

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
	:	<b>CR-1648-2021</b>
	:	<b>CR-108-2022</b>
<b>vs.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>TYRICE BOWEN,</b>	:	
<b>Defendant</b>	:	

**OPINION**

This matter is before the Court on Defendant’s Omnibus Pretrial Motion filed on April 18, 2022. For the reasons set forth below, the Motion is granted in part and denied in part.

**I. Factual and Procedural Background**

Tyrice Bowen (“Defendant”) was charged under docket #1648-2021 with two counts of delivery of a controlled substance<sup>1</sup> and two counts of criminal use of a communication facility<sup>2</sup> following controlled buys in March of 2021 and June of 2021 using a vetted confidential informant. Defendant was arrested on November 17, 2021, outside his residence after which his vehicle was impounded. Based on a report from an Adult Probation Officer, on the date of Defendant’s arrest members of the Lycoming County Narcotics Unit conducted surveillance at the Defendant’s home and encountered his girlfriend who allegedly consented to their entrance to his home. Additionally, law enforcement picked up the Defendant’s 12 year old son who directed them to a wooded area where he had discarded a bag containing drugs, a digital scale, and a cell phone from the Defendant’s home.

---

1 35 P.S. §780-113(A)(30)  
2 18 Pa.C.S. §7512(a)

Following these events, several search warrants were applied for and granted, resulting in the seizure of multiple items. Under docket #108-2022, the Defendant was charged with two counts of possession with intent to deliver cocaine.<sup>3</sup>

The Defendant waived his preliminary hearing scheduled for January 26, 2022, and his arraignment which was scheduled for February 28, 2022, and was scheduled for a pretrial conference on June 9, 2022. On April 18, 2022, the Defendant filed his Omnibus Pretrial Motion under both docket numbers.

In his Omnibus Pretrial Motion, the Defendant the following issues:

1. Motion to Suppress;
2. Motion for Return of Property;
3. Motion to Suppress Prison Calls;
4. Motion to Disclose Existence of and Substance of Promises of Immunity, Leniency or Preferential Treatment and Complete Criminal History;
5. Motion for Disclosure of Other Crimes, Wrongs, or Acts Pursuant to Pa.R.E. 404(b);
6. Motion for Formal Discovery; and
7. Motion to Reserve Right.

An argument was held February 7, 2023, at which time Matthew Welickovitch, Esquire, appeared on behalf of the Commonwealth and Defendant appeared and was represented by Edward J. Rymsza, Esquire.

---

<sup>3</sup> 35 P.S. §780-113(A)(30)

## **II. Discussion**

The Court will discuss each of the above Motions separately. It is noted that the attorneys for the Commonwealth and the Defendant were able to resolve several of the matters on their own without presenting testimony or argument to the Court.

### **1. Motion to Suppress**

The Defendant's Motion alleges that his rights under the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution were violated as the warrants were overbroad, not supported by probable cause, and provided no evidence that illegal narcotics, paraphernalia or proceeds would be found in the residence or vehicle. Defendant's Motion argued that all evidence seized as a result of the illegal searches and seizures, and all derivative fruits thereof, must be seized.

At the time of the hearing on the Omnibus Motion, counsel for the Defendant and the Commonwealth agreed that no evidence was seized from the Defendant's residence or the storage facility. Additionally, the Commonwealth conceded to the suppression of the drugs found in the Defendant's white Volvo and made an oral motion to withdraw Count 2 under which will be reflected in a separate Order. Accordingly, the Defendant's Motion to Suppress the evidence obtained from the white Volvo is **GRANTED** and the remainder of the Motion to Suppress is **DISMISSED as MOOT**.

### **2. Motion for Return of Property**

The Defendant alleges that during the search of his home numerous personal items including clothes, shoes, a watch, and jewelry were seized. The Defendant further alleges that these items have no evidentiary value to the case and are not subject to forfeiture. The

Defendant requests that these items be returned to him as he is the lawful owner. At the time of the hearing on the Omnibus Motion, the Commonwealth agreed to the relief and indicated that they will be returning the property on its inventory list. Accordingly, the Defendant's Motion for Return of Property is **GRANTED** and the Commonwealth shall promptly return the Defendant's personal property.

