

STATE OF FLORIDA,

Plaintiff,

vs.

DANA LYNN LOYD

Defendant.

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA.

CASE NO.: 05-2015-CF-039871-AXXX-XX

MOTION TO SUPPRESS DEFENDANT'S RECORDED STATEMENT

COMES NOW, the Defendant, **DANA LYNN LOYD**, by and through her undersigned attorney and respectfully moves this Honorable Court to enter an Order Suppressing and preventing the State Attorney or any State witness(es) from offering evidence regarding the audio recording of the Defendant DANA LYNN LOYD and as grounds therefore would states as follows:

STATEMENT OF FACTS

1. The Defendant, DANA LYNN LOYD was arrested and is being prosecuted for one count of Making a False Report of Child Abuse, Abandonment or Neglect.

2. The Defendant DANA LYNN LOYD has been charged under Florida Statute 39.205(9) which states

"A person who knowingly and willfully makes a false report of child abuse, abandonment, or neglect, or who advises another to make a false report, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Anyone making a report who is acting in good faith is immune from any liability under this subsection."

3. The State has yet to file on the cyberstalking charge that the Defendant was arrested on simultaneously.

4. On or about August 19, 2015, Special Agent Robert Fischer of the sex crimes unit and Agent Sara McLennon arrived at Ms. Loyd's residence to question her regarding a call allegedly placed on April 29, 2015. Prior to entering the home of Ms. Loyd, Agent Fischer hid an audio recording camera on his person.

5. Per Agent Fischer's own admission in his deposition taken February 11, 2016 and filed with the court on April 25, 2016, he appeared at Ms. Loyd's home for the purposes of interviewing her as a suspect to a crime. (See *Exhibit A- relevant portion of Agent Fischer's Deposition- full version is in the court file*).

6. Agent Fischer initiated a custodial interrogation in the home of the Defendant. He was there to interview her as a suspect and use any of her words to assist him in implicating her of a crime.

7. The Defendant DANA LYNN LOYD felt that she did not have the freedom to leave even though she was in her own home. The Defendant was terrified and absolutely believed that she was not free to leave. The Defendant understood that it was imminent that she would be arrested and booked. The Defendant was interrogated in her home without being read Miranda Rights and acknowledging that she understood the same. The Defendant never waived her right to an attorney therefore in violation of her Fifth Amendment right against self-incrimination.

8. The Defendant DANA LYNN LOYD was never informed that she was a suspect of a crime. She was never provided any of the Miranda warnings in which the law mandates. She was never told that she did not have to speak to law enforcement. She was never told that she had the right to stop the interrogation or that she had a right to have an attorney present with her while she answered questions. Lastly, the Defendant was never told that she was being recorded as she spoke nor was she given the liberty that because she was being recorded she had a right not to

speak to law enforcement.

EVIDENCE SOUGHT TO BE SUPPRESSED

Defendant respectfully requests this Honorable Court suppress all evidence retrieved as a result of the illegally obtained audio recording on the Defendant, included but not limited to: the entirety of the audio recording of the Defendant DANA LYNN LOYD.

ARGUMENT

Officer Agent Fischer's unlawfully obtained Audio Recording of the Defendant DANA LYNN LOYD and fruit of the poisonous tree.

Officer Agent Fischer violated the Defendant's Fifth Amendment right to self-incrimination when he entered her home with the purposes of interviewing the Defendant as a suspect of a crime. Agent Fischer's intention was to gain information about the Defendant's involvement in a crime and to use that information against her and for the purposes of implicating her in a crime. Agent Fischer held the Defendant in a custodial interrogation as a suspect of a crime and he had a duty to provide her with Miranda Warnings as mandated by the law.

