

>> OKAY.

THE NEXT CASE IS U'DREKA ANDREWS  
V. STATE OF FLORIDA.

>> ON BEHALF OF THE PETITIONER,  
U'DREKA ANDREWS, I WOULD LIKE TO  
RESERVE TIME FOR REBUTTAL.

I BECAME PRESIDENT OF THE  
FLORIDA ASSOCIATION OF CRIMINAL  
DEFENSE LAWYERS, AS A RESULT OF  
HENRY AND FALCON HUNDRED OF  
JUVENILES ENTITLED TO  
RESENTENCING.

ONE OF MY INITIATIVES FOR MY  
TERM IS TO PROVIDE TRAINING TO  
THOSE LAWYERS HANDLING  
RESENTENCING CASES.

AND TO SUGGEST THEY CONSIDER  
TAKING ON ONE OF THE -- THE  
PUBLIC DEFENDERS.

AND AFTER THIS COURT, THE REMAND  
ORDER, TO A RESENTENCING  
HEARING, I FILED A MOTION IN THE  
TRIAL COURT, THERE IS A REQUEST  
FOR EXPERTS UNDER A QUASI  
PROCEDURE.

I WAS SEEKING TO EXCLUDE THAT TO  
INCLUDE JC, FOR HANDLING  
FINANCIAL MATTERS IN THE STATE.  
THE PROSECUTOR TOOK NO POSITION  
BUT DENIED THE MOTION AND THE  
DCA, I JOKE WITH MY WIFE THE PRO  
BONO CASE KEEPS COMING.

>> I HAVE A LOT OF EXPERIENCE IN  
THIS AREA.

THE PUBLIC DEFENDERS, THEY CAN  
HIRE EXPERTS.

>> THE EXPERT THEY HIRE, IF THAT  
THEORY DOESN'T WORK OUT, NO ONE  
KNOWS THEY LOOKED AT THAT  
THEORY.

THEY ARE OKAY WITH THAT.

THE PUBLIC DEFENDANT HAS A  
CONFLICT OF INTEREST, THEY  
WITHDRAW FROM THE CASE.

WITH I AM TESTING OUT A THEORY  
ABOUT THE CASE, THEY SAY IT IS A  
BALLISTICS CASE, THE ONE THAT  
FIRED THE BULLET THAT KILLED THE  
VICTIM, WHAT I HAVE TO DO  
TO HIRE THE EXPERT.

>> YOU WOULD HAVE TO FILE A MOTION IN THE TRIAL COURT --  
>> THE STATE ATTORNEY'S OFFICE.  
>> OUT OF THE THIRD DCA WITH PROCEDURE IN MIAMI-DADE COUNTY WHEN THESE ARE NOT STATE-FUNDED BUT THE ACCOUNT HE, THAT IS THE ONLY CASE IN FLORIDA WITH THIS PROCEDURE.

IF IT IS ADOPTED, IT REQUIRES THE STATE FROM BEING SERVED WITH MY REQUEST FOR AN EXPERT APPOINTED FOR A POSSIBLE THEORY. THE NAME OF THE EXPERTS, THE AREA OF EXPERTISE IN THE DEFENSE, THEY ARE NOT ENTITLED TO FIND OUT ABOUT.

TO ADOPT JUDGE WOLF'S OPINION BEFORE, HE SIMPLIFIES THE ISSUE, IT IS ABOUT EQUAL PROTECTION. AND THE PUBLIC DEFENDERS OFFICE, SHE WOULD NOT BE INFORMING THE STATE ABOUT WHAT SHE IS CONSULTING WITH.

IF SHE WAS NONEMERGENT WITH ALL THE RESOURCES IN THE WORLD, WHAT YOU WANT TO CONSULT WITH, NOT DISCLOSING THAT TO THE STATE. WHAT THEY ARE TALKING TO NOW, MS. SANDERS'S RESENTENCING AS WE SPEAK, I AM NOT GETTING WHAT WE ARE CONSULTING WITH.

IF THIS IS PERMITTED, I WILL NOT DISCLOSE TO THE STATE, THAT WOULD REVEAL THE DEFENSE STRATEGY.

AND EQUAL PROTECTION ALLOWS ME TO ENGAGE IN THE PROCEDURE OUTLINED BY HAVING PROPOSED RULE 3.111 WITH DEFENSE STRATEGIES, THE FIRST STEP, I'M REPRESENTING HER ON A PRO BONO BASIS.

IF I WITHDREW AND THE PUBLIC DEFENDANT TOOK OVER THE CASE TOMORROW, SUBJECTED TO HAVING TO REVEAL THE PRESENTENCING HEARING STRATEGY TO THE STATE.

>> WHAT HAPPENS IF HE DOESN'T QUALIFY?

>> OF THE PERSON DOESN'T QUALIFY

THEY HAVE RESOURCES TO GET THEIR OWN EXPERT AND NOT DISCLOSING THOSE EXPERTS TO THE OTHER SIDE.

>> WHAT IS THE MOST SIGNIFICANT ARGUMENT THAT YOU CONFRONT FROM THE STATE IN INSISTING THEY BE PRESENT FOR THIS STEP IN THE PROCESS.

>> I HAVE NOT SEEN THE STATE PUT FORWARD A GOOD ARGUMENT AT ALL. THERE IS NOTHING IN THIS PROCESS THEY ARE ENTITLED TO BE PART OF. THERE IS NO REASON TO LEARN OF THE EXPERTS WE ARE CONSULTING WITH.

I TRIED TO MAKE THAT CLEAR IN THE BRIEFS.

ONCE THE DEFENSE TEAM GETS TO THE POINT OF USING AN EXPERT, WITHOUT QUESTION WE MUST DISCLOSE THAT EXPERT AND THE STATE WILL BE ENTITLED TO REVIEW ANY REPORTS THE EXPERT HAS PREPARED.

