IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	§	
	§	
v.	§	**Case No. CR-2000433**
	§	
GREGORY MICMICHAEL,	§	
TRAVIS MCMICHAEL, and	§	
WILLIAM R BRYAN,	§	
	§	
Defendants.	§	

ORDER ON MOTION TO EXCLUDE ALL JAIL CALLS

On December 30, 2021 the Defendants Travis McMichael and Gregory McMichael filed a Motion to Exclude from Trial All Jail Calls.[1] The State responded to the Motion on January 29, 2021. The matter was heard by the Court on May 13, 2021. Having considered the Motion, the State's response thereto and the applicable law, the Court hereby **DENIES** the Motion, finding as follows:

SUMMARY OF THE ISSUE

The Defendants move this Court to exclude from evidence at trial *all* recorded jail calls intercepted by the Glynn County Detention Center (hereinafter "Detention Center") during the duration of the Defendants' incarceration in the county jail.[2] The recorded phone calls at issue were recorded according to the policies and procedures of the Detention Center. To be sure, the Detention Center Jail Handbook informs inmates that calls are recorded (except to attorneys) and information obtained in the recordings may be used as evidence in court. Specifically, the Jail Handbook states: "All calls made from any of the inmate phones are recorded and are subject to being monitored by [Detention Center] staff to detect illegal activities and information obtained in the recordings may be used as evidence in a court of law against you. Your usage of these phones shall constitute consent to such monitoring."[3] Additionally, each call is preceded with the following warning before an inmate places an outgoing call: "This call will be

[1]Defendant William R. Bryan adopted this motion on December 31, 2020.
[2]The Glynn County Sheriff's Department, which manages the Glynn County Detention Center where the defendants are incarcerated pending trial, provides a telephone system for inmates. Any calls made by inmates are subject to being recorded.
[3] Detention Center Jail Handbook, p. 16.

recorded and subject to monitoring at any time." After the phone call is answered, the recording again states: "This call will be recorded and subject to monitoring at any time."

Defendants claim that some or all of their recorded calls were conveyed from the jail to the prosecuting attorney, and further, the prosecuting attorney has served copies of some of their recorded calls on the Defendants in discovery in this case.[4] The Defendants argue that the motive for the State to seek to introduce any jail phone call evidence must be "that the State believes that [the call] would tend to incriminate the defendant."[5] They contend the defense would then be placed in the position of explaining the meaning of the statements made during the phone calls, thereby requiring the defense to offer into evidence, and then argue, what the Defendants' "actually had in mind" while talking on the phone.[6]

Defendants concede that jail calls may be monitored, and they do not challenge the Sheriff's applicable policy.[7] Instead, the Defendants challenge on four other separate grounds the admission of the recorded jail phone calls. Specifically, Defendants argue the use of the jail calls at trial as (1) a violation of due process, (2) a violation of the Defendants' Fourteenth Amendment right to equal protection, (3) a violation under the spousal privilege, and (4) a violation under the Fourth Amendment and the Georgia Constitution.

The State has responded arguing, *inter alia*, that the recorded jail phone call evidence Defendants seek to exclude are the voluntary, incriminating statements of the Defendants that were made to unprivileged third parties.[8] The State's position is that the alleged incriminating statements are relevant and probative evidence because the statements were voluntarily made to third parties chosen by the Defendants and the

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[4] Some of the calls were introduced by the State at the McMichaels' bond hearing on November 12-13, 2021.

[5] Defendants' Motion, p. 2, filed on December 30, 2020.

[6] Id. at pp. 2-3.

[7] "We do not include in our concerns here (a) a telephone system set up to record inmate calls, (b) the recording of all inmate calls, or (c) the monitoring of those non-privileged recorded calls by jail personnel in furtherance of legitimate security interests of the institution." Defendants' Motion at pp. 4-5. *See also*, Defendants' Motion, p.5, footnote 3.

