

IN THE SUPREME COURT OF FLORIDA
Fl. S. Ct. Case No. SC14-1273
DCA Case No. 3D14-227

MICHAEL POOLE,

Petitioner,

v.

SOUTH DADE NURSING & REHABILITATION CENTER
and THE STATE OF FLORIDA,

Respondents.

**SOUTH DADE NURSING & REHABILITATION CENTER'S
AMENDED ANSWER BRIEF (JURISDICTION)**
(AMENDED TO CORRECT DATE ON CERTIFICATE OF SERVICE)

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STATEMENT OF THE CASE AND FACTS

The relevant facts are set forth in the Third District's opinion in this case. Respondent hereby adopts and incorporates the Third District's recitation of the facts in this Jurisdictional Answer Brief as if the same were set forth fully herein.

SUMMARY OF THE ARGUMENT

The Third District's opinion in this case does **not** directly or expressly conflict with this Court's decision in *Caraballo v. State*, 39 So. 3d 1234, 1252-53 (Fla. 2010) ("*Caraballo*"); a decision which the Third District correctly determined was inapplicable here based on the significant difference between the facts at issue and underlying the decision in that case and those at issue in this case; and did **not** base its opinion on a mistaken belief that this Court had "overruled" its decision in *Caraballo sub silencio* via the adoption of Rule of Judicial Administration 2.420.

The Third District's opinion in this case does **not** directly or expressly conflict with other District Courts of Appeal as to whether competency evaluations pursuant to Florida Rule of Criminal Procedure 3.211(d) are protected by Section 456.057(7), Florida Statutes. The cases cited by Petitioner deal with a completely separate and unrelated issue (discovery of non-party medical reports and/or information from a physician expert without notice to the non-parties as required by 456.057(7)(a)(3) or a showing that the prior notice required by that section was impossible); and do not conflict with the opinion in this case in any way.

The Third District's opinion in this case does not expressly construe a provision of the state Constitution within the meaning of Article V, §3(b) of the state Constitution. More specifically, the decision does not "explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision." Rather, it addresses the constitutional right to privacy in a manner based on and consistent with established precedent regarding that right and its limitations in cases where it must be balanced against competing Constitutional rights (e.g. the right of access to public records including but not limited to records of civil and criminal court proceedings – with limited exceptions).

ARGUMENT

I. THE THIRD DISTRICT'S OPINION IN THIS CASE DOES NOT EXPRESSLY OR DIRECTLY CONFLICT WITH THIS COURT'S DECISION IN *CARABALLO*

The Third District's opinion in this case does not directly or expressly conflict with this Court's decision in *Caraballo v. State*, 39 So. 3d 1234, 1252-53 (Fla. 2010) ("*Caraballo*"); a decision which the Third District correctly determined was inapplicable here based on the significant difference between the facts at issue in that case and those at issue in this case; and did not base its opinion on a mistaken belief that this Court had "overruled" its decision in *Caraballo sub silencio* via the adoption of Rule of Judicial Administration 2.420.

A. THE THIRD DISTRICT'S OPINION IN THIS CASE DOES NOT CONFLICT IN ANY WAY WITH THIS COURT'S DECISION IN CARABALLO

Petitioner's argument that this Court's decision in *Caraballo* stands for the proposition that Rule 3.211(d) made competency evaluations confidential for essentially all purposes is, quite simply wrong. *Caraballo* concerned the State's use of competency evidence to rebut allegations of mental retardation during the penalty phase of a criminal case. In *Caraballo*, this Court reasoned such use was precluded by Rule 3.211(d), Florida Rules of Criminal Procedure because:

"As a result of the court's obligation to ensure that the material stages of a prosecution not proceed against a criminal defendant while the defendant is mentally incompetent, **any defendant may be subjected to mandatory competency evaluation and, consequently, subjected to the risk of saying something or responding in a manner that is detrimental to or incriminates the defendant. It is for this reason that the protection of confidentiality is afforded to the substance of a defendant's competency evaluation.**" *Id.* at 1252–53.

As noted by the Third District in its opinion in this case, it is apparent from a study of the *Caraballo* opinion that the central concern of that case was the protection of the defendant's constitutional right **against self-incrimination**. This is particularly clear given that rule at issue in that case (and here), Rule 3.211(d) subsection is a Florida Rule of Criminal Procedure. The 1980 Committee Notes regarding the rule reveal subsection (d) of Rule 3.211 [then denominated as subsection (e)] was intended to "provide[] for the confidentiality of the information obtained by virtue of an examination of the defendant." In 1988, the

second paragraph of subsection (d) was “expanded to clarify under what circumstances the reports of experts in a competency evaluation may be discovered **by the prosecution** and used as evidence [in a criminal case].” *In re Amendments to Fla. R. of Crim. P.*, 536 So.2d 992, 997 (Fla.1988) (emphasis added).

