

**IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-027527-CC-05

SECTION: CC08

JUDGE: Maria D. Ortiz

David Fintan Garavan (Dr), MD.

Plaintiff(s) / Petitioner(s)

vs.

Katherine Kenerson (Dr), MD.

Defendant(s) / Respondent(s)

ORDER FOLLOWING NON-JURY TRIAL

THIS CAUSE came before the Court for Non-Jury Trial on the complaint filed by the Plaintiff, Dr. David Fintan Garavan (hereafter Dr. Garavan), against the Defendant, Dr. Katherine Kenerson, (hereafter Dr. Kenerson), for preliminary or equitable or declaratory relief as may be appropriate for unlawful interception of wire, oral, or electronic communications in violation of § 934.03, Florida Statutes ; actual damages, but not less than liquidated damages computed at the rate of \$100.00 a day for each day of violation or \$1,000.00, whichever is higher; punitive damages in an amount to be determined by the factfinder at trial; and reasonable attorney's fee and other litigation costs reasonably incurred.

The Court, having heard the evidence and arguments of counsel, and pursuant to the Court's oral pronouncement of the final verdict on June 23, 2025, as stated on the court record which is fully incorporated herein by reference and made a part hereof, finds as follows:

Introduction

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This is a suit by Plaintiff Dr. Garavan against Defendant Dr. Kenerson for a violation of Fla. Stat. § 934.03 (“The Wiretap Statute”). The First Amended Complaint alleges that Dr. Kenerson intercepted Dr. Garavan’s oral communications in violation of The Wiretap Statute by recording a January 25, 2018, meeting at the Miami-Dade County Medical Examiner’s Office. The disputed issues tried were (1) whether Dr. Garavan exhibited a subjective expectation of privacy; and (2) whether any subjective expectation of privacy was reasonable. At the bench trial, held April 24, 2025, the Court heard the testimony of Dr. Garavan, Dr. Kenerson, and Dr. Benjamin Mathis.

The Legal Standard

Florida’s Wiretap Statute does not reach all communications, only those “uttered by a person exhibiting an expectation that such communication is not subject to interception.” Fla. Stat. § 934.02 (defining “oral communication”). The test to determine whether an utterance is an “oral communication” under § 934.02 is substantially the same as the Fourth Amendment test adopted by the United States Supreme Court in *Katz v. United States*, 389 U.S. 347 (1967), and in *Smith v. Maryland*, 442 U.S. 735 (1979). *See, e.g., Ford v. City of Boynton Beach*, 323 So. 3d 215, 221 (Fla. 4th DCA 2021) (Warner, J., concurring) (“The test to determine whether a person exhibits a subjective expectation of privacy set forth in section 934.02(2), defining ‘oral communication,’ is substantially the same as the test enumerated in *Smith v. Maryland*, 442 U.S. 735, 740, 99 S. Ct. 2577, 61 L.Ed.2d 220 (1979), to determine a Fourth Amendment right to privacy.”); *Mozo v. State*, 632 So. 2d 623, 628 (Fla. 4th DCA 1994), *approved*, 655 So. 2d 1115 (Fla. 1995) (“The Florida Supreme Court has interpreted the test set forth in the definition of “oral communication” as substantially the same as the constitutional test adopted by the United States Supreme Court in *Katz*.”).

There are two parts to the test: (1) the individual must have exhibited an actual, subjective expectation of privacy; and (2) the individual’s subjective expectation of privacy must be one society recognizes as reasonable. *Smith*, 442 U.S. at 740; *see also State v. Foster*, 323 So. 3d 209, 212 (Fla. 4th DCA 2021) (“Our supreme court has held that an oral communication is protected

under section 934.03 if it satisfies a two-part test: ‘for an oral conversation to be protected under section 934.03 the speaker must have an actual subjective expectation of privacy, along with a societal recognition that the expectation is reasonable.’”); *Cohen Bros., LLC v. ME Corp., S.A.*, 872 So. 2d 321, 324 (Fla. 3d DCA 2004) (“[F]or an oral conversation to be protected under section 934.03 the speaker must have an actual subjective expectation of privacy, along with a societal recognition that the expectation is reasonable.” (quoting *State v. Smith*, 641 So. 2d 849, 852 (Fla. 1994))).

Findings of Fact and Conclusions of Law

On January 25, 2018, the Chief Medical Examiner for Miami-Dade County, Dr. Emma Lew, called a meeting. The meeting was attended by eight people: (1) Chief Medical Examiner Dr. Emma Lew, (2) Administrative Assistant Leslie Cummings; (3) Director of Operations Darren Caparara; and Associate Medical Examiners (4) Dr. Mark Shuman; (5) Dr. Ben Mathis; (6) Dr. Ken Hutchins; (7) Dr. Kenerson; and (8) Dr. Garavan. All the attendees were employed by Miami-Dade County at the time of the meeting and it was held in the conference room at the Medical Examiner’s Office for Miami-Dade County, a county building. Although Dr. Lew called the meeting to address the interpersonal discord that had arisen among the Associate Medical Examiners; neither Dr. Lew, nor any of the other participants of the meeting, stated or expressed that the meeting would be confidential, private, or “off-the-record.” There was no agreement among the meeting participants that the meeting would be confidential, private, or “off-the-record.” At the meeting, the participants discussed the conflicts among the staff, the problems with the histology lab used by the Medical Examiner’s Office and other procedures of the Office.

Prior to or during the meeting, Dr. Garavan did not exhibit a subjective expectation of privacy or show that he sought to preserve his communications as private. Even if Dr. Garavan had exhibited a subjective expectation of privacy in his communications, any such expectation was not reasonable in light of the location of the meeting, the number of persons present during the meeting, the topics discussed during the meeting, and the fact that all attendees were Miami-Dade

County employees and the contents of their communications could be subject to public records disclosures laws. There is no expectation of privacy in statements made to a roomful of co-workers at a county office and Dr. Garavan exhibited no such expectation of privacy.

Accordingly, it is hereby,

ORDERED AND ADJUDGED that the Plaintiff Dr. David Fintan Garavan, M.D., takes nothing by this action and that Defendant Dr. Katherine Kenerson, M.D., go hence without day. Jurisdiction of this case is retained to determine the amount of costs to which Defendant is entitled.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 30th day of August, 2025.

2020-027527-CC-05 08-30-2025 10:37 AM

2020-027527-CC-05 08-30-2025 10:37 AM

Hon. Maria D. Ortiz

COUNTY COURT JUDGE

Electronically Signed

Final Order as to All Parties SRS #: 3 (Non-Jury Trial)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

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