Under *Miranda v. Arizona*, the United States Supreme Court ruled that the government, including law enforcement needs to notify arrested individuals of their Fifth Amendment constitutional rights, specifically: their right to remain silent; an explanation that anything they say could be used against them in court; their right to counsel; and their right to have counsel appointed to represent them if necessary. Without this notification, anything admitted by an arrestee in an interrogation will not be admissible in court. *Miranda v. Arizona*, 384 U.S. 436, 10 Ohio Misc. 9, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)

Miranda Rights are required whenever an officer is engaged in a custodial interrogation. In this case, Agent Fischer went to the home of the Defendant. He purposely concealed his recorder prior to entering the home of the Defendant. By his own admission, Agent Fischer

specifically intended to interview the Defendant as a suspect in a crime and use her words to assist him in implicating her in a crime. The Defendant was never informed that she was being recorded.

Agent Fischer had the Defendant DANA LYNN LOYD in custody. Although she was in her own home and she was not handcuffed, the Defendant felt that she was not free to leave, she believed she was in custody during the interview and she was in fear that he would keep her until placing her in handcuffs and taking her to the jail. The Defendant DANA LYNN LOYD believed that she was going to be arrested on that day even though Agent Fischer never said it. The Defendant made sure that her children were not around because she did not want them to see her handcuffed. Agent Fischer interrogated the Defendant DANA LYNN LOYD for the purposes of implicating her in a crime.

The Audio recording that Agent Fischer took of the Defendant was in clear violation of her Miranda Rights and her Fifth Amendment right. Thus any and all information obtained in the audio recorded statement from the Defendant DANA LYNN LOYD should be suppressed and any information obtained subsequent this recording should be considered fruit of the poisonous tree and also suppressed.

WHEREFORE, the Defendant, DANA LYNN LOYD, respectfully requests this Honorable Court suppress all evidence retrieved as a result of the illegally obtained audio recording of the Defendant in violation of her Fifth Amendment against self-incrimination.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was forwarded via U.S. EMail to: Brevfelony@sa18.state.fl.us this 6th day of November, 2016.

Respectfully,

/s/ JESSICA BURGESS, ESQ. /s/

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1 conversation pertaining to the child having sex with her
2 father.

3 Q Okay. What is your agency's protocol when you do
4 an interview like this of someone like Ms. Loyd?

5 A Meaning what?

6 Q You go to their house. You said you're not
7 required to tell them that they're being recorded. Why not?

8 A She's a suspect.

9 Q Did you follow all protocol when you interviewed
10 her?

11 A I believe I did.

12 Q Did Ms. Loyd believe that at any time she could ask
13 you to leave her house; do you know?

14 A I gave her no reason to believe otherwise.

15 Q So you would not consider this an interrogation?

16 A I would not.

17 Q Is it normal for someone like Mr. [REDACTED] to send
18 you e-mailed timelines and things like that, like he did?

19 A The timeline I requested, rather than having him
20 verbally or just send me scattershot, this happened, this
21 happened.

22 As far as normal, some involved parties are more
23 passionate than others.

24 Q Did you ever see the pictures that Ms. Loyd stated
25 she was concerned about?

Exhibit A

1 Q In your opinion was Ms. Loyd, did she appear
2 concerned for this child?

3 A Yes.

4 Q In what way did she appear concerned?

5 A She was very animated.

6 Q Animated in what way?

7 A She just seemed very excited about relaying what
8 she knew about the [REDACTED].

9 Q If she appeared concerned would you believe at all
10 that maybe she made this call to DCF in good faith?

11 A Based on her concern alone, no.

12 Q Why not?

13 A Sometime during that conversation she mentioned
14 never meeting [REDACTED] or her mother in person.

15 Q So that's why you think it wasn't made in good
16 faith?

17 A That's part of the totality of the circumstances.

18 Q Did you ask Ms. Loyd what she was hoping to
19 accomplish by making that call?

20 A Is that in my report?

21 Q Yes, sir.

22 A If it's in my report I'm going to say I asked her
23 that.

24 Q It starts with paragraph, "I explained to Ms. Loyd
25 that on April 28th and 29th."