### **3. Motion to Suppress Prison Calls**

The Defendant's Motion indicates that the Commonwealth has obtained numerous recorded phone calls the Defendant made to his friends/family while he was incarcerated at the Lycoming County Prison. He argues he was never advised that his prison calls would be released to the prosecutor and/or used in any court proceeding and that his consent to use the prison phone system cannot be broader than the notice provided to him. The Defendant requests that the Court grant his Motion to Suppress any prison calls and preclude the introduction of the statements and any evidence derived from it at trial and preclude any further disclosure of any future prison calls to the District Attorney.

At the hearing on February 7, 2023, Ryan Barnes, Deputy Warden of Security and Operations at the Lycoming County Prison testified that the Defendant was incarcerated on November 17, 2021, and on or around that date he would have signed the Inmate Telephone ID Number Release Form. (Com Ex. 1). Each inmate is provided a unique 5 digit ID number. 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 RECORDED, 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. This message is heard by both the inmate and the person receiving the call.

The Defendant’s Motion argues that he did not consent to the prison’s dissemination of his recorded conversations to the Lycoming County District Attorney’s Office simply by using the prison phone system and that he was never advised that his prison calls would be released to the prosecutor and/or used in any court proceeding. He further argues by combing through the prison calls, the prosecution is able to obtain information about a defendant’s defense strategy, potential witnesses and decision making, outside the presence of counsel. In support of his position, the Defendant cites U.S. v. Cohen, 996 F.2d 20 (2<sup>nd</sup> Cir. 1986), which held that “[an inmate] retains an expectation of privacy within his cell sufficient to challenge the investigatory search ordered by the prosecutor. Because his effects were searched at the instigation of non-prison officials for non-institutional security related reasons, the validity of the search may be challenged. An individual's mere presence in a prison cell does not totally strip away every garment cloaking his Fourth Amendment rights, even though the covering that remains is but a small remnant.” Defendant argues the fact that one government actor, the Lycoming County Prison, monitors potentially sensitive information for institutional security purposes does not mean that law enforcement can access the same information for criminal investigative purposes without a search warrant.

The Court finds this case distinguishable from the Cohen case, in that the Defendant’s calls were not monitored at the direction of law enforcement. They are

monitored pursuant to Lycoming County Prison's policy for the safety and security of the facility. The calls were provided to the District Attorney's Office not at the prison's initiation, but rather following receipt of a subpoena.

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). While the Inmate Telephone ID Number Release Form or the prison handbook do not specifically indicate that the recordings may be divulged to law enforcement, there is no language in the consent form limiting to whom the recordings may be divulged.

Furthermore, 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). Deputy Warden Barnes testified that inmates in general population have access to the prison phone system any time they are not on lockdown. The calls are made from the housing units, which hold up to 20 inmates, or from one of two phones in a common area of the day room. All phones are within earshot of other inmates. This Court finds (1) that the Defendant was made aware that his calls were subject to being monitored, recorded, and divulged through both the release form and the recording on every outgoing call and (2) the location of the phones within the housing unit gives rise to no reasonable expectation of privacy in the

calls. Accordingly, the Motion to Suppress prison phone calls is **DENIED**.

**4. Motion to Disclose Existence of and Substance of Promises of Immunity, Leniency or Preferential Treatment and Complete Criminal History**

The Defendant requests that he be provided with the names, addresses, and substance of all persons who have been offered immunity, favorable consideration, leniency, or favorable treatment in these cases, including any informants. At the time of the hearing the Commonwealth indicated that they intend to provide all information required pursuant to United States v. Giglio, 405 U.S. 150 (1972). Accordingly, Defendant's Motion to Disclose Existence of and Substance of Promises of Immunity, Leniency, or Preferential Treatment and Complete Criminal History is **GRANTED**. The Commonwealth shall provide to Defendant's counsel any Giglio material within 30 days of the date of this Order.

