

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

STATE OF FLORIDA,

Plaintiff,

vs.

SHANNON STEPHEN,

Defendant.

COPY
CASE NUMBER
CRC0601591CFAWS

888799

PROCEEDINGS: MOTION

BEFORE: HONORABLE SHAWN CRANE
Circuit Court Judge
Sixth Judicial Circuit
New Port Richey, Florida

DATE: August 3, 2010

PLACE: West Pasco Judicial Center
7530 Little Road
New Port Richey, FL 34654

TRANSCRIBED BY: Debra Denamen
Court Reporter

*FILED FOR RECORD
PASCO COUNTY, FLORIDA*
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*Paula S. O'Neil
Clerk & Controller
Pasco County, Florida*

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APPEARANCES

APPEARING ON BEHALF OF
THE STATE OF FLORIDA:

Bryan Sarabia, Assistant State Attorney
Office of Bernie McCabe, State Attorney
Sixth Judicial Circuit, Pasco County
New Port Richey, Florida

APPEARING ON BEHALF OF
THE DEFENDANT SHANNON STEPHEN:

Kenneth Foote, Esq.
6521 Ridge Road Suite 4
Port Richey, Florida

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P R O C E E D I N G S

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THE COURT: Who would like to go next?

Mr. Foote?

MR. FOOTE: I guess I'm the only one.

THE COURT: I guess you are.

MR. FOOTE: Judge, we have Shannon Stephen's matter on the calendar. We pretty much -- we're readdressing, Judge, a couple of the housekeeping issues regarding the text messaging to Kara Wallace.

THE COURT: I have a motion here for protective order is all I have on the calendar.

MR. FOOTE: Yeah. That's what it is, Judge. I titled the wrong thing, basically, and I've spoken with the State about this.

The last time we were all together we did not have the phone number for Ms. Wallace, she had gone up to the court reporter and given in private not in open court on the record. We had to order that transcript.

We've gotten that transcript back and pretty much, we're asking the Court today to give us permission to preserve those records by AT&T. We've spoken with their subpoena compliance because it is text messages and they would want a

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1 warrant and we're going to be in the process of
2 preparing warrants for that purpose of obtaining
3 the text messages. But to give them an order to
4 protect that information today -- I've spoken to
5 the State and they don't have an objection to that
6 portion of it.

7 So that's all we have on the calendar for
8 today.

9 THE COURT: All right. What says the State?

10 MR. SARABIA: And, Judge, we have no
11 objection to the Court asking that AT&T to
12 preserve any records that they still have, at this
13 time.

14 We do object to some of the language in the
15 motion regarding Ms. Wallace texting or text
16 messaging because that was not the testimony.
17 However, aside from that, we have no objection to
18 that order being issued.

19 THE COURT: All right. And did you have a
20 copy of that order -- that proposed order?

21 MR. FOOTE: I do, Judge, and it's titled
22 order on motion for protective order. I think it
23 should be order on --

24 THE COURT: Well, if you want to re-do it
25 that's fine and just do me a favor and just run

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1 that through Mr. Sarabia and once you-all agree
2 upon the language, just send it to me and I'll go
3 ahead and sign it.

4 MR. FOOTE: I think the language would be the
5 same, I think just the title that's going to
6 change.

7 THE COURT: Okay. Like I said, however
8 you-all want to do that.

9 MR. FOOTE: Also, Judge, procedurally,
10 because they need a warrant, it would be our
11 position that we would prepare a warrant for the
12 Court to review. That would be something, I
13 guess, that we would just approach the Court on.

14 THE COURT: Well, that's going to be kind of
15 an interesting process because --

16 MR. FOOTE: It's normally the State --

17 THE COURT: -- warrants are -- well, no --
18 warrants are specifically provided for law
19 enforcement.

20 MR. FOOTE: Right.

21 THE COURT: So, it's kind of an interesting
22 -- I don't know if I've ever done a non-law
23 enforcement warrant.

24 MR. FOOTE: There was one that came up, it
25 was actually -- it received a lot of attention

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1 because there is no prohibition against anyone
2 doing a warrant if the Judge believes there is
3 probable cause. It's just customary that law
4 enforcement bring one.

