IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO. 3D17-0734

SAINTAMEN EDWARDS,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

ANSWER BRIEF OF APPELLEE

APPEAL FROM THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR MIAMI-DADE COUNTY

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

Rules

STATEMENT OF THE CASE AND FACTS

The State accepts Appellant's Statement of the Case and Facts subject to the modifications and/or additions set forth in the body of this brief, and states further:

Suppression Hearing

On May 1, 2016, Edwards filed a motion to suppress the flash drive seized from her police workstation by internal affairs investigators. (R. 28-30.) The State responded on June 1, 2016 (R. 33-30). A suppression hearing was held on September 2, 2016 (R. 259, *et seq*.). Several witnesses testified at the hearing, including the defendant. In relevant part, the hearing produced the following testimony:

Officer Tracy Tomkins

Officer Tomkins was employed as a crime scene investigative support officer in the Digital Forensic Unit of the Miami-Dade County Police Department. (R. 265.) On or around July 13, 2016, Officer Tomkins was told by her supervisor, at the direction of the Professional Compliance Bureau (also known as Internal Affairs), to go to the Intracoastal District Station of Miami-Dade Police Department and seize a computer in the station control office. (R. 267-268.) Officer Tomkins photographed the environs of the office and seized a computer. (R. 269.)

The station control office is an administrative area in the district station which is used to keep track of police resources such as cars, equipment, weapons, and general inventory. (R. 271-272.) A station control officer is tasked with making monthly statistical reports accounting for usage of the inventory. (R. 272.)

When Officer Tomkins impounded the computer, a thumb drive was connected to the USB port of the computer. (R. 273-275.) The items were transported for administrative intake and placed in a secure evidence lock-up. (R. 275.) Officer Tomkins stated that before seizing items, she checked for the presence of a "county banner," (R. 276), which is a "legal notice that comes up every time you log onto a County machine that basically lets you know what can and can't be done with . . . the machine, and what your expectations are with data that is on a County machine." (R. 277.) The logon banner was introduced as State's Exhibit 10 (R. 288) and provides as follows:

> This computer system is the property of the Miami-Dade Police Department. It is for authorized use only. Users have no explicit or implicit expectation of privacy. Any or all uses of this system and all files on this system may be intercepted, monitored, recorded, copied, audited, inspected, and disclosed to authorized personnel. By using this system the user consents to such interception, monitoring, recording, copying, auditing, inspection and disclosure. Unauthorized or improper use of this system may result in administrative disciplinary action or civil/criminal penalties. By continuing to use this system, you indicate your awareness of and consent to these terms and conditions.

(R. 60).

Officer Tomkins further testified that County computers are networked, that is, connected to each other via intranet. (R. 291.) The computers have both shareable hard drives and local hard drives. (R. 300-303.) General network users can only access shareable drives of other users over the intranet, except IT professionals, who may access shared and local data over networked computers for the purpose of fixing them. (*Id*.).

Officer Sonya King

Officer King was the station control officer who succeeded Edwards in that position. (R. 321.) Officer King was not familiar with some aspects of her new position, such as preparing statistical reports, and Edwards offered to help. (R. 323.) Edwards stated to Officer King that the reports could be found on a "jump drive" (R. 324.) Officer King obtained the jump drive (also called a thumb drive or flash drive), and contacted Edwards. (R. 325.) Edwards helped Officer King through the process of retrieving statistical reports from the thumb drive and understanding the process of "how it was done here at Intracoastal." (R. 326.) The thumb drive was not password protected. (*Id*.).

Officer King testified that five people had access to the station control office: Administrative Officer Diane Mikowitz, Lieutenant Lahiff, Sergeant Gilligan, Captain Wright, and Major Placensia. (R. 327.) On cross-examination, Officer King stated that the reason for the access was not to access the computer,

but to access sensitive inventory contained within the office, such as firearms and flare guns. (R. 330.) The station control office typically remains locked. (R. 331.)

Lieutenant Lahiff

Lieutenant Lahiff was the administrative lieutenant of the station. (R. 366-367.) Edwards was her subordinate on the date of the offense. (*Id*.). Lieutenant Lahiff stated that the station control office was basically an armory. (R. 367.) When Professional Compliance officers indicated that they wished to enter the office to seize a computer, Lieutenant Lahiff gave them access. (R. 368.) Lieutenant Lahiff gave Edwards a task to do ("we sent her to go pick up a car"), while the investigators seized the computer. (R. 369.)

