

ORIGINAL

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

FILED
LUCAS COUNTY

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COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

STATE OF OHIO

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Case No. CR20-1186

Plaintiff,

*

Hon. Myron C. Duhart

-vs-

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STATE'S RESPONSE TO MOTION IN
OPPOSITION FOR IN CAMERA REVIEW

RONALD STEVENS

*

Defendant.

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Now comes the State of Ohio, by and through Assistant Prosecuting Attorney, Charles R. McDonald, and respectfully responds to Defendant's Motion in Opposition to State's Motion For an In Camera Review.

Respectfully submitted,

JULIA R. BATES, PROSECUTING ATTORNEY
LUCAS COUNTY, OHIO

By: Charles R. McDonald
Charles R. McDonald, #87126
Assistant Prosecuting Attorney

By: Patricia S. Wardrop
Patricia S. Wardrop #85724
Assistant Prosecuting Attorney

By: Erin M. Kennedy
Erin M. Kennedy #85622
Assistant Prosecuting Attorney

Memorandum

FACTS

On December 23, 2019, Defendant Ronald “Donnie” Stevens was arrested and charged with six counts of Rape, six counts of Sexual Battery, and seven counts of Gross Sexual Imposition. On January 31, 2020, a superseding indictment was filed charging thirteen additional counts, including three additional Rape charges, five additional Gross Sexual Imposition charges, and five counts of Pandering Obscenity Involving a Minor. From December 23, 2019, until present, Defendant has been held at the Lucas County Jail.

On Saturday, January 18, 2020, law enforcement officers removed documents from the Defendant’s bunk in the jail. The materials were inventoried, given a records bureau number, and booked into property. No law enforcement agency or State representative has examined or reviewed these documents. It is believed that these documents contain incriminatory statements of Defendant, and evidence of additional crimes.

LAW

It is well established law that a prisoner does not have a subjective expectation of privacy in his or her prison cell.

In *Hudson v. Palmer*, 468 U.S. 517 (1984), the Supreme Court of the United States contemplated whether or not a “shakedown” of an inmate’s cell, and subsequent removal of an inmate’s items, violated Fourth Amendment protections. There, the Supreme Court of the United States held, “...the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell.” *Id.*, at 526.

Further, the Supreme Court of Ohio has likewise adopted and expanded the holding in *Hudson*. In *State v. Spirko*, (1991) 59 Ohio St. 3d 1, an inmate challenged scope of the holding in *Hudson*. There, an inmate argued that a warrantless search of an inmate's cell only applies where there is an issue of prison security. The Ohio Supreme Court wrote, "We disagree. The language of the court in *Hudson* is unequivocal," affirming that an inmate has no protection against warrantless searches of his or her jail cell, without regard or requirement of a security issue. *Spirko*, at 58.

However, certain attorney-client communications are protected under the Sixth Amendment. The Sixth District Court of Appeals has analyzed this privilege as follows:

The attorney-client privilege is a privilege of confidentiality accorded communications between a client and his attorney. The classic statement of the privilege is found in United States v. United Shoe Machinery Corp. (Mass. D.C. 1950) 89 F. Supp. 357, in which it was stated that the privilege applies only if:

- 1) the asserted holder of the privilege is or sought to be a client;*
- 2) the person to whom the communication was made*
 - a) is a member of the bar of a court, or his subordinate and*
 - b) in connection with this communication is acting as a lawyer;*
- 3) the communication relates to a fact of which the attorney was informed*
 - a) by his client*
 - b) without the presence of strangers*
 - c) for the purposes of securing primarily either*
 - i) an opinion on law or*
 - ii) legal services or*
 - iii) assistance in some legal proceeding, and not*
 - d) for the purpose of committing a crime or tort; and*
- 4) the privilege has been*
 - a) claimed and*
 - b) not waived by the client.*

- In re Helmick, 1999 Ohio App. LEXIS 3368

The Sixth District in *Helmick* continued that a letter sent to a family member is not "a communication made to [an] attorney by a client," and therefore, "does not fall within the attorney-client privilege." *Id.*

