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

CASE NO: 05-2015-CF-39871-AXXX-XX

STATE OF FLORIDA,
Plaintiff,

v.

DANA LYNN LOYD,
Defendant.

_____/

ORDER DENYING DEFENDANT'S AMENDED MOTION FOR POST-CONVICTION RELIEF

THIS CAUSE came before the Court upon the Defendant's Amended Motion for Post-Conviction Relief filed on December 27, 2019 pursuant to Rule 3.850, Florida Rules of Criminal Procedure. The Court reviewed the Defendant's motion and the official court file, and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law:

a. The Defendant was charged with False Report of Child Abuse, Abandonment or Neglect (Exhibit A, Amended Information). On March 30, 2017, the Defendant was found guilty as charged (Exhibit B, Verdict). The Defendant was sentenced on April 6, 2017 to 2 years of community control with 1 year in the Brevard County Jail as a condition of community control, followed by 3 years of probation (Exhibit C, Amended Judgment). The Defendant's judgment and sentence were per curiam affirmed on December 19, 2017 with a mandate issued on January 12, 2018 (Exhibit D, Decision and Mandate).

b. In her motion, the Defendant claims she received ineffective assistance of counsel. To establish a colorable claim of ineffective assistance of counsel, a defendant must show that (1) counsel's performance was deficient (the defendant must do this by alleging specific acts or omissions) and (2) that the deficient performance prejudiced the outcome of the proceedings.

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Cherry v. State, 659 So. 2d 1069, 1072 (Fla. 1995). A court considering a claim of ineffective assistance of counsel need not make a specific ruling on the performance component of the test if the prejudice component clearly is not satisfied. Kennedy v. State, 547 So. 2d 912 (Fla. 1989). In order to satisfy the prejudice component, the defendant must show that there is reasonable probability that but for counsel's errors, the result of the proceedings would have been different. Strickland, 566 U.S. 698 (cited in Rose v. State, 675 So. 2d at 577, n. 4). "A reasonable probability is a probability sufficient to undermine the confidence in the outcome." Id.

c. In Issue I of her motion, the Defendant claims her attorneys, Paul Bross and Jessica Burgess, were ineffective for failing to argue that she was denied due process of law because the Department of Children and Families (DCF), not the Court, has the sole authority to determine whether an abuse report is fraudulent. According to F.S. §39.205(8), if DCF determines that a report is false, it may refer the report to local law enforcement who determine whether sufficient evidence exists to refer the case for prosecution for filing a false report. The Defendant argues that since DCF never actually determined the report was false, she should not have been prosecuted.

d. The State alleged the Defendant made a false report to the DCF Hotline regarding sexual abuse against R.M., a minor. DCF investigated the allegations and believed the call was suspicious, so they referred the matter to the Brevard County Sheriff's Office (BCSO) for further investigation (Exhibit E, Trial Transcript, pp. 493-498). BCSO Agent Fischer confronted the

Defendant about the call, and the Defendant admitted she made the false report (See Exhibit E, p. 501).

e. During trial, Mr. Bross asked DCF investigator Oneil Brooks if DCF had ever determined whether the report was false (Exhibit F, Trial Transcript, p. 608). The Court sustained the State's objection and ruled that the question invaded the province of the jury (See Exhibit F, p. 608). The conclusion by the DCF investigator that the Defendant made a false report is an expression as to the Defendant's guilt. Brockington v. State, 600 So. 2d 29, 30 (Fla. 2d DCA 1992). Such testimony is not permitted as it is the ultimate issue in a criminal case which should be decided by the trier of fact. Martinez v. State, 761 So. 2d 1074, 1079 (Fla. 2000). Therefore, the Court's ruling was correct. The Defendant is not entitled to relief on Issue I.

f. In Issue II of her motion, the Defendant claims Mr. Bross and Ms. Burgess were ineffective for failing to argue the Court gave improper and misleading jury instructions and then denied the Defendant's request for a mistrial. The Defendant raised this claim in her initial brief (Exhibit G, Appellate Brief). Because the Defendant raised this claim on direct appeal, it cannot be relitigated under the guise of ineffective assistance of counsel. Rodriquez v. State, 919 So. 2d 1252, 1280 (Fla. 2005). The Defendant is not entitled to relief on Issue II.

g. In Issue III of her motion, the Defendant claims Mr. Bross and Ms. Burgess were ineffective for failing to address the trial judge's "intemperate conduct", therefore denying the Defendant a fair trial. The Defendant cites two cases in which the trial judge admitted to acts of judicial misconduct and received a public reprimand. The Defendant argues that since her own

case was pending during this same time period, the trial judge must have "suffered from these same external stressors" thereby affecting her judicial conduct during the Defendant's case. However, the Defendant does not allege that the trial judge engaged in any specific misconduct in the Defendant's case and does not demonstrate how the trial judge's disciplinary issues in unrelated cases affected the Defendant's trial. The Defendant is not entitled to relief on Issue III.

h. In Issue IV of her motion, the Defendant claims Mr. Bross and Ms. Burgess were ineffective because they entered into an agreement with the Court to prevent the Defendant from filing any post-conviction motions. The Defendant points to an exchange between the Court and the Defendant's attorneys which occurred prior to the start of the trial. However, the Defendant has taken the conversation out of context.

i. During pre-trial plea discussions, the Defendant appeared to be ill and the Court questioned her about her medical condition (Exhibit H, Trial Transcript, p. 82). The Defendant advised the Court she was not feeling well and did not want to enter a plea at that time (See Exhibit H, p. 94). The Defendant then ran from the courtroom as she felt she was going to vomit (See Exhibit H, p. 94). During her absence, Mr. Bross and Ms. Burgess discussed the Defendant's emotional state and her indecision about whether to enter a plea (See Exhibit H, pp. 95-98). The Court advised the Defendant's attorneys:

> THE COURT: And certainly I don't want to subject the two of you to an ineffective assistance of counsel motion for the next three years, you know, because she was either bullied into taking a plea or bullied into going trial because it's not her choice.
>
> (See Exhibit H, p. 99)

After further discussion regarding the Defendant's emotional state, the Court offered to recess to give the Defendant an opportunity to consult with her attorneys about the State's plea offer (See Exhibit H, p. 104). The Court reconvened and the Defendant's attorneys asked the Court for a continuance until the following day as the Defendant was still in distress (See Exhibit H, p. 112). Ms. Burgess expressed her concern that if the Defendant were forced into making a decision, that could subject her and Mr. Bross to an ineffective assistance claim (See Exhibit H, p. 115). In response, the Court stated "I'm going to do anything and everything necessary to ward that off for you" and granted the Defendant's request for a continuance until the following day (See Exhibit H, p. 115).

j. The Defendant claims the Court's statement was an effort to prevent the Defendant from filing any post-conviction claims of ineffective assistance of counsel. However, given the context of the comments, it is apparent the Court was guarding against the Defendant being forced into entering a plea, especially when she was ill and emotionally distraught. Further, as evidenced by the instant motion, the Defendant was obviously not prevented from filing any post-conviction claims. The Defendant is not entitled to relief on Issue IV.

k. In Issue V of her motion, the Defendant claims Mr. Bross and Ms. Burgess were ineffective for failing to request a new jury pool when the jurors' names were posted to the Clerk of Court's website, arguing they "may have felt intimidated" by the posting. The Defendant also claims her attorneys should have questioned the jurors to determine their feelings about the public disclosure of their names. Contrary to the Defendant's allegation, the jurors' names were not "posted to any media" or posted directly on the Clerk of Court's website. The names were

recorded on the court minutes on the day the jury was impaneled, and those court minutes were made part of the court docket (Exhibit I, CMO). The Defendant's assertion that the jurors "may have felt intimidated" by the disclosure of their names is purely speculative. To establish prejudice from counsel's allegedly deficient performance, as required to support a claim of ineffective assistance of counsel, a defendant must do more than speculate that an error affected the outcome. Bradley v. State, 33 So.3d 664, 672 (Fla. 2010). The Defendant is not entitled to relief on Issue V.

l. In Issue VI of her motion, the Defendant claims Mr. Bross and Ms. Burgess were ineffective for failing to request a mistrial based upon the "vitriolic and intemperate" comments the Court made during the Defendant's sentencing concerning the Defendant's work as a journalist. However, since the trial had already concluded, there would have been no basis for a motion for mistrial. The Court will instead consider the Defendant's claim in the context of failure to move for recusal/disqualification.

m. Generally, mere characterizations and gratuitous comments, while offensive to the litigants, do not in themselves satisfy the threshold requirement of a well-founded fear of bias or prejudice. Howard v. State, 950 So. 2d 1260, 1263 (citing Wargo v. Wargo, 669 So. 2d 1123, 1124 (Fla. 4th DCA 1996). A judge may form mental impressions and opinions during the presentation of evidence, as long as she does not prejudge the case. Id. (citing Brown v. Pate, 577 So. 2d 645, 647 (Fla. 1st DCA 1991). The Court's comments did not serve as a basis for disqualification because they did not indicate a predisposed bias against the defendant. Id. (citing Waterhouse v. State, 792 So. 2d 1176, 1192-1194 (Fla. 2001). The Defendant has failed

to show the Court was biased against her, especially since she was sentenced to less than the statutory maximum after receiving a full sentencing hearing. The Defendant is not entitled to relief on Issue VI.

n. In Issue VII of her motion, the Defendant claims Mr. Bross was "professionally impaired" during his representation of her because he had several pending Bar complaints against him which resulted in his eventual disbarment. These complaints were unrelated to the instant case (Exhibit J, Amended Petition for Disciplinary Revocation). Mr. Bross was disbarred in March 2018, well after his representation of the Defendant concluded. The Defendant does not allege that Mr. Bross engaged in any misconduct while he was representing her and does not demonstrate how his then-pending Bar grievances affected his representation of her. The Defendant is not entitled to relief on Issue VII.

o. In Issue VIII of her motion, the Defendant raises claims which were addressed in Issues II and IV above. The Defendant is not entitled to relief on Issue VIII.

p. In Issue IX of her motion, the Defendant claims the trial judge was not neutral and impartial because the judge directed the Defendant's probation officer to file a violation of probation affidavit. This affidavit was filed on December 29, 2017 (Exhibit K, Violation Report). On March 29, 2018, the trial judge recused herself from the case sua sponte, and a successor judge was appointed on April 27, 2018 (Exhibit L, Order of Recusal and Exhibit M, Order of Reassignment). On July 1, 2019, a new judge was assigned the case as part of a division reassignment. That judge conducted the Defendant's violation of probation hearing and dismissed the violation on November 12, 2019 (Exhibit N, CMO/Order). The Defendant has

failed to demonstrate how she was prejudiced by the filing of the violation of probation affidavit. The Defendant is not entitled to relief on Issue IX.

q. In Issue X of her motion, the Defendant claims the cumulative impact of Mr. Bross' and Ms. Burgess' errors deprived the Defendant of a fair trial. Because the Court has found no merit in each of the arguments addressed above, the cumulative error argument must fail as well. The Defendant is not entitled to relief on Issue X.

Accordingly, it is **ORDERED AND ADJUDGED:**

1. The Defendant's Amended Motion for Post-Conviction Relief is **DENIED**.

2. The Defendant has the right to appeal this Order within thirty (30) days of the date of its rendition.

DONE AND ORDERED in Viera, Brevard County, Florida, this 9th day of April, 2020.

CHARLES G. CRAWFORD
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE
STATE OF FLORIDA, COUNTY OF BREVARD

I, Scott Ellis, Clerk of the Circuit Court, do hereby certify that a copy of the foregoing was furnished by U.S. Mail to **Dana Lynn Loyd**, 497 Louis Drive, Cocoa, Florida 32926; and by courier to the **Office of the State Attorney**, 2725 Judge Fran Jamieson Way, Building D, Viera, Florida 32940 this 10 day of April, 2020.

SCOTT ELLIS
By: _____
Deputy Clerk
Kristan Johnson

EXHIBITS SENT TO: ☐ ATTORNEY ☒ DEFENDANT

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

STATE OF FLORIDA

VS.

DANA LYNN LOYD

_____/

NO CAPIAS

CASE NUMBER: 052015CF039871AXXXXX

AMENDED INFORMATION

FALSE REPORT OF CHILD ABUSE, ABANDONMENT, OR NEGLECT (F3) 39.205

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA, PHIL ARCHER, STATE ATTORNEY, THROUGH THE UNDERSIGNED DESIGNATED ASSISTANT STATE ATTORNEY, CHARGES THAT:

COUNT 1: IN THE COUNTY OF BREVARD, STATE OF FLORIDA, on April 29, 2015, DANA LYNN LOYD did knowingly and willfully make a false report of child abuse, abandonment, or neglect or advised another to make such false report, to the Department of Children and Families, concerning a child, [redacted] date of birth [redacted] for the purpose of HARRASSING, EMBARRASSING OR HARMING ANOTHER PERSON, contrary to Sections 39.205(9), Florida Statutes,

AND against the peace and dignity of the State of Florida.

I HEREBY state under oath that I am instituting this prosecution in good faith, and I certify that I have received testimony under oath from the ~~material~~ witness or witnesses for the offense(s).

D Meacham

Designated Assistant State Attorney
Eighteenth Judicial Circuit
Florida Bar No. 63265

Personally appeared before me, Designated Assistant State Attorney DORIS MEACHAM, who is personally known to me, who being first duly sworn, says that this prosecution is instituted in good faith, and certifies that testimony under oath has been received from the material witness or witnesses for the offense(s), and says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true and which, if true, would constitute the offense(s) therein charged. Sworn to and subscribed before me in Brevard County, Florida, this 29th day of December, 2015.

Leah Brooks

Signature of Notary

LEAH BROOKS
MY COMMISSION # FF 085624
EXPIRES: January 23, 2018
Bonded Thru Notary Public Underwriters

LEAH BROOKS
MY COMMISSION # FF 085624
EXPIRES: January 23, 2018
Bonded Thru Notary Public Underwriters

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

CASE NUMBER: 052015CF039871AXXX

STATE OF FLORIDA,

Plaintiff,

vs.

DANA LYNN LOYD,

Defendant.
_____/

FILED IN OPEN COURT
Date 3-30-17, Time 3:47pm
Scott Ellis, Clerk of Courts
By _____ D.C.

VERDICT

We, the jury, find as follows, as to Count 1, in this case: (check only one)

✓ A) The defendant, Dana Lynn Loyd, is guilty of False Report of Child Abuse, Abandonment, or Neglect.

_____ B) The defendant, Dana Lynn Loyd, is not guilty.

So say we all this 30 day of March, 2017, in Titusville, Brevard County, Florida.

Virginia Williams
FOREPERSON

Case # 05-2015-CF-039871-AXXX-XX
Document Page # 173
27118084

Exhibit "B"

CFN 2017077266, OR BK 7865 Page 969, Recorded 04/13/2017 at 02:57 PM, Scott Ellis, Clerk of Courts, Brevard County

Reserved for Recording

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

____ Probation Violator ____ Community Control Violator _____ Retrial _____ Resentence

STATE OF FLORIDA

vs.

DANA LYNN LOYD

Case Number: 05-2015-CF-039871-AXXX-XX

Filed in Office on April 7, 2017 10:21 am.
J Robinson, Deputy Clerk

27151320

AMENDED

JUDGMENT/ORDER OF PROBATION/ORDER OF COMMUNITY CONTROL

Court was opened with the Honorable ROBIN C LEMONIDIS presiding, and in attendance: State Attorney: SEAN M SENDRA; Trial Clerk J Robinson. The Defendant, DANA LYNN LOYD, being personally before this Court represented by BRIAN HARRIS BIEBER, the attorney of record, and said Defendant having the following crime(s):

OBTS Number(s): 0501325293			
Count	**Crime**	**Offense Statute Number**	**Degree**
1	FALSE RPT OF CHLD ABUSE ABANDONMENT OR NEGLECT	39 .205(6)	F3
X	the prior ADJUDICATION OF GUILT in this case is confirmed.		

DONE AND ORDERED in open court at Brevard County, Florida, on April 6, 2017.

ROBIN C LEMONIDIS, Circuit Judge

Case # 05-2015-CF-039871-AXXX-XX
Document Page # 195

27159536

Exhibit "C"

Reserved for Recording

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

STATE OF FLORIDA

vs.

