

APPEARANCES

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KATHERINE FERNANDEZ-RUNDLE, STATE ATTORNEY,
By: Patrick Dray, Assistant State Attorney, on
behalf of the Plaintiff.

MILTON HIRSCH, ESQ., on behalf of the Defendant.

1 THE COURT: Page 8 of the calendar, the case of
2 Sean Casey.

3 MR. HIRSCH: Milton Hirsch on his behalf. Mr. Cas
4 is present in Court.

5 THE COURT: Mr. Casey, come on up with your lawyer
6 Mr. Dray?

7 MR. DRAY: Good morning, Your Honor. How are you
8 doing?

9 THE COURT: I'm hanging in there.

10 MR. DRAY: Busy morning, huh?

11 MR. HIRSCH: That was said with a singular lack of
12 enthusiasm, Your Honor.

13 THE COURT: Alright. On the case of Sean Casey.
14 The Court has before it a motion to suppress a
15 hearing that was held on that motion. The Court would
16 like to make the following observations on that case.

17 There was testimony from three officers in that
18 case, Detective Nagel, with 24 years in the Miami Beach
19 Police Department; Sergeant Hundevadt, with 21 years with
20 the Miami Beach Police Department and Officer Silvagni,
21 with 14 years with the Miami Beach Police Department.

22 Detective Nagel, his testimony was that he had
23 responded to the accident scene and he investigated the
24 accident.

25 Sergeant Hundevadt met the defendant at his

1 apartment and testified that he smelled alcohol on his
 2 breath. Now, a 21-year sergeant with the Miami Beach
 3 Police Department, smelling alcohol on the defendant's
 4 breath, asked the defendant to come downstairs to see if
 5 his car was still present. It was not.

6 Sergeant Hundevadt indicated the defendant was not
 7 a suspect in the vehicular homicide at that time, despite
 8 the alcohol on his breath. He was asked to come to the
 9 police station to fill out a stolen vehicle report. He
 10 wasn't handcuffed. He was taken to a lounge to wait and
 11 then to a conference room in the Criminal Investigation
 12 Division. The reason given for this conference room being
 13 used was that it was a quiet place where they could talk
 14 comfortably.

15 The defendant was interviewed by Sergeant Hundevadt
 16 as well as by Officer Silvagni. A tape recorded statement
 17 was taken at that time in a stolen vehicle case. Afterward
 18 the defendant was asked to consent to a search of his
 19 apartment and his car in a stolen vehicle case.

20 Officer Silvagni knew that or knew something about
 21 the circumstances at that time of the vehicular homicide,
 22 yet, made no effort to Mirandize the defendant and took no
 23 part in the interview.

24 The parties have filed pleadings with this Court
 25 and before I go any further I want to compliment both

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sides on an excellent job on that. There was some lie-for-tats going back and forth with those pleadings, but the whole they were very well done.

The cases cited by the State, while not directly on point, seems to be a defense by the State, that deceit in trying to obtain permission to search is permissible, the actions in this case by very experienced police officers seem to indicate that an investigation was taking place in which the defendant was in fact a suspect, that they were not being forthright with the defendant. This raises some question as to whether a knowing and voluntary consent to search could be given.

What is particularly disturbing to this Court is not only does it appear that the officers were being less than candid with the defendant, but that they were being less than candid with this Court. They continued to maintain in the suppression hearing that the purpose in taking the defendant to the station was to question him and to get his consent regarding the search of his car and apartment as part of a stolen vehicle investigation.

Given the facts of this case, that story is simply not credible. While the cases cited by the defense are not Florida cases, they are persuasive authorities and appear more on point than the cases cited by the State.

With the analysis accomplished in these Federal and

1 non-Florida state cases and given the lack of candor of
 2 the State's witnesses with the resulting loss of
 3 credibility, this Court feels compelled to order that the
 4 statements given by the defendant should be suppressed,
 5 along with any evidence found in the defendant's apartment.

