



## SUPERIOR COURT OF NEW JERSEY

VICINAGE 1

**Bernard. E. DeLury, Jr.**  
*Presiding Judge*

Criminal Court Complex  
4997 Unami Boulevard  
Mays Landing, N.J. 08330  
609-402-0100 ext. 4736

**Not for Publication Without Approval of the Committee of Opinions**

July 24, 2025

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Re: **State v. Marty Small and La'Quetta Small: Motion to Suppress Media Evidence in Violation of the Wiretap Act**  
Ind. No. 24-09-2951 & 24-12-3927

Dear Counselors:

### **INTRODUCTION**

This matter comes before the Court on the motion of Defendants Marty Small and La'Quetta Small to suppress audio and video recordings obtained by [REDACTED], the boyfriend of [REDACTED], pursuant to allegations that their acquisition violated the New Jersey Wiretap Act, N.J.S.A.

2A:156A-1 et seq. Defendants contend that the recordings constitute unlawful interceptions and are inadmissible, arguing that E.L. was not a party to the communications, that [REDACTED] as a minor lacked legal capacity to consent, and that no valid exception under the New Jersey Wiretap Act applies.

The State opposes, contending that the recordings were lawfully obtained either because [REDACTED] was a party to the communications or, in the alternative, received the requisite prior consent from [REDACTED]. The State further maintains that [REDACTED]'s explicit instructions and assent to [REDACTED] to make the recordings bring the conduct within the statutory consent exception, and that, under the facts presented, [REDACTED] possessed sufficient capacity to authorize the interception for her own protection.

For the reasons set forth below, namely, the Court's finding that [REDACTED] credibly and unequivocally testified at the evidentiary hearing that she expressly authorized [REDACTED] to record the interactions at issue—the Court concludes that the statutory consent exception of the New Jersey Wiretap Act applies, and the recordings do not violate the Act. Therefore, Defendants' motion to suppress is hereby **DENIED**. The Court has entered an Order in accordance with the foregoing reasons expressed in this decision.

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## PROCEDURAL HISTORY

On April 15, 2024, Marty Small, Sr. and La'Quetta Small ("Defendants") were charged with Complain-Summons alleging Child-Endangerment and Marty Small individually with Aggravated Assault, and Terroristic Threats under Indictment Number 24-09-2951. Small was separately indicted on one count of witness tampering on December 17, 2024, under Indictment Number 24-12-3927. The Court joined Mr. Small's two indictments for purposes of trial on April 30, 2025. Subsequently, the Court granted Mrs. Small's motion to sever the counts for purposes of trial on June 13, 2025, for the reasons set forth on the recording of oral argument on June 12, 2025. As such, Mrs. Small will be tried separately on the count of child endangerment under Indictment Number 24-09-2951.

Counsel for Mr. Small filed the instant motion on December 19, 2024. Mrs. Small joined Mr. Small's motion on March 18, 2025. The Defendants move this Court for an Order suppressing the media evidence obtained by [REDACTED] (victim's boyfriend) in violation of New Jersey's Wiretapping Statute (hereinafter "the Act"). On April 15, 2025, the Court heard oral argument on the instant motion. The Court, pursuant to the Order of Post-Argument Submissions regarding the Admissibility of the Alleged Recorded Intercepts by [REDACTED] and/or [REDACTED] dated April 15, 2025, made the following findings at the conclusion of oral argument:

1. The parties will simultaneously submit to each other and the Court proposed findings of fact and conclusions of law on May 19, 2025.
2. The proposed findings of fact shall address, at minimum, the number, date, time, device, and parties regarding each intercept. The Court's form may be used as a template. Additionally, the parties shall indicate the exhibit, certification, or other evidence upon which the finding of fact is drawn.

3. The proposed conclusions of law shall address at a minimum the burdens of persuasion, the burdens of proof as to admissibility, the nature of the evidence that is warranted or necessary for the Court to make its determination.
4. The parties submissions shall address whether the 13 “clips” of audio/video recordings are recorded intercepts of oral wire communications within the meaning of the Wiretap statute; whether the recorded intercepts were obtained with the consent of any one of the parties to the oral communications, or whether the intercepts were obtained by another with the prior consent of one of the parties to the communications; whether the issue of consent must be shown by direct, indirect, or circumstantial evidence; whether the State must show by a preponderance of the evidence that the recorded intercepts of oral communications were obtained with the consent of one of the parties to the oral communication; and whether, given their minority, [REDACTED] and [REDACTED] had the ability to consent to the recorded interception of [REDACTED]’s oral communications.

The parties filed post-argument submissions with the Court on or before May 19, 2025.

Upon review of the parties’ submissions, the Court found that a N.J.R.E. 104 hearing is warranted to determine the issue of consent pursuant to the Act. On May 22, 2025, the Court ordered “that a testimonial hearing is warranted pursuant to N.J.R.E. 104 and R. 3:5-7 to establish whether the extracted audio and video clips were interceptions covered under the New Jersey Wiretap Act and whether they were obtained with prior consent, [and] a testimonial hearing will be held on June 16, 2025.” Additionally, enclosed with the Order the Court provided a letter decision. The Court made the following determinations:

1. The State bears both the burden of proof and the burden of persuasion with regard to the proposed admissibility of the twelve extracted audio and video clips detailed in the State’s letter brief of May 19, 2025, pp 4-6 (“the Clips”).
2. The State shall be held to its burdens by a preponderance of the credible evidence to show that the Clips were obtained lawfully as an exception to the general prohibitions set forth in the Wiretap Act.
3. The Clips, at this juncture, appear to have been obtained by [REDACTED] while not “acting under color of law.” The Clips further appear to be intercepts of electronic communications transmitted from J.S.’s device to [REDACTED]’s device by

use of cellular or similar connection. Interceptions, such as the intercepts defined under N.J.S.A. 2A:156A-4d, "do not represent the same intrusions [as unauthorized wiretaps by law enforcement] into constitutionally protected privacy." State v. Toth, 354 N.J. Super. 13, 22 (App. Div. 2002) (citing State v. McDermott, 167 N.J. Super. 271, 278 (App. Div. 1979)).

4. The Defendants have countered with reference to the contents of the Clips. Namely, the Clips appear to be the result of [REDACTED]'s device maintaining an open connection with E.L. and that [REDACTED] used his electronic device to record the communications between [REDACTED], the Defendants and [REDACTED]'s grandmother. Such a showing warrants a testimonial hearing pursuant to N.J.R.E. 104 and R. 3:5-7 in order to establish whether the Clips were interceptions covered under the Wiretap Act and whether they were obtained with [REDACTED]'s prior consent. A consensual intercept by a third party (no state involvement) simply means that the person recording the conversation is a party to the conversation or that the persons who are being recorded have given their lawful consent to have the conversation recorded. This consent can be implied. See George v. Carusone, 849 F. Supp. 159, 164 (D. Conn. 1994) ("A court can infer implied consent when the circumstances indicate that the party knowingly agreed to the surveillance." In that case, the court observed that police officers who were aware that police telephone lines were taped impliedly consented to recording of their conversations).
5. Further, the Court is of the opinion that an evidentiary and testimonial hearing is required to ensure that the strictures of the Wiretap Control Act have been scrupulously observed. The Defendants are entitled to test that the appropriate guardrails were in place protect the Defendants' rights of privacy.

State v. Minter, 116 N.J. 269 (1989) reaffirmed the principles set forth in State v. Worthy, 141 N.J. 368, 379 (1995) "that legislative concern demands the strict interpretation and application of the Wiretap Control Act." The Worthy Court held:

That legislative concern demands the strict interpretation and application of the Wiretap Control Act. See, e.g., State v. Catania, 85 N.J. 418, 437 (1981) ("[T]his Court has strictly construed the Wiretap Act so as to afford maximum safeguards for individual privacy"); State v. Cerbo, 78 N.J. 595, 604 (1979) ("[T]he Wiretap Act constitutes an intrusion into 'individual rights of privacy' and should be strictly interpreted and meticulously enforced") (citation omitted); In re Wire Communication, 76 N.J. 255, 260 (1978) ("Wiretap statutes implicating as they do an intrusion into individual rights of privacy, constitutionally and legislatively recognized, should generally be strictly construed").

Id. 141 N.J. at 380.

6. In order to gain admissibility of the Clips, the State must show that [REDACTED] provided prior consent to the interception of communications between her and her family members by [REDACTED]. The State has provided the Court with a recorded interview of [REDACTED]. The interview was conducted by Detective Sergeant Ryan Ripley ("R.R.") and Assistant Prosecutor Elizabeth Fischer ("E.F.") on May 1, 2025, at the Atlantic City High School. The Court has reviewed the audio recording. [transcript of audio recording omitted]

Under N.J. Ct. R. 3:5-7(c), "[i]f material facts are disputed, testimony thereon shall be taken in open court." The motion judge must conduct an N.J.R.E. 104 evidentiary hearing to provide the parties the opportunity to probe the veracity of testimony. State v. Parker, 459 N.J. Super, 26 (App. Div. 2019). The Appellate Division in Parker held:

Here, the parties made clear in their respective written submissions that they had diametrically irreconcilable accounts about what the [d]etective claimed occurred when he approached defendant. Under R. 3:5-7(c), the motion judge *must* conduct an N.J.R.E. 104 evidentiary hearing to provide the parties the opportunity to probe the veracity of [the detective's] testimony. The motion judge thereafter must make factual findings that will be substantially influenced by an opportunity to hear and see the witnesses. State v. Gamble, 218 N.J. 412, 424-25, (2014).  
Id. at 30.

