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July 19, 2019


U.S. Attorney's Office


Re: USA v. Jeffrey Epstein

Dear 

The bullet Epstein dodged that no one is talking about. He did so because of the combined actions of former U.S. Attorney Alexander Acosta, former Palm Beach County State Attorney Barry Krischer, the Palm Beach County Sheriff's Office, and the assistant state attorney(s) that handled Jeffrey Epstein's criminal prosecution in state court.

At his plea and sentencing, the judge asked why Epstein was going to serve his sentence in the Palm Beach County stockade instead of in a Florida state prison, like most sex offenders. The response was we just decided that was the best way *to accomplish what needed to be done* here and agreed that the sentence satisfied everyone's requirements.

His carefully constructed plea and sentence *accomplished* Epstein avoiding the Jimmy Ryce Act, relating to the indefinite civil commitment of sexual predators. If he had been eligible for Jimmy Ryce commitment, there is a substantial likelihood that he would have been indefinitely committed and warehoused with other sexual predators.

Epstein was charged with two felony offenses: (1) procuring a person under the age of 18 for prostitution, a second-degree felony, punishable by 15 years in prison, and (2) felony solicitation of prostitution, a third-degree felony, punishable by 5 years in prison. He was facing a maximum consecutive sentence of 20 years in prison.

Florida, like the Federal Courts, has sentencing guidelines. Epstein's guidelines calculated the "lowest permissible prison sentence of 21.5 months," or almost two years in state prison. In Florida, the court can go below the lowest permissible range via a motion for downward departure, or plea bargain. Epstein avoided a 21.5-month prison system via *plea bargain*.

To understand how he avoided the Jimmy Ryce Act, you need to look at his carefully constructed sentence. According to the plea sheet he signed, regarding his conviction for felony solicitation of prostitution, he was sentenced to 12 months in the county jail. Regarding his conviction for procuring a person under the age of 18 for prostitution, a second-degree felony, he was sentenced to 6 months county jail consecutive to the above 12-month sentence, and that term of incarceration was to be followed 12 months community control. In other words, he was sentenced to 18 months incarceration in the county jail.

What if he had been sentenced to 18 months in prison, instead of the county jail? In 2008, the Jimmy Ryce provided that to be eligible for indefinite civil commitment as a sexual predator the person had to be:

. . . serving a sentence in the custody of the Department of Corrections, a person who was adjudicated delinquent and is committed to the custody of the Department of Juvenile Justice, or a person who was involuntarily committed to the custody of the Department of Children and Family Services upon an adjudication of not guilty by reason of insanity. §394.912(1), Fla. Stat. (2008).

Defendants that might satisfy the definition of a sexual predator were excluded from consideration if they were serving their time in a county jail. I have defended sex offenders and men being prosecuted under the Jimmy Ryce Act. In 2005-2006, as an assistant public defender, I defended about 25 men being prosecuted under the Jimmy Ryce Act. I advised young public defenders to have sex crime offenders to take time in the county jail for this very reason.

In 2008, an experienced sex crimes prosecutor would have been aware of this county jail loophole.¹ If they say they were not aware of this loophole, they are incompetent or untruthful.

In 2014, this loophole was closed. The above section was amended to include, ". . . a person who is serving a sentence in a *county or municipal jail* for a sexually violent offense. . ." §394.912(1), Fla. Stat. (2014). Now, a defendant cannot avoid the Jimmy Ryce Act by doing his time in the county jail, like Epstein.

For purposes of the Jimmy Ryce Act a "sexually violent offense" includes any criminal act that is subsequently determined to be proven beyond a reasonable doubt to have been "sexually motivated." A "sexually motivated" crime is one whose purpose, in part, was for sexual gratification. Certainly, prostitution related offenses, and particularly with the facts of his case were committed in part for sexual gratification. The misnomer is that *violence* does not have to be an element of the crime.

If Epstein had been in prison, instead of the county jail, the Department of Children and Family's Multidisciplinary Team would have evaluated Epstein and submitted its written assessment and recommendation to State Attorney Barry Krischer. Epstein would have been back in the

¹ A defense attorney cannot be faulted for getting a disposition that avoids Jimmy Ryce consequences, because his duty is to his client.

State Attorney's lap for the filing a petition to seek his indefinite civil commitment. Once a petition is filed, the offender is held in custody at the Florida Civil Commitment Center. There is no bond/bail.

