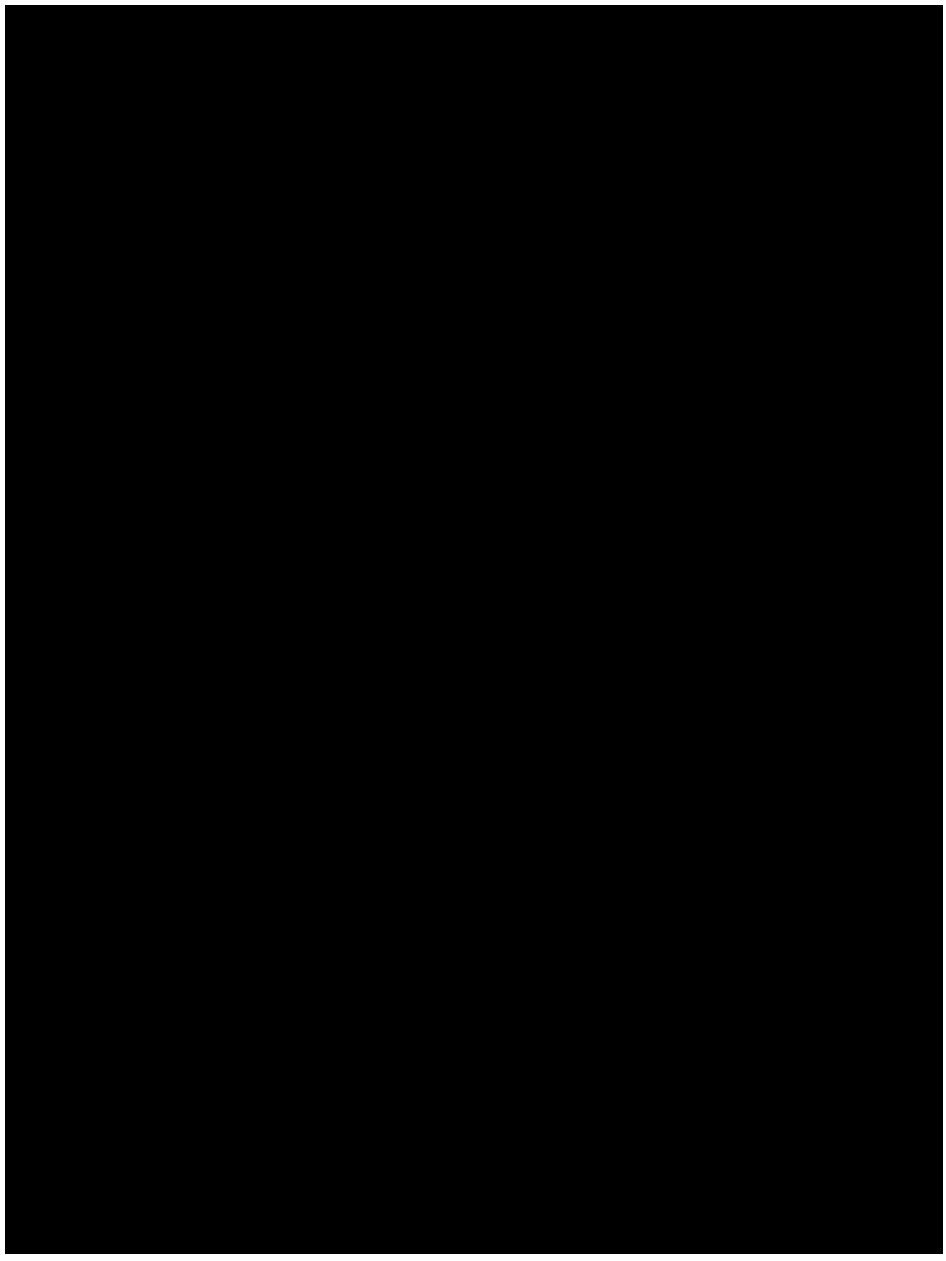
Application for Nomination to the County Court ~ 7th Judicial Circuit ~

Arthur Christian Miller

“Chris”



APPLICATION FOR NOMINATION TO THE COUNTY COURT

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

DATE: December 26, 2017 Florida Bar No.: 0023211

GENERAL: Social Security No.: [redacted]

1.

Name Arthur Christian Miller "Chris" Email: millerc@sao7.org

Date Admitted to Practice in Florida: April 18, 2006

Date Admitted to Practice in other States: N/A

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

Assistant State Attorney in Homicide Investigations Unit of the State Attorney's Office

3. Business address: 440 South Beach Street

City Daytona Beach County Volusia State FL ZIP 32114

Telephone (386) 238-4894 FAX (386) 238-4969

4. Residential address: [redacted]

City [redacted] County [redacted] State [redacted] ZIP [redacted]

Since January 2008 Telephone [redacted]

5. Place of birth: Norfolk, Virginia

Date of birth: March 7, 1979 Age: 38

6a. Length of residence in State of Florida: 14 years, 10 months

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

If so, in what county are you registered? Volusia

7. Marital Status: Married

If married: Spouse's name [redacted]

Date of marriage December 29, 2007

Spouse's occupation Attorney

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.

I have never been previously married or divorced.

8. Children

Name(s)	*Age(s)*	*Occupation(s)*	*Residential address(es)*
[redacted]	[redacted]	Student	[redacted]

9. Military Service (including Reserves)

Service	*Branch*	*Highest Rank*	*Dates*
N/A	N/A	N/A	N/A

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.

N/A

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.

N/A

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.

N/A

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 a 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 names 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***
Oakland High School, Murfreesboro, Tennessee	Top 11%	8/1993 – 5/1997	H.S. Diploma
University of Tennessee, Knoxville	Unknown (3.42 GPA)	8/1997 – 5/2001	Bachelor of Arts, Political Science
Stetson University College of Law, Gulfport, Florida	Top 42%	1/2003 – 12/2005	Juris Doctor

18b. List and describe academic scholarships earned, honor societies or other awards.

- Victor O. Whele Award recipient, Stetson University College of Law, December 2005 (awarded to outstanding student in trial advocacy class)
- Moot Court Board member, Stetson University College of Law, January 2004 – December 2005
- Second Best Brief Award recipient, Robert F. Wagner National Labor and Employment Law Moot Court Competition hosted by New York Law School, March 2004
- *Phi Eta Sigma* National Honor Society, University of Tennessee, Knoxville, April 1998 (Freshman honors society for academic excellence)
- National Honor Society, Oakland High School
- National Beta Club, Oakland High School, January 1995
- *Beta Epsilon* Honor Society (English), Oakland High School, Fall 1994

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/Description***	***Employer***	***Address***
8/2001– 11/2001	Sales representative – sold Dell computers by telephone	Dell, Inc.	1 Dell Parkway, Nashville, TN 37217
12/2001– 12/2002	Sales representative – sold computers and other electronics	CompUSA, Inc.	719 Thompson Way, Nashville, TN 37204

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*
The Florida Bar	April 18, 2006

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***
Law clerk	Donna Feldman, P.A. (now Feldman & Mahoney, P.A.)	2240 Belleair Road, Suite 210, Clearwater, FL 33764	7/2004 – 3/2005
Law clerk	Dickinson & Gibbons, P.A.	401 North Cattleman Road, Suite 300, Sarasota, FL 34232	5/2005 – 8/2005
Certified Legal Intern	Public Defender's Office, 6th Judicial Circuit	Pinellas County Justice Center, 14250 49th Street North, Clearwater, FL 33762	8/2005 – 12/2005
Assistant State Attorney	State Attorney's Office, 7th Judicial Circuit	251 North Ridgewood Avenue, Daytona Beach, FL 32114	3/2006 – 3/2011
Associate Attorney	McCullough, Morgan & Kurak, P.A.	3121 Opportunity Circle, Suite D, South Daytona, FL 32119	3/2011 – 6/2011

Assistant State Attorney	State Attorney's Office, 7th Judicial Circuit	251 North Ridgewood Avenue, Daytona Beach, FL 32114	7/2011- present

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 your prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

I am proud to serve in my current position as a homicide prosecutor with the State Attorney's Office. In this capacity, I work very closely with law enforcement starting from the initial crime scene continuing through the grand jury process, discovery and trial. I frequently advise law enforcement about numerous statutory and constitutional matters that arise during the drafting and execution of search warrants and arrest warrants, as well as the sufficiency or insufficiency of evidence to merit a prosecution. Having worked in both the northern and southern divisions of the homicide unit, I have prosecuted murder cases in every county in the 7th circuit.

I also work closely with family members of victims to inform them about the legal system, the normal processes involved in a criminal prosecution, and answer their factual and legal questions about individual cases.

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	100	%
Federal Other	_____	%	Family	_____	%
State Appellate	_____	%	Probate	_____	%
State Trial	100	%	Other	_____	%
State Administrative	_____	%			
State Other	_____	%			
	_____	%		_____	
TOTAL	100	%		100	%

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

Jury?	70	Non-jury?	5
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).

1. State of Florida vs. Darrell Willis; case no. 2014-300546 CFDB
    a. Defense counsel – David Glasser (386-252-0175)
    b. State counsel – Applicant (1st chair) and Derek Candela (2nd Chair) (386-239-7710)

2. State of Florida vs. Tyrone Davis; case no. 2013-102944 CFDB
    a. Defense counsel – Brad Sherman (386-532-6000)
    b. State counsel – Ryan Will (1st chair) (386-238-4894) and Applicant (2nd Chair)

3. State of Florida vs. Shawn Rupe; case no. 2014-300455 CFDB
    a. Defense counsel – Ann Finnell (1st chair) (904-791-1101) and BeJae Shelton (2nd chair) (904-791-1101)
    b. State counsel – Applicant (1st chair) and Heatha Trigones (2nd Chair) (386-238-4894)

4. State of Florida vs. Jeremy Maruska; case no. 2013-306213 CFDB
    a. Defense counsel – Francis Jerome Shea (904-399-1966)
    b. State counsel – Applicant (1st chair) and Tammy Jaques (2nd Chair) (386-822-6400)

5. State of Florida vs. Deandre Peterson; case no. 2014-301270 CFDB
    a. Defense counsel – John Selden (386-254-3758) & Juliane Morris (386-290-5119)
    b. State counsel – Heatha Trigones (1st chair) (386-238-4894) and Applicant

6. State of Florida vs. Justin Boyles; case no. CF-13-01221
    a. Defense counsel – James Hernandez (904-354-4499 x 6517)
    b. State counsel – Applicant (1st chair) and Travis Mydock (2nd Chair) (904-494-8402)

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).

1. State of Florida vs. Amy Piellucci; case no. 2016-304962 CFDB
    a. Defense counsel – John Selden (386-254-3758)
    b. State counsel – Applicant

2. State of Florida vs. Leeshawn Sutton; case no. 2017-101594 CFDL
    a. Defense counsel – Matthew Phillips (386-239-7730)
    b. State counsel – Applicant

3. State of Florida vs. David Almond; case no. 2015-304406 CFDB
    a. Defense counsel – David Damore, Aaron Delgado (386-255-1400) and John Reid (386-239-7710)
    b. State counsel - Applicant

4. State of Florida vs. Rayshad Mincey; case no. 2016-300960 CFDB
    a. Defense counsel – Robert Rawlins (386-547-2261)
    b. State counsel – Applicant

5. State of Florida vs. Mark Berrios; case no. 1994-034434 CFAES
    a. Defense counsel – Matthew Phillips, Larry Powers, and Craig Dyer (386-239-7730) (all counsel)
    b. State counsel – Applicant

6. State of Florida vs. Daniel Wilkinson; case nos. 2013-CF-359/2016-CF-456
    a. Defense counsel – Clyde Taylor and Bradley Waldrop (904-687-1630) (both counsel)
    b. State counsel – Applicant (1st chair) and Kenneth Janesk (2nd chair) (386-329-0259)

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?

10-15 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? 0 % Defendants? 0 %

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.

From March 2006 until March 2011, I was assigned to misdemeanor and felony dockets and responsible for several hundred cases. I was the lead counsel on all cases assigned to me and was thus responsible for all aspects of the litigation. This included reviewing police reports, witness statements/interviews, and physical evidence to make charging decisions, conducting discovery depositions and motion practice, as well as representing the State of Florida as the lead counsel at trial. In this capacity, I was in court on a near-daily basis. The overwhelming majority of my cases that went to a trial during this period were tried before a jury.

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.

None

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.

State of Florida vs. James Celano	
Case No.	2006-036734 MMAES
Judge:	Peter McGlashan
State Counsel:	Applicant
Defense Counsel:	Philip Bonamo (386) 257-1222
Trial dates:	August 24, 2006
Circuit Court Case No.:	None (not appealed to Circuit Court)
This case was significant to me because it was one of my toughest cases early in my career. Mr. Celano came to the vicitm's home to pick up a young woman who was alleging that the victim had abused her. As the woman got into Mr. Celano's car, the victim approached Mr. Celano, who was seated in the driver's seat of his car, and put his hands on the top of a barely-cracked open window. Mr. Celano pulled out a gun and shot off part of the victim's finger. My opposing counsel was very skilled, there were complicated evidentiary issues involved, and the jury deliberated for several hours late into the night. The jury came back with questions and ultimately hung on one count (battery) but convicted Mr. Celano of improper discharge of a weapon.	

State of Florida vs. Montario Royals	
Case No.	2010-031818 CFAES
Judge:	Hon. R. Michael Hutcheson
State Counsel:	Applicant (1st chair) & Mike Willard (386) 239-7710
Defense Counsel:	Christopher L. Smith (407) 836-2400
Trial dates:	May 22, 2012
5th DCA Case No.:	5D12-4405 (Affirmed – Per Curiam)
This case was significant to me because it was one of the first very violent felony cases that I tried as the lead counsel for the State. The victim was a handicapped young man who was robbed and tortured at gunpoint in his own home. Mr. Royals was a former Marine, but despite his military service, he went on a very violent crime spree. Mr. Royals was convicted at trial and sentenced to life in prison, concurrent with another life sentence he was serving on an unrelated murder charge. See Tab 30 for an article related to this case.	

State of Florida vs. Al Rue Hopkins	
Case No.	2011-035980 CFAES
Judge:	Hon. Raul Zambrano
State Counsel:	Applicant (1st chair) & Laura Coln (407) 245-0888
Defense Counsel:	Matthew Phillips (386) 239-7730 Allison Hughes (386) 822-5770
Trial dates:	April 15 - 18, 2013
5th DCA Case No.:	5D13-1471 (Affirmed – Per Curiam)
This case was significant to me because of the facts of the case and the resultling loss to the victims' families. This was a DUI Manslaughter case with two deaths, and Mr. Hopkins had 3 previous DUI convictions. Mr. Hopkins alleged the victims caused the accident leading to their deaths, therefore the case involved significant use of an expert accident reconstructionist and forensic DNA evidence to refute the defense. After a four day jury trial, Mr. Hopkins was convicted and sentenced to 30 years in prison, and his driving privileges were permantenly revoked. See Tab 30 for articles related to this case.	

