IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIFTH DISTRICT

KELLY MATHIS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

CASE NO.: 5D14-492

LT CASE NO.: 13CF695AA

BRIEF IN SUPPORT OF APPELLANT BY AMICUS CURIAE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

There are two fundamental questions before this court that form the basis of this *amicus* brief. The first is whether the State has met the *mens rea* requirement with regard to Mr. Mathis's charge when the evidence at trial revealed that he, acting in his role as a licensed attorney, researched and offered what he believed to be sound legal advice to a client. The second is whether the trial court violated Mr. Mathis's constitutional right to present a defense when it precluded him from presenting evidence that he acted within the proper scope of the attorney client relationship when he offered the advice which formed the basis of the charge.

The respondent, an attorney, after having been approached by a client with a particular legal concern researched the question presented, consulted with colleagues – including law enforcement officers and public officials – and ultimately rendered advice to his client. He was compensated for the advice he

provided as well as his advocacy as an attorney. In this the facts of Mr. Mathis's case suggest little of note. He performed his duty as an attorney as countless others do on a daily basis in accordance with the tenets of the profession and was compensated. Where Mr. Mathis's case deviates from this norm was in his subsequent prosecution for violating the RICO statute, as well as gambling offenses, based on the advice he provided to his client.

The appeal before this court raises serious questions about the sufficiency of the evidence with regard to the *mens rea* element, the limitations the trial court's rulings placed on Mathis' ability to defend himself, and the implications for attorneys going forward if good faith legal advice and advocacy alone can serve as a basis for the conviction.

INTEREST OF AMICUS CURIAE

The National Association of Criminal Defense Lawyers ("NACDL") is a nationwide non-profit association of criminal defense lawyers who sponsor educational programs for its members and advocates for the protection of the constitutional rights of people accused of criminal offenses. NACDL's core mission is to: ensure justice and due process for persons accused of crime; foster the integrity, independence and expertise of the criminal defense profession; and promote the proper and fair administration of criminal justice. Founded in 1958, NACDL has a rich history of promoting education and reform through steadfast

support of America's criminal defense bar, *amicus* advocacy, and myriad projects designed to safeguard due process rights and promote a rational and humane criminal justice system. NACDL's 11,000 direct members— and more than 90 state, local and international affiliates with an additional 40,000 members—include private criminal defense lawyers, public defenders, active U.S. military defense counsel, and law professors committed to preserving fairness in America's criminal justice system. Representing thousands of criminal defense attorneys who know firsthand the inadequacies of the current system, NACDL is recognized domestically and internationally for its expertise on criminal justice policies and best practices.

Both Appellant and Appellee consented to the filing of this Amicus Curiae brief.

THE TRIAL COURT ERRED IN BARRING THE DEFENSE FROM INTRODUCING EVIDENCE TO SUPPORT THE BASIS FOR THE LEGAL OPINION THAT MATHIS GAVE TO HIS CLIENT

Kelly Mathis, an attorney practicing law in Jacksonville, Florida, was approached by a client and asked to give advice about the legality of sweepstake games at internet cafes. Based on this request he researched the issue, consulted with state prosecutors, city officials and other lawyers, and proceeded to advise his client in good faith based on what he had learned. The advice he gave was that the activity that the client sought to engage in was legal. At trial, the State contended

that the advice he provided was legally wrong. The State argued in closing argument that *because* Mathis was a lawyer, he should have known that his advice was wrong (Tr. 3943-44). The State argued that *because* he knew his advice was wrong, Mathis was guilty of aiding and abetting the underlying criminal offense of gambling and being a participant in a RICO violation. In his defense, Mathis sought to present evidence to the jury to explain the basis of his conclusion and, in the process, to demonstrate that he lacked the requisite *mens rea* for the offense. In short that he was both correct in the legal advice he gave and that his research into the issue supported this conclusion or at a minimum offered a reasonable basis for the advice he offered the client. The trial court precluded the defense from making such a presentation. Thus, the State was permitted to argue that Mathis knew his advice was wrong, but the defense could not offer evidence that he did not know his advice was wrong.

In this, the trial court not only improperly interfered with Mathis's ability to present his defense but it improperly reduced the offense to the equivalent of a strict liability offense for Mathis.

1. Mens Rea is an essential element in criminal law

As an element, *mens rea* plays a critical role in both establishing and differentiating the culpability of a defendant. As Justice Holmes famously noted: "[e]ven a dog distinguishes between being stumbled over and being kicked."

