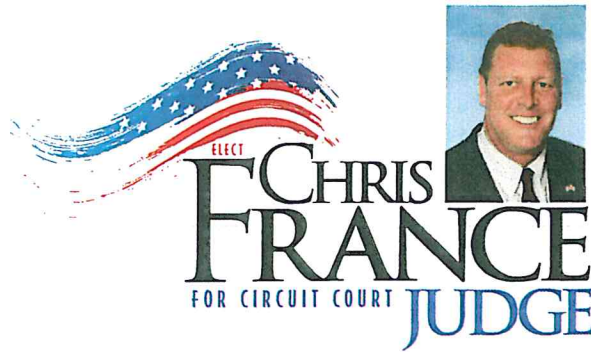




Chris & Laura France and Family



Christopher J. Greene, Chair Seventh Circuit Judicial Nominating Commission
238 Ponte Vedra Park Drive, Suite 104
Ponte Vedra Beach, FL 32082

Dear Mr. Green and Honorable Commissioners,

I thank you so much for your consideration of my application for Circuit Judge. I write to introduce my candidacy to you in the hope that this will aid in your deliberations.

August of 2015 I pre-qualified for this same seat, Group 8, and began my work as a candidate for election. I have diligently presented myself to the communities throughout the seventh circuit and have been gratified at the support I have received from almost all corners of the circuit. This support has become apparent at hundreds of community events where I have met thousands of people.

My campaign has been an exercise in communicating with business and community leaders and with so many residents of the four-county circuit, some of whom are familiar with our judiciary and some of whom are unfamiliar with our courts. It is great to see that they all seem to recognize the importance of having dedicated, experienced professionals serving on the bench.

As for the trappings of the campaign, we have created campaign literature, campaign ads and direct mail pieces ready for release, and 100 large signs constructed and ready to be raised. I have been invited into businesses where these signs will be posted- to meet the staff and share the vision. Invitations to address groups large and small continue to arrive as I continue to cover all four counties of the circuit each week.

There are a few things my candidacy demonstrates about my commitment to this office.

Chris France for Circuit Court Judge Campaign

Post Office Box 1222, Palatka, FL 32178 · 386-916-1762 · ChrisFrance2016@gmail.com · ChrisFranceForJudge.com

Paid for and approved by Chris France for Circuit Judge, Circuit 7, Group 4



First, my accomplishments as an attorney, prosecutor and division chief for the State Attorney show I am an electable candidate and that I am prepared for the rigors of serving as Circuit Judge. I reside and was a judicial staff attorney in Palatka. I am originally from the Daytona area, have led two task forces as a prosecutor that served the north counties of the circuit. Currently, I am the division chief of St. Johns County. I have tried-- or been actively involved in-- trials in nearly every courthouse in the circuit. Having experience throughout the entire circuit is unique. These experiences and my passion for serving as Circuit Judge has resulted in the support of many leaders in the community. Attached to this cover letter is the updated list of endorsements. Every county is represented. I will continue to grow that list. In terms of campaign funding, I have out-raised any other judicial candidate (my financial reports can be viewed at the Florida Division of Elections web page). Those donations, large and small, are evidence that my message has been well-received.

Second, my campaign achievements demonstrate a solid work ethic. For ten (10) months now I have traveled throughout the circuit and have made myself available to all interested parties. I have balanced well my obligations as a father and husband with my duties as division chief and the needs of the campaign. I have outworked every opponent whether he/she has declared candidacy or not, nor have I yielded to any obstacles or distractions. Any success in my career I attribute to my work ethic which has helped me conduct an effective political campaign. The same work ethic supports my pledge to meet the challenges and responsibilities of serving as Circuit Judge and keeping my oath of office.

Finally, I invite all of you to look at our webpage at <ChrisFranceForJudge.com> and also our Facebook page <Chris France for Circuit Judge> for a glimpse at the achievements of our campaign.

In the meantime, I will continue to work hard and prove to be worthy of the office I seek. I know that I will attain it and serve honorably. I will not disappoint my family or my community during my campaign or on the bench. Especially my family, as it is for them I seek this opportunity to continue my career of service to our community.

I ask you to send my name up to the Governor. Thank you for your service on the Judicial Nominating Commission and thank you for your consideration.

Sincerely,



Chris France

ENDORSED!

Endorsements rolling in for Chris France for Circuit Court Judge

These community leaders have endorsed Chris France for Circuit Court Judge. They are community leaders, attorneys, law enforcement professionals and they know how important it is to have well-qualified judges in our community. So, take their advice, or learn more about Chris France's credentials and experience at ChrisFranceForJudge.com.

- ✓ Steve Alexander, former State Attorney
- ✓ Jeff Hardy, Putnam County Sheriff
- ✓ Charlie Piwowarski, Welaka Chief of Police
- ✓ John Tanner, former State Attorney
- ✓ Robert Mathis, former Circuit Court Judge
- ✓ Jon Netts, Mayor of Palm Coast
- ✓ David B. Shoar, St. Johns County Sheriff
- ✓ Frank Bruno, former Volusia County Chair
- ✓ Loran Lueders, St. Augustine Chief of Police
- ✓ Tim Smith, Putnam County Clerk of Court
- ✓ Joie Alexander, Former Volusia County Council Member
- ✓ Bill Partington, Ormond Beach Deputy Mayor, Commissioner
- ✓ Cheryl Strickland, St. Johns County Clerk of Court (ret)
- ✓ Bill Navarra, Business and community leader
- ✓ Jim Hathaway, Mayor of New Smyrna Beach
- ✓ Robert Hardwick, St. Augustine Beach Chief of Police
- ✓ William E. McGuire, Palm Coast City Councilman
- ✓ Jason Shaw, Palatka Chief of Police
- ✓ Patrick Canan, St. Johns County School Board Chairman
- ✓ John Upchurch, former Chief Circuit Court Judge
- ✓ Edward Hedstrom, former Circuit Court Judge
- ✓ Ben Johnson, Volusia County Sheriff
- ✓ Dr. Frank Farmer, Florida Surgeon General (ret)
- ✓ Peggy Farmer, Community leader and volunteer
- ✓ Glenn Ritchey, former Daytona Beach Mayor

Chris France is Division Chief of the St. Augustine office of the State Attorney. He is a leader in the legal profession, an active community volunteer and a dedicated family man. Please vote for Chris France for Circuit Court Judge.



ELECT
CHRIS FRANCE
FOR CIRCUIT COURT JUDGE

Tough. Fair. Experienced.

Political advertisement paid for and approved by Christopher France for Circuit Judge, Circuit 7, Group 4

APPLICATION FOR NOMINATION TO THE 7th COURT

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

DATE: May 23rd, 2016 Florida Bar No.: 0069190

GENERAL: Social Security No.: XXXXXXXX

1. Name Christopher Anthony France E-mail: chrisfrance2016@gmail.com
Date Admitted to Practice in Florida: November 25th, 1995
Date Admitted to Practice in other States: n/a

2. State current employer and title, including professional position and any public or judicial office.
Managing Assistant State Attorney, St. Johns County

3. Business address: 4010 Lewis Speedway
City St. Augustine County St. Johns State FL ZIP 32084
Telephone (904) 209-1620 FAX (904) 209-1621

4. Residential address: XXXXXXXX
City XXXXXX County XXXXXX State XXX ZIP XXXXX
Since 2002 Telephone (XXX) XXX-XXXX

5. Place of birth: Baltimore, MD
Date of birth: XXXXXX Age: 47

6a. Length of residence in State of Florida: 45 years

6b. Are you a registered voter? Yes No
If so, in what county are you registered? Putnam

7. Marital status: Married
If married: Spouse's name Laura Wilkes France
Date of marriage 01/23/1999
Spouse's occupation Director of Elementary Education for Putnam County School District

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

n/a

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
Peyton Elizabeth France	13	student	XXXXXX
Allison Elizabeth France	11	student	XXXXXX
Natalie Elizabeth France	9	student	XXXXXX

9. Military Service (including Reserves)

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
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 result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

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

No

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

No

EDUCATION:

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

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Father Lopez High School	n/a	1984-1988	H.S. Diploma
Catholic University of America	n/a	1988-1989	n/a
Loyola University of New Orleans	n/a	1989-1992	BA-English BA- History
Loyola University of New Orleans Law School	n/a	1992-1995	Juris Doctor

18b. List and describe academic scholarships earned, honor societies or other awards.
National Honor Society, Member of Key Club, Deans List Loyola University of New Orleans, Phi Alpha Theta International Historical Honor Society, Maritime Law Society- Loyola University Law School

NON-LEGAL EMPLOYMENT:

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

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
1990	Ocean Lifeguard I	Volusia County	123 Indiana Ave., Deland FL 32720
1990-1992	Zookeeper I	Audubon Institute	6500 Magazine Street, New Orleans, LA

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.

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
Florida Bar	November 25 th , 1995

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

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

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Judicial Staff Attorney	7 th Judicial Circuit	410 St. Johns Ave., Palatka, FL 32177	1996-1997
Assistant State Attorney	7 th Judicial Circuit	251 North Ridgewood Ave., Daytona Beach, FL 32114	1997-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 prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

My practice includes all levels of criminal prosecution with a caseload ranging from financial crimes to crimes of violence. All aspects of constitutional and civil law are involved. I am the primary assistant state attorney who handles the civil actions involving bond validations for St. Johns County. I am also the managing attorney for our office and staff of St. Johns County which entails the full array of administrative duties. I run an office of around thirty staff, interns, and investigators. My management duties also require involvement in several community based organization's meetings and events. I

am asked to lecture frequently on topics ranging from human trafficking to how the mentally ill are served by the legal system. I am involved in forming policy for the office, training the new attorneys, and the day to day operations of the office.

To further my practice, I have received specific training over the years in the following areas: racial/cultural sensitivity, elderly abuse and exploitation, victim advocacy for adult and child victims of domestic and sexual violence, governance for non-profit board members, Judicial Ethics- Cannon 7, office management and leadership, investigation of white collar crimes, application of the death penalty, advanced gang investigation, investigation of child sexual abuse, investigation of homicide cases, legal ethics and professionalism among other areas.

My clients are mostly the victims of crime. They are often targeted because they are poor, weak, or otherwise helpless. I have learned over the years to never assume because of one's race, appearance, hygiene, or economic status (rich or poor) that I have insight into them and their situation. My experience has taught me that each situation and person is unique. I therefore attend to their needs by making them know I am listening and hear them. That is a priority and usually sets the tone of our interaction from that point on. This includes forgiving bad or insulting behavior as is merely often the byproduct of the stress of being the victim or witness of traumatic events. I show each individual the respect that I hope to earn from them during our interaction.

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	_____ 2 %
Federal Trial	_____ %	Criminal	_____ 95 %
Federal Other	_____ %	Family	_____ 3 %
State Appellate	_____ <3 %	Probate	_____ %
State Trial	_____ 97 %	Other	_____ %
State Administrative	_____ <3 %		
State Other	_____ <3 %		
	_____ %		
TOTAL	_____ 100 %	TOTAL	_____ 100 %

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

Jury? 60 Non-jury? over 100
 Arbitration? _____ Administrative Bodies? _____

25. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under

which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

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

No

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

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

State vs. Leroy Whitty, St. Johns County, CF10-700. Defense Crawford Pierce and Joshua Mosley at 904-827-5699.

State vs. Michael McIntosh, St. Johns County, CF10-1696. Defense Jason Porter at 904-701-0591.

State vs. George Lightkep, St. Johns County, CF11-1859, Defense Samuel Bennett at 352-221-0971.

State vs. Douglas Hall, St. Johns County, CF10-1765. Defense Jill Barger at 904-806-3936.

State vs. Lamont Riley, Putnam County, CF08-2439, Defense Richard Kuritz at 904-355-1999.

State vs. Johnny Jones, Putnam County, CF09-534, Defense Kevin Monahan at 386-325-8673.

- 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).

As the managing attorney in my office I currently carry a caseload that are cases set ready for trial and do not resolve short of that. I do conduct all felony arraignment court dates. I will settle cases assigned to trial prosecutors and the assigned prosecutors do not generally attend this court appearance. Those felony arraignments involve the resolution of almost half of the felony cases. Most of these cases are handled by the Office of the Public Defender. The Defenders John Morris, Joshua Mosley, Rosemarie Peoples, Renee Peshek, and Pierce Crawford are available at 904-827-5699.

- 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?
22 average times per month

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

28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

n/a

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

n/a

30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved.

State vs Leslie Demeniuk, Two counts First Degree Murder, CF01-930.

- St. Johns Circuit Court- Judge Alexander

- Defense counsel- William Sheppard and Gray Thomas

- Lead counsel Chris France, co-counsel Assistant State Attorney Noah McKinnon

- Trial- January 2006

To win this case, we had to become temporary experts in the medical science related to the medications involved. The defense was based on a claim that the defendant's anti-depressant medication caused her to murder her twin sons. Accordingly, scientific arguments before and during the trial took on the character of a product liability civil lawsuit. Ten "banker boxes" of documents from the pharmaceutical companies contributed to very complicated evidentiary rulings. The defense involving these drugs was subject to the Frye Standard in a manner I have not seen since.

State vs. Justin Barber, First Degree Murder, CF04-1748

- St. Johns Circuit Court, appeal cite 4 So.3d 9- Judge Edward Hedstrom

- Defense counsel Robert Willis and Lee Hutton

- Lead counsel Chris France, co-counsel Matt Foxman

- Trial- June 2006

This case was significant in that all evidence proving the defendant killed his wife was circumstantial and difficult to properly present. Additionally, the case attracted national media attention including daily and live coverage. This distraction intensified the pressure and scrutiny under which the case was tried. The case was extraordinarily hard fought on both sides. Still, the relationship between the prosecution and defense remained extremely professional at all times. The spirited trial and the professionalism exhibited made this case particularly memorable.

State vs. Christopher Lewis, Capital Sexual Battery, CF04-1616

- St. Johns Circuit Court- Judge Patti Christiansen

-Defense counsel PD Renee Pesheck

-Sole trial counsel Chris France

-Trial- September 2007

This case was significant since the victim was a child under the age of twelve and unable to bring herself to testify beyond her name and age. The defendant had previously confessed to sexual acts. But the challenge was to lay the proper predicate to get his confession into evidence invoking the child hearsay rule. Once that was achieved, the challenge was to present the case in a coherent manner so the jury could understand and trust the evidence without the benefit of the child's testimony.

State vs. James Turner, First Degree Murder, Attempted First Degree Murder, CF05-1954.

- St. Johns Circuit Court- Judge Wendy Berger

- Defense counsel PD Val Quetti, PD James Valerino

- Lead counsel Chris France, co-counsel Angela Corey

- Trial- September 2007

This case was the first case of the newly formed Homicide Investigative Unit, serving the three northern counties of the 7th Circuit. Cooperation with law enforcement was excellent and the team concept was everything we had hoped it would be. In this case, we were on scene within thirty minutes of the murder. The teamwork began at the scene and continued through the penalty phase. We proved successful.

State vs. John Campbell, Capital Sexual Battery, CF99-2729

- St. Johns Circuit Court- Judge Robert Mathis

- Defense counsel PD Gary Smolek

- Sole trial counsel Chris France

Trial- May 2001

The significance of this case centers on the defendant's sexual abuse of his own daughters over many years and later, in a second marriage, his sexual abuse of his new daughters. The defendant was a military veteran, police officer and federal security officer. The evidentiary issues regarding prior bad-act evidence were extremely complicated. Proper and detailed pleadings saved the verdict and sentence from reversal upon post-conviction attack.

State vs. Morgan Leppert, First Degree Murder, 2008-1171- CF

- Putnam County Circuit Court- Judge Edward Hedstrom

- Defense counsel Christopher Smith

- Lead counsel Chris France

- Trial- August 2009

The significance of this case centers on the question of sentencing a juvenile to life without the possibility of release. In this case, the defendant, Morgan Leppert, age 15, willingly participated in a murder, stabbing the victim several times. She showed no remorse at the time of the crime or during trial, which occurred when she was 17 years of age. On the national level, the debate has raised the question of whether a juvenile criminal could mature to a point at which she could be rehabilitated, experience and demonstrate remorse, and no longer be a threat to others. *Miller v. Alabama*, 312 S.Ct. 2455 (2012), renders her life sentence for homicide illegal in its current form. Recent US Supreme Court holdings have applied this decision, as expected, retroactively to Leppert's murder conviction and we are in the middle of resentencing her under the new procedures required by F.S. 775.082 (b) and F.S. 921.1401- which define the procedure and considerations for the Court. It is amazing to be involved in a case that spans such a dramatic change in sentencing juveniles subject to a life sentence. It is particularly significant as Defendant Leppert's case is one of the first to have the new statutes applied that were written in response to the original Miller holding.

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

I conducted all research and have written all the samples provided.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

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

I am currently a candidate for Circuit Judge- 7th Circuit Group 4. In August 2015 I pre-qualified and began my candidacy for Circuit Judge- 7th Circuit Group 8, this seat.

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

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
n/a		

Types of issues heard:

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

In 2008, I was a candidate for the State House of Representatives for House District 21.

- 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.

na

- (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.

n/a

POSSIBLE BIAS OR PREJUDICE:

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

None

MISCELLANEOUS:

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

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

No.

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

No.

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

No.

37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?

No.

37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.

No.

38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.

No.

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

No.

40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).

No.

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

No.

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

No.

43a. Have you filed all past tax returns as required by federal, state, local and other government authorities?

Yes No If no, please explain. _____

43b. Have you ever paid a tax penalty?

Yes No If yes, please explain what and why. _____

43c. Has a tax lien ever been filed against you? If so, by whom, when, where and why?

No.

HONORS AND PUBLICATIONS:

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

n/a

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

I received a "Meritorious Public Service Award" from the Florida Bar Association for my service on the 7th Circuit Grievance Committee in 2013. I have received various certificates of appreciation over the years for presentations for the Teen Court program, participation in law day sponsored annually by local bar associations (Putnam, St. Johns), presentations to classes at Flagler College and St. Johns River Community College. I was given a certification of service from the parish members at St. Marks Church, Palatka, in 2013 for serving beyond my term as Senior Warden while finding a new Rector and for litigating, as an Acting Chancellor, a zoning issue for the church before the Palatka Historic Preservation Board and Palatka Zoning Board.

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

Complete answer consolidated in 49(b).

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.

Chair of the Florida Bar Grievance Committee 7th Judicial Circuit, term ended 2013.

Member of the Florida Bar, Volusia County Bar, St. Johns County Bar, Putnam County Bar.

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

Member of the St. Marks Episcopal Church Vestry, Palatka. (2009-2011)

-- Senior Warden of St. Marks Episcopal Church Vestry, Palatka (2011-2013)

Betty Griffin House anti-domestic violence, sexual abuse organization and shelter serving St. Johns and Flagler Counties. (2011-present)

-- Betty Griffin House Board of Directors- (2011-present)

-- Betty Griffin House Finance Committee- (2012-present)

-- Betty Griffin House Strategic Planning Committee (2014-present)

EPIC Behavioral Healthcare Advisory Board (2014-present)

Veterans Court Steering Committee for St. Johns County, (2015-present)

48c. List your hobbies or other vocational interests.

Family is my priority, my passion and my hobby. Spending time with my wife and daughters is gratifying on all levels and is always my first preference outside the office. As time permits, I also enjoy reading, cooking, travel, sporting clays, boating, and motorcycle off-roading.