Lieutenant Lahiff testified that a couple of weeks after the thumb dive was confiscated, she started receiving calls from Officer King for its return. (R. 369-370.) The drive was needed for compiling the statistical reports each month. (Id.) Lieutenant Lahiff further testified that "there's no real expectation of privacy within a police station" for work-related matters, and as a Lieutenant, she is allowed to enter into work spaces of subordinates. (R. 371.) Compiling statistics and preparing statistical reports is "within the official business of the Miami-Dade County Police Department." (R. 372.) However, officers generally do not have the right to search personal property of employees unless there is just cause to do so. (R. 373-374.)

After the State rested, the defendant was called to testify. Edwards stated that the seized flash drive was purchased by and belonged to her, rather than the police department. (R. 387.) Edwards denied assisting Officer King retrieve information from the flash drive. (*Id*.). However, Edwards admitted that the flash drive was used to store work-related templates and information. (R. 388-390.)

Edwards also stated that her computer logon password was written on a yellow "sticky note" and posted on the last page of her desk calendar so that it could be used by Administrative Officer Diane Mikowitz. (R. 391.) Officer Mikowitz and Edwards "worked hand in hand." (R. 392.) Edwards explained: "If I was unavailable and she needed to get something she could go in, she knew where it was, and like as I knew where to go to her computer, and I knew to lift it up and I could find her password as well." (*Id*.). Edwards testified that her ordinary practice was to take her flash drive with her when she left the office. (R. 397.) She did not consent to investigators seizing her flash drive. (*Id*.)

SUMMARY OF ARGUMENT

In this appeal, Edwards raises a claim that is really quite extraordinary: that she possesses a reasonable expectation of privacy in a shared flash drive containing essential work-related data, attached to a shared work computer, with a shared password, located in a shared workspace, in a police station, which contains a logon banner expressly stating that "[a]ny or all uses of this system . . . may be intercepted, monitored, recorded, copied, audited, inspected, and disclosed to authorized personnel . . . ."

For reasons that are immediately obvious, courts that have examined this issue have rejected the notion that computer users have a reasonable expectation of privacy under such circumstances. Although Edwards seems focus her argument on her personal ownership of the flash drive, and the fact that the data on the drive was not accessible through the shared network to individuals other than to IT personnel, those details are insufficient to render Edwards' expectation of privacy objectively reasonable.

Edwards evidentiary claims also fail. Edwards argues she was prevented from supporting her alibi when the trial court excluded certain exhibits from evidence, including a day care log sheet, text message exchange, and medical session summary and calendar page. Those exhibits were properly ruled inadmissible. If any error occurred, it would be harmless anyway.

ARGUMENT

I. Appellant's Expectation of Privacy Was Not Reasonable

Although the Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," U.S. Const. amend. IV, the "capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." *Rakas v. Illinois*, 439 U.S. 128, 143 (1978).

A determination that an expectation of privacy is "legitimate" involves subjective and objective inquiries. *Smith v. Maryland*, 442 U.S. 735, 740 (1979). To meet the subjective prong of the inquiry, an individual must show, though his conduct, an "actual (subjective) expectation of privacy"—in other words, that "he seeks to preserve [something] as private." *Id.* (quoting *Katz v. United States*, 389 U.S. 347, 351 (1967) (alteration in original)). If satisfied, an individual must then establish that his subjective expectation is "one that society is prepared to recognize as 'reasonable,'" that is, "whether . . . the individual's expectation, viewed objectively, is 'justifiable' under the circumstances." *Id.* (quoting *Katz*, 389 U.S. at 353, and 361).

In the workplace context in particular, the Supreme Court has recognized that "[p]ublic employees' expectations of privacy . . . may be reduced by virtue of

actual office practices and procedures, or by legitimate regulation." *O'Connor v. Ortega*, 480 U.S. 709, 717 (1987). The Court explained:

> An office is seldom a private enclave free from entry by supervisors, other employees, and business and personal invitees. Instead, in many cases offices are continually entered by fellow employees and other visitors during the workday for conferences, consultations, and other work-related visits. Simply put, it is the nature of government offices that others-such as fellow employees, supervisors, consensual visitors, and the general public-may have frequent access to an individual's office.

Id.

