

IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,909

RAUL CAMEJO,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

BRIEF OF AMICUS CURIAE
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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CONSTITUTIONAL PROVISIONS

Fourteenth Amendment to the Constitution of the United States

Article I, §2 of the Florida Constitution

RULE

Rule 3.210(b), Fla.R.Crim.P.

INTRODUCTION

The *Amicus Curiae*, the National Association of Criminal Defense Lawyers (NACDL), is the largest voluntary bar association of criminal defense attorneys in the country. The *Amicus Curiae* provides criminal law practitioners with an active voice in issues involving the quality of justice in the criminal justice system. The NACDL, through its Amicus Committee, briefs important substantive and procedural legal issues affecting the criminal law and the protection of the rights of those accused of crimes.

STATEMENT OF THE CASE AND FACTS

NACDL adopts the statement of the case and facts set forth in the brief filed on behalf of the Petitioner, Raul Camejo.

POINTS ON REVIEW

I

THE TRIAL COURT MUST HAVE THE POWER TO ORDER A PRETRIAL PSYCHIATRIC EVALUATION OF A WITNESS WHENEVER THERE IS REASONABLE GROUND TO BELIEVE THAT THE WITNESS IS INCOMPETENT, OR MENTALLY OR EMOTIONALLY UNSTABLE.

II

AN APPELLATE COURT SHOULD REVIEW A TRIAL COURT'S ORDER REQUIRING A PRETRIAL PSYCHIATRIC EVALUATION OF A WITNESS UNDER THE SAME STANDARD IT REVIEWS A TRIAL COURT'S ORDER DETERMINING COMPETENCE TO STAND TRIAL.

ARGUMENT

I

THE TRIAL COURT MUST HAVE THE POWER TO ORDER A PRETRIAL PSYCHIATRIC EVALUATION OF A WITNESS WHENEVER THERE IS REASONABLE GROUND TO BELIEVE THAT THE WITNESS IS INCOMPETENT, OR MENTALLY OR EMOTIONALLY UNSTABLE.

We begin with the obvious:

"The readily apparent principle is that the jury should, within reason, be informed of all matters affecting a witness' credibility to aid in their determination of the truth...It is just as reasonable that a jury be informed of a witness' mental incapacity at a time about which he proposes to testify as it would be for the jury to know that he then suffered an impairment of sight or hearing. It all goes to the ability to comprehend, know, and correctly relate the truth." (*United States v. Partin*, 493 F.2d 750, 762 (5th Cir. 1974))

Simply put:

"...the defendant has the right to explore every facet of relevant evidence pertaining to the credibility of those who testify against him...." (*Id.*, at 763)

A defendant can exercise this right only with a psychiatric evaluation of a witness when there is reasonable ground to question the witness's competence or mental or emotional stability.

The trial court has broad discretion in most areas of pretrial and trial procedure. Certainly it has the power to order a psychiatric evaluation of a witness when the witness's competence or emotional or psychological state is called into question. *State v. Camejo*, ___ So.2d ___, 19 FLW D683 (Fla. 5th DCA 1994); *United States v. Khoury*, 901 F.2d 948, 966 (11th Cir. 1990). Indeed: "...Of course the mental competency of a victim/witness would *always* be a valid reason to order such an examination in a criminal prosecution..."

State v. Camejo, supra, Slip Op. at 11 (Emphasis Added); *Goldstein v. State*, 447 So.2d 903 (Fla. 4th DCA 1984). The conviction of a defendant upon testimony of an incompetent witness, of course, violates due process. *Sinclair v. Wainwright*, 814 F.2d 1516, 1522-1523 (11th Cir. 1987).

There is no doubt then of the trial court's authority to order a psychiatric evaluation of a witness or of the need for it. The question is what standard should govern the trial court's decision? The *Amicus Curiae* respectfully submits that the only standard which will protect the constitutional rights of a defendant is that the trial court must order such an evaluation when there is reasonable ground to believe that the witness is incompetent or mentally or emotionally unstable.

Present law requires that a defendant demonstrate strong and compelling reasons for such an examination. *Dinkins v. State*, 244 So.2d 148, 150 (Fla. 4th DCA 1971); *State v. Coe*, 521 So.2d 373, 376 (Fla. 2d DCA 1988); *State v. LeBlanc*, 558 So.2d 507, 509 (Fla. 3d DCA 1990); *State v. Drab*, 546 So.2d 54, 55-56 (Fla. 4th DCA 1989); *State v. Camejo*, _____ So.2d _____, Slip Op. at 11 (Fla. 5th DCA 3/25/94) (Case No. 93-2436). That standard is too high. It places an impossible burden upon a defendant. Indeed, that none of the defendants in the cited cases could meet it, despite the obvious needs for the evaluations, is proof positive that the present standard is too high.

