

IN THE CIRCUIT COURT OF THE FOURTH
JUDICIAL CIRCUIT, IN AND FOR DUVAL
COUNTY, FLORIDA.

CASE NO.: 16-2013-CF-005781-AXXX-MA

DIVISION: CR-D

STATE OF FLORIDA

VS.

DONALD SMITH

MOTION TO SUPPRESS STATEMENTS

Defendant, Donald Smith, by and through the undersigned attorney, pursuant to Rule 3.190(h), Florida Rules of Criminal Procedure, respectfully moves this Honorable Court to suppress all statements obtained from the defendant during a warrant-less recording of his conversations in his jail cell between June 23, 2015 and June 26, 2015.

As grounds for this motion, the undersigned counsel states that the evidence mentioned above was illegally obtained in violation of the defendant's rights guaranteed by the Fourth, Fifth, and Sixth and Fourteenth Amendments to the United States Constitution.

Defendant further states that he has standing to contest the legality of said seizure.

THE FACTS

A general statement of the facts upon which this motion

is based are alleged as follows:

1. Donald Smith, the defendant herein, was arrested for Sexual Battery, Kidnapping and Murder in 2013.
2. The State of Florida is seeking the Death Penalty in Mr. Smith's case.
3. At some time after his arrest, Mr. Smith was placed in an isolation cell on the 6th floor of the Duval County Pre-Trial Detention Center.
4. In another isolation cell next to Mr. Smith was inmate Randall Deviney, also facing the Death Penalty for an unrelated murder.
5. For many years in Duval County it has been the policy of The State Attorney's Office to reward inmates who provide information in other inmates cases. This policy is well known amongst the inmates at the duval county pre-trial detention facility and the use of "jailhouse informants" has become the common practice in just about every homicide case.
6. In the later months of 2014 the attorneys representing Randall Deviney (the Public Defender's Office) approached the State Attorney's Office indicating that defendant Randall Deviney had spoken to Defendant Smith about the facts of Smith's case and informed the State Attorney's Office of Mr. Deviney's willingness to cooperate against Mr. Smith.
7. Soon thereafter the office of the Public Defender filed notifications of conflicts in both the Deviney case and the Smith case, and after several months of litigation, private attorney's were appointed to represent the two defendants.

8. Despite the State Attorney's Office assertions to the Court that the alleged conflict of interest was based on a scheme devised by defendants Smith and Deviney (the resulting removal of the Public Defender's Office has resulted in multiple delays in the trials of both defendants), the State Attorney's Office chose to leave defendants Smith and Deviney in the same, connected isolation cells even though there are at least 18 other isolation cells at the pre-trial detention facility.
9. Subsequent to the conversations between Deviney and Smith that led to the conflict issue, the attorney appointed to represent defendant Deviney approached assistant state attorney Bernie de la Rionda and proffered alleged statements made by Smith to Deviney.
10. The State chose not to list Deviney as a witness in the Smith case but entertained the factual proffer, and took no steps to inform defendant Deviney to have no more contact with Smith.
11. Knowing that defendant Deviney was still attempting to solicit statements from defendant Smith in an effort to cooperate with the State, on or about June 23, 2015 an investigator working with the State Attorney's Office and an Officer with the Jacksonville Sheriff's Office placed a recording device in the "chase" area between the two isolation cells occupied by defendants Smith and Deviney.
12. Prior to installing the recording device neither the State Attorney's Office or the Jacksonville Sheriff's Office requested or obtained a warrant to record the sounds that would come from Mr.

Smith's isolation cell.

13. The recording device was left running for approximately 74 and a half hours.
14. The recording device captured the sounds from Mr. Smith's cell, including the times he took a shower and used the bathroom.
15. The recording device also captured what purports to be a conversation initiated by defendant Randall Deviney. The conversation, initiated by Randall Deviney, although hard to understand, purports to contain inculpatory statements which the State of Florida is seeking to use at the guilt and penalty phase of Mr. Smith's trial.

**AS AN AGENT OF THE STATE, DEFENDANT RANDALL DEVINEY
WAS REQUIRED TO ADVISE DEFENDANT SMITH OF HIS
MIRANDA WARNINGS PRIOR TO INITIATING A CONVERSATION
WITH HIM BETWEEN JUNE 23, 2015 AND JUNE 26, 2015.
AS A RESULT, ANY STATEMENTS MADE BY DEFENDANT SMITH
ARE DUE TO BE SUPPRESSED**

Defendant Donald Smith signed an *Edwards* Notice the morning after his arrest. Any further questioning of him, by detectives or other agents of the state, was prohibited. In the present case, Defendant Randall Deviney was an agent of the state. Defendant Deviney repeatedly proffered testimony against Mr. Smith through his attorney. The state, even after alleging that defendant Deviney and Smith were conspiring to "create a conflict" and defraud the Court, chose to leave the two defendants in adjacent cells, knowing that Deviney would continue to attempt to solicit

incriminating information from defendant Smith. Finally, the State took no steps to prevent Mr. Deviney from continuing to attempt to solicit incriminating statements from defendant Smith. This continued questioning by defendant Randall Deviney was done in violation of the proscription set forth in Edwards v. Arizona, 451 U.S. 477, 484-485 (1981) (but if a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation.).

As a result, the statements made by defendant Smith during this interrogation were obtained in violation of the Defendant's rights guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Therefore, any and all statements obtained by Randall Deviney and the recording device during the questioning of Mr. Smith after he requested and was appointed an attorney must be suppressed. Miranda v. Arizona, 384 U.S. 436 (1966); Almeida v. State, 737 So.2d 520,522 (Fla. 1999). Edwards v. Arizona, 451 U.S. 477 (1981); Wong Sun v. U.S., 371 U.S. 471 (1963).

**THE 74 HOUR RECORDING OF DEFENDANT SMITH'S
ACTIVITIES IN HIS ISOLATION CELL VIOLATED HIS RIGHT
TO PRIVACY AND WAS AN UNREASONABLE SEARCH AND
SEIZURE AND IS DUE TO BE SUPPRESSED.**

While it is generally recognized that "prisoners do not have a reasonable expectation of privacy in their prison cells entitling them to the protection of the fourth amendment" *Hudson v. Palmer*, 468 U.S. 517 (1984), the actions of the Jacksonville Sheriff's Office violated Mr. Smith's fourth amendment rights. The holding in the *Hudson* case is limited to prison cell searches and "shakedowns" for weapons and other illegal contraband" having an impact on the prison's internal security and safety. In the present case, a recording device was positioned in the "chase" area of Mr. Smith's isolation cell and left to record for just over three days, capturing Mr. Smith's private moments in his shower and even during his use of the toilet. This level of intrusion into an inmates most private of moments is so intrusive that it must be characterized as an unreasonable search and seizure, prohibited by the fourth and Fourteenth Amendments to the United States Constitution. As such, the recording, in its entirety, is due to be suppressed.

WHEREFORE, Defendant respectfully requests this Court to suppress the above mentioned evidence.

I HEREBY CERTIFY that a copy of the above and foregoing Motion to Suppress Statements has been furnished to the Office of the State Attorney, by hand, this 8th

day of March 2016.

RESPECTFULLY SUBMITTED this 8th day of March 2016.

**Law Offices of W. Charles
Fletcher, P.A.**

A handwritten signature in black ink, appearing to read 'W. Charles Fletcher', is written over a horizontal line.

W. Charles Fletcher

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