In the present matter, the parties made clear in their respective written submissions and during the April 15, 2025, oral argument that that they have "diametrically irreconcilable" accounts about [REDACTED]'s consent, or lack thereof, to [REDACTED] prior to the intercept. While the May 1, 2025, interview of [REDACTED] may assist the Court in assessing the issue of consent pursuant to N.J.S.A. 2A:156A-4d, the Court finds an evidentiary hearing appropriate to determine the disputed material facts. Exhibit 32, which purports to record [REDACTED]'s sworn statement to law enforcement on the issue of her consent to the intercepts by [REDACTED], appears to be the one-sided product of a law-enforcement interview consisting of a series of leading and suggestive questions that elicited at times inaudible, non-verbal and ambiguous responses. It is axiomatic that credibility determinations are best made when the fact finder has the opportunity to see and hear the witness and the testimony that has been offered in the appropriate judicial setting when such testimony has been assessed in the crucible of cross-examination.

7. The nature and extent of such testimony or other evidence adduced by the State should address, at a minimum, the issue of [REDACTED]'s consent to the alleged interceptions.

Thereafter, the State alerted the Court to a potential conflict of interest. This potential conflict arose from Michael Schreiber's prior representation of [REDACTED] in an unrelated juvenile

matter, which was disclosed during the June 12, 2025, conference. The issue was raised in anticipation of the State's intention to call [REDACTED] as a witness at the evidentiary hearing on Marty and La'Quetta Small's Motion to Suppress Media Evidence, allegedly obtained in violation of the New Jersey Wiretap Act. The State's primary concern centered on the possible ethical conflict presented by Mr. Schreiber's prospective cross-examination of his former client. During the conference, the Court indicated that it would conduct an on-the-record colloquy to determine whether [REDACTED] knowingly and voluntarily waives any potential conflict.

During the evidentiary hearing on June 16, 2025, the State called [REDACTED] as its first witness. The Court conducted the colloquy with [REDACTED] to inquire into a potential waiver of the conflict. The Court indicated that there does not appear to be an apparent conflict and there is currently no motion pending from the State to disqualify Mr. Schreiber from the case. The Court then asked [REDACTED] if he would be willing to waive any conflict that may or may not exist with Mr. Schreiber. [REDACTED] indicated that he was not willing to waive the conflict because "I don't know what he can use against me." Following [REDACTED]'s refusal to waive the conflict, the Court excused him from the courtroom. The State continued its case with the other witnesses that were not impacted by [REDACTED]'s testimony.

On June 19, 2025, the parties appeared before the Court for the continued hearing of the instant motion. At that time, the State advised that it would not be calling [REDACTED] to testify. Thereafter, Defense counsel indicated an intention to call [REDACTED] as a witness. Because the potential conflict of interest remained unresolved, the Court directed the State to file a formal motion to disqualify Michael Schreiber and scheduled the continued hearing on the Wiretap Motion for July 17, 2025.

On July 17, 2025, the Court denied the State's motion to disqualify Mr. Schreiber. Thereafter, the Wiretap motion continued, and the Defense called [REDACTED] as a witness. Upon completion of [REDACTED]'s testimony, the Court, on the record, set forth its reasons denying the instant motion. This Letter Decision is issued by the Court to supplement and further articulate the reasons for its ruling as previously stated on the record.



## STATEMENT OF FACTS

On January 22, 2024, [REDACTED], a sixteen-year-old female student attending Atlantic City High School attended a school assembly concerning mental health.<sup>1</sup> At the conclusion of the assembly, [REDACTED] completed a written "exit ticket," [REDACTED] wrote she experienced "abuse" and asked to speak to a counselor.<sup>2</sup> That same day, a counselor at the high school spoke to [REDACTED] in the hallway. [REDACTED] disclosed that she was hit with a broom and passed out. [REDACTED] also stated her dad is a "big guy," and "she already spoke with Principal Chapman about some choices."<sup>3</sup>

The written "exit ticket" prompted a telehealth video appointment with [REDACTED] in which [REDACTED] disclosed allegations of physical abuse committed by Marty and La'Quetta Small to [REDACTED], a counselor at [REDACTED].<sup>4</sup>

Per Ms. [REDACTED] Marty and La'Quetta Small initially were present during the telehealth video appointment and requested [REDACTED] to be seen by a therapist because of "issues" with a boyfriend; but they left when it was time for a one-on-one interview.<sup>5</sup> During the one-on-one interview, [REDACTED] took her device to a bedroom for privacy [REDACTED]  
[REDACTED]  
[REDACTED]

<sup>1</sup> Investigative Report regarding Interview with [REDACTED], State's Exhibit 1, Pages 1-2.

<sup>2</sup> *Id.* at Page 3.

<sup>3</sup> Investigative Report regarding Interview with [REDACTED], State's Exhibit 2, Page 2.

<sup>4</sup> Investigative Report regarding Interview with [REDACTED], State's Exhibit 3, Page 1.

<sup>5</sup> *Id.* at Pages 1-2

<sup>6</sup> *Id.* at Page 1.

[REDACTED]

The disclosure by [REDACTED] resulted in [REDACTED]

[REDACTED] reporting the allegations to the New Jersey Department of Children and Families.

On January 24, 2024, Division of Child Protection and Permanency (hereinafter referred to as "DCPP") reported to 116 North Presbyterian Avenue, Atlantic City, New Jersey, to speak with [REDACTED] in reference to her disclosure.<sup>8</sup> DCPP stated [REDACTED] and [REDACTED] were interviewed and both denied the allegations.<sup>9</sup> DCPP stated when they arrived to speak with [REDACTED] both their parents were home and present during the interview. [REDACTED] denied disclosing abuse to anyone at the high school.<sup>10</sup> [REDACTED] stated that the first person she disclosed to was [REDACTED]

With her mother, La'Quetta Small, nearby, [REDACTED] stated to DCPP that she made the allegations up because she was mad at her parents for taking her phone away and neither parent agreeing with the relationship [REDACTED] has with her boyfriend, later identified at [REDACTED]. When asked about the identity of her boyfriend, La'Quetta Small interrupted [REDACTED] during the interview and told [REDACTED] not to provide [REDACTED]'s last name to DCPP.

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<sup>7</sup> Id. at Page 2.

<sup>8</sup> DCPP Records, State's Exhibit 4, Page 5.

<sup>9</sup> Id. at Page 6-7.

<sup>10</sup> Id. at Page 7.

█ subsequently was interviewed by Sergeant Ryan Ripley, of the Atlantic County Prosecutor's Office.<sup>11</sup> When interviewed, █ stated █ was being verbally, mentally, and physically abused by her parents.

█ further stated the last time he saw █ in person was early December of 2023. █ stated sometime in early December 2023, █'s parents went through her cellular telephone and found out █ and █ were having sexual intercourse, which led to her cellphone being taken away from her. █ advised her parents were against this and did not approve of their relationship.

█ stated █ was being verbally, mentally, and physically abused by her parents.<sup>12</sup> █ further stated, during the week of December 10, 2023, he witnessed over the video chat on different occasions how her father screamed at her and was physically abusive specifically by choking and described █'s clothing being ripped, and her body bruised after the incidents.

█ further stated, on January 13, 2024, there was a scheduled event early in the morning called a "Peace Walk," in which Marty was to attend. █ stated █ did not want to attend, but her father became physically violent specifically by beating her with a broom. █ stated █ showed him via video chat the long gray-ish colored broom handle used to beat her. █ stated the broom handle was bent. █ stated █ told him later that night that she was taken to the Atlantic City Regional Medical Center in Atlantic City, New Jersey, where she was treated for her injuries.

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<sup>11</sup> Investigative Report regarding Interview of █, State's Exhibit 5; Defense Exhibit E.

<sup>12</sup> Id. at Page 2.

█████ indicated that he has several video recordings of many of these incidents on his cellular devices and an iPad as well as photographs showing █████'s injuries.<sup>13</sup> █████ thereafter showed Sgt. Ripley, using his cellular device, sever photographs of █████'s injuries. The photographs showed different body parts with what appeared to be swelling, scratches, bruises, and also hair loss from a black female. The photographs did not show █████'s face. The hair loss photo was also located in the Instagram return. The black female in the photograph is the same black female in the photograph captured in █████'s bedroom.

On January 26, 2024, the Honorable Christine Smith, J.S.C., approved search warrants CS-ATL-691A-SW-24, CS-ATL-691-SW-24, and CS-ATL-696-SW-24, authorizing the seizure of cellular devices and an iPad belonging to █████.<sup>14</sup> These warrants subsequently were executed by Lieutenant James Rosiello, Sergeant Ripley, and Detective Choe of the Atlantic County Prosecutor's Office.<sup>15</sup> The execution resulted in two cellular devices being seized—one from the person of █████ and a second cellular device from the living room couch of his residence.

Following the seizure of these devices, the Honorable Christine Smith, J.S.C. approved search warrants for the tan Apple iPhone 8 and a white Apple iPhone, as located on █████ and in his residence.

The State executed the warrant and observed that █████ used Skype, a Microsoft Application with a live ID and an email address.<sup>16</sup> Detective Choe also located the same images shown to him and Sgt. Ripley by █████ during his interview on January 26, 2024, depicting █████'s injuries within the extraction report of the tan Apple iPhone 8.

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<sup>13</sup> Id. at Page 3.

<sup>14</sup> Certification and Search Warrant—Person of █████, and Residence of █████, State Exhibit 6.

<sup>15</sup> Certification and Search Warrant—Cellphone; State Exhibit 7, Paragraph EE; Defense Exhibit H.

<sup>16</sup> Certification and CDW; State Exhibit 8, Page 10.

