

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
There Was No Reasonable Expectation of Privacy Under the Circumstances of This Case.....	1
CONCLUSION	5
CERTIFICATE OF WORD COUNT & COMPLIANCE WITH RULE 18(B)	6
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

Rhode Island v. Innis, 446 U.S. 291 (1980).....7

CASES FROM OTHER JURISDICTIONS

Ahmad A. v. Superior Court, 215 Cal.App.3d 528 (1989)7

Belmer v. Commonwealth, 553 S.E.2d 123 (Va. App. Ct. 2001)6

Cox v. State, 26 So.3d 666 (Fla. Dist. Ct. App. 2010).....7

Cuomo v. State, 98 So3d 1275 (Fla. Dist. Ct. App. 2012).....7

Davis v. State, 121 So3d 462 (Fla. 2013)5

Dickerson v. State, 666 S.E.2d 43 (Ga. Ct. App. 2008)6

Easterling v. Commonwealth, 580 S.W.3d 496 (Ky. 2019)6

Larzelere v. State, 676 So2d 394 (Fla. 1996)6

North v. Superior Court, 502 P.2d 1305 (Cal. 1972)5

People v. Hammons, 235 Cal. App. 3d 1710 (Cal. Ct. App. 1991).....8

Rashid v. State, 737 S.E.2d 692 (Ga. 2013).....4, 7

State v. Allen, 513 P.3d 282 (Ariz. 2022)6

State v. Calhoun, 479 So2d 241 (Fla. Dist. Ct. App. 1985)4

State v. Scheineman, 77 S.W.3d 810 (Tex. Crim. App. 2002)4

Williams v. State, 982 So2d 1190 (Fla. Dist. Ct. App. 2008).....5

There Was No Reasonable Expectation of Privacy Under the Circumstances of This Case.

Throughout his brief, defendant refers to his request to speak to his mother “one-on-one” and “myself” but invariably also inserts the terms “privacy,” “privately,” or “private.” *See Defendant’s Brief*, pp. 9, 10, 15, 18, 22, 25, 26, 27, 29, 31, 32, & 33. Despite acknowledging that the police “did not explicitly say, ‘We are leaving you to have a private conversation,’” he claims that they lulled him into believing he was alone with his mother. *Defendant’s Brief*, p. 26. The defendant *was* physically alone in the interview room with his mother, but alone and one-on-one do not equate with privacy in the absence of assurances of privacy in the context of a police interrogation room. *See State v. Scheineman*, 77 S.W.3d 810, 811 (Tex. Crim. App. 2002) (codefendant requested to “speak alone with” defendant and the deputy complied by leaving the men alone in a room at the county law enforcement building). *Cf. State v. Calhoun*, 479 So2d 241, 243 (Fla. Dist. Ct. App. 1985) (defendant indicated that “he would like to speak to his brother *privately* before talking to officers.”) (emphasis added).

In *Scheineman*, the Texas Court of Appeals reversed the lower court’s motion to suppress statements since defendant was not “threatened, tricked, or cajoled” into making the statements and it did not involve a custodial interrogation. *State v. Scheineman*, 77 S.W.3d at 813. *See also Rashid v. State*, 737 S.E.2d 692, 698 (Ga. 2013) (defendant’s “conversation with family members occurred while he was in

custody, but they were not the product of interrogation.”). Although defendant was in custody, the complained of statement was not made in response to an interrogation nor while conferring with his attorney or an agent of the state. *Id.* “While [defendant] may well have had a subjective expectation, the dispositive issue is societal recognition of that expectation as reasonable.”¹ *Id.* As in the case *sub judice*, “[t]here [was] no allegation or evidence of oral assurances of privacy.” *Id.*

Moreover, defendant was told at the beginning of the interrogation that there would be a recording, was never told the recording was ending, and was not taken to a different room to speak with his mother. *Cf. North v. Superior Court*, 502 P.2d 1305, 1311 (Cal. 1972) (defendant and his wife were escorted to detective’s private office). Even surreptitious recordings are permissible in a jailhouse setting in the absence of “coercion or trick.” *Williams v. State*, 982 So2d 1190, 1194 (Fla. Dist. Ct. App. 2008). “The defendant did not ask for privacy, and there was no suggestion that he had any.” *Id.* *See also Davis v. State*, 121 So3d 462, 487 (Fla. 2013)

¹ However, the record demonstrates that defendant did not have a subjective expectation of privacy as indicated in his statements after meeting with his mother that, “I know what you guys do in an interrogation room,” that he’d “seen guys getting interviewed in this room,” and that the “videos come out, trust me.” Exhibit A to State’s Brief, pp. 260-61. The defendant did not seem at all surprised or outraged, but rather motioned his head to the precise spot where the camera was located, as can be seen on the video. *See also* State’s Brief, pp. 5-10. The trial justice erred in not considering this insight into defendant’s subjective state of mind regarding privacy or lack thereof under the totality of the circumstances analysis. *See eg. State v. Gates*, 249 A.3d 445, 451 (N.H. 2020).

