

Case No. 21-53

**IN THE
SUPREME COURT OF THE UNITED STATES**

JAMES DALE HOLCOMBE,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

**RESPONSE TO PETITION FOR WRIT OF
CERTIORARI TO THE FLORIDA FIFTH
DISTRICT COURT OF APPEAL**

APPENDIX

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA
Carolyn M. Snurkowski*
Associate Deputy Attorney General
Pamela J. Koller, Assistant Attorney General
Assistant Attorney General
PL-01 The Capitol
Tallahassee, Florida 32399
Carolyn.Snurkowski@myfloridalegal.com
crimappdab@myfloridalegal.com
Telephone: (850)414-3300

COUNSEL FOR RESPONDENT
*Counsel of Record

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Excerpt from transcript of January 8, 2018, pre-trial hearing, page 5:

TRIAL COURT: So if you would, not the lawyers, but are you the four defendants?

(Inaudible response).

TRIAL COURT: Would you please raise your right hand and allow the clerk to administer the appropriate oath.

THE CLERK: Do you and each of you solemnly swear or affirm to tell the truth, the whole truth, and nothing by the truth so help you God?

UNIDENTIFIED MALE SPEAKER: Yes.

THE CLERK: Thank you,

TRIAL COURT: Did y'all answer out loud?

UNIDENTIFIABLE MALE SPEAKERS: Yes, [and]... I do.

Excerpt from transcript of January 8, 2018, pre-trial hearing, pages 7-8:

TRIAL COURT: All right. Do you understand why we're here? The prosecutor does not really care if one attorney represents all four defendants, but she's right in that we have to make sure y'all understand and agree that it's okay to have one attorney. That's the reason for today's hearing, sort of - and please forgive me for sounding politically incorrect, I've done...I was an Assistant State Attorney back in the late '70's, early '80's; then I was a defense attorney; and then I became a judge in 2000 - started January 2003, but I remember when I would represent co-defendants or a co-defendant I would tell the young man, usually a young man, and usually a violent crime, you can cover your ass or you can cover your friend's ass, but you can't cover both. Make up your mind who's more important.

Now every once in a while there's an occasion where I could possibly represent more than one defendant, but I always - and there's a rule, and I couldn't find it, that provides - where people understand and recognize potential conflict. Did you - and I didn't know if you had something signed by them, if you wanted to file it.

Excerpt from transcript of January 8, 2018, pre-trial hearing, pages 8-9:

MR. DELGADO: Yeah. Judge, if I could just put something on the record. When they met - - each of them met with me individually and then signed a waiver of conflict are [sic] the Rules Regulating the Florida Bar where we explain to them it might be better for each of them to have independent counsel, that there may become a time where what's best for one is not for the other and that would cause a conflict of interest. After having reviewed that two-page document they each independently signed it.

And then in anticipation - when this issue kind of first came up, I advised each of them to consult with an independent attorney who I did not arrange for, I did not pay for. Each of them met with an independent attorney, had whatever conversation they had, and then affirmed to me that they wished me to continue representing them and did not believe that was a conflict. So each of the people here would affirm that what I've said is correct without going into the details of our conversation.

And, again, I've talked with each of them individually and collectively and they would all waive any conflict and wish to proceed together.

What's happening is the State - the State has made some offers about resolving the cases, and I've explained to them that, you know, as long as they testify truthfully that shouldn't really be a problem. It would be if one wants to throw the other under the bus or vice versa. These are father and son plus two life-long friends. So it's not your typical case where you have - and I kind of explained to them, I said think of Pablo Escobar where he wants to control his lieutenants and what they do, you know, that's not my view of the facts of this case, but that's the example I gave them.

Excerpt from transcript of January 8, 2018, pre-trial hearing, pages 9-10:

TRIAL COURT: Traditionally you don't see this. You got three people that rob a taxicab driver, one's got the gun, the other two don't. The first person to flip gets the best deal, especially if they're young. The other two can be held accountable for the guy with the gun. Like the getaway driver of a bank robbery, if something happens inside the bank, the driver gets tagged with it. If there's a murder inside, the driver what I've said is correct without going into the details of our conversation.