WHILE WE ARE DECIDING ARE WE GOING TO USE AN EXPERT WE SHOULDN'T BE REQUIRED TO DISCLOSE OUR STRATEGIES TO THE STATE.

THIS COURT IN THE FITZPATRICK CASE, THE DEATH PENALTY CASE, WHERE THE DEFENSE ATTORNEY FAILED TO HAVE EVIDENCE TESTED OR RETESTED BY AN INDEPENDENT EXPERT IN THE DEFENSE ATTORNEY DURING THE HEARING THE REASON I DON'T WANT TO GET AN EXPERT BECAUSE I WAS FEARFUL THE STATE WOULD LEARN ABOUT THE EXPERT I RETAINED AND THIS COURT SPECIFICALLY SAID THE DEFENDANT CAN GET AROUND THAT BY RETAINING A, QUOTE, NONTESTIFYING EXPERT AND WHATEVER NONTESTIFYING EXPERT MIGHT CONCLUDE THAT WOULD NOT HAVE TO BE REVEALED IF NOT HELPFUL IF YOU'RE NOT GOING TO USE IT.

I DON'T HAVE THE ADVANTAGE OF ANY SUCH PROCEDURE FOR A

NONTESTIFYING EXPERT THAT WOULD NOT BE DISCLOSED TO THE STATE BECAUSE I WOULD HAVE TO REVEAL THE AREA OF EXPERTISE TO GET THAT EXPERT.

IF THERE HADN'T BEEN A SUGGESTION JAY-Z CAN'T HANDLE THESE MATTERS, THEY DON'T PARTICIPATE, IN MY EXPERIENCE, I HAD TWO RESENTENCING HEARING THAT WE ASK FOR A PARTICULAR EXPERT, I CITED TO THE JUDGE'S REASONING.

IN THE MCGILL CASE WE ASKED FOR PARTICULAR EXPERT AND THEY CAME BACK AND SAID THIS IS NOT NEEDED.

WE WANT A HEARING TO INCLUDE THAT THIS IS AN EXPERT THAT WOULD BE REQUIRED.

THE PROCESS WORKED.

WE HAD A HEARING, THE PROSECUTOR WASN'T THERE, THE JUDGE WAS THERE.

WE PRESENTED EVIDENCE WHY WE NEEDED THE EXPERT, THE JUDGE CONSIDERED OUR REQUEST AND GRANTED THE REQUEST BUT THEY WERE LOOKING OUT FOR FINANCIAL INTEREST OF THE STATE AND THE JUDGE ULTIMATELY HAD TO MAKE THE DETERMINATION THE EXPERT WAS NEEDED.

IF THE EXPERT IS NOT NEEDED, NOT SUFFICIENT EVIDENCE TO JUSTIFY MY REQUEST FOR THE STATE TO EXTEND FUNDS FOR THE EXPERT THE JUDGE WOULD SAY I AM NOT GOING TO ALLOW FOR THAT BUT NO REASON FOR THE PROSECUTOR TO BE INVOLVED IN THE PROCESS.

>> ONCE THE PUBLIC DEFEND HER DOESN'T QUALIFY, HE IS NOT INDIGENT, THERE IS SUCH A THING AS NO BONO WHERE A PERSON MAY QUALIFY FOR PUBLIC DEFENDERS OFFICE OR PAY SOMEBODY A \$5000 FEE OR WHATEVER, BUT STILL BE INDIGENT OF COST.

JUDGES GET THOSE ALL THE TIME.

>> THIS WOULD APPLY TO THOSE.  
>> THIS PROCEDURE WOULD APPLY AS WELL.

>> IT IS NECESSARY AND THE COURTS HAVE RECOGNIZED THE COURT, COURTS THROUGHOUT THE COUNTRY HAVE RECOGNIZED WHEN IT COMES TO PROVIDING SERVICES FOR INDIGENT DEFENDANTS THEY SHOULDN'T BE DISADVANTAGED BECAUSE THEY ARE INDIGENT. I CITED MOST OF THE JURISDICTIONS THAT CONSIDERED THIS ISSUE THE LEADER IS FEDERAL COURTS, THEY HAVE A STATUTE FROM CONGRESS THEY ALLOW FOR THIS PROCESS.

THE REASON THEY ALLOW FOR THE PROCESS IS THE PROSECUTOR SHOULDN'T BE INVOLVED IN DEFENSE STRATEGIES.

IT WOULD BE AGAIN TO REQUIRE ME TO DISCLOSE THESE STRATEGIES IT WOULD BE BETTER TO REMOVE MYSELF FROM THE CASE.

>> WE ARE TALKING EXPERTS.  
DOES THE SAME PERTAIN TO INVESTIGATIVE COSTS?

YOU HAVE TRIAL JUDGES WHO FEEL THIS MONEY, WE HAVE TO BE CAREFUL, A WHOLE AREA THE LEGISLATURE DIDN'T CONTEMPLATE WITH SENTENCINGS.

DOES THE SAME THING PERTAIN WHEN YOU ASK FOR INVESTIGATIVE COSTS? THE STATE, IT SEEMS WHAT YOU ARE SAYING IS BEING ECHOED HERE, THEY CAN REPRESENT THE FINANCIAL INTEREST, BUT THE ISSUE FOR DUE PROCESS AND EQUAL PROTECTION, PUBLIC DEFENDERS HAVE INVESTIGATORS, HOW DOES THAT WORK?

IF YOU WANT INVESTIGATIVE COSTS?

>> THE PROCEDURE I WOULD REQUEST, CONTEMPLATED BY THE PROPOSED RULE APPLIES TO ALL DO PROCESSES IN THESE TYPE OF MITIGATION SPECIALISTS OR EXPERTS.

