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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

CHARLES ADELSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

CASE NO.: 1D2024-0004

LT case no. 2016-CF-3036

STATE'S RESPONSE TO APPELLANT'S MOTION TO RELINQUISH JURISDICTION TO THE TRIAL COURT

Charles Adelson has filed a motion to relinquish jurisdiction to the trial court in Leon County. While Adelson's motion is unclear as to what specific proceedings he seeks in the trial court below, Adelson appears to be pursuing a claim of ineffective assistance of counsel while his appeal is pending. The State objects to Adelson's motion to relinquish because it is procedurally barred, and Adelson has failed to demonstrate a valid reason to circumvent the normal procedures for postconviction relief under Florida Rule of Criminal Procedure 3.850.

Issues presented

Charles Adelson's motion presents two issues for this Court to consider. First, can Charlie Adelson pursue his conflict-of-interest claim while his direct appeal is pending? Second, if Adelson can pursue his claim during the pendency of this appeal, should this Court exercise its discretion to relinquish jurisdiction to the trial court?

Procedural history

A jury convicted Charles Adelson of first-degree murder, conspiracy to commit murder, and solicitation to commit murder. Attorney Daniel Rashbaum represented Appellant Adelson during his trial.

After Charles Adelson was convicted, his mother, Donna Adelson, was arrested and charged as a co-conspirator in the same murder. After this arrest, Rashbaum represented Donna Adelson in her case. Rashbaum told the trial court that Charles Adelson had waived any conflict of interest that might arise from Rashbaum representing both Charles and Donna. But on the eve of Donna Adelson's murder trial, Charles Adelson rescinded his waiver of conflict of interest. This led Rashbaum to remove himself as Donna Adelson's attorney in her murder trial.

Now, Charles Adelson claims that Rashbaum's representation of Donna

Adelson "infected appellant [Charles] Adelson's trial." (Mot. to Relinquish at 5.) According to Charles Adelson, his case should be relinquished to the trial court for some type of hearing regarding Rashbaum's potential conflict of interest. Adelson relies primarily on *State v. Meneses*, 392 So. 2d 905, 907 (Fla. 1981), which said that appellate courts have the discretion to relinquish jurisdiction to a trial court so that a defendant may pursue a 3.850 claim.

The State opposes this motion and asks this Court to make Adelson follow the normal route of pursuing a 3.850 ineffective assistance of counsel claim.

Adelson's conflict of interest claim should be handled as a postconviction claim of ineffective assistance of counsel

Adelson's motion fails to explain what he would accomplish by having his case returned to the trial court. Adelson does not allege that a hearing is necessary to establish a claim cognizable in this direct appeal. To further the confusion, Adelson's motion does not state that he is moving under any rule of criminal procedure. Instead, Adelson simply quotes old case law where appellate courts have relinquished jurisdiction for a defendant to pursue a claim under Florida Rule of Criminal Procedure 3.850. The only plausible 3.850 claim that Adelson could make based on Rashbaum's conflict of interest is an ineffective assistance

of counsel claim. The best procedure for handling such a claim is a collateral postconviction proceeding after Adelson's appeal is complete.

Adelson's motion to relinquish fails to satisfy the holding in *Steiger v. State*, which requires and allegation and showing of fundamental error

Adelson's conflict-of-interest argument is no more than a premature claim of ineffective assistance of counsel. While Adelson relies on *Meneses* for the proposition that appellate courts may relinquish jurisdiction to trial courts so a defendant can pursue a 3.850 claim, the issue in *Meneses* was a *Brady* violation, not ineffective assistance of counsel. The Supreme Court of Florida's decision in *Steiger v. State* casts doubt on whether Adelson can still rely on *Meneses* to obtain a mid-appeal hearing on an ineffective assistance claim.

Forty years after *Meneses* was decided, the *Steiger* Court held that "ineffective assistance of counsel claims may . . . only be raised on direct appeal in the context of a fundamental error argument." The *Steiger* Court also held that a postconviction proceeding is the proper vehicle for ineffective assistance claims under *Strickland v. Washington*, sub: "Ineffective assistance of counsel claims relying upon the less-demanding *Strickland* standard are properly

considered upon the filing of a legally sufficient postconviction motion in the trial court." *Steiger v. State*, 328 So. 3d 926, 930 (Fla. 2021). At a minimum, *Steiger* narrows the holding in *Meneses* by severely limiting the ineffective assistance of counsel claims that may be raised on direct appeal.

Adelson's motion to relinquish fails to meet the requirements of *Steiger* because the motion does not allege fundamental error. To establish fundamental error, Adelson must demonstrate an error that "reach[ed] down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." *Id.* at 930–31 (quoting *F.B. v. State*, 852 So. 2d 226, 229 (Fla. 2003) (quoting *Brown v. State*, 124 So. 2d 481, 484 (Fla. 1960)). Thus, if Adelson wishes to bring an ineffective assistance of counsel claim on direct appeal, he must allege and demonstrate that Rashbaum's conflict of interest caused the jury to convict Charles Adelson rather than acquit him.

