APPLICATION FOR VOLUSIA COUNTY COURT

WESLEY HEIDT

APPLICATION FOR NOMINATION TO THE VOLUSIA COUNTY COURT

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

DATE: November 11, 2017 Florida Bar No.: 773026

GENERAL: Social Security No.:

1. Name Wesley Harold Heidt E-mail:

   Date Admitted to Practice in Florida: September 27, 1988

   Date Admitted to Practice in other States: N/A

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

   State of Florida, Bureau Chief, Criminal Appeals, Attorney General of Florida

3. Business address: 444 Seabreeze Boulevard

   City Daytona Beach County Volusia State FL ZIP 32118

   Telephone (386) 238-4990 FAX (386) 238-4997

4. Residential address:

   City New Smyrna Beach County Volusia State FL ZIP

   Since January 2004 Telephone

5. Place of birth: Eglin AFB, Florida

   Date of birth: Age: 54

6a. Length of residence in State of Florida: Native Floridian

6b. Are you a registered voter? ☒ Yes ☐ No

   If so, in what county are you registered? Volusia

7. Marital status: Single

   If married: Spouse's name

   Date of marriage

   Spouse's occupation

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.

Tammy Heidt

Date/place/court number: January 30, 2017, Volusia County (Seventh Judicial Circuit), 2016 33781 FMCI

8. Children

Name(s)	*Age(s)*	*Occupation(s)*	*Residential address(es)*
Christopher Michael Heidt	35	Computer Programmer	Melbourne, FL.
Justin Lee Heidt	22	Student	Same as mine
John Wesley Heidt	15	Student	Same as mine

9. Military Service (including Reserves)

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.

Schools	*Class Standing*	*Dates of Attendance*	*Degree*
Valdosta State College (now Valdosta State University)	1st in my Major**	September 1981 to June 1985	B.A. in History with a minor in Political Science
University of Florida College of Law	unknown	August 1985 to May 1988	Juris Doctorate

18b. List and describe academic scholarships earned, honor societies or other awards.
*I was my High School Valedictorian; Senior Class president

*At Valdosta State College (now University), I earned an award for graduating with the highest grade point average in my major (History); graduated cum laude

NON-LEGAL EMPLOYMENT:

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

Date	*Position*	*Employer*	*Address*

- summers during college	Laborer	Occidental Chemical Company	White Springs, FL

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.

Court or Administrative Body	*Date of Admission*
Florida Bar	September 27, 1988
Middle District of Florida	July 28, 1989
Court of Appeals, Eleventh circuit	February 23, 1996
U.S. Supreme Court	February 22, 2000

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:

Position	*Name of Firm*	*Address*	*Dates*
Bureau Chief	Criminal Appeals Office of the Attorney General	444 Seabreeze Blvd., Daytona Beach, FL 32118	Current - February 2008
Assistant Attorney General	Criminal Appeals Office of the Attorney General	444 Seabreeze Blvd., Daytona Beach, FL 32118	February 2008 - April 1993
Staff Attorney	Tenth Judicial Circuit	255 North Broadway Ave., Bartow, FL 33830	April 1993 - September 1988

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.

I currently serve as the bureau chief for the Florida Attorney General's Daytona Beach criminal appellate division. In this role, I manage an office of about twenty attorneys and

ten staff. My duties require the day to day supervision of one of the largest legal offices in the area. As an assistant attorney general, I represent the State of Florida in criminal appeals in the state and federal courts. I became board certified by the Florida Bar in the area of criminal appeals in August of 1997 and was recertified in 2002, 2008, and 2012. I also have been an AV rated attorney by Martindale-Hubbell since 1997.

Representing the State, I have handled a variety of issues which include almost every conceivable challenge to a trial including such arguments as constitutional questions, evidence, jury selection, sentencing, etc. I have filed numerous pleadings in the Florida Supreme Court and have had the opportunity to argue before that court several times. In fact, I have almost forty published opinions from that court. Additionally, I have handled hundreds of cases in the Fifth District Court of Appeal.

I also represent the State in federal court addressing habeas petitions and appearing in all levels of the federal court system. At times these cases have required evidentiary hearings where I have appeared as both lead and as co-counsel. I have also argued in the Eleventh Circuit, again, representing the State of Florida.

As bureau chief of the office, I deal regularly with prosecutors discussing pretrial strategies in addition to the issues related to the cases for appeal. I also discuss legal issues with trial judges on miscellaneous pleadings. Previously, I handled civil forfeitures in the circuit court representing the Department of Highway Safety and Motor Vehicles.

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	_____ %	Civil	_____ %
Federal Trial	_____ %	Criminal	90 %
Federal Other	10 %	Family	_____ %
State Appellate	90 %	Probate	_____ %
State Trial	_____ %	Other	10 %
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? 0 Non-jury? 30

Arbitration? 0 Administrative Bodies? 0

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).

Griffin v. State, 5D16-1937

Alexander J. Gilewicz

Office of the Public Defender

444 Seabreeze Blvd., Suite 210

Daytona Beach, FL 32118

(386) 254-3758

Crawely v. State, 5D17-1444

Sir Charles A. Crawley

Pro se / incarcerated in prison

Kleintank v. State, 211 So. 3d 1142 (Fla. 5th DCA 2017)

A. R. Mander III

Mander Law Group

14217 3rd St.

Dade City, FL 33523

(352) 567-0411

Smith v. State, 5D15-3173
Robert Jackson Pearce, III
Office of the Public Defender
444 Seabreeze Blvd., Suite 210
Daytona Beach, FL 32118
(386) 254-3758

Demott v. State, 194 So. 3d 335 (Fla. 2016)
Kevin Richard Holtz
Office of the Public Defender
444 Seabreeze Blvd., Suite 210
Daytona Beach, FL 32118
(386) 254-3758

Wilkerson v. State, 183 So. 3d 373 (Fla. 5th DCA 2016)
Nancy Ryan
Office of the Public Defender
444 Seabreeze Blvd., Suite 210
Daytona Beach, FL 32118
(386) 254-3758

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).

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?
_____ 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? _____%
Defendants? _____%

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.

For about a ten year period, 1994 until 2004, I handled civil forfeitures for the Department of Highway Safety and Motor Vehicles. At its peak, this civil practice required me to appear several times a month in circuit court representing the Highway Patrol on seizure cases.

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.

Anthony v. State, 108 So.3d 1111 (Fla. 5th DCA 2013) (Lisabeth Fryer): Very high profile case which was regularly in the news, Casey Anthony was charged with first degree murder of her daughter. In the case, I had helped the prosecutors pretrial with legal issues, I handled a pretrial, illegal detention challenge, I handled the direct appeal, and I handled an extraordinary writ challenging the probationary sentence which I have included as one of my writing samples.

Shelton v. Secretary, Department of Corrections, 691 F.3d 1348 (11th Cir. 2012) (James E. Felman): The Middle District Court of Florida found that Florida's drug statutes were unconstitutional based on a lack of mens rea. This case led to many, statewide, meetings within our office, and within days of it being decided, I created a memorandum setting out a plan of attack to handle the thousands of cases it generated statewide. I represented Florida in the Eleventh Circuit Court of Appeals successfully arguing that the statute was not unconstitutional, and my brief is included as one of the writing samples.

Golphin v. State, 945 So. 2d 1174 (Fla. 2006) (Noel A. Pelella): The Florida Supreme Court in a lengthy opinion found that it is a consensual encounter when officers engage someone on the street and ask for identification. Additionally, subsequent discovery of an outstanding warrant would purge any illegality for the encounter. Golphin filed a petition for writ of certiorari in the United State Supreme Court; I filed a Response; and the Supreme Court denied the writ. Golphin v. Florida, 552 U.S. 810 (2007)

State v. Modeste, 66 So. 3d 386 (Fla. 5th DCA 2011) (Frank J. Bankowitz); I successfully argued to the Fifth DCA which sat en banc and that it was not an unconstitutional violation of Miranda if law enforcement failed to inform a defendant of his right to counsel before an interview as well as during the interview. Initially, this decision was quashed, then stayed pending the outcome of Florida v. Powell, 130 S. Ct. 1195 (2010); however, after the decision in the United States Supreme Court, the Florida Supreme Court eventually accepted the position for which I had advocated.

Brown v. State, 790 So. 2d 389 (Fla. 2000) (Barbara Davis): The Florida Supreme Court addressed the issue of whether a defendant could commit attempted second degree murder. After spirited discussion at oral argument, the Court accepted State's position that a defendant could be convicted of attempting a general intent crime.

J.A.S. v. State, 705 So. 2d 1381 (Fla. 1998) (Kenneth Witts): Constitutional challenge of the prosecution of a 15 year old defendant in a statutory rape case involving a 12 year old victim. Case involved issues of equal protection, right of privacy, selective enforcement, and cruel and unusual punishment. My efforts in this case led to a

personal thank you note from Brad King (the elected State Attorney in the Fifth Circuit) which I have included in the appendix to my application.

State v. Hanna, 901 So. 2d 201 (Fla. 5th DCA 2005) (Richard Wilson): Trial court had found various sections of Orange County's Adult Entertainment Code unconstitutional based upon issues of vagueness and of prompt judicial review. Little if any state cases addressing the issues existed. I successfully convinved the appellate court that Orange County's Code was not unconstitutional. I was informed by Orange County's legal department that the case would influence numerous local government codes in Florida and throughout the country.

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.

I have included three writing samples. One was a successful appeal to the Eleventh Circuit Court of Appeals concerning whether Florida drug statutes are unconstitutional. One was a response to an emergency writ of prohibition as to whether Casey Anthony's probation had ever been served. Lastly, I have also included an initial brief where a question was certified to the Fifth District Court of Appeal directly from county court (specifically, Volusia County Court). For all of these pleadings, I was lead counsel, and the attorney who researched and prepared the pleadings.

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.

n/a

32b. List any prior quasi-judicial service:

Dates	*Name of Agency*	*Position Held*

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.

(ii) Describe the approximate number and nature of the cases you have handled

during your judicial or quasi-judicial tenure.

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

(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.

(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.

(vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.

(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.

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.

For about fifteen years, I have served as an adjunct professor in the paralegal program at Daytona State College. There, I teach courses in legal research, legal writing as well as constitutional law.

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.

Only as described in question 33b.

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 from which I believe I would have to recuse myself.

MISCELLANEOUS:

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

Yes _____ No __X__ 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 __X__ 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 __X__ 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.

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

Board certified in criminal appellate law since 1997;

AV rated by Martindale - Hubbell

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

Twice, on behalf of the Young Lawyers Division of the Florida Bar, I have given a presentation on criminal appeals as part of the Basic Appellate Practice seminar. These were video taped and were offered as CLE for attorneys in the future.

I previously made several presentations to the statewide convention of staff attorneys and was the only person asked to do an encore version which was taped and was used to train newly hired staff attorneys statewide as to postconviction issues.

In my position as bureau chief, I made a presentation to the local Rotary Club as to the duties and services of our office.

I served as Volusia County Bar President as well as serving in several officer positions and as a board member. In those roles, I spoke numerous times to a variety of groups including making a presentation to the FAMU law school committee when it was deciding where to place its law school.

Additionally, the Attorney General has a Cyber Crime Unit which emphasized the education of middle and high school students on some of the dangers that can arise on the internet. I have spoken to hundreds of students in that program.

Several times, I have been a guest lecturer at the appellate portion of Bench / Bar seminars, and I have spoken at several local bar seminars (including organizing and chairing one.)

I have spoken dozens of times at local schools as part of Law Week to classes ranging from pre-kindergarten, to high schools, to the juvenile detention center.

I have traveled and spoken to almost every assistant state attorney in the Fifth, Seventh, Ninth, and Eighteenth Circuits. This was part of a CLE training classes than I organized and scheduled.

I made a two hour presentation to a local law enforcement SWAT team addressing Fourth Amendment issues.

I was the keynote speaker at the graduation for a local college in 2014. There were about 130 graduates.

Twice, I have spoken to a group of homicide victims in central Florida explaining to them them appellate process.

47. Do you have a Martindale-Hubbell rating? Yes ☒ If so, what is it?___No ☐

AV rated for over twenty years

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 of Volusia County Bar Association*:

President (2000-2001)

President -Elect (1999-2000)

Treasurer (two terms: 1997-1998 / 1998-1999)

Board of Directors (1996-1997)

Chair of Governmant Liaison committee

Co-chair Law Week (2005)

*I was a very active member of the Volusia County Bar Association. For example, I began the Historical Project which involves interviewing many of the experienced attorneys of this area and memorializing an oral history of their lives and of this area. I helped lead the VCBA's involvement in the local schools during law week and have spoken to all levels of classes. I also organized several bench / bar softball games trying to encourage the interaction between those two groups.

- Previous member of Inns of Court

-Member of Lakeland Bar Association (1998-1993)

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.

In 2013, I led the creation of a 501(c)(3), non-profit corporation, and have served as its President every since. Southeast Volusia Youth Sports, Inc., helps over 600 boys and girls annually play baseball and softball. I have been very active with this group seeking community support, conducting numerous fund raising events, conducting weekend clinics, and coaching.

As a member in the First United Methodist Church of Port Orange. I served on the Finance committee, as well as on the staff parish committee for a three year term (2002-2004). While on the staff parish committee, I served as the chair for two years (2003-2004). The staff parish committee in the Methodist Church is responsible for all administrative aspects of handling the staff. In this position, I led the team which intervewed and hired employees, disciplined employees, and dismissed employees. Additionally, for approximately one year while the church was searching for a youth pastor, I organized activities and taught Sunday school class to our high school students. I have also taught Sunday School for other grades including second graders, fourth and fifth graders.

I served on the United Way allocations committee in 2006. On this committee I visited local organizations which had requested funds from the United Way, reviewed their applications, their needs, and made recommendations

I serve on Judge Belle Schumann's re-election committtee helping with fundraising activities and other election matters.

I am Chair of the Paralegal Studies Advisory Committee at Daytona State College. Our committee advises the department as to what courses would best serve the legal community, and I helped organize and present at a career day type seminar which had paralegals from across legals fields - private, governement, and corporate.

48c. List your hobbies or other vocational interests.

I enjoy history, reading, being outdoors, and sports.

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.

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

I previously volunteered at the advice clinics run by the Central Florida Legal Services program when I first moved to Volusia County. However, in my position as an assistant attorney general, conflicts are always a potential concern. I volunteered to serve on the guardian ad litem list designed to assist the family law judges. I have also served as a judge in an attorney training seminar for legal service attorneys from several states.

