

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT IN AND FOR LEON
COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

CASE NO: 2011-CF-3254 A1

CARLETHA COLE,

Defendant.

**DEFENDANT'S MOTION IN LIMINE AND RESPONSE TO THE STATE'S MOTION
TO DETERMINE CONFIDENTIALITY OF COURT RECORDS**

COMES NOW, the Defendant, CARLETHA COLE, pursuant to the Sixth Amendment to the United States Constitution and the Defendant's right to a full and fair cross examination, files this Defendant's Motion In Limine and would further state as follows:

1. The Defendant was charged in a single count Information on December 2, 2011, with Disclosure of Intercepted Wire, Oral, or Electronic Communication, a third degree felony, punishable by a maximum of five years in prison, pursuant to Section 934.03(1)(c), Florida Statutes.
2. The allegations stem from Ms. Cole's alleged dissemination of private Communications with the Lieutenant Governor's Chief of Staff, John Konkus.
3. It is alleged that the Defendant distributed the allegedly private Communications, but the Defendant has not been charged with the unlawful recording of the Communications at issue.
4. The Communications at issue were between the Defendant and the Lieutenant Governor's Chief of Staff, John Konkus, wherein Mr. Konkus states that Governor

Rick Scott's former Chief of Staff Steve MacNamara was afraid of the Lieutenant Governor, given that she was considered a loose cannon and that, by Mr. Konkus' estimation, Governor Scott was exhibiting a failure of leadership qualities, which had allowed the relationship between the Governor's Office and the Lieutenant Governor's Office to become dysfunctional.

5. Governor Scott's Communications Team, had specifically instructed staff members to covertly record communications within the Lieutenant Governor's Office, as well as any and all communications with a member of the press in order to permit rebuttal of any misquotes or inaccurate attributions.

6. Consistent with former Chief of Staff MacNamara's instructions, Lieutenant Governor's Chief of Staff, John Konkus, boasted about and proudly displayed his "smart pen," which was capable of covertly recording communications. Mr. Konkus used his "smart pen" to routinely record conversations within the Lieutenant Governor's Office and exhibited an obvious belief that such communications did not occur with a reasonable expectation of privacy. Mr. Konkus regularly joked about his ability to covertly record conversations, allowing the participants of the conversation no knowledge that the recording was occurring given that Mr. Konkus' "smart pen" looked like an unassuming writing implement.

7. Additionally, Beatriz Ramos, Lieutenant Governor Carroll's Travel Aide, also possessed a hand held digital recording device, which she routinely used to record audio communications within the office and outside of the office during the Lieutenant Governor's travels. Ms. Ramos maintained sole possession of her digital recording device and would not allow other staff members to utilize the device or

have access to the device absent specific direction by the Lieutenant Governor that Ms. Ramos allow other members of the Lieutenant Governor's staff to have access to her digital recording device temporarily.

8. The Lieutenant Governor decided that her interests would be best served if she had her own personal website, by which her admirers could monitor her accomplishments. As a result, Ms. Ramos would consistently record the Lieutenant Governor's speaking engagements and upload the recordings to the Lieutenant Governor's public server. These data files were then transferred to the Lieutenant Governor's personal website by the Defendant, who has expertise in the construction and design of web pages.

9. To facilitate her efforts in constructing the Lieutenant Governor's personal website, the Defendant would often times forward, via email, the recordings uploaded to the Lieutenant Governor's public server to the Defendant's personal email account, so that the Defendant could work on constructing the Lieutenant Governor's personal website from her home, after hours.

10. The Defendant is an AME Minister, the mother of two (2) children, a grandmother of four (4) children, and she was personally recruited by the Lieutenant Governor to join her staff. The Defendant has no prior criminal history and, outside of the current accusations she is facing, she has never been arrested or suspected of any criminal activity.

11. Moreover, at the time that the Defendant was recruited by the Lieutenant Governor to join her staff, the Defendant was running a successful marketing/public relations firm and also published an international magazine entitled Silke Endress

named in honor of the Defendant's mentor who is a German citizen. At the time of the Defendant's recruitment, she had been accepted into a seminary program at Harvard University through a Baptist organization. The Defendant set aside her personal endeavors in order to serve the Lieutenant Governor.

