IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**No. 06-20394-B/P**
	)	
DESHAUN TAYLOR,	)	
	)	
Defendant.	)	
	)	

REPORT AND RECOMMENDATION ON DEFENDANT'S MOTION TO SUPPRESS

Before the court, by order of reference, is defendant Deshaun Taylor's Motion to Suppress Tapes (D.E. 21). On June 19, 2007, the court held a hearing on the motion. All parties were present and heard. The court heard testimony from Shelby County Sheriff's Deputy Carolyn Chambers and admitted three exhibits: (1) collective Exhibit 1 consisting of four photographs of telephones used by inmates at the 201 Poplar Avenue jail where Taylor was held after his arrest on June 14, 2006 ("201 Poplar"); (2) a call log for eight telephone calls made by Taylor from 201 Poplar between June 15, 2006 and June 19, 2006; and (3) a compact disc containing recordings of the eight telephone calls. For the reasons below, it is recommended that the motion to suppress be denied.

I. PROPOSED FINDINGS OF FACT

On October 25, 2006, a federal grand jury returned an

indictment charging Taylor with possessing a sawed-off shotgun in violation of 26 U.S.C. §§ 5841, 5861(d), and 5871 (Count One), and possessing that shotgun after having been previously convicted of a felony in violation of 18 U.S.C. § 922(g) (Count Two). The United States alleges that after he was arrested on June 14, 2006 on the firearm charge, and while he was in custody at 201 Poplar, Taylor made a series of telephone calls from the jail to family members and friends. These telephone calls began on June 15, 2006 and ended on June 19, 2006. During several of these calls, the United States contends that Taylor made incriminating statements relating to the circumstances of his arrest and his attempt to get family members to remove shotgun shells that were hidden in his bedroom. Pursuant to jail policy, all of these telephone calls were recorded by the jail. The United States has provided Taylor with these recordings and intends to use at trial those portions that contain incriminating statements made by Taylor. Specifically, the government intends to use portions of two calls made on June 17, one call made on June 18, and one call made on June 19.

At the June 19, 2007 evidentiary hearing, Deputy Carolyn Chambers testified that she is employed with the Special Operations Unit at the Sheriff's Department, and that her duties include monitoring and recording inmate telephone calls. She testified that the Sheriff's Department's policy for the past twelve years

has been that all inmates at 201 Poplar have their outbound telephone calls recorded, with the exception of calls to their lawyers which are made using specially designated "counselor" phones. When an inmate is initially brought to 201 Poplar, they are notified by jail officials about the jail's policy of monitoring and recording calls. In addition, all inmate telephones at 201 Poplar display a written warning (in both English and Spanish) that tells the user that calls are recorded:

> THE SHELBY COUNTY DIVISION OF CORRECTION RESERVES THE AUTHORITY TO MONITOR OR RECORD CONVERSATIONS ON THIS TELEPHONE. YOUR USE OF INSTITUTIONAL TELEPHONES CONSTITUTES CONSENT OF THIS MONITORING OR RECORDING. A PROPERLY PLACED TELEPHONE CALL THROUGH YOUR COUNSELOR TO AN ATTORNEY WILL NOT BE MONITORED OR RECORDED.

(See Ex. 1 to 6/19/07 hearing). Moreover, when an inmate makes a call and the call is successfully connected, an automated voice recording tells the individuals on both ends of the call that "this call is subject to monitoring and recording." (Ex. 3 to 6/19/07 hearing).

While at 201 Poplar, Taylor made one telephone call on June 15 ("Call 1"), one call on June 16 ("Call 2"), two calls on June 17 (Calls 3 and 4), one call on June 18 ("Call 5"), and three calls on June 19 (Calls 6, 7, and 8). The pertinent parts of each of these calls were played at the hearing, and the automated warning about monitoring and recording calls could be heard at the beginning of

each call.[1] During Call 4, Taylor tells a family member that he was arrested with a "chopper" and "dope," which the United States argues refers to the sawed-off shotgun and marijuana, respectively, that Taylor was arrested with on June 14.[2] Later in that same call, Taylor tells a family member to get rid of the "shells" in Taylor's bedroom so that the house is not "hot." During Calls 5 and 6, Taylor again asks a family member whether the "bullets" and "shells" in a shoe box and drawer in Taylor's bedroom had been removed. The government argues that these four conversations – which were all recorded after Taylor was repeatedly warned that calls were monitored and recorded – constitute evidence that is relevant to Taylor's possession of the sawed-off shotgun on June 14.

II. PROPOSED CONCLUSIONS OF LAW

[1]At the beginning of Calls 1 and 2, a static noise can be heard that renders inaudible the automated warning. Deputy Chambers testified that the jail records show that Taylor made these calls using telephones located at the post-booking annex (Ex. 2 to 6/19/07 hearing). According to Chambers, because these phones are located next to the inmate intake area, they are the most heavily used phones within the facility and therefore the recording "drum" assigned to these phones has deteriorated due to excessive use. Chambers testified that although the automated warning can be clearly heard by the telephone users and by the law enforcement officers who monitor the call at the time the call is made, the recording of the call from the drum to a compact disc creates static that interferes with the automated warning.

[2]The government intends to offer testimony at trial that "chopper" is slang for a sawed-off shotgun. The government stated at the evidentiary hearing that Taylor was in possession of marijuana at the time of his arrest, which explains his reference to "dope."

In his motion to suppress, Taylor contends that the eight telephone call recordings were made without a court order and thus violate Title III of the Crime Control and Safe Streets Act, 18 U.S.C. § 2510 et seq. Title III generally prohibits the intentional interception of telephone calls without judicial authorization. Id. Recordings of unauthorized intercepted telephone calls may not be used as evidence at trial. See 18 U.S.C. § 2515. However, Title III excepts certain communications from its provisions, including communications intercepted through "any telephone or telegraph instrument, equipment or facility, or any component thereof . . . being used by . . . an investigative or law enforcement officer in the ordinary course of his duties," id. at § 2510(5)(a), and where one of the parties has either expressly or impliedly consented to interception, id. at § 2511(2)(c).

