

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-364-2020**  
v. :  
 :  
**DAMON MILLINGTON,** : **MOTION IN LIMINE**  
**Defendant** :

**OPINION AND ORDER**

The Commonwealth filed a Motion in Limine on July 26, 2022 requesting permission to introduce a video of a recorded conversation between Damon Millington (Defendant) and Kortney Howard (Howard) at Defendant’s upcoming trial. A jury has been selected and trial has been set for August 16 and 17, 2022. This Court held a hearing on the motion on August 4, 2022.

At the hearing on this motion, the Court heard testimony from James Meuse, Jr. (Meuse) who was the individual that recorded the phone call. Meuse testified that Howard is his biological niece. Meuse was familiar with Defendant because Howard and Defendant used to be in a romantic relationship. On February 19, 2020, Meuse was on his way home from work when he received a voicemail from Howard’s mother telling Meuse that Defendant threatened to burn his mother’s house down with his mother in it. The voicemail also included a message for Meuse to go to his mother’s house right away. Meuse immediately went to the house as directed and saw his mother and Howard. Howard was on the phone with Defendant and they were arguing. Meuse indicated that he heard Defendant threatening Howard’s life so he retrieved his cell phone and started to record their phone call. The Commonwealth presented the footage to this Court, marked Commonwealth’s Exhibit 1. Although this footage was a video recording, the Commonwealth asked this Court to focus solely on the audio portion of the video. Meuse confirmed that this was the footage he took on his phone and Defendant was

continuously threatening Howard and indicating that he would burn down Howard's home. Meuse also confirmed that Defendant was speaking similarly prior to the beginning of the recording. The next day, Meuse called the police and the footage was provided to them.

The Commonwealth seeks to admit this recording under an exception to the Wiretapping and Electronic Surveillance Control Act. In general, the Wiretap Act "prohibits the interception, disclosure or use of any write, electronic or oral communications."

Commonwealth v. Mason, 247 A.3d 1070, 1080 (Pa. 2021). However, the Wiretap Act also provides several exceptions. Pursuant to 18 Pa.C.S. § 5704(17), it is lawful for

Any victim, witness, or private detective...to intercept the contents of any wire, electronic or oral communication, if that person is under a reasonable suspicion that the intercepted party is committing, about to commit or has committed a crime of violence and there is reason to believe that evidence of the crime of violence may be obtained from the interception.

Id. Subsection 17 only refers to particular "crimes of violence" as enumerated in Section 5702, including, but not limited to, murder, aggravated assault, arson, burglary, intimidation of witness or victim, and retaliation against witness or victim. 18 Pa.C.S. § 5702(1)(ii)-(iii). Based on the totality of the circumstances, this Court finds that the Commonwealth has met their burden to establish this recording qualifies as an exception under subsection 17. The Commonwealth presented Meuse's testimony that he had been alerted earlier that day of threats Defendant was making to burn his mother's house down while she was inside. Upon arriving at the house, Meuse heard additional threats to burn the house as well as serious bodily threats against Howard because she knew too much about an additional offense Defendant had allegedly already committed. *See* Commonwealth v. Jordan, No. CP-41-CR-1259-2019, 2021 WL 4132394 (Pa. Super. September 10, 2021) (non-precedential decision holding that cell phone recordings of appellant fell under the exception in subsection 17 after witness heard

appellant confess to murder prior to recording their telephone conversations.) This information gave Meuse proper reasonable suspicion to believe that Defendant had already committed a separate crime and was about to commit an additional crime of violence against both his mother's home and Howard. *See Winig v. Braverman*, 268 A.3d 409 (Pa. Super. November 5, 2021) (holding that reasonable suspicion existed where the recorded party threatened and insulted another person, tending to prove that a crime of violence might be committed to support the recordings' admission under this exception.) Therefore, for these reasons, this Court finds that the Commonwealth has met their burden and proven by a preponderance of the evidence that this recording falls under the exception in 18 Pa.C.S. § 5704(17).

**ORDER**

**AND NOW**, this 8th day of August, 2022, based upon the foregoing Opinion, the Commonwealth's Motion in Limine is hereby **GRANTED**. The video of a recorded conversation between Defendant and Kortney Howard is admissible at trial in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)  
Andrea Pulizzi, Esq.  
Law Clerk (JMH)

NLB/jmh