

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

STATE OF FLORIDA,

Plaintiff,

vs.

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

DANA LYNN LOYD

Defendant.

MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT THEREOF

COMES NOW, the Defendant, DANA LYNN LOYD, by and through her undersigned attorney, and hereby respectfully requests this Honorable Court enter an Order Dismissing this case pursuant to Florida Rules of Criminal Procedure 3.190(c)(4), and as grounds therefore would show:

1. In this case, the Defendant is currently charged with 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. Florida Statute 39.01(27) states:

"False report" means a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:

- (a) Harassing, embarrassing, or harming another person;*
- (b) Personal financial gain for the reporting person;*
- (c) Acquiring custody of a child; or*

(d) Personal benefit for the reporting person in any other private dispute involving a child.

The term "false report" does not include a report of abuse, neglect, or abandonment of a child made in good faith to the central abuse hotline.

4. The material facts of this case are undisputed. There was a phone call placed to the Florida Abuse Hotline on April 29, 2015 by a person with the name of "Theresa Smith" who reported that she was a substitute teacher and suspected abuse. The caller did not leave a call back phone number with the Florida Abuse Hotline. The Department of Children and Families Intake Report showed that the phone number of the caller was 321-591-7964. Debra Christiansen, acting supervisor for the Department of Children and Families (hereinafter "DCF") in Brevard County returned the phone call to the phone number listed in the intake report. There was no answer when the call was made, but the call was later returned by the Defendant. It was then discovered that the identity of that person was the Defendant, DANA LYNN LOYD.

5. Further, it is undisputed that after the day after the Intake of this call, Brevard County Sheriff's Deputies Darryl Johnson and Matthew Preston reported to Quest Elementary, the school in which the minor child subject to which this report was about attended. Upon arrival, Oneil Brooks, the responding DCF worker was at the school as well. It is further undisputed that school officials instructed the Deputies that the minor child, [REDACTED] has a court ordered gag order which forbids law enforcement and/or DCF workers from speaking to her. After being forbidden from speaking to the child, both deputies and the DCF worker left Quest Elementary School.

6. It is undisputed that Deputy Matthew Preston, Deputy Darryl Johnson nor DCF worker Oneil Brooks ever spoke to the minor child [REDACTED] regarding the allegations contained in the call placed to the Florida Abuse Hotline on April 29, 2015. It is further undisputed that

nobody has ever spoken to the minor child [redacted] regarding the allegations contained in the call placed to the Florida Abuse Hotline on April 29, 2015.

7. Even if these facts contained herewith are taken as true, the Defendant DANA LYNN LOYD has not committed a criminal offense. Without ever having spoken to the minor child regarding the allegations placed in the phone call to the Florida Abuse Hotline on April 29, 2015, the State of Florida does not have a prima facie case of guilt against the Defendant DANA LYNN LOYD. The State of Florida will not be able to prove that the allegations contained in this report are false without the minor child admitting or denying these allegations.

8. Additionally the State must prove that the Defendant DANA LYNN LOYD made this call to the Florida Abuse Hotline knowingly, willfully and maliciously. The State of Florida will never have the ability to prove the Defendant's state of mind at the time she made the call and whether or not she made the call in good faith.

WHEREFORE, the Defendant DANA LYNN LOYD, prays this Honorable Court enter an Order dismissing all of the charges in this action with prejudice.

30 August 16
DATE

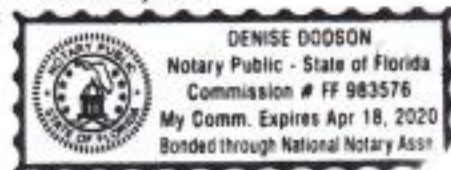
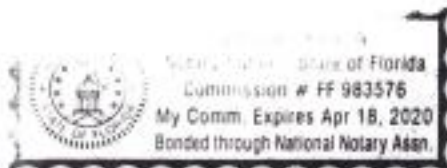
[Signature]
DANA LYNN LOYD

STATE OF FLORIDA
COUNTY OF BREVARD

SWORN TO AND SUBSCRIBED before me personally appeared DANA LYNN LOYD, who is personally known to me or produced _____, as identification, this 30, day of Aug, 2016.

[Signature]

Notary Public State of Florida
My Commission expires:



CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing has furnished by U.S. Mail delivery to the, Sean Sendra, Esquire at 400 South Street, Suite D, Titusville, Florida 32780 this 30th day of August, 2016.

Respectfully Submitted,

Law Office of Jessica Burgess, P.A.

/s/ JESSICA BURGESS, ESQ. /s/

Law Office of Jessica Burgess, Esq.

14 East Marina Isles Blvd.

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Denise6040@yahoo.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was forwarded via U.S. EMail to: Brevfelony@sal8.state.fl.us; this 30th day of August, 2016.

Respectfully,

Law Office of Jessica Burgess, P.A.

/s/ JESSICA BURGESS, ESQ. /s/

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