48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

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

Pro bono work has been an important part of my practice. While my expanding duties as Division Chief and Assistant State Attorney preclude some opportunities to offer pro bono services, I volunteered to serve the free legal aid clinics in Putnam and St. Johns County from 1996-2002. Currently, I am invited by business and civic organizations to speak on timely topics such as the epidemic of elder abuse and exploitation. I accept these invitations whenever possible.

SUPPLEMENTAL INFORMATION:

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

Florida Prosecutors Association Conferences- Fall and Spring meetings.

I have received much of my CLE credit this last cycle by lecturing at our twice a year training to our new assistant state attorneys and to the local bar members for which they receive CLE credit.

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

I have lectured twice a year since 2009 to our newly hired assistant state attorneys. I have lectured on cross examination of witnesses, opening statements, closing arguments, case preparation and pre-trial practice, legal ethics and professionalism, sentencing presentation, Discovery practice under Brady and Giglio, among others.

From 2012 to 2015, I lectured during segments of the certification training for the Sexual Assault Nurse Examiner Training to the nurses concerning forensic examiner's practice from a legal perspective.

From 2005 to 2007 I lectured at joint training lectures for prosecutors and law enforcement officers covering homicide investigation, search and seizure law, and Miranda warnings and their proper application.

In 2015 I lectured to law enforcement officers on the topic of DUI investigation and prosecution at the St. Johns River State College Justice Academy hosted by the Florida Public Safety Institute.

From 2013 to 2015, I have lectured to segments of the St. Johns Sheriffs Office promotions classes on the role of the State Attorney in the court system and how that office interacts with the law enforcement agencies within the circuit.

Starting in 2005 to the present, I have been asked sporadically to lecture to pre-law undergraduate classes concerning the criminal justice system. In 2016, I presented a lecture on the law surrounding justifiable use of force and the effect of the passage of F.S. chapter 776- Stand Your Ground. That presentation was to a Master level class at Flagler College in the public administration program.

I have lectured on elderly abuse and exploitation at Florida Hospital Flagler to seniors as part of Florida Hospital's lunch and learn series. I also recently lectured for the Dori Saves Lives Foundation-- a public safety foundation-- on the law regarding DUI Manslaughter prosecution. That lecture occurred at Jacksonville University this spring to students. I presented a case that I prosecuted in St. Johns County. I remain on the Dori Saves Lives roster of lecturers. Also, in the spring of 2016, I was a panelist at the St. Augustine Film Society human trafficking symposium held at Flagler College during the annual film festival. I presented Florida's anti-human trafficking statute F.S. chapter 787.

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

While I am fortunate that my legal career has included a broad spectrum of experience in the courtroom and beyond, I have also learned a great deal through my role as the first judicial officer in so many criminal matters before they are charged by me or a grand jury. As in medical cases, triage is so critical to every criminal case. I have been guided by a sense of justice and by the law when reviewing these matters. My duty often involves life and death decisions. My duty can be to dismiss cases that violate the law before any court's review, or to proceed with cases even knowing that families may be driven apart in the process. In these instances, as a prosecutor, I have been making these judgements-- similar to those of a judge-- and have done so without fail.

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

Aside from presiding over my courtroom with unyielding respect for the law, and a commitment to civility for everyone involved in every trial, there is another benefit I hope to bring to the bench. My years of administrative and management experience running the St. Johns County office has given me a depth of understanding into the workings of government. I understand how to operate efficiently under a tight budget. I understand how funding, budget, human resources, and the three co-equal branches of government operate together to ensure the community is served in the best manner possible. I think it is absolutely vital to have judges on the bench whose experience and skill extends beyond the courtroom in order to shepherd the judiciary to remain properly funded and staffed to meet the needs of the practitioners and litigants before it. I think it necessary to stay active with the legislative committees in garnering proper funding, lead the rule making committees so that the needs of the trial lawyers are met, and remain committed to be an active participant in the budget process so that the needs of citizens can be met

by a robust and energetic judiciary.

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.

7th Circuit JNC- August 2014.

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

Beyond the extensive legal experience I have gained throughout my career, my role as Division Chief of the States Attorney's Office and manager of the St. Johns County office has added exponentially to my qualifications to serve as a Circuit Judge. Overseeing a staff of around thirty dedicated employees-- attorneys, staff, and investigators-- I am responsible for the formation and enforcement of policy and rules for the office. This includes human resource matters, budget management, myriad outside organizations involved in our pursuit of justice, the Public Defenders Office, Clerk of Court, law enforcement agencies, community service providers, community leaders, media and more. I have overseen the conversion of our office to a paperless data system and have been actively engaged in assisting the St. Johns Clerk of Court in its own conversion to digital documentation. This project (and others) keeps me in exceedingly close touch with our information technology professionals and often takes me beyond the crucible of the courtroom. The experience I have gained during the 5+ years of leadership of the office have greatly enhanced my administrative skills. I believe my experience has prepared me well to bring these abilities to the judiciary at a time when the skills will help enable the judiciary to keep pace with growing demands on the system. I believe I am uniquely qualified to serve as Circuit Judge.

One more thing. As a candidate for Circuit Court Judge for nearly a year, I have had the pleasure of meeting thousands of people throughout the four-county circuit, hearing their concerns, getting their "read" on our court system and presenting my own qualifications and credentials. While it is a challenge to cover such a vast territory, it has been the experience of a lifetime and has given me greater appreciation of the relationship between the people of our circuit and the judicial system that is so pivotal to protecting our society and the quality of life it should afford to all.

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.

Circuit Judge Karen Foxman, 125 Orange Ave., Daytona Beach, FL 32114, 386-257-6090.

Circuit Judge Leah Case, 251 N. Ridgewood Ave., Daytona Beach, FL 32114, 386-239-7790.

Circuit Judge Mary Jolley, 101 N. Alabama Ave., Deland, FL 32724, 386-736-5945.

Breck Sloan, President Beck Auto Sales, 256 HW 17 North, Palatka, FL 32177, 386-937-1122.

Megan Wall, St. Johns County Legal Aid, 222 San Marco Ave., St. Augustine, FL, 904-827-9921

Circuit Judge John Alexander, 4010 Lewis Speedway, St. Augustine, FL 32084, 904-827-5603.

Circuit Judge Michael Traynor, 4010 Lewis Speedway, St. Augustine, FL 32084, 904-827-5606.

Honorable RJ Larizza, State Attorney, 251 N. Ridgewood Ave, Daytona Beach, FL, 32114, 386-239-7710.

Terry White, 25 Palmetto Ave., Daytona Beach, FL, 32114, 386-253-1560.

John Upchurch, Chief Circuit Judge (ret), 25 Palmetto Ave., Daytona Beach, FL, 32114, 386-253-1560.

CERTIFICATE

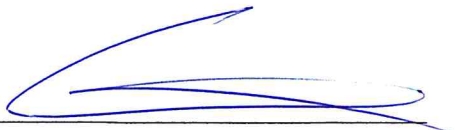
I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any 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 23 day of May, 2016.

Christopher France

Printed Name



Signature

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

FINANCIAL HISTORY

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

Current year to date	34,878.68		
List Last 3 years	104,220.00	99,636.00	99,636.00

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	same		
List Last 3 years	same	same	same

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

Current year to date	none		
List Last 3 years	none	none	none

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	none		
List Last 3 years	none	none	none

**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 May, 2016 was \$227,290.00.

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 \$ 48,900.00

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

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

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
IRA(ING)	\$47,450.00
IRA(Oppenheimer Funds)	\$39,500.00
XXXXXXXXXXXXXXXXXXXX	\$410,000.00

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Ally Bank, P.O. Box 380901, Bloomington, MN 55438	\$13,190.00
Vystar Credit Union, P.O. Box 45085, Jacksonville, FL	\$245,640.00
Vystar Credit Union, P.O. Box 45085, Jacksonville, FL	\$10,930.00

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
n/a	

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	200 East Gaines Street, Tallahassee, FL 32399	\$104,220.00

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

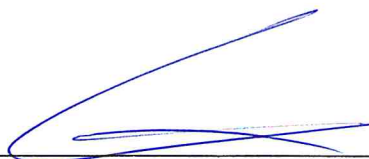
PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

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

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

OATH

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

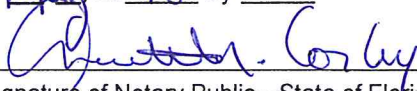


SIGNATURE

STATE OF FLORIDA

COUNTY OF St Johns

Sworn to (or affirmed) and subscribed before me this 19 day of May 20 16 by _____



(Signature of Notary Public—State of Florida)

Annette M. Corley
 (Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced _____



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: May 23, 2016

JNC Submitting To: 7th Judicial Circuit

Name (please print): Christopher Anthony France

Current Occupation: Managing Assistant State Attorney

Telephone Number: 904-209-1620 Attorney No.: 0069190

Gender (check one): Male Female

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

County of Residence: Putnam

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.

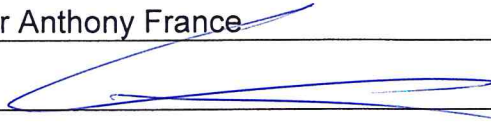
CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)

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:

Christopher Anthony France

Signature of Applicant:



Date: May 23, 2016

WRITING SAMPLE #1

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR ST. JOHN'S COUNTY, FLORIDA

CASE NO. CF04-1748-CFMA
DIV: 56

STATE OF FLORIDA

vs.

Justin Mertis Barber,
DEFENDANT,

FILED
2012 NOV -7 A 10 30
CLERK OF COURT
ST. JOHN'S COUNTY, FLORIDA

**STATE'S MOTION TO DENY DEFENDANTS PENDING MOTION PURSUANT TO
RULE 3.850**

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and hereby requests that the Honorable Court grant the State's motion, as the grounds therefore would state the following:

The Defendant filed his motion under Rule 3.850 on October 10th, 2010 with a contemporaneous prayer to be allowed to amend this motion over the next six months. No amendments were filed and the evidentiary hearing was held on this motion on May 4th, 2012. Both parties were ordered by the Court at that evidentiary hearing to provide their final argument in the form of this written pleading. The transcripts of the evidentiary hearing are attached to the Court's copy. This response serves also as a "Notice of Filing" these transcripts into the record for the Court's use. Any references to that transcript will be marked as "T." The arguments are due on October 29th, 2012.

Facts of the Case

The facts of the case are taken from the direct appeal, filed by Mallory Kent in September of 2007, as Exhibit A, and State's answer brief, filed by Mary Jolly in January of 2008, as Exhibit B. This is done for the Court's convenience as these statements of facts by each opposing attorney contain specific references to the trial transcripts, which will direct the Court to the appropriate sections of the extensive record. This should not be misconstrued as the State admitting the Defendant's statement of facts as true and unchallenged. Obviously, the State disagrees with the Defendant's position on all of these matters presented at trial and herein.

The Defendant raised several claims of ineffective assistance of counsel. An ineffective assistance of counsel claim requires the Defendant to satisfy the factors of a two-prong test as set forth in Strickland v. Washington, 466 U.S. 668 (1984). The Defendant must first identify particular acts or omissions by counsel that are shown to be outside the broad range of reasonable assistance under prevailing professional standards. Id ay 687. The second prong of the Strickland

test requires a defendant to show prejudice as a result of counsel's deficient performance. "When a defendant fails to make a showing as to one prong, it is not necessary to delve into whether he has made a showing as to the other prong." Zakrewski v. State, 866 So.2d 688, 692 (Fla 2004) (quoting Waterhouse v. State, 792 So.2d 1176, 1182 (Fla. 2001)).

Ineffective Assistance of Counsel Arising out of a Conflict of Interest

The Strickland burden is still upon the Defense at all times when making claims of ineffective assistance of counsel based upon a conflict of interest. Cole v. State, 700 So.2d 33 (Fla. 5th DCA). But an exception exists. The prejudice prong of Strickland will be presumed "if the defendant demonstrates that counsel 'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" Alessi v. State, 969 So.2d 430 (Fla. 5th DCA 2007). The Defendant would therefore not be required to prove the outcome would be different. But the Defendant is not relieved of establishing through evidence that an actual conflict exists, that conflict adversely affected his lawyer's performance, and *must identify specific evidence* in the record that suggests that his or her interests were compromised. State v. Larzelere, 979 So.2d 195, (Fla. 2008). Quoting Culyer v. Sullivan, 466 U.S. 335, 100 S.Ct. 1708 (1980), the Florida Supreme Court goes on to state that "A possible, speculative or merely hypothetical conflict is insufficient to impugn a criminal conviction. Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance." Larzelere at 208.

The Defendant alleges that his attorneys, Robert Willis and Lee Hutton, labored under an impermissible conflict of interest because they represented him on both the criminal matters and civil matters arising from this murder. Around September 2002, within three weeks of his wife's, April Barber's, murder, Justin Barber approached Robert Willis. The Defendant hired Robert Willis and Lee Hutton in a pre-indictment criminal capacity for a \$7,500 flat fee. The engagement was to help Mr. Barber avoid an indictment in the murder of his wife. In February of 2003, the family of April Barber filed a suit under Florida's "Slayer Statute" to prove that Justin Barber had killed his wife and therefore was not entitled to any insurance proceeds. A contingency agreement was entered into between the firm of Willis and Hutton and the Defendant for the recovery of these proceeds. In July of 2004, the Defendant was then indicted for First Degree Murder for the death of April Barber and lawyers Willis and Hutton were hired to represent the Defendant in a criminal capacity. It is this dual representation that the Defendant now avers undermined the performance of his attorneys.

As a threshold issue, the Defendant's argument mistakenly implies that the dual relationship complained of existed from the date of the first meeting among lawyers Willis and Hutton and the Defendant. Lawyers Willis and Hutton were initially hired to try to head off a criminal indictment of the Defendant in September of 2002. The civil case involving the proceeds of the life insurance policies, born February of 2003, and the criminal case, born July of 2004, did not yet exist. The only deficiency complained of throughout the pleadings and hearing is the alleged failure of the Defendant's attorneys to secure a plea deal. It therefore stands to reason that the representation of the Defendant was without problems from August 2002 till at least 2003.

When the civil suit was filed in February of 2003, the goals of avoiding an indictment and the possibility of defending the civil suit over April Barber's insurance money were not converse. The Defendant, either in testimony at his evidentiary hearing and in his pleadings, does not complain of the representation of counsel at this juncture leading all the way up to the date of his indictment in 2004. In fact, the record reflects that the Defendant consulted with lawyers Willis and Hutton extensively. They advised the Defendant that he ought to surrender the money to the brother and sister of April Barber, as was the intended purpose when the policies were purchased, and that if he did so the primary motive at that time to suspect him of murder would forever disappear. This goes against the Defendant's arguments-- that he was erroneously advised to rejected any plea offers (later in the case); that the legal advice was compromised by the desire of lawyers Willis and Hutton to get 40% of that money. The first piece of legal advice to advance the Defendant's position was to give up his claim on the money, which is the record evidence of Mr. Willis' and Mr. Hutton's willingness to forgo the fruits of speculative litigation favoring solid legal advice in the best interests of their client. The Defendant failed to take their good advice and requested they answer the suit.

The Defendant was at this time and previously advised the difficulty of defending a civil suit of this nature. The testimony of both lawyers Willis and Hutton indicate that they knew the police favored their client from day one as a suspect, that they were working "hand and glove" with the civil attorneys, that the police would use the civil proceedings to develop their case against Justin Barber, that in order to participate in the civil suit the Defendant would be required to answer responsive pleadings under oath and would be required to give a depositions, that allegations concerning his responsibility for his wife's death would be subject to a lower standard of proof with no presumption of innocence as found in the criminal setting, and that all of the forgoing would increase his chances of being criminally prosecuted. Mr. Barber was advised of all these matters throughout the representation.

The record testimony is also uncontroverted that lawyers Willis and Hutton in no way expected to recover the insurance proceeds. They testified that their consistent and well-reasoned analysis of the case led them to believe that there was no way they would prevail in the insurance lawsuit; therefore, there exists no cause to find the speculative fruit of that civil lawsuit is a catalyst to provide deficient representation. The logic is clear: as the Defendant's involvement would be viewed by the jury with a lower standard of proof, as the Defendant admitted multiple affairs within a short three year marriage, as the Defendant admitted that the money was for the benefit of April's surviving siblings—there is no way a jury would award him the money. This is the only mindset of the Defense team that the record supports.

In Larzelere, the attorney for the Defense entered into a contract for the representation in a criminal case where the Defendant [Wife] was accused of murdered her husband for \$2 million in expected insurance proceeds (and \$1 million in assets). This is obviously relevant to our issue here in the Barber case. Larzelere's attorney charged an hourly rate and expected to be paid ONLY from the insurance proceeds if he won. The Defendant complained that her attorney failed to move for costs to be paid by the county and to engage proper experts/investigators to 1. Hide the unlawful contingency contract, and 2. to maximize the take from the insurance proceeds. The

Larzelere court ruled that the contract was not a contingency arrangement [FN1]; but applying this case to the Barber representation the Court analyzed the same alleged conflict— the representation of a criminal case that must be successful for the attorney to get paid from the accompanying civil case. .

The Larzelere case forbids us from entering into the slippery slopes of speculation. Here, there are two types of speculation upon which the Defendant Barber relies upon to meet his required showing under the law: 1. He asks that we speculate as to the reasons the defense did not actively pursue plea offers, 2. He asks that we speculate upon the very possibility of any plea offer becoming forthcoming from the State in this case. The Defendant cannot show that an actual conflict exists because his entire argument is built upon forbidden speculation. He cannot meet the requirement of Larzelere. The testimony is uncontroverted that no plea offers ever were extended by the State. In affirming their decision to deny this claim the Larzelere court recognized that there was a potential conflict of interest, that the attorney having fired the investigator and having failed to hire some experts could expect to take more of the insurance money home. But, that possibility, logical as it was, did not excuse the required need for record proof that the motivation was the reason those actions were done or things left undone. The court found that never did a time arise where the defense failed to take action because of a concern over funds. As with the Barber legal team, the Larzelere defense team would only get paid should they be successful at trial. Where can it be said that this is any sort of conflict? The Defense tried time and time again during the evidentiary hearing to create the required proof of such a conflict by engaging in the forbidden speculation of a non-existent plea offers.

The Defendant produced the unhelpful but insightful testimony of Professor Mashburn during the hearing. She time and time again opined that maybe a stay could have been moved for in the civil case (thus preserving his claim to the money and accompany motive for murder) instead of giving a civil deposition. This flies in the face of the record testimony that Barber was advised clearly as to the risk of a civil deposition, that the civil case was a voluntary proceeding (meaning Barber had the choice himself of walking away from the money which was purchased for the siblings of his victims in the first place), that not contesting the civil suit would remove the single most important motive to murder forever, and the police would use that civil proceeding to build their case. These are facts- not speculation. [FN2] Professor Mashburn also repeatedly speculates as to possibilities of plea offers. The evidence is un-refuted that the State never offered anything to the Defendant to resolve the case short of trial. It is also un-refuted that the Defense is

1 The worry of the Larzelere Court as to a “contingency contract” is that the arrangement was for the criminal case, which is per se forbidden by the Rules of the Florida Bar. In Barber we have the converse which is not forbidden. The Larzelere attorney did not represent the Defendant in the civil matter and the arrangement held was ruled proper and not a contingency contract.