There is no evidence in the plain language of the Rule or its history that would even arguably support the proposition that the drafters of Florida Rule of Criminal Procedure 3.211(d) was meant to apply outside the criminal arena - where the right against self incrimination is a non-issue. Similarly, there is nothing in the *Caraballo* decision that even arguably suggest that this Court interpreted Rule 3.211(d) to apply outside the criminal arena or that it intended for its decision in that case to expand the scope of the Rule or deem it to provide blanket confidentiality for such evaluations in all cases.

The invalidity of the Petitioner’s proposed interpretation of the Rule is particularly clear in civil cases such as this one where the disclosure of the Evaluations/Reports at issue to Respondents will not allow the Prosecution in the criminal case, which already has copies of the reports, to use the reports in any way other than those allowed by Rule 3.211 and the *Caraballo* decision (i.e. where any statements made by Petitioner in conjunction with those evaluations cannot be used as *incriminating statements* by the Prosecution). Therefore, the Third District

applied both properly in this case and did **not**, via the opinion explaining its decision, create any conflict with *Caraballo*.

The invalidity of the Petitioner's proposed interpretation of the Rule is even more clear when viewed from the common sense perspective that Criminal court proceedings in Florida are public events, and there is a well-established common law right of access to criminal court proceedings and records and a State Constitutional Amendment that creates a right of access to public records including but not limited to records of civil and criminal court proceedings. Therefore, a strong presumption of openness in judicial proceedings (including judicial records) exists; and, while the law has established a number of exceptions to the rule of openness and access exceptions to protect competing interests, none of those exceptions apply in this case.

The facts of the incident at issue are public record as is the Circuit Court's Order of Incompetency. If this matter proceeds to trial, the facts relating to Defendant's mental state and actions during the days preceding the alleged commission of the crime, including his alleged compliance or lack thereof with medication regimes and his participation in activity that may or may not have been sanctioned by staff at the Facility will undoubtedly arise and be the main issue in that cause and will be discussed in detail in open court. On a related note, the media has a Constitutional right of access to the same information Respondents

are requesting; and may choose exercise that right at any time between the present date and the criminal or civil trial in this matter *and publish that information*.

Given the foregoing, it is clear that the competency evaluations at issue are critical to Respondents because the evaluations purport to shed light on Defendant's mental state and actions during the days preceding the alleged commission of the crime, including his alleged compliance or lack thereof with medication regimes and his participation in activity that may or may not have been sanctioned by staff at the Facility. Thus, the evaluations may be of significant value to the Facility in evaluating issues relating to foreseeability and the use of the Evaluations for this legitimate and necessary purpose, subject to the limitations of the underlying Circuit Court Order, would be absolutely proper.

For the foregoing reasons, it is clear the Third District's opinion in this case comports with established precedent including precedent relating to competing rights, does not conflict in any way with this court's decision in *Caraballo*, and does not provide any legitimate basis upon which this Court could or should exercise its discretionary conflict jurisdiction to review this case.

B. THE THIRD DISTRICT'S OPINION IN THIS CASE IS NOT BASED ON A MISTAKEN BELIEF THAT THIS COURT HAD "OVERRULED" ITS DECISION IN CARABALLO SUB SILENTO VIA THE ADOPTION OF RULE OF JUDICIAL ADMINISTRATION 2.420

Despite Petitioner's suggestion to the contrary, nowhere in its opinion of this case did the Third District state or imply that its decision was based on a belief this

Court had overruled *Caraballo sub silencio* via the adoption of Rule of Judicial Administration 2.420. Instead, the Third District properly noted, as part of its analysis of the Rule, and **as further support for its decision** (which is not in conflict with this Court's opinion in *Caraballo*) that, in 2011, this Court amended rule 2.420 to add presentence investigation reports and corresponding psychological or psychiatric evaluations to the subsection (d)(1)(B) list, but **expressly rejected a recommendation that all mental health evaluations be included in the category.** See *In re Amendments to Fla. Rule of Jud. Admin. 2.420*, 68 So.3d 228, 230 (Fla.2011)(stating "The proponents of adding all mental health evaluations and reports filed in a criminal case to the subdivision (d)(1)(B) list acknowledge that the statutes relied upon for their inclusion do not clearly express that those evaluations and reports are confidential in the context of public access to court records...").¹ In short, the Third District citation to this Court's opinion relating to the adoption of Rule of Judicial Administration 2.420 was completely proper (it would have been somewhat remiss if it had not); and does not support Petitioner's jurisdictional claim.