SUPPLEMENTAL INFORMATION:

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

Yes, I am involved in ongoing continued legal education. My emphasis has been in the areas of criminal law, appellate practice, evidence, and ethics.

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?

See answer to question 46

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

I serve as a Commissioner on the Medical Examiners Commission. I was nominated by Attorney General Pam Bondi and appointed by Governor Rick Scott to serve as one of only nine commissioners. My duties include handling administrative matters related to

the 24 statewide medical examiners. The Commission also has disciplinary authority over the medical examiners, and I have served several times on probable cause panels reviewing complaints filed against a medical examiner. Such panels are comprised of three commissioners appointed by the chair of the Commission. We review allegations in great detail, meet and discuss whether there is a violation, and, if there is probable cause of a violation, we recommend disciplinary action appropriate to the violation.

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

The best judges should be excellent attorneys, organized administrators, and strong leaders. These qualities would make them the best choice to manage the heavy county court docket and the people who appear in county court. I believe that my vast legal experience combined with my leadership positions both as supervisor of the Attorney General's Office and outside of my legal practice have prepared me for the challenges of efficiently running a courtroom.

I am AV rated by my peers and am board certified by the Florida Bar. My years of experience have given me the opportunity to debate some of the most complex issues our legal system addresses. As noted previously in the application, I have handled some of the most high profile cases with which our office has dealt. Casey Anthony, Mackle Shelton (in the 11th circuit reversing the federal district court which had held many of Florida's drug statutes to be unconstitutional), Ebony Wilkerson (the mother who drove into the beach), and many others. I have argued numerous times in the Florida Supreme Court, the Eleventh Circuit, and the Fifth District Court of Appeal. Additionally, I previously handled many cases at the trial level as well as serving as a staff attorney for the trial court.

In my current position as bureau chief, my administrative duties require me to run one of the largest legal offices in this area. My duties include all levels of human resources such as hiring, evaluating, training, discliplining, supervising, and, even, terminating employees. Also, I review all incoming mail, and I'm responsible for case assignment.

In addition to my position with the Attorney General's Office, I am constantly involved in public service. Groups as varied as the local bar association, my local church, and the local baseball league have asked me to serve in their highest leadership positions. In these various positions, I have often had to make tough decisions such as discliplining personnel and even terminating them.

Furthermore, I have been an adjunct professor at Daytona State College for about fifteen years teaching in its paralegal department. The ability to take a very complicated legal point and present it to students would be invaluable when running a courtroom which may often have inexperienced attorneys or pro se litigants.

Lastly, I currently serve as a Commissioner on the Medicial Examiners Commission.

When serving on the bench, obviously, legal issues arise and have to be addressed, and my over twenty-five years of legal experience would be invaluable when doing that. When a judge can correctly answer a legal question without having to take it under advisement, he or she is able to improve the efficiency of the court system. Additionally, if questions arise which I cannot answer immediately, my skills enable me to quickly find and apply the correct law. I often am contacted by trial attorneys operating under tight time constraints seeking legal advice, and I either can immediately answer their

questions, or I quickly research the issues and, then, answer them.

However, a judge, in additional to knowing the applicable law, has to have the ability to relate to the people before him or her. The human aspect of being a judge is extremely important. I was reared in a rural area, worked on farms, and have been working when not in school since about the fifth grade. I fully appreciate the value of commitment and working hard as well as understanding the importance of time to the litigants and the attorneys before the court.

My years of practicing law at a high level, my administrative skills, and my diverse leadership experience allow me to bring unique abilities to the bench, and I would be honored with the opportunity to serve as a judge.

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.

Yes, 2006, 2007, 2010, and 2012 with the Seventh Judicial Circuit JNC.

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

I have lived my entire life focusing on public service both in my legal practice and in my involvement in the community. Serving on the bench is one of the highest callings for our profession. It is a position where the judge has great power and responsibilities. I have often been complimented on my demeanor and temperament and told that my abilities are consistent with those which a judge should possess. Given my respect for the position, I would love the opportunity to serve as a Volusia County Judge, and, thank you for any and all consideration.

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.

1.

Justice C. Alan Lawson,

Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399-1925

(850) 921-1096

2.

Judge Richard B. Orfinger,

Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach, FL 32114

(386) 947-1530

3.

Volusia County Court Judge Belle Schumann,

125 Orange Avenue, Daytona Beach, Florida 32114

(386) 257-6042

4.

Volusia County Court Judge David Foxman,

125 Orange Avenue, Daytona Beach, Florida 32114

(386) 257-6033.

5.

Stephen J. Nelson, M.A., M.D., F.C.A.P., Chair Medical Examiners Commission

District Medical Examiner, 10th Judicial Circuit of Florida

Polk, Hardee and Highlands Counties

1021 Jim Keene Boulevard

Winter Haven, Florida 33880-8010

(863) 298-4600

6.

James S. Purdy, Seventh Circuit Public Defender

Office of the Public Defender

51 N. Ridgewood Ave.

Daytona Beach, FL 32114-3275

7.

George D.E. Burden, Office of the Public Defender,

Seventh Judicial Circuit of Florida, Appellate Division, 444 Seabreeze Blvd., Ste 210

Daytona Beach, FL 32118

(386) 254-3758

8.

Linda Cupick,

Daytona State College, 1200 West International Speedway Boulevard, Daytona Beach, Florida 32114

(386) 506-3000

9.

David Ray

Assistant Director of Maintenance Operations,

124 Industrial Park Ave.,

City of New Smyrna Beach, FL 32168

(386) 424-2271

10.

Todd Richardson,

Daytona State College, 1200 West International Speedway Boulevard, Daytona Beach, Florida 32114

(386) 506-3000

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 11th day of November, 2017.

Wesley Heidt
Printed Name

Wesley Heidt
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

In lieu of answering the questions on this page, you may attach copies of your completed Federal Income Tax Returns for the preceding three (3) years. Those income tax returns should include returns from a professional association. If you answer the questions on this page, you do not have to file copies of your tax returns.

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.

   2016: $76,278.55

   2015: $77,487.55

   2014: $74,639.86

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.

   2016: $70,005.76

   2015: $71,249.86

   2014: $68,489.82

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.

   Daytona State College 2016: $1,935.00

4. State the amount of net income you have earned or losses incurred (after deducting expenses) from 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.

   Daytona State College 2016: $1,789.89

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: 11/11/17

JNC Submitting To: Seventh Judicial Circuit

Name (please print): Wesley Harold Heidt

Current Occupation: Assistant Attorney General

Telephone Number: 386-238-4990 Attorney No.: 773026

Gender (check one): ☒ Male ☐ Female

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

County of Residence: Volusia

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Printed Name of Applicant: Wesley Harold Heidt

Signature of Applicant: /s/ Wesley Harold Heidt

Date: 11/11/17

WRITING SAMPLE

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 11-13515-G

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Appellant,

v.

MACKLE VINCENT SHELTON

Appellee.

Appeal from the United States District Court

Middle District of Florida

INITIAL BRIEF OF APPELLANT

PAMELA JO BONDI
ATTORNEY GENERAL

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NUMBER 0773026
444 Seabreeze Boulevard
Suite 500
Daytona Beach, Florida 32118
(386) 238-4990/FAX 238-4997
Wesley.Heidt@MyFloridaLegal.com
COUNSEL FOR APPELLANT

Secretary, Florida Dept. of Corrections v. Shelton, Case No. 11-13515-G

CERTIFICATE OF INTERESTED PERSONS

Those persons having an interest in the outcome of the case are as follows:

Bondi, Pamela Jo, Attorney General, State of Florida, Appellant;

Corrente, Carmen, Assistant Attorney General, State of Florida;

Felman, James E., counsel for Appellee;

Foster, Todd, *amicus* counsel;

Golik, Tomislav, Assistant Public Defender, Seventh Judicial Circuit, Volusia County, appellate counsel on the direct appeal;

Heidt, Wesley, Assistant Attorney General, State of Florida;

Heller, Michele, Assistant Attorney General, Ninth Judicial Circuit, Osceola County, Florida;

Lamar, Lawson, State Attorney, Ninth Judicial Circuit, Osceola County, Florida ;

Schilling, Christopher J., Assistant Public Defender, Ninth Judicial Circuit, Osceola County, Florida;

Scriven, Mary, United States District Court Judge, Middle District of Florida, Orlando Division;

Shelton, Mackle Vincent, Appellee;

Strickland, Stan, , Circuit Court Judge, Ninth Judicial Circuit, Osceola County, Florida; and

Tucker, Kenneth S., Secretary of the Department of Corrections, State of Florida.

STATEMENT REGARDING ORAL ARGUMENT

Given the vast potential impact of the ruling being appealed, the State of Florida does believe that oral argument would be beneficial in the review of this issue.

CERTIFICATE OF TYPE SIZE AND STYLE

The font used in this brief is 14-point Times New Roman.

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES :

STATEMENT OF JURISDICTION

This case involves a direct appeal from a final order granting Shelton's petition for a writ of habeas corpus. This Court has jurisdiction pursuant to 28 U.S.C. section 2253.

STATEMENT OF ISSUE PRESENTED

Whether the district court erred by failing to follow the requirements of the AEDPA when it found that all of Florida's drug statutes were strict liability offenses and facially violated due process.

STATEMENT OF THE CASE AND FACTS

I. Course of Proceedings Below.

Shelton was charged in an amended information with three counts of aggravated assault with a deadly weapon, one count of fleeing or attempting to elude a law enforcement officer ("LEO"), one count of delivery of cocaine, two counts of criminal mischief, one count of driving while license suspended, and one count of reckless driving causing damage to property or a person. (Doc. 8, A 139-147). These charges stemmed from an attempt by undercover officers to arrest Shelton on an outstanding warrant. The evidence presented during the jury trial established that Shelton was ordered out of his vehicle at gunpoint, but Shelton put his car in reverse, rammed the vehicle behind him, and hit another vehicle as he left the area. (Doc. 8, B 100-104). One shot into the fleeing vehicle struck Shelton in the shoulder. (Doc. 8, B 252-257). Shelton was acquitted of the aggravated assault charges and one criminal mischief charge but was convicted of the remaining five charges. Relevant to the instant case, Shelton was charged with delivering crack cocaine to an undercover officer during a controlled buy. (Doc. 8, A 4).

Relevant to this appeal, the delivery of crack cocaine offense stemmed from a controlled buy by an informant. (Doc. 8, B 92-94). The officer monitoring the exchange testified that law enforcement recovered the cocaine from the informant after the sale. (Doc. 8, B 126-132).

On appeal an Anders[1] brief was filed, and Shelton filed his own *pro se* supplemental brief raising four issues: (1) that he was denied due process when he was not permitted to file a motion to correct sentence while on appeal; (2) improper prosecutorial comments at trial; (3) that his sentence was illegal, and (4) that his

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[1] Anders v. Califomia, 386 U.S. 738 (1967).

habitual felony sentence was prohibited by statute. (Doc. 8, C). The State declined to file an answer brief, and the appellate court entered its *per curiam* affirmance on June 13, 2006. (Doc. 8, D). Mandate issued June 30, 2006. (Doc. 8, D).

Shelton next filed a motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850 raising seven issues: (1) that his sentence was illegal, (2) that his habitual felony offender classification was illegal; and that counsel was ineffective for (3) failing to raise the illegal sentence issues, (4) failing to object to prosecutorial misconduct in closing, (5) failing to properly argue reasonable doubt, (6) failing to effectively cross-examine state witnesses, and (7) for cumulative errors caused by counsel's lack of effectiveness. Grounds (4) through (7) expressly pertained only to Count 4 of the information, the delivery of cocaine offense. (Doc. 8, E).

The trial court denied the motion, specifically ruling that Grounds 1, 2, and 3 were procedurally barred. The remaining grounds were denied on their merits. (Doc. 8, F). Shelton filed an initial brief on appeal (Doc. 8, G), and the State declined to file an answer brief. On March 6, 2007 the appellate court issued its *per curiam* affirmance. (Doc. 8, H). Mandate issued March 6, 2007. (Doc. 8, H).

On May 18, 2007, Shelton filed a federal habeas petition raising nine grounds. (Doc. 1). The grounds raised were substantially the same as those raised in Shelton's Rule 3.850 motion with the addition of one ground relating to procedural due process in his direct appeal. On September 4, 2007, the State of Florida filed its Response to the petition asserting why relief should be denied. (Doc. 7).

On September 7, 2010, the district court appointed counsel directing him to file a memorandum of law within 90 days addressing Florida's drug statute. (Doc. 19). On December 16, 2010, Shelton filed his memorandum as directed by the district court. (Doc. 25). On January 28, 2011, an *amicus* brief was filed supporting Shelton's position. (Doc. 27). The State of Florida filed its memorandum in opposition of relief

on April 18, 2011. (Doc. 36).

On July 27, 2011, the district court issued an order denying eight of Shelton's claims for relief. (Doc. 38). However, more relevant to the instant appeal, the district court also declared Florida's drug statutes to be facially unconstitutional. The district court wrote in its order:

> A writ of habeas corpus shall issue unless within 90 days, the State of Florida vacates Petitioner's conviction and sentence with respect to Count IV[2] and begins new sentencing proceedings against Petitioner regarding the same. The 90-day time period shall be tolled until the conclusion of any appeal from this Order, either by the exhaustion of appellate remedies or the expiration of the time period within which to file such appellate proceedings;

(Doc. 38, pp. 42-43).

On August 1, 2011, Florida immediately filed a notice of appeal. (Doc. 40).

ii. Statement of the facts.

There are no additional facts to provide this Court. The issue addressed by the district court and to be addressed by this Court on appeal involves federal habeas procedural law and a due process analysis of Florida statute. It does not involve the facts surrounding Shelton's conviction.

iii. Standard of review.

Pursuant to 28 U.S.C. Section 2254(d), a petition for a writ of habeas corpus can only be issued if the state court's ruling "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1)-(2); see also Williams v. Taylor, 529 U.S. 362 (2000). Shelton filed his federal habeas petition after April 24, 1996. Thus, section 2254(d) governs

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[2]Count four was the delivery of cocaine count. (Doc. 8, A 139-147).

this proceeding. Harrington v. Richter, 131 S. Ct. 770, 784 (2011) ("By its terms [section] 2254(d) bars relitigation of any claim "adjudicated on the merits" in state court, subject only to the exceptions in [sections] 2254(d)(1) and (d)(2). There is no text in the statute requiring a statement of reasons. The statute refers only to a "decision," which resulted from an "adjudication.").