In this vein, a reasonable expectation of privacy on commercial premises is not only "different from" but "indeed less than, a similar expectation in an individual's home." *New York v. Burger*, 482 U.S. 691, 700 (1987). Nevertheless, those determinations must be made on a case-by-case basis. *O'Connor*, 480 U.S. at 718.

Some factors that have been considered in assessing the reasonableness of an employee's privacy expectation "include the employee's relationship to the item, whether the item was in the employee's immediate control when it was seized, and whether the employee took actions to maintain a sense of privacy in the item." *State v. Young*, 974 So. 2d 601, 608 (Fla. 1st DCA 2008) (citing *United States v. Anderson*, 154 F.3d 1225, 1232 (10th Cir. 1998)). Moreover, "[w]hen a computer is involved, relevant factors include whether the office has a policy regarding the employer's ability to inspect the computer, whether the computer is networked to

other computers, and whether the employer (or a department within the agency) regularly monitors computer use." *Young*, 974 So. 2d at 609 ("We agree with these courts that where an employer has a clear policy allowing others to monitor a workplace computer, an employee who uses the computer has no reasonable expectation of privacy in it.")

Further, it is important to note that "the reasonableness of an employee's expectation of privacy in his or her office or the items contained therein depends on the operational realities of the workplace, and not on legal possession or ownership." *Id*. (citations and quotations omitted); *see also U. S. v. Salvucci*, 448 U.S. 83, 91 (1980) (declining to use property ownership as a proxy for determining whether an individual's Fourth Amendment rights have been violated with respect to a seized object, but acknowledging that ownership is a relevant factor).

Properly considered, the principles set forth above compel the conclusion that Edwards did not have an objectively reasonable expectation of privacy under the circumstances of this case. Several considerations warrant this Court's particular attention.

First, when seized, the thumb drive was plugged into a government work computer which expressly warned users that "[a]ny or all uses of this system . . . may be intercepted, monitored, recorded, copied, audited, inspected, and disclosed to authorized personnel . . . ." (R. 60). Clearly, using a thumb drive to store and

retrieve work-related data in combination with an employer-owned computer system is a "use" of the "system" which is subject to interception, monitoring, recording, etc. By acknowledging the splash screen at logon, a reasonable user would understand that such uses of the system are not private. Standing alone, this defeats the reasonableness of Edwards' expectation of privacy.

Second, the station control office was the so-called "armory" in addition to the administrative nucleus of the district station. Station superiors had routine access to the office to obtain weapons, flare guns, and other necessary police resources. Moreover, the administrative workspace, and the computer within it, was shared with Officer Mikowitz. Edwards and Officer Mikowitz even shared passwords to that computer.

Third, the thumb drive was not in Edwards' control when it was seized. There is no evidence that Edwards made any efforts to obtain the thumb drive after it was seized, or otherwise prevent third-party use. On the contrary, the thumb drive was not password-protected, and it was freely shared between Edwards and Officer King in furtherance of official county business.[1] Inasmuch as the thumb

[1] Although the record indicates that Edwards shared the flash drive with Officer King only after Edwards was relieved of her post and the drive was seized, it still demonstrates, at minimum, that she did not have a subjective expectation of privacy in the item.

drive contained official police business, moreover, its contents are public records under Chapter 119.

Fourth, the computer was networked. Local files, including the contents of the thumb drive, could be accessed remotely by IT personnel at any time while attached to the computer. (*Compare* R. 300-303 *with* IB. 29-31.)

Taken as a whole, the clear record evidence demonstrates that Edwards' expectation of privacy was unreasonable. In circumstance strikingly similar to those present here, several federal appellate courts have examined privacy interests of computer users who bring privately owned laptops or thumb drives to the workplace and concluded that Fourth Amendment protections did not attach.

In *United States v. King*, 509 F.3d 1338 (11th Cir. 2007), the Eleventh Circuit considered the issue of whether a civilian contractor on a military airbase "had a legitimate expectation of privacy in the contents of his personal laptop computer when it was connected to the base network from his dorm room." *Id*. at 1341. The defendant intended to keep his files private by adjusting the computer's security settings but was unaware that the files were shared on the network. *Id*. The Eleventh Circuit concluded that although the defendant had a subjective expectation of privacy, that expectation was not objectively reasonable. *Id*. The court reasoned that

> King's files were "shared" over the entire base network, and that everyone on the network had access to all of his files and could

> observe them in exactly the same manner as the computer specialist did . . . . King's files were exposed to thousands of individuals with network access, and the military authorities encountered the files without employing any special means or intruding into any area which King could reasonably expect would remain private.

