

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 any written or oral statements made by defendant to law enforcement or other agents of the State of Florida. The grounds in support of this motion are:

1. The statements made by defendant on April 6, 2015 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 Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 16 of the Florida Constitution. The statements were made without counsel present and were made after the defendant invoked his right to remain silent and to counsel under both the Sixth and Fourteenth Amendments of the United States Constitution and under the Fifth and Fourteenth Amendments to the United States Constitution and Article I section 9 and 16 of the Florida Constitution.

**FACTS:**

1. On March 26, 2015, the Defendant was arrested for ten counts of possession of sexual performance by a child and two counts of transmission of child pornography by electronic device or equipment. The arrest was the result of an execution of a search warrant at a home located at 22 Buffalo Meadow Lane in Palm Coast, FL. Various electronic devices were found in this search and seized. Relevant to this motion are an Asus Laptop and a Samsung Galaxy Cell Phone allegedly belonging to or used by the Defendant. Mr. Dykes was 18 years old when he was arrested.
2. Mr. Dykes' prior contact with law enforcement as a suspect was limited to a juvenile incident that occurred as a juvenile where he was accused of taking a bicycle. The case was resolved through Teen Court and Mr. Dykes never consulted with an attorney. Mr. Dykes was 14 years old when this case occurred.
3. After a physical extraction of the Samsung cell phone on March 31, 2015, agent Clifford Whiteside found photographs and a video that showed acts of sexual abuse of children. There was a belief that the child shown in the photographs and video was the Defendant's child and that the act(s) depicted were done in the defendant's room

- and that the Defendant took the photographs and video. In addition there was a belief Mr. Dykes was the person in the video performing a sex act on a child.
4. Plans were made by the Florida Department of Law Enforcement (FDLE) agents to travel to the Flagler County Inmate Facility where the Defendant was housed and to attempt to interview the Defendant in order to obtain more information as to the photographs and video and who the persons were who were shown in the photos and video.
  5. Prior to travelling to the Flagler County Inmate Facility the agents had obtained a warrant for the Defendant's arrest on one count of sexual battery on a child less than 12 years old and two counts of promoting a sexual performance of a child. Clearly, the Defendant was the focus of the questioning that the agents planned to carry out.
  6. On April 6, 2015, the undersigned met with the defendant at the Flagler County Inmate Facility and had him execute an Invocation of Rights form that was filed with the Clerk of Court and served on the State that same date. Court records indicate it was filed at 4:06 P.M. The Defendant was left with a copy of the Invocation of Rights form. The Invocation of Rights form is attached to this Motion.
  7. On April 6, 2015 at approximately 4:25, P. M. the Defendant was taken from his cell and led to an interview room by personnel from the Flagler County Inmate Facility. There the Defendant met with agents Veronica Edwards and Travis Smith from the FDLE.
  8. The Defendant had in his possession the Invocation of Rights form given to him by his attorney.
  9. After Agent Edwards read Mr. Dykes his *Miranda* rights the Defendant took the Invocation of Rights form and showed it to the agents.
  10. Agent Edwards read the form and even repeated the word "unequivocally" back to Mr. Dykes as he was pointing at that particular word in the Invocation of Rights form.
  11. In bold black print and underlined on the first part of the first page are the phrases that the Defendant is invoking the "Right to Counsel" and the "Right to Remain Silent". It also says that the Defendant is invoking the "Right to Counsel" in any custodial interrogation whatsoever.
  12. In response to Mr. Dykes presenting Agent Edwards with the rights form, Agent Edwards continued to speak, questioned Mr. Dykes about the photographs, and stated her belief that he took the photographs and was showing copies of the photographs in question that depicted sex acts to Mr. Dykes.
  13. Mr. Dykes has a significant learning disability. He had a diagnosis for ADHD. He only went to the 8<sup>th</sup> grade, a fact that agent Edwards was aware of because she participated in his interview with the FDLE agents in connection with the March 26<sup>th</sup> search warrant execution and his arrest.
  14. Mr. Dykes denied taking the photographs and denied that the child depicted was his daughter.
  15. The questioning continued and sharpened from asking questions as to who the children were in the photographs into questions about Mr. Dykes role in the taking of these photographs and his sexual interest in his own children.
  16. At that point, Mr. Dykes asked for his attorney to be there.
  17. The interview then ended. This was at 4:35 P.M.

