

APPLICATION FOR NOMINATION TO THE COUNTY COURT, VOLUSIA COUNTY

Instructions: Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.

Full Name: Joseph Phillip LeDonne **Social Security No.:** REDACTED

Florida Bar No.: 101529 **Date Admitted to Practice in Florida:** 12/18/2012

1. Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.

Assistant State Attorney
Office of the State Attorney, 7th Judicial Circuit
251 N. Ridgewood Avenue
Daytona Beach, FL 32114
(386) 239-7710

2. Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number), and your preferred email address.

REDACTED

I have lived at my current address for approximately five years, since July of 2018. I have lived in Florida for approximately 27 years – from 1987 until April of 2006, then from February of 2014 until the current date.

3. State your birthdate and place of birth.

REDACTED. McCandless Township, PA.

4. Are you a registered voter in Florida (Y/N)?

Yes.

5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

Colorado Bar – Admitted: May 17, 2006.

Florida Bar – Admitted: December 18, 2012.

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias.

No.

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

Stetson University College of Law
May 2003 – December 2005
Juris Doctor – December 2005
Graduating GPA: 2.981
Class Rank: 42/102

Embry-Riddle Aeronautical University
September 1999 – December 2002
Bachelor of Science in Aerospace Studies – December 2002
Graduating GPA: 3.872
Class Rank: The Office of the Registrar stated that Embry-Riddle does not have class ranks or a class percentages system and they could not provide that information.

United States Air Force Academy
July 1999 – September 1999
No degree received

Father Lopez Catholic High School
1995 – 1999
High School Diploma

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

N/A

EMPLOYMENT:

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job

title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

Assistant State Attorney
Office of the State Attorney, 7th Judicial Circuit
251 N. Ridgewood Avenue
Daytona Beach, FL 32114
(386) 239-7710
April 2015 – Present

Senior Attorney
Florida Department of Children and Families, Children's Legal Services
210 N. Palmetto Avenue
Daytona Beach, FL 32114
(386) 481-9358
February 2014 – April 2015

Attorney
The Law Office of Joseph LeDonne, LLC
14 Costilla Street
Colorado Springs, CO 80903
REDACTED
April 2013 – February 2014

Deputy District Attorney
Office of the District Attorney, 4th Judicial District
105 E. Vermijo Avenue
Colorado Springs, CO 80903
(719) 520-6000
July 2006 – April 2013

Legal Intern
Superior Uniform Group, Inc.
10055 Seminole Boulevard
Seminole, FL 33772
(727) 397-9611
August 2005 – December 2005

Legal Intern
St. Petersburg City Attorney's Office
One 4th Street North, 10th Floor
P.O. Box 2842
St. Petersburg, FL 33721
(727) 893-7401
May 2005 – July 2005

Law Clerk
Akerson Law Offices
535 49th Street North
St. Petersburg, FL 33710
(727) 347-5131
May 2004 – July 2004

Substitute Teacher
Volusia County Schools
200 N. Clara Avenue
DeLand, FL 32721
(386) 734-7190
March 2003 – May 2003

Student Assistant
Embry-Riddle Aeronautical University
600 S. Clyde Morris Boulevard
Daytona Beach, FL 32114
(386) 226-6100
June 2000 – December 2002

10. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

I am currently an Assistant State Attorney with the Office of the State Attorney, 7th Judicial Circuit. For approximately the past five years I have been assigned to the Intake Division in the Daytona Beach Office. As an intake attorney, I am responsible for reviewing and making filing decisions for over one thousand criminal cases originating from the Daytona Beach Police Department and Holly Hill Police Department. In making filing decisions, I have to decide if there is sufficient evidence to file charges in the case, and if there is sufficient evidence, if charges should be filed in the case. I also must decide if there are any legal issues (such as an illegal detention or search) that would preclude charges from being filed. Because of this, before filing charges I am often not only thinking from a prosecution perspective, but also a defense and judicial perspective, before making a final decision.

Additionally, I review search and arrest warrants prepared by detectives, as well as routinely discuss legal issues with both detectives and patrol officers. As an intake attorney, I am on a rotation to attend Baker Act proceedings.

Further, as a felony attorney, I am on a rotation to be on-call 24 hours a day, 7 days a week for one week every few months to answer calls from any law enforcement agency within Volusia County if they have a legal question or need a search warrant or arrest warrant issued. In addition, I am on a rotation to periodically cover first appearances at the jail.

Prior to being assigned to the Intake Division, I was assigned to the Career Criminal Unit in the Flagler County Office. As a career criminal attorney, I was assigned to the more serious felony cases, which included sexual offenses, defendants who are prison releasee reoffenders, and offenses that qualified for sentencing under 10-20-Life. Additionally, I worked closely with Flagler County law enforcement to discuss legal issues, assist in building cases, and review search and arrest warrants for legal sufficiency.

Prior to being assigned to the Career Criminal Unit, I was assigned to the Daytona Beach Office as a felony trial attorney. As a felony trial attorney, I was responsible for all aspects of managing a high volume of criminal cases, to include depositions, motions hearings, attending court, and jury trials.

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates) was:

	Court		Area of Practice	
Federal Appellate	_____	%	Civil	<u>5</u> _____ %
Federal Trial	_____	%	Criminal	<u>95</u> _____ %
Federal Other	_____	%	Family	_____ %
State Appellate	_____	%	Probate	_____ %
State Trial	<u>100</u>	%	Other	_____ %
State Administrative	_____	%		
State Other	_____	%		
TOTAL	_____	100 %	TOTAL	_____ 100 %

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation: N/A

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were:

Jury?	<u>50+</u> _____	Non-jury?	<u>1</u> _____
Arbitration?	<u>0</u> _____	Administrative Bodies?	<u>0</u> _____
Appellate?	<u>0</u> _____		

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument,

and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

N/A

14. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended, or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

15. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain full.

No.

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

State v. Robert J. Remus, 2020 101725 CFDL

Co-Counsel: Andrew Urbanak, (386) 238-4894, UrbanakA@sao7.org

Defense Counsel: John Selden, (386) 286-3084, john@seldenlawpa.com, and Courtney Davison, (386) 822-5770, davison.courtney@pd7.org

State v. Dionysius Giovanni Nicols, 2019 306204 CFDB

Co-Counsel: Andrew Urbanak, (386) 238-4894, UrbanakA@sao7.org

Defense Counsel: Peyton Quarles, (386) 255-0305, peytonquarles@gmail.com

State v. Benjamin Jaquaric Bascom, 2018 102584 CFDL

Co-Counsel: Andrew Urbanak, (386) 238-4894, UrbanakA@sao7.org

Defense Counsel: Philip Massa, (561) 598-9280, Philip@PhilipMassa.com

State v. Paul Kevin Dykes, Jr., 15-00267-CFFA

Co-Counsel: Jason Lewis, (386) 313-4300, LewisJ@sao7.org

Defense Counsel: William Bookhammer, (386) 313-4545, bookhammer.bill@pd7.org

State v. Erin Marie Vickers, 15-00302-CFFA

Co-Counsel: Jason Lewis, (386) 313-4300, LewisJ@sao7.org

Defense Counsel: Garry Wood, (386) 326-3993, GarryWood2011@hotmail.com

State v. Marco Antonio DeJesus, 16-00537-CFFA

Defense Counsel: William Bookhammer, (386) 313-4545, bookhammer.bill@pd7.org

17. For your last six cases, which were either settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

State v. Daeaan Hooper, 2021 311893 MMDB

Defense Counsel: David Jancha, (386) 308-3000

State v. Tanner James Coleman, 2020 303631 CFDB

Defense Counsel: Jeremy Buckmaster, (386) 257-0606

State v. Junot Philee Henry, 2019 306275 CFDB

Defense Counsel: Aaron Delgado, (386) 222-6677

State v. Christopher Charles Bissell, 2019 305134 CFDB

Defense Counsel: Aaron Delgado, (386) 222-6677

State v. Thomas Deason, 17-00330-CFFA

Defense Counsel: William Bookhammer, (386) 313-4545

State v. Thomas Leto, 13-01009-CFFA

Defense Counsel: James Crock, (386) 255-9202

18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

During the last five years, because of my position as an intake attorney, I have only appeared in court a few times per month. My court appearances consist of Baker Act proceedings, covering court appearances for other attorneys, and trials I was recently involved in. Prior to that, I was in court regularly, approximately fifteen times per month.

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel.

N/A

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants?

N/A

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant.

a. People v. Martin Mendiola (09CR4838), District Court, El Paso County, CO

Judge: Honorable Larry Schwartz (Retired)

Date: April 19th, 2011

Co-Counsel: Diana May, dianamay@elpasoco.com, (719) 520-6409

Defense Counsel: Dennis McGuire, D04_Courts_DivD@judicial.state.co.us, (719) 452-5191, and Michele Newell, email address unknown, 970-353-8224

This was the first homicide trial I ever prosecuted and I was fortunate enough to sit second chair to one of the best attorneys I have ever had the privilege to practice with. At the time she was Chief Deputy District Attorney Diana May (she is now with the El Paso County Attorney's Office) and she asked me to try the case with her when we received a DNA hit on a cold case from 2004. Given her reputation and the facts of the case, I was eager to try the case with her.