2 It ought to be repeated that attorneys Willis and Hutton first advised the Defendant to abandon the insurance money, and this advice continued as the civil case was born and as the civil deposition and responsive sworn pleadings of the Defendant were coming into play. How can it be said as to any part of this claim that Attorneys Willis and Hutton were motivated in their legal duties by money and yet they constantly advised the Defendant to abandon that same money? We cannot speculate otherwise if we adhere to the law as directed by Larzelere.

in no position to force the State into offering anything in a criminal matter. The evidence here is that there were no offers; there would not be any offers. The goal of the prosecution was to try the Defendant for first degree murder and seek the death penalty. The record also is clear that the Defendant rejected the thought of even granting Mr. Willis 10-15 years [of prison time] of authority to pursue a plea. The Defendant, after being fully advised rejected this strategy and is now trying to benefit from his own bad judgment. The Larzelere opinion requires some record proof that any other course of action was not explored because of the risk of losing the money. Professor Mashburn, as learned and respected as she is, uses the terms “imagine, potential, possible” while describing what else could have harpooned here instead of analyzing what did happen in this case. Professor Mashburn closed her testimony without applying the case-law cited herein, without stating that as an expert she believes the requirements of the law as to this claim have been met by the Defendant, or offered any insight into this matter. Pages 279 to 281 of the provided transcript of the evidently hearing serves as a perfect example of exactly what type of hypothetical factual basis is forbidden by Larzelere, and what type of proof failed to carry the day in the Cole opinion.

In Cole v. State, 700 So.2d 33 (Fla. 5th DCA), the attorney had a blanket policy of not conducting discovery, yet charged a flat fee that stated all discovery, depositions, etc. were included. The court found this conduct to be deficient but affirmed the denial of the Defendant’s relief because he failed to show that this had affected the outcome of the case. Unlike the Barber case, here there is actual deficient behavior yet the standard of proof upon the Defendant is maintained. The conflict claimed was found to be inherent in the contract in that the attorney said all fees were included but then having a policy as to all cases not to engage the purpose of those fees- that being pretrial discovery. It is applicable to our case because that policy was ruled deficient yet the court, under the traditional Strickland test and the modified burden as mandated in the Alessi opinion and applied more distinctly in Larzelere, failed to order the extraordinary relief as prayed for by Barber. In Barber, there is no claimed, actual deficiency. The Defendant offers only random speculation that things could have been different. Accordingly, relief must be denied as the Defendant has failed entirely to meet his required burden.

Failure to Use the Original Crime Scene Photos

The photographs the Defendant is referring to are photographs taken by Kenny Moore of the Medical Examiner’s office—copies of which are attached as Exhibit C. Mr. Moore took eight (8) digital photographs and one polaroid.

The Defendant spuriously alleges that the Defense team lost these photographs, asked for reproductions, and then misplaced them a second time. The Defendant further alleges that these specific photographs show no blood on the Defendant’s face where there should have been blood. Further, the Defendant argues that these same photographs negates the “shot where she lay” theory of the State. This claim is tragically flawed.

First, these allegations, including the determination by the Defendant that these same photographs show that April Barber’s body had been moved, contrary to the evidence presented

at trial, is based upon the investigation by a Carlos Chirino. Carlos Chirino's observations and qualifications are suspect. The record reflects that Carlos Chirino has no formal training, background, or knowledge in the fields of forensic science, medicine, forensic medical examination, crime scene investigation, criminal investigation, blood pattern interpretation, anything involving the legal fields, or any other field relevant to this case. Mr. Chirino failed to interview the key witnesses in this case including FDLE crime scene analyst John Holmquist, SJSO Case Agent Howard Cole, lawyers Willis and Hutton. It seems he is content to leave himself ill-advised as to the facts of this case. Instead, Chirino relies upon the materials in boxes and only asked Mr. Willis one time the importance of the photographs that form the basis of these wild conclusions. Mr. Willis' response was that he had been provided those photographs in discovery, had analyzed those photographs, and because of the testimony of Kenny Moore—that was not made part of Carlos Chirino's "report"[FN 3]—were of no value as Kenny Moore's testimony would be that blood and foam were present on April Barber's face when he took these photographs. Mr. Chirino ignored those facts and persisted in his observations without any sort of proof. Mr. Chirino did take the time to destroy the envelope he said he "found" these "lost" photographs instead of preserving that envelope—which is actually the property and part of the records of lawyers Willis and Hutton—so that his assertions could be further examined in this process. It is also noted that the testimony of Mr. Willis is that the hundreds of photographs in his files that were taken by Mr. Chirino have not been returned to him [Willis] as is the case with much of the materials that evidence the work performed by trial counsel as to the David Shuey matter. Those materials were not returned with the provided boxes to lawyers Willis and Hutton.

Mr. Chirino mistakenly states in his report that Deputy Rake took these photographs when Kenny Moore in fact took them. He stated that they were polaroids throughout his report when all but one were digital photographs. Mr. Chirino believes from his research that Kenny Moore was the first on the scene when he was far down that list. Mr. Chirino posits that the defense lost these photographs and the State replaced them with 35 MM photographs taken by John Holmquist. Chirino backs of that conclusion and states that these photographs were simply lost—all without any basis of proof or logic. Mr. Chirino also went on to posit that it was clear that April Barber's head had been moved at the crime scene prior to her body being moved by FLDE. Chirino could not explain why he alone, contrary to all expert opinion in this case, would strike out to make that assumption. Mr. Chirino, instead of explaining his logic for the Court, ended his testimony on the matter with the indelible quote, "That's my story." (T-65) It appears that is his story and he is sticking to it in spite of the evidence in this case. The Court ought to disregard completely the testimony of Carlos Chirino and remember that it is on his testimony alone that this claim is based.

Second, this claim involving these photographs is refuted by the record. The Defendant

3 The State revealed at the hearing that affidavits of witnesses who did not see blood on April's face at the crime scene were attached to his report to the Defense [whether or not those witnesses were in a position to see is another unexplored matter by Chirino] yet Kenny Moore's report and deposition were suspiciously absent from that report. Kenny Moore states in both that he saw blood and foam on her face just as Dep. Tanner stated at trial—Deputy Tanner being the first person to find Miss Barber after the Defendant left her for dead. It seems as though Chirino is willing to ignore some evidence to support his conclusions as he sees fit.

claims that these photographs show no blood on April Barber's face. But, the fact is that Kenny Moore testified that blood and foam were on Miss Barber's face contemporaneously when he took these photographs. Deputy Tanner, in spite of Chirino's misleading references in his report and testimony, was actually the first to see April Barber and noted blood and foam on her face as the later taken photographs show. So, these photographs would not likely change the quality of the State's evidence any more than it would change the outcome of the trial. These photographs also do not show the side of the face where the bullet wound, blood, and foam are. Those all important areas of the face are in the shaded portions of the picture. Those areas of April Barber's face are simply not visible in these photographs. As stated before, for the Defense to implicate differently would be immediately refuted at trial by the testimony of Kenny Moore and Deputy Tanner. Mr. Willis clearly identified these photographs at the hearing and stated that they simply don't show the areas that are in question. [FN4]

This claim has been entirely discredited and there is no proof offered of how this claim would come into play at trial except to be refuted by two eye witnesses.

Failure to Adequately Investigate Alternate Suspect David Shuey's Alleged Alibi

This claim was abandoned by the Defense but it is relevant as to the competence of Carlos Chirino and the quality of the Defendant's claims as a whole. It is relevant to the Court that we again have claims that are based solely upon a witness who is so clearly flawed in his qualifications and observations. Carlos Chirino finished his work on this claim and was allowed to testify about it at the evidentiary hearing. During his testimony it was adduced that Mr. Chirino mistakenly thought David Shuey's credit card records meant nothing even though those records corroborated the statements of R. Lopez and E. Arcesi. Those two witness state that David Shuey (alternative suspect for the Barber case) was in fact in Massachusetts at the time of Barber's crime. Chirino dispensed with this eyewitness testimony that David Shuey was 1,000 miles away at the time of the crime with the notion that anyone could sign the credit card receipt so it didn't mean anything to him. (T-80).

Failure to Timely Poll the Jury as to Prejudicial Publicity

This claim was raised and rejected during the direct appeal and is now resurrected by retitling it as an ineffective assistance of counsel claim. There was no evidence or testimony adduced at the evidentiary hearing, nor appears in the record, that this had any affect on the outcome. As stated in the direct appeal and supported by the record, the publicity complained of by the Defendant occurred while the jury and the parties were in court. Three of those appearances occurred while the jury was actually in deliberations and sequestered. Throughout the trial, upon every time the jury was brought back into session several times a day, the Court reminded the jury to avoid the

4 The Court has the FDLE crime scene video in evidence. A DVD marked for identification was left for the Court after the hearing for the Court's convenience. That video shows exactly what is depicted in the pictures and pans down to the face of April Barber's showing that those areas cannot be seen until you go to face level—which Kenny Moore in his capacity as M.E. investigator did not do due to the limited purposes of his file photographs.

known publicity in the media and asked if anything had occurred in violation of those orders. Never did a juror indicate they had seen or made aware of any publicity. Before closing arguments, the Court specifically stressed the importance of this issue. At one time, the Defense requested that the jury be asked about exposure to pretrial publicity, the court granted that relief, and forgot for whatever reason. Lawyers Willis and Hutton made as strategic decision at that point considering the potential harm to their case if they stressed this coverage to the jury and the benefits of yet another answer from the jury to the negative [as to exposure to the evidence of the case outside the courtroom]. It cannot be said that their performance in this matter rises anywhere near either prong of the Strickland standard.

Prosecution Perjury Threat Against Shannon Kennedy

This claim must fail as it was never established at the hearing or in any record evidence that Shannon Kennedy was threatened by perjury at any time in the case. Likewise, it was never establish that if some mention to S. Kennedy of perjury occurred that the hypothetical interaction was improper, had any effect on the trial, or would change the outcome at trial in any fashion. The testimony from Justin Barber himself in support of this claim negates its validity. Barber states that he cannot say that her testimony swayed from the truth at any time and cannot say that any discussion of perjury had any effect on her testimony. Barber goes onto testify that he agrees with Mr. Willis' decision not to cross S. Kennedy aggressively. Mr. Willis had testified that they wanted to get her and her testimony of the affair (admitted by Justin Barber) on and off the stand as quickly as possible.

Detective Cole's Testimony About Lack of Violent Crimes at Guana State Park

The statement of the Defendant's claim reminds us of the speculation found in the claim involving the alleged conflict of interest. Counsel claims that Det. Cole's testimony could have been impeached if evidence existed that counsel might have found to show the jury Det. Cole was providing false testimony. The Defendant states that this unknown evidence is easily obtainable by simple due diligence. But here's the rub. If it is available by the exercise of due diligence, where is it? Why has the Defendant by and through his attorney provided this evidence as required by law to support their claim? So, we cannot speculate on what records, crime reports from SJSO, or other evidence might exist to show that Det. Cole's testimony was false beyond what the Defendant alleges.

The Defendant's claim is therefore unfortunately intertwined with the abandoned claim involving David Shuey. The Defendant therefore is arguing that the evidence of David Shuey's attack would have helped impeach Det. Cole as to this point. We may not speculate about what might be out there yet it is not surprising that consistent with the State's investigation into both Shuey and Barber, the Defendant's pre-trial investigation, and the Defendant's post trial investigation no other crimes similar to Barber's have been presented since the trial. So, looking at the projected use of "Shuey" as impeachment for this single question (the trial transcript as to this entire issue is attached as Exhibit D) Shuey's attack is of little value. In order to bring up the Shuey attack it would also allow the State to go into that investigation which showed that the

Guana Park area because of its seclusion is a perfect place for rape or murder. This single question to Det. Cole was not a feature of trial. Additionally, the record evidence shows the testimony of DEP Officer Breckler— who patrols the park area—testified that beyond the Shuey matter the only crime he’s ever seen were some unattended car burglaries. These were described as “smash and grab” offense that occurred in the parking lot sometimes. Taking April Barber at that time to that place was suspicious enough without the defense highlighting how good of a place it was to kill someone. With Shuey affirmatively excluded as a suspect, which the Defendant concedes abandoning the claim on that issue, and with no other useful data to support his motion this claim fails to meet even the threshold requirements of Strickland.

Failure to Fully Sequester Jurors

There was no evidence elicited on this issue at the hearing. This claim was raised and rejected during the direct appeal. The only relevant testimony comes from Mr. Willis that at the time of the trial what are now known as “smartphones” did not exist—that the cell phones were text only without internet capability. The Court was resented with no other direct testimony that jurors were using their phones in order to violate the court’s orders. This claim may be denied without further consideration.

This State therefore respectfully, prays this Court deny the Defendant’s motion on all grounds. The Court granted the State the right to file a response memorandum once the Defendant memorandum filed his memorandum. I have endeavored as promised to address all arguments well and completely herein but do reserve that right to file a response memo once I receive the Defendant’s argument memorandum.

WHEREFORE, the State respectfully renews its request that the Defendants Rule 3.850 motion be denied.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the attorney for the defendant. Dated October 29th, 2012.

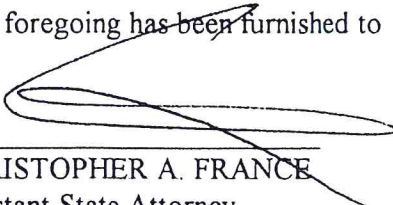

CHRISTOPHER A. FRANCE
Assistant State Attorney
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Exhibit A

STATEMENT OF FACTS

On August 17, 2002, Appellant Justin Barber and his wife April belatedly celebrated their wedding anniversary at Carraba's Restaurant in Jacksonville Beach. [R104]. Barber had beers and mixed drinks before and during dinner, and another drink at the nearby Ritz Bar after dinner. [R104]

After playing pool at the Ritz bar, the couple drove together to Guana State Park south of Ponte Vedra, where they had previously celebrated special occasions by having sex on a deck overlooking the beach on each of those occasions. [R108-09]

On the night in question, the couple walked south down the dark beach, then returned north, walking to their starting point. [R109-11] During the return northbound walk, both were shot - - April Barber died of her wounds, but Justin Barber was able to leave the beach and drive to get help. [R81-130]

In a deposition given in a subsequent civil case, Barber testified that he and his wife had been accosted at gunpoint at the water's edge by an assailant who

approached them from the north. [R81-130]² Barber testified the man wore a dark tee-shirt and a baseball hat with a distinctive logo. [R112]

Barber testified that he lost consciousness after being shot and that when he came to, he began searching for April. [R113-14] Barber testified he attempted to carry his wife off the beach and used several methods to carry her to the dune walkover. [R115-16]

Barber then attempted to get help by flagging down cars on the roadway, but no one stopped. [R117-18] Barber then drove north on State Road A-1-A to seek help, but ultimately passed out after driving into the median. [TR1297-98]

Vacationers Jason and Kimberly Pryor had driven northbound past the beach access shortly before Barber left to get help; the Pryors both testified another vehicle had been parked at the dune walkover near Barber's SUV. [TR1272-74] The Pryors both testified Barber's SUV later came past them on A-1-A at a high rate of speed with its hazard lights flashing. [TR1264-66; TR1272-74] Barber's SUV landed in a median and he passed out. [TR1264-66]

Paramedic Susan Brown responded to the scene of the crashed SUV; she

² This deposition was read into the record at trial. [R1] A video-taped walk-through with Barber explaining the incident was introduced by the defense. [TR723-35]

testified Barber had minimal bleeding. [TR1249] Barber was life-flighted from the median strip to a local trauma center. [TR1254] Barber was treated at the emergency room by Dr. Tepas who observed five wounds and noticed two wounds of significant concern -- the wound three to four centimeters below the nipple, and the one near the neck. [TR1074] Tepas opined that these wounds could have caused significant pain and could be consistent with a loss of consciousness. [TR1079-80]

St. John's County Sheriff's Lieutenant Ben Tanner was the first law enforcement officer to arrive at the beach crime scene, where he found April Barber's body at the dune walk-over. [TR465] Tanner was initially unable to determine what injuries she had suffered. [TR482] April Barber had been shot once in the face, below her left eye. [R114]

Two hours later, FDLE crime scene analyst John Holmquist arrived at the beach to "process" the scene; he observed blood on April's right wrist, inside upper left arm and on her face. [TR501; TR554; TR555] Holmquist also testified the tide had destroyed most of the drag marks in the sand between the surf and the dune walkover, but that there were dozens of footprints in the sand above the tide line. [TR507]

Three and one-half hours after Lt. Tanner had first arrived on the scene, photographs were taken of April Barber which showed her body lying across the boardwalk and blood running down her face. [TR561-62]

Paramedic Brian Erb of Jacksonville Fire/Rescue was the first medical responder on the scene; Erb specifically checked April for bleeding and did not see any bleeding observed by Holmquist. [TR1221-22; TR1225] Jason Pryor, the vacationer/passers-by, had also returned to the scene; because he had prior training as a first responder, he was permitted to check the body prior to the arrival of paramedics. [TR1277] Pryor had noticed no blood on April's face. [TR1277]

FDLE analyst Holmquist also testified none of Justin Barber's blood was found on the dune walkover or on the path to his car. [TR557] Blood found on April's right wrist, left arm, left shoulder and under April's armpit turned out to be Justin Barber's blood. [TR973; TR1225]

FDLE analyst Nicole Lee testified that blood found on Justin Barber's shirt (in at least three locations) and on Justin Barber's pants (on at least two locations) was determined to be female blood. [TR964-69] Additionally, Lee had observed a large area of blood on the back of April's blouse, but never tested it. [TR972]

The medical examiner, Dr. Steiner, testified April's body showed multiple areas of abrasion (showing both pressure and movement) and a gunshot injury to the left cheek. [TR1004] Steiner opined the abrasions on the left clavicle, the left arm, the left side of the body and behind the left ear were made while April was still alive. [TR1006-07] Steiner further opined that April had suffered a "near-drowning"

episode, but stated that the foam on April's cheek was consistent with April having died in saltwater. [TR1014]

Pathologist William Sturner testified for the defense; Sturner opined that the blood line shown of photos of April Barber's face was a "re-bleed," consistent with her having been shot at the water's edge and dragged or carried to the boardwalk. [TR1402-03] Sturner also testified the female blood on Barber's clothing supported Barber's version of the events. [TR1472]

Sturner also opined that all four of Jason Barber's wounds were inflicted by a third party, and that the wounds had been capable of rendering Barber unconscious. [TR1393-99] Sturner also testified the wound to Barber's palm was consistent with a scuffle with an assailant. [TR1395-97] Sturner's opinion was that April was not shot at the dune walkover. [TR1418] Sturner also opined that April's lungs were one-half the weight he would expect to see in a drowning. [TR1412]

A DNA expert, Dale Gilmore, testified for the state. [TR1549-50] Gilmore testified that of the forty-six blood stains on April Barber's pants, thirty-six were female blood. [TR979] Gilmore testified the blood stains were not in good condition for DNA extraction and typing. [TR980] Gilmore further testified that the remaining ten blood stains on April's pants could have all been male. [TR983] Gilmore also testified that the clothing evidence had been poorly handled. [TR985]

FDLE DNA Analyst Jason Hitt testified he tested April Barber's pants and Justin Barber's shirt. [TR931; 941] According to Hitt, the stain on April's blouse presented difficulty in determining whether more than one person's bodily fluids were there. [TR949]

Jerry Findley, a privately-retained crime scene analyst called by the State opined that April had been shot on the dune walkover, but admitted that the finding of female blood on Justin's pants was inconsistent with this theory. [TR1166] Findley also testified there was no blood on the boardwalk. [TR1167]

Alexander Jason, the defense crime scene expert, testified that for April to have been shot where she lay on the boardwalk, that the shot would have had to come from underground. [TR1468] Jason testified it would have been difficult, if not impossible for Justin to have held April upright as he shot her. [TR1471] Jason testified that the blood flow evidence was consistent with Barber's version of the incident. [TR1463] Jason also testified that the bullet holes in Justin's shirt did not exactly correspond to the bullet wounds on Justin's body - - this, he testified, "could be consistent with a struggle." [TR1445-46; TR1451]

Testimony established April Barber had initially applied for the two million dollar insurance policy on her life with First Colony Life Insurance. [TR1203] The company representative conducted a background investigation and personal interview

with April Barber; the policy was issued in July 2001. [TR821; TR1204]

CPA David Siegel testified that Justin Barber had \$58,000 credit card debt which had been incurred after the purchase of the life insurance policy. [TR809-21] Siegel testified the credit card debt had been incurred after post-September 11 stock market losses. Siegel testified Barber's annual income had been \$105,000 and that April Barber's annual income had been \$73,000. Siegel testified he saw no problem with the credit card debt, given the couple's high income and testified Barber had managed the debt with no delinquencies. [TR817-18]

Shannon Kennedy testified that she had begun a casual sexual relationship with Barber after an office-sponsored happy hour. [TR765] The two had occasional sex over a three week time period; Kennedy lived with another man at the time and had no intention of breaking up with the other man. [TR772]

Exhibit B

STATEMENT OF THE CASE AND FACTS

Appellee provides the following facts in addition to those offered by Barber in his version of the case and facts:

In both his civil deposition and his statements to police,¹ Barber stated that after he awoke after hearing the gunshot, he ran in both directions until he found April face down in the water with a hole in her face but no bleeding. (V. I, R. 114, V. IV, R. 718). He tried to carry her from the water to the boardwalk where he left her.² (V. I, R. 116-117, V. IV, R. 719). Barber said he looked for April's purse in the back seat. (V. I, R. 117-118, V. IV, R. 720). Barber drove north and did not recall passing any houses or open businesses. (V. I, R. 118, V. IV, R. 720).