State of Florida vs. Justin Duvall	
Case No.	2012-001651 CFAWS
Judge:	Hon. R. Michael Hutcheson
State Counsel:	Applicant (1st chair) & Celeste Gagne (386) 566-3716
Defense Counsel:	Martin K. Leppo (508) 580-3733 Theodore Barone (508) 584-0411
Trial dates:	April 21 - 29, 2014
5th DCA Case No.:	5D14-1973 (Affiirmed – Per Curiam)
This case was significant to me because it was my very first murder trial (before I was promoted to Homicide Unit). The trial lasted 7 business days. Opposing counsel were very skilled and thoroughly challenged the State at every turn. This case was additionally significant to me because it increased my knowledge of forensic evidence, which I was able to integrate into a very persuasive PowerPoint presentation used during my closing argument. The jury returned a verdict of guilty as charged after just 16 minutes of deliberating. Mr. Duvall was sentenced to life in prison. See Tab 30 for an article related to this case.	

State of Florida vs. Kenneth Bronson	
Case No.	2013-301317 CFDB
Judge:	Hon. R. Michael Hutcheson
State Counsel:	Applicant
Defense Counsel:	Kenneth Hamburg (407) 389-5140
Trial dates:	August 19-20, 2014
5th DCA Case No.:	5D14-3693 (Affirmed – Per Curiam)
This case was significant to me because it was one of the most serious sex crimes prosecutions I have handled during my career as a prosecutor. The case involved many complex legal issues including Williams Rule evidence, a complicated victim and expert testimony. The jury rejected Mr. Bronson's consent defense after evidence was presented that he attempted to break the victim's neck when she resisted his assault. This was a very emotional case, espeically in light of Mr. Bronson's history of preying on vulnerable women in society. See Tab 30 for an article related to this case.	

State of Florida vs. Justin Boyles	
Case No.	CF13-01221
Judge:	Hon. J. Michael Traynor
State Counsel:	Applicant (1st chair) & Travis Mydock (904) 494-8402
Defense Counsel:	Jim Hernandez (904) 354-4499
Trial dates:	December 7-14, 2015
5th DCA Case No.:	5D16-410 (Affirmed – Per Curiam)
This case was significant to me because it was my first murder trial after being officially promoted to the Homicide Investigations Unit, and it was my first ever jury trial in St. Johns County. Although I had tried many jury trials before in Volusia County, trying a high-stakes case in a courtroom and a county completely foreign to me was an unsettling experience. It helped me appreciate the feelings many litigants and witnesses must feel when they are in a courtroom for the first time themselves. This murder was very violent and involved a torture, beating, and arson death. I had to use a forensic anthropologist and a dentist to identify the victim in this case during trial. See Tab 30 for an article related to this case.	

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

See Tab 31 for two recent writing samples. I was the sole author of both samples.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

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

No

32b. List any prior quasi-judicial service:

Dates *Names of Agency* *Position Held*

None

Type 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.

N/A

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

N/A

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

N/A

(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.

N/A

(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.

N/A

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

N/A

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

N/A

BUSINESS INVOLVEMENT:

33a. If you are now an officer, director or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

N/A

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

No

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.

None

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.

I could not preside over cases where my spouse was an attorney or where her law firm was counsel in a case, unless the parties agree to a remittal of disqualification for the law firm.

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 any 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.

A Guide to Florida's Juvenile Sentencing Issues after *Miller v. Alabama* and *Graham v. Florida*, last published on November 9, 2016. See Tab 44.

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

Top Gun Trial Attorney award, State Attorney's Office, 2013

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

On several occasions, I have prepared and spoken about a summary of the criminal law cases contained in a volume of the Florida Law Weekly publication to other members of the State Attorney's Office, for which one hour of CLE credit was awarded on each occasion.

On July 7, 2015, I (along with co-worker Jennifer Dunton) gave a lecture to the St. Johns County Sheriff's Office Criminal Investigations Division about 4th Amendment search and seizure issues, as well as common 5th Amendment/*Miranda* rights issues arising during interrogations.

On November 14, 2014, I gave a lecture to misdemeanor prosecutors discussing evidentiary concerns in domestic violence cases, with a focus on the Florida Evidence Code and the Confrontation Clause of the 6th Amendment.

On November 8, 2013, I gave a lecture to new detectives at the Daytona State College Advanced Technology College concerning the fundamental concepts of the 4th Amendment and related search and seizure issues.

On February 24, 2012, I participated in a mock trial training seminar at the Deland Courthouse, which was hosted by the State Attorney's Office to help train local law enforcement.

On November 4, 2011, I participated in a mock trial training seminar at the Flagler County Courthouse, which was hosted by the State Attorney's Office to help train local law enforcement.

On August 26, 2011, I participated in a mock trial training seminar at the Deland Courthouse, which was hosted by the State Attorney's Office to help train local law enforcement.

47. Do you have a Martindale-Hubbell rating? Yes ☐ If so, what is it? ____ No ☒

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.

Volusia County Bar Association, member

Dunn Blount Inn of Court, member

48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to questions 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.

Volusia County Teen Court; volunteer judge; 2012-2014, and 2017 – present

Habitat for Humanity of Greater Volusia County, volunteer, 2017 - present

Daytona Beach Quarterback Club, past member

48c. List your hobbies or other vocational interests.

I enjoy traveling, spending time with family, learning about new technology, watching movies, and playing golf.

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.

Daytona Beach Quarterback Club, past member, I believe this organization only admits male members. I do not intend to join this organization again if selected to serve on the bench.

Phi Kappa Psi social fraternity, University of Tennessee, Knoxville, member 1998-2001; President, 1999-2000; this organization only admits male members. I would remain as an alumni member if selected to serve on the bench.

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

Volusia County Teen Court; volunteer judge; 2012-2014, and 2017 – present

SUPPLEMENTAL INFORMATION:

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

In the past five years, I have attended CLE programs in both criminal law and civil law. The criminal law programs focused on Florida law updates, trial procedure, and ethical obligations under the *Brady* and *Giglio* cases. The civil law programs focused on

discovery, summary judgments, employment law, business practices, consumer protection law, intellectual property and legal remedies.

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

No

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

Through my career as a prosecutor, I have litigated 70 jury trials, including several homicide cases. During this work, I have developed a strong working knowledge of Florida's Evidence Code that would serve the parties and counsel that appear before me well in trials. I have also developed a strong sense of fairness and reasonableness that will also help me treat all litigants with the dignity and respect they deserve.

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

Although I am only 38 years old, I have already tried many serious cases as a prosecutor, including several murder cases. I have gained a great deal of trial experience in a relatively short amount of time. Additionally, I am very interested in technology and I like to try new and innovative ideas that can make our courtrooms more efficient and effective platforms to help the legal communities we serve. Lastly, I would bring an enthusiasm and energy level to the work that would enable me to fairly and effectively manage heavy docket caseloads.

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

I previously applied to this judicial nominating commission for the vacancy created by the retirement of Judge Shirley Green.

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

I have a very calm demeanor and a good sense of humor. I am also very hard working, and I strive to use technology to be more efficient in my current practice. Although I only practiced civil law for a short time, I enjoyed that work as well. I am confident I can preside over a civil or criminal division assignment as a County Court Judge. I work hard to be prepared and to consider both sides of every issue in my current practice and would do so if appointed to serve on the bench. I am also firmly committed to the rule of law, and would earnestly uphold the oath to support and defend the laws of the State of Florida as well as the Florida and United States Constitutions.

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.

Name	Address	Telephone number
Hon. Leah R. Case, Circuit Judge	251 North Ridgewood Avenue, Daytona Beach, FL 32114	(386) 239-7790
Hon. R. Lee Smith, Circuit Judge	1769 East Moody Boulevard, Building 1, Bunnell, FL 32110	(386) 313-4515
Hon. Matthew Foxman, Circuit Judge	251 North Ridgewood Avenue, Daytona Beach, FL 32114	(386) 239-7793
R.J. Larizza, State Attorney	251 North Ridgewood Avenue, Daytona Beach, FL 32114	(386) 239-7710
Jason Lewis, Chief of Operations North	1769 East Moody Boulevard, Building 1, Bunnell, FL 32110	(386) 313-4300
Michelle Suskauer, President-Elect of The Florida Bar	Suskauer Feuer LLC, 240 10th Street, West Palm Beach, FL 33401	(561) 687-7866
Philip Bonamo, Esq.	Rice Law Firm, 222 Seabreeze Boulevard, Daytona Beach, FL 32118	(386) 257-1222
Jack Bisland, Undersheriff	Flagler County Sheriff's Office, 901 East Moody Boulevard, Bunnell, FL 32110	(386) 222-8085
Heather Post, Volusia County Council District Four Representative	123 West Indiana Avenue, Deland, FL 32720	(386) 690-3770
Melissa Morgan Paul, Esq.	Paul, Elkind, Branz & Kelton, P.A., 505 Deltona Boulevard, Suite 105, Deltona, FL 32725	(386) 574-5634

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 26th day of December, 2017.

Arthur Christian Miller
Printed Name

Arthur Christian Miller
Signature

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

FINANCIAL HISTORY

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

Current year to date	$82,500 (2017)		
List Last 3 years	$90,000 (2016)	$88,333 (2015)	$70,000 (2014)

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

Current year to date	$82,500 (2017)		
List Last 3 years	$90,000 (2016)	$88,333 (2015)	$70,000 (2014)

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

Current year to date	$0 (2017)		
List Last 3 years	$0 (2016)	$0 (2015)	$0 (2014)

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

Current year to date	$0 (2017)		
List Last 3 years	$0 (2016)	$0 (2015)	$0 (2014)

FORM 6
FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTEREST

PART A – NET WORTH

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

My net worth as of December 26, 2017 was $136,100.00.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

The aggregate value of my household goods and personal effects (described above) is $ 31,500

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Bank accounts (Bank of America)	$54,600
Florida Retirement Account (FRS-Pension)	$57,000
Coverdell Education Savings Account (USAA)	$4,000

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Volvo Car Financial Services, PO Box 91300, Mobile, AL 36691-1300	$5,400

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
None	

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	251 North Ridgewood Avenue, Daytona Beach, FL 32114	$91,000

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

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE
None			

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

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTTITY	None	None	None
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

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

OATH

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

Arthur Christian Miller

SIGNATURE

STATE OF FLORIDA
COUNTY OF Volusia

Sworn to (or affirmed) and subscribed before me this 26th day of December, 2017 by Arthur Christian Miller

Victoria E. Schwartz

(Signature of Notary Public—State of Florida)

VICTORIA E. SCHWARTZ
Commission # GG 135826
Expires November 5, 2021
Bonded Thru Troy Fain Insurance 800-385-7019

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

Personally Known ✓ *OR* Produced Identification ____

Type of Identification Produced ____

INSTRUCTIONS FOR COMPLETING FORM 6:

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

PART A – NET WORTH

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

To total the value of your assets, add:

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

To total the amount of your liabilities, add:

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

PART B – ASSETS WORTH MORE THAN $1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

ASSETS INDIVIDUALLY VALUED AT MORE THAN $1,000:

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

How to Identify or Describe the Asset:

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

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

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

How to Value Assets:

— Value each asset by its fair market value on the date used in Part A for your net worth.

— Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. However, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.

— Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.

— Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.

— Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.

— Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.

— Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.

— Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by "buy-out" agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.

— Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

PART C—LIABILITIES

LIABILITIES IN EXCESS OF $1,000:

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

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

How to Determine the Amount of a Liability:

— Generally, the amount of the liability is the face amount of the debt.

— If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.

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

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

Examples:

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

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

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

PART D – INCOME

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

PRIMARY SOURCES OF INCOME:

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

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

Examples:

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

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

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

— If more than $1,000 of income was gained from the sale of property, then you should list as a source of income the name of the purchaser, the purchaser's address, and the amount of gain from the sale. If the purchaser's identity is unknown, such as where securities listed on an exchange are sold through a brokerage firm, the source of income should be listed simply as "sale of (name of company) stock," for example.

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

SECONDARY SOURCE OF INCOME:

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

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

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

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

Examples:

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

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

PART E – INTERESTS IN SPECIFIED BUSINESS

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

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

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

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: December 26, 2017

JNC Submitting To: Seventh Circuit

Name (please print): Arthur Christian Miller

Current Occupation: Assistant State Attorney

Telephone Number: (386) 238-4894 Attorney No.: 0023211

Gender (check one): ☒ Male ☐ Female

☒

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: Arthur Christian Miller

Signature of Applicant: Arthur Christian Miller

Date: December 26, 2017

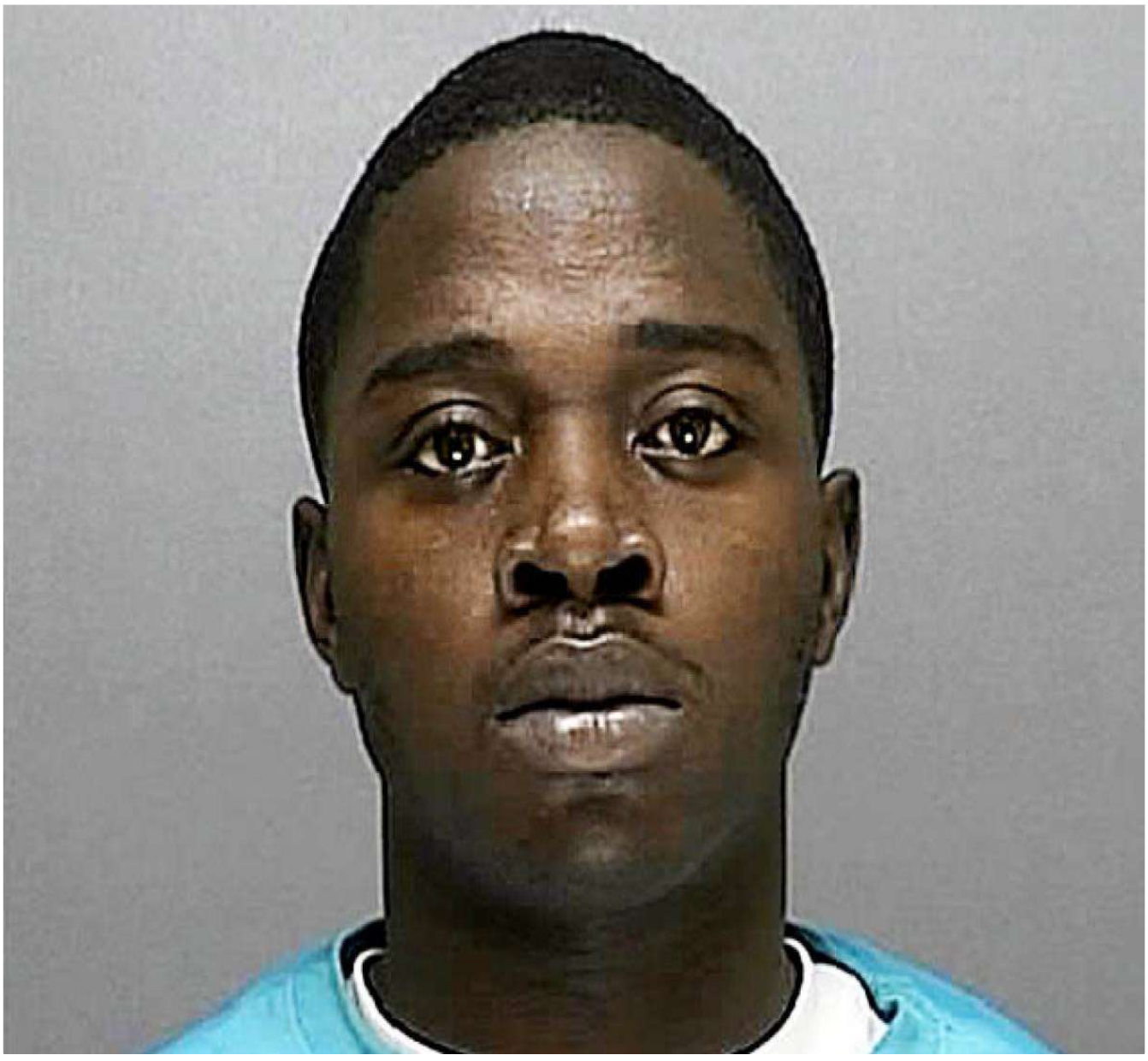
TAB 30

News articles related to significant cases

Ex-Marine gets life sentence for torturing man with cerebral palsy

BY ERIK ORTIZ

NEW YORK DAILY NEWS Thursday, May 24, 2012, 8:39 AM



Montario Litoron Royals, a 25-year-old former Marine Corps corporal, received life in prison for a home invasion case where he tortured a man with cerebral palsy and a prosthetic leg for nearly an hour, police say. (FLORIDA.ARRESTS.ORG)

An ex-Marine who helped torture a physically disabled Florida man in his home by stabbing him and pouring bleach on his head was sentenced to life in prison Wednesday.

