

The State of New Hampshire

MERRIMACK COUNTY

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

ERIC SWEENEY

Clerk's Notice of Decision
Document Sent to Parties
on 06/27/2024

Docket No.: 217-2023-CR-00721

REDACTED ORDER

The defendant, Eric Sweeney, is charged with three counts of First Degree Murder and one count of Falsifying Physical Evidence. Eric moves to compel the State to disclose Cellebrite extraction data from Sean and Kassandra Sweeney's cell phones. The State objects. The Court held hearings on this matter on April 11 and 29, 2024. For the reasons stated below, Eric's motion is GRANTED in part and DENIED in part. This redacted version of this order that does not reference information only discussed in the ex parte confidential hearing will be provided to the State and be kept in the public file. An unredacted version will be kept confidential and only made available in its entirety to the defense.

I. Background

The background facts of this case were provided in the redacted June 11, 2024 order on Eric's motion to suppress and are incorporated herein. Additional facts are derived from the testimony and exhibits presented at the April 11 and 29 hearings.

On August 3, 2022, investigators from the New Hampshire State Police ("NHSP") requested written consent from Sean to search his and Kassandra's cell phones in

furtherance of its investigation of the homicides of Cassandra, Benjamin, and Mason Sweeney. NHSP Trooper Stevens explained the consent form with Sean before he signed it,

14 TROOPER STEVENS: Okay, so this is just a
15 written consent form, Sean.

16 SEAN SWEENEY: Yeah.

17 TROOPER STEVENS: That I'm gonna ask that
18 you give us your permission that we can download your
19 cell phone, basically all the digital content so we
20 can look to see if there's anything else related to
21 this. So I have it as it's your cell phone, an

(State's Hr'g Ex. 7a, Interview of Sean Sweeney, Aug. 3, 2022, at 7:14–21.)

Trooper Stevens further described the download by stating,

8 it's a general cell phone download and basically
9 includes pictures, video, and messaging apps,
10 basically all digital information that's on your
11 phone, and we're located here at the Tilton Police
12 Department. And basically you're authorizing us to,
13 to go through all that information that's on the
14 phone, and that's gonna be considered pertinent and
15 as evidence to any violations. We're just looking,
16 obviously, information for today's stuff, of what
17 happened today.

(Id. at 8:8–17.)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

II. Analysis

Preliminarily, the Court sustains its April 12 order declining the State's request to appoint counsel for Sean. At the April 11 hearing, the State requested the Court appoint counsel considering Sean's right to be free from governmental intrusion into his personal information under Article 2b of the New Hampshire Constitution. Rather than appoint counsel, the Court provided Sean with notice of a subsequent hearing on April 29, at which Sean could assert his privacy rights or request counsel. However, Sean did not appear at the April 29 hearing. While Sean's absence is understandable, the fact remains that Sean has not asserted his rights under Article 2b nor requested a lawyer. In essence, the State is asking the Court to appoint a lawyer for him sua

sponte, despite no suggestion that he has any criminal exposure. The Court declines the State's request.

The Court turns to address the merits of Eric's motion to compel. The Court first addresses the scope of Sean's consent, then addresses whether Eric made a sufficient showing to compel discovery.

Scope of Sean's Consent

Eric argues that Sean's consent was unlimited because the consent form was broadly written and because his statement in the September 11, 2023 interview demonstrates that he believes the police have full access to his phone's information. The State contends that Trooper Steven's conversation with Sean prior to his execution of the consent forms limited Sean's consent to information solely from August 3, 2022.

Part I, Article 19 of the New Hampshire Constitution protects citizens from unreasonable searches and seizures. State v. Stacey, 171 N.H. 461, 464 (2018). "[W]arrantless searches are per se unreasonable unless they fall within the narrow confines of a judicially crafted exception." State v. Saunders, 164 N.H. 342, 353–54 (citing State v. LaBarre, 160 N.H. 1, 7 (2010)). Consent is one such exception. Id. at 354. As stated in Saunders,

When the police are relying upon consent as a basis for their warrantless search, they have no more authority than they have been given by the consent. The question of the scope of consent may be stated as how far the defendant intended the consent to extend or how the police reasonably construed his consent.

