

IN THE CIRCUIT COURT OF THE 18th JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

CASE NO.: 05-2016-CF-012745-AXXX

v.

JUDGE: ROBIN C. LEMONIDIS

SKYLER FRANCIS,
Defendant,

_____ /

AMENDED DEFENSE MOTION FOR NEW TRIAL

Defendant moves pursuant to *Florida Rule of Criminal Procedure 3.580* for a new trial and as grounds therefore states:

1. The defense was not given adequate time to prepare for the trial. Undersigned defense counsel entered an appearance in this cause on September 26, 2018, requested additional time to prepare for the trial; however, was compelled to start the trial thirty two (32) days later, on October 29, 2018 at 8:30 a.m. There was a rush to judgment in this case and defendant did not receive a fair and impartial trial. The lack of adequate time rendered undersigned counsel ineffective violating Defendant's right to counsel. *U.S. Const. 6th Amendment* ("in all criminal prosecutions, the accused shall enjoy he right to . . . have the assistance of counsel for his defense"). *Gideon v Wainwright*, 372 U.S. 335 (1963).

2. At the beginning of the trial, the trial judge muzzled defense counsel and chilled his ability to present an effective defense. The trial judge ordered defense counsel to come into her chambers and told him off the record to stand before he spoke to her and

28 to wait until she acknowledged him before he spoke or before he made an objection.
29 During the trial, defense counsel would stand to make an objection waiting for the trial
30 judge to acknowledge his presence while standing; however, the trial judge would have
31 her head and eyes turned away from defense counsel and on the witness and jury so she
32 could not see defense counsel until she turned her head and looked at him. Thereby,
33 denying and preventing defense counsel from making contemporaneous and timely
34 objections to preserve for appeal, *State v. Smith*, 240 So.2d 807 (Fla. 1970); *Sanford v.*
35 *Rubin*, 237 So.2d 134, 137 (Fla. 1970). The Defendant was denied his right to effective
36 assistance of counsel as guaranteed by the *Sixth Amendment of the U.S. Constitution*.

37 3. The court erroneously instructed the jury on a matter of law and refused to give
38 proper instructions requested by the Defense. None of the Defendant's requested special
39 jury instructions were given. The court also departed from the Florida Supreme Court's
40 Standard Jury Instructions, using the State's modified version of the standard jury
41 instructions.

42 4. Defendant did not receive his constitutional rights to due process of law, *U.S.*
43 *Const., 14th Amendment*.

44 5. The verdict was contrary to law.

45 6. Defendant was denied a request for a change of venue and a different jury pool.
46 The jury pool appeared to be cherry picked. The jury panel consisted of Brevard County
47 employees or former employees, predominantly Brevard County Sheriff's Office

48 employees or former employees, associates, family, or friends of the Brevard County
49 Sheriff's Office. Particularly egregious because the nature of the crimes charged
50 concerned violence against Brevard County Sheriff's deputies: attempted second degree
51 murder and aggravated battery on law enforcement officers. Of the thirty (30) jurors left
52 on the jury panel to pick from, twenty (20) of them had direct connections to the State, to
53 the Brevard County Sheriff's Office or the victims who were Brevard County Sheriff's
54 deputies. ("Regardless of the heinousness of the crime charged, the apparent guilt of the
55 offender or the station in life which he occupies, our system of justice demands trials that
56 are fair in both appearance and fact"). *Skilling v United States*, 561 U.S. 40, 130 S.Ct.
57 2896, 177 L.Ed.2d 619 (2010); *Irvin v. Dowd*, 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed.2d
58 751 ("In all criminal prosecutions, the accused shall enjoy the right to . . . an impartial
59 jury of the State and District wherein the crime shall have been committed, which District
60 shall have been previously ascertained by law"), *Id.*

61 7. The defense was denied equal time to interview and question the jury or present
62 visual aides. The State was allowed by the trial judge approximately five and one-half (5
63 ½) hours to interview, question and ingratiate itself to the jury and to establish personal
64 ties with the jurors; while the defense was allowed one (1) hour. The defense was told by
65 the trial judge that time was of the essence and since the State did such a thorough job of
66 questioning the jurors the defense did not need as much time.

67 8. The defense was denied pre-trial jury instructions at the commencement of trial

68 over the request by defense counsel to have the jury instructions before the trial
69 commenced. The defense was told by the trial judge the jury instructions would be had
70 after the defense rested its case and that they would be the standard Florida Supreme
71 Court's pattern jury instructions. However, when the jury instructions were selected by
72 the trial judge, the Florida Supreme Court's jury instructions were modified by the State
73 with the approval of the trial judge over the objections by defense counsel. The defense
74 was not given adequate time to review the State's proposed jury instructions, which were
75 approved and adopted by the trial judge, which were not given to defense counsel until
76 after closing arguments the night before the jury deliberated.

