


**OFFICE OF THE STATE ATTORNEY
20TH JUDICIAL CIRCUIT
P.O. BOX 399
FORT MYERS, FLORIDA 33902**

Stephen B. Russell, State Attorney

MEMO

TO: State Attorney Steve Russell
FROM: ASA Francine H. Donnorummo 
DATE: February 23, 2015
RE: File SAO CJIS 2178224, Nathaniel Ray ("Nate") Allen

On February 17, 2015 the State Attorney's Office (SAO) received an affidavit and request for a summons for Nathaniel Ray ("Nate") Allen (DOB 11/30/1987) from the Fort Myers Police Department (FMPD) for a charge of exposure of sexual organs in violation of FS 800.03 (1st degree misdemeanor) stemming from an incident on US 41 on Monday, February 16. Upon the receipt and review of the documentation, the SAO requested follow up investigation and information. That request included video from surveillance cameras along US 41, the victim's 911 call, and measurements and photographs of the vehicles.

After reviewing and evaluating the totality of the evidence received from FMPD, information and evidence provided by Mr. Allen through his interviews and his attorney, Sawyer Smith, and through further investigation conducted by the SAO which confirmed the accuracy of Mr. Allen's information, it has been determined that Mr. Allen could not have been the perpetrator alleged in the reports. The summons request is denied.

On Monday, February 16, 2015, a 16 year old high school female called 911 driving south on Cleveland Avenue (US 41) by the Edison Mall on the way to work at 4:54pm in a white SUV with her windows up. Her call indicated that she saw a man in a large black two door or four door pick-up, most likely a Ford, with his window down masturbating in the truck. She indicated that the man was of "mixed race", had a grey/white goatee, was in his mid-40s to early 50s and was wearing a red shirt. She observed the truck turn right, westbound, into the parking lot near Naples Vapor and a massage parlor. The call ended at 4:57pm. The caller was contacted by FMPD shortly thereafter at which time she indicated that the driver was also wearing a white visor.

At 5:01pm, an FMPD officer driving westbound on Colonial observed a black 250 Ford pick-up truck with a driver, in a red t-shirt and white cap, later identified as Nate Allen, driving eastbound on Colonial. The officer turned around and conducted a traffic stop.

Further investigation revealed that the black 250 Ford pick-up truck being driven eastbound on Colonial by Nate Allen is not the same truck the 911 caller saw make the right turn and pull into the parking lot of Naples Vapor and the massage parlor.

Nate Allen was at the Red Lobster on Cleveland Avenue, north of Colonial prior to being pulled over. According to the records of Red Lobster, Allen paid his bill at 4:47.43pm. While there, Allen had his photograph taken with a Red Lobster employee. This was confirmed by a sworn statement received from the employee in which she indicated that the photo was taken between 4:30pm and 5:00pm. Nate Allen is seen wearing a red t-shirt, white cap, with a light beard from ear to ear. Evidence supports that Allen was continuously on his cell phone from approximately 4:53pm to 5:02pm. Nate Allen is 27 years old.

After Nate Allen was pulled over, the 911 caller was transported to the location where the traffic stop was conducted for the purposes of identifying the person she saw masturbating in his truck. The courts have found that the method used by the FMPD is inherently suggestive and leads to potential misidentification. See *Dorsey v. State*, 5 So.3d 702 (2nd DCA 2009).

The 911 caller did see an offender in a black pick-up truck. Subsequent surveillance video shows both her white SUV and a black truck, not owned by Mr. Allen, in front of the Edison Mall at the time she called 911, 4:54pm. Mr. Allen could not have been the offender.