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

CASE NO.: 2021 303222 CFDB

STATE OF FLORIDA

VS.

NICOLE JACKSON-MALDONADO,
DEFENDANT.
_____/

STATE'S MOTION IN LIMINE TO LIMIT TESTIMONY AND ACCPOMPANYING MEMORANDUM OF LAW

COMES NOW, R.J. LARIZZA, State Attorney for the Seventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney pursuant to F.R.Cr.P 104.5, and files this Motion in Limine for the court to limit irrelevant testimony and or argument regarding the subsequent information and/or matters. In support of this motion, the State would show the following:

MENTAL ILLNESS, MEDICAL CONDITIONS OF DEFENDANT:

1. Any testimony regarding the mental state and or mental capacity of this Defendant is irrelevant to the crime as charged.
2. Any diagnosis or testimony regarding the mental state of the Defendant would only be appropriate for sentencing (mitigation) purposes.
3. There has been no assertion that Mental Illness or the Mental Capacity of the Defendant is at dispute for the purpose of trial. There has been no notice filed to the contrary and any discussion should be prohibited.
4. Consent is not at issue, regarding the state of mind and or mental capacity of this Defendant nor will it be included in the jury instructions as a defense.
5. Evidence of any mental illness and or any prior diagnosis is not admissible to show that the defendant lacked the specific intent to commit the offense as charged.
6. Any statements or argument regarding the aforementioned matters would potentially be used to draw sympathy or invoke feelings of empathy for the Defendant in contrary to the law as spelled out by the jury instructions.

7. The State also requests the Defense be limited in mentioning the past of the Defendant in Foster Care or State ordered placement through any other organization. This testimony should be limited to her most recent stay at FUMCH which would ultimately be presented in the State's case in chief.

AGE OF THE DEFENDANT:

1. It is obvious that the age of the Defendant will be discussed at trial. However, any emphasis on this fact in regards to the culpability and or cognitive ability of the Defendant is irrelevant.
2. Any mention of the ability of the Defendant to understand and or comprehend the severity of her actions would only confuse the jury, including and not limited to creating a possibility of nullification and a verdict inconsistent with the law.
3. The age will be apparent to the jury due to the placement of the Defendant in a juvenile facility, Florida United Methodist Children's Home (FUMCH).
4. The State would request this fact, be presented to the jury as part of this testimony and not be addressed as any point of argument on behalf of the Defense.
5. The State also requests any argument regarding the lack of mental capacity or brain development that would be attributed to the Defendant's age be inadmissible.
6. Any statements or argument regarding the aforementioned matters would potentially be used to draw sympathy or invoke feelings of empathy for the Defendant in contrary for the law as spelled out by the jury instructions for the alleged offense.

FILING DECISION AND STATUS OF CODEFENDANT'S CASE:

1. Any discussion and or testimony regarding the filing decision in this case by the Office of The State Attorney is irrelevant.
2. Any comment on the ability to file this matter in juvenile court as opposed to the decision to file in an adult court should be inadmissible for the purposes of trial and should not be eluded to by testimony and/or argument.
3. Any discussion of the decision made regarding the co-defendant's case is also irrelevant to the elements of the crime as charged.

4. The ultimate disposition of the codefendant's case is irrelevant to the current case and would only draw or call for questions of law to be assessed by the jury that are not permissible and inconsistent with the jury instructions.
5. Simply put, the trier of fact need not be considering the culpability and/or lack thereof of the codefendant in comparison to the Defendant, neither should the trier of fact be tasked with considering the variance or lack thereof in the treatment of each case.

