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APPENDIX A

**FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 5D2025-0841
LT Case No. 2021-CF-000253-A

MICHAEL LEROY WAITE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

On appeal from the Circuit Court for Citrus County.
Joel D. Fritton, Judge.

Debra B. Tuomey, of Debra B. Tuomey, Attorney at
Law, LLC, Weeki Wachee, and Alexei V. Lizanich, of
Melisa L. Militello, P.A., Inverness, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and
Kristen L. Davenport, Assistant Attorney General,
Daytona Beach, for Appellee.

May 5, 2026

PER CURIAM.

AFFIRMED.

MAKAR, EDWARDS, and EISNAUGLE, JJ., concur.

*Not final until disposition of any timely and authorized
motion under Fla. R. App. P. 9.330 or 9.331.*

APPENDIX B

**IN THE CIRCUIT COURT OF
THE FIFTH JUDICIAL CIRCUIT
IN AND FOR CITRUS COUNTY, FLORIDA**

[DATE STAMP]
MAR 24 '25 4:32PM

STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO.: 2021-CF-253

MICHAEL LEROY WAITE,
Defendant.

**ORDER DENYING SECOND MOTION
TO VACATE**

THIS CAUSE, having come before the Court on February 20, 2025, upon the Defendant's Second Motion to Vacate Judgment and Sentence, and the Court having reviewed the pleadings and court file and having heard argument from both the Defense and the State of Florida hereby finds as follows:

1. Mr. Waite was charged with five counts of unlawful interception of oral communications, one count of battery on a law enforcement officer and one count of resisting arrest with violence.
2. Mr. Waite filed several motions to dismiss and

suppress, including a motion to dismiss based upon Florida Rules of Criminal Procedure Rule 3.190(c)(4).

3. After the hearing on Mr. Waite's respective motions, he pled no contest and reserved his right to appeal.
4. Mr. Waite timely appealed.
5. On August 16, 2024, the Fifth District Court of Appeals withdrew and substituted its prior opinion dated April 12, 2024, reversed this court's order denying his Rule 3.190(c)(4) motion to dismiss the unlawful interception of oral communication and affirmed in all other aspects.
6. On February 17, 2025, Mr. Waite, through his counsel of record, filed a Second Motion to Vacate Judgment and Dismiss.
7. Mr. Waite asserted in his Second Motion to Vacate Judgment and Dismiss that his convictions should be vacated because the Court did not have subject matter jurisdiction. Mr. Waite alleged the deputies were not engaged in the lawful execution of their legal duties as a matter of law and therefore the arrest of Mr. Waite was therefore unlawful.
8. The Fifth District Court of Appeals addressed this in its opinion dated August 16, 2024.

IT IS THEREFORE, ORDERED AND ADJUDGED that the Defendant's Second Motion to

Vacate Judgment and Sentence is **DENIED**.

DONE AND ORDERED in Chambers at Inverness, Citrus County, Florida this 24 day of March 2025.

/s/
HONORABLE JOEL FRITTON
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the Office of the State Attorney, 110 N. Apopka Ave., Inverness, FL. 34450, eservicecitrusao5.org, and Alexei Lizanich, Melisa L. Militello, P.A. 107-B W. Main St., Inverness, FL. 34450, militellolawyeregmail.com on this 27 day of March 2025.

/s/
~~Judicial Assistant~~

APPENDIX C

**IN THE CIRCUIT COURT OF THE FIFTH
JUDICIAL CIRCUIT, IN AND FOR CITRUS
COUNTY FLORIDA**

FELONY COURT ORDERS

2021 CF 000253 A
WAITE, MICHAEL LEROY
MOTION HEARING - FELONY
MTN TO VACATE JUDGMENT AND DISMISS
DOO: 02/18/2021 DOA: 02/06/2023

C2

006 3F **784.07(2b)
[] BATTERY ON LAW ENFORCEMENT OR OTHER
OFFICER

006 3F **843.01
[] RESIST LAW ENFORCEMENT OFFICER WITH
VIOLENCE

DEFENDANT

☒ PRESENT ☐ NOT PRESENT ☐ IN CUSTODY
☐ WAIVED

REPRESENTED BY

☐ APPT PD Lizanich ✓
☐ WAIVE SPEEDY TRIAL

☐ APPOINT CONFLICT ATTORNEY

PLEA

☐ NOT GUILTY ☐ NO CONTEST ☐ GUILTY
☐ ADMIT VOP/VOCC ☐ DENY VOP/VOCC
☐ PLEA/WAIVER RIGHTS FILED
☐ PSI WAIVED ☐ PSI ORDERED
☐ WRITTEN PLEA FORM WAIVED
LESSER CHARGE OF _____

HEARING ☐ PLEA OR SET

PRE-TRIAL	_____@_____
CALENDAR CALL	_____@_____
TRIAL DATE	_____@_____
VOP/CC STAT/HRG	_____@_____
DRC/MHC/VET	_____@_____

VERDICT

☐ WITHHELD ☐ GUILTY ☐ NOT GUILTY
JURY TRIAL VERDICT _____

SENTENCE

☐ DEPARTMENT OF CORRECTIONS _____
W/ _____ DAYS CREDIT TIME SERVED
☐ CITRUS COUNTY JAIL _____ W/ _____ DAYS
CREDIT TIME SERVED
☐ DOC/JAIL TIME SUSPENDED UPON
SUCCESSFUL COMPLETION OF PROBATION _____
PROBATION _____ ☐ AS CONDITION OF
☐ FOLLOWED BY ☐ STANDARD

- ☐ DRUG OFFENDER ☐ SEX OFFENDER
- ☐ COMMUNITY CONTROL
- ☐ REVOKE PREVIOUS COMMUNITY
CONTROL/PROBATION
- ☐ PREV. COND APPLY
- ☐ MONETARY OBLIGATIONS APPLY
- ☐ REINSTATE TO PREVIOUS SUPERVISION
- ☐ TERMINATE PROBATION
- ☐ 3 YEARS DRUG COURT SUPERVISION
- ☐ 24 MONTHS MENTAL HEALTH COURT
SUPERVISION
- ☐ VETERAN'S COURT SUPERVISION

SPECIAL CONDITIONS

- ☐ DRUG/ALCOHOL EVALUATION &
TREATMENT
- ☐ RANDOM DRUG/ALCOHOL SCREENS AT
OWN EXPENSE
- ☐ NOT TO CONSUME OR POSSESS ALCOHOL
DURING TERM OF PROBATION
- ☐ NO ALCOHOL/NO BARS
- ☐ TO ENTER AND COMPLETE IN-PATIENT
DRUG TREATMENT
- ☐ REMAIN IN CUSTODY AWAITING A BED AT
TREATMENT FACILITY
- ☐ OBTAIN GED AND PROVIDE PROOF TO
PROBATION
- ☐ COMMUNITY SERVICE HOURS_____
- ☐ BUY OUT OR WORK OFF
- ☐ DUI (ADVANCED)SCHOOL
- ☐ VEHICLE IMPOUND__10 DAYS __30 DAYS__
90 DAYS
- ☐ ____MONTHS/YEARS INTERLOCK ALL

OWNED VEHICLES

- ☐ ____ WORDS LETTER OF APOLOGY TO VICTIM W/IN ____ DAYS
- ☐ NO CONTACT WITH VICTIM
- ☐ NO VIOLENT CONTACT WITH VICTIM
- ☐ NO CONTACT W/ANYONE UNDER COURT SUPERVISION, EXCEPT FOR BUSINESS PURPOSES
- ☐ SEXUAL PREDATOR ☐ SEXUAL OFFENDER
- ☐ SUBJECT TO ICCA
- ☐ SUBJECT TO JESSICA LUNSFORD ACT
- ☐ NO CONTACT WITH A MINOR UNLESS APPROVED BY THE COURT
- ☐ MAY HAVE CONTACT W/FAMILY MEMBERS W/IN THE ____ DEGREE OF CONSANGUINITY
- ☐ MAY APPLY FOR EARLY TERMINATION OF PROBATION AFTER APPROPRIATE AMOUNT OF TIME; AFTER 50% COMPLETE
- ☐ MAY TRANSFER PROBATION TO COUNTY/STATE OF RESIDENCE
- ☐ THE COURT HAS NO OBJECTION TO THE ISSUANCE OF A "BUSINESS PURPOSES ONLY" LICENSE IF THE DEFENDANT OTHERWISE QUALIFIES
- ☐ **MUST SCHEDULE AND KEEP APPOINTMENT WITH ATTORNEY PRIOR TO NEXT COURT HEARING**

BOND

BOND NUMBER____
BONDSMAN____
BOND AMOUNT____

- ☐ BOND REVOKED-COURTS MTN
- ☐ ISSUE SUMMONS
- ☐ BOND REDUCED TO_____
- ☐ ESTREAT BOND
- ☐ NO MODIFICATION
- ☐ CAPIAS ORDERED-BOND_____
- ☐ VACATE ESTREATURE
- ☐ RECALL CAPIAS/WARRANT

MOTION HEARING

Def mtn to vacate Judgment and dismiss

- ☐ GRANTED ☒ DENIED ☐ RESERVED

DISPOSED OF IN OPEN COURT CTS_____

- ☐ ANNOUNCEMENT OF NO INFO
- ☐ NOLLE PROSEQUI
- ☐ REFERRED TO PTI
- ☐ DISMISSED
- ☐ REFERRED TO DRUG PTI
- ☐ REF TO DRUG COURT
- ☐ REF TO MENTAL HEALTH COURT
- ☐ REF TO VET COURT
- LESSER CHARGE OF _____

FINANCIAL REQUIREMENTS

Court Costs \$_____ Additional \$_____

LEEFs (if applicable) LEEF/LEEF2_____ \$5.00

Fine_____ FINECF_____ \$_____

5%_____ 5%SURCF_____ \$_____

☐ CrimeStopper_____ COSTCSCF_____ \$20.00

☐ SAO Fee_____ SACOPCF_____ \$100.00
☐ PDF Asst._____ PDACF_____ \$100.00
☐ PD Rep Fee_____ PDRF_____ \$_____
☐ Rape Crisis_____ CFRCS_____ \$151.00
☐ Dom Viol_____ CFDVS_____ \$201.00
☐ Crime Against Minor CFCAM_____ \$151.00
☐ FDLE_____ FDLE_____ \$100.00
☐ Investigation Costs CFIN_____ \$_____
☐ BOCC Fund_____ CFBOCC65_____ \$65.00
☐ Teen Court Fund_____ CFTEENCT_____ \$3.00
☐ Restitution Reserved ☐ Restitution Victim \$_____
 Incarceration Costs_____ INCOSTSJ/INCOST2-P \$_____
 Electronic Monitoring Fees (If applicable)_____
 Drivers License Suspended 6 Months (If applicable)
 DL Susp Fee_____ CFDISP (If applicable)_____ \$7.00
 Lien Fee_____ CF65OS (If applicable)_____ \$17.00
 Record Lien Fee_____ SATREC (If applicable)_____ \$10.00
 Criminal Use of Personal ID surchg_____ \$1001.00
☐ Min/Man Fine Dismissed/Reduced By \$_____
☐ Pursuant to 893.135(4)-CT(S) _____
☐ Under Assessed By The Court - CT(S)_____

**☒ SEE BACK OF DISPOSITION FOR PAYMENT
OPTIONS**

DONE AND ORDERED IN CITRUS COUNTY THIS
20th DAY OF FEBRUARY, 2025

/s/
 CIRCUIT JUDGE

[DATE STAMP]
FEB 20'25 12:01 PM

APPENDIX D

**IN THE CIRCUIT COURT OF THE FIFTH
JUDICIAL CIRCUIT, IN AND FOR CITRUS
COUNTY FLORIDA**

FELONY COURT ORDERS

2021 CF 000253 A
WAITE, MICHAEL LEROY
MOTION HEARING - FELONY
MTN TO VACATE JUDGMENT AND DISMISS
DOO: 02/18/2021 DOA: 02/06/2023

C2

001 3F 934.03(1a)
[] UNLAWFUL INTERCEPTION OF ORAL
COMMUNICATION

001 3F 934.03(1a)
[] UNLAWFUL INTERCEPTION OF ORAL
COMMUNICATION

001 3F 934.03(1a)
[] UNLAWFUL INTERCEPTION OF ORAL
COMMUNICATION

001 3F 934.03(1a)
[] UNLAWFUL INTERCEPTION OF ORAL
COMMUNICATION

001 3F 934.03(1a)

[] UNLAWFUL INTERCEPTION OF ORAL
COMMUNICATION

DEFENDANT

☒ PRESENT ☐ NOT PRESENT ☐ IN CUSTODY
☐ WAIVED

REPRESENTED BY

☐ APPT PD Lizanich **[P]**
☐ WAIVE SPEEDY TRIAL
☐ APPOINT CONFLICT ATTORNEY

PLEA

☐ NOT GUILTY ☐ NO CONTEST ☐ GUILTY
☐ ADMIT VOP/VOCC ☐ DENY VOP/VOCC
☐ PLEA/WAIVER RIGHTS FILED
☐ PSI WAIVED ☐ PSI ORDERED
☐ WRITTEN PLEA FORM WAIVED
LESSER CHARGE OF _____

HEARING ☐ PLEA OR SET

PRE-TRIAL	_____@_____
CALENDAR CALL	_____@_____
TRIAL DATE	_____@_____
VOP/CC STAT/HRG	_____@_____
DRC/MHC/VET	_____@_____