DANA LYNN LOYD

Case Number: 05-2015-CF-039871-AXXX-XX

OBTS Number(s): 0501325293

AMENDED SENTENCE

The Defendant, DANA LYNN LOYD, being personally before this Court, accompanied by the Defendant's attorney of record, BRIAN HARRIS BIEBER, and herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the Defendant should not be sentenced as provided by law, and no cause being shown

It is the sentence of the Court that:

(as to Count 1)

X The Defendant is hereby committed to the custody of the Sheriff of Brevard County, Florida.

X The Defendant is placed on community control for a period of two (2) years under the supervision of the Department of Corrections, to be followed by probation for a period of three (3) years under the supervision of the Department of Corrections, according to the terms and conditions of supervision set forth in a separate order entered herein.

To be imprisoned (Check one; unmarked sections are inapplicable):

X For a term of one (1) year as a condition of community control.

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

STATE OF FLORIDA

vs.

DANA LYNN LOYD

Case Number: 05-2015-CF-039871-AXXX-XX

OBTS Number(s): 0501325293

AMENDED SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed:

(as to Count 1)

Other Provisions:

Original Jail Credit X It is further ordered that the defendant be allowed a total of 1 day as credit for time incarcerated before imposition of this sentence.

Reserved for Recording

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

STATE OF FLORIDA,
Plaintiff

Case Number: 05-2015-CF-039871-AXXX-XX

vs.

DANA LYNN LOYD,
Defendant

AMENDED ORDER OF COMMUNITY CONTROL AND PROBATION

Community Control	The court hereby stays and withholds the imposition of sentence as to count(s) 1 and places the defendant on community control for a period of two (2) years under the supervision of the Department of Corrections (conditions of community control set forth in this order).
Followed by Probation	Followed by probation for a period of three (3) years under the supervision of the Department of Corrections as to count(s) 1 (conditions of probation set forth in this order).

Reserved for Recording

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

STATE OF FLORIDA,
Plaintiff

Case Number: 05-2015-CF-039871-AXXX-XX

vs.

DANA LYNN LOYD,
Defendant

AMENDED STANDARD CONDITIONS OF COMMUNITY CONTROL AND PROBATION

It is further ordered that the defendant comply with the following standard conditions and sanctions of community control / probation:

1. (01) Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.
2. (02) You will pay the State of Florida the amount of $50.00 per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.
3. (03) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
4. (04) You will not possess, carry or own any firearm. You will not possess, carry, or own any weapons without first procuring the consent of your officer.
5. (05) You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation of law to constitute a violation of your community control.
6. (05) You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation of law to constitute a violation of your probation.
7. (06) You will not associate with any person engaged in any criminal activity.
8. (07) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.
9. (08) You will work diligently at a lawful occupation, advise your employer of your community control status, and support any dependents to the best of your ability as directed by your officer.
10. (08) You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.
11. (09) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.
12. (10) You will pay restitution, court costs, and/or fees in accordance with special conditions imposed or in accordance with attached orders.
13. (10) You will report to your officer at least 4 times a week, or, if unemployed full time, daily.
14. (12) You shall submit to the drawing of blood or other biological specimens as required by s. 943.325, Florida Statutes.
15. (12) You will remain confined to your approved residence except for one half hour before and after your approved employment, public service work, or any other special activities approved by your officer.
16. (13) You shall submit to the taking of a digitized photograph as required by s. 948.03, Florida Statutes.
17. (13) You will pay restitution, costs, and/or other fees in accordance with the attached orders.
18. (13a) You shall pay a related cost of $1.00 for each month of your probationary term. The amount due, up to $60.00, shall be paid within the first ninety (90) days after the beginning of your probationary sentence. Further, payments, if any, shall be paid in accordance with a schedule to be established by your officer, if the offender agrees, or the Court.
19. (14) You will report in person within 72 hours of your release from incarceration to the Probation Office in Brevard County, Florida, unless otherwise instructed by the court or department. (This condition applies only if released from the Department of Corrections confinement.) Otherwise, you must report immediately to the probation office located at: 1060 W. King Street, Cocoa, FL 32922

20. (15) You shall submit to the drawing of blood or other biological specimens as required by s. 943.325, Florida Statutes.
21. (16) You shall submit to the taking of a digitized photograph as required by s. 948.101, Florida Statutes.

Reserved for Recording

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

STATE OF FLORIDA

Case Number: 05-2015-CF-039871-AXXX-XX

vs.

DANA LYNN LOYD

AMENDED SPECIAL CONDITIONS OF COMMUNITY CONTROL AND PROBATION

And it is further ordered that the defendant comply with the following special conditions of community control / probation.

(as to Count _1_)

a. Your fines and court costs set forth on the Fine/Costs/Fees page on this judgment are made conditions of your probation and will be paid to the Clerk of the Circuit Court, P.O. Box 919026, Orlando, FL 32891-9026.
b. You will serve 1 year in the Brevard County Jail with credit for 1 day time served.
c. You must immediately enroll in and successfully complete Psychological Evaluation. AND ANY RECOMMENDED FOLLOW- UP TREATMENT; SCHEDULED WITHIN 20 DAYS OF RELEASE
d. Amended on 4/ 7/2017 to reflect TO ADD FINES/COSTS. NOT IN THE TABLE ON 4-6-2017
e. (23) Other: REMOVE ALL INFORMATION FROM THE INTERNET REGARDING THE VICTIM, VICTIM'S FATHER AND DEAN TONG WITHIN 24 HOURS OF RELEASE
f. (24) Other: NO MENTION OF THE VICTIM OR VICTIM'S FATHER FOR ANY REASON
g. (25) Other: DO NOT POST ON ANY SUBJECT REFERENCING THE VICTIM OR VICTIM'S FATHER
h. (26) Other: DO NOT ACCESS OR PARTICIPATE ON ANY SOCIAL MEDIA DURING SUPERVISION
i. (27) Other: DO NOT BLOG / WRITE / TALK ABOUT THE VICTIM
j. (28) Other: DO NOT OWN ANY MATERIAL RELATED TO THE VICTIM OR VICTIM'S FAMILY
k. (29) Other: HAVE "BANKER BOXES" TURNED OVER TO YOUR COUNSEL IMMEDIATELY BY YOUR HUSBAND
l. (30) Other: NO EARLY TERMINATION OF ANY SUPERVISION
m. ADDENDUM Condition of Community Control: You will remain confined to your approved residence under house arrest except for 1 HOUR before and 1 HOUR after any approved employement, public service work or other special activities approved in advance by your Community Control officer. Approval to be away from your residence will be given only for things involving necessities of life such as work, doctor and dental appointments, grocery shopping, laundry, church, etc. You will not be allowed to leave for any recreational or pleasure activities. Approval to be away from your residence must be obtained prior to leaving. If you leave without permission and then report your absence, it is still a violation. Any authorization given you to go to work, to the doctor, etc., means that you must travel directly there and directly back to your residence. You may not make any stops along the way unless approved in advance by your Community Control Officer. Your "residence" means: (a) if a house, the boundaries of your yard. You cannot go across the street to the house next door to visit; (b) if a mobile home, the boundaries of the lot; (c) if an apartment, the boundary is the apartment walls of your apartment and any porch, portico or balcony. You may not use the amenities (swimming pool, tennis courts, etc.) nor the laundromat in the complex without getting the prior consent of your Community Control Officer.
n. CONTACT: No contact with the victim, [redacted].
o. You will maintain an hourly accounting of all your activities on a daily log, which you will submit to your officer on request.

Dana Lynn Loyd

05-2015-CF-39871-AXXX-XX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail / hand delivery to BRIAN HARRIS BIEBER, 333 SE 2ND AVE SUTE 3200, MIAMI, FL 33131-2191 on 4-8-17.

Deputy Clerk

DANA LYNN LOYD

Case Number: 05-2015-CF-039871-AXXX-XX

COMMUNITY CONTROL

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your community control, or may extend the period of community control as authorized by law, or may discharge you from further supervision or return you to a program of regular probation supervision. If you violate any of the conditions and sanctions of your community control, you may be arrested, and the court may adjudicate you guilty if adjudication of guilt was withheld, revoke your community control, and impose any sentence which it might have imposed before placing you on community control.

PROBATION

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence which it might have imposed before placing you on probation or require you to serve the balance of said sentence.

DONE AND ORDERED in Brevard County, Florida, on April 6, 2017.

ROBIN C LEMONIDIS, Circuit Judge

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

STATE OF FLORIDA

Case Number: 05-2015-CF-039871-AXXX-XX

vs.

DANA LYNN LOYD

AMENDED SIGNATURE PAGE

In the event the above sentence is to the Department of Corrections, the Sheriff of Brevard County, Florida, is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The Defendant was advised in open court of the right to appeal from this sentence by filing a notice of appeal within thirty (30) days from this date with the clerk of this court and the Defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the Court further recommends:
*(Items marked with *(COP), *(COCC), and *(COS) are Conditions of Probation, Community Control, and Condition of Suspension)*

(as to Count 1)

General

COURT DENIED MOTION FOR CONTINUANCE
COURT HEARD TESTIMONY FROM WITNESSES, READ LETTERS FROM WITNESSES AND ARGUMENTS FROM COUNSEL
ATTORNEY JESSICA BURGESS PRESENT
ATTORNEY BRIAN BIEBER APPEARED AS CO-COUNSEL
MOTION FOR CONTINUANCE
COURT DENIED RENEWED MOTION FOR JUDGMENT OF ACQUITTAL
COURT DENIED MOTION FOR A BOND PENDING APPEAL. DEFENDANT REMANDED.
DEFENDANT PREVIOUSLY FINGERPRINTED
DEFENSE ORE TENUS MOTION FOR BOND PENDING APPEAL
Amended on 4/ 7/2017 to reflect TO ADD FINES/COSTS. NOT IN THE TABLE ON 4-6-2017 *(COP) * (COCC)

Community Control

REPORT TO COMMUNITY CONTROL WITHIN 24 HOURS OF RELEASE FROM BCJ OR 1ST BUSINESS DAY

Self Improvement Programs

Psychological Evaluation *(COP) AND ANY RECOMMENDED FOLLOW- UP TREATMENT; SCHEDULED WITHIN 20 DAYS OF RELEASE

THE COURT HEREBY ORDERS THE DEFENDANT remanded to the Brevard County Detention Center.

DONE AND ORDERED at Brevard County, Florida, on April 6, 2017.

ROBIN C LEMONIDIS, Circuit Judge

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL OR BY PETITION, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION OR DECISION;

YOU ARE HEREBY COMMANDED THAT FURTHER PROCEEDINGS AS MAY BE REQUIRED BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE RULING OF THIS COURT AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE JAY P. COHEN, CHIEF JUDGE OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT, AND THE SEAL OF THE SAID COURT AT DAYTONA BEACH, FLORIDA ON THIS DAY.

DATE: January 12, 2018

FIFTH DCA CASE NO.: 5D 17-1070

CASE STYLE: DANA LOYD v. STATE OF FLORIDA

COUNTY OF ORIGIN: Brevard

TRIAL COURT CASE NO.: 2015-CF-039871

I hereby certify that the foregoing is
(a true copy of) the original Court mandate.

DISTRICT COURT OF APPEAL FIFTH DISTRICT STATE OF FLORIDA

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK

FILED
2018 JAN 12 A 10:09
SCOTT ELLIS
CLERK OF CIR. CT.
BREVARD CO., FL

cc:

Office Of Attorney General
Andrea K Totten

Brian H Bieber
Alexander G Strassman

L Charlene Matthews
Clerk Brevard

Case # 05-2015-CF-039871-AXXX-XX
Document Page # 245

Exhibit "D"

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

DANA LOYD,

Appellant,

v.

Case No. 5D17-1070

STATE OF FLORIDA,

Appellee.

_____/

Decision filed December 19, 2017

Appeal from the Circuit Court
for Brevard County,
Robin C. Lemonidis, Judge.

Alexander G. Strassman and Brian H. Bieber, of Gray Robinson, P.A., Miami, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Andrea K. Totten, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED.

COHEN, C.J., PALMER and LAMBERT, JJ., concur.

of the testimony and whatnot in order to play it back for you.

Because we've gone away from, as you know, the Court reporter who used to have that strip of hieroglyphics, and now we have an audio record. So, it does take a little bit of time for even the Wizard of Oz to -- that's what I call her because things magically happen here -- to make the disk and whatnot.

And so, I urge you to pay close attention to the testimony as it is given and not be distracted by excessive note-taking.

All right. At this time, would the State like to make an opening statement?

(Whereupon, State Counsel discussion.)

THE COURT: At this time, would the State like to make an opening statement?

MR. SENDRA: Sure.

THE COURT: All right.

MR. SENDRA: May it please the Court and Counsel.

STATE'S OPENING STATEMENT

MR. SENDRA: All right. You don't get to get questioned again today. You get to actually hear some testimony.

All right. Back on April 28th, 2015, the child in this case that you will hear about, [redacted], was attending Quest Elementary School here in Brevard County. [redacted] is [redacted] you will hear from them also toward the end of the trial.

But you're going to hear today, you will hear from Ms. Christiansen first. She's a former employer and supervisor at DCF. They received an intake Hotline call, or a Hotline abuse intake call.

The subject of that call was [redacted] and [redacted] and you're going to learn -- you will hear the call. DCF provided that recording to Agent Fischer from the Brevard County Sheriff's Office, who was the main investigating agent in this case.

During that call you will hear the Defendant tell the Hotline that she overheard a conversation at the school that [redacted] was having, and [redacted] had said that [redacted] shaved her legs and repeatedly forces her to have sex with him.

There will be a bunch of other information that the Hotline operator asked to

obtain the information of the caller. And to try to verify the information that's being given to them about where the conversation occurred.

What you will hear the Defendant say: At the school I was substituting. She will give other details about the child, claiming that she's malnourished severely. She's only allowed to eat certain things, the [redacted] has weight restrictions for the child and things like that.

The call from the Hotline had been passed along to the local DCF people, because the Hotline is in Tallahassee. Okay. That's when Ms. Christiansen and Mr. Oneil Brooks get involved. Okay. They are the local DCF people that you're going to hear from in this case.

Ms. Christiansen was the supervisor that day locally, and Mr. Oneil Brooks is the -- what we call a child protective investigator. He's the person that will go out and actually try to observe the child or verify what they can in person, based on the report.

Okay. You're going to hear from Ms. Christiansen that they checked with the school. They do a preliminary investigation before they send Mr.

Brooks out to meet with the child. And they start seeing red flags with the information that they had received.

She will tell you that they checked with the school and there were no substitutes that day for [redacted] who was in the [redacted] grade at the time. And that there was nobody by the name used by the caller to the DCF Hotline.

That caller had used the name of "Theresa Smith" and the information that was obtained from the school was that nobody by that name was substituting. Nobody subbed for [redacted] that day.

You will hear on the intake call to the Hotline that the person reporting does this on April 29th. You are going to find that out through the witnesses. But they will say that the conversation was overheard on April the 28th. Okay, the day before. I believe it was a Tuesday.

And you're going to get records later on in the case from the School Board that show you that there were no subs that day at the school that dealt with [redacted] and there were no substitute by the name of Theresa Smith.

And you will get that information through Patti Buchanan, who is one of the Brevard County

School Board employees.

You are going to hear from Mr. Brooks, he's going to tell you he responded to Quest Elementary at the direction of Ms. Christiansen, his supervisor. He went to meet with [redacted] and make a determination of whether there appeared to be any immediate harm or danger to the child. He responded to the school, they did not observe any indicators that she was in any immediate danger.

And they then spoke to the school employees, including Ms. Sorokin who is the assistant principal. You are going to hear from her at some point today or tomorrow.

And she will tell you what the normal procedure is as a teacher for reporting, that they have in the school. She is going to tell you her observations about the child, [redacted] and how they're inconsistent with what you hear on the DCF Hotline call.

And she will also tell you who [redacted] teachers are, or were at the time. And tell you that as far as she's aware, there was no call made to DCF by a teacher from the school.

After that you're going to hear from Agent Fischer. Agent Fischer will tell you that he was the

case agent assigned to this after DCF passed this along to the Sheriff's office, because they had suspicions that it was a false report. The information wasn't checking out at all, so Agent Fischer starts to look into this case.

Agent Fischer gets the intake report from DCF, the initial report that they type up when they get the Hotline call. And that report includes the phone number of the caller.