OLIVER WENDELL HOLMES, THE COMMON LAW 3 (Dover Publishing 1991). Put another way: an act without a mental state is usually not a crime. The act may still cause harm, but the absence of a mental state renders it generally non-culpable and non-criminal. *See* Jenny E. Carroll, *Brain Science and the Theory of Juvenile Mens Rea*, 94 N.C. Law Review ___, (forthcoming 2016), available at: http://ssrn.com/abstract=2603647.

In this case, the theory of the prosecution was that Mathis provided advice to his clients that was legally "wrong." As defined by the prosecution Mathis's *actus reus* was giving the advice. What is less clear was what the *mens rea* for that offense was, both in the charge and later at the trial itself, as well as the jury instructions. At a minimum, it would seem that the attorney must have contemporaneous knowledge that his advice was erroneous. Absent that requirement, the offense would amount to a strict liability offense.

a. **Ambiguity in the statute with regard to *mens rea* requires the court to insert an appropriate state of mind element**

To the extent that the statutory text lacks clarity in defining the *mens rea* element, the United States Supreme Court has explained how to fill in the gap: In *United States v. United States Gypsum Co.*, 438 U.S. 422, 438, 98 S.Ct. 2864, 2874 (1978), the Court wrote,

"Certainly far more than the simple omission of the appropriate [*mens rea*] phrase from the statutory definition is necessary to justify dispensing with an intent requirement."

This court should construe the offense with which Mathis was charged in light of the fundamental principle that a person is not criminally responsible unless "an evil-meaning mind" accompanies "an evil-doing hand." *See Morissette v. United States,* 342 U.S. 246, 251, 72 S.Ct. 240, 244 (1952).

The Supreme Court continues to endorse this position. Earlier this term the Court noted:

> We have repeatedly held that "mere omission from a criminal enactment of any mention of criminal intent" should not be read "as dispensing with it." *Morissette v. United States,* 342 U.S. 246, 250, 72 S.Ct. 240, 96 L.Ed. 288 (1952). This rule of construction reflects the basic principle that "wrongdoing must be conscious to be criminal." *Id.,* at 252, 72 S.Ct. 240. As Justice Jackson explained, this principle is "as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Id.,* at 250, 72 S.Ct. 240. The "central thought" is that a defendant must be "blameworthy in mind" before he can be found guilty, a concept courts have expressed over time through various terms such as *mens rea,* scienter, malice aforethought, guilty knowledge, and the like. *Id.,* at 252, 72 S.Ct. 240; 1 W. LaFave, Substantive Criminal Law § 5.1, pp. 332–333 (2d ed. 2003). Although there are exceptions, the "general rule" is that a guilty mind is "a necessary element in the indictment and proof of every crime." *United States v. Balint,* 258 U.S. 250, 251, 42 S.Ct. 301, 66 L.Ed. 604 (1922). We therefore generally "interpret[ ] criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them." *United States v. X–Citement Video, Inc.,* 513 U.S. 64, 70, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994).

Elonis v. United States, 135 S Ct. 2001, 2009 (2015). *See also Liparota v. United States*, 471 U.S. 419 (1985); *Cheek v. United States*, 498 U.S. 192 (1991).

b. The "knowledge" element of an offense occasionally includes knowledge of a legal "fact"

The Supreme Court and circuit courts have repeatedly held that knowledge of a legal status or legal fact is encompassed in the knowing state of mind. The *Liparota* decision, cited by the Court in *Elonis*, held that in order to prosecute a defendant for food stamp fraud, the State must prove that the defendant *knew* that his use of the food stamps was unauthorized. 471 U.S. 419 (1985). In *Liparota* proof that the defendant had used food stamps improperly was insufficient to support his conviction. The government had to demonstrate that Liparota knew the "legal" fact that he was not entitled to use such stamps and that knowing that fact he had proceeded to use the stamps anyway. Likewise this circuit and others have held that for offenses requiring the violation of a legal status or norm the government must prove that the defendant violated that legal status or norm knowing both of its existence and his transgression of it. *See United States v. Grigsby*, 111 F.3d 806 (11th Cir. 1997) (to be guilty of violating law prohibiting importing ivory, the defendant must be shown to have known that it was illegal to import the ivory he was importing).