On January 27, 2024, Sgt. Ripley and Detective Armani Rex reported to [REDACTED]'s residence and were provided with a black and silver iPad with a damaged and cracked screen.<sup>17</sup> The search warrant was executed the following day and resulted in, among other things, a series of text messages between [REDACTED] and [REDACTED]:

[REDACTED] I didn't wan wake up so she kicked up and I fell on my face  
like my body is sore from head to toe  
: Off ya bed  
and I have bruises on my shoulders  
yes  
from my dad  
on each side

[Certification and CDW—Apple, State Exhibit 10, Pages 11 to 13]

Within the black and silver Apple iPad extraction, the State also located a series of text messages in of which [REDACTED] tells [REDACTED] that he is able to see Marty and La'Quetta Small:

[REDACTED] See u can download stuff  
they keep walking in and out my room  
no  
U got the app  
I can see  
At the top of ya screen say Ig  
I told you

[State Exhibit 10, Page 13]

The extraction report further revealed thirteen separate videos clipless from the black and silver Apple iPad.

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<sup>17</sup> Certification and Search Warrant—Apple iPad, State Exhibit 9; Defense Exhibit H.

Those recordings appeared to be made from a screen video recording application or saved utilizing one of the devices from the video chat. The videos show a 50/50 split screen, each showing their live view of the video chat from their respective devices.

The videos further summarized as follows:

- 1) The videos start with a female voice that says, "She is the problem," and J. later responding with "I am scared." The device appeared to be most of the time in ■■■'s bedroom with the camera face down while the abuse also appeared to be happening inside the bedroom and at times on the second floor.
- 2) A male voice that appears to be of ■■■'s father continued with verbal aggression and threats toward ■■■ by saying, "I won't allow you to go to school," and "Don't make me hurt you."
- 3) The screaming and yelling from ■■■'s parents, and grandmother becomes more intense to a point in which screaming can be heard even when ■■■ appeared to be far away from her bedroom.
- 4) ■■■ can be heard crying in the background many times and pleading with her parents not to be near her and to let her go. In addition, in one video clip, ■■■ says "you punched me in my mouth," and then "you hit me in my face," while coughing.
- 5) The last video clips ■■■ yells even more so saying, "get off of me" and her crying intensifies even when she appeared to be down the hallway further away.
- 6) The last video clip shows someone holding clear plastic bag containing what appears to be a bloody white towel while in a common area like the kitchen/dining room.

[State Exhibit 10, Page 13 to 14]

The State subsequently served legal process on Atlantic Care Regional Medical Center (hereinafter referred to as "ARMC") City Division Hospital in Atlantic City, seeking medical records that revealed ■■■ was admitted on January 16, 2024, for a head injury. The initial medical report stated ■■■ reported to the hospital for a head injury due to playing with her younger brother.

The State further obtained video surveillance from ARMC that show [REDACTED] and Marty Small arriving in what appeared to be a black SUV. Both Marty Small and [REDACTED] then entered ARMC. The video surveillance also depicted La'Quetta Small joining Marty Small and [REDACTED] at the hospital.<sup>18</sup>

On January 31, 2024, Lieutenant Lynne Dougherty and Detective Hannah Piatt of the Atlantic County Prosecutor's Office, with and interviewed [REDACTED] at Atlantic City High School.<sup>19</sup> During the interview, [REDACTED] disclosed being physically abused by her father and mother on multiple occasions during the months of December 2023 to January 2024, while inside their residence.

Specifically, [REDACTED] stated her dad (Mr. Small) called her into his "man cave" to talk. [REDACTED] advised she was sitting on a high barstool when they started arguing, which escalated to Mr. Small punching her legs. [REDACTED] stated she told her dad to "stop doing too much." In addition, [REDACTED] stated her legs were bruised from Mr. Small punching her legs. [REDACTED] stated on another occasion, her dad hit her across her face with the bristle end of a broom multiple times, because she refused to go out with him since her hair was not done. [REDACTED] further stated that prior to her January 23 disclosure to Ms. [REDACTED] during the telehealth appointment, she disclosed the abuse to Atlantic City High School Guidance counselor, Johnathan Rivera.

At the conclusion of the interview, Lt. Dougherty and Detective Piatt seized the cellular telephone of [REDACTED], a purple Apple iPhone, pursuant to a duly signed search warrant.<sup>20</sup> The data

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<sup>18</sup> Certification and CDW—Apple, State Exhibit 10, Page 11-13.

<sup>19</sup> Investigative Report regarding Interview of J.S., State Exhibit 11; Defense Exhibit B.

<sup>20</sup> Certification and Search Warrant—Seizure of Phone from [REDACTED], State Exhibit 12; Defense Exhibit I.

found within the cellular telephone of J.S. was forensically extracted and revealed, among other things:<sup>21</sup>

- 1) [REDACTED] directing [REDACTED] to mute his device and stay on mute on numerous occasions.
- 2) [REDACTED] stating to [REDACTED]: It's on mute for a reason
- 3) [REDACTED] stating to [REDACTED]: I hung up on you because YOU wouldn't go on mute, and I didn't want to get in trouble.<sup>22</sup>

Thereafter, the Atlantic County Prosecutor's Office interviewed school officials, DCPD workers, and various individuals. These interviews, coupled with subsequent investigations, corroborated the allegations of J.S., as well as the failure of the Atlantic City School District to report child abuse and neglect, as required by law.

On March 27, 2024, Your Honor approved search warrants for Mr. Small, Mrs. Small, their residence, Mrs. Small's office, a black Chevy Suburban, and a black Chevy Tahoe for any and all electronic devices to include, but not limited to cellular phones, tablets, laptop computers, iPads, and digital watches.<sup>23</sup>

The search warrants were executed on March 28, 2024, and resulted in the following items being located:

1. a blue Apple iPhone 13 Pro Max being located on the bed in the master bedroom belonging to Marty Small,
2. a silver Apple iPad with black case being found on the bed in the master bedroom,
3. a black Tablet labeled AC Digital Inclusion Project ACFPL 0935 being found on the vanity in the master bedroom of Marty Small's residence,

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<sup>21</sup> Certification and Search Warrant, Extraction of Data from Phone from [REDACTED], State Exhibit 13; Defense Exhibit I.

<sup>22</sup> Forensic Extraction with Analysis limited to the Keyword "Mute," State Exhibit 14. See also Chat between [REDACTED] and [REDACTED] from Forensic Extraction, State Exhibit 15.

<sup>23</sup> Certification and Search Warrants, State Exhibit 16.



4. A black Apple iPhone being found in walk-in closet 1 in the master bedroom of Marty Small's residence,
5. a silver Apple Laptop being found on the floor of walk-in closet 2 in master bedroom of Marty Small's residence,
6. a silver Apple iPad with a black case being found in the storage cube in the master bedroom of Marty Small's residence,
7. an Apple MacBook Pro being found in the left office of entertainment,
8. A black Apple iPhone with a cracked casing being found in the glove compartment of the Chevrolet Tahoe bearing NJ Registration [REDACTED],
9. a midnight blue Apple iPhone 15 Pro being found on the person of La'Quetta Small while in the Chevrolet Tahoe, and
10. a silver Apple MacBook Pro, being found on a corner desk of La'Quetta Small's office at the Atlantic City Board of Education building.

[See Search Warrant Return of the Small's residence and Tahoe, State's Exhibit 17; Search Warrant Return for La'Quetta Small's office, State's Exhibit 18]

On March 30, 2024, Your Honor subsequently approved following search warrants to search the iPhone 13 Pro Max and iPhone 15 Pro,<sup>24</sup> Within the Apple iPhone 15 Pro were two audio recordings.<sup>25</sup> Each of these recordings contains Marty Small's voice and originates from a device found at his residence.

Specifically, one of the recordings captures a recording between Marty Small, La'Quetta Small, and [REDACTED] in of which Marty Small confronts his daughter about her phone calls with [REDACTED]. The audio recording provides:

**M.S.:** It ain't gonna be where you want to move to, because like this, this, this ain't working [REDACTED] Like every day, like we, we on pins and needles in our own house, we can't even have a conversation with you

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<sup>24</sup> Certification and Search Warrant—Smalls' Phones, State's Exhibit 19.

<sup>25</sup> Forensic Extraction Report on Recording from 12/17/2023, State's Exhibit 20; Forensic Extraction Report on Recording from 02/11/2024, State's Exhibit 21.

without worrying about who's on the other and listening. You think that's cool? Huh? I'm asking, like what does he tell you about the phone?

█: First of all, he doesn't tell me anything about the phone, I can hang up if I want to, I choose.

M.S.: Oh so you choose to be on the phone all the time while your parents is talking, just said that, right?

█: I don't have to. I choose to be on the phone all the time, I don't have to. You acting like he's demanding to stay on the phone.

M.S.: I think he is.

█: He's not, I can hang up, hang up the phone.

[See Transcript of Audio Recording dated 02/11/2024, State's Exhibit 22]

In the audio recording dated 12/17/2023, Marty Small expresses his frustration at █ "because she will make [him] go to jail," and if La'Quetta Small wants her daughter, she "better come get her."<sup>26</sup>

On April 15, 2024, Marty Small was charged by way of Complaint Summons S-2024-001446-0180.<sup>27</sup> On May 1, 2024, Sgt. John Sharkey of the Atlantic City Police Department (hereinafter referred to as ACPD), contacted Sgt. Ripley of ACPO, and stated ACPD is responding to Atlantic City Mayor, Marty Small's, residence for a domestic dispute.<sup>28</sup> Sgt. Sharkey advised Sgt. Ripley that he wanted to contact DCPD and requested information for DCPD. Sgt. Ripley provided the contact information for DCPD.

Sgt. Ripley subsequently contacted █ after learning █ wanted to speak with ACPO in reference to the domestic dispute at █'s residence earlier that day.<sup>29</sup>

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<sup>26</sup> Transcript of Recording Audio dated 12/17/2023, State's Exhibit 23.

<sup>27</sup> Complaint Summons S-2024-01446-0180, State's Exhibit 24.

