

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, CRIMINAL DIVISION
IN AND FOR PALM BEACH COUNTY, FLORIDA

DIVISION "X"

CASE NO. 2017CF008722AXX

STATE OF FLORIDA

vs.

SHEILA KEEN WARREN,

Defendant.

**STATE'S OBJECTION TO DEFENDANT'S MOTION TO INCUR COSTS AND
MOTION REQUESTING THE COURT TO RESCIND STATUS AS INDIGENT AND
IMPOSE SANCTIONS**

THE STATE OF FLORIDA, by and through the undersigned Assistant State Attorney, files this Objection to Defendant's Motion to Incur Costs and Motion Requesting the Court: (1) To Rescind Defendant's Status as Indigent under Fla. Stat. 27.52(5), and (2) Impose Sanctions including repayment to JAC for all monies paid to date.

Introduction

The purpose of this Objection and Motion is twofold:

First, the State is requesting this Honorable Court to rescind the status of Defendant Sheila Keen Warren as indigent under Fla. Stat. 27.52(5) where: (1) on October 4, 2017, Defendant knowingly and intentionally falsified her criminal indigent status application by failing to report, under question number 4, "other assets;" and (2) Mr. and Mrs. Warren are considered to be tenants by the entirety, which treats the husband and spouse as a unit and each spouse is considered to own the entire property.

Second, the State requests this Court to impose sanctions to include repayment to JAC for all monies paid to date.

This request is covered by Section 27.52(7), Florida Statutes (2018), which states in pertinent part that:

(a) If the court learns of discrepancies between the application or motion and the actual financial status of the person found to be indigent or indigent for costs, the court shall determine whether the public defender, office of criminal conflict and civil regional counsel, or private attorney shall continue representation or whether the authorization for any other due process services previously authorized shall be revoked. The person may be heard regarding the information learned by the court. If the court, based on the information, determines that the person is not indigent or indigent for costs, the court shall order the public defender, office of criminal conflict and civil regional counsel, or private attorney to discontinue representation and revoke the provision of any other authorized due process services.

(b) If the court has reason to believe that any applicant, through fraud or misrepresentation, was improperly determined to be indigent or indigent for costs, the matter shall be referred to the state attorney. Twenty-five percent of any amount recovered by the state attorney as reasonable value of the services rendered, including fees, charges, and costs paid by the state on the person's behalf, shall be remitted to the Department of Revenue for deposit into the Grants and Donations Trust Fund within the Justice Administrative Commission. Seventy-five percent of any amount recovered shall be remitted to the Department of Revenue for deposit

into the General Revenue Fund.

(c) A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Pursuant to Rule 3.111(b)(4), Fla.R.Crim.Pro. (2019), “Indigent” shall mean a person who is unable to pay for the services of an attorney, including costs of investigation, without substantial hardship to the person or the person’s family.

Legal Analysis

The law creates a presumption of nonindigency when any of certain factors exist.¹ *Fla. Stat. 27.52; Martin v. State*, 711 So.2d 117, 119 (Fla. 4th DCA 1998); *Haughwout v. State*, 870 So.2d 895 (Fla. 4th DCA 2004).

As explained in *Clark*, “there is a presumption of non-indigency when an applicant owns, or has equity in, any tangible personal property or real property or the expectancy of an interest in any such property having a net equity of \$2500 or more.” *State v. Clark*, 2006 WL

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(2) (a) An applicant, including an applicant who is a minor or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income (SSI).

1. There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.

2. Notwithstanding the information that the applicant provides, the clerk may conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records of the state to identify any property interests of the applicant under this paragraph. The clerk may evaluate and consider the results of the review in making a determination under this subsection. If the review is conducted, the clerk shall maintain the results of the review in a file with the application and provide the file to the court if the applicant seeks review under subsection (4) of the clerk's determination of indigent status.

6487975 (Fla.Cir.Ct. 19th Judicial Circuit 2006). In *Mansfield*, “[t]he relevant inquiry turns on the defendant’s financial situation at the time that he seeks public assistance, assuming he has not transferred assets or impoverished himself in an effort to become indigent.” *Mansfield v. State*, 16 So.3d 302 (Fla. 5th DCA 2009); See also *Haughwout v. Mellor*, 870 So.2d 895 (Fla. 4th DCA 2004) (the court held that since the defendant had an equity interest in real property and was able to hire private counsel, he was presumed non-indigent).