Now, you're going to hear a little bit later on that. When you hear the recording, the caller tries to report anonymously. Okay. The problem with that scenario is substitute teachers are mandatory reporters. You are required to leave your name and your phone number.

They take this report and he learns, because he gains the recording and listens to it and you are going to hear it, she leaves her number but refuses to leave her name. And the only name she then gives is a false name, because we know there's no Theresa Smith at the school at that time.

Okay. So, Agent Fischer starts looking into this. He's got the phone number, he uses whatever investigative resources or databases he uses. He determines what phone company that number belongs to.

And he sends out a subpoena basically: I need the records for this cellular phone number and the subscriber information, any payment information and that sort of thing.

He gets a response from AT&T, which is the company he learned the number belonged to. They provide all of the information he requested. That phone number, which you're going to learn is 321-591-7964, belongs to the Defendant, Ms. Loyd.

And the subscriber on that account is Christopher Loyd, her husband. And you will also learn that her husband was a former employee of the Sheriff's office, and Agent Fischer has that knowledge directly.

From there, Agent Fischer meets with the School Board employees, and talks with Ms. Sorokin, the assistant principal that I told you that you will hear from, to get her statement and what knowledge she has of the situation.

He meets with Ms. Buchanan, Ms. Buchanan actually runs an inquiry in their employee database. And you will see a printout from April 28th and April 29th, 2015, which shows you the subs, substitute teachers that were at Quest Elementary on that two-day timeframe based on the DCF call.

And that printout is going to tell you that there were no substitute teachers by the name of Theresa Smith. And based on the information you're going to get from Ms. Sorokin, you're going to see from that sheet that [redacted] didn't have any substitutes that day either.

You are going to hear from Theresa Smith, the only substitute teacher that was active in the Brevard County school system at the time this report was made.

And she's going to tell you that she was not teaching in County during the year 2015. She was actually teaching in, I believe, it was Osceola County over South of Orlando or the Orlando area.

She didn't make a report to DCF when she substituted at the school. And she had not called the Hotline about [redacted]

Finally, you are going to hear from [redacted] He will tell you that [redacted] was roughly [redacted] or [redacted] at the time. I might be out by year or two, but she was under the age of 18.

Okay. He's going to tell you he's [redacted] DCF came out and investigated this, they spoke to him. Agent Fischer spoke to him. You will learn that the DCF investigation was closed as unfounded.

Mr. Oneil Brooks will tell you that based on

all of the false information provided to DCF that was verified through all of these other sources, that it was not true.

And you will learn through [redacted] that he doesn't know the Defendant. And as far as he's aware, [redacted] doesn't know the Defendant.

You're going to get instructions at the end of this case, and we will explain those to you and the Judge will as well.

But at the end of the case, Ms. Stewart and I are going to ask you to find the Defendant guilty of false reporting of child abuse, abandonment or neglect, because the evidence is going to show beyond a reasonable doubt that nothing she said to DCF that day was true.

And she also attempted to lie about it to Agent Fischer. And when he finally confronted her with the evidence, her consciousness of guilt comes out when she says: I'm sorry for what I did. I'm not going to make any excuses.

So, at the end, we're going to ask that you return a verdict of guilty to this crime against Ms. Loyd.

Thank you.

THE COURT: Thank you, Mr. Sendra.

interviewed. Is that correct?

A. I believe so.

Q. Okay. So, you never interviewed the child and you never interviewed [redacted] and you never interviewed Dana Loyd. Is that correct?

A. Correct.

Q. And when you laid eyes on the child initially, when you first went to the school, did that happen from a distance or how close were you to the child when you laid eyes on the child?

A. We were in the same room, probably from where I sit to where you are.

Q. Okay. Did you speak to the child on that day?

A. No.

Q. Okay. Did she know -- so you never -- you never spoke to her at all, said anything to her that day?

A. No.

Q. Okay. And when you laid eyes on her, was she like taken out of class and brought to an area so you could lay eyes on her, or did you go to where she was and lay eyes on her; how was that done? Tell me how -- describe to me how that happened.

A. I went into, I believe it was a cafeteria area where all the children were waiting to be picked up

after school.

Q. Okay. So, it sounds like you laid eyes on her from a distance of 10 or 15 feet, and she had no idea that you were doing so; is that a fair statement?

A. Yes.

Q. Okay, so did anybody -- okay. And when you laid eyes upon her from a distance while she was waiting after school to be picked up, was there anyone with you, standing with you or were you standing by yourself?

A. The deputy and the principal.

Q. Okay. And isn't it true that you have never made a determination as to whether or not the report made in this case was false?

A. I'm not -- can you repeat that question?

Q. Sure. Isn't it true that you never made a determination as to whether or not the report made in this case is false?

MR. SENDRA: I'm going to object, it calls for a legal conclusion.

THE COURT: Sustained. Invasion of the province of the jury.

BY MR. BROSS:

Q. Now, when you laid eyes on the child a second time at the home, did you speak to the child on that

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FIFTH DISTRICT

CASE NO. 5D17-1070
Lower Tribunal Case No. 05-2015-CF-039871-AXXX-XX

DANA LOYD,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

APPELLANT'S INITIAL BRIEF

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TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS

STATE CASES **PAGE**

CONSTITUTIONAL PROVISIONS **PAGE**

STATUTES **PAGE**

STATEMENT OF CASE AND THE FACTS

A. Nature of the Case

On August 28, 2015, Appellant, DANA LOYD ("LOYD"), was arrested and later charged by Amended Information with one (1) count of false report of child abuse, abandonment, or neglect, in violation of Fla. Stat. § 39.205(9).

B. Course of the Proceedings[1]

Trial commenced on March 27, 2017. On March 30, 2017, the jury returned a verdict of guilty. On April 6, 2017, Appellant was sentenced to two (2) years community control, with a special condition of imprisonment for a period of one (1) year, followed by three (3) years' probation. (R-391). Appellant was immediately remanded into custody, and her motion for Bond Pending Appeal was denied. (R-406).

On June 13, 2017, LOYD filed a Motion to Correct Sentencing Errors pursuant to Fla. R. Crim. P. 3.800(b)(2), challenging six (6) of the special conditions of community control and probation imposed by the trial court, (R-517), and on June 29, 2017, following oral argument, the trial court entered an Order granting in part and denying in part LOYD's Motion. (R-545).

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[1] References to the Record will appear as "(R-___)." References to the Trial Transcripts will appear as "(T-__)."

C. Statement of the Facts

This case involves an alleged false report by LOYD of child abuse committed by [redacted] against [redacted] R.M. (R-153–54). LOYD had never met R.M., and, aside from [redacted] presence at trial in March of 2017, LOYD had never met [redacted] (T-660, 720, 756, 811).

Prior to her conviction at trial (and present incarceration), LOYD was self-employed since approximately 2011 as the owner and operator of an online news publication, BrevardsBestNews.com. (T-793–94). This website focused on local newsworthy matters, seeking to hold law enforcement and public officials accountable, and occasionally contained reports concerning cases of sexual abuse. (T-794).

In 2011, LOYD was telephonically contacted by an individual named Dean Tong, a child abuse expert living on the West Coast. (T-810). Mr. Tong asked LOYD if she was familiar with allegations that [redacted]had sexually abused [redacted] LOYD answered in the negative. (T-810). Following that telephone call, LOYD began to investigate the matter, in her capacity as a journalist, (T-811), for a period of approximately four (4) years. (T-812). During the course of her investigation LOYD obtained numerous documents evincing sexual abuse by [redacted] against R.M., including a hand-drawn picture from R.M.'s personal journal depicting [redacted] ejaculating, (T-849), as

well as a photograph posted online by [redacted] in 2014 of R.M. in a sexually suggestive pose, with a caption which read "Straight Pimped." (T-852). LOYD eventually amassed two (2) "bankers boxes" worth of material related to her investigation. (T-796). LOYD attempted to speak with [redacted] to obtain his account of the events, (T-795), but he declined to provide a statement. (T-797, 926).

Based on the documents and evidence she had gathered, LOYD believed that she had a good-faith basis to report the sexual abuse, (T-801-02, 811), and further believed that, as a matter of law and as a citizen of the State of Florida, she was required to report an instance of child sex abuse. (T-798–99).

As LOYD candidly testified at trial, on April 29, 2015, she called the Florida Sex Abuse Hotline and, falsely representing herself as a substitute teacher, reported that she had overheard a conversation at school involving R.M., and that [redacted] sexually abused her. (T-802–03). LOYD admitted at trial that she had not actually overheard this conversation, that she was not a substitute teacher on that day, and explained that the reason she invented her "substitute teacher" persona was because she believed it would get more attention from law enforcement, which would ultimately help R.M. (T-802).

LOYD's defense at trial was that although the details (i.e., who she was and how she acquired the information) of her report of sexual abuse were false, the

allegation that [redacted] had sexually abused R.M. was made in good faith, based on her investigations over the course of approximately four (4) years. (T-916–17, 919–20, 922).

Prior to trial, the defense filed multiple Motions in Limine, three (3) of which concerned Williams[2] Rule evidence regarding other, uncharged crimes allegedly committed by LOYD against [redacted] (See R-254–62) (Defendant's Motions in Limine); (T-295) (excluding (1) "issues in Colorado[,]" (2) LOYD's "contact with TPD [Titusville Police Department] and BCSO [Brevard County Sherriff's Office,]" and (3) "contact with soccer club[.]") (alterations added). Those three (3) Motions were granted by the trial court. (R-295).

Trial commenced on March 27, 2017. The State's seven (7) witnesses included the alleged victim, [redacted] During [redacted] testimony, defense counsel asked whether, prior to LOYD's April 29, 2015 call, there had been any other allegations of sexual abuse made against him by others, "that were completely unrelated" to LOYD. (T-754). [redacted] guardedly answered in the affirmative. (T-754) ("I would think so.").

Following defense counsel's questions about allegations completely unrelated to LOYD, the trial court ruled that defense counsel had "opened the

[2] Williams v. State, 110 So. 2d 654 (Fla. 1959).

door" to evidence of other allegations committed by LOYD. (T-765). The State proceeded to elicit evidence from [redacted] regarding each and every one of the previously excluded, (R-295), acts committed by LOYD against [redacted] (T-760, 763, 777). Later, in its closing argument, the State repeatedly made use of this Williams-Rule related testimony. (T-890, 892, 894, 905–06, 936).

LOYD waived her constitutional right to remain silent, and chose to testify. Appellant admitted that the "who" and "how" details of her call were inaccurate, but attempted to explain to the jury her reason for doing so was based on her investigative work over the preceding four (4) years. During re-direct, LOYD attempted to expand on the nature of the documents she had acquired over the course of her investigation, but was restricted in doing so by the trial court. (T-844–45). The trial court, in the presence and within the hearing of the jury, chastised defense counsel that he (defense counsel) was "getting way far afield" and declared what, in the court's view, was "the [sole] question" for the jury to consider: "whether or not there was a false allegation of child abuse made; period, end of story." (T-844–45).

Defense counsel immediately moved for a mistrial on the basis of the above-mentioned comment. (T-845). The State was asked for its position by the trial court, but took no position on the Motion. (T-847). The trial court denied the Motion. (T-848).

During its closing argument the State referred to LOYD as a "liar." (See T-901). Defense counsel's objection to same was overruled. (T-901). Emboldened by the trial court's ruling, the State repeated its tactic. (T-904) ("She lied to you throughout this entire process[.]").

That same day, on March 30, 2017, the jury returned a verdict of guilty as charged. (T-961).

SUMMARY OF THE ARGUMENT

The trial court committed reversible error in making improper and misleading remarks in the presence and within the hearing of the jury, and further committed reversible error in failing to grant LOYD's Motion for Mistrial. The trial court's objective neutrality was breached. The State cannot prove beyond a reasonable doubt that the error did not contribute to the verdict.

In addition, the trial court erred in admitting into evidence three (3) separate instances of Williams Rule evidence, all of which had been deemed inadmissible pursuant to pre-trial Motions in Limine excluding same. The improper admission of the evidence is presumptively harmful, and the State's repeated reliance upon such evidence during its closing argument compounded its prejudicial effect.

Moreover, the trial court erred in overruling LOYD's timely objection to the State's improper closing argument, and in allowing highly improper, prejudicial prosecutorial remarks during closing argument. The State improperly called LOYD a "liar," and emphasized to the jury LOYD "lied to you." That prosecutorial misconduct prejudiced LOYD and effectively vitiated her right to a fair and impartial trial, warranting a reversal of her conviction and a new trial.

Finally, the trial court erred in imposing special condition 24 of community control and probation, and then denying LOYD's Motion to Strike same, on the grounds that it is overbroad and violates her First and Sixth Amendment rights.

ARGUMENT AND CITATIONS OF AUTHORITY

I. The Trial Court Committed Reversible Error by Making Improper Judicial Remarks, and Denying LOYD's Motion for Mistrial

It is well-settled law in Florida that "[t]rial judges must be fair, impartial, and disinterested participants in the proceedings." Johnson v. State, 114 So. 3d 1012, 1013 (Fla. 5th DCA 2012). That principle is codified by Fla. Stat. § 90.106, which provides that "[a] judge may not sum up the evidence or comment to the jury upon the weight of the evidence, the credibility of the witnesses, or the guilt of the accused." Id.

Indeed, as all practicing trial lawyers know, because of the "[t]he dominant position occupied by a judge in the trial of a cause before a jury[,]" the reality is that a Judge's "remarks or comments, especially as they relate to the proceedings before him [or her], overshadow those of the litigants, witnesses and other court officers." Hamilton v. State, 109 So. 2d 422, 424 (Fla. 3d DCA 1959).

In light of that reality, Florida law is clear that "[w]hile a judge may take the initiative to clear up uncertainties in the issues of a case, the law is clear, **especially in a criminal prosecution**, that the trial court should take great care not to intimate to the jury the court's opinion as to the weight, character, or credibility of any evidence adduced." Johnson, 114 So. 3d at 1016–17 (emphasis added). "When this neutrality is breached, the State has the burden to prove beyond a reasonable

doubt that the error did not contribute to the verdict." Id. at 789 (citing State v. DiGuilio, 491 So. 2d 1129, 1135 (Fla. 1986)).

Similarly, "Florida courts have determined that various jury instructions that amounted to judicial comment on the evidence violate the statute [§ 90.106] and thus are impermissible." Brown v. State, 11 So. 3d 428, 434 (Fla. 2d DCA 2009). Here, the trial court's improper and highly prejudicial remarks, in the presence of the jury, are wince-worthy:

THE COURT: **How is this relevant?**[3]

MR. BROSS: Because she was asked on cross examination numerous times about the documents and evidence that she looked at in forming her opinions.

And she, the State, asked her to list all of those things. And she said that she could remember some of them, but she couldn't remember all of them.

So, I am asking - - I'm now asking to show her some of those things, so it can refresh her recollection, so she can tell the ladies and gentlemen of the jury the things that she looked at in forming her opinion and the basis for making the call.

THE COURT: Mr. Bross, **that does not go to any material allegation in the case. This is not a case of whether or not your client believed that there was some form of injustice occurring or some bad act occurring.**

The question for the jury is whether or not there was a false allegation of child abuse made; **period, end of story.** Whether - - whether your client believed she was doing it for a good reason or

[3] The sua sponte objection from the trial court also demonstrates a lack of impartiality.

not she's - - she can say, but you are getting way far afield.

MR. BROSS Your Honor, I was - -

THE COURT: You are getting way far afield.

(T-844–45) (emphasis added).

Immediately thereafter, defense counsel approached at sidebar and moved for a mistrial. (Id. at 845). The trial court, after having heard argument from defense counsel, asked the State for its response. (Id. at 847). Notably, Assistant State Attorney Susan Stewart explained that **the State did not have an opinion as to the granting of a mistrial**:

MS. STEWART I don't think now - - I mean, **I don't have an opinion on a mistrial,** I except [sic: accept] that the whole - - well, no; **I don't - - I don't.** You're making a ruling on an objection, that's all.

MR. BROSS: But you went beyond that, Your Honor, you basically told the jury that this case was about whether or not she made a false call. And I think that - -

(Id.)(emphasis added).