<sup>28</sup> Certification and Search Warrant, State's Exhibit 25,

<sup>29</sup> *Id.* at Page 26, Paragraph 72.

Sgt. Ripley and Detective Rex met with [REDACTED] later in the day. [REDACTED] provided the following information:

1. [REDACTED] stated earlier today, [REDACTED] woke up late for school, the Wi-Fi turned off to the house, her phone was taken away and she was told to get out of the house.
2. [REDACTED] knew this because [REDACTED] called him from another phone and told him what happened.
3. [REDACTED] stated her parents have been torturing her and calling [REDACTED] derogatory names.
4. [REDACTED] stated he has recent recording on his phone that [REDACTED] recorded and sent to [REDACTED]
5. [REDACTED] stated he saved recording from [REDACTED] on his phone.
6. [REDACTED] played an audio clip during the interview of [REDACTED]'s [REDACTED]. The audio clip referenced [REDACTED] and [REDACTED] arguing over [REDACTED]'s refusal to attend the "press conference."
7. [REDACTED] stated [REDACTED] has most of the recordings she recorded on the phone that [Marty and La'Quetta Small] took.
8. [REDACTED] was asked if any of the audio recording contain physical abuse and he stated, "no, "they are not hitting her anymore, but threatening her" and something happens every day.
9. [REDACTED] stated he doesn't like to listen to the audio recordings because they make him upset.
10. [REDACTED] states the Prosecutor's Office stopped the physical abuse but they are still mentally and emotionally abusing [REDACTED] with petty things.<sup>30</sup>

Sgt. Ripley and Det. Rex subsequently reported to Mays Landing, New Jersey with [REDACTED] to speak with him.<sup>31</sup> After speaking with him and grabbing something to eat, [REDACTED] was talking to [REDACTED] and placed the conversation on speaker, wherein [REDACTED] was repeatedly screaming, "get the fuck off me." A woman's voice then states: "La'Quetta let her go." There is continued muffled

<sup>30</sup> Id. States Exhibit, Pages 26 to 27, Paragraph 72.

<sup>31</sup> Id. at Pages 26 to 27, Paragraph 73.

noise and then the call ends. When Sgt. Ripley asked [REDACTED] what was going on, [REDACTED] said [REDACTED] and her mom, La'Quetta Small, are trying to forcibly get [REDACTED]'s cellphone. [REDACTED] says they always try to get her cellphone because they are worried about the evidence she has against them. [REDACTED] further stated similar incidents happen all the time.

[REDACTED] further told Sgt. Ripley and Det. Rex that he had about five or six other audio recordings of [REDACTED]'s parents or [REDACTED] "like tormenting her" with derogatory statements such as, "whore," "bitch," and "prostitute."

[REDACTED] reestablished communication with [REDACTED]. Once [REDACTED] ended the phone call with [REDACTED] Sgt. Ripley asked [REDACTED] what occurred.<sup>32</sup> [REDACTED] said that [REDACTED] was trying to catch her breath because [REDACTED] and mom, La'Quetta small, were on top of her. [REDACTED] stated [REDACTED] has to hide her phone in her shirt while she sleeps because her mom and dad will stand over her and try to get it from her.

Upon arrival back to Atlantic City from Mays Landing, [REDACTED] was informed, by phone, that [REDACTED] was at his residence.<sup>33</sup> While at [REDACTED]'s residence Sgt. Ripley and Det. Rex asked [REDACTED] if she wanted to talk. Sgt. Ripley asked [REDACTED] how everything is and if she is alright. [REDACTED] replied: "everything is not alright...I'm just tired of everything." Sgt. Ripley asked what brought about the incident today that resulted in her reporting to [REDACTED]'s house. [REDACTED] explained her parents turned the Wi-Fi back on and her parents were angry. [REDACTED] said her mom flicked the phone out of her hand and it fell onto the floor in Marty Small's mancave. Marty Small then picked up her phone off the floor and kept the phone. Marty and La'Quetta Small then got physical with [REDACTED] [REDACTED] attempted to get her phone back and her parents prevented her from getting her phone back. [REDACTED]

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<sup>32</sup> Id. at Pages 27 to 28, Paragraph 74.

<sup>33</sup> Id. at Page 28, Paragraph 75.

said she eventually took her mom's work phone so she had a way to communicate. Later in the day, [REDACTED] reported that she was locked out of the house. [REDACTED]'s mother and [REDACTED] then held her down by the arms and they went on top of her until they got the cellphone. [REDACTED] said while her mother and [REDACTED] were holding her down, [REDACTED] was already on the phone with her. Sgt. Ripley asked [REDACTED] about her relationship with [REDACTED]. [REDACTED] responded that she does not talk to [REDACTED] anymore because [REDACTED] tells [REDACTED] that she is "warped," "possessed," "on drugs," and "demonic." [REDACTED] said she had become nonchalant about everything and does not feel loved at home.

On May 1, 2024, [REDACTED] contacted Sgt. Ripley. During the phone call, you can hear both [REDACTED] and [REDACTED] at different times talking during the conversation. [REDACTED] stated that she logged onto her iCloud account and confirmed she has 46 audio recordings of her dad, mom, and [REDACTED] degrading her. [REDACTED] provided her iCloud account. Sgt. Ripley asked [REDACTED] if the audio recordings were all recorded by her and she said, "yes."

Following further investigation, the State presented the case to the Grand Jury. On September 17, 2024, Marty and La'Quetta Small were indicted on charges of endangering the welfare of a child and other related charges.<sup>34</sup>

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<sup>34</sup> Indictment No. 24-09-2951-I, State's Exhibit 26.

## ARGUMENTS OF THE PARTIES

### I. MARTY SMALL

Marty Small asserts that the State must prove, by a preponderance of the evidence, that one party to the intercepted communications gave prior consent to the interception as required by N.J.S.A. 2A:156A-4(d). The State has failed to carry this burden. The record contains no direct testimony, affidavit, or contemporaneous statement from [REDACTED] authorizing or consenting to [REDACTED]'s recording or disclosure of these private conversations. All references to any alleged consent by [REDACTED] stem from after-the-fact evidence, such as her conduct months later or her acknowledgment to law enforcement after being confronted with the existence of the recordings.

Moreover, Defendant Marty Small argues that even if the State were correct in claiming [REDACTED] could, as a party to the conversation, authorize [REDACTED] to intercept and record, such evidence of consent must precede the act of recording, and any after-the-fact rationalization or contextual circumstantial evidence is insufficient under the strictly construed language and remedial purposes of the Wiretap Act. See State v. Worthy, 141 N.J. 368, 380 (1995) (strict construction required).

Significantly, Marty Small contends that [REDACTED]'s status as a minor at the time of the relevant events renders her categorically incapable of giving legal consent to interception for these purposes, either as a matter of statutory law or judicial precedent. See D'Onofrio v. D'Onofrio, 344 N.J. Super. 147, 154 (App. Div. 2001) (children lack the legal capacity to consent for interception by third parties under the Act). In the absence of parental or guardian vicarious consent, or specific statutory authority for a minor's capacity to consent to interception, no valid exception applies, and the recordings must be suppressed. Marty Small further notes that any

analogy to vicarious consent doctrine fails here, as no parent or person standing in loco parentis provided consent, and the rationale for vicarious consent, to protect the best interest of the child, is inapposite given the context and purpose of the recordings.

In the alternative, the Defense asserts that even if [REDACTED] could legally furnish prior consent, the State has not produced any direct, circumstantial, or habitual evidence predating the recordings that would establish such consent.

## **II. LA'QUETTA SMALL**

La'Quetta Small emphasizes that the Wiretap Act mandates strict construction to safeguard individual privacy, and exclusion is the required remedy for unlawful interception. See State v. Worthy, 141 N.J. 368, 384 (1995); N.J.S.A. 2A:156A-21. The defense acknowledges the sufficiency of the probable cause supporting the warrant for [REDACTED]'s device but maintains that admissibility is foreclosed due to a lack of proper consent to the interception as required by N.J.S.A. 2A:156A-4(d).

La'Quetta Small highlights that [REDACTED] was a minor at all relevant times, and under New Jersey law and precedent, minors lack the legal capacity to furnish effective consent to third-party interceptions or to authorize another party to record private, intra-family conversations within the home. Defendant cites D'Onofrio v. D'Onofrio, 344 N.J. Super. 147, 154 (App. Div. 2001), in which the Appellate Division held that "children lack the legal capacity to consent" sufficient to satisfy the consent exception under the Wiretap Act; such capacity resides only with a parent or legal guardian acting under the doctrine of vicarious consent and in the child's best interest—not with the minor herself, and not for the purpose of recording communications with her parents.

Supporting this claim, La'Quetta Small further catalogs relevant New Jersey statutes restricting the legal capacity of minors in various domains and argues that, in the absence of a specific legislative provision to the contrary, ■■■'s consent—if given—would be a nullity for purposes of the Act. There is no factual or legal basis for the proposition that a minor may unilaterally waive her parents' statutory and constitutional rights of privacy in the home by authorizing a third party to record family conversations.

In addition, Defendant maintains that the State's reliance on *post hoc* circumstantial actions or statements by ■■■ subsequent to the recordings cannot supply the "prior consent" required by law. The textual requirement of prior consent under N.J.S.A. 2A:156A-4(d) is unambiguous and forecloses reliance on after-acquired evidence of acquiescence, habit, or post-intercept conduct. The State has neither produced direct evidence (such as a contemporaneous statement or writing) nor even adequate circumstantial evidence that ■■■ knew of, expressly authorized, or affirmatively permitted ■■■ to record the subject conversations on the relevant dates.

