

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

CASE NO: 2013-102888-CFDL

STATE OF FLORIDA,

v.

LUIS ALBERT TOLEDO,

Defendant.

**ORDER DENYING MOTION TO TRANSFER DEFENDANT TO ANOTHER
FACILITY BUT DIRECTING MODIFICATIONS TO SECURITY PROCEDURES AT
THE VOLUSIA COUNTY BRANCH JAIL AS APPLIED TO DEFENDANT**

THIS MATTER came before the Court on February 3, 2014 for a hearing on the Defendant's Motion for Release on Own Recognizance and Motion for Arthur Hearing. Being fully apprised of the premises, the Court finds as follows:

1. Defendant has not appropriate access to his attorney at the Volusia County Branch Jail because of the jail's security designations for him as "max heavy" and "on suicide watch." These combined designations have resulted in 2-4 correctional guards escorting Defendant to the interview room provided for at the facility in order to meet with his attorney. Those same guards remain outside the door to the interview room, often close enough to hear the conversation between Defendant and his attorney.
2. Although these procedures employed by the Volusia County Brach Jail are understandable, some do infringe upon Defendant's constitutional right to competent assistance of counsel for his defense guaranteed by the Sixth Amendment to the United States Constitution. Counsel cannot be expected to properly represent Defendant if he or

other members of his office cannot discuss the defense of the case privately with Defendant.

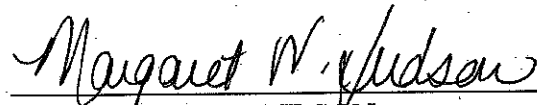
3. The Court recognizes that restraints and multiple guard escorts are deemed necessary by the Volusia County Branch Jail. These do not interfere with Defendant's right to competent assistance of counsel and the Court will not direct any modifications to those procedures.
4. The Court finds that other measures may address Defendant's concerns without the need to incur the administrative difficulties which would arise from transferring Defendant to another county's jail facility. However, the positioning of guards must be modified to accommodate Defendant's constitutional right to competent assistance of counsel for his defense.

THEREFORE, it is **ORDERED AND ADJUDGED** that:

1. Defendant's Motion to Transfer Defendant to Another Facility is DENIED.
2. The Volusia County Branch Jail shall take all necessary and prudent measures to move the positioning of correctional guards, supervisors or anyone else under the supervision of the Volusia County Branch Jail and its warden to allow for the maximum distance between the interview room and such observing guard's position and still provide his or her ability to see Defendant through the observation panel contained within the interview room door.
3. At a minimum, the observing guard must stand against the wall across the hall from the interview room. It may be possible for the observing guard to observe Defendant from a further distance, at an angle, from the interview room door and, if so, the observing guard must be positioned at that furthest angled distance.

4. Furthermore, should any of these observing guards hear anything being said by Defendant or his attorney and/or staff, they are to immediately knock on the interview room door to advise they can hear so the occupants of the room can attempt to lower their voice.
5. The Court retains jurisdiction to address any further issues or concerns arising from the modified procedures contemplated by this Order, as well as any violation of this Order.

DONE AND ORDERED in Chambers, in DeLand, Volusia County, Florida, this 3rd day of February, 2014.



MARGARET W. HUDSON
CIRCUIT JUDGE

cc: Jeffrey D. Deen, Esq., Attorney for Defendant, tcollins@rc5state.com

J. Ryan Will/ Edwin L. Davis, Office of the State Attorney, willj@sao7.org;
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