6 As the defendant's vehicle was properly seized as
 7 part of a vehicular homicide investigation, at the very
 8 least an inventory search of that vehicle was appropriate.
 9 In the course of such a search any evidence obtained by
 10 the police was properly obtained and will be admitted.

11 As to the blood draw, because of the questions
 12 raised regarding the credibility of the officers who
 13 testified in this case, the consent of the defendant is in
 14 question. The Court will likewise suppress the blood draw.
 15 The Court does not find there was probable cause at the
 16 time of the blood draw to require the defendant to submit
 17 blood, so there is no basis on which the blood draw would
 18 be admissible.

19 Gentlemen, I understand this is a vehicular homicide
 20 case and I have gone back and forth on this issue, but I
 21 keep going back to the fact that I had officers, experienced
 22 officers in this Court who I did not find to be candid and
 23 I just won't abide by it. Therefore, the evidence is
 24 suppressed.

25 MR. DRAY: Judge, most respectfully, the State will

1 object to the granting of the defendant's motion to
2 suppress evidence, motion to suppress statements and
3 motion to suppress blood and we will accordingly file our
4 Notice to Appeal today and file oral notice to the Court
5 and to the defense, but that is what we will be doing.

6 THE COURT: Alright. What I would like you to do,
7 Mr. Hirsch, is to prepare a proposed order, proposed
8 findings of fact and conclusions of law.

9 MR. HIRSCH: May I obtain a transcript of Your
10 Honor's oral ruling?

11 THE COURT: Yes, you may.

12 MR. HIRSCH: That will very much assist me.

13 THE COURT: The State will need that in the course
14 of the appeal.

15 MR. DRAY: If it will be forwarded with the
16 transcript and proposed order first before Your Honor
17 signs it, I would appreciate it.

18 MR. HIRSCH: I will provide everything to Mr. Dray.

19 THE COURT: That being the case, the State is
20 requesting a continuance on this.

21 MR. DRAY: That will be so we can file the appeal,
22 Judge.

23 THE COURT: I know. That I figured. State
24 continuance will be granted. I am going to set this back
25 for status to see where we are as far as any State appeal

1 in 30 days and if there has not been an appeal at that
2 point it will be set back for trial. Let me get a date.

3 THE CLERK: One-twenty-eight.

4 THE COURT: One-twenty-eight.

5 MR. HIRSCH: Judge, may she give me the date,
6 Carolyn, would you please give me the date?

7 THE CLERK: One-twenty-eight.

8 MR. HIRSCH: One-twenty-eight for status. Is that
9 Monday the 28th?

10 THE CLERK: Yes, it will be a Monday.

11 MR. HIRSCH: Thank you very much.

12 THE COURT: Thank you.

13 MR. HIRSCH: Thank you, Your Honor. Have a nice
14 holiday.

15 THE COURT: Alright. You, too. Who's next?

16 (Thereupon, the hearing was concluded.)
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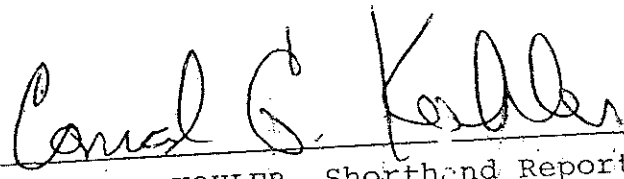
CERTIFICATE

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STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

I, CONRAD G. KOHLER, Shorthand Reporter do hereby certify that I did prepare the foregoing transcript from my stenographic notes, that the foregoing proceedings had in the cause of THE STATE OF FLORIDA versus SEAN CASEY, Case Number F01-7975, heard before the Honorable Daryl E. Trawick, and that the foregoing transcript is a true record thereof, to the best of my ability.

I WITNESS MY HAND this 3rd day of January, 2002.



CONRAD G. KOHLER, Shorthand Reporter.