VERDICT

☐ WITHHELD ☐ GUILTY ☐ NOT GUILTY

JURY TRIAL VERDICT _____

SENTENCE

- ☐ DEPARTMENT OF CORRECTIONS_____W/
_____ DAYS CREDIT TIME SERVED
- ☐ CITRUS COUNTY JAIL_____W/_____DAYS
CREDIT TIME SERVED
- ☐ DOC/JAIL TIME SUSPENDED UPON
SUCCESSFUL COMPLETION OF PROBATION
PROBATION_____ ☐ AS CONDITION OF
- ☐ FOLLOWED BY ☐ STANDARD
- ☐ DRUG OFFENDER ☐ SEX OFFENDER
- ☐ COMMUNITY CONTROL
- ☐ REVOKE PREVIOUS COMMUNITY
CONTROL/PROBATION
- ☐ PREV. COND APPLY
- ☐ MONETARY OBLIGATIONS APPLY
- ☐ REINSTATE TO PREVIOUS SUPERVISION
- ☐ TERMINATE PROBATION
- ☐ 3 YEARS DRUG COURT SUPERVISION
- ☐ 24 MONTHS MENTAL HEALTH COURT
SUPERVISION
- ☐ VETERAN'S COURT SUPERVISION

SPECIAL CONDITIONS

- ☐ DRUG/ALCOHOL EVALUATION &
TREATMENT
- ☐ RANDOM DRUG/ALCOHOL SCREENS AT
OWN EXPENSE
- ☐ NOT TO CONSUME OR POSSESS ALCOHOL
DURING TERM OF PROBATION
- ☐ NO ALCOHOL/NO BARS

- ☐ TO ENTER AND COMPLETE IN-PATIENT DRUG TREATMENT
- ☐ REMAIN IN CUSTODY AWAITING A BED AT TREATMENT FACILITY
- ☐ OBTAIN GED AND PROVIDE PROOF TO PROBATION
- ☐ COMMUNITY SERVICE HOURS_____
- ☐ BUY OUT OR WORK OFF
- ☐ DUI (ADVANCED)SCHOOL
- ☐ VEHICLE IMPOUND__10 DAYS __30 DAYS__90 DAYS
- ☐ ____MONTHS/YEARS INTERLOCK ALL OWNED VEHICLES
- ☐ ____WORDS LETTER OF APOLOGY TO VICTIM W/IN____DAYS
- ☐ NO CONTACT WITH VICTIM
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- ☐ SEXUAL PREDATOR ☐ SEXUAL OFFENDER
- ☐ SUBJECT TO ICCA
- ☐ SUBJECT TO JESSICA LUNSFORD ACT
- ☐ NO CONTACT WITH A MINOR UNLESS APPROVED BY THE COURT
- ☐ MAY HAVE CONTACT W/FAMILY MEMBERS W/IN THE ____DEGREE OF CONSANGUINITY
- ☐ MAY APPLY FOR EARLY TERMINATION OF PROBATION AFTER APPROPRIATE AMOUNT OF TIME; AFTER 50% COMPLETE
- ☐ MAY TRANSFER PROBATION TO COUNTY/STATE OF RESIDENCE
- ☐ THE COURT HAS NO OBJECTION TO THE ISSUANCE OF A "BUSINESS PURPOSES

ONLY" LICENSE IF THE DEFENDANT
OTHERWISE QUALIFIES

- ☐ **MUST SCHEDULE AND KEEP
APPOINTMENT WITH ATTORNEY PRIOR
TO NEXT COURT HEARING**

BOND

BOND NUMBER_____

BONDSMAN_____

BOND AMOUNT_____

- ☐ BOND REVOKED-COURTS MTN
- ☐ ISSUE SUMMONS
- ☐ BOND REDUCED TO_____
- ☐ ESTREAT BOND
- ☐ NO MODIFICATION
- ☐ CAPIAS ORDERED-BOND_____
- ☐ VACATE ESTREATURE
- ☐ RECALL CAPIAS/WARRANT

MOTION HEARING

Def's motion to vacate Judgment & dismiss cts 1-5

☒ GRANTED ☐ DENIED ☐ RESERVED

DISPOSED OF IN OPEN COURT CTS 1, 2, 3, 4 & 5

- ☐ ANNOUNCEMENT OF NO INFO
- ☐ NOLLE PROSEQUI
- ☐ REFERRED TO PTI
- ☒ DISMISSED
- ☐ REFERRED TO DRUG PTI

☐ REF TO DRUG COURT
☐ REF TO MENTAL HEALTH COURT
☐ REF TO VET COURT
LESSER CHARGE OF _____

FINANCIAL REQUIREMENTS

Court Costs \$_____ Additional \$_____
LEEFs (if applicable) LEEF/LEEF2_____ \$5.00
Fine_____ FINECF_____ \$_____
5%_____ 5%SURCF_____ \$_____
☐ CrimeStopper_____ COSTCSCF_____ \$20.00
☐ SAO Fee_____ SACOPCF_____ \$100.00
☐ PDF Asst._____ PDACF_____ \$100.00
☐ PD Rep Fee_____ PDRF_____ \$_____
☐ Rape Crisis_____ CFRCS_____ \$151.00
☐ Dom Viol_____ CFDVS_____ \$201.00
☐ Crime Against Minor CFCAM_____ \$151.00
☐ FDLE_____ FDLE_____ \$100.00
☐ Investigation Costs CFIN_____ \$_____
☐ BOCC Fund_____ CFBOCC65_____ \$65.00
☐ Teen Court Fund_____ CFTEENCT_____ \$3.00
☐ Restitution Reserved ☐ Restitution Victim \$_____
Incarceration Costs_____ INCOSTSJ/INCOST2-P \$_____
Electronic Monitoring Fees (If applicable)_____
Drivers License Suspended 6 Months (If applicable)_____
DL Susp Fee_____ CFDISP (If applicable)_____ \$7.00
Lien Fee_____ CF65OS (If applicable)_____ \$17.00
Record Lien Fee_____ SATREC (If applicable)_____ \$10.00
Criminal Use of Personal ID surchg_____ \$1001.00
☐ Min/Man Fine Dismissed/Reduced By \$_____
☐ Pursuant to 893.135(4)-CT(S) _____
☐ Under Assessed By The Court - CT(S)_____

**☒ SEE BACK OF DISPOSITION FOR PAYMENT
OPTIONS**

Counts 1-5 sanction from 3/9/23 & dismiss

**DONE AND ORDERED IN CITRUS COUNTY THIS
20th DAY OF DECEMBER, 2024**

/s/

CIRCUIT JUDGE

[DATE STAMP]

DEC 20'24 12:37 PM

APPENDIX E

**IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT**

Michael L. Waite,
Appellant(s),

v.

State of Florida,
Appellee(s).

Case No.: 5D2023-1354
L.T. No.: 2021-CF-000253-A

Date: September 30, 2024

BY ORDER OF THE COURT:

ORDERED that Appellee's Motion for Rehearing, Rehearing En Banc, and Certification, filed August 23, 2024, is denied as to Motion for Rehearing and Certification. It is also

ORDERED that inasmuch as no member of the panel or judge in regular active service on the Court eligible to participate in this case requested that the Court be polled on rehearing en banc, the motion for rehearing en banc, filed August 23, 2024, is denied. See Fla. R. App. P. 9.331(d)(1).

I hereby certify that the foregoing is (a true copy of) the original Court order.

5D2023-1354 9/30/2024
SANDRA B. WILLIAMS, CLERK

Panel: Judges Edwards, Makar and Kilbane
Judges Lambert and Eisnaugle recused

cc:
Criminal Appeals DAB Attorney General
Steven L. Brannock
Kristen L. Davenport
Jeffrey Paul DeSousa
Alexei V. Lizanich
John David Marsey
Office of the Attorney General
Sarah B. Roberge

APPENDIX F

**FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 5D2023-1354
LT Case No. 2021-CF-000253-A

MICHAEL L. WAITE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

On appeal from the Circuit Court for Citrus County.
Joel Fritton, Judge.

Alexei V. Lizanich, of Law Offices of Melisa Militello,
Inverness, and Steven L. Brannock and Sarah B.
Roberge, of Brannock Berman & Seider, Tampa, for
Appellant.

Ashley Moody, Attorney General, and Jeffrey Paul
DeSousa, Chief Deputy Solicitor General, Tallahassee,
and Kristen L. Davenport, Assistant Attorney General,
Daytona Beach, for Appellee.

Robert Wayne Evans, of Allen Norton & Blue, P.A.,
Tampa, Amicus Curiae, for the Florida Sheriffs
Association, in support of Appellee.

J. David Marsey, of Rumberger, Kirk & Caldwell,
Tallahassee, Amicus Curiae, for the Florida Police
Chiefs Association, in support of Appellee.

August 16, 2024

**ON MOTION FOR REHEARING, REHEARING
EN BANC, OR CERTIFICATION**

KILBANE, J.

We deny the State’s request for rehearing, rehearing en banc, and for certification of a question of great public importance. However, we withdraw our prior opinion of April 12, 2024, and substitute the following in its place.

Michael L. Waite appeals a judgment entered after a nolo contendere plea to five counts of unlawful interception of “oral communication” in violation of section 934.03(1)(a), Florida Statutes (2020), one count of battery on a law enforcement officer, and one count of resisting arrest with violence. Specifically, Waite appeals the denial of several dispositive motions to dismiss and suppress evidence after reserving his right to appeal. For the reasons set forth below, we reverse the denial of the motion to dismiss the unlawful interception of “oral communication” charges. We affirm in all other respects.

Facts

This case stems from a lengthy dispute between Waite and the Citrus County Sheriff’s Office (“CCSO”).

Since 2018, Waite quarreled over property boundaries with city employees and CCSO deputies. For the duration of this dispute, Waite would report what he believed to be crimes to various state agencies and the media. As his relationship with the CCSO continued to devolve, Waite started recording conversations with CCSO deputies.

In January 2021, Waite called 911 to report what he perceived to be a trespassing incident involving members of the CCSO. Waite insisted that he wanted to file a complaint with internal affairs and that he had an email ready to send. The 911 operator explained that she would have a supervisor give him a call back as she could not provide the information he was requesting. Waite agreed and informed the 911 operator he wanted the call to be recorded. Later that same day, Sergeant Edward Blair called Waite back. Waite recorded the three-minute phone conversation but did not inform Sergeant Blair he was doing so. Waite sent a copy of the audio recording of that call via email to the CCSO records department and requested an internal investigation.

In February 2021, Detective Jacob Chenoweth sought to obtain an arrest warrant based on the recorded conversation attached to Waite's email. The State alleged that Waite violated section 934.03(1)(a), Florida Statutes, by unlawfully intercepting an "oral communication" when he recorded the conversation with Sergeant Blair without his consent. After obtaining the warrant, deputies including Captain Ryan Glaze went to execute it at Waite's home. An altercation ensued, and Waite elbowed Captain Glaze

in the face. Incident to the arrest, deputies found an audio recording device containing three additional recorded conversations with CCSO deputies.

In total, Waite was charged with five counts of unlawful interception of “oral communication,” battery on a law enforcement officer, and resisting arrest with violence. Waite filed several motions to dismiss and suppress including a Florida Rule of Criminal Procedure 3.190(c)(4) motion to dismiss the unlawful interception of “oral communication” charges.¹ Waite conceded that he did not inform the deputies he was recording the conversations and none of the deputies gave their consent to be recorded. However, Waite argued that the recorded conversations did not fall under the definition of “oral communication” as defined by section 934.02(2), Florida Statutes, because the deputies did not have a reasonable expectation of privacy that such communications were not subject to interception.

The State filed a traverse and demurrer admitting that at all times during the recorded conversations, the deputies were acting in their official capacities and added that the deputies were using office phones and cell phones. However, the State argued that whether someone has a reasonable expectation of privacy is an

¹ The fifth count of unlawful interception of an “oral communication” was added at a later point in time after an additional recorded conversation with a deputy was uncovered during discovery. On appeal, the State does not contest that the motion to dismiss and Waite’s reservation of his right to appeal applied to all five counts of unlawful interception.

issue of fact for the jury and therefore the motion to dismiss should be denied. After a hearing, the trial court agreed with the State and denied Waite's motion to dismiss. This appeal followed.

Analysis

A. Unlawful Interception of "Oral Communication" Charges

A motion to dismiss filed pursuant to Florida Rule of Criminal Procedure 3.190(c)(4) is reviewed de novo. *Galston v. State*, 943 So. 2d 968, 970–71 (Fla. 5th DCA 2006) (citing *State v. Massey*, 873 So. 2d 494 (Fla. 5th DCA 2004)). "It is only when the state cannot establish even the barest bit of a prima facie case that it should be prevented from prosecuting." *State v. Heffner*, 727 So. 2d 977, 978 (Fla. 5th DCA 1999) (quoting *State v. Pentecost*, 397 So. 2d 711, 712 (Fla. 5th DCA 1981)). As such, "the motion is somewhat similar to a motion for summary judgment in a civil case." *State v. Jones*, 642 So. 2d 804, 805 n.2 (Fla. 5th DCA 1994) (citing *Ellis v. State*, 346 So. 2d 1044, 1045 (Fla. 1st DCA 1977); *State v. Giesy*, 243 So. 2d 635, 636 (Fla. 4th DCA 1971)).

Under section 934.03(1)(a), it is unlawful for any person to intentionally intercept or endeavor to intercept any wire, oral, or electronic communication. § 934.03(1)(a), Fla. Stat. (2020); *see also McDade v. State*, 154 So. 3d 292, 297 (Fla. 2014). "'Oral communication' means any oral communication uttered by a person *exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation* and does not

mean any public oral communication uttered at a public meeting or any electronic communication.” *Id.* § 934.02(2), Fla. Stat. (emphasis added). “[F]or an oral conversation to be protected under section 934.03 the speaker must have an actual subjective expectation of privacy, along with a societal recognition that the expectation is reasonable.” *State v. Smith*, 641 So. 2d 849, 852 (Fla. 1994) (citing *State v. Inciarrano*, 473 So. 2d 1272 (Fla. 1985)).

