2017 WL 4621829 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida.
Eleventh Judicial Circuit
Miami-Dade County

STATE of Florida, Plaintiff,
v.
Renell JONES, Defendant.

No. F14-21152B.
September 20, 2017.

Order Denying Renell Jones' Motion to Suppress

Miguel M. de la O, Judge.

***1 THIS CAUSE** came before the Court on Defendant, Renell Jones' ("Jones") Motion to Suppress Evidence ("Motion"). Jones moves this Court to suppress "any and all statements made, and all other evidence obtained, including videotaped recordings." Jones argues that police violated his Fourth, Fifth, and Sixth Amendment rights. The grounds for the Motion evolved as the Hearing progressed. [1] At the conclusion of the Hearing, Jones' counsel provided a short summary of the claims upon which he was proceeding as a basis for suppressing his statements and other evidence obtained by law enforcement. [2]

Jones argues that police violated his Fourth Amendment rights because (1) the Washington County arrest warrant was based on false testimony about his residence and, therefore, his detention was unlawful; (2) police unlawful delayed serving Jones with the Washington County arrest warrant and, therefore, his detention was unlawful; and (3) the Miami detectives violated the Maryland wiretap statute and, therefore, the video recording of Jones' interview should not be shown to the jury. [3] Jones asserts police violated his Fifth Amendment rights because (1) Jones did not voluntarily agree to waive his Fifth Amendment rights; (2) police undermined the *Miranda* warnings, and (3) police did not honor Jones' invocation of his right to remain silent. Lastly, Jones claims police violated his Sixth Amendment rights when they did not honor Jones' invocation of his right to counsel.

The Court has reviewed the Motion, held a three day evidentiary hearing on August 28, 29 and 30, 2017 ("Hearing"), heard argument of counsel, reviewed cases cited by the parties, listened to the video recording of Jones' interrogation, and is fully advised in the premises. The Motion is denied in all respects.

I. BACKGROUND AND TESTIMONY.

The State has charged Jones, and his (now severed) co-Defendant, Alexander Pen#a, with First Degree Murder, Armed Burglary with an Assault or Battery therein, Armed Robbery with a Deadly Weapon, and Conspiracy to Commit Armed Robbery. Jones has moved to suppress "any and all statements made, and all other evidence obtained, including videotaped recordings" made to the law enforcement officers. At the Hearing, Detectives Jorge Garcia, Jonathan Grossman, and George Hatzsis, in addition to former detective Adam Hart, testified. The State and Jones also introduced various exhibits, including a copy of a Waiver of Rights form signed by Jones and the video recordings of Jones' interview by Dets. Grossman and Hatzsis (the "Miami detectives").

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***2** Maryland police arrested Jones on December 12, 2014, at approximately 4:30 pm, in Fredrick County, Maryland on an arrest warrant out of Washington County ("Washington County arrest warrant"). They then transported Jones to the Fredrick police station. These same officers allowed Dets. Grossman and Hatzsis to speak Jones while he was in custody. Jones agreed to speak to the Miami detectives. The interview was video recorded and introduced into evidence at the Hearing.

Much of the witnesses' testimony concerned statements which are contained in the video recording of Jones' statement. The Court has relied on the recording itself to determine what was said by whom on December 12, 2014. [4] The following two statements are particularly relevant to the determination of the Motion:

17:43:26: "I mean to protect anything that I might get myself involved in at this point right here. Don't you think, don't you think I should talk to somebody, I mean." ("First Statement").

17:49:59: "I, I think, I don't know, I'm not going home anyway, I need to get a attorney then. If you telling me somebody, I think I need to get an attorney. I don't know, I don't know, I don't wanna say nothing to, to, to fuck myself." ("Second Statement").