Very relevant to the issue before the Court pursuant to this Objection and Motion is a quote from the appellate courts:

“Here, we must separate the right to counsel, which all criminal defendants have, from the right to have the public pay for that counsel, which only the truly needy have. We do not believe that section 27.52 allows transfers of property and money by a defendant to family members in order to create the insolvency required for court-appointed counsel. To do so would require the public to pay for lawyers for defendants whose appearance of need was specifically created for that purpose. That amounts to a fraud on the courts as well as the taxpayers. Voluntary transfers of property to family members to create indigency for the appointment of counsel are just as much fraudulent conveyances as are such transfers by debtors to avoid payment to their creditors.” *Martin v. State*, 711 So.2d 117, 120 (Fla. 4th DCA 1998)

Relevant Procedural History of Case

The Defendant was arrested on September 26, 2017, for charges of First Degree Murder and has remained in custody since that time. On October 4, 2017, the Defendant filed an Application for Criminal Indigent Status. Exhibit A. She alleged a take home income of \$100 per week and absolutely no assets. On April 15, 2019, an Indigent for Costs Affidavit of Attorney’s Fees and a

Motion to Declare Defendant Indigent for Due Process Costs were filed. Exhibits B & C. The affidavit confirms that a total fee of \$150,000 was agreed upon for legal representation. The affidavit also confirms that \$90,000 was paid with an outstanding balance of \$60,000 remaining. The motion alleged that neither the Defendant nor her spouse, Michael Warren (our victim's husband at the time she was murdered), had the financial ability to pay the remaining balance nor the costs associated with the case. Based upon these assertions, which counsel believes was provided directly by the Defendant, an order was issued granting the Defendant's motion to declare her indigent. Exhibit D. Since that time, the Defendant has been receiving the benefit of having her associated costs paid by the JAC and has petitioned the court ex-parte for certain expenses.

Evidence Discovered and Argument

An investigation was initiated into the assets held by both the Defendant and her husband, Michael Warren, since the time of her arrest. While not all of the assets have been discovered, the State avers that we have reached a point in which it is incumbent to inform the Court of the large assets, including a substantial amount of cash, which have been identified. While the Defendant and her husband resided in Abingdon, Virginia, they purchased a popular fast-food restaurant in nearby Kingsport, Tennessee, called the "Purple Cow" restaurant. They own a home in Abingdon that sits on a large lake. They recently retired and sold the restaurant (although the Defendant is still listed as the registered agent) while keeping a substantial amount of cash in bank accounts. They also own several vehicles. The following is an estimated accounting of these assets with attached exhibits (Composite Exhibit E):

1. Defendant's value of her lakefront home located at 20210 Heron Circle, Abingdon, VA, is currently \$581,700.00;
2. Defendant's non-homestead property located at 168 Old Mill Court, TN, is currently valued at \$184,800.00;
3. Defendant's non-homestead property located at 33 boat Ramp Road, FL, is currently valued at \$3,000.00;
4. Defendant's non-homestead property located at 12 Quail Run, FL, is currently valued at \$6,000.00;
5. Vehicles owned by the Defendant include a Black Cadillac Escalade valued at \$40,000 and a 2015 Dodge Challenger SRT Hellcat valued at \$40,000;
6. On February 1, 2018, Defendant had an account with Wells Fargo (ending [REDACTED]) with a balance of \$93,629.80;
7. On February 1, 2018, Defendant had an account with Wells Fargo (ending [REDACTED]) with a balance of \$191,157.63;
8. On February 1, 2018, Defendant had an account with Wells Fargo (ending [REDACTED]) with a balance of \$14,635.35.

Total cash assets on February 1, 2018, with the Wells Fargo Bank accounts amounted to \$299,324.09. On February 6, 2018, these three account were transferred to two different Wells Fargo accounts held solely by Michael Warren (ending in [REDACTED]). As of July 31, 2019, these two accounts amounted to a total of \$319,073.32 in cash assets. Money is not regularly withdrawn from these accounts and the low activity indicates no immediate need for these cash reserves.

9. The Defendant's husband, Michael Warren, has a BB&T account (ending in [REDACTED]) with a balance as of April 15, 2019, of \$42,226.00.

10. Michael Warren also has a Bank of Tennessee account (ending [REDACTED]) with an unknown balance. Court orders are expected to be obtained in Tennessee to acquire these records.

During the pendency of this case, the Defendant has not only transferred her cash assets to the sole accounts of her husband, Michael Warren, she also has transferred title of their primary residence in Virginia to him. The Defendant has deliberately abused State's funds through knowingly and intentionally falsifying her application in order to seek status as being indigent. There are no valid rationalizations, justifications, or excuses for the Defendant's false statements in her application. In fact, her actions are contemptuous and criminal. The Defendant and her husband have done nothing short of perpetrating a fraud onto the Court and the State of Florida. But for the fact that she is being held No Bond, the State would request heavier sanctions and would pursue criminal prosecution. However, given the present circumstances, the State is respectfully requesting that her status of indigency be revoked and that all monies paid by the JAC to this point be ordered returned pursuant to Chapter 27, Florida Statutes.

I HEREBY CERTIFY that a true and correct copy of the foregoing Objection to Defendant's Motion to Incur Costs and Motion Requesting the Court to Rescind Defendant's Status as Indigent and Impose Sanctions has been furnished to the Defendant and her counsel this 28th day of October, 2019.

Respectfully submitted,

DAVID ARONBERG
STATE ATTORNEY



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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT a true and correct copy of the foregoing Motion has been furnished by E-SERVICE to Defense Counsel on this the 28th day of October, 2019.



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