[8] Defendant Gregory McMichael objects to the State's use of any recorded phone calls he made to his wife. *See* Defendant's Motion, Section D, filed on December 30, 2020. But see also the State's Response, filed on January 29, 2021, wherein the State expressed "no intention of using privileged communication between Greg McMichael and his wife, unless it becomes relevant during his or her testimony." State's Response, p. 6, footnote 1, filed on January 29, 2021.

statements were made while the Defendants were in jail and knew their conversations were recorded.[9]

ANALYSIS AND OPINION

A. The use of recorded jail calls does not violate due process.

Both the Fourteenth Amendment of the United States Constitution and Article 1, Section 1, Paragraph XVII of the Georgia Constitution forbid the deprivation of a person's liberty without due process of law. This right does not expire upon the entrance and detention of a pretrial detainee in a jail or penal institution. The United States Supreme Court has repeatedly acknowledged that "prisons are not beyond the reach of the Constitution" and "[n]o iron curtain separates one from the other." Hudson v. Palmer, 468 U.S. 517, 523, 104 S.Ct. 3194, 3198 (1984). Thus, although incarcerated, pretrial detainees may claim the protection of the Due Process Clause to prevent additional deprivation of life, liberty or property. Bell v. Wolfish, 441 U.S. 520, 545, 99S.Ct. 1861, 1877 (1979).

In Bell v. Wolfish, the Supreme Court considered the scope of constitutional protection afforded to pretrial detainees in light of legitimate security concerns at detention facilities. The Court stated that "[i]n evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, we think that *the proper inquiry is whether those conditions amount to punishment of the detainee.* For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." (Emphasis supplied; Citations and footnote omitted). Id. at 535–36.

Importantly, not every condition of confinement imposed during pretrial detention amounts to "punishment" in the constitutional sense. Id. at 537. To be sure, the Supreme Court explained that punishment can be demonstrated through (1) actions taken with the "express intent to punish" or (2) the use of restrictions or conditions on confinement that are not reasonably related to a legitimate goal. *See* id. at 538. Specifically, the Court provided the following as guidance:

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[9] *See* State's Response, p. 1, filed on January 29, 2021.

> [a] court must decide whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose. Absent a showing of an expressed intent to punish on the part of detention facility officials, that determination generally will turn on 'whether an alternative purpose to which (the restriction) may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned (to it).' Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'

(Citations and footnote omitted.) Id. at 559.

When judged by the analysis provided in Bell v. Wolfish, *supra*, this Court finds that the use of the Defendants' recorded jail calls during trial does not violate due process. First, the violative condition, or punishment, claimed by the Defendants is the disclosure of the Defendants' recorded telephone conversations to the prosecuting attorney and the subsequent "use of recorded jail calls to incriminate the defendant in the case for which he is being held in jail".[10] The Defendants provide an elaborate explanation as to why the transmission of the jail calls to the State and the State's use of the calls to incriminate the Defendants would constitute a violation of due process.[11] In effect the argument is that providing the jail calls to the State may result in a conviction (i.e. "punishment").[12] When broken down the argument is effectively a self-incrimination claim, and it fails. *See* Preston v. State, 282 Ga. 210, 647 S.E.2d 260 (2007) (The Supreme Court of Georgia held that a pretrial detainee cannot avail himself of the Fifth Amendment right against self-incrimination because recorded jail calls do not involve police-initiated custodial interrogation).

Instead, the "particular condition or restriction" at issue here is the recording of outgoing calls placed by inmates. The Detention Center's policy of recording outgoing calls from inmates serves important penological interests (i.e. internal security), and

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[10] Defendants' Motion, p. 4, filed on December 30, 2020.

[11] The Defendants emphasize a distinction between the legitimate security concerns for a detention facility (which places a restriction on all those in confinement) and the prosecution's use of the calls to incriminate a defendant in a pending case. Specifically, they argue the use of the jail calls by the prosecuting attorney in the pending case exceeds the legitimate interest in maintaining the security of the jail. They further argue that the State's legitimate regulatory restraint to "[i]nsure security can be achieved without encroaching upon a defendants constitutional right to due process" by using the defendant's phone calls to incriminate him at trial, leading to punishment. *See* Defendants' Motion, pp. 6-8, filed on December 30, 2020.

