

SUPREME COURT OF FLORIDA

JOHN WESLEY HENDERSON,

Petitioner,

vs.

CASE NO.: 92,885

STATE OF FLORIDA,

District Court of Appeal,
1st District - No.: 97-0795

Respondent.

PETITIONER'S REPLY BRIEF ON THE MERITS

RHONDA S. CLYATT
Florida Bar No.: 346081
Post Office Box 2492
Panama City, Florida 32402
(850) 872-1031

Counsel for Petitioner

TABLE OF CONTENTS

Table of Contents..... i

Table of Citations..... ii

Preliminary Statement 1

Certification of Type and Size and Style..... 1

Argument..... 2

**DOES SECTION 119.07 (8), FLORIDA
STATUTES (Supp. 1996), LIMIT A CRIMINAL
DEFENDANT’S PRE-TRIAL DISCOVERY
OF NONEXEMPT PUBLIC RECORDS
REGARDING HIS OR HER PENDING
PROSECUTION, TO THE DISCOVERY
PROVISIONS IN FLORIDA RULE OF
CRIMINAL PROCEDURE 3.220, SUCH
THAT RECEIPT OF SUCH RECORDS
TRIGGERS A RECIPROCAL DISCOVERY
OBLIGATION FOR THAT
DEFENDANT?..... 2**

Conclusion..... 7

Certificate of Service..... 8

TABLE OF CITATIONS

Cabral v. State, 699 So.2d 294 (Fla. 5th DCA 1997)..... 3

Henderson v. State, 708 So.ed 642,643 (Fla. 1st DCA 1998)..... 3

Wait v. Florida Power & Light Company, 372 So.2d (Fla. 1979)..... 6 & 7

PRELIMINARY STATEMENT

For purpose of the brief, the Petitioner, will be referred to as Petitioner, Defendant, or Henderson; the Respondent shall be referred to as Respondent or the State. Citation (A-) refer to exhibits in Volume I of the Appendices followed by the appropriate page number. Citations (T-) refer to the hearing transcript contained in Volume II of the Appendices followed by the appropriate page number.

CERTIFICATE OF TYPE AND SIZE AND STYLE

Counsel certifies that this brief has been typed using Times New Roman 14.

ARGUMENT

DOES SECTION 119.07 (8), FLORIDA STATUTES (Supp. 1996), LIMIT A CRIMINAL DEFENDANT'S PRE-TRIAL DISCOVERY OF NONEXEMPT PUBLIC RECORDS REGARDING HIS OR HER PENDING PROSECUTION, TO THE DISCOVERY PROVISIONS IN FLORIDA RULE OF CRIMINAL PROCEDURE 3.220, SUCH THAT RECEIPT OF SUCH RECORDS TRIGGERS A RECIPROCAL DISCOVERY OBLIGATION FOR THAT DEFENDANT?

Respondent attempts to restate the certified question and issue presented by this appeal rather than address directly the issue. On page five of the Answer Brief, Respondent states the issue certified by the First District Court of Appeal, then asserts that the question is "simple and straight forward". (*Respondent's Answer Brief at Page 5*) Indeed the question is simple and straight forward. Respondent, however, fails to address the question and issue presented. Instead, Respondent attempts to reframe the issue to advance a more tenable position.

Respondent argues that if a criminal defendant or his counsel obtain *any* information that is concededly within the public domain by use of a public records request, then reciprocal disclosure and discovery obligations are mandatory upon that defendant. The question is not as argued by Respondent of whether rules or statutes may be manipulated. Rather, the question is whether a criminal defendant or his counsel should be deprived of equal protection of law as provided

by both the Constitution of the State of Florida and the Constitution of the United States of America.

Respondent has conceded that the records at issue in the instant case are public. *Henderson v. State*, 708 So.2d 642,643 (Fla.1st DCA 1998). Any individual or agency can obtain the records by a public records request. Yet, Respondent suggests that if a criminal defendant or his counsel obtains such records, the penalty of reciprocal disclosure and discovery obligations should be imposed. Respondent attempts to carve out a special class and impose differential treatment for access to the public records upon criminal defendants or counsel in such an arbitrary and capricious manner is without legal support and violative of equal protection. Additionally, the opinion below of the First District indicates that *any public record* obtained by a criminal defendant or counsel therefor creates a reciprocal obligation upon that defendant.