To determine whether Waite’s secretly recorded phone conversations with CCSO deputies constituted unlawful interception of “oral communications,” we first examine cases dealing with recorded conversations involving police. It has previously been established that there is a First Amendment right to record police officers conducting their official duties in public. *See Pickett v. Copeland*, 236 So. 3d 1142, 1146 n.2 (Fla. 1st DCA 2018) (“Simply put, the First Amendment protects the act of photographing, filming, or otherwise recording police officers conducting their official duties in public.” (quoting *Fields v. City of Philadelphia*, 862 F.3d 353, 356 (3d Cir. 2017))). Additionally, it has been recognized that meetings taking place in an office context may have “a quasi-public nature.” *McDonough v. FernandezRundle*, 862 F.3d 1314, 1320–21 (11th Cir. 2017) (quoting *Inciarrano*, 473 So. 2d at 1274) (explaining recording fell outside definition of “oral communication” where party was invited to police chief’s office and secretly

recorded conversation).²

Here, Waite secretly recorded a telephone conversation with Sergeant Blair. He subsequently emailed the audio recording to the CCSO to report what he believed to be police misconduct and requested an internal investigation. It was later discovered that Waite had similarly recorded four other conversations with CCSO deputies. Under these circumstances, it cannot be said that any of the deputies exhibited a reasonable expectation of privacy that society is willing to recognize.

Importantly, this is based on the record before us³ as all the secretly recorded conversations were between a citizen and law enforcement officers regarding official business, occurred while the deputies were on duty, and involved phones utilized for official police business. Under these circumstances, and in spite of Waite's concession that none of the deputies

² The Florida Constitution recognizes that “[a] public office is a public trust” and “[t]he people shall have the right to secure and sustain that trust against abuse.” Art. II, § 8, Fla. Const. Thus, “the Florida Constitution contemplates that public business is to be conducted in the ‘sunshine.’” *Dep’t of Agric. & Consumer Servs. v. Edwards*, 654 So. 2d 628, 631 (Fla. 1st DCA 1995).

³ Our decision is also based on the charges that were filed. The State charged Waite with unlawfully intercepting “oral communications” in violation of section 934.03(1)(a). *See Langlois v. State*, 49 Fla. L. Weekly D1469a (Fla. 5th DCA July 12, 2024) (Kilbane, J., concurring) (examining differences between “wire” and “oral” communications and discussing prosecutorial discretion).

gave consent for him to record which is also required, Waite did not violate section 934.03(1)(a)'s prohibition on intercepting "oral communications" when he recorded the conversations with the deputies because they did not have a reasonable expectation of privacy. *Cf. McDonough*, 862 F.3d at 1320 (explaining that meeting involved "public employees acting in furtherance of their public duties," which undermined objective expectation of privacy); *Avrich v. State*, 936 So. 2d 739, 742 (Fla. 3d DCA 2006) (reversing defendant's conviction for making obscene or harassing telephone calls where victim did not have reasonable expectation of privacy as required by statute).

Accordingly, the denial of the rule 3.190(c)(4) motion to dismiss must be reversed. *Cf. Ford v. City of Boynton Beach*, 323 So. 3d 215, 220 (Fla. 4th DCA 2021) (reversing summary judgment based on reasonable expectation of privacy requirement for intercepting "oral communication" in section 934.03(1)(a) and section 934.02(2)).⁴

B. Battery and Resisting with Violence Charges

⁴ The State relies on *State v. Sells*, 582 So. 2d 1244 (Fla. 4th DCA 1991), for its position that whether officers have a reasonable expectation of privacy is a question for the jury. However, *Sells* addresses circumstances where one party suspects that the other party may be recording. *Id.* at 1245. That is not the issue addressed here. "Whether the provisions of chapter 934, Florida Statutes, apply to the recordings at issue in this case—*where the facts relevant to the recordings are undisputed*—is a question of statutory interpretation." *McDade*, 154 So. 3d 296–97 (emphasis added).

Waite further advances that because the unlawful interception of “oral communication” charges must be dismissed, so must the charges for battery on a law enforcement officer and resisting arrest with violence. We reject this assertion. Section 776.051(1), Florida Statutes, “prohibits the use of force to resist either arrest or the execution of a legal duty by a law enforcement officer unless the defendant can show that the officer was not acting in good faith.” *King v. State*, 120 So. 3d 108, 109 (Fla. 4th DCA 2013) (per curiam) (citing *A.W. v. State*, 82 So. 3d 1136, 1139 (Fla. 4th DCA 2012)); *see also Tillman v. State*, 934 So. 2d 1263, 1269 (Fla. 2006), *superseded by statute on other grounds*, § 776.051(1), Fla. Stat. (2008) (explaining that under section 776.051(1) citizens do not have the “right to resist an illegal arrest with force”). Here, the deputies were executing an arrest warrant. Waite did not demonstrate that the deputies lacked good faith in executing the arrest warrant, and he was required to comply without resorting to violence.

Conclusion

Accordingly, we reverse the denial of Waite’s rule 3.190(c)(4) motion to dismiss the unlawful interception of “oral communication” charges and remand for further proceedings consistent with this opinion. In all other respects, we affirm.

AFFIRMED in part, REVERSED in part,
REMANDED with instructions.

EDWARDS, C.J., concurs.

MAKAR, J., concurring in result with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Case No. 2023-1354
Lt. Case. No. 2021-CF-000253-A

MAKAR, J., concurring in result only.

The State seeks rehearing in this case, convincingly pointing out that Waite intercepted wire communications, not oral communications, a point it did not raise in initial briefing. With due respect to my colleagues, the path of least resistance in this case is to reverse on the basis that improper charges were brought against Waite and to leave it at that.

The prosecution charged Waite under that portion of Florida's wiretap statute that relates to *oral* communications, such as direct face-to-face verbal conversations in which speakers may have an expectation of privacy in their communications. The phone calls underlying the charges against Waite, however, were not oral communications, they were *wire* communications as the Solicitor General correctly points out in his rehearing motion. Under the facts presented, Waite could have been charged with interceptions of wire communications; no oral communications occurred between Waite and the officers that were susceptible to interception.

Having charged Waite under the wrong section of the wiretap statute, the State ought to concede error

and stipulate to dismissal of the interception charges against Waite on that basis; simply stated, because Waite did not intercept oral communications the charges against him are nullities. The Solicitor General urges that the panel certify the following question of great public importance: “Whether a person is liable for unlawful wiretapping under Section 934.03 for surreptitiously recording phone conversations with lawenforcement officers.” The answer to that question is “yes,” provided a nonconsensual interception of a wire communication occurred, such as the phone calls in this case. But those were not the charges against Waite.

In summary, the charges against Waite—that he intercepted oral communications—were erroneous. Because Waite is entitled to relief from those specific charges, I concur in the result reached; a discussion of the nuances of what constitutes an oral communication is unnecessary and, as the State and amicus point out, creates uncertainty in the law enforcement field. That said, this odd case is an outlier because it is unlikely that future prosecutors will pursue charges for interceptions of oral communications under Florida’s wiretap statute under the facts presented, i.e., the interception of a phone call, which is a wire communication.

APPENDIX G

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, IN AND FOR CITRUS COUNTY FLORIDA

FELONY COURT ORDERS

2021 CF 000253 A
WAITE, MICHAEL LEROY
MOTION HEARING - FELONY
MTN TO VACATE JUDGMENT AND DISMISS
DOO: 02/18/2021 DOA: 02/06/2023

C2

001 3F 934.03(1a)
☐ UNLAWFUL INTERCEPTION OF ORAL
COMMUNICATION

001 3F 934.03(1a)
☐ UNLAWFUL INTERCEPTION OF ORAL
COMMUNICATION

001 3F 934.03(1a)
☐ UNLAWFUL INTERCEPTION OF ORAL
COMMUNICATION

001 3F 934.03(1a)
☐ UNLAWFUL INTERCEPTION OF ORAL
COMMUNICATION

006 3F 784.07(2b)

☐ BATTERY ON LAW ENFORCEMENT OR
OTHER OFFICER

006 3F 843.01

☐ RESIST LAW ENFORCEMENT OFFICER WITH
VIOLENCE

DEFENDANT

☒ PRESENT ☐ NOT PRESENT ☐ IN CUSTODY
☐ WAIVED

REPRESENTED BY

☐ APPT PD LIZANICH, ALEXEI V ✓
☐ WAIVE SPEEDY TRIAL
☐ APPOINT CONFLICT ATTORNEY

PLEA

☐ NOT GUILTY ☐ NO CONTEST ☐ GUILTY
☐ ADMIT VOP/VOCC ☐ DENY VOP/VOCC
☐ PLEA/WAIVER RIGHTS FILED
☐ PSI WAIVED ☐ PSI ORDERED
☐ WRITTEN PLEA FORM WAIVED
LESSER CHARGE OF _____

HEARING ☐ PLEA OR SET

PRE-TRIAL	_____@_____
CALENDAR CALL	2/6/23 @ 900
TRIAL DATE	2/13/23 @ 845
VOP/CC STAT/HRG	_____@_____
DRC/MHC/VET	_____@_____

VERDICT

☐ WITHHELD ☐ GUILTY ☐ NOT GUILTY
JURY TRIAL VERDICT _____

SENTENCE

- ☐ DEPARTMENT OF CORRECTIONS_____W/
_____DAYS CREDIT TIME SERVED
- ☐ CITRUS COUNTY JAIL_____W/_____DAYS
CREDIT TIME SERVED
- ☐ DOC/JAIL TIME SUSPENDED UPON
SUCCESSFUL COMPLETION OF PROBATION
PROBATION_____ ☐ AS CONDITION OF
- ☐ FOLLOWED BY ☐ STANDARD
- ☐ DRUG OFFENDER ☐ SEX OFFENDER
- ☐ COMMUNITY CONTROL
- ☐ REVOKE PREVIOUS COMMUNITY
CONTROL/PROBATION
- ☐ PREV. COND APPLY
- ☐ MONETARY OBLIGATIONS APPLY
- ☐ REINSTATE TO PREVIOUS SUPERVISION
- ☐ TERMINATE PROBATION
- ☐ 3 YEARS DRUG COURT SUPERVISION
- ☐ 24 MONTHS MENTAL HEALTH COURT
SUPERVISION
- ☐ VETERAN'S COURT SUPERVISION

SPECIAL CONDITIONS

- ☐ DRUG/ALCOHOL EVALUATION &
TREATMENT
- ☐ RANDOM DRUG/ALCOHOL SCREENS AT
OWN EXPENSE

- ☐ NOT TO CONSUME OR POSSESS ALCOHOL DURING TERM OF PROBATION
- ☐ NO ALCOHOL/NO BARS
- ☐ TO ENTER AND COMPLETE IN-PATIENT DRUG TREATMENT
- ☐ REMAIN IN CUSTODY AWAITING A BED AT TREATMENT FACILITY
- ☐ OBTAIN GED AND PROVIDE PROOF TO PROBATION
- ☐ COMMUNITY SERVICE HOURS_____
- ☐ BUY OUT OR WORK OFF
- ☐ DUI (ADVANCED)SCHOOL
- ☐ VEHICLE IMPOUND__10 DAYS __30 DAYS__90 DAYS
- ☐ ____MONTHS/YEARS INTERLOCK ALL OWNED VEHICLES
- ☐ ____WORDS LETTER OF APOLOGY TO VICTIM W/IN____DAYS
- ☐ NO CONTACT WITH VICTIM
- ☐ NO VIOLENT CONTACT WITH VICTIM
- ☐ NO CONTACT W/ANYONE UNDER COURT SUPERVISION, EXCEPT FOR BUSINESS PURPOSES
- ☐ SEXUAL PREDATOR ☐ SEXUAL OFFENDER
- ☐ SUBJECT TO ICCA
- ☐ SUBJECT TO JESSICA LUNSFORD ACT
- ☐ NO CONTACT WITH A MINOR UNLESS APPROVED BY THE COURT
- ☐ MAY HAVE CONTACT W/FAMILY MEMBERS W/IN THE ____DEGREE OF CONSANGUINITY
- ☐ MAY APPLY FOR EARLY TERMINATION OF PROBATION AFTER APPROPRIATE AMOUNT OF TIME; AFTER 50% COMPLETE
- ☐ MAY TRANSFER PROBATION TO

- COUNTY/STATE OF RESIDENCE
- ☐ THE COURT HAS NO OBJECTION TO THE ISSUANCE OF A "BUSINESS PURPOSES ONLY" LICENSE IF THE DEFENDANT OTHERWISE QUALIFIES
 - ☐ **MUST SCHEDULE AND KEEP APPOINTMENT WITH ATTORNEY PRIOR TO NEXT COURT HEARING**

BOND

BOND NUMBER U1021041737
BONDSMAN ALL FLORIDA BAIL BONDS
BOND AMOUNT 15000

- ☐ BOND REVOKED-COURTS MTN
- ☐ ISSUE SUMMONS
- ☐ BOND REDUCED TO_____
- ☐ ESTREAT BOND
- ☐ NO MODIFICATION
- ☐ CAPIAS ORDERED-BOND_____
- ☐ VACATE ESTREATURE
- ☐ RECALL CAPIAS/WARRANT

MOTION HEARING

- (1) Def motn to suppress
- (2) State mtn to strike witness – G Declue
- (3) State mtn to strike witness – E Serock
- (4) Def renewed all mtns to dismiss