Adelson's motion to relinquish fails to allege or demonstrate that Rashbaum's conflict changed the jury's verdict. Instead, the motion merely claims that "Rashbaum's conflict of interest . . . infected

Appellant Adelson's trial." (Mot. to Relinquish at 5). The Florida Supreme Court's decision in *Steiger* makes clear that this allegation of "infection" is insufficient to warrant the relief Adelson seeks under *Meneses*.

At best, Adelson's claim that Rashbaum's conflict infected Charles Adelson's trial alleges a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 694 (1984). The *Steiger* decision requires Adelson to raise this *Strickland* claim in a collateral postconviction motion.

This Court should refuse to exercise discretion to relinquish jurisdiction

The *Meneses* Court made clear that an appellate court's authority to relinquish jurisdiction is discretionary. *Meneses* held that "[t]he filing in the appellate court of a request to relinquish jurisdiction, however, does not require an appellate court to automatically relinquish jurisdiction to the trial court." *Meneses*, 392 So. 2d at 907. The *Meneses* Court also noted that "the appellate court, before relinquishing jurisdiction, may evaluate the grounds for the motion to vacate to determine whether they are frivolous and may decide not to relinquish on this basis." Adelson's grounds are speculative and therefore frivolous.

Even if this Court could relinquish jurisdiction under *Meneses*, Adelson has given this Court no reason to do so. Adelson's motion provides this Court with no blueprint for how his case would proceed if placed back in the trial court. At a minimum, Adelson's motion should have demonstrated two things: First, that further proceedings in the trial court will reveal that Rashbaum had an *actual* conflict of interest. Second, Adelson should explain why his conflict-of-interest claim would not be better addressed in a postconviction motion.

Because Adelson did not raise his conflict of interest claim in the trial court, Adelson cannot raise Rashbaum's conflict of interest on direct appeal unless Rashbaum had an actual conflict of interest: "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an *actual* conflict of interest adversely affected his lawyer's performance." *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980) (emphasis supplied). However, "an actual conflict of interest" means "precisely a conflict that affected counsel's performance—as opposed to a mere theoretical division of loyalties." *Mickens v. Taylor,* 535 U.S. 162, 171 (2002) (quoting *Cuyler*, 446 U.S. at 349–50).[1]

Adelson's motion is insufficient because it cites the *possibility* of a conflict

[1] The prototypical example of an actual conflict is where a lawyer jointly represents two defendants in the same trial that blame one another for a crime.

of interest but does not hint at how that conflict prejudiced the outcome of his case. But "the possibility of a conflict is insufficient to impugn a criminal conviction." *Cuyler* , 446 U.S. at 350. The Supreme Court explained the reason for this and how even a trial court's awareness of a potential conflict is insufficient for a Sixth Amendment violation: "The trial court's awareness of a potential conflict neither renders it more likely that counsel's performance was significantly affected nor in any other way renders the verdict unreliable." *Mickens*, 535 U.S. at 173. In fact, a potential conflict can work to a defendant's advantage, by ensuring that a jointly represented codefendant does not cooperate with law enforcement. *Dixon v. State*, 758 So. 2d 1278, 1281 (Fla. 3d DCA 2000). Such joint representation may provide "[a] common defense [that] . . . gives strength against a common attack.'" *Cuyler*, 446 U.S. at 348 (quoting *Glasser v. United States*, 315 U.S. 60 (1942) (Frankfruter, J., dissenting)).

The facts alleged in Adelson's motion are insufficient to even support an ineffective assistance of counsel claim: "until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance." *Cuyler*, 446 U.S. at 350. The Florida Supreme Court in *State v. Alexis* held that a "[s]howing an effect on counsel's performance is essential to showing an actual conflict of interest; a

theoretical conflict is almost always present in cases of multiple representation." 180 So. 3d 929, 936–37 (Fla. 2015). At best, Adelson alleges a theoretical conflict of interest that would be better explored through the normal postconviction claim process. This would allow the lower court to hold a hearing on all of Adelson's postconviction claims at once.

The record contained in Adelson's own appendix shows why Adelson's conflict argument is premature, and therefore his motion should be denied: Both Charles and Donna Adelson waived any conflict arising from Rashbaum representing both codefendants during separate trials. But before jury selection in Donna Adelson's case, Charles Adelson revoked his waiver of the potential conflict. During that jury selection, Attorney Laurel Niles, Charles Adelson's appellate attorney, stated that when they received a subpoena for Charles Adelson's trial testimony, they spoke to him about invoking his rights. (App. at 77-78).

Niles recognized that a potential conflict would only arise if Charles Adelson took the stand as a State witness and faced cross-examination from Donna Adelson's attorneys—particularly Rashbaum. Niles stated that "the potential for conflict was always there, but the conflict arose - - it's going to arise on the witness stand. It

has not quite yet arisen, but potential for conflict is there." (App. at 78). Thus, even during the hearing which resulted in Attorney Rashbaum's removal from Donna Adelson's case, Charles Adelson recognized that there was a *potential* for a conflict if he testified but Charles Adelson did not assert that there was an *actual* conflict.

