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ANGELA B. COREY
STATE ATTORNEY

March 28, 2016

Ms. Debra Billard
Assistant Public Defender
Public Defender's Office
407 North Laura Street
Jacksonville, Florida 32202

Dear Ms. Billard:

On March 23, 2016 at approximately 4:30 p.m. an envelope addressed to me and marked "personal and confidential", was delivered to the State Attorney's Office. In the letter you allege that I committed a crime (a felony) based on your analysis of Florida Statute 406.136, and asked me to respond if I disagreed.

Although we spoke briefly in court the morning of the 24th and I told you I disagreed with your accusation and analysis, and intended to formally respond in writing, your office leaked the letter to the media before I had an opportunity to do so. Your boss, Matt Shirk, who has never handled, much less tried, a death penalty case, even made public comments about your allegations.

Rather than being a truthful, or even arguable claim, your behavior more closely resembles:

> Florida Statute 836.05: Threats; extortion
>
> Whoever either verbally or by written or printed communication, maliciously threatens to accuse another of any crime or offense.....with intent to compel the person so threatened....to do any act or refrain from doing any act against his or her will shall be guilty of a felony of the second degree.....

Let me be perfectly clear, I've been doing this job for nearly 33 years and don't take kindly to your veiled extortion attempt. It's not working. I didn't do anything illegal and based on the facts of the case, your client's criminal history and the law, the State Attorney's Office will continue to seek the death penalty in this case.

In a transparent and inappropriate attempt to coerce a waiver of possible exposure to the death penalty, and having failed once already to substantiate similar scurrilous claims, you and the Office of the Public Defender are now attempting to influence the outcome of the case and prejudice potential jurors by dissemination of false information. This appears to be the first time in recorded history where the 4th Circuit OPD is attempting to force the prosecution to accede to the demands of a third-party member of a deceased victim's family with respect to seeking imposition of the death penalty; presumably, your office would likewise demand satisfaction of the family's wishes in those cases where the family member desires imposition of death rather than waiver, though your office's other clients may not appreciate such a "principled stand."

This is the second time you have personally accused me of committing a crime in this case because I didn't agree to waive the death penalty. The first time, you filed a motion and falsely alleged I committed a misdemeanor. You also accused me of unethical and immoral conduct and asked Judge Tatiana Salvador to reprimand me.

I would assume that after the hearing on 3/21/6 in which Judge Tatiana Salvador denied your bogus motion and found that the State and I didn't do anything wrong, you would have come to your senses and decided to focus on representing your client and not on personal attacks against me or the State Attorney's Office. The fact you represent someone who is facing the death penalty doesn't allow you to disregard the rules of professionalism and civility.

I disagree with your comments about what happened in this case and your analysis of the statute in question. I didn't do anything criminally, ethically or morally wrong. Let me focus at this time on your analysis.

In a footnote to your letter, you acknowledge that Section 406.136, Florida Statutes, does not apply in criminal proceedings. The term "criminal proceedings" is not defined in the statute. You choose, however, to define the term "criminal proceedings" narrowly to include only in-court proceedings where you and your client are present. You claim to rely on both the plain language of the statute and the staff analysis.

You are mistaken when you claim that the term "criminal proceedings" only applies to criminal court proceedings where you and your client are present. This is true for several reasons.

First, if the term "criminal proceedings" was limited to court proceedings where evidence is offered, the legislature would have used the term "judicial proceedings" not criminal proceedings. *See* Palm Beach Newspapers v. Burk, 504 So.2d 378, 384 (Fla. 1987)(describing judicial proceedings are those in which there is a judge present and rulings or adjudications are made by a judicial authority).

Second, while the staff analyst does describe this public records exemption statute as one that does not apply to materials submitted as part of a criminal proceeding, the statute actually has no such limiting language. [1] It is to the language of the statute that one must look, not the legislative history. Florida Department of Revenue v. Florida Municipal Power Agency, 789 So.2d 320, 324 (Fla. 2001)(Legislative history cannot be used to change the plain and clear language of a statute).