The responding officer to the crime scene, St. Johns Sheriff's Lieutenant Ben Tanner, testified that he saw April laying longways across the end of the boardwalk. (V. XV, T. 467-468). Lieutenant

¹ The civil deposition and Barber's statements were admitted as evidence and played for the jury. (V. XVII, T. 678-680, 724-735, V. XVIII, T. 917).

² Barber first pulled April by grabbing her under her arms or armpits. (V. I, R. 114, V. IV, R. 718). He tried to pick her up and carry her by putting his arm under her head and his other arm under her legs. (V. I, R. 114, V. IV, R. 718-719). He could not carry her so he tried to get April into a "fireman's carry." Barber then dragged her by her hands, pulling her backwards toward the boardwalk. (V. I, R. 115). When he couldn't do that any longer, Barber pulled her by her wrists, and then under her arms. (V. I, R. 115). He grabbed the waistband of her pants, with his thumbs on the inside of her pants and his fingers on the outside. (V. I, R. 115-116, V. IV, R. 719).

Tanner observed a white frothy substance along her cheek and her hair. He also noticed a red residue or blood. (V. XV, T. 475, 479).

Investigative personnel observed drag marks from the end of the boardwalk to the beach until said marks were washed away by the surf. (V. XV, T. 497-501). While walking these drag marks, there was no blood in either the hard or soft sand. (V. XV, T. 508, V. XVI, T. 557). Blood was collected from Barber's vehicle from the interior driver's door panel, the steering wheel, and the armrest. (V. XV, T. 510). When discussing April's condition at the crime scene, Crime Scene Analyst Holmquist noted the blood flow from April's mouth using crime scene photographs, and he noted that he could clearly differentiate from the blood and the foam. (V. XVI, T. 525-526). The blood was obvious and visible, and had dripped from her mouth and nose. The blood came down the side of her face into her hair. (V. XVI, T. 541).

Detective Howard Cole investigated this crime. Barber told Detective Cole that he struggled with the gunman, but Detective Cole noticed nothing on Barber that reflected a struggle. (V. XVII, T. 739-740). Barber stated that he dropped April when he tried to get her to the boardwalk. (V. XVII, T. 745). Detective Cole noted that the beach sloped down to the water and that blood normally flows with gravity. (V. XVII, T. 748). Detective Cole further observed that Barber offered no explanation for his additional

gunshot wounds which occurred after he said he fainted from the first gunshot wound. (V. XVII, T. 743-744). Detective Cole also noted that Barber's gunshot wound to the right side of his chest was unusual compared to the gunshot wound to his left shoulder. (V. XVII, T. 742-743).

Detective Cole travelled the 9.6 miles of AIA that Barber drove after the murder. He noted that there were ocean front homes and gated subdivisions with guards. Businesses were well-lit and there was a gas station 7.3 miles into the drive. (V. XVI, T. 623-626). These businesses were open at 11:00 p.m. at night. (V. XVI, T. 626). An aerial map of this area was admitted as evidence. (V. XVI, T. 622, Supp. V. XXVI). When asked why he did not stop at any of these homes, Barber told Detective Cole that he did not want to get some old man out of bed. (V. XVI, T. 646). Barber told April's aunt, Patricia Parrish, that he drove ten miles from his wife who had been shot because there were no lights on in any of the homes he passed. (V. XVII, T. 858).

Detective Cole noted that a "tremendous amount of resources" were utilized on the night in question looking for this assailant based upon Barber's account of what happened, including the notion that another vehicle was seen on AIA at the time of the murder. (V. XVI, T. 616, 651-655). In the days after the murder, investigators returned to the beach and searched the vegetation using machetes and K-9 dogs, stating, "Any way possible we

utilized." (V. XVI, T. 537, 616-617). Detective Cole noted that the area of the Guana State Park where April was killed was the "worst place for evidence recovery" given the vegetation of the dunes, which was so rugged that police dogs were injured, and the wildlife of spiders and rattlesnakes. (V. XVI, T. 617). Despite this investigation, no other suspect emerged and there was no evidence of a third party assailant. (V. XVI, T. 656, V. XVII, T. 748). Detective Cole testified that there was no physical evidence that anyone other than Barber and April were on the beach that night. (V. XVII, T. 753).

Initially, Barber denied having any extramarital affairs, and he "adamantly denied" having an extramarital affair with Shannon Kennedy. Yet, when he was told that his mistress, Shannon Kennedy, was at the police station, he admitted to having a sexual relationship with her. (V. XVI, T. 647-648). Ms. Kennedy testified that she met Barber in July 2002 while working at Enterprise Car Rental in the Omni Hotel. (V. XVII, T. 763). They began a sexual relationship early on, which lasted for about three weeks. (V. XVII, T. 764-765). Ms. Kennedy did not know that Barber was married at first and that the two had a sexual encounter within one week of the murder. (V. XVII T. 765-766). During that same time frame, Barber asked her to go on trips to Georgia and California with him. (V. XVII, T. 766-767).

Ms. Kennedy noted that when she first went to Barber's

apartment, she didn't think anybody else lived there, but she noticed pictures were up on another visit. Barber told her he needed to put up pictures because family was coming and he wanted it to look like they were happy. (V. XVII, T. 767-768). Barber stayed at the Omni after the murder. He called Ms. Kennedy after the murder and tried to see her at work. (V. XVII, T. 768, 777-778). Barber brought her a gift several months later. (V. XVII, T. 769).

From January 2001 through July/August 2002, Barber had seven credit card accounts. (V. XVII, T. 809). In January 2001, Barber had a collective balance of \$9725.48 on all seven cards, with minimum payments of \$430. (V. XVII, T. 809, 815). On September 1, 2002, the balance was \$58,487.94, with minimum payments of \$1357. (V. XVII, T. 809, 815). During this time period, there were significant cash advances which totaled \$50,000. (V. XVII, T. 810). The cash advances were deposited into an E-trade account to invest and cover losses. (V. XVII, T. 817-819).

In July 2001, Barber and April were issued term life insurance policies for \$2,000,000 from First Colony Life Insurance. (V. XVII, T. 821-822, 834-835). Barber was the beneficiary of April's policy and on the application paperwork, Barber listed himself as the person to receive any correspondence as it related to the policy. (V. XVII, T. 835). Within weeks of the murder, Barber came in and filled out the paperwork to claim April's life insurance. (V.

XVII, T. 824-825).

The information technology director for Barber's employer, Rayonier Incorporated, testified that Barber had his own password for his computer and that even the IT department typically did not have that password. (V. XVII, T. 840-841. The company forbade the sharing of passwords and frowned upon employees who allowed others to use their computers. (V. XVII, T. 841).

A search of Barber's hard drive from his work computer revealed that two Google searches were conducted on February 14, 2002, using the keywords "trauma, gunshot, right and chest." (V. XVIII, T. 880-881. On February 20, 2002, there were Internet searches using the search engine, Google, using the keywords "medical, trauma, gunshot and chest." (V. XVIII, T. 883-886). On July 19, 2002, there was an Internet search for "Florida and divorce." (V. XVIII, T. 886-887). An attempt was made to delete this search. (V. XVIII, T. 887-888). On August 17, 2002, at 5:16 p.m. the song, "Used to Love Her (But I Had to Kill Her)" by Guns N Roses was downloaded and stored on the computer. (V. XVIII, T. 890-891). That song was deleted or moved on September 3, 2002, and of the 1,695 files on his computer, only that song and one other were marked for deletion. (V. XVIII, T. 892-893, 895, 914).

The Florida Department of Law Enforcement conducted DNA testing on both April and Barber's clothing. (V. XVIII, T. 959-965). The blood stains on April's pants matched only to April's

DNA. (V. XVIII, T. 979-983).

When conducting April's autopsy, medical examiner Dr. Terrence Steiner easily removed a ring from April's finger along with her watch and two earrings. (V. XIX, T. 1001-1002). He observed that the blood drained from her face post-mortem, soaking her hair and pooling behind her head, soaking the back of her clothing. (V. XIX, T. 1003). April had two different types of trauma, multiple areas of abrasions and a gunshot wound to her left cheek. (V. XIX T. 1004). The abrasions were all made when she was alive and were caused by pressure or movement consistent with being rubbed against a coquina beach or rough shells. (V. XIX, (V. XIX, T. 1007-1009, 1052-1057, 1061-1062). April was shot in her face when she was alive. (V. XIX, T. 1010-1011).

Dr. Steiner testified that the blood came out from April's mouth at an angle around her cheek, and the one and one-half teaspoons of white foam coming from her mouth. (V. XIX, T. 1014). The foam was that type expected from someone who was immersed in salt water. (V. XIX, T. 1015-1016). April suffered a near drowning episode, which could cause loss of consciousness. (V. XIX, T. 1026). Dr. Steiner testified that given the blood flow from her face and the fact there was no blood anywhere else, April had been shot where she was found and had not been moved. Her death was caused by that single gunshot. (V. XIX, 1017, 1036, 1039, 1045-1050). If April had been moved or manipulated there

would have been blood somewhere from the draining wound, but there was none. (V. XIX, T. 1045). The lack of blood anywhere else and the blood pattern from her face demonstrated she had not been moved and had been shot where she lay. (V. XIX, T. 1036-1045). Dr. Steiner further noted that if April had been shot in the water, the foam by her nose was inexplicable as it should have washed away in the water. (V. XIX, T. 1046). There was no trace of drugs or alcohol in April's body at the time of her death. (V. XIX, T. 1068).

Barber had five gunshot wounds. (V. XIX, T. 1073-1075). All of his gunshot wounds were minor, requiring only wound care, and none of Barber's organs were at risk. (V. XIX, T. 1075, 1078). He was released from the hospital the day after he was shot. (V. XIX, T. 1080).

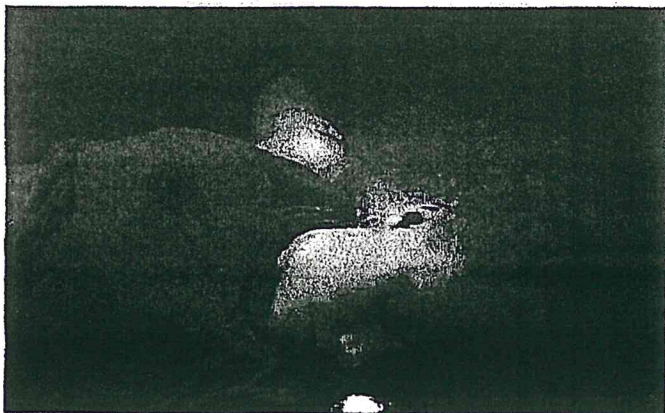
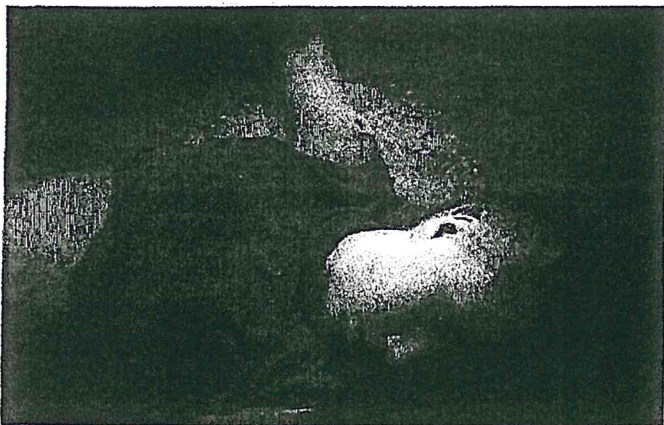
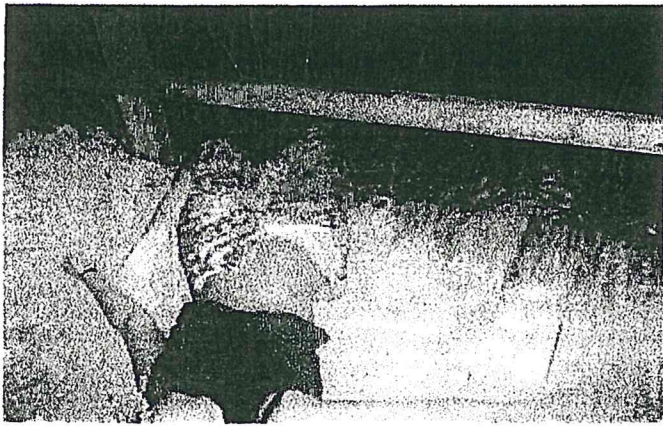
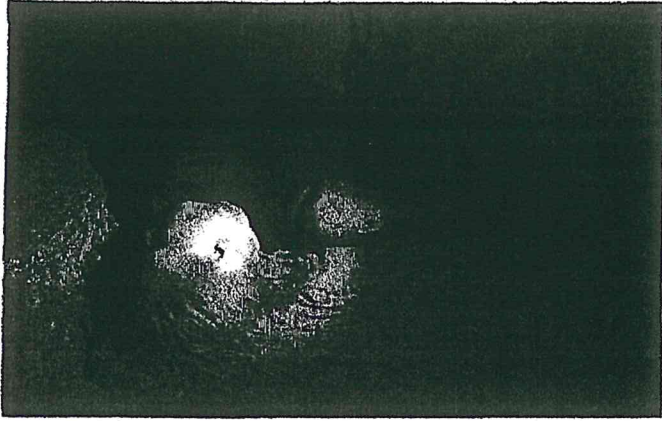
Jerry Findley, who had previously testified 133 times as an expert in bloodstain pattern analysis or crime scene reconstruction, explained to the jury that blood flows with gravity and that by comparing Barber's account of the murder with the forensic evidence, there were five major inconsistencies. (V. XIX, T. 1151-1155). First, Barber said he moved April nine times after she was shot, but the blood flow on her face came straight down the left side of her face. (V. XIX, T. 1152-1153). If her body had been moved, her head would have changed positions and the blood would flow consistent with those changes. (V. XIX, T. 1153).

Here, the blood flow was consistent only with her laying in one position and staying in that same position. It did not change once. (V. XIX, T. 1153-1154). Second, Barber stated that he dragged April up the beach by grabbing the waistband of her pants. If Barber had been shot by the assailant down by the water and he had been shot through the hand, there would have been blood transfer to her pants. None of his blood was found on April's pants. (V. XIX, T. 1155). Third, if Barber dragged April by her pants, there should have been buttocks marks in the sand; there were none. April's pants should have fallen down given that she was found with her pants undone and zipper down, but her pants were still in the middle of her back. (V. XIX, T. 1156). Also, sand would have accumulated in her waistband and there was none. (V. XIX, T. 1157). Fourth, Barber stated that he looked for April's purse in the passenger seat and back seat of his car, but there was no blood transfer. There was only blood on the driver's door handle and steering wheel. (V. XIX, T. 1157). The blood drips on his pants were consistent with Barber driving and blood dripping down. (V. XIX, T. 1158). Finally, Barber's blood found on April's upper left arm was a blood transfer and not consistent with someone pulling April by the arms as Barber had stated. (Vol XIX, T. 1159-1161). If he had been pulling April, the skin would give and the blood would swipe and would reflect movement. The blood on April's arm was a straight transfer. (V. XIX, T. 1161).