18. For nine minutes, the conversations between Mr. Dykes and the agents were not recorded.
19. The agents told Mr. Dykes that he was going to be charged with Capital Sexual Battery based on the video they had found on the phone and with the two counts of transmission of sexual performance by a child per the warrant they had already procured.
20. The agents continued telling Mr. Dykes that this would be his last opportunity to talk and help himself as they gathered their papers and prepared to leave.
21. Mr. Dykes was led to believe that the agents from FDLE had the ability to persuade the State Attorney's Office to exercise leniency if he "cooperated" and told them who the persons in these photographs.
22. After being stymied in his attempt to assert his right to remain silent and to deal with law enforcement solely through counsel and feeling no other option, Mr. Dykes agreed to speak with the agents.
23. After he agreed to speak with the agents, the agents resumed recording the conversations. Mr. Dykes was asked again, who the persons in the photographs were and he identified who they were. In a short time the questioning turned from the agents asking Mr. Dykes who the other person were in the photographs to whether the defendant himself was in any of these photographs or videos. The defendant admitted that he was in one of the videos/photographs that was shown to him. That photograph is from a video found on his cell phone. It forms the basis for the charge of Capital Sexual Battery.
24. It is these statements in their entirety made by Mr. Dykes to law enforcement on April 6, 2015 that the defendant seeks to suppress.

### LEGAL ARGUMENT

1. Both the United States Constitution and the Florida Constitution guarantee the absolute privilege to be free from self-incrimination. If the police obtain statement from a defendant in violation of the right against self-incrimination, the State cannot use those statements against the defendant and those statements must be excluded. Deviney v. State, 112 So. 3d 57 at 72 (2013)
2. If the defendant indicates *in any manner, at any time prior to or during questioning that he wishes to remain silent, the interrogation must cease.* Deviney at page 74 quoting from the Miranda decision. The exercise of the right against self-incrimination must be scrupulously honored by law enforcement. Deviney at page 74.
3. Moreover, there are no "magic words" that must be uttered to invoke that right. An invocation of that right may be made by words or by the defendant's *conduct*. Deviney at page 74 citing to Pierre v. State, 22 So. 3d 759 (Fla. 4<sup>th</sup> DCA 2009).
4. The Defendant argues that by his presentation of his Invocation of Rights form to Agents Edwards and Smith by this conduct he clearly and unequivocally invoked his Fifth Amendment right to remain silent and to deal with law enforcement solely through counsel. His actions were the equivalent of a verbal assertion of the right to remain silent and his right to assistance of counsel during any custodial interrogation

5. At this point all questioning should have ceased as to any matter whatsoever. This is the holding of the case of McNeil v. Wisconsin, 501 U.S. 171 (1991). Where a suspect invokes the Fifth Amendment right to counsel in dealing with any custodial interrogation by the police, he or she may not be approached by the police regarding any offense unless counsel is present. McNeil at 501 U.S. at 177. The Invocation of Rights form attached to this motion clearly states that Mr. Dykes was invoking his rights in the context of any custodial interrogation about any "other crime or criminal activity under investigation". It is undisputed that Mr. Dykes was in custody for purposes of the application of Miranda rights.
6. However, the agents continued, ignored the document Mr. Dykes presented to them and reassured him that they were not there to question him about the charges he was in jail for but for other matters.
7. Factors to be considered if the free will of the defendant was overcome include but are not limited to: the age and youth of the defendant (here the Defendant was 18 years old), the lack of education of the defendant (here the defendant had an 8<sup>th</sup> grade education, a fact known by Agent Edwards because this was discussed in the prior questioning of Mr. Dykes on March 26, 2015), the low intelligence of the defendant (the defendant was diagnosed with a learning disability and records will show his full scale IQ was 80 with a range between 75 – 91 at the 95<sup>th</sup> percent confidence interval and that places him in the bottom 9 per cent of the general population). These factors are ones mentioned in the Deviney opinion. The court should look to the totality of all relevant factors in determining the voluntariness of a defendant's statement.
8. Another important factor is the location of the interview. This one was done in the Flagler County Inmate Facility. Mr. Dykes was not simply free to step up and walk out of the interview room. He was in custody. All of his movements were restricted.
9. This was a police initiated interrogation, Mr. Dykes was not asked if he wanted to speak with the officers, he was led out of his cell and placed in a room for reasons he did not know in advance.
10. Mr. Dykes had no real exposure to the criminal justice system before his arrest on March 26, 2015. He had been in jail for less than 2 weeks before the agents initiated their interrogation of him. The lack of sophistication and lack of prior contact with the criminal justice system is a relevant factor in determining the voluntariness of any statement made after Miranda warnings are administered. Ramirez v. State, 739 So. 2d 568 at 577 (Fla. 1999). Although Ramirez dealt with a 17-year-old juvenile defendant, there is no real significant difference between a 17-year and an 18 year old like Mr. Dykes as it relates to the relevant factors discussed in Ramirez.
11. Here Mr. Dykes unequivocally invoked his rights under the Fifth Amendment. Law enforcement ignored the invocation. They pressed on. Mr. Dykes was then presented with a situation unlike one he had ever had before. A document his attorney gave him for his protection seemed to him meaningless, he was in a closed room with two well-trained agents from the Florida Department of Law Enforcement. The agents confront him with the photographs found on his telephone. They continue to ask questions designed to elicit incriminating responses from Mr. Dykes after he invokes his rights. The combination of all of the factors mentioned above lead to the clear