Having tried these cases, representing the defendant, the case is a battle of experts. The six-person jury must unanimously find by clear and convincing evidence whether the person has the requisite prior conviction, has a mental abnormality affecting a person's emotional or volitional capacity which predisposes the person to a sex offense, and is likely to engage in further sex crime to such a degree as to pose a menace to the health and safety of others, unless he is indefinitely confined for treatment.

This potential "rabbit hole" was avoided simply by where Epstein was incarcerated.

In determining whether Epstein would satisfy the criteria for the State Attorney to file a petition for involuntary commitment, the psychologist/psychiatrist evaluators use a diagnostic tool known as Static-99. It is used throughout the United States and Canada. See the attached Static-99 form. Plus, the evaluators can go behind the mere charges that he pled to.

Having a familiarity with Static-99 evaluation forms while representing men who had petitions filed against them, based on the Static-99, Epstein arguably qualified for the filing of a petition. I am not an expert, but I rough calculated his score, using the score sheet applicable at the time of his plea, as 4, which translates to a moderate to high risk of re-offending.

If Epstein was sentenced to state prison by the State Attorney Krischner, there is a likelihood he would have been back in front of that same State Attorney for potential indefinite civil commitment. Instead of recently returning from France, Epstein might still be at the facility in Arcadia, Florida, with over 600 other sexual predators. Florida has more people committed than any other state.

There are other anomalies in the handling of this case. He was *indicted* for the first charge (2006CF9454). In the Federal system, felony prosecution is initiated by Indictment, or the prosecutor and the defense agree to the file of an Information charging a specific crime(s). In Florida, the only crime that requires an Indictment is first-degree murder. In Florida, the State Attorney is referred to an a "one-man" grand jury because the State Attorney can with the stroke of a pen initiate a criminal prosecution for any crime, other than first-degree murder. Over 98% of crimes in Florida are charged by Information filed by an assistant state attorney.

According to The Miami Herald article, Detective Recarey also told The Miami Herald that in May 2006, he drew up probable cause affidavits that charged Epstein and three associates with a slew of sex crimes. But instead of pushing forward with the case, Krischer referred the case to the grand jury, which returned an Indictment on a single count of soliciting prostitution. In Florida state court, the prosecutor frames the charge it wants the grand jury to consider and brings an Indictment and the applicable law and instructions.²

I would be curious how many *indictments* in Palm Beach County in 2005-2006 were returned for crimes other than first-degree murder cases? How many sex crimes prosecutions were

² As an assistant state attorney, I presented Indictments to the grand jury.

initiated by indictment? These questions a federal prosecutor unfamiliar with our state court system might not ask.

Regarding the first case, there are over 140 docket entries. A demand for discovery was never filed. If it had been filed, the State Attorney would have to file an answer. Under Florida law, the answer is a public record, as well as most of the documents produced in conjunction with the answer. This kept the facts out of the public eye.³

Regarding the second case (2008CF009381), an Information was filed June 26, 2008. But the usual probable cause affidavit setting forth the facts of the crime was not filed.⁴ He plead guilty four days later. Does the transcript of the plea colloquy set forth a factual basis, or did he stipulate there was a factual basis?

In summary, with no probable cause affidavit in either case, or demand for discovery the public has no idea about the facts supporting the charges. Epstein was sex offender like my former public defender clients. But money, powerful friends, the U.S. Attorney, the Palm Beach State Attorney and Sheriff's Office agreed to an unusual sentence structure whereby Epstein avoided potential Jimmy Ryce Act indefinite civil commitment. Ask for proof that any other serial sex offender was sentenced to more than 365 days incarceration and was permitted to serve his time in the Palm Beach County Jail. I am not a hypocrite, as a criminal defense attorney, I too would have sought to structure a sentence to avoid the Jimmy Ryce Act.

The defense obtained a spectacular outcome. But, the outcome was only possible because (1) a U.S. Attorney's Office was apparently afraid to try a case that was less than a slam dunk winner, (2) a state court prosecutor was apparently afraid to try a case that was less than a slam dunk winner, and (3) a Sheriff who went along with the sentencing scheme. Ask the sheriff how many times he has honored this type of sentencing arrangement.

Sincerely yours,



H. Dohn Williams Jr.

Cc:

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U.S. Attorney's Office

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U.S. Attorney's Office

³ A defense attorney should not be faulted for this tactic; it protects his client.

⁴ Go to the online court document number 4. It reads "rough arrest no probable cause filed"