I CAN'T MAKE A STRONG ARGUMENT THAT I'M REVEALING A DEFENSE STRATEGY WHEN I'M REQUESTING AN INVESTIGATOR BE APPOINTED. IN THE CONTEXT OF ME REQUESTING A PARTICULAR INVESTIGATOR BE APPOINTED THAT IS NOT NECESSARILY GOING TO REVEAL ANYTHING.

I DON'T KNOW IF THE STATE HAS A RIGHT TO KNOW WHO MY INVESTIGATOR IS.

>> THE PROBLEM IS WHAT DO YOU NEED THE INVESTIGATOR FOR? HOW MANY HOURS DO YOU NEED THE INVESTIGATOR FOR? HOW MUCH SHOULD BE SPENT TO PUT A CAP ON THE NUMBER OF HOURS? THE INVESTIGATOR WOULD HAVE TO BE REVEALED.

>> IN ANY DISCUSSION ABOUT WHY YOU NEED AN INVESTIGATOR, THAT IS PRIVILEGED.

LOOKING AT AN AREA REGARDING MY CLIENTS BACKGROUND NO WAY PROSECUTION SHOULD BE INVOLVED IN THAT, BUT THE STATE ATTORNEY INVESTIGATOR, 20 HOURS IN THIS AREA LOOKING AT THESE AREAS, I HAVE NO IDEA WHAT THEY ARE LOOKING INTO.

THE NAME OF THE INVESTIGATOR, NOT A BIG ISSUE.

IT IS NO QUESTION.

THE OTHER EXAMPLE, ONE OF THE FACTORS, DEFENDANT'S ACTIVITY OR PARTICIPATION IN A CRIME CITED THE CELL PHONE TOWER EXAMPLE. WHEN CELL PHONE TOWER EXPERTS WERE NOT BEING USED THE DATA MIGHT BE THERE AND MY CLIENTS CONVICTED OF FELONY MURDER MAY HAVE BEEN INVOLVED IN THE PLANNING BUT WASN'T THERE AT THE SCENE OF THE CRIME WHICH WOULD BE A LITIGATOR WHEN THE JUDGE IS DECIDING WHAT SENTENCE TO IMPOSE ON MY JUVENILE CLIENT.

WHEN I LOOK UP ISSUE I WANT A CELL PHONE TOWER EXPERT TO SAY

WHERE WAS MY CLIENT AT THE TIME OF THE MURDER?

WAS HE OR SHE AT THE SCENE OF THE CRIME OR SOMEWHERE ELSE? TO HAVE MY CELL PHONE TOWER LOOK AT THAT IF I HAVE TO REVEAL TO THE STATE I'M LOOKING AT HOW TO GET EXPERT JOHN SMITH, IF THE STATE WASN'T CONSIDERING THE SAME EVIDENCE, I MIGHT TIP THEM OFF TO SOMETHING THEY MIGHT LOOK INTO, IT IS BAD NEWS, YOUR CLIENT WAS AT THE SCENE, NOW THEY ARE PRESENTING IT, I HAD TO TELL THEM WHICH EXPERT I WANTED TO HAVE INVESTIGATE A POTENTIAL THEORY I MAY NOT USE IN THE CASE.

UNLESS THERE ARE OTHER QUESTIONS I ASK THIS COURT TO ADOPT THE PROCEDURE AND PROPOSE RULE 3.111 AND REQUIREMENTS ANDREWS TO DISCLOSE STRATEGIES.

>> ARE YOU STILL PRO BONO?

>> I AM STILL PRO BONO.

>> MAY IT PLEASE THE COURT, ASSISTANT ATTORNEY GENERAL CHARMAINE MILLSAPS ON BEHALF OF THE STATE.

I AM PROPOSING THE SAME RULE WITH ADDITIONS.

ALL DEFENSE COUNSEL HAS TO DO TO MAKE THIS, CERTIFY THAT IT WILL REVEAL HIS STRATEGY, LET THE JUDGE DECIDE.

THEY WANT A BLANKET RULE.

EXCLUDING THE PROSECUTOR EVEN THOUGH MOST OF THE TIME YOU ARE NOT TELLING ME ANYTHING I DON'T KNOW AND WE HAVE AN ADVERSARIAL SYSTEM.

ONE SIDE SHOULD NOT BE TALKING TO THE JUDGE UNLESS THERE IS A REASON FOR IT.

IF YOU AMEND THE RULE, JUST SIGN A CERTIFICATION, HE CAN EXPLAIN TO THE JUDGE HOW IT WILL REVEAL THE REQUEST FOR THIS SERVICE.

FOR INSTANCE ASKING AN INVESTIGATOR, I AM INVESTIGATING

A VERY UNUSUAL AREA AND CERTIFIES THAT, CERTIFIES TO THE JUDGE, AND EXPLAINS TO THE JUDGE AT THE BEGINNING OF THE HEARING WHEN THE PROSECUTOR IS NOT THERE, WHAT IS UNUSUAL ABOUT HIS INVESTIGATION AND THE JUDGE SAYS WE WILL CONTINUE BECAUSE THAT WILL REVEAL THE TRIAL STRATEGY. MOST OF THE TIME YOU ARE NOT TELLING ME ANYTHING.

>> WHAT IS THE STATE INTEREST IN BEING THERE?

IF THE STATE IS THERE THROUGH THE JAC?

>> THEY USUALLY KNOW VERY LITTLE ABOUT THE CASE.

WE SHOULD NOT HOLD HEARINGS WHERE DEFENSE COUNSEL GETS TO TALK ABOUT THIS CASE WITHOUT THE PROSECUTOR UNLESS WE SHOULD NOT HAVE A BLANKET RULE.

WE SHOULD HAVE A RULE THAT GOVERNS THE NORM.

>> SOME SORT OF IMPROPER COMMUNICATION THAT WE ARE TALKING ABOUT.