Accordingly, Defendant La'Quetta Small asserts that the only reasonable remedy is full suppression of the recordings and all evidence derived therefrom, as required by N.J.S.A. 2A:156A-21, and requests that the Court grant the relief sought.

### **III. STATE OF NEW JERSEY**

The State acknowledges the Wiretap Act imposes strict requirements for the admissibility of intercepted communications, and that evidentiary burdens rest initially with the State to demonstrate an exception applies. However, the State contends that the New Jersey Wiretap Act is not violated in this instance for two independent reasons:



1. There was no “interception” within the meaning of the Act; and
2. Alternatively, the statutory “consent” exception applies as a matter of law and fact.

#### **A. No Unlawful “Interception”**

The State advances that the Wiretap Act, mirroring its federal counterpart, is only triggered where there is an “intercept,” which it defines as the acquisition of the contents of a communication “through the use of any electronic, mechanical, or other device” not including a telephone. N.J.S.A. 2A:156A-2(c), (d). Multiple authorities recognize that where the contents of a communication are acquired by a telephone in the ordinary course of use—as here, via active video chat—rather than via a surreptitious eavesdropping “device,” the statutory prohibition is not activated. See State v. McDermott, 167 N.J. Super. 271, 275–79 (App. Div. 1979); State v. McMartin, 135 N.J. Super. 81 (Law Div. 1975).

Here, the iPad utilized by [REDACTED] served as the communications endpoint, hearing and recording what was transmitted over the regular Skype/phone connection at [REDACTED]’s end, and the device is therefore not an “intercepting device” as defined by the Act. The State maintains that, absent the use of such a “device,” there is no statutory interception and thus no violation requiring suppression.

#### **B. The “Consent” Exception Applies**

Even if the Court finds that an “interception” within the meaning of the New Jersey Wiretap Act did occur, the State argues that the statutory “consent” exception, N.J.S.A. 2A:156A-4(d), is fully satisfied. Under that provision, it is not unlawful for a “person not acting under color of law

to intercept a wire, electronic or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.” Id.

The prosecution stresses that “consent” under both federal and New Jersey wiretap law includes both explicit and implied consent and can be inferred from surrounding circumstances. See United States v. Bonanno, 487 F.2d 654, 658–59 (2d Cir. 1973); United States v. Glickman, 604 F.2d 625, 633 (9th Cir. 1979); State v. McQueen, 248 N.J. 26, 51 (2012). The record demonstrates that [REDACTED] and [REDACTED] were constantly in contact, regularly communicated via video chat, and [REDACTED] was routinely aware that [REDACTED] was present and listening. More specifically, the evidence includes: [REDACTED] left her phone connected with [REDACTED] during the times in question; [REDACTED] directed [REDACTED] to “stay on mute” so as not to alert others of his presence, indicating her awareness of and assent to his continued monitoring; [REDACTED] confirmed that she intentionally left her phone on so that [REDACTED] could listen to the events as they transpired, and that she wanted him to do so.

[4T:36-9 to 37-19, 3T:2-13 to 3-15]

The State points out that neither the letter nor the spirit of the New Jersey Wiretap Act requires contemporaneous, written, or express consent for every instance so long as “the party knew of, and assented to, the possibility of capture” and took no steps to withdraw consent but rather acted in conformity with a pattern of consent.

### **C. Capacity of a Minor to Consent**

The State further rebuts the defense’s argument that [REDACTED]’s minority status precluded valid consent. The State argues there is no specific statutory authority requiring parental or vicarious consent for a minor in these circumstances; to the contrary, both state and federal case law

recognize the capacity of minors in similar contexts, particularly where the conduct serves the minor's own protection and interests. See State v. Turner, 356 Wis.2d 759, 769–772 (Wis. App. 2014) (approving one-party consent by a 15-year old in a family-abuse context); see generally In re Nickelodeon Consumer Priv. Litig., 827 F.3d 262, 275 (3d Cir. 2016) (“one-party consent regime does not depend on the age of the non-consenting party”).

The State thus contends that, in the absence of legislative limitation, nothing in either federal or New Jersey law prohibits a mature minor from validly consenting to the interception of her own communications, especially for the purpose of documenting parental wrongdoing or abuse. To hold otherwise, the State argues, would effectively immunize abusers from audio or video documentation by their juvenile victims, risking frustration of the criminal law's protective purposes.

#### **D. After-the-Fact Demonstrations of Consent**

The State also maintains that evidence of [REDACTED]'s post-recording acknowledgment of her knowledge, assent, and intentions can and should be considered probative of her prior consent, particularly where they are corroborated by her consistent practice of keeping [REDACTED] on the line during abusive episodes and instructing him, both before and after, as to his conduct.

#### **E. Burden and Standard**

The State concludes by noting that, on a suppression motion, it bears a preponderance burden but that no hearing is required where defendants offer only general denials or conclusory assertions against clear documentary and testimonial evidence of implied consent. See State v. Carillo, 469 N.J. Super. 318, 322 (App. Div. 2021).

Based on the above, the State urges that the recordings at issue were either (a) not “interceptions” within the meaning of the Wiretap Act, or (b) were subject to the clear exception for consensual interceptions by a party or with the consent of a party, which here is established overwhelmingly by the factual record. Accordingly, the State submits that the defense motions to suppress must be denied in their entirety.

## **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the Court's April 15, 2025, Order for post-argument submissions the parties submitted the following:<sup>35</sup>

**1. FILE NAME: IMG\_5186.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 3, 2024 at 10:32:33 PM
- DEVICE: iPad
- IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: [REDACTED] Marty Small Sr., LaQuetta Small
- CONSENT PROVIDED:
  - State: Yes - [REDACTED]
  - Defense: No

**2. FILE NAME: IMG\_5187.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 4, 2024 at 12:24:58 AM
- DEVICE: iPad
- IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: [REDACTED] Marty Small Sr.
- CONSENT PROVIDED:
  - State: Yes - [REDACTED]
  - Defense: No

**3. FILE NAME: IMG\_5189.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 4, 2024 at 6:38:15 AM
- DEVICE: iPad
- IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: [REDACTED] Marty Small Sr.
- CONSENT PROVIDED:
  - State: Yes - [REDACTED]
  - Defense: No

**4. FILE NAME: IMG\_5190.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 4, 2024 at 7:11:52 AM
- DEVICE: iPad
- IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: [REDACTED], [REDACTED], Marty Small Sr.
- CONSENT PROVIDED:
  - State: Yes - [REDACTED]

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<sup>35</sup> The screen of [REDACTED] appears, visually, to be black during each recording. During the recordings, the Court can hear interactions between what appears to be [REDACTED], Marty Small, La'Quetta Small, and [REDACTED]

- Defense: No

**5. FILE NAME: IMG\_5191.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 4, 2024 at 7:11:56 AM
- DEVICE: iPad
- IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: [REDACTED], [REDACTED], [REDACTED] Marty Small Sr.
- CONSENT PROVIDED:
  - State: Yes - [REDACTED]
  - Defense: No

**6. FILE NAME: IMG\_5192.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 4, 2024 at 7:12:00 AM
- DEVICE: iPad
- IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: [REDACTED] Marty Small Sr., [REDACTED], [REDACTED]
- CONSENT PROVIDED:
  - State: Yes - [REDACTED]
  - Defense: No

**7. FILE NAME: IMG\_5193.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 4, 2024 at 7:12:07 AM
- DEVICE: iPad
- IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: [REDACTED], Marty Small Sr., [REDACTED]
- CONSENT PROVIDED:
  - State: Yes - [REDACTED]
  - Defense: No

**8. FILE NAME: IMG\_5194.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 4, 2024 at 7:12:11 AM
- DEVICE: iPad • IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: [REDACTED], Marty Small Sr., [REDACTED], [REDACTED]
- CONSENT PROVIDED:
  - State: Yes - [REDACTED]
  - Defense: No

**9. FILE NAME: IMG\_5198.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 7, 2024 at 2:37:22 PM
- DEVICE: iPad • IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: [REDACTED] LaQuetta Small, [REDACTED]
- CONSENT PROVIDED:

- State: Yes - [REDACTED]
- Defense: No

**10. FILE NAME: IMG\_5199.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 7, 2024 at 2:37:25 PM
- DEVICE: iPad • IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: [REDACTED], LaQuetta Small, [REDACTED]
- CONSENT PROVIDED:
  - State: Yes - [REDACTED]
  - Defense: No

**11. FILE NAME: IMG\_5200.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 7, 2024 at 2:37:35 PM
- DEVICE: iPad • IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: LaQuetta Small, [REDACTED], [REDACTED]
- CONSENT PROVIDED:
  - State: Yes - [REDACTED]
  - Defense: No

**12. FILE NAME: IMG\_5201.MP4**

- TYPE: Video With Audio
- DATE & TIME: January 7, 2024 at 2:37:40 PM
- DEVICE: iPad • IDENTITY OF RECORDER: [REDACTED]
- PARTIES IN RECORDING: LaQuetta Small, [REDACTED], [REDACTED] Marty Small Sr.
- CONSENT PROVIDED:
  - State: Yes - [REDACTED]
  - Defense: No

## **CREDIBILITY OF WITNESSES**

### **I. TESTIMONY OF [REDACTED]**

The Court finds that [REDACTED] testified credibly during the evidentiary hearing on June 16, 2025. Her demeanor on the witness stand was composed and straightforward, and she remained consistent throughout both direct and cross-examination. [REDACTED] demonstrated a clear recollection of events, recounting with specificity the circumstances surrounding the communication with [REDACTED], her interactions with her parents, and the manner in which the recordings were captured. Importantly, her testimony was corroborated by contemporaneous text messages, forensic extractions, and prior statements, all of which display a consistent narrative regarding her communication patterns with [REDACTED] and her knowledge of the recordings. The Court notes that [REDACTED] did not evade difficult questions and was candid when recalling both her own actions and her state of mind. There was no evidence of exaggeration, fabrication, or motives to mislead. The objective evidence, including the digital records and the corroboration from third-party witnesses, supports the core of her account and further bolsters her credibility as a witness. [REDACTED] was quite soft-spoken and, at times, difficult to hear. Despite these limitations, her testimony was credible and reliable.