II. CONFLICT OF LAW.

This Court inquired during the Hearing whether it should apply Maryland or Florida law in ruling on the Motion, assuming a material divergence between the jurisdictions on the applicable legal principles. Jones asserted that the Court must apply the law of the jurisdiction which results in a more favorable outcome to Jones. The Court expressed skepticism at this novel "head I win, tails you lose" approach to constitutional law. However, being admittedly unfamiliar with conflict of law jurisprudence in the criminal law context, it promised to keep an open mind and looked forward to Jones' counsel providing precedent in support of it assertion. To date, Jones has provided no case law to support its claim. [5]

On the other hand, the State relies on *Tarawneh v. State*, 562 So. 2d 770 (Fla. 4th DCA 1990). There, the court concluded that evidence obtained pursuant to a warrant from Michigan based on a "deceptive and exaggerated affidavit" was admissible in Florida because "even if the warrant were subject to attack in Michigan, exclusion of this evidence in Florida would have no deterrent or remedial effect in either state." *Id.* at 772.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

A. THE LEGALITY OF JONES' DETENTION IN MARYLAND.

Jones was detained on December 12, 2014 pursuant to the Washington County arrest warrant. Although Jones was detained at approximately 4:30 p.m., the arrest warrant was not served upon him until approximately 1:30 a.m. on December 13, 2014. The Washington County arrest warrant was issued by a Maryland Commissioner. It ordered Maryland officers to arrest Jones and bring him before a judicial officer "as soon as practicable and without unnecessary delay."

1. JONES RESIDENCE AND THE WASHINGTON COUNTY WARRANT.

***3** Much of Jones' focus during the Hearing was on whether Jones lived at 609 North Market Street and whether Maryland police were aware of this alleged fact. To be clear, however, there was no evidence introduced during the Hearing that 609 North Market Street was Jones' residence in fact. Jones may very well have lived there. There is record evidence that he used this address on his driver's license, gave this address to police when arrested a few days earlier, and

was arrested coming out of this location on December 12, 2014. But there was no evidence introduced at the Hearing that Jones actually resided there and, if so, when. [6]

In contrast, there was testimony introduced that police had information indicating Jones was transient between various locations. He was either arrested or being investigated in multiple locations on the East Coast. Therefore, Jones' claim that police affirmative misled the Maryland Commissioner when they applied for the Washington County arrest warrant on December 10, 2014 is not supported by the evidence presented to this Court.

Likewise, Jones' assertion that Det. Hart played fast and loose when he obtained an arrest warrant on December 10, 2014 averring that Jones had "no fixed address" and "is transient in nature," and then obtaining a search warrant for 609 North Market Street on December 12, 2014, is superficially appealing. It ignores, however, the fast moving pace of a real-time investigation. What is true or known one day, can rapidly change as an investigation progresses and new facts are uncovered. [7] Det. Hart explained that after the Washington County arrest warrant was secured he was able to determine that Jones was observed at the 609 North Market Street location, which then provided the basis for securing a search warrant for that residence.

Nor is Jones' actual residence all that relevant, frankly. The question for this Court to determine is what the officer who secured the warrants at issue reasonably believed. Det. Hart testified without contradiction that he directed or participated in surveillance of 609 North Market Street on seven occasions for 2 to 12 hours at a time. Det. Hart was in fact trying to establish exactly where Jones resided so he could seek a search warrant for his residence. In fact, even when Maryland detectives found Jones at a Burlington Coat Factory the day before his arrest, they did not apprehend Jones because they wanted to follow him to establish probable cause for a search warrant of his residence. [8]

***4** After listening to, and observing, the testimony of the witnesses, in particular former Det. Hart, [9] and viewing the photographs of the location at 609 and 611 North Market Street, the Court finds that (1) it was both subjectively and objectively reasonable for Det. Hart to conclude that 609 North Market Street is a business address given its juxtaposition to the window of the market; and (2) it was both subjectively and objectively reasonable for Hart to conclude that it did not appear that Jones resided at 609 North Market Street even if that was a residential address.

Moreover,

a Fourth Amendment violation is not synonymous with the application of the exclusionary rule. *See Arizona v. Evans*, 514 U.S. 1, 12 (1995). As the Court there stated: "[T]he issue of exclusion is separate from whether the Fourth Amendment has been violated, and exclusion is appropriate only if the remedial objectives of the rule are thought most efficaciously served." *Id.* at 13-14 (citations omitted).

Voorhees v. State, 699 So. 2d 602, 610 (Fla. 1997). In *United States v. Leon*, 468 U.S. 897 (1984), the Court explained that the purpose of the exclusionary rule is to deter violations of the Fourth Amendment, "not as a technical device for the benefit of defendants." *Johnson v. State*, 660 So. 2d 648, 658 (Fla. 1995).

Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system. *Stone v. Powell*, [428 U.S. 465 (1976)]. Indiscriminate application of the exclusionary rule, therefore, may well "generat[e] disrespect for the law and administration of justice." *Id*, at 491. Accordingly, "[a]s with any remedial device, the application of the rule has been restricted to those areas where its remedial objects are thought most efficaciously served." *United States v. Calandra*, [414 U.S. 338 (1974)].

U.S. v. Leon, 468 U.S. at 907-08.

Here, the Miami detectives provided Jones with the proper *Miranda* warnings, were unaware of any defect in the Washington County arrest warrant or any possible noncompliance with Maryland law. Exclusion of Jones' statement would not further the remedial objectives of the exclusionary rule.

In summary, to this day this Court has received no evidence upon which it can conclude that Jones actually resided at 609 North Market Street on December 10, 2014 when Det. Hart secured the Washington County arrest warrant, or that Det. Hart knew that Jones lived there but misled the Maryland Commissioner in order to obtain the arrest warrant, or that the Miami detectives had any reason to know there was any possible defect related to the Washington County arrest warrant. The evidence adduced at the Hearing simply does not support the narrative Jones proffers. Consequently, the Court finds that Jones was lawfully in custody on December 12, 2014 when the Miami detectives interviewed him.

2. DELAY IN DETENTION.

***5** Jones argues that his detention was unlawful because he was not taken before the Commissioner after arrest "as soon as practicable and without unnecessary delay." His argument is grounded in the language of Maryland Rule 4-212. Jones cites no cases in support of his view that if police in Maryland do not take an arrestee without any delay to a Commissioner then courts must *automatically* suppress any voluntary statement made by the person. Indeed, Jones provided this Court cases which hold the opposite.

> We hold that any deliberate and unnecessary delay in presenting an accused before a District Court Commissioner, in violation of Rule 4-212(e) or (f) must be given very heavy weight in determining whether a resulting confession is voluntary, because that violation creates its own aura of suspicion. The violation does not, of itself, make the confession involuntary or inadmissible. It remains a factor to be considered, along with any others that may be relevant, but it must be given very heavy weight.

Williams v. State, 825 A.2d 1078, 1095 (Md. 2003). [10]

Consequently, this Court evaluates any delay in presenting Jones to the Commissioner upon his arrest pursuant to the Washington County arrest warrant as one factor in determining the voluntariness of his statement to the Miami detectives. For the reasons set forth *infra*, the Court concludes that the delay did not undermine the voluntariness of Jones' statement.

B. FIFTH AMENDMENT RIGHT TO REMAIN SILENT.

Jones argues the First and Second Statements were an invocation of his right to remain silent, and the Miami detectives violated his Fifth Amendment rights when they continued to question him about the Miami murder.

Both the Florida and United States Constitutions provide a right against self-incrimination. "To safeguard the privilege against self-incrimination, a person questioned while in custody must be clearly informed as to his or her rights, including the 'right to remain silent' and that 'any statement he does make may be used as evidence against him.' A defendant may waive these rights, but the waiver must be made voluntarily, knowingly, and intelligently." *Miles v. State*, 60 So. 3d 447, 451 (Fla. 1st DCA 2011) (citations omitted).
The State bears the burden of proving by a preponderance of the evidence that a confession is voluntary and thus admissible. *See Jorgenson v. State*, 714 So. 2d 423, 426 (Fla. 1998). "[A] determination of the issues of both the voluntariness of a confession and a knowing and intelligent waiver *of Miranda* rights requires an examination of the totality of the circumstances." *Lukehart v. State*, 776 So. 2d 906, 917 (Fla. 2000).

***6** *Davis v. State*, 859 So. 2d 465, 482 (Fla. 2003).

1. VOLUNTARY WAIVER.

Jones' central argument as to the involuntariness of his waiver of his right against self-incrimination is that the Miami detectives did not read the *Miranda* warnings to him, but rather had him read the warnings to himself out loud. Jones has cited no authority for the notion that having a suspect read the warnings for himself violates *Miranda.*
We have found no case where a statement was suppressed where a valid written waiver form had been executed by the defendant. The contrary is the rule. *See* *United States v. Sledge*, 546 F.2d 1120 (4th Cir. 1977); *United States v. Coleman*, 524 F.2d 593, 594 (10th Cir. 1975) (stating that "information of rights by written form has been upheld in many Circuits."); *N. Carolina v. Strobel*, 164 N.C. App. 310, 596 S.E.2d 249, 253 (2004) ("[I]t is not essential that the warnings required by *Miranda* be given in oral rather than written form. Thus, the mere fact that Sergeant King did not read *the Miranda* warnings to defendant, standing alone, does not render defendant's waiver ineffective.").