In denying the Motion for Mistrial, and attempting to downplay the fact that it had inaccurately and unambiguously instructed the jury, (id. at 845) ("**The question for the jury** is whether or not there was a false allegation of child abuse made; **period, end of story.**") (emphasis added), as defense counsel correctly contended, the trial court sought to justify its comment by stating that, regardless, the trial would be over in "about an hour," and that the jury would be instructed on

the law shortly. (See id.) ("It took me [sic](indicating document) I'm going to tell the jury that in about an hour.") (parenthesis in original).

To the contrary, however, what the trial court did "tell" the jury at the conclusion of trial, the offense instruction, was quite different from the inaccurate and oversimplified—"period, end of story"—late-in-trial instruction inappropriately given by the trial court. (Cf. T-845):

> THE COURT: To prove the crime of false report of child abuse, abandonment or neglect, the State must prove the following element beyond a reasonable doubt:
>
> Dana Lynn Loyd knowingly and willfully made a false report of child abuse, abandonment or neglect.
>
> **It is not a crime, if, at the time of making the report of child abuse, abandonment or neglect, Dana Lynn Loyd was acting in good faith.**

(T-937) (emphasis added).

Improper judicial remarks, such as those at issue here, have been deemed to constitute reversible error. In Simmons v. State, "the defense attacked the credibility of [State] witnesses during cross examination and closing argument." 803 So. 2d 787, 788 (Fla. 1st DCA 2001). During its rebuttal, the State "ridiculed the defense argument, saying, 'according to the defense, no crime occurred here because [the victim] said it was a butcher knife and [the eyewitness] said it was a steak knife.' The trial court overruled defense counsel's mischaracterization of

evidence objection by saying, '**[i]t is accurate**[4] **and dead on point. Sit down, Mr. Boothe.**'" Id. (brackets in original, emphasis added). The First DCA held that "[n]ot only did the judge's comment reflect approval of the State's argument, it also demonstrated disapproval of the defense argument[,]" id. at 789, and emphasized that "[t]his type of error is particularly harmful, as the judge's position of neutrality is essential to the proper functioning of the justice system." Id.

Here, the trial court committed a "serious departure from neutrality[,]" Williams v. State, 901 So. 2d 357, 359 (Fla. 2d DCA 2005), by suggesting that the evidence did indeed fit the offense, and that LOYD's defense was irrelevant, and "way far afield." See id. ("In this case, we find that the trial court committed an equally serious departure from neutrality by prompting the State to alter the allegation to fit the proof of the offense."). In addition, the trial court's statement also could have easily been misinterpreted to have meant that, in its view, LOYD simply did not have a defense of good faith at all. See id.

Such conduct by the trial court—as underscored by the State's reluctance to oppose defense counsel's Motion for Mistrial—deprived LOYD of the "cold

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[4] In the instant matter, on two separate occasions during trial, the trial court similarly commented on the evidence while overruling defense counsel's objections during the State's cross-examination of LOYD. (See T-814) ("Overruled. Ms. Loyd just testified to that exact fact."); (see also T-836) ("Overruled. There's been testimony now of two calls and two times that . . . . Mr. Bross? . . . Read your notes.").

neutrality of an impartial judge," to which she was entitled. Grant v. State, 764 So. 2d 804, 806 (Fla. 2d DCA 2000).

Moreover, declaring that "[t]he question for the jury is whether or not there was a false allegation of child abuse made; period, end of story[,]" without any further explanation, including a good-faith caveat (i.e., whether LOYD was acting in good faith), was totally misleading to the jury. See Brown, 11 So. 3d at 439 ("telling the jury that a particular witness's testimony does not need to be corroborated without further explanation is likely to mislead the jury.").

Indeed, the words of the trial court were so biased in favor of the State[5] that even if they were made outside the presence of the jury—which they were not—they would still have risen to the level of reversible error. See Seago v. State, 23 So. 3d 1269, 1271–72 (Fla. 2d DCA 2010) ("This duty of neutrality is especially important when the trial judge is in the presence of a jury, but this court has recognized that a trial court can commit error—even fundamental error—outside

[5] While it was perhaps the most egregious, this was hardly the only time that the trial court demonstrated favoritism to the State at the defense's expense. (See e.g., T-822) (overruling defense counsel's objection to the State cutting off and talking over LOYD's answers on cross-examination); (T-828) (overruling defense counsel's objection that LOYD be "allowed to finish her answer."); (T-828–89) (not ruling on defense counsel's objection that LOYD be permitted "to finish" her answer); (T. 826–27) (overruling defense counsel's objections to the State's improper representations, phrased in the form of a question during cross-examination of LOYD, that R.M. was "upset" as a result of LOYD's actions, notwithstanding R.M. not being presented as a witness at trial); see also supra at n.4 and infra at n.8.

the presence of the jury by taking actions that obviously favor one side or the other.").

"The trial court's conduct vitiated the validity of the proceedings," Johnson 114 So. 3d at 1017–18, and the State cannot prove beyond a reasonable doubt that the error did not contribute to the verdict. Id. at 787. As such, LOYD's conviction should be vacated, and the matter remanded for a new trial, perhaps "before a different judge[.]" Johnson, 114 So. 3d at 1017–18.

II. The Trial Court Committed Reversible Error by Improperly Admitting "Williams Rule" Evidence

Fla. Stat. § 90.402(2)(a) provides:

> Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

The Florida Supreme Court has held that "evidence of other crimes, whether factually similar or dissimilar to the charged crime, is admissible if the evidence is relevant to prove a matter of consequence other than bad character or propensity." Williams v. State, 621 So. 2d 413, 414 (Fla. 1993). However, the general rule is that the "use of collateral crime evidence in a criminal trial is the exception, not the rule." Hill v. State, 933 So. 2d 667, 669 (Fla. 1st DCA 2006).

"Evidence that suggests a defendant has committed other crimes or bad acts can have a powerful effect on the results at trial[,]" Bozeman v. State, 698 So. 2d 629, 631 (Fla. 4th DCA 1997), so much so that the Florida Supreme Court has held that **"collateral crime evidence is presumptively harmful."** Goodwin v. State, 751 So. 2d 537, 547 (Fla. 1999) (emphasis added). Despite this principle of law, however, "[a] criminal defendant may open the door to the presentation of collateral crime evidence that would otherwise be inadmissible if he gives misleading testimony or makes a specific factual assertion that is not correct[,]" and the reason for that exception is "based on principles of fairness." Id. at 669–70.

The mere fact, however, that a "defendant's testimony can be characterized as false or misleading[,]" **does not** entitle the State "to present evidence that a defendant has committed an unrelated crime[.]" Id.; see also Redd v. State, 49 So. 3d 329, 333 (Fla. 1st DCA 2010) ("the mere fact that testimony may be characterized as incomplete or misleading does not automatically trigger the admission of otherwise inadmissible evidence under the 'opening the door' rule."). "Rather, the State must demonstrate a legitimate need to resort to such evidence to correct a false impression." Redd, 49 So. 3d at 333. "Otherwise, the 'opening the door' rule threatens to become a pretext for the illegitimate use of inadmissible evidence, and the fairness-promoting purpose of the rule is lost." Id.

Sub judice, the "door" was purportedly "opened" during the following exchange between defense counsel and the alleged victim, [redacted]

[MR. BROSS:] You have just testified that you were embarrassed when you found out about the allegations regarding your child's sex abuse.

Isn't it true that there had been such allegations before this incident that were **completely unrelated to Ms. Loyd**?

[redacted] I would think so.

(T-754) (emphasis added).

Shortly thereafter, the trial court summoned counsel to sidebar, (T-757), and informed defense counsel that by virtue of this line of questioning he had opened the door to LOYD's other bad acts against [redacted] actions which had been originally deemed inadmissible in light of the trial court having granted, prior to trial, LOYD's three (3) Motions in Limine excluding testimony regarding those very incidents. (See R-254–62, 295) (excluding (1) "issues in Colorado[,]" (2) LOYD's "contact with TPD [Titusville Police Department] and BCSO [Brevard County Sherriff's Office,]" and (3) "contact with soccer club[.]") (alterations added):

THE COURT: Well, you also asked whether there were other prior allegations prior to this.

MR. BROSS: Completely **unrelated to Ms. Loyd**. That's what I think, have you ever - - have you ever - -

THE COURT: I have your question here and it's not - -

MR. BROSS: That's why I said, I think, have you ever - - because he asked - - On direct he asked [sic: testified], you know, how he felt about receiving, you know, when he was made aware of these allegations by Ms. Loyd.

THE COURT: Uh-huh.

MR. BROSS: And he said he was extremely embarrassed and I was merely - - and I said: Sir isn't it true that you have received other allegations completely **unrelated to Ms. Loyd?**

And he said yes. And that was my question. It was only in the context of unrelated to Ms. Loyd, not from Ms. Loyd.

THE COURT: Uh-huh, proceed.

(T-758 –59) (emphasis added).

On redirect examination, the State "bolted" right through the purported[6] "open door," and improperly elicited Williams Rule testimony from [redacted]

[ASA SENDRA:] You were asked about prior allegations. Were there prior allegations that you sexually abused [redacted] made against you?

[redacted] Yes.

[ASA SENDRA:] **Prior to 2015?**

[redacted] Yes.

[ASA SENDRA:] **Are you aware if Ms. Loyd ever made one of those allegations against you?**

[6] Actually, the trial court's ruling on whether the door had or had not been opened was not entirely clear. (T-759) ("Uh-huh, proceed.").

MR. BROSS: Objection, Your Honor.

THE COURT: Overruled.

[ASA SENDRA:] You can answer the question.

[redacted] I'm not aware if she has.

(T-760) (emphasis added).

Unsatisfied with [redacted] answer, the State improperly pressed [redacted] for details (i.e., trying to impeach its own witness) regarding these incidents, over the objection of defense counsel:

[ASA SENDRA:] **So, are you aware if Ms. Loyd contacted anybody else in regard to these allegations?**

MR. BROSS: Objection, Your Honor, hearsay, speculation, and lack of personal knowledge.

THE COURT: Overruled. The question was: to your knowledge?

[ASA SENDRA:] You can answer.

[redacted] Yes.

[ASA SENDRA:] Okay, who?

[redacted] She had - -

(T.-763).

* * * *

[redacted] **She [Ms. Loyd] had called a soccer club locally.**

MR. BROSS: Objection, Your Honor, hearsay. May we approach?

THE COURT: You're welcome to.

(T.-764) (emphasis added).

Revisiting the issue of whether he had, in fact, "opened the door," defense counsel explained to the trial court at sidebar that he had specifically asked [redacted] if he "had any prior allegations that were **completely unrelated to Ms. Loyd**[,]" and that defense counsel "did not ask about prior allegations from Ms. Loyd." (T-764) (emphasis added). The State, in response, made a blanket assertion, without explanation, that defense counsel "opened the door when he asked about prior sexual abuse allegations against this gentlemen, **it doesn't matter who made them.**" (Id.) (emphasis added). A lengthy argument between defense counsel and the State continued at sidebar, with the trial court "weighing in" intermittently:

MR. BROSS: Yes, and I said - - I said completely unrelated to Ms. Loyd.

[ASA] SENDRA **It's all relevant now.**

THE COURT: Understand, Mr. Bross, when you started and went down the road of prior allegations, **you opened the door** to the other matters that had previously - - that previously were not going to be part of this.

MR. BROSS: Okay, I don't - -

THE COURT: I have no idea why you desired to ask that question in light of the motions in limine, but you did and - -

MR. BROSS: It could have - -

THE COURT: - - and I warned you and - -

MR. BROSS: I don't see how asking about prior allegations that were completely unrelated to Ms Loyd - -

THE COURT: Because you are leaving - - you're leaving - - Well, Mr. Sendra, do you have a response to that?

[ASA] SENDRA: He opened the door. And I have the report that it's false, and **it shows a pattern of harassment directly by the Defendant.**

MR. BROSS: But that's not the - - that's not the theory the State has followed, in that they have not filed any notice of Williams Rule or anything like that.

The reason I asked the question is because the State asked how he felt when he received the notice of the allegation regarding Ms. Loyd.

And he said he was like surprised, he was upset.

(T.-764–66) (emphasis added).

* * * *

[MR. BROSS:] So, I never asked about prior allegations that Ms. Loyd made against him or anything having to do with Ms. Loyd. It was a very clear question, it was prior allegations from - -

THE COURT: You were asking - - the problem is, Mr. Bross, you were asking about prior allegations which is a question certainly; and the object here - - remember the case that the Court - - the case that I quoted from yesterday,[7] that the bottom line of a trial is fairness to both parties?

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[7] Quoting from an excerpt of Bozeman, 698 So.2d 629, the trial court noted, (T-545), "[t]o open the door to evidence of prior bad acts the Defense must first offer misleading testimony or make a specific factual assertion, which the State has the right to correct so that the jury will not be misled." (T-545). Ironically, however, the trial court apparently failed to appreciate that in Bozeman, the Fourth DCA reversed the defendant's convictions on multiple grounds, including its ruling that "the innocuous question posed by defense counsel to [the State's witness on cross-

MR. BROSS: Okay.

THE COURT: And that means to the Defendant and to the State as well.

[ASA] SENDRA: Right.

(T-766).

* * * *

THE COURT: Because what you're doing is leaving the jury with the impression that everybody in the world is reporting this man essentially for abuse of a child.

MR. BROSS: Okay. Well, Judge I - -

THE COURT: And he's entitled to - - the State is entitled to a fair trial as well as your client is.

(T-767–68).

* * * *

MR. BROSS I asked specifically about prior allegations by other persons, not prior allegations that Ms. Loyd made.

THE COURT: Mr. Bross, that's - -

[ASA] SENDRA: And that's misleading. Ms. Loyd has made other allegations against him.

MR. BROSS: I know, and I didn't ask him - -

THE COURT: It's misleading and it's - -

MR. BROSS: No, it's not.

THE COURT: Go back and finish. Your objection is overruled.

(T-771).

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examination] was hardly the type of deceptive conduct by a defendant that opens the door to evidence of prior bad acts." Bozeman, 668 So. 2d at 631.

Now permitted to continue to "pile on," the State further emphasized LOYD's—previously deemed inadmissible—uncharged "bad acts" toward [redacted] by specifically inquiring whether [redacted] had been suspended from coaching at a soccer club, (T-773), and whether Ms. Loyd had contacted [redacted] employer in Colorado. (T-777). The trial court offered no curative or limiting instruction to the jury to explain the significance of these incidents or for what purpose they were being offered into evidence.

The State, of course, relied heavily on this alleged "pattern" of conduct during its closing argument:

> [ASA SENDRA:] Well, the only agenda here in this case **is Ms. Loyd continually harassing** [redacted]

(T-890) (emphasis added).

> [ASA SENDRA:] **You heard during the testimony that she had called DCF on** [redacted] **in 2014.** She wasn't satisfied with the outcome of that investigation, and so then we end up with this call in 2015, where she is now making up tremendous lies.

(T-892) (emphasis added).

> [ASA SENDRA:] And we've heard since then that there's been **two calls to DCF** that Ms. Loyd is responsible for. At some point, the only reason you can be calling is to harass that person or to embarrass them.

(T-894) (emphasis added).

> [ASA SENDRA:] Harass or embarrass. I suspect they're going to get up and tell you Ms. Loyd told you she did this out of concern for the child. **I think that argument probably would have flown in**

2014, the first call she admitted to making.

I don't know how you can do that again in 2015 with all the lies that are on this call, **with all the other information that's before the Court and you as the jury panel**, and say the intent is not malicious.

(T-905–06) (emphasis added).

[ASA SENDRA:] Based on all of that, **based on Ms. Loyd's continual harassment,** we would ask that you find her guilty as charged of making a false report of child abuse.

(T-936) (emphasis added).

Even assuming arguendo that defense counsel's question was misleading, that alone would not be enough to justify the State's introduction of otherwise inadmissible Williams Rule evidence.[8] See Redd, 49 So. 3d at 333 ("the mere fact that testimony may be characterized as incomplete or misleading does not automatically trigger the admission of otherwise inadmissible evidence under the 'opening the door' rule."). Yet, other than the fact that it was purportedly misleading, the State did not offer, as it was required by law, id. ("Rather, the State

[8] While the trial court permitted the admission of Williams Rule evidence, it tellingly, and characteristically, refused to permit LOYD to explain to the jury, while on cross-examination, that she herself was a victim of sexual abuse after the State asked her, "You are obsessed with [redacted]?" (See T-830) (ruling that "[t]hat's absolutely forbidden. No, she's not permitted to seek sympathy from the jury . . . [a]nd bring up something totally irrelevant."); (see also T-832) (pronouncing "[w]ell, what I'm saying is, why people do what they do is not always relevant.").

must demonstrate a legitimate need to resort to such evidence to correct a false impression."), any legitimate need to resort to any such type of evidence.