Montario Litoron Royals, a 25-year-old former Marine Corps corporal, was convicted by a Florida jury a day earlier for the horrific home-invasion robbery on Aug. 30, 2009.

His defense attorney, Christopher Smith, alluded to Royal's military service during the sentencing, but Circuit Judge R. Michael Hutcheson still slapped him with the harsh sentence, The Orlando Sentinel reported.

In a statement, State Attorney R.J. Larizza described how the "

violent and sadistic nature" of the crime impacted victim Clifford Tindle, 29, who has cerebral palsy and a prosthetic leg.

"The physically disabled victim endured 45 minutes of hell and survived, the approximate time it took for the jury to find his attacker guilty," Larizza said. "His strength and courage are inspirational."

Royals did not know Tindle.

Prosecutors said Royals and two other unidentified men charged into Tindle's home in New Smyrna Beach, Fla., demanding drugs, money and jewelry.

Tindle testified that Royals put a gun in his mouth and threatened to shoot, The Orlando Sentinel reported. Royals also stabbed him in the head while one of the other attackers poured bleach on him, he testified.

Another one of the robbers nearly sawed off Tindle's pinkie, according to the Daytona Beach News-Journal.

After beating him relentlessly, the sickos left with just $6 cash and a stack of CDs, the News-Journal said.

Police were reportedly tipped off after an inmate in Volusia County Branch Jail claimed Royals bragged about the attack.

Royals was being held in jail on a first-degree murder charge connected to the 2009 death of a Daytona Beach man. That trial is set for next month, the News-Journal reported.

Royals was also previously convicted in 2009 of robbing a man and breaking his fingers.

Port Orange man convicted in Biketoberfest DUI crash that killed Apopka couple

Al Rue Hopkins, 55, was sentenced to 30 years in crash that killed Randall and Laura Allen.

April 18, 2013 | By Jeff Weiner, Orlando Sentinel

A Port Orange man was found guilty of DUI manslaughter on Thursday in a crash that killed an Apopka husband and wife during Biketoberfest 2011, prosecutors said.

The trial of Al Rue Hopkins, 55, ended on its third day, when Volusia County jurors returned a verdict convicting him in the crash that killed the Allens: Randall, 40, and Laura, 44.

The husband and wife were westbound on Taylor Road on a motorcycle Oct. 16, 2011, according to Port Orange police, when Hopkins drove his pickup directly into their path.

According to state prosecutors, lab results later measured Hopkins' blood alcohol content at .345, which is more than quadruple the .08 legal maximum for driving in Florida.

Prosecutor Chris Miller said that the verdict "will give the families of the victims some comfort" and "hopefully it will deter others from following in Mr. Hopkins's footsteps."

After the verdict, Circuit Judge Raul Zambrano sentenced Hopkins to 30 years in state prison. His driver's license was permanently revoked, the State Attorney's Office said.

jeweiner@tribune.com or 407-420-5171

THE DAYTONA BEACH NEWS-JOURNAL
NEWS-JOURNALONLINE.COM
HOME OF THE WORLD'S MOST FAMOUS BEACH

Port Orange man gets 30 years for bikers' deaths

By MARK I. JOHNSON / STAFF WRITER
Posted Apr 18, 2013 at 2:13 PM
Updated Apr 18, 2013 at 8:30 PM

Blood tests showed Hopkins had a blood alcohol level of 0.345, more than four times the legal limit of 0.08.

A jury found a Port Orange man guilty Thursday on two counts of DUI manslaughter for the deaths of an Apopka couple during Biketoberfest 2011, drawing him a 30-year prison sentence.

Al R. Hopkins, 55, was sentenced by Circuit Judge Raul A. Zambrano to two consecutive 15-year terms — 30 years — for his role in the deaths of Randall D. Allen, 40, and his wife, Laura J. Allen, 44.

The pair were riding their motorcycle on Taylor Road near Williamson Boulevard on Oct. 16, 2011, when Hopkins turned his red pickup into their path, causing the motorcyclists to slam into it. The impact threw Randall Allen onto the roof of Hopkin's truck, across the roof and then back onto the ground. Laura Allen was thrown to the pavement. Both were pronounced dead at the scene.

Blood tests showed Hopkins had a blood alcohol level of 0.345, more than four times the legal limit of 0.08.

While Hopkin's attorney, assistant public defender Matt Phillips, acknowledged his client was impaired at the time of the accident and as such was guilty of DUI, he said he was not guilty of manslaughter.

Phillips said the Allens also were drunk when they slammed into the right side of his client's pickup.

He said Randall Allen's blood alcohol level was almost three times the legal limit at 0.238, while his wife's was 0.132.

Because he was impaired, Phillips said, Randall Allen, who was driving the motorcycle, did not try to brake or swerve to avoid the pickup as it made its turn.

"This crash was caused by the operator of the motorcycle," he said.

However, Assistant State Attorney Chris Miller argued to the jury of two men and four women that it only had to find Hopkins contributed to the Allens' deaths to be guilty of manslaughter.

"You don't have to determine to what extent, you only have to find the defendant caused or contributed to the death," Miller said. "This is DUI manslaughter because as a

result of the defendant operating the vehicle while impaired he failed to yield the right of way and that failure to yield the right of way caused the crash. And the crash caused the death."

THE DAYTONA BEACH NEWS-JOURNAL
NEWS-JOURNALONLINE.COM
HOME OF THE WORLD'S MOST FAMOUS BEACH

Man convicted of shotgun killing

By Frank fernandez / frank.fernandez@news-jrnl.com

Posted Apr 29, 2014 at 7:28 PM

An Orange City man who had warned that "somebody is going to die" will spend the rest of his life in prison after he was found guilty Tuesday in the shotgun slaying of another man.

An Orange City man who had warned that "somebody is going to die" will spend the rest of his life in prison after he was found guilty Tuesday in the shotgun slaying of another man.

A jury took just 20 minutes to find Justin Tyler Duvall, 21, guilty of first-degree murder in the killing of Ricky Young, 46, said State Attorney R.J. Larizza, who praised prosecutors Celeste Gagne and Chris Miller.

Circuit Judge R. Michael Hutcheson sentenced Duvall to the mandatory life term without parole.

On June 18, 2012, Duvall was frustrated because his girlfriend Amy Beam, who was 35 at the time, would not see him. Duvall wrapped a bandanna round his face, armed himself with a shotgun loaded with two slugs and walked a mile to Beam's house near Orange City. Duvall encountered Beam and her neighbor Ricky Young in the garage. Duvall pulled the shotgun's trigger as Beam grabbed and turned Young to run away, Miller said during closing arguments.

Miller told the jury to hold Duvall accountable and that his youth did not entitle him to sympathy.

"He's old enough to buy a gun, his old enough to use a gun and his old enough to be held accountable when he killed someone," Miller said.

He said that Duvall had warned Beam of violence.

"He sent her a text message saying 'I'm coming over, better get out, somebody is going to die," Miller said.

The clean-shaven Duvall sat looking straight ahead at the defense table.

Duvall's defense team, Theodore A. Barone and Martin K. Leppo, said that Duvall went to the house because he was worried about Beam's welfare. Barone also argued that the bullet's entry wound was inconsistent with Duvall firing while standing in front of Young.

MOST POPULAR STORIES

THE DAYTONA BEACH NEWS-JOURNAL
NEWS-JOURNALONLINE.COM
HOME OF THE WORLD'S MOST FAMOUS BEACH

Holly Hill man gets 25 years for rape

By Frank Fernandez / frank.fernandez@news-jrnl.com
Posted Oct 9, 2014 at 2:57 PM
Updated Oct 9, 2014 at 10:30 PM

DAYTONA BEACH — A Holly Hill man convicted of raping a woman was sentenced on Thursday to 25 years in prison.

Kenneth Bronson Jr., 26, was convicted Aug. 20 of sexual battery with deadly force and false imprisonment after a two-day trial in front of Circuit Judge R. Michael Hutcheson.

Bronson beat and choked the woman and threatened to kill her during the rape that occurred in March 2013 at a home in the 300 block of Kingston Avenue, according to Assistant State Attorney Spencer Hathaway, spokesman for the State Attorney's Office.

The woman told police she had just met Bronson on the street and agreed to have a beer with him when he suddenly dragged her by her hair and sweatshirt onto the home's front porch and put her in a choke hold, according to a Daytona Beach police charging affidavit.

Bronson had previously been accused of a similar crime in Clearwater but not prosecuted due to insufficient evidence, Hathaway said. But the jury was informed of the accusation in Clearwater due to its common scheme or motive, Hathaway said in the press release.

Bronson, whose DNA was found on the woman, had faced up to life in prison for the sexual battery with deadly force conviction and up to five years for the false imprisonment conviction, Hathaway said.

THE DAYTONA BEACH NEWS-JOURNAL
NEWS-JOURNALONLINE.COM
HOME OF THE WORLD'S MOST FAMOUS BEACH

Hammock man found guilty in love-triangle murder trial

By Tony Holt / tony.holt@news-jrnl.com
Posted Dec 14, 2015 at 2:14 PM
Updated Dec 15, 2015 at 9:20 PM

ST. AUGUSTINE — Edward Scott Mullener apologized to Justin Boyles, but mercy would not be forthcoming, prosecutors said.

Mullener was beaten, tortured and killed by Boyles and his body and car were abandoned and burned.

After nearly eight hours of deliberations, jurors in turn gave little mercy Monday to Boyles, the man who stood trial for Mullener's slaying. After eight hours spent in the deliberation room, the jury reached guilty verdicts on charges of second-degree murder and kidnapping. When sentenced next month, Boyles faces up to life in prison.

"We've forgiven the defendants in our hearts so that the hatred doesn't consume us," said Drew Mullener, the victim's younger brother, who waited all day Monday — along with a half-dozen other family members and friends — for a resolution. He added that he hopes Boyles gets life because "that's what he deserves."

No date has been set for Boyles' sentencing, but it is expected to take place in mid-January.

Boyles' co-defendant, Danny Massey, 40, reached a plea agreement earlier this year with the State Attorney's Office, pleading guilty to second-degree murder. He gets sentenced Jan. 6 and faces 15 to 25 years in prison.

During the morning of Jan. 14, 2013, Mullener's remains were found in the trunk of his car, which had been burning for so long and so intensely, investigators needed to use dental bridges and orthopedic screws to confirm Mullener was the one in the trunk.

Boyles, 27, of The Hammock, killed Mullener, 53, because he had been sleeping with Boyles' girlfriend, prosecutors said.

Based on the evidence, Boyles severely beat Mullener in his girlfriend's backyard and recruited his friend, Massey, to help him stuff Mullener in the trunk of a car and take him to a desolate, logging road in St. Johns County where Mullener's corpse was burned — along with the car he was lying in.

Before he put Mullener in the trunk, Boyles tormented his victim, lead prosecutor Chris Miller said.

"(Boyles) spent several hours beating, torturing and interrogating Scott (Mullener)," Miller told jurors during closing arguments Monday morning.

The abuse Boyles inflicted included kicking a wounded and incapacitated Mullener as he lay on the ground, trying to goad his girlfriend into kicking Mullener, burning Mullener on the neck with a lit cigarette and mutilating Mullener's ear with a pocketknife, Miller said.

Boyles drove to Sanchez that night because his girlfriend, Antoinette Heart, wanted Mullener to leave her alone. Mullener had showed up to Heart's home drunk and was banging on her door, witnesses said.

Boyles, who was already livid about Heart's relationship with Mullener and had fired several rounds from a .38-caliber pistol in the direction of Mullener's house a week earlier, rushed to Heart's home where he beat up Mullener, according to court testimony.

Jurors heard much of that evidence last Tuesday when Massey took the stand and testified against his former friend.

Massey was an active participant in the crime by putting Mullener in the trunk and driving the victim's car to the place where it was set on fire, prosecutors said.

Massey was the one who told jurors that Mullener told Boyles he was sorry for sleeping with Heart, but Boyles continued to torture him anyway.

Defense attorney Jim Hernandez tried throughout the trial to convince jurors that Massey was the lone killer. He pointed to the lack of physical evidence tying Boyles to Mullener's slaying. Conversely, there was plenty of blood that was matched to Massey at 19 Sanchez Ave., where Mullener was beaten, Hernandez told the jury.

During his closing arguments, Hernandez also pointed out that Massey told jurors that he threw the murder weapon to the side of the road, a weapon he described as something resembling an anvil. Hernandez said Massey did so on his "own volition," implying that Massey was trying to hide evidence that would incriminate him.

Hernandez also tried to lay waste to Massey's allegation that he witnessed Boyles torture the victim with a pocketknife — specifically, the assertion that Boyles cut off a portion of the victim's ear and ate it. The details of that testimony reminded Hernandez of the fictional Hannibal Lecter character, a forensic psychiatrist and cannibalistic serial killer in novels and movies.

He called that part of Massey's testimony about as "outrageous as you can get, right out of 'Silence of the Lambs.' "

Boyles and Massey were already in prison serving time for prior felony convictions. Boyles was convicted last year of aggravated battery and Massey was convicted of a firearm possession charge. Those cases were in Flagler County.

Former prosecutor Jackie Roys originally was assigned to the case. She resigned from the State Attorney's Office earlier this year and moved to South Florida. On Monday, she expressed her satisfaction with the verdict.

"The jurors became the voice of the victim (and) the verdict reflects the relentless work of multiple law enforcement agencies that never quit seeking resolution for the family," Roys said.

Mullener's mother, Carol Costello, sat through every minute of the six-day trial. She said she intends to testify at Boyles' sentencing hearing next month.

"I'm glad we got it," she said of the verdict.

TAB 31

Writing samples

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

STATE OF FLORIDA,

CASE NO.: 2014-300455CFDB

v.

SHAWN RUPE,
Defendant.
_____/

STATE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS

The State requests this Honorable Court partially[1] deny the Defendant's Motion to Suppress for three reasons. First, substantial evidence supports the issuing judge's decision that probable cause existed to search the Defendant's laptop computer. Second, even if search for the internet history evidence recovered from the laptop computer was not supported by the probable cause statement in the affidavit, that evidence was discovered in plain view on the laptop computer during the forensic examination. Third, the U.S. v. Leon good faith exception should apply. 468 U.S. 897 (1984).

I. STANDARD OF REVIEW

In State v. Woldridge, the Second District Court of Appeal set forth the standard of review when trial courts are called upon to review the decision of another judge to issue a search warrant. 958 So.2d 455 (2007). The Court held that it is not a *de novo* review standard, but rather the relevant inquiry is whether or not there was substantial evidence to support the issuing judge's decision that probable cause existed. Id. at 458. Moreover, the Woldridge Court also noted that

[1] The search warrant and affidavit only mention a "laptop computer." However, during the execution of the search warrant, police seized both an Acer laptop computer and an HP Pavilion *desktop* computer. As the desktop computer was clearly outside the scope of the particular items authorized to be seized and searched in the search warrant, the State concedes suppression as to any evidence found on the HP Pavilion desktop computer. This responsive pleading will only address the Acer laptop computer.

reviewing courts should not overrule previous findings of probable cause "absent a clear demonstration that the magistrate abused his discretion in relying on the information in the affidavit supporting the warrant application to find probable cause." Id. The State submits this is akin to an abuse of discretion standard, and thus reviewing courts should give great deference to the original judge's decision to issue the warrant.

II. SUBSTANTIAL EVIDENCE SUPPORTED THE ISSUING JUDGE'S DECISION THAT PROBABLE CAUSE EXISTED

The Defendant's primary argument is that there was insufficient evidence to support the conclusion that evidence relating to the death of the victim would be located on the Defendant's laptop computer. This is essentially a lack-of-a-nexus argument. However, as argued below, the affidavit in support of the search warrant laid out specific facts that supported the issuing judge's decision establishing an nexus between evidence of the homicide of Dylan Tharp and the Defendant's laptop computer.

In State v. Weil, the Fifth District Court of Appeal considered a similar issue as raised by the Defense in this case: whether there was probable cause to establish the nexus requirement for a search warrant. 877 So.2d 803, 804 (2004). In Weil, the Court reversed a trial court's suppression of evidence found during a search warrant for lack of a nexus. Id. The Weil Court noted that "[c]learly, for a search warrant to be valid, it is not necessary that there exist direct proof that the objects of the search are located in the place to be searched." Id. The Court additionally observed that the existence of probable cause to believe a person committed a crime, increases the likelihood that evidence of that crime will be found in that person's residence. Id. at 805 (citing a recognized scholar on search and seizure law Professor LaFave.)

In State v. Williams, the First District Court of Appeal considered the nexus requirement in the context of a search warrant for a computer in a child pornography prosecution. 46 So.3d 1149, 1151 (2010). In Williams, the Court echoed the Weil Court's statements *supra* that direct proof of nexus is not required. Id. at 1152. The Williams Court continued,

> "Rather, the applicant must supply a sworn affidavit setting forth facts upon which a reasonable magistrate could find probable cause to support such a search. The issuing magistrate will then analyze the information contained in the affidavit, consider the type of crime being investigated, examine the nature of the items sought, and make a practical, common-sense decision as to whether there is a fair probability evidence of a crime will be found at a particular place."

Id. (internal citation and quotations omitted). With this framework, the Williams Court held that the trial court erroneously suppressed the evidence discovered during the execution of the search warrant. Id. at 1154.

When this Court reviews the application for the search warrant in the manner proscribed by Weil and Williams, the Court should conclude that substantial evidence supported the issuance of the search warrant in this case. This Court's analysis should focus on the areas of inquiry highlighted by the Williams court in the inset above, namely: (a) the information contained in the affidavit, (b) the type of crime being investigated, and (c) the nature of the items sought.

The Information Contained in the Affidavit

Within the affidavit supporting the search warrant, Det. Williams clearly established the following salient facts:

- Dylan Tharp was murdered
- The Co-Defendant confessed to murdering Dylan Tharp on an undercover recording
- The Co-Defendant implicated the Defendant in his confession

- The Defendant and Co-Defendant communicated with each other over the internet
- The Defendant behaved suspiciously toward his laptop computer when approached by the police for questioning

These facts alone are substantial evidence supporting the issuing judge's decision that probable cause existed to issue the search warrant. As stated in Weil, probable cause to believe a specified person committed a crime increases the likelihood that evidence of that crime will be found within their residence. 877 So.2d at 805.

When viewed in a practical, common sense manner, the existence of communications between the two suspects in a murder investigation created a fair probability that at least some of those communications will contain evidence of their individual or joint criminal conduct. Furthermore, the evidence of the Defendant's suspicious behavior toward his laptop computer could fairly be viewed as consciousness of guilt behavior – knowing that the laptop contains evidence of his guilt, the Defendant sought to either distance himself from the evidence, or prevent its discovery by the police. When this Court considers the information contained in the affidavit, as well as the reasonable inferences the issuing judge could have drawn therefrom, the Court should conclude that substantial evidence supported the issuing judge's decision to issue the search warrant.

The Type of Crime Being Investigated

Homicide investigations typically target a broader range and depth of evidence than almost any other type of criminal investigation. Killing another human being, relative to other crimes, is also usually a rarer event in society, such that the event is more impactful in the lives of the victim and the offender(s). The more impactful the crime on the various parties involved, the more likely

additional evidence may be created before, during, and after the crime. The State submits it was reasonable for the issuing judge to consider the nature of homicide crimes having a tendency to create more evidence than other crimes; and thus, that homicide suspects are more likely to communicate about their crimes with others than a petty thief or a burglar would.

The Nature of the Items Sought

Digital evidence is increasingly common and sought after in homicide cases. Even in 2013, when the search warrant was obtained, digital evidence was playing an increased role in homicide investigations. This is driven by the rate at which people are using technology in their daily lives. Sadly, emailing, text messaging, Tweeting, blogging and Facebooking have become ubiquitous, almost to the exclusion of actual personal interaction. In light of this societal trend, it naturally follows that evidence of crimes will increasingly be found within the digital realm. Such is the reality of criminal investigations in the twenty-first century.

III. ALTERNATIVELY, THE INCRIMINATING INTERNET HISTORY EVIDENCE WAS DISCOVERED IN PLAIN VIEW

The Defendant's Motion to Suppress appears to concede the existence of probable cause to search the laptop computer for evidence related to the communications between the Defendant and Co-Defendant. *Def.'s Mot. Supp*. 2 ("Here there was no probable cause to believe that evidence of the crime *beyond* communications between Mr. Rupe and others would be found on the laptop.") (emphasis supplied). This argument attempts to bifurcate the targeted evidence into two categories: a) evidence of communications between the Defendant and the Co-Defendant and b) all other evidence found on the computers. Therefore, the argument goes, any evidence fitting under category "b" must be suppressed because the probable cause only supported evidence fitting

within category "a." First, this argument ignores how a forensic examination of a computer is conducted. Second, even assuming the Defendant's argument is correct, the category "b" evidence was discovered in plain view, and thus it should not be suppressed.

In United States v. Wong, the United States Court of Appeals for the Ninth Circuit considered a similar issue. 334 F.3d 831 (2003). In Wong, the police were investigating the defendant for the murder of his girlfriend. Id. at 833. Evidence recovered near the victim's body led the police to obtain a series of search warrants, including one for the defendant's computer. Id. at 834. While examining the defendant's computer, police discovered child pornography. Id. at 835. In the ensuing prosecution, Wong – similar to the Defendant in this case – moved to suppress the child pornography by arguing that there was insufficient probable cause to establish that evidence of criminal activity would be found on his computers and that the warrant was overbroad. Id. at 835-36. Although the Ninth Circuit affirmed the District Court's ruling that the search warrant was supported by probable cause and was not overbroad, they went on to apply a plain view analysis because the search warrant originally authorized searching only for evidence of a murder, not child pornography. Id. at 838.

The Wong Court noted that for plain view to apply, the evidence must establish that "(1) the officer must be lawfully in the place where the seized item was in plain view; (2) the item's incriminating nature was immediately apparent, and (3) the officer had a lawful right of access to the object itself." Id. In applying the plain view legal standard to the facts of that case, the Court reasoned that because the forensic examiner found the child pornography within a part of the computer that he was lawfully accessing due to the valid search warrant for the murder investigation, that evidence was covered by the plain view exception. Id.

Similar to Wong, the police here were executing a valid search warrant. Even if the warrant in this case were only valid as to evidence of electronic communications between the Defendant and the Co-Defendant, the internet history evidence was located in an areas of the laptop computer that the forensic examiner reasonably would have been searching for the electronic communications evidence. As will be explained at the hearing on this Motion, the forensic examiner's method of searching the laptop computer was not by interacting with the computer itself as a normal user would by booting up the computer, logging in, and then manually searching the computer's hard drive folder-by-folder, file-by-file. Rather, the examiner created an exact and complete copy of the entire hard drive from the laptop computer (called a "mirror image"), and then he used two forensic examination tools called "Forensic Tool Kit" (or FTK) and "Internet Evidence Finder" (or IEF) to automate the search of the mirror image. FTK and IEF are vastly more efficient and thorough in searching for evidence in a digital crime scene because often only fragments of data are left on a hard drive, particularly when a user attempts to hide or delete files. An old-fashioned, manual search of the computer's hard drive itself by using the graphical user interface (i.e. "Windows operating system") would likely miss many pieces of evidence that fit the authorized search criteria.

The examiner will further testify that based upon his extensive training and experience in the field, searching for evidence of "electronic communications" pertains not just to emails, but also social media posts, blog posts, and various other methods of internet-based communications. He will testify that his process for looking for this evidence entails searching through browser histories and social media applications, because many applications through which these "electronic communications" are sent and received are themselves internet-based. The user must access a program such as Google Chrome, Mozilla Firefox, or Microsoft Internet Explorer to send and

receive these "electronic communications." Thus, the forensic examiner's search of the laptop computer for evidence of "electronic communications" required him to look at parts of the laptop computer's hard drive containing the files associated with the internet browsers and social media platforms. This is where the incriminating evidence of the internet history activity was located by the forensic examiner during his search of the laptop pursuant to the search warrant. And because the forensic examiner was searching the computer pursuant to a lawful search warrant, he was both in a place where he had a lawful right to be, and he had a lawful right of access to the items seized (the incriminating internet history) because they were located in the area he was searching for the "electronic communications" authorized by the search warrant.

In United States v. Gray, the United States District Court for the Eastern District of Virginia also addressed a similar issue. 78 F.Supp.2d 524 (1999). In Gray, the Court observed,

> "In some searches, however, it is not immediately apparent whether or not an object is within the scope of a search warrant; in such cases, an officer must examine the object simply to determine whether or not it is one that he is authorized to seize. Searches of records or documents present a variant of this principle, as documents, unlike illegal drugs or other contraband, may not appear incriminating on their face. As a result, in any search for records or documents, 'innocuous records must be examined to determine whether they fall into the category of those papers covered by the search warrant.' Although care must be taken to minimize the intrusion, records searches require that many, and often all, documents in the targeted location be searched because few people keep documents of their criminal transactions in a folder marked `crime records.'"

Id. at 528 (internal citations and quotations omitted). The Court further noted that computer searches are akin to document searches, and so many of the same legal principles apply. Id. at 529.

Based upon Gray, the State submits the forensic examiner in this case would have been authorized to examine any data within the laptop computer – within any area of the computer the

targeted evidence could reasonably have been located – to determine if the individual data fit the search criteria.

IV. THE OFFICERS ACTED IN GOOD FAITH IN RELYING UPON THE SEARCH WARRANT

The State agrees with the recitation of law in the Defendant's Motion to Suppress concerning the good faith exception to the exclusionary rule announced in United States v. Leon. 468 U.S. 897 (1984). However, the State asserts that the police in this case should be entitled to the good faith exception if the Court determines that the warrant was unsupported by probable cause. Here, the affidavit supporting the warrant detailed that a murder occurred, that the Defendant and Co-Defendant were implicated together in that murder, and that they had communicated "via computer by way of the internet." Additionally, the affidavit provided that it was the Co-Defendant's wife and the Co-Defendant himself that disclosed and confirmed the existence of the communications, respectively. The police reasonably could have concluded that this information was trustworthy as it came from persons with direct knowledge of the communications, that this provided a nexus to the Defendant's computer, and thus that the resulting search warrant stood upon sound legal and factual footing. Moreover, the search warrant itself authorized a search not just for the communications, but also "information pertaining to the death of Dylan [sic] Tharpe." This category of evidence is patently broader than just "communications."

Conclusion

For the reasons argued above, the State requests that this Honorable Court partially deny the Defendant's Motion to Suppress because competent evidence supports the issuing judge's decision to issue the search warrant. Alternatively, the search warrant was at least valid as to the

"electronic communications" evidence, and the incriminating internet history evidence was located within plain view during execution of that part of the search warrant. Lastly, even if the Court believes there was not substantial evidence supporting the issuance of the search warrant, the police were acting in good faith reliance upon the search warrant when the evidence was discovered.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion has been furnished by US mail and e-service to Ann Finnell, 2114 Oak Street, Jacksonville, Florida 32204 and afinnell@fmnlawyers.com this 1st day of September, 2016.

/s Chris Miller
Chris Miller
Assistant State Attorney
Bar No. 0023211
440 Beach Street
Daytona Beach, FL 32114
(386) 238-4894
eservicevolusia@sao7.org

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

STATE OF FLORIDA,

Respondent, **Case No.: 2012-129-CFFA**

v.

WILLIAM CARSON MERRILL,

Petitioner.

_____/

STATE'S RESPONSE TO MOTION FOR POSTCONVICTION RELIEF

On July 2, 2015, the Petitioner, William Carson Merrill, filed a Motion for Post-Conviction Relief pursuant to Florida Rule of Criminal Procedure 3.850. In his Motion, the Petitioner raises seven claims for relief. Respondent, the State of Florida, responds to these claims as indicated hereinafter, requesting the Court summarily deny those claims which can be conclusively rebutted by the record and requesting an evidentiary hearing on those claims that cannot.

Procedural History

On October 1, 2012, the Petitioner entered a no contest plea to the charge of Manslaughter with a Firearm. On October 29, 2012, the trial court sentenced the Petitioner to twenty-five years in prison, and the State dismissed the second count, which was for Possession of a Firearm by a Convicted Felon. On November 9, 2012, the Petitioner filed a Motion for Reduction/Modification of Sentence, which the trial court denied on November 20, 2012.

On April 1, 2013, the Petitioner filed a belated Notice of Appeal to the Fifth District Court of Appeal. On or about September 16, 2013, the Fifth District Court of Appeal affirmed

the Petitioner's judgment and sentence in this case. Thereafter, on July 2, 2015, the Petitioner filed this Motion for Postconviction Relief. No other motions for postconviction relief have been filed by the Petitioner, and no evidentiary hearings have been granted or conducted on the issues raised by the instant pleading.

Memorandum of Law

Claim One: Misadvice of Trial Counsel

Petitioner claims the trial counsel was ineffective for misadvising him on several matters, and thus, his plea was unknowingly and involuntarily entered. See Pet'r's Mot. 9. First, Petitioner claims trial counsel misadvised him that he would receive a probationary sentence. Pet'r's Mot. 9. This claim is rebutted by the record of the plea taken from the Petitioner on October 1, 2012. At that time, the trial court directly asked the Petitioner whether he had been promised anything in exchange for entering a plea to the charge. Tr. Proc. 6:9-10, Oct. 1, 2012. In response, the Petitioner stated "No, your honor." Tr. Proc. 6:11, Oct. 1, 2012. Respondent concedes that if the plea colloquy had not continued past this simple exchange, an evidentiary hearing would be required. See Pylant v. State, 134 So.3d 533, 534 (Fla. 5th DCA 2014) (holding a defendant's general acknowledgment that no one had made any promises to induce the plea is insufficient to conclusively rebut a misadvice claim.)

