

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GARY B. CAMPBELL,

Plaintiff,

v.

WOOD COUNTY SHERIFF DEPUTY
TODD JOHNSON,

Defendant.

ORDER

04-C-661-C

In an order dated June 28th, 2005, Magistrate Judge Stephen Crocker granted in part defendant's motion for disclosure of telephone conversations between plaintiff and one of his event witnesses, Ashley Pittman, that were recorded while plaintiff was incarcerated in the Milwaukee County Jail. He ordered that defendant may hire an independent investigator to review the tapes to determine whether there are discoverable portions and that the independent investigator must maintain in strictest confidence all other conversations on the tapes. In addition, the magistrate judge ordered that before the independent investigator may disclose any portions of the tape recordings to defendant, he or she must present them to the court for *in camera* review.

Now defendant has filed objections to Judge Crocker's order pursuant to Fed. R. Civ. P. 72. He argues that Judge Crocker erred when he implied that portions of the tape recordings might be protected by the work product privilege and that the procedure for review of the tape recorded conversations will cause defendant undue expense. Because I conclude that the magistrate judge's order was not clearly erroneous or contrary to law, I will deny defendant's request for reconsideration.

Judge Crocker's order was not grounded in the legally privileged nature of the telephone conversations between plaintiff and Pittman. Instead, it was an exercise of this court's equitable powers and supervisory authority over the discovery process. The underlying principle is that a litigant has the right to develop his trial strategy without his adversary rifling through every document or conversation generated towards that end. A federal court has discretion to manage discovery to ensure a fair process and to guard against overreaching by one party. Thus, although the telephone conversations may not constitute "work product" under Fed. R. Civ. P. 26(b)(3) or Hickman v. Taylor, 329 U.S. 495 (1947), this does not entitle defendant's counsel to unfettered access.

Defendant has not cited any authority suggesting that the Judge Crocker abused his discretion or clearly violated the law by requiring an independent investigator to perform a preliminary review of the tapes. Nor has he provided any authority other than a perfunctory citation to the "rules of evidence" to support his argument that the Judge Crocker

improperly limited the scope of discoverable information. In the absence of any such authority, I cannot conclude that Judge Crocker's order was clearly erroneous or contrary to law. Accordingly, defendant Todd Johnson's request to reconsider Judge Crocker's June 28, 2005 order is DENIED.

Entered this 18th day of July, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge