

1 from --

2 CALLER: Hey, ma, this Fred.

3 OPERATOR: -- an inmate at Broward
4 County Main Jail. This call is from a
5 correctional institution and is subject to
6 monitoring and recording. Do not use three
7 way or call waiting features or your call
8 will be disconnected. Charges may include
9 \$1.50 per month bill fee depending on
10 billing channel selected. The cost for this
11 call is \$2.35. If you consent to this call
12 being recorded and accept the charges, press
13 0. To deny this call and prevent further
14 calls from -- thank you for using Genetix.
15 For billing inquiries please call
16 1-800-844-6591. Go ahead with your call.

17 CALLER: Hello, ma.

18 CALL RECEIVER: Hello, baby. What's up?

19 CALLER: Ain't nothing much. Hey, ma, I
20 just wanted, you know what I mean, you to
21 relay a message to Greg, right.

22 CALL RECEIVER: Uh-huh.

23 CALLER: You know what I mean? He don't
24 have to, you know what I mean, try to tell
25 these, tell these police all this stuff

1 about me, ma. You know what I mean?

2 Because the police don't want him. You know
3 what I mean? The police -- I done already
4 told the police that Greg ain't have nothing
5 to do with nothing.

6 CALL RECEIVER: Uh-huh.

7 CALLER: And the police is basically,
8 you know what I mean, they beat -- they
9 basically taking my word for it, you know
10 what I mean, because I told them, I said my
11 brother wouldn't do no stuff like that. You
12 know what I mean? I done kept my brother
13 out of trouble plenty of times by, by, by,
14 by even thinking about doing some stuff like
15 that. My brother don't do nothing but go to
16 school and work. He don't do none of that.
17 But he telling the police other stuff about
18 me and it ain't right, ma. You know what I
19 mean? I'm --

20 CALL RECEIVER: Wait a minute. How you
21 know that?

22 CALLER: Because the lawyer came and
23 talked to me today. Him and Sherry told the
24 police something about me, ma.

25 CALL RECEIVER: No.

1 CALLER: Yes. Yes, ma. Yes, ma. I
2 seen the paperwork, ma. The man read the
3 letter, the man (unintelligible) today. Him
4 and Sherry.

5 CALL RECEIVER: Oh, well, the only
6 thing, the only thing they asked questions.
7 They --

8 CALLER: No. They showed Greg and
9 Sherry, they showed Greg and Sherry a
10 picture and Greg and Sherry said yeah,
11 that's him. They don't have to -- see, the
12 whole thing about it is this, Ma: They do
13 not have to say anything. Only thing they
14 have to say, I don't know. They don't have
15 to say anything, ma. They talking too damn
16 much, ma.

17 CALL RECEIVER: (Unintelligible).

18 CALLER: Ma, listen.

19 CALL RECEIVER: (Unintelligible).

20 CALLER: They don't have to -- only
21 thing they have to do is say they don't
22 know. Police can't make you say nothing.

23 CALL RECEIVER: Yeah, but well --

24 CALLER: They can't make you say
25 nothing. They showing, they showing, they

1 show Greg and Sherry a picture and Greg and
2 Sherry say, oh, yeah, that's my brother.
3 Only thing they got to do is say I don't
4 know. They can't make you say nothing.

5 CALL RECEIVER: Well, like I said, they
6 said it was you, so, you know.

7 CALLER: Yeah, but they.

8 CALL RECEIVER: They wasn't gonna deny
9 it.

10 CALLER: They supposed to deny it. They
11 supposed to say they don't know. That's the
12 whole point. You know what I mean? I'm
13 looking at a life sentence here. You know
14 what I mean? I can easily get Greg in this
15 mother fucking county jail, ma. I can get
16 his as in here.

17 CALL RECEIVER: Wait. How could you get
18 him in jail?

19 CALLER: Because -- listen, listen, ma.
20 See, that's the whole point, ain't nobody
21 listening. Everybody thinking they know but
22 they don't know nothing. I'm telling -- I'm
23 not calling here to argue with you. You
24 know what I mean? I'm not doing that.

25 CALL RECEIVER: Okay. Okay.

1 CALLER: What I'm saying is this, you
2 know what I mean, them people already think
3 Greg did all that over there. Literally.

