

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION

WILLIAM A. CABANA, pro se,

Plaintiff,

Case No.: 06-CA-5063 SC

VS.

JAMES ZINGALE, EXECUTIVE
DIRECTOR, DEPARTMENT OF
REVENUE, etc.,

Defendant.

DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT
OF MOTION TO DISMISS OR, ALTERNATIVELY,
MOTION FOR SUMMARY JUDGMENT

Defendant, James Zingale, Executive Director, Department of Revenue, by undersigned counsel, hereby submits his notice of supplemental authority in support of his Motion to Dismiss or, alternatively, Motion for Summary Judgment.

The first case is In re Commitment of Duane Edwin Sutton, 884 So. 2d 198

(Fla. 2d DCA 2004), which reiterates the principle that in order for Florida's

constitutional right of privacy under Art. I, §23, Fla. Const., to attach, there must be

a legitimate expectation of privacy. Plaintiff fails to cite to a single case that

establishes a legitimate expectation of privacy in alimony decisions.

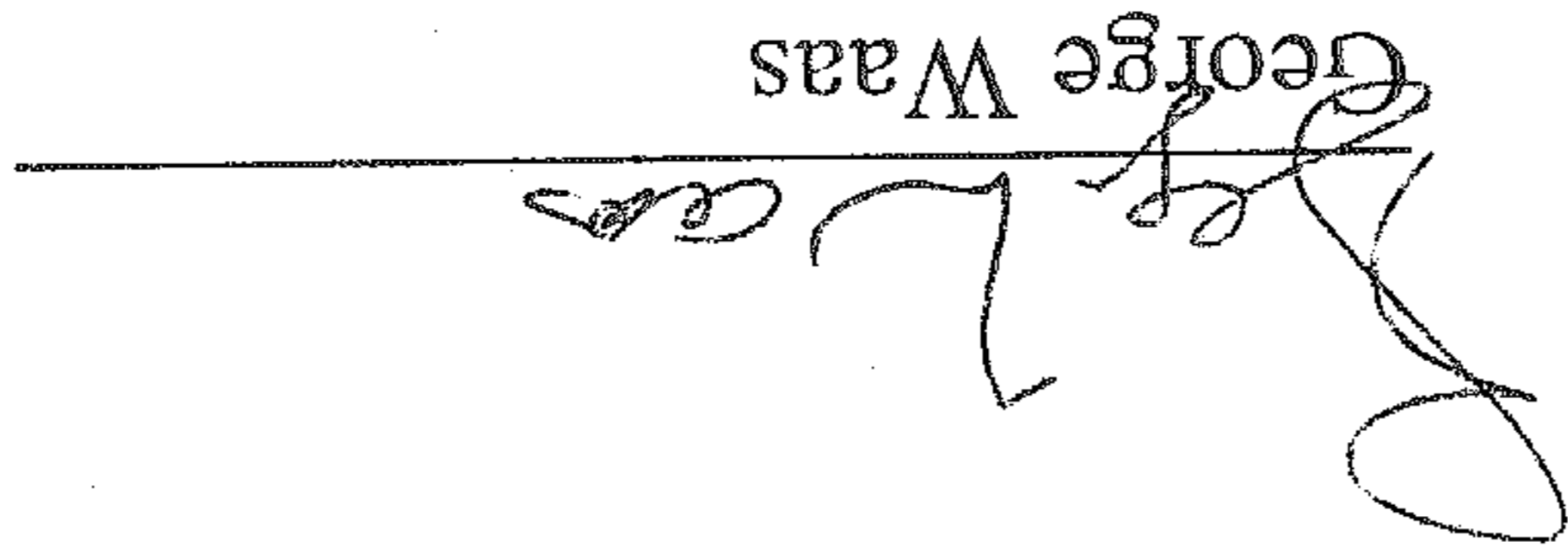
The second case is Barron v. Florida Freedom Newspapers, 531 So. 2d 113

(Fla. 1988), which demonstrates that both civil and criminal court proceedings in Florida are public events; there is a well-established common law right of access to court proceedings and records; there is a strong presumption of openness for all court proceedings; and closure of court proceedings or records should occur only when necessary and, with regard to privacy, only under appropriate circumstances. Plaintiff has failed to provide a single case in which alimony considerations overcame the strong presumption of openness for court proceedings and the right of access to court proceedings and records.