On January 26th, 2004, the defendant went to the victim's trailer and sexually assaulted her. She tried to call the police and her family, but the phone lines had been cut. She tried to call her brother for help on a cell phone, but misdialed and was one number off. After chasing her through the trailer, the defendant then stabbed her multiple times and cut her throat. What made the case particularly disturbing is that her 16-month-old son was in the trailer while his mother was being brutalized and murdered. The case went cold for several years until 2009, when the defendant was rearrested on a probation violation and his DNA was taken. His DNA was a match for multiple samples taken from the victim and the crime scene. The first witness in the trial was the El Paso County Coroner and I was conducting the direct examination. The pictures were so graphic that one of the jurors fainted and we had to break until she could recover. After a lengthy trial, the defendant was found guilty and sentenced to life in prison.

The defendant, the victim, and her family were all from Mexico and did not speak English, so there was a language barrier and there were multiple interpreters throughout the duration of the trial. Despite the language barrier with the victim's family, we grew close with them and their appreciation was evident by the end of the trial.

b. People v. Michael Destry Williams (Unable to recall case number), County Court, El Paso County, CO

Judge: Honorable Karla Hansen (Retired)

Unable to recall case number or specific date, but it was in 2006 or 2007
Defense Counsel: Pro Se

This is one of my first trials as a prosecutor. The defendant was charged with False Reporting, a 3rd Degree Misdemeanor in the State of Colorado. The charge arose out of a traffic stop of the defendant in which he would not comply with the officers' commands and was ultimately shot with a shotgun that expelled bean bag rounds when he reached into the back of his truck. He filed a report with the Colorado Springs Police Department alleging excessive force against one or more of the officers, which they ultimately determined to be unfounded and resulted in the False Reporting charge.

The defendant in the case was a sovereign citizen, who claimed to not be subject to any government statutes, laws, proceedings, etc. Additionally, he did not want to be represented by the public defender or a private attorney, but instead represented himself and requested his self-appointed legal advisor be allowed to provide legal advice, which the Judge allowed.

A trial that should have lasted only a day ended up lasting three days, but it was my first experience with a pro se litigant as well as a sovereign citizen. The length of the trial was dictated by having to balance protecting the defendant's rights and not taking advantage of his lack of legal training with not giving him legal advice or assisting him in his own defense. It was a difficult balance, which is ultimately why the Judge gave him a considerable amount of leeway in the trial and also likely why she allowed him to consult with his legal advisor, who was not a member of any bar association that we were able to ascertain. Despite the advantages that the defendant received, he was ultimately convicted. What makes the case so memorable to me is that it is one of the only times I have tried a case and the jury requested to stay for sentencing. The defendant was sentenced to the maximum – 90 days in the El Paso County Jail. It is also one of the best examples I've seen of a Judge maintaining control of her courtroom with an unruly pro se litigant, while simultaneously balancing his right to represent himself and giving him some latitude in the proceedings so that we were not taking advantage of his lack of legal training and experience. Some might believe that it is easier to oppose a pro se litigant since they lack the legal training of an attorney, but in actuality it is much more difficult and typically takes much longer. In order to give the litigant a fair trial, certain precautions must be taken in order to ensure that his or her rights are protected, while simultaneously not compromising the integrity of the judicial process.

- c. **State v. Paul Kevin Dykes, Jr. (15-00267-CFFA) and State v. Erin Marie Vickers (15-00302-CFFA), Circuit Court, Flagler County, FL**
Judge: Honorable Dennis Craig
Date: Week of September 18th, 2017 (Vickers); Week of December 4th, 2017 (Dykes)
Co-Counsel: Jason Lewis, (386) 313-4300, LewisJ@sao7.org

Defense Counsel: William Bookhammer (Dykes), (386) 313-4545, bookhammer.bill@pd7.org, and Garry Wood (Vickers), (386) 326-3993, GarryWood2011@hotmail.com

These are two co-defendants that my supervisor, Jason Lewis, and I tried close in time, in the latter half of 2017. The cases are significant due to the horrific nature of the allegations, as well as the severity and number of charges – each were charged with Capital Sexual Battery as well as numerous counts of Possession of Sexual Performance by a Child, and Promotion of Sexual Performance by a Minor.

The defendant and co-defendant were dating at the time of the offenses, which occurred between approximately February and March of 2015. Defendant Dykes was interested in child pornography and would request Defendant Vickers take videos of herself performing both digital penetration and oral copulation on her one-year old daughter for the purpose of sexual gratification of Defendant Dykes.

Part of what made this case so significant was the age of the victim as well as the fact that one of the defendants was her own mother. There were videos of the acts, and the sights and sounds on them will haunt me for the rest of my life.

The other aspect of the case that made it significant is the complexity of the case based on the technology used and the various social media applications utilized by the defendants to communicate and share the commission of these acts. It was very challenging as far as testimony and admission of evidence, but also very rewarding once the case was presented to the jury. Each defendant was convicted as charged and sentenced to life in prison.

d. Unable to recall the defendant's name or the exact date, but the case was sometime in 2006 in County Court, El Paso County, CO

When I first started working for the 4th Judicial District Attorney's Office in Colorado, I was assigned to the First Appearance Center. The First Appearance Center was a room in the courthouse designed for defendants charged with misdemeanors and traffic offenses to appear after being issued a summons. They were advised of their rights and would meet with deputy district attorneys to try to resolve their cases quickly in an effort to avoid congestion in the county courtrooms. If a defendant wanted to consult with an attorney, they would plea not guilty and would be set for a pretrial conference in front of a county court Judge. If they wanted to accept what the prosecutor was offering, they would sign a plea agreement and check out with a court clerk. Occasionally jail was offered and, if the defendant still accepted the offer, he or she would be given a day to report to the jail or they would be taken into custody in the first appearance center.

In this particular case, I met with a defendant who was charged with Driving Under Restraint (the Colorado equivalent of Driving While License Cancelled, Suspended, or

Revoked). He had previously been charged with the same offense and received a plea offer of a deferred sentence (the Colorado equivalent of a withhold of adjudication) to No Operators License, with probation and community service. To assist newer prosecutors and in order to keep plea offers consistent, we had a sheet of guidelines for plea offers. For a second offense to this particular charge, the guidelines recommended a deferred sentence to No Operators License, probation, community service, and ten days in the county jail. The benefit of that particular charge and the deferred sentence is that the defendant's license would not be suspended again.

When I met with the defendant, to the best of my recollection he needed his license, so I offered the guideline offer of a deferred sentence, probation, community service, and jail. He was understandably upset at the thought of serving a jail sentence, as he did not have an extensive criminal history, had a job, and had a family. However, as a young prosecutor, I stuck with the suggested offer per our guidelines. The defendant reluctantly accepted, I assume driven mainly by his desire to get his driver's license. As I left the courthouse later that morning, I saw the defendant on the courthouse steps, crying, as he waited for his ride home.

That case has stuck with me for fifteen years because it had a profound impact on how I viewed my job and the power that comes with it – something that cannot and should not be taken for granted. I was a young prosecutor at the time and did what I thought was appropriate, however I failed to see that there are other factors that need to be considered when handling any case – not every case is the same and not every person is the same. That was the day that I learned about using my own discretion, about deviating from guidelines because every situation is different. Additionally, I have had my own experiences with the criminal justice system and I was given a second chance. From that day, I have tried to look at every case from all sides and given people second, third, and even more chances if I felt that's what they deserve. I will never forget this case, how it made me feel, and how it changed the way I went forward in my career.

e. State v. Benjamin Jaquaric Bascom, 2018 102584 CFDL, Circuit Court, Daytona Beach, Volusia County, FL

Judge: Honorable Matthew Foxman

Date: Week of October 11th, 2021

Co-Counsel: Andrew Urbanak, (386) 238-4894, UrbanakA@sao7.org

Defense Counsel: Philip Massa, (561) 598-9280, Philip@PhilipMassa.com

This trial was significant to me for a number of reasons. It was the first trial I had litigated in quite some time as I had been assigned to the Intake Division with the State Attorney's Office, rather than in the Trial Division. However, the facts of this case compelled me to try this case with Assistant State Attorney Andrew Urbanak. On November 11th, 2017, the victim was shot and killed on the side of the road a short distance from his house. The victim was a United States Military Veteran murdered on Veteran's Day, and based on available information, it appeared that he was attempting to assist the defendant on the side of the road. When the victim was in a vulnerable

position, the defendant shot him multiple times, execution-style. The case went cold for a few months while the Volusia Sheriff's Office investigated. The victim was also the victim and sole witness of an Aggravated Assault that occurred a few months prior. The suspect in that case was Kelsey McFoley and after extensive investigation, the Sheriff's Office developed Bascom as the suspect who actually pulled the trigger in the homicide. Through further investigation, cell phone records, and the defendant's fingerprint at the crime scene, it became apparent that McFoley hired the defendant to kill the victim to prevent him from participating and testifying in the Aggravated Assault case against him. The Aggravated Assault case was eventually dismissed, but First Degree Murder charges were filed against both McFoley and the defendant.

After a weeklong trial, with numerous pieces of evidence and often complex technological testimony, the defendant was found guilty and sentenced to life in prison.

22. Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

Attachment A – State's Response to Defendant's Motion for Post-Conviction Relief

Attachment B – State's Notice of Intent to Elicit Other Crimes, Wrongs, or Acts Evidence

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

23. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved, the dates of service or dates of candidacy, and any election results.

