

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL  
CIRCUIT IN AND FOR MARION COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. 21-CF-4602

Plaintiff,

vs.

OREN MILLER,

Defendant.

\_\_\_\_\_ /

**VERIFIED MOTION TO DISMISS**

Defendant, Oren Miller ("Miller"), moves to dismiss the charges filed in this case pursuant to Rule 3.190(c)(4), Fla. R. Crim. P., and would cite as substantial grounds of law and fact in support thereof as follows:

1. Miller is charged with perjury for allegedly having stated that telephone calls with a certain Gary Search did not occur after January 2021.
2. To support the perjury charge, the State has produced all of the discovery requested by Miller. This discovery establishes only that there were telephone calls between two phone numbers after January 2021; there is absolutely no evidence of the identity of the person making or receiving or the nature of those calls.
3. A review of the transcript of the sworn testimony of Miller taken on October 6, 2021 reveals the following:

Page 6, line 20:

20 Q Okay. And do you have a home phone  
21 number, sir?

22 A I do not, I have a cell phone.  
23 Q And what is your cell phone number?  
24 A 815-370-9116.

Page 19, line 15:

15 Um, what about phone calls between one  
16 another how do you guys handle that, do you spend any  
17 time talking with each other?  
18 A We did at first. Um, after about the first  
19 two or three months all phone calls have stopped, maybe  
20 three or four months. I can't give you the exact time  
21 and date, um, but now the phone calls have stopped.

Page 20, line 4:

4 MR. MILLER: We got elected in November, the  
5 phone calls probably stopped in January or  
6 February when we all realized that could be an  
7 issue.

9 MR. MILLER: So I can't give you the exact  
10 date they stopped, but it was somewhere in there.

Page 23, line 1:

1 MR. GLADSON: But most of the calls -- you  
2 stopped sometime in January anyway, right?  
3 MR. MILLER: They set up the food banks and  
4 they've been doing it ever since then once a  
5 month. But I've have no involvement in the food  
6 bank issues.  
7 MR. GLADSON: Right, I'm talking about the  
8 calls, though, the calls stopped you said in  
9 January anyway.  
10 MR. MILLER: Yeah.

Page 23, line 14:

14 Q (By Mr. Sues) Of more concern, sir, is  
15 that I asked you I think a specific question: Do  
16 you have phone conversations with Mr. Search?

17 A Yes.  
18 Q Okay.  
19 A I did.  
20 Q After January?  
21 A No.

Page 25, line 13:

13 . . .do you recall  
14 that phone call?  
15 A I do not.

Page 31, line 8:

8 . . . you had another phone  
9 conversation with Mr. Search that was 400 seconds  
10 roughly long; do you remember that conversation?  
11 A I do not.

Page 31, line 23:

23 Q (By Mr. Sues) Okay, and do you  
24 remember the last time maybe Mr. Search had called  
25 you or you called him?  
1 A I have no clue.

Page 79, line 18:

18 Q The phone calls that you denied making,  
19 under oath, continued after that with, um,  
20 Commissioner Search.  
21 You're kind of shaking your head.  
22 A I don't know.  
23 Q You don't know what; you know you made  
24 the phone calls, or you don't know that you made  
25 the phone calls?  
1 A I don't know that I made them. You've got a  
2 record that says they were made so, I mean, a record is  
3 a record.

4. Curiously, the State, in its investigation, never asked Mr. Miller

whether anyone else had access to his cell phone or ever used his cell phone.

5. As stated in the circuit court case of Bernal v. Saffouri, D.O., 2016

WL 11371697 (Fla. Cir. Ct. 2016):

. . . [T]he fact that a call was placed does not show that either the caller or the recipient spoke to each other (as opposed to connecting to the other's voicemail, whether or not a message was left), let alone the identity of either person.

6. The Fifth District Court of Appeals in Hernandez v. State, 919 So.

2d 707 (Fla. 5<sup>th</sup> DCA 2006), noted:

Several courts have interpreted this to mean that, among other things, in order for a tape to be admissible as evidence, the identity of the speakers must be established. See, e.g., Holland v. State, 528 So. 2d 36, 38 (Fla. 4<sup>th</sup> DCA 1988), Parnell v. State, 218 So. 2d 535, 541 (Fla. 3d DCA 1969) (holding that "in order for a tape recording to be admissible, the state must show . . . (4) the voices of the persons speaking were identified.")

7. Assuming the documents supporting these charges are accurate and true, the State has failed to state a prima facie case of perjury. In addition, the documents also show the lack of materiality of the statements.

8. There is absolutely no evidence that, even if the calls were made, what they were about. In the testimony of Miller, the discussions with Mr. Search came up, and Miller testified, "Now we rode to some meetings together, but I can't ..."

9. Florida Statutes §837.011 defines material matter as follows:

(3) "Material matter" means any subject, regardless of its admissibility under the rules of evidence, which could affect the course or outcome of the proceeding. Whether a matter is material in a given factual situation is a question of law.

10. Thus, materiality is an essential element of perjury. An immaterial, false statement made under oath in an official proceeding is not perjury. The element of materiality is essential because without a material false statement, there is no perjury despite the presence of the other essential elements. Wolfe v. State, 271 So. 2d 132 (Fla. 1972), Gordon v. State, 104 So. 2d 524, 531 (Fla. 1958).

11. There is nothing criminally wrong with Miller and Search speaking with one another. It is only if such discussions violate the Sunshine Law. Thus, the possible existence of the phone calls is not material, especially in the absence of any identity of the caller or receiver.

12. Because there is absolutely no evidence of the identity of the caller or recipient of these calls, there is absolutely no evidence of the subject matter of any of these calls, and Miller's own testimony indicates he had other meetings with Mr. Search, these statements are not material.

13. Therefore, the undisputed facts do not establish a prima facie case of guilt against Miller and these charges should be dismissed.

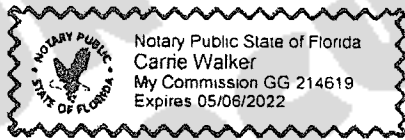
14. The facts upon which this Motion is based are alleged specifically above.

Oren Miller  
OREN MILLER

STATE OF FLORIDA  
COUNTY OF Sumter

BEFORE ME, the undersigned authority, personally appeared OREN MILLER, who is \_\_\_ personally known to me or who has produced drivers license as identification, who being first duly sworn, deposes and says that the foregoing statements are true and correct to the best of his knowledge, information and belief, and subscribed his name thereto in certification thereof.

SWORN TO AND SUBSCRIBED before me by means of  physical presence or  online notarization, this 19 day of January, 2022 at The Villages, Sumter County, Florida.



Carrie Walker  
NOTARY PUBLIC

Carrie Walker  
Print Name of Notary  
State of Florida

My Commission Expires: May 6, 2022

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a copy of the foregoing Plea has been furnished by e-service to the OFFICE OF THE STATE ATTORNEY, Marion County Judicial Center, 110 N.W. 1st Avenue, Suite 5000, Ocala, FL 34475, Ocala, Florida

34470, this 20<sup>th</sup> day of January, 2022.

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