I DON'T KNOW WHY WE WOULD ASSUME THAT.

>> I AM TELLING YOU TO DECIDE FOR INSTANCE IN THIS PARTICULAR CASE, IF HE WANTS TO MAKE A PARTICULAR SHOWING OF THE INVESTIGATOR HE HAS TO TALK ABOUT THE PARTICULAR CASE. OKAY?

WE DON'T DO THESE HEARINGS UNLESS YOU HAVE A REASON.

ALL I AM SAYING IS ALL HE HAS TO DO IS CERTIFY THERE IS A REASON, CONVINCE THE JUDGE THE PROSECUTOR SHOULD STAY OUT OF THE ROOM AND THE PROSECUTOR STAYS OUT OF THE ROOM.

>> IF THAT IS YOUR ARGUMENT, WHEN PEOPLE TAKE THESE CASES PRO BONO, SHOULDN'T WE HAVE AN ALLOCATED BUDGET, TWO EXPERTS AND INVESTIGATIVE BUDGET, WHY SHOULD THEY HAVE TO GO BEFORE



IT.

THE ARGUMENT YOU'RE MAKING IS THIS IS ALMOST UNFAIR THAT THE DEFENSE LAWYER TAKING THESE CASES PRO BONO HAS TO SPEND TIME TRYING TO CONVINCE A JUDGE TO DO THEIR JOB IN THESE MILLER CASES IS NECESSARY TO HAVE EXPERTS ON ALL THE FACTORS THAT ARE NEEDED. LET THE STATE GIVE ALLOCATED MONEY FOR THESE CASES.

>> IN THE FEDERAL SYSTEM YOU HAVE TO MAKE A SHOWING OF 8 AND 9.

IN THIS CASE UNDERSTAND HOW SIMPLE THIS WAS.

ALL HE HAD TO DO WAS SAY THE STATUTE REQUIRES ME TO DO THIS BUT WE ARE ADMITTING HE GETS AN EXPERT, BUT WHAT HAS BEEN REVEALED THAT HE WANTS TO FOLLOW THE STATUTE?

THAT HASN'T REVEALED ANY TRUST. LOOK AT BALLISTICS.

THE STATE WILL HAVE A BALLISTICS EXPERT IN A CASE.

WE ARE GOING TO PRESENT, OUR STRATEGY IS NOT GOING TO CHANGE BECAUSE HE WANTS A BALLISTIC EXPERT.

>> YOU ARE NOT GOING TO KNOW THAT DEFENSE IS LOOKING AT WHETHER YOUR BALLISTIC EXPERT IS CORRECT OR NOT.

THE DEFENSE COUNSEL COMING AND ASKING, PUTS YOU ON NOTICE YOU BETTER CHECK YOUR CASE AGAIN. YOU WOULD NOT DO THAT IF YOU HAD A PRIVATE COUNSEL OR A PUBLIC DEFEND HER BUT YOU KNOW THAT IF PRO BONO COUNSEL CAME IN AND SAID I NEED A POLICE EXPERTS JUDGE AND YOU WOULD OTHERWISE NOT KNOW.

>> IF YOUR EXPERT COMES BACK AND SAYS IF DEFENSE EXPERT THINKS HE CAN HELP I WOULD KNOW THAT FROM DISCOVERY, NOT FROM THIS HEARING.

IF THERE ARE TWO POSSIBILITIES

ONCE YOU HIRE AN EXPERT, PRESENT HIM AT TRIAL AND THAT IS DISPUTED FROM THE DISCOVERY, OR YOU DON'T PRESENT HIM, I KNOW THAT WILL NOT BE DISPUTED AND I GO MERRILY ALONG.

IN MOST CASES YOU HAVEN'T TOLD ME ANYTHING I'M NOT GOING TO KNOW.

>> WHY DO YOU CARE IF YOU ARE NOT THERE?

>> IT IS ADVERSARIAL.

>> NOTHING ABOUT THIS PROCEEDING REQUIRES YOUR PRESENCE, THE STATE'S FINANCIAL INTEREST WE ARE TALKING ABOUT.

IT IS ABOUT WHETHER TO HAVE AN EXPERT.

YOU HAVE NO SAY IN WHETHER THEY SHOULD HAVE AN EXPERT IN PRELIMINARY MATTERS, NO INTEREST IN THAT WHATSOEVER.

>> THAT IS NOT TRUE.

IF WE CAN BE REVERSED, IN THIS PARTICULAR CASE, IF I WERE IN THE HEARING, HE NEEDS AN EXPERT, YOU NEED TO GIVE HIM ONE.

WHETHER OR NOT HE COMPLIED WITH IT, THE CONVICTION CAN BE REVERSED.

I NEED TO TELL THE JUDGE IN THIS CASE, YOU HAVE TO GIVE HIM AN EXPERT OR WILL BE IN TROUBLE.

THIS COULD CAUSE REVERSAL OF OUR ENTIRE CASE AND THE ONLY PERSON WHO CAN TELL YOU WHETHER IT IS SIGNIFICANT, THE JUDGE ASKS ME ARE YOU GOING TO PRESENT A BALLISTICS EXPERT?

YES I AM INDEED GOING TO PRESENT A BALLISTICS EXPERT.

THE FIRST QUESTION IS WHETHER IT IS A SIGNIFICANT ISSUE IN THE CASE AND THE PERSON AT THIS POINT WHO COULD MOST LIKELY TELL YOU THAT IS THE PROSECUTOR.

HE KNOWS MORE ABOUT WHAT WILL MAKE A SIGNIFICANT ISSUE IN THE CASE.

WE CAN BE REVERSED AND IN THIS

ONE, IF WE SAID DON'T GIVE THEM AN EXPERT, THEY NEED AN EXPERT, THE STATUTE REQUIRES THIS.