77 9. The trial judge erroneously instructed the jury on matters of law and refused to
78 give any special instructions requested by defense counsel. The trial judge departed from
79 the Florida Supreme Court's Standard Jury Instructions. The trial judge was prepared to
80 not add the defense's requested special instructions to the court record but then added
81 them to the record upon the particular request by defense counsel that he wanted them in
82 the record.

83 10. The trial judge was visibly hostile and in a rage toward defense counsel and
84 the Defendant in front of the jury and court room gallery, which hindered the Defendant's
85 defense team and denied Defendant a fair and impartial trial, i.e.:

86 a. scowling at defense counsel with head thrust forward, doing the same to
87 defense counsel's paralegal sitting at the defense table, also to the defense witnesses,

88 Michael Francis and Courtney Johnson, and most egregiously to the Defendant himself
89 while he was on the witness stand.

90 b. the trial judge bullied, berated, and reprimanded defense counsel
91 repeatedly, banged her gavel at defense counsel while he was examining witnesses and
92 banged her gavel at the Defendant while he was testifying. The banging of the gavel was
93 so loud and obnoxious it sounded like gunshots and distracted the entire courtroom and
94 the defense team.

95 c. The trial judge was not patient, dignified or courteous to litigants as
96 required by *Canon 3.B.(4), Code of Judicial Conduct*, (“A judge shall be patient,
97 dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the
98 judge deals in an official capacity, and shall require similar conduct of lawyers, and of
99 staff, court officials, and others subject to the judge's direction and control.”) The trial
100 judge was in a rage, aggressive and tyrannical toward the defense counsel, the Defendant,
101 and defense witnesses: raising her voice numerous times and threatening contempt and
102 incarceration. The trial judge screamed so loudly at the Defendant as he was starting to
103 testify that the jury could hear her behind the thin walls of the jury waiting room in the
104 “old historic courtroom”. The young Defendant, who was bi-polar and schizophrenic, was
105 visibly intimidated, upset, horrified, and confused. He did not know what he did wrong
106 to upset the trial judge and thence was overly cautious about his testimony, guarded about
107 what he said on the witness stand so he would not upset the trial judge and go to jail. All

108 this being done while the jury could hear behind the thin panel walls of their waiting
109 room.

110 d. Early in the trial, the trial judge threatened defense counsel with
111 contempt. The trial judge also threatened defense counsel's paralegal/trial assistant in the
112 presence of the jury and to remove her from the defense table and put her in the gallery
113 for trying to set up the defense's video presentation.

114 e. All of which created an atmosphere of hostility, impartiality, bias, and
115 unfairness during the trial, of which the jury witnessed and violated the Florida Supreme
116 Court's *Code of Judicial Conduct, Canon 3.B(5)*.

117 11. The trial judge made fundamental errors in her decisions as a matter of law.
118 *Gibson v. State*, 194 So.2d 19, 20 (Fla. 2nd DCA 1961) ("where the issue reaches down
119 into the very legality of the trial itself to the extent that a verdict could not have been
120 obtained without the assistance of the error alleged . . ."). Defendant did not receive his
121 constitutional right to due process of law. *U.S. Const. 5th and 14th Amendment*.

122 12. The defense did not receive the complete medical records of Deputy Skinner,
123 exculpatory and exonerating evidence, which would show the orthopedic evaluation of
124 Deputy Skinner that no bodily harm, great bodily harm, or disability was done to her by
125 the Defendant. Those records would show Deputy Skinner did not have injuries required
126 as elements of the crimes charged; and Skinner could not have sustained the alleged
127 injuries because of her pre-existing cervical fusions.

128 13. The Plaintiff/State did not disclose three (3) witnesses, who were not
129 interviewed, who would have exonerated the Defendant and prove his innocence.

130
131 WHEREFORE, the Defense requests a new trial, with a different courtroom,
132 different venue, and different trial judge; and for any other just relief.

133

134 Certificate of Service

135
136 I HEREBY CERTIFY that a true copy of the foregoing was furnished through the Florida
137 E-file Portal and Clerk's e-file system to: William Scheiner, Asst. State Attorney, email:
138 wscheiner@sa18.org and Office of the State Attorney, 2725 Judge Fran Jamieson Way, Viera,
139 Florida 32940; this 11th day of November 2018.

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/s/ Geo.

GEORGE E. OLLINGER

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RE: *Francis, Skyler 4/20/93*

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- PLEASE REPLY WITH RECORDS ASAP
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NOTES/COMMENTS:
 Please see the attached information regarding the above patient. If you are in need of any further assistance please feel free to contact our office.
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