On Page 4 of the Answer Brief, Respondent asserts that Petitioner made a demand for discovery materials from the State by making a Chapter 119 demand in support of an argument that the decision in *Cabral v. State*, 699 So.2d 294 (Fla.5th DCA 1997) is applicable to the case at bar. The Respondent's assertion is inaccurate. The record herein reveals that no such demand was made by Petitioner upon the State. Petitioner's request for public records was made upon the Sheriff

of Bay County. The Sheriff of Bay County is not a party in the criminal case against Petitioner. Furthermore, the records requested from the Sheriff by Petitioner may be included in discovery materials but would not be all that Petitioner would be entitled to if he had elected to participate in discovery. If Petitioner had filed a Notice to participate in discovery, the State's obligation would be much more extensive than providing those materials in the public domain that were requested by Petitioner. Additionally, the Petitioner is unable to obtain sanctions against the State for noncompliance with the discovery rules that would be available if participating in discovery.

Moreover, the *Cabral* decision dealt with records sought directly from the State in a codefendant's case. In the case at bar, the Indictment against Petitioner is against only Petitioner. The State strategically chose to similarly charge another individual by elected to file separate Indictments. There are no co-defendants charged by the Indictment against Petitioner. The State has carefully manipulated the filing of the charges to avoid consolidation and to thereby create a "playing field" most advantageous to the State.

Lastly, Respondent urges this Court to create a legislative exception to the public records to arbitrarily deprive criminal defendants or their counsel of access to public records. Respondent's argument in this regard disregards all principles

of separation of power, as well as equal protection of law. Respondent's position urging the disregard of well established constitutional law should be rejected.

In the case at bar, the State's election to charge the defendants separately and to have separate trials is to maintain a strategic advantage in the presentation of the case. The State may well choose to call certain witnesses in one case that are not presented by the State in the other case. While Henderson and Adams are accused of the murder of Pinkard, they are not codefendants where the State's decisions in one case impact the other case. The witness lists, even if both were participating in discovery, could be entirely different. In fact, the State may choose to try two entirely different theories or motives for the murder. The ability of defense counsel to aid or assist the other in the trial is unavailable by virtue of the State's election to charge and try the accused separately. Under such circumstances, can it seriously be contended that the State only wants a "level playing field"?¹

And yet when the Petitioner requests only that which is concededly within the public domain, the State attempts to impose obligations of disclosure upon the Petitioner. A careful review of such argument leads to the inescapable conclusion

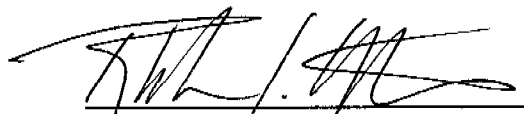
¹ Moreover, it should be noted that the State in the instant case has thus far refused to go forward with the trial of Adams, insisting that Henderson must be tried separately and prior to Adams.

that the First District erroneously upheld the lower court's Order in the case at bar and that such decision should be reversed with directions to grant the Petition For Certiorari and quash the Order of the lower court imposing reciprocal discovery obligations upon Petitioner. The certified question should be answered in the negative holding that the receipt of nonexempt public records by a criminal defendant does not trigger reciprocal discovery obligations. *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla.1979).

CONCLUSION

Based on the foregoing argument and citations of authority the certified question should be answered in the negative holding that the receipt of nonexempt public records by a criminal defendant does not trigger reciprocal discovery obligations. To hold otherwise denies Petitioner equal protection of law and deprives him of records that are public. A criminal defendant's access to public records or obligation to participate in reciprocal discovery pursuant to the provisions of Florida Rules of Criminal Procedure should not be left to a whimsical decision of the media, or a member the media, as would be the case according to the decision of the court below. Either the records are public or not. In the case at bar, the State has conceded that the records are public and not subject to exemption. Thus, no rational basis exists for the differential treatment imposed upon defense counsel for obtaining such records. Moreover, the opinion of the First District Court of Appeal should be reversed as contrary to this Court's opinion in *Wait, supra* and the Order of the trial court that is challenged by Petitioner should be quashed.

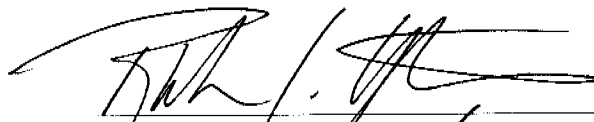
Respectfully Submitted,


Rhonda S. Clyatt
Attorney For Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via United States mail to the Honorable Dedee S. Costello, ✓ Circuit Judge, Post Office Box 1089, Panama City, Florida 32402, Honorable James Appleman, ✓ State Attorney, Post Office Box 1040, Panama City, Florida 32402 and Honorable Robert A. Butterworth, ✓ Attorney General, The Capitol, Tallahassee, Florida 32399-1050 this date.

DATED: August 21, 1998



RHONDA S. CLAYATT
Florida Bar No. 346081
Post Office Box 2492
Panama City, Florida 32402
(850) 872-1031

Counselor for Petitioner