

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Appellant,

v.

MICHAEL WESLEY KENNEDY,

Appellee.

_____ /

Appeal from the County Court
for Orange County, Florida
County Court Judge Deb S. Blechman

Jeffrey Ashton, State Attorney
and Daniel J. Quinn, Assistant State Attorney
Attorney for Appellant

Nelson Fleetwood Tilden, Esq.
Attorney for Appellee

Before MURPHY, THORPE, MYERS, JJ.

PER CURIAM.

The State appeals the trial court's order suppressing statements Appellee made to a wildlife investigator after Appellee reported that one of his king cobras was missing. Where the facts are not in dispute, as here, we consider *de novo* the trial court's application of the law to the facts. *State v. Carter*, 177 So. 3d 1028, 1029 (Fla. 5th DCA 2015). For the reasons discussed below, we find that the trial court erred in granting the motion to suppress.

A Florida Wildlife Commission investigator testified at the suppression hearing that he had been a captive wildlife investigator since 1994. He said he had inspected Appellee's property on at least 15 occasions since 1999 in reference to Appellee's permits to keep various wild animals,

including several species of non-native poisonous snakes. Appellee called the investigator to report that a male king cobra was missing from its enclosure on his property. He told the investigator that he had been away for several days and when he returned, he found the cobra was gone. The testimony seemed to indicate that Appellee did not report the snake's escape until the day after he discovered it missing.

The investigator offered to come to Appellee's property to help search. For several hours, he and Appellee searched Appellee's garage, where the snake's enclosure was located, and then searched Appellee's property without success. Appellee told the investigator that he believed water damage from a storm had weakened the enclosure and enabled the snake to push its way out. The snake was found a month later in a neighbor's garage.

As a result of the snake's escape, Appellee was charged with three counts of violating wildlife regulations: (1) maintaining captive wildlife in a manner and condition which resulted in its escape; (2) not providing secure housing for a poisonous snake by constructing an enclosure from unauthorized materials and (3) failing to immediately report the snake's escape.

Appellee moved to suppress the statements he made to the wildlife investigator. His argument was that because wildlife commission regulations required him to report the escape of his snake, anything he said in regard to the escape should be privileged and the State should be precluded from using it in proving the alleged violations.

Florida Administrative Code Rule 68A-6.0072(5) states:

Any person authorized to possess any venomous reptile not indigenous to Florida or reptile of concern must report any escapes to the Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement immediately upon discovery of escape.

This snake-reporting regulation requires only that the snake's owner report the escape. It does not require him to reveal any details about how or when this occurred. The mere fact of escape does

not by itself create any criminal liability. If Appellee elected to give details concerning problems with the cage and the apparent delay in reporting, that was his choice. He was not compelled by the wildlife rule or by any coercion on the part of the wildlife officer to report that information.

There is no statutory snake-reporting privilege and the reporting required here does not create a constitutional exception since, as noted above, Appellee was not required to report any incriminating facts. *See California v. Byers*, 402 U.S. 424, 91 S.Ct. 1535 (1971).

Because there was no basis for suppression, the order of trial court suppressing Appellee's statements is REVERSED and REMANDED for further proceedings.

DONE AND ORDERED in Orlando, Orange County, Florida this 10th day of January, 2017.

/S/ _____
MIKE MURPHY
Presiding Circuit Judge

THORPE and MYERS, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to Orange County Courthouse, **Division 82**, 425 North Orange Avenue, Orlando, Florida 32801; **Daniel Quinn, Assistant State Attorney**, 435 North Orange Avenue, Orlando, Florida 32801-1526; and **Nelson Fleetwood Tilden, Esq.**, 147 E. Lyman Avenue, Suite C, Winter Park, Florida 32789 this 11th day of January, 2017.

/S/ _____
Judicial Assistant