IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYWANN JOHNSON,	§	
	§	No. 172, 2012
Defendant Below,	§	
Appellant,	§	Court Below – Superior Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	CR. ID No. 1007020056
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 5, 2012
Decided: September 7, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

This 7th day of September 2012, it appears to the Court that:

1) Tywann Johnson, the defendant-appellant ("Johnson"), appeals from murder and robbery convictions after a Superior Court jury trial. Johnson's sole claim on appeal is that the trial judge erroneously admitted into evidence taped telephone calls that he made from a Delaware prison, in violation of his constitutional rights. We have concluded that claim is without merit.

2) On June 12, 2010, Johnson and Luis Sierra ("Sierra") stole marijuana from a man at gunpoint, after which Sierra shot the victim three times, killing him. Days later, the police investigating the crime spoke with Johnson's girlfriend, who told them that Johnson had "asked her to provide

him with an alibi." In early August 2010, Johnson and Sierra were both indicted on charges of Murder in the First Degree, Robbery in the First Degree, Conspiracy in the Second Degree, and several related weapons charges. When the police arrested Johnson, he "spontaneously stated . . . that [the police] 'scared the truth' out of his alibi witness."

3) After Johnson's arrest, prosecutors believed that Johnson "would continue to try to pressure [his girlfriend] to provide him with an alibi defense, or otherwise attempt to interfere with the prosecution of the case, while in prison awaiting trial." As a precaution, the prosecutors subpoenaed tapes of Johnson's prison telephone calls. Those tapes—which contained several incriminating statements by Johnson—were later introduced at trial by the State.

4) A jury trial was held in the Superior Court beginning September 7, 2011. The jury convicted Johnson on all charged counts. On March 21, 2012, Johnson was sentenced to life in prison. This appeal followed.

5) Johnson claims that his Fourth, Fifth and Sixth Amendment rights were violated by the introduction at trial of his recorded prison phone

calls.[1] We review questions of law, including constitutional claims, *de novo*.[2]

6) This Court has held that for Fourth Amendment purposes, prisoners who are notified by prison officials that their communications will be monitored have no expectation of privacy in the mail they send or the telephone calls they make.[3] Johnson does not dispute that before he made each call, a recorded message was played informing him that the calls would be monitored and recorded. Therefore, Johnson's Fourth Amendment claim must fail.

7) Johnson also purports to raise Fifth and Sixth Amendment claims, apparently premised on an alleged violation of his *Miranda* rights. He asks us to adopt a rule that prison officials must obtain permission from a defendant's lawyer to record his prison phone calls. Johnson cites no judicial opinion or other authoritative source of law to support that contention.

8) Separately, Johnson's brief appears to claim that the State violated his First Amendment rights under *Johnson v. State*[4] ("*Johnson I*").

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[1] Johnson also claims that the introduction of that evidence violated Delaware's wiretapping statute, but that claim was rejected in this Court's recent decision in *Rowan v. State*, 45 A.2d 149 (Del. 2012).
[2] *Cooke v. State*, 977 A.2d 803, 840 (Del. 2009).
[3] *Rowan v. State*, 45 A.3d 149 (Del. 2012); *Johnson v. State*, 983 A.2d 902 (Del. 2009).
[4] *Johnson v. State*, 983 A.2d at 902.

In *Johnson I*, we adopted the Third Circuit's standard for reviewing such claims: first, the contested actions (*i.e.*, the State's obtaining of prisoner communications) must further an important or substantial government interest "unrelated to the suppression of [speech];" and second, those actions "were no greater than necessary for the protection of that interest."[5]

9) The State's actions in Johnson's case satisfies the *Johnson I* test. Like this case, *Johnson I* was concerned with witness tampering. There, we found that an "important or substantial government interest" existed to justify the governmental interference. Johnson suggests, however, that the second prong of *Johnson I* was not met, because the State's subpoena was for an indefinite duration. But, the Superior Court found that "by its very nature, this investigation was of limited duration and would conclude at the time of trial." Therefore, this claim lacks merit as well.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are affirmed.

BY THE COURT:

/s/ Randy J. Holland
Justice

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[5] *Id.* at 917.