Pursuant to § 2254(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a federal court may not grant habeas relief to a state prisoner unless a state court's adjudication of a claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or the relevant state-court decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." Schriro v. Landrigan, 550 U.S. 465, 473 (2007) (quoting 28 U.S.C. § 2254(d)(1), (d)(2)) (citations omitted). "The question under AEDPA is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable - a substantially higher threshold." Id.

"We review *de novo* the district court's decision about whether the state court acted contrary to clearly established federal law, unreasonably applied federal law, or made an unreasonable determination of fact." Smith v. Sec'y, Dep't of Corr., 572 F.3d 1327, 1332 (11th Cir.2009); see also Hall v. Thomas, 611 F.3d 1259, 1284 (11th Cir. 2010).

A state court decision is "contrary to" clearly established law if the court arrived at a conclusion opposite to that reached by the Supreme Court on a question of law, or the state court confronted facts that are "materially indistinguishable from a relevant Supreme Court precedent" but arrived at a different result. Williams v. Taylor, 529 U.S. 362, 405 (2000). A state court decision is an "unreasonable

application" of clearly established law if the state court unreasonably extends or fails to extend a clearly established legal principle to a new context. Id. at 407. "[A]n unreasonable application of federal law is different from an incorrect application of federal law." Id. at 410. "[A] federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable." Id. at 411.

SUMMARY OF ARGUMENT

The district court below essentially declared all of Florida's drug statutes to be facially unconstitutional. The court found Florida's drug statutes to be strict liability offenses which violated due process. Such a decision not only was incorrect on the merits but, just as importantly, also violated the dictates of the AEDPA and the United States Supreme Court's voluminous case law applying that statute.

ARGUMENT

POINT ON APPEAL

WHETHER THE DISTRICT COURT ERRED BY FAILING TO FOLLOW THE REQUIREMENTS OF THE AEDPA WHEN IT FOUND THAT ALL OF FLORIDA'S DRUG STATUTES WERE STRICT LIABILITY OFFENSES AND FACIALLY VIOLATED DUE PROCESS.

The district court below essentially declared all of Florida's drug statutes to be unconstitutional. The court found Florida's drug statutes to be strict liability offenses which violated due process and which, therefore, were facially unconstitutional[3]. Such a decision not only was incorrect on the merits but just as importantly also violated the dictates of the AEDPA and the United States Supreme Court's voluminous case law applying of statute.

It is the legislature that defines criminal offenses. The United States Supreme Court has repeatedly observed that the power to define crimes including what facts are to be elements and what facts are to be affirmative defenses lays with the Legislature. Staples v. United States, 511 U.S. 600, 604 (1994)(stating that the "definition of the elements of a criminal offense is entrusted to the legislature" quoting Liparota v. United States, 471 U.S. 419, 424 (1985)); see also United States v. Balint, 258 U.S. 250, 251-252 (1922) (Court rejected a due process challenge to statute lacking intent element finding that the analysis is one of legislative intent). Furthermore, as the United States Supreme Court has noted the Legislature's power includes the power "to exclude elements of knowledge and diligence from its definition." Lambert v. California, 355 U.S. 225, 228 (1957).

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[3]Or, at least as to the excessive sentence imposed. It appears the order takes issue with Florida's statute as being facially unconstitutional but, then, remands the case to the State for resentencing for either a two year or a one year sentence - which one is constitutional is not exactly clear from the order.

That is exactly what occurred in Florida. In response to two Florida Supreme Court cases, the Florida Legislature in 2002 enacted section 893.101, Florida Statutes, which provides:

> (1) The Legislature finds that the cases of Scott v. State, 808 So. 2d 166 (Fla. 2002), and Chicone v. State, 684 So. 2d 736 (Fla. 1996), holding that the state must prove that the defendant knew of the illicit nature of a controlled substance found in his or her actual or constructive possession, were contrary to legislative intent.
>
> (2) The Legislature finds that knowledge of the illicit nature of a controlled substance is not an element of any offense under this chapter. Lack of knowledge of the illicit nature of a controlled substance is an affirmative defense to the offenses of this chapter.
>
> (3) In those instances in which a defendant asserts the affirmative defense described in this section, the possession of a controlled substance, whether actual or constructive, shall give rise to a permissive presumption that the possessor knew of the illicit nature of the substance. It is the intent of the Legislature that, in those cases where such an affirmative defense is raised, the jury shall be instructed on the permissive presumption provided in this subsection.

This statute was challenged in the Florida courts as to whether it violated due process and, repeatedly, Florida courts found the statute legal. See Williams v. Florida, 45 So. 3d 14 (Fla. 1st DCA 2010); Harris v. Florida, 932 So. 2d 551 (Fla. 1st DCA 2006), rev. denied, 962 So. 2d 336 (Fla. 2007); Taylor v. Florida, 929 So. 2d 665 (Fla. 3d DCA 2006), rev. denied, 952 So. 2d 1191 (Fla. 2007); Wright v. Florida, 920 So. 2d 21, 25 (Fla. 4th DCA), rev. denied, 915 So. 2d 1198 (Fla. 2005); Burnette v. Florida, 901 So. 2d 925, 927-28 (Fla. 2d DCA 2005).

It is this statute that the district court found reduced all of Florida drug laws[4] to strict liability offenses which violate due process. The State of Florida asserts that

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[4] See Garcia v. Florida, 901 So. 2d 788, 791-793 & n.1 (Fla. 2005)(detailing the history of the development Florida's drug laws and the Legislature's response).

this decision by the district court violates the constraints of the AEDPA as well as fails on its merits for the reasons set out below.

STANDARD OF REVIEW/APPLICATION OF THE AEDPA

There are many concerns with the district court's order which the State of Florida will try to address in this appeal. First, Florida would submit that Shelton's constitutional claim should be found to be procedurally barred. While Shelton did raise the constitutionality of the allegedly "strict liability" offense in his *pro se* brief filed on direct appeal, he did so only in the context of his sentence. (Doc. 8, C). Indeed, his prayer for relief at the conclusion of his initial brief only requested that his sentence be reduced to one year incarceration; he never claimed that the statute was unconstitutional or that his conviction of an unconstitutional offense must be vacated. His claim was that his sentence violated due process.[5] A federal habeas petitioner is required to provide the state courts with a fair opportunity to apply controlling legal principles to the facts bearing upon his constitutional claim. Walker v. Dugger, 860 F.2d 1010, 1011 (11th Cir. 1988). A state prison inmate who seeks release from custody on the ground that his conviction or sentence is in violation of the Constitution or laws of the United States must first exhaust remedies available to him in the courts of the convicting state. Heath v. Jones, 863 F.2d 815, 818 (11th Cir. 1989). The requirement of exhaustion mandates that the precise issues set forth in the federal petition must have been presented to the state courts. Id.; see also Duncan v. Henry, 513 U.S. 364 (1995); Picard v. Connor, 404 U.S. 270 (1971). This Court is empowered to address underlying procedural issues which have to be resolved before

[5]Shelton, again, tried to present the issue as to his sentence violating due process in his postconviction motion; however, the trial court specifically found the issue was one that could have or should have been raised on direct appeal. (Doc. 8, E, F). The court did also note that Shelton submitted he had raised it on direct appeal, and the claim had been rejected.

it can reach merits of constitutional claims. See McCoy v. United States, 266 F.3d 1245, 1248, n.2 (11th Cir. 2001), cert. denied, 356 U.S. 906 (2002). Given that the claim addressed by the district court was never presented to the State courts, Shelton should be barred from now presenting his claim to the federal courts.

As this Court wrote in Childers v. Floyd, 642 F.3d 953, 967 (11th Cir. 2011):

> The concept of an "adjudication on the merits" is the corollary of the long-held requirement that a state prisoner first exhaust his claims in state court. See Id. § 2254(b)(1)(A) (requiring exhaustion of state court remedies); Cone v. Bell, — U.S. —, 129 S. Ct. 1769, 1780, 173 L. Ed. 2d 701 (2009) (calling exhaustion of state remedies prior to seeking federal habeas relief a "longstanding requirement"). Federal-state comity underlies this policy; before asking the federal court to "correct" a state court's mistake, the petitioner must first give the state court an opportunity to rule on the merits of his claim. Cone, 129 S.Ct. at 1780 ("When a petitioner fails to properly raise his federal claims in state court, he deprives the State of 'an opportunity to address those claims in the first instance' and frustrates the State's ability to honor his constitutional rights." (quoting Coleman v. Thompson, 501 U.S. 722, 732, 111 S.Ct. 2546, 2555, 115 L.Ed.2d 640 (1991))).

To summarize, the issue addressed by the district court was never presented to the State of Florida, and Shelton should have been found to be procedurally barred from raising it for the first time in his federal habeas.

If the issue is not found to be procedurally barred, then the State would be entitled to deference in any and all of the state court rulings as to the issue. At its very core, the holding that the state court decisions as to Shelton are not entitled to any deference because they were *per curiam* affirmances is clearly an incorrect statement of the law (Doc. 38, p. 8). This Court has repeatedly held that a state appellate court's *per curiam* affirmances warrant deference under Section 2254(d)(1) writing "the summary nature of a state court's decision does not lessen the deference that it is due." Wright v. Moore, 278 F.3d 1245, 1254 (11th Cir.), reh'g and reh'g en banc

denied, 278 F.3d 1245 (2002), cert. denied sub nom. Wright v. Crosby, 538 U.S. 906 (2003); see also Harrington v. Richter, —— U.S. ——, 131 S. Ct. 770, 780, 784-785, 178 L. Ed.2 d 624 (2011) ("When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary."); Childers v. Floyd, 642 F.3d 953, 968 (11th Cir. 2011) (This Court wrote that "an 'adjudication on the merits' is best defined as any state court decision that does not rest solely on a state procedural bar.").[6] Clearly, the fact that Shelton's appeals were *per curiam* affirmed does not bar deference to the court's review of his claims.

As set out in the facts, the instant federal habeas petition was filed after April 24, 1996, and AEDPA governs review by this Court. Land v. Allen, 573 F.3d 1211, 1215 (11th Cir. 2009). Under the AEDPA, a federal habeas court review of a state court decision is "greatly circumscribed and is highly deferential to the state courts." Crawford v. Head, 311 F.3d 1288, 1295 (11th Cir. 2002). As was recently written, "The AEDPA was meant to stop just short of imposing a complete bar to federal court relitigation of claims already rejected in state court proceedings, allowing for federal habeas relief only where there have been 'extreme malfunctions in the state criminal justice systems.'" Wilson v. Cain, 641 F.3d 96, 100 (5th Cir. 2011)(quoting Harrington v. Richter, - U.S. -, 131 S. Ct. 770, 786, 178 L.Ed.2d 624 (2011)).

The federal habeas statute requires three separate conditions occur in order for a federal court to grant habeas relief: 1) the state court's decision must be contrary to, or involve an unreasonable application of federal constitutional law; 2) the law must

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[6]See Crittenden v. Florida, No. 5D11-745, 2011 WL 3627692 (Fla. 5th DCA Aug. 19, 2011) (Reemphasizing that Florida views its own *per curiam* affirmances as having considered the merits).

be clearly established; and 3) the law is limited to United States Supreme Court cases. The district court's decision fails to meet a single one of these three conditions.

The first requirement is that state court's decision must be contrary to, or involved an unreasonable application of constitutional law. This Court has explained the contrary to, or an unreasonable application of, language of the AEDPA:

> A state court decision is "contrary to" clearly established federal law if either (1) the state court applied a rule that contradicts the governing law set forth by Supreme Court case law, or (2) when faced with materially indistinguishable facts, the state court arrived at a result different from that reached in a Supreme Court case.
>
> A state court conducts an "unreasonable application" of clearly established federal law if it identifies the correct legal rule from Supreme Court case law but unreasonably applies that rule to the facts of the petitioner's case. An unreasonable application may also occur if a state court unreasonably extends, or unreasonably declines to extend, a legal principle from Supreme Court case law to a new context. Notably, an "unreasonable application" is an "objectively unreasonable" application.

Putman v. Head, 268 F.3d 1223, 1241 (11th Cir. 2001)(citations omitted). More specifically, addressing a question under the AEDPA standard is necessarily different and more demanding than addressing it *de novo*. Richter, 131 S. Ct. at 786. For instance, if the claim involves, as it did in Richter, application of Strickland v. Washington, 466 U.S. 668 (1984), "a state court must be granted a deference and latitude that are not in operation when the case involves review under the Strickland standard itself." Richter, 131 S. Ct. at 785. The Richter Court also observed, "If this standard is difficult to meet, that is because it was meant to be." Id. at 786.

The second requirement is that there be clearly established federal law. The AEDPA standard forbids a federal habeas court from granting habeas relief unless the law is clearly established. The AEDPA limits the source of law to cases decided by the United States Supreme Court. See 28 U.S.C. § 2254(d). The reviewing court may

consider only the clearly established" holdings, and not the dicta, of the Supreme Court. Williams v. Taylor, 529 U.S. 362, 412 (2000). As this Court in a recent *en banc* decision noted, the AEDPA prevents courts from engaging in broad readings of Supreme Court cases. Childers v. Floyd, 642 F.3d 953, 975 (11th Cir. 2011) (explaining that "broad language, i.e., *dicta*, does not permit us to expansively apply the Court's holdings far beyond the facts of those cases.").

The third requirement is that the clearly established law must be from a United States Supreme Court case. In an AEDPA case, the analysis is limited to United States Supreme Court precedent. As this Court has explained, clearly established federal law "is not the case law of the lower federal courts, including this Court" rather it is limited to the United States Supreme Court. Putman v. Head, 268 F.3d 1223, 1241 (11th Cir. 2001). While ordinarily a litigant can ask a lower federal court for an innovative constitutional interpretation, "that path is closed" in a AEDPA habeas case. Baird v. Davis, 388 F.3d 1110, 1115 (7th Cir. 2004). The decisions of the lower federal court may not be invoked as a basis for granting habeas relief.

Summarizing this law and applying it to this appeal, there must be a United States Supreme Court case directly on point which holds that a criminal statute imposing strict liability[7] is a violation of the Due Process Clause before the district court can grant federal habeas relief. There is no such a case. In fact, the Supreme Court has specifically upheld statutes which place the burden on the defendant to prove part of the *mens rea* relevant to his defense.

