

IN THE CIRCUIT COURT OF SHELBY COUNTY, MISSOURI

SHAYNE HEALEA,)
Defendant.)

Case No. 15SB-CR00046

Hadley E. Grimm, having been appointed Special Master herein, states that on December 21, 2016, he held a hearing in this case; the State appeared by its attorney Darrell Moore and Defendant appeared in person and with his attorney Shane Farrow; evidence was adduced by both parties; the Special Master listened and viewed the DVD recording of conversation between Defendant and the arresting officer and between Defendant and his attorney; the hearing was on the record; the exhibits introduced at the hearing were retained by the Special Master and are in a sealed envelope filed with this Report; the hearing was closed to the public on Motion by the Defendant, after giving representatives of the media the right to be heard.

1. Following his arrest on October 25, 2014, Defendant was taken to the Columbia, Missouri Police Department for booking.

2. Defendant was taken to the booking room; this room was monitored by audio and video recording and there were signs on the wall so indicating.

3. The arresting officer Scott Lenger advised Defendant that he was under arrest, suspected of driving while intoxicated, and asked Defendant if Defendant would give a breath sample, and advised Defendant that his driver's license would be revoked for one year if he refused.

4. The Defendant, in response, advised the officer that he would like to speak to his attorney before responding; Defendant requested to speak to his attorney "in private".

5. Defendant was then given his cell phone and taken by the officers from the booking room and placed in a holding cell; the holding cell was subject to audio and video recording but a photograph of the holding cell, State's Exhibit 2, does not show any sign indicating there was audio and video recording in the holding cell.

6. Defendant, in the holding cell, had a phone conversation with his attorney lasting approximately 20 minutes; the entire conversation was audio and video recorded by the Columbia Police Department's "in house" system.

7. The entire conversation between Defendant and his attorney was preserved on a DVD which was marked Defendant's Exhibit A on October 3, 2016, and is contained in the sealed envelope filed with this Report.

8. Defendant's Exhibit A is in three segments as follows:

(a) Defendant and the arresting officer in the booking room.

(b) Defendant alone in the holding cell talking to his attorney on his cell phone.

(c) The arresting officer in the hall outside the holding cell, waiting briefly before opening the door of the cell and then escorting Defendant down the hall, presumably back to the booking room.

9. The video in the holding cell shows Defendant seated on a bench, leaning forward, holding his cell phone; the audio portion is not of good quality; portions of Defendant's conversation were able to be understood, but other parts were not; most of the attorney's conversation was unintelligible or completely inaudible on the tape.

[REDACTED]

11. What I did not hear in the conversation between Defendant and his attorney was any discussion concerning trial strategy, credibility of witness, which witnesses to call or not to call, potential cross examination of possible State witnesses, how to shape the presentation of Defendant's case, or any other issue which could reasonably be expected to aid the State in preparing and prosecuting its case.

12. The arresting officer testified at the hearing that he did not listen to Defendant's conversation with his attorney as it was taking place and has never listened to the audio recording of the conversation.

13. Steve Hayden, an investigator for the Attorney General's office, became involved when the Columbia Police Department requested the Attorney General's office to take over the investigation of the case; he testified that he has reviewed a surveillance video from a Bank located near the accident scene, but has never looked at the video of the conversation between Defendant and his attorney and has never seen Defendant's Exhibit A, the DVD.

14. Defendant called as witnesses two civilian employees of the Columbia Police Department: Michelle Heater, Evidence Custodian of the Columbia Police Department, testified she has not watched the DVD and that another employee, Denise Shaw, is in charge of "in house" videos; Lydia Green, Records Unit Supervisor of Columbia Police Department, testified she has never viewed the DVD; Witness Green did identify Defendant's Exhibit J, a list of people who

had access to Defendant's file, but there was no evidence as to whether the DVD was in the file, or whether any of the persons who had access to the file may have listened or reviewed the DVD.

15. Defendant's Exhibit I was received in evidence; it is the Policy Manual of Columbia Police Department; Section 900.8 of the Policy Manual states that "Telephone calls between the detainee and his attorney shall be paid by the Department and shall be deemed confidential and shall not be monitored, eavesdropped upon or recorded."

16. Section 900.9(3) further states that "Interviews between attorneys and their clients shall not be monitored or recorded."

17. Darrell Moore, the Assistant Attorney General who is now handling the prosecution, stated that, as an officer of the Court, he has not seen the video, or listened to the audio, of Defendant's conversation with his attorney, nor has he seen or read a transcript of the audio portion of the conversation between Defendant and his attorney.

CONCLUSION

1. The Columbia Police Department failed to comply with Section 600.048.3, RSMO. requiring all law enforcement agencies "to make a room or place available therein where any person held in custody, under a charge or suspicion of a crime, will be able to talk privately with his or her lawyer."

2. Columbia Police Department failed to comply with its own written policies as set out in Sections 900.8 and 900.9(3), both of which clearly state that telephone calls or interviews between attorneys and their clients "shall not be monitored, eavesdropped upon or recorded."

3. By failing to comply with Section 600.048.3, RSMO. and to follow its own written policies, and by placing Defendant in a room with audio recording capability and then preserving

a tape of his conversation with his attorney, Columbia Police Department violated Defendant's rights under the 6th Amendment of the United States Constitution.

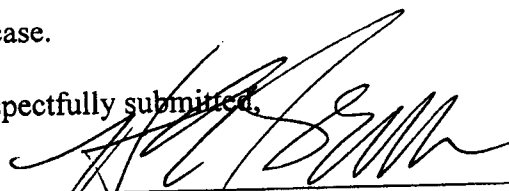
4. Once a defendant has shown that the State has invaded the privacy of an attorney-client conversation, a presumption arises that the invasion is prejudicial to the Defendant and that the Defendant's right to a fair trial has been compromised. *State v Blair*, 292 N.W. 398, 872 N.W. 2nd 777 (Supreme Court of Nebraska 2016). If the content of the attorney-client conversation involves matters of trial strategy, the knowledge of which would materially aid the prosecution to the detriment of the Defendant's right to a fair trial, the ultimate remedy should be the dismissal of all charges.

5. Where attorney-client conversations do not involve trial strategy, discussion of potential evidence, credibility of witnesses, suggestions for witness examinations or adequacy of the police investigation, a remedy less drastic than dismissal of all charges, such as an order excluding all evidence concerning the conversation, should be sufficient to eliminate any prejudice to the Defendant's fundamental right to a fair trial before an impartial jury.

6. Based upon the content of the conversation between Defendant and his attorney, which I heard on Defendant's Exhibit A, I believe a remedy less drastic than complete dismissal of the charges will be adequate to protect Defendant's right to a fair trial.

7. Assuming the Court does not sustain Defendant's Motion to Dismiss all charges, the court should allow counsel to be heard as to the appropriate remedy to protect Defendant's right to a fair trial, as well as whether this Report and the evidence adduced at the hearing should be closed to the public until the completion of this case.

Respectfully submitted,



Hadley E. Grimm, Senior Judge acting as
Special Master

12/28/16