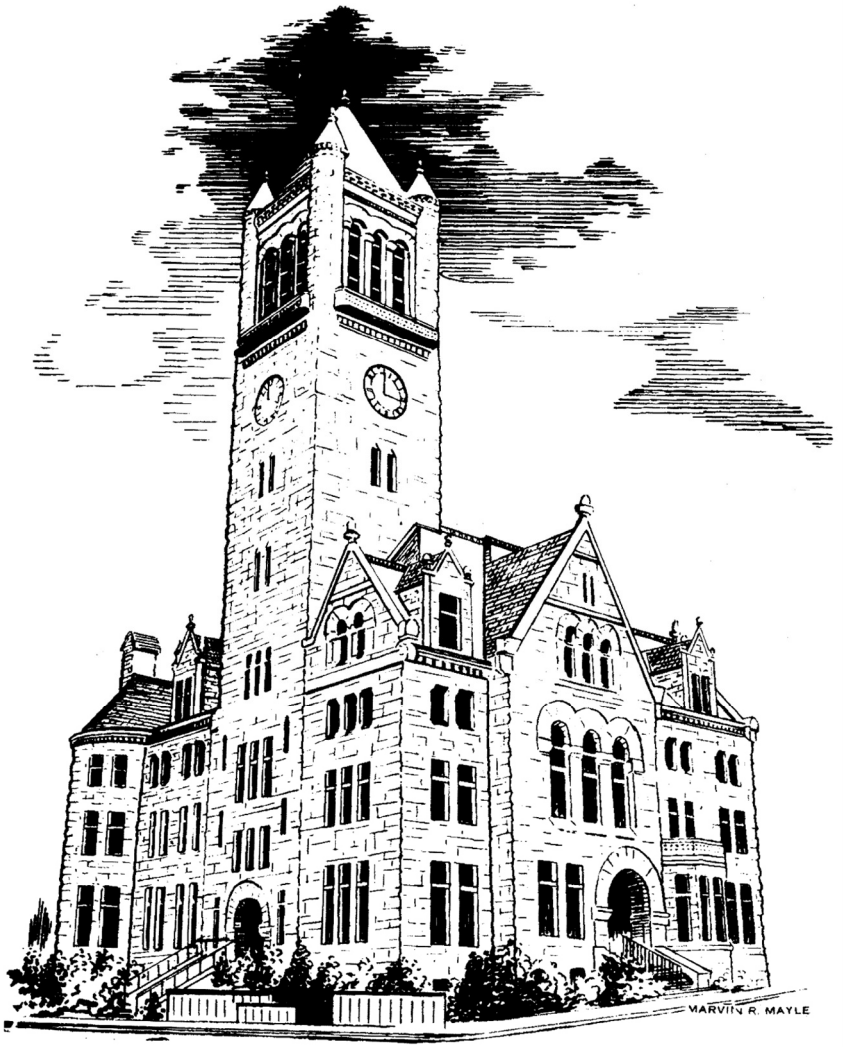
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Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

GARY R. BONAR, late of Georges, Fayette County, PA (3)
Executrix: Beulah E. Bonar
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

BRIAN EUGENE FREY, a/k/a BRIAN E. FREY, late of Henry Clay Township, Fayette County, PA (3)
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Attorney: John Greiner

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1590 Rostraver Road
Rostraver Township, PA 15012
Merilee Melvin
119 Price Avenue
Rostraver Township, PA 15012
c/o 823 Broad Avenue
Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

ELEANOR RISHEL, late of Uniontown, Fayette County, PA (3)
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New Holland, PA 17557
Attorney: R. Douglas Good

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Maureen Ann Landers
Kevin Lee Ryan
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

Second Publication

C. RALPH BLISS, a/k/a CONWAY RALPH BLISS, late of Uniontown, Fayette County, PA
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Attorney: Webster & Webster

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Executor: Morgan D. Chalfant, Jr.
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1650 Broadway Avenue, Floor 1
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Attorney: Megan Loftis

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c/o 208 South Arch Street, Suite 2
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Trafford, PA 15085
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Greensburg, PA 15601
Attorney: John K. Greiner

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Uniontown, PA 15041
Attorney: Gary J. Frankhouser

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New Salem, PA 15468
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First Publication

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Connellsville, PA 15425
Attorney: Timothy J. Witt

EDWARD T. JACKSON, late of Wharton Township, Fayette County, PA (1)
Executrix: Tammy L. Jackson
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Attorney: James E. Higinbotham, Jr.