Id. at 1342.

Similarly, in *United States v. Durdley*, 2010 WL 916107 (N.D. Fla. Mar. 11, 2010), *aff'd*, 436 Fed. Appx. 966 (11th Cir. 2011), the defendant inadvertently left a thumb drive plugged into in a county-owned common-use computer. *Id*. at *1. In doing so, "Durdley's files were exposed to anyone who sat down at the computer station who used the traditional means for opening and viewing files (such as Windows Explorer and the My Computer icon)." *Id*. at *5. The district court concluded that the defendant did not have a reasonable expectation of privacy in the content of his thumb drive, *id*., and the Eleventh Circuit affirmed. *Durdley*, 436 Fed. Appx. at 968 (unpublished).

In *United States v. Barrows*, 481 F.3d 1246, 1247 (10th Cir. 2007),

> Mr. Barrows and the city clerk shared a computer in addition to desk space, and both used it to access city records and programs. They could not, however, use the computer simultaneously. To remedy this inconvenience, Mr. Barrows brought his personal computer to work. He placed the machine on the common desk and connected it via the city network to the common computer. Mr. Barrows informed his co-worker that this way, he and she could input data simultaneously and access city files from either computer.
>
> Thereafter, Mr. Barrows conducted all of his city work on his personal computer. He did not install a password shield or otherwise attempt to exclude city employees from using his machine or gaining

> access to his files. Indeed, he left the computer running at all times-even in the evenings and while he was away from his desk.

Id. Eventually, "a reserve police officer who happened to be in city hall" helped the clerk manage computer difficulties and logged started opening files on the city-owned machine. *Id*. The police officer discovered illegal pornography. *Id*.

The Tenth Circuit determined that the defendant had no reasonable expectation of privacy in his personal computer. The court reasoned that, even though the evidence did not reveal whether the networked files were accessible in their entirety, "the fact remains that Mr. Barrows knew the contents of his machine were not wholly private" and that "he would be working in a public area" *Id*. at 1249. Just as Edwards, the defendant in *Barrows* made the argument that the computer was owned by him. *Id*. at 1248. However, the court was unconvinced:

> [T]he significance of personal ownership is particularly weakened when the item in question is being used for business purposes . . . . Mr. Barrows voluntarily transferred his personal computer to a public place for work-related use.

Id. The court also noted that Barrows failed "to password protect his computer, turn it off, or take any other steps to prevent third-party use." *Id*. "Given these facts," the court was "hard-pressed to conclude that Mr. Barrows harbored a subjective expectation of privacy. He certainly did not possess a reasonable one." *Id*. at 1248-1249. The same result should here in the instant case.

Finally, in *United States v. Angevine*, 281 F.3d 1130, 1133 (10th Cir. 2002), the Tenth Circuit considered a matter involving illegal pornography discovered on the work computer of a university professor. In that case, the court determined that university policies and procedures prevented its employees from reasonably expecting privacy in data downloaded to university computers. *Id*. at 1134. Of particular significance, "the University displayed a splash screen warning of "criminal penalties" for misuse and of the University's right to conduct inspections to protect business-related concerns." *Id*. The court stated that "[t]hese office practices and procedures should have warned reasonable employees not to access child pornography with University computers." *Id*.

The court held that the professor did not have a reasonable expectation of privacy in the seized data. The court reasoned that the university reserved access to the hardware and the data stored within it, that the images seized were not with the professor's immediate control, and that, even though he attempted to delete the data, the professor's actions over all were inconsistent with maintaining private access to the seized pornography. *Id*. at 1234-35.

Just as in *King*, *Durdley*, *Barrows*, and *Angevine*, it cannot be said the defendant in this case possessed a legitimate expectation of privacy in a shared thumb drive containing work-related data, which she accidentally left plugged into a shared police computer system, within a shared office, even though that thumb

drive may have been initially purchased by her. This case falls squarely within the parameters of existing precedent. *Cf. State v. Young*, 974 So. 2d 601, 610-11 (Fla. 1st DCA 2008) (holding that a defendant had a reasonable expectation of privacy in contents of work computer where the employer "had endowed Young with an expectation of privacy far beyond that which an average employee enjoys," based on the installation of a special lock on the door, his exclusive use of the office, a non-networked computer, lack of employer policy retaining the right to access computer data, and tightly controlled access to the office).