State v. Roman, 983 So. 2d 731, 737 (Fla. 3d DCA 2008)

Jones is a college graduate and initialed that he understood each of his rights on a *Miranda* waiver form. *See* *Thomas v. State*, 894 So. 2d 126, 136 (Fla. 2004) ("He also signed a written waiver asserting his understanding. Although a written statement is neither necessary nor by itself sufficient to establish waiver, it is strong proof that a waiver is valid. *See* *North Carolina v. Butler*, 441 U.S. 369, 373 (1979).") *See also* *United States v. Johnson, 426 F.2d 1112, 1115 (7th Cir. 1970)*("Having signed the written waiver form, without evidence to the contrary, [the defendant] cannot now contend that he did not understand his rights.").

Additionally, there was no testimony introduced at the Hearing to call into question Jones' understanding of his rights, his ability to understand what he read, or - most fundamentally - the voluntariness with which he answered the Miami detectives' questions. It is obvious from the manner in which Jones expresses himself throughout the interview that he is educated, of above-average intelligence, and has no difficulty comprehending the terms used in the *Miranda* waiver form.

Jones also claims the officers lied to him by inferring they had the power to arrest him for the Miami murder. In response to Jones saying he just wanted to go home, the Miami detectives told him he would not be "going home today." The Miami detectives insist they made this statement because Jones had been arrested pursuant to the Washington County arrest warrant and therefore he was going to be transported to jail.

The Miami detectives answered Jones truthfully, revealing as little as necessary without lying to Jones. Jones did not ask if he was under arrest for the Miami murder. Perhaps that is what Jones was asking, perhaps not. The Miami detectives were not obligated to advise Jones that they did not have a warrant for his arrest on the Miami murders. The critical fact is that the Miami detectives answered the question literally, without unnecessary detail, and truthfully. The Constitution does not require more.

2. UNDERMINING *MIRANDA*.

***7** Jones asserts that even if *Miranda* was properly administered to him, the Miami detectives subsequently undermined the *Miranda* warnings because they told him that this was his only opportunity to speak to them. The Court finds that the Miami detectives did not say or imply Jones would never be able to speak to them in the future. Rather, they made the point that if he later decided to speak to them, the credibility of his story at that time would be called into question because the jury might wonder why he did not tell the story initially, and it might appear his story was coached. For

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all the reasons set forth in this Order, these statements by the Miami detectives did not undermine the voluntariness of Jones' statement.

3. INVOCATION OF RIGHT TO REMAIN SILENT MUST BE UNEQUIVOCAL AND UNAMBIGUOUS.

"It is settled that once an individual is given *Miranda* warnings, and that person indicates in any manner prior to or during questioning that he wishes to remain silent, the interrogation must cease." *State v. Brown*, 592 So. 2d 308, 309 (Fla. 3d DCA 1991) (citing *Miranda v. Arizona*, 384 U.S. 436, 473-74 (1966). It is also well-settled that the invocation of the right to remain silent must be unambiguous and unequivocal.

> In Florida, law-enforcement officers have no duty to terminate questioning, or to limit themselves only to asking clarifying questions, when a suspect makes an equivocal invocation of a *Miranda* right. *See Owen v. State*, 862 So. 2d 687, 697 (Fla. 2003). Therefore, merely equivocal and ambiguous invocations of the right to remain silent require neither a cessation of the interview nor the resolution of the ambiguity.

Alvarez v. State, 890 So. 2d 389, 394 (Fla. 1st DCA 2004). *See, e.g., Cuervo v. State*, 967 So. 2d 155, 164 (Fla. 2007) (defendant clearly, unequivocally, and unambiguously asserted his right to remain silent when he told officers "I don't want to declare anything").

After a defendant waives his or her right to remain silent, subsequent equivocal or ambiguous requests to terminate an interrogation do not require police to cut off all questioning.
To require the police to clarify whether an equivocal statement is an assertion of one's Miranda rights places too great an impediment upon society's interest in thwarting crime. As noted in *Traylor:* "We adhere to the principle that the state's authority to obtain freely given confessions is not an evil, but an unqualified good." 596 So. 2d at 965. Thus, we hold that police in Florida need not ask clarifying questions if a defendant who has received proper Miranda warnings makes only an equivocal or ambiguous request to terminate an interrogation after having validly waived his or her Miranda rights.