JANET G. MARKER, late of North Union Township, Fayette County, PA (1)
Executor: Dewey L. Marker
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Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

ARTHUR P. METTS, SR., late of Uledi, Fayette County, PA (1)
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468 Mountain Road
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Greensburg, PA 15601
Attorney: John K. Greiner

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c/o George & George
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Attorney: Joseph M. George

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Uniontown, PA 15401
Attorney: Wendy L. O'Brien

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Executrix: Donna Palermo
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15041
Attorney: James T. Davis

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW
No. 544 of 2024 G.D.

JAMI HOVANEC, an individual,
Plaintiff
vs.
KATHLEEN I. DUBYAK, an individual, and her unknown heirs and assigns,
Defendant

ORDER OF COURT

AND NOW, this 12th day of June, 2024, it appearing to the Court that pursuant to the Order entered by this Court on April 3, 2024, in this Action to Quiet Title to real property, Plaintiff served the above Defendant by publication, and it further appearing that twenty (20) days have elapsed from the dates of publication pursuant to the Order for alternative service, and that the Defendant has not answered or otherwise responded to this Action to Quiet Title,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff has lawful and absolute title to the property set forth in Plaintiffs Complaint, and that the Defendant, her unknown heirs and assigns, are forever barred from asserting any right, lien, title, interest or claim in and to the property of the Plaintiff as set forth in Plaintiff's Complaint, being more specifically bounded and described as follows:

ALL that certain Condominium Unit situate in The Maples Condominium, Wharton Township, Fayette County, Pennsylvania, being Unit A in Building Ten and designated as Unit No. 10A, as more particularly appears in the Declaration of Condominiums recorded in the Office of the Recorder of Deeds for said County and Commonwealth in Deed Book Volume 1349, page 259, in the Plats and Plans recorded as aforesaid in Plan Book 19, page 8, and in the Amendments to said Declarations and Plats and Plans.

TOGETHER with all of grantor's right, title and interest in and to the Common Elements, Limited Common Elements and Reserved Common Elements as defined in the aforementioned Declaration of record in the Office of the Recorder of Deeds of Fayette County, Pennsylvania, in Deed Book Volume 1349, page 259.

UNDER AND SUBJECT to all roads, public or private, affecting the premises and the rights of others therein; all existing utilities, sewers and pipelines, as presently located; all oil and gas and gas and all oil and gas bearing sands, strata, formations, and horizons in which oil and gas may be found or may have been found, together with the extensive access, exploration, excavation, boring, drilling and other rights, and all the coal, stone, sand, gravel, clay, limestone and other minerals and substances, together with extensive access exploration, mining, quarrying, storing and other rights as conveyed to Roldiva, Inc., covenants, restrictions, easements, terms, rights, agreements, conditions and rules and regulations as contained in the Declaration of Condominium and the Plans of The Maples Condominium and as contained in the unrecorded Bylaws of The Maples Condominium Corporation, and all amendments to the aforesaid; limitations and conditions imposed by and rights of parties other than the insured arising under the Uniform Condominium Act of Pennsylvania; restrictions, reservations, conditions, limitations, agreements and covenants contained in the deed to the Unit or Units; right or reentry on the Sewage Facilities Area and rights of others therein; provisions of the Declaration of Condominium restricting development of the Condominium Property to not more than three Units per acre, and limiting the right to complete such development exclusively to the Declarant; rights of way, party walls, common walks,

drives, utility lines, etc., incident to the ownership of a party wall structure; and restrictions as set forth in instruments from Nemacolin, Inc. to Dr. Joseph A. Gerard, et ux., as all appear in prior instruments of record.

TOGETHER with such rights and **SUBJECT** to any exceptions, restrictions, reservations and conditions as exist by virtue of prior recorded instruments, deeds or conveyance.

BEING known and designated as Fayette County Tax Map Number 42-17-0027-01-Y0-0.

