.S. Section 5717(b).

The parties do not dispute that the wiretap was “authorized” by the Wiretap Act. Therefore, the intercepted communications may be properly disclosed in “testimony under oath” in a criminal proceeding under Section 5717(b), and in those enumerated proceedings under Section 5721.1. Plaintiff contends, and the court agrees, that a hearing under the Protection From Abuse Act is a quasi-criminal proceeding. *See Daily v. Daily*, 96 F.Supp.2d 463 (E.D. Pa. 2000). Thus, the intercepted communications are properly disclosed in “testimony under oath” during the PFA hearing.

It is not clear to the court whether Plaintiff is seeking a written transcript of the oral communications prior to the hearing, but if so, it does not appear the statute would allow for such disclosure. Therefore, the Motion to quash will be granted to that limited extent.

ORDER

AND NOW, this 11th day of June 2014, for the foregoing reasons, the motion to quash is granted to the extent Plaintiff seeks a written transcript of the intercepted communications. The motion is otherwise denied, however, and the State Police must respond to the subpoena by appearing at the final PFA hearing and, if questioned under oath regarding the intercepted communications, may disclose the contents thereof.

BY THE COURT,

cc: Jennifer Heverly, Esq.

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Hon. Dudley Anderson

Dudley N. Anderson, Judge