It is beyond dispute, of course, that in a perjury or false statement prosecution, the government is required to prove not only that the defendant's statement was false, but that the defendant *knew* the statement was false. *United States v. Phillips*, 731 F.3d 649 (7th Cir. 2013); *United States v. Goyal*, 629 F.3d 912 (9th Cir. 2010); *United States v. Cacioppo*, 460 F.3d 1012 (8th Cir. 2006).

c. The trial court improperly removed the *mens rea* element in this case

In the context of the case before this court, the significance of *mens rea* as an element and the Court's past treatment of *mens rea* all confirm that in order to garner a conviction, the State had to prove that Mathis not only gave erroneous advice but also that Mathis *knew* that his legal advice was erroneous when he gave it. Even if a defendant were mistaken in his legal analysis (a subject about which the NACDL voices no opinion in the context of this case), the State would have to demonstrate that this "mistake" encompassed knowledge that the advice given was incorrect. The trial court, however, precluded him from presenting such evidence not only improperly interfering with his ability to defend himself against the charges, but eviscerating the *mens rea* element in the process.

The lower court improperly justified its decision to preclude the presentation of Mathis's efforts to provide sound advice by characterizing the subject of Mathis's legal advice and so his false statements, as a "legal" fact, as opposed to some historical fact, and therefore beyond the scope of the jury's consideration. But such a justification is problematic on several levels.

First, it obscures the underlying principle that whatever the erroneous fact – whether legal or historical – the State must prove that the defendant *knew* that his recitation of the fact to his client was in fact *false*. Second, it effectively served to "direct" a verdict of guilt against the defendant with regard to the *mens rea*

element improperly usurping the jury's role as a fact finder with regard to all elements of the offense and denying the defendant his right to defend himself against the charges.

These two issues are entwined in the lower court's decision to preclude Mathis from presenting evidence regarding the basis for the advice he offered his client. This decision effectively converted the charge to a strict liability offense and removed from the jury's consideration an element of the offense.[1]

It is important to note here that Mathis did not claim that he inaccurately believed that he had the legal right to provide erroneous advice – that would be a classic mistake of law defense – but rather that he believed that his advice was correct. Put another way, Mathis attempted to assert at trial that based on his experience as an attorney and his due diligence he believed he was properly advising his client. That such advice might later prove erroneous does not undermine Mathis's knowledge at the time he offered the advice. This knowledge at the time the advice was given is critical for the State's case.

[1] The jury instructions failed to articulate the *mens rea* requirement for any of the charged offenses other than the RICO conspiracy offense (Mathis was acquitted of this offense), Tr. 3987-88. The instruction on "Principals" (Tr 3995-96) did *not* require that the State prove that Mathis know that he was providing erroneous advice, or that his clients were engaged in criminal activity. All that was required was that he know that his conduct (providing advice) would result in the conduct occurring.

At trial, Mathis attempted to offer evidence that he in fact behaved diligently and competently in reaching the legal conclusions that formed the basis for his advise. That such conclusions should now come into question or even be found to be incorrect, were therefore questions for the jury to contemplate to the extent that they addressed Mathis's state of mind, or knowledge, at the time he gave the advice. At its core, Mathis's defense disputed one of the fundamental elements of the charge – that he lacked the requisite *mens rea* to be found guilty of the offense. Mathis was entitled to have the jury review this evidence and render a verdict on it under the Sixth Amendment to the United States Constitution and the jury was entitled to hear such evidence in rendering their verdict.

In sum, while the prosecution may not be required to prove that a defendant *intended* to violate the law or even *knew* he was doing so to commit a general intent crime, the State is clearly required to prove that the defendant actually *intended* to do the act that the law proscribes. *See e.g.*, *United States v Haun*, 494 F.3d 1006 (11th Cir. 2007) (charged with communicating a false distress signal to the Coast Guard, the defendant was not permitted to argue that he was unaware that providing a false distress signal was a crime, but the prosecution was required to prove that the defendant knew the distress signal he communicated was false). In this case, the act alleged is the proffer of erroneous advice to a client. As such, the State must prove that the defendant understood that the advice he gave was

both wrong and that he intended to communicate such incorrect advice to his client. The fact that such advice was based on the attorney's interpretation of the law does not remove it from the jury's contemplation. The trial court's preclusion of evidence surrounding the basis of Mathis's advice improperly conflated the questions before the jury and in the process removed the *mens rea* element from their consideration. The court was correct that the jury was not tasked with determining the accuracy of Mathis's legal advice, but they were tasked with determining whether or not Mathis knew he was offering erroneous advice at the time he gave it.

