

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

STATE OF FLORIDA,

v.

PAUL KEVIN DYKES JR,  
Defendant.

CASE NO.: 2015-00267-CFFA  
JUDGE DENNIS P. CRAIG

**MOTION TO SUPPRESS STATEMENTS**

Pursuant to Fla.R.Crim.P.3.190(h), defendant, Paul Kevin Dykes Jr, moves to suppress as evidence at trial the oral statement made by the Defendant to agents of the Florida Department on Law Enforcement on March 26, 2015. The grounds in support of this motion are:

1. The statements made by defendant were obtained in violation of defendant's privilege against self-incrimination, defendant's right to counsel, and defendant's right to due process of law as guaranteed by the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 9,16, and 21 of the Florida Constitution, in that the statements were made without counsel present/under circumstances that render any statements involuntary and without a valid waiver of the Defendant's Miranda rights.

**STATEMENTS OF FACTS**

1. On March 26, 2015, agents of the Florida Department of Law Enforcement (FDLE) along with marked units with the Flagler County Sheriff's Office executed a search warrant at 22 Buffalo Meadow Lane in Palm Coast in Flagler County.
2. The Defendant was already the suspect in the case due to investigation performed by the FDLE prior to obtaining the search warrant.
3. The search warrant was issued in connection with an investigation into suspected child pornography being sent and received through the internet service provider address for this residence. Investigation conducted prior to the application for the search warrant centered onto a Whisper account allegedly being used by the Defendant as well as other social media accounts linked to the Defendant. Because of this investigation, the FDLE agents were able to link up images of child pornography uploaded through the Whisper app and messages to a KIK account with the user name of "pjayd1120" and an Instagram account with the name of "pjayd1120 associated with it. The FDLE was able to obtain photograph(s) of the Defendant on the Instagram account associated with "pjayd1120" and with this information, they were able to identify him by sight.

4. The warrant was executed when the Defendant was seen leaving his house to go to work. The FDLE agents already knew that the Defendant would be leaving to go to work that morning. It was decided that when Mr. Dykes exited the home that the warrant would be executed. As Mr. Dykes walked up to his car, a marked unit from the Sheriff's Office along with several other vehicles occupied by FLDE agents converged on the house and the Defendant was told to stop.
5. The Defendant was then approached by agent Clifford Whiteside and was asked if he was Paul Kevin Dykes. He replied that he was. He was then ordered to walk over to the edge of the driveway with another agent. He complied. A cell phone that he had in his hand and his car keys was taken after Agent Whiteside searched him before he was led over to the side of the driveway.
6. The agents then knocked on the door and the other occupants of the house answered the door. The agents entered the home and after some time, Agent Whiteside came out of the house and told the Defendant that he needed to speak to him. He grabbed the Defendant by his arm and led him over to one of the vehicles that FDLE arrived in. The passenger door was opened and he was told to get in. He did so and Agent Whiteside closed the door. Agent Whiteside then sat down in the driver's seat and closed the door. Then Agent Veronica Edwards entered into the vehicle sitting in the rear passenger seat, directly behind Mr. Dykes. She closed her door as well.
7. Agent Whiteside then read the Defendant his Miranda warnings and then the Defendant was interrogated. After he was interrogated, he was formally arrested for ten counts of possession of child pornography.

## **LEGAL ARGUMENT**

1. At the time the Defendant was read his Miranda warnings he was in "custody" so as to trigger the mandatory Miranda warning. The Defendant's house was being raided by law enforcement; he was in the act of opening his car door when approached by law enforcement. He was searched and personal items seized. He was told to go over to the end of the driveway with another agent from the FDLE. Agents entered his home and after 10 or more minutes had passed, the agents came out and Agent Whiteside physically led to him to a law enforcement car where he was told to get in and the door was closed. Another agent then entered and all doors were closed and the windows were up.
2. The test for "custody" is whether there has been any restraint on the freedom of movement associated with formal arrest. It is enough if a reasonable person would believe his or her freedom of movement was being restricted with the degree of an actual arrest. Ramirez v. State, 739 So. 2d 568 (Fla. 1999) at 573. Here Mr. Dykes was prevented from entering his car, he was prevented from going to work, law enforcement officers were entering his home, personal items were seized, he was told that the agents needed to talk to him and he was led to and placed into a government

vehicle by law enforcement. All of the car's doors were shut. He was never told he was free to leave and there were multiple units of law enforcement on his property the whole time he was questioned. Any reasonable person confronted with this array of factors would believe they were not free to leave and were for all practical reasons, under arrest.

