

APPLICATION FOR NOMINATION TO THE FIFTH DISTRICT COURT

(Please attach additional pages as needed to respond fully to questions.)

DATE: August 23, 2019 Florida Bar No.: 585262

GENERAL: Social Security No.: _____

1. Name Daniel E. Traver E-mail: ctjudt1@ocnjcc.org

Date Admitted to Practice in Florida: September 30, 2002

Date Admitted to Practice in other States: November 8, 2001 (Illinois)

2. State current employer and title, including professional position and any public or judicial office.

Circuit Judge, Ninth Judicial Circuit

3. Business address: 425 N. Orange Ave., Suite 1140

City Orlando County Orange State FL ZIP 32801

Telephone (407) 836-2352 FAX (407) 835-5292

4. Residential address: _____

City Orlando County Orange State FL ZIP _____

Since 2014 Telephone _____

5. Place of birth: Amsterdam, The Netherlands

Date of birth: May 9, 1976 Age: 42

6a. Length of residence in State of Florida: 18+ years (2001-2003; 2005-present)

6b. Are you a registered voter? Yes No

If so, in what county are you registered? Orange

7. Marital status: Married

If married: Spouse's name Jill Traver

Date of marriage _____

Spouse's occupation Owner and Physical Therapist, In Motion Physical Therapy

If ever divorced give for each marriage name(s) of spouse(s), current address for each former spouse, date and place of divorce, court and case number for each divorce.

N/A

8. Children

Name(s) Age(s) Occupation(s) Residential address(es)

9. Military Service (including Reserves)

Service Branch Highest Rank Dates

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

Service Branch Highest Rank Dates

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

HEALTH:

10. Are you currently addicted to or dependent upon the use of narcotics, drugs, or intoxicating beverages? If yes, state the details, including the date(s).

No

11a. 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?

Yes No

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.

11b. 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 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered 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

Yes No

If yes, please explain.

12a. 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?

Yes No

12b. If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes No

Describe such problem and any treatment or program of monitoring or counseling.

13. 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, give full details as to court, date and circumstances.

No

14. 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 law provisions.)
- No
15. 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 use of 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
16. 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
17. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.
- No

EDUCATION:

18a. Secondary schools, colleges and law schools attended.

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Benet Academy	Top 10%	1990-1994	High School
Cornell University	Not available*	1994-1998	B.A., Psychology
Loyola University Chicago School of Law	Top 10%	1998-2001	J.D., cum laude

*3.549/4.00 GPA

18b. List and describe academic scholarships earned, honor societies or other awards. National Honor Society, National Merit Finalist, Cornell University Dean's List (5 semesters), Loyola University Honors-at-Entrance Scholarship, Loyola University Chicago Civitas (Juvenile Law) Fellowship, Loyola University Chicago Dean's List (6

semesters).

NON-LEGAL EMPLOYMENT:

19. List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them.

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
Summer 1997	Camp Counselor	Cornell University	Teagle Hall, Ithaca, NY 14850
Summer 1997	Reunion Assistant	Cornell University	Day Hall, Ithaca, NY 14850
2001-2003	Running Coach	Downtown Orlando YMCA	433 N. Mills Ave., Orlando, FL 32803

PROFESSIONAL ADMISSIONS:

20. List all courts (including state bar admissions) and administrative bodies having special admission requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have been suspended or resigned.

Illinois Bar, admitted 11/8/2001, retired 2014

Florida Bar, admitted 9/30/2002

Middle District of Florida, admitted 7/23/2003

Northern District of Illinois, admitted 10/30/2003

Federal Circuit Court of Appeals, admitted 7/11/2006

Northern District of Florida, admitted 9/24/2008

Eleventh Circuit Court of Appeals, admitted 2/17/2009

Third Circuit Court of Appeals, admitted 11/14/2011

Southern District of Florida, admitted 6/19/2013

I have been a judge since May 2014, and accordingly, I have not kept my status current on any admissions other than The Florida Bar. It is possible that I am no longer eligible to practice in some federal courts for this reason.

LAW PRACTICE: (If you are a sitting judge, answer questions 21 through 26 with reference to the years before you became a judge.)

21. State the names, dates and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment:

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
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Associate, Senior Associate, Shareholder, Equity Shareholder	GrayRobinson, P.A.	301 E. Pine St., Suite 1400, Orlando, FL 32801	2005-2014
Associate	Shefsky & Froelich, Ltd., n/k/a Taft Stettinius & Hollister LLP	111 E. Wacker Dr., Suite 2800, Chicago, IL 60610 (current address)	2004
Judicial Law Clerk	The Honorable G. Kendall Sharp, U.S. District Judge, Middle District of Florida	401 W. Central Blvd., Orlando, FL 32801 (current address)	2001-2003
Summer Associate	Shefsky & Froelich, Ltd., n/k/a Taft Stettinius & Hollister LLP	111 E. Wacker Dr., Suite 2800, Chicago, IL 60610 (current address)	Summer 1999 & 2000

22. 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.

For my last position as a practicing attorney, I focused on complex commercial trial litigation in both state and federal court, with a small concentration in juvenile law. My typical clients were corporations or individuals who either sought to prevent or were involved in lawsuits involving all manner of commercial disputes, including those centered on contracts, real estate, residential and commercial loans, professional malpractice, personal injury or fraud. I also represented community-based care providers who contracted with the Department of Children and Families to protect children and strengthen families in designated judicial circuits. For questions 23-26, I will answer for my last position held as a practicing attorney before I took the bench on May 5, 2014.

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

	Court		Area of Practice	
Federal Appellate	1	%	Civil	95
Federal Trial	36	%	Criminal	%
Federal Other	%		Family	%
State Appellate	3	%	Probate	%
State Trial	60	%	Other	5
State Administrative	%			
State Other	%			
	%			
TOTAL	100	%	TOTAL	100

24. In your lifetime, how many (number) of the cases you have tried to verdict or judgment were:

Jury? 3 Non-jury? 2
 Arbitration? _____ Administrative Bodies? _____

25. 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

26. 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 in full.

No

(Questions 27 through 30 are optional for sitting judges who have served 5 years or more.)

27a. For your last 6 cases, which were tried to verdict before a jury or arbitration panel or tried to judgment before a judge, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

Equal Employment Opportunity Commission v. West Customer Management Group, LLC, United States District Court in and for the Northern District of Florida. Co-counsel: Geoff Weisbart and Julie Springer, Weisbart Springer Hayes (512-652-5780; 512-619-4449); Opposing counsel: Ylida Kopka and Maneesh Varma, EEOC (800-669-4000; 205-731-5000).

Gulfwind Management, LLC v. Thomas Grassia, et al., Orange County, Florida. Co-counsel, Nick Dancaescu, GrayRobinson, P.A. (407-244-5634; 407-403-1820); Opposing counsel, J. Robert "Bob" McCormick, Ogletree, Deakins, Nash, Smoak, Stewart, P.C. (813-221-7439) and Nicholas Dareneau, Lewis Brisbois Bisgaard & Smith (813-739-1900 x1976).

Melvin O. Carter v. RoadSafe Traffic Systems, Inc., et al., United States District Court in and for the District of Delaware. Co-counsel: F. Ryan Waters, GrayRobinson, P.A. (407-244-5671; 334-791-2724); Opposing counsel: D. Brad Hughes III, Jimerson & Cobb, P.A. (904-389-0050; 904-333-1472).

Jauser Cargo Corporation v. Aldo International, Miami-Dade County, Florida. Co-counsel: Juan Martinez, GrayRobinson, P.A. (305-416-6880; 305-458-8192); Opposing counsel: George Savage, George S. Savage, The Savage Law Group, P.A. (305-577-0000).

Goetz v. Texas Mutual, Swisher County, Texas. Co-counsel: Geoff Weisbart, Weisbart Springer Hayes LLP (512-652-5780; 512-619-4449); Opposing counsel: Bill Christian, Graves Dougherty Hearon & Moody (512-480-5704).

- 27b. For your last 6 cases, which were 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).

HSBC, as Trustee v. All-Star Ice of Central Florida, Inc., et al. Opposing counsel: Richard Zaretsky, Zaretsky Law Group (561-689-6660).

U.S. Bank v. JPMorgan Chase Bank, N.A. and Donald Rhoden, et al. Opposing counsel: M. Bradley ("Brad") Luczak, White & Luczak, P.A. (407-647-9300).

RFJD Holding Co., Inc. v. Planet Hollywood (Orlando), Inc., et al. Opposing counsel: Norman Marcus, Norman Marcus, P.A. (954-475-2500).

Timber Pines Centre Property Owners' Association v. TP19 Office Park, LLC, After-Image Eye Care, P.A., et al. Opposing counsel: Gary Clendenin, Carter, Clendenin & Foreman, PLLC (727-846-1828) and R. Travis Santos, Hill, Ward & Henderson, P.A. (813-222-8523).