Excerpt from transcript of January 8, 2018, pre-trial hearing, pages 10-11:

TRIAL COURT: Well, the deal is I don't have a problem with this, but I just want to make sure, and the prosecution doesn't want something to come back in the future, nor do I, like if one of you gets a better deal than the other one, I don't want to hear somebody say, well, how'd he get a better deal than me, or -- I don't even know what the deal is. I don't even know what's going on. I don't remember your case other than we just need to -- do you want to file that with the clerk?

MR. DELGADO: No. I was just saying if the Court wants to make an *in camera* inspection to confirm --

TRIAL COURT: Can I look at it?

MR. DELGADO: Yes, sir.

THE COURT: And have you shown it to the prosecutor?

MR. DELGADO: No. I actually don't really

—

MS. SAMMON [prosecutor]: The last -- I'm sorry to interrupt. The last time we were here Mr. Damore provided a copy to Your

Honor and to myself, and we reviewed it. I think after that point we felt that it was necessary to put it on the record as opposed to filing that in the court file.

TRIAL COURT: That's right, we did.

Excerpt from transcript of January 8, 2018, pre-trial hearing, pages 11-15:

TRIAL COURT: Now, do you understand, Mr. Holcombe, for lack of a better term, Senior, I'm going to call you Senior, the older Holcombe, do you understand what we're talking about here today?

MR. DALE HOLCOMBE: Yes.

TRIAL COURT: In other words, theoretically, not your son as much as maybe -- because I know how family -- blood is pretty thick, but if Mr --

MR. HOOPER: William Hooper.

TRIAL COURT: -- Hooper says, look -- how old are you?

MR. HOOPER: 25.

THE COURT: You look very young. Said I'm 25, these guys took advantage of me, let me tell you what they did to me, well, that would be a conflict. I mean, Mr. Holcombe took advantage of me, he made me do this, you know, his testimony would be bad for you.

MR. DALE HOLCOMBE: Right.

TRIAL COURT: That would be bad. Well, then, do you agree that it would be awkward to have one attorney represent both of you?

MR. DALE HOLCOMBE: No. I'm fine with the situation we have.

TRIAL COURT: Well, you say you're fine, but if we go to trial and everybody loses and bad things happen, you can't say, you know, I should have never had the same attorney. I don't want it to come back on me saying, Judge, you let me use the same attorney as and -- Mr. Angel?

MR. ANGEL: Uh-huh.

TRIAL COURT: Mr. Angel. I'm in prison, they're not. I got screwed by Delgado and Damore. You can't do that after today.

MR. DALE HOLCOMBE: Oh, I know.

TRIAL COURT: You sure?

MR. DALE HOLCOMBE: I'm absolutely sure.

TRIAL COURT: You understand completely?

MR. DALE HOLCOMBE: Completely.

THE COURT: That if y'all have inconsistent I think this is dangerous territory. This is we're on super thin ice. My gut tells me this is a bad thing to do. I trust Mr. Delgado, and I trust Mr. Damore to dot their Is and cross their Ts. I just want to make sure that you understand and comprehend and internalize there may be a conflict between your three co defendants and you; do you understand that?

MR. DALE HOLCOMBE: I understand that.

TRIAL COURT: And how old are you?

MR. DALE HOLCOMBE: 54.

THE COURT: What's your educational background?

MR. DALE HOLCOMBE: High school.

THE COURT: How about you, sir, do you understand? Same speech goes to you. You're the youngest person here, but you're a grown man. You can vote for President of the United States. You can die for our country, and you can certainly go to a state prison. So once you pass that age of 18 now. Do you understand?

MR. HOOPER: Yes, sir.

TRIAL COURT: So you sure about this?

MR. HOOPER: Yes, sir.