Specifically, in Patterson v. New York, 432 U.S. 197 (1977), the United States Supreme Court held that New York's statute which made the mental state of acting

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[7]Later in this brief, Appellant will address why Florida's statutes are not even strict liability offenses. However, for the district court's position to be upheld, there would have to be a United State Supreme Court rejecting strict liability offenses.

under the influence of extreme emotional distress an affirmative defense did not violate due process. Patterson was charged with second-degree murder for the shooting death of a man whom he caught with his estranged wife. Id. at 198. New York mitigated murder to manslaughter based on "extreme emotional disturbance" but made establishing the mental state an affirmative defense that the defendant had to establish by a preponderance of the evidence. Id. at 199-201. Patterson argued that because extreme emotional disturbance affected the degree of the crime, it was necessarily an element. Id. In New York, second-degree murder had two elements: 1) intent to cause the death of another person and 2) causing a death. It did not require malice. Id. At trial, the jury was instructed that if it found Patterson had demonstrated by a preponderance of the evidence that he had acted under the influence of extreme emotional disturbance, it had to find him guilty of manslaughter instead of murder. Id. The Patterson Court explained the affirmative defense of "extreme emotional disturbance" was just an expanded version of the common-law defense of heat of passion. The Patterson Court also noted that at common law the burden of proving the heat of passion, as well as all other affirmative defenses, rested on the defendant. Patterson, Id. at 202.

The Patterson Court declined "to adopt as a constitutional imperative, operative countrywide, that a State must disprove beyond a reasonable doubt every fact constituting any and all affirmative defenses related to the culpability of an accused." Patterson, 432 U.S. at 210. The Court noted that traditionally, "due process has required that only the most basic procedural safeguards be observed; more subtle balancing of society's interests against those of the accused have been left to the legislative branch." Id. The Patterson Court concluded that the statute did not violate due process. See also Medina v. California, 505 U.S. 437 (1992) (holding a statute placing the burden of proving incompetency to stand trial on the defendant by a

preponderance did not violate due process); Martin v. Ohio, 480 U.S. 228 (1987) (Ohio's requirement that the defendant has the burden of proving self-defense in a murder case does not violate due process.); Leland v. Oregon, 343 U.S. 790 (1952) (holding a statute placing the burden of proving insanity on the defendant by a beyond a reasonable doubt did not violate due process).

Clearly, Patterson supports the proposition that the state may make part of the mental state of a very serious crime, homicide, an affirmative defense. In its order, the district court seems to view Patterson as not controlling because the prosecution still had to prove an intent to kill as an element. In other words, the statute at issue in Patterson made only part of the mental state an affirmative defense. Even if Patterson could be limited in this manner, then the question of whether a State can make the entire mental state an affirmative defense is an open question. Thus, as stated above, there is no United States Supreme Court case on point contrary to the state court holdings as required by the AEDPA.

Again, the key question is whether there is a United States Supreme Court case that holds that every criminal offense must contain an intent in order for it not to violate the Constitution. In fact, the United States Supreme Court has stated that no single rule resolves whether a crime must require intent to be valid, "for the law on the subject is neither settled nor static." Morissette v. United States, 342 U.S. 246, 260 (1952). While "the existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence," strict liability offenses are not unknown to the criminal law and "do not invariably offend constitutional requirements." United States v. U.S. Gypsum Co., 438 U.S. 422, 436-37 (1978); Powell v. Texas, 392 U.S. 514, 535 (1968) (noting that despite its preference for a *mens rea* requirement when interpreting criminal statutes, "this Court has never articulated a general constitutional doctrine of *mens rea*."); Smith v.

California, 361 U.S. 147, 150 (1959) (states may "create strict criminal liabilities by defining criminal offenses without any element of scienter."); Lambert v. California, 355 U.S. 225, 228 (1957) ("We do not go with Blackstone in saying that a 'vicious will' is necessary to constitute a crime ... for conduct alone without regard to the intent of the doer is often sufficient. There is wide latitude in the lawmakers to declare an offense and to exclude elements of knowledge and diligence from its definition."); Williams v. North Carolina, 325 U.S. 226, 238 (1945) ("The objection that punishment of a person for an act as a crime when ignorant of the facts making it so, involves a denial of due process of law has more than once been overruled."); Chicago, B. & Q. Ry. v. United States, 220 U.S. 559, 578 (1911) ("The power of the legislature to declare an offense, and to exclude the elements of knowledge and due diligence from any inquiry as to its commission, cannot, we think, be questioned."); Shevlin-Carpenter Co. v. Minnesota, 218 U.S. 57, 70 (1910) ("[P]ublic policy may require that in the prohibition or punishment of particular acts it may be provided that he who shall do them shall do them at his peril and will not be heard to plead in defense good faith or ignorance.").

As one district court noted, "50 years later, there still is no criteria for determining when a criminal intent is required and when it is not." United States v. Parks, 411 F. Supp. 2d 856, 855 (S.D. Ohio 2005). Indeed, one of the main cases relied on by the district court, Staples v. United States, 511 U.S. 600, 619-20 (1994), noted that the holding was a "narrow one" that was not intended to "delineate a precise line or set forth comprehensive criteria for distinguishing between crimes that require a mental element and crimes that do not."

Additionally, there are numerous serious, criminal offenses at the state and federal level that have a severe penalty and have no *mens rea* or a limited one. For example, the Tenth Circuit rejected a due process challenge to the federal rape statute

when the defendant was sentenced to eleven years for having sex with someone under the age of twelve (12). United States v. Ransom, 942 F.2d 775 (10th Cir. 1991).[8] This Court also recognized that possession of a firearm by a convicted felon under the federal statutes is a strict liability offense. United States v. Sistrunk, 622 F.3d 1328 (11th Cir. 2010). Yet, another example is DUI manslaughter. Pre-AEDPA, this Court rejected a due process challenge to Florida's DUI manslaughter statute and the issue of causation in Armenia v. Dugger, 867 F.2d 1370 (11th Cir. 1989). This Court favorably cited the district court's rejection of the defendant's argument and the district court's quoting of the similar case of Caibaiosai v. Barrington, 643 F. Supp. 1007 (W.D. Wis. 1986). Specifically, this Court included the following quote:

> The issue raised by petitioner's challenge to § 940.09 [Wisconsin's drunk-driving manslaughter statute] is not whether the legislature made a wise choice in defining the offense, but whether the statute offends a fundamental principle of justice.... It is significant that plaintiff can point to no case in which a court has invalidated a felony-murder conviction on constitutional grounds, although most felony-murder statutes require no proof of specific culpability with respect to the murder. Generally, the state is required to prove only the culpability specified for the underlying crime. Despite scholarly criticism of such statutes that impose an additional penalty for the death of another without any independent proof of blameworthiness for the death, the courts have not held them invalid.
>
> In this case, I am convinced that it is not fundamentally unfair to impose felony liability based upon proof that the defendant's operation of a motor vehicle caused the death of another and that the defendant operated the vehicle while under the influence of an intoxicant. Accordingly, I conclude that § 940.09 does not violate the substantive protections of the due process clause. [Citations and footnotes omitted.] Caibaiosai v. Barrington, 643 F.Supp. at 1012-13.

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[8]Of course, almost every jurisdiction has a statutory rape statute that subjects defendants to severe penalties with absolutely no defense as to lack of knowledge of the victim's age.

Id. at 1372-1373. At the conclusion of the opinion, this Court wrote:

> No federal constitutional violation exists in this case. The Florida Supreme Court's application and interpretation of Florida's DWI-manslaughter statute do not violate federal due process. Florida has chosen to take a harsh stance against drunken driving; it is Florida's prerogative to do so. Because we cannot establish a due process violation, Armenia's claim becomes only a question of state law. Logically, questions of pure state law do not raise issues of constitutional dimension for federal habeas corpus purposes. A state's interpretation of its own laws or rules provides no basis for federal habeas corpus relief.

Id. at 1376.

Clearly, there is no Supreme Court precedent which holds that a State may not create a strict liability crime with significant penalties. Given this point, the district court's order should be reversed for failing properly to apply properly the AEDPA.[9] (Furthermore, as noted above, Florida's drug statute does not even create a true strict liability crime as will be explained more fully below).

MERITS

Even if the AEDPA allowed and authorized the intervention by the district court, all that would do is allow a *de novo* review of Florida's drug laws. Such an analysis still fails to support the district court's determination that Florida's statute is facially unconstitutional.

Initially, the State of Florida would point out that the district court wrote, "Because Fla. Stat. section 893.13 imposes harsh penalities, gravely besmirches an individual's reputation, and regulates and punishes otherwise innocuous conduct without proof of knowledge or other criminal intent, the Court finds it violates the

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[9]Of interest, this exact claim was reviewed and rejected by a different middle district of Florida court. The court in Knox v. Sec'y of Florida, et al., case no.: 3:10-cv-306-J-20TEM (M.D. Fla. Aug. 11, 2011), accepted the rulings of the Florida courts that the statute did not violate due process as well as recognized that there is no United States Supreme Court holding otherwise.

due process clause and that the statute is unconstitutional on its face." (Order at page 29). Section 893.101 arguably applies to all of Florida's drug statutes; therefore, it appears the district court declared all of Florida's drug statutes to be facially unconstitutional. This decision fails on its merits for numerous reasons as will be addressed below.

First, Shelton should not even be permitted to raise a facial constitutional challenge to Florida's drug statute. Facial challenges are disfavored by the United States Supreme Court. Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 450-451 (2008) (explaining facial invalidity are disfavored because they often rest on speculation; are contrary to the fundamental principle of judicial restraint and frustrate the intent of the elected representatives of the people. Recently, the United States Supreme Court reiterated that defendant "who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." Holder v. Humanitarian Law Project, - U.S. -, 130 S. Ct. 2705, 2719, 177 L. Ed. 2d 355 (2010)(quoting Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 (1982)); see also United States v. Ibarguen-Mosquera, 634 F.3d 1370, 1379-1380 (11th Cir. 2011)(stating that "except in First Amendment cases, a party who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others" citing Humanitarian Law). Basically, defendants raising due process claims are not permitted to raise facial constitutional attacks. Rather, those defendants are limited to as-applied challenges and must argue that the statute is unconstitutional as applied to their actual conduct. While Humanitarian Law concerned a due process lack of notice claim, the same logic applies to any substantive due process concerns as to lack of *mens rea*.

Shelton was charged with delivering crack cocaine during a controlled drug

buy. (Doc. 8, A 139-147). He testified at trial and stated that the informant called him on October 5, 2004, trying to buy crack cocaine, but Shelton stated he told the informant he had nothing to sell. (Doc. 8, B 274-275). Shelton admitted the informant got into Shelton's car, but he stated he did not sell him anything. (Doc. 8, B 274-278). The jury found Shelton guilty as charged. (Doc. 8, A 86-94). Shelton, who knowingly sold drugs and who cannot personally have any legitimate claim that he did not know that he was selling crack, engaged in conduct that is at the very core of Florida's drug statute. His own conduct was "clearly proscribed" by this drug statute. Shelton, as a guilty seller of drugs, is barred from raising the due process rights of a hypothetical innocent possessor or innocent deliverer. Shelton should be limited to constitutional challenges based on his own conduct, and any as-applied constitutional challenge based on his own conduct necessarily fails.

The United States Supreme Court has established a quite rigorous test for facial constitutional attacks on statutes. Under United States v. Salerno, 481 U.S. 739 (1987), Shelton had to establish that "no set of circumstances exists" under which the statute would be valid. Id. at 745. To meet the Salerno test, a defendant would have to establish that under no circumstances is Florida's drug statute valid - an obviously impossible task given that drug dealers knowingly sell drugs everyday.

Florida's statute covers several different types of conduct. The statute covers "sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance." In the vast majority of possession and delivery cases, knowledge is simply not at issue. Furthermore, there is no such thing as an innocent sale. It is an oxymoron. The act of the sale itself establishes that the defendant had knowledge that the substance he was selling was an illegal drug. One simply cannot offer to sell a substance and then claim his conduct was unknowing anymore than one can "innocently" manufacture drugs. Given that every sale's case is a set of

circumstances where the statute is valid as is every case involving manufacturing, the statute easily meets Salerno.

Furthermore, at no point in the district court's order was Salerno cited or employed. In fact, no recognized test for facial constitutionality was employed by the district court. Instead, the district court relied mainly on Staples v. United States, 511 U.S. 600, 619-20 (1994), and United States v. X-Citement Video, Inc., 513 U.S. 64, 68 (1994), to determine whether the statute was a strict liability crime and whether it violated due process, thus, making it facially unconstitutional. However, Staples addressed the situation when the legislature had failed to address *mens rea,* and the statute was silent as to an intent element. In those limited situations, those cases address when a court should read a *mens rea* element into a statute. The district court, however, overlooked that the Court also stated, "Of course, if Congress thinks it necessary to reduce the Government's burden at trial to ensure proper enforcement of the Act, it remains free to amend § 5861(d) by explicitly eliminating a *mens rea* requirement." Staples, 511 U.S. at 616, n. 11. Florida's statute is not silent; the Florida legislature specifically addressed how *mens rea* should be applied.

Another issue with the district court's order is that it finds that Florida's statute is facially unconstitutional but remands the case for resentencing. Specifically, the district court wrote, "A writ of habeas corpus shall issue unless within 90 days, the State of Florida vacates Petitioner's conviction and sentence with respect to Count IV [the delivery count] and begins new sentencing proceedings against Petitioner regarding the same." The order finds the penalties under Florida's statute to be too severe. Interestingly, one could argue that under the expansive manner the order is written all of Florida's drug statutes are found to be unconstitutional - including our misdemeanor, simple possession charges. However, the order does cite to two conflicting circuit opinions which allow, respectfully, a two year sentence or a one

year sentence. United States v. Engler, 806 F.2d 425 (3d Cir. 1986); United States v. Wulff, 758 F.2d 1121 (6th Cir. 1985).[10] Which of these "optional" sentences is constitutional is not resolved by the district court; however, the district court did apply those cases to Shelton's sentence and found that his sentence violated due process.