I NEED TO TELL THE JUDGE WHAT I AM GOING TO MAKE A SIGNIFICANT

--

>> YOU DON'T BELIEVE THE JUDGE HAS THE SAME KNOWLEDGE?

I AM SURE ANY DEFENSE LAWYER WOULD SAY TO THE JUDGE WE ARE ENTITLED TO HAVE WHATEVER THEY ARE ENTITLED TO.

YOU DON'T THINK A JUDGE CAN MAKE THAT KIND OF DECISION WITHOUT THE STATE ATTORNEY GENERAL'S OFFICE OR WHOEVER IT IS SAYING HE IS RIGHT?

>> WHEN YOU ARE DEALING WITH A STATUTE LIKE THIS YES BUT NORMALLY THE ISSUE, IS IT A SIGNIFICANT ISSUE IN THE CASE?

>> THAT IS YOUR TAKE ON IT. THE DEFENSE MAY THINK IT IS A SIGNIFICANT ISSUE AND PRESENT THAT TO THE JUDGE.

MAYBE THE PROSECUTOR IS SLEEPING ON IT AND DOESN'T KNOW THAT BUT THAT OPENS IT UP TO THE PROSECUTOR SAYING MAYBE THIS IS SOMETHING TO LOOK INTO.

>> MOST OF THE TIME THAT DOESN'T HAPPEN.

>> I AM SAYING I AM ASKING YOU, SHOULDN'T THIS DEFENDANT HAVE THE SAME OPPORTUNITY TO HAVE EXPERTS APPOINTED THE PUBLIC DEFEND HER'S OFFICE, I ASSUME, OTHER PEOPLE WHO TAKE PUBLIC DEFEND HER CASES HAS, WHY SHOULDN'T AN INDIGENT DEFENDANT REPRESENTED BY A PRO BONO ATTORNEY HAVE THE SAME OPPORTUNITY?

>> WE WANT YOU TO HAVE A RULE TOO.

WE WENT THIS TO BE ADVERSARIAL UNLESS IT IS GOING TO REVEAL, I WANT THE JUDGE TO REVEAL, WE SHOULD NOT HAVE A BLANKET RULE. WHEN MOST OF THE TIME THAT IS

GOING TO CHANGE THE PROSECUTOR STRATEGY.

>> SUGGESTING THE DEFENDANT HAS TO GO IN TO ESTABLISH THE DEFENDANT ADDRESSES A SIGNIFICANT ISSUE IN THE CASE WHICH IS NECESSARILY REVEALING INFORMATION ABOUT THEIR STRATEGY.

IN A CASE WHERE IT IS OBVIOUS AND YOU AGREE YOU ARE NOT LEARNING ANYTHING IT DOESN'T CHANGE THE FACT THEY ARE REVEALING WHAT THEY ARE THINKING ABOUT THE CASE AND WHAT IS SIGNIFICANT.

>> THE PROSECUTOR ISN'T THERE. ALL HE HAS TO DO IS CERTIFY.

>> WHY SHOULD THEY DO THAT?

>> THE BOTTOM OF THE MOTION, EXPLAIN TO THE JUDGE.

THAT WILL REVEAL A FIRE STRATEGY AND CONTINUE THE HEARING.

WE WANT A RULE THAT COVERS THE AVERAGE SITUATION.

>> THE PUBLIC DEFENDERS FILE CERTIFICATION.

WHY SHOULD A PRO BONO LAWYER HAVE TO FILE ONE?

>> YOU SHOULDN'T HOLD A HEARING AT ALL, YOU SHOULD -- THEY SHOULDN'T HAVE TO GO BEFORE THE JUDGE AT ALL.

>> HE IS MAKING AN ARGUMENT THAT A PRO BONO LAWYER SHOULD BE TREATED THE SAME AS A PUBLIC DEFEND HER.

WHY IS THAT NOT SO?

>> WE HAVE A POT OF MONEY FOR CONFLICT COUNSEL.

THEIR BUDGET, ON INVESTIGATORS AND EXPERTS ARE NOT UNLIMITED. THEY HAVE LIMITED FUNDS FOR THOSE PURPOSES TOO.

>> AS FAR AS ACCESS, AUTHORIZATION FROM A JUDGE THE SAME WAY THE PUBLIC DEFEND OR DOES WITHOUT THE PROSECUTOR THERE.

WHY COULD THEY NOT BE TREATED

THE SAME WAY?

>> THEY ARE GOING TO BE TREATED THE SAME WAY.

THE ONLY HARM IS IF HE HAS TO REVEAL STRATEGY AND IF HE SAYS I WILL BE REVEALING STRATEGY, THE PROSECUTOR STAYS OUT OF THE HEARING.

>> I ASKED FOR AN INVESTIGATOR. WHAT DO YOU MEAN AN INVESTIGATOR?

ONE OF THE WITNESSES HERE WAS LYING OR WHATEVER.

SO NOW I AM NOW DISCLOSING TO YOU THE PROSECUTOR STANDING THERE, INFORMATION WHAT I'M LOOKING AT, WHAT MY STRATEGY MAY BE.

IT MAY BE SOMETHING YOU NEVER DISCOVER, THAT YOU OTHERWISE NOT HAVE IF I HAD A PUBLIC DEFEND OR MONEY TO HIRE A LAWYER AND YOU WOULDN'T HAVE THIS HEARING.

>> YOU ARE MISSING MY POINT.

THE PROSECUTOR IS NOT THERE.

AS LONG AS HE SIGNS THE CERTIFICATION THE PROSECUTOR IS NOT THERE.

>> WHAT IS THE CERTIFICATION SUPPOSED TO BE?

>> A REAL TRIAL STRATEGY.

YOU DON'T HAVE TO TOTALLY WHAT IT IS AND AT THE HEARING, IF THE JUDGE DISAGREES --

>> HOW WILL THE JUDGE KNOW?