[12] Defendants' Motion, p 6, filed on December 30, 2020.

therefore, the "condition" satisfies a legitimate government purpose. *See* Bell at 546. ("Maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees.") The Defendants themselves concede that a "'legitimate governmental objective' when managing inmates in a county jail includes, *inter alia*, insuring that inmates do not use the jail phones to intimidate or influence witnesses or otherwise obstruct the administration of justice."[13]

Second, the Defendants fail to show any express intent by the Detention Center to punish the Defendants by recording the inmates' outgoing phone calls. The Detention Center provides Defendants with courtesy access to a telephone so that one may converse with legal representation,[14] family members, friends and other individuals. The Defendants, like all inmates at the Detention Center, are not required or forced to use the telephone system to speak with third parties. Each Defendant was given a copy of the Jail Handbook and listened to the automated recording at the outset of each phone call. Both notified the Defendants that the calls are monitored and recorded, and the Defendants were repeatedly warned that the "information obtained in the recordings may be used as evidence in a court of law against [the defendant]."[15] Nevertheless, the Defendants voluntarily chose to use the telephone, chose with whom to speak, chose which topics to discuss, and made statements at their own choosing. Significantly, there is no factual basis upon which the Court can ascribe any conduct on the part of any government agent to deliberately elicit incriminating information from the Defendants. There is no evidence that a government agent calculatingly prompted incriminating statements from Defendants while they were talking on the phone. Moreover, there is no suggestion that a state actor recruited, trained, instructed, or otherwise groomed any of the third-party persons with whom Defendants spoke during these phone calls to surreptitiously elicit information. The extent of government action was no more than passively listening and collecting what was said by Defendant, and it was only after the phone calls at issue were lawfully recorded that they were turned over to the prosecuting attorney. Accordingly, once the jail calls were made and recorded there is

[13] *See* Defendant's Motion, p. 4, filed on December 30, 2020.
[14] Conversations of Defendants with their legal representation are not recorded.
[15] Jail Handbook, p. 16.

no due process bar to their use at trial. *See* Bell at 559. ("Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'")

The condition placed on the outgoing jail calls is reasonably related to a legitimate penological goal. Further, there is no evidence of express intent to punish the inmates by recording the phone calls. Therefore, the condition does not amount to "punishment" in the constitutional sense, and the use of recorded jail calls does not violate due process. Defendants' motion to suppress the jail calls as a violation of due process is **DENIED.**

B. The use of recorded jail calls does not violate the Defendant's Fourteenth Amendment right to equal protection.

Defendants next contend that the admission of jail calls would violate their right to equal protection under the Fourteenth Amendment. As explained in Rodriguez v. State:

> The Georgia and U.S. Constitutions require government to treat similarly situated individuals in a similar manner. The person who is asserting the equal protection claim has the burden to establish that he is similarly situated to members of the class who are treated differently from him. If the person asserting the violation cannot make the foregoing showing, there is no need to continue with an equal protection analysis.

Rodriguez v. State, 275 Ga. 283, 284–85, 565 S.E.2d 458, 460 (2002) (Citation and punctuation omitted).

The Defendants must first establish that they were treated differently from others who were similarly situated, and they have failed to do so. The Defendants argue that the category of similarly situated defendants includes those "defendants charged with malice murder, some of whom are free on bond and some of them are in jail."[16] Their position is that admitting into evidence recordings made of personal telephone calls, when such recordings may not be introduced against defendants charged with malice murder who are free on bond, is violative because only those defendants who are

[16] Defendant's Motion, p. 10, filed December 30, 2020.

denied bond or who cannot post bail, are detained prior to trial and subjected to the recording and monitoring of their telephone calls.[17] The Court rejects this argument.

For the purposes of an equal protection analysis, the class at issue is better defined as those defendants charged with murder who have made statements on *legally recorded* telephone calls of which the State has been made aware. It is undisputed that some defendants charged with malice murder are released pretrial and that some defendants are not. It is also undisputed that defendants who are in jail awaiting trial are subject to greater surveillance than those who are not. These Defendants were not granted bond and are thereby subject to having their personal telephone conversations recorded. *See* Bell v Wolfish, *supra*, at 537. (The government is entitled to employ devices that are calculated to effectuate detention). Undoubtedly, the added scrutiny was made known to the Defendants (i.e., the Jail Handbook was given to the Defendants, a warning was given at the outset of each call, a warning was given again after the call was answered). Once the Defendants voluntarily used the telephone system and consented to the recording of phone calls, there is no due process bar to their use at trial. *See* Leekomon v. State, 351 Ga. App. 836, 840, 832 S.E.2d 437, 442 (2019), cert. denied (May 4, 2020) ("Generally, implied consent to the monitoring and recording of a jail inmate's telephone calls may be demonstrated by evidence that the inmate was warned that calls might be monitored and informed that use of the facility telephone constitutes consent.")