Regardless of the fact that the incorrect analysis was conducted by the district court, Appellant will address why Florida's statute does not violate due process. Contrary to the district court's ruling, Florida's statute does not make its drug offenses strict liability crimes. A true strict liability statute imposes criminal sanctions regardless of fault. In a strict liability crime, *meas rea* is not an element and it is not a defense. If a defendant is allowed to raise his blamelessness as an affirmative defense, then fault is being considered and the crime is not a strict liability crime. As the United States Supreme Court has defined a true strict liability crime, "the guilty act alone makes out the crime." Morissette, 342 U.S. at 256. In a true strict liability crime, the defendant is not allowed to present any mistake defense and is not entitled to a jury instruction explaining that if the defense is true, the jury should acquit. Kennedy v. Louisiana, 554 U.S. 407, 423 (2008) (because a mistake of age is not a defense, the statute imposes strict liability).

Professor LaFave, in his criminal law treatise, lists placing the burden on the defendant to prove his "lack of guilty intent" as an alternative to strict liability, not as a form of strict liability. Wayne R. LaFave & Austin W. Scott, Jr., Criminal Law § 3.8(d) at 249 (2d ed. 1986). One law review article describes strict liability offenses

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[10]Each of these circuit cases dealt with the federal migratory bird act and the fact it was a strict liability offense (and Florida's statute is not). Neither case involved federal habeas review of a state statute, neither case was conducted under the deferential standard required under Section 2254, and neither of these cases is a United States Supreme Court case.

"as those in which the sole question put to the jury is whether the jury believes the defendant to have committed the act proscribed by the statute" and that "proof of his state of mind is irrelevant." See Richard A. Wasserstrom, Strict Liability in the Criminal Law, 12 Stan. L. Rev. 731, 733 (1960) (criticizing many of the arguments advanced against strict liability).

In another law review article, the writer noted that it "is fundamentally unsound to convict a defendant for a crime involving a substantial term of imprisonment without giving him the opportunity to prove his action was due to an honest and reasonable mistake of fact or that he acted without guilty intent" and then advocated "shifting to the shoulders of the defendant the burden of proving lack of guilty intent." Francis B. Sayre, Public Welfare Offenses, 33 Colum. L. Rev. 55, 82 (1933); In other words, this well-known law review article advocated that affirmative defenses should be permitted as an alternative to strict liability crimes which is just what Florida did.

Under any of these definitions, Florida's drug statute is not a strict liability one. It does not impose "absolute liability" because the statute allows a "defense based upon *mens rea*." Simply put, unlike the concerns expressed in the district court's order, innocent possessors or innocent delivers are not criminally liable under Florida's drug statute. Such innocent possessors are not guilty of violating Florida's drug laws since the statute created the affirmative defense. A defendant charged with a violation of Florida's drug statute may assert that he did not know that he possessed drugs by raising the affirmative defense of lack of knowledge. If the jury believes that he lacked knowledge of the presence of the drugs, the jury must acquit him.

The Florida Legislature did not intend to create a true strict liability crime. Florida was well aware of the concerns presented by a strict liability offense. In fact, the Senate Staff Analysis warned that "dispensing with scienter would criminalize a

broad range of apparently innocent conduct" and gave as an example "a mail carrier's unknowing delivery of a package which contained cocaine." Senate Staff Analysis of Crim. Justice Comm., CS/SB 2300 at p.3 (March 9, 2002). With this in mind, the Florida Legislature did not dispense with scienter; rather, the Florida Legislature made scienter a defense. The Florida Legislature did not intend to punish innocent delivery. The mail carrier would be entitled to present his unknowing delivery as a defense, and if the jury believed him, he would not be criminally liable.

Furthermore, the district court's order indicated that Florida stood alone in making lack of knowledge an affirmative defense. It does not.[11] The State of Washington also makes "unwitting" possession an affirmative defense. Washington v. Bradshaw, 98 P.3d 1190, 1195 (Wash. 2004), cert. denied, 544 U.S. 922 (2005)(The Washington Supreme Court upheld its statute which was similar to Florida's and rejected the defense's argument that a different result was required by Staples and Morissette.). Under the law as set out by the district court in the instant case, Washington's drug statute would also be facially unconstitutional.

Additionally, often states require a defendant to show innocent ownership as to prescription drugs. Defendants are required to produce a valid prescription and even the original container. As the Fifth Circuit has noted in a prescription defense

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[11]Even if it did stand alone, that would not make it unconstitutional. Uniqueness does not reduce a statute to unconstitutional status. To the contrary, one of the justifications for federalism is that states can serve as laboratories including in the area of criminal law. United States v. Lopez, 514 U.S. 549, 581 (1995)(Kennedy, J., concurring)(noting the states' role "as laboratories for experimentation to devise various solutions where the best solution is far from clear"). As Justice Harlan observed, "one of the great strengths of our federal system is that we have, in the forty-eight States, forty-eight experimental laboratories." Roth v. United States, 354 U.S. 476, 505 (1957)(Harlan, J., concurring and dissenting). Of course, states cannot serve as laboratories if simply being different reduces their efforts to an automatic unconstitutional status. The United States Supreme Court has specifically rejected the "view that anything in the Due Process Clause bars States from making changes in their criminal law that have the effect of making it easier for the prosecution to obtain convictions." McMillan v. Pennsylvania, 477 U.S. 79, 89, n.5 (1986).

case, a defendant is in the best position to possess knowledge of the facts necessary to prove the defense - the prescribing doctor, the reason for the prescription, and the location from which the controlled substance was obtained. Woods v. Butler, 847 F.2d 1163, 1166 (5th Cir. 1988). The Fifth Circuit in Woods concluded that a Louisiana statute which made having a valid prescription an affirmative defense to crime of possession of controlled substance did not violate due process. The Fifth Circuit noted that both Texas and Idaho, as well as Louisiana, had made having a valid prescription an affirmative defense. Id. at 1166, n. 2. Florida has also made having a prescription an affirmative defense. § 893.13(6), Florida Statutes; McCoy v. Florida, 56 So. 3d 37 (Fla. 1st DCA 2010). The district court's ruling in this case would seem to find all states' statutes which make having a prescription an affirmative defense to be unconstitutional.

Yet another flaw in the district court's analysis is its finding that Florida's statute is unconstitutional because it creates a "social stigma." (Doc. 38, p. 16). It cites United States v. Heller, 579 F.2d 990 (6th Cir. 1978),[12] to support this finding. Interestingly, Heller discussed in detail the difference between *malum prohibitum* crimes and *malum in se* crimes citing Morissette. Morissette, 342 U.S. 246 (1952). However, in Morissette, the Supreme Court distinguished more regulatory violation offenses from crimes against the State and against the public welfare. Specifically, it acknowledged the validity of strict liability in statutory rape offenses as well as in certain other public welfare offenses. In fact, the Court wrote,

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[12]Appellant would again repeat the point, Heller is neither a United States Supreme Court case nor was its review conducted under the deferential standard required under Section 2254.

> However, the Balint[13] and Behrman[14] offenses belong to a category of another character, with very different antecedents and origins. The crimes there involved depend on no mental element but consist only of forbidden acts or omissions. This, while not expressed by the Court, is made clear from examination of a century-old but accelerating tendency, discernible both here and in England, to call into existence new duties and crimes which disregard any ingredient of intent. The industrial revolution multiplied the number of workmen exposed to injury from increasingly powerful and complex mechanisms, driven by freshly discovered sources of energy, requiring higher precautions by employers. Traffic of velocities, volumes and varieties unheard of came to subject the wayfarer to intolerable casualty risks if owners and drivers were not to observe new cares and uniformities of conduct. Congestion of cities and crowding of quarters called for health and welfare regulations undreamed of in simpler times. Wide distribution of goods became an instrument of wide distribution of harm when those who dispersed food, drink, drugs, and even securities, did not comply with reasonable standards of quality, integrity, disclosure and care. Such dangers have engendered increasingly numerous and detailed regulations which heighten the duties of those in control of particular industries, trades, properties or activities that affect public health, safety or welfare.

Id. at 252. Therefore, even Morissette fully recognized the legality and necessity of regulating behavior like drugs sales.

The district court's order continues by noting that the State's argument in support of its statute could lead to an innocent person being charged and having the burden to prove he or she did not have the required intent to commit the offense, thus, creating a Hobson's choice for the person. (Doc. 38, p. 28). The district court labeled this a "tough luck" backhanded retort by the state in defending the statute. Id. However, the State would counter that such a choice is made in cases as serious as

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[13]Balint, 258 U.S. 250 (1922) (Court conducted a legislative intent analysis of drug statute that lacked a *mens rea* and specifically found no due process violation.)

[14]United States v. Behrman, 258 U.S. 280 (1922) (Court upheld indictment of doctor for selling narcotics. Issue was fact indictment failed to contain any intent or knowledge element, and Court upheld charge since the offense charged was based on a statute which had no such elements.).

murder on a frequent basis. Killing someone may lead to homicide charges; however, a person who does so can prove to the jury that he was acting in self-defense. If the defendant fails to convince the jury, he or she would be convicted. Placing such a "burden" on a charged defendant does not render the statute with such a defense to be facially unconstitutional Furthermore, during the investigation of the offense, often defenses are accepted by law enforcement and prosecutors leading to people not being arrested or charged. For example, people are arrested for not having the required prescription on their person; however, if the documentation is later produced, charges are often not filed. Again, such requirements do not render statutes to be unconstitutional.

So, first, it appears States can make selling drugs a strict liability crime even if it may stigmatize defendants convicted of doing so. Additionally, while the district court takes issue with the social stigma involved, the State of Florida would counter with the fact that such does not make the statute unconstitutional. Driving offenses like DUI manslaughter often carry automatic penalties and high social stigma, but yet the States are left to punish such acts, severely. Again, statutory rape carries much social stigma and penalties up to automatic life sentences.[15] Those type of offenses either are strict liability ones or are closer to such than the instant offense.

A defendant is the one with intimate, personal knowledge of his own mental state. The defendant knows what he knew and at what point he knew it.. Shelton was present at the undercover drug buy. In the instant case, Shelton chose not to present an affirmative defense as to his knowledge. Instead, Shelton presented the defense that there was no delivery. That defense was rejected by the jury. Shelton's conviction

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[15]In Florida, sexual battery of a child under twelve is an automatic life sentence with no chance of parole. See section 794.011(2), Fla. Stat.; see also Adaway v. Florida, 902 So. 2d 746 (Fla. 2005) (Florida Supreme Court rejected a challenge that the mandatory life sentence without parole violated the cruel and unusual clause.).

and Florida's statute do not violate due process.

CONCLUSION

Based upon the arguments and authorities presented herein, the State of Florida respectfully requests this Court reverse the district court's order finding Florida's drug statutes to be unconstitutional.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 773026
444 Seabreeze Boulevard
Suite 500
(386) 238-4990/fax 238-4997
Daytona Beach, FL 32118
Wesley.Heidt@MyFloridaLegal.com

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was furnished by United Parcel Service to James E. Felman, Esquire, and Katherine Earle Yanes, Esquire, at Kynes, Markman & Felman, P.A., P.O. Box 3396, Tampa, FL 33601-3396, this 12th day of September 2011, and that in compliance with 11th Cir. R. 31-5, an Adobe Acrobat PDF file of the above brief was uploaded to this Court's website on September 12, 2011.

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL

WRITING SAMPLE

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

CASEY MARIE ANTHONY,

Appellant,

v. CASE NO.: 5D11-2707

STATE OF FLORIDA,

Appellee.
_____/

STATE'S RESPONSE TO EMERGENCY PETITION

COMES NOW the State of Florida requesting that this Court deny the requested relief. As grounds supporting this response, the State offers the following facts and argument:

1. On January 25, 2010, Ms. Anthony pled to thirteen (13) counts in case 48-08-CF-013331-O.[1] Judge Strickland was the presiding judge in this case, and part of the sentence imposed was one year of probation which was orally pronounced to begin upon her release from incarceration.[2]

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[1] This Court ordered Petitioner to provide copies of the sentencing hearings held on January 25, 2010, and August 5, 2011, by noon on Tuesday August 23, 2011. The prosecutor was able to provide the undersigned a copy of the January 25, 2010, which is being attached as an appendix. However, the undersigned was not able to obtain a copy of the August 2011 hearing and was not able to review that hearing prior to the due date of this response.

[2] At the time of the imposition of probation, Ms. Anthony was being held in jail to face charges in case no.: 48-2008-0015606-O.

2. While the oral pronouncement was clear that probation would commence when Ms. Anthony was released, it appears that it was interpreted by the Department of Corrections as running while she was in jail. Additionally, the Department of Corrections sent her a letter on January 25, 2011, notifying her that she had completed her probation.

3. Judge Strickland *sua sponte* entered an order on July 29, 2011, which attempted to reiterate that probation was intended to begin upon Ms. Anthony's release from jail.[3]

4. On August 2, 2011, Judge Strickland recused himself, and evidently the order he entered was stayed with Judge Perry entering the case.[4]

5. Also, on August 2, 2011, Ms. Anthony filed a pleading entitled "Emergency Motion for Hearing to Quash, Vacate, and Set Aside Court's Order." (Defense's appendix.: E).

6. A hearing was held on August 5, 2011, and on August 12, 2011, a detailed order was entered finding that probation was not

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[3] Presumably, because she was sentenced on her other case on July 7, 2011, and the error only, then, came to his attention.

[4] Petitioner addresses in detail concerns about Judge Strickland, his delayed recusal, and his bias. However, Florida Rule of Judicial Administration 2.160(h) allows a successor judge to reconsider rulings that the disqualified judge made before disqualification, and any concerns Petitioner may have had about the initial judge were cured after substitution and review by the new judge. See Richardson v. State, 821 So. 2d 428 (Fla. 5th DCA 2002) (Defendant is not entitled to presumption of vindictiveness given that new sentence was imposed by different judge.).

supposed to commence until Petitioner was released and ordering Ms. Anthony to report "no later that 12:00 p.m. on August 26, 2011...."

7. On August 18, 2011, Petitioner filed the instant emergency petition for writ of prohibition submitting that the trial court's August 12th order was executed without jurisdiction and violates double jeopardy. On August 19, 2011, this Court has ordered the State to respond.

ARGUMENT

It is undisputed that on January 25, 2010, the trial court imposed one year of probation on Ms. Anthony to be served "once released" from being incarceration on her other case. (A 5). The fact that she would not be serving that probation while in jail appeared clear to defense counsel given he countered that any concerns as to when Ms. Anthony would begin probation could be solved by releasing her on bond on the pending homicide case; thus, allowing her to begin her probation instantly when out of jail. (A 8).[5] Even if the written order was inconsistent with the oral pronouncement, Petitioner acknowledges that it is well settled law that oral pronouncements control over any discrepancies in the

[5] This comment came after there was some discussion at the hearing as to the logistics of serving probation without an exact date to begin since she was being held in jail in the other case. During this discussion, the prosecutor made a statement about Ms. Anthony serving the probation while in jail (A 8) and defense counsel suggested bond, release, and, then, probation. However, none of these suggestions changed the fact the sentence imposed by the trial judge was for probation to begin after Petitioner's release from jail.

written document. See Williams v. State, 957 So. 2d 600, 603 (Fla. 2003).

Therefore, Petitioner's argument is that although knowing she was to serve the probation only after being released from jail some type of administrative error led the Department of Corrections to treat the probation as running while she was in jail. Then, she successfully completed this "probation," and the trial court cannot now find that probation was not properly completed. Respectfully, the State disagrees.

The primary goals of probation are to impose conditions so that: (1) the probationer will be rehabilitated; (2) society will be protected from future criminal violations by the probationer; and (3) the crime victim's rights will be protected. Woodson v. State, 864 So. 2d 512, 516 (Fla. 5th DCA), review dismissed, 889 So. 2d 823 (Fla. 2004); see also Grubbs v. State, 373 So. 2d 905, 909 (Fla. 1979)("Protection of the public is an important and proper consideration by the trial judge when determining whether probation or confinement should be imposed."); Bernhardt v. State, 288 So. 2d 490, 494 (Fla. 1974)("It is well settled that the primary purpose of probation is to rehabilitate the individual while he is at liberty under supervision."); Spry v. State, 750 So. 2d 123, 124-125 (Fla. 2d DCA 2000)("[i]t is necessary to bear in mind the various purposes sought to be served by probation as a substitute for penitentiary custody. The freedom of the individual

is only one of the desiderata. Rehabilitation and public safety are others.") (quoting from Sobota v. Williard, 247 Or. 151, 427 P.2d 758, 759 (1967)); Crossin v. State, 244 So. 2d 142, 145 (Fla. 4th DCA 1971) ("The underlying purpose of probation is to give the individual a second chance to live within the rules of society and the law of the land during which time he can prove that he will thereafter do so and become a useful member of society. A grant of probation is a matter of grace and not of right, such grant being subject to revocation at any time the court determines that the probationer has violated the terms and conditions thereof.").

Knowing that it is a matter of grace, the court originally imposed probation to be served following her release from incarceration.[6] Legally, it is clear that a defendant cannot serve probation while incarcerated. As this Court wrote in Jones v. State, 964 So. 2d 167, 170-171 (Fla. 5th DCA 2007):

> It is well settled that a defendant cannot serve a prison term and be on probation simultaneously. Porter v. State, 585 So. 2d 399, 400 (Fla. 1st DCA 1991). To hold otherwise would be inconsistent with the rehabilitative concept of probation which presupposes that the probationer is not in prison confinement. Id. Any term of probation presumed to run when the defendant cannot be supervised would be

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[6] Furthermore showing that probation is to be served only once released are the very conditions of probation such as: not changing your residence, not possessing firearms, remaining at liberty without violating new laws, not using intoxicants, attempting to work diligently, submitting to a reasonable search, etc. One cannot even attempt to comply with these type of conditions while incarcerated (or the conditions are made nonsensical).

a nullity. Id. As this court explained in State v. Savage, 589 So. 2d 1016, 1018 (Fla. 5th DCA 1991):

> Simple logic would seem to dictate that, where a defendant is incarcerated ..., a probationary period from an unrelated sentence would be tolled since a probationary term should not be allowed to expire simply because a defendant has decided to incur new prison time as a result of a separate and distinct offense.

So, while seeming to acknowledge that the intent of the trial court was for the probation to be served after her release, and while failing to address how one can lawfully serve probation while incarcerated, Petitioner asserts that the error cannot now be corrected submitting that the "probation" had already been completed.

The error in Petitioner's argument is that the court was not modifying a completed sentence; instead, the court was simply attempting to ensure the previously imposed, and never served, probation was begun. The one year of probation imposed tolled while Ms. Anthony was in jail. Upon her release, she should have reported. Admittedly, the treatment of her by the Department of Corrections was not executed with the greatest clarity; regardless, when this error became known to the trial court, the error was corrected.

In addition to arguing that the trial court lost jurisdiction over her, Petitioner also submits that the trial court's order violated double jeopardy. The United States Supreme Court has

written, "That guarantee [against double jeopardy] has been said to consist of three separate constitutional protections. It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense." North Carolina v. Pearce, 395 U.S. 711, 717 (1969). It is this last prohibition that Petitioner submits was violated. However, the Court also noted in U.S. v. DiFrancesco, 449 U.S. 117, 133-134 (1980), when it was distinguishing sentencing issues from convictions:

> Historically, the pronouncement of sentence has never carried the finality that attaches to an acquittal. The common-law writs of *autre fois acquit* and *autre fois convict* were protections against retrial. . . . Although the distinction was not of great importance early in the English common law because nearly all felonies, to which double jeopardy principles originally were limited, were punishable by the critical sentences of death or deportation, . . . it gained importance when sentences of imprisonment became common. The trial court's increase of a sentence, so long as it took place during the same term of court, was permitted. This practice was not thought to violate any double jeopardy principle. . . . The common law is important in the present context, for our Double Jeopardy Clause was drafted with the common-law protections in mind. ...

(Citations omitted).

Consistent with that holding, the United States Supreme Court in Bozza v. United States, 330 U.S. 160 (1947), held that double jeopardy did not preclude a district court from increasing a sentence when a minimum mandatory term was mistakenly omitted.

Bozza was convicted of carrying on a distillery business with the intent to willfully defraud the United States of the tax on spirits. Id. at 162. The trial court originally sentenced Bozza to prison, but failed to impose the statutorily required fine of one hundred dollars. Five hours later, Bozza was returned to the courthouse from the local detention facility and the mandatory fine was imposed. Id. at 165. The Court rejected an interpretation of double jeopardy that allowed a defendant to "escape punishment altogether, because the court committed an error in passing sentence." Id. at 166. The Court explained that sentencing is not "a game in which a wrong move by the judge means immunity for the prisoner." Id. at 166-167.

Consistent with this United States Supreme Court law, an Ohio appellate court found that the Double Jeopardy Clause did not preclude the imposition of a mandatory prison term upon vacation of a previously paid fine in Ohio v. Vaughn, 462 N.E.2d 444 (Ohio 1st DCA 1983). The Ohio appellate court wrote:

> Under the Double Jeopardy Clause, a defendant has a shield against sentences that exceed the legislative enactment, but this cannot be used as a sword to cut down his penalty to less than that which the legislature has clearly and unmistakably imposed on the offense of which he stands guilty. The defendant's interest in the finality of his sentence is, in this instance, outweighed by society's interest in enforcing the law and meting out what has been duly designated as just desserts.

Id. at 447-448.

While Bozza and Vaughn involved correction of legislatively mandated sentences which had been omitted, the principle that such correction does not violate double jeopardy - whether legislatively mandated or judicially imposed - is the same. Petitioner should not be allowed to take advantage of an administrative error and create a free pass. She, in essence, would be using the erroneous actions of the Department of Corrections as a sword to bypass the known intent of the sentencing court and the very purpose of probation - supervised release. Under the case law cited above, double jeopardy does not bar the trial court's correction.

So, given that the probation was tolling while Petitioner was incarcerated, the trial court had jurisdiction to clarify, and given that trial court's correction of any perceived error does not violate double jeopardy, the instant order should be affirmed on appeal. Petitioner, to date, has yet to serve the one year of probation she was ordered to complete. The trial court simply is attempting to achieve the originally ordered sentence.

WHEREFORE, the State respectfully requests this Court deny Petitioner's writ of prohibition and requests this Court affirm the trial court's order that Petitioner serve her one year of probation.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #0773026
FIFTH FLOOR
444 SEABREEZE BLVD.
DAYTONA BEACH, FL 32118
(386) 238-4990/FAX 238-4997
Wesley.Heidt@MyFloridaLegal.com

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. mail and by electronic mail to counsel for Jose Baez, Esquire, The Baez Law Firm, office@baezlawfirm.com, 522 Simpson Road, Kissimmee, FL 34744; J. Cheney Mason, Esq., cheneylaw@aol.com; Lisabeth Fryer, Esq., Lisabeth@LisabethFryerLaw.com, 390 North Orange Avenue, Suite 2100, Orlando, FL 32801, this _____ day of August 2011.

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL

WRITING SAMPLE

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

STATE OF FLORIDA,

Appellant,

v. CASE NO.: 5D08-2196

KENNETH HALPIN,

Appellee.
_____/

BY CERTIFIED QUESTION
IN AND FROM VOLUSIA COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

BILL McCOLLUM
ATTORNEY GENERAL

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #773026
FIFTH FLOOR
444 SEABREEZE BLVD.
DAYTONA BEACH, FL 32118
(386) 238-4990/FAX 238-4997

COUNSEL FOR APPELLANT

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CASES:

STATEMENT OF CASE AND FACTS

The Defendant[1] was charged with one count of unnatural and lascivious act and one count of indecent exposure. (R 96). The charges arose from what began as an investigation of complaints about sexual activity in the men's restroom of the Sear's department store at the Volusia Mall. (R 86). The defense filed an amended motion to suppress arguing that the Defendant had an expectation of privacy within the stall of the restroom that was violated by law enforcement. (R 110-113).

At the suppression hearing held on June 2, 2008, Captain Richard Gardner (Capt. Gardner) was the sole witness. Capt. Gardner testified that the Sears restroom had come to the attention of law enforcement based not only on "word of mouth" but also on internet websites which listed hotspot locations where sexual activity would occur. (R 15-16). He testified he worked for the Beach Patrol and because of his experience with similar activity at beachfront restrooms he assisted the Daytona Beach Police in its investigation at Sears. (R 12-13).

He continued his testimony detailing his encounter with the Defendant which occurred on November 1, 2007. Capt. Gardner

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[1]Appellant will be referred to as "the State" and Appellee will be referred to as "the Defendant" for purposes of this

stated that the Defendant entered the stall right next to the one he occupied, and the Defendant immediately began to sniff, cough, and raise and lower his zipper. (R 18). Additionally, the Defendant leaned down as if looking under the partition and was breathing heavily. (R 24-26). Capt. Gardner also testified that in such investigations law enforcement never initiates any of the actions. (R 26).

The officer testified that based on his experience this was an offer for oral sex. (R 26). The officer at this point exited the stall and was able to make eye contact with the Defendant through the gap in the partition of the stall door. (R 27). The officer saw the Defendant masturbating his exposed penis and soon thereafter the Defendant opened the stall door at which point the officer said, "What do you want?" The Defendant responded, "I like everything" and took his hair and tied it back into a pony tail. (R 30). The officer stated that he believed this was an invitation to step in and have oral sex. (R 30).

A second officer came into the restroom, and upon hearing someone enter, the Defendant said in an alarmed tone, "No, no, somebody is coming." (R 32). The Defendant was then arrested.

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brief.

Id. Capt. Gardner took the Defendant to a nearby room, and after being informed of his rights, the Defendant volunteered that he was being stupid and probably should have just exchanged telephone numbers. (R 33).

After this testimony, the trial court listened to argument from each side. (R 52-84). The judge then took the motion under advisement and entered an order on June 12, 2008, granting the motion. (R 119-133). In that order the trial court certified to this Court the following question:

> DOES THE ACT OF ENTERING A PUBLIC BATHROOM STALL AND CLOSING THE DOOR DEMONSTRATE A REASONABLE EXPECTATION OF PRIVACY THAT IS ENTITLED TO PROTECTION FROM ANY VISUAL INTRUSION ABSENT PROBABLE CAUSE TO BELIEVE THAT A CRIME IS BEING COMMITTED, EVEN IF THE PERSON IN THE STALL IMPLICITLY INVITES OTHERS TO VIEW OR PARTICIPATE IN A LEWD ACT?

This is the appeal of that ruling.

SUMMARY OF ARGUMENT

The State would first submit that the facts show no search by law enforcement in this case. Additionally, even if there was a search by the State, the Defendant's own actions waived whatever right of privacy he may have had within the restroom stall. Therefore, it is the position of the State that the trial court improperly granted the defense's motion to suppress and asks this Court to reverse the trial court's order.

ARGUMENT

POINT OF LAW

THE TRIAL COURT ERRED IN GRANTING DEFENDANT'S MOTION TO SUPPRESS.

The State would respectfully assert that the actions of the officer in this case do not rise to the level of being a search, and even if found to be a search, the Defendant's actions waived any right of privacy he may have had upon entering the restroom stall. Given this, it is the position of the State that the trial court improperly granted the motion to suppress.

First, case law holds that a trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling. See Pagan v. State, 830 So. 2d 792, 806 (Fla. 2002). The reviewing court is bound by the trial court's factual findings if they are supported by competent, substantial evidence. Id. However, a trial court's determination of the legal issue of probable cause is subject to the *de novo* standard of review. See Ornelas v. United States, 517 U.S. 690 (1996); Connor v. State, 803 So. 2d 598 (Fla. 2001), cert. denied 535

U.S. 1103 (2002); Dewberry v. State, 905 So. 2d 963, 965 (Fla. 5th DCA 2005). With this *de novo* review, the State's position is that the trial court should be reversed.

Prior to reviewing the applicable law in this case, the State will first set out the facts. The Defendant was charged with one count of unnatural and lascivious act and one count of indecent exposure. (R 96). The charges arose from what began as an investigation of complaints about sexual activity in the men's restroom of the Sear's department store at the Volusia Mall. (R 86). The defense filed an amended motion to suppress arguing that the Defendant had an expectation of privacy within the stall of the restroom that was violated by law enforcement. (R 110-113).

At the suppression hearing held on June 2, 2008, Capt. Richard Gardner was the sole witness. Capt. Gardner testified that the Sears restroom had come to the attention of law enforcement based not only on "word of mouth" but also on internet websites which listed hotspot locations where sexual activity would occur. (R 15-16). He testified he worked for the Beach Patrol and because of his experience with similar activity at beachfront restrooms he assisted the Daytona Beach Police in its investigation at Sears. (R 12-13).

He continued his testimony detailing his encounter with the Defendant which occurred on November 1, 2007. Capt. Gardner stated that the Defendant entered the stall right next to the one he occupied, and the Defendant immediately began to sniff, cough, and raise and lower his zipper. (R 18). Additionally, the Defendant leaned down as if looking under the partition and was breathing heavily. (R 24-26). Capt. Gardner also testified that in such investigations law enforcement never initiates any of the actions. (R 26).

