

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR MARION COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

vs.

CASE NO. 2019-CF-4193

NEIL JOSEPH GILLESPIE,  
Defendant.

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DEFENDANT'S AMENDED MOTION TO DISMISS

Defendant NEIL JOSEPH GILLESPIE ("Gillespie"), a nonlawyer appearing *pro se*, hereby files *Defendant's Amended Motion To Dismiss*, and states:

1. Gillespie moves pursuant to Fla. R. Crim. P. 3.190(b) to dismiss the information against him under Article VI, Clause 2 of the U.S. Constitution, the Supremacy Clause, and 18 USC 2511(2)(d), *Interception and disclosure of wire, oral, or electronic communications prohibited*.

2. The information filed by the State on December 5, 2019 (DOC 21) alleges in two counts (DOC 22) that Gillespie's one-party consent telephone recording violated section 934.03(1)(a) of the Florida Statutes, *Interception of wire, oral, or electronic communications prohibited*, on or about October 16, 2019, [and] did intentionally intercept or endeavor to intercept the wire, oral, or electronic communication of another person, to wit: Chonnie Phillips, in violation of Florida Statute 934.03(1)(a).

3. The arrest affidavit on which the information is based alleges Gillespie was a party to a telephone call he recorded with Chonnie Phillips. Gillespie recorded the telephone call alleged, and did so lawfully as a party to the communication not acting under color of law, pursuant to the one-party consent federal statute, 18 USC 2511(2)(d), *Interception and disclosure of wire, oral, or electronic communications prohibited*, that states:

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

4. Gillespie is a person who was a party to the alleged intercepted communication; and as a party, Gillespie consented to the alleged intercepted communication.

5. Gillespie is a person who was not acting under color of law.

6. Gillespie is a citizen of the state of Florida, and a citizen of the United States.

7. Under the Supremacy Clause of the U.S. Constitution (Article VI, Clause 2), the federal one-party consent statute, 18 USC 2511(2)(d), is the Law of the Land in Florida that Judges of the state are bound to follow.

8. Gillespie's alleged one-party consent recorded telephone call with Chonnie Phillips was a lawful interception of wire, oral or electronic communication under 18 USC 2511(2)(d).

9. Article VI, Clause 2, of the U.S. Constitution, the Supremacy Clause, states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.

10. The Supremacy Clause of the U.S. Constitution establishes that the Constitution, federal laws made pursuant to it, and treaties made under its authority, constitute the "supreme Law of the Land", and thus take priority over any conflicting state laws. It provides that state courts are bound by, and state constitutions subordinate to, the supreme law.

11. In *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), the Supreme Court ruled: "A state statute is void to the extent that it actually conflicts with a valid Federal statute". In effect, this means

that a state law will be found to violate the Supremacy Clause when either of the following two conditions (or both) exist:

1. Compliance with both the Federal and State laws is impossible
2. "State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"

12. First, in this case, compliance with both the Federal and State laws is impossible.

18 USC 2511(2)(d) permits Gillespie's one-party consent interception of wire, oral, or electronic communication. The State alleges Fla. Stat. sec. 934.03(1)(a) prohibits Gillespie's one-party consent interception of wire, oral, or electronic communication. Therefore, 934.03(1)(a) violates the Supremacy Clause because compliance with both the Federal and State laws is impossible.

13. Second, "State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress". Here, Fla. Stat. sec. 934.03(1)(a) is an obstacle to the accomplishment and execution of the full purposes and objectives that Congress enacted under 18 USC 2511(2)(d), because 934.03(1)(a) prohibits or stands as an obstacle to Gillespie's accomplishment of one-party consent interception of wire, oral, or electronic communication, the full purpose and objective that Congress enacted and intended under 18 USC 2511(2)(d).

14. In the case of *California v. ARC America Corp.*, 490 U.S. 93 (1989), the Supreme Court held that if Congress expressly *intended* to act in an area, this would trigger the enforcement of the Supremacy Clause, and hence nullify the state action. In the instant case, Congress expressly intended to act, and expressly intended to legalize one-party consent interception of wire, oral or electronic communication by persons not acting under color of law, which nullifies the Florida law. Tellingly, both 18 USC 2511 and Fla. Stat. sec. 934.03 have the identical statutory name: *Interception and disclosure of wire, oral, or electronic communications prohibited*. Congress

expressly intended to legalize Gillespie's one-party consent interception of wire, oral, or electronic communication, which nullifies the state action under the Supremacy Clause.

15. The Supreme Court further found in *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000), that even when a state law is not in direct conflict with a federal law, the state law could still be found unconstitutional under the Supremacy Clause if the "state law is an obstacle to the accomplishment and execution of Congress's full purposes and objectives". Congress need not expressly assert any preemption over state laws either, because Congress may implicitly assume this preemption under the Constitution.

16. Therefore, Defendant Gillespie, acting *pro se*, moves this Honorable Court under Rule 3.190(b) to dismiss with prejudice the State's Information filed against him because under the Supremacy Clause of the U.S. Constitution (Article VI, Clause 2), the federal one-party consent statute, 18 USC 2511(2)(d), is the Law of the Land in Florida that Judges of the state are bound to follow. Gillespie's alleged one-party consent recorded telephone call with Chonnie Phillips was a lawful interception of wire, oral or electronic communication under 18 USC 2511(2)(d).

17. Separately and in addition, Gillespie moves to dismiss this case under the Sixth Amendment to the U.S. Constitution. A witness favorable to the Defendant is deceased. The U.S. Sixth Amendment provides Gillespie shall have compulsory process for obtaining witnesses in his favor. At trial, Gillespie would call Cathy Betancourt, who died, as a favorable witness to impeach witness Vicki Ellen Tomlinson shown the arrest affidavit by Officer A. Lewis, #4482, Marion County Sheriff's Office, dated October 30, 2019, report number MCSO55ARR00119S.

WHEREFORE, Gillespie moves this Honorable Court under Rule 3.190(b) for an Order of Dismissal with prejudice of the information filed against him because under the Supremacy Clause of the U.S. Constitution (Article VI, Clause 2), the federal one-party consent statute,

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18 USC 2511(2)(d), is the Law of the Land in Florida that Judges of the state are bound to follow, and thus Gillespie's alleged one-party consent recorded telephone call with Chonnie Phillips was a lawful interception of wire, oral or electronic communication. Separately and in addition, Gillespie moves to dismiss the information with prejudice under the Sixth Amendment to the U.S. Constitution because a witness favorable to the Defendant is deceased.

RESPECTFULLY SUBMITTED January 23, 2023.



Neil Joseph Gillespie, Defendant *pro se*  
11100 SW 93rd Court Rd.  
Suite 10-220  
Ocala, FL 34481-5188  
Phone: 352-239-9037  
Email: celticein@yahoo.com

VERIFICATION OF NEIL JOSEPH GILLESPIE,  
F.S. § 92.525(2) Verification of documents

Under penalties of perjury, I declare that I have read the foregoing motion and that the facts stated in it are true.



Neil Joseph Gillespie

January 23, 2023

Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 23, 2023 *Defendant's Amended Motion to Dismiss* was served on the Florida Portal to:

State Attorney's Office  
110 North West 1st Avenue  
Suite 5000  
Ocala, FL 34475  
Eservicemarion@Sao5.Org

and to the names on the Florida Portal *Notice of Service of Court Documents*.



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Neil Joseph Gillespie, Defendant *pro se*