"What a person
knowingly exposes to the public, even in his own home or office,
is not a subject of Fourth Amendment protection." Katz v. U.S.,
389 U.S. 347, 351 (1967). A person does not have a reasonable
expectation of privacy as he walks in public or a police
station. U.S. v. Santana, 427 U.S. 38 (1976); State v. Duhart,
810 So. 2d 972 (Fla. 4th DCA 2002).

The Fourth Amendment does not necessarily protect areas of a home which are "open and exposed to public view." *State v. Duhart,* 810 So.2d 972, 973 (Fla. 4th DCA 2002); *see also California v. Ciraolo,* 476 U.S. 207, 213-14, 106 S.Ct. 1809, 90 L.Ed.2d 210 (1986).

Federal courts interpreting the Fourth Amendment to the United States Constitution have held that a citizen has a significantly lower legitimate expectation of privacy in a place of business open to the public then he has in the privacy of his home. *See U.S. v. Reyes,* 595 F.2d 275 (5th Cir.1979); *see also, U.S. v. Glasgow,* 658 F.2d 1036 (5th Cir.1981).

http://www.floridasupremecourt.org/pub_info/summaries/briefs/00/00-247/00-247_CrossRep.pdf

See also: § 934.01(2) Fla. Stat. (2010)

"Sections 934.03 and 934.08 Florida Statutes provide that the contents of an
oral communication or evidence derived therefrom can be lawfully disclosed only
under certain specified circumstances."

http://www.floridasupremecourt.org/clerk/briefs/2013/1201-1400/13-1248_ini.pdf

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IN THE SUPREME COURT OF FLORIDA
Case No. SC13-1248

RICHARD R. McDADE,

Petitioner,
v.
STATE OF FLORIDA,
Respondent.

On Petition for Review of a Decision of the
Second District Court of Appeal of Florida Passing on a
Question Certified to be of Great Public Importance

Amicus Curiae Brief of the Florida Press
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Neither the federal nor state
laws prohibited a party to a communication from electronically recording it
without the other party's consent. Today, federal law still does not prohibit any
party to a communication from electronically recording or disclosing it

http://www.floridasupremecourt.org/clerk/briefs/2013/1201-1400/13-1248_ans-amicus.pdf

Obviously, however, a 'legitimate' expectation of privacy by definition means more than a subjective expectation of not being discovered. A burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate.' His presence, in the words of Jones [v. United States, 362 U.S. 257, 267, 80 S.Ct. 725, 734, 4 L.Ed.2d 697 (1960)], is 'wrongful,' his expectation of privacy is not one that society is prepared to recognize as 'reasonable.' Katz v. United States, 389 U.S., at 361, 88 S.Ct., at 516 (Harlan, J., concurring).

The Fourth Amendment right to privacy is measured by a twopart test: 1) the person must have a subjective expectation of privacy;
and 2) that expectation must be one that society recognizes as reasonable. Katz v. United States, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)). . . . A prisoner's right of privacy fails both prongs of the Katz test. First, a prisoner's privacy interest is severely limited by the status of being a prisoner and by being in an area of confinement that —shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room.□ Lanza v. New York, 370 U.S. 139, 143 (1962). Second, —society would insist that the prisoner's expectation of privacy always yield to what must be considered the paramount interest in institutional security.□ Hudson v. Palmer, 468 U.S. 517, 528 (1984). Thus, —the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell.□ Id. At 526.

SECTION 23.▫**Right of privacy.**—Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. **This section shall not be construed to limit the public's right of access to public records** ***[such as calls to the police station, which are 'Public Records' under chapter 119, Freedom of Information, of Florida State Law: 119.105 "Police reports are public records except as otherwise made exempt or confidential." PROOF of THAT: 911 and other phone calls are routinely recognised as "Public Records." ~Gordon//]*** **and meetings as provided by law.**

History.—Added, C.S. for H.J.R. 387, 1980; adopted 1980; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

http://www.leg.state.fl.us/Statutes/Index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A1S23

SECTION 23.▫Right of privacy.—Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

History.—Added, C.S. for H.J.R. 387, 1980; adopted 1980; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

http://www.flsenate.gov/Laws/Constitution#A1S23

Morningstar v. State, 428 So. 2d 220 (Fla. 1982), holding that an individual's Fourth Amendment rights are not

violated by the nonconsensual recording of one's voice in one's private office by one using a "body bug" on a person engaged in a conversation with the person whose voice is recorded.

"A defendant could not be criminally prosecuted for divulging the (Note: This syllabus contents of conversations she recorded in violation of the constitutes no part of the eavesdropping statute where that statutory prohibition itself, in its opinion of the court but overbreadth, was unconstitutional, in violation of the first amendment." (People v. Melongo, 2014 IL 114852, Illinois Supreme Court, Date Filed: April 24th, 2014, Status: Precedential, Citations: 2014 IL 114852, Docket Number: 114852)

"Although the officers did not consent to the recording, they did not have a reasonable expectation of privacy while in the targeted vehicle under the circumstances." (Hornberger v. American Broadcasting Cos., Inc., 799 A.2d 566 (N.J. Super. Ct. App. Div. 2002), New Jersey Superior Court, Date Filed: May 21st, 2002, Status: Precedential, Citations: 799 A.2d 566, 351 N.J. Super. 577)

The Fourth Amendment is not implicated in this case because the recordings were made by a private individual as opposed to a government actor: "the protection against unreasonable searches and seizures applies only to cases involving governmental action; it does not apply when the search or seizure was conducted by a private individual." Armstrong v. State, 46 So. 3d 589, 593 (Fla. 1st DCA 2010).

Under the "society is prepared to recognize" test, I conclude that in 2011 a person who regularly and consistently abused a teenager in a bedroom of their shared home had no reasonable expectation that their conversations about the abuse would never be recorded. In this modern digital world, any such adult should have expected that eventually a teenage victim would record such conversations in self-defense. Accordingly, I concur in this decision because Mr. McDade could not reasonably expect his statements to be protected oral communications.

"Petitioner maintains that article I, section 12, Florida Constitution, prohibits the warrantless interception of private communications notwithstanding the provision of section 934.03(2)(c). Furthermore, he argues the doctrine set forth in*State v. Sarmiento*, 397 So.2d 643 (Fla. 1981), is broad enough to extend that protection to one's private business office, because there also one has a "reasonable expectation of privacy" and it is likewise a place where one often relaxes, retreats and expresses one's inner thoughts.

We disagree. In *Sarmiento,* this Court held that the warrantless electronic interception by the state agents of a conversation between the defendant and an undercover police officer in the defendant's home was an unreasonable interception of defendant's private communications in violation of article 1, section 12, Florida Constitution, and that the defendant's home was an area specifically protected by Florida's constitution. That constitutional protection of the home, recognized in*Sarmiento,* does not extend to the defendant's office or place of business. We hereby hold section 934.03(2)(c) constitutional under these facts. Although Morningstar may have maintained a reasonable expectation of privacy in his private office, that expectation under these circumstances is not one which society is willing to recognize as reasonable or which society is willing to protect. *See Katz v. U.S.*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). *See also Hill v. State*,422 So.2d 816 (Fla. 1982).

We approve the decision of the District Court of Appeal." Morningstar v. State, 428 So. 2d 220 (Fla. 1982)