To the contrary, far from having a valid, legitimate need for the admission of this evidence, the State's rationale was that LOYD's conduct demonstrated "a pattern of harassment[,]" (T-765)—but that is exactly why such evidence is inadmissible. Bolden v. State, 543 So. 2d 423, 423 (Fla. 5th DCA 1989) ("On appeal, the state argues that the testimony was admissible to show a 'pattern of conduct' by Bolden. That is exactly why the evidence was inadmissible.").

Further, the State "rubbed salt" in the "open wound" created by the trial court's erroneous ruling by repeatedly referencing the Williams Rule evidence during its closing argument. (T-890, 892, 894, 905–06, 936). The prosecutor's reliance on improperly admitted Williams Rule evidence during closing argument only compounded the prejudice resulting from the trial court's erroneous admission of that evidence. See Bozeman, 698 So. 2d at 631 ("in light of the prosecutor's use of the improper comments during his closing argument, we cannot say that the error was harmless[.]").

The trial court's improper admission of the Williams Rule evidence here constitutes reversible error. See id.; Bolden, 543 So. 2d at 423 (reversing the defendant's conviction where Williams rule evidence was admitted for "[t]he purpose of . . . show[ing] propensity[.]").

III. The Trial Court Erred in Overruling LOYD's Objection to the State's Improper Closing Argument

"Unfortunately, prosecutorial misconduct in closing argument is neither a new nor fading phenomenon." Brinson v. State, 153 So. 3d 972, 981 (Fla. 5th DCA 2015). The State, in making its closing arguments here, undeniably followed that unfortunate trend. (T-901).

While "[i]t is well settled that attorneys are afforded 'wide latitude in arguing to a jury during closing argument[,]'" Narcisse v. State, 166 So. 3d 954, 956 (Fla. 4th DCA 2015) (citation omitted), "it is improper for a prosecutor to express a personal belief in the guilt of the accused, or in the veracity of . . . witnesses." Pacifico v. State, 642 So. 2d 1178, 1183–1184 (Fla. 1st DCA 1994) (citing Jones v. State, 449 So. 2d 313, 314 (Fla. 5th DCA 1984)); see also Linic v. State, 80 So. 3d 382, 392 (Fla. 4th DCA 2012) ("A criminal trial is a neutral arena wherein both sides place evidence for the jury's consideration; the role of counsel in closing argument is to assist the jury in analyzing that evidence, not to obscure the jury's view with personal opinion, emotion, and nonrecord evidence.") (quotations and citation omitted); Berger v. United States, 295 U.S. 78, 88 (1935) ("It is as much the [prosecution's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. [W]hile [the prosecution] may strike hard blows, [it] is not at liberty to strike foul ones.").

Florida law is unambiguous: "[i]t is 'unquestionably improper' for a prosecutor to state that the defendant has lied."[9] Connelly v. State, 744 So. 2d 531, 533 (Fla. 2d DCA 1999) (quoting Washington v. State, 687 So. 2d 279, 280 (Fla 2d DCA 1997)). Where a defendant timely objected[10] "to the allegedly improper [prosecutorial] comments, and his [or her] objection was overruled, the standard of review is abuse of discretion." Brinson, 153 So. 3d at 975 (citing McArthur v. State, 801 So. 2d 1037, 1040 (Fla. 5th DCA 2001)). Only "if the objection is sustained" must trial counsel "then request a curative instruction or mistrial[.]" State v. Fritz, 652 So. 2d 1243, 1244 (Fla. 5th DCA 1995) (citing, inter alia, Holton v. State, 573 So. 2d 284, 288 n.3 (Fla. 1990)).

During its closing argument, the State twice asserted that LOYD had lied to the jury:

> [ASA SENDRA:] And you will get an instruction that's called weighing the evidence, and you will get to decide. And there's factors, the Court will give you factors:

---

[9] "Exhorting the jury to convict the accused because [she] **lied** constitutes 'an open invitation to the jury to convict the defendant for a reason other than [her] guilt of the crimes charged. Such comments have been held to constitute reversible error in a long line of cases.'" Pacifico, 449 So. 2d at 1183 (emphasis in original; alterations added) (quoting Bass v. State, 547 So. 2d 680, 682 (Fla. 1st DCA 1989)).

[10] However, in some instances "where the comments of the prosecutor so deeply implant seeds of prejudice or confusion that even in the absence of a timely objection at the trial level it becomes the responsibility of this court to point out the error and if necessary reverse the conviction." Linic, 80 So. 3d at 394 (Warner, J., concurring specially) (alteration added) (quoting Pait v. State, 112 So. 2d 380, 384 (Fla. 1959).

Did the witness seem to have the opportunity to see or to know things about which the witness testified?

I would argue to you that all of the witnesses that the State put forward clearly did. Ms. Loyd didn't. **She's the only person that lied about everything in this case.** Everything that - -

MR. BROSS: Objection, Your Honor. I mean, it's an improper - - the objection (trailing off).

[ASA] SENDRA: I'm sorry?

MR. BROSS: Judge, I object to the statement the State just made regarding how Ms. Loyd testified.

THE COURT: All right. The objection is overruled.

(T-900–01) (emphasis added, parenthesis in original).

Emboldened by the trial court's ruling just moments earlier, the State repeated its message that LOYD had lied to the jury:

[ASA SENDRA:] You should not feel sorry for Ms. Loyd. **She lied to you** throughout this entire process and the evidence proves that.

(T-904) (emphasis added).

Like the Assistant State Attorney sub judice, the prosecutor in Pacifico also made prejudicial and improper remarks, asserting the prosecutor's personal belief that the appellant was a liar. Pacifico, 642 So. 2d at 1181. There, the prosecutor, during closing argument, emphatically told the jury how the appellant was a "**chronic liar**" and a "sadistic selfish bully who **lied**" to obtain the lifestyle the Appellant wanted. Id. (emphasis added). Due to those improper comments,

prejudicial remarks, and prosecutorial misconduct, the First DCA reversed and remanded the matter. See id.

Here, the State virtually echoed the Pacifico prosecutor's words and "poisoned" the proverbial "well" by prejudicing LOYD and twice declaring that LOYD was a liar. (T-900, 904). Not only did the State improperly label LOYD a liar, but went a step further and improperly evoked the jury's emotions by stating that "she lied to you." (T-904). The State's words "could have been and likely were construed as **asking jurors to send a message about lying** in the courtroom, rather than focusing attention on whether the State proved [LOYD's] guilt." Pacifico, 642 So. 2d at 1181 (emphasis added) (citing Bass, 547 So. 2d at 682); see Berger, 295 U.S. at 88 ("improper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they **should properly carry none**.") (emphasis added).

Like the ASA's words in Pacifico, the ASA's remarks sub judice are "sufficiently egregious to cast doubt upon the fairness of the trial." Id. at 1184. The trial court erred in overruling LOYD's objection to the State's improper closing argument, and this Court should reverse LOYD's conviction and grant a new trial. See id. at 393; Narcisse, 166 So. 3d at 957; Pierre v. State, 88 So. 3d 354, 356 (Fla. 4th DCA 2012); Pacifico, 642 So. 2d at 1187.

IV. The Trial Court Erred in Denying LOYD's Motion to Strike Special Condition Twenty-Four (24) of Community Control and Probation

The Trial Court erred in denying LOYD's Motion to Strike special condition twenty-four (24) of community control and probation, (R-621), a condition which is impermissibly overbroad and violative of LOYD's constitutional right to counsel of her choosing, and right free speech. U.S. Cons. amend. I, VI; Fla. Const. art. I, §§ 3, 16. The First Amendment of the United States Constitution states, in pertinent part: "Congress shall make no law . . . prohibiting the free exercise thereof; or abridging the freedom of speech[.]" U.S. Cons. amend. I. Additionally, Article One, Section Four of the Florida Constitution provides that "[e]very person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech[.]" Fla. Const. art. I, § 3.

The Florida Supreme Court has emphasized that conditions of supervision which "burden the exercise of a legal or constitutional right[,]" are subject to "special scrutiny." Larson v. State, 572 So. 2d 1368, 1371 (Fla. 1991). A condition of probation must be reasonable, and must be "rationally related to the nature of the crime and aimed at encouraging the defendant's rehabilitation." Evans v. State, 608 So. 2d 90, 91 (Fla. 1st DCA 1992) (quoting Larson, 572 So. 2d at 1370–71). "In determining whether a condition of probation is reasonably related to rehabilitation," a condition "is invalid if it (1) has no relationship to the

crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality." Rodriguez v. State, 378 So. 2d 7, 9 (Fla. 2d DCA 1979).

However, a condition of probation is "overbroad and must be stricken" where "it can be easily violated unintentionally." See Dean v. State, 629 So. 2d 1106 (Fla. 4th DCA 1994). Florida jurisprudence is rife with instances of overzealous sentencing courts imposing illegal special conditions of supervision. A condition is impermissible and overbroad where it, in blanket fashion, forbids a probationer's "contact with minor children[,]" as "[t]he language of the condition must be more specific, so that [a probationer] may not be charged with unintentional violation of it." Oliver v. State, 672 So. 2d 105, 105 (Fla. 4th DCA 1996). Other impermissibly overbroad special conditions include a probationer being forbidden from being "within three blocks of a 'high drug area' as defined by his probation officer[,]" Huff v. State, 554 So. 2d 616, 617 (Fla. 4th DCA 1989), prohibiting a defendant from residing in central Florida, Almond v. State, 350 So. 2d 810, 810 (Fla. 4th DCA 1977) ("The requirement that Appellant reside elsewhere than Central Florida is not sufficiently definite to advise Appellant of the limits of the restriction[.]"), and forbidding a probationer from residing with a female relative. Mays v. State, 349 So. 2d 792, 794 (Fla. 2d DCA 1977) ("the restriction is overbroad since its language

would prohibit appellant from living with his mother or any other female relative of appellant.").

Sub judice, special condition 24 initially stated, in blanket fashion, that LOYD was forbidden from making any "mention of the victim[11] or victim's [redacted] for any reason[.]" (R-381) (alterations added). Following the filing of, and oral argument on, Defendant's Motion to Correct Sentencing Errors, the trial court somewhat "loosened" the condition, and permitted LOYD to "communicate with her attorneys of record, her husband, and any/all mental health professionals treating" her. (R-621) (alterations added). However, even the "new version" of special condition 24 suffers from the same fatal defects as its predecessor: it is overbroad and violates LOYD's First and Sixth Amendment rights.

As contended by undersigned counsel before the trial court, special condition 24 restricts not only public comments by LOYD concerning the victim and [redacted] but also private ones. (R-572) ("It's not even talking about in a public forum, it's not even talking about the internet. It's just talking about no mention at all for any reason."). That fact was not lost on the trial court, which "doubled down" and added that LOYD is even forbidden from mentioning the victim and [redacted]

[11] As was clarified at the June 28, 2017, hearing on LOYD's Motion to Correct Sentencing Errors, the "victim" in this matter was [redacted] (R-570). The Amended Judgment was corrected to account for that clerical error. (R-621) ("no mention of the victim or victim[redacted].]") (alterations added).

while calling prospective attorneys. (See R-576) ("Not with any attorney, not calling 14 attorneys and asking, you know, shopping the facts or whatever[.]").

It is questionable whether a sentencing court has the power to restrict a supervisee from making public comments regarding a victim of his or her crime. See United States v. Richards, 385 F. App'x 691, 693 (9th Cir. 2010) (unpublished) ("With respect to the First Amendment issue, the conclusion of this panel is that the [probation] restriction imposed upon the defendant, with respect to public comments concerning Candice Trummell, violates the defendant's First Amendment rights.") (emphasis added).

However, unless such comments are harassing or threatening, cf. The Florida Bar v. Sayler, 721 So. 2d 1152, 1155 (Fla. 1998) ("The First Amendment does not protect those who make harassing or threatening remarks about the judiciary or opposing counsel."), a sentencing court simply does not have the authority to restrict a supervisee from making innocuous comments in private. Cf. D.L.S. v. State, 192 So. 3d 1273, 1274 (Fla. 2d DCA 2016) ("Words alone rarely, if ever, rise to the level of an obstruction unless the officer is executing process on a person, legally detaining a person, or asking for assistance with an ongoing emergency."). Indeed, a restriction that prevents LOYD from having case-related and fact intensive conversations in a private setting with prospective attorneys is not only overbroad and violates the First Amendment, but also violates her Sixth Amendment right to counsel of her choosing.

See United States v. Gonzalez-Lopez, 548 U.S. 140, 144 (2006) ("an element of this right [to counsel] is the right of a defendant who does not require appointed counsel to choose who will represent him."); see also People v. Brandao, 210 Cal. App. 4th 568, 577 (2012) (recognizing as "cognizable" the defendant's claim that a condition of probation forbidding contact with gang members violated "his right peaceably to assemble under the First Amendment to the United States Constitution[.]")[12]; State v. Davis, 27 Ohio App. 3d 65, 69 (1985) ("In the present case, appellant objects to the imposition of the condition that she 'not engage in any political activity during her two-year probation.' The condition does border on the infringement of appellant's First Amendment rights.").

The trial court's imposition of this special condition, even in its amended form, is overbroad, violates LOYD's First and Sixth Amendment rights, and constitutes reversible error. See Larson, 572 So. 2d at 1371.

CONCLUSION

The trial court improperly commented on the evidence in giving an inaccurate and misleading instruction to the jury. This was prejudicial and reversible error. The trial court further erroneously allowed the admission of

[12] Computer-assisted research failed to uncover, in all of Florida jurisprudence, a single case analyzing, within a First-Amendment context, a condition of probation or community control similar to special condition 24 sub judice. But see Goldschmitt v. State, 490 So. 2d 123, 124 (Fla. 2d DCA 1986) (affirming a special condition of probation requiring Defendant to affix a bumper sticker reading "CONVICTED D.U.I.-RESTRICTED LICENSE" to his vehicle).

Williams Rule evidence, which was repeatedly relied upon by the State in its closing argument. Moreover, the State twice committed prosecutorial misconduct during its closing argument, which the trial court improperly permitted the State to do.

Finally, the trial court erred in imposing special condition 24 of community control and probation, as same is overbroad and violates LOYD's First and Sixth Amendment rights. As such, Appellant's conviction and sentence should be vacated and a new trial ordered, perhaps before a different trial court judge, as appropriate.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I HEREBY CERTIFY that this brief was typed in Times New Roman 14 point font and is no longer than fifty (50) pages in length, exclusive of Table of Contents, Citations of Authorities, Certificates of Service and Compliance. Fla. R. App. P. 9.210(a)(2).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-mailed this 8th day of August, 2017 to:

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s/Alexander Strassman
ALEXANDER STRASSMAN

She will remove her blog, posts, news articles, et cetera regarding the incident at issue in this case. And she shall refrain from posting any news articles, et cetera, about this case in the future.

She will pay court costs, cost of prosecution, cost of investigation, submit DNA and fingerprints; and she will pay $933 -- or $983 in cost of investigation.

And the intent is that she would plead no contest. It's a best interest plea. And the Court could sentence her to as much as those things, and the Court can sentence her to as little or none of those things.

So we would actually ask for a sentencing date. And we would want to present some witnesses at sentencing. I think the victim has a right to be heard as well.

THE COURT: Certainly, we can do that. We can probably do that next week.

MR. BROSS: Okay.

THE COURT: We may have some time next week that we can that. I'll get Mike to confirm.

Mr. Sendra, you're standing, what do you

have?

MR. SENDRA: I would assume we could probably do this as soon as they are ready. I've spoken to the victim. I don't know that he would want to be here for a sentencing.

THE COURT: Okay.

MR. SENDRA: He has work obligations. He was going to come for the trial obviously but --

THE COURT: Right, okay. So, you don't think that that --

MS. STEWART: Next week would be fine.

THE COURT: You don't have any arrangements to make with regard to your end?

MR. SENDRA: No, not yet.