4 CALL RECEIVER: What they, what they,
5 Greg (unintelligible) they know Greg don't
6 do shit like that.

7 CALLER: They don't know nothing. The
8 police ain't trying to hear that. That's
9 the whole point. The police --

10 CALL RECEIVER: (Unintelligible) saying,
11 Fred, but you --

12 CALLER: See, ma, see, you not
13 listening.

14 CALL RECEIVER: So Greg don't do shit
15 like that.

16 CALLER: Listen, ma. You're not
17 understanding what I'm saying, man. Why
18 don't you just listen to me sometime,
19 please, man.

20 (Call 7 was concluded.)

21
22
23
24
25

C E R T I F I C A T E

The State Of Florida,)
County Of Broward.)

I, JENNIFER STORK, Reporter and Notary Public in and for the State of Florida at large, do hereby certify that I was authorized to and did transcribe the recorded proceedings; that I did so to the best of my ability; and that the foregoing pages, numbered from 1 to 46, inclusive, are a true and correct transcription of the recorded proceedings had.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter/ notary.

DATED this 23rd day of March, 2012.



JENNIFER STORK, Reporter/Notary

JENNIFER A. STORK
MY COMMISSION #: DD930995
EXPIRES: NOVEMBER 5, 2013
Bonded Thru Notary Public Underwriters

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED by PRG D.C.
MAY 14 2012
STEVEN M. LARIMORE
CLERK U. S. DIST. CT
S. D. of FLA. - MIAMI

FREDRICK STICKNEY,
Plaintiff,

PROVIDED FOR MAILING
AT CALHOUN CI
MAY 10 2012
INMATE INITIALS FS

v.

Case No: 11-60557-CV-RNS
MAGISTRATE'S JUDGE R.N. SCOLA

L.T. KIM SPADARO, et. al.,
Defendant.

PLAINTIFF MOTION FOR SUMMARY JUDGMENT

Comes now the Petitioner, Frederick Stickney by (*pro se*) and pursuant Federal Rule of Civil Procedure.

1). The Defendants should not be entitled to qualified immunity because;

i) The Petitioner has had his VI Amendment and Constitutional rights violated by Defendants for recording and monitoring calls made to attorney, which violates attorney and clients privileges.

ii) That Broward County jail does have a policy that states attorney and clients' telephone calls will not be recorded or monitored.

2). There is responsibility to be had against L.T. Col Kim Spodaro because of her high ranking and being in control of operations within Broward County jail.

3). There should not be any "impact rule" that's barred or limited in Petitioner's complaint because Petitioner did suffer mental and physical stress caused by this/these violations, which is stated in Petitioner's complaint.

Wherefore, the Petitioner Frederick Stickney seeks Summary Judgment in his favor to be granted.

MEMORANDUM OF LAW

Petitioner seeks review of all facts in this complaint despite Petitioner is a laymen in Florida and United States Constitutional law. Petitioner's case holds true and correct facts that all alleged Defendant's herein violated Petitioner's rights, and the Summary Judgment should issue...especially where this Court has the appropriate jurisdiction and

discretion when there is a compelling legal issue and material fact being alleged. The Petitioner prays that this Honorable Court exercise its governing authority and review/this instant complaint presented by Petitioner.

CONSTITUTIONAL DEPRIVATION DID OCCUR

Constitution deprivation occurred because none of Broward County jail phone(s) has a consent for inmates to press "o" letting them know their phone calls will be recorder and/or monitored once a inmate picks up the phone the recording states to put our pin which is the arrest number given to us at time of booking. The recording states to enter the phone number, and once this is done the automated system says you will hear silence, please hold.

At no time does the system say press "o". This automated system in Broward county jail (T. Netix secures) changes all the time so it's highly unlikely for attorney(s) to call in to register a number into the system if it even exist. Qualified immunity that the Defendants are asking for, shouldn't be granted because once a person is in position of authority they are to perform their duties in a professional manner in which their require for them to do. In this instant case, Ms Casey R. Faircloth and L.T. Kim Spadaro all were assigned as position holders in Broward County which entailed for them to perform their obligatory duties rather than blatantly violating Petitioner's rights to Due Process. No person administering a security ranking or governing over any position should feel free to out right breach that position and the duties entailing, by violating rules and laws governing by the State of Florida and Federal Constitution, as all Defendants "exercised" in this particular matter.