☐ GRANTED ☐ DENIED ☐ RESERVED

DISPOSED OF IN OPEN COURT CTS_____

- ☐ ANNOUNCEMENT OF NO INFO
- ☐ NOLLE PROSEQUI – see ruling below
- ☐ REFERRED TO PTI
- ☐ DISMISSED
- ☐ REFERRED TO DRUG PTI
- ☐ REF TO DRUG COURT
- ☐ REF TO MENTAL HEALTH COURT
- ☐ REF TO VET COURT
- LESSER CHARGE OF _____

FINANCIAL REQUIREMENTS

Court Costs \$_____ Additional \$_____
 LEEFS (if applicable) LEEF/LEEF2_____ \$5.00
 Fine_____ FINECF_____ \$_____
 5%_____ 5%SURCF_____ \$_____
☐ CrimeStopper_____ COSTCSCF_____ \$20.00
☐ SAO Fee_____ SACOPCF_____ \$100.00
☐ PDF Asst._____ PDACF_____ \$100.00
☐ PD Rep Fee_____ PDRF_____ \$_____
☐ Rape Crisis_____ CFRCS_____ \$151.00
☐ Dom Viol_____ CFDVS_____ \$201.00
☐ Crime Against Minor CFCAM_____ \$151.00
☐ FDLE_____ FDLE_____ \$100.00
☐ Investigation Costs CFIN_____ \$_____
☐ BOCC Fund_____ CFBOCC65_____ \$65.00
☐ Teen Court Fund_____ CFTEENCT_____ \$3.00
☐ Restitution Reserved ☐ Restitution Victim \$_____
 Incarceration Costs_____ INCOSTSJ/INCOST2-P \$_____
 Electronic Monitoring Fees (If applicable)_____
 Drivers License Suspended 6 Months (If applicable)_____
 DL Susp Fee_____ CFDISP (If applicable)_____ \$7.00
 Lien Fee_____ CF65OS (If applicable)_____ \$17.00
 Record Lien Fee_____ SATREC (If applicable)_____ \$10.00

Criminal Use of Personal ID surchg_____ \$1001.00

☐ Min/Man Fine Dismissed/Reduced By \$_____

☐ Pursuant to 893.135(4)-CT(S) _____

☐ Under Assessed By The Court - CT(S)_____

**☒ SEE BACK OF DISPOSITION FOR PAYMENT
OPTIONS**

(1) – Denied on all grounds

(2) – Hold in abeyance

(3) – Moot

(4) – All renewed mtn to dismiss – Denied

DONE AND ORDERED IN CITRUS COUNTY THIS
12th DAY OF JANUARY, 2023

/s/

CIRCUIT JUDGE

[DATE STAMP]

JAN 12'23 1:27 PM

APPENDIX H

Filing # 171007760 E-Filed 04/14/2023 10:50:35 AM

**IN THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT,
OF THE STATE OF FLORIDA,
IN AND FOR CITRUS COUNTY**

CASE NO: 2021-CF 177

STATE OF FLORIDA

vs.

MICHAEL L WAITE

RACE/SEX: W/M
D.O.B: 01/18/1961
HEIGHT: 6'3"
WEIGHT: 230 lbs.
EYES: BLUE
HAIR: GRAY

AGENCY NO:
CCSO 202100024738

DRIVERS LICENSE #: [REDACTED]
SOCIAL SECURITY #: [REDACTED]
LKA: 12209 E Walton Dr
Floral City, FL 34436

THE STATE OF FLORIDA

CAPIAS

TO ALL AND SINGULAR THE SHERIFFS OF THE
STATE OF FLORIDA, SPECIAL AGENTS OF THE
FLORIDA DEPARTMENT OF LAW
ENFORCEMENT, STATE ATTORNEY'S
INVESTIGATORS OF THE FIFTH JUDICIAL
CIRCUIT, AND ALL OTHER LAW ENFORCEMENT
OFFICERS OF THE STATE OF FLORIDA;
GREETINGS:

YOU ARE HEREBY COMMANDED to Take
MICHAEL L WAITE and him safely keep, so that you
have his body before the Judge of the CIRCUIT Court
of the State of Florida, for the County of Citrus, at the
Courthouse in Inverness, FL to answer unto the State
of Florida on an Information filed against him by the
State Attorney for the County of Citrus for:

I UNLAWFUL INTERCEPTION OF ORAL
COMMUNICATION (F3) 934.03(1)(a) BOND AMT =
\$5,000.00

[STAMP]
SERVED
Michael L. Waite
MONTH 02 DAY 19 YEAR 2021

and you have then and there this writ.

The undersigned hereby endorses bail in the amount
of \$5,000.00

does/does not authorize modification of this bail by the

Judge presiding at First Appearance.

/s/

JUDGE

WITNESS:

Angela Vick, Clerk of our said Court
and the seal of said Court
at the Courthouse, Inverness, FL

February 19, 2021

Date

Angela Vick, CLERK

By: /s/

Deputy Clerk

[SEAL]

**PLEASE PLACE THIS WARRANT/CAPIAS IN:
(CHECK APPROPRIATE LINES)**

 X 1- FCIC
 X 2- NCIC

IF FCIC ONLY:

 X STATEWIDE
 SURROUNDING COUNTIES ONLY
 CITRUS COUNTY ONLY
 OTHER _____

**WE WILL EXTRADITE SUBJECT FROM THE
FOLLOWING REGION(S) IF PLACED IN NCIC:**

<u> </u>	REGION A	<u> </u>	REGION E
<u> </u>	REGION B	<u> </u>	REGION F
<u> </u>	REGION C	<u> </u>	REGION G
<u> </u>	REGION D	<u> </u>	REGION H
<u> </u>	CONTINENTAL U.S.		
<u> </u>	INTERNATIONAL		

DATE: 2/19/2021

AUTHORIZED BY:

/s/ Debra L Munchel
Debra L Munchel
Assistant State Attorney
Florida Bar No. 0593699
Citrus County Courthouse
110 North Apopka Avenue
Inverness, FL 34450
(352) 341-6670
EServiceCitrus@sao5.org

APPENDIX I

[Circuit Court of the Fifth Judicial Circuit in and
for Citrus County, Florida, Transcript Excerpt,
January 12, 2023]

* * *

where the line is whether or not an expectancy of privacy is reasonable, and by her Traverse Ms. Hartman has agreed that the expectation of privacy they had was not reasonable.

MS. HARTMAN: I would object to that, that's not what I said.

THE COURT: All right, let's start with the Motion to Suppress because that's where the majority of the testimony and court time has been spent on this particular issue.

After the testimony and legal argument I don't think this was a close issue. Um, I think the issues and the facts have largely been conflated here, um, to bring an argument. I don't find any Constitutional violations whether it's Fourth Amendment or otherwise, a warrant is secured, there's a -- the warrant is based on sworn probable cause. A search warrant is later secured based on sworn probable cause. Um, there's been recordings made by your own client in this particular case. There's admissions made by your client in this particular case.

As to the, I believe it's four counts of, um -- in fact the Unlawful Miretaoping, um, I know of no law that specifically excludes Law Enforcement officers or any public service individual, um, from the protections of this statute.

You argued I think, what was it last Tuesday the first time we were here, about recording Law Enforcement, and those are situations where there's a camera and it's occurring in public and there is a case related to, uh, a chief of police conference room, but these are very specific factual situations which don't line up and don't mirror any higher court's decisions at this point in time. We can debate the policy considerations and I think there can be reasonable arguments on both sides, but at the end of the day the law is what the law is, 1-17, and it's not there yet, it may never be there -- maybe it is, at some point maybe it gets there, um, but it's not there now.

Um, I don't find there are any material omissions or overt lies or misrepresentations made to Judge Carney or Judge Pete Brigham in issuing the warrants in this particular case; in fact, they not only could have gone onto the property and the curtilage they have could have in my view pulled the gate down to get to him because they had a reasonable basis to believe -i.e. they saw him -- that he was behind that gate, that he was at that address and the address is specifically outlined as his home address, which is where they met him. Um, so the Motion to Suppress is denied on all grounds and all counts.

The Motion to Dismiss for Violation of Due

Process, I find no violation of due process in this particular case. Uh, a lot of what's been argued here potentially, and I don't know if it would be successful or not, could be argued in a 42 USC 1983 style case, um, that's an issue in a civil rights case related to the use of force and so on, but I don't find that there was any excessive amount of force used in this particular case.

The testimony that I've heard and that I found credible is that the physical altercation was -- let me choose my words here -- brought on by your client and there was no force used until that point, until resisting occurred, until physical force was used against then Captain Glaze. Um, I don't have any evidence that any injury occurred as a result of any, um, overt acts by anyone at the Sheriff's Office or the individual there from the Attorney General's Office, the testimony I have and the evidence before me is that if Mr. Waite was injured, it potentially could have occurred when the Captain fell on him. Both are big guys, from what I can tell Mr. Waite is bigger than Ine and I'm six foot and 190 pounds, um, that's going to be a hard fall, and then Captain Glaze is probably around a similar size and approximately a 200-pound individual falling on top of another one could cause injury.

But I don't have any definitive evidence, um, sufficient enough to satisfy that burden that there's an intentional injury, there's no credible evidence that he was kicked or intentionally stomped or struck in any way. The evidence that I have is that the Captain fell on top of him and that he was dry stunned at some point in time and then there was a pressure point,

1117, used behind the ear to gain compliance, none of this is outside the realm of due process, um, and I don't find that the Motion to Dismiss should be granted for that reason.

I don't find there was any failure to preserve any evidence because of the type of camera that was used in one situation versus another, there's no outright duty to even take photos. Uh, could it be best practice sure, if there's an allegation that there's injury is it best practice sure, but there's no lawful requirement for them to even take the photos that they did take. Um, I believe most the photos that you showed or proffered at some point were a few days later. UF, so that motion is denied as well, I don't find anything ineoroper, I don't find any violations of his due process rights in the alleged failure to preserve evidence.

And the Motion to Dismiss for Overbreadth I think is really an open and shut issue pursuant to the SHEVIN V SUNBEAM TELEVISION CORP, Case 351 So.2d 723, um, the issue seems settled it's -that case is clear dispositive on the issue, that motion is also denied. So with that, all the Defense's motions are denied here today.

We stand I believe set for calendar call in this case on the --

MS. HARTMAN: February 17th.

THE COURT: What is it?

MS. HARTMAN: February 17th.

THE COURT: I don't think I have calendar

* * *

APPENDIX J

**IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT**

Michael Leroy Waite,
Appellant(s),

v.

State of Florida,
Appellee(s).

Case No.: 5D2025-0841
L.T. No.: 2021-CF-000253-A

Date: June 26, 2026

BY ORDER OF THE COURT:

ORDERED that Appellant's "Motion for Rehearing or Rehearing En Banc," filed May 20, 2026, is denied as to the request for rehearing and is stricken as legally insufficient as to the request for rehearing en banc. Further, it is

ORDERED that Appellant's "Motion to Certify ..." and Motion for a Written Opinion, filed May 20, 2026, are denied.

I hereby certify that the foregoing is (a true copy of) the original Court order.

5D2025-0841 6/26/2026
SANDRA B. WILLIAMS, CLERK

Panel: Judges Makar, Edwards and Eisnaugle

cc:
Criminal Appeals DAB Attorney General
Kristen Davenport
Alexei Lizanich
Debra Tuomey

APPENDIX K

Filing # 171007760 E-Filed 04/14/2023 10:50:35 AM

**IN THE CIRCUIT COURT OF THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA, IN AND FOR CITRUS COUNTY**

THE STATE OF FLORIDA

vs

MICHAEL L WAITE

CASE NO. -202/CF177

INFORMATION

IN THE NAME AND BY THE AUTHORITY OF THE
STATE OF FLORIDA:

WILLIAM M GLADSON, State Attorney of the Fifth
Judicial Circuit of the State of Florida, in and for
Citrus County prosecuting for the State of Florida, by
and through the undersigned Assistant State
Attorney, in the said County, under oath, information
makes that: MICHAEL L WAITE (R/G: W/M, DOB:
01/18/1961) in the County of Citrus, and the State of
Florida, on or about the 6th day of January in the year
of Our Lord, twenty twenty-one:

**COUNT I
UNLAWFUL INTERCEPTION OF ORAL**

COMMUNICATION (F3)

934.03(1)(a)

did intentionally intercept or endeavor to intercept, or procure another person to intercept or endeavor to intercept the wire, oral, or electronic communication of another person, to wit: Sgt. Ed Blair, in violation of Florida Statute 934.03(1)(a);

contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Florida.

STATE OF FLORIDA, COUNTY OF CITRUS

[DATE STAMP]
FEB 19 '21 12:15 PM

Personally appeared before me, WILLIAM M GLADSON, State Attorney for the Fifth Judicial Circuit, State of Florida, in and for Citrus County, State of Florida, or his duly designated Assistant State Attorney, who first being sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which if true, would constitute the offense therein charged. Prosecution instituted in good faith and subscribed under oath, certifying he has received testimony under oath from the material witness or witnesses of the offense.

/s/
Debra L Munchel,
Assistant to WILLIAM M GLADSON

State Attorney,
Fifth Judicial Circuit of Florida
Florida Bar No. 0593699

Sworn to and subscribed before me this 19 day of
February, 2021.