Cognativ, Inc., et al. v. Carpe Diem Sales & Marketing, LLC, et al. Opposing counsel: Alfred "Bud" Bennington, Shutts & Bowen (407-835-6755).

PSPC v. Sogeval Laboratories: Opposing counsel: Tim Pecsénye, BlankRome LLP (215-569-5619). Co-counsel: Glenn Johnson, Nyemaster Goode LLP (319-286-7002).

- 27c. During the last five years, how frequently have you appeared at administrative hearings?
0 average times per month

- 27d. During the last five years, how frequently have you appeared in Court?
3-5 average times per month

- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? N/A% Defendants?
N/A%

28. If during any prior period you have appeared in court with greater frequency than during

the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

See Answer to 32(d)(ii).

29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases.

N/A

30. List and describe the six most significant cases which you personally litigated giving case style, number 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. Give the name of the court and judge, the date tried and names of other attorneys involved.

Melvin O. Carter v. RoadSafe Traffic Systems, Inc., et al., Case Nos. 1:09-cv-148-SLR and 1:10-cv-48-SLR, consolidated for trial before The Honorable Sue L. Robinson, U.S. District Court in and for the District of Delaware (302-573-6310). Reported at: 2011 WL 4543214 (D. Del. Sept. 29, 2011). Appeals filed at Case Nos. 11-4005 and 11-4006, before the Third Circuit Court of Appeals. Related to RoadSafe Traffic Systems, Inc. v. Masters, Smith & Wisby, P.A., Case No. 3:11-cv-1194, before The Honorable Roy J. Dalton, Jr., U.S. District Court in and for the Middle District of Florida.

We represented the RoadSafe entities in a multi-party, multi-jurisdictional dispute arising from RoadSafe's attempted purchase of three related road paving and marking companies based in St. Augustine, Florida. Following the motion to dismiss stage and through conclusion of all trial and appellate proceedings, I held primary responsibility for the two lawsuits RoadSafe and Mr. Carter filed against one another in Delaware and Florida. These consolidated cases proceeded to trial in Delaware, where after a bench trial, Judge Robinson awarded RoadSafe a verdict of \$1,080,309.98. RoadSafe later filed suit against Mr. Carter's accountants in Florida. This resulted in a global confidential settlement resolving the Delaware actions, the related appeals and the Florida action without the need for further court appearances. These combined matters occupied 18 intensive months of fact and expert discovery, motion practice, trial preparation, trial, appeal and considerable substantive work in the areas of accounting and auditing fraud. Counsel for Mr. Carter and his businesses was D. Brad Hughes (Jimerson & Cobb, PA, 1 Independent Dr., Ste 1400, Jacksonville, FL 32202, 904-389-0050). Counsel for Masters, Smith and Wisby was Ken Pollock (Shendell & Pollock, PL, 2700 N. Military Trail, Ste 150, Boca Raton, FL 33431, 561-241-2323). My co-counsel was F. Ryan Waters, my associate at GrayRobinson (301 E. Pine St., Ste. 1400, Orlando, FL 32802, 407-244-5671).

Richard R. Callahan v. Hugh Kent et al., Case Nos. 2009-CA-7474 and 2011-CA-714, consolidated before The Honorable Mark Nacke, Fifth Judicial Circuit in and for Lake County, Florida (352-742-4139). Appeal resolved before the Fifth District Court of Appeal at Case No. 5D13-2155.

We represented Mr. Callahan as his fifth set of trial counsel in a two-day evidentiary hearing related to Defendants' entitlement to recover attorneys' fees under two sections of the Florida Business Corporations Act. When we took the case, Mr. Callahan had lost a partial motion for summary final judgment, and the Court had involuntarily dismissed the rest of his case at trial. We appeared 30 days before the evidentiary hearing and worked around the clock to digest 10 years of business documents and four years of legal pleadings. Because of the breadth of Defendants' motion, we effectively had to re-

try the case. I also prepared and filed the Initial Brief of the underlying involuntary dismissal. Unfortunately, we were unsuccessful in both of our efforts, and the case later settled. This matter was significant for the length and complexity of the underlying dispute, the enormous personal acrimony between the parties – which never extended to the relationship between counsel – and the abbreviated preparation time. I took first-chair responsibility for this matter. Counsel for Mr. Kent was Michael Elsberry (Lowndes, Drosdick, Doster, Kantor & Reed, P.A., 215 N. Eola Dr., Orlando, FL 32801, 407-843-4600). My co-counsel was Rachael Crews, my law partner at GrayRobinson (301 E. Pine St., Ste. 1400, Orlando, FL 32802, 407-244-5666).

Gulfwind Management, LLC v. Logator Capital, LLC, et al., Case No. 2010-CA-25833, before The Honorable Lisa Munyon, Ninth Judicial Circuit in and for Orange County, Florida (Complex Business Court) (407-836-2470).

We represented Gulfwind in a multi-count escrow malpractice action against Mr. Grassia, his law firm, and his title company. Following a bench trial, Judge Munyon entered judgment in Gulfwind's favor for \$311,395.93. The case settled after appeal (Case No. 5D12-4216). This matter involved a seldom-litigated area of the law. It also necessitated arguments under both Florida and Massachusetts law, as well as the retention and preparation of legal experts from both jurisdictions. I held first-chair responsibility for this matter. Counsel for Mr. Grassia was J. Robert "Bob" McCormack (Ogletree Deakins, 100 N. Tampa St., Ste. 3600, Tampa, FL 33602, 813-289-1247) and Nick Dareneau (Lewis Brisbois Bisgaard & Smith, 401 E. Jackson St., Ste. 3400, Tampa, FL 33602). My co-counsel was Nick Dancaescu, my law partner at GrayRobinson (301 E. Pine St., Ste. 1400, Orlando, FL 32802, 407-244-5634).

Jauser Cargo Corp. v. Aldo International, Case No. 2006-13708-CA-01, before The Honorable Gerald Bagley, Eleventh Judicial Circuit in and for Miami-Dade County, Florida (305-349-7135).

We represented Aldo International, a Brazilian company that bought and sold computer equipment. Following a multi-million dollar theft from Jauser's warehouse, Jauser filed suit for unpaid warehouse invoices and Aldo counterclaimed for, among other things, negligent security. I appeared in this action two months before trial and handled all aspects of pre-trial motion practice, discovery and trial preparation. I took first-chair responsibility for the jury trial that resulted in an award of \$1,075,710 for Aldo. Judge Bagley vacated this verdict pursuant to a quick post-trial resolution between the parties. Counsel for Jauser was George Savage (The Savage Law Group, PA, 8603 S. Dixie Hwy, Suite 218, Miami, Florida 33143, 305-577-0000). My co-counsel was Juan Martinez, my law partner at Gray Robinson (333 SE 2nd Ave., Suite 3200, Miami, FL 33131, 305-458-8192).

JPMorgan Chase Bank, N.A. v. Sherone D. Waisome, et al., Case No. 2009-CA-5717, before The Honorable Richard J. Singeltary (352-742-4209), Fifth Judicial Circuit in and for Lake County, Florida, appeals resolved by the Fifth District Court of Appeal at Case Nos. 5D12-784 and 5D13-962.

We represented Chase in a residential foreclosure action where the borrower's attorney filed 18 affirmative defenses and 14 counterclaims. The borrower's attorney also accused my law firm of forging the operative promissory note, which necessitated a successful evidentiary hearing and the defense of her appeal of that ruling. Following eight separate hearings and 23 motions – on 22 of which we prevailed – the Court

entered summary final judgment in Chase's favor on all claims and counterclaims. This case is significant for the depth of treatment given legal issues that are deceptively complex. It is also significant as the only time in my 13-year career as a practicing attorney that I filed a motion for sanctions under Section 57.105, Florida Statutes. Counsel for Mr. Waisome was Jacquelyn Mack (The Mack Law Firm, 2022 Placida Road, Englewood, FL 34224, 941-475-7966). My co-counsel was Rachael Crews, my law partner at GrayRobinson (301 E. Pine St., Ste. 1400, Orlando, FL 32802, 407-244-5666).

Mark C. Faraone v. Lockheed Martin Corp. v. NLX, LLC, Case No. 6:07-cv-1086, before The Honorable Gregory A. Presnell, U.S. District Court in and for the Middle District of Florida (407-835-4301). Reported at 2008 WL 2824861 (M.D. Fla. July 21, 2008).