Id.

The Court finds that Sean's consent was limited to information directly material to the homicides, and that the information on Sean's phone from August 2, 2022 is directly

material to the homicide investigation. Information from August 2, 2022 would likely include the activities of Sean and his communications with Cassandra by cell phone in the 24-hour period prior to the homicides.

Regarding Cassandra's phone, the discussion between Trooper Davis limited Sean's consent further. There, while Trooper Davis stated that it was the same type of download, he said that investigators were "specifically looking for, see where the locations of where that phone may have been when it was with Eric." Thus, the Court determines that Sean's consent, regarding Cassandra's cell phone, was limited to August 3, 2022, because investigators knew that Eric had Cassandra's cell phone when he left the house that morning prior to his detainment. (As noted below, however, the Court also finds the defense has made a sufficient showing with respect to Cassandra's phone to require disclosure of the contents of her phone from August 2, 2022, as well).

In conclusion, the Court determines that Sean's consent, with respect to his cell phone, was limited to information directly material to the homicides and, and with respect to Cassandra's cell phone, Sean's consent was limited to information from August 3, 2022. Therefore, the Court orders the State to provide information from Sean's cellphone from August 2, 2022 to the defense. See State v. Etienne, 163 N.H. 57, 88 (2011).

Whether Eric has Made a Sufficient Showing to Compel Discovery

Eric argues that the cell phone extractions are likely to contain evidence relevant to the homicides or Eric's state of mind. Specifically, Eric points out that "without looking at the download, [the State] cannot definitively state there is no evidence prior to August 3, 2022 that is relevant to the homicides." (Def.'s Mot. to Compel ¶ 12.)

The State contends that Eric has provided no sufficient basis to demonstrate that the extractions contain relevant information. Alternatively, the State requests that if the Court orders further disclosures, they be done on an in camera basis and issued under a protective order.

Due Process under Part I, Article 15 of the New Hampshire Constitution “imposes on the prosecutor the duty to disclose evidence favorable to the accused where the evidence is material either to guilt or punishment.” Etienne, 163 N.H. at 88. “Favorable evidence includes that which is admissible, likely to lead to the discovery of admissible evidence, or otherwise relevant to the preparation or presentation of the defense.” Id. Such evidence includes “both exculpatory information and information that may be used to impeach the State’s witnesses” Duchesne v. Hillsborough Cnty. Att’y, 167 N.H. 774, 777 (2015).

The Court determines that Eric has not made a sufficient showing to necessitate the intrusion of a wholesale disclosure of Sean’s and Kassandra’s cell phones. There is no question the cell phones likely contain a great amount of very personal confidential and private information concerning the lives of both Sean and Kassandra. Given the manner and extent to which most people use their cell phones, the privacy interests implicated by such disclosure cannot be understated. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] defense counsel fails to provide a sufficient nexus between these facts and the existence of exculpatory information within either Sean or Kassandra’s cell phones or their effect on Eric’s state

of mind. For the Court to determine that such exculpatory information lies within the cell phone extractions would require the Court to engage in broad speculation.

However, the Court determines that limiting the disclosure solely to August 3, 2022 is too strict. Because the information on Sean's and Cassandra's cell phones from August 2, 2022 could provide the communications between Sean and Cassandra during the 24 hours prior to the homicides, as well as information concerning their activities during that time frame, the Court determines that any cell phone information from August 2, 2022 is directly material and must be disclosed.

Because the Court has so limited the necessary disclosure, the Court declines the State's request to have such disclosures performed on an in camera basis. However, the Court subjects the disclosed information to the following protective order. The parties shall only provide the compelled information from August 2, 2022 to the parties, counsel, and retained experts, on an as-needed basis. No party shall make any public filing referencing the disclosed information. Any filing requiring the inclusion of the disclosed information must be filed under seal.

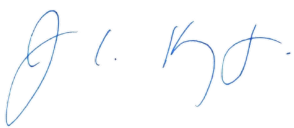
III. Conclusion

For the foregoing reasons, the motion to compel is GRANTED, in part, and DENIED, in part, consistent with the foregoing.

SO ORDERED.

June 26, 2024

Date



John C. Kissinger, Jr.
Presiding Justice