/s/

Affiant Personally Known to Notary Public

[NOTARY SEAL]
MARY ANN ICART
Commission # GG 290893
Expires February 26, 2023
Bonded Thru Troy Fein Insurance 800-385-7019

APPENDIX L

**IN THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT,
OF THE STATE OF FLORIDA,
IN AND FOR CITRUS COUNTY**

CASE NO. 21-CF-253

STATE OF FLORIDA

VS

Michael Waite

**WAIVER OF RIGHTS AND OPEN PLEA
TO THE COURT**

I, Michael Waite, the above-named Defendant in the criminal action(s) declare that:

If I have any questions before or during the plea, I can talk privately with my lawyer and if my lawyer cannot answer my questions, I can talk with the judge.

I am aware of and fully understand that charge(s) listed below have been filed against Me in-the above-styled case(s). I understand that the maximum sentence of each charge is as follows:

Charge	Imprisonment	Fine
5x unlawful interception	5 years ea.	\$5000.00 ea

1x Resist with
violence

1x Battery on LEO

I also understand that a plea of guilty admits the truth of a charge, a plea of not guilty denies a charge and a plea of nolo contendere (no contest) neither admits or denies a charge but is made in my own best interest and enables the judge to sentence me the same as if I pled guilty.

I wish to enter a plea of guilty/**Inolo contendere**
(no contest) to

(✓) the charges as filed.

The sentencing scoresheet prepared in my case has been fully explained to me and if I still have any questions, I can ask the judge about them at the time I enter this plea. I understand that if I am being sentenced as a habitual offender or prison releasee reoffender the sentencing scoresheet does not apply to my case.

By placing my initials beside the following paragraphs, I state that I understand the content of each item, either by having read each item or by having each item read and/or explained to me; and that each item so initialed is true and correct as it applies to me:

[Inits.] I am 62 years of age and I have completed 4
years of formal education.

[Inits.] I can read, write and understand the English language and I have no difficulty reading and understanding this document.

[Inits.] I am not currently under the influence of drugs or alcohol.

[Inits.] I have never been found to be insane or incompetent, nor have I ever been a patient at any hospital for mental illness.

[Inits.] I have discussed with my attorney the facts of this case(s) and the defense(s) that might be available. I am satisfied that my attorney has represented me to the best of his/her ability and has done all that can be expected of him/her.

[Inits.] I have not been promised any reward nor has it been suggested that I will be rewarded in any manner, or that I will be given any leniency, other than the terms set forth in this document, in return for my entering this plea. No person has used any threats, force, pressure or intimidation to induce me to make this plea. No promises concerning gain time or potential release dates have been made to me.

[Inits.] I fully realize that by entering this plea, I am waiving any right to a trial by a jury or by the judge, I am waiving my right to confront and cross-examine my accusers, I am waiving my right to remain silent or to testify in my own

behalf, I am waiving my right to subpoena witnesses and have them testify for me, and I am waiving my right to require the state to prove the truth of the charge(s), including each element thereof, beyond and to the exclusion of every reasonable doubt before I can be found guilty.

[Inits.] I understand that if I am not a United States citizen, this plea and the resulting sentence may lead to my deportation.

[Inits.] I understand the judge will impose mandatory court costs, surcharges and fees and may impose fines and other discretionary charges. If I am sentenced to probation and/or community control, I will be required to pay costs of supervision. If I have been represented by the public defender system, I will be required to pay a reasonable fee for those legal services. I represent that I have the ability to pay all of these obligations during terms of probation and/or community control.

[Inits.] I understand that by entering this plea, I waive my right to direct appeal of any matters relating to judgment, including the issue of guilt or innocence. I understand that an appeal, based solely on the length of a legal sentence, will not be successful. I understand I retain my right to challenge an illegal sentence.

[Inits.] I understand that this plea agreement is void
if withdrawn by the state prior to being
accepted by the judge.

/s/ 3/9/23
DEFENDANT DATE

[HANDWRITTEN:] Defense reserves the right to
appeal denial of motions to dismiss and suppress.
State stipulates issues were/are dispositive.

A/G
2 yrs probation
MHET
Do not possess any FA
\$150 cost of prosecution

I am attorney for the defendant in this case(s). I
have read and fully explained this document to the
defendant. I have also read and fully explained the
Information as well as the Sentencing Scoresheet to
the defendant. He has acknowledged to me that he
fully understands the content of both documents. I
have explained the maximum penalty as to each count
pled to by the defendant and I consider him competent
to understand the charge(s) against him and the effect
of his waiver of rights and open plea to the court. I
have explained to him his right of appeal and the
difference between direct appeal and collateral attack.

/s/ 3/9/23
ATTORNEY FOR DEFENDANT DATE

I have determined that the defendant entered into

this waiver of rights and open plea to the court I have determined that the defendant entered into this waiver of rights and open plea to the court freely and voluntarily and that there is sufficient factual basis. freely and voluntarily and that there is sufficient factual basis. Therefore, I approve this document and Therefore, I approve this document and accept the defendant's plea.

/s/	3/9/23
PRESIDING JUDGE	DATE

/s/	3/9/23
STATE ATTORNEY	Date

APPENDIX M

[Circuit Court of the Fifth Judicial Circuit in and
for Citrus County, Florida, Transcript Excerpt,
March 9, 2023]

* * *

THE COURT: And additionally on page two -that
was page three.

The defense reserves the right to appeal the denial
of motions to dismiss and suppress.

The state stipulates the issue are or were
dispositive; is that accurate?

MS. HARTMAN: Yes, Your Honor.

THE COURT: All right. That's the agreement. All
right, what's the highest grade level in school you
completed?

THE DEFENDANT: Uh, college, four years.

THE COURT: You can -- you can read and write
English, correct?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand everything going
on here today?

THE DEFENDANT: Yes, sir.

THE COURT: All right.

Have you ever been adjudicated mentally insane or incompetent and not had your status restored?

THE DEFENDANT: No, sir.

THE COURT: Are you currently under the influence of alcohol, narcotics or medications that would affect your ability to make a good choice?

THE DEFENDANT: No, sir.

APPENDIX N

[Circuit Court of the Fifth Judicial Circuit in and
for Citrus County, Florida, Transcript Excerpt,
January 12, 2023]

* * *

MR. LIZANICH: Thank you, sir.

Q (By Mr. Lizanich) Do you recognize that.
document?

A (Perusing document.)

Yes, sir.

Q What is it?

A That is the initial report -- or my report for the
initial investigation.

Q When did you sign that report?

A February 19th, 2021.

Q Now before that day -- well, we'll say before
February 18th -- was the original report on the 18th or
the 19th?

A I believe it was the 18th.

(Perusing document.)

Uh, February 18th, 2021.

Q So it was the 18th?

A Correct, is when I initiated the report.

Q Now on February 18th, 2021, did you have any knowledge of Mr. Waite recording anyone other than Sergeant Blair?

A No.

Q Now why did you prepare this document?

A Why did I generate the report?

Q Yes, sir.

A Um, a request had come in through our Records Department that got transferred up to Sergeant Viggiano, who then as the OIC of the unit handed it to me and said you know, "Take a look at this."

Q So does this appear to be a true and accurate copy of the document you had prepared on February 18th, 19th of 2021?

A (Perusing document.)

It does.

MR. LIZANICH: At this point I will both request Judicial Notice of this document in the court file and also move to enter it into evidence.

I understand the State's hearsay objection, I'll wait to respond.

THE COURT: It's a police report?

MS. HARTMAN: Yes.

THE COURT: Police reports are specifically not admissible.

MS. HARTMAN: Yes.

MR. LIZANICH: And I understand the Court's Ruling, again I have SMITH V STATE, So.2d -- or So.3d 473, Florida Supreme Court 2009, which held that police reports are not hearsay without knowledge.

Additionally, STATE V JOHNSON, 284 So.2d 198, Florida 1973, that does --

THE COURT: It's his own police report. Objection is sustained.

MR. LIZANICH: Yes, sir.

THE COURT: There's very limited circumstances where police reports come in and this is not one of them.

MR. LIZANICH: I understand, Your Honor.

To preserve my record I would ask to offer it as a Proffered Exhibit.

THE COURT: It will be Proffered.

MR. LIZANICH: Thank you, Your Honor.

THE COURT: What's that 28, Madam Clerk?

THE CLERK: That was Exhibit 21 he's referring to.

THE COURT: Oh, I see it's already labeled?

THE CLERK: Right.

THE COURT: All right, Exhibit 21 will be labeled as Exhibit 21 as a Proffer Exhibit, not accepted by the Court otherwise.

DIRECT EXAMINATION RESUMED

BY MR. LIZANICH:

Q In the course of your conduct in the investigation of the case did you have an opportunity to present that exhibit to the State Attorney's Office?

A Yes.

Q Do you remember which State Attorney you met with?

A I do not.

Q If I showed you a copy of the Direct Information would that refresh your recollection?

A I mean it's going to demonstrate who I saw, I can't recall exactly who it was. I can tell you it was a female.

Q Would it refresh your recollection if you saw the Information?

A It might, yes, sir.

Q Take a look at that.

A (Perusing document.)

Like I said all I can remember is it was a female. I don't believe I've have any other interaction with Debra.

Q Okay. Thanks.

A Oh, sorry.

Q Now, on that day you met with the State Attorney who was a female, you don't recall who she was by your personal conversation; is that what you indicated?

A Correct.

Q But you knew she was the Duty Prosecutor?

A Yes.

Q And she prepared that Direct Information?

A Yes.

Q So before you saw a Judge she had charged Michael Waite with a crime?

A She Direct Filed the Information and presented it to the Judge, yes.

Q I'm going to show you what's already in evidence as Defense Exhibit J.

(Showing the State Attorney.)

Q (By Mr. Lizanich) Do you recognize this document?

A (Perusing document.)

Yes.

Q And did Ms. Munchel (Phonetic) prepare that for you, provide that to you?

A Like I said the female State Attorney I met with prepared that, yes.

Q And you brought that to Judge Carney?

A I believe it was Judge Carney, yes.

Q And he signed it?

A Yes, it was signed.

Q And at that time the State of Florida was already charging Michael Waite with a crime?

A Based on the Direct File, yes.

Q Let's talk about some of the history relevant to planning your arrest.

Um, about when was the first time you encountered Mr. Waite?

A Within probably a year to a year and a half prior, somewhere in that range.

Q On one of those encounters were you, urn, riding on a boat?

A Yes.

MR. LIZANICH: Where's F? I'll grab it.

MS. HARTMAN: I'm going to object to relevance -- (Unintelligible) -- offer to show evidence to the Court, and it's not admitted into evidence.

MR. LIZANICH: Well I'm asking what he thinks about it, Your Honor, but I understand that --

THE COURT: Well his opinion on it doesn't necessarily matter. Why don't you approach.

(Bench conference.)

THE COURT: That's one of the videos that

* * *

You didn't discuss the e-mail that says Captain Glaze knew Mr. Waite was recording conversations, in that interview?

A No. Not in the interview, no, sir.

Q And you didn't mention it in your reports later?

A No, sir.

MR. LIZANICH: No further questions.

THE COURT: Cross?

MS. HARTMAN: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. HARTMAN:

Q Detective, would this defendant telling people that the calls were being recorded on prior occasions mean that they can record all calls?

A No.

MR. LIZANICH: Objection, calls for legal conclusion.

THE COURT: Overruled.

Q (By Ms. Hartman) And that capias was signed

by Judge Bruce Carney?

A The arrest warrant?

Q Yes, the arrest warrant.

A Yes.

Q And when you went to -- and did you personally walk that down to Judge Carney to have that signed?

A Yes.

Q When you did that did you tell Judge Carney the facts of the case?

A Yes, he asked me what everything was.

Q And that was prior to signing the capias?

A Correct.

Q As well as you went there with the charging document and Information signed by the duty prosecutor?

A Yes.

Q And I'm handing you what Defense has already moved into evidence as Defense's I.

And if you can read this paragraph into evidence, you can read it out loud.

A "Personally appeared before me, William M. Gladson, State Attorney for the Fifth Judicial Circuit of the State of Florida, in and for Citrus County, State of Florida, or his duly designated Assistant State Attorney, who first being sworn says that the allegations as set forth in foregoing Information are based upon facts that have been sworn to as true, in which if true would constitute the offense therein charged.

Prosecution instituted in good faith and subscribed under oath certify he has received testimony under oath for the material witness or witnesses of the offense."

Q And if you could read on Page 1 what the defendant was charged with in the Information.

A It says:

"Count I. Unlawful Interception of Oral Communications, Florida State Statute 394.03(1)(a). Did intentionally intercept or endeavor to intercept, or procure another person to intercept or endeavor to intercept the wire, oral, or electronic communication of another person; to wit, Sergeant Ed Blair, in violation of Florida Statute 934.03(1)(a)."

Q Does that document provide more testimony -- (Unintelligible) -- there is sworn testimony in evidence to support that charge which are material facts to support unlawful interception?

A Yes.

MR. LIZANICH: Objection, hearsay.

MS. HARTMAN: (Unintelligible.)

THE COURT: It's in evidence. It's overruled.

* * *

APPENDIX O

**IN THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR CITRUS COUNTY, FLORIDA**

Filing # 216932900 E-Filed 02/17/2025 01:39:43 PM

STATE OF FLORIDA
Plaintiff,

vs.