**5. Motion for Disclosure of Other Crimes, Wrongs, or Acts Pursuant to Pa.R.E. 404(b)**

The Defendant seeks an Order requiring the Commonwealth to disclose any evidence which may be admissible at trial pursuant to Pa.R.E. §404(b). At this time, the Defendant's Motion is **DENIED** as premature. If the Commonwealth intends to introduce the prior bad acts of the Defendant, they must provide *reasonable written notice* pursuant to Pa.R.E. §404(b)(3), at which time the Defendant may file a Motion in Limine to preclude the introduction of such evidence. Pursuant to the Court's Order of February 28, 2022, all 404(b)(3) notices must be filed and served by the Commonwealth no later than the date of the pretrial unless for good cause shown. If the Commonwealth fails to file a proper notice of its intent, it will be precluded from attempting to introduce evidence of the Defendant's prior bad acts at trial.

## 6. Motion for Formal Discovery

Defendant alleges that he made a timely request for discovery and the Commonwealth complied in-part with providing the requested information but that the discovery is incomplete. The Defendant specifically requests copies of all chemical reports and information regarding each expert witness and chemist consulted in the instant matter. Additionally, the Defendant requests a copy of the Lycoming County District Attorney's Office Narcotics Enforcement Unit written policies and/or procedures for the use of informants. Finally, the Defendant's Motion requests that the Commonwealth provide him with information regarding the Williamsport Bureau of Police K9, Niko, utilized in this case.

By Order dated December 5, 2022, the Court noted that the Commonwealth had provided the evidence of the K9 and K9 officer's certifications that was requested by the Defendant. At the hearing on February 7, 2023, counsel orally withdrew the portion of the motion pertaining to the K9 requests.

At the time of the hearing on the Defendant's Omnibus Pretrial Motion, Defendant's counsel indicated that the only real issue under this Motion is the Defendant's request for the written policies of the Narcotics Enforcement Unit ("NEU"). Initially, the Commonwealth opposed disclosing this information. After brief argument from both the Defendant's counsel and the Commonwealth regarding the relevance of these policies and procedures, the Commonwealth indicated that it would provide the requested information. Accordingly, the Defendant's Motion is **GRANTED**. The Commonwealth shall provide Defendant's counsel with a copy of the Lycoming County District Attorney's Office Narcotics



Enforcement Unit written policies and procedures for the use of informants within 30 days of this Order.

**7. Motion to Reserve Right**

Defendant moves to reserve the right to make any additional pre-trial motions pursuant to Pennsylvania Rule of Criminal Procedure 579. This motion is **GRANTED**, but only to the extent that any motion is based on information or discovery provided by the Commonwealth after February 7, 2023, the date of the argument on Defendant's Omnibus Pre-Trial Motion.

Accordingly, the Court will enter the following Order:

**ORDER**

**AND NOW**, this 27<sup>th</sup> day of **February, 2023**, upon consideration of Defendant's Omnibus PreTrial Motions, the argument of counsel on February 7, 2023, and for the reasons set forth above, the Court hereby enters the following Order:

1. The following Motions are **DENIED**: Motion to Suppress Prison Phone Calls and Motion to Preclude Prior Bad Acts.
2. The following Motions are **GRANTED**: Motion to Suppress evidence obtained from the white Volvo; Motion for Return of Property; Motion to Disclose Existence of and Substance of Promises of Immunity, Leniency or Preferential Treatment and Complete Criminal History; Motion for Formal Discovery with respect to the NEU's written policies and procedures; and Motion to Reserve Right.

By the Court,

\_\_\_\_\_  
Ryan M. Tira, Judge

RMT/jel

CC: DA – Matthew Welickovitch, Esq.  
Edward J. Rymza, Esq.  
Gary Weber, Esq.  
Jennifer E. Linn, Esquire