We represented Lockheed in a negligence action involving a flight simulator incident that allegedly injured Mr. Faraone, a senior Delta pilot. This action was significant for the amount and nature of fact and expert discovery, as well as voluminous motion practice. It is personally significant as the first major multi-party federal lawsuit for which I had primary responsibility. The matter settled at no out-of-pocket expense to the client on the eve of trial. Counsel for Mr. Faraone were Robert Hall and Gobind Sethi (Hall & Sethi, PLC, 11260 Roger Bacon Dr., #400, Reston, Virginia 20190) and Bill Ruffier (Dellecker Wilson King McKenna Ruffier & Sos, LLP, 719 Vassar St., Orlando, Florida 32804, 407-244-3000. Counsel for NLX was Greg Prusak (Kubicki Draper, PA, 201 S. Orange Ave., Suite 475, Orlando, Florida 32801, 407-245-3630).

31. Attach at least one example of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

See Attachments "1" and "2." I was the sole author of these opinions.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

- 32a. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved and the dates of service or dates of candidacy.

Yes. I was appointed as a circuit court judge (Ninth Judicial Circuit), for a term beginning April 21, 2014. My first day on the bench was May 5, 2014. I was elected in 2016 after prevailing in a contested election. My current term expires at the end of 2022.

- 32b. List any prior quasi-judicial service:

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
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N/A

Types of issues heard:

- 32c. Have you ever held or been a candidate for any other public office? If so, state the office, location and dates of service or candidacy.

No

32d. If you have had prior judicial or quasi-judicial experience,

- (i) List the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance.

Linda Drane Burdick, Office of the State Attorney, Ninth Judicial Circuit, 415 N. Orange Ave., Orlando, FL 32801-1526 (407-836-2400).

Kathleen Shea, Moore Ingram Johnson & Steele, LLP, 7830 W. Sand Lake Rd., Suite 500, Orlando, FL 32819 (407-248-1637).

Jenniza Rosado, Office of the State Attorney, Ninth Judicial Circuit, 415 N. Orange Ave., Orlando, FL 32801-1526 (407-836-2400).

Warren Lindsey, Lindsey & Ferry, P.A., 1150 Louisiana Ave., Suite 2, Winter Park, FL 32789 (407-644-4044).

Mark O'Mara, O'Mara Law Group, 221 NE Ivanhoe Blvd, Suite 200, Orlando, FL 32804 (407-898-5151).

Josh Martell, DeWitt Law Firm, 4 W. Washington St., Orlando, FL 32801 (407-425-7723).

The first four attorneys appear (or in the cases of Ms. Rosado and Ms. Shea, appeared) before me regularly as a criminal felony judge. Ms. Drane Burdick has tried nine murder or attempted murder cases to verdict in my courtroom, Ms. Rosado has tried five drug and domestic violence cases, and Ms. Shea has tried two sexual battery and possession of firearm by convicted felon cases. All four have argued substantive motions in my criminal felony division. Mr. Lindsey has argued substantive motions in both my criminal felony and family law/domestic violence divisions. He has also served as counsel for petitioners and respondents in domestic violence injunction proceedings before me. Mr. O'Mara served as both counsel for respondent and special prosecutor in a domestic violence proceeding in which I issued a final judgment of indirect criminal contempt for a petitioner's failure to follow a domestic violence injunction. He has also handled a matter in my criminal felony division. Mr. Martell has tried a divorce proceeding to final judgment before me that involved a matter of first impression and has also handled several domestic violence petitions.

- (ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.

According to the Orange County Clerk of Court, I have closed over 13,000 cases since I became a judge. I have presided over at least 56 criminal felony jury trials and 24 substantive family law bench trials. In addition, from May 2014 to December 2016, I served in a family/domestic violence division that regularly issued or denied final judgments of protection more commonly known as injunctions. I can conservatively estimate that I have issued between 500 and 1,000 family court judgments of varying complexity.

(iii) List citations of any opinions which have been published.

Plummer v. Forget, 164 So. 3d 109 (Fla. 5th DCA 2015) (reversing final injunction for protection against stalking because the incidents to which the former girlfriend testified at final hearing would not have caused a reasonable person substantial emotional distress).

Pimentel v. Colamarco, 177 So. 3d 56 (Fla. 5th DCA 2015) (reversing final injunction for protection against domestic violence). The trial court awarded a domestic violence injunction against Mr. Pimentel when Ms. Colamarco testified that he caused her eviction in the wake of the issuance of a temporary injunction. Mr. Pimentel exercised his right to remain silent at that hearing, but at a subsequent indirect criminal contempt proceeding, his attorney proved he had not caused her eviction. Accordingly, appellate counsel conceded error, and the appellate court remanded the case for a final hearing.

Spellers v. State, 224 So. 3d 303 (Fla. 5th DCA 2017) (reversing order summarily denying post-conviction motion to correct illegal sentence and remanding for attachment of records refuting movant's claim); see also Spellers v. State, 240 So. 3d 722 (Fla. 5th DCA 2017) (affirming subsequent order denying post-conviction motion).

Hamane v. Elofir, 226 So. 3d 330 (Fla. 5th DCA 2017) (reversing dismissal of final judgment of injunction).

Ward v. State, 230 So. 3d 630 (Fla. 5th DCA 2017) (affirming in part and reversing in part order summarily denying post-conviction motion for ineffective assistance of counsel and remanding for evidentiary hearing on one of eight grounds). After an evidentiary hearing, Mr. Ward did not appeal the subsequent denial of his final ground.

Boatwright v. State, 245 So. 3d 1013 (Fla. 5th DCA 2018) (affirming in part and reversing in part order summarily denying post-conviction motion for ineffective assistance of counsel and remanding for evidentiary hearing on one of six grounds).

Williams v. State, 247 So. 3d 722 (Fla. 5th DCA 2018) (affirming in part and reversing in part order summarily denying post-conviction motion for ineffective assistance of counsel and remanding for evidentiary hearing on one of two grounds). After an evidentiary hearing, the Fifth DCA dismissed Mr. Williams' subsequent appeal for failure to prosecute.

McFadden v. State, -- So. 3d --, 2018 WL 418549 (Fla. 5th DCA Aug. 28, 2018) (affirming guilty verdict on domestic violence case and addressing evidentiary issue related to admissibility of the defendant's recorded jail calls).

Stringfield v. State, 254 So. 3d 1127 (Fla. 5th DCA 2018) (reversing violation of probation decision).

State v. Johnson, 253 So. 3d 1252 (Fla. 5th DCA 2018) (reversing order summarily denying post-conviction motion for ineffective assistance of counsel and remanding for evidentiary hearing).

State v. Barros, 254 So. 3d 1186 (Fla. 5th DCA 2018) (reversing order summarily denying post-conviction motion for newly discovered evidence and remanding for evidentiary hearing). Mr. Barros later dismissed his post-conviction motion because he could not locate the witness that was the subject of the Fifth DCA's remand.

State v. Hodges, 260 So. 3d 458 (Fla. 5th DCA 2018) (affirming in part and reversing in part order summarily denying post-conviction motion for ineffective assistance of counsel and remanding for evidentiary hearing on one of four grounds).

Brown v. Poole, 261 So. 3d 708 (Fla. 5th DCA 2018) (Traver, A.J.).

Zimzores v. State, 261 So. 3d 759 (Fla. 5th DCA 2019) (affirming plea and sentence).

Moss v. State, 266 So. 3d 880 (Fla. 5th DCA 2019) (affirming in part and reversing in part order summarily denying post-conviction motion for ineffective assistance of counsel and remanding for evidentiary hearing on one of five grounds).

Santos v. State, -- So. 3d --, 2019 WL 2650234 (Fla. 5th DCA June 28, 2019) (affirming discretionary sentence and describing trial court's actions as "outstanding," "thorough" and "detailed.").

Harris v. State, 5D18-1242, -- So. 3d -- (Fla. 5th DCA Aug. 23, 2019) (affirming judgment and sentencing following trial for drug trafficking offenses).

- (iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.

State v. Julian, Case Nos. 2016-CF-5024A and 2016-CF-5024B (tried May 15-18, 2017); per curiam affirmed 272 So. 3d 405 (Fla. 5th DCA 2019) and 272 So. 3d 412 (Fla. 5th DCA 2019). After a combined trial, the jury found twin brothers Unterrio and Angelo Julian guilty of second-degree murder and armed robbery of Pedro Idelfonso. The Court sentenced them to 40 years in prison for the second-degree murder and 25 concurrent years in prison for the armed robbery. The Assistant State Attorney was Linda Drane Burdick, 407-836-2400; Defense Counsel were Peter Schmer, 407-836-4859 and Leroy Costner, 407-205-2929. This matter is significant due to the issues of law raised in motions for judgment of acquittal concerning reasonable hypotheses of innocence, the presence of a combined jury and its status as the first of six murder trials over which I have presided.

State v. Barker, Case No. 2016-CF-902 (tried June 26-28, 2017); per curiam affirmed 264 So. 3d 172 (Fla. 5th DCA 2019). The jury found Mr. Barker guilty of sexual battery of a child under the age of 12. The Court sentenced Mr. Barker to life in prison. The Assistant State Attorney was Erin Favorit, 407-836-2400 and Defense Counsel was Jerry Jenkins, 407-287-6757. In connection with this matter, I entered detailed orders relating to the admissibility of child hearsay and similar fact (Williams Rule) evidence. The matter is also significant as one of six trials over which I have presided involving children alleged to have been victims of sexual battery.

