

STATE OF OHIO ) IN THE COURT OF COMMON PLEAS  
 ) SS:  
CUYAHOGA COUNTY ) CASE NO. CR 540044

STATE OF OHIO, )  
 )  
Plaintiff, )  
 )  
vs. ) OPINION  
 )  
GREGORY M. COCHRAN, )  
 )  
Defendant. )  
 )

**SHIRLEY STRICKLAND SAFFOLD, JUDGE:**

**I. FACTUAL BACKGROUND**

The Defendant, Gregory Cochran (hereinafter “Defendant”) is charged in a two count indictment alleging violations of Ohio Revised Code (hereinafter “RC”) § 2903.02(A), murder, and RC 2923.13(A)(3), having a weapon under disability.

On or about July 17, 2010, Defendant was allegedly involved in an altercation in the parking lot of Bootleggers Bar located at 24888 Euclid Avenue in Euclid, Ohio. In the midst of the altercation Defendant allegedly shot and killed Derrick Walker.

After being arrested, cuffed, and transported to the police station, Defendant waived his rights and spoke with detectives. The interrogation was being recorded without Defendant’s notice as was the regular practice of the detectives. At one point during the interrogation Defendant asked the detective if he could use the telephone located in the interrogation room. The detective allowed the Defendant to use the telephone while he left the room. Defendant remained cuffed and the recording devices remained on. Defendant now seeks to suppress statements made during that phone call arguing that they were obtained in violation of his constitutional rights.

## II. LAW & ANALYSIS

Defendant is requesting that this Honorable Court suppress statements he made during said phone call. Defendant maintains that the recording of such statements essentially allowed authorities to obtain statements in violation of his constitutional right. Specifically, Defendant maintains that he had a reasonable expectation of privacy while on the telephone in the interrogation room. This argument is unpersuasive.

The most definitive case on a detained defendant's reasonable expectation of privacy is *United States of America v. Clark*.<sup>1</sup> In that case the defendant voluntarily sat in the back of a police cruiser with a friend while the officers searched his vehicle. Before leaving the defendant in the car, the officer activated the vehicle's recording device unbeknownst to the defendant.<sup>2</sup>

The United States Court of Appeals, Eighth Circuit, put forth the applicable test as follows, "[U]nder either the fourth amendment or the Wiretap Act, the inquiry is 1.) whether defendant manifested a subjective expectation of privacy, and 2.) if so, whether society is prepared to recognize that expectation as reasonable."<sup>3</sup>

In holding that the defendant's expectation of privacy while seated in a police car was not reasonable, the court held:

A marked police car is owned and operated by the state for the express purpose of ferreting out crime. It is essentially the trooper's office, and is frequently used as a temporary jail for housing and transporting arrestees and suspects. The general public has no reason to frequent the back seat of a patrol car, or to believe that it is a sanctuary for private discussions. A police car is not the kind of public place, like a phone booth...where a person should be able to reasonably expect that his conversation will not be monitored. In other words, allowing police to record statements made by individuals seated inside a patrol car does not intrude upon privacy and freedom to such an extent that it could be regarded as inconsistent with the aims of a free and open society.<sup>4</sup>

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<sup>1</sup> *United States of America v. Clark*, 22 F.3d 799.

<sup>2</sup> *Id.* at 800.

<sup>3</sup> *Id.* at 801.

<sup>4</sup> *Id.* at 801-802.