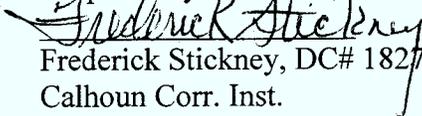
CERTIFICATE OF SERVICE

Petitioner hereby certifies that the information prescribed herein this foregoing Motion (Summary Judgment) before the court is true and correct. Petitioner hereby served copies to the following parties:

Robert D. Yates (Esq.)
208S.E.6th Street
Ft. Lauderdale Fla. 33301
Attorney for Defendant

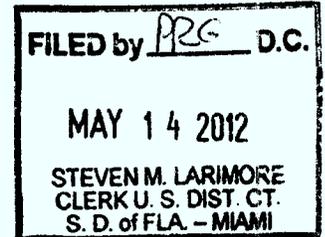
Clerk of Courts
U.S. District Court
400 N. Miami Avenue
Miami Fl, 33128

Respectfully submitted,


Frederick Stickney, DC# 182791
Calhoun Corr. Inst.
19562 S.E. Inst Dr.
Blountstown, FL 32424

AUNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

FREDRICK STICKNEY,
Plaintiff.



v.

Case No: 11-60557-CIV-RNS
MAGISTRATE'S JUDGE R.N. SCOLA

L.T. KIM SPADARO, et. al.,
Defendant.

**STATEMENT OF MATERIAL FACTS IN
SUPPORT OF MOTION OF SUMMARY JUDGEMENT**

Comes now the Plaintiff Frederick Stickney, by (*pro se*) and pursuant to S.D.L.R. 7.5(c) files this statement of material facts in support of Motion for Summary Judgment and states as follows:

BACKGROUND ARGUMENT

Petitioner filed complaint pursuant to 42 U.S.C. § 1983 was filed on or about March 9, 2011, which was granted to proceed against Defendants. On February 24, 2010, B.S.O. Det. Faircloth came to the Broward County Jail for phone records of all Petitioner's calls dated February 18-24 2010. At this time Petitioner was already incarcerated in Broward County Jail on charges of (grand theft of motor vehicle; fleeing from law enforcement; resisting arrest w/violence, obstruct w/violence) Petitioner was never charged for any of the charges B.S.O. Det R. Faircloth added on to Petitioner until after obtaining those phone records from telephone coordinator K. Casey. At which time Det. R. Faircloth come to interview Petitioner and Petitioner refused to talk to him without his attorney present and he related to me that the wasn't here to talk to me about anything "I" was already in custody for. Petitioner continued to tell Det. Faircloth I want my attorney present (see Exhibit of Motion to Suppress Statement granted by Judge Backman). Broward County Jail does have a policy that does not permit calls to attorney

to be rerecorded and/or monitored, see Tucker v. Randall 948 F.2d 388(C.A. Ill 1991). This is an on going practice with Broward County Jail with monitoring all calls but using only that which is needed in regular bases, Filmore v. Ordonez, 829 F. Supp 1544 (D. Kan 1993).

Telephone Coordinator K. Casey violated Petitioner's VI Amendment and Constitutional Rights by submitting those records to B.S.O. Det faircloth. It's K. Casey job as Telephone Coordinator to review all records that "leaves" her designated position as Telephone Coordinator for Broward County jail.

L.T. Col. Kim Spodaro position is the Chief Controller of all of Broward County Jails and her designated position the overseer of all staff operations that goes on within the foundation the entire Broward County jail facility. When B.S.O. Det R. Faircloth came to Broward County Jail to obtain phone records claiming to have a court order..., which would have to go through the chain of command to obtain... but such order wasn't presented to Petitioner or his attorney. Whether L.T. Spadaro signed it or not, the order came from her to release those phone records, so this makes her liable in this matter because of her position as Chief Controller of all operations of Broward County jail and the rules that are structured to be adhere for her and subordinate officers/staff alike that works under her direct supervision, especially phone monitoring surrounding inmates and attorney phone calls.