5 Now, current Judge Susan Gardner, when she
6 was a public defender, actually, did a defense
7 search warrant before.

8 We're doing it because I don't know if the
9 State would agree that -- you know, we want to get
10 this information -- I don't know if they want that
11 information from AT&T regarding this witness. We
12 think that's kind of important, obviously, for
13 appellate reasons as well. That appellate time is
14 running and so we're going to prepare the warrant
15 itself and approach the Court for it to determine
16 whether or not it has sufficient information to
17 grant that warrant.

18 What we're asking the Court to do is to
19 request the State assist us in a template -- a
20 blank template for the warrant that would be able
21 to expedite this matter. Since the last time I
22 wrote a warrant was when I was on 49th Street.

23 THE COURT: Okay. And that's something --
24 Mr. Sarabia?

25 MR. SARABIA: Well, Judge, that was not

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1 brought to my attention prior to the hearing today
2 and I didn't speak with Mr. Rosario about that.
3 I'm sure he has no objection to assisting
4 Mr. Foote as far as he can, but I do know that he
5 is very busy and he's the one who does that sort
6 of thing for our office and he is the only one
7 that has knowledge about it. But I would
8 appreciate it if the Court would not enter an
9 order compelling us to do something like that.

10 THE COURT: Well, I think that's what I'm
11 going to do and based upon that representation I'm
12 not going to enter an order that necessarily
13 requires that. But that may be something that the
14 State may surely want to assist in and perhaps
15 even be the primary agency, for lack of a better
16 phrase, that brings that order forward just so
17 that issue can be, specifically, addressed to see
18 if it is an issue or see if it's not an issue.

19 MR. FOOTE: And the last time we spoke,
20 Judge, and what I'm asking for is -- and I
21 understand that they are busy -- but they,
22 obviously, have templates that they can -- all I'm
23 asking for is a blank template so that we make
24 sure that form is right. I'm not requesting that
25 a prosecutor sit down and write it. If they are

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1 offering that assistance I will certainly take
2 that.

3 THE COURT: Well, I'm not going to order them
4 to give up any of that.

5 MR. FOOTE: But I'm not doing motions for
6 that because I know the last time Mr. Rosario said
7 that he would and the Court said maybe we can come
8 together and stipulate to expedite the matter.
9 That is what we're pretty much asking.

10 THE COURT: They won't even accept a court
11 order, that's interesting.

12 MR. FOOTE: And I was educated by the State
13 and the Court in regard to that because text
14 messaging --

15 THE COURT: Well, I know -- I knew that there
16 were times --

17 MR. FOOTE: Phone records would go by
18 subpoena's because they keep them.

19 THE COURT: Right.

20 MR. FOOTE: The text messaging has a
21 different level of information.

22 THE COURT: I know some things has to get a
23 search warrant for and some they have to get --

24 MR. FOOTE: Right.

25 THE COURT: -- some of the court orders are

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1 sufficient for -- and that's kind of unique to
2 each carrier, as well, I think, depending upon
3 their legal department, I guess.

4 MR. FOOTE: That is correct, Judge.

5 THE COURT: And, so, I guess, you know, I
6 think that's probably a fairly fluid issue too,
7 depending upon who is giving the -- you know, each
8 provider the information.

9 But -- and once again, you-all get together
10 on that. I have certainly no reason to doubt
11 Mr. Sarabia when he says that they'll give you
12 whatever assistance they can. But I just don't
13 think it would be prudent for me to issue an order
14 requiring them to turn over forms and that sort of
15 thing.

