

STATE OF LOUISIANA

CRIMINAL DISTRICT COURT

VERSUS

PARISH OF ORLEANS

ALEX BERNARD

CASE NUMBER 528-021 K

CONSOLIDATED WITH:

STATE OF LOUISIANA v. HENRY CAMPBELL, 526-311, 515-409, 525-904

STATE OF LOUISIANA v. DONALD GAMBLE, 524-409; 527-270

STATE OF LOUISIANA v. DARRIAN FRANKLIN, 523-095

STATE OF LOUISIANA v. MALCOLM SMITH, 524-004

STATE OF LOUISIANA v. JOSHUA VAUGHN, 526-187

STATE OF LOUISIANA v. BENNY WALKER, 523-135

**STATE'S RESPONSE TO CONSOLIDATED PETITIONS FOR WRIT OF HABEAS
CORPUS AND MOTIONS TO HALT PROSECUTION**

NOW INTO COURT, through the undersigned Assistant District Attorney for the Parish of Orleans, comes the State of Louisiana, who, at the request of this Honorable Court files the following response and opposition to the motions filed on behalf of various defendants pending before Section K of this Honorable Court. For the reasons set forth below, the State prays that the motions be denied.

INTRODUCTION

Before the court are a series of motions filed by counsel appointed by the Court to represent certain indigent defendants who remain in custody unable to either make bond or afford to retain their own counsel. In these motions the private lawyers have asked the prosecutions of their clients be halted and the defendants released from custody because they (the lawyers) have no clear means of being paid to represent these poor incarcerated defendants. Ultimately this court has to weigh the competing interests of the defendants and for that matter the public at large against the private lawyers who have been appointed by the court.

ARGUMENT

The right of a criminal defendant to the effective assistance of counsel is fundamental to our notions of due process and protected under both the United States and Louisiana

Constitutions. It is further without dispute that a defendant who cannot afford to hire an attorney shall have an attorney appointed to represent him at no cost to him or her.¹

While it is not the place of the District Attorney's office for the Parish of Orleans to speculate on what levels of funding should or should not be provided or for that matter what would constitute a sufficient indigent defender system, the State is compelled to point out the differences in the two classes of individuals between whom this Court will have to decide whose rights are more important.

While none of the indigent, incarcerated defendants have chosen to be part of this Criminal Justice System, the lawyers appointed by this court entered willingly into a profession which has always publically prided itself on public service. While the defendants are placing at risk their freedom, and the victims are placing at risk any hope of justice, the private counsel appointed by this court are risking convenience and economic comfort.

The private lawyers may have been asked by this Court to volunteer their services, their time, and their expertise to protect the rights of the accused, but their situation still far outshines those they have been asked to represent or the victims of these cases who wait helpless hoping that this Court can provide justice.

While courts have held that lawyers who represent indigent defendants should have some expectation of having some overhead and costs paid,² those same courts speak of the right to representation and due process of law as the most fundamental of our criminal justice system. In as much as the private counsel of the defendants are asking to abort the criminal justice process and leave defendants (and victims) in clearly unconscionable circumstances, this Court must decide who's rights are more important—the lawyer or the defendant.

Though this Court has heard testimony and opinion about what constitutes a sufficient level of funding and what constitutes adequate defense, the fact remains uncontested that the state of Louisiana has provided funding for indigent defense and established both State-level indigent defender boards and local indigent defender systems, complying with the requirements

¹ See Louisiana Const. art. 1 sec. 13; State v. Stripling, 354 So.2d 1297, (La.1978); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

² State v. Wigley, 624 So.2d 425 (La. 1993). It should be noted that even in Wigley and the cases which followed, it was not all costs associated with the defense of the indigent that an attorney had a right to expect pay for, only extraordinary out-of-pocket expenses such as experts and testing.

of Article I, Section 13 of the State Constitution.³ Whether the current funding state-wide is sufficient in level, or has been adequately accounted for, or wisely spent on the local level, is not an issue that is before this Court.

