Filing # 172645625 E-Filed 05/08/2023 01:18:05 PM

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

STATE OF FLORIDA, Case No.: 2020-CF-2361

Plaintiff,

v

LAURIE LEIGH SHAVER,

Defendant.
_____/

MOTION FOR RECONSIDERATION

COMES NOW, the undersigned attorney, and would move this court for "reconsideration," of that Order having been stated on May, 4, 2023 for the evaluation of the minor child in this cause, and in support therefore it is said:

Statement of Facts
And Requests for
Reconsideration

1. THAT, defense counsel presented a motion to the court on May 4th, 2023 having received testimony from a minor child who confessed to having committed the respective murder in this matter. A ruling was made by the court and the State directed to present an Order. The defense has moved within the limits to requests reconsideration.

2. THAT, as a consequence and for the benefit of the minor child Judge G. Richard Singletary appointed counsel, Kelly Johnson, as a attorney ad-litem, on behalf of the minor child, I.S., d.o.b. 9/15/2008.

3. THAT, the minor child has met with Kelly Johnson on multiple occasions and represented her desire to testify in this cause. At all times the minor has been apprised of the rights she would be waiving, and the possibility penalties she would be facing. Nonetheless, the child has persisted in seeking to testify.

FILED: LAKE COUNTY, GARY J. COONEY, CLERK, 05/08/2023 02:07:17 PM

These facts were mentioned by the attorney representing the minor child.

4. THAT, the State originally opposed the motion and continues to do so. It was brought to the attention of this court, that the State's position is not on point where as here the minor seeks to be evaluated and to present testimony. The argument of *Camejo v State*, 660 So. 2d 242 (Fla. 1995); *Jenkins v State*, 668 So. 2d 1003 (2 DCA 1996) are not relevant. The State has presented no other authority to bar any evaluation. The respective cases relied upon by the State deal with compelled examinations. Again, here the child "*requests*," ["*emphasis added*"], an evaluation.

5. THAT, the minor child presents exculpatory, *Brady* evidence, and yet both the State and the court seek to eliminate, and bar both development and presentation of this evidence at trial. Such efforts constitute an abuse of discretion, and interfere with the defendant's Due Process rights. The defense is entitled to both develop a full defense free of interference of the court unless protected by some compelling state interests. Instead, the State should be seeking to aid and assist the defense as defense counsel set forth in his motion pursuant to *Brady* and *Giglio.* Here, the State has sought to bury their heads on what is evidence which may truly seek out and ensure that justice is obtained. Likewise, the most which was said by the State on the matter was, "*I'm aware of my obligation,*" while failing to express to the court how they have properly sought to examine these same issues.

6. THAT, it was the position of the court that the court alone is better suited than any other to evaluate and determine whether the child may be properly qualified pursuant to *Fla. Rule Evidence*, 90.603.1. The court cannot deny the fact that the assistance of an expert will not work to the peril of the court where the court may *only* more informed. Additionally such evidence further assists the defense in preparing and presenting a defense against a claim of fabrication or tampering with a witness. Likewise, it allows the defense to present a full presentation of relevant evidence on the issue when seeking to address the voluntary character of testimony and the competency of the witness. To this end, it obstructs the defense in presenting their case. Here the court should be mindful of being judicially neutral in this manner and maintaining such a presence.

7. THAT, considering the matter of neutrality the law is well settled:

> ***"A judge simply cannot be both a judge and [an attorney] searching out facts favorable to [a party] without***

abandoning his or her judicial neutrality." State v. McCrary, 676 N.W.2d 116, 125 (S.D.2004). . . .

"[E]very litigant is entitled to nothing less than the cold neutrality of an impartial judge." State ex rel. Davis v. Parks, 141 Fla. 516, 519–20, 194 So. 613, 615 (1939). Our supreme court has adhered to the principle that the courthouse is a"temple of justice" where all litigants "may enter its portal with the assurance that they may controvert their differences in calm and dispassionate environment before an impartial judge and have their rights adjudicated in a fair and just manner." Williams v. State, 143 So.2d 484, 488 (Fla.1962). That neutrality is destroyed when the judge himself becomes part of the fact-gathering process." Kellie v Rogers, 57 So. 3d (4 DCA 2011)

8. THAT, in the present case, the court announced it had read defense counsel's motion in advance of the hearing. It further proclaimed that the court was concerned with the possible penalty facing the minor child. This fact is not of concern for the court. Instead, Judge Singletary had previously appointed Kelly Johnson, as legal counsel for the minor child. The court in this manner had become an activist which was beyond the boundaries of the matter before the court. In doing so, the court had taken on the side of the State, and could not be declared judicially neutral. The court should thus reconsider the position earlier taken and grant defense counsel's motion.

9. THAT, likewise, the court has misconstrued the law. At the end of the hearing the court asserted, *"there did not exists a compelling reason,"* to have an evaluation of the minor child. This is not the law. Again, the defense asserted, that the evaluation was to accommodate the minor; to present exculpatory evidence; and to seek to develop the truth at trial. Compelling is not the standard for here the minor child, through her attorney ad litem, had represented the will of the minor to be evaluated. The court was relying on that authority dealing with "*compelled evaluations*." As previously announced, the minor child had waived any objection to the evaluation. In this regard, a compelling need is not mandated under the authority relied upon by the State, *State v. Coe* [521 So.2d 373 (Fla. 2d DCA 1988)]; *Dinkins v. State* 244 So.2d 148 (Fla. 4th DCA 1971)]." Camejo at 243. There arguably is no protected right against those that have waived such rights.

WHEREFORE, the defense would move this court to strike the position taken on 5/4/23, and to grant the relief requested by Ordering an evaluation of the minor child.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and accurate copy of the above pleading has been furnished upon the Office of the State Attorney and Kelly Johnson, at those addresses as registered with the Clerk of the Court on this the: 5/8/2023.

/s/*Jeffrey W. Wiggs, Esq*.
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