State v. Owen, 696 So. 2d 715, 719 (Fla. 1997). *See, e.g., Owen v. State*, 862 So. 2d 687, 696-98 (Fla. 2003) ("I don't want to talk about it" and "I'd rather not talk about it" are not unequivocal invocations of right to silence); *Ford v. State*, 801 So. 2d 318, 319-20 (Fla. 1st DCA 2001) ("Just take me to jail" is not unequivocal invocation of right to silence) (Fla.), *cert. denied*, 537 U.S. 1010 (2002); *Sotolongo v. State*, 787 So. 2d 915 (Fla. 3d DCA 2001) (act of tearing up waiver form is not unequivocal invocation of right to silence).

In determining whether Jones unequivocally and unambiguously invoked his right to remain silent, certain principles are important.

First, the proper focus is on Jones' whole statement, not just on individual words, phrases, or sentences unmoored from their context. *See Joe v. State*, 66 So. 3d 423, 426 (Fla. 4th DCA 2011) ("Contrary to Joe's characterization that this was an unequivocal or at least equivocal invocation of his right to silence - a characterization that focuses on only one sentence - the whole statement amounts to an unequivocal expression of Joe's willingness to talk.").

***8** Second, the test of whether invocation was ambiguous or equivocal is an objective one; "that is, a suspect must articulate the desire to cut off questioning with sufficient clarity that a reasonable police officer in the circumstances would understand the statement to be an assertion of the right to remain silent." *Alvarez v. State*, 890 So. 2d 389, 394 (Fla. 1st DCA 2004); *see Alvarez v. State*, 15 So. 3d 738, 743 (Fla. 4th DCA 2009) ("A revocation of a waiver of the right to remain silent is unambiguous if a reasonable police officer under the circumstances would understand that the suspect is invoking the right.").

Applying these principles to the statements at issue leads to the obvious conclusion that Jones did not unambiguously invoke his right to remain silent, and no reasonable officer would have understood his statements as doing so. In the First Statement, Jones ruminates that *maybe* he should talk to "someone" before he speaks, but he does not actually say he wants to talk to "someone" first. In the Second Statement, Jones does not say he wants to remain silent. Rather, he is worried that what he says will hurt him ("I don't wanna say nothing to, to, to fuck myself."). Neither statement, separately or jointly, constituted the unequivocal, unambiguous invocation of the right to remain silent necessary to justify this Court excluding Jones' statement.

C. SIXTH AMENDMENT RIGHT TO COUNSEL.

Jones also relies on the First and Second Statements to assert that the Miami detectives violated his rights under the Sixth Amendment when they continued questioning him after he invoked his right to counsel. The law regarding invocation of the right to counsel is identical to invoking the right to remain silent - invocation must be unambiguous and unequivocal. We decline petitioner's invitation to … require law enforcement officers to cease questioning immediately upon the making of an ambiguous or equivocal reference to an attorney.... [T]he police must respect a suspect's wishes regarding his right to have an attorney present during custodial interrogation. But when the officers conducting the questioning reasonably do not know whether or not the suspect wants a lawyer, a rule requiring the immediate cessation of questioning "would transform the Miranda safeguards into wholly irrational obstacles to legitimate police investigative activity," *Michigan v. Mosley*, 423 U.S. 96, 102 (1975), because it would needlessly prevent the police from questioning a suspect in the absence of counsel even if the suspect did not wish to have a lawyer present.... In *Miranda* itself, we expressly rejected the suggestion "that each police station must have a 'station house lawyer' present at all times to advise prisoners," 384 U.S. at 474, and held instead that a suspect must be told of his right to have an attorney present and that he may not be questioned after invoking his right to counsel. We also noted that if a suspect is "indecisive in his request for counsel," the officers need not always cease questioning.

Davis v. United States, 512 U.S. 452, 459-60 (1994) (citations omitted).