THE COURT: Okay. Here comes Mike right on cue. Is there a day next week when we could -- Ms. Loyd wishes to enter a plea and then have the sentencing.

MIKE: How long do they need?

THE COURT: How long do you anticipate, Mr. Bross?

MR. BROSS: Probably 45 minutes.

MIKE: It could be on Wednesday or Thursday at 9:00 AM.

THE COURT: Okay. Wednesday or Thursday at 9:00 AM, so that would be --

Do you mean this Wednesday or next Wednesday?

MIKE: Next Wednesday.

THE COURT: Next Wednesday, so that's --

MR. BROSS: So the 27th --

THE COURT: Either the 5th or the 6th of April at 9:00 AM.

MR. BROSS: No, it's --

MS. STEWART: I've got --

MR. BROSS: No, I'm sorry. So it would be March the 29th or --

THE COURT: No, April 5 or 6.

MR. BROSS: Oh, so it's a month. It's five weeks out, okay.

MS. STEWART: No, it's --

THE COURT: No, today's March 27th.

MR. BROSS: Right.

THE COURT: 28, 29, 30, 31.

MR. BROSS: Oh, I'm sorry. It's next week, April the 6th, sorry.

THE COURT: Yeah.

(Whereupon, Defense Counsel discussion.)

MS. BURGESS: Does it have to be 9:00

AM, do you have an afternoon? Sorry.

THE COURT: Can you do Thursday afternoon at 1:30 PM.

MR. BROSS: Yes.

THE COURT: Thursday afternoon at 1:30 PM. Are the folks that you wish to have speak available either day?

MR. BROSS: Yes, they should be available, Your Honor, I believe.

THE COURT: Okay, all right. So Thursday at 1:30, that's April the 6th.

MR. BROSS: Yes, ma'am.

THE COURT: Okay. I'm going to count that as three pleas. That's 45 minutes and I'm allowing 15-minute time-slots, that's where I check on the check marks on my calendar.

ISSUE: DEFENDANT'S MEDICAL CONDITION

All right. So, Ms. Loyd, I noticed that as Mr. Bross and Ms. Burgess have been looking at their calendars, you said you had to sit down.

Are you feeling well, ma'am, are you dizzy, are you -- I mean, are you emotional because of what's going on or is there some other -- Are you sick, I mean like getting the

cold or flu or something.

COURT DEPUTY: Do we need to call the paramedics?

THE DEFENDANT: No.

THE COURT: Yes, you're shaking.

THE DEFENDANT: Yes, I know. I have a sinus infection and an ear infection.

THE COURT: Okay. You are nodding your head yes when I'm asking you these questions. When I said are you sick? You nodded your head yes.

But my question is: Does that in any way impede your ability to determine that you wish to resolve your case in this manner?

THE DEFENDANT: (No audible response.)

THE COURT: Does that prevent you from thinking clearly enough to resolve your case?

THE DEFENDANT: Okay, I'm -- oh, I -- I honestly don't think that I -- I just am not -- I don't -- I'm not on drugs, I've only taken Tylenol, but I just -- I don't know if I'm more sick because I'm not making -- I don't know if I'm making the right --

THE COURT: Well, ma'am, we've got -- we're ready to start picking the jury in your

case. And I'm sorry if you're not feeling well.

THE DEFENDANT: I know, I'm trying to pull it together.

THE COURT: Right. I understand you are, I understand. And I understand completely that people are emotional when they are making a decision to enter a plea or go to trial or continue with trial or what have you.

But I want to make sure that you are making a knowing and intelligent decision, and that you are doing so while exercising your best judgment. Because as you know, if we proceed with jury selection and whatnot, then all you have to do is remain, sit there, remain seated and let Ms. Burgess to Mr. Bross do all the thinking and talking to the jury. And there's really nothing required of you. I mean, obviously we want you to be mentally alert while you're doing that.

THE DEFENDANT: Yes, correct.

THE COURT: But I don't in any way want you to feel that you are being pressured into resolving your case in one way as opposed to a way you may prefer, because at the end of the

day, this is about you.

THE DEFENDANT: Thank you.

THE COURT: And about your making a decision that you feel is in your best interest.

THE DEFENDANT: Well, Your Honor, I just don't want to make this decision right now. I don't -- I'm not comfortable and it's -- I feel like -- I just want to go with the trial. And if I can just go throw up, I need to throw up.

THE COURT: Go, please. Don't anybody get in her way please. She's running, too.

(Whereupon, Defendant exits courtroom.)

THE COURT: Counsel, can you all approach for a moment please?

(Whereupon, side bar proceedings, out of the hearing of the open court:)

THE COURT: I understand that Ms. Loyd is very emotional. And she obviously sounds like she's got a very bad cold, or she's been crying all morning.

MR. BROSS: She does have a really bad cold.

MS. BURGESS: Yes, she's sick.

THE COURT: And there have been some

other observers that said she's been crying all morning, so that always adds to the nose blowing and the backed up (indicating); but if she's got a the sinus infection, that just makes it worse.

But I don't want to take a plea when she saying a lot of equivocal things about not thinking clearly, being sick, not knowing whether she's, you know, not, et cetera. You heard it all at the same time I did.

MR. BROSS: I'll just say earlier that, when we were discussing the plea, she never made a decision one way or the other. It was like she was in zonky-mode.

And I just assumed it was because of the Tylenol. I mean, she never gave us a -- When we were talking to her about a plea this morning, she never gave us an answer one way or the other.

She was just -- When we were told to come back in the courtroom, when we came back in the courtroom, it was like when I was talking to her and explaining about the recent change or, you know, the changes in the things that I crossed out, you know, she said: I'm

just not -- She said, I'm just having a hard time understanding right now because of this Tylenol or whatever I took.

MS. STEWART: I would ask that you inquire whether or not she's able to sit at Counsel table and she's -- Because that she's got to do and it's got to be on the record that she was there helping or --

MR. BROSS: Right, and that she's able to --

(More than one speaker, indiscernible.)

MS. STEWART: -- when she's agreeing with the jury selection.

MS. BURGESS: Well, I personally think that she's just emotional about what -- which way to go, because of all of the people that are in her ear.

THE COURT: Right. Right, that may be.

MR. BROSS: Yeah, and not -- not -- her tears are not even really about this case. It's about her childhood. I mean, that's really what it's all about.

It's not about the decision that she's making at this minute. It's about things that happened to her when she was a child. So just

be aware --

THE COURT: Okay. But the problem is she has to be coherent, and she has to be completely:

(a) I'm on board with whatever direction we wish to go.

(b) She does have to be able to be mentally capable of assisting you.

MR. BROSS: Right.

THE COURT: And then helping you come to a -- helping you select the jury that she feels is going to be fair and impartial for her. Now, there's going to be a lot of other --

MS. BURGESS: I think she's mentally capable. When we just sit and talk about anything other than taking a plea, she's just fine. It's just when it comes to actually discussing her options on moving forward, is when the emotion starts.

MR. BROSS: Yes, she refuses -- Basically refuses to make any sort of decision on anything, like she's not, she's not -- She's not chosen to go to trial. She has acquiesced to go to trial. You understand what I mean by that?

THE COURT: Yeah.

MR. BROSS: And to me that's --

THE COURT: Well, and I mean.

MR. BROSS: To me, I don't think she's even really assisting at all because I -- She's not -- She's not making decisions or really able to talk to you.

THE COURT: All right. My concern is partly like you said or Mr. Bross or Ms. Burgess has just said, there's just a lot of people in her ear pulling her in different directions.

But the problem -- The other problem is that the case has to be resolved at some point. It's 577 days old and it's a third-degree felony.

MS. BURGESS: Well, we want it resolved. We're tired of coming in here.

THE COURT: I know. You are here and want to get it resolved.

MS. BURGESS: We like you and all, but we just don't want to come back.

THE COURT: Yeah. I understand, you don't want to keep coming back here indefinitely, yes.

MS. BURGESS: I understand.

THE COURT: But I can't lawfully resolve it. And certainly I don't want to subject the two of you to an ineffective assistance of counsel motion for the next three years, you know, because she was either bullied into taking a plea or bullied into going trial because it's not her choice.

But what she has to understand is she has to make that choice.

MS. BURGESS: Can we get like -- And I hate to ask for more time, but can we just have time, so we can get her to actually make a decision, because usually when it's just talking, she doesn't ever --

THE COURT: Right.

MS. STEWART: The Court is going to have to inquire anyway.

THE COURT: Right. I mean, are you talking about right this minute?

MR. BROSS: No.

MS. BURGESS: For him to --

MR. BROSS: I think what she's trying to say is --

THE COURT: You mean like take 20 minute

break to --

MR. BROSS: We have never been able to get an answer.

MS. STEWART: She's never answered.

MR. BROSS: She's never answered one of my more than -- And then she's trying to -- I mean she was -- Her statement was: Well, you know, I was molested as a child. And I need to try this case because I was molested as a child.

And I said: This has nothing to do with what happened to you as a child, and you need to take this up with --

MS. STEWART: You know, I'm really worried about competency, Judge, I am really afraid.

MR. BROSS: And actually I am, you know. And I was about to file a competency motion because she said something to me, which I believe is absolute grounds for competency. She basically said: God in heaven had told her to proceed.

And I don't -- I don't think -- I'm pretty sure there's case law that says that it's --

THE COURT: That wouldn't necessarily be so.

MR. BROSS: Well, I'm pretty sure --

THE COURT: There are plenty of people that God -- there's plenty of people who believe that God directs their life.

MR. BROSS: But I think the case law is pretty clear that, if God is the one telling you to try the case, I mean it's -- And you make your decision because God told you so, I think there's cases out there that's says that's actually incompetent.

And I've filed that motion before on someone else and I think that's --

MS. STEWART: I'm more concerned about the: I was molested as a child and therefore, we have to go forward on this case, because that's --

MS. BURGESS: And I'm --

(More than one speaker, indiscernible.)

MR. BROSS: And that's -- and I've tried to explain to --

THE COURT: I'm a little concerned about that, too, because this doesn't have anything to do with that.

MR. BROSS: Right. And when I explained that to her, she understood. And she signed the plea form and she said: Okay, I'm good with it.

And then when you started asking her about it, you saw the reaction.

THE COURT: Right, she apparently --

MR. BROSS: So her hangup is really --

THE COURT: And quite honestly, her reaction is not consistent with someone that took one Tylenol with, you know, a cold or whatever with sinus stuff, or even a Sudafed. I mean, I guess that Sudafed component --

MR. BROSS: I mean, a sinus infection alone can make you feel like a zombie.

THE COURT: Yeah, but --

MR. BROSS: I used to get them all the time, and they're all --

THE COURT: Okay, very true. Very true.

And that concerns me, that she -- I don't know whether she isn't feeling that whacked out from that particular medication, or whether it's the combination of dealing with what, you know, very emotional as you said and having an infection of some sort; and then

having taken a Tylenol sinus component.

MR. BROSS: Well, she acted coherent, I don't know what --

THE COURT: But the other problem is it's got to be resolved. And it was number one and, you know, we've all worked very hard to get you all on a week when everybody was up to speed.

Mr. Sendra, I know, has spent an awfully long time editing out portions of the tape. And everybody has cleared their schedules.

And, you know, we sent away this lady who's got a 2013 case.

Because I know that, you know, you had mentioned that you had your own (indiscernible) was beginning, so I don't want to keep bringing you all back.

MR. BROSS: Does the Judge know we are doing this pro bono?

THE COURT: Yes.

MR. BROSS: What, no good deed goes unpunished?

THE COURT: Yes, I think that's usually applies in full.

MS. BURGESS: Well, I can afford it.

I'm working for me. It's not free.

MR. BROSS: Well, I'm doing it -- I'm doing it for me, too.

THE COURT: Yeah, well -- But by the same, you know, by the same token, if you feel that 20 or 30 minutes with her might help then we --

MS. BURGESS: We probably won't even need that long. We just haven't gotten a decision either way which way she wants to go.

MR. BROSS: Well, she did -- She did sign the plea form and it wasn't by argument after --

MS. BURGESS: Yeah, I think like 30 seconds for that.

MR. BROSS: Well, after --

THE COURT: Well, my understanding was that you all had been talking about this for like six months.

MR. BROSS: Yeah. But well, the offer's changed, Judge. The offer's changed, Judge.

THE COURT: Maybe closer to 12 months.

MR. BROSS: Yeah.

THE COURT: Since the case is --

MR. BROSS: The offer changed.

MR. SENDRA: And the offer did change today, that's true.

MR. BROSS: And I believe it changed substantially as away from, you know, a term to a cap. You know, it gives the Court discretion.

THE COURT: Okay.

MR. BROSS: So I think that's what's substantial about it.

THE COURT: Yeah.

MR. SENDRA: And one of the -- One of the conditions that she really had an issue with was one of the ones that we agreed to strike.

MR. BROSS: Which was a psychological evaluation, whatever.

THE COURT: I won't say -- okay. Based on what you've just said to me as to her competency, maybe it wasn't an accident that it was left in. I don't know.

MR. BROSS: Yeah.

THE COURT: She may get one anyway.

MS. BURGESS: I mean, it's all about -- it's a lot about image, because she's got people that are rooting --

(Whereupon, three people enter courtroom.)

THE COURT: Get this, this is part of my concern. The gentleman is (indiscernible) and the other two that are accompanying him are potentially influencing her in a negative way.

MS. STEWART: They are.

MR. BROSS: Yeah.

THE COURT: And so they --

MR. SENDRA: They know. That's why we've been fair and left the plea offer where it is.

THE COURT: You know, I don't want her to be influenced in a negative way by folks that really don't -- They're not --

MR. BROSS: Well, honestly they're -- and I agree with you, but they actually agree with our assessment of the case which makes -- which also confuses the matter. They agree with our assessment of the case.

THE COURT: So they agree that she should be (trailing off).

MR. BROSS: No, they agree -- They agree --

MS. BURGESS: They agree with our

assessment, but not with what the State offered.

MR. BROSS: Right.

THE COURT: Okay.

MR. BROSS: Which is why I explained -- which is why we got a cap.

THE COURT: Okay.

MR. BROSS: And they kind of point her to go on a suicide mission to be able --

THE COURT: That's what it seems.

(More than one speaker, indiscernible.)

MR. BROSS: -- for everybody.

THE COURT: Right.

MR. BROSS: And which is not good, you know.

MS. STEWART: And who is it going to help?

MR. BROSS: Well, either all of the bloggers, reporters. And this is an affront, too, walking into court, and you know, if she's potentially -- And they have basically brought on the First Amendment freedom of speech and their ability to write papers.

MS. STEWART: If it's not smeared.

MR. BROSS: Yeah. No, no.

MR. SENDRA: He's also the only one risking being a convicted felon.

THE COURT: Yeah, that's kind of --

MR. BROSS: Yeah, they have no skin in the game and I made that very clear. None of these people are --

(More than one speaker, indiscernible.)

THE COURT: Right, and not -- and those folks don't stand by (indiscernible).

MR. BROSS: Uh-huh.

THE COURT: And, you know, they are not in the hotspot.

MR. BROSS: Yep. They get to go home, no matter what.

THE COURT: You took the words right out of my mouth.

MS. BURGESS: We have both explained this to her until we're blue in the face.

THE COURT: I thought you had. I know you all have had lengthy discussions.

I mean you've been months and months and months to discuss this with her; and she's obviously emotional, sitting back there trying to figure out what she's going to do.

And so, why don't we just recess for 20

minutes?

MR. BROSS: I think that's good.

MS. BURGESS: Well, we don't even need that. We need like approximately five or 10 minutes.

THE COURT: Okay. You just tell me know. And I'll give this back (tenders document). Thank you.

(Whereupon, before open Court.)

THE COURT: All right. Folks, we're going to be in recess for about 15 or 20 minutes. Whenever Mr. Bross and Ms. Burgess and Ms. Loyd -- Are you okay, Ms. Loyd?

THE DEFENDANT: Yes, thank you.

THE COURT: Okay, are you sure?

THE DEFENDANT: Thank you, yes.

THE COURT: Okay. We will be back with you all, and let me know when you're ready.

MS. BURGESS: Thank you, Judge.

(Whereupon, Court is in recess.)

(Whereupon, Venire out.)

MR. BROSS: Can we approach, Your Honor?

MS. BURGESS: Yeah, can we approach?

THE COURT: Sure.

MR. SENDRA: That's okay, I've got it.