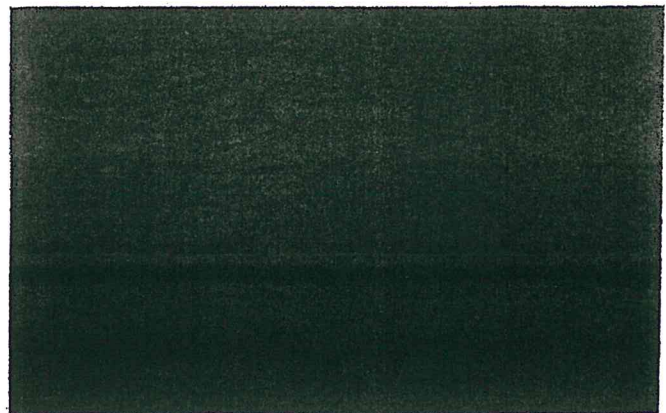
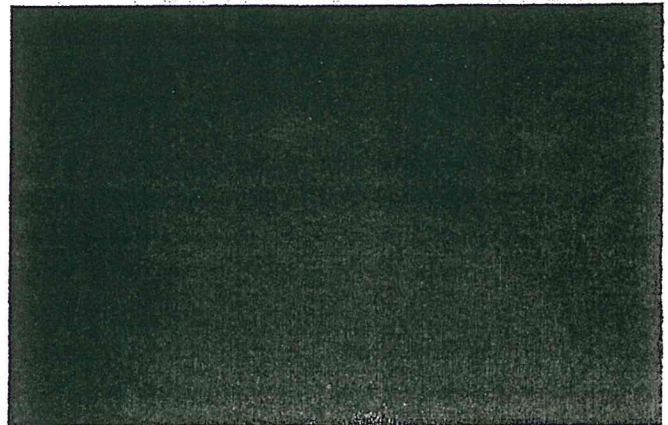
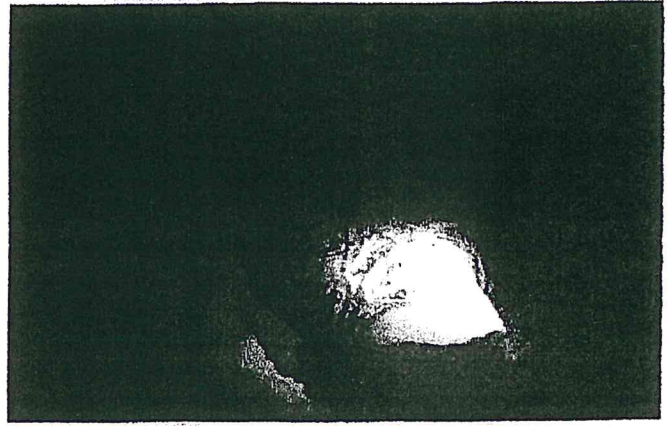
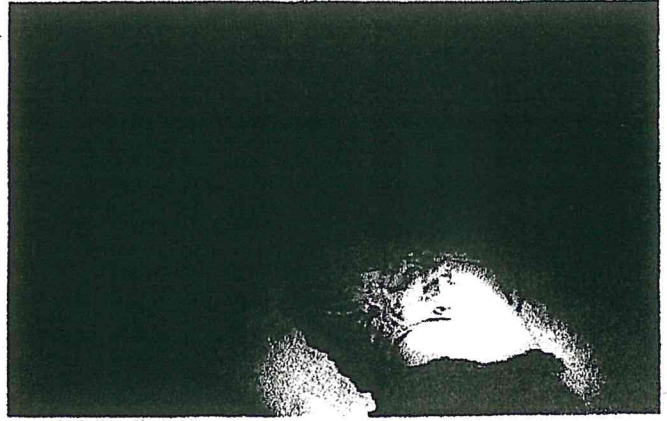
The defense experts who testified relied upon Barber's statements to reach their conclusions, and even Barber's expert could not exclude with reasonable certainty that April was shot at the boardwalk. (V. XXI. T. 1413-1416, 1418). Also, an additional defense witness admitted that Barber's hand wounds could have been self-inflicted. (V. XXI, T. 1498).

Exhibit C

02-23-259



02-23-259



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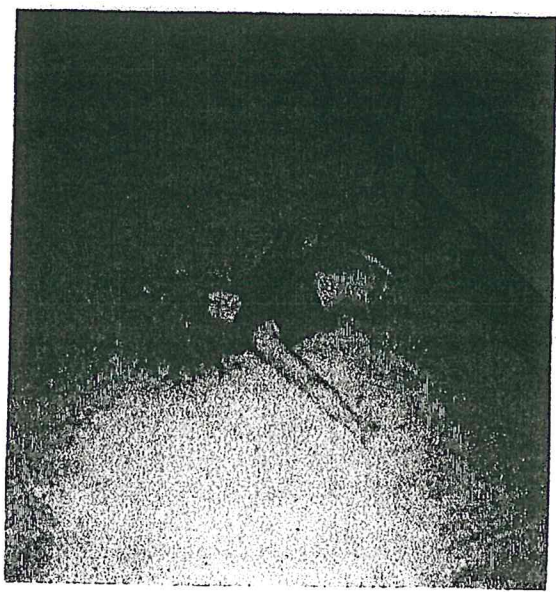


Exhibit D

1 A Yes.

2 Q Okay. And describe how that was described
3 to you.

4 A He initially stated that he basically --
5 when the assailant focussed his attention on April,
6 that he grabbed for the subject's arms.

7 Q Okay. And did that change in the
8 conversation that you had with the defendant on the
9 20th?

10 A Well, notably, which it kind of -- it
11 stuck out in my head for a couple different reasons,
12 but, yes, it did.

13 Q Directing your attention back to the
14 beginning of this when you were first called out, in
15 terms of the St. Johns County Sheriff's Office, this
16 came in as a -- an alleged robbery, correct?

17 A Correct.

18 Q Okay. In your time with the St. Johns
19 County Sheriff's Office, are you aware of any other
20 robberies at Guana Park?

21 A No.

22 Q And to that end, as a robbery, what, to
23 your knowledge, has the St. Johns County Sheriff's
24 Office done to work this to solve a potential
25 robbery?

WRITING SAMPLE #2

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR ST. JOHN'S COUNTY, FLORIDA

CASE NO. CF04-1748-CFMA
DIV: 56

STATE OF FLORIDA

vs.

JUSTIN MERTIS BARBER,
DEFENDANT,

**STATE'S MOTION TO DENY DEFENDANTS PENDING MOTION PURSUANT TO
RULE 3.850**

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and hereby requests that the Honorable Court grant the State's motion, as the grounds therefore would state the following:

The Defendant filed his motion under Rule 3.850 on October 10th, 2010 with a contemporaneous prayer to be allowed to amend this motion. No amendments were filed and the evidentiary hearing was held on that motion on May 4th, 2012. Both parties were ordered by the Court at that evidentiary hearing to provide their final argument in written form. Those arguments are due on October 29th, 2012. The Court denied the Defendant relief on April 24th, 2013, and then denied the Defendants subsequent "Motion to Rehear" on May 17th, 2013.

Facts of the Case and the Statement of the Defendants Claim

The facts of the case are taken from the State's answer brief to the direct appeal, filed by Mary Jolly in January of 2008, as Exhibit "A." This is done for the Court's convenience as the record is quite extensive. The transcripts of the jury selection, relevant to this latest claim, were attached to the Defendants amended motion and will be referred to as "R" followed by the page number.

The Defendant now raises a claim of juror misconduct. The claim involves an unsworn statement by a Timothy Faircloth. Mr. Faircloth claims that he was struck as a juror in the Barber case after stating that he had law enforcement ties in his family. It is claimed that Mr. Faircloth met with a seated juror some time after the trial and that juror told him that she was a data clerk for the FBI. The Defendant claims that juror's failure to state this to the court amounts to juror misconduct and prays for an evidentiary hearing on the matter.

Argument

First, the court may deny this claim because it rests solely on inadmissible hearsay. In Williamson v. State, 961 So.2d 229 (Fla 2007), The Florida Supreme Court affirmed the trial court's ruling that "newly discovered evidence that would not be admissible at trial is not 'evidence' and 'cannot be of such a nature that it would probably produce an acquittal at trial.'" Id at 234. (Affirming the trial court's ruling denying that Defendant's post-conviction motion because the newly discovered evidence was hearsay). Hearsay is a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted. Fla. Stat. Ann. Section 90.801(1)(c). Hearsay is inadmissible. Fla. Stat. Ann. Section 90.802. The affidavit or testimony of the declarant here consists of statements made by others-- first the Juror #161, second by Timothy Faircloth, then third by the investigator, who spoke with Timothy Faircloth, Gerald Collins, offered to prove the truth of the matters asserted by Juror #161. This is claim rests on triple hearsay and all those statements are inadmissible as such. There is therefore no "newly discovered evidence" upon which this Court may rely to lawfully grant the relief prayed for by the Defendant.

Second, the claim is successive and procedurally barred. This claim should have and could have been added to the original Rule 3.850 motion that was pending since October 10th, 2010. The evidentiary hearing was held on May 4th, 2012. The motion was not ultimately ruled upon until April 24th, 2013 (rehearing of that ruling not denied until May of 2013). Timothy Faircloth stated to the undersigned during two separate interviews that he met with Mr. Kent privately in Mr. Kent's office in 2011 and informed Mr. Kent of all the facts contained in the attachments to his amended Rule 3.850 claim filed August of 2014. ¹ This new pleading is therefore procedurally barred as successive. Renaud v. State, 926 So.2d 1241, 1242 (Fla. 2006). At all times during the pendency of his prior Rule 3.850 motion the Defendant was free to unilaterally amend the motion prior to the Court's ruling. Figueroa v. State, 128 So.3d 897, 893 (Fla. 4th DCA 2013). The trial court would then be obligated to consider that claim on its merits. Spera v. State, 971 So.2d 754 (Fla. 2007). As to the potential argument that the defense had to receive leave of the 5th DCA to relinquish jurisdiction would also fail.² The trial court had concurrent jurisdiction to hear a new Rule 3.850 claim that is separate and unrelated to the claims within the motion under appeal. Bryant v. State, 102 So.3d 660 (Fla 2nd DCA 2012). The Defendant could have and should have filed this claim at any time during the pendency of the original Rule 3.850 motion.

Third, assuming the allegations are true and reviewing the claim on its merits— that a

¹ Gerald Collins remarks within his affidavit that he is a former FBI and military investigator. Reviewing the unsworn testimony of Timothy Faircloth it is notable that the date and time of Collins' interview with Timothy Faircloth is not listed anywhere in the attachment or in the body of the motion itself. Such information would be the very first thing a career criminal investigator would memorialize within an affidavit or report of an interview. Coupled with the statements that Timothy Faircloth first informed Mr. Kent of these allegations in 2011, the issue of the timing of the Defendants knowledge of these statements are not sufficiently plead.

² The State does not concede that the information was gathered during the appellate period of the original Rule 3.850 motion as implied by the motion of the Defendant yet not plead with specificity as such.

juror was a data clerk for the FBI-- the Defendant cannot make the required showing under the test prescribed by the Florida Supreme Court in *De La Rosa v. Zequeria*, 659 So.2d 239 (Fla. 1995) and its progeny when asking for an evidentiary hearing. When dealing with alleged juror non-disclosure of information *De La Rosa* provides a three part test to meet to warrant a new trial: 1. *The facts must be relevant and material to jury service in the case;* 2. *The facts must be intentionally concealed by the juror on voir dire examination;* and 3. *The failure to discover the concealed facts must not be due to the want of diligence of the complaining party.* *De La Rosa* at 241. Here the alleged non-disclosure is that Juror #161 stated that she was a data clerk with the FBI several years ago, that she was not a criminal investigator, and that employment ended several years ago. Juror #161 also stated during voir dire that she has owned the bed and breakfast in St. Augustine for eight (8) years prior to the trial and that prior to that her profession was as a builder and real estate agent in Virginia. (R pgs. 126-128). Juror #161's experience, whatever that was, with the FBI is so remote it cannot be said that it creates any question as to the veracity of her answers.

First, the record reflects that Juror #161 answered truthfully to the questions asked and the allegations of Mr. Faircloth do not reveal any non-disclosure. The Court asked all members of the venire—of which Juror #161 was a member—“. . . Do any of you have any close friends or immediate family members with experience in law enforcement such as police officers, deputy sheriff, highway patrolman, Florida Department of Law Enforcement or such . . . ?” (R pg. 67) The Court followed up with “. . . General question to all of you with relatives, friends, whatever in law enforcement. Would that fact cause you to give law enforcement any greater or less weight if law enforcement officers were to testify in this trial . . . ?” (R pg. 69) During his individual questioning Mr. Willis asks of a single venireman, “Is there anybody else in *your family* that's been involved in Law enforcement?” (R pg. 121) Mr. Willis repeatedly asked of some individual venire members if any other “family members” worked in law enforcement. Contrary to the Defendants assertions here, Juror #161 answered all questions truthfully. Neither she nor any other venire member was asked if they **themselves** worked in law enforcement. Mr. Willis goes on to describe for the panel his specific concern with this issue: “MR. WILLIS: “. . . I guess more importantly, the thing most of the time people are concerned with, and that's why the court asked the question, sometimes when you're around law enforcement a good bit in your life, you hear kind of law enforcement perspective, they're griping about the system or they don't think it's fair or they think somebody got away with something, things of that sort. . . .” (R pg. 122) Mr. Willis later reinforces this singular concern to the panel: “MR. WILLIS: So none of the where you've sat down and they griped and told you that the system is all corrupt and people get away--- none of that kind of idea?” (R pg. 126) In the context of the entire voir dire, her answers are truthful to both the direct questions asked and to the well stated and specific concerns of Mr. Willis. Juror #161 had nothing further to disclose as to family members being involved in law enforcement. If she did not feel, as Mr. Willis repeatedly asked members of the panel, that she was influenced through any experience in her life to feel that the criminal justice system was broken or that it allowed guilty people to go free unfairly than she had nothing further to disclose. The defendant may not now speculate that Juror #161 would not have alerted the court if there were such reservations. The defense fails to meet the defendant's burden when their position is *contrary to the record*. When asked as a group about being exposed to prior news coverage of the

case she immediately alerted the court to what exposure she had. (R pgs. 19-21) Juror #161's candor and willingness to speak up is not in question.³ The Defendant has failed to properly allege any non-disclosure.

Further, on the issue of materiality of any alleged non-disclosure, "a new trial will not be granted due to a juror's non-disclosure of facts, unless those facts are considered material." Murray v. State, 3 So.2d 1108 (Fla. 2009) *citing* McCauslin v. O'Connor, 985 So.2d 558, 561 (Fla. 5th DCA 2008). "A jurors non-disclosure of information during voir dire is considered material if it is so substantial that, if that facts were known, the defense likely would peremptory exclude the juror from the jury." *Id.* At 1122-23. The record evidence reflects that an answer in the affirmative to connections with law enforcement would not have likely caused a peremptory challenge. The final jury consisted of twelve jurors (12) and two (2) alternates. Seven (7) out of that group of fourteen (14) that were seated and sworn as the jury had answered in the affirmative to question(s) regarding family law enforcement connections-- only one of the seven (7) was an alternant juror. Juror #235's brother-in-law was in the academy to become a law enforcement officer (R pg. 68). Juror #91's son was a current SJSO police explorer and spent time with local law enforcement officers. (R pg. 248) Juror #76's brother was a current highway patrolman (R pg. 133) Juror #9's children were friends of many who at the time of the trial were *local SJSO deputies*. These deputies were at her house as children and she sees them still. (R pg. 250) ⁴ Juror #184's brother is a captain in the police force in New Jersey. (R pgs. 249 and 321) Juror #195's brother is a Georgia police officer, a captain with a thirty (30) year career. (R pgs. 303-304) Juror #153's son is in the academy to become a law enforcement officer. (R. pg. 145) To compare, the defendant sat seven (7) panel members that were sworn to the jury and struck only four (4) who answered in the affirmative to this line of questioning. The defense struck only one juror out of the entire group because that prospective juror stated that he would believe the testimony of a policeman over other witnesses (R pg. 318) At the end of jury selection, the defense had not exhausted their challenges, they had one remaining, plus the challenge available for the alternant juror, and had never requested additional peremptory challenges as allowed under the law. The issue of law enforcement connections is clearly not the focus of the Defendant's worry over his prospective jurors. The issue now raised by the Defendant can in no way be found to be material in the manner which is mandated by the Florida Supreme Court in Murray. Merely stating that the Defendant would have wanted to strike Juror #161 (when taking his allegations as true) in the face of such record evidence is not enough. Therefore, this claim is based upon mere conclusory allegations and is insufficient. The court may summarily deny this motion on the merits. Franqui v. State, 59 So.3d 82 (Fla. 2011).⁵

The second showing the Defense must make after materiality of the information is that

³ It should also be noted that a data clerk for the FBI is in no way related to a law enforcement officer than a bus mechanic for the school board is related to a teacher in qualifications or scope of employment.

⁴ It should be noted that the defense was not concerned with those facts, so much so, that not one question was asked of that juror about those current relationships and worry that it might create a bias in the juror. (R pg. 322)

⁵ Justice Wells and Quince of the Florida Supreme Court warn us of the very speculative nature of the claims being made by the Defendant here in their dissent to the majority opinion found in Roberts ex Rel. Estate of Roberts v. Tejada, 814 So.2d 334 (Fla. 2002) at 346-347.

the juror intentionally concealed the information. As already addressed above, there was no failure to answer all questions truthfully by Juror #161. All her statements are uncontroverted even in light of the allegations of Mr. Faircloth. No jurors were asked specifically about their own employment with a law enforcement agency or experience as actually law enforcement officers. The lack of such questioning is logical in light of the final makeup of the jury as selected by the defense. When reviewing the entire record of the selection process, the court's comments regarding issues of law enforcement connections (R pgs. 67-69), and after reviewing the stated purpose of the defendant raising the issue (R pgs. 122 and 126) there is nothing further any panel member would be triggered to disclose. If a panel member is exposed to this questioning and does not feel that they will be swayed by the issues raised than there is nothing further to disclose. It cannot even be said that there is an inadvertent non-disclosure, much less an intentional one. The allegations, as represented by the defense, fail to provide a basis for this court to order further relief.

The third showing the defendant is required to make is that the non-disclosure is not the product of the defense's lack of diligence. Murray at 1123. First, the defense was not neglectful. As the record reflects, they were not concerned with an affirmative response to the questions in the manner that the defendant today suggest as previously argued herein. But, the defendant has now alleged that he would have struck Juror #161 on the basis of her speculative contact with law enforcement. The analysis today is not what the record reflects was the focus of the defendant's jury selection process, but in the context of what the defendant is *today* alleging. The defense through simple and direct questions would have revealed this information. They simply did not ask. See Birch v. Albert, 761 So.2d 355 (Fla 3rd DCA 2000) As stated before, the record reflects that Juror #161 was forthcoming even with general questions to the panel. (R pgs. 19-21) It is not the same situation where a juror is asked something "squarely," as Birch requires, and through no fault of the defense lies or fails to disclose that specific information. Here, the juror and the panel as a whole were never asked about employment or personal experience with law enforcement agencies. Therefore, this claim fails to meet this requirement of the law as it has all others. In the light the defendant now puts his trial counsel it must be found that they acted without due care or diligence by not simply asking for the information. This finding is not necessary as the defense has now failed to meet any of the required prongs of De La Rosa and is not supported by the trial record. But with this new claim now argued by the defendant a different finding by the court is impossible.

WHEREFORE, the State respectfully renews its request that the Defendants Rule 3.850 motion be denied.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the attorney for the defendant. Dated March 5th, 2015.

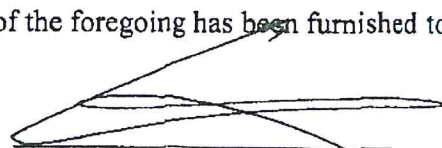

CHRISTOPHER A. FRANCE
Assistant State Attorney
Fla. Bar No: 0069190

EXHIBIT A

STATEMENT OF THE CASE AND FACTS

Appellee provides the following facts in addition to those offered by Barber in his version of the case and facts:

In both his civil deposition and his statements to police,¹ Barber stated that after he awoke after hearing the gunshot, he ran in both directions until he found April face down in the water with a hole in her face but no bleeding. (V. I, R. 114, V. IV, R. 718). He tried to carry her from the water to the boardwalk where he left her.² (V. I, R. 116-117, V. IV, R. 719). Barber said he looked for April's purse in the back seat. (V. I, R. 117-118, V. IV, R. 720). Barber drove north and did not recall passing any houses or open businesses. (V. I, R. 118, V. IV, R. 720).

The responding officer to the crime scene, St. Johns Sheriff's Lieutenant Ben Tanner, testified that he saw April laying longways across the end of the boardwalk. (V. XV, T. 467-468). Lieutenant

¹ The civil deposition and Barber's statements were admitted as evidence and played for the jury. (V. XVII, T. 678-680, 724-735, V. XVIII, T. 917).

