

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

November 02, 2018

CASE NO.: 2D18-2482
L.T. No.: CRC10-26597-CFANO

JAMIE GEER

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's motion for rehearing with written opinion and motion for rehearing en banc is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

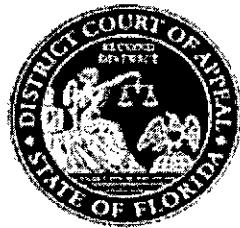
Attorney General, Tampa

Jamie Geer

Ken Burke, Clerk

lb

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

July 16, 2018

CASE NO.: 2D18-2482
L.T. No.: CRC10-26597-CFANO

JAMIE GEER v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

The petitioner's second amended petition for writ of habeas corpus is denied.

CRENSHAW, LUCAS, and ATKINSON, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

John M. Klawikofsky, A.A.G. Jamie Geer Ken Burke, Clerk

td

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
CRIMINAL DIVISION

STATE OF FLORIDA

v.

JAMIE GEER,

Person ID: 3114788, Defendant.

CASE NO.: CRC10-26597CFANO
UCN: 522010CF026597XXXXNO
DIV.: K

**ORDER DENYING DEFENDANT'S "MOTION TO
SUPPRESS CONTENTS OF INTERCEPTED COMMUNICATIONS"**

THIS CAUSE came before the court upon Defendant's *pro se* "Motion to Suppress Contents of Intercepted Communications," filed on December 2, 2017. Having reviewed the motion, record, and applicable law, this Court finds as follows:

Procedural History

On April 27, 2012, Defendant was found guilty by a jury of one count each of capital sexual battery, lewd or lascivious battery, and unlawful sexual activity with a minor. That same date, he was sentenced to life imprisonment on the sexual battery count, and to fifteen years' imprisonment on each of the remaining two counts. Count two was to run concurrent to count one; and, count three was to run consecutive to count two. Defendant filed a direct appeal of his judgment and sentence, which was *per curiam* affirmed by the Second District Court of Appeal. See Geer v. State, 137 So. 3d 382 (Fla. 2d DCA 2014). The mandate issued on May 16, 2014.

Analysis

Defendant's motion to suppress seeks to suppress a controlled phone call that was conducted on December 1, 2010, between the victim and Defendant. Defendant alleges that the communication that occurred during the controlled phone call was unlawfully intercepted and consequently, inadmissible in a criminal proceeding. Defendant relies on the Florida Securities of Communication Act, codified at sections 934.01-.50, Florida Statutes; the Georgia Wiretap Act, codified at sections 16-11-60-70; and the federal Wiretap Act, codified at 18 U.S.C. §§ 2510-22.

Initially, the Court finds that Defendant's reference to and reliance on Georgia law is misplaced. While Defendant does not indicate his reasons for citing to Georgia law, the Court assumes that he does so because the controlled phone call was initiated by the victim, who, due to

State v. Geer, CRC10-26597CFANO

the allegations against Defendant, had been removed from Defendant's home and was living at her grandmother's house in Georgia at the time the controlled call was made. However, Georgia law would not apply to the recording of Defendant's statements because Defendant uttered the statements at issue in Florida. See Nunn v. State, 121 So. 3d 566, 567 n.1 (Fla. 4th DCA 2013) (citing Cohen Bros., L.L.C. v. ME Corp., S.A., 872 So.2d 321, 324 (Fla. 3d DCA 2004) (law of state where interception occurs applies; interception occurs where the communication is uttered)). Therefore, Florida law would apply to Defendant's statements.

Next, to the extent Defendant relies on the Florida Securities of Communication Act and the federal Wiretap Act, the Court finds that Defendant's motion is without merit. The exclusionary rule provision of Chapter 934 authorizes exclusion of evidence secured through the unlawful interception of any wire, oral, or electronic communication. See § 934.09(10)(a). However, Chapter 934 specifically provides for an exception to law enforcement officers, allowing officers to record a communication in furtherance of a criminal investigation if one party consents. See § 934.03(2)(c), Fla. Stat.; see also Nunn, 121 So. 3d at 567. Specifically, section 934.03(2)(c) provides,

It is lawful under this section and ss. 934.04-934.09 for an investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

The federal Wiretap Act provides for this same exception. See 18 U.S.C. § 2511(2)(c). In the instant case, the victim was a consenting party to the controlled phone call and the victim was acting at the direction of law enforcement. (See Exhibit A: Jury Trial transcript, at pp. 581-91, 869-75, 964-68). Therefore, the interception was not unlawful and the exclusionary rule does not apply. See, e.g., State v. Stout, 693 So. 2d 657 (Fla. 4th DCA 1997). Defendant's motion is denied.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's "Motion to Suppress Contents of Intercepted Communications" is hereby **DENIED**.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this _____ day of January, 2018. A true and correct copy of this order has been furnished to the parties listed below.

Original Signed

JAN 19 2018

Frank Quesada, Circuit Judge

Frank Quesada
Circuit Court Judge

cc: Office of the State Attorney

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