

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, PINELLAS COUNTY

STATE OF FLORIDA,

Plaintiff,

Case No. 15-00226-CF

vs.

JOHN N. JONCHUCK,

Defendant.

/

PROCEEDINGS: Motion to Redepose Defense Experts

DATE: October 23, 2018

BEFORE: The Honorable Chris T. Helinger  
Circuit Court Judge

PLACE: Pinellas County Justice Center  
14250 49th Street North  
Clearwater, Florida

REPORTER: Michael Drake, CER\*D, CET\*D-513  
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A P P E A R A N C E S

## APPEARING ON BEHALF OF THE STATE OF FLORIDA:

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## APPEARING ON BEHALF OF THE DEFENDANT:

Jessica Manuele, Assistant Public Defender  
Jane McNeill, Assistant Public Defender  
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Sixth Judicial Circuit, Pinellas County  
14250 49th Street North  
Clearwater, Florida 33762

I N D E X

Page

Ruling..... 13

P R O C E E D I N G S

1 THE COURT: So we can do Jonchuck.

2 Ms. Manuele for the defense; Mr. Bolan and  
3 Mr. Ellis for the State.

4 It's the State's --

5 MS. MANUELE: Do we need a court reporter?

6 THE COURT: Not anymore?

7 MS. MANUELE: Oh, that's right.

8 THE COURT: So it's the State's motion to  
9 redepose the defense experts. Is that what it is?

10 MR. ELLIS: Yes, Judge.

11 THE COURT: Okay. And why do you need to  
12 redepose them?

13 MR. ELLIS: Judge, we deposed those defense  
14 experts. And then on September 14th, which is  
15 subsequent to deposing those experts, we received the  
16 attorney-client file between the defendant and  
17 Attorney Torres. There was some emails that have  
18 been sent by the defendant to Ms. Torres, a couple of  
19 them. One was four hours beforehand. One was an  
20 hour and a --

21 THE COURT: That's the Tampa lawyer, right?

22 MR. ELLIS: Correct.

23 THE COURT: Okay.

24 MR. ELLIS: And one was an hour and a half  
25

1 before the murder. They didn't seem to be psychotic  
2 in any nature. We did not have a chance to ask the  
3 experts about those emails because we didn't have  
4 them. I'm not even sure they even knew about them  
5 because they didn't appear in their reports or they  
6 didn't mention them in depositions.

7 We want to be able to question to see if that  
8 changes their opinion, and, if not, why doesn't it  
9 change their opinion.

10 THE COURT: Okay.

11 MR. ELLIS: So it shouldn't be a very lengthy  
12 deposition of the experts. But under the rule, as  
13 you know, we've got to ask permission to do so.

14 THE COURT: Okay. How many experts are you  
15 wanting to redepose?

16 MR. ELLIS: All three of their experts.

17 THE COURT: Okay. Do you want to be heard,  
18 Ms. Manuele?

19 MS. MANUELE: Yes, Judge.

20 THE COURT: Good morning, Mr. Williams.

21 MR. WILLIAMS: Good morning, Judge.

22 MS. MANUELE: Good morning, Judge.

23 So I don't think that this is ripe at this time.  
24 That's the issue. Under the rules, we are already  
25 under an obligation that if their testimony changes

1 in a material way, we have to let the State know as  
2 is they are with any of their witnesses. So  
3 certainly when our experts review that material, if  
4 it changes their opinion in any way, we will let the  
5 State know. At that time it may be appropriate for  
6 them to ask to come in and take a deposition again.  
7 But at this point, there's no indication that it's  
8 changed their testimony.

9 And so certainly we are under -- discovery is an  
10 ongoing process. And so presumably, every time  
11 there's an additional discovery filed between either  
12 side, we have an obligation to file additional  
13 discovery. Once we do, that doesn't mean we start  
14 re-deposing all the witnesses.

15 THE COURT: I understand.

16 MS. MANUELE: The rule says that we are on  
17 notice to put -- to let them know if there's a  
18 material change in their prior deposition testimony.  
19 And so certainly we will do that if there -- if that  
20 occurs.