3. Ramirez quoted with approval the four factor test adopted by the Iowa Supreme Court in the case of State. V. Countryman, 572 N.W. 2d. 553, 558 (Iowa 1997). The factors are: (1) the manner in which the suspect is summoned for questioning, (2) the purpose, manner and place of the interrogation, (3) the extent to which the suspect is confronted with evidence of his or her guilt and (4) whether the suspect is informed that he was free to leave.
4. In this case, the defendant was questioned contemporaneous with the execution of a search warrant on his home. This was not a situation where an officer asks someone to come to the station house to speak, this was a non-consensual entry of a number of officers onto the most protected area a person can have, his home. Thus factor (1) should be considered to go in favor of the defendant.
5. As to factor (2), the defendant was the focus of the interrogation. He was the suspect and was the only person subjected to a recorded interview. Thus the purpose of the questioning was certainly to elicit incriminating information from him. The manner in which the defendant was questioned was admittedly not done in a hostile way. The place of the interrogation, although on the defendant's property was done in a FDLE car with 2 agents in the car while numerous law enforcement officers were in and out of his home. This cannot be considered a "home field" advantage to the defendant but should be considered hostile turf. Thus 2 of the 3 subparts of factor (2) break in favor of the defendant.
6. As to factor (3), although the interrogation started out innocently enough (probably to put the suspect at ease and lessen any anxiety or lower defenses) as the interview progressed the defendant was confronted with incriminating posts the police thought he made. They showed him photographs of child pornography that were uploaded from the ISP address in question and also included in posts made. They confronted him with other evidence of his guilt. There is no question he was confronted with most of the evidence that the agents had amassed against him to that point. This factor should go in the defendant's favor.
7. Lastly, as to the issue of custody factor (4) is in favor of the defendant. In no portion of the recorded interview is Mr. Dykes told he was free to leave.
8. Thus, Defendant was in custody requiring the administration of Miranda warnings.
9. When the government wishes to introduce statements made after the reading of the Miranda they bear a "heavy burden" to show that the defendant knowing and intelligently waived his privilege against self-incrimination or the right to counsel.

10. The Ramirez case stated that the burden is especially heavy when the defendant is a juvenile. Here while Mr. Dykes was not a juvenile he was only 18 years and 4 months old, hardly a significant difference from a 17 year old.
11. One factor to consider in deciding whether a person is intelligently and knowingly waiving his rights is prior exposure to the judicial system. Mr. Dykes has never been in trouble before and had certainly never been questioned by law enforcement like he was.
12. Mr. Dykes felt that he had no choice but to speak to law enforcement. He was taught to respect and cooperate with the police. He told them he understood his rights to make them happy. He thought if he refused to speak to them that they would get angry with him. He knew he had no attorney and did not think that FDLE would get him one if he asked for one. He had no idea what assistance an attorney may provide if he had one there during the questioning. He thought that he had to remain in the car until they told him that he could leave. He felt powerless like he was an ant and the could crush him because of the powers police have. Basically he felt he had no choice but to speak.
13. A factor to be considered is where there was no written waiver of Miranda according to Sliney v. State, 699 So. 2d 662 at 669 n. 10 (Fla. 1997) and Traylor v. State, 596 So. 2d 957 at 966 (Fla. 1992). In this case, there was no written waiver of Miranda.
14. Mr. Dykes has a significant learning disability. He only went to the 8<sup>th</sup> grade and never obtained a GED. He has a diagnosis of ADHD according to his family.
15. When considering all of the factors mentioned above, the Defendant did not make a knowing and intelligent waiver of his right to remain silent or his right to counsel. He merely acquiesced to authority when he said he would speak with them and he had no real idea of what the right to counsel meant nor did he appreciate how an attorney could assist him in custodial interrogations.

Wherefore in consideration of all of the factors and arguments made the Defendant asks that this Honorable Court to suppress his statement and prohibit its introduction into the trial(s) in this case.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to: Joseph Ledonne, Assistant State Attorney, 1769 East Moody Blvd., Bldg. #1, Bunnell, FL 32110, on October 18, 2017.

/s/ William M. Bookhammer

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