

IN THE DISTRICT COURT OF TETON COUNTY
NINTH JUDICIAL DISTRICT

THE STATE OF WYOMING

Plaintiff,

vs.

CASEY WILLIAM HARDISON,

Defendant.

Criminal Action No. 2703

**DEFENDANT’S MOTION IN LIMINE
TO EXCLUDE AUDIO RECORDING OF JUNE 12TH, 2017**

Defendant, Casey Hardison, by and through Bailey Lazzari and Elisabeth Trefonas of the Wyoming Public Defenders’ Office respectfully moves the Court for an Order prohibiting the presentation at trial of the body wire recording purported to be made by the body wire worn during the alleged June 12th, 2017 controlled buy. Defendant states as follows:

FACTS

Mr. Casey Hardison is currently charged with three (3) counts of *Delivery of a Controlled Substance*, in violation of W.S. § 35-7-1031(a)(ii) and two (2) counts of *Aggravated Assault and Battery*, in violation of W.S. §6-2-502(a)(ii). This Motion specifically relates to Count 1 of the Information alleging Mr. Hardison delivered one pound of marijuana on or about June 2017. Reports provided to the Defense allege on June 12th, 2017 a controlled buy occurred between Mr. Hardison and a Confidential Information (“CI”). Chad Sachse, of the Teton County Sheriff’s Office, reported on June 14th, 2017 the CI was fitted with a wire to record the contact between the CI and the Defendant the day of the controlled buy. Then, **seventy-three (73) days** after the alleged

buy, Chad Sachse wrote a report on August 23rd, 2017 that the Evidence Tech, Kimmi Kussy, notified him that day the body wire recording had not been entered into evidence. Only after Mr. Sachse was notified of this mistake, did he enter it into evidence (seventy-three days after the audio recording is said to have occurred). Defendant and his legal team have not been provided with any information as to where the audio recording was for seventy three days or who was in custody and control of this recording, and/or whether the recording had been altered in any way during that time.

ARGUMENT

It is well known that Rule 901 of the Wyoming rules of Evidence requires authentication or identification for the admissibility of evidence. In other words, the proponent looking to admit the evidence must present evidence sufficient to support a finding that the evidence is in fact what the proponent claims it to be. *See Id.* Inadmissibility of a sound recording generally occurs because of serious questions of accuracy or reliability. *See Edwards v. State*, 577 P.2d 1380, 1385 (Wyo. 1978) (citing “Admissibility in Evidence of Sound Recording as Affected by Hearsay and Best Evidence Rules,” 58 A.L.R.3d 598.) Proper foundation cannot be laid for the audio recording purported to be recorded on June 12th, 2017 because the chain of custody in this instance is irreparably broken. In other words, serious questions of accuracy and reliability arise when a recording is missing from evidence for seventy-three days as the one in question here was. Wyoming case law is lacking as it specifically relates to chain of custody issues surrounding audio recording evidence. However, our Courts have pondered this issue explicitly for physical evidence in trials regarding controlled substances. As it relates to seized controlled substances being offered as evidence in trial, “Proper foundation for the admission into evidence of controlled substances

requires that a chain of custody be established” *Rosenbaum v. State of Wyoming*, 915 P.2d 1200, 1202 (Wyo. 1996) (quoting *Ostrowski v. State*, 665 P.2d 471, 490 (Wyo.1983).) The purpose for this is to show that the physical evidence being offered is in substantially the same condition as it was when the crime was committed. *See Id.*

Without a proper chain of custody, it is difficult to determine the recording is in the same condition as when it was originally recorded. One cannot be certain whether any notable alterations, deletions, or additions, occurred, which would make this evidence inadmissible due to reliability concerns. The State will most likely argue that proper foundation can be laid through testimony by an officer or confidential informant who was present during the alleged buy on June 12th, 2017. However, this buy is said to have occurred over *three years ago*. Although a witness may be able to testify that the content in the recording is generally what occurred, one cannot expect a person to remember specific details concerning this incident which is crucial in this instance to determine if anything has been added or subtracted from the recording while it lay outside of the chain of custody for an inexcusable seventy-three days.

REMEDY

The State of Wyoming will not be able to satisfy the evidentiary requirements of Rule 901 of the Wyoming Rules of Evidence for the audio recording purported to be made on June 12th, 2017 due to the broken chain of custody that has occurred here. It took seventy-three days for this recording to be entered into evidence, which created a myriad of reliability and authenticity issues as mentioned above. Due to these authenticity and reliability issues, the Defendant respectfully requests the Court prohibit the admission of the audio recording said to have been made on June 12th, 2017 at trial in this matter.

WHEREFORE, Defendant respectfully requests that the Court prohibit the admission of the June 12th, 2017 audio recording and grant any further relief that the Court deems just and proper.

DATED the 12th day of November, 2020.

Bailey Bennett Lazzari 7-5915
Co-Counsel for Defendant
with Elisabeth Trefonas 6-4168
Wyoming Office of the State Public Defender
P.O. Box 4200
Jackson, WY 83001

CERTIFICATE OF SERVICE

Counsel hereby certifies that on November 12, 2020 she electronically served a true and correct copy of the foregoing *Motion in Limine to Suppress Evidence* to the following:

Teton County Prosecuting Attorney's Office
180 South King Street
P.O. Box 4068
Jackson, WY 83001

Bailey Bennett Lazzari 7-5915

Defendant's Motion in Limine
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