² Barber first pulled April by grabbing her under her arms or armpits. (V. I, R. 114, V. IV, R. 718). He tried to pick her up and carry her by putting his arm under her head and his other arm under her legs. (V. I, R. 114, V. IV, R. 718-719). He could not carry her so he tried to get April into a "fireman's carry." Barber then dragged her by her hands, pulling her backwards toward the boardwalk. (V. I, R. 115). When he couldn't do that any longer, Barber pulled her by her wrists, and then under her arms. (V. I, R. 115). He grabbed the waistband of her pants, with his thumbs on the inside of her pants and his fingers on the outside. (V. I, R. 115-116, V. IV, R. 719).

Tanner observed a white frothy substance along her cheek and her hair. He also noticed a red residue or blood. (V. XV, T. 475, 479).

Investigative personnel observed drag marks from the end of the boardwalk to the beach until said marks were washed away by the surf. (V. XV, T. 497-501). While walking these drag marks, there was no blood in either the hard or soft sand. (V. XV, T. 508, V. XVI, T. 557). Blood was collected from Barber's vehicle from the interior driver's door panel, the steering wheel, and the armrest. (V. XV, T. 510). When discussing April's condition at the crime scene, Crime Scene Analyst Holmquist noted the blood flow from April's mouth using crime scene photographs, and he noted that he could clearly differentiate from the blood and the foam. (V. XVI, T. 525-526). The blood was obvious and visible, and had dripped from her mouth and nose. The blood came down the side of her face into her hair. (V. XVI, T. 541).

Detective Howard Cole investigated this crime. Barber told Detective Cole that he struggled with the gunman, but Detective Cole noticed nothing on Barber that reflected a struggle. (V. XVII, T. 739-740). Barber stated that he dropped April when he tried to get her to the boardwalk. (V. XVII, T. 745). Detective Cole noted that the beach sloped down to the water and that blood normally flows with gravity. (V. XVII, T. 748). Detective Cole further observed that Barber offered no explanation for his additional

gunshot wounds which occurred after he said he fainted from the first gunshot wound. (V. XVII, T. 743-744). Detective Cole also noted that Barber's gunshot wound to the right side of his chest was unusual compared to the gunshot wound to his left shoulder. (V. XVII, T. 742-743).

Detective Cole travelled the 9.6 miles of AIA that Barber drove after the murder. He noted that there were ocean front homes and gated subdivisions with guards. Businesses were well-lit and there was a gas station 7.3 miles into the drive. (V. XVI, T. 623-626). These businesses were open at 11:00 p.m. at night. (V. XVI, T. 626). An aerial map of this area was admitted as evidence. (V. XVI, T. 622, Supp. V. XXVI). When asked why he did not stop at any of these homes, Barber told Detective Cole that he did not want to get some old man out of bed. (V. XVI, T. 646). Barber told April's aunt, Patricia Parrish, that he drove ten miles from his wife who had been shot because there were no lights on in any of the homes he passed. (V. XVII, T. 858).

Detective Cole noted that a "tremendous amount of resources" were utilized on the night in question looking for this assailant based upon Barber's account of what happened, including the notion that another vehicle was seen on AIA at the time of the murder. (V. XVI, T. 616, 651-655). In the days after the murder, investigators returned to the beach and searched the vegetation using machetes and K-9 dogs, stating, "Any way possible we

utilized." (V. XVI, T. 537, 616-617). Detective Cole noted that the area of the Guana State Park where April was killed was the "worst place for evidence recovery" given the vegetation of the dunes, which was so rugged that police dogs were injured, and the wildlife of spiders and rattlesnakes. (V. XVI, T. 617). Despite this investigation, no other suspect emerged and there was no evidence of a third party assailant. (V. XVI, T. 656, V. XVII, T. 748). Detective Cole testified that there was no physical evidence that anyone other than Barber and April were on the beach that night. (V. XVII, T. 753).

Initially, Barber denied having any extramarital affairs, and he "adamantly denied" having an extramarital affair with Shannon Kennedy. Yet, when he was told that his mistress, Shannon Kennedy, was at the police station, he admitted to having a sexual relationship with her. (V. XVI, T. 647-648). Ms. Kennedy testified that she met Barber in July 2002 while working at Enterprise Car Rental in the Omni Hotel. (V. XVII, T. 763). They began a sexual relationship early on, which lasted for about three weeks. (V. XVII, T. 764-765). Ms. Kennedy did not know that Barber was married at first and that the two had a sexual encounter within one week of the murder. (V. XVII T. 765-766). During that same time frame, Barber asked her to go on trips to Georgia and California with him. (V. XVII, T. 766-767).

Ms. Kennedy noted that when she first went to Barber's

apartment, she didn't think anybody else lived there, but she noticed pictures were up on another visit. Barber told her he needed to put up pictures because family was coming and he wanted it to look like they were happy. (V. XVII, T. 767-768). Barber stayed at the Omni after the murder. He called Ms. Kennedy after the murder and tried to see her at work. (V. XVII, T. 768, 777-778). Barber brought her a gift several months later. (V. XVII, T. 769).

From January 2001 through July/August 2002, Barber had seven credit card accounts. (V. XVII, T. 809). In January 2001, Barber had a collective balance of \$9725.48 on all seven cards, with minimum payments of \$430. (V. XVII, T. 809, 815). On September 1, 2002, the balance was \$58,487.94, with minimum payments of \$1357. (V. XVII, T. 809, 815). During this time period, there were significant cash advances which totaled \$50,000. (V. XVII, T. 810). The cash advances were deposited into an E-trade account to invest and cover losses. (V. XVII, T. 817-819).

In July 2001, Barber and April were issued term life insurance policies for \$2,000,000 from First Colony Life Insurance. (V. XVII, T. 821-822, 834-835). Barber was the beneficiary of April's policy and on the application paperwork, Barber listed himself as the person to receive any correspondence as it related to the policy. (V. XVII, T. 835). Within weeks of the murder, Barber came in and filled out the paperwork to claim April's life insurance. (V.

XVII, T. 824-825).

The information technology director for Barber's employer, Rayonier Incorporated, testified that Barber had his own password for his computer and that even the IT department typically did not have that password. (V. XVII, T. 840-841. The company forbade the sharing of passwords and frowned upon employees who allowed others to use their computers. (V. XVII, T. 841).

A search of Barber's hard drive from his work computer revealed that two Google searches were conducted on February 14, 2002, using the keywords "trauma, gunshot, right and chest." (V. XVIII, T. 880-881. On February 20, 2002, there were Internet searches using the search engine, Google, using the keywords "medical, trauma, gunshot and chest." (V. XVIII, T. 883-886). On July 19, 2002, there was an Internet search for "Florida and divorce." (V. XVIII, T. 886-887). An attempt was made to delete this search. (V. XVIII, T. 887-888). On August 17, 2002, at 5:16 p.m. the song, "Used to Love Her (But I Had to Kill Her)" by Guns N Roses was downloaded and stored on the computer. (V. XVIII, T. 890-891). That song was deleted or moved on September 3, 2002, and of the 1,695 files on his computer, only that song and one other were marked for deletion. (V. XVIII, T. 892-893, 895, 914).

The Florida Department of Law Enforcement conducted DNA testing on both April and Barber's clothing. (V. XVIII, T. 959-965). The blood stains on April's pants matched only to April's

DNA. (V. XVIII, T. 979-983).

When conducting April's autopsy, medical examiner Dr. Terrence Steiner easily removed a ring from April's finger along with her watch and two earrings. (V. XIX, T. 1001-1002). He observed that the blood drained from her face post-mortem, soaking her hair and pooling behind her head, soaking the back of her clothing. (V. XIX, T. 1003). April had two different types of trauma, multiple areas of abrasions and a gunshot wound to her left cheek. (V. XIX T. 1004). The abrasions were all made when she was alive and were caused by pressure or movement consistent with being rubbed against a coquina beach or rough shells. (V. XIX, (V. XIX, T. 1007-1009, 1052-1057, 1061-1062). April was shot in her face when she was alive. (V. XIX, T. 1010-1011).

Dr. Steiner testified that the blood came out from April's mouth at an angle around her cheek, and the one and one-half teaspoons of white foam coming from her mouth. (V. XIX, T. 1014). The foam was that type expected from someone who was immersed in salt water. (V. XIX, T. 1015-1016). April suffered a near drowning episode, which could cause loss of consciousness. (V. XIX, T. 1026). Dr. Steiner testified that given the blood flow from her face and the fact there was no blood anywhere else, April had been shot where she was found and had not been moved. Her death was caused by that single gunshot. (V. XIX, 1017, 1036, 1039, 1045-1050). If April had been moved or manipulated there

would have been blood somewhere from the draining wound, but there was none. (V. XIX, T. 1045). The lack of blood anywhere else and the blood pattern from her face demonstrated she had not been moved and had been shot where she lay. (V. XIX, T. 1036-1045). Dr. Steiner further noted that if April had been shot in the water, the foam by her nose was inexplicable as it should have washed away in the water. (V. XIX, T. 1046). There was no trace of drugs or alcohol in April's body at the time of her death. (V. XIX, T. 1068).

Barber had five gunshot wounds. (V. XIX, T. 1073-1075). All of his gunshot wounds were minor, requiring only wound care, and none of Barber's organs were at risk. (V. XIX, T. 1075, 1078). He was released from the hospital the day after he was shot. (V. XIX, T. 1080).

Jerry Findley, who had previously testified 133 times as an expert in bloodstain pattern analysis or crime scene reconstruction, explained to the jury that blood flows with gravity and that by comparing Barber's account of the murder with the forensic evidence, there were five major inconsistencies. (V. XIX, T. 1151-1155). First, Barber said he moved April nine times after she was shot, but the blood flow on her face came straight down the left side of her face. (V. XIX, T. 1152-1153). If her body had been moved, her head would have changed positions and the blood would flow consistent with those changes. (V. XIX, T. 1153).

Here, the blood flow was consistent only with her laying in one position and staying in that same position. It did not change once. (V. XIX, T. 1153-1154). Second, Barber stated that he dragged April up the beach by grabbing the waistband of her pants. If Barber had been shot by the assailant down by the water and he had been shot through the hand, there would have been blood transfer to her pants. None of his blood was found on April's pants. (V. XIX, T. 1155). Third, if Barber dragged April by her pants, there should have been buttocks marks in the sand; there were none. April's pants should have fallen down given that she was found with her pants undone and zipper down, but her pants were still in the middle of her back. (V. XIX, T. 1156). Also, sand would have accumulated in her waistband and there was none. (V. XIX, T. 1157). Fourth, Barber stated that he looked for April's purse in the passenger seat and back seat of his car, but there was no blood transfer. There was only blood on the driver's door handle and steering wheel. (V. XIX, T. 1157). The blood drips on his pants were consistent with Barber driving and blood dripping down. (V. XIX, T. 1158). Finally, Barber's blood found on April's upper left arm was a blood transfer and not consistent with someone pulling April by the arms as Barber had stated. (Vol XIX, T. 1159-1161). If he had been pulling April, the skin would give and the blood would swipe and would reflect movement. The blood on April's arm was a straight transfer. (V. XIX, T. 1161).

The defense experts who testified relied upon Barber's statements to reach their conclusions, and even Barber's expert could not exclude with reasonable certainty that April was shot at the boardwalk. (V. XXI. T. 1413-1416, 1418). Also, an additional defense witness admitted that Barber's hand wounds could have been self-inflicted. (V. XXI, T. 1498).

WRITING SAMPLE #3

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. CF11-1859

vs.

GEORGE LIGHTKEP,

Defendant.

_____ /

**AMENDED STATE'S RESPONSE TO DEFENDANT'S AMENDED
MOTION FOR POST-CONVICTION RELIEF FILED 05/12/2015**

COMES NOW, R.J. Larizza, State Attorney for the Seventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney and hereby responds to Defendant's Amended Post-Conviction Relief filed 05/12/2015 and further provide this Honorable Court with additional information, in support of the State's argument held on May 15, 2015. The State respectfully moves that all claims be summarily denied.

Grounds Five and Seven

Defendant, George Lightkep ("Lightkep"), through his counsel, alleges trial counsel rendered ineffective assistance by failing to exclude or object to testimony offered by the victim K.E. Specifically, Lightkep argues, (i) evidence of uncharged criminal conduct was not inextricably intertwined and (ii) the testimony of the uncharged incidents became a feature of the trial and should not be admissible. The Florida Supreme Court has held that testimony by the victim of prior sexual acts on a minor have a relaxed standard of admissibility. McLean v. State, 934 So. 2d 1248, 1259 (Fla. 2006).

The appellate courts in the First, Second, and Fourth Districts have addressed the issue of admissibility of victim's testimony as to prior sexual attacks, and held the testimony is relevant,

therefore admissible. See Gibbs v. State, 394 So. 2d 231 (Fla. 1st DCA 1981); State v Jenkins, 624 So. 2d 354 (Fla. 2d DCA 1993); Kimbrell v. State, 764 So. 2d 893 (Fla. 4th DCA 2000). The courts held information is relevant, if the victim's testimony addresses intent and motive or corroborate the victim's testimony. Padgett v. State, 551 So. 2d 1259, 1261 (Fla. 5th DCA 1989) cause dismissed, 595 So. 2d 557 (Fla. 1992)(quoting Sampson v. State, 541 So. 2d 733 (Fla 1st DCA 1989) "although questioning whether the victim's testimony as prior sexual attacks by the defendant was admissible to corroborate her testimony as to the charged offense, the court nonetheless held the evidence to be admissible as relevant to the issues of intent, motive and absence of mistake."). The testimony is also relevant because generally no eyewitness are present during child abuse sexual encounters, therefore the testimony should be admissible to corroborate the victims testimony and "issue credibility." State v. Jenkins, 624 So. 2d 354 (1993).

Defense argues the testimony is not admissible, and the trial counsel should have objected or excluded testimony, because the testimony of the numerous prior sexual acts are not inextricably intertwined with the charged account, not permissible under the *Williams* rule, and prejudices the defendant.

A. Victim's testimony was inextricably intertwined with charged counts.

K.E.'s testimony of prior sexual acts is admissible because the testimony is inextricably intertwined with the charged counts. In Griffin, the Florida Supreme Court held, "evidence of unchanged crimes which are inseparable from the crime charged, or evidence which is inextricably intertwined with the crime charged . . . is admissible . . ." Strohm v. State, 84 So. 3d 1181, 1184 (Fla. 4th DCA 2012)(quoting Griffin v State, 639 So. 2d 966 (Fla. 1994). Prior

sexual acts are admissible, if the testimony “describes the manner in which criminal offense took place or how it came to light.” Downs v. State, 40 So. 3d 49, 51 (Fla. 5th DCA 2010).

In Downs, the court held prior sexual act involving a shower was not inextricably intertwined because the evidence occurred a couple years after the charged crime and the shower incidents were not similar to the other crimes. As stated in the hearing held on May 15, the testimony of prior sexual acts by K.E.’s explained to the court and jury how the abuse began, the relationship between the defendant and K.E., the length of the abuse, and the opportunity of the abuse. Here the prior incidents were similar to the charged crimes and inextricably intertwined.

Defense counsel argues the uncharged acts were “distinct and separate from the charged conduct, and were not relevant to prove the charged crimes.” (Def.’s Memorandum in Support, ¶ 3). Defense relies upon Wrightman v. State, which held accounts of other sexual battery occurring was not necessary to describe the “two discrete acts charged in the information.” 982 So. 2 74, 76 (Fla. 2nd DCA 2008). In that case, the testimony elicited was to help establish the two charged accounts, since the victim could not remember exact dates or times, just generalization. Id. Further, the court would not allow the testimony under the *Williams* rule, because the prosecutor never provided the defendant pre-trial notice. Id.¹

K.E. testified to several incidents, not to prove the two counts occurred, but to provide the complete context of the charged accounts, including the motive, opportunity, and lustful behavior of the defendant.

Assuming, arguendo, this Court found the testimony was not inextricably intertwined, the testimony is still admissible under the *Williams* rule.

¹ See *supra*, Part B.

B. The statements are admissible under the *Williams* Rule

K.E.'s testimony of prior sexual acts is admissible, under the *Williams* rule, because the testimony to prove motive, intent, preparation, and identity. Prior sexual acts are admissible if the testimony proves motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake.

In Paille, the court looked at the issue, similar to ours, testimony from victim detailing other non-charged sexual acts. In that case, the court held “the evidence of similar acts in this case was relevant to prove intent, preparation, plan, and existence of a lustful attitude toward the victim. State v. Paille, 601 So. 2d 1321, 1323 (Fla. 2nd DCA 1992). In that case, the victim described three separate incidents with Paille, different from the two charged accounts. Id. The trial court granted a new trial, based upon the victim’s testimony. Id. The Second Appellate District, stated “[t]he fact that the incidents began with kissing and continued over a period of three months is relevant to prove that Paille planned and intended to lure the victim into sexual activity over time.” Id. The court further explained the testimony was harmless, because it was from the victim and not testimony offered by other victims. Id. at 1324. Specifically the court stated, “[e]vidence of similar acts against the victim in the case being tried is far less objectionable than evidence of similar acts against other victims.” Id.

The court also looked at the issue of providing notice to defendant, as required to utilize *Williams* rule evidence. Id. The court held lack of notice is a harmless error and is subject to a “harmless error analysis.” Id. The court further held, the defendant (Paille), received notification of the testimony and prior incidents, through the victim’s deposition. Id. Although the prosecution never sent a formal notice, the court said the prosecutor was acting in good faith and the defendant received adequate notice through the deposition and pretrial hearings. Id.

Similar to Paille, the testimony offered by K.E. provided context from the beginning of the sexual abuse to the more heinous charged crimes. The testimony offered proof of intent by the defendant to commit the charged crimes, opportunity by offering evidence of times alone, familial context, by describing her relationship to the defendant, who is her uncle, and motive.

Furthermore, in our case, notice was provided to the defendant about the prior sexual acts, in the deposition of K.E. taken on March 5, 2012. (EXIBIT A). The prior acts testified at trial, where specifically stated in detail in the deposition, for example:

- Earliest memory is when he had his hands on my inner thigh. K.E. Depo 5:10-25;
 - Testimony offered at trial: an incident where Lightkep allegedly touched her leg while seated in a car. (JT 97-101, 106).
- On the way to gas stations, he always showed me his penis, told me what to do, told me how to do it. K.E. Depo. 7: 5-7;
 - Testimony offered a trial: incidents when she performed oral sex on him in a car. (JT 104).
- Incident at his home, when he took of his pants, and tried to have sex with her. K.E. Depo 9:16-25;
 - Testimony offered at trial: An incident when he attempted to penetrate her vagina while she sat on a bed. (JT 113-15).

It is clear, that notice was provided to defense of the prior sexual incidents, and that the testimony not only provided context, but described in clarity, the motive, opportunity, intent, and preparation of the defendant's acts against his young niece.

C. The defendant was not prejudiced by the testimony

Defense counsel argues, the testimony of the prior incidents became the feature of the trial and prejudiced his client. In order to prevail on ineffective counsel, defendant must prove,

counsel was not functional in his professional capacity and the unprofessional errors prejudiced the defendant. Strickland v Washington, 466 U.S. 668, 687 (1984).