1) Petitioner's IV Amendment and Constitutional Rights violated by these Defendants as well as having mental and physical stress in dealing with this matter of going through this ordeal that should of never occurred.

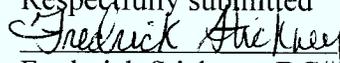
Petitioner claims against the Defendants may be limited because of Petitioner's lack of understanding Florida and United States Constitutional but presented allegation and claims against all Defendants warrant this complaint to be reviewed and subsequently grant his summary judgment.

CERTIFICATE OF SERVICE

I Frederick Stickney (*pro se*) Plaintiff hereby certify that the information prescribed to herein the foregoing motion of filing multiple documents and exhibits in support of Motion for Summary Judgment. Before the court is true and correct to the best of Petitioner's knowledge and under standing I hereby served copies to the following parties:

Robert D. Yates (Esq.)
208S.E.6th Street
Ft. Lauderdale Fla. 33301
Attorney for Defendant

Clerk of Courts
U.S. District Court
400 N. Miami Avenue, Fl
Miami Fl, 33128

Respectfully submitted

Frederick Stickney, DC#182791
Petitioner /*Pro se*
Calhoun Corr. Inst.
19562 S.E. Inst Dr.
Blountstown, FL 32424

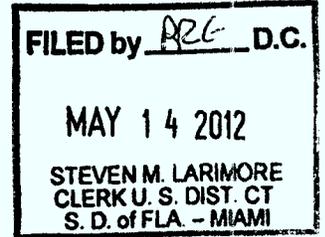
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

FREDRICK STICKNEY
Plaintiff,

v.

Case No: 11—60557-CIV-RNS
MAGISTRATE’S JUDGE R.N. SCOLA

L.T. KIM SPADARO, et. al.
Defendant



**PLAINTFF NOTICE OF FILING MULITPLE DOCUMENTS AND EXHIBITS IN
SUPPORT OF MOTOIN OF SUMMARY JUGEMENT**

Comes now the Plaintiff Frederick Stickney, by (*pro se*) and pursuant to S.D. Fla. L.R. 5.1 (d) herby serves Notice of Filing of the following times in support of Petitioner’s Motion for Summary Judgment.

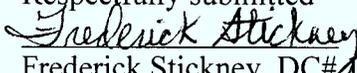
- 1 Complete transcript of telephone calls;
- 2 Copy of Motion to Suppress as granted by judge: against: B.S.O. Det. R. Faircloth.

CERTIFICATE OF SERVICE

I Frederick Stickney (*pro se*) Plaintiff hereby certify that the information prescribed to herein the foregoing motion of filing multiple documents and exhibits in support of Motion for Summary Judgment. Before the court is true and correct to the best of Petitioner’s knowledge and under standing I hereby served copies to the following parties:

Robert D. Yates (Esq.)
208S.E.6th Street
Ft. Lauderdale Fla. 33301
Attorney for Defendant

Clerk of Courts
U.S. District Court
400 N. Miami, Fl
Miami Fl, 33128

Respectfully submitted

Frederick Stickney, DC# 182791
Calhoun Corr. Inst.
19562 S.E. Inst Dr.
Blountstown, FL 32424

Fredrick Stickney Jail Calls & Interviews

Call 1

Greg: police suspect him in connection with the burglary of a neighbor, angry b/c he seems to believe that F was involved in the crime, flat out denies any involvement on his part

Fred: denies knowing anything about the burglary

G: had nothing to do with the burglary, says he knows nothing about it, say he's in school/trying to do the right thing and now has must deal with this additional and unnecessary strain

F: argumentative, also denies involvement in the burglary

*this is a
↓
problem*

Call 2

F: asks Mike to call "Glenda," **they didn't catch him with a gun, he "got rid of it" (2:00 – 2:10)**, wants Mike to tell "Glenda" to call him in jail, says that his brother Greg is mad at him b/c the police suspect Greg in a crime that F committed, denies involvement in burglary, apparently Greg heard that F tried to sell a TV (allegedly stolen in burglary), threatens to "handle" Greg when he gets out of jail, asks X to call "Dallas" as well, asks Mike to ask "Dallas" for money