No.

24. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

Seventh Judicial Circuit Judicial Nominating Commission

Approximate Date of Submission: February 16th, 2022

My name was not certified to the Governor's Office for consideration

Seventh Judicial Circuit Judicial Nominating Commission

Approximate Date of Submission: January 26th, 2023

My name was not certified to the Governor's Office for consideration

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard.

N/A

26. If you have prior judicial or quasi-judicial experience, please list the following information:

- (i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;
- (ii) the approximate number and nature of the cases you handled during your tenure;
- (iii) the citations of any published opinions; and
- (iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

27. Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

N/A

28. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

N/A

29. Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give the date, describe the complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

N/A

30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

N/A

31. Have you ever held or been a candidate for any other public office? If so, state the office, location, dates of service or candidacy, and any election results.

No.

NON-LEGAL BUSINESS INVOLVEMENT

32. If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties,

and whether you intend to resign such position immediately upon your appointment or election to judicial office.

N/A

33. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, explain and provide dates. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received.

No.

POSSIBLE BIAS OR PREJUDICE

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you, as a general proposition, believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

N/A

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

35. List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

N/A

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

N/A

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

On November 4th, 2022, I was a co-presenter of a lecture on the topics of Technology Evidence and Investigative Techniques at the Detective's Academy, held at the Volusia County Beach Safety Headquarters in Daytona Beach. I have also presented a lecture on Felony Intake and 4th

Amendment issues to new recruits with the Daytona Beach Police Department on several occasions.

Over the course of my career I have routinely been consulted by law enforcement about the law, criminal procedure, statutes, and caselaw. As an intake attorney assigned to work with the Daytona Beach Police Department and Holly Hill Police Department, I have been available 24 hours a day, 7 days a week to speak with officers and detectives about different legal issues, as well as to review and approve search warrants and arrest warrants.

Additionally, as a felony attorney with the State Attorney's Office, we are on a rotation to present Florida Law Weekly case law updates to our colleagues.

38. Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

No.

39. List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

Embry-Riddle Aeronautical University

- Graduated Magna Cum Laude
- Dean's List 10 out of 13 semesters
- Outstanding Senior Award: Highest GPA
- Florida Bright Futures Scholarship Recipient

Stetson University College of Law

- Honor Roll: Spring 2005; Fall 2005
- Victor O. Wehle Award for Excellence in Trial Advocacy

State Attorney's Office, 7th Judicial Circuit

- Top Gun Trial and Intake Award: 2018

40. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

No.

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

Florida Bar – since December of 2012

Colorado Bar – since May of 2006

Volusia County Bar – since March of 2022

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

City of Port Orange Parks and Recreation – Assistant Coach (T-Ball): Fall 2019

City of Port Orange Parks and Recreation – Head Coach (8U Machine Pitch): Spring 2022

City of Port Orange Parks and Recreation – Assistant Coach (10U Kid Pitch): Spring 2023

43. Do you now or have you ever belonged to a club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

As a government attorney, I have been prohibited from providing pro bono legal services.

45. Please describe any hobbies or other vocational interests.

Spending time with my family, reading, walking, spending time doing anything outdoors.

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

United States Air Force Academy, Cadet
July 1999 – September 1999
No discharge listed – Entry-level separation

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram.

Instagram: www.instagram.com/ledonnej

LinkedIn: www.linkedin.com/in/joseph-ledonne-07302b61

Twitter: www.twitter.com/ledonne_joe

FAMILY BACKGROUND

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

Married. Spouse: **REDACTED**. Occupation: Agent with the State of Florida, Division of Alcoholic Beverages and Tobacco. Date of Marriage: November 11, 2006.

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

REDACTED – 10 years old.

REDACTED – 8 years old.

CRIMINAL AND MISCELLANEOUS ACTIONS

50. Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

52. Have you ever been arrested, regardless of whether charges were filed? If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction.

Yes. On March 16th, 2001, I was arrested, along with two friends of mine at the time, in Daytona Beach Shores for misdemeanor charges of criminal mischief and petit theft. We had been on the beachside during Spring Break and when we returned to a condominium where one of my friends was living at the time, we began vandalizing cars by breaking the windshield wipers off, as well as damaging the condominium irrigation system. During the course of the incident, we placed the items into the trunk of my car, which was why we were also charged with petit theft. One of my friends and I were pulled over and arrested a short distance away after a resident, who had seen the incident, called the police. The other friend who lived in the condominium was contacted at his residence a short time later and also arrested. I was offered, and accepted, a deferred prosecution agreement, in which no plea was entered. The agreement was that I would be placed on probation, pay costs of prosecution, court costs, and costs of investigation, as well as complete a theft course, pay \$481.11 in restitution, and my probation could be terminated

early. All requirements were completed early, probation was terminated, and the charges were dismissed.

- 53.** Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

Lauren LeDonne, et al v. Universal Property & Casualty Insurance Company, 2022 31475 CICI, Volusia County. My status was a Party Plaintiff, the nature of the matter was a disputed insurance claim, and the case was voluntarily dismissed in July of 2023 after a settlement was reached.

- 54.** To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?

No.

- 55.** To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.

No.

- 56.** Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, provide the particulars of each finding or investigation.

No.

- 57.** To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior against you with any regulatory or investigatory agency or with your employer? If so, please state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition.

No.

- 58.** Are you currently the subject of an investigation which could result in civil, administrative, or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation, and the expected completion date of the investigation.

No.

- 59.** Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? If so,

please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy.

No.

60. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No.

61. Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

I have complied with all legally required tax return filings.

HEALTH

62. Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?

No.

63. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism? If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.] Please describe such treatment or diagnosis.

No.

64. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner: experiencing periods of no sleep for two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering from extreme loss of appetite, issuing checks without sufficient funds, defaulting on a loan, experiencing frequent mood swings, uncontrollable tiredness, falling asleep without warning in the middle of an activity. If yes, please explain.

No.

65. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

No.

66. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, provide full details as to court, date, and circumstances.

No.

67. During the last ten years, have you unlawfully used controlled substances, narcotic drugs, or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal or State law provisions.)

No.

68. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

69. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal, and the reason why you refused to submit to such a test.

No.

70. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No.

SUPPLEMENTAL INFORMATION

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

When I was arrested in March of 2001, it was a critical turning point in my life. Having experienced that process, I knew that it was something that would never happen again. It also sparked my interest in the law and the legal system – something of which I knew nothing about. It was the lowest point in my life, yet I was given an opportunity by the prosecutor – essentially, I was given a second chance. I was offered the benefit of a deferred prosecution agreement, in which I would not have to enter a plea and I would be able to keep a conviction off my record if I was able to complete certain requirements. I quickly completed all the requirements of my agreement, probation was terminated, and the case was dismissed. Though the criminal case was quickly behind me, it is something I have carried with me throughout my life for several reasons.

First, I decided shortly after the arrest that that was not the path I wanted to take in my life. I began to associate with different people and started to focus more on my education, as I was in my third year at Embry-Riddle.

Second, and even more importantly, I realized that, though I had made a huge mistake, I was given an opportunity by the prosecutor to minimize the impact this arrest had on my life. While it still follows me around, that was the first time I was introduced to prosecutorial discretion and the concept that people can be given second chances, and even more, in criminal cases. The criminal justice system is not always a system that punishes people – it is also a system that can be used to assist and rehabilitate those who are willing and who deserve the opportunity.

Lastly, this incident stimulated my interest in the law. Prior to the arrest, I had no knowledge of laws, procedure, or the court process. I was fortunate to have the assistance of a knowledgeable defense attorney, William Hathaway, to help guide me through the process, but I also wanted to understand it myself.

Not long after the criminal case concluded, I made the decision to go to law school. Much of what I learned throughout my own criminal case has guided me and influenced me in my own career. Many people deserve second chances or more, but there are also some who do not. The ability to differentiate between who deserves additional chances and who does not is a skill I have learned over my career. But giving someone another chance can be the difference between that person being successful in life and not being successful.

The decisions we make every day, whether as a prosecutor or judge, in a civil or criminal case, are extremely important to those people who are affected by the decisions and that is something that must always be in the front of our minds – we make decisions that impact lives, no matter how small or trivial they might seem to us individually. Every case is significant in the lives of the parties involved and we must treat them as such.

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

When I started law school, I had no idea which legal career path I wanted to choose, I just knew that I wanted to better understand the law and legal procedure. As my education progressed and I took different classes, the one class that changed the course of my career was trial advocacy. It was a realistic introduction to all aspects of courtroom procedure and the different parties and their roles in a trial, culminating in a mock trial at the end of the year. I was actually assigned as a defense attorney in a criminal case, but my passion was for prosecution. Regardless, trial advocacy taught me to respect all roles in a courtroom, to include judge, opposing counsel, and clients/defendants. Based on my experience in trial advocacy, I applied almost exclusively to District Attorney's Offices when I moved to Colorado.

The first job I was offered I accepted – with the 4th Judicial District Attorney’s Office in Colorado Springs in July of 2006. Since we were not native Coloradans, my wife and I felt fortunate to live in the community and were happy to give back by being dedicated public servants. While I was a prosecutor, she eventually became a Colorado State Trooper.

