

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, CRIMINAL  
DIVISION IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 2011CF009134AMB  
DIVISION "U"

STATE OF FLORIDA

vs.

JAMAL DAVID SMITH,  
Defendant.

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**ORDER**  
**ON FREDERICK COBIA'S MOTION FOR PROTECTIVE ORDER**  
**AND MOTION TO MAKE RECORDS CONFIDENTIAL**

This matter having come before the Court on Frederick Cobia's Motion for Protective Order and Motion to Make Records Confidential and having heard the argument of counsel and reviewed the relevant case provided by the parties it is hereby

ORDERED AND ADJUDGED as follows:

On or about August 25, 2015, the Defendant, Jamal Smith through his attorney, filed a Motion to Compel (DE# 746) in the above referenced case. The motion attaches excerpts of recorded telephone conversations between Frederick Cobia, a witness for the State of Florida, and his attorney Valerie Masters, as well as between Frederick Cobia and members of his family while he was incarcerated at the Palm Beach County Jail between July 23, 2009 and the present. It is unknown how this information left the custody of the Jail and the State Attorney, and found its way to Mr. Smith's Public Defender.

The Palm Beach Post submitted a memorandum to the Court indicating they were in possession of the recorded calls and that it had posted the transcripts of these recordings on its website, PalmBeachPost.Com. The memorandum indicates that copies of the recorded calls have

been circulated amongst certain members of the legal community. It is uncertain to this Court who distributed this information.

The Palm Beach Post argues the calls have been too widely circulated for a protective order to be of any value and that any prohibition of their dissemination or publication constitutes a violation of Prior Restraint. It is of some note that the Palm Beach County Sheriff's Office nor the Office of the Public Defender attended the hearing.

How the Office of the Public Defender came in to possession of the recorded calls of Mr. Cobia with his friends, his family, and his attorney is of great concern to this Court. Mr. Cobia argues that they were not provided to the defense as a part of pretrial discovery and were not disclosed by PBSO as a public record. The calls appear to have become a part of the court record as a result of Ms. Ramsey, counsel for Smith, filing them in the court file on October 15, 2015 (DE#803).

An inmate does not have an absolute expectation of privacy in recorded jailhouse telephone conversations. *McWatters v. State*, 36 So3d 613,616(Fla. 2010) However there is an expectation of privacy as to certain matters. As the Court said in *State of Florida v. Bent*, 46 So.3d 1047(Fla. 4<sup>th</sup> DCA 2010),

The expectation that a deputy or state attorney may listen to a call is very different from an expectation that anyone and everyone could listen to the calls. Sensitive or embarrassing information, or information that would otherwise be confidential, like financial information of the inmate or the person called, could be disclosed to the public.

During a jail house call a person may discuss attorney client matters unrelated to criminal charges; may discuss personal health matters regarding the inmate or his family or a minor. All manner of personal communication into which the Government (the

Sheriff, the State Attorney, and Public Defender) has no right to intrude. Article I, Section 23, Right of Privacy. Florida Constitution.

Because the Palm Beach Post got the information through the Government's violation of Mr. Cobia's right to privacy, the Court GRANTS Frederick Cobia's Motion for Protective Order.

The Palm Beach Post, The Office of the Public Defender, The Palm Beach County Sherriff's Office, The State Attorney, and any other person currently in possession of the recorded calls from July 23, 2009 to the present are prohibited from publishing or disclosing them in any way to any third party. To that end, the Palm Beach Post is ordered to remove the transcripts of the calls from its website forthwith.

Further the Motion to Make Records Confidential is GRANTED. The Clerk of Court is directed to make confidential DE#s 746,759, 803. Any future pleadings in this case containing reference to these telephone calls shall be properly protected pursuant to Florida Rule of Judicial Administration 2.420.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 30 day of November 2015.

  
JACK SCHRAMM COX, Circuit Judge

Copies furnished to:

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