Mike Holmes (friend of Fred's and Greg's): agrees to make the calls

Call 3

F: **agrees to confess if they arrest G (0:50 – 1:10)**

G: there is a record of F pawning a TV

G = Gregory Stickney

F: sold a TV that belonged to "Tina" b/c "Tina" needed money to pay her cell phone, denies stealing/pawning the TV missing in the burglary

G: refuses to go to jail for something he didn't do

F: scratched by police dogs when he was arrested

Call 4

F: explains why he doesn't want to/didn't have anything to do with the victim, **"if push comes to shove" and G is arrested in connection with the burglary, F agrees to take the blame (1:45 – 2:05)**

G: going to talk to police tomorrow, going to tell them he wasn't involved, mentions names of two people who may have suggested G's involvement, threatens to hit one of these people with a baseball bat

F: the only TV he pawned was "Tina's," he doesn't know anything about the victim's TV

G: denies involvement, had moved off the property prior to the burglary

F: authorities questioned him about G, told authorities that G had moved off the property weeks before the burglary

Call 5

Jerry Williams (attorney): **mentions a robbery/firearm charge from a different incident, mentions a 2009 domestic violence charge from a different incident (1:30 – 2:30)**

F: not charged with robbery/possession of a firearm

JW: asks what judge is hearing the case

F: hasn't been to court

JW: he'll grab a copy of F's police report the next morning, asks F if anyone can bond him out of jail

F: asks about filing a lawsuit against the police for the dog attack

JW: lawsuit success unlikely, he'll look into it

Call 6

F: doesn't want Greg giving information to the police, upset that **Greg and someone else ID'd F from a photo array (2:00 – 2:10)**, Greg is talking too much

F's Mother: that's what Greg is supposed to do; **Greg and someone else told police that F committed the burglary (2:35 – 2:45)**

F: Greg is supposed to refuse to talk to police b/c F is looking at a life sentence; F doesn't want Greg to incriminate him

FM: Greg is just doing what he's supposed to do (e.g. cooperating w/ authorities)

Call 7 – Won't Play

Call 8 – Misabeled (another inmate, not Fred Stickney)

Att/Client privilege

Fred Stickney Interview 1 (2/19/10) – Grand Theft Auto/Firearm Charges

D admits to have been in jail before, released in 2008, served a 4 year sentence

Before questioning begins, D says he knows what all this is about, references a car-theft and a robbery

D admits to have driven stolen vehicle but not to stealing it

D correctly identifies the make and color of the stolen car

D claims that unnamed person gave him stolen car in Miami

D admits to fleeing from police, then police put dogs on him

Detective says owner of stolen car identified D from photos, says D stole/tried to use this owner's credit cards too

D denies stealing the car/credit cards

Detective says car owner said D used a gun in the robbery

D denies knowing car owner, states he wasn't in Broward County at the time car was stolen, says he wouldn't be dumb enough to steal a car in Broward, drive to Miami, then return to Broward later

D admits to committing all sorts of prior offenses (robbery, assault, burglary, stolen property), denies ever stealing a car, denies ever stealing credit cards, denies owning/using a firearm "in years"

D claims to have a witness to corroborate his story that he was not in Broward when the incident happened (gives no name)

D claims to know who stole the car (again, gives no name) b/c this person gave car to D earlier that day

D admits to violating probation in 4/10, says his probation was reinstated

Detective says he's going to step out to find a gunshot residue test for D's hands, D says residue will only be on his hands if the gun was fired, Detective never tests D's hands

Fred Stickney Interview 2 (2/24/10) – Burglary/Dealing in Stolen Property Charges

Admits to pawning stolen goods but not to stealing them, says that an unnamed person gave him the stolen goods

Says that he pawned his girlfriend's TV so that she could pay her cell phone bill – in anticipation of the detective bringing up something about a stolen TV that was pawned

Says that it was his idea to pawn the Wii and Playstation

Denies pawning jewelry, apparently detective has evidence of Fred pawning jewelry

