

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

STATE OF FLORIDA,
Plaintiff,

CASE NO. 052021CF020747AXXXXX

vs.

KATHLEEN PRINCESS EDWARDS,
Defendant.

STATE'S MOTION TO STRIKE DEFENDANT'S MOTION TO DISMISS

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and pursuant to Rule 3.190(c)(4) Fl. R. Crim. Pr. and moves this Honorable Court to strike the Motion to Dismiss filed by the Defendant, and in support thereof alleges:

1. The State alleges that the facts contained in the Defendant's motion are not properly sworn.
2. The Defendant brings this Motion to Dismiss under Rule 3.190(c)(4), which sets out the guidelines, grounds and timing of a Motion to Dismiss involving this subject matter. This rule requires "the facts on which the motion is based should be alleged specifically and the motion sworn to," neither of which the Defendant has done.
3. It is settled case law that this type of motion needs to be properly sworn to by a person who has personal knowledge of the facts alleged in the motion, since the "purpose of the rule is to subject those having personal knowledge of the facts recited to the penalties of perjury." *State v. Davis*, 890 so.2d 1242 (Fla 4th DCA 2005). See also *State v. Williams*, 10 So.3d 1172 (Fla. 3d DCA 2009).
4. The Defendant has not attached any sworn testimony to the Defendant's motion to support the factual allegations, nor did they swear to their motion. Additionally, the Defendant makes a reference to statements made by the witness to the Defendant's Attorney.
5. Additionally, the Defendant must provide more than legal conclusions. A motion to dismiss must demonstrate that the undisputed material facts fail to establish a prima facie case of guilt or a valid defense. See *State v. Anderson*, 536 So.2d 1166 (Fla. 2d DCA 1988).
6. The Defendant has not attached any sworn testimony to the Defendant's motion to support the factual allegations, nor did they swear to this motion. The Defendant makes a reference to statements made by a witness to the Defendant's Attorney (see paragraph 13

on Defendant's Motion to Dismiss), as well as legal conclusions through paragraphs 1-13.

7. Relying on Goodmakers v. State, 450 So.2d 888 (Fla. 2d DCA 1984) the State is not waiving this objection and requests the court summarily deny the Defendant's Motion to Dismiss as procedurally invalid. See also Footnote 3 in State v. Mayle, 406 So.2d 108 (Fla. 5th DCA 1981). Additionally, Goodmakers notes that "case law says that this (that a defendant's motion to dismiss should be sworn to) means that the motion should be verified by one with firsthand knowledge of the facts alleged. Id. at 890. Even if correctly sworn to, the Defendant is not the only necessary person with personal knowledge in this case.
8. The State submits that the Defendant's motion does not comport with Rule 3.190(c)(4), lacks sworn testimony by persons with firsthand, personal knowledge of the facts as laid out in the motion, and rife with legal conclusion therefore the motion should be struck as invalid.
9. If this court does not strike the Motion in its entirety, the State respectfully requests this court clarify which paragraphs are valid for purposes of State's preparation of a Traverse.

WHEREFORE, the State respectfully requests this Honorable Court to strike and deny the Motion to Dismiss filed by the Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **E-MAIL** to MARK EIGLARSH ESQ., Attorney for Defendant, at MARK@EIGLARSHLAW.COM this 21st day of January, 2022.

PHIL ARCHER
STATE ATTORNEY

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