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The Honorable Patrick J. Arre
Veterans Courthouse
50 West Market Street, Room 704
Newark, New Jersey 07102

RE: State v. Buddy Randolph and Jamaal Mahorn
Indictment #

Your Honor:

Please accept this letter in lieu of a more formal brief in anticipation of an in limine motion regarding the admissibility of jail communications, specifically calls made by defendant Buddy Randolph, in the lead up to trial.

STATEMENT OF FACTS

A surveillance video, from September 7, 2022, at approximately 1:50 p.m., depicts the shooting of Khalif Ligon in front of 133 Roseville Ave. in Newark. Ligon is observed talking with two males as he comes out of a liquor store. One male is seen in a gray jacket, blue jeans, and a white shirt, the other in a white hooded sweater. Ligon starts to walk away when both males begin shooting at him multiple times. Ligon is hit, runs into the street, and is grazed by a moving SUV. He stands, and hopping on one leg, continues to cross the street. He holds his right hand up as if motioning to an approaching red Chevy Impala. The Impala stops abruptly and makes a U-turn and drives onto the sidewalk, fleeing east on 7th Ave out of camera view. Ligon stops abruptly and collapses. He was later transported to UMDNJ where he was pronounced at 1417 hours by Dr. Glass.

Simultaneously, Newark Police officers report driving southbound on Roseville Ave. approaching 7th Ave in Newark. Their attention was drawn to a male walking fast across Roseville Ave clutching his chest. He was wearing a gray jacket, blue jeans and a white shirt. At the same time the officers observed civilians who were pointing in the direction of the male. The officers followed the male. They observed him meeting up with another male wearing a white hoody. The two men continued walking westbound on 7th Ave. They looked back at the officers and then the one with the gray jacket began to run. He then stopped and laid down on the front stairs behind the retaining wall at 431 7th Ave. The officers alighted from their vehicle and observed him lying there with a gun, later identified as a Ruger .9mm, next to him on the stairs. When ordered not to move, he ran off. One officer gave chase and ultimately apprehended him at 41 No. 11th Street while the other officer secured

the gun. The NJ identification on the man who was apprehended revealed his name as Buddy Randolph.

A series of jail calls made by Randolph were recorded in which he indicated he would be willing to take up to 30 years for the crimes for which he is charged.

LEGAL ARGUMENT

Randolph's Jail Calls Should be Admitted at Trial

Inmates have no reasonable expectation of privacy in their calls under the Fourth Amendment. State v. Jackson, 460 N.J. Super. 258, 276 (2019). Furthermore, when an inmate is on notice that they are "being monitored and recorded when speaking on the phone, it is unreasonable to conclude either that the inmate retains a reasonable expectation of privacy, or that the inmate's loss of privacy should be limited to the one law enforcement agency... that is recording the conversation." Id., 460 N.J. Super. at 276-77. It has been affirmed that a defendant implicitly consents to the recording of their phone calls when given adequate notice, whether it be verbal or in writing, thus making statements made during these calls admissible evidence. See, e.g., U.S. v. Hodge, 85 Fed. Appx. 278, 280 (3d Cir. 2003); U.S. v. Korbe, 2010 WL 2776337; U.S. v. Morris, 2008 WL 5188826.

There is no need for a wiretap order (communication data warrant or "CDW") in order to gain access to a taped telephone conversation of a prison inmate, even if that conversation occurs over a line installed for the use of a prison inmate group. The State and federal wiretap laws control the interception of telephone calls. N.J.S.A. 2A:156A-2(d)(1); 18 U.S.C. §2510(5)(a). When the telephone equipment furnished to a subscriber by a communication carrier in the ordinary course of business is used by the subscriber in the ordinary course of its business for an investigative or law enforcement duty, the interception is excepted from the wiretap laws. State v. Fornino, 223 N.J. Super. 531, 545 (App. Div.), cert. denied, 111 N.J. 570 (1988), cert. denied, Fornino v. New Jersey, 488 U.S. 859, 109 S.Ct. 152, 102 L.Ed.2d 123 (1988).

In Fornino, the telephone company installed monitoring equipment for the prison officials to monitor calls on the subject phone. This equipment was used regularly to maintain prison security. "The exception from the definitions of 'intercepting devices' and 'electronic, mechanical or other device' provided by N.J.S.A. 2A:156A-2(d)(1) and 18 U.S.C. §2510(5) apply to telephone equipment used by law enforcement officers in the ordinary course of their duties, regardless of whether the monitoring on a particular occasion is random or is done by an officer who regularly performs that duty." Id., 223 N.J. Super. at 545-46. Warrantless interception of prisoner calls are not violated by the Fourth Amendment when telephone equipment is regularly used to monitor calls, and no prior court authorization based on specific information of use for a prohibited purpose is required.

Once prison personnel have intercepted the calls, they may share the intercepted calls with other law enforcement. N.J.S.A. 2A:156A-17a provides: "Any investigative or law enforcement officer or other person who, by any means authorized by this act, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may disclose or use such contents or evidence to investigative or law enforcement officers of this or another state, any of its political subdivisions, or of the United States to the extent that such disclosure or use is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure."

To the extent that the jail, rather than a prison, regularly monitors inmate calls, the same reasoning should apply. Indeed, this is exactly what occurred in State v. Thomas, 2008 WL 8120679 (law Div. 2008), aff'd. o.b. 2013 WL 4859779 (App. Div. 2013). While incarcerated in the Monmouth County Jail on

robbery charges, the defendant used a jail phone which resulted in the filing of additional charges for witness tampering, attempted murder and conspiracy to commit murder. A motion to suppress due to an allegedly illegal wiretap was denied based on the reasoning of the Fornino case. First, defendant had no legitimate expectation of privacy because a recorded phone message tells inmates that their calls are subject to monitoring, and such monitoring is authorized by N.J.A.C. 10A:31-21.5. Second, the New Jersey Wiretap Act exempts law enforcement officers, including corrections officers, who may listen in and record phone calls of inmates without a warrant and share those recorded calls with other law enforcement officers. This is exemplified in Jackson, where the court found that the jail authorities were in “proper performance of their official duties when they recorded the calls, and the Prosecutor’s Office was properly performing its official duties by conducting the investigation.” 460 N.J. Super. at 275.

Here, Defendant has no Fourth Amendment violation claim because he was informed that his call may be monitored and recorded. Despite these warnings, Defendant continued to make these phone calls, thus establishing his implicit consent to being recorded. During one of these calls, Defendant made a statement that was indicative of a guilty conscience by stating that he is willing to accept a sentence of up to 30 years. Transcript of Jail Call One, 5:19-22.

19 – and I’m just gonna tell

20 them like – like so I can have a possibility of seeing

21 the streets again. Like if they can give me 20 right now

22 or even worst case – or even worst case fucking 30.

CONCLUSION

In cessation, the evidence is clear that the recorded jail calls of Buddy Randolph, once authenticated by Essex County Correctional Facility personnel, should be admissible in this trial.

Respectfully submitted,

THEODORE N. STEPHENS II
ESSEX COUNTY PROSECUTOR

/s/ Felicia Garnes

Felicia Garnes, Assistant Prosecutor

cc: Sterling Kinsale, Esq.
John Wojtal, Esq.
Ghadeer Essa