Courts consistently hold that aspirational references to hiring counsel are not the unequivocal, unambiguous invocation of the right to counsel which requires police officers to cease all questioning. *See Davis v. United States*, 512 U.S. 452 (1994) ("Maybe I should talk to a lawyer"—was not a request for counsel); *Long v. State*, 517 So. 2d 664, 667 (Fla. 1987) ("I think I might need an attorney" was not unequivocal request for counsel), *overruled on other grounds, State v. Owen*, 696 So. 2d 715 (Fla. 1997); *Walker v. State*, 957 So. 2d 560, 574 (Fla. 2007) ("I think I might want to talk to an attorney" is an equivocal response and officers could continue their questioning "without violating Defendant's rights."); *Spivey v. State*, 45 So. 3d 51, 54-55 (Fla. 1st DCA 2010) ("Appellant's statement that 'I mean if I am being held and I'm being charged with something I need to be on the phone calling my lawyer' was not an unequivocal request for counsel. The statement did not clearly indicate that Appellant wanted counsel present at that time or that he would not answer any further questions without counsel."); *State v. Jennings*, 647 N.W.2d 142, 153 (Wis. 2002) ("'I think maybe I need to talk to a lawyer,' was equivocal under *Davis* and therefore insufficient to invoke his right to counsel under *Edwards* and *Miranda*, the officers were not constitutionally required to stop questioning him, nor were they required to clarify his intentions regarding counsel.").

***9** Jones did not unequivocally invoke his right to counsel. Jones did not even mention a lawyer in the First Statement, he mentioned talking to "someone." Nor did he say that he in fact wanted to speak to "someone," he instead asked the Miami detectives if they agree he should speak to "someone" ("Don't you think, don't you think I should talk to somebody"). The Court finds this was not invocation of his right to counsel, it was not even a genuine question as discussed in *Almeida v. State*, 737 So. 2d 520 (Fla. 1999).

The Second Statement is classic equivocal language ("I think I need to get an attorney") which courts have repeatedly held does not require officers to cease questioning a suspect. Jones further equivocates when he repeatedly says "I don't know" both before and after making the equivocal statement "I think I need to get an attorney."

The Court also finds it significant that Jones clarified any ambiguity in the First and Second Statement later in the interview when he makes it clear he did not want to stop the interview and get an attorney because he had nothing to hide. 21:52:30: "I didn't stab nobody, I didn't stab nobody. I didn't even want to say "I want to stop" and I wanted my attorney to talk because I don't have nothing to hide. I was wrong for not right after leaving, for saying nothing about it. I-I I understand that, which makes me an accessory to it. I-I I understand that."

Finally, the Court notes that the Miami detectives were scrupulous about advising Jones that he could speak to a lawyer if he wished, that it was his decision and they could not give him advice in that regard. Immediately following the First Statement, Det. Hatzis told Jones:
17:43:35: "Listen, whatever you wanna do that's your choice."

17:44:01: "So what I'm telling you is when you ask me for my advice. I can't be you, I can't tell you [sic] exactly what to do."

Following Jones' Second Statement, Det Hatzsis said:
17:50:13: "Listen, I already explained to you a bunch of times, that's your option. You say you need, you need an attorney, just like we told you in the Miranda, you can stop at any time, you can talk to an attorney."

See State v. Glatzmayer, 789 So. 2d 297, 305 (Fla. 2001) ("the officers responded to Glatzmayer's question by telling him that the decision as to whether he should have a lawyer was not theirs to make, that it was his decision. Glatzmayer in effect was soliciting the officers' subjective opinion, and the officers told him that their opinion was beside the point, that he needed to make up his own mind. Their response was simple, reasonable, and true.... By responding frankly, the officers acted to assuage the inherently coercive atmosphere of the interrogation session and to reaffirm the validity of Glatzmayer's prior waiver.").

D. VIOLATION OF MARYLAND WIRETAP STATUTE.

Jones final argument for suppressing his statements to the Miami detectives is that the interview was recorded in violation of Maryland's wiretap statute. This argument fails for multiple reasons.

First, as previously noted, this is not basis for suppressing the statement. It is a motion in limine to prevent the jury from viewing the video recording of Jones' statement. [11]

Second, it is irrelevant if the recording was made in violation of Maryland law because the recording was lawful under Florida law and therefore admissible.

> Although the affidavit does appear to contain some inaccuracies, we need not determine whether it would pass muster under Michigan law because in Florida a warrant is not required for law enforcement officers to transmit or record a conversation under these circumstances.

