

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

STATE OF FLORIDA,

v.

DORIAN BUZZ COPPEDGE,

Defendant.

CASE NO.: 2016-00171-CFFA
JUDGE MATTHEW M. FOXMAN

SENTENCING MEMORANDUM

COMES NOW the Defendant, Dorian Buzz Coppedge, by and through his undersigned Assistant Public Defender and hereby files with the Court this Sentencing Memorandum to aid the Court to understand the issues that the defense will be raising in the sentencing hearing set for 6/29/16.

1. The Defendant is before the court on an open plea to Counts I and II where the State waived the application of the Criminal Punishment Code scoresheet.
2. The case against Mr. Coppedge was initiated by the Flagler County Sheriff's Office (FCSO) in November, 2015.
3. Mr. Coppedge lived at 41 Louisiana Drive in Palm Coast with his parents, Lewis and Barbara Johnson. His 6 year old daughter lives there as well. 41 Louisiana Drive was his registered address with the Flagler County Sheriff's Office and also with the Florida Department of Highway Safety and Motor Vehicles.
4. Cpl. Miller of the FCSO decided to install a surveillance camera on a telephone pole across the street from the Defendant's registered address of 41 Louisiana Drive, Palm Coast, FL 32164. The telephone pole was located at the edge of a vacant lot which is heavily vegetated. The intention was that the camera would accurately show all activity at 41 Louisiana including and most importantly, the comings and goings of all persons (including Mr. Coppedge) entering and leaving 41 Louisiana Drive. The camera installed was a Moultrie M80 game camera that is motion activated and has infrared for nighttime use. The camera was set up by Cpl. Miller to take 2 pictures each time motion was detected and was set up on a five second delay. According to the owner's manual the range of the M80 is 45 feet plus or minus 5 feet. (please see defense exhibit A at page 12).
5. The camera was installed on 11/23/15 and taken down the early morning of 11/30/15. It was installed again in the same location on 12/13/15 until 12/17/15.
6. On May 27, 2016, the undersigned along with Public Defender investigator Thomas Elflein went to the Defendant's address of 41 Louisiana Drive. The location of the camera was determined and measurements were taken using a measuring wheel. The distance from where the camera was installed to the tip of the Defendant's driveway is 71

feet which is 21 feet beyond the effective range of the camera. The distance from the camera to the front door of 41 Louisiana Drive is 121 feet which is more than twice the effective range of the camera. (please see defense exhibit "B").

7. Therefore the inability of the camera to **accurately** capture all of the comings and goings of the persons entering and leaving 41 Louisiana Drive is apparent simply because the camera was placed too far away to do what it was intended to do.
8. Furthermore the defense has found twenty (20) instances where the camera either malfunctioned or did not capture movements of persons coming and going from 41 Louisiana. They are attached as Defense exhibit "C" as a composite and consist of the following photographs on the following dates:
 - a. 11/23/15 where frame 876 of 878 shows a single car in the driveway. In the next frame 877 of 878 a second car is in the driveway but the car is not seen arriving and no one is seen exiting the car and entering the home. (of note is the fact that of the 878 photographs taken on 11/23/15, 797 of them depict no motion at all probably due to the camera being tripped by a leaf or branch blowing into the camera's field of vision)
 - b. 11/24/15 where photos 1 – 3 of 926 do not show the woman in photo 3 exiting the home or walking to the car. That is because the camera cannot accurately show all the times persons were entering or leaving via the front door because of distance limitations.
 - c. 11/24/15 where similar to photos 1 – 3 described above, photos 10 – 11 of 926 do not show the black male (Mr. Lewis Johnson) exit the home or open the door of the truck. It is likely the camera was only activated by the motion of the white male depicted in the foreground.
 - d. 11/24/15 where at 5:12 P.M. there is one car parked in the driveway and in the very next photo taken at 6:14 P.M. there are now three (3) vehicles in the driveway with no photographs of either vehicle arriving or of anyone getting out and entering the home.
 - e. 11/25/15 photograph 10 of 96 taken at 6:50 A.M. shows three vehicles in the driveway and in the very next photograph in the set, the truck and trailer are gone. Again the camera was unable to capture the truck being entered or leaving. Again this is because it is too far away to have been activated by motion of the person(s) leaving the home and entering the vehicle or of the vehicle itself leaving.
 - f. 11/25/15 is a series of 4 photographs starting at 8:42 A.M. that shows a single car in the driveway and in the next 3 photographs taken from 9:38 A.M. to 9:59 A.M. a second car is seen in the driveway and again no arrival of the vehicle nor the exit of the driver and any passengers is seen.
 - g. 11/25/15 at 2:08 P.M. the car in the driveway is shown and at 2:16 P.M. it is gone with no one seen leaving the house, entering the car nor the car leaving.
 - h. 11/25/15 at 4:05 P.M. photo 58 of 96 shows one car in the driveway and in the next 2 photos of the series show a second car having arrived and been parked but no one seen exiting the car or entering the house.
 - i. 11/26/15 between 11:23 A.M. to 11:29 A.M. show the Mr. Coppedge's car parked in the median but Mr. Coppedge is not seen in the series of the photos exiting the car or entering the home (photos 38 – 41 of 582). However Mr.

Coppedge is seen at the home in the photographs taken at 1:13 P.M. This is Thanksgiving Day.

- j. 11/26/15 photographs 424 – 430 of 582 taken from 1:36 to 1:43 PM show a second car parked in the median but again no one is seen exiting the vehicle and entering the home.
 - k. 11/26/15 photos 580 – 582 of 582 show a car having left but no one is seen exiting 41 Louisiana Drive, going to the car and getting in again demonstrating the deficiencies of this camera which should have been able to detect the body heat of the person because the camera does have infrared.
 - l. 11/27/15 photo 862 of 880 shows 2 cars in the driveway. Photo 863 shows a truck and trailer backed in with no interceding photo showing the arrival of the truck and it being backed in.
 - m. 11/27/15 photo 866 of 880 shows three cars in the driveway and in the next photograph a car is gone without anyone seen leaving the home and getting in and leaving.
 - n. 12/13/15 photo 1123 of 1355 a truck is in median and in the next photograph it is now in the driveway. The truck is empty in photo 1123 so where is the person who got in and backed up the truck into the driveway?
 - o. 12/14/15 at 7:54 A.M. the vehicles in the driveway have the hoods down. In the next photo in the series (1134 of 1355) two of the vehicles now have the hoods and no one is seen opening up the hoods.
 - p. 12/14/15 photograph 1177 of 1355 at 12:49 P.M. shows two cars in the driveway and a truck and trailer in the median and in the next photo the truck and trailer are gone and the car is gone from the driveway.
 - q. 12/15/15 photo of 1207 of 1355 shows 3 vehicles in the driveway and in the next photo, the truck and car and gone. Again no one is seen leaving the home and getting in the vehicles and leaving.
 - r. 12/16/15 photo 1255 of 1355 taken at 7:11 A.M. shows 3 vehicles. Photo 1256 shows two vehicles. No one is seen entering the vehicle and the vehicle is not seen leaving
 - s. 12/17/15 photo 1303 of 1355 taken at 10:09 A.M. shows a single car in the driveway. Next photo shows a truck and trailer having been backed into the driveway again with no photographs of the truck arriving or of it being backed into the driveway.
9. In addition, of the 5258 photographs taken between 11/23/15 and 11/29/15 the undersigned has counted **4586** photographs where there is no motion at all other than the fluttering of leaves and branches into the field of view of the camera which most probably triggered the shutter of the camera to activate. That is 87% of the total photos taken. For example on 11/23/15 the first 784 pictures on that date show nothing at all but the home at 41 Louisiana Drive. No cars passing by, no persons in the road, no human activity at all yet the camera was activating from 10:10 AM until 3:21 P.M. for some reason.
10. Of the 1355 photographs taken from 12/13/15 – 12/17/15, 888 are photos where there is no motion at the home in question. That is 65%.

11. Thus for the State to say that out of 5258 photos taken in November that only 2 show the defendant is misleading. 87% of the photos were of absolutely nothing. Where there is no doubt that the Defendant was at 41 Louisiana there are no photographs showing him exiting his car, going into the house, exiting the home at 1:13 PM or leaving the home.
12. The Defense argues that the purpose for which the camera was affixed could not be accomplished given the distance and the malfunctioning of the camera. It simply did not accurately depict the comings and goings of the residents and visitors at 41 Louisiana Drive.
13. At the times relevant to this case, the Defendant's vehicle had a loose alternator belt rendering it unable to be driven unless a charged battery was placed in it. The Defendant also lost his driver's license for child support so for long periods of time he had the vehicle parked at 309 S. Chapel Street in Bunnell because he wasn't driving it other than a few times (like Thanksgiving for example). The Defendant has been friends with the resident of 309 S. Chapel, Lucianne Spearmon for a long time and she permitted him to leave the vehicle there. Although Mr. Coppedge and Ms. Spearmon had a romantic relationship for some time, they ended that romantic relationship around spring of 2015 but remained close friends.
14. During this time that his vehicle was in poor mechanical condition and when his driver's license was suspended, the Defendant got around using a bicycle that his father attached a motor to. With a motor it was fairly easy for the Defendant to get around from his home in Palm Coast to Bunnell where he spent most his overnight hours.
15. The Defendant slept in the living room at 41 Louisiana Drive during the daytime. Because of restrictions DCF has placed on him having contact with his daughter, Diamond, Mr. Coppedge would sleep during the day when his daughter is off at school or otherwise outside of the home. When she returns, he leaves and mostly goes to Bunnell during the overnight hours.
16. The State's allegation is that Mr. Coppedge was living with Lucianne Spearmon at 309 South Chapel Street in Bunnell and not at 41 Louisiana Drive as his registration stated. However when Ms. Spearmon was questioned by the FSCO she denied that he lived there. She said he did spend time there but did not live there. In fact when the police on March 6, 2016 went to serve the arrest warrant on Mr. Coppedge they went to 309 South Chapel Street in the early morning (around 6:30 A.M.) to locate Mr. Coppedge but he was not there and in fact was arrested at 41 Louisiana Drive at 6:48 A.M.
17. The State argues that the fact that Mr. Coppedge's vehicle is seen parked numerous times at 309 South Chapel is proof that he was inside the residence and was living there. However cell phone mapping records (defense exhibit "D") show that the pinpointing of the cell phone calls made by 386-569-6854 show that there is not one call that is shown to have emanated from 309 S. Chapel Street which is the alleged residence. The majority of the calls were made on the north side of Bunnell in the area of North Anderson Street and Magnolia Avenue, not the south side where Ms. Spearmon lives. The cell phone records also show a person who is very active at night as demonstrated by the number of calls made in the overnight hours. These are not the actions of a person sleeping in Bunnell, let alone a person who is inhabiting 309 S. Chapel Street as alleged by the State.
18. At no time when law enforcement made a spot check at 309 South Chapel Street and observed the Defendant's car did they go to the residence, knock on the door and attempt to ascertain if in fact the defendant was inside the residence. Thus there is no proof that

Mr. Coppedge was even inside the residence during the times when his vehicle was observed at 309 S. Chapel, let alone that he has established a residence at that address.

19. The Defendant's custom would be to enter and leave the home at 41 Louisiana mostly by the backdoor according to his mother Barbara Johnson. He would enter from a vacant lot on London Drive behind the home by a break in the fencing. He would park his bike in the back yard and enter via an unlocked screen and sliding door. Given the limitations of the camera, it would never pick up the comings and goings of a person entering and leaving in this fashion. Thus the fact that there are few photos showing the defendant is understandable and it is not due to his lack of presence there in the home.
20. In addition the undersigned has reviewed the photographs taken of the home in the morning of 12/13/16 and they are attached as defense "E". They show the Defendant's car parked in the driveway on the right hand side. There is a plastic bag covering the front passenger side window. Mr. Coppedge is seen in a number of photographs with his father, Lewis Johnson in this series of photographs. He is seen in the same clothes he was wearing when he was arrested on March 5, 2016. The last photograph in defense "E" is a picture taken by the FCSO of the Defendant's vehicle parked in front of 41 Louisiana in February of 2016. It is the same vehicle as seen in the 12/13/15 photographs.
21. The Defendant's parents took a cruise on 11/28/15. In defense exhibit "F" a series of photographs from 11/28/15 are shown. They demonstrate that the lights were off at 4:39 P.M. and by evening time at 5:16 P.M. they are turned on. The home does not have an automatic light timer. Mr. Coppedge was the person who turned the lights on. Of course the surveillance did not show Mr. Coppedge arriving at 41 Louisiana Drive but the lights are on.
22. On 11/29/15 the lights are again on at night. This shows the Defendant's presence at the home. (Defense "G").
23. The Defendant's parents know that the Defendant was in the home while they were on the cruise because when they came back home to their disappointment all of the Thanksgiving leftovers were gone. However on a positive note, he had washed the dishes. No one else had been in the home but Mr. Coppedge while they were away on their cruise.
24. Lastly there are numerous photographs showing the Defendant's belongings in the home at 41 Louisiana Drive. They are described in the report by Public Defender Investigator Thomas Elflein's report previously referred to as defense exhibit "B". The photographs are attached as defense exhibit "H".
25. On two occasions Lewis Johnson was interviewed by Cpl. Miller from the FCSO and in each interview he stated that his son lives at 41 Louisiana Drive. Of note is that in the first interview on December 16, 2016 Mr. Johnson had just taken some new medication and had laid down to rest as he was feeling the effects of the medication when the detectives came to speak to him. The interview was not long, possibly 5 minutes. Also of note is the fact that the Defendant had just left the home for a court case and Mr. Johnson told the detectives this during the first interview.
26. Further showing that the Defendant was living at 41 Louisiana Drive is the fact that in August of 2015 the Defendant was listed as a victim in a case and he was sent a victim letter by Ms. Opsahl to meet with her at the State Attorney's Office. That letter was sent