BEING the same property conveyed to Kathleen I. Dubyak by Deed of Russell B. Mechling, Ill, and Louise A. Mechling, his wife, dated August 29, 2005, and recorded on September 7, 2005, in the Office of the Recorder of Deeds of Fayette County, Pennsylvania, at Instrument Number 200500014488, Book 2959, Page 1405.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if no answer or other responsive pleading is made to Plaintiff's Complaint within thirty (30) days of the date of publication of this Order as set forth below, the Defendant above-named and her unknown heirs and assigns shall be barred from asserting any right, title, lien, interest or claim of ownership of the subject property, and Plaintiff shall be vested with lawful and absolute title to the subject property, and that the Plaintiff shall file a Praecipe for Final Judgment against the Defendant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Order shall be served upon the Defendant by publication one time in the Herald-Standard and one time in the Fayette Legal Journal.

BY THE COURT:
/s/ Linda R. Cordaro, Judge

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JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:
v.	:
ASHLEY THURBY KOLESAR,	: No. 474 of 2023
Defendant.	: Honorable Linda R. Cordaro

OPINION

Linda R. Cordaro, J. May 23, 2024

Currently before this Court is Defendant's Motion/Petition for Writ of Habeas Corpus. {1} A hearing on the Motion was held on April 10, 2024. After consideration, and for the following reasons, Defendant's Motion is denied.

FINDINGS OF FACT

The following facts were established according to the testimony presented and exhibits admitted at the April 10, 2024 hearing.

On October 5, 2022, while at school, student M.M. approached the Defendant, his math teacher, at her desk in the classroom. M.M. wanted to speak with the Defendant about improving his grade because his mother had promised he could go on a trip for Thanksgiving if he got As or Bs. He testified that he did not want the conversation to be overheard by others, and so he intentionally chose to speak to the Defendant in person, outside of class time, when no one else was in the room. He also testified that he chose not to communicate with the Defendant by email because he believed the email could be read by other school employees.

The classroom itself had between fifteen (15) and twenty (20) seats, with the Defendant's L-shaped desk at the back corner of the room. M.M. stood at one side of the desk to speak to the Defendant, and, although he could see the doorway from where he stood, no one passing in the hallway could have seen him or the Defendant's desk. The school did not have a camera installed inside of the classroom.

When M.M. first approached, the Defendant appeared to be texting on her mobile phone, but then she put the phone down. M.M. testified that, at the time, he believed she had put it to the side. The recording the Defendant is alleged to have made captured both audio and video, and it was played at the hearing during M.M.'s testimony. The video did not show M.M.'s face, but M.M. identified his own voice on the recording and confirmed that it was the conversation he had had with the Defendant. The recorded conversation was a discussion about M.M.'s grades, a possible trip to Deep Creek, and the need for M.M. to complete all his work. Afterward, the Defendant allegedly sent the recording to another juvenile student.

{1} Regardless of any prior waiver of the right to present a habeas petition, the Commonwealth did not object to this Petition pursuant to an oral agreement between Defendant's counsel and the former District Attorney of Fayette County.

Trooper Nicole Sigwalt testified that she had obtained the recording pursuant to a search warrant for the other juvenile's mobile phone. M.M. testified that he was not aware of any recording until the trooper notified him about it.

DISCUSSION

A petition for a writ of habeas is "the proper means for testing a pre-trial finding that the Commonwealth has sufficient evidence to establish a prima facie case" against a defendant. Commonwealth v. Scott, 578 A.2d 933, 936 (Pa. Super. Ct. 1990). A pre-trial petition for writ of habeas corpus is similar in its purpose to a preliminary hearing in that it seeks to prevent unlawful detention for a crime which was never committed, or for a crime for which there is no evidence of the accused's connection. Id. at 937. Accordingly, to establish its prima facie case, the Commonwealth must present evidence as to each material element of the crimes charged and establish sufficient probable cause that the accused is the person who committed the offenses. Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991).

The Defendant was charged with three (3) felony offenses: interception of oral communications, {2} disclosure of intercepted communications, {3} and criminal use of a communication facility. {4} Defendant's Motion asserts that the conversation in question does not meet the definition of "oral communication" under 18 Pa.C.S.A. § 5703(1) ("Wiretap Act"), and so the Commonwealth cannot meet its burden to provide evidence of all elements of the crime of interception. The Motion also argues that, consequently, the Commonwealth cannot establish that the Defendant intentionally disclosed the contents of any "oral communication," nor can the Commonwealth show criminal use of a communication facility.

Oral Communications under the Wiretap Act

Under the Wiretap Act, a crime is committed when a person intentionally intercepts any wire, electronic or oral communication where an "oral communication" is defined as one "uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation." 18 Pa.C.S.A. § 5702.