Further, as addressed in Section A, *supra*, the Defendants' phone calls were lawfully recorded.[18] Thus, this Court finds that a defendant charged with murder who was legally recorded on a telephone, regardless of whether they were in detention or not, is subject to having those recordings admitted at trial. Under this rationale the admissibility of the Defendants' recorded phone calls *sub judice* is treated no differently than the admissibility of lawfully recorded phone calls of those defendants charged with murder who are released on bond. Since the Defendants fail to establish that they are treated differently than those defendants similarly situated to them, there is no need to continue with an equal protection analysis. Rodriguez, *supra*, at 284–85.

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[17] Id.

[18] *See* Section A, *supra*. (Recording outgoing inmate phone calls is reasonably related to a legitimate penological goal).

In sum, the Court finds the use of the recorded jail calls does not violate the Defendants' Fourteenth Amendment right to equal protection. Defendants' motion to suppress the jail calls as a violation of the Fourteenth Amendment is **DENIED**.

C. The use of recorded jail calls does not violate the spousal privilege.[19]

Georgia has codified the privilege for confidential spousal communications in O.C.G.A. § 24-5-501(a)(1), which says: "There are certain admissions and communications excluded from evidence on grounds of public policy, including, but not limited to, [c]ommunications between husband and wife". Importantly, although a conversation between spouses is presumptively private, the conversation must be kept confidential in order for the privilege to exist.

Defendant's position, however, is that all phone calls between Defendant and his wife are protected by the spousal privilege regardless of his knowledge that they were recorded by a third-party and regardless that he was warned that the recordings could be used in court. Defendant provides a detailed argument for why his knowledge that his conversations are recorded by the jail does not waive the spousal privilege, and he cites to Huerta-Ramirez v. State, A20A1312, (Ga. App., October 15, 2020) in support of his position. Additionally, he contends the purpose for which the calls were recorded was for the Detention Center to detect illegal activity, and that the "public policy behind preserving the privileged nature of communications between married people when one of them is being held in custody before trial outweighs evisceration of that privilege in deference to the State's interest in incriminating a defendant at trial with conversations he had with his spouse on a jail phone."[20]

In effect, Defendant's argument and analysis ignores the well-established principle that communications between spouses are privileged when they are kept confidential and the privilege *ceases to exist* when they are made to a third party. In Cocroft v. Cocroft, 158 Ga. 714, 719 (3), 124 S.E. 346 (1924), our Supreme Court discussed admissions and communications excluded from public policy, including

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[19] Defendant Greg McMichael is married to Leigh McMichael. This section applies only to Defendant Greg McMichael even though he raised this objection in a joint motion with Defendant Travis McMichael and said motion was subsequently adopted by Defendant William R. Bryan.

[20] Defendants' Motion, p. 20, filed December 30, 2020.

communications between husband and wife. The Supreme Court noted that "[i]t will be perceived that the same rule that applies to communications between husband and wife also applies to communications between attorney and client." Id. The Supreme Court decided that statements made by a client to his attorney in the presence of a third party are not confidential or privileged, and the Court concluded that if a married couple is unsuccessful in keeping secret that which they intend to be confidential, the fact that they intended confidentiality will not prevent the testimony of one who hears the communication. Id. In applying the analysis used by the Court of the attorney-client privilege to the spousal privilege, it is clear that although there is a presumption that marital communications are confidential and privileged, spouses communicating in the presence of a third party eliminate the applicability of the spousal privilege, regardless of their intent for the communications to remain confidential.

This Court also considers Rogers v. State, 290 Ga. 18, 717 S.E.2d 629 (2011), under the notation in Cocroft that the same rule that applies to attorney-client communications also applies to spousal communications. In Rogers, our Supreme Court addressed the issue of the admission of recordings of a three-way telephone call between an inmate, his girlfriend and attorney. The Court concluded that the admission of the recordings did not violate the attorney-client privilege. Id. at 20. Noting that the privilege does not extend to situations in which third parties are present for attorney-client discussions, the Court found no evidence that the appellant's conversation with his attorney "could be considered confidential, or was intended to be so" because the call was initiated as a three-way call, and the evidence showed that the inmate's girlfriend heard the conversation. Id. The Court affirmed the trial court's admission of the recording. In doing so, the Court stated that it has "been held that ignorance of the presence of the third person does not prevent the exception from operating. Thus it has been decided that an eaves dropper or a wiretapper is not incompetent to testify to the communications he overhears." Id. at 21 (Citation omitted).

The principles discussed in Cocroft and Rogers, applied here, compel the conclusion that Defendant's recorded calls with his wife are not protected by the spousal privilege. *See also*, Helton v. State, 217 Ga. App. 691, 458 S.E.2d 872 (1995) (third party who overheard marital communications could testify to the same because

the communication was made in the presence of the third party, and therefore, not confidential); Chancey v. State, 256 Ga. 415, 349 S.E.2d 717 (1986) (communications made by one spouse in the presence of a third person are not privileged because they were not confidential); Georgia Intern. Life Ins. Co. v. Boney, 139 Ga. App. 575, 228 S.E.2d 731 (1976); Sims v. State, 36 Ga.App. 266, 136 S.E. 460 (1927) (testimony about a conversation between husband and wife, overheard by a third party, was properly admitted into evidence); McCord v. McCord, 140 Ga. 170, 78 S.E. 833 (1913); Knight v. State, 114 Ga. 48, 39 S.E. 928 (1901) (third party who overheard spousal communications could testify even though the husband and wife intended their conversation to be confidential and only between them). First, Defendant's phone calls with his wife are not confidential. Unlike conversations between an inmate and their legal representation, Defendant's conversations with third-parties, including his spouse, are recorded.[21] Next, the jail did not surreptitiously record the conversations. Defendant knew that his conversations with his wife are recorded and subject to being monitored by the Detention Center. The Jail Handbook informed the Defendant that jail phone calls are recorded, and Defendant is notified at the outset of every phone call that the calls are recorded and subject to monitoring. Additionally, the Detention Center records all outgoing calls, and therefore, fundamentally is a third party to all of Defendant's conversations. With such circumstances, the Court finds that Defendant consented to the recording of his phone calls with his wife by using the telephone system. Likewise, Defendant consented to the presence of a third-party during his conversations with his wife. It is therefore illogical to assume that a recording of a jail call with his wife could not be used against him at trial, especially given the express and meaningful notice of the warning on the outset of every call, and when he explicitly provides acknowledgement of such notice.

In sum, Defendant was not forced to communicate with his wife by phone nor continue with the phone conversation after being notified that it would be recorded and monitored. Defendant could have chosen not to call, or otherwise could have refused to disclose anything to his wife that he did not want recorded and potentially used at trial.

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[21] Conversations between an inmate and his counsel are not recorded by the Detention Center as long as the inmate has provided the attorney's phone number to the Detention Center so that the Detention Center can input the phone number into the computer recording system.

His decision to proceed with the conversations, despite notification that the conversations were being recorded and were subject to monitoring, is no different from Defendant electing to proceed with conversations notwithstanding the known presence of a third party within earshot of a conversation with his wife. Consequently, Defendant waived the spousal privilege.

The telephone calls between Defendant and his wife are not privileged, and Defendant's motion to suppress the jail calls between Defendant and his wife is **DENIED.**

D. The use of recorded jail calls does not violate the Defendants' expectation of privacy under the Fourth Amendment.

Defendants argue there is a distinction between the Detention Center using Defendants' recorded phone calls for security purposes and the prosecution using Defendants' recorded phone calls as evidence in their case, and that the later use violates their "limited but legitimate expectation of privacy" under the Fourth Amendment and the Georgia Constitution. Regardless of the distinction between the usage of the calls, the Defendants must, at the threshold, establish a legitimate expectation of privacy in the area searched or the subject matter seized in order to invoke the privacy protection of the Fourth Amendment. Rakas v. Illinois, 439 U.S. 128, 143, 99 S.Ct. 421, 430 (1978).