The officer testified that based on his experience this was an offer for oral sex. (R 26). The officer at this point exited the stall and was able to make eye contact with the Defendant through the gap in the partition of the stall door. (R 27). The officer saw the Defendant masturbating his exposed penis and soon thereafter the Defendant opened the stall door at which point the officer said, "What do you want?" The Defendant responded, "I like everything" and took his hair and tied it back into a pony tail. (R 30). The officer stated that he believed this was an invitation to step in and have oral sex. (R 30).

A second officer came into the restroom, and upon hearing someone enter, the Defendant said in an alarmed tone, "No, no,

somebody is coming." (R 32). The Defendant was then arrested. Id. Capt. Gardner took the Defendant to a nearby room, and after being informed of his rights, the Defendant volunteered that he was being stupid and probably should have just exchanged telephone numbers. (R 33).

After this testimony, the trial court listened to argument from each side. (R 52-84). The judge then took the motion under advisement and entered an order on June 12, 2008, granting the motion. (R 119-133). In that order the trial court certified to this Court the following question:

> DOES THE ACT OF ENTERING A PUBLIC BATHROOM STALL AND CLOSING THE DOOR DEMONSTRATE A REASONABLE EXPECTATION OF PRIVACY THAT IS ENTITLED TO PROTECTION FROM ANY VISUAL INTRUSION ABSENT PROBABLE CAUSE TO BELIEVE THAT A CRIME IS BEING COMMITTED, EVEN IF THE PERSON IN THE STALL IMPLICITLY INVITES OTHERS TO VIEW OR PARTICIPATE IN A LEWD ACT?

The trial court's order included a detailed analysis which contrasted the right of privacy involved in this case, the actions of the Defendant, and the interests of the State. However, the State would have two problems with trial court's holding. First, there was no search by the officer, and, secondly, even if the officer's limited actions did amount to a search, they were prompted by the Defendant's own invitation which would have waived any right of privacy the Defendant may

have initially had.

As to whether the officer's actions were a search, we should quickly review exactly what he did. The officer was in a stall when the Defendant entered the adjacent stall and closed the door. However, the Defendant immediately began a series of actions trying to signal the occupant of the next stall (which turned out to be Capt. Gardner). The trial court correctly noted in its order that officers are allowed to use their experience and training to make inferences that "might well elude an untrained person."[2] (R 125-126). Capt. Gardner testified that based upon his experience and training the Defendant's actions were an invitation for oral sex. (R 26, 30).

The officer next offered that he saw some actions by the Defendant through a gap between the partition and the wall as well as in reflections in the tile. (R 24-26). However, the trial judge stated that she with the permission of both parties

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[2]The trial court's order cited United States v. Arvizu, 534 U.S. 266, 273 (2002), in which the Court wrote, "A consideration of the totality of the circumstances of each case to determine whether the detaining officer has a well-founded suspicion of criminal activity allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." See also State v.

had viewed a videotape of the location of the offense and would not consider these facts as proven. (R 120).

Capt. Gardner next exited his stall, and when he looked through what was described in the court's order as an inch and half gap in the door, he saw the Defendant make eye contact with him as the Defendant masturbated. (R 27, 121). The Defendant then opened the stall door and essentially invited the officer in. (R 30).

Again, it would be State's position that there was no search. It was the Defendant who initiated contact, it was the Defendant who wanted to and did make eye contact while masturbating, and it was the Defendant who opened his stall door. Like the officer in Moore v. State, 355 So. 2d 1219 (Fla. 1st DCA 1978), Capt. Gardner had a legal right to be in the public restroom. In Moore, the officer was investigating illegal drug activities in the Greyhound bus station, and testified,

> Q. When you stopped outside the toilet, how big a crack was there? [Crack between the toilet stall and the door]
>
> A. I'd say half an inch.
>
> Q. You were able to stand outside the stall and look through that crack, and in plain view, you saw him with

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Marrero, 890 So. 2d 1278 (Fla. 2d DCA 2005).

the needle in his arm and his belt around his arm. Is that correct?

A. Yes, sir.

Further, the testimony of the officer revealed:

Q. How far away from the crack were you? Did you have to get close to it?

A. No, I didn't have to peep. * * * so there's about a three-foot aisle in between the wash basins and toilets, so by me walking down the middle of the aisle, it puts me about six or eight inches in front of the stall.

Q. So you are about six to eight inches away?

A. All I had to do was look as I walked by. . . .

Id. at 1220. The court found that such actions did not constitute a search. See also United States v. Billings, 858 F.2d 617 (10th Cir. 1988) (Viewing by an officer underneath the bottom of a restroom stall door of a defendant's retrieval of cocaine from his sock was not an illegal search that violated any right of privacy given that the officer simply observed what "any ordinary patron of a public restroom" could have seen from that normal vantage point.) Like in these cases, Capt. Gardner's actions also did not constitute a search.

Additionally, even if the officer's actions did constitute a limited search and an intrusion on the Defendant's right of privacy, the State would assert that the Defendant's actions

waived his rights. The State agrees that if the Defendant had simply entered a restroom stall and closed the door that there would be a right of privacy. However, such right is clearly not absolute. The Court in the Ninth Judicial Circuit recognized that fact when it wrote in Smayda v. United States, 352 F.2d 251, 257 (9th Cir. 1965), cert. denied, 382 U.S. 981 (1966):

> We agree that every person who enters an enclosed stall in a public toilet is entitled to believe that, while there, he will have at least the modicum of privacy that its design affords. We would not uphold a clandestine surveillance of such an area without cause. We are made as uncomfortable as the next man by the thought that our own legitimate activities in such a place may be spied upon by the police. We also think, however, that the nature of the place, the nature of the criminal activities that can and do occur in it, the ready availability therein of a receptacle for disposing of incriminating evidence, and the right of the public to expect that the police will put a stop to its use as a resort for crime all join to require a reasonable limitation upon the right of privacy involved. We hold that when, as here, the police have reasonable cause to believe that public toilet stalls are being used in the commission of crime, and when, as here, they confine their activities to the times when such crimes are most likely to occur, they are entitled to institute clandestine surveillance, even though they do not have probable cause to believe that the particular persons whom they may thus catch in flagrante delicto have committed or will commit the crime. The public interest in its privacy, we think, must, to that extent, be subordinated to the public interest in law enforcement.

See also United States v. Hill, 393 F.3d 839, 841 (8th Cir. 2005) (Officers entry into locked restroom was upheld with the

court writing, "[I]n the present case, the restroom was designed for use by one person, it was located in a convenience store,[3] and available for use by customers and guests of the store. Hill and his female companion occupied the restroom in a manner for which it was not designed, and remained there after being asked to leave. Under these circumstances, we hold that whatever reasonable expectation of privacy Hill and his companion had expired by the time the officers arrived."); Kansas v. Mudloff, 36 P.3d 326 (Kan. Ct. App. 2001) (In case where stall occupants were caught snorting cocaine the court held that an individual had a subjective expectation of privacy in a public bathroom; however, society would not recognize that right "if the stall's occupant was engaged in activity other than the stall's intended use.").

Again, after entering the stall, the Defendant immediately began actions which an experienced officer testified were an invitation for oral sex. It was the Defendant who did not utilize the facility for its intended purpose - instead seeking an activity in a public restroom used by others in a commercial

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[3]The court also quoted the United States Supreme Court's holding that "an expectation of privacy in commercial premises . . . is different from, and indeed less than, a similar expectation in an individual's home." Id., quoting, New York v.

department store which would involve two people. The Defendant's actions led the officer to exit his stall, and the Defendant opened his own stall door while exposing himself to the officer. Clearly, such actions constitute a waiver of any expectation of privacy.

The primary case relied upon by the trial court was Ward v. State, 636 So. 2d 68 (Fla. 5th DCA 1994). Ward can be distinguished by the fact it was the officer in Ward who took the initial action of standing near the closed door and peeking into the stall. Id. at 69. Ward never carried out a series of acts inviting the officer over prior to the officer even seeing him, and Ward never opened the door to the stall finalizing the earlier invitation. Therefore, not only were the officer's actions much greater as far as his efforts to view Ward than those of Capt. Gardner but his peeking was prior to any actions waiving the right to privacy.

The State would point out that this Court also wrote in Ward, "We agree with the circuit court that had Ward been masturbating in the public area of the restroom with the intent of exposing himself to others, **or had he been doing so in a stall, the interior of which could be freely seen from the**

Burger, 482 U.S. 691, 700 (1987).

public areas, a reasonable expectation of privacy would not have existed." Id. at 71 (emphasis added). That is exactly what did occur here. Initially from inside the stall, then, opening the door, the Defendant was masturbating and inviting the officer to join him. Although more relevant to ultimately proving the case and not the suppression issue, the State would also note that the Defendant's actions immediately after the second officer entered ("No, no, somebody is coming.") as well as his statements right after arrest (that his actions were stupid) helped confirm Capt. Gardner's determination.

Given these facts and law, the State would respectfully assert that the actions of the officer in this case do not rise to the level of being a search, and even if found to be a search, the Defendant's actions waived any right of privacy he may have had upon entering the restroom stall. Therefore, the State would ask this Court reverse the lower court's order.

CONCLUSION

Based on the argument and authorities presented herein, the State requests this Honorable Court reverse the order of the trial court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by delivery via the basket of the Office of the Public Defender at the Fifth District Court of Appeal to the Office of the Public Defender, counsel for the Appellee, 444 Seabreeze Blvd., Suite 210, Daytona Beach, FL 32118, this _____ day of November 2008.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL

WESLEY HEIDT
Assistant Attorney General
FL Bar No. 0773026
444 Seabreeze Blvd.
5th Floor
Daytona Beach, FL 32118
FAX: (386) 238-4997
(386) 238-4990

COUNSEL FOR APPELLANT

MISCELLANEOUS

STATE OF FLORIDA

PAM BONDI
ATTORNEY GENERAL

January 26, 2015

The Honorable Rick Scott
Governor, State of Florida
The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001

Dear Governor Scott:

Section 406.02 (1)(b), Florida Statutes (2014), pertaining to the membership of the Florida Medical Examiners Commission, provides that one member of the Commission shall be the Attorney General or her designated representative. Please be advised that I am designating Assistant Attorney General Wesley Heidt, Bureau Chief, Daytona Beach Criminal Appeals, as my representative to sit on the Medical Examiners Commission effective Thursday, February 26, 2015.

Sincerely,

Pam Bondi
Attorney General

PB/lpg

cc: Carolyn Snurkowski, Associate Deputy Attorney General
Bob Krauss, Assistant Attorney General

PL-01, The Capitol, Tallahassee, Florida 32399-1050, Telephone (850) 414-3300 Fax (850) 487-2564

Hi Wesley,

I just wanted to thank you for participating in giving CyberSafety presentations to the students of Florida for the 2007-08 school year.

We appreciate your assistance in accomplishing our goals to educate our youth in staying safe on the internet.

Thank You,

Gwen R. Rhodes

ATLANTIC HIGH SCHOOL
ACADEMY OF LAW & GOVERNMENT
1250 REED CANAL ROAD
PORT ORANGE, FLORIDA 32129
TELEPHONE (386) 322-6100
FAX (386) 322-5649

May 1, 2005

Dear Wesley Heidt:

On behalf of the teachers and students of Atlantic High Schools Academy of Law and Government, I would like to thank you for the splendid job you did arranging law week. The students are still talking about the fantastic time we spent with each speaker that was brought in – thank you, thank you!

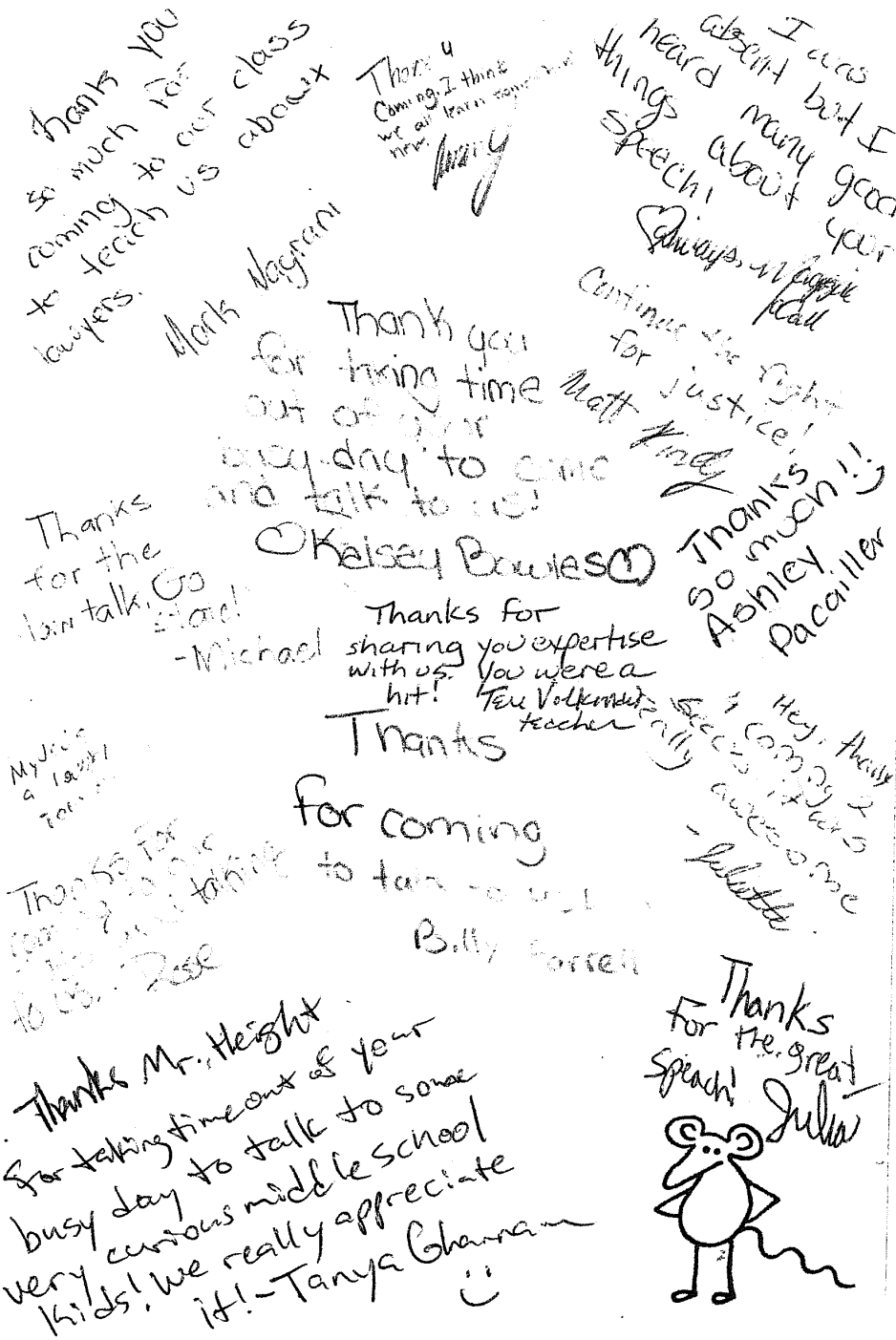
These speakers provided an invaluable opportunity for the academy students to see leadership in action. We look forward to planning another law week next year with the academy. Again, thank you for your support.