Only clear and convincing evidence is required to commit an individual indefinitely because of mental and/or emotional difficulties. *Addington v. Texas*, 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979). This is a less stringent standard than the "strong and compelling" reasons presently required in Florida to order a psychiatric evaluation of a

witness. This is untenable. How can a defendant in a commitment proceeding have fewer rights than a complaining witness in a criminal prosecution?

Moreover, the state need only establish the voluntariness of a confession by a preponderance of the evidence. *Lego v. Twomey*, 404 U.S. 477, 489, 92 S.Ct. 619, 626, 30 L.Ed.2d 618, 627 (1972). This is so even though due process requires that a defendant may only be convicted upon proof: "...beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In Re: Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1071, 25 L.Ed.2d 368, 375 (1970). A confession, of course, is tantamount to a conviction. If this crucial piece of evidence is admissible upon meeting a standard merely of a preponderance of the evidence, how can the standard protecting the defendant's accuser be higher?

The proper standard is found in the Florida Rules of Criminal Procedure.

In requiring an examination of a defendant to determine competence to stand trial, Rule 3.210(b), Fla.R.Crim.P., states that the court, counsel for the defendant, or counsel for the state, need only have: "...reasonable ground to believe that the defendant is not mentally competent to proceed....". To require a criminal defendant to meet a higher standard in obtaining a psychiatric evaluation of a complaining witness, when there is reasonable ground to believe that the witness is incompetent, or mentally or emotionally unstable, is fundamentally unfair. The same standard must apply to all. Anything else palpably violates the Equal Protection Clause of the Fourteenth Amendment and Article I, §2 of the Florida Constitution which provides that: "All natural persons are equal before the law...."

A psychiatric evaluation of a witness, of course, is an intrusion. A criminal charge against a defendant is a greater intrusion. Trial courts possess the imagination and flexibility to minimize the intrusion upon the witness and maximize the protection of a defendant's rights. Indeed, here, the order provided that the evaluation would be reviewed by the court *in camera*, revealed only to counsel for the state and defense, kept in confidence, and that the trial court would later determine whether and how the report would be used in the criminal proceeding and trial. What could be more reasonable?

This Court must hold that the trial court has the power to order a pretrial psychiatric evaluation of a witness when there is reasonable ground to believe that the witness is incompetent, or mentally or emotionally unstable, reverse the decision of the District Court, and remand this cause with instructions to reinstate the order of the trial court.

II

AN APPELLATE COURT SHOULD REVIEW A TRIAL COURT'S ORDER REQUIRING A PRETRIAL PSYCHIATRIC EVALUATION OF A WITNESS UNDER THE SAME STANDARD IT REVIEWS A TRIAL COURT'S ORDER DETERMINING COMPETENCE TO STAND TRIAL.

An appellate court should review a trial court's order requiring a pretrial psychiatric evaluation of a witness under the same standard it reviews a trial court's order determining competence to stand trial.

CONCLUSION

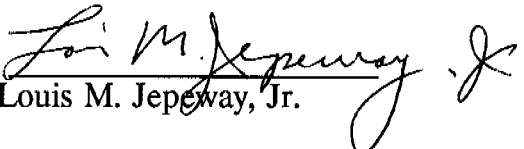
This court must hold that the trial court has the power to order a pretrial psychiatric evaluation of a witness when there is reasonable ground to believe that the witness is incompetent or mentally or emotionally unstable. This Court must hold that an appellate court reviews such an order under the same standard it reviews a trial court's order determining competence to stand trial.

This Court must reverse the decision of the District Court and remand this cause with instructions to reinstate the order of the trial court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Brief of Amicus Curiae** was mailed to **STEWART G. STONE**, Assistant State Attorney, 100 Ease First Street, Sanford, Florida 32771, **NORMAN WOLFINGER**, Assistant Attorney General, The Capitol, Tallahassee, Florida 32399, and **LISTER WITHERSPOON, IV**, 721 N.W. 14th Court, Miami, Florida 33125 this 9th day of September, 1994.

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