Copies of both decisions are attached as Exhibits A and B, respectively.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL



George Waas

Special Counsel

Fla. Bar No. 0129967

Office of the Attorney General

PL-01 The Capitol

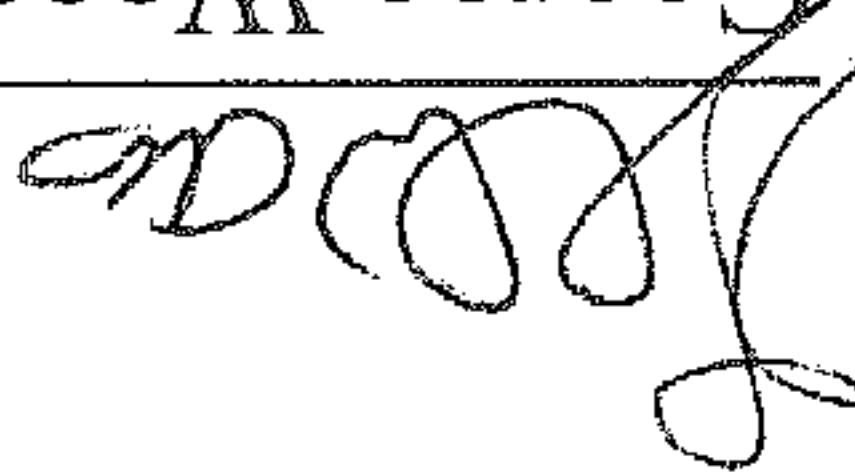
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(850) 414-3662

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to William A. Cabana, Pro Se, 1050 Capri Isles Blvd., Apt. F-105, Venice, Florida 34992, this 31st day of October, 2006.


George Waas

LEXSEE 884 SO. 2D 198

In re Commitment of Duane Edwin Sutton, Keith Norwood Smith, John R. Beikirch, Edward Allen Singleton, Jerry Wade Rhoades, and George Samuel Demarco; Duane Edwin Sutton, Keith Norwood Smith, John R. Beikirch, Edward Allen Singleton, Jerry Wade Rhoades, and George Samuel Demarco, Petitioners, v. STATE OF FLORIDA, Respondent.

Case Nos. 2D03-2780, 2D03-2973, 2D03-2984, 2D03-2988, 2D03-2993, 2D03-3327 CONSOLIDATED

COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

884 So. 2d 198; 2004 Fla. App. LEXIS 11221; 29 Fla. L. Weekly D 1721

July 28, 2004, Opinion Filed

SUBSEQUENT HISTORY: Review granted by Sutton v. State, 889 So. 2d 72, 2004 Fla. LEXIS 2408 (Fla., Dec. 17, 2004)

PRIOR HISTORY: [**1] Petitions for Writ of Certiorari to the Circuit Court for Sarasota County; Robert B. Bennett, Jr., Judge. Sutton v. State (In re Sutton), 828 So. 2d 1081, 2002 Fla. App. LEXIS 15523 (Fla. Dist. Ct. App. 2d Dist., 2002)

Singleton v. State (In re Singleton), 829 So. 2d 402, 2002 Fla. App. LEXIS 16160 (Fla. Dist. Ct. App. 2d Dist., 2002)

Beikirch v. State, 828 So. 2d 421, 2002 Fla. App. LEXIS 14538 (Fla. Dist. Ct. App. 2d Dist., 2002)

Demarco v. State, 781 So. 2d 367, 2000 Fla. App. LEXIS 16310 (Fla. Dist. Ct. App. 2d Dist., 2000)

Rhoades v. State, 818 So. 2d 514, 2002 Fla. App. LEXIS 7865 (Fla. Dist. Ct. App. 2d Dist., 2002)

Smith v. State, 827 So. 2d 1026, 2002 Fla. App. LEXIS 13169 (Fla. Dist. Ct. App. 2d Dist., 2002)

DISPOSITION: Writ of certiorari denied.

