

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

JUDGE: TERENCE R. PERKINS

CASE NO.: 2020-CF-000667

STATE OF FLORIDA,

vs.

TRAVIS S. SMITH,

Defendant.

**ORDER DENYING DEFENDANT’S MOTION TO SUPPRESS ANY VIDEO AND
AUDIO OF SURREPTITIOUSLY RECORDED TAPE IN VEHICLE**

THIS CAUSE was heard by the Court on the Defendant’s Motion to Suppress Any Video and Audio of Surreptitiously Recorded Tape in Vehicle filed on or about January 6, 2022, and the Court having heard the arguments of counsel and being fully informed of the premises, finds:

1. The defendant is charged with Battery, Burglary of an Occupied Conveyance and Contributing to the Delinquency of a Child for an incident arising from a ride provided by a ride-share service called “Lyft”. Specifically, it is alleged that the defendant attacked and struck the ride-share driver with an open fist, spit in his eye and placed him in a chokehold, all while the vehicle was in motion. It is further alleged that the defendant again attacked the driver when the vehicle stopped and the driver exited.

2. The verbal and then physical altercations were recorded on the driver’s interior facing dash camera.

3. The defendant seeks to suppress the video and audio from the dash-cam contending that such recordings violate 934.03, *Fla. Stat.* (2021) and the Defendant’s rights.

4. At an evidentiary hearing on the issue, the Court heard the testimony of the driver, and a passenger/witness. The driver testified that he had a digital camera in the middle of his car’s dashboard pointing towards the rear of the car at the riders in the back seat. The camera lens was 2-3 inches in size and mounted dead center on the dash, directly below the rear-view mirror. This dash-cam was very conspicuous and clearly visible to the passengers in the backseat. When the dash-cam was recording, it simultaneously displayed a real-time video image of the passengers. The driver described that from the passengers’ perspective, it was “like looking in a mirror”. The camera was installed to protect the driver and his passengers and was activated for every ride.

5. The passenger/witness, Andrew Kastl, was a fellow passenger with the Defendant and a witness to the incident. He testified that he used Uber and Lyft rideshare services in the past. On the night in questions, Mr. Kastl, his son and the Defendant used a Lyft rideshare to go to and then back from their beachside destination. The incident occurred on their return trip. Mr. Kastl denies that the driver told the passengers that they were being recorded or received permission from any of them to record their trip. Mr. Kastl did not recall seeing a camera or any signage regarding recordings and did not recall whether the vehicle had a rearview mirror. He also testified that he would have an expectation of privacy for any private conversations in the car.

6. The Defendant's actions and statements recorded on the dash-cam are clearly electronic or oral communications covered under 934.02(2). As such, the recording may be inadmissible in any civil or criminal proceedings if the declarant had a *reasonable* expectation of privacy and society is prepared to recognize this expectation as reasonable. Sec. 934.06, *Fla. Stat.* (2021) and *State v. Inciarrano*, 473 So. 2d 1272 (Fla. 1985).

7. In *Inciarrano*, the defendant went to the office of the victim to discuss a business deal. When the victim tried to back out of the deal, the defendant murdered him. The office conversation between the defendant and the victim regarding the business deal, the sound of Inciarrano's gun being cocked, five shots being fired by Inciarrano, several groans by the victim, the gushing of blood and the sound of the victim falling from his office chair to the floor were recorded on a tape found in the victim's desk. The defendant moved to suppress the recording and the trial judge denied the motion. The issue eventually reached the Florida Supreme Court. *Id.* at 1274. In phrasing the issue under the statute, the Court explained that Inciarrano must not only have had a subjective expectation of privacy, but also his expectation under the circumstances must have been one that society is prepared to recognize as reasonable.

8. The expectation of privacy must be more than a mere *subjective* expectation on the part of the person making the statement but rather a *reasonable* expectation of privacy, *that society is also prepared to recognize* as reasonable. *Shapiro v. State*, 390 So.2d 344 (Fla.1980), *cert. denied*, 450 U.S. 982, 101 S.Ct. 1519, 67 L.Ed.2d 818 (1981). Concluding that the recording and Inciarrano's oral communications were admissible, the Court found no reasonable expectation of privacy existed in the victim's business office. Reasoning that any reasonable expectation of privacy ended when the defendant entered the business premises of the victim, the Court concluded that Inciarrano's expectation "dissolved in the sound of gunfire." *Id.* 1276.¹

9. Here, the Defendant had no reasonable expectation of privacy. He was in a stranger's car, hired to take him to and from his destination. A digital camera was sitting in the

¹ On this point, Justice Overton's concurring opinion is enlightening: "I concur and write to emphasize that when an individual enters someone else's home or business, he has no expectation of privacy in what he says or does there, and chapter 934 does not apply. It is a different question, however, when the individual whose conversation is being recorded is in his own home or office." *Id.* at 1276. For similar reasoning, see *McDade v. State*, 154 So.3d 292 (Fla. 2d DCA 2014) (statements of defendant surreptitiously recorded *in his own bedroom* by child sexual abuse victim to corroborate and confirm solicitation of child victim for sex held inadmissible under 934.06.).


middle of the vehicle's dash just below the rearview mirror, pointed directly at him and displaying his live video image. Moreover, the defendant was being transported on public highways using a commercial, for-hire ride-share service. The defendant's communications were received by *any and all* occupants of the vehicle and anyone else who happened by in an open car or travelled by on the public roads. Would the expectation be any different in a convertible, a taxi cab or bus? Clearly not. The Court finds that our modern society is not prepared to recognize or protect such an unreasonable expectation of privacy.

10. Moreover, there is no reasonable expectation of privacy accorded to what you do or say when you enter someone's office or home. In this case, the victim's business was his lift-share vehicle. The defendant lost any reasonable expectation of privacy for his words or actions when he got into the victim's vehicle for commercial purposes.

Based on the above findings;

It is hereby ORDERED that the Defendant's Motion to Suppress Any Video and Audio of Surreptitiously Recorded Tape in Vehicle is hereby **denied**.

DONE AND ORDERED in Bunnell, Flagler County, Florida.

4/28/2022 11:01 AM 2020 CF
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e-Signed 4/28/2022 11:01 AM 2020 CF 000667

TERENCE R. PERKINS
CIRCUIT JUDGE

Copies to: Office of the State Attorney – libbyt@sao7.org
Philip Bonamo, Esquire – pbonamo@ricelawflorida.com
Mary Catherine Crock, Esquire – paigerusso@ricelawflorida.com