State v. Ortiz Rivera, Case No. 2011-CF-11344 (not reported - tried July 19-21, 2017). The jury found Mr. Ortiz Rivera guilty of Attempted Second Degree Murder with a Weapon, Aggravated Battery with a Deadly Weapon, Aggravated Assault with a Deadly Weapon, Robbery with a Deadly Weapon, Grand Theft Third Degree and Resisting Officer without Violence. The Court sentenced Mr. Ortiz Rivera to life in prison as a Prison Releasee Reoffender. The Assistant State Attorney was Linda Drane Burdick, 407-836-2400; Defense Counsel was Curtis Mendenhall, 407-702-5170. The case is significant due to the challenges in bringing Mr. Ortiz Rivera to trial in a six-year-old case. After his arrest, he picked up five new cases by attacking deputies at the Orange County Jail. He displayed signs of mental illness, which several doctors concluded were exaggerated or fabricated. The trial also necessitated Spanish and American Sign Language Interpreters. It is also one of five attempted murder cases over which I have presided.

Castillo v. Amaya, 2014-DR-4185 (not reported - tried December 14, 2014). The Court denied Ms. Amaya's request to relocate to New York and addressed an unprecedented matter involving equitable distribution of the parties' marital property. A military charity had upgraded the parties' marital residence and paid off the mortgage. Mr. Castillo, an amputee military veteran, argued for sole possession of the residence, and Ms. Amaya disagreed. The Court also addressed time-sharing of the parties' then five-year-old son. Josh Martell, 407-245-7723, represented Mr. Castillo. Karlyn Hylton, 407-802-3223, represented Ms. Amaya.

Layne v. Ward, 2010-DR-13616 (paternity - tried February 11, 2016). Over a three-year span, the Court presided over a dozen evidentiary hearings relating to this custody dispute over a then-five-year-old girl. I also handled the related domestic violence proceedings, which required the appointment of special counsel for both parties in connection with an indirect criminal contempt proceeding. The parties began litigating against one another 34 days after their child's birth. At least five judges and six magistrates presided over the parties' cases before I became involved. After trial, where both parties represented themselves, the Court drafted a 22-page final judgment and a 19-page parenting plan to attempt to recap the proceeding's lengthy history, make factual findings, and address time-sharing. The Court does not have the parties' telephone numbers. In addition to the reasons already outlined, the case is significant because it is emblematic of a number of high-conflict, pro se matters I handled in family court. This case represented my best effort to improve the life of a minor child whose parents have presented and will continue to present unique challenges in her upbringing.

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

Not to my knowledge. The JQC would not alert me, however, to complaints where it had no probable cause to investigate.

- (vi) Have you ever held an attorney in contempt? If so, for each instance state name

of attorney, approximate date and circumstances.

No

(vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

N/A

BUSINESS INVOLVEMENT:

33a. 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

33b. Since being admitted to the Bar, have you ever been engaged in any occupation, business or profession other than the practice of law? If so, give details, including dates.

From 2001 to 2003, I coached the runners' club at the Downtown Orlando YMCA. When I moved to Florida in 2001, I did not know anyone outside the federal courthouse. So I took over a six-person running club that had been founded at the YMCA a few weeks before my arrival. In two years, I grew the club to over 200 members. It still exists today, and I still run with the group on Monday nights. For a portion of my two years, following approval from the Middle District of Florida, the YMCA paid me an hourly wage (if memory serves, \$10/hour for 3+ hours per week of work).

From 2006 to 2014, I served as the Vice President of Dorothy's Family, a registered 501(c)(3) charity. My brother and I founded Dorothy's Family in memory of our mother, whom we lost to ovarian cancer. The charity's mission is to provide comfort to children undergoing cancer treatment in Florida and Illinois, as well as their families. During my tenure, Dorothy's Family donated a total exceeding \$125,000 to Central DuPage Hospital in Winfield, Illinois and both Arnold Palmer Children's Hospital and Florida Hospital in Orlando, Florida. These donations purchased portable video game units, iPads, movie theater projectors, and other toys and games. As Vice President, I organized all fundraising activities in Florida. I resigned my position upon my appointment to the judiciary.

From 2009-2014, I served as a Board Member of Track Shack Youth Foundation, a registered 501(c)(3) charity. From 2010-2014, I was the Foundation's President. Since inception, Track Shack Youth Foundation has donated in excess of \$2 million to grade schools, middle schools, high schools and clubs, as well as charities such as Foundation for Foster Children and Coalition for the Homeless. It awards grants that purchased physical education equipment, sports uniforms, competition entry fees, and playground equipment. As President, I ran four quarterly meetings every year at which the Board evaluated grant applications and disbursed money. I also coordinated fundraising efforts for the Foundation, including events and applications for outside grants. I resigned my position as President upon my appointment to the judiciary, and I finished my term as a Board Member in 2014.

33c. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise,

institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise, institution, organization or association involved and the dates such compensation was paid and the amounts.

N/A

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.

There are no types of cases, groups of entities, or extended relationships or associations that would limit the cases over which I could preside as an appellate judge. There are a limited number of former colleagues and friends in the legal community whose cases over which I would not feel comfortable presiding, but this issue has not arisen.

MISCELLANEOUS:

35a. Have you ever been convicted of a felony or a first degree misdemeanor?

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35b. Have you pled nolo contendere or pled guilty to a crime which is a felony or a first degree misdemeanor?

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a first degree misdemeanor?

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

36a. Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.

No

36b. Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?

No

36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.

No

- 37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?
No
- 37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.
No
38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.
No
39. 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, give the particulars.
No
40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).
No
41. 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
42. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.
No
- 43a. Have you filed all past tax returns as required by federal, state, local and other government authorities?
Yes No If no, please explain. _____
- 43b. Have you ever paid a tax penalty?
Yes No If yes, please explain what and why. _____
- 43c. Has a tax lien ever been filed against you? If so, by whom, when, where and why?

No

HONORS AND PUBLICATIONS:

44. If you have published any books or articles, list them, giving citations and dates.

"May It Please the Mediator: Strategies for Success in the Era of the Vanishing Jury Trial," Inside the Minds: Emerging Applications for ADR 29, 2010.

"Florida Offers of Judgment in Federal Court – Enforceable or Not?," The Orange County Bar Association Briefs, Vol. 75, No. 10, October 2007.

"The Wrong Answer to a Serious Problem: A Story of School Shootings, Politics and Automatic Transfer," 31 Loy. U. Chi. L.J. 281, Winter 2000.

"Remarks Upon Receipt of the 2018 James G. Glazebrook Memorial Bar Service Award," The Orange County Bar Association Briefs, Vol. 86, No. 4, May 2018.

2018 Competency Bench Book, a Guide to Handling Competency and Insanity Proceedings in the Ninth Judicial Circuit (with the Honorable Leticia Marques).

45. List any honors, prizes or awards you have received. Give dates.

See Response to Question 18(b).

2017 Jurist of the Year, Central Florida Hispanic Bar Association

2018 Winner, James G. Glazebrook Memorial Bar Service Award, Orange County Bar Association Professionalism Committee

2018 Winner, Central Florida Association for Women Lawyers "Good Guy" Award.

46. List and describe any speeches or lectures you have given.

"Succeeding in Federal Court: What You Need to Know About Rules and Procedures," National Business Institute Seminar. I delivered this lecture in 2005 or 2006, and I do not recall the location.

"Community-Based Care Programs in Central Florida," Capital University National Center for Adoption Law Policy. I delivered this lecture telephonically in 2012 or 2013, and it addressed Florida's system of care relating to abused and neglected juveniles and their families.

"Big Law – The Pros and Cons of Working for a Large, Private Law Firm," University of Central Florida. I delivered this lecture biannually to The Honorable Heather Higbee's capstone class from 2011 to 2014.

"Effective Legal Writing." I initially prepared this lecture for GrayRobinson's associates in 2008, and I presented it at least two more times at the firm. Since 2014, I have also delivered the presentation to several law firms and the Orange County Paralegal's Association.

Orange County Bar Association Bench/Bar Conference. In 2015, I spoke on two panels relating to Effective Legal Writing and Admission of Physical Evidence and Exhibits. In 2017, I spoke on a panel relating to Effective Use of Courtroom Technology.

Florida Institute on Interpersonal Violence, Phase II. December 1-2, 2016, April 27-28, 2017, November 30, 2017, January 25, 2018, February 8, 2019, and May 1-2, 2019.

Along with Judges Peter Ramsberger, Carroll Kelly, and Alice Blackwell, I helped train other Florida Circuit and County Judges in how to conduct court proceedings relating to domestic violence and stalking. I have also lectured on this subject to lawyers at the Orange County Bar Association (2017) and the Florida Conference against Domestic Violence (2015).