The Georgia Supreme Court analyzed the issue of an inmate's expectation of privacy and the use of recorded jail phone calls with third-parties in Preston v. State, 282 Ga. 210, 647 S.E.2d 260 (2007). In Preston, the appellant asserted that the State's use at trial of recorded telephone conversations he had with his mother while he was in jail violated his right to privacy. Id. at 213. The Court turned to other state and federal case law since there was no Georgia authority directly on point. Id. at 214. The Court noted it was persuaded by the rationale in four opinions from other jurisdictions:

> "While there appears to be no Georgia authority directly on point, federal courts and appellate courts of other states have decided this issue adversely to the position asserted by Preston. United State v. Van Poyck, 77 F.3d. 285, 290-291 (9th Cir.1996) (no prisoner should reasonably expect privacy in outbound telephone calls to nonattorneys); United States v. Sababu, 891 F.2d. 1308, 1329 (7th Cir.1989) (no reasonable expectation of privacy in content of personal phone calls placed by

> prisoner); State v. Rile, 287 Wis.2d 244, 252, 704 N.W.2d 635 (2005) (no expectation of privacy in calls to nonattorneys placed on jail telephones): State v. Smith, 117 Ohio App.3d 656, 661, 691 NE.2d 324 (1997) (no subjective expectation of privacy when prisoner has notice of telephone monitoring practice and elects to place call)).

Preston v. State, at 214. As a result, the Court concluded that the appellant had no reasonable expectation of privacy in the calls he placed from jail. *See also*, Keller v. State, 308 Ga. 492, 497, 842 S.E.2d 22, 29 (2020) (Supreme Court stated "it is well established that there is no reasonable expectation of privacy in a recorded telephone call made from a jail or prison.") Further, the Court found no error in the trial court's admission of evidence of the content of the phone calls. Preston at 263-264.

This Court also finds that there are a number of additional courts that have explained that where pretrial detainees are aware that their phone calls are recorded, and they have consented to the monitoring, all reasonable expectation of privacy in the content of the phone calls is lost, and "there is no legitimate reason to think that the recordings, like any other evidence lawfully discovered, would not be admissible". United States v. Eggleston, 165 F.3d 624, 626, (8th Cir. 1999); *see also*, United States v. Novak, 531 F.3d 99, 103 (1st Cir. 2008) (holding that because the defendant consented to the monitoring of his calls, they could be introduced into evidence "consistently with the requirements of the Fourth Amendment"); United States v. Green, 184 Fed. Appx. 617, 618 (9th Cir. 2006) (disclosure to prosecution "does not ... provide a basis for establishing a violation of ... the Fourth Amendment").

After considering the applicable cases, the Court rejects the Defendants' argument that they retained a reasonable expectation of privacy once the calls were lawfully recorded by the Detention Center. The Defendants received repeated warnings that the calls would be monitored and recorded. They have a logically lowered expectation of privacy in prison. And the Defendants consented to the Detention Center's policy by using the phone system. Accordingly, there is no reason to think the phone calls could not be used at trial just like any other lawfully discovered evidence. Furthermore, there is no violation of the Fourth Amendment right that would prevent the Detention Center from releasing the recordings to the prosecutor in response to a subpoena. In sum, by using the telephones, the Defendants consented to the recording

of their calls and waived any objection to the subsequent use of the calls against them at trial.

The Court finds the use of the recorded jail calls does not violate the Defendants' Fourth Amendment right. Defendants' motion to suppress the jail calls as a violation of the Fourth Amendment is **DENIED**.

CONCLUSION

For the foregoing reasons, the Defendants' Motion to Exclude From Trial All Jail Calls is **DENIED**.

SO ORDERED, this 8th day of October, 2021.

Timothy R. Walmsley, Judge,
Chatham Superior Court, EJC, Georgia

cc: Counsel of Record