What is actually before this court is whether a private attorney's right to a check should trump the defendant and the public's right to the quick, equal, and impartial administration of justice. And quite frankly, that decision should not be one before this court at all. Whether or not a private attorney defends indigent men and women should not depend on whether that attorney gets paid.⁴ The rules of professional conduct and for that matter basic humanity would frown on anyone walking away from someone who needed help simply because they would not profit from doing the work of their chosen profession.

It is not for the District Attorney to say whether this "crisis" is a manufactured stunt intended for political effect, a symptom of gross mismanagement on all levels of state government, or an unfortunate side effect of our current economic climate. Nevertheless, the District Attorney is compelled to seek justice for all people, and must ask this Court to side with the defendants and victims who are hoping to have their cases heard, and not the private attorneys who are hoping for a paycheck.

If there is a particularized need for a particular expert or testing in order to provide a constitutionally sufficient defense in a particular case, such a motion should be brought. In most of the cases before the court, however, the private attorneys have sought wholesale bans on doing the job they swore to do the day they became lawyers. Rather than help their clients either minimize their exposure or extricate them from the criminal justice system, what the movers before this court have sought is nothing less than anarchy. They have devoted their time, their resources, and their efforts to conducting hearings and presenting arguments on why they will not do their job. They are seeking to bring down a system they disagree with rather than protecting the rights of those individuals this court has appointed them to represent.

Halting prosecutions and releasing defendant does not protect anyone's rights. It does not provide anyone with justice. It neither move cases forward nor solves systemic problems. It

³ Article I, section 13 provides, in part, "The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents."

⁴ Indeed, the American Bar Association's Criminal Justice Standards for the Defense Function maintains, "Defense counsel should not permit a dispute or unhappiness regarding compensation to interfere with providing competent and zealous representation." ABA Standards for Criminal Justice, the Defense function Standard 4-3.4(e).

merely allows so-called professionals to shirk their professional responsibilities to the detriment of us all. It is unconscionable to abandon the rights of the indigent or the public because we cannot ensure a private attorney will get a paycheck. At its heart that is what the motions before this Court ask this Court to do.

It is not uncommon for a judge to have to weigh two competing and compelling interests in order to ensure justice is done. But this is not a choice between two mutually exclusive goals, or two ideas even worthy of equal consideration in the minds of all. This Court may well ask itself which of these groups is better suited to protect their own interests—trained lawyers who are provided by law with both a source of funding and a group legally obligated to pay at some point, or incarcerated indigents who, without the help of those appointed lawyers, lack both the expertise and the access to protect their interests.

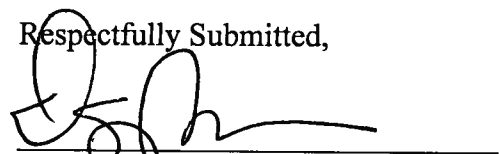
When we entered the legal profession we accepted that with the powers we have been entrusted come certain responsibilities. Vehicles exist to protect the lawyers' interests, but even if they did not, asking those members of the bar who can provide help to those unable to provide for themselves is preferable to ensuring that defendants and victims languish in uncertainty, injustice, and chaos.

It is not the job of a defense attorney, whether private or public, to build or attack a system. It is their job to protect the rights and interests of their clients in their individual cases. If that means that a private lawyer must defend the poor without the certainty of knowing they are going to be paid, that is preferable to seeing justice denied, criminals turned loose, or victims and defendants languishing in uncertainty.

CONCLUSION

The question of whether or how a private lawyer will be paid should not come before protecting the rights of the accused or for that matter the rights of the public. For that reason, the State prays that the defense motions to halt prosecution be denied on the showing made and that any motion ordering the release of defendants for no reason other than the uncertainty of a lawyer's paycheck should likewise be denied.

Respectfully Submitted,



David S. Pipes
Assistant District Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the Defendant through his attorney of record, this _____ day of _____, 2016.

David S. Pipes
Assistant District Attorney