to 41 Louisiana Drive in Palm Coast and was received by Mr. Coppedge. Mr. Coppedge appeared on schedule and met with Ms. Opsahl.

27. Cpl. Miller states in his report that Mr. Coppedge was seen in Bunnell on February 19, 2016. Cpl. Miller's report states that he felt that this showed that Mr. Coppedge was staying in Bunnell and not in Palm Coast because of the distance between the suspected address of 309 S. Chapel Street in Bunnell and 41 Louisiana Drive. However the records show that Mr. Coppedge had his driver's license reinstated on February 19th at the Government Services Building in Bunnell and that is noted in Cpl. Miller's report. That explains his reason for being in Bunnell that day. Also the surveillance video taken that day clearly shows his bicycle with the motor attached thus making the distance argument less persuasive. (please see defense exhibit "I" a screen shot from the surveillance video of 2/19/16).
28. When the Defendant's mother, Barbara Johnson was interviewed by Public Defender Investigator Thomas Elflein she stated that Mr. Coppedge did live at 41 Louisiana Drive.
29. So the fact is that of the 3 persons interviewed either by law enforcement (Lucianne Spearmon and Lewis Johnson) or the investigator for the defendant (Barbara Johnson) all stated that Mr. Coppedge's residence was 41 Louisiana Drive and not at 309 S. Chapel Street in Bunnell. The State's case is based on cell phone records which do not show a single call coming from 309 South Chapel Street, a series of surveillance photos from a camera unable to accurately show what it was intended to show and some observations of the Defendant's vehicle parked on South Chapel Street and him being seen one time in Bunnell the same day he had license reinstated at the Government Services Building in Bunnell.

On the day of the docket sounding the State announced their intention to add an additional count alleging that Mr. Coppedge had failed to provide required information on his registration form including accurate cell phone numbers and email addresses and internet identifiers. Because the latest registration form completed by Mr. Coppedge did not include the questioned email address (doriancoppedge@gmail.com) and also that the registration forms had incorrectly listed a cell phone number that he used, Mr. Coppedge was faced with the dilemma of facing a conviction for a violation of a technical aspect of the registration law which would be the same degree felony and same severity level as a conviction for the allegations in Counts I and II (establishing a new permanent or temporary address and not providing that information as required). With the Criminal Punishment scoresheet being what it is he was facing a minimum of approximately 5 – 6 years or more for just one count. With the State offering to waive the mandatory application of the Criminal Punishment scoresheet it was in Mr. Coppedge's best interests to accept an open plea and to let the Court decide the appropriate punishment for what the Court determines what were the Defendant's wrongful actions.

It is important to note that at no time did the defendant "vanish", or go "off the grid" or go into hiding. His was in Flagler County at all times as shown by the cell phone records and the interviews of the witnesses as well as the photographs of his clothing and other belongings at 41 Louisiana Drive

The defense will call witnesses on behalf of the defendant and other grounds in support of mitigation of sentence will be argued *ore tenus*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to:
Christina Opsahl, Assistant State Attorney, 1769 East Moody Blvd., Bldg. #1, Bunnell, FL
32110, and to the defendant, on ~~June 27~~, 2016.

June 28

/s/ William M. Bookhammer

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