TRIAL COURT: You understand and comprehend it. Now -- and I'm not going to ask you this, but if they're footing the bill for the attorney's fees, that still doesn't mean you have to go along with your attorney. I don't know who's paying the attorneys, I don't know how -- that's none of my business. I don't want to know. But I've had -- I've always worried in the past that, hey, they're paying my attorney's fees, I can't object. They've told me I cannot object. I don't want to hear that at a later time. They paid the bill, they told me I could not object to Mr. Delgado or Mr. Damore representing me. Did that happen?

MR. HOOPER: No, sir.

TRIAL COURT: How about you, Mr. Angell, same - how old are you?

MR. ANGELL: 29. Just turned 29.

TRIAL COURT: So same deal, do you understand my fear?

MR. ANGELL: Yes, sir.

TRIAL COURT: It may be unfounded, but I just don't want anything in the future to come back to me and say one attorney represented us all and he screwed the whole thing up. I got screwed. My father - or my friend's father or whoever got a better deal than me and that's not right. Do you understand?

MR. ANGELL: Yes, sir.

TRIAL COURT: How about you, Mr - I'll call you Holcombe, Junior, for lack of a better term. What's your first name?

MR. JAMES HOLCOMBE: James.

TRIAL COURT: James. Do you understand? How old are you?

MR. JAMES HOLCOMBE: 29 as well.

Excerpt from transcript of January 8, 2018, pre-trial hearing, pages 15-16:

TRIAL COURT: So how are y'all - how did y'all hook up? How do y'all know each other? Can I ask that or not?

MR. DELGADO: Sure. They're -

TRIAL COURT: Well, we obviously know father, son.

MR. DELGADO: They're childhood friends.

TRIAL COURT: Are y'all buddies?

MR. JAMES HOLCOMBE: Yeah. Ever since elementary school.

TRIAL COURT: Okay.

MR. DELGADO: They worked together at a shop where gift cards were being turned in.

Excerpt from transcript of January 8, 2018, pre-trial hearing, pages 16-17:

TRIAL COURT: So understand my fear. So we've looked at the - we've looked at the waiver. We've discussed it with them. You understand - traditionally one defendant flips on the other defendant, whoever gets to the prosecutor first gets the best deal, especially statewide prosecution and drug deals.

MR. DELGADO: And I've explained that what - and we've discussed that if there becomes a conflict I will have to withdraw, they have to - you know, and I'm not going to allow -

TRIAL COURT: You don't get any money back either.

MR. DELGADO: They know that.

TRIAL COURT: That's the deal.

MR. DELGADO: But we've made it very clear to them. I mean, we're not going to - if we perceived a conflict, we would not be here. Based on my understanding and my negotiations with the State, which I know you don't want to get involved in, and our conversations, I feel like this - all these cases are probably going to resolve within a

certain margin of error that we're prepared to accept as a group. And some people may get slightly better or different deals based on their culpability, but collectively we all agree on a current strategy, and I'm not aware of any particular conflict based on our current strategy.

Excerpt from transcript of January 8, 2018, pre-trial hearing, pages 16-17:

TRIAL COURT: It puts me in an awkward spot and it puts the prosecutor in an awkward spot. It does. I mean, it's just scary territory. But, again, it's not - it's uncommon, but not illegal or unethical as long as you've signed an appropriate waiver and discussed it. Do you have any questions of me, Mr. Holcombe, Senior?

MR. DALE HOLCOMBE: No.

TRIAL COURT: Mr. Hooper?

MR. HOOPER: No, sir.

THE COURT: Mr. Angell?

MR. ANGELL: No, sir.

TRIAL COURT: Mr. Holcombe, Junior, for lack of a better term?

MR. JAMES HOLCOMBE: No, sir.

THE COURT: And for the record when I say senior, I'm talking to Dale Chester.

MR. DALE HOLCOMBE: Correct.

THE COURT: When I'm talking to what I call Junior, it's really James Dale, right?

MR. JAMES HOLCOMBE: Yes.

THE COURT: That's your name. Any questions you'd like me to - did I miss anything?