conclusion that any responses made by Mr. Dykes after he presented his Invocation of Rights form to the agents were not the product of his free will.

12. Assuming *arguendo*, that the statements made by Mr. Dykes after he presented his Invocation of Rights form to the agents were the product of his free will the Defendant argues that all statements made after he clearly invoked his right to deal with the agents only with the assistance of counsel were not the product of his free will. Mr. Dykes on pages 11 – 12 of the transcript of his recorded interview states to the agents: "At this point in time I would like my attorney to be here." After he invoked his rights, the agents ceased recording and off the record, he was told that he would be charged with Capital Sexual Battery. He was told that the only chance he had to help himself was to "cooperate" with the agents and give them the information they were looking for. He was led to believe that the agents had some influence over the prosecutors and that they might show some leniency on him if the agents told the prosecutors how cooperative the Defendant was with them. He already had his prior attempt to invoke his rights ignored so he felt powerless. He felt he had no choice but to submit to more questioning. He did then submit to more questioning and it is these additional statements that the Defendant seeks to suppress. The totality of circumstances as outlined above show that he statements were not made freely and voluntarily.

Wherefore the Defendant respectfully moves this Honorable Court to suppress all of his statements made to law enforcement on April 6, 2015 or in the alternative all statements made after the questioning ceased and an off the record discussion occurred between Mr. Dykes and the agents.

### 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 May 18, 2017.

/s/ William M. Bookhammer

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WILLIAM M. BOOKHAMMER  
ASSISTANT PUBLIC DEFENDER  
Florida Bar Number: 716200  
1769 East Moody Blvd., Bldg. #1  
Bunnell, FL 32110  
(386) 313-4545  
bookhammer.bill@pd7.org

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: J. DAVID WALSH

**NOTICE OF INVOCATION OF CONSTITUTIONAL RIGHTS**

The undersigned, now in custody and under arrest, invokes all state and federal constitutional rights, including the **RIGHT TO REMAIN SILENT** under the Fifth and Fourteenth Amendments to the United States Constitution and article I, section 9 of the Florida Constitution AND the **RIGHT TO COUNSEL** under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, article I, section 16 of the Florida Constitution, Florida Rule of Criminal Procedure 3.130; *Miranda v. Arizona*, 384 U.S. 436 (1966); *Edwards v. Arizona*, 451 U.S. 477 1880 (1981); *McNeil v. Wisconsin*, 501 U.S.171 (1991); *Michigan v. Jackson*, 475 U.S. 625 (1986). I invoke all rights to which I am entitled under international treaties and agreements.

By invoking my **RIGHT TO COUNSEL**, I hereby unequivocally ask for the assistance of a competent attorney in dealing with any custodial interrogation by law enforcement agencies and their agents about this arrest or any other crime or criminal activity under investigation. I demand that my civil rights be respected and that no local, state or federal police, prosecutors or their agents communicate with me concerning any crime or criminal activity of any type whatsoever.

I refuse to hereafter waive my constitutional rights in the absence of my attorney. Anyone violating my **CONSTITUTIONAL RIGHTS** is subject to sanctions and compensation for damages pursuant to 42 U.S.C. §1983. See *Hafer v. Melo*, 502 U.S. 21, 24 & 31 (1991).