12. Unfortunately, the Defendant's relationship with the Lieutenant Governor cooled shortly after Beatriz Ramos recognized that the Lieutenant Governor showed a distinct appreciation for the Defendant's technical capabilities, skills, and experience.

13. Ms. Ramos jealously hoarded the Lieutenant Governor's attention in a manner which can only be described as bizarre. Simply stated, Ms. Ramos made it clear that any and all communications with the Lieutenant Governor should be routed through herself so as to curtail any direct communications between the Lieutenant Governor and her other staff members.

14. A short time before the Defendant's termination, while working late in the office, the Defendant attempted to speak with the Lieutenant Governor, whom the Defendant believed was also still in the office. When the Defendant approached the door to the Lieutenant Governor's Office, she found that the door was closed. As such, the Defendant knocked on the door and walked in to the Lieutenant Governor's Office. When she entered the office, she found the Lieutenant Governor and her Travel Aide, Beatriz Ramos, in what can only be described as a compromising position.

15. The Defendant quickly and respectfully receded from the Lieutenant Governor's Office. The following day, the Lieutenant Governor held a staff meeting, mandating that any and all staff await an invitation into the Lieutenant Governor's Office upon knocking on her door prior to entering the office, including the same procedure for

incoming phone calls.

16. The Defendant's observations colored the remainder of her tenure within the Lieutenant Governor's Office and significantly strained her already tenuous relationship with Ms. Ramos.

17. Obviously, the incident caused enormous distress to the Defendant who, as an AME Minister, was not expecting to encounter such behaviors within the State's Capital. The incident did help explain Ms. Ramos' unnatural level of jealousy and lengths to which Ms. Ramos would go to consume the Lieutenant Governor's attention. Moreover, the incident shed some insight into the Lieutenant Governor's living arrangements insofar as she had allowed her Travel Aide, Beatriz Ramos, to reside at her home here in Tallahassee, Florida.

18. After this incident, the Defendant noticed a significant diminution in her relationship amongst the Lieutenant Governor and other staff within the Lieutenant Governor's Office. The Defendant began to endure an inordinate amount of criticism in an effort to discredit her at all costs within the office and felt as though she was being purposefully alienated by the Lieutenant Governor; her Chief of Staff, John Konkus; and Beatriz Ramos.

19. For example, strangely, the Defendant was tasked with making travel arrangements for the Lieutenant Governor, despite Ms. Ramos' designation as Travel Aide. These duties included booking hotel and flight accommodations for the Lieutenant Governor during her travels. A standing directive was provided, via Beatriz Ramos, that the Lieutenant Governor should at all times be booked into a hotel room which adjoined to the room occupied by her Travel Aide, Beatriz Ramos, and with the

Lieutenant Governor's security detail located across the hall

20. Unfortunately, on one occasion the Defendant was unable to secure an adjoining room for Ms. Ramos to that of the Lieutenant Governor. The Defendant was harshly criticized for her failure to reserve the rooms as directed, despite there being no such accommodations available.

21. On a subsequent occasion, the Lieutenant Governor traveled to Puerto Rico and she was accompanied by her husband on this particular trip. Consistent with the Lieutenant Governor's strict instructions, previously provided by Beatriz Ramos, the Defendant ensured that Ms. Ramos was booked into an adjoining room. Inexplicably, upon return from Puerto Rico, an FDLE special agent¹ assigned to the Lieutenant Governor's security team, which accompanied the Lieutenant Governor to Puerto Rico, scolded the Defendant for having booked Ms. Ramos in a room which adjoined that of the Lieutenant Governor and her husband. The FDLE special agent advised the Defendant that the protocol had changed and that Ms. Ramos should no longer share an adjoining room with the Lieutenant Governor on future travels, particularly in those circumstances where the Lieutenant Governor's husband was accompanying the Lieutenant Governor on her travels.