Beginning in 2015, I campaigned for election as a Circuit Court Judge. From August 2015 to May 2016, I delivered speeches at fundraising events in a variety of locations and settings. In May 2016, an opponent challenged me, and until the end of August, I campaigned across Orange and Osceola Counties. Over that time, I delivered dozens of speeches, both at private events and public gatherings. The nature of these speeches concerned why I had wanted to become a judge, my experiences in office, and why I believed people should vote for me.

"Introduction of C. Alan Lawson as Florida Supreme Court Justice." I delivered these remarks at the Florida Supreme Court during Justice Lawson's investiture on April 5, 2017.

"Remarks on Receiving the James G. Glazebrook Memorial Bar Service Award." I gave this speech on February 23, 2018.

"Keynote Address on Orange County Bar Association Mentor-Mentee Program." I gave this speech on August 30, 2018.

"Civility Matters." Panel discussion at Florida A&M School of Law organized by ABOTA delivered to law students and focused on the importance of civility and professionalism. I participated on this panel on October 30, 2018.

"Street Law." Mock trial court proceeding with high school law magnet students organized by Holland & Knight. I oversaw this proceeding in 2015, 2017 and most recently, on December 7, 2018.

"Preservation of Error by Trial Attorneys, County to Circuit Appeals, and Motions for Post-Conviction Relief." Panel discussion before the Appellate Law Section of the Orange County Bar Association on March 13, 2019.

47. Do you have a Martindale-Hubbell rating? Yes If so, what is it? ___ No
AV Preeminent

PROFESSIONAL AND OTHER ACTIVITIES:

- 48a. List all bar associations and professional societies of which you are a member and give the titles and dates of any office which you may have held in such groups and committees to which you belonged.

Member, Orange County Bar Association (2005-present);

Member, Federal Bar Association (Orlando Chapter) (2005-present);

Member, George C. Young American Inns of Court (2005-2011);

Member and Board Member, Central Florida Family Law Inns of Court (2014-2017);

Member, Central Florida Association for Women Lawyers (2014-present);

Member, Central Florida Hispanic Bar Association (2014-present);

Member, Robert Mansbach Lawyers' Literary Society (2014-present).

- 48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to question No. 48(a), of which you have been a member since graduating from law school, including the titles and dates of any offices which you have held in each such organization.

Central Florida YMCA

Big Brothers/Big Sisters of Central Florida

Leadership Orlando

Dorothy's Family - Vice President (2006-2014)

Track Shack Foundation - Board Member (2007-2014) & President (2008-2014).

- 48c. List your hobbies or other vocational interests.

I enjoy running and cycling with my friends. I competed in varsity track and field in both high school and college, and although I now participate in only one race per year, I am proud to hold the title of "Fastest Judge" for the five-year duration of the Orange County Bar Association Law Day 5K. I also was last year's overall race winner, with a time of 18:19. I am an avid reader of both books and longform journalism. My favorite books are "East of Eden" by John Steinbeck and "Shadow of the Wind" by Carlos Ruiz Zafon, and the best new book I have read is "The Labyrinth of the Spirits" by Mr. Ruiz Zafon. My favorite journalists change based on the subject matter, but I consistently appreciate Chris Jones, Wright Thompson, and Chris Ballard. I enjoy cooking my wife dinner and the occasional trip to a restaurant. I love to travel, and our most recent trips have been to India and France. Most importantly, I am seldom happier than when I am sitting on the couch watching Orlando City Soccer, the Chicago White Sox, or the Chicago Bears with my wife. I have been blessed by a number of incredible friends, and I am thrilled to have married the best of them.

- 48d. Do you now or have you ever belonged to any 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, national origin or sex? If so, detail 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

- 48e. Describe any pro bono legal work you have done. Give dates.

Although as a practicing attorney, I took pro bono cases from time to time, my typical pro bono work involved a substantial discount off my customary hourly rate. I adopted this practice with the community-based care providers I represented from 2005-2014.

As a Judge, and in my capacity as a Board Member for the Central Florida Family Law Inns of Court, I helped found a program that provided free legal counsel to victims of domestic violence in their divorce and paternity actions. This program started in 2016 and continues today.

SUPPLEMENTAL INFORMATION:

49a. Have you attended any continuing legal education programs during the past five years? If so, in what substantive areas?

Yes. Since my appointment to the bench, I have completed the mandatory 80 hours of continuing judicial education required of all new judges. I have also taken an additional 197.75 hours of classes. These courses focused on family and criminal law, including a weeklong course that certified me to handle death penalty cases.

49b. Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?

Yes. Please see answer to Question 46. I am particularly proud to have been chosen to teach domestic violence law to other judges throughout the State and to mentor new domestic violence judges through the Office of the State Court Administrator.

50. Describe any additional education or other experience you have which could assist you in holding judicial office.

On four occasions, I have had the opportunity to work in an appellate judicial setting. As a federal law clerk, I accompanied Judge Sharp to Cincinnati, where he accepted an Associate Judge position on the United States Court of Appeals for the Sixth Circuit. I reviewed all of his assigned cases and drafted bench memoranda for every argument. At Judge Sharp's direction, I prepared a draft opinion in *City of Flint v. Lexington Ins. Co.*, 293 F.3d 956 (6th Cir. 2002). In 2016, I accepted then-Chief Judge Alan Lawson's invitation to sit by designation on the Fifth District Court of Appeal. Along with Judges Orfinger, Wallis and Palmer, I presided over a series of family, criminal and civil appeals. Last month, at the invitation of then-Chief Judge Jay Cohen, I presided alongside Judges Torpy and Lambert on a series of civil cases. I authored the opinion in *Brown v. Poole*, 261 So. 3d 708 (Fla. 5th DCA 2018). Finally, I regularly serve on three-judge panels that review county court decisions.

51. Explain the particular potential contribution you believe your selection would bring to this position.

An unheralded but critical aspect of every appellate court judge's tenure is the ability to teach and guide the younger attorneys who work for them. My legal career began with a judicial clerkship, and I am grateful on a daily basis to the judges who instilled in me both practical and philosophical lessons at a young age.

When I first accepted my position as a judicial law clerk for Judge Sharp, I assumed I would spend my two-year term working exclusively for him. A few months after I started, though, I realized I had some extra time available. After obtaining Judge Sharp's approval, I volunteered my services to the District's other judges.

Over the next two years, I worked for Judge George Young, Judge Greg Presnell, Judge John Antoon and Magistrate Judge James Glazebrook. A remarkable characteristic of today's federal and Florida judiciary is that only the most qualified of nominees can be appointed, and upon their appointment, each of these judges lose the ability to strategize with their former law and trial partners. Instead, they must rely on the work and insight of their law clerks. While I am not sure what value I was able to provide to them, they imparted life-altering lessons about how I needed to act as a lawyer, judge and person.

Judge Sharp refined in me the critical importance of interpreting and applying the law

with a deep respect for a statute's plain meaning and judicial precedent. Judge Presnell taught me the necessity of judicial efficiency; as a 30-year business lawyer, he knew the harm that a moldering file could bring to parties hoping for prompt resolution to their cases. Judge Antoon showed me how to run a courtroom where nobody's voices are raised and where everyone who enters receives the same level of courtesy and respect. Judge Young emphasized a judge's scholarly responsibilities and diligence; despite working in a courthouse that bore his name, he never assumed he knew the right answer until he saw the cases supporting his hypothesis. Judge Glazebrook prioritized the mentoring of younger lawyers; he treated us with the same level of attentiveness as the most senior of his colleagues and litigants.

If appointed to this position, I will have the opportunity to mentor 30 years' worth of law clerks and interns. I will have the ability to affect the fabric of this community by teaching these young attorneys how to draft an order, how to interpret a statute, and how to (and how not to) conduct themselves in a courtroom. I believe my background evidences a willingness and ability to excel in this endeavor while fulfilling all other aspects of my position.

52. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.

I applied to the Ninth Circuit Judicial Nominating Commission in 2014 and was nominated for the appointment I received that year.

I applied to the Florida Federal Judicial Nominating Commission in 2017, but was not selected.

I applied to the Fifth District Court of Appeal Nominating Commission in 2018 and was shortlisted for positions ultimately filled by the Honorable Jamie R. Grosshans and the Honorable John Harris.

I applied to the Fifth District Court of Appeal Nominating Commission in 2018 and was nominated for a position ultimately filled by the Honorable Meredith Sasso.