In his motion to relinquish jurisdiction, Charles Adelson appears to rely on the fact that both the State and Rashbaum listed Donna Adelson as a witness for Charles Adelson's trial. Rashbaum, however, removed Donna from the witness list before Charles Adelson's trial began. Charles Adelson's motion speculates "that Donna Adelson's removal from the witness list was done in order to protect Donna Adelson's interest (i.e., in not being interviewed by the State) – and against Charles Adelson's interest (i.e., a witness that could have corroborated Charles Adelson's testimony was not called by Mr. Rashbaum." (Mot. to Relinquish at 6). This speculative claim is a poor reason to put this appeal on hold and send Charles Adelson's case back to the trial court.

Charles Adelson cites an October 12, 2023, motion hearing where Attorney Marissel Descalzo appeared on behalf of Donna

Adelson, who was then a potential witness in Charles Adelson's trial alongside her husband, Harvey Adelson. Attorney Descalzo had concerns about the State seeking to interview Donna and Harvey Adelson. Rashbaum, then representing Charles Adelson, explained to the court that he had included Donna Adelson on his witness list after the State had sought to interview her. Attorney Rashbaum believed that the State had sought to interview Donna as an "end [run] around the discovery rule." (App. at 39). Rashbaum complained that the State had years to interview Donna Adelson, but only sought an interview immediately before trial. Rashbaum stated that he would remove Donna from the witness list if she was not going to be interviewed, but Rashbaum added that he listed Donna as a witness "as a protection for myself to put them on there." (App. at 40). The Court asked if anyone was planning on calling Donna Adelson, and Rashbaum explained that he did not intend on calling Donna Adelson. Rashbaum further accused the State of gamesmanship, claiming that the State did not intend on calling Donna, but instead "they were trying to get an interview now on the eve of trial, frankly, to figure out what my defense is." (App. at 41).

The prosecutor, Ms. Cappleman, responded to Rashbaum's accusations, stating that Donna and Harvey Adelson had never made themselves available for an interview. (App. at 41). Cappleman said that she reached out to the Adelsons to "nail down the fact that they were going to invoke [their 5th Amendment right against self-incrimination]." Donna Adelson responded that she was going to invoke the Fifth for pretrial purposes, but not for trial. This response led Cappleman to believe that the Adelsons were going to testify for the defense. (App. at 42). Cappleman stated that she was seeking to interview Donna and Harvey Adelson prior to trial to see if they were going to invoke, but she did not know if she would call them because they never made a statement. (App. at 42). Thereafter, the parties stipulated that neither the State nor defense would call Donna or Harvey Adelson as a witness. (App. at 45-46).

Thus, the record shows that Rashbaum did not remove Donna Adelson from the witness list to protect her interest and thereby undermine Charles Adelson's defense. In fact, Attorney Rashbaum had never intended on calling Donna Adelson as a witness. Instead, Rashbaum only listed Donna Adelson as a defense witness when he

learned that the State was intending on interviewing her. Rashbaum believed that the State was attempting to avoid discovery and gain insight into Charles Adelson's defense. These facts fail to show that Attorney Rashbaum changed his defense strategy to benefit Donna Adelson to the detriment of Charles Adelson. And even if Rashbaum had intended on calling Donna Adelson as a witness there would only be a conflict if Donna Adelson's defense was detrimental to Charles Adelson's case. There is no evidence of that.

Rashbaum's representation of both Donna and Charles Adelson was no more conflicted than the dual representation at issue in *State v. Alexis*, 180 So. 3d 929 (Fla. 2015). Alexis and codefendant Guerrier were represented by the same attorney at trial. The victim and another witness testified that Alexis or Guerrier had pulled the victim out of a car and pointed a gun at him. Guerrier had made a statement at trial that both he and Alexis had asked the victim to get out of the car which was occupied by a female friend of theirs and Alexis had pulled him out of the car. *Id.* at 931. Both defendants testified at trial that they had jointly pulled the victim out of the car but neither displayed a gun during the encounter. *Id.* at 932. The State had argued

that "since the codefendants' respective defenses were compatible rather than conflicting—they both admitted pulling the victim from the car, they both denied being armed, and neither claimed the other was armed—the dual representation did not create a conflict of interest between Respondent and his attorney." *Id.* at 933. The Florida Supreme Court agreed there was no actual conflict of interest.

Conclusion

There is no reason to delay this appeal any longer. If Mr. Adelson wants to immediately pursue his postconviction remedies, Charles Adelson should dismiss this direct appeal. If Adelson does not immediately want to pursue the postconviction claims, he should continue with this direct appeal and file his postconviction motion when this appeal concludes. The State asks this Court to deny Adelson's motion to relinquish jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this response has been served on the following recipients through the Florida Courts E-Filing Portal on October 18, 2024:

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