¹ The Third District also noted that, in that same opinion, this Court went on to expressly disapproved of local administrative court rules which authorized clerks to seal mental health evaluations pending a judicial determination. *Id.* at 230 ("Rule 2.420 provides the procedures for sealing court records. And ... permitting local introduction of blanket exemptions to the rule would undermine the uniform procedures adopted by the Court").

II. THE THIRD DISTRICT'S OPINION IN THIS CASE DOES NOT DIRECTLY OR EXPRESSLY CONFLICT WITH OTHER DISTRICT COURTS ON THE QUESTION OF WHETHER COMPETENCY EVALUATIONS PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.211(D) ARE PROTECTED BY SECTION 456.057(7), FLORIDA STATUTES

A review of each of the cases Petitioner claims are in conflict with the opinion in this case reveals that those cases deal with discovery orders that purported to require defendants' physician experts witnesses who performed medical examinations of the plaintiffs in those cases pursuant to Florida Rule of Civil Procedure 1.360 to produce records of prior medical examination reports relating to numerous **non-parties** (*who those physician experts had examined pursuant to the same rule in prior, unrelated cases*) *absent notice* to the non-party patients as required by Section 456.057(7)(a)(3) or a showing that the prior notice required by that section was impossible. As a result, all of those cases are completely distinguishable from and inapplicable to this case, which presents completely different legal issues and arguments in a completely different factual context and provide no support for Petitioner's jurisdictional claim.

III. THE THIRD DISTRICT'S OPINION IN THIS CASE DOES NOT EXPRESSLY CONSTRUE FLORIDA'S CONSTITUTIONAL RIGHT TO PRIVACY IN A MANNER THAT WOULD ALLOW FOR THE EXERCISE OF JURISDICTION PURSUANT TO ARTICLE V, §3(B) OF THE FLORIDA CONSTITUTION

The Third District's opinion in this case does not expressly construe a provision of the state Constitution (i.e. the Constitutional Right to Privacy) within

the meaning of Article V, §3(b) of the State Constitution. Stated another way, the decision does not “explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision.” Rather, it addresses the constitutional right to privacy in a manner based on and consistent with established precedent including the decisions of this Court regarding that right and its limitations (precedents cited in its opinion); particularly in cases where it must be balanced against competing Constitutional rights such as the Constitutional Right of Access to Public Records which included but is not limited to access to records of civil and criminal court proceedings; with certain limited exceptions – none of which apply in this case.

In the alternative, if for any reason this Court deems the opinion of the Third District to “explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision [at issue]” it should refrain from exercising its discretionary jurisdiction in this case because the Third District’s opinion correctly interpreted Florida Rule of Criminal Procedure 3.211(d) and properly held that competency reports of criminal defendant are not entitled to confidentiality under that provisions of that Rule, the provisions of Florida Law that protect against disclosure of a “patient’s medical records” without the “patient’s consent” because such individuals are not “patients” as that term is defined by any controlling legal authority, or any other provision of Florida Law.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court should conclude that it has no jurisdiction to review and/or should decline to review this case via the exercise of the limited jurisdiction (discretionary “conflict jurisdiction”) authorized by Article V, § 3(b)(3) of the Florida Constitution.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Florida Courts E-DCA filing Portal to the Court and Electronic Mail to: JOHN EDDY MORRISON, Assistant Public Defender, Eleventh Judicial Circuit of Florida, 1320 NW 14th Street, Miami, Florida 33125, at appellatedefender@pdmiami.com; and counsel for the State of Florida, Joanna Standstrom, 1350 N.W. 12th Avenue, Miami, Florida 33136, at JoannaSandstrom@MiamiSAO.com, on the 5th day of September, 2014.

CERTIFICATE OF COMPLIANCE

WE HEREBY FURTHER CERTIFY that this motion complies with the font requirements of Rule 9.210 of the Florida Rules of Appellate Procedure and is in the required font of Times New Roman 14.

QUINTAIROS, PRIETO WOOD & BOYER, P.A.

/s/ - Thomas A. Valdez

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