22. The special agent was very forceful in her rebuke of the Defendant for having booked Ms. Ramos in an adjoining room, which caused an enormous amount of confusion for the Defendant. As such, the Defendant attempted to defend herself by explain to the special agent that she had followed specific instructions of the Lieutenant Governor and Ms. Ramos, and that she had previously been reprimanded for having

¹ The identity of the special agent will not be revealed herein, as the special agent may still be a part of the executive security detail.

failed to provide adjoining accommodations for the Lieutenant Governor and Ms. Ramos on a separate occasion, when no such accommodations were available. The special agent was un-phased by the Defendant's exasperation and told the Defendant that the rules had changed but would offer no further explanation. This is but one example of the interoffice hostility the Defendant unfairly endured after she discovered the Lieutenant Governor in a compromising position with her Travel Aide Beatriz Ramos.

23. On March 16, 2011, the Lieutenant Governor held a staff meeting which led to a heated exchange between the Defendant and Ms. Ramos. The Defendant utilized the meeting as a vehicle by which to voice her concerns regarding Ms. Ramos' unprofessional demeanor and attitude.

24. At about 6:38 P.M. on March 17, 2011, Mike Prendergrast called the Capital Police Department to report a fire in the Lieutenant Governor's Office. The fire was first detected by Ms. Carolyn Timmann after smelling smoke emanating from a trashcan under the Defendant's desk. After realizing that the Defendant's trashcan was on fire, Ms. Timmann grabbed a flower vase and doused the fire, succeeding in extinguishing the blaze. A Capital police officer responded to the call for suspected arson and retrieved a partially burnt cigar and match from within the Defendant's trashcan, which were impounded as evidence. Ms. Timmann informed the responding officer that she had no knowledge of anyone within the office who smoked cigars.

25. FDLE Investigator John Hamilton was assigned with conducting the investigation and he quickly realized that the partially burnt cigar most likely contained ample amounts of saliva by which a DNA profile could be obtained, as it is commonly

understood within law enforcement that saliva is the ideal medium through which DNA can be transferred.

26. On Friday, March 18, 2011, the Lieutenant Governor requested that Investigator Hamilton meet at her office. After arriving at the Capital, Lieutenant Governor Carroll informed Investigator Hamilton that Ms. Ramos had confessed to having placed the cigar in the Defendant's trashcan. Unfortunately, Ms. Ramos was not at work on March 18, 2011, therefore she was unavailable to be interviewed by Investigator Hamilton with respect to the arson investigation.

27. After Investigator Hamilton had concluded his closed door meeting with the Lieutenant Governor, the Defendant informed Investigator Hamilton, as he was exiting the office, that her computer had been tampered with in addition to her trashcan having been lit on fire.

28. The Defendant suggested to Investigator Hamilton that latent fingerprints might be developed off of her keyboard and computer tower as it was obvious to her that someone had moved these items and attempted to access her work station. Investigator Hamilton, after speaking with Lieutenant Governor Carroll, was immediately dismissive of the Defendant's suggestions regarding his investigation and he informed the Defendant that he had no intention of expending a great amount of investigative resources into the allegation of arson within the Capital. Obviously, the Defendant was shocked by Investigator Hamilton's sudden lack of interest.

29. At approximately 3:02 P.M. (according to the Metadata preserved on the Evidence Property Receipt) on March 17, 2011, Investigator Hamilton destroyed the partially burned cigar and match, based upon a determination that the suspected arson

within the Capital was “non-criminal.”

30. Approximately four (4) days after destroying the evidence related to the suspected arson within the Capital, Investigator Hamilton formally interviewed Beatriz Ramos.