2. In the alternative, a mistake of law defense was appropriate in this case

Even if this court were to conclude that the trial court properly characterized the defendant's advice as a legal fact, the defendant was still entitled to present a "mistake of law" defense to the jury.

a. Mistake of law defenses are appropriate

Universally accepted principles of criminal law recognize that a "mistake of fact" is a defense to criminal culpability. However, the line between a mistake of fact and a mistake of law is not always clear. A recent Seventh Circuit decision explored the blurred line. In *United States v. Bowling*, 770 F.3d 1168 (7th Cir. 2014), the defendant was charged with making a false statement on a firearms form that he filled out in order to purchase a gun. He denied that he was a convicted

felon. In fact he was a convicted felon (a fact that he acknowledged at trial), but he claimed that he was laboring under a mistake of fact when he filled out the form that he had been convicted of a misdemeanor offense, as opposed to a felony offense. To support his claim, he sought to introduce evidence that based on his prior attorney's representations of the plea offer that led to the predicate conviction he understood that he had pled guilty to a misdemeanor offense. The Seventh Circuit held that excluding evidence of the defendant's understanding of his prior conviction was reversible error. The fact that he was mistaken about his legal status was undeniable; but he was permitted to offer evidence to explain the cause of his confusion at the time he filled out the form because it refuted that State's claim that he had acted with the requisite *mens rea*. The fact that this evidence related to a legal status and that he had made a mistake of law did not preclude the defense. The question of the reasonableness of his mistake was properly left to the jury to determine. Multiple circuits have endorsed this conclusion.

In *United States v. Migliaccio*, 34 F.3d 1517 (10th Cir. 1994), the court addressed a defendant's claim that he was mistaken about the law in support of his claim that he lacked criminal intent. The defendant, a doctor, was charged with mail fraud and conspiracy to defraud the government by means of filing false CHAMPUS health insurance forms. In his defense, he claimed he lacked criminal intent because the language in the CHAMPUS regulations was ambiguous and his

interpretations of the relevant provisions were reasonable. He requested a jury instruction based on his theory of the defense -- instructing the jury that if it found ambiguity in the forms, then the government would have to prove beyond a reasonable doubt that there was no reasonable interpretation of the situation that would make the defendant's statements factually correct. The trial court declined to give this instruction. The 10th Circuit reversed. In this case, the lower court had given a general good faith defense instruction, but the 10th Circuit held that this failed to adequately address the defense theory and violated the defendant's right to offer his explanation of why his understanding of the law was accurate and therefore he did not intentionally or knowingly violate the law.

Similarly, in *United States v. Ali*, 557 F.3d 715 (6th Cir. 2009), the defendant was charged with making a false statement on a naturalization document. He had been married to a Canadian woman and then, prior to the divorce being finalized, he married a woman in Georgia. He answered a question on a naturalization form that he had never been married to two women at the same time. The defendant claimed that he could not be guilty of making a false statement because a bigamous marriage, under Georgia law, was void *ab initio*, therefore he was never actually married to the woman in Georgia. The government moved to bar this defense on the theory that it represented a "mistake of law" defense. The Sixth Circuit disagreed, holding that if the defendant in fact believed that he was not married

based on the void *ab initio* principle – a legal principle – then he was not guilty of knowingly making a false statement.

The recent decision of the Florida Supreme Court – though controversial on the issue of assigning the burden of proof to the defendant to prove a mistake of law – emphasized that if a defendant is mistaken about the illicit nature of the substance he possesses, this is a complete defense to a possession offense:

> Any concern that entirely innocent conduct will be punished with a criminal sanction under chapter 893 is obviated by the statutory provision that allows a defendant to raise the affirmative defense of an absence of knowledge of the illicit nature of the controlled substance. In the unusual circumstance where an individual has actual or constructive possession of a controlled substance **but has no knowledge that the substance is illicit**, the defendant may present such a defense to the jury.

State v. Adkins, 96 So. 3d 412, 422 (Fla. 2012) (emphasis supplied).