I quickly rose through the office, handling almost every case from traffic offenses to First Degree Murder cases. I was assigned to a rural office in Teller County for over a year, I was the leader of the Vehicular Homicide/Vehicular Homicide Team, and I was a member of the Homicide Team. After almost seven years, I decided to try something different and opened up my own practice. Almost immediately I regretted it as I missed the focus on public service that I had previously with the District Attorney’s Office. However, I was able to secure a contract where I represented indigent clients in dependency cases in an effort to fill the public service void.

Ultimately, as my wife and I had started a family, we decided we wanted to come back home to Florida. After less than a year in private practice, I was offered a job with the Department of Children and Families, Children’s Legal Services, in Daytona Beach. I accepted and we moved back to Port Orange in February of 2014.

After a year with the Department of Children and Families, I was fortunate to again be offered an opportunity I could not pass up – this time with the Office of the State Attorney, where I have happily been since April of 2015. Around this same time, my wife became a police officer with the City of Port Orange, where she worked for over six years.

At the State Attorney’s Office, I have been privileged to have been given multiple opportunities, to include handling all levels of felony cases, from lower-level cases to First Degree Murder. I have made appearances in every courthouse in the circuit, for both criminal cases and civil cases (Baker Acts, Marchman Acts, and Jimmy Ryce hearings).

My wife and I are both life-long public servants who are fully invested in our community. If selected to serve on the County Court bench, I am committed to serving for as long as the community allows. I feel that I embody what it means to be a resident of Volusia County. My parents moved our family here in the late 1980’s and I was educated in Volusia County public schools, as well as Embry-Riddle Aeronautical University in Daytona Beach. We moved for a short time to experience living and working in another state, but ultimately returned to the place we call home to serve our community.

I have practiced in front of more than 30 judges in my career, in both Colorado and Florida. Throughout that time, I have been able to observe and absorb what it means to be a respectable Judge – patient, dedicated, fair, impartial, and respectful, to all sides and parties.

As someone who has the perspective of being on both sides of the criminal justice system, I possess a unique perspective. I will use all of my past experiences, both good and bad, to be the fair, impartial, courteous, dedicated, and respectful Judge that Volusia County deserves.

REFERENCES

73. List the names, addresses, e-mail addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for a judicial position and of whom inquiry may be made by the Commission and the Governor.

R.J. Larizza
State Attorney, 7th Judicial Circuit
251 N. Ridgewood Avenue
Daytona Beach, FL 32114
LarizzaR@sao7.org
(386) 239-7710

Honorable Dennis Craig
Volusia County Courthouse Annex
125 E. Orange Avenue, Suite 307
Daytona Beach, FL 32114
dcraig@circuit7.org
(386) 257-6071

Honorable Matthew Foxman
Volusia County Courthouse
101 N. Alabama Avenue, Rm. D-439
DeLand, FL 32724
mfoxman@circuit7.org
(386) 626-6590

Honorable Kathryn Weston
Volusia County Courthouse
101 N. Alabama Avenue
DeLand, FL 32724
kweston@circuit7.org
(386) 943-7060

Mark Lewis
Managing Assistant State Attorney
Office of the State Attorney, 7th Judicial Circuit
410 St. Johns Avenue, Room 109
Palatka, FL 32178
LewisM@sao7.org
(386) 329-0259

Andrew Urbanak
Assistant State Attorney
Office of the State Attorney, 7th Judicial Circuit
251 N. Ridgewood Avenue

Daytona Beach, FL 32114
UrbanakA@sao7.org
(386) 238-4894

Detective Collin Howell
Daytona Beach Police Department
129 Valor Boulevard
Daytona Beach, FL 32114
HowellCollin@dbpd.us
(386) 671-5257

Investigator Kevin Connelly
Office of the State Attorney, 7th Judicial Circuit
251 N. Ridgewood Avenue
Daytona Beach, FL 32114
ConnellyK@sao7.org
(386) 239-7710 or **REDACTED**

David Damore
Attorney
David Damore Law
200 Magnolia Avenue
Daytona Beach, FL 32114
David@daviddamorelaw.com
(386) 671-5220

Andrew Bryant
Attorney
The Law Office of Andrew Bryant
805 S. Cascade Avenue
Colorado Springs, CO 80903
andrew@andrewbryantlaw.com
(719) 634-7353

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(1), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 6th day of September, 2023.

Joseph LeDanne
Printed Name


Signature

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current Year-To-Date: \$69,038.77 (approximate)

Last Three Years: 2022: \$88,982.74 2021: \$76,792.04 2020: \$70,721.43

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current Year-To-Date: \$54,440.65 (approximate)

Last Three Years: 2022: \$70,039.15 2021: \$60,543.74 2020: \$55,953.55

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current Year-To-Date: N/A

Last Three Years: N/A

4. State the amount you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current Year-To-Date: N/A

Last Three Years: N/A

5. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current Year-To-Date: N/A

Last Three Years: N/A

**FORM 6
FULL AND PUBLIC
DISCLOSURE OF
FINANCIAL INTEREST**

PART A – NET WORTH

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of September 6th, 2023 was \$259,623.77.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is \$ 30,000

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Home (REDACTED)	\$495,583
Checking Account (JP Morgan Chase Bank, N.A.)	\$3,697.33
Savings Account (JP Morgan Chase Bank, N.A.)	\$37,026.73
State of Florida Pension	\$10,105.71

PART C - LIABILITIES

LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Wells Fargo Home Mortgage, P.O. Box 10335, Des Moines, IA 50306	\$316,789.00

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D - INCOME

You may ***EITHER*** (1) file a complete copy of your latest federal income tax return, *including all W2's, schedules, and attachments*, ***OR*** (2) file a sworn statement identifying each separate source and amount of income which exceeds \$1,000 including secondary sources of income, by completing the remainder of Part D, below.

I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.
 (if you check this box and attach a copy of your latest tax return, you need not complete the remainder of Part D.)

PRIMARY SOURCE OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	200 E. Gaines Street, Tallahassee, FL 32399	\$115,500

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

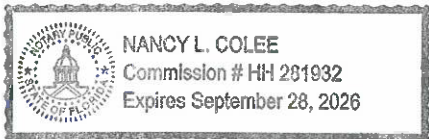
PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITY			
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.



[Handwritten Signature]
SIGNATURE

STATE OF FLORIDA

COUNTY OF Volusia

Sworn to (or affirmed) and subscribed before me this 6th day of Sept, 2023 by Nancy L. Colee

[Handwritten Signature]
 (Signature of Notary Public—State of Florida)

Nancy L. Colee
 (Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced _____

INSTRUCTIONS FOR COMPLETING FORM 6:

PUBLIC RECORD: The disclosure form and everything attached to it is a public record. Your Social Security Number is not required and you should redact it from any documents you file. If you are an active or former officer or employee listed in Section 119.071(4)(d), F.S., whose home address is exempt from disclosure, the Commission is required to maintain the confidentiality of your home address if you submit a written request for confidentiality.

PART A – NET WORTH

Report your net worth as of December 31 or a more current date, and list that date. This should be the same date used to value your assets and liabilities. In order to determine your net worth, you will need to total the value of all your assets and subtract the amount of all of your liabilities. Simply subtracting the liabilities reported in Part C from the assets reported in Part B will not result in an accurate net worth figure in most cases.

To total the value of your assets, add:

- form;
- (1) The aggregate value of household goods and personal effects, as reported in Part B of this form;
 - (2) The value of all assets worth over \$1,000, as reported in Part B; and
 - (3) The total value of any assets worth less than \$1,000 that were not reported or included in the category of “household goods and personal effects.”

To total the amount of your liabilities, add:

- (1) The total amount of each liability you reported in Part C of this form, except for any amounts listed in the “joint and several liabilities not reported above” portion; and,
- (2) The total amount of unreported liabilities (including those under \$1,000, credit card and retail installment accounts, and taxes owed).

PART B – ASSETS WORTH MORE THAN \$1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

The value of your household goods and personal effects may be aggregated and reported as a lump sum, if their aggregate value exceeds \$1,000. The types of assets that can be reported in this manner are described on the form.

ASSETS INDIVIDUALLY VALUED AT MORE THAN \$1,000:

Provide a description of each asset you had on the reporting date chosen for your net worth (Part A), that was worth more than \$1,000 and that is not included as household goods and personal effects, and list its value. Assets include: interests in real property; tangible and intangible personal property, such as cash, stocks, bonds, certificates of deposit, interests in partnerships, beneficial interest in a trust, promissory notes owed to you, accounts received by you, bank accounts, assets held in IRAs, Deferred Retirement Option Accounts, and Florida Prepaid College Plan accounts. You are not required to disclose assets owned solely by your spouse.

How to Identify or Describe the Asset:

— Real property: Identify by providing the street address of the property. If the property has no street address, identify by describing the property’s location in a manner sufficient to enable a member of the public to ascertain its location without resorting to any other source of information.

— Intangible property: Identify the type of property and the business entity or person to which or to whom it relates. Do not list simply “stocks and bonds” or “bank accounts.” For example, list “Stock (Williams Construction Co.),” “Bonds (Southern Water and Gas),” “Bank accounts(First

National Bank),” “Smith family trust,” Promissory note and mortgage (owed by John and Jane Doe).”

