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STATE OF FLORIDA
CRIMINAL JUSTICE STANDARDS AND TRAINING
COMMISSION

CRIMINAL JUSTICE STANDARDS
AND TRAINING COMMISSION,
Petitioner,

vs.

FRANCIS J. FOLEY, JR.
Respondent.

CASE NO: 01-1276PL-13836

FILED
01 JUN-4 PM 1:34
DIVISION OF
ADMINISTRATIVE
HEARINGS

01-1276PL

WPS

MOTION TO SUPPRESS WITH AUTHORITY

COMES NOW the Respondent, FRANCIS J. FOLEY, JR., by and through his undersigned counsel and would hereby move this Court to suppress the transcript of the proceeding before the Hon. Bob Anderson Mitcham, Circuit Court Judge, on March 11, 1998, and in support would show that:

1. Florida Statute § 120.569 (2)(g) states that in administrative hearings the court can consider evidence of a "type commonly relied upon by reasonably prudent persons in the conduct of their affairs."

2. This exception is normally applied to the use of hearsay evidence in administrative hearings.

3. The transcript of the proceedings before the Hon. Bob Anderson Mitcham was suppressed by the trial court in the criminal proceedings against the Respondent as having been obtained in violation of the Respondent's right to counsel and in violation of "Miranda."

4. The suppression of the transcript was upheld by the Second District Court of Appeals.

5. The Courts have generally held that the exclusionary rule, and other similar constitutional guarantees, are inapplicable to administrative hearings. United States v. Janis, 428 U.S. 433 (1976) and Tirado v. Commissioner of Internal Revenue, 689 F.2d 307 (2nd Cir. 1982).

6. The Courts have also carved out an exception to this rule when the violations are "egregious violations . . . that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained." Immigration and Naturalization Service v. Lopez-Mendoza, 468 U.S. 1032 (1984), cited in Valdez v. Department of Revenue, 622 So. 2d 62 (Fla. 1st DCA 1993)

7. The basic constitutional violations surrounding the testimony before Judge Mitcham were so egregious as to lead any "reasonably prudent person" to question whether such a statement should be used "in the conduct of their affairs." These violations included:

a. Prior to his testimony the State Attorney knew, or should have known, that she would be seeking evidence that would later be used against Mr. Foley, and yet saw no reason to inform Mr. Foley that such criminal prosecution may result.

b. Prior to his testimony the State Attorney failed to inform Mr. Foley of his rights under "Miranda."

c. Prior to his testimony the State Attorney failed to inform Mr. Foley that he may desire to contact independent legal counsel before making any statement.

d. Prior to his testimony the Court failed to inform Mr. Foley of his rights

under "Miranda."

e. During his testimony the State Attorney and the Court failed to inform Mr. Foley that he may be making statements against his interest and that he may desire to contact legal counsel prior to answering any questions.

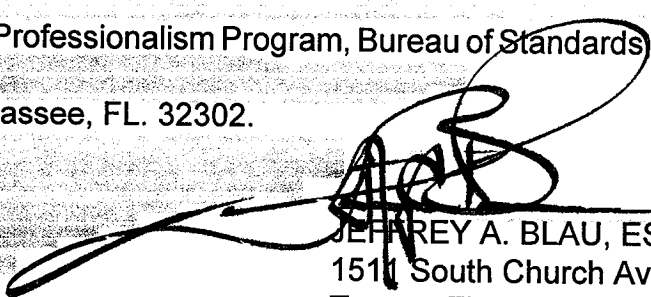
f. The testimony was obtained by a State Attorney who knew that the Respondent was a law enforcement officer and, as such, may attempt to accept responsibility for problems that were the result of the State Attorney's actions.

8. Based on the foregoing, the Court could not be satisfied that the statements made before the Hon. Judge Mitcham are of any probative value, that no "reasonably prudent person" would rely on such statements "in the conduct their affairs," and should be suppressed.

WHEREFORE, the Respondent would Move this Court to Suppress the transcript of all testimony before the Hon. Judge Mitcham.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail, this 31st day of May, 2001, to the Florida Department of Law Enforcement, Criminal Justice Professionalism Program, Bureau of Standards Attn: Philip Lindley, P.O. Box 1489, Tallahassee, FL. 32302.



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