Case No.: 2021-CF-000253-A

MICHAEL LEROY WAITE
Defendant,

**SECOND MOTION TO VACATE JUDGMENT
AND DISMISS**

The Defendant, MICHAEL LEROY WAITE, through counsel, moves this Honorable Court to vacate judgment of guilt and sentence of Counts VI-VII, and to dismiss Counts VI-VII, for lack of subject matter jurisdiction. Based on the undisputed facts and the final opinion of the Fifth District Court of Appeal, Mr. Waite was arrested for lawful conduct. As a result, the Deputies were not engaged in the lawful execution of a legal duty as a matter of law when they arrested him. Therefore, the highest cognizable crime for what took place during the arrest is a misdemeanor. This Honorable Court lacks subject matter jurisdiction to hear misdemeanors. Mr. Waite states:

a. The name and location of the court that entered the judgment and sentence in this case is the Fifth Judicial Circuit in and for Citrus County, Florida.

b. The judgment and sentence resulted from a plea.

c. Mr. Waite appealed this Court's judgment and sentence on April 6, 2023. The Fifth District Court of Appeal reversed the Trial Court's denial of Mr. Waite's motion to dismiss counts I-V.

d. This is the first postconviction motion to address Counts VI-VII. Mr. Waite filed one previous postconviction motion on December 11, 2024, pertaining to Counts IV upon the Mandate of the Fifth District Court of Appeal received on October 25, 2024. This Honorable Court granted the first motion to vacate and dismiss counts I-V on December 20, 2024.

e. The claim in the present motion was not raised in the first motion to vacate because it was not ripe until Counts I-V were first dismissed.

f. Mr. Waite seeks to have his judgment and sentence vacated.

g. The facts and conditions relied on in support of this motion are as follows.

**FACTS IN SUPPORT OF MR. WAITE'S
CLAIM FOR RELIEF**

1. On February 18, 2021, Citrus County Sheriffs

Office (CCSO) Detective Chenoweth wrote an affidavit alleging Mr. Waite, on January 6, 2021, secretly recorded a phone call between himself and Sergeant Edward Blair, CCSO, in violation of § 934.03, Fla. Stat. Detective Chenoweth provided this affidavit to the Office of the State Attorney, who filed a Direct Information. Judge Bruce Carney issued a capias based solely upon the Direct Information.

2. On February 19, 2021, deputies arrested Mr. Waite on the capias.

3. Captain Ryan Glaze, CCSO, seniormost officer involved, alleged Mr. Waite elbowed him in the face during the arrest on February 19, 2021, resulting in additional charges for Battery on a Law Enforcement Officer and Resist Law Enforcement Officer with Violence, the same Counts VI-VII addressed by this motion. The battery and resisting charges were initially filed separately in 2021-CF-200, Citrus County, and were later consolidated into 2021-CF-253, Citrus County.

4. On March 19, 2021, the State charged Counts II-IV, alleging three additional violations of § 934.03, Fla. Stat. On February 6, 2023, the State charged Count V, also alleging violation of § 934.03, Fla. Stat., upon production of reciprocal discovery by defense counsel.

5. On August 18, 2022, Mr. Waite filed five motions to dismiss and a motion to suppress in a joint brief. On October 24, 2022, Mr. Waite filed an amended motion to dismiss pursuant to Fla. R. Crim.

P. 3.190(c)(4). On October 25, 2022, this Court struck the joined motions filed on August 18, 2022, without prejudice to refile them separately. On October 27, 2022, Mr. Waite filed three additional motions to dismiss and a motion to suppress, separately. The parties, this Court and the Fifth District Court of Appeal of Florida treated these motions as incorporating the later-filed Count V. These motions were denied by the Trial Court.

6. This Court heard the motions on January 4, 2023, and January 12, 2023.

7. At the hearing, Detective Chenoweth, case agent and author of the affidavit prepared for the Direct Information testified in substance, among other things:

a. He wrote the affidavit for a Direct Information. (R. 1731:19-23).¹

b. The State filed a Direct Information upon review of his affidavit. (R. 1741:57).

c. That Judge Bruce Carney signed a capias based on the Direct Information. (R. 1741:10-11, 1742:1-4).

d. Prior to completing the affidavit on February 18, 2021, he did not know then Sergeant Paul Viggiano, in September 2020, told Michael Waite that all calls with members of the Sheriffs Office were

¹ The Record will be cited as: (R. page: line).

recorded. (R. 1735:4-11).

e. Prior to completing the affidavit, he did not know Michael Waite, in October of 2020, told Captain Ryan Glaze he would record all calls with members of the Sheriff's Office. (R. 1735:13-19).

f. Prior to completing the affidavit, he did not know Michael Waite, in October 2020, told 911 operator Nicole Connolly he would record all calls, or that Nicole Connolly told Michael Waite it was "fine to record" all calls with members of the Sheriffs Office. (R. 1735:20-25).

g. Prior to completing the affidavit, he never listened to the 911 audio of Mr. Waite's call on January 6, 2021, in which Michael Waite said the return call from Sergeant Blair, which formed the basis of the capias, should be recorded. (R. 1736:1-4).

h. He would have found those facts relevant had he known those facts. (R. 1736:8-10).

i. If he had known those facts at the time he wrote his affidavit, he would have mentioned those facts in his affidavit. (R. 1736:5-7).

j. He told Judge Carney the facts of the case as he knew them. (R. 1781:46).

k. Detective Chenoweth never testified that he gave Judge Carney the affidavit or that Judge Carney reviewed the affidavit. (R. 1731:3-1796:8).

8. At the hearing, Lieutenant Paul Viggiano, supervising Sergeant overseeing the case at the time of Mr. Waite's arrest, testified in substance, among other things:

a. That he had a conversation with Michael Waite in September of 2020. (R. 1801:17-1803:24).

b. In that conversation, he told Michael Waite all calls made with the Sheriff's Office were recorded. (R. 1803:20-24).

c. Before February 19, 2021, he had no knowledge that Michael Waite told Captain Glaze in October of 2020, "I'm recording all calls." (R. 1804:15-23).

d. He had no knowledge Captain Glaze replied to that statement by Michael Waite, by saying, "I would expect nothing less from you." (R. 1804:24-1805:4).

e. He had no knowledge of the conversation Mr. Waite had with Nicole Connolly. (R. 1805:18-20).

9. Captain Ryan Glaze, seniormost officer involved in the case, testified at the hearing in substance, among other things, as follows:

a. In August of 2020, he sent an email expressing his hope that he had enough for a warrant to arrest Michael Waite regarding a separate matter, for which no charges were filed. (R. 1842:21-1844:25).

b. He had no knowledge of Michael Waite recording anyone prior to an email containing a recording of a conversation with Sergeant Blair on January 6, 2021. (R. 1851:13-17).

c. He had a conversation with Michael Waite in 2020. (R. 1851:18-24).

d. He did not recall Michael Waite telling him he would recall all calls with members of Sheriff's Office in that call. (R. 1851:25-1852:3).

e. Upon having his recollection refreshed, his testimony at deposition a year prior, and moments before his recollection was refreshed, was not accurate because he had forgotten Michael Waite said he would record all calls with members of the Sheriff's Office. (R. 1853:11-21).

10. Thomas Tiderington, an expert witness in police procedures, called on behalf of Mr. Waite, testified in substance, among other things, as follows:

a. He was formerly Chief of Police of the Plymouth Township Police Department, of Plymouth Township, Michigan, and formerly a Captain of the Fort Lauderdale Police Department.

b. In his opinion, information that Michael Waite had told Captain Ryan Glaze and Nicole Connolly, in October 2020, that he was recording all calls, and that Nicole Connolly told him it was fine to do so, should have been included in Detective Chenoweth's affidavit.

c. In his opinion, information that Michael Waite stated on January 6, 2021, that the call with Sergeant Blair should be recorded should have been included in Detective Chenoweth's affidavit.

d. As a result of these omissions, Detective Chenoweth's affidavit did not comply with nationally accepted police practices.

e. The operation to arrest Michael Waite did not comply with nationally accepted police practices and even violated the Sheriff's own General Order 715, by failing to complete a tactical operation plan prior to the arrest.

f. The deputies should have ensured Mr. Waite received medical treatment and their failure to do so did not comply with nationally accepted police practices.

g. The deputies should have documented Mr. Waite's injuries photographically, and their failure to do so did not comply with nationally accepted police practices.

h. The deputies omitted these same material facts from their later affidavit for a search warrant as well, and by this failure did not comply with nationally accepted police practices.

i. That he has taught search warrant writing classes for many years, among other things.

R. 1379:10-1380:8; 1385:13-1398:14.

11. Dr. Ronald K. Wright, M.D., J.D., a forensic pathologist called on behalf of Mr. Waite, testified in substance, among other things, as follows:

a. That he was formerly Chief Medical Examiner for Broward County, Florida.

b. That he was also a licensed attorney until he retired the year prior.

c. That in his opinion, based on high resolution photographs and medical records, Captain Glaze was basically uninjured.

d. That no physical evidence corroborated an allegation that Mr. Waite elbowed Captain Glaze or caused injury to his thumb.

e. That no medical tests can disprove a claim of suffering from pain.

f. In his opinion, based on his review of medical records and x-ray images, someone kicked Mr. Waite in the chest while he was down on the ground, breaking three of Mr. Waite's ribs.

g. His ability to opine about the extent of Mr. Waite's injuries was diminished because the deputies did not take photographs or document Mr. Waite's injuries and did not ensure Mr. Waite received medical treatment immediately.

h. That the deputies' use of force against Mr. Waite was excessive, because "you don't kick people

when they're down."

R. 1582:5-1584:22; 1586:11-20; 1596:7-1600:16; 1607:1-5.

12. The State did not call any experts or elicit any testimony contradicting the opinions of Dr. Ronald K. Wright, M.D., J.D., or Chief Thomas Tiderington. Instead, the State argued both experts' testimonies were irrelevant, and that Dr. Wright's opinion should be discarded because he has not previously been qualified to testify as an expert in the five-county Fifth Judicial Circuit.

13. Mr. Waite, without admitting guilt, entered a no contest plea to all charges and reserved his right to appeal the denial of his motions to dismiss and suppress. The State conceded his motions were dispositive.

14. This Court adjudged Michael Waite guilty on all counts and sentenced him according to a negotiated plea to a term of two (2) years of standard probation.

15. This motion renews and incorporates by reference each and every material allegation and argument contained in Mr. Waite's Motion to Dismiss for Violation of Due Process, (attached as "1"), his Motion to Dismiss for Failure to Preserve Evidence, (attached as "2"), and his Motion to Suppress, (attached as "3").

16. It is undisputed that on February 19, 2021, Citrus County Sheriffs deputies arrived at Mr. Waite's

home to arrest him on a capias for one count of violating § 934.03, Fla. Stat.

17. It is undisputed that when Mr. Waite was seized on February 19, 2021, there was no other basis to seize him than the capias for an alleged violation of § 934.03, Fla. Stat.

18. The Fifth District Court of Appeal held, "[i]t is only when the state cannot establish even the barest bit of a prima facie case that it should be prevented from prosecuting." *Waite y, State*, 395 So. 3d 601, 601 (Fla. 5th DCA 2024).

19. The District Court held further, "Waite did not violate section 934.03(1)(a)'s prohibition on intercepting 'oral communications' when he recorded the conversations with the deputies because they did not have a reasonable expectation of privacy." *Id.*

I. THE CONVICTIONS SHOULD BE VACATED FOR LACK OF SUBJECT MATTER JURISDICTION.

a. DEPUTIES WERE NOT ENGAGED IN THE LAWFUL EXECUTION OF A LEGAL DUTY AS A MATTER OF LAW

i. THE CAPIAS WAS INVALID AND/OR VOID BECAUSE IT ONLY ALLEGED LAWFUL CONDUCT

20. Because there was not the barest bit of a prima facie case, because the capias sought to arrest Mr.

Waite for engaging in only lawful conduct, and because the deputies did not have a reasonable expectation of privacy at the time they were recorded, the capias was not supported by probable cause.

21. "[N]o Warrants shall issue, but upon probable cause [...]." Amend. IV, U.S. Const.

22. "No warrant shall be issued except upon probable cause [...]." Art. I, § 12, Fla. Const.

23. Where a warrant is not supported by probable cause, the warrant is invalid. *See Franks v. Delaware*, 438 U.S. 154 (1978); *Debord y. State*, 422 So. 2d 881 (Fla. 2d DCA 1982); *State v. Bogard*, 388 So. 2d 1296 (Fla. 4th DCA 1980).

24. Where probable cause is not shown by the complaint, a warrant for arrest is issued illegally. *See Giordanello v. United States*, 357 U.S. 480, 84-87 (1958).

25. An invalid warrant cannot be the basis for a legal arrest and search. *See United States v. Cox*, 475 F. 2d 837 (9th Cir. 1973); *Martin v. State*, 424 So. 2d 994 (Fla. 2d DCA 1983); *Pesci v. State*, 420 So. 2d 380 (Fla. 3d DCA 1982);

26. An arrest made on an invalid warrant is unlawful. *Cf. Florez v. Broward Sheriff's Office*, 270 So. 3d 417 (Fla. 4th DCA 2019) (which held an arrest on an invalid warrant was not lawful, instead the arrest was made as a result of a warrant which was void per the Broward Sheriff's Office's own actions).

27. The good faith exception does not cure an arrest upon an invalid or void warrant, and an invalid or void warrant cannot support an arrest and incidental search. *See State v. White*, 660 So. 2d 664, 666-67 (Fla. 1995); *see also Robinson v. State*, 885 So. 2d 951 (Fla. 1st DCA 2004).

ii. **THE CAPIAS AND THE ARREST ITSELF WERE INVALID AND/OR VOID BECAUSE OF LAW ENFORCEMENT'S KNOWING OR RECKLESS DISREGARD FOR MATERIAL FACTS IN OBTAINING THE CAPIAS AND IN CONDUCTING THE ARREST ITSELF**

28. In addition, and in the alternative, because deputies knowingly or recklessly omitted material facts from the initial affidavit and their reports and testimony, particularly in consideration of the fellow officer rule, deputies obtained the capias and conducted Mr. Waite's arrest unlawfully. As a result, deputies were not lawfully engaged in the execution of their legal duties at the time of the alleged offenses.