Refuses to tell detective who came to him with the stolen goods – later claims it was a **Jamal Nickerson**, the latter allegedly admitted to Fred that he committed the burglaries, says that he has a cell phone contact for Jamal but that he doesn't remember the number (says it's programmed in his phone) – contradicts what he said at the beginning of the interview: that he has no contact information for the person who came to him w/ the stolen goods

Admits to stealing cars, but says he's never stolen from a residence

Denies that Mike accompanied him to the pawn shop, says that Mike had nothing to do with the burglaries

Admits to being in jail from 4/09 – 10/09

Denies ever seeing a TV/pawning a TV that was stolen in the burglary

Says that he has committed robberies and sold drugs in the past, but that "a burglary is something that he cannot do"

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,)	
)	
Plaintiff,)	CASE NO.: 10-007938CF10A
v.)	
)	JUDGE: BACKMAN
FREDERICK STICKNEY,)	
)	DIVISION: FX
Defendant.)	
_____)	

ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS STATEMENT

THIS CAUSE came before this Court upon the Defendant's Motion to Suppress Statement. Having considered the Defendant's Motion, witness testimony, oral arguments of counsel, the Court file, items entered into evidence, applicable law and being otherwise fully advised in the premises, this Court finds as follows:

The facts in this case are that the residence of Herschell Williams and Traquia Oliver was burglarized on January 27, 2010. A firearm, electronics and jewelry were taken from the residence. On February 24, 2010 Detective Ronald Faircloth of the Broward Sheriff's Office visited Defendant in the Main Jail. Defendant was in custody on a different case. Their conversation was captured on an audio recording.

The first thing captured on the audio recording was Defendant, upon entering the interview room, say to Detective Faircloth "I don't want to talk to you all, man. I already said what I had to say man." Detective Faircloth then told Defendant this was "about some stuff with your brother." Detective Faircloth then started to read Defendant his Miranda warnings. At the point where Detective Faircloth informed Defendant "You have the right to talk to an attorney or lawyer before talking with me and to have an attorney or lawyer here with you during questioning now and in the future" Defendant

replied "Well, I want to. I want somebody here with me right now... So I would like to have a lawyer present with me while I'm talking." Detective Faircloth then continued speaking with the Defendant and telling him he is going to be charged with two counts of burglary of a residence, dealing in stolen property and false ownership of pawned items. The two discussed where the burglary took place and Defendant stated "I pawned it but I didn't take it." Detective Faircloth then told Defendant "I wanted to talk to you but you didn't want to talk to me." At that point the Defendant said "we'll talk then..." and, again, confessed to pawning the items. Detective Faircloth then resumed the Miranda warnings where he left off.

The Defendant has been charged by Information with Armed Burglary Dwelling, Dealing in Stolen Property and Grand Theft (Firearm).

Defendant argues in his Motion that the Broward Sheriff's Office ignored his request for counsel. It is clear from both the CD audio recording of the interview (State's Exhibit 2) and the transcript (State's Exhibit 3) that Defendant unequivocally invoked his right to counsel at which point Detective Faircloth continued speaking with Defendant and persuaded him to give a statement. "Once an accused makes clear he wants an attorney present during custodial interrogation, waiver of that right does not occur unless the accused reinitiates the dialogue." *O'Brien v. State*, 56 So. 3d 884 (Fla. 1st DCA 2011). That was not the case here. The statements by Detective Faircloth to Defendant amounted to a continued interrogation. Defendant did not reinitiate contact with Detective Faircloth, rather, Detective Faircloth kept talking and effectively lured Defendant into a conversation in which he gave a statement.

"[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." *Edwards v. Arizona*, 451 U.S. 477, 484, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). The accused who invokes his right to counsel "is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." *Id.* at 484–85, 101 S.Ct. 1880. Under *Edwards*, "once an individual has invoked the Miranda right to counsel, a valid waiver of this right can be found only if the individual is the one responsible for reinitiating contact with the police," *Sapp v. State*, 690 So.2d 581, 584 (Fla.1997).

Based upon the foregoing, Defendant's Motion to Suppress Statement is granted.

It is therefore,

ORDERED AND ADJUDGED that Defendant's Motion to Suppress Statement is **granted.**

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this 29th day of November, 2011.