How to Value Assets:

- Value each asset by its fair market value on the date used in Part A for your net worth.
- Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. *However*, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.
- Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.
- Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.
- Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.
- Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.
- Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.
- Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by “buy-out” agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.
- Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

PART C—LIABILITIES

LIABILITIES IN EXCESS OF \$1,000:

List the name and address of each creditor to whom you were indebted on the reporting date chosen for your net worth (Part A) in an amount that exceeded \$1,000 and list the amount of the liability. Liabilities include: accounts payable; notes payable; interest payable; debts or obligations to governmental entities other than taxes (except when the taxes have been reduced to a judgment); and judgments against you. You are not required to disclose liabilities owned *solely* by your spouse.

You do not have to list on the form any of the following: credit card and retail installment accounts, taxes owed unless the taxes have been reduced to a judgment), indebtedness on a life insurance policy owned to the company of issuance, or contingent liabilities. A “contingent liability” is one that will become an actual liability only when one or more future events occur or fail to occur, such as where you are liable only as a partner (without personal liability) for partnership debts, or where you are liable only as a guarantor, surety, or endorser on a promissory note. If you are a “co-maker” on a note and have signed as being jointly liable or jointly and severally liable, then this is not a contingent liability.

How to Determine the Amount of a Liability:

- Generally, the amount of the liability is the face amount of the debt.
- If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.
- If you are jointly and severally liable with another person or entity, which often is the case where more than one person is liable on a promissory note, you should report here only the portion of the liability that corresponds to your percentage of liability. *However*, if you are jointly and severally liable for a debt relating to property you own with one or more others as tenants by the entirety or jointly, with right of survivorship,

report 100% of the total amount owed.

— If you are only jointly (not jointly and severally) liable with another person or entity, your share of the liability should be determined in the same way as you determined your share of jointly held assets.

Examples:

— You owe \$10,000 to a bank for student loans, \$5,000 for credit card debts, and \$60,000 with your spouse to a saving and loan for the mortgage on the home you own with your spouse. You must report the name and address of the bank (\$10,000 being the amount of that liability) and the name and address of the savings and loan (\$60,000 being the amount of this liability). The credit cards debts need not be reported.

— You and your 50% business partner have a \$100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and \$50,000 as the amount of the liability. If your liability for the loan is only as a partner, without personal liability, then the loan would be a contingent liability.

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

List in this part of the form the amount of each debt, for which you were jointly and severally liable, that is not reported in the “Liabilities in Excess of \$1,000” part of the form. Example: You and your 50% business partner have a \$100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and \$50,000 as the amount of the liability, as you reported the other 50% of the debt earlier.

PART D – INCOME

As noted on the form, you have the option of either filing a copy of your latest federal income tax return, including all schedules, W2's and attachments, with Form 6, or completing Part D of the form. If you do not attach your tax return, you must complete Part D.

PRIMARY SOURCES OF INCOME:

List the name of each source of income that provided you with more than \$1,000 of income during the year, the address of that source, and the amount of income received from that source. The income of your spouse need not be disclosed; however, if there is a joint income to you and your spouse from property you own jointly (such as interest or dividends from a bank account or stocks), you should include all of that income.

“Income” means the same as “gross income” for federal income tax purposes, even if the income is not actually taxable, such as interest on tax-free bonds. Examples of income include: compensation for services, gross income from business, gains from property dealings, interest, rents, dividends, pensions, IRA distributions, distributive share of partnership gross income, and alimony, but not child support. Where income is derived from a business activity you should report that income to you, as calculated for income tax purposes, rather than the income to the business.

Examples:

— If you owned stock in and were employed by a corporation and received more than \$1,000 of income (salary, commissions, dividends, etc.) from the company, you should list the name of the company, its address, and the total amount of income received from it.

— If you were a partner in a law firm and your distributive share of partnership gross income exceeded \$1,000, you should list the name of the firm, its address, and the amount of your distributive share.

— If you received dividend or interest income from investments in stocks and bonds, list only each individual company from which you received more than \$1,000. Do not aggregate income from all of these investments.

— If more than \$1,000 of income was gained from the sale of property, then you should list as a source of income the name of the purchaser, the purchaser's address, and the amount of gain from the sale. If the purchaser's

identity is unknown, such as where securities listed on an exchange are sold through a brokerage firm, the source of income should be listed simply as “sale of (name of company) stock,” for example.

— If more than \$1,000 of your income was in the form of interest from one particular financial institution (aggregating interest from all CD’s, accounts, etc., at that institution), list the name of the institution, its address, and the amount of income from that institution.

SECONDARY SOURCE OF INCOME:

This part is intended to require the disclosure of major customers, clients, and other sources of income to businesses in which you own an interest. It is not for reporting income from second jobs. That kind of income should be reported as a “Primary Source of Income.” You will *not* have anything to report *unless*:

(1) You owned (either directly or indirectly in the form of an equitable or beneficial interest) during the disclosure period, more than 5% of the total assets or capital stock of a business entity (a corporation, partnership, limited partnership, LLC, proprietorship, joint venture, trust, firm, etc., doing business in Florida); and

(2) You received more than \$1,000 in gross income from that business entity during the period.

If your ownership and gross income exceeded the two thresholds listed above, then for that business entity you must list every source of income to the business entity which exceeded 10% of the business entity’s gross income (computed on the basis of the business entity’s more recently completed fiscal year), the source’s address, the source’s principal business activity, and the name of the business entity in which you owned an interest. You do not have to list the amount of income the business derived from that major source of income.

Examples:

— You are the sole proprietor of a dry cleaning business, from which you received more than \$1,000 in gross income last year. If only one customer, a uniform rental company, provided more than 10% of your dry cleaning business, you must list the name of your business, the name of the uniform rental company, its address, and its principal business activity (uniform rentals).

— You are a 20% partner in a partnership that owns a shopping mall and your gross partnership income exceeded \$1,000. You should list the name of the partnership, the name of each tenant of the mall that provided more than 10% of the partnership’s gross income, the tenant’s address and principal business activity.

PART E – INTERESTS IN SPECIFIED BUSINESS

The types of businesses covered in this section include: state and federally chartered banks; state and federal savings and loan associations; cemetery companies; insurance companies; mortgage companies, credit unions; small loan companies; alcoholic beverage licensees; pari-mutuel wagering companies; utility companies; and entities controlled by the Public Service Commission; and entities granted a franchise to operate by either a city or a county government.

You are required to make this disclosure if you own or owned (either directly or indirectly in the form of an equitable or beneficial interest) at any time during the disclosure period, more than 5% of the total assets or capital stock of one of the types of business entities listed above. You also must complete this part of the form for each of these types of business for which you are, or were at any time during the year an officer, director, partner, proprietor, or agent (other than a resident agent solely for service of process).

If you have or held such a position or ownership interest in one of these types of businesses, list: the name of the business, its address and principal business activity, and the position held with the business (if any). Also, if you own(ed) more than a 5% interest in the business, as described above, you must indicate that fact and describe the nature of your interest.

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: September 6th, 2023
JNC Submitting To: 7th Judicial Circuit

Name (please print): Joseph LeDonne
Current Occupation: Assistant State Attorney
Telephone Number: **REDACTED**

Attorney No.: 101529

Gender: Male
Ethnic Origin: White, Non-Hispanic

County of Residence: Volusia

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR
FDLE TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Joseph Phillip LeDonne
Printed Name of Applicant



Signature of Applicant

Date: 9/6/2023

I, Joseph Phillip LeDonne, am an Assistant State Attorney for the Seventh Judicial Circuit. Pursuant to Florida Statute 119.071, I request that my home address, telephone number, date of birth, social security number, and photograph be redacted from public record. I request that the name, date of birth, and home address of my children and wife be redacted from public record also.



Joseph Phillip LeDonne

Date: 9/6/2023

**IN THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA**

CASE NO: 13-00548-CFFA

STATE OF FLORIDA

VS.

**EDMON NATHANIEL WELCH,
DEFENDANT.**

**STATE'S RESPONSE TO DEFENDANT'S
MOTION FOR POST-CONVICTION RELIEF**

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and files this Response to the Defendant's Motion for Post-Conviction Relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure. For the reasons stated below, the State requests that the Defendant's motion be summarily denied or, in the alternative, that the matter be set for a hearing. As support for its response, the State sets forth the following arguments:

BACKGROUND

Defendant was charged by information with 1) Home Invasion Robbery; 2) Battery on a Person 65 Years of Age or Older; and, 3) Burglary with an Assault or Battery; all with an incident date of June 29, 2013, with victim [REDACTED]. The Defendant was found guilty of all charges by a jury on January 23, 2015, and sentenced to life in the Florida Department of Corrections on February 24, 2015.

The Defendant alleges in his motion that his counsel was ineffective in the following ways: 1) Failing to use prior inconsistent testimony and testimony favorable to the defendant to impeach State's key witness; 2) Presenting evidence that bolstered the credibility of the State's

key witness; 3) Failing to defend the defendant from improper impeachment; 4) Waiving the defendant's motion in limine and advising the defendant to disclose prejudicial bad character evidence to the jury; 5) Eliciting prejudicial evidence of the defendant's propensity to commit crime; 6) Failing to object to improper prosecutorial arguments; 7) Cumulative prejudicial errors.