In order to establish a prima facie case under the Wiretap Act for interception of an oral communication, "a claimant must demonstrate: (1) that he engaged in a communication; (2) that he possessed an expectation that the communication would not be intercepted; (3) that his expectation was justifiable under the circumstances; and (4) that [the alleged violator] ... successfully intercepted the communication ...." Agnew v. Dupler, 717 A.2d 519,522 (Pa. 1998). In Agnew, the Pennsylvania Supreme Court established that a conversation is a protected "oral communication" under the Wiretap Act "only where the speaker possessed a reasonable expectation of privacy in the conversation." Id. at 523. As the Court stated,

{2} 18 Pa.C.S.A. § 5703(1)
{3} 18 Pa.C.S.A. § 5703(2)
{4} 18 Pa. C.S.A. § 7512(a)

> . . . one cannot have an expectation of non-interception absent a finding of a reasonable expectation of privacy. To determine the existence of an expectation of privacy in one's activities, a reviewing court .must first examine whether the person exhibited an expectation of privacy; and second, whether that expectation is one that society is prepared to recognize as reasonable.

Id.

Therefore, the two-part analysis here is whether (1) M.M. exhibited a subjective expectation of privacy; and (2) that expectation was justifiable and one that society would recognize as reasonable - an objective standard. The analysis must consider the totality of the circumstances and the balance of societal interests involved. Commonwealth v. Moore, 928 A.2d 1092, 1101 (Pa. Super. Ct. 2007). This privacy expectation analysis is the same as that applied in cases in which a defendant alleges that government action violated the Fourth Amendment prohibition against unreasonable searches. Katz v. United States, 389 U.S. 347, 360-61 (1967) (Harlan, J., concurring).

Subjective Expectation of Privacy

As to the first part of the analysis, it is clear that M.M. did exhibit a subjective expectation of privacy. He intentionally approached the Defendant at her desk between scheduled classes when no one else was present because he did not wish to be overhead. He chose to have an in-person conversation instead of communicating by email because he did not want others to be able to view the conversation. In addition, while speaking with the Defendant, M.M. stood in a location from which he could see if anyone entered through the doorway, and he testified that he would not have spoken to the Defendant if anyone else had been in the room.

Objective Expectation of Privacy

As to the second part of the analysis, the Defendant's Motion asserts that there was no objective expectation of privacy because students in a public school have a lower expectation of privacy than citizens in general, and that there is no expectation of privacy in a school classroom at all. The Motion further asserts that there was no expectation of privacy in the classroom because anyone could have entered the room, M.M. had no ownership or property interest in the location, and he had no authority to exclude others.

The Pennsylvania Supreme Court indeed has stated that students possess a limited expectation of privacy within the school environment. Commonwealth v. Cass, 709 A.2d 350, 354 (Pa. 1998) (citing New Jersey v. T.L.O., 469 U.S. 325 (1985)). The Defendant's Motion also cites to two other cases to support the limited expectation of privacy in schools: Theodore v. Delaware Valley Sch. Dist. 836 A.2d 76 (Pa. 2003) and Groenke v. Seip, 225 F.3d 290 (3d Cir. 2000). However, while the holdings of these cases maybe applicable, the facts differ significantly from the case currently before this Court and relate more to allegations of violative government intrusion. For example, Cass challenged a school's search of a student locker upon suspicion of drugs; Theodore opposed a school's policy of random student drug testing; and Groenke challenged a school's authority to require that a student swim team member take a pregnancy test.

As to whether there is an expectation of privacy specifically within a school classroom, there does not appear to be precedential Pennsylvania case law directly on point, but Defendant's Motion does reference case law outside of Pennsylvania to assert that there is no expectation of privacy against the recording of communications in a classroom. Plock v. Bd. of Educ. Of Freeport Sch. Dist. No.145, 545 F.Supp.2d 755 (N.D. Ill. 2007) (holding that special education teachers had no expectation of privacy against audio monitoring in their classrooms); Evens v. The Superior Court of Los Angeles County, 77 Cal.App-4th 320 (2d District 1999) (holding that a teacher had no reasonable expectation of privacy against students surreptitiously recording her performance in the classroom). However, these cases are related to teachers' privacy expectations in the workplace and involved circumstances occurring while students were present and while the teachers themselves were engaged in instruction and/or supervisory activities. {5}