PAUL L. BACKMAN

PAUL L. BACKMAN, Circuit Judge
A TRUE COPY

Copies furnished to:
Elizabeth Scherer, Esq., Assistant State Attorney

J. Samantha Vacciana, Esq., Attorney for the Defendant
Office of Criminal Conflict Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FREDERICK STICKNEY,

Plaintiff,

CASE NO: 11-60557-CIV-SCOLA

Magistrate Judge P.A. WHITE

vs.

LT. KIM SPADARO, et al.,

Defendants.

**DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR JOINT MOTION
FOR SUMMARY JUDGMENT AND CONSOLIDATED RESPONSE IN OPPOSITION
TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Defendants, LT. COL. KIM SPADARO, DETECTIVE RONALD FAIRCLOTH and KATHLEEN CASEY, by and through the undersigned attorneys and pursuant Federal Rule of Civil Procedure 56(b) and S.D. L.R. 7.1© and files their Joint Reply Memorandum in Support of their Motion for Summary Judgment (DE 37) and the Defendants' Consolidated Response in Opposition to Plaintiff's Motion for Summary Judgment (DE 46), and as grounds therefore would state:

1. In lieu of a formal response to the Defendants' Motion for Summary Judgment, Stickney filed his own Motion for Summary Judgment, Statement of Material facts and exhibits (DE 46,47,48). Upon review of the substantive portions of Stickney's Motion for Summary Judgment and unsworn statement of facts it becomes apparent that Stickney's filings are really more akin to a response to the Defendants' Motion for Summary Judgment rather than a classic Motion for Summary Judgment as he has titled it. Accordingly, the instant Reply is directed at Stickney's filings (DE 46,47,48) and should also be considered as a consolidated Response in Opposition to

Stickney's Motion for Summary Judgment.¹

2. Stickney's claims are essentially that his Sixth Amendment rights were violated by the Defendants recording and monitoring his calls made to an attorney. (DE 46, ¶ 1; DE 47, p.2).

In *Reply*, Stickney's filings are insufficient to prevent the entry of summary judgment in favor of all the defendants. The Defendants have fully supported their motion for summary judgment demonstrating that no Constitutional deprivation occurred, and even if one did occur, the Defendants should be entitled to qualified immunity as the law regarding inmate phone calls is not clearly established. Stickney had the burden as the non-moving party to come forward with sufficient evidence to rebut this showing, and has failed to do so. See Avirgan v. Hull, 932 F.2d 1572, 1577 (11th Cir. 1992). Stickney has failed to demonstrate even a mere scintilla of an unconstitutional policy, an unconsensual tape recording, or evidence pointing to anything he said to his lawyer that was incriminating and used against him. Stickney also failed completely to personally tie in Defendant Spadero as having participated or having any knowledge regarding his phone calls.

This case was an example of a spiteful inmate completely exaggerating and making false claims that his attorney calls placed in the jail were intercepted unconsensually and then used against him to bring additional charges. In reality, the evidence shows that the automated phone system used in the BSO jail does not allow recording of any kind unless it is consented to by the call participants. Moreover, there was no incriminating information revealed in the one recorded call Stickney had with an attorney. (Gerald Williams in call number 6). The Williams call referenced a very generic

¹ The Defendants' also adopt and incorporate by reference their previously filed Statement of Material Facts in Support of Summary Judgment (DE 37-1) and all exhibits set forth within their Omnibus Notice of Filing Multiple Exhibits in Support of Summary Judgment. (DE 38).

discussion of what cases and charges were pending, getting a police report, a possible jail visit and whether or not Stickney could sue BSO in a civil dog bite case. (DE 38-12 p. 33-40, *Transcripts of calls*). There was no smoking gun moment involved regarding the one Stickney call recorded with an attorney.² Most importantly, none of the calls, including the Williams call could have been recorded without each participant's consent.