EVIDENTIARY STANDARD

Claims of ineffective assistance of trial counsel are evaluated using the two-part test announced in *Strickland v. Washington*, 466 U.S. 668 (1984). For such a claim to be meritorious, a claimant must (1) identify particular acts or omissions of the trial lawyer that fall below the wide range of reasonably competent performance under prevailing professional standards, and (2) show that there is a reasonable probability that, but for the clear and substantial deficiency in counsel's performance, the result of the proceeding would have been different. The Defendant has the burden of proving both the deficiency and prejudice prongs by clear and convincing evidence.

Under *Strickland*, the Defendant as the moving party also bears the burden of overcoming a strong presumption of counsel's reasonable and effective performance. *State v. Patterson*, 966 So. 2d 471, 477 (Fla. 2d DCA 2007) (citing *Cabrera v. State*, 766 So. 2d 1131, 1133 (Fla. 2d DCA 2000)). In addition to this presumption, an examination of trial counsel's performance must be considered from trial counsel's perspective under the circumstances at the time of trial, *Patterson*, 966 So. 2d at 471, and strategic or tactical decisions by counsel made after a thorough investigation are virtually unchallengeable, *Cabrera*, 766 So. 2d at 1133.

A defendant asserting a claim of ineffective assistance of counsel is not entitled to a hearing if (1) the motion, files and record in the case conclusively show that the defendant is not

entitled to any relief, and (2) the motion or a particular claim is legally insufficient. *Williamson v. State*, 994 So. 2d 1000, 1006 (Fla. 2008) (quoting *Freeman v. State*, 761 So. 2d 1055, 1061 (Fla. 2000)). A defendant's post-conviction motion is legally insufficient if the allegations contained therein are conclusory. His motion must allege specific facts that, when considered in the totality of the circumstances, demonstrate a deficiency on the party of counsel that is detrimental to the defendant. *State v. Convey*, 845 So. 2d 120, 135 (Fla. 2003). Even when allegations are sufficiently specific, a court may summarily deny a claim for relief when it is clear that the prejudice component is not satisfied. *Kennedy v. State*, 547 So. 2d 912, 914 (Fla. 1989) (citing *Maxwell v. Wainwright*, 490 So. 2d 927, 932 (Fla. 1986)).

ARGUMENT

I. Claim One: Failing to use prior inconsistent testimony and testimony favorable to the defendant to impeach State's key witness

For this claim, the court must determine if failure to call a witness falls outside the range of reasonable professional assistance. *Williams v. State*, 161 So.3d 459, 461. The court will also decide whether there was reasonable probability that counsel's [alleged] deficient performance affected the outcome of the proceeding. *Id.* Moreover, the court requires the defendant to demonstrate that the failure of trial counsel to present such evidence is relevant to the outcome of the proceeding. *Shellito v. State*, 121 So.3d 445, 453-54 (Fla. 2013).

The record reflects that counsel cross-examined the witness in which he asks Mr. [REDACTED] "And you described for the dispatcher that the intruder was in his early 20's. You described him as 19 or early 20s, is that correct?" The witness responds, "Did I describe him at that time as early 20s?" Counsel asks, "Yes, sir, do you recall that?" and the witness answers, "I don't recall that at this time." (T.T. 408). Additionally, impeachment of the witness, Mr. [REDACTED] on the

statement: “Except I would say that he was very mature man. He was not one of 20 years old (Depo 37),” would have been damaging to the defendant’s case. According to the record, the defendant, was 32 at the time of the arrest. (T.T. 502). If defense counsel impeached Mr. [REDACTED] on the inconsistent statement of the defendant “not [being] one of 20 years old,” this would have gone against the misidentification theory of the case, and would have been prejudicial to the outcome of the defendant’s case.

Moreover, even if trial counsel did not impeach Mr. [REDACTED], trial counsel did sufficiently challenge Mr. [REDACTED] testimony when he asked, “And you described for the dispatcher that the intruder was in his early 20s.” Counsel’s strategic reason for eliciting this testimony was to bolster the defense’s “misidentification” theory. If defense counsel impeached Mr. [REDACTED] on the statement made in the deposition: “He was not one of 20-years old,” this would have been damaging to the defendant and would have undermined the defenses theory of misidentification; See *Overton v. State*, 976 So.2d 536, 554 (Fla. 2007) (holding that trial counsel’s failure to cross-examine a witness was not deficient assistance in that such grounds for challenging the witness were investigated and reasonably rejected as a matter of strategy due to lack of evidence).

Trial counsel’s failure to further impeach informants with their statements that were inconsistent with evidence at trial did not prejudice defendant and thus did not constitute ineffective assistance of counsel. *Gregory v. State*, 224 So.3d 719,734 (Fla. 2017).

Defendant further contends that defense counsel was ineffective for failing to impeach a witness when Mr. [REDACTED] testimony at trial was allegedly inconsistent with his testimony during the deposition. According to the record, Mr. [REDACTED] testified at trial, “I attempted to study [the intruder’s face] very carefully” (T.T. 388). During the deposition Mr. [REDACTED] was

asked if he seen what color the intruder's eyes were and Mr. ██████ responded, "Lighter color as I recall. I didn't look at his eyes that close to tell you the truth." (Depo. 37).

Impeachment of a witness regarding slight differences in the details of a witnesses' testimony at trial and during the deposition as to the identification of the defendant should be exercised cautiously; See *Morton v. State*, 689 So.2d 259, 264 ("The statement should be truly inconsistent, and caution should be exercised in permitting impeachment of a witness who has given favorable testimony, but simply fails to recall every detail") Here, Mr. ██████ testified to the description of the intruder's body color (T.T. 391); he described the intruder to have a t-shirt in his hand and a band on his head (T.T. 387), and Mr. ██████ testified that he could not see the helper's face because his shirt was covering it (T.T. 388). Here, the record shows that Mr. ██████ gave favorable testimony during direct-examination. The defendant's contention that Mr. ██████ deposition testimony contradicts his trial testimony about the intruder's facial features is detail in nature. Impeachment is not necessary to sift out every detail of the defendant's identification, and the statement that Mr. ██████ made regarding the eye color of the defendant is not an inconsistent statement, and therefore, does not warrant impeachment.

See also, *Rodgers v. State*, 113 So.3d 761 (Fla. 2013) (concluding that limiting the cross-examination of child witnesses is a reasonable trial strategy while witnesses' credibility was material to the state's case; Defendant's counsel was not deficient for not more aggressively cross-examining the children on inconsistencies of testimony).

II. Claim Two: Presenting evidence that bolstered the credibility of the State's key witness

Defendant argues that defense counsel was ineffective for eliciting evidence favorable to the State that bolstered the credibility of the State's key witness, which was particularly important

because the defense theory of the case was based on misidentification by the victim of the defendant.

In *Gregory v. State*, 224 So.3d 719 (Fla. 2017), the defendant argued that his counsel was ineffective because he failed to rebut the State's theory that he (defendant) was a jealous ex-lover. Counsel offered a more favorable view of defendant, and the Court found that trial counsel was neither deficient nor prejudicial for that decision. *Id.* At 729-30.

"Ineffective assistance of counsel is not judged by the quantity of evidence presented to the jury, but whether the quality of the evidence not presented sufficiently undermines confidence in the outcome of the proceeding." *State v. FitzPatrick*, 118 So.3d 737, 766 (Fla. 2013).

In the instant case, Defendant argues that evidence misled jury to believe that Mr. [REDACTED] identification of Julio Allen was accurate and that Mr. Allen was arrested for the robbery. The message conveyed that Mr. [REDACTED] accurately identified Allen.

However, defendant was not prejudiced as a result of defense counsel allegedly eliciting evidence favorable to the State. Defendant was not prejudiced when he claimed that defense counsel allegedly bolstered the credibility of the State's key witness because the State already questioned the witness on the identity of the intruder. Defense counsel's questioning of the witness about the identity of the intruder would not have changed the outcome of the case. Thus, defendant was not prejudiced.

Additionally, defense counsel made a strategic decision to elicit testimony about the victim's identification of Julio Allen as someone who was involved in the crime in order to argue that the victim was incorrect in his identification of Julio Allen, therefore he must also be incorrect in his identification of the defendant. This is evident in defense counsel's discussion of the evidence,

particularly of the identification of both parties and the suggestibility of the identification, during his closing argument. (T.T. 842-847).

Strategic decisions do not constitute ineffective assistance of counsel . . . and counsel's decision was reasonable under the norms of professional conduct. *Overton v. State*, 976 So.2d 536, 549 (Fla. 2007)

III. Claim Three: Failing to defend the defendant from improper impeachment

Defendant argues that defense counsel was ineffective for failing to make appropriate arguments, objections, and motions for mistrial to defend the defendant from improper impeachment.

Specifically, defendant argues that defense counsel was deficient for failing to apprise the court of additional grounds for exclusion of the defendant's interview, which was used by the State during the trial as impeachment of the defendant's trial testimony. The defendant assumes that, had defense counsel properly objected and notified the court that he believed the prosecution was going to use the prior statement to improperly comment on the defendant's post-arrest silence, then the court would have sustained the objection and there is a reasonable probability that the result of the proceeding would have been different.

However, this is refuted by the record. (T.T. 666-670). The record indicates that the court was aware, based on the State's argument during the trial, that the purpose of introducing the prior statements was not for substantive evidence, but for impeachment of the defendant's trial testimony – specifically to show that his timeline at the time the statement was made was different from the timeline at the time he testified at trial, based on the discovery and reports he

had at the time. Whether defense counsel specifically made this part of his objection is irrelevant because it was nevertheless considered by the court and subsequently overruled.