LAW IN SUPPORT OF STATE'S REQUEST TO LIMIT TESTIMONY

All evidence must first be relevant to be admissible. Fla. Stat. 90.402 (2022). Evidence is relevant when it tends to "prove or disprove a material fact." *McDuffie v. State*, 970 So.2d 312, 326 (Fla. 2007). While evidence of mental illness, incapacity, or defect may be relevant in some cases where consent is at issue, there are no facts that would support the Defendant being forced or coerced to participate in the crime as charged nor do the standard jury instruction provide an exception for that circumstance. There has been no notice of Insanity or question as to capacity in the instant case as to warrant any testimony or argument that the Defendant has been previously diagnosed with a mental illness. Without such notice, mental capacity is not admissible to negate guilt or intent. "A defendant cannot present evidence of an abnormal mental condition not constituting legal insanity to argue they did not have the specific intent or state of mind necessary to commit an offense. *Morris v. State*, 283 So.3d 436 (FL 1st DCA 2019). It is also impermissible to use a mental diagnosis or condition as a vehicle to introduce evidence of "mental state or diminished capacity in attempt to negate requisite intent for murder." *Id.* at 438. "Evidence of abnormal mental condition not constituting legal insanity is inadmissible for purposes of proving either that accused could not or did not entertain the specific intent or state of mind essential to proof of the offense, in order to determine whether crime charged, or lesser degree thereof, was in fact committed." *Chestnut v. State*, 538 So. 2d 820 (Fla. 1989) Evidence of such mental capacity would only confuse the jury when there are no exceptions for the intent required to perpetrate the crime as charged. *Id.* The trial court granted the state's motion finding that "absent an insanity plea, expert testimony as to mental status, especially when offered to bolster an affirmative defense would be improper in and of itself since it would only tend to confuse the jury." *Chestnut v. State*, 538 So. 2d 820, 821 (Fla. 1989). It is well cemented in law that providing the jury irrelevant testimony regarding the mental state of an offender will lend to

create confusion and irrelevant questions which will interfere with the trier of facts task of determining guilt or innocence. "It is our opinion that to allow expert testimony as to mental state in the absence of an insanity plea would confuse and create immaterial issues. If permitted, such experts could explain and justify criminal conduct. As lay people we could guess that almost everyone who commits crimes against society must have some psychiatric or psychological problem. However, the test continues to be legal insanity as defined and not otherwise, and the court and jury should not be subjected to testimony as to mental flaws and justifications where the defendant knew the difference between right and wrong at the time of the crime." *Chestnut v. State*, 538 So. 2d 820, 821 (Fla. 1989).

"There is no constitutional right to be tried as a juvenile merely by virtue of age." *Woodward v. Wainright,* 556 F.2d 781 (5th Cir. 1977). To the contrary the State has the discretion to file certain cases in adult court under certain circumstances so long as the age of the offender is 14 or older at the time of the offense. F.S. 985.557 and F.S. 985.56. The law has made clear under these circumstances the State should consider the seriousness of the offenses when making this decision while balancing the consequences of such waiver. In such an instance the offender is to be tried as an adult. *Collins v. State*, 381 So.2d 328 (Fla. 5th DCA 1980). The decision to try a juvenile as an adult is one based on an assessment of the available consequences given the nature of the offense. This decision is evaluated from a legal basis and rooted in law, therefore to ask a jury to assess the reasoning behind the decision would only lead to possible nullification and or confusion.

WHEREFORE, the State prays that this Court will enter an order limiting such testimony.

R.J. LARIZZA
STATE ATTORNEY

By: 

ASSISTANT STATE ATTORNEY
Florida Bar No.: 119419
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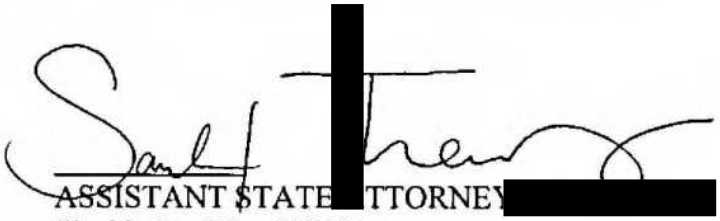
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by mail/delivery to Larry AVALLONE, 251 N Ridgewood Avenue, DAYTONA BEACH, FL 32118, on January 26, 2023.



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