Defendant's Motion further argues that there is no expectation of privacy in a classroom because, as in Katz v. United States, "'what a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." 389 U.S. 347, 351 (1967). Accordingly, Defendant's Motion characterizes the conversation between M.M. and the Defendant as "in the open" and "knowingly expose [d] to the public." Defendant's Motion, at 6. The Motion also emphasizes that if anyone walking by could have overheard the conversation, and M.M. had no property interest in the location, then there could be no expectation of privacy under the circumstances, citing to Schultz v. Hughesville Borough. No. 4:10-CV-0262, 2011 WL 3273076, at *22 (M.D.Pa., July 29, 2011). Finally, the Motion references two other cases to support its assertion that there generally is no reasonable expectation of privacy when an individual has no ability or right to exclude others from a space: Commonwealth v. Reed, 851 A.2d 958 (Pa. Super. 2003) (holding that a defendant could not exclude police from the common hallway and stairs of the apartment building where he lived), and Commonwealth v. Curtin, 628 A.2d 1132 (Pa. Super. 1993) (holding that the "knock and announce" rule applies to commercial property that is not open to the general public).

As to these points, first, it is somewhat misleading to describe M.M.'s conversation as "in the open" when one considers that it occurred in the back corner of an empty classroom, away from the door, where no one could see from the hallway. Second, in Katz, the Court observed that "the Fourth Amendment protects people, not places." 389 U.S. at 351. Furthermore, the United States Supreme Court has stated that "'property rights are not the sole measure of Fourth Amendment violations.'" Carpenter v. United States, 585 U.S. 296, 304 (2018) (quoting Soldal v. Cook County, 506 U.S. 56, 64 (1992)). In addition, there is no reason to believe that the Defend nt and M.M. were completely unable to exclude others from the room, briefly and outside of class time, to hold a conversation. Finally, again, the facts of the cited cases are considerably different: in Schultz, the conversation in question took place outside, in a bar parking lot; in Reed, the area in question was the shared hallway and stairs of an apartment building; and in Curtin, police had entered a business office not open to the general public in order to execute a warrant without first knocking and announcing their presence.

{5} In Plock, the school had proposed audio and video monitoring of specific classrooms due to allegations of abuse. The court analyzed the issue as relating to employee privacy expectations in the workplace: "In making this case-by-case determination, it becomes critically important whether the area to be searched was given over to the employee's exclusive use or whether the area was shared by others." Id. at 756-57. In Evens, the court observed that the teacher's expectation that her communications would be confined only to the classroom was unreasonable because students usually discuss a teacher's communications and activities with others. 77 Cal.App.4th at 325.

The variation among the facts of all of these cases clearly demonstrates why there is a need to thoroughly evaluate the specific circumstances of this case in light of relevant principles of case law and societal interest. To that end, the Defendant's Motion sets forth some facts upon which it indicates the Court may decide the Motion. {6} Those facts are useful to better understand the circumstances, including that: it was "the usual practice in [the Defendant's] classroom ... for the door to be open, and her desk to always be approachable;" and that the Defendant had no office space but worked from her desk in the classroom. {7} Defendant's Motion, at 2-3.

This reveals that the Defendant's designated workspace was within the room, and so it is a mischaracterization to describe the space merely as "a classroom" and nothing more. The Defendant's desk and the surrounding area was where students could, and should, expect to have discussions with her, and so that area was functionally distinguishable from the general classroom space.

In Plock, the Illinois federal court recognized that a classroom "may also contain a teacher's personal office space" and that "[p]ortions of that office space such as a teacher's desk and locked file cabinets could conceivably be reserved for the teacher's exclusive use, giving rise to an expectation of privacy which society is willing to recognize as reasonable." 545 F.Supp.2d at 757. Although Plock may be used only for its persuasive value, and it referred to a teacher's potential privacy interest, it still acknowledged that there can be a distinct space in which privacy expectations may differ from a larger space in which it is located. This approach better considers the totality of the circumstances here in a way that deeming the entire space as only "a classroom" simply does not.