MS. SAMMON: I don't think so, Your Honor. I think we got the -

THE COURT: Tell me if I did.

MS. SAMMON: I think we got everybody agreeing to any waiver.

Excerpt from transcript of January 8, 2018, pre-trial hearing, page 18:

TRIAL COURT: And I appreciate all four of you being here.

MR. DELGADO: And I'm not misrepresenting -

TRIAL COURT: I wanted to look at you.

MR. DELGADO: Right. I mean, like this is kind of consistent with what we've talked about, right? I mean kind of -

TRIAL COURT: Yeah. It's my fault. I wanted to see them eyeball to eyeball -

MR. DELGADO: Oh, I understand.

TRIAL COURT: - face to face.

Excerpt from transcript of January 8, 2018, pre-trial hearing, pages 19-20:

TRIAL COURT: So now it's set for the 23rd....Trial week of February 19th.

MR. DELGADO: We've tri - we're trying to set up four proffers so we can continue?...Is it okay if we continue it?

TRIAL COURT: Why not.

MS. SAMMON: I have no objection to continuing.

TRIAL COURT: Of course not. Granted.

Excerpt from transcript of May 17, 2018, docket sounding, pages 6-8:

MR. Taelman: Black Taelman for the defense, Judge.

MR. GILLESPIE [Prosecutor]: There are four co-defendants. If I could address the lower of the two, that is William Hooper and Matthew Angell....Ms. Sammon, who is the one who is actually handling (indiscernible)...said she's ready for trial on Monday. She's indicated that the plea offer to those two individuals were 13 months' DOC followed by probation. However, she understands that they don't score prison and certainly may do an open plea to the Court if the Court wants to try something else.

TRIAL COURT: Done deal.

Excerpt from transcript of May 17, 2018, docket sounding, pages 9-10,12 :

TRIAL COURT: Okay. Now, what about James and Dale?

MR. GILLESPIE: [B]ased upon the charges, they both score...55.5 months. And her recommended sentence to them is basically 60 months in prison followed by probation (inaudible).

MR. TAEELMAN: I just know, Judge, none of these guys have any prior....criminal history.

TRIAL COURT: I'd like to get this over with. This is, like, one of my oldest cases.

MR. TAEELMAN: I understand, Judge. They did just give me discovery....

TRIAL COURT: [I]f I can resolve it by not putting someone in prison, I'll do it....But that would then put Mr. Hooper and Mr. Angell in an awkward spot on having to testify on behalf of the State.

MR. TAEELMAN: That's fine.

TRIAL COURT: Is that going to put y'all in an awkward spot?

MR. Taelman: No. We understand. They've all waived Judge. ...

TRIAL COURT: Let me ask you this question: Do you think you have reasons, statutory reasons for a downward departure on Dale and James?

MR. Taelman: Yes, Judge. Yeah. Especially based on absolutely no criminal history, really.

Excerpt from transcript of May 17, 2018, docket sounding, pages 13-14 :

TRIAL COURT: What do y'all want to do?
What do you want do?

MR. TAELEMAN: Judge, could I have a moment just to chat with my clients?

TRIAL COURT: Absolutely.

MR. TAELEMAN: Run over everything?

TRIAL COURT: Take as much time....Because I'd like to resolve them....Why are we - this thing has been dragging on forever now, hasn't it?

MR. GILLESPIE: Yeah. I know that counsel and Ms. Sammon had worked and tried to have some meetings and tried to get this all resolved, but those negotiations broke down.

TRIAL COURT: Could I ask you a question, Mr. Taelman?

MR. TAELEMAN: Yes, sir.

TRIAL COURT: Who are you with?

MR. TAELEMAN: Damore, Delgado, and Romanik....[i]t's just Delgado and Romanik

now....

(A recess was had at 9:45 a.m., and the proceedings resumed at 1:59 p.m.)

Excerpt from transcript of May 17, 2018, docket sounding, pages 17-18:

TRIAL COURT: I believe it was represented to me that Mr. Angell and Mr. Hooper do not score state prison.