53. Give any other information you feel would be helpful to the Commission in evaluating your application.

Both my litigation and judicial background evidence an ability to learn and excel in new areas of law in abbreviated time. One of the most important traits a jurist can have is intellectual curiosity. As a litigator, my favorite part of my job was that every day, I not only got to counsel and advocate for accomplished professionals - I was also able to learn from them. I found it impossible to defend someone accused of doing their job the wrong way without quickly and fully understanding the right way first. As a judge, I have been assigned to two divisions with which I had no prior experience. In each situation, I believe I have distinguished myself in the time I was able to learn the substantive law while simultaneously managing an efficient docket. These challenges have been some of my favorite parts of my judicial service.

If I am nominated by this Commission, I promise to bring intellectual curiosity to every type of case I am asked to consider. I also promise I will combine this curiosity with my work ethic to learn new areas of the law and to make a daily effort to improve at my job.

REFERENCES:

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

The Honorable Alan Lawson, Justice, Florida Supreme Court, 500 South Duval Street, Tallahassee, FL 32399, 850-921-1096.

The Honorable Robert J. Luck, Justice, Florida Supreme Court, 500 South Duval Street, Tallahassee, FL 32399, 850-922-5624.

The Honorable G. Kendall Sharp, Senior Judge, U.S. District Court in and for the Middle District of Florida, 401 W. Central Blvd., Orlando, FL 32801, 407-835-4334.

The Honorable John Antoon II, Senior Judge, U.S. District Court in and for the Middle District of Florida, 401 W. Central Blvd., Orlando, FL 32801, 407-835-4334.

The Honorable Allen C. Winsor, District Judge, U.S. District Court in and for the Northern District of Florida, 111 N. Adams St., Tallahassee, FL 32301, 850-521-3641

The Honorable Jeffrey T. Kuntz, Judge, Fourth District Court of Appeal, 110 S. Tamarind Ave., West Palm Beach, FL 33401, 561-242-2000.

The Honorable Frederick J. Lauten, Chief Judge (Retired), Ninth Judicial Circuit, 425 N. Orange Ave., Orlando, FL 32801, 407-432-6124.

The Honorable C. Wayne Wooten, Circuit Judge, Ninth Judicial Circuit, 2 Courthouse Square, Kissimmee, FL 34741, 407-742-2548.

Daniel E. Nordby, Shutts & Bowen, LLP, 215 S. Monroe St., Suite 804, Tallahassee, FL 32301, 850-241-1725.

Rachael Crews, GrayRobinson, P.A., 301 E. Pine St., Ste. 1400, Orlando, FL 32801, 407-843-8880 or 407-765-7541.

Addendum – Application for Nomination

21. State the names, dates and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment:

Position	Name of Firm	Address	Dates
Law Clerk	Cook County Office of the Public Guardian	2245 W. Ogden Ave., Chicago, IL 60612	Summer 1999

Addendum – Financial History

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.

I derived the income reported in response to this and the next question exclusively from our rental property in Orange County. The disparity between 2017 and 2018 is attributable to a Hurricane Irma insurance settlement check and the ensuing expenditures, which exceeded the settlement.

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(l), 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 23rd day of August, 2019.

DAW TRAVIS

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	\$93,734		
List Last 3 years	\$156,543	\$149,732	\$142,658

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	\$93,734		
List Last 3 years	\$156,543	\$149,732	\$142,658

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	\$16,000		
List Last 3 years	\$19,855	\$35,982	\$22,000

4. 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	\$329.59		
List Last 3 years	(\$1,650)	\$7,093.31	(\$3,011.12)

**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 December 31, 2018 was \$1,555,210.35.

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 \$ 50,000

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Real Estate -	\$501,132
Real Estate -	\$287,900
Cash/Money Market (SunTrust, Charles Schwab, Morgan Stanley)	\$46,961.36
Retirement Accounts (Morgan Stanley, Florida Retirement System, Deferred Compensation)	\$1,116,715.16

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
SunTrust Mortgage (200 S. Orange Ave., Orlando 32801)	\$269,812.05
SunTrust Mortgage (same)	\$126,666.12

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

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 St., Tallahassee, 32399	SEE FINANCIAL HIST.
Residential Property Rental Income		SEE FINANCIAL HIST.

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 BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE
N/A			

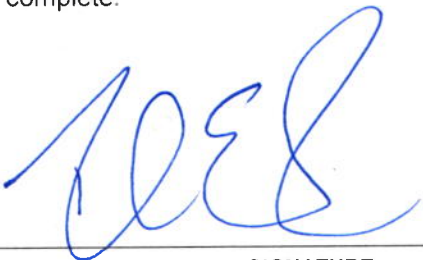
PART E - INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITTY	N/A		
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.



SIGNATURE

STATE OF FLORIDA

COUNTY OF ORANGE

Sworn to (or affirmed) and subscribed before me this 13 day of August, 2019 by _____

Helene Wyka Welch

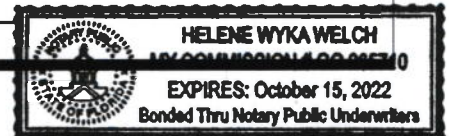
(Signature of Notary Public—State of Florida)

Helene Wyka Welch

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification _____

Type of Identification Produced _____



London Transport Parks Authority
Exhibit Order 18 2013
BY COMMISSIONER OF ROADS
HELENE WYKWIŁCZAK



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: August 23, 2019

JNC Submitting To: Fifth District Court of Appeal

Name (please print): Daniel E. Traver

Current Occupation: Circuit Judge

Telephone Number: 407-836-2352 Attorney No.: 585262

Gender (check one): Male Female

Ethnic Origin (check one): White, non Hispanic
 Hispanic
 Black
 American Indian/Alaskan Native
 Asian/Pacific Islander

County of Residence: Orange

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.

Printed Name of
Applicant:

Daniel E. Traver

Signature of Applicant:



Date: August 23, 2019

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO: 18-CF-9686-A-O

DIVISION: 15

JERMAINE CORNELIUS WRIGHT

Defendant.

ORDER DENYING MOTION TO DISMISS

This Cause came before the Court for evidentiary hearing on February 26, 2019, on the Motion to Dismiss under the Void for Vagueness Doctrine (“Motion”) filed by Defendant, Jermaine Cornelius Wright (“Defendant”). The Court heard testimony from Dr. Candice Bridge, Carol Peterson and Jeffery Geyre, reviewed the Motion and the State’s Response, analyzed State’s Exhibit 1 in evidence, heard argument of counsel, and read the detailed proposed Orders submitted by the State and Defendant. For the following reasons, the Court concludes that Section 893.03(1)(c)191, *Florida Statutes* (“the Statute”) is constitutional, and Defendant’s Motion should be **DENIED**.

I. Background

On January 11, 2019, the State charged Defendant via Amended Information with: 1) Trafficking in 10 Grams or More of Phenethylamines (with a Firearm or Destructive Device); 2) Possession of Firearm by a Convicted Felon; 3) Possession of 20 Grams or Less of Cannabis; and 4) Possession of Cocaine. The Amended Information identifies the controlled substance charged in Count 1 as 3, 4-Methylenedioxy-alpha-ethylaminovaleerophenone (“the Substance”).

On January 17, 2019, Defendant filed his Motion, seeking to dismiss Count 1 of the Amended Information because the Statute is unconstitutionally vague as applied to Defendant in

two ways. First, Defendant argues that under one interpretation of the Statute, the Substance is not specifically “enumerated” as illegal. Motion at 3. Defendant therefore suggests that the Rule of Lenity therefore compels dismissal. Second, Defendant contends that the Statute’s “conflicting” language and its scientific complexity renders it void because a person of ordinary intelligence could not understand what conduct the Statute seeks to prohibit. *Id.* at 4.

On February 22, 2019, the State filed its Response, claiming that the Statute is constitutional as applied to Defendant for two reasons. First, the Statute’s plain language prohibits Defendant’s conduct because the Substance is listed therein, and the Rule of Lenity does not apply because Defendant’s alternative construction of the Statute has no basis in law or fact. Second, the Statute provides fair notice – to a chemical certainty – of what conduct it prohibits, thus providing fair notice to a person of ordinary intelligence.

The parties offered testimony from three expert witnesses at the hearing about the Substance’s composition. These experts agreed with one another almost entirely. The experts agreed that the Substance is not listed by specific name in the Statute, but that it had a “2-amino-1-phenyl-1-propanone structure.” *See* § 893.03(1)(c)(191)(a), Fla. Stat. They further concurred that the Substance had a “fused alkylendioxy” “substitution on the ring system.” *See id.* at § 893.03(1)(c)(191)(I). Finally, they all acknowledged that the Substance had a “substitution at the 2-amino nitrogen atom with an alkyl substituent” *See id.* at § 893.03(1)(c)(191)(III).

The expert witnesses differed, however, on whether the Substance had a “substitution at the 3-propanone position with an alkyl substituent” *See id.* at § 893.03(1)(c)(191)(II). Defendant’s expert conceded that one possible interpretation of Statute encompassed this definition, but that another did not. She testified that while the State’s interpretation of the Statute was “not wrong,” it “could be more clear.” The State’s experts, by contrast, swore that the only

way in which the Court could agree with the Defendant's expert's interpretation would require ignoring the Statute's plain language, specifically the phrase "3-propanone position."