Here, M.M. chose to speak with the Defendant in that functionally distinct area. He did not approach her in the middle of the classroom, in the doorway, or in the hallway, and the Defendant was not teaching a class or otherwise giving instruction at the time. M.M. deliberately went to where teacher-student discussion was expected to occur, and he did so while no class was in session, and no other people were present. In effect, and in the absence of any other such space, M.M. met with the Defendant in what was the functional equivalent of an office. {8}

{6} Defendant's Motion, at 1. According to the footnote, "The Defense does not admit or concede any of these facts and they are set forth herein only for the purpose of this Motion and based on the legal framework that requires the Court to accept these facts as true in deciding this motion."

{7} The Motion also asserts that the school's published policies confirm that students have no expectation of privacy in the classroom with respect to audio/video recording. Defendant's Motion, at 2. However, this is a legal conclusion.

{8} Defendant's counsel opined at the hearing on the Motion that M.M. should have met with the Defendant in another location, such as the principal's office, if he truly wanted a private conversation. However, not only is this a commentary on M.M.'s subjective expectations, but to require students to go somewhere else to meet with a teacher would contradict the purported "approachability" encouraged by the Defendant working from the desk inside the classroom. Furthermore, even assuming it would be feasible for the principal's office to be available to the entire student body for conversations with teachers, the suggestion detracts from Defendant's own arguments as to property interest and ability to exclude others. M.M. arguably would have less of both in the workspace of a third party than he did in his classroom.

Society certainly would be willing to recognize that some expectation of privacy does exist in such an area. If this were not so, then taken to its logical end, students wishing to disclose medical conditions, personal needs, abuse or bullying to their teacher might as well do so in the outside parking lot, and parent-teacher conferences to discuss a child's challenges and needs might as well occur in the middle of the hallway. The absurdity of these suggestions demonstrates that there must be an objective difference between privacy expectations in those scenarios and the facts of this case.

Accordingly, here, the facts include that: the Defendant had no separate office space; she worked from her desk inside the classroom; M.M. specifically approached the Defendant at the desk where teacher-student meetings were expected to occur; he did so when no class was in session, when no other individuals were in the room, and while no one could see him from the hallway. Therefore, this Court finds that M.M. had both a subjective and an objective expectation of privacy in his conversation under those circumstances, and so the conversation qualifies as an "oral communication" under the Act. {9}

Defendant's counsel has argued that such a finding would be against public policy because it could, for example, impede a school's ability to install recording equipment in classrooms. However, as discussed, because the specific facts are an indispensable part of the analysis, the finding here is based only upon the facts of this particular case. Therefore, it cannot, and should not, be read as pertaining to all classrooms at large and in general.

There is evidence that M.M. engaged in a communication; that he possessed an expectation that it would not be intercepted; that the expectation was justifiable under the circumstances; and that the Defendant did intercept the communication. Therefore, this is sufficient for a prima facie case of interception under the Act. In addition, since the conversation qualifies as an oral communication, and the recording was obtained by Trooper Sigwalt from the juvenile male student's phone after he allegedly received it as a text from the Defendant's mobile phone, there is evidence to establish a prima facie case with respect to the remaining charges.

{9} Agnew of course remains binding precedent, but Justice Wecht repeatedly has pointed out the difficulties with applying Agnew in a Wiretap Act context. See, e.g., Commonwealth v. Mason, 247 A.3d 1070, 1089 (Pa. 2021) (Wecht, J., dissenting) ("The Court disregarded the plain language of the Wiretap Act and applied inapposite Fourth Amendment concepts because it believed, incorrectly, that anyone who lacks a generalized expectation of privacy ... necessarily should assume that their conversation is being recorded. But ... many situations could arise in which an individual possesses one expectation but not the other.") (footnotes omitted); Pennsylvania State Police v. Grove, 161 A.3d 877, 905 (Pa. 2017) (Wecht, J., concurring) ("To conclude, as this Court has, that the mere possibility of being overheard by a third party effectively places an individual on notice that his or her words are subject to interception and recordation defies a common-sense reading of the statute and unduly restricts the scope of the interest that the Wiretap Act was meant to protect.") This case is an example of the dissonance that can arise when attempting to apply a Fourth Amendment privacy expectation analysis in a case in which no such violation is even alleged, and the language of the Wiretap Act seems to suggest another approach.

ORDER

AND NOW, this 23rd day of May, 2024 in consideration of Defendant's Motion/ Petition for Writ of Habeas Corpus, and after a hearing on the matter, it is hereby ORDERED and DIRECTED that Defendant's Motion is DENIED for the reasons set forth in the accompanying Opinion.

The Commonwealth shall list this case for trial.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

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