21 THE COURT: How long have you had the emails?

22 MR. ELLIS: Excuse me, Judge?

23 THE COURT: I asked Ms. Manuele how long their  
24 office had had the emails.

25 MS. MANUELE: We decided to use the emails the

1 same time we disclosed them to the State. I believe  
2 within a day or two, we decided finally as a team  
3 that we were going to use the emails, disclosed them  
4 to the State, disclosed them to our experts after, in  
5 fact. So we haven't even had any conversation -- I  
6 mean --

7 THE COURT: Well, aren't they entitled to  
8 redepose the experts on that narrow issue as to, hey,  
9 does this make a difference or doesn't it and why?

10 MS. MANUELE: No, Judge. The rule was just  
11 changed. I believe it was changed I believe it was  
12 January of 2018, 3.220.

13 MS. MCNEILL: 2019. It's just effective 2018.

14 MS. MANUELE: Okay. And --

15 THE COURT: Do you have it there?

16 MS. MANUELE: -- actually, Ms. McNeil would be  
17 better --

18 THE COURT: Good morning, Ms. McNeil.

19 MS. MANUELE: -- being on the committee for --

20 MS. MCNEILL: Good morning, Your Honor.

21 MS. MANUELE: -- on that with the rules.

22 MS. MCNEILL: The Florida Supreme Court --

23 THE COURT: Okay. 3.220-what?

24 MS. MCNEILL: It's not going to be --

25 THE COURT: I know it's not.

1 MS. MCNEILL: -- in your rule book.

2 THE COURT: But I just wanted to --

3 MS. MCNEILL: Okay. But it's under 3.220(j).

4 THE COURT: Okay.

5 MS. MCNEILL: Under the continuing duty to  
6 disclose.

7 THE COURT: Okay. Got it.

8 MS. MCNEILL: Effective January 1st of 2019, (j)  
9 is going to be amended. And that was approved by the  
10 Florida Supreme Court in August with a reissued  
11 opinion on October 4th, I believe it was.

12 But the rule is now going to say that in  
13 response to a referral that was made to the Rules of  
14 Criminal Procedure Committee, there was a concern  
15 that the scenario that happened in the case of Scipio  
16 v. State which is 928 So.2d 1138, the Florida Supreme  
17 Court was concerned in that case about the ongoing  
18 discovery obligation and noted that there really  
19 wasn't anything in the rules to directly address the  
20 ongoing discovery issue specifically as it related to  
21 the set of circumstances that happened in Scipio.

22 So in response to that, there was a referral  
23 made to the committee. And the committee submitted  
24 to the Court and the Court approved language that  
25 says that the duty -- under the continuing duty to

1 disclose, it includes additional recorded or  
2 unrecorded statements of any person disclosed under  
3 the subdivisions of the rule that materially alter a  
4 written or recorded statement previously provided.

5 So certainly with Scipio being addressed directly in  
6 the Rule of Criminal Procedure, the defense is under  
7 an obligation, as is the State, to disclose anything  
8 that changes with regards to our witnesses.

9 So if and when we call -- when we speak to our  
10 doctors and if our doctors say based upon those  
11 emails I think now this, which may be different  
12 than -- if it is different than what they had  
13 previously said about the case, then we are certainly  
14 under an obligation to put the State on notice of  
15 that and provide an additional discovery document  
16 saying this is how the additional information has  
17 impacted what our witness is saying. Just as the  
18 State is under an obligation to provide that  
19 information to us should their experts have any  
20 difference of opinion.

21 As this Court well knows, in the course of  
22 discovery in the case, I mean, we're getting  
23 discovery up until the last minute oftentimes in a  
24 trial. And the provision of additional discovery  
25 does not certainly require or entitle the party to

1 redepose a witness. If there is something in the  
2 discovery that we think may warrant an additional  
3 deposition or redeposition on that narrow issue, then  
4 certainly we bring it before the Court.

5 But until and unless we provide the State with  
6 something that says, hey, our experts are now -- you  
7 know, have changed their opinion, there is some  
8 material change in what they are saying based upon  
9 the discovery we provided them after the depositions,  
10 we don't believe the issue is ripe.

11 THE COURT: Well, it's 2018, not '19.

12 MS. MCNEILL: It is.

13 THE COURT: And when does this take effect?

14 MS. MCNEILL: This takes effect in 2019. It is  
15 codifying, essentially, what Scipio says. Scipio  
16 says you're under a continuing duty to disclose.  
17 What happened in that case is that, I believe it was  
18 after a deposition, a witness testified at trial in a  
19 way that was inconsistent with the deposition  
20 testimony in some way. And the Supreme Court -- and  
21 the defense had not been put on notice of the change  
22 in testimony. And there was great concern about  
23 that. And the court said that information needs to  
24 be disclosed.