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioners, prisoners, Sarasota County (Florida), seeking review of orders sought a writ of certiorari to the Circuit Court for requiring them to submit to depositions in sexually

OVERVIEW: The State sought to have the prisoners involuntarily committed as sexually violent predators under the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, Fla. Stat. ch. 394.910-931 (2002). During the proceedings, the State attempted to depose the prisoners. The prisoners objected, claiming the depositions violated their right to privacy and their Fifth Amendment privilege against self-incrimination. The appellate court held that Jimmy Ryce detainees in civil commitment proceedings did not have any absolute privilege to avoid the discovery process. In essence, the prisoners did nothing more than raise a blanket assertion of their Fifth Amendment privilege, an act which was not available because of the civil nature of these proceedings. As to the privacy claims, the appellate court held that the prisoners did not demonstrate that they had a legitimate expectation of privacy with respect to their familial relationship with the victim and witnesses. Any right the prisoners may have had to keep their thoughts about their offenses private was outweighed by the State's interest in obtaining the information.

OUTCOME: The certiorari petitions were denied.

LexisNexis(R) Headnotes



Amendment privilege against self-incrimination whenever there is a realistic possibility that his answer to a question can be used in any way to convict him of a crime. It need not be probable that a criminal prosecution will be brought or that the witness's answer will be introduced in a later prosecution; the witness need only show a realistic possibility that his answer will be used against him. Moreover, the Fifth Amendment forbids not only the compulsion of testimony that would itself be admissible in a criminal prosecution, but also the compulsion of testimony, whether or not itself admissible, that may aid in the development of other incriminating evidence that can be used at trial.

Civil Rights Law > Prisoner Rights > Self-Incrimination Privilege > Evidence > Privileges > Self-Incrimination Privilege > Exceptions

[HN5] The Fifth Amendment privilege is inapplicable only if the testimony sought cannot possibly be used as a basis for, or in aid of, a criminal prosecution against the witness.

Criminal Law & Procedure > Trials > Judicial Discretion > Evidence > Privileges > Self-Incrimination Privilege > Elements

[HN6] If the self-incriminating nature of a question is not clear from the face of the question, the party claiming the Fifth Amendment privilege may be required to provide sufficient information on which a trial court may find that a reasonable danger of incrimination exists. The trial court has the ultimate responsibility to determine whether the witness's refusal to answer questions is in fact justifiable under the privilege. The trial court has broad discretion to determine what answers provided in discovery may incriminate or tend to incriminate a litigant.

Civil Procedure > Discovery > Relevance > Civil Procedure > Appellate Jurisdiction > State Court Review

[HN7] In Florida, certiorari generally does not lie to review the relevance of discovery, since the disclosure of information that is merely irrelevant is not likely to cause irreparable harm.

Civil Procedure > Discovery > Methods > Oral Depositions

Criminal Law & Procedure > Postconviction Proceedings > Sex Offenders > Criminal Law & Procedure > Remands & Rehearings

[HN1] In Florida, a respondent in a sexually violent predator commitment proceeding cannot assert a blanket right of privacy or the right against self-incrimination to avoid being deposed. Instead, he must appear and make a good faith assertion of the privileges to particular questions when necessary.

Civil Procedure > Discovery > Methods > Oral Depositions

Criminal Law & Procedure > Postconviction Proceedings > Sex Offenders

[HN2] Detainees in civil commitment proceedings under the Jimmy Ryce Act, Fla. Stat. ch. 394.910-.931 (2002), do not have any absolute privilege to avoid the discovery process.

Civil Procedure > Discovery > General Overview > Civil Procedure > Appellate Jurisdiction > Interlocutory Orders

[HN3] In Florida, certiorari is an "extraordinary remedy" that should not be used to circumvent the interlocutory appeal rule which authorizes appeal from only a few types of non-final orders. While orders granting discovery have traditionally been reviewed by certiorari, not every erroneous discovery order creates certiorari jurisdiction in an appellate court. A nonfinal order granting discovery will be reviewed by certiorari only when the order departs from the essential requirements of the law and causes irreparable injury to the petitioner throughout the remainder of the proceedings, effectively leaving no adequate remedy on appeal.

Civil Rights Law > Prisoner Rights > Self-Incrimination Privilege > Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > Self-Incrimination Privilege > Evidence > Privileges > Self-Incrimination Privilege > Elements

[HN4] A witness is generally entitled to invoke the Fifth