II. Legal Standard

Defendant contends that the Statute is unconstitutionally vague as applied to him. Motion at 2. There is a strong presumption that the Statute is constitutionally valid. *See Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 256 (Fla. 2005); *Dickerson v. State*, 783 So. 2d 1144, 1146 (Fla. 5th DCA 2001). Indeed, Defendant bears "a heavy burden" to invalidate the Statute as void for vagueness. *See Dickerson*, 783 So. 2d at 1146.

If the Statute clearly applies to Defendant, he cannot challenge it as vague. *Parker v. Levy*, 417 U.S. 733, 756 (1974). Furthermore, because the Statute does not regulate conduct the Constitution protects, the Court can only find it void for vagueness if it fails to give adequate notice that proscribed conduct is illegal. *See State v. Adkins*, 96 So. 3d 412, 421 (Fla. 2012) (holding that the criminalization of possessing a controlled substance "does not impinge on the exercise of some constitutionally protected freedom."). Stated differently, a vague statute does not give a person of common intelligence fair notice of prohibited conduct, thus inviting arbitrary enforcement. *See Dickerson*, 783 So. 2d at 1147 (citing *Brown v. State*, 629 So. 2d 841, 842 (Fla. 1994)). A statute is not void for vagueness, however, if it conveys "definite warning" about illegal conduct "when measured by common understanding and practices." *U.S. v. Petrillo*, 332 U.S. 1, 8 (1947).

When interpreting the Statute on constitutional grounds, the Court must first examine the Statute's plain language. *See Dickerson*, 783 So. 2d at 1146 (citing *State v. Dugan*, 685 So. 2d 1210, 1212 (Fla. 1996)). In so doing, the Court must give effect to every clause and accord meaning to all of its parts. *See Acosta v. Richter*, 671 So. 2d 149, 154 (Fla. 1996). The Court will not read phrases or clauses in isolation, but rather within context of the entire Statute. *See id.* The

Court must give significance to every word in the Statute; it disfavors any interpretation that renders the Statute's words superfluous. *Hechtman v. Nations Title Ins. of New York*, 840 So. 2d 993, 996 (Fla. 2003).

III. Legal Analysis

The Court must deny Defendant's Motion because the Statute clearly applies to Defendant's conduct, and it is not vague. In addition, the Court rejects Defendant's argument that the Statute's unambiguous language does not provide fair notice of the Substance's illegality to a person of ordinary intelligence.

A. The Statute Clearly Applies to Defendant, and It Is Not Vague.

Although the Statute does not list the Substance by its specific name, the Statute clearly and unambiguously prohibits it. As an initial matter, the Statute is not vague because it does not list the Substance by specific name; its categorical description of chemically-related substances is sufficient. *See State v. Quetglas*, 901 So. 2d 360, 362 (Fla. 2d DCA 2005) (Canaday, J.). Having made this finding, the Court need only determine whether the Substance is one of the categories of chemically-related substances outlawed by the Statute. Based on the testimony of the State's experts and the Statute's plain language, the Court concludes that it is.

Ultimately, the parties' dispute over the Statute's interpretation turns on what "3-propanone position" means. *See* § 893.03(1)(c)(191)(II), Fla. Stat. All three experts agreed that propanone position numbers are assigned by "counting carbons" along the propane chain, starting from the 1-propanone. All three experts demonstrated this scientific rule by counting the same points on the structure and assigning the same numbers to the same points on the structure. State Ex. 1. Defendant's expert conceded that the State's experts' interpretation of "3-propanone position" was "not wrong." Indeed, she agreed to this interpretation when acknowledging that the

Substance was a compound containing a 1-propanone structure and identifying the propanone in this structure as the “1” propanone located in the “1” position. *See* § 893.03(1)(c)(191)(a), Fla. Stat.; State Ex. 1. Counting the next two carbon positions along the propane chain would illustrate a propanone substitution at the “3” position.

Defendant’s expert also testified, however, that the State’s experts’ interpretation could lead to confusion. She explained that she could also interpret the Statute in another way that requires substitution occurring at a propanone *in the* 3-position. This would result in a substance that the Statute does not prohibit. The Court finds that Defendant’s alternative interpretation of the Statute is not supported by the Statute’s plain language. Indeed, this interpretation requires the Court to disregard the plain meaning of “3-propanone position.”¹ Because there is only one reasonable and unambiguous statutory construction, the Rule of Lenity is inapplicable, and the Court must deny Defendant’s Motion.

B. The Statute Provides Fair Notice to a Person of Ordinary Intelligence That the Substance is Illegal.

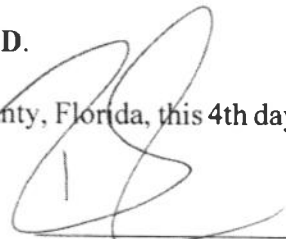
Having found that the Statute is not void for vagueness, the Court’s analysis may end. In an abundance of caution, however, the Court also concludes that the Statute provides fair notice to a person of ordinary intelligence that the Substance is illegal. Defendant asserts that simply because the subject matter of the Statute concerns chemistry and chemical compounds, it is impossible for a person of ordinary intelligence to understand it. *See* Motion at 3 (“[the Statute] . . . uses chemistry terminology not accessible by most persons of ordinary intelligence.”). The mere use of scientific or technical terms, however, does not render a statute unconstitutional. *See*

¹ Alternatively, a statute will not fail as vague solely if the Legislature easily could have chosen “clearer and more precise language” to accomplish its ends. *U.S. v. Powell*, 423 U.S. 87, 94 (1975) (Rehnquist, J.).

Fisheries Ass'n, Inc. v. Dep't of Nat. Res., 453 So. 2d 1351, 1354 (Fla. 1984) (declining to find a technical statute on fish trapping void for vagueness because the law's technical terms had "a definite meaning in the fishing industry."); *State v. Campbell*, 664 So. 2d 1085, 1087 (Fla. 5th DCA 1995) (declining to find a statute containing psychological terms void for vagueness). Despite its length and detail, the Statute simply lists a series of illegal chemical names and formulas. Accordingly, potential defendants are aware – to a chemical structural certainty – that they may not possess specific illegal substances, and their individual lack of this knowledge provides no defense. *See Adkins*, 96 So. 3d at 421. If Defendant was truly unaware of the Substance's illicit nature, he may make this argument to a jury.

For these reasons, Defendant's Motion is **DENIED**.

ORDERED in Chambers at Orlando, Orange County, Florida, this 4th day of March, 2019.



Dan Traver
Circuit Judge

Copies to:

Shannon MacGillis and Gabriel Lozano, State Attorney's Office
Steven Krejci and Jessica Gordon, Office of the Public Defender

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBERS: 2017-CF-9484-A-O
2017-CF-9484-B-O

DIV 15

STATE OF FLORIDA

Plaintiff,

vs.

KELVIN DAVIS AND BRITNEY PEREZ,

Defendants.

ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS

This Cause came before the Court on May 11, 2018, on the Motions to Dismiss filed by Defendants, Kelvin Davis and Britney Perez (collectively, "Defendants"). On that date, the Court heard testimony from Mr. Davis, Detective William Pappas, Detective Aaron Blankenship, and Dwayne Edwards. It reviewed evidence introduced by the parties, and it later reviewed their supplemental briefs. The Court hereby denies Defendants' motions, without prejudice to raise self-defense at trial, for these reasons:

Charges

Via Amended Information dated October 25, 2017, the State of Florida charged Mr. Davis with Robbery with a Firearm, Aggravated Battery Causing Great Bodily Harm, and Attempted Felony Murder with a Firearm in the robbery and shooting of Mr. Edwards. In the same document, it charged Ms. Perez with Robbery with a Firearm and Attempted Felony Murder with a Firearm.

Legal Standard

The parties agree that the procedural law applicable to this June 28, 2017, incident is the Florida Legislature's most recent amendment to Section 776.032, Florida Statutes, which is one of a series of statutes commonly referenced as Florida's "Stand Your Ground" law. § 776.032(4), Fla Stat. ("the Amendment") (effective June 9, 2017); *see also* §§ 776.012, 776.013 and 776.031, Fla. Stat. (collectively, "Stand Your Ground"). Before making factual findings, the Court must first determine what the parties must establish to meet their statutory procedural obligations. At this time, only four appellate decisions have addressed the Amendment. *See Rodriguez v. State*, 239 So. 3d 147 (Fla. 3d DCA 2018); *Arceri v. State*, -- So. 3d --, 2018 WL 988298 at *1 (Fla. 3d DCA Feb. 21, 2018); *Martin v. State*, -- So. 3d --, 2018 WL 2074171 at *1 (Fla. 2d DCA May 4, 2018); *Love v. State*, -- So. 3d --, 2018 WL 2169980 at *1 (Fla. 3d DCA May 11, 2018). Other than the *Love* court's determination that the Amendment is constitutional, these decisions offer no guidance on the issues in this case. *Love*, 2018 WL 2169980 at *2.