However, in Petitioner's case, prior to accepting the open plea, the trial court engaged in additional dialog excerpted below related to any plea offers in the case. This continued dialog, which went beyond the *pro forma* questions of most plea colloquies, conclusively rebuts the Petitioner's claim that he was promised a probationary sentence, thus distinguishing this case from Pylant.

THE COURT: Okay, I want to make sure that – that there's a clear understanding before he – before I accept the plea. Number one, was there ever a plea offer made to him?

MR. MATHIS: This was the plea offer, Judge.

THE COURT: There wasn't – this is the plea offer?

MR. MATHIS: This is the plea offer.

MR. KOCIJAN: Yes, sir.

THE COURT: Okay, All right. And then you conveyed that plea offer to him?

MR. KOCIJAN: Yes, Your Honor. Just for the record, there was [sic] two offers that were actually made to my client. We've discussed both of those, and that was essentially what it came down to today, and that was negotiated with the State.

THE COURT: Okay. Were the plea offers made in writing?

MR. MATHIS: I sent – I did send an e-mail to Mr. Kocijan, which contained both. It was an alternative plea. He could either plea to manslaughter in Count I as a second-degree felony, and possession of a firearm by a convicted felon in Count II. Or he could plea to the case as charged in Count I.

THE COURT: No –

MR. MATHIS: He would have a 30-year exposure.

THE COURT: No – no terms of years was offered?

MR. MATHIS: No terms of years. No, sir.

THE COURT: Okay. All right. I just want to make sure that he – he – this was conveyed to him is that…

MR. KOCIJAN: Yes, Your Honor. And what was stated is correct. I received an e-mail. We discussed both scoresheets and looked that over.

THE COURT: Okay. And then I want Mr. Merrill to also be aware that because you're entering a plea open to the Court – it's almost always unwise to do that, but it is your right – and

then your exposure is anywheres [sic] from whatever the – do we have a scoresheet?

MR. MATHIS: I do, Judge.

THE COURT: Could you show it to him, please.

MR. MATHIS: I have –

THE COURT: Have [sic] he seen that?

MR. KOCIJAN: Yes, Your Honor. And I believe he has a copy of both of the proposed scoresheets with – with – depending on the plea. They are a little bit different than the two, but not by much.

THE COURT: Okay. Well, so long as he has seen it. Do you understand that – let me take a look at the scoresheet.

MR. MATHIS: We've got some – we've got some corrections on here, Judge.

MR. KOCIJAN: Yeah. We've –

MR. MATHIS: I believe it's 128 months is the max – is the minimum.

THE COURT: And you're aware of that? That the scoresheet has a recommendation of 125 [sic] months?

MR. KOCIJAN: Point one. Yeah.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Which, in essence, is ten and a half years on the minimum mand. [sic]

THE DEFENDANT: Yes, Your Honor.

THE COURT: And your exposure is anywhere between zero and the maximum of 30 years.

THE DEFENDANT: Yes, Your Honor.

THE COURT: And that's what you want to do?

THE DEFENDANT: Yes, Your Honor.

Tr. Proc. 6-11, Oct. 1, 2012. Thereafter, the trial court accepted the Petitioner's open plea to Manslaughter with a Firearm as a first degree felony. Additionally, trial counsel denies that he promised the Petitioner that he would receive probation; therefore Respondent requests an evidentiary hearing on this issue if the Court determines this claim is not conclusively rebutted by the record.

Second, Petitioner claims trial counsel misadvised him that he needed to enter a plea because he would most likely be unsuccessful at trial. Pet'r's Mot. 10. Respondent asserts that this was not ineffective assistance, but rather tough advice given to a client in a difficult position based upon the lawyer's experience in the field. In State v. Leroux, the Florida Supreme Court noted that there is a difference between a lawyer promising a client a particular outcome, and giving that client advice based upon the lawyer's training and expertise. 689 So.2d 235, 237 (1996). The Leroux court noted that "providing such advice is a legitimate and essential part of the lawyer's professional responsibility to his client in most plea negotiations." Id. Furthermore, trial counsel's advice to plea rather than go to trial was reasonable in light of the Petitioner's video-taped confession to shooting the victim.

Third, Petitioner claims trial counsel failed to inform him of the pictures taken from Petitioner's cellular telephone. Pet'r's Mot. 10. As this issue was never conclusively addressed on the record, Respondent requests an evidentiary hearing on this issue. However, the Respondent notes that the trial counsel did acknowledge receipt of the photographs during the discovery process. Tr. Proc. 63:19-25, 64:1-2, Oct. 29, 2012.

Fourth, Petitioner claims trial counsel failed to inform him of the elements and required proof for Manslaughter and Possession of a Firearm by a Convicted Felon. Pet'r's Mot. 10. As

this issue was never addressed on the record, Respondent requests an evidentiary hearing on this issue.

Fifth, Petitioner claims trial counsel failed to inform him of the types of penalties he would be facing if he was convicted on the various charges. Pet'r's Mot. 10. This claim is conclusively rebutted by the record of the plea colloquy, as extensively quoted *supra*. The Petitioner was specifically advised on three occasions during the plea colloquy that he faced a maximum of thirty years in prison on a charge of Manslaughter with a Firearm. Tr. Proc. 5:21-25, 9:10, 11:2-3, Oct. 1, 2012. Furthermore, whether or not his trial counsel informed the Petitioner of the possible penalties for Possession of a Firearm by a Convicted Felon is irrelevant because that charge was dismissed pursuant to the plea agreement, therefore the Petitioner was not prejudiced by this alleged failure. Tr. Proc. 5:2-6, Oct. 1, 2012.

Claim Two: Failure to Seek Recusal of Presiding Judge

Petitioner claims the trial counsel was ineffective for failing to recuse the presiding trial court judge based upon a perceived conflict of interest. Pet'r's Mot. 11. The perceived conflict arose from the judge's concurrent roles as the presiding judge in the Petitioner's criminal case, as well as the Petitioner's family law case arising from the same incident. Respondent agrees with the Petitioner's statement of the law as quoted in his Motion, "[w]hen considering a disqualification issue in the context of an ineffective assistance claim, the finding of prejudice turns on whether disqualification would have been required, not on whether the outcome of a new trial would have been different." Cox v. State, 974 So.2d 474, 476 (Fla. 2d DCA 2008).

However, Respondent disagrees that disqualification would have been required in Petitioner's case. In Hope v. State, the Second District Court of Appeal held that disqualification

of a trial judge was not required where the judge presided over related civil and criminal matters of the defendant. 449 So.2d 1315, 1317 (Fla. 2d DCA 1984). In Hope, the defendant refused to answer questions before a grand jury, which led to an order to show cause and eventually, indirect criminal contempt charges. Id. at 1316. The same judge presided over both proceedings, thus Hope felt there was a conflict of interest and requested the judge recuse himself. Id. However, the Second District Court of Appeal affirmed the denial of the motion to recuse, reasoning that the grounds were not "legally or reasonably sufficient to support a well-grounded fear in [defendant] that he would not receive a fair trial at the hands of the trial judge." Id. at 1317.

Other courts have similarly held that the same judge presiding over different cases of the same litigant, even when the cases are factually related, does not support a legally sufficient motion to recuse that judge. In Santisteban vs. State, the Fourth District Court of Appeal held:

> [t]he fact that the judge has made adverse rulings against the defendant in the past is not an adequate ground for recusal, nor is the mere fact that the judge has previously heard the evidence…Moreover, a judge is not disqualified from presiding over a criminal trial because the judge presided over civil proceedings involving the defendant, *even where the civil proceedings arise out of the same incident as the criminal proceedings*.

72 So.3d 187, 194 (2011) (internal citations omitted) (emphasis added).

Lastly, in Scott v. State, the Fifth District Court of Appeal affirmed the denial of a motion to recuse the trial judge who was presiding over a violation of probation matter as well as the same defendant's family law (termination of parental rights) matter. 909 So.2d 364, 367-68 (2005). The Scott court noted that "the subjective fear of a party seeking the disqualification of a judge is not sufficient. The fear of judicial bias must be *objectively* reasonable." Id. at 368 (emphasis in original).

Petitioner cites Clayton v. State in support of his argument on this issue. 12 So.3d 1259 (Fla 2d DCA 2009). However, Clayton is factually distinguishable from Petitioner's case. In Clayton, the judge had previously prosecuted the defendant in another case when he/she had been an assistant state attorney. Id. The roles of a prosecutor and judge are fundamentally different. The prosecutor is an advocate who is responsible for presenting and arguing a case on behalf of the State of Florida *against* a defendant, whereas a judge does not advocate for either side. In the case at bar, although the trial judge was previously an assistant state attorney, there is no evidence that he ever prosecuted a case involving the Petitioner. Thus, the only context in which the trial judge here had any previous contact with the Petitioner was in his role as a judge presiding over the Petitioner's family law matter.

Here, Petitioner is similarly situated to the defendants in Hope, Santisteban, and Scott. All he possessed, at best, was a subjective fear of judicial bias. This was a legally insufficient basis to recuse the trial judge in Petitioner's case, thus his trial counsel was not ineffective for failing to raise this issue. Even if trial counsel should have raised the issue, no prejudice occurred in this context, for as stated in Cox *supra*, the disqualification would not have been required.

Claim Three: Failure to Seek Suppression of Cell Phone Evidence

Petitioner claims trial counsel was ineffective for failing to move to suppress the search and seizure of his cell phone, which contained photographs of the Petitioner in possession of multiple firearms and pointing a firearm at the victim. Pet'r's Mot. 13. Petitioner alleges this phone, and the photographs contained therein, were outside the scope of the written consent Petitioner gave to police on the date of the incident, and thus they were essentially taken without

his consent. Pet'r's Mot. 13-15. However, the police had an objectively reasonable basis to conclude that the cell phone was included within the scope of the Petitioner's written consent given at the time. See Pet'r's Mot. App. A. Furthermore, the trial court did not rely upon this evidence at the sentencing hearing, and thus Petitioner was not prejudiced by any potential error. See Tr. Proc. 78-79, Oct. 29, 2012.

As with other issues above, Respondent agrees with the Petitioner's general statements of law regarding consent and the scope of consent. Key to the resolution of this issue is one such statement of law from State v. Martin, 635 So.2d 1036 (Fla. 3d DCA 1994). Concerning the scope of consent given, Martin stated, *inter alia*, that, "in conducting the reasonableness inquiry, the court must consider what the parties knew to be the object of the search at the time." Id. at 1038. In Martin, the defendant's wife consented to a search of their home for evidence of property stolen during a home invasion robbery. Id. at 1037. Police found evidence of that robbery in a jewelry bag located within the defendant's home, which the trial court suppressed at trial based upon an argument similar to Petitioner's here. Id. In reversing the suppression of the consent search, the Martin court reasoned, "[t]he jewelry bag was within the scope of Mrs. Martin's consent because it was in the area authorized by her to be searched, and it was reasonably capable of containing the stolen property." Id. at 1038. The Martin court also noted that the wife had been told what the police were searching for prior to her providing them with consent. Id. at 1037.

In Petitioner's case, the object of the consent search was any and all evidence of the homicide. Similar to Martin, the Petitioner gave broad consent to search his home, and the cell phone containing the contested photographs was found within the area authorized to be searched. Like the jewelry bag to a robbery in Martin, a cell phone is an item reasonably capable of

containing evidence of a homicide. It is certainly reasonable to expect that the police will conduct thorough and exhaustive searches for all types of evidence at the scene of a homicide. The police often search for trace or very small quantity evidence such as nanograms of touch DNA or blood splatter at a homicide scene. As technology and social media continue to become more interwoven with daily life, police in homicide investigations are frequently searching for social media and other digital evidence that may supply evidence of motive, intent, or otherwise illuminate the background between the suspect and victim. In this case, because the cell phone was located within the area authorized to be searched, and because it was reasonable for the police to conclude that cell phone found at the scene of the crime may contain evidence of the homicide they were investigating, the cell phone would have been included within the reasonable scope of consent given under Martin. Therefore, trial counsel was not ineffective for failing to seek suppression of this evidence.

Assuming *arguendo* that the evidence was subject to suppression, and trial counsel was ineffective for failing to seek suppression, the Petitioner was not prejudiced by this failure as the trial court did not rely on this evidence at the sentencing hearing. In his comments prior to imposing the sentence in this case, the trial court made no reference whatsoever to the cell phone or the contested photographs. The trial court only commented on the admitted conduct of the Petitioner in the instant offense, his proffered excuse for such conduct, and the resulting harm. See Tr. Proc. 78-79, Oct. 29, 2012. Thus, Petitioner suffered no prejudice.

Claim Four: Failure to Object to Prosecutorial Misconduct

Petitioner claims that his trial counsel provided ineffective assistance for failing to object to several instances of prosecutorial misconduct at sentencing. Pet'r's Mot. 15. First, Petitioner

claims that the prosecutor's introduction of and comments regarding the photographs of the Petitioner holding numerous firearms and pointing a scope at the victim's head were improper because the Respondent did not establish that the Petitioner specifically was the photographer, nor that it was the same weapon used in the victim's killing. Pet'r's Mot. 16. In the context of this issue, it is important to note that the limited issues raised in mitigation by the Petitioner at his sentencing were that this shooting was accidental and out of character. The Petitioner presented numerous witnesses to attempt to establish these points. Tr. Proc. 9:9-12, 10:23-25, 11:1, 13:4-5, 13:15-17, 14:24, 17:18-19, 17:22-23, 23:6-8, 27:14-17, 29:13-14, 31:14-15, 33:1, 37:12-16, 41: 20-22, 43:7, Oct. 29, 2012. In that context, these photographs became entirely relevant to demonstrate that the Petitioner was not a cautious gun owner as he portrayed himself. Rather, these photographs demonstrated that he was reckless with his firearms in the past, just as he was at the time of victim's death.

"Evidence may be authenticated by appearance, content, substance, internal patterns, or other distinctive characteristics taken in conjunction with the circumstances. In addition, the evidence may be authenticated either by using extrinsic evidence, or by showing that it meets the requirements for self-authentication." Symonette v. State, 100 So. 3d 180, 183 (Fla. 4th DCA 2012). The Petitioner ignores that the Respondent would have been able to circumstantially authenticate these photographs. The photographs were located on the Petitioner's cell phone, they depicted areas inside his home (which several officers had access to and would have recognized from the search of the home), and the Petitioner was shown in most of the photographs himself. These facts would have been sufficient to authenticate the evidence. Even if the photograph depicting the rifle scope focusing on the victim's head was not the same weapon used in her killing, it would still have been relevant, admissible evidence to demonstrate

the Petitioner's pattern of recklessness leading up to the killing. The State would concede that it would be difficult to conclusively establish that the Petitioner took the particular photograph of the rifle scope focusing its crosshairs on the victim's head. However, given the other facts pointed out above that would tend to authenticate the other photographs found on the same cellular phone, and in light of the preponderance of evidence standard for authentication of evidence, the Respondent submits that this particular objection would go toward the weight and not the admissibility of the evidence. Thus, trial counsel was not ineffective for failing to object to these photographs, nor the related comments by the prosecutor.

Respondent also notes that the Reese case cited by the Petitioner is factually distinguishable. In Reese, the unsubstantiated allegations of prior misconduct consisted of the prosecutor's comments at sentencing that the defendant had appeared in other undercover drug sting videos coupled with the allegation that he was involved as a principal in those other uncharged cases. 639 So.2d at 1068. None of the videos were presented to the trial court. Id. However, in the Petitioner's case, the trial court was actually shown photographic evidence of his prior misconduct: possessing numerous firearms despite his status as a convicted felon and pointing a gun at the victim's head previously. These were not unsubstantiated claims of a prosecutor at a sentencing as in Reese, rather they were relevant evidence of the Petitioner's prior conduct directly contradicting the Petitioner's proffered mitigation at sentencing.