The Defendants filed their Joint Motion for Summary Judgment and Statement of Material Facts (DE 37; 37-1) with supporting exhibits (DE 38) that included an Affidavit of Defendant Casey (DE 38-10, *Affidavit of Casey*) the BSO Detention Communication Coordinator and Records Custodian along with the relevant portions of the Jail Inmate Handbook regarding inmate calls. (DE 38-10 exh. A.). Casey's affidavit outlined the BSO automated phone system, policy and procedures related to the recording of inmate calls; the safe guards in place regarding the recording of all calls; the consent or disconnect feature prompt; and the entirety of how the automated system is utilized within the jail and codified on page seven of the BSO Jail Inmate Handbook. (DE 38-10 exh. A). Casey systematically went through the entire process of the automated T-Netix phone system in place within the BSO Jail and testified "*conclusively that neither the system itself or any person did or could have recorded any of Mr. Stickney's telephone conversations with anyone, including any attorney, unless he pressed "0" to consent to the call being recorded.*" (DE 38-10, ¶ 14, *Casey Affidavit*). The Defendants have filed the transcripts of the actual calls, and conventionally filed the CD of the calls. Both exhibits evidence conclusively that the consent/disconnect prompt feature was utilized in every call Stickney made.(DE 38-12, *Transcripts*). Stickney offers nothing but a

² Actually, Stickney's incriminating discussion surrounding his having possession of a stolen firearm occurred with a call reciever named "Mike" in call number three where he tells Mike that he got rid of the "little gun." (DE 38-12 p. 11 Ln. 24 - p. 12 Ln. 5).

conclusory unsworn opinion as to the policy and procedures utilized in the jail regarding inmate calls. His response contained within his motion and statement of facts are all unsworn, unsupported by evidence and are nothing more than a regurgitation of the complaint. “[A] *pro se* litigant does not escape the essential burden under summary judgment standards of establishing that there is a genuine issue as to a fact material to his case in order to avert summary judgment.” See Brown v. Crawford, 906 F.2d 667, 670 (11th Cir. 1990). Stickney has not done that. He has only misled this Court as to what actually occurred regarding the phone calls and contents.

3. Early on in this case, the Defendants filed a motion to dismiss based upon qualified immunity and lack of clearly established law surrounding the recording of inmate phone calls. (DE 20). This Court entered an order (DE 26) adopting the Magistrate’s Report and Recommendation to allow the case to proceed beyond the motion to dismiss stage noting that because the complaint claimed that an attorney conversation was used to bring new charges, that it was unclear whether the Plaintiff was warned about the recording, or whether Plaintiff followed all necessary procedures to maintain confidentiality. (DE 26 p. 1). Now that the policy has been put into evidence for the court together with the actual calls and circumstances surrounding inmate calls through the automated call system, it is now appropriate to grant summary judgment based upon the lack of a Constitutional Deprivation and or Qualified Immunity.

4. Stickney’s Motion for Summary Judgment is really just a two page conclusory response to the Defendants’ well supported motion for summary judgment. Stickney’s Statement of facts is unsworn, unsupported by competent evidence and argumentative. The exhibits he offers are Detective Faircloth’s notes regarding the calls and jail interview and an order granting a motion to suppress any statements made to Faircloth by Stickney during the jail interview. (DE 48). The

suppression order is limited only to the statement given by Stickney to Faircloth at the jail. It does not reference, suppress, or find any constitutional violation associated with the recorded jail phone calls, Stickney's incriminating statements contained within them, the cell phone tower records placing Stickney at the scene of the Burglary, or the pawn tickets that were recovered through the pawn tracker fingerprint program. The suppression order is irrelevant to the issues in this case. There is no civil rights cause of action for a violation of Miranda rights. *See Jones v. Cannon*, 174 F.3d 1271, 1291 (11th Cir. 1999)(In the Eleventh Circuit the "failure to follow Miranda procedures triggers the prophylactic protection of the exclusion of the evidence, but does not violate any substantive Fifth Amendment right such that a cause of action for money damages under § 1983 is created.").

Summary Judgment should be granted in favor of the Defendants and denied as to the Plaintiff.

Dated: May 23, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 23, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identical on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

BY: /s/ Robert D. Yates
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FBN #090387

SERVICE LIST

United States District Court, Southern District of Florida

STICKNEY v. LT. KIM SPADARO, et al.
CASE NO: : 11-60557-CIV-SCOLA
Magistrate Judge: Patrick A. White

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