***10** *Tarawneh v. State*, 562 So. 2d 770, 772 (Fla. 4th DCA 1990).

Third, the recording was not made in violation of Maryland law. The Maryland wiretap statute allows law enforcement officers who are party to a communication to record it without a warrant, *see* Md. Code § 10-402(c)(2) (2015), and the statutory definition of law enforcement encompasses the Miami detectives.

> "Investigative or law enforcement officer" means any officer of this State or a political subdivision of this State, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this subtitle, any sworn law enforcement officer of the federal government or of any other state or a political subdivision of another state, working with and under the direction of an investigative or law enforcement officer of this State or a political subdivision of this State, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses.

Md. Code, § 10-401(11) (2015).

E. CHARADE THEORY.

Jones initially suggested to this Court that the Washington County arrest warrant was a sham, its purpose being solely to secure Jones' presence in a police interrogation room so that the Miami detectives could question him regarding the Miami murder investigation. During the Hearing, as the testimony made it clear that Maryland was indeed actively investigating Jones' potential involvement in car thefts, Jones appeared to retreat from this theory. Nevertheless, the Court will address the theory in order to be thorough.

First, the Court notes that the motivation for obtaining a warrant is irrelevant. *See Scott v. United States*, 436 U.S. 128, 138 (1978) ("[subjective intent alone … does not make otherwise lawful conduct illegal or unconstitutional"). In *United States v. Robinson*, 414 U.S. 218 (1973), the Court observed that "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Id.* at 136. *See generally Whren v. United States*, 116 S. Ct. 1769 (1996). It is well-settled that the holding in *Whren* applies with equal strength to arrests.

> [I]n *Whren*, [] we noted our "unwillingness] to entertain Fourth Amendment challenges based on the actual motivations of individual officers," and held unanimously that "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." 517 U.S., at 813. That *Whren* involved a traffic stop, rather than a custodial arrest, is of no particular moment; indeed, *Whren* itself relied on *United States v. Robinson*, 414 U.S. 218 (1973), for the proposition that "a traffic-violation arrest … [will] not be rendered invalid by the fact that it was 'a mere pretext for a narcotics search.'" 517 U.S., at 812-813.

***11** *Arkansas v. Sullivan*, 121 S. Ct. 1876, 1878 (2001). Florida courts have followed and applied *Whren* in the context of an officer's motivation for an arrest.

> We know that in the context of "pretextual stop" cases, "the subjective knowledge, motivation, or intention of the individual officer involved [is] wholly irrelevant [to the determination of the legality of the stop]." *Dep 't of Highway Safety & Motor Vehicles v. Jones*, 935 So.2d 532, 534 (Fla. 3d DCA 2006) ("The constitutional validity of a traffic stop depends on purely objective criteria. *Whren v. United States*, 517 U.S. 806, 813 (1996); *see Holland v. State*, 696 So. 2d 757, 759 (Fla. 1997) (concluding that the objective test "asks only whether any probable cause for the stop existed"). This objective standard also has been applied to suppression questions where an arrest has been made for one crime, and the defendant claims that the motivation for the arrest was the investigation of entirely different crime.

White v. State, 76 So. 3d 335, 339-40 (Fla. 3d DCA 2011).

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This Court has no difficulty believing that perhaps Maryland officers conducted a more thorough, proactive investigation of what appears to be a routine car theft case because it involved a suspect in a murder case out of Miami. Yet, even if the police were partially motivated to obtain the Washington County arrest warrant to secure Jones' presence in an interrogation room for the Miami detectives, this Court finds that the Washington County arrest warrant, and the search warrant for 609 North Market Street, were legitimately issued based on probable cause. Moreover, and far more probative, the Maryland Commissioner found probable cause for both an arrest and a search warrant.

No fewer than six Maryland officers thoroughly searched the 609 North Market Street location, and documented the search with numerous photographs. Det. Hart provided his case file to the Court and the parties and it shows he was actively investigating Jones' involvement in a number of car thefts. The clear and convincing evidence in this case is that Maryland was conducting a *bone fide* investigation, it was not a sham for the purpose of securing Jones' presence in an interrogation room for the benefit of Miami detectives. Doubtless, the Washington County Warrant assisted the Miami detectives, but the fact that a warrant is beneficial in multiple ways is of no moment. The warrant was legal, and therefore the detention of Jones was lawful.

IV. CONCLUSION.

For all the reasons set forth in this Order, Jones' Motion to Suppress is denied in all respects.