The Petitioner also argues that but for this challenged photographic evidence and the related comments, the trial court would have been "obligated to sentence the [Petitioner] to either a guidelines sentence or grant trial counsel's request for a downward departure." See Pet'r's Mot. 16. This argument misunderstands the Criminal Punishment Code. The trial court is never "obligated" to sentence a defendant to the "guidelines sentence." Rather, as stated in Florida

Statute § 921.0024(2), "[t]he lowest permissible sentence is the minimum sentence that *may* be imposed by the trial court, absent a valid reason for departure." Hall v. State, 773 So.2d 99, 100-01 (Fla. 1st DCA 2000) (emphasis supplied) (noting that "the CPC provides for the establishment of the lowest permissible sentence and permits the judge to sentence within its discretion from the lowest permissible sentence up to the statutory maximum without written explanation. The lowest permissible sentence is not a presumptive sentence."). Moreover, the Petitioner also misunderstands the state of the law regarding downward departures. The trial court similarly would never have been "obligated" to downward depart in the Petitioner's case. See State v. Robinson, 149 So.3d 1199, 1203 (Fla. 1st DCA 2014) (noting "[a] trial court's decision to depart from the lowest permissible sentence is a two-step process: the trial court must first determine whether it *can* depart (step one) and then it must determine whether it *should* depart (step two)."") (emphasis in original).

Lastly, the Respondent submits that even if the trial counsel was ineffective for failing to object to the photographs or the comments by the prosecutor, the Petitioner still suffered no prejudice from this failure. It is evident from the transcript of the trial judge's comments at sentencing that he did not rely upon the photographs or the prosecutor's related comments in determining his sentence in this case. See Tr. Proc. 78-79, Oct. 29, 2012. Thus, even if there was ineffective assistance, Petitioner was not prejudiced thereby.

Claim Five: No Factual Basis to Support Plea to Charge

Petitioner argues that the trial counsel was ineffective for allowing him to plea to a charge where no factual basis existed. Pet'r's Mot. 17. Petitioner cites the case of Colding v. State in support of his argument on this claim. 638 So.2d 1008 (Fla. 2d DCA 1994). However,

Colding is distinguishable. Unlike in Colding, Petitioner's trial counsel twice stipulated to a factual basis for the charge of Manslaughter by Firearm at the plea hearing. Tr. Proc. 8:4-7, 11:10-13, Oct. 1, 2012. Furthermore, unlike in Colding, the trial court here inquired and independently found that a factual basis existed for the Petitioner's plea. Tr. Proc. 11:14-19, Oct. 1, 2012. Thus, Petitioner's reliance on Colding is misplaced.

Claim Six: Failure to Object to Victim Advocate Reading Next of Kin's Statement

Petitioner claims his trial counsel was ineffective for failing to object to the victim advocate reading an unsworn victim impact statement to the court at the sentencing hearing. Pet'r's Mot. 20. In support of this claim, Petitioner cites Patterson v. State, 994 So.2d 428 (Fla 1st DCA 2008). However, part of the rationale of the Patterson decision was that the sentencing judge there relied upon the erroneously admitted evidence when imposing the sentence on Patterson. Id. at 429. Unlike in Patterson, here there is no evidence from the trial court's comments suggesting that it relied upon anything stated by the victim advocate. See Tr. Proc. 78-79, Oct. 29, 2012. Thus, even assuming counsel was ineffective for failing to object to this evidence, Petitioner cannot prove prejudice because the trial court did not rely upon this evidence.

Furthermore, it was not error for the trial court to receive the contested evidence in this fashion, thus trial counsel was not ineffective for failing to object to its admission. In Smith v. State, the defendant alleged that the sentencing court erred when it allowed the state to present testimony from witnesses not listed in the approved list under Florida Statute § 921.143. 982 So.2d 69, 70 (Fla. 1st DCA 2008). In rejecting her claim, the Smith court reasoned that Florida Rule of Criminal Procedure 3.720(b) provides an "unqualified directive" to sentencing courts to

"entertain submissions and evidence by the parties that are relevant to the sentence." Id. at 71. The Smith court then noted that Florida Statute § 921.143 should be viewed as a vindication of victim's rights, not as a restriction of the court's "unqualified directive" under Rule 3.720(b). Id. at 71-72. To view the statute and rule in conflict with each other, rather than as compatible, would create separation of powers and due process issues. Id. Just as in Smith, Petitioner's claim that the victim advocate could not read a letter from the victim's mother because it violated the requirements of F.S. § 921.143 is not legally sound. Florida Rule of Criminal Procedure 3.720(b) requires the trial court to receive submissions and evidence from the parties that are relevant to the issues at sentencing. Therefore, Petitioner's trial counsel was not ineffective for failing to object to this evidence as it was lawfully received by the trial court despite noncompliance with the victims' rights statute.

Petitioner also claims that it was error for his trial counsel to fail to object to the victim's mother's claim that he was a convicted felon. Pet'r's Mot. 21. Petitioner disingenuously claims this was unsubstantiated because the charge of Possession of a Convicted Felon was dismissed by the State, but he neglects to recall that the charge was dropped under a *plea agreement,* rather than as a result of a factual deficiency. Tr. Proc. 5:2-6, Oct. 1, 2012. Moreover, the trial court would have been aware of the Petitioner's status as a convicted felon because the Petitioner's prior felony conviction was reflected on the "Prior Record" section of his scoresheet submitted to the court at the time of sentencing.

Petitioner also claims it was error for his trial counsel to fail to object to the victim's mother's claim that there was a prior allegation of domestic violence between the Petitioner and the victim. Pet'r's Mot. 21. The Petitioner relies on Epprecht v. State to show error, however Epprecht is distinguishable. 488 So.2d 129 (Fla. 3d DCA 1986). In Epprecht, the court reversed

the defendant's sentence because it was clear from the record that the sentencing judge had based his sentencing decision, at least partially, on the unsubstantiated claims of prior misconduct. Id. at 130. In Petitioner's case however, as argued *supra*, the trial court did not rely upon anything the victim's mother communicated in its rationale as expressed in the court's comments preceding the imposition of sentence. See Tr. Proc. 78-79, Oct. 29, 2012.

Petitioner also claims it was error for his trial counsel to fail to object to the victim's mother's request for a maximum sentence. Pet'r's Mot. 21. Respondent fails to see how a victim's mother expressing her desire for an otherwise legal sentence is error.

Claim Seven: Cumulative Errors of Trial Counsel Rendered Him Ineffective

Petitioner lastly claims the cumulative errors of his trial counsel culminated in ineffective assistance, which he was prejudiced thereby. Pet'r's Mot. 22. As argued above under the individual claims, Respondent submits that Petitioner's trial counsel rendered effective assistance in most instances, and that Petitioner was not prejudiced by any alleged instances of ineffective assistance. Therefore, Respondent requests that this Honorable Court deny this claim.

Conclusion

Petitioner raises seven claims of error by his trial counsel. However, numerous of these claims are meritless and conclusively rebuttable by the record or otherwise legally insufficient. As to those claims, the Respondent requests that this Honorable Court summarily deny Petitioner's claims. The remaining claims that are legally sufficient, and not rebuttable by the record, the Respondent requests that this Honorable Court conduct an evidentiary hearing to adjudicate.

Certificate of Service

I HEREBY CERTIFY that true and correct copies of the above were sent by U.S. Mail and e-mail to Rachael E. Bushey, Esq., O'Brien Hatfield P.A., Bayshore Center, 511 West Bay Street, Third Floor – Suite 330, Tampa, Florida 33606 and reb@markjobrien.com on this 6th day of October, 2015.

_/s Chris Miller_____
Chris Miller
Assistant State Attorney
Florida Bar No. 0023211
2446 Dobbs Road
St. Augustine, Florida 32086

TAB 44

Publications

A Guide to Florida's Juvenile Sentencing Issues after *Miller v. Alabama* and *Graham v. Florida*

Office of the State Attorney, 7th Judicial Circuit – The Honorable R.J. Larizza

Last published on November 9, 2016

Contents

Topical Outline

What does *Miller v. Alabama* hold?

- Juveniles are different, and thus 8th Amendment forbids mandatory life-without-parole sentencing schemes for juveniles convicted of homicides
- Trial courts must conduct individualized sentencings for juveniles convicted of a homicide
- At sentencing, judge must consider defendant's youth and its "attendant circumstances"; such as immaturity, impetuosity, failure to appreciate risk and consequences
- Trial courts should also consider the family and home environment, as well as the circumstances of the homicide offense, including the extent of participation and the way familial and peer pressures may have affected the defendant; as well as the potential for rehabilitation

Are life-without-parole sentences totally prohibited under *Miller v. Alabama*?

- No, only *mandatory* life-without-parole sentencing schemes are unconstitutional
- *Miller* recognizes that a judge may still sentence a juvenile to life without parole for a homicide; but it first must conduct an individualized sentencing to determine if appropriate
- However, Ch. 14-220 built in mandatory 25-year sentencing review hearings even for first degree premeditated and felony murder; so effectively, unless the defendant has a prior conviction for an enumerated felony under F.S. § 921.1402(2)(a), true life without parole (or a review hearing) is no longer a realistic option in Florida

Are discretionary life sentences for homicides affected by *Miller v. Alabama*?

- Possibly, if the Court did not consider the "distinctive attributes of youth" and its attendant circumstances, see *Landrum v. State*, 192 So.3d 459 (Fla. 2016) (remanding discretionary life sentence for second degree murder for new sentencing under 921.1401 because the trial court did not consider these factors)

Is *Miller v. Alabama* retroactive?

- Yes, see *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016); *Falcon v. State*, 162 So.3d 954 (Fla. 2015)

What sentencing law applies to *Miller* effected defendants if their case arose prior to July 1, 2014 – the effective date of Ch. 14-220?

- Ch. 14-220 applies retroactively to *Miller* defendants, despite the effective date and despite the Savings Clause of Fla. Const. Art. X, § 9; see *Horsley v. State*, 160 So.3d 393 (Fla. 2015) (also rejecting statutory revival of prior law that imposed life with parole eligibility after twenty-five years)

How long do Florida defendants affected by *Miller* have to file motions post-conviction relief under Florida Rule of Criminal Procedure 3.850?

- 2 years from date of mandate in *Falcon v. State* (opinion issued March 19, 2015)

What does *Graham v. Florida* hold?

- Categorically bans life-without-parole sentences against juveniles for non-homicide crimes
- This is unlike *Miller* which is not a total ban
- Sentence must provide a meaningful opportunity for release upon demonstrated maturity and rehabilitation within the juvenile's natural lifetime

Does *Graham v. Florida* mean a juvenile defendant must be released in their natural lifetime?

- No, *Graham* only holds that 8th Amendment guarantees *meaningful opportunity* for release based on demonstrated maturity and rehabilitation, not release itself

Is there an exception to *Graham* for separate criminal offenses/episodes?

- No, see *Francis v. State*, 2015 WL 7740389 (3rd DCA 2015)

Who has burden of proof regarding an alleged *Graham* violation?

- Juvenile defendant has burden of proving no meaningful opportunity for release based upon demonstrated maturity and rehabilitation within natural lifetime, see *Davis v. State*, 199 So.3d 546 (4th DCA 2016)

Can a judge sentence a juvenile defendant to life without parole on a non-homicide offense if there is also a qualifying homicide charge (2nd degree or 1st degree murder)?

- No, see *Lawton v. State*, 181 So.3d 452 (Fla. 2015), explicitly finding no "homicide exception" to *Graham v. Florida*

How many years equals a *de facto* life sentence sufficient to establish a *Graham* violation?

- Varies based on circumstances:
    a) 50 year sentence does <u>not</u> violate *Graham*, see *Thomas v. State*, 78 So.3d 644 (1st DCA 2011); *Williams v. State*, 197 So.3d 569 (2nd DCA 2016)
    b) 60 year sentence with review mechanism would <u>not</u> violate *Graham*, see *Barnes v. State*, 175 So.3d 380 (5th DCA 2015) (affirming sixty year sentence, but remanding for inclusion of review mechanism in sentencing documents)
    c) 65 year sentence does violate *Graham*, see *Morris v. State*, 198 So.3d 31 (2nd DCA 2015)
    d) 70 year sentence violated *Graham*, see *Cunningham v. State*, 187 So.3d 937 (4th DCA 2016); *Gridine v. State*, 175 So.3d 672 (Fla. 2015)
    e) 75 year sentence with significant basic and meritorious gain time eligibility does <u>not</u> violate *Graham*, see *Smith v. State*, 93 So.3d 371 (1st DCA 2012)

f) 80 year sentence does violate *Graham*; see *Floyd v. State*, 87 So.3d 45 (1st DCA 2012); *Davis v. State*, 182 So.3d 700 (4th DCA 2015)
g) 80 year sentence with significant basic and meritorious gain time eligibility does not violate *Graham*, see *Davis v. State*, 199 So.3d 546 (4th DCA 2016)
h) 85 year sentence violates *Graham*, see *Francis v. State*, 2015 WL 7740389 (3rd DCA 2015)
i) 90 year sentence violates *Graham*, see *Henry v. State*, 175 So.3d 675 (Fla. 2015)
j) 90 year sentence without review mechanism violates *Graham*, see *Stephenson v. State*, 197 So.3d 1126 (3rd DCA 2016)
k) 93-year aggregate, minimum mandatory sentence violates *Graham*, see *Cook v. State*, 190 So.3d 215 (4th DCA 2016)

How does parole eligibility effect an alleged *Miller* violation?

- Generally, Florida's existing parole system does not satisfy *Miller's* requirement for individualized sentencing; see *Atwell v. State*, 197 So.3d 1040 (Fla. 2016)
- However, at least one case has held where the Presumptive Parole Release Date (PPRD) does not exceed the life expectancy of the defendant, that there is no *Miller* violation, see *Cunningham v. State*, 54 So.3d 1045 (3rd DCA 2011)
- Another case remanded to trial court for evidentiary hearing concerning PPRD determinations, signaling this information may be dispositive of an alleged *Miller* violation, see *Stallings v. State*, 198 So.3d 1081 (5th DCA 2016)

How does gain time eligibility effect an alleged *Miller* or *Graham* violation?

- Depending on the amount and type of gain time eligibility, as compared to the life expectancy of the defendant, this may suffice for "meaningful opportunity for release"; see below cases for illustrations:
    a) *Smith v. State*, 93 So.3d 371 (1st DCA 2012) (affirming 80 year sentence where defendant eligible for 10 days per month basic gain time and 20 days per month of meritorious gain time);
    b) *Williams v. State*, 197 So.3d 569 (2nd DCA 2016) (affirming 50 year sentence and noting gain time eligibility after minimum mandatory portion of sentence completed);
    c) *Davis v. State*, 199 So.3d 546 (4th DCA 2016) (affirming 75 year prison sentence where defendant had opportunity to receive substantial gain time and expected to be released in his mid-50s)

Where can I find information about parole eligibility?

- Florida Department of Corrections website contains information concerning parole eligibility: http://www.dc.state.fl.us/oth/inmates/parole.html

Where can I find information about gain time types and eligibility for different offense dates?