>> ONCE HE GETS IN FRONT AND EXPLAINS TO HIM.

>> THEY HAVE TO CONVINCING THE JUDGE THAT IT IS GOING TO REVEAL A STRATEGY WITHOUT REVEALING ANY STRATEGY BEFORE THEY CAN GET A HEARING?

>> THE PROSECUTOR IS NOT THERE.

>> YOU ARE NOT MAKING ANY SENSE.

>> THE PROSECUTOR CERTIFIES IF DEFENSE COUNSEL CERTIFIES THE PROSECUTOR IS NOT THERE, HE TOLD THE JUDGE I CERTIFIED THIS BECAUSE HERE IS WHAT MY REQUEST WILL REVEAL.

OF THE JUDGE AGREES WITH THAT  
THE HEARING STAYS EX PARTE.  
>> IT IS A MEETING WITH FAITH  
AND THEREFORE IN THAT  
CERTIFICATION THE JUDGE, ONCE IS  
MADE, YOU COME IN AND THE  
PROSECUTOR WON'T BE THERE.  
>> THE PROSECUTOR WON'T BE  
THERE.  
>> IN ALL CASES YOU HAVE AN EX  
PARTE HEARING EVEN IF A JUDGE  
FINDS IT WASN'T.  
>> I DON'T BELIEVE THAT WILL  
REVEAL THE TRIAL STRATEGY, BRING  
THE PROSECUTOR IN.  
THE ORIGINAL IF HE IS CERTIFIED  
BECAUSE I THINK MOST OF THE TIME  
THEY WON'T BE ABLE TO CERTIFY  
THAT.  
>> HOW IS THAT DIFFERENT FROM  
THIS CASE?  
DON'T YOU NEED A GOOD FAITH  
BASIS BY REQUESTING AN EX PARTE  
HEARING IN THIS CASE, WILL  
REVEAL STRATEGY.  
>> LET'S USE THIS CASE, THE  
STATE PRESENT ONE OF THE PRONGS,  
MENTAL AND EMOTIONAL HEALTH.  
DEFENSE COUNSEL SAID UNDER THE  
STATUTE THAT REVEALED NO  
STRATEGY WHATSOEVER AND IF IT  
GETS IS EXPERT TO EXAMINE HIM  
TWO THINGS CAN HAPPEN.  
EITHER DEFENSE COUNSEL LISTS HIM  
ON THE DISCOVERY AND NOT ONLY I  
KNOW HIS NAME AND EVERYTHING  
ELSE I GET TO DEPOSE HIM OR  
DECIDES NOT TO CALL HIM.  
>> WHAT IS THE HARM TO YOU IF HE  
FILES A MOTION EX PARTE SAYING  
THE STATUTES THAT I NEED AN  
EXPERT AND ENTITLED TO ONE AND I  
WANT ONE?  
>> OF THE JUDGE GAVE HIM AN  
EXPERT WE WERE NOT HARMED.  
>> YOUR OBJECTIVE IS TO HELP THE  
DEFENSE.  
>> MY OBJECTIVE -- THE JUDGE TO  
KNOW.  
>> SPENDING RESOURCES LITIGATING

THIS CASE WITH THE SUPREME COURT OF FLORIDA.

>> THIS IS CERTIFIED BY THE FIRST DCA.

WE WANT A UNIFORM WAY OF HANDLING THIS.

>> COULD YOU DIRECT OUR ATTENTION TO ANY OTHER AREAS OF CRIMINAL LAW IN WHICH THE STATE PARTICIPATES IN DECISIONS WITH REGARD TO HOW OR WHY A LAWYER IS GOING TO UTILIZE CERTAIN EXPERTS?

>> INTELLECTUAL DISABILITY, RULE AND POSTCONVICTION, INTELLECTUAL DISABILITY, THE STATE AND DEFENSE GET AN EXPERT BUT THEY HAVE TO DISCLOSE THE REPORT OF THEIR EXPERT AND IN ONE OF MY CASES THEY WOULD NOT DISCLOSE THE REPORT BECAUSE THIS SHOWED A HIGHER IQ THAN MY EXPERTS REPORT AND THE JUDGE MADE HIM GIVE IT TO HIM BECAUSE THE RULE REQUIRES IT.

THERE IS AN EXAMPLE.

IN THE NONCAPITAL CONTEXT WE DO NOT CAPTURE HIS EXPERT.

IF YOU ARE WORRIED ABOUT THEIR EXPERT THE PROSECUTOR TRIES TO GET THE DEFENSE EXPERT UNDER THE CURRENT CASE LAW WE ARE NOT ALLOWED TO DO THIS.

IF THE JUDGE WANTS THE PROSECUTOR THERE HE CAN DO THAT. I WANT THE EX PARTE DETERMINED BY THE JUDGE, NOT THE DEFENSE COUNSEL.

>> THE TIME YOU ARE PREPARING THE CASE THE STATE DOES NOT KNOW WHAT EXPERTS THE DEFENSE MIGHT HAVE.

THE ACTUAL TRIAL LEVEL IS DIFFERENT FROM POSTCONVICTION.

>> YOU ASKED ME FOR AN EXAMPLE.

>> I'M TRYING TO EXPLORE THE FACT THAT POSTCONVICTION, NOT AT THE TIME THE TRIAL AND ALL THE STRATEGIES WE HAVE DEVELOPED.

>> MY BRIEF CONTAINED THE RULES

THAT SAYS DEFENSE COUNSEL ARE ENTITLED TO HIRE A CONFIDENTIAL EXPERT AND WE CANNOT CAPTURE THAT EXPERT BUT THAT IS THE RULE AND WE WANT A RULE TOO.

YOU ARE ASKING WHAT THE STATE IS UP HERE FOR.