Finally, this narrow interpretation is inconsistent with the way the term is typically used in case law. [2] For instance, in James v. State, 58 So.3d 891 (Fla. 1st DCA 2011), the court noted that a criminal indictment returned by the grand jury marks the beginning of a formal ***criminal proceeding*** for

[1] Even the Staff Analyst who prepared the bill analysis noted that "This document does not reflect the intent or official position of the bill sponsor or House of Representatives." Nothing in the statute limits the exemption of this statute's proscriptions to materials submitted into evidence during judicial proceedings. (Attached)

[2] The Florida Supreme Court has also explained that a **collateral criminal proceeding** includes a motion for post-conviction relief and an appeal thereof. Hall v. State, 752 So.2d 575, 578 (Fla. 2000). This decision undermines your interpretation of the statute that the term "criminal proceedings" means only "in court" proceedings where materials are introduced into evidence.

Sixth Amendment purposes. In Bretherick v. State, 135 So.3d 337, 344 (Fla. 5th DCA 2014)(Associate Judge Shumann concurring), *affirmed* Bretherick v. State, 170 So.3d 766 (Fla. 2015), Judge Shumann noted that the earliest stages of **criminal proceedings** are defined to include arrest, detention, filing of charges, and prosecution." In Levine v. Taylor, 932 So.2d 1292, 1293 (Fla. 2d DCA 2006), a malicious prosecution case, the Court observed that the Plaintiff's "***criminal proceeding***" commenced with his arrest at a city council meeting.

In Sixth Amendment jurisprudence from the United States Supreme Court, the Court has consistently described the initiation of adversary "**criminal proceedings**" as ones that include formal charge, preliminary hearing, indictment, information, or arraignment. Missouri v. Frye, 132 S.Ct. 1399, 1405 (2012) (setting forth that the critical stages of criminal proceedings include arraignments, post-indictment interrogations, post-indictment lineups, and the entry of a guilty plea); Montejo v. Louisiana, 556 U.S. 778, 786 (2009) (noting the Sixth Amendment guarantees a defendant the right to have counsel present at all critical stages of the ***criminal proceedings*** and observing that post-indictment interrogation is one such stage); Texas v. Cobb, 532 U.S. 162, 167-168 (2001); McNeil v. Wisconsin, 501 U.S. 171, 175 (1991). *See also* Kaley v. United States, 134 S.Ct. 1090, 1098 (2014)(describing the grand jury's finding of probable cause that a crime was committed as an act that, *inter alia*, commences a **criminal proceeding**).

Section 406.136 does not preclude a prosecutor, in the course of a criminal proceeding, from allowing a family member or witness to view a photograph or video, or listen to an audio, depicting or recording the killing of a person. This is so because the statute, by its plain language, specifically exempts criminal proceedings from its proscriptions.

According to your mistaken analysis, Ch. 403.136 would prohibit any prosecutor from preparing a witness for testimony or discussing a particular type of evidence absent a court order. If your theory was correct, the police could never show a witness a photo or video depicting a killing in order to identify the suspect because the police would have to wait until the suspect was arrested based on other evidence, and then it could only be done in front of the judge, the suspect and the defense attorney. Such a proposition defies all logic and common sense!

Such a construction is facially inconsistent with Article 1, Section 4 of the Florida Constitution and the other statutory obligations contained in (for example) Chapters 27.0065, 27.02, and 27.04, Florida Statutes. Under your construction, even counsel for a defendant would not be permitted to review the video with defendant himself absent a court order. Additionally, your analysis would prohibit you or any other defense attorney from showing a video or photo depicting the murder or deceased victim to a hired defense expert. This would seem to conflict with Article 1, Section 16 of the Florida Constitution and the Sixth Amendment to the United States Constitution.

As a prosecutor I have a greater obligation than you do in any case. I must do everything in my power to make sure your client receives a fair trial. That means avoiding a situation where a witness or family member is seeing a photo or video for the first time at trial and having a public emotional reaction in front of the jury. In such a case, the defense attorney would move for a mistrial and the trial judge would ask me why I had not shown the video or photo prior to the trial beginning.

In this case you've filed other frivolous motions, asking the court to take judicial notice of what the Pope said about the death penalty and how the Victim's mother feels about the death penalty. As I previously mentioned, and the Court agreed, such matters are irrelevant and inadmissible in court. Given the judge's rulings, I must assume that you are continuing these unwarranted and unsupported personal attacks solely to get more publicity for your anti-death penalty beliefs and to litigate this case in the media rather than in a court of law.

In conclusion, I hope we can focus on trying this case and look forward to doing so.

Bernie de la Rionda
Assistant State Attorney
Sr. Managing & Homicide Director