- Florida Statute § 944.275 controls gain time, and provides the following eligibility based upon date of offense:

  a) (4)(a) provides basic gain time shall be granted at 10 days per month

  b) (4)(b) provides incentive gain time may be granted as follows:

Date of offense	Gain time eligibility
Prior to January 1, 1994	Up to 20 days per month
From January 1, 1994 to October 1, 1995	Up to 25 days per month for level 1-7 offenses Up to 20 days per month for level 8-10 offenses
October 1, 1995 to present	Up to 10 days per month but minimum of 85% of sentence must be served; no gain time for life sentences

Where can I find information about a juvenile's life expectancy?

- The Centers for Disease Control and Prevention website contains information concerning life expectancy: http://www.cdc.gov/nchs/fastats/life-expectancy.htm

Does a life sentence imposed as a minimum mandatory under 10-20-Life law supersede an alleged *Miller* or *Graham* violation?

- No, see *Wade v. State*, 2016 WL 5874429 (1st DCA 2016) (remanding a minimum mandatory life sentence for discharge of firearm causing death pursuant to 10-20-Life for resentencing)
- But also see *St. Val v. State*, 174 So.3d 447 (4th DCA 2015) (affirming a 25-year minimum mandatory sentence where juvenile defendant would definitely be released within his lifetime)

What factors must a court consider in conducting a sentencing/resentencing based on a *Graham* or *Miller* violation?

- The trial court must make a finding whether the defendant actually killed, intended to kill, or attempted to kill.

- Additionally, Florida Statute § 921.1401(2) states the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:
    a) The nature and circumstances of the offense committed by the defendant.
    b) The effect of the crime on the victim's family and on the community.
    c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
    d) The defendant's background, including his or her family, home, and community environment.
    e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
    f) The extent of the defendant's participation in the offense.
    g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.
    h) The nature and extent of the defendant's prior criminal history.
    i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
    j) The possibility of rehabilitating the defendant.

Is *Graham v. Florida* retroactive?

- Yes; see *Peterson v. State*, 193 So.3d 1034 (5th DCA 2016)

Is the State allowed to have a psychologist or psychiatrist examine a defendant for use at a sentencing hearing?

- Yes, if the defendant is offering an expert who examined the defendant, then the state can have its own expert also examine the defendant; however, the examination is limited to the mitigating factors raised by the defendant's expert; see *Beckman v. State*, 147 So.3d 584 (3rd DCA 2014)

Are all juveniles entitled to a sentencing review hearing?

- See Appendix A.

Does the judge have to make written findings whether a review hearing is required or not?

- Yes, F.S. §§ 775.082(1)(b)3 and (3)(a)5c and (3)(b)2c each require the court to make written findings of the defendant's eligibility for a sentencing review hearing based upon whether the defendant killed, intended to kill, or attempted to kill.

What factors must a court consider at a sentencing review hearing?

- Florida Statute § 90.1402 states the court shall consider any factor it deems appropriate, including but not limited to:
    a) Whether the juvenile offender demonstrates maturity and rehabilitation.
    b) Whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

c) The opinion of the victim or the victim's next of kin. The absence of the victim or the victim's next of kin from the sentence review hearing may not be a factor in the determination of the court under this section. The court shall permit the victim or victim's next of kin to be heard, in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentencing review hearings.
d) Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.
e) Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.
f) Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.
g) Whether the juvenile offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.
h) Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.
i) The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as to rehabilitation.

Case law summaries

U.S. SUPREME COURT

Graham v. Florida, 560 U.S. 48 (2010)

- Held 8th Amendment bans life sentences without possibility for parole for juvenile non-homicide offenders
- Recognizes that State not required to guarantee eventual release of non-homicide juvenile offenders
- State must give defendants "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation"
- 8th Amendment does not require state to release juvenile non-homicide offender within his lifetime; just prohibits State from making that judgement at outset

Miller v. Alabama, 132 S.Ct. 2455 (2012)

- Held *mandatory* life without possibility of parole for juvenile offenders violates 8th amendment
- Juvenile defendants entitled to individualized sentencings where trial court can consider youth and attendant circumstances
- Discretionary life without parole sentences for juvenile homicide defendants are permissible, but sentencing court must conduct individualized sentencing

Alleyne v. United States, 133 S.Ct. 2151 (June 17, 2013)

- Any fact that increases mandatory minimum sentence for crime is an "element" of the crime, not sentencing factor that must be submitted to the jury.
- Finding as to whether defendant has brandished, as opposed to merely carried, firearm in connection with crime of violence, because it would elevate the mandatory minimum term for firearms from five to seven years, was element of separate, aggravated offense that had to be found by the jury.

Montgomery v. Louisiana, 136 S.Ct. 718 (2016)

- *Miller v. Alabama* is retroactive

Tatum v. Arizona, 2016 WL 1381849 (Oct. 31, 2016)

- *Miller* requires "that a sentencer decide whether the juvenile offender before it is a child "whose crimes reflect transient immaturity" or is one of "those rare children whose crimes reflect irreparable corruption" for whom a life without parole sentence may be appropriate"

FLORIDA SUPREME COURT

Henry v. State, 175 So.3d 675 (Fla. 2015)

- Extended *Graham* to lengthy term-of-years sentences
- 90 year aggregate sentence on non-homicide charges violated *Graham*
- 8th Amendment will not tolerate prison sentences that lack a review mechanism for evaluating special class of offenders for demonstrable maturity and reform in future

Gridine v. State, 175 So.3d 672 (Fla. 2015)

- 70 year prison sentence on non-homicide charges violated *Graham* because it did not provide for meaningful opportunity for early release based upon demonstration of his maturity and rehabilitation

Falcon v. State, 162 So.3d 954 (Fla. 2015)

- *Miller* applies retroactively to juvenile offenders whose convictions and sentences were final at time *Miller* was decided
- Proper remedy is to resentence under new statute (921.1401), citing *Horsley*
- Holds 775.082(1) – requiring mandatory life sentences for capital murder – unconstitutional as applied to juveniles
- Juveniles have 2 years to file motion from date of mandate in *Falcon* (opinion issued March 19, 2015)
- Held "trial court" must make findings whether juvenile actually killed, intended to kill or attempted to kill (but see *Alleyne* – 6th amendment requires jury make findings for minimum mandatory sentences)

Horsley v. State, 160 So.3d 393 (Fla. 2015)

- Held proper remedy is to apply new statutes to all juveniles affected by *Miller*
- Rejected statutory revival argument because legislature passed new law fixing issue

Lawton v. State, 181 So.3d 452 (Fla. 2015)

- Held there is no homicide-exception to *Graham* (commission of homicide during same criminal episode of non-homicide offenses allowing life without parole sentence for non-homicide offenses)
- Remanded for resentencing on non-homicide offenses using new statute 921.1401

Atwell v. State, 197 So.3d 1040 (Fla. 2016)

- Held Florida's existing parole system does not provide for individualized consideration of juvenile status as required by *Miller*
- Parole system ineffective because (1) commission is required to give primary weight to seriousness of offense and offender's record, and (2) none of mitigating factors parole commission can consider recognize diminished culpability of juvenile

- 1990 offense date; juvenile sentenced to life with parole after 25 years on 1st degree murder, and life without parole on armed robbery; presumptive release date was 2130 (140 years after crime and exceeding Atwell's life expectancy)
- Atwell's sentence was "virtually indistinguishable" from life without parole, thus unconstitutional under *Miller*
- This case has a helpful explanation of how the parole system works in Florida

Landrum v. State, 192 So.3d 459 (Fla. 2016)

- Held discretionary life without parole sentence for juvenile convicted of 2nd degree murder violated *Miller* because judge not required to, and did not, consider "the distinctive attributes of youth" and its attendant circumstances
- Remanded for individualized sentencing under new statutes

1ST DCA

Abrakata v. State, 168 So.3d 251 (1st DCA 2015)

- 25 year sentence for non-homicide crimes; including 25 year min-man for discharge of firearm causing great bodily harm
- Held neither the imposition of 25-year minimum mandatory, nor 25 year sentence as a whole, violated *Graham* because defendant will be released in his 40s
- Absent violation of Graham, there is no legal basis to retroactively apply the new statutes
- This case is very important because it establishes (along with *Davis* from 4th DCA, see below) that a Defendant must first establish their sentence violates *Graham* before they are entitled to a new sentencing (thus a harmless error analysis could apply to any cases where a juvenile defendant is expected to be released within their lifetime expectancy)

Wade v. State, 2016 WL 5874429 (1st DCA 2016)

- Juvenile defendant convicted of 2nd degree murder with minimum mandatory life sentence due to discharge of firearm causing death
- Reversed and remanded for resentencing in conformance with 775.082, 921.1401, and 921.1402

Romero v. State, 105 So.3d 550 (2012)

- Declines to extend *Graham's* bar on mandatory life-without-parole sentences to 18-year-old adults

Wade v. State, 2016 WL 5874429 (1st DCA 2016)

- Minimum mandatory life sentence for discharge of firearm causing death under 10-20-Life imposed on juvenile reversed for resentencing under new statutes
- Cites to *Landrum* (which extended *Miller* and new sentencing statutes to even discretionary life-without-parole sentences)

Austin v. State, 158 So.3d 648 (1st DCA 2014)

- Defendants must preserve issues of sentencing errors by either objecting to sentence below or by timely filing 3.800 motions
- Trial court conducted individualized sentencing hearing on juvenile convicted of first degree murder (as well as a separate attempted murder), gave 135 year aggregate sentence
- Affirmed sentences because defense counsel did not preserve the sentencing error issue (see case for discussion of evidence the sentencing court was presented with by defense counsel regarding defendant's youth; court went to great lengths to affirm sentence – probably because trial court made good effort to follow *Miller's* requirement of individualized sentencing and considered defendant's youth)

Collins v. State, 189 So.3d 342 (1st DCA 2016)

- Affirmed 55 year sentence for non-homicide crimes because defendant's release dates (earliest and latest) did not exceed his life expectancy
- Also held he was not entitled to sentencing review hearing because 90.1402 was prospective only; distinguishing *Horsley* based on defendant there having an unconstitutional sentence, thus resentencing was already required
- Also found Savings Clause prohibited retroactive application of 90.1402
- Concurring opinion advocated review hearings are required based upon (1) statutory interpretation of different terms used in new statutes combined with rule of lenity, (2) possible disparate treatment of non-homicide offenders vis-à-vis homicide offenders given *Horsley's* decision that 90.1402 did apply retroactively to cure *Miller* violations, and (3) *Graham* both barred life without parole sentences and required opportunity for *early* release

Ortiz v. State, 188 SO.3d 113 (1st DCA 2016)

- State presented some evidence relating to factors listed under 921.1401 at sentencing on Defendant's first degree murder charge, but 1st DCA held it was not equivalent of individualized sentencing hearing required by *Horsley* and 90.1401
- Reversed and remanded for resentencing under 90.1401 and 90.1402 on homicide count only
- Affirmed concurrent 50-year sentence on home-invasion robbery with firearm count because that would not exceed his life expectancy
- Court noted anomaly that he will be entitled to sentencing review hearing on his homicide count, but not his non-homicide count

Franklin v. State, 141 So.3d 210 (1st DCA 2014)

- Held Defendant's 1000-year sentences for non-homicide crimes were not in violation of *Graham* because he is parole-eligible
- Concurring opinion describes extremely horrific facts of Defendant's crimes and their effects on his victims – so 1st DCA probably going out of its way to affirm his sentences

- (But see *Atwell* – critiquing parole system's inadequacies for complying with *Miller/Graham*)
- This case cited by Justice Polston in his dissent in *Atwell*

Lambert v. State, 170 So.3d 74 (1st DCA 2015)

- Affirmed 15 year sentence for vehicular homicide and non-homicide offense in same episode
- Held no *Graham* violation established – defendant to be released in his twenties or early thirties at latest

Kelsey v. State, 183 So.3d 439 (1st DCA 2015)

- Affirmed 45-year post-*Graham* resentence for non-homicides;
- Held resentencing under new statutes not required absent *Graham* violation (in the resentencing) and 45 years not a *de facto* life sentence
- Certified question to FSC – whether resentencing post-Graham but pre-Ch. 2014-220 requires resentencing

Smith v. State, 93 So.3d 371 (1st DCA 2012)

- 1985 offense dates; 80-year aggregate sentence for non-homicides did not violate *Graham*
- Affirmance based on his eligibility for basic gain time (10 days per month) and good behavior gain time (20 days per month) which would significantly reduce his sentence
- Held this satisfied "meaningful opportunity for release" required by *Graham*

Thomas v. State, 78 So.3d 644 (1st DCA 2011)

- 50 year sentence for non-homicides does not violate *Graham* as does not exceed defendant's life expectancy

Floyd v. State, 87 So.3d 45 (1st DCA 2012)

- Combined 80 year sentences for non-homicide crimes are functional equivalent of life sentence because exceed his life expectancy
- Reversed/remanded for new sentencing

Britten v. State, 181 So3d 1215 (1st DCA 2015)

- This case may be helpful to the analysis of whether jury findings are required on *Miller* or *Graham* re-sentencings considering the now-required findings of actually killed, intended to kill, or attempted to kill
- Defendant convicted of sexual battery and designated a dangerous sexual offender. Appeal challenges the 25-year minimum mandatory sentence resulting from the designation.
- The trial court erred in making the finding required to support the designation, but the error was harmless because the record demonstrates beyond a reasonable doubt that a rational jury would have made this finding.

- Judgment and sentence affirmed despite fact that jury did not make necessary finding that the defendant caused "serious personal injury to the victim as a result of the commission of the offense" Fla Stat § 794.0115(2)(a)
- Defendant did not dispute that the victim had been beaten – injuries were extensive – merely that the injuries accompanied a rape. Defense theory was drug deal gone bad.
- A factual finding that leads to an increased minimum mandatory term for an underlying crime must be found by a jury, citing *Alleyne, Apprendi, and Blakely*. Any fact that increases the minimum mandatory "floor" for a crime must be found by the jury.
- The error is not per se reversible error. It is well-settled that *Apprendi* and *Blakely* errors are subject to harmless error analysis.