WE ARE GETTING INCONSISTENT RULINGS ACROSS THE STATE.

WE WANT A RULE HERE, WE WANT THE JUDGE TO DECIDE.

>> WHAT ARE THE INCONSISTENT RULINGS YOU ARE GETTING?

>> SOME JUDGES ALLOW THE PROSECUTOR TO BE THERE.

SOME PROSECUTORS WANT TO BE THERE, SOME ARE NOT ALLOWING THEM TO BE THERE.

WE NEED A RULE.

WE ARE UP HERE BECAUSE WE NEED A RULE.

SOMETIMES THE STATE DOESN'T EVEN CARE HOW THE LAW COMES OUT.

WE JUST WANT THE RULE.

THE STATE DOESN'T HAVE AN INTEREST IN GETTING IT CLEAR IN THIS AREA AND WE WANT A RULE ENACTED.

WE WOULD LIKE THE JUDGE TO DECIDE WHETHER THE HEARING SHOULD BE EX PARTE INSTEAD OF AN AUTOMATIC BLANKET RULE THAT OVER COVERS THE SITUATION.

MOST OF THE TIME YOU'RE NOT REVEALING ANYTHING, HE WANTS A MENTAL HEALTH EXPERT.

>> ISN'T A BLANKET RULE NECESSARY TO TREAT A DEFENDANT THE SAME WAY WITH THE PUBLIC DEFENDER OR A DEFENDANT WITH RESOURCES?

>> THERE IS NO WAY TO TREAT THEM EQUALLY.

>> THE ADVERSARIAL PROCESS IN TERMS OF YOU AS THE STATE KNOWING WHAT EXPERTS ARE USING IN PREPARATION ON THE CASE, THE BLANKET RULE TO PROTECT, TO TREAT THE SAME WAY BECAUSE YOU DON'T KNOW WHAT EXPERTS PUBLIC



DEFENDERS ARE USING OR PRIVATE COUNSEL.

>> THE DISCOVERY POINT.

>> WE ARE TALKING AT THE EARLY STAGE THAT THEY MAY NEVER CALL.

>> THAT THEY DO NOT LIST BECAUSE THE MINUTE THEY LIST THEM IN DISCOVERY.

IF THEY CERTIFY AND CHANGING THE STATE STRATEGY, THEY ARE TWO THINGS.

MOST TIMES LIKE BALLISTICS EXPERTS WE ARE NOT GOING TO DO THAT BUT WE ASK FOR A STANDARD RULE THROUGHOUT THE STATE, WHETHER THE HEARING SHOULD BE EX PARTE OR NOT.

>> I WANT TO CLARIFY ONE POINT, IN MOST INSTANCES THE PUBLIC DEFENDER WITHDRAWS FROM THE CASE BECAUSE THEY HAVE A CONFLICT OF INTEREST AND THE COURT HAS A LIST OF LAWYERS FOR COURT-APPOINTED CASES FOR WHICH A JUDGE APPOINTS A LAWYER TO TAKE THE CASE FOR THE PUBLIC DEFENDER AND THAT LAWYER IS NOT PRO BONO BUT BEING PAID.

IN CRIMINAL CASES IN MOST INSTANCES THAT IS THE PROCEDURE. THE PERSON BEING PAID, THE LAWYER BEING PAID WILL HAVE TO GO TO COURT AND ASK THE JUDGE FOR FUNDS TO HIRE AN INVESTIGATOR, AN EXPERT OR WHATEVER.

WHEN THE CASE IS OVER THE COURT-APPOINTED LAWYER WILL HAVE TO SUBMIT A BILL TO BE PAID, WOULD HAVE TO SUBMIT THE HOURS. THAT IS SUBMITTED TO JAC AND THEY WILL DECIDE WHAT IS PAYABLE UNDER STATE LAW OR NOT.

HOW ABOUT YOUR EXPERIENCE IF YOU HAVE DONE COURT APPOINTED CASES, PAYING A LAWYER FOR THE TRIP TO THE COURTHOUSE?

>> IT HAS BEEN YEARS SINCE I DID THAT KIND OF CASE.

I DO SUCH CASES FOR FEDERAL

COURT.

THEY ARE STRICT ABOUT WHAT YOU CAN RECOUP AND THEY LOOK AT YOUR BILLS.

>> IF YOU HAVE A COURT APPOINTED LAWYER, THE LOT RIGHT NOW REQUIRES A LAWYER TO TAKE AN EXTRA STEP THAT OTHER LAWYERS WOULD NOT TAKE.

IF YOU HAD MONEY YOU COULD NOT HAVE TO GO TO COURT AND IF YOU HAVE A PUBLIC DEFEND HER YOU GET THE EXPERT SO YOU TAKE THE NEXT STEP AND A STRONG POSSIBILITY THE LAWYER MAY NOT GET PAID.

>> IF A RULE IS ADOPTED I HAVE FAITH IN THE TRIAL JUDGES OF THE STATE THAT THEY CAN FIGURE THESE THINGS OUT.

I CAN TELL YOU FROM EXPERIENCE IN THE TWO MILLER CASES I HAD WE FILED REQUESTS TO SUBMIT REQUESTS FOR EXPERTS EX PARTE, THE JUDGE GRANTED IT FROM THAT POINT FORWARD.

I HAD THREE EXPERT AND THE MITIGATION SPECIALIST, EACH REQUEST SPECIFIED WHO, THE STATE GOT NOTICE THAT I WAS FILING SOMETHING BUT THE SUBSTANCE OF MY REQUEST SPECIFIED WHO THE EXPERTS WERE, THE AREA OF EXPERTISE, I HAD AN HOURLY RATE I HAD TO EXPLAIN WAS A REASONABLE HOURLY RATE.