In this case, Defendant wrote a letter to his wife. Contained in this letter is a code to enable Defendant and his wife to talk about the case over the jail phone call system, without law enforcement being able to determine the context of the conversations. This code contains at least thirty-five numbers which correspond to certain topics. Defendant wrote out the code for his wife and maintained an “index” of the numbers and topics for himself to reference in the jail. The documents Defendant kept for himself are not protected by attorney-client privilege. These documents are notes for his own reference during conversations with his wife, and were never intended for counsel. Further, these documents do not fall under any of the four sections or subsections referenced by *Helmick, supra*.

Defendant acknowledges that the letter was only intended for his wife. On January 17, 2020, he states, “Anything I wrote in your letter, no one else needs to know.” On January 21, 2020, Defendant states to his wife, they “took all my notes, all my notes to you, all my coding to you, all my numbers that I had coded...” Again, Defendant states the coding and notes are for conversations with his wife, not an attorney.

Based on the substance and context of the jail calls between Defendant and his wife, the State believes there to be inculpatory material contained within the code. On January 12, 2020, Defendant tells his wife over the phone that there is more she does not know that he will provide in a letter. On January 14, 2020, Defendant tells his wife he will write her a letter “so we can be on the same page.” On Friday, January 17, 2020, the letter is delivered to his wife.

In the phone calls between Defendant and his wife following the delivery of the letter, there are coded references to potential victims, specific counts in the indictment, and potentially forms of payment used to purchase illegal materials involving a minor. There are implied references that Defendant’s wife may have culpability and could be arrested.

Further, Defendant acknowledges the necessity of secrecy regarding the code. On January 17, 2020, Defendant instructs his wife:

Defendant: At some point you are going to have to literally burn that [the letter], so we will talk about it until Sunday and then you will have to burn that.

Wife: Ok.

Defendant: Ok. You will literally have to burn it.

Wife: I know.

Defendant: And any conversations, unless you tell me otherwise, we will never have about these conversations, I don't care if they put us in a small room and torture us, you know what I mean?

Subsequent conversations about the letter provide:

Wife: Is this OK until Sunday?

Defendant: We will probably burn it tomorrow.

And regarding the Defendant's index he made for himself:

Defendant: If we have a shakedown, I'm just going to rip it out and eat it.

Wife: What?

Defendant: If we have a shakedown, I'm just going to rip it out and eat it.

Wife: Wow.

Defendant: I'm not joking.

Additional conversations illustrate that his wife did, in fact, burn the letter.

Defendant correctly points out that the State is actually unaware of the materials recovered from Defendant's bunk. This is precisely why the State, out of abundance of caution, asked this Court to conduct an in camera review to purge any protected materials from what the State can review. It is the State's position that the State is entitled to any material not covered by attorney-client privilege as Defendant has no Fourth Amendment right to his writings while in custody. *Spirko, supra*. The State of Ohio is not seeking, and has no interest in, materials intended for his attorney or made for the purpose of his defense.

CONCLUSION

Because the State is unaware if any potential privileged materials under the Sixth Amendment are included in documents appropriately removed from Defendant's cell under the Fourth Amendment, the State now respectfully requests this Court return any protected materials to the Defendant, with any remaining materials returned to the Lucas County Jail property room for review by the State.

Respectfully submitted,

JULIA R. BATES, PROSECUTING ATTORNEY
LUCAS COUNTY, OHIO

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Assistant Prosecuting Attorney

By: Patricia S. Wardrop
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Assistant Prosecuting Attorney

By: Erin M. Kennedy
Erin M. Kennedy #85622
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CERTIFICATION

This is to certify that a copy of the foregoing motion was mailed this 18th day of February, 2020 to Lorin Zaner, Attorney for Defendant, 241 N. Superior St., Ste. 200, Toledo, Ohio, 43604.

By: Charles McDonald
Charles R. McDonald, #87126
Assistant Prosecuting Attorney

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