When the Florida Legislature initially enacted Stand Your Ground, the statutes did not specify a procedure for trial courts to determine whether defendants had a substantive right to immunity from prosecution. *Bretherick v. State*, 170 So. 3d 766, 772 (Fla. 2015) (citing *Dennis v. State*, 51 So. 3d 456, 462 Fla. 2010)). The Florida Supreme Court later held that trial courts should hold an evidentiary hearing, where defendants bore the burden to establish their immunity by a preponderance of the evidence. *Id.* at 775.

The Amendment changes this burden, requiring defendants to make a "prima facie claim of self-defense immunity from criminal prosecution . . ." § 776.032(4), Fla Stat. If a defendant makes this initial showing, the State of Florida must then prove the defendant is not entitled to immunity by clear and convincing evidence. *Id.*

Prima facie evidence is “evidence sufficient to establish a fact unless and until rebutted.” *State v. Kahler*, 232 So. 2d 166, 168 (Fla. 1970). Clear and convincing means that evidence is credible, witnesses distinctly remember the facts about which they testify and are not confused, and witness testimony is clear and explicit. *Kingsley v. Kingsley*, 623 So. 2d 780, 786 (Fla. 5th DCA 1993) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). Clear and convincing evidence will produce in the Court’s mind “a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.” *Id.* In this case, the Court need not determine whether the State met its burden because Defendants have failed to make their required prima facie showing of entitlement to immunity.

Findings of Fact – Defendants’ Prima Facie Case

Mr. Davis offered Defendants’ only testimony at the prima facie stage. He testified that on June 28, 2017, he approached a parked car at an apartment complex in which Mr. Edwards and Ms. Perez sat. Mr. Davis and Ms. Perez were friends, and when he learned she was meeting up with Mr. Edwards, “an older gentleman,” he went to “look after her.” Mr. Davis knew Ms. Perez was a minor. Around the time Ms. Perez entered Mr. Edwards’ car, Mr. Davis was in the bushes of the apartment complex because he had to “use the bathroom.”

Mr. Davis emerged from the bushes when he heard Ms. Perez call for help. He pulled a gun out of a backpack he had taken into the bushes and loaded it. Mr. Davis did not have a concealed carry or an open carry permit for this firearm. Upon approaching Mr. Edwards’ car, he saw Mr. Edwards point a gun at both of them. Mr. Edwards then fired at least one shot at Mr. Davis, who returned fire with at least three shots. Mr. Davis testified that he was in fear of his life, and that Mr. Edwards’ actions could cause death or great bodily harm to him and Ms. Perez.

Ms. Perez then exited the car and ran away. Mr. Davis ran to his house, where he did not contact law enforcement. Two days later, law enforcement arrested him for events unrelated to this case and found his gun in his backpack. Ms. Perez was with him at the time.

Conclusions of Law – Prima Facie Stage

The Court concludes that Defendants have not met their prima facie burden to illustrate entitlement to immunity. Stand Your Ground offers immunity from prosecution to defendants who exercise deadly force if they: 1) reasonably believe that using such force is necessary to prevent imminent death or great bodily harm to themselves or another, or to prevent the imminent commission of a forcible felony; 2) were not engaged in criminal activity; and 3) were in a place they had a right to be. § 776.012(2), Fla. Stat.; *State v. Chavers*, 230 So. 3d 35, 39 (Fla. 4th DCA 2017). Defendants have established the first of these three elements. Mr. Davis offered prima facie evidence that he believed shooting Mr. Edwards was necessary to prevent death or great bodily harm to him and Ms. Perez. The other two prongs, however, present a more difficult issue. The Court will first address Mr. Davis.

Mr. Davis admitted he had no legal right to carry a concealed firearm. His actions constituted a third-degree felony. § 790.01(1-2), Fla. Stat. He argues that the Florida Legislature, however, did not intend that “criminal activity” apply to all crimes. For example, he complains that a person unlawfully using a disabled parking permit would not be entitled to immunity under the State’s interpretation of the Amendment. Davis’ Supplemental Argument, dated May 15, 2018, at ¶ 6. He does concede, however, “an altercation over a drug transaction would appear not to qualify.” *Id.*

The Court finds that Mr. Davis’ commission of a third-degree felony in carrying a concealed weapon constitutes “criminal activity” precluding his immunity from prosecution.

While the Amendment does not define “criminal activity,” its plain language compels the reasonable construction that the Legislature did not intend Stand Your Ground immunity to shield defendants who were committing a crime when they exercised deadly force. *See, e.g., Kumar v. Patel*, 227 So. 3d 557, 559 (Fla. 2017) (“We first examine the statute’s plain meaning, resorting to rules of statutory construction only if the statute’s language is ambiguous.”). The Court respectfully declines Mr. Davis’ invitation to define “criminal activity” as involving certain crimes but not others.¹ Because the Court concludes that Mr. Davis was engaged in criminal activity when he shot Mr. Edwards, it does not reach the issue of whether he was in a place he had a right to be.

Ms. Perez presents a closer question, if for no other reason than the Court heard very little about her during the prima facie stage of the hearing. She did not testify. She concedes that she has not established that she was in a place where she had a right to be, and that she was not engaged in criminal activity. *See Perez’s Supplemental Authority and Argument*, dated May 15, 2018, at IV-V. Ms. Perez argues, however, that she should not have to establish prima facie evidence of these elements because they are not elements at all. *Id.* Rather, they are

¹ On this issue, the Court finds a previous case addressing a defendant’s entitlement to Stand Your Ground immunity instructive. *See Miles v. State*, 162 So. 3d 169 (Fla. 5th DCA 2015). The *Miles* court reversed a trial court’s denial of immunity to a defendant who carried a concealed firearm when he exercised deadly force. It reasoned that because the then-extent Stand Your Ground law did not contain a prohibition against “unlawful activity,” committing the crime of carrying a concealed weapon did not forestall immunity. *Id.* at 171. It declared, however, “the Florida Legislature has rectified the problem presented in this case by amending section 776.012, effective June 20, 2014, to grant immunity only to a person ‘not engaged in criminal activity.’” *Id.* at 171 n.1. While the Fifth DCA’s reference to rectifying the “problem” of granting immunity to a defendant who used deadly force while illegally carrying a concealed firearm does not compel the ultimate decision in this case, it further reassures the Court of the Amendment’s plain meaning.

“exceptions” to self-defense that the State should have the burden of disproving by clear and convincing evidence. *Id.* Ms. Perez distinguishes *Chavers* by reasoning that it predated the Amendment, and it therefore could not provide which party now has the burden to prove the non-existence of criminal activity. 230 So. 2d at 39.

While creative, this argument ignores the plain language of Stand Your Ground. It also presupposes that the Amendment somehow redefined self-defense. The Amendment only adjusts a defendant’s burden; it does not disturb the elemental definition of self-defense outlined in *Chavers*. *Id.*; § 776.012(2). Mr. Chavers had to establish his entitlement to immunity by a preponderance of the evidence. Ms. Perez only had to outline a prime facie entitlement to immunity, but she did not meet this lesser burden.

The Court rejects the State’s argument that Ms. Perez is the only person who could have established her prima facie entitlement to immunity. *See Rudin v. State*, 182 So. 3d 724, 726 (Fla. 1st DCA 2015). Indeed, the Court has already found that Mr. Davis’ testimony illustrated that deadly force was justified to prevent Ms. Perez’s death or great bodily harm. The Court also rejects, however, Ms. Perez’s contentions that she had to “affirmatively prove” she was not engaged in criminal activity, or “prove a negative” that she was in a place she had a right to be. *See Perez’s Supplemental Authority and Argument at IV-V*. Based on the Amendment, she did not have to “prove” anything. She needed to establish a prima facie entitlement to immunity, and she has failed in this endeavor.²

² Because the Court has found that the Defendants have failed to establish a prima facie entitlement to immunity, it need not opine whether the State has met its burden of clear and convincing evidence under the Amendment.

Conclusion

Defendants' Motions to Dismiss are **DENIED** without prejudice for Defendants to raise the issue of self-defense at trial.

ORDERED in Chambers, at Orlando, Orange County, Florida this 22nd day of May, 2018.



Dan Traver, Circuit Judge

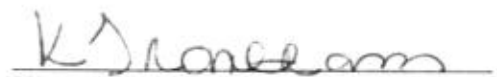
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 22nd day of May, 2018, by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

Ben Baird, Office of State Attorney

Jonathan Mills, Counsel for Mr. Davis

Justin Bleakley, Counsel for Ms. Perez



Kimberly Trantham, Judicial Assistant