The motion to suppress was properly denied.

II. Appellant's Evidentiary Claims Are Meritless

A. The Day Care Log Sheet Was Properly Excluded

Appellant claims that certain evidentiary rulings prevented her from fully proving her alibi. Her first argument concerns a day care sign-in / sign-out sheet. Appellant claims the log sheet "went to the heart" of her alibi defense because it "proved that Ms. Edwards was picking up her daughter at the child care center in Miramar at almost the same time" that the crime was committed. (IB. 43.)

However, the judge did not err in excluding this evidence as hearsay because the self-reported data on the log sheet, indicating Edwards' arrival and departure time from the center, does not count as a business record, and is not otherwise reliable.

The question of whether an interested outside party can infuse a business record with self-serving information, and then claim the mantle of reliability by pointing to that very same business record, has been conclusively settled by the Florida Supreme in *Brooks v. State*, 918 So. 2d 181, 193 (Fla. 2005), *receded from on other grounds by State v. Sturdivant*, 94 So. 3d 434, 440 (Fla. 2012). A proponent of evidence cannot simply bootstrap his own hearsay exceptions.

In *Brooks*, the court reiterated that the application of the business records exception "requires the information to have been supplied by an individual who does have personal knowledge of the information and who was acting in the course of a regularly conducted business activity." *Id*. at 193. The court concluded that the hearsay exception did not apply to a Department of Revenue record that contained information supplied by an outside third party rather than a Department employee because the person who supplied the information "obviously, was not acting within the course of a regularly conducted business activity." *Id*. (citing approvingly to *Reichenberg v. Davis*, 846 So.2d 1233, 1234 (Fla. 5th DCA 2003) (concluding that the information contained within DCF records was not admissible under the business records exception because it was relayed by witnesses, and not "based upon the personal knowledge of an agent of the 'business' ")).

Similarly, in this case, the log sheet data which is relevant to Edwards' alibi defense was supplied by Edwards, who is an outsider to the business. Accordingly,

that information cannot be introduced under the business records exception. The trial judge did not abuse his discretion in excluding that evidence.

B. The Text Message Screenshot Was Properly Excluded

Edwards next claims that a text message sent between Edwards and her superior, stating that Edwards was feeling ill on the day of the crime, "strongly supported" the alibi defense and should have been admitted. Edwards' claim fails for four independent reasons.

First, the text message is nothing more than an attempt to bolster anticipated trial testimony of the Appellant though a prior consistent statement, which is proscribed by the rules of evidence. *Bradley v. State*, 787 So.2d 732, 743 (Fla. 2001) ("It is well established that prior consistent statements are generally not admissible to bolster a witness's testimony at trial.") Although a prior consistent statement can be introduced as non-hearsay under Fla. Stat. §90.801(2)(b) to rebut a charge "of improper influence, motive, or recent fabrication," *see id*., those prior consistent statements "must have been made before the existence of a fact said to indicate bias, interest, corruption, or other motive to falsify the prior consistent statement." *Taylor v. State*, 855 So. 2d 1, 23 (Fla. 2003); *see also Lazarowicz v. State*, 561 So. 2d 392, 393 (Fla. 3d DCA 1990)("[S]ection 90.801(2)(b) permits the admission of only prior consistent statements made *before* the existence of the facts said to indicate an improper influence.")(emphasis in original).

In this a case, the text message was sent just hours after the criminal episode. The motive to falsify the message could not possibly have been greater. The trial judge correctly recognized that the document did not bear indicia of reliability. (T. 948 ("just because she sent the message doesn't mean she wasn't there").)

Second, the text message was not an official record from a cellular telephone company but it appears that the exhibit was something akin to a screen shot prepared by the defense. (T. 1041.) Although Appellant frames this as an authentication issue, the trial judge explained that the issue really boiled down to the best evidence rule. (T. 950, 965-967.)