MR. TAEELMAN: They do not score, Judge.

TRIAL COURT: And then we have...the Holcombes...[who] do score state prison.

MR. TAEELMAN: They do based on being charged with -

TRIAL COURT: First degree felonies.

MR. TAEELMAN: Right. Two first degree felonies apiece.

TRIAL COURT: Do you know what they score?...

MR. GILLESPIE: 55.5 months.

Excerpt from transcript of May 17, 2018, docket sounding, pages 19-20,22-26:

TRIAL COURT: I was trying to help y'all resolve it....because it's been pending too long....

MR. TAELEMAN: Judge, here's where we're at. Unfortunately, because both the Holcombes are charged with first degree felonies, there's not going to be a withhold of adjudication in their future....nor a reduction. Neither are willing to put themselves through that. So these two gentlemen, Judge, have - I've talked to them all about it. We've talked about the downside. They know the risks. They know the...you know, sometimes trading an uncertainty for a certainty.

TRIAL COURT (speaking to the co-defendants): I'm trying to bend over backwards to figure out a way to keep y'all out of prison. You have no prior felony history. Two of you are easy....That's easy. You don't score. So they can't appeal me. If I don't put you two in prison, the State of Florida can appeal me....So...if you go to trial and lose, you score at state prison. You cannot withhold on a first degree felony....I can't legally. The statute says I cannot

withhold. So if that's your beef, we're going to trial. And if you lose...you score...55 months.....[u]p to 30 years.

I'm not saying I'm definitely going to put you in prison. I just - I'm stuck, and I can't withhold, even if you...you understand I'm not allowed to withhold? It's just - I would if I could, but I can't.

Same for you, young Mr. Holcombe. Do you understand that?

MR. JAMES HOLCOMBE: I understand.

TRIAL COURT: So do you want to try four, or do you want to try two? ...

MR. TAELEMAN: Mr. Hooper and Mr. Angell, if we're talking a probationary, withhold sentence we can get that done today, Judge. ...

TRIAL COURT: I'm...committing to withholding and no prison sentence.

Excerpt from transcript of May 17, 2018, docket sounding, pages 27-28:

TRIAL COURT: So those two, but I - how about testimony? I want to hear - you know me....

MR. GILLESPIE: Yes sir. We attempted that. We sat down. I wasn't there, but a representative of our office and counsel sat down with four of them and discussed the case with them. But I guess it was relayed back there was a lack of candor and so that kind of ended there. And that's how we ended up where we are now. ...

MR. Taelman: That's semi-accurate, Judge. I think what happened is they got scared early and then clammed up. I mean, that's really - we got through one and a half proffers and that was it, Judge.

Excerpt from transcript of May 17, 2018, docket sounding, pages 29-30,31:

MR. TAEELMAN: And, Judge, as far as the non-prison sentences for Mr. Hooper and Mr. Angell, you know, if it's something that we can work out where it's a non-incarcerative sentence.

TRIAL COURT: I said that.

MR. TAEELMAN: Well, you said non-prison, Judge. And I just want to -

TRIAL COURT: I meant non-incarcerative.
...

MR. TAEELMAN: Thank you, Judge. I just wanted to make that clear for both the gentlemen. ...

TRIAL COURT: So whatever you want to do on two out of four, and we'll pick a jury on two Monday morning.

MR. TAEELMAN: All right, Judge. I think that's what we'd like too.

(A recess was had at 2:12 p.m., and the proceedings continued at 2:47 p.m.)

Excerpt from transcript of May 17, 2018, docket sounding, pages 31-34:

TRIAL COURT: Certainly y'all are entitled to look at whatever information is on that flash drive. And, quite frankly, even though young Mr. Hooper and the other fella, Mr. Angell, are friends and co-defendants, they now have entered a plea.

If your attorney wants to - even though they're clients of your attorney, if he wants to depose them and talk to them under oath further than what I did here today ... they have that right. ...