25 THE COURT: So the State just has to do

1 discovery when you put your experts on the stand  
2 concerning these new emails?

3 MS. MCNEILL: No, no. No, no.

4 THE COURT: Okay. Well, what --

5 MS. MCNEILL: We're under an obligation. If our  
6 experts say something in response to the emails that  
7 they've now been provided, if their opinion -- if  
8 their information that they would provide is  
9 materially changed based on the new discovery --

10 THE COURT: And that's your decision. That's  
11 what you're telling me. That's your decision.

12 MS. MCNEILL: -- then we have an ongoing  
13 obligation under discovery 3.220 to disclose to the  
14 State what that is.

15 THE COURT: Mr. Ellis?

16 MR. ELLIS: Judge, they are under that  
17 obligation. It has nothing to do with what we're  
18 asking for here today. They are not the arbitrators  
19 of we can and not be -- can redepose is for good  
20 cause.

21 Under Florida Rule of Criminal Procedure  
22 3.220(h)(1), it says that any case, including  
23 multiple defendants or consolidated cases, no person  
24 shall be deposed more than once except by consent of  
25 the parties or by order of the court issued on good

1 cause shown.

2 Can I approach, Judge? I have some cases.

3 THE COURT: Sure. What do you say to that?

4 MS. MCNEILL: I don't disagree that that's the  
5 law. I'm saying if we tell the State there's  
6 something different now, I think the issue is very  
7 well ripe. And I would not have an objection to the  
8 redeposition.

9 THE COURT: Okay. But this --

10 MS. MCNEILL: But it's not ripe at this point  
11 because there -- we don't know that -- the State has  
12 not been put on notice that there's anything  
13 different.

14 THE COURT: Well, but it says on good cause  
15 shown. And to me, that's surely good cause shown,  
16 those emails.

17 MS. MANUELE: It also doesn't say shall on good  
18 cause. It says that they shall not seek to depose  
19 more than once unless --

20 THE COURT: Shall be deposed --

21 MS. MANUELE: -- the Court makes a  
22 determination, not that the Court must allow it --

23 THE COURT: Well, I understand that.

24 MS. MANUELE: -- for any --

25 THE COURT: But what would preclude me from

1 making a finding that those emails are substantial in  
2 the big picture as to whether he's NGRI or not? I  
3 mean, I can easily see why they would want to  
4 redepose your experts concerning those emails.

5 MS. MANUELE: And we're not saying that under no  
6 circumstances should they get to. What we're saying  
7 is it's not ripe right now.

8 THE COURT: Why?

9 MS. MANUELE: We have to -- because there is no  
10 reason to believe that it would change their  
11 testimony or their opinion at all.

12 MR. ELLIS: And we should be able to ask them  
13 why not then.

14 THE COURT: Yeah. I don't see what would  
15 preclude me from ordering a redeposition of your  
16 sanity experts considering that issue.

17 Motion granted.

18 MS. MANUELE: So then likewise, are we -- I  
19 guess to redepose the State's doctors on that issue  
20 as well?

21 THE COURT: You're not asking me that. I mean,  
22 that's not --

23 MS. MANUELE: We're orally moving at this time.

24 MR. ELLIS: Judge, I'm not going to argue that  
25 they can't redepose our doctors on that limited

1 issue. I think that would be -- they should have  
2 filed a motion to do so, but I won't get that  
3 technical with them. And I won't object to that.

4 MS. MANUELE: And we do have -- if we can get  
5 another motion date for actually about a week and a  
6 half. There are a couple of other motions we do --  
7 we would like to file. So maybe two weeks out or  
8 something at this --