16 MR. FOOTE: No. And that's not my motion,
17 Judge. But I would think that in the interest of
18 all parties --

19 THE COURT: Well, that's what I mean, that's
20 the point I made. I think that, you know, that
21 would be something to either address if there
22 truly was an issue there or if there truly was not
23 an issue there.

24 MR. FOOTE: Correct, Judge.

25 THE COURT: That's, kind of, getting to the

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1 bottom of it and deciding what's going on.

2 MR FOOTE: We've been moving expeditiously,
3 obviously, the 30 days is about to run for the
4 notice of appeal and once we file that the Court,
5 I believe, relinquishes jurisdiction and so that's
6 why we're moving on a quick note to, pretty much,
7 have that done. I know there was some events that
8 have come up both involving Mr. Rosario and
9 different things that have come up that is out of
10 everyone's control, that kind of done this thing
11 so that's why we're, kind of, moving, kind of,
12 quickly now, so that I can preserve my client's
13 rights of appeal.

14 THE COURT: Well, and that may be, you know,
15 obviously, you can't let that 30 days run.

16 MR. FOOTE: Correct. But we're going to be
17 prepared in the next 24 hours. In fact, I'm going
18 to go up to the State now if they're able to give
19 me that template and we're going to try to see
20 Your Honor as soon as possible with that.

21 THE COURT: So, well, like I said, well I
22 can't tell you how to do your job.

23 MR. FOOTE: Right.

24 THE COURT: But you can't let that 30 days
25 run and you can always ask the circuit court to --

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1 or the appellate court -- if there was an issue to
2 relinquish jurisdiction.

3 MR. FOOTE: Right. Correct.

4 THE COURT: Because there's no telling that
5 they're going to be able to get you that
6 information -- or how long it's going to take them
7 to produce that information.

8 MR. FOOTE: That's correct. We -- I mean --
9 right, we're not going to wait for them to
10 actually do that. However if that --

11 THE COURT: But, I mean, even once they get
12 the order, I mean, very rarely is it ever
13 instantaneous.

14 MR. FOOTE: Right. All right then. I will
15 prepare an order and the heading will be changed
16 but the language will, pretty much, stay the same,
17 if that's acceptable to the State, we'll bring
18 that to the Court to be forwarded to preserve the
19 materials.

20 THE COURT: All right.

21 MR. FOOTE: And that's all we have before the
22 Court, Judge.

23 THE COURT: Thank you.

24 MR. FOOTE: Thank you.

25 (PROCEEDINGS CONCLUDED.)

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STATE OF FLORIDA)
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COUNTY OF PASCO)

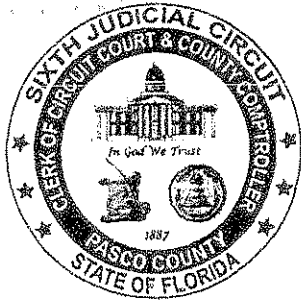
I, Debra Denamen, Court Reporter, certify that I was
authorized to and did transcribe the foregoing
proceedings and that the transcript is a true record.

DATED this 1st day of November, 2011.

S/ Debra Denamen

Debra Denamen, Court Reporter

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Office of Paula S. O'Neil
Clerk & Comptroller
Pasco County, Florida

STATE OF FLORIDA }
 {
COUNTY OF PASCO }

I, Paula S. O'Neil, Clerk & Comptroller of Circuit Court for the County of Pasco, State of Florida, do hereby certify that the foregoing pages 328-1444 & 1-1085 & 1-1735, inclusive, contain a correct Supplemental Transcript of the Record in the case of State Of Florida, Plaintiff(s) vs. Shannon Stephen, Defendant(s), being Case Number(s) 06-1591, Circuit Criminal, and a true and correct recital and copy of all such papers and proceedings in said cause as appears from the records and files of my office that have been directed to be included in the record by the directions furnished to me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 4 day of February, 2013.

By: Brenda McNeil
Deputy Clerk