While we find the Florida Supreme Court's allocation of proof troubling, the holding correctly acknowledges the fundamental principle that the underlying offense requires a state of mind and the defendant is entitled to present evidence in his defense that refutes that state of mind.

b. Such a mistake of law defense is consistent with the use of such a defense in other cases

In the context of this case, and others like it, a fundamental reality surfaces: lawyers, on both sides of the courtroom, make mistakes. In the hard and all too human task of offering legal counsel, they make mistakes based on their interpretation of the law, or based on the arc of jurisprudence they are called on to

predict. Judges make mistakes too: the author of a majority opinion one day may acknowledge the error of his (or her) ways and author a contradictory opinion not long afterwards. Justice Powell: *Bowers v. Hardwick*, 106 S. Ct. 2841 (1986) and *Lawrence v. Texas*, 123 S. Ct. 2472 (2003). Trial judges, too, reach erroneous legal conclusions: that is why we have appellate courts.

Indeed others called to interpret law make mistakes. The police make mistakes of law. And when they do, the fact that the law is often confusing, or that contradictory precedents may be found, excuses their conduct. In *Hein v. North Carolina*, 135 S. Ct. 530 (2014), the police detained the defendant based on the officer's understanding of the law regarding the brake light requirement of the motor vehicle code. But the officer erred. His understanding of the law was incorrect. The Supreme Court held that this mistake of law did not render the detention of the defendant unconstitutional. What the Court wrote applies here, as well:

> We have recognized that searches and seizures based on mistakes of fact can be reasonable. The warrantless search of a home, for instance, is reasonable if undertaken with the consent of a resident, and remains lawful when officers obtain the consent of someone who reasonably appears to be but is not in fact a resident. See *Illinois v. Rodriguez*, 497 U.S. 177, 183–186, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990). By the same token, if officers with probable cause to arrest a suspect mistakenly arrest an individual matching the suspect's description, neither the seizure nor an accompanying search of the arrestee would be unlawful. See *Hill v. California*, 401 U.S. 797, 802–805, 91 S.Ct. 1106, 28 L.Ed.2d 484 (1971). The limit is that "the mistakes must be those of reasonable men." *Brinegar, supra*, at 176, 69 S.Ct. 1302.

But reasonable men make mistakes of law, too . . .

Heien v. North Carolina, 135 S. Ct. 530, 536, 190 L. Ed. 2d 475 (2014) (emphasis added). *See also Michigan v. DeFillippo*, 443 US. 31, 99 S. Ct. 2627 (1979).[2]

To adopt the lower court's position would be to hold attorneys to a standard that exceeds that of all other actors in the legal and judicial realm – to impose strict liability for erroneous advice to clients.

3. **Denying Mathis the right to present this evidence resulted in the denial of his right to present a defense.**

As discussed above, at trial Mathis sought to introduce evidence to show why he offered the advice he did to his clients.[3] He offered this evidence to demonstrate that he in fact believed that he was providing accurate advice to his client – in short to refute the State's evidence that he had knowingly proffered false advice to a client. The Supreme Court has long held that a constitutional right to a defense is embedded in the Fifth and Sixth Amendments.

Holmes v. South Carolina, 547 U.S. 319 (2006), was the most recent in a long line of decisions that have held that a defendant in a criminal case has a constitutional right to introduce evidence that proves the innocence of the

[2] A considerable body of case law also explains that law enforcement officers and other public officials are immune from civil liability when they make a reasonable mistake of law. 42 U.S.C. § 1983; *Wilson v. Layne*, 526 U.S. 603 (1999); *Saucier v. Katz*, 533 U.S. 194 (2001).

[3] Appellant's Brief at pages 37 – 43.

defendant – or that detracts from the strength of the prosecution's case. In *Holmes*, the issue was whether the defendant could offer evidence that another person was the perpetrator. But there are scores of cases that apply this same principle to evidence that establishes the absence of the defendant's culpable *mens rea*.

The Florida Supreme Court addressed this issue in the *Adkins* decision cited above that addressed the admissibility of evidence that a defendant was not aware of the illicit nature of a controlled substance that he possessed:

> As a result, the defendant can concede all elements of the offense but still coherently raise the "separate issue," *Patterson*, 432 U.S. at 207, 97 S.Ct. 2319, of whether the defendant lacked knowledge of the illicit nature of the controlled substance. The affirmative defense does not ask the defendant to disprove something that the State must prove in order to convict, but instead ***provides a defendant with an opportunity to explain why his or her admittedly illegal conduct should not be punished***. "It is plain enough that if [the sale, manufacture, delivery, or possession of a controlled substance] is shown, the State intends to deal with the defendant as a [criminal] unless he demonstrates the mitigating circumstances." *Patterson*, 432 U.S. at 206, 97 S.Ct. 2319. Thus, the affirmative defense does not improperly shift the burden of proof to the defendant.