The issue was revisited by the Eighth Circuit in *United States of America v. Swift*.<sup>5</sup> There, the defendant was transported to police headquarters and placed in an interrogation room with his co-defendant. The room was equipped with a video and audio monitoring system and the officers monitored the conversation between the defendants. At trial, the defendant moved to suppress these statements. His motion was denied and he appealed.<sup>6</sup>

The appellate court held:

[The trooper's] act of leaving the appellants alone in his vehicle, with a recording device activated, was not the functional equivalent of express questioning. [The trooper] may have expected that the two men would talk to each other if left alone, but an expectation of voluntary statements does not amount to deliberate elicitation of an incriminating response. "Officers do not interrogate a suspect simply by hoping that he will incriminate himself."<sup>7</sup>

The court concluded that defendant had no reasonable expectation of privacy while he was detained in a police interrogation room at a precinct.<sup>8</sup>

This issue has, of course, been addressed in other jurisdictions as well. The case that is perhaps most analogous to the one at hand comes from the Colorado Court of Appeals, Division IV. In *People v. Zamora*<sup>9</sup> the defendant claimed that the trial court erred in denying his motion to suppress statements that he made while on the phone with a family member.<sup>10</sup> The call was placed from a police interrogation room.<sup>11</sup> It is important to note that while on the phone with his family member, the defendant spoke Spanish. Additionally, the officer remained in the interrogation room during the phone call.

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<sup>5</sup> *United States of America v. Swift*, 623 F.3d 618.

<sup>6</sup> *Id.* at 620.

<sup>7</sup> *Id.* at 622-623, quoting *United States v. Hernandez-Mendoza*, 600 F.3d 971.

<sup>8</sup> *Id.* at 623.

<sup>9</sup> *The People of the State of Colorado v. Zamora*, 220 P. 3d 996.

<sup>10</sup> *Id.* at \*998.

<sup>11</sup> *Id.*

Defendant claimed that he had a subjective and objective expectation of privacy because he spoke in Spanish on the phone and because the officer could not understand the conversation without the aid of videotape surveillance that was conducted without his knowledge.<sup>12</sup>

The court held that defendant did not have an objectively reasonable expectation of privacy in not being recorded, stating:

First...Zamora's statements were made inside a jailhouse interrogation room, which does not give rise to an expectation of privacy. Second, Zamora was never misled to believe his statements were not being videotaped or otherwise recorded. Third, even when a person is deliberately misinformed that his or her statements to police are not being videotaped, that person does not automatically have an objectively reasonable expectation of privacy in those statements when they are made, as they were here, in police presence.<sup>13</sup>

Finally, the Court of Criminal Appeals examined this issue in *Springsteen v. State*.<sup>14</sup> Defendant voluntarily accompanied officers to the police station to answer questions about the murder of four local teenage girls.<sup>15</sup> While there, he waited in the station lobby while the interview room was prepared. What defendant was unaware of was that earlier in the day the officers had set up a video camera built into a wall clock and put a small audio recorder in a drawer.<sup>16</sup>

On appeal defendant argued that the police-initiated statement that the interview yielded was involuntary because, *inter alia*, he was interviewed in a police interrogation room with a hidden camera.<sup>17</sup> The court found that there was no violation of any constitutional rights stating, "Deception is only one factor to be considered in applying the general 'totality of the

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<sup>12</sup> *Id.* at \*999.

<sup>13</sup> *Id.* at 1000.

<sup>14</sup> *Springsteen v. The State of Texas*, 2006 WL 1412244.

<sup>15</sup> *Id.* at \*9.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 10.

circumstances' test...Given these circumstances, the appellant has failed to show that his statement was the product of any police coercion or that it was involuntary.”<sup>18</sup>

**III. CONCLUSION**

Staying in line with the preceding case law, it seems clear to this Honorable Court that the Defendant in this matter did not have a reasonable expectation of privacy when he was in police custody, handcuffed, in a police station interrogation room, and using a police station land line to make a telephone call. As such, any statements he made during that phone call were not recorded in violation of his constitutional rights and are in fact admissible.

Defendant's, Gregory M. Cochran, Motion to Suppress Statements Obtained in Violation of Defendant's Constitutional Rights is hereby denied in its' entirety.

IT IS SO ORDERED.

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Date

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Judge Shirley Strickland Saffold

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<sup>18</sup> *Id.* at 11.

**NOTICE OF SERVICE**

A copy of the foregoing OPINION was forwarded this \_\_\_\_\_ day of February, 2011

by regular United States mail to:

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