### **II. TESTIMONY OF SGT. RIPLEY**

The Court also finds Sergeant Ryan Ripley to be a credible and reliable witness based on his testimony during the June 16 hearing. Sgt. Ripley's account of his investigative actions, including his interviews with both [REDACTED] and [REDACTED], his execution of search warrants, and his handling of the evidence, was clear, coherent, and consistent with the documentary record. His testimony was detailed and methodical, demonstrating recall of both the timeline of events and the rationale for investigative decisions. Cross-examination did not expose any inconsistencies or



bias in his presentation. Sgt. Ripley also acknowledged moments of uncertainty where appropriate, which the Court interprets as hallmarks of candor rather than evasion. The documentation he referenced, including investigative reports, forensic extractions, and contemporaneous notes, aligned closely with his oral testimony and reinforced his version of events. The professionalism and objectivity displayed throughout his investigation and testimony further support the Court's finding of credibility.

### **III. TESTIMONY OF E.L.**

█'s testimony on July 17, 2025, is the archetype of a reluctant and difficult witness. His motives and insights are, at best, conflicting. And yet, many times he could not resist the temptation to gild the lily. █'s testimony was difficult to follow, bracketed as it was with █'s truculence, combativeness, argument, asides, and sotto vice muttering.

█'s testimony, however, had its moments of clarity and assurance. Specifically, █ testified corroboratively with respect to █'s testimony that she wanted to make a contemporaneous record of her conversations with her parents.

█'s testimony, taken in view of his immaturity and his apparent suspicious nature, was not otherwise credible.

## **LEGAL ANALYSIS**

### **I. THE NEW JERSEY AND FEDERAL WIRETAP ACTS**

The Courts in New Jersey have historically given a strict construction to the New Jersey Wiretap Act so as to afford the maximum protection of individual privacy. N.J.S.A. 2A:156A-1 et. seq; See State v. Catania, 85 N.J. 418, 437 (1981); In re Wire Communications, 76 N.J. 255, 260 (1978); State v. Molinaro, 117 N.J. Super. 276 (Law Div. 1971), rev'd on other grounds, 120 N.J. Super. (App. Div. 1972); State v. Christy, 112 N.J. Super. 48 (Law Div. 1970).

In addition to complying with the provisions of the Act, any request for wiretapping must also comply with the provisions of the Federal Wiretap Act. 18 U.S.C.A. 2510-2522. To the extent the New Jersey Wiretap Act provides greater protection than the Federal Wiretap Act, state law controls and state courts may construe their own state law as to provide additional protection. State v. Hunt, 91 N.J. 338, 344-346 (1982). Where, however, the Federal Wiretap Act provides greater protection federal law preempts state law. State v. Barber, 169 N.J. Super. 26, 30 (Law Div. 1979).

N.J.S.A. 2A:156A-3 provides the general rule that except for certain exceptions, it is illegal to purposely intercept, disclose to any other person or use, or endeavor to intercept, disclose to any other person or use, the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing, or having reason to know that the information was obtained through the interception of wire, electronic, or oral communication. See M.G. v. J.C., 254 N.J. Super. 470, 472 (Ch. Div. 1991) (husband's surreptitious recordings of wife's telephone communications from within the marital home which revealed an extra-marital affair, and his subsequent disclosure of tapes to third parties warranted award of compensatory and punitive

damages); and Scott v. Scott, 277 N.J. Super. 601 (Ch. Div. 1994) (punitive damages awarded to wife for interception of phone communications by husband, even though wife on prior occasion had consented to phone tap in order to learn information about their teenage daughter). The New Jersey Wiretap Act only applies to audio communications, and thus, does not cover the video component of a video tape. Kinsella v. Welch, 362 N.J. Super. 143, 158 (App. Div. 143). See also H.E.S. v. J.C.S., 175 N.J. 309, 331 (2003) (commenting that “the defendant’s audio surveillance of the plaintiff with the microphone component of the camera may fit within [the] definition” of an intercepting “device” pursuant to N.J.S.A. 2A:156A-2d when he allegedly endeavored to intercept oral communications of the plaintiff while in her bedroom, either with another person or on her private telephone line).

Pursuant to the New Jersey Wiretap Act, wire communications are defined as:

[A]ny *aural transfer* [i.e. a transfer containing the human voice] made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other connection in a switching station, furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate or foreign communication. ‘Wire communication’ includes any electronic storage of such communication, and the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

N.J.S.A. 2A:156A-2a [emphasis added].

In interpreting this statute, the court looks to the expectation of privacy as to the conversation. State v. Tirelli, 208 N.J. Super. 628 (App. Div. 1986); See also, PBS Local No. 38 v. Woodbridge Police Dept., 832 (F. Supp. 808, 819 (D. N.J. 1993) when interpreting the federal and New Jersey wiretap statutes, the court held that wire communications, unlike oral communications, were generally protected regardless of whether the person making or receiving the communication had an expectation of privacy. N.J.S.A. 2C:14-9 defines a private place as

under circumstances in which a reasonable person would not expect to be observed. See Soliman v. Kushner Companies Inc., 433 N.J. Super. 153 (2013) (finding that a rational jury could find that defendants' actions in setting up secret video cameras to monitor bathrooms in the defendants' building violated the plaintiffs' reasonable expectations of privacy).

N.J.S.A. 2A:156A-4 contains a list of statutory exceptions to the general prohibition against intercepting, disclosing or using wire, electronic or oral communications. For instance, the Business Phone Exception, or communications intercepted during the normal course of business pursuant to N.J.S.A. 2A:156A-4a. Under federal and New Jersey law this exception allows for the monitoring of calls carried out with certain kinds of equipment in the ordinary course of business. Pascale v. Carolina Freight Carriers Corp., 898 F. Supp. 276, 281 (D. N.J. 1995) (noting that language of the New Jersey statute regarding business extension exception was "virtually identical" to the language in the federal statute). Examples of this exception are customer service lines, police telephone "beeper lines" and routine monitoring of inmate's phone conversations. See Ali v. Douglas Cable Comm., 929 F. Supp. 1362, 1375 (D. Kan. 1996); P.B.A. Local No. 38 v. Woodbridge Police Dept., 832 F. Supp. 808 (D. N.J. 1993); U.S. v. Noriega, 764 F. Supp. 1480, 1490-91 (S.D. Fla. 1991). The hallmark of this exception is expectation of privacy. George v. Carusone, 849 F. Supp. 159, 164 (D. Conn. 1994) (the ordinary course of business exception is a technical doctrine that lives and dies by the secretive nature of the interception, that is, if conversations are surreptitiously recorded then the exception does not apply). Additionally, the business phone exception "functions without regard to the consent of either party." Ali v. Douglas Cable, supra. 929 F. Supp. At 1376, n. 4. The business exception to the New Jersey and Federal Wiretap Acts do not apply to the instant case.

Moreover, the New Jersey Wiretap Act excepts consensual intercepts. The New Jersey Wiretap Act differentiates between consensual intercepts by law enforcement officers (N.J.S.A. 2A:156A-4b), third party consensual intercepts at the direction of law enforcement officers (N.J.S.A. 2A:156A-4c), and consensual intercepts with no state involvement (N.J.S.A. 2A:156A-4d). The instant motion concerns whether instances of the alleged abuse recorded by E.L. fall within the exception of consensual intercepts by non-state actors pursuant to N.J.S.A. 2A:156A-4d.

Consensual interceptions, such as the intercepts defined under N.J.S.A. 2A:156A-4d, “do not represent the same intrusions [as unauthorized wiretaps by law enforcement] into constitutionally protected privacy.” State v. Toth, 354 N.J. Super. 13, 22 (App. Div. 2002) (citing State v. McDermott, 167 N.J. Super. 271, 278 (App. Div. 1979)). “Any party to a conversation may actually record a conversation without the knowledge or consent of the other parties to the conversation.” Id. A consensual intercept by a third party (no state involvement) simply means that the person taping the conversation is a party to the conversation or that the persons who are being taped have given their lawful consent to have the conversation taped. This consent can be *implied*. The New Jersey Wiretap Act, provides that it shall not be unlawful for:

A person not acting under color of law to intercept a wire, electronic or oral communication, *where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception* unless such communication is intercepted or used for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State or for the purpose of committing any other injurious act. The fact that such person is the subscriber to a particular telephone does not constitute consent effective to authorize interception of communications among parties not including such person on that telephone. Any person who unlawfully intercepts or uses such communication as provided in this paragraph shall be subject to the civil liability established in section 24 of P.L.1968, c.409 (C.2A:156A-24), in addition to any other criminal or civil liability imposed by law;

Id. [emphasis added]

In State v. Gora, 148 N.J. Super. 528 (App. Div. 1977), certif. denied, 74 N.J. 275 (1977), the Appellate Division upheld the trial court's refusal to suppress the recording of defendant's telephone conversations with an unindicted co-conspirator by the co-conspirator because the person was not acting under color of law and because the taping of one's own telephone conversations with another is not an intercept within the meaning of the statute.