29. Though this Court denied, and the Fifth District Court of Appeal affirmed this Court's denial of Mr. Waite's second, third, and fourth motion to dismiss (filed pursuant to Fla. R. Crim. P. 3.190(b)) and his motion to suppress (Fla. R. Crim. P. 3.190(g) and (h)), this Court and District Court have not considered subject matter jurisdiction in conjunction with the dismissal of Counts I-V for bearing not even the barest

bit of a prima facie case. As a result, these facts and arguments should be considered in the totality of the circumstances as they pertain to subject matter jurisdiction.

30. It is undisputed Detective Chenoweth's February 18, 2021, affidavit for Direct Information failed to disclose Mr. Waite told Citrus County deputies several times he was recording them, that he would record all calls with law enforcement, and that Sheriff's office employees gave Mr. Waite explicit permission to record Citrus County Sheriff's deputies. *See Franks*, 438 U.S. at 155.

31. Under the fellow officer rule, information known to one officer is imputed to other officers in the investigation and officers cannot avoid the protection of Amend. IV, U.S. Const., by failing to disclose information to another officer and then claiming the omission was made in good faith. *See White*, 660 So. 2d at 667.

32. The capias was also invalid because, and it is undisputed, the probable cause affidavit was only reviewed by a State Attorney, not by a neutral and detached magistrate. The State Attorney issued a Direct information. The Court issued a capias solely upon that Direct Information, without reviewing the probable cause affidavit. This procedure does not comply with Amend. IV, U.S. Const., or Art. I, § 12, Fla. Const. *See U.S. v. Lefkowitz*, 285 U.S. 452, 464 (1932). *See also Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

**b. THE HIGHEST COGNIZABLE CRIME IS
A MISDEMEANOR**

33. Counts VI and VII of the Information both require proof beyond a reasonable doubt that the deputies were lawfully executing a legal duty at the time of the offense. *See* §§ 843.01, 784.07, Fla. Stat.

34. As a matter of law, the deputies were not engaged in the lawful execution of a legal duty at the time of Mr. Waite's arrest because "it is settled that the State cannot prove that the police are in the lawful execution of a legal duty when they arrest a suspect if the arrest itself is executed unlawfully." *Nieves v. State*, 277 So. 3d 745, 750 (Fla. 2d DCA 2019).

35. When the State cannot prove the element of lawful execution, the highest cognizable crime is a misdemeanor simple battery, under such cases as *Brown v. State*, 298 So. 3d 716, 721 (Fla. 2d DCA 2020), which held:

In sum, we conclude that Deputy Velasquez and Deputy Vivian did not have reasonable suspicion to detain Brown. Because the detention was not supported by reasonable suspicion, it was unlawful. And because the detention was unlawful, the State did not prove the "lawful execution" element to sustain the charges of battery on a law enforcement officer and resisting an officer with violence.

c. BECAUSE THE HIGHEST COGNIZABLE

**CRIME WAS A MISDEMEANOR, THIS
COURT LACKED SUBJECT MATTER
JURISDICTION TO HEAR THE CASE**

36. Circuit courts in Florida have subject matter jurisdiction of "all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged." § 26.012(2)(d), Fla. Stat.; Art. V, § 20, Fla. Const.

37. Because the highest cognizable crime was a misdemeanor, this Court lacked subject matter jurisdiction to hear it, under such cases as *Booker v. State*, 497 So. 2d 957, 958 (Fla. 1st DCA 1986), which held in part:

The appellant was charged in circuit court with one felony and three misdemeanor charges. Upon defense motion, the felony charge was severed from the misdemeanor charges. Two separate jury trials were held in circuit court and appellant was found not guilty of the felony count, but guilty of all three misdemeanors. Because appellant was found guilty in circuit court solely on misdemeanor offenses, the circuit court, under the circumstances, lacked subject matter jurisdiction.

38. Subject matter jurisdiction cannot be conferred

by failure to object or waiver.² See *Izquierdo v. State*, 890 So. 2d 1263 (Fla. 5th DCA 2005).

39. "When the circuit court dismissed the battery charge, Mr. Andujar-Ruiz no longer faced a felony charge. Consequently, the circuit court could not adjudicate the unrelated misdemeanors." *Andujar-Ruiz v. State*, 320 So. 3d 228 (Fla. 2d DCA 2021).

40. The State may argue that § 776.051, Fla. Stat., "prohibits the use of force to resist either arrest or the execution of a legal duty by a law enforcement officer unless the defendant can show that the officer was not acting in good faith." *King v. State*, 120 So. 3d 108, 109 (Fla. 4th DCA 2013), which the Fifth District cited in its opinion in this case. The State's argument is misplaced for several reasons:

- a. § 776.051, Fla. Stat., only prohibits a finding of immunity pursuant to justifiable use of force as defined in § 776.012, Fla. Stat. "Section 776.051(1) forecloses the defense of justifiable use of force by a defendant who resists an arrest by a law enforcement officer, regardless of the legality of the arrest." *Tillman v. State*, 934 So. 2d 1263, 1269 (Fla. 2006), (*superseded by statute on other grounds as recognized in Tillman v. Orange County*,

² Although, in this case, Mr. Waite did object to this Court's exercise of jurisdiction despite lack of subject matter jurisdiction. Record at 364.

519 Fed. Appx. 632 (11th Cir. 2013).

- b. § 776.051, Fla. Stat., does not refer to §§ 784.03, 784.07, or 843.01, Fla. Stat.
- c. §§ 784.03, 784.07, and 843.01, Fla. Stat., do not refer to § 776.051, Fla. Stat.
- d. Nothing in §§ 776.051, 784.03, 784.04, or 843.01, Fla. Stat., seeks or purports in any way to eliminate an essential element of the crimes of Battery on a Law Enforcement Officer or Resisting with Violence.
- e. The State never filed any information alleging Mr. Waite violated § 776.051, Fla. Stat.
- f. Mr. Waite never asserted he was immune pursuant to § 776.012, Fla. Stat., and did not raise self-defense.
 - i. Mr. Waite never presented a case alleging he was attacked first and defended himself.³
 - ii. Because Mr. Waite did not assert

³ Irrelevant to his argument here, he could not raise justification as a defense because he denied elbowing Captain Glaze in the face or in any way resisting him with violence. *Cf. State v. Moore*, 337 So. 3d 876 (Fla. 3d DCA 2022) (which held that a defendant must show that the elements for justifiable use of force are met to raise the claim).

justifiable use of non-deadly force, Mr. Waite did not seek to introduce evidence to support the defense, and instead, filed other motions on other grounds.

- iii. Mr. Waite was deprived of due process and access to courts where his denial of relief was predicated upon his failure to introduce evidence to support a defense he never raised, in violation of Amends. IV-VI, XIV, U.S. Const., Art. I, § 9, Fla. Const., and § 775.021, Fla. Stat.
- g. Granting his motion to dismiss for lack of subject matter jurisdiction would not violate § 776.051, Fla. Stat. because Mr. Waite did not seek immunity from prosecution pursuant to § 776.012, Fla. Stat., and because he could face a simple misdemeanor battery charge on the allegation presented by the State.
- h. To let the convictions stand would violate separation of powers, the rule of lenity, due process, the prohibition against ex post facto laws, the right to present a complete defense, access to courts, double jeopardy, would be void for vagueness, and grant relief not requested by the State in any of its pleadings, all of which would violate Amends. IV-VI, XIV, U.S. Const., Art. I, § 9, Fla. Const., and § 775.021, Fla. Stat.

41. Absent subject matter jurisdiction, this Court had no authority to hear this case, and any judgment

entered by the Circuit Court is null and void.

The issue of subject matter jurisdiction is one of fundamental error that may be raised for the first time on appeal. Moreover, the entry of a plea does not foreclose a later claim premised on the trial court's lack of subject matter jurisdiction. . . . When a court lacks subject matter jurisdiction, it has no power to decide the case and any judgment entered is absolutely null and void, can be set aside and stricken from the record on motion at any time, and may be collaterally attacked.

Waggy v. State, 935 So. 2d 571, 573 (Fla. 1st DCA 2006). External references omitted. *See also Dean v. State*, 303 So. 3d 257 (Fla. 5th DCA 2020); *Booker v. State*, 497 So. 2d 957 (Fla. 1986).

WHEREFORE, the Defendant respectfully requests this Honorable Court vacate its judgment of guilt and sentence of March 9, 2023, and to dismiss Counts VI-VII.

(The remainder of this page has been left intentionally blank. A signature page follows.)

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in good faith in this motion and that the punishment for knowingly making false statement includes fines and/or imprisonment.

Date: 2/17/2025 /s/

MICHAEL LEROY WAITE
Defendant

STATE OF FLORIDA
COUNTY OF CITRUS

BEFORE ME, the undersigned notary public, this day personally appeared MICHAEL LEROY WAITE, who is either personally known to me or who produced his FL DL # [REDACTED] as identification, by physical presence ____ or by online notarization ____ and who, upon being duly sworn, did depose and say that he was the Defendant named in the foregoing SECOND MOTION TO VACATE, that he read the same, executed it, and that, under penalties of perjury, the things and matters contained therein are true and correct.

WITNESS my hand and official seal this 17 day of February 2025.

[NOTARY STAMP]
MICHELLE DRAWDY
MY COMMISSION # HH 464991
EXPIRES: March 15, 2028
Notary Stamp or Seal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the Office of the State Attorney, EServiceCitrusao5.org, by eservice

on this 17 day of February 2025.

By: /s/ Alexei V. Lizanich
ALEXEI V. LIZANICH
MELISA L. MILITELLO, P.A.
107-B West Main Street
Inverness, Florida 34450
352/637-2222
E-Service: militellolawyer@gmail.com
Florida Bar No. 107525
Attorney for Defendant

EXHIBIT

**IN THE CIRCUIT COURT OF
THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR CITRUS COUNTY, FLORIDA**

Filing # 160117959 E-Filed 10/27/2022 03:02:27 PM

STATE OF FLORIDA
Plaintiff,

vs.

Case No.: 2021-CF-000253-A

MICHAEL LEROY WAITE
Defendant,

MOTION TO SUPPRESS

Michael Leroy Waite, through counsel, moves this Honorable Court to suppress evidence pursuant to Fla. R. Crim. P. 3.190(g) and (h), and as grounds states:

STATEMENT OF FACTS

On February 19, 2022, the Sheriff's deputies seized and arrested Mr. Waite in his curtilage without probable cause for any offense, without a valid arrest or search warrant, and without an exception to the warrant requirement. As a result, the Sheriff's deputies obtained evidence, including their observations of Mr. Waite's conduct and condition, of each other's conduct and condition, photographs, and an Olympus audio recording device, containing audio

files.

EVIDENCE SOUGHT TO BE SUPPRESSED

1. All testimony and observations by all deputies of the Defendant's condition and conduct after Mr. Waite was illegally seized.
2. All testimony and observations by all deputies of all deputies' conditions and conduct after Mr. Waite was illegally seized.
3. Photographs taken by CSS John Kloss pursuant to his assignment in this case.
4. The existence, search, and return, results, or product of a search warrant executed upon an Olympus digital recorder, including audio recordings of conversations between Mr. Waite and Sergeant Shelly Clark, Captain Ryan Glaze, and Detective Steven Farkas, including the recorder and audio files themselves, and all reports and testimony regarding them.

MEMORANDUM OF LAW

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.¹ Emphasis supplied.

The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. **Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.** Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent.

U.S. v. Lefkowitz, 285 U.S. 452, 464 (1932).² Emphasis supplied.

Warrants authorizing searches and seizures upon the authority of law enforcement officers, such as

¹ U.S. Const. amend. IV. Emphasis supplied.

² *U.S. v. Lefkowitz*, 285 U.S. 452, 464 (1932). Emphasis supplied.

prosecutors, are not valid warrants, and searches and seizures upon warrants issued by State Agents are constitutionally infirm.

We find no escape from the conclusion that the seizure and search of the Pontiac automobile cannot constitutionally rest upon the warrant issued by the state official who was the chief investigator and prosecutor in this case. **Since he was not the neutral and detached magistrate required by the Constitution, the search stands on no firmer ground than if there had been no warrant at all.** If the seizure and search are to be justified, they must, therefore, be justified on some other theory.

Coolidge v. New Hampshire, 403 U.S. 443 (1971).³

A prosecutor is an interested and attached agent to the competitive practice of ferreting out crime. No neutral and detached magistrate reviewed the facts or became satisfied of the existence of probable cause in this case. A *capias* does not necessarily involve a neutral magistrate at all under Florida's statutes, and directly contravenes the plain language of the Fourth Amendment, because it does not require a neutral magistrate to examine the probable cause before issuing a warrant.

Upon the filing of an information, the clerk of

³ *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

the circuit court shall docket the information and shall, **without leave or order** of the court first being had and obtained, issue a capias for the arrest of the person charged; and the clerk shall likewise issue any and all other necessary process incident to the information.

§ 932.48, Fla. Stat. Emphasis supplied.⁴

Contrasted with the Florida's Issuance of arrest warrants statute:

(1) A judge, upon examination of the complaint and proofs submitted, if satisfied that probable cause exists for the issuance of an arrest warrant for any crime committed within the judge's jurisdiction, shall thereupon issue an arrest warrant signed by the judge with the judge's name of office.

(2) The court may issue a warrant for the defendant's arrest when all of the following circumstances apply:

(a) A complaint has been filed charging the commission of a misdemeanor only.

(b) The summons issued to the defendant has been returned unserved.

⁴ § 932.48, Fla. Stat. Emphasis supplied.