DONE and ORDERED in Miami-Dade County, Florida this 20th day of September, 2017.

<<signature>>

Miguel M. de la O

Circuit Judge

Footnotes

1 For example, a central focus of the Hearing was both Jones' residence and the delay between Jones' initial detention and his presentment to a Commissioner. The Motion made no mention of either issue. On the third day of the Hearing, Jones filed a Supplement to the Motion to Suppress which raised these issues for the first time.

2 There were claims raised in the Motion that were abandoned as the Hearing progressed when it turned out that the facts were not as Jones alleged in the Motion. For example, Jones was not arrested on a DNA warrant, the Miami detectives never advised him that there murder charges pending against him in Miami, and Jones was not tracked through live monitoring of his cellphone location or through Stingray tracking technology.

3 Jones agreed during the Hearing that this last claim is not grounds to suppress Jones's statements to police, but is more properly a motion in limine.

4 The parties marked for identification at the Hearing a transcript of the interview prepared by the State. The Court has not relied on this transcript because the parties agree in contains multiple inaccuracies.

5 The Florida Supreme Court's decision in *Echols v. State*, with its pointed reference to Justice White's concurrence in *Illinois v.* Gates, belies Jones's argument.

[A]ny rule of evidence that denies the jury access to clearly probative and reliable evidence must bear a heavy burden of justification, and must be carefully limited to the circumstances in which it will pay its way by deterring official unlawlessness. *Echols v. State*, 484 So. 2d 568, 572 (Fla. 1985) (quoting *Illinois v. Gates*, 462 U.S. 213, 257-58, 103 S.Ct. 2317, 2342, 76 L.Ed.2d 527 (1983) (White, J., concurring in the judgment)).

6 The Court reviewed the photographs taken by officers when they executed the search warrant at 609 North Market Street on December 12, 2014. Obviously, someone at some point in time resided there. It is not obvious from the photographs, however, whether someone was actively residing on the premises on December 12, 2014. Some visual cues suggest there may have been, but based on the general chaos of the contents it is just as likely that the apartment was now being used to store belongings.

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There is one clue that Jones may have resided there: an "Initial Appearance Report" from a Maryland criminal case against Jones. On the other hand, there are various pieces of mail where someone has written "pass to Renell," which would support the conclusion that 609 North Market Street is a mail drop for Jones, a location to which he has access, but in which he does not reside. There is also a credit card on the premises belonging to a third party ("Lindsey Colunga").

7 Although never explicitly raised in the Motion, it appears that Jones is raising a *Franks* challenge as to the Washington County arrest warrant. *See Franks v. Delaware*, 438 U.S. 154 (1978). This issue, however, should have been litigated in Maryland. *See Marquardt v. State*, 156 So. 3d 464, 481 (Fla. 2015), *reh'g denied* (Apr. 17, 2015), *cert. denied*, 136 S. Ct. 213 (2015).

8 This plan was foiled when detectives lost sight of Jones after he left the store.

9 Although Jones' counsel argued forcefully that it was apparent Det. Hart was lying in his video testimony during the Hearing, the Court sees no basis to draw such a conclusion. Det. Hart was forthright in answering the many questions posed to him. He was cooperative with the various requests the defense made for additional documents during the Hearing. At one point, Det. Hart provided the Court and counsel unfettered access (through a Dropbox account) to 1.6 gigabytes of documents he generated during the investigation Jones' involvement in the theft of the two cars.

10 To be sure, before *Williams*, Maryland did have the very *per se* rule Jones asks this Court to apply.

In *Johnson v. State*, 282 Md. 314, 384 A.2d 709 (1978), we interpreted the requirement of prompt presentment to be mandatory. Further, we stated that statements obtained in violation of the Rule were *per se* inadmissible. *See id.* at 328-29, 384 A.2d at 717..... The *per se* rule announced in *Johnson* remained the law in this State for only a few years.... The enactment of § 10-912 eliminated the *per se* rule, bringing this State in conformity with the majority of other states. Whether petitioner faced a delay of 12 hours, 36 hours, or four days, a delay in presentment will not be sufficient grounds, standing alone, to suppress his statement, absent an analysis by the court into the statement's voluntariness.

Facon v. State, 825 A.2d 1096, 1105-06 (Md. 2003) (citations omitted).

11 The motion in limine is also denied.

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