Additionally, the Appellate Division in Kinsella v. Welch, 362 N.J. Super. 143 (App. Div. 2003) found that consent can be implied to satisfy the exception set forth in N.J.S.A. 2A:156A-4d. In Kinsella, a television show videotaped the arrival of a hospital patient from a job-related injury. Id. at 149. The next day, the patient signed a form consenting to the videotaping. In a civil suit, the patient sued his employer and the television company. One claim was a violation of the Wiretap Act. The Appellate Division held that the New Jersey Wiretap Act did not apply to the videotape recording of any oral communications between the patient and others, such as family members, because the footage was taken with handheld cameras that would have been evident to any person who was being videotaped. Thus, there was no indication that the patient or any other person had a reasonable expectation of privacy during their conversations in the hospital. Id. at 159. The court also held that if the videotape recorded any oral communication between the plaintiff and the hospital medical staff, the New Jersey Wiretap Act would not apply because the hospital consented to the videotaping. See also George v. Carusone, 849 F. Supp. 159, 164 (D. Conn. 1994) ("A court can infer implied consent when the circumstances indicate that the party knowingly agreed to the surveillance." In the instant case, police officers aware that police telephone lines were taped impliedly consented to recording of their conversations).

**A. [REDACTED] was Not a “Party to the Communication.”**

In the present case, the first issue the Court must address is whether [REDACTED] was a party to the communication. The State maintains that [REDACTED] was a party to the conversation and was free to record. Although, it does not appear that any binding authority circumscribes specific conduct of an individual to be considered a “party to a communication.” The Court may look to Federal Wiretap Act jurisprudence to support its analysis. To the extent the New Jersey Wiretap Act provides greater protection than the Federal Wiretap Act, state law controls and state courts may construe their own state law as to provide additional protection. State v. Hunt, 91 N.J. 338, 344-346 (1982). Where, however, the Federal Wiretap Act provides greater protection, federal law preempts state law. State v. Barber, 169 N.J. Super. 26, 30 (Law Div. 1979). The language of the consent exception to the Federal Wiretap Act is substantially similar to that of New Jersey. The Federal Wiretap Act provides:

It shall not be unlawful under this chapter [18 U.S.C. 2510 et seq.] for a person not acting under color of law to intercept a wire, oral, or electronic communication *where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception* unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

18 U.S.C. 2511(2)(d) [emphasis added]

A “party to the communication” under §§ 2511(2)(d) is defined as “a party who is present when the oral communication is uttered and need not directly participate in the conversation.” Pitt Sales, Inc. v. King World Prods., 383 F. Supp. 1354, 1360 (S.D. Fla. 2005). However, for purposes of the exception, “the concern of congress is with the interception of private conversations by an unseen auditor.” Id. at 1361 [internal citations omitted]. In Pitt Sales Inc.,

“[w]here [the defendant] wore an intercepting device on his person and the communications intercepted had to occur relatively close to [the defendant] to be picked up by his microphone, the [defendant’s] . . . presence alone renders him a party to the communication,” even if he was not participating in the conversations around him. *Id.* In contrast, other courts have analyzed an individual’s behavior as a “party to the communication” where affirmative acts may indicate party status, such as participating in the conversation. *Caro v. Weintraub*, 618 F.3d. 94, 97-98 (2d Cir. 2010); *See U.S. v. Eady*, 648 F. App’x 188 (3d Cir. 2016) (in defendant’s trial for illegal wiretapping under 28 *U.S.C.* § 2511, Congress intended to require actual participation in conversation at issue to be considered “party” under § 2511(2)(d); therefore, although defendant was listening in and could potentially have spoken, he was not “party” exempt from prosecution).

Despite the differing views regarding the extent to which an individual’s conduct amounts to a “party to the communication,” one aspect remains clear: “interception of private conversations by an *unseen auditor* and turning such intercepted conversation against the speaker to the auditor’s advantage,” was a primary concern when Congress enacted the Federal Wiretap Act. *Smith v. Wunker*, 356 F. Supp. 44, 46 (S.D. Ohio 1972) [emphasis added]; *See also Pitt Sales, Inc. v. King World Prods.*, *supra*. 1361.

In the case at hand, the facts clearly indicate that [REDACTED] did not actively participate in the conversation, the Defendants were not aware of [REDACTED]’s presence on the video calls during the incidents of abuse,<sup>36</sup> and [REDACTED] recorded the incidents while on the video call. The facts and circumstances appear to show that [REDACTED] was an unseen auditor. The Court is aware of thirteen recorded videos revealing [REDACTED]’s black screen indicating an attempt to conceal the device during

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<sup>36</sup> *See Certification of Search Warrant ¶3(bb)*, CS-ATL-692-SW-24.



the incidents. Based on a review of the recordings, [REDACTED] does not appear to satisfy the criteria necessary to be deemed a party to the communication.

**C. J.S.'s Consent was Legally Effective and Permissible Pursuant to N.J.S.A. 2A:156A-4d.**

In this matter, the critical factual question is whether [REDACTED], as a party to the communications with the Defendants, gave prior consent to [REDACTED] to intercept the interactions. As discussed above, the New Jersey Wiretap Act requires the consent of one party and the consent may be implied. If [REDACTED] was aware of the [REDACTED]'s intercept, that is sufficient to indicate implied consent. See George v. Carusone, 849 F. Supp. 159, 164 (D. Conn. 1994).

The State points to two instances that, in its view, prove that [REDACTED] provided consent to [REDACTED]. First, the State provides messages between [REDACTED] and [REDACTED] in which [REDACTED] tells [REDACTED] to "stay on mute." The Court concludes that the message is too ambiguous to definitively interpret it as consent by [REDACTED]. Although one could reasonably interpret the message as [REDACTED] consenting to being recorded, it could just as easily imply something else. For instance, instructing [REDACTED] to "stay on mute" to prevent her parents from overhearing their conversation. Additionally, the communication occurred on January 24, 2024, and the recordings occurred in mid-December 2023 and on January 7, 2024. Therefore, even if the communication reflects [REDACTED]'s consent, it took place after the recording had already occurred. In other words, because the Federal and New Jersey Wiretap Acts require that consent must be obtained prior to the commencement of any recording, the post-recording communication by [REDACTED] to [REDACTED] to "stay on mute" are inadequate to establish valid consent.

The second instance the State points to is a transcript recording of a February 10, 2024, conversation between [REDACTED] and the Defendants as evidence of [REDACTED]'s consent. Specifically, the

Defendant, Mr. Small, stated during the conversation that, “[s]o, when your mother and father is talking to you, you’re staying on the phone and he’s on the other end recording.” (State’s Exhibit 22 2:16-17). However, because the Federal and New Jersey Wiretap Acts require that consent must be obtained prior to the commencement of any recording, the post-recording communication between [REDACTED] and the Defendants on February 10, 2024, is insufficient to prove consent of the mid-December and January 7, 2024, recordings.

At the evidentiary hearing, [REDACTED] credibly and unequivocally testified that she explicitly told [REDACTED] to record the interactions between herself and the Defendants. The Court has found [REDACTED] to be a credible witness, noting the consistency of her testimony, the corroboration by contemporaneous electronic communications, and the absence of any indication of fabrication or improper motive.

Consent under the New Jersey Wiretap Act may be explicit or implied, and New Jersey courts have recognized that implied consent may be inferred from words, actions, or the surrounding circumstances, so long as there is a knowing and intentional relinquishment of privacy in the communication. See United States v. Amen, 831 F.2d 373, 378 (2d Cir. 1987). As established by J.S.’s testimony, her clear instruction to E.L. to record is sufficient to constitute either explicit or, at a minimum, implied consent. This is supported by the legal principle that a party’s knowing conduct here, not only acquiescence but specific direction, satisfies the statutory requirement for prior consent.

Accordingly, the credible evidence before the Court demonstrates by a preponderance that [REDACTED] gave prior, knowing, and voluntary consent for [REDACTED] to record the interactions. This consent, whether characterized as express or implied, brings the recordings within the statutory exception,

and the act of recording does not violate the New Jersey Wiretap Act. As such, there is no lawful basis to suppress the recordings on the ground advanced by the Defendants.

## **II. A MINOR'S LEGAL CAPACITY TO CONSENT AND VICARIOUS CONSENT**

Currently, there are few cases that mention the issue of a minor's legal capacity to consent to aural recordings within the purview of the Federal and New Jersey Wiretap Acts, most of which, analyze the vicarious consent exception. For example, in Commonwealth v. F.W., 465 Mass. 1 (2013)<sup>37</sup> the court held that a Superior Court judge properly denied a criminal defendant's pretrial motion to suppress the oral communications in an audiovisual recording of the mute and autistic child victim and the defendant, who was her grandfather, and subsequent statements by the defendant to the police, where, although the defendant had a legitimate expectation of privacy in the bedroom his son occupied in the defendant's home, the circumstances nonetheless supported the application of the so-called "vicarious consent" exception to the Federal wiretap statute, 18 U.S.C. § 2511 (2)(d), whereby the victim's adult sibling, a nonparent, acting in good faith and in the victim's best interest (in that the danger to the child was posed by a parent of the child's parent, and thus a reasonable person in the sibling's position would have had reason to fear that the child's parent would not have acted in the child's best interest to protect the child from actual or potential harm), could safeguard the child by giving vicarious consent to the recording. Id. at 14-19.

The court reasoned that a fundamental right of parental autonomy rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. Natural bonds of affection lead parents to act in the

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<sup>37</sup> While the Massachusetts Wiretap Act requires two party consent, the court in Commonwealth v. F.W., 465 Mass. 1 (2013) analyzes the Federal Wiretap Act. Mass Ann. Laws ch. 272 §99.

best interests of their children. Parental rights, however, are not absolute. The State has a compelling interest to protect children from actual or potential harm. Safeguarding the physical and psychological well-being of a minor constitutes a "compelling" State interest. Therefore, under these circumstances, the court found that it was understandable, and objectively reasonable, that the minor's adult sister sought to act on behalf of the victim in order to protect her from actual and substantial physical and emotional harm. Massachusetts and Federal policies afford minors "a unique and protected status. *Id.* at 24. (citing Commonwealth v. A Juvenile, 389 Mass. 128, 132, (1983)). And protect those with disabilities from abuse. *Id.* (citing Cooney v. Department of Mental Retardation, 52 Mass. App. Ct. 378, 382-383 (2001)).

