

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1509-2018
vs. :
EDWARD HECK, : Omnibus Pretrial Motion – Count III Motion
Defendant : to Suppress Prison Calls & Count XIII Motion
: for Severance of Counts

OPINION AND ORDER

This matter came before the court on Defendant’s motion to suppress prison calls and motion for severance of counts contained in Count III and Count XIII of Defendant’s omnibus pretrial motion.

By way of background, Defendant is charged with homicide, criminal conspiracy to commit homicide, and related offenses arising out of the murder of Sonja Heck, Defendant’s wife, on August 16, 2018, as well as animal cruelty charges related to the killing of Defendant’s dogs. More specifically, it is currently alleged that Defendant met Kenneth Smith online and he and Mr. Smith conspired to kill Defendant’s wife and his dogs. Defendant drove to the Nanty-Glo area, picked up Mr. Smith, and drove Mr. Smith to Defendant’s home in Williamsport. Mr. Smith killed Defendant’s wife and the dogs. The next morning, Defendant and Mr. Smith fled from Williamsport.

Defendant and Mr. Smith were apprehended in the state of Indiana and returned to Pennsylvania. Defendant made phone calls and had visits which were recorded by the prison.

As part of Defendant’s omnibus pretrial motion, Defendant sought to suppress the prison recordings and sever the counts of animal cruelty.

Defendant contends that the prison recordings should be suppressed because

Defendant did not have notice that the recordings would be provided to the District Attorney or that they would be used in any court proceeding. Defendant argues that he did not consent to the prison's dissemination of his recorded conversations to the District Attorney's office simply by using the prison phone and his consent cannot be broader than the notice provided to him. He also argues that the prison is an agent of the District Attorney. He contends that the disclosure and use of the prison recordings impairs his ability to prepare an unhampered defense and undermines his 6th Amendment right to counsel.

At the hearing, the Commonwealth presented testimony from the warden of the Lycoming County Prison, Brad Shoemaker; a document entitled Inmate Telephone ID Number Release Form signed by Defendant, which was marked as Commonwealth Exhibit A; and a disc of phone calls made by Defendant between August 20, 2018 and September 4, 2018 marked as Commonwealth Exhibit B so the court could hear the standard recording at the beginning of each call.

Warden Shoemaker testified that upon commitment to the prison an inmate completes documentation to receive a telephone ID number and the inmate must enter a telephone ID number to complete a phone call. The document signed by the inmate has acknowledgements and their number.

Warden Shoemaker was familiar with Defendant. He testified that Defendant completed the form in 2018. The document includes the following acknowledgement: "I understand and agree that telephone calls and visitation calls are subject to monitoring, recording, and may be intercepted or divulged." Above Defendant's signature in bold and all capital letters is the following statement: "**ALL INCOMING AND OUTGOING SECURE**

MESSAGES ARE RECORDER, MONITORED, AND MAY BE REVIEWED AND DIVULGED.” Additionally, after an inmate picks up the phone to make a call, he enters his ID number, then the telephone number, there is a recording that states all calls are monitored and recorded.

Warden Shoemaker testified the reasons the prison recorded telephone calls and visitation calls included safety and security issues within the prison and disciplinary matters which could include the possible referral for charges. Warden Shoemaker testified that inmates can send correspondence to their attorney without it being read by the prison or the Commonwealth and they can have private meetings with their attorneys. Although there were times during the COVID-19 pandemic when inmates could not have face to face meetings with their attorney, the prison installed a separate phone system with private lines for inmates to have private conversations with their attorney.

On cross-examination, Warden Shoemaker indicated that the prison handbook reiterates the same thing as the release form. He also acknowledged that that the release form and handbook did not specifically say that the recordings could be provided to the District Attorney’s Office or that they could be used in any pending criminal prosecution.

The court finds that Defendant is not entitled to suppression of the prison calls and recordings because he was aware that his calls would be subject to being recorded and divulged. By signing the Inmate Telephone ID Number Release Form, Defendant consented to his calls being recorded and divulged. See *Commonwealth v. Byrd*, 235 A.3d 311 (Pa. 2020)(recordings of jail visit conversations by the Commonwealth were lawful under the mutual consent exception to the Wiretap Act).

In the alternative, the court finds that Defendant is not entitled to suppression because he did not have a reasonable expectation of privacy in his prison phone calls and visitations. In order to prevail on the merits of a suppression motion, a defendant is required to demonstrate a reasonable expectation of privacy in the area searched or effects seized. *Commonwealth v. Enimpah*, 630 Pa. 357, 106 A.3d 695, 698 (2014); *Commonwealth v. Hawkins*, 533 Pa. 76, 718 A.3d 365, 267 (1988). If the defendant has no protected privacy interest, neither the Fourth Amendment of the United States Constitution nor Article 1, §8 of the Pennsylvania Constitution is implicated. *Commonwealth v. Kane*, 210 A.3d 324, 330 (Pa. Super. 2019). Defendant did not have a reasonable expectation of privacy in his prison phone calls and visitations because he was aware that his calls and visitations were being recorded and were subject to being divulged. The release form did not in any way limit to whom the recordings could be divulged. Therefore, they could be divulged to anyone, including law enforcement authorities.

Defendant also contends that the counts of Aggravated Cruelty to Animals, Counts 3 & 4, must be severed. He contends that these counts are in no way connected with the homicide count; the evidence of the death of the canines would have a strong influence upon the determination of Defendant's guilt on the other counts because of the extreme affection many people accord their pets and animals in general; and the danger arising from the cumulative effect of evidence of other crimes on the minds of the jurors is too great to tolerate.

While many people are fond of animals, the court does not find that severance is required. Rather, the court finds that the killing of the dogs is inextricably entwined with

the other crimes. The killing of the dogs was all part of the same criminal episode as the killing of Defendant's wife. One could argue that the dogs were killed so that they would not awaken Defendant's wife before she was killed by Mr. Smith and/or so that they would not alert others to the death of Defendant's wife by barking when they became hungry or needed to be taken outside after Defendant and Mr. Smith fled from Williamsport. Based on some of the conversations between Defendant and Mr. Smith, killing the dogs was part of their plan or conspiracy to kill Defendant's wife.

The standard jury instructions contain language that the jury should not base its decision on sympathy, bias or prejudice. See Pa. SSJI (Crim) §§7.01, 7.05. If desired by Defendant, the court can expand upon these charges to preclude the jury from considering any sort of sympathy, bias or prejudice toward the dogs as well as persons and provide the jury with a limiting or cautionary instruction regarding the use of the evidence regarding the dogs in relation to the other charges similar to the instruction for 404(b) evidence.

Based on the foregoing Opinion, the following Order is entered:

ORDER

AND NOW, this ____ day of April 2022, the court DENIES Defendant's motion to suppress prison calls and his motion to sever charges.

By The Court,

Kenneth D. Brown, Senior Judge

cc: Martin Wade, Esquire
Michael Rudinski, Esquire
Honorable Kenneth D. Brown