The defendant also asserts that, during cross-examination, the prosecution asked two improper questions and defense counsel failed to object. The defendant claims that these two questions were not questions, but rather impeaching assertions. The first question by the State was, “And your alibi on July 1, 2013, was that you were in Bunnell?” Defendant’s response is, “No, ma’am. It wasn’t. My alibi that night was that I’d just come into Bunnell from the Daytona North area to get cigarettes. That was my alibi.” (T.T. 673). Defendant goes on to explain more about his alibi and certain things he didn’t tell the police at the time. The defendant claims that, had defense counsel objected to this question and moved for a mistrial or asked the jury to disregard the question, there is a reasonable probability the court would have granted it. However, any prejudice to the defendant by this question was cured by the defendant’s response – if he believed the question to be incorrect, it was certainly cured by his answer and explanation. Any lack of objection by defense counsel can be seen as a tactical decision on his part (see *Cave v. State*, 899 So. 2d 1042 (Fla. 2005)). “The decision to take the stand in his own defense, like the decision to plead not-guilty and proceed to trial, provides the defendant with an opportunity directly to meet the charges against him. ‘The wisdom or unwisdom of the defendant’s choice does not diminish his right to make it.’” (citing *Wright v. Estelle*, 572 F. 2d 1071 at 1079 (5th Cir. 1978)).

The defendant also specifically claims that defense counsel’s performance was deficient in that he failed to object and move for a mistrial based on improper statements by the prosecutor during closing argument. As a basis, defendant again claims that defense counsel should have objected to the prosecutor’s comments regarding the defendant’s prior statement to police, which

were used as a basis to impeach his trial testimony. For all the same reasons, these were proper arguments made by the prosecution and defense counsel had no basis to object to them. The defendant claims that the prosecutor was arguing facts not in evidence and was making misleading statements during closing arguments that were not objected to by defense counsel. However, a review of the record shows that the prosecution was making reasonable inferences based on the evidence and testimony and is making a closing argument based on the facts and the law. The defendant's main issue, based on his motion, seems to be that the argument by the prosecution is prejudicial, which it is designed to be. (T.T. 820-828; 879-892). As is well-known, and instructed to the jury, closing arguments are just that – arguments by the attorneys based on their interpretation of the evidence. The arguments themselves are not evidence or testimony.

IV. Claim Four: Waiving the defendant's motion in limine and advising the defendant to disclose prejudicial bad character evidence to the jury

Defendant next claims that counsel was ineffective for waiving his motion in limine and allowing evidence to be elicited that defendant used and possessed cocaine on the night of the robbery – including that defendant was found to be in possession of cocaine at the time he was arrested. Based upon a review of the record (T.T. 259-261; 859), this was a strategic decision by both the prosecution and the defense.

The fact that defendant was in possession of cocaine when he was arrested, as well as a certain sum of money and other items, was relevant to the prosecution's theory of the case – that the defendant had stolen approximately \$180 from the victim, had purchased cocaine, then was found with \$23 and cocaine and some other items when he was arrested. Though this could arguably be viewed as prejudicial, it is clear that based on the evidence the probative value outweighs the danger of unfair prejudice. Additionally, because the defendant chose to take the

stand, testimony about the cocaine and money, to refute the prosecution's theory, was an integral part of the defense case and was also used to show that the defendant was being honest, forthcoming, and had nothing to hide in his testimony. (T.T. 612-684; 851). Again, this was a strategic decision by defense counsel and not unreasonable under the circumstances (See *Strickland v. Washington*, 466 U.S. 668, 689 (1984)).

V. **Claim Five: Eliciting prejudicial evidence of the defendant's propensity to commit crime**

Defendant next claims that his counsel was ineffective when he elicited "highly prejudicial" evidence of the defendant's prior theft conviction, which showed his propensity to steal. Defendant admits that it was a strategic decision for counsel to elicit felony convictions, crimes of dishonesty, and the number of such convictions, but argues that part of that strategy did not include eliciting evidence of the nature of the convictions, i.e., theft.

A review of the record (T.T. 681-683) reveals that the testimony of the defendant's felony convictions and conviction for a crime of dishonesty was the result of cross-examination by the prosecution. It was only on redirect examination by defense counsel that the question was asked, by defense counsel, "Q: And this crime of dishonesty is a theft conviction?" A: "It is." (T.T. 683). When looking at the context of when the question was asked and why it was asked, this again amounts to a strategic decision by defense counsel to attempt to minimize the defendant's prior convictions. As is well-known, felony convictions and crimes of dishonesty can be used by the jury in determining whether or not to believe a witness. Because the defendant did have a conviction for a crime of dishonesty and because that testimony was elicited during cross-examination by the prosecution, it is reasonable to assume that defense counsel wanted the jury

to be aware that the crime of dishonesty was theft, rather than a conviction such as false reporting or a similar crime that would directly relate to whether or not the defendant could be believed.

VI. Claim Six: Failing to object to improper prosecutorial arguments

Defendant claims that defense counsel was ineffective for failing to object to the prosecutor's closing argument and lists several statements or arguments made by the prosecutor as grounds for this claim, alleging that the prosecutor was injecting her personal opinion, vouching for the victim's credibility, and arguing facts not in evidence.

Again, closing arguments made by the attorneys are not evidence or testimony, but are arguments by the respective parties based on their memories and interpretations of the testimony and evidence. Additionally, the jury is to follow their recollection of the evidence if it differs from the attorneys and the jury was instructed of this. (T.T. 819-820). Accordingly, it would have been improper for defense counsel to object to the specific statements/arguments made by the prosecutor as outlined in defendant's motion. The prosecution's arguments were simply her recitation of her theory of the case, coupled with the testimony and evidence to support it.

VII. Claim Seven: Cumulative prejudicial errors

Defendant's last claim is that, based on all the foregoing grounds (Grounds I-VI), defense counsel was ineffective. This argument is cumulative and conclusory as each of the allegations has already been argued and a response provided herein. A defendant's post-conviction motion is legally insufficient if the allegations contained therein are conclusory. His motion must allege specific facts that, when considered in the totality of the circumstances, demonstrate a deficiency

on the party of counsel that is detrimental to the defendant. *State v. Convey*, 845 So. 2d 120, 135 (Fla. 2003).

WHEREFORE, as stated above, the State respectfully requests that this Court summarily deny the Defendant's Amended Motion for Post-Conviction Relief. In the alternative, the State requests the Court set this matter for an evidentiary hearing so that additional evidence and argument may be presented.

R.J. LARIZZA
STATE ATTORNEY

By: s/JOSEPH LEDONNE
ASSISTANT STATE ATTORNEY
Florida Bar No.: 101529
ESERVICEFLAGLER@SAO7.ORG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by mail/delivery to INMATE EDMON WELCH, DC #V12603, FLORIDA STATE PRISON-WEST UNIT, P.O. BOX 800, RAIFORD, FL 32083, on January 19, 2018.

s/JOSEPH LEDONNE
ASSISTANT STATE ATTORNEY
Florida Bar No.: 101529
1769 EAST MOODY BLVD BLDG 1
THIRD FLOOR
BUNNELL, FL 32110
(386) 313-4300
ESERVICEFLAGLER@SAO7.ORG

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 2015-00302-CF

V.

ERIN MARIE VICKERS

Defendant/

NOTICE OF INTENT TO ELICIT OTHER CRIMES, WRONGS, OR ACTS EVIDENCE

COMES NOW, R.J. LARIZZA, State Attorney for the Seventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, pursuant to section 90.404(2)(a) of the Florida Statutes (2013) and the law as set forth in *Williams vs. State*, 110 So. 2d 654 (Fla. 1959), and files with this Honorable Court, notice of the State's intent to use similar fact evidence in the trial of the above-styled cause and hereby gives notice to the Court and all parties that the State intends to offer at trial similar fact evidence as indicated below for purposes of proving motive, intent, common scheme or plan, absence of accident or mistake/consent, and identity.:

Facts and Evidence

1. In the instant case the Defendant is charged in an amended information with one count of capital sexual battery (794.011), twenty counts of production of child pornography (827.071), twenty counts of transmission of child pornography (847.0137), and three counts of conspiracy to commit capital sexual battery (794.011).
2. The offenses occurred between January 27th, 2014, and March 26, 2015.
3. The State is prepared to present evidence that the Defendant performed oral sex on her one year old daughter on multiple occasions to substantiate the capital sexual battery count.
4. This evidence includes eighteen (18) photographs and two (2) videos of the Defendant performing oral sex on her daughter. These photographs were obtained from a forensic search of Paul Dykes' property seized pursuant to a search warrant and substantiates the twenty (20) counts of production of child pornography.