(“Because this case did not involve any specific or deliberate assurances or privacy, the general rule that suspects have no expectation of privacy in police custody controls.”); *Easterling v. Commonwealth*, 580 S.W.3d 496, 505 (Ky. 2019) (simply leaving a suspect alone while in police custody does not create a reasonable expectation that society is prepared to and taped conversation with family members was admissible). Police’s “legitimate security interest in monitoring and recording its interview rooms, along with the common knowledge that these rooms are being monitored, extinguished any already diminished expectation of privacy [defendant] had while in custody.” *State v. Allen*, 513 P.3d 282, 303 (Ariz. 2022).

Also, unlike *North*, which involved the marital privilege,² there was no legally privileged relationship at issue in the case at bar. *See Dickerson v. State*, 666 S.E.2d 43, 47 (Ga. Ct. App. 2008) (“although the officer left the minor in the interrogation room alone with his mother, no representations or inquiries were made as to privacy or confidentiality.”); *Belmer v. Commonwealth*, 553 S.E.2d 123, 129 (Va. App. Ct. 2001) (“Because the only ‘lulling’ done by the detective was leaving appellant with his mother and her boyfriend, we cannot find as a matter of law that appellant’s expectation of privacy was reasonable.”); *Larzelere v. State*, 676 So2d 394, 405 (Fla. 1996) (“Unlike the situation in *Calhoun*, appellant did not ask to speak to her son

² Albeit, not even all marital communications are privileged when they occur in places “not [] reasonably confidential.” *State v. Dunbar*, 553 F.3d 48, 58 (1st Cir. 2009).

privately; they were simply placed in a cell together before a hearing.”); *Ahmad A. v. Superior Court*, 215 Cal.App.3d 528, 536-37 (1989) (unlike a privileged attorney-client relationship, a minor’s request to speak to a parent is not likewise protected).

Likewise, the police did not manipulate circumstances to introduce defendant’s mother into the equation as an agent of the state but complied with his request to speak with his mother. *See Rashid*, 737 S.E.2d at 697 (“There is no evidence that the police did anything to foster a belief that [defendant’s] conversation with his family would be private. In fact, [defendant] requested the family meeting without any prompt from law enforcement.”); *Cuomo v. State*, 98 So3d 1275, 1282 (Fla. Dist. Ct. App. 2012) (“police did nothing to manipulate [defendant’s] visitation with his mother or make assurances that his conversation with her would be private.”); *Rhode Island v. Innis*, 446 U.S. 291, 303 (1980) (“it cannot be fairly concluded that he respondent was subjected to the ‘functional equivalent’ of questioning.”). *Cf. Cox v. State*, 26 So.3d 666, 677 (Fla. Dist. Ct. App. 2010) (“Law enforcement officials planted co-defendant [] in the interrogation room with the specific intent to evoke an incriminatory response.”). Per defendant, he wanted to “talk to my mom myself. I don’t want no messages having to be told to her by y’all.” Exhibit A to State’s Brief, p. 83. And once he met with his mother, he told her about the evidence the police had and, for the first time, about the baby he was expecting. Exhibit A to State’s Brief, pp. 118-20.

The defendant claims that this case is very similar to *People v. Hammons*, 235 Cal. App. 3d 1710 (Cal. Ct. App. 1991), but in *Hammons*, unlike the case at bar, the testifying detective admitted that he “led them to believe that this was in fact a private conversation between just the 2 of [them].” *Id.* at 1714. Therefore, in *Hammons*, the California Appellate Court found that “an expectation of privacy based upon express representations by police officers, even in a jailhouse setting, is one which society is prepared to recognize as reasonable.” *Id.*, 235 Cal.App.3d at 1716. The police here made no representations regarding privacy, there was no privileged relationship, defendant’s mother was not an agent of the state, defendant’s subjective knowledge was not considered, and the hearing justice erred in ruling that defendant had a reasonable expectation of privacy in a conversation that occurred while he was in police custody in an interrogation room.

CONCLUSION

For the reasons discussed above, as well as those raised in the State’s original brief, the State respectfully requests that this Court sustain its appeal, vacate the Superior Court decision, and remand the matter to the Superior Court.

Respectfully submitted,

STATE OF RHODE ISLAND
By Its Attorneys,

PETER F. NERONHA
ATTORNEY GENERAL

/s/ Virginia M. McGinn
Virginia M. McGinn #4525
Assistant Attorney General
Office of the Attorney General
150 South Main Street
Providence, RI 02903
vmcginn@riag.ri.gov
(401) 274-4400 (phone)

CERTIFICATE OF WORD COUNT & COMPLIANCE WITH RULE 18(B)

1. This reply brief contains 1,300 words, excluding the parts exempted from the word count by Rule 18(b).
2. This reply brief complies with the font, spacing, and type size requirements stated in Rule 18(b).

/s/ Virginia M. McGinn

CERTIFICATE OF SERVICE

I certify that, on December 20, 2023, I filed this reply brief through the electronic filing system and served a copy through that system on Assistant Public Defender Kara Maguire. This document is available for viewing and/or downloading from the Rhode Island Judiciary's electronic filing system.

/s/ Brianna Messa-Mastronardi