31. According to Ms. Ramos, in her formal statement personally provided to Investigator Hamilton as opposed to the account of Ms. Ramos’ involvement in the suspected arson within the Capital provided to Investigator Hamilton by Lieutenant Governor Carroll, Ms. Ramos left the Capital on Thursday, March 17, 2011 at approximately 5:15 P.M.². According to Ms. Ramos, she left the Capital to visit friends who were attending a Saint Patrick’s Day party in the 200 block of Adams Street. Ms. Ramos claimed that she met her friends, who offered her a cigar, which she lit and proceeded to enjoy a couple of drags off of said cigar. Then, according to Ms. Ramos, she wrapped the cigar in a napkin and placed the napkin-wrapped cigar into her purse, where after Ms. Ramos returned to the Capital at approximately 5:45 P.M.

32. Reenactments suggest that a minimum of twelve (12) minutes would be required to commute from the Lieutenant Governor’s Office to the 200 block of Adams Street on foot, as such Ms. Ramos’ timeline allows approximately six (6) minutes for her to interact with her friends, receive a cigar, light the cigar, partially smoke the cigar, and place the napkin-wrapped cigar in her purse before returning to the Capital to discard the cigar in the Defendant’s trashcan. Moreover, Ms. Ramos’ explanation as to how she inadvertently set the Defendant’s office trashcan ablaze does not account for the partially burned match which was also destroyed by Investigator Hamilton after he had received Ms. Ramos’ defense through Lieutenant Governor Carroll.

² Assumedly, Sonitrol® records could have been obtained by Investigator Hamilton to verify Ms. Ramos’ timeline for March 17, 2011, but there is no record of Investigator Hamilton making any attempt to obtain these records which would have conclusively shown what times Ms. Ramos entered and exited secured areas of the Capital.

33. Investigator Hamilton's report does not memorialize the identities of the friends whom Ms. Ramos allegedly went to visit on March 17, 2011.

34. Remarkably, less than twenty-four (24) hours after Investigator Hamilton had destroyed the evidence related to the arson investigation within the Capital and closed the case pursuant to a determination that the incident was "non-criminal," Lieutenant Governor Carroll wrote a letter of recommendation on behalf of Investigator Hamilton.

35. The public records indicate that Investigator Hamilton left the employ of the Capital Police shortly after receiving Lieutenant Governor Carroll's letter of recommendation.

36. The Lieutenant Governor's activities with her Travel Aide, Beatriz Ramos, as observed by the Defendant, are relevant to the defense against these allegations insofar as they show motive and bias. Moreover, the actions of Ms. Ramos in setting the Defendant's trashcan ablaze within hours of having a heated exchange with the Defendant and in the presence of the Lieutenant Governor and her Chief of Staff are also relevant to the defense as they show further evidence of motive and bias, especially when coupled with the evidence that Ms. Ramos also tampered with the Defendant's computer as she was discarding the lit cigar into the Defendant's trashcan.

37. FDLE's investigation into the arson within the Capital is also relevant as it shows bias on behalf of the investigating agency and Lieutenant Governor Carroll's willingness to intervene in the normal course of an FDLE investigation. The letter of recommendation penned by Lieutenant Governor Carroll on behalf of Investigator Hamilton is relevant as it would offer a motive to any FDLE agent or law enforcement personnel involved in future investigations for which Lieutenant Governor Carroll had

a vested interest.

38. Criminal defendants are afforded broad latitude in developing testimony related to a witness' motivation for testifying and such form of cross examination have long been recognized as an important function of this Constitutionally protected Sixth Amendment right. See Olden v. Kentucky, 488 U.S. 227, 109 (1988); Davis v. Alaska, 415 U.S. 308, 316-17 (1974).

39. When cross examination of prior sexual activity is relevant to motive or bias, such testimony is not rendered inadmissible pursuant to Section 794.022(2), Florida Statutes. The testimony evidence is relevant to the defense insofar as this evidence shows that the Lieutenant Governor and her close staff have a motive and bias to distort evidence, plant evidence, fabricate evidence, destroy evidence, and have the opportunity and requisite influence to alter the normal course of a criminal investigation, especially when said investigation involves the Defendant.

40. This case is highly unusual as it does not include an allegation that the Defendant is responsible for making the alleged illicit recording, nor does the State allege with any specificity that the Defendant should have known that the recording at issue violated a reasonable expectation of privacy.