5. The Defendant transmitted these twenty (20) media file images electronically to Paul Dykes. The forensic examination of Paul Dykes' cellphone, laptop, and Dropbox account confirmed the transmission of these twenty (20) files containing child pornography.
6. Concerning the conspiracy counts, the Defendant engaged in multiple "Skype" video chats with Paul Dykes. In these chats, the Defendant conspired with Paul Dykes to commit sexual battery on her one year old daughter; and on multiple occasions, carried out the conspiracy by digitally and orally penetrating the vagina and anus of her daughter over video chat for Paul Dykes to watch. There were also text chats during these "Skype" sessions. The Defendant retrieved her daughter and brought her into the room to participate in the video chats. The Defendant and Paul Dykes texted back and forth planning what sex acts would be performed on the child next. The Defendant then carried out these acts as requested by Paul Dykes.
7. The Defendant also conspired with Paul Dykes to allow Paul Dykes to sexually batter her daughter. The forensic extraction of the Defendant's cell phone revealed a "Skype" chat dated March 23, 2015 in which Paul Dykes asks to have sexual intercourse with both the Defendant and her one (1) year old daughter. The Defendant agrees to allow Paul Dykes to sexually batter her daughter. They discuss where they could carry out the sexual battery since the Defendant is on probation, and they can't do it at her house. They further discuss what type of clothing the child will wear during the sexual battery to include "fishnets and stuff". They discuss obtaining "baby sex toys" and that they "have to get small dildos."
8. The Defendant also conspired with Paul Dykes to commit sexual battery upon Paul Dyke's two (2) year old daughter. This is evidenced by the forensic extraction of video chats between the two on February 27, 2015. The Defendant and Paul Dykes began by having an exchange about the video and audio settings. The Defendant asks, "Do you want me to start?" Paul Dykes replies, "Rub it", "Finger", "Put her hand in your pussy". Later in the chat Paul Dykes asks the Defendant if she would have sexual intercourse with his two (2) year old daughter. The Defendant indicates that she would with the two (2) year old, but would not with his seven (7) week old daughter.

9. The Defendant also conspired with Paul Dykes to commit sexual battery upon her one (1) year old daughter by planning to force the one (1) year old child to be penetrated by a dog's penis. The forensic evidence revealed a "Skype" conversation on March 23, 2015 in which Paul Dykes asks the Defendant, "If I find a dog can she fuck it"... "Probably my dog." "I'll have to hold his dick for him to fuck her." The Defendant then agrees to allow a dog to penetrate her daughter.

Law

10. In *Williams*, the Court clarified the law regarding the admissibility of other crimes, wrongs, or acts. 110 So. 2d 654, 662 (Fla. 1959). The Court held that "any fact relevant to prove a fact in issue is admissible into evidence unless its admissibility is precluded by some specific rule of exclusion." *Id.* at 658. Stated more concisely, "unless precluded by some specifically recognized exception, all relevant testimony is admissible." *Id.* at 660.
11. The Court held "relevancy to be the test of admissibility" regarding similar fact evidence. *Id.* at 660. "If found to be relevant for any purpose save for that of showing bad character or propensity, then [similar fact evidence] should be admitted." *Id.* at 662.
12. The Court cites intent, guilty knowledge, purpose, plan, design, common scheme or general pattern of criminality, absence of mistake, identity, and the rebuttal of expected defenses as examples of the types of material issues of fact that similar fact evidence may be relevant to prove. *Id.* at 661-662.
13. In subsequent decisions the Court has reviewed William's Rule cases in two steps: (1) are the collateral crimes, wrongs, or acts the State is attempting to introduce similar enough to the facts underlying the crime charged to be considered William's Rule evidence and fall under section 90.404(2)(a) and (2) whether the similar fact evidence "transcends the bounds of relevancy" by making the evidence a "feature of the trial." *Conde v. State*, 860 So. 2d 930, 945-946 (Fla. 2003).
 - a. With regard to Step 1 the Court has held that "startling similarities in the facts of each crime and the uniqueness of modus operandi will determine the admissibility of collateral crime evidence." *Chandler v. State*, 702 So. 2d 186, 192 (Fla. 1997).

b. With regard to Step 2, the Court has explained that the trial court should engage in a balancing test under section 90.403; that is, whether the relevance of the similar fact evidence being introduced is not substantially outweighed by its prejudicial effect. *Bradley v. State*, 787 So. 2d 732, 743 (Fla. 2001). However, the Court later made clear in *Conde* that “it is not solely the quantity but also the quality and nature of collateral crimes evidence in relation to the issues to be proven that determines whether its admission has “transcended the bounds of relevancy to the charge being tried.” *Conde*, 860 So. 2d at 946. The Court cited a myriad of cases where it “has affirmed the admission of extensive collateral crimes evidence where that evidence was wholly probative of material issues.” *Id.*

14. Prior to introducing any similar fact evidence at trial, the State must prove that a defendant committed the collateral crime by clear and convincing evidence. *McLean v. State*, 934 So. 2d 1248, 1262 (Fla. 2006).

15. In cases involving a sexual offense, the Florida legislature has created a lower standard for the admissibility of collateral crime/William’s Rule evidence. Section 90.404(2)(c)1 of the Florida Statutes (2014), states that “[i]n a criminal case in which the defendant is charged with a sexual offense, evidence of the defendant’s commission of other crimes, wrongs, or acts involving a sexual offense is admissible and may be considered for its bearing on any matter to which it is relevant.” This statutory language in subsection (2)(c)1 mirrors the language relating to child molestation in subsection (2)(b)1.

Subsection (2)(b)1 has been held to “broadly provide” that evidence of a defendant’s commission of other acts of child molestation are admissible regardless of whether the collateral offenses and charged act occurred in the familial context or whether they share any similarity. *McLean*, 934 So. 2d at 1259. However, the collateral crime evidence of other acts of child molestation is still subject to the balancing test mandated by section 90.403 of the Florida Statutes (2014). *Id.* In conducting the balancing inquiry when considering prior acts of child molestation a trial court should consider all factors, including but not limited to (1) the similarity of the prior acts to the charged act including the location where the acts occurred, the age and gender of the victims, and the manner in which the acts occurred, (2) the

relative closeness in time of the charged act and the collateral act, (3) the frequency of the prior acts of child molestation, and (4) the presence or lack of intervening circumstances. *Peralta-Morales v. State*, 143 So. 3d 483, 484 (Fla. 1st DCA 2014). Additionally, the trial court must insure that the evidence of other acts of child molestation will not become a feature of the trial or mislead the jurors. *Id.*

Because of the identical language in subsections (2)(b)1 and (2)(c)1, the Court should apply the same standard for admissibility to other crimes wrongs or acts involving a sexual offense as that is used in cases involving child molestation.

ARGUMENT

16. The Defense has filed a Motion to Sever 20 counts of promoting sexual performance by a child and 20 counts of transmission of child pornography, in addition to filing a Motion in Limine to preclude the testimony and evidence of the child pornography and of the defendant's prior crime of Unlawful Use of a Two Way Communication Device in Polk County
17. However, all counts are inextricably intertwined with each other and would be admissible in any trial on any count. The capital sexual battery is evidenced by the possession of the images of it, and the possession of the photographs is evidenced by the transmission of them. The video chats and text conversations are evidence of the relationship between the Defendant and Paul Dykes. They are necessary to explain the commission of the sexual battery, the possession of the images, the transmission of the images, and to document the conspiracy between them.
18. Additionally, the State contends that all of these crimes are enumerated in 90.404(2)(b) as acts of child molestation with the exception of the transmission charges (847.0137). They are admissible and may be considered for its bearing on any matter to which it is relevant.
19. The State intends on presenting testimony regarding all of the images and videos of child pornography possessed, produced, and transmitted by the Defendant. The forensic extraction revealed more than the twenty (20) files that are charged in the Information. The additional files are relevant to prove identity, opportunity, plan,

possession, knowledge, lack of duress, and the Defendant's intent. This evidence is admissible under 90.404(2)(b) regardless of whether it is charged in the Information.

20. There is evidence of prior child molestation. The Defendant was previously arrested and charged with traveling to meet a minor (847.0135), attempted lewd or lascivious battery (800.04), and unlawful use of a two-way communications device (934.215) in Polk County case 13-5087CF. She entered a plea pursuant to plea negotiations to the communications charge and the State dismissed the other two counts in exchange. The Defendant was on probation for the Polk County case at the time of the commission of the present offenses. Under 90.404(2)(b), lewd or lascivious battery is an enumerated crime of child molestation and is relevant for any matter to which it is relevant. The prior attempted lewd or lascivious battery is relevant to the motive and intent of the Defendant and lack of duress or influence by Paul Dykes. The Defendant states in her interview with law enforcement and to multiple witnesses that Paul Dykes made her do it.

21. The State intends on introducing a video of Paul Dykes performing oral sex on his two (2) year old daughter in this Defendant's trial. This evidence is relevant to the Defendant's state of mind in entering the conspiracy with Paul Dykes to sexually batter his two (2) year old daughter. The fact that he has sexually battered his two (2) year old daughter and the Defendant knew about it, evidences her intent to enter into the conspiracy and likelihood that it would be carried out. The Defendant stated in her post-miranda confession that Paul Dykes sent her this video and she did watch it and acknowledge to Paul Dykes that she liked it.

The foregoing evidence is offered and is relevant to prove motive, intent, common scheme or plan, identity, and absence of mistake or accident/consent. It is not sought to be introduced to prove bad character or propensity on behalf of the Defendant.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to U.S. Mail to WILLIAM BOOKHAMMER, attorney for Paul Dykes, and GARRY WOOD, attorney for Defendant, this _____ day of February, 2017.

JOSEPH LEDONNE
ASSISTANT STATE ATTORNEY