The Sixth Circuit, as well as numerous other courts of appeals and district courts, has held that routine monitoring and recording by law enforcement of inmate telephone calls does not violate Title III. See United States v. Paul, 614 F.2d 115, 117 (6th Cir. 1980); see also United States v. Gangi, 57 Fed. Appx. 809, 813-14 (10th Cir. 2003); United States v. Friedman, 300 F.3d 111, 121-22 (2d Cir. 2002); United States v. Van Poyck, 77 F.3d 285, 292 (9th Cir. 1996); United States v. Sababu, 891 F.2d 1308, 1329 (7th Cir. 1989); United States v. Doyle, No. 06 CR 224, 2007 WL 707023, at *1-2 (E.D. Wis. Feb. 16, 2007); United States v. Muse, No. 2:05 CR

118, 2006 WL 581245, at *2 (S.D. Ohio Mar. 7, 2006); United States v. Correa, 220 F. Supp. 2d 61, 63-65 (D. Mass. 2002); United States v. Hammond, 148 F. Supp. 2d 589, 590-91 (D. Md. 2001); United States v. Noriega, 764 F. Supp. 1480, 1490-92 (S.D. Fla. 1991); see generally Cook v. Hills, 3 Fed. Appx. 393 (6th Cir. 2001). These courts opine that either § 2510(5)(a)'s "law enforcement" exception or § 2511(2)(c)'s "consent to interception" exception, or both, apply to the recording of inmate calls. See Van Poyck, 77 F.3d at 292. In addition, such recordings do not violate an inmate's Fourth Amendment rights because "any expectation of privacy in outbound calls from prison is not objectively reasonable and that the Fourth Amendment is therefore not triggered by the routine taping of such calls." Id.; see also Gangi, 57 Fed. Appx. at 815; Friedman, 300 F.3d at 123; Doyle, 2007 WL 707023, at *2.

The present case is similar to Doyle. In that case, the defendant made numerous calls from the jail where he was confined, which were recorded by jail personnel and provided to the government. The court noted that the jail, with the exception of calls between an inmate and his lawyer, recorded all inmate calls consistent with jail rules and regulations. Id. at 1. In addition, inmates at the jail were notified of this recording policy in several ways:

> First, at the beginning of each call, an audio message states that the call will be recorded and is subject to monitoring at any time. Id. ¶ 6. Second, printed warnings in both English and Spanish are posted next to

> the phones used by inmates, stating that the jail reserves the authority to monitor and record calls and that an inmate's use of the phones constitutes consent to monitoring and recording. Id. ¶ 7. Third, upon being received into the jail, inmates receive a copy of the jail's rule-book, of which they must acknowledge receipt, including an acknowledgment that all calls except those to counsel will be recorded. Defendant received and signed for the rule-book. Id. ¶ 8. Finally, defendant received a document explaining how the phone system at the jail worked, which again stated that phone calls, other than to attorneys, made from the inmate phone system are recorded. Id. ¶ 9.

Id. at *1. In denying defendant's motion to suppress the recordings, the court held that "where, as here, a jail provides notice that calls will be monitored, there is no reasonable expectation of privacy in such communications." Id. at *1. The court further held that the law enforcement exception applied because the jail recorded inmate calls automatically pursuant to an established policy and that the consent exception applied because the defendant received several warnings that his calls were subject to recording. Id. at *2.

In this case, Deputy Chambers (whose testimony the court finds credible) testified that all calls made by inmates at 201 Poplar, with the exception of calls to counsel, are automatically recorded pursuant to jail policy that has been in effect for the past twelve years. All telephones display a written notice that warns the inmate that calls are subject to monitoring and recording. Once a call is successfully connected, an automated voice message tells the inmate and the person on the receiving end of the call that the

call is subject to monitoring and recording. Calls 3 through 8, which were played in court at the hearing, all clearly contained the voice warnings. Although the voice warnings on Calls 1 and 2 were inaudible due to static created when the call was copied over to compact disc, the court submits that Taylor heard the same voice warning at the beginning of those calls as well.[3] Finally, while the government did not present evidence of a written jail policy or that Taylor was provided with a copy of the recording policy when he was brought to 201 Poplar, Chambers testified that inmates are notified of the telephone recording policy when they initially arrive at the facility. In any event, even if Taylor had not received actual notice of the recording policy during the intake process, the court submits that the written warning on the telephones and the voice warnings at call initiation provided Taylor with more than sufficient notice that his calls were being recorded. Applying the analysis set forth in the cases cited above, this court likewise concludes that the law enforcement and consent exceptions under Title III apply to the telephone calls at issue in Taylor's Motion to Suppress.[4]

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[3]The government stated at the hearing that it does not intend to use Calls 1 and 2 at trial, nor does it intend to use Calls 3, 7, and 8.

[4]Call 8 was actually initiated by a fellow inmate at 201 Poplar at Taylor's direction, since Taylor was in lock down at the time and could not get to the telephone located outside of his cell. Although the government stated at the hearing that it would not use this call at trial, the court notes that this recording also did

III. RECOMMENDATION

For the reasons above, it is recommended that Taylor's Motion to Suppress be denied.

Respectfully submitted,

s/ Tu M. Pham

TU M. PHAM

United States Magistrate Judge

June 21, 2007

Date

NOTICE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN TEN (10) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN TEN (10) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.

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not violate Title III because, based on Taylor's experience in making his prior seven calls, he was well aware that Call 8 was also being recorded.