(c) The conditions of subsection (1) are met.

§ 901.02, Fla. Stat.⁵

The test for whether probable cause cures an arrest in a public place is whether the arresting officers knew of "facts and circumstances [. . .] sufficient to cause a reasonably cautious person to believe that the suspect was guilty of committing a crime."⁶

"[L]aw enforcement cannot avoid the dictates of *Payton* and *Saavedra* by ordering suspects out of their homes, then arresting or detaining them as if they had been encountered abroad."⁷

⁵ § 901.02, Fla. Stat.

⁶ *Fla. Game & Freshwater Fish Comm 'n v. Dockery*, 676 So. 2d 471, 474 (Fla. 1st DCA 1996).

⁷ *Davis v. State*, 744 So. 2d 586, 588 (Fla. 2d DCA 1999)(holding:

"We realize, of course, that Detective Eastmond did not initially enter Davis's home; instead, he directed her to step outside. But law enforcement cannot avoid the dictates of *Payton* and *Saavedra* by ordering suspects out of their homes, then arresting or detaining them as if they had been encountered 'abroad.' As previously noted, Eastmond's direction to Davis constituted a seizure; she did not voluntarily consent to leave her residence. Nor did this case involve exigent circumstances. Detective Landsberg testified he developed probable cause to arrest Davis and Carl at least a day earlier. He had ample time to

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing memorandum has been furnished by e-service to the Office of the State Attorney, Citrus County, Florida, this 27th day of October, 2022.

Law Offices of Michael A. Graves
Public Defender
Fifth Judicial Circuit

/S
ALEXEI V. LIZANICH
Assistant Public Defender
FL Bar No.: 0107525
Citrus County, Judicial Center
Second Floor, Room 238
110 North Apopka Ave
Inverness, Florida 34450
(352) 341-6777
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obtain an arrest warrant. Law enforcement officer may not sit and wait when they could be obtaining a warrant, and then employ this self-created delay to concoct exigent circumstances.).

APPENDIX P

**IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT, OF THE
STATE OF FLORIDA, IN AND FOR
CITRUS COUNTY**

Filing # 163924930 E-Filed 01/02/2023 03:38:02 PM

STATE OF FLORIDA

VS

CASE NO. 2021-CF-000253-A

MICHAEL L WAITE

CASE NO. 2021-CF-000253-A

**STATE'S RESPONSE TO DEFENSE MOTION
TO SUPPRESS**

COMES NOW, PATRICIA LOUISE DIAZ, Assistant State Attorney in the above styled case and moves this Honorable Court to Deny Defense motion to suppress and as grounds for this motion therefore states the following:

1. On or about January 6, 2021, the Defendant recorded Sgt Edward Blair of the citrus county sheriffs office. The defendant then sent that recording to CCSO via email.
2. Detective Jacob Chenoweth then appeared before the State Attorney's office where he

provided sworn testimony, along with the sworn testimony of Sgt. Edward Blair. The sworn testimony, as well as the recording of the conversation with the Defendant and Sgt Blair, provided sufficient evidence for the State Attorney's office to file an information in which it was sworn to under oath by the State Attorney's office.

3. The information contained the date, the defendants name, the charge, and the person the Defendant recorded without permission.
4. That information and application for capias was brought to the Honorable Judge Bruce Carney by Detective Chenoweth. Detective Chenoweth told Judge Carney the circumstances surrounding the case, and Judge Carney signed and issued a capias for the defendant's arrest.
5. When officers went to execute the search warrant, the Defendant resisted Captain Ryan Glaze with violence by using his elbow to strike Capt. Glaze across his face, adding charges of battery on a law enforcement officer and resisting with violence to the defendants charge.
6. After the defendant was in custody, officers found an audio recording device.
7. At that point, Detective Chenoweth brought an application for search warrant to the duty

judge, the Honorable Peter Brigham. Judge Brigham reviewed the search warrant and signed it.

8. The recorder was then searched by Detective Chenoweth in compliance with the search warrant where three more recordings were found of law enforcement telephone calls where they were unaware of the recording, including that of Sgt. Shelley Clarke, Capt. Ryan Glaze, and Det. Steve Farkas.
9. The Defendant was then arrested on three more counts of a violation of Fla Stat. 934.03.
10. In the current case a neutral and detached magistrate, Judge Bruce Carney, signed the capias.
11. Unlike the case of US v. Lefkowitz as cited by the defense where the State directly attempted to issue a search warrant for a vehicle, in the current case, both the arrest and search warrants were reviewed and signed by a neutral and detached magistrate.
12. Judge Carney not only signed the search warrant based on what Detective Chenoweth told him, but also signed it finding probable cause based on the sworn testimony of the State Attorney filing the information, swearing that there is sworn testimony that the Defendant is the one who committed the offense of recording Sgt. Blair without

permission on January 6, 2021. Therefore, a neutral and detach magistrate did review and issue the capias.

13. Furthermore, a defendant cannot resist, obstruct, or oppose law enforcement with violence, or commit battery on a law enforcement officer even in the case of an illegal arrest.
14. In *Ruggles v. State*, the Court found that the Defendant was not entitled to use violence or commit battery on a law enforcement officer, even if the arrest and detention was illegal because the officer was off duty; however, identified herself as a law enforcement officer. The Court found that the appellants are still guilty of the offenses charged because neither of them had any right to use violence against the officer during their attempted arrest. *Ruggles v. State*, 757 So. 2d 632, 633 (Fla. Dist. Ct. App. 2000). Therefore, the evidence should not be suppressed.
15. Defense makes an argument that it should be suppressed as fruits of the poisonous tree if the Court finds the original capias was invalid; however, the good-faith exception to the exclusionary rule applies unless (1) the issuing judge "was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth"; (2) the issuing judge "wholly abandoned" her neutral

role as a gatekeeper; (3) the warrant rested on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"; or (4) the warrant was so facially deficient that the executing officers could not reasonably presume it to be valid. Leon, 468 U.S. at 923, 104 S.Ct. 3405.

16. Three conditions must be met before a court applies the exclusionary rule: 1) misconduct by police or their adjuncts; 2) a conclusion that applying the exclusionary rule will appreciably deter the misconduct; and 3) a conclusion that the benefit of applying the rule does not outweigh its costs. *United States v. Herring*, 492 F.3d 1212, 1217 (11th Cir. 2007).
17. While the State argues that the capias is in fact valid, the evidence should also not be suppressed under the good faith exception. Detective Chenoweth did not mislead Judge Carney with any information, Judge Carney did not "Wholly abandon" his role as a neutral gatekeeper as he had sufficient sworn testimony to determine probable cause existed, the warrant did not rest on an affidavit lacking of probable cause because it was based on the Detectives words to Judge Carney as well as a charging document with each element of the crime laid out as sworn and alleged that the defendant committed, and the warrant is not so facially deficient

that Detective Chenoweth could not reasonably presume it to be valid.

18. Additionally, Detective Chenoweth did not commit misconduct- he took the recorded tapes and sworn testimony Sgt. Blair that he did not know he was being recorded and expected it to be a private call. It also will not deter misconduct as Detective Chenoweth took the evidence he had and provided it to the state, who then in turn provided a charging document to a neutral and detached magistrate. Applying the exclusionary rule also would not outweigh the costs.
19. A new search warrant was also obtained with sworn testimony provided by Detective Chenoweth and other deputies to search the recorder and was signed by Judge Peter Brigham. Detective Chenoweth in good faith relied on this search warrant and excluding such would not deter any misconduct.

WHEREFORE the State respectfully requests this Court enter an Order Denying Defense Motion to Suppress.

Respectfully submitted this 2nd Day of January, 2023.

/s/ TARA ELIZABETH HARTMAN
TARA ELIZABETH HARTMAN
Assistant State Attorney
Florida Bar No. 1018577

110 N Apopka Ave 3rd Floor Rm 2-372
Inverness, FL 34450
(352) 341-6670
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above has been furnished to Alexei Lizanich 107-B West Main St Inverness, FL 34450, by hand or mail delivery or electronic service this 30th day of December, 2022.

/s/ TARA ELIZABETH HARTMAN
TARA ELIZABETH HARTMAN

APPENDIX Q

[Circuit Court of the Fifth Judicial Circuit in and
for Citrus County, Florida, Transcript Excerpt,
January 12, 2023]

* * *

internal injuries. And when he said that his ribs were kicked -- or I'm sorry he didn't say his ribs were kicked -- when he said that he had pain to the side of his ribs the jail staff, medical staff didn't order any X-Rays or CT's, which is in their discretion to order or to not order. You also heard testimony from Defense's expert witness that there's not much you can do for fractured ribs, um, so that may be why the jail staff didn't order that.

For those reasons I would ask for Defense's Motion to Dismiss for Violation of Due Process be denied.

When it come to the Motion to Suppress I would argue the same thing, that there was, um, sworn testimony and evidence in support of Detective Chenoweth obtaining an arrest affidavit for this defendant. Um, there was sworn testimony by multiple officers that they did not give consent for Mr. Waite to record them, they didn't know they were being recorded, they had an expectation of Privacy and they were in fact recorded.

With that information Detective Chenoweth came to the State Attorney's Office in which they swore to

and affirmed, um, in their charging document and there was testimony to support that charge and the material allegations therewithin. Based on that, as well as Detective Chenoweth telling Detective [sic] Carney about the case, he signed a capias for arrest warrant. Um, there was nothing that indicated a reason to suppress any of the evidence.

After that when the arrest was effectuated and the audio recording device was taken into the custody of Law Enforcement a search warrant was obtained by Judge Brigham. We heard testimony that it was after that it was searched and more recordings of Law Enforcement officers were found in which they gave sworn testimony and a probable cause arrest was made based upon the support of those charges.

For the Motion to Dismiss for Failure to Preserve Evidence, it is in my written response that it is not the -- the Sheriff's Office isn't required to take photos of every single defendant in every single case. There was a Booking photo of this defendant, while it may not be the same quality that is, um, something to argue to a jury about the lack -- or Defense's argument of what

* * *

APPENDIX R

[Excerpt, Fifth District Court of Appeal of the State
of Florida, State's Answer Brief, October 4, 2023]

* * *

e.g., Ortiz v. State, 24 So. 3d 596, 600 (Fla. 5th DCA
2009). Applying that standard here, the lower court's
order should be affirmed.

After hearing the relevant testimony and
argument of the parties, the trial court denied the
Defendant's motion to suppress as follows:

After the testimony and legal argument I don't
think this was a close issue. Um, I think the
issues and the facts have largely been
conflated here, urn, to bring an argument. I
don't find any Constitutional violations
whether it's Fourth Amendment or otherwise,
a warrant is secured, there's a — the warrant
is based on sworn probable cause. A search
warrant is later secured based on sworn
probable cause. Urn, there's been recordings
made by your own client in this particular
case. There's admissions made by your client
in this particular case.

* * *

I don't find there are any material omissions
or overt lies or misrepresentations made to

Judge Carney or Judge Pete Brigham in issuing the warrants in this particular case; in fact, they not only could have gone onto the property and the curtilage they could have in my view pulled the gate down to get to him because they had a reasonable basis to believe — i.e. they saw him — that he was behind that gate, that he was at that address and the address is specifically outlined as his home address, which is where they met him. Um, so the Motion to Suppress is denied on all grounds and all counts.

(R. 1876-78). These factual findings and legal conclusions are fully supported by the record, and the court's order should be affirmed.

Detective Chenoweth, the lead investigator on this case, testified that he met with the on-duty prosecutor and presented his investigative report, and she direct filed an information and presented it to Judge Carney, who signed the capias on February 19, 2921. (R. 1740-42, 1752-53, 1780). Chenoweth personally walked down to Judge Carney to have the capias signed, with the sworn charging document, and the judge asked him questions about the facts of the case before signing. (R. 1781-82, 1028-30).

The charging document includes a certification that the prosecutor has received testimony under oath in support of the charge, that the prosecution was instituted in good faith, and that the allegations set forth are based on facts that have been sworn to as true and if true would constitute the offense charged.

(R. 1781-82, 1026-27). The capias was signed and in hand before the Defendant was arrested, and before any law enforcement agents even went to the house. (R. 1784).

The Defendant contends that this process was improper as it fails to include a written probable cause affidavit. In support of this contention, he relies on two cases where **search warrants** were issued without the support of an affidavit, despite the explicit requirement of an affidavit for such a warrant in Article 1, section 12 of the Florida Constitution. See Mylock v. State, 750 So. 2d 144, 146 (Fla. 1st DCA 2000); Glass v. State, 604 So. 2d 5, 6 (Fla. 4th DCA 1992).

There is no such affidavit requirement for a capias. Instead, under Florida law a capias shall issue "without leave or order of the court first being had and obtained" upon the filing of an information. § 932.48, Fla. Stat. See also Fla. R. Crim. P. 3.131(j). The Defendant's argument has no merit.

The Defendant also contends that the capias was invalid because the information lacked specificity and accordingly there was insufficient probable cause for the arrest. Notably, he never challenged the sufficiency of the information below, where the information tracked the language of the relevant statute and included the victim of the unlawful interception (Sergeant Blair) and the date it happened (January 6, 2021). (R. 1026-27). The information was sworn and provided the required detail, and its filing required the issuance of a capias, as discussed above. This

argument has no merit.

The Defendant further complains that the information was one-sided and omitted relevant facts. He cites no authority for the proposition that an information must include the defendant's perspective, nor does the rule governing charging documents contain such a requirement. Fla. R. Crim. P. 3.140. The information in this case fully complies with this rule, and the Defendant has failed to show a valid basis to suppress the fruits of his legal and proper arrest.