The Court concluded that, in circumstances where an adult sibling is acting in good faith and in the best interests of a child, where the threat to the child originates from a parent of the child's parent, and where, for that reason, a reasonable person in the adult sibling's position would have cause to believe that the child's parent may not adequately protect the child from actual or potential harm, the adult sibling may properly invoke vicarious consent to safeguard the child. The Court found that this conclusion aligns with the State's compelling interest in protecting children from actual or potential harm, a consideration that outweighs the privacy interests of the grandfather in this context. A Juvenile, *supra*.

The Court further explained that there is no indication Congress intended to prohibit such protective measures; on the contrary, if the Court were to hold otherwise, it would subject the minor's adult sister to potential criminal liability for attempting to shield the child from harm—an outcome the Court could not conceive Congress intended. *Id.* at 27.

The facts and circumstances of the defendant's case are distinguishable from those in FW. In FW, the individual providing vicarious consent to the recording was the minor's adult sister, acting out of concern for her sibling's wellbeing. In contrast, although [REDACTED] may have similarly been motivated by his concern for [REDACTED]'s safety, [REDACTED] was a minor at the time the recordings were made. While the doctrine of vicarious consent allows parents and legal guardians (and in some circumstances concerned adults) to consent to recordings on behalf of a minor child, the doctrine is grounded in the presumption that such decisions are to be made by adults who possess both the legal responsibility and the maturity necessary to act in the best interests of the child. Permitting a minor to vicariously consent on behalf of another minor runs contrary to the foundational principles of the doctrine and is therefore inapposite.

Notwithstanding, a minor's ability to consent does not preclude a parent's ability to vicariously consent on the minor child's behalf. State v. Whitner, 399 S.C. 547, 556 (2012). In Whitner, the court explained:

Appellant argues that the victim was capable of consenting because she was eleven years old at the time of the recording. But a minor's actual ability to consent does not preclude a parent's ability to vicariously consent on her behalf. Further, we believe it inadvisable to create a bright-line age limit for the application of vicarious consent because "not all children develop emotionally and intellectually on the same timetable. Thus, the ability to invoke the vicarious consent doctrine prior to the age of majority does not turn on an age-mandated bright-line rule, nor does it require a minor's lack of capacity.

Whitner, 399 S.C. 556 (citing See Pollock v. Pollock, 154 F.3d 601 (6th Cir. 1998) (applying the vicarious consent doctrine to a fourteen-year-old); State v. Spencer, 737 N.W.2d 124 (Iowa 2007) (applying the vicarious consent doctrine to a thirteen-year-old); Alameda v. State, 235 S.W.3d 218 (Tex. 2007) (applying the vicarious consent doctrine to a thirteen-year-old)).

In New Jersey, the court in D'Onofrio v. D'Onofrio, 344 N.J. Super. 147, 154 (App. Div. 2001), stated:

The "consent exception" provision in our Wiretap Act has been interpreted to incorporate "vicarious consent" as well. See State v. Diaz, 308 N.J. Super. 504, 516 (App. Div. 1998); Cacciarelli v. Boniface, 325 N.J. Super. 133, 135-43 (Ch. Div. 1999). Because children lack the legal capacity to consent, courts have held that a parent or guardian may authorize the recording of his or her minor child's conversations. Id. at 137-40.

Id. at 154.

**A. [REDACTED] Possessed the Legal Capacity to Consent to the Intercepts.**

Although the Defense argues that the above statement in D'Onofrio is clear that minors do not have the legal capacity to consent to recordings under the New Jersey Wiretap Act, it is unclear whether the language explicitly states that minors *never* have the capacity to consent. The Appellate Division cites to Cacciarelli v. Boniface, 325 N.J. Super. 133 (Ch.Div.1999). However, upon review of the court's decision in Cacciarelli, the decision is void of any language to indicate that minors do not have the legal capacity to consent to recordings, only that parents or guardians *may* consent on behalf of the minor child. Id.

The Defense provided various examples of laws prohibiting minors from engaging in certain activities including enlisting in the military and consuming alcohol. However, New Jersey Data Privacy Act (NJDPa) and the Children's Online Privacy Protection Act (COPPA) are more appropriately analogized to the issue presently before the Court. See N.J.S.A. P.L. 2023, Ch. 266, approved January 16, 2024 (effective January 2025); 15 U.S.C. § 6501 et. seq. (1998).

The NJDPa provides that "[a] controller<sup>38</sup> shall . . . not process sensitive data concerning a consumer without first obtaining the consumer's consent, or, in the case of the processing of personal data concerning a known child, without processing such data in accordance with

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<sup>38</sup> Per the NJDPa, "Controller" means an individual, or legal entity that, alone or jointly with others determines the purpose and means of processing personal data."

COPPA.” NJDPA §9(4).<sup>39</sup> The COPPA, directly incorporated in the NJDPA, requires that processing and collection of a child’s data requires “verifiable” parental consent for those under 13 years of age. Additionally, the NJDPA provides that if the child is between 13 and 17 years of age for targeted advertising, profiling, or sale of personal data, that child’s (consumer) consent is required.

Under the NJDPA and COPPA, child between the ages of 13 and 17 must provide their consent in the use of their personally identifiable information. Personally identifiable information “means any information that is linked or reasonably linkable to an identified or identifiable person.” Id. Such information can include biometric data, meaning:

data generated by automatic or technological processing, measurements, or analysis of an individual’s biological, physical, or behavioral characteristics, including, but not limited to, fingerprint, voiceprint, eye retinas, irises, facial mapping, facial geometry, facial templates, or other unique biological, physical, or behavioral patterns or characteristics that are used or intended to be used, singularly or in combination with each other or with other personal data, to identify a specific individual.

Id. at NJDPA.

At the time of the recordings, [REDACTED] was 16 years old. Notably, [REDACTED] possessed the legal capacity to provide consent to online service providers,<sup>40</sup> operators,<sup>41</sup> and controllers to process, collect, or sell her personally identifiable information, including, inter alia, her fingerprints, eye retinas, and facial geometry. It would be illogical to conclude that a 16-year-old lacks the

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<sup>39</sup> The NJDPA defines “child” as same meaning as provided in COPPA

<sup>40</sup> “Service provider” means a person, private entity, public entity, agency, or other entity that processes personally identifiable information on behalf of the operator and who shall provide sufficient guarantees to the operator to implement appropriate technical and organizational measures in a manner that processing shall ensure the protection of the consumer’s personally identifiable information.” NJDPA.

<sup>41</sup> “Operator” means a person or entity that operates an online service, and includes any third party that tracks or collects any information concerning a customer’s usage of a commercial Internet website, regardless of whether the third party owns or operates the website.” NJDPA.

capacity to consent to visual and audio recordings of her own personal interactions, particularly when such recordings are intended for her protection, while simultaneously possessing the capacity to consent to the collection and commercial exploitation of her unique biological, physical, and behavioral characteristics by anonymous online entities and third parties.

Moreover, to categorically bar a minor of this age from consenting to the recording, under these unique circumstances, where her central aim was the preservation of evidence of abuse for her own protection, would run counter to public policy and the protective purposes of the law. Accordingly, the Court declines to read D'Onofrio so broadly as to preclude any and all minors from validly consenting under the New Jersey Wiretap Act, especially in the absence of any vicarious or conflicting consent by her legal guardians.



## CONCLUSION

After thorough consideration of the parties' submissions, the testimony elicited at the evidentiary hearing, and the controlling legal standards under the New Jersey Wiretap Act, the Court concludes that the motion to suppress must be denied.

The record establishes that [REDACTED] testified clearly and credibly at the June 16, 2025, hearing that she expressly instructed [REDACTED] to record the communications and interactions between herself and the Defendants. The Court specifically finds [REDACTED]'s testimony, on both direct and cross-examination, to be consistent, detailed, and corroborated by contemporaneous electronic messages, forensic extractions, and other documentary evidence in the record. There was no evidence presented of fabrication, exaggeration, or improper motive. Rather, [REDACTED] acknowledged her role in authorizing the recordings and described the circumstances under which she communicated this direction to [REDACTED], an account to which [REDACTED] corroborated during his testimony.

Moreover, pursuant to the New Jersey Wiretap Act consent exception, the evidence does not merely establish acquiescence, but rather affirmative, pre-recording direction by [REDACTED] to [REDACTED] to record the subject events. The standard for prior consent within the meaning of the New Jersey Wiretap Act is thus satisfied, whether under an express or implied theory.

The Court further notes that this finding is not undermined by the fact that [REDACTED] was a minor at the time of the recordings, as the specific facts of this record support her capacity to give meaningful and voluntary consent for the purpose of documenting her own experiences and protecting her interests. There was no evidence that the consent was coerced, manufactured, or otherwise defective. To hold otherwise, would risk frustrating the protective purposes of the criminal law in circumstances directly implicating the safety and well-being of the minor.

Applying the controlling law and weighing the credible, corroborated testimony, the Court is satisfied that the statutory consent exception to the New Jersey Wiretap Act applies in full. The audio and video recordings at issue were lawfully obtained with the knowing and voluntary consent of one party to the communications, [REDACTED], and thus do not constitute unlawful interceptions.

Accordingly, there is no violation of the New Jersey Wiretap Act, and Defendants' motion to suppress the subject recordings is hereby DENIED in its entirety. The Court has entered an Order in accordance with the Court's decision.

BED/ep  
Encl.

Very truly yours,

  
Bernard E. DeLury, Jr., P.J.Ct.