In this connection, Fla. Stat. §90.953 provides: "A duplicate is admissible to the same extent as an original, unless . . . [a] genuine question is raised about the authenticity of the original or any other document or writing." In this case, the prosecutor raised a genuine issue about the authenticity of the document because the document was essentially produced from thin air mid-trial and was not accompanied by any explanation of its origins. (T. 947.) Moreover, Detective Gilligan did not recall the message exchange with Edwards when voir dire'd about the message. (T. 989.) The court did not abuse its discretion in applying the best evidence rule in these circumstances.

Third, even if construed as an authentication issue, for the same reasons set forth above, the trial court did not clearly err in refusing admission of the

document. *See Symonette v. State*, 100 So. 3d 180, 183 (Fla. 4th DCA 2012) (recognizing the clearly erroneous standard of review for authentication issues).

This case does not compare favorably to those matters in which text messages retrieved from a cellular phone user have been deemed properly authenticated. *Cf. State v. Lumarque*, 44 So. 3d 171, 172–73 (Fla. 3d DCA 2010) ("The images and text messages were found on the defendant's cellular telephone, seized pursuant to a search of the defendant's home through a warrant shortly after the alleged incident. This fact, testified by the State's forensics expert, is sufficient to authenticate these exhibits."); *Symonette*, 100 So. 3d at 183 (concluding that text messages were properly authenticated where a witness "testified that she texted the defendant," "[a] detective recovered the cell phone from the defendant, and later executed a search warrant on the cell phone" and "[t]he investigators took photographs of those messages"). In this case, there was no supporting testimony concerning the origins of the proffered exhibit.[2]

Finally, any error would be harmless anyway. Appellant was not prevented from discussing the contents of her text message. (T. 991, 1040.) She testified that she was feeling sick and sent a text message to Sergeant Gilligan, and then went on to describe the content of that message. (T. 1047.) As compared with Edwards live

[2] Notably, the exhibit is not even in the appellate record. It is difficult, if not impossible, for this Court to evaluate Appellant's authenticity claim without looking at the evidence proffered to the trial court.

trial testimony, the text message would have been cumulative at best, and certainly inferior from an evidentiary standpoint. *See, e.g., Coloma v. State*, 600 So. 2d 483, 483-84 (Fla. 3d DCA 1992) (holding that erroneous admission of prior statement was harmless when "cumulative with other evidence already clearly established in the record"); *Lee v. State*, 869 So. 2d 1251, 1252 (Fla. 3d DCA 2004) (holding that trial court error in admitting hearsay was harmless when "merely cumulative of the other testimony in the case.")

As aptly noted by the United States Supreme Court: "When two versions of the same evidence are available, longstanding principles of law of hearsay . . . favor the better evidence." *United States v. Inadi*, 475 U.S. 387, 394, (1986) (*quoted approvingly by Abreu v. State*, 804 So. 2d 442, 444 (Fla. 4th DCA 2001)).

C. The Court Did Not Err In Excluding Redacted Medical Records

Finally, Edwards argues that she was prevented from admitting into evidence a redacted "appointment calendar and dated treatment notes" of her therapist which would have purportedly supported her alibi. (IB. 48; Supplemental Record, and exhibits thereto.) This claim fails for three basic reasons.

First, invited error precludes this claim. Defense counsel basically agreed with the trial court's characterization that the medical aspect of the evidence was irrelevant as far as supporting the alibi defense, and that the therapist would be able to testify concerning Edward's alibi, rendering the documentary exhibit

unnecessary. (T. 1155-1156.) The therapist ultimately testified and corroborated the alibi. (T. 1211-1222.)

Second, as the trial court hinted, the medical aspect of the records would serve no purpose other than eliciting sympathy and inflaming the jury by drawing attention to Edwards' marriage problems. (T. 1154-1155.) That information was totally irrelevant to the alibi.

Third, inasmuch as Edwards' position is that the medical aspects of her alibi are somehow relevant, Edwards cannot cherry-pick medical information for tactical advantage. By putting her psychological needs squarely in play, she waived whatever privilege she might have once had an opened the door to a robust cross-examination. *See generally Rodriguez v. Smith*, 141 So. 3d 217, 218 (Fla. 3d DCA 2014). Thus, the trial court correctly ruled that if Edwards wanted to introduce those records, she would not be allowed to partially redact them.

CONCLUSION

The judgement and sentence should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was e-mailed to Marcia J. Silvers, Esq., 3390 Mary Street, Suite 116, Miami, FL 33133, marcia@marciasilvers.com, this 11th day of September, 2018.

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this Answer Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Marlon J. Weiss
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