MS. STEWART: Right, okay.

(Whereupon, sidebar proceedings out of the hearing of open court.)

MS. BURGESS: We've got a little issue. Apparently while she was vomiting, she urinated on herself.

MR. BROSS: Which has a --

MS. BURGESS: And Paul and I are concerned that something's going on.

MR. BROSS: She didn't realize she urinated on herself. And I was -- I thought she was urinating on herself all the time when she was standing in front of me, I thought she was urinating on herself.

MS. BURGESS: I thought it happened beforehand, but --

THE COURT: Do you think the question is she's just not feeling this stuff or do you think there's a (indiscernible).

MS. BURGESS: I don't think there's --

MR. BROSS: Well, she's definitely not malingering. I don't -- I know that. She's not malingering.

THE COURT: Well, no, I don't think it's malingering.

MR. BROSS: Oh, you think no?

THE COURT: No.

MR. BROSS: Oh, I'm sorry.

MS. BURGESS: I personally, just having known her for the last two years.

THE COURT: Yes.

MS. BURGESS: I that it's stress, I think it's going back and forth between what decision she should make. I don't think there's a psychological issues.

THE COURT: So you think she's (indiscernible) to make a final decision?

MS. BURGESS: Right. So, now you have somebody who has vomit on their shirt and urine on their pants.

MR. BROSS: Well, I recognized it but she -- We had to bring it up to her that the vomit is there. And that's what's bothering her and typically -- It's like very noticeable. Okay, and someone with --

MS. BURGESS: Well, her response was that she thought that she had cleaned it up, but she hadn't.

THE COURT: Okay, okay.

MR. SENDRA: I would agree with that.

THE COURT: Yeah.

MR. SENDRA: So anyway, we can just continue until tomorrow?

THE COURT: I was going to say, why don't we just start --

MR. SENDRA: We don't really want to start the process over again.

THE COURT: Right.

MR. SENDRA: I think, if she has some time to compose herself and clean up, then I'm thinking they will talk to her again and it might actually resolve itself.

THE COURT: Yeah. And I am going to instruct her not to take any sinus medicine --

MS. STEWART: Right, yeah.

THE COURT: -- before coming to court tomorrow.

MS. BURGESS: Can we still do like jury instructions today and get that --

THE COURT: Huh?

MS. BURGESS: Can we still do like jury instructions today and get that done?

THE COURT: Sure we can, sure.

MS. BURGESS: All right.

THE COURT: But, I mean, my concern is

that she not take anything, meaning not even an aspirin that will affect her --

MS. BURGESS: Right.

MR. SENDRA: Right.

THE COURT: -- her ability to think clearly in making her decision.

MS. BURGESS: She said something about -- and I've taken these messages where she's taken medicine and then all of a sudden she's feels in an altered state, but it shouldn't do that.

THE COURT: None of that. No, none of over-the-counter stuff. I've actually OD'ed DayQuil before, where I got really violently sick to my stomach.

And I've never taken it again, that was 25 years ago I took it. So I know what this stuff does, the over-the-counter cold stuff can mess with you.

So I will just recess for today and let her go home and compose herself. I am going to direct her not to take any over-the-counter drugs of any sort.

And she says she has a sinus infection. Is she on antibiotics or do you know?

MS. BURGESS: I don't think so.

THE COURT: You know, someone with an infected nose, there's a --

MS. BURGESS: And even antibiotics, they shouldn't be mood altering.

THE COURT: No, no. I mean usually with any kind of infection, usually the first thing they do is call the drugstore and get an antibiotic prescription called in. I'm just saying.

MS. BURGESS: That's what I thought.

THE COURT: Yes. Well, okay, sorry. I thought about that.

So we will just recess for the day for her to go home and compose herself.

MS. BURGESS: Okay.

THE COURT: Okay, thank you very much.

MS. BURGESS: And how much (indiscernible).

THE COURT: Give me a moment, because I'll have to go down and excuse the jurors for the day, because they are very anxious right now to know what's going on.

MS. BURGESS: I understand.

THE COURT: Yeah, okay. I asked Doris

to just tell them that we've been overtaken by events, and that's what -- that's my --

MS. BURGESS: I think that's the best answer. Even if she were to make a decision, there could be an ineffective Counsel, just like you said, which is something that I --

THE COURT: And I don't want that to happen either. I don't know, I don't even -- no.

MS. BURGESS: Yeah. Either way we'll proceeding forward for a trial.

THE COURT: Well, it won't -- And we're -- I'm going to do anything and everything necessary ward off that for you.

MS. BURGESS: Right.

THE COURT: So, because I've been where you are, I guess. Okay, thank you.

(Whereupon, Venire out.)

COURT'S RULING RE DEFENDANT'S MEDICAL CONDITION

THE COURT: All right. Ms. Loyd, I do have some concerns about your well-being today.

And so, what I'm going to do is recess for the day. And we will be back -- Please be back tomorrow at 8:45, but please do not any over-the-counter medicine, prescribed medicine;

nothing. Just bring tissue.

If you want to use -- What do you call it Afrin or whatever for a stuffy nose, I don't think that should be mood altering in any way. But please not -- I know those over-the-counter medications can sometimes have a really weird effect on people.

As I told Counsel, I've been the victim of a DayQuil overdose where just I got very sick.

And so, please don't take anything, because we want you to be thinking clearly and able to make a knowing and voluntary decision tomorrow on whether to go forward.

And if that's what you wish to do, then you must be able to assist your attorneys in selecting the jury. I mean, obviously you're not going to be standing up asking everybody questions.

But you have to be able to listen to what they're saying and say: Well, this one gives me the creeps. And I really like this one or whatever, however it is you feel.

But you have to be able to give cogent input to your attorneys and I don't think today

is the best day for that.

THE DEFENDANT: I'm sorry.

THE COURT: No, it's not your fault, you know, these things happen, so don't worry. Just come back tomorrow at 8:45, and hopefully you will get a good night's rest and we'll pick up where we left off.

And I hope you don't go home and have that other effect from the Sudafed stuff, and end up at two a clock in the morning with your heart coming out to your chest; which is what happened to me from those medications. Anyway, so we will be in recess for today for you, Ms. Loyd.

And then Ms. Burgess and Mr. Bross, would you like to discuss the jury instruction issue? We'll just take care of that since we're all here.

MS. BURGESS: Sure.

(Whereupon, Court/Clerk discussion.)

COURT DEPUTY: Do you want me to go down with you, Judge?

THE COURT: Sure.

COURT DEPUTY: All rise, Circuit Court is in recess until tomorrow morning at 8:45,

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

MARCH 28, 2017
JURY TRIAL

SCHEDULED: 8:30 AM
CONVENED: 9:25 AM

PRESENT:	
JUDGE:	**ROBIN LEMONIDIS**
COURT CLERK:	**JANNIE ROBINSON**
STATE ATTORNEY:	**SUSAN STEWART, ASA**
STATE ATTORNEY:	**SEAN SENDRA, ASA**
DEFENSE ATTORNEY:	**PAUL BROSS**
DEFENSE ATTORNEY:	**JESSICA BURGESS**
COURT DEPUTY:	**KEVIN HUGHES**
COURT DEPUTY:	**MITCH BOSHNACK**

STATE OF FLORIDA

VS **CASE NUMBER: 05-2015-CF-039871-AXXX-XX**

DANA LYNN LOYD

_____/

The defendant, Dana Lynn Loyd, present with her attorneys Paul Bross and Jessica Burgess present and ready to proceed with the Jury Trial.

Assistant State Attorneys Susan Stewart, present representing the State of Florida, present and ready to proceed with the Jury Trial.

Bench Conference (9:27 am)

Defendant sworn (9:28 am)

Court inquired of the defendant.

Court and Counsel addressed preliminary matters and addressed Jury Instructions.

Court Recessed: 10:02 am
Court Reconvened: 10:31 am

All parties present and ready to proceed with Jury Trial

Plea offer announced on the record

Defendant rejected plea offer on the record

Court instructed Deputy to bring the Venire in the courtroom.

J. ROBINSON

The following Prospective Jurors entered the courtroom: (10:41 am)

1	0000101517	KRISTA LYNN LITTTLE
2	0000582472	MICHAEL DWAYNE PACE
3	0000637519	EILEEN WALKO
4	0000413875	JOHN ROBERT ALLEN
5	0000250871	JONATHAN JAMES WEATHERFORD
6	0000212727	N JOHN FILIPOWICZ
7	0000049716	VIRGINIA MARIE WILLIAMS
8	0000263834	STEPHANIE NICOLE VRBANIC
9	0001027844	ZACHARY TYLER SOLMONSON
10	0000335528	LATASHA RENEE CUSHINGBERRY
11	0000090382	GUS SPRIO ALEX
12	0000419423	JAMES SAMUEL BROWN
13	0000275604	LOIS BRENDLE GREENE
14	0000978387	SIMMONE LASHAY GILLYARD
15	0000641420	MARY JO WALKER
16	0000885214	ZANDRA LYNNE MARTZ
17	0000470123	JOHN DENNIS KAVANAUGH
18	0000963996	PENNY LYNN FRITSCH
19	0000888038	JUSTIN MICHAEL CAMPBELL
20	0000596545	JAMES GLENN TAYLOR
21	0000498660	BARBARA LYNN MCGILLICUDDY
22	0000959055	PATRICK JOHN HAYES
23	0000123624	DAVID CARROLL MACON
24	0000122360	STEPHEN PATRICK ONEAL
25	0001004469	VICTORIA VIOLET VENUS MERCADO
26	0000009983	RICHARD CARLTON CADY
27	0000226284	JAMES ROBERT TOMBERLIN
28	0001013816	MIGUEL ANGEL MERCADO ECHEVARRIA
29	0000875139	LASHONTE EVETTE BEVEL
30	0000635939	DAWN MARIE MORRISON

Court spoke briefly with the Venire.

Venire Sworn

The following prospective Jurors were called and examined (10:42 am)

1	0000101517	KRISTA LYNN LITTTLE
2	0000582472	MICHAEL DWAYNE PACE
3	0000637519	EILEEN WALKO
4	0000413875	JOHN ROBERT ALLEN
5	0000250871	JONATHAN JAMES WEATHERFORD
6	0000212727	N JOHN FILIPOWICZ
7	0000049716	VIRGINIA MARIE WILLIAMS
8	0000263834	STEPHANIE NICOLE VRBANIC
9	0001027844	ZACHARY TYLER SOLMONSON
10	0000335528	LATASHA RENEE CUSHINGBERRY

11	0000090382	GUS SPRIO ALEX
12	0000419423	JAMES SAMUEL BROWN
13	0000275604	LOIS BRENDLE GREENE
14	0000978387	SIMMONE LASHAY GILLYARD
15	0000641420	MARY JO WALKER
16	0000885214	ZANDRA LYNNE MARTZ
17	0000470123	JOHN DENNIS KAVANAUGH
18	0000963996	PENNY LYNN FRITSCH

Assistant State Attorney, Susan Stewart inquired of Prospective Jurors.
(10:44 am – 12:02 pm)

Court Recessed: 12:04 pm
Court Reconvened: 1:37 pm

All parties present and ready to proceed with Jury Trial

Court and Counsel addressed Preliminary Matters

Court Recessed: 1:39 pm
Court reconvened: 1:58 pm

All parties present and ready to proceed with Jury Trial

Bench Conference (1:59 pm)

Court Recessed: 2:05 pm
Court Reconvened: 2:08 pm

All parties present and ready to proceed with Jury Trial

The following Prospective Juror were called and examined individually: (2:09 pm)

4 0000413875 JOHN ROBERT ALLEN

The following Prospective Juror were called and examined individually: (2:12 pm)

11 0000090382 GUS SPRIO ALEX

The following Prospective Juror were called and examined individually: (2:15 pm)

12 0000419423 JAMES SAMUEL BROWN

Bench Conference (2:20 pm)

The following peremptory challenges for CAUSE were exercised:

4	0000413875	JOHN ROBERT ALLEN	- JOINT
8	0000263834	STEPHANIE NICOLE VRBANIC	- JOINT

11	0000090382	GUS SPRIO ALEX	- JOINT
14	0000978387	SIMMONE LASHAY GILLYARD	- JOINT

Court instructed Deputy to bring the remaining Venire in the Courtroom

Court recognized the Venire in the box and the gallery (2:32 pm)

Court inquired of the Venire briefly regarding the lunch recess.

Defense Counsel, Paul Bross inquired of Prospective Jurors
(2:35 pm – 4:26 pm)

Bench Conference (3:17 pm)

Court instructed Deputy to remove the Venire from the courtroom

Court recognized the Venire removed from the courtroom (3:26 pm)

Court Recessed: 3:27 pm
Court Reconvened: 3:38 pm

All parties present and ready to proceed with Jury Trial

Court instructed Deputy to bring the Venire in the courtroom

Court recognized the Venire in the box and the gallery (3:43 pm)

Court briefly spoke with the Venire and inquired of the break

Defense Counsel, Paul Bross continued his inquiry of the Venire

Bench Conference (3:50 pm)

Bench Conference (4:20 pm

Bench Conference (4:25 pm)

Bench Conference (4:26 pm)

Court instructed Deputy to remove the Venire from the courtroom

Court recognized the Venire removed from the courtroom (4:30 pm)

The following Peremptory Challenges for CAUSE were exercised:

9	0001027844	ZACHARY TYLER SOLMONSON
17	0000470123	JOHN DENNIS KAVANAUGH

The following Prospective Juror was called and examined individually: (4:48 pm)

10 0000335528 LATASHA RENEE CUSHINGBERRY

The following Peremptory Challenge for CAUSE was exercised:

10 0000335528 LATASHA RENEE CUSHINGBERRY

The following Peremptory Challenges were exercised:

1 0000101517 KRISTA LYNN LITTTLE
2 0000582472 MICHAEL DWAYNE PACE
3 0000637519 EILEEN WALKO
5 0000250871 JONATHAN JAMES WEATHERFORD

Court instructed Deputy to bring the Venire into the courtroom

Court recognized the Venire in the courtroom and the gallery (5:04 pm)

The following jurors were tendered as a Jury Panel in this case.

1 0000212727 N JOHN FILIPOWICZ
2 0000049716 VIRGINIA MARIE WILLIAMS
3 0000419423 JAMES SAMUEL BROWN
4 0000275604 LOIS BRENDLE GREENE
5 0000641420 MARY JO WALKER
6 0000885214 ZANDRA LYNNE MARTZ
7 0000963996 PENNY LYNN FRITSCH - Alternate

Court spoke briefly with the Prospective Jurors and released them with instructions to call code-a-phone tomorrow night.

Bench Conference (5:08 pm)

Court gave preliminary instructions to the Jury and released them with instructions to report on March 29, 2017 @ 9:00 am

Court Recessed: 5:18 pm

Filing # 67394214 E-Filed 02/01/2018 03:42:37 PM

IN THE SUPREME COURT OF FLORIDA

CASE NO.:

THE FLORIDA BAR, The Florida Bar File No.2018-30,498-18(B)(C)(D)(R)

IN RE:
THE PETITION FOR DISCIPLINARY REVOCATION OF PAUL EDWARD BROSS,

Petitioner.
_____/

AMENDED PETITION FOR DISCIPLINART REVOCATION WITH LEAVE TO APPLY FOR READMISSION

COMES NOW the Petitioner, PAUL EDWARD BROSS, and submits this Petition for Disciplinary Revocation With Leave to Apply For Readmission, pursuant to Rule Regulating the Fla. Bar 3-7.12 and states:

1. Petitioner Knowingly and voluntarily submits this Petition with full knowledge of its effect.
2. Petitioner is 44 years old and has been a member of the Florida bar since October 18, 2000, and is subject to the jurisdiction of the Supreme Court of Florida Rules and the Rules Regulating The Florida Bar.
3. The Petitioner has the following discipline history:
    a. In The Florida Bar v. Bross, SC17-88, respondent was suspended from the practice for ten days and required to undergo an office procedure analysis and record keeping analysis by and under the direction of the Diversion/Discipline Consultation Service of The Florida Bar for failing to appear in court of his criminal client in two unrelated matters, failing to timely recognize a conflict

of interest and withdraw from representation in a third matter and for failing to honor a letter of protection in a fourth matter.