9 THE COURT: Okay. So what are they?

10 MS. MANUELE: While we're all here.

11 THE COURT: What motions?

12 MS. MANUELE: Motion to compel.

13 THE COURT: So it would take --

14 MS. MANUELE: So I don't think --

15 THE COURT: -- five minutes?

16 MS. MANUELE: -- they'll be lengthy. Correct.

17 THE COURT: Okay.

18 MS. MANUELE: Just a date when everyone is  
19 available.

20 THE COURT: Is there a day? You could pick your  
21 day. I mean, it doesn't matter.

22 MR. ELLIS: I'm sorry. I didn't bring a  
23 calendar so I'm trying to --

24 MS. MANUELE: November 6th?

25 THE COURT: That's fine with me. That's a

1 Tuesday.

2 MR. ELLIS: Your Honor, I have a trial starting  
3 that day in Division B.

4 THE COURT: Okay.

5 MS. MANUELE: You want to do November 5th?

6 MR. ELLIS: 5th would be better, morning or  
7 afternoon, for me.

8 MR. BOLAN: I think I'm available that day,  
9 Judge.

10 THE COURT: Okay. 2:00.

11 MR. BOLAN: I think I'm available that day,  
12 Judge.

13 THE COURT: What?

14 MR. BOLAN: I think I'm available that day. I  
15 don't have my calendar.

16 THE COURT: Okay. November 5th at 2:00.

17 Do I need to start monthly status conferences?

18 MS. MANUELE: Well, I guess -- I mean, last time  
19 we did that, I -- the issue that --

20 THE COURT: Well, I --

21 MS. MANUELE: -- ultimately blew up I did make  
22 everybody aware at all the status conferences. So --

23 THE COURT: Well, I'm asking. I mean, before I  
24 said there's no way I'm continuing the trial. And  
25 then I had to do it in my opinion. So --

1 MS. MANUELE: I mean, I don't think there's any  
2 reason.

3 MR. ELLIS: I don't have any objection --

4 MS. MANUELE: We have our motions.

5 MR. ELLIS: -- to monthly status checks, Judge.

6 THE COURT: Okay.

7 MR. ELLIS: I think it's probably a good idea.  
8 You want to --

9 MS. MANUELE: Well, we have one now.

10 MR. ELLIS: November 5th is the status check  
11 date?

12 MS. MANUELE: And then we have our motion  
13 hearing mid-December already. So do we want another  
14 status check?

15 THE COURT: All right. We can do it then.

16 MR. ELLIS: Okay.

17 THE COURT: I don't think we need one before  
18 that.

19 Okay. Anything else I need to do on -- and  
20 you're waiving his presence?

21 MS. MANUELE: We did file some additional  
22 motions.

23 THE COURT: You're waiving his presence?

24 MS. MANUELE: Oh, yes. We are waiving his  
25 presence for today.

1 THE COURT: Okay.

2 MS. MANUELE: We did file some additional  
3 motions that were -- we set the notice of hearing  
4 today. But we didn't officially calendar them. We  
5 just -- since they were -- we had a hearing date  
6 today. So I don't know --

7 THE COURT: Can we hear those --

8 MS. MANUELE: -- if the State is prepared to  
9 hear --

10 THE COURT: -- on the 5th --

11 MS. MANUELE: -- those today or --

12 THE COURT: -- too or --

13 MS. MANUELE: -- if you want to hear them on --

14 THE COURT: -- you want to hear them -- I don't  
15 know what they are.

16 MR. ELLIS: Which motions?

17 MS. MANUELE: The motion to compel the Brady  
18 material from Gamache and the statements of the --

19 MR. ELLIS: Judge, they didn't set a hearing  
20 date, so we were not ready.

21 THE COURT: All right.

22 MS. MANUELE: The ones that we handed to you.

23 MR. ELLIS: We're aware of the motion, but we're  
24 not --

25 THE COURT: Right, okay. So you need to set a

1 hearing date. Do you want it on the 5th for those  
2 two?

3 MS. MANUELE: November 5th is good for all of  
4 this.

5 THE COURT: Okay, at 2:00.

6 MR. ELLIS: And they have new motions to compel  
7 coming to us?

8 THE COURT: I guess because they're not filed,  
9 right?

10 MR. ELLIS: Can we get those sufficiently and on  
11 time to be prepared?

12 THE COURT: Okay. Anything else to do? No?

13 All right. Thank you.

14 (Proceedings concluded.)

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CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA

COUNTY OF PINELLAS

I, Michael Drake, a digital court reporter for the Sixth Judicial Circuit, do hereby certify that I was authorized to and did transcribe the foregoing proceedings and that the transcript is a true and correct record of said proceedings.

DATED this 24th day of January, 2019.

/S Michael Drake  
Michael Drake, CER\*D, CET\*D-513  
Digital Court Reporter  
Sixth Judicial Circuit