2ND DCA

Ejak v. State, 2016 WL 6143145 (2nd DCA 2016)

- 17 year old defendant convicted of 1st degree murder after *Miller v. Alabama* decided, but before F.S. 921.1401 passed
- Trial court recognized that mandatory life sentence for juvenile was unconstitutional based upon *Miller*, so it conducted a sentencing hearing and considered many of factors subsequently required by 921.1401
- Trial court found defendant was entitled to sentencing review hearing, but was not entitled to resentencing based on passage of 921.1401 after defendant's sentencing
- 2nd DCA affirmed because defendant had already been given an individualized sentencing hearing by the trial court considering factors in *Miller*; and trial court had already ruled he would be entitled to sentencing review hearing

Williams v. State, 197 So.3d 569 (2nd DCA 2016)

- *Graham* applies retroactively
- Resentencing not required though because no *Graham* violation
- Affirmed 50 year sentence, including 20 year minimum mandatory, for non-homicide crimes as not *de facto* life sentence
- Noted defendant eligible for gain time on portion of sentence after 20 year minimum mandatory as well

Howard v. State, 180 So.3d 1135 (2nd DCA 2015)

- PCA because defendant is eligible for parole; but see concurring opinion of Judge Altenbernd arguing Howard should be able to challenge the parole system's inadequacies to address the *Miller* factors, and recognizing a possible equal protection argument based thereon

Morris v. State, 198 So.3d 31 (2nd DCA 2015)

- 65 year sentence for non-homicides did not provide meaningful opportunity for release – held unconstitutional

- Juvenile's life expectancy is relevant to determination of whether lengthy term-of-years sentence is constitutional

Lee v. State, 130 So3d 707 (2nd DCA 2013)

- Another case that may be helpful in the analysis of the necessity of jury finding on re-sentencing a *Miller* or *Graham* defendant based on the killed/intended to kill/attempted to kill findings required by 775.082.
- 15 year old defendant sentenced to 40-years' incarceration with a 25-year minimum mandatory for attempted 1st degree murder
- Competent and substantial evidence demonstrated that the defendant shot the victim and that victim suffered permanent, disabling injuries. At rehearing, the defendant admitted the crime and took responsibility for his actions.
- The verdict form at trial did not require the jury to make express findings that the defendant "discharged" the firearm and caused "great bodily harm"
- An interrogatory verdict form is the preferred method to address Fla Stat § 775.087 but a "clear jury finding" such as the one in *Gentile* can lead to the same result.
- *Gentile* extends a harmless error analysis because of the overwhelming evidence that that defendant used a deadly weapon.
- Court expresses concern that the *Galindez* test – that no rational jury could find otherwise – could become a slippery slope that to frequently temps an appellate court to dispense with the constitutional right to trial by jury but applies harmless error analysis to the case at bar and upholds the conviction and sentence.
- Court not required to empanel jury to make special findings because record is clear

3RD DCA

Cunningham v. State, 54 So.3d 1045 (3rd DCA 2011)

- Affirming 4 life sentences for non-homicide crimes because defendant eligible for parole and his PPRD was 2026 and next parole re-interview was in 2 years
- This case has limited applicability in light of *Atwell* – see above

Neely v. State, 126 So.3d 342 (3rd DCA 2013)

- Reversing 4 life sentences for homicide and non-homicide crimes for resentencing per *Miller*
- Recognized breach in Florida Statutes based on *Miller* and lack of other valid sentencing options (this case was decided pre-Ch.14-220)

Beckman v. State, 147 So.3d 584 (3rd DCA 2014)

- State is entitled to have rebuttal expert examine a defendant for individualized *Miller* sentencings – but exam is limited to mitigation factors identified by defendant's expert
- Defendant listed psychologist on sentencing witness list to offer evidence of his Asperger's disorder; state sought to have its own psychologist examine him

- Trial court allowed state's expert to examine defendant, and defendant sought writ of prohibition
- 3rd DCA denied the petition, stating goal was to "level the playing field" ; but limited State's expert's examination to the mitigating factors identified by the defendant's expert
- Court noted a lack of case law in Florida regarding the procedural rights of defense and state in this area

Stephenson v. State, 197 So.3d 1126 (3rd DCA 2016)

- 90 year aggregate sentence without review mechanism for early release for several non-homicide crimes violated *Graham* and *Henry*

Torres v. State, 184 So.3d 1239 (3rd DCA 2016)

- When defendant has life without parole sentences for *both* homicide and non-homicide offenses that violate *Miller* and *Graham*, proper remedy is to remand both counts for resentencing under Ch. 14-220
- State argued proper remedy for non-homicide count was to remand for resentencing under governing statute in place at time of offense, not new Ch.14-220 sentencing laws (essentially arguing Ch. 14-220 not retroactive for non-homicide offenses violating *Graham*)
- 3rd DCA disagreed with State, remanded non-homicide back for resentencing under Ch. 14-220 along with the homicide count

Francis v. State, 2015 WL 7740389 (3rd DCA 2015)

- 85 year aggregate sentence for non-homicide crimes violated *Graham*
- Court rejected separate criminal episode exception to *Graham* argued for by State

4TH DCA

Davis v. State, 199 So.3d 546 (4th DCA 2016)

- 16 year old defendant convicted of 3 non-homicide offenses, sentenced to 75 years prison
- Held that sentence does not violate *Graham v. Florida* because he has opportunity to receive substantial amount of gain time (1991 offense dates) and is expected to be released in his mid-50s
- Juvenile defendants sentenced prior to the Stop Turning Out Prisoners Act (enacted 85% rule - 944.275(4)(b)) generally have meaningful opportunity for early release – and this should be considered
- Burden on juvenile to show his/her sentence is unconstitutional because deprives him/her of meaningful opportunity for release during natural lifetime
- Certifies four questions for FSC

St. Val v. State, 174 So.3d 447 (4th DCA 2015)

- Affirming 25 year minimum mandatory for non-homicide offense imposed on juvenile because it provided for definite release within juvenile's lifetime

Daugherty v. State, 96 So.3d 1076 (4th DCA 2012)

- Reversing and remanding for resentencing of discretionary life sentence for second degree murder
- Held although trial court heard extensive evidence of Defendant's bad childhood and remorse, trial court did not consider "distinctive attributes of youth" referenced in *Miller*

Janvier v. State, 123 So.3d 647 (4th DCA 2013)

- Declined to extend *Miller* or *Graham* to those defendants who are under 21 ("youthful offenders")

Hadley v. State, 190 So.3d 217 (4th DCA 2016)

- A contemporaneous capital felony cannot be considered as a prior criminal history under F.S. 921.1401(2)(h) if it was part of same criminal transaction or episode
- "transition period" case – the sentencing occurred after *Miller* but before Ch. 14-220 passed
- Although trial court considered many of factors from *Miller* later codified in F.S. 921.1401, was still reversed/remanded for new sentencing because of error with prior capital felony consideration and because trial court erroneously thought it had only 2 options: life without parole or life without parole before 25 year years (statutory revival)

Cook v. State, 190 So.3d 215 (4th DCA 2016)

- 93-year, minimum mandatory sentence for non-homicide crimes did not give juvenile defendant meaningful opportunity for release based on maturity and rehabilitation, thus violated *Graham*

Cunningham v. State, 187 So.3d 937 (4th DCA 2016)

- 70-year sentence for non-homicide crimes violated *Graham*

Troche v. State, 184 So.3d 1174 (4th DCA 2015)

- Review hearing for sentences on crimes committed as juvenile not required if defendant serving independent life sentences on crimes later committed as an adult

Davis v. State, 182 So.3d 700 (4th DCA 2015)

- 80 year sentence for VOP's as adult, where underlying non-homicide crimes committed while defendant was juvenile, violated *Graham* and *Henry*

5TH DCA

Peterson v. State, 193 So.3d 1034 (5th DCA 2016)

- 56 year sentence for 17 year old juvenile for non-homicide offenses
- Held lengthy term-of year sentences that don't provide for meaningful opportunity for early release (i.e. a review hearing) are unconstitutional
- Finding no material difference between *Miller* and *Graham* for retroactivity analysis, holds *Graham* applies retroactively
- Remanded for resentencing under new statutes

Randolph v. State, 2016 WL 4945116, 5th DCA, Sept. 16, 2016

- 2001 offense date; 17 year old defendant convicted of 2nd degree murder, sentenced to 100 years prison with 25 year minimum mandatory
- Even though life sentence was discretionary (2nd degree murder), still reversed based on *Landrum v. State* (extended *Miller* to discretionary life without parole sentences)
- Sentencing court did not "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison"
- Reversed and remanded for resentencing in conformance with 775.082, 921.1401, and 921.1402

Tarrand v. State, 199 So.3d 507, 5th DCA, Sept. 2, 2016

- (1993 offense date) 51 year sentence for 2nd degree murder reversed and remanded for resentencing under new statutes
- Court noted that his initial sentence (51 years) did not violate 8th Amendment, but remanded anyway for resentencing under the new statutes based on *Thomas v. State*, 177 So.3d 1275 (Fla. 2015) (quashing underlying decision approving a 40-year sentence on juvenile homicide offender and remanding for resentencing under new statutes); and *Henry*
- This case, viewed in light of *Tyson*, *Peterson*, *Barnes*, and *Brooks*, strongly suggests the 5th DCA is more concerned about the review mechanism being in place, rather than the specific term of years imposed

Tyson v. State, 2016 WL 4585974, 5th DCA, Sept. 2, 2016

- 45 year (stacked) sentences for 3 non-homicide crimes was unconstitutional because it did not provide meaningful opportunity for early release based upon demonstrated maturity and rehabilitation (no review ordered)
- Court explicitly held that 45 years was not the problem, it was the lack of a review after 20 years as required by 921.1402
- Certified conflict with several cases and certified several questions to FSC

Bissonette v. State, 2016 WL 4945160, (5th DCA 2016)

- Presumptive Parole Release Date (PPRD) 100 years after crime occurred was *de facto* life sentence without parole for juvenile offender in light of *Atwell* and *Miller*

Stallings v. State, 198 So.3d 1081 (5th DCA 2016)

- 1973 offense date; juvenile sentenced to life with possibility of parole, but PPRD was not clear based on records
- Remanded for evidentiary hearing to determine entitlement to resentencing under *Atwell*

Williams v. State, 171 SO.3d 143 (5th DCA 2015)

- Reversed/remanded mandatory life sentence for first degree murder based on *Miller* for resentencing under new statutes
- Recognized that juvenile homicide defendants can still get life without parole under *Miller*, but must have individualized sentencing

- Held court must make findings of whether Williams actually killed, intended to kill, or attempted to kill because jury did not make special finding he possessed gun
- No mention of *Alleyne* (6th Amendment requires jury fact finding for minimum mandatories)

Barnes v. State, 175 So.3d 380 (5th DCA 2015)

- Juvenile sentenced to 60 years aggregate sentence for non-homicide crimes
- Held failure to include review mechanism violated *Graham*
- Affirmed sentence, but remanded to amend sentencing documents to include a review hearing in 20 years per new statute

Brooks v. State, 186 So.3d 564 (5th DCA 2015)

- 65 year sentence for non-homicide crimes violated *Graham* because they failed to provide meaningful opportunity to obtain release

Appendix A

Sentencing Structure for Defendants under 18 at the time of their Offense					
Crime Convicted of	**Can they be sentenced to Life**	**Is there a minimum amount of prison they can recieve**	**Are they entitled to a Sentencing hearing based on amount of time sentenced to prison?**	**When is the Sentencing hearing to be held**	**Are they entitled to an additional Sentence Review Hearing after the first one**
1st degree murder - killer	Yes - with an appropriate hearing that includes the factors in F.S. 921.1401	Yes - 40 years	Yes - if Sentenced to more than 25 years in prison. See 921.1402(6). However, they are not eligible if they have a prior conviction for one of the enumerated felonies in 921.1402(2)a	25 years after the intial sentencing date	No
1st degree murder - not killer	Yes - with an appropriate hearing that includes the factors in F.S. 921.1401	No	Yes - if sentenced to more than 15 years in prison. See 921.1402(6).	15 years after the intial sentencing date	No
2nd Degree Murder or Attempted First Degree Murder with a Weapon - killer	Yes - with an appropriate hearing that includes the factors in F.S. 921.1401	No	Yes - if Sentenced to more than 25 years in prison. See 921.1402(6).	25 years after the intial sentencing date	No
2nd Degree Murder or Attempted First Degree Murder with a Weapon - not killer	Yes - with an appropriate hearing that includes the factors in F.S. 921.1401	No	Yes - if sentenced to more than 15 years in prison. See 921.1402(6).	15 years after the intial sentencing date	No
Life felony or PBL Felony	Yes - with an appropriate hearing that includes the factors in F.S. 921.1401	No	Yes - if sentenced to more than 20 years in prison. See 921.1402(6).	20 years after the intial sentencing date	Yes - 10 years after the intial hearing

Appendix B

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1) …

(b) 1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2) (a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2) (a) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

...

(3) A person who has been convicted of any other designated felony may be punished as follows: …

(a) …

5. Notwithstanding subparagraphs 1.-4., a person who is convicted under s. 782.04 of an offense that was reclassified as a life felony which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2) (b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

…

(b)…

2. Notwithstanding subparagraph 1., a person convicted under s. 782.04 of a first degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life, which was committed before the person attained 18 years of age may be punished by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2) (b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

…

(c) Notwithstanding paragraphs (a) and (b), a person convicted of an offense that is not included in s. 782.04 but that is an offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18 years of age may be punished by a term of

imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2) (d).

…

Appendix C

921.1401 Sentence of life imprisonment for persons who are under the age of 18 years at the time of the offense; sentencing proceedings.—

(1) Upon conviction or adjudication of guilt of an offense described in s. 775.082(1)(b), s. 775.082(3)(a)5., s. 775.082(3)(b)2., or s. 775.082(3)(c) which was committed on or after July 1, 2014, the court may conduct a separate sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence.

(2) In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:

(a) The nature and circumstances of the offense committed by the defendant.

(b) The effect of the crime on the victim's family and on the community.

(c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

(d) The defendant's background, including his or her family, home, and community environment.

(e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

(f) The extent of the defendant's participation in the offense.

(g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.

(h) The nature and extent of the defendant's prior criminal history.

(i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

(j) The possibility of rehabilitating the defendant.

Appendix D

921.1402 Review of sentences for persons convicted of specified offenses committed while under the age of 18 years.—

(1) For purposes of this section, the term “juvenile offender” means a person sentenced to imprisonment in the custody of the Department of Corrections for an offense committed on or after July 1, 2014, and committed before he or she attained 18 years of age.

(2)(a) A juvenile offender sentenced under s. 775.082(1)(b)1. is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence under s. 775.082(1)(b)1.:

1. Murder;

2. Manslaughter;

3. Sexual battery;

4. Armed burglary;

5. Armed robbery;

6. Armed carjacking;

7. Home-invasion robbery;

8. Human trafficking for commercial sexual activity with a child under 18 years of age;

9. False imprisonment under s. 787.02(3)(a); or

10. Kidnapping.

(b) A juvenile offender sentenced to a term of more than 25 years under s. 775.082(3)(a)5.a. or s. 775.082(3)(b)2.a. is entitled to a review of his or her sentence after 25 years.

(c) A juvenile offender sentenced to a term of more than 15 years under s. 775.082(1)(b)2., s. 775.082(3)(a)5.b., or s. 775.082(3)(b)2.b. is entitled to a review of his or her sentence after 15 years.

(d) A juvenile offender sentenced to a term of 20 years or more under s. 775.082(3)(c) is entitled to a review of his or her sentence after 20 years. If the juvenile offender is not resentenced at the initial review hearing, he or she is eligible for one subsequent review hearing 10 years after the initial review hearing.

(3) The Department of Corrections shall notify a juvenile offender of his or her eligibility to request a sentence review hearing 18 months before the juvenile offender is entitled to a sentence review hearing under this section.

(4) A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

(5) A juvenile offender who is eligible for a sentence review hearing under this section is entitled to be represented by counsel, and the court shall appoint a public defender to represent the juvenile offender if the juvenile offender cannot afford an attorney.

(6) Upon receiving an application from an eligible juvenile offender, the court of original sentencing jurisdiction shall hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified. When determining if it is appropriate to modify the juvenile offender's sentence, the court shall consider any factor it deems appropriate, including all of the following:

(a) Whether the juvenile offender demonstrates maturity and rehabilitation.

(b) Whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

(c) The opinion of the victim or the victim's next of kin. The absence of the victim or the victim's next of kin from the sentence review hearing may not be a factor in the determination of the court under this section. The court shall permit the victim or victim's next of kin to be heard, in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentencing review hearings.

(d) Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.

(e) Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.

(f) Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.

(g) Whether the juvenile offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.

(h) Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.

(i) The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as to rehabilitation.

(7) If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.