First, defendant must prove specific acts or omissions occurred by counsel, that “were so serious, counsel was not functioning as the ‘counsel’ guaranteed by the defendant by the Sixth Amendment.” Id. To prove counsel was deficient, the defendant must show “counsel’s representation fell below an objective standard of reasonableness.” Jones v. State, 845 So. 2d 55, 65 (Fla. 2003) (quoting Ragsdale v. State, 798 So. 2d 713, 715 (Fla. 2001)). To measure the objective standard of reasonableness the court evaluates counsel performance using “prevailing professional norms.” Id. Furthermore, if the defendant fails to prove specific acts or omission, the court may summarily deny the motion, without an evidentiary hearing, if the court’s records, files and motions, refutes the movant’s ineffective counsel claim or if the claim is legally insufficient. Parker v. State, 904 So.2d 370 (Fla. 2005). Thus, general claims and conclusory allegations are not sufficient to meet the defendant’s burden. Id. at 376.

Second, the defendant must prove that the ineffective counsel prejudiced him and “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 694. It is not necessary to prove defendant would have prevailed at trial, only the reasonable probability “sufficient to undermine confidence in the outcome.” Jones, 845 So. 2d at 65.

Further, procedural objections, such whether to allow testimony is considered a strategy decision reserved for the trial counsel. If the decision to “proceed in the manner chosen was a strategic one” and defendant consents to chosen strategy, then counsel’s performance “does not amount to ineffective assistance.” Gamble v. State, 877 So. 2d 706, 704 (Fla. 2004).

In this case, the defendant was aware of the previous sexual acts, given the testimony and the control call. During the call, the defendant reaffirms the victim's testimony, which again was presented in the deposition, such as overnight camp trips. K.E. Depo, 7:5-25. Not only does the defendant reaffirm the testimony, but defendant apologizes to the victim and said "he never meant to hurt her" and she was always "special to him." (Exhibit B) Even if you exclude testimony offered by victim for some of the prior sexual acts, the call was so damning, any counsel in his position would face the same judgment of guilty. This call standing on its own provides the proverbial nail in the coffin.

Nothing is better for the jury than hearing the defendant admitting the acts, by his own mouth. The defendant was not prejudiced by the control call and the call itself was self-explanatory, without the testimony of the victim.

CONCLUSION

Thus, the defendant was not prejudiced by the testimony, the defendant received notification of the testimony, prior to trial, and the testimony provided context, motive, intent, preparation, and opportunity of the defendant to commit these heinous acts against his niece.

Therefore, the State respectfully ask this Honorable Court to deny the remaining two grounds of the Defendant's Post-Conviction relief.

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished to the attorney for the Defendant on this the 3rd day of June, 2015.

Christopher France /s/
Christopher France, ASA
Division Chief St. Johns County
Office of the State Attorney
Fl Bar No. 0069190

Cc Clyde Taylor, attorney for Defendant e-service and email.

Exhibit A

1 DEPOSITION OF
 2 KIMBERLY ELIXSON
 3
 4 In the Circuit of the Seventh Judicial Circuit
 5 In and For St. Johns County, Florida
 6
 7 State of Florida, *
 Plaintiff * No. CF-11-01859
 8 vs. *
 9 George Lightkep, *
 Defendant *

11 March 5, 2012
 12 9:00 A.M.
 13 ~~~~~
 14 ~~~~~
 15 OFFICES OF:
 16
 17 LAKE CHARLES COURT REPORTING SERVICE, INC.
 18 121 Jefferson Drive, Building C
 19 Lake Charles, Louisiana 70605

23 LAKE CHARLES REPORTING SERVICE, INC.
 24 P.O. Box 4969
 Lake Charles, Louisiana 70606-4969
 (337) 478-9637 Fax: (337) 478-9627

25

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1 PROCEEDINGS:
 2 KIMBERLY ELIXSON, the witness hereinbefore
 3 named, after being first duly cautioned and sworn to
 4 tell the truth, the whole truth, and nothing but the
 5 truth testified under oath as follows:
 6 EXAMINATION
 7 By Mr. Bennett:
 8 Q My name is Sam Bennett. I represent George
 9 Lightkep. We're here today because you were listed
 10 by the State of Florida as the victim in this case
 11 in St. Johns County. I'm going to ask you some
 12 questions. All I ask is you try to answer
 13 honestly. If you don't know something, say you
 14 don't know. If you're not sure, say so. If you
 15 have to guess, say you're guessing so everything is
 16 clear. Also, of course, please answer out loud
 17 because the court reporter has trouble taking down
 18 head shakes or "Uh-huh" and such.
 19 A Okay.
 20 Q For the record, please state your name.
 21 A Kimberly Peaches Elixson.
 22 Q Previously you said you go by Kim?
 23 A Kim, Kimberly.
 24 Q Kim, do you know why you're here today?
 25 A To do my deposition.

1 Q Okay. Yes. What brought you to the police in
 2 regards to George Lightkep, Sr.?
 3 A He's my uncle and he molested me for ten years.
 4 Q When did this take place roughly?
 5 A The earliest I can remember is age 6 to 16 until I
 6 moved to Biloxi, Mississippi, to get away from him.
 7 Q And what details, if any, do you recall?
 8 A There's a lot. Any kind of certain details you
 9 want?
 10 Q If I don't ask you, I'm sure State will. Start
 11 from the beginning what you recall.
 12 A My earliest memory was when I was about six years
 13 old. It was my mother -- well, it was my uncle.
 14 He was driving. My mom was in the middle and then
 15 it was me and -- I'm nervous. I'm sorry.
 16 Q That's okay. Take your time.
 17 A I got that wrong. It was my uncle, me, and my mom.
 18 My mom was on the outside. I was in the middle and
 19 we were driving.
 20 Q What is your uncle's name?
 21 A George Lightkep.
 22 Q Okay. That's your uncle.
 23 A However, I was in the middle. We were driving to
 24 the gas station and my mom noticed and I noticed
 25 that he had his hand on my inner thigh going up,

5

1 up, up close to my vagina. My mom noticed it. She
 2 stopped it. We switched places. That's kind of
 3 like the vaguest early memory I have of him and I
 4 remember my mom saying, "Leave her alone," this,
 5 that and the other. My mom is from a different
 6 country. She was scared of being deported even
 7 though she does have her alien status now or
 8 however you say it, the correct term. That's the
 9 earliest.
 10 Q What next do you remember?
 11 A The next one is probably -- like I don't remember
 12 the exact ages, like if I was 5 or if I have 12 but
 13 I do remember about what time from like 7 to 8 or
 14 8 to 9 around in that time.
 15 Q Okay.
 16 A However, another one I remember was probably when I
 17 was about 8, 7, 8, around in that time. Anytime I
 18 wanted to go to the gas station, we would go
 19 together and we were living in Hastings, Florida,
 20 and if I went with him to the gas station, the gas
 21 station is not even a mile away. It's like
 22 probably two blocks away, maybe three. It would
 23 always take us 30 minutes because on the way there,
 24 he would make me give him a blow-job in order to
 25 get candy or anything. That happened so many times

6

1 I can't even put a number on it. If I had to
 2 guess, I would say over 50 to 100 times. I'm not
 3 exact on how many times. It happened throughout
 4 the whole ten years.
 5 On the way to the gas stations, he always
 6 showed me his penis, told me what to do, told me
 7 how to do it. He would always touch me in my
 8 vagina. He's even with his hand gone to the
 9 inside, things like that. That's kind of from
 10 7 to about 16 is why I kind of remember him doing
 11 all that stuff like that. I want to say anytime
 12 when we went on his -- am I going too fast?
 13 Q As long as she can get it, you're great.
 14 A He was a part of the bikers group, AEWTE, American
 15 Bikers Working Towards Education. They would
 16 always go out, I guess, every weekend and go to
 17 Tallahassee, go to Pensacola, Orlan - not Orlando
 18 -- Daytona Beach for the Daytona 500. There's
 19 numerous places that he went and I would always
 20 normally come along.
 21 During that time I would come along, I would
 22 be in the R.V. My aunt would be out getting drunk,
 23 doing whatever she's doing.
 24 Q Your aunt, you're talking about --
 25 A Irene Lightkep. She would be out. It would be

7

1 late. All the other kids that was with us, my
 2 cousins in general, would be like Stephanie Watson,
 3 Matthew Watson, Clara Shallingsberg. I'm not sure
 4 how to pronounce it. It's Stephanie's stepsister
 5 from the last marriage. We would all in general be
 6 there. All the kids would be there and whenever
 7 everybody would go to sleep, that's when he would
 8 come over and he would start touching me and he
 9 would touch my clit and he would go inside me. He
 10 would just keep doing it and doing it. Then he
 11 would make me touch him. I would have to touch him
 12 on his penis. I would have to either give him a
 13 blow-job or I would have to either use my hands and
 14 masturbate him.
 15 I want to say I was probably 12 or 13 and my
 16 aunt I believe at that time she was, I want to say,
 17 working at the post office and that's Irene
 18 Lightkep.
 19 Q When this was happening or just in general that's
 20 where she worked?
 21 A When this incident happened.
 22 Q The one we're talking about right now?
 23 A Yes, I believe she was working. I'm not for sure.
 24 Normally she would work to probably 4:00 or 5:00.
 25 Q This would have been during the day?

8

1 A This was during the day. I was grounded. I got in
2 trouble with school. So, my dad would put me over
3 there. He would kind of be like my baby-sitter at
4 the time. I would go over there but this one
5 incident we went upstairs. I was grounded to a
6 room and so I was already up there. I was in his
7 room. When you go up the steps, at the time the
8 first door on your right, there is a bed there and
9 he tried to take my virginity. He put me on the
10 bed. He told me he had a vasectomy where he
11 couldn't have any kids. He took my clothes off. I
12 was on the bed and he basically had my hands kind
13 of like back holding them down and then at the time
14 then he was like kissing all over me, doing that
15 kind of stuff. I couldn't get free at that time.
16 He took his pants off. He still had his shirt
17 on. He got up into that position where he started
18 to try to have sex with me where he tried to stick
19 his penis inside of me. Then I would put my hand
20 there. I got one hand free. I was like I put my
21 hand down on my vagina. I was like, "Please, No,
22 no, I don't want to. I don't want to get pregnant.
23 I'm not ready," blah, blah, blah. What I mean by
24 "blah, blah," I kept saying the same thing over and
25 over, "No, No, No."

9

1 Finally he stopped. I got dressed. I went
2 back downstairs and that's kind what I remember of
3 that one.

4 At an early age, I will say by age 12, anytime
5 like I said earlier about the gas station where I
6 wanted to go have candy or something like that, I
7 would have to give him a blow-job. There were
8 times where he would get a candy and put it on top
9 of his penis and try and say, "Oh, it makes it
10 taste better."

11 I don't know the exact name of it. They still
12 make it. He used to tell me it looks like a penis
13 and so I need practice kind of. It's a liquid
14 candy that you squirt out of it. It's an old-time
15 candy I grew up with. He would buy me the Sixlets
16 or the little round candy, little things. That's
17 how he would try to get me to do what I had to do
18 at that time which was giving him blow-jobs mostly.

19 Another incident I do remember was probably
20 about 7, 8, 9 at the most. I was laying in the bed
21 and my aunt was closest to the TV. My cousin,
22 Stephanie, was in the middle. Stephanie Watson and
23 my uncle, which was George Lightkep, was at the
24 end, the next one. Then I was at the very end and
25 I remember seeing him touching her, trying to go

10

1 after his own granddaughter, blood granddaughter,
2 which is Stephanie Watson, and was touching her on
3 her leg and stuff like that.

4 I grabbed his hand and I moved it to me and I
5 said, "Leave her alone. Please don't touch her.
6 Please do what you got to do to me. Don't mess
7 with her."

8 The reason I didn't come forward was I really
9 thought he would just leave her alone and come
10 after me and just be done with it. I was scared
11 for my cousin. I loved her very much.

12 So, you know, he proceeded to do that. He
13 touched my vagina. He went inside me. He touched
14 my clit. He rubbed down there and this whole time
15 this was happening, my cousin had fell back sleep
16 and my aunt either passed out from drunk or
17 being -- I don't know. I couldn't tell you, too
18 many things wrong with her.

19 Q Do you remember anything else?

20 A It's just really hard to pinpoint exactly, you
21 know, because I'm telling you -- it just basically
22 never stopped for ten years. Ten years it was
23 really hard.

24 My last memory that I have was I was 16 and I
25 was in their kitchen. When you go into their

11

1 kitchen, there's with pole and you can see at the
2 bottom and the top is closed. I was right at the
3 pole.

4 Q You lost me on that. I'm not sure if it's
5 important or not but start over.

6 A It's where my aunt could see. My aunt was -- like
7 if you had your kitchen, it would be like this is
8 the kitchen where the sink is right here. She was
9 standing here. (indicating)

10 Q Like at the sink?

11 A Around the sink. He was right here at the end of
12 the table and there is this one pole that was right
13 here.

14 Q Like to the ceiling?

15 A Well, up to the top of that area. I remember I was
16 standing, leaning on that pole and he reaches his
17 hand up and grabbed my boob and I was 99 percent
18 sure my aunt saw it and never said anything. I
19 tried to tell my aunt, which is Irene Lightkep,
20 that George was touching me. He was molesting me
21 for ten years for a very long time. She looked at
22 me and laughed in my face and told me I was lying.

23 After all that happened, I talked to my mom.
24 I didn't quite tell her everything but I told her I
25 wanted to leave and at the age of 16 1/2 probably

12

1 In January I moved to Biloxi, Mississippi.
2 I also remember just like, you know, there was
3 so many incidents where it happened. You know, I
4 could be in the campground because normally when he
5 goes like to Tallahassee, Pensacola, Daytona Beach,
6 he stayed in campgrounds because he had a camper.
7 When they would go out and my aunt would be with
8 her friends or other family members, I was on the
9 inside with him. You know, it could be in the
10 daytime he wouldn't touch me. Then he would touch
11 me at nighttime or when everybody went to sleep or
12 when my aunt was laying right next to me. It
13 really depends.

14 I'm nervous. My cousin who is no longer with
15 us, she died at the age of 14. She was Lynelle's
16 daughter. Her name -- it's been a long time. I
17 know it's bad, but I forgot her first name.

18 Q Would that be Megan's sister?

19 A Yes, it was Megan's sister. She died at 14. She
20 was molested and cut up into pieces and left in
21 front of a school yard in Colorado. That is
22 Lynelle's daughter and that was George Lightkep's
23 own granddaughter as well and he did pretty much
24 the same thing to her that he did to me at the same
25 time. She was present. She's no longer here to

13

1 let you know, but I have to come clean about that.
2 Q You're not saying that George is the one that cut
3 her up or anything?

4 A No, no. That was in Colorado. That's a totally
5 different thing but he did --

6 Q But you witnessed things.

7 A I saw him touching her and she saw him touching me
8 and things like that. Unfortunately she's not here
9 to testify.

10 The only reason my dad would send me over
11 there is because at the time my dad was going
12 through a hard time. Unfortunately we were kind of
13 broke. My dad would use him for loans and stuff
14 like that. One of the reasons I never told my dad
15 that this would happen, if you meet my dad, you
16 will see right off the bat.

17 Q I met him.

18 MR. FRANCE: I think he gets it.

19 A He would have done something and I promised him
20 never to do anything. The other reason is George
21 threatened me a lot. He would threaten to hurt me,
22 threaten to kill me, get me in trouble, just
23 anything you can think about.

24 Along as this -- during this ten years with
25 George, his stepson, Irene's son, Jeremy

14

1 Lightkep -- actually it's Jeremy Davis. Excuse me.
2 I forgot that's his stepson. Jeremy is in jail
3 right now. I don't know when he's getting out of
4 jail. He's been in and out of jail for a very long
5 time.

6 Q That's the one you asked about where you asked
7 George on the controlled phone call?

8 A Yeah, Jeremy Davis. When I want to say I was about
9 8, maybe 9, I want to say he was probably 15, 16.
10 I don't know, somewhere in there, he was a
11 teenager. While George was downstairs, Jeremy
12 called me up to the room. We was playing with his
13 toys, stuff like that. Then all of a sudden --
14 well, his video games -- he made me give him a
15 blow-job probably two times. He said if I ever
16 told anybody, he would kill me. My dad would be
17 mad at me and he would kill me.

18 That was the same time or during the same time
19 George was doing his stuff to me. I don't know if
20 Jeremy was aware of what was going on with him or
21 not.

22 MR. BENNETT: Can I borrow a piece of
23 paper?

24 MR. FRANCE: Sure.

25 By Mr. Bennett:

15

1 Q Go ahead.

2 A I'm trying to think back to certain dates and
3 certain times. It's just in general he just always
4 touched me. When he would touch me, his normal way
5 would be using his hands, going inside of my
6 vagina. He did use his penis that one time that I
7 can remember. I don't know. I might have blocked
8 it out. If it happened again, I'm not for sure.
9 He was not scared to do it in front of other
10 people.

11 I do remember this one time it was kind of
12 like we were having -- he always had parties,
13 Thanksgiving parties, Halloween parties, this, that
14 and another. When everybody would go to sleep, he
15 would come to me and make me give him a blow-job,
16 give him a hand job, things like that.

17 My Aunt Irene Lightkep was so passed out she
18 passed out butt naked over -- it's kind of like a
19 round sectional. It's a big round sectional where
20 it had the lift chair at the end of it. That was
21 his spot towards the other end where Irene was
22 sitting, laying passed out butt naked. I was in
23 the middle.

24 During that time, he touched me, touched me in
25 my vagina, my boobs, my butt. He touched her,

16

1 Irene Lightkep. He touched both of us. I believe
2 finally after all the other kids started to come in
3 that's when he stopped and he took her upstairs. I
4 can't remember if he picked her up or if he tried
5 to wake her up enough from being drunk to bring her
6 upstairs.
7 He would touch me when he's always sitting at
8 his end of the chair and I would be sitting next to
9 him because he would make me sit next to him. If
10 there was a blanket, he would touch me in front of
11 Irene when she was like 5 feet away in her chair.
12 He would touch me underneath the blanket. He would
13 finger me, use his finger. He would have me touch
14 him.
15 He always told me that he would hurt me if I
16 ever said anything. We was with the post office,
17 at the time, United States Post Office in Hastings.
18 He touched me inside of the post office vehicle
19 because sometimes I would be with him. I would go
20 through the mail and play with it, all the junk
21 mail, shall I say, that never nobody ever wants.
22 Q Okay.
23 A And Irene's truck which was like a green/blue like
24 a teal looking truck.
25 Q Small pickup?