I unequivocally state that I **DO NOT AND WILL NOT:**

- a. agree to speak with any jail psychologist or anyone in the ministry employed by the jail concerning the charges against me or any matter related thereto unless my attorney is present. (Or with any law enforcement at all)
- b. consent to appear in any line-up, show-up or other identification procedure without consulting with my attorney and having my attorney present for that procedure.
- c. consent to interviews or communication with the media unless my attorney is present.
- d. consent to any polygraph test or voice stress examination, or the giving of any voice sample, handwriting exemplar, hair, blood, urine, saliva, skin sample or fingernail scraping.

e. consent to any search of my residence, automobile, person or any of my property, including my personal property being kept in the County Jail.

Signed: Paul Dykes  
PAUL KEVIN DYKES, JR  
Inmate Number: 15-0693

/s/ [Redacted Signature]  
WILLIAM M. BOOKHAMMER  
ASSISTANT PUBLIC DEFENDER  
Florida Bar Number: 716200

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to:  
Flagler State Attorney's Office, Assistant State Attorney, 1769 East Moody Blvd., Bldg. #1,  
Bunnell, FL 32110, on April 6, 2015.

/s/ William Bookhammer  
WILLIAM M. BOOKHAMMER  
ASSISTANT PUBLIC DEFENDER  
Florida Bar Number: 716200  
1769 East Moody Blvd., Bldg. #1  
Bunnell, Florida 32110  
(386) 313-4545  
716200

FLAGLER County Warrant Number: 2015 CF 267

FELONY WARRANT

STATE OF FLORIDA

VS.

PAUL KEVIN DYKES, JR

IN THE CIRCUIT COURT FOR  
FLAGLER COUNTY, FLORIDA

CASE NUMBER:

AGENCY: FLORIDA DEPARTMENT OF LAW  
ENFORCEMENT JACKSONVILLE

AGENCY REPORT NO. JA-20-0076

CHARGE(S):

- SEXUAL BATTERY ON PERSON LESS THAN 12 YEARS OF AGE
- PROMOTING SEXUAL PERFORMANCE BY A CHILD

W/M: DOB: 11/20/1996; SSN: 589-66-1469

HGT.: 5'11" / WGT.: 130

In the name of the State of Florida, to All and Singular the Sheriffs of the State of Florida:

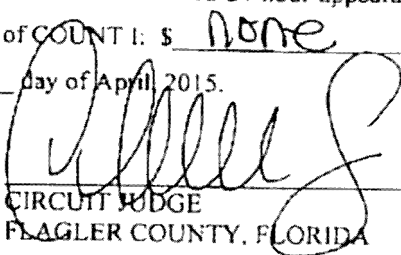
WHEREAS, CLIFFORD WHITESIDE has made oath before VERONICA EDWARDS, A Law Enforcement Officer, that one, PAUL KEVIN DYKES, JR on, about, or between March 26, 2012 and March 26, 2015, in the County of FLAGLER and State of Florida, PAUL KEVIN DYKES, JR, a person eighteen years of age or older, did unlawfully commit sexual battery upon a pre-pubescent female, or injure the sexual organs during an attempt to commit sexual battery upon a pre-pubescent female, a person less than twelve years of age, by penetrating the child's vagina with his mouth or tongue, or did have union with her vagina with his mouth, contrary to Florida Statute 794.011(2)(a). (CAPITAL FELONY)

COUNT II: PAUL KEVIN DYKES, JR. on, about, or between March 12, 2015 and March 26, 2015, in the County of FLAGLER and State of Florida, did produce, direct or promote a sexual performance, to wit: vaginal union or penetration with an adult's mouth, by a child less than 18 years of age, while knowing the character and content thereof, contrary to Florida Statute 827.071(3). (2 DEG FEL)

These are, therefore, to command you to arrest instantler the above named accused and bring him/her before the CIRCUIT Court, FLAGLER County, Florida, at the next scheduled 24-hour appearance hearing following his/her arrest, unless he/she shall first post bond in the amount of

COUNT I: \$ None COUNT II: \$ 50,000.00

Given under my hand and seal this 6 day of April, 2015.

  
CIRCUIT JUDGE  
FLAGLER COUNTY, FLORIDA

no contact with  
MINORS.

Received this 6<sup>th</sup>  
~~April 6<sup>th</sup>~~ April 6<sup>th</sup> 2015  
 served same April 6<sup>th</sup> 2015  
 by arresting the within named  
DYKES, Paul Defendant  
James Mantle  
 Sheriff  
 By D/A B. He  
 Deputy Sheriff

DITION INFORMATION:

ENTER INTO NCIC/FCIC  
NATIONWIDE