I'm going to read you the statute that's got my hands tied. ...It's 775.08435, it says: "Notwithstanding the provisions of" -- and it says some other statute - "the court may not withhold adjudication of guilt upon a defendant for any capital, life, or first-degree felony." The statute says that. My hands are tied. Even if I wanted to - to tell you the truth, I wouldn't mind doing it - I can't. ...

So I'm going to grant the continuance. Tell Ms. Sammon I'm sorry.

Excerpt from transcript of July 26, 2018, docket
sounding hearing, page 7:

TRIAL COURT: All right. Now, the other
two codefendants pled, didn't they?

MR. DELGADO: Yes.

TRIAL COURT: Are they testifying?

MS. SAMMON: I haven't decided.

Excerpt from transcript of August 6, 2018, voir dire, pages 7-10:

MR. DELGADO: Judge, I mean, I think we've twice had hearings on this matter, and I think Your Honor inquired of the gentlemen. We gave you a signed waiver that we reviewed. We did that twice.

You know, I understand the State's concern. I assume that the clients would testify truthfully. And, you know, I've heard their testimony now several times. I don't think that I have any, you know, secret weapon that would rely on privileged communications that would be used to their detriment.

I mean, I suppose I could withdraw from representing Mr. Angell and Mr. Hooper, and the Court could appoint counsel for them. Although, I don't know that that cures –

TRIAL COURT: Well, haven't we - we covered this with a - we had a separate–

MR. DELGADO: To be honest, I walked in and, you know, to - you know, I don't know - but the comment about, you know, my bar license and one of my clients makes me a little bit concerned.

I mean, my clients have already –

TRIAL COURT: Wait. Wait. Don't

interrupt.

MR. DELGADO: My clients haven't voiced any concerns. I thought we had a waiver that we've gone over.

You know, I don't know what I can do at this point, you know, or what the remedy would be. ...

TRIAL COURT: Wasn't a waiver filed with the clerk?

MR. DELGADO: If it wasn't filed, it was reviewed *in camera* by the Court, and we have

After the State presented its concerns to the court, the trial court disagreed with the State:

TRIAL COURT: Well, I disagree. I think it can be waived. I think ultimately defendants can - as long as they're adequately advised, they were told exactly what would happen, and they waived it.

And I do remember looking at the waiver. And I remember having this issue when I was a private attorney - not with four of them, but two - where, you know, theoretically they could be testifying against each other. They both wanted to waive it, and we put it in writing. And we made it and had the judge review it.

So I found that the waiver was valid. It

was entered into freely, voluntarily, knowingly, intelligently, with full advice of the consequences.

And we have - please forgive me - we have Mr. Holcombe and Mr. Holcombe here. What's your name? Which one are you?

MR. JAMES HOLCOMBE: Your Honor, my name is James Holcombe.

TRIAL COURT: James Dale?

MR. JAMES HOLCOMBE: James Dale Holcombe.

TRIAL COURT: I'm going to put a Jr. - even though you're not a junior - that way it will help me.

And then we have Dale Chester.

Okay. So I find there's no conflict. I accepted the waiver previously somewhere along the line. I discussed it the other day with Hooper and Angell when they were here in front of me for sentencing, and I continued the sentencing, so I'm ready to go.

Excerpt from transcript of October 22, 2018,
sentencing, pages 50-51,57:

MR. JAMES HOLCOMBE: Well, obviously I feel terrible. I mean, I wouldn't want any of my friends to be arrested. I - you know, it's - it's awful. I mean, like Matt, I've known Matthew Angell since Sunday school when we were in, like, elementary. So, you know, I would never wish any harm on these people. They're good people. They're my friends. And, you know, for my father, I feel bad that he's - he's dragged into it.

MR. JAMES HOLCOMBE: Yeah. Among other things, one of the reasons I wanted to go to trial for this case was so that I could potentially adopt or to go back to school. So adoption is a big thing for me because my wife may not be able to have children, but it's not guaranteed....And things like going to school, it's - it would be very difficult to go to school with a conviction so that fueled my desire to go to trial.