17

1 A Yeah, small pickup. It was a four-seater, like a
2 front and back.
3 Q With a top on it?
4 A I don't know about the top. It didn't have a
5 topper at the time.
6 Q It had mail signs on it?
7 A Yes. It had the mail signs. He would do it
8 whenever we would go bowling. They always bowled.
9 They were in a bowling league. He would touch me
10 inside of the bowling office. He would touch me
11 inside of the truck. Before we went, my aunt would
12 go in first. He always grabbed my butt. We could
13 just be walking anywhere and he would just grab it.
14 He would grab my boob.
15 I really honestly feel my aunt had to know
16 something and just didn't say anything or didn't
17 care and I thought I was the only one. I really
18 did. I thought he would leave his own grandkids
19 alone.
20 Q Is that why you've come forward at this time?
21 A The reason I came forward was because there was a
22 couple of things. I was friends with some of my
23 cousins on Facebook and I saw they had some kids
24 and one of them, Katelyn Lightkep, which is
25 George's son's daughter, Baxter Lightkep, had a

18

1 child. It was a boy. I also saw that George's
2 daughter, Lynelle, had Crystal had I believe it was
3 three little girls. I kind of was ready in my life
4 to come forward just to let them know just, "Hey,
5 be careful, be aware."
6 So, I told Katelyn and Crystal and Crystal, I
7 believe, told Lynelle. Lynelle sat down with Megan
8 Smith and with Steven, which is her brother. I
9 don't know what his last name is, questioned him,
10 asked him what happened. They came forward and
11 told me that Megan Smith admitted that he would
12 give her blow-jobs -- I mean, she would give him
13 blow-jobs, excuse me, and things that happened to
14 me she told me happened the same thing happened to
15 her.
16 I never knew that you could actually come
17 forward this late because you watch TV and you see
18 all these shows about five years. I thought after
19 five years you can't come forward. Megan's mother,
20 Lynelle, asked me to come forward. So, I did.
21 Then I found out that -- for Megan's side I was
22 coming forward to let them know what happened on my
23 side and then I found out after the Marion County
24 called me and said they were going to set up an
25 appointment with me out here to do a video that you

19

1 could actually still prosecute him for what he did.
2 So, I prosecuted him.
3 Q Okay. Is there anything else you think that I
4 should know?
5 A I'm an open book. Just ask me any questions.
6 Q Well, is there anything that you haven't told us
7 that you believe?
8 A There may be other stuff. You've got to understand
9 I've been trying to block this away. I've been
10 trying to deal with my life.
11 Q Sure. I guess what I'm trying to say -- and I
12 think I'm sure you've given plenty but what I'm
13 trying to say is the purpose of a deposition is to
14 know everything that would come out at trial
15 basically.
16 A I'm trying to remember everything that I can
17 remember at this time. Like I said, there's still
18 different parts in my mind that I still think, "Did
19 this happen?"
20 "Yes. I remember this happening." It's just
21 so many times of him -- so many instances of him
22 molesting, touching me on the way to the gas
23 station, on the way to the stores. It's just I
24 can't pinpoint every single one that happened
25 because after so long, you sit there and you try to

20

1 block it out. In general that's a pretty good
2 aspect of what happened.
3 MR. BENNETT: You got any questions,
4 Chris?
5 MR. FRANCE: No, I don't.
6 MR. BENNETT: That will do it. You have
7 an option now -- it's the same in Louisiana --
8 to read or waive. Most people waive. What it
9 means basically is that if you want to read,
10 either she'll get a copy to you or you'll come
11 down here and read what you said. You're not
12 going to be able to correct things but if
13 there's a typo or something like that or
14 misspelled, you could say, "No, that's not
15 what I said" or something like that. It's
16 like an errata page where you just --
17 THE WITNESS: Can I have a copy for my
18 records?
19 MR. FRANCE: I'll get a copy.
20 THE WITNESS: That's all I want is a copy
21 for my records.
22 MR. FRANCE: We'll waive.
23 MR. BENNETT: Otherwise, you can just
24 waive. That's fine. We're done.
25 (Whereupon the deposition was concluded)

1 C E R T I F I C A T E
2 This certification is valid only for a transcript
3 accompanied by my original signature and original blue
4 seal on this page.
5 I, BELYNDA CHAMPAGNE, Registered Professional
6 Reporter and Certified Court Reporter in and for the
7 State of Louisiana, as the officer before whom this
8 testimony was taken, do hereby certify that
9 KIMBERLY ELIXSON, after having been duly sworn by me
10 upon authority of R.S. 37:2554, did testify as herein
11 before set forth in the foregoing (22) pages; that this
12 testimony was reported by me in the stenotype reporting
13 method, was prepared and transcribed by me or under my
14 personal direction and supervision, and is a true and
15 correct transcript to the best of my ability and
16 understanding; that I am not related to counsel or to
17 the parties herein, nor am I otherwise interested in the
18 outcome of this matter.
19 IN WITNESS WHEREOF, I have hereunto affixed my
20 signature at Lake Charles, Louisiana, this the 20th day
21 of March, 2012.
22
23
24 BELYNDA CHAMPAGNE
25 CCR No. 93048
RPR No. 821012

Exhibit B

1 IN THE CIRCUIT COURT, SEVENTH
2 JUDICIAL CIRCUIT, IN AND FOR
3 ST. JOHNS COUNTY, FLORIDA.

4
5 CASE NO.: 11-1859 CF

6 STATE OF FLORIDA

7 vs.

8 GEORGE LIGHTKEP,

9 Defendant.
10 _____/

11 TRANSCRIPT OF RECORDED TELEPHONE CALL
12
13
14
15
16
17
18
19

20 Transcribed by:

21 Carman L. Gaetanos
22 Florida Professional Reporter
23 Coastal Court Reporters, LLC
24 3940 Lewis Speedway, Suite 2102
25 St. Augustine, Florida 32084
(904) 824-3525

CERTIFIED
COPY

* * * * *

1

PEACHES: 26856103 (inaudible). Okay.

2

3

(Ring, ring.)

4

GEORGE LIGHTKEP: Hello.

5

PEACHES: May I speak with George Lightkep?

6

GEORGE LIGHTKEP: Speaking.

7

PEACHES: Hi, Uncle George. This is Peaches.

8

GEORGE LIGHTKEP: Oh, hey babe.

9

PEACHES: How are you?

10

GEORGE LIGHTKEP: All right. How are you?

11

PEACHES: Doing good. I just spoke with Aunt

12

Irene. She was at work, so I told her I would give

13

her a call. Heard you got into a motorcycle

14

accident.

15

GEORGE LIGHTKEP: Yeah, but I'm all right.

16

PEACHES: Well, that's good. How is

17

everything going for you?

18

GEORGE LIGHTKEP: Everything's fine.

19

PEACHES: So, I'm calling because I need to

20

know something. And it's kind of serious so we

21

need to sit down and kind of have this talk because

22

I need to know what you want me to say or what you

23

want me to do.

24

Are you still there?

25

GEORGE LIGHTKEP: Yeah.

1 PEACHES: Okay. So, I -- me and you both know
2 what happened to me when I was younger, and what
3 you had me do, and all of that. And I'm kind of
4 looking at you for an apology, some kind of, you
5 know, saying like I'm sorry so I can kind of
6 forgive you and move on with my life. And I have
7 detectives wanting to know -- they want to sit down
8 and talk to me to find out what happened with Megan
9 and all of this other stuff. So I just kind of
10 need to know what you want me to do because I
11 really don't want any involvement at all.

12 GEORGE LIGHTKEP: Well, baby, the best thing I
13 can tell you is I have never intentionally hurt
14 you, and I'm sorry for any problems that I may have
15 caused you.

16 PEACHES: I mean, I just don't understand --

17 GEORGE LIGHTKEP: You've always been very
18 special to me and I've always, you know --

19 PEACHES: You know --

20 GEORGE LIGHTKEP: -- thought of you in that
21 way.

22 PEACHES: I --

23 GEORGE LIGHTKEP: Honey, if I have caused you
24 any problems at all, I am very, very sorry.

25 PEACHES: Okay. Well, I'm just going to let

1 you know that I am going to forgive you for what
2 you did to me for so long. I'm just -- I'm going
3 to overlook it and you know, I'm going to forgive
4 you. But I just, you know, Megan was telling me
5 because I found her on Facebook or something like
6 that, and she was telling me stuff about her that
7 was very similar to what happened to me, and I
8 just, you know, I don't know if it's true or not.
9 I don't know. I mean, you know, I'm just going by
10 my experience.

11 GEORGE LIGHTKEP: Uh-huh.

12 PEACHES: But what do you want me to do if the
13 detectives call me because they've been trying to
14 call me for the last week and I've been ignoring
15 phone calls because I don't --

16 GEORGE LIGHTKEP: Well, my wish is that you
17 would continue to do that.

18 PEACHES: Okay. Well yeah, I mean I guess I
19 can just continue to keep ignoring the phone calls
20 and everything like that for you.

21 GEORGE LIGHTKEP: Well, you don't know how
22 much I would appreciate that, hon.

23 PEACHES: But you know, I just want you to
24 know, Uncle George, though that you know, I'm an
25 adult now and everything like that and I have my

1 own little daughter, you know, and I'm married,
2 have my own life and I just want you to know that
3 what happened to me when I was little, and all the
4 way until I left, you know, it seriously hurt me.
5 Like, I did -- I did really bad things to try to
6 get over it. I'm in a really good set of --

7 GEORGE LIGHTKEP: My intention was never to
8 hurt you in any way, shape or form.

9 PEACHES: Well, I mean, I understand you're
10 saying that now, and I mean, I understand where
11 you're coming from, but you know, as me growing up,
12 I looked at you as my uncle, you know, somebody
13 that's always going to be there to protect me and
14 it just, it kills me now that I'm older and I
15 understand this, that all of that happened, you
16 know. It makes me feel like you sit here and tell
17 me you love me, but you don't love me, you know.

18 GEORGE LIGHTKEP: Well, that's -- that is not
19 the case, honey.

20 PEACHES: All right. It's just -- it's really
21 hard for me to get over like I said. I've been
22 going to church, I've been having my own little
23 conversations with God and everything like that
24 just trying to get -- just trying to forgive you
25 and just kind of overlook everything, because you

1 know like I said, I don't want any involvement with
2 this, and I'm just -- you know, I don't -- I just
3 don't know what to do. I don't -- you know, I
4 guess if the police call me or the detectives call
5 me, I will just play stupid like I don't know.

6 GEORGE LIGHTKEP: Well, that would be of help
7 to me, I'm sure.

8 PEACHES: Yeah. I mean, but between me and
9 you though, I mean, like is Megan right though, or
10 is she just lying?

11 GEORGE LIGHTKEP: Megan has a vivid
12 imagination and she is boy crazy. I don't know who
13 planted this stuff in her head, and there is
14 nothing that I can do or say about it. They --
15 basically they pretty much hold the rest of my life
16 in their hands, and I can't do a thing about it one
17 way or the other.

18 PEACHES: Uh-huh. Well, you know, like I
19 said, I don't know who to believe or what to
20 believe or anything like that, but you know, Megan
21 contacted me and told me that, you know, like you
22 used to -- we used to go to the gas station all the
23 time and you would make me do oral stuff and
24 everything, and she said the same thing like that
25 with her, so I was like how could -- nobody else

1 would know about that but her.

2 GEORGE LIGHTKEP: Uh-huh.

3 PEACHES: You know, so I mean, I just -- as
4 long as you're saying that she is making it up and
5 everything like that, but I mean, I just -- I don't
6 know what to say, you know. She wants --

7 GEORGE LIGHTKEP: Well baby, I don't know what
8 to tell you to ease your mind. Again, you know,
9 I'm the one -- I'm hung out a limb. There ain't
10 nothing I can do about it except ride it out and
11 see what happens. It ruined my life. It ruined
12 Aunt Irene's life. It will ruin my momma's life,
13 but there is nothing I can do or say to exonerate
14 myself except say it.

15 PEACHES: Yeah. Well, I mean, have you like
16 tried to talk to Glenell or any of them to see
17 what's going on in that situation or --

18 GEORGE LIGHTKEP: Both of my daughters have
19 said they do not want to talk to me or have
20 anything to do with me, and I am respecting their
21 wishes.

22 PEACHES: Yeah.

23 GEORGE LIGHTKEP: I don't have any choice.

24 PEACHES: Yeah. Well, I understand that.
25 Yeah. Well, I mean I just hope that, you know,

1 this gets resolved in the way you want it to go,
2 and I'll just try my -- I just won't answer those
3 phones calls and I won't go down there and I won't
4 have any kind of involvement, so you're safe on
5 this side.

6 GEORGE LIGHTKEP: Well, it's greatly
7 appreciate, hon.

8 PEACHES: But I just want you to know that,
9 you know, everything that had happened when I was
10 younger, you know, it's destroyed me, Uncle George,
11 it really did. I tried to kill myself because of
12 what you did. You know, I was deeply depressed and
13 that's the reason I moved without saying goodbye or
14 anything like that. I just up and left because I
15 could not take it any more, you know.

16 GEORGE LIGHTKEP: Uh-huh.

17 PEACHES: So I just want you to know, and I'm
18 not saying you have to tell Aunt Irene, or she
19 doesn't know, if she does know, whatever, but I
20 want you to some way sit down and kind of talk to
21 her and tell her the reason why I left. You don't
22 have to sit there and say -- you know, just come up
23 with your own story and just let her know that you
24 know, I still love y'all, I still care about y'all,
25 and I still want the best for y'all, but I just --

1 it was a time in my life where I had to leave. If
2 you could --

3 GEORGE LIGHTKEP: I understand.

4 PEACHES: -- just explain that to her. I
5 mean, you can say whatever you want, but I want
6 y'all to know that, you know, like I said, I looked
7 up to you like you were my second dad, you know.
8 You were always there for me, you know, when I
9 needed something, when we'd go bowling or when we'd
10 go to school or you know something like that, you
11 know.

12 GEORGE LIGHTKEP: Well, I always tried to be
13 that way with you.

14 PEACHES: Well, Aunt Ren told me you sold
15 your -- I talked to her briefly and she said that
16 y'all sold that house. Why did y'all sell that
17 house?

18 GEORGE LIGHTKEP: Because too much for us
19 because we didn't have any kids. It was just her
20 and me, six acres and a two-story house, just -- we
21 didn't need it.

22 PEACHES: Uh-huh. So have you heard from
23 Justin or Jeremy or anybody like that?

24 GEORGE LIGHTKEP: Yeah. Jeremy is in jail in
25 Oklahoma.

1 PEACHES: Oklahoma.

2 GEORGE LIGHTKEP: And Dustin is in Virginia
3 stationed up there.

4 PEACHES: So how -- what did Jeremy go to jail
5 for?

6 GEORGE LIGHTKEP: He went to jail for
7 aggravated assault and battery. He stabbed two
8 guys. He went to jail in California but due to the
9 overcrowding, he's in jail in Oklahoma now.

10 PEACHES: Uh-huh.

11 GEORGE LIGHTKEP: They transferred him to
12 Oklahoma.

13 PEACHES: Huh. I knew he went to jail, but I
14 didn't know he went to jail for that. So when do
15 they predict him to get out, if he's ever going to
16 get out?

17 GEORGE LIGHTKEP: Well he -- yeah, he's in for
18 seven years.

19 PEACHES: Oh, okay.

20 GEORGE LIGHTKEP: He has to do 85 percent of
21 the time.

22 PEACHES: Uh-huh.

23 GEORGE LIGHTKEP: Then, you know, with good
24 behavior or he would have a chance of getting out
25 on parole if he was good in jail.

1 PEACHES: Yeah. Well, hopefully everything
2 will work out to his way, the way he wants it to go
3 too. He just got to behave and maybe he will learn
4 this time.

5 GEORGE LIGHTKEP: Well, I'm hoping.

6 PEACHES: So how do you like -- where do you
7 live again?

8 GEORGE LIGHTKEP: We live in Salt Springs,
9 right in the middle of the Ocala National Forest in
10 an RV resort.

11 PEACHES: Okay. That's nice. You like it out
12 there? You got a lot of family or friends, or you
13 know --

14 GEORGE LIGHTKEP: Well, we love it out here.
15 We like the camping lifestyle.

16 PEACHES: Are you still part of ABATE and all
17 of that stuff?

18 GEORGE LIGHTKEP: Uh-huh, I'm still a member.

19 PEACHES: Well, that's good. I read that,
20 what was it the Cheyenne --

21 GEORGE LIGHTKEP: Uh-huh.

22 PEACHES: That's good. How's everybody doing?
23 Have you seen Greg or any of them lately?

24 GEORGE LIGHTKEP: No.

25 PEACHES: No?

1 GEORGE LIGHTKEP: I have not seen any of them.

2 PEACHES: Yeah, I haven't seen them either.

3 So who else goes there?

4 GEORGE LIGHTKEP: Goes where, baby?

5 PEACHES: To the ABATE. Who is the still part
6 of the ABATE, anyone I know?

7 GEORGE LIGHTKEP: To be honest with you, you
8 probably wouldn't know any of them. They're all
9 new faces.

10 PEACHES: Oh, okay. Do you still go to those
11 little bike rides that we used to do when I was
12 younger, where you go all over and pick up toys?

13 GEORGE LIGHTKEP: I haven't -- I have not
14 lately.

15 PEACHES: Uh-huh.

16 GEORGE LIGHTKEP: But, yeah, I did the
17 Tallahassee run when they all go up there to do the
18 ride on the Capitol, I did that. That was the last
19 basically outing we were on.

20 PEACHES: Uh-huh. What about the one over --
21 didn't y'all do -- we used to do one all the time,
22 but I can't remember -- was it Daytona or it was
23 something similar to that, you remember.

24 GEORGE LIGHTKEP: You talking about Spooks N'
25 Scoots?

1 PEACHES: Yeah, I think so. Where they had
2 all the kids.

3 GEORGE LIGHTKEP: Yes, they still do that.

4 PEACHES: Like all the kids would stay in the
5 camper and all the adults would go out and have fun
6 and you know party and stuff at nighttime, and the
7 kids kind of hung out.

8 GEORGE LIGHTKEP: That was Spooks N' Scoots.
9 They're still doing that. That's done in October
10 every year.

11 PEACHES: Are you going to go this year?

12 GEORGE LIGHTKEP: I don't think so.

13 PEACHES: Well, maybe plans will change, you
14 never know. You might be able to go.

15 GEORGE LIGHTKEP: Yeah, you never know.

16 And where are you?

17 PEACHES: I live in Louisiana. I live in New
18 Orleans right now.

19 GEORGE LIGHTKEP: Uh-huh.

20 PEACHES: So just kind of out here working and
21 living my life. But I just wanted to call you real
22 quick and just kind of touch bases with you to see
23 what you want me to say and everything like that.

24 GEORGE LIGHTKEP: Uh-huh.

25 PEACHES: So, well I don't mean to cut this

1 short or anything like that, but you know my
2 daughter is screaming over here on the side. She
3 wants me to go pick her up, so I got to go feed her
4 and everything like that. I told Aunt Ren that I'd
5 give y'all a call about 6 o'clock tonight, maybe
6 6:30.

7 GEORGE LIGHTKEP: Uh-huh.

8 PEACHES: So, if that's okay with you, I will
9 give y'all a call back later tonight.

10 GEORGE LIGHTKEP: Sure, that's fine, hon.

11 PEACHES: All right. Well, once again, I just
12 want you to know that I'm forgiving you for what
13 you did, I really am. Okay. But you --

14 GEORGE LIGHTKEP: All right.

15 PEACHES: But you got to promise me that you
16 never do it to anybody else.

17 GEORGE LIGHTKEP: Baby, I'm so old right now,
18 I can't hardly get around myself.

19 PEACHES: I understand. So I'm going to go
20 ahead and go take care of my daughter and I'll give
21 y'all a call back later tonight.

22 GEORGE LIGHTKEP: All right, hon.

23 PEACHES: All right. Talk to you later.

24 GEORGE LIGHTKEP: Bye bye.

25 PEACHES: Bye.

(Recording concluded.)

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REPORTER'S CERTIFICATE

I, Carman L. Gaetanos, FPR, Court Reporter,
certify that I was authorized to and did
transcribe the foregoing audio recorded proceedings, and
that the foregoing transcript is a true and complete
record to the best of my ability.

DATED this 16th day of March, 2012.

Carman Gaetanos
CARMAN L. GAETANOS, FPR
Court Reporter
Notary Public-State of Florida
Commission No. EE 091192
Expires: 6/12/2015