IN THE CIRCUIT COURT OF THE FOURTEEN JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR BAY COUNTY
CRIMINAL JUSTICE DIVISION

FILED
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HAROLD BAZZEL
CLERK OF CIRCUIT COURT
BAY COUNTY, FLORIDA

STATE OF FLORIDA CASE NO.: 06-4016CF

v.

HENRY DICKENS	06-4016CFMA
CHARLES ENFINGER	06-4016CFMB
[redacted]	[redacted]
RAYMOND HAUCK	06-4016CFMD
[redacted]	[redacted]
HENRY MCFADDEN, JR.	06-4016CFMF
KRISTIN SCHMIDT	06-4016CFMG
JOSEPH WALSH II	06-4016CFMH

MOTION FOR REHEARING ON THE STATE'S FOURTH MOTION FOR ORDER IN LIMINE

COMES NOW, THE STATE OF FLORIDA, by and through the undersigned Assistant State Attorney and brings this motion for rehearing on the State's Fourth Motion for Order in Limine and in furtherance states as follows:

1. The State of Florida filed its Fourth Motion For Order In Limine (See attached) and a hearing was held on this motion as well as other State and defense motions on August 30, 2007. At the hearing the Court denied the State's motion with a caveat. (See pages 56 and 59 of the attached transcript.) The caveat appears to be that the Court wants a proffer from the defense as to what they intend to say in opening statements as it pertains to the civil lawsuit filed by Gina Jones. (See pages 56 through 58).
2. The State of Florida now asks for rehearing on this motion and the issue of the civil lawsuit filed by Ms. Jones.
3. The clear issue in this motion is whether a settled civil lawsuit still constitutes bias evidence that can be used to impeach Ms.

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Jones. The Court expressed its own concern as to whether a settled lawsuit would still constitute evidence of bias on the part of Ms. Jones. (See page 53, lines 12-18, page 54, lines 25 through page 55, line 2). The Court then expressed concern that in denying the defense inquiry into this area the case could be reversed on appeal. (page 56, lines 1-4).

4. The only potential bias that could be demonstrated by this type of evidence would be the interest of the witness in the outcome of the trial. Here, clearly, if the lawsuit was still pending Ms. Jones could arguably have a financial interest in the outcome of the trial. However, the civil lawsuit was settled months ago and the agreed upon settlement dispersed. Thus, just as clearly, Ms. Jones no longer has a financial interest in this case. There is no longer any improper motivation for her testimony to be untruthful.

5. The decision to allow questioning to show bias rests largely in the discretion of the trial court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion. (See Nelson v. State, 204 So.2d 752 (Fla. 5th DCA 1998), Hahn v. State, 626 So.2d 1056 (Fla. 4th DCA 1993), Torres-Arboledo v. State, 524 So.2d 403 (Fla. 1988) and Pandula v. Fonseca, 199 So.358 (1940). Also, Professor Charles W. Ehrhardt, speaking on this issue stated "the decision whether a particular question properly goes to interest, bias, or prejudice lies within the discretion of the trial judge". (Florida Evidence, 2007 Edition, pages 563 and 564.) Thus, the Court's decision on this matter would be subject to an abuse of discretion standard on review.

6. Evidence of interest or bias on the part of a witness is subject to a 90.403 balancing and would be inadmissible if its prejudicial

impact to a party or witness outweighed its probative value. Rodriguez v. State, 753 So.2d 29 (Fla.2000), Dennis v. State, 817 So.2d 741 (Fla. 2002), Nelson v. State, 704 So.2d 752 (Fla. 5th DCA 1998). The Florida Supreme Court speaking on this issue stated as follows:

> "Evidence of bias may be inadmissible if it unfairly prejudices the trier of fact against the witness or misleads the trier of fact. Therefore, inquiry into collateral matters, if such matters will not promote the ends of justice, should not be permitted if it is unjust to the witness and uncalled for by the circumstances."

Breedlove v. Singletary, 595 So.2d 8 (Fla. 1992). When applying a 405 analysis to this case it is clear that the arguably slight to non-existent probative value of this collateral evidence is greatly outweighed by the tremendous prejudice to the State and the potential for confusion of the issues. It doesn't take much imagination to see the potential pandora's box that evidence of a civil lawsuit would open. The jury would be distracted and misled by this evidence and could develop concerns such as:

-- Why are we here if this case has been settled?
-- If the case was settled does that mean the defendant's conceded their guilt?
-- Does that mean the defendant's have paid the victim's family?

Clearly, they could become confused as to the issues in this case and how they should be resolved.

Under a 90.405 analysis this evidence should be excluded from this

trial.

7. When assessing whether there is a critical need for allowing this evidence the subject matter of Ms. Gina Jones' testimony should be considered. Generally speaking, Ms. Jones will testify to Martin Anderson's medical history, that he was a normal healthy boy while growing up and never had any major health problem. Also, she will testify that the victim participated in sports, including organized sports, and she will tell the jury when he was born. As the Court can see, her testimony covers very objective facts and basic information. Her testimony, while relevant and important, is not critical to the State's case or to any defense and she is not the linch pin of the State's case. Her testimony does not hold the importance of an identification witness or a witness to a confession or other critical evidence. Additionally, the substance of Ms. Jones' testimony is not of the type that is subject to embellishment or subjective spin. Thus, the need for the defense to use this very prejudicial and potentially confusing evidence is low to non-existent. In light of the substance of her testimony and the fact that the defense still wants to use this evidence it appears that their argument for admissibility is based on pretext and is disingenuous.

8. Based on the above argument the State of Florida asks that this Court grant the State's Fourth Motion for Order in Limine.

I HEREBY CERTIFY that a copy of the foregoing Motion in Limine has been furnished by personal service to Hoot Crawford, attorney for Henry Dickens, at 748 Jenks Avenue, P.O. Box 1103, Panama City, Florida 32402; Walter B. Smith, Deputy Public Defender, attorney for Charles Enfinger, at 115 East 4th

Street, P.O. Box 580, Panama City, Florida 32402-0580; Robert Sombathy, attorney for Patrick Garrett, at P.O. Box 430, Panama City, Florida 32402; James H. White, Jr., attorney for Raymond Hauck, at 229 McKenzie Avenue, Panama City, Florida 32401; [redacted] at Post Office Box 327, Panama City, Florida 32402-0327; Jonathan Dingus, attorney for Henry McFadden, Jr., at 527 Jenks Avenue, Panama City, Florida 32401; Ashley Benedik, attorney for Kristin Schmidt, at 1004 Jenks Avenue, Panama City, Florida 32401; and Robert Pell, attorney for Joseph Walsh II, at 514 Magnolia Avenue, P.O. Box 651, Panama City, Florida 32401, on this 27 day of September, 2007.

Respectfully submitted,

MARK A. OBER
STATE ATTORNEY

SCOTT HARMON
ASSISTANT STATE ATTORNEY
FLORIDA BAR #933775

SH/als