41. The Lieutenant Governor was directly involved in perverting the investigation into the suspected arson of the Defendant's office trashcan, as well as the investigation into the possible tampering of the Defendant's work station, and one must reasonably conclude that the Lieutenant Governor's Chief of Staff was aware of the ongoing arson investigation and the Lieutenant Governor's involvement therein. This would provide ample reason for a juror to conclude that the Lieutenant Governor's Chief of Staff's

testimony concerning his expectation of privacy with regard to the Communications at issue would also be deserving of closer scrutiny given his allegiance to the Lieutenant Governor and his involvement in his surreptitious recording of communications within the Lieutenant Governor's Office.

42. It is interesting to note that a suspected arson within the Capital of the State of Florida merited but a passing glance by Florida's Department of Law Enforcement, once the Lieutenant Governor had assured all concerned that the arson was a non-event. However, an allegation that the Defendant unlawfully distributed a recording, for which there is no evidence to support she was responsible for making said recording, and where the alleged victim of said recording routinely utilized his own personal recording device within the same setting to surreptitiously record others at the direction of the Chief of Staff of the Executive Office of the Governor which should only be construed as an admission by the alleged victim that the setting in question did not offer a reasonable expectation of privacy to those who entered therein, merited a full and exhaustive criminal investigation into the alleged wrongdoing of the Defendant.

43. Inexplicably, a first degree felony, for which critical evidence was destroyed prior to the primary suspect being interviewed and for which her explanation created more questions than answers provided, was immediately disposed of at the Lieutenant Governor's request, while a third degree felony, for which the allegations can best be described as strained, received the full measure of FDLE's investigative prowess and labors.

44. A juror could reasonably conclude that the Florida Department of Law Enforcement's investigation into the Defendant was tainted by the Lieutenant

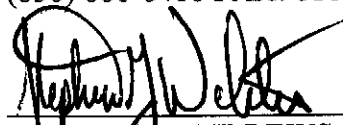
Governor's Office in an effort to ensure the Defendant's arrest, prosecution, and ultimate assassination of her character in order to shield the Lieutenant Governor and her staff from legitimate inquiry into their own misdeeds.

45. Much like in *Olden*, the evidence at issue is relevant, and admissible, to the Defendant's theory that these allegations are fabricated and that the Lieutenant Governor's Chief of Staff has a vested interest in preserving the Lieutenant Governor's position of power. See Lewis v. State, 591 So. 2d 922, 925 (Fla. 1991).

46. The State, in seeking to seal the Defendant's evidence, is essentially progressing down a path of arguing to the Court that the information at issue is wholly irrelevant. The Defendant would submit to the Court that the preliminary facts, given the breadth of latitude afforded a defendant in preparing and presenting his or her defense pursuant to the Sixth Amendment, sufficiently justifies the admissibility of the evidence at issue. Nonetheless, at a minimum, the Defendant must be allowed to engage in full discovery related to these issues as the minimum threshold for discovery inquiries has certainly been met.

Respectfully submitted,

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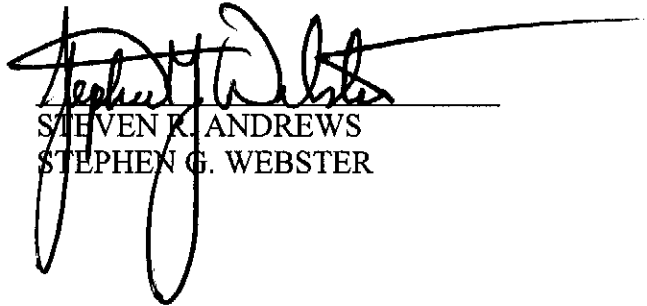


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been served by U.S. Mail and/or electronic transmission this 3rd day of July, 2012, to:

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TRANSMITTAL SHEET

DATE: July 3, 2012
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FROM: Stephen G. Webster, Esq.
RE: State of Florida v. Carletha Cole
NUMBER OF PAGES (including cover sheet): 15
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