State v. Adkins, 96 So. 3d 412, 423 (Fla. 2012) (emphasis supplied).

In *United States v. Certified Environmental Services, Inc.*, 753 F.3d 72 (2d Cir. 2014), the Second Circuit further explained why a defendant's conversations with law enforcement officers and other officials which demonstrates the defendant's state of mind are relevant in a case, even if the conduct that the defendant ultimately engages in is determined to be illegal. In *Certified Environmental Services, Inc.*, the defense sought to introduce evidence of

conversations with officials about whether their monitoring practices complied with the law's requirements. The government objected that these conversations were hearsay and the trial court excluded the testimony. The Second Circuit held that the trial court's exclusion of this evidence was reversible error. The evidence relating to the conversations with regulators was not in fact hearsay as it was not offered to prove the truthfulness of the information provided by the regulators, but to prove that the defendants were acting in good faith when they engaged in certain monitoring practices.

The same rationale and larger underlying point applies here: evidence of Mathis' research, including his conversations with relevant officials, is central to his defense that he did not knowingly provide erroneous advice to his client. As such, this evidence is not only not hearsay, but it is integral to Mathis' constitutional right to defend himself against the charges levied by the State.

In *United States v. Cavin*, 39 F.3d 1299 (5th Cir. 1994), the defendant, an attorney, was charged with fraud in connection with his efforts to help his client obtain regulatory approval for an insurance company. The attorney sought to offer evidence of the ethical problems involved in representing a client in such regulatory proceedings and also offered evidence of the uncertainties of the regulations in this area. The Fifth Circuit held that the trial court erred in excluding

this evidence. Such evidence was probative of the defendant's state of mind and thus was probative of his intent to defraud:

> We therefore join our Eleventh Circuit colleagues in holding that a lawyer accused of participating in his client's fraud is entitled to present evidence of his professional, including ethical, responsibilities, and the manner in which they influenced him. Exclusion of such evidence prevents the lawyer from effectively presenting his defense.

United States v. Cavin, 39 F.3d 1299, 1309 (5th Cir. 1994), *citing United States v. Kelly*, 888 F.2d 732 (11th Cir.1989). *See also United States v. Garber*, 607 F.2d 92 (5th Cir. 1979)(*en banc*); *United States v. Gaumer*, 972 F.2d 723 (6th Cir. 1992) (excluding evidence – including legal materials – that defendant proffered to explain why he filed his tax returns as he did, was reversible error); *United States v. Kottwitz*, 614 F.3d 1241 (11th Cir. 2010) (defendant must be permitted to introduce evidence in tax prosecution about the reason he filed his returns as he did – even if it is conceded that the returns are false); *United States v. Walter*, 913 F.2d 388 (7th Cir. 1990) (excluding evidence offered by the defendant that he was told by his attorney that his conduct might be unethical, but not illegal, was reversible error).

CONCLUSION

Whether the advice that Kelly Mathis provided to his clients was right or wrong, the underlying question of whether or not he violated any criminal law hinges on what his state of mind was when he provided that advice. The State

must prove that he knew that the advice he offered was erroneous, and he is entitled to defend himself against the charge by demonstrating that he lacked such knowledge. In short, he was entitled to establish his good faith -- he was entitled to introduce evidence about the research that he conducted, the people with whom he consulted, the other attorneys that provided advice and the laws of various jurisdictions that shaped his views. Perhaps his conclusion was correct. Perhaps it was incorrect. But offering his conclusion was not a criminal offense.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed through the eDCA on this 29th day of June, 2015, which will serve a copy by email transmission on the following: Assistant Attorney General, Pamela J. Koller, Esq., 444 Seabreeze Boulevard, Suite 500, Daytona Beach, FL 32118; crimappdab@myfloridalegal.com and to attorneys for the Appellant, Michael Ufferman, Esq., 2022-1 Raymond Diehl Road, Tallahassee, FL 32308; ufferman@uffermanlaw.com

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