Sincerely,

Colleen Kirvan

Colleen Kirvan
Community Liaison
Academy of Law and Government

"Gratitude is something of which none of us can give too much. For on the smiles, the thanks we give, our little gestures of appreciation, our neighbors build up their philosophy of life." (A.J. Cronin)


thank you so much for coming to our class to teach us about lawyers.
Thanks 4 Coming. I think we all learn something new.
I guess I didn't but I heard many good things about your speech!
Always, Maggie Hall
Mark Nagrani
Thank you for taking time out of your busy day to come and talk to us!
Continue the fight for justice!
Matt Kinsey
Thanks for the law talk. Go Irish!
-Michael
Kelsey Bowles
Thanks so much!!)
Ashley Pacaller
Thanks for sharing you expertise with us. You were a hit!
Teri Volkmann teacher
Thanks
for coming
Billy Farrell
Hey, thanks for coming to talk to us. Your speech was awesome.
-Juliette
Thanks Mr. Height for taking time out of your busy day to talk to some very curious middle school kids! We really appreciate it! -Tanya Ghannam
Thanks for the great speech!
Julia

OFFICE OF THE STATE ATTORNEY
Fifth Judicial Circuit of Florida
Serving Marion, Lake, Citrus, Sumter, Hernando Counties

BRAD KING
State Attorney

Dear Wesley,

I just wanted to let you know we appreciate the Attorney General's Office efforts in State v. J.A.S.

This case was important from a public policy viewpoint and as a matter of the Court's doing what is right and following the law.

We appreciate your efforts as counsel of record for us.

Sincerely

Brad King

Eighteenth Judicial Circuit

State of Florida

E. Ashley Hardee, Senior Trial Court Staff Attorney

Moore Justice Center • 2825 Judge Fran Jamieson Way, Viera, Florida 32940 • Tel: (321) 617-7328

May 25, 2012

The Honorable Rick Scott
Governor of Florida
The Capitol Building, PL05
Tallahassee, Florida 32399-0001

Re: Recommendation for Wesley Heidt to be Selected as a Volusia County Court Judge

Dear Governor Scott:

It is with great pleasure that I recommend Attorney Wesley Heidt for selection as a county judge in Volusia County.

I came to know Mr. Heidt from serving as President of the Florida Trial Court Staff Attorneys Association and on its Board since 2001. Mr. Heidt taught Florida Trial Court Staff Attorneys on a statewide basis on postconviction and criminal law issues. Because of his expertise as an Assistant Attorney General, his vast experience in criminal law, and his teaching ability, he is very well-respected by the Florida Trial Court Staff Attorneys.

In 2010-11, Mr. Heidt participated in a first-ever virtual statewide course on post-conviction law for Florida Trial Court Staff Attorneys. The program was very well-received, and the course taught by Mr. Heidt is considered by many as an important primer on postconviction law for new staff attorneys in Florida.

Mr. Heidt is accomplished, intelligent, hardworking, and gives generously of his time to the community. Not only is Mr. Heidt intelligent, he has a wonderful demeanor, and would work well and get along with court staff and litigants. Mr. Heidt would make a fine county judge.

With Warmest Regards,

E. Ashley Hardee, Esq.

DIRECTOR
Dawna G. Bicknell
850/561-5850
dbicknell@flabar.org

ASSISTANT DIRECTOR
Linda Cook
850/561-5735
lcook@flabar.org

ASSISTANT TO DIRECTOR
Maritza M. McGill
850/561-5850
mmcgill@flabar.org

DEPARTMENT FAX
850/561-9421

THE FLORIDA BAR
BOARD CERTIFIED

BOARD OF LEGAL SPECIALIZATION & EDUCATION

May 7, 2013

Mr. Wesley Harold Heidt
444 Seabreeze Blvd Fl 5
Daytona Beach, FL 32118-3958

Dear Mr. Heidt:

On behalf of the Board of Legal Specialization and Education (BLSE), it gives me great pleasure to inform you of your recertification in Criminal Appellate Law law effective August 1, 2012.

Your continued pursuit of board certification is a direct reflection of your commitment to excellence and professionalism in your practice of law. As a board certified lawyer, you have, in the eyes of the Supreme Court of Florida, the distinction of having "special knowledge, skills, and proficiency in your practice area, as well as character, ethics, and a reputation for professionalism in the practice of law." Moreover, you are entitled to represent yourself as a "specialist" and "expert" in your field of practice, and use the initials B.C.S. after your name to indicate Board Certified Specialist.

The Supreme Court of Florida has repeatedly stated its view that board certified lawyers have a special responsibility to maintain high standards of conduct and professionalism. The integrity of the Certification program depends upon the quality of its participants and the public is entitled to rely upon the fact that board certified lawyers are preeminent in competence and ethics. We are confident that you share our commitment to maintaining the Certification program's high standards in order to encourage and enhance professionalism for all lawyers.

Significantly gratifying was recognition by the Eleventh Circuit Court of Appeals that, "the goal of the Florida Bar's certification process is to recognize in various fields of specialization exceptional attorneys, meaning those who stand out from others in all of the ways that make an attorney outstanding." Doe v Florida Bar, 630 F.3d 1336, 1338 (11th Cir. 2011).

We thank you for your participation and welcome your suggestions regarding enhancing the Certification program. If there is anything the BLSE can do to improve the Certification program for you and for other certified lawyers, please let us know. You may contact Dawna Bicknell at the Florida Bar, 850-561-5850, dbicknell@flabar.org, or feel free to contact me directly at 813-223-5111 or at tsullivan@ogdensullivan.com.

Congratulations! We are proud and honored to renew your status as a Board Certified Criminal Appellate Law Lawyer.

Sincerely,

Timon V. Sullivan, B.C.S.
Chair, BLSE

TVS/jc

Enclosures

STATE OF FLORIDA
COUNTY COURT, VOLUSIA COUNTY, FLORIDA
125 East Orange Avenue, Room 206
Daytona Beach, Florida 32114

Telephone: (386) 257-6042
Facsimile: (386) 248-8166

BELLE B. SCHUMANN
County Court Judge

Dusty Going
Judicial Assistant

May 6, 2015

Wesley H. Heidt, Esquire
Office of the Attorney General
444 Seabreeze Blvd., Suite 500
Daytona Beach, FL 32118

RE: Professionalism Seminar May 1, 2015

Dear Mr. ~~Heidt~~ Wes:

Thank you for your participation in the Law Day Professionalism Seminar on Friday, May 1, 2015. Your presence as a panel member greatly added to the quality of the discussion. We appreciate your volunteer efforts.

Sincerely,

Belle Schumann

BELLE B. SCHUMANN
COUNTY COURT JUDGE

BBS/dg

DAYTONA STATE COLLEGE
STAY CLOSER. GO FURTHER.

1200 West International Speedway Boulevard
Daytona Beach, Florida 32114
(386) 506-3222

October 14, 2016

Mr. Wesley Heidt, PA
Office of the Attorney General
444 Seabreeze Blvd. FL 5
Daytona Beach, FL 32118

Re: Gratitude for Service on the Paralegal Studies Advisory Committee

Dear Mr. Heidt:

I want to personally thank you for your service as a committee member on the Paralegal Studies Advisory Committee during the 2015-2016 academic year. This committee was very successful as a result of your leadership, contributions and hard work. The Paralegal Studies Advisory Committee plays an important role in occupational education and serves as a vital link between the College and the community.

Daytona State College was founded to provide citizens of Volusia and Flagler counties an opportunity to develop their potential to the fullest while achieving individual career goals. The College is committed to providing quality instruction that will enable our graduates to secure employment and to advance as paralegals.

Daytona State College and I look forward to your continued service on the Paralegal Studies Advisory Committee. We appreciate your guidance and industry input in assisting our Paralegal Studies Program to provide students with the skills, knowledge and attitudes necessary to succeed in their chosen career.

The next meeting of the Paralegal Studies Advisory Committee will be Monday, November 7, 2016 beginning at 5:30 PM on the Daytona campus, building 200, room 403. The Agenda, the Minutes of the last meeting and additional materials will be sent out via email and will be provided at the meeting.

Sincerely,

Kim Grippa, J.D.
Academic Chair of the School of Business Administration

Volusia County Bar Association
125 S. Palmetto Avenue • P.O. Drawer 15050 • Daytona Beach, FL 32115

May 1, 2009

Wesley Heidt, Esquire
Office of the Attorney General
444 Seabreeze Blvd. 5th Floor
Daytona Beach, FL 32118

Dear Wes,

Great speakers, knowledgeable panel members and a perfect setting to share ideas about professionalism were the key ingredients for a successful Bench & Bar Professionalism Symposium.

Although considered a "small bar", we are able to offer "big bar" events because of your support. On behalf of the Volusia County Bar Association, thank you for your participation---we couldn't have done it without you!

Sincerely,

Kathie Selover
Executive Director

Phone: 386.253.9471 • Fax: 386.255.3360
www.volusiabar.org • volusiabar@bellsouth.net

VICTIM'S SERVICE COALITION OF THE 7TH CIRCUIT

May 8, 2009

Wesley Heidt, Esquire
Office of the Attorney General
444 Seabreeze Blvd., Suite 500
Daytona Beach, FL 32118

Dear Attorney Heidt,

Thank you for helping to make our Eighth Annual Victims' Rights Week Breakfast a great success. Your commitment to Victims' Rights was shown in your willingness to speak on the criminal appeal process.

We want you to know that we truly appreciate all you do for crime victims.

The members of the Coalition all thank you.

Sincerely,

Kimberly Beck-Frate

Kimberly Beck-Frate
President

DAYTONA STATE COLLEGE
1200 West International Speedway Boulevard
Daytona Beach, Florida 32114
(386) 506-3222
www.DaytonaState.edu
A MEMBER OF THE FLORIDA STATE COLLEGE SYSTEM
AN EQUAL ACCESS / EQUAL OPPORTUNITY INSTITUTION

March 5, 2009

Mr. Wesley Heidt
Bureau Chief
Office of the Attorney General
444 Seabreeze Blvd., 5th Floor
Daytona Beach, FL 32118

Dear Wes:

Thank you for your enthusiastic presentation on the role of the Attorney General's Office and the information available on the Attorney General's website on March 3, 2009. Several students have commented that they really learned a lot from your excellent presentation and enjoyed it greatly. I know that I am much better informed. It is of great assistance to the students to learn from a professional in the field and learn information that will help them in their paralegal career.

Your presentation was informative and enlightening, and we appreciate the opportunity that you extended us to ask questions. Thank you again for taking time from your busy schedule to speak to our Student Paralegal Association.

Sincerely,

Linda

Linda S. Cupick
Senior Professor of Paralegal Studies

cc: Dr. Shawn Friend
Mr. Bill Wetherell

October 26, 2016

Wesley Heidt
Attorney General's Office
444 Seabreeze Blvd, Floor 5
Daytona Beach, FL 32118-3958

Dear Wesley:

On behalf of the Florida Bar's Continuing Legal Education Committee and the Young Lawyers Division, we would like to offer our sincere gratitude for your presentation on Criminal Appeals at the Basic Appellate Practice 2016 seminar on October 14, 2016.

We greatly appreciate the time you took out of your busy schedule to prepare for and present at the seminar, and we hope you will consider joining us again for future legal seminars.

Thank you also for your support of the young (and new) lawyers of The Florida Bar as well as the Young Lawyers Division. In addition to lawyers who attended in-person, hundreds of young and new lawyers will have the opportunity to fulfill their Basic Skills Course Requirement by downloading and watching the seminar online. We are certain that not only will those lawyers benefit from your presentation, but the profession and their clients will as well.

Regards,

Margaret Good

Margaret Rowell Good
Program Co-Chair

Dwayne Robinson

Dwayne Robinson
Program Co-Chair

P.S. Wesley, We cannot thank you enough for your sage advice. We hope you can join us in the future.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

To Wesley Heidt:

I am pleased to notify you on behalf of the Chief Justice and Associate Justices that the motion for your admission to practice has been granted and that you are now a member of the Bar of the Court and an officer of the Court.

Your admission is effective February 22, 2000 and a certificate of admission will be mailed to you in approximately six weeks.

The following provides information regarding your membership privileges:

- As a member of the Bar you are eligible to sit in a reserved section of the Courtroom. To attend an oral argument, members must register at the bar registration desk located near the John Marshall Statue in the Lower Great Hall, ground level. The hours of the registration desk are from 9:00 a.m. until noon and 12:30 p.m. until Court adjourns. Seating is on a first come, first served basis.

- Your membership entitles you to use of the public areas of the extensive law library located on the third floor. The telephone number for the library is 202-479-3173.

- Tours of the building are arranged by the Curator's Office. As a member of the Bar you may request a special tour for your family or friends by calling the Curator's Office at 202-479-3298. Tours are not conducted when oral arguments are being heard in the Courtroom. Tour arrangements must be made in advance.

- The cafeteria and snack bar located on the ground level are open from 7:30 a.m. until 3:30 p.m.

- The Supreme Court Historical Society gift shop, located on the ground level, is open from 9:00 a.m. until 4:15 p.m. The telephone number is 202-479-3450.

The Clerk's Office information number is 202-479-3011 and the Bar Admissions Office telephone number is 202-479-3387. The Supreme Court Bulletin Board System number is 202-554-2570.

If my office can assist in any way, we will be glad to do so.

I extend to you a warm welcome as a member of the Bar and an officer of the Court.

William K. Suter
Clerk