I HAD A CAP FOR EACH EXPERT. THE JUDGE HAD TO DECIDE IF JAY-Z VOICED THEIR CONCERN WHETHER THEY AGREED OR DISAGREED AND IF THEY DIDN'T IT WAS UP TO THE JUDGE TO SIGN AN ORDER ALLOWING ME TO HAVE THAT EXPERT.

>> THE STATE SUGGESTION THAT INSTEAD OF YOU JUST DOING IT THAT WAY, THAT YOU DO CERTIFICATION THAT THIS IS SOMETHING TO REVEAL TRIAL STRATEGY.

>> IF I'M ASKING FOR AN INVESTIGATOR, NO PROBLEM WITH

THAT.

IF I AM ASKED TO EXPLAIN THE AREA THE INVESTIGATOR WILL GO INTO, NO WAY THE STATE SHOULD BE INVOLVED.

AS FAR AS ME ASKING FOR EXPERTS, HARD FOR ME TO FATHOM I SHOULD HAVE TO TELL THE STATE WHAT TYPE OF EXPERT I MAY HAVE WON IN MY CASE.

>> YOU HAVE SOME TRIAL JUDGES THAT WILL UNDERSTAND MILLER REQUIRES YOU HAVE THIS AND THERE'S NOT GOING TO BE MUCH OF THE DISCUSSION.

SOME JUDGES ALL OF THE SUDDEN ARE ASKING AS YOU GET IN THERE, WHY DO YOU NEED THIS.

FOR ME TO CERTIFY IN ADVANCE THAT IT WILL DISCLOSE YOUR STRATEGY IT DEPENDS WHAT HAPPENS DURING THE HEARING.

>> THE SYSTEM WORKS IN OTHER JURISDICTIONS.

THERE IS NOT A PROBLEM IN FEDERAL COURT AND THERE IS NOT AN EX PARTE HEARING, YOU ASKED HOW OFTEN THERE IS AN EX PARTE HEARING, THERE WAS NEVER A HEARING, THEY DID NOT OBJECT TO THE REQUEST, THE JUDGE APPROVED IT AND WE ARE DONE.

>> AS WE WERE LOOKING AT THIS IS THIS EXCLUSIVELY FOR MILLER PROBLEMS?

>> KNOW.

>> WE HAVE OTHERS.

I HAVE NO IDEA WHERE THIS GOES BUT WITH OUR ELECTRONIC FILINGS, WHERE IS THE MATERIAL THAT DEALS WITH THIS THING THAT IS GOING ON?

WHERE IS THE REPOSITORY?

>> I HAVE FAITH IN THE CASES IN THIS PROCEDURE THAT WHEN I CLICK THE EX PARTE BUTTON ON THE PORTAL, IT WENT TO A REPOSITORY.

>> WHERE DO THOSE END UP.

>> I WAS CLEAR IF THERE IS A PROPOSED ORDER I SUBMITTED IT

WAS ONLY THROUGH JAC.

>> THERE IS NO COURT FILE PLACED IN THE NORMAL RECORDS WITH THE PROCEEDINGS FOR THAT CASE.

>> THE CLERK'S OFFICE, WHEN I SUBMIT IT I HAVE THAT OPTION THAT I TRUST IS BEING TAKEN CARE OF.

THAT IS AN ISSUE FOR THE CLERKS TO LOOK INTO.

>> IS THAT HOW IT IS DONE IN FEDERAL COURT OR YOU DON'T KNOW?

>> I DON'T KNOW.

>> THE INTENT, IT IS NOT PART OF THE REGULAR COURT DOCKET TO THE PUBLIC, THE STATE.

>> THAT IS CORRECT.

>> WE HAVE A NUMBER OF FILINGS THAT FLOW THROUGH THIS PROCESS THE GO BEFORE TRIAL JUDGES THAT ARE EX PARTE IN NATURE AND ARE ACCEPTED BUT THE RESULTS OF THAT ARE STILL CAPTURED IN THE MAIN FILING, THE MAIN DIGITAL RECORD.

>> IF IT IS TRULY AN EX PARTE ORDER, IF I SUBMIT A REQUEST FOR A SEX OFFENDER RECIDIVISM EXPERT POINT REVEAL STRATEGY AND THE JUDGE GRANTS MY REQUESTED DISHES IN ORDER ON THAT PARTICULAR EXPERT THE STATE SHOULDN'T HAVE ACCESS TO THAT ORDER.

THE ORDER I SUBMIT, CLEAR TO ANYONE THAT WOULD LOOK AT IT.

>> THIS COULD BE A BROADER AND BIGGER ISSUE THAN WE ARE TALKING ABOUT TODAY.

WE START STIRRING THE POT, OTHER PROBLEMS MIGHT ARISE FROM THE DISCUSSION.

>> SOMEONE NEEDS TO VERIFY THE E-FILING WORKS.

IT IS CONTEMPLATED THAT THERE BE EX PARTE FILINGS.

I AM HAPPY TO REACH OUT TO THE CURRENT CHAIR TO MAKE SURE THIS IS ON THEIR RADAR.

>> ALL OF THOSE EX PARTE ORDERS, REQUESTS, MADE A PART OF THE RECORD?

>> NOT SURE THEY SHOULD BE.  
IF I CONSULTED A PARTICULAR  
EXPERT THAT LED TO SOMETHING  
NEGATIVE AND DOWN THE ROAD MY  
CLIENT GETS REALLY FUN APPEAL  
AND THERE IS A RETRIAL THE STATE  
SHOULDN'T HAVE ACCESS TO  
WHATEVER THAT IS.

>> ARE WE OUT OF TIME?  
I WANT TO THANK YOU FOR PRO BONO  
SERVICE.

WE THANK YOU.  
THE SYSTEM IS BETTER FOR IT.  
WE ARE IN RECESS.  
>> ALL RISE.