4. The following disciplinary charges are currently pending against the Petitioner:

   a. In the Florida Bar File No. 2017-31,040(09C) the Bar is investigating a Complaint filed by a former [redacted] regarding lack of diligence and communication. The matter is pending before the 09C Grievance Committee.

   b. In the Florida Bar File No. 2017-31014(09C), the Bar is investigating a Complaint filed by a [redacted] alleging lack of communication and diligence , and respondent's failure to timely negotiate or resolve a medical provider's claim on the settlement proceeds.

   c. In The Florida Bar File No. 2018-30,199(09C), The Bar is investigating respondents being cited on September 1, 2017, for driving with a suspended license with knowledge, a misdemeanor; respondents arrest on September 19, 2017, for driving with a suspended license with knowledge; and a citation on July 22, 2017, for driving with a license suspended without knowledge, a civil infraction.

   d. In The Florid Bar File No.. 2018, 30,196 (18B), the Bar is investigating sa Complaint filed by a client alleging that respondent failed to provide adequate communication or competent and diligent representation.

   e. In the Florida Bar File No. 2018,331 (09C), The Florida Bar opened an investigation after receiving notice from respondent's bank of an overdraft in respondents trust account On October 31st, 2017; November 9, 2017 and November 13, 2017. The overdrafts were caused by fraudulent activity on

Respondents Trust account. The Florida Bar is also conducting a compliance audit of respondents trust account for the period of July 1, 2014 through October 31st, 2017. Respondent has failed to comply with two Grievance Committee subpoena's for his trust account records for the audit period. The Florida bar obtained records from the bank where the respondent maintains his trust account. After a compliance audit was conducted, the records demonstrate that respondent is not in substantial compliance with the Rules Regulating the Florida bar governing trust accounts.

f. In The Florida Bar File No. 2018, 30,395 (18B), the Bar is investigating a Complaint filed by company who alleges that respondent negotiated a settlement between the company and respondents client. The company provided a release in October, but they have not received the settlement funds despite multiple calls to respondent. Respondent was out for medical reasons for much of October and November, and has responded to the Bar that he has disbursed the settlement funds to the company.

g. In the Florida Bar File No. 2018-30,426(18B), the Bar is investigating a Complaint filed by a [redacted] alleging that Respondent failed to provide adequate communication and diligent representation in [redacted] case. The client also filed a Complaint in the Florida Bar File No. 2018-30,497 (18B).

h. In the Florida Bar File No. 2018-30,497 (18B), the Bar is investigating a Complaint filed by a client alleging that Respondent failed to provide

adequate communication and diligent representation in his case. The Clients mother also filed a Complaint In the Florida Bar File No. 2018-30,426(18B).

i. In the Florida Bar File No. 2018-30,58 (18B), the Bar is investigating a Complaint filed by a client alleging that Respondent failed to provide adequate communication and diligent representation.

j. In The Florida Bar v. Bross, SC17-2167, The Florida Bar File No. 2018-30,078 (18B), the case has been referred to a Referee after the Florida Bar filed a Formal Complaint for Reciprocal Discipline after respondent was suspended from practicing law for six months from the United States District Court, for the Middle District of Florida.

k. In The Florida Bar v. Bross, SC17-585, The Florida Bar File No. 2018-90,009 (OSC), the case has been referred to a Referee after The Florida Bar filed a Petition for Contempt and Order to Show Cause alleging respondent failed to comply with Rule 3-5.1(h) after he was suspended for ten days by Order June 22, 2017, in Florida Supreme Court Case No. SC17-88.

5. This revocation will not adversely affect the public interest, the purity of the courts, nor hinder the administration of justice nor the confidence of the public in the legal profession.

6. Petitioner agrees to reimburse the Clients Security Fund of the Florida Bar for any and all payments imposed as a result of his actions.

7. The Petitioner agrees to reimburse The Florida Bar $6,066.19, for the costs incurred in his disciplinary cases.

8. The Petitioner agrees to permit the Florida Bar to audit any and all trust accounts and any other accounts over which he has signatory powers as either an attorney-at-law, fiduciary, or trustee.
9. The Petitioner will provide the Florida with a sworn financial affidavit.
10. The Petitioner shall notice the Bar of any change of address during a two-year period to be computed from the date of entry of this Courts Order accepting this Petition for Disciplinary Revocation. Further the Petitioner shall keep the Bar advised as to the physical address of Petitioner's home and or business in the event the Petitioner shall utilize a post office box or other type of mail drop service.
11. The Petitioner understands that the granting of this Petition by the Supreme Court of Florida shall serve to dismiss all pending disciplinary cases.

WHEREFORE, the Petitioner respectfully requests this Honorable Court to grant this Petition herein as follows:

A. That the Petitioners membership in the Florida Bar be revoked, with Leave to Apply for Readmission, with the revocation to take effect in 90 days to allow the Petitioner time to close out his practice.

Respectfully Submitted,

/s/ PAUL BROSS
PAUL E. BROSS, ESQUIRE
50 N. Grove Street
Merritt Island, Florida 32953
(321) 456-5914
Florida Bar No.: 0410837
Pbross1@yahoo.com
pleadings@brosslawfirm.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Disciplinary Revocation has been furnished by email service to The Honorable John A. Tomasino, Clerk of The Supreme Court of Florida, with copies provided Via United States Mail to Joshua Doyle, Executive Director, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida, 32399,-2300, and Karen Clark Bankowitz, Bar Counsel at kbankowitz@flroidabar.org, and via email to Adria Quintela, Staff Counsel, The Florida Bar at aquintel@floridabar.org on this 1st Day of February 2018

/s/ PAUL BROSS

PAUL E. BROSS, ESQUIRE
50 N. Grove Street
Merritt Island, Florida 32953
(321) 456-5914
Florida Bar No.: 0410837
Pbross1@yahoo.com
pleadings@brosslawfirm.com

STATE OF FLORIDA

DEPARTMENT OF CORRECTIONS

VIOLATION REPORT

☐ REPORT CONTAINS CONFIDENTIAL INFORMATION

Date: 12/29/17 ☐ MANDATORY RETAKING FROM: n/a

To: Honorable Robin C. Lemonidis
From: Margo Sloan, CPSO
Name: DANA LYNN LOYD
DC No: E06084 Circuit: Cocoa 18-2
Case No: 05-2015-CF-039871-AXXX-XX
UC No: 05-2015-CF-039871-AXXX-XX
Scheduled Termination Date: 04/06/2022

REQUESTING

☐ Violation of Probation Hearing-**Warrantless Arrest Conducted**
☐ **Warrant for Arrest** (Violation of Probation)
☒ Violation of Probation Hearing without Warrant-**(Notice to Appear)**
☐ **No further action**

TYPE OF REPORT

☒ Non-Compliance with Conditions
☐ Delinquent Monetary Obligations Only
☐ Arrest/New Charge
☐ Warrantless Arrest

LOCATION

☒ At Large
☐ In Custody
☐ On Bond
☐ ROR
☐ Absconder

Current Address: 1294 Estridge Drive, Rockledge, FL 32955

(1) **HOW VIOLATION OCCURRED:**

Violation of Condition (11) of the Order of Community Control, by failing to comply with all lawful instructions given to her by the community control officer, and as grounds for belief that the offender violated her Community Control, Officer Sloan states that on 12/07/17, the offender was instructed to remove all information regarding the victim and the [redacted] from her Go Fund Me account immediately and the offender did fail to carry out this instruction by failing to immediately remove the information on the Go Fund Me account and the account was disabled on 12/20/17 (13 days later).

Violation of Special Condition (F) of the Order of Community Control, by failing to remove all information from the internet regarding the victim, victim[redacted] and Dean Tong within 24 hours of release, and as grounds for belief that the offender violated her Community Control, Officer Sloan states that on 12/07/17, the offender was instructed to remove all information regarding the victim and the victim[redacted] rom her Go Fund Me account immediately and the offender did fail to carry out this instruction by failing to immediately remove the information on the Go Fund Me account and the account was disabled on 12/20/17 (13 days later).

Circumstances:

On Thursday, 12/07/17, the offender reported to the Probation Office as instructed by this Officer. At that time, the offender was instructed on all conditions of her supervision, including the Special Condition (F) instructing the offender to remove all information from the internet regarding the victim, [redacted] and Dean Tong within 24 hours of release. After the offender left the Probation Office, this Officer accessed the offender's website, BREVARDSBESTNEWS.COM, which also had a link to a Go Fund Me account that was set up for the offender's legal fees. This Officer called the offender at home and instructed the offender that every article on BREVARDSBESTNEWS.COM with any mention about the victims must be removed and also any information about the victims on the Go Fund Me account must be removed immediately. The offender immediately contacted Go Daddy and shut down the BREVARDSBESTNEWS.COM website. On 12/20/17, the Go Fund Me account was still active. Supervisor Samantha Eastman contacted the offender and within an hour, the offender called back and the Go Fund Me account was disabled. This was (13) days after the offender was originally instructed to do so by this Officer.

Exhibit "K"

(2) **OFFENDER'S STATEMENT**: No statement has been made to this Officer.

(3) **HISTORY OF SUPERVISION**: ☐ ADJUDICATION WITHHELD ☒ ADJUDICATED
Original sentence: 04/06/17: A/G, sentenced to (2) years Community Control, followed by (3) years Probation by Judge Lemonidis.

Prior violation(s) of supervision for all periods of supervision and disposition(s) of violation(s) include the following:
N/A

RESIDENCE: ☒ STABLE ☐ UNSTABLE ☐ ABSCONDED
Resides with: Chris Loyd / husband and their (2) sons.

EMPLOYMENT: ☐ EMPLOYED ☐ RETIRED/DISABLED ☐ STUDENT ☒ UNEMPLOYED
Current Employer/school name and address: n/a
Full-time employment or school attendance: ☐ Part-time employment or school attendance: ☐
Monthly salary or other source of income: n/a

RESTITUTION: ☒ N/A ☐ PAID IN FULL ☐ COMPLYING ☐ DELINQUENT
Original Obligation: n/a Current Balance: n/a

COURT COSTS/FINES: ☐ N/A ☐ PAID IN FULL ☒ COMPLYING ☐ DELINQUENT
Original Obligation: $3,136.50 Current Balance: $1,472.50

ELECTRONIC MONITORING: ☒ N/A ☐ PAID IN FULL ☐ COMPLYING ☐ DELINQUENT
Original Obligation: n/a Current Balance: n/a

COST OF SUPERVISION: ☐ N/A ☐ PAID IN FULL ☐ COMPLYING ☒ DELINQUENT
Original Obligation: $50.00 / month Current Balance: $450.00

PUBLIC SERVICE WORK: ☒ N/A ☐ COMPLETED ☐ COMPLYING ☐ DELINQUENT
Total Hours Imposed: n/a Current Balance: n/a

TREATMENT STATUS: ☐ N/A ☐ COMPLETED ☒ COMPLYING ☐ NON-COMPLIANT

Summary of offender's current and prior participation in treatment, educational, and vocational programs:

The offender completed the psychological evaluation while she was in the Orange County Jail.

STATUS OF OTHER SPECIAL CONDITIONS:

It should be noted that diffuculties arise as a result of wording of some of the special conditions in regard to supervising the offender.

Example: Condition (G): NO MENTION OF THE VICTIM OR [redacted] FOR ANY REASON EXCEPT DEFENDANT IS PERMITTED TO COMMUNICATE WITH HER ATTORNEYS OF RECORD, HER HUSBAND, AND ANY/ALL MENTAL HEALTH PROFESSIONALS TREATING DEFENDANT. Due to this condition, this Officer is not allowed to speak to and/or ask the offender any information about the victim [redacted]

Example: Condition (I): DO NOT OWN OR POSSESS ANY MATERIAL RELATED TO THE VICTIM OR [redacted] ASIDE FROM ANY AND ALL MATERIAL CONTAINED WITHIN THE DISCOVERY PREVIOUSLY EXCHANGED BY THE PARTIES IN THIS MATTER. Due to this condition, the offender is afraid to even possess a copy of her Community Control order that lists the victims names on Special Condition (L).

(4) RECOMMENDATION:

At this time, this Officer respectfully recommends that the Court issue a Notice To Appear for a hearing to address the violations listed in this Violation Report.

This Officer respectfully recommends that the offender continue on supervision and modify Condition (13) to reflect: that the offender report to the Probation Office once per week, or additionally as instructed, while on Community Control.

The foregoing is true and correct to the best of my knowledge and belief.

Margo Sloan, CPSO

Margo Sloan, Correctional Probation Senior Officer

Approved: _____

Samantha Eastman, Correctional Probation Supervisor

12/29/17

MS

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

CASE NO. 05-2015-CF-039871-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

vs.

DANA LYNN LOYD,

Defendant.
_____/

ORDER OF RECUSAL

THIS CAUSE came before the Court upon the undersigned judge's own initiative, pursuant to Rule 2.330(i), Florida Rules of Judicial Administration. The Court finds that recusal is appropriate in this action. Accordingly, it is

ORDERED AND ADJUDGED:

The undersigned is hereby **RECUSED** from this action.

DONE AND ORDERED this 29th day of March, 2018, at Titusville, Brevard County, Florida.

ROBIN C. LEMONIDIS
CIRCUIT JUDGE

copies to:

Court Administration
The Honorable Morgan Reinman
The Office of the State Attorney
The Office of Regional Conflict Counsel

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

05-2015-CF-039871-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

vs.

DANA LOYD

Defendant.
_____/

ORDER OF REASSIGNMENT

The above cases having been assigned to Circuit Judge **ROBIN C. LEMONIDIS** who is recused from further participation in this cause, it is therefore;

ORDERED AND ADJUDGED that the above case be, and is hereby reassigned to Circuit Judge **MORGAN REINMAN**, before whom all proceedings in this cause will be heard.

DONE AND ORDERED this 27th day of April 2018.

JOHN M. HARRIS
CHIEF JUDGE

Copies furnished to:
Judge Robin C. Lemonidis, Titusville Courthouse
Judge Morgan Reinman, Moore Justice Center
State Attorney
Michael Bross, Esq., michaelbross@brosslawoffice.com

Jennifer Proctor
April 27, 2018
DATE

Reserved for Official Use Only

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

STATE OF FLORIDA

vs.

DANA LYNN LOYD

Participant ID 3639710

31256345

Case Number: 05-2015-CF-039871-AXXX-XX

Filed in Open Court on November 12, 2019 2:25 pm.
N Kenny, Deputy Clerk

COURT MINUTES – VOP HEARING

Judge:	CHARLES G CRAWFORD		
State Attorney:	STATE ATTORNEY'S OFFICE		
Defense Attorney:	A MICHAEL BROSS		
Dig. Rec. Unit #:	V2D VIERA CTRM 2D		
Dig. Rec. Time:	14:23:43 14:32:08		
Arrest Data:	08/28/2015	4048087	201500404115

Count: 1	**39..205.(9)**	**FALSE REPORT OF CHILD ABUSE ABANDONMENT OR NEGLECT**	**F-3**

CASE ACTIVITY

Presence

The Defendant was present.

Violation of Probation

The Court dismissed allegation(s) that the Defendant violated Probation/Community Control: 11, F.

Exhibits and Witnesses

State Witnesses Sworn and Testified: MARGO SLOAN (1:15-2:04PM)
SAMANTHA EASTMAN (2:04PM- 2:22PM)

GENERAL ORDERS/REMARKS

The violation of probation/violation of community control is dismissed.

SENTENCE

Probation *(Items marked with *(COP) are Conditions of Probation)* 0.00

The defendant is reinstated to probation/community control with the same terms and conditions of supervision as previously ordered. The defendant must report to probation/community control within WITHIN 24 HOURS.

Related Sentences

Sentence shall run concurrent with any active sentence.

The Defendant was advised in open court of the right to appeal from this sentence by filing a notice of appeal within thirty (30) days from this date with the clerk of this court and the Defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

Exhibit "N"

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

STATE OF FLORIDA

vs.

DANA LYNN LOYD

31256347

Case Number: 05-2015-CF-039871-AXXX-XX

Filed in Open Court on November 12, 2019 2:25 pm..
N Kenny, Deputy Clerk

ORDER

IT IS HEREBY ORDERED AND ADJUDGED

The violation of probation/violation of community control is dismissed.

DONE AND ORDERED at Brevard County, Florida, on November 12, 2019.

Charles G. Crawford

CHARLES G CRAWFORD, Circuit Judge